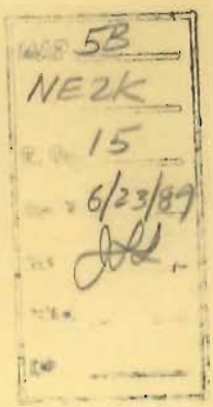
G 3rd 330

OPINIONS / ORDERS

ZONING COMMISSIONER

BOARD OF APPEALS

CIRCUIT COURT



#1

CIRCUIT COURT FOR BALTIMORE COUNTY

CIVIL GENERAL

DOCKET 19 PAGE 117 CASE NO. 86CG22 CATEGORY APPEAL

IN THE MATTER OF PETITIONS FOR
SPECIAL EXCEPTION, SPECIAL HEARING
AND ZONING VARIANCES,
N/S of Chester Rd., 590' W of
Serern Rd. (800 Chester Rd.)
15th Election District

JOSEPH F. EVERING, JR., et ux,
PETITIONERS

Zoning Case 85-65-XSPHA

ATTORNEYS

Malcolm F. Spicer, Jr.
Thomas J. Bollinger
Court House- Mezzanine (04)

John O. Hennegan
Donald E. Brand
Romadka, Gontrum, Hennegan & Foos
809 Eastern Blvd (21) 686-8274

T. Rogers Harrison
Mudd, Harrison & Burch
306 W. Joppa Rd. (4) 828-1335
(Protestants-Appellants)
Phyllis Cole Friedman,
Peter Max Zimmerman,
Rm. 223 Court House (4) 494-2188
(People's Council Balto. Co.)

Judith A. Armold
Assistant Atty General
301 W. Preston St. (01)
Peter W. Tallaferro
P.O. Box 8766
Baltimore/Washington International
Airport 21240-0766

6/2/88 d/e & Order path Board of Appeals

CENTRAL ASSIGN.

(1) January 3, 1986 People's Counsel for Baltimore County, Protestants and Appellants Order for Appeal from Ruling of the County Board of Appeals and Petition fd.

(2) Jan. 10, 1986 - Baltimore County' Cross Appeal fd.

(3) Jan. 13, 1986 Certificate of Notice fd.

(4) Jan. 20, 1986 - Pltff's Petition for Appeal fd.

(5) Jan. 21, 1986 Appellees' Motion to Consolidate case with case86CG240 fd.

(6) Feb. 3, 1986 - Transcript of Record fd.

(7) Feb. 3, 1986 - Notice of Filing of Record fd.

(8) Feb 3,1986- Joseph F Evering Jr. et ux Motion to dismiss and answer to petition on appeal fd.

(9) Feb. 13, 1986 - Correspondence fd.

(10) Feb. 20, 1986 - People's Counsel for Baltimore County's Request for Hearing on all open Motions fd.

(11) April 23,1986- People's counsel memorandum on pending motions fd.

July 22, 1986 - Hon. James S. Sfekas. Hearing had. Plaintiffs to file Supplementary Memorandum within One Week from this date.

(12) Aug. 7, 1986 = Ruling from Judge Sfekas that Pltff's Motion for consolidation Granted, Pltffs Petition on Appeal is Dismissed and Remanded to the Bd. of Appeals for a final judgment, Defts Motion to Dismiss Petition on appeal Granted, Defts Petition for Atty Fees Denied, Costs to be paid by Pltffs apportioned equally fd. (JSS)

Recd. 6/6/88 D.Ja.

COSTS

CV GEN (S3) 8622 H
CV CLK 70.00
CKCHECK TL 70.00
#25822 C001 R02 T15:47
01/03/86

10c
10b
2p
22—

(13) December 9, 1987 - Transcript of Record, fd.

CASE NO. 86CG22 19/117

(14) December 9, 1987 - Notice of Filing of Record, fd.

(15) Dec 16, 1987 - Stipulation fd.

May 23, 1988 Hon. J. William Hinkel. Hearing had. Order to be filed.

(16) May 26,1988 - Order of Court That Case no 86 CG 22 is hereby Dismissed with Costs to the Appellants fd. (JWH)

CIRCUIT COURT FOR BALTIMORE COUNTY

CIVIL GENERAL

DOCKET 48 PAGE 225 CASE NO. 87CG4755 CATEGORY APPEAL

	ATTORNEYS
PEOPLE'S COUNSEL FOR BALTIMORE COUNTY	Phyllis Cole Friedman Peter Max Zimmerman Rm 223, Courthouse (04) 494-2188
KENNETH ENGELKE, et al protestants/appellants	T. Rogers Harrison Mudd, Harrison & Burch Ste 300, Jefferson Bldg 105 W. Chesapeake Ave (4) 828-1335
JOSEPH F. EVERING, JR., et al cross appellant	John B. Gontrum Romadka, Gontrum & Hennegan 809 Eastern Blvd (21) 686-8274

6/3/88 d/e of Order of Bd. of Appeals both cases.

COSTS

(1) Nov 10, 1987 - Pltff's Order for Appeal from the opinion and order of the County Board of Appeals of Balto. Co. and Petition for Appeal fd.

(2) Nov 12,1987 - Certificate of Notice fd.

(3) Nov 16, 1987 - Appellant's (Kenneth Engelke, et al) Order for Appeal from the Order of the County Board of Appeals fd.

(4) Nov. 16, 1987 - Appellant's (KennethEngelke, et al) Petition on Appeal fd.

(5) Nov 16, 1987 - Certificate of Notice fd.

(6) Nov 20, 1987 - Appellant's (Joseph F. Evering, Jr., et us) Order for Appeal and Petition w/ Exhibits fd.

(7) Nov 24,1987 - Certificate of Notice fd.

(8) Dec. 9, 1987 - App. of Phyllis Cole Friedman & Peter Max Zimmerman for the Deft PEOPLE COUNSEL & Same Day Petition on Appeal fd.

(9) Dec 16, 1987 - App of John B. Gontrum for the Petitioner (Joseph F. Evering, Jr., et ux) and Same Day Answer to Protestant's/Appellant's, Kenneth Engelke, et al) Petition on Appeal fd.

(10) Dec 16, 1987 - Petitioner's (Joseph F. Evering, Jr, et ux) Answer to People's Counsel/Appellants Petition on Appeal fd.

(11) Jan 7,1988 - Cross Appellant's (Joseph F. Evering, Jr) Memorandum fd.

Rec'd. 6/6/88 Bd. of Appeals JA

CASE NO. 87 CG 4755

(12) Jan 29,1988 - Pltff's (People's Counsel for Baltimore County) Memorandum fd.

(13) May 26,1988 - Joint Motion to Remand to County Board and Same Day Order of Court that Case 87 CG 4755 be Remanded to the Baltimore County Board of Appeals fd.

6-15-88

IN THE MATTER OF THE APPLICATION OF JOSEPH F. EVERING, JR., ET UX FOR SPECIAL EXCEPTION FOR A BOAT YARD, SPECIAL HEARING TO AMEND SITE PLAN, AND VARIANCES ON PROPERTY LOCATED ON THE NORTH SIDE OF CHESTER ROAD, 490' WEST OF SEVERN ROAD (800 CHESTER ROAD) 15th ELECTION DISTRICT	:	ON REMAND FROM THE CIRCUIT COURT FOR BALTIMORE COUNTY - AT LAW CASE NO. 87-CG-4755 ZONING CASE NO. 85-65-XSPHA

: :

AMENDED OPINION AND ORDER

This matter comes before the Board on remand from the Circuit Court by Order dated May 26, 1988, whereby the Circuit Court directed that the Board consider an amended site plan and make a determination that this plan satisfies the critical area criteria as set forth in the COMAR regulations. The facts of this case are set forth in our Opinion of October 21, 1987. Although the Board ruled on December 12, 1985 that the critical area requirements were not applicable to this particular case for the reasons set forth in our Ruling, substantial evidence concerning critical area requirements was introduced, including several reports and expert testimony provided by petitioners.

An amended site plan has been prepared by the petitioner which plan has been consented to by the protestants and by People's Counsel. This amended plan eliminates 16 slips from the southern pier extension and approximately 38 slips from the northern pier extension. This proposal addresses the Board's concerns which were raised in our October 21, 1987 Opinion that the proposed slips not interfere with navigation in Frog Mortar Creek. A review of the testimony of this matter indicates that the protestants were concerned with both pier extensions, and the Board notes that the protestants who testified actually lived closer to the southern pier extension. Testimony also was presented with respect to the fact that the proposed pier extensions would not in any way

interfere with any submerged aquatic vegetation, in that none existed in the area. The piers, being extended in the manner as now proposed, minimize necessary dredging and the effects of propeller wash on the bottom of Frog Mortar Creek. Additionally, there was much testimony that these slips will be used primarily for sailboats rather than motor boats, which will also minimize propeller wash on the river bottom. No endangered species of plant life or of fish were found in the area. Pollution studies which were performed by petitioner indicate that there is good fishing of the water at this particular location because it is located at the mouth of Frog Mortar Creek in Middle River.

Based upon the testimony and evidence received, the Board finds that the marina extension as amended satisfies the criteria as set forth in the critical area law and in the regulations promulgated by the State of Maryland. See COMAR Section 14.15.03.04. In addition, petitioner's proposal to buffer the creek from existing land improvements and place a pump station for boat facilities will minimize the impact of the proposed marina extension on the critical area.

O R D E R

It is therefore this 15th day of June, 1988 by the County Board of Appeals of Baltimore County ORDERED

(1) That the Petition for Special Exception be and is hereby GRANTED with restrictions as hereinafter provided;

(2) That the variance from B.C.Z.R. 409.2.c(2) be and is hereby GRANTED:

(3) That in view of the Board's restriction on the number of slips, the petitioner's variance relief under B.C.Z.R. 409.2.b is MOOT;

(4) That the Petition for Variance under B.C.Z.R. 417.5 is GRANTED to the extent as shown on the amended site plan submitted by the petitioner, thereby allowing expansion in conformance with the site plan offered and identified and attached hereto as part hereof. This plan is identified as Petitioner's Exhibit #1A and amends Petitioner's Exhibit #1 by removing 16 and 38 slips from the southern and the northern pier extensions, respectively.

(5) That the Petition for Special Hearing is GRANTED to allow amendments to the site plan as was approved on January 16, 1967, in Case No. 64-160-X in order to construct additional piers and slips, in conformance with the variance as set forth in #4 of this Order;

(6) That the Petition for Special Hearing to remove restrictions #1 and #3 in Case No. 64-57-SPH will be GRANTED;

(7) That the Petition for Special Hearing to remove restrictions #1 and #6 in Case No. 64-160-X will be GRANTED in part and DENIED in part and that restriction #1 is AFFIRMED and re-incorporated herein and restriction #6 amended so as to allow maintenance and minor repairs on site and in the water immediately adjacent thereto from 8:00 a.m. to 7:00 p.m., seven days per week, year round;

(8) That the Petition for Special Hearing for a determination of the recreational activities on site is GRANTED so that the use is exempt from Residential Transition Area requirements;

(9) That the on-shore improvements of a pump-out facility for boats and landscaping be completed simultaneously with the construction of the proposed piers; and

(10) That the following best management practices guidelines be utilized in the operation of the facility at such time as the construction commences:

(a) Wording in lease agreements to enforce use of trash receptacles and controlling of washing of boats;

(b) Replacing existing fuel pumping facility with newer equipment having back-pressure automatic shut off valves and restriction of fuel service to trained Marina personnel, education of boat owners regarding fuel spill sources, and on-site sales of fuel recovery products;

(c) Restrict the use of antifouling paints to boat hulls and avoid painting piers and other in-water structures;

(d) Conduct scraping and painting operations away from the water in protected areas to avoid the loss of particulate and raw paint;

(e) Avoid repainting hulls after a year during which fouling to the hulls was minimal;

(f) Dry store boats not in use for extended periods;

(g) Post signs prohibiting overboard disposal of sewage and inform the public of contamination levels resulting from violations;

(h) Require compliance with federal "head Laws" as a prerequisite to slip rental, and indicate violations will result in cancellation of rental contract;

(i) Require all through-hull discharge ports of Type III MSD's to be sealed on those vessels "permanently" moored; and

(j) Require use of on-site pump-out facilities.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence E. Schmidt, Acting Chairman

William T. Hackett

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

June 15, 1988

Robert J. Romadka, Esquire
809 Eastern Boulevard
Essex, MD 21221

RE: Case No. 85-65-XSPHA
Joseph F. Evering, Jr., et ux

Dear Mr. Romadka:

Enclosed is a copy of the Amended Opinion and Order issued this date by the County Board of Appeals in the subject case.

Sincerely,

Kathleen C. Weidenhammer

Kathleen C. Weidenhammer
Administrative Secretary

Encl.

cc: John B. Gontrum, Esquire
John O. Hennegan, Esquire
Joseph F. Evering, Jr.
T. Rogers Harrison, Esquire
Phyllis C. Friedman, Esquire
Assistant Attorney General
P. David Fields
James G. Hoswell
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
Docket Clerk -Zoning
Arnold Jablon, County Attorney

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, MARYLAND	*	IN THE
	*	CIRCUIT COURT FOR
and	*	BALTIMORE COUNTY
BALTIMORE COUNTY, MARYLAND	*	CASES NOS. 86CG22
VS.	*	86CG0240
	*	87CG4755
JOSEPH F. EVERING, JR. and CATHERINE L. EVERING	*	

* * * * * * * * * * * * * *

ORDER

Upon consideration of the Joint Motion for Dismissal and Remand and consideration of the reasons stated therein and presented in open hearing on May 23, 1988, it is hereby, ORDERED, this 26 day of May, 1988, that Circuit Court Cases Nos. 86CG22 and 86CG0240 be and the same are hereby dismissed with costs to the appellants and that Case No. 87CG4755 be remanded to the Baltimore County Board of Appeals for consideration of the amended site plan and a determination that the plan meets critical area criteria.

Judge

LAW FIRM
ROMADKA, GONTRUM & HENNEGAN
ESSEX, MARYLAND

FILED MAY 26 1988

5-23-88

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, MARYLAND	*	IN THE
	*	CIRCUIT COURT FOR
and	*	BALTIMORE COUNTY
BALTIMORE COUNTY, MARYLAND	*	CASES NOS. 86CG22
VS.		86CG0240
		87CG4755
JOSEPH F. EVERING, JR. and CATHERINE L. EVERING	*	

* * * * * * * * * * * * *

JOINT MOTION FOR DISMISSAL AND REMAND TO COUNTY BOARD OF APPEALS

All the parties in the above referenced cases hereby jointly move this court to dismiss case Nos. 86CG22 and 86CG0240 and to Remand 87CG4755 to the Board of Appeals for Baltimore County to consider a joint revised plan. The grounds for this Motion are:

1. Case No. 86CG22 pertained to a preliminary interlocutory appeal taken by People's Counsel to Circuit Court. This matter was heard by Judge Sfekas and was held pending a final determination by the Board of Appeals. That matter was finally determined by the Board and is at issue in Case No. 87CG4755. The grounds for appeal in Case 86CG22 have been incorporated into 87CG4755.

2. Case No. 86CG0240 pertained to a Bill of Complaint for declaratory judgment filed by People's Counsel which the parties believe was dismissed by Judge Sfekas in a previous hearing. In any event the parties believe that the issues raised in that declaratory judgment have also been raised in Case No. 87CG4755.

LAW FIRM
ROMADKA, GONTRUM & HENNEGAN
ESSEX, MARYLAND

3. Since the appeal in Case No. 86CG22 and the issues in the Bill of Complaint in Case No. 86CG0240 are contained in Case No. 87CG4755, there is now no good reason for these cases to be independently pursued and accordingly the parties feel that a dismissal is appropriate.

4. A revised plan has been prepared by Petitioners, Joseph F. Evering, Jr. and Catherine L. Evering in Case No. 87CG4755 that addresses the concerns of all parties. A copy of the plan is attached hereto and made a part hereof.

5. All parties are agreed that the Board of Appeals for Baltimore County could and should make a critical area finding that based upon existing testimony the revised plan meets the critical area requirements.

6. That the parties believe that the appropriate remedy at this time is for the court to remand Case No. 87CG4755 to the Board to consider the revised plan and to make a finding that based upon existing testimony the revised plan meets the critical area requirements.

7. Such other and further reasons that exist for remand of Case No. 87CG4755.

John B. Gontrum

Phyllis Cole Friedman

T. Rogers Harrison

LAW FIRM
ROMADKA, GONTRUM & HENNEGAN
ESSEX, MARYLAND

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, MARYLAND	*	IN THE
	*	CIRCUIT COURT FOR
and	*	BALTIMORE COUNTY
BALTIMORE COUNTY, MARYLAND	*	CASES NOS. 86CG22
VS.	*	86CG0240
	*	87CG4755
JOSEPH F. EVERING, JR. and CATHERINE L. EVERING	*	

* * * * * * * * * * * * *

ORDER

Upon consideration of the Joint Motion for Dismissal and Remand and consideration of the reasons stated therein and presented in open hearing on May 23, 1988, it is hereby, ORDERED, this ____ day of May, 1988, that Circuit Court Cases Nos. 86CG22 and 86CG0240 be and the same are hereby dismissed with costs to the appellants and that Case No. 87CG4755 be remanded to the Baltimore County Board of Appeals for consideration of the amended site plan and a determination that the plan meets critical area criteria.

_____
Judge

LAW FIRM
ROMADKA, GONTRUM & HENNEGAN
ESSEX, MARYLAND

5-26-88

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, MARYLAND and BALTIMORE COUNTY, MARYLAND VS. JOSEPH F. EVERING, JR. and CATHERINE L. EVERING	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY CASES NOS. 86CG22 86CG0240 87CG4755

* * * * * * * * * * * * * *

ORDER

Upon consideration of the Joint Motion for Dismissal and Remand and consideration of the reasons stated therein and presented in open hearing on May 23, 1988, it is hereby, ORDERED, this 26 day of May, 1988, that Circuit Court Cases Nos. 86CG22 and 86CG0240 be and the same are hereby dismissed with costs to the appellants and that Case No. 87CG4755 be remanded to the Baltimore County Board of Appeals for consideration of the amended site plan and a determination that the plan meets critical area criteria.

Judge

LAW FIRM
ROMADKA, GONTRUM & HENNEGAN
ESSEX, MARYLAND

FILED MAY 26 1988

12-16-87

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et al.,	:	IN THE CIRCUIT COURT
Appellants	:	FOR BALTIMORE COUNTY
v.	:	
JOSEPH F. EVERING, JR., et ux,	:	Case No. 86-CG-0022
Appellees	:	

: : : : : : :

STIPULATION

People's Counsel for Baltimore County and the attorney for Joseph F. Evering, Jr., et ux, stipulate that the time by which People's Counsel may file their Memorandum on appeal is hereby extended to and including January 22, 1988.

John B. Gontrum pgf

John B. Gontrum
Romadka, Gontrum, Hennegan & Foos
809 Eastern Boulevard
Baltimore, MD 21221
686-8274

Phyllis Cole Friedman

Phyllis Cole Friedman
People's Counsel for Baltimore County
Room 223, Court House
Towson, MD 21204
494-2188

I HEREBY CERTIFY that on this 16th day of December, 1987, a copy of the foregoing Stipulation was mailed to T. Rogers Harrison, Esquire, Mudd, Harrison & Burch, 306 W. Joppa Rd., Towson, MD 21204; Assistant Attorney General, Md. Dept. of State Planning, The Munsey Building, Seven N. Calvert St., Baltimore, MD 21201; and Nancy C. West, Esquire, Assistant County Attorney, Room 202, Court House, Towson, MD 21204.

Phyllis Cole Friedman

Phyllis Cole Friedman

RECEIVED
COUNTY BOARD OF APPEALS
1987 DEC 15 P 4: 25

12-9-87 +

IN THE MATTER OF THE APPLICATION OF JOSEPH F. EVERING, JR., ET UX FOR SPECIAL EXCEPTION FOR A BOAT YARD, SPECIAL HEARING TO AMEND SITE PLAN AND VARIANCES FROM SEC. 409.2.c(2), 409.2.b and 417.5(a) OF THE BCZR N/S CHESTER RD., 590' W of SEVERN RD. (800 CHESTER RD.) 15th ELECTION DISTRICT	:	ON REMAND FROM THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW
PHYLLIS C. FRIEDMAN, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, PLAINTIFF	:	CG Doc. No. 19 Folio No. 117
T. ROGERS HARRISON, ESQ., ON BEHALF OF PROTESTANTS, PLAINTIFFS	:	File No. 86-CG-0022
JOSEPH F. EVERING, JR., ET UX, PETITIONER-PLAINTIFF	:	
ZONING FILE NO. 85-65-XSPHA	:	

PROCEEDINGS BEFORE THE ZONING COMMISSIONER AND THE BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come William T. Hackett and Lawrence E. Schmidt, constituting the County Board of Appeals of Baltimore County, and in answer to the Order for Appeal directed against them in this case, herewith return the record of proceedings had in the above entitled matter:

No. 85-65-XSPHA

August 7, 1986	REMANDED to the County Board of Appeals by the Circuit Ct. for Baltimore County, Judge James S. Sfekas, "this Court does not believe the Board of Zoning Appeals has issued a final determination of the rights of the parties."
December 16	Hearing held before the Board of Appeals
December 17	Continued hearing held before the Board of Appeals
April 22, 1987	Continued hearing held before the Board of Appeals
October 21	Board's Order: GRANTED Petition for Special Exception w/ restrictions; GRANTED variance from 409.2.c(2); GRANTED in part and DENIED in part variance from 417.5; GRANTED Petition for Special Hearing in part.
November 10	Order for Appeal filed in Circuit Ct. for Baltimore County by People's Counsel for Baltimore County
November 10	Petition to accompany Order for Appeal filed in the Circuit Ct. for Baltimore County
November 12	Certificate of Notice sent to interested parties

November 16, 1987	Order for Appeal filed in the Circuit Ct. for Baltimore County by T. Rogers Harrison, Counsel for Protestants.
November 16	Petition to accompany Order for Appeal filed in the Circuit Court for Baltimore County
November 16	Certificate of Notice sent to interested parties
November 20	Order for Appeal filed in the Circuit Ct. for Baltimore County by John B. Gontrum, Esq., Counsel for Petitioners
November 20	Petition to accompany Order for Appeal filed in the Circuit Ct. for Baltimore County
November 24	Certificate of Notice sent to interested parties
December 9	Transcript of testimony filed

Protestants' Exhibit No. 2 - List of protestants present at hearing, Dec. 16, 1986

" " " 3 - Resolution of Bowley's Quarters Improv. Assn. in opposition to petition, 10/28/85.

" " " 4 - Guide for Cruising Md. Waters

" " " 5 - Portion of site plan showing measurement of shoreline distance

" " " 6 - Portion of site plan showing measurement of pier extensions

" " " 7a - f -Photos of area around subj. site.

" " " 8 - List of protestants present at hearing, Dec. 17, 1986.

People's Counsel's Exhibit No. 5a-o - Photos of roads in neighborhood

" " " " 6 - Trip generation numbers for Long Beach Marina.

" " " " 7a-l - Photos of subject property and surrounding neighborhood

Petitioner's Exhibit No. 7 - Md. Dept. of Transportation Bd. of Airport Zoning Appeals decision permitting variance for subj. property

" " " 8 - Petition for Special Hearing, Special Exception, Variance

" " " 9 - Map of Bowleys Quarters and surrounding areas

Petitioner's Exhibit No. 10 - Aerial photograph

" " " 11a-f - Photos of site

" " " 12 - Petition for Special Exception June 6, 1955

" " " 13 - Order of Zoning Commissioner, 64-57-SPH, March 9, 1964

" " " 14 - Order of DZC-6/30/64 64-160-X

" " " 15 - Site Plan, 1/16/67

" " " 16a & b - Letter, 9/1/66-Army Corp. of Engineering & permit from Balto. Co.

" " " 17 - Jan. 1986, Aerial photo of Bowleys Quarters

" " " 18 - CV of Frank W. Pine, Ph.D.

" " " 19 - Environmental Issues Document prepared by Dr. Pine

" " " 20 a,b - STV/Lyon Assoc.,Traffic Study, Bowleys Quarters Rd.,Long Beach Marina

" " " 21 a-n - Series of photos depicting the subj. and surrounding sites.

" " " 22 - Postcard marked to show proposed piers.

" " " 23 - Aerial Photograph of site view to the south

" " " 24 - Aerial Photograph of site view to the north

December 9, 1987 Record of proceedings filed in the Circuit Court for Baltimore County.

Record of proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court, together with exhibits entered into evidence before the Board. However, all tangible material or evidence of an unwieldy or bulky nature will be retained in the Board of Appeals' office, and upon request of the parties or the Court will be transmitted to the Court by whomever institutes the request.

CC: John B. Gontrum, Esq., etal
T. Rogers Harrison, Esq.
Phyllis C. Friedman, Esq.
Judith A. Armold, Esq.

June W. Holmen

June Holmen, County Board of Appeals

11-24-87

IN THE MATTER OF THE APPLICATION OF JOSEPH F. EVERING, JR., ET UX NORTH SIDE OF CHESTER RD., 590' WEST OF SEVERN RD. (800 CHESTER RD.) 15th ELECTION DISTRICT SPECIAL EXCEPTION FOR A BOAT YARD; SPECIAL HEARING TO AMEND SITE PLAN; and VARIANCES	:	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW
JOSEPH F. EVERING, JR., ET UX - PETITIONERS/PLAINTIFFS	:	CG Doc. No. 48
ZONING FILE NO. 85-65-XSPHA	:	Folio No. 225
	:	File No. 87-CG-4755

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, Lawrence E. Schmidt and William T. Hackett, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, John O. Hennegan, Esq., John B. Gontrum, Esq. and Robert J. Romadka, Esq., 809 Eastern Blvd., Essex, Md. 21221, Counsel for Petitioners/Plaintiffs; Joseph F. Evering, Jr., et ux, 800 Chester Rd., Baltimore, MD. 21220, Petitioners/Plaintiffs; T. Rogers Harrison, Esq., 306 W. Joppa Rd., Towson, Md. 21204, Counsel for Protestants; Judith A. Armold, Dept. of State Planning, 301 W. Preston St., Balto., Md. 21201, Asst. Attorney General; Arnold Jablon, Esq., Rm. 202, Court House, Towson, Md. 21204, County Attorney for Baltimore County; and Phyllis C. Friedman, Rm. 223, Court House, Towson, Md. 21204, People's Counsel for Baltimore County, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

June Holmen

June Holmen
County Board of Appeals of Baltimore County
Rm. 200, Court House, Towson, Md. 21204

I HEREBY CERTIFY that a copy of the aforegoing Certificate of Notice has been mailed to John O. Hennegan, Esq., John B. Gontrum, Esq. and Robert J. Romadka, Esq., 809 Eastern Blvd., Essex, Md. 21221, Counsel for Petitioners/Plaintiffs; Joseph F. Evering, Jr., et ux, 800 Chester Rd., Baltimore, Md. 21220, Petitioners/Plaintiffs; T. Rogers Harrison, Esq., 306 W. Joppa Rd., Towson, Md. 21204, Counsel for Protestants; Judith A. Armold, Dept. of State Planning, 301 W. Preston St., Balto., Md. 21201, Asst. Attorney General; Arnold Jablon, Esq., Rm. 202, Court House, Towson, Md. 21204, County Attorney for Baltimore County; and Phyllis C. Friedman, Rm. 223, Court House, Towson, Md. 21204, People's Counsel for Baltimore County, on this 24th day of November, 1987.

June Holmen

June Holmen
County Board of Appeals of Baltimore County

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

November 24, 1987

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

Re: Case No. 85-65-XSPHA
Joseph F. Evering, Jr., et ux

Dear Mr. Gontrum:

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

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

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

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

June Holmen

June Holmen, Secretary

Enclosures
cc: Joseph F. Evering, Jr., et ux

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

November 24, 1987

T. Rogers Harrison, Esq.
306 W. Joppa Rd.
Towson, Md. 21204

Re: Case No. 85-65-XSPHA
Joseph F. Evering, Jr., et ux

Dear Mr. Harrison:

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

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

June Holmen

June Holmen, Secretary

Encl.
cc: Judith A. Armold, Esq.
Norman E. Gerber
James G. Hoswell
J. Robert Haines
Ann Nastarowicz
James E. Dyer
Robin Clark
Phyllis C. Friedman
Arnold Jablon, Esq.

11-20-87

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

IN THE MATTER OF THE APPLICATION OF JOSEPH F. EVERING, JR. ET UX. FOR SPECIAL EXCEPTION FOR A BOAT YARD, SPECIAL HEARING TO AMEND SITE PLAN, AND VARIANCES	*	Case No.: 48
	*	Docket: 87-CG-4755
	*	Folio: 225
N/S OF CHESTER ROAD, 590' WEST OF SEVERN ROAD (800 CHESTER ROAD) 15TH ELECTION DISTRICT	*	

*** *** *** *** *** *** * *** *** *** *** *** ***

ORDER FOR APPEAL

Appellants, Joseph F. Evering, Jr., et ux, by their attorneys, John B. Gontrum, Robert J. Romadka and John O. Hennegan, file pursuant to Maryland Rule B2 a. this Order for Appeal to the Circuit Court for Baltimore County from the October 21, 1987, Opinion and Order of the County Board of Appeals of Baltimore County (Case 85-65-XSPHA). A copy of the Board of Appeals' Opinion and Order is attached to and incorporated in this Order for Appeal.

John B. Gontrum
Romadka, Gontrum & Hennegan
809 Eastern Boulevard
Baltimore, Maryland 21221
686-8274
Attorneys for Appellants
Joseph F. Evering, et ux.

RECEIVED
COUNTY BOARD OF APPEALS
1987 NOV 20 P 3:30

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

CERTIFICATE OF SERVICE AND COMPLIANCE

I HEREBY CERTIFY that a copy of the foregoing ORDER FOR APPEAL was served pursuant to Maryland Rule 1-321 and B2 c. this 20 day of November, 1987, on the following:

The Administrative Secretary
Baltimore County Board of Appeals
Room 200
Court House
Towson, Maryland 21204

John B. Gontrum

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing ORDER FOR APPEAL was mailed, this 20 day of November, 1987, to each of the following:

T. Rogers Harrison
Suite 300--Jefferson Building
105 West Chesapeake Avenue
Towson, Maryland 21204

Phyllis Cole Friedman, Esquire
Peter Max Zimmerman
People's Counsel for Baltimore County
Room 223, Court House
Towson, Maryland 21204

Assistant Attorney General
Maryland Department of State Planning
Baltimore, Maryland 21201

Nancy C. West, Esquire
Assistant County Attorney
Room 202
Court House
Towson, Maryland 21204

John B. Gontrum

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

11-16-87

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

IN THE MATTER OF THE APPLICATION OF JOSEPH F. EVERING JR. ET UX. FOR SPECIAL EXCEPTION FOR A BOAT YARD, SPECIAL HEARING TO AMEND SITE PLAN, AND VARIANCES	*	Case:
	*	Docket:
	*	Folio:
N/S OF CHESTER ROAD, 590' WEST OF SEVERN ROAD (800 CHESTER ROAD) 15TH ELECTION DISTRICT	*	
	*	

****

ORDER FOR APPEAL

Protestants/Appellants Kenneth Engelke et al., by their attorneys, T. Rogers Harrison and Mudd, Harrison & Burch, file pursuant to Md. Rule B2 a. this Order for Appeal to the Circuit Court for Baltimore County from the October 21, 1987, Opinion and Order of the County Board of Appeals of Baltimore County (Case 85-65-XSPHA). A copy of the Board of Appeals' Opinion and Order is attached to and incorporated in this Order for Appeal.

T. Rogers Harrison
Mudd, Harrison & Burch
Suite 300--Jefferson Building
105 West Chesapeake Avenue
Towson, Maryland 21204
(301) 828-1335
Attorneys for
Protestants/Appellants
Kenneth Engelke et al.

RECEIVED
COUNTY BOARD OF APPEALS
1987 NOV 16 A 9:42

CERTIFICATE OF SERVICE AND COMPLIANCE

I HEREBY CERTIFY that a copy of the forgoing ORDER FOR APPEAL was served pursuant to Md. Rule 1-321 and B2 c. this 16th day of December, 1987, on the following:

The Administrative Secretary
Baltimore County Board of Appeals
Room 200
Court House
Towson, Maryland 21204

T. Rogers Harrison

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing ORDER FOR APPEAL was mailed, this 16th day of November, 1987, to each of the following:

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

Phyllis Cole Friedman, Esquire
Peter Max Zimmerman
People's Counsel for Baltimore County
Room 223, Court House
Towson, Maryland 21204

Judith A. Armold, Esquire
Assistant Attorney General
Maryland Department of State Planning
Baltimore, Maryland 21201

Nancy C. West, Esquire
Assistant County Attorney
Room 202
Court House
Towson, Maryland 21204

T. Rogers Harrison

11-20-87

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

IN THE MATTER OF THE APPLICATION OF JOSEPH F. EVERING JR. ET UX. FOR SPECIAL EXCEPTION FOR A BOAT YARD, SPECIAL HEARING TO AMEND SITE PLAN, AND VARIANCES N/S OF CHESTER ROAD, 590' WEST OF SEVERN ROAD (800 CHESTER ROAD) 15TH ELECTION DISTRICT	*	CG Docket No. 48 Folio No. 225 File No. 87-CG-4755

RECEIVED
COUNTY BOARD OF APPEALS
'87 NOV 20 P 3 30

PETITION ON APPEAL

Petitioner, Joseph F. Evering, Jr. et ux, by their attorneys, John B. Gontrum, Robert J. Romadka and John O. Hennegan, file pursuant to Md. Rule B2 this Petition on Appeal.

1. That Board of Appeals erroneously determined that 80 slips should be eliminated from the northern prong of the pier extensions without substantial basis in the record.

2. That Board of Appeals erroneously determined that the northern prong extended further into the water way then neighboring piers and also hindered boating traffic without substantial justification in the record and, therefore, eliminated the 80 slips erroneously.

WHEREFORE, Petitioner, Joseph F. Evering, Jr. et ux, asks that the October 21, 1987 Opinion and Order of the Board of Appeals by affirmed in all respects except for the

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

determination of the removal of 80 slips and be reversed on that issue or be remanded for further testimony with respect to the elimination of the 80 slips from the northern prong of the proposed extension.

John B. Gontrum
Romadka, Gontrum & Hennegan
809 Eastern Boulevard
Essex, Maryland 21221
686-8274

CERTIFICATE OF SERVICE AND COMPLIANCE

I HEREBY CERTIFY that a copy of the foregoing Petition on Appeal was served pursuant to Md. Rule 1-321 and B2 c. this 20 day of November, 1987, on the following:

The Administrative Secretary
Baltimore County Board of APpeals
Room 200
Court House
Towson, Maryland 21204

John B. Gontrum

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petition was mailed this 20 day of November, 1987, to each of the following:

T. Rogers Harrison
Mudd, Harison & Burch
Suite 300 Jefferson Building
105 W. Chesapeake Avenue
Towson, Maryland 21204

Phyllis Cole Friedman, Esquire
Peter Max Zimmerman
People's Counsel for Baltimore County
Room 223, Court House
Towson, Maryland 21204

Assistant Attoney General
Maryland Department of State Planning
Baltimore, Maryland 21201

Nancy C. West, Esquire
Assistant County Attorney
Room 202
Court House
Towson, Maryland 21204

John B. Gontrum

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

11-16-87

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

IN THE MATTER OF THE APPLICATION OF JOSEPH F. EVERING JR. ET UX. FOR SPECIAL EXCEPTION FOR A BOAT YARD, SPECIAL HEARING TO AMEND SITE PLAN, AND VARIANCES	*	Case:
	*	Docket:
	*	Folio:
N/S OF CHESTER ROAD, 590' WEST OF SEVERN ROAD (800 CHESTER ROAD) 15TH ELECTION DISTRICT	*	

****

PETITION ON APPEAL

Protestants/Appellants Kenneth Engelke et al., by their attorneys, T. Rogers Harrison and Mudd, Harrison & Burch, file pursuant to Md. Rule B2 a. this Petition on Appeal.

1. The Board of Appeals erroneously granted relief from BCZR 417.5a to allow the extension of piers to a distance of 419 feet into Frog Mortar Creek beyond the mean low tide rather than the allowed 300 feet.

2. The Board of Appeals erroneously determined that the boatyard, piers, and related parking activities and other structures were exempt from the residential transitional area requirements under Section 1B01.1.B.c.9.

3. The Board of Appeals erroneously determined that the Petitioners, Joseph F. Evering Jr. et ux., had utilized the 1964 Special Exception for the Brown Parcel.

4. The Board of Appeals erroneously ruled that the land in question was not subject to the Chesapeake Bay Critical

RECEIVED
COUNTY BOARD OF APPEALS

Area Protection Act, Md. Nat. Res. Ann. Code secs. 8-1801--8-1816 (1983 Repl. Vol.).

5. The Board of Appeals' ruling was otherwise arbitrary, capricious, and not based on legally sufficient evidence.

Wherefore, Appellants/Protestants Kenneth Engelke et al. ask that the October 21, 1987, Opinion and Order of the Board of Appeals of Baltimore County be reversed.

T. Rogers Harrison
Mudd, Harrison & Burch
Suite 300--Jefferson Building
105 West Chesapeake Avenue
Towson, Maryland 21204
(301) 828-1335
Attorneys for
Protestants/Appellants
Kenneth Engelke et al.

CERTIFICATE OF SERVICE AND COMPLIANCE

I HEREBY CERTIFY that a copy of the foregoing PETITION ON APPEAL was served pursuant to Md. Rule 1-321 and B2 c. this 16th day of November, 1987, on the following:

The Administrative Secretary
Baltimore County Board of Appeals
Room 200
Court House
Towson, Maryland 21204

T. Rogers Harrison

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing PETITION ON APPEAL was mailed, this 16th day of November, 1987, to each of the following:

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

Phyllis Cole Friedman, Esquire
Peter Max Zimmerman
People's Counsel for Baltimore County
Room 223, Court House
Towson, Maryland 21204

Judith A. Armold, Esquire
Assistant Attorney General
Maryland Department of State Planning
Baltimore, Maryland 21201

Nancy C. West, Esquire
Assistant County Attorney
Room 202
Court House
Towson, Maryland 21204

T. Rogers Harrison

11-16-87

IN THE MATTER OF THE APPLICATION OF JOSEPH F. EVERING, JR., ET UX NORTH SIDE OF CHESTER ROAD, 590' WEST OF SEVERN ROAD (800 CHESTER ROAD) 15th ELECTION DISTRICT SPECIAL EXCEPTION FOR A BOAT YARD; SPECIAL HEARING TO AMEND SITE PLAN; AND VARIANCES	:	CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW
KENNETH ENGELKE, ET AL - PROTESTANTS/APPELLANTS	:	CG Doc. No. 48 Folio No. 225 File No. 87-CG-4755
ZONING FILE NO. 85-65-XSPHA	:	

: : : : : : : : : : : : : : :

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, Lawrence E. Schmidt and William T. Hackett, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, John O. Hennegan, Esquire, John B. Gontrum, Esquire, and Robert J. Romadka, Esquire, 809 Eastern Boulevard, Essex, MD 21221, Counsel for Petitioners; Joseph F. Evering, Jr., et ux, 800 Chester Road, Baltimore, MD 21220, Petitioners; T. Rogers Harrison, Esquire, 306 W. Joppa Road, Towson, MD 21204, Counsel for Protestants/Appellants; Judith A. Armold, Department of State Planning, 301 W. Preston Street, Baltimore, MD 21201, Assistant Attorney General; Arnold Jablon, Room 202, Courthouse, Towson, MD 21204, County Attorney for Baltimore County; and Phyllis Cole Friedman, Room 223, Courthouse, Towson, MD 21204, People's Counsel for Baltimore County, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

Kathleen C. Weidenhammer

Kathleen C. Weidenhammer
County Board of Appeals of Baltimore County
Room 200, Courthouse, Towson, MD 21204

I HEREBY CERTIFY that a copy of the aforegoing Certificate of Notice has been mailed to John O. Hennegan, Esquire, John B. Gontrum, Esquire, and Robert J. Romadka, Esquire, 809 Eastern Boulevard, Essex, MD 21221, Counsel for Petitioners; Joseph F. Evering, Jr., et ux, 800 Chester Road, Baltimore, MD 21220, Petitioners; T. Rogers Harrison, Esquire, 306 W. Joppa Road, Towson, MD 21204, Counsel for Protestants/Appellants; Judith A. Armold, Department of State Planning, 301 W. Preston Street, Baltimore, MD 21201, Assistant Attorney General; Arnold Jablon, Room 202, Courthouse, Towson, MD 21204, County Attorney for Baltimore County; and Phyllis Cole Friedman, Room 223, Courthouse, Towson MD 21204, People's Counsel for Baltimore County, on this 16th day of November, 1987.

Kathleen C. Weidenhammer
County Board of Appeals of Baltimore County

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

November 16, 1987

Robert J. Romadka, Esquire
809 Eastern Boulevard
Baltimore, MD 21221

RE: Joseph F. Evering, Jr., et ux
Case No. 85-65-XSPHA
Appeal: T. Rogers Harrison, Esq. for
Protestants -Kenneth Engelke, et al

Dear Mr. Romadka:

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

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Kathleen C. Weidenhammer

Kathleen C. Weidenhammer
Administrative Secretary

Encl.

cc: John B. Gontrum, Esquire
John O. Hennegan, Esquire
Joseph F. Evering, Jr., et ux
Judith A. Armold, Esquire
Norman E. Gerber
James G. Hoswell
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
Robin Clark
Phyllis Cole Friedman, Esquire
Arnold Jablon, County Attorney

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

November 16, 1987

T. Rogers Harrison, Esquire
Suite 300, Jefferson Building
105 W. Chesapeake Avenue
Towson, MD 21204

RE: Joseph F. Evering, Jr., et ux
Case No. 85-65-XSPHA

Dear Mr. Harrison:

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

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

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

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

Kathleen C. Weidenhammer
Administrative Secretary

Enclosures

11-12-87

IN THE MATTER OF THE APPLICATION OF JOSEPH F. EVERING, JR., ET UX NORTH SIDE OF CHESTER ROAD, 590' WEST OF SEVERN ROAD (800 CHESTER ROAD) 15th ELECTION DISTRICT SPECIAL EXCEPTION FOR A BOAT YARD; SPECIAL HEARING TO AMEND SITE PLAN; AND VARIANCES	:	CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW
PHYLLIS COLE FRIEDMAN, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, PLAINTIFF	:	CG Doc. No. 48 Folio No. 225 File No. 87-CG-4755
ZONING FILE NO. 85-65-XSPHA	:	

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, Lawrence E. Schmidt and William T. Hackett, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, John O. Hennegan, Esquire, John B. Gontrum, Esquire, and Robert J. Romadka, Esquire, Germania Federal Building, 809 Eastern Boulevard, Essex, MD 21221, Counsel for Petitioners; Joseph F. Evering, Jr., et ux, 800 Chester Road, Baltimore, MD 21220, Petitioners; T. Rogers Harrison, Esquire, 306 W. Joppa Road, Towson, MD 21204, Counsel for Protestants; Judith A. Armold, Department of State Planning, 301 W. Preston Street, Baltimore, MD 21201, Assistant Attorney General; Arnold Jablon, Room 202, Courthouse, Towson, MD 21204, County Attorney for Baltimore County; and Phyllis Cole Friedman, Room 223, Courthouse, Towson, MD 21204, People's Counsel for Baltimore County, Plaintiff, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

Kathleen C. Weidenhammer

Kathleen C. Weidenhammer
County Board of Appeals of Baltimore County
Room 200, Courthouse, Towson, MD 21204

I HEREBY CERTIFY that a copy of the aforegoing Certificate of Notice has been mailed to John O. Hennegan, Esquire, John B. Gontrum, Esquire, and Robert J. Romadka, Esquire, Germania Federal Building, 809 Eastern Boulevard, Essex, MD 21221, Counsel for Petitioners; Joseph F. Evering, Jr., et ux, 800 Chester Road, Baltimore, MD 21220, Petitioners; T. Rogers Harrison, Esquire, 306 W. Joppa Road, Towson, MD 21204, Counsel for Protestants; Judith A. Armold, Department of State Planning, 301 W. Preston Street, Baltimore, MD 21201, Assistant Attorney General; Arnold Jablon, Room 202, Courthouse, Towson, MD 21204, County Attorney for Baltimore County; and Phyllis C. Friedman, Room 223, Courthouse, Towson, MD 21204, People's Counsel for Baltimore County, Plaintiff, on this 12th day of November, 1987.

Kathleen C. Weidenhammer

Kathleen C. Weidenhammer
County Board of Appeals of Baltimore County

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

November 12, 1987

Robert J. Romadka, Esquire
Germania Federal Building
809 Eastern Boulevard
Essex, MD 21221

RE: Case No. 85-65-XSPHA
Joseph F. Evering, Jr., et ux

Dear Mr. Romadka:

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

Enclosed is a copy of the Certificate of Notice.

Sincerely,

Kathleen C. Weidenhammer

Kathleen C. Weidenhammer
Administrative Secretary

Encl.

cc: John B. Gontrum, Esquire
John O. Hennegan, Esquire
Joseph F. Evering, Jr.
T. Rogers Harrison, Esquire
Judith A. Armold, Esquire
Norman E. Gerber
James G. Hoswell
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
Robin Clark
Arnold Jablon, County Attorney

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

November 12, 1987

Phyllis C. Friedman
People's Counsel for Balto County
Room 223, Courthouse
Towson, MD 21204

RE: Case No. 85-65-XSPHA
Joseph F. Evering, Jr., et ux

Dear Ms. Friedman:

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

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

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

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

Kathleen C. Weidenhammer

Kathleen C. Weidenhammer
Administrative Secretary

Enclosures

11-10-87

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY	:	IN THE CIRCUIT COURT
	:	FOR BALTIMORE COUNTY
Appellant		
v.	:	AT LAW
JOSEPH F. EVERING, JR., et al.	:	Docket No. 48
	:	Folio No. 225
Appellee		
	:	File No. 87CG4755

: : : : : :

NOTICE OF APPEAL

Please note an appeal to the Circuit Court for Baltimore County from the Opinion and Order of the County Board of Appeals of Baltimore County, under date of October 21, 1987, in the above-captioned matter.

RECEIVED
COUNTY BOARD OF APPEALS
1987 NOV 10 P 4:26

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

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

I HEREBY CERTIFY that on this 10th day of November, 1987, a copy of the foregoing Notice of Appeal was served on the Administrative Secretary, County Board of Appeals, Room 200, Court House, Towson, MD 21204; and a copy was mailed to John O. Hennegan, Esquire, and John B. Gontrum, Esquire, 809 Eastern Blvd., Baltimore, MD 21221; T. Rogers Harrison, Esquire, 306 W. Joppa Rd., Towson, MD 21204; Judith A. Arnold, Esquire,

Assistant Attorney General, Maryland Dept. of State Planning, The Munsey Building, Seven N. Calvert Street, Baltimore, MD 21201; and Nancy C. West, Esquire, Assistant County Attorney, Room 202, Court House, Towson, MD 21204.

Phyllis Cole Friedman

Phyllis Cole Friedman

11-10-87

RECEIVED
COUNTY BOARD OF APPEALS
1987 NOV 10 P 4:26

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY	:	IN THE CIRCUIT COURT
	:	FOR BALTIMORE COUNTY
Appellant	:	AT LAW
v.	:	Docket No. 48
JOSEPH F. EVERING, JR., et al.	:	Folio No. 225
Appellee	:	File No. 87CG4755

: : : : : :

PETITION ON APPEAL

People's Counsel for Baltimore County, Protestant below and Appellant herein, having heretofore filed a Notice of Appeal from the Opinion and Order of the County Board of Appeals under date of October 21, 1987, in compliance with Maryland Rule B-2(e), files this Petition on Appeal setting forth the grounds upon which this Appeal is taken, and states that the following rulings of the Board were in error:

1. That the Board erroneously granted relief from BCZR 417.5a to allow the extension of piers to a distance of 419 feet into Frog Mortar Creek beyond the mean low tide rather than the allowed 300 feet.

2. That the Board erroneously granted an exemption from the critical areas legislation which was previously appealed and held by the Circuit Court to be an interlocutory ruling the appeal of which was untimely.

3. That the Board erroneously determined that the boatyard, piers and related parking activities and other structures were exempt from the residential transitional area requirements under Section 1B01.1.B.1.c.9.

4. That the Order of the Board was otherwise arbitrary, capricious, and not based on legally sufficient evidence.

WHEREORE, Appellant prays that the Doinion and Order of the Board of Appeals of Baltimore County under date of October 21, 1987 be reversed.

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

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

I HEREBY CERTIFY that on this 10th day of November, 1987, a copy of the foregoing Petition on Appeal was served on the Administrative Secretary, County Board of Appeals, Room 200, Court House, Towson, MD 21204; and a copy was mailed to John O. Hennegan, Esquire, and John B. Gontrum, Esquire, 809 Eastern Blvd., Baltimore, MD 21221; T. Rogers Harrison, Esquire, 306 W. Joppa Rd., Towson, MD 21204; Judith A. Arnold, Esquire, Esquire, Assistant Attorney General, Maryland Dept. of State Planning, The Munsey Building, Seven N. Calvert St., Baltimore, MD 21201; and Nancy C. West, Esquire, Assistant County Attorney, Room 202, Court House, Towson, MD 21204.

Phyllis Cole Friedman
Phyllis Cole Friedman

10-21-87

IN THE MATTER OF THE APPLICATION OF JOSEPH F. EVERING, JR., ET UX FOR SPECIAL EXCEPTION FOR A BOAT YARD, SPECIAL HEARING TO AMEND SITE PLAN AND VARIANCES N/s OF CHESTER ROAD, 590' WEST OF SEVERN ROAD (800 CHESTER ROAD) 15th ELECTION DISTRICT	:	BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 85-65-XSPHA

: :

O P I N I O N

This matter comes before the Board as an appeal from the decision of the Zoning Commissioner dated April 25, 1985, wherein the Commissioner granted a special exception and variances with restriction, all petitioned for by the property owner, Joseph F. Evering.

STATEMENT OF THE CASE

Prior to a discussion of the merits of the case, a statement of the procedural history of the case is in order. On August 6, 1984, the Petitioner, Joseph F. Evering, et al, filed the following three petitions:

1. A Petition for Special Exception: This request was made to allow two lots on the north and south sides of Chester Road to be used as part of a boatyard. The lots, as is the entire property, are zoned D.R. 5.5 and, under Section 1B01.1.C.2 of the Baltimore County Zoning Regulations (hereinafter B.C.Z.R.), may only be used as a boatyard upon granting of a special exception. As will be discussed later, the two parcels for which the special exception is sought are properties acquired by Mr. Evering in the relative recent past, and the petitioner seeks permission to consolidate the uses on these parcels with adjacent properties owned by him and operated as a boatyard, pursuant to special exceptions granted to him a number of years ago.

2. A Petition for Zoning Variance: Within this petition, the petitioner seeks relief by way of variance from three sections of the Baltimore

County Zoning Regulations. To wit: a) To allow existing compacting stone instead of the required durable and dustless surface (B.C.Z.R. Sec. 409.2.c.(2)); b) To allow 318 parking spaces in lieu of the required 384 spaces, or, if the special exception petitioned for is granted, to allow 363 spaces instead of the required 384 spaces (B.C.Z.R. 409.2.b); and c) To allow the extension of piers to extend 419 feet into Frog Mortar Creek beyond the mean low tide, rather than the allowed 300 feet (B.C.Z.R. 417.5(a)).

3. A Petition for Special Hearing: The petitioner also seeks other relief by way of special hearing, specifically: a) To amend the site plan which was approved on January 16, 1967 in connection with the granted petition for special exception in Case No. 64-160-X, in order to construct additional piers and slips; b) To remove the restrictions numbered 1 and 3 in Case No. 64-57-SPH, in order to allow marine craft to be stored within twenty feet of the eastern-most property line and to request the variance for the parking surface heretofore referred; c) To remove restrictions in Case No. 64-160-X numbered 1 and 6, in order to allow major repairs of boats both on the premises and in the waters, and to change the times and days of the week and year the repairs will be permitted; and d) To determine that a boatyard, piers and related parking activities and other structures are devoted to civic, commercial and recreational activities and are, therefore, exempt from the residential transitional area requirements.

As indicated above, the Zoning Commissioner on April 25, 1985, granted the special exception and variances, subject to restriction. Cross appeals were then filed to this Board, by both the petitioner and neighboring protestants. In a hearing before this Board in October of 1985, a Motion was raised by the petitioner relative to sub-title 18 of the Natural Resources Article

of the Annotated Code of Maryland, seeking a ruling as to the applicability of this legislation (generally known as the Chesapeake Bay Critical Area Protection Program). After entertaining lengthy argument, this Board held on December 12, 1985 that the Critical Area legislation was not applicable.

Following this ruling, People's Counsel and the protestants filed an appeal of the Board's ruling to the Circuit Court for Baltimore County. Additionally, an action for declaratory judgment was filed within that Court by the protestants and People's Counsel. After consideration of the various pleadings, arguments, etc., Judge Sfekas denied the Complaint for Declaratory Judgment and dismissed the appeal. Although Judge Sfekas' opinion speaks for itself, it is noted that the matter was remanded to the Board of Appeals for its consideration as to the merits of the case.

STATEMENT OF THE FACTS

The Board received lengthy testimony and legal memoranda in this case which elicited the following facts regarding the history of these parcels and their current use. The current Evering property actually consists of four separate parcels, which have been acquired over the years. These parcels total approximately 3.3 acres and, as shown from the aerial photo exhibits introduced, represent the tip of a peninsula which extends into Frog Mortar Creek.

The original Evering parcel of approximately 1.2 acres lies on the south side of Chester Road. After acquiring this property, the Everings applied for and were granted special exception for the use of that property as a boatyard (see Case No. 35-35-X). After acquiring this special exception, Mr. Evering constructed four piers which extended into Frog Mortar Creek for the purpose of mooring his customers' boats. In January of 1964, the Everings filed a Petition for Special Hearing, seeking clarification of that special exception granted to

them. Specifically, they sought, and received, approval to store marine craft on the shore. This approval, however, was subject to three restrictions; to wit: 1) the prohibition of storing marine craft within thirty feet of the eastern-most portion of the property owned by the Everings; 2) limiting the use of the boatyard to pleasure craft only; and 3) mandating that the Everings comply with off-street parking requirements contained within the Baltimore County Zoning Regulations.

On August 1, 1960, the Everings acquired the second parcel of what eventually became the entire Evering property. This parcel was obtained from Mr. and Mrs. Henry J. Brown. This lot lies directly north, across Chester Road from the original parcel. In contemplation of purchase of the same, the petitioner filed for a special exception in the spring of 1964, seeking permission to develop the second parcel into a boatyard. This special exception was also granted, again, however, subject to numerous restrictions as more fully described within the record of this case. Generally, the granted petition restricted the use of the property by prohibiting (1) major repairs on boats, (2) the construction of boats, and (3) the mooring of commercial vessels, barges or similar type craft. Additionally, the extent of and time frame for repairs to boats were limited. Furthermore, as had been the case with the initial special exception applicable to parcel one, the boatyard facility was restricted to pleasure craft only.

The third parcel of the Evering property was purchased in 1969 and encompasses the adjacent lot on the southern side of Chester Road. The fourth and final piece of the Evering property puzzle was purchased by the petitioner in 1970 and includes that lot adjacent to the old Brown parcel, located on the northern side of Chester Road. It is these parcels, designated as #3 and #4, for which the Everings currently seek a special exception.

In addition to the lengthy testimony regarding the chronological history of this property, the Board received extensive testimony regarding the current use of the property. Both the petitioners and protestants produced numerous witnesses as to the operation, both past and present, of this facility and its effect on the general locale. Suffice it to say, the Board will not repeat here at length all the testimony which is contained in the record. This testimony has largely been summarized by all counsel and will not be repeated. However, certain relevant portions of the testimony will be drawn from and cited during discussion of the numerous issues which the Board will address in considering the petitioner's request.

UTILIZATION OF THE SPECIAL EXCEPTION FOR THE SECOND (BROWN) PARCEL AS GRANTED ON JULY 30, 1964

The initial issue facing this Board concerns the present state of the special exception granted by the County Zoning Commissioner in June of 1964. As indicated earlier, the Zoning Commissioner in 1964 granted a special exception for the secondly acquired parcel, purchased from Mr. and Mrs. Brown. The protestants argue that the Everings did not utilize this special exception. As such, they maintain that the factual basis on which the presently requested relief is sought does not exist. Expressed otherwise, since the special exception for the second parcel was not utilized, the petitioners cannot now seek an additional special exception and variances for the subsequently acquired property. The protestants therefore urge this Board to deny the current petitions because of the failure of the Everings to utilize the special exception which they obtained in 1964. As a factual basis for this position, the protestants point to the site plan submitted by the Everings in 1967 wherein the petitioners propose to exercise the use granted by the extension of Chester Road, filling in

and extending of the Brown parcel, the construction of a bulkhead off the Brown parcel, the building and delineation of parking areas, and building three piers off the western shore from the Brown parcel and a fourth from parcel one. In that the petitioners did not fully complete all of their plans, the protestants urge this Board to hold that the 1964 special exception was not utilized and is therefore invalid. As a legal basis for this condition, the protestants point to Section 502.3, B.C.Z.R.; particularly, subsection A which provides:

> "[A] special exception which has not been utilized within a period of two years from the date of the final Order granting same, or such longer period not exceeding five years, as may have been specified therein, shall thereafter be void...."

Later, this section provides that:

> "[a] special exception which requires any construction for its utilization shall be deemed to have been used within its authorized time, if such construction shall have been commenced during the authorized period, or any extension thereof, provided said construction is thereafter pursued to completion with reasonable diligence."

The protestants argue that the petitioner has not complied with this section of the B.C.Z.R., in that construction has not been commenced and/or completed pursuant to the petitioner's site plan.

In opposition to this conclusion, the petitioners, although acknowledging that not all construction was completed, argue that substantial utilization was undertaken. Although the petitioners admit that the three piers in front of the parcel were not in fact constructed, they point to the construction of a repair shop barge and additional 36 slips constructed from the front of the initial parcel. Additionally, the petitioners point to a number of improvements on the Brown property itself. Specifically, marine craft were stored on the parcel, the property was graded, the rudiments of a parking lot

were completed and recreational facilities, including a swimming pool, showers and sanitary house, were built. The petitioners also point to the pilings which were driven for the bulkhead, although the bulkhead was never constructed.

In consideration of this issue, the Board looks to prior decisions for guidance. Although the Zoning Commissioner questioned its applicability, the Board views the standards as set forth in Case No. 84-89-SPH, In re: Joseph L. Soley, as controlling. Particularly, we look to not only the Board's initial Opinion in that case, but, also, Judge Hinkel's Opinion and the Board's subsequent Opinion. It should be noted that the Board's second Opinion, after remand, was affirmed by the Circuit Court (Fader, J.).

The standard which must be applied here, as was applied in Soley, is whether the petitioner exercised reasonable diligence in utilizing his special exception. As Zoning Commissioner Jablon pointed out, "reasonable diligence is nowhere defined in the B.C.Z.R." Although the B.C.Z.R. nowhere defines the standard under which the Board is to determine "reasonable diligence," that standard was unmistakenly provided to this Board in Judge Hinkel's Order. Specifically, the Board was instructed to apply a two-prong test; that is, 1) the commencement of some readily identifiable work, and 2) the work begun with the intention then formed to continue said work to its completion.

Applying that test to the facts found by us, we are persuaded that the special exception granted in 1964 was utilized. Certainly, the Board acknowledges that not all the petitioner's plans were completed fully. However, there appeared to be a sufficient and extensive developed use of the Brown parcel, in a manner which must be described as a boatyard. Particularly, the petitioner completed one pier, stored marine craft on the site, constructed facilities (bath house, showers, pool) thereon, etc. More significantly, there is no doubt that the boatyard use exists, and has existed on this site.

As was evident from the testimony of not only Mr. Evering but other longstanding residents of the community, parcels 1 and 2 were considered, from a practical standpoint, in conjunction. That is, their use was consistent and in a joint manner; and that both parcels 1 and 2 have been used continuously since 1964 as a boatyard.

CONSIDERATION OF THE SPECIAL EXCEPTIONS

Having settled the utilization of the 1964 special exception and concluded that in fact the special exception on the former Brown parcel has been utilized, the Board next turns its attention to the Petition for Special Exception before us for parcels 3 and 4. As is the case in all special exception matters before this Board, we are obligated to determine whether the conditions set forth in Section 502.1 of the B.C.Z.R. have been satisfied by the petitioners. As to the factual consideration of this issue, the Board has received lengthy testimony and evidence, all of which is reflected in the record of this case. This evidence will not be repeated here. However, in conclusion, the Board finds that the proposed use would not be detrimental to the neighborhood and surrounding area and would not adversely affect any public interest. Specifically, we find that the proposed use meets all of the tests as set forth in B.C.Z.R. Section 502.1. The Board has received lengthy evidence as to the effects of the already existing boatyard use on portions of the property. This evidence is telling and convinces us that the proposed use is consistent with the spirit and intent of the Baltimore County Zoning Regulations. We will, therefore, grant the Petition for Special Exception with restrictions.

CONSIDERATION OF THE PROPOSED VARIANCES

As indicated above, the property owner seeks three zoning variances. They are: (1) relief from B.C.Z.R. Section 409.2.c(2), to allow existing com-

pacting stone instead of the required durable and dustless surface; (2) relief from B.C.Z.R. 409.2.b, to allow 363 parking spaces instead of the required 384 spaces, in that, the Board has in this Opinion heretofore stated that the Petition for Special Exception will be granted; and (3) relief from B.C.Z.R. 417.5(a), to allow the extension of piers to a distance of 419 feet into Frog Mortar Creek beyond the mean low tide, rather than the allowed 300 feet. We shall address each of these requests in turn, pursuant to the standards as set forth in B.C.Z.R., Section 307 and the applicable core law, e.g., Anderson v Board of Appeals, Town of Chesapeake Beach 22 M App 28, 322 A2d 220 (1970). McLean v Soley 270 MD 208, 31 A2d 787 (1973). This body of law requires the petitioner to demonstrate that practical difficulty or undue hardship would result if strict compliance with the regulations were imposed.

Parking Lot Paving

The parking surfaces may remain compacted stone. As the property owner testified, crushed stone is cleaner, more dust free, and provides a reduced rate of storm water runoff than a macadam or impenetrable surface. We agree. In our view, practical difficulty would exist if the petitioner were forced to comply with B.C.Z.R. 409.2.c(2). Further, a parking surface of crushed stone is, in our view, more compatible with the intended purposes of the B.C.Z.R. than would the required macadam surface. We also note that, among the many issues before us, this is the sole question about which there is unanimous agreement among all concerned.

Required Number of Parking Spaces

As did the Zoning Commissioner, the Board will reduce the number of additional slips requested. Therefore, the petitioner's variance for relief from B.C.Z.R. 409.2.b is rendered moot. The Board finds as fact, however, that

the number of parking spaces as mandated by B.C.Z.R. 409 et cet is not necessary. The property owner testified that he had "plenty of parking." Other witnesses testifying on behalf of the petitioner, including both expert witnesses and patrons of the facility, opined that parking congestion was not an issue. Even the protestants, who primarily objected to the anticipated increased traffic on the local roads leading to the facility, did not present any convincing testimony as to parking overflow. In our view, the parking on site is sufficient. As it stands to reason, the land vehicle parking needed is greatest when the boats are in the water, which frees additional room.

Extension of the Piers

The petitioner's final request for variance, from B.C.Z.R. 417.5, is most difficult for this Board to decide and elicited complex and conflicting testimony. It is uncontroverted that the site currently offers 201 slips for rent, and the petitioner requests that the capacity be increased by 178, for a total of 379. The Board received conflicting and detailed testimony regarding the current state of Frog Mortar Creek, from navigational, traffic and water quality standpoints. Additionally, both proponent and opponent witnesses of the project rendered lengthy opinions about the impact of the proposed expansion. We will not repeat all of this testimony at length here; suffice it to say that the Board carefully considered all of the opinions expressed in an effort to apply the practical difficulty/undue hardship test to the proposed use.

On the petitioner's side, the property owner testified as to current conditions on Frog Mortar Creek at this location. He testified that this waterway was not overcrowded, the condition of the water itself was sufficient to support marine life and the proposed use would not adversely impact the area from either an ecological or overcrowding standpoint. In his view, Frog Mortar

Creek can well handle the intensification of use which will result if this project is approved. This view was supported by several patrons of Mr. Evering's existing marina, who envisioned no adverse impact with the consequential results of marina expansion.

Also supportive of this view was the petitioner's expert, Frank Pine. This witness testified that the water quality here was marginally adequate, at the present time. However, additional boat slips and traffic would reduce the quality only an infinitesimal amount in that, in this witness' view, boat traffic contributes an insignificant amount of pollutants.

In opposition to these views were several neighborhood protestants. These witnesses testified as to the current crowded and dangerous conditions on the waterway and poor water quality. In their view, further expansion into the creek would be a hazard to navigation, further reduce water quality and further tax beyond its limits the capacity of this creek to support the uses demanded of it.

In addressing this particular variance, the Zoning Commissioner's opinion deserves note. Within this opinion, the Commissioner reviews the staid and mundane legal standards by which we are to judge the requested relief and tempers their application in an aesthetic manner by considering the people's right to the use of this natural resource, government's obligation to protect same, and the right of a property owner to use his land in a manner which he so desires. After pondering the Zoning Commissioner's approach, the Board is persuaded that it is the proper manner in which to consider the requested variance for a pier extension. After all, it is the spirit and intent of the B.C.Z.R. to serve the purposes heretofore set forth.

After due consideration, we are persuaded that the proposed expansion should be limited by the deletion of the 80 slips which run northward from the northern prong of the proposed expansion. That is, the northern prong may be expanded into Frog Mortar Creek in an "L" configuration, not in the proposed "T" configuration. We find that the slips which we delete are the most objectionable as they protrude into the navigable portion of Frog Mortar Creek. We impose this restriction not to strike a compromise but because, in our view, the increase must be limited so as to strike a balance between the property owner's right to the use of his land with the public's need for safeguards as to its health, safety and welfare.

CONSIDERATION OF SECTION 417.7 (B.C.Z.R.)

In its post-hearing memorandum, the Office of the People's Counsel raised yet another issue for this Board to consider. Specifically, People's Counsel argues that Section 417.7 of the B.C.Z.R. was not addressed by the Petitioner. That section provides that:

> "Marinas located on property consisting of five or more acres shall be permitted to establish out-of-water storage facilities for recreational marine craft provided that no such facilities thereon shall be located within 60 feet of any property line, and provided, further, that screening shall be provided and maintained of such types and at such locations as may be required by the zoning commissioner or board of appeals, on appeal."

As indicated earlier in this Opinion, the petitioners did not seek a variance from the requirements of 417.7. In fact, the issue as to whether a variance can be granted from the mandates of this section is among the issues raised by the People's Counsel.

We will not address those issues here. Although this appeal is de novo, the issues presented herein are the Petition for Special Exception,

Petition for Special Hearing, and variances from B.C.Z.R. sections 409.2.c(2), 409.2.b, and 417.5(a). In that those are the only issues raised by the petitioner, we will not explore throughout the zoning regulations to find others. Although People's Counsel may or may not have alternative means for relief available to them if they believe that the petitioner has improperly ignored 417.7, those arguments must be addressed not in this forum, but elsewhere.

CONSIDERATION OF THE SPECIAL HEARING

As indicated earlier in this Opinion, the property owner has also presented a Petition for Special Hearing seeking amendments and changes to the earlier site plans and orders of this Board and, further, a determination as to whether the use of this site is exempted from Residential Transition Area requirements. We will address each of these in turn.

A) First, the petitioner seeks to amend the site plan approved on January 16, 1967 in connection with the granted Petition for Special Exception in Case No. 64-160-X. We will grant an amendment to that site plan to conform with the mandates expressed herein. That is, the site plan is to be amended so as to conform with the petitioner's proposed expanded facility, less the 80 slips which we have ordered deleted.

B) The petitioner also seeks the removal of restrictions #1 and #3 in Case No. 64-57-SPH. Those restrictions in essence prohibited the storage of marine craft within 20 feet of the easternmost property line at the time and also delineated the nature of the parking surface. Removal of restriction #3 is rendered moot by the Board's granting of the petitioned variance from section 409.2.c(2) in that this Board will allow a compacting stone parking area. Likewise, the request to remove restriction #1 to permit marine craft to

be stored within 20 feet of the easternmost property line will be granted.

C) The petitioners also seek to remove restrictions from the Deputy Zoning Commissioner's Order of June 30, 1964, in Case No. 64-160-X. In that Order, the Deputy Zoning Commissioner prohibited any major repairs of any boats on premises or the waters immediately adjacent thereto. Further, minor repairs and maintenance were permitted on a set schedule. We are in agreement with the analysis of the Zoning Commissioner regarding the proliferation of recreational boating in this area. What made good sense in 1964 applies equally today; therefore, we will continue restriction #1 in Deputy Zoning Commissioner Hardesty's Order, and thereby prohibit any major repairs on-site or in the waters immediately adjacent thereto. On the other hand, minor repairs and maintenance should be unfettered. Therefore, we will strike restriction #6 in the Deputy Zoning Commissioner's Order and permit the petitioner to perform minor repairs and maintenance on boats from 8:00 a.m. to 7:00 p.m., seven days per week, year round.

D) The petitioners also seek a determination that the activity on site is devoted to civic, commercial, or recreational purposes and therefore exempt from Residential Transition Area requirements. Section 1B01.1.B.1.c.9 specifically sets forth an exemption for structures devoted to civic, social, recreational, fraternal or educational activity. There can be little doubt that in fact the use of the site presently and its proposed expansion fall within the recreational exemption. Therefore, this Board will hold that the petitioner's use is exempt from said Residential Transition Area requirements.

CONCLUSION

Based upon all of the testimony, exhibits, and arguments offered, the Board adopts as its findings and conclusion the Opinion heretofore stated and will incorporate it fully within its Order.

O R D E R

It is therefore this 21st day of October, 1987 by the County Board of Appeals of Baltimore County ORDERED:

1) that the Petition for Special Exception be and is hereby GRANTED with restrictions as hereinafter provided;

2) that the variance from B.C.Z.R. 409.2.c(2) be and is hereby GRANTED;

3) that in view of the Board's restriction on the number of slips, the petitioner's variance relief under B.C.Z.R. 409.2.b is MOOT;

4) that the Petition for Variance from B.C.Z.R. 417.5 is GRANTED in part and DENIED in part so that the petitioner may expand in conformance with the site plan offered and identified as Petitioner's Exhibit #1 subject, however, to the removal of 80 slips as set forth in the Opinion attached hereto and made a part hereof;

5) that the Petition for Special Hearing is GRANTED to allow amendments to the site plan as was approved on January 16, 1967, in Case No. 64-160-X in order to construct additional piers and slips, in conformance with the variance as set forth in #4 of this Order;

6) that the Petition for Special Hearing to remove restrictions #1 and #3 in Case No. 64-57-SPH will be GRANTED;

7) that the Petition for Special Hearing to remove restrictions #1 and #6 in Case No. 64-160-X will be GRANTED in part and DENIED in part and that restriction #1 is AFFIRMED and re-incorporated herein and restriction #6 amended so as to allow maintenance and minor repairs on site and in the water immediately adjacent thereto from 8:00 a.m. to 7:00 p.m., seven days per week, year round; and

8) that the Petition for Special Hearing for a determination of the recreational activities on site is GRANTED so that the use is exempt from Residential Transition Area requirements.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence E. Schmidt, Acting Chairman

William T. Hackett

William T. Hackett

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

October 21, 1987

Robert J. Romadka, Esquire
Germania Federal Building
809 Eastern Boulevard
Essex, MD 21221

RE: Case No. 85-65-XSPHA
Joseph F. Evering, Jr., et al

Dear Mr. Romadka:

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

Sincerely,

Kathleen C. Weidenhammer

Kathleen C. Weidenhammer
Administrative Secretary

Encl.

cc: John O. Hennegan, Esquire
John B. Gontrum, Esquire
T. Rogers Harrison, Esquire
Phyllis C. Friedman, Esquire
Mr. Joseph F. Evering, Jr., et ux
Judith A. Armold, Esquire
Arnold Jablon, County Attorney
Nancy C. West, Esquire
Norman E. Gerber
James G. Hoswell
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
Margaret E. du Bois

File

1-16-87

IN THE MATTER OF

PETITION FOR SPECIAL EXCEPTION PETITION FOR SPECIAL HEARING PETITION FOR VARIANCES N/S Chester Rd., 590' W of Severn Rd. (800 Chester Rd.) 15th District	:	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
JOSEPH F. EVERING, JR., et ux, Petitioners	:	Case No. 85-65-CSPHA

: : : : : :

RECEIVED
COUNTY BOARD OF APPEALS
1987 JAN 16 A 11: 29

PEOPLE'S COUNSEL'S MEMORANDUM

People's Counsel submits this memorandum in response to the request by the Board of Appeals for written closing argument.

INTRODUCTION

The Everings ("Petitioner") have requested an expansion of their marina facility on Frog Mortar Creek to encompass two adjacent lots and additional piers that would provide a total of 379 boat slips with a total land area of 3.3 acres. Based on a prior Special Exception, Petitioner contends the proposed new slips number only 178. This number is disputed due to a controversy over the utilization of a prior Special Exception.

In order to proceed, Petitioner has asked for a Special Exception; a Special Hearing; a Declaration that the "RTA" does not apply; a Declaration that compliance with the "Critical Area" Legislation is not necessary; a variance from Section 409 (BCZR), requiring macadam paving; and a waiver from Section 417.5(a), requiring that structures in the waterway not extend beyond 300 feet beyond mean low tide. Based on testimony Petitioner should also have addressed the issue of Section 417.7, which requires that:

> "Marinas located on property consisting of five or more acres shall be permitted to establish out of water

storage facilities for recreational marine craft provided that no such facilities thereon shall be located within 60 feet of any property line, and provided, further, that screening shall be provided and maintained of such types and at such locations as may be required by the zoning commissioner or board of appeals, on appeal.

Since Petitioner does not have five acres, it cannot comply with this requirement for out-of-water storage facilities. The significance of this is discussed below. This Board has already ruled that "Critical Areas" does not apply, and People's Counsel has preserved its right to appeal from this decision.

FACTS

Testimony showed that Frog Mortar Creek abounds with existing marinas. In excess of 1,000 boat slips already exist on this narrow and fragile waterway that was characterized by Petitioner's expert witness as "stressed." Further identification of environmental problems was limited due to Petitioner's failure to provide information required by the "Critical Areas" legislation. However, there was evidence that suggests such problems exist.

There is little dispute that at the site of Petitioner's marina the width of Frog Mortar Creek is in the range of 1,000 feet; and it is undisputed that Petitioner's proposal would jut out 419 feet, into this waterway, or 119 feet beyond the 300 foot limit described in Section 417.5 BCZR.

Mike Flanigan, a traffic expert from the County, stated that Chester Road leading into the property is only 14 feet wide in places and could not accomodate emergency vehicles. He also pointed out other potential traffic problems and congestion, supporting the anectodal testimony of other witnesses, and testified to parking problems created by out-of-water storage

facilities of boats on Petitioner's parking lot. Petitioner's expert produced some figures that purported to show automobile traffic would not be a problem, but the dates and times of these traffic counts raises serious doubts as to their probative value. In addition to Mr. Flanigan's testimony, there was other clear evidence that Petitioner has established out-of-water storage facilities on its parking lot for marinecraft. This evidence consisted both of oral testimony and of visual observation of the January, 1986 aerial photo of the subject site.

ARGUMENT

People's Counsel contends the expansion of the proposed Special Exception should be denied, and to avoid redundancy adopts the Memorandum and Argument submitted by Protestants, Bowley's Quarters Improvement Association, Inc. on this issue.

People's Counsel also objects to any acquiescence to the out-of-water storage facilities for marinecraft that are clearly located on the parking lot of the property. While People's Counsel agrees with the Zoning Commissioner that the RTA does not ordinarily apply to parking for a marina, in this case, the parking lot is being used for boat storage. As a result, unless this Board prohibits the use of the parking lot for boat storage, the RTA must be complied with.

However, and most importantly, People's Counsel does not believe this Board has the authority to grant any variance from Section 417 of the Baltimore County Zoning Regulations dealing with Waterfront Construction. These Regulations are not height and area regulations, but are mandatory standards imposed upon waterfront construction.

Two analogous Baltimore County cases have addressed requests to deviate from mandatory standards: Miller v. Forty West Builders, 62 Md. App. 320 (1985) and In the Matter of the Application of Joseph L. Soley for Rezoning, No. R-83-62-A, Before the County Board of Appeals. In both cases, the final ruling denied the requests because waivers were beyond the scope of statutory authority.

In Miller, the Zoning Commissioner granted a de facto variance from the buffer requirement of the RTA. (Id. at 335.) The Court of Special Appeals overturned this grant because the proposal did not satisfy the regulations; and it held that the specifically defined restrictions imposed by the regulations must be adhered to. Similarly, in Soley, this Board refused to grant a Petition for Reclassification to an O-2 zone for a parcel that contained less than the required 10 acres.

A recent New York case dealing with a request similar to the variance requested from Section 417.5 provides guidance in this matter. In Knadle v. Zoning Board of Appeals, 503 N.Y.S.2d 141 (A.D. 2 Dept. 1986), the Petitioner, in connection with a Special Exception, had requested a modification of the setback requirements for a radio tower. The Board granted the modification calling it "a variance" and the Supreme Court of New York reversed, holding that the "board has no power to waive or modify this requirement or to alter this condition under the guise of a variance." (Id. at 142.)

The Knadle Court relied upon an earlier New York case, Cappadoro Land Development Corp. v. Amelkin, et al., 432 N.Y.S.2d 513 (1980), which held, in even stronger terms, that conditions

specified in a zoning ordinance cannot be waived under the guise of granting "variance." Cappadoro had petitioned for a special exception for a convalescent home which, under the applicable zoning regulations, required a side yard of 100 feet and frontage on a major road. The Supreme Court of New York noted that the property in question had a side yard of only 51 feet and did not front on a major street. It then reversed the Zoning Board of Appeals which had granted the petition and held that:

> "A special exception can be issued solely upon fulfillment of the conditions mandated in the delegation of power in the zoning ordinance. Since the board had no power to waive or modify any of the conditions specified in the ordinance it could neither issue the requested permit nor alter the requirements...in the guise of an area variance." (Id. at 517.)

The Court concluded that, "the petitioner's failure to meet the mandatory standards of the zoning ordinance rendered the board powerless to grant the permit."

As in the cases cited above, the requirements of Section 417 are mandatory conditions that govern waterfront construction and cannot be waived under the guise of a "variance". This applies both to the illegal boat storage and to the pier extension. Even without legislative history, it is obvious that Section 417 was enacted to address important health, safety and general welfare concerns by imposing minimum standards. The fact that the regulations contain a numerical standard does not make them a height or area regulation from which this Board has the authority to grant a variance.

Conclusion

Since the requested Special Exception does not comply with the

conditions required by Section 417.5 with regard to extensions into waterways, this Board should deny the subject request and the request for a variance from section 417.5 should be denied. However, this Board would be remiss if it ignores the evidence presented of Petitioner's violation of Section 417.7, which requires a minimum area of 5 acres for out-of-the water boat storage. To clarify Petitioner's permitted use, this Board should order Petitioners to cease out-of-water boat storage on this site. If this is done, then the issues of the applicability of the RTA would also be resolved. If not, then this Board should require compliance with the RTA because it is clear that what is called a parking lot is being used for boat storage. Finally, irrespective of these technical limitations, the evidence shows Petitioners have not met their burden under Section 502.1 and the Petition for Special Exception, Special Hearing and Variances should be denied.

Respectfully submitted,

Phyllis Cole Friedman

Phyllis Cole Friedman
People's Counsel for
Baltimore County

Peter Max Zimmerman /pk

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

6551A/1-6

I HEREBY CERTIFY that on this 16th day of January, 1987, a copy of the foregoing People's Counsel's Memorandum was mailed to: John O. Hennegan, Esquire, John B. Gontrum, Esquire, and Robert J. Romadka, Esquire, 809 Eastern Blvd., Baltimore, MD 21221; T. Rogers Harrison, Esquire, 306 W. Joppa Rd., Towson, MD 21204; Judith A. Armold, Assistant Attorney General, Room 1101, 301 W. Preston St., Baltimore, MD 21201; Peter W. Taliaferro, Assistant Attorney General, Counsel to State Aviation Administration, P. O. Box 8766, BWI Airport, MD 21240-0766; Norman E. Gerber, Director, Office of Planning & Zoning, 4th Floor, Courts Building, Towson, MD 21204; and Malcolm F. Spicer, Jr., County Attorney, Office of Law, Mezzanine, Court House, Towson, MD 21204.

Phyllis Cole Friedman

Phyllis Cole Friedman

6551A/7

1-16-87

RECEIVED
COUNTY BOARD OF APPEALS
1987 JAN 16 P 3:38

IN THE MATTER OF	:	BEFORE THE
	:	BOARD OF APPEALS
JOSEPH F. EVERING, JR.,	:	OF
	:	BALTIMORE COUNTY
ET UX.	:	CASE NO. 85-65 XSPHA

MEMORANDUM OF PETITIONERS

STATEMENT OF CASE

The Petitioners in this case have filed under the Baltimore County Zoning Regulations (hereinafter referred to as the BCZR) for a special exception for a boat yard and for zoning variances to permit the continuation of the existing compacted stone parking surface instead of the required durable and dustless surface, 318 parking spaces instead of the required 384 spaces if the special exception is denied or 363 parking spaces instead of the required 384 spaces if it is granted, and to permit piers to extend 419 feet beyond the mean low tide instead of the allowed 300 feet. In addition, a special hearing was requested to amend the previously granted special exceptions for boatyards and site plans in Cases 3535-X and 64-160-X in accord with the requests filed herein, to utilize that portion of Chester Road lying entirely within the site and to remove in Case No. 64-57 SPH restrictions 1 and 3 in order to permit marine craft to be stored within 20 feet of the easternmost property line and to permit the variance for the parking surface requested herein, and to remove in Case No. 64-160 X restrictions 1 and 6 to allow major repair of boats on the premises and in the water

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

and to change the times and days of the week and year that repairs will be permitted, and, additionally, to determine that the boat yard, piers, and related parking areas are other "structures" devoted to civic, commercial, and recreational activities and , therefore, exempt from the residential transition area requirements set forth in Section 1B01.1.B.1.c.9 and 10 in the B.C.Z.R.

Cross appeals were filed to the order of the Zoning Commissioner dated April 25, 1985, granting the requested relief in part and denying it in part. The matter then came on for hearing before the Board of Appeals for Baltimore County in October, 1985. At that time testimony was taken and arguments heard pertaining to the applicability of the state legislation pertaining to the Chesapeake Bay critical area. The Board ruled on December 12, 1985, that the Chesapeake Bay critical area protection program was not applicable to the relief requested. On January 3, 1986, an appeal was filed by People's Counsel for Baltimore County and on January 10, 1986, an appeal was also taken by Baltimore County. These appeals were dismissed on August 7, 1986, by the Circuit Court for Baltimore County in a ruling on motions to dismiss filed by Petitioners. A Complaint for Declaratory Relief filed by People's Counsel on the same subject matter also was dismissed by the Circuit Court.

The case came on for hearing by the Board of Appeals of

Baltimore County (hereinafter referred to as the "Board") on December 14 and 15, 1986.

STATEMENT OF FACTS

The Everings purchased their first parcel of property at the end and to the south of Chester Road in 1954. They were granted a special exception for use of that property as a boatyard in Case No. 3535-X. In 1960 they purchased property directly across Chester Road from the original parcel, and a special exception was granted for a boatyard covering that parcel in case no 64-160-X. Prior to that case, however, an issue arose under the original special exception as to the storage of marine craft on shore, and this was allowed in Case No. 64-57-SPH. A site plan was filed indicating the amendments granted in these cases to the original special exception and incorporating both parcels. (Pet. Ex. 15). Case No. 64-57-SPH also contained a prohibition against parking of boats within twenty (20) feet of the easternmost portion of the southern property. In 1969 the Everings purchased the adjacent lot on the southern side of Chester Road and in 1970 purchased a lot adjacent to their 1960 purchase on the northern side of Chester Road.

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

Mr. Evering testified that the primary purpose of this special exception request was to allow additional on-shore parking facilities. This area encompasses the two most recently acquired tracts of land. It is indicated by the cross-hatched area on the site plan accompanying the Petition. (Pet. Ex. 2).

The site plan also contains the amendments to the two previous special exceptions granted the Everings, including the requested pier extensions.

The site plans and the aerial maps which were introduced indicate that the marina and boatyard are located on the eastern side of Frog Mortar Creek where it empties into Middle River. At the site the creek widens substantially, and the channel was indicated by all to be near the other shore closer to the airport. Directly upstream from the Evering property a private pier extends out into the Creek occupying a much larger portion of Creek area than the extensions sought by the Everings.

Mr. Evering testified that it was his intention to rent the additional slips created by the extension primarily to sailboat users. It has been his experience that sailboaters less intensively use the marina facilities and afford a cleaner type of operation than power boat users. By extending the piers Mr. Evering reaches water sufficiently deep that not only will dredging not be necessary but also the effects of propeller rotation or wash will be minimized.

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

Two aspects of traffic were at issue at the hearing. Mr. Evering testified that the busiest days of the year were the two summer holidays, the Fourth of July and Labor Day. Even on those days, however, use of the site never exceeded forty percent (40%). The marina currently offers 201 slips and with the proposed extensions will have 379 slips. Even eithout the special exception the site as now constituted offers 318 spaces. With the special exception it will offer 363 spaces, only slightly less than one for each boat. There has never been any testimony that the site with or without the special exception has not been able to accommodate the necessary parking. Mr. Evering's testimony was corroborated on this point by Dr. Ewell's observations of cars parked over the Labor Day weekend. He observed fifty-five (55) cars on the site at 5 PM on Labor Day in 1985. (Pet. Ex. 20). Although there was testimony as to the crowded conditions of Bowley's Quarters Road primarily in connection with Miami Beach, there was no indication that the subject marina contributed any more to the traffic than any of the other numerous marinas in the area. Furthermore, there was testimony that the primary hours of utilization were "off-peak" hours which do not conflict with regular commuter traffic. There was no testimony as to undue congestion on either Chester Road or on Susquehanna Avenue, the two closest roads.

The testimony of Mr. Flannigan of the County was to the effect that Chester Road was substandard and that the intersections of Chester Road and Susquehanna and of Susquehanna and Bowleys Quarters Roads were substandard. He admitted, however, that these intersections were not dissimilar to numerous other intersections on the Bowley's Quarters peninsula. He further admitted that neither public works nor fire had any adverse comments to the petition in terms of access. He also did not know whether the County had easements to bring the intersections or the roadways up to standard. Finally, Mr. Flannigan testified as to the "book traffic count" to be expected of marinas. According to the "book" the current usage during the week was over eight hundred trips or three and a half trips per slip. This in no way corresponds to any of the actual observations of anyone actually visiting the site. The book count estimated up to eight (8) trips on the average per slip per day on every weekend. (P.C. Ex. 6). He admitted that the book count was not based on any personal observations nor on any local marina activities. He also did not know the kinds of marinas providing the information. Some marinas, for instance, allow trailer boating and have ramps. The Evering marina does not have these facilities and does not intend to provide them. This logically would eliminate a lot of traffic projected from the marina.

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

The other potential area of traffic is from the boats in the waterway. There was testimony from Mr. Evering, slip renters, and Mr. Greenwood, a longtime neighborhood resident, that the increase in slips would not prove to be any danger. There was testimony from Mr. Jones and from Mr. Stumpf from the community that the waterway already was overcrowded. Mr. Stumpf now keeps his boat in Bear Creek, and Mr. Jones moved into the cove adjacent to the marina three (3) years ago. He testified, however, that he had been familiar with the area and the Creek for many years. He submitted numerous photos from the headwaters of the Creek showing boats up in the narrower portions of the Creek as well as utilization of the airport property by picnickers. He did acknowledge that Everings' marina was located right where the channel widens. He further acknowledged that the new extensions were located proportionately no further out into the cove in which he lived than the existing piers.

The testimony was that the major problems in the creek come from speeding boats and people using the airport property. No one, however, contradicted the safety record attested to by Mr. Evering in the creek and with the marina. None of the slip renters felt that there was a safety problem in their utilization of the marina. Furthermore, a review of the site plan and of the traffic map (Pet. Ex. 9) indicates that this marina's slips will be located much further from the channel than the slips of other marinas in the area.

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

Mr. Frederick Klaus testified that in his opinion there would be no diminution in the value of neighboring homes in the event that the special exception, variances and amendments were granted. He had visited the subject site on numerous occasions and was familiar with the area. He felt that if the requests were granted that there would be no injury to the health, safety or general welfare of the community.

Dr. Frank Pines also testified with respect to the environmental aspect of the Petitioners' requests. He very definitely thought that Petitioners' request for a durable and dustfree surface other than macadam, cement or tar and chip was environmentally more sound than these alternatives and that the variance request should be granted from an environmental standpoint alone. He further felt that the additional facilities proposed by Petitioner to go along with the additional piers such as the sewage pump out facilities and the back-fill behind new bulkheading would so improve on existing conditions that the facility with the amendments and additional slips would not in any way create a worsening of an existing condition and would in fact minimize pollutants into the water. His studies indicated that only a minimal amount of the overall pollution in the immediate waterways was contributed by the boats. The increment added by additional facilities at this marina was infinitesimal. With best management practices and the above noted improvements he did not see any worsening in condition if the requests were

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

granted. In comparison with other locations he noted that in this instance the marina has fully developed its land resources. It has no wetlands or aquatic vegetation. The backfilling behind that bulkheads proposed to be replaced by the Everings would reduce sediment runoff into the water by up to eighty percent (80%).

With respect to the lifting of the restrictions in the previous cases Mr. Evering testified that he had purchased the property from which he was supposed to set back twenty (20) feet and that, therefore, the restriction should no longer apply. Neighboring properties are now much further from the repair facilites. The additional area, he believed, could best be used for parking and storage of boats on land. He felt that the restriction as to major repairs was confusing. Originally, he believed it to be the intent of the restriction that he not be allowed to perform work on commercial vessels. He has no objection to that restriction. Now some of his customers in performing work on their boats may be in violation depending on the work performed and the meaning of "major repairs".

With respect to the hours of the repairs he felt that most repairs again would take place during the daylight hours of the work week, but occasionally, minor in water repairs limited to emergencies might be undertaken by the slip renters on weekends. It was to accommodate this perceived need of the

renters as well as to make use of daylight hours in the summer that this restriction was sought to be removed.

Amendment to the plan to allow the inclusion of that portion of Chester Road surrounded by the boatyard is also requested. Chester road deadends onto the Evering site. Over the years with the acquisition of additional parcels the roadbed has become necessary to the utilization of the special exceptions for the site, but it itself has never been part of the previous special exceptions. Consequently, the Petitioners are requesting that this area along with the additional parcels be considered as part of the marina and boatyard facility for the purpose of the special exception.

There was no adverse testimony to the removal of any of the restrictions or to the variance for the parking surface or to the special exception for parking area. No adverse comments were filed by any agency of the county zoning advisory committee. The testimony of People's Counsel witnesses and Protestants went exclusively to the pier extensions and perceived problems associated with that sole request.

One final request by Petitioners calls for an interpretation under the BCZR of whether the piers, boatyard facilities including the swimming pool and parking areas can be classified as structures for recreational activities and be exempt from residential transition area (RTA) requirements. There has never been any factual dispute that the Evering

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

marina supports only recreational boating craft due in part from the restrictions in previous zoning cases. No one has contested that the use by boat owners who live either in the neighborhood such as Mr. Greenwood or up in Reisterstown such as Mr. Butterworth are not recreational and therefore exempt from the residential transition requirements.

APPLICABLE LAW

The standards applicable to special exceptions are contained in Section 502 of the BCZR. Under the note to Section 502 is the consideration that the special exception uses are proper uses of land, but have aspects which call for special consideration of each proposal. Similar wording has been interpreted in the Court of Appeals. In Schultz v. Pritts, 291 Md. 1 at 23, 432 A. 2d 1319 (1981), the Court said: " We now hold that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone."

Section 502.1 goes on to list eight (8) factors which should not be detrimentally affected by the award of the special exception. These factors are to be taken into consideration in light of Schultz.

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

Protestants have raised the issue as to the continuing validity of the special exception granted in Case No,64-160-X and depicted in the 1967 site plan wherein building permits were sought. (Pet. Ex. 15). There is no question but that the onshore facilities depicted in the site plan as well as the pier and location of the barge on the southern property were all placed pursuant to the special exception. The proposed piers on the northern side of the property as allowed in the 1964 special exception were not built. The Zoning Commissioner disagreed with the Board's decision in Case No. 84-89-SPH, In Re: Joseph L. Soley. In that case the Board found that to satisfy the conditions of Section 502.3 one must merely initiate construction. The Zoning Commissioner also felt that more was needed than would satisfy the "vested rights" criteria. See Petitioners' Memorandum to the Zoning Commissioner attached hereto addressing this issue. The Commissioner felt that the reasonable diligence test required more. However, in this case he felt that the test had been met. He felt that "There has certainly been 'reasonable diligence' - a fair, proper and due degree of care and activity, measured with reference to the particular circumstances. The strictures of Section 502.3 have been satisfied." Consequently, the Board is asked to make a factual determination as to the validity of the previous special exception because in place of the piers and additional slips shown on the northern side of Chester Road in the 1967 plat,

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

Petitioner is now seeking additional slips in deeper water in a different configuration.

Section 307 of the BCZR sets the standard for an area variance by stating that the Petitioner should show that the regulation sought to be varied would result in practical difficulty if enforced. It further must be shown that the variance is in strict harmony with the spirit and intent of the regulations and would not be cause substantial injury to the health, safety or general welfare. The easier standard of "practical difficulty" has been held to be applicable to the variances sought herein by the Court of Special Appeals in Anderson v. Board of Appeals, Town of Chesapeake Beach, 22 Md. App. 28, 322 A. 2d 220 (1970). According to that case to prove practical difficulty it must be determined whether strict compliance with the requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome ; whether the grant of the variance would do substantial justice to the petitioner as well as other property owners or whether a lesser relaxation than that applied for would give substantial relief; and whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured. McLean v. Soley, 270 Md. 208, 214-215, 31 A. 2d 783, 787(1973), quoting 2 Rathkopf, The Law of Zoning and Planning, 45-28-29 (3d ed. 1972).

The standards of adjudication under the special hearing provisions are much more nebulous,but it may be assumed that the relief sought may be granted if found to be within the spirit and intent of the regulations and not injurious to the public health, safety and general welfare. This assumption is based on Section 502.2 where the Board or the Zoning Commissioner may impose such restrictions onto special exceptions as may be deemed advisable for the protection of surrounding or neighboring properties. In this case restrictions earlier imposed on previously granted special exceptions are sought to be lifted because of the change in configuration of the site and in the neighborhood.

The Opinion and Order of the Zoning Commissioner also makes reference to the residential transition area requirements contained in Section 1B01.1.B.1.b et seq. of the BCZR. These provisions relate to all uses permitted as of right or by special exception in residential areas unless specifically exempt. An exception is provided in Section 1B01.1.B.1.c.9 and 10 for other structures devoted to social , civic or recreational activities including parking. Questions arise as to whether the use of piers and storage buildings under the residential area apply to the previously granted special exception and whether piers qualify as structures. In the event that they do not qualify as structures then it is apparent that the RTA requirements will not apply. If, however, the piers do qualify as structures, then the only

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

question is whether they are used for a social or recreational use. The Petitioners have no disagreement with the findings of the Zoning Commissioner that the piers are recreational in nature and as such are structures exempted from the RTA requirements. Neither Protestants nor People's Counsel have contested this finding.

The issue as to the applicability of the Chesapeake Bay Critical Area legislation to these proceedings has already been addressed in earlier proceedings and in an earlier Memorandum, a copy of which is attached.

DISCUSSION

Although numerous issues have been presented to the Board for review, we believe that the case is best viewed as a zoning case involving questions of use under the zoning regulations. The Board has to decide whether the requirements of a special exception have been met on the site under Section 502 of the BCZR, whether the previous special exceptions are still alive, and whether the previous special exception site plans and restrictions can be amended as indicated on the site plan filed by Petitioner. (Pet. Ex. 2). In addition, the Board has to determine whether Petitioners should be granted the variances requested for paving, parking and pier extension in order to overcome the practical difficulties involved with strict compliance of the zoning regulations. Finally, the Board has to interpret the residential transition area (RTA)

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

requirements and exemptions to determine if the facilities are exempt.

Petitioners obviously believe that the previously granted special exceptions for boatyard use are still valid. There has been no question over the actual existence of the boatyard and marina since 1955. There also has been no question that the usage involves properties on both sides of Chester Road. Ever since the acquisition of the northern property in 1960 and special exception in 1964 boats have been stored along with parking for renters' cars on shore. Recreational facilities indicated on the 1967 site plan (Pet. Ex. 15) including swimming pool and showers have also been built. Finally the pier including 36 slips and the permitted barge were placed in accord with the site plan on the southern parcel. As all of the photos introduced into evidence suggest, the various parcels are all used as one in the use of a boatyard and marina. We agree with the Zoning Commissioner that the special exceptions previously granted have been pursued with due diligence even though the piers proposed on the 1967 plan were not built. For further discussion of this issue please see attached memorandum. Mr. Evering testified that this improvement did not occur due to the cost involved with necessary dredging to obtain the necessary depth for either sail or power boats. Now, of course, dredging is acknowledged to have certain environmental impacts which the new configuration avoids. We believe that the new

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

configuration will not only allow us the expansion in the most environmentally sensitive manner but also will allow the marina to shift its service more to the less intensive sail boat use.

The special exception requests pertain to the newly acquired properties and to the roadbed of Chester Road within the site. If the new special exceptions are denied, the practical effect would be to deny additional parking and storage area. No protestant complained of the on land facilities or objected to these proposals.

Petitioners have met the standards under Section 502 of the BCZR in their application for the special exception and amendments to the previous special exceptions. All of the evidence indicated that location of the additional facilities as this marina presented no problems greater than those normally associated with a marina or boatyard use at any other location. Under the criteria of Schultz v. Pritts there has been no showing that this location for a marina or boatyard use presents any special problems. Testimony from Petitioner and his expert witnesses indicated that there would be no detriment to the health, safety or general welfare by the location and expansion of the marina use at this location. Even Mr. Flannigan who was concerned over the condition of the County roads and intersections indicated that these problems are common to the entire Bowleys Quarters area in which there are numerous marina and boatyard facilities. Dr. Ewell

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

indicated that the additional traffic generated by the marina is of minimal impact given its timing and quantity. His study was based on actual observations and not on a theoretical number not based on similar operations or on data from the area.

Even though the critical area program for the Chesapeake Bay is not applicable to the petitions, Petitioners presented evidence indicating that the criteria under the critical area program had been met. Dr. Pines testified as to the extensive studies which have occurred both at the subject site and in the Middle River area in general. His studies indicated that the contribution of marinas in general to the pollutant levels was minimal. He pointed out that in this case the on-shore facilities already are in place so that the relative pollutant levels to the construction of a new marina on vacant land are much less. Furthermore, this marina facility is located at the mouth of the creek where the water action is such as to be more cleansing than at the headwaters or where the Creek is narrower.

Perhaps most important are the mitigative measures which will be taken in the event that the petitions are granted which will serve to minimize any contribution to existing pollutant levels. First, Mr. Evering has agreed to be bound by the "best management" practices outlined in Dr. Pines report. (Pet. Ex. 19). These practices include:

1. Wording in lease agreements to enforce use of trash receptacles and controlling of washing of boats.

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

2.Replacing existing fuel pumping facility with newer equipment having back-pressure automatic shut off valves and restriction of fuel service to trained Marina personnel, education of boat owners regarding fuel spill sources, and on-site sales of fuel recovery products.

3. Restrict the use of antifouling paints to boat hulls and avoid painting piers and other in-water structures.

4. Conduct scraping and painting operations away from the water in protected areas to avoid the loss of particulate and raw paint.

5. Avoid repainting hulls after a year during which fouling to the hulls was minimal.

6. Dry store boats not in use for extended periods.

7. Post signs prohibiting overboard disposal of sewage and inform the public of contamination levels resulting from violations.

8. Require compliance with federal "head laws" as a prerequisite to slip rental, and indicate violations will result in cancellation of rental contract.

9. Require all through-hull discharge ports of Type III MSD's to be sealed on those vessels "permanently" moored.

10. Require use of on-site pump-out facilities.

In addition, Mr. Evering has agreed to install on site pump-out facilities which currently do not exist on site. These facilities should significantly encourage slip owners to properly discharge their wastes. Investigation of the sewage facilities by the Health Department indicate that the marina has an approved and properly functioning septic system. As Dr. Pines indicated, most of the private septic systems in Bowley's Quarters are failing and are a primary source of pollution in the river.

Finally, Mr. Evering has agreed to backfill behind the new bulkheading which he intends to install so as to create a filter from runoff on the site. The fact that the site has a porous gravel surface is important in alleviating runoff and reducing surface pollutants, but Dr. Pines felt that with the filtration almost all surface pollutants would be eliminated

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

which would improve on the existing condition and minimize the contribution of pollution from the additional development.

These factors not only function to meet critical area criteria with respect to minimizing impact on water quality but also indicate that there would be no detriment to the health, safety and general welfare on an environmental level from the proposed development. This also meets the test under the variances requested of not causing substantial detriment to the neighborhood.

It should also be noted that by placing the new piers in deeper water the marina not only eliminates disturbance of the bottom by dredging or by the boats but also the marina minimizes the impact of additional usage on the water. The second criterion of the critical area program has to do with the impact of the population on the environment. Testimony at the hearing indicated that power boats not only contributed to much more intensive on-shore use but also had more effect on the bottom areas through propeller wash and through engine discharge. It is Mr. Evering's stated intention to convert the marina to almost exclusive sail boat use. His reasoning candidly has more to do with economic advantages than with environmental advantages but the latter benefits can not and should not be ignored. The application, therefore, has considered and responded to the concern as to the impact of population on the critical area.

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

There was no response from either the Protestants or from People's Counsel to any of the environmental or health related issues addressed by Petitioner. None of their witnesses produced any evidence in contradiction to Dr. Pines, Frederick Klaus, or Mr. Evering. Indeed, there was no contradiction to the testimony of Petitioners' witnesses who testified as to the cleanliness and efficiency of the Evering operation.

With respect to the variances requested we believe that we have shown the practical difficulty and undue burden in strict compliance with the zoning regulations and the absence of harm to the community if they are granted. No evidence was submitted opposing the parking variance nor the paving variance. We believe that the only evidence before the Board on these requests illustrates the benefits of not paving the site from the standpoint of run-off and the fact that there already exists a durable and dust-free surface. The parking requirements on the site are more than sufficient to meet the existing and proposed development. The variance sought will not overcrowd the site since over twice the needed parking from the evidence already is provided.

With respect to the pier extension variance we believe that it is necessary in order to obtain the needed deep water and attendant environmental advantages. We believe that already we have the right to construct piers along the northern parcel close to shore. To effectively use these

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

piers, however, would not only be costly but also environmentally damaging. To minimize the impact of the additions on the community and on the river we have sought pier additions in the configuration indicated on the plan. At this point the channel is still over a hundred yards from the proposed extensions and should be of no danger to either the boats moored at the extensions or to boats using the waterway. We do not need a variance of Section 417.5 (c) which specifically prohibits extension of piers into the channel area. None of the witnesses actually using the facility felt that the piers would in any way endanger the safety of the users of the river or of the marina. Of all configurations of additional piers both within the 300 foot limit and outside of it, we believe that this configuration will best serve all interests.

It clearly would be unduly burdensome on the Petioners to comply with this regulation given the relationship of this marina to the water and other facilities in the area.

The special hearing requests to amend the conditions of the previous plans and hearings also were not contested. The twenty (20) foot limitation (Condition 1 of Case No. 64-57-Sph) should no longer apply since we now own the property to which it referred and propose to use it for parking. We believe that the appropriate screening will be far more beneficial to the neighbors and be more attractive to the site than the maintenance of the restriction.

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

We also have sought removal of restrictions as above noted for the conduct of major repairs on the site for the reasons stated above. The facilities for the conduct of the repairs are already in place. We do not believe that a meaningful and fair distinction can be made between so-called "major" and "minor" repairs. Furthermore, it is clear from the context in which this restriction appears (Restriction 1 of Case No. 64-160-X) that it was intended to apply primarily to commercial boats, which we do not intend to have on the site. The restriction as to hours for the conduct of repairs also was sought to be lifted primarily as Mr. Evering said in order to take advantage of daylight hours in the summer and to allow emergency repairs on the weekends. The restriction also does not speak to what is allowable on Saturdays. (Restriction 6 of Case 64-160-X). There was no adverse comment to the lifting of either restriction and in view of the additional properties acquired by the Everings, the repairs will no longer be taking place adjacent to neighboring properties. We do not believe that the lifting of these restrictions will be adverse to the health, safety or general welfare.

Finally, site plan amendments were sought in light of the special exception and variance requests and to utilize the roadbed of Chester Road within the site. The object of the request is simply to bring the site plan up to date, in harmony with the other requests. Again, there was no opposition to this request.

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

CONCLUSION

In conclusion, we respectfully request the Board to approve our requests for special exception and for amendment of the previous special exceptions for boatyard and marina use, for the variances requested to parking, paving, and 300 foot pier limitation, for lifting of the restrictions as above indicated and revision of the site plans and for determination that the residential transition area does not apply to the subject parcel's recreational and social use.

Respectfully submitted,

John B. Gontrum
Romadka, Gontrum, Hennegan and Foos
809 Eastern Blvd.
Essex, Maryland 21221

1-14-87

IN RE

PETITION FOR SPECIAL EXCEPTION PETITION FOR SPECIAL HEARING PETITION FOR VARIANCES N/S CHESTER ROAD, 590' W OF SEVERN ROAD (800 CHESTER ROAD)	*	BEFORE THE BOARD OF ZONING APPEALS OF
	*	BALTIMORE COUNTY
JOSEPH F. EVERING, JR., et ux	*	
Petitioners	*	
BOWLEY'S QUARTERS IMPROVEMENT ASSOCIATION, INC. and KENNETH ENGLEKE et al	*	Case No. 8565XSPHA
Protestants	*	

****

MEMORANDUM AND ARGUMENT

The Protestants, Bowley's Quarters Improvement Association, Inc. Ken Engleke, et al, by their attorney, T. Rogers Harrison, submit this Memorandum and Argument in support of their position that (1) the subject property falls under the Chesapeake Bay Critical Area Protection Program, Md. Nat. Res. Code, Ann. Sections 8-1801-8-1816 (1974 and 1984 Cum. Supp.); (2) the Petitioners have not met the requirements of Section 8-1813 of the aforementioned Act; (3) the Special Exception granted in 1964 as to parcel #2, i.e., Brown Parcel located at north side of Chester Road, has long since expired and was never utilized pursuant to Section 502.3 of the Zoning Regulations of Baltimore County; (4) that the variance requested to extend new piers

419 feet beyond mean low tide should be denied; (5) that Petitioners should not be permitted to construct any new piers at the subject site; (6) that parcels 3 and 4, i.e., south and north parking parcels should be restricted as to use; (7) that Petitioner should be required to screen and landscape subject site and required to participate in storm water management; (8) that all currently existing restrictions regarding use of subject property should be maintained.

DESCRIPTION OF LAND

The property of the Petitioners, Joseph J. Evering, Jr. and his wife, Catherine (hereinafter the "Everings"), consists of approximately 3.3 acres located on the north and south sides of Chester Road, 1000 feet west of Susquehanna Avenue in the Fifteenth Election District, Baltimore, County, Maryland. The property is known as the Long Beach Marina, 800 Chester Road, and can be described as the tip of a peninsula jutting into Frog Mortar Creek. Frog Mortar Creek is a part of the Middle River Tidal Basin.

The property is best understood as consisting of four separate pieces of land: (1) the original Evering parcel, approximately 1.2 acres in size, located on the south side of Chester Road and comprising Lots 1, 82 and 83 of the Long Beach Estates (Parcel 1); (2) the Brown parcel, approximately 1.75 acres in size, located on the north side of Chester Road (Parcel 2); (3) the south parking parcel,

Lot 83 of the Long Beach Estates, located on the south side of Chester Road (Parcel 3); and (4) the north parking parcel, located on the north side of Chester Road (Parcel 4). All of these four pieces of land are in a D.R. 5.5 zone.

STATEMENT OF FACTS

In 1955, Joseph F. Evering, Jr., (hereinafter "Joseph Evering") filed a petition for special exception, requesting that he be allowed to use his property on Chester Road, then and now in a D.R. 5.5. zone, for a boat yard. At that time, he owned only the 1.2 acre original Evering Parcel located on the south side of Chester Road. On June 6, 1955, the Special Exception was granted (Case No. 3535X) and Joseph Evering thereafter converted his property into a boat yard by, among other things, building four piers which extended west into Frog Mortar Creek, for the mooring of power and sail boats.

On August 1, 1960, Mr. and Mrs. Henry J. Brown conveyed to the Everings the 1.75 acre Brown Parcel located on the north side of Chester Road. In January 1964, the Everings filed a Petition for Special Hearing "for a clarification and extension of the uses heretofore granted under the special exception, granted on the 6th day of June, 1955 (File No. 3535) to specifically include the storage of marine craft on the land." On March 9, 1964, the Everings'

request was granted (Case No. 64-57SH) subject to three restrictions:

1. No marine craft may be stored within 30 feet of the easternmost portion of the property presently owned by ...[the Everings];

2. The use of the boat yard, both on land and in the water, shall be limited to pleasure craft.

3. The Petitioners [the Everings] shall comply with the off-street parking requirements of Section 409 of the Baltimore County Zoning Regulations.

About one month later, on April 10, 1964, the Everings filed a Petition for Special Exception.

The Petition for Special Exception requested that the Everings be allowed to develop a boat yard on the Brown Parcel. The Everings planned to fill and level the land, build a bulkhead on the north side of the Brown Parcel and extend Chester Road to the water's edge. On June 30, 1964, the Petition for Special Exception (Case No. 64-160X) was granted subject to the following restrictions:

1. No major repairs of any boats shall be permitted on the premises or waters immediately adjacent thereto.

2. Construction of boats is prohibited.

3. No commercial vessels will be permitted to patronize said establishment.

4. Services will be restricted to pleasure craft only.

5. Barges or similar type craft will not be allowed on or tied up at the property, with the exception of the one small barge which is presently being used by the Petitioner[s]. [The Everings.]

6. Minor repairs and maintenance will be permitted from 8 a.m. to 7 p.m. week-days [sic], May through September and 8 a.m. to 6 p.m. on week-days [sic] during the other months of the year. No repairs will be permitted on Sundays.

The site plan, which was approved by the Office of Planning and Zoning on January 16, 1967, called for four additional piers, approximately 168 additional boat slips and approximately 168 additional parking spaces for automobiles. Three of the proposed piers were to be built off the Brown Parcel, more or less parallel to the four existing piers which extended west from the original Evering Parcel. Each was to contain 44 boat slips. The fourth proposed pier was to be built off the south side of the original Evering Parcel, perpendicular and to the rear of the four existing piers. It was to contain 36 boat slips. The site plan also called for the Everings to extend Chester Road to the water's edge, to fill in and extend the Brown Parcel to conform with the original Evering Parcel, to build a bulkhead and to use a macadam surface for the parking areas.

In 1966, the Everings applied for and received three building permits for the northwest Brown Parcel piers. Little, if any, construction was commenced and, in 1970, the Everings again applied for and received building permits for the same three piers. Again, the Everings did not commence any substantial construction. It is apparent that they did drive in some mooring piles along the western shore line of the Brown Parcel, but it is just as apparent that this construction was soon abandoned. No effort was made to fill in and extend the Brown Parcel, to extend Chester Road, to build the bulkhead and to comply with the plans for the required parking spaces. Sometime between 1966 and 1984, they did construct the southern pier off the original Evering Parcel. During this time they also acquired the north and south parking parcels.

In August, 1984, the Everings filed the following three petitions:

1. Petition for Zoning Variance

(a) to allow existing compacted stone in lieu of the required macadam paving. A variance from B.C.Z.R. Sec. 409.2.c.(2) (1981 and 1983 Supp.)

(b) to allow 318 parking spaces in lieu of the required 384, or, if the special exception is granted, to allow 363 parking spaces in lieu of the required 384. A variance from B.C.Z.R. Sec. 409.2.b (1981 and 1983 Supp.)

(c) to allow the extension of the piers to exceed 300 feet beyond the mean low tide. A variance of B.C.Z.R. Sec. 417.5(a) (1981 and 1983 Supp.)

2. Petition for Special Exception

(a) to allow the two lots on the north and south sides of Chester Road (the North and South Parking Parcels) to be used as part of the boat yard. The lots are zoned D.R. 5.5.

3. Petition for Special Hearing

(a) to amend the site plan which was approved on January 1, 1967, in connection with the June 30, 1964 Petition for Special Exception (Case No. 64-160X) in order to construct additional piers and slips.

(b) to remove restrictions 1 and 3 in Case No. 64-57SPH in order to allow marine craft to be stored within 20 feet of the easternmost property line and to request a variance of the parking.

(c) to remove restrictions 1 and 6 in Case No. 64-160X in order to allow major repairs on the premises and in the waters and to change the times that repairs are permitted.

(d) to determine that a boat yard and related parking areas are structures devoted to civic, commercial and recreational activities and are, therefore, exempt from the residential transitional requirements et out in B.C.Z.R. Sec. 1B01.1B.1.c (1981 and 1983 Supp.)

The Protestants do not oppose Petitioners' request 1(a) (stone, in lieu of macadam paving) if the Petitioner is required to engage in meaningful storm water management practices at the site (Protestants contend that Petitioner was impliedly required to do this by way of bulkheading prior to the last pier construction off Parcel 1 permitted by way of the approval of the amended site plan in 1964). Otherwise, Protestants oppose each of Petitioner's requests before this Board.

For reasons fully briefed and argued at the hearing on the merits, the Protestants contend that the Petitioners' requests do fall under Chesapeake Bay Critical Area Protection Program, Md. Nat. Res. Code, Am. Sections 8-1801-8-1816 (1974 and 1984 Cum. Supp.) and have failed to comply with the requirements of said Act. However, given this Honorable Board's determination that the "Act" does not apply, Protestants will not further argue this point in this Memorandum.

The preliminary issue presented in this case is, simply put, whether the Everings utilized the Special Exception they were granted on June 30, 1964. Section 502.3 of the Baltimore County Zoning Regulations (1981 and 1983 Supplements) states, in pertinent part, that:

> "[a] Special Exception which has not been utilized within a period of two years from the date of the final order granting same, or such longer period not exceeding five years, as may have been specified therein, shall thereafter be void... After a final

> order granting a Special Exception, the Zoning Commissioner, at any time prior to expiration of the period of time authorized for its utilization, may grant one or more extensions of such period, provided that a maximum time for utilization of the Special Exception is not thereby extended for a period of more than five years from the date of the final order granting same."

The same section also provides that:

> "[a] Special Exception which requires any construction for its utilization shall be deemed to have been used within its authorized time <u>if such construction shall have been commenced during the authorized period, or any extension thereof, provided said construction is thereafter pursued to completion with reasonable diligence</u>." (Emphasis added.)

Phrased differently, then, the issue here is whether the Everings, under the June 30, 1964, order granting them a Special Exception (as to Parcel 2), commenced construction during the authorized time period and thereafter pursued that construction to completion with reasonable diligence.

The requirements set forth by Section 502.3 are twofold: (1) the petitioner must commence construction within the authorized time period; and (2) he must pursue that construction to completion with reasonable diligence. If the Petitioner fails to do both, the Special Exception is void. While the record is not clear, it is assumed that the Everings had five years from the date of the Special Exception in which to commence construction.

It is apparent that the Everings have not attempted to utilize the Special Exception they were granted on June 30, 1964. As of September 1984, they had not extended Chester

Road, had not filled in and extended the Brown Parcel, had not built the bulkhead, had not built the parking areas as detailed on the site plan, and had not implemented their plans to build three piers off the western shore of the Brown Parcel. As the June 30, 1964, Special Exception was surely one requiring construction for its utilization and the Everings did not commence any substantial construction during the ensuing five years (1964-1969), the Special Exception is void.

The Everings, in essence, have failed to meet both requirements of Section 502.3: They did not begin any substantial, easily recognized construction and they did not pursue what little construction they did commence to completion with reasonable diligence. It must be remembered that the June 30, 1964, Special Exception concerned the Brown Parcel (Parcel 2).

The only apparent action taken by the Everings with regard to the Brown Parcel during the authorized five-year period was applying for building permits in 1966 for the three Brown Parcel piers. This, by itself, does not constitute the commencement of construction. Even if it did, the Everings did not pursue the construction to completion with reasonable diligence. More than eighteen years have passed since the Everings secured the building permits and, during this time, the Everings, at best, drove a few piles along the western and northern shores of the

Brown Parcel (Parcel 2). Mr. Evering himself characterized his intentions in the 1970-1980 period as an "abandonment" of expansion because of lack of money, gas crisis, and so forth. Perhaps the fact that this marina is not filled, played a role.

The meaning of the language in Section 502.3 requiring construction to be pursued to completion with reasonable diligence is clear, unambiguous and should be given its literal meaning.

The Everings did not have a substantial construction beginning. All they did was obtain building permits and drive in a few mooring piles. Neither action, as noted earlier, constitutes a readily recognizable commencement or a substantial construction beginning. It has been repeatedly held that the mere issuance of a building permit alone does not confer any vested right and, therefore, would not constitute a construction under Section 502.3. See Stewart Petroleum Co. v. Board of County Commr's., 276 Md. 435, 347 A.2d 854 (1975); County Council v. District Land, 274 Md. 691, 337 A.2d 712 (1975); Rockville Fuel & Feed Co. v. City of Gaithersburg, 266 Md. 117, 291 A.2d 672 (1972); and Ross v. Montgomery County, 252 Md. 497, 250 A.2d 635 (1969). See generally 3 Rathkopf, The Law of Zoning and Planning, 57-6 (45th ed. 1976). As it was stated in County Council, "the obtention of a building permit creates no vested right... unless substantial construction has been

undertaken in reliance thereon...."274 Md. at 707, citing Rockville Fuel, 266 Md. 117.

The driving of a few piles along the western and northern shores of the Brown Parcel does not constitute a substantial construction because, under the Rupp test, everyone would not be able to recognize these few piles as the manifest commencement of the landfill extension of the Brown Parcel, the extension of Chester Road, the construction of a bulkhead, the leveling and paving of a parking area, and the construction of three piers. See Rupp 230 Md. at 578. Indeed, these few piles barely protrude out of the water. At best, they constitute an incomplete and ambiguous outline of the northern and western shores of the Brown Parcel. In this regard, the piles can be likened to the footing of a building. In Ross v. Montgomery County, the Court of Appeals held that the pouring of a single footing was not enough to give the property owner a vested right to build an apartment hotel under a building permit issued prior to a change in the zoning classification of the property. 252 Md. 497. See Pemberton v. Montgomery County, 275 Md. 363, 340 A.2d 240 (1975) and Stewart Petroleum, 276 Md. 435.

Assuming that the driving of the piles coupled with the building permit does constitute a substantial, readily recognizable construction beginning, the Everings still have failed to pursue that construction to completion with

reasonable diligence. It has been eighteen years since the building permits were issued, and the piles are the only evidence of a construction attempt. While it may very well have been the intention and purpose of the Everings to secure building permits, drive the piles, and pursue to completion the landfill, road extension and the bulkhead, parking lot and pier constructions, this intention was quickly abandoned.

It is true that in 1970 the Everings renewed the building permits, thus in some sense evidencing their continued intention to implement the 1967 site plan, but, again, no substantial construction occurred immediately thereafter or in the ensuing fourteen years. It cannot, therefore, be maintained that the Everings have been pursuing to completion the utilization of their 1964 Special Exception with reasonable diligence, but this is exactly what they would have to prove in order for that Special Exception to still be valid. HB.C.Z.R. Sec. 502.3. It should be remembered that the Everings have the burden of proving that the 1964 Special Exception is still valid and that they both commenced construction within the authorized time period and pursued that construction to completion with reasonable diligence. As this burden has not been met, and all evidence suggests that it cannot be met, the 1964 Special Exception is void. A Special Hearing, therefore, is not proper and the Everings should be required to re-

petition for a special exception for Brown Parcel. Furthermore, the Petition for Variances and the Petition for Special Exception should both be denied because the invalidity of the 1964 Special Exception changes the factual basis on which they rest.

Counsel for Petitioners, as did the Zoning Commission for Baltimore County, seemed to confuse what Protestants were saying, interpreting their argument solely as an issue of "vested rights," rather than a question of "use." Although a helpful insight can be drawn from cases dealing solely with the vested rights issue -- it is rather the specific fact that Petitioners herein failed to construct the improvements specifically requested in a prior Special Exception which spells demise for their attempt to receive what has been clearly abandoned and, therefore, expired.

Certainly, the Petitioners cannot be allowed to revive the 1964 Special Exception by bootstrapping it with their 1984 Petition and the transparent argument that use of the overall property is the key which facilitates construction they choose, when they choose, from 1964 to the end of time.

Essentially, the Petitioners are asking for permission to extend the new piers four hundred nineteen feet out into Frog Mortar Creek 419 feet beyond mean low tide.

Section 417.5 of the Baltimore County Zoning Regulations provides as follows:

"Any structure built beyond mean low tide must be contained within construction offsets as prescribed. In addition to meeting these requirements, the structure must not extend beyond any of the following limits:

(a) Three hundred feet beyond mean low tide;

(b) In the absence of a definable channel, not more than 1/3 the width of the waterway;

(c) Not beyond the near boundary of a definable channel;

In addition to a showing of "practical hardship," Petitioners were required to prove that the proposed pier extension complies with Section 417.5 supra.

Assuming arguendo that "increased construction costs" constitute "practical difficulty or hardship," the Petitioners totally failed to offer any evidence regarding existence of the channel and its proximity to the proposed improvements. Moreover, the only evidence offered on this point was the testimony and exhibits offered by Protestants through Andrew Jones, a resident of the community and registered engineer.

Indeed, the map which hangs in the hallway outside the Zoning Office clearly depicts that Frog Mortar Creek at the area of Long Beach Marina is 1,000 feet from eastern shore to western shore. The Guide for Cruising Maryland Waters indicates that the edge of the channel is 66% of the total

distance from Long Beach Marina to the western shoreline, or 666 feet.

Not only would this proposed pier extension protrude to the very channel edge, it would consume 41.9% of Frog Mortar Creek, or, according to the Petitioners' drawing by Frank Lee (which shows 950 feet width), 47.8% of Frog Mortar Creek.

Clearly, a navigation obstruction would be created; indeed one already exists and it would be seriously exascerbated. Moreover, whether Frog Mortar is 1,000 feet or 950 feet wide, the proposed pier extension of 419 feet would violate Section 417.5(a) and (b) and since the near boundary, i.e., eastern boundary of channel, has not been defined, this Board cannot speculate as to its whereabouts.

Moreover, the uncontradicted evidence is that southeastern piers, as they now exist, extend into the deepest water, i.e., channel. Any extension of the piers out into this cove would clearly violate Section 417.5(c).

The Petitioners had the burden of adducing testimony and evidence which would show that the proposed pier extension and slip increase with attendant on-shore improvements met the prescribed standards and requirements set forth in Section 502.1. Their crusade in this regard was joined in by Mr. Ewell (Traffic Engineer) whose traffic counts were insufficient, transparently timed and indicative of an existing traffic problem; Mr. Klaus (Real Estate

Appraiser) whose historical narrative, although well presented and quite interesting, failed to reflect compliance with 502.1, and last, but not least, Mr. Pine, who capably verified that Frog Mortar Creek is already in violation of Class I water quality standards, for existence of fecal coliforms, undissolved nitrogen, dissolved oxygen and Ph. Moreover, Mr. Pines admitted that Frog Mortar Creek is a narrow and shallow body of water and that additional pollutants resulting from further development may well result in a failure in continued re-invasion of aquatic life already being experienced.

The Protestants produced testimony from a number of witnesses whose testimony clearly reflected an adverse impact above and beyond that which is arguably associated with a special exception use.

The roadways serving the subject site are already congested and overtaxed. Frog Mortar Creek already contains over 1,000 slips and experiences serious navigational problems which could only be compromised further by additional expansion, particularly this expansion which consumes more than 45% of the total width of Frog Mortar Creek at its point of entry into Middle River.

It is respectfully submitted that Petitioners' proposed uses could clearly be detrimental to the health, safety and general welfare of the Bowley's Quarters area, that it will <u>further</u> create congestion in an already insufficient and

overtaxed road system. Any further development of Long Beach Marina, particularly development which entails extension more than 300 feet beyond mean low tide, compromises and is inconsistent with the spirit and intent of Baltimore County's Zoning Regulations.

Respectfully submitted:

T. Rogers Harrison

T. ROGERS HARRISON
Mudd, Harrison & Burch
306 West Joppa Road
Towson, Maryland 21204
828-1335
Attorney for Protestants

RECEIVED
COUNTY BOARD OF APPEALS
1987 JAN 14 P 3:46

8-18-86

PCF! ✓
PM2! ✓

AUG 11 1986

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, MARYLAND LYNNE LOMBARDI ANDREW JONES	*	IN THE
Plaintiffs	*	CIRCUIT COURT
V.	*	FOR
JOSEPH F. EVERING, JR. and CATHERINE L. EVERING STATE AVIATION ADMINISTRATION MARYLAND DEPT. OF STATE PLANNING	*	BALTIMORE COUNTY
Defendants	*	Case No. 86-CG-22 } Consolidated Case No. 86-CG-240 }

* *

MOTIONS RULING

Case No. 86-CG-240

1. Plaintiffs' Motion for Partial Summary Judgment/Declaratory Judgment - DENIED.

2. Plaintiffs' Motion for Consolidation - GRANTED.

3. Maryland Department of State Planning's Motion to Intervene - GRANTED.

4. The Everings' Motion to Dismiss and Answer to Complaint for Declaratory Judgment - GRANTED.

5. Motion of State Aviation Administration to Dismiss Complaint for Declaratory Judgment - GRANTED.

6. Maryland Department of State Planning's Motion to Dismiss Complaint for Declaratory Judgment for More Definite Statement - GRANTED.

7. Defendants' Motion for Attorneys Fees - DENIED.

8. Costs to be paid by the Plaintiffs, apportioned equally.

RECEIVED
COUNTY BOARD OF APPEALS
1986 AUG 18 P 1:46

Case No. 86-CG-22

Plaintiffs' Motion for Consolidation - GRANTED.

2. Plaintiffs' Petition on Appeal is DISMISSED and REMANDED to the Board of Appeals for a final judgment.

3. Defendants' Motion to Dismiss Petition on Appeal - GRANTED.

4. Defendants' Petition for Attorneys Fees - DENIED.

5. Costs to be paid by the Plaintiffs, apportioned equally.

MEMORANDUM IN SUPPORT OF COURT'S RULING ON THE PLAINTIFFS' MOTION FOR DECLARATORY JUDGMENT AND PLAINTIFFS' APPEAL TAKEN FROM THE RULING MADE BY THE BOARD OF ZONING APPEALS

This matter comes before the Circuit Court for Baltimore County on appeal (Case No. 86-CG-22) and on a Motion for Declaratory Judgment (Case No. 86-CG-240) from the Board of Appeals of Baltimore County (Case No. 85-86-XSPHA). The Zoning Commissioner for Baltimore County granted the Defendants', Joseph and Catherine Evering, request for special exception to construct an extension to their existing marina-boat yard in the vicinity of Martin Airport. The County Board of Appeals ruled that Subtitle 18 of the Natural Resources Article, Chesapeake Bay Critical Area Protection Program, does not apply to the Evering's request for special exception, although the Board has still not decided whether or not it will affirm the Order of the Zoning Commissioner to allow the special exception.

The Plaintiffs, People's Counsel for Baltimore County, Maryland, Baltimore County, Lynne Lombardi and Andrew Jones, have filed an appeal (86-CG-22) from the Board's ruling naming the Everings as party defendants. Subsequently, a complaint was filed to obtain a declaratory judgment (86-CG-240) regarding the applicability of the State Aviation Administration Regulations, Chapters 11.03.05 and 11.03.06, Code of Maryland Regulations, and the Chesapeake Bay Critical Areas Law, Natural Resources Article, Title 8, Subtitle 18, Annotated Code of Maryland, to the Everings request for special exception. The Plaintiffs have named the Everings and the State Aviation Administration parties defendant to this declaratory action. The Maryland Department of State Planning has intervened as co-defendants in the action for declaratory judgment.

This Court will first discuss the motion for declaratory judgment and then rule on the appeal.

I. Motion for Declaratory Judgment.

Defendants contend the Plaintiffs do not have sufficient interest in this matter to give them standing and that the Circuit Court for Baltimore County lacks subject matter jurisdiction.

A. Lack of Standing

The Maryland Uniform Declaratory Judgment Act, Courts and Judicial Proceedings Article, Title 3, Subtitle 4, gives the Maryland courts authority to render a declaratory judgment in appropriate cases. The Act provides "[a]ny person...whose rights, status, or legal relations are affected by a statute,

municipal ordinance, administrative rule or regulation,...contract, or franchise [can] obtain a declaration of rights status or other legal relations under it." Courts and Judicial Proceedings Article, Section 3-406 (An. Code 1957, art. 31A, Section 2; 1973, 1st Sp. Sess., ch. 2, Section 1; 1976, ch. 915, Section 4.). Section 3-409(a), Discretionary relief, provides a court may grant a declaratory judgment or decree if: "(1) [a]n actual controversy exists between contending parties; (2) [a]ntagonistic claims are present between parties involved which indicate imminent and inevitable litigation; or (3) [a] party asserts a legal relation, status, right, or privilege and this is challenged or denied by an adversary party, who also has or asserts a concrete interest in it." Courts and Judicial Proceedings Article, Section 3-409.

This Court does not believe the Plaintiffs have demonstrated a legally cognizable interest in this matter. The applicability of the State Aviation Administration's zoning regulations is a matter between the Everings and the State Aviation Administration. This Court does not see where the Plaintiffs in this case would have a greater interest in upholding the Aviation zoning regulations than the Administration would. The State Aviation Administration even stated during argument that the regulations did not apply in this case.

As to the applicability of the Chesapeake Bay Critical Areas Law, the individual Plaintiffs lack a real and substantial interest different from any member of the public. Lombardi

resides some distance away from the Evering's marina and Jones has not shown any substantial interest being affected. Thus, the individual Plaintiffs lack standing to bring this motion for declaratory judgment.

B. This Court Lacks Subject Matter Jurisdiction

More important than the Plaintiffs' lack of standing is this Court's lack of subject matter jurisdiction over their motion for declaratory judgment. Section 3-409(b) of the Declaratory Judgment Act specifically provides that:

> "If a statute provides a special form of remedy for a specific type of case, that statutory remedy shall be followed in lieu of proceeding under this subtitle."

Courts and Judicial Proceedings Article, Section 3-409(b). Section 5-507 of the Maryland Transportation Article authorizes applicants to appeal to the Maryland Department of Transportation's Board of Airport Zoning Appeals. This Court believes the Board of Airport Zoning Appeals to be the appropriate forum for an appeal from the Board's ruling on the applicability of the State Aviation Administration Zoning Regulations.

This Court also lacks subject matter jurisdiction because the issues raised are the subject of another proceeding. There is still an appeal pending before the Board of Zoning Appeals. In Haynie v. Gold Bond Building Products, (Court of Appeals, No. 26, September Term, 1985, Filed July 11, 1986; See Daily Record, July 31, 1986), the Court of Appeals did not allow the use of a declaratory judgment to resolve an issue when another action is pending where the same issue can be resolved. Id. at 11. The Court stated in dicta that a declaratory judgment

may be appropriate in "very unusual and compelling circumstances." Id. at 12. The Plaintiffs here have not shown "very unusual or compelling circumstances."

Furthermore, the Court of Appeals has reasoned that the use of a declaratory judgment to invalidate a ruling of the Board of Appeals that is subject to direct appeal would be inappropriate. See, Hamilton v. McAuliffe, 277 Md. 336, 342 (1976) (quoting Feritita v. Brown, 252 Md. 594, 599-600 (1969): "[d]eclaratory proceedings were not intended to and should not serve as a substitute for appellate review.").

Accordingly, this Court hereby denies the Plaintiffs' Motion for Declaratory Judgment.

II. On Appeal

In regard to the appeal the Plaintiffs have filed in this matter (86-CG-22), this Court believes it to be premature. Section 12-301, Right of appeal from final judgments, Courts and Judicial Proceedings Article, gives the right to appeal from a final judgment. The Court of Appeals has held that an appealable judgment is one that is so final as to determine or conclude the rights of the parties involved, or deny the appellant further means of defending their rights and interest in that proceeding. See, Cant v. Bartlett, 292 Md. 611, 614 (1982). The purpose of this provision is to prohibit piecemeal disposition of litigation. Jolley v. State, 282 Md. 353, 355 (1978).

In this case, the Plaintiffs have only appealed the Board's ruling on the applicability of the Aviation Zoning Regulations

and the Critical Areas Law, the remaining portion of the case is still pending before the Board. The Board has also affirmed the Zoning Commissioner's ruling on the applicability of the Chesapeake Bay Critical Areas Legislation. They have not affirmed the granting of the Evering's special exception. For these reasons, this Court does not believe the Board of Zoning Appeals has issued a final determination of the rights of the parties. To allow an appeal of the Board's ruling, at this time, would encourage piecemeal litigation, thus imposing an increased burden on the judicial system and the parties.

Accordingly, this Court grants the Defendants' Motion to Dismiss the Plaintiffs' Petition for Appeal. Costs to be paid by the Plaintiffs, apportioned equally.

James S. Sfekas.

JUDGE JAMES S. SFEKAS

Dated: August 7, 1986.

Copies to:
Peter Max Zimmerman
Judith A. Armold
Peter W. Taliaferro
T. Rodgers Harrison
Thomas J. Bollinger
John B. Gontrum
Court File

2/86+

IN THE MATTER OF THE APPLICATION OF JOSEPH F. EVERING, JR., ET UX FOR SPECIAL EXCEPTION FOR A BOAT YARD, SPECIAL HEARING TO AMEND SITE PLAN AND VARIANCES FROM SEC. 409.2.c(2), 409.2.b and 417.5(a) OF THE BCZR N/S CHESTER RD., 590' W. OF SEVERN RD. (800 CHESTER RD.) 15th DISTRICT	:	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW CG Doc. No. 19
PHYLLIS C. FRIEDMAN, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, PLAINTIFF	:	Folio No. 117 File No. 86-CG-0022
MALCOLM F. SPICER, JR., ESQ., and THOMAS J. BOLLINGER, ESQ., ATTORNEYS FOR BALTIMORE COUNTY, PLAINTIFF	:	
ZONING FILE NO. 85-65-XSPHA	:	

CERTIFIED COPIES OF PROCEEDINGS BEFORE THE ZONING COMMISSIONER AND THE BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Lawrence E. Schmidt, Keith S. Franz and Diana K. Vincent, constituting the County Board of Appeals of Baltimore County, and in answer to the Orders for Appeal directed against them in this case, herewith return the record of proceedings had in the above entitled matter, consisting of the following certified copies or original papers on file in the office of the Zoning Department of Baltimore County:

ZONING ENTRIES FROM DOCKET OF ZONING COMMISSIONER OF BALTIMORE COUNTY

Case No. 85-65-XSPHA

August 6, 1984	Petitions of Joseph F. Evering, Jr., for special hearing to approve an amendment to the site plan in Case No. 64-57-SPH, 64-160-X and 35-35-X, to construct an addition to the piers, etc.; for variances from Sec. 409.2.c(2) to allow existing compacted stone in lieu of req. macadam paving, 409.2.b to allow 318 pkg. spaces in lieu of 384, etc.; and special exception for 2 lots in a D.R. 5.5 zone to be used as a boat yard.

August 6, 1984	Order of Zoning Commissioner directing advertisement and posting of property, date of hearing set for Sept.10,'84.
August 18	Certificate of Posting of Property - filed
August 23	Certificate of Publication in newspaper - filed
September 4	Comments of Baltimore County Zoning Plans Advisory Committee - filed
September 7	Comments of Baltimore County Director of Planning - filed
September 10	At 1:30 p.m. hearing held on petitions by Zoning Commissioner.
May 10, 1985	Order for Appeal to County Board of Appeals from Order of Zoning Commissioner by People's Counsel for Baltimore County
May 20	Order for Appeal to C.B. of A. from Order of Zoning Commissioner by Robert J. Romadka, Esq., counsel for Petitioners.
May 20	Order for Appeal to C.B. of A. from Order of Zoning Commissioner by T. Rogers Harrison, Esq., on behalf of Protestants, Ken Engelke, et al.
May 20	Order for Appeal to C.B. of A. from Order of Zoning Commissioner by Norman E. Gerber, Director, Office of Planning & Zoning.
October 29	Hearing on ~~appeals~~ MOTION before County Board of Appeals
December 12	Ruling on Motion by the Board of Appeals majority states that the Chesapeake Bay Critical Area Protection Program is not applicable to the proposed petition; Dissent on Ruling on Motion states that the Board member would deny Petitioner's Motion and hold that the provisions of Sec. 8-1801 et seq of Natural Resources Article of the Annotated Code of Maryland are applicable to the petitions in this matter.
January 3, 1986	Order for Appeal filed in the Circuit Ct. for Balto. County by People's Counsel for Balto. County. & Harrison
January 3	Petition to accompany Order for Appeal filed in the Circuit Ct. for Baltimore County
January 10	Order for Appeal filed in the Circuit Ct. for Baltimore County by Malcolm F. Spicer, Jr., and Thomas J. Bollinger, Esq., County Attorneys for Baltimore County.

January 13, 1986	Certificate of Notice sent to all interested parties.
January 21,	Petition to accompany order for appeal filed in the Circuit Court for Baltimore County.
February 3,	Transcript of testimony - filed
	Exhibit - Zoning Commissioner's file and exhibits
	Exhibits on Motion - 1st day
	Petitioner's Exhibit No. 1 - Plat to accompany petitione for pier extension
	" " " 2 - Plat to accompany petition for special exception, special hearing, and variances
	" " " 3 - Copy of receipt #123264 for the amt. of $100 for item #166.
	" " " 4 - Zoning Commissioner's file
	" " " 5 - Petition for Zoning Variance, undated
	" " " 6 - Copy of receipt #133200 for the amt. of $150 for item 166.
	People's Counsel's Exhibit No. 1 - Series of letters from Baltimore County
	" " " " 2 - Receipt (notice that the petition has been accepted for filing dated Aug. 6, 1984.
	" " " " 3 - Memo to A. Jablon from Norman Gerber, Plan. & Zoning
	" " " " 4 - Letter to M/M Evering from Eugene Bober, Planning & Develop.
	Exhibits on 2nd hearing day:
	Protestants' Exhibit No. 1 - List of Protestants
	State Planning Dept.'s Exhibit No. 1 - Plat of Clear Zone for Martin Airport
	" " " " " 2 - Regulations - Title II

February 3, 1986 Record of proceedings filed in the Circuit Court for Baltimore County

Record of proceedings pursuant to which said Order was entered and said Board acted are permanent records of the Zoning Department of Baltimore County and your respondents respectively suggest that it would be inconvenient and inappropriate to file the same in this proceeding, but your respondents will produce any and all such rules and regulations whenever directed to do so by this Court.

Respectfully submitted,

June Holmen

June Holmen
County Board of Appeals of Baltimore County

cc: John O. Hennegan, Esq.
Robt. J. Romadka, Esq.
T. Rogers Harrison, Esq.
Phyllis C. Friedman
Judith A. Armold
Malcolm Spicer, Jr., Esq.
Thomas J. Bollinger, Esq.

2-3-86

IN THE MATTER OF PETITIONS FOR SPECIAL EXCEPTION, SPECIAL HEARING, AND ZONING VARIANCES N/S of Chester Rd., 590' W of Severn Rd. (800 Chester Rd.), 15th Election District	*	IN THE CIRCUIT COURT
	*	FOR
	*	BALTIMORE COUNTY
	*	AT LAW
JOSEPH F. EVERING, JR., et ux. Petitioners	*	CG DOCKET NO. 86CG0022 FOLIO NO.
Zoning Case No. 85-65-XSPHA	*	FILE NO.

*** *** *** *** *** *** *** *** * *** *** *** *** *** *** ***

MOTION TO DISMISS AND
ANSWER TO PETITION ON APPEAL

NOW COMES Joseph F. Evering, Jr., et ux, by John O. Hennegan, Donald E. Brand and ROMADKA, GONTRUM, HENNEGAN & FOOS, in answer to the Petition for Appeal states as follows:

1. That they deny the allegations contained in paragraphs 1, 2 and 3 of the Petition.

FIRST AFFIRMATIVE DEFENSE

The decision of the County Board of Appeals was an Interrlocutory Order and as a result the Appeal filed herein is premature.

GROUNDS FOR MOTION

1. The issues raised by the Appellants are interlocutory or preliminary in nature and are not a matter which determines all the issues both law and fact in the aboved captioned case. The resolution of these issues will

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

leave other issues of law and fact undetermined needing a final hearing resulting in a final order in which to conclude said matters.

2. The Interlocutory Order or subject matter appealed from is not matter which is specifically prescribed by statute as appealable nor a final judgment and as a result is not a posture by which this Court can make a judicial determination.

3. And for such other and further reasons as will be set forth at a hearing hereon.

WHEREFORE, the Appellees pray that the Petition on Appeal and the Notice of Appeal be dismissed and the ruling of the County Board of Appeals be affirmed with cost and attorney's fees to the Appellees.

John O. Hennegan

Donald E. Brand
ROMADKA, GONTRUM, HENNEGAN & FOOS
809 Eastern Boulevard
Baltimore, Maryland 21221
686-8274

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the aforegoing Answer to Petition on Appeal was mailed this 3 day of ~~January~~ Feb., 1986, to T. Rogers Harrison, Mudd, Harrison & Burch, 306 West Joppa Road, Towson, Maryland 21204, Attorneys for Ken Engelke,

et al., Protestants/Appellants; Phyllis Cole Friedman, People's Counsel for Baltimore County; Peter Max Zimmerman, Deputy People's Counsel, Room 223, Court House, Towson, Maryland 21204; Administrative Secretary, County Board of Appeals, Room 200, Court House, Towson, Maryland 21204; Judith A. Armold, Esquire, Assistant Attorney General, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201; Malcom F. Spicer, Jr., County Attorney, Office of Law, Mezzanine, Court House, Towson, Maryland 21204; and Peter W. Taliaferro, Assistant Attorney General, P.O. Box 8766, Baltimore/Washington International Airport, Baltimore, Maryland 21240-0766.

John O. Hennegan

MEMORANDUM OF POINTS AND AUTHORITIES

Courts Article 12-303, Annotated Code of Maryland

Eastgate Associates et al v. Apper, 350 A 2nd 661

Rule B1; Maryland Rules of Procedure

RECEIVED
COUNTY BOARD OF APPEALS
1986 FEB -6 A 10 5

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

2-3-86

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, MARYLAND	*	IN THE
and	*	CIRCUIT COURT
BALTIMORE COUNTY, MARYLAND a Body Corporate and Politic County Attorney	*	FOR
and	*	BALTIMORE COUNTY
LYNNE LOMBARDI	*	
and	*	CASE NO.: 86CG240
ANDREW JONES	*	Docket No.: 20
Plaintiffs	*	Folio No.: 10
vs.	*	
JOSEPH F. EVERING, JR. and CATHERINE L. EVERING	*	
and	*	
STATE AVIATION ADMINISTRATION	*	
Serve On: Stephen H. Sachs, Attorney General	*	
Defendants	*	

*** *** *** *** *** *** *** *** * *** *** *** *** *** *** ***

MOTION TO DISMISS AND ANSWER TO COMPLAINT FOR DECLARATORY JUDGMENT

Defendant, Joseph F. Evering, Jr. and Catherine L. Evering by John O. Hennegan and ROMADKA, GONTRUM, HENNEGAN & FOOS move for Dismissal and file this Answer to the Complaint for Declaratory Judgment and state as their reasons therefore, the following:

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

1. That they admit the allegations contained in paragraphs 5, 10, 12, 13 and 14 of the Complaint for Declaratory Judgment.

2. That they deny the allegations contained in paragraphs 1, 2, 7, 8, 9, 11 (a) and (b), 15, and 16 of the Complaint for Declaratory Judgment.

3. They neither admit nor deny the allegations contained in paragraphs 3, 4 and 6 of the Complaint for Declaratory Judgment.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a cause of action upon which relief can be granted.

2. That the Court lacks jurisdiction over the subject matter.

3. The Plaintiffs have failed to exhaust their administrative remedies and therefore relief cannot be granted until such an event occurrs.

4. This action involves the same parties, the same subject matter and the same issues as an action which has been appealed from the Board of Appeals for Baltimore County and therefore is res judicata.

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

GROUNDS FOR MOTION

1. The Complaint makes a Request for Relief from questions of law and fact which remedy has been provided by statute before an administrative agency. Since the requested action does not involve a constitutional question or involve a question for which there is no statutory remedy, the relief must be sought initially from an administrative agency and such remedy must be exhausted before court action can be resorted to.

2. The Court lacks jurisdiction over the subject matter since the subject matter is presently pending before this very Court on appeal from the Board of Appeals from Baltimore County and that the relief requested by the Plaintiffs can be disposed of appropriately in the processing of said appeal.

WHEREFORE, Defendant, Joseph F. Evering, Jr. and Catherine L. Evering pray that the relief requested and the Complaint for Declaratory Judgment be denied and the Complaint for Declaratory Judgment be dismissed with cost to be paid by the Plaintiffs and reasonable attorney's fees to be awarded to the Defendant.

John O. Hennegan
ROMADKA, GONTRUM, HENNEGAN & FOOS
809 Eastern Boulevard
Baltimore, Maryland 21221
686-8274

RECEIVED
BOARD OF APPEALS
COUNTY
1986 FEB -6 A 10: 52

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the aforegoing Motion to Dismiss and Answer to Complaint for Declaratory Judgment was mailed this 3 day of Feb, 1986, to Malcom F. Spicer, Jr., County Attorney, 20 Dixie Drive, Towson, Maryland 21204; Phyllis Cole Friedman, People's Counsel for Baltimore County, and Peter Max Zimmerman, Deputy People's Counsel, Room 223, Court House, Towson, Maryland 21204; Thomas J. Bollinger, Assistant County Attorney, Office of Law, Mezzanine, Court House, Towson, Maryland 21204; T. Rogers Harrison and Mudd, Harrison & Burch, 306 West Joppa Road, Towson, Maryland 21204, Attorneys for Lynne Lombardi and Andrew Jones, Plaintiffs; Peter W. Taliaferro, Assistant Attorney General, P.O. Box 8766, Baltimore/Washington International Airport, Baltimore, Maryland 21240-0766; and Judith Armold, Attorney General's Office, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201-2365.

John O. Hennegan

STATEMENT OF POINTS AND AUTHORITIES

Maryland Rule 2-322 and 2-323.

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

2-3-86

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, MARYLAND	*	IN THE
and	*	CIRCUIT COURT
BALTIMORE COUNTY, MARYLAND a Body Corporate and Politic County Attorney	*	FOR
and	*	BALTIMORE COUNTY
LYNNE LOMBARDI	*	
and	*	CASE NO.: 86CG240
ANDREW JONES	*	Docket No.: 20
Plaintiffs	*	Folio No.: 10
vs.	*	
JOSEPH F. EVERING, JR. and CATHERINE L. EVERING	*	
and	*	
STATE AVIATION ADMINISTRATION	*	
Serve On: Stephen H. Sachs, Attorney General	*	
Defendants	*	

*** *** *** *** *** *** *** *** * *** *** *** *** *** *** ***

RESPONSE TO MOTION
FOR PARTIAL SUMMARY DECLARATORY JUDGMENT

Joseph F. Evering, Jr. and Catherine L. Evering pursuant to Rule 2-501 respond to the Motion for Partial Summary Judgment and states as their reasons therefor the following:

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

1. The Defendants incorporate herein by reference its statements and answers contained in their Motion to Dismiss and Answer to Complaint for Declaratory Judgment.

2. That the Defendants deny that they are subject to the state critical areas legislation since the relief requested was filed prior to March 1, 1984 before the Zoning Commissioner for Baltimore County. Further deny that the Plaintiffs are entitled to a Declaration of their rights concerning the critical areas statutes since they have failed to exhaust their administrative remedies. Further, the Defendants claim that this Court is without jurisdiction of the subject matter to make any decisions or judgments herein.

3. That Maryland Rule 2-501 (a) requires that a Motion for Summary Judgment shall be supported by an Affidavit if filed before the day on which the adverse party's initial pleading or motion is filed and therefor the Motion for Partial Summary Declaratory Judgment is not a posture in which this Court can make a decision and the Plaintiffs have failed to comply with the Maryland Rules of Procedure as a result the Motion should be dismissed.

4. Therefore, the Plaintiffs are not entitled to judgment as a matter of law.

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

WHEREFORE, the Defendants, Joseph F. Evering, Jr. and Catherine L. Evering pray that the Motion for Partial Declaratory Judgment be dismissed with cost and reasonable attorney's fees being awarded to said Defendants.

John O. Hennegan
ROMADKA, GONTRUM, HENNEGAN & FOOS
809 Eastern Boulevard
Baltimore, Maryland 21221
686-8274

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the aforegoing Motion to Dismiss and Answer to Complaint for Declaratory Judgment was mailed this 3 day of Feb, 1986, to Malcom F. Spicer, Jr., County Attorney, 20 Dixie Drive, Towson, Maryland 21204; Phyllis Cole Friedman, People's Counsel for Baltimore County, and Peter Max Zimmerman, Deputy People's Counsel, Room 223, Court House, Towson, Maryland 21204; Thomas J. Bollinger, Assistant County Attorney, Office of Law, Mezzanine, Court House, Towson, Maryland 21204; T. Rogers Harrison and Mudd, Harrison & Burch, 306 West Joppa Road, Towson, Maryland 21204, Attorneys for Lynne Lombardi and Andrew Jones, Plaintiffs; Peter W. Taliaferro, Assistant Attorney General, P.O. Box 8766, Baltimore/Washington International Airport, Baltimore, Maryland 21240-0766; and

RECEIVED
COUNTY BOARD OF APPEALS
86 FEB -6 A 10:5

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

Judith Armold, Attorney General's Office, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201-2365.

John O. Hennegan

MEMORANDUM OF POINTS AND AUTHORITIES

Maryland Rule 2-501.

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, MARYLAND, et al.,	:	IN THE CIRCUIT COURT
	:	FOR BALTIMORE COUNTY
Plaintiffs	:	~~CSP~~ No. 86CG240
v.	:	
JOSEPH F. EVERING, JR., et al.,	:	
	:	
Defendants		

: : : : : : :

MOTION FOR PARTIAL SUMMARY DECLARATORY JUDGMENT

Plaintiffs, pursuant to Rule 2-501, move for partial summary declaratory judgment on the following grounds:

1. Plaintiffs incorporate by reference the facts alleged in the Complaint, and the attached exhibits.

2. Plaintiffs further refer to the transcript of the evidentiary hearing before the County Board of Appeals in Case No. 86CG0022, which appealed case is the subject of a Motion for Consolidation filed simultaneously herewith.

3. There is no genuine dispute as to any material fact.

4. Beyond these facts, the Plaintiffs are entitled to a Declaration or Rights that the State Critical Areas Legislation is applicable to the subject petitions.

WHEREFORE, Plaintiffs pray that the Court enter partial summary declaratory judgment declaring the said State Critical Areas Legislation to be applicable to the petitions for variance, special exception and special hearing filed by Joseph F. Evering and Catherine L. Evering in Case No. 86CG0022.

Malcolm F. Spicer, Jr.
County Attorney

Phyllis Cole Friedman
People's Counsel for Baltimore County

Thomas J. Bollinger
Assistant County Attorney
Office of Law, Mezzanine
Court House
Towson, Maryland 21204
494-4420

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

T. Rogers Harrison and
Mudd, Harrison & Burch
306 West Joppa Road
Towson, Maryalnd 21204
828-1335
Attorneys for Lynne Lombardi and
Andrew Jones, Protestants/Plaintiffs

STATEMENT OF POINTS AND AUTHORITIES

1. The declaratory judgment procedure is appropriate. Md. Ann. Code CJ Article Section 3-401, et seq.; See Lohrmann v. Arundel Corporation, 65 Md. App. 309, 500 A.2d 344 (1985).

2. The Critical Areas Legislation does apply. Md. Ann. Code NR Article Section 8-1813; Rule II of the Rules of Practice and Procedure of the Zoning Commissioner of Baltimore County.

1-21-86

CBA

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et al.,	:	IN THE CIRCUIT COURT
	:	FOR BALTIMORE COUNTY
Plaintiffs	:	
v.	:	~~ESE~~ No. 86 CG 240
JOSEPH F. EVERING, JR., et al.,	:	
Defendants	:	

: : : :

T. Rogers Harrison

T. Rogers Harrison and
Mudd, Harrison & Burch
306 West Joppa Road
Towson, Maryland 21204
828-1335
Attorneys for Lynne Lombardi and
Andrew Jones, Protestants/Plaintiffs

I HEREBY CERTIFY that on this 21st day of January, 1986, a copy of the foregoing Motion for Consolidation was mailed to John O. Hennegan, Esquire, and Robert J. Romadka, Esquire, 809 Eastern Boulevard, Essex, MD 21221; Judith A. Arnold, Esquire, Assistant Attorney General, Dept. of State Planning, 301 W. Preston Street, Baltimore, MD 21201; and a copy was delivered to the Administrative Secretary, County Board of Appeals, Room 200, Court House, Towson, MD 21204.

Peter Max Zimmerman

Peter Max Zimmerman

1-21-86

CBA

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et al.,	:	IN THE CIRCUIT COURT
	:	FOR BALTIMORE COUNTY
Plaintiffs	:	
v.	:	No. 86CG240
JOSEPH F. EVERING, JR., et al.,	:	
Defendants	:	

: : : : : : : :

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of January, 1986, I served upon Joseph F. Evering, Jr. a copy of the Complaint for Declaratory Judgment, Motion for Partial Summary Declaratory Judgment, and Motion for Consolidation in the above-captioned matter.

Shirley M. Hess

Shirley M. Hess, Legal Assistant
People's Counsel for Baltimore County
Room 223, Court House
Towson, Maryland 21204
494-2188

1-21-86

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et al.,	:	IN THE CIRCUIT COURT
Plaintiffs	:	FOR BALTIMORE COUNTY
v.	:	
JOSEPH F. EVERING, JR., et al.,	:	No. 86CG240
Defendants	:	

: : : : : : :

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of January, 1986, I served upon Catherine L. Evering a copy of the Complaint for Declaratory Judgment, Motion for Partial Summary Declaratory Judgment, and Motion for Consolidation in the above-captioned matter.

Shirley M. Hess

Shirley M. Hess, Legal Assistant
People's Counsel for Baltimore County
Room 223, Court House
Towson, Maryland 21204
494-2188

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et al.,	:	IN THE CIRCUIT COURT
Plaintiffs	:	FOR BALTIMORE COUNTY
v.	:	No. 86CG240
JOSEPH F. EVERING, JR., et al.,	:	
Defendants	:	

: : : : : : :

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of January, 1986, I served upon Peter W. Taliaferro, Assistant Attorney General, Counsel to the State Aviation Administration a copy of the Complaint for Declaratory Judgment, Motion for Partial Summary Declaratory Judgment, and Motion for Consolidation in the above-captioned matter.

Shirley M. Hess

Shirley M. Hess, Legal Assistant
People's Counsel for Baltimore County
Room 223, Court House
Towson, Maryland 21204
494-2188

1-20-86

IN THE MATTER OF PETITIONS FOR SPECIAL EXCEPTION, SPECIAL HEARING, AND ZONING VARIANCES N/S of Chester Rd., 590' W of Severn Rd. (800 Chester Rd.), 15th Election District	:	IN THE CIRCUIT COURT
	:	FOR BALTIMORE COUNTY
	:	AT LAW
JOSEPH F. EVERING, JR., et ux, Petitioners	:	CG Docket No. 19 Folio No. 117 File No. 86-CG0022
Zoning Case No. 85-86 XSPHA	:	

. . . . . .

PETITION ON APPEAL

Baltimore County, Maryland, by Malcolm F. Spicer, Jr., County Attorney, and Thomas J. Bollinger, Assistant County Attorney, having heretofore filed in October an Appeal in the above entitled case files this Petition and states:

1. Baltimore County, Maryland hereby adopts and incorporates herein the Petition on Appeal filed on behalf of People's Counsel.

WHEREFORE, Appellant prays that the Ruling on Motion of the Board of Appeals be reversed.

/S/
MALCOLM F. SPICER, JR.
County Attorney

/S/
THOMAS J. BOLLINGER
Assistant County Attorney
Courthouse, 2M07
Towson, Maryland 21204 494-4420

RECEIVED
COUNTY BOARD OF APPEALS
1986 JAN 22 A 10: 00

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of January, 1986, a copy of the aforegoing Petition on Appeal was served on the Administrative Secretary, County Board of Appeals, Room 200, Courthouse, Towson, Maryland 21204; a copy mailed to John O. Hennegan, Esquire and Robert J. Romadka, Esquire, 809 Eastern Boulevard, Essex, Maryland 21221; Judith A. Arnold, Assistant Attorney General, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201; and Peter Max Zimmerman, Deputy People's Counsel, Room 223, Courthouse, Towson, Maryland 21204.

/S/
THOMAS J. BOLLINGER
Assistant County Attorney

1-13-86

IN THE MATTER OF THE APPLICATION OF JOSEPH F. EVERING, JR., ET UX FOR SPECIAL EXCEPTION FOR A BOAT YARD, SPECIAL HEARING TO AMEND SITE PLAN AND VARIANCES FROM SEC. 409.2.c(2), 409.2.b and 417.5(a) OF THE BCZR N/S CHESTER RD., 590' W. OF SEVERN RD. (800 CHESTER RD.) 15th DISTRICT	:	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW CG Doc. No. 19
PHYLLIS C. FRIEDMAN, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, PLAINTIFF	:	Folio No. 117
MALCOLM F. SPICER, JR., ESQ., AND THOMAS J. BOLLINGER, ESQ., ATTORNEYS FOR BALTIMORE COUNTY, PLAINTIFF	:	File No. 86-CG-0022
FILE NO. 85-65-XSPHA	:	

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, Lawrence E. Schmidt, Keith S. Franz and Diana K. Vincent, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, John O. Hennegan, Esq. and Robert J. Romadka, Esq., 809 Eastern Blvd., Essex, Md. 21221, Counsel for Petitioners; T. Rogers Harrison, Esq., 306 W. Joppa Rd., Towson, Md. 21204, Counsel for Protestants; Judith A. Armold, Assistant Attorney General, Department of State Planning, 301 W. Preston St., Baltimore, Md. 21201; Phyllis C. Friedman, Court House, Towson, Md. 21204, People's Counsel for Baltimore County; and Malcolm F. Spicer, Jr., Esq. and Thomas J. Bollinger, Esq., Mezzanine, Court House, Towson, Md. 21204, County Attorneys for Baltimore County, Maryland, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

June Holmen

June Holmen
County Board of Appeals of Baltimore County
Rm. 200, Court House, Towson, Md. 21204
494-3180

I HEREBY CERTIFY that a copy of the aforegoing Certificate of Notice has been mailed to John O. Hennegan, Esq. and Robert J. Romadka, Esq., 809 Eastern Blvd., Essex, Md. 21221, Counsel for Petitioners; T. Rogers Harrison, Esq., 306 W. Joppa Rd., Towson, Md. 21204, Counsel for Protestants; Judith A. Armold, Assistant Attorney General, Department of State Planning, 301 W. Preston St., Baltimore, Md. 21201; Phyllis C. Friedman, Court House, Towson, Md. 21204, People's Counsel for Baltimore County; and Malcolm F. Spicer, Jr., Esq. and Thomas J. Bollinger, Esq., Mezzanine, Court House, Towson, Md. 21204, County Attorneys for Baltimore County, Maryland, on this 13th day of January, 1986.

June Holmen

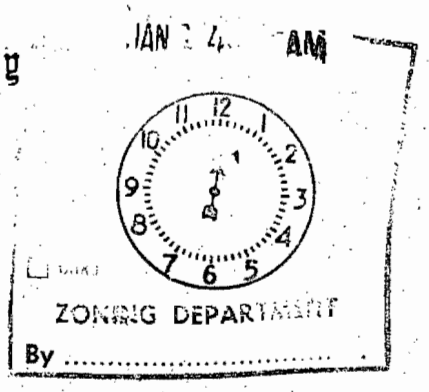
June Holmen
County Board of Appeals of Baltimore County

86-1444
case file

County Board of Appeals of Baltimore County

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

January 13, 1986



Robert J. Romadka, Esq.
John O. Hennegan, Esq.
809 Eastern Blvd.
Essex, Md. 21221

Re: Case No. 85-65-XSPHA
Joseph F. Evering, Jr., etux

Gentlemen:

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

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

June Holmen

June Holmen, Secretary

Enclosures
cc: T. Rogers Harrison, Esq.
Joseph F. Evering, Jr., et ux
Judith A. Armold
Norman E. Gerber
James Hoswell
Arnold Jablon
Jean Jung
James E. Dyer

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

January 13, 1986

Phyllis C. Friedman
People's Counsel for Baltimore County
Court House
Towson, Md. 21204

Malcolm F. Spicer, Jr., Esq.
Thomas J. Bollinger, Esq.
County Attorneys for Baltimore County
Court House
Towson, Md. 21204

Re: Case No. 85-65-XSPHA
Joseph F. Evering, Jr., et ux

Dear Mrs. Friedman and Messrs. Spicer and Bollinger:

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

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

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

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

June Holmen

June Holmen, Secretary

Enclosures

file

1/86 t

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, MARYLAND Room 223, Court House Towson, Maryland 21204	:	IN THE CIRCUIT COURT
and	:	FOR BALTIMORE COUNTY
BALTIMORE COUNTY, MARYLAND, a Body Corporate and Politic County Attorney, Office of Law, Mezzanine, Court House, Towson, Maryland 21204	:	ESP No. 86 CG 240
and	:	
LYNNE LOMBARDI 1124 Bowley's Quarters Road Baltimore, Maryland 21220	:	
and	:	
ANDREW JONES 1026 Susquehanna Avenue Baltimore, Maryland 21220	:	
Plaintiffs	:	
v.	:	
JOSEPH F. EVERING, JR. and CATHERINE L. EVERING 600 Chester Road Baltimore, Maryland 21220	:	
and	:	
STATE AVIATION ADMINISTRATION Department of Transportation P. O. Box 8766, Balto.-Wash. Intl. Airport Baltimore, Maryland 21240	:	
SERVE ON: Stephen H. Sachs, Attorney General Munsey Building 7 N. Calvert Street Baltimore, MD 21202	:	
Defendants	:	

: : : : : : :

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiffs, People's Counsel for Baltimore County, Maryland, Baltimore County, Maryland, a Body Corporate and Politic, and Lynne Lombardi and

Andrew Jones, sue the Defendants, Joseph F. Evering, Jr. and Catherine L. Evering, and State Aviation Administration, as follows:

1. The purpose of this Complaint is to obtain a Declaration of Rights on important questions of public interest.

2. People's Counsel for Baltimore County, Maryland, is authorized pursuant to Section 524.1(b) of the Baltimore County Charter to defend the Baltimore County Master Plan and Comprehensive Zoning Maps in cases involving zoning reclassifications, variances, and special exceptions and to initiate, and appear as a party in, proceedings in State Courts involving the preservation of the quality of the air, land, and water resources of Baltimore County. See Exhibit A1.

3. Baltimore County, Maryland, is a body corporate and politic interested in land use matters affecting the public safety, health, and welfare of the County.

4. Lynne Lombardi and Andrew Jones are property owners who live in the immediate neighborhood, whose property rights are affected, and who are interested parties in these proceedings.

5. Joseph F. and Catherine L. Evering are residents and property owners in Baltimore County, and have filed petitions for variances, special exception, and special hearing (hereinafter "the petitions").

6. The State Aviation Administration is the duly constituted state agency responsible for the administration of Maryland law and regulations concerning obstructions to air navigation and airport zoning.

7. In the course of review at the County Board of Appeals, there have arisen two extraordinary issues of public interest which affect and may be dispositive of the pending proceedings, and which are of public interest generally, so that a Declaration of Rights is appropriate at this time.

8. Questions have arisen concerning the application of the Maryland Chesapeake Bay Critical Areas Legislation, Md. Ann. Code Natural Resources Article Section 8-1813 and, in particular, the interpretation of its time provision.

9. A second extraordinary question has arisen in reference to the application of State Aviation Administration Regulations, COMAR Sections 11.03.05 and 11.03.06 as to whether the petitions conflict with state regulations concerning obstructions to air navigation and airport zoning.

10. On December 12, 1985, following an evidentiary hearing, the County Board of Appeals delivered a "Ruling on Motion" in reference to the applicability of the Critical Areas Legislation and an accompanying letter in reference to the State Aviation Administration Regulations. The Board ruled that the Critical Areas Legislation does not apply, and that the State Aviation Administration Regulations would not prohibit the granting of the subject petition. A copy of the Board's Ruling and accompanying letter is attached as Exhibit A_2.

11. The Ruling of the County Board of Appeals is invalid on its face, and as a matter of law, because:

(a) Pursuant to Natural Resources Article 8-1813 and Rule II of the Rules of Practice and Procedure of the Zoning Commissioner of Baltimore County, none of the petitions were "accepted for filing" until after June 1, 1984. Furthermore, while a petition for variance was submitted (but not accepted for filing) prior to June 1, 1984, it is undisputed that no petition for special exception or petition for special hearing was even submitted until after June 1, 1984. Accordingly, the subject petitions are not grandfathered or beyond the scope of the State law governing Chesapeake Bay

Critical Areas. Copies of the pertinent State law and Zoning Commissioner Rule are attached as Exhibit B.

(b) At the hearing, a representative of the office of the Attorney General for the State of Maryland advised that there was a serious question as to whether the proposed development would be prohibited because in conflict with the State regulations prohibiting construction in the vicinity of existing airports. Following the hearing, on November 6 and again on December 17, 1985, People's Counsel requested from the State Aviation Administration its advice concerning the impact of the airport regulations on the subject petitions. However, there has been no reply. A copy of the correspondence and pertinent airport regulations are attached as Exhibit C.

12. On January 3, 1986, People's Counsel and interested property owners filed an appeal of the Board's Ruling in order to resolve, in particular, the Critical Areas question because of its major impact on the scope of the case, and in order to preserve the question for judicial decision. The appeal is pending as Case No. 86CG0022.

13. On January 9, 1986, the County Board of Appeals wrote to the parties and questioned the timeliness and appropriateness of the appeal. A copy of the Board's letter is attached as Exhibit D.

14. On January 10, 1986, Baltimore County, Maryland, filed its appeal, also docketed in Case No. 86CG0022.

15. Because of the public interest in the resolution of the questions raised in this Complaint, and further because of the apparent question concerning the timing of the appeal, the Plaintiffs find it appropriate to file separately this Complaint for Declaratory Judgment, thereby removing any procedural question.

16. The Plaintiffs believe that the prompt resolution of these issues is in the interest of all parties because it will set the parameters and applicable law for the petitions under consideration.

WHEREFORE, Plaintiffs pray:

(a) That the Court enter a Declaratory Judgment and issue a Declaration of Rights.

(b) That the Court declare the Maryland Chesapeake Bay Critical Areas Legislation and Regulations to be applicable to the petitions for variance, special exception and special hearing filed by Joseph F. Evering, Jr. and Catherine L. Evering pending before the County Board of Appeals and that the "Ruling on Motion" of the County Board of Appeals is in error and unenforceable.

(c) That the Court declare and clarify the rights of the parties in reference to the applicability of State Aviation Administration Regulations, COMAR Title 11, Subtitle 03, 11.03.05 Obstructions to Air Navigation, and 11.03.06 Airport Zoning Regulations.

(d) That the Court grant such other relief as is necessary and appropriate.

Malcolm F. Spicer, Jr.
County Attorney

Phyllis Cole Friedman
People's Counsel for Baltimore County

Thomas J. Bollinger
Assistant County Attorney
Office of Law, Mezzanine
Court House
Towson, Maryland 21204
494-4420

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

T. Rogers Harrison

T. Rogers Harrison and
Mudd, Harrison & Burch
306 West Joppa Road
Towson, Maryland 21204
828-1335
Attorneys for Lynne Lombardi and
Andrew Jones, Protestants/Plaintiffs

1-10-86

IN THE MATTER OF PETITIONS FOR SPECIAL EXCEPTION, SPECIAL HEARING, AND ZONING VARIANCES N/S of Chester Rd., 590' W of Severn Rd. (800 Chester Rd.), 15th Election District	"	IN THE CIRCUIT COURT
	"	FOR BALTIMORE COUNTY
	"	AT LAW
	"	CG Docket No. 19
JOSEPH F. EVERING, JR., et ux, Petitioners	"	Folio No. 117
Zoning Case No. 85-65 XSPHA	"	File No. 86-CG0022

" " " " " "

NOTICE OF APPEAL

Please note an appeal on behalf of Baltimore County, Maryland to the Circuit Court for Baltimore County from the Ruling on Motion under date of December 12, 1985, in the above entitled matter.

RECEIVED
COUNTY BOARD OF APPEALS
1986 JAN 10 P 3:39

Malcolm F. Spicer, Jr.
County Attorney

Thomas J. Bollinger
Assistant County Attorney
Courthouse-Mezzanine
Towson, Maryland 21204
494-4420

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 10th day of January, 1986, a copy of the foregoing Notice of Appeal was served on the Administrative Secretary, County Board of Appeals, Room 200, Court House, Towson, Maryland 21204; a copy mailed to John O. Hennegan, Esquire and Robert J. Romadka, Esquire, 809 Eastern Boulevard, Essex, Maryland 21221; Judith A. Arnold, Assistant Attorney General, Department of State Planning, 301 W. Preston Street, Baltimore, Maryland 21201; and Peter Max Zimmerman, Deputy People's Counsel, Room 223 Courthouse, Towson, Maryland 21204.

Thomas J. Bollinger

1-3-86

IN THE MATTER OF PETITIONS FOR SPECIAL EXCEPTION, SPECIAL HEARING, AND ZONING VARIANCES N/S of Chester Rd., 590' W of Severn Rd. (800 Chester Rd.), 15th Election District

JOSEPH F. EVERING, JR., et ux, Petitioners

Zoning Case No. 85-65-XSPHA

: IN THE CIRCUIT COURT

: FOR BALTIMORE COUNTY

: AT LAW

: CG Docket No. 19

: Folio No. 117

: File No. 86-CG-0022

: : : : : : : :

RECEIVED
COUNTY BOARD OF APPEALS
1986 JAN -3 P 2:00

NOTICE OF APPEAL

Please note an appeal to the Circuit Court for Baltimore County from the Ruling on Motion under date of December 12, 1985, in the above-entitled matter.

T. Rogers Harrison/pb

T. Rogers Harrison and
Mudd, Harrison & Burch
306 West Joppa Road
Towson, Maryland 21204
828-1335
Attorneys for Ken Engelke, et al., Protestants/Appellants

Phyllis Cole Friedman/pb

Phyllis Cole Friedman
People's Counsel for Baltimore County

Peter Max Zimmerman

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

I HEREBY CERTIFY that on this 3rd day of January, 1986, a copy of the foregoing Notice of Appeal was served on the Administrative Secretary, County Board of Appeals, Room 200, Court House, Towson, MD 21204; and a copy mailed to John O. Hennegan, Esquire, and Robert J. Romadka, Esquire, 809 Eastern Blvd., Essex, MD 21221; Judith A. Arnold, Esquire, Assistant Attorney General, Dept. of State Planning, 301 W. Preston St., Baltimore, MD 21201; and Malcolm F. Spicer, Jr., County Attorney, Office of Law, Mezzanine, Court House, Towson, MD 21204.

Peter Max Zimmerman

Peter Max Zimmerman

1-3-86

IN THE MATTER OF PETITIONS FOR SPECIAL EXCEPTION, SPECIAL HEARING, AND ZONING VARIANCES N/S of Chester Rd., 590' W of Severn Rd. (800 Chester Rd.), 15th Election District	:	IN THE CIRCUIT COURT
	:	FOR BALTIMORE COUNTY
	:	AT LAW
	:	CG Docket No. _____
JOSEPH F. EVERING, JR., et ux, Petitioners	:	Folio No. _____
Zoning Case No. 85-65-XSPHA	:	File No. _____

: : : : : : :

RECEIVED
COUNTY BOARD OF APPEALS
1986 JAN -3 P 2:01

PETITION ON APPEAL

People's Counsel for Baltimore County and T. Rogers Harrison and Mudd, Harrison & Burch, Attorneys for Ken Engelke, et al., Protestants below and Appellants herein, having heretofore filed an Order for Appeal from the Ruling on Motion of the County Board of Appeals, under date of December 12, 1985, in compliance with Maryland Rule B-2(e), file this Petition on Appeal setting forth the grounds upon which this Appeal is taken, viz:

1. That the decision of the County Board of Appeals exempting the subject petition from the requirements of Maryland State Law pertaining to Chesapeake Bay Critical Areas, Natural Resources Article Section 8-1801, et seq., was arbitrary, capricious, and erroneous as a matter of law.

2. That the Board of Appeals' decision, furthermore, is crucial to the framing of issues in the case and the course of subsequent proceedings. Therefore, it is in the interest of justice to have a judicial determination of this question at this time.

3. That the question of the application, timing, and implementation of the Maryland Critical Areas Legislation is a subject of State-wide importance which should be resolved at the earliest possible opportunity.

WHEREFORE, Appellants pray that the Ruling on Motion of the Board of Appeals of Baltimore County under date of December 12, 1985 be reversed.

T. Rogers Harrison/sh

T. Rogers Harrison and
Mudd, Harrison & Burch
306 West Joppa Road
Towson, Maryland 21204
828-1335
Attorneys for Ken Engelke,
et al., Protestants/Appellants

Phyllis Cole Friedman/sh

Phyllis Cole Friedman
People's Counsel for Baltimore County

Peter Max Zimmerman

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

I HEREBY CERTIFY that on this 3rd day of January, 1986, a copy of the foregoing Notice of Appeal was served on the Administrative Secretary, County Board of Appeals, Room 200, Court House, Towson, MD 21204; and a copy mailed to John O. Hennegan, Esquire, and Robert J. Romadka, Esquire, 809 Eastern Blvd., Essex, MD 21221; Judith A. Arnold, Esquire, Assistant Attorney General, Dept. of State Planning, 301 W. Preston St., Baltimore, MD 21201; and Malcolm F. Spicer, Jr., County Attorney, Office of Law, Mezzanine, Court House, Towson, MD 21204.

Peter Max Zimmerman

Peter Max Zimmerman

12-12-85

IN THE MATTER OF THE APPLICATION OF JOSEPH F. EVERING, JR., ET UX FOR SPECIAL EXCEPTION FOR A BOAT YARD, SPECIAL HEARING TO AMEND SITE PLAN AND VARIANCES FROM §409.2.c(2), 409.2.b and 417.5(a) OF THE BCZR N/S OF CHESTER ROAD, 590' W. OF SEVERN ROAD (800 CHESTER ROAD) 15th DISTRICT	:	BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY NO. 85-65-XSPHA

: :

DISSENT ON RULING ON MOTION

I dissent. Section 500.8 of the Baltimore County Zoning Regulations (BCZR) provides that the Zoning Commissioner shall have the authority to prescribe rules for the conduct of proceedings before him. Such rules have been promulgated, including Rule 2(a), which I believe properly and reasonably governs the filing of petitions for those types of relief requested in this matter. Clearly, under this rule, the petitions were not filed, as that term is defined by the Rule, until August 6, 1984. All submissions prior to that date constituted only preliminary application, and the actions by the Zoning Commissioner thereafter were in accordance with the checklist for compliance mandated by Rule 2(a). The Zoning Commissioner did not "accept for filing" the petition until after the exception date.

I also note that Section 8-1818(a) of the Natural Resources Article provides that findings must be made for each variance, special exception, etc. Although a petition for variance was submitted prior to March 1, 1984, the petitions for special hearing and special exception were first filed in August, 1984. As this was the first time this relief was requested, I believe that

Section 8-1813 of the Natural Resources Article is applicable to, at the least, these petitions.

For the aforegoing reasons, I would deny Petitioner's Motion and hold that the provisions of Section 8-1801 et seq of the Natural Resources Article of the Annotated Code of Maryland are applicable to the petitions in this matter.

Diana K. Vincent

Diana K. Vincent

Date: December 12, 1985

12-12-85

IN THE MATTER OF THE APPLICATION OF JOSEPH F. EVERING, JR., ET UX FOR SPECIAL EXCEPTION FOR A BOAT YARD, SPECIAL HEARING TO AMEND SITE PLAN AND VARIANCES FROM §409.2.c(2), 409.2.b and 417.5(a) OF THE BCZR N/S OF CHESTER ROAD, 590' W. OF SEVERN ROAD (800 CHESTER ROAD) 15th DISTRICT	:	BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY NO. 85-65-XSPHA

: :

RULING ON MOTION

This case comes before the Board on appeal from the Order of the Zoning Commissioner of Baltimore County, dated April 25, 1985, granting the petitions of Joseph F. Evering, Jr., et ux, for a special exception, special hearing and variances, with restrictions.

Prior to testimony on the merits of the requested relief, a Preliminary Motion was raised by the Petitioner relative to Sub-title 18 of the Natural Resources Article of the Annotated Code of Maryland. This Sub-title, enacted in 1984 and known as the Chesapeake Bay Critical Area Protection Program (the "Act"), was enacted by the Maryland Legislature for the purpose of protecting the Chesapeake Bay and its tributaries from the ravages of development. The Petitioner's Motion challenged the applicability of the Act to the development sought in the petitions

Section 8-1813 of the Act, Sub-section (a) thereof, entitled "Specific Findings Required" provides:

> "From June 1, 1984 with regard to any subdivision plat approval or approval of a zoning amendment, variance, special exception, conditional use permit or use of a floating zone, affecting any land or water area located within the initial planning area identified in § 8-1807 (a) of this subtitle, for which application is completed after that date, the approving authority of the local jurisdiction in rendering its decision to approve an application shall make specific findings. . . "

The section then goes on to delineate the specific findings required. Later, in Section 8-1813 (d), it is provided, "This section does not apply to any

application initially filed prior to March 1, 1984". It is conceded that the subject site falls within the land and/or water area identified in Section 1807 (a) of the Act. However, based upon the exception set forth in sub-section (d), the Petitioner argues that the provisions of the Act are not applicable to the petitions before this Board, because the initial application was filed on December 23, 1983. In support of this argument, the Petitioner produced two witnesses, Frank Lee, the Surveyor who produced the site plan, and John O. Hennegan, an attorney for the Petitioner. Mr. Lee testified that he was first requested to draw a site plan in 1983, and his first draft was completed on June 1, 1983. Based upon conversations with officials of Baltimore County, this plan was revised on numerous occasions. Specifically, revisions are noted on the plan on November 25, 1983, March 24, 1984, July 5, 1984 and August 1, 1984. Mr. Lee testified that the revisions did not significantly alter the plan, however, he was unable to recall each particular revision. He did recall that the revisions concerned Health Department recommendations about the Septic System, alterations in the parking area configuration and a change in the location map. However, he stressed that the essence and purpose of the site plan was unchanged. Mr. Hennegan also testified as to his role in requesting the relief sought by the Petitioner. He stated that he initially submitted an application for a variance for this property on December 23, 1983. On that date, the necessary deed descriptions, site plans, petitions and $100.00 were submitted. Although a receipt for the cash was given to Mr. Hennegan, a receipt showing that the petition was "accepted for filing" was not given to Mr. Hennegan by the Zoning Commissioner. Rather, according to Mr. Hennegan, there commenced a series of communications between the County and the Petitioner regarding the best manner in which to pursue the obtaining of the requested relief.

These communications included comments from the Zoning Advisory Committee meeting of January 3, 1984, and numerous letters and memoranda from the County. After months of this give and take, Mr. Hennegan, pursuant to the County's request, supplemented his request by resubmitting another petition for variance and, for the first time, requesting a special hearing and special exception on August 6, 1984. At this time, an additional $150.00 fee was paid, this amount representing the costs for submitting the petitions for special hearing and special exception. Finally, Mr. Hennegan testified that at no time did he withdraw his petition submitted in December, 1983.

Despite this testimony, the Protestants and People's Counsel argue that the exception does not insulate the petition. In support of their proposition, they offer a two pronged argument. First, that Rule 2(a) of the Rules of Practice of the Zoning Commissioner of Baltimore County specifically sets forth when a petition is considered to be filed. This rule provides that the Zoning Commissioner will refer a received petition to the Zoning Plans Advisory Committee, and he will further review the petition to ensure its compliance with the Zoning Commissioner's Rules, the County Code, the Baltimore County Zoning Regulations (BCZR) and all reasonable requests of the Zoning Advisory Committee. Upon compliance with all these standards, the Zoning Commissioner will then accept the petitions for filing. Therefore, the Protestants argue, because the Zoning Commissioner did not accept the petition for filing until August 6, 1984, the exception set forth in Sec. 1813 (d) does not apply. Secondly, the Protestants argue that the petitions submitted in August 1984 should be considered as new filings, as they were not labeled as amendments, and it was at that time that the petitions for special exception and special hearing were first submitted.

After due consideration of the evidence before us, applicable law and argument, we are not persuaded by the Protestants and People's Counsel and, therefore, hold that Section 8-1813 of the Natural Resources Article of the Annotated Code of Maryland is not applicable to the petitions before us.

In interpreting any statute the clear meaning of the words used therein must be considered. The wording in Section 8-1813 of the Chesapeake Bay Critical Area Protection Program is clear and cannot be disregarded. The exception set forth in that section provides: "This section does not apply to any application initially filed. . ." (Emphasis added). Clearly, by the use of the word "initially," the Legislature intended for the Act to be applicable only to that proposed development for which approval had not be requested, in any manner, until after March 1, 1984. We might agree with the Protestants' and People's Counsel's reasoning if the exception had not included the word "initially". However, as it was included we must conclude that the Legislature so intended the clear meaning of that language to be applied.

Insofar as the impact of Rule 2 (a), we do not question its validity or the Zoning Commissioner's authority to adopt reasonable rules of procedure. However, that rule cannot be interpreted so literally as to allow the Zoning Commissioner the authority to determine when petitions are filed in the context of the Natural Resources legislation. To abide by such a literal interpretation could conceivably allow the Zoning Commissioner carte blanche authority to prevent petitions from being filed and ever considered on their merits. Certainly, the intention of Rule 2 (a) is not to regulate the filing of petitions insofar as limitations issues and the nature of the matter before us; rather, the rule was enacted to provide a mechanism for the orderly filing

and consideration of petitions.

We also note the testimony of Mr. Hennegan in regard to the payment of filing fees to Baltimore County. He testified that the County charges $100.00 per petition, or a maximum of $250.00. When the initial request for variance was submitted in December, 1983, a receipt for $100.00 was provided. Later, when the subsequent petitions were submitted, the County charged the Petitioner $150.00 more, indicating that they accepted these petitions as a continued and amended filing. As Baltimore County considered this subsequent submission as a continuation of the earlier filing, we must likewise believe that the initial application for the relief sought in this case was filed prior to March 1, 1984.

Therefore, for the aforegoing reasons, we will hold that the Chesapeake Bay Critical Area Protection Program is not applicable to the proposed petition.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence E. Schmidt, Acting Chairman

Keith S. Franz

Date: December 12, 1985

12-12-85

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

December 12, 1985

John O. Hennegan, Esquire
Robert J. Romadka, Esquire
809 Eastern Boulevard
Essex, MD 21221

T. Rogers Harrison, Esquire
306 W. Joppa Road
Towson, MD 21204

Judith A. Armold
Assistant Attorney General
Department of State Planning
301 W. Preston Street
Baltimore, MD 21201

Re: Case No. 85-65-XSPHA
Joseph F. Evering, Jr., et ux

Dear Counsel:

Enclosed please find the Board of Appeals' Ruling on the Petitioner's Preliminary Motion to determine the applicability of Subtitle 18 of the Natural Resources Article of the Annotated Code of Maryland. This ruling is self-explanatory.

Additionally, at the conclusion of the hearing, counsel requested the Board's advice as to the COMAR regulations promulgated by the State Aviation Administration. Although we will reserve all parties' rights to be heard on this matter, the Board has reviewed the regulations. We note that Subtitle 03, Section 11.03.05 prohibits actual construction, and does not prohibit the filing and granting of the petitions before us. Also, Section 11.03.06 provides for relief through the Board of Airport Zoning Appeals, outside of the jurisdiction of this Board.

Finally, please note the next hearing date for this matter is Tuesday, January 21, 1986 at 10 a.m. We must deny the Protestants' request for a continuance from that date. The Board clearly remembers all parties' agreement to the January 21st date at the conclusion of the initial day's hearing. Also, although this Board has granted postponements for conflicting trial dates, we cannot grant a postponement

for a conflict with the preparation for another trial. With the numerous parties involved in this matter, the Board has already found it impossible to schedule additional hearing days on an agreed date.

Very truly yours,

Lawrence E. Schmidt
Acting Chairman

LES:e

cc: People's Counsel
Norman E. Gerber
Joseph Evering Jr., et ux
James Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer

10-21-85

IN THE MATTER OF	*	BEFORE THE
JOSEPH F. EVERING, JR., et ux.,	*	BOARD OF APPEALS
Petitioners	*	FOR
(Appeal from the Decision of the Zoning Commissioner of Baltimore County)	*	BALTIMORE COUNTY
	*	Case No. 85-65-XSPHA

* * * * * * * * * * * * * * * *

NOTICE OF INTENTION TO OBJECT TO ADMISSION OF EVIDENCE WITHOUT TESTIMONY

The Maryland Department of State Planning filed a Motion to Intervene in this appeal late in May, 1985, and no party has opposed that motion. However, the Department has not been advised of any formal action on that motion as of the date of this notice. Nevertheless, Counsel to the Department has been receiving notices and copies of pleadings in the case and assumes that the Board of Appeals will rule formally on the Department's motion at the beginning of the hearing scheduled for October 29, 1985.

On the assumption that the Department will be made a party Appellant and will be permitted to participate in the October 29 hearing, the Department wishes to advise the Board that it will object to the admission of certain evidence without testimony.

Under §22-28 of the Baltimore County Code, all exhibits introduced in evidence at the hearing before the Zoning Commissioner, as well as certain other items, "shall be considered in evidence by the Board without testimony thereto, absent objection by any party". While the Department of State Planning does not object to the admission of the petitions or to the admission of any report or comments of a county agency, it does

RECEIVED
COUNTY BOARD OF APPEALS
1985 OCT 21 A 9:45

believe that the exhibits introduced before the Zoning Commissioner require explanation and should be entered by testimony of proper witnesses.

Judith A. Armold

Judith A. Armold
Assistant Attorney General
Room 1101, 301 West Preston Street
Baltimore, Maryland 21201
225-4507
Attorney for Maryland Department of
State Planning

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of October, 1985, I caused copies of the accompanying Notice of Intention to Object to Admission of Evidence Without Testimony to be mailed, first-class postage prepaid, to Arnold E. Jablon, Esquire, Zoning Commissioner, County Office Building, Towson, Maryland 21204; John O. Hennegan, Esquire, 809 Eastern Boulevard, Baltimore, Maryland 21221; Robert J. Romadka, Esquire, 809 Eastern Boulevard, Baltimore, Maryland 21221; T. Rogers Harrison, Esquire, 306 West Joppa Road, Towson, Maryland 21204; Phyllis C. Friedman, Esquire, People's Counsel, Room 223, Courthouse, Towson, Maryland 21204; and Mr. Norman E. Gerber, Director, Office of Planning and Zoning, Room 406, County Courts Building, Towson, Maryland 21204.

Judith A. Armold

Judith A. Armold

10-10-85

IN THE MATTER OF	*	BEFORE THE
JOSEPH F. EVERING, JR., et ux	*	BOARD OF APPEALS
Petitioners	*	FOR
(Appeal from the Decision of the Zoning Commissioner of Baltimore County)	*	BALTIMORE COUNTY
	*	Case No. 85-65-XSPHA

* * * * * * * * * * *

SUBPOENA DUCES TECUM

Please issue a subpoena duces tecum for the following-named individual to appear and testify at the hearing of the above matter before the County Board of Appeals and make the writ returnable to the Baltimore County Board of Appeals, County Office Building, Towson, Maryland 21204, at 10:00 a.m. on October 29, 1985.

Mr. Joseph F. Evering, Jr.
800 Chester Road
Baltimore, Maryland 21220

and he is to bring with him the following:

1. All contracts or agreements of sale, or any options, option agreements, rights-of-first refusal, or any correspondence depicting or reflecting a sale or proposed sale of the land (i.e., the Long Beach Marina) which is the subject of this case.

RECEIVED
1985 OCT 10 PM 2:23
SHERIFF'S OFFICE
BALTO. CO.

COST $ 15.00
SUMMONED 10/20/85 19
NOT SERVED _____ 19
REASON NOT SERVED _____

SHERIFF
OF BALTIMORE COUNTY
J. EDWARD MALONE

RECEIVED
1985 OCT 10 A 8:56
COUNTY BOARD OF APPEALS

T. Rogers Harrison

T. Rogers Harrison
Mudd, Harrison & Burch
306 West Joppa Road
Towson, Maryland 21204
828-1335
Attorneys for Protestants

Mr. Sheriff:

Please issue the above summons.

June Holmen

June Holmen, Bd. of Appeals

10-10-85

Brown 413

IN THE MATTER OF	*	BEFORE THE
JOSEPH F. EVERING, JR., et ux	*	BOARD OF APPEALS
Petitioners	*	FOR
(Appeal from the Decision of the Zoning Commissioner of Baltimore County)	*	BALTIMORE COUNTY
	*	Case No. 85-65-XSPHA

* * * * * * * * *

SUBPOENA DUCES TECUM

Please issue a subpoena duces tecum for the following-named individual to appear and testify at the hearing of the above matter before the County Board of Appeals and make the writ returnable to the Baltimore County Board of Appeals, County Office Building, Towson, Maryland 21204, at 10:00 a.m. on October 29, 1985.

Mrs. Catherine L. Evering
800 Chester Road
Baltimore, Maryland 21220

and she is to bring with her the following:

1. All contracts or agreements of sale, or any options, option agreements, rights-of-first refusal, or any correspondence depicting or reflecting a sale or proposed sale of the land (i.e., the Long Beach Marina) which is the subject of this case.

COST $ .00
SUMMONED _____ 19
NOT SERVED C/L W HUSBAND 10/20/85 19
REASON NOT SERVED _____

SHERIFF
OF BALTIMORE COUNTY
J. EDWARD MALONE

RECEIVED
COUNTY BOARD OF APPEALS
1985 OCT 10 A 8:56

T. Rogers Harrison
T. Rogers Harrison
Mudd, Harrison & Burch
306 West Joppa Road
Towson, Maryland 21204
828-1335
Attorney for Protestants

Mr. Sheriff:

Please issue the above summons.

June Holmen
June Holmen, Board of Appeals

10-9-85

IN THE MATTER OF	*	BEFORE THE
JOSEPH F. EVERING, JR., et ux	*	BOARD OF APPEALS
Petitioners	*	FOR
(Appeal from the Decision of the Zoning Commissioner of Baltimore County)	*	BALTIMORE COUNTY
	*	Case No. 85-65-XSPHA

* * * * * * * * * * *

APPLICATION FOR ISSUANCE OF SUBPOENA

TO THE BOARD OF APPEALS:

The Protestants, Ken Engelke, et al, by their attorney, request pursuant to Rule 5 of the Rules of Practice and Procedure of the County Board of Appeals that the Board issue subpoenas compelling Joseph F. Evering, Jr. and Catherine L. Evering, husband and wife, to attend the October 29, 1985, hearing and to produce at the hearing the documents listed in the attached Subpoena, which is incorporated herein.

The purpose of this Subpoena is to ascertain evidence showing that the Everings have plans to sell the land which is the subject of this case and that the contract purchaser has plans to develop it in a manner different than what is presented in the Everings' petitions. This evidence and material is relevant and material.

WHEREFORE, the Protestants ask that the subpoenas be issued and served by Sheriff on Joseph F. Evering, Jr. and Catherine L. Evering.

T. Rogers Harrison

T. Rogers Harrison
Mudd, Harrison & Burch
306 West Joppa Road
Towson, Maryland 21204
828-1335
Attorney for Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Application for Issuance of Subpoena was mailed, this 9th day of October, 1985, to Judith A. Armold, Esquire, Assistant Attorney General, Room 1101, 301 West Preston Street, Baltimore, Maryland 21201; Arnold E. Jablon, Esquire, Zoning Commissioner, County Office Building, Towson, Maryland 21204; John O. Hennegan, Esquire, 809 Eastern Boulevard, Baltimore, Maryland 21221; Robert J. Romadka, Esquire, 809 Eastern Boulevard, Baltimore, Maryland 21221; Phyllis C. Friedman, Esquire, People's Counsel, Room 223, Courthouse, Towson, Maryland 21204; and to Mr. Norman E. Gerber, Director, Office of Planning and Zoning, Room 406, County Courts Building, Towson, Maryland 21204.

T. Rogers Harrison

RECEIVED
COUNTY BOARD OF APPEALS
1985 OCT 10 A 8:55

5-23-85

In the Matter of JOSEPH F. EVERING, JR., et ux., Petitioners	*	BEFORE THE
	*	BOARD OF APPEALS
(Appeal from decision of the Zoning Commissioner of Baltimore County)	*	FOR
	*	BALTIMORE COUNTY
	*	Case No. 85-65-XSPHA

* *

Motion to Intervene

The Maryland Department of State Planning, by its Counsel, Judith A. Armold, Assistant Attorney General, hereby requests that it be made a party Appellant to the captioned appeal. As authority in support of its motion, the Department cites Article 88C, §2(r), Annotated Code of Maryland. That section provides that the Department shall "[h]ave the right and authority to intervene in and become a party to any administrative, judicial, or other proceeding in this State concerning land use, development or construction." See also Department of State Planning v. Mayor and Council of Hagerstown, 288 Md. 9 (1980).

The Department believes that the Zoning Commissioner failed to respond properly to the requirements of §8-1813 of the Natural Resources Article of the Annotated Code of Maryland. In particular, the Department asserts:

1. That the Zoning Commissioner acted improperly when he made initial determinations to grant the Petitioners a special exception and certain variances, without considering the requirements of §8-1813. The Department contends that, as a matter of law, an approving authority must consider §8-1813 requirements as an integral part of any decision to grant a special exception or variance.

2. That the Zoning Commissioner erred when he concluded that the Petitioners' requests did not involve "development", as that term is

defined in §8-1802(a)(3) of the Natural Resources Article, and that §8-1813(a) did not, therefore, require specific findings.

3. That the Zoning Commissioner was mistaken as to his proper role under §8-1813 if he believed that he was legally bound to accept the testimony and evidence of Petitioners' expert witnesses merely because the Protestants presented no contradictory expert testimony.

The Department expects to present written and oral argument before the Board of Appeals on these and, perhaps, other aspects of the issue of the requirements of §8-1813 of the Natural Resources Article.

Judith A. Armold

Judith A. Armold
Assistant Attorney General
Room 1101
301 West Preston Street
Baltimore, Maryland 21201
(301) 383-7700

RECEIVED
COUNTY BOARD OF APPEALS
1985 MAY 20 A 11: 15

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of May, 1985, I caused copies of the accompanying Motion to Intervene to be mailed, first-class postage prepaid, to the following: Arnold E. Jablon, Esq., Zoning Commissioner, County Office Bldg., Towson, MD. 21204; John O. Hennegan, Esq., 809 Eastern Blvd., Baltimore, MD. 21221; Robert J. Romadka, Esq., 809 Eastern Blvd., Baltimore MD. 21221; T. Rogers Harrison, Esq., 306 W. Joppa Rd., Towson, MD. 21204; Phyllis C. Friedman, Esq., People's Counsel, Room 223, Courthouse, Towson, MD. 21204; and Mr. Norman E. Gerber, Director, Office of Planning and Zoning, Room 406, County Courts Bldg., Towson, MD. 21204.

Judith A. Armold

Judith A. Armold

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

ARNOLD JABLON
ZONING COMMISSIONER

JEAN M. H. JUNG
DEPUTY ZONING COMMISSIONER

May 21, 1985

John O. Hennegan, Esquire
Germania Federal Building
809 Eastern Boulevard
Essex, Maryland 21221

RE: PETITIONS FOR SPECIAL EXCEPTION, SPECIAL HEARING, AND ZONING VARIANCES
N/S of Chester Road, 590' W of Severn Road (800 Chester Road) - 15th Election District
Case No. 85-65-XSPHA (Item 166)

Joseph F. Evering, Jr., et ux, Petitioners

Dear Mr. Hennegan:

The following appeals have been filed, in addition to the appeal filed by the People's Counsel for Baltimore County, from the decision rendered by the Zoning Commissioner of Baltimore County in the above referenced matter.

1. Appeal from Norman E. Gerber, Director
   Office of Planning and Zoning, Baltimore County

2. Appeal from T. Rogers Harrison, Esquire
   Attorney for Protestants

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

Sincerely,

Arnold Jablon
Zoning Commissioner

RECEIVED
COUNTY BOARD OF APPEALS
1985 MAY 22 P 1:00

AJ:bg

cc: Robert J. Romadka, Esquire
T. Rogers Harrison, Esquire
Board of Appeals
People's Counsel

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO BOARD OF APPEALS **Date** May 21, 1985

FROM ARNOLD JABLON
Zoning Commissioner

SUBJECT Case No. 85-65-XSPHA (Item No. 166)
Petitions for Special Exception,
Special Hearing, and Zoning Variances
Joseph F. Evering, Jr., et ux - Petitioners

Please find attached an additional appeal filed this date from the decision rendered by the Zoning Commissioner of Baltimore County.

ARNOLD JABLON
Zoning Commissioner

AJ:bg

cc: Norman E. Gerber, Director
Office of Planning and Zoning

RECEIVED
COUNTY BOARD OF APPEALS
1985 MAY 22 P 1:00

5-20-85

RE: PETITION FOR SPECIAL EXCEPTION * BEFORE THE ZONING
PETITION FOR SPECIAL HEARING *
PETITION FOR VARIANCES COMMISSIONER OF
N/S of Chester Road, 590' West *
of Severn Road (800 Chester Rd) * BALTIMORE COUNTY
15th District
*
JOSEPH F. EVERING, JR., et ux, *
Petitioners CASE NO: 85-65-XSPHA
*

*** *** *** *** *** *** * *** *** *** ***

NOTICE OF APPEAL

Please note an appeal from your decision in the above captioned matter, under date of April 25, 1985, to the County Board of Appeals and forward all papers in connection therewith to the Board for hearing.

Robert J. Romadka

John O. Hennegan

ROMADKA, GONTRUM, HENNEGAN & FOOS
809 Eastern Boulevard
Baltimore, Maryland 21221
PHONE: 686-8274
Attorneys for the Petitioners

I HEREBY CERTIFY that on this 20th day of May, 1985, a copy of the foregoing Notice of Appeal was mailed to Phyllis Cole Friedman, People's Counsel for Baltimore County, and Peter Max Zimmerman, People's Counsel for Baltimore County, Room 223, Court House, Towson, Maryland, 21204; and T. Rogers Harrison, Esquire, 306 West Joppa Road, Towson, Maryland, 21204.

John O. Hennegan

MAY 21 AM

ZONING DEPARTMENT

By .....

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

5-20-85

RE: PETITIONS SPECIAL EXCEPTION, SPECIAL HEARING, AND ZONING VARIANCES N/S of Chester Road, 590' W. of Severn Road (800 Chester Road - 15th Election District

JOSEPH F. EVERING, JR., et ux

: BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY

: Case No. 85-65-XSPHA

: : : : : : :

NOTICE OF APPEAL

Please note an appeal from your decision in the above-captioned matter, under date of April 25, 1985, to the County Board of Appeals and forward all papers in connection therewith to the Board for hearing.

Norman E. Gerber

Norman E. Gerber, Director
Office of Planning and Zoning
Room 406, County Courts Building
Towson, Maryland 21204
494-3211

I HEREBY CERTIFY that on this 20th day of May, 1985, a copy of the foregoing Notice of Appeal was mailed to John O. Hennegan, Esquire, 809 Eastern Boulevard, Baltimore, Maryland 21221, Attorney for Petitioners.

Norman E. Gerber

Norman E. Gerber

MAY 21 AM
Cmkd
ZONING DEPARTMENT
By .....

B-10-85

RE: PETITION FOR SPECIAL EXCEPTION : BEFORE THE ZONING COMMISSIONER
PETITION FOR SPECIAL HEARING
PETITION FOR VARIANCES : OF BALTIMORE COUNTY
N/S of Chester Rd., 590' W of
Severn Rd. (800 Chester Rd.) :
15th District
:
JOSEPH F. EVERING, JR., et ux, Case No. 85-65-XSPHA
Petitioners :

: : : : : : :

NOTICE OF APPEAL

Please note an appeal from your decision in the above-captioned matter, under date of April 25, 1985, to the County Board of Appeals and forward all papers in connection therewith to the Board for hearing.

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 10th day of May, 1985, a copy of the foregoing Notice of Appeal was mailed to John O. Hennegan, Esquire, and Robert J. Romadka, Esquire, 809 Eastern Blvd., Baltimore, MD 21221; and T. Rogers Harrison, Esquire, 306 W. Joppa Rd., Towson, MD 21204.

Peter Max Zimmerman

Peter Max Zimmerman

MAY 10 [illegible]

☐ Ansd
☐ Rec'd
☐ Retd
☐ Entd
☐ Chkd

ZONING DEPARTMENT

By .....

4-25-85

IN RE: PETITIONS SPECIAL EXCEPTION, SPECIAL HEARING, AND ZONING VARIANCES N/S of Chester Road, 590' W of Severn Road (800 Chester Road) - 15th Election District

Joseph F. Evering, Jr., et ux,

Petitioners

* BEFORE THE

* ZONING COMMISSIONER

* OF BALTIMORE COUNTY

* Case No. 85-65-XSPHA

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a special exception for a boat yard, variances to permit the existing compacted-stone parking surface instead of the required durable and dustless surface, 318 parking spaces instead of the required 384 spaces if the special exception is denied or 363 parking spaces instead of the required 384 spaces if it is granted, and structures (piers) to extend 419 feet beyond the mean-low tide instead of the allowed 300 feet; and to amend the site plans filed in Case No. 3535-X in order to construct an addition to their existing piers, in Case No. 64-57-SPH to remove Restrictions 1 and 3 in order to permit marine craft to be stored within 20 feet of the easternmost property line and the variance for the parking surface requested herein, and in Case No. 64-160-X to remove Restrictions 1 and 6 in order to allow major repair of boats on the premises and in the water and to change the times and days of the weeks and year that repairs will be permitted and, additionally, to determine that the boat yard, piers, and related parking areas are other "structures" devoted to civic, commercial, and recreational activities and, therefore, exempt from the Residential Transition Area (RTA) requirements set forth in Section 1B01.1.B.1.c.9 and 10, Baltimore County Zoning Regulations (BCZR).

The Petitioner, Joseph F. Evering, Jr., appeared and testified and was represented by Counsel. Testifying on behalf of the Petitioners were Paul

Canatella, a neighbor; Vincent Elliott and Leonard Gardiner, individuals who maintain their boats at the Long Beach Marina; John Schneider, a registered landscape architect and environmental consultant and Chief of the Environmental Design Section, Bureau of Landscape Architecture, State Highway Administration, Maryland Department of Transportation; and William Bafitis, a registered engineer.

Ken Engelke and Richard Stumpf appeared and testified as Protestants as did many others (see Protestants' Exhibit 2). The Protestants later retained counsel who, after entering his appearance, submitted a memorandum and appeared at the continued hearing.

In addition to the relief prayed for, two other issues are an integral part of this proceeding, i.e., the impact of the proposed project on the Chesapeake Bay and the requirement by the Office of Planning that the proposed project be submitted to the County Review Group (CRG). The continued hearing involved only these two issues.

Testimony indicated that the Petitioners originally purchased the major portion of the subject property in 1954 and were granted a special exception to operate a marina in 1955, Case No. 3535-X. In 1960, they purchased an adjoining 35' x 245' lot on the north side of Chester Road and were granted a special exception to extend their boat yard to include that property in 1964, Case No. 64-160-X. Prior to that case, the Petitioners were granted permission to store marine craft on their property, but were restricted to not storing boats within 20 feet of their easternmost property line, Case No. 64-57-SPH. In 1969, the Petitioners purchased an adjoining 50' x 252' lot on the south side of Chester Road. In 1974, they bought the lot adjacent to the one purchased in 1960 and have utilized that lot for parking. There are 24 parking spaces on the north lot and 23 spaces on the south lot.

When the Petitioners were granted the special exception in 1964, they had four piers and were entitled to construct four more, of which only one was built because it was not financially feasible to build all four. They now wish to amend their site plans to construct two new piers at different locations. The feasibility of constructing the piers granted in 1964 was negated due to the depth of the water at the locations cited because boats could not be tied up at those piers without dredging at a prohibitive cost. At the new locations, they could be. The Petitioners will need to extend two of the existing piers so that they will meet at right angles with the new piers in what is described as a "T" formation. Presently, the Petitioners have 201 slips and want another 178 slips, which would be about 40 more than originally approved. In addition, they want to do major repair of boats on the property and in the water, to change when repairs are permitted, to store marine craft within 20 feet of the easternmost property line, and to be permitted the existing compacted-stone parking surface.

Mr. Evering testified that they have 318 parking spaces, 363 spaces with the two lots included, and yet, this past Fourth of July and Labor Day, the busiest days of the year, there were only approximately 55 vehicles parked on the site. Further, they believe that the existing parking surface is better than an impermeable surface because it allows a more efficient run-off since the property is on the water. Mr. Evering's testimony regarding the proposed piers extending 419 feet rather than the 300 feet allowed was that they would not impede the free flow of navigation on the channel or the use of the channel by their neighbors.

The Protestants oppose the expansion and maintain that more slips are not needed. The traffic generated by the increased number of boats utilizing the new slips would adversely impact the already congested waterways in the area.

They maintain that the new slips would cause a hazardous condition by creating "blind spots" around which boat traffic could not see. The Protestants also stated that the additional slips would hinder their view and adversely affect the value of their properties which have already been devalued by the air traffic generated by Martin Marietta directly across from the marina and the existing heavy boat traffic. There is only one access road to the marina, Chester Road, and traffic is already heavy during the boating season. If the expansion is permitted, the traffic would be unbearable.

Mr. Evering contested these suppositions and presented testimony to the contrary. At the request of both sides, the Zoning Commissioner personally visited the site on two separate occasions and went out into the water with each of them.

I

The first issue to be determined is whether the special exception granted in Case No. 64-160-X has been utilized. Both the Petitioners and the Protestants have submitted memoranda on this issue, and upon consideration of both, it is determined that the requirements of Section 502.3, BCZR, have been satisfied, although not for the reasons argued by the Petitioners and contrary to the conclusion recommended by the Protestants. The issue is more than just "vested rights" and certainly more than what the Board of Appeals for Baltimore County held in Case No. 84-89-SPH, In Re: Joseph L. Soley. In that decision, which addressed this very issue, the Board reversed the Zoning Commissioner and found that to satisfy Section 502.3 one must merely initiate construction. "Mere commencement of work appears to be the test", stated the Board. However, the Zoning Commissioner believes that the Board wrongly merged the doctrine of "vested rights", as it operates to protect property from rezoning, with the doctrine of "utilization", which specifically and legislatively makes a special exception

conditioned on the commencement of construction that is pursued to completion with "reasonable diligence".

There is no need to expound on the doctrine of "vested rights". Certainly, both parties clearly set out the law in their memoranda dated October 3, 1984, October 31, 1984, and November 13, 1984. The principles set forth therein, however, are not entirely applicable to Section 502.3. As pointed out by the Protestants, there must be more than just a building permit issued or work or labor readily seen and recognized by the public.

Nowhere in the BCZR is "reasonable diligence" defined. Therefore, as the Court of Appeals suggested in Kastendike v. Balto. Assoc. for Retarded Children, 267 Md. 389 (1972), where no definition is found, the phrase must be given its ordinary meaning in the context in which it appears. The term is defined in Black's Law Dictionary as "[a] fair, proper and due degree of care and activity, measured with reference to the particular circumstances; such diligence, care, or attention as might be expected from a man of ordinary prudence and activity."

Was it enough, therefore, that the Petitioners completed one pier, which provided an additional 36 rental slips, instead of the four shown on the site plan approved in Case No. 64-160-X or that the pool, bath house, and showers were provided? Was it enough that the lot was graded and surfaced and that marine craft were stored or that they "began" construction of the bulkhead and the repair shop barge? The Protestants contest whether some of the work claimed was actually performed; however, they do not contest that a boat yard exists.

The Petitioners did not complete construction of the piers because of the expense involved in dredging the bottom of the waters around the projected location of the piers to permit sail boats to utilize them. Another reason given was the trend away from power boats and toward sail boats (which would require a deeper channel) as a result of rising gasoline prices which had not been

foreseen by the Petitioners when they submitted their request for the special exception in 1964. Failure to construct the three piers does not deflect the use granted. There has certainly been "reasonable diligence"—a fair, proper, and due degree of care and activity, measured with reference to the particular circumstances. The strictures of Section 502.3 have been satisfied. A boat yard existed after 1955, and an expanded boat yard has existed continuously since 1964.

II

The Petitioners now request that they be granted a special exception for a boat yard for the two lots, zoned D.R.5.5, located on the north and south sides of Chester Road, including the roadbed of Chester Road. The lots adjoin the property presently operating as a boat yard pursuant to the special exceptions previously granted.

It is clear that the BCZR permits the use requested by the Petitioners in a D.R.5.5 Zone by special exception. It is equally clear that the proposed use would not be detrimental to the primary uses in the vicinity. Therefore, it must be determined whether the conditions as delineated by Section 502.1, BCZR, are satisifed by the Petitioners.

After reviewing all of the testimony and evidence presented, it appears that the special exception should be granted with certain restrictions, as more fully described below.

The Petitioners had the burden of adducing testimony and evidence which would show that the proposed use met the prescribed standards and requirements set forth in Section 502.1. In fact, the Petitioners have shown that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest. The facts and circumstances do not show that the proposed use at the particular location described

by Petitioners' Exhibit 1 would have any adverse impact above and beyond that inherently associated with such a special exception use irrespective of its location within the zone. Schultz v. Pritts, 432 A.2d 1319 (1981).

The proposed use will not be detrimental to the health, safety, or general welfare of the locality, nor tend to create congestion in roads, streets, or alleys therein, nor be inconsistent with the purposes of the property's zoning classification, nor in any other way inconsistent with the spirit and intent of the BCZR.

Therefore, without consideration as to the potential impact on the critical area of the Chesapeake Bay, the special exception will be granted.

III

The Petitioners request that they be permitted the existing compacted-stone parking surface rather than an impermeable surface for their parking areas, 363 parking spaces instead of the required 384 spaces, and to extend two of the piers 419 feet beyond the mean-low tide instead of the allowed 300 feet.

A

The parking surfaces may remain compacted stone, provided the Petitioners comply with Section 10.18.06.03D., COMAR, State Health Department, which will insure limitation of particulate into the air and water (see attached, which is herein made a part of this Order). The reasons described in their petition and further described in their testimony for this particular request are sufficient bases to satisfy the burden of proof required by Section 307, BCZR, in that a practical difficulty would exist if it were denied, the variance will satisfy the spirit and intent of the BCZR, and there would be no adverse impact on the public health, safety, and general welfare.

B

The variance to permit 363 parking spaces instead of the required 384 spaces will be moot. It is clear that 384 spaces are not necessary if the

parking area is never full. Indeed, even with the storage of boats during the winter, the "down-period" for a boat yard, there will never be a need for 384 spaces. However, inasmuch as the number of slips requested will be reduced, as indicated below, the Petitioners will be able to provide the requisite parking spaces, i.e., a total of 324, and a variance would not be necessary.

C

The variance to extend the piers is more difficult to decide. The Petitioners maintain that the piers cannot be located anywhere within the 300-foot limitation due to the lack of depth needed for sail boats and argued that by extending the piers, in order to provide an additional 178 slips, there would be no obstruction or hindrance to the use of the water or to the public safety. The Protestants strenuously object, with validity, to these contentions.

It would definitely appear that an additional 178 slips, and the resultant increase in boats, would have to obstruct or, at the very least, hinder existing boat traffic and usage of the surrounding waters by adjoining property owners. Of the 201 slips, 75% to 80% are rented. Although Mr. Evering's testimony was that there would be no such obstruction or hindrance, this Commissioner is not convinced. On the other hand, the Protestants must recognize that the waters are free and available to anyone with a boat and the Petitioners' right to attract these people, i.e., the right of free enterprise, must be accepted within the confines of the State's responsibility to protect this valuable resource, even from the very persons to whom the State is guaranteeing its usage. The right of the Petitioners must be weighed against the responsibility of the State to insure the waters continued existence as a natural resource.

After visiting the site and experiencing the lure of a calm Autumn afternoon on the water, the Zoning Commissioner is convinced that the extension of the piers to permit an additional 178 slips would create a danger to the public

health, safety, and welfare. It is just too many. Therefore, it is recommended that the Petitioners limit the expansion to 118 slips. If this is acceptable, they shall provide the Zoning Commissioner with a revised site plan showing the distance the projected piers will extend beyond the mean-low tide line. At that time, a decision on this issue will be rendered based on the testimony and evidence already provided.

IV

A

The requested relief to amend the site plans filed in Case Nos. 3535-X, 64-57-SPH, and 64-160-X in order to construct additional piers and to extend existing ones must be stayed pending resolution of the number of slips permitted as explained above.

B

The request to remove Restriction 1 in Case No. 64-57-SPH to permit marine craft to be stored within 20 feet of the easternmost property line will be granted. However, removal of Restriction 3 is a moot issue since the existing parking surface is to be granted, although it shall be subject to the conditions precedent in Section III, A above. The conditions are the means to justify the end, i.e., the variance to permit the compacted-stone surface.

C

The request to remove Restrictions 1 and 6 in Case No. 64-160-X to permit major repair of boats on the premises and in the waters and to change the hours, days, and months that repairs can be made will be denied in part. With the proliferation of boat traffic since 1964 and the public's increased concern with its natural resources, there is an even greater need to prevent the defilement and deterioration of our rivers, bay, and tributaries. Therefore, no major repairs of any kind will be permitted on the premises or in the waters. Restriction 1 will not be removed and shall remain in full force and effect.

However, it is equally clear that the Petitioners should have expanded time frames within which they can perform minor repair and maintenance of boats. The hours of operation for such minor repairs and maintenance shall be from 8:00 a.m. to 7:00 p.m., seven days per week, year-round.

D

The last request is to exempt the projected piers and parking areas from the application of the RTA. Section 1B01.1.B.1.c.9 excepts an addition to an existing community building, or other structures devoted to civic, social, recreational, fraternal, or educational activity, including parking areas and driveways. A pier at a marina would classify as a structure devoted to recreational activity and, therefore, be exempt from the RTA.

V

The Petitioners have been informed that this project must be submitted to the County Review Group (CRG) for approval. The Petitioners argued that the CRG does not have this authority and the Zoning Commissioner agrees.

It is clear that the CRG was created by the Baltimore County Council, at the suggestion and advice of the Baltimore County Planning Board (Planning Board), to relieve the Planning Board of the responsibility of approving development plans, a time consuming and detailed job. Its purpose is clearly development oriented, not use oriented. Development is defined in Section 22-39 of the Development Regulations, BCC, as meaning (1) the improvement of property for any purpose involving building; (2) subdivision; (3) combination of any two or more lots, tracts, or parcels of property for any purpose; (4) subjecting property to the provisions of the Maryland Condominium Act; and (5) preparation of land for any of the purposes listed in 1 through 4. The legislative history strongly indicates that the purpose of the CRG is to oversee development in the County, and there seems to be no suggestion that jurisdiction over actual use would be conferred.

None of the constrictions to the CRG's authority, as delineated by Section 22-39, would impart the power to require the construction of piers to be the subject of its review. Indeed, the development regulations define "building" as a structure enclosed within exterior walls or firewalls for the shelter, support, or enclosure of persons, animals, or property of any kind. A pier or boat slip is not a building. The statute is unambiguous. If the proposed project does not come within specific statutory authority, then the CRG on its own cannot expand its power to be all inclusive.

VI

The final issue to be resolved is whether the Petitioners have satisified the burden imposed by the Chesapeake Bay Critical Area Protection Program, Section 8-1813, Nat. Res. Art., Md. Code. This section requires, from June 1, 1984 (until such time as the local jurisdiction's program is approved by the Commission created by this legislation), with regard to approval of any subdivision plat, special exception, or variance, affecting any land or water area located within the area identified as being within the critical area of the Bay, that the "approving authority of the local jurisdiction in rendering its decision to approve an application shall make specific findings that: (1) [t]he proposed development [which is defined as any activity that materially affects the condition or use of dry land, land under water, or any structure (Section 8-1801(a)(3)] will minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands; and (2) [t]he applicant has identified fish, wildlife, and plant habitat which may be adversely affected by the proposed development and has designed the development so as to protect those identified habitats." The approving authority has the power to require such additional information from an applicant as is necessary in order to make the findings required.

It is clear that the approving authority for any special exception or variance is the Zoning Commissioner, unless the proposed project meets the definition of "development" found in Section 22-39, hereinbefore mentioned, which is substantially different than the definition found in Section 8-1802(a)(3), Nat. Res. Art., Md. Code. If the CRG does not have the approving authority, then the Zoning Commissioner is solely responsible as to whether or not a special exception or variance is required. If the CRG does have the responsibility, and if a special exception and/or variance is required, co-approving authorities would exist, i.e., the CRG and the Zoning Commissioner. Since the proposed expansion of an already existing marina by adding only piers is not "development", as defined by Section 22-39, then the sole responsibility is that of the Zoning Commissioner.

In the instant case, the Petitioners filed a Motion with the Zoning Commissioner to schedule a second hearing for the sole purpose of presenting evidence aimed at satisfying the precepts delineated in Section 8-1813. The hearing before the Zoning Commissioner was, and is, an adversary proceeding with both the Petitioners and the Protestants being given the opportunity to present evidence and testimony and to cross-examine and refute any given. Indeed, the Petitioners' Counsel, Protestants' Counsel, and Office of Planning and Zoning were notified of the hearing date and purpose of that hearing by letter dated January 3, 1985. The Protestants appeared and presented rebuttal evidence and cross-examined Mr. Schneider, the Petitioners' expert witness. The Office of Planning and Zoning elected not to appear. Inasmuch as Mr. Evering requested the opportunity to present his evidence, and by law it is the responsibility of the Zoning Commissioner to determine whether the Petitioners have satisifed the burden required by Section 8-1813(a)(1) and (2), the Zoning Commissioner must make his decision based on the facts and evidence presented. Although the Zoning

Commissioner may expressly require additional information, it has been determined that no such additional information is needed.

Mr. Schneider's testimony was convincing that the proposed expansion would not "materially affect" the condition or use of dry land, land under water, or any structure. The evidence submitted by the Petitioners, specifically the Hydrogeological Study and Environmental Effects Report for Long Beach Marina, prepared by Bafitis & Associates, Petitioners' Exhibit 1A, contradicted any potential adverse impact that might result. The report found that the proposed expansion would not increase the amount of biochemical oxygen demand, total phosphorus, total nitrogen, lead, zinc, or sediment in any measurable amount.

For example, the potentiality for overboard discharge of wastes from the additional boats would be minimized by the provision of "pump-out" facilities. The Department of Health, in its comments dated February 8, 1984, found that the on-site disposal facilities were functioning adequately. Additionally, the capacity of the facilities would be enlarged to minimize any future adverse impact. Cross-examination of Mr. Schneider pointed out the importance of cooperation by boaters inthis regard. It seems that many do not. Obviously, there would be an impact created by an aditional 118 boats moored at the Petitioners' marina, but Mr. Schneider testified that these additional boats would not increase the adverse impact already caused by the existing recreational boating. In fact, testimony indicated that the additional boats using the marina were not additional boats to the area; that is, the expansion of the marina would not attract additional boats but would induce present boaters to utilize the new services proposed.

Further, the Petitioners pointed out that the location of the new piers would minimize any adverse environmental process which would result if dredging were required. Since the water's depth where the piers are proposed is

approximately 12 feet, no dredging will occur. In fact, the requested variances to allow extension of the piers more than 300 feet beyond the mean-low tide line and the compacted-stone parking surface would minimize any adverse impact. It is important to note that there is no proposed change on or alteration of land, and therefore, any change to water quality, wildlife, and land habitat would be for the better. Mr. Schneider testified that, in his expert opinion, there was no submerged vegetation in the off-shore area; therefore, there would be no adverse impact.

Although the Protestants disagreed point by point, they presented no expert testimony or study to specifically contradict those presented by the Petitioners. It is left to the trier of the facts to weigh the evidence and evaluate the testimony, and after long and thoughtful consideration of the memoranda submitted on this issue by both the Petitioners and the Protestants and the evidence and testimony presented, it is found that there would be no material effect. Therefore, the proposed project does not fall within the purview of Section 8-1801, et. seq. However, even assuming that the project would satisfy the definition of "development", Section 8-1802, it is determined that the Petitioners have met the burden of Section 8-1813(a). The proposed project will minimize adverse impact on the water quality, as further defined by Section 8-1813(a)(1), and the Petitioners have identified those fish, wildlife, and plant habitat and designed the project so as to protect those identified habitats, as further defined by Section 8-1813(a)(2).

The contradictions presented by the Protestants need careful consideration; however, this is an administrative proceeding, i.e., quasi-judicial in nature, and the burden of proof is not "beyond a reasonable doubt". There was no expert testimony presented and no specific findings as to this site in contradiction of the Petitioners, and the Zoning Commissioner has no choice but to accept the

testimony and evidence of Mr. Schneider and Mr. Bafitis, as experts in the field. The Petitioners have satisfied their burden of proof.

SUMMARY

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 25th day of April, 1985, that the Petition for Special Exception for a boat yard for two lots, one located on the north side and the other on the south side of Chester Road, including the roadbed of Chester Road, be and the same is hereby GRANTED; the Petition for Zoning Variances to permit the existing compacted-stone parking surface instead of the required durable and dustless surface be and the same is hereby GRANTED; and the amendments to the site plans filed in Case No. 3535-X to permit an additional 118 slips, in Case No. 64-57-SPH to remove Restrictions 1 and 3 in order to permit marine craft to be stored within 20 feet of the easternmost property line and the variance for the parking surface requested herein, subject to Section 10.18.06.03D. COMAR, and in Case No. 64-160-X to amend Restriction 6 in order to allow the hours of operation for minor repair and maintenance of boats to be 8:00 a.m. to 7:00 p.m., seven days per week, year-round are approved and that the criteria of Section 8-1801, et. seq., has been satisfied and, as such, the Petition for Special Hearing is hereby GRANTED, from and after the date of this Order, subject, however, to the following restrictions which are conditions precedent to the relief herein granted:

1. A revised site plan, showing the placement of the 118 slips and the distance of their extension beyond the mean-low tide, shall be submitted to the Zoning Commissioner for approval.

2. The requested variance to permit the piers to extend 419 feet beyond the mean-low tide instead of the allowed 300 feet shall be stayed pending submission of the revised site plan, at which time a decision shall be rendered without further hearing necessary.

It is FURTHER ORDERED that in Case No. 64-160-X, Restriction 1 shall not be removed and shall remain in full force and effect.

Zoning Commissioner of
Baltimore County

AJ/srl

Attachment

cc: John O. Hennegan, Esquire

Robert J. Romadka, Esquire

T. Rogers Harrison, Esquire

People's Counsel

(a) A person may not cause or permit to be discharged into the outdoor atmosphere from any other installation, particulate matter in excess of 0.03 gr/SCFD (68.7 mg/dscm).

(b) Exceptions. Section B(2)(a) does not apply to the following:

(i) Iron and steel production installations;

(ii) Soda-lime recipe and opal recipe glass melting furnaces in compliance with COMAR 10.18.15.04.

C. Particulate Matter from Unconfined Sources in Areas III and IV.

(1) In Areas III and IV, a person may not cause or permit emissions from an unconfined source without taking reasonable precautions to prevent particulate matter from becoming airborne. These reasonable precautions shall include, when appropriate as determined by the Department, the installation and use of hoods, fans, and dust collectors to enclose, capture, and vent emissions. In making this determination, the Department shall consider technological feasibility, practicality, economic impact, and the environmental consequences of the decision.

(2) Exceptions. The following are exempt from the provisions of §C(1):

(a) Iron and steel production installations which are subject to COMAR 10.18.10.04B and C;

(b) Grain drying and grain handling installations;

(c) Batch-type hot-dip galvanizing installations which are subject to COMAR 10.18.12.

D. Particulate Matter from Materials Handling and Construction.

(1) A person may not cause or permit any material to be handled, transported, or stored, or a building, its appurtenances, or a road to be used, constructed, altered, repaired, or demolished without taking reasonable precautions to prevent particulate matter from becoming airborne. These reasonable precautions shall include, but not be limited to, the following when appropriate as determined by the control officer:

(a) Use of water or chemicals for control of dust in the demolition of existing buildings or structures, construction operations, the grading of roads, or the clearing of land.

(b) Application of asphalt, oil, water, or suitable chemicals on dirt roads, materials stockpiles, and other surfaces which can create airborne dusts.

(c) Installation and use of hoods, fans, and dust collectors to enclose and vent the handling of dusty materials. Adequate containment methods shall be employed during sandblasting of buildings or other similar operations.

(d) Covering, at all times when in motion, open-bodied vehicles transporting materials likely to create air pollution. Alternate means may be employed to achieve the same results as would covering the vehicles.

(e) The paving of roadways and their maintenance in clean condition.

(See page 1142)

ORDER RECEIVED FOR FILING
DATE April 29, 1985
BY Linda M. Lourey
ADMINISTRATIVE ASSISTANT

3-4-85

3/5/85
S

IN RE:	*	BEFORE THE
Petition for Special Exception Petition for Special Hearing Petition for Variances N/S Chester Road, 590' W. of Severn Road (800 Chester Road)	*	ZONING COMMISSIONER OF BALTIMORE COUNTY
JOSEPH F. EVERING, JR., et ux	*	Case No. 85-65-XSPHA
Petitioners	*	

* * * * * * * * * * *

MEMORANDUM OF LAW

The Protestants, Ken Engelke, et al, by their attorneys, T. Rogers Harrison and Mudd, Harrison & Burch, submit this Memorandum in support of their position that the Everings have not met the requirements of Md. Nat. Res. Code Ann., Section 8-1813 (1974 & 1984 Cum. Supp.).

Description of the Land

The Protestants adopt the description of the land set forth in their original Memorandum.

MAR 5
ZONING DEPARTMENT

On December 18, 1984, the Everings, by their attorney, filed with the Zoning Commissioner of Baltimore County a Motion for [a] Hearing, requesting:

"1. That a hearing be set at the earliest possible date for the Petitioner to present expert testimony.

2. That the Hearing be limited to determine whether or not the proposed development will (a) minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have runoff from surrounding lands; (b) the applicant has identified fish, wildlife and plant habitat which may be adversely affected by the proposed development and has designed the development so as to protect those identified habitat whose loss would substantially diminish the continued ability of populations of affected species to sustain themselves.

3. That the Hearing also be set to determine whether or not this proposed development is subject to Section 8-1801 through 8-816 [sic] entitled Chesapeake Bay Critical Area Protection Program of the Natural Resources Article of the Annotated Code of Maryland."

On January 3, 1985, the Zoning Commissioners scheduled a hearing for February 1, 1985 on the two issues raised in the Everings' Motion.

At the hearing, the Zoning Commissioner decided that the Everings' land was subject to the Chesapeake Bay Critical Area Protection Program, Md. Nat. Res. Code Ann., Sections 8-1801 to 8-1816 (1974 & 1984 Cum. Supp.). He also heard and considered evidence on the other issue, including testimony from Mr. Schneider, a landscape architect, who was called by the Petitioners. In addition, the Petitioners introduced a "Hydrogeological Study and Environmental Effects Report," prepared by Mr. Schneider and William Bafitis, (both of Bafitis & Associates) (hereinafter called the "Bafitis Report").

The Protestants introduced into evidence a Memorandum of Law and several supporting pamphlets, brochures and documents.

At the close of the evidence, the Zoning Commissioner reserved decision on the issue of whether the Everings had satisfied the requirements of Section 8-1813 of the Chesapeake Bay Critical Area Protection Program and gave the Petitioners and the Protestants thirty days in which to file a Memorandum on whether the Everings, as Petitioners, had met their burden of proof under Section 8-1813

Statement of the Law

Section 8-1813 of the Chesapeake Bay Critical Area Protection Program provides:

"(a) Specific findings required - From June 1, 1984 with regard to any subdivision plat approval or approval of a zoning amendment, variance, special exception, conditional use permit or use of a floating zone, affecting any land or water area located within the initial planning area identified in Sec. 8-1807(a) of this subtitle, for which application is completed after that date, the approving authority of the local jurisdiction in rendering its decision to approve an application shall make specific findings that:

(1) The proposed development will minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands; and

(2) The applicant has identified fish, wildlife and plant habitat which may be adversely affected by the proposed development and has designed the development so as to protect those identified habitats whose loss would substantially diminish the continued ability of populations of affected species to sustain themselves.

(b) Information required from applicant - With regard to any application for project approval described in subsection (a) of this section, a local approving authority shall require such additional information from an applicant as is necessary in order to make the findings required by subsection (a).

(c) Section in effect until program effective - This section shall remain in effect in a local jurisdiction until such time as an approved program becomes effective.

(d) Exception - This section does not apply to any application initially filed prior to March 1, 1984."(1984 Ch. 794).

A close reading of Section 8-1813 itself, as well a consideration of other interrelated sections and the general purpose behind the program, reveals that the Everings have not met the requirements of Section 8-1813. Therefore, their Petitions should be denied.

Under Section 8-1813, the Everings' primary responsibility is informational. They have the burden of producing certain specified information, which can be divided into two types: statutorily mandated information and additional County information. The contours of the mandated information are

delineated in Section 8-1813(a). The Baltimore County informational requirements are set forth in the October 29, 1984, memo from Eugene Bober (hereinafter the "Bober Memo"). At the February 1, 1985 hearing, the Everings failed to satisfy their informational burden: They did not submit the statutorily mandated information and they did not satisfy Baltimore County's additional requirements.

In order to understand the informational burdens of Section 8-1813, it is necessary to review the role of the approving authority under the same Act. Section 8-1813 requires the approving authority to make three specific findings. First, it must find that the proposed development will minimize adverse impacts on water quality. Second, it must find that the applicant/petitioner has identified fish, wildlife and plant habitat which may be adversely affected by the proposed development. Third, it must find that the proposed development has been designed to protect the identified habitats. In order for an approving authority to make these three specific findings, it must have certain information corresponding to its three findings.

Section 8-1813 requires the applicant/petitioner to show that the proposed development will minimize adverse impacts on water quality, to identify fish, wildlife, and plant habitat which may be adversely affected by the proposed development, and to show that the proposed development has been designed to protect the identified habitat. The applicant/petitioner is absolutely required to produce this information and he cannot escape the requirement. See Sections 8-1813(a), 8-1813(b).

In addition to the statutorily mandated information, the applicant/petitioner, under Section 8-1813(b), may be required by the approving authority to produce "such additional information...as is necessary in order [for the approving authority] to make the [three specific] findings required by [8-1813(a)]." Pursuant to Section 8-1813, Baltimore County, and most of the other Counties bordering the Bay, has promulgated informational requirements which land developers, such as the Everings, must comply with before their projects can be reviewed and approved. These requirements were delineated in the Bober Memo and accompanying outline. See the Protestants' Memorandum submitted at the February 1, 1985 hearing.

It is clear that the Petitioners did not satisfy either the statutorily mandated informational requirements or Baltimore County's informational requirements at the February 1, 1985 hearing. While Schneider's testimony and the Bafitis Report did address the first statutorily mandated requirement (whether the proposed development will minimize the adverse effects on the water quality), they did so in a cursory and conclusionary fashion. Moreover, they reached this conclusion based on improperly obtained data, or, in several instances, on no data at all. See the Protestants' Memorandum submitted at the February 1, 1985 hearing. Neither Schneider nor the Bafitis Report, however, identified, as is mandated by Section 8-1813, the fish, wildlife and plant habitat which may be adversely affected by the proposed development, and neither addressed how the proposed development had been designed to protect these habitats. Simply put, then, the Everings failed in the February

1, 1985 hearing to meet the statutorily mandated requirements of Section 8-1813.

In addition to failing to meet the statutorily mandated informational requirements of Section 8-1813, the Everings failed to meet the additional informational requirements established and promulgated by Baltimore County. See the Bober Memo and the Protestants' February 1, 1985 Memorandum. Requiring the additional information is not unique or burdensome, given the purpose behind Section 8-1813 specifically and the Chesapeake Bay Program in general.

The Chesapeake Bay Program is an attempt to coordinate the efforts of the State and affected local governments in restoring and preserving the Bay. See Section 8-1801(b). It is the intent of the Program "that each local jurisdiction have primary responsibility for developing and implementing a program ...to:

(1) Minimize adverse impacts on water quality that result from pollutants that are discharged from structure or conveyances or that have run off from surrounding lands;

(2) Conserve fish, wildlife and plant habitat; and

(3) Establish land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement and activities of persons in that area can create adverse environmental impacts."

Section 8-1808(a)(1), 8-1808(b)(1)(2)& (B). It is while these local programs are being developed that Section 8-1813 comes into play as an interim protection devise. See Sections 8-1808(d), 8-1809, 8-1810, 8-1811 and 8-1813. And as the purpose of the

Chesapeake Bay Program is to coordinate State and local efforts, a County under Section 8-1813(b) has great latitude in determining exactly what type of additional information a petitioner/applicant is required to submit.

Baltimore County's additional informational requirements are well within the parameters of the Chesapeake Bay Program's purpose and, in fact, do not vary drastically from the requirements established by other Counties bordering the Bay. See the attached requirement outlines from Harford County, Prince George's County and Anne Arundel County. The other Counties touching the Bay are currently, but slowly, developing similar informational requirements, waiting, as are Baltimore, Harford, Prince George's and Anne Arundel Counties, for further direction from the State. The Department of State Planning has plans to publish a Critical Areas Handbook within the next few weeks which should serve as a guide to the Counties. Likewise, the Chesapeake Bay Critical Area Commission is working on publishing criteria for coordinating State and affected local government efforts. See Section 8-1808(d).

A simple review of Schneider's testimony and the Bafitis Report reveals that the Everings absolutely did not satisfy Baltimore County's informational requirements. See the Protestants' February 1, 1985 Memorandum. Furthermore, in some respects, Schneider's testimony and the Bafitis report are seriously flawed.

In preparing the Bafitis Report, neither William Bafitis nor Schneider made the extensive field inspections and testing

necessary to satisfy the Baltimore County informational requirements. See the Protestants' February 1, 1985 Memorandum. And what little inspection was performed was done during the fall months, not the summer months, the time designated by Baltimore County's Office of Planning and Zoning as proper for such testing. The flawed nature of the Bafitis report can most readily be seen in Schneider's testimony about his field observation of submerged aquatic vegetation (SAV).

Section I of the Environmental Effects portion of the Bafitis Report, which is titled "Aquatic Organisms," states that the Everings' land "drains to low salinity estuarine waters with no submerged aquatic vegetation observed in [the] vicinity." At the hearing, Schneider testified that he reached the conclusion that there was no SAV by walking along the perimeters of the Everings land and observing the water to a depth of four feet. He also stated that his visual observation extended approximately fifteen feet from the shoreline. Page three of the Bober memo delineates the method of mapping the SAV on or near a proposed development. It requires that "[s]ite investigations should be to a water depth of 15 [feet]." Merely observing the water to a depth of four feet, then, is patently defective, and it becomes more defective considering the fact that Schneider only walked the perimeters of the Everings' land and did not walk out on the existing piers or attempt to observe the SAV from the proposed pier locations. For a short discussion of the importance of SAV to the Bay's ecosystem, see the Protestants' Memorandum of February 1, 1985. In most other respects, the

Bafitis Report, when compared to the Baltimore County Informational Requirements outlined in the Bober Memo, fails to provide the required information. See the Protestants' February 1, 1985 Memorandum.

Conclusion

At the February 1, 1985, hearing before the Zoning Commissioner, the Everings failed to meet their burden of providing information required under Section 8-1813. Neither Schneider's testimony nor the Bafitis Report satisfied the statutorily mandated requirements or Baltimore County's additional informational requirements. Therefore, the Everings' Petitions should be denied.

Respectfully submitted,

T. Rogers Harrison
Mudd, Harrison & Burch
306 West Joppa Road
Towson, Maryland 21204
828-1335
Attorneys for Ken Engelke, et al

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Memorandum of Law was mailed, postage prepaid, this 4th day of March, 1985, to Arnold Jablon, Zoning Commissioner, Baltimore County, Room 113, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland 21204; and to John O. Hennegan, Esquire, 809 Eastern Boulevard, Baltimore, Maryland 21221, attorney for Petitioners.

T. Rogers Harrison

3/85

PROT

IN RE:	*	
Petition for Special Exception Petition for Special Hearing Petition for Variances N/S Chester Road, 590' W. of Severn Road (800 Chester Road)	*	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY
JOSEPH F. EVERING, JR., et ux	*	Case No. 85-65-XSPHA
Petitioners	*	

* * * * * * * *

MEMORANDUM OF LAW

Ken Engelke, et al, by their attorneys, T. Rogers Harrison and Mudd, Harrison & Burch, submit this Memorandum of Law in support of their position that (1) the Petition for Special Hearing filed in this matter is improper because the Special Exception it attempts to amend and alter is no longer valid; (2) the Petition for Variances filed in this matter should be denied because the invalidity of the aforementioned Special Exception changes the factual basis on which it rests; and (3) the Petition for Special Exception filed in this matter should be denied because the invalidity of the aforementioned Special Exceptions changes the factual basis on which it rests.

Description of Land

The property of the Petitioners, Joseph J. Evering, Jr. and his wife, Catherine (hereinafter the "Everings"), consists of approximately 3.3 acres located on the north and south sides of Chester Road, 1000 feet west of Susquehanna Avenue in the Fifteenth Electrion District, Baltimore County, Maryland. The property is known as the Long Beach Marina, 800 Chester Road, and can be described as the tip of a peninsula jutting into Frog Mortar Creek.

The property is best understood as consisting of four separate pieces of land: (1) the original Evering parcel, approximately 1.2 acres in size, located on the south side of Chester Road and comprising Lots 1, 82 and 83 of the Long Beach Estates; (2) the Brown parcel, approximately 1.75 acres in size, located on the north side of Chester Road; (3) the south parking parcel, Lot 83 of the Long Beach Estates, located on the south side of Chester Road; and (4) the north parking parcel, located on the north side of Chester Road. All of these four pieces of land are in a D.R.5.5 zone.

Statement of Facts

In 1955, Joseph F. Evering, Jr. (hereinafter "Joseph Evering") filed a Petition for Special Exception, requesting that he be allowed to use his property on Chester Road, then and now in a D.R.5.5 zone, for a boat yard. At that time, he owned only the 1.2 acre Original Evering Parcel located on the south side of Chester Road. On June 6, 1955, the Special Exception was granted (Case No. 3535X) and Joseph Evering thereafter converted his property into a boat yard by, among other things, building four piers which extended west into Frog Mortar Creek, for the mooring of power and sail boats.

On August 1, 1960, Mr. and Mrs. Henry J. Brown conveyed to the Everings the 1.75 acre Brown Parcel located on the north side of Chester Road. In January 1964, the Everings filed a Petition for Special Hearing "for a clarification and extension of the uses heretofore granted under the special exception

granted on the 6th day of June, 1955 (File No. 3535) to specifically include the storage of marine craft on the land." On March 9, 1964, the Everings' request was granted (Case No. 64-57SH) subject to three restrictions:

1. No marine craft may be stored within 30 feet of the easternmost portion of the property presently owned by...[the Everings]

2. The use of the boat yard, both on land and in the water, shall be limited to pleasure craft.

3. The Petitioners [the Everings] shall comply with the off-street parking requirements of Section 409 of the Baltimore County Zoning Regulations.

About one month later, on April 10, 1964, the Everings filed a Petition for Special Exception.

The Petition for Special Exception requested that the Everings be allowed to develop a boat yard on the Brown Parcel. The Everings planned to fill and level the land, build a bulkhead on the north side of the Brown Parcel and extend Chester Road to the water's edge. On June 30, 1964, the Petition for Special Exception (Case No. 64-160X) was granted subject to the following restrictions:

1. No major repairs of any boats shall be permitted on the premises or waters immediately adjacent thereto.

2. Construction of boats is prohibited.

3. No commercial vessels will be permitted to patronize said establishment.

4. Services will be restricted to pleasure craft only.

5. Barges or similar type craft will not be allowed on or tied up at the property, with the exception of the one small barge which is presently being used by the Petitioner[s]. [The Everings.]

6. Minor repairs and maintenance will be permitted from 8 a.m. to 7 p.m. week-days [sic], May through September and 8 a.m. to 6 p.m. on week-days [sic] during the other months of the year. No repairs will be permitted on Sundays.

The site plan, which was approved by the Office of Planning and Zoning on January 16, 1967, called for four additional piers, approximately 168 additional boat slips and approximately 168 additional parking spaces for automobiles. Three of the proposed piers were to be built off the Brown Parcel, more or less parallel to the four existing piers which extended west from the Original Evering Parcel. Each was to contain 44 boat slips. The fourth proposed pier was to be built off the south side of the Original Evering Parcel, perpendicular and to the rear of the four existing piers. It was to contain 36 boat slips. The site plan also called for the Everings to extend Chester Road to the water's edge, to fill in and extend the Brown Parcel to conform with the Original Evering Parcel, to build a bulkhead and to use a macadam surface for the parking areas.

In 1966, the Everings applied for and received three building permits for the northwest Brown Parcel piers. Little, if any, construction was commenced and, in 1970, the Everings again applied for and received building permits for the same three piers. Again, the Everings did not commence any substantial construction. It is apparent that they did drive in some mooring piles along the western shore line of the Brown Parcel, but it is just as apparent that this construction was soon abandoned. No effort was made to fill in and extend the Brown

Parcel, to extend Chester Road, to build the bulkhead and to comply with the plans for the required parking spaces. Sometime between 1966 and 1984, they did construct the southern pier off the Original Evering Parcel. During this time they also acquired the north and south parking parcels.

In August, 1984, the Everings filed the following three petitions:

1. Petition for Zoning Variance

    a. to allow existing compacted stone in lieu of the required macadam paving. A variance from B.C.Z.R. Sec. 409.2.c.(2)(1981 and 1983 Supp.)

    b. to allow 318 parking spaces in lieu of the required 384, or, if the special exception is granted, to allow 363 parking spaces in lieu of the required 384. A variance from B.C.Z.R. Sec. 409.2.b (1981 and 1983 Supp.)

    c. to allow the extension of the piers to exceed 300 feet beyond the mean low tide. A variance of B.C.Z.R. Sec. 417.5(a) (1981 and 1983 Supp.)

2. Petition for Special Exception

    a. to allow the two lots on the north and south sides of Chester Road (the North and South Parking Parcels) to be used as part of the boat yard. The lots are zoned D.R.5.5.

3. Petition for Special Hearing

    a. to amend the site plan which was approved on January 1, 1967 in connection with the June 30, 1964 Petition for Special Exception (Case No. 64-160X) in order to construct additional piers and slips.

    b. to remove restrictions 1 and 3 in Case No. 64-57SPH in order to allow marine craft to be stored within 20 feet of the easternmost property line and to request a variance of the parking.

c. to remove restrictions 1 and 6 in Case No. 64-160X in order to allow major repairs on the premises and in the waters and to change the times that repairs are permitted.

d. to determine that a boat yard and related parking areas are structures devoted to civic, commercial and recreational activities and are, therefore, exempt from the residential transitional requirements set out in B.C.Z.R. Sec. 1B01.1B.1.c (1981 and 1983 Supp.)

Statement of the Law

The issue presented in this case is, simply put, whether the Everings utilized the Special Exception they were granted on June 30, 1964. Section 502.3 of the Baltimore County Zoning Regulations (1981 and 1983 Supplements) states, in pertinent part, that:

> "[a] Special Exception which has not been utilized within a period of two years from the date of the final order granting same, or such longer period not exceeding five years, as may have been specified therein, shall thereafter be void...After a final order granting a Special Exception, the Zoning Commissioner, at any time prior to expiration of the period of time authorized for its utilization, may grant one or more extensions of such period, provided that a maximum time for utilization of the Special Exception is not thereby extended for a period of more than five years from the date of the final order granting same."

The same section also provides that:

> "[a] Special Exception which requires any construction for its utilization shall be deemed to have been used within its authorized time <u>if such construction shall have been commenced during the authorized period, or any extension thereof, provided said construction is thereafter pursued to completion with reasonable diligence</u>." (Emphasis added.)

Phrased differently, then, the issue here is whether the Everings, under the June 30, 1964 order granting them a Special Exception, commenced construction during the authorized time period and thereafter pursued that construction to completion with reasonable diligence.

The requirements set forth by Section 502.3 are twofold: (1) The Petitioner must commence construction within the authorized time period; and (2) he must pursue that construction to completion with reasonable diligence. If the Petitioner fails to do both, the Special Exception is void. While the record is not clear, it is assumed that the Everings had five years from the date of the Special Exception in which to commence construction.

It is apparent that the Everings have not attempted to utilize the Special Exception they were granted on June 30, 1964. As of September 1984, they had not extended Chester Road, had not filled in and extended the Brown Parcel, had not built the bulkhead, had not built the parking areas as detailed on the site plan, and had not implemented their plans to build three piers off the western shore of the Brown Parcel. As the June 30, 1964 Special Exception was surely one requiring construction for its utilization and the Everings did not commence any substantial construction during the ensuing five years (1964-1969), the Special Exception is void.

The Everings, in essence, have failed to meet both requirements of Section 502.3: They did not begin any substantial, easily recognized construction and they did not pursue what little construction they did commence to completion with reasonable diligence. While it is true that the Everings did build the southern pier off the Original Evering Parcel sometime after 1966, the record is not clear as to exactly when this structure was constructed. Furthermore, even if construction on this southern pier was commenced within the five-year time period, it would not toll Section 502.3. It must be remembered that the June 30, 1964 Special Exception concerned the Brown Parcel. The southern pier is built within the property boundaries of the Original Evering Parcel and, therefore, relates to the 1955 Special Exception, not the 1964 Special Exception. The Everings could have built the southern pier at any time after the 1955 Special Exception was granted. Its mere inclusion in the 1967 site plan, which included both the Brown and the Original Evering Parcels, does not make it part of the 1964 Special Exception.

The only apparent action taken by the Everings with regard to the Brown Parcel during the authorized five-year period was securing building permits in 1966 for the three Brown Parcel piers. This, by itself, does not constitute the commencement of construction. Even if it did, the Everings did not pursue the construction to completion with reasonable diligence. More than eighteen years have passed since the Everings secured the building permits and, during this time, the Everings, at best,

drove a few piles along the western and northern shores of the Brown Parcel. Again, the record is not clear as to when these piles were driven, but even if they were driven in within the authorized time period, this action does not constitute "construction" as contemplated by Section 502.3.

The meaning of the language in Section 502.3 requiring construction to be pursued to completion with reasonable diligence was recently addressed by the Baltimore County Zoning Commissioner in the case of In Re Petition for Special Hearing of Joseph L. Soley, Case No. 84-89-SPH (hereinafter "Joseph Soley"). There, the Petitioner, Joseph Soley (hereinafter "Soley") sought approval of the Zoning Commissioner to continue his special exception on the grounds that he had fulfilled his reasonable diligence construction obligation under Section 502-3.

Soley had been granted a Special Exception on April 28, 1977. On October 18, 1978, the time for the utilization of the Special Exception was extended for a period of three years, April 28, 1979 to April 28, 1982. On September 22, 1981, Soley requested the Zoning Commissioner to further extend his utilization of the Special Exception, but the Zoning Commissioner noted that no further extensions could be granted because the total period for utilization would reach five years by April 28,1982. On April 14, 1982, Soley filed for and received a building permit. He then hired an engineer to do a land survey and in quick succession cleared the site for construction, excavated to an

average of three and one-half feet, placed sediment control devices around the perimeter of the property and even poured a concrete footing.

In deciding that Soley had not acted with reasonable diligence in pursuing the construction to completion, the Zoning Commissioner first adopted the definition of "Reasonable Diligence" set forth in Black's Law Dictionary (rev. 5th ed. 1979):

> "[a] fair, proper and due degree of care and activity, measured with reference to the particular circumstances; such diligence, care or attention as might be expected from a man of ordinary prudence and activity." Joseph Soley, p.

Next, the Zoning Commissioner found it appropriate to compare the language of and intent behind Section 502.3 to a string of Maryland cases concerning a property owner's "vested rights."

A vested right is the right to initiate or continue the establishment of a use or construction of a structure which, when completed, will be contrary to the restrictions or regulation of a zoning ordinance or an amendment to it which has become effective in the meantime. See generally, 3 Rathkopf, The Law of Zoning and Planning, 57-6 (4th ed. 1976). A vested right usually arises "where the owner seeks to proceed in accordance with prior zoning despite an existing or pending amendment to the zoning regulations." Joseph Soley, p. 4. A vested right is held to accrue in Maryland when:

> "[a] manifest commencement of some work or labor on the ground which everyone can readily see and recognize as the commencement of a building...begun with the inten-

> tion and purpose then formed to continue the work until the completion of the building." Rupp v. Earl H. Cline & Sons, 230 Md. 573, 578, 188 A.2d 146 (1963).

Noting that "Section 502.3 provides that any special exception which requires the construction for its utilization be commenced during an authorized time period...provided that the construction is pursued to completion with reasonable diligence," the Zoning Commissioner concluded that "[t]he language found in Rupp and in Section 502.3 is similar and must be read in conjunction." Joseph Soley, p. 5 (emphasis in original). In this regard, the Zoning Commissioner then held that the Rupp test was virtually identical to the language in Section 502.3 and that case law determining what action amounts "to work or labor readily seen and recognized as the commencement of a building and done with the intention and purpose to continue until completion" should also determine what action constitutes "construction pursued to completion with reasonable diligence." Joseph Soley, p. 6.

Having made the comparison between the language in Section 502.3 and Rupp, the Zoning Commissioner stated that Soley:

> "did not comply with Section 502.3 nor with the strictures as mandated by the Court of Appeals [in Rupp]. He did excavate; he did pour concrete; he did provide sediment control devices. He did not pursue to completion with reasonable diligence; he did not begin in April, 1982, with the intention and purpose to continue the work until completion of the building. He did begin with the intention of tolling 502.3... [Soley's] testimony and by his actions clearly show that what he did constituted "construction," and that it was an acceptable beginning [but]...it is clear that...[Soley]...has not met his burden proving that he began construction on the subject site...with the intention and purpose to continue the work until completion of the building with reasonable diligence." Joseph Soley, p. 7

In brief, Soley met the first requirement of Section 502.3 by having a substantial construction beginning, or, at least, to paraphrase Rupp, a readily recognizable commencement. However, he failed to meet the second requirement of pursuing that construction to completion with reasonable diligence because he lacked the requisite intent.

In the Evering situation, the Everings did not have a substantial construction beginning. All they did was obtain building permits and drive in a few mooring piles. Neither action, as noted earlier, constitutes a readily recognizable commencement or a substantial construction beginning. Using, as the Zoning Commissioner in Joseph Soley did, Rupp and its progeny as guides, it has been repeatedly held that the mere issuance of a building permit alone does not confer any vested right and, therefore, would not constitute a construction under Section 502.3. See Stewart Petroleum Co. v. Board of County Commr's, 276 Md. 435, 347 A.2d 854 (1975); County Council v. District Land, 274 Md. 691, 337 A.2d 712 (1975); Rockville Fuel & Feed Co. v. City of Gaithersburg, 266 Md. 117, 291 A.2d 672 (1972); and Ross v. Montgomery County, 252 Md. 497, 250 A.2d 635 (1969). See generally 3 Rathkopf, The Law of Zoning and Planning, 57-6 (4th ed. 1976). As it was stated in County Council, "the obtention of a building permit creates no vested right...unless substantial construction has been undertaken in reliance thereon..." 274 Md. at 707, citing Rockville Fuel, 266 Md. 117.

The driving of a few piles along the western and northern

shores of the Brown Parcel does not constitute a substantial construction because, under the Rupp test, everyone would not be able to recognize these few piles as the manifest commencement of the land-fill extension of the Brown Parcel, the extension of Chester Road, the construction of a bulkhead, the leveling and paving of a parking area, and the construction of three piers. See Rupp, 230 Md. at 578. Indeed, these few files barely protrude out of the water. At best, they constitute an incomplete and ambiguous outline of the northern and western shores of the Brown Parcel. In this regard, the piles can be likened to the footing of a building. In Ross v. Montgomery County, the Court of Appeals held that the pouring of a single footing was not enough to give the property owner a vested right to build an apartment hotel under a building permit issued prior to a change in the zoning classification of the property. 252 Md. 497. See Pemberton v. Montgomery County, 275 Md. 363, 340 A.2d 240 (1975) and Stewart Petroleum, 276 Md. 435.

Assuming that the driving of the piles coupled with the building permit does constitute a substantial, readily recognizable construction beginning, the Everings still have failed to pursue that construction to completion with reasonable diligence. It has been eighteen years since the building permits for the three permits were issued, and the piles are the only evidence of a construction attempt. While it may very well have been the intention and purpose of the Everings to secure building permits, drive the piles, and pursue to completion the land-

fill, road extension and the bulkhead, parking lot and pier constructions, this intention was quickly abandoned.

It is true that in 1970 the Everings renewed the building permits, thus in some sense evincing their continued intention to implement the 1967 site plan, but, again, no substantial construction occurred immediately thereafter or in the ensuing fourteen years. It cannot, therefore, be maintained that the Everings have been pursuing to completion the utilization of their 1964 Special Exception with reasonable diligence, but this is exactly what they would have to prove in order for that Special Exception to still be valid. B.C.Z.R. Sec. 502.3. It should be remembered that the Everings have the burden of proving that the 1964 Special Exception is still valid and that they both commenced construction within the authorized time period and pursued that construction to completion with reasonable diligence. See Joseph Soley, p. 7. As this burden has not been met, and all evidence suggests that it cannot be met, the 1964 Special Exception is void. A Special Hearing, therefore, is not proper and the Everings should be required to re-petition for a special exception for the Brown Parcel. Furthermore, the Petition for Variances and the Petition for Special Exception should both be denied because the invalidity of the 1964 Special Exception changes the factual basis on which they rest.

Respectfully submitted,

T. Rogers Harrison
Mudd, Harrison & Burch
306 West Joppa Road
Towson, Maryland 21204
828-1335
Attorneys for Ken Engelke, et al

3-6-85 3-1-85 3/7/85 8

85-174-A

IN RE:	*	BEFORE THE
PETITION FOR SPECIAL HEARING, PETITION FOR SPECIAL EXCEPTION, PETITION FOR ZONING VARIANCE. NORTH SIDE OF CHESTER ROAD, JOSEPH F. EVERING, JR.	* * *	ZONING COMMISSIONER OF BALTIMORE COUNTY
	*	85-65-H-XSPHA

*** *** *** *** *** *** *** ** * ** *** *** *** *** *** ***

MEMORANDUM OF LAW AS TO HEARING ON FEBRUARY 1, 1985

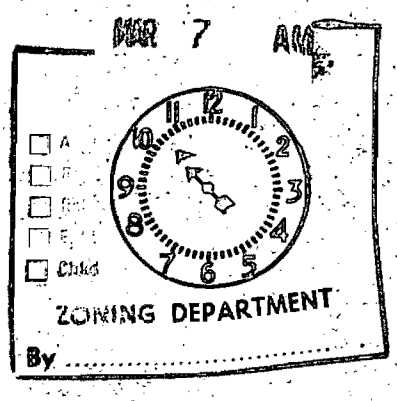
LONG BEACH MARINA and **JOSEPH F. EVERING, JR.** by their attorneys, John O. Hennegan and ROMADKA, GONTRUM, HENNEGAN & FOOS, submit this Memorandum of Law applicable to the Hearing before the Zoning Commissioner on February 1, 1985, in support of their position that the proposed change in uses will have no adverse impact on water quality and will have no adverse impact on fish, wildlife or plant habitat.

ISSUES

I. What is the identity of the approving authority of the local jurisdiction as used in Section 8-1813 of the Natural Resources Article of the Annotated Code of Maryland?

II. What is the Burden of Proof?

III. Have adequate facts been presented from which the Zoning Commissioner can approve the requested changes in use as required in Section 8-1813 of the Natural Resources Article of the Annotated Code of Maryland?



LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

IV. Is there an adequate source of scientific knowledge or facts to support findings required by Section 8-1813 of the Natural Resources Article over and above the mitigation measures proposed by the Petitioner?

DISCUSSION OF THE LAW

The Chesapeake Bay Critical Area Program, as set forth in Section 8-1813 of the Natural Resources Article of the Annotated Code of Maryland (Critical Area Program), requires any Zoning Amendment, Variance or Special Exception after June 1st, 1984, and prior to either state approval of the Baltimore County program or state adoption of a Baltimore County program, sometime after December 1st, 1985, to be reviewed by "The approving authority of the local jurisdiction". The approving authority, in rendering a decision to approve an application, shall make findings that:

(1) The proposal will minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run-off from surrounding lands; and

(2) The applicant has identified fish, wildlife, and land habitat which may be adversely affected by the proposed development and has designed the development so as to protect those identified habitats whose loss would substantially diminish the continued ability of populations of affected species to sustain themselves.

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

In addition, Section 8-1813 of the Critical Area Program provides that the approving authority can require additional information as is necessary to make the beforementioned findings.

Except as provided in Section 2-58.1 of the Baltimore County Code, which deals with change in zoning classifications and reclassifications, not the subject of this matter, the Zoning Commissioner may grant Variances and make Special Exceptions to the Zoning Regulations in harmony with their general purpose and intent. Such power is subject to appropriate principals, standards, rules, conditions and safeguards set forth in the Baltimore County Zoning Regulations (BCZR). Section 22-26, Baltimore County Code, 1978, as amended. Pursuant to Section 500.7, BCZR, the Zoning Commissioner has the power to conduct such Hearings (called "Special Hearings") and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations. Such power includes the right "to determine any rights whatsoever" in any property insofar as affected by zoning regulations.

Viewing the above in light of the existing case law, it is clear that the "approving authority" under Section 8-1813 of the Critical Area Program is the Zoning Commissioner. For example, in May v. Warnick, 227 Md. 77, 175 A.2d 413, (1961), the Court of Appeals stated:

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

"It is well-established law that in construing legislative enactments, all statutes relating to the same subject matter are to be considered harmonized as far as possible. This rule applies when the statutes were passed at different dates, separated by long or short intervals. The statutes are to be compared and brought into full accord if possible, but if they are insusceptible of a construction which would permit all their provisions to fall into complete agreement, they are to be made to operate together as far as possible, consistent with the evident intent of the latest enactment."

Applying the principal of a harmonious reading to the Critical Area Program, it is the Zoning Commissioner who must make specific findings that the proposed development will minimize adverse impacts on water quality that result from pollutants that discharged from structures or conveyances, or that have run from surrounding lands, and that the applicant has identified fish, wildlife, and plant habitat which may be adversely affected by the proposed development and has designed the development so as to protect those identified habitats whose loss would substantially diminish the continuing ability of populations of affected species to sustain themselves.

After making the required specific findings, the Zoning Commissioner must then exercise his legislative function of granting or denying the petitions insofar as the proposed changes in uses comply with the Critical Area Program. See, In Board of County Com'rs. of Prince George's

LAW FIRM

ROMADKA, GONTRUM, HENNEGAN & FOOS

ESSEX, MARYLAND

County v. Levitt and Sons, Inc., 235 Md. 151, 200 A.2d 670 (1964) and Dal Maso v. Board of County Comm'rs., 182 Md. 200, 34 A.2d 464 (1943).

One of the basic requirements of fair procedure is that an agency's decision must be based upon the evidence produced at the hearing before the agency and not on evidence not contained in the record. See, 24 Md. L. Rev. 1 (1964) at 15-18.

The law is settled that questions of fact may be finally determined by an administrative agency (in this case, the County Zoning Commissioner) so long as the Courts retain their inherent power to assess the sufficiency of evidence to support such factual conclusions and to review the actions of administrative agencies which are illegal, arbitrary, unreasonable or which impair personal or property rights. See, Johnsontown Coal and Coke Co. v. Dishong, 198 Md. 467, 84 A.2d 847 (1951). This final determination has been defined as "compulsory arbitration". See, State Insurance Commissioner v. National Bureau of Casualty Underwriters, 248 Md. 292, 236 A.2d 282 (1967).

The duty of the Board (in this case, the Zoning Commissioner) is to exercise the discretion of experts. The court, although it may not arrive at the same conclusion, will not disturb a decision of the Board on review, if the Board has complied with all legal requirements of notice and hearing and the record shows substantial evidence to sustain the

finding. Aaron v. City of Baltimore, 207 Md. 401, 114 A.2d 639 (1955). Substantial evidence is such evidence as a reasonable mind might accept as adequate to support a conclusion. Snowden v. City of Baltimore, 224 Md. 443, 168 A.2d 390 (1961). See also, Department of Nat. Res. v. Linchester Sand and G. Corp., 274 Md. 211, 334 A.2d 514 (1975).

The scope of the Zoning Commissioner's fact finding process, including conclusions is confined to the wording contained in Section 8-1813 (1) and (2) of the Critical Area Program. The administrative agency, when acting in a manner which may be considered legislative in nature, must act within its legal boundaries. See, Department of Nat. Res. v. Linchester Sand and G. Corp., cited previously. The Petitioner's Burden of Proof under local, County regulations is not applicable to the Commissioner's fact finding procedure under Section 8-1813. For example, the Zoning Commissioner must find that the applicant has met his Burden of Proof if there is evidence before it which would make the issues "fairly debatable, that is, evidence from which a reasonable mind could reasonably have reached a result the Zoning Commissioner reached upon a fair consideration of the fact picture painted by the entire record. Board of County Commissioners for Prince George's County v. Oakhill Farms, Inc., 232 Md. 274, 192 A.2d 761 (1963). Also, the law with regard to Burden of Proof in the case of Use Variances and Area Variances does not

apply. For example, the standard of "practical difficulty" does not apply should not be considered by the Zoning Commissioner with regard to his findings under Section 8-1813. The administrative agency, when acting in a manner which may be considered legislative in nature, must act within its legal boundaries. See, Department of Nat. Res. v. Linchester Sand and G. Corp., as cited previously.

DISCUSSION OF THE EVIDENCE PRESENTED

In light of the need for such evidence as a reasonable mind might accept as adequate to support a conclusion and to avoid an arbitrary or unreasonable finding, Protestants' Exhibit 3A, a Federal Environmental Protection Agency (EPA) report entitled, Chesapeake Bay Program+ Finding and Recommendations, is particularly alarming. For example, the report states, at page 25, that " there is also a similar, but not a precise, relationship between nutrients and bay fisheries". The run-off of the subject site is referred to as a non-point source. The report states, at page 28, that "the diffuse nature of non-point sources render them difficult both to quantify and control". Overall, the report states that the relationships between man-made activities on and off shore and water quality is not well understood. It recommends studies and the collection of more data from which the relationships can be better defined. It further states that once these relationships are defined they can be transformed to management practices to mitigate or minimize adverse impacts

on water quality and mitigate against the loss of fish, wildlife and land habitat populations. The report makes specific reference to the lack of knowledge in the areas of anti-fouling paints and urban run-off (page 46). The specific management activities recommended apply to (1) point sources such as sewage treatment plants, (2) poor agricultural practices, (3) urban run-off, (4) industrial activities involving chemicals and toxins. None of these activities apply to the changes in uses requested.

Protestants' Exhibit 4A,an EPA report entitled Chesapeake Bay Program Technical Studies, A. Synthesis describes the findings to-date with regard to Nutrient Enrichment, Toxic Substances, and the Decline of Submerged Aquatic Vegitation. No where does this report show a known relationship or trend between any of the proposed change in uses and water quality or fish, wildlife or land habitat.

Also admitted into evidence was an Environmental Effects Report which was prepared by the Petitioner which discussed, among other things, the impact of the proposed changes on water quality, pollutant loadings, land disturbance, aquatic organisms and vegitation. One, adverse impact described was the potential for over-board discharge of wastes from boats. The report stated that this would be minimized by providing pump-out facilities. Evidence from the Health Department dated February 8, 1984, revealed on-site disposal facilities are functioning adequately. In addition, evidence

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

was presented that the capacity of this system would be enlarged to minimize any future adverse impact. The Environmental Effects Report also shows, based upon information recommended to the Petitioner's engineer by the County Health Department, that the proposed change in uses will not increase the amount of biochemical oxygen demand, total phosphorus, total nitrogen, lead, zinc or sediment in any measurable amount. Also, evidence was presented that water conservation practices would be implemented to minimize adverse impacts on water quality.

The proposed location of new piers in areas where the depth of water is approximately twelve feet (12') is a significant practice in minimizing the adverse environmental process associated with dredging should the piers be located within three hundred feet (300') of mean-low tide as currently required by the BCZR. In other words a variance is requested in order to minimize any adverse impact on water quality caused by the extension of existing piers. Since no changes are proposed which would alter the present configuration of the land, on-shore, there is little if any change in the impact of the proposed uses on water quality, wildlife and land habitat. In fact, evidence was presented that the unpaved, water bound macadam parking area functions as a filter and traps any pollutants and other adverse particulars from reaching the bay waters, thus minimizing any adverse impact caused by additional parking of motor vehicles. Also,

evidence showed no submerged aquatic vegitation in the off-shore area. To the degree that practices are known and available to mitigate against water quality, fish, wildlife and land habitat, they are being implemented at this site to minimize any adverse impact proposed uses may have.

Protestant's Exhibit 2A, "Interim Critical Areas Requirements for Baltimore County" makes reference to the necessity for the developers to provide additional environmental information. Although the Petitioner is not a developer, it bears emphasizing that according to the EPA's findings and recommendations set forth in Protestants' Exhibits 3A, and 4A, ~~it bears emphasizing that~~, detailed information is presently unknown as to the relationship between any zoning proposal and its site-specific impact on water quality and fish, wildlife and land habitat. The "Interim Critical Areas Requirements for Baltimore County" are not supported by existing and available scientific knowledge of activities harmful to Chesapeake Bay and environs and existing and available comprehensive management tools to properly and equitably mitigate against harm to the Bay and environs according to the Protestants' Exhibits 3 and 4. To expect this Petitioner to undertake any studies and/or research to develop state-of-the-art best management practices is clearly unreasonable. This also applies to Mr. Bober's September 7, 1984 letter to Frank S. Lee requesting information. According to the EPA Reports, admitted into evidence,

known and available methods to mitigate against the deterioration of bay waters apply to soils, fertilizer application, animal waste, sediment, agricultural chemicals, and bacteria from animal waste. None of these issues is a problem at the subject site.

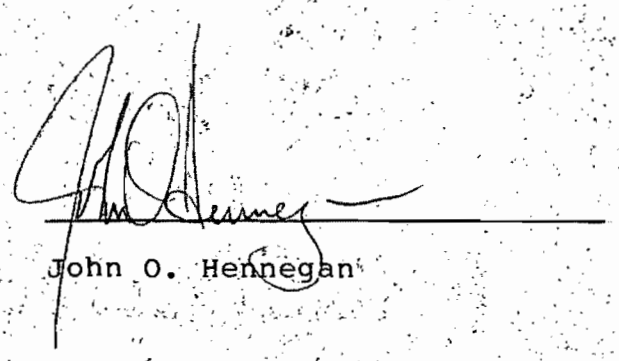
The testimony of John C. Schneider, an expert witness as to environmental impact, stated the Long Beach Marina location was an advantage in that it was located immediately upstream of its discharge into Middle River. As a result there is a greater flushing effect and increase in the assimilation of potential additional pollutants. This process loses its efficiency as you proceed upstream in Frog Mortar Creek. Siting considerations are important in light of Section 8-1808 (c) (9) of the Critical Area Program which states that, as a minimum, the program must designate those shoreline areas suitable for marinas.

SUMMARY

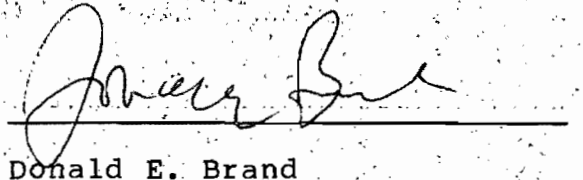
It is important to stress that the State legislation being applied is interim in nature. By its very terms, it shows a recognition of a need for more study, research and evaluation of physical, commercial and governmental forces before developing a comprehensive approach to changes in the Bay shoreline. The burden on the Petitioner is to minimize the impact his proposed changes may have on water quality, fish, wildlife and land habitat according to known and acceptable methods. The evidence clearly shows that this can

be accomplished, and that the Petitioner has taken the correct preliminary steps to implement such methods. Several Exhibits were introduced which would require the Petitioner to provide certain information and evaluation. This information and evaluation was performed to the extent that known and acceptable information and evaluation tools exist. More importantly, no evidence was presented that the mitigation measures (to minimize any adverse impact) were incorrect, not comprehensive, inadequate or property applied.

Respectfully submitted,



John O. Hennegan



Donald E. Brand
ROMADKA, GONTRUM, HENNEGAN & FOOS
809 Eastern Boulevard
Baltimore, Maryland 21221
Phone No.: 686-8274

Attorneys for Petitioner

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of _____, 1985, a copy of the aforegoing Memorandum of Law, was mailed to T. Rogers Harrison, Esquire, Mudd, Harrison & Burch, 306 West Joppa Road, Towson, Maryland 21204, Attorneys for Protestants'; and to Arnold Jablon, Zoning COmmissioner, Baltimore County, Room 113, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland 21204.

John O. Hennegan

Donald E. Brand

LAW FIRM

ROMADKA, GONTRUM, HENNEGAN & FOOS

ESSEX, MARYLAND

3/85

IN RE:

Petition for Special Exception
Petition for Special Hearing
Petition for Variances
N/S Chester Road, 590' W. of
Severn Road (800 Chester Road)

JOSEPH F. EVERING, JR., et ux

Petitioners

*

BEFORE THE

ZONING COMMISSIONER

OF

BALTIMORE COUNTY

Case No. 85-65-XSPHA

* * * * * * * * * *

MEMORANDUM OF LAW

The Protestants, Ken Engelke, et al., by their attorneys, T. Rogers Harrison and Mudd, Harrison & Burch, submit this Memorandum in support of their position that (1) the Everings' land falls under the Chesapeake Bay Critical Area Protection Program, Md. Nat. Res. Code Ann., Sections 8-1801 - 8-1816 (1974 & 1984 Cum. Supp.); (2) the Everings have not met the requirements of Section 8-1813 of the aforementioned Act; and (3) the proposed expansion and reshaping of the Everings' land will adversely affect the surrounding environment and will contribute to the decline of the Chesapeake Bay's ecosystem.

Description of the Land

The Protestants adopt the description of the land set forth in their original Memorandum.

Statement of Facts

The Protestants adopt the Statement of Facts set forth in their original Memorandum but amend that statement as follows:

On December 18, 1984, the Everings, by their attorney, filed with the Zoning Commissioner of Baltimore County a Motion for [a] Hearing, requesting:

"1. That a hearing be set at the earliest possible date for the Petitioner to present expert testimony.

2. That the Hearing be limited to determine whether or not the proposed development will (a) minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have runoff from surrounding lands; (b) the applicant has identified fish, wildlife and plant habitat which may be adversely affected by the proposed development and has designed the development so as to protect those identified habitat whose loss would substantially diminish the continued ability of populations of affected species to sustain themselves.

3. That the Hearing also be set to determine whether or not this proposed development is subject to Section 8-1801 through 8-816 [sic] entitled Chesapeake Bay Critical Area Protection Program of the Natural Resources Article of the Annotated Code of Maryland."

On January 3, 1985, the Zoning Commissioners scheduled a hearing on the two issues raised in the Everings' Motion. The Protestants, by their attorneys, have prepared this Memorandum in response to the issues raised in the Everings' Motion and as a supplement to their arguments raised at the hearing.

Law

In order to properly consider the two issues raised in the Everings' Motion, the second issue -- whether the Everings' land is subject to the Chesapeake Bay Critical Area Protection Program -- must be considered first because the other issue arises only if the Chesapeake Bay Critical Area Protection Program applies.

THE EVERINGS' LAND IS SUBJECT TO THE CHESAPEAKE BAY CRITICAL AREA PROTECTION PROGRAM

The Chesapeake Bay Critical Area Protection Program, Md. Nat. Res. Code Ann. Sections 8-1801 - 8-1816 (1974 & 1984 Cum. Supp.), was enacted in June 1984 to:

1. Establish a Resource Protection Program for the Chesapeake Bay and its tributaries by fostering more sensitive development activity for certain shoreline areas so as to minimize damage to water quality and natural habitats; and

2. Implement the Resource Protection Program on a cooperative basis between the State and affected local governments, with local governments establishing and implementing their programs in a consistent and uniform manner subject to State criteria and oversight.

Section 8-1801(b). The Program was implemented because of recent natural studies which showed "that the quality and productivity of the waters of the Chesapeake Bay and its tributaries have declined due to the cumulative effects of human activity that have caused increased levels of pollutants, nutrients and toxics in the Bay System and declines in more protective land uses such as forestland and agriculatural land in the Bay Region." Section 8-1801(a)(14).

According to the Program, the Chesapeake Bay Critical Area, or at least the initial planning area for determination of the Critical Area, consists of:

1. All waters of and lands under the Chesapeake Bay and its tributories to the head of tide as indicated on the State Wetlands Maps, and all State and private wetlands designated under Title 9 of [the Natural Resources] article; and

2. All land and water areas within 1,000 feet beyond the landward boundaries of State or private wetlands and the heads of tides designated under Title 9 of [the Natural Resources] article.

Section 8-1807(a). The Program also enabled local jurisdictions to exclude certain areas. Under Section 8-1807(b)(1)(i), a local jurisdiction may exclude from the Critical Area land which is:

1. Part of a developed, urban area in which...the imposition of a program would not substantially improve protection of tidal water quality or conservation of fish, wildlife or plant habitats; or

2. Located at least 1,000 feet from open water and separated from open water by an area of wetlands which...will serve to protect tidal water quality and fish, wildlife or plant habitats from adverse impacts of development in the excluded area.

In order to fall within the urban exclusion, the urban area must "be at least 50 percent developed and may not be less than 2,640,000 sqaure feet (60 acres) in contiguous area or the entire initial planning area located within the boundaries of a municipality, whichever is less." Section 8-1807(b)(1)(ii).

The Everings' land, located as it is on Frog Mortar Creek, is clearly within the Chesapeake Bay Critical Area as defined by Sections 8-1807(a)(1), (c)(1). Moreover, the Everings' land falls into neither the urban exclusion nor the wetlands exclusion as defined by Section 8-1807(b)(1). It is not located 1,000 feet from open water or separated from the open water by wetlands; and it is not a portion of an urban area. A review of the State Wetlands Map covering the Middle River/Frog Mortar Creek area reveals that, indeed, the Everings' land is part of the Critical Area. See State Wetlands Map, Baltimore County, No. 25. Therefore, the Chesapeake Bay Critical Areas Protection Program applies.

THE EVERINGS HAVE NOT MET THE REQUIREMENTS OF SECTION 8-1813 OF THE CHESAPEAKE BAY CRITICAL AREA PROTECTION PROGRAM

As the Chesapeake Bay Critical Area Protection Program applies to the Everings' land, the Everings must abide by the Program's directives, including Section 8-1813:

"(a) Specific findings required - From June 1, 1984 with regard to any subdivision plat approval or approval of a zoning amendment, variance, special exception, conditional use permit or use of a floating zone, affecting any land or water area

located within the initial planning area identified in Sec. 8-1807(a) of this subtitle, for which application is completed after that date, the approving authority of the local jurisdiction in rendering its decision to approve an application shall make specific findings that:

(1) The proposed development will minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands; and

(2) The applicant has identified fish, wildlife and plant habitat which may be adversely affected by the proposed development and has designed the development so as to protect those identified habitats whose loss would substantially diminish the continued ability of populations of affected species to sustain themselves.

(b) Information required from applicant - With regard to any application for project approval described in subsection (a) of this section, a local approving authority shall require such additional information from an applicant as is necessary in order to make the findings required by subsection (a).

(c) Section in effect until program effective - This section shall remain in effect in a local jurisdiction until such time as an approved program becomes effective."

(d) Exception - This section does not apply to any application initially filed prior to March 1, 1984. (1984. ch. 794).

The Everings filed their Petitions on August 16, 1984 and, therefore, the Section 8-1813(d) Exception is inapplicable. Thus, in order for the Everings to have their Petitions for Variances and Special Exceptions approved, they would have to submit information under Section 8-1813(b) from which Baltimore County could determine if the proposed expansion of the marina met the Section 8-1813(a) requirements. That is, Baltimore County would determine from the submitted information if the proposed expansion was environmentally compatible.

Apparently, the Everings' Motion for [a] Hearing is an attempt to fulfill the informational requirements under Section 8-1813. In other words, the Everings are attempting to prove

through expert testimony at a public hearing that their proposed expansion is environmentally compatible. Merely offering expert testimony, however, will not satisfy the informational requirements of Section 8-1813.

The purpose of Section 8-1813 is to prevent further deterioration of the critical area while the State is promulgating and approving statewide criteria for protecting the Bay. See Section 8-1808. Such a program is several years away and Section 8-1813, then, can be seen as an interim protection device. Pursuant to Section 8-1813, Baltimore County has promulgated informational requirements which land developers, such as the Everings, must comply with before their projects can be reviewed and approved. These requirements were delineated in an October 29, 1984 memorandum from Eugene A. Bober, Chief, Current Planning & Development Division, Office of Planning and Zoning, entitled "Interim Critical Areas Requirements for Baltimore [County]."

The Bober memo includes an outline of the informational requirements. The requirements can be divided into two categories: (1) baseline environmental data and (2) information on the environmental impact of the developer's plan. Before any formal review of a developer's plan can be taken by Baltimore County, the developer must submit the baseline environmental data.

The baseline environmental information includes (1) a description and mapping of the critical areas boundary; (2) a mapping of the water depth within 50 feet of the shoreline; (3) a description of the shoreline rates of erosion; (4) a mapping of the shoreline erosion control structures; (5) an analysis of

of surrounding soil, including a description and identification of wetlands soil, drainage patterns, and the site's soil erodibility and permeability characteristics; (6) a mapping of the topography, underground and surface waters, floodplains and the site's unique features; and (7) a description and mapping of plant, fish and wildlife habitats.

The description and mapping of the plant habitats should include a mapping of submerged aquatic vegetation (SAV) and a description of species composition and extent. It should also include a mapping of (1) the different vegetative habitats and a description of the plant communities and associations; (2) the presence of rare or endangered species; (3) the presence of significant coastal species; (4) the vegetation lawyers; (5) the successional stage vegetation; (6) any unique vegetation; and (7) the approximate acreage of each habitat type.

The description and mapping of the fish and wildlife habitats should be made in terms of (1) the availability and suitability of food and cover; (2) the continuity of habitats to determine corridor effects; (3) the actual or potential presence of coastal/Bay species; (4) the presence of rare or endangered species; (5) the quality of nesting, breeding or nursery sites; and (6) the migrational stopovers. Fish and wildlife is defined by the Bober memo to include finfish, crustaceans, mollusks, mammals, birds, amphibians and reptiles.

The environmental impact information includes (1) a description and mapping of the impervious surfaces; (2) a de-

description of the water quality, including a description of the extent and types of pollutants likely to occur because of the development, a detailed analysis of the impacts that the pollutant loadings will have on water quality and habitats, and a description of the effects that the velocity and volume of stormwater will have on water quality and habitats; and (3) a detailed comprehensive summary of the measures the developer will take to minimize run-off, soil erosion, sedimentation, population pressure and other adverse impacts. The summary of the mitigative measures should include a discussion of the stormwater management alternatives, a discussion of the sediment control practices to be implemented and a discussion of environmental protection design measures.

In addition to supplying the baseline environmental information and the environmental impact information, a developer may have to submit additional information depending on the site or the project characteristics. All three of these categories of information must be submitted in what is termed a "Critical Areas Information Text." This, according to the definition provided in the Bober memo, "is a written report describing the requested environmental information." The developer also has to submit a "Critical Areas Information Map," which is a map of the site detailing the requested environmental information. Bober memo, Critical Areas Information, Outline, page 1.

As is made abundantly clear by the Bober memo and the Critical Areas Information Requirements, the Everings cannot satisfy the requirements of Section 8-1813 merely by offering

expert testimony. Indeed, in order to satisfy Section 8-1813 and the additional informational requirements delineated by Baltimore County, the Everings would have to undertake an extensive and highly technical examination of the environment surrounding their land and would then have to submit the results of this examination in the form of the Critical Areas Information Text and Map. Moreover, the Baltimore County Office of Planning and Zoning has indicated that any testing or examination of a critical area must be conducted during the summer months. This is so because the ecosystem of the Bay varies dramatically from summer to winter. The levels of oxygen, nitrogen, phosphorous and toxic substances differ drastically in the summer. The requirement of a summer examination is even more appropriate in the case of a marina, a land use which has the greatest effect on the ecosystem during the summer months.

There is no indication that the Everings have met the informational requirements. They, apparently, have not submitted either the baseline environmental data or the environmental impact information. Nor have they submitted the required Critical Areas Information Text and Map. Nor, for that matter, does it appear that they have undertaken the type of thorough examination of the surrounding environment contemplated by the drafters of the Baltimore County Critical Areas Information Requirements; and, furthermore, even if the expert testimony offered by the Everings reveals that an examination of the surrounding environment was conducted, this examination would not be valid because

it was not taken during the summer months. Finally, because of the uniqueness of the marina, Baltimore County will, no doubt, require the Everings to submit additional information regarding the impact of the marina on the environment. A hint of this required information was given in a September 7, 1984 letter from Paul Solomon, Current Planning & Development Division, Baltimore County Office of Planning and Zoning, to Frank S. Lee, a surveyor hired by the Everings to draw up the plans for the expansion and reshaping of their marina.

In the Solomon letter, Paul Solomon writes "the County needs a very detailed, comprehensive analysis in order to determine the impact of the proposed marina on water quality." He then lists five areas of additional information "deemed necessary" by the County before it can determine whether the proposed expansion meets the Section 8-1813 Critical Area Requirements:

"1. Existing water quality in Frog Mortar Creek in the immediate adjacent and downstream area. Testing should be performed for biological, chemical and other properties which will in any way be affected by the proposed marina.

2. Identify the types, amounts and sources of pollutants that will be generated by the full range of activities of the proposed marina. Determine what absolute amounts of these pollutants will directly or indirectly flow into Frog Mortar Creek. Indicate the effect of mitigating measures on both the amount and impacts of the identified pollutants.

3. Determine or assess the anticipated overboard discharge of wastes (including oil products) from the boats utilizing the marina and its effect on water quality and biota from any turbidity created by boat propellers and generated wave action.

4. Survey of the biota of Frog Mortar Creek or Middle River for the area that you determine may be impacted by the proposed marina. Assess any impacts from the proposed marina on the identified biota. The biota is to be interpreted in a broad sense including both flora and fauna.

5. Rate of flushing or exchange rate in Frog Mortar Creek adjacent to the site."

Paul Solomon, in the same letter, also directed Frank S. Lee to submit the baseline environmental data and the environmental impact information. All three categories of information (baseline, impact and additional), Paul Solomon wrote, should be obtained through "methods which are generally accepted as the state of the art with respect to reliability, accurancy and completeness." The Office of Planning and Zoning then withheld consideration of the Everings' Petitions until such time as the Everings provided the required information. See Inter-Office Correspondence between Norman E. Gerber, Director, Office of Planning and Zoning, and Arnold Jablon, Zoning Commissioner, September 7, 1984.

As the Everings have not conducted the proper tests during the summer months, have not submitted the required Critical Area Information Text and Map, and as merely offering expert testimony will not satisfy the Section 8-1813 requirements or the Baltimore County Informational Requirements, the Everings' Petitions should be denied.

THE PROPOSED EXPANSION AND RESHAPING OF THE EVERINGS' LAND WILL ADVERSELY AFFECT THE SURROUNDING ENVIRONMENT AND WILL CONTRIBUTE TO THE DECLINE OF THE CHESAPEAKE BAY'S ECOSYSTEM

As the Everings requested a hearing on whether they had met the requirements of Section 8-1813 of the Chesapeake Bay Critical Area Protection Program on December 18, 1984, the Protestants, like the Everings, have not had the opportunity to study and examine the environment surrounding the Everings' land

during the summer months, the time the Baltimore County Office has designated as the proper time for such studies. Therefore, the Protestants, like the Everings, cannot possibly offer extensive data on the environmental impact of the proposed expansion and reshaping of the Everings' land. Still, the Protestants would like to offer evidence that the proposed expansion and reshaping of the Everings' land will have an adverse impact on the surrounding environment.

The Everings' land, located in the Frog Mortar Creek/ Middle River area, is in a part of the Chesapeake Bay which various national studies, most notably the Environmental Protection Agency's Chesapeake Bay Program (CBA), have designated as a highly sensitive, perhaps even a critical, area. The Everings' land, for example, is in an area of the Bay which is heavily enriched with nutrients, mostly nitrogen and phosphorous.

While nutrients are crucial to the ecosystem of the Bay, an overabundance of nutrients, often called nutrient enrichment, causes serious environmental problems.

> "Nutrient enrichment occurs when extensive additions of nitrogen and phosphorous compounds enter the water. Enrichment can lead to undesirable consequences such as phytoplankton blooms, depletion of oxygen and changes in kinds of fish present. When an estuary, such as [the] Chesapeake Bay, becomes nutrient-enriched, algae can thrive and accumulate in the water column. Their presence decreases light transparency, and, when they degrade, they use up dissolved oxygen that other plants and animals need."

Chesapeake Bay Program Technical Studies: A Synthesis, (E.P.A. Sept. 1982) p. 2 (hereinafter "Technical Studies"). The CBA has designated riverine sources as the major contributor of nitrogen and phosphorous to the Bay. Id, p. 4.

The Frog Mortar Creek/Middle River area is also in the part of the Bay which has the highest concentration of inorganic and organic toxic substances. Technical Studies, p. 7. "In the main Bay, the highest metals concentrations in sediment occur in the northern Bay and particularly near the western shore [the area which includes Frog Mortar Creek] where cadmium, cobalt, copper, manganese, nickel, lead and zinc are enriched...two to eight times above natural levels." Id. Human sources are responsible for "[a]t least half of the metal loads for chromium, cadmium, copper and lead." Id.

One of the major human sources of toxic substances is what is termed urban runoff. It is anticipated that the urban runoff from the Everings' land will drastically increase if the plans for the expansion and reshaping of the marina are approved. According to their Petition, the Everings plan to expand the parking facilities of their marina. Automobiles generate various toxic substances, many of which drip out of the engine and exhaust system while an automobile is parked. Even the most cursory examination of a parking lot or driveway will reveal an array of toxic substances: splotches of oil, spots of coolants, puddles of exhaust emissions. When it rains, a macadam or compacted stone surface prevents these substances from perculating through the soil, which acts as a cleansing filter, and, instead, the substances are carried by the rainwater. In the case of the Everings' marina, the substances would be carried into Frog Mortar Creek. Automobiles also send pollutants, especially lead, into the air and these also find their way into

the Bay's ecosystem. See Chesapeake Bay Program: Findings and Recommendations (E.P.A. September 1983), page 33, (hereinafter "Findings and Recommendations").

It is also anticipated that the Everings' marina, if expanded and reshaped, will contribute pollutants and toxic substances to the Bay through the overboard discharge of wastes from the boats using the marina. See Paul Solomon letter. These will, no doubt, include human excrement and oil wastes from motor boats. Using a portion of the marina as a boatyard to repair boats will also generate similar wastes which will flow directly into Frog Mortar Creek. Finally, the expansion and reshaping of the Everings' land will adversely affect the Bay's delicate environment because of the expected increase of week-end human activity and population. This increase, no doubt, will produce a corresponding increase in pollutants and toxic substances.

The Frog Mortar Creek/Middle River area also has a low level of dissolved oxygen and little submerged aquatic vegetation (SAV). The low level of dissolved oxygen, the small amount of SAV and the high concentration of nutrients are all closely related. Briefly, the nutrients foster the "growth of undesirable weed-like plants such as blue-green algae." These undesirable plants decrease the level of dissolved oxygen because they reduce the light available to other desirable floating and rooted aquatic plants, thus preventing photosynthesis. See Findings and Recommendations, page 25. Without light and dissolved oxygen, the submerged aquatic vegetation declines.

> "The severity of [this] decline is heightened by the importance of SAV to the vitality of the Bay. The Bay grasses are vitally important to the Bay because of their value as large primary producers, food sources for waterfowl, habitat and nursery areas for many commercially important fish, controls for shoreline erosion and mechanisms to buffer negative effects of excessive nutrients."

Technical Studies, page 12. An increase of the turbidity of the water has been sited as a source of SAV decline. Id. p. 14-15.

It is anticipated that the expansion and reshaping of the Everings' marina will further contribute to the decrease in the levels of dissolved oxygen and to the decline of the SAV. The repositioning of the piers will reduce the availability of light and will affect the natural flow of the water, thus increasing the water's turbidity. If power motorboats are used in the water, their propellors will also increase the turbidity. See Paul Solomon letter.

Because of the fragile ecosystem of the area surrounding the Everings' land, an ecosystem which has been placed in peril by generations of abuse, and the evidence that the expansion and reshaping of the Everings' land will adversely affect that ecosystem, the Everings' Petitions should be denied.

CONCLUSION

The Chesapeake Bay Critical Area Protection Program applies to the Petitions filed by the Everings because their land is in a critical area and does not fall within the two recognized exclusions. The Everings have not met the requirements of Section 8-1813 of the aforementioned Act because they have not con-

ducted a reliable examination of the environment during the summer months or submitted the required Critical Areas Information Text and Map. And, the proposed expansion and reshaping of the Everings' land will adversely affect the surrounding environment and further contribute to the decline of the Chesapeake Bay's ecosystem.

Respectfully submitted,

T. Rogers Harrison
Mudd, Harrison & Burch
306 West Joppa Road
Towson, Maryland 21204
828-1335
Attorneys for Ken Engelke, et al

12-19-84

IN RE:	*	BEFORE THE
Petition for Special Exception, Petition for Special Hearing and Petition for Variances of North side of Chester Road, Joseph F. Evering, et ux	*	ZONING COMMISSIONER
	*	OF
	*	BALTIMORE COUNTY
	*	85-65-H-XSPHA

*** *** *** *** *** *** *** ** * ** *** *** *** *** *** ***

MOTION FOR HEARING

NOW COMES, LONG BEACH MARINA and JOSEPH F. EVERING, JR., by John O. Hennegan, ROMADKA, GONTRUM, HENNEGAN & FOOS, their attorneys and request the following:

1. That a Hearing be set at the earliest possible date for the Petitioner to present expert testimony.

2. That the Hearing be limited to determine whether or not the proposed development will (a) minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have runoff from surrounding lands; (b) the applicant has identified fish, wildlife and plant habitat which may be adversely affected by the proposed development and has designed the development so as to protect those identified habitat whose loss would substantially diminish the continued ability of populations of affected species to sustain themselves.

ROBERT J. ROMADKA
ATTORNEY AT LAW
ESSEX, MARYLAND

3. That the Hearing also be set to determine whether or not this proposed development is subject to Section 8-1801 through 8-816 entitled Chesapeake Bay Critical Area Protection Program of the Natural Resources Article of the Annotated Code of Maryland.

WHEREFORE the Petitioner prays that this matter be set in for a Hearing to take testimony concerning the aforesaid items.

John O. Hennegan
ROMADKA, GONTRUM, HENNEGAN & FOOS
809 Eastern Boulevard
Baltimore, Maryland 21221
Phone No.: 686-8274

Attorneys for the Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of December, 1984, a copy of the aforegoing Motion for Hearing was mailed to D. Rodgers Harrison, Mudd, Harrison and Birch, 306 West Joppa Road, Towson, Maryland 21204, attorneys for the Protestants.

John O. Hennegan

ROBERT J. ROMADKA
ATTORNEY AT LAW
ESSEX, MARYLAND

12-19-84 1/1294

1/2/84 FYI to Gerber-Hackett & John Solomon

LAW FIRM

Romadka, Gontrum, Hennegan & Foos

GERMANIA FEDERAL BUILDING
809 EASTERN BOULEVARD
ESSEX, MARYLAND 21221
TELEPHONE (301) 686-8274

DEC 21 8 AM

ROBERT J. ROMADKA
JOHN B. GONTRUM
JOHN O. HENNEGAN
CHARLES E. FOOS, III

OF COUNSEL
ALFRED M. WALPERT

December 18, 1984

Mr. Arnold Jablon
Zoning Commissioner
OFFICE OF PLANNING AND ZONING
County Courts Building
Towson, Maryland 21204

Reference: Case Number 85-65-H-XSPHA
Joseph F. Evering, Jr., Petitioner
etux

Dear Mr. Jablon:

Enclosed you will find the Motion for Hearing to be filed in the above captioned case. If you have any questions, please do not hesitate to contact me.

Thank you for your assistance in this matter.

Very truly yours,

John O. Hennnegan

JOH/dlw

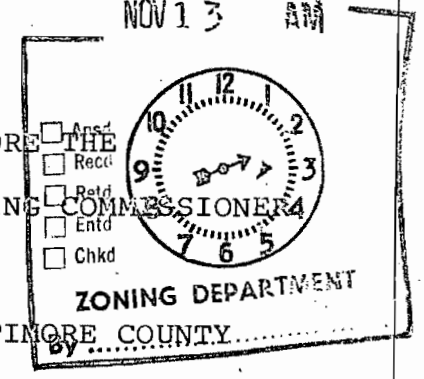
Enclosure

cc: T. Rogers Harrison, Esquire
Mr. Joseph F. Evering, Jr.

11-13-84

11/13/84
D

NOV 13 AM



85/1093
case file

IN RE: * BEFORE THE

Petition for Special Exception * ZONING COMMISSIONER
Petition for Special Hearing
Petition for Variances * OF
N/S Chester Road, 590' W of
Severn Road (800 Chester Road) * BALTIMORE COUNTY

JOSEPH F. EVERING, JR., et ux * Case No. 85-65-XSPHA

Petitioners *

* * * * * * * * *

PROTESTANTS' REPLY TO PETITIONERS' MEMORANDUM

Ken Engelke, et al., the Protestants, by their attorney, T. Rogers Harrison and Mudd, Harrison & Burch, submit this Memorandum in reply to the Memorandum submitted by the Petitioners, Joseph F. Evering, Jr., and his wife, Catherine.

Description of Land

The Protestants adopt the description of the land set forth in their original Memorandum.

Statement of Facts

The Protestants adopt the Statement of Facts set forth in their original Memorandum.

Statement of the Law

I. Vested Rights

Both the Protestants and the Petitioners apparently agree that the primary issue in this case is whether the Everings met the requirements of the second paragraph of Section 502.3 of the Baltimore County Zoning Regulations (1981 and 1983 Supplements). The requirements of that paragraph are twofold: (1) The Petitioners must commence construction within the authorized time period; and (2) they must pursue that construction to com-

pletion with reasonable diligence. The Petitioners argue that they have acquired a vested right because they have in good faith made a substantial change of position in relation to the land and have substantially altered their own position by making substantial expenditures. Each of these contentions is without merit, both factually and legally.

First, the Petitioners have not made a substantial change of position in relation to the land. It is their contention that they constructed a swimming pool, showers, and a sanitary house on the Brown parcel, drove in pilings for the bulkhead, stored marine craft on the Brown parcel, graded the land, laid stone for the parking areas, and obtained building permits for the three piers. The only construction, according to the Petitioners, which they did not pursue was the three Brown parcel piers.

Attached to this memorandum is a photocopy of four aerial photographs of the Everings' land taken in the late summer of 1984. Comparing these photographs to the 1967 site plan and the 1955 plat reveals that the 1984 Evering land more clearly resembles the 1955 plat than the 1967 site plan. Contrary to what the Petitioners allege, the construction of the three Brown parcel piers was not the only construction which they did not pursue. It is evident that the Petitioners did not extend Chester Road, did not build the bulkhead and did not fill in and extend the Brown parcel. It is also apparent that very little, if anything, was done to the land to convert it into a parking lot. The color versions of the photographs demonstrate that the so-called parking area is covered by grass, and not macadam as

required by the 1967 site plan. Indeed, the Petition for Zoning Variance filed by the Petitioners in August 1984 recognizes the fact that the parking areas do not conform with the 1967 site plan. It is also not true that the Petitioners built the showers and sanitary house on the Brown parcel in accordance with the 1967 site plan: That plan plainly shows that the sanitary house was an existing structure. While the Petitioners might have modified or altered the house, they certainly did not built it from scratch.

What the aerial photographs do demonstrate is that since 1967 the Petitioners have driven in pilings for the bulkhead and have built a pool. They also show that the Petitioners currently store marine craft on the land. In their Memorandum of Law, the Petitioners acknowledge that they abandoned the plans to build the three Brown parcel piers. The photographs suggest that when these plans were abandoned, the Petitioners also abandoned their plans to use the Brown parcel as a boatyard in accordance with the 1967 site plan and the underlying 1964 Special Exceptions.

It cannot be argued that driving in a few piling and building a pool secured the Petitioners a vested right to use the 1964 Special Exception. The actions alone or together would not meet the test in Rupp v. Earl H. Cline & Sons, 230 Md. 573, 578, 188 A.2d 146 (1963). While it may be true that the Petitioners built a pier off the south end of the original Evering parcel and a workshop on that piece of land within five years of the 1964 Special Exception, these structures relate to the 1955

Special Exception, not the 1964 Special Exception. As they were built on the original Evering parcel, they certainly would not have advised the neighborhood that the Everings were planning to use the Brown parcel as a boatyard. In addition, merely obtaining building permits for the piers would not create a vested right without substantial construction. See Rockville Fuel & Feed Co. v. Gaithersburg, 266 Md. 117, 291 A.2d 672 (1972).

Even if driving in the pilings and building the pool constitutes a readily recognizable construction beginning, the Petitioners have still failed to meet the second requirement of BCZR 502.3: They have not, in the words of the statute, pursued the construction to completion with reasonable diligence. And, in fact, they admit in their Memorandum that they abandoned their plans to build the Brown parcel piers. As evidence demonstrates that they also abandoned their plans to implement the 1967 site plan and the underlying 1964 Special Exception, it cannot be argued that they have pursued converting the Brown parcel into a boatyard with reasonable diligence.

The Petitioners, in addition to arguing that they substantially altered the land, advance the position that they acquired a vested right because they have materially altered their position by making substantial expenditures. They argue that "many other criteria outside of construction should be considered when determining the issue of whether or not a land owner [sic] has a vested right." In support of their position, they site what they term the "majority rule." This rule, taken from

Rathkopf, The Law of Zoning and Planning and badly misquoted by the Petitioners, see 3 Rathkopf, The Law of Zoning and Planning, 57-6 (4th ed. 1976); Steuart Petroleum Co. v. Board of County Commr's, 276 Md. 435, 347 A.2d 854 (1975); Ross v. Montgomery County, 252 Md. 497, 250 A.2d 635 (1969); has never been adopted by the Maryland courts. Indeed, the Court of Appeals in County Council v. District Land, 274 Md. 691, 337 A.2d 712 (1975) specifically rejected Rathkopf's formulation of the rule as a statement of the majority rule in Maryland.

While the Rathkopf passage has been cited by Maryland Courts with approval, it is considered only a general principle. See Ross, 252 Md. at 506. The rule followed in Maryland is somewhat stricter. See Rockville Fuel, 266 Md. 117. Contrary to what the Petitioners contend, substantial expenditures or a material change of position without a substantial construction beginning will not create a vested right. See County Council, 274 Md. 691, 707, and cases cited therein. Moreover, the Petitioners' position that construction is not the only criteria which should be considered in deciding whether they have acquired a vested right ignores the plain language of B.C.Z.R. Sec. 502-3.

II. The Constitutionality of B.C.Z.R. Section 502-3.

The Petitioners argue, basically, that B.C.Z.R. Section 502-3 is unconstitutional because it is arbitrary, unreasonable, capricious or discriminatory and deprives the Petitioners of the use of their land. They cite Northwest Merchants Terminal, Inc. v. O'Rourke, 191 Md. 171, 60 A.2d 743 (748).

The O'Rourke case bears absolutely no resemblance to the Evering situation. O'Rourke concerned a change from one entire zoning classification to another after the commercial use had been established. Furthermore, O'Rourke is a classic example of "a special law for a special case:" The sole basis for the zoning change was an amendment which was passed specifically to restrict the owner from using his land for any reasonable purpose. See Rockville Fuel, 266 Md. 117, 128-131 [distinguishing O'Rourke].

In the Evering situation, as in Rockville Fuel, there is no "special law for a special case." Section 502.3 was not passed solely for the purpose of preventing the Petitioners from using their land. The Evering situation is not a case of a "plebiscite of the neighbors." See Steuart Petroleum, 276 Md. 435, at 445, and cases cited therein.

The Petitioners, apparently combining a claim that Section 502-3 represents an unconstitutional taking of their land with their argument that Section 502-3 is an unconstitutional exercise of the State's police power, also argue that a ruling that the 1964 Special Exception was abandoned would amount to an unconstitutional taking which "would restrict the Petitioner[s] from using the property for any other reasonable purpose." The Petitioners allege that "the only permissible use in a D.R.5.5. zone as a matter of right" is residential development and that the Noise Act of Maryland would permit only a recreational use.

In order to prove an unconstitutional confiscation, it must be shown that the landowner "has been deprived of all

reasonable use of his property and that it cannot be used for any of the permitted uses in the existing zone." Stratakis v. Beauchamp, 268 Md. 643, 652, 304 A.2d 244 (1973). Evidence of mere financial hardship is "insufficient to establish that there is no reasonable use for [the] property..." Id. And [i]t is not enough for the property owners to show that the zoning action results in substantial loss or hardship." Mayor & City Council of Baltimore v. Borinsky, 239 Md. 611, 622, 212 A.2d 508 (1965). Finally, it should be noted that the burden of establishing "an unconstitutional taking is a heavy one." Franklin Constr. Co. v. Welch, 251 Md. 715, 248 A.2d 639 (1968).

The Petitioners misapply the law governing the unconstitutional taking of land. First, Section 502-3 does not amount to a taking of the Petitioners' land. The land can still be used for residential development. The notion that denying the Petitioners' the right to use the 1964 Special Exception would amount to a taking because the Noise Act of Maryland would allow only recreational uses is totally without merit; if anything, the Petitioners' argument reveals that it is the Noise Act and not Section 502-3 which amounts to an unconstitutional taking. Moreover, even if the Petitioners cannot use the Brown parcel for residential development, special exceptions are available in the D.R.5.5. zone; therefore, the Petitioners cannot be said to be deprived of all reasonable uses. See Trainer v. Lipchin, 269 Md. 667, 309 A.2d 468 (1973).

III. The Scope of the August 1, 1984 Petition for Special Exception

The Petitioners argue that the Petition for Special Excep-

tion for the south and north parking parcels filed on August 1, 1984, encompasses the entire Evering land because the "advertised description advertised the entire parcel of land" and, therefore, the Zoning Commission can grant the Special Exception and ratify "what was previously granted, including the additional piers requested by the Petitioner[s]." They cite Amberly Community Association v. Board of Appeals, 229 Md. 261, 182 A.2d 811 (1962) for the proposition that "[e]vidence of granting a prior application for special zoning exception which had lapsed... may properly be admitted at a hearing before the Zoning Commisioner on subsequent application for an exception involving the same property." (Emphasis added.)

The August 1, 1984, Petition for Special Exception involves the north and south parking parcels, not the Brown parcel; therefore, under the proposition stated by the Petitioners, evidence that the 1964 Special Exception was granted would not be admitted because the 1984 Petition for Special Exception does not concern the same property. Furthermore, the Petitioners fail to recognize that if the 1964 Special Exception has expired, the factual foundation on which the August 1, 1984 Petitions for Special Exception, Special Hearing and Variances rest is substantially altered. Certainly the Petitioners cannot be allowed to revive the 1964 Special Exception by bootstrapping it up with the 1984 Petitions.

Conclusion

The Petitions for Special Exception, Variance and Special Hearing should be denied.

Respectfully submitted,

T. Rogers Harrison
Mudd, Harrison & Burch
306 West Joppa Road
Towson, Maryland 21204
828-1335
Attorneys for Ken Engelke, et al

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of November 1984, a copy of the PROTESTANT'S REPLY TO PETITIONERS' MEMORANDUM was mailed, postage prepaid, to John O. Hennegan, Esquire, 809 Eastern Boulevard, Baltimore, Maryland 21221, the attorney for the Petitioners.

T. Rogers Harrison

10-31-84

IN RE:	*	BEFORE THE
Petition for Special Exception, Petition for Special Hearing and Petition for Variances of North side of Chester Road, Joseph F. Evering, et ux	*	ZONING COMMISSIONER
	*	OF
	*	BALTIMORE COUNTY
	*	85-65-H-XSPHA

*** *** *** *** *** *** *** ** * ** *** *** *** *** *** ***

MEMORANDUM OF PETITIONERS

The Petitioner herein, Joseph F. Evering, et ux, has filed a petition for Special Hearing requesting the Zoning Commissioner to approve an amendment to the site plan in Case number 64-57 SPH, 64-160 X and 35-35 X to construct an addition to the piers; to remove restriction number 1 and 3 in Case number 64-57 SPH to allow marine craft to be stored within 20 feet of the eastern most property line and to request a variance to the parking; to remove restriction number 1 and 6 in Case number 64-16DX to allow major repairs on the premises and in the waters and to change the times and days a week in years that repairs will be permitted; also to determine that a boat yard, related parking or other structures devoted to the civic, commericial and recreational activities and are therefore exempt from residential, transitional requirements set out in Section BO 1.1, BO 1.C.9 and or 10. Secondly, the Petitioners filed a Petition for Special Exceptions under the Zoning Law and Zoning Regulations of Baltimore County to use the two lots located on north and south side of Chester Road not included in Special Exception cases 35-35 X, 64-57 SPH, 64-160 X in a DR 5.5 zone, to be used as a boat yard including the road bed of Chester Road. Thirdly, Petition for Variance was filed from Section 409.2.C (2) to allow existing compact stone in lieu of requirement macadam paving and from 409.2.B to allow three hundred and eighteen (318) in lieu of the required three hundred and eighty-four (384), in the event that Special Exception is

LAW FIRM
ROMADKA, GONTRUM,
HENNEGAN & FOOS
ESSEX, MARYLAND
21221

granted to allow three hundred and sixty-three (363) parking spaces in lieu of the required three hundred and eighty-four (384); and a variance from Section 417.5 (a) requiring a structure not to exceed three hundred feet (300') beyond the mean low tide, to allow the structure to exceed four hundred and nineteen feet (419) beyond the mean low tide. Filed along with the various Petitions was a site development plan revised and dated 8/1/84 which is entitled "Plat to accompany Petition for Special Exception, Special Hearing and Variances".

STATEMENT OF FACTS

The facts of the case indicate that in 1954 Petitioners purchased a piece of land off of Chester Road in Baltimore County, Maryland, and in 1955 filed a Petition requesting a Special Exception to use the land for a boat yard, case #35-35 X. As a result of said petition on the 6th day of June 1955 it was ordered by the Zoning Commissioner of Baltimore County that the Petition for Special Exception was granted for the purpose of slip-rental services and services to a boat yard and slips only. As a result the property was developed which resulted in the construction of a repair shop, a travel lift, train railway, office, restrooms, paving, grading and servicing of a parking lot along with approximately one hundred and sixty-five (165) slips including a gas pier.

The operation was continued as a boat yard, slips were rented and marine craft were stored on land without difficulty from that period on. In March 9th, 1964 the Petitioner, by necessity, filed a Petition for a Special Hearing to determine what use the Petitioner was entitled to as a result of the June 6th, 1955 granting the special exception which resulted in the Petitioner being granted a right to store marine craft on land. In addition, Petitioner filed a Special Exception in 64-160 X for some one and three quarter (1-3/4) acres situated on the north side of Chester Road six hundred twenty-five feet (625')

LAW FIRM
ROMADKA, GONTRUM,
HENNEGAN & FOOS
ESSEX, MARYLAND
21221

Severn Road in the Fifteenth (15th) Election District for permission to build and develop said property as a boat yard. As a result of testimony, said Special Exception was granted on the 30th day of June 1964 subject to restrictions and approval of a site plan by the Bureau of Public Services and Office Planning and Zoning, which site plan was approved on 1/16/67 for the construction of a pool,bath house, showers, barge and additional piers. Subsequent to the granting of Special Exception, the Petitioner obtained permits and approval from Baltimore County, the Office of Planning and Zoning to construct said improvements and in fact engaged in doing so. The Petitioner constructed a pool on the parcel subject to Special Exception 64-160 X along with bath house, showers, graded said lot and surfaced it, stored marine craft on said lot along with parking and began construction of a bulk head along with the construction of the repair shop barge and additional thirty-six (36) rental slips. The Petitioner was unable to complete the construction of the remaining piers due to economic conditions then existing and depth of the waters in that area. A gas shortage and the trend from power boats to sail boats and the depth of the water which was insufficient to or was insufficient for the maintenance and storage of sailing craft caused the Petitioner to reconsider the viability of locating piers in that area.

The Petitioner continued to use the total site as a boat yard including the use of the pool and bath house for the customers of said boat yard along with the storage of craft on the property subject to 64-160 X, 35-35 X and 64-57-SPH for the benefit of the customers of the boat yard along with parking for automobiles and the facilities on said site for the repair and maintenance of marine craft up until the present time.

LAW FIRM
MADKA, GONTRUM,
NNEGAN & FOOS

ISSUE

The issue to be addressed is the application of Regulation 502.3, second paragraph:

> "A special exception which requires any construction for utilization shall be deemed to have been used within its authorized time, if such construction shall commence during the authorized period, or any extension thereof, provided said construction is thereafter pursued to completion with reasonable diligence."

STATEMENT OF LAW

I. VESTED RIGHT

In order for the Petitioner to comply with Section 502.3 of the Zoning Rules and Regulations he must have vested rights from said special exception in order to be protected against a subsequent change in Zoning Ordinance prohibiting or limiting the use.

Vested right is a right to initiate or continue the establishment of a use or construction of a structure which when completed will be contrary to the restrictions or regulations of the Zoning Ordinance or an amendment to it which has become effective in the meantime. Particular use or structure will continue after the effective date of the Ordinance or amended as a vested right. 4 Rathkopf, the Law of Zoning and Planning, 50-2. Rockville Fuel and Feed Company vs. City of Gaithersburg, 266 Md. 172, 291 A2nd 672, 1972 case and in Richmond Corporation vs. Board of County Commissioners of Prince George's County, 254 Md. 244, 255 A2nd 398, 1969 general law in regard to vested rights and existing zoning use was reviewed in Maryland and stated:

> "In Maryland it is established that in order to obtain a vested right in the existing zoning use which will be constitutionally protected against the subsequent change in the Zoning Ordinance prohibiting or limiting that use, the owner must (1) obtain a permit or occupancy certificate where required by the applicable Ordinance and (2) must proceed under that permit or certificate to exercise on the land involved so that the neighborhood may be advised that the land is being devoted to that use."

LAW FIRM
ROMADKA, GONTRUM,
HENNEGAN & FOOS
ESSEX, MARYLAND
21221

It is clear that Building permits having been obtained by the Petitioner satisfying requirement one (1) as set out in the above cited cases. As a result, we must direct our attention to the second requirement of Rockville Fuel and Feed Company and Richmond Corporation, supra, which is whether or not the Petitioner proceeded under that permit or certificate to exercise it on the land involved so that the neighborhood may be advised that the land is being devoted to that use. In accordance with the site plan that was approved 1/16/67 and the building permits that were issued the Petitioner proceeded with construction in accordance with the Special Exception that was granted to him on the 30th day of June 1964 in case number 64-168 whereby he constructed a swimming pool, showers and sanitary house on the one and three quarter (1-3/4) acres situated on the north side of Chester Road, drove in pilings for bulk head, stored marine craft on land and permitted and did repairs on pleasure craft on said land, property was graded and stone was laid for parking and access to and from said site. In addition, across from said site and in accordance with the approved site plan a repair shop barge was constructed along with an additional thirty-six (36) piers. The only construction which was not pursued by the Petitioner was the three (3) piers in front of the parcel and the Petitioner testified that to construct said piers would have been in fact economically detrimental and environmentally harmful, since the piers would not have been used due to the shift from power boating to sail boating and the depth of the waters in which those piers were to be located was not at all suitable for sail boating.

It certainly can not be argued that the Petitioner did not obtain building permits required, that he proceeded under the permit to exercise his right on the land by substantial to beginning construction so that the neighborhood was advised as to the intended land use. The intended land use has been for

LAW FIRM
ROMADKA, GONTRUM,
HENNEGAN & FOOS
ESSEX, MARYLAND
21221

twenty (20) years more or less as a boat yard in accordance with the Special Exception that was granted along with pool facilities and a bath house, for use of those customers that rent slips from the Petitioner. The Petitioner has in good faith made substantial change in relation to the land and has made substantial expenditures and construction by increasing the number of slips, constructing repair facilities and recreational facilities that were available to his customers in addition to land being used for parking and marine craft storage.

The Majority rule which can be synthesized from the multitudinous decisions in this area may be stated as follows:

"A land owner will be held to have acquired a vested right to continue the construction of a building or structure to initiate and continue a use to spite a restriction or certain ordinance where, prior to the effective date of the ordinance, in reliance of a permit thereto validly issued, he has in good faith, made a substantial change of position in relation to the land, made substantial expenditures, or has incurred substantial obligations ***" (252 Md. at 506, 250 A.2nd at 640). See also Board of County Commissioners of Anne Arundel County vs. Snyder, 186 Md. 342, 46 A.2nd 689 (1946) and Mayor and City Council vs. Shapiro, 187 Md. 623, 51 A.2nd 273 (1947) and also quoted with approval, from(2) Rathkopf, the Land for Zoning and Planning (third [3rd] edition, chapter 57, Section 3 at 57-6 to 57-7. To deprive the Petitioner of a Special Exception in 64-160 X since he has not constructed three (3) piers which are economically and environmentally not feasible as previously stated and to hold that he did not pursue to complete the construction with reasonable diligence when in fact the only matter remaining is the construction of the three (3) piers which are in fact as previously stated not feasible would be flying in the face of the spirit of Section 502.3 and depriving the Petitioner of the use of his land.

LAW FIRM
ROMADKA, GONTRUM,
HENNEGAN & FOOS
ESSEX, MARYLAND
21221

It certainly seems that one of the key issues as cited in the cases referred to above and in O'Donnell vs. Blaser, 425 A2nd, 1003 289 Md. 501, 1981, is that the owner make a substantial change of position in relation to land that is to be committed to the use for which the special exception or the permits were obtained and that good faith be exercised by the developer. The passage of time alone is not necessarily the main criteria for lapse of permits or a Special Exception and certainly the two elements referred to above cry out for recognition in this particular case and any argument that the parcel on the north side of Chester Road has not been substantially committed to the use as a boat yard in accordance with the Special Exception in 1964 would be far reaching. To support the argument that time is not necessarily the criteria for lapsing the Petitioner sites Putnam Armonk, Inc. vs. Town of Southeast 382 NYS2nd 538 which is a New York case where a developer built half the homes that he was permitted to construct pursuant to his permit and during construction water and sewer problems developed and no new construction took place for fifteen (15) years. The court held that developers right to complete development of a tract despite later changes in the zoning ordinance did not terminate through the simple passage of time. The court indicated that you should consider:

1. Whether or not the rights of the developer have been abandoned.

2. Whether the owner has recouped the financial investment providing for the basis for the right to complete the development.

3. Have any contravening considerations of public health, safety and welfare supervened during the period when the right and issue has not been used.

LAW FIRM
ROMADKA, GONTRUM,
HENNEGAN & FOOS
ESSEX, MARYLAND
21221

Further, the Petitioners' argue that they have materially altered their position as a result of the granting of the Special Exception by constructing a pool, showers and bath house on the property and using the property to store boats, for parking and for the minor repair of marine craft which his customers rely on; they also have constructed the additional piers and the repair barge, and as a result have substantially altered their position thereby acquiring a vested right in the Special Exception of 1964. When such acts occur a vested right is acquired if the land owner has materially altered his position usually by commencement of construction before the zoning class is changed or permit is revoked, Mayor and City Council of Baltimore vs. Crane, 352 A2nd 786, 277 Md. 198, 1976. the above cited case obviously by using the word "usually" supports the Petitioners' position that many other criteria outside of construction should be considered when determining the issue of whether or not a land owner has a vested right.

The Protestants argue that the

> "southern pier is built within the property boundaries of the original Evering parcel and therefore relates to the 1955 Special Exception, not the 1964 Special Exception. The Everings could have built the southern pier at any time after the 1955 Special Exception was granted. It's mere inclusion in the 1967 site plan which included both the Brown and the original Evering parcels, does not make it part of 1964 Special Exception.

Though it is clear the Petitioner has argued that the construction of that pier along with the repair shop barge are to be considered as part of the substantial construction and expenditures pursuant to the granting of the 1964 Special Exceptions, the Petitioners do not at this time wish to contest

LAW FIRM
ROMADKA, GONTRUM,
HENNEGAN & FOOS
ESSEX, MARYLAND
21221

the merits of this statement, but wish to draw the attention of the Zoning Commissioner to the site plan revised 8/1/84 which is filed in the case which is the subject of this memorandum.

The piers which Petitioner wishes to construct are the natural extension of the existing piers which were constructed as a result of the Special Exception granted in 1955 in case number 35-35 X. The Petitioner has not only filed a Petition for Special Hearing to Amend 64-160 X by eliminating those piers but has filed a Special Hearing to Amend 35-35 X and 64-50-SPX to add the additional piers which he previously had intended to extend off the 1964 Special Exception, but found said construction unfeasible and now has requested them to be constructed off of the property which is the subject of the 1955 Special Exception. Since the Protestants indicate that additional construction off this parcel can occur at any time after the 1955 Special Exception was granted when referring to the southern pier it would seem that the same logic and arguments would accrue to the construction of the additional piers off the previous existing piers that were constructed after the 1955 Special Exception was granted off of the parcel which was the subject of that Special Exception. Certainly there can be no argument that the 1955 Special Exception was not completed pursuant to permits and Zoning Laws and Regulations and therefore there is no need to file an additional Special Exception and that a mere amendment of the site plan as the Petitioner has proposed would be all that is necessary; provided the Zoning Commissioner feels that the addition is in compliance with the general character of the property and in accordance with the previous Special Exception and is not detrimental to the public health or welfare.

LAW FIRM
ROMADKA, GONTRUM,
HENNEGAN & FOOS
ESSEX, MARYLAND
21221

II. THE CONSTITUTIONALITY OF DEPRIVING THE LAND OWNER OF HIS RIGHTS TO USE THE ONE AND THREE QUARTER ACRES ON THE NORTH SIDE OF CHESTER ROAD AS A BOAT YARD.

The question comes to mind as whether or not the zoning ordinance being strictly construed in this incidence would be unconstitutional as being arbitrary or unreasonable, capricious or discriminatory and thus a violation of the provisions of Article 23 of the Declaration of Rights of the Maryland Constitution and a denial of due process of the law provided by the 14th Amendment of the United States Constitution by depriving the Petitioner of his right to continue to use the parcel as provided for in Special Exception 64-160 X. "In Northwest Merchants Terminal, Inc. vs. O'Rourk, 191 Md. 171, 60 A2nd 743, 1948, the Baltimore City property had been a commercial use district since the original Zoning Ordinance in 1931 and in the immediate vicinity was a large area of residential classification. In 1945, the Appellant purchased property in the commercial district for expansion of its storage facilities which it required for its building materials and manufacturing business, and because of the property's access to a railroad siting. After obtaining an occupancy permit, it cleared and filled the property and otherwise prepared it for use at a cost of Fifty Thousand Dollars ($50,000.00) which included the purchase price. By 1946 preparations were completed and the property was being used.

In October 1945, and amendment to the Ordinance was proposed which changed the property and the second commercial use district to a residential use district. While this amendment was under consideration, the Appellant filed three applications for building permits. This incurred considerable neighborhood oppositions but the permits were issued. In April 1946, after undergoing a tortuous journey through the various public agencies, the Ordinance was approved. A group of nearby property owners sued for injuction in a Declaration that the

LAW FIRM
ROMADKA, GONTRUM,
HENNEGAN & FOOS
ESSEX, MARYLAND
21221

three building permits were void. On an Appeal from a decree enjoining the Appellant from erecting the three warehouse buildings and from using the property for any use not permitted by the Ordinance Amendment, the Appellant contended, inter alia that the amendment was unconstitutional as applied to it and depriving the property without due process and denying it equal protection under the law. Court of Appeals reversed the Decree, holding the Ordinance Amendment was invalid as applied to the Appellant for being unreasonable, arbitrary and contrary to the section of the zoning enabling act (acts of 1927, Chapter 7 and 5, Article 66 B, Section 3, which requires zoning regulations to be made in accordance with the comprehensive plan and with reasonable consideration among other things, to the character of the district and it's suitability for particular purposes)."

To deny the Plaintiff this Special Exception that was granted in 1964 in case number 64-160-X would be an unconstitutional taking of his land and depriving him of the use thereof without due process and would restrict the Petitioner from using the property for any other reasonable purpose. The Petitioner testified at the time of the hearing that the property was subject to the Noise Act of the State of Maryland which would not allow any residential development which is the only permissible use in a DR 5.5 zone as a matter of right and that the only use permitted as a result of the Noise Act is recreational which is in fact the manner in which the property is presently being used by the Petitioner. See also, Vine vs. Zabriskie, 122 N.J.L.4, 6, 3 A.2nd 886, 887, (1939).

III. SPECIAL EXCEPTION CAN BE GRANTED FOR THE ADDITIONAL PIERS ON BEHALF OF THE PETITIONER.

The Petitioner filed a Special Exception for two lots located on the north and south side of Chester Road not included in Special Exception cases 35-35 X, 64-57 SPH, 64-160 X in a DR 5.5 zone to be used as a boat yard including the road bed of

LAW FIRM
ROMADKA, GONTRUM,
HENNEGAN & FOOS
ESSEX, MARYLAND
21221

Chester Road. A hearing was conducted on that Petition and the elements as required by 502.1 were offered to the Court and were not contravened by the Protestants. A site development plan date 8/1/84 was submitted and entitled Plat to accompany Petition for Special Exception, Special Hearing and Variances with the Petition for Special Exception and was submitted to the Court at the time of the hearing and placed in evidence. Plat indicated the additional piers on it and was obtained by the Protestants prior to the hearing.

The Protestants indicate that the only method by which the Petitioner can obtain his request is by way of a new Special Exception since 64-160 X in their opinion has expired or terminated. The Petitioners have in addition to the other alternatives proceeded in this manner and have given the Zoning Commissioner the opportunity to grant a Special Exception on the north side and south side parcels in accordance with the petition and site plans that had been submitted and it is the Petitioners position that in the event that the Zoning Commissioner feels the criteria for 502.1 has been satisfied by the Petitioner and that the Special Exception requested will not adversely affect that criteria then the Commissioner can grant the Special Exception including the new lots and ratifying what was previously granted, including the additional piers requested by the Petitioner.

Evidence of granting a prior application for special zoning exception which had lapsed (which the Petitioners in this case contend has not occurred) may properly be admitted at a hearing before the zoning commissioner on subsequent application for an exception involving the same property. "Amberly Community Association vs. Board of Appeals of Anne Arundel County, 182 A.2nd 811, 229 Md. 261, (1962)."

LAW FIRM
ROMADKA, GONTRUM,
HENNEGAN & FOOS
ESSEX, MARYLAND
21221

IV. CONCLUSION.

It is the Petitioners' position that the rights of the Petitioner to the Special Exception granted in 64-160 X have vested for all the reasons cited above and that he has the right to continue to use the property in accordance with the Order of 30th day of June 1964. However, the Special Hearing involves an amendment of a site plan and the addition of piers to the 1955 Special Exception in case number 35-35 X and the removal of the piers that were granted in Special Exception 64-160 X and that the granting of said petitions would not be harmful, detrimental to the general public health, safety and welfare. In the event that the Zoning Commissioner would find that there are no vested rights in 64-160 X, such a ruling would be unconstitutional since it would deprive the owner of any reasonable use of his land and that the only reasonable use is the use that it is presently being used for and that finally Zoning Commissioner can grant a Special Exception for the uses as set out on the site plan dated and revised 8/1/84 since the advertised description advertised the entire parcel of land as part of the hearing.

Respectfully submitted,

John O. Hennegan
809 Eastern Boulevard
Baltimore, Maryland 21221
Phone No.: 686-8274

Attorney for Petitioner

LAW FIRM
ROMADKA, GONTRUM,
HENNEGAN & FOOS
ESSEX, MARYLAND
21221

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 31st day of October, 1984, the aforegoing Memorandum of Petitioners was mailed to D. Rodgers Harrison, Mudd, Harrison and Birch, 306 West Joppa Road, Towson, Maryland 21204, attorneys for the Protestants.

John O. Hennegan

11/1/84

85-1017
case file

LAW FIRM

Romadka, Gontrum, Hennegan & Foos

GERMANIA FEDERAL BUILDING
809 EASTERN BOULEVARD
ESSEX, MARYLAND 21221
TELEPHONE (301) 686-8274

ROBERT J. ROMADKA
JOHN B. GONTRUM
JOHN O. HENNEGAN
CHARLES E. FOOS, III

OF COUNSEL
ALFRED M. WALPERT

October 29, 1984

Mr. Arnold Jablon
Zoning Commissioner
OFFICE OF PLANNING AND ZONING
County Courts Building
Towson, Maryland 21204

Reference: Petition for Special Exception,
Petition for Special Hearing
Petition for Variances of North
Side of Chester Road, Joseph F.
Evering, et ux, 85-65-H-XSPHA

Dear Mr. Jablon:

Enclosed you will find the original ~~and one copy~~ of the Memorandum of Petitioners to be filed in the above captioned case.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

John O. Hennegan

JOH/dlw

Enclosure

cc: T. Rodgers Harrison, Esquire
Mr. Joseph F. Evering, Jr.

3-20-84

RE: PETITION FOR SPECIAL EXCEPTION: BEFORE THE ZONING COMMISSIONER
PETITION FOR SPECIAL HEARING
PETITION FOR VARIANCES : OF BALTIMORE COUNTY
N/S Chester Rd., 590' W of
Severn Rd. (800 Chester Rd.) :
15th District
:
JOSEPH F. EVERING, JR., et ux, Case No. 85-65-XSPHA
Petitioners :

: : : : : : :

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 the passage of any preliminary or final Order.

Phyllis Cole Friedman
People's Counsel for Baltimore County

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

I HEREBY CERTIFY that on this 20th day of August, 1984, a copy of the foregoing Entry of Appearance was mailed to John O. Hennegan, Esquire, and Robert J. Romadka, Esquire, Romadka, Gontrum, Hennegan & Foos, 809 Eastern Blvd., Baltimore, MD 21221, Attorneys for Petitioners.

Peter Max Zimmerman

#2

#2

PETITION FOR SPECIAL EXCEPTION

85-65-XSPHA

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property for two lots located on the north and south side of Chester Road not included in Special Exception Cases 35-35X, 64-57SPH, 64-160X in a D.R. 5.5 Zone to be used as a Boat Yard. including the roadbed of Chester Road

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

I, or we, agree to pay expenses of above Special Exception advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

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

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Legal Owner(s):

Joseph F. Evering, Jr.
(Type or Print Name)

Joseph F. Evering
Signature

Catherine L. Evering
(Type or Print Name)

Catherine L. Evering
Signature

Attorney for Petitioner:

John O. Hennegan, Esquire
Robert J. Romadka, Esquire
(Type or Print Name)

John O. Hennegan
Signature

ROMADKA, GONTRUM, HENNEGAN & FOOS
809 Eastern Boulevard
Address

Baltimore, Maryland 21221
City and State

Attorney's Telephone No.: 686-8274

800 Chester Road 335-8602
Address Phone No.

Baltimore, Maryland 21220
City and State

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

John O. Hennegan
Name

809 Eastern Boulevard
Baltimore, Maryland 21221 686-8274
Address Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 6th day of August, 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 10th day of September, 1984, at 1:30 o'clock P. M.

Zoning Commissioner of Baltimore County.

Z.C.O.—No. 1

(over)

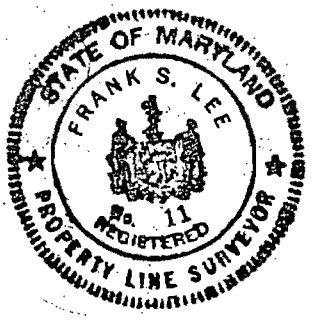
Pursuant to the advertisement, posting of property, and public hearing on the Petition and it appearing that by reason of the requirements of Section 502.1 of the Baltimore County Zoning Regulations

Phone: 687-6922

FRANK S. LEE

Registered Land Surveyor

1277 NEIGHBORS AVE. — BALTIMORE, MD. 21237



August 2, 1984

Long Beach Marina
No. 800 Chester Road
15th District Baltimore County, Maryland

Beginning for the same on the north side of Chester Road at the distance of 590 feet more or less measured along the north side of Chester Road from the west side of Severn Road, thence running and binding on the north side of Chester Road South 77 degrees 25 minutes W 115 feet more or less, thence crossing the end of Chester Road and continuing the same direction in all South 12 degrees 35 minutes West 252 feet more or less to the waters of Frog Mortor Creek, thence binding on the waters of Frog Mortor Creek as follows: North 71 degrees 00 minutes West 50 feet more or less, South 86 degrees 00 minutes West 260 feet more or less, North 16 degrees 00 minutes East 570 feet more or less and North 77 degrees 25 minutes East 320 feet more or less, thence running for a line of division South 27 degrees 33 minutes East 245 feet more or less to the place of beginning.

Containing 3.30 acres of land more or less.

Special Exception includes all of the above described area not included in Case #3535, 64-57-SPH and 64-160-X.

Variances and Special ~~Exceptions~~ includes entire site.

HEARING

PETITION FOR SPECIAL HEARING 85-65-XSPHA

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve an amendment to the site plan in case number 64-57SPH, 64-160X and 35-35X to construct an addition to the piers; remove restriction number 1 and 3 in case number 64-57SPH to allow marine (CONTINUED ON ATTACHED SHEET)

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

Legal Owner(s):

Joseph F. Evering, Jr.
(Type or Print Name)

Joseph F. Evering Jr
Signature

Catherine L. Evering
(Type or Print Name)

Catherine L Evering
Signature

Attorney for Petitioner:
John O. Hennegan, Esquire
Robert J. Romadka, Esquire
(Type or Print Name)

John O. Hennegan
Signature

ROMADKA, GONTRUM, HENNEGAN & FOOS
Address

809 Eastern Boulevard
Baltimore, Maryland 21221
City and State

Attorney's Telephone No.: 686-8274

800 Chester Road 335-8602
Address Phone No.

Baltimore, Maryland 21220
City and State

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

John O. Hennegan, Esquire
Name

809 Eastern Boulevard
Baltimore, Maryland 21221
Address 686-8274 Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 6th day of August, 19 84, 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 10th day of September, 19 84, at 1:30 o'clock P. M.

Zoning Commissioner of Baltimore County.

(over)

ORDER RECEIVED FOR FILING
DATE
BY
ADMINISTRATIVE ASSISTANT

Z.C.O.—No. 1

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 :

PETITION FOR SPECIAL HEARING - CONTINUED

Joseph F. Evering, Jr. and
Catherine L. Evering, Legal Owners

craft to be stored within 20 feet of the easternmost property line and to request a variance to the parking; to remove restriction number 1 and 6 in 64-160X to allow major repairs on the premises and in the waters and to change the times and days of the weeks and years that repairs will be permitted; also to determine that a boatyard and related parking areas are other structures devoted to civic, commercial and recreational activities and therefore exempt from the residential, transitional requirements as set out in Sections 1B01.1B.1.c.9/10

#166

PETITION FOR ZONING VARIANCE

85-65-XSPHA

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a

Variance from Section 409.2.c(2) to allow existing compacted stone in lieu of required macadam paving. 409.2.b. to allow 318 parking spaces in lieu of the required 384, in the event that special exception is granted to allow 363 parking spaces in lieu of the required 384; and variance from Section 417.5(a) requiring the structure not to exceed 300 feet beyond mean low tide to allow the structure to extend 419 feet beyond the mean low tide.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (indicate hardship or practical difficulty)

1. The hardship is that under special exception granted the 6th day of June, 1955, in a site plan improved therewith, said use was permitted with compacted stone in lieu of required macadam and said matter was reaffirmed and allowed to continue in 1964 in cases 64-57SPH and 64-160X.

2. That the practical difficulty is that macadam would require extensive repairs and alteration in the event that sewerage is brought into the area. Also, during winter months, large boats are stored on the parking area which would cause deep depressions in the macadam due to the weight of the boats that would be in place for six to seven months. (CONTINUED ON ATTACHED SHEET)

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

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

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

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Legal Owner(s):

Joseph F. Evering, Jr.
(Type or Print Name)

Joseph F. Evering Jr.
Signature

Catherine L. Evering
(Type or Print Name)

Catherine L Evering
Signature

Attorney for Petitioner:

Robert J. Romadka, Esquire
John O. Hennegan, Esquire
(Type or Print Name)

ROMADKA, GONTRUM, HENNEGAN & FOOS
809 Eastern Boulevard
Signature

Baltimore, Maryland 21221
Address

City and State

Attorney's Telephone No.: 686-8274

800 Chester Road 335-8602
Address Phone No.

Baltimore, Maryland 21220
City and State

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

John O. Hennegan, Esquire
Name

809 Eastern Boulevard
Baltimore, Maryland 21221 686-8274
Address Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 6th day of August, 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 10th day of September, 1984, at 1:30 o'clock P. M.

Zoning Commissioner of Baltimore County.

(over)

8-6

ORDER RECEIVED FOR FILING

DATE

BY

ADMINISTRATIVE ASSISTANT

Pursuant to the advertisement, posting of property, and public hearing on the Petition and it appearing that strict compliance with the Baltimore County Zoning Regulations would/would not result in practical difficulty and unreasonable hardship upon the Petitioner(s) and the granting of the variance(s) requested will/will not adversely affect the health, safety, and general welfare of the community, the variance(s) should /should not be granted.

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this _____ day of _____, 19____, that the herein Petition for Variance(s) to permit

3. The structure or pier that the Petitioner desires to construct cannot be located in any other area within the 300 feet limitations due to the depths of the water in the surrounding area.

4. A hardship exists in that the Petitioner has no other location in which to locate the additional slips and pier which are needed to adequately provide for his clientele. The construction will not interfere with the public free access to Frog Mortar Creed nor hinder or obstruct use of the waterways and in no way interfere with public safety and is not more than one third (1/3) the width of waterway nor beyond rear boundary of a defineable channel.

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY 85-65-XSPHA

Towson, Maryland

District 15th **Date of Posting** 5/21/85

Posted for: Appeal

Petitioner: Joseph F. Evering Jr. et ux

Location of property: N/S Chester Rd., 590' W of Severn Rd.
800 Chester Rd.

Location of Signs: ① Facing Chester, Approx. 8' Fr. roadway, on property of Petitioner
② Facing intersection of Chester & Severn Rd., Approx. 3' Fr. roadway.

Remarks:

Posted by W. P. Stealy **Date of return:** 5/24/85
Signature

Number of Signs: 2

PETITIONS FOR SPECIAL EXCEPTION, SPECIAL HEARING AND VARIANCES
15th Election District

ZONING: Petitions for Special Exception, Special Hearing and Variances

LOCATION: North side Chester Road, 590 ft. West of Severn Road (800 Chester Road)

DATE & TIME: Monday, September 10, 1984 at 1:30 P.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 Exception for 2 lots located on the north and south sides of Chester Road, not included in Special Exception Case Nos. 3535-X, 64-57-SPH, 64-160-X, in a D.R. 5.5 zone to be used as a boat yard including the roadbed of Chester Road; Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve an amendment to the site plan in Case Nos. 3535-X, 64-57-SPH and 64-160-X to construct an addition to the piers, remove Restriction Nos. 1 and 3 in Case No. 64-57-SPH to allow marine craft to be stored within 20 ft. of the easternmost property line and to request a variance to the parking, to remove Restrictions Nos. 1 and 6 in Case No. 64-160-X to allow major repairs on the premises and in the waters and to change the times and days of the weeks and years that repairs will be permitted, also to determine that a boat yard and related parking areas are other structures devoted to civic, commercial and recreational activities and therefore exempt from the residential, transitional requirements as set out in Sections 1B01.1B.1.c.9/10; Variances to allow existing compacted stone in lieu of required macadam paving, to allow 318 parking spaces in lieu of the required 384, in the event that Special Exception is granted, to allow 363 parking spaces in lieu of the re-

85-165-SPHA

"DUPLICATE"

CERTIFICATE OF PUBLICATION

TOWSON, MD., August 23, 19 84

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., appearing on

August 23, 19 84.

THE JEFFERSONIAN,

Publisher

Cost of Advertising 40.00

Petitions for Special Exception, Special Hearing & Variances

15th Election District

ZONING: Petitions for Special Exception, Special Hearing and Variances

LOCATION: North side Chester Road, 590 ft. West of Severn Road (800 Chester Road)

DATE & TIME: Monday, Sept. 10, 1984, at 1:30 p.m.

PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Ave., Towson, Md.

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

Petition for Special Exception for 2 lots located on the north and south sides of Chester Road, not included in Special Exception Case Nos. 3535-X, 64-57-SPH, 64-160-X in a D.R. 5.5 zone to be used as a boat yard including the roadbed of Chester Road; Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve an amendment to the site plan in Case Nos. 3535-X, 64-57-SPH and 64-160-X to construct an addition to the piers, remove Restriction Nos. 1 and 3 in Case No. 64-57-SPH to allow marine craft to be stored within 20 ft. of the easternmost property line and to request a variance to the parking, to remove Restriction Nos. 1 and 6 in Case No. 64-160-X to allow major repairs on the premises and in the waters and to change the times and days of the weeks and years that repairs will be permitted, also to determine that a boat yard and related parking areas are other structures devoted to civic, commercial and recreational activities and therefore exempt from the residential, transitional requirements as set out in Sections 1B01.1B.1.c.9/10; Variances to allow existing compacted stone in lieu of required macadam paving, to allow 318 parking spaces in lieu of the required 384, in the event that Special Exception is granted, to allow 363 parking spaces in lieu of the required 384, and variance requiring the structure not to exceed 300 ft. beyond mean low tide to allow the structure to extend 419 ft. beyond the mean low tide.

Being the proprty of Joseph F. Evering, Jr., et ux, as shown on plat plan filed with the Zoning Department.

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

BY ORDER OF
Arnold Jablon
Zoning Commissioner of
Baltimore County

The Times

Middle River, Md., Aug 23 19 84

~~This is to Certify,~~ That the annexed

Petition

was inserted in The Times, a newspaper printed and published in Baltimore County, once in each of One successive weeks before the 23rd day of Aug, 19 84

S. D. Wolfe

Publisher.

85-65-XSPHA

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY

Towson, Maryland

District 15 **Date of Posting** 8/15/84

Posted for: Petition for special exception special hearing Var.

Petitioner: Joseph E. Lorenz, Jr., et ux

Location of property: W/S Walker Rd., 500' N of Hereford Rd.

Location of Signs: Facing entrance to property at Walker Rd. & Loveton Ct. intersection & Hereford Rd.

Remarks: & Marker

Posted by Joan D. Gilliland **Date of return:** 8/23/84

Signature

Number of Signs: 6

CASE NO. 19/117/86-CG-0022 AT LAW

Joseph F. Evering, Jr., VS. Phyllis Friedman, et ux & Malcolm Spicer, etal

RECEIVED FROM THE COUNTY BOARD OF APPEALS EXHIBITS, BOARD'S ANSWER & TRANSCRIPT FILED IN THE ABOVE ENTITLED CASE. ALSO FILED IS THE ZONING COMMISSIONER'S FILE AND EXHIBITS.

Clerk's Office

Date: Feb. 3, 1986

#85-65-XSPHA

15th District

N/S Chester Rd., 590' W of Severn Rd.

(800 Chester Road)

JOSEPH F. EVERING, JR., et ux

1 SIGN and 1 LOCATION SIGN

85-65-XSPHA

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 6th day of August, 1984.

ARNOLD JABLON
Zoning Commissioner

Petitioner Joseph F. Evering, Jr., Received by:

Petitioner's Attorney John O. Hennegan, Esq.

Nicholas B. Commodari
Chairman, Zoning Plans
Advisory Committee

People's Counsel Ex. #2

LAW OFFICES
MUDD, HARRISON & BURCH
306 WEST JOPPA ROAD
TOWSON, MARYLAND 21204
AREA CODE 301-828-1335

JOHN E. MUDD
T. ROGERS HARRISON
RICHARD C. BURCH
DOUGLAS W. BISER
H. PATRICK STRINGER, JR.

MAY 20 AM
Rec'd
Cklcd
ZONING DEPARTMENT
By

BOB MARYLAND TRUST BUILDING
14 SOUTH CALVERT STREET
BALTIMORE, MARYLAND 21202
301-323-0266

May 17, 1985

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

Re: Petition for Spec Ex
Petition for Spec Hearing
Petition for Variances
Case No. 85-65-XPHA

Dear Mr. Jablon:

The Protestents, Ken Engelke, et al., would like to appeal your decision in the above-captioned matter.

Our firm's check in the amount of $260.00 is enclosed. This amount represents the fee for the appeal from the granting of the special exception $100.00), the fee for the appeal from the granting of the variance ($75.00), the fee for the appeal from the granting of the special hearing ($75.00), and the costs for posting two signs ($10.00) on the Everings' property.

If you have any questions, please feel free to contact me.

Very truly yours,

T. Rogers Harrison

T. Rogers Harrison

TRH/djb
Enclosure

RECEIVED
COUNTY BOARD OF APPEALS
1985 MAY 22 P 1:

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

No. 007257

DATE May 21, 1985 ACCOUNT R-01-615-000

AMOUNT $ 260.00

RECEIVED FROM: Law Office/Romadka, Gontrum, Hennegan & Foos

FOR: Appeal fee for Case No. 85-65-XPHA

B [illegible]

VALIDATION OR SIGNATURE OF CASHIER

LAW OFFICES
MUDD, HARRISON & BURCH
306 WEST JOPPA ROAD
TOWSON, MARYLAND 21204
AREA CODE 301-828-1335

JOHN E. MUDD
T. ROGERS HARRISON
RICHARD C. BURCH
DOUGLAS W. BISER
H. PATRICK STRINGER, JR.

MAY 20 AM
Rel
Chkd
ZONING DEPARTMENT
By
900 MARYLAND TRUST BUILDING
14 SOUTH CALVERT STREET
BALTIMORE, MARYLAND 21202
301-323-0266

May 17, 1985

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

Re: Petition for Spec Ex
Petition for Spec Hearing
Petition for Variances
Case No. 85-65-XPHA

Dear Mr. Jablon:

The Protestents, Ken Engelke, et al., would like to appeal your decision in the above-captioned matter.

Our firm's check in the amount of $260.00 is enclosed. This amount represents the fee for the appeal from the granting of the special exception $100.00), the fee for the appeal from the granting of the variance ($75.00), the fee for the appeal from the granting of the special hearing ($75.00), and the costs for posting two signs ($10.00) on the Everings' property.

If you have any questions, please feel free to contact me.

Very truly yours,

T. Rogers Harrison

T. Rogers Harrison

TRH/djb
Enclosure

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

No. 007351

DATE May 21, 1985 ACCOUNT R-01-615-000

AMOUNT $ 260.00

RECEIVED FROM: T. Rogers Harrison
Mudd, Harrison & Burch

FOR: Appeal fee for Case No. 85-65-XPHA

B B013*****26000:a 821BF

VALIDATION OR SIGNATURE OF CASHIER

Form CA2

CIRCUIT COURT FOR BALTIMORE COUNTY

Jobi Adams — 494-2660
Civil Assignment Commissioner
Settlement Court

Maria Ercolano — 494-2662
Masters Assignment Clerk
Medical Records

ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Bosley Avenue
P.O. Box 6754
Towson, Maryland, 21204-0754

Kathy Rushton — 494-2660
Assignment — Jury — Motions

Marcia Fennell
Assistant Clerk Typist

Irene Summers - 494-2661
Assignment — Non-Jury — Motions

Freddie Grove
Assistant Clerk Typist

February 7, 1986.

TO:

Malcolm F. Spicer, Jr., Esq.
Thomas J. Bollinger, Esq.

T. Rogers Harrison, Esq.

Phyllis Cole Friedman, Esq.
Peter Max Zimmerman, Esq.

County Board of Appeals of Balto. Co.

RE: NON JURY - 86 CG 22 - JOSEPH F. LYBRAND, JR. ET AL (Zoning Case)

HEARING DATE: Wednesday, May 14, 1986, @ 9:30 a.m.

ON THE FOLLOWING: Appeal: 1 hour

RECEIVED
COUNTY BOARD OF APPEALS
1986 FEB 10 P 12:50

UPON RECEIPT OF THIS NOTICE: Counsel shall contact each other immediately to conform calendars. Claim of not receiving notice will not constitute reason for postponement.

POSTPONEMENTS: If the above date is not agreeable to any counsel, a request for a postponement MUST BE MADE IN WRITING to the Assignment Office AS SOON AS POSSIBLE, with a copy to all counsel involved. POSTPONEMENTS WITHIN 15 DAYS OF TRIAL must be made to the attention of the Director of Central Assignments — Joyce Grimm — 494-3497.

SETTLEMENT CONFERENCES: All counsel must secure the attendance of all parties necessary to effect a binding settlement, including clients and insurance representatives. THERE WILL BE NO EXCEPTIONS PER ORDER OF JUDGE FRANK E. CICONE. Please direct all inquiries to the attention of Jobi Adams.

SETTLEMENTS: If a settlement is reached prior to the hearing date, the Assignment Office must be notified immediately. All settlements must be put on the record if no order of satisfaction is filed prior to trial.

IN THE MATTER OF PETITIONS FOR

SPECIAL EXCEPTION, SPECIAL HEARING AND ZONING VARIANCES

Vs.

IN THE CIRCUIT COURT

FOR

BALTIMORE COUNTY

Docket 19 Folio 117

Case No. 86CG22 19/117

NOTICE OF FILING OF RECORD

TO:

Malcolm F. Spicer, Jr.
Thomas J. Bollinger
Courthouse Mezzanine
Baltimore, Md. (04)

John O. Hennegan
Donald J. Brand
Romadka, Gontrum, Hennegan & Foos
809 Eastern Blvd., (21221

T. Rogers Harrison
Mudd, Harrison & Burch
306 W. Joppa Rd.
Baltimore, 21204

Phyllis Cole Friedman
Peter Max Zimmerman
Room 223 Court House
Baltimore, 21204

Judith A. Arnold
301 W. Preston St.
Baltimore, 21201

Peter W. Taliaferro
P.O Box 8766
Balto/Wash. International
Airport 21240

In accordance with Maryland Rule of Procedure B12, you are notified that the record in the above entitled case was filed on December 9, 1987.

Suzanne Mensh

Clerk

Copies Sent

FILED DEC.9 1987

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

March 26, 1987

N O T I C E O F A S S I G N M E N T

CONTINUED HEARING

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

CASE NO. 85-65-XSPHA

JOSEPH F. EVERING, JR., ET UX

FOR SE -BOAT YARD
VARIANCES
SPH ON SITE PLAN

N/s CHESTER ROAD, 590' W SEVERN ROAD

15th Election District

As per agreement with all Counsel relative to the difficulties encountered in the hearing transcript, the continued hearing on these matters is scheduled for April 22, 1987 at 10:00 a.m.

ASSIGNED FOR: WEDNESDAY, APRIL 22, 1987 at 10:00 a.m.

cc: John O. Hennegan, Esquire — Counsel for Petitioners
John B. Gontrum, Esquire — " " "
Robert J. Romadka, Esquire — " " "
Joseph F. Evering, Jr., et ux — Petitioners
T. Rogers Harrison, Esquire — Counsel for Protestants
Phyllis Cole Friedman, Esquire — People's Counsel
Patrick D. Hanley, Esquire — Office of Law
Judith A. Armold — Assistant Attorney General

Norman E. Gerber
James G. Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Margaret E. du Bois

Kathi C. Weidenhammer
Administrative Secretary

County Board of Appeals of Baltimore County

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

February 5, 1987

TO: Phyllis C. Friedman, Esquire
John B. Gontrum, Esquire
T. Rogers Harrison, Esquire
Robert J. Romadka, Esquire

FROM: William T. Hackett, Chairman
County Board of Appeals

RE: Case No. 85-65-XSPHA
Joseph F. Evering

As per our telephone conversation of February 5, 1987, there will be a meeting of all the attorneys involved in the Evering case in the Board of Appeals office at 9:00 a.m. on February 17, 1987 for the purpose of discussing the appropriate steps to be taken because of the problem that has arisen.

Sincerely,

William T. Hackett

William T. Hackett, Chairman

WTH:kcw

August 20, 1986

TO: Keith S. Franz and Larry Schmidt

Larry is taking care of this.

FROM: E. T. Eisenhart

SUBJECT: Case No. 85-65-XSPHA - Joseph F. Evering, Jr.

The above case has been remanded to the Board for hearing on its merits. We have received a letter from John Gontrum requesting that the case be assigned for hearing as soon as possible, and also requesting that we set it for two hearing days. We are presently scheduled through the first week in December, therefore, the first open date would be Tuesday, December 9th and any hearing day after that.

Mr. Hackett requested that inasmuch as you were the Board which ruled on the Motion which was appealed to Circuit Court (Diana was the third member) - you should contact John Gontrum to see if they are going forward with the case (T. Bollinger thought it was going to be dismissed) and if so then arrange for hearing dates suitable to you and the attorneys in the file.

Petitioners	Hennegan, Gontrum, Romadka
Protestants	Harrison
Judith A. Armold	Asst. Attorney General
Phyllis C. Friedman	P.C.
T. J. Bollinger, Esq.	Law

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

NOTICE OF POSTPONEMENT and REASSIGNMENT

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

CASE NO. 85-65-XSPHA

JOSEPH F. EVERING, JR., ET UX

FOR SE FOR A BOAT YARD
" VARIANCES
" SPH ON SITE PLAN

N/S CHESTER ROAD 590' W. SEVERN ROAD

15th DISTRICT

8/7/86 - REMANDED BY JUDGE SFEKAS FOR TESTIMONY

First hearing day, Wednesday, December 10, 1986, has been postponed at the request of the Assistant Attorney General. Case is

ASSIGNED FOR: TUESDAY, DECEMBER 16, 1986 at 10 a.m.
WEDNESDAY, DECEMBER 17, 1986 at 10 a.m.
THURSDAY, DECEMBER 18, 1986 at 10 a.m.

cc: John O. Hennegan, Esq. — Counsel for Petitioners
John B. Gontrum, Esq. — " " "
Robert J. Romadka, Esq. — " " "
Joseph F. Evering, Jr., et ux — Petitioners
T. Rogers Harrison, Esq. — Counsel for Protestants
Phyllis Cole Friedman — People's Counsel
Thomas J. Bollinger, Esq. — Office of Law
Judith A. Armold — Assistant Attorney General
Norman E. Gerber
James G. Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer

Kathi C. Weidenhammer
Administrative Secretary

County Board of Appeals of Baltimore County

Room 200 Court House (Hearing Room #218)
Towson, Maryland 21204
(301) 494-3180

September 5, 1986

NOTICE OF ASSIGNMENT

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

CASE IS BEING SPECIALLY SET BECAUSE IT HAS BEEN REMANDED TO THE BOARD BY THE COURT -- NO POSTPONEMENTS WILL BE CONSIDERED UNLESS REQUESTED WITHIN TEN (10) DAYS OF THE DATE OF THIS NOTICE

CASE NO. 85-65-XSPHA — JOSEPH F. EVERING, JR., ET UX

FOR SE FOR A BOAT YARD
" VARIANCES
" SPH ON SITE PLAN

N/S CHESTER ROAD 590' W. SEVERN ROAD

15th DISTRICT

8/7/86 - REMANDED BY JUDGE SFEKAS FOR TESTIMONY

ASSIGNED FOR:

WEDNESDAY, DECEMBER 10, 1986 at 10 a.m.
TUESDAY, DECEMBER 16, 1986 at 10 a.m.
WEDNESDAY, DECEMBER 17, 1986 at 10 a.m.

cc:

John O. Hennegan, Esq.	Counsel for Petitioners
John B. Gontrum, Esq.	" " "
Robert J. Romadka, Esq.	" " "
Joseph F. Evering, Jr., et ux	Petitioners
T. Rogers Harrison, Esq.	Counsel for Protestants
Phyllis Cole Friedman	People's Counsel
Thomas J. Bollinger, Esq.	Office of Law
Judith A. Armold	Asst. Attorney General

Norman E. Gerber
James G. Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer

Edith T. Eisenhart, Adm. Secretary

County Board of Appeals of Baltimore County

Room 200 Court House (Hearing Room #218)
Towson, Maryland 21204
(301) 494-3180

June 18, 1985

NOTICE OF ASSIGNMENT

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

CASE NO. 85-65-XSPHA

JOSEPH F. EVERING, JR., ET UX

N/s Chester Rd., 590' W of Severn Rd.
(800 Chester Rd.)

15th District

SE-Two lots located on N & S side of Chester Rd., DR 5.5 zone to be used as a boat yard.
Variance-Stone in lieu of macadam; 318 parking spaces in lieu of 384; structure not to exceed 300' beyond low tide;
SH-Amendment to site plan.

ASSIGNED FOR: THURSDAY, SEPTEMBER 12, 1985, at 10 a.m.

cc: John O. Hennegan, Esq. Attorney for Petitioners

Robert J. Romadka, Esq. " "

T. Rogers Harrison, Esq. Attorney for Protestants

Joseph F. Evering, Jr., et ux Petitioners

Judith A. Armold

Phyllis C. Friedman People's Counsel

Norman Gerber

James Hoswell

Arnold Jablon

Jean Jung

James Dyer

494-3180

County Board of Appeals

Room 219 Court House

TOWSON, MARYLAND 21204

June 28, 1985

NOTICE OF POSTPONEMENT and REASSIGNMENT

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

CASE NO. 85-65-XSPHA

JOSEPH F. EVERING, JR., ET UX

N/s Chester Rd., 590' W of Severn Rd. (800 Chester Rd.)

15th District

SE-Two lots located on N & S side of Chester Rd., DR 5.5 zone to be used as a boat yard.
Variance-Stone in lieu of macadam; 318 parking spaces in lieu of 384; structure not to exceed 300' beyond low tide;
SH-Amendment to site plan

Scheduled for hearing on Thursday, September 12, 1985, at 10 a.m. has been

POSTPONED at the request of Counsel for the Protestants, and has been

REASSIGNED FOR: TUESDAY, OCTOBER 29, 1985, at 10 a.m.

cc: John O. Hennegan, Esq. — Counsel for Petitioners

Robert J. Romadka, Esq. — " " "

T. Rogers Harrison, Esq. — Counsel for Protestants

Joseph F. Evering, Jr., et ua — Petitioners

Judith A. Armold

Phyllis C. Friedman — People's Counsel

Norman Gerber

James Hoswell

Arnold Jablon

Jean Jung

James Dyer

11/8/85 - NOTE TO FILE PER L. E. SCHMIDT AND E. T. EISENHART

After trying unsuccessfully to get two agreeable hearing dates for continuation of this case all the way through the middle of February, Mr. Schmidt, while in the office today, talked to Mr. Romadka's secretary and informed her that the case would definitely be set for hearing on 1/21/86 as agreed to at the close of the hearing on the Motion. Inasmuch as it has been quite difficult to get another agreed date at this time we cannot set the continued hearings on consecutive days. Therefore, if this additional date is needed, Mr. Romadka will have to get an agreeable date and submit it to the Board for confirmation. This must be done immediately as of now January and February are not scheduled but after next week when Mr. Hackett sets up the docket, these dates will no longer be available. Also, if they let the continuation date go to the hearing on 1/21 and then try to get another date, it will then mean sometime in April or May before the case can be completed.

6/18/85 - Following were notified of hearing set for Thursday, Sept. 12, 1985, at 10 a.m.

John Hennegan
Robt. Romadka
T. R. Harrison
Phyllis C. Friedman
Norman Gerber
James Hoswell
Arnold Jablon
Jean Jung
James Dyer
Joseph Evering, Jr., et ux
Judith Armold

Postponed 6-28-85

5/28/85 - Above have been notified of hearing postponement & reassignment for Tues. Oct. 29, '85, at 10 am.

ON MOTION ONLY
counted as 1st day on merits because of time involved on arguments

11/13/85 - Above notified of hearing on MERITS scheduled for TUESDAY, JANUARY 21, 1986 at 10 a.m.

~~11/13/85 - " " " CONTINUED HEARING scheduled for TUESDAY, FEBRUARY 25, 1986 at 10 a.m.~~

Postponed

6/18/85 - Following were notified of hearing set for Thursday, Sept. 12, 1985, at 10 a.m.

John Hennegan
Robt. Romadka
T. R. Harrison
Phyllis C. Friedman
Norman Gerber
James Hoswell
Arnold Jablon
Jean Jung
James Dyer
Joseph Evering, Jr., et ux
Judith Armold

Postponed 6-28-85

6/28/85 - Above have been notified of hearing postponement & reassignment for Tues. Oct. 29, '85, at 10 am.

ON MOTION ONLY
case contd for court decision on motion

11/13/85 - Above notified of hearing on MERITS scheduled for TUESDAY, JANUARY 21, 1986 at 10 a.m.

11/13/85 - " " " CONTINUED HEARING scheduled for TUESDAY, FEBRUARY 25, 1986 at 10 a.m.
HOLD

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

November 13, 1985

NOTICE OF ASSIGNMENT

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

CASE NO. 85-65-XSPHA — JOSEPH F. EVERING

Chester Rd. W. Severn

15th District

Re: Boat Yard

ASSIGNED FOR: TUESDAY, JANUARY 21, 1986, at 10 a.m.

CC: John O. Hennegan, Esq. — Counsel for Petitioners

Robert J. Romadka, Esq. — " " "

T. Rogers Harrison, Esq. — Counsel for Protestants

Joseph F. Evering, Jr., et ux — Petitioners

Judith A. Armold, Asst. Attorney General

Phyllis C. Friedman — People's Counsel

Norman E. Gerber

James Hoswell

Arnold Jablon

Jean Jung

James Dyer

June Holmen, Secretary

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

November 13, 1985

NOTICE OF ASSIGNMENT

(CONTINUED HEARING, 3rd DAY)

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

CASE NO. 85-65-XSPHA — JOSEPH F. EVERING

Chester Rd. W. Severn

15th District

RE: Boat Yard

ASSIGNED FOR: TUESDAY, FEBRUARY 25, 1986, at 10 a.m. HOLD

cc: John O. Hennegan, Esq. — Counsel for Petitioners

Robert J. Romadka, Esq. — " " "

T. Rogers Harrison, Esq. — Counsel for Protestants

Joseph F. Evering, Jr., et ux — Petitioners

Judith A. Armold, Asst. Attorney General

Phyllis C. Friedman — People's Counsel

Norman E. Gerber

James Hoswell

Arnold Jablon

Jean Jung

James Dyer

June Holmen, Secretary

JED 86/117

File Case file

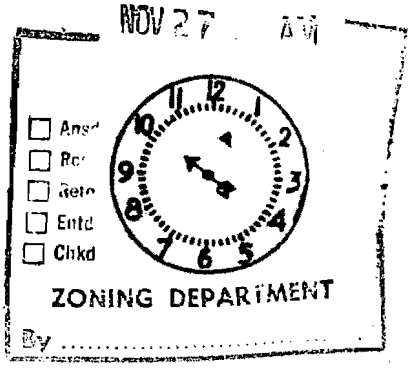
JED Reid 11/27/85

LAW OFFICES
MUDD, HARRISON & BURCH
306 WEST JOPPA ROAD
TOWSON, MARYLAND 21204
AREA CODE 301-828-1335

JOHN E. MUDD
T. ROGERS HARRISON
RICHARD C. BURCH
DOUGLAS W. BISER
H. PATRICK STRINGER, JR.
ANDREW JANQUITTO

900 MARYLAND TRUST BUILDING
14 SOUTH CALVERT STREET
BALTIMORE, MARYLAND 21202
301-828-0266

November 26, 1985



Mr. William T. Hackett, Chairman
Baltimore County Board of Zoning Appeals
Room 200 Court House
Towson, Maryland 21204

Re: Case No. 85-65-XSPHA
Joseph F. Evering - Protestants
Chester Road, W. Severn
15th District
Boat Yard

Dear Mr. Hackett:

We have received a notice rescheduling the continuance of the above-captioned zoning case for Tuesday, January 21, 1986, at 10 a.m. I hope that it is everyone's understanding that it is not my desire to create any unnecessary inconvenience for anyone; however, my practice is primarily that of trial work and I do have a previously scheduled trial in the Circuit Court for Baltimore County, Hoffman v. High's, beginning on January 22, 1986, and I will be preparing for that trial several days prior. However, we all know there are always cases that are postponed, settled, etc. In light of this previously scheduled trial, I have no alternative but to ask that the zoning case be postponed to another date and my secretary would be more than willing to provide all the available dates on my calendar from the first of the year forward.

Thank you for your kind cooperation.

Very truly yours,

T. Rogers Harrison

TRH:sw

c.c. John O. Hennegan, Esquire, Robert J. Romadka, Esquire, Judith A. Arnold, Esquire, Phyllis C. Friedman, Esquire, Mr. Norman E. Gerber, Mr. James Hoswell, Mr. Arnold Jablon, Jean Jung, Mr. James Dyer

LAW OFFICES
MUDD, HARRISON & BURCH
306 WEST JOPPA ROAD
TOWSON, MARYLAND 21204
AREA CODE 301-828-1335

JOHN E. MUDD
T. ROGERS HARRISON
RICHARD C. BURCH
DOUGLAS W. BISER
H. PATRICK STRINGER, JR.

900 MARYLAND TRUST BUILDING
14 SOUTH CALVERT STREET
BALTIMORE, MARYLAND 21202
301-323-0266

June 25, 1985

County Board of Appeals
of Baltimore County
Room 200
Court House
Towson, Maryland 21204

Re: Petitions of Joseph F. Evering, Jr.
Case No. 85-65-XSPHA

To The Board:

I have received the Board's Notice of Assignment, dated June 18, 1985, scheduling the appeal in the above matter for September 12, 1985.

I have plans to be in England from September 9th to 25th; therefore, I would appreciate it if the appeal were rescheduled. I have the following open dates:

October 11, 14, 21, 22, 23, 24, 28, 29, 30, 31

November 1, 2, 7, 8, 18, 19, 20, 21, 22

I also have several dates open in December.

If you have any questions, please feel free to contact me.

Very truly yours,

T. Rogers Harrison

T. Rogers Harrison

TRH:sw

cc: All Counsel

RECEIVED
COUNTY BOARD OF APPEALS
1985 JUN 27 A 10:47

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

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

o0o

Nicholas B. Commodari
Chairman

MEMBERS

Bureau of Engineering

Department of Traffic Engineering

State Roads Commission

Bureau of Fire Prevention

Health Department

Project Planning

Building Department

Board of Education

Zoning Administration

Industrial Development

September 4, 1984

John O. Hennegan, Esquire
809 Eastern Boulevard
Baltimore, Maryland 21221

RE: Item No. 166 - Case No. 85-65-XSPHA
Joseph F. Evering, Jr., et ux
Special Exception, Special Hearing
and Variance Petition

Dear Mr. Hennegan:

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.

This combination hearing is required as a result of your clients' proposal to expand the existing boatyard/marina operation. In addition to the expansion of the piers and land utilized by this operation, variances are also required for the number of parking spaces provided and the paving of said spaces. A determination of whether this use should be exempted from the residential transition requirements (Section 1B01.1B.1.c of the Baltimore County Zoning Regulations) is also included.

In view of the fact that revised plans reflecting the comments from the Current Planning Office, were submitted, the petition was scheduled for a hearing.

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

Very truly yours,

Nicholas B Commodari

NICHOLAS B. COMMODARI, Chairman
Zoning Plans Advisory Committee

NBC:bsc
Enclosures
cc: Frank S. Lee
1277 Neighbors Ave., 21237

BALTIMORE COUNTY
DEPARTMENT OF PUBLIC WORKS
TOWSON, MARYLAND 21204

HARRY J. PISTEL, P. E.
DIRECTOR

February 23, 1984

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

Re: Item #166 (1983-1984)
Property Owner: Joseph F. Evering, Jr., et ux
N/S Chester Rd. 1,000' W. Susquehanna Ave.
Acres: 3.30 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.

Highways:

Chester Road, an existing public road, is proposed to be further improved in the future on a 50-foot right-of-way with a standard type roadway termination.

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

Storm Drains:

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

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

Water and Sanitary Sewer:

There is an 8-inch public water main in Chester Road.

Public sanitary sewerage is not available to serve this property, which is utilizing private onsite sewage disposal facilities.

Water and Sanitary Sewer: (Cont'd)

This property is within the Baltimore County Metropolitan District and the Comprehensive Metropolitan Facilities Planning Area. Baltimore County Water Supply and Sewerage Plans W and S-23B, as amended through January 1982, indicate respectively, "Existing Service" and "Planned Service in 1 to 6 Years".

Very truly yours,

ROBERT A. MORTON, P.E., Chief
Bureau of Public Services

RAM:EAM:FWR:ss

Z-SW Key Sheet
7 & 8 NE 41 Pos. Sheets
NE 2 K Topo
91 Tax Map

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
TOWSON, MARYLAND 21204
494-3211

NORMAN E. GERBER
DIRECTOR

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

Re: Zoning Advisory Meeting of 1-3-84
Item # 166
Property Owner: JOSEPH F. EVERING, JR. ET UX
Location: N/S CHESTER RD. 1000' W. OF SUSQUEHANNA AVE.

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 forward by the Bureau of Public Services.
( )This site is part of a larger tract; therfore 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 on _____.
(✓)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:

SCREENING MUST BE PROVIDED AROUND THE PARKING AREA.
PARKING BREAKDOWN MUST INCLUDE REQUIREMENTS FOR OFFICE AREAS AND, IF ANY, RETAIL SPACE.
RECOMMEND ENVIRONMENTAL IMPACT STATEMENT & ANALYSIS OF ADDITIONAL BOAT TRAFFIC.

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

cc: James Hoswell

BALTIMORE COUNTY
DEPARTMENT OF TRAFFIC ENGINEERING
TOWSON, MARYLAND 21204
494-3550

STEPHEN E. COLLINS
DIRECTOR

February 6, 1984

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

Item No. 166	-ZAC- Meeting of January 3, 1984
Property Owner:	Mr. Joseph F. Evering, Jr., et ux
Location:	N/S Chester Road 1000' W. Susquehanna Avenue
Existing Zoning:	D.R. 5.5
Proposed Zoning:	Variance requiring the structure not to exceed 300' beyond mean low tide to allow the structure to extend 419' beyond the mean low tide.
Acres:	3.30
District:	15th

Dear Mr. Jablon:

This site is served by very narrow roads and traffic problems can be expected. All parking areas should be shown.

Michael S. Flanigan
Traffic Engineering Assoc. II

MSF/ccm

February 8, 1984
Date

BALTIMORE COUNTY DEPARTMENT OF HEALTH

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

Zoning Item # 166, Zoning Advisory Committee Meeting of JANUARY 3, 1984

Property Owner: Joseph F. Evering, Jr., et ux

Location: n/s Chester Road District 15

Water Supply public 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, 494-3775, 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)

Zoning Item # 166
Page 2

( ) Any existing 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.

( ) Soil percolation tests have been conducted.
( ) The results are valid until _____.
( ) Revised plans must be submitted prior to approval of the percolation tests.

( ) Prior to occupancy approval, the potability of the water supply must be verified by collection of bacteriological and chemical water samples.

( ) 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 or approval of Building Permit Applications.

( ) All roads and parking areas should be surfaced with a dustless, bonding material.

( ) No health hazards are anticipated.

(✓) Others The private sewage disposal system serving this property appears in satisfactory condition. Owner should contact the Army Corps of Engineers at 962-4252 and the Maryland State Water Resources Administration at 269-3871 for information regarding permits required for the proposed pier extension.

Ian J. Forrest, Director
BUREAU OF ENVIRONMENTAL SERVICES

SS 20 1080 (2)

BALTIMORE COUNTY
FIRE DEPARTMENT
TOWSON, MARYLAND 21204
825-7310

PAUL H. REINCKE
CHIEF

February 14, 1984

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

Attention: Nick Commodari, Chairman
Zoning Plans Advisory Committee

RE: Property Owner: Joseph F. Evering, Jr., et ux

Location: N/S Chester Road 1000' W. Susquehanna Avenue

Item No.: 166 Zoning Agenda: Meeting of January 3, 1984

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 or _____ 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.

* (X) 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.

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

REVIEWER: Capt. Joseph Kelly 2-14-84 Noted and Approved: George M. Wagandt
Planning Group
Special Inspection Division
Fire Prevention Bureau

/mb

* Where piers exceed 250 feet, each should be provided with a two (2) inch water line extending the length of the pier and be equipped with 1½ hour connections at 75 feet intervals according to NFPA Std. 303, Sec. 2-2.3.

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

TED ZALESKI, JR.
DIRECTOR

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

January 20, 1984

Dear Mr. Jablon:

Comments on Item # 166 Zoning Advisory Committee Meeting are as follows:

Property Owner: Joseph F. Evering, Jr., et ux
Location: N/W Chester Road 1000' W. Susquehanna Avenue
Existing Zoning: D.R. 5.5
Proposed Zoning: Variance requiring the structure not to exceed 300' beyond mean low tide to allow the structure to extend 419' beyond the mean low tide.

Acres: 3.30
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 Handicapped and Aged; and other applicable Codes.

B. A building/ & other / miscellaneous 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 uses 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, line 2, Section 1407 and Table 1402, also Section 503.2.

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

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

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

I. Comments

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

Very truly yours,

Charles E. Burnham

Charles E. Burnham, Chief
Plans Review

CEB:es

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO Nick Commodari Date August 31, 1984

FROM Edward A. McDonough, P.E.

SUBJECT Zoning Items - Critical Area

Attached are comments from James Markle for critical area items requested by your office.

EDWARD A. MCDONOUGH, P.E., Chief
Developers Engineering Division

EAM:ss

Attachment

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO Ed McDonough Date August 30, 1984

FROM James A. Markle

SUBJECT Critical Areas Review

1. Item 166 (1983-1984) Evering

   No adverse impact expected.

2. Item 249 (1983-1984) 84-311

   No adverse impact expected.

3. Item 278 (1983-1984) 84-344

   No adverse impact expected.

4. Item 301 (1983-1984) 84-361

   No adverse impact expected.

5. Item 324 (1983-1984) Knight

   No adverse impact expected.

6. Item 337 (1983-1984) Sokolski

   No adverse impact expected.

7. Item 366 (1983-1984) 85-61-A

   No adverse impact expected.

8. Item 365 (1983-1984) 85-62-SPH

   No adverse impact expected.

9. Item 3 (1983-1984) 85-67-A

   No adverse impact expected.

RECEIVED
AUG 30 1984
DEVELOPERS ENGINEERING DIVISION
BUREAU OF PUBLIC SERVICES

All of the above comments are made concerning the three items that were given as Public Works review responsibility in the June 1, 1984 memo from Norman Gerber to Don Hutchinson concerning Critical Areas.

These three items are flood plains, effect of increased impervious areas and effects of points of storm water discharge.

JAMES A. MARKLE, P.E.
Chief, Storm Drain Design
and Approval Section

JAM:hhm

BALTIMORE COUNTY PUBLIC SCHOOLS

Robert Y. Dubel, Superintendent

Towson, Maryland – 21204

Date: January 3, 1984

Mr. Arnold Jablon
Zoning Commissioner
Baltimore County Office Building
1111 West Chesapeake Avenue
Towson, Maryland 21204

Z.A.C. Meeting of:
January 3, 1984

RE: Item No: 158,159,160,161,162,163,164,165,166,167, & 168.
Property Owner:
Location:
Present Zoning:
Proposed Zoning:

District:
No. Acres:

Dear Mr. Jablon:

The above items have no bearing on student population.

Very truly yours,

Wm. Nick Petrovich

Wm. Nick Petrovich, Assistant
Department of Planning

WNP/lh

B A L T I M O R E C O U N T Y, M A R Y L A N D

INTER-OFFICE CORRESPONDENCE

TO: Mr. Carl Richards
Office of Planning and Zoning

DATE: November 24, 1989

FROM: David C. Flowers, Coordinator
Chesapeake Bay Critical Area Program

SUBJECT: Long Beach Marina

The Chesapeake Bay Critical Area Program requests a case chronology for Long Beach Marina which has been involved in the following Zoning Cases; 35-35X, 64-57SPH, 64-160X, and 85-65XSPHA. Specifically, what are the current restrictions on the property under the existing Special Exception, as amended by the court order from Case No. 85-65-XSPHA? Also, could we meet to discuss this case at your earliest convenience. Thank you.

David Flowers

David C. Flowers, Coordinator
Chesapeake Bay Critical Area Program

DCF:SO:ju

cc: Mrs. Janice B. Outen

RECEIVED
NOV 29 1989
ZONING OFFICE

Kathi: For your info.

Baltimore County, Maryland

PEOPLE'S COUNSEL
RM. 223, COURT HOUSE
TOWSON, MARYLAND 21204
494-2188

PHYLLIS COLE FRIEDMAN
People's Counsel

PETER MAX ZIMMERMAN
Deputy People's Counsel

May 10, 1988

Robert J. Romadka, Esquire
John B. Gontrum, Esquire
Romadka, Gontrum, Hennegan & Foos
809 Eastern Boulevard
Baltimore, Maryland 21221

T. Rogers Harrison, Esquire
Andrew N. Janquitto, Esquire
Mudd, Harrison & Burch
306 W. Joppa Road
Towson, Maryland 21204

RE: People's Counsel, et al. v. Joseph F. Evering, Jr., et ux, Circuit Court No. 87CG4755

Dear Counsel:

This will confirm that there will be a meeting in People's Counsel's office on Tuesday, May 17th at 9:00 a.m. for the purpose of resolving the status of the above-referenced case. Currently, there is a hearing set for Monday, May 23rd and I have been told by the Court that their file is incomplete. If we wish to proceed, we must refile certain papers.

Please come prepared to decide whether you wish to go forward on any of the issues raised on appeal or whether there are currently proposals for resolving these issues without further litigation.

If for some reason you will be unable to make this meeting, please contact Shirley Hess in my office as soon as possible.

Sincerely,

Phyllis Cole Friedman/sh

Phyllis Cole Friedman
People's Counsel for Baltimore County

cc: The Honorable
J. William Hinkel, Judge
Baltimore County Circuit Court

Circuit Court Assignment Office

1988 MAY 10 P 12:28
COUNTY BOARD OF APPEALS
RECEIVED

PCF:sh

Baltimore County, Maryland

PEOPLE'S COUNSEL
RM. 223, COURT HOUSE
TOWSON, MARYLAND 21204
494-2188

PHYLLIS COLE FRIEDMAN
People's Counsel

PETER MAX ZIMMERMAN
Deputy People's Counsel

April 29, 1987

T. Rogers Harrison, Esquire
Mudd, Harrison & Burch
306 W. Joppa Road
Towson, MD 21204

John B. Gontrum, Esquire
Romadka, Gontrum, Hennegan & Foos
809 Eastern Boulevard
Baltimore, MD 21221

RE: People's Counsel, et al.
v. Joseph F. Evering, Jr.,
et ux, Ckt. Ct. #86-CG-0022

Gentlemen:

Before I submit the enclosed addendum to the testimony of Mr. Evering, I am sending you a copy of the final version. If I do not hear from you to the contrary by Tuesday, May 5, 1987, I will submit the original to the Board of Appeals.

Sincerely yours,

Phyllis Cole Friedman
People's Counsel for Baltimore County

Enclosures

PCF:sh

He did not build 3 piles requested because of money

JOSEPH EVERING DIRECT EXAMINATION

Built the bulkhead, bathhouse, swimming pool, parking, storage

Mr. Evering testified in direct examination as follows:

That you could see 10 feet down into the creek from the piers - that there was no question that the northern pier (i.e., not on the subject site, but north of the subject site) definitely impedes both traffic and maneuverability in the channel - that he recalls testifying in the 1960 zoning hearing that he intended to bulkhead, fill in the land, extend ~~and pave~~ Chester Road - ~~admits that~~ other than building ~~the~~ bulkhead, ~~he did not do these improvements.~~ Evering testified he was willing to limit himself to emergency repairs on Saturday and Sunday and also limit himself as to the time of day that repairs are completed - ~~admits that no work done on the north side of Chester Road pursuant to the earlier zoning,~~ other than the driving of several piles. - The reason he didn't do any of the construction facilitated by the original zoning was an issue of money - he got a couple of extensions - gas shortage came along - there was a problem with shallow water - and " I just abandoned it." - Saw no need for slips, cost of dredging would be expensive - dredging could be done and make additional slips slips for power boats but he would just rather have sail boats - he says that they do do repairs till dark in the summer time - sail boat people are more inclined to ~~use their boat more often and~~, therefore, generate more boat traffic - testified that there was no detriment to boat traffic by the pier extension. There isn't any navigation problem in the river now; sailboats only move 2 m.p.h. - everything is slow moving, no problem - no waterskiing is allowed - used to have a fuel system on the piers, is not selling any gas now, won't sell any until he installs new pumps with a gas recovery system - never has been any congestion on Chester Road, Susquehanna, or Bowley's Quarters Roads. Again says the opposite shoreline is navigable by boats.

CROSS EXAMINATION OF EVERING

Admits to greatly increasing boat traffic over the last 30 years - again states the opposite side shoreline is navigable - says there's real good fishing for perch, pike and bass - Frog Mortar Creek even in the areas off the piers - admits that no one ever found any samplings of vegetation in the water in this area.

take their boat out of the slip,

Just 1st Page!

JOSEPH EVERING DIRECT EXAMINATION

Mr. Evering testified in direct examination as follows:

That you could see 10 feet down into the creek from the piers - that there was no question that the northern pier (i.e., not on the subject site, but north of the subject site) definitely impedes both traffic and maneuverability in the channel - that he recalls testifying in the 1960 zoning hearing that he intended to bulkhead, fill in the land, extend Chester Road - he built the bulkhead, bathhouse, swimming pool, parking, storage. Evering testified he was willing to limit himself to emergency repairs on Saturday and Sunday and also limit himself as to the time of day that repairs are completed - he did not build 3 piers requested because of money, other than the driving of several piles. - The reason he didn't do any of the construction facilitated by the original zoning was an issue of money - he got a couple of extensions - gas shortage came along - there was a problem with shallow water - and "I just abandoned it." - Saw no need for slips, cost of dredging would be expensive - dredging could be done and make additional slips for power boats but he would just rather have sail boats - he says that they do do repairs till dark in the summer time - sail boat people are more inclined to take their boat out of the slip, therefore, generate more boat traffic - testified that there was no detriment to boat traffic by the pier extension. There isn't any navigation problem in the river now; sailboats only move 2 m.p.h. - everything is slow moving, no problem - no waterskiing is allowed - used to have a fuel system on the piers, is not selling any gas now, won't sell any until he installs new pumps with a gas recovery system - never has been any congestion on Chester Road, Susquehanna, or Bowley's Quarters Roads. Again says the opposite shoreline is navigable by boats.

CROSS EXAMINATION OF EVERING

Admits to greatly increasing boat traffic over the last 30 years - again states the opposite side shoreline is navigable - says there's real good fishing for perch, pike and bass - Frog Mortar Creek even in the areas off the piers - admits that no one ever found any samplings of vegetation in the water in this area.

RECEIVED
COUNTY BOARD OF APPEALS
1981 MAY -7 P 5:16

parking and storage of boats could now occur within 20' of the easternmost property line, especially since the Everings had purchased the property to which the restriction applied and to conform the restrictions with the parking variances requested.In addition, Petitioners sought to remove restrictions 1 and 6 in Case No. 64-160-X to allow major repairs seven days a week. The distinction between major repairs and minor repairs was not clear to Petitioner, and he felt that there was a need for repairs to occur on the weekends and during daylight hours in the summer. Finally, Petitioners sought to have the boatyard, piers and related parking area classified as "other structures" so as to be exempt from residential transition area requirements.

The boatyard and marina is on Chester Road located off of Susquehanna Road in the Bowley's Quarters area of Baltimore County. Chester Road deadends into the site. From the waterside the property is located at the mouth of Frog Mortar Creek where it empties into Middle River. The distance between the banks appreciably widens at this point. Petitioners' Exhibits 11A-F were offered. Thses were six (6) photos of the site from various views showing existing piers, improvements and the channel.

The Everings bought their first parcel of the site in 1954. This was the property on the South side of Chester Road on the water. Petitioners were granted a Special Exception for a boatyard use on this property in zoning case No. 3535-X.(Pet. Ex. 12). This order contained a restriction that boats could only be serviced in the water. In 1964 in Case No. 64-57SPH the Everings applied for a special hearing to specifically include the storage of marine craft on the land. In an order dated March 9, 1964, John Rose granted permission to store marine craft on land but restricted storage from twenty (20) feet of the easternmost property line then owned by Petitioners. In addition use of the boatyard was restricted to pleasure craft. (Pet. Ex. 13).

In 1960 Petitioners had purchased Parcel No. 2 on the north side of Chester Road across from the first parcel. This parcel was approximately 35' deep by 245' long along Chester Road and ran along the water. They were granted a pecial exception to extend their boatyard and marina to that site in 1964 in Case No. 64-160-X. (Pet. Ex. 14).

The third parcel was a 50' wide x 252' deep lot adjacent to their property on the South side from which the 20' setback had originally been taken in Case No. 64-57SPH. This was purchased in 1969. It will accommodate 23 parking spaces. In 1974 the fourth and final parcel on the north side of Chester Road adjacent to the 1960 tract was bought. It will accommodate 24 parking spaces.

The 1964 special exception order expanded the number of slips on both the north and the south sides. In addition, swimming facilities were proposed on the northern property along with on land boat storage and parking. On the south property continued

use of a stationary barge was allowed in addition to the pier extensions. A site plan was required. This Plan was approved in 1967. (Pet. Ex. 15). A permit was issued by the Army Corps of Engineers authorizing the additional slips. Although four (4) piers were authorized by the Special Exception, the three (3) piers on the northern site were never built due to the cost of construction and the dredging that would have had to have been done. (Pet. Ex. 16).

The special exception now sought is to cover the cross-hatched area on the site plan, this being the area added to the site in the 1969 and 1974 parcels and the roadbed of Chester Road within the site. This portion of Chester Road has been maintained solely by Petitioners for as long as they have had the boatyard. The special exception is to allow use of the two lots in conjunction with the existing facilities for parking and storage of boats. Storage of boats would be the use in wintertime when there is little traffic. This area would then be available for parking when the boats are in the water. No additional traffic is expected to be generated from the granting of the special exception. Evering felt that the granting of the special exception would not be injurious to the health, safety or general welfare.

The site has its heaviest usage during the summer holidays of July 4 and Labor Day. At these times perhaps 40% of the lot is used. No private launching of boats is permitted, and the only traffic is from owners of boats in the water at the marina and their guests. No boats are offered for daily rental. Most boats in the water are stored on shore in the winter. Employees of the marina do all launching and taking of boats from the water so that there is no real trailering of boats to and from the site.

With respect to the parking variance Evering testified that maximum usage of the site during the two major holidays was approximately 40%. On other peak summer weekends usage of the marina boats is closer to 20%. There never is a time when all boats are out or when there are not parking spaces available on site. He has never had any complaints about parking, and granting the variance requested would in no way be injurious to the public. Even with the variance requested actual parking provided is far more than actual usage, and providing one space per slip would work an undue and unreasonable hardship on him. The parking variance aslo relates to the removal of restriction one (1) in Case No 64-57SPH. Removal of restriction 3 is also sought because Everings now own the lot from which the setback was placed and desire to use it along with the twenty foot strip for parking and storage. Since Everings now own the adjoining lot, there is now no reason for the restriction, and retention of it would work an unreasonable hardship on the boatyard.

Evering also testified that the variance from the paving requirements was sought because he never in all the years of the

operation been confronted with a problem from the surface he had in place. The gravel surface allowed filtration of run-off but did not rut and was dust-free. To pave the site would increase run-off and pollutants into the water without any real benefit. The storage of the boats on the shore would also damage any macadam surface and mandate costly maintenance.

Restrictions one (1) and six (6) in Case No.64-160-X are sought to be removed. Restriction 1 limits prohibits major repairs to boats. There is no distinction made between major and minor repairs. Evering testified that at the time the major concern was over repair work to commericial vessels, which he did not propose to do. Evering only serviced pleasure boats and that restriction was to be maintained. Because of the lack of clarity on major and minor repairs, he wished to have the restriction removed. Restriction 6 had to do with the hours of repairs. He wished to do repairs during daylight hours in the summer and to be allowed to do emergency repair work on the weekends. At the marina repairs to boats are conducted by marina personnel during the week. Boats are pulled from the water to perform the repairs. Lifting of the restriction was sought to perform emergency repairs to boats only and to permit full usage of daylight hours on weekdays during the summer.

The previous special exceptions were sought to be modified and a variance was sought to allow extension of the existing piers to go 419' beyond mean low tide instead of the allowed 300'. There are now 201 slips exising at the marina. With the pier extensions an additional 178 slips could be built. The previous special exceptions had authorized 310 slips.

Evering testified that the channel on Frog Mortar Creek ran along the western shore by the airport property. The proposed extensions would not extend to the channel. An existing pier still in private use just upstream of the subject property extended out almost to the channel. The Creek widened at the marina, and the proposed extensions would be well away from the channel. It was his opinion that due to the widening of the Creek at the marina that there would be no endangerment to boats in the Creek. It was his memory that there had been only one bad accident on the river in all the years of his operation. The speed limit was reduced further at this point so that he did not foresee any hazard to navigation from boats going into or out of the marina. Several marinas located upstream from Long Beach Marina have piers which do project out to the channel.

Evering testified that the water quality around the marina was gnerally good. He had no problem seeing the bottom a couple of feet down into the river, and children swam in the water near the marina. The slip renters were forbidden from dumping wastes overboard. Slip renters were instructed not to dump holding tanks overboard and not to empty them into the septic system. To his knowledge this had not been a problem.

The previously granted right to construct the three piers on the northern property had not been exercised for two basic reasons. First, there was the cost involved for the project. The construction of the piers as indicated would allow power boats to go into the slips but not sail boats due to the draft needed for sailboat keels. As Mr. Evering stated, however, he felt that more revenue and less use of the facilities could be had from sailboat slip rental. Sailboaters in his opinion spent more time out on the water rather than entertaining in the slip and consequently used the on-shore facilities less than power boaters. Many power boaters come down and entertain on their boats but never leave the slip. The other reason dealt with the environment, for Mr. Evering felt that dredging would now be necessary to place the piers that close to shore even with use by power boats. Not only would dredging be very costly but also it possibly would create environmental problems. There would also be a potential problem from the propeller wash on the bottom. The proposed extensions would allow Mr. Evering to use the new slips for sailboats without dredging. According to his testimony this represents a substantial cost savings to Mr. Evering and minimizes impact on the environment.

In the event that the variance and amendment to the special exception were granted for the proposed slips Mr. Evering stated that he would provide a holding tank and a pump-out facility for disposal of on-board waste. Such a facility is not currently provided but was recommended by the Health Department. Mr. Evering felt that this would assist in alleviating current pollution although boat owners are prohibited from disposing of their waste in the water.

In addition Mr. Evering agreed to comply with certain "best management" practices as outlined in recommendations of his environmental experts to relieve and improve on existing conditions. Finally, Mr. Evering stated that he was willing to backfill behind any new bulkheading in such a way as to provide a filtration strip around the water which would cleanse runoff.

In conclusion Mr. Evering stated that the additional slips and requested changes to the existing special exceptions would not tend to create congestion either on the streets or on the waterway and that there would be no adverse impact to the environment or to the health, safety or general welfare from the proposed construction.

Cross-Examination:

Under cross-examination Mr. Evering stated that he had no contracts of sale on the property and that he had no plans for duplexes on the site.

The first parcel was purchased in 1954 on the south side of Chester Road. The second parcel was on the north side of Chester. Under the special exception on the property in 1964 he

put in the shower facilites, poole and septic facilities. It was all put in to handle the slips that he poposed using, being 358 slips. The third parcel was the Frye property on the South side of Chester Road and the fourth parcel was next to the second parcel on the north side of Chester Road. The property is being used as one unit. The property has all been regraded and surfaced for parking and boat storage.

With respect to the lifiting of the restrictions for repairs Evering stated that he was willing to limit repairs on weekends to emergency repairs only.

He felt that dedging was difficult as a practical matter. The 201 slips now available are filled most of the time. The composition of boats at the marina is now approximately 60% sailboats and 40% power boats. He eventually would like to go to an all sail boat facility. He estimated that the Creek was 1500' wide at the marina. The pier extensions would be out 419'.

Under cross-examination Mr. Evering stated that there probably would be a charge either built into the slip rental or based on usage of the waste holding facility. He admitted further that he had already ceased use of the fuel facilty located on the pier.

He also stated that the primary reason he had not constructed the piers on the northern property under the special exception was due to economics.

JOINT STIPULATION NO 1 P.C. Pet & Prot.

Re: Evering XSPHA #85-65

PCP!

RECEIVED
APR 20 1987
PEOPLE'S COUNSEL

Hearing on 12/16/87

Prior to testimony Petitioner offered a copy of the Order of the Board of Airport Appeals dated July 23, 1986, granting Petitioner a variance for the proposed construction at the marina. (Pet. Ex. 7).
Pet. No. 8 was copies of the Petitions for Special Exception, Special Hearing and Variances filed in the case. There were no objections to either exhibit.
Joseph Evering
800 Chester Road

Petitioner's Exhibit No. 10 was a 1986 photogrammetric plan of the site and of the channel which Petitioner put into evidence at the request of People's Counsel.

Direct testimony:

Joseph Evering
Chester Road

Petitioners have filed Petitions for Special Exception, Special Hearing and for Variances in this case. The purpose of the requested Special Exception is only to allow additonal parking for the boatyard on the two cross-hatched areas on the site plan, which were properties purchased since the last Special Exception and to include the roadbed of Chester Road where it is encompassed by the Evering property as part of the Special Exception.

Petitioners have also filed for zoning variances in order not to pave the gravel lot now in existence with a bituminous or concrete or tar chip surface in order to minimize run-off. Mr. Evering testified that neither dust nor rutting had been a problem and that the surface was replenished regularly. It was pointed out that this appeared to more environmentally sound than paving the lot. In addition variances of the parking requirement for marinas and boatyards was sought to be modified to 318 spaces in lieu of the 384 spaces required if the requested Special Exception was denied or to 363 spaces out of the required 384 spaces if the Special Exception were to be granted. In addition, a variance was sought to extend the existing piers 419' beyond mean low tide in lieu of the allowed 300' so as to reach deeper water and avoid dredging.

A special hearing was requested to modify existing site plans in Special Exception Cases No. 3535-X, 64-160-X and in Special Hearing Case No. 64-57SPH to construct the additional piers and to reflect the additional special exceptions. Restrictions 1 and 3 in Case No. 64-57SPH were sought to be eliminated so that

JOINT NO 2
511 P. all parties Pet & P.C, Prot.

DIRECT TESTIMONY OF DR. FRANK PINE

After questioning as to qualifications and background and the introduction of his resume (Pet. Ex. 18) without objection, Dr. Pine was presented to the Board as an expert as to the environmental impact aspects of the case including water quality. The Board accepted Dr. Pine as an expert on water quality and on the environment without objection.

Dr. Pine was hired by the Petitioners to investigate the environmental impact of the expansion plans of the marina and boatyard. After being retained he had the occasion of visiting the site on a number of occasions to perform aquatic assessments and to perform water quality studies. As part of his study he reviewed available information on the water quality in Middle River and in Frog Mortar Creek including studies which he had previously prepared on another marina in the mouth of Middle River. In addition, he reviewed reports and sutdies prepared by the State Natural Resources and Health Departments as well as private studies in order to evaluate water quality and envirnomental toxicology and to arrive at an aquatic assessment.

He checked the previous calculations and performed his own calculations based on acceptable scientific methodology and on his training and experience. He had reviewed the proposed expansion of the existing facility as well as the current operation and had sat through all of the testimony of Mr. Evering.

He was asked: "Do you have an opinion as to the impact, if any, of the proposed expansion plans described here today on the water, fish and wildlife at and in the vicinity of the site?" He did have an opinion and that opinion was that the proposed expansion with appropriate mitigative measures would not have a net adverse impact on the water quality, fish or wildlife.

He had prepared a report on the site which was introduced as Petitioner's Exhibit 19. It was accepted for identification purposes only as other counsel had not had the opportunity to review it and offer objections as to admissibility.

His examination of the site indicated that there was little or no aquatic vegetation on the bottom at the site. He felt that the proposed construction would disturb the bottom at the time the piles were driven, but that there would be sufficient depth so

that dredging would not be required. He did not identify any rare or endangered species that would be injured by the construction.

The additional slips and boats would add to the pollutant levels in the water, but these he felt would be minimal. His studies of pollutant levels in the water indicated that the vast majority of the organic pollutants in the water were caused by failing septic systems and not by boats. The additional increment of pollution caused by the boats would be infinitesimal. In addition, if certain steps were taken with respect to control of on shore water run off and with respect to a holding tank as well as best management practices then the additional increment would in his opinion be offset and then there would be no worsening in existing condition if the requests were granted. In comparison with other locations he noted that in this instance the marina has fully developed its land resources. The backfilling behind the bulkheads proposed to be replaced by the Everings would reduce sediment runoff into the water by up to eighty percent (80%).

With respect to the variance request for maintenance of the existing gravel surface as opposed to macadam, cement or tar and chip Dr. Pine testified that the existing surface was much more sound from an environmental view than the other alternatives. The proposed backfill would further protect the water from runoff.

The facility had an approved and passing septic system. The pump out facility would be used for boat wastes which were not to be placed in the septic system. This should have a positive impact on water quality as his studies had assumed that all boaters would violate the law by dumping their wastes overboard.

At the request of the Petitioners he had undertaken studies at three times in 1986 of water quality, fecal chloriform levels. These tests were done over Labor Day, at the end of September and in November. He would have expected the results to have been higher earlier in the season due to temperature. They indicate that the site is well flushed by the tides and that there is a good cleansing action of the water at the site despite the overall stressed nature of the waterway. The primary cause of the pollution comes from the failing septic systems in the area.

CROSS EXAMINATION

On cross-examination Dr. Pine stated that there was no wetland vegetation at the site nor was there any aquatic vegetation. The on shore facilities and land was fully developed so that his studies did have to examine any on-shore adverse impact.

He did note that the water quality of Middle River was stressed. His estimates on water quality impact was based on a worse case basis, but he estimated that no more than 30% of the boats on the

river used that water at any one time. The 30% figure had previouosly been derived from his study for the proposed Mariner's II marina, which was to be located elsewhere in the Middle River area. His study further assumed that all of the boats using the water would dump their wastes into the water rather than use pump out facilities or on-board holding tanks. Using these assumptions he felt that the additional contribution to pollution caused by the expansion of the facilities would be minimal.

He recommended that a requirement for discharge into the pump out facilities proposed by Petitioners be written into the Lease for slip rental. He was unaware of Mr. Everings proposal to charge for the service.

He felt that the proposed backfill material used behind the bulkheading would have the most impact on improving the environment by reducing sediments.

CROSS EXAMINATION OF FRANK PINE

Over 20% of the boats in Middle River Basin are in Frog Mortar Creek, ~~how~~ how polluted Frog Mortar Creek really gets depends on the amount of illegal discharge. If we make the assumption that all boat users illegally discharge bringing 178 more boats, will result in more illegal discharge and more pollution. Pine states that you cannot see down into the water from the piers - Pine has admitted that Frog Mortar Creek is in violation of Class I water quality standards for fecal coliforms presently, also for dissolved oxygen and PH presently. Pine is aware that a serious water quality problem already exists in Middle River generally and specifically in Frog Mortar Creek. Pine is aware that approximately 1,000 slips already exist in Frog Mortar Creek. States that some system of on-site maintenance, storage, off-site discharge of waste and septic disposal is essential. Admitted if you have any boats, you have some impact, if you add more boats, you increase the amount of discharge and therefore pollution.

Baltimore County, Maryland

PEOPLE'S COUNSEL
RM. 223, COURT HOUSE
TOWSON, MARYLAND 21204
494-2188

PHYLLIS COLE FRIEDMAN
People's Counsel

PETER MAX ZIMMERMAN
Deputy People's Counsel

February 26, 1986

The Honorable
Lawrence E. Schmidt, Acting Chairman
Keith S. Franz, Member
William T. Hackett, Member
County Board of Appeals of Baltimore County
Room 200, Court House
Towson, Maryland 21204

RE: Joseph F. Evering, Jr., et ux,
Petitioners - Zoning Case No.
85-65-XSPHA

Gentlemen:

I am enclosing herewith a copy of a recent decision approving the State Airport Zoning Regulations, Greenberg v. State, 66 Md. App. 24, 502 A.2d 522 (1986).

Greenberg challenged the State Airport Zoning Regulations on the ground that they amounted to an unlawful "taking" or confiscation of his 14.496 acre property in Glen Burnie. The regulations totally prohibited residential development, and the Board of Airport Zoning Appeals had denied a request for variance. As a result, he was limited to certain other designated non-residential uses permitted by the zoning law.

Judge Robert Karwacki delivered an excellent opinion reviewing cases of the United States Supreme Court, the United States District Court of Maryland, and State court decisions. He found that there was no "taking" because it appeared from the complaint that Greenberg was not denied all reasonable use of his property and because the State had a legitimate interest in protecting the health and general welfare of occupants of land near airports and in minimizing the impact of harmful airport noise. Accordingly, the Court of Special Appeals affirmed the dismissal of the complaint.

I realize the Evering case is currently in Circuit Court but my recollection is that in argument, I mentioned the Greenberg case, although not by name, and I thought you might have some continued interest in the issue.

Very truly yours,
Phyllis Cole Friedman
Phyllis Cole Friedman
People's Counsel for Baltimore County

Enclosures

RECEIVED
COUNTY BOARD OF APPEALS
1986 FEB 26 P 2:32

court's analysis, although partially couched in the appropriate statutory language, reveals that the court applied, in reality, the wrong standard. The precipitating event in the chain leading to appellant's arrest was the officer's belief that appellant secreted a bag from him. Thereafter, the way in which the officer viewed appellant's actions was colored by the officer's suspicions that appellant was engaged in criminal activity: appellant's nervousness was attributed to a cause other than his having violated the traffic laws and appellant's display of a prison identification card was viewed as corroborating those suspicions. Fortuitously, appellant did not have a driver's license. This fact thus became, for the officer, the vehicle to discover the nature of the criminal activity he suspected. As the concluding comments of his ruling demonstrate, the trial judge adopted and legitimized this faulty premise. This arrest was a mere subterfuge for the search for evidence that followed.

---

502 A.2d 522

Erwin L. GREENBERG, et al.

v.

The STATE of Maryland.

No. 381, Sept. Term, 1985.

Court of Special Appeals of Maryland.

Jan. 10, 1986.

Landowners brought action for declaratory judgment and anciliary relief alleging that airport noise regulations which imposed restrictions on property, in addition to county zoning ordinances, constituted an unlawful "taking" of their property without compensation. The Circuit Court, Anne Arundel County, Eugene M. Lerner, J., granted summary judgment against them, and landowners appealed. The Court of Special Appeals, Karwacki, J., held that: (1) motion for dismissal could be treated as a motion for summary judgment, and (2) the combined effects of the restrictions was not an unconstitutional "taking" without compensation.

Affirmed.

1. **Judgment ⇐183**

Motion to dismiss claim alleging that zoning regulations resulted in an unconstitutional "taking" of property could be treated as one for summary judgment since there was no issue of material fact where State conceded factual premise that combined effect of noise regulations and zoning ordinance severely diminished the value of property. Md.Rules 2-322, 2-501.

2. **Eminent Domain ⇐2(1.2)**

Combined effects of airport noise zone law and county zoning ordinance, which restricted uses to which property could be put, did not constitute an unconstitutional "taking" in exercise of power of eminent domain to require compensation, although regulations restricted development and reduced value of property, since regulations were legitimate exercise of police power and did not deny owner of reasonable use of property where there were number of permitted uses of property remaining. U.S.C.A. Const.Amends. 5, 14; Const. Art. 3, §§ 40-40D; Code, Transportation, §§ 5-801 to 5-823.

Warren K. Rich (Richard E. Rich, Lester O. Brown, and Niles, Barton & Wilmer on brief), Annapolis, for appellants.

Andrew H. Baida, Sp. Asst. Atty. Gen. (Stephen H. Sachs, Atty. Gen., Diana G. Motz, Peter E. Keith, Janis Ashman and Peter W. Taliaferro, Asst. Attys. Gen. on brief), Baltimore, for appellee.

Do Not Remove!

Argued Before WILNER, WEANT, and KARWACKI, JJ.

KARWACKI, Judge.

This appeal is from a summary declaratory judgment entered by the Circuit Court for Anne Arundel County in favor of the State of Maryland and the State Aviation Administration of the Department of Transportation (hereinafter "the State" or "the appellees"). Erwin L. Greenberg, Alvin M. Lapidus, Lois Lapidus, Tevis Margolis, and Sylvia Margolis (hereinafter "the landowners" or "the appellants") filed this action against the State seeking declaratory and equitable relief. They alleged that their undeveloped property, located within the Baltimore-Washington International Airport (BWI) noise zone, had been "taken" by the State for public use without just compensation as a result of the application of the State airport noise zone regulations and the refusal by the Board of Airport Zoning Appeals to grant a variance permitting the use of the property for residential purposes. The appellants requested the court to declare that the "taking" of their property without just compensation is unconstitutional under the Fifth and Fourteenth Amendments of the United States Constitution and under Article III, Section 40 of the Maryland Constitution.

The 14.496 acre parcel of land which is the subject of this dispute is located near Crain Highway in Glen Burnie, Anne Arundel County, approximately one mile south of the North Arundel General Hospital and southeast of BWI. It lies within a 65–70 Ldn [1] noise zone. Maryland Code (1977, 1985 Supp.), § 5–801 through 5–823 of the Transportation Article [2] authorize the State Aviation Administrator to adopt

1. Ldn is the annual day-night sound level in decibels, resulting from annual average daily traffic and use of runways and flight paths, affecting a location in the neighborhood of an airport. COMAR § 11.03.03.01 A(1).

2. All further statutory references will be to this Article of the Code unless otherwise indicated.

noise zones in areas surrounding airports licensed by the Administration and to promulgage regulations governing land use therein. The regulation applicable to properties lying within a 65–70 Ldn noise zone, COMAR § 11.03.03.03, stipulates that residential development is prohibited. The same regulation, however, permits use of such property for hotels, motels, sports arenas, outdoor spectator sports, playgrounds, neighborhood parks, golf courses, riding stables, water recreation, cemeteries, office buildings (personal, business, and professional), commercial (retail or wholesale, movie theatres, restaurants, industry), manufacturing utilities, manufacturing, communications, livestock farming, agricultural purposes, mining, fishing, and aviation-related purposes.

In addition to the State noise zone regulations, the landowners' property is also subject to use restrictions imposed by the Anne Arundel County zoning ordinance. Anne Arundel County Code § 13–309. Under that zoning, the property is located in an R–22 Medium Density Multi-Family District, which permits use for apartments, apartment hotels, golf courses, libraries, museums and similar institutions of a noncommercial nature, private educational institutions, professional offices, certain restaurants, taverns and lounges, rooming houses, and certain swimming pools. Thus, as affected by both the State noise zone regulations and the Anne Arundel County zoning, the landowners' property is restricted to use for apartment hotels, golf courses, professional offices, restaurants, taverns and lounges, rooming houses, and swimming pools.

In October of 1982, the appellants entered a contract to sell the subject property to Harkins Associates, Inc. (hereinafter "Harkins") contingent upon Harkins's ability to build apartments thereon. Harkins's October 19, 1982 application for a building permit required by § 5–821 was denied by the State Aviation Administration because the property was located in a 65–70 Ldn zone. Thereafter, Harkins applied to the Board of Airport Zoning Appeals, established under § 5–506, for a variance from the noise zone regulations

pursuant to § 5–822 which was denied on January 14, 1983. The Circuit Court for Anne Arundel County affirmed the Board's decision on August 31, 1983, finding that reasonable uses were available for the property under the regulation applicable to its noise zone.[3]

On June 20, 1984, the appellants filed a Petition for Declaratory Judgment and Ancillary Equitable Relief followed by two amended petitions. The appellants asserted that the Airport Noise Program effectuated a "taking" of their property for public use without just compensation in violation of the Fifth Amendment of the United States Constitution (as applied to the states via the Fourteenth Amendment) and Article III, §§ 40–40D of the Maryland Constitution. Following a hearing on December 17, 1984, the State's motion to dismiss based on *res judicata* and failure to exhaust administrative remedies was denied.

A third amended petition was filed by the appellants containing two counts:

(1) alleging that the Airport Noise Control Program "took" their property for public use without just compensation in violation of the Fifth Amendment of the United States Constitution and Article III, §§ 40–40D of the Constitution of Maryland; and

(2) charging that since the airport noise zone regulations diminished the value of the property, and since the program was enacted by the State pursuant to and in the exercise of its eminent domain powers, the State was required to compensate the landowners for the "taking."

Again, the State moved to dismiss or, alternatively, to be granted summary declaratory judgment. Following a hearing on February 7, 1985, Judge Lerner granted the Summary Declaratory Judgment from which this appeal was taken.

3. In the matter of the Application of Harkins's Associates, Inc. for a variance from Airport Noise Zone Regulations, Law No. 1105667 (hereinafter "Harkins decision").

The appellants raise three issues for our determination. They argue that:

(1) the circuit court's action granting summary judgment in favor of the State based upon the pleadings was improper;

(2) the appellants were inappropriately precluded from showing the relationship between the airport noise zone regulations and the governmental enterprise; and

(3) the airport noise zone regulations as applied have resulted in an unconstitutional taking of the appellant's property for public use without just compensation.

In addition to taking issue with these arguments, the State urges that the appellant's action was barred by *res judicata*. It will not be necessary to resolve this assertion because, as a matter of law, we find from the pleadings that there was not an unconstitutional taking.

I.

[1] As a preliminary matter, we are satisfied that the court's disposition of this case upon a motion to dismiss was appropriate under Rule 2–322, dealing with motions to dismiss for failure to state a claim. Where the contentions of parties to a declaratory judgment proceeding reveal no dispute as to any material fact rendering the issue drawn by the pleadings one of law, summary judgment is appropriate. *Carroll County Educational Association v. Board of Education*, 294 Md. 144, 448 A.2d 345 (1982); *Baltimore Import Car Service and Storage, Inc. v. Port Authority*, 258 Md. 335, 265 A.2d 866 (1970); *Hunt v. Montgomery County*, 248 Md. 403, 237 A.2d 35 (1968). In such a case the court may treat the motion to dismiss as one for summary judgment pursuant to Rule 2–501. In the case *sub judice* the issue drawn by the pleadings, when read in a light most favorable to the appellants, raised no issue of fact material to the resolution of the dispositive legal issue. The appellants alleged that the combined effect of the

State's airport noise zone regulations and the Anne Arundel County zoning ordinance was to "severely diminish" the value of their property. Based upon that premise, they argued that their property has been unconstitutionally taken without compensation even though they have not been deprived of all beneficial use of their land. In the trial court and here, the State conceded the factual premise for the appellants' assertion.

Persuasive on this question are decisions of the U.S. District Court for Maryland dismissing under Rule 12(b)(6) of the Federal Rules of Civil Procedure claims of unconstitutional "taking" of property. Niemeyer and Richards, *Maryland Rules Commentary* 146–151 (1984). One such case involved a developer who sought to develop a residential subdivision on his property in Queen Anne's County. *Kent Island Joint Venture v. Smith*, 452 F.Supp. 455 (D.Md.1978). The developer asserted that his federal constitutional rights had been violated because state and local officials interfered with his plans. He claimed that governmental actions with regard to a subdivision moratorium, percolation standards, and water and sewage requirements had led to an unconstitutional "taking" of his property because he was unable to complete his residential subdivision. The court dismissed the "taking" claims pursuant to a 12(b)(6) motion. It held:

> Although governmental interference by regulation of the use of private property can constitute a *de facto* or constructive taking, there is no taking in the constitutional sense unless the interference is so substantial as to render the property worthless or useless. It is not enough that the regulation deprives the property owner of the most profitable use of the property, or that the regulation causes a severe decline in the property's value. In *Hadacheck v. Sebastian*, 239 U.S. 394, 36 S.Ct. 143, 60 L.Ed. 348 (1915), a decline in value from $800,000 to $60,000 was found by the Supreme Court to be insufficient to constitute a taking. Before a court can conclude that there has been an unconstitutional taking of property, the government regulation must deprive the landowner of all reasonable uses of his land. Plaintiff has done no more than allege that the actions of the defendants have deprived it of the "most reasonable" use of its property, and have resulted in "substantial decrease" in the property's value. These allegations are clearly insufficient to establish a taking in the constitutional sense. This Court is satisfied that the acts alleged do not constitute a "taking" within the constitutional sense which would permit claims to be asserted in this suit against these defendants.

Kent Island Joint Venture, supra at 460.

Similarly, in *Smoke Rise, Inc. v. Washington Suburban Sanitary Commission*, 400 F.Supp. 1369 (D.Md.1975), a case decided upon the defendant's Rule 12(b)(6) motion to dismiss, the court addressed the validity of a "taking" claim, noting "[t]hough the value of the tract has been decreased considerably, it is not worthless or useless so as to constitute a taking." *Smoke Rise, Inc., supra* at 1383. The claim was dismissed. Likewise, in *Chesapeake Bay Village, Inc. v. Costle*, 502 F.Supp. 213 (D.Md.1980), the court again dismissed a "taking" claim upon a Rule 12(b)(6) motion since the allegations failed to satisfy the "all beneficial use" standard. Judge Miller repeated the well-established principle that in order to state a claim of unconstitutional "taking":

> [A] plaintiff must show that the state's interference with his property has effectively deprive[d] the owner of all or most of his interest in the property; and
>
> [T]he fact that a person is unable to make the most desirable or profitable use of its property does not mean that there has been a taking. (Citations omitted).

Chesapeake Bay Village, Inc., supra at 226–27. *See also Hagerstown Kitchens v. Board of County Commissioners of Washington County*, 547 F.Supp. 46, 48 (D.Md.1982), *aff'd mem.*, 707 F.2d 506 (4th Cir.1982).

2. and 3.

[2] We turn now to the resolution of the crucial issue herein: whether the governmental action involved constituted a "taking" in exercise of the power of eminent domain, or rather a regulation under the State's police power. Generally, zoning ordinances, which restrict the use of property and cause reduction in value, are not "takings" if they substantially advance legitimate state interests and do not "extinguish a fundamental attribute of ownership." *Agins v. Tiburon*, 447 U.S. 255, 262, 100 S.Ct. 2138, 2142, 65 L.Ed.2d 106 (1980). In determining whether the enactment of the zoning ordinances constituted a "taking" Justice Powell explained:

> The determination that governmental action constitutes a taking is, in essence, a determination that the public at large, rather than a single owner, must bear the burden of an exercise of state power in the public interest. Although no precise rule determines when property has been taken, see *Kaiser Aetna v. United States*, 444 U.S. 164 [100 S.Ct. 383, 62 L.Ed.2d 332] (1979), the question necessarily requires a weighing of private and public interests. The seminal decision in *Euclid v. Ambler Co.*, 272 U.S. 365 [47 S.Ct. 114, 71 L.Ed. 303] (1926), is illustrative. In that case, the landowner challenged the constitutionality of a municipal ordinance that restricted commercial development of his property. Despite alleged diminution in value of the owner's land, the Court held that the zoning laws were facially constitutional. They bore a substantial relationship to the public welfare, and their enactment inflicted no irreparable injury upon the landowner. *Id.* at 395–397 [47 S.Ct. at 121].

Agins, supra at 260–61, 100 S.Ct. at 2141.

In this case, the noise zone regulations substantially advance legitimate governmental goals. Noise pollution, like air pollution, is a matter over which the State has a legitimate concern. *Department of Transportation v. Armacost*, 299 Md. 392, 474 A.2d 191 (1984). The regulations at issue are an exercise of the State's police powers to

protect the public from harmful airport noise, applicable on a statewide basis to all airports licensed by the State Aviation Administration. The legislative purpose specifically set forth in the statute is to:

> (1) Provide a positive basis for abatement of existing noise problems in communities near airports and to prevent new noise problems; and
>
> (2) Protect the health and general welfare of the occupants of land near airports.

Section 5–802.

The Court of Appeals observed in *Bureau of Mines v. George's Creek*, 272 Md. 143, 166, 321 A.2d 748 (1974):

> [T]he police power of the State includes everything essential to the public health, morals and safety. And beyond this, the State may interfere whenever the public welfare demands it, a large discretion necessarily being vested in the Legislature to determine what the welfare of the public requires and what measures are necessary for the promotion of the public welfare.

In *Md.-Nat'l Cap. P. & P. Comm'n v. Chadwick*, 286 Md. 1, 8, 405 A.2d 241 (1979), the Court noted:

> The power of the state over private property extends from the regulation of its use and enjoyment under the police power, to its actual appropriation under the eminent domain power upon payment of just compensation. The distinction between the two governmental powers is an important one because a taking for public use without compensation can be corrected by payment, while a governmental action that violates due process requirements may be invalidated, without regard to whether compensation is provided. Our cases have recognized and applied the distinction between a compensable taking under the eminent domain power and a noncompensable regulation under the police power. *See, e.g., Governor v. Exxon Corp.*, 279 Md. 410, 423–38, 370 A.2d 1102 (1977), *aff'd*, 437 U.S. 117 [98 S.Ct. 2207, 57 L.Ed.2d 91] (1978); *Bureau of Mines v. George's Creek*, 272 Md. 143, 165–66,

321 A.2d 748 (1974); *Rockville Fuel v. Gaithersburg*, 266 Md. 117, 127–28, 291 A.2d 672 (1972); *Stevens v. City of Salisbury*, 240 Md. 556, 563–66, 214 A.2d 775 (1965). We have consistently upheld regulations which may have, as an incidental effect, the diminution of value of property, so long as those regulations have been shown to be fair exercises of the police power. *See, e.g., State Dep't of A. & Tax. v. Clark*, 281 Md. 385, 380 A.2d 28 (1977); *Mont. Co. v. Woodward & Lothrop*, 280 Md. 686, 376 A.2d 483 (1977), *cert. denied sub nom. Funger v. Montgomery County*, 434 U.S. 1067 [98 S.Ct. 1245, 55 L.Ed.2d 769] (1978); *Bureau of Mines v. George's Creek, supra; City of Annapolis v. Anne Arundel Co.*, 271 Md. 265, 316 A.2d 807 (1974); *Arnold v. Prince George's Co.*, 270 Md. 285, 311 A.2d 223 (1973); *Potomac Sand & Gravel v. Governor*, 266 Md. 358, 293 A.2d 241, *cert. denied*, 409 U.S. 1040 [93 S.Ct. 525, 34 L.Ed.2d 490] (1972); *Baltimore City v. Borinsky*, 239 Md. 611, 212 A.2d 508 (1965). A regulation which prohibits a beneficial use of private property constitutes a fair exercise of the police power if the public interest generally requires it and the regulation is reasonably necessary to achieve the public goal without being unduly oppressive upon individuals. *Potomac Sand & Gravel v. Governor, supra.*

We perceive no merit in the appellants' assertion that the Legislature abused its discretion in concluding that noise pollution attendant to airport operations within the State poses a threat to the public health and welfare of residents of the State and requires regulation.

We also reject the appellants' contention that since the noise zones are necessarily dictated by the volume of air traffic at BWI, a state owned airport, that imposition of those zones cannot be justified under the police power. We do not find *McShane v. City of Faribault*, 292 N.W.2d 253 (Minn.1980), relied on by the appellants, persuasive in this case. In *McShane*, a municipality enacted an ordinance limiting the use of property located under the flight paths established for its municipal airport. The limitations re-

stricted height of structures as well as the commercial and residential use thereof. The Minnesota Court held that since the sole purpose of the municipal ordinance was to benefit a municipal enterprise, that the owners of property affected by the ordinance were not required to establish that they had been deprived of all reasonable use before they were entitled to compensation. Rather, the court held that they were entitled to be compensated for the measurable decline in the market value of their property. The noise zone regulations in the instant case are materially different. They were enacted as part of a legislatively mandated program of statewide application aimed at abating and monitoring harmful noise emanating from airports. Airports, whether state owned or privately operated, come within their reach.

Understandably, the appellants would like to maximize the profits they might expect to make by developing their land in a residential manner. Undoubtedly, the noise zone regulations *sub judice* have restricted the development and affected adversely the value of that property. This diminution of value does not constitute a "taking," however, unless the State's legitimate exercise of its police power denies the owner all beneficial use of his property. *Department of Transportation v. Armacost, supra; State v. Good Samaritan Hospital*, 299 Md. 310, 473 A.2d 892 (1984); *Md.-Nat'l Cap. P. & P. Comm'n v. Chadwick, supra.*

In *Armacost* the Court of Appeals rejected a challenge to the recently enacted vehicle emissions inspection program on the ground that the enforcement mechanisms adopted by the General Assembly constituted a "taking" of a non-complying vehicle by the State in violation of substantive due process. Chief Judge Murphy speaking for the Court explained:

> Both the fifth amendment to the United States Constitution and Article III, § 40 of the Constitution of Maryland prohibit the taking of private property for public use unless just compensation is paid to the owner. The fifth

amendment applies to the states through the fourteenth amendment. We have said that Supreme Court decisions interpreting the fifth amendment's just compensation requirement are practically direct authority for our interpretation of the parallel provision in the Constitution of Maryland. *King v. State Roads Comm'n of St. Hwy. Admin.*, 298 Md. 80, 83–84, 467 A.2d 1082 (1983). The standard for determining when a government regulation affecting the use of private property becomes a "taking" in the constitutional sense is well accepted.

> "'If the owner affirmatively demonstrates that the legislature or administrative determination deprives him of all beneficial use of the property, the action will be held unconstitutional. But the restrictions imposed must be such that the property cannot be used for any reasonable purpose. It is not enough for the property owners to show that the ... action results in substantial loss or hardship.'"

Governor v. Exxon Corp., 279 Md. 410, 437, 372 A.2d 237 (1977), *aff'd* 437 U.S. 117, 98 S.Ct. 2207, 57 L.Ed.2d 91 (1978), *quoting Baltimore City v. Borinsky*, 239 Md. 611, 622, 212 A.2d 508 (1965). *See also State v. Good Samaritan Hospital*, 299 Md. 310, 321, 473 A.2d 892 (1984); *Cider Barrel Mobile Home v. Eader*, 287 Md. 571, 580, 414 A.2d 1246 (1980); *Pitsenberger v. Pitsenberger*, 287 Md. 20, 34, 410 A.2d 1052 (1980), *appeal dismissed*, 449 U.S. 807, 101 S.Ct. 52, 66 L.Ed.2d 10 (1980); *Rockville v. Stone*, 271 Md. 655, 668–64, 319 A.2d 536 (1974).

Armacost, supra [299 Md.] at 420–21, 474 A.2d 191.

The noise zone regulations in issue in this case have not deprived the appellants of all reasonable uses of their land as there are a number of permitted uses for the property consistent with the State noise zone regulations and the Anne Arundel County zoning. Thus, fundamental attributes of ownership have not been extinguished and the State's interest in protecting the health and general welfare of the occupants of land near airports has been preserved. A weighing of public and private interests in this case indicates that the enforcement of these regulations does not constitute a "taking" of the appellant's property. Therefore, no compensation is required.

JUDGMENT AFFIRMED;

COSTS TO BE PAID BY THE APPELLANTS.

502 A.2d 528

Mary Susan SIECK

v.

John T. SIECK.

No. 899, Sept. Term, 1985.

Court of Special Appeals of Maryland.

Jan. 10, 1986.

Former wife brought action against former husband on several tort theories, seeking damages for physical and emotional injuries. The Circuit Court, Baltimore County, Edward A. DeWaters, Jr., J., entered summary judgment for husband and subsequently refused to consider wife's revisory motion, on grounds that appeal had been filed depriving court of jurisdiction, and wife appealed from entry of summary judgment and from ruling on post-judgment motion. The Court of Special Appeals, Bishop, J., held that: (1) notice of appeal filed on Monday following 30th day, which fell on Saturday, after trial court refused to consider revisory motion filed within ten days of entry of judgment was timely, and (2) revisory motion filed within ten days of entry of judgment rendered order for appeal filed prior to trial court's ruling on motion nugatory, and thus, trial court was not prevented from considering such motion.

Baltimore County, Maryland

PEOPLE'S COUNSEL
RM. 223, COURT HOUSE
TOWSON, MARYLAND 21204
494-2188

PHYLLIS COLE FRIEDMAN
People's Counsel

PETER MAX ZIMMERMAN
Deputy People's Counsel

January 14, 1986

The Honorable
Lawrence E. Schmidt
Acting Chairman
County Board of Appeals
Room 200, Court House
Towson, Maryland 21204

RE: Joseph F. Evering, Jr., et ux, Petitioners
Zoning Case No. 85-65-XSPHA (Item 166);
Circuit Court Case No. 86CG0022 (19/117)

Dear Mr. Schmidt:

This is in response to your letter of January 9, 1986 in the above-referenced matter in which you state that in your opinion our appeal was untimely and the Board is considering noncompliance with Rule B2(d) and B-7(a) until ordered by the Circuit Court.

While you have correctly surmised that one reason for our appeal was a fear of later being untimely, your suggestion that the parties stipulate to preserve our rights is, unfortunately, not a viable alternative. The time for appeal is jurisdictional and not subject to waiver by stipulation of the parties. In addition, the appeal will be accompanied by a request for a Declaratory Judgment as to the applicability of the airport regulations as well as critical areas.

We feel that the appeal accompanied as it is by a request for Declaratory Judgment is proper and in the public interest. It will enable us to resolve a number of issues in a timely fashion that will make further proceedings of the Board more meaningful. I hope with this explanation in mind, you will comply with Rule B2(d) and B-7(a).

Sincerely yours,

Phyllis Cole Friedman

Phyllis Cole Friedman
People's Counsel for Baltimore County

cc: Malcolm F. Spicer, Jr., Esquire
John O. Hennegan, Esquire
Robert J. Romadka, Esquire
Judith A. Armold, Esquire

PCF:sh

RECEIVED
COUNTY BOARD OF APPEALS
1986 JAN 14 P 12: 36

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

January 9, 1986

T. Rogers Harrison, Esq.
306 W. Joppa Road
Towson, Md. 21204

Phyllis C. Friedman
People's Counsel for Baltimore County
Peter Max Zimmerman, Esq.
Deputy People's Counsel
Court House
Towson, Md. 21204

Re: Case No. 85-65-XSPHA
Special Hearing, Special Exception, and Variances petitioned for by Joseph F. Evering, Jr., et ux

Dear Mrs. Friedman, Messrs. Harrison and Zimmerman:

The Board has received the Notice of Appeal filed by you on January 3, 1986, in the above matter. Needless to say, we are distressed at the timing of this action.

As you know, Maryland Rule B-7(a) requires that the Board submit the record of proceedings before it to the Circuit Court for Baltimore County. Under the mandate of this rule, the Board in the past has, as a matter of practice, forwarded its entire file to the Circuit Court. Additionally, past decisions of the Court have held that the filing of the appeal immediately removes the matter from before the Board; as jurisdiction is assumed by the Circuit Court.

These two considerations, the transmittal of the record and the Board's loss of jurisdiction, are of great concern to the Board in view of the present status of the matter. That is, the Board has to date heard testimony only on the preliminary motion and has yet to hear or consider the merits of the petitioned relief. As the next day's testimony, January 21st, is rapidly approaching, the Board is concerned over its authority to hear the matter on that date and if the appeal is proper.

After consideration, it is the Board's view that the appeal is improper and we will treat it as such. Our reasons for this conclusion are several. First, the Board's published "Ruling on Motion" dated December 12, 1985, is just that, a ruling on the Petitioner's preliminary motion. There is no opinion or, more importantly, Order of the Board which can be appealed.

T. Rogers Harrison, Esq.
Phyllis C. Friedman
Peter Max Zimmerman, Esq.

Additionally, it is well settled that an appeal may only be commenced when there has been some finality of judgment. Here, obviously, there has been none, as the Board has yet to even hear evidence upon the merits. Finally, the language of both the majority and dissent is clear, that is, "we will hold" and "I would deny". This language must be construed as prospective, in that the Board has not ruled on the motion in open hearing, rather, is merely advising counsel of its intention.

For these reasons, the Board views the appeal as untimely and will proceed with the hearing scheduled for January 21, 1986. Additionally, the Board may well consider not to comply with Rule B-2(d) and B-7(a) until ordered to do so by the Circuit Court.

Finally, although not attempting to advise the Appellants' and/or People's Counsel how to conduct their case, the Board surmises that the timing of the appeal was based upon a fear that failure to file within 30 days from December 12, 1985, would forfeit the right to appeal on this ruling. If that is indeed the case, we suggest that all parties reach a binding stipulation to preserve their rights to appeal this ruling, and then dismiss the current appeal. Certainly, it is in the best interests of the Petitioners to have this entire matter expeditiously heard and decided by the Board.

Very truly yours,

Lawrence E. Schmidt
Acting Chairman

cc: John O. Hennegan, Esq.
Robert J. Romadka, Esq.
Judith A. Armold
Malcolm Spicer, Jr., Esq.

LES:jh

Evening File

Baltimore County, Maryland

PEOPLE'S COUNSEL
RM. 223, COURT HOUSE
TOWSON, MARYLAND 21204
494-2188

PHYLLIS COLE FRIEDMAN
People's Counsel

PETER MAX ZIMMERMAN
Deputy People's Counsel

November 6, 1985

Mr. Theodore E. Mathison
State Aviation Administration
Department of Transportation
P. O. Box 8766, Balto.-Wash. Intl. Airport
Baltimore, Maryland 21240

RE: Joseph F. Evering, Jr., et ux, Petitioners
Zoning Case No. 85-65-XSPHA
N/S Chester Rd., 590' W of Severn Rd.
(800 Chester Rd.), 15th District (3.30 acs.)

Dear Mr. Mathison:

Enclosed herewith is a site plan for the above-referenced Petition for a Special Exception. During the course of a preliminary hearing, the issue of the applicability of Title 11, Subtitle 03, 11.03.05 Obstructions to Air Navigation, and 11.03.06 Airport Zoning Regulations, was raised.

Would you please advise us at the earliest possible moment as to whether development of the site in question is in any way impacted by these regulations and if so, how? This matter is presently pending before the County Board of Appeals.

Thank you for your prompt attention to this.

Sincerely yours,

Phyllis Cole Friedman

Phyllis Cole Friedman
People's Counsel for Baltimore County

Enclosure

cc: John O. Hennegan, Esquire
Robert J. Romadka, Esquire
T. Rogers Harrison, Esquire
Judith A. Arnold, Asst. Attorney General
Norman E. Gerber, Director, OPZ

PCF:sh

RECEIVED
COUNTY BOARD OF APPEALS
1985 NOV -7 P 3:27

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO Ted Zaleski, Jr., Director
Department of Permits and Licenses Date November 4, 1985

FROM Norman E. Gerber, Director
Office of Planning and Zoning

SUBJECT Joseph F. Evering, Jr., et ux
Long Beach Marina
N/A of Chester Road, 590' W. of Severn Road (800 Chester Road)
15th Election District
Zoning Petition No. 85-65-XSpHA

In view of the apparent controversy in the zoning cycle case involving the subject site, I decided to clarify this office's position in the building permit application process, if and when an application is filed.

Please be advised that the subject site is within the State of Maryland Chesapeake Bay Critical Area, and that it is my policy not to grant waivers to the CRG for any such properties. Therefore, I request that no building permit be issued unless the applicant has obtained approval from the CRG.

Your cooperation in this matter is appreciated and, if you have any questions, please call.

Norman E. Gerber

Norman E. Gerber, AICP
Director

NEG:slm

cc: John O. Hennegan
Romadka, Gontrum, Hennegan & Foos

Phyllis Cole Friedman ✓
People's Counsel

Gary Kerns, Acting Chief
Division of Current Planning & Development

James Dyer
Zoning Supervisor

J.G. Hoswell

RECEIVED
COUNTY BOARD OF APPEALS
1985 NOV -8 A 9:04

36'89

BALTIMORE COUNTY
OFFICE OF LAW
TOWSON, MARYLAND 21204
494-4420

JUL 10 AM

ZONING DEPARTMENT

MALCOLM F. SPICER, JR.
COUNTY ATTORNEY

July 8, 1985

Arnold Jablon, Esquire
Zoning Commissioner
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Dear Mr. Jablon:

You have requested an opinion from this Office concerning the role of the Zoning Commissioner and the Office of Planning & Zoning in implementing the provisions of Title 8, subtitle 18, Chesapeake Bay Critical Area Protection Program of the Natural Resources Article. In your request for an Opinion you raise the following questions:

1) Who is the "approving authority" in Baltimore County?

2) Under what circumstances can the Office of Planning & Zoning require information?

The questions which you raise occur primarily in three (3) possible settings. Those settings are (1) where a subdivision plat or site plan approval is required by the County Review Group under Baltimore County's Development Regulations; (2) where there is a need for a project to receive both C.R.G. approval and issuance of a special exception or variance by the Zoning Commissioner; (3) where only a variance or special exception is required which would be issued by the Zoning Commissioner.

A review of the definitional section in subtitle 18 "Chesapeake Bay Critical Area Program" is useful in determining the appropriate "approval authority" for purposes of the Interim Control Program established by §8-1813 of the Natural Resources Article. Section 8-1802 defines "development" to mean "any activity that materially affects the condition or use of dry land, land under water or any structure." In our view this definition is intended to include any activity, even though there is no structure involved, if that activity materially affects the condition or use of dry land or land under water. It also includes any structure but there is no requirement that the structure "materially affect" the condition or use

of dry land or land underwater. That Section also defines "project approval" to mean "approval of development including approval of subdivision plats and plans; issuance of variances, special exceptions and conditional use permits." The term, however, does not include building permits. The Chesapeake Bay Critical Area legislation does not contain a definition for "approving authority" and this is understandable due to the fact that the State legislation has application to a number of local jurisdictions which would have different powers in respect to Planning & Zoning functions and which would have various "approving authorities." Local jurisdiction is defined to mean a County or a municipal corporation with planning and zoning powers in which any part of the Chesapeake Bay Critical Area is located. Baltimore County clearly is included under this definition of "local jurisdiction." The State law, in determining the "approving authority" is designed to be flexible to allow for the different review and approval procedures that may exist in any local jurisdiction.

A review of these definitions as well as the provisions of §8-1813 indicates that the event which triggers the need to make the specific findings of subsection (a)(1) and (2) of that Section is an application for "project approval." See Natural Resources §8-1813(b). So long as the application for project approval includes or proposes "development", the findings must be made.

In Baltimore County, the Development Regulations which were adopted by Bill #56-82 contemplates that for all matters involving development which come within the scope of Bill #56-82, the County Review Group (C.R.G.) is the approving authority. Utilizing the C.R.G. as the "approving authority" contemplated by the Chesapeake Bay Critical Area legislation is consistent with the mandates of the Interim Control Program established by §8-1813 which contemplates that the approving authority would make specific findings with regard to any proposed development within the initial planning area identified in §8-1807(a). Clearly for a development which requires only C.R.G. approval under the County's Development Regulations the C.R.G. should be the approving authority and in instances where a proposed development would require both C.R.G. approval and granting of a special exception or variance, the C.R.G. should be the approval authority for that proposed development in terms making the specific findings required by §8-1813 of the Natural Resources Article. Utilizing the review function contemplated by the Critical Area's legislation would be consistent with the development policies adopted by the County

in §22-37(b)(4) of the Baltimore County Code. That Section provides, in part:

> "These regulations are designed and intended to insure the safety, adequacy and convenience of proposed provisions for the following:
>
> ...(4) prevention of environmental degradation and promotion of environmental enhancement, including adequacy of landscaping and energy conservation measures, and of protection of floodplains, steep slopes, watersheds, wetlands, vegetation, and other natural features and historical sites or areas."

In addition, State law mandates that the approving authority require an applicant for project approval to submit additional information as may be necessary to make the findings required by §8-1813(a)(1) and (2). The C.R.G. under the County Development Regulations is also empowered to require an applicant to submit additional information regarding his plan and to continue its meeting in order that such additional information may be received. The procedures before the Zoning Commissioner involving often times an adversarial hearing do not lend themselves to the interruption of the process in order that additional information may be submitted. While it is true that the Zoning Commissioner could conceivably suspend or continue his hearing to allow for additional evidence, such interruptions of quasi-judicial hearings should not be encouraged. The Zoning Commissioner, as a quasi-judicial officer is required to make findings of fact and to apply the law to those facts. In the case of special exceptions the findings required are set forth in §502.1 of the Baltimore County Zoning Regulations. While it is possible that the Zoning Commissioner could make the findings required by the State legislation, it is more appropriate that the C.R.G. be the approving authority under the State legislation for purposes of making those required findings. There is nothing in the State law which suggests that the findings should be made in adversarial setting where testimony is produced from a witness stand and a witness is subject to cross-examination. Rather, the State law contemplates that certain administrative findings will be made by those individuals who, during the course of the implementation of the Chesapeake Bay Program, will have developed the expertise necessary to make the findings required. The C.R.G. process as established in the Baltimore County Development Regulations is uniquely suited to process the proposed development and, with its input from various agencies, is uniquely suited to make

the required findings. This is not to suggest that the findings or non-findings made by the C.R.G. under the Chesapeake Bay legislation would not be subject to review but that the C.R.G. decision, as in the case of other C.R.G. decisions, would have the presumption of correctness and the person challenging that decision would have the burden of establishing that such action was arbitrary or capricious, procured by fraud or otherwise illegal.

In the remaining instance which you have presented wherein a special exception or variance would be required but for some reason the C.R.G. is not required to take action under the County's Development Regulations, the Zoning Commissioner should follow the procedures outlined in §22-26 of the Baltimore County Code and forward the Petition and supporting documentation to the Director of Planning (or his Deputy) for his consideration and written report thereon containing his findings with regard to planning factors. The Director's findings with regard to planning factors would include the findings required by §8-1813 of the Natural Resources Article and for purposes of making those findings with regard to the proposed development, the Director of Planning & Zoning is the "approving authority." The Director, of course, in making his findings would consult with other interested departments and agencies of the County and would have the authority under the State law to require additional information. The Zoning Commissioner should not conduct a hearing on a Petition for Special Exception or Variance prior to receipt of the Director's findings.

In connection with the second question which you have raised, the provisions of §8-1813(b) of the Natural Resources Article contemplate that whenever additional information is deemed necessary in order to make the findings required by subsection (a), the approving authority (either the C.R.G. or the Director of Planning & Zoning) shall require the applicant to submit such additional information. While there are no apparent limitations on the ability to require additional information, common sense dictates that it only be required when reasonably necessary and that the request for additional information not be arbitrary or capricious.

In the instance whether neither a C.R.G. approval nor a Zoning Commissioner approval is required by County law, it is probable that the findings would not be required because there would be no application for project approval and therefore no development. For example, in the case of a

Petition for Reclassification filed before the Board of Appeals under §2-58.1 of the County Code which does not include a plan showing the proposed use, the required findings would not need to be made. Only when there was a plan for the development of a property submitted would the findings be made and they would be made by the C.R.G. during the course of its review. If, in connection with a reclassification, there is a proposed plan submitted, that plan or a substantially similar plan would, in all probability, be submitted for contemporaneous C.R.G. approval. The C.R.G. in that instance and not the Board of Appeals would make the necessary findings. As with the instances of dual approvals involving the C.R.G. and Zoning Commissioner, dual approval involving the Board of Appeals and C.R.G. should not result in dual findings which may be inconsistent. There should be only one approving authority for purposes of making the findings and the C.R.G. should be that authority.

Sincerely,

Malcolm F. Spicer, Jr.
County Attorney

MFSJR:gh

cc: Gene Bober, Chief - Current
Planning & Development
James Markle, Chief - Bureau
of Public Services

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

ARNOLD JABLON
ZONING COMMISSIONER

January 11, 1985

T. Rogers Harrison, Esquire
306 West Joppa Road
Towson, Maryland 21204

RE: Case No. 85-65-XSPHA
Joseph F. Evering, Jr., et ux - Petitioners

Dear Mr. Harrison:

I am in receipt of your letter dated January 10, 1985.

The hearing scheduled is on the Motion filed by Mr. Hennegan. He will be permitted to present any witnesses or evidence in support of his position, and you as counsel for the Protestants may do likewise. They will be permitted to argue fully as to the points raised by the Motion filed. This shall be a continuation of the hearing on the Petitions filed, and after evaluating all of the evidence and testimony presented, I will decide on the merits and on the impact of the proposals on the Chesapeake Bay, pursuant to the Critical Area Protection Program.

No decision on the special exception can be made until there is a resolution of the issues raised in Mr. Hennegan's Motion. If you have any further questions, please feel free to call me.

Sincerely,

ARNOLD JABLON
Zoning Commissioner

AJ:aj

cc: John O. Hennegan, Esquire

Mr. Norman Gerber

Mr. Eugene Bober

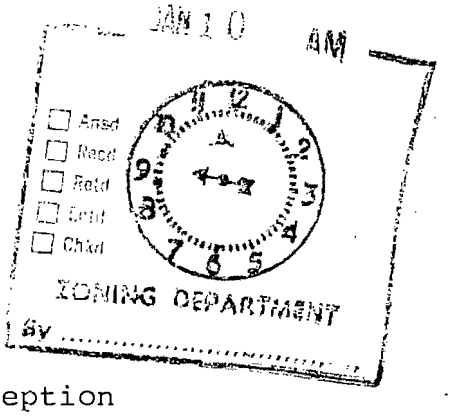
85-65

LAW OFFICES
MUDD, HARRISON & BURCH
306 WEST JOPPA ROAD
TOWSON, MARYLAND 21204
AREA CODE 301-828-1335

JOHN E. MUDD
T. ROGERS HARRISON
RICHARD C. BURCH
DOUGLAS W. BISER
H. PATRICK STRINGER, JR.

800 MARYLAND TRUST BUILDING
14 SOUTH CALVERT STREET
BALTIMORE, MARYLAND 21202
301-323-0266

January 10, 1985



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

Re: Petition for Special Exception
Special Hearing Variances
N/S Chester Road, 590' W of
Severn Road (800 Chester Road)
Joseph F. Evering, Jr., et ux
Petitioners Case No. 85-65XSPHA

Dear Mr. Jablon:

I have received a copy of your letter of January 3, 1985, to John O. Hennegan, Esquire, the attorney for the Everings, in which you set up a hearing to determine whether or not the Everings' property is subject to the Chesapeake Bay Critical Area Protection Program, Md. National Resources Code Ann., §8-1801 - 8-1816 (1974 and 1984 Comm. Supp.).

It would be greatly appreciated if you would provide me with information about the scope of the hearing and what type of input Ken Engelke and the other Protestants will be allowed to make. Also, unless I am mistaken, I believe you mentioned in your November 9, 1984, letter to me that you would by the end of November (or thereabouts) decide whether the Everings fulfilled the requirements of Section 502.3 of the B.C.Z.R. (1981 and 1983 Supplements).

A prompt reply would be appreciated because I will need adequate time to prepare for the hearing.

Thank you.

Very truly yours,

T. Rogers Harrison

TRH/djb

September 11, 1984

Mr. Ken Engelke
828 Chester Road
Baltimore, Maryland 21220

RE: Case No. 85-65-XSPHA
Joseph F. Evering, Jr.,
et ux, Petitioners

Dear Mr. Engelke:

I have decided that a view from the water would be appropriate in light of the circumstances presented at the hearing. Therefore, I am making a request to both parties to provide me with a means to make an inspection so that each may have the same opportunity to show me their perspective. Please advise.

Sincerely,

Arnold Jablon

ARNOLD JABLON
Zoning Commissioner

AJ/srl

cc: John O. Hennegan, Esquire

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO Arnold Jablon
Zoning Commissioner

Date September 7, 1984

FROM Norman E. Gerber, Director
Office of Planning and Zoning

SUBJECT Joseph F. Evering, Jr., et ux
No. 85-65-XSpHA

In view of the comments concerning the State's Chesapeake Bay Critical Area regulations (see letter to Frank S. Lee from Paul J. Solomon dated September 7, 1984), this office cannot offer final comments on the subject petition.

Norman E. Gerber, Director
Office of Planning and Zoning

NEG/JGH/sf

Pump-out station
On-shore sanitary facilities - we need more info.

BALTIMORE COUNTY DEPARTMENT OF HEALTH

September 5, 1984
Date

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

CRITICAL AREA REVIEW

Zoning Item # 166 Zoning Advisory Committee Meeting of January 3, 1984

Property Owner: Joseph F. Evering

Location: N/s Chester Rd. District 15

Stream(s) on Property Yes ___ No ___

COMMENTS Will be reviewed after Environmental Effects Report is submitted.

Wetlands/Hydric Soils Yes ___ No ___

COMMENTS Will be reviewed after Environmental Effects Report is submitted.

Note: As per Baltimore County Health Department Wetland Guidelines, development or grading is prohibited in upland and tidal wetlands.

OTHER COMMENTS Long Beach Marina - Health Dept. strongly recommends installation of sewage pump-out station. More information is needed on on-shore sanitary facilities, ex. ability of septic system to accomodate anticipated marina user increase. Environmental Effects Report will be required and further comments on the environmental impact of the proposed expansion will be made after EER has been submitted.

B. H. Stafford

5. Bodies of water	
(a) Permanent	. 200' scale topo maps . Aerial photos . USGS quad sheets
(b) Intermittent	. As above . Wetlands maps as referenced earlier
(c) Tidal limit	. Vegetation . Wetlands maps as referenced earlier
(d) Mean high water line	
6. Aquatic habitat	
(a) Spawning area	. Aquatic Sensitive Areas Handbook, DNR/Coastal Resources 1977; available from DNR . DNR/Fisheries Division of Tidewater Administration, 269-3061
(b) Nursery areas	. As above
(c) Shellfish beds	. DNR/Hydrographic Survey Maps, Oyster bars and clam areas, 269-3436 . DNR/Fisheries Division as above
7. Soil types	. Soil Survey of Prince George's County, 1967 . Borings by developer
8. Steep slopes	. Topo maps; shaded if greater than 15%
9. Upland Natural Areas Boundary	. 1" = 1 mile scale map at DNR
10. Area of Critical State Concern	. Maryland Areas of Critical State Concern: Designation Report NDR and Maryland Department of State Planning January 1981
11. Marlboro Clay	. U.S.G.S Geological Survey Map

CRITICAL AREA GENERAL RESOURCES INFORMATION

These general resources should be supplemented by detailed field investigations on a site-by-site basis.

A. To be shown	Source
1. Existing treeline -	. aerial photos - developer or MNCPPC-Planning Department
Individual trees -	. landscape architect, bontanist, forester
2. Limit of disturbance -	. engineer and developer
3. Floodplains	
(a) Coastal -	. FEMA 600' scale maps
(b) Non-Tidal -	. FEMA 600' scale maps
	. Subdivision plats
	. Tax maps
	. Engineering calculations
4. Wetlands	
(a) Tidal -	. 200' scale maps (photo base) MNCPPC-NRD
(b) Non-Tidal -	. 2000' scale maps (USGS quad base) MNCPPC-NRD
(c) Submerged Aquatic Vegetation -	. 2000' scale maps (USGS quad base) MNCPPC-NRD

A detailed narrative is to be submitted with the above plans demonstrating the adequacy of the proposal to address the intent of the Chesapeake Bay Critical Areas Program and minimize the impact on water quality and natural habitats. Included in this section will be a discussion of the rare, threatened, or endangered species (plant and animal) impacted upon by the proposed project. Calculations of pollutants, stormwater runoff, erosion and sedimentation, generated before, during and after development, are to be provided. Also, include the approximate acreage to be cleared, graded, and covered with impervious surfaces. Erosion and sediment control strategies, stormwater management measures, sewage treatment and disposal methods, and means of protecting valued resources are to be discussed in the narrative.

A resource list for preparing the required submissions is attached.

Required Submissions

Maps of the existing conditions shall be submitted to the Natural Resources Division for review showing the following, if present:

1. treeline
2. floodplains
3. wetlands
4. water bodies
5. aquatic habitats
6. soil types
7. steep slopes
8. Marlboro Clay
9. Upland Natural Areas Boundary
10. Areas of Critical State Concern
11. Chesapeake Bay Critical Areas Boundary
12. rare, threatened or endangered species habitat

A general concept plan shall also be submitted to the Natural Resources Division showing the following, if applicable:

1. limit of disturbance of the proposed action during all phases of construction
2. width and length of buffer area
3. proposed grades
4. location of structures, streets, and stormwater outfalls
5. stormwater management facilities
6. sediment and erosion control measures
7. infiltration measures

The concept plan and the existing conditions map must be the same scale (at a minimum of 1" = 100').

Screening Criteria for Chesapeake Bay Critical Area

	Yes	No
° Does the site contain any other plant or animal communities which have unique or unusual attributes or diversity?	___	___

If the answer to any of these questions is "yes", submit the required information as listed on the following two pages.

Screening Criteria for Chesapeake Bay Critical Area

Water Quality Protection

	Yes	No
° Will development disturb more than 5000 square feet of the site?	___	___
° Are lots less than two acres in size?	___	___
° Does the site contain highly erodible soils (i.e., soils with K factor of 0.37 or greater on slopes in excess of 15%)?	___	___
° Does the site contain Marlboro Clay (i.e. a plastic clay associated with landslides in the County?	___	___

Natural Habitat Protection

° Is the proposed site near, adjacent to or upstream from, or does the site contain tidal wetlands designated under Title 9 of the Natural Resources Article, Annotated Code of Maryland?	___	___
° Is the proposed site near, adjacent to or upstream from, or does the site contain nontidal wetlands identified by the U.S. Fish and Wildlife Service for the National Wetland Inventory?	___	___
° Does the site contain perennial streams with watersheds of 50 acres or greater?	___	___
° Is the proposed site near, adjacent to or upstream from, or does the site contain any Areas of Critical State Concern designated under Article 88C Section 2(b)(3) of the Annotated Code of Maryland?	___	___
° Is the proposed site near, adjacent to or does the site contain the habitat of any endangered or threatened species protected under Subtitle 2A Title 4 and Subtitle 2A Title 10 Natural Resources Article, Annotated Code of Maryland which would be directly impacted by the application?	___	___

RE: CRITICAL AREA - CHESAPEAKE BAY -
NOTIFICATION

Dear Applicant:

This is to notify you that project _____
is within the 1000-foot critical area and is subject to Section 8-1813 Senate Bill No. 664 of 1984.

In rendering the decision to approve this project Section 8-1813 requires that the County, as of June 1, 1984 make specific findings that:

(1) The proposed development will minimize adverse impacts on water quality that results from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands; and

(2) The applicant has identified fish, wildlife, and plant habitat which may be adversely affected by the proposed development and has designed the development so as to protect those identified habitats whose loss would substantially diminish the continued ability of populations of affected species to sustain themselves.

With regard to any application for approval, a local approving authority shall require such additional information from an applicant as is necessary in order to make the findings required above.

Answer questions on screening criteria checksheet.

Stan Udhiri, Chief
National Resources Division

	subject to restrictions.
October 17,1984	Order for Appeal to C.B. of A. from Phyllis C. Friedman, People's Counsel for Baltimore County.
October 19, 1984	Order for Appeal to C.B. of A. from Austin W. Brizendine, Jr., Esq., on behalf of Petitioners.
Feb. 7, 1985	Hearing held before the Board (F.S.V.)
" 12	" " " " " "
April 9	Board GRANTED SE with restrictions (Franz, Spurrier, Vincent)
May 8	Order for Appeal filed in the Circuit Court by S. Barhight for Protestants, Jean Duvall, et al (85-CG-1433)
June 21	Order of Dismissal filed in the Circuit Court on behalf of Protestants-Appellants by Mr. Barhight and case DISMISSED

#85-65-XSPHA (Item No. 166)	N/s Chester Rd., 590' W of Severn Rd. (800 Chester Road)	15th District	Joseph F. Evering, Jr., et ux
August 6, 1984	Petitions filed - for special exception for 2 lots located on the north and south side of Chester Rd. not included in special exception Cases 35-35X, 64-57 SPH, 64-160-X in a D.R. 5.5 zone to be used as a boat yard; variance from Sec. 409.2.c(2) to allow existing compacted stone in lieu of req. macadam paving. 409.2.b to allow 318 pkg. spaces in lieu of the req. 384; & from Sec. 417.5(a) requiring the structure not to exceed 300' beyond mean low tide to allow the structure to extend 419 ft. beyond the mea low tide; and special hearing to approve an amendment to th site plan in Case No. 64-57-SPH, 64-160-X and 35-35-X to construct an addition to the piers; etc.		
April 25, 1985	Z.C.'s Order - That the Petition for Special Exception be GRANTED: that the Petition for Zoning Variances be GRANTED: That the amendments to the site plans be approved: That the Petition for Special Hearing be GRANTED, subject to restrictions.		
May 10, 1985	Order for Appeal to C. B. of A. from Phyllis C. Friedman, People's Counsel of Baltimore County.		
May 20, 1985	Order for Appeal to C.B. of A. from Robert J. Romadka, Esq., on behalf Petitioners.		
May 20, 1985	Order for Appeal to C.B. of A. from Norman E. Gerber, Director, Planning & Zoning Office.		
May 20, 1985	Order for Appeal to C.B. of A. from T. Rodgers Harrison, Esq., on behalf of Protestants.		

----------OVER--------->

#85-65-XSPHA	N/S Chester Rd. 590' W. of Severn Rd.	15th District	Joseph F. Evering, Jr.

Oct. 29, 1985 Hearing held by the Board on MOTION ONLY (L.F.V.)

Dec. 12 Board issued RULING ON MOTION - ". . that the Chesapeake Bay Critical Area Protection Program is not applicable to the proposed petition." (Majority Opinion by Schmidt and Franz)

DISSENT filed by Diana K. Vincent

Jan. 3, 1986 Order for Appeal filed in the Circuit Court by People's Counsel (#86-CG-0022)

Jan. 10 Order for Appeal filed in the Circuit Court by County Attorney (#86-CG-240) CONSOLIDATED IN COURT

" 21 Hearing held by the Board (L.F.H.) - Case was to open on merits, therefore, did not need same Board. After much discussion, case did not open but was continued until after the Circuit Court has rendered an Order on the above appeals.

Aug. 7 Order of Judge Sfekas: "In this case the Plaintiffs have only appealed the Board's ruling on the applicability of the Aviation Zoning Regulations and the Critical Areas Law, the remaining portion of the case is still pending before the Board. The Board has also affirmed the Z.C.'s ruling on the applicability of the Chesapeake Bay Critical Areas Legislation. They have not affirmed the granting of the Evering's SE. For these reasons, this Court coes not believe the Board of Zoning Appeals has issued a final determination of the rights of the parties. To allow an appeal of the Board's ruling, at this time, would encourage piecemeal litigation, thus imposing an increased burden on the judicial system and the parties." --- Case remanded to Board to have a hearing on the merits.

Dec. 16 Hearing held by the Board (L.F.H.) (continued to 12/17/86)

Dec. 17 Continued hearing before Board. Case completed. (L.F.H.)

To Mr. Hackett

Date _____ Time _____ A.M. P.M.

WHILE YOU WERE OUT

M RE: Evering case

of Has been remanded to the Board

Phone by the Circuit Court.

Area Code	Number	Extension

TELEPHONED		PLEASE CALL	
CALLED TO SEE YOU		WILL CALL AGAIN	
WANTS TO SEE YOU		URGENT	
RETURNED YOUR CALL			

Message Judge Sfekas wants the Board to make a final determination, therefore, dismissed the appeals filed from the Board's RULING on the Motions only.

Board Schmidt, Franz & Vincent

Operator

Campbell 09301

IMPORTANT MESSAGE

FOR Gail

DATE 4/11/90 TIME 1:03 A.M. P.M.

WHILE YOU WERE OUT

M Bill Buchanan

OF BO47285

PHONE NO. 828-6707

TELEPHONED		PLEASE CALL	✓
CALLED TO SEE YOU	✓	WILL CALL AGAIN	
WANTS TO SEE YOU		RUSH	

RETURNED YOUR CALL

MESSAGE Kate ↑ said Flowers was going to sign off 4/12 - if you don't have any conflicting info. or problems sign off + make sure "IN ACCORDANCE WITH ZONING CASE # " IS TYPED ON FACE of permit.

SIGNED Gail

Associated L1-A2334 PRINTED IN U.S.A.

11/27/85 - Sent cc of this letter to Larry

12/2/85 - Per phone call from Romadka's office, he objects to granting this request as Larry had notified everyone that 1/21 date was firm.

E

LAW OFFICES
MUDD, HARRISON & BURCH
306 WEST JOPPA ROAD
TOWSON, MARYLAND 21204
AREA CODE 301-828-1335

JOHN E. MUDD
T. ROGERS HARRISON
RICHARD C. BURCH
DOUGLAS W. BISER
H. PATRICK STRINGER, JR.
ANDREW JANQUITTO

900 MARYLAND TRUST BUILDING
14 SOUTH CALVERT STREET
BALTIMORE, MARYLAND 21202
301-323-0266

January 14, 1987

HAND DELIVERED

Mr. William T. Hackett, Chairman
Board of Zoning Appeals
Baltimore County, Maryland
Room 200
Court House
Towson, Maryland 21204

Re: Joseph F. Evering, Jr., et ux, Petitioners v. Bowley's Quarters Improvement Association, Inc. et al, Protestants, #8565XSPHA

Dear Mr. Hackett:

Enclosed please find the original and three copies of Memorandum and Argument filed in the captioned matter on behalf of the Protestants.

Very truly yours,

T. Rogers Harrison

T. Rogers Harrison

TRH:lfc

c.c. - John Gontrum, Esquire
Phyllis Friedman, Esquire
Mr. Andy Jones

RECEIVED
COUNTY BOARD OF APPEALS
1987 JAN 14 P 3:45

LAW OFFICES
MUDD, HARRISON & BURCH
306 WEST JOPPA ROAD
TOWSON, MARYLAND 21204
AREA CODE 301-828-1335

JOHN E. MUDD
T. ROGERS HARRISON
RICHARD C. BURCH
DOUGLAS W. BISER
H. PATRICK STRINGER, JR.
ANDREW JANQUITTO

900 MARYLAND TRUST BUILDING
14 SOUTH CALVERT STREET
BALTIMORE, MARYLAND 21202
301-323-0260

November 26, 1985

Mr. William T. Hackett, Chairman
Baltimore County Board of Zoning Appeals
Room 200 Court House
Towson, Maryland 21204

Re: Case No. 85-65-XSPHA
Joseph F. Evering - Protestants
Chester Road, W. Severn
15th District
Boat Yard

Dear Mr. Hackett:

We have received a notice rescheduling the continuance of the above-captioned zoning case for Tuesday, January 21, 1986, at 10 a.m. I hope that it is everyone's understanding that it is not my desire to create any unnecessary inconvenience for anyone; however, my practice is primarily that of trial work and I do have a previously scheduled trial in the Circuit Court for Baltimore County, Hoffman v. High's, beginning on January 22, 1986, and I will be preparing for that trial several days prior. However, we all know there are always cases that are postponed, settled, etc. In light of this previously scheduled trial, I have no alternative but to ask that the zoning case be postponed to another date and my secretary would be more than willing to provide all the available dates on my calendar from the first of the year forward.

Thank you for your kind cooperation.

Very truly yours,

T. Rogers Harrison

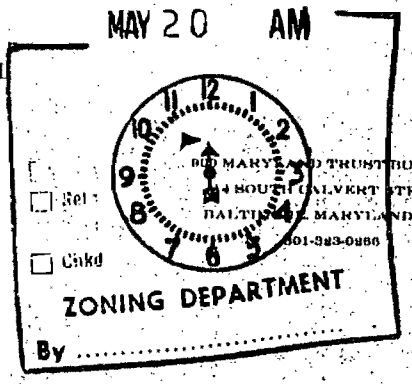
TRH:sw

c.c. John O. Hennegan, Esquire, Robert J. Romadka, Esquire, Judith A. Arnold, Esquire, Phyllis C. Friedman, Esquire, Mr. Norman E. Gerber, Mr. James Hoswell, Mr. Arnold Jablon, Jean Jung, Mr. James Dyer

RECEIVED
COUNTY BOARD OF APPEALS
1985 NOV 27 A 11:07

LAW OFFICES
MUDD, HARRISON & BURCH
306 WEST JOPPA ROAD
TOWSON, MARYLAND 21204
AREA CODE 301-828-1315

JOHN E. MUDD
T. ROGERS HARRISON
RICHARD C. BURCH
DOUGLAS W. BIRKE
H. PATRICK STRINGER, JR.



May 17, 1985

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

Re: Petition for Spec Ex
Petition for Spec Hearing
Petition for Variances
Case No. 85-65-XPHA

Dear Mr. Jablon:

The Protestents, Ken Engelke, et al., would like to appeal your decision in the above-captioned matter.

Our firm's check in the amount of $260.00 is enclosed. This amount represents the fee for the appeal from the granting of the special exception $100.00), the fee for the appeal from the granting of the variance ($75.00), the fee for the appeal from the granting of the special hearing ($75.00), and the costs for posting two signs ($10.00) on the Everings' property.

If you have any questions, please feel free to contact me.

Very truly yours,

T. Rogers Harrison

TRH/djb
Enclosure

RECEIVED
COUNTY BOARD OF APPEALS
1985 MAY 22 P 1:01

November 9, 1984

T. Rogers Harrison, Esquire
306 West Joppa Road
Towson, Maryland 21204

RE: Case No. 85-65-XSPHA
Joseph F. Evering, et ux,
Petitioners

Dear Mr. Harrison:

I am in receipt of your letter dated November 5, 1984.

Although I can imagine a scenario that both sides to the above matter will request time ad nausem to respond to the other side's memorandums, I will permit you ten days from the date of this letter to respond. I will then permit Mr. Hennegan ten days from his receipt of a copy of your response to answer, after which I will issue my decision.

Sincerely,

ARNOLD JABLON
Zoning Commissioner

AJ/srl

cc: John O. Hennegan, Esquire

85-1050
Our file

11/7/84

LAW OFFICES
MUDD, HARRISON & BURCH
306 WEST JOPPA ROAD
TOWSON, MARYLAND 21204
AREA CODE 301-828-1335

JOHN E. MUDD
T. ROGERS HARRISON
RICHARD C. BURCH
DOUGLAS W. BISER
H. PATRICK STRINGER, JR.

800 MARYLAND TRUST BUILDING
14 SOUTH CALVERT STREET
BALTIMORE, MARYLAND 21202
301-323-0206

November 5, 1984

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

Re: Petitions of Joseph F. Evering, et ux
85-65-H-XSPHA

Dear Mr. Jablon:

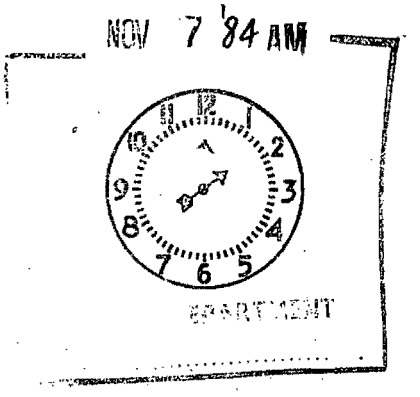
We just received our copy of the Memorandum filed by Petitioners' counsel in the above-captioned matter. It had been my understanding that both parties were to file a Memorandum within a specified period of time and not that the Petitioners would have weeks of time to review and then respond to the Memorandum filed by the Protestants. Therefore, I am requesting an additional 10 days period of time to file a response to the Petitioners' Memorandum prior to any ruling by your office. Positive consideration of this request would be greatly appreciated.

Very truly yours,

T. Rogers Harrison

TRH:lfc

c.c. - John O. Hennegan, Esquire

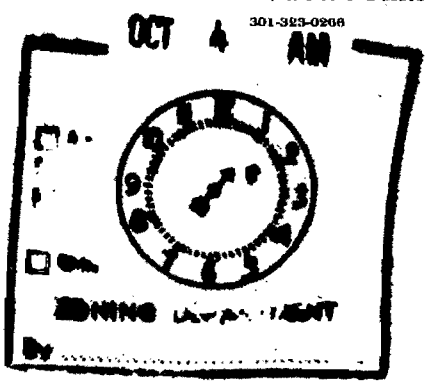


85-791
Case File

LAW OFFICES
MUDD, HARRISON & BURCH
306 WEST JOPPA ROAD
TOWSON, MARYLAND 21204
AREA CODE 301-828-1335

JOHN E. MUDD
T. ROGERS HARRISON
RICHARD C. BURCH
DOUGLAS W. BISER
H. PATRICK STRINGER, JR.

900 MARYLAND TRUST BUILDING
14 SOUTH CALVERT STREET
BALTIMORE, MARYLAND 21202
301-323-0266



October 3, 1984

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

Re: Petition of Joseph F. Evering, Jr., et ux
Petition for Special Exception
Petition for Special Hearing
Petition for Variances
Case No. 85-65-XSPHA

Dear Mr. Jablon:

Enclosed please find the original and one copy of our Memorandum filed on behalf of all protestants at the Zoning hearing which occurred on September 10, 1984. It is my understanding that your primary area of interest was the protestants' position regarding validity and legality of the existing zoning and the petitions utilized to bring the current issues before the Zoning Commissioner. In accordance with that indication, we have not developed the myriad of additional arguments which exist on the merits of this case.

We are sending a copy of our memorandum to Petitioners' counsel and if you require any additional information, please don't hesitate to contact me.

Very truly yours,

T. Rogers Harrison

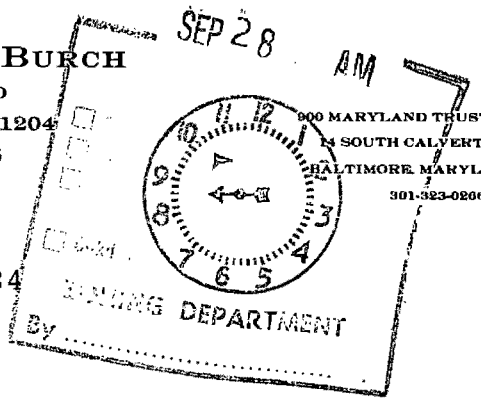
TRH:lfc
Enclosures

c.c. - Robert Romadka, Esquire
Mr. Ken Engelke

LAW OFFICES
MUDD, HARRISON & BURCH
306 WEST JOPPA ROAD
TOWSON, MARYLAND 21204
AREA CODE 301-828-1335

JOHN E. MUDD
T. ROGERS HARRISON
RICHARD C. BURCH
DOUGLAS W. BISER
H. PATRICK STRINGER, JR.

900 MARYLAND TRUST BUILDING
14 SOUTH CALVERT STREET
BALTIMORE, MARYLAND 21202
301-323-0206



27 September 1984

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

Re: Case No. 85-65-XSPHA
Item No. 166
Petitions for Special Exceptions, Special Hearing, and Variances
Property Owner: Joseph F. Evering, Jr., et ux.

Dear Mr. Jablon:

Pursuant to the conversation we had yesterday, I have written this letter to confirm that I shall be assisting Tom Harrison in the above-captioned case. I also want to thank you for allowing me to make copies of the documents in the file. If you have any questions, please feel free to contact Tom Harrison or me.

Very truly yours,

Andrew Janquitto

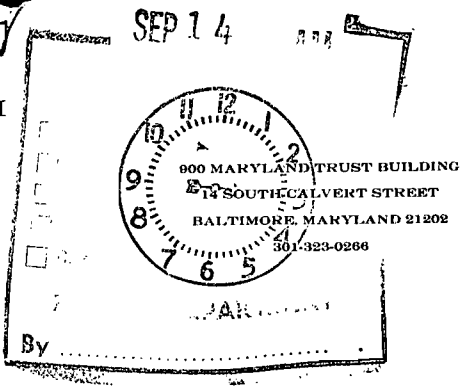
AJ:aj

85-138 Case file

9/17/84

LAW OFFICES
MUDD, HARRISON & BURCH
306 WEST JOPPA ROAD
TOWSON, MARYLAND 21204
AREA CODE 301-828-1335

JOHN E. MUDD
T. ROGERS HARRISON
RICHARD C. BURCH
DOUGLAS W. BISER
H. PATRICK STRINGER, JR.



13 September 1984

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

Re: Case No. 85-65-XSPHA
Item No. 166 (1983-1984)
Petitions for Special Exception, Special Hearing, and Variances
Property owner: Joseph F. Evering, Jr., et ux.

Dear Mr. Jablon:

Please be advised that Ken Engelke and other members of Mr. Evering's neighborhood have retained our services to represent their interests in the above-captioned matter. Also, let this letter serve as confirmation of today's telephone conversation between our offices in which you gave us until 5 October 1984 to file the memorandum of law you requested in the 10 September 1984 hearing. If there are any questions, please feel free to contact me. Thank you.

Very truly yours,

Tom H

T. Rogers Harrison

TRH:aj

PCF: seen
PMZ: /

OFFICES OF

STEPHEN H. SACHS
ATTORNEY GENERAL

ELEANOR M. CAREY
DENNIS M. SWEENEY
CHARLES O. MONK, II
DEPUTY ATTORNEYS GENERAL

JUDITH A. ARMOLD
ASSISTANT ATTORNEY GENERAL

COUNSEL
DEPARTMENT OF STATE PLANNING

THE ATTORNEY GENERAL

DEPARTMENT OF STATE PLANNING
301 WEST PRESTON STREET
BALTIMORE, MARYLAND 21201-2365
301-383-7700



September 8, 1986

County Board of Appeals of Baltimore
County
Room 200 Court House
Towson, Maryland 21204

c/o Ms. Edith T. Eisenhart, Administrative Secretary

Re: Case No. 85-65-XSPHA
Joseph F. Evering, Jr., et ux.

Dear Chairman and Members of the Board:

I have just received notice of the assignment of the referenced case for December 10, 16, and 17, 1986. While December 16 and 17 present no problems for me, I do have a scheduling conflict on December 10. I am a member of the Review Board of the Attorney Grievance Commission, and the Review Board has scheduled its regular monthly meeting, in Annapolis, beginning at 1:00 P.M. on Wednesday, December 10. In order that the business of the Review Board can be handled expeditiously, it is important that each of the members makes every effort to attend. For that reason, I respectfully request that the case be set for a day other than December 10 if a third day of hearing is necessary.

Thank you for your cooperation.

Very truly yours,

Judith Armold

Judith A. Armold

cc: John B. Gontrum, Esquire
T. Rogers Harrison, Esquire
Phyllis C. Friedman, Esquire
Thomas J. Bollinger, Esquire

JAA:mp

2/13/86

I talked to J. Arnold & told her all their papers were sent over to Court. She said okay — same, the Motion to Intervene, just weren't listed on the Answer. (Don't have to do anything about it as they were sent over.)

J. A.

OFFICES OF

STEPHEN H. SACHS
ATTORNEY GENERAL

ELEANOR M. CAREY
DENNIS M. SWEENEY
CHARLES O. MONK, II
DEPUTY ATTORNEYS GENERAL

JUDITH A. ARMOLD
ASSISTANT ATTORNEY GENERAL

COUNSEL
DEPARTMENT OF STATE PLANNING

THE ATTORNEY GENERAL
DEPARTMENT OF STATE PLANNING
301 WEST PRESTON STREET
BALTIMORE, MARYLAND 21201-2365
(301) 225-4507

February 10, 1986

Ms. June Holmen
Secretary, Board of Appeals of
Baltimore County
Room 200, Court House
Towson, Maryland 21204

Re: In re Application of Joseph F. Evering, Jr. et ux., Board Case No. 85-65XSPHA, Circuit Court Case No. 86CG0022 (Doc. 19, Folio 117)

Dear Ms. Holmen:

In reviewing the Certified Copies of Proceedings Before the Zoning Commissioner and the Board of Appeals of Baltimore County, I note that the Department of State Planning's Motion to Intervene, filed with the Board on or about May 24, 1985, as well as a number of other less significant documents, were not included. While the Department continues to take no position on the date of filing issue that is the essence of the referenced appeal, I believe that the record should reflect that the Department was a proper party to the proceedings before the Board. Therefore, I respectfully request that the record be amended to include the Department's Motion to Intervene.

Thank you for your attention to this matter.

Very truly yours,

Judith Armold

Judith A. Armold

cc: Phyllis C. Friedman, Esquire
Thomas J. Bollinger, Esquire
T. Rogers Harrison, Esquire
John O. Hennegan, Esquire
Clerk, Circuit Court for Balto. Co.

JAA:mp

RECEIVED
COUNTY BOARD OF APPEALS
1986 FEB 13 P 12:24

OFFICES OF

STEPHEN H. SACHS
ATTORNEY GENERAL

ELEANOR M. CAREY
DENNIS M. SWEENEY
CHARLES O. MONK, II
DEPUTY ATTORNEYS GENERAL

JUDITH A. ARMOLD
ASSISTANT ATTORNEY GENERAL

COUNSEL
DEPARTMENT OF STATE PLANNING

THE ATTORNEY GENERAL

DEPARTMENT OF STATE PLANNING
301 WEST PRESTON STREET
BALTIMORE, MARYLAND 21201-2365
301-383-7700

May 23, 1985

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

Re: Case No. 85-65-XSPHA

Dear Mr. Hackett:

Please file the enclosed motion in the referenced case and present it at the earliest appropriate time for the Board's action. Thank you.

Very truly yours,

Judith Armold

Judith A. Armold

Enclosure

JAA:mr

RECEIVED
COUNTY BOARD OF APPEALS
1985 MAY 24 A 11: 17

OFFICES OF

STEPHEN H. SACHS
ATTORNEY GENERAL

ELEANOR M. CAREY
DENNIS M. SWEENEY
CHARLES O. MONK, II
DEPUTY ATTORNEYS GENERAL

JUDITH A. ARMOLD
ASSISTANT ATTORNEY GENERAL

COUNSEL
DEPARTMENT OF STATE PLANNING

THE ATTORNEY GENERAL

DEPARTMENT OF STATE PLANNING
301 WEST PRESTON STREET
BALTIMORE, MARYLAND 21201-2365
(301) 225-4507

October 18, 1985

Secretary
Board of Appeals for Baltimore County
Room 200, Old Courthouse
Towson, Maryland 21204

Dear Sir or Madam:

Please file the enclosed notice in the case identified in the heading of the notice.

Thank you.

Very truly yours,

Judith Armold

Judith A. Armold

Enclosure

JAA:mr

RECEIVED
COUNTY BOARD OF APPEALS
1985 OCT 21 A 9:44

August 20, 1986

TO: Keith S. Franz and Larry Schmidt

FROM: E. T. Eisenhart

SUBJECT: Case No. 85-65-XSPHA - Joseph F. Evering, Jr.

The above case has been remanded to the Board for hearing on its merits. We have received a letter from John Gontrum requesting that the case be assigned for hearing as soon as possible, and also requesting that we set it for two hearing days. We are presently scheduled through the first week in December, therefore, the first open date would be Tuesday, December 9th and any hearing day after that.

Mr. Hackett requested that inasmuch as you were the Board which ruled on the Motion which was appealed to Circuit Court (Diana was the third member) - you should contact John Gontrum to see if they are going forward with the case (T. Bollinger thought it was going to be dismissed) and if so then arrange for hearing dates suitable to you and the attorneys in the file. T. Bollinger, Esq.

Petitioners	Hennegan, Gontrum, Romadka
Protestants	Harrison
Judith A. Armold	Asst. Attorney General
Phyllis C. Friedman	P.C.

1/6/86
To file

B. Melvin Cole
County Administrative Officer

January 2, 1986

Norman E. Gerber, AICP, Director
Office of Planning and Zoning

Appeal to Circuit Court
Zoning Petition No. 85-65-XSpHA
Joseph F. Evering, Jr., et ux

Enclosed please find a copy of both the majority and minority opinions of the County Board of Appeals on a Preliminary Motion by the petitioner in the subject case. I am concerned by the finding of the CBA in its majority opinion, not just as to the impact of this case but, more importantly, the impact of this ruling on the normal procedures followed by my office.

For quite some time, it has been the practice of the Division of Zoning Administration to accept petitions and fees at the counter, review them with input from appropriate agencies, notifying the petitioner of any necessary revisions, and then transmit a form letter accepting the petition for filing. At this point in the process, the petition is scheduled for hearing by the Zoning Commissioner.

Were the majority opinion of the CBA to be binding, it would mean that anything taken over the counter with a check would be "accepted for filing", and this could create difficulties in day to day operations.

One other point should be noted. If the majority opinion is allowed to stand in the instant case, the petitioner will not be required to submit information with the petition that can be evaluated to determine conformance to the requirements of the Chesapeake Bay Critical Area Protection Program.

I am therefore notifying you of our intention to appeal the subject decision by the CBA. This appeal will be filed prior to January 10, 1986.

Norman E. Gerber

Norman E. Gerber, AICP
Director

NEG:JGH:slm

enclosure

cc: Arnold Jablon ✓
Malcolm Spicer
Phyllis Cole Friedman

86-1163 Case file

11/21/85 To file

JED Reid 11-22-85

DINENNA, MANN & BRESCHI
ATTORNEYS AT LAW

S. ERIC DINENNA, P.A.
JAMES L. MANN, JR., P.A.
GEORGE A. BRESCHI, P.A.

ROBERT A. BRESCHI

406 WEST PENNSYLVANIA AVE.
TOWSON, MARYLAND 21204

(301) 296-6820

November 20, 1985

Zoning Commissioner for
Baltimore County
County Office Building
Towson, Maryland 21204

RE: Variance Petition
H. C. Kim and Wife, Petitioners
Case #: 86-207A

Item 92

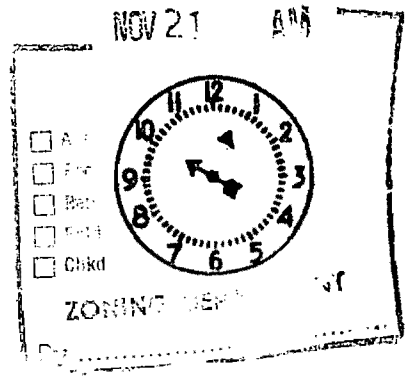
Dear Mr. Commissioner:

Please enter my appearance in the above-captioned matter on behalf of the Petitioners.

Very truly yours,

S. ERIC DINENNA

SED:bk



LAW FIRM

Romadka, Gontrum, Hennegan & Foos

IRVINGTON FEDERAL BUILDING
809 EASTERN BOULEVARD
ESSEX, MARYLAND 21221
TELEPHONE (301) 686-8274

ROBERT J. ROMADKA
JOHN B. GONTRUM
JOHN O. HENNEGAN
CHARLES E. FOOS, III

DONALD E. BRAND

OF COUNSEL
ALFRED M. WALPERT

August 18, 1986

Chairman William Hackett
Baltimore County Board
of Appeals
Court House
Towson, Maryland 21204

Re: Joseph F. Evering, Jr., et ux.

Dear Chairman Hackett:

Please enter my appearance as attorney for Joseph F. Evering, Jr., et ux. with respect to his Petition for Special Exceptions, Special Hearing and Zoning Variance before you. It is my understanding that the court, on August 7, 1986, dismissed People's Counsel's appeal and this matter may proceed with a hearing on the merits. We would appreciate the board assigning us, at this time, two days of hearing time as soon as possible.

Unfortunately, this matter has been before the board and the courts for more than a year without resolution, and we would appreciate any assistance which you could give in scheduling a prompt hearing.

Respectfully yours,

John B. Gontrum

JBG/rc

cc to: Judith A. Armold, Esquire
Peter Max Zimmerman, Esquire
T. Rogers Harrison, Esquire
Peter W. Taliaferro, Esquire
Thomas J. Bollinger, Esquire
Mr. Joseph F. Evering, Jr.

RECEIVED
COUNTY BOARD OF APPEALS
1986 AUG 20 A 11: 24

Zoning Petition
Item # 166
Re: 85-65-XBPHA

27 September 1984

→ I have taken the file in the above-captioned case to my office for copying, and shall return it tomorrow, 28 September 1984

Andrew Langvitlo, Esquire
Mudd, Harrison & Burch

85-65-XSPHA Colvin 9/10/64 1:30

Jack Hennegan, Esq
@ Robt Ramalda, Esq
Joseph Colvin, Pet
* Ken Endike, 828 Chesta Rd 21220
+ Richard Stumpf, III, 816 " "

marina operates w/2 lots that had been bought by Pets but for some reason not included in the original spx request -

Colvin - owner of marina - bought grp 1955 - obtained spx in 1955 to operate marina - Can the 3535 X. operated as boat yard - in 1960, bought adjoining grp on north side of Chesta Rd - in 1964, applied for spx to have boat yard - 64-57-SPH to allow marine craft & parking on grp - 3 restrictions - adjoining grp owner on easternmost portion of grp required no craft stored w/in 20' of their grp line - inside grp owners, & Pet bought other grp, which is on south side of Chesta Rd - purchased lot in July, 1969 - spx in 1964 granted spx for new grp on north side of Chesta - marina - personal boat - storage & recreation - season begins July 4th & continues to Labor Day - will pull out of H2O if people want, if not let stay in H2O - people can come @ any hour - in 1974, bought another lot adjacent to grp bought in 1960 - utilized for parking - Chesta Rd pays rd never improved - Pet improved - wants to continue usage of 2 lots as has been for past 15 years - utilized for parking - 23 spaces on south & 24 on north - on north 50' x 252', north side 35' x 245' - less than 20% of total grp 2 lots -

1964 when got rid of K, had ~~piers~~ in ~~1965~~, when bought 4 piers existed 4 piers in existance - got up K ~~of~~ + to include 4 additional piers, of which built 1 - at this time, not determined not to be financially feasible to build all 4 + Coppel now wants to award 1967 site plan - to construct 2 new piers @ different location due to depth of H-O - can't tie up sail boats @ piers at old location but can @ new location - wants to relocate piers - wants to extend 2 existing piers + extend them to a T formation - have 201 slips + wants to add 178, about 70 more than previously app'd - need greater depth - has permission to dredge for dump, but doesn't want to - expense + greater impact on surrounding grup - wants removed rest 1 (64-160 K) & rest 6 (64-160-K) - in 64-57 wants rest 1 + rest 3 removed - RTK not applicable because grup originally for recreational purposes only - concrete now used for parking areas - allows for sum M-w/o 2 lots has 318 parking spaces - 4th of July + Labor Day busiest days of year - this year had only 55 cars parked on site - piers would extend 408' rather than 300' for land - piers would not impede free flow of navigation in channel -

cross K - 75% to 80% slips rented - 12 to 14 boats stored on land - during M season 10 boats stored - DRS.5 -

II Carl Casabella - lives across ~~at~~ water way for grup - repairs boats - 178 additional boats would adversely impact due to seasonal comings + goings - also piers due M land + boats would be going out into channel + not effect grup surrounding marina

III Vincent Elliott - boat owner - doesn't believe new slips will impact on use of marina -

IV Leonard Gerstein - had said boat at Marina for > years -

Proto read statement - don't need more slips for marina - traffic generated will adversely impact - equates 178 slips w/ 178 new homes - new slips will be dangerous by creating blind spots -

Stumpf - new slips would hinder view - doesn't want boats stored on lot, run cars w/in 50' for gas line - concerned about speed & safety -

Jackie Cymek - concerned about use of gas road -

Diane Stumpf - concerned about blind spots in H-O - + about speeding -

Katherine Reese - concerned about traffic - traffic very bad on weekends which would prevent fire dept from servicing any fire -

Helen Demick - opposed to removal of restrictions -

Edward Brunwell -

Bertha Casson -

Evening -

85-65 XSPRIT EVENING 2/16/85 1:35

* Jack Hennegan, Esq
Bill Baptiste, engineer
John Schneider, landscape Arch & environmental consultant
* Tom Harrison, Esq Asst

Hennegan - requires write CRC or Cuttings Bay apply - §8-1813(a)(2) - not applicable to an application filed prior to 3/1/84 - application actually filed in Dec, 1983 - originally filed then w/ subsequent petn filed due to request of additional info - application not followed thru by D/E - techs required changes & wanted to talk w/ Frank Lee - other factors followed - filed pet of variance to build piers & to waive requirements that piers not allowed beyond 300' of mean low tide - plts & Sp X & SH filed in 8/18/84 -

Schneider - reps Everett, landscape architect & environmental consultant - chief environmental design of State Hwy Admin - Bureau of Landscape Architecture - H+W quality & rate development to site 3 times - to prepare hydrogeological study - flat site, not affected by proposed development - no drainage or sediment loss - stone base permeable base - as to local caliper (need stnd enforcement) - if expansion is to take place, this location better than most in area - associated boating does contribute to adverse impact - but additional boats using new piers will not contribute to problem - boats there now - did not take any tests at site - no H+W quality tests nor sampling of vegetation + habitat - only by rate -

JOSEPH F. EVERING, JR., ET UX # 85-65-XSPHA

Aug. 6, 1984	Petition filed
Apr. 25, 1985	Z.C. GRANTED SE for Boat Yard for two lots, one located on the north side and the other on the south side of Chester Road, including the roadbed of Chester Road; GRANTED variances to permit the existing compacted-stone parking surface instead of the required durable and dustless surface; GRANTED special hearing subject to restrictions (see ZC Order)
May 10	Order for Appeal filed by People's Counsel
" 20	Order for Appeal filed by Mr. Romadka for Petitioners
" 20	Order for Appeal filed by Mr. Harrison for Protestants, Ken Engelke, et al
" 20	Order for Appeal filed by Mr. Gerber, Director, Office of Planning and Zoning
Oct. 29	Hearing before the Board on MOTION by the Petitioner relative to sub-title 18 of the Natural Resources Article of the Annotated Code of Md. (Critical Area Protection). Petitioner's Motion challenged the applicability of the Act.
Dec. 12	Majority RULING on Motion filed by Lawrence E. Schmidt, Acting Chairman, and Keith S. Franz holding that the Chesapeake Bay Critical Area Protection Program is not applicable to the proposed petition
" 12	Dissent on Ruling on Motion filed by Diana K. Vincent
Jan. 3, 1986	Order for Appeal filed in Circuit Court by People's Counsel & Harrison
" 10	" " " " " " " County Attorney
Feb. 3	Record of proceedings filed in the Circuit Court
Aug. 7	REMANDED TO THE BOARD by Judge Sfekas "In this case the Plaintiffs (P.C., County Attorney & Counsel for Protestants) have only appealed the Board's ruling on the applicability of the Aviation Zoning Regulations and the Critical Areas Law, the remaining portion of the case is still pending before the Board. The Board has also affirmed the Z.C. ruling on the applicability of the Chesapeake Bay Critical Areas Legislation. They have not affirmed the granting of the Evering's special exception. For these reasons, this Court does not believe the Board of Zoning Appeals has issued a final determination of the rights of the parties. To allow an appeal of the Board' ruling, at this time, would encourage piecemeal litigation, thus imposing an increased burden on the judicial system and the parties.
Dec 17	Per LES: All Counsel have thirty (30) days (specifically, close of business on January 16) to submit their closing arguments. All written arguments to be submitted by that date; no extensions will be given.
	Hearing before Board - December 16 & December 17.
Febr 17	As per telephone conversation, meeting of all attorneys involved in Evering case in CBA office to discuss appro. steps.

JOSEPH F. EVERING, JR., ET UX (continued)

April 22, 1987	Continued hearing held before C.B. of A.
October 21	Order of C.B. of A. GRANTING Petition for SE w/ restrictions; GRANTING variance from 409.2.c(2); GRANTING in part and DENYING in part variance from 417.5; GRANTING Petition for Special Hearing in part.
November 10	Order for Appeal filed in CCt for BCo by People's Counsel; Petition to accompany Appeal filed.
November 12	Certificate of Notice sent.
November 16	Order for Appeal filed in CCt for BCo by T. Rogers Harrison, Counsel for Protestants; Petition to accompany appeal filed.
November 16	Certificate of Notice sent.
November 20	Order for Appeal filed in CCt for BCo by John B. Gontrum, Esquire, Counsel for Petitioners; Petition to accompany appeal filed.
November 24	Certificate of Notice sent.
December 9	Record of Proceedings filed in CCt.
Nov 10	Order for Appeal fd by PC in CCt, BCo.
Nov 16	Appellant's (Kenneth Engelke, et al) Order for Appeal filed in CCt, BCo
Nov 20	Appellant's (Jos Evering) Order for Appeal/Petition filed in CCt, BCo
12 May 26, 1988	Joint Motion to Remand to CBA and Court's Order that Case 87-CG-4755 be REMANDED to Board "...for consideration of the amended site plan and a determination that the plan meets critical area criteria." (Hinkle, J)

JOSEPH F. EVERING, JR., ET UX (continued)

April 22, 1987	Continued hearing held before C.B. of A.
October 21	Order of C.B. of A. GRANTING Petition for SE w/ restrictions; GRANTING variance from 409.2.c(2); GRANTING in part and DENYING in part variance from 417.5; GRANTING Petition for Special Hearing in part.
November 10	Order for Appeal filed in CCt for BCo by People's Counsel; Petition to accompany Appeal filed.
November 12	Certificate of Notice sent.
November 16	Order for Appeal filed in CCt for BCo by T. Rogers Harrison, Counsel for Protestants; Petition to accompany appeal filed.
November 16	Certificate of Notice sent.
November 20	Order for Appeal filed in CCt for BCo by John B. Gontrum, Esquire, Counsel for Petitioners; Petition to accompany appeal filed.
November 24	Certificate of Notice sent.
December 9	Record of Proceedings filed in CCt.
Nov 10	Order for Appeal fd by PC in CCt, BCo.
Nov 16	Appellant's (Kenneth Engelke, et al) Order for Appeal filed in CCt, BCo
Nov 20	Appellant's (Jos Evering) Order for Appeal/Petition filed in CCt, BCo
May 26, 1988	Joint Motion to Remand to CBA and Court's Order that Case 87-CG-4755 be REMANDED to Board "...for consideration of the amended site plan and a determination that the plan meets critical area criteria." (Hinkle, J)

VE

Note: CCt Case # 88-CG-0022 - Dism by above Order.

85-65-XSPHA	N/S of Chester Road, 590' W of Severn Rd. (800 Chester Road) 15th
	Petitions - Special Exception, Special Hearing and Variances of Joseph F. Evering, Jr.etux
8/8/84	Filing Fee - $250.00
9/25/84	Advertising and Posting - $111.90
8/6/84	Hearing date set for September 10, 1984 at 1:30 P.M.
8/23/84	Certificate of Publication filed
8/18/84	Certificate of Posting filed
4/25/85	Ordered by Zoning Commissioner that Special Exception for boat yard for 2 lots be GRANTED; Special Hearing to amend site plans and to permit an additional 118 slips be GRANTED; Variances for parking surfaces GRANTED; FURTHER ORDERED that Restriction No. 1 in Case No. 64-160-X shall not be removed and shall remain in full force and effect.
5/10/85	Appeal by People's Counsel
5/20/85	Appeal by Norman E. Gerber, Director/Office of Planning & Zoning
5/17/85	Appeal by T. Rogers Harrison - $260.00
5/20/85	Appeal by John O. Hennegan, Esquire - $260.00
12/12/85	Ruling of County Board of Appeals for Baltimore County holding that the Chesapeake Bay Critical Area Protection Program is not applicable to the proposed petition.
12/12/85	Dissent of Diana K. Vincent, of County Board of Appeals, DENYING Petitioner's Motion and HOLDING provisions of Section 8-1801 et seq. of the Natural Resources Article of the Annotated Code of Md. are applicable to petitions in this matter.
10/21/87	ORDERED by the County Board of Appeals; that the Petition for Special Exception is GRANTED; that the Variance from B.C.Z.R. 409.2.c(2) is GRANTED; that the restriction on the number of slips is MOOT; that the Variance from B.C.Z.R. 417.5 is GRANTED in part and DENIED in part; that the Special Hearing is GRANTED in Case No. 64-160-X, in conformance with the variance set forth in #4 of this Order; that the Special Hearing to remove restrictions #1 and #3 in Case #64-57-SPH will be GRANTED; that the Petition for Special Hearing to remove strictions in #1 and #6 in Case No. 64-160-X will be GRANTED in part and DENIED in part and that restriction #1 is AFFIRMED and re-incorporated herein and restriction #6 amended to allow maintenance and minor repairs on site and in the water immediately adjacent thereto from 8:00 a.m. to 7:00 p.m., seven days per week, year round; that Special Hearing for a determination of recreational activities is GRANTED.
11/24/87	Appeal filed by with the Circuit Court of Baltimore County by Joseph F. Evering, Jr., et ux
5/26/89	ORDERED by Circuit Court for Baltimore County, that the herein #87CG4755 be remanded to the Baltimore County Board of Appeals.
6/15/88	ORDERED by County Board of Appeals that the Petition for Special Exceptions be and is hereby GRANTED with restrictions. 2) That the variance from B.C.Z.R. 409.c.(2) be and is hereby GRANTED; that the variance relief under B.C.Z.R. 409.2.B is MOOT; that the variance under B.C.Z.R. 417.5 is GRANTED to the extent as shwon on the amended site plan (Petitioner's Exhibit #1A); that the Petition for Special Hearing is GRANTED, amending CASE #64-160-X; to all construction of additional piers and slips, in conformance with the variance as set forth in #4 of this Order; that the Petition for Spcial Hearing to remove restrictions #3 and 3 in case No. 64-57-SPH be GRANTED; that the Petition for Special Hearing to remove restrictions #1 and #6 in CASE No. 64-160-X be GRANTED in part and DENIED in part and that restriction #1 is AFFIRMED and re-incorporated herein and restriction #6 amended so as to allow maintenance and minor repairs on site and in the water immediately adjacent thereto from 8:00 a.m. to 7:00 p.m., seven days a week, year round; that the Petition for Special Hearing for a determination of the recreational activities on site is GRANTED, so that the use is exempt from Residential Transition Area requirements; that the on-shore improvements of a pump-out facility for boats and landscaping be completed simutaneously with the construction of the proposed piers; and; that the following best management practies guidelines be utilized in the operation of the facility at such time as the construction commences:

A-5

12/12/86

Circuit Court file and exhibits are in back of drawer. Keep separate from our file + exhibits.

J. Holmen

UFFICIENT
TING AND IN
NO POSTPONE-
CHEDULED HEAR-
IL BILL #59-79

CASE NO. 85-85-ASPHA JOSEPH F. EVERING, JR., ET UX

FOR SE FOR A BOAT YARD
" VARIANCES
" SPH ON SITE PLAN

N/S CHESTER ROAD 590' W. SEVERN ROAD

15th DISTRICT

8/7/86 - REMANDED BY JUDGE SFEKAS FOR TESTIMONY

First hearing day, Wednesday, December 10, 1986, has been postponed at the request of the Assistant Attorney General. Case is

ASSIGNED FOR: TUESDAY, DECEMBER 16, 1986 at 10 a.m.
WEDNESDAY, DECEMBER 17, 1986 at 10 a.m.
THURSDAY, DECEMBER 18, 1986 at 10 a.m.

cc:

John O. Hennegan, Esq.	Counsel for Petitioners
John B. Gontrum, Esq.	" " "
Robert J. Romadka, Esq.	" " "
Joseph F. Evering, Jr., et ux	Petitioners
T. Rogers Harrison, Esq.	Counsel for Protestants
Phyllis Cole Friedman	People's Counsel
Thomas J. Bollinger, Esq.	Office of Law
Judith A. Armold	Assistant Attorney General
Norman E. Gerber	
James G. Hoswell	
Arnold Jablon	
Jean M. H. Jung	
James E. Dyer	

Kathi C. Weidenhammer
Administrative Secretary

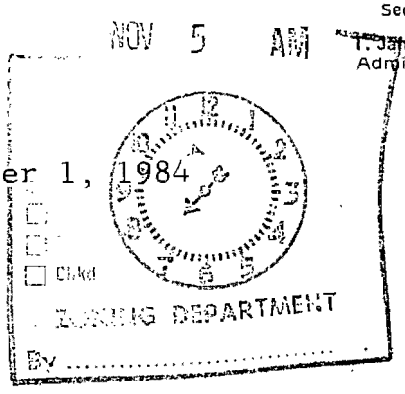
JOS. F. EVERING JR., et ux
85-65-XSPHA

Maryland Department of Transportation

STATE AVIATION ADMINISTRATION

William K. Hellmann
Secretary
T. James Truby
Administrator

85-1039
Case file



November 1, 1984

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

RE: Long Beach Marina
Case No. 3535-X, 64-57-SPH,
64-160-X

Dear Mr. Jablon:

This is to advise you that the area delineated on the above-referenced re-zoning application lies within the clear zone of the approach end of Runway 32 of Martin State Airport (MTN). A copy of the existing airport layout plan is enclosed.

The Federal Aviation Administration (FAA), in its Advisory Circular 150/5300-4B, has expressed its view that it is unacceptable to develop real or personal property in a clear zone in a manner that will bring about a congregation of people in that zone. The FAA deems such a congregation to be a hazard to the landing, taking-off, or maneuvering of aircraft. The State Aviation Administration (SAA), as owner and operator of MTN, concurs with the FAA in this matter.

Furthermore, 14 CFR Part 77 sets dimensional standards for all approach surfaces to all runways in the United States. The three-dimensional requirements for the primary approach surface to R/W 32 basically involve a 50:1 obstruction-free slope beginning 200 feet from the end of the pavement and extending upward and outward from the extended runway centerline. The proposed expansion of the marina would most likely involve several penetrations of this plane by masts of moored sailboats. Such penetrations would violate the Federal regulations for obstructions and airport hazards.

Section 5-502 of the Transportation Article of the Annotated Code of Maryland provides in sub-section (a) that the SAA may adopt zoning regulations to protect the aerial approaches to any State-owned airport. Additionally,

P.O. Box 8766, Baltimore/Washington Int'l Airport, Maryland 21240, -0766 Telephone: (301) 859-7100
TTY For the Deaf: (301) 859-7227

ANNE ARUNDEL COUNTY

ANNAPOLIS, MARYLAND 21401

OFFICE OF PLANNING AND ZONING

Re: CRITICAL AREA - CHESAPEAKE BAY - NOTIFICATION

This is to notify you that your project _____ is subject to Senate Bill No. 664 of 1984.

This act requires that the County in rendering its decision to approve this project shall make specific findings that:

8-1813 (A)(1) The proposed development will minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands; and

(2) The applicant has identified fish, wildlife, and plant habitat which may be adversely affected by the proposed development and has designed the development so as to protect those identified habitats whose loss would substantially diminish the continued ability of populations of affected species to sustain themselves.

Subsection (B) states that: ... a local approving authority shall require such additional information from an applicant as is necessary in order to make the findings required by subsection (A).

Please provide the information on the attached list that applies to your project. A list of references and consultants has been included to assist you in compiling the information. Four copies of the site plan and accompanying report are needed for review.

Florence Beck Kurdle
Planning and Zoning Officer

FBK/PC/mw

Attachments

ANNE ARUNDEL COUNTY
ANNAPOLIS, MARYLAND 21401

OFFICE OF PLANNING AND ZONING

CHESAPEAKE BAY CRITICAL AREA
INFORMATION NEEDED FOR PROJECTS

Please refer to attached Critical Area Resources Information and list of Consultants for assistance in providing the following information. You may include this as a checklist with your submittal, indicating by (X) those items submitted or a reason why other items are not included. Please submit four copies of your site plan and report.

A. Indicate the following, if present, on the site plan:

1. Trees,

   (a) Edge of continuous wooded areas;

   (b) Approximate location of individual trees in continuous wooded area with a diameter twice as large as that of the surrounding trees;

   (c) Approximate location of individual trees greater than 5 inches in diameter at breast height outside of continuous wooded area.

2. Limit of area that will be disturbed during all phases of construction,

3. 100 Year Floodplains

   a) Coastal

   b) Non-tidal

4. Wetlands

   a) Tidal

   b) Non-tidal

   c) Submerged aquatic vegetation

5. Bodies of water

   a) Permanent

   b) Intermittent

c) Tidal limit

d) Mean high water line

6. Aquatic habitat in a body of water adjacent or within the property

a) Spawning area

b) Nursery areas

c) Shellfish beds

7. Soil types

8. Steep slopes

9. Upland Natural Areas boundary

10. Area of Critical State Concern boundary

11. Chesapeake Bay Critical Area boundary
(area within 1000 feet of tidal wetland boundary which is the mean high water line if no tidal marsh is present)

12. Rare or endangered species habitat (plants and animals).

13. Stormwater outfalls and points of discharge.

B. Identify the following, if present, in a report accompanying the site plan:

1. Rare and endangered plants, giving scientific and common name

2. Rare and endangered animals, giving scientific and common name

3. Description and extent of vegetation within the Critical Area boundary. Specify the vegetative communities present on the site and give their areas. Examples include: mature woodland, immature woodland, old field, pasture, cropland, orchard, and wetland. For each community please describe the vegetation in the following manner:

a) Canopy (highest layer of trees)

i) Common species present, indicating approximate percentage of total,

ii) Diameter at breast height - give general range for each species listed,

b) Understory (immature trees below canopy)

i) Common species present, indicating approximate percentage of total,

c) Shrub layer (woody plants below trees)

i) Common species present, indicating approximate percentage of total,

d) Herbaceous layer (non-woody plants below shrubs)

i) Common species present, indicating approximate percentage of total.

4. Species of animals observed or expected to be present, based on habitat or other evidence,

a) Permanent,

b) Migrants.

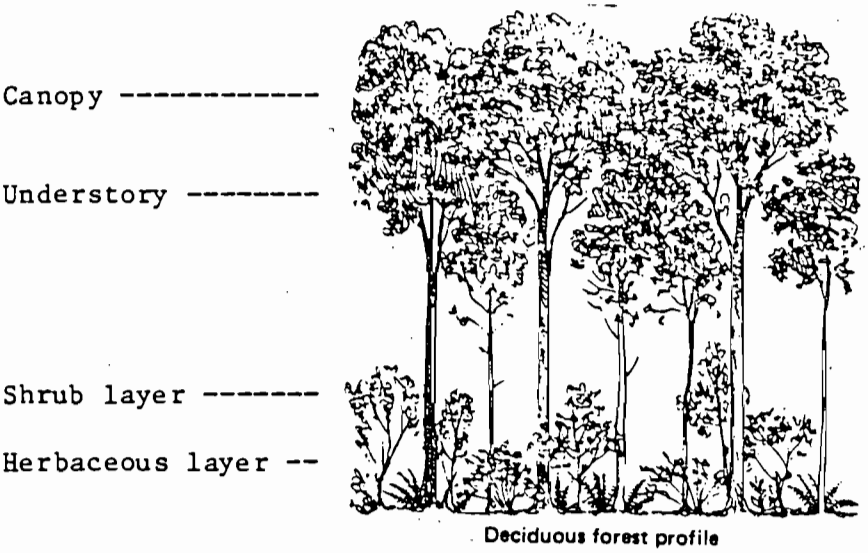
5. Infiltration potential for stormwater, based on soil type and depth to ground water.

6. Pollutants expected to be generated by development and measures that will be taken to reduce their impact.

7. Proposed stormwater management plan to minimize degradation of water quality.

8. Shoreline condition and any proposed work at or beyond the natural shoreline.

9. Dates of field work.



Deciduous forest profile

From: R. L. Smith, Ecology and Field Biology, 2nd Edition, 1974 p. 566

CRITICAL AREA GENERAL RESOURCES INFORMATION

These general resources should be supplemented by detailed field investigations on a site-by-site basis. Items marked with (*) are available in the Office of Planning and Zoning only, and may not be loaned out.

A. To be shown	Source
1. Existing treeline -	. aerial photos - developer or Office of Planning and Zoning *
Individual trees -	. landscape architect, botanist, forester
2. Limit of disturbance -	. engineer and developer
3. Floodplains	
(a) Coastal -	. FEMA 600' scale maps * Office of Planning and Zoning For individual maps call 897-5900 in Bethesda or 1-800-638-6620
(b) Non-Tidal -	. FEMA 600' scale maps * Office of Planning and Zoning For individual maps call 897-5900 in Bethesda or 1-800-638-6620
	. Subdivision plats * Office of Planning and Zoning
	. Tax maps.
	. Engineering calculations.
4. Wetlands	
(a) Tidal -	. 200' scale maps (photo base) * Office of Planning and Zoning; Anne Arundel County Courthouse, Plat Room; DNR.
(b) Non-Tidal -	. 2000' scale maps (USGS quad base) Available at $23.00 per 15 sheet set from Planning and Zoning, or $2.00 per sheet..
(c) Submerged Aquatic Vegetation -	. 2000' scale maps (USGS quad base) Available at $2.00 per sheet from Planning and Zoning.

5. Bodies of water	
(a) Permanent	. 200' scale topo maps . Aerial photos . USGS quad sheets
(b) Intermittent	. As above
(c) Tidal limit	. Wetlands maps as referenced earlier . Vegetation
(d) Mean high water line	. Field topo . Tide tables, East Coast of North & South America, NOS
6. Aquatic habitat	
(a) Spawning area	. Aquatic Sensitive Areas Handbook, DNR/Coastal Resources 1977 * ; may also be available from DNR. . DNR/Fisheries Division of Tidewater Administration, 269-3061.
(b) Nursery areas	. As above.
(c) Shellfish beds	. DNR/Hydrographic Survey Maps, Oyster bars and clam areas, 269-3436. . DNR/Fisheries Division as above.
7. Soil types	. Soil Survey of Anne Arundel County Maryland, USDA and SCS, February 1973. . Borings by developer
8. Steep slopes	. Topo maps, shaded if greater than 15%
9. Upland Natural Areas Boundary	. 1" = 1 mile scale map * Planning and Zoning . Computer printout * Planning and Zoning and DNR.
10. Area of Critical State Concern	. Maryland Areas of Critical State Concern: Designation Report. Maryland Department of State Planning, January 1981. *
11. Chesapeake Bay Critical Area (1000').	Planning and Zoning Drafting Room.
12. Rare or endangered species habitat	. DNR/Natural Heritage and Environmental Review 269-3656.
13. Stormwater outfalls	. Engineer

B. To be included in narrative:

1. Rare and endangered plants	. See 12 above
2. Rare and endangered animals	. List available from Planning & Zoning and DNR; also see 12 above.
3. Description of vegetation (a) to (d)	. See list of consultants, forester, landscape architect, botanist
4. Species of animals	. See list of consultants, biologist, naturalist
5. Infiltration potential	. Soil survey; soil scientists; hydrologist; engineer; borings
6. Pollutants	. Literature . Urban stormwater runoff pollutant information may be available on a limited basis from Samuel R. Martin at Regional Planning Council, 383-5861.
7. Stormwater management plan	. Engineer; hydrologist
8. Shoreline condition	. Field information; for long-term information see shoreline atlas entitled "Historical Shorelines and Erosion Rates," Maryland Geological Survey, 1975, available in Planning and Zoning and DNR. *

MARYLAND ENDANGERED SPECIES

Endangered species in Maryland are protected by Federal and/or State law. All species listed by Federal law (Endangered Species Act of 1973, 87 Stat. 884) are also protected under State law (The Maryland Nongame and Endangered Species Conservation Act of 1975, 10-2A01 et seq.).

Wildlife Conservation regulation (.08.03.01.43) governing possession of State listed endangered species is reproduced below:

.43 Endangered Wildlife Species

A. Permit.

(1) Except by special permit, a person may not take, export, transport, or possess any of the species of wildlife listed in Sections B and C. The permit shall be obtained from the Director, Wildlife Administration only upon written application which shall describe in such detail that the Director can determine whether it is in the best interest of the species to issue it. Each permit shall be subject to an expiration date and other limitations as may be prescribed by the Director.

(2) Violation of any provision or restriction of the permit shall constitute a violation of this regulation and may result, at the discretion of the Director, in revocation of the permit and confiscation of those species held pursuant to it.

B. In addition to those species listed in the Endangered Species Act of 1973, 87 Stat. 884, with amendments, the following species of wildlife are declared to be threatened with Statewide extinction:

(1)	Delmarva Peninsula Fox Squirrel	(Sciurus niger cinereus)
(2)	Hellbender	(Cryptobranchus allegheniensis)
(3)	Eastern Tiger Salamander	(Ambystoma tigrinum tigrinum)
(4)	Green Salamander	(Aneides aeneus)
(5)	Eastern Narrow-mouthed Toad	(Gastrophryne carolinensis)
(6)	Coal Skink	(Eumeces anthracinus anthracinus)
(7)	Rainbow Snake	(Farancia erytrogramma erytrogramma)
(8)	Mountain Earth Snake	(Virginia valeriae pulchra)

C. The following species are declared to be in need of further study and investigation in respect to conservation:

(1)	Bobcat	(Lynx rufus rufus)
(2)	Porcupine	(Erethizon dorsatum)
(3)	Least Weasel	(Mustela nivalis allegheniensis)
(4)	Black Bear	(Ursus americanus)

In addition, state law does not prohibit entry into this State or the possession, transportation, exportation, processing, sale, offer for sale, or shipment of any wildlife or plant which is designated an endangered or threatened species in this State but not in the state where originally taken, if the person engaging in the activity demonstrates by substantial evidence that the wildlife or plant was lawfully taken and lawfully removed from the state of origin (10-2A08).

For further information contact the Maryland Wildlife Administration, Annapolis, Maryland 21401.

MARYLAND WILDLIFE ADMINISTRATION

ENDANGERED SPECIES IN MARYLAND

COMMON NAME	SCIENTIFIC NAME
	ENDANGERED
FISH	
Sturgeon, Shortnose	*Acipenser brevirostrum*
Darter, Maryland	*Etheostoma sellare*
AMPHIBIANS	
Hellbender	*Cryptobranchus alleganiensis alleganiensis*
Salamander, Eastern Tiger	*Ambystoma tigrinum tigrinum*
Salamander, Green	*Aneides aeneus*
Toad, Eastern Narrow-Mouthed	*Gastrophryne carolinensis*
REPTILES	
Skink, Northern Coal	*Eumeces anthracinus anthracinus*
Snake, Rainbow	*Farancia erytrogramma erytrogramma*
Snake, Mountain Earth	*Virginia valeriae pulchra*
Turtle, Kemp's Ridley	*Lepidochelys kempi*
Turtle, Leatherback	*Dermochelys coriacea*
Turtle, Hawksbill	*Eretmochelys imbricata*
BIRDS	
Eagle, Bald	*Haliaeetus leucocephalus*
Falcon, American Peregrine	*Falco peregrinus anatum*
Falcon, Arctic Peregrine	*Falco peregrinus tundrius*
Curlew, Eskimo	*Numenius borealis*
Woodpecker, Red-Cockaded	*Picoides borealis borealis*
MAMMALS	
Bat, Indiana	*Myotis sodalis*
Squirrel, Delmarva Fox	*Sciurus niger cinereus*
Lion, Mountain (Eastern)	*Felis concolor cougar*
Whale, Blue	*Balaenoptera musculus*
Whale, Finback	*Balaenoptera physalus*
Whale, Black Right	*Balaena glacialis*
Whale, Sei	*Balaenoptera borealis*
Whale, Sperm	*Physeter catodon*
Whale, Humpback	*Megaptera novaeangliae*
PLANTS	
Pogonia, Small Whorled	*Isotria medeoloides*
	THREATENED
REPTILES	
Turtle, Atlantic Green	*Chelonia mydas*
Turtle, Loggerhead	*Caretta caretta*

SPECIAL CONCERN - STATUS UNKNOWN

MAMMALS	
Bobcat	*Lynx rufus rufus*
Bear, Black	*Ursus americanus*
Weasel, Least	*Mustela nivalis allegheniensis*
Porcupine	*Erethizon dorsatum*

This publication is for information purposes only. For official law, see Natural Resources Article of the Annotated Code and DNR regulation.

HARFORD COUNTY GOVERNMENT

Department of Planning and Zoning

Re: Notification of Requirements of the Chesapeake Bay Critical Areas Act

This is to notify you that your project _____ is subject to the State of Maryland Senate Bill No. 664 of 1984.

This act requires that the County in rendering its decision to approve this project shall make specific findings that:

8-1813 (A)(1) The proposed development will minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands; and

(2) The applicant has identified fish, wildlife, and plant habitat which may be adversely affected by the proposed development and has designed the development so as to protect those identified habitats whose loss would substantially diminish the continued ability of populations of affected species to sustain themselves.

Subsection (B) states that: ... a local approving authority shall require such additional information from an applicant as is necessary in order to make the findings required by subsection (A).

Please provide the information requested on the attached list that applies to your project. A list of information sources has been included to assist you in compiling the information. Three copies of the site plan and accompanying report are needed for review.

_____

Robert S. Lynch, Planning Director

RSL:mkz
Attachments

220 SOUTH MAIN STREET · BEL AIR, MARYLAND 21014
(301) 838-6000 (301) 879-2000

CHESAPEAKE BAY CRITICAL AREA

INFORMATION NEEDED FOR PROJECT REVIEW

A. Indicate the following, if present, on the site plan, or on duplicate copies:

1. Site topography with contour interval appropriate to scale of site plan,
2. Limit of area that will be disturbed during all phases of construction,
3. Delineation of 100 year flood plain,
4. Delineation of Natural Resources District,
5. Wetlands
   a) Tidal
   b) Non-tidal
   c) Submerged aquatic vegetation
6. Surface water (streams, ponds, estuaries)
   a) Permanent
   b) Intermittent
   c) Tidal limit
   d) Mean high water line
7. Aquatic Habitat in a body of water adjacent or within the property
   a) Spawning area
   b) Nursery areas
8. Soil types (mapped at same scale as site plan)
9. Steep Slopes (shown at 15-25% and greater than 25% slope)
10. Upland Natural Areas boundary
11. Trees, identify edge of continuous wooded areas
12. Area of Critical State Concern boundary
13. Chesapeake Bay Critical Area boundary
    (area within 1000 feet of tidal wetland boundary which is the mean high water line if no tidal marsh is present)
14. Rare or endangered species habitat (plants and animals)
15. Stormwater outfalls and points of discharge

B. Identify the following, if present, in a report accompanying the site plan:

1. Rare and endangered plants, giving scientific and common name. Describe their habitat.

2. Rare and endangered animals, giving scientific and common name. Describe their habitat.

3. Description and extent of vegetation within the Critical Area boundary. Specify the vegetative communities present on the site and give their general location. Examples include: mature woodland, immature woodland, old field, pasture, cropland, orchard, and wetland. Describe each vegetative community on the basis of the common tree, shrub and herbaceous plant species present. For dominant and subdominant tree species give the general range of their diameter at breast height.

4. Species of animals observed or expected to be present, based on habitat or other evidence,

   a) Identify as permanent or migrant species

   b) Identify fish species using spawning or nursery areas.

5. Infiltration potential for stormwater, based on soil type and depth to ground water.

6. Pollutants expected to be generated by development and measures that will be taken to reduce their impact. Describe pollutants expected during construction phase and those expected after project completion.

7. Percentage of active and passive open space

8. Estimate percentage of impervious surfaces from proposed development

9. Proposed stormwater management plan to minimize degradation of water quality.

10. Shoreline condition and any proposed work at or beyond the natural shoreline.

11. Dates of field work.

DRAFT

CRITICAL AREA RESOURCE INFORMATION

These general resources should be supplemented by detailed field investigations on a site-by-site basis. Items marked with (*) are available in the Department of Planning and Zoning only, and may not be loaned out. The Department of Planning and Zoning is in the process of obtaining copies of all available data and maps. A revised information sheet then be developed.

A. To be shown	Source
1. Topography -	. 200' scale photogrammetrics (5 foot contour) - engineer or Department of Planning and Zoning *
2. Limit of disturbance -	. engineer and developer
3. Floodplains -	. 600' scale maps - Department of Planning and Zoning *; FEMA 400' scale maps - Department of Public Works. For individual maps call 897-5900 in Bethesda or 1-800-638-6620
	. Record subdivision plats Department of Planning and Zoning *
	. Engineering calculations.
4. Natural Resource District -	. Zoning maps, Planning & Zoning *
5. Wetlands -	
(a) Tidal -	. 200' scale maps (photo base) Department of Planning and Zoning *; Department of Natural Resources (DNR).
(b) Non-Tidal -	. 2000' scale maps (USGS quad base) Department of Planning and Zoning *; DNR
(c) Submerged Aquatic Vegetation -	. 2000' scale maps (USGS quad base) Wetlands Division, DNR (269-3871)
6. Surface Water	
(a) Permanent	. 200' scale photogrammetic maps * . Aerial photos . USGS quad sheets
(b) Intermittent	. As above
(c) Tidal limit	. Tidal wetlands maps as referenced earlier
(d) Mean high water line	. Tidal wetlands maps as referenced earlier

7. Aquatic habitat	
(a) Spawning area	. Aquatic Sensitive Areas Handbook, DNR/Coastal Resources 1977; may be available from DNR. . DNR/Fisheries Division of Tidewater Administration, 269-3061.
(b) Nursery areas	. As above.
8. Soil types	. Soil Survey of Harford County, Maryland, USDA and SCS, February 1975. 600' scale mylars available at Planning and Zoning. * . Borings by developer
9. Steep slopes	. Topo maps
10. Upland Natural Areas Boundary	. 1" = 1 mile scale map * Planning and Zoning . Computer printout * Planning and Zoning; DNR.
11. Trees	. Aerial photos - engineer or Department of Planning and Zoning *
12. Area of Critical State Concern	. Maryland Areas of Critical State Concern: Designation Report. Maryland Department of State Planning, January 1981. *
13. Chesapeake Bay Critical Area (1000')	. Planning and Zoning *; DNR
14. Rare or endangered species habitat	. DNR/Natural Heritage and Environmental Review, 269-3656.
15. Stormwater outfalls	. Engineer
B. To be included in narrative	
1. Rare and endangered plants	. See 12 above
2. Rare and endangered animals	. List available from Planning & Zoning and DNR; also see 12 above.
3. Description of vegetation	. Forester, landscape architect, ecologist, botanist
4. Species of animals	. Biologist, naturalist
5. Infiltration potential	. Soil survey; soil scientists; hydrologist; engineer; borings

6. Pollutants	. Literature
7. Openspace	. Engineer
8. Impervious surface	. Engineer
9. Stormwater management plan	. Engineer; hydrologist
10. Shoreline condition	. Field information; for long-term information see shoreline atlas entitled "Historical Shorelines and Erosion Rates," Maryland Geological Survey, 1975.

EXHIBIT A

Baltimore County Code, § 524.1. People's Counsel.

...

(b) Notwithstanding any other provision of this Charter, within thirty (30) days after the effective date of this Charter amendment, the county executive shall appoint a people's council who shall represent the interests of the public in general in zoning matter as hereinafter set forth, subject, however, to confirmation by the county council, and such person so appointed shall continue to serve as people's counsel until such time as he or she resigns or has been removed pursuant to the provisions herein contained:

...

...

(3) Powers and duties: The people's counsel shall have the following powers and duties:

A. He shall appear as a party before the zoning commissioner of Baltimore County, his deputy, the county board of appeals, the planning board, and the courts on behalf of the interests of the public in general, to defend any duly enacted master plan and/or comprehensive zoning maps as adopted by the county council, and in any matter or proceeding now pending or hereafter brought involving zoning reclassification and/or variance from or special exception under the Baltimore County Zoning Regulations, as now or hereafter in force and effect, in which he may deem the public interest to be involved. In defense of the zoning maps or master plan, he may appear as a party in interest before all state and federal agencies, boards, and courts on matters involving the preservation of the quality of the air, land, and water resources of Baltimore County, and/or may initiate such proceedings in the public interest. He shall have in such appearance, all the rights of counsel for a party in interest, including but not limited to the right to present his case, to cross examine, to object, to be heard, and to file and prosecute an appeal in his capacity as people's counsel from any order or act of the zoning commissioner of Baltimore County or his deputy, or of the county board of appeals to the courts as an aggrieved party pursuant to the provisions of Section 604 of this Charter to promote and protect the health, safety and general welfare of the community. The people's counsel may also prosecute an application before any state or federal court for injunctive and other relief incidental thereto, to enjoin violation of any Baltimore County zoning maps or master plan or as authorized by resolution by the county council.

(Bill No. 90, 1978, § 1)

(Approved by voters Nov. 7, 1978. Effective Dec. 8, 1978)

...

EXHIBIT A 2

PCF: seen

PMZ: seen

County Board of Appeals of Baltimore County

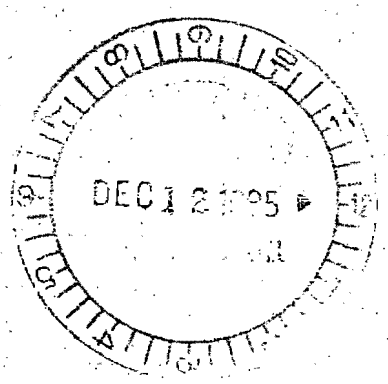
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

December 12, 1985

John O. Hennegan, Esquire
Robert J. Romadka, Esquire
809 Eastern Boulevard
Essex, MD 21221

T. Rogers Harrison, Esquire
306 W. Joppa Road
Towson, MD 21204

Judith A. Armold
Assistant Attorney General
Department of State Planning
301 W. Preston Street
Baltimore, MD 21201



Re: Case No. 85-65-XSPHA
Joseph F. Evering, Jr., et ux

Dear Counsel:

Enclosed please find the Board of Appeals' Ruling on the Petitioner's Preliminary Motion to determine the applicability of Subtitle 18 of the Natural Resources Article of the Annotated Code of Maryland. This ruling is self-explanatory.

Additionally, at the conclusion of the hearing, counsel requested the Board's advice as to the COMAR regulations promulgated by the State Aviation Administration. Although we will reserve all parties' rights to be heard on this matter, the Board has reviewed the regulations. We note that Subtitle 03, Section 11.03.05 prohibits actual construction, and does not prohibit the filing and granting of the petitions before us. Also, Section 11.03.06 provides for relief through the Board of Airport Zoning Appeals, outside of the jurisdiction of this Board.

Finally, please note the next hearing date for this matter is Tuesday, January 21, 1986 at 10 a.m. We must deny the Protestants' request for a continuance from that date. The Board clearly remembers all parties' agreement to the January 21st date at the conclusion of the initial day's hearing. Also, although this Board has granted postponements for conflicting trial dates, we cannot grant a postponement

for a conflict with the preparation for another trial. With the numerous parties involved in this matter, the Board has already found it impossible to schedule additional hearing days on an agreed date.

Very truly yours,

Lawrence E. Schmidt
Acting Chairman

LES:e

cc: People's Counsel
Norman E. Gerber
Joseph Evering Jr., et ux
James Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer

EXHIBIT B

APPENDIX E

RULES OF PRACTICE AND PROCEDURE OF THE ZONING COMMISSIONER OF BALTIMORE COUNTY*

The following rules and regulations are prescribed under the provisions of Subsection 500.8, Baltimore County Zoning Regulations, 1955:

RULE I

Locations and Times of Hearings—In General

Hearings shall be held in the County Office Building, 111 West Chesapeake Avenue, Towson, Maryland, Monday through Friday. (The times for hearings on petitions will be set in accordance with Sections 22-22 and 22-23 of the Baltimore County Code 1968, as amended by Bills No. 72, 1969, and No. 42, 1970.[1]) Special sessions of the Zoning Commissioner for any and all authorized purposes may be held at such times and places as the Zoning Commissioner may direct.

RULE II

Petitions and Preliminary Review

A. Acceptance. On receiving a petition, the Zoning Commissioner will refer it to the office staff and Zoning Plans Advisory Committee (see Section C, below) for examination and comment. If it is found to be in accordance with these rules, with the Baltimore County Code, with the Baltimore County Zoning Regulations, and with all reasonable requirements of the Committee, the Zoning Commissioner will accept the petition for filing and so notify the petitioner by letter. If it does not conform, the petitioner will be advised of the defects which must be corrected before the petition will be accepted for filing.

B. Form, contents, and accompanying documentation

1. Any petition to be accepted for filing must be on the form supplied by the Zoning Commissioner.

2. The petition shall be submitted in triplicate, and each copy shall be signed by the petitioner(s). All information on the petition other than the printed impression and the signature(s) shall be typewritten.

---

* *Revised 1974.*

1. *See Appendix D.*

3. While zoning-office personnel will assist the person filing the petition in interpreting those provisions of the Baltimore County Zoning Regulations applicable to the petitioner's case, the final wording of the petitioner's request as set forth on the petition form shall be the responsibility of the petitioner or his legally authorized representative.

4. The petition must be accompanied by 10 copies of a surveyor's plat, 7 copies of a surveyor's description, and 1 copy of a reproducible location plan.

5. The surveyor's plat must be drawn at an engineering scale (whereby each inch on the plat represents an actual dimension of 10 feet or an even multiple thereof) which, in the Zoning Commissioner's judgement, is an appropriate scale in relation to the area covered and the information shown. The following must be shown on the surveyor's plat: *

   a. North arrow

   b. Scale

   c. Identification of Election District

   d. Outline of each parcel under petition, in heavy lines

   e. Zoning of each such parcel and of adjacent properties

   f. Name of any present or prospective subdivision within which any property shown on the plat may be situated, and name of any adjacent subdivision

   g. Metes and bounds of each such parcel (dimensions, bearings, etc., of boundaries)

   h. Name of every street adjoining each such parcel, and distance along at least one such street to nearest intersecting street

   i. Existing and proposed widths of right of way of each bounding street, and width of any right of way proposed to be established within each such parcel

   j. Existing topography and topography as proposed, if such information is required by the Office of Planning and Zoning

   k. Existing and proposed widths and types of paving of any street within each such parcel

   l. Location and width of any proposed entrance on each such parcel; locations and widths of existing entrances

---

* *See also Subsection 500.9 of the Baltimore County Zoning Regulations, 1955, as amended by Resolution, November 21, 1956.*

m. Use(s), dimensions, and location of any existing building on each such parcel

n. Use(s), dimensions, and location of any proposed building or addition on each such parcel, and proposed use(s) of any existing building if its use is to be changed. (Note: Any building without a setback on any side must meet special building-code and fire-code requirements with regard to type of construction, windows, etc.)

o. In cases where yard setbacks or areas are to be determined, the locations of all principal buildings within a distance of at least 200 feet from each joint side property line

p. "Height tent", in cases where maximum height is determined by such means

q. Residential density and types of dwelling units

EXAMPLE—

Existing zoning	D.R. 5.5
Proposed zoning	D.R. 16
Gross area	10 acres
Permitted density	16 density units/acre
Maximum number of density units permitted	160

Types of dwelling units and "design" density—

Dwelling-unit type	Number	Density units
Efficiency	80	40
1-bedroom	80	60
2-bedroom	20	20
3+-bedroom	14	21
Totals	194	141
"Design" density	19.4 DU/acre	14.1 DnU/acre

r. Offstreet parking information—parking-area locations and layouts, parking-space sizes,* required number of spaces, number of spaces to be provided, paving type and construction, size and type of screening, and type, direction, and height of lighting

* *Minimum size 9' x 20' preferred.*

PARTIAL EXAMPLE (two-story apartment-office building in D.R. 16 zone)—

First-floor use	offices
Total floor area	6000 sq. ft.
Number of spaces required	$\frac{6000}{300} = 20$
Number of spaces provided	25
Second-floor use	apartments
Number of units proposed	12 density units
Number of residential spaces required	1.53 x 12 = 18.36
Number of residential spaces provided	19
Total number of spaces required	39
Total number of spaces provided	44

s. Locations of streams or drainage courses on or within 50 feet of property under petition

t. Utilities—locations and sizes of existing water and sewer lines at site or, if water and/or sewer lines are not at the site, the locations and sizes of the nearest usable lines and their distances from the site, with the proper Baltimore County utility-drawing number listed. (If desired, these data may be indicated on the location plan, described below, rather than on the surveyor's plat.)

u. Fire-fighting facilities—locations of fire hydrants. (Hydrant spacing must conform to the requirements of the Department of Public Works and the Fire Department.)

6. The location plan must be prepared by the surveyor, must be drawn to a scale of 1"=200' or 1"=1000', and must show the following:

a. North arrow

b. Scale

c. Outline of each parcel under petition

d. All existing and proposed motorways in the vicinity of the property under petition

e. Locations of sewer and/or water lines and distances to property, as required

f. Approximate sizes and locations of school and church sites or sites of other landmarks in the vicinity of the property

7. Plats must be trimmed to a neat 8½" x 11", or, where larger prints are necessary, they must be folded to that size. They must be clear and the lettering, distinct.

C. Zoning Plans Advisory Committee

1. For the purposes of these rules, the "joint zoning advisory committee" cited in Subsection 22-22(i) of the Baltimore County Code 1968 as amended by Bills No. 72, 1969, and No. 42, 1970,[2] is termed the "Zoning Plans Advisory Committee".

2. It is the primary function of the Zoning Plans Advisory Committee to prepare written comments regarding possible conflicts or problems, or the absence of conflicts or problems, relative to developments as proposed by petitioners.

3. The Committee shall consist of responsible representatives of the following officials and agencies:

Buildings Engineer
Department of Education
Department of Health
Department of Public Works
Department of Traffic Engineering
Fire Department
Industrial Development Commission
Project and Development Planning Division, Office of Planning and Zoning
State Highway Administration
Zoning Commissioner

The Chairman of the Committee shall be the representative of the Zoning Commissioner. The Chairman is authorized to request comments from any governmental agency not represented on the Committee and to invite representatives of such agencies to participate in Committee activities, as he deems it appropriate.

4. No zoning-petition comments by the Zoning Plans Advisory Committee members other than the representative of the Office of Planning and Zoning shall be considered as having been duly submitted, as the term is used in Subsection 22-23.1(2) of the Baltimore County Code 1968,

---

2. *The subsection referred to is set forth in Appendix D.*

as amended by Bill No. 72, 1969,[3] unless they have been submitted to the Zoning Commissioner at least ten days prior to the hearing on the petition to which the comments relate.

RULE III

Complaints

A. A zoning complaint may originate with the Zoning Commissioner or may be filed by any other person or agency.

B. Any complaint other than one originating with the Zoning Commissioner or filed by another government official must be made by letter, signed by the complainant and setting forth the following:

1. Name and address of the person, firm, or corporation charged with the alleged violation, if these can be reasonably ascertained by the complainant

2. Full name and postal address of the complainant

3. Full name and postal address of the complainant's attorney, if the complainant be represented by an attorney

4. A clear and specific statement describing the alleged violation

5. Citations of the provisions of the Baltimore County Zoning Regulations alleged to be violated, if known by the complainant

RULE IV

Hearings

A. Stipulations. The parties to any hearing, investigation, or other proceeding before the Zoning Commissioner may, by stipulation in writing, filed with the Zoning Commissioner, agree upon any of the facts involved therein, which stipulation shall be regarded and used as evidence at such proceeding. The Zoning Commissioner may, nevertheless, require such additional evidence as he may deem necessary.

B. Character of testimony. Except where stipulations are filed as above, the witnesses whose testimony may be desired at any hearing, investigation, or other proceeding before the Zoning Commissioner shall testify orally, unless the Zoning Commissioner, for good cause shown, deems it proper in special cases that written evidence, under affidavit or otherwise, be submitted.

---

3. *The subsection referred to is set forth in Appendix D.*

EXHIBIT C

Baltimore County, Maryland

PEOPLE'S COUNSEL
RM. 223, COURT HOUSE
TOWSON, MARYLAND 21204
494-2188

PHYLLIS COLE FRIEDMAN
People's Counsel

PETER MAX ZIMMERMAN
Deputy People's Counsel

November 6, 1985

Mr. Theodore E. Mathison
State Aviation Administration
Department of Transportation
P. O. Box 8766, Balto.-Wash. Intl. Airport
Baltimore, Maryland 21240

RE: Joseph F. Evering, Jr., et ux, Petitioners
Zoning Case No. 85-65-XSPHA
N/S Chester Rd., 590' W of Severn Rd.
(800 Chester Rd.), 15th District (3.30 acs.)

Dear Mr. Mathison:

Enclosed herewith is a site plan for the above-referenced Petition for a Special Exception. During the course of a preliminary hearing, the issue of the applicability of Title 11, Subtitle 03, 11.03.05 Obstructions to Air Navigation, and 11.03.06 Airport Zoning Regulations, was raised.

Would you please advise us at the earliest possible moment as to whether development of the site in question is in any way impacted by these regulations and if so, how? This matter is presently pending before the County Board of Appeals.

Thank you for your prompt attention to this.

Sincerely yours,

Phyllis Cole Friedman

Phyllis Cole Friedman
People's Counsel for Baltimore County

Enclosure

cc: John O. Hennegan, Esquire
Robert J. Romadka, Esquire
T. Rogers Harrison, Esquire
Judith A. Arnold, Asst. Attorney General
Norman E. Gerber, Director, OPZ
C&A

PCF:sh

Baltimore County, Maryland

PEOPLE'S COUNSEL
RM. 223, COURT HOUSE
TOWSON, MARYLAND 21204
494-2188

PHYLLIS COLE FRIEDMAN
People's Counsel

PETER MAX ZIMMERMAN
Deputy People's Counsel

December 17, 1985

Peter Taliaferro, Esquire
Assistant Attorney General
State Aviation Administration
Department of Transportation
P. O. Box 8766, Balto.-Wash. Intl. Airport
Baltimore, Maryland 21240

RE: Joseph F. Evering, Jr., et ux, Petitioners - Zoning Case No. 85-65-XSPHA, N/S Chester Rd., 590' W of Severn Rd. (800 Chester Rd.), 15th District (3.30 acs.)

Dear Mr. Taliaferro:

As requested by the office of the State Aviation Administration, I am redirecting our letter of November 6, 1985 and enclosed site plan to you for reply. The above office has no record of receiving our previous letter.

Thank you for your assistance in this matter.

Sincerely yours,

Shirley M. Hess

Shirley M. Hess
Legal Assistant to
People's Counsel for Baltimore County

Enclosures

EXHIBIT D

County Board of Appeals of Baltimore County

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

January 9, 1986

T. Rogers Harrison, Esq.
306 W. Joppa Road
Towson, Md. 21204

Phyllis C. Friedman
People's Counsel for Baltimore County
Peter Max Zimmerman, Esq.
Deputy People's Counsel
Court House
Towson, Md. 21204

Re: Case No. 85-65-XSPHA
Special Hearing, Special Exception, and Variances petitioned for
by Joseph F. Evering, Jr., et ux

Dear Mrs. Friedman, Messrs. Harrison and Zimmerman:

The Board has received the Notice of Appeal filed by you on January 3, 1986, in the above matter. Needless to say, we are distressed at the timing of this action.

As you know, Maryland Rule B-7(a) requires that the Board submit the record of proceedings before it to the Circuit Court for Baltimore County. Under the mandate of this rule, the Board in the past has, as a matter of practice, forwarded its entire file to the Circuit Court. Additionally, past decisions of the Court have held that the filing of the appeal immediately removes the matter from before the Board; as jurisdiction is assumed by the Circuit Court.

These two considerations, the transmittal of the record and the Board's loss of jurisdiction, are of great concern to the Board in view of the present status of the matter. That is, the Board has to date heard testimony only on the preliminary motion and has yet to hear or consider the merits of the petitioned relief. As the next day's testimony, January 21st, is rapidly approaching, the Board is concerned over its authority to hear the matter on that date and if the appeal is proper.

After consideration, it is the Board's view that the appeal is improper and we will treat it as such. Our reasons for this conclusion are several. First, the Board's published "Ruling on Motion" dated December 12, 1985, is just that, a ruling on the Petitioner's preliminary motion. There is no opinion or, more importantly, Order of the Board which can be appealed.

T. Rogers Harrison, Esq.
Phyllis C. Friedman
Peter Max Zimmerman, Esq.

Additionally, it is well settled that an appeal may only be commenced when there has been some finality of judgment. Here, obviously, there has been none, as the Board has yet to even hear evidence upon the merits. Finally, the language of both the majority and dissent is clear, that is, "we will hold" and "I would deny". This language must be construed as prospective, in that the Board has not ruled on the motion in open hearing, rather, is merely advising counsel of its intention.

For these reasons, the Board views the appeal as untimely and will proceed with the hearing scheduled for January 21, 1986. Additionally, the Board may well consider not to comply with Rule B-2(d) and B-7(a) until ordered to do so by the Circuit Court.

Finally, although not attempting to advise the Appellants' and/or People's Counsel how to conduct their case, the Board surmises that the timing of the appeal was based upon a fear that failure to file within 30 days from December 12, 1985, would forfeit the right to appeal on this ruling. If that is indeed the case, we suggest that all parties reach a binding stipulation to preserve their rights to appeal this ruling, and then dismiss the current appeal. Certainly, it is in the best interests of the Petitioners to have this entire matter expeditiously heard and decided by the Board.

Very truly yours,

Lawrence E. Schmidt
Acting Chairman

cc: John O. Hennegan, Esq.
Robert J. Romadka, Esq.
Judith A. Armold
Malcolm Spicer, Jr., Esq.

LES:jh

EVERING - EXHIBITS - ON MOTION
#85-65-XSPHA - 1ST DAY

Petitioners Exhibit

1. Plat to accompany petition for pier extension Revised Nov. 25, 1983
2. Plat to accompany petition for special exception special hearing and variances, Revised 8-6-84
3. Copy of Receipt #123264 issued by Balto. Co. for the amount of $100 for item #166 - Evening.
4. Zoning Commissioners File Case No. 85-65-XSPHA-166
5. Petition for Zoning Variance - undated
6. Copy of Receipt #133200 issued by Balto. Co. for the amount of $50.00 for item #66 - Evening

People's Council Exhibits

1. Series of letters from Balto. Co.
2. ~~[illegible]~~ Receipt / Notice that the petition has been accepted for filing dated Aug. 6, 1984
3. Memo to A. Jablon from Norman E. Gerber, Office of Planning and Zoning
4. Letter to m/m Evering from Eugene A. Baber, Chief Planning & Development

~~[illegible]~~

Jos. Evering
#85-66XSPHA

Exhibits

Protestants

✓1 List of Protestants

State Planning Dept.

✓1 Plat of Clear Zone for Martin Airport
✓2 Regulations - Title 11

In The Circuit Court for Baltimore County

Docket 19 Folio 117

Case No. 86CG 22

TERM, 19

IN THE MATTER OF PETITIONS FOR SPECIAL EXCEPTIONS, SPECIAL HEARING AND ZONING, ETC. Vs. JOSEPH F. EVERING, JR., ET UX

ORIGINAL PROCEEDINGS BEFORE THE ZONING BOARD COMMISSIONER AND THE BOARD OF APPEALS OF BALTIMORE COUNTY RECEIVED BY CATHERINE MILTON PLANNER NO. 1 FROM THE ZONING OFFICE.

Suzanne Mensh Clerk

I Hereby Certify, That I have this day received under cover from the Clerk of the Circuit Court for Baltimore County, process as above.

IN TESTIMONY WHEREOF, I hereto subscribe my name and affix the Seal of the ZONING OFFICE OF BALTIMORE COUNTY Court for County—City, on the 14th day of December nineteen hundred and 89

Catherine A. Milton Clerk

Rm 113 x3391

Maryland Department of Transportation

STATE AVIATION ADMINISTRATION

APPLICATION FOR AIRPORT ZONING PERMIT

Lowell K. Bridwell
Secretary
T. James Truby
Administrator

APPROVAL OF THIS APPLICATION IS NOT A SUBSTITUTE FOR ANY OTHER PERMITS OR APPROVALS REQUIRED BY THE STATE OR LOCAL JURISDICTIONS.

FOR ADMINISTRATION USE ONLY

APPLICATION NO. _____ DATE RECEIVED _____

PERMIT NO. _____ DATE ISSUED _____

COUNTY PERMIT NO. _____

AIRPORT
- ☐ BALTIMORE-WASHINGTON INTERNATIONAL
- ☐ MARTIN STATE AIRPORT

COUNTY
- ☐ BALTIMORE
- ☐ ANNE ARUNDEL
- ☐ HOWARD

ZONE
- ☐ NOISE
- ☐ HIGH STRUCTURE

1. BUILDING/SITE ADDRESS _____
House No. Street Town Development

A. N.S.E.W. SIDE OF _____ B. _____ FEET N.E.S.W. FROM INTERSECTION WITH _____

SUBDIVISION _____ LOT NO. _____ BLOCK _____ SECTION _____

OR ACREAGE _____ TAX MAP NO. _____ PARCEL NO. _____ BLOCK _____

MARYLAND GRID COORDINATES _____ N. _____ E. 200' SCALE MAP REFERENCE _____

2. TYPE OF IMPROVEMENT
- A. ☐ NEW BUILDING
- B. ☐ ADDITION
- C. ☐ ALTERATION
- D. ☐ REPAIR
- E. ☐ OTHER

3. CONTRACT PRICE OR ESTIMATED VALUE OF IMPROVEMENT _____

4. PROPOSED USE(S)

A. RESIDENTIAL
- 1. ☐ ONE FAMILY
- 2. ☐ TWO FAMILY
- 3. ☐ MULTI FAMILY No. of Units _____
- 4. ☐ OTHER _____

B. NON RESIDENTIAL
- 1. ☐ HOSPITAL, NURSING HOME, INSTITUTIONAL CARE
- 2. ☐ SCHOOL, LIBRARY, CHURCH
- 3. ☐ HOTEL, MOTEL, TRANSIENT LODGING
- 4. ☐ OUTDOOR SPECTATOR SPORTS
- 5. ☐ PARK, PLAYGROUND
- 6. ☐ PLACE OF ASSEMBLY
- 7. ☐ OFFICE
- 8. ☐ STORES, THEATERS, RESTAURANTS
- 9. ☐ INDUSTRY Type _____
- 10. ☐ AGRICULTURE Type _____
- 11. ☐ TOWER, TANK Type _____
- 12. ☐ OTHER _____

5. PRESENT USE(S) (IF DIFFERENT FROM ABOVE) _____

6. DESCRIBE PROPOSED STRUCTURE(S) (IF ANY): _____

SIZE OF STRUCTURE: HEIGHT _____ FT. LENGTH _____ FT. WIDTH _____ FT.

ELEVATION (MEAN SEA LEVEL) OF STRUCTURE: BASE _____ FT.
HIGHEST POINT _____ FT.

THE APPLICANT HEREBY CERTIFIES AND AGREES AS FOLLOWS: (1) THAT HE IS AUTHORIZED TO MAKE THIS APPLICATION: (2) THAT THE INFORMATION IS CORRECT: (3) THAT HE WILL COMPLY WITH ALL REGULATIONS WHICH ARE APPLICABLE HERETO: (4) THAT HE WILL PERFORM NO WORK ON THE ABOVE PROPERTY NOT SPECIFICALLY DESCRIBED IN THIS APPLICATION.

APPLICANT

NAME _____

CONNECTION WITH PROPERTY _____
(E.G. OWNER, LEASE HOLDER, ETC.)

SIGNED _____

MAILING ADDRESS _____

_____
ZIP CODE

PHONE _____

OWNER (IF OTHER THAN APPLICANT)

NAME _____

MAILING ADDRESS _____

_____
ZIP CODE

FOR ADMINISTRATIVE USE ONLY

APPLICATION

HIGH STRUCTURE ZONE ☐ APPROVED ☐ DENIED BY _____ DATE _____

NOISE ZONE ☐ APPROVED ☐ DENIED BY _____ DATE _____

REASON _____

Approval of this Application, if granted, will terminate if construction is not begun within one year of approval date.

Approval of this Permit does not preclude disturbance of the applicant or occupants from aircraft operations. Applicants are encouraged to call 859-7070 for further information.

State Aviation Administration, Office of Planning and Engineering, P.O. Box 8766, Baltimore/Washington International Airport, Maryland 21240.

Md. Natl Resources Code Ann. §§ 8-1801 - 8-1816 (1974 & 1988 Cum Supp)

(7) 1 individual who represents the sport fishing or crabbing industry in Baltimore County;

(8) 1 individual from the Greater Dundalk Community Council; and

(9) 1 individual from the Hart and Miller Island Area Environmental Group, Inc.

(c) *Duties.* — The Oversight Committee shall:

(1) Monitor the redeposit of spoil and Baltimore County tributary spoil within 5 miles of the Hart-Miller-Pleasure Island chain; and

(2) Hear and dispose of complaints lodged by individuals affected by the redeposit of spoil and Baltimore County tributary spoil within 5 miles of the Hart-Miller-Pleasure Island chain. (1981, ch. 587; 1983, ch. 557.)

Effect of amendment. — The 1983 amendment, approved May 31, 1983, and effective from date of passage, in subsection (b), substituted "2" for "three" in paragraph (1), and "1" for "one" in paragraphs (2) and (3), rewrote paragraph (4), and substituted "1" for "one" in paragraphs (5), (6), (7), (8) and (9).

Subtitle 18. Chesapeake Bay Critical Area Protection Program.

§ 8-1801. Declaration of public policy.

(a) *Findings.* — The General Assembly finds and declares that:

(1) The Chesapeake Bay and its tributaries are natural resources of great significance to the State and the nation;

(2) The shoreline and adjacent lands constitute a valuable, fragile, and sensitive part of this estuarine system, where human activity can have a particularly immediate and adverse impact on water quality and natural habitats;

(3) The capacity of these shoreline and adjacent lands to withstand the continuing demands upon them, without further degradation to water quality and natural habitats is limited;

(4) National studies have documented that the quality and productivity of the waters of the Chesapeake Bay and its tributaries have declined due to the cumulative effects of human activity that have caused increased levels of pollutants, nutrients, and toxics in the Bay System and declines in more protective land uses such as forestland and agricultural land in the Bay region;

(5) Those portions of the Chesapeake Bay and its tributaries within Maryland are particularly stressed by the continuing population growth and development activity concentrated in the Baltimore-Washington metropolitan corridor;

(6) The quality of life for the citizens of Maryland is enhanced through the restoration of the quality and productivity of the waters of the Chesapeake Bay and its tributaries;

(7) The restoration of the Chesapeake Bay and its tributaries is dependent, in part, on minimizing further adverse impacts to the water quality and natural habitats of the shoreline and adjacent lands;

(8) The cumulative impact of current development in inimical to these purposes; and

(9) There is a critical
and future generations
consistent and uniform
and its tributaries so
habitats.

(b) *Purposes.* — It i
enacting this subtitle t

(1) Establish a Resou
tributaries by fosterir
shoreline areas so as
habitats; and

(2) Implement the R
tween the State and affi
lishing and implementi
subject to State criteria

Editor's note. — Section
1984, provides that "of the i
the Chesapeake Bay Critical
the member from Anne Ar
members at large, and the me
Queen Anne's, Talbot, and Do
serve for terms of 4 years; th
Baltimore City and Wico
Calvert, Charles, and St. Mar
for terms of 3 years; and th
Baltimore, Prince George's,
Caroline, and Worcester co
terms of 2 years."

Section 3 of ch. 794 provides

§ 8-1802. Definitio
Prince

(a) *In general.* — (1) I
indicated.

(2) "Commission" me
established in this subt

(3) "Development" me
or use of dry land, land

(4) "Includes" means
way of limitation.

(5) "Local jurisdictio
planning and zoning pov
Area as defined in this

(6) "Program" means
tion including any ame

(7) "Project approval
development by a state
Critical Area by the ap

Jablon
3 findings

30 days

(1) insignificant
minor
significant proposal
He finds it significant

(2) Will there be ~~an~~ adverse impact
if significant,

(3)

what is the Burden of Proof

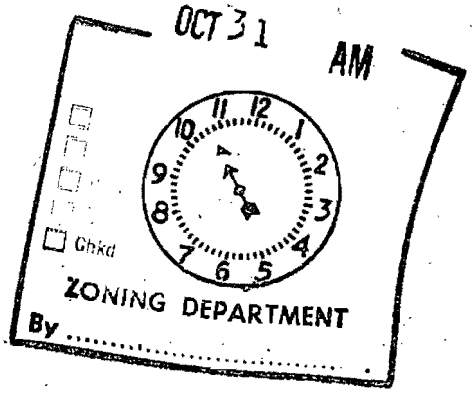
① Rational attempt to interpret law

85-1007
Case file

BAFITIS & ASSOCIATES
CIVIL ENGINEERS • SURVEYORS

WILLIAM N. BAFITIS
3482 DUNHAVEN RD.
BALTIMORE, MD. 21222

301-285-3212



October 31, 1984

Paul J. Solomon
County Court Office Building
Office of Planning and Zoning
Towson, Maryland 21204

Dear Mr. Solomon,

Reference: Long Beach Marine Additional Slips
Joseph F. Evering, Jr.,
No. 85-65-XSpHA
Hydrogeological Study and Environmental Effects Report

As requested, we are submitting one copy of the above referenced report for the additional boat slips proposed at Long Beach Marine.

If there are any questions concerning this project, please do not hesitate to call me at 323-8100.

Very Truly Yours
BAFITIS AND ASSOCIATES

William N. Bafitis, P.E.

cc: Mr. Arnold Jablon
Mr. B. H. Stafford
Mr. J. Hennegan
Mr. Joseph F. Evering, Jr.

85-158?
DB-case file

2168
8

LAW OFFICES
MUDD, HARRISON & BURCH
306 WEST JOPPA ROAD
TOWSON, MARYLAND 21204
AREA CODE 301-828-1335

JOHN E. MUDD
T. ROGERS HARRISON
RICHARD C. BURCH
DOUGLAS W. BISER
H. PATRICK STRINGER, JR.

900 MARYLAND TRUST BUILDING
14 SOUTH CALVERT STREET
BALTIMORE, MARYLAND 21202
301-323-0266

February 4, 1985

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

Re: Petitioners Case No. 85-65XSPHA
DOS. F. EVGRING, JR., etux.

Dear Mr. Jablon:

Please find enclosed copies of the Chesapeake Bay Program: Findings and Recommendations (E.P.A., September 1983), the Chesapeake Bay Program Techincal Studies: A Synthesis (E.P.A., September 1982) and the Bober memo of October 29, 1984, all which the Protestants introduced into evidence during the February 1, 1985 hearing.

After the hearing, Mr. Hennigan was presented with copies of the Findings and Recommendations brochure and the Bober memo. I mailed him a copy of the Technical Studies brochure today, and once he receives it, he should have copies of all the exhibits introduced by the Protestants. I anticipate that he will have the brochure copy of February 7th.

This letter will also confirm that both the Petioners and the Protestants will each have thirty days from the time Mr. Hennigan receives the Technical Studies brochure to submit a memorandum on the issue of whether the Petitioners have fulfilled their evidentiary burden under Md. Nat. Res. Code Ann. Section 8-1813 (1974 & 1984 Cum. Supp.).

Thank you.

FEB 6 AM
Orig
Rec'd
Entered
Chkd
ZONING DEPARTMENT
By .....

Very truly yours,

T. Rogers Harrison

TRH:sw
enc.

CRITICAL AREAS INFORMATION REQUIREMENTS

BALTIMORE COUNTY

SUBJECT	SPECIFIC INFORMATION	SOURCE	SUBMITTAL FORM
CRITICAL AREA	Critical Areas Boundary	Map in Office of Planning and Zoning, Current Planning & Development Div.	Critical Areas Information Map*
WATER DEPTH	Average water depth within 50' of shoreline at mean high tide to be shown at 1' intervals. This is to be done for water bodies on and adjacent to the site as well as for the major tributaries into which the site drains.	Nautical Maps	Critical Areas Information Map. If data are unavailable, field estimates and descriptions may be substituted.
SHORELINE	1. Shoreline rates of erosion or accretion	Historical Shorelines and Erosion Rates, Maryland Geological Survey, 1975	Critical Areas Information Text**
	2. Shoreline erosion control structures or projects	Shoreline Structures in Maryland: Their Location and Extent, Maryland Geological Survey, 1976 or latest available information	Critical Areas Information Map

*Critical Areas Information Map is a map of the site detailing the requested environmental information. Lot lines, roads, utility lines, etc. should not be included and the scale and size must be the same as that used for the site development plan.

**Critical Areas Information Text is a written report, describing the requested environmental information.

References
for Plant, Wildlife, and Fish Habitat

* BUCK, LEWIS. 1974. Wetlands, bogs, marshes, and swamps.

* COLE, GERALD A. 1983. Textbook of limnology. Toronto: C.V. Mosby Company.

CONQUIST, ARTHUR and H. A. GLEASON. 1963. Manual of vascular plants of northeastern United States and adjacent Canada. New York: D. Van Nostrand.

* DAUBENMIRE, REXFORD F. 1968. Plant Communities. New York: Harpers.

FASSETT, NORMAN C. 1975. A manual of aquatic plants. Madison, Wisc: University of Wisconsin Press.

FERNALD, M. L. 1950. Gray's manual of botany 8th ed. New York: American Book Co.

* GLEASON, HENRY A, 1952. Illustrated flora of northeastern United States and adjacent Canada. New York: Dover Publications, Inc.

* HARLOW, WILLIAM. 1964. Fruit key and twig key to trees and shrubs. New York: Dover Publications, Inc.

HOTCHKISS, N. 1972. Common marsh, underwater, and floating-leaved plants of the United States and Canada. New York: Dover Publications.

* KLOTS, ELSIE B. 1966. Freshwater life. New York: G. P. Putnam's Sons.

* MARTIN, A.C., H.S. ZIM and A.L. NELSON. 1955. American wildlife and plants. A guide to wildlife food habits. New York: Dover Publications, Inc.

* MC CORMICK, J.A. and H. SOMES, JR. 1982. The coastal wetlands of Maryland. Annapolis, MD: Maryland Department of Natural Resources, Coastal Zone Management Program.

* NEWCOMB, L. 1977. Newcomb's wildflower guide. Boston: Little, Brown and Co.

* ODUM, EUGENE. 1963. Ecology.

* _____. 1971. Fundamentals of ecology.

* PETERSON, R.T. and M. McKENNY. 1968. A field guide to wildflowers of northeastern and north-central North America. Boston: Houghton Mifflin Co.

* PETRIDES, G.A. 1972. A field guide to trees and shrubs. Boston: Houghton Mifflin Co.

PIERCE, ROBERT J. 1977. Wetland plants of the eastern United States. New York: Army Corps of Engineers.

(2) A generator who accumulates hazardous waste [for more than 90 days] is an operator of a storage facility and is subject to the requirements of **COMAR 10.51.05[.]** *; unless the hazardous waste:*

(a) Is accumulated for 90 days or less; or

(b) Accumulated is less than 500 kilograms, contains less than 1 kilogram of acute hazardous waste, and is accumulated for 180 days or less from the date of initial generation or accumulation.

ADELE WILZACK
Secretary of Health and Mental Hygiene

[Md. R. Doc. No. 85-R-139-P. Filed at Div. of St. Doc: April 2, 1985.]

Title 11
DEPARTMENT OF TRANSPORTATION

Subtitle 03 STATE AVIATION ADMINISTRATION

11.03.05 Obstructions to Air Navigation

Authority: Transportation Article, §§5-204(d), 5-208 and 5-702, Annotated Code of Maryland

Notice of Proposed Action

The State Aviation Administration proposes to adopt new Regulations .01 — .11 under a new chapter, **COMAR 11.03.05 Obstructions to Air Navigation.** The purpose of these regulations is to comply with the provisions of Transportation Article, §5-702(a), and govern the erection and maintenance of any obstruction to air navigation that endangers the lives and property of persons using the air space for transportation or occupying land within this State.

Estimate of Economic Impact

I. Summary of Economic Impact. These regulations will govern the erection and maintenance of any structure, personalty, or vegetation that, due to its location, would endanger the lives or property of those persons using a licensed public-use airport or occupying adjoining lands. Authority to grant exemptions is provided to the local subdivisions for use through their existing appeal processes. When exemptions are granted, provisions are included to require precautionary measures consistent with the degree of risk. Both the State and local sub-divisions will incur expense in processing requests for exemptions, as will those property owners who might be required to install obstruction lighting and markings.

II. Types of Economic Impacts.	Revenue (+) Expense (–)	Magnitude
A. On issuing agency: The State Aviation Administration will incur expense in reviewing requests for exemptions and providing testimony at local hearings.	(–)	$6,000
B. On other State or local agencies affected: Local sub-divisions will incur added expense as a result of hearings to consider requests for exemptions.	(–)	$8,000
	Benefit (+) Cost (–)	**Magnitude**
C. On regulated industries or trade groups:	NONE	
D. On other industries or trade groups affected: There may be an indirect effect due to the purchase of goods and services to mark or remove obstructions.	(+)	Determined at the local level
E. Direct and indirect effects on public: Added expenses may be expected on the part of builders in the installation of obstruction lighting and markings, and by others in limiting the growth of vegetation.	(–)	Determined at the local level

III. Assumptions.

A. This figure is based upon the review of an estimated 100 construction applications per year for determination as to their impact on air navigation and participation in 20 hearings relative to exemptions.

B. This figure is the estimated local cost of processing 20 requests for exemptions.

D. Extent of expense will be determined by local zoning officials in connections with requests for vacancies.

E. Extent of expense will be determined by local zoning officials in connections with requests for vacancies.

Opportunity for Public Comment

Written comments may be sent to Evelyn M. Kellner, Chief, Administrative Services, State Aviation Administration, P.O. Box 8766, Baltimore/Washington International Airport, Maryland 21240 or call (301) 859-7228. These comments must be received by May 31, 1985. No public hearing will be scheduled.

.01 Definitions.

A. As used in these regulations, the following terms have the meanings indicated unless the context requires otherwise. Words not specifically defined that relate to aeronautical practices, processes, and equipment shall be construed according to their general usage in the aviation industry.

B. Terms Defined.

(1) "Administration" means the State Aviation Administration of the Maryland Department of Transportation, established pursuant to Transportation Article, §2-102(b)(2), Annotated Code of Maryland.

(2) "Administrator" means the State Aviation Administrator, whose office is established pursuant to Transportation Article, §2-102(b)(2), Annotated Code of Maryland, or his duly authorized representative.

United States
Environmental Protection
Agency

Region 3
Sixth and Walnut Streets
Philadelphia, PA 19106

September 1983

CHESAPEAKE BAY PROGRAM: FINDINGS AND RECOMMENDATIONS

EPA



cover only!



THIS DEED, Made this 25th day of June, in the year one thousand nine hundred and sixty-nine, by and between JOHN R. HINRICHS and MARJORIE M. HINRICHS, his wife, of Darien, State of Connecticut; D.JASON COE and MARY H. COE, his wife, of Baltimore County, State of Maryland; and E. HENRY HINRICHS, JR. and SUSANNE HINRICHS, his wife, of Baltimore County, State of Maryland, parties of the first part, Grantors; and ALBERT CRAWFORD HUBBARD, Jr. and PENNEY COX HUBBARD, his wife, of Baltimore County, State of Maryland ,parties of the second part, Grantees.

WITNESSETH, that in consideration of the sum of Five ($5.00) Dollars and other good and valuable considerations, the receipt whereof is hereby acknowledged, the said parties of the first part do hereby grant and convey unto the said parties of the second part, as tenants by the entireties, their assigns, the survivor of them, and such survivor's heirs and assigns, in fee-simple, all that lot of ground, situate, lying and being in Baltimore County, in the State of Maryland, and described as follows, that is to say:

BEGINNING for the same in the centre of an avenue twenty-five feet wide and at the distance of six hundred and ninety-seven feet north westerly from a stone heretofore planted at the intersection of the centre line of the aforesaid avenue with the centre line of another avenue twenty-five feet wide both avenues being laid out on the plat of Walnut Hill, said plat being recorded among the Plat Records of Baltimore County in Plat Book #2 folio 131 the centre line of the said last mentioned avenue being the division line between lots 9 and 10 on said plat said place of beginning being also at the distance of twelve and five tenths feet south three degrees fifty-three minutes west from an iron pipe planted on the north side of the first mentioned avenue thence north three degrees fifty-three minutes east to said pipe and continuing the same course in all two hundred and thirty-six feet to an iron pipe thence north sixty degrees forty-four minutes west three hundred and fifty-five and two tenths feet to an iron pipe and to the centre of another twenty-five foot avenue thence binding on the centre of said last mentioned avenue as laid out on the aforesaid plat the six following courses and distances viz south one hundred and thirty-two feet, south nine degrees forty minutes east eighty-two feet south twenty-one degrees twenty minutes east ninety-nine feet, south forty degrees thirteen minutes east forty-nine and five tenths feet and south fifty-five degrees ten minutes east fifty-one and eight tenths feet to the centre of the twenty-five foot avenue first above mentioned and thence binding thereon south seventy-seven degrees fourteen minutes east one hundred andsixty-four feet to the place of beginning. Containing 1.9 acres of land more or less.

BEING the same lot of ground which by Deed dated October 5, 1936 and recorded among the Land Records of Baltimore County inLiber C.W.B.Jr. No.983 folio 268, was granted and conveyed by George C.Carey,Jr.,et al, to Ernest H.Hinrichs and Elizabeth Sadler Hinrichs,his wife, in fee-simple. The said Elizabeth Sadler Hinrichs having predeceased the said Ernest H.Hinrichs, on or about the 29th day of March, 1967 , thereby vesting fee-simple title absolutely in the said Ernest H.Hinrichs.

PAID 2 0 3 JUN 26 325.00

Case No. 85-65-XSPHA
Item No. 166
Date: May 10, 1985
SE-2 lots located on N & S side of Chester Rd., DR 5.5 zone to be used as a boat yd. Var.-Stone in lieu of macadam; 318 pkg. sps. in lieu of 384; structure not to exceed 300' beyond low tide; SH-Amend. to site plan

N/S of ChesterRoad, 590' W of Severn Road (800 Chester Road) - 15th Election District
Joseph F. Evering, Jr., et ux, Petitioners

X	1.	Copy of Petition
X	2.	Copy of Description of Property
X	3.	Copy of Certificate of Posting 1 sign & 1 location sign
X	4.	Copy of Certificates of Publication
X	5.	Copy of Zoning Advisory Committee Comments
X	6.	Copy of Comments from the Director of Planning
	7.	Planning Board Comments and Accompanying Map
X	8.	Copy of Order to Enter Appearance
X	9.	Copy of Order - Zoning/[illegible] Commissioner-4/25/85,GRANTED, w/restrictions
X	10.	Copy of Plat of Property (Petitioner's Exhibit #1)
	11.	200' Scale Location Plan
	12.	1000' Scale Location Plan
X	13.	Memorandum in Support of Petition
X	14.	Letter(s) from Protestant(s)
	15.	Letter(s) from Petitioner(s)
X	16.	Protestants' Exhibits 1 to 5a — #'s 2 & 3 missing from file
X	17.	Petitioners' Exhibits 1 to 7
X	18.	Letter of Appeal, 5/10/85 by People's Counsel, Phyllis Friedman.
X	19.	Protestants' Reply to Petitioners' Memorandum
X	20.	Critical Area Review/Baltimore County Dept. of Health

John O. Hennegan, Esquire — Attorney for Petitioners
Germania Federal Building
809 Eastern Boulevard
Essex, Maryland 21221

JOHN B. GONTRUM, ESQUIRE
*Robert J. Romadka, Esquire — Attorney for Petitioners
Germania Federal Building
809 Eastern Boulevard
Essex, Maryland 21221

*T. Rogers Harrison, Esquire — Attorney for Protestants
306 West Joppa Road
Towson, Maryland 21204

*Phyllis C. Friedman, Esquire — People's Counsel
*Norman E. Gerber — Request Notification
James Hoswell — Request Notification
Arnold Jablon — Request Notification
Jean M. H. Jung — Request Notification
James E. Dyer — Request Notification

Joseph F. Evering, Jr., et ux — Petitioners
800 Chester Rd. (21220)

Judith A. Armold
Asst. Atty. General

T. B. Bollinger, Esq.

#1: Plat of Property

#1a: Hydrogeological Study and Environmental Effects Report

#2: Long Beach Marina Location Plan

#3: Department of The Army Permit

#4: Baltimore County Permit

#5: Long Beach Marina Post Card/picturing Marina

#6: Photograph/Marina

#7: Application for Building Permit

PROTESTANT'S EXHIBITS

#1: Photographs/Booklet

#1a: Letter from Eugene Bober to Frank S. Lee Re: Required information relative to the Chesapeake Bay Critical Areas

#2: Exhibit missing from file

#3: Exhibit missing from file

#4a: Chesapeake Bay Program Technical Studies: A Synthesis

#5a: Petition (2 pages)

Case # 64-57 ~~8PM~~

(NO PLOT)

Crest 64 100 X

CASE 3535X



Ex. 23

View to the South

Negative # 6291-3

© '82 TADDER/BALTIMORE

501 St. Paul Place 21202
Phone 301 837-7427



POT. Ea. 24

View toward the North



76



7c



79



7e







A. From CP RR South
side of Chester Rd.
Eagle's across Chester Rd
to N. side

Kod
5 985 JULY 19
N3 N3 N3



B

Looking North across
Chester Rd. towards
each corner of Park
area

JULY 1985
N3

JULY 1985
N3



C.

LOT ON N.S.

Rd. looking [illegible] from
water

1985

JULY 19

N3



looking north side of chester
rd.

JULY 198
N3

JULY 1985
N3

JULY 19
N3

11 5



5, Looking from north
up East Lot
at end of Chester Rd.

Kodak
JULY 1985
N3

11E



F. Rocks on south side of Kaiser Peak looking south

Kod
Kodak
JULY 1985
JULY 198
N3
N3

11F,



LONG BEACH MARINE
Located on Middle River
opposite Martin Plant,
North Side of Baltimore, Md.
Near the Beltway.
Shopping facilities, Restaurant and Transportation Available. Full Marine Services. Phillips 66 gas. Open 24 Hours During Season.
Phone: 301 - 335-8602
Owner - Jack Evering

PLACE
STAMP
HERE

Post Card

The Country Studio, P.O. Box 206, Aberdeen, Md. 21001

5

PETITIONER'S EXHIBIT

55724-C

dp MADE BY DEXTER PRESS, INC. WEST NYACK, NEW YORK



LONG BEACH MARINE
Located on Middle River
opposite Martin Plant,
North Side of Baltimore, Md.
Near the Beltway.

Shopping facilities, Restaurant and Transportation Available. Full Marine Services. Phillips 66 gas. Open 24 Hours During Season.

Phone: 301 - 335-8602
Owner - Jack Evering

Bot No 22

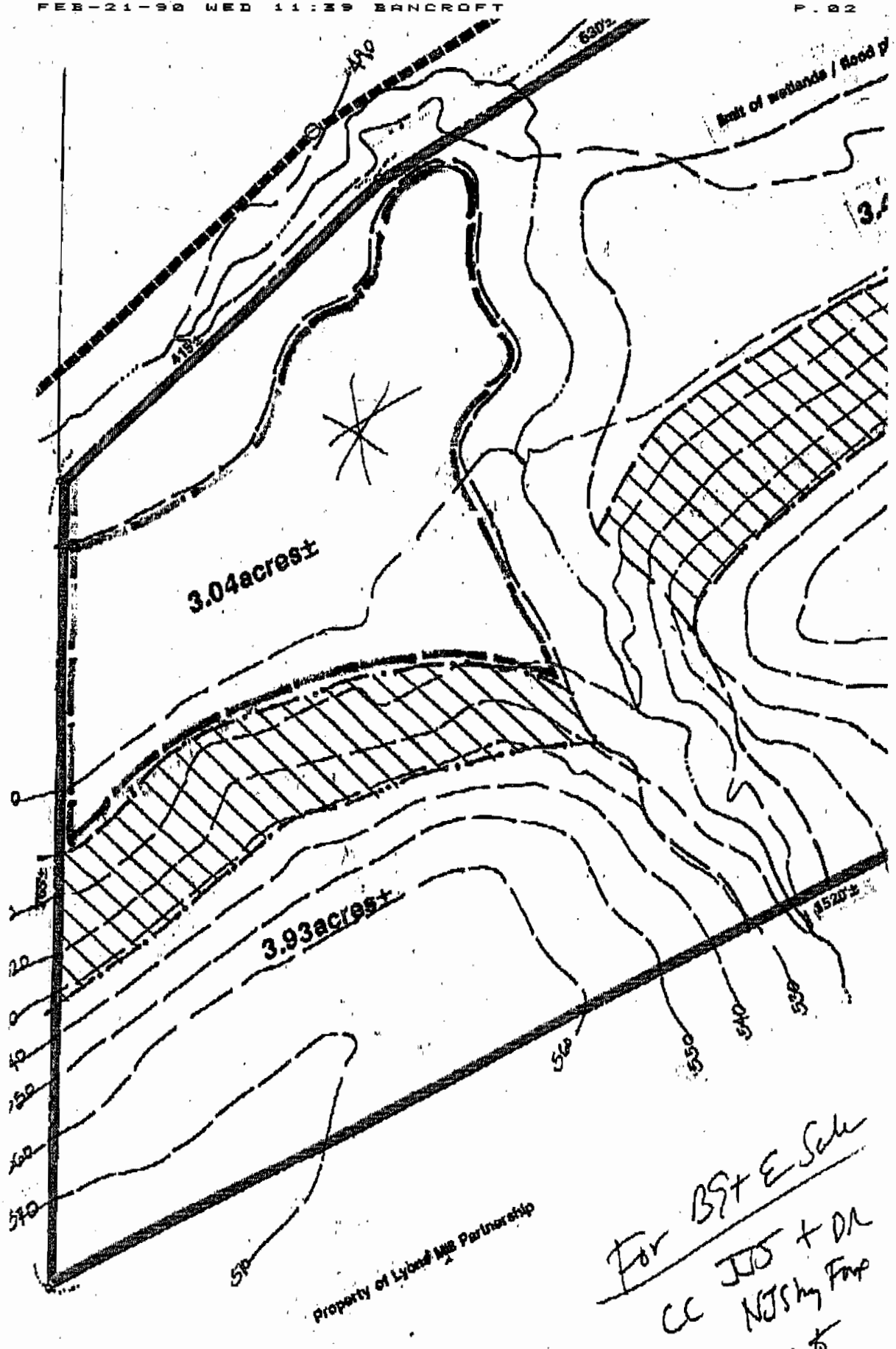
PLACE STAMP HERE

Post Card

The Country Studio, P.O. Box 206, Aberdeen, Md. 21001

55724-C

dp MADE BY DEXTER PRESS, INC. WEST NYACK, NEW YORK


3.04acres±
3.93acres±
Property of Lybed Mtg Partnership
For BS+E Sale
CC JJS + DA
NJS by Fax
orig back to
me

LAW OFFICES
MILES & STOCKBRIDGE
600 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

TELEPHONE 301-821-0566
TELECOPIER 301-823-8123

10 LIGHT STREET
BALTIMORE, MARYLAND 21202

101 BAY STREET
EASTON, MARYLAND 21601

11350 RANDOM HILLS ROAD
FAIRFAX, VIRGINIA 22030

30 WEST PATRICK STREET
FREDERICK, MARYLAND 21701

22 WEST JEFFERSON STREET
ROCKVILLE, MARYLAND 20850

1701 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20006

January 3, 1990

HAND-DELIVERY

Department of Permits & Licenses
111 West Chesapeake Avenue
Towson, MD 21204

Re: In Re: Merritt Boulevard
Shopping Center
F & M Distributors, Inc.,
Appellant

Gentlemen:

Enclosed herewith please find a Notice of Appeal concerning the above-captioned property. Also enclosed is our check in the amount of $75.00 to cover the cost of the filing fee. Please be advised that there is a related appeal which we have noted to the Baltimore County Office of Planning & Zoning, also relating to the above property.

Many thanks for your cooperation.

Very truly yours,

Kenneth F. Spence, III

KFS/lrs

Enclosures

cc: Arnold G. Foreman, Esquire
Board of Appeals (Hand-Delivered)

In Re: MERRITT BOULEVARD SHOPPING CENTER	*	BEFORE THE
Merritt Boulevard and Germanhill Road	*	BALTIMORE COUNTY
Dundalk, Maryland	*	DEPARTMENT OF
F & M DISTRIBUTORS, INC.,	*	PERMITS & LICENSES
Appellant	*	

* * * * * * * * * * * * *

NOTICE OF APPEAL

F & M Distributors, Inc., by its attorneys, Gary C. Duvall and Kenneth F. Spence, III, gives notice that it hereby appeals to the Baltimore County Board of Appeals from:

1. The approval by the Baltimore County Office of Planning & Zoning on December 4, 1989 of the revised site layout and utility plan submitted by T.G. Stores, Inc. pertaining to the above-captioned property;

2. The approval by the Baltimore County Office of Planning & Zoning on December 4, 1989, pursuant to Building Permit No. 100302, of the revised site layout and utility plan submitted by T.G. Stores, Inc. pertaining to the above-captioned property; and

3. The lifting of the Stop Work Order issued by the Baltimore County Department of Permits & Licenses.

Gary C. Duvall (KFS)

Gary C. Duvall
MILES & STOCKBRIDGE
600 Washington Avenue
Suite 300
Towson, Maryland 21204
(301) 823-8155

Kenneth F. Spence, III
MILES & STOCKBRIDGE
600 Washington Avenue
Suite 300
Towson, Maryland 21204
(301) 823-8250

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of January, 1990, a copy of the aforegoing Notice of Appeal was mailed, postage pre-paid, to Arnold G. Foreman, Esquire, Alperstein & Diener, P.A., 605 Court Square Building, 200 East Lexington Street, Baltimore, Maryland 21202, Attorney for T.G. Stores, Inc.; and hand-delivered to the Board of Appeals, 111 West Chesapeake Avenue, Towson, Maryland 21204.

Kenneth F. Spence, III

a:kfsf&m01.apl

MILES & STOCKBRIDGE
ATTORNEYS AT LAW
600 WASHINGTON AVENUE
TOWSON, MD 21204

NO. 10877

JANUARY 3, 19 90 7-16/520 0202

PAY TO THE ORDER OF BALTIMORE COUNTY $ 75.00

SEVENTY-FIVE DOLLARS AND NO/100 DOLLARS

MILES & STOCKBRIDGE, ATTORNEYS AT LAW
AUTHORIZED SIGNATURE

TOWSON OFFICE 461
MARYLAND NATIONAL BANK
TOWSON, MARYLAND 21204

⑈010877⑈ ⑆052000168⑆ 64152851⑈

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

No. 002979

DATE 1/4/90 ACCOUNT R01-615-00

AMOUNT $ 75.00

RECEIVED FROM: Miles & Stockbridge, Attorneys at Law

FOR: Appeal decision of Buildings Engineer/Planning & Zoning to issue permit #100302 submitted by T.G. Stores, Inc., and lifting of Stop Work Order.

VALIDATION OR SIGNATURE OF CASHIER

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

Chaz BUSINESS FORMS (301) 561-1680

Baltimore County
Office of Law
400 Washington Avenue
Towson, Maryland 21204
(301) 887-4420
Fax (301) 296-0931

Arnold Jablon
County Attorney

January 18, 1990

Dennis F. Rasmussen
County Executive

Mr. Gene L. Neff
Director
Department of Public Works
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: Waiver of Public Works Standards/Waiver of Public Works Standards

Dear Mr. Neff:

We are in receipt of a request from you and Dave Fields, Director of Planning, asking for us to render an opinion as to a waiver of public works standards, when such is granted as a waiver of subdivision regulations. You point to potential conflicts with applicable statutes that require the independent judgment and approval of the Director of Public Works. More specifically, you have indicated that the Director of Planning has become involved in requests for waivers of subdivision regulations pursuant to Code Sec. 22-43, which have involved engineering questions. Your concern is that such waivers may circumvent the authority of the Director of Public Works, and whether the Director of Planning, by approving a waiver, can bind the Director of Public Works. It is our opinion that the determination of engineering questions, whether separate issues in and of themselves or subissues contained in requests for waivers of subdivision regulations, are the exclusive province of the Director of Public Works, and the Director of Planning does not have the authority to rule on engineering questions, whether part of a proposed subdivision waiver or otherwise.

We base this conclusion as follows. Sec. 2-15 of the Baltimore County Code reads as follows:

> "The director of public works shall have supervision over all engineering questions and over all matters concerned or connected with any and every public improvement in the county and elsewhere, made by the county or any department, officer, board, commission or agency thereof, and all plans and specifications of such public improvements shall be submitted to the director of public works and be subject to this approval."

While a request for a waiver of a subdivision regulation is within the province of the Director of Planning, see Code Sec. 22-43, such a request may nonetheless involve "engineering questions." When such questions are involved, the clear language of the Statute makes the waiver request subject to approval by the Director of Public Works, as a condition precedent, to the granting of a waiver by the Director of the Office of Planning and Zoning. See also Code Sec. 22-51, which provides that the subdivision regulations do not supersede other applicable County laws, except if specifically stated otherwise. Section 2-15 is not superseded by Section 22-43.

Moreover, the language of Sec. 2-15 is conjunctive, in that "engineering questions" are set apart from "all matters concerned or connected with any and every public improvement." Case law mandates that the plain language of a statute be used to determine legislative intent, and such an obvious choice of language must mean that the legislature intended to give the Director of Public Works broad and exclusive authority with respect to engineering questions and concerns, regardless of whether public improvements are involved.

You also inquire as to professional liability for the Director of Public Works should he sign, in his capacity as a registered engineer, a plat, plan, or other document he believes is not "engineeringly" sound. The Director, as with any County employee, is generally protected by the County from personal liability for any negligent acts performed within the scope of his employment. He could, in addition, be liable to the applicable canons of his engineering profession, but such a determination by this office would be beyond the scope of this opinion.

Very truly yours,

Arnold Jablon
County Attorney

James A. Helfman
Assistant County Attorney
Opinions and Research

AJ:JAH:med

c.c. Frank C. Robey, Jr.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Frank Robey
County Administrative Officer

DATE: September 15, 1989

FROM: Gene Neff, Director of Public Works
David Fields, Director of Planning

SUBJECT: Request for a Legal Opinion
Re: Waiver of Subdivision Regulations

An opinion is requested as to the operation of a waiver of PUBLIC WORKS STANDARDS if granted as a waiver of subdivision regulations where a direct conflict is created with:

1.) statutes requiring the independent judgement and signature of the Director of Public Works, or;

2.) statutes and charter requiring independent professional judgement and signature of the Director of Public Works as a registered professional engineer.

GLN:nb

cc: Arnold Jablon
Stanley Schapiro
Tom Hamer

IOC90914/DAGEN

RECEIVED
SEP 19 1989
OFFICE OF LAW

To ALL Board MEMBERS
AND
COUNSEL

Please keep this file and all ephibits in tact, as I am responsible for them and must return them to the Circuit Court when case is finished.

June Holmen
Dec. 12, 1986

2. CONSTRUCT OF BOATS IS PROHIBITED.
3. NO COMMERCIAL VEHICLES WILL BE PERMITTED TO PATRONIZE SAID ESTABLISHMENT.
4. SERVICES WILL BE RESTRICTED TO PLEASURE CRAFT ONLY.
5. BARGES OR SIMILAR TYPE CRAFT WILL NOT BE ALLOWED ON OR TIED UP AT THE PROPERTY, WITH THE EXCEPTION OF THE ONE SMALL BARGE WHICH IS PRESENTLY BEING USED BY THE PETITIONERS.

RESTRICTIONS 64-57-SPH 3-9-1964

2. THE USE OF THE BOAT YARD, BOTH ON LAND AND IN THE WATER, SHALL BE LIMITED TO PLEASURE CRAFT.

CREEK

MORTOR

FROG

FROG MORTOR CREEK

N77°-25°E 320'

26 SPACES

24 DRIVE

50 SPACES

24 DRIVE

52 SPACES

24 DRIVE

17 SPACES

9

24 DRIVE

9

BATH HOUSE

2

16

8'

MICHAEL CANNUCK

590' TO SEVER

S77°-55°W

152' P.O.B.

35

CHESTER (30') D

PROP. RR TIES

OFFICE - REST ROOMS - SHOWERS ACCESSORIES PROP. RR TIES

8

12 SPACES

5 SPS.

EX. SEPTIC SYSTEM

46 SPACES

24

DRAIN

DRAIN

DRIVE

9 SPACES

REPAIR SHOP

35 SPACES

DRIVE

SPACES

10

REPAIR SHOP (GARAGE)

EXISTING 6' WOOD STOCKADE FENCE

PROP. EAST-WEST PIERS

S12°-35°W 212±'

30

29

2 3 4 5

END OF BALTO. CO. ROAD MAINTAINANCE

FIRE HYD.

200'

S86°-30°E

N71°-00°W

MARINA WAY

TO

EX PIER

EX PIER

EX PIER

EX PIER

EX PIER

EX PIER

EX PIER

EX PIER

OIL SHED

GAS PUMPS

419

195'

50'

35'

120'

30'

20

7

14

90

13

14

6

15

24

11

26

25

22

12

17

15

EX. PIER

NO CHANNEL

400'

100'

PREVIOUS APPROVED PIER

N700

N800

N7000

E60000

EX. CHANNEL

PIER

CHESTER

100'

E80

CHANNEL

400'

N0

SECURED

FROG MORTOR CREEK

LOCATION MAP
SCALE 1"=200'

VARIANCE - AS-5(a) TO ALLOW STRUCTURE NOT TO EXCEED 300 BEYOND MEAN LOW TIDE
409 PAVING (TO ALLOW EXISTING COMPACTED STONE IN LIEU OF THE REQ. MACADAMING

SPECIAL EXCEPTION FOR TWO LOTS LOCATED ON THE NORTH AND SOUTH SIDE OF CHESTER ROAD NOT INCLUDED IN SPECIAL EXCEPTION CASES 78-37-X, 64-57-SPH AND 64-150-X

EXISTING USE - BOAT YARD
PROPOSED USE - SAME
EXISTING ZONING - DR 5.5
PROPOSED ZONING - SAME
AREA OF LOT - 3.30 Ac. ±

PARKING DATA

OFFICE - 1020 SQ. FT.	=	4
RESIDENCE	=	1
EXISTING No. OF SLIPS	=	201
PROPOSED No. OF SLIPS	=	115
TOTAL =		321
TOTAL PROVIDED	=	321

ALL PARKING SPACES ARE EXISTING (9x18)

PLAT TO ACCOMPANY PETITION FOR SPECIAL EXCEPTION, SPECIAL HEARING AND VARIANCES

STATE OF MARYLAND
FRANK S. LEE
No. 11
REGISTERED
PROPERTY LINE SURVEYOR

FRANK S LEE
1277 NEIGHBORS AVE.
BALTIMORE, MD. 21237
687-6922

ATTORNEY
ROBERT ROMADKA
809 EASTERN BLVD.
BALTO., MD. 21221
686-8274

OWNER
JACK EVERING
800 CHESTER ROAD
BALTO., MD. 21220
335-8602

REVISED
3-21-84
7-5-84

FOR MARINA

2. CONST. 10'x20' POOL IS PROPOSED.
3. NO COMMERCIAL ACTIVITIES WILL BE PERMITTED TO TAKE PLACE ON THIS EQUIPMENT.
4. SERVICES WILL BE RESTRICTED TO CLEAR TITLE HOLDERS ONLY.
5. ANY BOAT OR SIMILAR TYPE CRAFT WILL NOT BE ALLOWED TO BE TIED UP AT THIS PROPERTY WITH THE EXCEPTION OF THE ONE SMALL BOAT AS NOTED ON PLAT.

RESTRICTIONS: 64/510 & 64/511 3-27-1964

2. THE USE OF THE BOAT HOUSE, PIER OR LAND AREA IN THE WATER, SHALL BE LIMITED TO PLEASURE CRAFT.

N 7000

24' DRIVE

STAIRS

#2

#4

BATH HOUSE

10'

8'

5.0'

59.0 To SEVERN CR

S 77°-25' W

CHESTER (30') ROAD

END OF PUBLIC ROAD MAINTENANCE

FIRE HYD

OFF STREET PARKING SPACES

EX. SHED

EX. PIER

PROP. EAST WATER LINE

S 12°-26' W 252.7'

#3

#1

5.0' N 77°-30' W

35' GRAVEL DRIVE

EX. TREE

EX. PIER

EX. CHANNEL

EDGE MOLTOR CREEK

NO CHANGE

EX. PIER

PREVIOUS APPROVED PIER

CHESTER ROAD

N 7000

EDGE MOLTOR CREEK

500' +MHWL

PARKING DATA

DWELLING - 1020 SQ. FT.	4
GARAGE	1
EXISTING NO. OF SLIPS	291
PROPOSED NO. OF SLIPS	103
TOTAL	384

ALL PARKING SPACES ARE EXISTING (SEE PLAT)

TOTAL NO. OF SPACES REQUIRED IF NOT GRANTED EXCEPT IN LIEU GRANTED 384
NOT GRANTED 315

PETITION FOR SPECIAL EXCEPTION
LONG BEACH MARINA
LONG BEACH ESTATES
PLAT 5 SEC. 4-131
15TH DISTRICT BALTIMORE COUNTY MARYLAND
SCALE 1" = 50'

DATE 2-1-83
REVISED 11-25-83
3-21-84
7-15-84
8-1-84

PLAT TO ACCOMPANY PETITION FOR SPECIAL HEARING AND VARIANCES

PETITION FOR SPECIAL EXCEPTION

STATE OF MARYLAND
FRANK S. LEE
REGISTERED
PROFESSIONAL ENGINEER

FRANK S. LEE
1277 NEIGHBORS AVE.
BALTIMORE, MD. 21237
687-5922

ATTORNEY
2 - FELT BONAPARTE
BONAPARTE BUILDING
BALTIMORE, MD. 21202
685-8274

OWNER
LONG BEACH
CONSTRUCTION CORP.
ESSEX, MD. 21221
687-8000

LOCATION MAP
SCALE 1" = 200'

Case #
86 CG 22
19/117

PETITIONER'S EXHIBITS

#4

#4

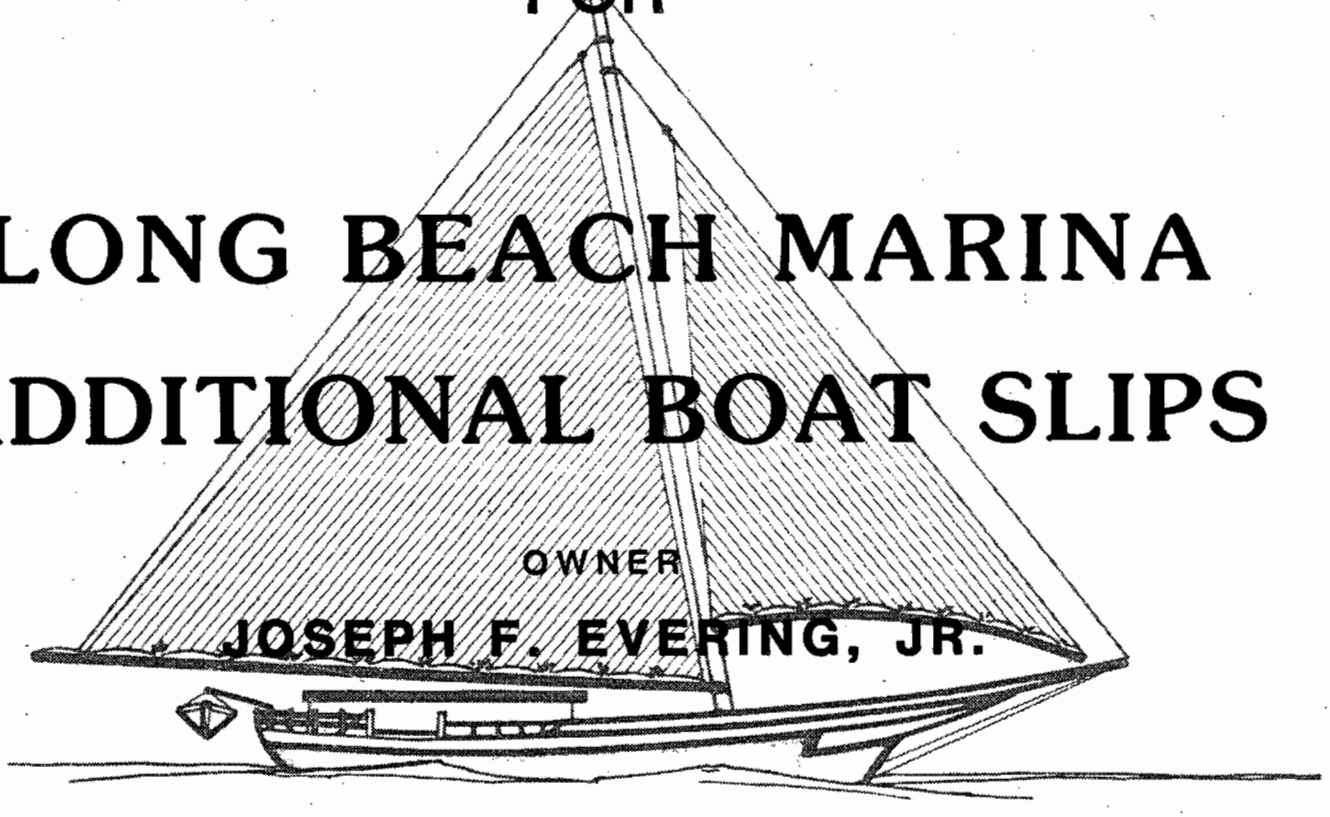
#85-65-XSPHA

JOSEPH F. EVERING, Jr. #85-65-XSPHA
ET UX - N/s Chester Rd.,590' W of
Severn Rd. (800 Chester Rd.) 15th District

HYDROGEOLOGICAL STUDY
AND
ENVIRONMENTAL EFFECTS REPORT

FOR

LONG BEACH MARINA
ADDITIONAL BOAT SLIPS



OWNER

JOSEPH F. EVERING, JR.

PREPARED BY

BAFITIS AND ASSOCIATES

BALTIMORE, MARYLAND

Pet Ex 1

OCTOBER 1984

RESTRICTIONS #24-1160-X 6-30-1964

2. CONSTRUCT OF BOATS IS PROHIBITED
3. NO COMMERCIAL VEHICLES WILL BE PERMITTED TO [illegible] SAID ESTABLISHMENT
4. SERVICES WILL BE RESTRICTED TO PLEASURE CRAFT ONLY
5. BARGES OR SIMILAR TYPE CRAFT WILL NOT BE ALLOWED OR MOORED AT THE PROPERTY, WITH THE EXCEPTION OF THE ONE SMALL BARGE CURRENTLY BEING USED BY THE PETITIONER.

RESTRICTIONS 64-517-SPH 3-9-1964

2. THE USE OF THE BOAT YARD, BOTH ON LAND AND IN THE WATER, SHALL BE LIMITED TO PLEASURE CRAFT.

CREEK

MORTAR

FROG

(49) (48) 555'

(20) (7) (14) (9) (13) (12) (6) (15) (24) (4) (12) (7) (15) (33) (26)

EX. PIER

OIL SHED

GAS TANKS

419'

195'

120'

50'

35'

70'

EX. PIER

EX. PIER

EX. PIER

CREEK

MORTON

FROG

FROG MORTON CREEK

N77°-25 E 303'±

28 SPACES

42 SPACES

81 SPACES

27 SPACES

20 SPACES

570'±

N12°-00 E

OFFICE-RESTROOMS-SHOWERS ACCESSORIES

15 SPACES

EX. SEPTIC SYSTEM

38 SPACES

31 SPACES

13 SPACES

DENTIST SHOP (GARAGE)

S60°-00 W

TRAVEL LIFT

14 SPACES

23 SPACES

22 SPACES

S12°-35 W 234'±

2 3 4 5

MICHAEL GIMNICK

115'±

1000'± TO SUSQ. AVE.

S77°-25 W

P.O.B.

CHESTER (30') ROAD

FIRE HYD.

520'± N77°-00 W

260'±

MARINE DRIVE

70' EX. PIER

20 7 14

OIL SHED

P Q

GAS PUMPS

120'±

99

419'

35'

13 14

195' EX. PIER

6 15

EX. PIER 11

EX. PIER 12

EX. PIER 17 15

36

65'

33 30

65'

CHESTER TOWN

EX. PIER

FROG MORTON CREEK

EXISTING USE - MARINA
PROPOSED USE - SAME
EXISTING ZONING - D12 & C
PROPOSED ZONING - SAME
AREA OF LOT - 3.64 ac±

PARKING DATA

EXISTING NO. OF SLIPS = 251
PROPOSED NO. OF SLIPS = 178
TOTAL = 429

NO. OF PARKING SPACES PROVIDED = 383

PROPOSED SLIP PLAN
LONG BEACH MARINA
LONG BEACH ESTATE
PLAT BOOK A.W.M. 1
15TH DISTRICT BALTIMORE COUNTY
SCALE 1" = 50'

PLAT TO ACCOMPANY PETITION FOR
VARIANCE IN LIEU OF THE REQ'D.

VARIANCE FOR PIER EXTENSION
OF FEET

FRANK S. LEE
1277 NEIGHBORS AVE.
BALTIMORE, MD. 21237
687-6927

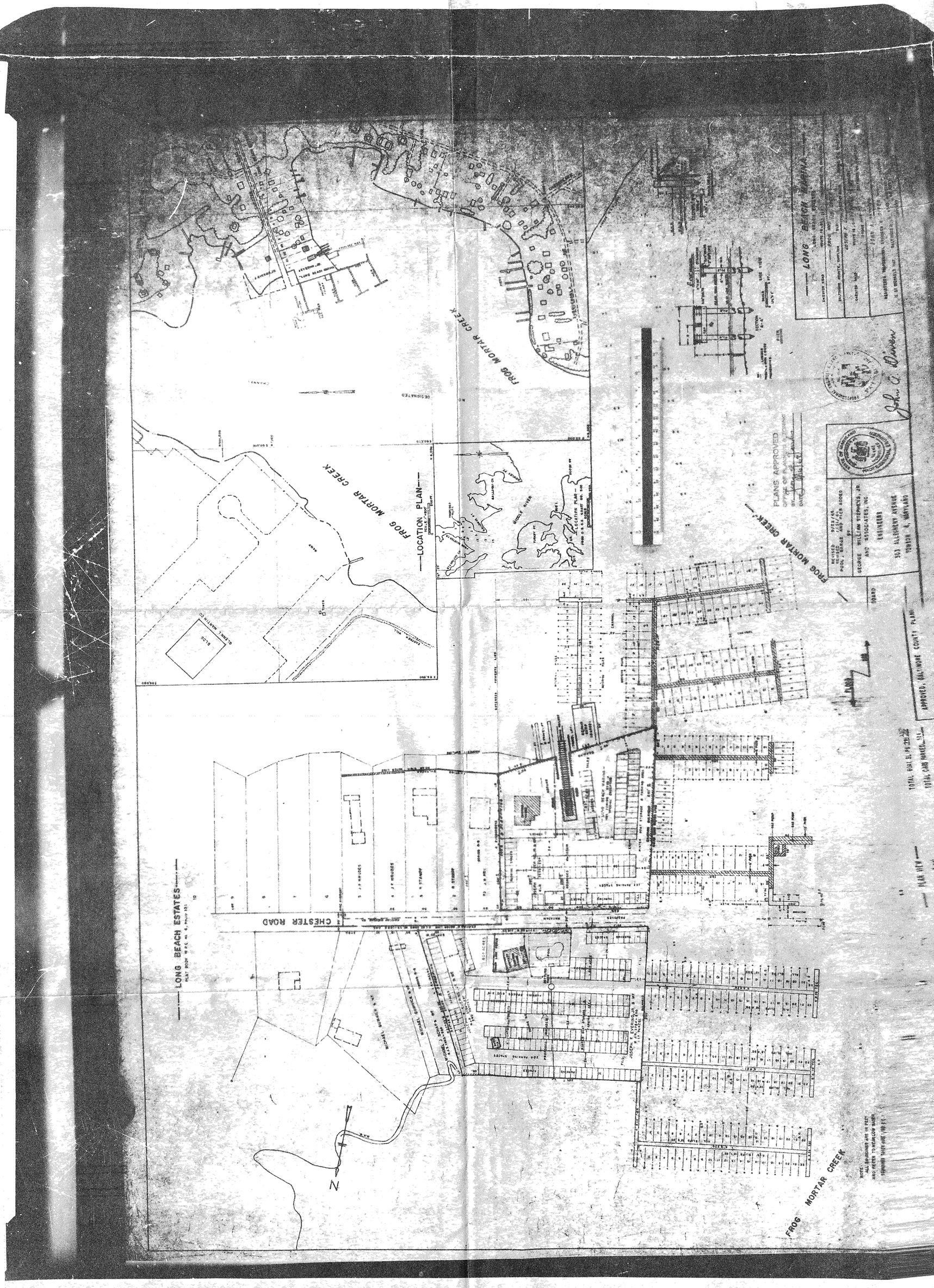
ATTORNEY
ROBERT NOMADVA
300 EASTERN BLVD.
BALTO., MD. 21221
686-8274

OWNER
JACK EVERLEY
300 CHESTER ROAD
BALTO., MD. 21220
335-8600

LOCATION MAP
SCALE 1" = 1000'

Pet Ex #1

PET. EX. #2 & #15


LONG BEACH ESTATES
CHESTER ROAD
FROG MORTAR CREEK
LOCATION PLAN
PLANS APPROVED
APPROVED, BALTIMORE COUNTY PLANNING
PLAN VIEW
N

DEPARTMENT OF THE ARMY

NOTE.—It is to be understood that this instrument does not give any property rights either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to private property or invasion of private rights, or any infringement of Federal, State, or local laws or regulations, nor does it obviate the necessity of obtaining *State assent* to the work authorized. IT MERELY EXPRESSES THE ASSENT OF THE FEDERAL GOVERNMENT SO FAR AS CONCERNS THE PUBLIC RIGHTS OF NAVIGATION. (See *Cummings* v. *Chicago*, 188 U. S., 410.) 16—12158-6

NABOP-P (Evering, Joseph, Jr.)10

PERMIT

U. S. Army Engineer District, Baltimore.
Corps of Engineers.
P. O. Box 1715, Baltimore, Md. 21203.
1 September, 19 66.

Mr. Joseph Evering, Jr.
Route 15, Box 177
Chester Road
Baltimore, Maryland 21220

Referring to written request dated 31 January 1966,

I have to inform you that, upon the recommendation of the Chief of Engineers, and under the provisions of Section 10 of the Act of Congress approved March 3, 1899, entitled "An act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," you are hereby authorized by the Secretary of the Army.

to construct a pier and to install mooring piles
(Here describe the proposed structure or work.)

in Frog Mortar Creek
(Here to be named the river, harbor, or waterway concerned.)

at a point on the north shore at the foot of Chester Road at Long Beach Estates,
(Here to be named the nearest well-known locality—preferably a town or city—and the distance in miles and tenths from some definite point in the same, stating whether above or below or giving direction by points of compass.)
Baltimore County, Maryland,

in accordance with the plans shown on the drawing attached hereto titled: "Proposed Pier - Piling in Frog Mortar Creek at Long Beach Estates - Baltimore County, Md. - Election Dist. 15 - Application by: Joseph F. Evering, Jr. & Wf. - Route 15, Box 177 - Chester Road - Balto. Md. 21220 - Phone: Ed. 5-8602 - January 31, 1966",
(Or drawings; give file number or other definite identification marks.)

subject to the following conditions:

PETITIONER'S EXHIBIT 3

PETITIONER'S EXHIBIT 4

D.P.L. 32—Revised 5-15-63

MISCELLANEOUS PERMIT

BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF PERMITS AND LICENSES
WALTER J. RASMUSSEN, Director
Office of the Buildings Engineer
County Office Building, Towson, Md. 21204

No. 16727

District 15

Date February 17, 1966

This Miscellaneous Permit Is Hereby Granted To

Jos. F. Evering Jr. & Catherine L. (Owner)

2 Randall Avenue (Address)

White Marsh, Md. 21162

SUBDIVISION

Long Reach Estates

Lot No. 1-81-82

Block

Section

Plat No.

To construct (Erect, Install, Renew, etc.) the following described structure

Location S. 9. Chester Rd. S. E. Cor. Frog Mortar Creek

Setback of Structure: Front 0 ft. Side Setbacks 100' and 960' ft. Corner lot ft. from side street.

Complete Description, Dimensions, Etc. To construct pier 165' with 6' x 40' T-end

M. H. W. at [illegible] Front 68' Depth 165' Height [illegible]

All work to be done on property where owner has legal right [illegible]

Fee Paid $ 7.50

Issued By The Buildings Engineer

BUILDING ENGINEER

This Permit shall be kept on the premises open to public inspection during the prosecution of the work and until completion of same. LIMITATION. After a new building permit is issued, if the operation or work authorized and approved thereunder is not commenced within one year after the issue, or if after commencement of the operation or work the operation or work is suspended or discontinued for a period of one year, then in either case the permit shall be null and void, and no operations or work shall be again commenced unless and until another proper permit shall have been issued for such work.

1 Feb 85

Name	address	
Ken Engelke	828 Chester Rd	21220
Jackie Cornick	843 Chester Rd	21220
Richard Stumpf	816 Chester Rd	21220
A.R. Bowman	1220 Susquehanna Ave	21220
E.S. Bowman	" " "	"
Stanley C. Schaap	827 Chester Rd.	21220
William Fell	1130 Susquehanna Ave	21220
Diana E. Fell	1130 Susquehanna Ave.	21220
Walter E. Fuchs Sr	13119 E. Greenbank Rd	21220
Berta Casson	1202 Susquehanna Ave.	21220
Beatrice Baker	1206 Susquehanna ave	21220
Donald P. Baker	1206 Susquehanna ave	21220
Elmer J. Norberg	1216 Susquehanna Ave	21220
Christopher D'Alessandro	3703 Bay Drive Balt	21220 Res Bonlyn Dr. Joppa

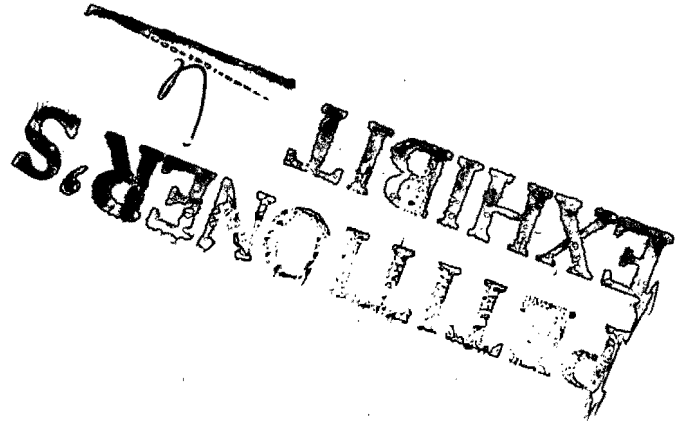
PROTESTANT'S EXHIBIT 5A

10 Dept 84

Route ch 2

MARK STUMPF 816 CHESTER RD.
JACKIE CYMEK 843 CHESTER RD
H. ANDREW JONES 1026 SUSQUEHANNA AVE.
Norma Smith 1214 Susquehanna Ave
Nancy Tenley 1208 Susquehanna Ave
Albert L. Norberg 1216 Susquehanna Ave.
J. Charles Smith Jr 1214 Susquehanna Ave
Walter L Ruby 1616 Susquehanna Ave
Elmer J Norberg 1216 Susquehanna Av 21220
Tom Davis 408 Nolleyer Rd 21220
H.R. Bowman 1220 Susquehanna Ave
E.G. Bowman 1220 Susquehanna Ave.
Gladys Norberg 1216 Susquehanna Ave
Betty M. Lynch 1232 Susquehanna Ave.
Mrs. Cecil Bromwell 1234 Susquehanna Ave
Edward Bromwell 1234 Susquehanna ave
Frederick Brant 1226 Susquehanna ave
Catherine Reese 831 Chester Road.
Alice Holle 835 Chester rd 21220
Helen Dimick 826 Chester Rd. 21220
Gloria Stumpf 816 Chester RD. 21220
Diana Stumpf 816 Chester Rd 21220
Thomas R Casson 1200 + 1202 Susquehanna ave 21220
Bertha M. Casson 1200+1202 Susquehanna Ave 21220
Ernest C Remmuth 1132 Susquehanna Ave 21220
Donald P Baker 1206 Susquehanna ave 21220

Olivia E. Baer 1134 Susquehanna Ave.
Beatrice L. Baker 1206 Susquehanna Ave.
James Dimick Sr. 826 Chestes Rd.
Anna M. Huber Hamilton Ave
George P. Huber Jr. 1110 Susquehanna Ave
Helen M. Taylor 1100 Susquehanna Ave
Margaret A. Keller 1102 Susquehanna Ave
William M. Keller Sr. 1102 Susquehanna
Neil D. Huber 6813 Fordcrest Rd
Patti Huber 6813 Fordcrest Rd
Richard Stump III 816 CHESTER Rd.
Ken Engelke 828 Chester Rd 21220



Negative # 6291-1
© '82 TADDER/BALTIMORE
501 St. Paul Place 21202
Phone 301 837-7427



CONSTR. PLANS	PLOT PLANS	RECORD PLAT	FLAME WAIVED	LETTER OF INTENT	DATA	AFF.	SUPERVISION WAIVER
3	8				0		

TAX ACCOUNT NUMBER 15-05-880~~3~~140

APPLICATION FOR PERMIT
BALTIMORE COUNTY MARYLAND
OFFICE OF THE BUILDING ENGINEER
TOWSON, MARYLAND 21204

CENSUS TRACT	CENSUS BLOCK	ELEC YES	ELEC NO	PLUMBING YES	PLUMBING NO
			X		X

BY PO

DATE ISSUED

BUILDING PERMIT NO.	DISTRICT	PRECINCT
CONTROL NO. R -83	15	

	IDENTIFICATION	NAME / ADDRESS / CITY / ZIP / PHONE NO. / LICENSE
Building Address		S. S. Chester Road - SE Cor Frog Mortar Creek
Owners Name		John F. Eggerding Jr. & Catherine L.
Mailing Address		~~800 Chesley Road~~ White Marsh Md. 21220 WP
TENANT		
BUILDING CONTRACTOR		owner
ENGINEER OR ARCHITECT		
IF UNDER CONTRACT OF SALES GIVE SELLER'S NAME AND ADDRESS		
TRANSFER DESCRIPTION		S. S. Chester Road - SE Cor Frog Mortar Creek

A. TYPE OF IMPROVEMENT

1. ☐ NEW BUILDING CONSTRUCTION
2. ☑ ADDITION
3. ☐ ALTERATION
4. ☐ REPAIR
5. ☐ WRECKING (ENTER NO. UNITS DEDUCTED ____)
6. ☐ MOVING
7. ☐ OTHER ____

DESCRIBE PROPOSED WORK

1 OR 2 FAM. CODE ☐ 1978 BOCA CODE ☑

add. to 2 existing piers T shaped into Frog Mortar Creek. ~~S. W. Pier~~ N. W. Pier 70' X 455' add. S. W. Pier 195' X 615' add. These additions are to be built in lieu of 3 ~~piers~~ pier permits issued in 1966 (18727) and renewed in 1970. These 3 piers will not be constructed.

B. OWNERSHIP

Total 200 mooring piles

1. ☑ PRIVATELY OWNED 2. ☐ PUBLICLY OWNED

ESTIMATED COST OF MATERIAL & LABOR $ _____ .00

RESIDENTIAL

01. ☐ ONE FAMILY
02. ☐ TWO FAMILY
03. ☐ THREE AND FOUR FAMILY
04. ☐ FIVE OR MORE FAMILY (ENTER NO UNITS ____)
05. ☐ SWIMMING POOL
06. ☐ GARAGE
07. ☐ OTHER ____

TYPE FOUNDATION
- ☐ SLAB
- ☐ BLOCK
- ☐ CONCRETE
- ☐ BASEMENT
- ☐ FULL
- ☐ PARTIAL
- ☐ NONE

CHECK APPROPRIATE CATEGORIES: FOR RESIDENTIAL ONLY

DETACHED	SEMI DETACHED	GROUP	TOWN HOUSE	MID RISE	HI RISE
1.	2.	3.	4.	5.	6.

RENT	SALE
1.	2.

C. TYPE OF USE

NON-RESIDENTIAL

08. ☐ AMUSEMENT, RECREATION, PLACE OF ASSEMBLY
09. ☐ CHURCH, OTHER RELIGIOUS BUILDING
10. ☐ FENCE (LENGTH _____ HEIGHT _____)
11. ☐ INDUSTRIAL, STORAGE BUILDING
12. ☐ PARKING GARAGE
13. ☐ SERVICE STATION, REPAIR GARAGE
14. ☐ HOSPITAL, INSTITUTIONAL, NURSING HOME
15. ☐ OFFICE, BANK, PROFESSIONAL
16. ☐ PUBLIC UTILITY
17. ☐ SCHOOL, COLLEGE, OTHER EDUCATIONAL
18. ☐ SIGN
19. ☐ STORE ☐ MERCANTILE ☐ RESTAURANT
    SPECIFY TYPE: ____
20. ☐ SWIMMING POOL (MD. HEALTH DEPT. APPR. REQ.)
21. ☐ TANK, TOWER
22. ☐ TRANSIENT HOTEL, MOTEL (NO. UNITS ____)
23. ☑ OTHER Piers

24. PROPOSED USE(S) same + add'l Piers
EXISTING USE(S) Marina

COMPLETE ALL ITEMS IN "D" AND "E" FOR NEW BUILDINGS, ADDITIONS AND ALTERATIONS ONLY

D. TYPE OF CONSTRUCTION

1. ☐ MASONRY
2. ☐ WOOD FRAME
3. ☐ STRUCTURE STEEL
4. ☐ REINF. CONCRETE

TYPE OF HEATING FUEL

1. ☐ GAS
2. ☐ OIL
3. ☐ ELECTRICITY
4. ☐ COAL

TYPE OF SEWAGE DISPOSAL

1. ☐ PUBLIC SEWER
2. ☑ PRIVATE SYSTEM ☐ EXISTS ☐ PROPOSED
   SEPTIC ☑ EXISTS ☐ PROPOSED
   PRIVY ☐ EXISTS ☐ PROPOSED

TYPE OF WATER SUPPLY

1. ☐ PUBLIC SYSTEM ☑ EXISTS ☐ PROPOSED
2. ☐ PRIVATE SYSTEM ☐ EXISTS ☐ PROPOSED

IS THERE CENTRAL AIR CONDITIONING

1. ☐ YES 2. ☐ NO

IS THERE AN INCINERATOR

1. ☐ NO 2. ☐ YES - WITH AIR POLLUTION CONTROL
3. ☐ YES - WITHOUT AIR POLLUTION CONTROL

NO. OF ELEVATORS TO BE INSTALLED ____

NUMBER OF OFF STREET PARKING SPACES

ENCLOSED ____ OUTDOORS ____

E. RESIDENTIAL ONLY

SINGLE FAMILY UNITS

1. TOTAL NO. OF BEDROOMS ____

MULTI FAMILY UNITS HOW MANY APARTMENTS HAVE

2. EFFICIENCY (NO SEPARATE BEDROOMS) ____
3. ONE BEDROOM ____
4. TWO BEDROOMS ____
5. THREE BEDROOMS OR MORE ____
6. TOTAL NO. OF BEOROOMS ____
7. TOTAL NO. OF APARTMENTS ____

F DIMENSIONS

GARBAGE DISPOSAL YES	GARBAGE DISPOSAL NO	POWDER ROOMS	BATHROOMS	KITCHENS

BUILDING SIZE - LARGEST OVERALL DIMENSIONS INCLUDING BASEMENT FLOOR AREA	WIDTH	DEPTH	HEIGHT	STORIES
	See above			

LOT SIZE	CENTER LINE SETBACKS (FROM STREET CENTER) FRONT STREET	SIDE STREET
200 X 250		

PROPERTY LINE SETBACKS	FRONT	SIDE	SIDE STREET	REAR
	NC			

IN LINE WITH EXISTING BLDGS YES	NO	CORNER LOT YES	NO	LOT NUMBERS
				1-81-82

ZONING INFORMATION	ZONE DISTRICT	ZONING MAP NO.	PETITION NO.	DATE
			~~72-37-A~~	

ASSESSMENT LAND	SUBDIVISION NAME	BLOCK	SECTION	LIBER	FOLIO
38,150.-	H Long Beach Estates			4	131
IMPROVEMENTS 82,000.-					
TOTAL 120,150.-	BUILDINGS (29) 8897				

G.

(I HAVE CAREFULLY READ THIS APPLICATION AND KNOW THE SAME IS CORRECT AND TRUE, AND THAT IN DOING THIS WORK ALL PROVISIONS OF THE BALTIMORE COUNTY CODE AND APPROPRIATE STATE REGULATIONS WILL BE COMPLIED WITH WHETHER HEREIN SPECIFIED OR NOT AND WILL REQUEST ALL REQUIRED INSPECTIONS)

COMPANY _____ DATE _____

ADDRESS _____ CITY _____ STATE _____ ZIP _____

☐ AGENT ☐ OWNER

SIGNATURE OF APPLICANT _____ PHONE _____

MAKE CHECKS PAYABLE TO BALTIMORE COUNTY MARYLAND

PERMIT FEE	RECEIPT NO.	DATE
20.00		

AGENCY	APPROVAL SIGNATURE	DATE
PRELIMINARY INSPECTION		
ZONING	[illegible]	10/21/83
PLANNING		
BUREAU OF PUBLIC SERVICES		
HEALTH DEPARTMENT	O/C to file - [illegible]	10/26/83
CONSTRUCTION PLANS REVIEW		
BARD CHIEF		

INVESTIGATION FEE

NO PERMIT FEES REFUNDED

OCCUPANCY FEE

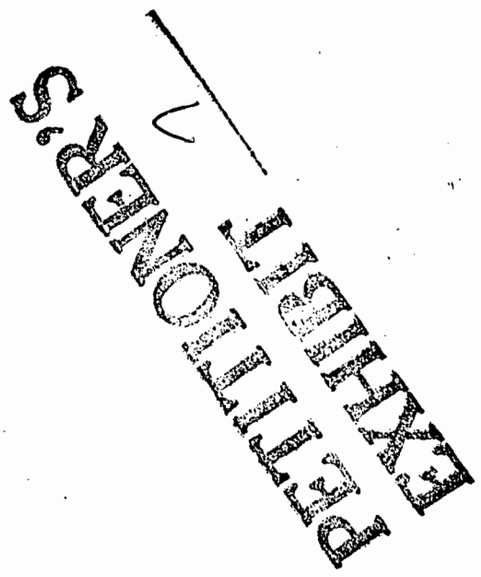
15-05-880141 ✓ pt Lot 292

15-12-202790 ✓ pt 291-292

~~15-05-880132~~

140 ✓

142 ✓



Pet No 7

BEFORE THE MARYLAND DEPARTMENT OF TRANSPORTATION
BOARD OF AIRPORT ZONING APPEALS

IN THE MATTER OF:	*	
Joseph F. Evering	*	BAZA Docket No. MTN-9
and	*	
Catherine L. Evering	*	
	*	

MEMORANDUM AND ORDER

Joseph F. Evering and Catherine L. Evering ("Applicants") applied to the Maryland Department of Transportation State Aviation Administration ("SAA") for a permit to expand their existing marina by constructing a pier for 178 boat slips on Applicants' property located at 800 Chester Road in Baltimore County, Maryland. On February 24, 1986, SAA denied Applicants' application. SAA determined that, while Applicants' proposed construction would not violate airport height or noise zone restrictions, the proposed marina expansion would cause congregation in the Martin State Airport Clear Zone District and would pose a public hazard, in violation of COMAR 11.03.06.05F and .06E. Applicants appealed to the Board of Airport Zoning Appeals (the "Board"). The Board heard the above entitled petition on June 9, 1986. Applicants were duly notified of the hearing and were represented by John E. Hennegan, Esquire and Robert J. Romadka, Esquire. The proceedings were duly recorded and transcribed.

Ref No 8a

PETITION FOR SPECIAL HEARING

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve an amendment to the site plan in case number 64-57SPH, 64-160X and 35-35X to construct an addition to the piers; remove restriction number 1 and 3 in case number 64-57SPH to allow marine (CONTINUED ON ATTACHED SHEET)

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

Attorney for Petitioner:
John O. Hennegan, Esquire
Robert J. Romadka, Esquire
(Type or Print Name)

Signature

ROMADKA, GONTRUM, HENNEGAN & FOOS
Address
809 Eastern Boulevard
Baltimore, Maryland 21221
City and State

Attorney's Telephone No.: 686-8274

Legal Owner(s):

Joseph F. Evering, Jr.
(Type or Print Name)

Joseph F Evering Jr
Signature

Catherine L. Evering
(Type or Print Name)

Catherine L Evering
Signature

800 Chester Road 335-8602
Address Phone No.

Baltimore, Maryland 21220
City and State

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

John O. Hennegan, Esquire
Name
809 Eastern Bouelvard
Baltimore, Maryland 21221
Address 686-8274 Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this _____ day of _____, 19_____, 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 _____ day of _____, 19_____, at _____ o'clock _____M.

Zoning Commissioner of Baltimore County.

Z.C.O.—No. 1

(over)

8/6/84

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 :

Pet. #81

PETITION FOR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property for two lots located on the north and south side of Chester Road not included in Special Exception Cases 35-35X, 64-57SPH, 64-160X in a D.R. 5.5 Zone to be used as a Boat Yard. INCLUDING Road Bed of Chester Road

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

I, or we, agree to pay expenses of above Special Exception advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

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

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Legal Owner(s):

Joseph F. Evering

(Type or Print Name) Joseph F. Evering, Jr.

Joseph F. Evering Jr.

Signature

Catherine L. Evering

(Type or Print Name)

Catherine L. Evering

Signature

Attorney for Petitioner:

John O. Hennegan, Esquire
Robert J. Romadka, Esquire

(Type or Print Name)

John O. Hennegan

Signature

ROMADKA, GONTRUM, HENNEGAN & FOOS

809 Eastern Boulevard

Address

Baltimore, Maryland 21221

City and State

Attorney's Telephone No.: 686-8274

800 Chester Road 335-8602

Address Phone No.

Baltimore, Maryland 21220

City and State

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

John O. Hennegan

Name

809 Eastern Boulevard

Baltimore, Maryland 21221 686-8274

Address Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this _____ day of _____, 19_____, 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 _____ day of _____, 19_____, at _____ o'clock _____M.

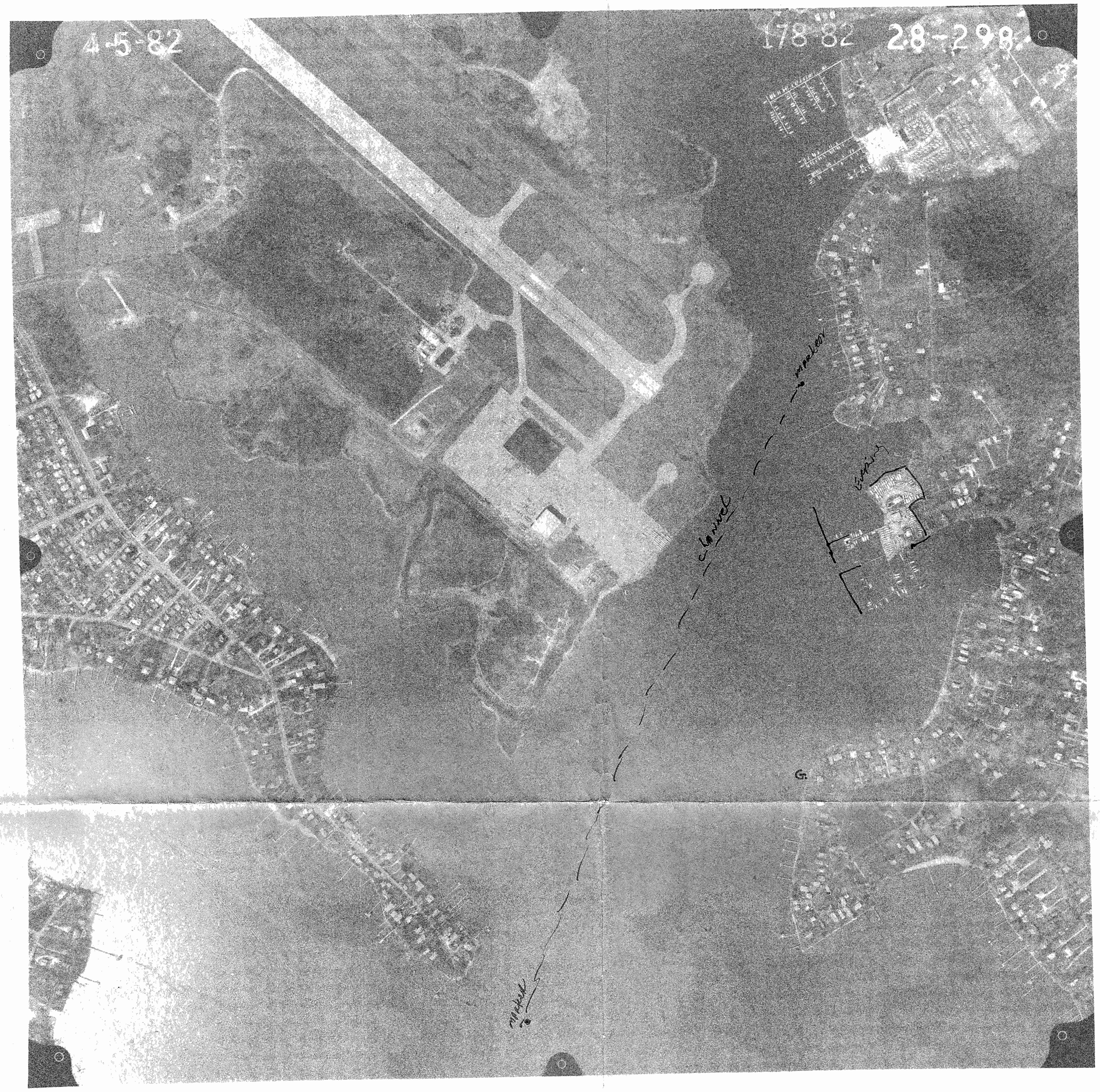
Zoning Commissioner of Baltimore County.

Z.C.O.—No. 1

(over)

8/6/84

Pursuant to the advertisement, posting of property, and public hearing on the Petition and it appearing that by reason of the requirements of Section 502.1 of the Baltimore County Zoning Regulations



AERIAL DATA REDUCTION ASSOCIATES, INC.
PENNSAUKEN, N.J. HEBRON, CT.
RICHMOND, VA. EAST PROVIDENCE, RI

28-7

2

Pet No
10

Pet. # 12

3535X

3535-X

3535-X

PETITION FOR SPECIAL EXCEPTION

IN THE MATTER OF : BEFORE THE
JOSEPH EVERING : ZONING COMMISSIONER
: OF
: BALTIMORE COUNTY
:

Exception
For a Special Permit
To the Zoning Commissioner of Baltimore County

Bldg Permit No. 6785 Nov 8, 1952

Joseph Evering Legal Owner
Contract Purchaser

hereby petition for a Special Exception, under the Zoning Regulations and Restrictions passed by the County Commissioners of Baltimore County, agreeable to Chapter 877 of the Acts of the General Assembly of Maryland of 1943, for a certain permit and use, as provided under said Regulations and Act, as follows:

A Special Exception to use the land (and improvements now or be erected thereon) hereinafter described for

BOAT YARD

All that parcel of land in the Fifteenth District of Baltimore County, beginning at the west end of Chester Road and Frog Mortar Creek; thence easterly and binding on the south side of Chester Road 200 feet with an average rectangular depth southerly of 275 feet. Being lots 1, 81 and 82 plat of Long Beach Estates.

Contract Purchaser

Joseph Evering
Legal Owner

Address

Rt 4 Box 80
Baltimore 21, Md.

MAY 5 1953

ORDERED by the Zoning Commissioner of Baltimore County this 6th day of May, 1953 that the subject matter of this petition be advertised in a newspaper of general circulation throughout Baltimore County and that the property be posted, as required by the Zoning Regulations and Act of Assembly aforesaid, and that a public hearing thereon be held in the office of the Zoning Commissioner of Baltimore County, Maryland, on the 4th day of June, 1953, at 11:00 o'clock A. M.

Zoning Commissioner
of Baltimore County

Upon hearing on petition for a Special Exception to use the property described in the within petition for a Boat Yard, it being for the purpose of slip rental services and services to boats in slips only, the granting of the special exception will not be detrimental to the safety and the general welfare of the community, therefore, the petition should be granted.

It is this 6th day of June, 1953, ORDERED by the Zoning Commissioner of Baltimore County that the aforesaid petition for a special exception be and the same is hereby granted for the purpose of slip rental services and services to boats in slips only.

Zoning Commissioner
of Baltimore County

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

#3535

District 15th Date of Posting 5-26-53
Posted for: Special Exception for a Boat Yard
Petitioner: Joseph Evering
Location of property: N/E corner of Chester Rd and Frog Mortar Creek thence E.E. binding on the S/S of Chester Road 200 ft. more or less
Location of Signs: N/E side of Chester Rd. on the S.S. of Chester Road
Remarks:
Posted by George E. Hermann Date of return: 5-27-53
signature

Order to Publish May 6, 1953
MAY 21 1953

Page Fourteen

SALE

Certificate Of Publication

ESSEX, MD., May 27th, 1953

THIS IS TO CERTIFY, That the annexed advertisement was published in THE EASTERN ENTERPRISE, a weekly newspaper published in Essex, Baltimore County, Md., once in each of 2 successive weeks before the 6th day of June 1953, the first publication appearing on the 13th day of May 1953.

THE EASTERN ENTERPRISE, INC.
Catherine M. Schaefer
Manager.

3535X

Plat No 13

PETITION FOR SPECIAL HEARING FOR A Clarification and Extension of the Uses heretofore gramted under Special Exception on June 6, 1955 (File No. 3535) to Specifically include the Storage of Marine Craft on S.S. Chester Road 1000' W. Susquehanna Ave., 15th Dist., Jos. F. Evering, Jr. and Catherine L. Evering, Petitioners

BEFORE

ZONING COMMISSIONER

OF

BALTIMORE COUNTY

No. 64-57-SPH

: : : : : : : : : : : : : : : : : :

The petitioners, in the above matter, have requested an extension of the special exception granted on June 6, 1955, (File No. 3535) to specifically include the storage of marine craft on the land. The previous hearing resulted in the granting of a boat yard which has been used as a boat yard including the storage of marine craft on the land up until the present date. This use has been questioned and for that reason the present hearing was held.

It is quite obvious that if the petitioner is to continue to use his property as a boat yard, he must of necessity have the right to store marine craft on the land. The original Order gave the petitioner a use without the means to make use of it.

It is this 9th day of March, 1964, ORDERED that the petitioners' request is granted subject to:

1. No marine craft may be stored within 20 feet of the easternmost portion of the property presently owned by Joseph F. Evering, Jr., and Catherine L. Evering.

2. The use of the boat yard, both on land and in the water, shall be limited to pleasure craft.

3. The petitioners shall comply with the off-street parking requirements of Section 409 of the Baltimore County Zoning Regulations.

MICROFILMED

The granting of the above request is subject to approval of the Office of Planning and Zoning.

Zoning Commissioner

#64-160 X

RE: PETITION FOR SPECIAL EXCEPTION : BEFORE THE
N/S Chester Road, 625' W. of :
Severn Road - 15th District : DEPUTY ZONING COMMISSIONER
Joseph Evering Jr., Petitioner :
OF
BALTIMORE COUNTY
No. 64-160-X

MAP 15-C "X"

: : : : : : : : : : : : :

The petitioner's property consists of some 1 3/4 acres situated on the North side of Chester Road, 625 feet West of Severn Road in 15th Election District.

The petitioner now seeks a Special Exception to the Zoning Regulations for permission to build and develop a Boat Yard. There was testimony that if the Special Exception is granted, the develope will fill and level the land, build a bulkhead, and extend Chester Road to the waters edge.

The requirements of Section 502.1 of the Zoning Regulations having been met and the safety, health and general welfare of the locality involved not being detrimentally affected, the Special Exception should be granted, subject, however, to the following restrictions:

(1) No major repairs of any boats shall be permitted on the premises or waters immediately adjacent thereto.

(2) Construction of boats is prohibited.

(3) No commercial vessels will be permitted to patronize said establishment.

(4) Services will be restricted to pleasure craft only.

(5) Barges or similar type craft will not be allowed on or tied up at the property, with the exception of the one small barge which is presently being used by the Petitioner.

(6) Minor repairs and maintenance will be permitted from 8 a.m. to 7 p.m. week-days, May through September and 8 a.m. to 6 p.m. on week-days during the other months of the year. No repairs will be permitted on Sundays.

IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County, this 30 day of June, 1964, that a Special Exception for a Boat Yard, subject to the aforementioned restrictions, should be and the same is granted from and after the date of this order subject to approval of the site plan by the Bureau of Public Services and the Office of Planning and Zoning.

Edward D. Harden

Deputy Zoning Commissioner
of
Baltimore County

Pet No 14

MICROFILMED

Pet. #169

Buckley/bcb/8395
1 September 1966 J.K.B.
BUCKLEY
LEINEWEBER
TRIESCHMAN

NABOP-P(Evering, Joseph, Jr.)10

Mr. and Mrs. Alfred J. Kaufman
Susquehanna Avenue
Baltimore, Maryland 21220

Dear Mr. and Mrs. Kaufman:

This will acknowledge your letter of 29 June 1966, wherein you and other interested parties expressed objections to the issuance of a Department of the Army permit to Mr. Joseph Evering, Jr. to construct a pier and to install mooring piles in Frog Mortar Creek at Long Beach Estates, Baltimore County, Maryland.

A permit authorizing Mr. Evering to construct a pier and to install mooring piles in front of his property was issued today. Prior to its issuance, Mr. Evering revised his plans by eliminating the five (5) mooring piles that he proposed to install channelward of the head of the proposed pier. A copy of the revised plans is inclosed.

The objections expressed by you were given careful consideration by this office prior to issuance of the permit. However, before a decision was made in this matter, a field investigation was conducted at the site of the proposed work. The investigation resulted in an opinion by this office that the proposed work would not unreasonably affect general navigation in the creek and the permit was therefore issued.

A permit, when issued, merely expresses the assent of the Federal Government so far as concerns the public rights of navigation.(See Cummings v. Chicago, 188 U. S. 410.) It does not give any property rights either in real estate or material, or any exclusive privileges; and it does not authorize any injury to private property or invasion of private rights, or any infringement of Federal, State, or local laws or regulations; nor does it obviate the necessity of obtaining State assent to the work authorized.

Sincerely yours,

Incl
as

WILLIAM E. TRIESCHMAN, JR.
Assistant Chief
Operations Division

DEPARTMENT OF THE ARMY

NOTE.—It is to be understood that this instrument does not give any property rights either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to private property or invasion of private rights, or any infringement of Federal, State, or local laws or regulations, nor does it obviate the necessity of obtaining *State assent* to the work authorized. IT MERELY EXPRESSES THE ASSENT OF THE FEDERAL GOVERNMENT SO FAR AS CONCERNS THE PUBLIC RIGHTS OF NAVIGATION. (See *Cummings* v. *Chicago*, 188 U. S., 410.) 16—12168-2

PERMIT

NABOP-P (Evering, Joseph, Jr.)10

U. S. Army Engineer District, Baltimore.
Corps of Engineers.
P. O. Box 1715, Baltimore, Md. 21203.
1 September, 19 66.

Mr. Joseph Evering, Jr.
Route 15, Box 177
Chester Road
Baltimore, Maryland 21220

Referring to written request dated 31 January 1966,

I have to inform you that, upon the recommendation of the Chief of Engineers, and under the provisions of Section 10 of the Act of Congress approved March 3, 1899, entitled "An act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," you are hereby authorized by the Secretary of the Army.

to construct a pier and to install mooring piles
(Here describe the proposed structure or work.)

in Frog Mortar Creek
(Here to be named the river, harbor, or waterway concerned.)

at a point on the north shore at the foot of Chester Road at Long Beach Estates,
(Here to be named the nearest well-known locality—preferably a town or city—and the distance in miles and tenths from some definite point in the same, stating whether above or below or giving direction by points of compass.)
Baltimore County, Maryland,

in accordance with the plans shown on the drawing attached hereto titled: "Proposed Pier
(Or drawings; give file number or other definite identification marks.)
Piling in Frog Mortar Creek at Long Beach Estates - Baltimore County, Md. - Election Dist. 15 - Application by: Joseph F. Evering, Jr. & Wf. - Route 15, Box 177 - Chester Road - Balto. Md. 21220 - Phone: Ed. 5-8602 - January 31, 1966",

subject to the following conditions:

Pet. #165

D.P.L. 32—Revised 5-15-63

MISCELLANEOUS PERMIT

BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF PERMITS AND LICENSES

WALTER J. RASMUSSEN, Director

Office of the Buildings Engineer

County Office Building, Towson, Md. 21204

No. 18727

District 15

Date February 17, 1966

SUBDIVISION

Long Beach Estates

Lot No. 11-81-82

Block

Section

Plat No.

This Miscellaneous Permit Is Hereby Granted To

Jos. F. Ewering Jr. & Catherine L. (Owner)

2 Randall Avenue (Address)

White Marsh, Md. 21162

To construct (Erect, Install, renew, etc.) the following described structure:

Location S. S. Chester Rd. S. E. Cor. Frog Mortar Creek

Setback of Structure: Front 0 ft.; Side Setbacks 100' and 960' ft. Corner lot ft. from side street.

Complete Description, Dimensions, Etc. To construct pier- 165' with 6'x20' T-end.

W. H. W. - 3' L. W. - 1.5' Front 68' Depth 165' Height W.S. 3'

All work to be done on property of which owner has legal right.

Fee Paid $ 7.50

Issued By The Buildings Engineer

BUILDING ENGINEER

This Permit shall be kept on the premises open to public inspection during the prosecution of the work and until completion of same. LIMITATION. After a new building permit is issued, if the operation or work authorized and approved thereunder is not commenced within one year after the issue, or if, after commencement of the operation or work, the operation or work is suspended or discontinued for a period of one year, then, in either case, the said permit shall be null and void, and no operations or work shall be again commenced unless and until another proper permit shall have been issued for such work.

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
PHOTOGRAPHIC MAP

SCALE	LOCATION	SHEET
1" = 200' ±	BOWLEYS QUARTERS	N.E. 2-K
DATE OF PHOTOGRAPHY JANUARY 1986		

MADE BY AIR PHOTOGRAPHICS, INC.

EA ENGINEERING, SCIENCE, AND TECHNOLOGY, INC.

Pet No 18

FRANK W. PINE, Ph.D.
Program Manager, Environmental Assessments
Coordinator, Terrestrial and Wetland Studies
Mid-Atlantic Region

Dr. Pine coordinates terrestrial and wetland studies for the Mid-Atlantic Region and is responsible for designing and reviewing terrestrial and wetland research and for writing scopes of work and cost proposals dealing with these disciplines. He is also responsible for guiding proposal writing and costing for the Mid-Atlantic Operations Group and for marketing in a number of areas, managing projects, and reviewing study plans and reports to ensure proper completion of contracted studies.

EXPERIENCE:

TERRESTRIAL AND WETLAND ECOLOGY: Trained in ecology and animal behavior with emphasis upon environmental biology and public health. Conducted studies and research on biological uptake of trace metals in estuarine ecosystems. Surveyed effects of oil drilling operations upon population dynamics of migratory waterfowl. Managed multidisciplinary studies to define baseline conditions in tidal fresh wetland communities, estuarine communities, and upland terrestrial and wetland areas. Studies included water quality, nutrient flux determinations, soil types and conditions, plant community structure, invertebrate and vertebrate populations, and potential influences of adjacent land-use practices. Experienced in environmental impact assessments, aerial photographic surveying and mapping, taxonomic and community structure analyses, and quantitative assessment of environmental effects. Defined potential effects of disturbances upon rare, threatened, or endangered species and upon sensitive communities.

WATER QUALITY AND ENVIRONMENTAL TOXICOLOGY: Trained in mammalian physiology and toxicology. Conducted research in water-borne pollutant dynamics and water quality. Studies included sources, bioaccumulation potential, sinks, and comparison of contaminant concentrations with federal and state guidelines, criteria, and standards for all classes of surface water, ground water, and drinking water.

PROJECT MANAGEMENT: Directed multidisciplinary studies involving combined field and laboratory research as well as literature reviews and laboratory studies. Responsible for directing proposal preparation, costing, management, and completion of projects. Training has included seminars concerning personnel and project management and short courses in proposal preparation.

Ref No 19

ADDENDUM A

WATER QUALITY SAMPLING RESULTS - LONG BEACH MARINA

On 1 September, 30 September and 17 November 1986, water quality samples were collected off the end of the piers at Long Beach Marina. Samples were taken using a standard Van Dorn bottle. Samples were taken at high and low tide on each of the three dates. A vertical composite of the water column was collected by combining one sample collected from the surface with one from the bottom. At the time of each collection weather conditions were noted and standard water quality data were collected utilizing a Hydrolab field water quality analyzer on-site. The data for temperature, pH, dissolved oxygen and conductivity are all provided in Table 1. Times of high and low tide as well as general weather conditions are also provided.

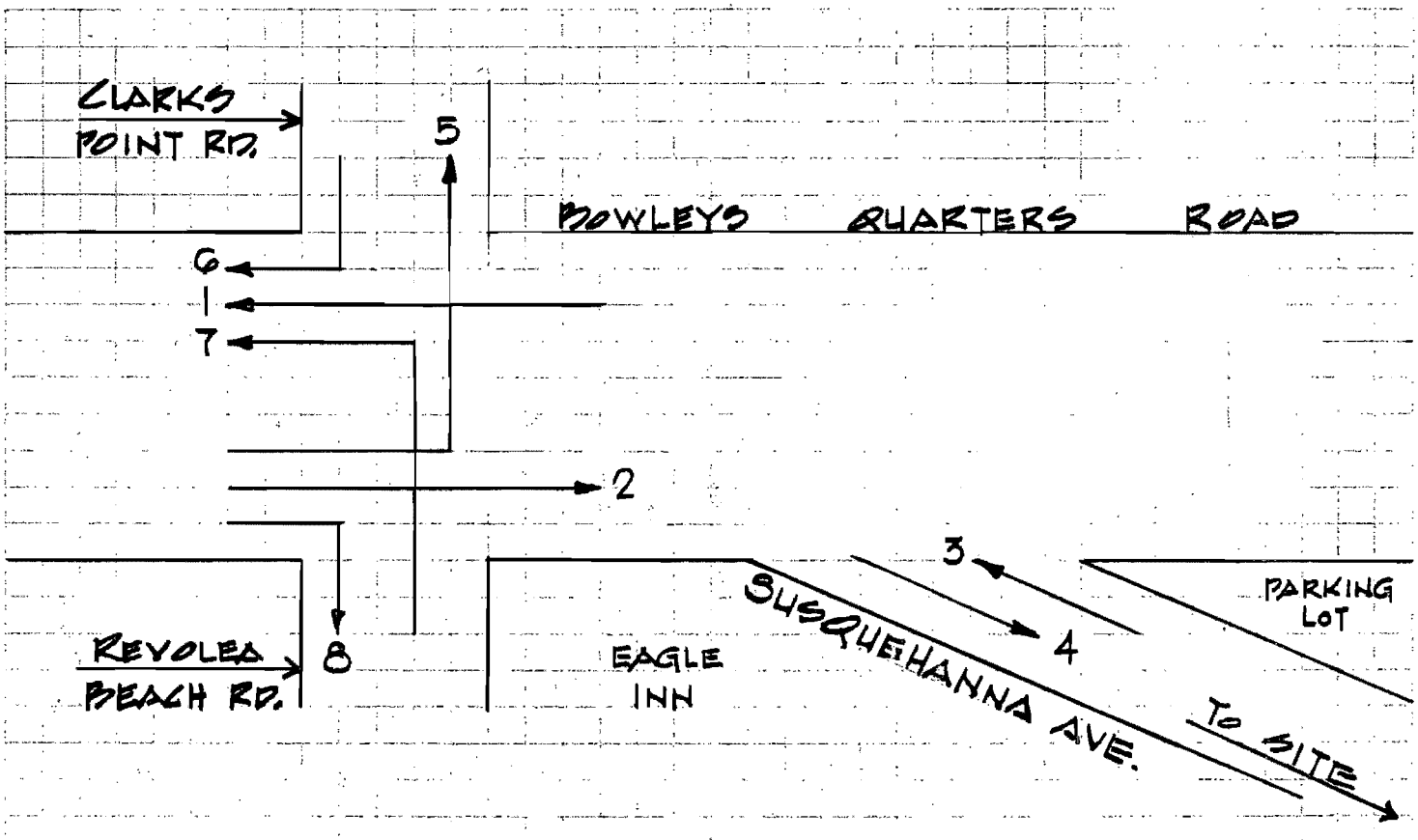
The results of the water quality analyses are given in Tables 2, 3 and 4. All analytical procedures were undertaken according to standard EPA methodology and holding times for all parameters were met.

The results of the analyses of samples collected on 1 September are given in Table 2 and indicate moderately eutrophic conditions. Water temperatures on this date were the highest of the three collection dates and the total and fecal coliform concentrations were also the highest. Based upon chlorophyll a concentrations and phosphorus and nitrogen concentrations, Middle River would be considered eutrophic and marginally acceptable as rated by a Neilson index for estuarine waters (D' Elia, 1982). Chlorophyll a concentrations specifically indicate that the system lies between 30 and 60 micrograms per liter which is indicative of moderate enrichment. The bio-chemical oxygen demand was low while chemical oxygen demand was moderate. Total organic carbon would be considered to be within normal ranges. Trace metal concentrations were extremely low indicating no existing environmental problems related to copper or lead in the water column. On this date the phosphorus concentrations where less than .2 milligrams per liter and orthophosphorus (.07 milligrams per liter) concentrations were also low.

STV/LYON ASSOCIATES.
ENGINEERS, ARCHITECTS & PLANNERS.
21 GOVERNOR'S COURT
BALTIMORE, MD 21207-2722
301/944-9112

SUBJECT TRAFFIC STUDY
BOWLEYS QUARTERS RD.
& SUSQUEHANNA AVE.

SHEET NO. ..... OF .....
JOB NO. .....
BY ..... DATE .....
CHK'D ..... DATE .....
REV. ..... DATE .....



DATE	TIME	DIRECTIONS							
		1	2	3	4	5	6	7	8
FRI. 8-16-85	5-6 P.M.	142	230	39	69	11	7	8	15
FRI. 8-23-85	5-6 P.M.	153	218	44	70	17	9	16	15
SAT. 8-24-85	8-9 A.M.	61	52	38	20	5	11	0	1
FRI. 8-30-85	5-6 P.M.	135	216	36	71	21	13	10	18
* MON. 9-2-85	5-6 P.M.	353	130	62	67	16	18	20	13

* LABOR DAY

CARS ON SITE

8-30-85 13/15

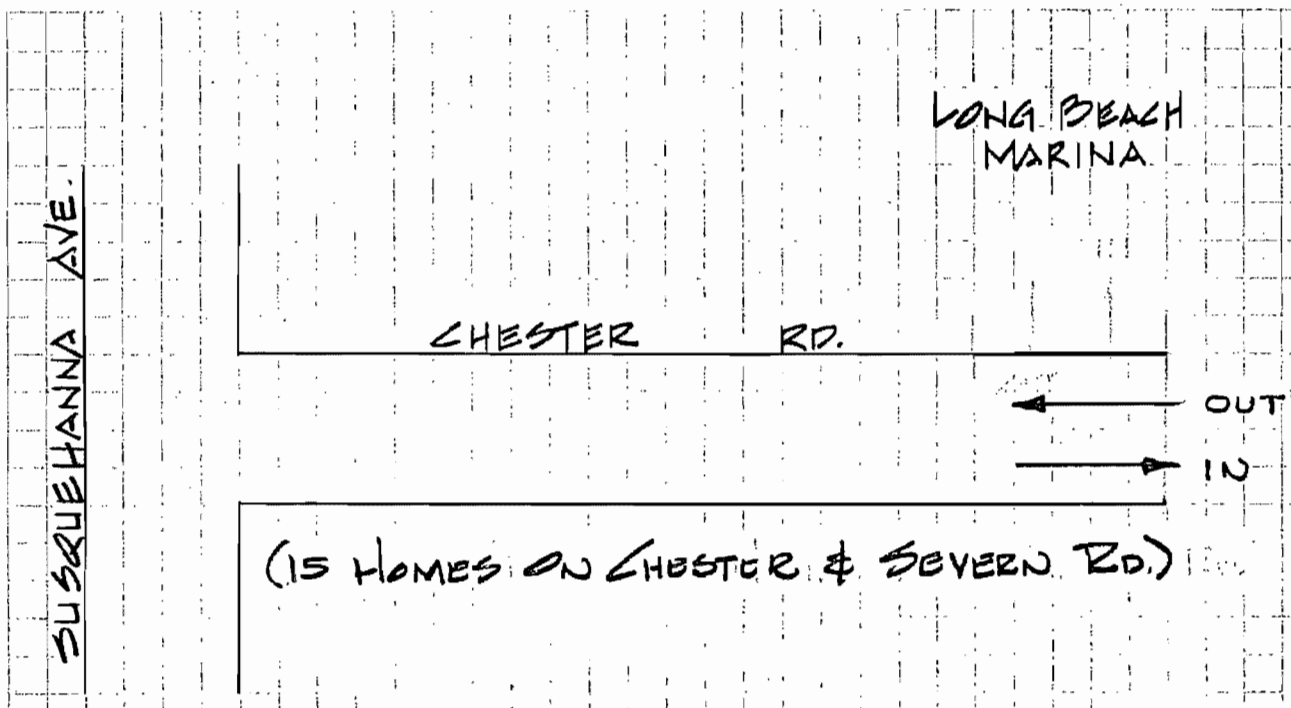
9-2-85 55/40

Pet No. 209

STV/LYON ASSOCIATES.
ENGINEERS ARCHITECTS PLANNERS.
21 GOVERNOR'S COURT
BALTIMORE, MD 21207-2722
301/944-9112

SUBJECT LONG BEACH MARINA

SHEET NO. ..... OF .....
JOB NO. .....
BY ..... DATE .....
CHK'D ..... DATE .....
REV. ..... DATE .....



DATE	TIME	IN	OUT	BEGIN. OF HOUR CARS ON LOT
SAT. 5-24-86	8-9 A.M.	5	4	20
SUN. 5-25-86	5-6 P.M.	5	14	85
MON. 5-26-86	7-8 P.M.	8	17	42

Pet No. 20

PROTESTANT'S AND PEOPLE'S COUNBEL'S EXHIBITS

#5

PROTESTANTS

No 2

Date: December 16, 1986

	Name	Address	
(1)	H. Andrew Jones	1026 Susquehanna Ave	21220
(2)	Karen Jones	1026 Susquehanna Ave.	21220
(3)	PHILIP EDWARDS	1016 SUSQUEHANNA AVE	21220
(4)	ANN EDWARDS	1016 Susquehanna Ave.	21220
(5)	MICHELE A. KEHL	103 BAY COURT	21220
(6)	Fred Conrad	3301 Edwards Lane	21220
(7)	Faye Conrad	3301 Edwards Lane	21220
(8)	Richard Stumpf	816 Chester Rd	21220
(9)	MARK STUMPF	816 CHESTER RD.	21220
(10)	Diana Stumpf	816 Chester Rd	21220
(11)	William Spence	3504 GLENWOOD	21220
(12)	Mary E. Spence	3504 Glenwood Rd	21220
(13)	Bertha Casson	1202 Susquehanna Ave	21220
(14)	Thomas Casson	1202 Susquehanna ave.	21220
(15)	Beatrice Baker	1206 Susquehanna ave.	21220
(16)	Donald P Baker	1206 Susquehanna ave	21220
(17)	Elmer J Norberg	1216 Susquehanna Ave	21220
(18)	MILLARD A. BIERMAN	3841 BAY DR.	21220
19	George P. Huber	1110 Susquehanna	21220
20	John Schmidt	3833 Clarks Pt. Rd	21220

BOWLEY'S QUARTERS IMPROVEMENT ASSN., Inc.
1124 BOWLEY'S QUARTERS ROAD
BALTIMORE, MARYLAND 21220

Telephone: 335-9802

October 28, 1985

Re: Long Beach Marina Expansion

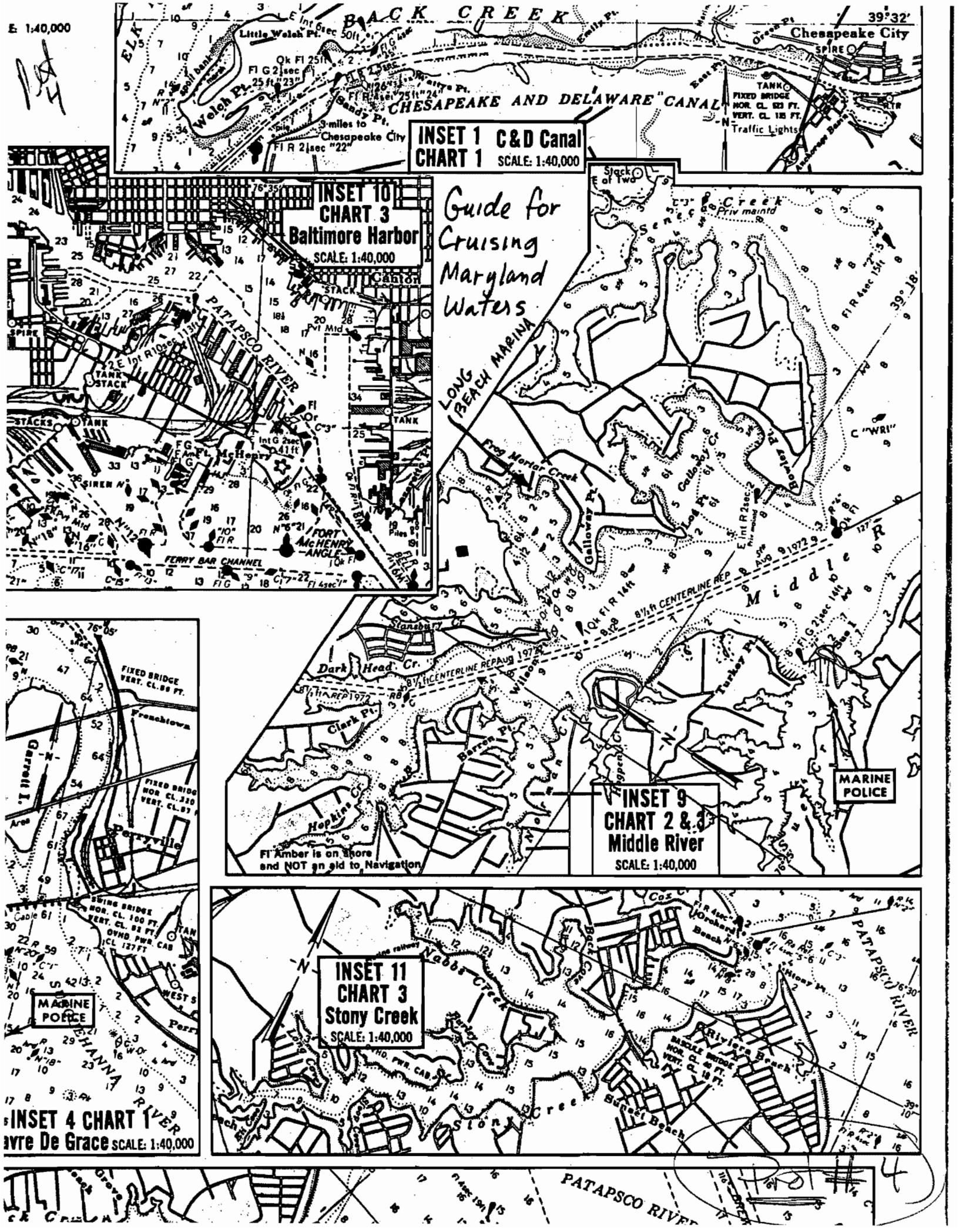
The Board of Directors of the Bowley's Quarters Improvement Association, Inc. is responsible for the review and action on any matters regarding zoning within its territorial jurisdiction. The Board of Directors appoints one member as their spokesperson who is authorized to testify on the behalf of the entire organization. The person authorized by the Board of Directors to testify in this case is Mr. H. Andrew Jones who is a current member of the Board of Directors.

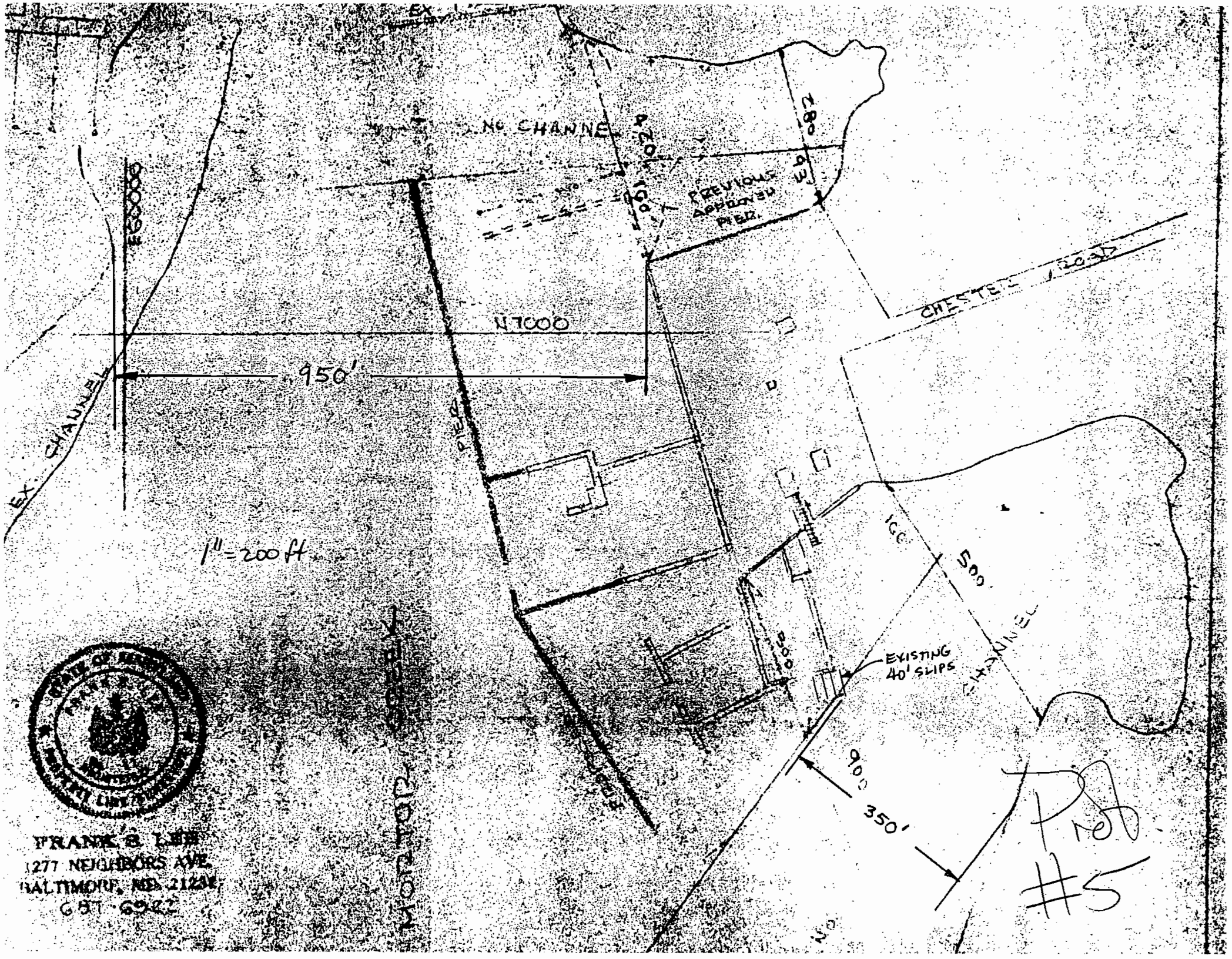
It has been resolved that the Bowley's Quarters Improvement Association, Inc. is against the expansion of the Long Beach Marina due to the adverse effect it will have on the safety, health and welfare of the community as well as the environmental impact on the Frog Mortar Creek, Middle River and Chesapeake Bay. The additional vehicular traffic to an already limited access location will be detrimental to the safety of the residents and their children in the area. The additional boat traffic created will be detrimental to the already overcrowded Frog Mortar Creek which currently contains at least (6) six major marinas, and Middle River which currently contains an additional (19) nineteen marinas, eleven (11) yacht clubs and numerous private homes with boats. Finally, the environmental affect to the water and land surrounding the marina could also be detrimental to the residents of the area.

President

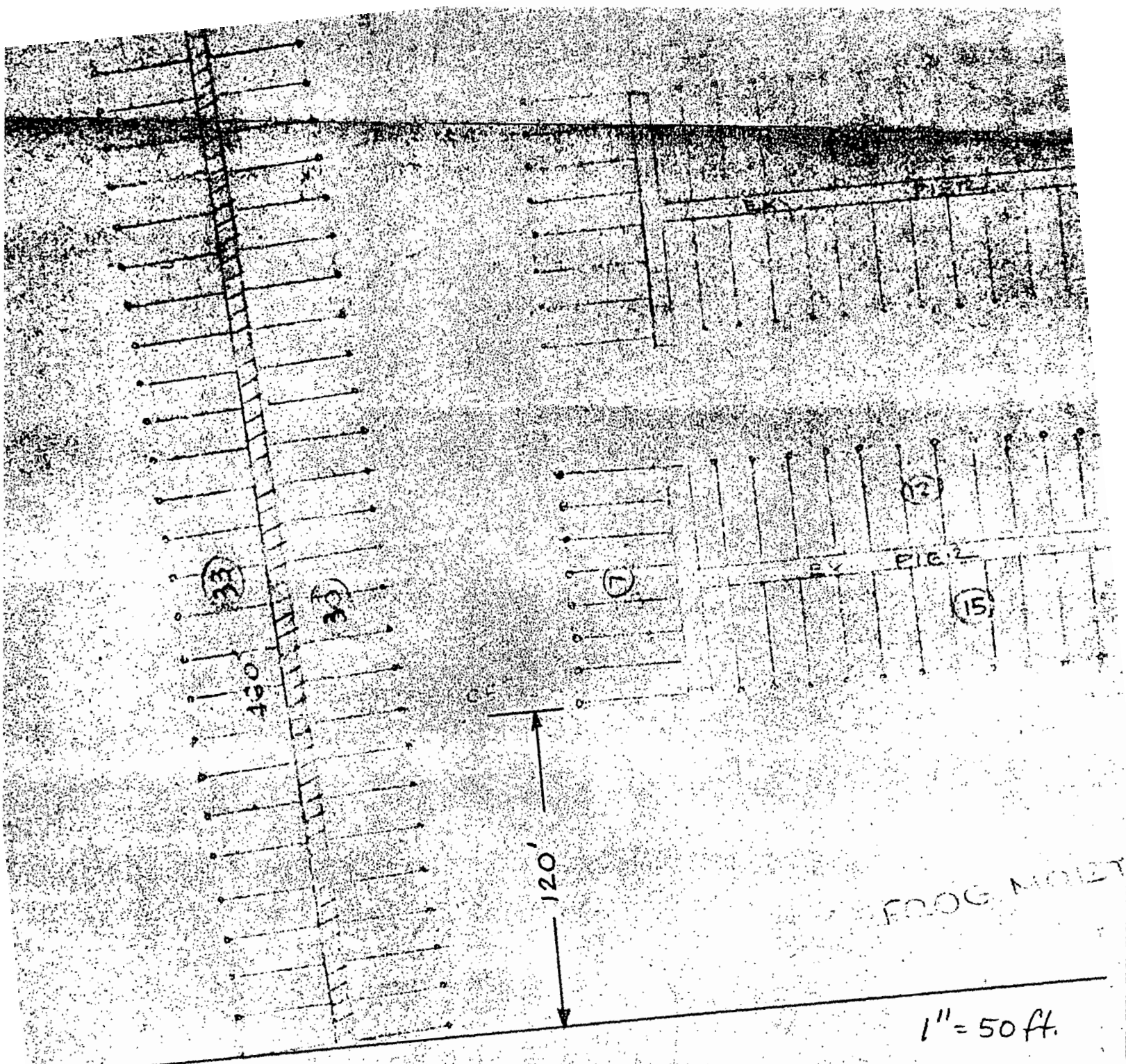
Secretary

Prot. No 3


E 1:40,000
BACK CREEK
ELK
Little Welch Pt.
Welch Pt.
Sandy Pt.
3 miles to Chesapeake City
CHESAPEAKE AND DELAWARE CANAL
Chesapeake City
39°32'
TANK
FIXED BRIDGE
Traffic Lights
INSET 1 C&D Canal
CHART 1 SCALE: 1:40,000
INSET 10
CHART 3
Baltimore Harbor
SCALE: 1:40,000
Guide for Cruising Maryland Waters
PATAPSCO RIVER
FORT McHENRY ANGLE
FERRY BAR CHANNEL
LONG BEACH MARINA
Seneca Creek
Priv maintd
Frog Mortar Creek
Middle R
Dark Head Cr.
Clark Pt.
Barren Pt.
Hopkins Cr.
Fl Amber is on shore and NOT an aid to Navigation
INSET 9
CHART 2 & 3
Middle River
SCALE: 1:40,000
MARINE POLICE
FIXED BRIDGE
Frenchtown
Perryville
SWING BRIDGE
INSET 4 CHART 1
Havre De Grace SCALE: 1:40,000
INSET 11
CHART 3
Stony Creek
SCALE: 1:40,000
Nabbs Creek
Orchard Beach
Riviera Beach
Sunset Beach
PATAPSCO RIVER



FRANK S. LEE
1277 NEIGHBORS AVE.
BALTIMORE, MD. 21234
687-6922



Plot No 6

Protestants #8

Diana Stump	816 Chester Rd
Margaret Baker	1110 Susquehanna Ave
George Baker	1110 Susquehanna Ave
John Frank	1114 Susquehanna Ave
Donald P Baker	1206 Susquehanna ave 21220
Beatrice G Baker	1206 Susquehanna ave 21220
Bertha Casson	1202 Susquehanna Ave. 21220
Thomas Casson	1202 Susquehanna ave 21220
Frederick Brant	1226 Susquehanna ave 21220
Ernest Clemmitt	1132 Susquehanna Ave 21220
Cone St Reavi	3308 Choptank ave 21220
H. ANDREW JONES	1026 Susquehanna Ave 21220
Mary E Spence	3504 Glenwood Rd 21220
Peggy King	1114 Susquehanna ave 21220
Richard Stump III	816 Chester Rd. 21220

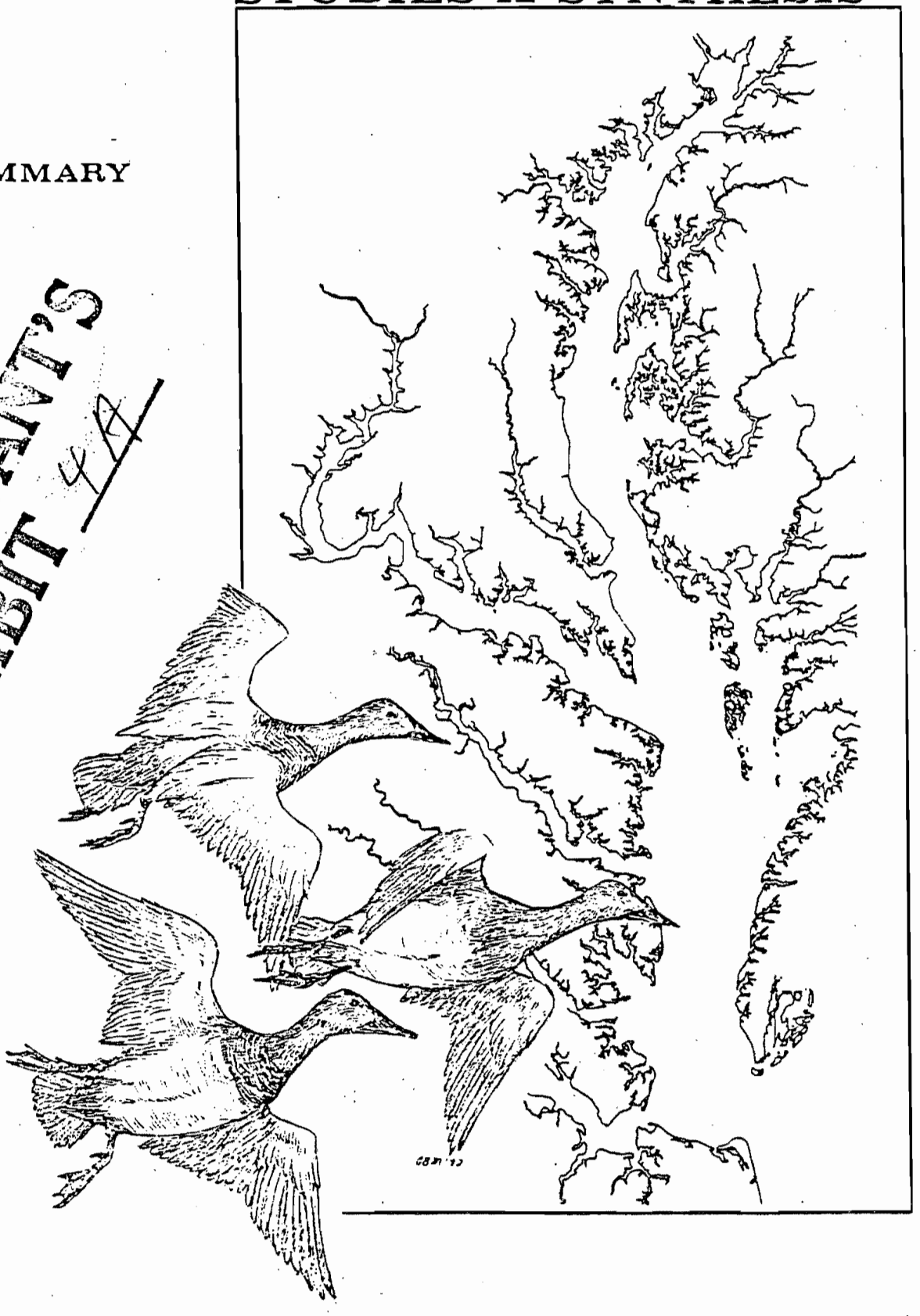
United States
Environmental Protection
Agency

Washington, D.C. 20460
September 1982

EPA

CHESAPEAKE BAY PROGRAM TECHNICAL STUDIES: A SYNTHESIS

SUMMARY



PROTESTANT'S EXHIBIT 4A

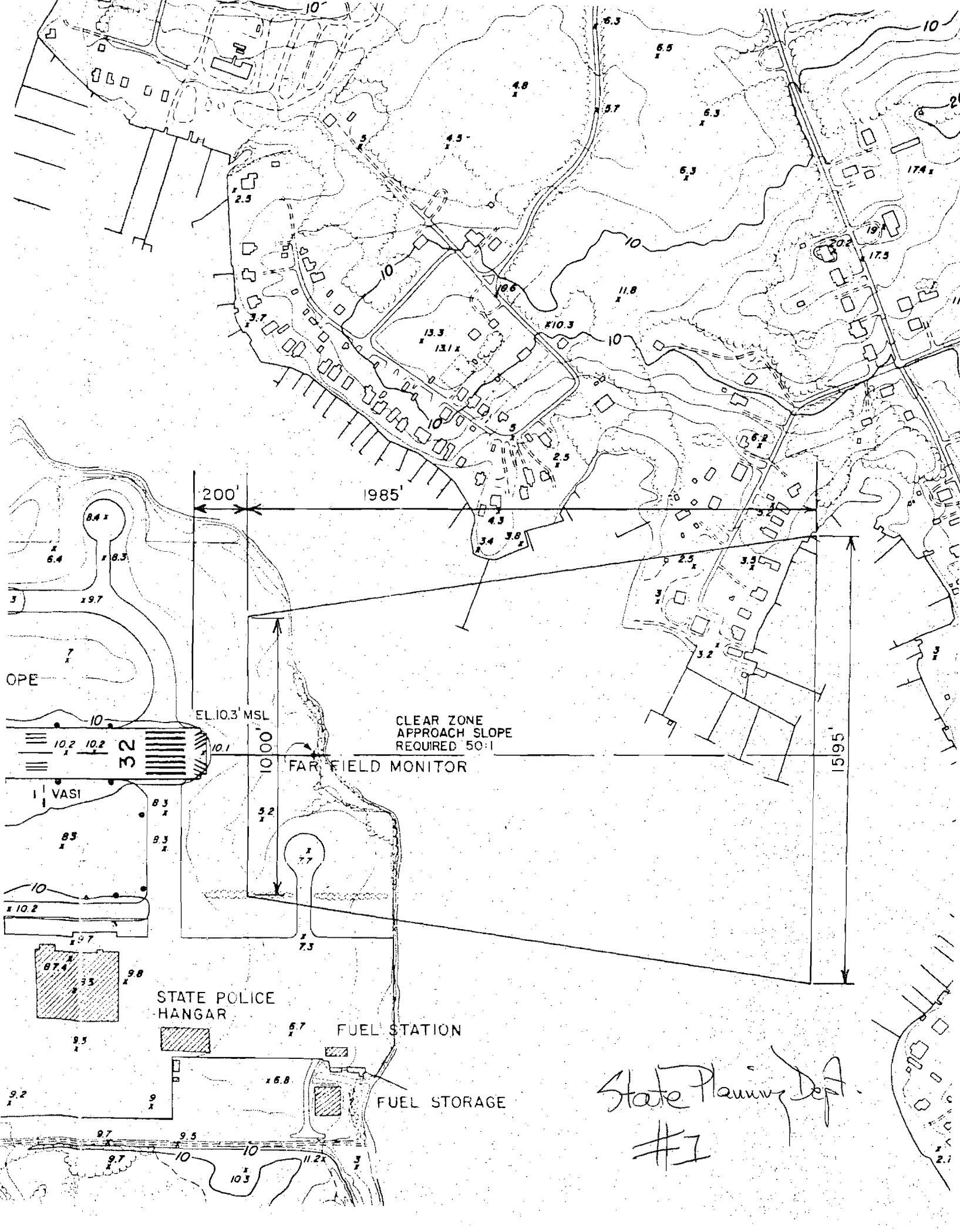
Protestants #1

Jan. 21, 1986 PROTESTANTS

NAME	ADDRESS	
Mr. & Mrs. H. Andrew Jones	1026 Susquehanna Ave.	21220
Greg McKibbin	1208 Susquehanna Ave	
Mary E. Spence	3504 Glenwood Rd	21220
Wm W. Spence	3504 Glenwood Rd	21220
Elmer J. Norberg	1216 Susquehanna Av	21220
[illegible] Bowman	1220 Susquehanna ave	
Fred Conroy	3301 Edwards ha	
John Lifel	3694 Galloway Rd.	21220
Mary Hubbard	4023 Bay Dr	21220
Frank Hubbard	4023 Bay Dr.	21220
Beatrice Baker	1206 Susquehanna ave	21220
Bertha Cazzon	1202 Susquehanna Avenue	21220
Cecil Edward Bromwell	1234 Susquehanna Ave	21220
Ronald P Baker	1206 Susquehanna ave	21220
Carl L Reavis	3308 Chesapeake ave	21220
Lillian Valvo	1914 Wilson Point Rd	21220
Paul V Hayes	4029 Bay Dr.	21220
Mary Lukowick	823 Chester Rd	21220
Margaret Schuler	824 Chester Rd	21220
Philip Edwards	1016 Susquehanna Ave	21220
Ernest Remmuth	1134 " "	21220

ON BEHALF OF BOWLEY'S QUARTERS IMPROVEMENT ASSOCIATION

H. Andrew Jones


200'
1985'
EL.10.3' MSL
CLEAR ZONE
APPROACH SLOPE
REQUIRED 50:1
1000'
FAR FIELD MONITOR
1595'
32
VASI
STATE POLICE
HANGAR
FUEL STATION
FUEL STORAGE
State Planning Dept.
#1

State Planning Dept. #2

(2) A generator who accumulates hazardous waste [for more than 90 days] is an operator of a storage facility and is subject to the requirements of COMAR 10.51.05[.] ; *unless the hazardous waste:*

(a) Is accumulated for 90 days or less; or

(b) Accumulated is less than 500 kilograms, contains less than 1 kilogram of acute hazardous waste, and is accumulated for 180 days or less from the date of initial generation or accumulation.

ADELE WILZACK
Secretary of Health and Mental Hygiene

[Md. R. Doc. No. 85-R-139-P. Filed at Div. of St. Doc. April 2, 1985.]

Title 11
DEPARTMENT OF TRANSPORTATION

Subtitle 03 STATE AVIATION ADMINISTRATION

11.03.05 Obstructions to Air Navigation

Authority: Transportation Article, §§5-204(d), 5-208 and 5-702, Annotated Code of Maryland

Notice of Proposed Action

The State Aviation Administration proposes to adopt new Regulations .01 — .11 under a new chapter, **COMAR 11.03.05 Obstructions to Air Navigation.** The purpose of these regulations is to comply with the provisions of Transportation Article, §5-702(a), and govern the erection and maintenance of any obstruction to air navigation that endangers the lives and property of persons using the air space for transportation or occupying land within this State.

Estimate of Economic Impact

I. Summary of Economic Impact. These regulations will govern the erection and maintenance of any structure, personalty, or vegetation that, due to its location, would endanger the lives or property of those persons using a licensed public-use airport or occupying adjoining lands. Authority to grant exemptions is provided to the local subdivisions for use through their existing appeal processes. When exemptions are granted, provisions are included to require precautionary measures consistent with the degree of risk. Both the State and local sub-divisions will incur expense in processing requests for exemptions, as will those property owners who might be required to install obstruction lighting and markings.

II. Types of Economic Impacts.	Revenue (+) Expense (-)	Magnitude
A. On issuing agency: The State Aviation Administration will incur expense in reviewing requests for exemptions and providing testimony at local hearings.	(-)	$6,000
B. On other State or local agencies affected: Local sub-divisions will incur added expense as a result of hearings to consider requests for exemptions.	(-)	$8,000
	Benefit (+) Cost (-)	**Magnitude**
C. On regulated industries or trade groups:	NONE	
D. On other industries or trade groups affected: There may be an indirect effect due to the purchase of goods and services to mark or remove obstructions.	(+)	Determined at the local level
E. Direct and indirect effects on public: Added expenses may be expected on the part of builders in the installation of obstruction lighting and markings, and by others in limiting the growth of vegetation.	(-)	Determined at the local level

III. Assumptions.

A. This figure is based upon the review of an estimated 100 construction applications per year for determination as to their impact on air navigation and participation in 20 hearings relative to exemptions.

B. This figure is the estimated local cost of processing 20 requests for exemptions.

D. Extent of expense will be determined by local zoning officials in connections with requests for ~~vacancies~~ variances

E. Extent of expense will be determined by local zoning officials in connections with requests for ~~vacancies~~ variances

Opportunity for Public Comment

Written comments may be sent to Evelyn M. Kellner, Chief, Administrative Services, State Aviation Administration, P.O. Box 8766, Baltimore/Washington International Airport, Maryland 21240 or call (301) 859-7228. These comments must be received by May 31, 1985. No public hearing will be scheduled.

.01 Definitions.

A. As used in these regulations, the following terms have the meanings indicated unless the context requires otherwise. Words not specifically defined that relate to aeronautical practices, processes, and equipment shall be construed according to their general usage in the aviation industry.

B. Terms Defined.

(1) "Administration" means the State Aviation Administration of the Maryland Department of Transportation, established pursuant to Transportation Article, §2-102(b)(2), Annotated Code of Maryland.

(2) "Administrator" means the State Aviation Administrator, whose office is established pursuant to Transportation Article, §2-102(b)(2), Annotated Code of Maryland, or his duly authorized representative.



CHESTER RD.
#1



AREA DIRECTLY
ACROSS FROM MY
DRIVEWAY
#2



AREA ALONG
CHESTER RD. #3

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
TOWSON, MARYLAND 21204
494-3211

NORMAN E. GERBER
DIRECTOR

September 7, 1984

Mr. Frank S. Lee
1277 Neighbors Avenue
Baltimore, MD 21237

Dear Mr. Lee:

I am writing you in regard to the petitions submitted for special exception, special hearing, and variance in regard to the expansion of Long Beach Marina on Frog Mortar Creek in Baltimore County. This facility is located within the State of Maryland Chesapeake Bay Critical Area and, therefore, you are required to provide the following information so that impacts on water quality and wildlife and plant habitats can be assessed in order to determine whether this proposed expansion meets the State of Maryland Critical Area Requirements. In order for us to make this review, the following information is required. (The attached outline provides you with the specific information that is necessary regarding each of the items listed below.)

1. Water depth
2. Soils
3. Impervious surfaces
4. Points of stormwater storage
5. Wildlife and fish habitat
6. Water quality
7. Mitigative measures

In regard to water quality, one of the items listed above, the County needs a very detailed, comprehensive analysis in order to determine the impact of the proposed marina on water quality. The information that is deemed necessary is as follows:

1. Existing water quality in Frog Mortar Creek in the immediate adjacent and downstream area. Testing should be performed for biological, chemical, and other properties which will in any way be affected by the proposed marina.

2. Identify the types, amounts, and sources of pollutants that will be generated by the full range of activities of the proposed marina. Determine what

absolute amounts of these pollutants will directly or indirectly flow into Frog Mortar Creek. Indicate the effect of mitigating measures on both the amount and impacts of the identified pollutants.

3. Determine or assess the anticipated overboard discharge of wastes (including oil products) from the boats utilizing the marina and its effect on water quality and biota from any turbidity created by boat propellers and generated wave action.

4. Survey of the biota of Frog Mortar Creek or Middle River for the area that you determine may be impacted by the proposed marina. Assess any impacts from the proposed marina on the identified biota. The biota is to be interpreted in a broad sense including both flora and fauna.

5. Rate of flushing or exchange rate in Frog Mortar Creek adjacent to site.

It is essential that the information being requested be obtained by these methods which are generally accepted as state of the art with respect to reliability, accuracy, and completenesss.

Should you have any questions regarding this matter, pleaase cal me at 494-3335.

Sincerely,

Paul J. Solomon for
EUGENE A. BOBER, Chief
Current Planning & Development Div.

EAB:PHS:eds

cc: Mr. Arnold Jablon
Zoning Commissioner
Baltimore County

Mr. Norman E. Gerber, Director
Office of Planning & Zoning

Mr. Robert W. Marriott, Jr.
Deputy Director of Planning

Ms. Andrea VanArsdale
Coastal Zone Planner

Mr. James G. Hoswell, Planner
Office of the Director

Ms. Stephanie Taylor
Department of Health

COASTAL ZONE
RECEIVED
SEP 14

People's Ex. #1

BALTIMORE COUNTY
DEPARTMENT OF TRAFFIC ENGINEERING
TOWSON, MARYLAND 21204
494-3550

STEPHEN E. COLLINS
DIRECTOR

February 6, 1984

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

Item No. 166	-ZAC- Meeting of January 3, 1984
Property Owner:	Mr. Joseph F. Evering, Jr., et ux
Location:	N/S Chester Road 1000' W. Susquehanna Avenue
Existing Zoning:	D.R. 5.5
Proposed Zoning:	Variance requiring the structure not to exceed 300' beyond mean low tide to allow the structure to extend 419' beyond the mean low tide.
Acres:	3.30
District:	15th

Dear Mr. Jablon:

This site is served by very narrow roads and traffic problems can be expected. All parking areas should be shown.

Michael S. Flanigan
Traffic Engineering Assoc. II

MSF/ccm

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

September 4, 1984

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

o0o

Nicholas B. Commodari
Chairman

MEMBERS

Bureau of
Engineering

Department of
Traffic Engineering

State Roads Commission

Bureau of
Fire Prevention

Health Department

Project Planning

Building Department

Board of Education

Zoning Administration

Industrial
Development

John O. Hennegan, Esquire
809 Eastern Boulevard
Baltimore, Maryland 21221

RE: Item No. 166 - Case No. 85-65-XSPHA
Joseph F. Evering, Jr., et ux
Special Exception, Special Hearing
and Variance Petition

Dear Mr. Hennegan:

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.

This combination hearing is required as a result of your clients' proposal to expand the existing boatyard/marina operation. In addition to the expansion of the piers and land utilized by this operation, variances are also required for the number of parking spaces provided and the paving of said spaces. A determination of whether this use should be exempted from the residential transition requirements (Section 1B01.1B.1.c of the Baltimore County Zoning Regulations) is also included.

In view of the fact that revised plans reflecting the comments from the Current Planning Office, were submitted, the petition was scheduled for a hearing.

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

Very truly yours,

Nicholas B Commodari

NICHOLAS B. COMMODARI, Chairman
Zoning Plans Advisory Committee

NBC:bsc
Enclosures
cc: Frank S. Lee
1277 Neighbors Ave., 21237

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO Arnold Jablon
Zoning Commissioner

Date September 7, 1984

FROM Norman E. Gerber, Director
Office of Planning and Zoning

SUBJECT Joseph F. Evering, Jr., et ux
No. 85-65-XSpHA

In view of the comments concerning the State's Chesapeake Bay Critical Area regulations (see letter to Frank S. Lee from Paul J. Solomon dated September 7, 1984), this office cannot offer final comments on the subject petition.

Norman E. Gerber, Director
Office of Planning and Zoning

NEG/JGH/sf

People's Counsel
Ex. #3

BOARD OF APPEALS

PETITIONER'S

EXHIBIT P.C No 3

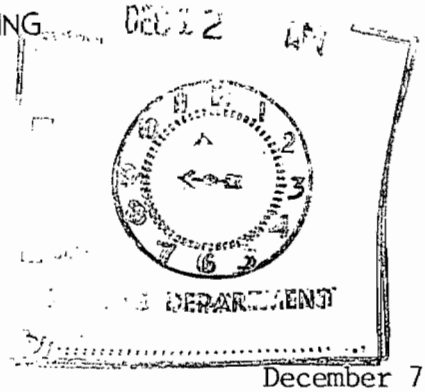
12/12/84
9g

85-65-XSPHA

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
TOWSON, MARYLAND 21204
494-3211

NORMAN E. GERBER
DIRECTOR

85/150



December 7, 1984

Mr. & Mrs. Joseph F. Evering, Jr.
800 Chester Road
Baltimore, Maryland 21220

Re: Proposed Slips for Long Beach Marina

Dear Mr. & Mrs. Evering:

This office has reviewed your plans for the proposed additional slips to the Long Beach Marina. It will be necessary for you to submit plans for a County Review Group Meeting so that we may determine if the proposal complies with the County requirements and so that we may make a finding that the property can comply with the Chesapeake Bay Critical Areas Legislation. If you have any questions please contact me at 494-3335.

Sincerely yours,

Eugene A. Bober
Chief, Current Planning & Development

EAB:rh

cc: James Markle
Arnold Jablon

People's Counsel Ex #4

People's Counsel
Ex. #4

P.C. Exh 6

Long Beach Marina

Location - Chester Rd.

No. of existing slips 201

" " proposed " 178

Aver. trips per slip weekday 3 } Source - Trip Gen
" " " " Sat. 3.2 } 3rd edition
" " " " Sun 7.9 } I.T.E.

Existing

Wk. day	3 x 201	= 603	≈ 603
Sat	3.2 x 201	= 643.2	≈ 643
Sun	7.9 x 201	= 1587.9	≈ 1588

Proposed

Wk. day	3 x 178	= 534	534
Sat.	3.2 x 178	= 569.6	≈ 570
Sun.	7.9 x 178	= 1406.2	≈ 1406

Totals

Wk. day	603 + 534	= 1137
Sat	643 + 570	= 1213
Sun	1588 + 1406	= 2994

M. S. Flanagan






LONG BEACH
MARINE


SPEE
LIMI
25












STOP


CHESTER RD



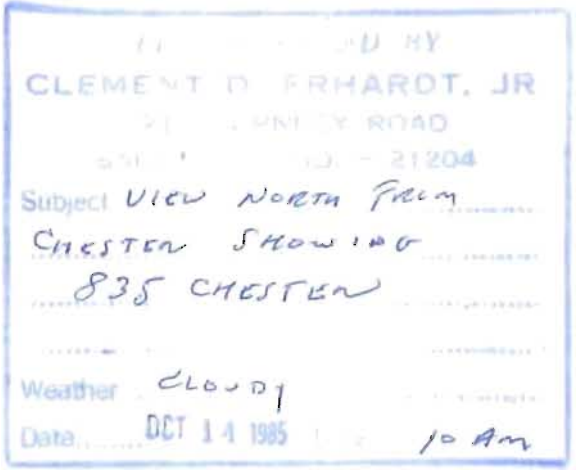

NO
THRU
STREET




STOP



PC Exh 7A


CLEMENT D ERHARDT, JR
Subject VIEW NORTH FROM
CHESTEN SHOWING
835 CHESTEN
Weather CLOUDY
Date OCT 14 1985
10 AM

6

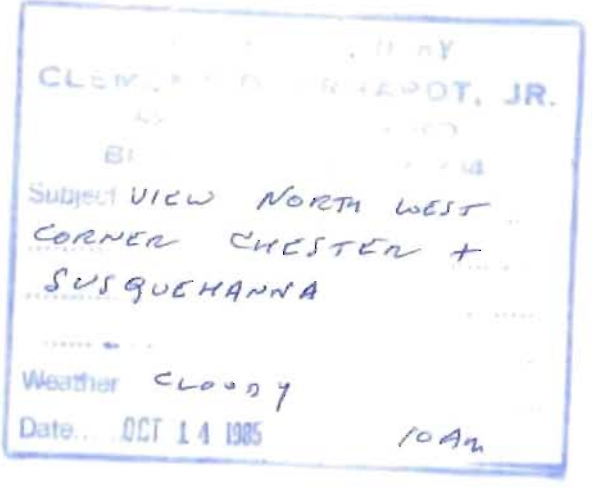


PCGth 1B

CLEN [illegible]APOT, JR.
[illegible]
[illegible]1204
Subject: VIEW NORTH FROM
CHESTEN SHOWING
839 CHESTEN
Weather CLOUDY
Date.. OCT 14 1985 10 AM



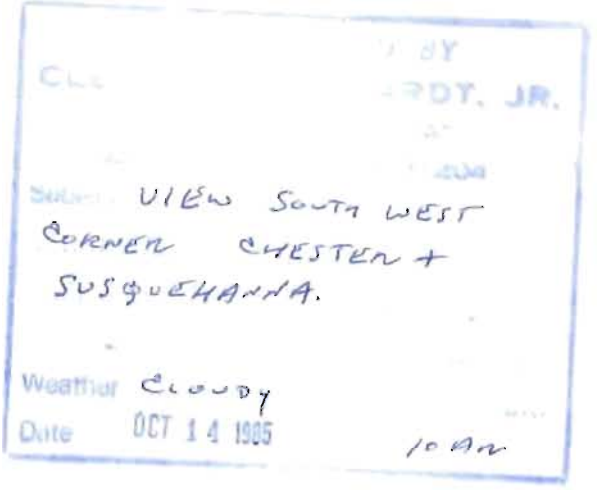
P.C. Exh 1C


CLEM
ABBOT, JR.
Subject VIEW NORTH WEST
CORNER CHESTER +
SUSQUEHANNA
Weather CLOUDY
Date OCT 14 1985
10 AM

4

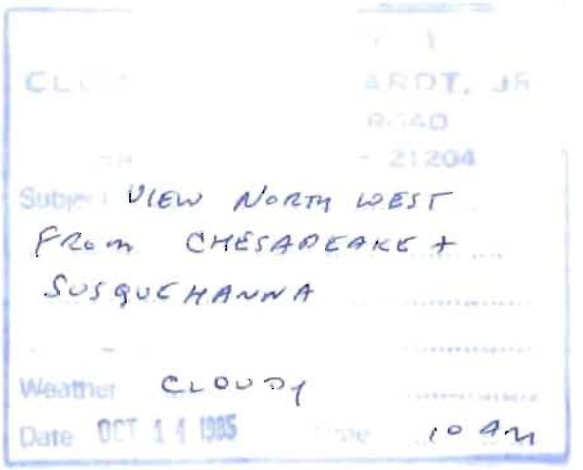


PC Exh 7D


BY
DY, JR.
Subject VIEW SOUTH WEST
CORNER CHESTER +
SUSQUEHANNA.
Weather Cloudy
Date OCT 14 1985
10 AM



P.C. 6th 7I


ARDT, JR
ROAD
21204
Subject VIEW NORTH WEST
FROM CHESAPEAKE +
SUSQUEHANNA
Weather CLOUDY
Date OCT 1 4 1985
Time 10 AM

1C



PC 6th TE

CLEMENT [illegible] RHARDT, JR

[illegible] EY ROAD

[illegible] - 21204

Subject VIEW OFFICE BLDG.
ON SITE FROM PARKING LOT

Weather CLOUDY

Date OCT 14 1985 10 AM

2



P.C.Exh 7H

PHOTOGRAPHED BY
CLEMENT O. ERHARDT, JR.
[illegible] HINLEY ROAD
BALTIMORE, MD - 21204
Subject VIEW NORTH ON SUSQUEHANNA FROM SOUTH OF CHESTER
Weather CLOUDY
Date OCT 14 1985 Time 10 AM



P.C Exh 7J

CLEM[illegible] ERHARDT, JR.

Subject VIEW RIVER
SHOWING PIER

Weather CLOUDY

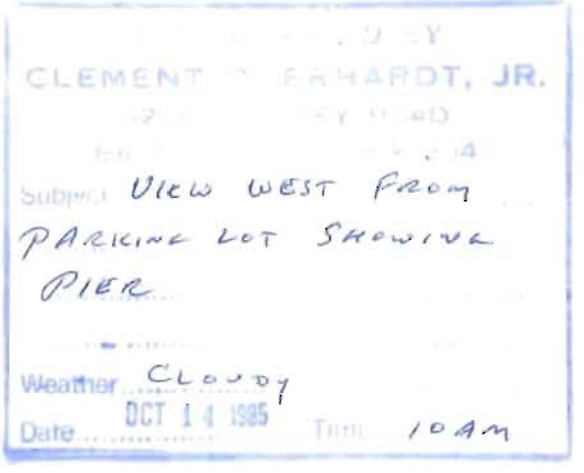
Date OCT 14 1985 10 Am

9



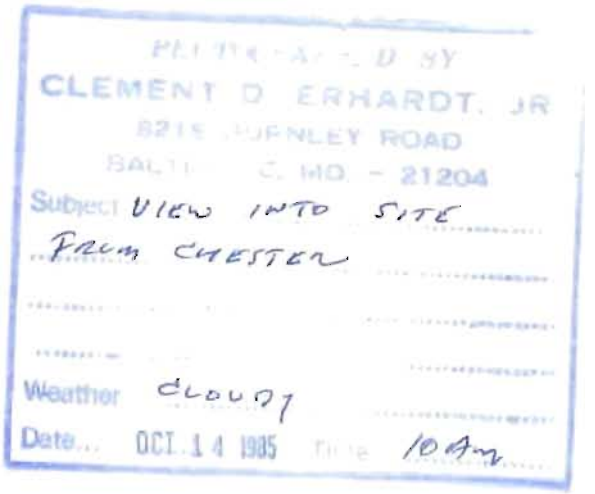
p.c & h.

7K


CLEMENT
HARDT, JR.
Subject VIEW WEST FROM
PARKING LOT SHOWING
PIER
Weather CLOUDY
Date OCT 14 1985
Time 10AM


ZONING APPEAL
PUBLIC HEARING
494 3180

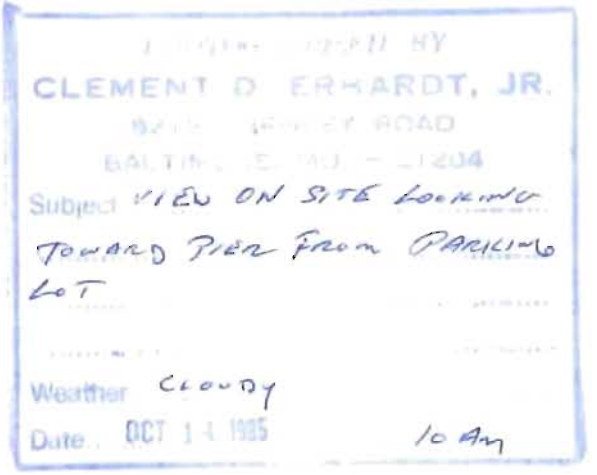
P.C.Gth
7L


PHOTOGRAPHED BY
CLEMENT D ERHARDT, JR
8215 HURNLEY ROAD
BALTIMORE, MD. - 21204
Subject VIEW INTO SITE
FROM CHESTER
Weather CLOUDY
Date OCT 14 1985 Time 10 AM

7

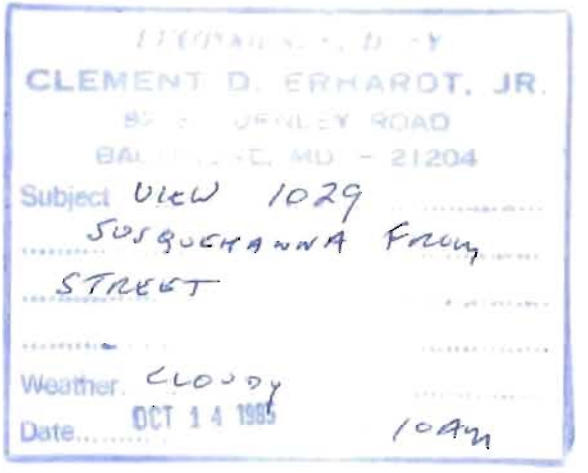


P.C. 6th 7F

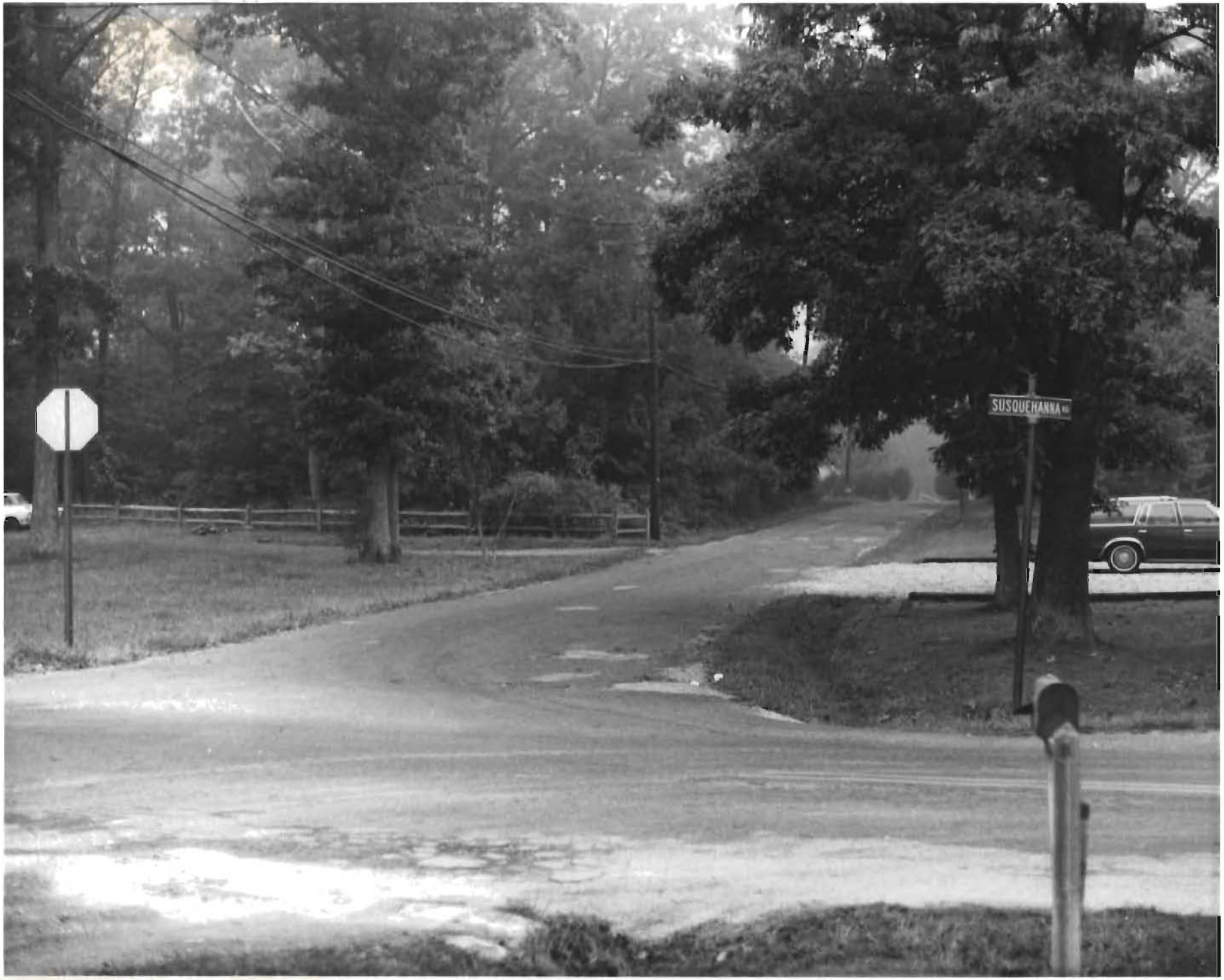

CLEMENT D. ERHARDT, JR.
Subject VIEW ON SITE LOOKING
TOWARD PIER FROM PARKING
LOT
Weather CLOUDY
Date OCT 14 1985
10 AM



P.C. 6th 16


CLEMENT D. ERHAROT, JR.
Subject VIEW 1029
SUSQUEHANNA FRONT
STREET
Weather CLOUDY
Date OCT 14 1985
10AM

12


SUSQUEHANNA RD

21A View of Susquehanna and Chester Road. Center Road leads into the subject property.

PHOTOGRAPH BY
CLEMENT O. EKHAROT, JR
[illegible]

OCT 14 1985



2/B View of a typical house along ~~Exeter~~ Rd.
Dexter

PHOTOGRAPH BY
CLEMENT G. BRANDT, JR.
[illegible]
OCT 14 1985



Zac View of Chester Road
showing Bob + Jim's Crab House

PHOTO... BY
CLEMENT ... GAUT, JR
... ROAD
... 21234
OCT 14 1995



24D View of the property on Chester Rd adjacent to the subject property

OCT 14 1985


ZONING APPEAL
PUBLIC HEARING

24c. View of the Chester Road as it leads into the subject property.

PRESENTED BY
CLERK
OCT 14 1985


LONG BEACH
MARINE

26P. View of some improvements on the subject property

PHOTOGRAPH BY
CLEMENT D. ERHARDT, JR.
8218 BURNLEY ROAD
BALTIMORE, MD. 21204

OCT 14 1985



21G View of swimming pool on the subject property

PHOTOGRAPHED BY
CLEMIE V... CRAIGHILL, JR
B... LAND
BALTIMORE ... MARYLAND
OCT 1 8 1985



28½ View from Frog Morton Creek looking North at the most southern pier on the subject petition



2-5 View from Frog Mortar Creek at the location of the northern pier looking into the subject property

PHOTOGRAPH BY
CLEMENT O. ABBOTT, JR.
[illegible]

OCT 14 1985



26 View of the entrance into the Marina from the Frog Morton Creek side also shows the bar pumps.

PHOTOGRAPH BY
CLEMENT D. ERHARDT, JR.

OCT 14 1985



2V/k Types of boats in the Marina

OCT 1 : 1985



DLL Type of boats in the Marine

PHOTOGRAPH BY
ROBERT G. EDWARDS, JR.
[illegible]

OCT 14 1985



21A View from the proposed
Southern pier

OCT 1 1 1995



2/2 View from the proposed

Northern pier

PHOTOGRAPH BY
CLEMENT C. MANOT, JR
BALTIMORE, MD. 21208

OCT 14 1985

C.G. Doc. No. 19 Folio 117 File 86-CG-0022

86 CG 22

WRITTEN TRANSCRIPTS

Joseph Evering, Jr., et ux

VS. #6

Phyllis C. Friedman, People's Counsel

Malcolm R. Spicer, Jr., Esq. and
Thomas J. Bollinger, Esq.,
Attorneys for Baltimore County

Plaintiffs

86 22

Zoning File No. - 85-65-XSPHA

Second half of Day 1, begins with conclusion of Dr. Pine; witness before Dr. Pine (Mr. Evering) is gone, rest of day is complete

Day 2 - Complete Transcript.
Where Mr. Gontrum begins
to Speak on pg. 99 ??
Where reporters Change ↓ ↓
B. Dauken has Conclusion of
transcript which I believe
has been distributed.

NOTES - Joseph Evering 4/21/87

08/06/84 Petition filed

04/25/85 Zoning Commissioner grants special exception and variances subject to restriction

05/85 Appeals filed by all parties: People's Counsel
Petitioners
Protestants
Planning & Zoning

10/29/85 First hearing day -hearing as to applicability of Critical Areas legislation (transcript of testimony is complete)

12/12/85 Majority ruling on motion by Board holding that Critical Areas legislation is not applicable

01/86 Appealed by People's Counsel and Protestants of Board's ruling

01/21/86 Hearing before Board as to applicability of Aviation Zoning Regulations and ruling from bench that Aviation Regulations not applicable. (Transcript of testimony is complete)

08/07/86 People's Counsel and Protestants appeals remanded to Board by Judge Sfekas of Circuit Court in that appeal not timely because Board has not ruled upon entire motion.

12/16/86) Hearing on merits per Judge Sfekas
12/17/86) " " " " " "

12/16/86 Missing: Testimony of Joseph Evering and all but last seven (7) pages of Dr. Pine, which is end of cross-exam by Friedman.

Have : Walter Ewell by Gontrum p 8
By Harrison p 19
(complete transcript of Ewell) by Friedman p 32

12/17/86 Complete transcript:

Fred Klaus	by Gontrum	p 3
	by Harrison	p 35
Joseph Boone	by Gontrum	p 48
	by Friedman	p 52
Owen Butterworth	by Gontrum	p 59
Burton Greenwood	by Gontrum	p 65
	by Harrison	p 70
Richard Stumpf	by Harrison	p 74
	by Gontrum	p 83
	by Harrison	p 87
Andrew Jones	by Harrison	p 88
*Reporters change here & Danker begins transcript	by Gontrum	p 14

Mike Flannigan by Friedman p 22
by Gontrum p 38
by Harrison p 47

oooooooooooooooooooooooooooooooooooooooo

kcw

ORIGINAL

IN THE MATTER OF JOSEPH F. EVERING, JR., et ux.	*	BEFORE THE
	*	COUNTY BOARD OF APPEALS
	*	OF BALTIMORE COUNTY
	*	Case No. 85-65-XSPH
	*	April 22, 1987

* * * * *

The above-entitled cause came on for hearing before the County Board of Appeals of Baltimore County at the Courthouse, Towson, Maryland 21204 at 10 o'clock a.m., on April 22, 1987.

* * * * *

BOARD MEMBERS:

LAWRENCE E. SCHMIDT, Acting Chairman
WILLIAM T. HACKETT

APPEARANCES:

JOHN B. GONTRUM, Esquire
ROBERT J. ROMADKA, Esquire
On behalf of the Petitioners

T. ROGERS HARRISON, Esquire
On behalf of Protestants

PHYLLIS COLE FRIEDMAN, Esquire
On behalf of People's Counsel

Reported by:
C.E. Peatt

BEFORE THE BALTIMORE COUNTY BOARD OF APPEALS

IN THE MATTER OF	:	No. 8565XSPHA
JOSEPH F. EVERING, JR.,	:	December 17, 1986 12:00 noon
ET UX	:	Old Court House Towson, Maryland
	:	
	: :	

BOARD MEMBERS:

LAWRENCE E. SCHMIDT
KEITH S. FRANZ
WILLIAM T. HACKETT

APPEARANCES:

JOHN GONTRUM, ESQUIRE,
In behalf of the Petitioners

T. ROGERS HARRISON, ESQUIRE,
In behalf of the Protestants

PHYLLIS COLE FRIEDMAN, ESQUIRE,
Assistant County Solicitor,
People's Counsel

Reported by:

Susan A. Kambouris

BERNARD DANKER ASSOCIATES
14401 OLD YORK ROAD
PHOENIX, MD 21131
666-8877

SERVING MARYLAND ATTORNEYS SINCE 1947

ORIGINAL

IN THE MATTER OF	*	BEFORE THE
JOSEPH F. EVERING, JR., et ux.	*	COUNTY BOARD OF APPEALS
	*	OF BALTIMORE COUNTY
	*	Case No. 85-65-XSPH
	*	December 17, 1986

* * * * *

The above-entitled cause came on for hearing before the County Board of Appeals of Baltimore County at the Courthouse, Towson, Maryland 21204 at 10 o'clock a.m., December 17, 1986.

* * * * *

BOARD MEMBERS:

KEITH S. FRANZ, Chairman
WILLIAM T. HACKETT
LAWRENCE E. SCHMIDT

APPEARANCES:

JOHN B. GONTRUM, Esquire
ROBERT J. ROMADKA, Esquire
On behalf of Petitioners

T. ROGERS HARRISON, Esquire
On behalf of Protestants

PHYLLIS COLE FRIEDMAN, Esquire
People's Counsel

Reported by:
C.E. Peatt

ORIGINAL

IN THE MATTER OF JOSEPH F. EVERING, JR., et ux.	*	BEFORE THE
	*	COUNTY BOARD OF APPEALS
	*	OF BALTIMORE COUNTY
	*	Case No. 85-65-XSPH
	*	December 16, 1986

* * * * *

The above-entitled cause came on for hearing before the County Board of Appeals of Baltimore County at the Courthouse, Towson, Maryland 21204 at 10 o'clock a.m., December 16, 1986.

* * * * *

BOARD MEMBERS:

KEITH S. FRANZ, Chairman
WILLIAM T. HACKETT
LAWRENCE E. SCHMIDT

APPEARANCES:

JOHN B. GONTRUM, Esquire
ROBERT J. ROMADKA, Esquire
On behalf of Petitioners

T. ROGERS HARRISON, Esquire
On behalf of Protestants

PHYLLIS COLE FRIEDMAN, Esquire
People's Counsel

Reported by:
C.E. Peatt

IN THE MATTER OF JOSEPH EVERING * BEFORE THE

* COUNTY BOARD OF APPEALS

* OF BALTIMORE COUNTY

* CASE NO. 85-65-XSPHA

* October 29, 1986

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County, at Room 218, at the Courthouse, Towson, Maryland 21204 at 10 a.m., October 29, 1985.

* * * * *

BOARD MEMBERS:

LAWRENCE SCHMIDT, Esquire
Chairman
KEITH FRANZ, Esquire
DIANA VINCENT

APPEARANCES:

ROBERT J. ROMADKA, Esquire
JOHN O. HENNEGAN, Esquire
DONALD BRAND, Esquire
On behalf of Petitioner

T. ROGERS HARRISON, Esquire
On behalf of Protestants

JUDITH A. ARNOLD, Esquire
On behalf of Assistant Attorney General

PHYLLIS COLE FRIEDMAN, Esquire
PETER MAX ZIMMERMAN, Esquire
On behalf of Peoples Counsel

IN THE MATTER OF JOSEPH F. EVERING * BEFORE THE COUNTY BOARD OF

* APPEALS OF BALTIMORE COUNTY

* CASE NO. 85-65-XSPHA

* January 21, 1986

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County, Room 218, at the Courthouse, Towson, Maryland 21204 at 10 a.m., January 21, 1986.

* * * * *

BOARD MEMBERS:

LAWRENCE SCHMIDT, Esquire
Chairman
WILLIAM T. HACKETT
KEITH S. FRANZ, Esquire

APPEARANCES:

ROBERT J. ROMADKA, Esquire
JOHN O. HENNEGAN, Esquire
On behalf of Petitioner

T. ROGERS HARRISON, Esquire
On behalf of Protestants

JUDITH A. ARNOLD, Esquire
Assistant Attorney General

PHYLLIS COLE FRIEDMAN, Esquire
On behalf of People's Counsel

lot," "lot depth," "through lot" and then defines "interior lot" simply as "[a] lot other than a corner or through lot." It generically defines "lot of record," as "[a] *parcel of land* with boundaries as recorded in the land records of Baltimore County on the same date as the effective date of the zoning regulation which governs the use, subdivision or other condition thereof." *Id.* (emphasis added). The term "lots" as used in ordinances generally means parcels or tracts of land. In other words, when setbacks in respective districts are established, they generally apply to all tracts, parcels or pieces of land within the district, as indicated in the Baltimore County ordinance's definition of "setback." *See id.*

Generally, and in Baltimore County, the title or purpose clauses of zoning ordinances express concern with undersized parcels or lots, not with parcels that exceed the minimum dimensional requirements of the ordinances. The ordinance at issue here, in section 1A04.1(A)(1), which deals with Resource Conservation Zones (in the case *sub judice*, an "R.C.5 " (Rural-Residential Zone)), states in its "legislative findings" clause:

> It is found that:
>
> . . . .
>
> c. In some cases *lot sizes are inadequate* to assure long-term adequacy of on-lot sewer and water systems;
>
> d. That unless measures are implemented to assure more rational growth patterns, *including adequate lot size*, undue financial hardships will be placed on Baltimore County and the life, safety and general welfare of the citizens of the county will be adversely affected. [Emphasis added.]

The "purpose" clause provides, in relevant part:

the merits of this statement, but wish to draw the attention of the Zoning Commissioner to the site plan revised 8/1/84 which is filed in the case which is the subject of this memorandum.

The piers which Petitioner wishes to construct are the natural extension of the existing piers which were constructed as a result of the Special Exception granted in 1955 in case number 35-35 X. The Petitioner has not only filed a Petition for Special Hearing to Amend 64-160 X by eliminating those piers but has filed a Special Hearing to Amend 35-35 X and 64-50-SPX to add the additional piers which he previously had intended to extend off the 1964 Special Exception, but found said construction unfeasible and now has requested them to be constructed off of the property which is the subject of the 1955 Special Exception. Since the Protestants indicate that additional construction off this parcel can occur at any time after the 1955 Special Exception was granted when referring to the southern pier it would seem that the same logic and arguments would accrue to the construction of the additional piers off the previous existing piers that were constructed after the 1955 Special Exception was granted off of the parcel which was the subject of that Special Exception. Certainly there can be no argument that the 1955 Special Exception was not completed pursuant to permits and Zoning Laws and Regulations and therefore there is no need to file an additional Special Exception and that a mere amendment of the site plan as the Petitioner has proposed would be all that is necessary; provided the Zoning Commissioner feels that the addition is in compliance with the general character of the property and in accordance with the previous Special Exception and is not detrimental to the public health or welfare.

LAW FIRM
ROMADKA, GONTRUM,
HENNEGAN & FOOS
ESSEX, MARYLAND
21221

II. THE CONSTITUTIONALITY OF DEPRIVING THE LAND OWNER OF HIS RIGHTS TO USE THE ONE AND THREE QUARTER ACRES ON THE NORTH SIDE OF CHESTER ROAD AS A BOAT YARD.

The question comes to mind as whether or not the zoning ordinance being strictly construed in this incidence would be unconstitutional as being arbitrary or unreasonable, capricious or discriminatory and thus a violation of the provisions of Article 23 of the Declaration of Rights of the Maryland Constitution and a denial of due process of the law provided by the 14th Amendment of the United States Constitution by depriving the Petitioner of his right to continue to use the parcel as provided for in Special Exception 64-160 X. "In Northwest Merchants Terminal, Inc. vs. O'Rourk, 191 Md. 171, 60 A2nd 743, 1948, the Baltimore City property had been a commercial use district since the original Zoning Ordinance in 1931 and in the immediate vicinity was a large area of residential classification. In 1945, the Appellant purchased property in the commercial district for expansion of its storage facilities which it required for its building materials and manufacturing business, and because of the property's access to a railroad siting. After obtaining an occupancy permit, it cleared and filled the property and otherwise prepared it for use at a cost of Fifty Thousand Dollars ($50,000.00) which included the purchase price. By 1946 preparations were completed and the property was being used.

In October 1945, and amendment to the Ordinance was proposed which changed the property and the second commercial use district to a residential use district. While this amendment was under consideration, the Appellant filed three applications for building permits. This incurred considerable neighborhood oppositions but the permits were issued. In April 1946, after undergoing a tortuous journey through the various public agencies, the Ordinance was approved. A group of nearby property owners sued for injuction in a Declaration that the

LAW FIRM
ROMADKA, GONTRUM,
HENNEGAN & FOOS
ESSEX, MARYLAND

three building permits were void. On an Appeal from a decree enjoining the Appellant from erecting the three warehouse buildings and from using the property for any use not permitted by the Ordinance Amendment, the Appellant contended, inter alia that the amendment was unconstitutional as applied to it and depriving the property without due process and denying it equal protection under the law. Court of Appeals reversed the Decree, holding the Ordinance Amendment was invalid as applied to the Appellant for being unreasonable, arbitrary and contrary to the section of the zoning enabling act (acts of 1927, Chapter 7 and 5, Article 66 B, Section 3, which requires zoning regulations to be made in accordance with the comprehensive plan and with reasonable consideration among other things, to the character of the district and it's suitability for particular purposes)."

To deny the Plaintiff this Special Exception that was granted in 1964 in case number 64-160-X would be an unconstitutional taking of his land and depriving him of the use thereof without due process and would restrict the Petitioner from using the property for any other reasonable purpose. The Petitioner testified at the time of the hearing that the property was subject to the Noise Act of the State of Maryland which would not allow any residential development which is the only permissible use in a DR 5.5 zone as a matter of right and that the only use permitted as a result of the Noise Act is recreational which is in fact the manner in which the property is presently being used by the Petitioner. See also, Vine vs. Zabriskie, 122 N.J.L.4, 6, 3 A.2nd 886, 887, (1939).

III. SPECIAL EXCEPTION CAN BE GRANTED FOR THE ADDITIONAL PIERS ON BEHALF OF THE PETITIONER.

The Petitioner filed a Special Exception for two lots located on the north and south side of Chester Road not included in Special Exception cases 35-35 X, 64-57 SPH, 64-160 X in a DR 5.5 zone to be used as a boat yard including the road bed of

LAW FIRM
ROMADKA, GONTRUM,
HENNEGAN & FOOS
ESSEX, MARYLAND
21221

Chester Road. A hearing was conducted on that Petition and the elements as required by 502.1 were offered to the Court and were not contravened by the Protestants. A site development plan date 8/1/84 was submitted and entitled Plat to accompany Petition for Special Exception, Special Hearing and Variances with the Petition for Special Exception and was submitted to the Court at the time of the hearing and placed in evidence. Plat indicated the additional piers on it and was obtained by the Protestants prior to the hearing.

The Protestants indicate that the only method by which the Petitioner can obtain his request is by way of a new Special Exception since 64-160 X in their opinion has expired or terminated. The Petitioners have in addition to the other alternatives proceeded in this manner and have given the Zoning Commissioner the opportunity to grant a Special Exception on the north side and south side parcels in accordance with the petition and site plans that had been submitted and it is the Petitioners position that in the event that the Zoning Commissioner feels the criteria for 502.1 has been satisfied by the Petitioner and that the Special Exception requested will not adversely affect that criteria then the Commissioner can grant the Special Exception including the new lots and ratifying what was previously granted, including the additional piers requested by the Petitioner.

Evidence of granting a prior application for special zoning exception which had lapsed (which the Petitioners in this case contend has not occurred) may properly be admitted at a hearing before the zoning commissioner on subsequent application for an exception involving the same property. "Amberly Community Association vs. Board of Appeals of Anne Arundel County, 182 A.2nd 811, 229 Md. 261, (1962)."

LAW FIRM
ROMADKA, GONTRUM,
HENNEGAN & FOOS
ESSEX, MARYLAND
21221

IV. CONCLUSION.

It is the Petitioners' position that the rights of the Petitioner to the Special Exception granted in 64-160 X have vested for all the reasons cited above and that he has the right to continue to use the property in accordance with the Order of 30th day of June 1964. However, the Special Hearing involves an amendment of a site plan and the addition of piers to the 1955 Special Exception in case number 35-35 X and the removal of the piers that were granted in Special Exception 64-160 X and that the granting of said petitions would not be harmful, detrimental to the general public health, safety and welfare. In the event that the Zoning Commissioner would find that there are no vested rights in 64-160 X, such a ruling would be unconstitutional since it would deprive the owner of any reasonable use of his land and that the only reasonable use is the use that it is presently being used for and that finally Zoning Commissioner can grant a Special Exception for the uses as set out on the site plan dated and revised 8/1/84 since the advertised description advertised the entire parcel of land as part of the hearing.

Respectfully submitted,

John O. Hennegan
809 Eastern Boulevard
Baltimore, Maryland 21221
Phone No.: 686-8274

Attorney for Petitioner

LAW FIRM
ROMADKA, GONTRUM,
HENNEGAN & FOOS
ESSEX, MARYLAND

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 31st day of October, 1984, the aforegoing Memorandum of Petitioners was mailed to D. Rodgers Harrison, Mudd, Harrison and Birch, 306 West Joppa Road, Towson, Maryland 21204, attorneys for the Protestants.

John O. Hennegan

85-1017
Case file

LAW FIRM

Romadka, Gontrum, Hennegan & Foos

GERMANIA FEDERAL BUILDING
809 EASTERN BOULEVARD
ESSEX, MARYLAND 21221
TELEPHONE (301) 686-8274

ROBERT J. ROMADKA
JOHN B. GONTRUM
JOHN O. HENNEGAN
CHARLES E. FOOS, III

OF COUNSEL
ALFRED M. WALPERT

October 29, 1984

Mr. Arnold Jablon
Zoning Commissioner
OFFICE OF PLANNING AND ZONING
County Courts Building
Towson, Maryland 21204

Reference: Petition for Special Exception,
Petition for Special Hearing
Petition for Variances of North
Side of Chester Road, Joseph F.
Evering, et ux, 85-65-H-XSPHA

Dear Mr. Jablon:

Enclosed you will find the original and ~~one copy~~ of the Memorandum of Petitioners to be filed in the above captioned case.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

John O. Hennegan

JOH/dlw

Enclosure

cc: T. Rodgers Harrison, Esquire
Mr. Joseph F. Evering, Jr.

RE: PETITION FOR SPECIAL EXCEPTION: BEFORE THE ZONING COMMISSIONER
PETITION FOR SPECIAL HEARING
PETITION FOR VARIANCES : OF BALTIMORE COUNTY
N/S Chester Rd., 590' W of
Severn Rd. (800 Chester Rd.) :
15th District
:
JOSEPH F. EVERING, JR., et ux, Case No. 85-65-XSPHA
Petitioners :

: : : : : : :

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 the passage of any preliminary or final Order.

Phyllis Cole Friedman
People's Counsel for Baltimore County

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

I HEREBY CERTIFY that on this 20th day of August, 1984, a copy of the foregoing Entry of Appearance was mailed to John O. Hennegan, Esquire, and Robert J. Romadka, Esquire, Romadka, Gontrum, Hennegan & Foos, 809 Eastern Blvd., Baltimore, MD 21221, Attorneys for Petitioners.

Peter Max Zimmerman

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

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

o0o

Nicholas B. Commodari
Chairman

MEMBERS

Bureau of
Engineering

Department of
Traffic Engineering

State Roads Commission

Bureau of
Fire Prevention

Health Department

Project Planning

Building Department

Board of Education

Zoning Administration

Industrial
Development

September 4, 1984

John O. Hennegan, Esquire
809 Eastern Boulevard
Baltimore, Maryland 21221

RE: Item No. 166 - Case No. 85-65-XSPHA
Joseph F. Evering, Jr., et ux
Special Exception, Special Hearing
and Variance Petition

Dear Mr. Hennegan:

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.

This combination hearing is required as a result of your clients' proposal to expand the existing boatyard/marina operation. In addition to the expansion of the piers and land utilized by this operation, variances are also required for the number of parking spaces provided and the paving of said spaces. A determination of whether this use should be exempted from the residential transition requirements (Section 1B01.1B.1.c of the Baltimore County Zoning Regulations) is also included.

In view of the fact that revised plans reflecting the comments from the Current Planning Office, were submitted, the petition was scheduled for a hearing.

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

Very truly yours,

Nicholas B Commodari

NICHOLAS B. COMMODARI, Chairman
Zoning Plans Advisory Committee

NBC:bsc
Enclosures
cc: Frank S. Lee
1277 Neighbors Ave., 21237

BALTIMORE COUNTY
DEPARTMENT OF PUBLIC WORKS
TOWSON, MARYLAND 21204

HARRY J. PISTEL, P. E.
DIRECTOR

February 23, 1984

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

Re: Item #166 (1983-1984)
Property Owner: Joseph F. Evering, Jr., et ux
N/S Chester Rd. 1,000' W. Susquehanna Ave.
Acres: 3.30 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.

Highways:

Chester Road, an existing public road, is proposed to be further improved in the future on a 50-foot right-of-way with a standard type roadway termination.

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

Storm Drains:

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

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

Water and Sanitary Sewer:

There is an 8-inch public water main in Chester Road.

Public sanitary sewerage is not available to serve this property, which is utilizing private onsite sewage disposal facilities.

Finally, Robert Gensler, an individual unknown to the protestants until shortly before the hearing on the last day, testified that he had a contract on an existing house in the Fox Ridge subdivision and that based upon what he heard at the hearing, his concerns in regard to the decreased property value of the proposed house that he was purchasing, he was breaking his contract, even at the loss of the $5,000.00 deposit in order not to acquire the property within the subdivision adjacent to the proposed BGE facility.

The community next presented its testimony concerning the Special Exception criteria under 502.1 related to concerns of a number of individual property owners against the proposed expansion. Pam Follo, an adjacent property owner to the proposed facility and perhaps the closest neighbor, testified that while she knew there was an existing substation of 1,200 square feet on the site when she acquired her property, she could not possibly have anticipated that such a facility would grow to a 22,000 square foot substation. In addition, she felt assured that Parcel A contained in her subdivision could not be used by BGE for anything more than a buffer between the substation and her home. She also testified that she could not possibly have anticipated that BGE could have acquired the Vinup property for the sole purpose of knocking it down to expand their substation in a residential zone.

Ms. Follo expressed concern in regard to the EMF issue but clearly indicated that since the literature is

Water and Sanitary Sewer: (Cont'd)

This property is within the Baltimore County Metropolitan District and the Comprehensive Metropolitan Facilities Planning Area. Baltimore County Water Supply and Sewerage Plans W and S-23B, as amended through January 1982, indicate respectively, "Existing Service" and "Planned Service in 1 to 6 Years".

Very truly yours,

ROBERT A. MORTON, P.E., Chief
Bureau of Public Services

RAM:EAM:FWR:ss

Z-SW Key Sheet
7 & 8 NE 41 Pos. Sheets
NE 2 K Topo
91 Tax Map

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
TOWSON, MARYLAND 21204
494-3211

NORMAN E. GERBER
DIRECTOR

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

Re: Zoning Advisory Meeting of 1-3-84
Item # 166
Property Owner: JOSEPH F. EVERING, JR. ET UX
Location: N/S CHESTER RD. 100' W. OF SUSQUEHANNA AVE.

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 forward by the Bureau of Public Services.
( )This site is part of a larger tract; therfore 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 on _____.
(✓)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:

SCREENING MUST BE PROVIDED AROUND THE PARKING AREA.
PARKING BREAKDOWN MUST INCLUDE REQUIREMENTS FOR OFFICE AREAS AND, IF ANY, RETAIL SPACE.
RECOMMEND ENVIRONMENTAL IMPACT STATEMENT & ANALYSIS OF ADJACENT PARK USE, ETC.

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

BALTIMORE COUNTY
DEPARTMENT OF TRAFFIC ENGINEERING
TOWSON, MARYLAND 21204
494-3550

STEPHEN E. COLLINS
DIRECTOR

February 6, 1984

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

Item No. 166	-ZAC- Meeting of January 3, 1984
Property Owner:	Mr. Joseph F. Evering, Jr., et ux
Location:	N/S Chester Road 1000' W. Susquehanna Avenue
Existing Zoning:	D.R. 5.5
Proposed Zoning:	Variance requiring the structure not to exceed 300' beyond mean low tide to allow the structure to extend 419' beyond the mean low tide.
Acres:	3.30
District:	15th

Dear Mr. Jablon:

This site is served by very narrow roads and traffic problems can be expected. All parking areas should be shown.

Michael S. Flanigan
Traffic Engineering Assoc. II

MSF/ccm

February 3, 1984
Date

BALTIMORE COUNTY DEPARTMENT OF HEALTH

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

Zoning Item # 166, Zoning Advisory Committee Meeting of January 3, 1984

Property Owner: Joseph F. Evening, Jr., et ux

Location: N/S Chester Road District 15

Water Supply public 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, 494-3775, 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)

( ) Any existing 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.

( ) Soil percolation tests have been conducted.
( ) The results are valid until _____.
( ) Revised plans must be submitted prior to approval of the percolation tests.

( ) Prior to occupancy approval, the potability of the water supply must be verified by collection of bacteriological and chemical water samples.

( ) 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 or approval of Building Permit Applications.

( ) All roads and parking areas should be surfaced with a dustless, bonding material.

( ) No health hazards are anticipated.

(✓) Others The private sewage disposal system serving this property appears in satisfactory condition. Owner should contact the Army Corps of Engineers at 962-4252 and the Maryland State Water Resources Administration at 269-3871 for information regarding permits required for the proposed pier extension.

Ian J. Forrest, Director
BUREAU OF ENVIRONMENTAL SERVICES

inconclusive, even though there are credible and respected sources indicating that there are possible risks between EMF's and increased likelihood of childhood leukemia and breast cancer, Alzheimers, and cancer in general, that the very nature of the inconclusiveness of the studies should not require the neighborhood to assume the risk of this incr ased facility. She identified and entered into evidence photographs of twenty-six (26) substations that she had visited which indicate the nature of the communities in which they are located as well as the landscaping for those substations. Those Exhibits are marked as prot stants' Exhibit Numbers Seventeen through Nineteen. The photographs will show the integral parts of the substation as well as th lack of appropriate landscaping. It can be seen from looking at the photographs that the proposed eight to ten foot (8' - 10') landscaping by BGE still does not screen the height of the structures, the bus supports, the transformers, the switching structure, and the switching gear enclosure, all of which exceed the height. Furthermore, she testified that BGE's own landscaper indicated that in the winter time, the existing facility as well as the new facility will be seen from the Follo property, even with the eight to ten foot (8' - 10') evergreen plantings. Her testimony also included the fact that there were only two of these substations east Towson and Sudbrook which were actually in purely

BALTIMORE COUNTY
FIRE DEPARTMENT
TOWSON, MARYLAND 21204
825-7310

PAUL H. REINCKE
CHIEF

February 14, 1984

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

Attention: Nick Commodari, Chairman
Zoning Plans Advisory Committee

RE: Property Owner: Joseph F. Evering, Jr., et ux

Location: N/S Chester Road 1000' W. Susquehanna Avenue

Item No.: 166 Zoning Agenda: Meeting of January 3, 1984

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 or _____ 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.

* (X) 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.

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

REVIEWER: Capt. Joseph Kelly 2-14-84 Noted and Approved: Leonard M. Liegel
Planning Group
Special Inspection Division
Fire Prevention Bureau

/mb

* Where piers exceed 250 feet, each should be provided with a two (2) inch water line extending the length of the pier and be equipped with 1½ hour connections at 75 feet intervals according to NFPA Std. 303, Sec. 2-2.3.

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

TED ZALESKI, JR.
DIRECTOR

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

January 20, 1984

Dear Mr. Jablon:

Comments on Item # 166 Zoning Advisory Committee Meeting are as follows:

Property Owner: Joseph F. Evering, Jr., et ux
Location: N/W Chester Road 1000' W. Susquehanna Avenue
Existing Zoning: D.R. 5.5
Proposed Zoning: Variance requiring the structure not to exceed 300' beyond mean low tide to allow the structure to extend 419' beyond the mean low tide.
Acres: 3.30
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 Handicapped and Aged; and other applicable Codes.

B. A building/ & other / miscellaneous 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 uses 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, line 2, Section 1407 and Table 1402, also Section 503.2.

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

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

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

I. Comments

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

Very truly yours,

Charles E. Burnham, Chief
Plans Review

CEB:es

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO Nick Commodari Date August 31, 1984

FROM Edward A. McDonough, P.E.

SUBJECT Zoning Items - Critical Area

Attached are comments from James Markle for critical area items requested by your office.

EDWARD A. MCDONOUGH, P.E., Chief
Developers Engineering Division

EAM:ss

Attachment

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO Ed McDonough Date August 30, 1984

FROM James A. Markle

SUBJECT Critical Areas Review

1. Item 166 (1983-1984) Ewing

   No adverse impact expected.

2. Item 249 (1983-1984) 84-311

   No adverse impact expected.

3. Item 278 (1983-1984) 84-344

   No adverse impact expected.

4. Item 301 (1983-1984) 84-361

   No adverse impact expected.

5. Item 324 (1983-1984) Konigh

   No adverse impact expected.

6. Item 337 (1983-1984) Sokolski

   No adverse impact expected.

7. Item 366 (1983-1984) 85-61-A

   No adverse impact expected.

8. Item 365 (1983-1984) 85-62-SPH

   No adverse impact expected.

9. Item 3 (1983-1984) 85-67-A

   No adverse impact expected.

RECEIVED
AUG 30 1984
ZONING OFFICE
BUREAU OF PUBLIC SERVICES

All of the above comments are made concerning the three items that were given as Public Works review responsibility in the June 1, 1984 memo from Norman Gerber to Don Hutchinson concerning Critical Areas.

These three items are flood plains, effect of increased impervious areas and effects of points of storm water discharge.

JAMES A. MARKLE, P.E.
Chief, Storm Drain Design
and Approval Section

JAM:hhm

residentially neighborhoods and that both of them were abominations in terms of the aesthetic view.

Andy Lansman and Elizabeth Langendorf likewise raised impacts upon the neighborhood based upon the increased size. Thomas St. Ville, an attorney for a local large law firm testified that had he known of this planned expansion, he would not have purchased his property, which is four properties west on Ridge Road from the BGE facility. The important part of his testimony was that in January 1994, h looked at the County's ten year Master Plan in terms of growth and development; he looked at the subdivision plats for his subdivision; he looked at the Vinup property, and he concluded that it was safe to buy his home. He testified that he had no way of knowing or expecting that BGE could acquire the Vinup property, ask for Special Exception, and receive permission to extend a substation on that residential site.

Turning to the issue of the filed development plan, Ira Brown, Joseph Czajkowski, Carl Follo, and Nigel Howse, all adjacent property owners, testified in regard to their acquiring a lot in the Fox Ridge Estates subdivision. All identified their property in relationship to the subj ct site on protestants' Exhibit Number Three. Brown did not know of BGE's ownership of Tract A until he called to complain about the upkeep of the lot in regard to a fire at the substation on May 25, 1994. Joe Czajkowski never received a plat of the

BALTIMORE COUNTY PUBLIC SCHOOLS

Robert Y. Dubel, Superintendent

Towson, Maryland – 21204

Date: January 3, 1984

Mr. Arnold Jablon
Zoning Commissioner
Baltimore County Office Building
1111 West Chesapeake Avenue
Towson, Maryland 21204

Z.A.C. Meeting of:
January 3, 1984

RE: Item No: 158,159,160,161,162,163,164,165,166,167, & 168.
Property Owner:
Location:
Present Zoning:
Proposed Zoning:

District:
No. Acres:

Dear Mr. Jablon:

The above items have no bearing on student population.

Very truly yours,

Wm. Nick Petrovich, Assistant
Department of Planning

WNP/lh

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. Carl Richards
Office of Planning and Zoning

DATE: November 24, 1989

FROM: David C. Flowers, Coordinator
Chesapeake Bay Critical Area Program

SUBJECT: Long Beach Marina

The Chesapeake Bay Critical Area Program requests a case chronology for Long Beach Marina which has been involved in the following Zoning Cases; 35-35X, 64-57SPH, 64-160X, and 85-65XSPHA. Specifically, what are the current restrictions on the property under the existing Special Exception, as amended by the court order from Case No. 85-65-XSPHA? Also, could we meet to discuss this case at your earliest convenience. Thank you.

David Flowers

David C. Flowers, Coordinator
Chesapeake Bay Critical Area Program

DCF:SO:ju

cc: Mrs. Janice B. Outen

Baltimore County, Maryland

PEOPLE'S COUNSEL
RM. 223, COURT HOUSE
TOWSON, MARYLAND 21204
494-2188

PHYLLIS COLE FRIEDMAN
People's Counsel

PETER MAX ZIMMERMAN
Deputy People's Counsel

May 10, 1988

Robert J. Romadka, Esquire
John B. Gontrum, Esquire
Romadka, Gontrum, Hennegan & Foos
809 Eastern Boulevard
Baltimore, Maryland 21221

T. Rogers Harrison, Esquire
Andrew N. Janquitto, Esquire
Mudd, Harrison & Burch
306 W. Joppa Road
Towson, Maryland 21204

RE: People's Counsel, et al. v. Joseph F. Evering, Jr., et ux, Circuit Court No. 87CG4755

Dear Counsel:

This will confirm that there will be a meeting in People's Counsel's office on Tuesday, May 17th at 9:00 a.m. for the purpose of resolving the status of the above-referenced case. Currently, there is a hearing set for Monday, May 23rd and I have been told by the Court that their file is incomplete. If we wish to proceed, we must refile certain papers.

Please come prepared to decide whether you wish to go forward on any of the issues raised on appeal or whether there are currently proposals for resolving these issues without further litigation.

If for some reason you will be unable to make this meeting, please contact Shirley Hess in my office as soon as possible.

Sincerely,

Phyllis Cole Friedman/sh

Phyllis Cole Friedman
People's Counsel for Baltimore County

cc: The Honorable
J. William Hinkel, Judge
Baltimore County Circuit Court

Circuit Court Assignment Office

'88 MAY 10 P 12:28
COUNTY BOARD OF APPEALS
RECEIVED

PCF:sh

Baltimore County, Maryland

PEOPLE'S COUNSEL
RM. 223. COURT HOUSE
TOWSON, MARYLAND 21204
494-2188

PHYLLIS COLE FRIEDMAN
People's Counsel

PETER MAX ZIMMERMAN
Deputy People's Counsel

April 29, 1987

T. Rogers Harrison, Esquire
Mudd, Harrison & Burch
306 W. Joppa Road
Towson, MD 21204

John B. Gontrum, Esquire
Romadka, Gontrum, Hennegan & Foos
809 Eastern Boulevard
Baltimore, MD 21221

RE: People's Counsel, et al.
v. Joseph F. Evering, Jr.,
et ux, Ckt. Ct. #86-CG-0022

Gentlemen:

Before I submit the enclosed addendum to the testimony of Mr. Evering, I am sending you a copy of the final version. If I do not hear from you to the contrary by Tuesday, May 5, 1987, I will submit the original to the Board of Appeals.

Sincerely yours,

Phyllis Cole Friedman
People's Counsel for Baltimore County

Enclosures

PCF:sh

JOSEPH EVERING DIRECT EXAMINATION

Mr. Evering testified in direct examination as follows:

That you could see 10 feet down into the creek from the piers - that there was no question that the northern pier (i.e., not on the subject site, but north of the subject site) definitely impedes both traffic and maneuverability in the channel - that he recalls testifying in the 1960 zoning hearing that he intended to bulkhead, fill in the land, extend ~~and pave~~ Chester Road - ~~admits that~~ other than building ~~the~~ bulkhead, ~~he did not do these improvements.~~) Evering testified he was willing to limit himself to emergency repairs on Saturday and Sunday and also limit himself as to the time of day that repairs are completed - ~~admits that no work done on the north side of Chester~~ Road pursuant to the earlier zoning, other than the driving of several piles. - The reason he didn't do any of the construction facilitated by the original zoning was an issue of money - he got a couple of extensions - gas shortage came along - there was a problem with shallow water - and "I just abandoned it." - Saw no need for slips, cost of dredging would be expensive - dredging could be done and make additional slips slips for power boats but he would just rather have sail boats - he says that they do do repairs till dark in the summer time - sail boat people are more inclined to ~~use their boat more often and~~, therefore, generate more boat traffic - testified that there was no detriment to boat traffic by the pier extension. There isn't any navigation problem in the river now; sailboats only move 2 m.p.h. - everything is slow moving, no problem - no waterskiing is allowed - used to have a fuel system on the piers, is not selling any gas now, won't sell any until he installs new pumps with a gas recovery system - never has been any congestion on Chester Road, Susquehanna, or Bowley's Quarters Roads. Again says the opposite shoreline is navigable by boats.

CROSS EXAMINATION OF EVERING

Admits to greatly increasing boat traffic over the last 30 years - again states the opposite side shoreline is navigable - says there's real good fishing for perch, pike and bass - Frog Mortar Creek even in the areas off the piers - admits that no one ever found any samplings of vegetation in the water in this area.

He did not build 3 piles requested because of money

Built the bulkhead, bathhouse, swimming pool, parking, storage

take their boat out of the slip,

entire development and was told that the community owned Tract A when he settled on the property and was given no indication of BGE's ownership of Tract A. He also thought it reasonable to propose an alternate location, which was the Oregon Ridge Park, suggesting that BGE should examine other locations not in a residential zone.

Carl Follo testified that he is within three hundred feet (300') of the subject site, that he was provided a plat which did not show ownership by BGE. Follo testified that he knew Tract A was part of his subdivision and believed only residential structures could be built upon it. He further testified he objected to the use of Tract A in the Fox Ridge Estates subdivision to support the BGE facility. Finally, Nigel Howse testified that he purchased in May 1994 and at the time he likewise had no awareness of BGE's ownership. Nigel Howse's property is immediately adjacent to th BGE facility as proposed and a part of the Fox Ridge Estates subdivision. (Testimony in regard to the legal aspect of the final development plan will be discussed during the analysis of Norman Gerber's testimony.)

The community then presented evidence in regard to the EMF issue from Dr. Zory Glaser, who qualified as an expert and who testified in regard to EMF studies and effects of EMF. Dr. Glaser can be set apart from BGE's witness in that his résumé marked as protestants' Exhibit Number Twenty-Two establishes that Dr. Glaser is in fact an expert on

JOSEPH EVERING DIRECT EXAMINATION

Mr. Evering testified in direct examination as follows:

That you could see 10 feet down into the creek from the piers - that there was no question that the northern pier (i.e., not on the subject site, but north of the subject site) definitely impedes both traffic and maneuverability in the channel - that he recalls testifying in the 1960 zoning hearing that he intended to bulkhead, fill in the land, extend Chester Road - he built the bulkhead, bathhouse, swimming pool, parking, storage. Evering testified he was willing to limit himself to emergency repairs on Saturday and Sunday and also limit himself as to the time of day that repairs are completed - he did not build 3 piers requested because of money, other than the driving of several piles. - The reason he didn't do any of the construction facilitated by the original zoning was an issue of money - he got a couple of extensions - gas shortage came along - there was a problem with shallow water - and "I just abandoned it." - Saw no need for slips, cost of dredging would be expensive - dredging could be done and make additional slips for power boats but he would just rather have sail boats - he says that they do do repairs till dark in the summer time - sail boat people are more inclined to take their boat out of the slip, therefore, generate more boat traffic - testified that there was no detriment to boat traffic by the pier extension. There isn't any navigation problem in the river now; sailboats only move 2 m.p.h. - everything is slow moving, no problem - no waterskiing is allowed - used to have a fuel system on the piers, is not selling any gas now, won't sell any until he installs new pumps with a gas recovery system - never has been any congestion on Chester Road, Susquehanna, or Bowley's Quarters Roads. Again says the opposite shoreline is navigable by boats.

CROSS EXAMINATION OF EVERING

Admits to greatly increasing boat traffic over the last 30 years - again states the opposite side shoreline is navigable - says there's real good fishing for perch, pike and bass - Frog Mortar Creek even in the areas off the piers - admits that no one ever found any samplings of vegetation in the water in this area.

RECEIVED
COUNTY BOARD OF APPEALS
1981 MAY -7 P 5:16

JOSEPH EVERING DIRECT EXAMINATION

Mr. Evering testified in direct examination as follows:

That you could see 10 feet down into the creek from the piers - that there was no question that the northern pier (i.e., not on the subject site, but north of the subject site) definitely impedes both traffic and maneuverability in the channel - that he recalls testifying in the 1960 zoning hearing that he intended to bulkhead, fill in the land, extend Chester Road - he built the bulkhead, bathhouse, swimming pool, parking, storage. Evering testified he was willing to limit himself to emergency repairs on Saturday and Sunday and also limit himself as to the time of day that repairs are completed - he did not build 3 piers requested because of money, other than the driving of several piles. - The reason he didn't do any of the construction facilitated by the original zoning was an issue of money - he got a couple of extensions - gas shortage came along - there was a problem with shallow water - and "I just abandoned it." - Saw no need for slips, cost of dredging would be expensive - dredging could be done and make additional slips for power boats but he would just rather have sail boats - he says that they do do repairs till dark in the summer time - sail boat people are more inclined to take their boat out of the slip, therefore, generate more boat traffic - testified that there was no detriment to boat traffic by the pier extension. There isn't any navigation problem in the river now; sailboats only move 2 m.p.h. - everything is slow moving, no problem - no waterskiing is allowed - used to have a fuel system on the piers, is not selling any gas now, won't sell any until he installs new pumps with a gas recovery system - never has been any congestion on Chester Road, Susquehanna, or Bowley's Quarters Roads. Again says the opposite shoreline is navigable by boats.

CROSS EXAMINATION OF EVERING

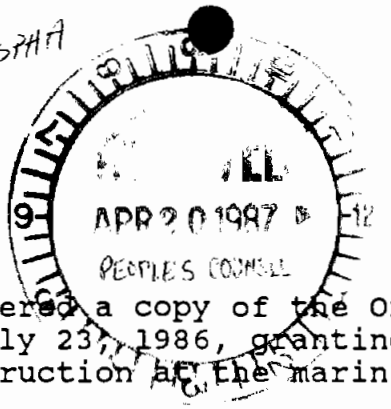
Admits to greatly increasing boat traffic over the last 30 years - again states the opposite side shoreline is navigable - says there's real good fishing for perch, pike and bass - Frog Mortar Creek even in the areas off the piers - admits that no one ever found any samplings of vegetation in the water in this area.

RECEIVED
COUNTY BOARD OF APPEALS
1981 MAY -7 P 5:16

JOINT STIPULATED NO 1 P.C. PET & PROT.

Re: Evering #85-65-XSPHA

PCF



Hearing on 12/16/87

Prior to testimony Petitioner offered a copy of the Order of the Board of Airport Appeals dated July 23, 1986, granting Petitioner a variance for the proposed construction at the marina. (Pet. Ex. 7).
Pet. No. 8 was copies of the Petitions for Special Exception, Special Hearing and Variances filed in the case. There were no objections to either exhibit.
Joseph Evering
800 Chester Road

Petitioner's Exhibit No. 10 was a 1986 photogrammetric plan of the site and of the channel which Petitioner put into evidence at the request of People's Counsel.

Direct testimony:

Joseph Evering
Chester Road

Petitioners have filed Petitions for Special Exception, Special Hearing and for Variances in this case. The purpose of the requested Special Exception is only to allow additonal parking for the boatyard on the two cross-hatched areas on the site plan, which were properties purchased since the last Special Exception and to include the roadbed of Chester Road where it is encompassed by the Evering property as part of the Special Exception.

Petitioners have also filed for zoning variances in order not to pave the gravel lot now in existence with a bituminous or concrete or tar chip surface in order to minimize run-off. Mr. Evering testified that neither dust nor rutting had been a problem and that the surface was replenished regularly. It was pointed out that this appeared to more environmentally sound than paving the lot. In addition variances of the parking requirement for marinas and boatyards was sought to be modified to 318 spaces in lieu of the 384 spaces required if the requested Special Exception was denied or to 363 spaces out of the required 384 spaces if the Special Exception were to be granted. In addition, a variance was sought to extend the existing piers 419' beyond mean low tide in lieu of the allowed 300' so as to reach deeper water and avoid dredging.

A special hearing was requested to modify existing site plans in Special Exception Cases No. 3535-X, 64-160-X and in Special Hearing Case No. 64-57SPH to construct the additional piers and to reflect the additional special exceptions. Restrictions 1 and 3 in Case No. 64-57SPH were sought to be eliminated so that

JOINT NO
SIP 2
all parties
Pet & Prot.

DIRECT TESTIMONY OF DR. FRANK PINE

After questioning as to qualifications and background and the introduction of his resume (Pet. Ex. 18) without objection, Dr. Pine was presented to the Board as an expert as to the environmental impact aspects of the case including water quality. The Board accepted Dr. Pine as an expert on water quality and on the environment without objection.

Dr. Pine was hired by the Petitioners to investigate the environmental impact of the expansion plans of the marina and boatyard. After being retained he had the occasion of visiting the site on a number of occasions to perform aquatic assessments and to perform water quality studies. As part of his study he reviewed available information on the water quality in Middle River and in Frog Mortar Creek including studies which he had previously prepared on another marina in the mouth of Middle River. In addition, he reviewed reports and sutdies prepared by the State Natural Resources and Health Departments as well as private studies in order to evaluate water quality and envirnomental toxicology and to arrive at an aquatic assessment.

He checked the previous calculations and performed his own calculations based on acceptable scientific methodology and on his training and experience. He had reviewed the proposed expansion of the existing facility as well as the current operation and had sat through all of the testimony of Mr. Evering.

He was asked: "Do you have an opinion as to the impact, if any, of the proposed expansion plans described here today on the water, fish and wildlife at and in the vicinity of the site?" He did have an opinion and that opinion was that the proposed expansion with appropriate mitigative measures would not have a net adverse impact on the water quality, fish or wildlife.

He had prepared a report on the site which was introduced as Petitioner's Exhibit 19. It was accepted for identification purposes only as other counsel had not had the opportunity to review it and offer objections as to admissibility.

His examination of the site indicated that there was little or no aquatic vegetation on the bottom at the site. He felt that the proposed construction would disturb the bottom at the time the piles were driven, but that there would be sufficient depth so

Baltimore County, Maryland

PEOPLE'S COUNSEL
RM. 223, COURT HOUSE
TOWSON, MARYLAND 21204
494-2188

PHYLLIS COLE FRIEDMAN
People's Counsel

PETER MAX ZIMMERMAN
Deputy People's Counsel

February 26, 1986

The Honorable
Lawrence E. Schmidt, Acting Chairman
Keith S. Franz, Member
William T. Hackett, Member
County Board of Appeals of Baltimore County
Room 200, Court House
Towson, Maryland 21204

RE: Joseph F. Evering, Jr., et ux,
Petitioners - Zoning Case No.
85-65-XSPHA

Gentlemen:

I am enclosing herewith a copy of a recent decision approving the State Airport Zoning Regulations, Greenberg v. State, 66 Md. App. 24, 502 A.2d 522 (1986).

Greenberg challenged the State Airport Zoning Regulations on the ground that they amounted to an unlawful "taking" or confiscation of his 14.496 acre property in Glen Burnie. The regulations totally prohibited residential development, and the Board of Airport Zoning Appeals had denied a request for variance. As a result, he was limited to certain other designated non-residential uses permitted by the zoning law.

Judge Robert Karwacki delivered an excellent opinion reviewing cases of the United States Supreme Court, the United States District Court of Maryland, and State court decisions. He found that there was no "taking" because it appeared from the complaint that Greenberg was not denied all reasonable use of his property and because the State had a legitimate interest in protecting the health and general welfare of occupants of land near airports and in minimizing the impact of harmful airport noise. Accordingly, the Court of Special Appeals affirmed the dismissal of the complaint.

I realize the Evering case is currently in Circuit Court but my recollection is that in argument, I mentioned the Greenberg case, although not by name, and I thought you might have some continued interest in the issue.

Very truly yours,

Phyllis Cole Friedman

Phyllis Cole Friedman
People's Counsel for Baltimore County

Enclosures

RECEIVED
1986 FEB 26 P 2:32
COUNTY BOARD OF APPEALS

electromagnetic radiation bio-effects, risk assessment associated with exposure to EMF radiation, dosimetry (dosage) of non-iodizing radiation, standards and regulations pertaining to non-iodizing radiation, biophysics, physical and polymer chemistry, and microbiology. He has been qualified in administrative agencies, courts hearing boards, and in federal courts in the United States. Contrary to the BGE expert, Dr. Glaser has actual hands-on experience and work in the laboratory over the years of his career with the Department of the Navy concerning the effects of EMF's. In his testimony, he analyzed other case studies and literature. He reviewed the testimony of the BGE expert by reading the transcript and he concluded that he has concerns in regard to homes, pets, children across the street and on thos properties surrounding the power lines leading to and from th substation.

Protestants have always submitted to the Board that they have no need to affirmatively establish the medical link between EMF's and human health. It is believed that protestants have established through the testimony of Dr. Glaser the fact that credible studies by credible scientists have concluded that there are negative impacts on the human body as a result of exposure to EMF's, that risk of possible connection and future proof of related health hazards should not be borne by the community in this instance. In addition, the evidence clearly reflects the perception of EMF conc rns

court's analysis, although partially couched in the appropriate statutory language, reveals that the court applied, in reality, the wrong standard. The precipitating event in the chain leading to appellant's arrest was the officer's belief that appellant secreted a bag from him. Thereafter, the way in which the officer viewed appellant's actions was colored by the officer's suspicions that appellant was engaged in criminal activity: appellant's nervousness was attributed to a cause other than his having violated the traffic laws and appellant's display of a prison identification card was viewed as corroborating those suspicions. Fortuitously, appellant did not have a driver's license. This fact thus became, for the officer, the vehicle to discover the nature of the criminal activity he suspected. As the concluding comments of his ruling demonstrate, the trial judge adopted and legitimized this faulty premise. This arrest was a mere subterfuge for the search for evidence that followed.

---

502 A.2d 522

Erwin L. GREENBERG, et al.

v.

The STATE of Maryland.

No. 381, Sept. Term, 1985.

Court of Special Appeals of Maryland

Jan. 10, 1986.

Landowners brought action for declaratory judgment and ancillary relief alleging that airport noise regulations which imposed restrictions on property, in addition to county zoning ordinances, constituted an unlawful "taking" of their property without compensation. The Circuit Court, Anne Arundel County, Eugene M. Lerner, J., granted summary judgment against them, and landowners appealed. The Court of Special Appeals, Karwacki, J., held that: (1) motion for dismissal could be treated as a motion for summary judgment, and (2) the combined effects of the restrictions was not an unconstitutional "taking" without compensation.

Affirmed.

1. Judgment ⇐183

Motion to dismiss claim alleging that zoning regulations resulted in an unconstitutional "taking" of property could be treated as one for summary judgment since there was no issue of material fact where State conceded factual premise that combined effect of noise regulations and zoning ordinance severely diminished the value of property. Md.Rules 2–322, 2–501.

2. Eminent Domain ⇐2(1.2)

Combined effects of airport noise zone law and county zoning ordinance, which restricted uses to which property could be put, did not constitute an unconstitutional "taking" in exercise of power of eminent domain to require compensation, although regulations restricted development and duced value of property, since regulations were legitimate exercise of police power and did not deny owner of reasonable use of property where there were number of permitted uses of property remaining. U.S.C.A. Const.Amends. 5, 14; Const. Art. 3, §§ 40–40D; Code, Transportation, §§ 5–801 to 5–823.

Warren K. Rich (Richard E. Rich, Lester O. Brown, and Niles, Barton & Wilmer on brief), Annapolis, for appellants.

Andrew H. Baida, Sp. Asst. Atty. Gen. (Stephen H. Sachs, Atty. Gen., Diana G. Motz, Peter E. Keith, Janis Ashman and Peter W. Taliaferro, Asst. Attys. Gen. on brief), Baltimore, for appellee.

Baltimore County, Maryland

PEOPLE'S COUNSEL
RM. 223, COURT HOUSE
TOWSON, MARYLAND 21204
494-2188

PHYLLIS COLE FRIEDMAN
People's Counsel

PETER MAX ZIMMERMAN
Deputy People's Counsel

January 14, 1986

The Honorable
Lawrence E. Schmidt
Acting Chairman
County Board of Appeals
Room 200, Court House
Towson, Maryland 21204

RE: Joseph F. Evering, Jr., et ux, Petitioners
Zoning Case No. 85-65-XSPHA (Item 166);
Circuit Court Case No. 86CG0022 (19/117)

Dear Mr. Schmidt:

This is in response to your letter of January 9, 1986 in the above-referenced matter in which you state that in your opinion our appeal was untimely and the Board is considering noncompliance with Rule B2(d) and B-7(a) until ordered by the Circuit Court.

While you have correctly surmised that one reason for our appeal was a fear of later being untimely, your suggestion that the parties stipulate to preserve our rights is, unfortunately, not a viable alternative. The time for appeal is jurisdictional and not subject to waiver by stipulation of the parties. In addition, the appeal will be accompanied by a request for a Declaratory Judgment as to the applicability of the airport regulations as well as critical areas.

We feel that the appeal accompanied as it is by a request for Declaratory Judgment is proper and in the public interest. It will enable us to resolve a number of issues in a timely fashion that will make further proceedings of the Board more meaningful. I hope with this explanation in mind, you will comply with Rule B2(d) and B-7(a).

Sincerely yours,

Phyllis Cole Friedman

Phyllis Cole Friedman
People's Counsel for Baltimore County

cc: Malcolm F. Spicer, Jr., Esquire
John O. Hennegan, Esquire
Robert J. Romadka, Esquire
Judith A. Arnold, Esquire

PCF:sh

RECEIVED
COUNTY BOARD OF APPEALS
1986 JAN 14 P 12: 36

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

January 9, 1986

T. Rogers Harrison, Esq.
306 W. Joppa Road
Towson, Md. 21204

Phyllis C. Friedman
People's Counsel for Baltimore County
Peter Max Zimmerman, Esq.
Deputy People's Counsel
Court House
Towson, Md. 21204

Re: Case No. 85-65-XSPHA
Special Hearing, Special Exception,
and Variances petitioned for
by Joseph F. Evering, Jr., et ux

Dear Mrs. Friedman, Messrs. Harrison
and Zimmerman:

The Board has received the Notice of Appeal filed by you on January 3, 1986, in the above matter. Needless to say, we are distressed at the timing of this action.

As you know, Maryland Rule B-[illegible] requires that the Board submit the record of proceedings before it to the [illegible] Baltimore County. Under the mandate of this rule, the Board in this case has, as a matter of practice, forwarded its entire file to the Clerk of Court. Additionally, past decisions of the Court have held that the filing of the appeal immediately removes the matter from before the Board; as jurisdiction is assumed by the Circuit Court.

These two considerations, the transmittal of the record and the Board's loss of jurisdiction, are of great concern to the Board in view of the present status of the matter. That is, the Board has to date heard testimony only on the preliminary motion and has yet to hear or consider the merits of the petitioned relief. As the next day's testimony, January 21st, is rapidly approaching, the Board is concerned over its authority to hear the matter on that date and if the appeal is proper.

After consideration, it is the Board's view that the appeal is improper and we will treat it as such. Our reasons for this conclusion are several. First, the Board's published "Ruling on Motion" dated December 12, 1985, is just that, a ruling on the Petitioner's preliminary motion. There is no opinion or, more importantly, Order of the Board which can be appealed.

T. Rogers Harrison, Esq.
Phyllis C. Friedman
Peter Max Zimmerman, Esq.

Additionally, it is well settled that an appeal may only be commenced when there has been some finality of judgment. Here, obviously, there has been none, as the Board has yet to even hear evidence upon the merits. Finally, the language of both the majority and dissent is clear, that is, "we will hold" and "I would deny". This language must be construed as prospective, in that the Board has not ruled on the motion in open hearing, rather, is merely advising counsel of its intention.

For these reasons, the Board views the appeal as untimely and will proceed with the hearing scheduled for January 21, 1986. Additionally, the Board may well consider not to comply with Rule B-2(d) and B-7(a) until ordered to do so by the Circuit Court.

Finally, although not attempting to advise the Appellants' and/or People's Counsel how to conduct their case, the Board surmises that the timing of the appeal was based upon a fear that failure to file within 30 days from December 12, 1985, would forfeit the right to appeal on this ruling. If that is indeed the case, we suggest that all parties reach a binding stipulation to preserve their rights to appeal this ruling, and then dismiss the current appeal. Certainly, it is in the best interests of the Petitioners to have this entire matter expeditiously heard and decided by the Board.

Very truly yours,

Lawrence E. Schmidt
Acting Chairman

cc: John O. Hennegan, Esq.
Robert J. Romadka, Esq.
Judith A. Armold
Malcolm Spicer, Jr., Esq.

LES:jh

Baltimore County, Maryland

PEOPLE'S COUNSEL
RM 223, COURT HOUSE
TOWSON, MARYLAND 21204
494-2188

PHYLLIS COLE FRIEDMAN
People's Counsel

PETER MAX ZIMMERMAN
Deputy People's Counsel

November 6, 1985

Mr. Theodore E. Mathison
State Aviation Administration
Department of Transportation
P. O. Box 8766, Balto.-Wash. Intl. Airport
Baltimore, Maryland 21240

RE: Joseph F. Evering, Jr., et ux, Petitioners
Zoning Case No. 85-65-XSPHA
N/S Chester Rd., 590' W of Severn Rd.
(800 Chester Rd.), 15th District (3.30 acs.)

Dear Mr. Mathison:

Enclosed herewith is a site plan for the above-referenced Petition for a Special Exception. During the course of a preliminary hearing, the issue of the applicability of Title 11, Subtitle 03, 11.03.05 Obstructions to Air Navigation, and 11.03.06 Airport Zoning Regulations, was raised.

Would you please advise us at the earliest possible moment as to whether development of the site in question is in any way impacted by these regulations and if so, how? This matter is presently pending before the County Board of Appeals.

Thank you for your prompt attention to this.

Sincerely yours,

Phyllis Cole Friedman
People's Counsel for Baltimore County

Enclosure

cc: John O. Hennegan, Esquire
Robert J. Romadka, Esquire
T. Rogers Harrison, Esquire
Judith A. Arnold, Asst. Attorney General
Norman E. Gerber, Director, OPZ

PCF:sh

RECEIVED
COUNTY BOARD OF APPEALS
1985 NOV -7 P 3:27

are significant in the relat d property value area. As a result together, these risks and concerns and perceptions are enough to cause concerns under the qualifications of Section 502.1 of the B.C.Z.R. Mrs. Mary O'Hara and Nancy Muegel testified as to their personal concerns in regard to EMF exposures on their homes and children.

Protestants presented the expert testimony of Norman Gerber, former Planning Director of Baltimore County, who testified in regard to the final development plan/variances/ special exception. In general, Gerber's testimony in regard to the final development plan was that the Baltimore County Code required submittal of this amendment to the final development plan to the Planning Board and that the purported resolution of the Planning Board delegating that authority to the Planning Director is a violation of the County Law and County code, which takes precedence. In addition, he felt that even if the matter was reviewed, that clearly the use for an electrical substation was not an appropriate use envisioned within the context of the original subdivision and should be denied. He testified that the variances should not be granted because there was nothing unusual at all in regard to this property under the most recent case of David Cromwell vs. Arthur Thomas Ward, decided January 4, 1995 by the Court of Special Appeals. Finally, in his analysis of the Special Exception criteria of Section 502.1, the court opined that the size of this enlargement presented an intrusion into the

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO Ted Zaleski, Jr., Director
Department of Permits and Licenses Date November 4, 1985

FROM Norman E. Gerber, Director
Office of Planning and Zoning

SUBJECT Joseph F. Evering, Jr., et ux
Long Beach Marina
N/A of Chester Road, 590' W. of Severn Road (800 Chester Road)
15th Election District
Zoning Petition No. 85-65-XSpHA

In view of the apparent controversy in the zoning cycle case involving the subject site, I decided to clarify this office's position in the building permit application process, if and when an application is filed.

Please be advised that the subject site is within the State of Maryland Chesapeake Bay Critical Area, and that it is my policy not to grant waivers to the CRG for any such properties. Therefore, I request that no building permit be issued unless the applicant has obtained approval from the CRG.

Your cooperation in this matter is appreciated and, if you have any questions, please call.

Norman E. Gerber

Norman E. Gerber, AICP
Director

NEG:slm

cc: John O. Hennegan
Romadka, Gontrum, Hennegan & Foos

Phyllis Cole Friedman ✓
People's Counsel

Gary Kerns, Acti g Chief
Division of Current Planning & Development

James Dyer
Zoning Supervisor

J.G. Hoswell

RECEIVED
COUNTY BOARD OF APPEALS
1985 NOV -8 A 9:04

BALTIMORE COUNTY
OFFICE OF LAW
TOWSON, MARYLAND 21204
494-4420

MALCOLM F. SPICER, JR.
COUNTY ATTORNEY

JUL 10 AM
ZONING DEPARTMENT

July 8, 1985

Arnold Jablon, Esquire
Zoning Commissioner
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Dear Mr. Jablon:

You have requested an opinion from this Office concerning the role of the Zoning Commissioner and the Office of Planning & Zoning in implementing the provisions of Title 8, subtitle 18, Chesapeake Bay Critical Area Protection Program of the Natural Resources Article. In your request for an Opinion you raise the following questions:

1) Who is the "approving authority" in Baltimore County?

2) Under what circumstances can the Office of Planning & Zoning require information?

The questions which you raise occur primarily in three (3) possible settings. Those settings are (1) where a subdivision plat or site plan approval is required by the County Review Group under Baltimore County's Development Regulations; (2) where there is a need for a project to receive both C.R.G. approval and issuance of a special exception or variance by the Zoning Commissioner; (3) where only a variance or special exception is required which would be issued by the Zoning Commissioner.

A review of the definitional section in subtitle 18 "Chesapeake Bay Critical Area Program" is useful in determining the appropriate "approval authority" for purposes of the Interim Control Program established by §8-1813 of the Natural Resources Article. Section 8-1802 defines "development" to mean "any activity that materially affects the condition or use of dry land, land under water or any structure." In our view this definition is intended to include any activity, even though there is no structure involved, if that activity materially affects the condition or use of dry land or land under water. It also includes any structure but there is no requirement that the structure "materially affect" the condition or use

of dry land or land underwater. That Section also defines "project approval" to mean "approval of development including approval of subdivision plats and plans; issuance of variances, special exceptions and conditional use permits." The term, however, does not include building permits. The Chesapeake Bay Critical Area legislation does not contain a definition for "approving authority" and this is understandable due to the fact that the State legislation has application to a number of local jurisdictions which would have different powers in respect to Planning & Zoning functions and which would have various "approving authorities." Local jurisdiction is defined to mean a County or a municipal corporation with planning and zoning powers in which any part of the Chesapeake Bay Critical Area is located. Baltimore County clearly is included under this definition of "local jurisdiction." The State law, in determining the "approving authority" is designed to be flexible to allow for the different review and approval procedures that may exist in any local jurisdiction.

A review of these definitions as well as the provisions of §8-1813 indicates that the event which triggers the need to make the specific findings of subsection (a)(1) and (2) of that Section is an application for "project approval." See Natural Resources §8-1813(b). So long as the application for project approval includes or proposes "development", the findings must be made.

In Baltimore County, the Development Regulations which were adopted by Bill #56-82 contemplates that for all matters involving development which come within the scope of Bill #56-82, the County Review Group (C.R.G.) is the approving authority. Utilizing the C.R.G. as the "approving authority" contemplated by the Chesapeake Bay Critical Area legislation is consistent with the mandates of the Interim Control Program established by §8-1813 which contemplates that the approving authority would make specific findings with regard to any proposed development within the initial planning area identified in §8-1807(a). Clearly for a development which requires only C.R.G. approval under the County's Development Regulations the C.R.G. should be the approving authority and in instances where a proposed development would require both C.R.G. approval and granting of a special exception or variance, the C.R.G. should be the approval authority for that proposed development in terms making the specific findings required by §8-1813 of the Natural Resources Article. Utilizing the review function contemplated by the Critical Area's legislation would be consistent with the development policies adopted by the County

in §22-37(b)(4) of the Baltimore County Code. That Section provides, in part:

> "These regulations are designed and intended to insure the safety, adequacy and convenience of proposed provisions for the following:
>
> ...(4) prevention of environmental degradation and promotion of environmental enhancement, including adequacy of landscaping and energy conservation measures, and of protection of floodplains, steep slopes, watersheds, wetlands, vegetation, and other natural features and historical sites or areas."

In addition, State law mandates that the approving authority require an applicant for project approval to submit additional information as may be necessary to make the findings required by §8-1813(a)(1) and (2). The C.R.G. under the County Development Regulations is also empowered to require an applicant to submit additional information regarding his plan and to continue its meeting in order that such additional information may be received. The procedures before the Zoning Commissioner involving often times an adversarial hearing do not lend themselves to the interruption of the process in order that additional information may be submitted. While it is true that the Zoning Commissioner could conceivably suspend or continue his hearing to allow for additional evidence, such interruptions of quasi-judicial hearings should not be encouraged. The Zoning Commissioner, as a quasi-judicial officer is required to make findings of fact and to apply the law to those facts. In the case of special exceptions the findings required are set forth in §502.1 of the Baltimore County Zoning Regulations. While it is possible that the Zoning Commissioner could make the findings required by the State legislation, it is more appropriate that the C.R.G. be the approving authority under the State legislation for purposes of making those required findings. There is nothing in the State law which suggests that the findings should be made in adversarial setting where testimony is produced from a witness stand and a witness is subject to cross-examination. Rather, the State law contemplates that certain administrative findings will be made by those individuals who, during the course of the implementation of the Chesapeake Bay Program, will have developed the expertise necessary to make the findings required. The C.R.G. process as established in the Baltimore County Development Regulations is uniquely suited to process the proposed development and, with its input from various agencies, is uniquely suited to make

the required findings. This is not to suggest that the findings or non-findings made by the C.R.G. under the Chesapeake Bay legislation would not be subject to review but that the C.R.G. decision, as in the case of other C.R.G. decisions, would have the presumption of correctness and the person challenging that decision would have the burden of establishing that such action was arbitrary or capricious, procured by fraud or otherwise illegal.

In the remaining instance which you have presented wherein a special exception or variance would be required but for some reason the C.R.G. is not required to take action under the County's Development Regulations, the Zoning Commissioner should follow the procedures outlined in §22-26 of the Baltimore County Code and forward the Petition and supporting documentation to the Director of Planning (or his Deputy) for his consideration and written report thereon containing his findings with regard to planning factors. The Director's findings with regard to planning factors would include the findings required by §8-1813 of the Natural Resources Article and for purposes of making those findings with regard to the proposed development, the Director of Planning & Zoning is the "approving authority." The Director, of course, in making his findings would consult with other interested departments and agencies of the County and would have the authority under the State law to require additional information. The Zoning Commissioner should not conduct a hearing on a Petition for Special Exception or Variance prior to receipt of the Director's findings.

In connection with the second question which you have raised, the provisions of §8-1813(b) of the Natural Resources Article contemplate that whenever additional information is deemed necessary in order to make the findings required by subsection (a), the approving authority (either the C.R.G. or the Director of Planning & Zoning) shall require the applicant to submit such additional information. While there are no apparent limitations on the ability to require additional information, common sense dictates that it only be required when reasonably necessary and that the request for additional information not be arbitrary or capricious.

In the instance whether neither a C.R.G. approval nor a Zoning Commissioner approval is required by County law, it is probable that the findings would not be required because there would be no application for project approval and therefore no development. For example, in the case of a

residential natur of the neighborhood causing unnecessary and negative impact on the health, safety, and welfare of the community, a change of the character of the neighborhood, an increased concern for fire explosion danger, and other panic, including panic from EMF's and the perception of that health issue as being appropriate reasons to deny the Special Exception under those criteria.

Finally, the Valleys Planning Council testified in opposition to the proposed facility as exampled by protestants Exhibit Number Twenty-Nine. Nancy Muegel testified on behalf of the Chestnut Ridge Grace Pre-School directly across the street in opposition. Lisa Eberling testified in opposition for Schwann Valley Association, Inc. Floyd Pawn testified on behalf of Hunt Club Hill Association against the proposal.

V.

Legal Arguments

A. Baltimore County Zoning Regulations

The applicable sections of the B.C.Z.R. are well known to this Board. First, Section 50.21 requires that before any Special Exception is granting, it must appear that the use for which the Special Exception is requested will not:

1. be detrimental to the health, safety, or general welfare of the locality involved;
2. tend to create congestion in roads, streets, or alleys therein;

Petition for Reclassification filed before the Board of Appeals under §2-58.1 of the County Code which does not include a plan showing the proposed use, the required findings would not need to be made. Only when there was a plan for the development of a property submitted would the findings be made and they would be made by the C.R.G. during the course of its review. If, in connection with a reclassification, there is a proposed plan submitted, that plan or a substantially similar plan would, in all probability, be submitted for contemporaneous C.R.G. approval. The C.R.G. in that instance and not the Board of Appeals would make the necessary findings. As with the instances of dual approvals involving the C.R.G. and Zoning Commissioner, dual approval involving the Board of Appeals and C.R.G. should not result in dual findings which may be inconsistent. There should be only one approving authority for purposes of making the findings and the C.R.G. should be that authority.

Sincerely,

Malcolm F. Spicer, Jr.
County Attorney

MFSJR:gh

cc: Gene Bober, Chief - Current
Planning & Development
James Markle, Chief - Bureau
of Public Services

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

ARNOLD JABLON
ZONING COMMISSIONER

January 11, 1985

T. Rogers Harrison, Esquire
306 West Joppa Road
Towson, Maryland 21204

RE: Case No. 85-65-XSPHA
Joseph F. Evering, Jr., et ux - Petitioners

Dear Mr. Harrison:

I am in receipt of your letter dated January 10, 1985.

The hearing scheduled is on the Motion filed by Mr. Hennegan. He will be permitted to present any witnesses or evidence in support of his position, and you as counsel for the Protestants may do likewise. They will be permitted to argue fully as to the points raised by the Motion filed. This shall be a continuation of the hearing on the Petitions filed, and after evaluating all of the evidence and testimony presented, I will decide on the merits and on the impact of the proposals on the Chesapeake Bay, pursuant to the Critical Area Protection Program.

No decision on the special exception can be made until there is a resolution of the issues raised in Mr. Hennegan's Motion. If you have any further questions, please feel free to call me.

Sincerely,

ARNOLD JABLON
Zoning Commissioner

AJ:aj

cc: John O. Hennegan, Esquire

Mr. Norman Gerber

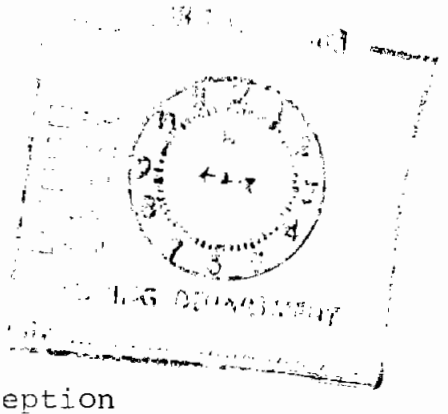
Mr. Eugene Bober

LAW OFFICES
MUDD, HARRISON & BURCH
306 WEST JOPPA ROAD
TOWSON, MARYLAND 21204
AREA CODE 301-828-1335

JOHN E. MUDD
T. ROGERS HARRISON
RICHARD C. BURCH
DOUGLAS W. HOSER
H. PATRICK STRINGER, JR.

900 MARYLAND TRUST BUILDING
24 SOUTH CALVERT STREET
BALTIMORE, MARYLAND 21202
301-539-0206

January 10, 1985



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

Re: Petition for Special Exception
Special Hearing Variances
N/S Chester Road, 590' W of
Severn Road (800 Chester Road)
Joseph F. Evering, Jr., et ux
Petitioners Case No. 85-65XSPHA

Dear Mr. Jablon:

I have received a copy of your letter of January 3, 1985, to John O. Hennegan, Esquire, the attorney for the Everings, in which you set up a hearing to determine whether or not the Everings' property is subject to the Chesapeake Bay Critical Area Protection Program, Md. National Resources Code Ann., §8-1801 - 8-1816 (1974 and 1984 Comm. Supp.).

It would be greatly appreciated if you would provide me with information about the scope of the hearing and what type of input Ken Engelke and the other Protestants will be allowed to make. Also, unless I am mistaken, I believe you mentioned in your November 9, 1984, letter to me that you would by the end of November (or thereabouts) decide whether the Everings fulfilled the requirements of Section 502.3 of the B.C.Z.R. (1981 and 1983 Supplements).

A prompt reply would be appreciated because I will need adequate time to prepare for the hearing.

Thank you.

Very truly yours,

T. Rogers Harrison

TRH/djb

September 11, 1984

Mr. Ken Engelke
828 Chester Road
Baltimore, Maryland 21220

RE: Case No. 85-65-XSPHA
Joseph F. Evering, Jr.,
et ux, Petitioners

Dear Mr. Engelke:

I have decided that a view from the water would be appropriate in light of the circumstances presented at the hearing. Therefore, I am making a request to both parties to provide me with a means to make an inspection so that each may have the same opportunity to show me their perspective. Please advise.

Sincerely,

ARNOLD JABLON
Zoning Commissioner

AJ/srl

cc: John O. Hennegan, Esquire

3. create a potential hazard from fire, panic or other dangers;

4. tend to overcrowd land and cause undue concentration of population;

5. interfere with adequate provisions for schools, parks, water, sewerage, etc.;

6. interfere with adequate light and air;

7. be inconsistent with the purposes of the property zoning classification nor in any other way inconsistent with the spirit and intent of the zoning regulations.

Second, Section 411, B.C.Z.R., provides for public utility uses permitted by Special Exception, the following additional regulations shall apply:

Section 411.1 - The use must be needed for the proper rendition of the public utility service and the location thereof shall not seriously impair the use of neighboring property (emphasis supplied).

Third, Section 307 of the B.C.Z.R. permits the granting of variances: only in cases where special circumstances or conditions exist that are peculiar to the land or structures which is the subject of the variance request and where strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship.

These, then, are the criteria by which the evidence presented before the Board must be examined. A general

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO Arnold Jablon
Zoning Commissioner

Date September 7, 1984

FROM Norman E. Gerber, Director
Office of Planning and Zoning

SUBJECT Joseph F. Evering, Jr., et ux
No. 85-65-XSpHA

In view of the comments concerning the State's Chesapeake Bay Critical Area regulations (see letter to Frank S. Lee from Paul J. Solomon dated September 7, 1984), this office cannot offer final comments on the subject petition.

Norman E. Gerber, Director
Office of Planning and Zoning

NEG/JGH/sf

Pump-out station
On-shore sanitary facil - we need more info.

BALTIMORE COUNTY DEPARTMENT OF HEALTH

September 5, 1984
Date

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

CRITICAL AREA REVIEW

Zoning Item # 166 Zoning Advisory Committee Meeting of January 3, 1984

Property Owner: Joseph F Ewing

Location: N/S Chester Rd. District 15

Stream(s) on Property Yes ___ No ___

COMMENTS Will be required after Environmental Effects Report is submitted

Wetlands/Hydric Soils Yes ___ No ___

COMMENTS Will be required after Environmental Effects Report is submitted

Note: As per Baltimore County Health Department Wetland Guidelines, development or grading is prohibited in upland and tidal wetlands.

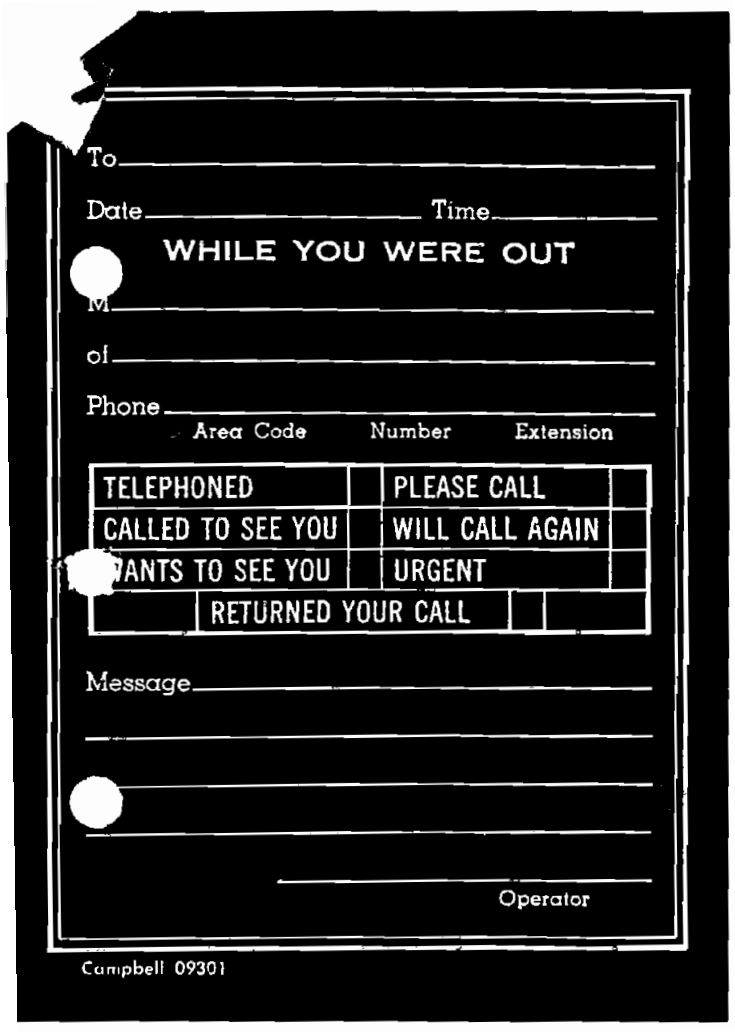
OTHER COMMENTS Long Beach Marina - Health Dept. strongly recommends installation of sewage pump-out station. More information is needed on on-shore sanitary facilities, ex. ability of septic system to accommodate anticipated marina uses. Environmental Effects Report will be required and final comments on the environmental impact of the proposed improvements will be made after EER has been submitted

B. H. Stafford

11/27/85 - Sent cc of this letter to Larry

12/2/85 - Per phone call from Ronalda's office; he objects to granting this request as Larry had notified everyone that 1/21 date was firm.

E


To
Date
Time
WHILE YOU WERE OUT
M
of
Phone
Area Code
Number
Extension
TELEPHONED
PLEASE CALL
CALLED TO SEE YOU
WILL CALL AGAIN
ANTS TO SEE YOU
URGENT
RETURNED YOUR CALL
Message
Operator
Campbell 09301

To Mr. Hackett

Date _____ Time _____ A.M. P.M.

WHILE YOU WERE OUT

M RE: Evering case

of Has been remanded to the Board

Phone by the Circuit Court

Area Code Number Extension

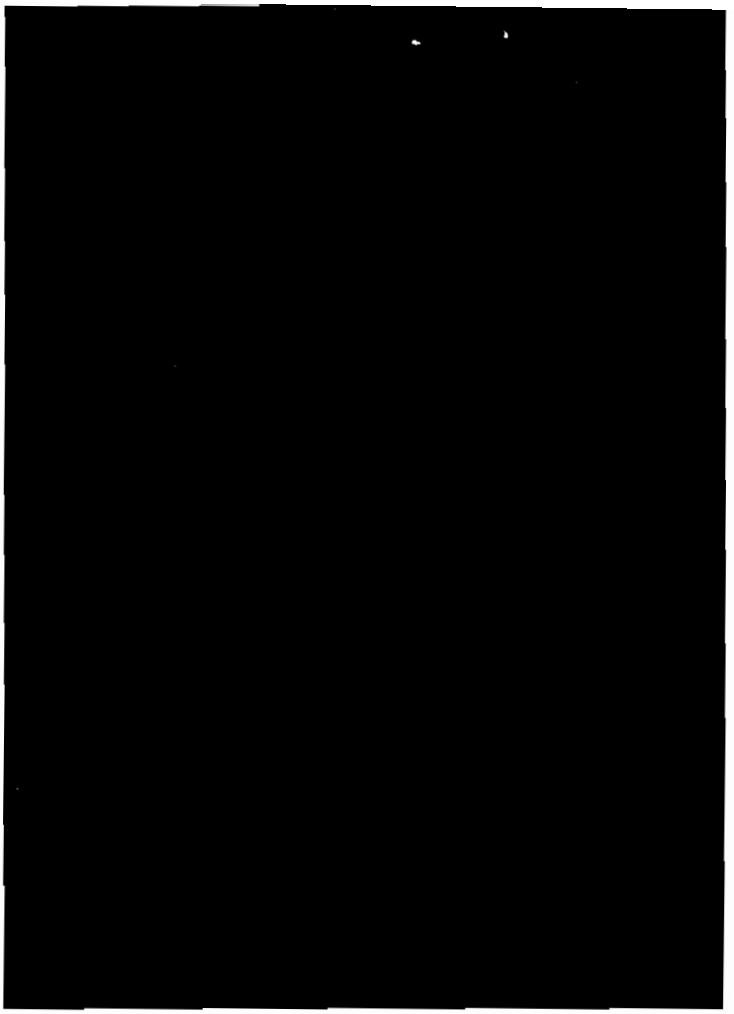
TELEPHONED		PLEASE CALL	
CALLED TO SEE YOU		WILL CALL AGAIN	
WANTS TO SEE YOU		URGENT	
RETURNED YOUR CALL			

Message Judge Sfekas wants the Board to make a final determination, therefore, dismissed the appeals filed from the Board's RULING on the Motions only.

Board Schmidt, Franz & Vincent

Operator

Campbell 09301



MPORTANT MESSAG

FOR

DATE 4/11/03 TIME 1103 A.M. P.M.

WHILE YOU WERE OUT

M Bill Beckwith

OF

PHONE NO. 828-6207

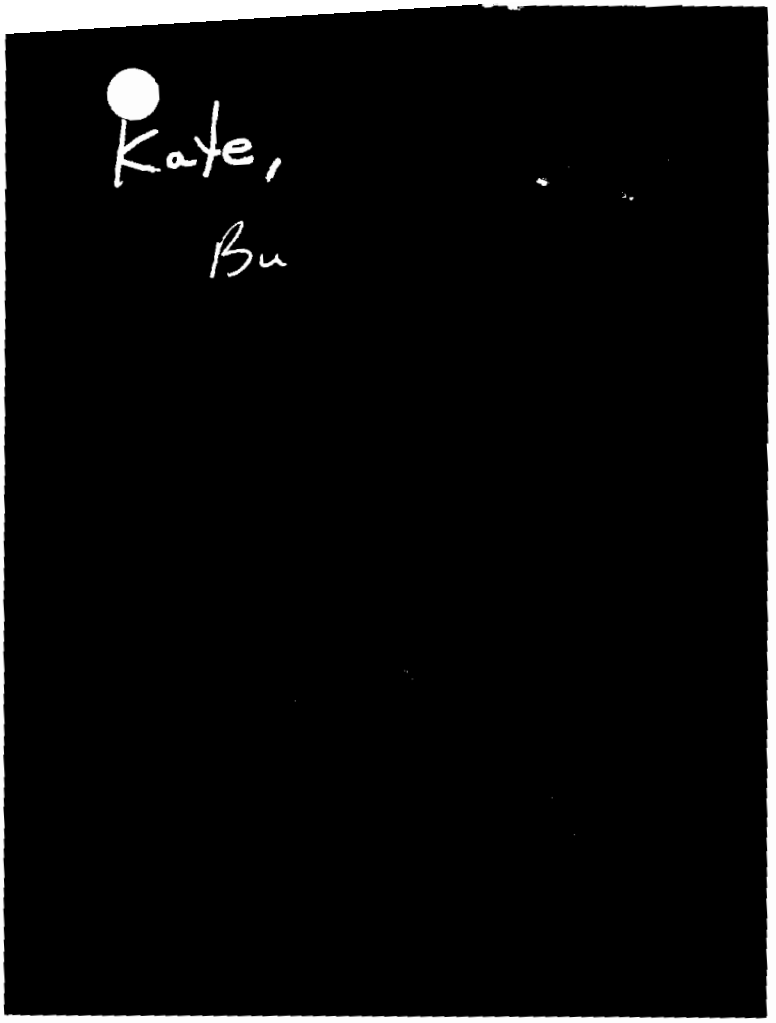
TELEPHONED	✓	PLEASE CALL	✓
CALLED TO SEE YOU		WILL CALL AGAIN	
WANTS TO SEE YOU		RUSH	

RETURNED YOUR CALL

MESSAGE Kate ↑ said Flowers was going to sign off 4/12 - if you don't have any conflicting info. or problems sign off + make sure "IN ACCORDANCE WITH ZONING CASE # " IS TYPED ON FACE of permit.

SIGNED

Associated L1-A2334 PRINTED IN U.S.A.


Kate,
Bu

B. Purpose. The R.C.5 zoning classification is established, pursuant to the legislative findings above, in order to:

. . . .

4. *Provide a minimum lot size* which is sufficient to provide adequate area for the proper functioning of on-lot sewer and water systems.[7]

Id. (emphasis added).

Efforts throughout the country, including Baltimore County, have been to restrict undersize parcels, not oversized parcels. These efforts have resulted in the creation and evolution in zoning of the doctrine of merger, which, in zoning cases, generally prohibits the use of individual substandard parcels if contiguous parcels have been, at any relevant time, in the same ownership and at the time of that ownership, the combined parcel was not substandard.[8] In other words, if several contiguous parcels, each of which do not comply with present zoning, are in single ownership and, as combined, the single parcel is usable without violating zoning provisions, one of the separate, nonconforming parcels may not then *or thereafter* be considered nonconforming, nor may a variance be granted for that separate parcel. Some cases discuss automatic merger, but most require that the intent of the owner to merge the parcels be expressed, though little evidence of that intent is required. As far as we can discern, the zoning doctrine of lot merger has never been applied in any

---

[7] We will address the combining of three smaller parcels into one larger parcel by respondent, *infra*. That the purpose of this section is to require adequately sized lots or parcels of land will prove especially relevant in that context.

[8] We are unaware of any Maryland cases adopting the zoning doctrine of merger.

discussion of the case law interpreting these sections will be addressed later in this memorandum. The following arguments have to be viewed within the context of the above Baltimore County Zoning Regulations.

I. <u>First Legal Argument: Proposed Substation Expansion in Size</u>

A. Physical Size - The proposed substation will increase in size from the existing 1,200 square feet to approximately 22,000 square feet and will extend from the existing Tract C onto Tract A, which is a part of the subdivision of Fox Ridge Estates, as well as Tract B, which is currently a residential property with a residenc upon it, owned by the Vinup family. (This property was subsequently acquired by BGE on September 30, 1994).

B. Capacity - In addition, the capacity of the Ivy Hill facility will be increased from a 16.6-megawatt transformer to two 32-megawatt transformers for a total of 64 megawatts, or a 400% increase in capacity. The proposal will include in addition to the transformers, bus supports, a twenty by forty foot (20' by 40') metal switching structure, switching enclosures, and other equipment, all of which will exceed the proposed screening height of eight to ten feet of evergreens. The sheer size of the physical expansion proposed and its intrusion into the Fox Ridge Estates subdivision as well as neighboring piece of residentially zoned property

subject to restrictions.

October 17,1984	Order for Appeal to C.B. of A. from Phyllis C. Friedman, People's Counsel for Baltimore County.
October 19, 1984	Order for Appeal to C.B. of A. from Austin W. Brizendine, Jr., Esq., on behalf of Petitioners.
Feb. 7, 1985	Hearing held before the Board (F.S.V.)
" 12	" " " " " "
April 9	Board GRANTED SE with restrictions (Franz, Spurrier, Vincent)
May 8	Order for Appeal filed in the Circuit Court by S. Barhight for Protestants, Jean Duvall, et al (85-CG-1433)
June 21	Order of Dismissal filed in the Circuit Court on behalf of Protestants-Appellants by Mr. Barhight and case DISMISSED

#85-65-XSPHA (Item No. 166)	N/s Chester Rd., 590' W of Severn Rd. (800 Chester Road)	15th District	Joseph F. Evering, Jr., et ux

August 6, 1984	Petitions filed - for special exception for 2 lots located on the north and south side of Chester Rd. not included in special exception Cases 35-35X, 64-57 SPH, 64-160-X in a D.R. 5.5 zone to be used as a boat yard; variance from Sec. 409.2.c(2) to allow existing compacted stone in lieu of req. macadam paving. 409.2.b to allow 318 pkg. spaces in lieu of the req. 384; & from Sec. 417.5(a) requiring the structure not to exceed 300' beyond mean low tide to allow the structure to extend 419 ft. beyond the mea low tide; and special hearing to approve an amendment to th site plan in Case No. 64-57-SPH, 64-160-X and 35-35-X to construct an addition to the piers; etc.
April 25, 1985	Z.C.'s Order - That the Petition for Special Exception be GRANTED: that the Petition for Zoning Variances be GRANTED: That the amendments to the site plans be approved: That the Petition for Special Hearing be GRANTED, subject to restrictions.
May 10, 1985	Order for Appeal to C. B. of A. from Phyllis C. Friedman, People's Counsel of Baltimore County.
May 20, 1985	Order for Appeal to C.B. of A. from Robert J. Romadka, Esq., on behalf Petitioners.
May 20, 1985	Order for Appeal to C.B. of A. from Norman E. Gerber, Director, Planning & Zoning Office.
May 20, 1985	Order for Appeal to C.B. of A. from T. Rodgers Harrison, Esq., on behalf of Protestants.

----------OVER---------->

#85-65-XSPHA	N/S Chester Rd. 590' W. of Severn Rd.	15th District	Joseph F. Evering, Jr.

Oct.	29, 1985	Hearing held by the Board on MOTION ONLY (L.F.V.)
Dec.	12	Board issued RULING ON MOTION - ". . that the Chesapeake Bay Critical Area Protection Program is not applicable to the proposed petition." (Majority Opinion by Schmidt and Franz) DISSENT filed by Diana K. Vincent
Jan.	3, 1986	Order for Appeal filed in the Circuit Court by People's Counsel (#86-CG-0022)
Jan.	10	Order for Appeal filed in the Circuit Court by County Attorney (#86-CG-240) CONSOLIDATED IN COURT
"	21	Hearing held by the Board (L.F.H.) - Case was to open on merits, therefore, did not need same Board. After much discussion, case did not open but was continued until after the Circuit Court has rendered an Order on the above appeals.
Aug.	7	Order of Judge Sfekas: "In this case the Plaintiffs have only appealed the Board's ruling on the applicability of the Aviation Zoning Regulations and the Critical Areas Law, the remaining portion of the case is still pending before the Board. The Board has also affirmed the Z.C.'s ruling on the applicability of the Chesapeake Bay Critical Areas Legislation. They have not affirmed the granting of the Evering's SE. For these reasons, this Court coes not believe the Board of Zoning Appeals has issued a final determination of the rights of the parties. To allow an appeal of the Board's ruling, at this time, would encourage piecemeal litigation, thus imposing an increased burden on the judicial system and the parties." --- Case remanded to Board to have a hearing on the merits.
Dec.	16	Hearing held by the Board (L.F.H.) (continued to 12/17/86)
Dec.	17	Continued hearing before Board. Case completed. (L.F.H.)

LAW OFFICES
MUDD, HARRISON & BURCH
306 WEST JOPPA ROAD
TOWSON, MARYLAND 21204
AREA CODE 301-828-1335

JOHN E MUDD
T ROGERS HARRISON
RICHARD C BURCH
DOUGLAS W BISER
H. PATRICK STRINGER, JR.
ANDREW JANQUITTO

900 MARYLAND TRUST BUILDING
14 SOUTH CALVERT STREET
BALTIMORE, MARYLAND 21202
301-323-0266

January 14, 1987

HAND DELIVERED

Mr. William T. Hackett, Chairman
Board of Zoning Appeals
Baltimore County, Maryland
Room 200
Court House
Towson, Maryland 21204

Re: Joseph F. Evering, Jr., et ux,
Petitioners v. Bowley's Quarters
Improvement Association, Inc. et
al, Protestants, #8565XSPHA

Dear Mr. Hackett:

Enclosed please find the original and three copies of Memorandum and Argument filed in the captioned matter on behalf of the Protestants.

Very truly yours,

T. Rogers Harrison

TRH:lfc

c.c. - John Gontrum, Esquire
Phyllis Friedman, Esquire
Mr. Andy Jones

RECEIVED
COUNTY BOARD OF APPEALS
1987 JAN 14 P 3:45

LAW OFFICES
MUDD, HARRISON & BURCH
306 WEST JOPPA ROAD
TOWSON, MARYLAND 21204
AREA CODE 301-828-1335

JOHN E. MUDD
T. ROGERS HARRISON
RICHARD C. BURCH
DOUGLAS W. BISER
H. PATRICK STRINGER, JR.
ANDREW JANQUITTO

900 MARYLAND TRUST BUILDING
14 SOUTH CALVERT STREET
BALTIMORE, MARYLAND 21202
301-323-0266

November 26, 1985

Mr. William T. Hackett, Chairman
Baltimore County Board of Zoning Appeals
Room 200 Court House
Towson, Maryland 21204

Re: Case No. 85-65-XSPHA
Joseph F. Evering - Protestants
Chester Road, W. Severn
15th District
Boat Yard

Dear Mr. Hackett:

We have received a notice rescheduling the continuance of the above-captioned zoning case for Tuesday, January 21, 1986, at 10 a.m. I hope that it is everyone's understanding that it is not my desire to create any unnecessary inconvenience for anyone; however, my practice is primarily that of trial work and I do have a previously scheduled trial in the Circuit Court for Baltimore County, Hoffman v. High's, beginning on January 22, 1986, and I will be preparing for that trial several days prior. However, we all know there are always cases that are postponed, settled, etc. In light of this previously scheduled trial, I have no alternative but to ask that the zoning case be postponed to another date and my secretary would be more than willing to provide all the available dates on my calendar from the first of the year forward.

Thank you for your kind cooperation.

Very truly yours,

T. Rogers Harrison

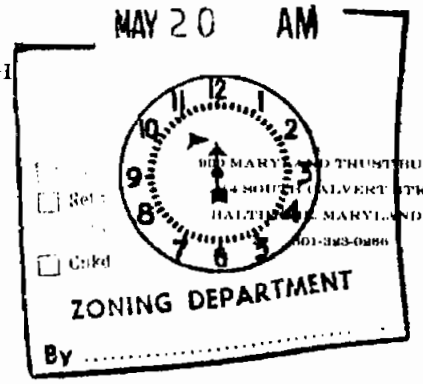
TRH:sw

c.c. John O. Hennegan, Esquire, Robert J. Romadka, Esquire, Judith A. Arnold, Esquire, Phyllis C. Friedman, Esquire, Mr. Norman E. Gerber, Mr. James Hoswell, Mr. Arnold Jablon, Jean Jung, Mr. James Dyer

RECEIVED
COUNTY BOARD OF APPEALS
1985 NOV 27 A 11:07

LAW OFFICES
MUDD, HARRISON & BURCH
306 WEST JOPPA ROAD
TOWSON, MARYLAND 21204
AREA CODE 301-828-1345

JOHN E. MUDD
T. ROGERS HARRISON
RICHARD C. BURCH
DOUGLAS W. BIRKE
H. PATRICK STRINGER, JR.



May 17, 1985

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

Re: Petition for Spec Ex
Petition for Spec Hearing
Petition for Variances
Case No. 85-65-XPHA

Dear Mr. Jablon:

The Protestents, Ken Engelke, et al., would like to appeal your decision in the above-captioned matter.

Our firm's check in the amount of $260.00 is enclosed. This amount represents the fee for the appeal from the granting of the special exception $100.00), the fee for the appeal from the granting of the variance ($75.00), the fee for the appeal from the granting of the special hearing ($75.00), and the costs for posting two signs ($10.00) on the Everings' property.

If you have any questions, please feel free to contact me.

Very truly yours,

T. Rogers Harrison

TRH/djb
Enclosure

RECEIVED
COUNTY BOARD OF APPEALS
1985 MAY 22 P 1:01

produces the many issues and concerns raised by th community at this hearing.

C. Geographical Expansion - The gross increase in substation size, the unwarranted expansion onto an existing residential property which will be demolished to make room for the enlarged substation, and the addition of more service area to support electric service to other areas of Baltimore County in addition to what is currently being serviced by Ivy Hill substation satisfies the violation of section 502.1 in that this expansion will be detrimental to the health, safety, or general welfare of the locality involved. This proposed expansion is inconsistent with the purposes of the property zoning classification and inconsistent with th spirit and intent of the zoning regulations. Clearly, the zoning regulations were never meant to permit a facility such as the proposed substation, which can only be viewed as industrial and commercial in nature to be located in such close proximity to adjacent residences and adjoining residential property. One only need look at the various photos of the existing substations presented by Mrs. Follo in her testimony to understand the unwarranted intrusion into this residential subdivision (see protestants' Exhibit Numbers Sevent en through Nineteen). It should be noted in reviewing these photos that many of the substations depicted in the

November 9, 1984

T. Rogers Harrison, Esquire
306 West Joppa Road
Towson, Maryland 21204

RE: Case No. 85-65-XSPHA
Joseph F. Evering, et ux,
Petitioners

Dear Mr. Harrison:

I am in receipt of your letter dated November 5, 1984.

Although I can imagine a scenario that both sides to the above matter will request time ad nausem to respond to the other side's memorandums, I will permit you ten days from the date of this letter to respond. I will then permit Mr. Hennegan ten days from his receipt of a copy of your response to answer, after which I will issue my decision.

Sincerely,

ARNOLD JABLON
Zoning Commissioner

AJ/srl

cc: John O. Hennegan, Esquire

85-1050
Over file

11/7/84

LAW OFFICES
MUDD, HARRISON & BURCH
306 WEST JOPPA ROAD
TOWSON, MARYLAND 21204
AREA CODE 301-828-1335

JOHN E. MUDD
T. ROGERS HARRISON
RICHARD C. BURCH
DOUGLAS W. BISER
H. PATRICK STRINGER, JR.

900 MARYLAND TRUST BUILDING
14 SOUTH CALVERT STREET
BALTIMORE, MARYLAND 21202
301-323-0288

November 5, 1984

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

Re: Petitions of Joseph F. Evering, et ux
85-65-H-XSPHA

Dear Mr. Jablon:

We just received our copy of the Memorandum filed by Petitioners' counsel in the above-captioned matter. It had been my understanding that both parties were to file a Memorandum within a specified period of time and not that the Petitioners would have weeks of time to review and then respond to the Memorandum filed by the Protestants. Therefore, I am requesting an additional 10 days period of time to file a response to the Petitioners' Memorandum prior to any ruling by your office. Positive consideration of this request would be greatly appreciated.

Very truly yours,

T. Rogers Harrison

TRH:lfc

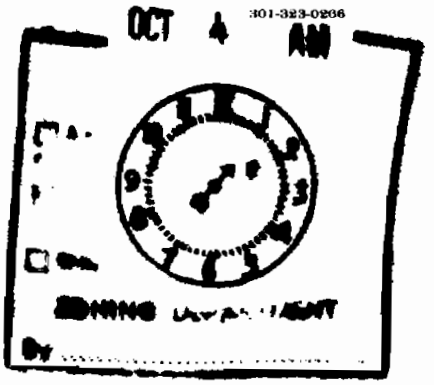
c.c. - John O. Hennegan, Esquire

7 '84 AM

LAW OFFICES
MUDD, HARRISON & BURCH
306 WEST JOPPA ROAD
TOWSON, MARYLAND 21204
AREA CODE 301-828-1335

JOHN K. MUDD
T. ROGERS HARRISON
RICHARD C. BURCH
DOUGLAS W. BISER
H. PATRICK STRINGER, JR.

900 MARYLAND TRUST BUILDING
14 SOUTH CALVERT STREET
BALTIMORE, MARYLAND 21202
301-323-0266



October 3, 1984

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

Re: Petition of Joseph F. Evering, Jr., et ux
Petition for Special Exception
Petition for Special Hearing
Petition for Variances
Case No. 85-65-XSPHA

Dear Mr. Jablon:

Enclosed please find the original and one copy of our Memorandum filed on behalf of all protestants at the Zoning hearing which occurred on September 10, 1984. It is my understanding that your primary area of interest was the protestants' position regarding validity and legality of the existing zoning and the petitions utilized to bring the current issues before the Zoning Commissioner. In accordance with that indication, we have not developed the myriad of additional arguments which exist on the merits of this case.

We are sending a copy of our memorandum to Petitioners' counsel and if you require any additional information, please don't hesitate to contact me.

Very truly yours,

T. Rogers Harrison

TRH:lfc
Enclosures

c.c. - Robert Romadka, Esquire
Mr. Ken Engelke

LAW OFFICES
MUDD, HARRISON & BURCH
306 WEST JOPPA ROAD
TOWSON, MARYLAND 21204
AREA CODE 301-828-1335

JOHN E. MUDD
T. ROGERS HARRISON
RICHARD C. BURCH
DOUGLAS W. BISER
H. PATRICK STRINGER, JR.

900 MARYLAND TRUST BUILDING
14 SOUTH CALVERT STREET
BALTIMORE, MARYLAND 21202
301-323-0200

27 September 1984

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

Re: Case No. 85-65-XSPHA
Item No. 166
Petitions for Special Exceptions, Special Hearing, and Variances
Property Owner: Joseph F. Evering, Jr., et ux.

Dear Mr. Jablon:

Pursuant to the conversation we had yesterday, I have written this letter to confirm that I shall be assisting Tom Harrison in the above-captioned case. I also want to thank you for allowing me to make copies of the documents in the file. If you have any questions, please feel free to contact Tom Harrison or me.

Very truly yours,

Andrew Jahquitto

AJ:aj

85-65-A
Case file

9/17/84

LAW OFFICES
MUDD, HARRISON & BURCH
306 WEST JOPPA ROAD
TOWSON, MARYLAND 21204
AREA CODE 301-828-1335

JOHN E. MUDD
T. ROGERS HARRISON
RICHARD C. BURCH
DOUGLAS W. BISER
H. PATRICK STRINGER, JR

900 MARYLAND TRUST BUILDING
14 SOUTH CALVERT STREET
BALTIMORE, MARYLAND 21202
301-323-0266

13 September 1984

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

Re: Case No. 85-65-XSPHA
Item No. 166 (1983-1984)
Petitions for Special Exception, Special Hearing, and Variances
Property owner: Joseph F. Evering, Jr., et ux.

Dear Mr. Jablon:

Please be advised that Ken Engelke and other members of Mr. Evering's neighborhood have retained our services to represent their interests in the above-captioned matter. Also, let this letter serve as confirmation of today's telephone conversation between our offices in which you gave us until 5 October 1984 to file the memorandum of law you requested in the 10 September 1984 hearing. If there are any questions, please feel free to contact me. Thank you.

Very truly yours,

Tom

T. Rogers Harrison

TRH:aj

photographs are not even the size of the proposed subdivision. For instance, the Jacksonville substation is approximately a third the size of the proposed expansion and its effects can readily be seen in the protestants Exhibit. The visual impact of this proposed facility can readily be seen from the comparison charts submitted by Robert Rytter as protestants' Exhibits Three, Four, and Five.

D. Service Territory Expansion - The physical expansion and the geographical expansion is accompanied likewise by an expansion of the service territory to include what is called the Hickory Ridge area during the course of the hearing before the Board. The effect of the increased service territory is to put a burden upon the protestants' community to support electric service to an area that is currently not being supplied by the Ivy Hill substation. In effect, it means that BGE is sacrificing this community to preclude the need to construct a substation or transformer station in another area of Baltimore County where service may be needed. protestants believe that not only is this an improper and unwarranted intrusion in their community, but that it is patently unfair to require a change in character of their neighborhood to support another area which will not be burdened by such an unsightly facility.

II. <u>Second Legal Argument: BGE's Failure to Establish Need</u>

PCF: seen
PMZ: /

OFFICES OF

STEPHEN H. SACHS
ATTORNEY GENERAL

ELEANOR M. CAREY
DENNIS M. SWEENEY
CHARLES O. MONK, II
DEPUTY ATTORNEYS GENERAL

JUDITH A. ARMOLD
ASSISTANT ATTORNEY GENERAL

COUNSEL
DEPARTMENT OF STATE PLANNING

THE ATTORNEY GENERAL

DEPARTMENT OF STATE PLANNING
301 WEST PRESTON STREET
BALTIMORE, MARYLAND 21201-2365
301-383-7700

September 8, 1986

noted

County Board of Appeals of Baltimore
County
Room 200 Court House
Towson, Maryland 21204

c/o Ms. Edith T. Eisenhart, Administrative Secretary

Re: Case No. 85-65-XSPHA
Joseph F. Evering, Jr., et ux.

Dear Chairman and Members of the Board:

I have just received notice of the assignment of the referenced case for December 10, 16, and 17, 1986. While December 16 and 17 present no problems for me, I do have a scheduling conflict on December 10. I am a member of the Review Board of the Attorney Grievance Commission, and the Review Board has scheduled its regular monthly meeting, in Annapolis, beginning at 1:00 P.M. on Wednesday, December 10. In order that the business of the Review Board can be handled expeditiously, it is important that each of the members makes every effort to attend. For that reason, I respectfully request that the case be set for a day other than December 10 if a third day of hearing is necessary.

Thank you for your cooperation.

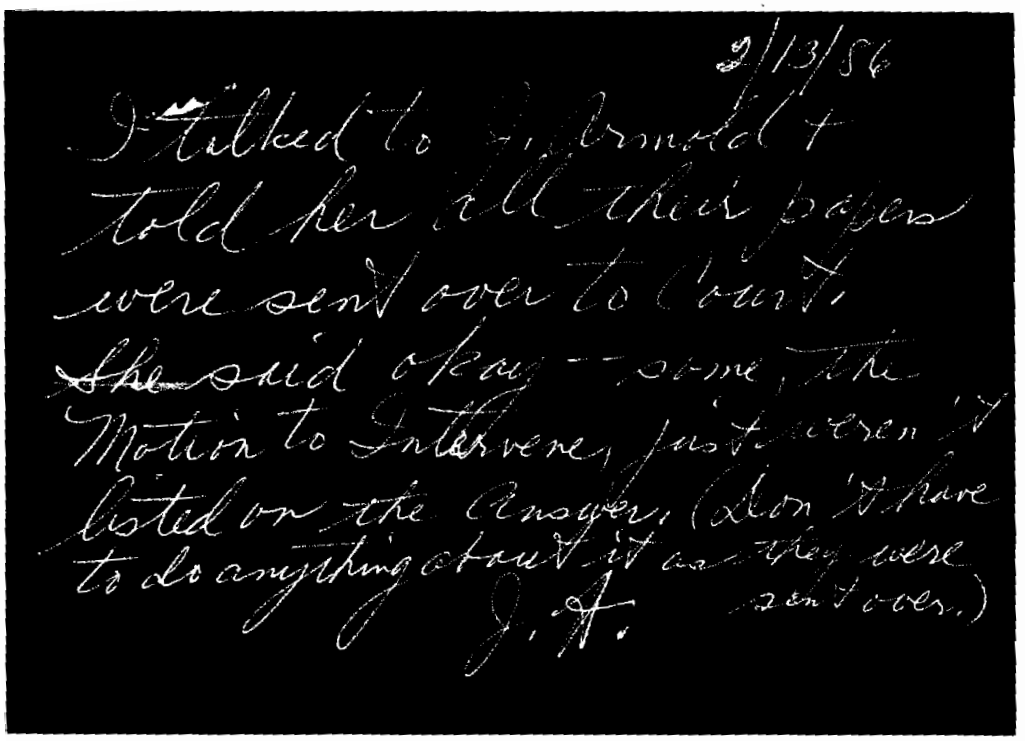
Very truly yours,

Judith Armold

Judith A. Armold

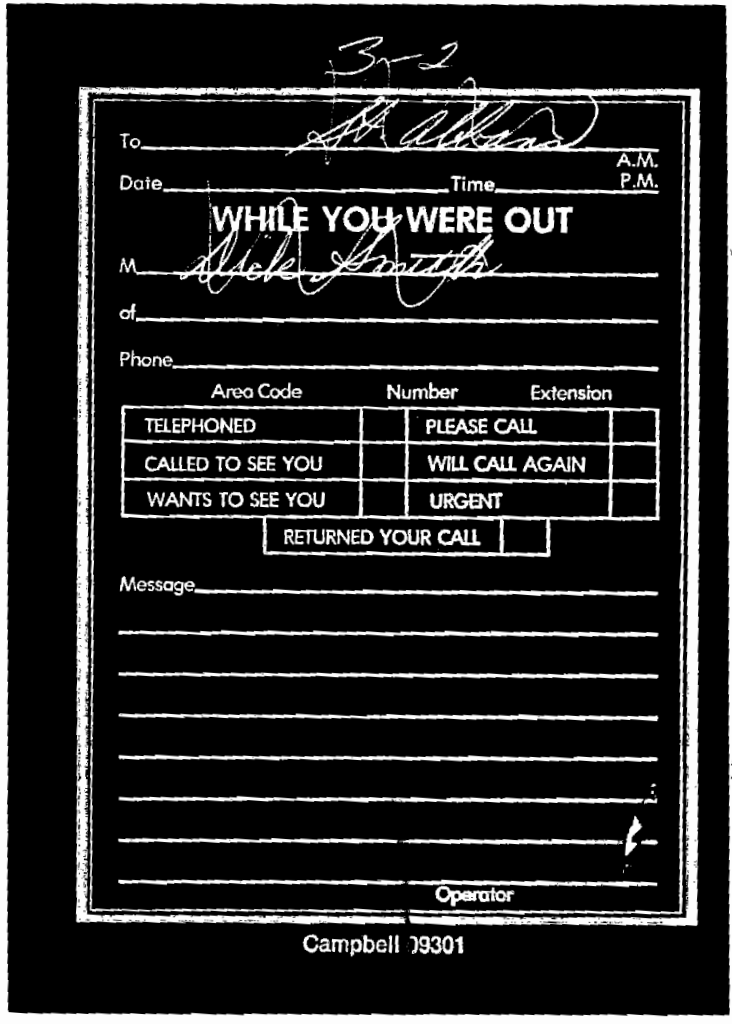
cc: John B. Gontrum, Esquire
T. Rogers Harrison, Esquire
Phyllis C. Friedman, Esquire ✓
Thomas J. Bollinger, Esquire

JAA:mp


2/13/86

I talked to Schmoldt told her all their papers were sent over to Court. She said okay -- some, the Motion to Intervene, just weren't listed on the Answer, (don't have to do anything about it as they were sent over.)

J. F.



3-2

To Mikes

Date Time A.M. P.M.

WHILE YOU WERE OUT

M Mike Smith

of

Phone

Area Code Number Extension

TELEPHONED		PLEASE CALL	
CALLED TO SEE YOU		WILL CALL AGAIN	
WANTS TO SEE YOU		URGENT	
RETURNED YOUR CALL			

Message

Operator

Campbell 09301

OFFICES OF

STEPHEN H. SACHS
ATTORNEY GENERAL

ELEANOR M. CAREY
DENNIS M. SWEENEY
CHARLES O. MONK, II
DEPUTY ATTORNEYS GENERAL

JUDITH A. ARMOLD
ASSISTANT ATTORNEY GENERAL

COUNSEL
DEPARTMENT OF STATE PLANNING

THE ATTORNEY GENERAL
DEPARTMENT OF STATE PLANNING
301 WEST PRESTON STREET
BALTIMORE, MARYLAND 21201-2365
(301) 225-4507

February 10, 1986

Ms. June Holmen
Secretary, Board of Appeals of
Baltimore County
Room 200, Court House
Towson, Maryland 21204

Re: In re Application of Joseph F. Evering, Jr. et ux., Board Case No. 85-65XSPHA, Circuit Court Case No. 86CG0022 (Doc. 19, Folio 117)

Dear Ms. Holmen:

In reviewing the Certified Copies of Proceedings Before the Zoning Commissioner and the Board of Appeals of Baltimore County, I note that the Department of State Planning's Motion to Intervene, filed with the Board on or about May 24, 1985, as well as a number of other less significant documents, were not included. While the Department continues to take no position on the date of filing issue that is the essence of the referenced appeal, I believe that the record should reflect that the Department was a proper party to the proceedings before the Board. Therefore, I respectfully request that the record be amended to include the Department's Motion to Intervene.

Thank you for your attention to this matter.

Very truly yours,

Judith Armold

Judith A. Armold

cc: Phyllis C. Friedman, Esquire
Thomas J. Bollinger, Esquire
T. Rogers Harrison, Esquire
John O. Hennegan, Esquire
Clerk, Circuit Court for Balto. Co.

JAA:mp

RECEIVED
COUNTY BOARD OF APPEALS
1986 FEB 13 P 12: 24

OFFICES OF

STEPHEN H. SACHS
ATTORNEY GENERAL

ELEANOR M. CAREY
DENNIS M. SWEENEY
CHARLES O. MONK, II
DEPUTY ATTORNEYS GENERAL

JUDITH A. ARMOLD
ASSISTANT ATTORNEY GENERAL

COUNSEL
DEPARTMENT OF STATE PLANNING

THE ATTORNEY GENERAL

DEPARTMENT OF STATE PLANNING
301 WEST PRESTON STREET
BALTIMORE, MARYLAND 21201-2365
301-383-7700

May 23, 1985

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

Re: Case No. 85-65-XSPHA

Dear Mr. Hackett:

Please file the enclosed motion in the referenced case and present it at the earliest appropriate time for the Board's action. Thank you.

Very truly yours,

Judith Armold

Judith A. Armold

Enclosure

JAA:mr

RECEIVED
COUNTY BOARD OF APPEALS
1985 MAY 24 A 11: 17

OFFICES OF

STEPHEN H. SACHS
ATTORNEY GENERAL

ELEANOR M. CAREY
DENNIS M. SWEENEY
CHARLES O. MONK, II
DEPUTY ATTORNEYS GENERAL

JUDITH A. ARMOLD
ASSISTANT ATTORNEY GENERAL

COUNSEL
DEPARTMENT OF STATE PLANNING

THE ATTORNEY GENERAL

DEPARTMENT OF STATE PLANNING
301 WEST PRESTON STREET
BALTIMORE, MARYLAND 21201-2365
(301) 225-4507

October 18, 1985

Secretary
Board of Appeals for Baltimore County
Room 200, Old Courthouse
Towson, Maryland 21204

Dear Sir or Madam:

Please file the enclosed notice in the case identified in the heading of the notice.

Thank you.

Very truly yours,

Judith Arnold

Judith A. Armold

Enclosure

JAA:mr

RECEIVED
COUNTY BOARD OF APPEALS
1985 OCT 21 A 9:44

As s t forth above, BGE must stablish that the propos d expansion must be needed for the proper rendition of the public utility service and that the location thereof shall not seriously impair the use of the neighboring property. To suggest that this facility will not seriously impair the use of the neighboring property is to ignore completely the obvious. The same arguments which applied to the denial of the Special Exception pursuant to Section 502.1 are applicable to Section 411.1 and that the evidence supports the level of serious impairment to the use of the neighboring property.

Turning to the proof of need, the protestants believed that they could utilize the very testimony of BGE to show that BGE's projected growth rate did not warrant th expansion proposed. In addition, protestants sought out information from Baltimore County which established that BGE's projections were far in excess of what the county proposed for the growth rate in the service area.

The figures previously presented in this memorandum establishing the growth rate as developed by Baltimore County Office of Planning and Zoning established that through the use of transportation districts, an accurate analysis of th proposed growth rate of the BGE service area, both including and excluding the Hickory Ridge additional service area could be made. Through the use of traffic zones and giving BGE the benefit of the doubt for those zones which exceeded the

August 20, 1986

TO: Keith S. Franz and Larry Schmidt

FROM: E. T. Eisenhart

SUBJECT: Case No. 85-65-XSPHA - Joseph F. Evering, Jr.

The above case has been remanded to the Board for hearing on its merits. We have received a letter from John Gontrum requesting that the case be assigned for hearing as soon as possible, and also requesting that we set it for two hearing days. We are presently scheduled through the first week in December, therefore, the first open date would be Tuesday, December 9th and any hearing day after that.

Mr. Hackett requested that inasmuch as you were the Board which ruled on the Motion which was appealed to Circuit Court (Diana was the third member) - you should contact John Gontrum to see if they are going forward with the case (T. Bollinger thought it was going to be dismissed) and if so then arrange for hearing dates suitable to you and the attorneys in the file. T. Bollinger, Esq.

Petitioners	Hennegan, Gontrum, Romadka
Protestants	Harrison
Judith A. Armold	Asst. Attorney General
Phyllis C. Friedman	P.C.

1/3/84
To file
gs

J. Melvin Cole
County Administrative Officer

January 3, 1984

Norman E. Gerber, AICP, Director
Office of Planning and Zoning

Appeal to Circuit Court
Zoning Petition No. 85-65-XSpH
Joseph F. Evering, Jr., et ux

Enclosed please find a copy of both the majority and minority opinions of the County Board of Appeals on a Preliminary Motion by the petitioner in the subject case. I am concerned by the finding of the CBA in its majority opinion, not just as to the impact of this case but, more importantly, the impact of this ruling on the normal procedures followed by my office.

For quite some time, it has been the practice of the Division of Zoning Administration to accept petitions and then at the counter, review them with input from appropriate agencies, notifying the petitioner of any necessary revisions, and then transmit a form letter accepting the petition for filing. At this point in the process, the petition is scheduled for hearing by the Zoning Commissioner.

Were the majority opinion of the CBA to be binding, it would mean that anything taken over the counter with a check would be "accepted for filing", and this could create difficulties in day to day operations.

One other point should be noted. If the majority opinion is allowed to stand in the instant case, the petitioner will not be required to submit information with the petition that can be evaluated to determine conformance to the requirements of the Chesapeake Bay Critical Area Protection Program.

I am therefore notifying you of our intention to appeal the subject decision by the CBA. This appeal will be filed prior to January 13, 1984.

Norman E. Gerber

Norman E. Gerber, AICP
Director

NEG:JGH:slm

enclosure

cc: Arnold Jablon ✓
Malcolm Spicer
Phyllis Cole Friedman

86-1163 Case file

11/21/85 pc file

QED Reid 11-22-85

DINENNA, MANN & BRESCHI
ATTORNEYS AT LAW

S. ERIC DINENNA, P.A.
JAMES L. MANN, JR., P.A.
GEORGE A. BRESCHI, P.A.

ROBERT A. BRESCHI

406 WEST PENNSYLVANIA AVE.
TOWSON, MARYLAND 21204

(301) 296-6820

November 20, 1985

Zoning Commissioner for
Baltimore County
County Office Building
Towson, Maryland 21204

RE: Variance Petition
H. C. Kim and Wife, Petitioners
Case #: 86-207A

Item 92

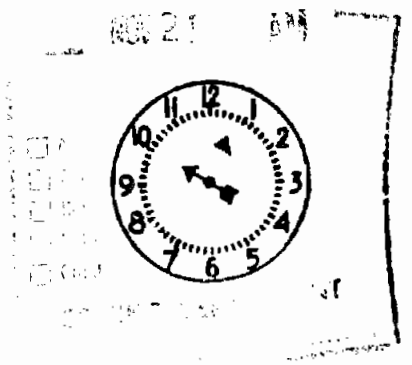
Dear Mr. Commissioner:

Please enter my appearance in the above-captioned matter on behalf of the Petitioners.

Very truly yours,

S. ERIC DINENNA

SED:bk



LAW FIRM

Romadka, Gontrum, Hennegan & Foos

IRVINGTON FEDERAL BUILDING
809 EASTERN BOULEVARD
ESSEX, MARYLAND 21221
TELEPHONE (301) 686-8274

ROBERT J. ROMADKA
JOHN B. GONTRUM
JOHN O. HENNEGAN
CHARLES E. FOOS, III

DONALD E. BRAND

OF COUNSEL
ALFRED M. WALPERT

August 18, 1986

Chairman William Hackett
Baltimore County Board
of Appeals
Court House
Towson, Maryland 21204

Re: Joseph F. Evering, Jr., et ux.

Dear Chairman Hackett:

Please enter my appearance as attorney for Joseph F. Evering, Jr., et ux. with respect to his Petition for Special Exceptions, Special Hearing and Zoning Variance before you. It is my understanding that the court, on August 7, 1986, dismissed People's Counsel's appeal and this matter may proceed with a hearing on the merits. We would appreciate the board assigning us, at this time, two days of hearing time as soon as possible.

Unfortunately, this matter has been before the board and the courts for more than a year without resolution, and we would appreciate any assistance which you could give in scheduling a prompt hearing.

Respectfully yours,

John B. Gontrum

JBG/rc

cc to: Judith A. Armold, Esquire
Peter Max Zimmerman, Esquire
T. Rogers Harrison, Esquire
Peter W. Taliaferro, Esquire
Thomas J. Bollinger, Esquire
Mr. Joseph F. Evering, Jr.

RECEIVED
COUNTY BOARD OF APPEALS
19 AUG 20 A 11: 24

Evening Petition
Item # 166
Re: 85-65-XBPHA

27 September 1984

→ I have taken the file in the above-captioned case to my office for copying, and shall return it tomorrow, 28 September 1984

Andrew Jianquitto, Esquire
Munn, Harrison & Burch

limits of the service territory, it became clear that under the Baltimore County figures that in examining protestants' Exhibit Number Seven, the unit Growth comparison, the Baltimore County figures in dealing with units of increase were far below that of BGE's estimate to the year 2020 as demonstrated on protestants' Exhibit Number Seven. On that same Exhibit, BGE's increase of seventy-five (75) units per year was likewise plotted as well as their other alternative growth projection of four percent (4%) per year. It can b seen that the Baltimore County figures (which BGE did not rely upon but used a country-wide modeling program) are clearly much less and protestants submit more accurate. However, giving BGE the benefit of the doubt, protestants' Exhibit Number Eight was presented which showed the need comparison versus the capacity proposed by the incr ased substation. On that Exhibit, using the BGE assumption of seventy-five (75) units equaling 0.7 megawatt, the capacity of the proposed Phase I and Phase II enlarged substation facility was diagrammed in yellow, which shows the dramatic capacity in excess of the need, both through Phase I and Phase II.

Furthermore, in protestants' Exhibit Numbers Nine and Ten, the protestants plotted not only the need comparisons previously discussed, but also included within thos projections the Hickory Meadow area, which is being added to the existing service area of the Ivy Hill substation. Even

85-65 - XSPHA Colvin 9/10/64 1:30

* Jack Kenney, Esq
* Bob Ronalds, Esq
Joseph Colvin, Pet
* Ken Engelke, 828 Chesterfield Rd 21220
* Richard Stewart, III, 816 " "

marina operates w/2 lots that have been bought by Pets but for some reason not included in the original spx request -

Colvin - owner of marina - bought prop 1953 - obtained spx in 1955 to operate marina - can use 3535X operated as boat yard - in 1960, bought adjoining prop on south side of Chesterfield Rd - in 1964, applied for spx to have boat yard - 64-57-SPH to allow marine craft & parking on prop - 3 restrictions - ~~adjoining~~ prop owner on easternmost portion of prop required no craft stored w/in 20' of their prop line - side prop owners, & Pet bought their prop, which is on south side of Chesterfield Rd - purchased lot in July, 1969 - spx in 1964 granted spx for new prop on north side of Chesterfield - mariner - personal boat - storage for recreation - season begins July 4th & continues to Labor Day - will pull out of H2O if people want, if not let stay in H2O - people can come & any time - in 1974, bought another lot adjacent to prop bought in 1960 - utilized for parking - Chesterfield pays Rd never improved - Pet improved - wants to continue usage of 2 lots as been for past 15 years - utilized for parking - ~~30~~ 23 spaces on south & 24 on north - on south 50' x 25', north side 35' x 295' - less than 20% of total prop 2 lots -

1964 when sat mod up R, had
~~piers~~ in ~~1955~~, ~~when bought + piers existed~~ 4 piers
in existence - sat up R ~~&~~ + to include 4 additional
piers, of which built 1 - at this time, bet determined
not to be financially feasible to build all 4 + Coppel
now wants to amend 1967 site plan - to construct
2 new piers @ different location due to depth
of H-C - ~~can't~~ can't tie up sail boats @ piers
at old location but can @ new location -
wants to relocate piers - wants to extend
2 existing piers + extend them to a T formation -
have 201 slips + wants to add 178, about 40
more than previously app'd - need greater depth -
has permission to dredge for Army, but doesn't
want to - expense + greater impact on surrounding
grass - wants removed rest 1 (64-160R) +
rest 6 (64-160-R) - in 64-57 wants rest 1
+ rest 3 removed - RTR not applicable because
pier ~~adjacent~~ utilized for recreational purposes only -
compact stone used for parking areas - allows for use of -
w/o 2 lots has 318 parking spaces - 4th of July + Labor Day
busiest days of year - this year had only 55 cars parked
on site - piers would extend 418' rather than 300'
from land - piers would not impede free flow of
navigation in channel -

cross R - 75% to 80% slips rented - 12 to 14 boats stored
on land - during off season 100 boats
stored - DR 5.5 -

II Paul Caravatella - lives across ~~water~~ way for pier -
repair boats - 178 additional boats would
adversely impact due to seasonal comings +
goings - also piers are on land +
boats would be going out into channel
+ not affect pier surrounding marina

III Vincent Elliott - boat owner - doesn't believe new piers will impact on use of marina -

IV Leonard Gerstein - boat owner at Marina for > years -

Scots read statement - don't need more slips for marina - traffic generated will adversely impact - equates 178 slips w/ 178 new homes - new slips will be dangerous by creating blind spots -

Stumpf - new slips would limit view - don't want boats stored on lot, cars w/in 20' for prop line - concerned about speed & safety -

Jackie Cymek - concerned about use of paper road -

Diane Stumpf - concerned about blind spots in H-O - & about speeding -

Katherine Reese - concerned about traffic - traffic very bad on weekends which would prevent fire dept from servicing any fire -

Helen Demuth - opposed to removal of restrictions -

Edward Brunwell -

Bertha Carson -

Evening -

81-45 XSFHA — Evening — 2/11/85 — 1:38

* Jack Hennigan, Esq
Neil Boufetis, Engineer
John Schmidt, Landscape Arch + Environmental consultant
* Tom Hannon, Esq Asst

Hennigan - requests variance CAC or Setting Bay req'mt - 88-181 S(2)(2) - not applicable to any subdivision plans prior to 3/1/84 - application originally filed in Nov, 1983 - originally filed then w/ subsequent plat filed due to alignment of additional street - application not followed thru by 6/2 - then required changes + wanted to wait til Frank Lee + other factors followed - filed lot of variance to build piers + to waive requirements that piers not be closer than 300' from Conn Turn - Lots 4 by X + SH filed on 8/8/84 -

Schmidt - represented Landscape architect + environmental consultant - chief environmental design for State Hwy Admin - Bureau of Landscape Architecture - Has worked + will continue to site 3 times - the previous hydrological study - flat site, not affected by proposed development - no changes or removal trees - stone base permeable base - to the least coliform (more than requirement) - if response is to take 3 days, will continue data collection - wet to dry - Sensitive testing will be conducted to address impact - Most undisturbed state except new piers + not contribute to problem - Best time now - will not take any trees at site - no Hydrological test - use sampling of vegetation + bioassay - only by-pass

JOSEPH F. EVERING, JR., ET UX # 85-65-XSPHA

Aug.	6, 1984	Petition filed
Apr.	25, 1985	Z.C. GRANTED SE for Boat Yard for two lots, one located on the north side and the other on the south side of Chester Road, including the roadbed of Chester Road; GRANTED variances to permit the existing compacted-stone parking surface instead of the required durable and dustless surface; GRANTED special hearing subject to restrictions (see ZC Order)
May	10	Order for Appeal filed by People's Counsel
"	20	Order for Appeal filed by Mr. Romadka for Petitioners
"	20	Order for Appeal filed by Mr. Harrison for Protestants, Ken Engelke, et al
"	20	Order for Appeal filed by Mr. Gerber, Director, Office of Planning and Zoning
Oct.	29	Hearing before the Board on MOTION by the Petitioner relative to sub-title 18 of the Natural Resources Article of the Annotated Code of Md. (Critical Area Protection). Petitioner's Motion challenged the applicability of the Act.
Dec.	12	Majority RULING on Motion filed by Lawrence E. Schmidt, Acting Chairman, and Keith S. Franz holding that the Chesapeake Bay Critical Area Protection Program is not applicable to the proposed petition
"	12	Dissent on Ruling on Motion filed by Diana K. Vincent
Jan.	3, 1986	Order for Appeal filed in Circuit Court by People's Counsel & Harrison
"	10	" " " " " " " County Attorney
Feb.	3	Record of proceedings filed in the Circuit Court
Aug.	7	REMANDED TO THE BOARD by Judge Sfekas "In this case the Plaintiffs (P.C., County Attorney & Counsel for Protestants) have only appealed the Board's ruling on the applicability of the Aviation Zoning Regulations and the Critical Areas Law, the remaining portion of the case is still pending before the Board. The Board has also affirmed the Z.C. ruling on the applicability of the Chesapeake Bay Critical Areas Legislation. They have not affirmed the granting of the Evering's special exception. For these reasons, this Court does not believe the Board of Zoning Appeals has issued a final determination of the rights of the parties. To allow an appeal of the Board' ruling, at this time, would encourage piecemeal litigation, thus imposing an increased burden on the judicial system and the parties.
Dec 17		Per LES: All Counsel have thirty (30) days (specifically, close of business on January 16) to submit their closing arguments. All written arguments to be submitted by that date; no extensions will be given.
		Hearing before Board - December 16 & December 17.
Febr 17		As per telephone conversation, meeting of all attorneys involved in Evering case in CBA office to discuss appro. steps.

JOSEPH F. EVERING, JR., ET UX (continued)

April 22, 1987	Continued hearing held before C.B. of A.
October 21	Order of C.B. of A. GRANTING Petition for SE w/ restrictions; GRANTING variance from 409.2.c(2); GRANTING in part and DENYING in part variance from 417.5; GRANTING Petition for Special Hearing in part.
November 10	Order for Appeal filed in CCt for BCo by People's Counsel; Petition to accompany Appeal filed.
November 12	Certificate of Notice sent.
November 16	Order for Appeal filed in CCt for BCo by T. Rogers Harrison, Counsel for Protestants; Petition to accompany appeal filed.
November 16	Certificate of Notice sent.
November 20	Order for Appeal filed in CCt for BCo by John B. Gontrum, Esquire, Counsel for Petitioners; Petition to accompany appeal filed.
November 24	Certificate of Notice sent.
December 9	Record of Proceedings filed in CCt.
Nov 10	Order for Appeal fd by PC in CCt, BCo.
Nov 16	Appellant's (Kenneth Engelke, et al) Order for Appeal filed in CCt, BCo
Nov 20	Appellant's (Jos Evering) Order for Appeal/Petition filed in CCt, BCo
May 26, 1988	Joint Motion to Remand to CBA and Court's Order that Case 87-CG-4755 be REMANDED to Board "...for consideration of the amended site plan and a determination that the plan meets critical area criteria." (Hinkle, J)

VE

Note: CCt Case # 88-CG-0002. Dism by above Order.

with that area added, including all existing units served by the area of Hickory Meadows, it can be clearly seen that again the capacity from this expansion is far in excess of what is actually needed by using all of the figures and comparisons most favorable to BGE.

Finally, in a protestants' Exhibit, it was shown that using Baltimore County projections by the year 2020, we arrive at a 10.7% increase since 1995, whereas under the BGE data, in the same year, 2020, beginning with an assumption of 75 units per year, we see an increase of 111.4%. While using an assumption of four percent increase, BGE arrives at 177.3% increase in the year 2020.

Protestants believe they have demonstrated by two m thods that the increased capacity is not needed, even assuming the Hickory Meadow area is added to the existing service territory, which protestants believe is improper and should not be done for the foregoing reasons.

For all the above reasons, protestants submit that clearly BGE has failed to establish a basis of need.

III. <u>Third Legal Argument: Physical Threats to the Neighborhood</u>

A. Stormwater Management Pond and Enlarged Facility - The testimony of the various protestants will not be herein restated. However, it is clear that there is significant concern in regard to young children being able to access the stormwater management pond, which will only be protected by a 42" high fence. In addition, the eight

85-65-XSPHA	N/S of Chester Road, 590' W of Severn Rd. (800 Chester Road) 15th
	Petitions - Special Exception, Special Hearing and Variances of Joseph F. Evering, Jr.etux
8/8/84	Filing Fee - $250.00
9/25/84	Advertising and Posting - $111.90
8/6/84	Hearing date set for September 10, 1984 at 1:30 P.M.
8/23/84	Certificate of Publication filed
8/18/84	Certificate of Posting filed
4/25/85	Ordered by Zoning Commissioner that Special Exception for boat yard for 2 lots be GRANTED; Special Hearing to amend site plans and to permit an additional 118 slips be GRANTED; Variances for parking surfaces GRANTED; FURTHER ORDERED that Restriction No. 1 in Case No. 64-160-X shall not be removed and shall remain in full force and effect.
5/10/85	Appeal by People's Counsel
5/20/85	Appeal by Norman E. Gerber, Director/Office of Planning & Zoning
5/17/85	Appeal by T. Rogers Harrison - $260.00
5/20/85	Appeal by John O. Hennegan, Esquire - $260.00
12/12/85	Ruling of County Board of Appeals for Baltimore County holding that the Chesapeake Bay Critical Area Protection Program is not applicable to the proposed petition.
12/12/85	Dissent of Diana K. Vincent, of County Board of Appeals, DENYING Petitioner's Motion and HOLDING provisions of Section 8-1801 et seq. of the Natural Resources Article of the Annotated Code of Md. are applicable to petitions in this matter.
10/21/87	ORDERED by the County Board of Appeals; that the Petition for Special Exception is GRANTED; that the Variance from B.C.Z.R. 409.2.c(2) is GRANTED; that the restriction on the number of slips is MOOT; that the Variance from B.C.Z.R. 417.5 is GRANTED in part and DENIED in part; that the Special Hearing is GRANTED in Case No. 64-160-X, in conformance with the variance set forth in #4 of this Order; that the Special Hearing to remove restrictions #1 and #3 in Case #64-57-SPH will be GRANTED; that the Petition for Special Hearing to remove strictions in #1 and #6 in Case No. 64-160-X will be GRANTED in part and DENIED in part and that restriction #1 is AFFIRMED and re-incorporated herein and restriction #6 amended to allow maintenance and minor repairs on site and in the water immediately adjacent thereto from 8:00 a.m. to 7:00 p.m., seven days per week, year round; that Special Hearing for a determination of recreational activities is GRANTED.
11/24/87	Appeal filed by with the Circuit Court of Baltimore County by Joseph F. Evering, Jr., et ux
5/26/89	ORDERED by Circuit Court for Baltimore County, that the herein #87CG4755 be remanded to the Baltimore County Board of Appeals.
6/15/88	ORDERED by County Board of Appeals that the Petition for Special Exceptions be and is hereby GRANTED with restrictions. 2) That the variance from B.C.Z.R. 409.c.(2) be and is hereby GRANTED; that the variance relief under B.C.Z.R. 409.2.8 is MOOT; that the variance under B.C.Z.R. 417.5 is GRANTED to the extent as shwon on the amended site plan (Petitioner's Exhibit #1A); that the Petition for Special Hearing is GRANTED, amending CASE #64-160-X; to all construction of additional piers and slips, in conformance with the variance as set forth in #4 of this Order; that the Petition for Spcial Hearing to remove restrictions #3 and 3 in case No. 64-57-SPH be GRANTED; that the Petition for Special Hearing to remove restrictions #1 and #6 in CASE No. 64-160-X be GRANTED in part and DENIED in part and that restriction #1 is AFFIRMED and re-incorporated herein and restriction #6 amended so as to allow maintenance and minor repairs on site and in the water immediately adjacent thereto from 8:00 a.m. to 7:00 p.m., seven days a week, year round; that the Petition for Special Hearing for a determination of the recreational activities on site is GRANTED, so that the use is exempt from Residential Transition Area requirements; that the on-shore improvements of a pump-out facility for boats and landscaping be completed simutaneously with the construction of the proposed piers; and; that the following best management practies guidelines be utilized in the operation of the facility at such time as the construction commences.

A-5

PETITION FOR SPECIAL EXCEPTION

85-65-XSPH

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property for two lots located on the north and south side of Chester Road not included in Special Exception Cases 35 35X, 64-57SPH, 64-160X in a D.R. 5.5 Zone to be used as a Boat Yard. including the roadbed of Chester Road

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

I, or we, agree to pay expenses of above Special Exception advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

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

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Attorney for Petitioner:

John O. Hennegan, Esquire
Robert J. Romadka, Esquire
(Type or Print Name)

Signature

ROMADKA, GONTRUM, HENNEGAN & FOOS
809 Eastern Boulevard
Address

Baltimore, Maryland 21221
City and State

Attorney's Telephone No.: 686-8274

Legal Owner(s):

Joseph F. Evering, Jr.
(Type or Print Name)

Signature

Catherine L. Evering
(Type or Print Name)

Signature

800 Chester Road 335-8602
Address Phone No.

Baltimore, Maryland 21220
City and State

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

John O. Hennegan
Name
809 Eastern Boulevard
Baltimore, Maryland 21221 686-8274
Address Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 6th day of August, 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 10th day of September, 1984, at 1:30 o'clock P. M.

Zoning Commissioner of Baltimore County.

Z.C.O.—No. 1

(over)

Pursuant to the advertisement, posting of property, and public hearing on the Petition and it appearing that by reason of the requirements of Section 502.1 of the Baltimore County Zoning Regulations

Phone: 687-6922

FRANK S. LEE

Registered Land Surveyor

1277 NEIGHBORS AVE. — BALTIMORE, MD. 21237



August 2, 1984

Long Beach Marina
No. 800 Chester Road
15th District Baltimore County, Maryland

Beginning for the same on the north side of Chester Road at the distance of 590 feet more or less measured along the north side of Chester Road from the west side of Severn Road, thence running and binding on the north side of Chester Road South 77 degrees 25 minutes W 115 feet more or less, thence crossing the end of Chester Road and continuing the same direction in all South 12 degrees 35 minutes West 252 feet more or less to the waters of Frog Mortor Creek, thence binding on the waters of Frog Mortor Creek as follows: North 71 degrees 00 minutes West 50 feet more or less, South 86 degrees 00 minutes West 260 feet more or less, North 16 degrees 00 minutes East 570 feet more or less and North 77 degrees 25 minutes East 320 feet more or less, thence running for a line of division South 27 degrees 33 minutes East 245 feet more or less to the place of beginning.

Containing 3.30 acres of land more or less.

Special Exception includes all of the above described area not included in Case #3535, 64-57-SPH and 64-160-X.

Variances and Special Exceptions includes entire site.

PETITION FOR SPECIAL HEARING 85-66-XSPH

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve an amendment to the site plan in case number 64-57SPH, 64-160X and 35-35X to construct an addition to the piers; remove restriction number 1 and 3 in case number 64-57SPH to allow marine (CONTINUED ON ATTACHED SHEET)

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

Legal Owner(s):

Joseph F. Evering, Jr.
(Type or Print Name)

Joseph F. Evering Jr
Signature

Catherine L. Evering
(Type or Print Name)

Catherine L Evering
Signature

Attorney for Petitioner:
John O. Hennegan, Esquire
Robert J. Romadka, Esquire
(Type or Print Name)

John O Hennegan
Signature

ROMADKA, GONTRUM, HENNEGAN & FOOS
Address

809 Eastern Boulevard
Baltimore, Maryland 21221
City and State

Attorney's Telephone No.: 686-8274

800 Chester Road 335-8602
Address Phone No.

Baltimore, Maryland 21220
City and State

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

John O. Hennegan, Esquire
Name
809 Eastern Boulevard
Baltimore, Maryland 21221
Address 686-8274 Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 6th day of August, 19 84, 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 10th day of September, 19 84, at 1:30 o'clock P. M.

Zoning Commissioner of Baltimore County.

(over)

Z.C.O.—No. 1

ORDER RECEIVED FOR FILING
DATE
BY ADMINISTRATIVE ASSISTANT

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 :

PETITION FOR SPECIAL HEARING - CONTINUED

Joseph F. Evering, Jr. and
Catherine L. Evering, Legal Owners

craft to be stored within 20 feet of the easternmost property line and to request a variance to the parking; to remove restriction number 1 and 6 in 64-160X to allow major repairs on the premises and in the waters and to change the times and days of the weeks and years that repairs will be permitted; also to determine that a boatyard and related parking areas are other structures devoted to civic, commercial and recreational activities and therefore exempt from the residential, transitional requirements as set out in Sections 1B01.1B.1.c.9/10

foot fence surrounding the increased dangerous equipment proposed for the enlarged facility affords nothing more than an attractive nuisance for neighborhood children and beyond to be attracted to. Clearly there are many reports in the testimony of concern for children being hurt by the dangerous equipment after climbing the fence or entering through an unlocked gate.

B. Fire and Explosion - In addition, multiple witnesses testified to the location of this substation on a ridge, which makes it susceptible to lightning strikes and to fires and explosions. There had been a previous fire testified to at this very location and th re was testimony from the Public Service Commission representative, as well as others, as to the potential explosion of equipment contained in a substation.

C. Finally, there was testimony in regard to noise emanating from this site that is currently noticeable to the residents. This testimony should afford the protestants relief under Section 502.1 A and C.

IV. <u>Fourth Legal Argument: EMF's</u>

There was much testimony presented by both sides to the Board concerning the effect and the magnitude of el ctro-magnetic field exposure to the residents of this community. The mere fact that so much information is available to present to the Board from experts on both sides, those who believe that there has been established a medical link

PETITION FOR ZONING VARIANCE

85-65-XSPHA

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a

Variance from Section 409.2.c(2) to allow existing compacted stone in lieu of required macadam paving. 409.2.b. to allow 318 parking spaces in lieu of the required 384, in the event that special exception is granted to allow 363 parking spaces in lieu of the required 384; and variance from Section 417.5(a) requiring the structure not to exceed 300 feet beyond mean low tide to allow the structure to extend 419 feet beyond the mean low tide.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (indicate hardship or practical difficulty)

1. The hardship is that under special exception granted the 6th day of June, 1955, in a site plan improved therewith, said use was permitted with compacted stone in lieu of required macadam and said matter was reaffirmed and allowed to continue in 1964 in cases 64-57SPH and 64-160X.

2. That the practical difficulty is that macadam would require extensive repairs and alteration in the event that sewerage is brought into the area. Also, during winter months, large boats are stored on the parking area which would cause deep depressions in the macadam due to the weight of the boats that would be in place for six to seven months. (CONTINUED ON ATTACHED SHEET)

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

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

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

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Legal Owner(s):

Joseph F. Evering, Jr.
(Type or Print Name)

Joseph F. Evering Jr.
Signature

Catherine L. Evering
(Type or Print Name)

Catherine L Evering
Signature

Attorney for Petitioner:
Robert J. Romadka, Esquire
John O. Hennegan, Esquire
(Type or Print Name)
ROMADKA, GONTRUM, HENNEGAN & FOOS
809 Eastern Boulevard
Signature
Baltimore, Maryland 21221
Address

John O. Hennegan
City and State

Attorney's Telephone No.: 686-8274

800 Chester Road 335-8602
Address Phone No.
Baltimore, Maryland 21220
City and State

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

John O. Hennegan, Esquire
Name
809 Eastern Boulevard
Baltimore, Maryland 21221 686-8274
Address Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 6th day of August, 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 10th day of September, 1984, at 1:30 o'clock P. M.

Zoning Commissioner of Baltimore County.

(over)

ORDER RECEIVED FOR FILING
DATE
BY
ADMINISTRATIVE ASSISTANT

Pursuant to the advertisement, posting of property, and public hearing on the Petition and it appearing that strict compliance with the Baltimore County Zoning Regulations would/would not result in practical difficulty and unreasonable hardship upon the Petitioner(s) and the granting of the variance(s) requested will/will not adversely affect the health, safety, and general welfare of the community, the variance(s) should /should not be granted.

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this ———— day of ————————, 19———, that the herein Petition for Variance(s) to permit

EVERING
PETITION FOR ZONING VARIANCE (Continued)

3. The structure or pier that the Petitioner desires to construct cannot be located in any other area within the 300 feet limitations due to the depths of the water in the surrounding area.

4. A hardship exists in that the Petitioner has no other location in which to locate the additional slips and pier which are needed to adequately provide for his clientele. The construction will not interfere with the public free access to Frog Mortar Creed nor hinder or obstruct use of the waterways and in no way interfere with public safety and is not more than one third (1/3) the width of waterway nor beyond rear boundary of a defineable channel.

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY 85-65-XSPHA

Towson, Maryland

District 15th **Date of Posting** 5/31/85

Posted for: Appeal

Petitioner: Joseph F. Evering Jr. et ux

Location of property: N/s Chester Rd, 390' w of Severn Rd.

700 Chester Rd.

Location of Signs: (1) Facing Chester, Approx. 8' fr. roadway, on property of Petitioner

(2) Facing intersection of Chester & Severn Rd., Approx. 3' fr. roadway.

Remarks:

Posted by W. P. Healy **Date of return:** 5/24/85

Signature

Number of Signs: 2

PETITIONS FOR SPECIAL EXCEPTION, SPECIAL HEARING AND VARIANCES
15th Election District

ZONING: Petitions for Special Exception, Special Hearing and Variances
LOCATION: North side Chester Road, 590 ft. West of Severn Road (800 Chester Road)
DATE & TIME: Monday, September 10, 1984 at 1:30 P.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 Exception for 2 lots located on the north and south sides of Chester Road, not included in Special Exception Case Nos. 3535-X, 64-57-SPH, 64-160-X in a D.R. 5.5 zone to be used as a boat yard including the roadbed of Chester Road; Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve an amendment to the site plan in Case Nos. 3535-X, 64-57-SPH and 64-160-X to construct an addition to the piers, remove Restriction Nos. 1 and 3 in Case No. 64-57-SPH to allow marine craft to be stored within 20 ft. of the easternmost property line and to request a variance to the parking, to remove Restrictions Nos. 1 and 6 in Case No. 64-160-X to allow major repairs on the premises and in the waters and to change the times and days of the weeks and years that repairs will be permitted, also to determine that a boat yard and related parking areas are other structures devoted to civic, commercial and recreational activities and therefore exempt from the residential, transitional requirements as set out in Sections 1B01 1B 1 c 9/10. Variances to allow existing compacted stone in lieu of required macadam paving, to allow 318 parking spaces in lieu of the required 384, in the event that Special Exception

"DUPLICATE"

CERTIFICATE OF PUBLICATION

TOWSON, MD., _____, 19____

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., appearing on

_____, 19____.

THE JEFFERSONIAN,

_____
Publisher

Cost of Advertising

From THE JEFFERSONIAN

CERTIFICATE OF PUBLICATION

OF

Filed ----------, 19----



PETITIONS FOR SPECIAL EXCEPTION, SPECIAL HEARING AND VARIANCES
15th Election District

ZONING: Petitions for Special Exception, Special Hearing and Variances
LOCATION: North side Chester Road, 590 ft. West of Severn Road (800 Chester Road)
DATE & TIME: Monday, September 10, 1984 at 1:30 P.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 Exception for 2 lots located on the north and south sides of Chester Road, not included in Special Exception Case Nos. 3535-X, 64-57-SPH, 64-160-X in a D.R. 5.5 zone to be used as a boat yard including the roadbed of Chester Road; Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve an amendment to the site plan in Case Nos. 3535-X, 64-57-SPH and 64-160-X to construct an addition to the piers, remove Restriction Nos. 1 and 3 in Case No. 64-57-SPH to allow marine craft to be stored within 20 ft. of the easternmost property line and to request a variance to the parking, to remove Restrictions Nos. 1 and 6 in Case No. 64-160-X to allow major repairs on the premises and in the waters and to change the times and days of the weeks and years that repairs will be permitted, also to determine that a boat yard and related parking areas are other structures devoted to civic, commercial and recreational activities and therefore exempt from the residential, transitional requirements as set out in Sections 1B01.1B.1.c.9/10; Variances to allow existing compacted stone in lieu of required macadam paving, to allow 318 parking spaces in lieu of the required 384, in the event that Special Exception is granted, to allow 363 parking spaces in lieu of the required 384, and variance requiring the structure not to exceed 300 ft. beyond mean low tide to allow the structure to extend 419 ft. beyond the mean low tide

Being the property of Joseph F. Evering, Jr., et ux, as shown on plat plan filed with the Zoning Department.

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

By Order Of
ARNOLD JABLON,
Zoning Commissioner
of Baltimore County

Aug 23

"DUPLICATE"

CERTIFICATE OF PUBLICATION

TOWSON, MD., _____, 19____

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., appearing on _____, 19____.

THE JEFFERSONIAN,

_____
Publisher

Cost of Advertising

[redacted]

From THE JEFFERSONIAN

CERTIFICATE OF PUBLICATION

OF

Filed ----------, 19__

[redacted]

Tiny Shrimp
FISHERMEN NET
Sardin s •OI
•MUST
HORMEL
Potted M at
HORMEL
Vienna Saus
TABLE JOY STUFFED
Manzanilla Oli
•SWEET •HOT DOG •HAMB
Vlasic R lish

. 22nd THRU TUES. A

between EMF's and the effect upon human health versus those who believe that the case studies have not established such a link, establishes a strong basis for the Board's consideration of this issue in its overall evaluation under Sec. 502.1.

Clearly, both sides were forced to acknowledge that there has been substantial case work performed since 1970 and that a number of case studies reflect a link between EMF's and cancer. These studies are simply dismissed by the BGE experts; however, that dismissal alone does not answer the question for this Board. It was never anticipated that the protestants would prove to the Board's satisfaction that there is a direct medical link between EMF's and cancer and harmful effects upon the residents of this community. It was anticipated and successfully presented to the Board that there would be a showing to the Board that there is sufficient concern among scientists who are recognized as qualified experts in their fields to establish that ther is a strong reason to be concerned about the health effects of EMF's. BGE's experts simply analyzed all the reports and concluded that the weight of evidence was against the medical connection. Protestants' expert did not simply review the case studies performed by others and conclude that there was no cause for concern. He in fact has a twenty year history of working in the scientific field on the equipment and on animals subject to EMF's in the laboratory to determine that

Petitions f r Special Excepti n, Special H ar- ing & Variances

15th Election District

ZONING: Petitions for Special Exception, Special Hearing and Variances

LOCATION: North side Chester Road, 590 ft. West of Severn Road (800 Chester Road)

DATE & TIME: Monday, Sept. 10, 1984, at 1:30 p.m.

PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Ave., Towson, Md.

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

Petition for Special Exception for 2 lots located on the north and south sides of Chester Road, not included in Special Exception Case Nos. 3535-X, 64-57-SPH, 64-160-X in a D.R. 5.5 zone to be used as a boat yard including the roadbed of Cbester Road; Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve an amendment to the site plan in Case Nos. 3535-X, 64-57-SPH and 64-160-X to construct an addition to the piers, remove Restriction Nos. 1 and 3 in Case No. 64-57-SPH to allow marine craft to be stored within 20 ft. of the easternmost property line and to request a variance to the parking, to remove Restriction Nos. 1 and 6 in Case No. 64-160-X to allow major repairs on the premises and in the waters and to change the times and days of the weeks and years that repairs will be permitted, also to determine that a boat yard and related parking areas are other structures devoted to civic, commercial and recreational activities and therefore exempt from the residential, transitional requirements as set out in Sections 1B01.1B.1.c.9/10; Variances to allow existing compacted stone in lieu of required macadam paving, to allow 318 parking spaces in lieu of the required 384, in the event that Special Exception is granted, to allow 363 parking apaces in lieu of the required 384, and variance requiring the structure not to exceed 300 ft. beyond mean low tide to allow the structure to extend 419 ft. beyond the mean low tide.

Being the proprty of Joseph F. Evering, Jr., et ux, as shown on plat plan filed with the Zoning Department.

In the event that these Petitions are granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commisaioner 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

The Times

Middle River, Md., Aug 23 19 84

~~This is to Certify~~, That the annexed

Petition

was inserted in The Times, a newspaper printed and published in Baltimore County, once in each of One successive weeks before the 23rd day of Aug, 19 84

S. D. Wyatt

Publisher.

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY

Towson, Maryland

District 13 **Date of Posting** 5/15/84

Posted for: Petition for Special Hearing etc.

Petitioner: Orwin E. Lerch, Jr. et ux

Location of property: W/S Eastern Blvd. 300' S/E of Fitzgerald Rd.

Location of Signs: Facing roadway on property of petitioner

Remarks: 1 sign

Posted by [signature] **Date of return:** 5/23/84

Signature

Number of Signs: 1

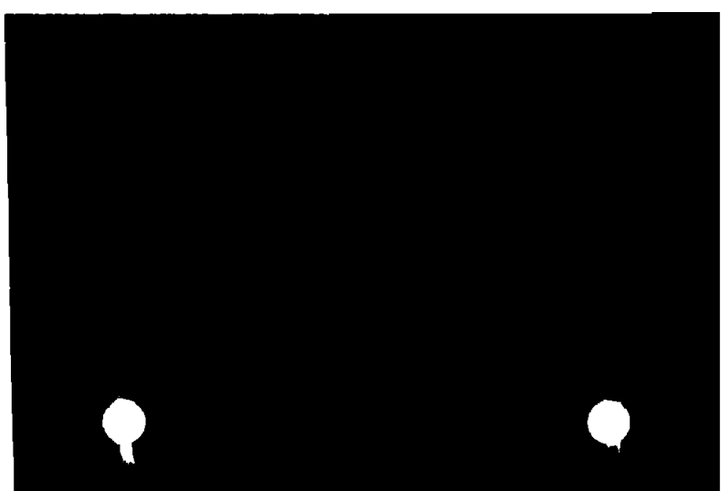
CASE NO. 19/117/86-CG-0022 AT LAW

Joseph F. Evering, Jr., VS. Phyllis Friedman, et ux & Malcolm Spicer, etal

RECEIVED FROM THE COUNTY BOARD OF APPEALS EXHIBITS, BOARD'S ANSWER & TRANSCRIPT FILED IN THE ABOVE ENTITLED CASE. ALSO FILED IS THE ZONING COMMISSIONER'S FILE AND EXHIBITS.

Clerk's Office

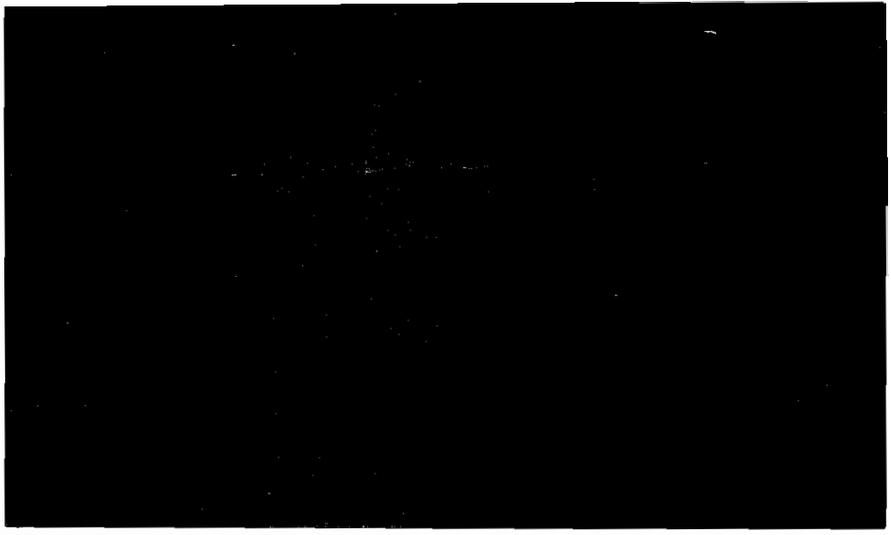
Date: Feb. 3, 1986



#85-65-XSPHA 15th District

N/S Chester Rd., 590' W of Severn Rd.
(800 Chester Road)
JOSEPH F. EVERING, JR., et ux

1 SIGN and 1 LOCATION SIGN



85-65-XSPHA

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 6th day of August, 1984.

ARNOLD JABLON
Zoning Commissioner

Petitioner Joseph F. Evering, Jr., Received by:

Petitioner's Attorney John O. Hennegan, Esq.

Nicholas B. Commodari
Chairman, Zoning Plans
Advisory Committee

People's Counsel Ex. #4

based on his analysis of this situation that he had cause for concern for the safety of the residents in this neighborhood from the increased electrical energy being generated by the wires leading to and from this substation and from the substation itself. That is all that the protestants ever intended to establish to this Board.

Furthermore, the cause for concern is shared not just by experts in this field, but is shared by appraisers of real property concerning the perception of the harmful effects of EMF's on real property values. One need only look at the writings and literature attached to the report of Pete Kern to understand the protestants' point of view in regard to this issue.

The scientific community has proven that EMF's penetrate the human body and catalyze cellular changes. Until appropriate safety standards can be established by fed ral, state, and local officials and the scientists in this field, protestants submit that BGE must act prudently. BGE does not have the right to impose potentially higher risks on current residents. BGE does not have the right to determine the degree of risk to which a private citizen should be exposed in this community.

It is too well known to the protestants, as well as to the Board, that for decades, scientists debated the harmful effects of smoking and secondary smoking upon the human body, and today, we all know the detrimental effects of smoking

LAW OFFICES
MUDD, HARRISON & BURCH
306 WEST JOPPA ROAD
TOWSON, MARYLAND 21204
AREA CODE 301-828-1335

JOHN E. MUDD
T. ROGERS HARRISON
RICHARD C. BURCH
DOUGLAS W. BISER
H. PATRICK STRINGER, JR.

MAY 20 AM
ZONING DEPARTMENT
By .....

May 17, 1985

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

Re: Petition for Spec Ex
Petition for Spec Hearing
Petition for Variances
Case No. 85-65-XPHA

Dear Mr. Jablon:

The Protestents, Ken Engelke, et al., would like to appeal your decision in the above-captioned matter.

Our firm's check in the amount of $260.00 is enclosed. This amount represents the fee for the appeal from the granting of the special exception $100.00), the fee for the appeal from the granting of the variance ($75.00), the fee for the appeal from the granting of the special hearing ($75.00), and the costs for posting two signs ($10.00) on the Everings' property.

If you have any questions, please feel free to contact me.

Very truly yours,

T. Rogers Harrison

TRH/djb
Enclosure

RECEIVED
COUNTY BOARD OF APPEALS
1985 MAY 22 P 1:

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

No.

DATE _____ ACCOUNT _____

AMOUNT $ _____

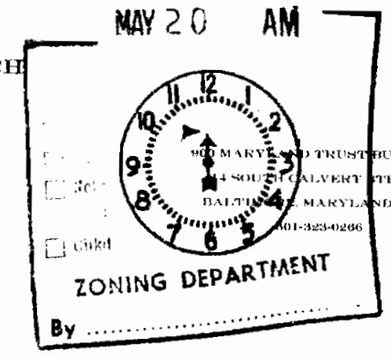
RECEIVED
FROM: _____

FOR: _____

_____
VALIDATION OR SIGNATURE OF CASHIER

LAW OFFICES
MUDD, HARRISON & BURCH
306 WEST JOPPA ROAD
TOWSON, MARYLAND 21204
AREA CODE 301-828-1335

JOHN E. MUDD
T. ROGERS HARRISON
RICHARD C. BURCH
DOUGLAS W. BISER
H. PATRICK STRINGER, JR.



May 17, 1985

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

Re: Petition for Spec Ex
Petition for Spec Hearing
Petition for Variances
Case No. 85-65-XPHA

Dear Mr. Jablon:

The Protestents, Ken Engelke, et al., would like to appeal your decision in the above-captioned matter.

Our firm's check in the amount of $260.00 is enclosed. This amount represents the fee for the appeal from the granting of the special exception $100.00), the fee for the appeal from the granting of the variance ($75.00), the fee for the appeal from the granting of the special hearing ($75.00), and the costs for posting two signs ($10.00) on the Everings' property.

If you have any questions, please feel free to contact me.

Very truly yours,

T. Rogers Harrison

T. Rogers Harrison

TRH/djb
Enclosure

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

No.

DATE _____ ACCOUNT _____

AMOUNT $ _____

RECEIVED
FROM: _____

FOR: _____

_____
VALIDATION OR SIGNATURE OF CASHIER

Form CA2

CIRCUIT COURT FOR BALTIMORE COUNTY

Jobi Adams — 494-2660
Civil Assignment Commissioner
Settlement Court

Maria Ercolano — 494-2662
Masters Assignment Clerk
Medical Records

ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Bosley Avenue
P.O. Box 6754
Towson, Maryland, 21204-0754

Kathy Rushton — 494-2660
Assignment — Jury — Motions
Marcia Fennell
Assistant Clerk Typist

Irene Summers - 494-2661
Assignment — Non-Jury — Motions
Freddie Grove
Assistant Clerk Typist

February 7, 1986.

TO: Malcolm F. Spicer,Jr., Esq.
Thomas J. Bollinger, Esq.

T. Rogers Harrison, Esq.

Phyllis Cole Friedman, Esq.
Peter Max Zimmerman, Esq.

County Board of Appeals of Balto. Co.

RE:

HEARING DATE:

ON THE FOLLOWING:

RECEIVED
COUNTY BOARD OF APPEALS
1986 FEB 10 P 12:50

POSTPONEMENTS: If the above date is not agreeable to any counsel, a request for a postponement MUST BE MADE IN WRITING to the Assignment Office AS SOON AS POSSIBLE, with a copy to all counsel involved. POSTPONEMENTS WITHIN 15 DAYS OF TRIAL must be made to the attention of the Director of Central Assignments — Joyce Grimm — 494-3497.

SETTLEMENT CONFERENCES: All counsel must secure the attendance of all parties necessary to effect a binding settlement, including clients and insurance representatives. THERE WILL BE NO EXCEPTIONS PER ORDER OF JUDGE FRANK E. CICONE. Please direct all inquiries to the attention of Jobi Adams.

SETTLEMENTS: If a settlement is reached prior to the hearing date, the Assignment Office must be notified immediately. All settlements must be put on the record if no order of satisfaction is filed prior to trial.

IN THE MATTER OF PETITIONS FOR

SPECIAL EXCEPTION, SPECIAL HEARING AND ZONING VARIANCES

Vs.

IN THE CIRCUIT COURT

FOR

BALTIMORE COUNTY

Docket 19 Folio 117

Case No. 86CG22 19/117

NOTICE OF FILING OF RECORD

TO:

Malcolm F. Spicer, Jr.
Thomas J. Bollinger
Courthouse Mezzanine
Baltimore, Md. (04)

John O. Hennegan
Donald J. Brand
Romadka, Gontrum, Hennegan & Foos
809 Eastern Blvd., (21221

T. Rogers Harrison
Mudd, Harrison & Burch
306 W. Joppa Rd.
Baltimore, 21204

Phyllis Cole Friedman
Peter Max Zimmerman
Room 223 Court House
Baltimore, 21204

Judith A. Arnold
301 W. Preston St.
Baltimore, 21201

Peter W. Taliaferro
P.O Box 8766
Balto/Wash. International
Airport 21240

In accordance with Maryland Rule of Procedure B12, you are notified that the record in the above entitled case was filed on December 9, 1987.

Suzanne Mensh

Clerk

Copies Sent

FILED DEC.9 1987

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

March 26, 1987

N O T I C E O F A S S I G N M E N T

CONTINUED HEARING

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

CASE NO. 85-65-XSPHA

JOSEPH F. EVERING, JR., ET UX

FOR SE -BOAT YARD
VARIANCES
SPH ON SITE PLAN

N/s CHESTER ROAD, 590' W SEVERN ROAD

15th Election District

As per agreement with all Counsel relative to the difficulties encountered in the hearing transcript, the continued hearing on these matters is scheduled for April 22, 1987 at 10:00 a.m.

ASSIGNED FOR: WEDNESDAY, APRIL 22, 1987 at 10:00 a.m.

cc: John O. Hennegan, Esquire — Counsel for Petitioners
John B. Gontrum, Esquire — " " "
Robert J. Romadka, Esquire — " " "

Joseph F. Evering, Jr., et ux — Petitioners

T. Rogers Harrison, Esquire — Counsel for Protestants

Phyllis Cole Friedman, Esquire — People's Counsel

Patrick D. Hanley, Esquire — Office of Law

Judith A. Armold — Assistant Attorney General

Norman E. Gerber
James G. Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Margaret E. du Bois

Kathi C. Weidenhammer
Administrative Secretary

upon an individual and those in the immediate vicinity. In addition, it is also clear that for years, the industry ignored warning of the concerns for asbestos and its effect upon humans. After the scientific community finally established proof of the detrimental link between asbestos and human health, it was too late for those many persons who had been subjected improperly over the years to such exposure. It is that threat that the protestants seek to avoid in the instant case. Clearly, until the proof has been irrefutably established showing that there is no danger to humans from EMF's, this Board should not gamble with the health and safety of the surrounding neighbors for the sake of this project, nor does BGE have the right to det rmine that these citizens must be exposed to whatever degr e of risk there is from EMF's from this facility.

It is clear that the protestants need not prove the medical link to satisfy Section 502.1C.

V. Fifth Legal Argument: Devaluation of Property Value

A. The negative impact upon property value is clearly within the subject matter of section 502.1A as well as within the definition of Section 411.1 wherein the proposed facility shall not seriously impair the use of neighboring property. Those two provisions certainly provide for an analysis of the detrimental effect of this subject site upon the property values of the surrounding neighborhood. The effect of this facility on property

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

February 5, 1987

TO: Phyllis C. Friedman, Esquire
John B. Gontrum, Esquire
T. Rogers Harrison, Esquire
Robert J. Romadka, Esquire

FROM: William T. Hackett, Chairman
County Board of Appeals

RE: Case No. 85-65-XSPHA
Joseph F. Evering

As per our telephone conversation of February 5, 1987, there will be a meeting of all the attorneys involved in the Evering case in the Board of Appeals office at 9:00 a.m. on February 17, 1987 for the purpose of discussing the appropriate steps to be taken because of the problem that has arisen.

Sincerely,

William T. Hackett

William T. Hackett, Chairman

WTH:kcw

August 20, 1986

TO: Keith S. Franz and Larry Schmidt

FROM: E. T. Eisenhart

SUBJECT: Case No. 85-65-XSPHA - Joseph F. Evering, Jr.

The above case has been remanded to the Board for hearing on its merits. We have received a letter from John Gontrum requesting that the case be assigned for hearing as soon as possible, and also requesting that we set it for two hearing days. We are presently scheduled through the first week in December, therefore, the first open date would be Tuesday, December 9th and any hearing day after that.

Mr. Hackett requested that inasmuch as you were the Board which ruled on the Motion which was appealed to Circuit Court (Diana was the third member) - you should contact John Gontrum to see if they are going forward with the case (T. Bollinger thought it was going to be dismissed) and if so then arrange for hearing dates suitable to you and the attorneys in the file.

Petitioners	Hennegan, Gontrum, Romadka
Protestants	Harrison
Judith A. Armold	Asst. Attorney General
Phyllis C. Friedman	P.C.
T. J. Bollinger, Esq.	Law

County Board of Appeals of Baltimore County

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

NOTICE OF POSTPONEMENT and REASSIGNMENT

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

CASE NO. 85-65-XSPHA — JOSEPH F. EVERING, JR., ET UX

FOR SE FOR A BOAT YARD
" VARIANCES
" SPH ON SITE PLAN

N/S CHESTER ROAD 590' W. SEVERN ROAD

15th DISTRICT

8/7/86 - REMANDED BY JUDGE SFEKAS FOR TESTIMONY

First hearing day, Wednesday, December 10, 1986, has been postponed at the request of the Assistant Attorney General. Case is

ASSIGNED FOR:

TUESDAY, DECEMBER 16, 1986 at 10 a.m.
WEDNESDAY, DECEMBER 17, 1986 at 10 a.m.
THURSDAY, DECEMBER 18, 1986 at 10 a.m.

cc:	John O. Hennegan, Esq.	Counsel for Petitioners
	John B. Gontrum, Esq.	" " "
	Robert J. Romadka, Esq.	" " "
	Joseph F. Evering, Jr., et ux	Petitioners
	T. Rogers Harrison, Esq.	Counsel for Protestants
	Phyllis Cole Friedman	People's Counsel
	Thomas J. Bollinger, Esq.	Office of Law
	Judith A. Armold	Assistant Attorney General
	Norman E. Gerber	
	James G. Hoswell	
	Arnold Jablon	
	Jean M. H. Jung	
	James E. Dyer	

Kathi C. Weidenhammer
Administrative Secretary

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

September 5, 1986

NOTICE OF ASSIGNMENT

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

CASE IS BEING SPECIALLY SET BECAUSE IT HAS BEEN REMANDED TO THE BOARD BY THE COURT -- NO POSTPONEMENTS WILL BE CONSIDERED UNLESS REQUESTED WITHIN TEN (10) DAYS OF THE DATE OF THIS NOTICE

CASE NO. 85-65-XSPHA — JOSEPH F. EVERING, JR., ET UX

FOR SE FOR A BOAT YARD
" VARIANCES
" SPH ON SITE PLAN

N/S CHESTER ROAD 590' W. SEVERN ROAD

15th DISTRICT

8/7/86 - REMANDED BY JUDGE SFEKAS FOR TESTIMONY

ASSIGNED FOR:

WEDNESDAY, DECEMBER 10, 1986 at 10 a.m.
TUESDAY, DECEMBER 16, 1986 at 10 a.m.
WEDNESDAY, DECEMBER 17, 1986 at 10 a.m.

cc: John O. Hennegan, Esq. — Counsel for Petitioners
John B. Gontrum, Esq. — " " "
Robert J. Romadka, Esq. — " " "
Joseph F. Evering, Jr., et ux — Petitioners
T. Rogers Harrison, Esq. — Counsel for Protestants
Phyllis Cole Friedman — People's Counsel
Thomas J. Bollinger, Esq. — Office of Law
Judith A.Armold — Asst. Attorney General
Norman E. Gerber
James G. Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer

Edith T. Eisenhart, Adm. Secretary

County Board of Appeals of Baltimore County

Room 200 Court House (Hearing Room #218)
Towson, Maryland 21204
(301) 494-3180

June 18, 1985

NOTICE OF ASSIGNMENT

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

CASE NO. 85-65-XSPHA

JOSEPH F. EVERING, JR., ET UX

N/s Chester Rd., 590' W of Severn Rd.
(800 Chester Rd.)

15th District

SE-Two lots located on N & S side of Chester Rd., DR 5.5 zone to be used as a boat yard.
Variance-Stone in lieu of macadam; 318 parking spaces in lieu of 384; structure not to exceed 300' beyond low tide;
SH-Amendment to site plan.

ASSIGNED FOR: THURSDAY, SEPTEMBER 12, 1985, at 10 a.m.

cc: John O. Hennegan, Esq. — Attorney for Petitioners
Robert J. Romadka, Esq. — " " "
T. Rogers Harrison, Esq. — Attorney for Protestants
Joseph F. Evering, Jr., et ux — Petitioners
Judith A. Armold
Phyllis C. Friedman — People's Counsel
Norman Gerber
James Hoswell
Arnold Jablon
Jean Jung
James Dyer

jurisdiction to limit the creation of parcels that exceed minimum dimensional requirements; merger has been applied only to prohibit the later creation of undersized parcels. This, perhaps, is due to the general lack of objection to large parcels.[9] A discussion, however, of how the doctrine of merger applies conversely to the present case may help emphasize that, in the context described above, merger occurs without the need for official subdivision or conveyancing. It is accepted automatically in some jurisdictions or, most often, with minimum proof of the owner's intent in other jurisdictions and always without the necessity of official action. We see no reason why a doctrine that seeks to prevent the proliferation or use of nonconforming, undersized lots by holding that they have been combined or merged into a larger parcel should not, as far as zoning is concerned, be applied properly to permit the creation, through the combining by use of a larger parcel from already conforming smaller parcels, without the necessity of official action or conveyancing.

One of the seminal cases discussing the doctrine of merger with respect to zoning is the New Jersey case of *Loechner v. Campoli*, 49 N.J. 504, 231 A.2d 553 (1967). In 1936, Mrs. Loechner and her late husband acquired lots numbered 186 through 188 on a surveyor's map or plat. Each lot was twenty-five feet wide by one hundred feet in depth. Prior to 1952, the Loechners erected a single house on the three lots. In 1952, Rudolph Loechner acquired two adjoining lots, numbered 189 and 190. These new lots remained

[9] There are social concerns that raising minimum parcel or lot size or raising minimum square footage requirements can result in exclusionary zoning that may, in some circumstances, be invalid. Exclusionary zoning issues have not been raised in the case at bar.

values in the opinion of witness Pete Kern takes the form of: 1) negative impact as a result of the aesthetic considerations of simply viewing a substation and power lines such as those represented by the photographs in the protestants' Exhibits; and 2) the perception of a human health risk from EMF's to a prospective purchaser. There are numerous cases involving courts which have ruled that a property owner need not prove the medical link between EMF's and cancer but simply may establish that there is a general public perception of concern which is sufficient to detrimentally effect property values. In analyzing the public perception, it is clear that from the extensive number of journals and article titles found on pages six and seven of the Kern report that knowledge of EMF's effects is widespread and is the subject of over three hundred articles that were available to Kern in his analysis. He concluded that public knowledge and concern over EMF hazards is rising irrespective of its validity and that scores of lawsuits involving EMF's have been filed around the country.

Kern concluded that courts are now allowing lawsuits which bypass the medical issues and focus solely on the economic impact of buyers' fears. He further concluded that sale prices of homes located near power generation and conveyance are lower than those not within line of sight according to realtors and scientifically based

494-3180

County Board of Appeals

Room 219 Court House

TOWSON, MARYLAND 21204

June 28, 1985

NOTICE OF POSTPONEMENT and REASSIGNMENT

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

CASE NO. 85-65-XSPHA

JOSEPH F. EVERING, JR., ET UX

N/s Chester Rd., 590' W of Severn Rd.
(800 Chester Rd.)

15th District

SE-Two lots located on N & S side of Chester Rd., DR 5.5 zone to be used as a boat yard.
Variance-Stone in lieu of macadam; 318 parking spaces in lieu of 384; structure not to exceed 300' beyond low tide;
SH-Amendment to site plan

Scheduled for hearing on Thursday, September 12, 1985, at 10 a.m. has been

POSTPONED at the request of Counsel for the Protestants, and has been

REASSIGNED FOR: TUESDAY, OCTOBER 29, 1985, at 10 a.m.

cc: DONALD BRAND - Retired
John O. Hennegan, Esq. Counsel for Petitioners

Robert J. Romadka, Esq. " " "

T. Rogers Harrison, Esq. Counsel for Protestants
ANDY SANQUITTO
Joseph F. Evering, Jr., et ua Petitioners

Judith A. Armold - office

Phyllis C. Friedman People's Counsel

Norman Gerber

James Hoswell

Arnold Jablon

Jean Jung

James Dyer

11/8/85 - NOTE TO FILE PER L. E. SCHMIDT AND E. T. EISENHART

After trying unsuccessfully to get two agreeable hearing dates for continuation of this case all the way through the middle of February, Mr. Schmidt, while in the office today, talked to Mr. Romadka's secretary and informed her that the case would definitely be set for hearing on 1/21/86 as agreed to at the close of the hearing on the Motion. Inasmuch as it has been quite difficult to get another agreed date at this time we cannot set the continued hearings on consecutive days. Therefore, if this additional date is needed, Mr. Romadka will have to get an agreeable date and submit it to the Board for confirmation. This must be done immediately as of now January and February are not scheduled but after next week when Mr. Hackett sets up the docket, these dates will no longer be available. Also, if they let the continuation date go to the hearing on 1/21 and then try to get another date, it will then mean sometime in April or May before the case can be completed.

6/18/85 - Following were notified of hearing set for Thursday, Sept. 12, 1985, at 10 a.m.

John Hennegan
Robt. Romadka
T. R. Harrison
Phyllis C. Friedman
Norman Gerber
James Hoswell
Arnold Jablon
Jean Jung
James Dyer
Joseph Evering, Jr., et ux
Judith Armold

Postponed 6-28-85

6/28/85 - Above have been notified of hearing postponement & reassignment for Tues. Oct. 29, '85, at 10 am.
ON MOTION ONLY

11/13/85 - Above notified of hearing on MERITS scheduled for TUESDAY, JANUARY 21, 1986 at 10 a.m.

~~11/13/85 - " " " CONTINUED HEARING scheduled for TUESDAY, FEBRUARY 25, 1986 at 10 a.m.~~
Postponed

6/18/85 - Following were notified of hearing set for Thursday, Sept. 12, 1985, at 10 a.m.

John Hennegan
Robt. Romadka
T. R. Harrison
Phyllis C. Friedman
Norman Gerber
James Hoswell
Arnold Jablon
Jean Jung
James Dyer
Joseph Evering, Jr., et ux
Judith Armold

Postponed 6-28-85

6/28/85 - Above have been notified of hearing postponement & reassignment for Tues. Oct. 29, '85, at 10 am.
ON MOTION ONLY.

11/13/85 - Above notified of hearing on MERITS scheduled for TUESDAY, JANUARY 21, 1986 at 10 a.m.

11/13/85 - " " " CONTINUED HEARING scheduled for TUESDAY, FEBRUARY 25, 1986 at 10 a.m.
HOLD

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

November 13, 1985

NOTICE OF ASSIGNMENT

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

CASE NO. 85-65-XSPHA — JOSEPH F. EVERING

Chester Rd. W. Severn

15th District

Re: Boat Yard

ASSIGNED FOR: TUESDAY, JANUARY 21, 1986, at 10 a.m.

CC: John O. Hennegan, Esq. — Counsel for Petitioners

Robert J. Romadka, Esq. — " " "

T. Rogers Harrison, Esq. — Counsel for Protestants

Joseph F. Evering, Jr., et ux — Petitioners

Judith A. Armold, Asst. Attorney General

Phyllis C. Friedman — People's Counsel

Norman E. Gerber

James Hoswell

Arnold Jablon

Jean Jung

James Dyer

June Holmen, Secretary

studies. Further, the average time for selling a hous is increased when located within sight of an electrical feature such as a power line or substation. The Board need only review the literature excerpts attached to Kern's report to understand this issue. Interestingly enough, in cross-examination of BGE's expert appraiser, Walter Ryder acknowledged a number of significant points, among those being that the perception of the public concerning danger from EMF's was increasing, that there has been litigation which has gone to the jury based upon perception of people's concerns, and that there have been multiple articles and studies in trade journals which define the industry's concern for the effect of power lines and substations upon property values.

B. In this case, however, we have more than just a "battl of experts." We have specific testimony and documentation to support the fact that property values have already been affected by the BGE proposal. The testimony of Alison Roose established that she had a lease by agreement for her home in the amount of $350,000.00 and that when she went to execute on th lease and buy her residence, she was able to utilize the proposed expansion of BGE to reduce the purchase price to $290,000.00, or an eighteen percent (18%) decrease based solely on the BGE proposed substation. In addition, the startling testimony of Robert Gensler who identifi d

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

November 13, 1985

NOTICE OF ASSIGNMENT

(CONTINUED HEARING, 3rd DAY)

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

CASE NO. 85-65-XSPHA — JOSEPH F. EVERING

Chester Rd. W. Severn

15th District

RE: Boat Yard

ASSIGNED FOR: TUESDAY, FEBRUARY 25, 1986, at 10 a.m. HOLD

cc: John O. Hennegan, Esq. — Counsel for Petitioners

Robert J. Romadka, Esq. — " " "

T. Rogers Harrison, Esq. — Counsel for Protestants

Joseph F. Evering, Jr., et ux — Petitioners

Judith A. Armold, Asst. Attorney General

Phyllis C. Friedman — People's Counsel

Norman E. Gerber

James Hoswell

Arnold Jablon

Jean Jung

James Dyer

June Holmen, Secretary

86/197

File Case file

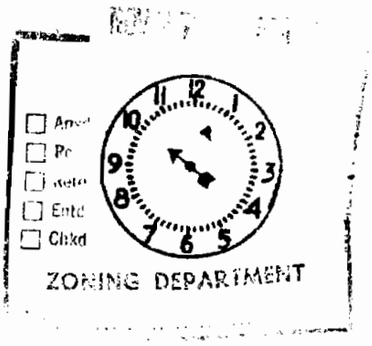
JED Reid 11/27/85

LAW OFFICES
MUDD, HARRISON & BURCH
306 WEST JOPPA ROAD
TOWSON, MARYLAND 21204
AREA CODE 301-828-1335

JOHN R. MUDD
T. ROGERS HARRISON
RICHARD C. BURCH
DOUGLAS W. RISER
H. PATRICK STRINGER, JR.
ANDREW JANQUITTO

900 MARYLAND TRUST BUILDING
14 SOUTH CALVERT STREET
BALTIMORE, MARYLAND 21202
301-323-0866

November 26, 1985



Mr. William T. Hackett, Chairman
Baltimore County Board of Zoning Appeals
Room 200 Court House
Towson, Maryland 21204

Re: Case No. 85-65-XSPHA
Joseph F. Evering - Protestants
Chester Road, W. Severn
15th District
Boat Yard

Dear Mr. Hackett:

We have received a notice rescheduling the continuance of the above-captioned zoning case for Tuesday, January 21, 1986, at 10 a.m. I hope that it is everyone's understanding that it is not my desire to create any unnecessary inconvenience for anyone; however, my practice is primarily that of trial work and I do have a previously scheduled trial in the Circuit Court for Baltimore County, Hoffman v. High's, beginning on January 22, 1986, and I will be preparing for that trial several days prior. However, we all know there are always cases that are postponed, settled, etc. In light of this previously scheduled trial, I have no alternative but to ask that the zoning case be postponed to another date and my secretary would be more than willing to provide all the available dates on my calendar from the first of the year forward.

Thank you for your kind cooperation.

Very truly yours,

T. Rogers Harrison

TRH:sw

c.c. John O. Hennegan, Esquire, Robert J. Romadka, Esquire, Judith A. Arnold, Esquire, Phyllis C. Friedman, Esquire, Mr. Norman E. Gerber, Mr. James Hoswell, Mr. Arnold Jablon, Jean Jung, Mr. James Dyer

LAW OFFICES
MUDD, HARRISON & BURCH
306 WEST JOPPA ROAD
TOWSON, MARYLAND 21204
AREA CODE 301-828-1335

JOHN E. MUDD
T. ROGERS HARRISON
RICHARD C. BURCH
DOUGLAS W. RISER
H. PATRICK STRINGER, JR.

900 MARYLAND TRUST BUILDING
14 SOUTH CALVERT STREET
BALTIMORE, MARYLAND 21202
301-423-0266

June 25, 1985

County Board of Appeals
of Baltimore County
Room 200
Court House
Towson, Maryland 21204

Re: Petitions of Joseph F. Evering, Jr.
Case No. 85-65-XSPHA

To The Board:

I have received the Board's Notice of Assignment, dated June 18, 1985, scheduling the appeal in the above matter for September 12, 1985.

I have plans to be in England from September 9th to 25th; therefore, I would appreciate it if the appeal were rescheduled. I have the following open dates:

October 11, 14, 21, 22, 23, 24, 28, 29, 30, 31

November 1, 2, 7, 8, 18, 19, 20, 21, 22

I also have several dates open in December.

If you have any questions, please feel free to contact me.

Very truly yours,

T. Rogers Harrison

TRH:sw

cc: All Counsel

RECEIVED
COUNTY BOARD OF APPEALS
JUN 27 AM 10 47

Circuit Court file and 12/2/86
exhibits are in back
of drawer. Keep separate
from our file + exhibits,

J. Holmen

UFFICIENT
TING AND IN
NO POSTPONE-
CHEDULED HEAR-
IL BILL #59-79

CASE NO. 85-85-ASPHA

FOR SE FOR A BOAT YARD
" VARIANCES
" SPH ON SITE PLAN

N/S CHESTER ROAD 590' W. SEVERN ROAD

15th DISTRICT

8/7/86 - REMANDED BY JUDGE SFEKAS FOR TESTIMONY

First hearing day, Wednesday, December 10, 1986, has been postponed at the request of the Assistant Attorney General. Case is

ASSIGNED FOR: TUESDAY, DECEMBER 16, 1986 at 10 a.m.
WEDNESDAY, DECEMBER 17, 1986 at 10 a.m.
THURSDAY, DECEMBER 18, 1986 at 10 a.m.

cc: John O. Hennegan, Esq. — Counsel for Petitioners
John B. Gontrum, Esq. — " " "
Robert J. Romadka, Esq. — " " "
Joseph F. Evering, Jr., et ux — Petitioners
T. Rogers Harrison, Esq. — Counsel for Protestants
Phyllis Cole Friedman — People's Counsel
Thomas J. Bollinger, Esq. — Office of Law
Judith A. Armold — Assistant Attorney General
Norman E. Gerber
James G. Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer

Kathi C. Weidenhammer
Administrative Secretary

In The Circuit Court for Baltimore County

Docket 19 Folio 117

Case No. 86CG 22

..... TERM, 19....

IN THE MATTER OF PETITIONS FOR SPECIAL EXCEPTIONS, SPECIAL HEARING AND ZONING, ETC. Vs. JOSEPH F. EVERING, JR., ET UX

ORIGINAL PROCEEDINGS BEFORE THE ZONING BOARD COMMISSIONER AND THE BOARD OF APPEALS OF BALTIMORE COUNTY RECEIVED BY CATHERINE MILTON PLANNER NO. 1 FROM THE ZONING OFFICE.

Susanne Marsh Clerk.

I Hereby Certify, That I have this day received under cover from the Clerk of the Circuit Court for Baltimore County, process as above.

IN TESTIMONY WHEREOF, I hereto subscribe my name and affix the Seal of the ZONING OFFICE OF BALTIMORE COUNTY Court for ..... County—City, on the 14th day of December nineteen hundred and 89

Catherine A. Milton Clerk

Rm 113 x3391

himself during the course of this case as a prospective purchaser of a lot within the Fox Ridge Estates subdivision is worthy to note. Gensler was unknown to the protestants until the hearing. However, upon his listening to the testimony of the EMF experts as well as reviewing the appraiser's report, he concluded that he did not want to acquire a home in the Fox Ridge Estates subdivision, and he was willing to break his contract and lose his $5,000.00 deposit in order to do so. The protestants submit that that is direct and strong evidence to support the testimony of Pete Kern in his analysis of the potential real estate drop in value for the protestants involved in this case.

As previously stated under Section 502.1A and 411.1, this evidence clearly establishes an impairment of the use of neighboring property and an impact upon the health, safety, and general welfare of the community.

VI. Sixth Legal Argument: Need to Amend Final Development Plan

Norman Gerber, former County Planning Director, provid d expert testimony and opined that the final development plan of Fox Ridge Estates needed to be amended. He testified that Section 1A00.4 requires a final development plan for all subdivisions in RC zones be governed by Section 1B01.3.A.7. That section requires that after final development plans have been approved, they may be amended after the sale of interest in nearby property by Special Exception procedures in the

JOS. L. EVERING JR., et ux
85-65-XSPHA

Maryland Department of Transportation

STATE AVIATION ADMINISTRATION

William K. Hellmann
Secretary

T. James Truby
Administrator

85-1039
Case file

November 1, 1984

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

RE: Long Beach Marina
Case No. 3535-X, 64-57-SPH,
64-160-X

Dear Mr. Jablon:

This is to advise you that the area delineated on the above-referenced re-zoning application lies within the clear zone of the approach end of Runway 32 of Martin State Airport (MTN). A copy of the existing airport layout plan is enclosed.

The Federal Aviation Administration (FAA), in its Advisory Circular 150/5300-4B, has expressed its view that it is unacceptable to develop real or personal property in a clear zone in a manner that will bring about a congregation of people in that zone. The FAA deems such a congregation to be a hazard to the landing, taking-off, or maneuvering of aircraft. The State Aviation Administration (SAA), as owner and operator of MTN, concurs with the FAA in this matter.

Furthermore, 14 CFR Part 77 sets dimensional standards for all approach surfaces to all runways in the United States. The three-dimensional requirements for the primary approach surface to R/W 32 basically involve a 50:1 obstruction-free slope beginning 200 feet from the end of the pavement and extending upward and outward from the extended runway center-line. The proposed expansion of the marina would most likely involve several penetrations of this plane by masts of moored sailboats. Such penetrations would violate the Federal regulations for obstructions and airport hazards.

Section 5-502 of the Transportation Article of the Annotated Code of Maryland provides in sub-section (a) that the SAA may adopt zoning regulations to protect the aerial approaches to any State-owned airport. Additionally,

P.O. Box 8766, Baltimore/Washington Int'l Airport, Maryland 21240, -0766 Telephone: (301) 859-7100
TTY For the Deaf: (301) 859-7227

Maryland Department of Transportation

STATE AVIATION ADMINISTRATION
APPLICATION FOR AIRPORT ZONING PERMIT

Lowell K. Bridwell
Secretary
T. James Truby
Administrator

APPROVAL OF THIS APPLICATION IS NOT A SUBSTITUTE FOR ANY OTHER PERMITS OR APPROVALS REQUIRED BY THE STATE OR LOCAL JURISDICTIONS.

FOR ADMINISTRATION USE ONLY

APPLICATION NO. _____ DATE RECEIVED _____
PERMIT NO. _____ DATE ISSUED _____
COUNTY PERMIT NO. _____

AIRPORT
- ☐ BALTIMORE-WASHINGTON INTERNATIONAL
- ☐ MARTIN STATE AIRPORT

COUNTY
- ☐ BALTIMORE
- ☐ ANNE ARUNDEL
- ☐ HOWARD

ZONE
- ☐ NOISE
- ☐ HIGH STRUCTURE

1. BUILDING/SITE ADDRESS _____
House No. Street Town Development

A. N.S.E.W. SIDE OF _____ B. _____ FEET N.E.S.W. FROM INTERSECTION WITH _____

SUBDIVISION _____ LOT NO. _____ BLOCK _____ SECTION _____

OR ACREAGE _____ TAX MAP NO. _____ PARCEL NO. _____ BLOCK _____

MARYLAND GRID COORDINATES _____ N. _____ E. 200' SCALE MAP REFERENCE _____

2. TYPE OF IMPROVEMENT
- A. ☐ NEW BUILDING
- B. ☐ ADDITION
- C. ☐ ALTERATION
- D. ☐ REPAIR
- E. ☐ OTHER

3. CONTRACT PRICE OR ESTIMATED VALUE OF IMPROVEMENT _____

4. PROPOSED USE(S)

A. RESIDENTIAL
1. ☐ ONE FAMILY
2. ☐ TWO FAMILY
3. ☐ MULTI FAMILY No. of Units _____
4. ☐ OTHER _____

B. NON RESIDENTIAL
1. ☐ HOSPITAL, NURSING HOME, INSTITUTIONAL CARE
2. ☐ SCHOOL, LIBRARY, CHURCH
3. ☐ HOTEL, MOTEL, TRANSIENT LODGING
4. ☐ OUTDOOR SPECTATOR SPORTS
5. ☐ PARK, PLAYGROUND
6. ☐ PLACE OF ASSEMBLY
7. ☐ OFFICE
8. ☐ STORES, THEATERS, RESTAURANTS
9. ☐ INDUSTRY Type _____
10. ☐ AGRICULTURE Type _____
11. ☐ TOWER, TANK Type _____
12. ☐ OTHER _____

5. PRESENT USE(S) (IF DIFFERENT FROM ABOVE) _____

6. DESCRIBE PROPOSED STRUCTURE(S) (IF ANY): _____

SIZE OF STRUCTURE: HEIGHT _____ FT. LENGTH _____ FT. WIDTH _____ FT.

ELEVATION (MEAN SEA LEVEL) OF STRUCTURE: BASE _____ FT.
HIGHEST POINT _____ FT.

THE APPLICANT HEREBY CERTIFIES AND AGREES AS FOLLOWS: (1) THAT HE IS AUTHORIZED TO MAKE THIS APPLICATION: (2) THAT THE INFORMATION IS CORRECT: (3) THAT HE WILL COMPLY WITH ALL REGULATIONS WHICH ARE APPLICABLE HERETO: (4) THAT HE WILL PERFORM NO WORK ON THE ABOVE PROPERTY NOT SPECIFICALLY DESCRIBED IN THIS APPLICATION.

APPLICANT

NAME _____
CONNECTION WITH PROPERTY _____
(E.G. OWNER, LEASE HOLDER, ETC.)
SIGNED _____
MAILING ADDRESS _____
_____
ZIP CODE
PHONE _____

OWNER (IF OTHER THAN APPLICANT)

NAME _____
MAILING ADDRESS _____
_____
ZIP CODE

FOR ADMINISTRATIVE USE ONLY

APPLICATION

HIGH STRUCTURE ZONE ☐ APPROVED ☐ DENIED
BY _____
DATE _____

NOISE ZONE ☐ APPROVED ☐ DENIED
BY _____
DATE _____

REASON _____

Approval of this Application, if granted, will terminate if construction is not begun within one year of approval date.

Approval of this Permit does not preclude disturbance of the applicant or occupants from aircraft operations. Applicants are encouraged to call 859-7070 for further information.

State Aviation Administration, Office of Planning and Engineering, P.O. Box 8766, Baltimore/Washington International Airport, Maryland 21240.

SAA-010
R 11/83

ANNE ARUNDEL COUNTY
ANNAPOLIS, MARYLAND 21401

OFFICE OF PLANNING AND ZONING

Re: CRITICAL AREA - CHESAPEAKE BAY - NOTIFICATION

This is to notify you that your project _____ is subject to Senate Bill No. 664 of 1984.

This act requires that the County in rendering its decision to approve this project shall make specific findings that:

8-1813 (A)(1) The proposed development will minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands; and

(2) The applicant has identified fish, wildlife, and plant habitat which may be adversely affected by the proposed development and has designed the development so as to protect those identified habitats whose loss would substantially diminish the continued ability of populations of affected species to sustain themselves.

Subsection (B) states that: ... a local approving authority shall require such additional information from an applicant as is necessary in order to make the findings required by subsection (A).

Please provide the information on the attached list that applies to your project. A list of references and consultants has been included to assist you in compiling the information. Four copies of the site plan and accompanying report are needed for review.

Florence Beck Kurdle
Planning and Zoning Officer

FBK/PC/mw

Attachments

HARFORD COUNTY GOVERNMENT

Department of Planning and Zoning

Re: Notification of Requirements of the Chesapeake Bay Critical Areas Act

This is to notify you that your project _____ is subject to the State of Maryland Senate Bill No. 847 of 1985.

This act requires that the County by rendering its decision to approve this project shall make specific findings that:

S-1815 (A)(1) The proposed development will minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands; and

(2) The applicant has identified fish, wildlife, and plant habitat which may be adversely affected by the proposed development and has designed the development so as to protect those identified habitats whose loss would substantially diminish the continued ability of populations of affected species to sustain themselves.

Subsection (B) states that: ... a local approving authority shall require such additional information from an applicant as is necessary in order to make the findings required by subsection (A).

Please provide the information requested on the attached list that applies to your project. A list of information sources has been included to assist you in compiling the information. Three copies of the site plan and accompanying report are needed for review.

_____
Robert S. Lynch, Planning Director

RSL:mkz
Attachments

220 SOUTH MAIN STREET Bel Air, MARYLAND 21014
(301) 638-6000 (D.C. Area) (301) 879-2000

Md. Natl Resources Code Ann §§ 8-1801 - 8-1816 (1974 & 1983 Cum Supp)

(7) 1 individual who represents the sport fishing or crabbing industry in Baltimore County;

(8) 1 individual from the Greater Dundalk Community Council; and

(9) 1 individual from the Hart and Miller Island Area Environmental Group, Inc.

(c) *Duties.* — The Oversight Committee shall:

(1) Monitor the redeposit of spoil and Baltimore County tributary spoil within 5 miles of the Hart-Miller-Pleasure Island chain; and

(2) Hear and dispose of complaints lodged by individuals affected by the redeposit of spoil and Baltimore County tributary spoil within 5 miles of the Hart-Miller-Pleasure Island chain. (1981, ch. 587; 1983, ch. 557.)

Effect of amendment. — The 1983 amendment, approved May 31, 1983, and effective from date of passage, in subsection (b), substituted "2" for "three" in paragraph (1), and "1" for "one" in paragraphs (2) and (3), rewrote paragraph (4), and substituted "1" for "one" in paragraphs (5), (6), (7), (8) and (9).

Subtitle 18. Chesapeake Bay Critical Area Protection Program.

§ 8-1801. Declaration of public policy.

(a) *Findings.* — The General Assembly finds and declares that:

(1) The Chesapeake Bay and its tributaries are natural resources of great significance to the State and the nation;

(2) The shoreline and adjacent lands constitute a valuable, fragile, and sensitive part of this estuarine system, where human activity can have a particularly immediate and adverse impact on water quality and natural habitats;

(3) The capacity of these shoreline and adjacent lands to withstand the continuing demands upon them, without further degradation to water quality and natural habitats is limited;

(4) National studies have documented that the quality and productivity of the waters of the Chesapeake Bay and its tributaries have declined due to the cumulative effects of human activity that have caused increased levels of pollutants, nutrients, and toxics in the Bay System and declines in more protective land uses such as forestland and agricultural land in the Bay region;

(5) Those portions of the Chesapeake Bay and its tributaries within Maryland are particularly stressed by the continuing population growth and development activity concentrated in the Baltimore-Washington metropolitan corridor;

(6) The quality of life for the citizens of Maryland is enhanced through the restoration of the quality and productivity of the waters of the Chesapeake Bay and its tributaries;

(7) The restoration of the Chesapeake Bay and its tributaries is dependent, in part, on minimizing further adverse impacts to the water quality and natural habitats of the shoreline and adjacent lands;

(8) The cumulative impact of current development in inimical to these purposes; and

(9) There is a critical
and future generations
consistent and uniform
and its tributaries so a
habitats.

(b) *Purposes.* — It i
enacting this subtitle t

(1) Establish a Resou
tributaries by fosterin
shoreline areas so as
habitats; and

(2) Implement the R
tween the State and affe
lishing and implementi
subject to State criteria

Editor's note. — Section
1984, provides that "of the ir
the Chesapeake Bay Critical A
the member from Anne Ar
members at large, and the me
Queen Anne's, Talbot, and D
serve for terms of 4 years; th
Baltimore City and Wico
Calvert, Charles, and St. Mar
for terms of 3 years; and th
Baltimore, Prince George's,
Caroline, and Worcester co
terms of 2 years."

Section 3 of ch. 794 provides

§ 8-1802. Definitio
Prince

(a) *In general.* — (1) I
indicated.

(2) "Commission" me
established in this subt

(3) "Development" me
or use of dry land, land

(4) "Includes" means
way of limitation.

(5) "Local jurisdiction
planning and zoning pow
Area as defined in this

(6) "Program" means
tion including any amer

(7) "Project approval"
development by a state
Critical Area by the app

manner provided under S ction 502 subject to the following provisions: Section 1B01.3.A.7B(1) provides the amendment must first be approved by the Planning Board as being in accord with provisions adopted under the authority of Section 504.

It is clear in this case that the Planning Board has never reviewed the amendment to this final development plan. It is also undisputed that the protestants, particularly Follo, Howse, O'Hara, Brown, Rytter and Langendorf reside within three hundred (300) feet of the subject property. It is also clear that BGE alleges that the Planning Board has delegated, by an amendment to the Comprehensive Manual of Development (CMDP), the responsibility for approving amendments to final development plans to the Director of Planning. Gerber testified and protestants submit that this was an illegal action by the Planning Board. The B.C.Z.R. is of "inclusive construction." There are no provisions for delegation of this function. In the opinion of Gerber, the method of amending the B.C.Z.R. is clearly Section 26-123(a), (b) and (c) of the Baltimore County Code. This is clearly an amendment to the B.C.Z.R. and the Code was not followed.

BGE alleges that this action was based on Section 504.2 of the B.C.Z.R. However, this action of delegation of authority to the Planning Director is in conflict and inconsistent with Section 504.1 of the B.C.Z.R., which says any addition to the CMDP is acceptable if they "are not

EXHIBIT A1

Baltimore County Code, § 524.1. People's Counsel.

...

(b) Notwithstanding any other provision of this Charter, within thirty (30) days after the effective date of this Charter amendment, the county executive shall appoint a people's council who shall represent the interests of the public in general in zoning matter as hereinafter set forth, subject, however, to confirmation by the county council, and such person so appointed shall continue to serve as people's counsel until such time as he or she resigns or has been removed pursuant to the provisions herein contained:

...

...

(3) Powers and duties: The people's counsel shall have the following powers and duties:

A. He shall appear as a party before the zoning commissioner of Baltimore County, his deputy, the county board of appeals, the planning board, and the courts on behalf of the interests of the public in general, to defend any duly enacted master plan and/or comprehensive zoning maps as adopted by the county council, and in any matter or proceeding now pending or hereafter brought involving zoning reclassification and/or variance from or special exception under the Baltimore County Zoning Regulations, as now or hereafter in force and effect, in which he may deem the public interest to be involved. In defense of the zoning maps or master plan, he may appear as a party in interest before all state and federal agencies, boards, and courts on matters involving the preservation of the quality of the air, land, and water resources of Baltimore County, and/or may initiate such proceedings in the public interest. He shall have in such appearance, all the rights of counsel for a party in interest, including but not limited to the right to present his case, to cross examine, to object, to be heard, and to file and prosecute an appeal in his capacity as people's counsel from any order or act of the zoning commissioner of Baltimore County or his deputy, or of the county board of appeals to the courts as an aggrieved party pursuant to the provisions of Section 604 of this Charter to promote and protect the health, safety and general welfare of the community. The people's counsel may also prosecute an application before any state or federal court for injunctive and other relief incidental thereto, to enjoin violation of any Baltimore County zoning maps or master plan or as authorized by resolution by the county council.

(Bill No. 90, 1978, § 1)

(Approved by voters Nov. 7, 1978. Effective Dec. 8, 1978)

...

EXHIBIT A 2

PCF: seen

PMZ: seen

County Board of Appeals of Baltimore County

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

December 12, 1985

John O. Hennegan, Esquire
Robert J. Romadka, Esquire
809 Eastern Boulevard
Essex, MD 21221

T. Rogers Harrison, Esquire
306 W. Joppa Road
Towson, MD 21204

Judith A. Armold
Assistant Attorney General
Department of State Planning
301 W. Preston Street
Baltimore, MD 21201

Re: Case No. 85-65-XSPHA
Joseph F. Evering, Jr., et ux

Dear Counsel:

Enclosed please find the Board of Appeals' Ruling on the Petitioner's Preliminary Motion to determine the applicability of Subtitle 18 of the Natural Resources Article of the Annotated Code of Maryland. This ruling is self-explanatory.

Additionally, at the conclusion of the hearing, counsel requested the Board's advice as to the COMAR regulations promulgated by the State Aviation Administration. Although we will reserve all parties' rights to be heard on this matter, the Board has reviewed the regulations. We note that Subtitle 03, Section 11.03.05 prohibits actual construction, and does not prohibit the filing and granting of the petitions before us. Also, Section 11.03.06 provides for relief through the Board of Airport Zoning Appeals, outside of the jurisdiction of this Board.

Finally, please note the next hearing date for this matter is Tuesday, January 21, 1986 at 10 a.m. We must deny the Protestants' request for a continuance from that date. The Board clearly remembers all parties' agreement to the January 21st date at the conclusion of the initial day's hearing. Also, although this Board has granted postponements for conflicting trial dates, we cannot grant a postponement

EXHIBIT B

APPENDIX E

RULES OF PRACTICE AND PROCEDURE OF THE ZONING COMMISSIONER OF BALTIMORE COUNTY*

The following rules and regulations are prescribed under the provisions of Subsection 500.8, Baltimore County Zoning Regulations, 1955:

RULE I

Locations and Times of Hearings—In General

Hearings shall be held in the County Office Building, 111 West Chesapeake Avenue, Towson, Maryland, Monday through Friday. (The times for hearings on petitions will be set in accordance with Sections 22-22 and 22-23 of the Baltimore County Code 1968, as amended by Bills No. 72, 1969, and No. 42, 1970.[1]) Special sessions of the Zoning Commissioner for any and all authorized purposes may be held at such times and places as the Zoning Commissioner may direct.

RULE II

Petitions and Preliminary Review

A. Acceptance. On receiving a petition, the Zoning Commissioner will refer it to the office staff and Zoning Plans Advisory Committee (see Section C, below) for examination and comment. If it is found to be in accordance with these rules, with the Baltimore County Code, with the Baltimore County Zoning Regulations, and with all reasonable requirements of the Committee, the Zoning Commissioner will accept the petition for filing and so notify the petitioner by letter. If it does not conform, the petitioner will be advised of the defects which must be corrected before the petition will be accepted for filing.

B. Form, contents, and accompanying documentation

1. Any petition to be accepted for filing must be on the form supplied by the Zoning Commissioner.

2. The petition shall be submitted in triplicate, and each copy shall be signed by the petitioner(s). All information on the petition other than the printed impression and the signature(s) shall be typewritten.

---

* *Revised 1974.*

1. *See Appendix D.*

EXHIBIT C

Baltimore County, Maryland

PEOPLE'S COUNSEL
RM. 223, COURT HOUSE
TOWSON, MARYLAND 21204
494-2188

PHYLLIS COLE FRIEDMAN
People's Counsel

PETER MAX ZIMMERMAN
Deputy People's Counsel

November 6, 1985

Mr. Theodore E. Mathison
State Aviation Administration
Department of Transportation
P. O. Box 8766, Balto.-Wash. Intl. Airport
Baltimore, Maryland 21240

RE: Joseph F. Evering, Jr., et ux, Petitioners
Zoning Case No. 85-65-XSPHA
N/S Chester Rd., 590' W of Severn Rd.
(800 Chester Rd.), 15th District (3.30 acs.)

Dear Mr. Mathison:

Enclosed herewith is a site plan for the above-referenced Petition for a Special Exception. During the course of a preliminary hearing, the issue of the applicability of Title 11, Subtitle 03, 11.03.05 Obstructions to Air Navigation, and 11.03.06 Airport Zoning Regulations, was raised.

Would you please advise us at the earliest possible moment as to whether development of the site in question is in any way impacted by these regulations and if so, how? This matter is presently pending before the County Board of Appeals.

Thank you for your prompt attention to this.

Sincerely yours,

Phyllis Cole Friedman

Phyllis Cole Friedman
People's Counsel for Baltimore County

Enclosure

cc: John O. Hennegan, Esquire
Robert J. Romadka, Esquire
T. Rogers Harrison, Esquire
Judith A. Arnold, Asst. Attorney General
Norman E. Gerber, Director, OPZ

PCF:sh

(2) A generator who accumulates hazardous waste [for more than 90 days] is an operator of a storage facility and is subject to the requirements of COMAR 10.51.05[.] *; unless the hazardous waste:*

(a) Is accumulated for 90 days or less; or

(b) Accumulated is less than 500 kilograms, contains less than 1 kilogram of acute hazardous waste, and is accumulated for 180 days or less from the date of initial generation or accumulation.

ADELE WILZACK
Secretary of Health and Mental Hygiene

[Md. R. Doc. No. 85-R-139-P. Filed at Div. of St. Doc. April 2, 1985.]

Title 11
DEPARTMENT OF TRANSPORTATION

Subtitle 03 STATE AVIATION ADMINISTRATION

11.03.05 Obstructions to Air Navigation

Authority: Transportation Article, §§5-204(d), 5-208 and 5-702, Annotated Code of Maryland

Notice of Proposed Action

The State Aviation Administration proposes to adopt new Regulations .01 — .11 under a new chapter, **COMAR 11.03.05 Obstructions to Air Navigation.** The purpose of these regulations is to comply with the provisions of Transportation Article, §5-702(a), and govern the erection and maintenance of any obstruction to air navigation that endangers the lives and property of persons using the air space for transportation or occupying land within this State.

Estimate of Economic Impact

I. Summary of Economic Impact. These regulations will govern the erection and maintenance of any structure, personalty, or vegetation that, due to its location, would endanger the lives or property of those persons using a licensed public-use airport or occupying adjoining lands. Authority to grant exemptions is provided to the local subdivisions for use through their existing appeal processes. When exemptions are granted, provisions are included to require precautionary measures consistent with the degree of risk. Both the State and local sub-divisions will incur expense in processing requests for exemptions, as will those property owners who might be required to install obstruction lighting and markings.

II. Types of Economic Impacts.	Revenue (+) Expense (–)	Magnitude
A. On issuing agency: The State Aviation Administration will incur expense in reviewing requests for exemptions and providing testimony at local hearings.	(–)	$6,000
B. On other State or local agencies affected: Local sub-divisions will incur added expense as a result of hearings to consider requests for exemptions.	(–)	$8,000
	Benefit (+) Cost (–)	**Magnitude**
C. On regulated industries or trade groups:	NONE	
D. On other industries or trade groups affected: There may be an indirect effect due to the purchase of goods and services to mark or remove obstructions.	(+)	Determined at the local level
E. Direct and indirect effects on public: Added expenses may be expected on the part of builders in the installation of obstruction lighting and markings, and by others in limiting the growth of vegetation.	(–)	Determined at the local level

III. Assumptions.

A. This figure is based upon the review of an estimated 100 construction applications per year for determination as to their impact on air navigation and participation in 20 hearings relative to exemptions.

B. This figure is the estimated local cost of processing 20 requests for exemptions.

D. Extent of expense will be determined by local zoning officials in connections with requests for vacancies.

E. Extent of expense will be determined by local zoning officials in connections with requests for vacancies.

Opportunity for Public Comment

Written comments may be sent to Evelyn M. Kellner, Chief, Administrative Services, State Aviation Administration, P.O. Box 8766, Baltimore/Washington International Airport, Maryland 21240 or call (301) 859-7228. These comments must be received by May 31, 1985. No public hearing will be scheduled.

.01 Definitions.

A. As used in these regulations, the following terms have the meanings indicated unless the context requires otherwise. Words not specifically defined that relate to aeronautical practices, processes, and equipment shall be construed according to their general usage in the aviation industry.

B. Terms Defined.

(1) "Administration" means the State Aviation Administration of the Maryland Department of Transportation, established pursuant to Transportation Article, §2-102(b)(2), Annotated Code of Maryland.

(2) "Administrator" means the State Aviation Administrator, whose office is established pursuant to Transportation Article, §2-102(b)(2), Annotated Code of Maryland, or his duly authorized representative.

inconsistent with these regulations." In the opinion of the protestants and Gerber, this delegation is clearly inconsistent. As a matter of law, the delegation was improper, and the Planning Board must review the final development plan for this project.

Assuming for the sake of argument that procedurally th Planning Board had approved this particular amendment, the amendment must be in accord with specific standards and requirements. It is clear that the standard for an amendment to the final development plan is that "the amendment would be consistent with the spirit and intent of the original plan and of this article." protestants submit and are confident that any interpretation of the original subdivision plan for Fox Ridge Estates under no stretch of the imagination could include the use of Parcel A as a location for a substation. It is clearly not consistent with the idea of a residential subdivision and has absolutely no basis in reason to believe that a substation is consistent with the spirit and intent of the original development plan.

Gerber opined that the proposed amendment to the final development plan for the use of Parcel A as a BGE substation was not consistent with the spirit and intent of the original plan. Gerber testified that "the primary purpose of the requirement for a final development plan and the amendment plan is to provide some protection to purchasers of lots in an uncompleted subdivision so that the use could not be

EXHIBIT D

County Board of Appeals of Baltimore County

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

January 9, 1986

T. Rogers Harrison, Esq.
306 W. Joppa Road
Towson, Md. 21204

Phyllis C. Friedman
People's Counsel for Baltimore County
Peter Max Zimmerman, Esq.
Deputy People's Counsel
Court House
Towson, Md. 21204

Re: Case No. 85-65-XSPHA
Special Hearing, Special Exception, and Variances petitioned for by Joseph F. Evering, Jr., et ux

Dear Mrs. Friedman, Messrs. Harrison and Zimmerman:

The Board has received the Notice of Appeal filed by you on January 3, 1986, in the above matter. Needless to say, we are distressed at the timing of this action.

As you know, Maryland Rule B-7(a) requires that the Board submit the record of proceedings before it to the Circuit Court for Baltimore County. Under the mandate of this rule, the Board in the past has, as a matter of practice, forwarded its entire file to the Circuit Court. Additionally, past decisions of the Court have held that the filing of the appeal immediately removes the matter from before the Board; as jurisdiction is assumed by the Circuit Court.

These two considerations, the transmittal of the record and the Board's loss of jurisdiction, are of great concern to the Board in view of the present status of the matter. That is, the Board has to date heard testimony only on the preliminary motion and has yet to hear or consider the merits of the petitioned relief. As the next day's testimony, January 21st, is rapidly approaching, the Board is concerned over its authority to hear the matter on that date and if the appeal is proper.

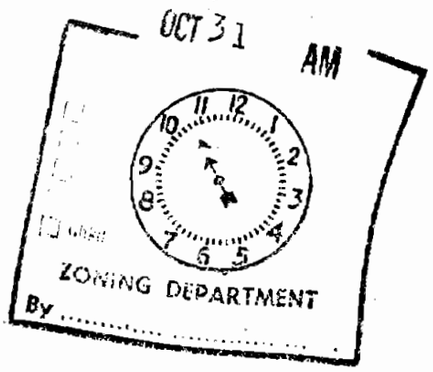
After consideration, it is the Board's view that the appeal is improper and we will treat it as such. Our reasons for this conclusion are several. First, the Board's published "Ruling on Motion" dated December 12, 1985, is just that, a ruling on the Petitioner's preliminary motion. There is no opinion or, more importantly, Order of the Board which can be appealed.

85-1007
Case file

BAFITIS & ASSOCIATES
CIVIL ENGINEERS • SURVEYORS

WILLIAM N. BAFITIS
3482 DUNHAVEN RD.
BALTIMORE, MD. 21222

301-285-3212



October 31, 1984

Paul J. Solomon
County Court Office Building
Office of Planning and Zoning
Towson, Maryland 21204

Dear Mr. Solomon,

Reference: Long Beach Marine Additional Slips
Joseph F. Evering, Jr.,
No. 85-65-XSpHA
Hydrogeological Study and Environmental Effects Report

As requested, we are submitting one copy of the above referenced report for the additional boat slips proposed at Long Beach Marine.

If there are any questions concerning this project, please do not hesitate to call me at 323-8100.

Very Truly Yours
BAFITIS AND ASSOCIATES

William N. Bafitis, P.E.

cc: Mr. Arnold Jablon
Mr. B. H. Stafford
Mr. J. Hennegan
Mr. Joseph F. Evering, Jr.

LAW OFFICES
MUDD, HARRISON & BURCH
306 WEST JOPPA ROAD
TOWSON, MARYLAND 21204
AREA CODE 301-828-1335

JOHN E. MUDD
T. ROGERS HARRISON
RICHARD C. BURCH
DOUGLAS W. HISER
H. PATRICK STRINGER, JR.

900 MARYLAND TRUST BUILDING
14 SOUTH CALVERT STREET
BALTIMORE, MARYLAND 21202
301-323-0266

February 4, 1985

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

Re: Petitioners Case No. 85-65XSPHA

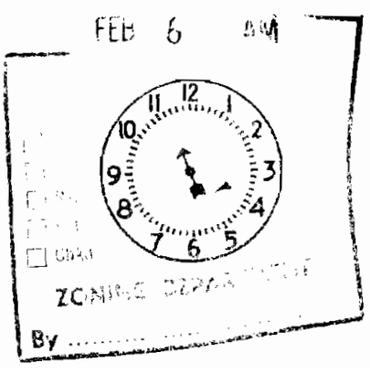
Dear Mr. Jablon:

Please find enclosed copies of the Chesapeake Bay Program: Findings and Recommendations (E.P.A., September 1983), the Chesapeake Bay Program Techincal Studies: A Synthesis (E.P.A., September 1982) and the Bober memo of October 29, 1984, all which the Protestants introduced into evidence during the February 1, 1985 hearing.

After the hearing, Mr. Hennigan was presented with copies of the Findings and Recommendations brochure and the Bober memo. I mailed him a copy of the Technical Studies brochure today, and once he receives it, he should have copies of all the exhibits introduced by the Protestants. I anticipate that he will have the brochure copy of February 7th.

This letter will also confirm that both the Petioners and the Protestants will each have thirty days from the time Mr. Hennigan receives the Technical Studies brochure to submit a memorandum on the issue of whether the Petitioners have fulfilled their evidentiary burden under Md. Nat. Res. Code Ann. Section 8-1813 (1974 & 1984 Cum. Supp.).

Thank you.



Very truly yours,

T. Rogers Harrison

TRH:sw
enc.

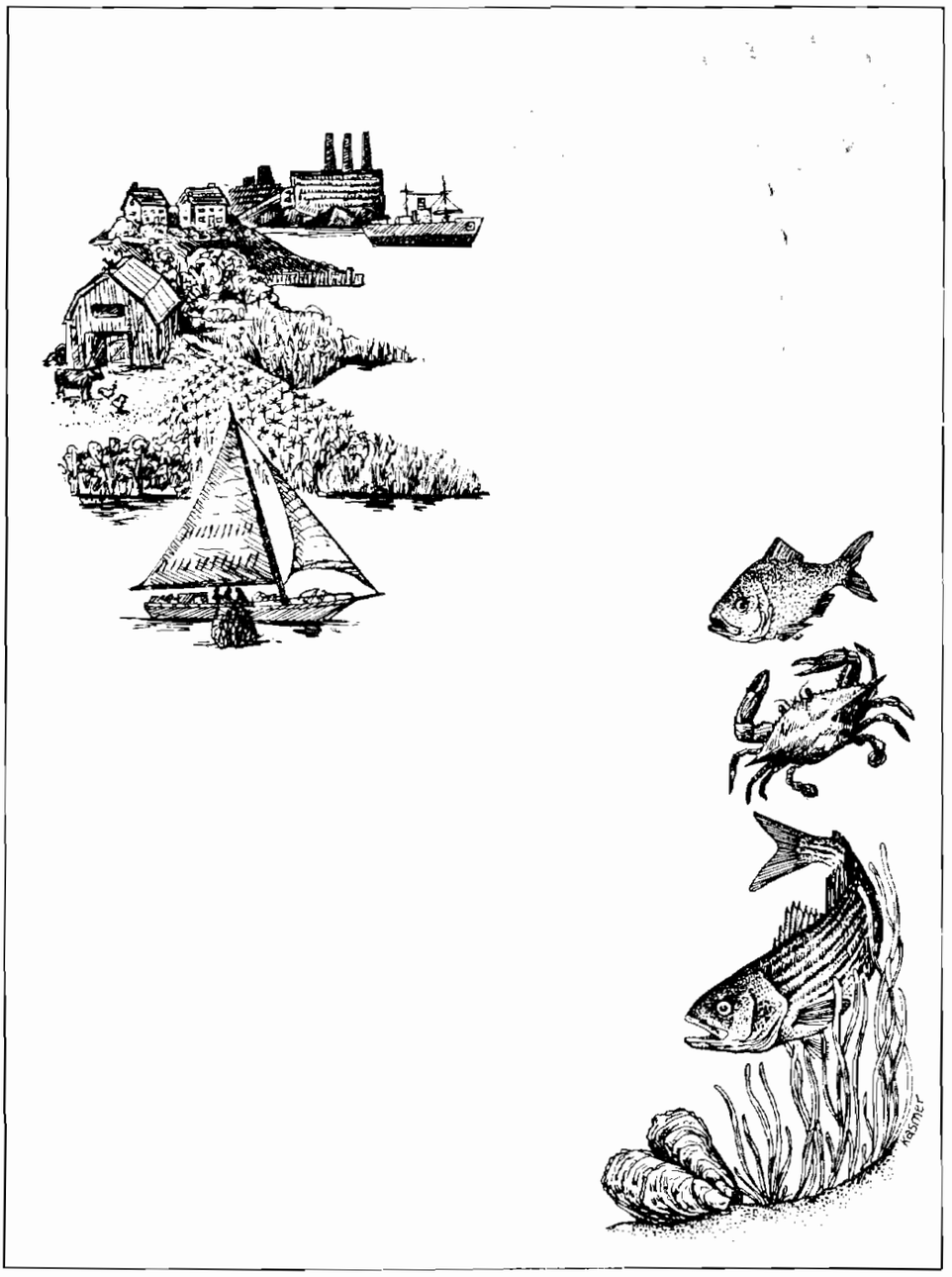
United States
Environmental Protection
Agency

Region 3
Sixth and Walnut Streets
Philadelphia, PA 19106

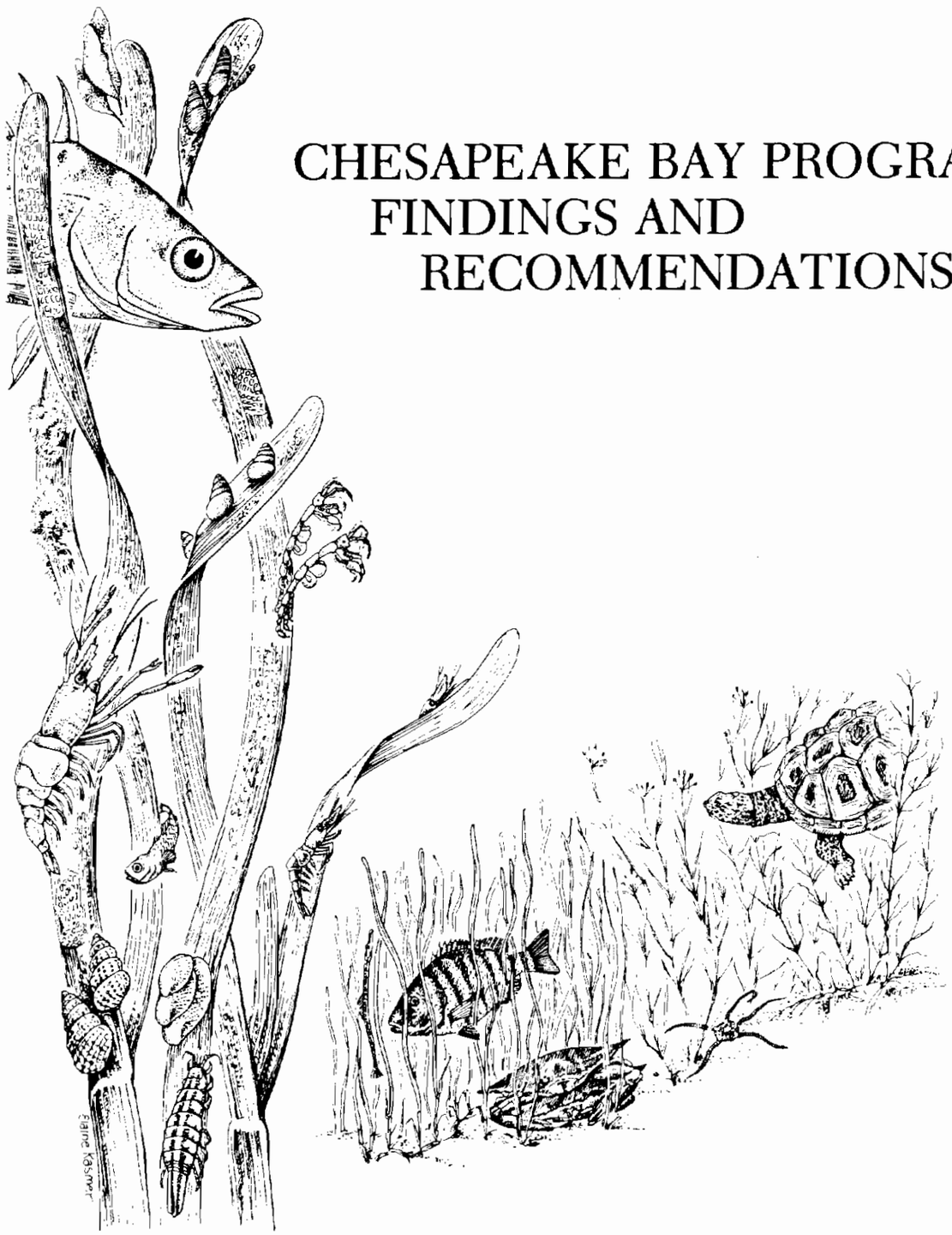
September 1983

CHESAPEAKE BAY PROGRAM: FINDINGS AND RECOMMENDATIONS

EPA



CHESAPEAKE BAY PROGRAM: FINDINGS AND RECOMMENDATIONS



changed to something undesirable to th m after they made their purchase."

Gerber further rejected the expert opinion of BGE witness George Gavrelis that somehow the final development plan by simply including the fact that BGE was the owner of Parcel A put the Protestants on notice and that amendment to the final development plan was not necessary. He specifically pointed out Section 1B01.3A.5B, which requires that each parcel or final development plan must show the locations, type, and exterior dimensions of all proposed structures and all existing structures generalized floor plans, layout of parking facilities, streets and drives giving access to, etc.

Gerber's testimony was that ownership was not the criteria for the amendment of a final development plan and does not in any way, shape or form alert the prospective purchasers at Fox Ridge Estates what was the intended use of the parcel. Gerber distinguished between the proposed use not being consistent with the uses on the other lots and simply the ownership of the various parcels and lots. Ownership of the parcel by BGE was not sufficient to avoid the need to amend the final development plan. Protestants can conceive of no possible analysis that would permit the Board to conclude that the use of this parcel is consistent with the overall intended use of the Fox Ridge Estat s subdivision plan.

CRITICAL AREAS INFORMATION REQUIREMENTS

BALTIMORE COUNTY

SUBJECT	SPECIFIC INFORMATION	SOURCE	SUBMITTAL FORM
CRITICAL AREA	Critical Areas Boundary	Map in Office of Planning and Zoning, Current Planning & Development Div.	Critical Areas Information Map*
WATER DEPTH	Average water depth within 50' of shoreline at mean high tide to be shown at 1' intervals. This is to be done for water bodies on and adjacent to the site as well as for the major tributaries into which the site drains.	Nautical Maps	Critical Areas Information Map. If data are unavailable, field estimates and descriptions may be substituted.
SHORELINE	1. Shoreline rates of erosion or accretion	Historical Shorelines and Erosion Rates, Maryland Geological Survey, 1975	Critical Areas Information Text**
	2. Shoreline erosion control structures or projects	Shoreline Structures in Maryland: Their Location and Extent, Maryland Geological Survey, 1976 or latest available information	Critical Areas Information Map

*Critical Areas Information Map is a map of the site detailing the requested environmental information. Lot lines, roads, utility lines, etc. should not be included and the scale and size must be the same as that used for the site development plan.

**Critical Areas Information Text is a written report, describing the requested environmental information.













THIS DEED, Made this 25th day of June, in the year one thousand nine hundred and sixty-nine, by and between JOHN R. HINRICHS and MARGARET M. HINRICHS, his wife, of Darien, State of Connecticut; D.JASON COE and MARY H. COE, his wife, of Baltimore County, State of Maryland; and E. HENRY HINRICHS, JR. and SUSANNE HINRICHS, his wife, of Baltimore County, State of Maryland, parties of the first part, Grantors; and ALBERT CRAWFORD HUBBARD, JR. and PENNEY COX HUBBARD, his wife, of Baltimore County, State of Maryland ,parties of the second part, Grantees.

WITNESSETH, that in consideration of the sum of Five ($5.00) Dollars and other good and valuable considerations, the receipt whereof is hereby acknowledged, the said parties of the first part do hereby grant and convey unto the said parties of the second part, as tenants by the entireties, their assigns, the survivor of them, and such survivor's heirs and assigns, in fee-simple, all that lot of ground, situate, lying and being in Baltimore County, in the State of Maryland, and described as follows, that is to say·

BEGINNING for the same in the centre of an avenue twenty-five feet wide and at the distance of six hundred and ninety-seven feet north westerly from a stone heretofore planted at the intersection of the centre line of the aforesaid avenue with the centre line of another avenue twenty-five feet wide both avenues being laid out on the plat of Walnut Hill, said plat being recorded among the Plat Records of Baltimore County in Plat Book #2 folio 131 the centre line of the said last mentioned avenue being the division line between lots 9 and 10 on said plat said place of beginning being also at the distance of twelve and five tenths feet south three degrees fifty-three minutes west from an iron pipe planted on the north side of the first mentioned avenue thence north three degrees fifty-three minutes east to said pipe and continuing the same course in all two hundred and thirty-six feet to an iron pipe thence north sixty degrees forty-four minutes west three hundred and fifty-five and two tenths feet to an iron pipe and to the centre of another twenty-five foot avenue thence binding on the centre of said last mentioned avenue as laid out on the aforesaid plat the six following courses and distances viz south one hundred and thirty-two feet, south nine degrees forty minutes east eighty-two feet south twenty-one degrees twenty minutes east ninety-nine feet, south forty degrees thirteen minutes east forty-nine and five tenths feet and south fifty-five degrees ten minutes east fifty-one and eight tenths feet to the centre of the twenty-five foot avenue first above mentioned and thence binding thereon south seventy-seven degrees fourteen minutes east one hundred andsixty-four feet to the place of beginning. Containing 1.9 acres of land more or less.

BEING the same lot of ground which by Deed dated October 5, 1936 and recorded among the Land Records of Baltimore County inLiber C.W.B.Jr. No.983 folio 268, was granted and conveyed by George C.Carey,Jr.,et al, to Ernest H.Hinrichs and Elizabeth Sadler Hinrichs,his wife, in fee-simple. The said Elizabeth Sadler Hinrichs having predeceased the said Ernest H.Hinrichs; on or about the 29th day of March, 1967 , thereby vesting fee-simple title absolutely in the said Ernest H.Hinrichs.

[illegible] 325.00

Case No. 85-65-XSPHA
Item No. 166
Date: May 10, 1985

N/S of ChesterRoad, 590' W of Severn Road (800 Chester Road) - 15th Election District
Joseph F. Evering, Jr., et ux, Petitioners

SE-2 lots located on N & S side of Chester Rd., DR 5.5 zone to be used as a boat yd.
Var.-Stone in lieu of macadam; 318 pkg. sps. in lieu of 384; structure not to exceed 300' beyond low tide; SH-Amend. to site plan

- X 1. Copy of Petition
- X 2. Copy of Description of Property
- X 3. Copy of Certificate of Posting 1 sign & 1 location sign
- X 4. Copy of Certificates of Publication
- X 5. Copy of Zoning Advisory Committee Comments
- X 6. Copy of Comments from the Director of Planning
- ____ 7. Planning Board Comments and Accompanying Map
- X 8. Copy of Order to Enter Appearance
- X 9. Copy of Order - Zoning/[redacted] Commissioner-4/25/85,GRANTED, w/restrictions
- X 10. Copy of Plat of Property (Petitioner's Exhibit #1)
- ____ 11. 200' Scale Location Plan
- ____ 12. 1000' Scale Location Plan
- X 13. Memorandum in Support of Petition
- X 14. Letter(s) from Protestant(s)
- ____ 15. Letter(s) from Petitioner(s)
- X 16. Protestants' Exhibits 1 to 5a - #'s 2+3 missing from file
- X 17. Petitioners' Exhibits 1 to 7
- X 18. Letter of Appeal, 5/10/85 by People's Counsel, Phyllis Friedman.
- X 19. Protestants' Reply to Petitioners' Memorandum
- X 20. Critical Area Review/Baltimore County Dept. of Health

John O. Hennegan, Esquire — Attorney for Petitioners
Germania Federal Building
809 Eastern Boulevard
Essex, Maryland 21221

JOHN B. GONTRUM, ESQUIRE
*Robert J. Romadka, Esquire — Attorney for Petitioners
Germania Federal Building
809 Eastern Boulevard
Essex, Maryland 21221

*T. Rogers Harrison, Esquire — Attorney for Protestants
306 West Joppa Road
Towson, Maryland 21204

*Phyllis C. Friedman, Esquire — People's Counsel
*Norman E. Gerber — Request Notification
James Hoswell — Request Notification
Arnold Jablon — Request Notification
Jean M. H. Jung — Request Notification
James E. Dyer — Request Notification

Joseph F. Evering, Jr., et ux — Petitioners
800 Chester Rd. (21220)

Judith A. Armold

T. B. Ballweber, Esq.

#1: Plat of Property

#1a: Hydrogeological Study and Environmental Effects Report

#2: Long Beach Marina Location Plan

#3: Department of The Army Permit

#4: Baltimore County Permit

#5: Long Beach Marina Post Card/picturing Marina

#6: Photograph/Marina

#7: Application for Building Permit

PROTESTANT'S EXHIBITS

#1: Photographs/Booklet

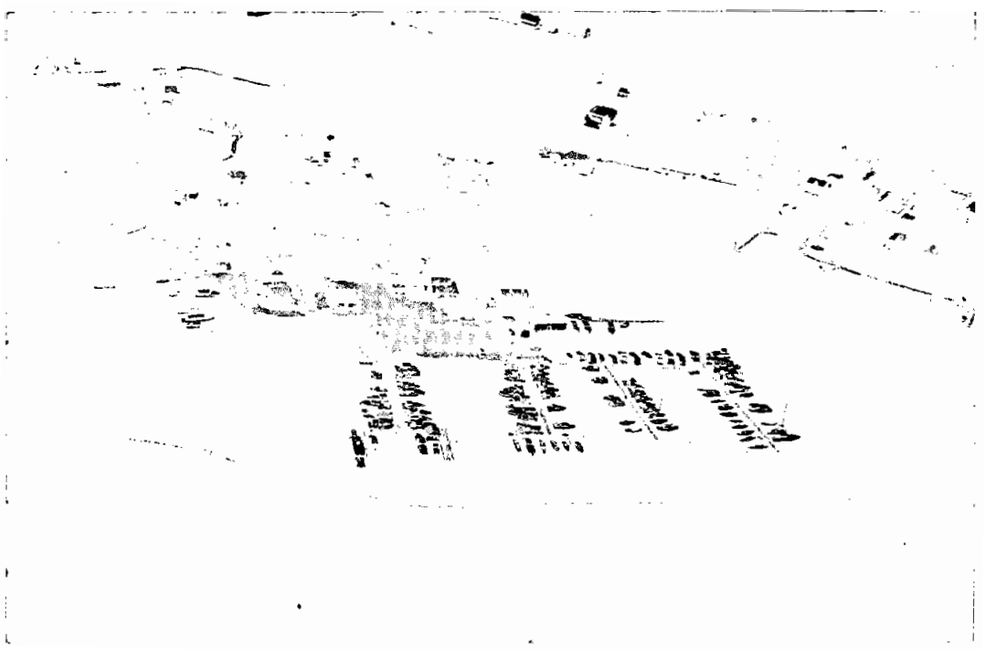
#1a: Letter from Eugene Bober to Frank S. Lee Re: Required information relative to the Chesapeake Bay Critical Areas

#2: Exhibit missing from file

#3: Exhibit missing from file

#4a: Chesapeake Bay Program Technical Studies: A Synthesis

#5a: Petition (2 pages)



LONG BEACH MARINE
Located on Middle River
opposite Martin Plant,
North Side of Baltimore, Md.
Near the Beltway.
Shopping facilities, Restaurant and Transportation Available. Full Marine Services. Phillips 66 gas. Open 24 Hours During Season.
Phone: 301 - 335-8602
Owner - Jack Evering

The Country Studio, P.O. Box 206, Aberdeen, Md. 21001

55724-C

MADE BY DEXTER PRESS, INC. WEST NYACK, NEW YORK

Pict No 22

PLACE STAMP HERE

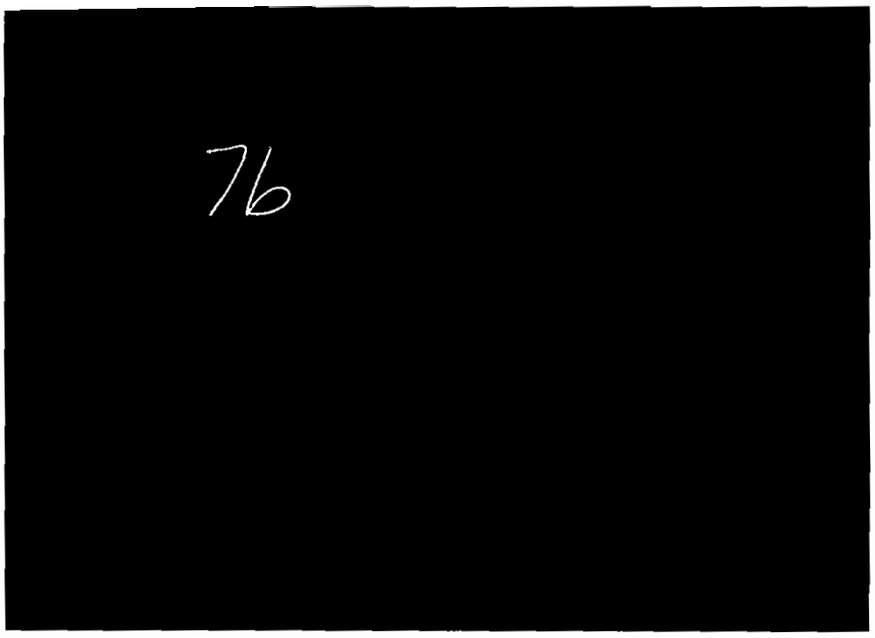
Post Card

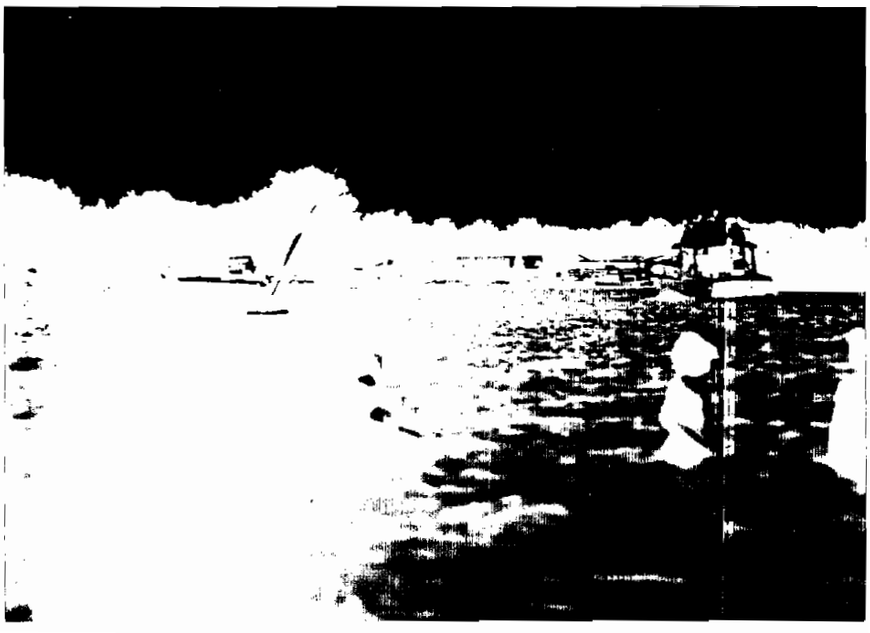
Gerber further testified that in his opinion the proposed enlargement of the Ivy Hill substation was detrimental to the health, safety, and general welfare pursuant to general welfare pursuant to Section 502.1A that it violated Section 502.1C, that it violated Section 502.1D, that it was inconsistent with the purpose of the property zoning under Section 502.1G, and that this Special Exception should be therefore denied.

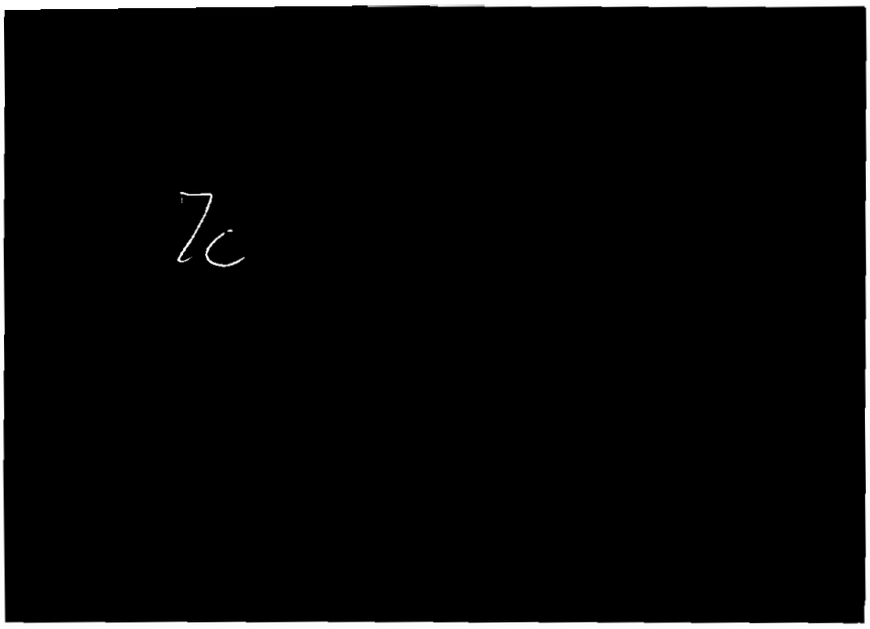
VII. Variances - Failure to Prove

The previous discussion of the B.C.Z.R. relating to Section 307.1 make it abundantly clear that the county regulations require some "special circumstance or conditions exist which are peculiar to the land which is the subject of the variance request." One must analyze the testimony of the only witness presented by BGE, George Gavrelis, to establish the variance criteria. Mr. Gavrelis' testimony can be found in the transcript for January 10, 1995, at page 105. When asked what was unique to this site, he responded that "it's a site that is wooded; it's a site as proposed, wooded dges can be retained and the substation, as proposed, is, in effect, tries to concentrate the improvement regardless of the internal lot lines to come up with a more rational and coherent way to in effect provide for the substation and at the same time provide green landscape edges and I think that's what's unique about this site." Later, in the cross-

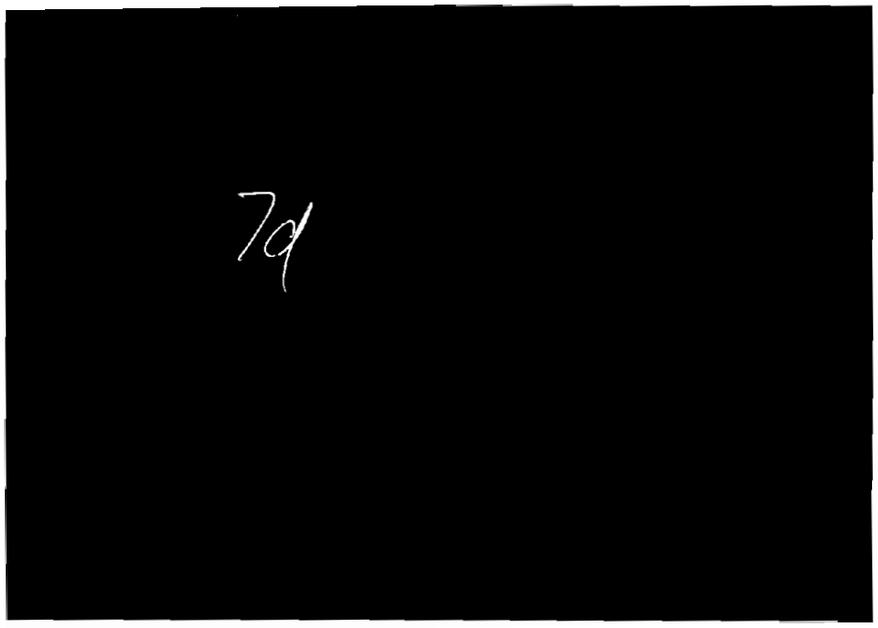



76




7c

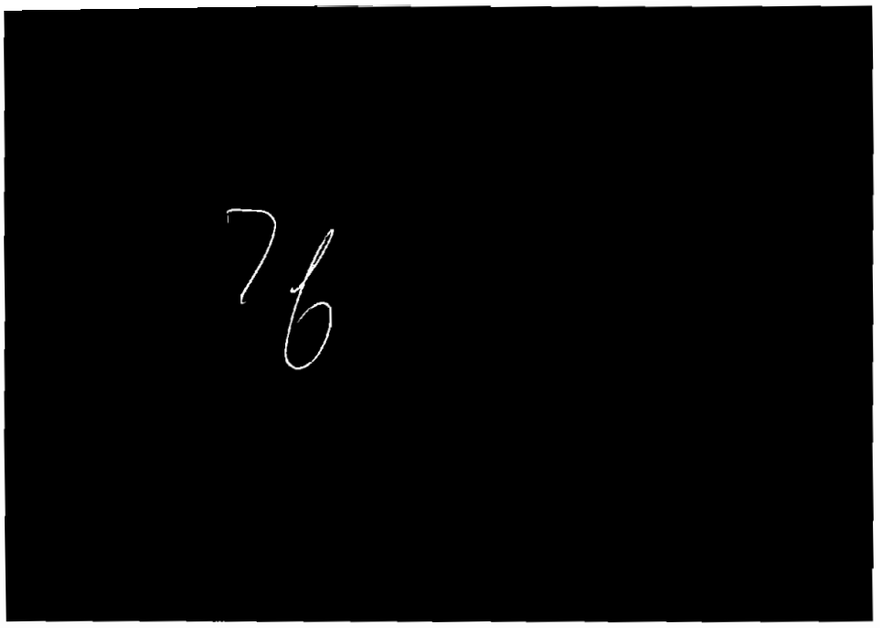



7d




7e




76

examination, he was asked at page 110, what was the reason for the variance. He was then asked on page 111:

Q: Is there anything else different about this site combining the three parcels into the 2.8 acres other than the fact that it's treed?

A: There's a substation already there.

Q: Exactly. And other than that?

A: It has existing infrastructure.

Q: It has lines serving it in and out?

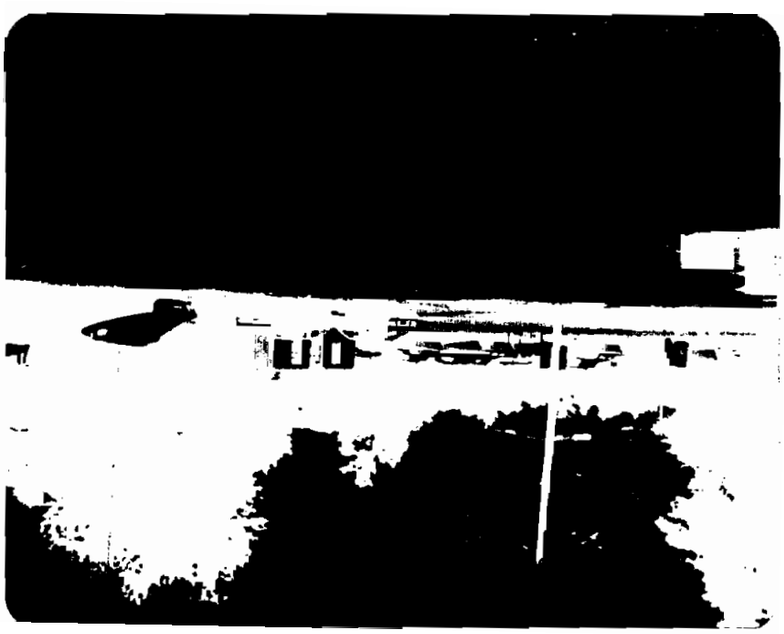
A: Exactly.

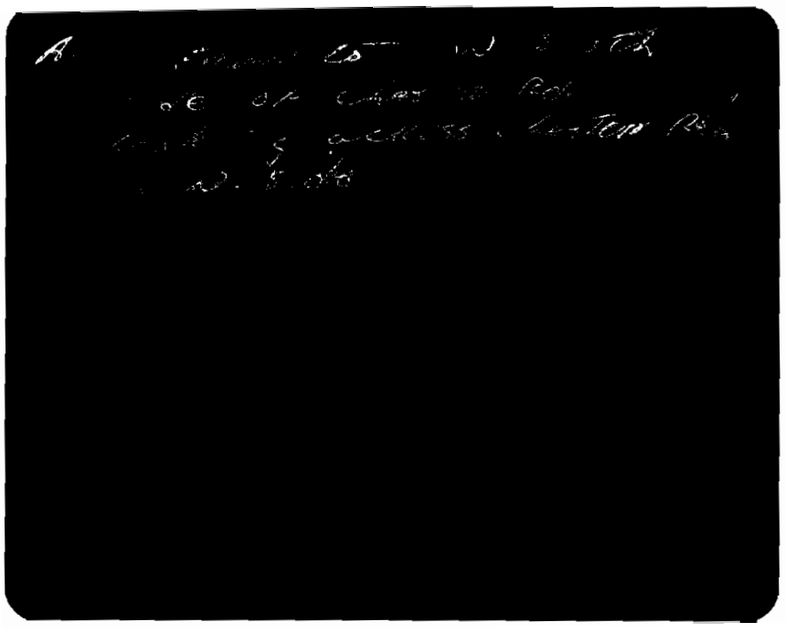
Q: Other than that?

A: I think that's enough.

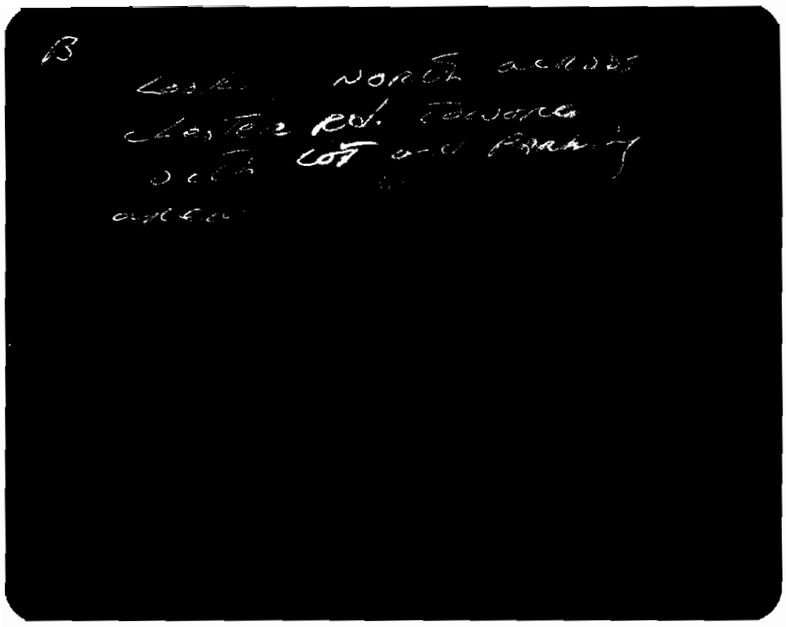
That is all of the testimony which supports the requested variance as set forth by BGE in this case. In analyzing a most recent decision by Judge Cathell of the Court of Special Appeals, in the case of David Cromwell v. Arthur Thomas Ward III, CSA No. 94-617, filed January 4, 1995, the court ruled in a case presented before this very Board, the Court of Special Appeals noted that zoning variances and exceptions have often been confused because of a tendency to intermingle the concept of Special Exception/Conditional Uses and Variances.

The Court wrote that variance analysis is a two-step process, with the first step requiring a finding that the property is unique or different from the surrounding properties and the zoning provision impacts disproportionately upon that property. If the first step is satisfied,

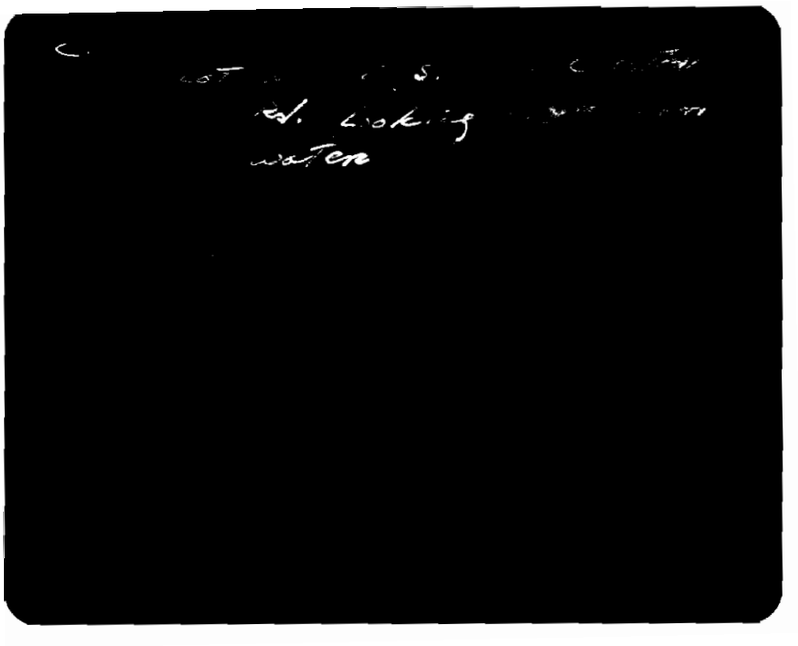


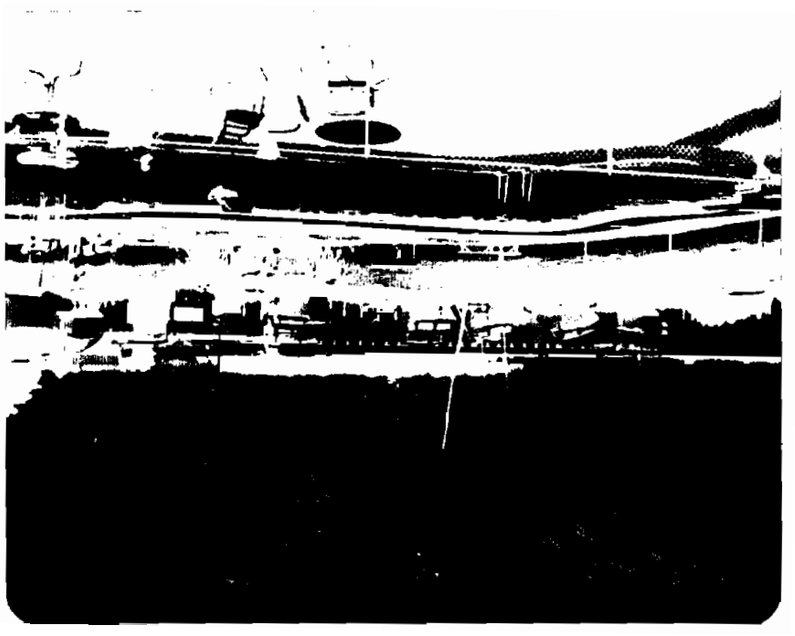


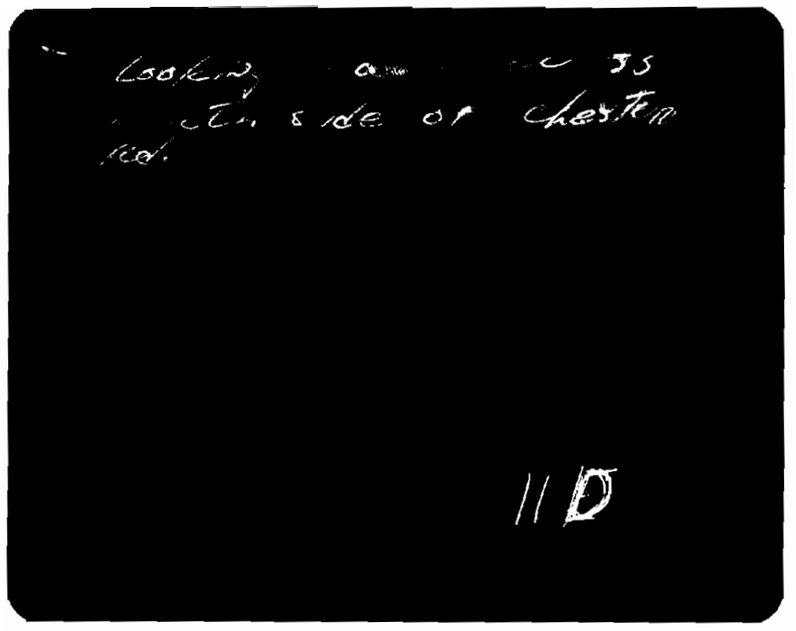



13

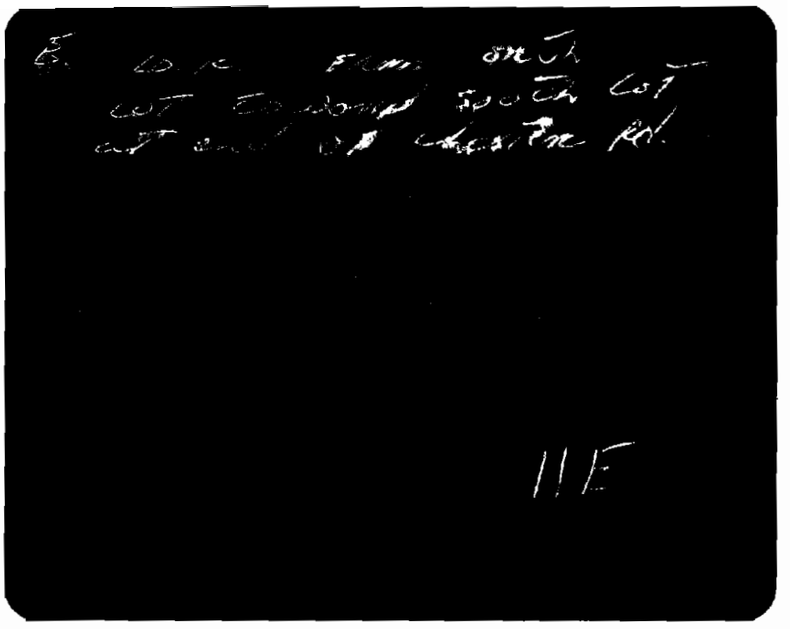







Looking
E. side of Chester
Rd.
11D



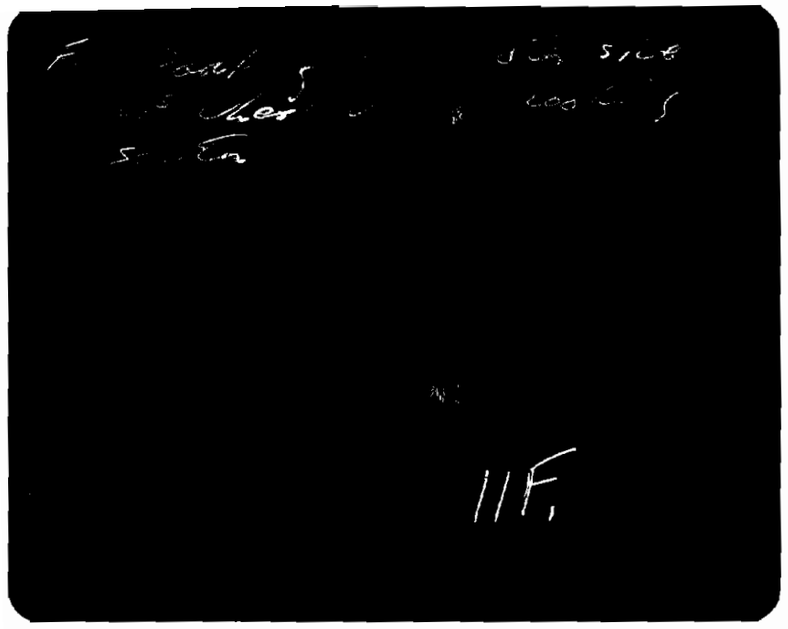


then the Board should determine whether any practical difficulty or unreasonable hardship is caused by the property's unique character exists. In the Ward case, no evidence came before the Zoning Board that showed Ward's property to be "peculiar, unusual, or unique." It can also be said that in a similar case in which this Honorable Board granted variances in the case of Williams Estates, 92-460-SPHA, the Court of Special Appeals likewise reversed this Board on a variance involving the same general issue, Grethchen Floyd, et al. v. Williams Estates, et al., No. 551, September Term, 1994.

Here, it is clear that there is nothing unique about this particular piece of property that sets it apart from and distinguishes it from any other parcel of land in the area. Indeed, Norman Gerber testified during the course of his testimony that in his opinion this property was not unique when compared to the nature of surrounding properties in such a manner as to cause the setbacks in Section 1A04.3B3 to impact this property disproportionately. Gerber testified that each parcel looks similar to any other lot on Ridge, Falls, or Gent Roads. Some nearby lots have more trees, and some have less. There are no unusual topographic considerations unique to the Petitioners' property.

Gerber concluded that the variances are primarily to permit a more intensive coverage of the lots which in fact the very nature of the variances goes to in his opinion prove







LONG BEACH MARINE
Located on Middle River
opposite Martin Plant,
North Side of Baltimore, Md.
Near the Beltway.
Shopping facilities, Restaurant and Transportation Available. Full Marine Services. Phillips 66 gas. Open 24 Hours During Season.
Phone: 301 - 335-8602
Owner - Jack Evering

PLACE
STAMP
HERE

Post Card

The Country Studio, P.O. Box 206, Aberdeen, Md. 21001



55724-C

MADE BY DEXTER PRESS, INC. WEST NYACK, NEW YORK

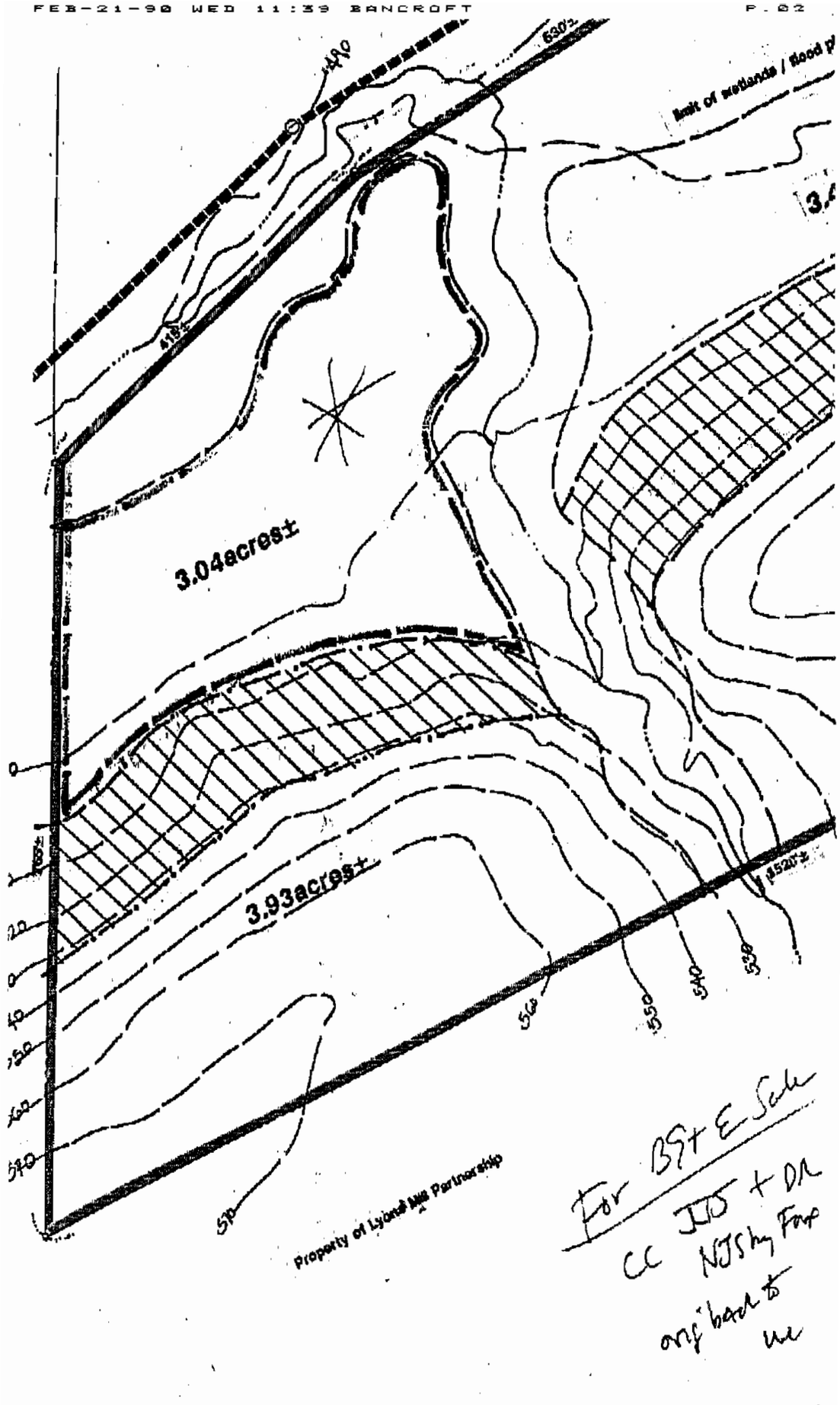


View to the South

Negative # 6291-3
© '82 TADDER/BALTIMORE
501 St. Paul Place 21202
Phone 301 837-7427

Pot. Ea 24

View toward the North


limit of wetlands / flood p
3.04acres±
3.93acres±
Property of Lyons Mill Partnership
For BS+E Sale
cc JJO + DR
NJSky Fax
original to
me

the point that under Section 502.1, that this proposed substation will negatively impact the general welfare of the locality involved and be inconsistent with the purpose of the property zoning classification. In Gerber's opinion, the variances simply establish the tendency to overcrowd the land and cause undue concentration under Section 502.1D of the B.C.Z.R.

VIII. Legal Conclusions: For all of the above reasons, protestants respectfully submit to this Honorable Board that BGE has clearly failed to meet its responsibilities under Section 502.1, 411.1, and 307.1 of the Baltimore County Zoning Regulations.

Protestants, in an analysis of general case law concerning the granting of Special Exceptions, would suggest to this Board that the following cases clearly support the proposition that this Special Exception request for an enlarged substation by BGE should be denied.

It is well recognized in Maryland that the case of Shultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981) is a case of some significance in setting forth the appropriate guidelines and standards to be used by the Board in determining whether a requested Special Exception use would have an adverse effect upon the health, safety, or general welfare of the community of neighborhood. This case, decided in 1981 and authored by the late Judge Rita Davidson, has been well cited by various administrative Hearing Officers, as well as Circuit Courts in

LAW OFFICES
MILES & STOCKBRIDGE
600 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

TELEPHONE 301-821-6565
TELECOPIER 301-823-8123

10 LIGHT STREET
BALTIMORE, MARYLAND 21202

101 BAY STREET
EASTON, MARYLAND 21601

11350 RANDOM HILLS ROAD
FAIRFAX, VIRGINIA 22030

30 WEST PATRICK STREET
FREDERICK, MARYLAND 21701

22 WEST JEFFERSON STREET
ROCKVILLE, MARYLAND 20850

1701 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20006

January 3, 1990

HAND-DELIVERY

Department of Permits & Licenses
111 West Chesapeake Avenue
Towson, MD 21204

Re: In Re: Merritt Boulevard
Shopping Center
F & M Distributors, Inc.,
Appellant

Gentlemen:

Enclosed herewith please find a Notice of Appeal concerning the above-captioned property. Also enclosed is our check in the amount of $75.00 to cover the cost of the filing fee. Please be advised that there is a related appeal which we have noted to the Baltimore County Office of Planning & Zoning, also relating to the above property.

Many thanks for your cooperation.

Very truly yours,

Kenneth F. Spence, III

KFS/lrs

Enclosures

cc: Arnold G. Foreman, Esquire
Board of Appeals (Hand-Delivered)

Ros read

Dave Fields

FYI Gene

1/25

Baltimore County
Office of Law
400 Washington Avenue
Towson, Maryland 21204
(301) 887-4420
Fax (301) 296-0931

Arnold Jablon
County Attorney

January 18, 1990

Dennis F. Rasmussen
County Executive

Mr. Gene L. Neff
Director
Department of Public Works
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: Waiver of Public Works Standards/Waiver of Public Works Standards

Dear Mr. Neff:

We are in receipt of a request from you and Dave Fields, Director of Planning, asking for us to render an opinion as to a waiver of public works standards, when such is granted as a waiver of subdivision regulations. You point to potential conflicts with applicable statutes that require the independent judgment and approval of the Director of Public Works. More specifically, you have indicated that the Director of Planning has become involved in requests for waivers of subdivision regulations pursuant to Code Sec. 22-43, which have involved engineering questions. Your concern is that such waivers may circumvent the authority of the Director of Public Works, and whether the Director of Planning, by approving a waiver, can bind the Director of Public Works. It is our opinion that the determination of engineering questions, whether separate issues in and of themselves or subissues contained in requests for waivers of subdivision regulations, are the exclusive province of the Director of Public Works, and the Director of Planning does not have the authority to rule on engineering questions, whether part of a proposed subdivision waiver or otherwise.

We base this conclusion as follows. Sec. 2-15 of the Baltimore County Code reads as follows:

> "The director of public works shall have supervision over all engineering questions and over all matters concerned or connected with any and every public improvement in the county and elsewhere, made by the county or any department, officer, board, commission or agency thereof, and all plans and specifications of such public improvements shall be submitted to the director of public works and be subject to this approval."

EVERING - EXHIBITS - ON MOTION
#85-65-XSPHA - 1ST DAY

Petitioners Exhibit

1. Plat to accompany petition for pet extension Revised Nov. 25, 1983
2. Plat to accompany petition for special exception special hearing and variances, Revised 8-6-84
3. Copy of Receipt #123264 issued by Balto. Co. for the amount of $100 for item #166 - Evering.
4. Zoning Commissioners File Case No. 85-65-XSPHA-166
5. Petition for Zoning Variance - undated
6. Copy of Receipt #133200 issued by Balto. Co. for the amount of $150.00 for item #66 - Evering

People's Council Exhibits

1. Series of letters from Balto. Co.
2. Receipt / Notice that the petition has been accepted for filing dated Aug. 6, 1984
3. Memo to A. Jablon from Norman E. Gerber, Office of Planning and Zoning
4. Letter to m/m Evering from Eugene A. Bober, Chief Planning & Development

To ALL Board Members

AND

Counsel

Please keep this file and all ephibits in tact, as I am responsible for them and must return them to the Circuit Court when case is finished.

June Holmon
Dec. 12, 1986

DEPARTMENT OF THE ARMY

NOTE.—It is to be understood that this instrument does not give any property rights either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to private property or invasion of private rights, or any infringement of Federal, State, or local laws or regulations, nor does it obviate the necessity of obtaining *State assent* to the work authorized. IT MERELY EXPRESSES THE ASSENT OF THE FEDERAL GOVERNMENT SO FAR AS CONCERNS THE PUBLIC RIGHTS OF NAVIGATION. (See *Cummings* v. *Chicago*, 188 U. S., 410.) 16—12163-8

PERMIT

NABOP-P (Evering, Joseph, Jr.)10

U. S. Army Engineer District, Baltimore.
Corps of Engineers.
P. O. Box 1715, Baltimore, Md. 21203.
1 September, 19 66.

Mr. Joseph Evering, Jr.
Route 15, Box 177
Chester Road
Baltimore, Maryland 21220

Referring to written request dated 31 January 1966,

I have to inform you that, upon the recommendation of the Chief of Engineers, and under the provisions of Section 10 of the Act of Congress approved March 3, 1899, entitled "An act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," you are hereby authorized by the Secretary of the Army.

to construct a pier and to install mooring piles
(Here describe the proposed structure or work.)

in Frog Mortar Creek
(Here to be named the river, harbor, or waterway concerned.)

at a point on the north shore at the foot of Chester Road at Long Beach Estates,
(Here to be named the nearest well-known locality—preferably a town or city—and the distance in miles and tenths from some definite point in the same, stating whether above or below or giving direction by points of compass.)
Baltimore County, Maryland,

in accordance with the plans shown on the drawing attached hereto titled: "Proposed Pier - Piling in Frog Mortar Creek at Long Beach Estates - Baltimore County, Md. - Election Dist. 15 - Application by: Joseph F. Evering, Jr. & Wf. - Route 15, Box 177 - Chester Road - Balto. Md. 21220 - Phone: Ed. 5-8602 - January 31, 1966",
(Or drawings; give file number or other definite identification marks.)

subject to the following conditions:

PETITIONER'S
EXHIBIT 3

vacant. When Rudolph Loechner died, he devised lots 189 and 190 to his wife. Accordingly, upon his death, his wife owned all five lots, 186 through 190, and the house that had been erected on lots 186, 187, and 188.

Mrs. Loechner subsequently contracted to sell lots 189 and 190 to Anthony Villani. Villani applied for a variance to build on his two lots, neglecting to mention that he had purchased the lots from an owner who had owned all five lots at one time. Although he obtained a variance, he was denied a building permit on grounds that subdivision approval was required because the five lots, when in common ownership, had merged into one parcel and the subsequent off-conveyance of the two lots to Villani was, in fact, a resubdivision of more parcels from a lesser number of parcels (one tract composed of the five lots). Mrs. Loechner took the position that resubdivison was unnecessary because all five lots were shown on the map or plat when she and her husband acquired the lots.

The Supreme Court of New Jersey noted that "[t]he acquisition of title by plaintiff to Lots 189 and 190 which were contiguous to Lots 186-188 created one parcel or tract of land consisting of five separate lots." *Id.* at 508, 231 A.2d at 555. Explaining that a state statute defined subdivision as "division of a lot, tract, or parcel of land into two or more lots," *id.* at 509, 231 A.2d at 555, the court discussed the meaning of the word "lot" in that context, noting that it retained its traditional meaning as a parcel or tract of land:

> The word "lot" as used in the Subdivision Act must be read in context with the words "tract or parcel of land" in order to ascertain its meaning. Consistent with recognized principles of statutory construction "lot" takes its meaning from the other two words with which it is associated. *Martell v.*

their analyses of the facts presented in their individual cases.

Shultz held:

> "We now hold that the appropriate standard to be used in determining whether a requested Special Exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that the particular use proposed at the particular location proposed would have any adverse effect above and beyond those inherently associated with such a Special Exception use irrespective of its location within the zone." At page 1331.

However, the Court, in the same Opinion, at page 1327, stated the same principle in a slightly different fashion:

> "[These] cases establish that a Special Exception use has an adverse effect and must be denied when it is determined from the facts and circumstances that the grant of the requested Special Exception uses would result in an adverse effect upon adjoining and surrounding properties unique and different from the adverse effect that would otherwise result from the development of such a Special Exception use located anywhere within the Zone" (emphasis supplied).

Because administrative agencies and Courts in many jurisdictions in the State struggled with the application of the Shultz v. Pritts standard, the Court of Appeals grant d certiorari and vacated a Court of Special Appeals decision in the case of Board of County Commissioners v. Holbrook, 314 Md. 210, 550 A.2d 664 (1988). The Honorable Judge Harry Col wrote the Opinion for the Court in the Holbrook case, and incidentally also sat on the Court at the time of Shultz v. Pritts.

PETITIONER'S EXHIBIT 4

D.P.L. 32—Revised 5-15-63

BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF PERMITS AND LICENSES

WALTER J. RASMUSSEN, Director

Office of the Buildings Engineer

County Office Building, Towson, Md. 21204

No. 15727

District 15

Date February 17, 1966

MISCELLANEOUS PERMIT

SUBDIVISION

This Miscellaneous Permit Is Hereby Granted To

Long Beach Estates

Jos. F. Evering Jr. & Catherine L. (Owner)

Lot No 1-81-82

2 Randall Avenue (Address)

Block

White Marsh, Md. 21162

Section

Plat No.

To construct (Erect, Install, renew, etc.) the following described structure

Location S. S. Chester Rd. S. E. Cor. Frog Mortar Creek

Setback of Structure: Front 0 ft. Side Setbacks 100' and 960' ft. Corner lot ft. from side street.

Complete Description, Dimensions, Etc. To construct pier- 165' with a side T 30' long.

M. H. W. - 3' M. L. W. - 1.5' from 68' Depth 10' Height M.L.W. 3'

All work to be done on property of which owner has legal right

Issued By The Buildings Engineer

Fee Paid $ 7.50

BUILDING ENGINEER

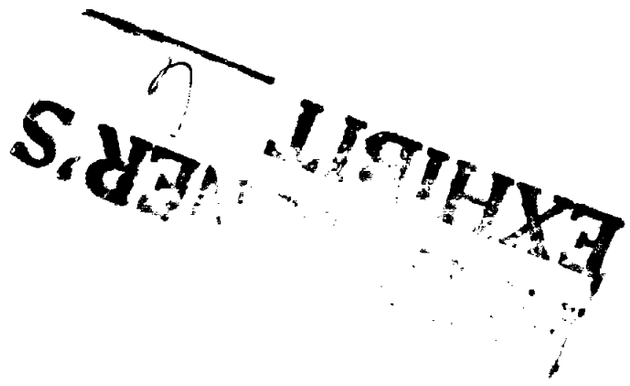
This Permit shall be kept on the premises open to public inspection during the prosecution of the work and until completion of same. **LIMITATION.** After a new building permit is issued, if the operation or work authorized and approved thereunder is not commenced within one year after the issue, or if after commencement of the operation or work, the operation or work is suspended or discontinued for a period of one year, then, in either case, the said permit shall be null and void, and no operations or work shall be again commenced unless and until another proper permit shall have been issued for such work.

1 Feb 85

Name	address	
Ken Engelke	828 Chester Rd	21220
Jackie Cornek	843 Chester Rd	21220
Richard Stumpf	816 Chester Rd	21220
A.R. Bowman	1220 Susquehanna Ave	21220
E.D. Bowman	"	"
Stanley A. Bishop	827 Chester Rd.	21220
William Fell	1130 Susquehanna Ave	21220
Diana E Fell	1130 Susquehanna Ave.	21220
Walter E. Wuchter Sr	13119 E. Greenbank Rd	21220
Bertha Casson	1202 Susquehanna Ave	21220
Beatrice Baker	1206 Susquehanna ave	21220
Ronald P Baker	1206 Susquehanna ave	21220
Elmer J. Norberg	1216 Susquehanna Ave	21220
Christopher D'Allacco	3703 Boy Scout Blvd 21220 Pres Baltimore Co. Jaycees	

PROTESTANT'S EXHIBIT 5A

/



Negative # 6291-1

© '82 TADDER/BALTIMORE

501 St. Paul Place 21202
Phone 301 837-7427

CONSTR. PLANS	PLOT PLANS	RECORD PLAT	PLANS WAIVED	LETTER OF INTENT	DATA	AFF.	SUPERVISION WAIVER
3	8				0		

TAX ACCOUNT NUMBER 15-05-880[illegible]140

APPLICATION FOR PERMIT
BALTIMORE COUNTY MARYLAND
OFFICE OF THE BUILDING ENGINEER
TOWSON, MARYLAND 21204

CENSUS TRACT	CENSUS BLOCK	ELEC YES	ELEC NO	PLUMB YES	PLUMB NO
			X		X

BY PO

DATE ISSUED

BUILDING PERMIT NO	DISTRICT	PRECINCT
CONTROL NO.	15	

Building Address	S. S. Chesto Road - SE Cor Frog Mantar Creek
Owners Name	John F. Eggering Jr. + Catherine L.
Mailing Address	[illegible] Chesto Road - White Marsh Md. 21220

IDENTIFICATION	NAME / ADDRESS / CITY / STATE / ZIP / PHONE NO. / LICENSE
TENANT	
BUILDING CONTRACTOR	owner
ENGINEER OR ARCHITECT	
IF UNDER CONTRACT OF SALES GIVE SELLER'S NAME AND ADDRESS	
TRANSFER DESCRIPTION	S. S. Chesto Road - SE Cor Frog Mantar Creek

A. TYPE OF IMPROVEMENT

1. ☐ NEW BUILDING CONSTRUCTION
2. ☑ ADDITION
3. ☐ ALTERATION
4. ☐ REPAIR
5. ☐ WRECKING (ENTER NO. UNITS DEDUCTED _____)
6. ☐ MOVING
7. ☐ OTHER

DESCRIBE PROPOSED WORK

1 OR 2 FAM. CODE ☐ 1978 BOCA CODE ☑

add. to 2 existing piers T shaped into Frog Mantar Creek. [illegible] S.W. Pier 70' X 45' add. S.W. Pier 195' X 615' add. These additions are to be built in lieu of 3 [illegible] piers permits issued in 1966 (18729) and removed in 1970. These 3 piers will not be reconstructed.

Total 200. Mooring piles

B. OWNERSHIP

1. ☑ PRIVATELY OWNED 2. ☐ PUBLICLY OWNED

ESTIMATED COST OF MATERIAL & LABOR $_____.00

RESIDENTIAL

01. ☐ ONE FAMILY
02. ☐ TWO FAMILY
03. ☐ THREE AND FOUR FAMILY
04. ☐ FIVE OR MORE FAMILY (ENTER NO UNITS _____)
05. ☐ SWIMMING POOL
06. ☐ GARAGE
07. ☐ OTHER

TYPE FOUNDATION
- ☐ SLAB
- ☐ BLOCK
- ☐ CONCRETE
- ☐ BASEMENT
- ☐ FULL
- ☐ PARTIAL
- ☐ NONE

CHECK APPROPRIATE CATEGORIES: FOR RESIDENTIAL ONLY

DETACHED	SEMI-DETACHED	GROUP	TOWN HOUSE	MID RISE	HI RISE	RENT	SALE
1.	2	3.	4	5	6.	1.	2.

C. TYPE OF USE

NON-RESIDENTIAL

08. ☐ AMUSEMENT, RECREATION, PLACE OF ASSEMBLY
09. ☐ CHURCH, OTHER RELIGIOUS BUILDING
10. ☐ FENCE (LENGTH_____ HEIGHT_____)
11. ☐ INDUSTRIAL, STORAGE BUILDING
12. ☐ PARKING GARAGE
13. ☐ SERVICE STATION, REPAIR GARAGE
14. ☐ HOSPITAL, INSTITUTIONAL, NURSING HOME
15. ☐ OFFICE, BANK, PROFESSIONAL
16. ☐ PUBLIC UTILITY
17. ☐ SCHOOL, COLLEGE, OTHER EDUCATIONAL
18. ☐ SIGN
19. ☐ STORE ☐ MERCANTILE ☐ RESTAURANT
    SPECIFY TYPE:
20. ☐ SWIMMING POOL (MD. HEALTH DEPT. APPR. REQ.)
21. ☐ TANK, TOWER
22. ☐ TRANSIENT HOTEL, MOTEL (NO. UNITS _____)
23. ☑ OTHER Piers

24. PROPOSED USE(S) Same + add to Piers
    EXISTING USE(S) Marina

COMPLETE ALL ITEMS IN "D" AND "E" FOR NEW BUILDINGS, ADDITIONS AND ALTERATIONS ONLY

D. TYPE OF CONSTRUCTION

1. ☐ MASONRY
2. ☐ WOOD FRAME
3. ☐ STRUCTURE STEEL
4. ☐ REINF. CONCRETE

TYPE OF HEATING FUEL

1. ☐ GAS
2. ☐ OIL
3. ☐ ELECTRICITY
4. ☐ COAL

TYPE OF SEWAGE DISPOSAL

1. ☐ PUBLIC SEWER
2. ☑ PRIVATE SYSTEM ☐ EXISTS ☐ PROPOSED
   SEPTIC ☑ EXISTS ☐ PROPOSED
   PRIVY ☐ EXISTS ☐ PROPOSED

TYPE OF WATER SUPPLY

1. ☐ PUBLIC SYSTEM ☑ EXISTS ☐ PROPOSED
2. ☐ PRIVATE SYSTEM ☐ EXISTS ☐ PROPOSED

IS THERE CENTRAL AIR CONDITIONING

1. ☐ YES 2. ☐ NO

IS THERE AN INCINERATOR

1. ☐ NO 2. ☐ YES - WITH AIR POLLUTION CONTROL
3. ☐ YES - WITHOUT AIR POLLUTION CONTROL

NO. OF ELEVATORS TO BE INSTALLED _____

NUMBER OF OFF STREET PARKING SPACES

ENCLOSED _____ OUTDOORS _____

E. RESIDENTIAL ONLY

SINGLE FAMILY UNITS

1. TOTAL NO. OF BEDROOMS _____

MULTI FAMILY UNITS HOW MANY APARTMENTS HAVE

2. EFFICIENCY (NO SEPARATE BEDROOMS) _____
3. ONE BEDROOM _____
4. TWO BEDROOMS _____
5. THREE BEDROOMS OR MORE _____
6. TOTAL NO OF BEDROOMS _____
7. TOTAL NO. OF APARTMENTS _____

F DIMENSIONS

GARBAGE DISPOSAL YES	GARBAGE DISPOSAL NO	POWDER ROOMS	BATHROOMS	KITCHENS

BUILDING SIZE - LARGEST OVERALL DIMENSIONS INCLUDING BASEMENT FLOOR AREA	WIDTH	DEPTH	HEIGHT	STORIES
	Rec. above			

LOT SIZE	CENTER LINE SETBACKS (FROM STREET CENTER) FRONT STREET	SIDE STREET
200 X 250		

PROPERTY LINE SETBACKS	FRONT	SIDE	SIDE STREET	REAR
	NC.			

IN LINE WITH EXISTING BLDGS YES	IN LINE WITH EXISTING BLDGS NO	CORNER LOT YES	CORNER LOT NO	LOT NUMBERS
				1-81-82

ZONING INFORMATION	ZONE DISTRICT	ZONING MAP NO.	PETITION NO	DATE
			[illegible]	

ASSESSMENT LAND	SUBDIVISION NAME	BLOCK	SECTION	LIBER	FOLIO
38,150.-	H Long Beach Estates			4	131
IMPROVEMENTS 82,000.-					
TOTAL 120,150.-	BUILDINGS (29) 8897				

G.

(I HAVE CAREFULLY READ THIS APPLICATION AND KNOW THE SAME IS CORRECT AND TRUE, AND THAT IN DOING THIS WORK ALL PROVISIONS OF THE BALTIMORE COUNTY CODE AND APPROPRIATE STATE REGULATIONS WILL BE COMPLIED WITH WHETHER HEREIN SPECIFIED OR NOT AND WILL REQUEST ALL REQUIRED INSPECTIONS)

COMPANY _____ DATE _____

ADDRESS _____ CITY _____ STATE _____ ZIP _____

☐ AGENT ☐ OWNER

SIGNATURE OF APPLICANT _____ PHONE _____

MAKE CHECKS PAYABLE TO BALTIMORE COUNTY MARYLAND

PERMIT FEE	RECEIPT NO.	DATE
20.00		

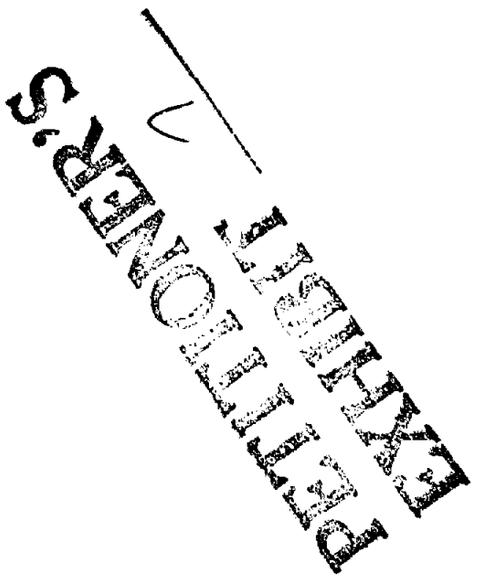
AGENCY	APPROVAL SIGNATURE	DATE
PRELIMINARY INSPECTION		
ZONING	[illegible]	10/26/83
PLANNING		
BUREAU OF PUBLIC SERVICES		
HEALTH DEPARTMENT	O/C to file - [illegible]	10/26/83
CONSTRUCTION PLANS REVIEW		
BARD CHIEF		

INVESTIGATION FEE

NO PERMIT FEES REFUNDED

OCCUPANCY FEE

15-05-580141 pt Lot 292-
15-12-202790 ft. of 291-292
~~15-05-580132~~
140 ft.
142 ft.



BEFORE THE MARYLAND DEPARTMENT OF TRANSPORTATION
BOARD OF AIRPORT ZONING APPEALS

Ref No 7

IN THE MATTER OF:	*	
Joseph F. Evering	*	BAZA Docket No. MTN-9
and	*	
Catherine L. Evering	*	
	*	

MEMORANDUM AND ORDER

Joseph F. Evering and Catherine L. Evering ("Applicants") applied to the Maryland Department of Transportation State Aviation Administration ("SAA") for a permit to expand their existing marina by constructing a pier for 178 boat slips on Applicants' property located at 800 Chester Road in Baltimore County, Maryland. On February 24, 1986, SAA denied Applicants' application. SAA determined that, while Applicants' proposed construction would not violate airport height or noise zone restrictions, the proposed marina expansion would cause congregation in the Martin State Airport Clear Zone District and would pose a public hazard, in violation of COMAR 11.03.06.05F and .06E. Applicants appealed to the Board of Airport Zoning Appeals (the "Board"). The Board heard the above entitled petition on June 9, 1986. Applicants were duly notified of the hearing and were represented by John E. Hennegan, Esquire and Robert J. Romadka, Esquire. The proceedings were duly recorded and transcribed.

The facts in the Holbrook case are very important to understand before analyzing the facts as presented in the instant case by the Protestants. In the words of the Court in Holbrook:

> "Holbrook obtained a temporary building permit in July, 1985, which permitted him to move a mobile home onto his heavily wooded 2.8 acre parcel of land located in a sparsely developed rural area of Cecil County. He placed his mobile home in a small clearing near the border line between his property and a 1.5 acre tract owned by Mr. & Mrs. Peters. In October, 1985, the Peters completed construction of a new residence with a value of $147,000.00 located less than 150 feet from their neighbor's mobile home... Alarmed at the prospect that their unobstructed view of the nearby trailer would become permanent (when Holbrook applied for a permanent Special Exception), the Peters protested granting of the Special Exception on the basis, that "I do object to a trailer being permanently adjacent to my property because I feel it would be detrimental to the value of my home." Mrs. Peters offered six (6) photographs in evidence.

It is also important to understand that the Court of Special Appeals reversed the Circuit Court and the Board of Appeals' denial of the Special Exception and held "under Shultz, the proper test to be applied by the Board in determining whether to deny the Special Exception was whether evidence was presented which demonstrated that a mobile home on the Appellant's land had any adverse impact effects on the neighboring properties above and beyond those inherently associated with such a Special Exception use irrespective of its location within the AR Zone." The Court of Special Appeals held that since there was no substantial evidence before the Board of Appeals to meet that test, the denial of

Pet No 8a

PETITION FOR SPECIAL HEARING

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve an amendment to the site plan in case number 64-57SPH, 64-160X and 35-35X to construct an addition to the piers; remove restriction number 1 and 3 in case number 64-57SPH to allow marine (CONTINUED ON ATTACHED SHEET)

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

Attorney for Petitioner:
John O. Hennegan, Esquire
Robert J. Romadka, Esquire
(Type or Print Name)

Signature

ROMADKA, GONTRUM, HENNEGAN & FOOS
Address
809 Eastern Boulevard
Baltimore, Maryland 21221
City and State

Attorney's Telephone No.: 686-8274

Legal Owner(s):

Joseph F. Evering, Jr.
(Type or Print Name)

Joseph F. Evering Jr.
Signature

Catherine L. Evering
(Type or Print Name)

Catherine L Evering
Signature

800 Chester Road 335-8602
Address Phone No.

Baltimore, Maryland 21220
City and State

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

John O. Hennegan, Esquire
Name
809 Eastern Bouelvard
Baltimore, Maryland 21221
Address 686-8274 Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this _____ day of _____, 19_____, 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 _____ day of _____, 19_____, at _____ o'clock _____M.

Zoning Commissioner of Baltimore County.

Z.C.O.—No. 1

(over)

8/6/84

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 :

Plat No 13

PETITION FOR SPECIAL HEARING FOR A Clarification and Extension of the Uses heretofore gramted under Special Exception on June 6, 1955 (File No. 3535) to Specifically include the Storage of Marine Craft on S.S. Chester Road 1000' W. Susquehanna Ave., 15th Dist., Jos. F. Evering, Jr. and Catherine L. Evering, Petitioners

BEFORE

ZONING COMMISSIONER

OF

BALTIMORE ~~COUNTY~~

No. 64-57-SPH

: : : : : : : : : : : : : : : : :

The petitioners, in the above matter, have requested an extension of the special exception granted on June 6, 1955, (File No. 3535) to specifically include the storage of marine craft on the land. The previous hearing resulted in the granting of a boat yard which has been used as a boat yard including the storage of marine craft on the land up until the present date. This use has been questioned and for that reason the present hearing was held.

It is quite obvious that if the petitioner is to continue to use his property as a boat yard, he must of necessity have the right to store marine craft on the land. The original Order gave the petitioner a use without the means to make use of it.

It is this 9th day of March, 1964, ORDERED that the petitioners' request is granted subject to:

1. No marine craft may be stored within 20 feet of the easternmost portion of the property presently owned by Joseph F. Evering, Jr., and Catherine L. Evering.

2. The use of the boat yard, both on land and in the water, shall be limited to pleasure craft.

3. The petitioners shall comply with the off-street parking requirements of Section 409 of the Baltimore County Zoning Regulations.

MICROFILMED

The granting of the above request is subject to approval of the Office of Planning and Zoning.

Zoning Commissioner

64-160-X

RE: PETITION FOR SPECIAL EXCEPTION : BEFORE THE
N/S Chester Road, 625' W. of :
Severn Road - 15th District : DEPUTY ZONING COMMISSIONER
Joseph Evering Jr., Petitioner :
OF
BALTIMORE COUNTY
No. 64-160-X

MAP 15-C "X"

: : : : : : : : : : : : :

The petitioner's property consists of some 1 3/4 acres situated on the North side of Chester Road, 625 feet West of Severn Road in 15th Election District.

The petitioner now seeks a Special Exception to the Zoning Regulations for permission to build and develop a Boat Yard. There was testimony that if the Special Exception is granted, the develope will fill and level the land, build a bulkhead, and extend Chester Road to the waters edge.

The requirements of Section 502.1 of the Zoning Regulations having been met and the safety, health and general welfare of the locality involved not being detrimentally affected, the Special Exception should be granted, subject, however, to the following restrictions:

(1) No major repairs of any boats shall be permitted on the premises or waters immediately adjacent thereto.

(2) Construction of boats is prohibited.

(3) No commercial vessels will be permitted to patronize said establishment.

(4) Services will be restricted to pleasure craft only.

(5) Barges or similar type craft will not be allowed on or tied up at the property, with the exception of the one small barge which is presently being used by the Petitioner.

(6) Minor repairs and maintenance will be permitted from 8 a.m. to 7 p.m. week-days, May through September and 8 a.m. to 6 p.m. on week-days during the other months of the year. No repairs will be permitted on Sundays.

IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County, this 22 day of June, 1964, that a Special Exception for a Boat Yard, subject to the aforementioned restrictions, should be and the same is granted from and after the date of this order subject to approval of the site plan by the Bureau of Public Services and the Office of Planning and Zoning.

Edward D. Gundrum
Deputy Zoning Commissioner
of
Baltimore County

Pet No 14

Pot. #169

Buckley/bcb/8395
1 September 1966
BUCKLEY
LEINEWEBER
TRIESCHMAN

NABOP-P(Evering, Joseph, Jr.)10

Mr. and Mrs. Alfred J. Kaufman
Susquehanna Avenue
Baltimore, Maryland 21220

Dear Mr. and Mrs. Kaufman:

This will acknowledge your letter of 29 June 1966, wherein you and other interested parties expressed objections to the issuance of a Department of the Army permit to Mr. Joseph Evering, Jr. to construct a pier and to install mooring piles in Frog Mortar Creek at Long Beach Estates, Baltimore County, Maryland.

A permit authorizing Mr. Evering to construct a pier and to install mooring piles in front of his property was issued today. Prior to its issuance, Mr. Evering revised his plans by eliminating the five (5) mooring piles that he proposed to install channelward of the head of the proposed pier. A copy of the revised plans is inclosed.

The objections expressed by you were given careful consideration by this office prior to issuance of the permit. However, before a decision was made in this matter, a field investigation was conducted at the site of the proposed work. The investigation resulted in an opinion by this office that the proposed work would not unreasonably affect general navigation in the creek and the permit was therefore issued.

A permit, when issued, merely expresses the assent of the Federal Government so far as concerns the public rights of navigation. (See Cummings v. Chicago, 188 U. S. 410.) It does not give any property rights either in real estate or material, or any exclusive privileges; and it does not authorize any injury to private property or invasion of private rights, or any infringement of Federal, State, or local laws or regulations; nor does it obviate the necessity of obtaining State assent to the work authorized.

Sincerely yours,

Incl
as

WILLIAM E. TRIESCHMAN, JR.
Assistant Chief
Operations Division

DEPARTMENT OF THE ARMY

NOTE.—It is to be understood that this instrument does not give any property rights either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to private property or invasion of private rights, or any infringement of Federal, State, or local laws or regulations, nor does it obviate the necessity of obtaining *State assent* to the work authorized. IT MERELY EXPRESSES THE ASSENT OF THE FEDERAL GOVERNMENT SO FAR AS CONCERNS THE PUBLIC RIGHTS OF NAVIGATION. (See *Cummings* v. *Chicago*, 188 U. S., 410.) 16—12163-2

PERMIT

NABOP-P (Evering, Joseph, Jr.)10

U. S. Army Engineer District, Baltimore.
Corps of Engineers.
P. O. Box 1715, Baltimore, Md. 21203.
1 September, 19 66.

Mr. Joseph Evering, Jr.
Route 15, Box 177
Chester Road
Baltimore, Maryland 21220

Referring to written request dated 31 January 1966,

I have to inform you that, upon the recommendation of the Chief of Engineers, and under the provisions of Section 10 of the Act of Congress approved March 3, 1899, entitled "An act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," you are hereby authorized by the Secretary of the Army.

to construct a pier and to install mooring piles
(Here describe the proposed structure or work.)

in Frog Mortar Creek
(Here to be named the river, harbor, or waterway concerned.)

at a point on the north shore at the foot of Chester Road at Long Beach Estates,
(Here to be named the nearest well-known locality—preferably a town or city—and the distance in miles and tenths from some definite point in the same, stating whether above or below or giving direction by points of compass.)
Baltimore County, Maryland,

in accordance with the plans shown on the drawing attached hereto titled: "Proposed Pier - Piling in Frog Mortar Creek at Long Beach Estates - Baltimore County, Md. - Election Dist. 15 - Application by: Joseph F. Evering, Jr. & Wf. - Route 15, Box 177 - Chester Road - Balto. Md. 21220 - Phone: Ed. 5-8602 - January 31, 1966",
(Or drawings; give file number or other definite identification marks.)

subject to the following conditions:

the Appellant's application was arbitrary, capricious and illegal.

Judge Cole, in reversing the Court of Special Appeals, cited the previously recited standard from Shultz v. Pritts and specifically pointed out that:

> "We then defined the specific nature of the requisite adverse impact required to warrant denial of the Special Application: (a) a Special Exception use has an adverse effect and must be denied when it is determined from the facts and circumstances that the grant of the request of Special Exception use would result in an adverse effect upon adjoining and surrounding properties unique and different from the adverse effect that would otherwise result from th development of such a Special Exception use located elsewhere within the Zone." At page 217.

The Court went on to state:

> **"We believe that the facts and circumstances of this case evidenced by the undisputed testimony in photographic exhibits clearly satisfy the Shultz standard of particular impact** (emphasis supplied). The evidence revealed that the Peters built their $147,000.00 house in a uniquely valuable heavily forested low growth area. Moreover, photographs clearly depict the direct and approximate view of the mobile home from the Peters home. The Board found that this evidence vividly indicated that th debilitating effect of the mobile home on the value of the Peters property, inferring thereby that the trailer's continued presence would create significantly greater adverse effects in this location than were it located in other areas in the Zone."

The Court of Appeals found that the mobile home in this particular location would impair neighboring property value to a greater extent than it would elsewhere in the Zone.

It is submitted by the Protestants that the application of the Holbrook case to the instant case clearly provides this Board with the authority, in view of the evidence

Pt. #165

D.P.L. 32—Revised 5-15-63

BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF PERMITS AND LICENSES

WALTER J. RASMUSSEN, Director

Office of the Buildings Engineer

County Office Building, Towson, Md. 21204

MISCELLANEOUS PERMIT

No. 18727

District 15

Date February 17, 1966

SUBDIVISION

Long Reach Estates

Lot No. 1-81-82

Block

Section

Plat No.

This Miscellaneous Permit Is Hereby Granted To

Jos. F. Evering Jr. & Catherine L. (Owner)

2 Randall Avenue (Address)

White Marsh, Md. 21162

To construct (Erect, install, renew, etc.) the following described structure:

Location S. S. Chester Rd. S. E. Cor. Frog Mortar Creek

Setback of Structure: Front 0 ft. Side Setbacks 100' and 960' ft. Corner lot ft. from side street.

Complete Description, Dimensions, Etc. To construct pier- 165' with 6' wide T-60' long.

M. H. W. - 3' M. L. W. - 1.5 Front 68' Depth 165' Height M.H.W. at M.L.W. 1.5

All work to be done on property on which owner has legal right

Issued By The Buildings Engineer

Fee Paid $ 7.50

BUILDING ENGINEER

This Permit shall be kept on the premises open to public inspection during the prosecution of the work and until completion of same. LIMITATION. After a new building permit is issued, if the operation or work authorized and approved thereunder is not commenced within one year, after the issue, or if, after commencement of the operation or work, the operation or work is suspended or discontinued for a period of one year, then, in either case, the said permit shall be null and void, and no operations or work shall be again commenced unless and until another proper permit shall have been issued for such work.

EA ENGINEERING, SCIENCE, AND TECHNOLOGY, INC.

Pet No 14

FRANK W. PINE, Ph.D.
Program Manager, Environmental Assessments
Coordinator, Terrestrial and Wetland Studies
Mid-Atlantic Region

Dr. Pine coordinates terrestrial and wetland studies for the Mid-Atlantic Region and is responsible for designing and reviewing terrestrial and wetland research and for writing scopes of work and cost proposals dealing with these disciplines. He is also responsible for guiding proposal writing and costing for the Mid-Atlantic Operations Group and for marketing in a number of areas, managing projects, and reviewing study plans and reports to ensure proper completion of contracted studies.

EXPERIENCE:

TERRESTRIAL AND WETLAND ECOLOGY: Trained in ecology and animal behavior with emphasis upon environmental biology and public health. Conducted studies and research on biological uptake of trace metals in estuarine ecosystems. Surveyed effects of oil drilling operations upon population dynamics of migratory waterfowl. Managed multidisciplinary studies to define baseline conditions in tidal fresh wetland communities, estuarine communities, and upland terrestrial and wetland areas. Studies included water quality, nutrient flux determinations, soil types and conditions, plant community structure, invertebrate and vertebrate populations, and potential influences of adjacent land-use practices. Experienced in environmental impact assessments, aerial photographic surveying and mapping, taxonomic and community structure analyses, and quantitative assessment of environmental effects. Defined potential effects of disturbances upon rare, threatened, or endangered species and upon sensitive communities.

WATER QUALITY AND ENVIRONMENTAL TOXICOLOGY: Trained in mammalian physiology and toxicology. Conducted research in water-borne pollutant dynamics and water quality. Studies included sources, bioaccumulation potential, sinks, and comparison of contaminant concentrations with federal and state guidelines, criteria, and standards for all classes of surface water, ground water, and drinking water.

PROJECT MANAGEMENT: Directed multidisciplinary studies involving combined field and laboratory research as well as literature reviews and laboratory studies. Responsible for directing proposal preparation, costing, management, and completion of projects. Training has included seminars concerning personnel and project management and short courses in proposal preparation.

EA Report Number: JFE51A

Pet 19

ENVIRONMENTAL ISSUES ASSOCIATED WITH THE PROPOSED PIER EXTENSION PROJECT AT LONG BEACH MARINA, FROG MORTAR CREEK, BALTIMORE COUNTY, MARYLAND

IN PREPARATION FOR AN APPEALS HEARING BEFORE THE BALTIMORE COUNTY ZONING COMMISSIONER

Prepared for

Mr. Joseph F. Evering, Jr. (owner)
800 Chester Road
Baltimore, Maryland 21220

Prepared by

EA Engineering, Science, and Technology, Inc.
Hunt Valley/Loveton Center
15 Loveton Circle
Sparks, Maryland 21152

NOVEMBER 1986

ADDENDUM A

WATER QUALITY SAMPLING RESULTS - LONG BEACH MARINA

On 1 September, 30 September and 17 November 1986, water quality samples were collected off the end of the piers at Long Beach Marina. Samples were taken using a standard Van Dorn bottle. Samples were taken at high and low tide on each of the three dates. A vertical composite of the water column was collected by combining one sample collected from the surface with one from the bottom. At the time of each collection weather conditions were noted and standard water quality data were collected utilizing a Hydrolab field water quality analyzer on-site. The data for temperature, pH, dissolved oxygen and conductivity are all provided in Table 1. Times of high and low tide as well as general weather conditions are also provided.

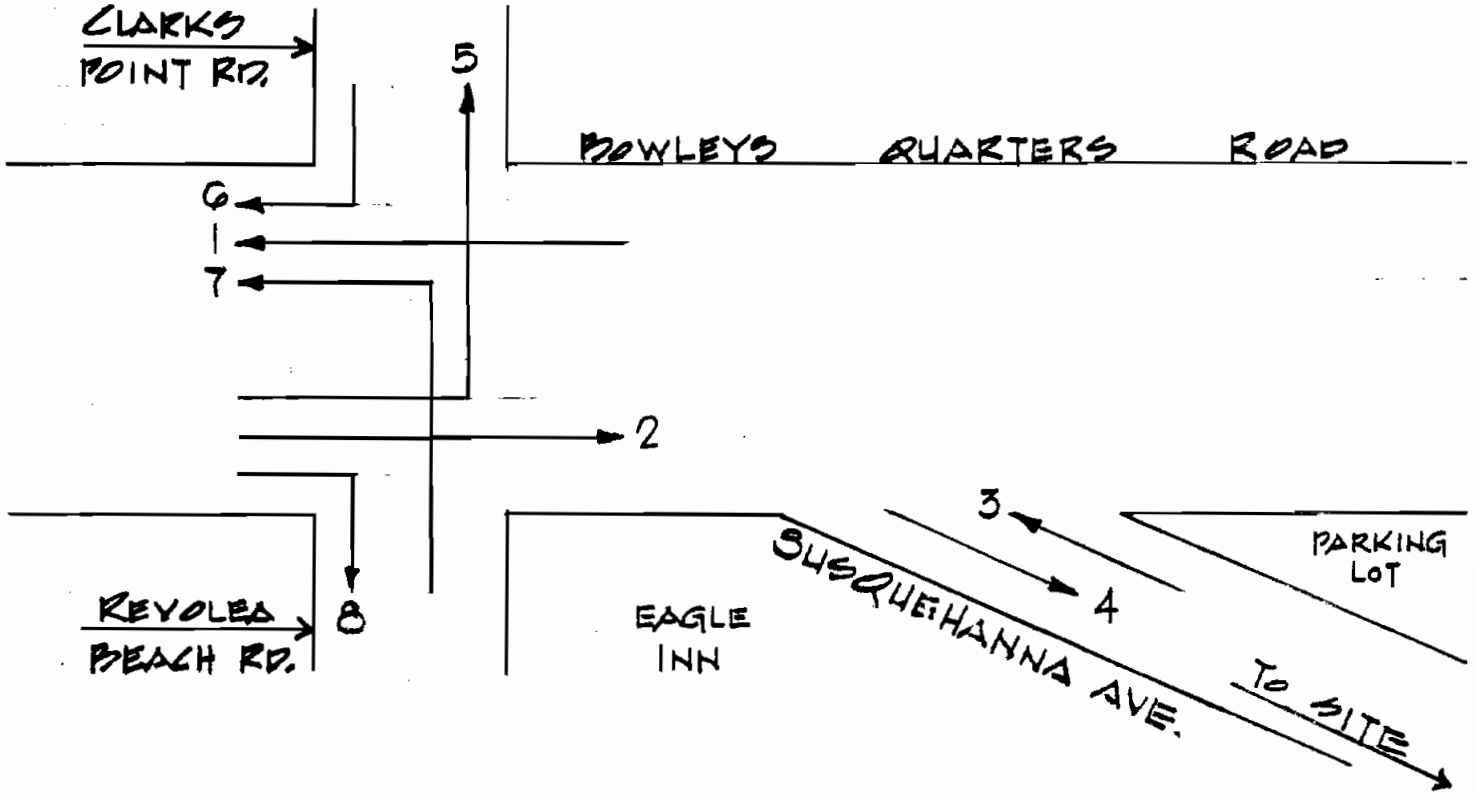
The results of the water quality analyses are given in Tables 2, 3 and 4. All analytical procedures were undertaken according to standard EPA methodology and holding times for all parameters were met.

The results of the analyses of samples collected on 1 September are given in Table 2 and indicate moderately eutrophic conditions. Water temperatures on this date were the highest of the three collection dates and the total and fecal coliform concentrations were also the highest. Based upon chlorophyll a concentrations and phosphorus and nitrogen concentrations, Middle River would be considered eutrophic and marginally acceptable as rated by a Neilson index for estuarine waters (D' Elia, 1982). Chlorophyll a concentrations specifically indicate that the system lies between 30 and 60 micrograms per liter which is indicative of moderate enrichment. The bio-chemical oxygen demand was low while chemical oxygen demand was moderate. Total organic carbon would be considered to be within normal ranges. Trace metal concentrations were extremely low indicating no existing environmental problems related to copper or lead in the water column. On this date the phosphorus concentrations where less than .2 milligrams per liter and orthophosphorus (.07 milligrams per liter) concentrations were also low.

STV/LYON ASSOCIATES.
ENGINEERS, ARCHITECTS & PLANNERS.
21 GOVERNOR'S COURT
BALTIMORE, MD 21207-2722
301/944-9112

SUBJECT TRAFFIC STUDY
BOWLEYS QUARTERS RD. & SUSQUEHANNA AVE.

SHEET NO. ... OF
JOB NO.
BY ... DATE
CHK'D ... DATE
REV. ... DATE



DATE	TIME	DIRECTIONS							
		1	2	3	4	5	6	7	8
FRI. 8-16-85	5-6 P.M.	142	230	39	60	11	7	8	15
FRI. 8-23-85	5-6 P.M.	153	218	44	70	17	9	16	15
SAT. 8-24-85	8-9 A.M.	61	52	38	20	5	11	0	1
FRI. 8-30-85	5-6 P.M.	135	216	36	71	21	13	10	18
* MON. 9-2-85	5-6 P.M.	353	130	62	67	16	18	20	13

* LABOR DAY

CARS ON SITE

8-30-85 13/15

9-2-85 55/40

P1 No. 202

presented, to deny the Special Exception request for the reasons previously set forth.

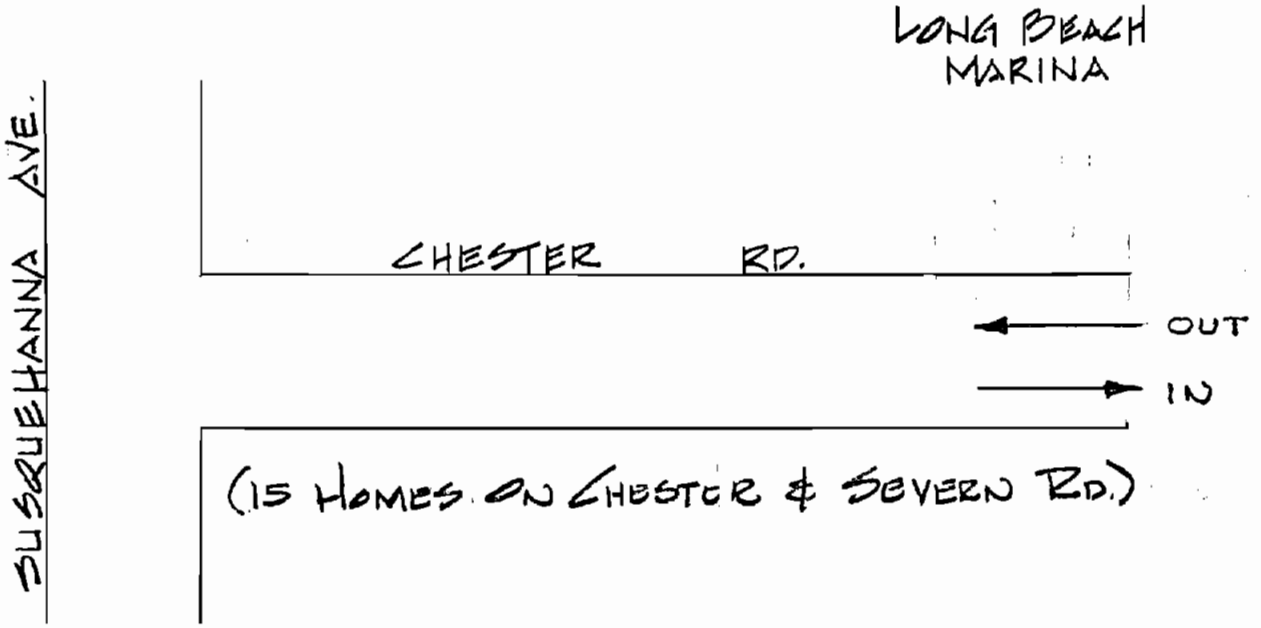
Finally, a recent Court of Special Appeals case, People's Counsel for Baltimore County, et al. v. Nicholas Mangione, 85 Md. App. 738, 584 A.2d 1318 (1991) is also applicable here. In People's Counsel v. Mangione, a Special Exception was requested in Baltimore County for a nursing home on a four (4) acre parcel inside a single family detached home area of Lutherville in Baltimore County zoned DR5.5. In that case, this Board found that the proposed project would overwhelm and dominate the surrounding landscape. The Court of Special Appeals recited Judge Cole's comments in Holbrook as well as quoting from Shultz v. Pritts when it was stated "a Special Exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses, which the Legislature has determined to be permissible, absent any fact or circumstance negating the presumption (emphasis supplied). In Mangione, this Board relied upon, and the Court of Special Appeals affirmed, that testimony of odors being generated from the site, as well as traffic on narrow winding streets, as well as the project dominating the surrounding landscape, were all appropriate factors from which the trier of fact could determine that the Shultz standard of particular adverse impact was satisfied.

IX. Summary

STV/LYON ASSOCIATES.
ENGINEERS ARCHITECTS PLANNERS.
21 GOVERNOR'S COURT
BALTIMORE, MD 21207-2722
301/944-9112

SUBJECT LONG BEACH MARINA

SHEET NO. ..... OF .....
JOB NO. .....
BY ..... DATE .....
CHK'D ..... DATE .....
REV. ..... DATE .....



BEGIN. OF HOUR.

DATE	TIME	IN	OUT	CARS ON LOT
SAT. 5-24-86	8-9 A.M.	5	4	29
SUN. 5-25.86	5-6 P.M.	5	14	85
MON. 5-26-86	7-8 P.M.	8	17	42

- 127. No. 205

PROTESTANTS

Date: December 16, 1986

No 2

Name	Address	
(1) H. Andrew Jones	1026 Susquehanna Ave	21220
(2) Karen Jones	1026 Susquehanna Ave,	21220
(3) PHILIP EDWARDS	1016 SUSQUEHANNA AVE.	21220
(4) ANN EDWARDS	1016 Susquehanna Ave	21220
(5) MICHELE A. KEHL	103 BAY COURT	21220
(6) Fred Conrad	3301 Edwards Lane	21220
(7) Faye Conrad	3301 Edwards Lane	21220
(8) Richard Stumpf	816 Chester Rd	21220
(9) MARK STUMPF	816 CHESTER RD	21220
(10) Diana Stumpf	816 Chester Rd	21220
(11) William Spence	3504 Glenwood Rd	21220
(12) Mary E. Spence	3504 Glenwood Rd.	21220
(13) Bertha Casson	1202 Susquehanna Ave	21220
(14) Thomas Casson	1202 Susquehanna Ave	21220
(15) Beatrice Baker	1206 Susquehanna ave.	21220
(16) Donald P Baker	1206 Susquehanna ave	21220
(17) Elmer J Norberg	1216 Susquehanna Ave	21220
(18) Millard A. Bierman	3141 Bay Dr.	21220
19 George P Huber	1110 Susquehanna	21220
20 John Schmidt	3833 Clarks Pt. Rd	21220

BOWLEY'S QUARTERS IMPROVEMENT ASSN., Inc.

1124 BOWLEY'S QUARTERS ROAD

BALTIMORE, MARYLAND 21220

Telephone: 335-9802

October 28, 1985

Re: Long Beach Marina Expansion

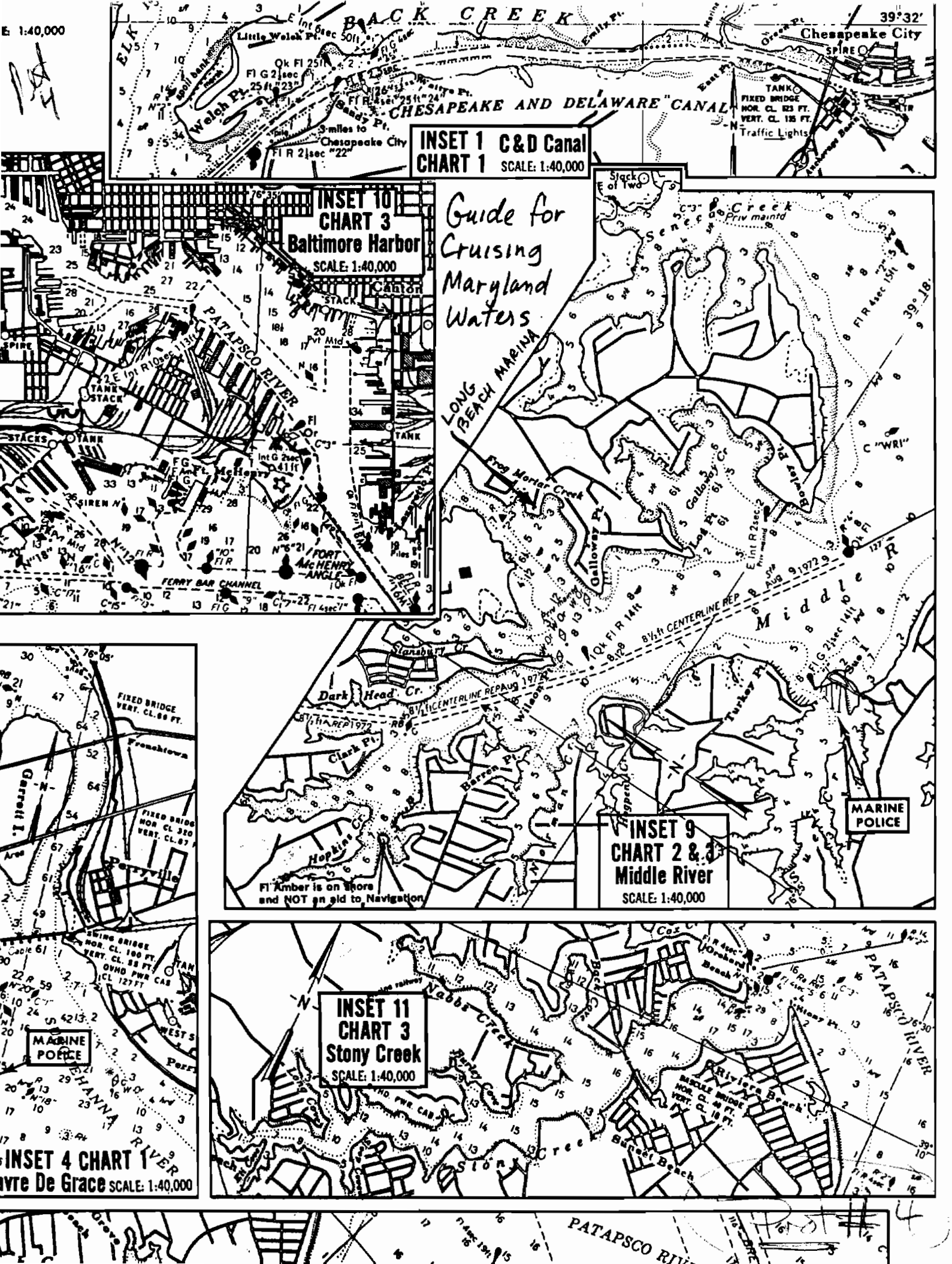
The Board of Directors of the Bowley's Quarters Improvement Association, Inc. is responsible for the review and action on any matters regarding zoning within its territorial jurisdiction. The Board of Directors appoints one member as their spokesperson who is authorized to testify on the behalf of the entire organization. The person authorized by the Board of Directors to testify in this case is Mr. H. Andrew Jones who is a current member of the Board of Directors.

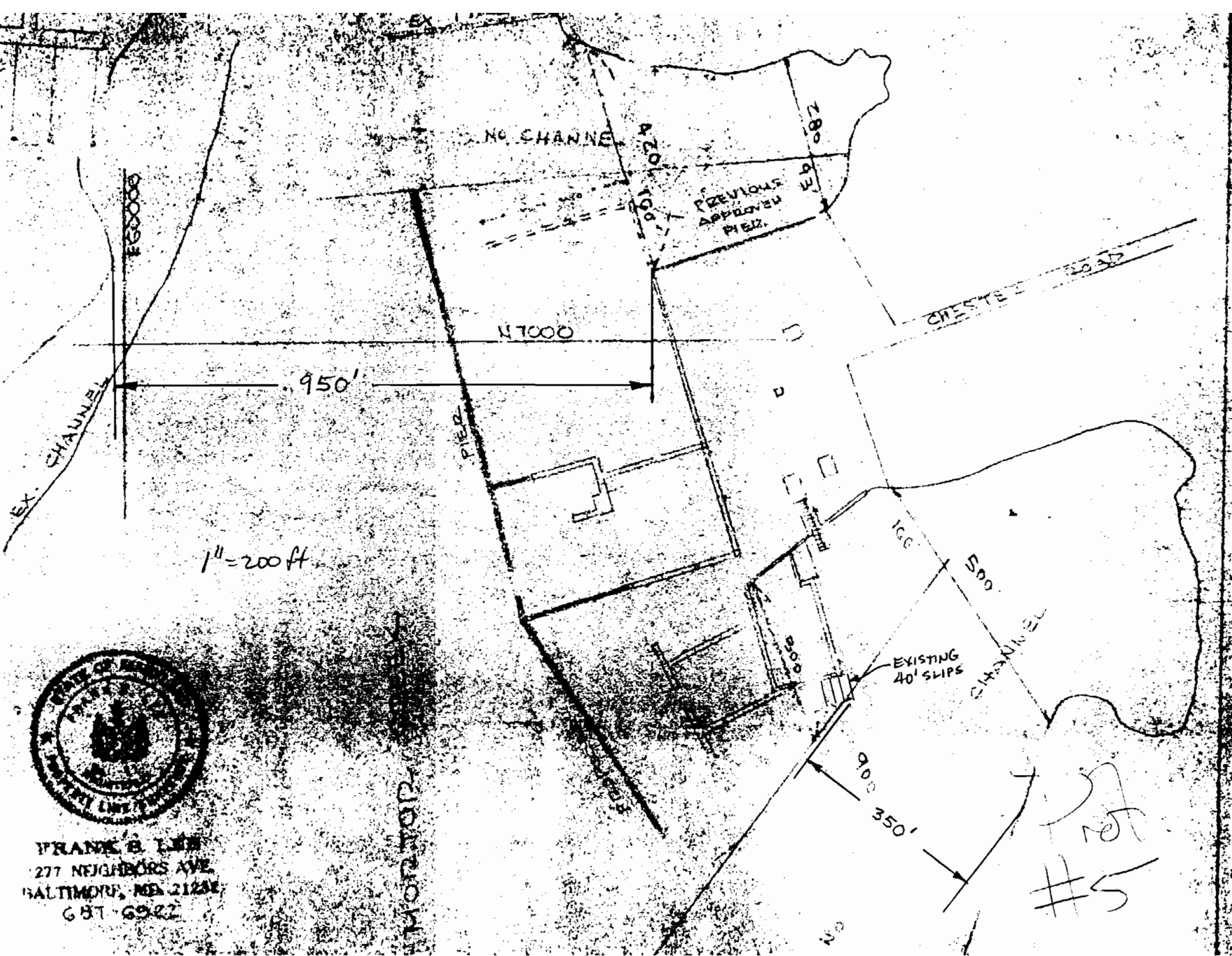
It has been resolved that the Bowley's Quarters Improvement Association, Inc. is against the expansion of the Long Beach Marina due to the adverse effect it will have on the safety, health and welfare of the community as well as the environmental impact on the Frog Mortar Creek, Middle River and Chesapeake Bay. The additional vehicular traffic to an already limited access location will be detrimental to the safety of the residents and their children in the area. The additional boat traffic created will be detrimental to the already overcrowded Frog Mortar Creek which currently contains at least (6) six major marinas, and Middle River which currently contains an additional (19) nineteen marinas, eleven (11) yacht clubs and numerous private homes with boats. Finally, the environmental affect to the water and land surrounding the marina could also be detrimental to the residents of the area.

President

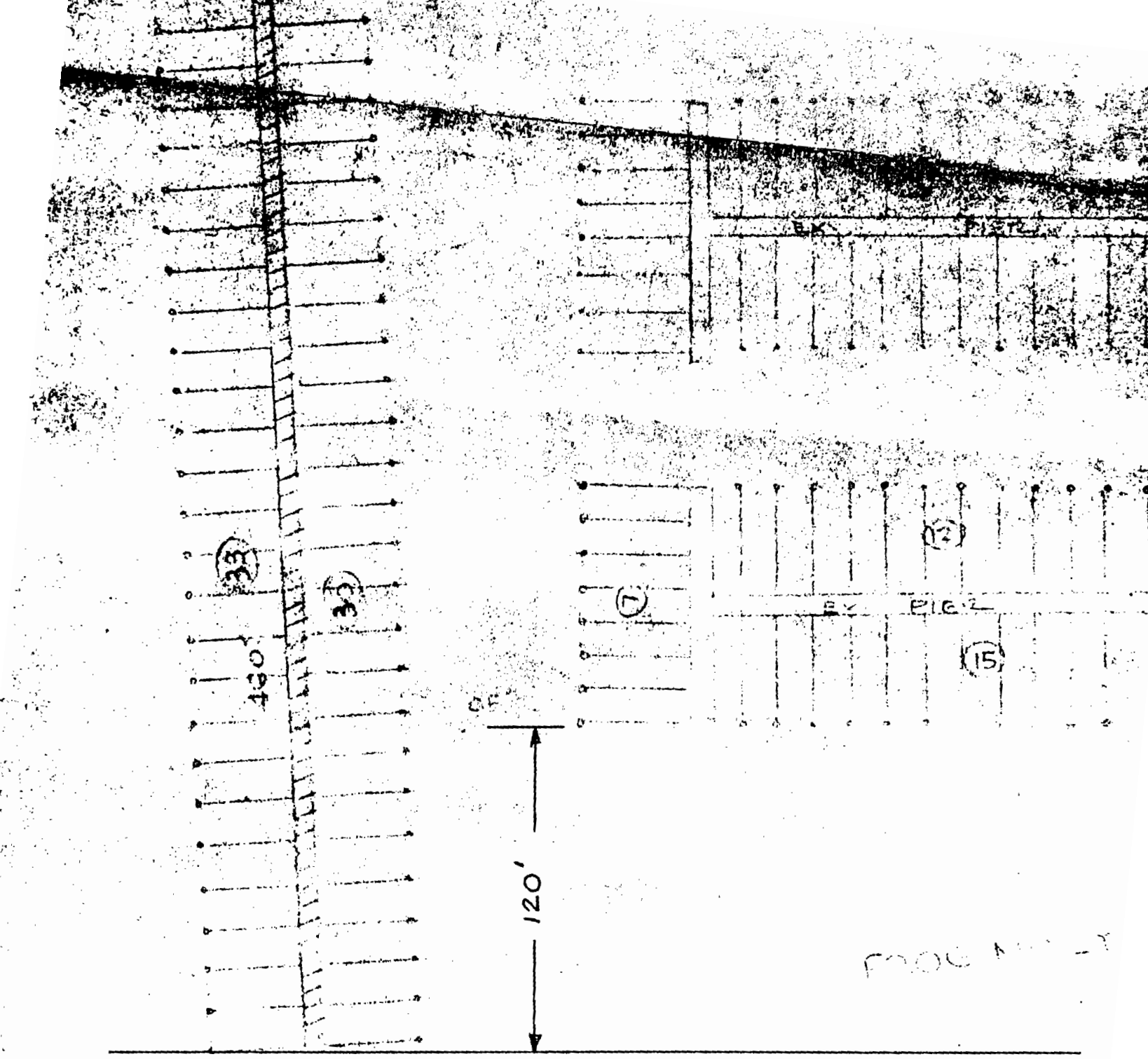
Secretary

Prot. No 3


INSET 1 C&D Canal
CHART 1 SCALE: 1:40,000
INSET 10
CHART 3
Baltimore Harbor
SCALE: 1:40,000
Guide for Cruising Maryland Waters
INSET 9
CHART 2 & 3
Middle River
SCALE: 1:40,000
MARINE POLICE
INSET 11
CHART 3
Stony Creek
SCALE: 1:40,000
INSET 4 CHART 1
Havre De Grace SCALE: 1:40,000
BACK CREEK
CHESAPEAKE AND DELAWARE CANAL
Chesapeake City
PATAPSCO RIVER
LONG BEACH MARINA
Middle R.
Dark Head Cr.
Frog Mortar Creek
Seneca Creek
Stony Creek
Riviera Beach
Bodkin Creek
Nabbs Creek
Perryville
Havre de Grace
Fl Amber is on shore and NOT an aid to Navigation



FRANK B. LEE
277 NEIGHBORS AVE.
BALTIMORE, MD. 21237
687-6922



1" = 50 ft.

Prot Mb

Petition #8

Richard Stumpf	816 Chester Rd
Margaret Baker	1110 Susquehanna Ave
George Baker	1110 Susquehanna Ave
John Franck	1114 Susquehanna Ave
Donald P Baker	1206 Susquehanna Ave 21220
Beatrice H Baker	1206 Susquehanna Ave 21220
Bertha Casson	1202 Susquehanna Ave 21220
Thomas Casson	1202 Susquehanna Ave 21220
Frederick Brant	1226 Susquehanna Ave 21220
Ernest C Remmith	1132 Susquehanna Ave 21220
Carol H Reavis	3308 Chaplark Ave 21220
H. ANDREW JONES	1026 Susquehanna Ave 21220
Mary E Spence	3504 Glenwood Rd 21220
Peggy King	1114 Susquehanna Ave 21220
Richard Stumpf III	816 Chester Rd. 21220

United States
Environmental Protection
Agency

Washington, D.C. 20460
September 1982

EPA

CHESAPEAKE BAY PROGRAM TECHNICAL STUDIES: A SYNTHESIS

SUMMARY



PROTESTANT'S EXHIBIT 4A

Protestants #1

Jan. 21, 1986

PROTESTANTS

NAME	ADDRESS	
Mr. & Mrs. H. Andrew Jones	1026 Susquehanna Ave.	21220
Greg McKibbin	1208 Susquehanna Ave	
Mary E. Spencer	3504 Glenwood Rd	21220
Wm F. Spencer	3504 Glenwood Rd	21220
Elmer J. Norberg	1216 Susquehanna Ave	21220
J & R. Bowman	1220 Susquehanna ave	" "
Fred Conrad	3301 Edwards La	
John Lifer	3694 Galloway Rd.	21220
Mary Hubbard	4023 Bay Dr	21220
Frank Hubbard	4023 Bay Dr.	21220
Beatrice Baker	1206 Susquehanna Ave	21220
Bertha Cazzon	1202 Susquehanna Avenue	21220
Carl - Edward Bromwell	1234 Susquehanna Ave	21220
Ronald P. Baker	1206 Susquehanna Ave	21220
Carl L. Lewis	3308 Choptank ave.	21220
Lillian Yates	1914 Williams Fork Rd	21220
Paul Hayes	4027 Bay Dr	21220
Mary Limerick	823 Sheets Rd	21220
Margaret Schuler	824 Chesterfield	21220
Ralph Edwards	1016 Susquehanna Ave	21220
Ernest C. Kenneth	1134 " "	21220

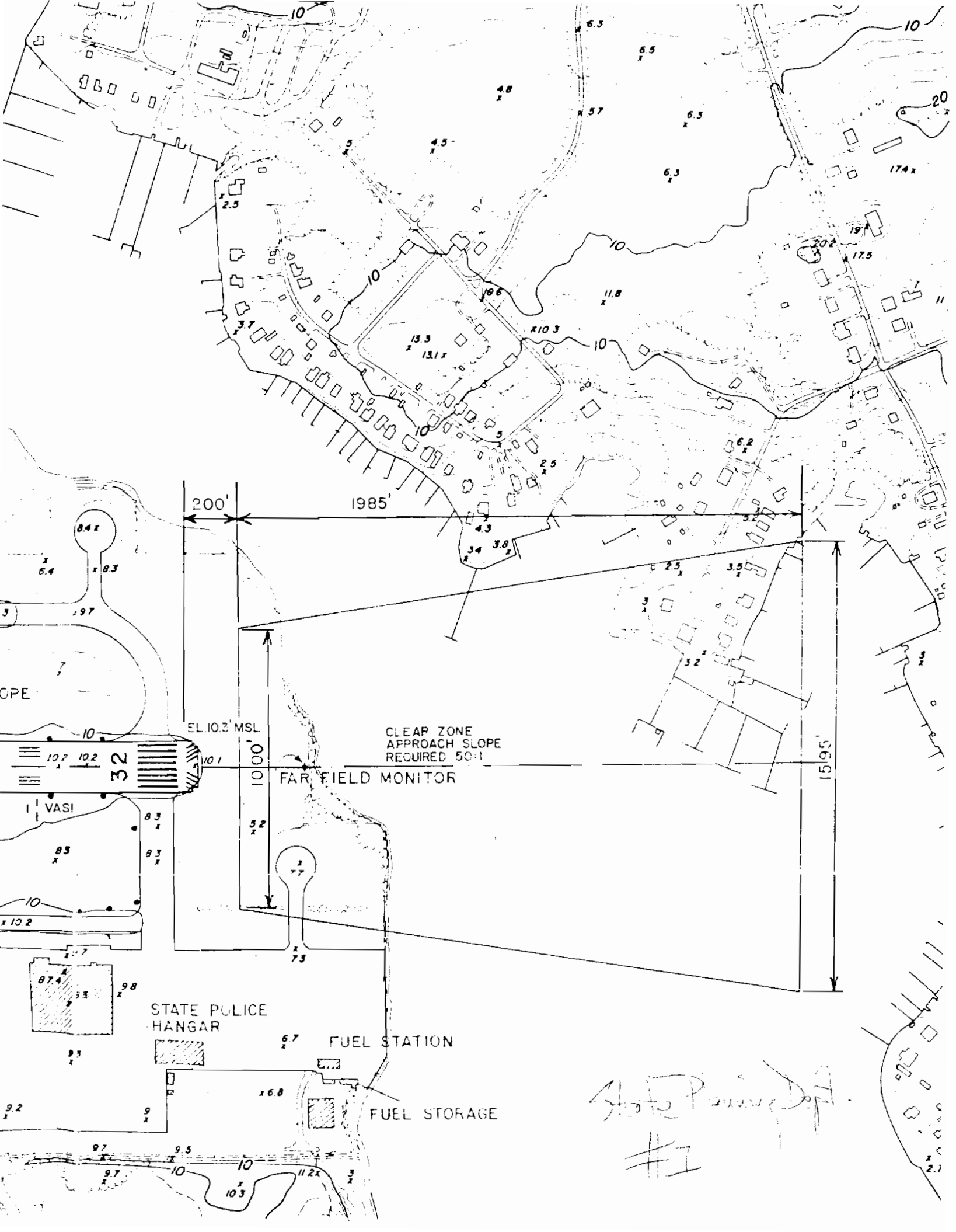
ON BEHALF OF BOWLEY'S QUARTERS IMPROVEMENT ASSOCIATION

H. Andrew Jones

This case can best be summarized by one of the protestants, Rosemary Hanley. Mrs. Hanley testified before this Board as follows:

"As a psychologist, my concern is always about p ople and the impact of factors which affect their lives. In my view this proceeding is really about the impact of the proposed expansion of the Ivy Hill substation on the residents, th people, the men, women and children who live there. My neighbors have asked me to reiterate their concerns. I think I can do that best by explaining my own concerns.

"My concern is not really about property values. It is about what effect the loss of property values may have on the people who own these homes. It may be about the loss of equity to pay for a child's college tuition. It is about losing a dream which was realized by hard work and sacrifice. In my case, it is about the loss of security for retirem nt. There is no trust fund, no large investments, no windfall inheritance. If the property value of my home is materially affected I could very well lose the ability to purchas another comparable home. I have the most modest home of the group, but it is my home...simple and comfortable. It was appraised for $245,000 last year. If I were in the market for a new home right now, I would not pay $245,000 to liv across the street from a 21,000 square foot substation; I would not pay $200,000 to live across the street from a 21,000 square foot substation; I would not pay $150,000 to


200'
1985'
EL 10.3' MSL
1000'
CLEAR ZONE
APPROACH SLOPE
REQUIRED 50:1
FAR FIELD MONITOR
1595'
32
VASI
STATE POLICE
HANGAR
FUEL STATION
FUEL STORAGE
#1

(2) A generator who accumulates hazardous waste [for more than 90 days] is an operator of a storage facility and is subject to the requirements of **COMAR 10.51.05[.]** *; unless the hazardous waste:*

(a) Is accumulated for 90 days or less; or

(b) Accumulated is less than 500 kilograms, contains less than 1 kilogram of acute hazardous waste, and is accumulated for 180 days or less from the date of initial generation or accumulation.

ADELE WILZACK
Secretary of Health and Mental Hygiene

[Md. R. Doc. No. 85-R-139-P. Filed at Div. of St. Doc. April 2, 1985.]

Title 11
DEPARTMENT OF TRANSPORTATION

Subtitle 03 STATE AVIATION ADMINISTRATION

11.03.05 Obstructions to Air Navigation

Authority: Transportation Article, §§5-204(d), 5-208 and 5-702, Annotated Code of Maryland

Notice of Proposed Action

The State Aviation Administration proposes to adopt new Regulations .01 — .11 under a new chapter, **COMAR 11.03.05 Obstructions to Air Navigation.** The purpose of these regulations is to comply with the provisions of Transportation Article, §5-702(a), and govern the erection and maintenance of any obstruction to air navigation that endangers the lives and property of persons using the air space for transportation or occupying land within this State.

Estimate of Economic Impact

I. Summary of Economic Impact. These regulations will govern the erection and maintenance of any structure, personalty, or vegetation that, due to its location, would endanger the lives or property of those persons using a licensed public-use airport or occupying adjoining lands. Authority to grant exemptions is provided to the local subdivisions for use through their existing appeal processes. When exemptions are granted, provisions are included to require precautionary measures consistent with the degree of risk. Both the State and local sub-divisions will incur expense in processing requests for exemptions, as will those property owners who might be required to install obstruction lighting and markings.

II. Types of Economic Impacts.	Revenue (+) Expense (–)	Magnitude
A. On issuing agency: The State Aviation Administration will incur expense in reviewing requests for exemptions and providing testimony at local hearings.	(–)	$6,000
B. On other State or local agencies affected: Local sub-divisions will incur added expense as a result of hearings to consider requests for exemptions.	(–)	$8,000
	Benefit (+) Cost (–)	Magnitude
C. On regulated industries or trade groups:	NONE	
D. On other industries or trade groups affected: There may be an indirect effect due to the purchase of goods and services to mark or remove obstructions.	(+)	Determined at the local level
E. Direct and indirect effects on public: Added expenses may be expected on the part of builders in the installation of obstruction lighting and markings, and by others in limiting the growth of vegetation	(–)	Determined at the local level

III. Assumptions.

A. This figure is based upon the review of an estimated 100 construction applications per year for determination as to their impact on air navigation and participation in 20 hearings relative to exemptions.

B. This figure is the estimated local cost of processing 20 requests for exemptions.

D. Extent of expense will be determined by local zoning officials in connections with requests for vacancies.

E. Extent of expense will be determined by local zoning officials in connections with requests for vacancies.

Opportunity for Public Comment

Written comments may be sent to Evelyn M. Kellner, Chief, Administrative Services, State Aviation Administration, P.O. Box 8766, Baltimore/Washington International Airport, Maryland 21240 or call (301) 859-7228. These comments must be received by May 31, 1985. No public hearing will be scheduled.

.01 Definitions.

A. As used in these regulations, the following terms have the meanings indicated unless the context requires otherwise. Words not specifically defined that relate to aeronautical practices, processes, and equipment shall be construed according to their general usage in the aviation industry.

B. Terms Defined.

(1) "Administration" means the State Aviation Administration of the Maryland Department of Transportation, established pursuant to Transportation Article, §2-102(b)(2), Annotated Code of Maryland.

(2) "Administrator" means the State Aviation Administrator, whose office is established pursuant to Transportation Article, §2-102(b)(2), Annotated Code of Maryland, or his duly authorized representative.

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
TOWSON, MARYLAND 21204
494-3211

NORMAN E. GERBER
DIRECTOR

September 7, 1984

Mr. Frank S. Lee
1277 Neighbors Avenue
Baltimore, MD 21237

Dear Mr. Lee:

I am writing you in regard to the petitions submitted for special exception, special hearing, and variance in regard to the expansion of Long Beach Marina on Frog Mortar Creek in Baltimore County. This facility is located within the State of Maryland Chesapeake Bay Critical Area and, therefore, you are required to provide the following information so that impacts on water quality and wildlife and plant habitats can be assessed in order to determine whether this proposed expansion meets the State of Maryland Critical Area Requirements. In order for us to make this review, the following information is required. (The attached outline provides you with the specific information that is necessary regarding each of the items listed below.)

1. Water depth
2. Soils
3. Impervious surfaces
4. Points of stormwater storage
5. Wildlife and fish habitat
6. Water quality
7. Mitigative measures

In regard to water quality, one of the items listed above, the County needs a very detailed, comprehensive analysis in order to determine the impact of the proposed marina on water quality. The information that is deemed necessary is as follows:

1. Existing water quality in Frog Mortar Creek in the immediate adjacent and downstream area. Testing should be performed for biological, chemical, and other properties which will in any way be affected by the proposed marina.

2. Identify the types, amounts, and sources of pollutants that will be generated by the full range of activities of the proposed marina. Determine what

absolute amounts of these pollutants will directly or indirectly flow into Frog Mortar Creek. Indicate the effect of mitigating measures on both the amount and impacts of the identified pollutants.

3. Determine or assess the anticipated overboard discharge of wastes (including oil products) from the boats utilizing the marina and its effect on water quality and biota from any turbidity created by boat propellers and generated wave action.

4. Survey of the biota of Frog Mortar Creek or Middle River for the area that you determine may be impacted by the proposed marina. Assess any impacts from the proposed marina on the identified biota. The biota is to be interpreted in a broad sense including both flora and fauna.

5. Rate of flushing or exchange rate in Frog Mortar Creek adjacent to site.

It is essential that the information being requested be obtained by these methods which are generally accepted as state of the art with respect to reliability, accuracy, and completenesss.

Should you have any questions regarding this matter, pleaase cal me at 494-3335.

Sincerely,

Paul J. Solomon for
EUGENE A. BOBER, Chief
Current Planning & Development Div.

EAB:PHS:eds

cc: Mr. Arnold Jablon
Zoning Commissioner
Baltimore County

Mr. Norman E. Gerber, Director
Office of Planning & Zoning

Mr. Robert W. Marriott, Jr.
Deputy Director of Planning

Ms. Andrea VanArsdale
Coastal Zone Planner

Mr. James G. Hoswell, Planner
Office of the Director

Ms. Stephanie Taylor
Department of Health

COASTAL ZONE

People's Ex. #1

BALTIMORE COUNTY
DEPARTMENT OF TRAFFIC ENGINEERING
TOWSON, MARYLAND 21204
494-3550

STEPHEN E. COLLINS
DIRECTOR

February 6, 1984

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

Item No. 166	-ZAC- Meeting of January 3, 1984
Property Owner:	Mr. Joseph F. Evering, Jr., et ux
Location:	N/S Chester Road 1000' W. Susquehanna Avenue
Existing Zoning:	D.R. 5.5
Proposed Zoning:	Variance requiring the structure not to exceed 300' beyond mean low tide to allow the structure to extend 419' beyond the mean low tide.
Acres:	3.30
District:	15th

Dear Mr. Jablon:

This site is served by very narrow roads and traffic problems can be expected. All parking areas should be shown.

Michael S. Flanigan
Traffic Engineering Assoc. II

MSF/ccm

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO Arnold Jablon
Zoning Commissioner Date September 7, 1984

FROM Norman E. Gerber, Director
Office of Planning and Zoning

SUBJECT Joseph F. Evering, Jr., et ux
No. 85-65-XSpHA

In view of the comments concerning the State's Chesapeake Bay Critical Area regulations (see letter to Frank S. Lee from Paul J. Solomon dated September 7, 1984), this office cannot offer final comments on the subject petition.

Norman E. Gerber, Director
Office of Planning and Zoning

NEG/JGH/sf

People's Counsel
Ex. #3

1/4/13/R1
8

85-65-XSPHA

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
TOWSON, MARYLAND 21204
494-3211

NORMAN E. GERBER
DIRECTOR

85-175-C

December 7, 1984

Joseph F.
Mr. & Mrs. Evering, Jr.
800 Chester Road
Baltimore, Maryland 21220

Re: Proposed Slips for Long Beach Marina

Dear Mr. & Mrs. Evering:

This office has reviewed your plans for the proposed additional slips to the Long Beach Marina. It will be necessary for you to submit plans for a County Review Group Meeting so that we may determine if the proposal complies with the County requirements and so that we may make a finding that the property can comply with the Chesapeake Bay Critical Areas Legislation. If you have any questions please contact me at 494-3335.

Sincerely yours,

Eugene A. Bober
Chief, Current Planning & Development

EAB:rh

cc: James Markle
Arnold Jablon

People's Counsel Ex. #4

P.C. Exh 6

Long Beach Marina

Location - Chester Rd.

No. of existing slips 201
" " proposed " 178
Aver. trips per slip weekday 3
" " " " Sat. 3.2
" " " " Sun 7.9

} Source - Trip Gen 3rd edition I.T.E.

Existing

Wk. day	3 x 201	=	603	≈ 603
Sat	3.2 x 201	=	643.2	≈ 643
Sun	7.9 x 201	=	1587.9	≈ 1588

Proposed

Wk. day	3 x 178	=	534	534
Sat.	3.2 x 178	=	569.6	≈ 570
Sun.	7.9 x 178	=	1406.2	≈ 1406

Totals

Wk. day	603 + 534	=	1137
Sat	643 + 570	=	1213
Sun	1588 + 1406	=	2994

M. S. Flanigan




LONG BEACH
MARINA

live across the street from a 21,000 square foot substation. I would not pay for the experience to live there at all. Does BGE have the right to diminish my property value, particularly when they can relocate their facility to an area which will not directly impact people?

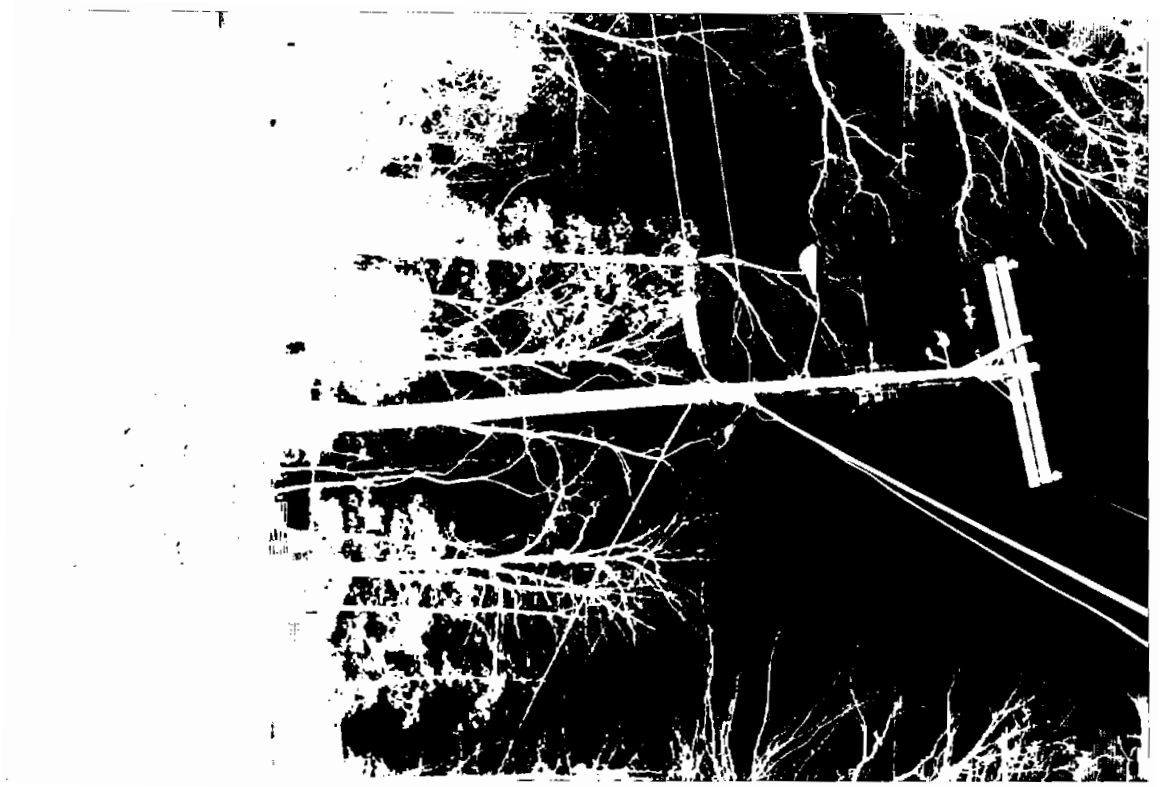
"My concern is not really about electromagnetic fields. It is about the degree of risk my friends, their children and my family may be exposed to. What may happen to a child four feet tall who is intrigued by a stormwater management system which is three to four feet deep and is 'protected' by a 3½ foot fence? What will happen to nearby residents if a gigantic facility explodes or catches fire? What will happen to a ten year old riding a bike too near a chain link fence with an electrostatic charge and bumps into it? What will happen to me if the wires which cross my property carry higher current? My grandmother died of breast cancer and my mother has had one breast removed. What if BGE is wrong and so many others are right? Who gets the right to decide how much risk I should be exposed to? Who gets to ignite the fuse for my personal time bomb?

"Because the potential for harm is there, until positively refuted, BGE does not have the right to expose me and my children to dramatically higher current, to greater safety risks which may result from human error, equipment malfunction, or acts of God. They do not have the right to determine the degree of risk to which we should be exposed.



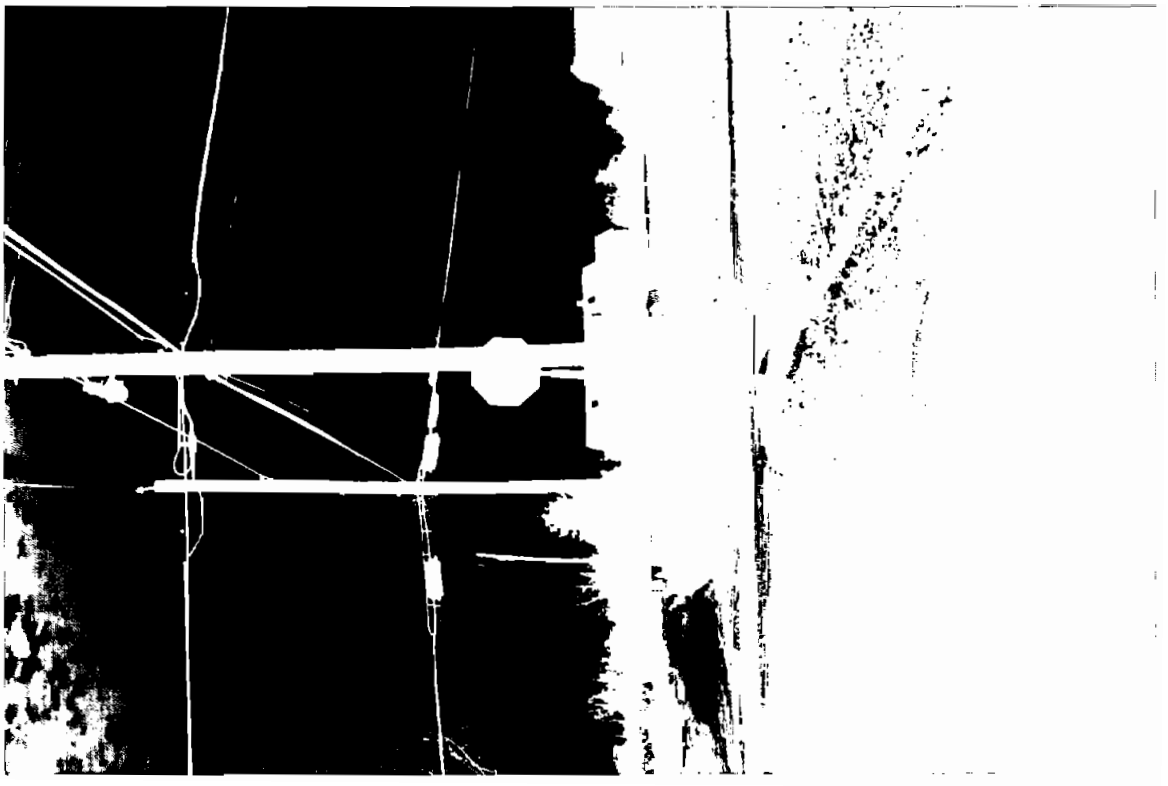


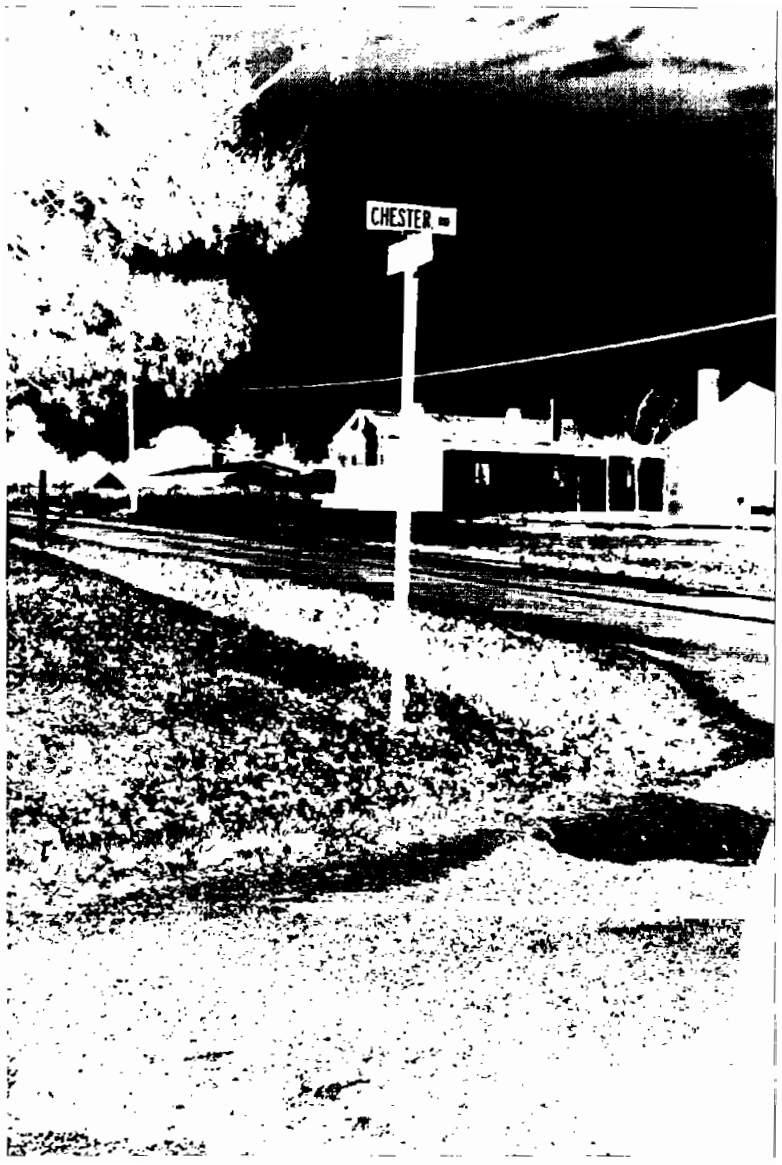




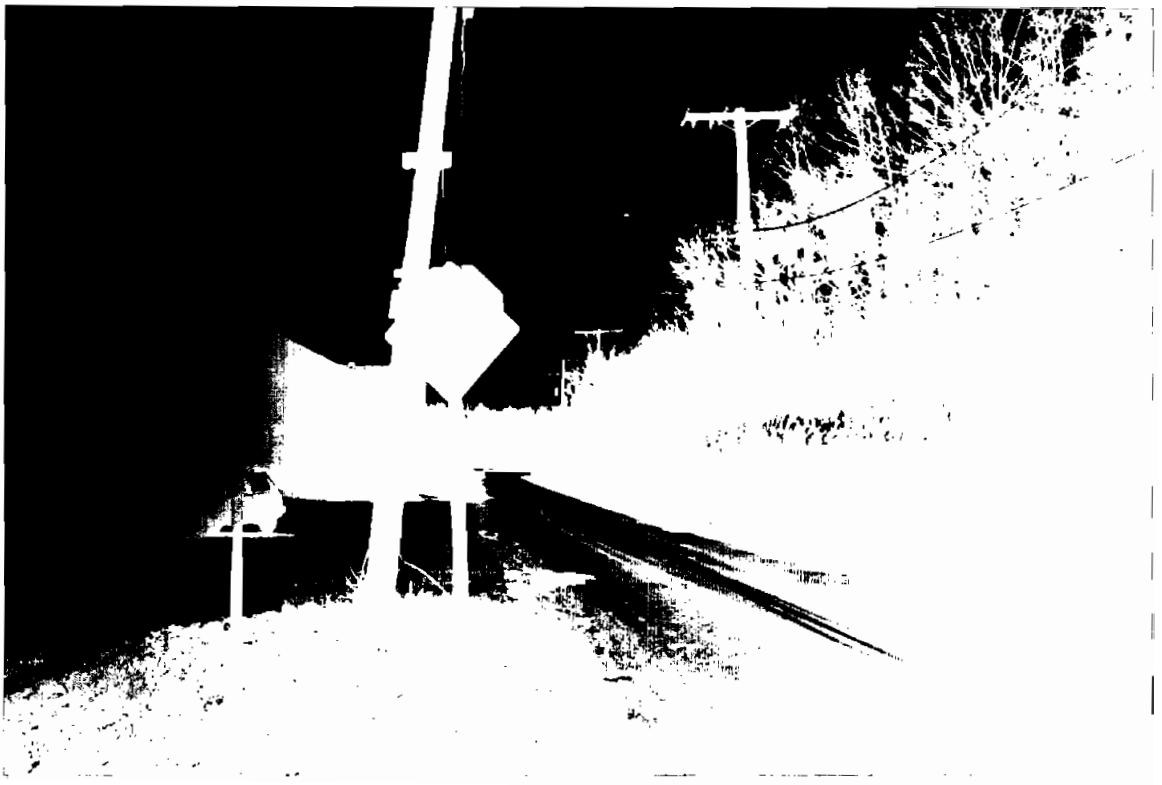







CHESTER RD





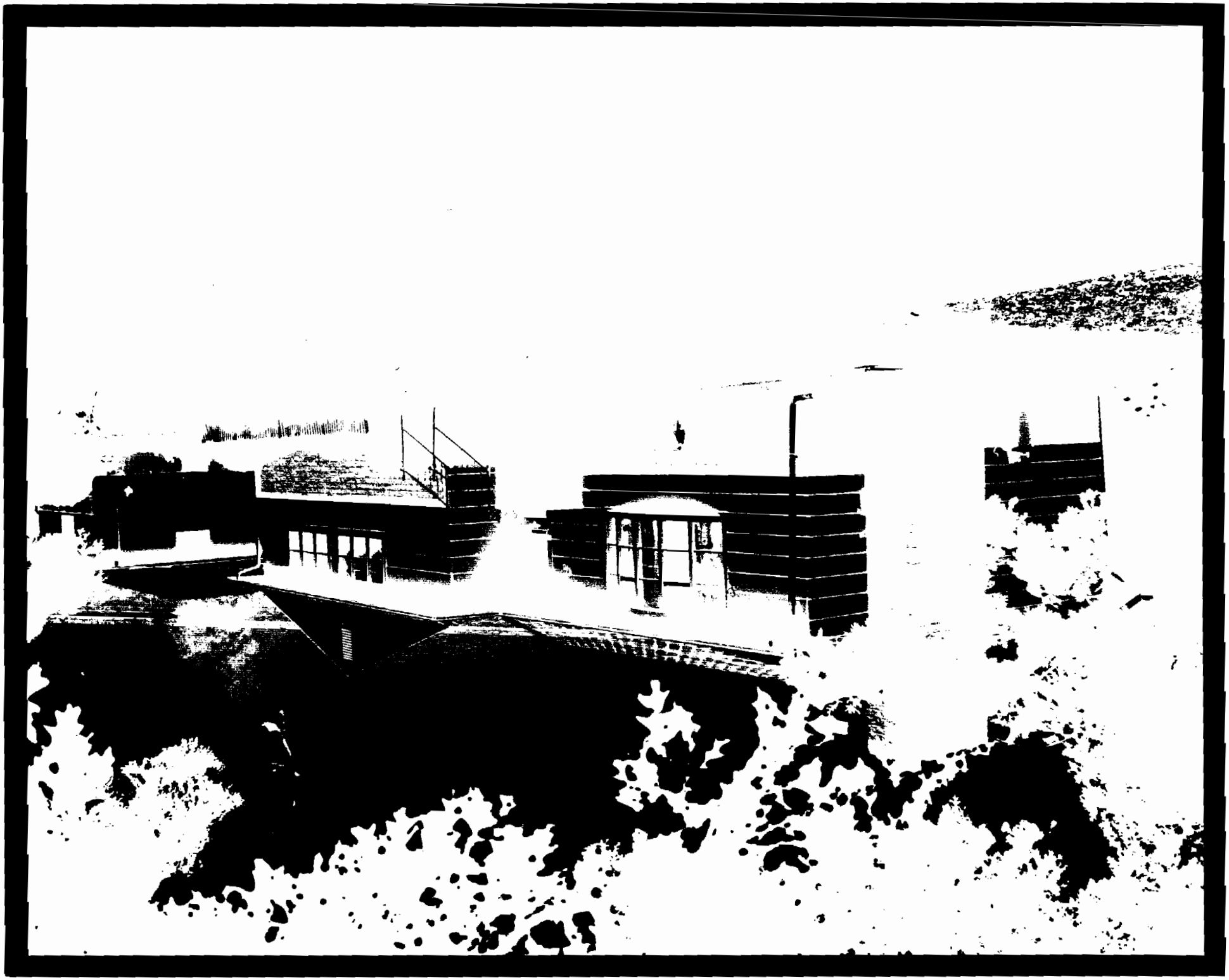
Only you as members of th Board of Appeals of the Office of Zoning in Baltimore County can grant them special permission in the form of a variance and/or Special Exception to take over that right.

"We're talking about a residential neighborhood, a place where families live and children play. Most of us chose to live in the area because of its character, peacefulness, sense of security, and charm...rolling countryside, pastoral atmosphere, nearly free from big noisy trucks and many of the hazards found in crowded, urban, or mixed comm rcial/ industrial areas. There is no question in my mind that if BGE is allowed to erect two transformers, a 20 by 40 foot switch gear building, bus supports, capacitators, a s ven foot high chain length fence topped by barbed wire, then the general character of this neighborhood will be forever and dramatically altered. The need for a substation of this magnitude has not been established. The necessity for destroying a neighborhood where people live has not been established. The justification for encroaching on the rights of citizens for the primary purpose of accommodating BGE can never be established.

"In the end it is my greatest concern that the people in government, civil servants, elected and appointed officials, assume the responsibility to protect the rights and welfare of citizens against real threat of harm and that private citizens, homeowners retain and safeguard their right to

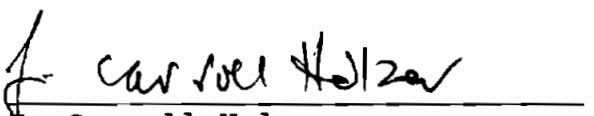



STOP



protect their property and their lives. We have learned that the Public Service Commission does not regulate substations of this nature and, indeed, there is no regulatory agency in the State of Maryland which is charged with accountability for this substation. Particularly after my experience with the tactics employed by BGE in the last six months, I do not have any confidence that they will act responsibly toward my neighbors and me. Many people advised me against fighting BGE. I was told that they are too big, too powerful, too wealthy; that I could never win. We have to win. It is the only way that we can protect our rights as homeowners and our personal health and safety."

Respectfully submitted,

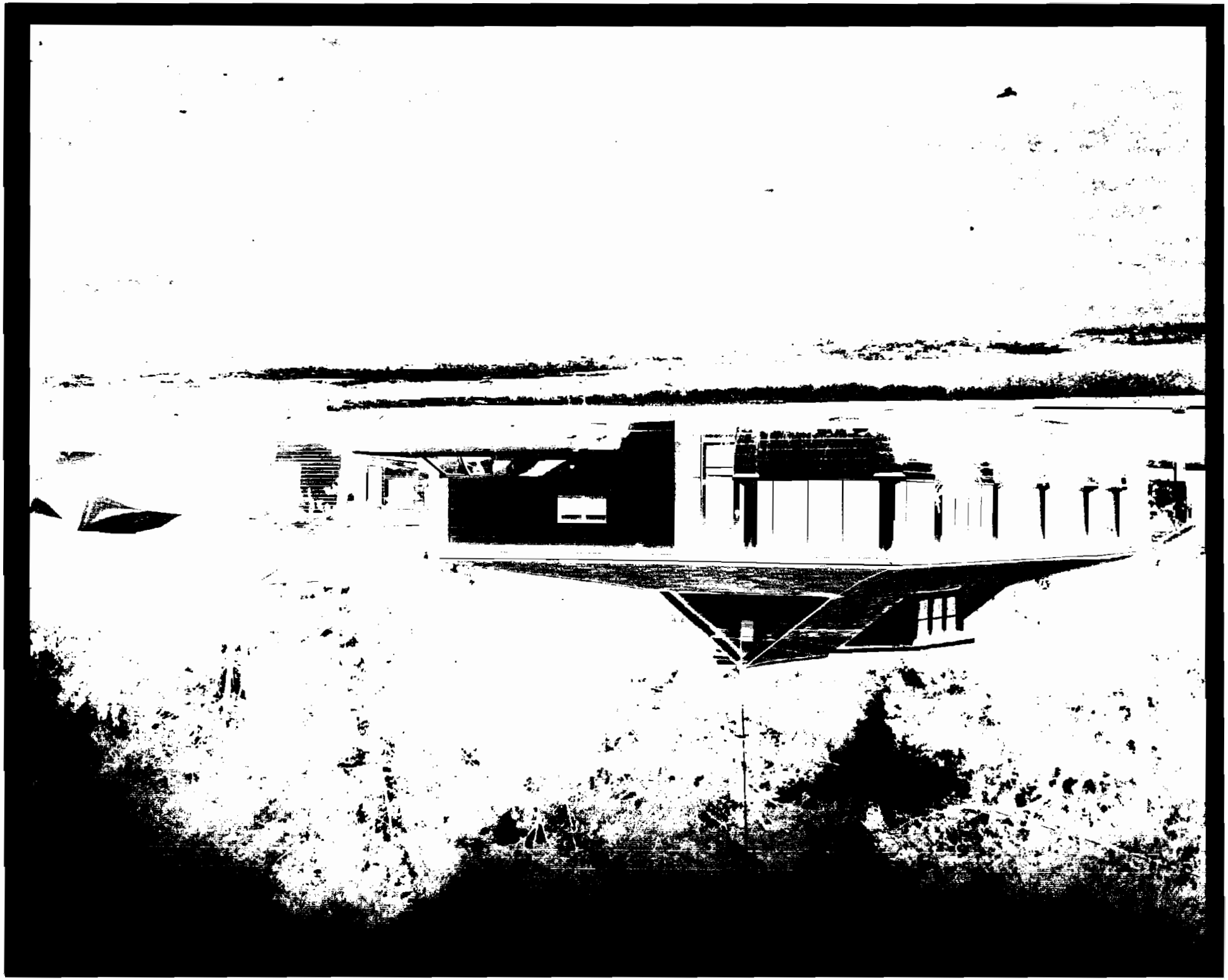


J. Carroll Holzer
Holzer and Lee
305 Washington Avenue
Suite 502
Towson, Maryland 21204
(410) 825-6961
Attorney for Protestants






SUSQUEHANNA PL





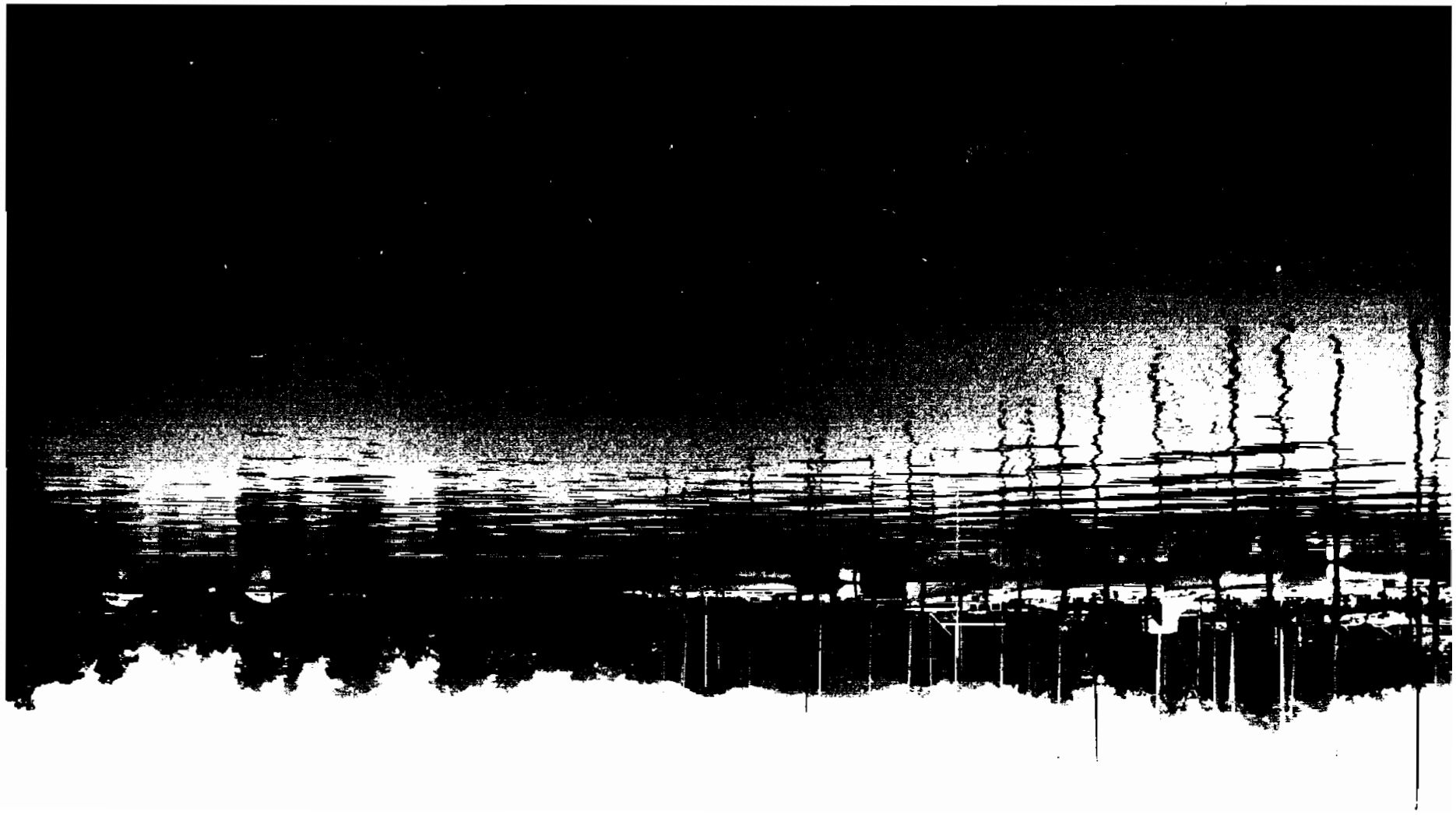
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the 6th day of February 1995, a copy of the foregoing Memorandum in Lieu of Final Argument was mailed, postage pre-paid, to Robert Hoffman, Esquire, Venable, Baetjer & Howard,

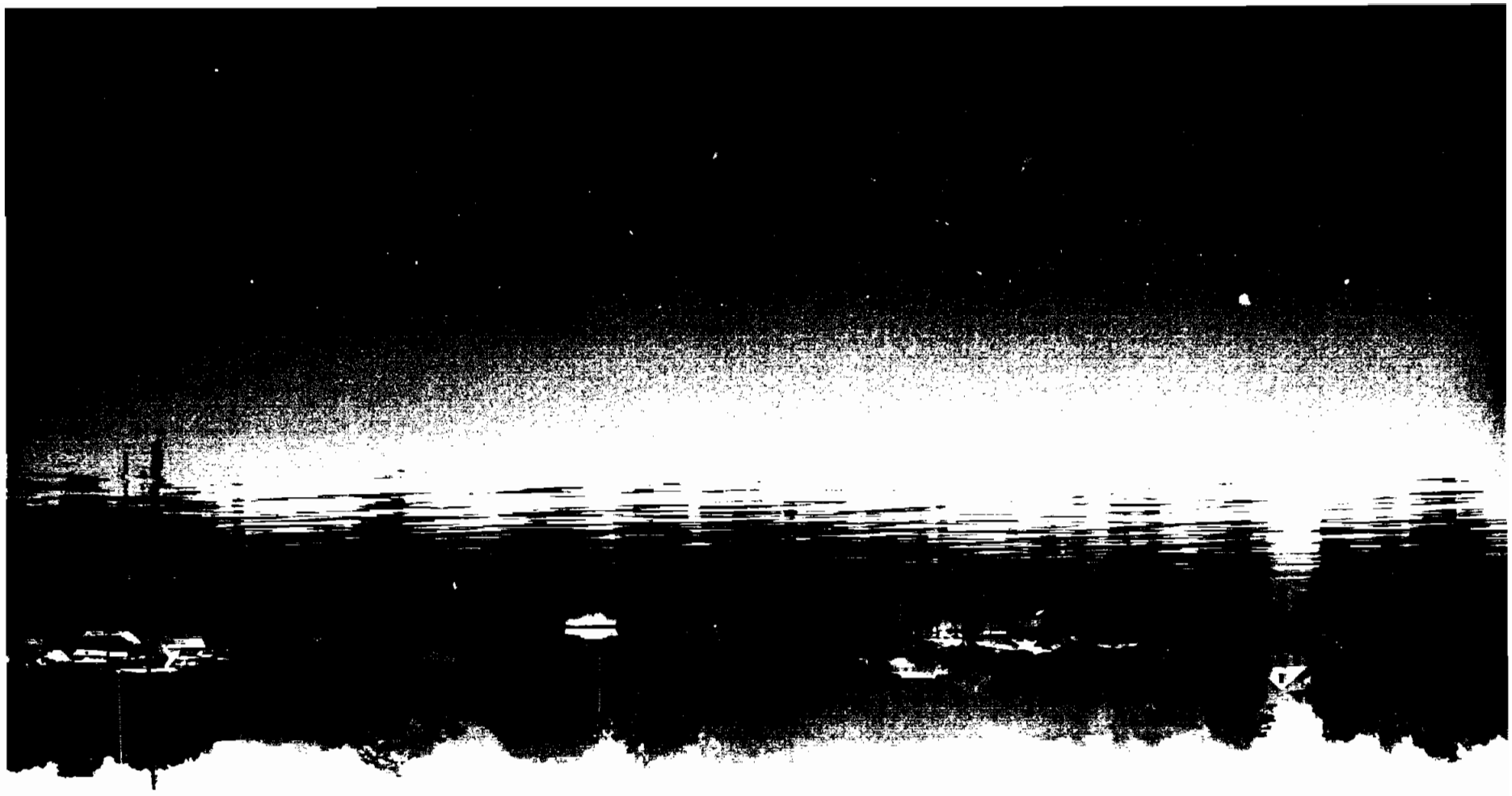
J. Carroll Holzer

J. Carroll Holzer

LONG BEACH
MARINE







NOTES - Joseph Evering 4/21/87

08/06/84 Petition filed

04/25/85 Zoning Commissioner grants special exception and variances subject to restriction

05/85 Appeals filed by all parties: People's Counsel
Petitioners
Protestants
Planning & Zoning

10/29/85 First hearing day -hearing as to applicability of Critical Areas legislation (transcript of testimony is complete)

12/12/85 Majority ruling on motion by Board holding that Critical Areas legislation is not applicable

01/86 Appealed by People's Counsel and Protestants of Board's ruling

01/21/86 Hearing before Board as to applicability of Aviation Zoning Regulations and ruling from bench that Aviation Regulations not applicable. (Transcript of testimony is complete)

08/07/86 People's Counsel and Protestants appeals remanded to Board by Judge Sfekas of Circuit Court in that appeal not timely because Board has not ruled upon entire motion.

12/16/86) Hearing on merits per Judge Sfekas
12/17/86) " " " " " "

12/16/86 Missing: Testimony of Joseph Evering and all but last seven (7) pages of Dr. Pine, which is end of cross-exam by Friedman.

Have : Walter Ewell by Gontrum p 8
By Harrison p 19
by Friedman p 32
(complete transcript of Ewell)

12/17/86 Complete transcript:

Fred Klaus	by Gontrum	p 3
	by Harrison	p 35
Joseph Boone	by Gontrum	p 48
	by Friedman	p 52
Owen Butterworth	by Gontrum	p 59
Burton Greenwood	by Gontrum	p 65
	by Harrison	p 70
Richard Stumpf	by Harrison	p 74
	by Gontrum	p 83
	by Harrison	p 87
Andrew Jones	by Harrison	p 88
*Reporters change here & Danker begins transcript	by Gontrum	p 14

RE :	IN THE MATTER OF BG&E, LEGAL OWNER (IVY HILL SUBSTATION)	*	BEFORE THE COUNTY BOARD OF APPEALS
	8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	OF
	PETITIONER	*	BALTIMORE COUNTY
		*	CASE NO.: 94-452-XA

* * * * * * * * * *

REQUEST FOR SUBPOENA

Please issue a Subpoena for the following individual to have all records, correspondence, plats, plans and any other written documents contained in Zoning Administration and Development Management's files relating to the property known as Foxridge Estates, formerly known as the Forwood property, available at the Baltimore County Board of Appeals for the hearing scheduled in the above referenced matter on Thursday, January 19, 1995 at 9:00 a.m.:

Ms. Stella Lowery,
Management Assistant
Zoning Administration and
Development Management
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Mr. Sheriff/Private Process Server:

Please process this Subpoena in accordance with Rule 5 of the Rules of Practice and Procedure of the County Board of Appeals.

Kathleen C. Weidenhammer

KATHLEEN WEIDENHAMMER
Administrative Assistant

95 JAN 18 PM 2:26

ORIGINAL

IN THE MATTER OF JOSEPH F. EVERING, JR., et ux.	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
	*	Case No. 85-65-XSPH
	*	April 22, 1987

* * * * *

The above-entitled cause came on for hearing before the County Board of Appeals of Baltimore County at the Courthouse, Towson, Maryland 21204 at 10 o'clock a.m., on April 22, 1987.

* * * * *

BOARD MEMBERS:

LAWRENCE E. SCHMIDT, Acting Chairman
WILLIAM T. HACKETT

APPEARANCES:

JOHN B. GONTRUM, Esquire
ROBERT J. ROMADKA, Esquire
On behalf of the Petitioners

T. ROGERS HARRISON, Esquire
On behalf of Protestants

PHYLLIS COLE FRIEDMAN, Esquire
On behalf of People's Counsel

Reported by:
C.E. Peatt

BEFORE THE BALTIMORE COUNTY BOARD OF APPEALS

IN THE MATTER OF	:	No. 8565XSPHA
JOSEPH F. EVERING, JR.,	:	December 17, 1986 12:00 noon
ET UX	:	Old Court House Towson, Maryland
	:	
	: :	

BOARD MEMBERS:

LAWRENCE E. SCHMIDT
KEITH S. FRANZ
WILLIAM T. HACKETT

APPEARANCES:

JOHN GONTRUM, ESQUIRE,
In behalf of the Petitioners

T. ROGERS HARRISON, ESQUIRE,
In behalf of the Protestants

PHYLLIS COLE FRIEDMAN, ESQUIRE,
Assistant County Solicitor,
People's Counsel

Reported by:

Susan A. Kambouris

BERNARD DANKER ASSOCIATES
14401 OLD YORK ROAD
PHOENIX, MD 21131
666-8877

SERVING MARYLAND ATTORNEYS SINCE 1947

ORIGINAL

IN THE MATTER OF JOSEPH F. EVERING, JR., et ux.	*	BEFORE THE
	*	COUNTY BOARD OF APPEALS
	*	OF BALTIMORE COUNTY
	*	Case No. 85-65-XSPH
	*	December 17, 1986

* * * * *

The above-entitled cause came on for hearing before the County Board of Appeals of Baltimore County at the Courthouse, Towson, Maryland 21204 at 10 o'clock a.m., December 17, 1986.

* * * * *

BOARD MEMBERS:

KEITH S. FRANZ, Chairman
WILLIAM T. HACKETT
LAWRENCE E. SCHMIDT

APPEARANCES:

JOHN B. GONTRUM, Esquire
ROBERT J. ROMADKA, Esquire
On behalf of Petitioners

T. ROGERS HARRISON, Esquire
On behalf of Protestants

PHYLLIS COLE FRIEDMAN, Esquire
People's Counsel

Reported by:
C.E. Peatt

ORIGINAL

IN THE MATTER OF JOSEPH F. EVERING, JR., et ux.	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
	*	Case No. 85-65-XSPH
	*	December 16, 1986

* * * * *

The above-entitled cause came on for hearing before the County Board of Appeals of Baltimore County at the Courthouse, Towson, Maryland 21204 at 10 o'clock a.m., December 16, 1986.

* * * * *

BOARD MEMBERS:

KEITH S. FRANZ, Chairman
WILLIAM T. HACKETT
LAWRENCE E. SCHMIDT

APPEARANCES:

JOHN B. GONTRUM, Esquire
ROBERT J. ROMADKA, Esquire
On behalf of Petitioners

T. ROGERS HARRISON, Esquire
On behalf of Protestants

PHYLLIS COLE FRIEDMAN, Esquire
People's Counsel

Reported by:
C.E. Peatt

IN THE MATTER OF JOSEPH EVERING	*	BEFORE THE
	*	COUNTY BOARD OF APPEALS
	*	OF BALTIMORE COUNTY
	*	CASE NO. 85-65-XSPHA
	*	October 29, 1986

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County, at Room 218, at the Courthouse, Towson, Maryland 21204 at 10 a.m., October 29, 1985.

* * * * *

BOARD MEMBERS:

LAWRENCE SCHMIDT, Esquire
Chairman
KEITH FRANZ, Esquire
DIANA VINCENT

APPEARANCES:

ROBERT J. ROMADKA, Esquire
JOHN O. HENNEGAN, Esquire
DONALD BRAND, Esquire
On behalf of Petitioner

T. ROGERS HARRISON, Esquire
On behalf of Protestants

JUDITH A. ARNOLD, Esquire
On behalf of Assistant Attorney General

PHYLLIS COLE FRIEDMAN, Esquire
PETER MAX ZIMMERMAN, Esquire
On behalf of People's Counsel

IN THE MATTER OF JOSEPH F. EVERING * BEFORE THE COUNTY BOARD OF

* APPEALS OF BALTIMORE COUNTY

* CASE NO. 85-65-XSPHA

* January 21, 1986

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County, Room 218, at the Courthouse, Towson, Maryland 21204 at 10 a.m., January 21, 1986.

* * * * *

BOARD MEMBERS:

LAWRENCE SCHMIDT, Esquire
Chairman
WILLIAM T. HACKETT
KEITH S. FRANZ, Esquire

APPEARANCES:

ROBERT J. ROMADKA, Esquire
JOHN O. HENNEGAN, Esquire
On behalf of Petitioner

T. ROGERS HARRISON, Esquire
On behalf of Protestants

JUDITH A. ARNOLD, Esquire
Assistant Attorney General

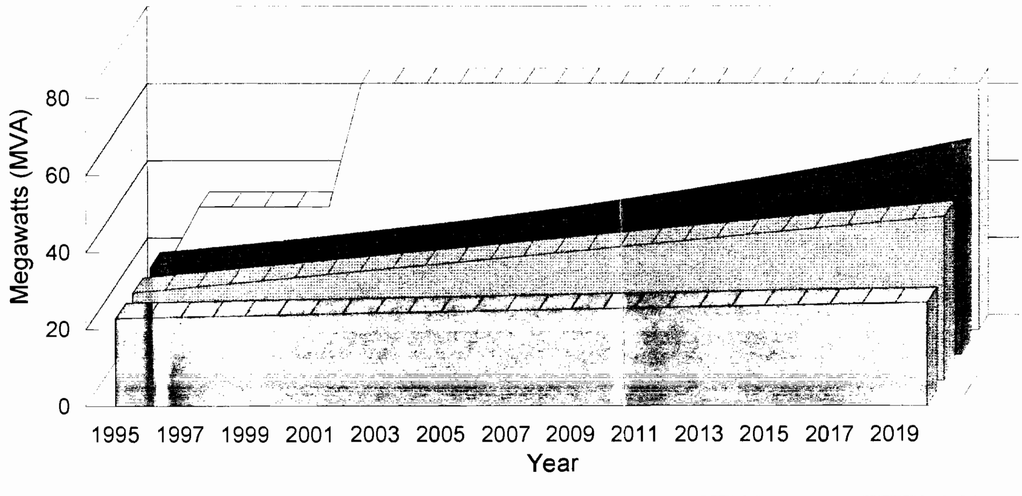
PHYLLIS COLE FRIEDMAN, Esquire
On behalf of People's Counsel

Second half of Day 1,
begins with conclusion
of Dr. Pine; witness
before Dr. Pine (Ms. Evering)
is gone, rest of day is
complete

Day 2 - Complete Transcript -
Where Mr. Gontrum begins
to speak on Pg. 99 is
Where reporters change
& Barker has conclusion of
transcript which I believe
has been distributed.

Need Comparison vs Capacity

(All Projections include Hickory Meadow)



assume 75 units = .7megawatt

P. 228 : LOT A2
RAYMOND JAY FISHER
RAYMOND H. FISHER, ET. AL.
1822 RIDGE ROAD
REISTERSTOWN, MD. 21136-5600
TAX ACCOUNT : 08-0819035868
LIBER / FOLIO : 5426 / 87
ZONED R.C.5

P. 228 : LOT A1
RONALD P. HANLEY
ROSEMARY HANLEY
1820 RIDGE ROAD
REISTERSTOWN, MD. 21136-5600
TAX ACCOUNT : 08-0819035867
LIBER / FOLIO : 6059 / 411
ZONED R.C.5

P. 51
GRACE METHODIST CHURCH, INC.
FALLS ROAD
COCKEYSVILLE, MD. 21030

TAX ACCOUNT : 08-0807060575
2.940 ACRES
LIBER / FOLIO : 2335 / 99
ZONED R.C.5

EX. DRIVEWAY

EX. GRAVEL DRIVEWAY

WIDENING STRIP
75.00'

N 61° 30' 00 E

S 28° 17' 10" E
35.42'

WIDE GATE

EXISTING SUBSTATION (TO BE REMOVED)

PROPOSED FENCE

EX. GRAVEL PARKING AREA

EX. ANTENNA MAST

EX. POOL & DECK (TO BE REMOVED)

EX. EARTH DRIVEWAY

N 42° 30' 18" W

12 WHITE PINE AT 15' O.C.

P. 386
DOROTHY L. MARSDEN
1823 RIDGE ROAD
REISTERSTOWN, MD. 21136-5617
TAX ACCOUNT : 08-1900006034
2.759 ACRES
ZONED R.C.5

EX. HOUSE & CONC. WALK (TO BE REMOVED)

EX. WOODS

EX. SEPTIC CLEAN OUT

EX. SHEDS (TO BE REMOVED)

LEGEND

A = FUTURE 34.5 KV CAPACITOR
B = 34.5 KV DISC SWITCHING STRUCTURE
C = 34.5 KV CIRCUIT SWITCHER
D = 34.5 KV BUS SUPPORT
E = 34.5 KV TRANSFORMER
F = 13 KV BUS SUPPORT
G = 13 KV LOAD BRK. SWITCHING STRUCTURE
H = 13 KV SWITCHGEAR

P. 79 : LOT 15
CARL FOLLO
1 JOEL COURT
REISTERSTOWN, MD. 21136-5643
TAX ACCOUNT : 08-2100008993
2.950 ACRES
LIBER / FOLIO : 8816 / 620
ZONED : R.C.5

5 WHITE PINE AT 15' O.C.

CH= S 06° 15' 00" E

L= 360.63'

R= 475.00'

5 NORWAY SPRUCE AT 15' O.C.

9 WHITE PINE AT 15' O.C.

3 NORWAY SPRUCE AT 15' O.C.

5 WHITE PINE AT 15' O.C.

EX. DRIVEWAY

R. 338
FREDRICK R. VINUP
ANN L. VINUP
1821 RIDGE ROAD
REISTERSTOWN, MD. 21136-5617
TAX ACCOUNT : 08-0822035540
LIBER / FOLIO : 4941 / 720
ZONED : R.C.5

N 21° 23' 37" E
51.61'

N 73° 49' 47" W
208.99'

P. 79 : LOT 24
JAMES J. KIRCHNER, JR.
TINA M. KIRCHNER
4 JOEL COURT
REISTERSTOWN, MD. 21136
TAX ACCOUNT : 08-2100009002
3.662 ACRES
LIBER / FOLIO : 9657 / 396
ZONED : R.C.5

TRACT A
ELECTRIC CO.
ACCOUNTING UNIT
P.O. BOX 1475
MORE, MD. 21203
ACCOUNT : 08-2100008988
LIBER / FOLIO : 8085 / 474
ZONED R.C.5

P. 79 : LOT 16
ROBERT J. RYTTER
CAROL P. RYTTER
3 JOEL COURT
REISTERSTOWN, MD. 21136-5643
TAX ACCOUNT : 08-2100008994
2.972 ACRES
LIBER / FOLIO : 9403 / 619
ZONED : R.C.5

S 15° 30' 00" W
64.00'

D= 49° 30' 00"

P. 79 : LOT 17
IRA N. BROWN
CYNTHIA M. BROWN
5 JOEL COURT
REISTERSTOWN, MD. 21136-5643
TAX ACCOUNT : 08-2100006995
3.173 ACRES
LIBER / FOLIO : 8858 / 720
ZONED R.C.5

FENCE 8'-0"
34.5 KV DISC SW 12'-10¼"
34.5 KV CKT SW STRUCT 12'-0"
34.5 KV BUS SUPP 12'-10¼"
34.5-13KV TRANSF 13'-7¾"
13 KV SWITCHING STRUCTURE 14'-6"
13 KV SWGR ENCLOSURE 13'-0"

MAXIMUM HEIGHT OF STRUCTURES

Petitioner's #1

TUFTON AVE. SHAWAN ROAD
HMX AVE.
SITE
OLD COURT RD
FALLS RD
RIDGE RD

LOCATION MAP
SCALE: 1" = 2000'

NOTES:

1. IVY HILL SUBSTATION IS AN UNATTENDED STATION AND NO PERMANENT EMPLOYEES ARE TO BE LOCATED ON THE PREMISES. AVERAGE DAILY TRIPS: 1/WEEK.
2. THERE ARE NO EXISTING OR PROPOSED WATER AND SEWER TO THE STATION.
3. FENCE: 8 FT. OVERALL HEIGHT CONSISTING OF 7 FT. OF CHAIN LINK FABRIC AND THREE STRANDS OF BARBED WIRE (TURNED OUT).
4. ROADWAY: COMPACT SUBGRADE TO 95% DENSITY AS DETERMINED BY ASTM 1557-70. INSTALL 8" OF CR-6? CRUSHED STONE BASE IN TWO LIFTS AND COMPACT EACH LIFT WITH A 10 TON ROLLER. INSTALL 2" BITUMINOUS BINDER COURSE (B1 BAND). INSTALL 1" BITUMINOUS CONCRETE SURFACE (SM BAND) AS PER MARYLAND STATE HIGHWAY ADMINISTRATION SPECIFICATIONS.
5. AREA WITHIN FENCE TO BE COVERED WITH 4" OF STONE OVER NEW GRADE. STONE SHALL BE GRAY IN COLOR, WITH A LOS ANGELES ABRASION RATING LESS THAN 50% AND GRADATION IN ACCORDANCE WITH MARYLAND STATE HIGHWAY ADMINISTRATION SHA-4.
6. ALL AREAS NOT COVERED BY STONE OR PAVING WILL BE SEEDED WITH GRASS ACCORDING TO MARYLAND S.C.S. AND/OR BALTIMORE COUNTY SPECIFICATIONS.
7. ALL ELECTRIC STRUCTURES ARE FUNCTIONALLY ATTACHED.
8. TOPOGRAPHIC AND BOUNDARY INFORMATION TAKEN FROM SURVEY PERFORMED BY: ASM TECHNOLOGIES, INC.
   2 WEST FORREST AVENUE
   SHREWSBURY, PA. 17361
   717-235-8325
9. EXISTING SEPTIC SYSTEM SHALL BE PURIFIED AND BACKFILLED OR REMOVED AT TIME OF RAZING THE EXISTING HOUSE.
10. EXISTING WELL SHALL BE BACKFILLED BY A LICENSED WELL DRILLER WHO MUST SUBMIT A WELL ABANDONMENT REPORT AT THE TIME OF RAZING THE EXISTING STRUCTURE.
11. PETITION FOR A VARIANCE FROM SECTION 1A04.3.B.3 OF THE BALTIMORE COUNTY ZONING REGULATIONS TO PERMIT STRUCTURES AS CLOSE AS 0 FEET FROM INTERIOR LOT LINES IN LIEU OF THE REQUIRED 50 FOOT BUILDING SETBACK.
12. PETITION FOR A SPECIAL EXCEPTION UNDER THE ZONING REGULATIONS OF BALTIMORE COUNTY TO USE THE HEREIN DESCRIBED PROPERTY FOR AN OUTDOOR ELECTRIC PUBLIC UTILITY SERVICE CENTER (ELECTRIC SUBSTATION) IN A RC5 ZONE PURSUANT TO SECTION 1A04.2.B.11 OF THE BALTIMORE COUNTY ZONING REGULATIONS.

CASE NO. 3780-X — PETITIONER: BALTIMORE GAS & ELECTRIC COMPANY PETITION FOR SPECIAL EXCEPTION TO USE SAID PROPERTY FOR THE CONSTRUCTION OF AN ELECTRICAL TRANSFORMER SUBSTATION. DEPUTY ZONING COMMISSIONER BY ORDER DATED MARCH 14, 1958, GRANTED SPECIAL EXCEPTION REQUEST.

CASE NO. 4536-X — PETITIONER: BALTIMORE GAS & ELECTRIC COMPANY PETITION FOR SPECIAL EXCEPTION FOR WIRELESS TRANSMITTING AND RECEIVING STATION. ZONING COMMISSIONER BY ORDER DATED MARCH 9, 1959, GRANTED SPECIAL EXCEPTION REQUEST.

APPLICANT/OWNER/CONTRACT PURCHASER
BALTIMORE GAS & ELECTRIC COMPANY
SYSTEM ENGINEERING & CONSTRUCTION DEPARTMENT
LEXINGTON & LIBERTY STREETS
1020 G & E BUILDING
BALTIMORE, MD. 21201
C/O MONICA P. McGRADY, P.E.
1-410-234-5294

THIS PROPERTY LOCATED IN THE
6TH ELECTION DISTRICT OF,
3RD COUNCIL DISTRICT
BALTIMORE COUNTY, MARYLAND
ZONED R.C.5
TAX MAP NO. 30
PARCEL NO. 247, 338, & 79 - TRACT A
TOTAL AREA : 2.8933 ACRES
ZONING MAP NO. D-2

Rev	Date	J.O./Est. No.	Description	Approved

ENGINEERING
Civil
Elec.
Proj. Engr.
Mgr.
Prin. Engr.
Supv. Engr.

DESIGN GROUP
Designer
Drawn
Checked
Appd.
Date Appd.

PLAT TO ACCOMPANY PETITION FOR ZONING SPECIAL EXCEPTION AND VARIANCES

34.5-13.8 KV SUBSTATION

IVY HILL

BALTIMORE GAS AND ELECTRIC COMPANY
DISTRIBUTION & TRANSMISSION ENGINEERING DEPT.
SYSTEM ENGINEERING SECTION

File | Scale: 1" = 20'
Microfilmed Orig. ☐ Rev. ..... | Dwg. No. 400-701-E

30X

> *Lane*, 22 N.J. 110, 123 A.2d 541 (1956); *Salz v. State House Commission*, 18 N.J. 106, 112 A.2d 716 (1955); *State v. Murzda*, 116 N.J.L. 219, 183 A. 305 (E. & A. 1936); 2 *Sutherland, Statutory Construction* § 4908 (3*d ed.* 1443). Thus considered "lot" is synonymous with "tract or parcel." The phrase "lot, tract or parcel of land" has traditionally been used to connote any portion or piece of realty. N.J.S.A. 40:55— 1.2 contemplates supervision of the division of a large tract or parcel of land into two or more smaller tracts or parcels. The Subdivision Act is not concerned with the manner in which land is described for conveyancing purposes but rather with what use is made thereof.

Id. at 510-11, 231 A.2d at 556-57.

Much the same can be said for zoning. Zoning is concerned with dimensions and uses of land or structures, not with any particular description "lot," "parcel," or "tract" applicable to or necessary for conveyancing. Conveyancing is a separate area of law involving the transfer of property between buyers and sellers that generally is not directly connected with government regulations and restrictions on the use of property through the zoning power. In zoning, the term lot normally is generic and used interchangeably to describe parcels, tracts, pieces or sections of land.[10]

After *Loechner*, the doctrine of merger continued to evolve. It was described more concisely in *Somel v. Board of Adjustment*, 277 N.J. Super. 220, 228, 649 A.2d 422, 426 (1994): "[S]eparate *undersized* but contiguous lots fronting on the same street in single

---

[10] In an earlier case, *Hutzler v. Mayor of Baltimore*, 207 Md. 424, 429, 114 A.2d 608, 611 (1955), which involved a parcel of land 200 feet by 380 feet, we noted that the statute at issue defined a "lot as '. . . a parcel of land now or hereafter laid out and occupied by one building and the accessory buildings or uses customarily or necessarily incident to it, including such open spaces as are required by this ordinance.'" (Omission in original.) In *Hertelendy v. Montgomery County Bd. of Appeals*, 245 Md. 554, 568-69, 226 A.2d 672, 681 (1967), we noted, without comment, that an ordinance's variance provisions addressed "parcels of property" and then, without making any distinction, described the parcel of property as "Lot 23-B."

This subpoena request is made on behalf of the undersigned attorneys for the Petitioner.

ROBERT A. HOFFMAN
Venable, Baetjer and Howard
210 Allegheny Avenue
Towson, Maryland 21204
(410) 494-6200

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of January, 1995, a copy of the foregoing Subpoena was hand-delivered to:

Ms. Stella Lowrey,
Management Assistant
Zoning Administration and
Development Management
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Barbara W. Ormord,
Legal Assistant

SUBP0198.GPW

Petitioners Ex 2

P. 228 : LOT A2
RAYMOND JAY FISHER
RAYMOND H. FISHER, ET. AL
1822 RIDGE ROAD
REISTERSTOWN, MD. 21136-5600
TAX ACCOUNT : 08-0819035868
LIBER / FOLIO : 5426 / 87
ZONED R.C.5

P. 228 : LOT A1
RONALD P. HANLEY
ROSEMARY HANLEY
1820 RIDGE ROAD
REISTERSTOWN, MD. 21136-5600
TAX ACCOUNT : 08-0819035867
LIBER / FOLIO : 6059 / 411
ZONED R.C.5

P. 51
GRACE METHODIST CHURCH, INC.
FALLS ROAD
COCKEYSVILLE, MD. 21030

TAX ACCOUNT : 08-0807060575
2.940 ACRES
LIBER / FOLIO : 2335 / 99
ZONED R.C.5

EX. DRIVEWAY

GENT ROAD

RIDGE ROAD

EX. PAVING

N 60° 30' 02" E 153.95'

256.59'
102.64'

45'

20'

655

EX. DRIVEWAY

EX. GRAVEL DRIVEWAY

28.10'

N 61° 30' 00 E

WIDENING STRIP
75.00'

S 28° 17' 10" E

S 25° 48' 25" E 352.03'

30'

670

660

5' WIDE GATE

EXISTING SUBSTATION (TO BE REMOVED)

EX. WELL

PROPOSED FENCE

EX. GRAVEL PARKING AREA

EX. SHED

EX. ANTENNA MAST

EX. POOL & DECK (TO BE REMOVED)

EX. EARTH DRIVEWAY

WHITE PINE AT 15' O.C.

CH S 06° 15' 00" E

662

661

660

659

658

657

656

655

654

653

652

651

650

649

648

647

646

645

644

643

642

641

640

639

638

637

636

635

634

633

632

631

630

629

628

627

626

625

624

623

622

621

620

619

618

617

616

615

614

613

612

611

610

609

608

607

606

605

604

603

602

601

600

599

598

597

596

595

594

593

592

591

590

589

588

587

586

585

584

583

582

581

580

579

578

577

576

575

574

573

572

571

570

569

568

567

566

565

564

563

562

561

560

559

558

557

556

555

554

553

552

551

550

549

548

547

546

545

544

543

542

541

540

539

538

537

536

535

534

533

532

531

530

529

528

527

526

525

524

523

522

521

520

519

518

517

516

515

514

513

512

511

510

509

508

507

506

505

504

503

502

501

500

499

498

497

496

495

494

493

492

491

490

489

488

487

486

485

484

483

482

481

480

479

478

477

476

475

474

473

472

471

470

469

468

467

466

465

464

463

462

461

460

459

458

457

456

455

454

453

452

451

450

449

448

447

446

445

444

443

442

441

440

439

438

437

436

435

434

433

432

431

430

429

428

427

426

425

424

423

422

421

420

419

418

417

416

415

414

413

412

411

410

409

408

407

406

405

404

403

402

401

400

399

398

397

396

395

394

393

392

391

390

389

388

387

386

385

384

383

382

381

380

379

378

377

376

375

374

373

372

371

370

369

368

367

366

365

364

363

362

361

360

359

358

357

356

355

354

353

352

351

350

349

348

347

346

345

344

343

342

341

340

339

338

337

336

335

334

333

332

331

330

329

328

327

326

325

324

323

322

321

320

319

318

317

316

315

314

313

312

311

310

309

308

307

306

305

304

303

302

301

300

299

298

297

296

295

294

293

292

291

290

289

288

287

286

285

284

283

282

281

280

279

278

277

276

275

274

273

272

271

270

269

268

267

266

265

264

263

262

261

260

259

258

257

256

255

254

253

252

251

250

249

248

247

246

245

244

243

242

241

240

239

238

237

236

235

234

233

232

231

230

229

228

227

226

225

224

223

222

221

220

219

218

217

216

215

214

213

212

211

210

209

208

207

206

205

204

203

202

201

200

199

198

197

196

195

194

193

192

191

190

189

188

187

186

185

184

183

182

181

180

179

178

177

176

175

174

173

172

171

170

169

168

167

166

165

164

163

162

161

160

159

158

157

156

155

154

153

152

151

150

149

148

147

146

145

144

143

142

141

140

139

138

137

136

135

134

133

132

131

130

129

128

127

126

125

124

123

122

121

120

119

118

117

116

115

114

113

112

111

110

109

108

107

106

105

104

103

102

101

100

99

98

97

96

95

94

93

92

91

90

89

88

87

86

85

84

83

82

81

80

79

78

77

76

75

74

73

72

71

70

69

68

67

66

65

64

63

62

61

60

59

58

57

56

55

54

53

52

51

50

49

48

47

46

45

44

43

42

41

40

39

38

37

36

35

34

33

32

31

30

29

28

27

26

25

24

23

22

21

20

19

18

17

16

15

14

13

12

11

10

9

8

7

6

5

4

3

2

1

0

-1

-2

-3

-4

-5

-6

-7

-8

-9

-10

-11

-12

-13

-14

-15

-16

-17

-18

-19

-20

-21

-22

-23

-24

-25

-26

-27

-28

-29

-30

-31

-32

-33

-34

-35

-36

-37

-38

-39

-40

Petitioners Ex 3

P 228 LOT A2
RAYMOND JAY FISHER
RAYMOND H. FISHER, ET AL
1822 RIDGE ROAD
REISTERSTOWN, MD 21136-5600
TAX ACCOUNT 08-0819035868
LIBER / FOLIO 5426 / 87
ZONED R.C.5

P 228 LOT A1
RONALD P. HANLEY
ROSEMARY HANLEY
1820 RIDGE ROAD
REISTERSTOWN, MD. 21136-5600
TAX ACCOUNT 08-0819035867
LIBER / FOLIO 6059 / 411
ZONED R.C.5

P 51
GRACE METHODIST CHURCH, INC
FALLS ROAD
COCKEYSVILLE, MD. 21030

TAX ACCOUNT 08-0807060575
2.940 ACRES
LIBER / FOLIO 2335 / 99
ZONED R.C.5

EX. DRIVEWAY

EX. PAVING

GENT ROAD

RIDGE ROAD

N.60° 30' 02" E
153.95'

256.59'
102.64'

45'

20'

WIDENING STRIP
75.00'

N 61° 30' 00 E

S 28° 17' 10" E

S 28° 00' 00" E
352.03'

75.00'

24'

EX. DRIVEWAY

EX. GRAVEL PARKING AREA

EXISTING SUBSTATION (TO BE REMOVED)

EX. POLE & LEAD (TO BE REMOVED)

EX. GRAVEL

EX. PAVING

EX. CURB

EX. DRIVEWAY

CHS 66° 15' 00" E

L=360.63'

R=875.00'

S 15° 30' 00" W
64.00'

S 43° 30' 00" W

15 WHITE PINE AT 15' O.C.

8 NORWAY SPRUCE AT 15' O.C.

15 WHITE PINE AT 15' O.C.

5 NORWAY (SPRUCE AT 15' O.C.

JOI'L COURT

670

665

660

655

650

645

640

30'

30x

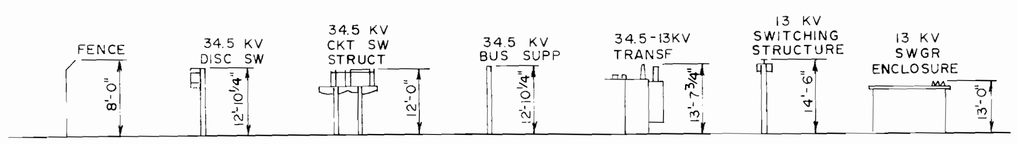
P 79 LOT 15
CARL FOLLO
1 JOEL COURT
REISTERSTOWN, MD 21136-5643
TAX ACCOUNT 08-2100008993
2.950 ACRES
LIBER / FOLIO 8816 / 620
ZONED R.C.5

P 79 LOT 16
ROBERT J. RYTTER
CAROL P. RYTTER
3 JOEL COURT
REISTERSTOWN, MD. 21136-5643
TAX ACCOUNT 08-2100008994
2.972 ACRES
LIBER / FOLIO 9403 / 619
ZONED R.C.5

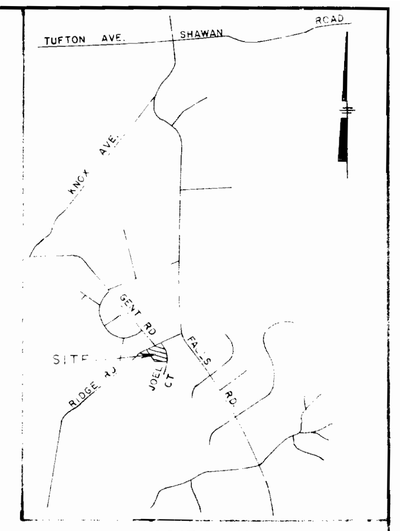
P 79 LOT 17
IRA N. BROWN
CYNTHIA M. BROWN
5 JOEL COURT
REISTERSTOWN, MD. 21136-5643
TAX ACCOUNT 08-2100008995
3.173 ACRES
LIBER / FOLIO 8858 / 720
ZONED R.C.5

LEGEND

A = FUTURE 34.5 KV CAPACITOR
B = 34.5 KV DISC SWITCHING ST
C = 34.5 KV CIRCUIT SWITCHER
D = 34.5 KV BUS SUPPORT
E = 34.5 KV TRANSFORMER
F = 13 KV BUS SUPPORT
G = 13 KV LOAD BRK. SWITCHING
H = 13 KV SWITCHGEAR



MAXIMUM HEIGHT OF STRUCTURES



LOCATION MAP
SCALE: 1" = 2000'

PLANT LIST

QUANTITY	COMMON NAME/ BOTANICAL NAME	SIZE	REMARKS
64	EASTERN WHITE PINE/ PINUS STROBUS	8' HT.	B&B - WELL BRANCHED
13	NORWAY SPRUCE/ PICEA ABIES	8' HT.	B&B - WELL BRANCHED
76	LEYLAND CYPRESS/ CUPRESSOCYPARIS LEYLANDII	8' HT.	B&B - WELL BRANCHED
6	CANADIAN HEMLOCK/ TSUGA CANADENSIS	8' HT.	B&B - WELL BRANCHED

NOTES:

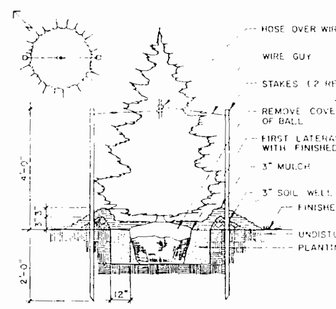
1. IVY HILL SUBSTATION IS AN UNATTENDED STATION AND NO PERMANENT EMPLOYEES ARE TO BE LOCATED ON THE PREMISES. AVERAGE DAILY TRIPS: 1/WEEK.
2. THERE ARE NO EXISTING OR PROPOSED WATER AND SEWER TO THE STATION.
3. FENCE: 8 FT. OVERALL HEIGHT CONSISTING OF 7 FT. OF CHAIN LINK FABRIC AND THREE STRANDS OF BARBED WIRE (TURNED OUT).
4. ROADWAY: COMPACT SUBGRADE TO 95% DENSITY AS DETERMINED BY ASTM 1557-70. INSTALL 8" OF CR-6? CRUSHED STONE BASE IN TWO LIFTS AND COMPACT EACH LIFT WITH A 10 TON ROLLER. INSTALL 2" BITUMINOUS BINDER COURSE (B1 BAND). INSTALL 1" BITUMINOUS CONCRETE SURFACE (SN BAND) AS PER MARYLAND STATE HIGHWAY ADMINISTRATION SPECIFICATIONS.
5. AREA WITHIN FENCE TO BE COVERED WITH 4" OF STONE OVER NEW GRADE. STONE SHALL BE GRAY IN COLOR, WITH A LOS ANGELES ABRASION RATING LESS THAN 50% AND GRADATION IN ACCORDANCE WITH MARYLAND STATE HIGHWAY ADMINISTRATION SHA-4.
6. ALL AREAS NOT COVERED BY STONE OR PAVING WILL BE SEEDED WITH GRASS ACCORDING TO MARYLAND S.C.S. AND/OR BALTIMORE COUNTY SPECIFICATIONS.
7. ALL ELECTRIC STRUCTURES ARE FUNCTIONALLY ATTACHED.
8. TOPOGRAPHIC AND BOUNDARY INFORMATION TAKEN FROM SURVEY PERFORMED BY: ASM TECHNOLOGIES, INC.
   2 WEST FORREST AVENUE
   SHREWSBURY, PA. 17361
   717-235-8325
9. EXISTING SEPTIC SYSTEM SHALL BE PURIFIED AND BACKFILLED OR REMOVED AT TIME OF RAZING THE EXISTING HOUSE.
10. EXISTING WELL SHALL BE BACKFILLED BY A LICENSED WELL DRILLER WHO MUST SUBMIT A WELL ABANDONMENT REPORT AT THE TIME OF RAZING THE EXISTING STRUCTURE.
11. PETITION FOR A VARIANCE FROM SECTION 1A04.3.B.3 OF THE BALTIMORE COUNTY ZONING REGULATIONS TO PERMIT STRUCTURES AS CLOSE AS 0 FEET FROM INTERIOR LOT LINES IN LIEU OF THE REQUIRED 50 FOOT BUILDING SETBACK.
12. PETITION FOR A SPECIAL EXCEPTION UNDER THE ZONING REGULATIONS OF BALTIMORE COUNTY TO USE THE HEREIN DESCRIBED PROPERTY FOR AN OUTDOOR ELECTRIC PUBLIC UTILITY SERVICE CENTER (ELECTRIC SUBSTATION) IN A RC5 ZONE PURSUANT TO SECTION 1A04.2.B.11 OF THE BALTIMORE COUNTY ZONING REGULATIONS.

CASE NO 3760-X PETITIONER: BALTIMORE GAS & ELECTRIC COMPANY PETITION FOR SPECIAL EXCEPTION TO USE SAID PROPERTY FOR THE CONSTRUCTION OF AN ELECTRICAL TRANSFORMER SUBSTATION. DEPUTY ZONING COMMISSIONER BY ORDER DATED MARCH 14, 1956 GRANTED SPECIAL EXCEPTION REQUEST

CASE NO 4535-X PETITIONER: BALTIMORE GAS & ELECTRIC COMPANY PETITION FOR SPECIAL EXCEPTION FOR WIRELESS TRANSMITTING AND RECIEVING STATION. ZONING COMMISSIONER BY ORDER DATED MARCH 9, 1959 GRANTED SPECIAL EXCEPTION REQUEST

PLANTING NOTES:

1. ALL TREES SHALL BE NURSERY STOCK GROWN IN MARYLAND, DELAWARE, NEW JERSEY, OHIO, PENNSYLVANIA, VIRGINIA, OR WEST VIRGINIA FOR AT LEAST TWO (2) YEARS PRIOR TO DIGGING.
2. PLANTING SOIL SHALL CONSIST OF A MIXTURE OF ONE (1) PART PEAT MOSS, THREE (3) PARTS TOPSOIL AND 10 LBS/C.Y. OF 0-20-0 FERTILIZER. PLANTING SOIL MIX SHALL BE PREPARED AT AN ON-SITE LOCATION DESIGNATED BY THE OWNER.
3. BACKFILL PLANTS WITH PLANTING SOIL; TAMP TO TWO-THIRDS DEPTH OF PIT AND THOROUGHLY WATER BEFORE BRINGING BACKFILL UP TO PROPER GRADE. THOROUGHLY WATER THE PLANT AGAIN AFTER THE SOIL WELL HAS BEEN COMPLETELY FORMED IN-PLACE.
4. WELLS AROUND TREES AND SHRUBS: AFTER PLANTING IS COMPLETE, FORM A SOIL WELL 3-INCHES HIGH AROUND EACH PLANT, EXTENDING TO THE OUTER LIMIT OF THE PLANT PIT IN ACCORDANCE WITH THE PLANTING DETAILS SHOWN ON THE DRAWINGS.
5. WHERE WATER IS NOT AVAILABLE ON-SITE, THE CONTRACTOR SHALL FURNISH SUFFICIENT QUANTITIES TO COMPLETE THE WORK AT NO ADDITIONAL COST TO THE OWNER.
6. STAKE ALL TREES REQUIRING STAKING WITHIN 24 HOURS AFTER PLANTING.
7. GUYING:
   a. GUYING SHALL BE IN ACCORDANCE WITH PLANTING DETAILS.
   b. STAKES SHALL BE SECURELY DRIVEN IN GROUND AND PLANTS GUYED TO PROVIDE AND MAINTAIN ADEQUATE SUPPORT UNTIL REMOVAL.
8. MULCH SHALL BE SHREDDED LONG FIBER HARDWOOD. MULCHING SHALL BE PERFORMED IN ACCORDANCE WITH THE PLANTING DETAILS ON THIS SHEET.
9. ALL TREES IN AN IMPAIRED, DEAD, OR DYING CONDITION AFTER ONE FULL GROWING SEASON SHALL BE REMOVED AND REPLACED.



EVERGREEN TREE DETAIL
N.T.S.

APPLICANT/OWNER/CONTRACT PURCHASER
BALTIMORE GAS & ELECTRIC COMPANY
SYSTEM ENGINEERING & CONSTRUCTION DEPARTMENT
LEXINGTON & LIBERTY STREETS
1020 G & E BUILDING
BALTIMORE, MD 21201
C/O MONICA P. McGRADY, P.E.
1-410-234-5294

THIS PROPERTY LOCATED IN THE
8TH ELECTION DISTRICT OF,
3RD COUNCIL DISTRICT
BALTIMORE COUNTY, MARYLAND
ZONED R.C.5
TAX MAP NO. 50
PARCEL NO. 247, 338, & 79 TRACT A
TOTAL AREA 2.8933 ACRES
ZONING MAP NO. D-2

Rev.	Date	W.O./Est. No.	Description	Approved

ENGINEERING
Civil .....
Elec. .....
Proj. Engr. .....
Proj. Mgr. .....
Str. Engr. .....
Supv. Engr. .....
.....

DESIGN GROUP
Designer .....
Drawn .....
Checked .....
Appd .....
Date Appd .....

LANDSCAPE PLAN

34.5-13.8 KV SUBSTATION

IVY HILL

BALTIMORE GAS AND ELECTRIC COMPANY
DISTRIBUTION & TRANSMISSION ENGINEERING DEPT.
SYSTEM ENGINEERING SECTION

File | Scale: 1" = 20' | Rev.
Microfilmed | Dwg. No.
Orig. ☐ Rev. .....

7

CASE 3760-X Pet Ex 1

3760

PETITION FOR SPECIAL EXCEPTION
FOR THE ERECTION OF AN ELECTRICAL TRANSFORMER SUBSTATION
IN THE ZONING DISTRICT OF BALTIMORE COUNTY

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY

IN THE MATTER OF : BEFORE THE
BALTIMORE GAS AND ELECTRIC COMPANY : ZONING COMMISSIONER
: OF BALTIMORE COUNTY

For a Special Exception Under the Zoning Regulations and Restrictions of Baltimore County

To the Zoning Commissioner of Baltimore County:

Baltimore Gas and Electric Company hereby petitions for a Special Exception under the Zoning Regulations and Restrictions of Baltimore County, passed by the County Commissioners of Baltimore County, agreeable to Chapter 577 of the Acts of the General Assembly of Maryland of 1943, and amendments thereto, for a certain use and exception as provided under said Regulations as follows:

A Special Exception for the construction of an electrical transformer substation on a parcel of land situate on the southeast side of Ridge Road 685 feet westerly from Falls Road in the Eighth Election District of Baltimore County, Maryland.

The location and the description of the land to be used for said electrical transformer substation is shown outlined in red on the plat attached hereto marked Petitioner's Exhibit "A" and made a part hereof.

Said parcel of land is described as follows:

BEGINNING for the same on the southeast side of Ridge Road at the distance of 1425 feet measured westerly along said road from the distance formed by the intersection of the south side of Ridge Road with the west side of the Falls Road, thence binding on the southeast side of Ridge Road, South 67 degrees 30 minutes West 100.3 feet, thence leaving said road and running South 22 degrees 30 minutes East 199 feet, more or less, thence binding on the division lines between Frank J. Marsden, Jr., and Dorothy L. Marsden and the three following courses and distances, viz: North 89 degrees 35 minutes East 111.36 feet, North 34 degrees 39 minutes West 99 feet to a point marked "P" and North 34 degrees 08 minutes West 30 feet more or less to the place of beginning.

Dorothy L. Marsden
Dorothy L. Marsden

Frank J. Marsden
Frank J. Marsden

BALTIMORE GAS AND ELECTRIC COMPANY

By: [illegible]
Vice President

Witness:

3/17/56

X 1028

X-Ref

3760-X

8:00 AM

ORDERED by the Zoning Commissioner of Baltimore County this 28th day of February, 1956, that the subject matter of this petition be advertised in a newspaper of general circulation throughout Baltimore County and that the property be posted, as required by the Zoning Regulations and Act of Assembly aforesaid, and that a public hearing thereon be had in the office of the Zoning Commissioner of Baltimore County, Maryland, on the 14th day of March, 1956, at 1 o'clock P. M.

Zoning Commissioner
of Baltimore County

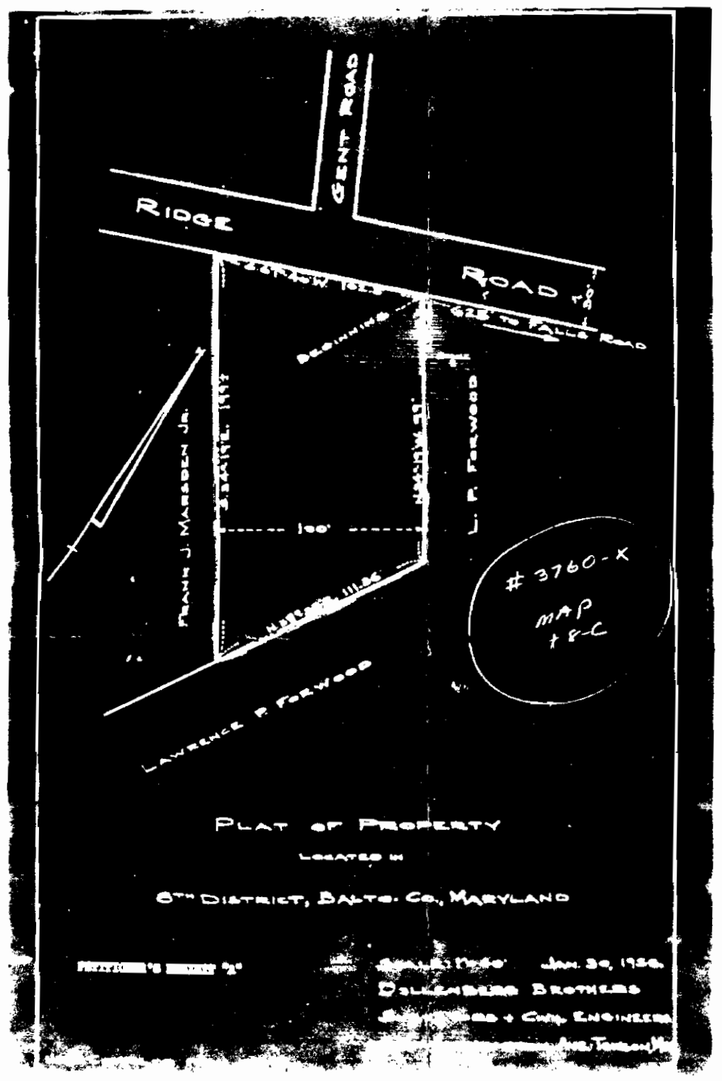
Upon hearing on the above petition for a special exception to use said property for the construction of an electrical transformer substation, and it appearing that by reason of location, the safety, health and the general welfare of the community not being detrimentally affected, the said petition should be granted, therefore:

It is this 29th day of March, 1956, ORDERED by the Deputy Zoning Commissioner of Baltimore County, that the aforesaid petition for a special exception, be and the same is hereby granted.

Deputy Zoning Commissioner
of Baltimore County

CERTIFICATE OF POSTING

CERTIFICATE OF PUBLICATION


GENT ROAD
RIDGE
ROAD
BEGINNING
FRANK J. MARSDEN JR.
L. P. FORWOOD
LAWRENCE P. FORWOOD
#3760-K
MAP
PLAT OF PROPERTY
LOCATED IN
6TH DISTRICT, BALTO. CO., MARYLAND
SCALE 1"=50'
JAN. 24, 1956
BLANKENBERG BROTHERS
CIVIL ENGINEERS

P. 228 : LOT A2
RAYMOND JAY FISHER
& BOND H. FISHER, ET. AL.
1822 RIDGE ROAD
REISTERSTOWN, MD. 21136-5600
TAX ACCOUNT : 08-0819035868
LIBER / FOLIO : 5426 / 87
ZONED R.C.5

EX. DRIVEWAY

P. 228 : LOT A1
RONALD P. HANLEY
ROSEMARY HANLEY
1820 RIDGE ROAD
REISTERSTOWN, MD. 21136-5600
TAX ACCOUNT : 08-0819035867
LIBER / FOLIO : 6059 / 411
ZONED R.C.5

P. 51
GRACE METHODIST CHURCH, INC.
FALLS ROAD
COCKEYSVILLE, MD. 21030

TAX ACCOUNT : 08-0807060575
2.940 ACRES
LIBER / FOLIO : 2335 / 99
ZONED R.C.5

EX. DRIVEWAY

GENT ROAD

RIDGE ROAD

EX. PAVING

N 60° 30' 02" E
153.95'
45'
256.59'
102.64'

TRACT B
0.9224 AC.

TRACT C
0.4081 AC.

6 WHITE PINE AT 15' O.C.

EX. WOODS

EX. GRAVEL DRIVEWAY

WIDENING STRIP
75.00'

N 61° 30' 00 E

S 28° 17' 10" E
35.42'

S 22° 30' 18" E
128.10'
113.60'
141.70'

38 LEYLAND CYPRESS AT 8'O.C.

MIN. BLDG. SETBACK

16' WIDE GATE

PROPOSED PARK & TURN AREA

EXISTING SUBSTATION (TO BE REMOVED)

EX. WOODS

NOTE : 50 FOOT LOT LINE SETBACK RENDERS BUILDING ENVELOPE FOR PARCEL 247 (TRACT C) VIRTUALLY NONEXISTENT

P. 247
BALTIMORE GAS & ELECTRIC CO.
TAX ACCOUNTING UNIT
P.O. BOX 1475
BALTIMORE, MD. 21203
TAX ACCOUNT : 08-0802002467
LIBER / FOLIO : 2911 / 289
ZONED R.C.5

PROPOSED FENCE

FUTURE CAR STR.

EX. GRAVEL PARKING AREA

N 42° 30' 18" W
321.90'

P. 386
DOROTHY L. MARSDEN
1823 RIDGE ROAD
REISTERSTOWN, MD. 21136-5617
TAX ACCOUNT : 08-1900006034
2.759 ACRES
ZONED R.C.5

12 WHITE PINE AT 15'O.C.

EX. HOUSE & CONC. WALK (TO BE REMOVED)

EX. POOL & DECK (TO BE REMOVED)

EX. SHED

EX. ANTENNA MAST

6 CANADIAN HEMLOCK AT 15' O.C.

PROP. ROADWAY LINE

S 21° 23' 34" W
167.03'

EX. WOODS

EX. SEPTIC CLEAN OUT

EX. SHEDS (TO BE REMOVED)

15 WHITE PINE AT 15'O.C.

PROPOSED STORM WATER MANAGEMENT AREA

NOTE: LIMIT OF WOODS SHOWN REFLECTS AFTER GRADING CONDITION.

P. 338
FREDRICK R. VINUP
ANN L. VINUP
1821 RIDGE ROAD
REISTERSTOWN, MD. 21136-5617
TAX ACCOUNT : 08-0822035540
LIBER / FOLIO : 4941 / 720
ZONED : R.C.5

N 21° 23' 37" E
516.61'

8 NORWAY SPRUCE AT 15' O.C.

R-412.00'

JOEL COURT

EX. WOODS

SETBACK LINE

EX. DRIVEWAY

TRACT A
1.5628 AC.

10' DRAINAGE & UTILITY EASEMENT

N 73° 49' 47" W
208.95'

15 WHITE PINE AT 15' O.C.

BLDG. RESTRICTION LINE

L=409.50.00'

5 NORWAY SPRUCE AT 15' O.C.

P. 79 : LOT 24
JAMES J. KIRCHNER, JR.
TINA M. KIRCHNER
4 JOEL COURT
REISTERSTOWN, MD. 21136
TAX ACCOUNT : 08-2100001002
3.662 / 2325
LIBER / FOLIO : 9657 / 356
ZONED : R.C.5

P. 79 : TRACT A
BALTIMORE GAS & ELECTRIC CO.
TAX ACCOUNTING UNIT
P.O. BOX 1475
BALTIMORE, MD. 21203
TAX ACCOUNT : 08-2100009003
LIBER / FOLIO : 8085 / 676
ZONED R.C.5

EX. PAVING

11 WHITE PINE AT 15' O.C.

S 21° 30' 00" W
640.00'

EX. DRIVEWAY

EX. CURB

P. 79 : LOT 16
ROBERT J. RYTTER
CAROL P. RYTTER
3 JOEL COURT
REISTERSTOWN, MD. 21136-5643
TAX ACCOUNT : 08-2100008994
2.972 ACRES
LIBER / FOLIO : 9403 / 619
ZONED : R.C.5

P. 79 : LOT 17
IRA N. BROWN
CYNTHIA M. BROWN
5 JOEL COURT
REISTERSTOWN, MD. 21136-5643
TAX ACCOUNT : 08-2100008995
3.173 ACRES
LIBER / FOLIO : 8858 / 720
ZONED R.C.5

P. 79 : LOT 15
CARL FOLLO
1 JOEL COURT
REISTERSTOWN, MD. 21136-5643
TAX ACCOUNT : 08-2100008993
2.950 ACRES
LIBER / FOLIO : 8816 / 620
ZONED : R.C.5

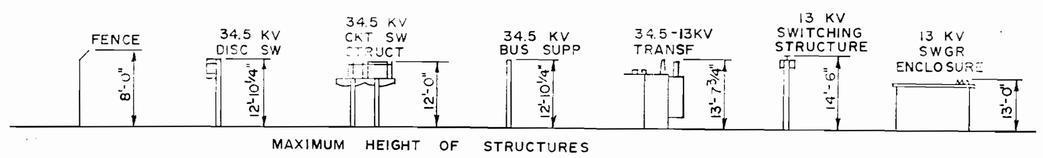
L=360.63'
CH=S 06° 15' 00" E
352.03'

655 660 665 670 650 645

LOCATION MAP
SCALE: 1"= 2000'

LEGEND

A = FUTURE 34.5 KV CAPACITOR
B = 34.5 KV DISC SWITCHING STRUCTURE
C = 34.5 KV CIRCUIT SWITCHER
D = 34.5 KV BUS SUPPORT
E = 34.5 KV TRANSFORMER
F = 13 KV BUS SUPPORT
G = 13 KV LOAD BRK. SWITCHING STRUCTURE
H = 13 KV SWITCHGEAR



MAXIMUM HEIGHT OF STRUCTURES

PLANT LIST

QUANTITY	COMMON NAME / BOTANICAL NAME	SIZE	REMARKS
53	EASTERN WHITE PINE / PINUS STROBUS	8' HT.	B&B - WELL BRANCHED
13	NORWAY SPRUCE / PICEA ABIES	8' HT.	B&B - WELL BRANCHED
38	LEYLAND CYPRESS / CUPRESSOCYPARIS LEYLANDII	8' HT.	B&B - WELL BRANCHED
6	CANADIAN HEMLOCK / TSUGA CANADENSIS	8' HT.	B&B - WELL BRANCHED

NOTES:

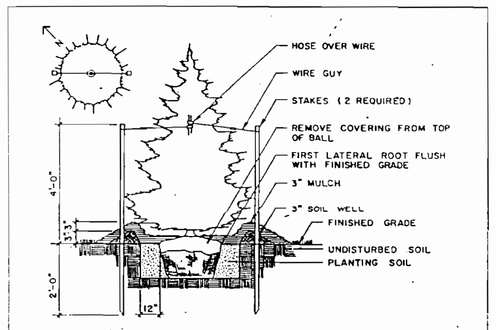
1. IVY HILL SUBSTATION IS AN UNATTENDED STATION AND NO PERMANENT EMPLOYEES ARE TO BE LOCATED ON THE PREMISES. AVERAGE DAILY TRIPS: 1/WEEK.
2. THERE ARE NO EXISTING OR PROPOSED WATER AND SEWER TO THE STATION.
3. FENCE: 8 FT. OVERALL HEIGHT CONSISTING OF 7 FT. OF CHAIN LINK FABRIC AND THREE STRANDS OF BARBED WIRE (TURNED OUT).
4. ROADWAY: COMPACT SUBGRADE TO 95% DENSITY AS DETERMINED BY ASTM 1557-70. INSTALL 8" OF CR-6? CRUSHED STONE BASE IN TWO LIFTS AND COMPACT EACH LIFT WITH A 10 TON ROLLER. INSTALL 2" BITUMINOUS BINDER COURSE (B1 BAND). INSTALL 1" BITUMINOUS CONCRETE SURFACE (SH BAND) AS PER MARYLAND STATE HIGHWAY ADMINISTRATION SPECIFICATIONS.
5. AREA WITHIN FENCE TO BE COVERED WITH 4" OF STONE OVER NEW GRADE. STONE SHALL BE GRAY IN COLOR, WITH A LOS ANGELES ABRASION RATING LESS THAN 50% AND GRADATION IN ACCORDANCE WITH MARYLAND STATE HIGHWAY ADMINISTRATION SHA-4.
6. ALL AREAS NOT COVERED BY STONE OR PAVING WILL BE SEEDED WITH GRASS ACCORDING TO MARYLAND S.C.S. AND/OR BALTIMORE COUNTY SPECIFICATIONS.
7. ALL ELECTRIC STRUCTURES ARE FUNCTIONALLY ATTACHED.
8. TOPOGRAPHIC AND BOUNDARY INFORMATION TAKEN FROM SURVEY PERFORMED BY: ASM TECHNOLOGIES, INC.
   2 WEST FORREST AVENUE
   SHREWSBURY, PA. 17361
   717-235-8325
9. EXISTING SEPTIC SYSTEM SHALL BE PURIFIED AND BACKFILLED OR REMOVED AT TIME OF RAZING THE EXISTING HOUSE.
10. EXISTING WELL SHALL BE BACKFILLED BY A LICENSED WELL DRILLER WHO MUST SUBMIT A WELL ABANDONMENT REPORT AT THE TIME OF RAZING THE EXISTING STRUCTURE.
11. PETITION FOR A VARIANCE FROM SECTION 1A04.3.B.3 OF THE BALTIMORE COUNTY ZONING REGULATIONS TO PERMIT STRUCTURES AS CLOSE AS 0 FEET FROM INTERIOR LOT LINES IN LIEU OF THE REQUIRED 50 FOOT BUILDING SETBACK.
12. PETITION FOR A SPECIAL EXCEPTION UNDER THE ZONING REGULATIONS OF BALTIMORE COUNTY TO USE THE HEREIN DESCRIBED PROPERTY FOR AN OUTDOOR ELECTRIC PUBLIC UTILITY SERVICE CENTER (ELECTRIC SUBSTATION) IN A RC5 ZONE PURSUANT TO SECTION 1A04.2.B.11 OF THE BALTIMORE COUNTY ZONING REGULATIONS.

PLANTING NOTES:

1. ALL TREES SHALL BE NURSERY STOCK GROWN IN MARYLAND, DELAWARE, NEW JERSEY, OHIO, PENNSYLVANIA, VIRGINIA, OR WEST VIRGINIA FOR AT LEAST TWO (2) YEARS PRIOR TO DIGGING.
2. PLANTING SOIL SHALL CONSIST OF A MIXTURE OF ONE (1) PART PEAT MOSS, THREE (3) PARTS TOPSOIL AND 10 LBS/C.Y. OF 0-20-0 FERTILIZER. PLANTING SOIL MIX SHALL BE PREPARED AT AN ON-SITE LOCATION DESIGNATED BY THE OWNER.
3. BACKFILL PLANTS WITH PLANTING SOIL; TAMP TO TWO-THIRDS DEPTH OF PIT AND THOROUGHLY WATER BEFORE BRINGING BACKFILL UP TO PROPER GRADE. THOROUGHLY WATER THE PLANT AGAIN AFTER THE SOIL WELL HAS BEEN COMPLETELY FORMED IN-PLACE.
4. WELLS AROUND TREES AND SHRUBS: AFTER PLANTING IS COMPLETE, FORM A SOIL WELL 3-INCHES HIGH AROUND EACH PLANT, EXTENDING TO THE OUTER LIMIT OF THE PLANT PIT IN ACCORDANCE WITH THE PLANTING DETAILS SHOWN ON THE DRAWINGS.
5. WHERE WATER IS NOT AVAILABLE ON-SITE, THE CONTRACTOR SHALL FURNISH SUFFICIENT QUANTITIES TO COMPLETE THE WORK AT NO ADDITIONAL COST TO THE OWNER.
6. STAKE ALL TREES REQUIRING STAKING WITHIN 24 HOURS AFTER PLANTING.
7. GUYING:
   a. GUYING SHALL BE IN ACCORDANCE WITH PLANTING DETAILS.
   b. STAKES SHALL BE SECURELY DRIVEN IN GROUND AND PLANTS GUYED TO PROVIDE AND MAINTAIN ADEQUATE SUPPORT UNTIL REMOVAL.
8. MULCH SHALL BE SHREDDED LONG FIBER HARDWOOD. MULCHING SHALL BE PERFORMED IN ACCORDANCE WITH THE PLANTING DETAILS ON THIS SHEET.
9. ALL TREES IN AN IMPAIRED, DEAD, OR DYING CONDITION AFTER ONE FULL GROWING SEASON SHALL BE REMOVED AND REPLACED.

CASE NO. 3780-X — PETITIONER: BALTIMORE GAS & ELECTRIC COMPANY PETITION FOR SPECIAL EXCEPTION TO USE SAID PROPERTY FOR THE CONSTRUCTION OF AN ELECTRICAL TRANSFORMER SUBSTATION. DEPUTY ZONING COMMISSIONER BY ORDER DATED MARCH 14, 1955, GRANTED SPECIAL EXCEPTION REQUEST.

CASE NO. 4535-X — PETITIONER: BALTIMORE GAS & ELECTRIC COMPANY PETITION FOR SPECIAL EXCEPTION FOR WIRELESS TRANSMITTING AND RECIEVING STATION. ZONING COMMISSIONER BY ORDER DATED MARCH 9, 1959, GRANTED SPECIAL EXCEPTION REQUEST.



EVERGREEN TREE DETAIL
N.T.S.

APPLICANT/OWNER/CONTRACT PURCHASER
BALTIMORE GAS & ELECTRIC COMPANY
SYSTEM ENGINEERING & CONSTRUCTION DEPARTMENT
LEXINGTON & LIBERTY STREETS
1020 G & E BUILDING
BALTIMORE, MD. 21201
C/O MONICA P. McGRADY, P.E.
1-410-234-5294

THIS PROPERTY LOCATED IN THE
8TH ELECTION DISTRICT OF,
3RD COUNCIL DISTRICT
BALTIMORE COUNTY, MARYLAND
ZONED R.C.5
TAX MAP NO. 50
PARCEL NO. 247, 338, & 79 : TRACT A
TOTAL AREA : 2.8933 ACRES
ZONING MAP NO. D-2

No.			Approved

Engineering Department Approval
Civil .....
Elec. .....
Proj. Engr. .....
Proj. Mgr. .....
Prin. Engr. .....
Supv. Engr. .....

DESIGN GROUP
Designer .....
Drawn .....
Checked .....
Appd. .....
Date Appd .....

LANDSCAPE PLAN
34.5-13.8 KV SUBSTATION
IVY HILL
BALTIMORE GAS AND ELECTRIC COMPANY
DISTRIBUTION & TRANSMISSION ENGINEERING DEPT.
SYSTEM ENGINEERING SECTION

File | Scale: 1"= 20' | Rev.
Microfilmed | Dwg. No.
Orig. ☐ Rev. .....

30X

Petitioner's #7 with attach photos

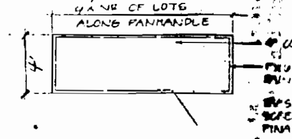
FINAL DEVELOPMENT PLAN
"FORWOOD PROPERTY"

LOCATED IN
8th ELEC. DIST. - BALTO. CO. - MD.
SCALE 1"=100' MARCH 22nd 1988
C.R.G. #87422 (SEE PRIOR #86272)
AMENDED 1-21-88

REVISED - 5-2-88

trash & mail pad detail

NO SCALE



TRASH & MAIL PADS SHALL HAVE EVERGREEN SCREEN PLANTING AS PER THE APPROVED FINAL LANDSCAPE PLAN.

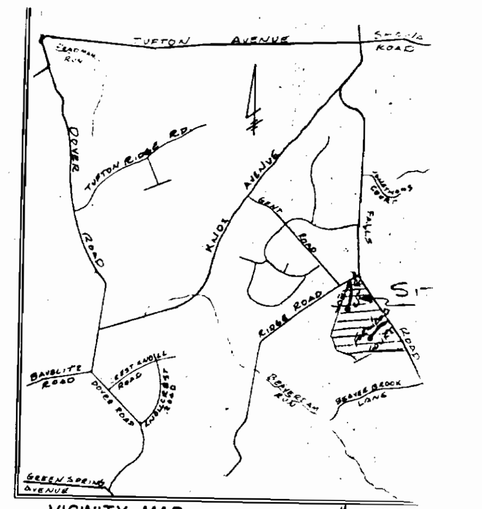
● INDICATES LOCATION OF TRASH & MAIL PADS ON PLAN.

NOTE:

THE DEVELOPER IS TO MAKE EVERY REASONABLE EFFORT TO PROVIDE MAIL & REFUSE SERVICES ALONG PANHANDLE DRIVES. IF EFFORT FAILS, TRASH & MAIL PAD AREAS WILL BE PROVIDED. IN EFFORT TO PROVIDE MAIL & TRASH COLLECTION, REFUSE COLLECTION, SNOW REMOVAL, MAIL DELIVERY & ROAD MAINTENANCE WILL BE PICK-UP TO THE RIGHT OF WAY ONLY & NOT ONTO THE PRIVATE DRIVE.

VICINITY MAP

1" = 3000'

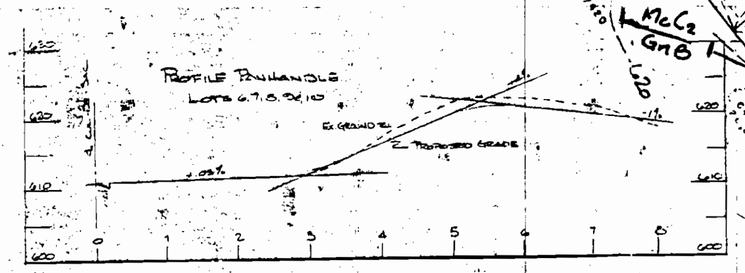


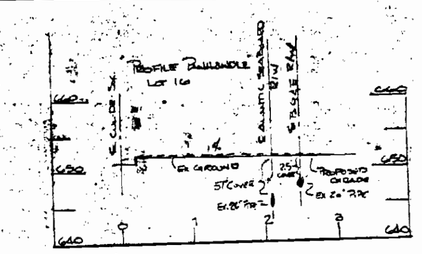
General Notes

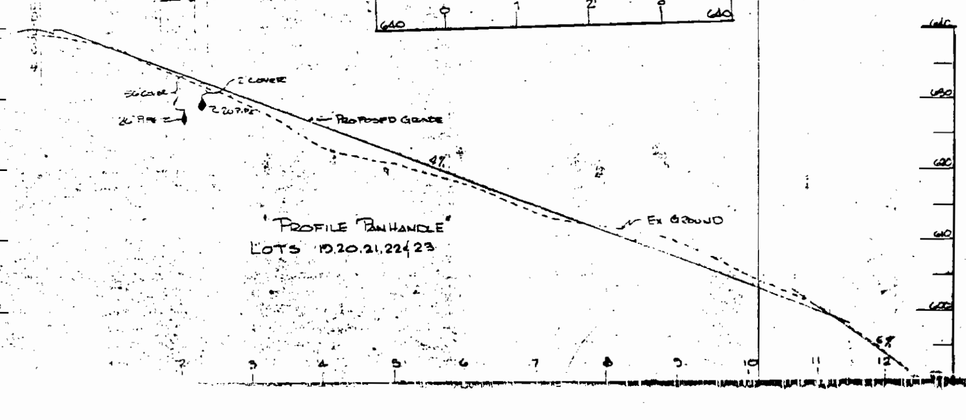
1. Watershed 11; Subwatershed 36. Councilmanic District 3. Census Tract #6087
2. Bldg. Data: Current Zoning and Acreage:
   Net = 77.03 Acres +/- RC-5
   Gross = 78.66 Acres +/- RC-5
   (Excludes 33' of ex. Falls Rd R/W).
   Density: Permitted - 78.66 Acres x 0.667 Dwelling/Acre = 52.47 Units
   Proposed - 24 Single Family Units = / Units
3. All units will be for sale.
4. Parking: Required - 16 units @ 2 Spaces/Dwelling Unit = 48 Spaces
   Proposed - A minimum of two off-street driveway spaces will be provided for each lot. 8 1/2' x 18' minimum.
5. Landscape Requirements:
   Required - 24 units @ 1 tree/unit = 24 trees
   Proposed - A minimum of 24 major deciduous trees.
6. Existing vegetation consists of hardwood forest and cultivated fields. Only trees for house and panhandle construction will be removed. The developer will require contractors to restrict work areas & maximum 7000 sq ft of clearing per lot shall be permitted.
7. There are no existing buildings on site as shown on plan.
8. There is one existing residence, an existing barn and an old root cellar which will be retained on the site. The remaining existing structures will be removed. None of the existing structures are on the Baltimore County Landmark List or the National Register.
9. Open space is not required in this zone.
10. Stormwater management quantity has been waived. Management of storm water quality will be provided by on lot swales. Letter dated 12-4-86.
11. The limit of 100 year flood coincides with the limits of the wetlands on the final plat and will approved by applicable State and County agencies having jurisdiction. Has been located on the site plan.
12. Wetlands on the site have been delineated by Environmental Planning & Design, Inc. The RSI site evaluation system was used to determine the ecological sites, endangered species habitats, or hazardous materials on the site.
13. Panhandle drive will have 16 feet wide bituminous pavement and will be maintained equally by all parties having rights to their use.
14. Construction or grading will occur within the limits of the vegetated stream buffer.
15. Refuse collection pads will provide 16 sq ft per unit served. Pad will provide an unobstructed opening facing the cul-de-sac. 22 meets Section 400 (Baltimore County Zoning Regulations).
16. There will be no access to Falls Rd except from Forwood Ct.
17. Each lot will be a minimum of one acre.
18. All buildings will be 75 ft from centerline of [illegible] and 50 ft from other tract boundaries and lot lines.
19. No more than 15% of any lot may be covered by buildings.
20. The existing gas tank and pump is to be removed.
21. Grading for lots to be performed by individual lot owners for grading of the proposed panhandles, and driveways.
22. Panhandle lots subject to declaration and maintenance agreements to be recorded among the Land Records of Baltimore County at the time of Plat Recordation. Panhandle lots for refuse collection. Snow removal and maintenance will be provided to the junction of the panhandle and street R/W line only and not onto the panhandle lot driveway. (Refuse to be collected by Baltimore County). The proposed paving sections shall be 3" of stone with 1 1/2 in. bituminous concrete surface on panhandle roads. Widths are shown hereon.
23. All septic systems are a minimum 200 ft from all wells.
24. No further subdivision of the parcel shown hereon is allowed unless approved by the Baltimore County Planning and Zoning Commission.
25. Where applicable, utilities shall be installed in accordance with the regulations or as amended by the Public Service Commission of Maryland regarding underground services.
26. If and when water & sewer facilities become available to the subdivision, connection thereto shall be required by the agency having jurisdiction.
27. No building permit shall be issued for the construction of a dwelling on a lot shown on the final plat until well approved by applicable State and County agencies having jurisdiction, has been located on the site for any lot.
28. In accordance with Sec. 22-29 of the Development Regulations, the following measures taken to protect the soil in this development which have moderate to severe limitations to move all building envelopes out of the Soil areas and to place a 30-ft building setback on the 15% slopes. In addition, the developer will place areas currently cultivated, in a grass cover.
29. Accessory structures, fences, or projections into yard cannot be located in flood plain areas or hydric soils.
30. This development plan is approved by the Zoning Commissioner based on his interpretation of the Zoning Regulations, that it complies with the present policies, policy and controls as they are delineated in the Zoning Regulations. [illegible] has been established [illegible] dwellings shown hereon. No lot shown hereon may be further divided, subdivided or developed for additional dwellings or any purpose other than that indicated presently on said plan. Utilization of this plan will have occurred when a dwelling is constructed and transferred for the purpose of occupancy.
31. The Development Plan complies with the C.R.G. Plan and all C.R.G. comments. 1-21-88
32. ● indicates flexibility in granting the dwelling, change in direction requires an amendment to the Development Plan prior to permit approval. Contact current Planning Office prior to any amendment application.
33. A LANDSCAPE PLAN MUST BE APPROVED BY THE OFFICE OF PLANNING PRIOR TO THE ISSUANCE OF A BUILDING PERMIT.
34. ENVELOPES SHOWN HEREON ARE FOR THE LOCATION OF ALL PRINCIPAL BUILDINGS ONLY. ACCESSORY STRUCTURES, FENCES & PROJECTIONS INTO YARDS MAY BE CONSTRUCTED OUTSIDE THE ENVELOPES BUT MUST COMPLY WITH SEC. 400.1, 301 OF THE B.C.Z.R.
35. DRIVEWAY CURB CUT LOCATION TO BE STAKED AFTER MODEL SELECTION BUT BEFORE INSTALLATION OF STREET CURBS.

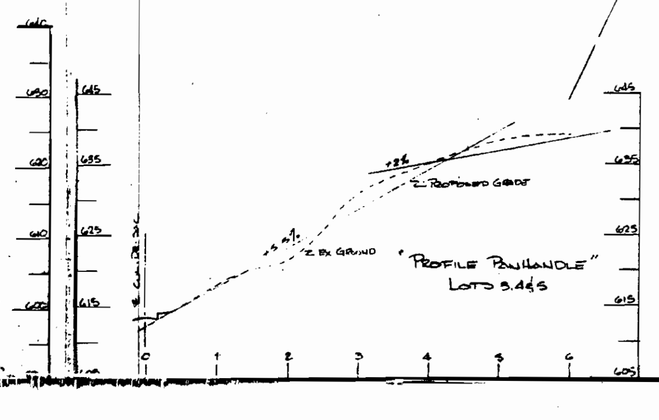
SOIL TYPES AND LIMITATIONS

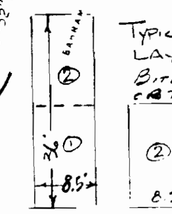
Symbol	Name	Slope Class	With Severe Limitations	Without Severe Limitations	Street and Parking
BaA	Baile	B	Severe: High Water Table; Poor Natural Drainage	Severe: High Water Table; Poor Natural Drainage	Severe: Hi Water Tabl Poor Natur Drainage
FlC2	Flinchum	B	Slight	Moderate: Slope	Moderate: Sl
FlC3		C	Moderate: Slope	Moderate: Slope	Severe: Sl
GnB	Glenelg	B	Moderate: Slope	Moderate: Slope	Severe: Sl
GoC2	Glenville	C	Severe: High Water Table	Moderate: High Water Table	Severe: Hi Water Tabl
GoD2		D	Slight	Slight	Moderate: Sl
MeC2	Manor	C	Slight	Slight	Moderate: Sl
MeD2		D	Severe: Slope	Severe: Slope	Severe: Sl
(Hi-D, Ma)					











LEGEND:

- 25% GRADE
- ST. LIGHT
- TRASH PAD
- SEPTIC AREA
- WELL AREA
- EXISTING WELL

STATE OF MARYLAND — GEORGE V. PALMER — No. 5302 — REGISTERED PROFESSIONAL LAND SURVEYOR

ENGINEER:
GERHOLD, CROSS & ETZEL
Registered Professional Land Surveyors
412 Delaware Avenue
TOWSON, MARYLAND 21204
#823-4470

OWNER & DEVELOPER:
GEO. V. PALMER
BUTLER MD. 21023 #771-4311
TAX # 21-00-000-795

OWNER LOT 21
LAWRENCE P. FORWOOD
REISTERSTOWN MD 21136
TAX # 08-06-04-5300 & 5302

Office of Planning and Zoning
Approved by:
Director of Planning
5/27/88
Zoning Commissioner

Petitioner's Exh. #8

PROPOSED IVY HILL SUBSTATION EXPANSION

IVY HILL SERVICE TERRITORY

TEMPORARILY MOVED TO DELIGHT

BEAVER DAM GATE STATION

OWINGS MILLS GATE STATION

NORTHERN DISTRIBUTION DIVISION DEPT.
203 GREEN SPRING DRIVE

LONG QUARTER PUMPING STA.

CAVES VALLEY EAST TERM.

CAVES VALLEY WEST TERM.

LAKESIDE NORTH TERM.

LAKESIDE SOUTH TERM.

PAINTERS MILL

Ret #19

R.C. 5

R C 5

R.C. 5

R C 5

R.C. 5

R C 5



PRINTED
JAN 05 1995
DAFT-McCUNE-WALKER

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
PHOTOGRAPHIC MAP

SCALE	LOCATION	SHEET
1" = 200' ±	GRACE CHURCH	N.W. 17-E

DATE OF PHOTOGRAPHY
JANUARY 1986

PREPARED BY AIR PHOTOGRAPHICS, INC.
MARTINSBURG, W.V. 25401

P. 228 : LOT A2
RAYMOND JAY FISHER
RAYMOND H. FISHER, ET. AL.
1822 RIDGE ROAD
REISTERSTOWN, MD. 21136-5600
TAX ACCOUNT : 08-0819035668
LIBER / FOLIO : 5426 / 87
ZONED R.C.5

P. 228 : LOT A1
RONALD P. HANLEY
ROSEMARY HANLEY
1820 RIDGE ROAD
REISTERSTOWN, MD. 21136-5600
TAX ACCOUNT : 08-0819035867
LIBER / FOLIO : 6059 / 411
ZONED R.C.5

P. 51
GRACE METHODIST CHURCH, INC.
FALLS ROAD
COCKEYSVILLE, MD. 21030
TAX ACCOUNT : 08-0807060575
2.940 ACRES
LIBER / FOLIO : 2335 / 99
ZONED R.C.5

EX. DRIVEWAY

RIDGE ROAD

EX. PAVING

N 60° 30' 02" E
153.95'
45'
256.59'
102.64'

TRACT B
0.9224 AC.

TRACT C
0.4081 AC.

EX. WOODS

EX. GRAVEL DRIVEWAY

EX. DRIVEWAY

38 EMERALD GREEN ARBORVITAE AT 8' O.C.

MIN. BLDG. SETBACK LINE

16' WIDE GATE

PROPOSED PARK & TURN AREA

EXISTING SUBSTATION (TO BE REMOVED)

EX. WELL

FUTURE CAP. STR.

PROPOSED FENCE

EX. GRAVEL PARKING AREA

12 WHITE PINE AT 15' O.C.

P. 386
DOROTHY L. MARSDEN
1823 RIDGE ROAD
REISTERSTOWN, MD. 21136-5617
TAX ACCOUNT : 08-1900006034
2.759 ACRES
ZONED R.C.5

EX. HOUSE & CONC. WALK (TO BE REMOVED)

PROP. ROADWAY

EX. POOL & DECK (TO BE REMOVED)

EX. SHED

EX. ANTENNA MAST

EX. EARTH DRIVEWAY

EX. WOODS

EX. SEPTIC CLEAN OUT

EX. SHEDS (TO BE REMOVED)

7 WHITE PINE AT 15' O.C.

P. 247
BALTIMORE GAS & ELECTRIC CO.
TAX ACCOUNTING UNIT
P.O. BOX 1475
BALTIMORE, MD. 21203
TAX ACCOUNT : 08-0802002467
LIBER / FOLIO : 2911 / 289
ZONED R.C.5

NOTE : 50 FOOT LOT LINE SETBACK RENDERS BUILDING ENVELOPE FOR PARCEL 247 (TRACT C) VIRTUALLY NONEXISTENT

WIDENING STRIP
75.00'

N 61° 30' 00 E

S 28° 17' 10" E
352.42'

S 42° 30' 18" E
113.60'
141.70'

S 29° 00' 00" E
528.00'

CH. S 06° 15' 00" E
352.03'

P. 79 : LOT 15
CARL FOLLO
1 JOEL COURT
REISTERSTOWN, MD. 21136-5643
TAX ACCOUNT : 08-2100008993
2.950 ACRES
LIBER / FOLIO : 8816 / 620
ZONED : R.C.5

5 NORWAY SPRUCE AT 15' O.C.

JOEL COURT

R=415.00'

9 WHITE PINE AT 15' O.C.

NOTE: LIMIT OF WOODS SHOWN REFLECTS AFTER GRADING CONDITION.

P. 338
FREDRICK R. VINUP
ANN L. VINUP
1821 RIDGE ROAD
REISTERSTOWN, MD. 21136-5617
TAX ACCOUNT : 08-0822035540
LIBER / FOLIO : 4941 / 720
ZONED : R.C.5

PROPOSED STORM WATER MANAGEMENT AREA

S 21° 23' 34" W
167.03'

N 21° 23' 37" E
51.61'

TRACT A
1.5628 AC.

10' DRAINAGE & UTILITY EASEMENT

N 73° 49' 47" W
208.95'

50'

3 NORWAY SPRUCE AT 15' O.C.

BLDG. SETBACK LINE

Δ=43° 30' 00"

P. 79 : TRACT A
BALTIMORE GAS & ELECTRIC CO.
TAX ACCOUNTING UNIT
P.O. BOX 1475
BALTIMORE, MD. 21203
TAX ACCOUNT : 08-2100009003
LIBER / FOLIO : 8085 / 676
ZONED R.C.5

5 WHITE PINE AT 15' O.C.

S 15° 30' 00" W
64.00'

EX. CURB

EX. PAVING

EX. DRIVEWAY

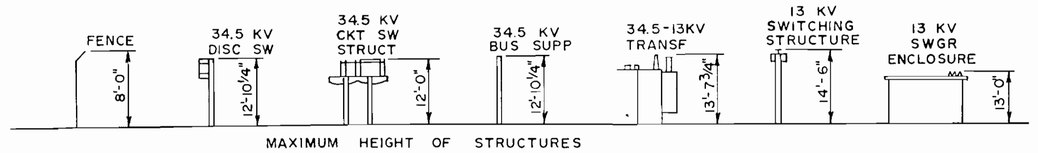
P. 79 : LOT 24
JAMES J. KIRCHNER, JR.
TINA M. KIRCHNER
4 JOEL COURT
REISTERSTOWN., MD. 21136
TAX ACCOUNT : 08-2100009002
3.662 ACRES
LIBER / FOLIO : 9657 / 396
ZONED : R.C.5

P. 79 : LOT 16
ROBERT J. RYTTER
CAROL P. RYTTER
3 JOEL COURT
REISTERSTOWN, MD. 21136-5643
TAX ACCOUNT : 08-2100008994
2.972 ACRES
LIBER / FOLIO : 9403 / 619
ZONED : R.C.5

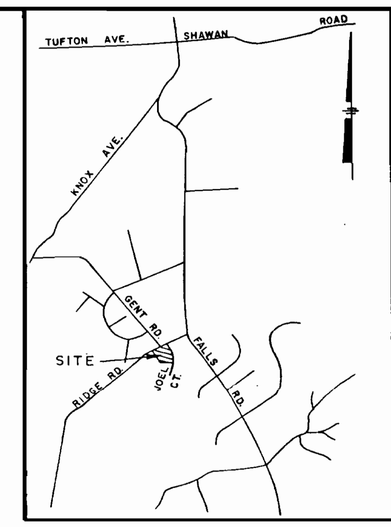
P. 79 : LOT 17
IRA N. BROWN
CYNTHIA M. BROWN
5 JOEL COURT
REISTERSTOWN, MD. 21136-5643
TAX ACCOUNT : 08-2100008995
3.173 ACRES
LIBER / FOLIO : 8858 / 720
ZONED R.C.5

LEGEND

A = FUTURE 34.5 KV CAPACITOR
B = 34.5 KV DISC SWITCHING STRUCTURE
C = 34.5 KV CIRCUIT SWITCHER
D = 34.5 KV BUS SUPPORT
E = 34.5 KV TRANSFORMER
F = 13 KV BUS SUPPORT
G = 13 KV LOAD BRK. SWITCHING STRUCTURE
H = 13 KV SWITCHGEAR



MAXIMUM HEIGHT OF STRUCTURES



LOCATION MAP
SCALE: 1"=2000'

NOTES:

1. IVY HILL SUBSTATION IS AN UNATTENDED STATION AND NO PERMANENT EMPLOYEES ARE TO BE LOCATED ON THE PREMISES. AVERAGE DAILY TRIPS: 1/WEEK.
2. THERE ARE NO EXISTING OR PROPOSED WATER AND SEWER TO THE STATION.
3. FENCE: 8 FT. OVERALL HEIGHT CONSISTING OF 7 FT. OF CHA IN LINK FABRIC AND THREE STRANDS OF BARBED WIRE (TURNED OUT).
4. ROADWAY: COMPACT SUBGRADE TO 95% DENSITY AS DETERMINED BY ASTM 1557-70. INSTALL 8" OF CR-4&7 CRUSHED STONE BASE IN TWO LIFTS AND COMPACT EACH LIFT WITH A 10 TON ROLLER. INSTALL 2" BITUMINOUS BINDER COURSE (B1 BAND). INSTALL 1" BITUMINOUS CONCRETE SURFACE (SH BAND) AS PER MARYLAND STATE HIGHWAY ADMINISTRATION SPECIFICATIONS.
5. AREA WITHIN FENCE TO BE COVERED WITH 4" OF STONE OVER NEW GRADE. STONE SHALL BE GRAY IN COLOR, WITH A LOS ANGELES ABRASION RATING LESS THAN 50% AND GRADATION IN ACCORDANCE WITH MARYLAND STATE HIGHWAY ADMINISTRATION SHA-4.
6. ALL AREAS NOT COVERED BY STONE OR PAVING WILL BE SEEDED WITH GRASS ACCORDING TO MARYLAND S.C.S. AND/OR BALTIMORE COUNTY SPECIFICATIONS.
7. ALL ELECTRIC STRUCTURES ARE FUNCTIONALLY ATTACHED.
8. TOPOGRAPHIC AND BOUNDARY INFORMATION TAKEN FROM SURVEY PERFORMED BY: ASM TECHNOLOGIES, INC.
   2 WEST FORREST AVENUE
   SHREWSBURY, PA. 17361
   717-235-8325
9. EXISTING SEPTIC SYSTEM SHALL BE PURIFIED AND BACKFILLED OR REMOVED AT TIME OF RAZING THE EXISTING HOUSE.
10. EXISTING WELL SHALL BE BACKFILLED BY A LICENSED WELL DRILLER WHO MUST SUBMIT A WELL ABANDONMENT REPORT AT THE TIME OF RAZING THE EXISTING STRUCTURE.
11. PETITION FOR A VARIANCE FROM SECTION 1A04.3.B.3 OF THE BALTIMORE COUNTY ZONING REGULATIONS TO PERMIT STRUCTURES AS CLOSE AS 0 FEET FROM INTERIOR LOT LINES IN LIEU OF THE REQUIRED 50 FOOT BUILDING SETBACK.
12. PETITION FOR A SPECIAL EXCEPTION UNDER THE ZONING REGULATIONS OF BALTIMORE COUNTY TO USE THE HEREIN DESCRIBED PROPERTY FOR AN OUTDOOR ELECTRIC PUBLIC UTILITY SERVICE CENTER (ELECTRIC SUBSTATION) IN A RCS ZONE PURSUANT TO SECTION 1A04.2.B.11 OF THE BALTIMORE COUNTY ZONING REGULATIONS.

CASE NO. 3760-X — PETITIONER : BALTIMORE GAS & ELECTRIC COMPANY PETITION FOR SPECIAL EXCEPTION TO USE SAID PROPERTY FOR THE CONSTRUCTION OF AN ELECTRICAL TRANSFORMER SUBSTATION. DEPUTY ZONING COMMISSIONER BY ORDER DATED MARCH 14, 1956, GRANTED SPECIAL EXCEPTION REQUEST.

CASE NO. 4535-X — PETITIONER : BALTIMORE GAS & ELECTRIC COMPANY PETITION FOR SPECIAL EXCEPTION FOR WIRELESS TRANSMITTING AND RECIEVING STATION. ZONING COMMISSIONER BY ORDER DATED MARCH 9, 1959, GRANTED SPECIAL EXCEPTION REQUEST.

94-452-XA

APPLICANT/OWNER/CONTRACT PURCHASER
BALTIMORE GAS & ELECTRIC COMPANY
SYSTEM ENGINEERING & CONSTRUCTION DEPARTMENT
LEXINGTON & LIBERTY STREETS
1020 G & E BUILDING
BALTIMORE, MD. 21201
C/O MONICA P. McGRADY, P.E.
1-410-234-5294

THIS PROPERTY LOCATED IN THE
8TH ELECTION DISTRICT OF,
3RD COUNCIL DISTRICT
BALTIMORE COUNTY, MARYLAND
ZONED R.C.5
TAX MAP NO. 50
PARCEL NO. 247, 338, & 79 : TRACT A
TOTAL AREA : 2.8933 ACRES
ZONING MAP NO. D-2

Rev	Date	J.O./Est No.	Description	Approved
			430	

ENGINEERING
Civil
Elec
Proj. Engr.
Proj. Mgr.
Prin. Engr.
Supv. Engr.

DESIGN GROUP
Designer
Drawn
Checked
Appd.
Date Appd.

PLAT TO ACCOMPANY PETITION FOR ZONING SPECIAL EXCEPTION AND VARIANCES

34.5-13.8 KV SUBSTATION

IVY HILL

BALTIMORE GAS AND ELECTRIC COMPANY
DISTRIBUTION & TRANSMISSION ENGINEERING DEPT.
SYSTEM ENGINEERING SECTION

File | Scale: 1" = 20' | Rev.
Microfilmed Orig. ☐ Rev. ..... | Dwg. No. 400-701-E

IN THE MATTER OF	*	BEFORE THE
BGE Ivy Hill Substation	*	COUNTY BOARD OF APPEALS
S/w Corner of Ridge Rd. &	*	BALTIMORE COUNTY
Joel Ct. 3rd Council Dist.	*	CASE NO. 94-452-XA

* * * * * * * * * * * * * *

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Tuesday Jan. 10, 1995 at 10:00 a.m. at Room 48, located at Basement, Old Courthouse, 400 Washington Ave. Towson and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Witness: Custodian of the Records, Balto. Gas & Electric
Address: Charles Center, P.O. Box 1475
Balto., MD 21203

SERVE ON: Martha Delea, Esq., BG & E and Robert Hoffman, Esq.
210 Allegheny Ave. , P.O. Box 5517, Towson, MD 21204
Towson, 21204

SEE ATTACHED SHEET FOR DOCUMENTS

Name: J. Carroll Holzer
Firm: Holzer & Lee
Address: 305 Washington Ave. #502
Towson, MD 21204
825-6961

The witness named above is hereby ordered to so appear before the County Board of Appeals. The Board requests the Sheriff to issue the summons set forth herein.

County Board of Appeals of
Baltimore County

Cost: $_____

Summoned: _____, 19____

Not served: _____, 19____

Sheriff of Baltimore County

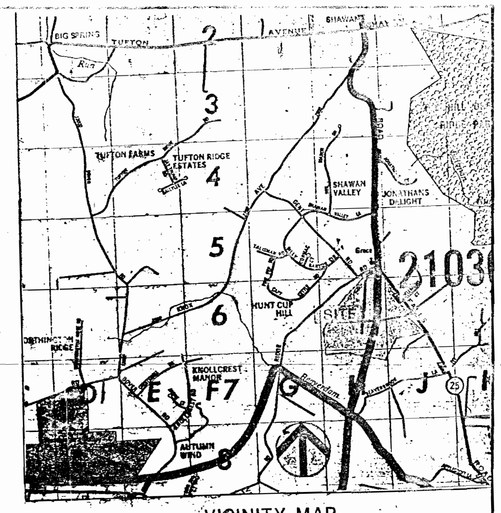
METROPOLITAN DISTRICT LINE BOUNDARY

12/15/92

Pet Ex 21

"SOIL TYPES AND LIMITATIONS"

Soil Series and Symbol		Hydrologic Class	With Basements	Without Basements	Street and Parking
Baile	(BaA)	D Hydric	Severe: High Water Table; Poor Natural Drainage	Severe: High Water Table; Poor Natural Drainage	Severe: Hi Water Tabl Poor Natur Drainage
Elioak	(ElbB2)	B	Slight	Slight	Moderate: Sl
	(ElC3)		Moderate: Slope	Moderate: Slope	Severe: Sl
Glenelg	(GcC2)	B	Moderate: Slope	Moderate: Slope	Severe: Sl
Glenville	(GnB)	C	Severe: High Water Table	Moderate: High Water Table	Severe: Hi Water Tabl
Manor	(McB2)	B	Slight	Slight	Moderate: Sl
	(MaD), (MaE)		Severe: Slope	Severe: Slope	Severe: Sl



VICINITY MAP
SCALE: 1" = 2000'

DENNIS, THOMAS MARY LOU FEDDY
7651/0015

MARION & JUDITH KEYS
6378/417

ROBERT & NANCY FLOWER
6280/0526

LEE & SANDRA BAUSTIAN
6490/0402

EUGENE & JOANNE LINDSAY
6334/0172

BAHRAM SINA
4541/164

BAHRAM SINA
6005/466

MARSDEN COMPANY
43/17

PEGGY BEALEFIELD
6042/420

Zoned R.C.-5

Dellwood Court

Falls Road

FORWOOD COURT

JOEL COURT

Ridge

General Notes

1. Watershed 11; Subwatershed 36, Councilmanic District 3, Census Tract 8403
2. Site Data: Current Zoning and Acreage:
   Net = 77.01 Acres +/- RC-5
   Gross = 78.66 Acres +/- RC-5
   (Includes 33' of ex. Falls Rd R/W).
   Density: Permitted - 79.66 Acres x 0.667 Dwelling/Acre = 52.47 Units
   Proposed - =25 Single Family Units
3. All units will be for Sale.
4. Parking: Required - 25 units @ 2 Spaces/Dwelling Unit = 50 Spaces
   Proposed - A minimum of two off-street driveway spaces will be provided for each lot..8 1/2' x 18'min.
5. Landscape Requirements:
   Required - 25 units @ 1 tree/unit = 25 trees (25 major deciduous trees)
   Proposed - A minimum of 1 tree/unit provided
6. Existing vegetation consists of hardwood forest, pasture, meadow, and trees for fence and pondline.
7. Existing streams and bodies of water are as shown on Plan.
8. There is one existing residential structure, an existing Barn and an existing root cellar which will be retained on the site. The remaining existing structures will be removed. None of the existing structures are on the Baltimore County Landmark List or the National Register.
9. Open space is not required in this zone.
10. Stormwater management quantity has been waived. Management of water quality will be handled on a lot by lot basis.
11. The limit of the wetlands coincides with the limits of the Belle (BaA) soils as determined from the 1" = 400' soil maps. There are no known critical areas, archeological sites, endangered species habitats, or hazardous materials on the site.
12. Panhandle drives will have 16 feet wide bituminous pavement. It will be maintained equally by all parties having rights to the same. Lot 16 will be 12' wide.
13. No construction or grading will occur within the limits of the vegetated stream buffer, with exception of the well to be drilled on Lot 22.
14. Refuse collection pads will provide 16 sq ft per unit served. Pad will provide an unobstructed opening facing the cul-de-sac.
15. The root cellar on Lot 22 meets Section 400 (Baltimor County Zoning Regulations).
16. There will be no access to Falls Rd except from Forwood Ct.
17. Each lot will be a minimum of one acre.
18. All buildings will be 75 ft from centerline of street and 50 ft from other tract boundaries and lot lines.
19. No more than 15% of any lot may be covered by buildings.
20. The existing gas tank and pump is not permitted to remain on Lot 21, it conflicts with zoning policy no. A-16. If the owner/developer does not agree, a public hearing may be requested for an interpretation/justification for it to remain.
21. Grading for lots to be performed by individual lot owners. For grading of the proposed panhandles, see profiles.
22. Panhandle lots subject to declaration and maintenance agreements to be recorded among the land Records of Baltimore County at the time of Plat Recordation. For panhandle lots: refuse collection, snow removal and road maintenance will be provided to the junction of the panhandle and street R/W line only and not on the panhandle to be collected by Baltimore County). The proposed paving sections shall be 8 in. CR-6 stone with a 3 in. bituminous concrete surface on all panhandle roads. Widths are shown hereon.
23. All septic systems are a minimum 200 ft from all streams.
24. No further subdivision of the parcel shown hereon will be allowed unless approved by the Baltimore County Planning and Zoning Commission.
25. Where applicable, utilities shall be installed in accordance with current regulations or as amended by the Maryland Service Commission of Maryland regarding underground services.
26. All wells when water & sewer facilities become available to the subdivision, connection thereto shall be required by the agency having jurisdiction.
27. No building permit shall be issued for the construction of a dwelling on a lot shown on the final plat until a well approved by applicable State and County agencies having jurisdiction, has been located on the site of any lot.
28. In accordance with Sec. 22-29 of the Development Regulations, the Mitigative Measures taken to protect the soils in this development which have moderate to severe limitations is to move all building envelope out of the Hydric Soil areas and to place a 20 ft building setback off the 25% slopes. In addition, the developer will place all areas currently cultivated, in a grass cover.
29. A letter to the Zoning Commissioner has been written to justify the barn on Lot 21 as a farm use. In the event the Commissioner does not agree, a variance for an accessory building, will be filed for.

VIII-472

BALTIMORE COUNTY MD
COUNTY REVIEW GROUP
12/6/88 Plan Was Reviewed By The CRG Ca With The Following Action Taken
AMENDED PLAN APPROVED 1/21/88
Plan Approved By Robert P. Crowley
Plan Approved By Gary Kepp
Approval Expiration Date 1/21/91
Plan Disapproved
Continued to Be Revised
Plan PROPERTY

REVISED C.R.G. PLAN

FORWOOD

8th ELECTION DISTRICT
SCALE 1"=100'
BALTIMORE CO., MD
DEC. 15th, 1987
PUBLIC SERVICES CRG # 87122 (Site Work # 322)
RUNNING No

LEGEND:
- STREET LIGHT
- TRASH PAD
- 25% GRADE
- GOOD WELL
- PERC TEST
- SOIL LINE
- WELL AREA

NOTE: PARCEL "A" TO BECOME LOT 23 PART OF LAWRENCE FORWOOD PROPERTY.

OWNERS:
LOT 21 - LAWRENCE P. FORWOOD
REISTERSTOWN MD. 21136
3155/300 - 2645/161 #08-04-04-6300, 6302
PART OF LOTS 3 1/4 - DENNIS PEDDY ETAL
10829 FALLS ROAD
LUTHERVILLE MARYLAND 21093
7051/0045 # 08-16-015703

OWNER & DEVELOPER:
GEO. V. PALMER % GRAY & SONS
BOWLING MD 21023 # 21-00-000700
#771-4511

GERHOLD, CROSS & ETZEL
REGISTERED PROFESSIONAL LAND SURVEYORS
412 DELAWARE AVENUE
TOWSON MARYLAND 21204
823-4470

REVISION	
DATE	
12-21	Per CRG Comments
2-1	DEPRM COMMENTS
2-9	B.C.C.P.D. (CONST. ROAD, NOTE 30)

"PROFILE PANHANDLE"
LOTS 19,20,21,22&23
SCALE: HORZ 1"=100'
VERT 1"=10'

"PROFILE PANHANDLE"
LOTS 5,4&5
SCALE: HORZ 1"=100'
VERT 1"=10'

PROFILE PANHANDLE
LOTS 6,7,8,9&10
SCALE HORZ 1"=100'
VERT 1"=10'

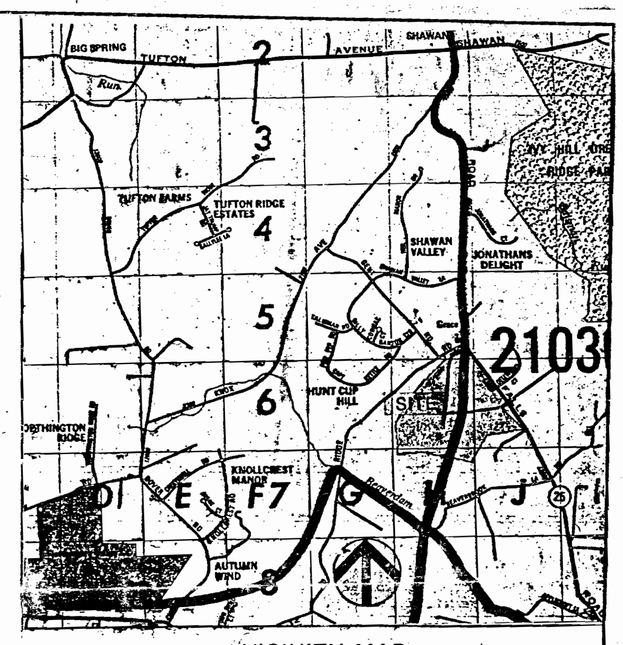
"PROFILE PANHANDLE"
LOT 16
SCALE: HORZ 1"=100'
VERT 1"=10'

Pet. Ex. 25



"SOIL TYPES AND LIMITATIONS"

Soil Series and Symbol		Hydrp Class	With Basements	Without Basements	Street and Parking
Built	(Bua)	D Hydric	Severe: High Water Table; Poor Natural Drainage	Severe: High Water Table; Poor Natural Drainage	Severe: Hi Water Tabl Poor Natur Drainage
Elioak	(ElhB2)	B	Slight	Slight	Moderate: Sl
	(ElhC2)		Moderate: Slope	Moderate: Slope	Severe: Sl
Glenelg	(GcC2)	B	Moderate: Slope	Moderate: Slope	Severe: Sl
Glenville	(GnB)	C	Severe: High Water Table	Moderate: High Water Table	Severe: Hi Water Tabl
Manor	(McB2)	B	Slight	Slight	Moderate: Sl
	(MnD3, Mnc)		Severe: Slope	Severe: Slope	Severe: Sl



VICINITY MAP
SCALE: 1" = 2000'

General Notes

1. Watershed 11; Subwatershed 36, Councilmanic District 3, Census Tract #4083
2. Site Data: Current Zoning and Acreage:
   Net = 77.03 Acres +/- RC-5
   Gross = 78.66 Acres +/- RC-5
   (Includes 33' of ex. Falls Rd R/W).
   Density: Permitted = 78.66 Acres x 0.667 Dwelling/Acre = 52.47 Units
   Proposed = 24 Single Family Units ~~@ 1 TRACT~~
3. All units will be for sale.
4. Parking: Required = 24 Units @ 2 Spaces/Dwelling Unit = 48 Spaces
   Proposed = A minimum of two off-street driveway spaces will be provided for each lot, 8 1/2' x 40'min.
5. Landscape Requirements:
   Required = 24 Units @ 1 tree/unit = 25 trees (24 major deciduous trees)
   Proposed = A minimum of 1 tree/unit provided
6. Existing vegetation consists of hardwood forest and cultivated fields. Only trees for house and panhandle construction will be removed. The development will require by restrictive covenant whereever a maximum 7000 sq ft of clearing per lot shall be permitted.
7. Existing streams and bodies of water are as shown on plan.
8. There is one existing residence, an existing barn and an existing root cellar which will remain on the site. The remaining existing structures will be removed. None of the existing structures are on the Baltimore County Landmark List or the National Register.
9. Open space is not required in this zone.
10. Stormwater management quantity has been waived. Management of water quality will be handled on a lot by lot basis. Letter dated 12-4-86.
11. The limit of the wetlands coincides with the limits of the Bulle (BuA) soils as determined by [illegible] biological assay, endangered species habitats, or hazardous materials on the site.
12. Panhandle drives will have 16 feet wide bituminous paving and will be maintained equally by all parties having rights to their use. Lot 16 will be 12' wide.
13. No construction or grading will occur within the limits of the vegetated stream buffer, with exception of the well to be drilled on Lot 22.
14. Refuse collection pads will provide 16 sq ft per unit served. Pad will provide an unobstructed opening facing the cul-de-sac.
15. The root cellar on Lot 22 meets Section 400 (Baltimore County Zoning Regulations).
16. There will be no access to Falls Rd except from Forwood Ct.
17. Each lot will be a minimum of one acre.
18. All buildings will be 75 ft from centerline of street and 50 ft from other tract boundaries and lot lines.
19. No more than 15% of any lot may be covered by buildings.
20. The existing gas tank and pump is not permitted to remain on Lot 21, it conflicts with zoning policy no. A-16. If the owner/developer does not agree, a public hearing may be requested for an interpretation/justification for it to remain.
21. Grading for lots to be performed by individual lot owners. For grading of the proposed panhandles, see profiles.
22. Panhandle lots subject to declaration and maintenance agreements to be recorded among the Land Records of Baltimore County at the time of Plat Recordation. For panhandle lots; refuse collection, snow removal and road maintenance will be provided to the junction of the panhandle and street R/W line only and not onto the panHandle lot driveway. (Refuse to be collected by Baltimore County). The proposed paving sections shall be 6 in. CR-6 stone with a 1 in. bituminous concrete surface on all panhandle roads. Widths are shown hereon.
23. All septic systems are a minimum 200 ft from all streams.
24. No further subdivision of the parcel shown hereon will be allowed unless approved by the Baltimore County Planning and Zoning Commission.
25. Where applicable, [illegible] shall be installed in accordance with current regulations or as amended by the Public Service Commission of Maryland regarding underground services.
26. If and when water & sewer facilities become available to the subdivision, connection thereto shall be required by the agency having jurisdiction.
27. No building permit shall be issued for the construction of [illegible] lot shown on the plat until [illegible] Section, has been located on the site of [illegible]
28. In accordance with Sec. 22-29 of the Development Regulations, the Mitigative Measures taken to protect the soils in this development which have moderate to severe limitations is to rove all building envelope out of the Hydric Soil areas and to place a 20 ft building setback off the 15% slopes. In addition, the developer will place all areas currently cultivated, in a grass cover.
29. A letter to the Zoning Commissioner has been written to justify the barn on Lot 21 as a farm use. In the event the Commissioner does not agree, a variance for an accessory building, will be filed for.

BALTIMORE COUNTY MD.
COUNTY REVIEW GROUP
12-4-86 This Plan Was Reviewed By The CRG On [illegible] With The Following Action Taken
REVISED PLAN APPROVED
AMENDED 12/15
Plan Approved DPW Robert W. Crosby 5-20-88
Plan Approved OPZ Lenore Lewis
Approval Expiration Date 11-21-91
Plan Disapproved
Continued Revised
Plan Referred To Plan. Bd.
C.R.G. PLAN

VIII-472

LEGEND:
- Street Light
- Trash Pad
- 25% Grade
- Good Well
- Failed Perc Test
- Good Perc Test
- Dry Hole
- Soil Line

"FORWOOD PROPERTY"
6th ELECTION DISTRICT — BALTIMORE CO., MD
SCALE 1"=100 — DEC 15th, 1987
PUBLIC SERVICES C.R.G. # 87-422 (see also # 88-122)
RANNING No.

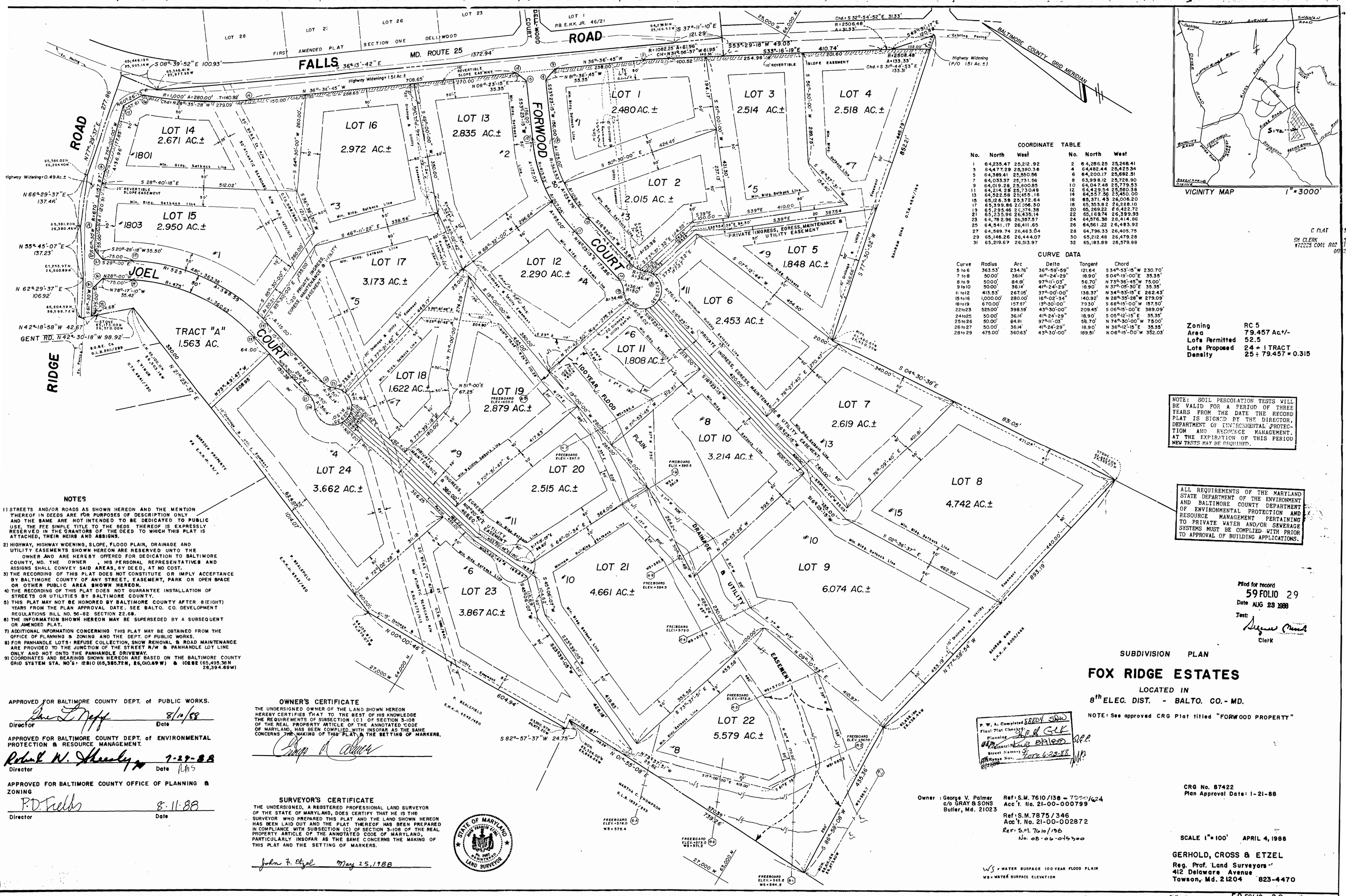
OWNERS:
LOT 21 - LAWRENCE P. FORWOOD
RE: STE STOWN MD. 21136
3185/539 - 2645/161 FOR: 04-04-88 0.5302
PART OF LOTS 3 1/4 - DENNIS PEGGY ETAL
10820 FALLS ROAD
LUTHERVILLE MARYLAND 21093

OWNER / DEVELOPER:
GEORGE PALMER & GRAY & SONS
BUILT MD 21023 # 21-00-000 7300

GERHOLD, CROSS & ET
REGISTERED PROFESSIONAL
412 DELAWARE AVENUE
TOWSON MARYLAND
823

REVISI
DATE

"PROFILE PANHANDLE"
"PROFILE PANHANDLE"



No.	North	West	No.	North	West
1	64,235.47	25,212.92	2	64,286.25	25,248.41
3	64,477.29	25,390.36	4	64,482.44	25,425.34
5	64,389.41	25,550.56	6	64,200.17	25,682.51
7	64,033.37	25,731.56	8	63,998.12	25,728.90
9	64,019.28	25,800.85	10	64,047.48	25,779.53
11	64,214.28	25,730.48	12	64,429.54	25,580.38
13	64,522.58	25,455.16	14	64,557.86	25,450.00
15	65,126.38	25,572.64	16	65,371.43	26,006.20
17	65,399.86	26,056.30	18	65,353.82	26,228.10
19	65,295.46	26,376.38	20	65,269.22	26,422.72
21	65,235.96	26,435.14	22	65,169.74	26,599.93
23	64,782.96	26,357.57	24	64,576.38	26,414.86
25	64,541.17	26,411.65	26	64,561.22	26,483.92
27	64,589.74	26,463.04	28	64,796.33	26,405.75
29	65,146.26	26,444.07	30	65,212.48	26,479.28
31	65,219.67	26,513.97	32	65,183.89	26,579.88

Curve	Radius	Arc	Delta	Tangent	Chord
5 to 6	363.53'	234.76'	36°-59'-59"	121.64'	S 34°-53'-15"W 230.70'
7 to 8	50.00'	36.14'	41°-24'-29"	18.90'	S 04°-19'-00"E 35.35'
8 to 9	50.00'	84.81'	97°-11'-03"	56.70'	N 73°-36'-45"W 75.00'
9 to 10	50.00'	36.14'	41°-24'-29"	18.90'	N 37°-05'-30"E 35.35'
11 to 12	413.53'	267.05'	37°-00'-00"	138.37'	N 34°-53'-15"E 262.43'
15 to 16	1,000.00'	280.00'	16°-02'-34"	140.92'	N 28°-35'-28"W 279.09'
18 to 19	670.00'	157.87'	13°-30'-00"	79.30'	S 68°-15'-00"W 157.50'
22 to 23	525.00'	398.59'	43°-30'-00"	209.45'	S 06°-15'-00"E 389.09'
24 to 25	50.00'	36.14'	41°-24'-29"	18.90'	S 05°-12'-15"E 35.35'
25 to 26	50.00'	84.81'	97°-11'-03"	58.70'	N 74°-30'-00"W 75.00'
26 to 27	50.00'	36.14'	41°-24'-29"	18.90'	N 36°-12'-15"E 35.35'
28 to 29	475.00'	360.63'	43°-30'-00"	189.51'	N 06°-15'-00"W 352.03'

Zoning	RC 5
Area	79.457 Ac+/-
Lots Permitted	52.5
Lots Proposed	24 + 1 TRACT
Density	25 ÷ 79.457 = 0.315

NOTE: SOIL PERCOLATION TESTS WILL BE VALID FOR A PERIOD OF THREE YEARS FROM THE DATE THE RECORD PLAT IS SIGNED BY THE DIRECTOR, DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT. AT THE EXPIRATION OF THIS PERIOD NEW TESTS MAY BE REQUIRED.

ALL REQUIREMENTS OF THE MARYLAND STATE DEPARTMENT OF THE ENVIRONMENT AND BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT PERTAINING TO PRIVATE WATER AND/OR SEWERAGE SYSTEMS MUST BE COMPLIED WITH PRIOR TO APPROVAL OF BUILDING APPLICATIONS.

NOTES

1) STREETS AND/OR ROADS AS SHOWN HEREON AND THE MENTION THEREOF IN DEEDS ARE FOR PURPOSES OF DESCRIPTION ONLY AND THE SAME ARE NOT INTENDED TO BE DEDICATED TO PUBLIC USE, THE FEE SIMPLE TITLE TO THE BEDS THEREOF IS EXPRESSLY RESERVED IN THE GRANTORS OF THE DEED TO WHICH THIS PLAT IS ATTACHED, THEIR HEIRS AND ASSIGNS.
2) HIGHWAY, HIGHWAY WIDENING, SLOPE, FLOOD PLAIN, DRAINAGE AND UTILITY EASEMENTS SHOWN HEREON ARE RESERVED UNTO THE OWNER AND ARE HEREBY OFFERED FOR DEDICATION TO BALTIMORE COUNTY, MD. THE OWNER , HIS PERSONAL REPRESENTATIVES AND ASSIGNS SHALL CONVEY SAID AREAS, BY DEED, AT NO COST.
3) THE RECORDING OF THIS PLAT DOES NOT CONSTITUTE OR IMPLY ACCEPTANCE BY BALTIMORE COUNTY OF ANY STREET, EASEMENT, PARK OR OPEN SPACE OR OTHER PUBLIC AREA SHOWN HEREON.
4) THE RECORDING OF THIS PLAT DOES NOT GUARANTEE INSTALLATION OF STREETS OR UTILITIES BY BALTIMORE COUNTY.
5) THIS PLAT MAY NOT BE HONORED BY BALTIMORE COUNTY AFTER 8(EIGHT) YEARS FROM THE PLAN APPROVAL DATE. SEE BALTO. CO. DEVELOPMENT REGULATIONS BILL NO. 56-82 SECTION 22.68.
6) THE INFORMATION SHOWN HEREON MAY BE SUPERSEDED BY A SUBSEQUENT OR AMENDED PLAT.
7) ADDITIONAL INFORMATION CONCERNING THIS PLAT MAY BE OBTAINED FROM THE OFFICE OF PLANNING & ZONING AND THE DEPT. OF PUBLIC WORKS.
8) FOR PANHANDLE LOTS: REFUSE COLLECTION, SNOW REMOVAL & ROAD MAINTENANCE ARE PROVIDED TO THE JUNCTION OF THE STREET R/W & PANHANDLE LOT LINE ONLY AND NOT ONTO THE PANHANDLE DRIVEWAY.
9) COORDINATES AND BEARINGS SHOWN HEREON ARE BASED ON THE BALTIMORE COUNTY GRID SYSTEM STA. NO'S: 12810 (65,385.72N, 26,010.69W) & 10282 (65,495.38N 26,394.69W)

APPROVED FOR BALTIMORE COUNTY DEPT. of PUBLIC WORKS.
Director — Date 8/10/88

APPROVED FOR BALTIMORE COUNTY DEPT. of ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT.
Director — Date 7-29-88

APPROVED FOR BALTIMORE COUNTY OFFICE OF PLANNING & ZONING
P.D. Fields — Director — Date 8.11.88

OWNER'S CERTIFICATE

THE UNDERSIGNED OWNER OF THE LAND SHOWN HEREON HEREBY CERTIFIES THAT TO THE BEST OF HIS KNOWLEDGE THE REQUIREMENTS OF SUBSECTION (C) OF SECTION 3-108 OF THE REAL PROPERTY ARTICLE OF THE ANNOTATED CODE OF MARYLAND, HAS BEEN COMPLIED WITH INSOFAR AS THE SAME CONCERNS THE MAKING OF THIS PLAT & THE SETTING OF MARKERS.

SURVEYOR'S CERTIFICATE

THE UNDERSIGNED, A REGISTERED PROFESSIONAL LAND SURVEYOR OF THE STATE OF MARYLAND, DOES CERTIFY THAT HE IS THE SURVEYOR WHO PREPARED THIS PLAT AND THE LAND SHOWN HEREON HAS BEEN LAID OUT AND THE PLAT THEREOF HAS BEEN PREPARED IN COMPLIANCE WITH SUBSECTION (C) OF SECTION 3-108 OF THE REAL PROPERTY ARTICLE OF THE ANNOTATED CODE OF MARYLAND, PARTICULARLY INSOFAR AS THE SAME CONCERNS THE MAKING OF THIS PLAT AND THE SETTING OF MARKERS.

John F. Etzel May 25, 1988

STATE OF MARYLAND — JOHN FRANCIS ETZEL — No. 7997 — REGISTERED LAND SURVEYOR

Filed for record
59 FOLIO 29
Date AUG 23 1988
Test:
Clerk

SUBDIVISION PLAN

FOX RIDGE ESTATES

LOCATED IN
8th ELEC. DIST. - BALTO. CO. - MD.

NOTE: See approved CRG Plat titled "FORWOOD PROPERTY"

P. W. As Completed 88804 SDW
Final Plat Checked GLE
Planning
Transcribed 8/19/88
Street Names
House Nos. Date 6-23-88

Owner : George V. Palmer
c/o GRAY & SONS
Butler, Md. 21023

Ref: S.M. 7610/138 - 7959/624
Acc't. No. 21-00-000799
Ref: S.M. 7875/346
Acc't. No. 21-00-002872
Ref: S.M. 7610/138
No. 08-06-045300

WS = WATER SURFACE 100 YEAR FLOOD PLAIN
WS = WATER SURFACE ELEVATION

CRG No. 87422
Plan Approval Date: 1-21-88

SCALE 1"= 100' APRIL 4, 1988

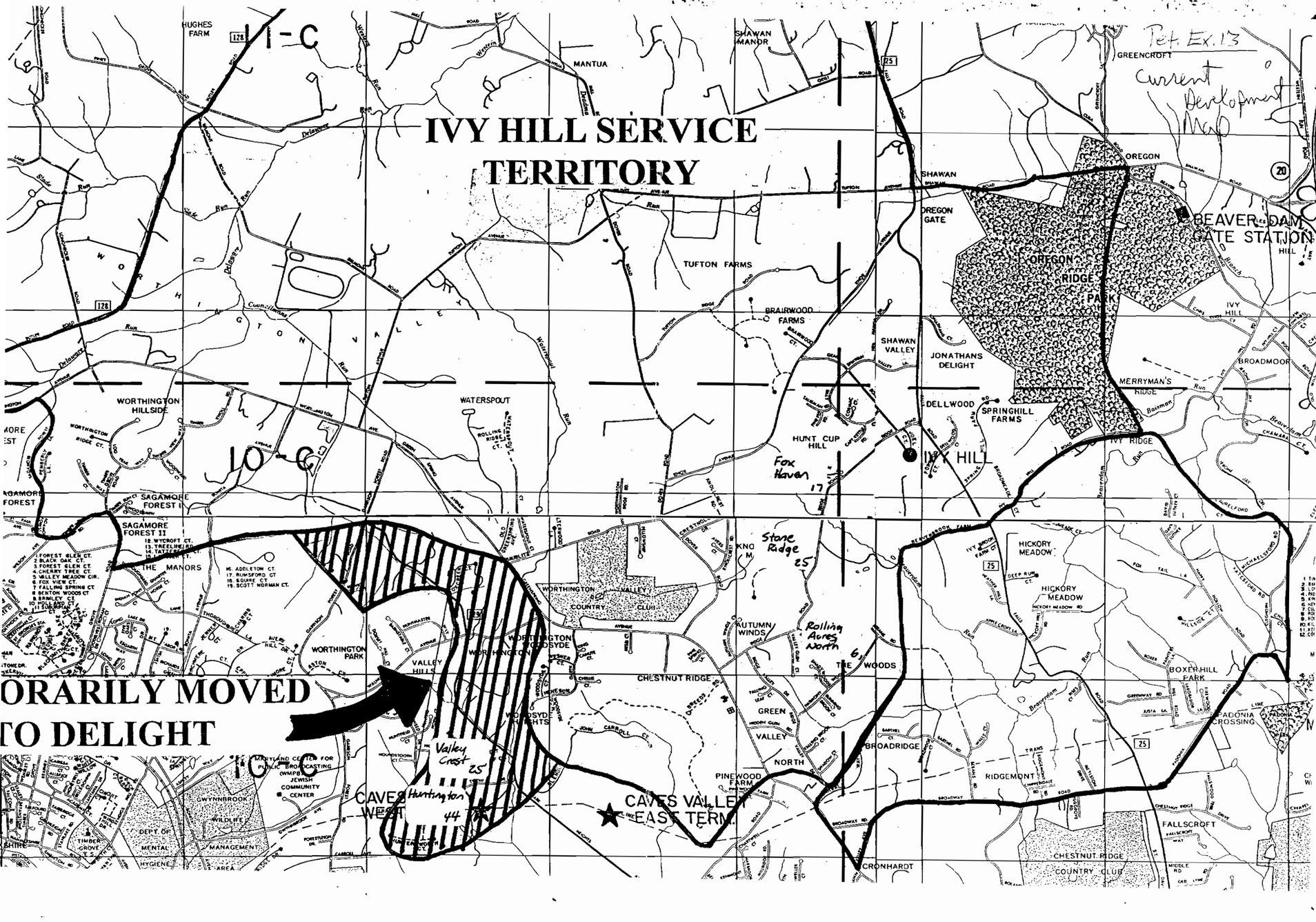
GERHOLD, CROSS & ETZEL
Reg. Prof. Land Surveyors
412 Delaware Avenue
Towson, Md. 21204 823-4470

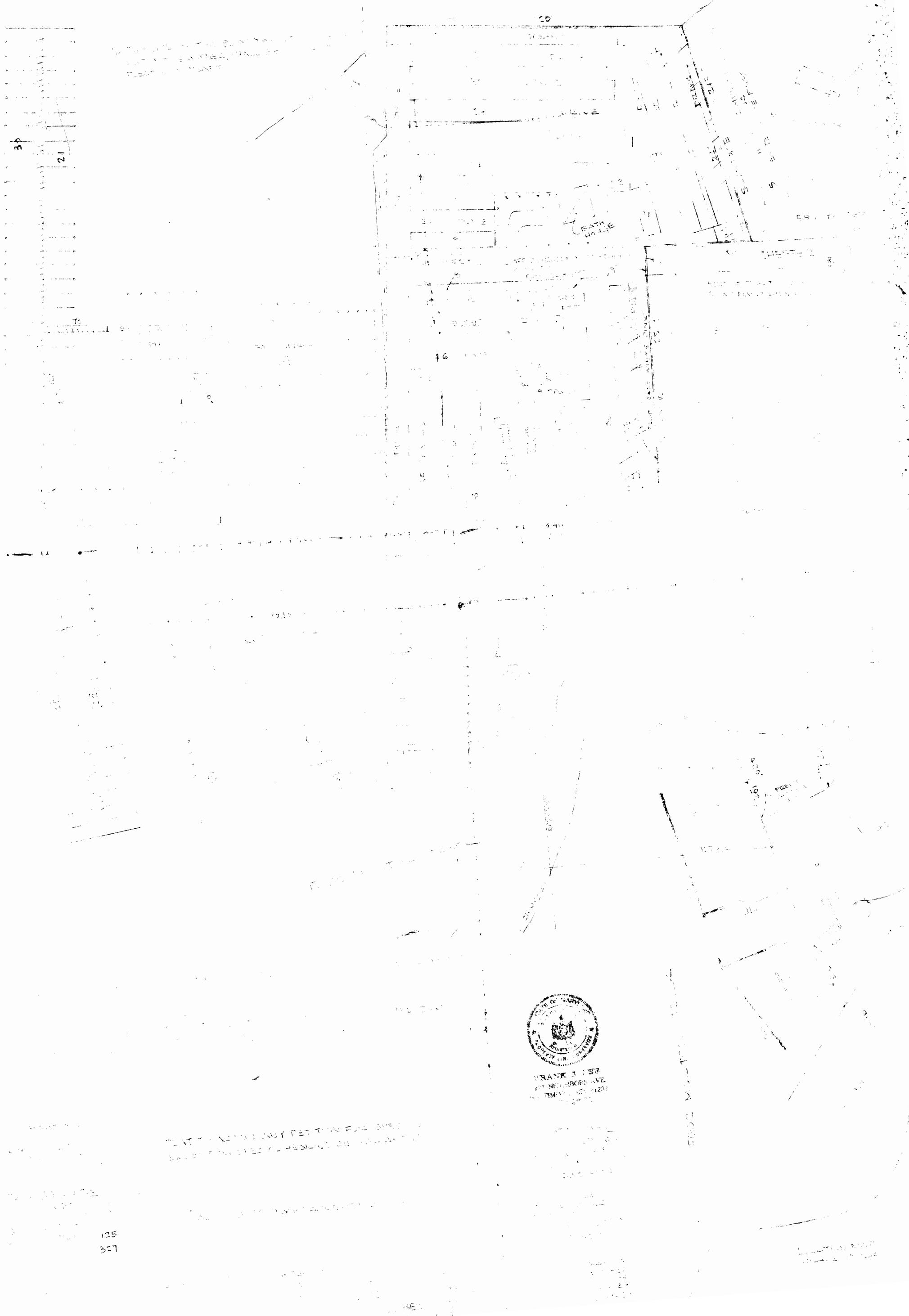
59-29 59 FOLIO 29 Proof Sht #2

IVY HILL SERVICE TERRITORY

Pet. Ex. 13
Current Development Map

ORARILY MOVED
TO DELIGHT




20
16
DEATH HOUSE
125
367





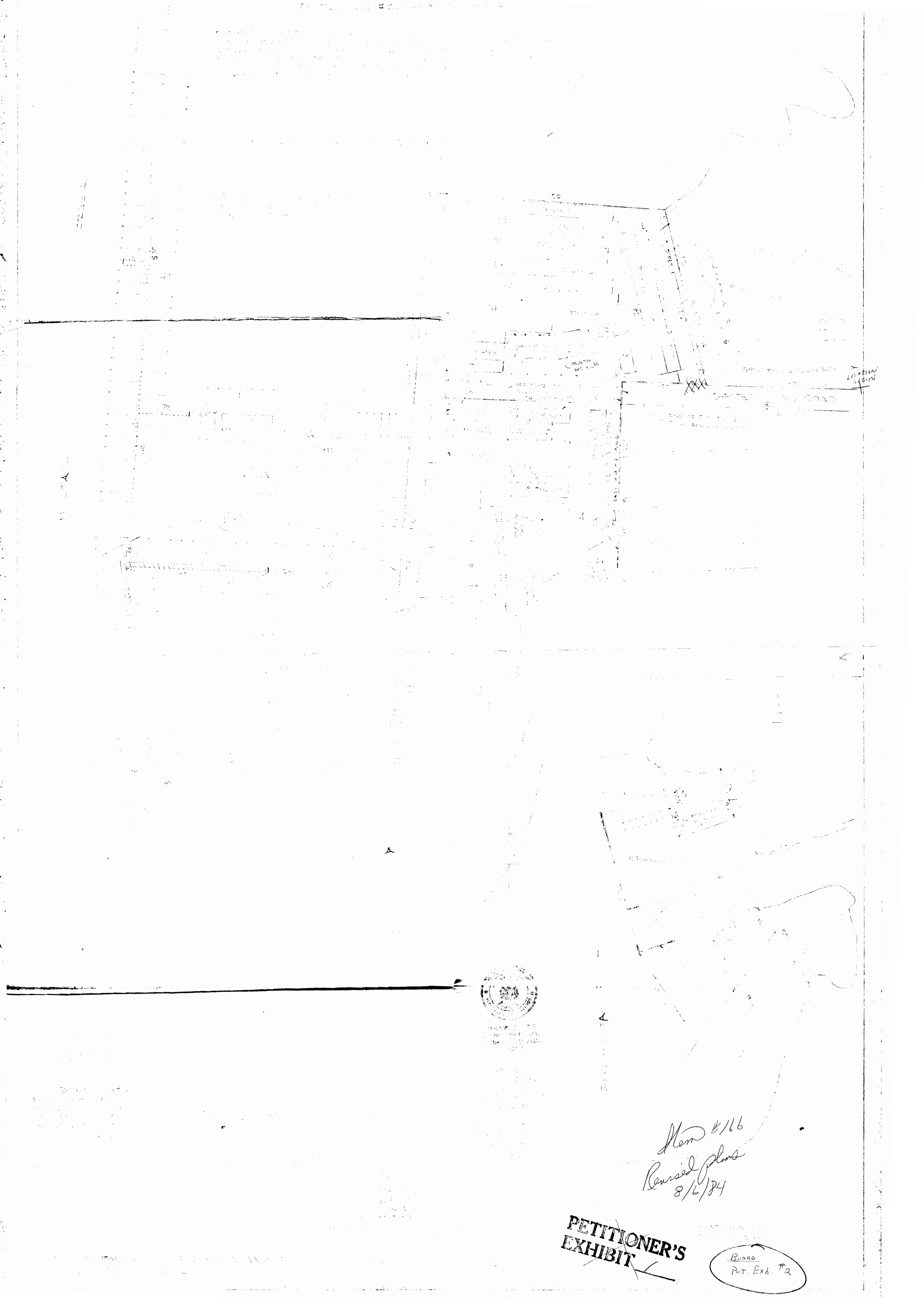
FRANK S. LEE
277 NEIGHBORS AVE.
BALTIMORE, MD. 21237
687-6922

ATTORNEY
ROBERT ROMADKA
809 EASTERN BLVD.
ESSEX, MD. 21221
686-8274

OWNER
[illegible]
[illegible] CHESTER ROAD
[illegible], MD. 21220
335-8002

COMPANY PETITION FOR VARIANCE FOR PIER EXTENSION IN LIEU OF THE REQ. 300 FEET.

Bet Eh #1

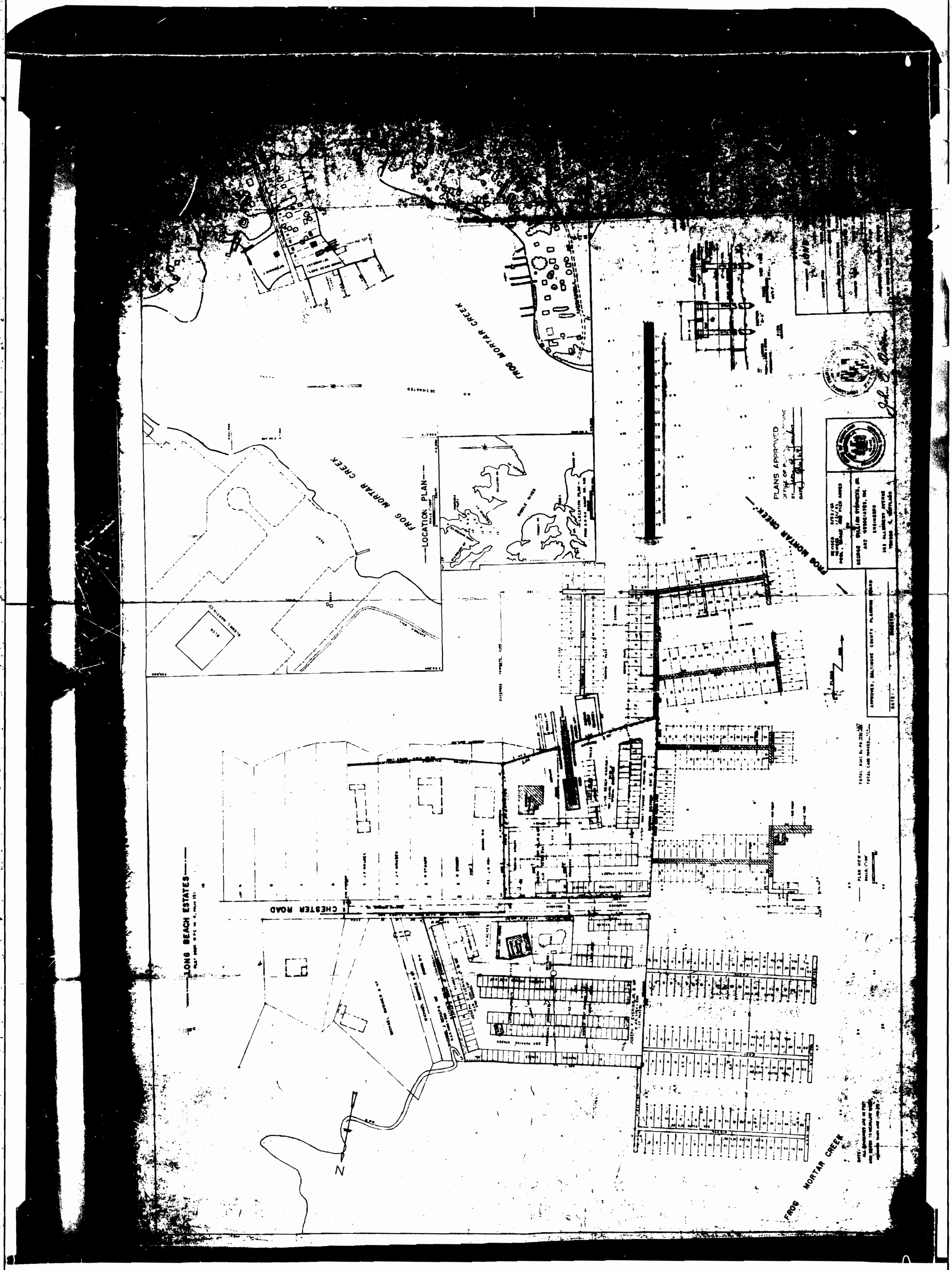


Item #16
Revised Plans
8/6/84

PETITIONER'S EXHIBIT

BOARD
PET. EXH. #2

PET. EX. #2 & #15


FROG MORTAR CREEK
LOCATION PLAN
FROG MORTAR CREEK
PLANS APPROVED
FROG MORTAR CREEK
CHESTER ROAD
LONG BEACH ESTATES
N
FROG MORTAR CREEK

Subpoenaed Records for Case No. 94-452-XA BGE Ivy Hill Substation:

1. A current Copy of BGE system operating diagrams (one line diagrams).

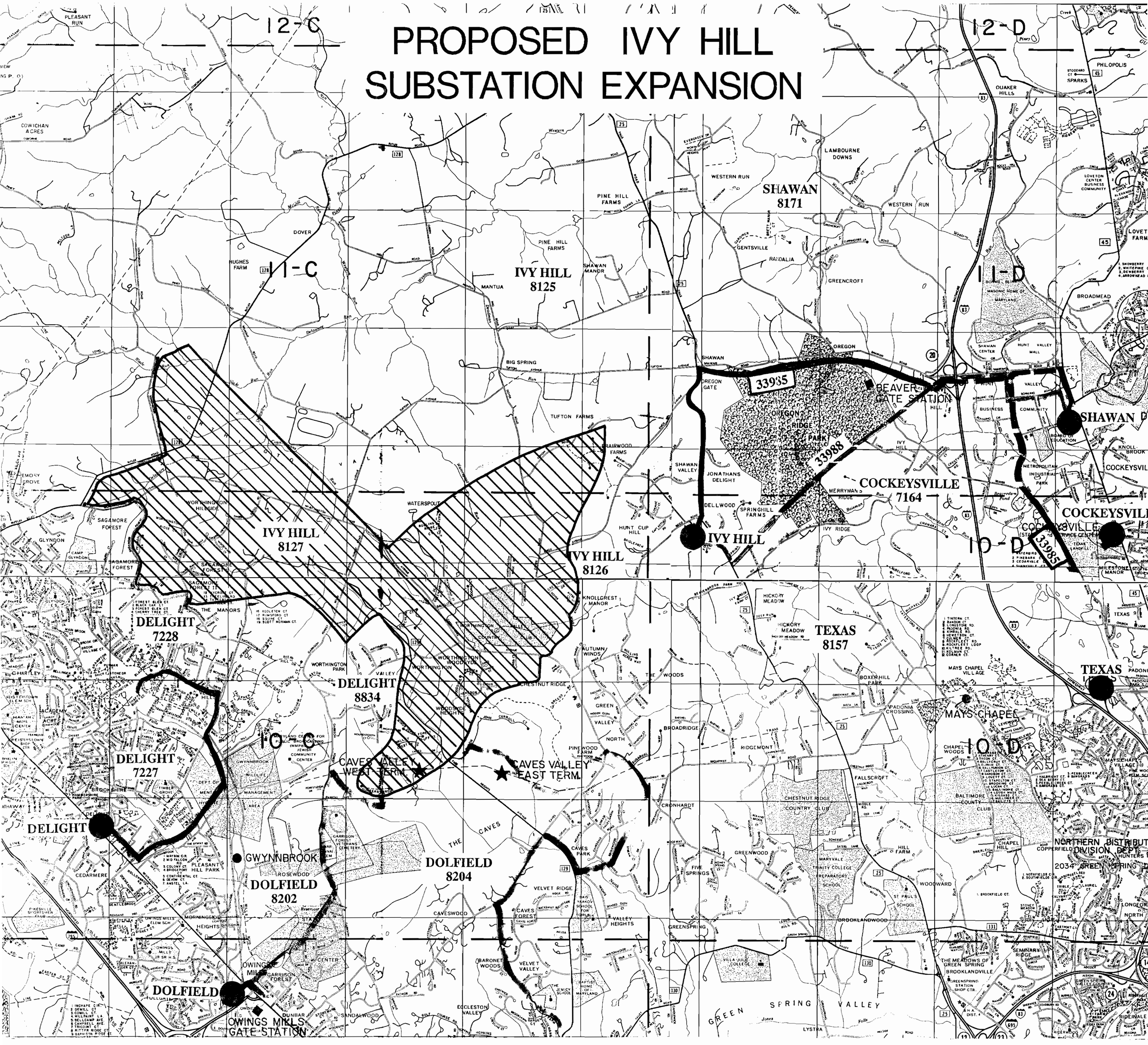
2. A set of plans for the proposed expansion of Ivy Hill Substation.

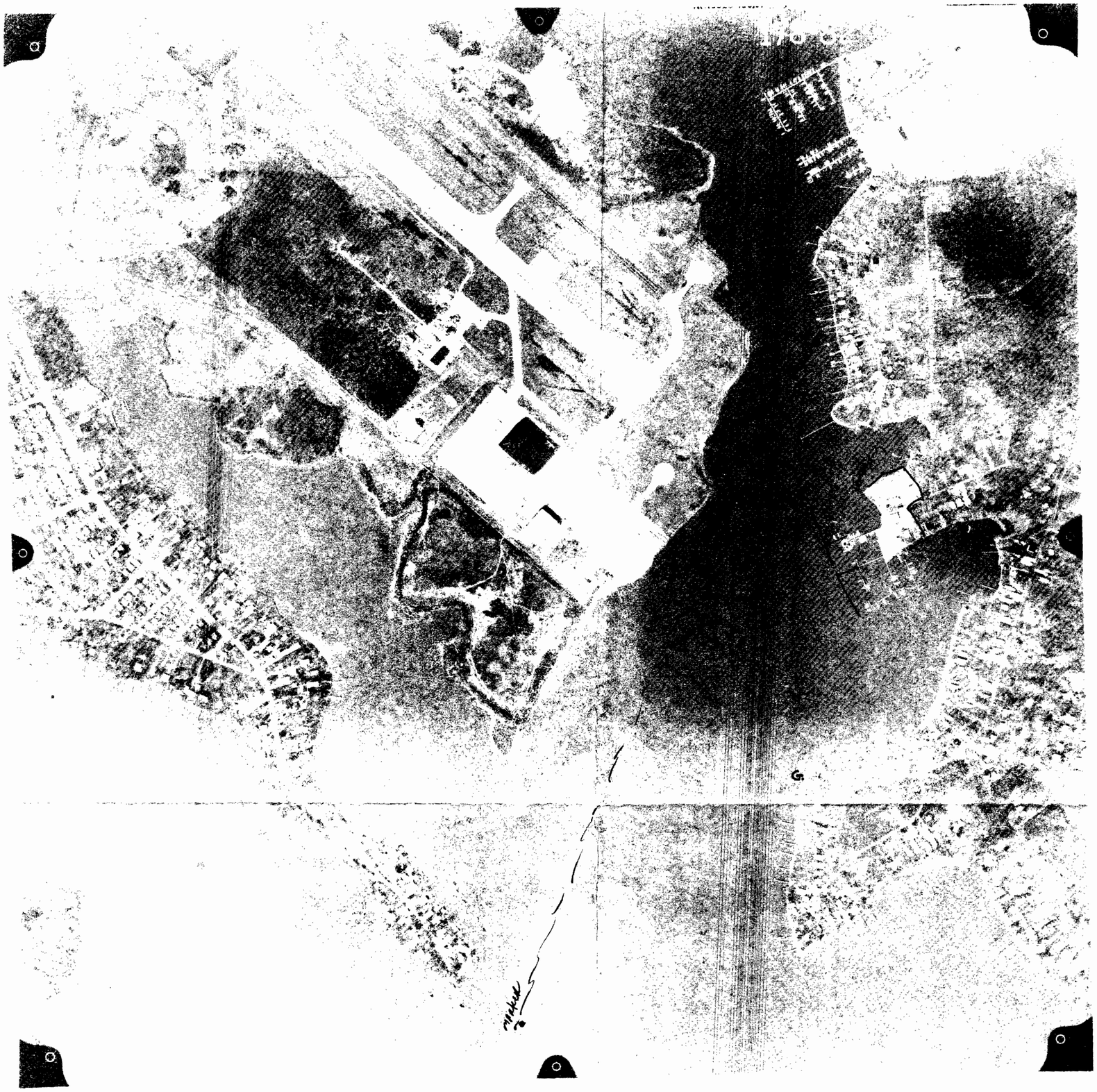
3. A system map showing the configuration of distribution circuits currently fed from Ivy Hill and the substations immediately surrounding it.

4. A system map showing the configuration of the distribution circuits to be fed from Ivy Hill and the substations immediately surrounding it, once the expansion has been completed.

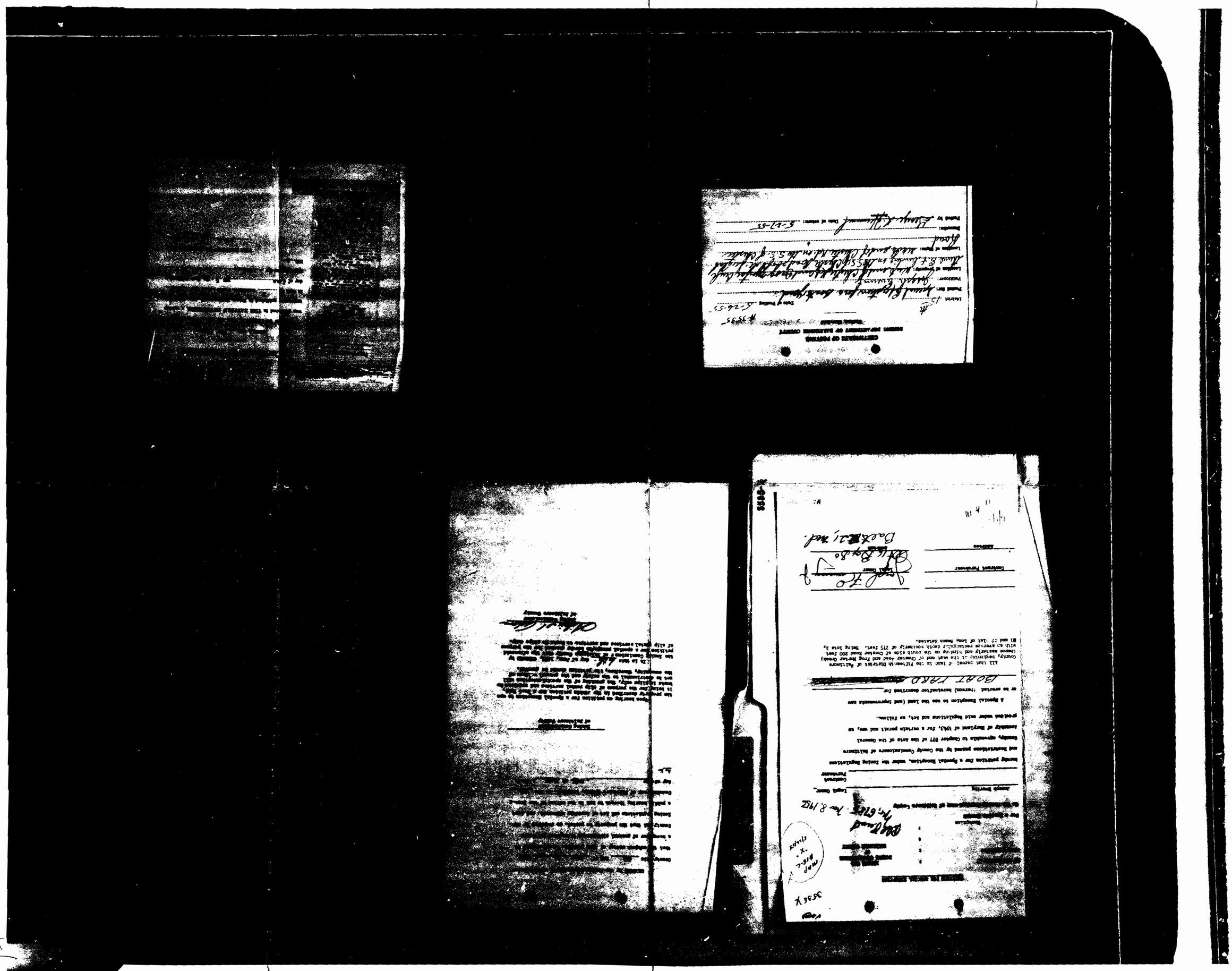
5. The substation load information for the Ivy Hill substation for the last three years.

PROPOSED IVY HILL SUBSTATION EXPANSION





Ref No
10





BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
PHOTOGRAPHIC MAP

PREPARED BY AIR PHOTOGRAPHICS, INC.
MARTINSBURG, W.V. 25401

SCALE	LOCATION	SHEET
1" = 200'±	BOWLEYS QUARTERS	N.E. 2-K

DATE OF PHOTOGRAPHY
JANUARY



BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
PHOTOGRAPHIC MAP

SCALE	LOCATION	SHEET
1" = 200' ±	BOWLEYS QUARTERS	N.E. 2-K
DATE OF PHOTOGRAPHY JANUARY		

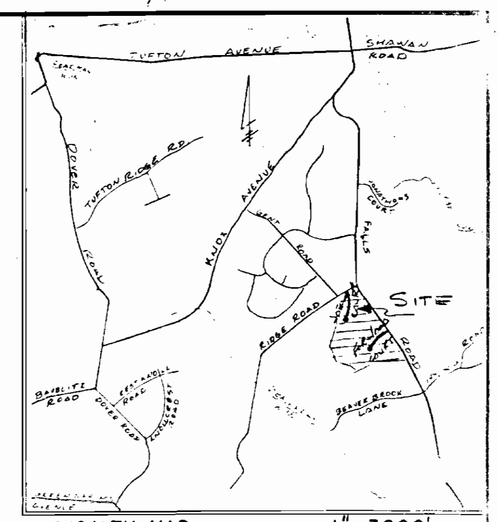
PREPARED BY AIR PHOTOGRAPHICS, INC.
MARTINSBURG, W.V. 25401

FINAL DEVELOPMENT PLAN
"FORWOOD PROPERTY"

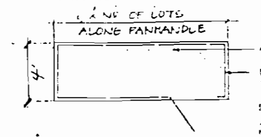
LOCATED IN
8th ELEC. DIST. - BALTO. CO. - MD.
SCALE 1"=100' MARCH 22nd 1988
C.R.G.#87422 (SEE PRIOR # 86222)
AMENDED 1-21-88

REVISED - 5-2-88

VICINITY MAP 1"=3000'



trash & mail pad detail
NO SCALE



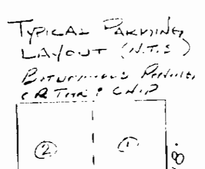
- 4" CONCRETE PAD
- 6'x6' VERTICAL BOARDS, TREATED OR PAINTED MIN. 5'-6" HIGH, W/GATE, ONE SIDE

TRASH & MAIL PADS SHALL HAVE EVERGREEN SCREEN PLANTING AS PER THE APPROVED FINAL LANDSCAPE PLAN.

* INDICATES LOCATION OF TRASH & MAIL PAD ON PLAN

NOTE:
THE DEVELOPER IS TO HAVE EVERY REASONABLE EFFORT TO PROVIDE MAIL & REFUSE SERVICES USING PANHANDLE DRIVES IF EFFORT FAILS, TRASH & MAIL PAD AREAS WILL BE PROVIDED. IT IS UP TO PROVIDE MAIL & TRASH COLLECTION, SNOW REMOVAL, MAIL DELIVERY & REFUSE COLLECTION WILL NOT EXTEND TO THE RIGHT OF WAY ONLY & NOT OUTO ALTERNATE DRIVE.

TYPICAL PARKING LAYOUT (NTS)
(PER ZONING REGULATIONS SECTION 409.4.C.1.2)

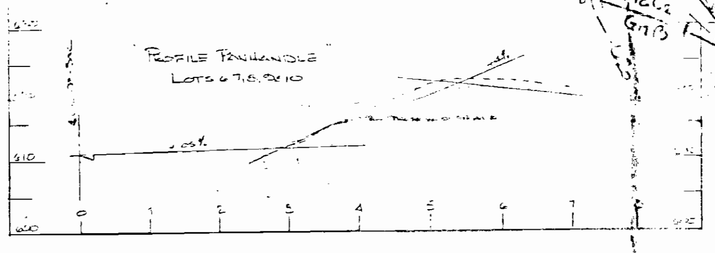


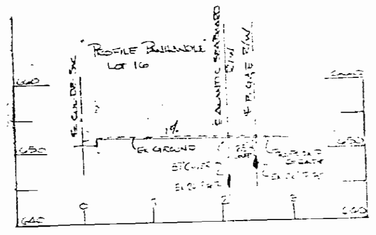
General Notes

1. Tax Map 31, Parcel 180, Tax Sheet 43, Subwatershed 36, Councilmanic District 3, Census Tract 4033
2. Current Zoning and Acreage:
   - RC-5 = 77.03 Acres +/-
   - RC-4 = 78.66 Acres +/-
   - Gross = 78.66 Acres +/- (Includes 33' of ex. Falls Rd R/W).
3. Permitted - 78.66 Acres x 0.65 Dwelling/Acre = 52.47 Units
   Proposed - 52 Single Family Units + 7 Panhandle Lots = 59 Units
4. 7 Units will be for sale.
5. Density: Required - 26 units @ 2 Spaces/Dwelling Unit = 52 Spaces
   Proposed - A minimum of two off-street driveway spaces to be provided for each lot.8 1/2' x 18' min.
6. Landscape Requirements:
   Required - 26 units @ 1 tree/unit = 26 trees (24 major deciduous trees)
   Proposed - A minimum of 1 tree/unit provided
7. Existing vegetation consists of hardwood forest and cultivated fields. Only trees for house and panhandle construction will be removed. The developer will require a restrictive covenant wherein a maximum 7000 sq ft of forest per lot shall be approved.
8. Existing streams and bodies of water are as shown on plan.
9. Where existing residences, or existing barn and swimming pool cellar which will be retained on the site, encompass existing structures will be removed. None of the existing structures are on a Baltimore County Historic List or the National Register.
10. A waiver is not required for this zone.
11. Stormwater management quantity has been waived. Management of water quality will be handled on a lot by lot basis. Letter dated 12-4-86.
12. The limit of the wetlands coincides with the limits of the "RC4" soils as delineated on the soil survey maps. There are no known historical sites, archeological sites, endangered species, habitats, or hazardous materials on the site.
13. The private drives will have 16 foot wide bituminous pavement and shall be maintained equally by all parties having access to their use.
14. No construction or grading will occur within the limits of the vegetated stream buffer.
15. Refuse collection pads will provide 16 sq ft per unit (min. 4'x4'). Pad will provide an unobstructed opening along the cul-de-sac.
16. Each pool cellar on Lot 27 meets Section 400 (Baltimore County Zoning Regulations).
17. Each lot will be a minimum of one acre.
18. All buildings will be 75 ft from centerline of street and 50 ft from other tract boundaries and lot lines.
19. No more than 15% of any lot may be covered by buildings
20. The existing gas tank and pump is to be removed.
21. Grading for lots to be performed by individual lot owners. For grading of the panhandles, see profiles.
22. Panhandle lots subject to declaration and maintenance agreements to be recorded among the Land Records of Baltimore County at the time of Plat Recordation. For panhandle lots: refuse collection, snow removal and road maintenance will be provided to the junction of the panhandle and street R/W line only and not onto the panhandle lot driveway. (Refuse to be collected by Baltimore County). The proposed paving sections shall be 8 in. CR-6 stone with a 1½ in. bituminous concrete surface on all panhandle roads. Widths are shown hereon.
23. All septic systems are a minimum 20' ft from all streams.
24. No further subdivision of the parcel shown hereon will be allowed unless approved by the Baltimore County Planning and Zoning Commission.
25. Where applicable, utilities shall be installed in accordance with current regulations as established by the Public Service Commission of Maryland regarding underground services.
26. If and when water & sewer facilities become available to the subdivision, connection thereto shall be required by the agency having jurisdiction.
27. No building permit shall be issued for the construction of a dwelling on a lot shown on the final plat until a well approved by applicable State and County Agencies having jurisdiction, has been located on the site of any lot.
28. In accordance with Sec. 22-26 of the Development Regulations, the Mitigative Measures taken to protect the soils in this development which have moderate to severe limitations is to move all building envelopes out of the Hydric Soil areas and to place a 30 ft building setback off the 25% slopes. In addition, the developer will place all areas currently cultivated, in a grass cover.
29. Accessory structures, fences and projections into yard cannot be located in flood plain areas or hydric soils.
30. This development plan is approved by the Zoning Commissioner based on his interpretation of the Zoning Regulations, that it complies with present policy, density and bulk controls as they are delineated in the Regulations. Any part or parcel of this tract that has been utilized for density to support dwellings shown thereon shall not be further divided, subdivided or developed for additional dwellings or any purpose other than that indicated presently on said plan. Utilization will have occurred when a dwelling is constructed and transferred for the purpose of occupancy.
31. The Development Plan complies with the C.R.G. Plan and all C.R.G. comments.
32. ** indicates flexibility in fronting the dwelling, change in direction requires an amendment to the Development Plan prior to any permit approval. Contact current Planning Office prior to any amendment application.
33. A LANDSCAPE PLAN MUST BE APPROVED BY THE OFFICE OF PLANNING PRIOR TO THE ISSUANCE OF A BUILDING PERMIT.
34. ENVELOPES SHOWN HEREON ARE FOR THE LOCATION OF ALL PRINCIPAL BUILDINGS ONLY, ACCESSORY STRUCTURES, FENCES & PROJECTIONS INTO YARDS MAY BE CONSTRUCTED OUTSIDE THE ENVELOPE BUT MUST COMPLY WITH SEC. 400.1 OF THE B.C.Z.R.
35. DRIVEWAY CURB CUT LOCATION TO BE DETERMINED AFTER MODEL SELECTION BUT BEFORE INSTALLATION OF STREET CURBS.

"SOIL TYPES AND LIMITATIONS"

Soil	Hydro Class	With Basements	Without Basements	Street and Parking
(BaA)	D Hydric	Severe: High Water Table; Poor Natural Drainage	Severe: High Water Table; Poor Natural Drainage	Severe: Hi Water Tabl Poor Natur Drainage
(GnB2)	B	Slight	Slight	Moderate: Si
(GnC3)		Moderate: Slope	Moderate: Slope	Severe: Si
(GoC2)	B	Moderate: Slope	Moderate: Slope	Severe: Si
(MeB2)	C	Severe: High Water Table	Moderate: High Water Table	Severe: Hi Water Tabl
(MeC2)	B	Slight	Slight	Moderate: Si
(MeD2), (MeE)		Severe: Slope	Severe: Slope	Severe: Si





LEGEND:
- 25% GRADE
- ST. LIGHT
- TRASH PAD
- SEPTIC AREA
- WELL AREA
- EXISTING WELL

ENGINEER:
GERHOLD, CROSS & ETZEL
Registered Professional Land Surveyors
412 Delaware Avenue
TOWSON, MARYLAND 21204
#633-4170

OWNER & DEVELOPER:
GEO. V. PALMER
SYKESVILLE, MD. 21023 #781-4311
TAX # 21-00-000-795

OWNER LOT 21
LAWRENCE P. FORWOOD
REISTERSTOWN, MD 21136

Office of Planning and Zoning
Approved by:

Director of Planning — Date 5/27/88

Zoning Commissioner — Date

(SHEET NW 18-E)

R.C. 5

STA ZINK (MBCS & M)
92-381-A

KNOX AVE

MANOR DR

JONATHAN CT

GENT

GAS PIPELINE

25

LALIEWAY RD

MILL

BARON

STA GENT (USC&GS)

GRACE CHURCH

RIDGE RD

92-381-AA (G.P.)

W-28,500

W-27,000

W-25,500

W-24,000

N-68,000

N-67,000

N-66,000

N 65,000

N 64,000

(SHEET NW 16-E)

1988 COMPREHENSIVE ZONING MAP
Adopted by the Baltimore County Council
Oct. 17, 1988
(Bill Nos. 144-88, 145-88, 146-88, 147-88, 148-88, 149-88, 150-88)

Chairman, County Council

N REVISED IN SELECTED AREAS.
PILED BY PHOTOGRAMMETRIC METHODS
INC. BALTIMORE, MD. 21210

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
OFFICIAL ZONING MAP

1992 COMPREHENSIVE ZONING MAP
Adopted by the Baltimore County Council
Oct. 15, 1992
(Bill Nos. 183-92, 184-92, 185-92, 186-92, 187-92, 188-92, 189-92)

William A. Howard IV
Chairman, County Council

SCALE	LOCATION	SHEET
1" = 200' ±	GRACE CHURCH	N.W. 17-E
DATE OF PHOTOGRAPHY JANUARY 1986		

94-76
IV-C-1
A30

P. 228 : LOT A2
RAYMOND JAY FISHER
RAYMOND H. FISHER, ET. AL.
1822 RIDGE ROAD
REISTERSTOWN, MD. 21136-5600
TAX ACCOUNT : 08-0819035868
LIBER / FOLIO : 5426 / 87
ZONED R.C.5

P. 228 : LOT A1
RONALD P. HANLEY
ROSEMARY HANLEY
1820 RIDGE ROAD
REISTERSTOWN, MD. 21136-5600
TAX ACCOUNT : 08-0819035867
LIBER / FOLIO : 6059 / 411
ZONED R.C.5

P. 51
GRACE METHODIST CHURCH, INC.
FALLS ROAD
COCKEYSVILLE, MD. 21030
TAX ACCOUNT : 08-0807060575
2.940 ACRES
LIBER / FOLIO : 2335 / 99
ZONED R.C.5

EX. DRIVEWAY

GENT ROAD

RIDGE ROAD

EX. PAVING

TRACT B
0.9224 AC.

TRACT C
0.4081 AC.

EX. WOODS

EX. GRAVEL DRIVEWAY

38 EMERALD GREEN ARBORVITAE AT 8' O.C.

16' WIDE GATE

MIN.1 BLDG

PROPOSED PARK & TURN AREA

EXISTING SUBSTATION (TO BE REMOVED)

EX. WELL

FUTURE CAP. STR.

PROPOSED FENCE

EX. GRAVEL PARKING AREA

12 WHITE PINE AT 15' O.C.

P. 386
DOROTHY L. MARSDEN
1823 RIDGE ROAD
REISTERSTOWN, MD. 21136-5617
TAX ACCOUNT : 08-1900006034
2.759 ACRES
ZONED R.C.5

EX. HOUSE & CONC. WALK (TO BE REMOVED)

EX. ANTENNA MAST

EX. SHED

EX. POOL & DECK (TO BE REMOVED)

PROP. ROADWAY

EX. EARTH DRIVEWAY

EX. SEPTIC CLEAN OUT

EX. SHEDS (TO BE REMOVED)

7 WHITE PINE AT 15' O.C.

5 NORWAY SPRUCE AT 15' O.C.

PROPOSED STORM WATER MANAGEMENT AREA

NOTE: LIMIT OF WOODS SHOWN REFLECTS AFTER GRADING CONDITION.

9 WHITE PINE AT 15' O.C.

3 NORWAY SPRUCE AT 15' O.C.

5 WHITE PINE AT 15' O.C.

EX. CURB

EX. DRIVEWAY

WIDENING STRIP

NOTE : 50 FOOT LOT LINE SETBACK RENDERS BUILDING ENVELOPE FOR PARCEL 247 (TRACT C) VIRTUALLY NONEXISTENT

P. 247
BALTIMORE GAS & ELECTRIC CO.
TAX ACCOUNTING UNIT
P.O. BOX 1475
BALTIMORE, MD. 21203
TAX ACCOUNT : 08-0802002467
LIBER / FOLIO : 2911 / 289
ZONED R.C.5

P. 79 : LOT 15
CARL FOLLO
1 JOEL COURT
REISTERSTOWN, MD. 21136-5643
TAX ACCOUNT : 08-2100008993
2.950 ACRES
LIBER / FOLIO : 8816 / 620
ZONED : R.C.5

P. 338
FREDRICK R. VINUP
ANN L VINUP
1821 RIDGE ROAD
REISTERSTOWN, MD. 21136-5617
TAX ACCOUNT : 08-0822035540
LIBER / FOLIO : 4941 / 720
ZONED : R.C.5

P. 79 : LOT 24
JAMES J. KIRCHNER, JR.
TINA M. KIRCHNER
4 JOEL COURT
REISTERSTOWN, MD. 21136
TAX ACCOUNT : 08-2100009002
3.662 ACRES
LIBER / FOLIO : 9657 / 396
ZONED : R.C.5

TRACT A
1.5628 AC.

10' DRAINAGE & UTILITY EASEMENT

P. 79 : TRACT A
BALTIMORE GAS & ELECTRIC CO.
TAX ACCOUNTING UNIT
P.O. BOX 1475
BALTIMORE, MD. 21203
TAX ACCOUNT : 08-2100029003
LIBER / FOLIO : 8085 / 676
ZONED R.C.5

P. 79 : LOT 16
ROBERT J. RYTTER
CAROL P. RYTTER
3 JOEL COURT
REISTERSTOWN, MD. 21136-5643
TAX ACCOUNT : 08-2100008994
2.972 ACRES
LIBER / FOLIO : 9403 / 619
ZONED : R.C.5

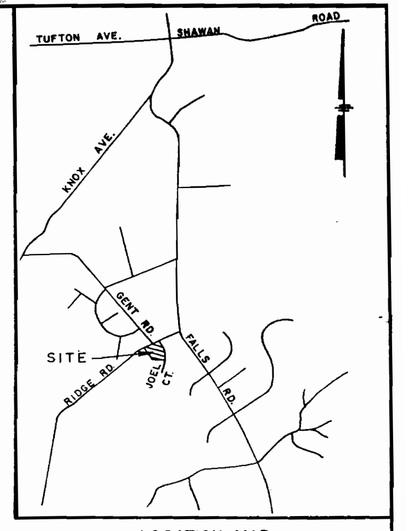
P. 79 : LOT 17
IRA N. BROWN
CYNTHIA M. BROWN
5 JOEL COURT
REISTERSTOWN, MD. 21136-5643
TAX ACCOUNT : 08-2100008995
3.173 ACRES
LIBER / FOLIO : 8858 / 720
ZONED R.C.5

JOEL COURT

EX. DRIVEWAY

Part No 4

LOCATION MAP
SCALE: 1" = 2000'



NOTES:

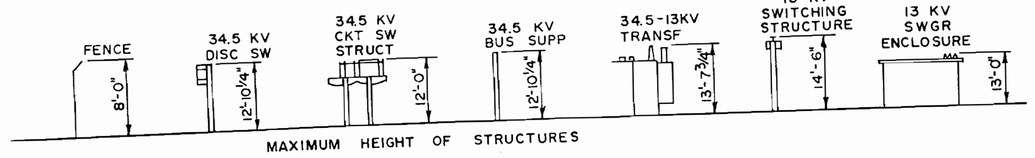
1. IVY HILL SUBSTATION IS AN UNATTENDED STATION AND NO PERMANENT EMPLOYEES ARE TO BE LOCATED ON THE PREMISES. AVERAGE DAILY TRIPS: 1/WEEK.
2. THERE ARE NO EXISTING OR PROPOSED WATER AND SEWER TO THE STATION.
3. FENCE: 8 FT. OVERALL HEIGHT CONSISTING OF 7 FT. OF CHAIN LINK FABRIC AND THREE STRANDS OF BARBED WIRE (TURNED OUT).
4. ROADWAY: COMPACT SUBGRADE TO 95% DENSITY AS DETERMINED BY ASTM 1557-70. INSTALL 8" OF GR-467 CRUSHED STONE BASE IN TWO LIFTS AND COMPACT EACH LIFT WITH A 10 TON ROLLER. INSTALL 2" BITUMINOUS BINDER COURSE (BT BAND). INSTALL 1" BITUMINOUS CONCRETE SURFACE (SN BAND) AS PER MARYLAND STATE HIGHWAY ADMINISTRATION SPECIFICATIONS.
5. AREA WITHIN FENCE TO BE COVERED WITH 4" OF STONE OVER NEW GRADE. STONE SHALL BE GRAY IN COLOR, WITH A LOS ANGELES ABRASION RATING LESS THAN 50% AND GRADATION IN ACCORDANCE WITH MARYLAND STATE HIGHWAY ADMINISTRATION SHA-4.
6. ALL AREAS NOT COVERED BY STONE OR PAVING WILL BE SEEDED WITH GRASS ACCORDING TO MARYLAND S.C.S. AND/OR BALTIMORE COUNTY SPECIFICATIONS.
7. ALL ELECTRIC STRUCTURES ARE FUNCTIONALLY ATTACHED.
8. TOPOGRAPHIC AND BOUNDARY INFORMATION TAKEN FROM SURVEY PERFORMED BY: A S M TECHNOLOGIES, INC.
   2 WEST FORREST AVENUE
   SHREWSBURY, PA. 17361
   717-235-8325
9. EXISTING SEPTIC SYSTEM SHALL BE PURIFIED AND BACKFILLED OR REMOVED AT TIME OF RAZING THE EXISTING HOUSE.
10. EXISTING WELL SHALL BE BACKFILLED BY A LICENSED WELL DRILLER WHO MUST SUBMIT A WELL ABANDONMENT REPORT AT THE TIME OF RAZING THE EXISTING STRUCTURE.
11. PETITION FOR A VARIANCE FROM SECTION 1A04.3.B.3 OF THE BALTIMORE COUNTY ZONING REGULATIONS TO PERMIT STRUCTURES AS CLOSE AS 0 FEET FROM INTERIOR LOT LINES IN LIEU OF THE REQUIRED 50 FOOT BUILDING SETBACK.
12. PETITION FOR A SPECIAL EXCEPTION UNDER THE ZONING REGULATIONS OF BALTIMORE COUNTY TO USE THE HEREIN DESCRIBED PROPERTY FOR AN OUTDOOR ELECTRIC PUBLIC UTILITY SERVICE CENTER (ELECTRIC SUBSTATION) IN A RC5 ZONE PURSUANT TO SECTION 1A04.2.B.11 OF THE BALTIMORE COUNTY ZONING REGULATIONS.

CASE NO. 3760-X — PETITIONER : BALTIMORE GAS & ELECTRIC COMPANY PETITION FOR SPECIAL EXCEPTION TO USE SAID PROPERTY FOR THE CONSTRUCTION OF AN ELECTRICAL TRANSFORMER SUBSTATION. DEPUTY ZONING COMMISSIONER BY ORDER DATED MARCH 14, 1956, GRANTED SPECIAL EXCEPTION REQUEST.

CASE NO. 4535-X — PETITIONER : BALTIMORE GAS & ELECTRIC COMPANY PETITION FOR SPECIAL EXCEPTION FOR WIRELESS TRANSMITTING AND RECIEVING STATION. ZONING COMMISSIONER BY ORDER DATED MARCH 9, 1959, GRANTED SPECIAL EXCEPTION REQUEST.

LEGEND

A = FUTURE 34.5 KV CAPACITOR
B = 34.5 KV DISC SWITCHING STRUCTURE
C = 34.5 KV CIRCUIT SWITCHER
D = 34.5 KV BUS SUPPORT
E = 34.5 KV TRANSFORMER
F = 13 KV BUS SUPPORT
G = 13 KV LOAD BRK. SWITCHING STRUCTURE
H = 13 KV SWITCHGEAR



APPLICANT/OWNER/CONTRACT PURCHASER
BALTIMORE GAS & ELECTRIC COMPANY
SYSTEM ENGINEERING & CONSTRUCTION DEPARTMENT
LEXINGTON & LIBERTY STREETS
1020 G & E BUILDING
BALTIMORE, MD. 21201
C/O MONICA P. McGRADY, P.E.
1-410-234-5294

THIS PROPERTY LOCATED IN THE
6TH ELECTION DISTRICT OF,
3RD COUNCIL DISTRICT
BALTIMORE COUNTY, MARYLAND
ZONED R.C.5
TAX MAP NO. 50
PARCEL NO. 247, 338, & 79 : TRACT A
TOTAL AREA : 2.8933 ACRES
ZONING MAP NO. D-2

Rev	Date	J.O./Est. No	Description	Approved

ENGINEERING
Civil
Elec.
Proj. Engr.
Proj. Mgr.
Prin. Engr.
Supv. Engr.

DESIGN GROUP
Designer
Drawn
checked
Appd.
Date Appd.

PLAT TO ACCOMPANY PETITION FOR ZONING SPECIAL EXCEPTION AND VARIANCES

34.5-13.8 KV SUBSTATION

IVY HILL

BALTIMORE GAS AND ELECTRIC COMPANY
DISTRIBUTION & TRANSMISSION ENGINEERING DEPT.
SYSTEM ENGINEERING SECTION

File — Scale: 1" = 20' — Rev.
Microfilmed — Orig. ☐ Rev. ..... — Dwg. No. 400-701-E

30X

Traffic Zones

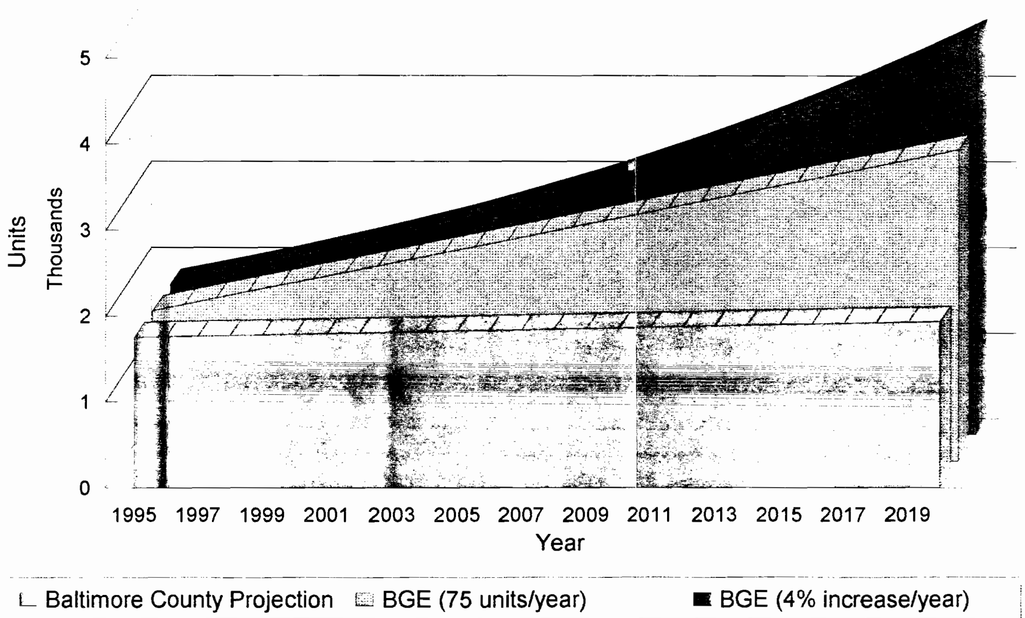
	1990	1995	2010	2020		
307	100	100	100	100		
313	90	94	119	119		
330	1,720	2,035	2,239	2,258		
332	840	883	957	967		
333	700	736	788	817		
	3,450	3,848	4,203	4,261	***10.7%***	*Since 1995*

BGE Data

	1994	1995	2010	2020		
Assumes 75 units/year	1,750	1,825	2,950	3,700	***111.4%***	*Since 1995*
Assumes 4% inc./year	1,750	1,820	3,278	4,852	***177.3%***	*Since 1995*

Unit Growth Comparison

(1995 - 2020)



IN THE MATTER OF	*	BEFORE THE
BGE Ivy Hill Substation	*	COUNTY BOARD OF APPEALS
S/w Corner of Ridge Rd. &	*	BALTIMORE COUNTY
Joel Ct. 3rd Council Dist.	*	CASE NO. 94-452-XA

* * * * * * * * * * * * * *

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Tuesday Jan. 10, 1995 at 10:00 a.m. at Room 48, located at Basement, Old Courthouse, 400 Washington Ave. Towson and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Witness: Dave Thomas
Address: Ass't Dir. of Public Works
County Office Bldg.
Towson, MD 21204

Name: J. Carroll Holzer
Firm: Holzer & Lee
Address: 305 Washington Ave. #502
Towson, MD 21204
825-6961

The witness named above is hereby ordered to so appear before the County Board of Appeals. The Board requests the Sheriff to issue the summons set forth herein.

County Board of Appeals of
Baltimore County

Cost: $_____

Summoned: _____, 19____

Not served: _____, 19____

Sheriff of Baltimore County

RECEIVED
DEC 15 1994
BALTIMORE COUNTY

4-2-99

IN THE MATTER OF THE APPLICATION OF BALTIMORE GAS & ELECTRIC CO. (IVY HILL SUBSTATION) FOR SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE SOUTHWEST CORNER OF RIDGE ROAD AND JOEL COURT 8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT COUNTY LINE, INC. -PETITIONER	*	ON REMAND FROM THE CIRCUIT COURT FOR BALTIMORE COUNTY Civil Action No. 95-CV-5315
ZONING CASE NO. 94-452-XA	*	

* * * * * * * * * * * * *

ON REMAND FROM THE CIRCUIT COURT FOR BALTIMORE COUNTY PURSUANT TO REMAND ORDER OF THE MARYLAND COURT OF APPEALS

This matter comes before the Board on remand by Order of the Circuit Court for Baltimore County dated March 24, 1999 pursuant to the March 15, 1999 Disposition of the Maryland Court of Appeals.

The Court of Appeals, in its Opinion filed February 11, 1999, states: "We shall direct that this case be remanded to the Baltimore County Board of Appeals (Board) with instructions to enter an order that no variance was needed in the case sub judice." That Court remanded this case with the following directive:

> JUDGMENT OF THE COURT OF SPECIAL APPEALS AFFIRMED IN PART AND VACATED IN PART; THAT PORTION OF THE COURT OF SPECIAL APPEALS' JUDGMENT RELATING TO THE VARIANCE IS VACATED; CASE REMANDED TO THAT COURT WITH INSTRUCTIONS TO VACATE THAT PORTION OF THE JUDGMENT OF THE CIRCUIT COURT RELATING TO THE VARIANCE AND REMAND THE CASE TO THE CIRCUIT COURT WITH INSTRUCTIONS TO REMAND THE CASE TO THE BOARD OF APPEALS FOR A DECISION CONSISTENT WITH THIS OPINION...."

IT IS THEREFORE this 2nd day of April, 1999, by the County Board of Appeals of Baltimore County

ORDERED that, consistent with the decision of the Court of Appeals, no variance was needed in this case; and, therefore, the decision of the Board relating to the variance relief in Case No. 94-452-XA be and the same is hereby **VACATED.**

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Charles L. Marks, Chairman

County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180

April 2, 1999

J. Carroll Holzer, P.A.
508 Fairmount Avenue
Towson, MD 21286

RE: Circuit Case #95-CV-5315 /In the Matter of BG&E /Ivy Hill Substation (Friends of the Ridge, et al) Zoning Case No. 94-452-XA

Dear Mr. Holzer:

Enclosed please find a copy of the Board's Order on Remand issued this date in response to the Remand Order of the Circuit Court pursuant to the March 15, 1999 Disposition of the Maryland Court of Appeals.

Very truly yours,

Charlotte E. Radcliffe for
Kathleen C. Bianco
Administrator

Enclosure

cc: Friends of the Ridge, et al c/o J. C. Holzer
Robert A. Hoffman, Esquire
Kathleen Gallogly Cox, Esquire
John H. Zink, Esquire
Martha A. Delea, Esquire
Mr. and Mrs. Frederick Vinup
Mr. and Mrs. Raymond Fischer
Mrs. Dorothy Marsden
The Honorable T. Bryan McIntire
Baltimore County Council
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
Arnold Jablon, Director /PDM
The Honorable Lawrence R. Daniels, Judge
Circuit Court for Baltimore County
Clerk of the Court /Case No. 95-CV-5315
Virginia W. Barnhart, County Attorney

FILE RETURNED / HAND DELIVERED w/ Clerk 4-2-99

FILED APR - 2 1999

Printed with Soybean Ink on Recycled Paper

3-5-99

94-452-XA -BG&E (Ivy Hill Sub. CCt REMANDS to CBA pursuant to Court of Appeals Disposition 3/17/99 (Cathell, J.) 3/24/99 -Lawrence Daniels, J

PETITION OF FRIENDS OF THE RIDGE, et al FOR JUDICIAL REVIEW	*	IN THE
	*	CIRCUIT COURT
IN THE MATTER OF BALTIMORE GAS & ELECTRIC COMPANY (IVY HILL SUBSTATION) FOR SPECIAL EXCEPTION AND VARIANCE	*	FOR
	*	BALTIMORE COUNTY
	*	Case No. 95 CV 5315
ZONING CASE: 94-452-XA	*	

* * * * * * * * * * * * *

ORDER

The Court of Appeals of Maryland having issued its Disposition on March 15, 1999, it is this 24TH day of March, 1999

ORDERED that the above-captioned case is hereby remanded to the Board of Appeals for a decision consistent with the decision of the Court of Appeals.

SO ORDERED.

LAWRENCE R. DANIELS
JUDGE

cc: County Board of Appeals
J. Carroll Holzer, Esquire
John H. Zink, III, Esquire

Circuit Court for Baltimore County
Case # 95 CV 5315

94-452-XA /BG&E (Ivy Hill Sub)
COA AFFIRMED in part and VACATED in part the CSA Judgment Case REMANDED to the CCt w/ instructions to REMAND to CBA for decision consistent with opinion relating to VARIANCE

IN THE COURT OF APPEALS OF

MARYLAND

No. 76

September Term, 1998

FRIENDS OF THE RIDGE *et al.*

v.

BALTIMORE GAS AND ELECTRIC COMPANY

Eldridge
Chasanow
Raker
Wilner
Cathell,
Karwacki, Robert L.
(retired, specially assigned),
Murphy, Joseph F. Jr.
(specially assigned)

JJ.

Opinion by Cathell, J.

Filed: February 11, 1999

In this case, Pamela and Carl Follo and Friends of the Ridge *et al.*, petitioners, appeal the affirmance by the Court of Special Appeals[1] of the decision of the Circuit Court for Baltimore County, which upheld the granting of a variance from side yard setback requirements to Baltimore Gas and Electric Company, respondent. Petitioners present three issues for our review, which we rearrange:

> [1]. Whether the Court of Special Appeals' preference given to utility companies in this zoning case conflicts with this Court's decision in *Kahl vs. Consolidated Gas and Electric,* 191 Md. 249 (1949)[.]
>
> [2]. Whether in the absence of statutory authority, an electric utility company's status, *vel non*, as a utility, may be used to justify a zoning variance, generally, and the prerequisite of "uniqueness" specifically[.]
>
> 3. Whether the evidence relied on by the Court of Special Appeals in the instant case was sufficient to support a variance, both as to the uniqueness and practical difficulty, and whether its decision conflicts with the Court of Special Appeals' decision in *Cromwell vs. Ward*, 102 Md. App. 691 (1995)[.]

We shall not directly address the questions presented.[2] We shall direct that this case be remanded to the Baltimore County Board of Appeals (Board) with instructions to enter an

---

[1] *Friends of the Ridge v. Baltimore Gas & Elec. Co.*, 120 Md. App. 444, 707 A.2d 866 (1998).

[2] We note that Respondent argues that the provisions of the ordinance applicable to variances ("where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request") should be read to indicate that a structure intended to be built once a variance is granted could itself be so unusual as to satisfy the uniqueness requirement of the statute. Under this argument, respondent contends that, given the characteristics of the equipment respondent proposes to erect and for which it seeks a variance, combined with the necessity that the equipment be within a certain distance of each other, its situation creates "peculiar or unusual circumstances relating to the substation *structures* which are the subject of the variance." Our failure to address this issue should not be construed as our approval or acceptance of that approach. We are reluctant to say that a proposition we are not resolving is wrong. Accordingly, we shall instead describe it as of doubtful logical force.

order that no variance was needed in the case *sub judice*.[3]

Under the ordinance at issue here, and indeed in most ordinances of which we are aware, unless the ordinance's language specifically and clearly prohibits it, an owner of contiguous parcels of real property, such as respondent, is free to combine them into larger and fewer parcels without violating the *zoning* code. In this case we are concerned only with the zoning ordinance. We first shall recite the facts and conclude by furnishing the reasons for holding that no variance was necessary in the present case.

FACTS

Respondent, at all times pertinent to the case at bar has operated a facility called the "Ivy Hill Substation," which is situated on one of the parcels it owns near the intersection of Falls and Ridge Roads in Baltimore County, Maryland. The site, and all of the relevant surrounding area, is zoned RC-5. Under that classification, public utility facilities are permitted as special exceptions if they comply with the requirements of the Baltimore County zoning ordinance. Respondent, anticipating a need for additional capacity in the region, proposed to increase the capacity at the Ivy Hill Substation. In order to do so, respondent was required to apply for a special exception to operate an enlarged facility. Respondent applied for and obtained a special exception. In their petition for certiorari, petitioners did not challenge the granting of the special exception. Accordingly, the granting

[3] This is consistent with the Board's initial finding that no variance was necessary. The Board apparently felt it was required to address the variance issue because respondent filed a variance petition. Respondent may have filed the variance request because opponents to the project asserted that a variance was necessary.

of the special exception is no longer at issue.

The new, enlarged substation was planned to extend onto a contiguous parcel from the original site of the existing substation. The original substation was situated on a 0.4 acre parcel. Subsequently, respondents acquired an adjacent 1.5 acre parcel and, during the proceedings at the administrative level, acquired another 0.9 acre adjoining parcel. The record reflects that all three parcels are contiguous with each other. Petitioners assert in their brief that because the parcels never were "legally combined," the Baltimore County ordinance required respondent to obtain a variance to use the three parcels as one parcel. Respondent asserts that it since has caused the three lots to be combined by a resubdivision. Petitioner alleges that this was done improperly. If, in fact, it was done improperly, that is a matter for another day.[4] We are concerned here only with the applicability of the zoning ordinance's variance provisions and not Baltimore County subdivision regulations.

RESOLUTION

We again note that in this case we are concerned only with the issue of the variance.

---

[4] We often have held that subdivision is not zoning. In most jurisdictions, including Baltimore County, subdivision regulations are enacted and codified separately. We did state in our recent case of *Wesley Chapel Bluemount Ass'n v. Baltimore County*, 347 Md. 125, 699 A.2d 434 (1997), that planning and subdivision matters were in the nature of zoning for the purposes of the State Open Meetings Act. That opinion was based on our perception that the Legislature intended planning and subdivision processes to be considered as zoning *under that Act*. *See generally id.* Our opinion on that matter in that case was meant to apply only to Open Meetings Act concerns, and was not meant to be of general application changing, as Judge Eldridge discussed in his dissent, the holdings of "numerous opinions of this Court which have drawn a sharp distinction between 'planning' and 'zoning.' The approval or disapproval of a development plan is simply not a 'zoning matter.' " *Id.* at 151, 699 A.2d at 447. The holding in *Wesley Chapel* is limited to the context of the Open Meetings Act.

The primary concern of the Board, however, was the simultaneously considered special exception request. The grant of that special exception is not before us. The Board originally found that the variance provisions, section 307.1, did not apply to respondent's request. The Board, for reasons we shall discuss, was correct in that finding.[5] Nonetheless, apparently assuming it was required to address the variance issue because respondent filed a petition requesting a variance, the Board granted the petition. Because no variance was required, we direct the Court of Special Appeals to remand this matter to the circuit court for it to remand to the Board. The Board shall render a finding, consistent with its initial finding, that no variance is required for respondent to utilize the entire parcel for its proposal, so long as setback requirements are met from the exterior property lines of respondent's combined parcel.

DISCUSSION

---

[5] The Board discussed the variance request, stating, in relevant part:

> [Respondent] finally must meet the tests under Section 307.1 in pursuing variance from lot line setbacks, said lot lines existing between tracts owned by [respondent]. George Gavrelis clearly points out in his testimony that Section 306 of the BCZR speaks to lot area regulations for erecting substations. [Respondent] seeks a variance under 307.1 from BCZR 1A04.3B.3 which requires a 50-foot setback from any lot line other than a street line. *The Board finds as a fact that Section 306 applies in this case and that the application for a variance under 307.1 may be treated as moot.* [Respondent] recognizes that its placement of electric utility structures on the subject site, straddling interior lot lines and certainly within *otherwise* required setbacks, *may be construed* under 1A04.3B.3 as a principal building, and is therefore requesting such variance. The Board is *compelled* to address the issue of 307.1 pursuant to the Petition. [Emphasis added.]

Zoning ordinances, including Baltimore County's ordinances, **do not create lots.** Zoning does not create parcels of real property. What zoning ordinances normally do, with respect to residential districts, is establish dimensional minimums, such as minimal lot, parcel or tract size, yard sizes (the distance between buildings and property lines), and the height of structures. In addition, such ordinances specify the number of residential units that may be placed upon the area of a tract or parcel (density), ancillary requirements such as parking minimums, bathroom minimums, and square footage minimums of buildings. Additionally, zoning ordinances can, to some extent, regulate uses of property, as distinct from dimensional requirements.[6]

Baltimore County's ordinance, like most zoning ordinances, does not define lots to include only lots delineated on plats in approved subdivisions. Section 101 defines "corner

---

[6] When variance issues are involved, some cases regarding setbacks or height restrictions refer to them as "dimensional" variances, *see Bressman v. Gash*, 131 N.J. 517, 523-26, 621 A.2d 476, 479-81 (1993), and some as "deviational" variances. *See Sako v. Delsesto*, 688 A.2d 1296, 1298 (R.I. 1997). In Maryland, they are commonly referred to as "yard" variances, distinguishing them from "use" variances, but on occasion have been referred to as "dimensional" variances. *See Easter v. Mayor of Baltimore*, 195 Md. 395, 401, 73 A.2d 491, 493 (1950) ("Use variances are doubtless more serious than dimensional changes, but that is only a matter of degree."). The proof required, however, assuming the uniqueness of a subject property, can be much greater with respect to use variances when the terms "practical difficulties" and "unwarranted [undue, unusual or unreasonable] hardship" are framed in the disjunctive, "practical difficulties *or* unwarranted hardship." We noted in *Zengerle v. Board of County Commissioners*, 262 Md. 1, 21, 276 A.2d 646, 656 (1971): "a use variance is customarily concerned with unusual [unwarranted] hardship where the land cannot yield a reasonable return without a variance whereas an area variance is primarily concerned with practical difficulties." Although the phrase "reasonable return" has all but disappeared from the vocabulary of zoning, except to the extent the term "reasonable investment backed expectations," has crept into "takings" jurisprudence, *see Penn Central Transp. Co. v. City of New York*, 438 U.S. 104, 98 S. Ct. 2646, 57 L. Ed. 2d 631 (1978) and its progeny, the distinction between yard and use variances consistently has been applied through the selective application of the practical difficulty/unwarranted hardship terminology.

IN THE MATTER OF	*	BEFORE THE
BGE Ivy Hill Substation	*	COUNTY BOARD OF APPEALS
S/w Corner of Ridge Rd. &	*	BALTIMORE COUNTY
Joel Ct. 3rd Council Dist.	*	CASE NO. 94-452-XA

* * * * * * * * * * * * * *

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Tuesday Jan. 10, 1995 at 10:00 a.m. at Room 48, located at Basement, Old Courthouse, 400 Washington Ave. Towson and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Witness: Pam Baudashine
Address: Balto. Co. Office of Planning
~~County Courts Bldg. 4th Fl.~~
Towson, MD 21204

Name: J. Carroll Holzer
Firm: Holzer & Lee
Address: 305 Washington Ave. #502
Towson, MD 21204
825-6961

The witness named above is hereby ordered to so appear before the County Board of Appeals. The Board requests the Sheriff to issue the summons set forth herein.

County Board of Appeals of
Baltimore County

Cost: $_____

Summoned: _____, 19____

Not served: _____, 19____

Sheriff of Baltimore County

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
MISCELLANEOUS RECEIPT
DATE 12/19/94 ACCOUNT 001-6150
AMOUNT $ 10.00
RECEIVED FROM: J. Carroll Holzer
FOR: Subpoena
DISTRIBUTION
WHITE - CASHIER
PINK - AGENCY
YELLOW - CUSTOMER

lot," "lot depth," "through lot" and then defines "interior lot" simply as "[a] lot other than a corner or through lot." It generically defines "lot of record," as "[a] *parcel of land* with boundaries as recorded in the land records of Baltimore County on the same date as the effective date of the zoning regulation which governs the use, subdivision or other condition thereof." *Id.* (emphasis added). The term "lots" as used in ordinances generally means parcels or tracts of land. In other words, when setbacks in respective districts are established, they generally apply to all tracts, parcels or pieces of land within the district, as indicated in the Baltimore County ordinance's definition of "setback." *See id.*

Generally, and in Baltimore County, the title or purpose clauses of zoning ordinances express concern with undersized parcels or lots, not with parcels that exceed the minimum dimensional requirements of the ordinances. The ordinance at issue here, in section 1A04.1(A)(1), which deals with Resource Conservation Zones (in the case *sub judice*, an "R.C.5 " (Rural-Residential Zone)), states in its "legislative findings" clause:

> It is found that:
>
> . . . .
>
> c. In some cases *lot sizes are inadequate* to assure long-term adequacy of on-lot sewer and water systems;
>
> d. That unless measures are implemented to assure more rational growth patterns, *including adequate lot size*, undue financial hardships will be placed on Baltimore County and the life, safety and general welfare of the citizens of the county will be adversely affected. [Emphasis added.]

The "purpose" clause provides, in relevant part:

B. Purpose. The R.C.5 zoning classification is established, pursuant to the legislative findings above, in order to:

. . . .

4. *Provide a minimum lot size* which is sufficient to provide adequate area for the proper functioning of on-lot sewer and water systems.[7]

Id. (emphasis added).

Efforts throughout the country, including Baltimore County, have been to restrict undersize parcels, not oversized parcels. These efforts have resulted in the creation and evolution in zoning of the doctrine of merger, which, in zoning cases, generally prohibits the use of individual substandard parcels if contiguous parcels have been, at any relevant time, in the same ownership and at the time of that ownership, the combined parcel was not substandard.[8] In other words, if several contiguous parcels, each of which do not comply with present zoning, are in single ownership and, as combined, the single parcel is usable without violating zoning provisions, one of the separate, nonconforming parcels may not then *or thereafter* be considered nonconforming, nor may a variance be granted for that separate parcel. Some cases discuss automatic merger, but most require that the intent of the owner to merge the parcels be expressed, though little evidence of that intent is required. As far as we can discern, the zoning doctrine of lot merger has never been applied in any

---

[7] We will address the combining of three smaller parcels into one larger parcel by respondent, *infra*. That the purpose of this section is to require adequately sized lots or parcels of land will prove especially relevant in that context.

[8] We are unaware of any Maryland cases adopting the zoning doctrine of merger.

jurisdiction to limit the creation of parcels that exceed minimum dimensional requirements; merger has been applied only to prohibit the later creation of undersized parcels. This, perhaps, is due to the general lack of objection to large parcels.[9] A discussion, however, of how the doctrine of merger applies conversely to the present case may help emphasize that, in the context described above, merger occurs without the need for official subdivision or conveyancing. It is accepted automatically in some jurisdictions or, most often, with minimum proof of the owner's intent in other jurisdictions and always without the necessity of official action. We see no reason why a doctrine that seeks to prevent the proliferation or use of nonconforming, undersized lots by holding that they have been combined or merged into a larger parcel should not, as far as zoning is concerned, be applied properly to permit the creation, through the combining by use of a larger parcel from already conforming smaller parcels, without the necessity of official action or conveyancing.

One of the seminal cases discussing the doctrine of merger with respect to zoning is the New Jersey case of *Loechner v. Campoli*, 49 N.J. 504, 231 A.2d 553 (1967). In 1936, Mrs. Loechner and her late husband acquired lots numbered 186 through 188 on a surveyor's map or plat. Each lot was twenty-five feet wide by one hundred feet in depth. Prior to 1952, the Loechners erected a single house on the three lots. In 1952, Rudolph Loechner acquired two adjoining lots, numbered 189 and 190. These new lots remained

[9] There are social concerns that raising minimum parcel or lot size or raising minimum square footage requirements can result in exclusionary zoning that may, in some circumstances, be invalid. Exclusionary zoning issues have not been raised in the case at bar.

vacant. When Rudolph Loechner died, he devised lots 189 and 190 to his wife. Accordingly, upon his death, his wife owned all five lots, 186 through 190, and the house that had been erected on lots 186, 187, and 188.

Mrs. Loechner subsequently contracted to sell lots 189 and 190 to Anthony Villani. Villani applied for a variance to build on his two lots, neglecting to mention that he had purchased the lots from an owner who had owned all five lots at one time. Although he obtained a variance, he was denied a building permit on grounds that subdivision approval was required because the five lots, when in common ownership, had merged into one parcel and the subsequent off-conveyance of the two lots to Villani was, in fact, a resubdivision of more parcels from a lesser number of parcels (one tract composed of the five lots). Mrs. Loechner took the position that resubdivison was unnecessary because all five lots were shown on the map or plat when she and her husband acquired the lots.

The Supreme Court of New Jersey noted that "[t]he acquisition of title by plaintiff to Lots 189 and 190 which were contiguous to Lots 186-188 created one parcel or tract of land consisting of five separate lots." *Id.* at 508, 231 A.2d at 555. Explaining that a state statute defined subdivision as "division of a lot, tract, or parcel of land into two or more lots," *id.* at 509, 231 A.2d at 555, the court discussed the meaning of the word "lot" in that context, noting that it retained its traditional meaning as a parcel or tract of land:

> The word "lot" as used in the Subdivision Act must be read in context with the words "tract or parcel of land" in order to ascertain its meaning. Consistent with recognized principles of statutory construction "lot" takes its meaning from the other two words with which it is associated. *Martell v.*

> *Lane*, 22 N.J. 110, 123 A.2d 541 (1956); *Salz v. State House Commission*, 18 N.J. 106, 112 A.2d 716 (1955); *State v. Murzda*, 116 N.J.L. 219, 183 A. 305 (E. & A. 1936); 2 *Sutherland, Statutory Construction* § 4908 (3*d ed.* 1443). Thus considered "lot" is synonymous with "tract or parcel." The phrase "lot, tract or parcel of land" has traditionally been used to connote any portion or piece of realty. N.J.S.A. 40:55— 1.2 contemplates supervision of the division of a large tract or parcel of land into two or more smaller tracts or parcels. The Subdivision Act is not concerned with the manner in which land is described for conveyancing purposes but rather with what use is made thereof.

Id. at 510-11, 231 A.2d at 556-57.

Much the same can be said for zoning. Zoning is concerned with dimensions and uses of land or structures, not with any particular description "lot," "parcel," or "tract" applicable to or necessary for conveyancing. Conveyancing is a separate area of law involving the transfer of property between buyers and sellers that generally is not directly connected with government regulations and restrictions on the use of property through the zoning power. In zoning, the term lot normally is generic and used interchangeably to describe parcels, tracts, pieces or sections of land.[10]

After *Loechner*, the doctrine of merger continued to evolve. It was described more concisely in *Somel v. Board of Adjustment*, 277 N.J. Super. 220, 228, 649 A.2d 422, 426 (1994): "[S]eparate *undersized* but contiguous lots fronting on the same street in single

---

[10] In an earlier case, *Hutzler v. Mayor of Baltimore*, 207 Md. 424, 429, 114 A.2d 608, 611 (1955), which involved a parcel of land 200 feet by 380 feet, we noted that the statute at issue defined a "lot as '. . . a parcel of land now or hereafter laid out and occupied by one building and the accessory buildings or uses customarily or necessarily incident to it, including such open spaces as are required by this ordinance.'" (Omission in original.) In *Hertelendy v. Montgomery County Bd. of Appeals*, 245 Md. 554, 568-69, 226 A.2d 672, 681 (1967), we noted, without comment, that an ordinance's variance provisions addressed "parcels of property" and then, without making any distinction, described the parcel of property as "Lot 23-B."

ownership ordinarily merge into one lot and conveyance of a portion will require subdivision and variance approval." (Emphasis added.) As is evident, the doctrine is designed to limit the creation of undersized parcels by *presuming* that merger can occur when contiguous lots exist in common ownership. As we have indicated, some jurisdictions presume merger automatically; in most jurisdictions, however, there must be some evidence of the owner's intent to merge. In the present case, respondent asserts a right to combine the contiguous parcels and to use them as a single parcel. Therefore, to the extent the doctrine is held to apply in this State under these converse circumstances, the existence of merger is admitted in the case *sub judice*.

In *Iannucci v. Zoning Board of Appeals*, 25 Conn. App. 85, 592 A.2d 970 (1991), the applicant submitted a variance application to reposition a house entirely on one lot. At the time of the application, the house was built on two lots, with the attached porch on one lot and the main body of the house on the other. The purpose of the variance was to allow the property owner to build a new house on the vacated lot. The zoning body denied the variance, finding that "'when a portion of the dwelling on lot two was constructed over the property line, lots one and two were effectively combined.'" *Id.* at 87, 592 A.2d at 971. The Connecticut Appellate Court held:

> Contiguous land owned by the same person does not necessarily constitute a single lot. A merger can occur, however, if the owner of contiguous parcels of land intends to form one tract. The owner's intent "may be inferred from his conduct with respect to the land and the use which he makes of it." Intent is an inference of fact and "is not reviewable unless it was one which the trier could not reasonably make."

We shall hold that a landowner who clearly desires to combine or merge several parcels or lots of land into one larger parcel may do so. One way he or she may do so is to integrate or utilize the contiguous lots in the service of a single structure or project, as respondent proposes in the instant case.[11] Although this is not the general application of the doctrine of merger as it relates to zoning, we perceive no rational objection to applying the same principles to the circumstances of this case, resulting in a larger parcel. For title purposes, the platted lot lines may remain, but by operation of law a single parcel emerges for zoning purposes. At least three of our sister jurisdictions appear to have moved in the same direction. For example, the New Jersey Superior Court in *Bridge v. Neptune Township Zoning Board*, 233 N.J. Super. 587, 592-93, 595, 559 A.2d 855, 858, 859 (1989), discussed merger where a house had been constructed so it extended across the property lines of two parcels in common ownership:

> The pivotal question is whether lot 686 retained its identity as a separate and distinct parcel for land use regulation purposes. Integral to that issue is the distinction, for land subdivision regulation purposes, between (1) the assembling in common ownership of two contiguous non-conforming lots both of which front on existing streets where the owner constructs a single-family residential dwelling so as to cover all or part of both lots, and (2) such similarly assembled lots where one or both of the lots remains entirely vacant. In the latter instance, the lots *may* retain their identity, but in the former instance, the lots lose their identity and merge into a single parcel.

---

[11] An owner of contiguous parcels who erects a structure in what would ordinarily be a setback of one of the individual parcels might, under this doctrine, although we do not now decide it, also cause a combination of lots thus restricting the future alienability of the unbuilt upon parcel because the conveyance of that parcel would cause the property upon which the structure is built to be in violation of the ordinance. Such an owner would also risk being forced to bring that parcel into conformity by removing the structure from the setback.

. . . .

> When a person acquires ownership of contiguous non-conforming lots that are delineated as separate tracts on any map, and then builds a single-family structure so that it overlaps both lots, the lots merge into a single tract and are subject to the [Municipal Land Use Law] and its restrictions for future subdivision purposes as long as the structure remains on any part of both lots. Lot 686 cannot recover its separate identity so long as a portion of the house remains where it is. . . .

In *Molic v. Zoning Board of Appeals*, 18 Conn. App. 159, 163-65, 556 A.2d 1049, 1051-52 (1989), which did not involve the zoning doctrine of merger, the court, upholding an agency's finding that no merger had occurred where a swimming pool had been constructed across two parcels of land, nonetheless stated:

> The plaintiffs claimed that all of the property . . . had been merged by use and intent into one parcel, and that the 1984 map that showed three lots was an unapproved subdivision. . . .
>
> An owner of contiguous parcels of land *may merge those parcels to form one tract if he desires to do so.* An intent on the part of the owner to do so may be inferred from his conduct with respect to the land and the use which he makes of it. . . . Intent is a question of fact.
>
> The plaintiffs have cited no authority . . . for the proposition that an owner *must* be deemed to have merged contiguous lots. The one exception we have found . . . is that . . . some zoning regulations . . . may require, either expressly or implicitly, that under certain conditions a nonconforming lot merges with contiguous land owned by the same owner [the zoning concept of the doctrine of merger]. This is an understandable requirement because it furthers the general zoning purpose of eliminating nonconforming lots. . . .

. . . .

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258

12/31/96

Case Number: 03-C-95-005315 AA
Date Filed: 06/16/95
Status: Closed/Active
Previous Case ID:
Reference Number:
Judge Assigned: To Be Assigned,

Friends Of The Ridge, et al vs Baltimore Gas & Electric Company

C A S E H I S T O R Y

INVOLVED PARTIES

Type	Num	Name(Last,First,Mid,Title) / Dispo	Entered
PLT	001	Friends Of The Ridge	CT DO 12/30/96 06/16/95
	Attorney	0012186 Holzer, J Carroll Holzer And Lee 305 Washington Ave Suite 502 Towson MD 21204 (410)825-6961	
PLT	002	Howse, Nigel, Mr	CT DO 12/30/96 06/16/95
	Attorney:	0012186 Holzer, J Carroll Holzer And Lee 305 Washington Ave Suite 502 Towson, MD 21204 (410)825-6961	
PLT	003	Howse, Nigel, Mrs	CT DO 12/30/96 06/16/95
	Attorney:	0012186 Holzer, J Carroll Holzer And Lee 305 Washington Ave Suite 502 Towson, MD 21204 (410)825-6961	
PLT	004	O Hara, Robert, Mr	CT DO 12/30/96 06/16/95
	Attorney:	0012186 Holzer, J Carroll	

Holzer And Lee
305 Washington Ave
Suite 502
Towson, MD 21204
(410)825-6961

Type	Num	Name(Last,First,Mid,Title) / Dispo	Entered
PLT	005	O Hara, Robert, Mrs	CT DO 12/30/96 06/16/95
Attorney	0012186	Holzer, J Carroll Holzer And Lee 305 Washington Ave Suite 502 Towson, MD 21204 (410)825-6961	
PLT	006	Hanley, Ron, Mr	CT DO 12/30/96 06/16/95
Attorney	0012186	Holzer, J Carroll Holzer And Lee 305 Washington Ave Suite 502 Towson, MD 21204 (410)825-6961	
PLT	007	Hanley, Ron, Mrs	CT DO 12/30/96 06/16/95
Attorney:	0012186	Holzer, J Carroll Holzer And Lee 305 Washington Ave Suite 502 Towson, MD 21204 (410)825-6961	
PLT	008	Follo, Carl, Mr	CT DO 12/30/96 06/16/95
Attorney	0012186	Holzer, J Carroll Holzer And Lee 305 Washington Ave Suite 502 Towson, MD 21204 (410)825-6961	
PLT	009	Follo, Carl, Mrs	CT DO 12/30/96 06/16/95
Attorney	0012186	Holzer, J Carroll Holzer And Lee 305 Washington Ave Suite 502 Towson, MD 21204 (410)825-6961	
PLT	010	Brown, Ira, Mr	CT DO 12/30/96 06/16/95
Attorney.	0012186	Holzer, J Carroll Holzer And Lee 305 Washington Ave Suite 502	

IN THE MATTER OF	*	BEFORE THE
BGE Ivy Hill Substation	*	COUNTY BOARD OF APPEALS
S/w Corner of Ridge Rd. &	*	BALTIMORE COUNTY
Joel Ct. 3rd Council Dist.	*	CASE NO. 94-452-XA

* * * * * * * * * * * * * *

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Tuesday Jan. 10, 1995 at 10:00 a.m. at Room 48, located at Basement, Old Courthouse, 400 Washington Ave. Towson and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Witness: Carolyn Beatty
Address: Balto. Co. Office of Planning
County Courts Bldg. 4th Fl.
Towson, MD 21204

Name: J. Carroll Holzer
Firm: Holzer & Lee
Address: 305 Washington Ave. #502
Towson, MD 21204
825-6961

The witness named above is hereby ordered to so appear before the County Board of Appeals. The Board requests the Sheriff to issue the summons set forth herein.

County Board of Appeals of
Baltimore County

Cost: $_____

Summoned: _____, 19____

Not served: _____, 19____

Sheriff of Baltimore County

BOARD OF APPEALS 95

Towson, MD 21204
(410)825-6961

Type	Num	Name(Last,First,Mid,Title) / Dispo	Entered
PLT	011	Brown, Ira, Mrs	CT DO 12/30/96 06/16/95
	Attorney:	0012186 Holzer, J Carroll Holzer And Lee 305 Washington Ave Suite 502 Towson, MD 21204 (410)825-6961	
PLT	012	Langendorf, Dieter, Mr	CT DO 12/30/96 06/16/95
	Attorney:	0012186 Holzer, J Carroll Holzer And Lee 305 Washington Ave Suite 502 Towson, MD 21204 (410)825-6961	
PLT	013	Langendorf, Dieter, Mrs	CT DO 12/30/96 06/16/95
	Attorney:	0012186 Holzer, J Carroll Holzer And Lee 305 Washington Ave Suite 502 Towson, MD 21204 (410)825-6961	
PLT	014	Lansman, Andrew, Mr	CT DO 12/30/96 06/16/95
	Attorney:	0012186 Holzer, J Carroll Holzer And Lee 305 Washington Ave Suite 502 Towson, MD 21204 (410)825-6961	
PLT	015	Lansman, Andrew, Mrs	CT DO 12/30/96 06/16/95
	Attorney:	0012186 Holzer, J Carroll Holzer And Lee 305 Washington Ave Suite 502 Towson, MD 21204 (410)825-6961	
PLT	016	Bozel, Jeffrey, Mr	CT DO 12/30/96 06/16/95
	Attorney:	0012186 Holzer, J Carroll Holzer And Lee 305 Washington Ave Suite 502 Towson, MD 21204 (410)825-6961	

Type	Num	Name(Last,First,Mid,Title) / Dispo	Entered
PLT	017	Bozel, Jeffrey, Mrs	CT DO 12/30/96 06/16/95
		Attorney: 0012186 Holzer, J Carroll Holzer And Lee 305 Washington Ave Suite 502 Towson, MD 21204 (410)825-6961	
PLT	018	Pitcher Bruce, Mr	CT DO 12/30/96 06/16/95
		Attorney: 0012186 Holzer, J Carroll Holzer And Lee 305 Washington Ave Suite 502 Towson, MD 21204 (410)825-6961	
PLT	019	Pitcher, Bruce, Mrs	CT DO 12/30/96 06/16/95
		Attorney: 0012186 Holzer J Carroll Holzer And Lee 305 Washington Ave Suite 502 Towson, MD 21204 (410)825-6961	
PLT	020	Czajkowski, Joe, Mr	CT DO 12/30/96 06/16/95
		Attorney: 0012186 Holzer, J Carroll Holzer And Lee 305 Washington Ave Suite 502 Towson, MD 21204 (410)825-6961	
PLT	021	Czajkowski, Joe, Mrs	CT DO 12/30/96 06/16/95
		Attorney: 0012186 Holzer, J Carroll Holzer And Lee 305 Washington Ave Suite 502 Towson, MD 21204 (410)825-6961	
PLT	022	Rytter, Robert, Mr	CT DO 12/30/96 06/16/95
		Attorney: 0012186 Holzer, J Carroll Holzer And Lee 305 Washington Ave Suite 502 Towson, MD 21204 (410)825-6961	
PLT	023	Rytter, Robert Mrs	CT DO 12/30/96 06/19/95
		Attorney: 0012186 Holzer, J Carroll Holzer And Lee	

305 Washington Ave
Suite 502
Towson MD 21204
(410)825-6961

Type	Num	Name(Last,First,Mid,Title) / Dispo	Entered
DEF	001	Baltimore Gas & Electric Company	CT DO 12/30/96 06/16/95
		Capacity : Ivy Hill Substation	
	Attorney:	0008166 Delea, Martha	
		1700 Gas & Electric Bldg	
		P O Box 1475	
		Baltimore, MD 21203	
		(301)234-5697	
		0016339 Zink, John H	
		Venable, Baetjer & Howard, LLP	
		210 Allegheny Avenue	
		Towson, MD 21204	
		(410)494-6200	

CALENDAR EVENTS

Date	Time	Dur	Cer	Evnt	Jdg	L	Day	Of	Rslt	By	ResultDt	Jdg	T	Notice	Rec
05/01/96	09:30A	006	yes	CIVI	TBA		01	/01	CON	C	12/30/96		P		

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal RSN
TBA To Be Assigned,	J	06/16/95	

DOCUMENT TRACKING

Num/Seq	Description	Filed	Received	Tickle	For	Party	Routed	D	Closed	User ID
001000	Petition for Judicial Review	06/16/95	06/16/95		TBA	PLT000		M	12/30/96	JMG PS
	jg #1 Petition of Friends of the Ridge for Judicial Review of the Decision of the County Board of Appeals for Balto. Co in the Matter of: The Application of Balto. Gas & Elec. Co.(Ivy Hill Substation) for special exception and variance on property located on the Southwest corner of ridge road and Joel Court 8th Election District 3rd Councilmanic District Case # 94-452-XA. Copy sent to agency.									
002000	ex parte injunction to stay operation	06/23/95	06/23/95		TBA	PLT001			06/23/95	PH PH

PETITION OF FRIENDS OF THE RIDGE, et al FOR JUDICIAL REVIEW	*	IN THE CIRCUIT COURT
IN THE MATTER OF BALTIMORE GAS & ELECTRIC COMPANY (IVY HILL SUBSTATION) FOR SPECIAL EXCEPTION AND VARIANCE	*	FOR BALTIMORE COUNTY Case No. 95 CV 5315
ZONING CASE: 94-452-XA	*	

* * * * * * * * * * * * *

OPINION

This matter comes before the Circuit Court on appeal from the County Board of Appeals' (hereinafter, CBA) decision affirming the Zoning Commissioner's Order of June 24, 1994*, in which Appellee BGE's Petition for Variance and Petition for Special Exception for the subject properties was granted. The Zoning Commissioner's Order granted BGE's request for approval of a special exception to construct a local electrical distribution substation on the subject property and for approval of a variance permitting a lot line setback distance of less than the 50 feet required by Section 1A04.3.B.3 of the Baltimore County Zoning Regulations (hereinafter BCZR). The property in question is made up of three adjoining tracts located in an RC-5 zone. These tracts, delineated tracts A, B, and C, on the Site Plan, are all owned by BGE. The combined area of the three tracts is approximately 2.9 acres. On March 28, 1956, BGE was granted a special

*Noting the importance of this case to each of the parties, this Court found it appropriate to attempt to foster an out-of-court settlement between the parties. Accordingly, this Court referred the case to the Honorable Frank E. Cicone, presiding judge of the Baltimore County Settlement Court, noting that Judge Cicone had extensive experience with zoning matters prior to his investiture as a Circuit Court Judge. Judge Cicone held three lengthy negotiation sessions over a six-month period without definitive results.

FILED DEC 30 19

exception for the operation of a local electrical distribution substation, known as the Ivy Hill Substation on Tract C. This local distribution substation accepts higher voltage electricity from a master substation and lowers the voltage of that electricity to a level usable by its customers in the area. BGE's purpose in requesting the special exception and variance, *sub judice*, is to permit the replacement and expansion of the equipment at the Ivy Hill Substation in order to accommodate an increased demand for electricity caused by continued development and other changes in the area. The improvement of the Ivy Hill Substation as envisioned by BGE would locate the expanded substation equipment in the geographical center of the three tracts. This equipment configuration will result in BGE's equipment straddling interior lot lines within Tracts A, B, and C.

ISSUES PRESENTED

The Appellants present the following issues on Page 5 of their Memorandum:

"A. Need to Amend Final Development Plan - The CBA erred as a matter of law in failing to require compliance with the B.C.Z.R.

B. Failure to Meet Burden of Proof on Variances - The CBA erred as a matter of law in granting the variance.

C. Lack of Need - BGE's failure to establish need by evidence to support the CBA's finding.

D. The CBA factual finding that "all property owners prior to the purchase of their properties were apprised of the ownership of Tract A and the ultimate disposition of that property..." is without any factual basis in the entire transcript of the case.

E. Failure to Comply with 605.1 Criteria - CBA erred by failing to require compliance with B.C.Z.R., Section 502.1."

a special exception and variance. The Board of Appeals addressed the Appellants' argument on Pages 1 and 2 of its Opinion:

> Protestants allege that, due to the presence of a note on the final development plan indicating disposition of the parcel known as Tract A, the plan which is the subject of this hearing should have gone to the planning board for advice on the appropriateness of the instant case in relation to the final development plan.

The Board rejected this position and found:

> Having heard the testimony of expert witnesses Norman Goerber, for the Protestants, and George Gavrelis, for the Petitioner, the Board agrees with the Petitioner that the subject case is not a deviation from the final development plan, and, in fact, that the transfer of title of Tract A to the Baltimore Gas & Electric Company (hereinafter "BGE") occurred prior to the sale of other lots within the development.

Though this Court must grant appropriate deference to the findings of fact made by the Board of Appeals, it is, "... under no constraints in reversing an administrative decision which is premised solely upon an erroneous conclusion of law." *People's Counsel v. Maryland Marine*, 316 Md. 491 (1989), 497. Whether, vel non, the final development plan for the Fox Ridge subdivision should have been amended prior to the Board of Appeals consideration of BGE's request for special exception and variance is, perforce, a matter of law; consequently, this court must provide its own independent analysis of the property of the Board's finding in that regard. *People's Counsel v. Maryland Marine, supra.*

The use of plans and plats in the development process serves the following purpose:

> To provide for the disclosure of development plans to prospective residents and to protect those who have made decisions based on such plans from inappropriate changes therein; B.C.Z.R. 1B01.3A.1.a.

The final development plan for Fox Ridge contained in the record below, identifies Tract

A as having been "conveyed to adjoining property owner BG&E Co." An arrow on the Plan clearly depicts the association of Tract A with the lot on which the Ivy Hill Substation is situate. As represented on the Plan, Tract A does not contain a building envelope, septic disposal system, well or any other indicia of residential development. Given this description, the reasonable prospective resident of the Fox Ridge subdivision would have no basis for concluding that Tract A had a use apart from that of the BGE substation on the abutting lot.[2] Accordingly, this Court finds that the Final Development Plan sufficiently discloses BGE's development plans for Tract A, i.e., that it be developed as part of the Ivy Hill substation.

Having so ruled, the Court also disposes of Protestants' "Issue D" by implication. In "Issue D" the Protestants' challenge the factual finding that "... all property owners prior to the purchase of their properties were apprised of the ownership of Tract A and the ultimate disposition of that property...". As noted, *supra*, the purpose served by plans like the final development plan for Fox Ridge is "to provide for the disclosure of development..." BCZR 1B01.3A.1.a. "Disclosure" is defined by the American Heritage College Dictionary as "the act or process of revealing or uncovering." The writing contained on the final development planned for Fox Ridge which identifies Tract A as

---

[2]It is significant that the Final Development Plan was approved by the appropriate County authorities prior to the sale of any of the twenty-four residential lots in the Fox Ridge subdivision. Had any lot been sold prior to that approval, section 1B01.3 Par. A.7. of the BCZR would have required an amendment to the Final Development Plan before BGE could develop Tract A as part of the substation. *Quare:* Whether the end result would be altered, even if BGE were required to undergo the amendment process set out in 1B01.3, supra, since "...the plans may be amended through special exception procedures, in the manner provided under Section 502..." BCZR Section 1B01.3.A.7; with the exception of obtaining approval of the Planning Board, Section 502 criteria are the equivalent of those considered by the Board in this case.

having been "conveyed to adjoining property owner BG & E Company" and the arrow on the plan indicating the association of Tract A with the lot on which the Ivy Hill Substation is situate do, in this Court's opinion, "reveal" or "uncover" the use of this property as an electrical substation.[3] The word "apprise", as used by the CBA in making its finding, is defined by the same dictionary as "to give notice to; inform". The definitions of disclose and apprise are not synonymous with one another. However, the connotation of these two words is roughly the same. The use of the word "disclosure" in the Zoning Regulations and "apprise" in the Findings of the Board of Appeals present the Protestants with a linguistical Hobson's Choice. If the definition of "disclose" is the rough equivalent of "apprise", then the notations on the Final Development Plan for Fox Ridge do substantiate the factual finding of the CBA that "all property owners prior to the purchase of their properties were apprised of the ownership of Tract A and the ultimate disposition of that property...". On the other hand, if the Protestants adhere to a strict definition of these two words then the factual finding that "all property owners... were apprised..." is irrelevant: the Zoning Regulations call for "disclosure" and not "appraisal".

B. FAILURE TO MEET BURDEN OF PROOF ON VARIANCES - THE CBA ERRED AS A MATTER OF LAW IN GRANTING THE VARIANCE.

BGE filed for a variance from the height and area regulations contained in Section 1A.04.3 of the BCZR to accommodate the location of the substation equipment which is at the heart of this controversy. BGE is a public service utility which is required by State

---

[3]None of the Protestants' witnesses testified to having personally reviewed the Final Development Plan for Fox Ridge, let alone to having been misled in some fashion by the notations thereon.

law to provide electrical generating capacity "sufficiently large enough to meet all normal demands for service and provide a reasonable reserve for emergencies." MD. Regs. Code Tit. 20, §50.02.03(1981); see also MD. Code Ann. Article 78, §§28(c), 75(a)(1994). BGE argues that, in order to meet these regulatory requirements, it must install and position new substation equipment in a configuration which will perforce result in the equipment's crossing the interior lot lines on the subject Tract of land.[4]

The CBA found as a matter of fact that Section 306 of the BCZR entitled BGE to a variance as a matter of law.

> Section 306 Minor Public Utility Structures. Minimum lot area regulations in any Zone shall not apply to repeater, booster, or transformer stations, or small community dial offices.

Having so found, the CBA should have found that BGE's request for a variance from lot line setback requirements was moot. Simply put, because BGE intended to install transformer equipment on the three-lot site, minimum lot area restrictions such as the 50 foot setback mandated by BCZR 1A04.3B.3 simply do not apply. Nevertheless, "the Board is compelled to address the issue of 307.1 pursuant to the Petition." (Op. 10)

Though this Court disagrees with the necessity found by the Board to apply the test for variances found in BCZR 307.1, the Court, nevertheless, finds that the Board's analysis approving the variance was correct.

The first step in the application of Section 307.1 is to determine whether or not the subject property is in some way unique or peculiar.

---

[4]Building setbacks. Any principal building hereafter constructed in an R.C. 5 Zone shall be situated at least 75 feet from the central line of any street and at least 50 feet from any lot line other than a street line,... 1A04.3.B.3.

> A property's peculiar characteristic or unusual circumstances relating only and uniquely to that property must exist in conjunction with the Ordinance's more severe impact on the specific property because of the property's uniqueness before any consideration will be given to whether practical difficulty or unnecessary hardship exists. Cromwell v. Ward, 102 MD App. 691 (1995), page 721.

The Board found as a matter of fact that unusual circumstances existed with regard to the extent electrical substation. It found that:

> "...the existing electrical substation is a substation which is far undersized in capacity for the required demand in the existing locale. An immediate (*sic*) need in increased capacity has been adequately demonstrated to address the issue of an unusual condition which exists with the existing structure. BGE is mandated to increase the capacity of any substation in order to stay ahead of demand. The conditions which exist in the existing substation are unique in that BGE has been unable to even meet existing demand. The Board finds that the existing conditions and insufficient capacity force BGE to increase capacity; (Op. 11)

The transcript of the proceeding before the Board of Appeals indicates that the existing Ivy Hill Substation is almost 40 years old. It has a single transformer with the capacity of 16.6 megawatts. (T. 1/10/95, p. 19). During the length of its service, the number of customers served by the Ivy Hill Substation has grown to approximately 1750 to 1800 customers over a 15 to 20 square mile area without any increase in its capacity to generate electricity. (T. 10/4/94, pp. 124-125, 132) (T. 1/10/95, pp. 54, 57). A further strain on the substation's capacity to generate electricity comes from an average increase of 75 new customers per year added to the substation's service area. (T. 10/4/94, p. 103) (T. 1/10/95, pp. 25-28). In the winter of 1994, the substation's 16.6 megawatt capacity was exceeded by almost 20% when it was required to generate 20.1 megawatts of power. (T. 10/4/94, pp. 103-104). This above-capacity demand for electricity caused an overload and interruption in electrical power to the service area. The Board heard testimony that

IN THE MATTER OF	*	BEFORE THE
BGE Ivy Hill Substation	*	COUNTY BOARD OF APPEALS
S/w Corner of Ridge Rd. &	*	BALTIMORE COUNTY
Joel Ct. 3rd Council Dist.	*	CASE NO. 94-452-XA

* * * * * * * * * * * * * *

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Tuesday Jan. 10, 1995 at 10:00 a.m. at Room 48, located at Basement, Old Courthouse, 400 Washington Ave. Towson and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Witness: Phillip VanderHayden
Address: PSC Engineering Division
6 St. Paul St. Rm. 1920
Baltimore, MD 21202-6806

Name: J. Carroll Holzer
Firm: Holzer & Lee
Address: 305 Washington Ave. #502
Towson, MD 21204
825-6961

The witness named above is hereby ordered to so appear before the County Board of Appeals. The Board requests the Sheriff to issue the summons set forth herein.

County Board of Appeals of
Baltimore County

Cost: $_____

Summoned: _____, 19____

Not served: _____, 19____

Sheriff of Baltimore County

no other distribution station is available to relieve the demand from Ivy Hill. (T. 10/4/94, pp. 120-124). Based upon its statutory mandate, BGE is required to supply its customers with adequate electric service to have a generating capacity, "sufficiently large enough to meet all normal demands for service and provide a reasonable reserve for emergencies." COMAR Tit. 20, §50.02.03 (1981). Given this mandate, and the increased demands on its generating capacity, the Board heard testimony that BGE's only option was to expand the Ivy Hill substation. (T. 10/4/94, pp. 106-107).

Having found BGE's obligation to expand the Ivy Hill substation to be "special circumstances" in terms of BCZR §307.1, the CBA then went on to consider whether strict compliance with the Zoning Regulations would result in "practical difficulty or unreasonable hardship". The CBA reached the appropriate legal conclusion with regard to the character of the variance requested by BGE. The CBA determined that BGE's Petition for Relief from setback requirements implicated an area variance, the requirement for which is "practical difficulty" rather than a use variance which would have required a showing of "unreasonable hardship". *Red Roof Inns v. People's Counsel*, 96 MD. App. 219 (1993) p. 224.

> In order to require BGE to comply strictly with the setback requirements, the Board would be asking BGE to deviate from the aforementioned nationally recognized building and electrical codes, as well as sound engineering practices, on consolidating all substation equipment to the extent possible under this Petition. That deviation creates a practical difficulty in causing BGE to design a facility which would not conform to those standards. (Op. 12).

The record supports the CBA's finding. BGE developed a two-stage plan for the upgrading of the Ivy Hill Substation and its equipment. In the first stage, the current

transformer would be removed and replaced by a 32 megawatt capacity transformer. (T. 10/4/94, p. 104) (T. 1/10/95, pp. 28, 65). BGE intends to install a second transformer at Ivy Hill to meet anticipated demands for electrical power in the future. (T. 10/4/94, p. 105)(T. 1/10/95, pp. 28, 65). The existing equipment and that proposed in the two-stage development program must, necessarily, operate in close proximity. (T. 10/4/94, p. 39). In order to situate and operate the transformer equipment in accord with nationally recognized engineering codes, the only configuration in which the equipment can be situate on the three-acre tract will necessitate the equipment's straddling interior lot lines. (T. 10/4/94, pp. 39, 104-105, 109-110)(T. 1/10/95, pp. 21-23, 28-30, 63-65, 69-70).

In summary, the CBA found that unusual circumstances were inherent in the Ivy Hill Substation site. Coupling this finding with an additional finding that interior lot line setback requirements would result in practical difficulty in the proper location of power generating equipment on the site, the CBA properly granted a variance from those lot setback requirements. The record contains substantial evidence to support those findings and, therefore, the Court will not substitute its judgment for that of the CBA.

C. LACK OF NEED - "BGE'S FAILURE TO ESTABLISH NEED BY EVIDENCE TO SUPPORT THE CBA'S FINDING"

Protestants note that the grant of a special exception for the Ivy Hill Substation would require BGE to meet the requirements of Section 411.1 of the BCZR: "the use must be needed for the proper rendition of the public utility's service and the location thereof shall not seriously impair the use of neighboring property" as well as those requirements set out in Section 502.1 BCZR. The Protestants assert that BGE failed to demonstrate the "need" for the upgrade of the Ivy Hill Substation. This Court disagrees.

Prior judicial decisions indicate that the requirement to show "need" is not a very stringent one in the context in which it presents itself in this case. In the case of *Neuman v. City of Baltimore*, 92 MD 251 (1967), the Court of Appeals considered the propriety of the grant of a special exception which permitted a physician to practice in a residential apartment building. The Protestants in that case, Neuman, argued the lack of need for this special exception and offered evidence to the affect that there were numerous doctors' offices already in the area. In considering this argument, the court stated: "Need for the services of a physician likewise must be considered as elastic and relative." Clearly it does not mean absolute necessity. Need has been judicially held to mean "expedient, reasonably convenient, and useful to the public... ." *Neuman v. City of Baltimore, supra*, at page 99. (See also, *Baltimore City v. C & P Telephone Company*, 92 MD 692 (1901), in which the court found that the term "necessary", "for the purpose of making distribution and forming connections", as contained in a City Ordinance, should have been interpreted to allow the C & P Telephone Company to leave standing those telephone poles "reasonably" necessary to achieve the purpose of the Ordinance.) Having defined "need" as such, the *Neuman* court upheld the granting of the special exception based upon countervailing evidence to the effect that 95% of the patients of the subject physician were in the "immediate area". *Neuman v. Baltimore City, supra*, page 94.

Expert witness testimony presented by BGE to the CBA amounted to more than a mere scintilla of evidence upon which the CBA could find need for the upgrade of the Ivy Hill Substation. The CBA received competent evidence that the capacity of the Ivy Hill

Substation was exceeded by nearly 20% during the winter of 1994. (T. 10/4/94, pp. 103-104). This power overload resulted in an interruption in service which necessitated that a portion of the load served by the Ivy Hill Substation be temporarily transferred to the Delight Substation. (T. 10/4/94, pp. 103-105). However, because of rapid growth in the area served by the Delight Substation, the transferred energy generation potential would necessarily be returned to the Ivy Hill Substation. (T. 10/4/94, pp. 104-105, 122-123). Further, the necessary energy generation potential to supply the needs of the residents served by the Ivy Hill Substation were not available from any other distribution substation in the area. (T. 10/4/94, pp. 120-124). The CBA also heard testimony that the demand on the Ivy Hill Substation for the production of electric power will increase arithmetically in years to come. That the CBA found this testimony probative and compelling is obvious from its Opinion:

> It was well established during the course of evidence and testimony that existing demand, prior to the single-day occurrence in 1994, is not met by the existing substation capacity; therefore, need for enlargement of the substation giving current demand is justified. As indicated by Petitioners' experts, future demand is forecasted and is the basis for establishing future demand in designing facilities such as the Ivy Hill substation. (Opinion pp.4-5)

The CBA made its finding of "need" in the face of testimony presented by the Protestants' witnesses. Pam Budeshein, and employee of the Baltimore County Office of Planning and Zoning prepared a projection of population increase in the subject area upon which the Protestants argued that an increase in generating power to only 17.7 megawatts would meet any increase need for generating capacity to the Ivy Hill service area. The Protestants also offered the testimony of one Ron Hanley who interpreted the factual evidence presented by BGE's witnesses in such a manner to show that no need existed

for an increase in the substation's capacity to the extent requested by BGE.

The case of *Snowden v. Mayor and City Council of Baltimore*, 224 Md. 443 (1961) is apposite to disputes, like the one before this court, in which each side argues that different inferences should be drawn from the same set of facts.

> The heart of the fact-finding process often is the drawing of inferences from the facts. The administrative agency is the one to whom is committed the drawing of whatever inferences reasonably are to be drawn from the factual evidence. *Snowden*, supra, p. 448.

Accordingly, it is not for this court to determine whether or not the CBA was "right" in finding a need to expand the Ivy Hill Substation. Though this court might well find the evidence presented by the Protestants to be logical and commanding, that finding is not a basis for the court to substitute its opinion for that of the CBA as long as the opinion of the CBA is a reasonable one.

E. DID THE CBA ERR BY FAILING TO REQUIRE COMPLIANCE WITH BCZR SECTIONS 502.1 AND 411.1?

The BCZR's specifically addressed Public Utility uses in Section 411.

> For Public Utility uses permitted only by special exceptions in addition to the provisions of Section 502, the following regulations shall apply.
> 411.1 The use must be needed for the proper rendition of the Public Utility's service and the location thereof shall not seriously impair the use of the neighborhood.

The Protestants heatedly debate the CBA's finding: "... that any effect on property values in relation to the existence of the substation were already felt in the purchase of their respective properties." At the hearing before the CBA, the Protestants presented testimonial and documentary evidence probative of the negative effect the mere proposal to upgrade the substation had on properties bordering the Ivy Hill Substation. BGE

opposed that evidence with the testimony of Walter A. Reiter, Jr., an appraiser, who testified that the plan for enlarging the substation would not seriously impair the use of the surrounding properties because the plan provided for adequate screening by extant woodlands and additional landscaping and planting.

The Court of Appeals was presented with strikingly similar arguments based upon parallel facts in *Deen v. Baltimore Gas & Electric*, 240 Md. 317 (1965). The issue presented in *Deen* was whether or not the Baltimore Gas & Electric Company would be allowed to place its 115,000 volt transmission line above ground throughout its right-of-way from Summerfield to an East Towson substation in Baltimore County. In considering the effect that high tension wires would have on property values in the residential areas affected, the Court stated:

> Besides Mr. Gavrelis, other witnesses, including Hugh E. Gelston, a real estate expert, testified before the Board that in their opinion high tension wires in this area would adversely affect property values. To rebut this, the Company produced Mr. Magee and Mr. Heinmuller, both expert real estate appraisers, who testified that in their opinions overhead lines do not have an adverse affect on property values. Because of the evidence as to safety, coupled with the conclusions which reasonable men could have gleaned from the conflicting testimony as to the effect of high tension wires on nearby property values, we conclude that under the test used in *Meltzer*, the Board was not clearly erroneous when, pursuant to the authority given the Board under Section 411.3, it ordered these high tension wires underground. For that reason, this portion of the Board's findings we consider to be supported by competent, material and substantial evidence upon the whole record, and therefore, was not arbitrary and capricious. *Deen* p. 326.

That the CBA found that the erection of high tension lines would deflate residential property values in the *Deen* case, and that the improvement of the Ivy Hill substation would not deflate residential property values in the case *sub judice* is unimportant. What is significant is that the quality of analysis by the CBA is the same in both cases. The

In distilling this case down to its essence: the evidence presented to the CBA supports each and every relevant, dispositive finding of fact made by the CBA and having so decided, this Court should not presume to substitute its judgment for that of the CBA.

Accordingly, it is

ORDERED, this 24TH of December, 1996, that the Petition of Friends of the Ridge for Judicial Review be, and it is hereby, **DENIED**.

Lawrence R Daniels

LAWRENCE R. DANIELS
JUDGE

DATE: DEC 24, 1996

cc: J. Carroll Holzer, Esquire
John H. Zink, III, Esquire

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY
*
PETITION OF FRIENDS OF THE RIDGE, INDIVIDUALS MR. & MRS. NIGEL HOWSE, MR. & MRS. ROBERT O'HARA, MR. & MRS. RON HANLEY, MR. & MRS. CARL FOLLO, MR. & MRS. ROBERT RYTTER, MR. & MRS. IRA BROWN, MR. & MRS. DIETER LANGENDORF, MR. & MRS. ANDREW LANSMAN, MR. & MRS. JEFFREY BOZEL, MR. & MRS. BRUCE PITCHER, AND MR. & MRS. JOE CZAJKOWSKI AT 305 WASHINGTON AVENUE, SUITE 502, TOWSON, MARYLAND 21204 *
*
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Room 49, Old Courthouse, 400 Washington Avenue, Towson, MD 21204 * CIVIL ACTION No. 3-C-95-5315
*
IN THE CASE OF: IN THE MATTER OF THE APPLICATION OF BALTIMORE GAS & ELECTRIC CO. (IVY HILL SUBSTATION) FOR SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE SOUTHWEST CORNER OF RIDGE ROAD AND JOEL COURT 8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT *
*
CASE NO. 94-452-XA
* * * * * * * * * * * * *

PROCEEDINGS BEFORE THE ZONING COMMISSIONER AND THE BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Kristine K. Howanski and S. Diane Levero, constituting the County Board of Appeals of Baltimore County, and in answer to the Petition for Judicial Review directed against the Board in this case, herewith return the record of proceedings had in the above-entitled matter, consisting of the following certified copies or original papers on file in the Office of Permits and Development Management and the Board of Appeals of Baltimore

RECEIVED AND FILED
95 JUL 17 PM 2:50

County:

ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND OFFICE OF PERMITS AND DEVELOPMENT MANAGEMENT OF BALTIMORE COUNTY

No. 94-452-XA

May 10, 1994	Petitions filed by Martha A. Delea, Esquire, and Robert A. Hoffman, Esquire, on behalf of BG&E and Frederick and Ann Vinup, for: Special Exception to use property for an outdoor electric public utility service center (electric substation); and Variance to permit structures as close as 0' from an interior lot line in lieu of required 50' building setback.
May 26	Publication in newspapers.
June 3	Certificate of Posting of property.
June 10	Zoning Advisory Committee (ZAC) comments.
June 21	Hearing held on Petition by the Zoning Commissioner.
June 24, 1994	Order of the Zoning Commissioner in which Petitions for Special Exception and Variance were GRANTED.
July 21	Notice of Appeal filed by J. Carroll Holzer, Esquire, on behalf of Nigel Howse, Robert O'Hara, Ron Hanley, Carl Follo, Robert Rytter, Ira Brown, Dieter Langendorf, Andrew Lansman, Jeffrey Bozell, Bruce Pitcher, Joe Czajkowski, and Friends of the Ridge.
September 13	Request to withdraw appearance filed by Marc K. Cohen, Esquire (Holzer representing client).
October 4	Hearing before the Board of Appeals (Day #1)
January 10, 1995	Hearing before the Board of Appeals (Day #2)
January 12	Hearing before the Board of Appeals (Day #3)
January 17	Hearing before the Board of Appeals (Day #4)
January 19	Hearing before the Board of Appeals (Day #5)

February 6, 1995	Memorandum in Lieu of Final Argument filed by J. Carroll Holzer, Esquire on behalf the Friends of the Ridge, et al.
February 6	Petitioner's Memorandum in Support of Petition for Special Exception and Variance filed by Robert A. Hoffman, Esquire, on behalf of BGE.
February 22	Deliberation completed.
May 31	Opinion and Order of the Board in which the Petition for Variance was GRANTED and the Petition for Special Exception was GRANTED with restrictions.
June 7	Amendment to Opinion of the Board to indicate that People's Counsel did not participate in the proceedings.
June 16	Petition for Judicial Review filed in the Circuit Court for Baltimore County by J. Carroll Holzer, Esquire, on behalf of Friends of the Ridge, et al.
June 23	Copy of Petition for Judicial Review received by the Board of Appeals from the Circuit Court for Baltimore County.
June 26	Certificate of Notice sent to interested parties.
July 17	Transcript of testimony filed.

Petitioner's Exhibits No.

1 -Curriculum vitae - Monica P. McGrady
2 -Plat for proposed substation
3 -Plat of site plan shows company's proposed landscaping plan
4 -Existing special exception for substation currently on Tract B
5 -Aerial photo - March, 1994 - black & white lines - external
6a-Photo -Circuit switches -12' high, Transformer
7 -Location Chart for photos
7a-1- thru 7-K-11- Joel Court
8 -Final Development Plan for Forwood
9 -Curriculum vitae - Lawrence S. Taylor

IN RE: PETITIONS FOR SPECIAL EXCEPTION AND ZONING VARIANCE
S/W cor. of inters. of Ridge Rd. and Joel Court
Ivy Hill Substation
8th Election District
3rd Councilmanic District
Legal Owner & Contract Purchaser:
Tracts A & C: Baltimore Gas & Electric Co.
Legal Owner: Tract B: Frederick R. Vinup, et ux,

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 94-452-XA
*
*
*

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as both a Petition for Special Exception and Petition for Zoning Variance for the property located on the southwest corner of the intersection of Ridge Road and Joel Court in northern Baltimore County. Within the Petition for Special Exception, relief is requested to approve an outdoor electric public utility service center (electric substation) in an R.C.5 zone, pursuant to Section 1A04.2.B.11 of the Baltimore County Zoning Regulations (B.C.Z.R.) and, if necessary, to amend the Fox Ridge Estates (formerly Forwood property) Final Development Plan. Within the Petition for Zoning Variance, a variance is sought from Section 1A04.3.B.3 of the B.C.Z.R. to permit structures as close as 0' from an interior lot line in lieu of the required 50 ft. building setback. All of the relief requested is more particularly shown on Petitioners' Exhibit No. 1, the site plan to accompany the Petitions for Special Exception and Variance.

ORDER RECEIVED FOR FILING
Date 6/24/94
By [illegible]

Appearing at the requisite public hearing held for this case were two representatives of Baltimore Gas and Electric Company (BG&E), owner of a portion of the subject property and Contract Purchaser of the remainder of the site. These included Ed Carmen, an electrical engineer, who studies BG&E's anticipated power needs, and Monica P. McGrady, who designed the

10 -Chart: "How Does Electricity Get to Your House?"
11 -Map of Service area for Proposed Ivy Hill Substation Expansion
12 -Curriculum Vitae - James F. Ryan, Jr.
13 -Portion of Pet. Ex. 11 - Current Development Map
14 -Curriculum Vitae - Linda Erdreich
15 -Curriculum Vitae - Paul Taylor
16 -Breakdown of coverage areas 1/5/95
17 -Chart showing projected growth rate of trees
18 -Resume -George E. Gavrelis
19 -200-scale zoning map
20 -Aerial photographic map
21 -Map from Dept. of Public Works - Metropolitan District Map 12/15/92
22 -Planning Board Policies & Resolutions: Final Development Plans
23 -Inter-Office Correspondence to Jablon from Keller 6/2/94
24 -Qualifications: Walter A. Reiter
25 -Revised CRG Plan for Forwood property Approved 1/21/88
26 -Revised CRG Plan for Forwood property Approved
27 -Packet of letters -top letter to Clare Miller 1/18/95

Protestant's Exhibits:

1 -Press release: "President Clinton Asks EPA to address EMF Issue" 5/3/94
2 -Letters from neighbors - For I.D. Only
3 -Underlying site drawing with green tract overlays (**IN CLOSET - LARGE EXHIBIT**)
4 -Overlay on western side to show property line (overlays Pet. Ex. 3)
5 -Chart showing Community Associations that will testify - For I.D. Only.
6A-Map of transportation zones and attachments.

6B-Revised population figures
7 -Comparison of Transportation zone growth figures with BGE growth figures
8 -Unit Growth Comparison
9 -Need Comparison vs. Capacity
10 -Need Comparison vs. Capacity (includes Hickory Meadow)
11 -Packett of letters -top letter to Martha Delea, BGE 12/8/94
12 -Curriculum Vitae, Ernest J. Kern
13 -Consultation Report for Friends of the Ridge 9/30/94
14 -Contract of sale (copy) for 11 Forwood Court
15 -Copy of photo of proposed site
16 -Map -Subtransmission map showing 13 KV to 34 KV feeders (IN CLOSET - LARGE EXHIBIT)
17 -Photos - 9 photos of substations (IN CLOSET - LARGE EXHIBIT)
18 -Photos - 9 photos of substations (IN CLOSET - LARGE EXHIBIT)
19 -Photo Album - substation site in county (Large Album)
20 -Small photo album of Ivy Hill substation from Ridge Road & property of Mr. & Mrs. Follo, also Hanley property, etc. in summer & fall
21 -Poster: Alternate location - Oregon Ridge Park (IN CLOSET - LARGE EXHIBIT)
22 -Curriculum Vitae - Zory Glaser
23 -Chart: The electromagnetic Spectrum
24 -Brochure on Fox Ridge Estates
25 -Fox Ridge Estate plan
26 -Graph: Baltimore County population
27 -Curriculum Vitae, Norman Gerber
28 -For I.D. - Planning Board report 6/25/91
29 -Rule 8 Document 1/1/95
30 -Packet of Letters from parents and staff of Chestnut Grace Preschool
31 -Rule 8 Documents for Shawan Valley
32 -Rule 8 Documents for Hunt Cup

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY
*
PETITION OF FRIENDS OF THE RIDGE, *
INDIVIDUALS MR. & MRS. NIGEL HOWSE, *
MR. & MRS. ROBERT O'HARA, MR. & MRS.
RON HANLEY, MR. & MRS. CARL FOLLO, *
MR. & MRS. ROBERT RYTTER, MR.
& MRS. IRA BROWN, MR. & MRS. DIETER *
LANGENDORF, MR. & MRS. ANDREW LANSMAN,
MR. & MRS. JEFFREY BOZEL, MR. & MRS. *
BRUCE PITCHER, AND MR. & MRS. JOE
CZAJKOWSKI AT 305 WASHINGTON AVENUE, *
SUITE 502, TOWSON, MARYLAND 21204
*
FOR JUDICIAL REVIEW OF THE DECISION OF CIVIL
THE COUNTY BOARD OF APPEALS * ACTION
OF BALTIMORE COUNTY No. 3-C-95-5315
Room 49, Old Courthouse, 400 Washing- *
ton Avenue, Towson, MD 21204
*
IN THE CASE OF: IN THE MATTER OF
THE APPLICATION OF *
BALTIMORE GAS & ELECTRIC CO.
(IVY HILL SUBSTATION) *
FOR SPECIAL EXCEPTION AND VARIANCE
ON PROPERTY LOCATED ON THE SOUTHWEST *
CORNER OF RIDGE ROAD AND JOEL COURT
8TH ELECTION DISTRICT *
3RD COUNCILMANIC DISTRICT
*
CASE NO. 94-452-XA
* * * * * * * * * * * * *

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, Robert O. Schuetz and S. Diane Levero, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely, J. Carroll Holzer, P.A., HOLZER AND LEE, 305 Washington Avenue, Suite 502, Towson, MD 21204, Counsel for Friends of the Ridge, et al, Petitioners, at 305 Washington Avenue, Suite 502, Towson, Maryland 21204; Martha A. Delea, Esquire, Baltimore Gas & Electric Company, P.O. Box 1475, Charles Center, Baltimore, MD 21203-1475; Mr. and Mrs. Frederick Vinup, 1821 Ridg Road, Reisterstown, MD 21136; Robert A. Hoffman, Esquire, VENABLE, BAETJER AND HOWARD, 210 West Allegheny Avenue, Towson, MD 21204,

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

June 26, 1995

Robert A. Hoffman, Esquire
VENABLE, BAETJER & HOWARD, LLP
210 Allegheny Avenue
Towson, MD 21204

RE: Civil Action No. 3-C-95-5315
BALTIMORE GAS & ELECTRIC CO.
(IVY HILL SUBSTATION)

Dear Mr. Hoffman:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that a Petition for Judicial Review was filed on June 16, 1995, in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to Rule 7-202(d)(2)(B).

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, must be filed under Civil Action No. 3-C-95-5315.

Enclosed is a copy of the Certificate of Notice, which has been filed in the Circuit Court.

Very truly yours,

Charlotte E. Radcliffe

Charlotte E. Radcliffe
Legal Secretary

Enclosure

cc: Martha A. Delea, Esquire
Baltimore Gas & Electric Co.
Mr. & Mrs. Frederick Vinup
Pat Keller /Planning
Joseph V. Maranto /ZADM
Lawrence E. Schmidt /ZADM
Arnold Jablon /ZADM
W. Carl Richards /ZADM
Docket Clerk /ZADM
Virginia W. Barnhart, County Attorney
People's Counsel for Baltimore County

Printed with Soybean Ink on Recycled Paper

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

June 26, 1995

J. Carroll Holzer, P.A.
HOLZER and LEE
305 Washington Avenue, Suite 502
Towson, MD 21204

RE: Civil Action No. 3-C-95-5315
BALTIMORE GAS & ELECTRIC CO.
(IVY HILL SUBSTATION)

Dear Mr. Holzer:

In accordance with Rule 7-206(c) of the Maryland Rules of Procedure, the County Board of Appeals is required to submit the record of proceedings of the petition for judicial review which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty days.

The cost of the transcript of the record must be paid by you. In addition, all costs incurred for certified copies of other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court within sixty days, in accordance with Rule 7-206(c).

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

Charlotte E. Radcliffe
Legal Secretary

Enclosure

c: Friends of the Ridge, et al

Printed with Soybean Ink on Recycled Paper

IN THE CIRCUIT COURT *
FOR *
BALTIMORE COUNTY *
*
PETITION OF Friends of the Ridge, *
individuals Mr. & Mrs. Nigel *
Howse, Mr. & Mrs. Robert *
O'Hara, Mr. & Mrs. Ron Hanley, *
Mr. & Mrs. Carl Follo, Mr. & Mrs. *
Robert Rytter, Mr. & Mrs. Ira *
Brown, Mr. & Mrs. Dieter *
Langendorf, Mr. & Mrs. Andrew *
Lansman, Mr. & Mrs. Jeffrey *
Bozel, Mr. & Mrs. Bruce Pitcher, *
and Mr. & Mrs. Joe Czajkowski at *
305 Washington Avenue, Suite 502, *
Towson, Maryland 21204 *
*
FOR JUDICIAL REVIEW OF THE * Civil Action
DECISION OF THE COUNTY BOARD OF *
APPEALS FOR BALTIMORE COUNTY * Case No.: 3C-95-5315
400 Washington Avenue, Room 49 *
Old Courthouse *
Towson, Maryland 21204 *
*
IN THE MATTER OF: *
THE APPLICATION OF *
BALTIMORE GAS & ELECTRIC CO. *
(IVY HILL SUBSTATION) *
FOR SPECIAL EXCEPTION AND *
VARIANCE ON PROPERTY LOCATED *
ON THE SOUTHWEST CORNER OF *
RIDGE ROAD AND JOEL COURT *
8TH ELECTION DISTRICT *
3RD COUNCILMANIC DISTRICT *
Case No.: 94-452-XA *
* * * * * * * * * * * * * *

PETITION FOR JUDICIAL REVIEW

Petitioners, Friends of the Ridge and individuals Mr. & Mrs. Nigel Howse, Mr. & Mrs. Robert O'Hara, Mr. & Mrs. Ron Hanley, Mr. & Mrs. Carl Follo, Mr. & Mrs. Robert Rytter, Mr. & Mrs. Ira Brown, Mr. & Mrs. Dieter Langendorf, Mr. & Mrs. Andrew Lansman, Mr. & Mrs. Jeffrey Bozel, Mr. & Mrs. Bruce Pitcher, and Mr. & Mrs. Joe Czajkowski by and through their attorney, J. Carroll Holzer and Holzer and Lee, hereby Petition for Judicial Review by

LAW OFFICE
HOLZER AND LEE
305 WASHINGTON AVENUE
SUITE 502
TOWSON, MARYLAND
21204

(410) 825-6961
FAX (410) 825-4923

the Circuit Court for Baltimore County pursuant to Rule 7-207 of Civil Procedure from the opinion of the County Board of Appeals dated May 31, 1995.

J. Carroll Holzer
Holzer and Lee
305 Washington Avenue
Suite 502
Towson, Maryland 21204
(410) 825-6961
Attorney for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the 16th day of June 1995, a copy of the foregoing Petition for Judicial Review was mailed, postage pre-paid, to Robert Hoffman, Esquire, Venable Baetjer and Howard, 210 Allegheny Avenue, P.O. Box 5517, Towson, Maryland 21204

J. Carroll Holzer

Petitions\Ridge

IN THE MATTER OF THE THE APPLICATION OF BALTIMORE GAS & ELECTRIC CO. (IVY HILL SUBSTATION) FOR SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE SOUTHWEST CORNER OF RIDGE ROAD AND JOEL COURT 8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 94-452-XA

* * * * * * * * *

AMENDMENT TO OPINION

On May 31, 1995, this Board issued an Opinion and Order in the above-captioned matter. The Board, on its own initiative, pursuant to Rule 10, has reviewed its Opinion issued in the proceedings and finds that an error exists within that Opinion. Specifically, the last sentence of the first paragraph on page 1 of the Board's Opinion is hereby deleted, inasmuch as the Office of People's Counsel did not participate in these proceedings.

No other changes having been made, any Petition for Judicial Review shall be filed from the date of the Board's final Opinion and Order as issued on May 31, 1995.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Robert O. Schuetz, Chairman

Harry E. Buchheister, Jr.

DATE: June 7, 1995

County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

June 7, 1995

J. Carroll Holzer, P.A.
HOLZER and LEE
305 Washington Avenue, Suite 502
Towson, MD 21204

RE: Case No. 94-452-XA
Baltimore Gas & Electric Co. /Ivy Hill Substation -- Amended Opinion

Dear Mr. Holzer:

Enclosed please find a copy of the Amended Opinion issued this date by the County Board of Appeals of Baltimore County in the subject matter to correct an error in the Board's original Opinion issued May 31, 1995.

Very truly yours,

Kathleen C. Weidenhammer
Administrative Assistant

encl.

cc: Andrew Lansman, et al
Robert A. Hoffman, Esquire
Martha A. Delea, Esquire
Baltimore Gas & Electric Co.
Mr. & Mrs. Frederick Vinup
Mr. & Mrs. Raymond Fischer
Mrs. Dorothy Marsden
The Honorable Paula C. Hollinger
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
W. Carl Richards, Jr. /ZADM
Joseph V. Maranto /ZADM
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM
Virginia W. Barnhart, County Attorney

bcc: The Hon. Bryan T. McIntire

Printed with Soybean Ink on Recycled Paper

IN THE MATTER	*	BEFORE THE
THE APPLICATION OF		
BALTIMORE GAS & ELECTRIC CO.	*	COUNTY BOARD OF APPEALS
(IVY HILL SUBSTATION)		
FOR SPECIAL EXCEPTION AND	*	OF
VARIANCE ON PROPERTY LOCATED		
ON THE SOUTHWEST CORNER OF	*	BALTIMORE COUNTY
RIDGE ROAD AND JOEL COURT		
8TH ELECTION DISTRICT	*	Case No. 94-452-XA
3RD COUNCILMANIC DISTRICT		

* * * * * * * * * * * * *

O P I N I O N

This case comes on appeal to this Board from the Zoning Commissioner's Order dated June 24, 1994 in which a Petition for Special Exception and Petition for Variance for the subject properties were granted. The case was heard in five days of testimony: October 4, 1994; January 10, 1995; January 12, 1995; January 17, 1995; and January 19, 1995. It should be noted that one Board member was replaced, prior to commencing Day #2, with no objection from either Counsel. Petitioner was represented by Robert A. Hoffman, Esquire, and C. Carey Deeley, Jr., Esquire, VENABLE, BAETJER, HOWARD, LLP; and Martha A. Delea, Esquire, of Baltimore Gas & Electric Company. Protestants were represented by J. Carroll Holzer, Esquire, HOLZER & LEE. People's Counsel for Baltimore County also participated in these proceedings.

Due to the length of the case, transcripts were prepared for use by the Board in preparing for deliberation in this matter; said deliberation being in open meeting on February 22, 1995. Because of the presence of the transcripts, the evidence and testimony will not be recounted herein.

Argument was made on the part of the Protestants regarding the jurisdiction of this case before the Board. Protestants allege

ite plan. Also appearing on behalf of the Petitioner was Walter A. Reiter, Jr., a Real Property Appraiser. The Petitioner was represented by Robert A. Hoffman, Esquire and Martha Delea, Esquire.

Several residents of the surrounding locale also appeared in opposition. These included Andrew Lansman and Pamela Fallo who served as spokesman for several residents in the Foxridge Estates community. Also present were Joann Czaykowski, Raymond and Dorothy Fisher, Peggy Bealsfield and Dorothy Marsden. The Protestants were unrepresented by counsel, but for Rosemary Hanley who was represented by Mark K. Cohen, Esquire.

Testimony and evidence was received from Edward Carmen, a planner of electric systems with BG&E. Mr. Carmen observed that the subject site is divided into three tracts, known as lots A, B and C. Tracts A & C are owned by BG&E and tract B is under contract for acquisition by the company from Frederick R. and Ann L. Vinup. Presently, the tracts owned by BG&E are improved with a small electric substation. This existing substation helps supply electricity to the surrounding locale. The area that is provided service from this station encompasses approximately 6 sq. miles.

Mr. Carmen indicated that he has made a comprehensive study of the growth of this area and the company's needs in the future. Based upon the study, he has concluded that the station will be overloaded by the winter of 1995. Moreover, he observed that the existing station was installed in the mid 1950s. Because of the growth of the area since that time and advances in technology, BG&E, proposes revitalizing the improvements on site. Specifically, the electrical equipment on the property will be removed. In its place, modern equipment will be installed which will upgrade the electrical capacity of this substation. These improvements will result in more efficient and a higher capacity station. Mr. Carmen also testified that as part of the improvement of the site, the overhead wires which lead

ORDER RECEIVED FOR FILING
Date 6/24/96
By

that, due to the presence of a note on the final development plan indicating disposition of the parcel known as Tract A, the plan which is the subject of this hearing should have gone to the Planning Board for advice on the appropriateness of the instant case in relation to the final development plan. Having heard the testimony of expert witnesses Norman Gerber, for the Protestants, and George Gavrelis, for the Petitioner, the Board agrees with the Petitioner that the subject case is not a deviation from the final development plan, and, in fact, that the transfer of title of Tract A to the Baltimore Gas & Electric Company (hereinafter "BGE") occurred prior to the sale of other lots within the development. Therefore, this case is properly before the Board.

The facts in the case are essentially undisputed. The subject property is located in the R.C. 5 zone and is made up of three adjoining tracts. The combined area of all three tracts is approximately 2.9 acres. The area known as Tract C on Petitioner's Exhibit 2 is the subject of an existing special exception granted on March 28, 1956, for the operation of a local electric distribution substation known as Ivy Hill Substation. BGE proposes to replace existing equipment within the substation, enlarge the area for placement of electrical equipment, and increase the capacity of the Ivy Hill Substation. The issues before this Board are whether (a) BGE is able to meet the tests under Section 411 of the Baltimore County Zoning Regulations (hereinafter "BCZR") for public utility uses; (b) whether, due to the nature of the proposed development, the tests pursuant to Section 502.1, Special

Exceptions, are met; and (c) whether the Petitioner is due variances from interior lot lines between Tracts A, B and C, pursuant to Section 307, Variances, of the BCZR.

The Protestants attempted to illustrate for the Board that (a) need can be maintained by placement of similar substation equipment in other areas outside the area served by the Ivy Hill Substation; (b) the tests prescribed under Section 502 concerning special exceptions could not be met by the subject Petition; and (c) the Petitioner is not entitled to a variance subject to Section 307 of the BCZR, attempting to prove that no special conditions exist on the site.

Over the five days of testimony, much was discussed regarding various unresolved issues as they relate to this Board; namely, the effects of electromagnetic fields (hereinafter EMF's) and what standing those forces may have in regard to Section 502.1. In response to a question from the bench, the Protestants' expert witness, Zory Raphael Glaser, revealed that no legal standard for exposure to EMF's exists in the State of Maryland; further, the collection of data by the Petitioner's field personnel and witness, Bonnie L. Johansen, reveals that levels of EMF readings in and around the community, and more specifically around the subject site, are, and are expected to be, at levels below those which are commonly found in the average American household. As there is no legal standard by which this Board is compelled to judge the effects of EMF's pursuant to Section 502.1, coupled with the fact that aging equipment will be replaced by new and, from an

engineering standpoint, a technologically superior brand of equipment, and the testimony indicating the expected levels of exposure to EMF's, the Board can find no probative value to the evidence presented in opposition to the Petition on the basis of the argument of the presence of EMF's.

The first issue to be decided by this Board, therefore, is the question of need pursuant to Section 411 of the BCZR regarding distribution of electric power. Petitioner brought evidence and testimony by an expert in forecasting electric demand, James F. Ryan. Protestants offered the testimony of Ronald P. Hanley, an employee for a waste collection and recycling company, and one who had three courses in statistics at Pennsylvania State University, and who prepared various graphs which were introduced into evidence. According to the testimony of Charles S. Taylor, an engineer and expert in the area of electrical system planning, the BGE franchise with the Public Services Commission in the State of Maryland is required to supply power at all times and satisfy all demands. In short, the obligation of the Petitioner is to serve the demand at peak periods. The Protestants allege that the peak demand experienced on one day in the winter of 1994 was, admittedly by the Petitioner's witness, a one-time occurrence; however, that one-time occurrence established the new demand.

It was well established during the course of evidence and testimony that existing demand, prior to the single-day occurrence in 1994, is not met by the existing substation capacity; therefore, need for enlargement of the substation given current demand is

justified. As indicated by Petitioner's experts, future demand is forecasted and is the basis for establishing future demand in designing facilities such as the Ivy Hill Substation. The analysis of the need comparison versus capacity presented by Prot stants' witness, Mr. Hanley, points to a future need for increased capacity from this substation. Protestants would have the Petitioner increase the capacity of the substation in increments which stay just ahead of demand. The Board notes that such alteration of the substation places unreasonable engineering constraints and unnecessary additional cost to the ultimate development of this site. Such costs would be unnecessarily borne by all electric consumers for the benefit of those in the surrounding community. The Public Services Commission dictates that BGE must provide sufficient power to exceed demand. Petitioner has obviously met its burden of proof pursuant to Section 411 as buttressed by the evidence presented by Protestants in their graphic analysis of need versus capacity.

The Protestants further allege that the Ivy Hill Substation should not be used to supply power to areas outside of their own locale. Again, BGE was able to demonstrate that, because of its requirement to provide power, it was forced into the position of switching power distribution away from the Ivy Hill Substation as a result of the peak demands in 1994, creating a similar condition at the nearby Delight Substation in Owings Mills, an area growing even faster than the area surrounding Ivy Hill.

The Board therefore finds as a fact that not only has need

been demonstrated but that in further reviewing the requirements of 502.1 the health, safety and welfare of the general public is suspect when required power is not delivered to the homes served by the substations as mandated.

Much of the five days of testimony surrounded the requirements of Section 502.1. The first test under 502.1 is that the propos d use for which the special exception is required will not be detrimental to the health, safety or general welfare of the locality involved. The Board has already commented on the issue of EMF's; the Board can find no reason to believe that the presence of the proposed enlarged substation would have any impact on th health, safety or general welfare of the locality as a result of the presence of EMF's. Concerning the presence of the requisite stormwater management pond as part of the development of the site, the Protestants allege that said pond presents a breach of the safety to be enjoyed by the residents of the neighborhood and their children. Evidence and testimony by the Petitioner point to the fact that legal design standards for the pond will be maintained; therefore, the Board finds that no safety concerns are generated by the presence of a well-designed and well-constructed stormwater management pond.

Pursuant to the issue of general welfare under this subsection, the Protestants allege that property values will be negatively impacted on the expansion of the proposed substation. The Board finds as a fact that the Ivy Hill Substation has existed since 1958; the Board also finds as a fact that all property owners

prior to the purchase of their properties were apprised of the ownership of Tract A and the ultimate disposition of that property being with BGE, and that any effect on property values in relation to the existence of the substation were already felt in the purchase of their respective properties. Furthermore, as indicated above, the health, safety and general welfare of other localities served by the Ivy Hill Substation continues to be suspect so long as the substation sits unaltered, as most homes in the area served by the Ivy Hill Substation rely on uninterrupted transmission of electric power as the sole source of energy for the heating of their homes.

Regarding 502.1B, the subject proposal obviously does not tend to create congestion in roads, streets or alleys in the community; testimony was presented that the subject substation would be only periodically visited for maintenance of equipment.

The Protestants commented on the potential hazard from fire or other dangers, namely explosions, emitting from the expanded substation. The Board recognizes that the existence of electric equipment on the site presents an inherent danger. Nonetheless, design standards are established both locally and nationwide for the siting and construction of such facilities, in addition to design and construction standards of the equipment to be placed thereon. BGE obviously agrees to adhere to any and all building and electric codes and standards in the construction of the proposed enlarged substation. Therefore, the potential for fire or explosion at this particular substation is no greater than would

exist at any other substation; further, the existing conditions, already being beyond capacity of the existing substation, present a greater danger from fire or explosion than a substantially enlarged substation equipped to handle ever-increasing demand. There were no facts or circumstances presented to indicate that the particular use proposed at the particular location proposed would have any adverse effect above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981)

The case presented here is one in which the Petitioner plans to expand an existing substation, accommodate existing and future demand with a reasonable buffer for same, and to do so on a part of the combined three tracts which allows for the greatest amount of space between the proposed expanded substation and nearby properties. The Board finds as a fact that not only has BGE met the standard in Schultz v. Pritts, but in fact has worked diligently to mitigate such ordinary hazards from the subject property to a degree that those hazards are below the standard normally found at similar sites. Therefore, the requirements of 502.1C have been easily met.

Section 502.1D speaks to the overcrowding of the land and concentration of population. The subject Petition includes evidence and testimony which indicates that BGE intends to raze an existing home on Tract B; the Board finds as a fact that the Petition will actually reduce the concentration of population and

the intensity of overcrowding on the land. Section 502.1E is similarly unaffected by the subject Petition as is 502.1F. Schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements, and adequate light and air all are unaffected by the proposed expanded substation.

Regarding 502.1G, the Board agrees with the testimony of Mr. Gavrelis when he states that the R.C. 5 zone permits some public utility uses as a matter of right and others as special exceptions which are presumed to be valid uses. The mere existence of homes in the R.C. 5 zone points to their need for power transmission; therefore, the reasoning follows that facilities to provide the transmission of power as a natural consequence of the existenc of those homes dictates that not only are electric substations consistent with the purposes of the property's zoning classification but are a need to be fulfilled, in the allowance of development in the R.C. 5 zone.

Regarding 502.1H, the Board heard testimony from Mr. Gavrelis and Monica McGrady, BGE project engineer and an expert in site planning, that because of the intent to raze the existing structures which include a residence and swimming pool, coupled with the planned siting of equipment within the cleared area and the additional landscaping, the impermeable surface and vegetative retention provisions are met by the subject Petition. Concerning 502.1A, the Board did hear testimony from experts in property values from both the Petitioner and Protestants; the Board recognizes that one of the concerns in regard to property values is

the visual impact that an enlarged substation presents. The Board is not compelled by the argument that property values will be negatively impacted; however, the Board recognizes that the residents have come to be familiar and comfortable with what has been termed the pastoral setting of the neighborhood. In recognizing that BGE is meeting the requirements for vegetative retention provisions of the regulations, the Board is compelled to require as part of any improvements pursuant to this Petition to include landscaping which serves to provide a visual buffer between the subject site and surrounding properties, in deference to the adjoining property owners. Therefore, the Board will grant the special exception, subject to restrictions.

The Petitioner finally must meet the tests under Section 307.1 in pursuing variance from lot line setbacks, said lot lines existing between tracts owned by the Petitioner. George Gavrelis clearly points out in his testimony that Section 306 of the BCZR speaks to lot area regulations for erecting substations. The Petitioner seeks a variance under 307.1 from BCZR 1A04.3B.3 which requires a 50-foot setback from any lot line other than a street line. The Board finds as a fact that Section 306 applies in this case and that the application for a variance under 307.1 may be treated as moot. The Petitioner recognizes that its placement of electric utility structures on the subject site, straddling interior lot lines and certainly within otherwise required setbacks, may be construed under 1A04.3B.3 as a principal building, and is therefore requesting such variance. The Board is compelled

to address the issue of 307.1 pursuant to the Petition. As stated by Mr. Gavrelis in his testimony, the Board finds that the application of Section 306 points to the fact that public utilities are unique in their requirements. Therefore, the spirit and intent of the BCZR in height, area, off-street parking and sign regulations are met by the subject Petition. Since the Petitioner seeks relief from 1A04.3B.3, the Petitioner must meet the tests in trying to prove that special circumstances or conditions exist that are peculiar to this land or structure that is the subject of the variance request. In David Cromwell v. Arthur Thomas Ward, III, CSA No. 94-617, filed January 4, 1995, Judge Cathell, the Court of Special Appeals, states that the conditions which are peculiar to the land or structure must be met before the tests for strict application of the BCZR and any resulting practical difficulty or unreasonable hardship are reviewed. The Board finds as a fact that the existing electrical substation is a substation which is far undersized in capacity for the required demand in the existing locale. An immediate need in increased capacity has been adequately demonstrated to address the issue of an unusual condition which exists with the existing structure. BGE is mandated to increase the capacity of any substation in order to stay ahead of demand. The conditions which exist in the existing substation are unique in that BGE has been unable to even meet existing demand. The Board finds that the existing conditions and insufficient capacity force BGE to increase capacity; furthermore, in order to accommodate existing and increasing demand, in

to the property from Falls Road will be eliminated and cables will be placed underground. Mr. Carmen's testimony was technical in character and discussed extensively the need requirements as contained within Section 411 of the B.C.Z.R.

Also offering extensive testimony was Monica McGrady, a senior project engineer with BG&E and the author of the development plan. She confirmed Mr. Carmen's testimony about the history of the use of the site. She noted that the property originally owned by BG&E is labeled Tract C and was acquired in 1956. She offered several photographs, including an aerial photograph, which shows the existing station and use at the present time. Subsequently, BG&E purchased Tract A in December 1988 and has entered into a contingent contract with Mr. and Mrs. Vinup to acquire Tract B. These recent acquisitions were made with an eye towards the proposed improvements. The total area of the site is 2.9 acres and the property is zoned R.C.5. Ms. McGrady also explained that all of the improvements on site, with the exception of a 100 ft. antenna, will be dismantled and retired. Ultimately, the site will be improved with an upgraded station. However, these improvements will be completed in two phases. The first phase will involve construction on the west side of the property, on that portion of the site farthest away from the Foxridge Estates community. Ultimately, however, additional equipment will be installed in the central portion of the site. As shown on the site plan and described by the witness, the equipment installed will be of a different character then that now on the property. The tallest piece of equipment to be installed will be approximately 14 ft. high. Moreover, all of the equipment will be surrounded by a 7 ft. fence with an additional 1 ft. height of barbed wire. Moreover, significant testimony was offered regarding other improvements to the site including the installation of a new driveway on the northwest side. This

ORDER RECEIVED FOR FILING
Date 6/24/92
By [illegible]

accordance with its requirements under its Public Services franchise, as well as nationally recognized and accepted building codes and standards, a condition exists which requires sufficient area to accommodate the needs of an enlarged substation. The Board therefore finds that the first test under 307.1 has been met. The land on which the substation will sit is divided by interior lot lines.

The second test under 307.1, assuming the first has been met, is that strict compliance with the zoning regulations would result in practical difficulty or unreasonable hardship. In order to require BGE to comply strictly with the setback requirements, the Board would be asking BGE to deviate from the aforementioned nationally recognized building and electrical codes, as well as sound engineering practices, on consolidating all substation equipment to the extent possible under this Petition. That deviation creates a practical difficulty in causing BGE to design a facility which would not conform to those standards. Furthermore, the Board finds as a fact that BGE's proposal, in consolidating the substation equipment to a central location within the three tracts, provides for the maximum setback from adjoining property owners, allowing for the greatest opportunity from visual and other alleged impacts. Because the Board finds that strict compliance would result in practical difficulty, the Board is not required to address the issue of unreasonable hardship.

O R D E R

IT IS THEREFORE this 31st day of May, 1995 by the

County Board of Appeals of Baltimore County

ORDERED that Petition for Variance from Section 1A04.3B.3 is hereby **GRANTED**; and it is further

ORDERED that the Petition for Special Exception for an electrical substation in R.C. 5 zone is hereby **GRANTED** subject to the following restrictions:

1. To the extent possible due to site conditions, the Board will require, as a condition of the special exception, that landscaping around the proposed substation and stormwater management pond shall be double that shown on the Landscape Plan, and that the height of the specimen trees to be planted shall be increased from 8'-10' to 10'-12'; and

2. The screening shall be strictly maintained; any specimens which are planted pursuant to this Order which do not survive shall be immediately replaced, and that understory vegetation will be encouraged to increas in density. Failure of the Petitioner to maintain the screening shall result in the forfeiture of the special exception.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Robert O. Schuetz, Chairman

William T. Hackett

S. Diane Levero

County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

May 31, 1995

J. Carroll Holzer, P.A.
HOLZER and LEE
305 Washington Avenue, Suite 502
Towson, MD 21204

RE: Case No. 94-452-XA
Baltimore Gas & Electric Co.
/Ivy Hill Substation

Dear Mr. Holzer:

Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules and Procedure. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Charlotte E. Radcliffe for
Kathleen C. Weidenhammer
Administrative Assistant

encl.

cc: Andrew Lansman, et al
Robert A. Hoffman, Esquire
Martha A. Delea, Esquire
Baltimore Gas & Electric Co.
Mr. & Mrs. Frederick Vinup
Mr. & Mrs. Raymond Fischer
Mrs. Dorothy Marsden
The Honorable Paula C. Hollinger
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
W. Carl Richards, Jr. /ZADM
Joseph V. Maranto /ZADM
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM
Virginia W. Barnhart, County Attorney
The Honorable T. Bryan McIntire

Printed with Soybean Ink
on Recycled Paper

IN THE MATTER OF BALTIMORE GAS & ELECTRIC COMPANY	*	BEFORE THE
	*	COUNTY BOARD
PETITION FOR SPECIAL EXCEPTION AND VARIANCE FOR PROPERTY LOCATED AT SOUTHWEST CORNER OF INTERSECTION OF RIDGE ROAD AND JOEL COURT	*	OF APPEALS OF
	*	BALTIMORE COUNTY
	*	
		Case No. 94-452-XA
8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	
	*	

* * * * * * *

PETITIONER'S MEMORANDUM IN SUPPORT OF PETITION FOR SPECIAL EXCEPTION AND VARIANCE

Baltimore Gas and Electric Company ("BGE"), Petitioner, by Robert A. Hoffman with Venable, Baetjer and Howard, LLP, and Martha A. Delea with BGE, its attorneys, respectfully submits this Memorandum in support of its Petition for Special Exception and Variance, as follows:

INTRODUCTION

BGE has requested a special exception and variance for property located at the southwest corner of the intersection of Ridge Road and Joel Court in north central Baltimore County. The subject property, which is located in an RC-5 zone, is made up of three adjoining tracts. See Petitioner's Exhibit 2. Tracts A, B, and C, as delineated on the Site Plan, are owned by BGE. The combined area of the three tracts is approximately 2.9 acres.

A portion of the property, Tract C, is the subject of an existing special exception, granted on March 28, 1956, for the operation of a local electric distribution substation, known as the Ivy Hill substation. See Petitioner's Exhibit 4. A local distribution substation,

such as that located at Ivy Hill, accepts higher voltage electricity from a master substation and lowers the voltage of that electricity to a usable level for its customers in the area. This use is permitted in an RC-5 zone by special exception. Section 1A04.2.B.11 of the Baltimore County Zoning Regulations ("B.C.Z.R.").

BGE now proposes, in requesting the present special exception and variance, to replace and expand the Ivy Hill substation in order to accommodate the increased demand for electricity that has been placed on its facility by continued development and changes in the area. Without this much needed expansion, the electrical capacity of the existing substation will be overloaded by the Winter of 1995. Realizing it would eventually have to expand the substation to meet the increased demand, in 1989, BGE purchased the adjoining Tract A. Tract A is currently unimproved and is heavily wooded. Similarly, in 1994 , BGE purchased Tract B. Tract B is improved with a residence and a pool, which will be razed under the proposed plan to allow for placement of the new substation.

Under the plan submitted to the Board, BGE proposes to replace the existing equipment and to expand the capacity of the Ivy Hill substation in two distinct phases based on existing and predicted need. In order to ensure adequate and reliable service, the Phase One expansion must be implemented immediately. According to predictions, the electrical capacity provided by Phase One, though, will also be exceeded, necessitating the Phase Two expansion.

Because of the configuration and natural features of the three tracts and because of BGE's desire to preserve the maximum amount of wooded areas to serve as a buffer between the substation and the surrounding neighborhood, BGE has planned to centrally locate the

new equipment on the three tracts. Centrally locating this equipment is also important because the different pieces of equipment for the substation work in concert and necessarily must be placed close together, making placement on any one tract impossible.

This placement, though, will result in the structures straddling the interior lot lines of Tracts A, B, and C and, consequently, will violate the setback distance required by B.C.Z.R. Section 1A04.3.B.3. While this placement will violate the interior lot lines, necessitating a variance, such placement will maximize the distance of the equipment from the exterior lot lines and, in fact, this distance to the exterior lot lines will meet or exceed that required by the zoning regulations. As a further barrier between the substation and the surrounding locale, BGE further proposes to enclose all equipment in a seven foot fenced area, topped with one foot of barbed wire. The proposed plan also provides for substantial landscaping and planting to provide increased year-round screening.

In appearing before the Board of Appeals on October 4, 1994, January 10, 1995, January 12, 1995, January 17, 1995, and January 19, 1995, BGE had the burden of proving its entitlement to the requested special exception and variance by demonstrating that the requirements of the following sections of the Baltimore County Zoning Regulations have been met: Section 502.1 (Special Exceptions); Section 411.1 (Public Utility Uses); and Section 307.1 (Variances). As outlined below, BGE produced strong and substantial evidence on each of these requirements. The Board of Appeals, therefore, should grant the requested relief, enabling BGE to fulfill its responsibility to provide adequate and reliable service to its customers.

ARGUMENT

I. Based on the Evidence Presented before the Board of Appeals, BGE is Entitled to the Requested Special Exception.

BGE has requested a special exception so that it may expand the Ivy Hill electric substation. Such a use is permitted in an RC-5 zone by special exception pursuant to B.C.Z.R. Section 1A04.2.B.11. According to the well-developed law of Maryland, such a special exception use is *presumed* to be valid and is *presumed* to be consistent with the general welfare. Schultz v. Pritts, 291 Md. 1, 11, 432 A.2d 1319 (1981). Therefore, once a petitioner demonstrates that the proposed use satisfies the specific requirements of the applicable ordinances, *i.e.,* Section 411.1 and Section 502.1, the special exception must be granted unless a protestant produces strong and substantial evidence that placement in this particular location will have adverse effects *above and beyond* those inherently associated with such a special exception use regardless of where it may be located within the zone. Schultz , 291 Md. at 14, 22-23. In other words, a protestant must do more than show that the use may have adverse effects that are common to the use generally. Id. See also Sharp v. Howard County Board of Appeals, 98 Md. App. 57, 632 A.2d 248 (1993).

As outlined below, BGE produced sufficient evidence at the hearings before the Board to prove that no adverse impact would result from the proposed use and that the requirements of Section 411.1 and Section 502.1 have, in fact, been met. The Protestants were unable to produce any credible evidence to show otherwise.

A. The Evidence Confirms that the Proposed Plan Complies with B.C.Z.R. Section 411.1.

In order to prove its entitlement to the requested special exception, BGE first must demonstrate that the requirements of Section 411.1 have been met. According to Section 411.1, BGE has the burden of proving that: (1) the proposed substation is needed for the proper rendition of electric service to its customers; and (2) the proposed substation will not seriously impair the use of the neighboring properties. In the hearings before the Board of Appeals, BGE produced substantial evidence, by way of numerous exhibits and expert witnesses, to prove that these requirements have, in fact, been met.

To prove that the improvements to the Ivy Hill substation are necessary, at the hearings before the Board, BGE produced the testimony of Lawrence S. Taylor, an engineer, who was qualified as an expert in the area of electrical system planning, and the testimony of James F. Ryan, Jr., a registered professional engineer, who was qualified as an expert in power station engineering and in forecasting electrical demand. As these experts testified, both phases of the proposed expansion are necessary to allow BGE to properly render electric service to its customers.

The existing Ivy Hill substation, which is almost forty years old, has a single transformer with a capacity of 16.6 megawatts. (T. 1/10/95, p. 19) Although the demand placed on the substation has increased over the years, its capacity, unfortunately, has remained unchanged. The Ivy Hill substation presently serves approximately 1750-1800 customers over a 15-20 square mile area. (T. 10/04/94, pp. 124-125, 132) (T. 1/10/95, pp. 54, 57) See Petitioner's Exhibit 11. In addition to those customers, an average of 75 new customers are being added to this service area every year. (T. 10/04/94, p. 103) (T. 1/10/95,

pp. 25-28) These new customers equate to approximately seven-tenths of a megawatt per year in additional demand for electricity from the Ivy Hill location. (T. 1/10/95, p. 27)

During the Winter of 1994, the capacity of the Ivy Hill substation (16.6 megawatts) was exceeded by close to 20% (20.1 megawatts). (T. 10/04/94, pp. 103-104) (T. 1/10/95, pp. 19, 32-33)[1/] As a result of this overload, there was an interruption in service, and a portion of the load served by the Ivy Hill substation had to be temporarily transferred to the Delight substation. (T. 10/04/94, pp. 103-105) (T. 1/10/95, p. 22) This transfer brought the load at the Ivy Hill substation back to under 16.6 megawatts. The demand from Ivy Hill's total service area with the transferred portion included, though, still exceeds its capacity.

Because the Delight substation is experiencing even more rapid growth than the Ivy Hill substation, the transferred load must be returned to Ivy Hill. (T. 10/04/94, pp. 104-105, 122-123) (T. 1/10/95, pp. 29, 49-50) No other distribution substation is available to relieve the demand from Ivy Hill. (T. 10/04/94, p. 120-124) As both Mr. Taylor and Mr. Ryan testified, with the added demand from new customers, the load for the Ivy Hill substation is again expected to exceed 16.6 megawatts in the Winter of 1995. (T. 10/04/94, pp. 103-105, 108-109, 159) (T. 1/10/95, pp. 21-23, 27-28) The substation's capacity will be exceeded this year even if the transferred area were not returned to Ivy Hill. (T. 10/04/94, pp. 103-105, 108-109, 159)

1/ While this load is considered a "peak usage," because BGE is required to supply adequate power at all times, BGE must plan for and be able to supply its customers with electricity even during a peak usage period.

Because the infrastructure already exists at the Ivy Hill site and because this site is a good load center, the only reasonable option is to expand the existing substation. (T. 10/04/94, pp. 106-108) As Mr. Taylor noted, the term "load center" refers to the proximity to the bulk of demand, not the strict geographic center of the service area. (T. 10/04/94, pp. 106-108) Because most of the demand in the area serviced by the Ivy Hill substation comes from the southern end of the service area, the location at Ivy Hill is optimal. (T. 10/04/94, pp. 74, 106-108) Being close to the demand ensures that BGE will be able to provide its customers with an adequate and reliable supply of power. (T. 10/04/94, pp. 107-108) Therefore, as BGE has proved through the testimony of its expert witnesses, in order to properly serve its customers, BGE must expand the Ivy Hill substation.

BGE proposes to expand the substation in two phases. In Phase One, the existing transformer would be replaced with a 32 megawatt capacity transformer. (T. 10/04/94, p. 104) (T. 1/10/95, pp., 28, 65) This new transformer would allow BGE to supply the existing demand, which will again exceed 16.6 megawatts when the transferred portion of the service area is returned to the Ivy Hill substation, and the added demand expected by the Winter of 1995. (T. 10/04/94, p. 104) (T. 1/10/95, pp. 21-23, 28-29) Because of anticipated continued growth and changes within the service area, however, the capacity of the single 32 megawatt transformer will likewise be exceeded by the year 2001, necessitating the Phase Two expansion. (T. 10/04/94, p. 109-110) (T. 1/10/95, pp. 28-30, 63-65, 69-70)[2/] In Phase Two,

---

2/ As Mr. Ryan explained, an additional area of service, called Hickory Meadow, must be added to the southeast portion of the Ivy Hill service territory due to a transmission project, which will eliminate the means of supplying this area from the Texas substation. (T. 1/10/95, pp. 29-30, 37-41, 47-49) Hickory Meadow contains approximately 700 units presently, and this area is expected to grow at a pace of 10 units per year. (T. 1/10/95, pp. 29-30, 37-41, 47-49)

ownership ordinarily merge into one lot and conveyance of a portion will require subdivision and variance approval." (Emphasis added.) As is evident, the doctrine is designed to limit the creation of undersized parcels by *presuming* that merger can occur when contiguous lots exist in common ownership. As we have indicated, some jurisdictions presume merger automatically; in most jurisdictions, however, there must be some evidence of the owner's intent to merge. In the present case, respondent asserts a right to combine the contiguous parcels and to use them as a single parcel. Therefore, to the extent the doctrine is held to apply in this State under these converse circumstances, the existence of merger is admitted in the case *sub judice*.

In *Iannucci v. Zoning Board of Appeals*, 25 Conn. App. 85, 592 A.2d 970 (1991), the applicant submitted a variance application to reposition a house entirely on one lot. At the time of the application, the house was built on two lots, with the attached porch on one lot and the main body of the house on the other. The purpose of the variance was to allow the property owner to build a new house on the vacated lot. The zoning body denied the variance, finding that "'when a portion of the dwelling on lot two was constructed over the property line, lots one and two were effectively combined.'" *Id.* at 87, 592 A.2d at 971. The Connecticut Appellate Court held:

> Contiguous land owned by the same person does not necessarily constitute a single lot. A merger can occur, however, if the owner of contiguous parcels of land intends to form one tract. The owner's intent "may be inferred from his conduct with respect to the land and the use which he makes of it." Intent is an inference of fact and "is not reviewable unless it was one which the trier could not reasonably make."

will replace two existing gravel driveways which access the property from the north and east. These existing driveways will be closed and replanted. Moreover, a large volume of testimony was offered about landscaping which is proposed on the site to buffer same from the surrounding community. Lastly, Ms. McGrady comprehensively discussed the requirements contained in Sections 411 and 502.1 of the B.C.Z.R. as they relate to the required special exception. Moreover, testimony was offered concerning the requirements in Section 307 of the regulations as same relates to the variance request.

Walter A. Reiter, Jr., a professional real estate appraiser, also testified about the proposed improvements. He particularly noted the elimination of the two existing driveways and burial of the electric cables from Falls Road as positive events in terms of property values in the community. He is also favorably impressed with the extensive landscaping proposed by the Petitioner. In his opinion, this screening will sufficiently protect the most affected properties. He identified those properties as the Marsden property to the west of the site, the Hanley property to the north and the Follo property to the west.

As to the Protestants, most of their concerns were voiced through their spokespersons, Andrew Lansman and Pamela Follo. Ms. Follo is the most affected property owner, residing immediately across Joel Court from the site. Mr. Lansman's house is the next lot down Joel Court. These witnesses voiced opposition to the project due to its alleged incompatible nature with existing uses. They are particularly concerned about the effects of the proposed electric substation within the midst of their residential community. Certain other concerns as to safety, traffic and effect on property values were also raised.

ORDER RECEIVED FOR FILING
Date 5/24/96
By

BGE proposes to add a second transformer to the substation to meet the additional expected demand. (T. 10/04/94, p. 105) (T. 1/10/95, pp. 28, 65)

In considering the issue of necessity, the Board must keep an important point in mind. As a public utility company, BGE is required, under its franchise agreement with the State of Maryland, to supply its customers with adequate and reliable electric service regardless of the circumstances. (T. 10/04/94, pp. 108-110, 157-158) BGE must be prepared to meet whatever demand occurs, even if that demand actually happens to be *higher* than expected. (T. 10/04/94, p. 108-110) (T. 1/10/95, p. 75) Therefore, BGE is acting reasonably and responsibly in preparing to meet future demand and is asking the Board to approve both phases of this special exception. Based on all the evidence and testimony presented during the hearings, this Board should find that, in accordance with Section 411.1, BGE has proved that both the Phase One expansion and the Phase Two expansion are necessary for the proper rendition of electric service to its customers.[3/]

As further required by Section 411.1, BGE produced substantial evidence through its expert witnesses that the proposed use will not seriously impair the use of neighboring properties. As Walter A. Reiter, Jr., expert appraiser, testified, because the plan provides for adequate screening by the surrounding woods and additional landscaping and planting, the

---

3/ The evidence and testimony presented by BGE was not rebutted by any credible evidence presented by the Protestants. To rebut "necessity," the Protestants offered only the testimony of Mr. Ronald P. Hanley, who admittedly has no experience or training in estimating the demands that are placed on public utility companies. Further, Mr. Hanley based his lay opinion that expansion of the substation is not necessary on the County's transportation zone maps. However, the representative from the Office of Planning, Pam Budesheim, openly admitted that this map has no correlation to the number of people or units contained in Ivy Hill's service area. (T. 1/17/95, Part One, p. 46) Further, Mr. Hanley calculated need based upon 16.6 megawatts, rather than actual current demand for the service area, which is 20.1 megawatts. Therefore, it is obvious that the very basis for Mr. Hanley's opinion is fundamentally flawed.

proposed use will not seriously impair the use of the surrounding properties. (T. 1/12/95, p. 138)

Mr. George S. Gavrelis, expert land planner and former Director of the Office of Planning and Zoning, also concluded that, because the proposed expansion of the substation would not have an adverse impact on the health, safety, and general welfare of the locality or on any other aspect of residential life, the proposed use will not seriously impair the use of the neighboring properties as residential properties. (T. 1/12/95, pp. 89-101) This conclusion was further supported by Monica McGrady, the engineer who designed the proposed substation. (T. 10/04/95, p. 44)

That the community prefers not to have a substation in their neighborhood is not a sufficient reason to overcome the solid and rational evidence presented by BGE. Their preference not to have a substation in their neighborhood is, in fact, ironic given that, while these neighbors are recent arrivals, the substation has been operating in this location for close to forty years. As the Zoning Commissioner found below,

> [t]his matter appears to be a case of the most recent residents of the community objecting to a use which has been in the locale for many years....Clearly, the Protestants were aware of the long history of this use when their homes were built and on legal notice of BG&E's intentions.

Findings of Fact and Conclusions of Law of Zoning Commissioner, dated June 24, 1994. Because BGE presented sufficient evidence demonstrating that the proposed use would not seriously impair the use of the neighboring properties, this Board should find that no such impairment will occur.

B. The Evidence Confirms that the Proposed Plan Complies with B.C.Z.R. Section 502.1.

In addition to proving that the proposed use is needed for the proper rendition of electricity to BGE's customers, BGE also proved that the proposed use complies with Section 502.1.

Health, Safety, and General Welfare of the Locality

The Protestants expressed concern over two primary issues, which fall under the ambit of health, safety, and general welfare of the locality. These two issues can be stated as a concern over the potential harm from electromagnetic fields ("EMFs") and a concern that the proposed use would lower property values in the neighborhood.

1. Electromagnetic Fields

Although the Protestants raised much speculation about the possible effect on the neighborhood, in terms of exposure to EMFs, from the proposed expansion of the substation, the expert testimony presented by BGE on the issue of EMFs was clear that the proposed plan would have *no* adverse impact because there would be *no* exposure at any of the surrounding homes to EMFs as a result of the expansion of the substation.

As Bonnie L. Johansen, an expert in industrial hygiene who specializes in electric and magnetic fields, testified, the average home has an EMF measurement in the range of .5 to 10 milligauss. (T. 1/10/95, pp. 90, 118) From the measurements she took of the existing substation and of substations similar in design and capacity to the proposed substation, Ms. Johansen concluded that any exposure at the property line of the proposed substation would be the same or less as the existing substation (between .5 and 2 milligauss depending on the distance from the equipment). (T. 1/10/95, pp. 92-97) This "exposure" is equal to or less

than that to which the average American is exposed in their home. (T. 1/10/95, pp. 90, 118) Ms. Johansen further noted that no federal, state, or local exposure limits to EMFs have been established. (T. 1/10/94. p. 91)

Taking into consideration Ms. Johansen's measurements, Dr. Linda S. Erdreich, environmental scientist and expert epidemiologist, concluded that no risk to health would result from the proposed substation. (T. 1/10/95, pp. 146-148, 150-151) (T. 1/12/95, p. 30) The EMF levels would be so low as to be considered no exposure at all. (T. 1/10/95, pp. 146-151) (T. 1/12/95, p. 30) In further explaining the findings with respect to EMFs generally, Dr. Erdreich further testified that there are no known health effects even from exposure to levels of EMFs up to 1000 milligauss. (T. 1/10/95, pp. 177-181) Nor are there any cumulative effects from exposure to low levels of EMFs. (T. 1/10/95, p. 172)

It is interesting to note that the Protestant's own expert on EMFs, Dr. Zory R. Glaser, did not testify contrary to the findings of no adverse effects under the circumstances of this case. In fact, when asked directly by one of the Board members, Mr. Schuetz, Dr. Glaser was unable to provide even an estimate for a threshold at which there is an increased health risk associated with EMFs. (T. 1/19/95, pp. 89-94).

2. Property Values

The Protestants were also very vocal at the hearings about their fears that expansion of the Ivy Hill substation would have a negative impact of their property values. As with the EMFs, the only credible evidence in this case as to property values, that of BGE's expert, Walter A. Reiter, Jr., certified appraiser, proves that these fears are unfounded.

According to his analysis of the effect of the proposed substation, Mr. Reiter concluded that the proposed use would have no adverse effect on property values in the neighborhood. (T. 1/12/95, pp. 137-139, 140) Mr. Reiter further concluded that the proposed use would not impair the use of the neighboring properties. (T. 1/12/95, p. 138) Mr. Reiter based his conclusions on the improvements being centered on the three tracts and the wooded areas being preserved to the greatest extent possible, which, in combination with the additional landscaping and planting, would provide a substantial screen and buffer from the rest of the neighborhood. (T. 1/12/95, pp. 138-139) Mr. Reiter also noted that the neighborhood might actually benefit from the proposed use because, under the plan, the overhead electric lines will be buried underground from Falls Road to the proposed substation, improving the general appearance of the neighborhood. (T. 1/12/95, pp. 138-139)

3. Summary of Health, Safety, and General Welfare

Ultimately, BGE produced overwhelming evidence from credible expert witnesses to demonstrate that the proposed use would not have any adverse impact on the health, safety, and general welfare of the community. George S. Gavrelis, expert land planner, wholly concurred with this conclusion, citing the large site, the plan's retention of much of the surrounding woods, the excellent screening of the equipment, and the many safety components of the plan. (T. 1/12/95, pp. 89-91)

Traffic Congestion

Monica McGrady, an expert in electrical substation engineering and construction and the engineer responsible for the design of the proposed expansion of the Ivy Hill substation, testified that the proposed use would not result in increased traffic or congestion in the roads.

(T. 10/04/94, pp. 106-108) The substation is designed to operate automatically and is unmanned with the exception of weekly visits by a single employee. (T. 10/04/94, pp. 40, 90)

Mr. Gavrelis also concluded that, because the proposed use would not generate traffic, the proposed use would not result in additional traffic or congestion in the roads. (T. 1/12/95, p. 94) This conclusion was further confirmed by the Protestant's own expert land planner, Norman E. Gerber. (T. 1/19/95, p. 169)

Potential Hazard from Fire, Panic, or Other Dangers

Ms. McGrady, the engineer responsible for the design of the proposed expansion of the Ivy Hill substation, testified as to the safety features of the substation, and it was her expert opinion, based upon her experience, that the proposed use will not present a potential hazard from fire, panic, or other dangers. (T. 10/04/94, pp. 40-41, 70-73) Mr. Gavrelis similarly testified that, due to the safety equipment built into the substation, in his opinion there is no danger of fire or other dangers. (T. 1/12/95, pp. 93-94)

The Protestants' fear that the proposed substation will create a potential for fires amounts to pure conjecture and speculation, wholly unsupported by any valid evidence of an increased risk. (T. 1/17/95, Part Two, p. 77, 102-105)

Overcrowding of Land or Undue Concentration of Population

Mr. Gavrelis testified, in his expert opinion, that the proposed substation would not overcrowd the land or cause undue concentration of population. (T. 1/12/95, p. 95) In stating this conclusion, Mr. Gavrelis noted that the total site is approximately 2.9 acres and that the area of actual improvements (.45 acres) is minimal in comparison. (T. 1/12/95, p.

95) Additionally, Mr. Gavrelis noted that, according to B.C.Z.R. Section 306, there is no minimum lot requirement for transformer stations. (T. 1/12/95, pp. 106-108) Even so, the property's size exceeds the minimum lot size required in an RC-5 zone by a factor of three. Therefore, the proposed use is an unintensive use of the land. (T. 1/12/95, p. 95) Mr. Gavrelis further recognized that population is not an issue in that the station is unmanned. (T. 1/12/95, p. 95)

Adequate Provisions for Schools, Parks, Etc.

Mr. Gavrelis concluded that, because BGE is not a consumer of these services, the proposed use would not interfere with the adequate provision of these services. (T. 1/12/95, pp. 95-96) Mr. Gerber, Protestant's expert, testified in agreement with this conclusion of no impact. (T. 1/19/95, p. 171)

Interference with Adequate Light and Air

Mr. Gavrelis likewise testified that the proposed Ivy Hill substation would not interfere with adequate light and air. (T. 1/12/95, pp. 96-97) His conclusion was based on the fact that the use will be unintensive in terms of height of equipment and use of the land. (T. 1/12/95, pp. 95-96) Mr. Gerber, Protestant's expert, likewise testified that the proposed use would not interfere with adequate light and air. (T. 1/19/95, p. 171)

Inconsistency with Zoning Regulations

Mr. Gavrelis testified that the plan to expand the Ivy Hill substation is not inconsistent with the property's RC-5 classification, nor is the plan inconsistent with the spirit and intent of the zoning regulations generally. (T. 1/12/95, pp. 97-98) In stating this opinion, Mr. Gavrelis took into consideration that RC-5 zones permit some public utility uses

as a matter of right, and others, such as this use, by special exception, which are presumed to be valid uses. (T. 1/12/95, p. 98) Mr. Gavrelis took this as proof that the drafters of the zoning regulations recognized that there has to be some way for utilities, such as BGE, to provide the residences located in these rural residential zones with services. (T. 1/12/95, p. 98) Ms. McGrady also stated her opinion that the proposed substation would be consistent with the zoning regulations. (T. 10/04/95, p. 42)

Inconsistent with Impermeable Surface/Vegetation

According to Mr. Gavrelis, the proposed use will not be inconsistent with any impermeable surface, building coverage, or vegetation retention requirements of the zoning regulations. (T. 1/12/95, pp. 98-99) See Petitioner's Exhibit 16, which shows the total area covered by buildings, both existing and proposed.

Ms. McGrady agreed that there would be no inconsistency and further testified that, because there is already clearing on the property, due to the residence and pool, clustering the equipment within this cleared area will preserve as much of the forest resources as possible. (T. 10/04/94, p. 42) With the additional landscaping, as testified to by Danny L. Davis, an expert forester, the condition of the property in terms of vegetation will actually be improved. (T. 1/12/95, pp. 51-53, 69)

Because the Site Plan includes a stormwater management area, any increase in impervious area will not result in a drainage problem for the neighboring property owners. See Petitioner's Exhibit 2. On behalf of BGE, Paul Taylor, registered professional engineer and expert in stormwater management facilities, testified concerning the stormwater management area shown on the Site Plan and stated that the proposed use would have no

adverse impact in terms of impervious area and drainage. (T. 1/12/95, pp. 33-35, 37-38, 41, 45-46). The Protestants offered no proof to the contrary on this issue.

II. Based on the Substantial Evidence Presented to the Board of Appeals, BGE is entitled to the Requested Variance.

In addition to the requested special exception, BGE also requested that a variance be granted from B.C.Z.R. Section 1A04.3.B.3 to permit the structures comprising the substation to be placed across the interior lot lines of Tracts A, B, and C in lieu of the required fifty foot building setback. Variances, such as the one requested by BGE, are permitted under B.C.Z.R. Section 307.1. At the hearings before the Board, BGE produced substantial evidence, through numerous expert witnesses, that the requirements for granting a variance under B.C.Z.R. 307.1 had been met: (1) that special circumstances exist that are peculiar to Ivy Hill; and (2) that requiring BGE to strictly comply with B.C.Z.R. Section 1A04.3.B.3 would result in practical difficulty.

A. The Evidence Confirms that Special Circumstances or Conditions Exist that are Peculiar to Ivy Hill.

BGE produced sufficient evidence to prove that the subject property is unique and that special circumstances exist peculiar to the Ivy Hill site that create a practical difficulty for BGE under the proposed plan in terms of strictly complying with the setback requirements of Section 1A04.3.B.3. The subject property is unique in that, as shown on the Site Plan, it is comprised of three adjoining tracts: Tract A, Tract B, and Tract C. See Petitioner's Exhibit 2 (T. 10/04/94, pp. 20-24) (T. 1/12/95, pp. 39-40, 101-106) BGE owns all three tracts. (T. 10/04/94, pp. 54, 58) (T. 1/12/95, pp. 39-40) These tracts are located in a residential neighborhood.

As the various photographs of the vicinity that were introduced into evidence indicate, and as the testimony of numerous witnesses demonstrates, a majority of the subject property is densely wooded. See Petitioner's Exhibits 5, 7, and 7a (T. 10/04/94, pp. 36-37) (T. 1/1/2/95, pp. 105-106) A portion of Tract B, though, is cleared. This clearing is improved with a residence and a pool. (T. 10/04/94, pp. 23, 58-59) Further, a portion of Tract C is cleared. The existing substation is located in the cleared area of Tract C. (T. 10/04/94, pp. 23-24) This combination of wooded and cleared areas and where these areas fall, in terms of the lot lines, make this property unique. (T. 1/12/95, pp. 129-131)

According to the proposed plan to expand the substation, in order to preserve as much of the existing woods as possible and to make use of the already cleared areas, BGE proposes to centrally locate the equipment on the three tracts. Petitioner's Exhibits 2 and 3. (T. 1/12/95, pp. 89-91, 99-106) Because the pieces of equipment, which work in concert, must be placed in close proximity to each other, centrally locating the substation also serves BGE's purposes. (T. 10/04/94, p. 39) This placement achieves the goals of utilizing the cleared spaces, preserving the natural resources, and providing the community with adequate screening. However, because the property is made up of three separate tracts, such placement violates the setback requirements for the interior lot lines of Section 1A04.3.B.3. (T. 1/12/95, pp. 99-106) Section 1A04.3.B.3 requires that the structures be set at least 50 feet back from any lot lines. While the setback requirement as to the interior lot lines will be violated, the central location of the equipment will, in fact, preserve the greatest distance from the equipment to the exterior lot lines. (T. 1/12/95, pp. 101-106) This distance will meet or exceed that required by the zoning regulations. (T. 1/12/95, pp. 101-106)

It is indeed true that the substation is located within close proximity to the surrounding residential community. However, I am not persuaded that it will adversely affect same. It is of particular note that the electric substation use has been present at this location for many years. As noted above, BG&E has had a transformer and other equipment on this site since the mid 1950s. This matter appears to be a case of the most recent residents of the community objecting to a use which has been in the locale for many years. From the photographs submitted, the Foxridge Estates community is obviously new. In fact, Mrs. Follo indicated that her house was built approximately 3 years ago. Nearly 40 years have passed since BG&E acquired tract C and 4 years have elapsed since the company's acquisition of tract A in 1988. Clearly, the Protestants were aware of the long history of this use when their homes were built and on legal notice of BG&E's intentions.

Nonetheless, the concerns of the citizens are reasonable. They invested, no doubt, large sums to acquire their homesites and erect their dwellings. However, in recognition of these concerns, the Petitioner has made significant efforts to eliminate the effects of the proposed use. Initially at the hearing, Mr. Hoffman and Mr. Cohen, representing the Hanleys, noted that an agreement had been reached between their respective clients to amend the plan to provide additional landscaping to the north of the site. Specifically, the company has agreed to install a row of evergreen trees along the front of the Hanley property. It is to be particularly stressed that BG&E's improvements in this respect will be made off site across Ridge Road. Thus, the existing forest on the north of the subject property will not be disturbed. The improvements on the Hanley property will be from that area across from the subject site to the existing evergreen trees which presently occupy the Hanley property adjacent to the

ORDER RECEIVED FOR FILING
Date 6/24/92
By

Based on the substantial evidence presented by BGE, the Board should find that this property has peculiar characteristics or unusual circumstances, which relate uniquely to this property, in that this property is made up of three tracts, all owned by BGE, and that this property has a unique distribution, in terms of lots lines and for building purposes, of cleared areas and heavily wooded areas. The Board should further find, based on these factors, that the setback ordinance has a more severe impact on this property as a result of this uniqueness.

B. The Evidence Confirms that Strict Compliance with the Baltimore County Zoning Regulations would Result in Practical Difficulty for BGE.

At the hearings before the Board, BGE produced sufficient evidence, demonstrating that requiring BGE to strictly comply with Section 1A04.3.B.3 would result in a practical difficulty for BGE.[4/] In deciding whether BGE has, in fact, proved that a "practical difficulty" exists, the Board should consider the following criteria: whether conformity with the applicable zoning regulation would be unnecessarily burdensome; whether granting the variance would do substantial justice; and whether the requested variance would be consistent with the spirit of the ordinance and would preserve the public safety and welfare. B.C.Z.R. § 307.1; McLean v. Solely, 270 Md. 208, 214-215, 310 A.2d 783 (1973). BGE

4/ Because this type of variance is an area variance, BGE is required to meet only the lesser standard of proof of "practical difficulty" rather than the stricter standard of "unreasonable hardship," which applies to use variances. McLean v. Soley, 270 Md. 208, 213-214, 310 A.2d 783 (1973); Loyola Fed. Sav. & Loan Ass'n v. Buschman, 227 Md. 243, 248-249, 176 A.2d 355 (1961); Red Roof Inns, Inc. v. People's Counsel, 96 Md. App. 219, 223-224, 624 A.2d 1281 (1993); Anderson v. Board of Appeals, 22 Md. App. 28, 38-40, 322 A.2d 220 (1974).

presented sufficient evidence to permit the Board to make factual findings with respect to each of these criteria.

As described in the section above, the subject property is actually made up of three individual tracts, all of which are effectively owned by BGE. Being owned by one party, the lot lines between the adjoining tracts are essentially unimportant except in terms of their legal effect. The purpose of a setback requirement is to protect neighboring property owners from encroachment. However, because BGE is its own "neighbor" with respect to these interior lot lines, this requirement becomes irrelevant under the circumstances. Requiring BGE to strictly comply with the setback requirements would serve no purpose as BGE does not need to be protected from itself. Therefore, requiring BGE to strictly comply with Section 1A04.3.B.3 would be unnecessarily burdensome. (T. 1/12/95, pp. 101-106) Because of the necessity to place the pieces of equipment close together, BGE cannot place the substation entirely on any one lot and still comply with the setback requirements. (T. 10/04/94, pp. 39) (T. 1/12/95, pp. 101-103, 106-108)

As presented in Section I.A. of this Memorandum, during the hearings before the Board, BGE presented convincing evidence as to the need to expand the substation. BGE is under its franchise agreement with the State of Maryland to provide adequate and reliable service to its customers. (T. 10/04/94, pp. 108-110, 157-158) (T. 1/10/95, p. 75) BGE has recognized that, without the expansion of the Ivy Hill substation, it will be unable to provide such quality service because of the ever-increasing demand for electricity for the service area. (T. 10/04/94, pp. 103-105, 108-110, 159) (T. 1/10/95, pp. 21-23, 27-30, 63-65, 69-70)

This evidence of need must be considered along with the strong evidence presented by BGE that granting the requested variance will not harm the neighboring property owners. Central placement of the substation will actually preserve the wooded areas as a buffer, utilize the already cleared areas, and maximize the distance of the substation from the neighboring residences, reducing the possibility of any exposure to EMFs at the external property lines. Therefore, granting the requested variance would do substantial justice to BGE, the 1750-1800 customers presently served by the Ivy Hill substation, future customers to be served by this substation, and the surrounding property owners.

BGE also presented sufficient facts upon which the Board could conclude that granting the variance would be consistent with the spirit and intent of the zoning regulations. As Mr. Gavrelis testified, the zoning regulations have recognized that public utility companies must be permitted to provide service to their customers, even in rural residential areas. (T. 1/12/95, pp. 106-108) Again, it must be reiterated that the reason for having setback requirements, to protect adjoining property owners, is not being served under the circumstances because BGE owns all three lots on which the setback requirements are an issue. Granting the requested variance would be consistent with the spirit of the ordinance because exterior setbacks are being preserved, and the public safety and welfare will be secured.

From the substantial and uncontroverted evidence presented by BGE, the Board should find that requiring BGE to strictly comply with the setback requirements of Section 1A04.3.B.3 would result in practical difficulty for BGE in that requiring such compliance does not serve the purpose behind the ordinance, that granting the variance would result in

substantial justice for BGE, the many customers served by the Ivy Hill substation, whose service would be made more reliable, and the surrounding property owners, and that granting the variance would be consistent with the spirit and intent of the zoning regulations.

III. Use of Tract A for the Proposed Substation is Not an "Amendment" to the Forwood Final Development Plan.

At the initial hearing before the Board of Appeals, which took place on October 10, 1994, the Protestants asserted that this proceeding was actually, in part, premature because the Final Development Plan for Forwood had to be amended to incorporate the uses proposed for Tract A under the Site Plan. No such additional proceedings are necessary, however, and this proceeding is not premature because, as the Zoning Commissioner found and as BGE proved at the hearings before the Board of Appeals, the use of Tract A for the proposed substation does not constitute an amendment to the Forwood Final Development Plan.

The Final Development Plan for Forwood, which was submitted as Petitioner's Exhibit 8, identifies Tract A as being "conveyed to adjoining property owner BG&E Co." The transfer of Tract A to BGE is further indicated by an arrow from the subdivision to the property on which the Ivy Hill substation is located. The substation property is clearly labeled "BG&E Company" with the deed reference. The written notation and graphic representation of the transfer in the form of an arrow clearly evidence an intention that the property not be developed as a residential lot and that the property was to be conveyed to BGE for a nonresidential use.[5/]

5/ BGE also presented copies of two CRG approved plans for the Forwood subdivision. The first plan has Tract A labeled as "Lot 25" with the same data as the other twenty-four residential lots. Petitioner's Exhibit 25. The second plan amends the first to change "Lot 25" to "Tract A" with a note "to be conveyed to adjoining lot owner" and an arrow showing transfer to the adjoining BGE property.
Footnote continued on next page

This interpretation of the Final Development Plan was confirmed by Mr. Gavrelis, expert land planner. (T. 1/12/95, pp. 76-81) Mr. Gavrelis explained that, in his opinion, the arrow "links" Tract A with the property owned by BGE. (T. 1/12/95, pp. 77-78) It is evident, from a review of the Final Development Plan, that Tract A is not a residential lot; the only markings on this tract are the boundary lines and those referencing the transfer to BGE. Further, unlike the other twenty-four residential lots, this property, which is labeled "tract," has no building envelope, nor is there a septic disposal area or well shown. (T. 1/12/95, pp. 78-79) From the notations on the Plan, Mr. Gavrelis concluded that, based on his experience, the Final Development Plan effectively removed Tract A from potentially being developed as a part of the Forwood residential development and inextricably linked Tract A with the uses, existing or proposed, on the adjoining BGE property. (T. 1/12/95, pp. 79, 131-133)

According to Section 1B01.3, the purpose of a final development plan is to provide for disclosure to prospective residents and for proper review of residential developments by the zoning authority. Mr. Gavrelis properly concluded that those purposes were served under these circumstances because the Plan gives clear notice to those concerned what the future use of Tract A will be. (T. 1/12/95, pp. 80-81, 131-133) In Mr. Gavrelis' opinion, because the Final Development Plan forewarns of the future use of Tract A by BGE, the utilization of Tract A as proposed is not an amendment or modification of the Forwood Final Development Plan. (T. 1/12/95, p. 81)

Footnote continued from previous page

Petitioner's Exhibit 26. Because this last CRG plan predates the Final Development Plan, it further substantiates the intent of the developer, Baltimore County, and BGE to remove Tract A from the Forwood Final Development Plan.

At the time BGE purchased Tract A, because none of the lots in the Forwood development had been sold, if the developer, BGE, or Baltimore County believed that the notations contained in the Final Development Plan were insufficient to put the public on notice, the plan could have, and would have, been amended by simple resubmission of the plan. B.C.Z.R. Section 1B01.3.A.7. (T. 1/12/95, p. 131-133, 142) Obviously, everyone involved understood that the notations were to give notice to future lot owners that BGE would be utilizing the property for a non-residential purpose, *i.e.*, for purposes of the local distribution substation.

Even if the Board believes that the proposed use of Tract A constitutes an amendment to the Final Development Plan for Forwood, this proceeding is still not be premature, and further proceedings on the "amendment" are not necessary because the procedures for amendment, under Section 1B01.3.7, have effectively been complied with by BGE under the circumstances of this case.

As drafted, the zoning regulations indicate that an amendment to a final development plan must first be approved by the Planning Board as being in accord with the provisions adopted by the Board under the authority of B.C.Z.R. Section 504. Exercising its authority under Section 504 , the Planning Board adopted the Comprehensive Manual of Development Policies ("C.M.D.P."), and, in turn, authorized the Director of Planning to make the

determination as to compliance of development plans. See Petitioner's Exhibit 22 (T/ 12/95, pp. 81-83)[6/]

BGE has essentially received such approval from the Director of Planning. The Office of Planning and Zoning has reviewed the Site Plan, which shows the proposed use, and, through their comment, has approved the requested special exception and variance. See Petitioner's Exhibit 23. Because the issue of an additional hearing was raised in the Petition for Special Exception and because no hearing was, in fact, required, this comment supports the conclusion that the proposal complies with the requirements of Section 504. (T. 1/12/95, pp. 81-84, 126-127)

According to Section 1B01.3.7, a determination must also be made as to whether the "amendment" is consistent with the spirit and intent of the original plan and with the development policies. (T. 1/12/95, pp. 127-128) At the hearings before the Board, BGE produced testimony demonstrating that use of the proposed substation was, in fact, consistent with the spirit and intent of the original final development plan. As Mr. Gavrelis testified, because the Final Development Plan evidences an intent that "Tract A" was to be conveyed to and used by BGE for other than residential purposes, placement of a stormwater management facility and a minute portion of the substation equipment on the tract is in accord with the intent of the original plan. (T. 1/12/95, pp. 84-85) The Board, therefore,

---

6/ As required, the C.M.D.P., with the provision granting the Director of Planning this authority, was submitted to the County Council for approval. Because the Council raised no objection within 45 days after submission, the C.M.D.P. is deemed to have been approved. B.C.Z.R. Section 504.

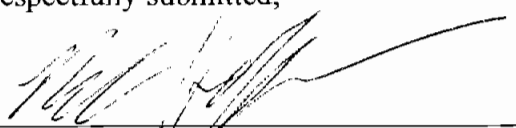
could find, based on the testimony presented before it, that this "amendment" is consistent with the Final Development Plan and the development policies.

Further, under Section 1B01.3.7, a determination must be made that the amendment complies with the requirements of Section 502.1 (Special Exception). As outlined in detail in Section I.B. of this Memorandum, BGE presented overwhelming testimony as to each of these requirements. Therefore, the procedure for amending a final development plan has essentially been met under the circumstances of this case. For this reason, the Board should not permit this purely technical argument to prevent it from reaching the merits of this case.

CONCLUSION

As the above recitation of the evidence demonstrates, Petitioner BGE produced strong and substantial evidence of its entitlement to the requested special exception and variance. Therefore, BGE respectfully requests that the Board grant the special exception and variance, which would allow BGE to expand the Ivy Hill substation and fulfill its statutory obligation of proving adequate and reliable electric service to its customers.

Respectfully submitted,



ROBERT A. HOFFMAN
Venable, Baetjer and Howard, LLP
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21285
(410) 494-6200

MARTHA. A. DELEA
Baltimore Gas and Electric Company
Charles Center
P.O. Box 1475
Baltimore, Maryland 21203
(410) 234-5697

Attorneys for Petitioner Baltimore Gas
and Electric Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6TH day of February, 1995, a copy of the foregoing PETITIONER'S MEMORANDUM IN SUPPORT OF PETITION FOR SPECIAL EXCEPTION AND VARIANCE was mailed to J. Carroll Holzer, P.A., Holzer & Lee, 305 Washington Avenue, Suite, Towson, Maryland 21204.

ROBERT A. HOFFMAN

TO1DOCS1/PAM01/0000705.01

IN THE MATTER OF	*	BEFORE THE
BGE IVY HILL SUBSTATION	*	COUNTY BOARD OF APPEALS
S/W CORNER OF RIDGE ROAD AND JOEL COURT	*	BALTIMORE COUNTY
	*	
8th ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT	*	CASE NO. 94-452-XA

* * * * * * * * * * * * * * *

MEMORANDUM IN LIEU OF FINAL ARGUMENT

I.

Statement of the Case

Prots, Friends of the Ridge, and individuals Mr. & Mrs. Nigel Howse, Mr. & Mrs. Robert O'Hara, Mr. & Mrs. Ron Hanley, Mr. & Mrs. Carl Follo, Mr. & Mrs. Robert Rytter, Mr. & Mrs. Ira Brown, Mr. & Mrs. Dieter Langendorf, Mr. & Mrs. Andrew Lansman, Mr. & Mrs. Jeffrey Bozel, Mr. & Mrs. Bruce Pitcher, and Mr. & Mrs. Joe Czajkowski, by J. Carroll Holzer, Holzer and Lee, hereby submit the following Memorandum in Lieu of Closing Final Argument as requested by the County Board of Appeals.

This matter comes before the Board as both a Petition for Special Exception and a Petition for Zoning Variance for the property located on the southwest corner of the intersection of Ridge Road and Joel Court in northern Baltimore County. Within the Petition for Special Exception, relief is requested to approve an outdoor electric public utility service center (electric substation) in an RC-5 zone, pursuant to Section 1A04.2.B.1.1 of the Baltimore County Zoning Regulations (hereinafter B.C.Z.R.) and if necessary, to amend the Fox Ridge Estates (formerly Forewood Property) final development plan. The Petition for Zoning Variance

LAW OFFICE
HOLZER AND LEE
305 WASHINGTON AVENUE
SUITE 502
TOWSON, MARYLAND
21204

(410) 825-6961
FAX (410) 825-4923

intersection of Ridge and Gent Roads. BG&E has agreed to install evergreens not less than 8 ft. in height at a distance of 15 ft. from center to center. Moreover, the trees to be installed will be properly mulched and will be under warranty for a period of at least one year. Based on this agreement, the Hanleys withdrew their opposition to the Petition.

In addition to the landscaping proposed for the Hanley's benefit, the Petitioner has also agreed to install a second row of evergreens on the east side of the property. These trees will be installed along Joel Court at a point immediately north of Mrs. Follo's driveway to the driveway which is to be abandoned. This will be a second row of trees, to provide additional screening above and beyond what is already shown on the plan. That is, the site plan already shows a significant line of evergreens to be planted on the east side of the property. Moreover, additional landscaping is shown on the plan immediately surrounding the fenced area as well as a row of evergreens on the west side of the site shielding same from the Marsden property. I believe that all of these improvements are appropriate and will adequately buffer the site from the surrounding locale. In fact, with the advances in technology and noise control, the relocation and elimination of driveways and the burial of the overhead lines, the site may prove to be less obtrusive than before.

ORDER RECEIVED FOR FILING
Date 12/2/92
By

As to the Petition for Special Exceptions, I am, therefore, persuaded that same shall be granted. The testimony offered was persuasive that the Petitioner has complied with the requirements contained in both Sections 411 and 502.1 of the B.C.Z.R. As to Section 411, those standards pertain to requirements for public utility uses. Ms. Carmen's testimony was persuasive. The standards in Section 502.1 of the B.C.Z.R. relate to all special exception uses. In the instant case, I am convinced that use of the site,

requests a variance from Section 1A04.3.B.3 of th B.C.Z.R. to permit structures as close as zero feet (0') from an interior lot line in lieu of the required fifty feet (50') building setback. The relief requested was shown on Petitioner's Exhibit Number Three.

A hearing was conducted before the Zoning Commissioner of Baltimore County and on the 24th day of June 1994, the Petitions for Special Exception and Variance were granted. An appeal to the commissioner's order was filed by the protestants to this Board.

The Board conducted hearings on five days beginning in October 1994 and ending on January 19, 1995.

II.

Summary of Protestants' Position

- BGE's proposed increase of an existing one-transformer substation containing approximately twelve hundred (1,200) square feet to a two-transformer, multiple switch-gear and circuit equipment increasing the size to a 22,000+ square foot serving an increased service area does not belong in this residential neighborhood and because of its size and capacity, it will serve an area in excess of the xisting service area for the present facility. In addition to its increased size, it is spilling out of its original lot confines to include expansion into a parcel of the original Fox Ridge subdivision as well as a current residential lot serving the Vinup family as a residence. The service area for the existing facility will be increased to take in

additional area of Baltimore County which is subject to additional development in the coming years. The protestants do not believe that their neighborhood should be required to serve additional areas of the county which could properly contain their own substation and accompanying equipment.

- BGE failed to establish the need for such a huge facility to be located at Ivy Hill on the basis of their own figur s projecting a four percent (4%) growth per year or seventy-five (75) units to be added per year. Such minimal projected growth rates from Baltimore County as well as BGE itself fails to justify an increased megawattage from 16.6 megawatts currently to 64 megawatts, or a four hundred percent (400%) increase.
- The physical threat demonstrated to the community consists of, in addition to the heavy electrical equipment contain d within BGE's fencing, a proposed stormwater management pond three to four feet (3' - 4') deep, which poses a significant risk to children. There is a strong likelihood that the fence and equipment will pose an attractive nuisance to young children. In addition, evidence was submitted by protestants indicating that this location is susceptible to lightning, fire, explosion, and noise.
- The extensive discussion of electromagnetic fields (EMF's) was not designed to prove to the Board that there is a direct link between EMF's and possible cancer effects among residents. Electromagnetic field testimony was designed,

however, to establish that the scientific community has proven that EMF's penetrate the human body and catalyze cellular changes and that multiple studies have indicated that there is a risk to humans from exposure to EMF's. Until safety standards can be established and a definitive link proven, BGE must act prudently and does not have the right to impose higher risk on present residents, nor to determine th degree of risk to which private citizens should be exposed. The net effect of the EMF testimony is to further establish that an electrical substation with the accompanying increase of high-current wires, as in this case, belongs in an area properly insulated from human activity and homes.

♦ Detrimental effect of this facility on property values

The Board has had the opportunity to see prot stants' Exhibit Numbers 17-19 which are photographs of numerous substations of BGE around Baltimore County and surrounding areas. These photos, as well as the Board's own knowledge of the equipment to be placed in the Ivy Hill Substation, are just one half of the detrimental effects of this proposal on the property values in the community. In addition, the perception of human health risk created by the multipl studies that have become so widespread and publicized over the last few years have produced a reluctance in numerous buyers of real estate to acquire property located in or near power lines or substations. These two combined effects, the aesthetic and the perceived human health risk, clearly in the

opinion of both experts who testified, have established potential detrimental effects in regard to property value. More importantly, testimony from individual witnesses established an actual reduction in value of acquired property in the neighborhood after this case arose as well as the unique situation of one prospective buyer determining not to locate in the subdivision because of this issue. Clearly, detrimental effect on the property value has been established in this case.

- The current law still requires the need to amend th final development plan in this case which amendment needs to be reviewed by the planning board. The delegation to the Director of Planning is not correct as a matter of law and is in conflict with the Baltimore County Code. Even if the proper procedure was performed in this matter, it is clear that a BGE substation can not conceivably comply with the original purpose of the Fox Ridge Estates. Certainly, there can be no consistency between a residential subdivision and a proposal for an electric substation on one parcel of that subdivision.
- BGE has failed to establish the uniqueness of this site which would permit the application of the standard of practical difficulty or unreasonable hardship for the purpose of variance. This site and this property is "no different than any other parcel in the neighborhood in that it is flat,

moderately forested, with no unusual physical features that would permit the granting of the variance."

- The character of this neighborhood, a peaceful, pastoral atmosphere, will be forever and dramatically altered if permission is granted for the increased Special Exception. It will never resemble the neighborhood which residents built and cherished. Homes and lifestyles will be dramatically altered by the granting of this Special Exception to accommodate BGE. Infrastructure, which BGE indicates is required to place the facility in this location is only wires and poles. They can be safely buried anywhere to lead to an installation which does not wreak havoc on homeowners and a neighborhood.
- Evidence revealed that no regulatory agency in the state of Maryland or Baltimore County monitors or regulates in any meaningful way substation activities. BGE is monitored by no legal authority in the placing, enlargement, or increased service area, but to their stockholders. This Board is the only regulatory agency evaluating this proposed r quest in monitoring or conditioning the activities of BGE.

III.

Outline of Issues

I. Increased Size

A. Physical: 1,200 square feet to 22,000 square feet

B. Capacity: 16.6 megawatt transformers to 64 megawatt transformers

C. Geographical: Expansion from Tract C, 0.40 acres, to Tract A, 1.5 acres and Tract B, 0.9 acres

D. Service Territory: Increase Over Existing Service Territory

II. Lack of Need: BGE's Failure to Establish Need

III. Physical Threat to Neighborhood

A. Stormwater management pond does not presently exist; fencing inadequate

B. Susceptible to lightning, fire, and explosion

C. Noise

IV. EMF's

V. Detrimental Effects on Property Value

A. Expert Opinion

B. Individual Opinion

VI. Need to Amend Final Development Plan

VII. Failure to Meet Burden of Proof on Variances

IV.

Statement of General Facts of Protestants' Case

A. BGE Case

Monica McGrady, the Project Engineer, and Lawrence S. Taylor, the Area Planner identified the site plan for the Ivy Hill substation as being 2.9 acres including 1.5 acres of the parcel located in the protestants' subdivision of Fox Ridge

Estates and 0.9 acres owned by the Vinup family, whose property will be adversely affected to make room for the expanded substation. McGrady testified to the extensive increase in switch-gears, transformers, and switch and bus supports that will be located within the fenced portion of the proposed substation. Taylor was instrumental in disclosing in cross-examination what has been mark d as Developers' Exhibit Number Ten, the Service Territory. That Exhibit establishes that BGE intends to service a larger territory than is portions of Mays Chapel area. Taylor testified that the growth of the area is consistent according to the BGE forecast of seventy-five (75) units added per year with a projected growth rate of four percent (4%) per year. It was these figures of Mr. Taylor and James Ryan, Area forecaster for BGE, that the citizens used in formulating their testimony. Ryan testified that he did not obtain the statistics or figures from Baltimore County in his forecast but used information through the new business activity center of BGE to track and develop his projections. Most importantly, he testified that they used a land use base model provided by the utility industry standard for other utilities all over the country. It is <u>not</u> localized for Baltimore County and it is certainly not personal to the projections of Baltimore County as are the figures which later were admitted into evidence by the Baltimore County Planning Department. Ryan characterized the growth as "low

to moderate pace" and confirmed the seventy-five (75) customers per year and four percent (4%) increase. He admitted that the increase in additional development was due to the adding of additional service area to the substation's territory.

Ryan testified that the current transformers rated at 16.6 megawatts and has not exceeded that wattage except for one day last winter (1994) when they recorded a demand of 20.1 megawatts. He acknowledged that that figure was a on - day extraordinary event. He testified that 150 added units would ad 1.5 megawatts of demand to the substation. He further testified that ten (10) years ago the Ivy Hill substation served one thousand (1,000) homes, and now approximately one thousand seven hundred fifty (1,750) homes, with a projected growth of four percent (4%) per y ar. He testified that both phases would bring a total of 64 megawatts or a four hundred percent (400%) increase to the capacity of the substation. Mrs. Bonnie Johansen testified in regard to the EMF issue as to the milli-Gauss readings as well as Linda Erdreich, Ph.D., Environmental Scientist, who likewise testified as an expert in risk assessment and an epidemiologist. The clear import of Ms. Erdreich's testimony was that she was not a medical doctor, she was not an engineer, she was not an electrical engineer, and she was not an active working scientist in the laboratory doing analysis. She testified that her function as an epidemiologist was

simply to read all of the materials available and assess in her opinion whether or not there was risk attached to EMF's. She acknowledged that there were a number of studies to support the concern for the effects of EMF's on residences (as opposed to workers) but that she believed the weight of the evidence did not favor those studies. Paul Taylor, Civil Engineer for G. W. Stevens, testified as to the stormwater management facility planned. Danny Davis was pres nted as a forester who testified in regard to his land planting activities and management of BGE's substations and landscaping. Examples of his involvement in designing landscaping plans can be seen in protestants' Exhibits Seventeen through Twenty. Protestants submit that the landscaping of all of the substations, including the ones that this witness designed are an abomination to the neighborhoods in which they are located. The Board can examine for themselves the photographs and come to their own conclusion.

Finally, George Gavrelis qualified as an expert Land Planner and testified as to the satisfaction of the 502.1 criteria as well as his theory for the final development plan. Discussion of this will be presented in the Legal Argument dealing with that issue.

B. Protestants' Case

The protestants' case was generally organized along issues beginning with a general discussion of the size of

the increase for the BGE facility b ing presented by Carol Rytter and her husband Robert Rytter. Protestants' Exhibit Numbers Three, Four, and Five basically established that the present site of the substation is being enlarged onto adjacent parcels as previously noted. The Rytter overlay on Protestants' Exhibit Number Four establishes that much of th green forest buffer on developer's Exhibit Number Three is actually located on property not owned by BGE, and the protestants' overlay established that fact very clearly, as well the fact that the relative proportions of the enlarged substation versus what is existing at the present time.

Concerning the need for this enlarged facility, protestants presented Caroline Beatty and Pam Budashine who testified as members of the County Planning Staff that they obtained and developed figures for the current Ivy Hill service area as well as the addition of the Hickory Ridge section by utilizing transportation zones of the County. The thrust of protestants' Exhibits Six A and B indicated that the transportation zones for the area when adjusted because some of them went outside of the actual service area showed a relatively minor increase of units up to the year 2020 in both units and population figures. Dave Thomas from the Department of Public Works likewise testified that to the best of his ability within the service area no water and sewer was being proposed for the existing service area in the future by Baltimore County.

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning

Suite 113 Courthouse
400 Washington Avenue
Towson, MD 21204

(410) 887-4386

June 24, 1994

Robert Hoffman, Esquire
210 W. Allegheny Avenue
Towson, Maryland 21204

Martha A. Delea, Esquire
Baltimore Gas and Electric Co.
P.O. Box 1475, Charles Center
Baltimore, Maryland 21203-1475

RE: Case No. 94-452-XA
Petitions for Special Exception and Variance
Legal Owner & Contract Purchaser: Balto. Gas & Electric Co.
Legal Owner: Frederick R. Vinup, et ux

Dear Mr. Hoffman and Ms. Delea:

Enclosed please find the decision rendered in the above captioned case. The Petitions for Special Exception and Variance have been granted, in accordance with the attached Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days of the date of the Order to the County Board of Appeals. If you require additional information concerning filing an appeal, please feel free to contact our Appeals Clerk at 887-3391.

Very truly yours,

Lawrence E. Schmidt
Zoning Commissioner

LES:mmn
encl.
cc: Mr. and Mrs. Frederick Vinup, 1821 Ridge Road, Reisterstown, Md. 21136
Mark K. Cohen, Esquire, 120 E. Baltimore Street, Balto.Md. 21202
Mr. Andrew Lansman, 9 Joel Court, Reisterstown, Md. 21136
Ms. Pamela Follo, 1 Joel Court, Reisterstown, Md. 21136
Mr. and Mrs. Raymond Fisher, 1822 Ridge Road, Reisterstown, Md.21136
Mrs. Dorothy Marsden, 1823 Ridge Road, Reisterstown, Md. 21136

Ron Hanley, using the testimony and figures of representatives of BGE as well as the County population and unit growth figures developed protestants' Exhibits Seven through Ten, charting the various alternative scenarios as to the actual increase or need versus the proposed capacity. Under all circumstances, the yellow or proposed capacity area far exceeded on the charts the actual need for capacity as demonstrated most favorably to BGE either through th ir own testimony or as more accurately reflected by the county figures as submitted by the Office of Planning and Zoning. Philip Vanderhaden testified as an employee of the Public Service Commission and an Engineer that the Public S rvice Commission does not regulate BGE's substation below 69,000 KV. Basically, the Public Service Commission does not know what equipment is on site, does not know the substation service area, doesn't review the adequacy or number of lines in and out of the substation. The latest record for the "one-line" diagram in the Public Service Commission files, for example, was dated in 1980, showing a woeful lack of knowledge of the existing substation status. Importantly, Vanderhaden testified that if this Board grants approval to BGE, no agency or governmental authority regulates what takes place at this substation, including the state or federal governments. Vanderhaden suggested that there were other methodologies of placing a substation in a community either underground or within a structure which could be more

compatible within a residential zone. Finally, he testified that he had tried to obtain information in regard to the lines and other data from BGE but they refused to submit any information to him because of the hearing before this Board of Appeals. That exchange of correspondence and BGE's refusal to provide information to the Public Service Commission as well as to the protestants is contained in protestants' Exhibit Number Eleven. Finally, Vanderhaden did acknowledge that fire or explosions are possible and occur at substations based on his knowledge at the Public Service Commission.

Turning next to property values, the protestants presented the testimony of Pete Kern, qualified as an expert appraiser, and submitted as protestants' Exhibit Number Thirteen, his consultation report in which he concluded that there would be a negative influence on property values as a result of the proposed construction of the enlarged substation. Attached to the consultation report are many articles and literature which establish and support Kern's conclusion. Significantly, the protestants did not have to rely on experts' opinion but presented the testimony of Alison Roose who was able to purchase her home based upon her alerting the seller to the BGE expansion of Ivy Hill issu and the related EMF concerns, reducing the sale price from $350,000.00 to $290,000 for her property, a reduction of $60,000.00 based totally upon the concern for the proposed substation.

Finally, Robert Gensler, an individual unknown to the protestants until shortly before the hearing on the last day, testified that he had a contract on an existing house in the Fox Ridge subdivision and that based upon what he heard at the hearing, his concerns in regard to the decreased property value of the proposed house that he was purchasing, he was breaking his contract, even at the loss of the $5,000.00 deposit in order not to acquire the property within the subdivision adjacent to the proposed BGE facility.

The community next presented its testimony concerning the Special Exception criteria under 502.1 related to concerns of a number of individual property owners against the proposed expansion. Pam Follo, an adjacent property owner to the proposed facility and perhaps the closest neighbor, testified that while she knew there was an existing substation of 1,200 square feet on the site when she acquired her property, she could not possibly have anticipated that such a facility would grow to a 22,000 square foot substation. In addition, she felt assured that Parcel A contained in her subdivision could not be used by BGE for anything more than a buffer between the substation and her home. She also testified that she could not possibly have anticipated that BGE could have acquired the Vinup property for the sole purpose of knocking it down to expand their substation in a residential zone.

Ms. Follo expressed concern in regard to the EMF issue but clearly indicated that since the literature is

inconclusive, even though there are credible and respected sources indicating that there are possible risks between EMF's and increased likelihood of childhood leukemia and breast cancer, Alzheimers, and cancer in general, that the very nature of the inconclusiveness of the studies should not require the neighborhood to assume the risk of this incr ased facility. She identified and entered into evidence photographs of twenty-six (26) substations that she had visited which indicate the nature of the communities in which they are located as well as the landscaping for those substations. Those Exhibits are marked as prot stants' Exhibit Numbers Seventeen through Nineteen. The photographs will show the integral parts of the substation as well as th lack of appropriate landscaping. It can be seen from looking at the photographs that the proposed eight to ten foot (8' - 10') landscaping by BGE still does not screen the height of the structures, the bus supports, the transformers, the switching structure, and the switching gear enclosure, all of which exceed the height. Furthermore, she testified that BGE's own landscaper indicated that in the winter time, the existing facility as well as the new facility will be seen from the Follo property, even with the eight to ten foot (8' - 10') evergreen plantings. Her testimony also included the fact that there were only two of these substations east Towson and Sudbrook which were actually in purely

residentially neighborhoods and that both of them were abominations in terms of the aesthetic view.

Andy Lansman and Elizabeth Langendorf likewise raised impacts upon the neighborhood based upon the increased size. Thomas St. Ville, an attorney for a local large law firm testified that had he known of this planned expansion, he would not have purchased his property, which is four properties west on Ridge Road from the BGE facility. The important part of his testimony was that in January 1994, h looked at the County's ten year Master Plan in terms of growth and development; he looked at the subdivision plats for his subdivision; he looked at the Vinup property, and he concluded that it was safe to buy his home. He testified that he had no way of knowing or expecting that BGE could acquire the Vinup property, ask for Special Exception, and receive permission to extend a substation on that residential site.

Turning to the issue of the filed development plan, Ira Brown, Joseph Czajkowski, Carl Follo, and Nigel Howse, all adjacent property owners, testified in regard to their acquiring a lot in the Fox Ridge Estates subdivision. All identified their property in relationship to the subj ct site on protestants' Exhibit Number Three. Brown did not know of BGE's ownership of Tract A until he called to complain about the upkeep of the lot in regard to a fire at the substation on May 25, 1994. Joe Czajkowski never received a plat of the

entire development and was told that the community owned Tract A when he settled on the property and was given no indication of BGE's ownership of Tract A. He also thought it reasonable to propose an alternate location, which was the Oregon Ridge Park, suggesting that BGE should examine other locations not in a residential zone.

Carl Follo testified that he is within three hundred feet (300') of the subject site, that he was provided a plat which did not show ownership by BGE. Follo testified that he knew Tract A was part of his subdivision and believed only residential structures could be built upon it. He further testified he objected to the use of Tract A in the Fox Ridge Estates subdivision to support the BGE facility. Finally, Nigel Howse testified that he purchased in May 1994 and at the time he likewise had no awareness of BGE's ownership. Nigel Howse's property is immediately adjacent to th BGE facility as proposed and a part of the Fox Ridge Estates subdivision. (Testimony in regard to the legal aspect of the final development plan will be discussed during the analysis of Norman Gerber's testimony.)

The community then presented evidence in regard to the EMF issue from Dr. Zory Glaser, who qualified as an expert and who testified in regard to EMF studies and effects of EMF. Dr. Glaser can be set apart from BGE's witness in that his résumé marked as protestants' Exhibit Number Twenty-Two establishes that Dr. Glaser is in fact an expert on

electromagnetic radiation bio-effects, risk assessment associated with exposure to EMF radiation, dosimetry (dosage) of non-iodizing radiation, standards and regulations pertaining to non-iodizing radiation, biophysics, physical and polymer chemistry, and microbiology. He has been qualified in administrative agencies, courts hearing boards, and in federal courts in the United States. Contrary to the BGE expert, Dr. Glaser has actual hands-on experience and work in the laboratory over the years of his career with the Department of the Navy concerning the effects of EMF's. In his testimony, he analyzed other case studies and literature. He reviewed the testimony of the BGE expert by reading the transcript and he concluded that he has concerns in regard to homes, pets, children across the street and on thos properties surrounding the power lines leading to and from th substation.

Protestants have always submitted to the Board that they have no need to affirmatively establish the medical link between EMF's and human health. It is believed that protestants have established through the testimony of Dr. Glaser the fact that credible studies by credible scientists have concluded that there are negative impacts on the human body as a result of exposure to EMF's, that risk of possible connection and future proof of related health hazards should not be borne by the community in this instance. In addition, the evidence clearly reflects the perception of EMF conc rns

are significant in the relat d property value area. As a result together, these risks and concerns and perceptions are enough to cause concerns under the qualifications of Section 502.1 of the B.C.Z.R. Mrs. Mary O'Hara and Nancy Muegel testified as to their personal concerns in regard to EMF exposures on their homes and children.

Protestants presented the expert testimony of Norman Gerber, former Planning Director of Baltimore County, who testified in regard to the final development plan/variances/ special exception. In general, Gerber's testimony in regard to the final development plan was that the Baltimore County Code required submittal of this amendment to the final development plan to the Planning Board and that the purported resolution of the Planning Board delegating that authority to the Planning Director is a violation of the County Law and County code, which takes precedence. In addition, he felt that even if the matter was reviewed, that clearly the use for an electrical substation was not an appropriate use envisioned within the context of the original subdivision and should be denied. He testified that the variances should not be granted because there was nothing unusual at all in regard to this property under the most recent case of David Cromwell vs. Arthur Thomas Ward, decided January 4, 1995 by the Court of Special Appeals. Finally, in his analysis of the Special Exception criteria of Section 502.1, the court opined that the size of this enlargement presented an intrusion into the

residential natur of the neighborhood causing unnecessary and negative impact on the health, safety, and welfare of the community, a change of the character of the neighborhood, an increased concern for fire explosion danger, and other panic, including panic from EMF's and the perception of that health issue as being appropriate reasons to deny the Special Exception under those criteria.

Finally, the Valleys Planning Council testified in opposition to the proposed facility as exampled by protestants Exhibit Number Twenty-Nine. Nancy Muegel testified on behalf of the Chestnut Ridge Grace Pre-School directly across the street in opposition. Lisa Eberling testified in opposition for Schwann Valley Association, Inc. Floyd Pawn testified on behalf of Hunt Club Hill Association against the proposal.

V.

Legal Arguments

A. Baltimore County Zoning Regulations

The applicable sections of the B.C.Z.R. are well known to this Board. First, Section 50.21 requires that before any Special Exception is granting, it must appear that the use for which the Special Exception is requested will not:

1. be detrimental to the health, safety, or general welfare of the locality involved;
2. tend to create congestion in roads, streets, or alleys therein;

3. create a potential hazard from fire, panic or other dangers;

4. tend to overcrowd land and cause undue concentration of population;

5. interfere with adequate provisions for schools, parks, water, sewerage, etc.;

6. interfere with adequate light and air;

7. be inconsistent with the purposes of the property zoning classification nor in any other way inconsistent with the spirit and intent of the zoning regulations.

Second, Section 411, B.C.Z.R., provides for public utility uses permitted by Special Exception, the following additional regulations shall apply:

Section 411.1 - The use must be needed for the proper rendition of the public utility service and the location thereof shall not seriously impair the use of neighboring property (emphasis supplied).

Third, Section 307 of the B.C.Z.R. permits the granting of variances: only in cases where special circumstances or conditions exist that are peculiar to the land or structures which is the subject of the variance request and where strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship.

These, then, are the criteria by which the evidence presented before the Board must be examined. A general

RE: PETITION FOR SPECIAL EXCEPTION PETITION FOR VARIANCE	*	BEFORE THE
Ivy Hill Substation S/W corner of intersection of Ridge Road and Joel Court, 8th 8th Election District, 3rd Councilmanic	*	ZONING COMMISSIONER OF BALTIMORE COUNTY CASE NO.: 94-452-XA
Legal Owner, Tracts A & C: Baltimore Gas & Electric Company Legal Owner, Tract B: Frederick R. Vinup and Ann L. Vinup Petitioners	*	

* * * * * * * * * * *

94-452-XA

ENTRY OF APPEARANCE

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

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
Room 47, Courthouse
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of May, 1994, a copy of the foregoing Entry of Appearance was mailed to Martha A. Delea, Esquire, Baltimore Gas & Electric Company, Charles Center, P. O. Box 1475, Baltimore, MD 21203-1475, and to Robert A. Hoffman, Esquire, 210 Allegheny Avenue, Towson, MD 21204, attorneys for Petitioners.

Peter Max Zimmerman

PETER MAX ZIMMERMAN

discussion of the case law interpreting these sections will be addressed later in this memorandum. The following arguments have to be viewed within the context of the above Baltimore County Zoning Regulations.

I. <u>First Legal Argument: Proposed Substation Expansion in Size</u>

A. Physical Size - The proposed substation will increase in size from the existing 1,200 square feet to approximately 22,000 square feet and will extend from the existing Tract C onto Tract A, which is a part of the subdivision of Fox Ridge Estates, as well as Tract B, which is currently a residential property with a residenc upon it, owned by the Vinup family. (This property was subsequently acquired by BGE on September 30, 1994).

B. Capacity - In addition, the capacity of the Ivy Hill facility will be increased from a 16.6-megawatt transformer to two 32-megawatt transformers for a total of 64 megawatts, or a 400% increase in capacity. The proposal will include in addition to the transformers, bus supports, a twenty by forty foot (20' by 40') metal switching structure, switching enclosures, and other equipment, all of which will exceed the proposed screening height of eight to ten feet of evergreens. The sheer size of the physical expansion proposed and its intrusion into the Fox Ridge Estates subdivision as well as neighboring piece of residentially zoned property

produces the many issues and concerns raised by th community at this hearing.

C. Geographical Expansion - The gross increase in substation size, the unwarranted expansion onto an existing residential property which will be demolished to make room for the enlarged substation, and the addition of more service area to support electric service to other areas of Baltimore County in addition to what is currently being serviced by Ivy Hill substation satisfies the violation of section 502.1 in that this expansion will be detrimental to the health, safety, or general welfare of the locality involved. This proposed expansion is inconsistent with the purposes of the property zoning classification and inconsistent with th spirit and intent of the zoning regulations. Clearly, the zoning regulations were never meant to permit a facility such as the proposed substation, which can only be viewed as industrial and commercial in nature to be located in such close proximity to adjacent residences and adjoining residential property. One only need look at the various photos of the existing substations presented by Mrs. Follo in her testimony to understand the unwarranted intrusion into this residential subdivision (see protestants' Exhibit Numbers Sevent en through Nineteen). It should be noted in reviewing these photos that many of the substations depicted in the

photographs are not even the size of the proposed subdivision. For instance, the Jacksonville substation is approximately a third the size of the proposed expansion and its effects can readily be seen in the protestants Exhibit. The visual impact of this proposed facility can readily be seen from the comparison charts submitted by Robert Rytter as protestants' Exhibits Three, Four, and Five.

D. Service Territory Expansion - The physical expansion and the geographical expansion is accompanied likewise by an expansion of the service territory to include what is called the Hickory Ridge area during the course of the hearing before the Board. The effect of the increased service territory is to put a burden upon the protestants' community to support electric service to an area that is currently not being supplied by the Ivy Hill substation. In effect, it means that BGE is sacrificing this community to preclude the need to construct a substation or transformer station in another area of Baltimore County where service may be needed. protestants believe that not only is this an improper and unwarranted intrusion in their community, but that it is patently unfair to require a change in character of their neighborhood to support another area which will not be burdened by such an unsightly facility.

II. <u>Second Legal Argument: BGE's Failure to Establish Need</u>

As s t forth above, BGE must stablish that the propos d expansion must be needed for the proper rendition of the public utility service and that the location thereof shall not seriously impair the use of the neighboring property. To suggest that this facility will not seriously impair the use of the neighboring property is to ignore completely the obvious. The same arguments which applied to the denial of the Special Exception pursuant to Section 502.1 are applicable to Section 411.1 and that the evidence supports the level of serious impairment to the use of the neighboring property.

Turning to the proof of need, the protestants believed that they could utilize the very testimony of BGE to show that BGE's projected growth rate did not warrant th expansion proposed. In addition, protestants sought out information from Baltimore County which established that BGE's projections were far in excess of what the county proposed for the growth rate in the service area.

The figures previously presented in this memorandum establishing the growth rate as developed by Baltimore County Office of Planning and Zoning established that through the use of transportation districts, an accurate analysis of th proposed growth rate of the BGE service area, both including and excluding the Hickory Ridge additional service area could be made. Through the use of traffic zones and giving BGE the benefit of the doubt for those zones which exceeded the

limits of the service territory, it became clear that under the Baltimore County figures that in examining protestants' Exhibit Number Seven, the unit Growth comparison, the Baltimore County figures in dealing with units of increase were far below that of BGE's estimate to the year 2020 as demonstrated on protestants' Exhibit Number Seven. On that same Exhibit, BGE's increase of seventy-five (75) units per year was likewise plotted as well as their other alternative growth projection of four percent (4%) per year. It can b seen that the Baltimore County figures (which BGE did not rely upon but used a country-wide modeling program) are clearly much less and protestants submit more accurate. However, giving BGE the benefit of the doubt, protestants' Exhibit Number Eight was presented which showed the need comparison versus the capacity proposed by the incr ased substation. On that Exhibit, using the BGE assumption of seventy-five (75) units equaling 0.7 megawatt, the capacity of the proposed Phase I and Phase II enlarged substation facility was diagrammed in yellow, which shows the dramatic capacity in excess of the need, both through Phase I and Phase II.

Furthermore, in protestants' Exhibit Numbers Nine and Ten, the protestants plotted not only the need comparisons previously discussed, but also included within thos projections the Hickory Meadow area, which is being added to the existing service area of the Ivy Hill substation. Even

with that area added, including all existing units served by the area of Hickory Meadows, it can be clearly seen that again the capacity from this expansion is far in excess of what is actually needed by using all of the figures and comparisons most favorable to BGE.

Finally, in a protestants' Exhibit, it was shown that using Baltimore County projections by the year 2020, we arrive at a 10.7% increase since 1995, whereas under the BGE data, in the same year, 2020, beginning with an assumption of 75 units per year, we see an increase of 111.4%. While using an assumption of four percent increase, BGE arrives at 177.3% increase in the year 2020.

Protestants believe they have demonstrated by two m thods that the increased capacity is not needed, even assuming the Hickory Meadow area is added to the existing service territory, which protestants believe is improper and should not be done for the foregoing reasons.

For all the above reasons, protestants submit that clearly BGE has failed to establish a basis of need.

III. <u>Third Legal Argument: Physical Threats to the Neighborhood</u>

A. Stormwater Management Pond and Enlarged Facility - The testimony of the various protestants will not be herein restated. However, it is clear that there is significant concern in regard to young children being able to access the stormwater management pond, which will only be protected by a 42" high fence. In addition, the eight

foot fence surrounding the increased dangerous equipment proposed for the enlarged facility affords nothing more than an attractive nuisance for neighborhood children and beyond to be attracted to. Clearly there are many reports in the testimony of concern for children being hurt by the dangerous equipment after climbing the fence or entering through an unlocked gate.

B. Fire and Explosion - In addition, multiple witnesses testified to the location of this substation on a ridge, which makes it susceptible to lightning strikes and to fires and explosions. There had been a previous fire testified to at this very location and th re was testimony from the Public Service Commission representative, as well as others, as to the potential explosion of equipment contained in a substation.

C. Finally, there was testimony in regard to noise emanating from this site that is currently noticeable to the residents. This testimony should afford the protestants relief under Section 502.1 A and C.

IV. <u>Fourth Legal Argument: EMF's</u>

There was much testimony presented by both sides to the Board concerning the effect and the magnitude of el ctro-magnetic field exposure to the residents of this community. The mere fact that so much information is available to present to the Board from experts on both sides, those who believe that there has been established a medical link

between EMF's and the effect upon human health versus those who believe that the case studies have not established such a link, establishes a strong basis for the Board's consideration of this issue in its overall evaluation under Sec. 502.1.

Clearly, both sides were forced to acknowledge that there has been substantial case work performed since 1970 and that a number of case studies reflect a link between EMF's and cancer. These studies are simply dismissed by the BGE experts; however, that dismissal alone does not answer the question for this Board. It was never anticipated that the protestants would prove to the Board's satisfaction that there is a direct medical link between EMF's and cancer and harmful effects upon the residents of this community. It was anticipated and successfully presented to the Board that there would be a showing to the Board that there is sufficient concern among scientists who are recognized as qualified experts in their fields to establish that ther is a strong reason to be concerned about the health effects of EMF's. BGE's experts simply analyzed all the reports and concluded that the weight of evidence was against the medical connection. Protestants' expert did not simply review the case studies performed by others and conclude that there was no cause for concern. He in fact has a twenty year history of working in the scientific field on the equipment and on animals subject to EMF's in the laboratory to determine that

based on his analysis of this situation that he had cause for concern for the safety of the residents in this neighborhood from the increased electrical energy being generated by the wires leading to and from this substation and from the substation itself. That is all that the protestants ever intended to establish to this Board.

Furthermore, the cause for concern is shared not just by experts in this field, but is shared by appraisers of real property concerning the perception of the harmful effects of EMF's on real property values. One need only look at the writings and literature attached to the report of Pete Kern to understand the protestants' point of view in regard to this issue.

The scientific community has proven that EMF's penetrate the human body and catalyze cellular changes. Until appropriate safety standards can be established by fed ral, state, and local officials and the scientists in this field, protestants submit that BGE must act prudently. BGE does not have the right to impose potentially higher risks on current residents. BGE does not have the right to determine the degree of risk to which a private citizen should be exposed in this community.

It is too well known to the protestants, as well as to the Board, that for decades, scientists debated the harmful effects of smoking and secondary smoking upon the human body, and today, we all know the detrimental effects of smoking

upon an individual and those in the immediate vicinity. In addition, it is also clear that for years, the industry ignored warning of the concerns for asbestos and its effect upon humans. After the scientific community finally established proof of the detrimental link between asbestos and human health, it was too late for those many persons who had been subjected improperly over the years to such exposure. It is that threat that the protestants seek to avoid in the instant case. Clearly, until the proof has been irrefutably established showing that there is no danger to humans from EMF's, this Board should not gamble with the health and safety of the surrounding neighbors for the sake of this project, nor does BGE have the right to det rmine that these citizens must be exposed to whatever degr e of risk there is from EMF's from this facility.

It is clear that the protestants need not prove the medical link to satisfy Section 502.1C.

V. Fifth Legal Argument: Devaluation of Property Value

A. The negative impact upon property value is clearly within the subject matter of section 502.1A as well as within the definition of Section 411.1 wherein the proposed facility shall not seriously impair the use of neighboring property. Those two provisions certainly provide for an analysis of the detrimental effect of this subject site upon the property values of the surrounding neighborhood. The effect of this facility on property

A30

Petition for Special Exception

94-452-XA

to the Zoning Commissioner of Baltimore County

for the property located at Southwest corner of intersection of Ridge Road and Joel Court

which is presently zoned RC5

This Petition shall be filed with the Office of Zoning Administration & Development Management.

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Regulations of Baltimore County, to use the herein described property for

an outdoor electric public utility service center (electric substation) in an RC5 zone pursuant to Section 1A04.2.B.11 of the Baltimore County Zoning Regulations and to amend the Fox Ridge Estates (formerly Forwood property) Final Development Plan if necessary.

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

I, or we, agree to pay expenses of above Special Exception advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

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

Contract Purchaser: ~~XXXX~~ (Tract B)

Baltimore Gas & Electric Company
(Type or Print Name)

By: [signature]
Signature Carserlo Doyle, Vice President

P.O. Box 1475
Address

Baltimore, Maryland 21203
City State Zipcode

Attorney for Petitioner:

Martha A. Delea, Esquire
(Type or Print Name)

[signature]
Signature

Baltimore Gas & Electric Company
Charles Center
P.O. Box 1475 234-5697
Address Phone No

Baltimore, MD 21203-1475
City State Zipcode

Legal Owner(s):

See Attached
(Type or Print Name)

Signature

(Type or Print Name)

Signature

Address Phone No

City State Zipcode

Name, Address and phone number of legal owner, contract purchaser or representative to be contacted

Robert A. Hoffman, Esquire
Name
210 Allegheny Avenue
Towson, MD 21204 494-6262
Address Phone No.

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing the following dates Next Two Months

ALL OTHER

REVIEWED BY: DATE

Zoning Administration & Development Management

values in the opinion of witness Pete Kern takes the form of: 1) negative impact as a result of the aesthetic considerations of simply viewing a substation and power lines such as those represented by the photographs in the protestants' Exhibits; and 2) the perception of a human health risk from EMF's to a prospective purchaser. There are numerous cases involving courts which have ruled that a property owner need not prove the medical link between EMF's and cancer but simply may establish that there is a general public perception of concern which is sufficient to detrimentally effect property values. In analyzing the public perception, it is clear that from the extensive number of journals and article titles found on pages six and seven of the Kern report that knowledge of EMF's effects is widespread and is the subject of over three hundred articles that were available to Kern in his analysis. He concluded that public knowledge and concern over EMF hazards is rising irrespective of its validity and that scores of lawsuits involving EMF's have been filed around the country.

Kern concluded that courts are now allowing lawsuits which bypass the medical issues and focus solely on the economic impact of buyers' fears. He further concluded that sale prices of homes located near power generation and conveyance are lower than those not within line of sight according to realtors and scientifically based

studies. Further, the average time for selling a hous is increased when located within sight of an electrical feature such as a power line or substation. The Board need only review the literature excerpts attached to Kern's report to understand this issue. Interestingly enough, in cross-examination of BGE's expert appraiser, Walter Ryder acknowledged a number of significant points, among those being that the perception of the public concerning danger from EMF's was increasing, that there has been litigation which has gone to the jury based upon perception of people's concerns, and that there have been multiple articles and studies in trade journals which define the industry's concern for the effect of power lines and substations upon property values.

B. In this case, however, we have more than just a "battl of experts." We have specific testimony and documentation to support the fact that property values have already been affected by the BGE proposal. The testimony of Alison Roose established that she had a lease by agreement for her home in the amount of $350,000.00 and that when she went to execute on th lease and buy her residence, she was able to utilize the proposed expansion of BGE to reduce the purchase price to $290,000.00, or an eighteen percent (18%) decrease based solely on the BGE proposed substation. In addition, the startling testimony of Robert Gensler who identifi d

himself during the course of this case as a prospective purchaser of a lot within the Fox Ridge Estates subdivision is worthy to note. Gensler was unknown to the protestants until the hearing. However, upon his listening to the testimony of the EMF experts as well as reviewing the appraiser's report, he concluded that he did not want to acquire a home in the Fox Ridge Estates subdivision, and he was willing to break his contract and lose his $5,000.00 deposit in order to do so. The protestants submit that that is direct and strong evidence to support the testimony of Pete Kern in his analysis of the potential real estate drop in value for the protestants involved in this case.

As previously stated under Section 502.1A and 411.1, this evidence clearly establishes an impairment of the use of neighboring property and an impact upon the health, safety, and general welfare of the community.

VI. Sixth Legal Argument: Need to Amend Final Development Plan

Norman Gerber, former County Planning Director, provid d expert testimony and opined that the final development plan of Fox Ridge Estates needed to be amended. He testified that Section 1A00.4 requires a final development plan for all subdivisions in RC zones be governed by Section 1B01.3.A.7. That section requires that after final development plans have been approved, they may be amended after the sale of interest in nearby property by Special Exception procedures in the

manner provided under S ction 502 subject to the following provisions: Section 1B01.3.A.7B(1) provides the amendment must first be approved by the Planning Board as being in accord with provisions adopted under the authority of Section 504.

It is clear in this case that the Planning Board has never reviewed the amendment to this final development plan. It is also undisputed that the protestants, particularly Follo, Howse, O'Hara, Brown, Rytter and Langendorf reside within three hundred (300) feet of the subject property. It is also clear that BGE alleges that the Planning Board has delegated, by an amendment to the Comprehensive Manual of Development (CMDP), the responsibility for approving amendments to final development plans to the Director of Planning. Gerber testified and protestants submit that this was an illegal action by the Planning Board. The B.C.Z.R. is of "inclusive construction." There are no provisions for delegation of this function. In the opinion of Gerber, the method of amending the B.C.Z.R. is clearly Section 26-123(a), (b) and (c) of the Baltimore County Code. This is clearly an amendment to the B.C.Z.R. and the Code was not followed.

BGE alleges that this action was based on Section 504.2 of the B.C.Z.R. However, this action of delegation of authority to the Planning Director is in conflict and inconsistent with Section 504.1 of the B.C.Z.R., which says any addition to the CMDP is acceptable if they "are not

inconsistent with these regulations." In the opinion of the protestants and Gerber, this delegation is clearly inconsistent. As a matter of law, the delegation was improper, and the Planning Board must review the final development plan for this project.

Assuming for the sake of argument that procedurally th Planning Board had approved this particular amendment, the amendment must be in accord with specific standards and requirements. It is clear that the standard for an amendment to the final development plan is that "the amendment would be consistent with the spirit and intent of the original plan and of this article." protestants submit and are confident that any interpretation of the original subdivision plan for Fox Ridge Estates under no stretch of the imagination could include the use of Parcel A as a location for a substation. It is clearly not consistent with the idea of a residential subdivision and has absolutely no basis in reason to believe that a substation is consistent with the spirit and intent of the original development plan.

Gerber opined that the proposed amendment to the final development plan for the use of Parcel A as a BGE substation was not consistent with the spirit and intent of the original plan. Gerber testified that "the primary purpose of the requirement for a final development plan and the amendment plan is to provide some protection to purchasers of lots in an uncompleted subdivision so that the use could not be

changed to something undesirable to th m after they made their purchase."

Gerber further rejected the expert opinion of BGE witness George Gavrelis that somehow the final development plan by simply including the fact that BGE was the owner of Parcel A put the Protestants on notice and that amendment to the final development plan was not necessary. He specifically pointed out Section 1B01.3A.5B, which requires that each parcel or final development plan must show the locations, type, and exterior dimensions of all proposed structures and all existing structures generalized floor plans, layout of parking facilities, streets and drives giving access to, etc.

Gerber's testimony was that ownership was not the criteria for the amendment of a final development plan and does not in any way, shape or form alert the prospective purchasers at Fox Ridge Estates what was the intended use of the parcel. Gerber distinguished between the proposed use not being consistent with the uses on the other lots and simply the ownership of the various parcels and lots. Ownership of the parcel by BGE was not sufficient to avoid the need to amend the final development plan. Protestants can conceive of no possible analysis that would permit the Board to conclude that the use of this parcel is consistent with the overall intended use of the Fox Ridge Estat s subdivision plan.

Gerber further testified that in his opinion the proposed enlargement of the Ivy Hill substation was detrimental to the health, safety, and general welfare pursuant to general welfare pursuant to Section 502.1A that it violated Section 502.1C, that it violated Section 502.1D, that it was inconsistent with the purpose of the property zoning under Section 502.1G, and that this Special Exception should be therefore denied.

VII. Variances - Failure to Prove

The previous discussion of the B.C.Z.R. relating to Section 307.1 make it abundantly clear that the county regulations require some "special circumstance or conditions exist which are peculiar to the land which is the subject of the variance request." One must analyze the testimony of the only witness presented by BGE, George Gavrelis, to establish the variance criteria. Mr. Gavrelis' testimony can be found in the transcript for January 10, 1995, at page 105. When asked what was unique to this site, he responded that "it's a site that is wooded; it's a site as proposed, wooded dges can be retained and the substation, as proposed, is, in effect, tries to concentrate the improvement regardless of the internal lot lines to come up with a more rational and coherent way to in effect provide for the substation and at the same time provide green landscape edges and I think that's what's unique about this site." Later, in the cross-

examination, he was asked at page 110, what was the reason for the variance. He was then asked on page 111:

Q: Is there anything else different about this site combining the three parcels into the 2.8 acres other than the fact that it's treed?

A: There's a substation already there.

Q: Exactly. And other than that?

A: It has existing infrastructure.

Q: It has lines serving it in and out?

A: Exactly.

Q: Other than that?

A: I think that's enough.

That is all of the testimony which supports the requested variance as set forth by BGE in this case. In analyzing a most recent decision by Judge Cathell of the Court of Special Appeals, in the case of David Cromwell v. Arthur Thomas Ward III, CSA No. 94-617, filed January 4, 1995, the court ruled in a case presented before this very Board, the Court of Special Appeals noted that zoning variances and exceptions have often been confused because of a tendency to intermingle the concept of Special Exception/Conditional Uses and Variances.

The Court wrote that variance analysis is a two-step process, with the first step requiring a finding that the property is unique or different from the surrounding properties and the zoning provision impacts disproportionately upon that property. If the first step is satisfied,

then the Board should determine whether any practical difficulty or unreasonable hardship is caused by the property's unique character exists. In the Ward case, no evidence came before the Zoning Board that showed Ward's property to be "peculiar, unusual, or unique." It can also be said that in a similar case in which this Honorable Board granted variances in the case of Williams Estates, 92-460-SPHA, the Court of Special Appeals likewise reversed this Board on a variance involving the same general issue, Grethchen Floyd, et al. v. Williams Estates, et al., No. 551, September Term, 1994.

Here, it is clear that there is nothing unique about this particular piece of property that sets it apart from and distinguishes it from any other parcel of land in the area. Indeed, Norman Gerber testified during the course of his testimony that in his opinion this property was not unique when compared to the nature of surrounding properties in such a manner as to cause the setbacks in Section 1A04.3B3 to impact this property disproportionately. Gerber testified that each parcel looks similar to any other lot on Ridge, Falls, or Gent Roads. Some nearby lots have more trees, and some have less. There are no unusual topographic considerations unique to the Petitioners' property.

Gerber concluded that the variances are primarily to permit a more intensive coverage of the lots which in fact the very nature of the variances goes to in his opinion prove

the point that under Section 502.1, that this proposed substation will negatively impact the general welfare of the locality involved and be inconsistent with the purpose of the property zoning classification. In Gerber's opinion, the variances simply establish the tendency to overcrowd the land and cause undue concentration under Section 502.1D of the B.C.Z.R.

VIII. Legal Conclusions: For all of the above reasons, protestants respectfully submit to this Honorable Board that BGE has clearly failed to meet its responsibilities under Section 502.1, 411.1, and 307.1 of the Baltimore County Zoning Regulations.

Protestants, in an analysis of general case law concerning the granting of Special Exceptions, would suggest to this Board that the following cases clearly support the proposition that this Special Exception request for an enlarged substation by BGE should be denied.

It is well recognized in Maryland that the case of Shultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981) is a case of some significance in setting forth the appropriate guidelines and standards to be used by the Board in determining whether a requested Special Exception use would have an adverse effect upon the health, safety, or general welfare of the community of neighborhood. This case, decided in 1981 and authored by the late Judge Rita Davidson, has been well cited by various administrative Hearing Officers, as well as Circuit Courts in

A30

94-92-XA

Legal Owner Tracts A & C:

Baltimore Gas & Electric Company

By: _____

Carserlo Doyle, Vice President
P.O. Box 1475
Baltimore, Maryland 21203
(410) 234-5697

Legal Owners Tract B:

_____
Frederick R. Vinup

_____
Ann L. Vinup

1821 Ridge Road
Reisterstown, Maryland 21136-5617

their analyses of the facts presented in their individual cases.

Shultz held:

> "We now hold that the appropriate standard to be used in determining whether a requested Special Exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that the particular use proposed at the particular location proposed would have any adverse effect above and beyond those inherently associated with such a Special Exception use irrespective of its location within the zone." At page 1331.

However, the Court, in the same Opinion, at page 1327, stated the same principle in a slightly different fashion:

> "[These] cases establish that a Special Exception use has an adverse effect and must be denied when it is determined from the facts and circumstances that the grant of the requested Special Exception uses would result in an adverse effect upon adjoining and surrounding properties unique and different from the adverse effect that would otherwise result from the development of such a Special Exception use located anywhere within the Zone" (emphasis supplied).

Because administrative agencies and Courts in many jurisdictions in the State struggled with the application of the Shultz v. Pritts standard, the Court of Appeals grant d certiorari and vacated a Court of Special Appeals decision in the case of Board of County Commissioners v. Holbrook, 314 Md. 210, 550 A.2d 664 (1988). The Honorable Judge Harry Col wrote the Opinion for the Court in the Holbrook case, and incidentally also sat on the Court at the time of Shultz v. Pritts.

The facts in the Holbrook case are very important to understand before analyzing the facts as presented in the instant case by the Protestants. In the words of the Court in Holbrook:

> "Holbrook obtained a temporary building permit in July, 1985, which permitted him to move a mobile home onto his heavily wooded 2.8 acre parcel of land located in a sparsely developed rural area of Cecil County. He placed his mobile home in a small clearing near the border line between his property and a 1.5 acre tract owned by Mr. & Mrs. Peters. In October, 1985, the Peters completed construction of a new residence with a value of $147,000.00 located less than 150 feet from their neighbor's mobile home... Alarmed at the prospect that their unobstructed view of the nearby trailer would become permanent (when Holbrook applied for a permanent Special Exception), the Peters protested granting of the Special Exception on the basis, that "I do object to a trailer being permanently adjacent to my property because I feel it would be detrimental to the value of my home." Mrs. Peters offered six (6) photographs in evidence.

It is also important to understand that the Court of Special Appeals reversed the Circuit Court and the Board of Appeals' denial of the Special Exception and held "under Shultz, the proper test to be applied by the Board in determining whether to deny the Special Exception was whether evidence was presented which demonstrated that a mobile home on the Appellant's land had any adverse impact effects on the neighboring properties above and beyond those inherently associated with such a Special Exception use irrespective of its location within the AR Zone." The Court of Special Appeals held that since there was no substantial evidence before the Board of Appeals to meet that test, the denial of

the Appellant's application was arbitrary, capricious and illegal.

Judge Cole, in reversing the Court of Special Appeals, cited the previously recited standard from Shultz v. Pritts and specifically pointed out that:

> "We then defined the specific nature of the requisite adverse impact required to warrant denial of the Special Application: (a) a Special Exception use has an adverse effect and must be denied when it is determined from the facts and circumstances that the grant of the request of Special Exception use would result in an adverse effect upon adjoining and surrounding properties unique and different from the adverse effect that would otherwise result from th development of such a Special Exception use located elsewhere within the Zone." At page 217.

The Court went on to state:

> **"We believe that the facts and circumstances of this case evidenced by the undisputed testimony in photographic exhibits clearly satisfy the Shultz standard of particular impact** (emphasis supplied). The evidence revealed that the Peters built their $147,000.00 house in a uniquely valuable heavily forested low growth area. Moreover, photographs clearly depict the direct and approximate view of the mobile home from the Peters home. The Board found that this evidence vividly indicated that th debilitating effect of the mobile home on the value of the Peters property, inferring thereby that the trailer's continued presence would create significantly greater adverse effects in this location than were it located in other areas in the Zone."

The Court of Appeals found that the mobile home in this particular location would impair neighboring property value to a greater extent than it would elsewhere in the Zone.

It is submitted by the Protestants that the application of the Holbrook case to the instant case clearly provides this Board with the authority, in view of the evidence

presented, to deny the Special Exception request for the reasons previously set forth.

Finally, a recent Court of Special Appeals case, People's Counsel for Baltimore County, et al. v. Nicholas Mangione, 85 Md. App. 738, 584 A.2d 1318 (1991) is also applicable here. In People's Counsel v. Mangione, a Special Exception was requested in Baltimore County for a nursing home on a four (4) acre parcel inside a single family detached home area of Lutherville in Baltimore County zoned DR5.5. In that case, this Board found that the proposed project would overwhelm and dominate the surrounding landscape. The Court of Special Appeals recited Judge Cole's comments in Holbrook as well as quoting from Shultz v. Pritts when it was stated "a Special Exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses, which the Legislature has determined to be permissible, absent any fact or circumstance negating the presumption (emphasis supplied). In Mangione, this Board relied upon, and the Court of Special Appeals affirmed, that testimony of odors being generated from the site, as well as traffic on narrow winding streets, as well as the project dominating the surrounding landscape, were all appropriate factors from which the trier of fact could determine that the Shultz standard of particular adverse impact was satisfied.

IX. Summary

This case can best be summarized by one of the protestants, Rosemary Hanley. Mrs. Hanley testified before this Board as follows:

"As a psychologist, my concern is always about p ople and the impact of factors which affect their lives. In my view this proceeding is really about the impact of the proposed expansion of the Ivy Hill substation on the residents, th people, the men, women and children who live there. My neighbors have asked me to reiterate their concerns. I think I can do that best by explaining my own concerns.

"My concern is not really about property values. It is about what effect the loss of property values may have on the people who own these homes. It may be about the loss of equity to pay for a child's college tuition. It is about losing a dream which was realized by hard work and sacrifice. In my case, it is about the loss of security for retirem nt. There is no trust fund, no large investments, no windfall inheritance. If the property value of my home is materially affected I could very well lose the ability to purchas another comparable home. I have the most modest home of the group, but it is my home...simple and comfortable. It was appraised for $245,000 last year. If I were in the market for a new home right now, I would not pay $245,000 to liv across the street from a 21,000 square foot substation; I would not pay $200,000 to live across the street from a 21,000 square foot substation; I would not pay $150,000 to

live across the street from a 21,000 square foot substation. I would not pay for the experience to live there at all. Does BGE have the right to diminish my property value, particularly when they can relocate their facility to an area which will not directly impact people?

"My concern is not really about electromagnetic fields. It is about the degree of risk my friends, their children and my family may be exposed to. What may happen to a child four feet tall who is intrigued by a stormwater management system which is three to four feet deep and is 'protected' by a 3½ foot fence? What will happen to nearby residents if a gigantic facility explodes or catches fire? What will happen to a ten year old riding a bike too near a chain link fence with an electrostatic charge and bumps into it? What will happen to me if the wires which cross my property carry higher current? My grandmother died of breast cancer and my mother has had one breast removed. What if BGE is wrong and so many others are right? Who gets the right to decide how much risk I should be exposed to? Who gets to ignite the fuse for my personal time bomb?

"Because the potential for harm is there, until positively refuted, BGE does not have the right to expose me and my children to dramatically higher current, to greater safety risks which may result from human error, equipment malfunction, or acts of God. They do not have the right to determine the degree of risk to which we should be exposed.

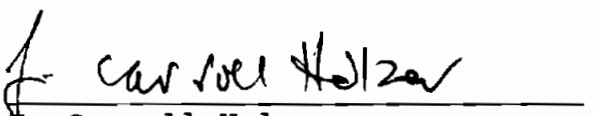
Only you as members of th Board of Appeals of the Office of Zoning in Baltimore County can grant them special permission in the form of a variance and/or Special Exception to take over that right.

"We're talking about a residential neighborhood, a place where families live and children play. Most of us chose to live in the area because of its character, peacefulness, sense of security, and charm...rolling countryside, pastoral atmosphere, nearly free from big noisy trucks and many of the hazards found in crowded, urban, or mixed comm rcial/ industrial areas. There is no question in my mind that if BGE is allowed to erect two transformers, a 20 by 40 foot switch gear building, bus supports, capacitators, a s ven foot high chain length fence topped by barbed wire, then the general character of this neighborhood will be forever and dramatically altered. The need for a substation of this magnitude has not been established. The necessity for destroying a neighborhood where people live has not been established. The justification for encroaching on the rights of citizens for the primary purpose of accommodating BGE can never be established.

"In the end it is my greatest concern that the people in government, civil servants, elected and appointed officials, assume the responsibility to protect the rights and welfare of citizens against real threat of harm and that private citizens, homeowners retain and safeguard their right to

protect their property and their lives. We have learned that the Public Service Commission does not regulate substations of this nature and, indeed, there is no regulatory agency in the State of Maryland which is charged with accountability for this substation. Particularly after my experience with the tactics employed by BGE in the last six months, I do not have any confidence that they will act responsibly toward my neighbors and me. Many people advised me against fighting BGE. I was told that they are too big, too powerful, too wealthy; that I could never win. We have to win. It is the only way that we can protect our rights as homeowners and our personal health and safety."

Respectfully submitted,



J. Carroll Holzer
Holzer and Lee
305 Washington Avenue
Suite 502
Towson, Maryland 21204
(410) 825-6961
Attorney for Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the 6th day of February 1995, a copy of the foregoing Memorandum in Lieu of Final Argument was mailed, postage pre-paid, to Robert Hoffman, Esquire, Venable, Baetjer & Howard,

J. Carroll Holzer

J. Carroll Holzer

RE :	IN THE MATTER OF BG&E, LEGAL OWNER (IVY HILL SUBSTATION)	*	BEFORE THE COUNTY BOARD OF APPEALS
	8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	OF
	PETITIONER	*	BALTIMORE COUNTY
		*	CASE NO.: 94-452-XA

* * * * * * * * * *

REQUEST FOR SUBPOENA

Please issue a Subpoena for the following individual to have all records, correspondence, plats, plans and any other written documents contained in Zoning Administration and Development Management's files relating to the property known as Foxridge Estates, formerly known as the Forwood property, available at the Baltimore County Board of Appeals for the hearing scheduled in the above referenced matter on Thursday, January 19, 1995 at 9:00 a.m.:

Ms. Stella Lowery,
Management Assistant
Zoning Administration and
Development Management
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Mr. Sheriff/Private Process Server:

Please process this Subpoena in accordance with Rule 5 of the Rules of Practice and Procedure of the County Board of Appeals.

Kathleen C. Weidenhammer

KATHLEEN WEIDENHAMMER
Administrative Assistant

95 JAN 18 PM 2:26

A30

Petition for Variance

94-452-XA

to the Zoning Commissioner of Baltimore County

for the property located at Southwest corner of intersection of Ridge Road and Joel Court

which is presently zoned RC5

This Petition shall be filed with the Office of Zoning Administration & Development Management.

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) 1A04.3.B.3

to permit structures as close a 0 feet from interior lot lines in lieu of the required 50 foot building setback.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (indicate hardship or practical difficulty)

To be determined at hearing.

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

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

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

Contract Purchaser/~~Lessee~~ (Tract B)

Baltimore Gas & Electric Company
(Type or Print Name)

By: [signature]
Signature Carserlo Doyle, Vice President

P.O. Box 1475
Address

Baltimore, Maryland 21203
City State Zipcode

Attorney for Petitioner:

Martha A. Delea, Esquire
(Type or Print Name)

[signature]
Signature

Baltimore Gas & Electric Company
Charles Center
P.O. Box 1475 234-5697
Address Phone No

Baltimore, Maryland 21203-1475
City State Zipcode

Legal Owner(s):

See Attached
(Type or Print Name)

Signature

(Type or Print Name)

Signature

Address Phone No

City State Zipcode

Name, Address and phone number of legal owner, contract purchaser or representative to be contacted.

Robert A. Hoffman, Esquire
Name
210 Allegheny Avenue
Towson, MD 21204 494-6262
Address Phone No

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING 2 HRS.

unavailable for Hearing the following dates Next Two Months

ALL [signature] OTHER

REVIEWED BY: DATE 5/10/94

TO FINAL / DROP OFF

This subpoena request is made on behalf of the undersigned attorneys for the Petitioner.

ROBERT A. HOFFMAN
Venable, Baetjer and Howard
210 Allegheny Avenue
Towson, Maryland 21204
(410) 494-6200

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of January, 1995, a copy of the foregoing Subpoena was hand-delivered to:

Ms. Stella Lowrey,
Management Assistant
Zoning Administration and
Development Management
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Barbara W. Ormord,
Legal Assistant

SUBP0198.GPW

IN THE MATTER OF	*	BEFORE THE
BGE Ivy Hill Substation	*	COUNTY BOARD OF APPEALS
S/w Corner of Ridge Rd. &	*	BALTIMORE COUNTY
Joel Ct. 3rd Council Dist.	*	CASE NO. 94-452-XA

* * * * * * * * * * * * * *

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Tuesday Jan. 10, 1995 at 10:00 a.m. at Room 48, located at Basement, Old Courthouse, 400 Washington Ave. Towson and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Witness: Custodian of the Records, Balto. Gas & Electric
Address: Charles Center, P.O. Box 1475
Balto., MD 21203

SERVE ON: Martha Delea, Esq., BG & E and Robert Hoffman, Esq.
210 Allegheny Ave. , P.O. Box 5517, Towson, MD 21204
Towson, 21204

SEE ATTACHED SHEET FOR DOCUMENTS

Name: J. Carroll Holzer
Firm: Holzer & Lee
Address: 305 Washington Ave. #502
Towson, MD 21204
825-6961

The witness named above is hereby ordered to so appear before the County Board of Appeals. The Board requests the Sheriff to issue the summons set forth herein.

County Board of Appeals of
Baltimore County

Cost: $_____

Summoned: _____, 19____

Not served: _____, 19____

Sheriff of Baltimore County

Subpoenaed Records for Case No. 94-452-XA BGE Ivy Hill Substation:

1. A current Copy of BGE system operating diagrams (one line diagrams).

2. A set of plans for the proposed expansion of Ivy Hill Substation.

3. A system map showing the configuration of distribution circuits currently fed from Ivy Hill and the substations immediately surrounding it.

4. A system map showing the configuration of the distribution circuits to be fed from Ivy Hill and the substations immediately surrounding it, once the expansion has been completed.

5. The substation load information for the Ivy Hill substation for the last three years.

IN THE MATTER OF	*	BEFORE THE
BGE Ivy Hill Substation	*	COUNTY BOARD OF APPEALS
S/w Corner of Ridge Rd. &	*	BALTIMORE COUNTY
Joel Ct. 3rd Council Dist.	*	CASE NO. 94-452-XA

* * * * * * * * * * * * * *

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Tuesday Jan. 10, 1995 at 10:00 a.m. at Room 48, located at Basement, Old Courthouse, 400 Washington Ave. Towson and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Witness: Dave Thomas
Address: Ass't Dir. of Public Works
County Office Bldg.
Towson, MD 21204

Name: J. Carroll Holzer
Firm: Holzer & Lee
Address: 305 Washington Ave. #502
Towson, MD 21204
825-6961

The witness named above is hereby ordered to so appear before the County Board of Appeals. The Board requests the Sheriff to issue the summons set forth herein.

County Board of Appeals of
Baltimore County

Cost: $_____

Summoned: _____, 19____

Not served: _____, 19____

Sheriff of Baltimore County

RECEIVED
DEC 15 1994
BALTIMORE COUNTY

IN THE MATTER OF	*	BEFORE THE
BGE Ivy Hill Substation	*	COUNTY BOARD OF APPEALS
S/w Corner of Ridge Rd. &	*	BALTIMORE COUNTY
Joel Ct. 3rd Council Dist.	*	CASE NO. 94-452-XA

* * * * * * * * * * * * * *

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Tuesday Jan. 10, 1995 at 10:00 a.m. at Room 48, located at Basement, Old Courthouse, 400 Washington Ave. Towson and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Witness: Pam Baudashine
Address: Balto. Co. Office of Planning
~~County Courts Bldg. 4th Fl.~~
Towson, MD 21204

Name: J. Carroll Holzer
Firm: Holzer & Lee
Address: 305 Washington Ave. #502
Towson, MD 21204
825-6961

The witness named above is hereby ordered to so appear before the County Board of Appeals. The Board requests the Sheriff to issue the summons set forth herein.

County Board of Appeals of
Baltimore County

Cost: $_____

Summoned: _____, 19____

Not served: _____, 19____

Sheriff of Baltimore County

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
MISCELLANEOUS RECEIPT
DATE 12/19/94 ACCOUNT 001-6150
AMOUNT $ 10.00
RECEIVED FROM: J. Carroll Holzer
FOR: Subpoena
DISTRIBUTION
WHITE - CASHIER
PINK - AGENCY
YELLOW - CUSTOMER

IN THE MATTER OF	*	BEFORE THE
BGE Ivy Hill Substation	*	COUNTY BOARD OF APPEALS
S/w Corner of Ridge Rd. &	*	BALTIMORE COUNTY
Joel Ct. 3rd Council Dist.	*	CASE NO. 94-452-XA

* * * * * * * * * * * * * *

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Tuesday Jan. 10, 1995 at 10:00 a.m. at Room 48, located at Basement, Old Courthouse, 400 Washington Ave. Towson and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Witness: Carolyn Beatty
Address: Balto. Co. Office of Planning
County Courts Bldg. 4th Fl.
Towson, MD 21204

Name: J. Carroll Holzer
Firm: Holzer & Lee
Address: 305 Washington Ave. #502
Towson, MD 21204
825-6961

The witness named above is hereby ordered to so appear before the County Board of Appeals. The Board requests the Sheriff to issue the summons set forth herein.

County Board of Appeals of
Baltimore County

Cost: $_____

Summoned: _____, 19____

Not served: _____, 19____

Sheriff of Baltimore County

BOARD OF APPEALS 95

IN THE MATTER OF	*	BEFORE THE
BGE Ivy Hill Substation	*	COUNTY BOARD OF APPEALS
S/w Corner of Ridge Rd. &	*	BALTIMORE COUNTY
Joel Ct. 3rd Council Dist.	*	CASE NO. 94-452-XA

* * * * * * * * * * * * * *

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Tuesday Jan. 10, 1995 at 10:00 a.m. at Room 48, located at Basement, Old Courthouse, 400 Washington Ave. Towson and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Witness: Phillip VanderHayden
Address: PSC Engineering Division
6 St. Paul St. Rm. 1920
Baltimore, MD 21202-6806

Name: J. Carroll Holzer
Firm: Holzer & Lee
Address: 305 Washington Ave. #502
Towson, MD 21204
825-6961

The witness named above is hereby ordered to so appear before the County Board of Appeals. The Board requests the Sheriff to issue the summons set forth herein.

County Board of Appeals of
Baltimore County

Cost: $_____

Summoned: _____, 19____

Not served: _____, 19____

Sheriff of Baltimore County

IN RE: PETITIONS FOR SPECIAL EXCEPTION AND ZONING VARIANCE
S/W cor. of inters. of Ridge Rd. and Joel Court
Ivy Hill Substation
8th Election District
3rd Councilmanic District
Legal Owner & Contract Purchaser:
Tracts A & C: Baltimore Gas & Electric Co.
Legal Owner: Tract B: Frederick R. Vinup, et ux,

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 94-452-XA
*
*
*

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as both a Petition for Special Exception and Petition for Zoning Variance for the property located on the southwest corner of the intersection of Ridge Road and Joel Court in northern Baltimore County. Within the Petition for Special Exception, relief is requested to approve an outdoor electric public utility service center (electric substation) in an R.C.5 zone, pursuant to Section 1A04.2.B.11 of the Baltimore County Zoning Regulations (B.C.Z.R.) and, if necessary, to amend the Fox Ridge Estates (formerly Forwood property) Final Development Plan. Within the Petition for Zoning Variance, a variance is sought from Section 1A04.3.B.3 of the B.C.Z.R. to permit structures as close as 0' from an interior lot line in lieu of the required 50 ft. building setback. All of the relief requested is more particularly shown on Petitioners' Exhibit No. 1, the site plan to accompany the Petitions for Special Exception and Variance.

ORDER RECEIVED FOR FILING
Date 6/24/94
By [illegible]

Appearing at the requisite public hearing held for this case were two representatives of Baltimore Gas and Electric Company (BG&E), owner of a portion of the subject property and Contract Purchaser of the remainder of the site. These included Ed Carmen, an electrical engineer, who studies BG&E's anticipated power needs, and Monica P. McGrady, who designed the

ite plan. Also appearing on behalf of the Petitioner was Walter A. Reiter, Jr., a Real Property Appraiser. The Petitioner was represented by Robert A. Hoffman, Esquire and Martha Delea, Esquire.

Several residents of the surrounding locale also appeared in opposition. These included Andrew Lansman and Pamela Fallo who served as spokesman for several residents in the Foxridge Estates community. Also present were Joann Czaykowski, Raymond and Dorothy Fisher, Peggy Bealsfield and Dorothy Marsden. The Protestants were unrepresented by counsel, but for Rosemary Hanley who was represented by Mark K. Cohen, Esquire.

Testimony and evidence was received from Edward Carmen, a planner of electric systems with BG&E. Mr. Carmen observed that the subject site is divided into three tracts, known as lots A, B and C. Tracts A & C are owned by BG&E and tract B is under contract for acquisition by the company from Frederick R. and Ann L. Vinup. Presently, the tracts owned by BG&E are improved with a small electric substation. This existing substation helps supply electricity to the surrounding locale. The area that is provided service from this station encompasses approximately 6 sq. miles.

Mr. Carmen indicated that he has made a comprehensive study of the growth of this area and the company's needs in the future. Based upon the study, he has concluded that the station will be overloaded by the winter of 1995. Moreover, he observed that the existing station was installed in the mid 1950s. Because of the growth of the area since that time and advances in technology, BG&E, proposes revitalizing the improvements on site. Specifically, the electrical equipment on the property will be removed. In its place, modern equipment will be installed which will upgrade the electrical capacity of this substation. These improvements will result in more efficient and a higher capacity station. Mr. Carmen also testified that as part of the improvement of the site, the overhead wires which lead

ORDER RECEIVED FOR FILING
Date 6/24/96
By

to the property from Falls Road will be eliminated and cables will be placed underground. Mr. Carmen's testimony was technical in character and discussed extensively the need requirements as contained within Section 411 of the B.C.Z.R.

Also offering extensive testimony was Monica McGrady, a senior project engineer with BG&E and the author of the development plan. She confirmed Mr. Carmen's testimony about the history of the use of the site. She noted that the property originally owned by BG&E is labeled Tract C and was acquired in 1956. She offered several photographs, including an aerial photograph, which shows the existing station and use at the present time. Subsequently, BG&E purchased Tract A in December 1988 and has entered into a contingent contract with Mr. and Mrs. Vinup to acquire Tract B. These recent acquisitions were made with an eye towards the proposed improvements. The total area of the site is 2.9 acres and the property is zoned R.C.5. Ms. McGrady also explained that all of the improvements on site, with the exception of a 100 ft. antenna, will be dismantled and retired. Ultimately, the site will be improved with an upgraded station. However, these improvements will be completed in two phases. The first phase will involve construction on the west side of the property, on that portion of the site farthest away from the Foxridge Estates community. Ultimately, however, additional equipment will be installed in the central portion of the site. As shown on the site plan and described by the witness, the equipment installed will be of a different character then that now on the property. The tallest piece of equipment to be installed will be approximately 14 ft. high. Moreover, all of the equipment will be surrounded by a 7 ft. fence with an additional 1 ft. height of barbed wire. Moreover, significant testimony was offered regarding other improvements to the site including the installation of a new driveway on the northwest side. This

ORDER RECEIVED FOR FILING
Date 6/24/92
By [illegible]

A30

Legal Owner Tracts A & C:

Baltimore Gas & Electric Company

By: _____

Carserlo Doyle, Vice President
P.O. Box 1475
Baltimore, Maryland 21203
(410) 234-5697

Legal Owner Tract B:

_____
Frederick R. Vinup

_____
Ann L. Vinup

1821 Ridge Road
Reisterstown, Maryland 21136-5617

will replace two existing gravel driveways which access the property from the north and east. These existing driveways will be closed and replanted. Moreover, a large volume of testimony was offered about landscaping which is proposed on the site to buffer same from the surrounding community. Lastly, Ms. McGrady comprehensively discussed the requirements contained in Sections 411 and 502.1 of the B.C.Z.R. as they relate to the required special exception. Moreover, testimony was offered concerning the requirements in Section 307 of the regulations as same relates to the variance request.

Walter A. Reiter, Jr., a professional real estate appraiser, also testified about the proposed improvements. He particularly noted the elimination of the two existing driveways and burial of the electric cables from Falls Road as positive events in terms of property values in the community. He is also favorably impressed with the extensive landscaping proposed by the Petitioner. In his opinion, this screening will sufficiently protect the most affected properties. He identified those properties as the Marsden property to the west of the site, the Hanley property to the north and the Follo property to the west.

As to the Protestants, most of their concerns were voiced through their spokespersons, Andrew Lansman and Pamela Follo. Ms. Follo is the most affected property owner, residing immediately across Joel Court from the site. Mr. Lansman's house is the next lot down Joel Court. These witnesses voiced opposition to the project due to its alleged incompatible nature with existing uses. They are particularly concerned about the effects of the proposed electric substation within the midst of their residential community. Certain other concerns as to safety, traffic and effect on property values were also raised.

ORDER RECEIVED FOR FILING
Date 5/24/96
By

It is indeed true that the substation is located within close proximity to the surrounding residential community. However, I am not persuaded that it will adversely affect same. It is of particular note that the electric substation use has been present at this location for many years. As noted above, BG&E has had a transformer and other equipment on this site since the mid 1950s. This matter appears to be a case of the most recent residents of the community objecting to a use which has been in the locale for many years. From the photographs submitted, the Foxridge Estates community is obviously new. In fact, Mrs. Follo indicated that her house was built approximately 3 years ago. Nearly 40 years have passed since BG&E acquired tract C and 4 years have elapsed since the company's acquisition of tract A in 1988. Clearly, the Protestants were aware of the long history of this use when their homes were built and on legal notice of BG&E's intentions.

Nonetheless, the concerns of the citizens are reasonable. They invested, no doubt, large sums to acquire their homesites and erect their dwellings. However, in recognition of these concerns, the Petitioner has made significant efforts to eliminate the effects of the proposed use. Initially at the hearing, Mr. Hoffman and Mr. Cohen, representing the Hanleys, noted that an agreement had been reached between their respective clients to amend the plan to provide additional landscaping to the north of the site. Specifically, the company has agreed to install a row of evergreen trees along the front of the Hanley property. It is to be particularly stressed that BG&E's improvements in this respect will be made off site across Ridge Road. Thus, the existing forest on the north of the subject property will not be disturbed. The improvements on the Hanley property will be from that area across from the subject site to the existing evergreen trees which presently occupy the Hanley property adjacent to the

ORDER RECEIVED FOR FILING
Date 6/24/92
By

intersection of Ridge and Gent Roads. BG&E has agreed to install evergreens not less than 8 ft. in height at a distance of 15 ft. from center to center. Moreover, the trees to be installed will be properly mulched and will be under warranty for a period of at least one year. Based on this agreement, the Hanleys withdrew their opposition to the Petition.

In addition to the landscaping proposed for the Hanley's benefit, the Petitioner has also agreed to install a second row of evergreens on the east side of the property. These trees will be installed along Joel Court at a point immediately north of Mrs. Follo's driveway to the driveway which is to be abandoned. This will be a second row of trees, to provide additional screening above and beyond what is already shown on the plan. That is, the site plan already shows a significant line of evergreens to be planted on the east side of the property. Moreover, additional landscaping is shown on the plan immediately surrounding the fenced area as well as a row of evergreens on the west side of the site shielding same from the Marsden property. I believe that all of these improvements are appropriate and will adequately buffer the site from the surrounding locale. In fact, with the advances in technology and noise control, the relocation and elimination of driveways and the burial of the overhead lines, the site may prove to be less obtrusive than before.

ORDER RECEIVED FOR FILING
Date 12/2/92
By

As to the Petition for Special Exceptions, I am, therefore, persuaded that same shall be granted. The testimony offered was persuasive that the Petitioner has complied with the requirements contained in both Sections 411 and 502.1 of the B.C.Z.R. As to Section 411, those standards pertain to requirements for public utility uses. Ms. Carmen's testimony was persuasive. The standards in Section 502.1 of the B.C.Z.R. relate to all special exception uses. In the instant case, I am convinced that use of the site,

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning

Suite 113 Courthouse
400 Washington Avenue
Towson, MD 21204

(410) 887-4386

June 24, 1994

Robert Hoffman, Esquire
210 W. Allegheny Avenue
Towson, Maryland 21204

Martha A. Delea, Esquire
Baltimore Gas and Electric Co.
P.O. Box 1475, Charles Center
Baltimore, Maryland 21203-1475

RE: Case No. 94-452-XA
Petitions for Special Exception and Variance
Legal Owner & Contract Purchaser: Balto. Gas & Electric Co.
Legal Owner: Frederick R. Vinup, et ux

Dear Mr. Hoffman and Ms. Delea:

Enclosed please find the decision rendered in the above captioned case. The Petitions for Special Exception and Variance have been granted, in accordance with the attached Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days of the date of the Order to the County Board of Appeals. If you require additional information concerning filing an appeal, please feel free to contact our Appeals Clerk at 887-3391.

Very truly yours,

Lawrence E. Schmidt
Zoning Commissioner

LES:mmn
encl.
cc: Mr. and Mrs. Frederick Vinup, 1821 Ridge Road, Reisterstown, Md. 21136
Mark K. Cohen, Esquire, 120 E. Baltimore Street, Balto.Md. 21202
Mr. Andrew Lansman, 9 Joel Court, Reisterstown, Md. 21136
Ms. Pamela Follo, 1 Joel Court, Reisterstown, Md. 21136
Mr. and Mrs. Raymond Fisher, 1822 Ridge Road, Reisterstown, Md.21136
Mrs. Dorothy Marsden, 1823 Ridge Road, Reisterstown, Md. 21136

RE: PETITION FOR SPECIAL EXCEPTION PETITION FOR VARIANCE	*	BEFORE THE
Ivy Hill Substation S/W corner of intersection of Ridge Road and Joel Court, 8th 8th Election District, 3rd Councilmanic	*	ZONING COMMISSIONER OF BALTIMORE COUNTY CASE NO.: 94-452-XA
Legal Owner, Tracts A & C: Baltimore Gas & Electric Company Legal Owner, Tract B: Frederick R. Vinup and Ann L. Vinup Petitioners	*	

* * * * * * * * * * *

94-452-XA

ENTRY OF APPEARANCE

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

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
Room 47, Courthouse
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of May, 1994, a copy of the foregoing Entry of Appearance was mailed to Martha A. Delea, Esquire, Baltimore Gas & Electric Company, Charles Center, P. O. Box 1475, Baltimore, MD 21203-1475, and to Robert A. Hoffman, Esquire, 210 Allegheny Avenue, Towson, MD 21204, attorneys for Petitioners.

Peter Max Zimmerman

PETER MAX ZIMMERMAN

A30

Petition for Special Exception

94-452-XA

to the Zoning Commissioner of Baltimore County

for the property located at Southwest corner of intersection of Ridge Road and Joel Court

which is presently zoned RC5

This Petition shall be filed with the Office of Zoning Administration & Development Management.

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Regulations of Baltimore County, to use the herein described property for

an outdoor electric public utility service center (electric substation) in an RC5 zone pursuant to Section 1A04.2.B.11 of the Baltimore County Zoning Regulations and to amend the Fox Ridge Estates (formerly Forwood property) Final Development Plan if necessary.

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

I, or we, agree to pay expenses of above Special Exception advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

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

Contract Purchaser: ~~XXXX~~ (Tract B)

Baltimore Gas & Electric Company
(Type or Print Name)

By: [signature]
Signature Carserlo Doyle, Vice President

P.O. Box 1475
Address

Baltimore, Maryland 21203
City State Zipcode

Attorney for Petitioner:

Martha A. Delea, Esquire
(Type or Print Name)

[signature]
Signature

Baltimore Gas & Electric Company
Charles Center
P.O. Box 1475 234-5697
Address Phone No

Baltimore, MD 21203-1475
City State Zipcode

Legal Owner(s):

See Attached
(Type or Print Name)

Signature

(Type or Print Name)

Signature

Address Phone No

City State Zipcode

Name, Address and phone number of legal owner, contract purchaser or representative to be contacted

Robert A. Hoffman, Esquire
Name
210 Allegheny Avenue
Towson, MD 21204 494-6262
Address Phone No.

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing the following dates Next Two Months

ALL OTHER

REVIEWED BY: DATE

Zoning Administration & Development Management

A30

94-92-XA

Legal Owner Tracts A & C:

Baltimore Gas & Electric Company

By: _____

Carserlo Doyle, Vice President
P.O. Box 1475
Baltimore, Maryland 21203
(410) 234-5697

Legal Owners Tract B:

_____
Frederick R. Vinup

_____
Ann L. Vinup

1821 Ridge Road
Reisterstown, Maryland 21136-5617

A30

Petition for Variance

94-452-XA

to the Zoning Commissioner of Baltimore County

for the property located at Southwest corner of intersection of Ridge Road and Joel Court

which is presently zoned RC5

This Petition shall be filed with the Office of Zoning Administration & Development Management.

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) 1A04.3.B.3

to permit structures as close a 0 feet from interior lot lines in lieu of the required 50 foot building setback.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (indicate hardship or practical difficulty)

To be determined at hearing.

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

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

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

Contract Purchaser/~~Lessee~~ (Tract B)

Baltimore Gas & Electric Company
(Type or Print Name)

By: [signature]
Signature Carserlo Doyle, Vice President

P.O. Box 1475
Address

Baltimore, Maryland 21203
City State Zipcode

Attorney for Petitioner:

Martha A. Delea, Esquire
(Type or Print Name)

[signature]
Signature

Baltimore Gas & Electric Company
Charles Center
P.O. Box 1475 234-5697
Address Phone No

Baltimore, Maryland 21203-1475
City State Zipcode

Legal Owner(s):

See Attached
(Type or Print Name)

Signature

(Type or Print Name)

Signature

Address Phone No

City State Zipcode

Name, Address and phone number of legal owner, contract purchaser or representative to be contacted.

Robert A. Hoffman, Esquire
Name
210 Allegheny Avenue
Towson, MD 21204 494-6262
Address Phone No

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING 2 HRS.

unavailable for Hearing the following dates Next Two Months

ALL [signature] OTHER

REVIEWED BY: DATE 5/10/94

TO FINAL / DROP OFF

A30

Legal Owner Tracts A & C:

Baltimore Gas & Electric Company

By: _____

Carserlo Doyle, Vice President
P.O. Box 1475
Baltimore, Maryland 21203
(410) 234-5697

Legal Owner Tract B:

_____
Frederick R. Vinup

_____
Ann L. Vinup

1821 Ridge Road
Reisterstown, Maryland 21136-5617

A30

LEGAL DESCRIPTION
LANDS OF
BANKERS TRUST COMPANY
BALTIMORE GAS AND ELECTRIC COMPANY

94-452-XA

ALL THAT CERTAIN tract of land situated in Baltimore County, Maryland. Said tract being more particularly described as follows:

BEGINNING at a concrete monument found on the northwesterly line of Tract "A" as shown on the Subdivision Plan for Fox Ridge Estates dated April 4, 1988 and recorded among the Land Records of Baltimore County in Plat Book 59, Folio 29. Said tract being the most easterly corner of a tract of land described in deed to Frederick R. Vinup and Ann L. Vinup from Frank J. Marsden, Jr. and Suzanne S. Marsden dated November 21, 1968 and recorded among the Land Records of Baltimore County in Liber 4941, Folio 720. Thence North 42 degrees 30 minutes 18 seconds West, passing a concrete monument found at a distance of 201.16 feet and continuing for a distance of 12.63 feet for a total distance of 213.79 feet to a point within the right-of-way of Ridge Road. Thence North 60 degrees 30 minutes 02 seconds East, along said Ridge Road, a distance of 102.64 feet to a point for corner. Thence South 42 degrees 30 minutes 18 seconds East, through said right-of-way of Ridge Road, a distance of 28.10 feet to a point for corner. Said point being the most northwest corner of hereinbefore mentioned Tract "A" as shown on the Subdivision Plan for Fox Ridge Estates. Thence along the property line of said Tract "A", the following two courses and distances: (1) South 42 degrees 30 minutes 18 seconds East, passing a "+" in stone found at a distance of 14.68 feet and continuing 98.92 feet for a total distance of 113.60 feet to a concrete monument found for corner; (2) South 21 degrees 23 minutes 42 seconds West, a distance of 111.36 feet to the point of beginning. Said tract being as shown as Tract "C" on Boundary & Topographic Survey of Ivy Hill Substation dated January 10, 1994 prepared for Baltimore Gas and Electric Company by ASM Technologies, Inc. (Project No. 9368x5).

CONTAINING 0.4081 acres or 17,777 square feet of land.

BEING all that tract of land described in deed to Bankers Trust Company and Baltimore Gas and Electric Company from Frank J. Marsden, Jr. and Dorothy Louise Marsden and Fidelity-Baltimore National Bank & Trust Company dated April 10, 1956 and recorded among the Land Records of Baltimore County, Maryland in Liber 2911, Folio 289.

May 4, 1994

STATE OF MARYLAND
ERIC MILES SHERN
496
PROPERTY LINE SURVEYOR

ASM TECHNOLOGIES, INC

A30

LEGAL DESCRIPTION
LANDS OF
BANKERS TRUST COMPANY
BALTIMORE GAS AND ELECTRIC COMPANY

94-452-XA

ALL THAT CERTAIN tract of land situated in Baltimore County, Maryland. Said tract being more particularly described as follows:

BEGINNING at a concrete monument found on the northwesterly line of Tract "A" as shown on the Subdivision Plan for Fox Ridge Estates dated April 4, 1988 and recorded among the Land Records of Baltimore County in Plat Book 59, Folio 29. Said tract being the most easterly corner of a tract of land described in deed to Frederick R. Vinup and Ann L. Vinup from Frank J. Marsden, Jr. and Suzanne S. Marsden dated November 21, 1968 and recorded among the Land Records of Baltimore County in Liber 4941, Folio 720. Thence North 42 degrees 30 minutes 18 seconds West, passing a concrete monument found at a distance of 201.16 feet and continuing for a distance of 12.63 feet for a total distance of 213.79 feet to a point within the right-of-way of Ridge Road. Thence North 60 degrees 30 minutes 02 seconds East, along said Ridge Road, a distance of 102.64 feet to a point for corner. Thence South 42 degrees 30 minutes 18 seconds East, through said right-of-way of Ridge Road, a distance of 28.10 feet to a point for corner. Said point being the most northwest corner of hereinbefore mentioned Tract "A" as shown on the Subdivision Plan for Fox Ridge Estates. Thence along the property line of said Tract "A", the following two courses and distances: (1) South 42 degrees 30 minutes 18 seconds East, passing a "+" in stone found at a distance of 14.68 feet and continuing 98.92 feet for a total distance of 113.60 feet to a concrete monument found for corner; (2) South 21 degrees 23 minutes 42 seconds West, a distance of 111.36 feet to the point of beginning. Said tract being as shown as Tract "C" on Boundary & Topographic Survey of Ivy Hill Substation dated January 10, 1994 prepared for Baltimore Gas and Electric Company by ASM Technologies, Inc. (Project No. 9368x5).

CONTAINING 0.4081 acres or 17,777 square feet of land.

BEING all that tract of land described in deed to Bankers Trust Company and Baltimore Gas and Electric Company from Frank J. Marsden, Jr. and Dorothy Louise Marsden and Fidelity-Baltimore National Bank & Trust Company dated April 10, 1956 and recorded among the Land Records of Baltimore County, Maryland in Liber 2911, Folio 289.

May 4, 1994

STATE OF MARYLAND
ERIC MILES SHERN
496
PROPERTY LINE SURVEYOR

ASM TECHNOLOGIES, INC

A30

LEGAL DESCRIPTION
LANDS OF
FREDERICK R. VINUP
ANN L. VINUP

94-452-XA

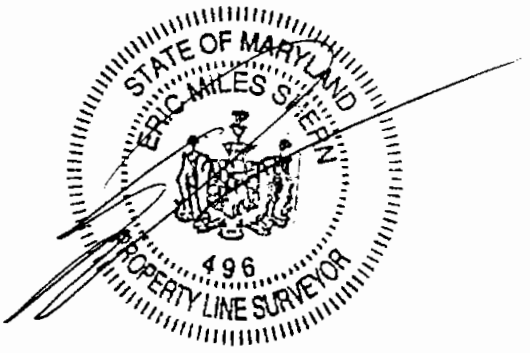
ALL THAT CERTAIN tract of land situated in Baltimore County, Maryland. Said tract being more particularly described as follows:

BEGINNING at a concrete monument found on the northwesterly line of Tract "A" as shown on the Subdivision Plan for Fox Ridge Estates dated April 4, 1988 and recorded among the Land Records of Baltimore County in Plat Book 59, Folio 29. Said point being the southeast corner of a tract of land described in deed to Bankers Trust Company and Baltimore Gas and Electric Company from Frank J. Marsden, Jr. and Dorothy Louise Marsden and Fidelity-Baltimore National Bank & Trust Company dated April 10, 1956 and recorded among the Land Records of Baltimore County in Liber 2911, Folio 289. Thence South 21 degrees 23 minutes 37 seconds West, along said northwesterly line of Tract "A", a distance of 167.03 feet to a 1/2" pipe found for corner. Said point being the northeast corner of Lot 1 as shown on plan of the Marsden Property dated May 26, 1978 and recorded among the Land Records of Baltimore County in Plat Book 43, Folio 7. Thence North 42 degrees 30 minutes 18 seconds West, along the northeasterly line of said Lot 1, passing a 1/2" pipe found at a distance of 290.77 feet and continuing for a distance of 7.65 feet to a concrete monument set and continuing for a distance of 23.48 feet for a total distance of 321.90 feet to a point within the right-of-way of Ridge Road. Thence North 60 degrees 30 minutes 00 seconds East, along said Ridge Road, a distance of 153.95 feet to a point for corner. Said point being the southwest corner of hereinbefore mentioned tract of land described in deed to Bankers Trust Company and Baltimore Gas and Electric Company. Thence South 42 degrees 30 minutes 18 seconds East, passing a concrete monument found at a distance of 12.63 feet and continuing for a distance of 201.16 feet for a total distance of 213.79 feet to the point of beginning. Said tract being as shown on survey dated December 6, 1993 prepared for Baltimore Gas and Electric Company by ASM Technologies, Inc. (Project No. 9368x5).

CONTAINING 0.9224 acres or 40,179 square feet of land.

BEING all that tract of land described in deed to Frederick R. Vinup and Ann L. Vinup from Frank J. Marsden, Jr. and Suzanne S. Marsden dated November 21, 1968 and recorded among the Land Records of Baltimore County, Maryland in Liber 4941, Folio 720.

December 6, 1993



ASM TECHNOLOGIES, INC

A30

LEGAL DESCRIPTION
LANDS OF
BANKERS TRUST COMPANY
BALTIMORE GAS AND ELECTRIC COMPANY

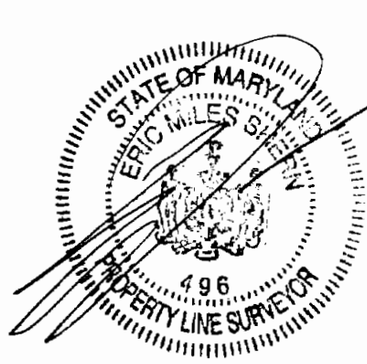
94-252-M

ALL THAT CERTAIN tract of land situated in Baltimore County, Maryland. Said tract being known as Tract "A" as shown on the Subdivision Plan for Fox Ridge Estates dated April 4, 1988 and recorded among the Land Records of Baltimore County in Plat Book 59, Folio 29. Said tract being more particularly described as follows:

BEGINNING at a concrete monument set on the westerly right-of-way line of Joel Court. Said point being the most easterly corner of Lot 24 as shown on the above referenced Subdivision Plan for Fox Ridge Estates. Thence North 73 degrees 49 minutes 47 seconds West, along the northerly line of said Lot 24 as shown on the Subdivision Plan for Fox Ridge Estates, a distance of 208.95 feet to a concrete monument set for corner. Said point being on the easterly line of Lot 1 as shown on the plan of the Marsden Property dated May 26, 1978 and recorded among the Land Records of Baltimore County in Plat Book 43, Folio 7. Thence North 21 degrees 23 minutes 37 seconds East, along the easterly line of said Lot 1 as shown on the plan of the Marsden Property, a distance of 51.61 feet to a 1/2" pipe found for corner. Said point being the most southerly corner of a tract of land described in deed to Frederick R. Vinup and Ann L. Vinup from Frank J. Marsden, Jr. and Suzanne S. Marsden dated November 21, 1968 and recorded among the Land Records of Baltimore County in Liber 4941, Folio 720. Thence North 21 degrees 23 minutes 37 seconds East, along the easterly line of said Frederick R. Vinup and Ann L. Vinup tract, a distance of 167.03 feet to a concrete monument found for corner. Said point being the most southerly corner of a tract of land described in deed to Bankers Trust Company and Baltimore Gas and Electric Company from Frank J. Marsden, Jr. and Dorothy Louise Marsden and Fidelity-Baltimore National Bank & Trust Company dated April 10, 1956 and recorded among the Land Records of Baltimore County in Liber 2911, Folio 289. Thence along the property line of said Bankers Trust Company and Baltimore Gas and Electric Company tract, the following two (2) courses and distances: (1) North 21 degrees 23 minutes 42 seconds East, a distance of 111.36 feet to a concrete monument found for corner; (2) North 42 degrees 30 minutes 18 seconds West, passing a "+" in stone found at a distance of 98.92 feet and continuing 14.68 feet for a total distance of 113.60 feet to a point for corner. Said point being on the southeasterly right-of-way line of Ridge Road. Thence along said right-of-way line of Ridge Road, the following two (2) courses and distances: (1) North 61 degrees 30 minutes 00 seconds East, a distance of 75.00 feet to a concrete monument set for corner; (2) South 78 degrees 17 minutes 10 seconds East, a distance of 35.42 feet to a concrete monument set for corner. Said point being on the southwesterly right-of-way line of hereinbefore mentioned Joel Court. Thence along said right-of-way line of Joel Court, the following three (3) courses and distances: (1) South 28 degrees 00 minutes 00 seconds East, a distance of 75.00 feet to a 5/8" rebar with cap set for corner; (2) along a curve to the right, said curve having a central angle of 43 degrees 30 minutes 00 seconds, a radius of 475.00 feet, an arc length of 360.63 feet, a chord bearing of South 06 degrees 15 minutes 00 seconds East, and a chord distance of 352.03 feet to a 5/8" rebar with cap set for corner; (3) South 15 degrees 30 minutes 00 seconds West, a distance of 64.00 feet to the point of beginning. Said tract being as shown as Tract "A" on Boundary & Topographic Survey of Ivy Hill Substation dated January 10, 1994 prepared for Baltimore Gas and Electric Company by ASM Technologies, Inc. (Project No. 9368x5).

CONTAINING 1.5628 acres or 68,075 square feet of land.

May 4, 1994



ASM TECHNOLOGIES, INC.

LEGAL DESCRIPTION
FOX RIDGE ESTATES

ALL THAT CERTAIN tract of land situated in Baltimore County, Maryland. Said tract being known as Fox Ridge Estates as shown on Subdivision Plan dated April 4, 1988 and recorded among the Land Records of Baltimore County in Plat Book 59, Folio 29. Said tract being more particularly described as follows:

BEGINNING at a point at the intersection of the centerlines of Falls Road and Ridge Road. Thence along and within the right-of-way of Falls Road the following seven (7) courses and distances: (1) South 08 degrees 39 minutes 52 seconds East, a distance of 100.93 feet to a point for corner; (2) South 36 degrees 13 minutes 42 seconds East, a distance of 1372.94 feet to a point for corner; (3) South 37 degrees 11 minutes 10 seconds East, a distance of 121.29 feet to a point for corner; (4) South 53 degrees 29 minutes 18 seconds West, a distance of 49.05 feet to a point for corner; (5) South 33 degrees 16 minutes 19 seconds East, a distance of 410.74 feet to a point for corner; (6) Along a curve to the left, said curve having a radius of 2506.48 feet, an arc length of 31.33 feet, a chord bearing of South 32 degrees 54 minutes 52 seconds East, and a chord distance of 31.33 feet to a point for corner; (7) South 49 degrees 31 minutes 17 seconds East, a distance of 120.88 feet to a point for corner. Said point being on the most northerly corner of a tract of land now or formerly owned by Bahram Sina as described in deed recorded among the Land Records of Baltimore County in Liber OTG 4541, Folio 164. Thence along the perimeter of said Bahram Sina tract, the following two (2) courses and distances: (1) South 77 degrees 30 minutes 52 minutes West, a distance of 852.21 feet to a point for corner; (2) South 04 degrees 30 minutes 38 seconds East, a distance of 831.05 feet to a point for corner. Said point being a northeast corner of a second tract of land now or formerly owned by Bahram Sina as described in deed recorded among the Land Records of Baltimore County in Liber EHK, Jr. 6005, Folio 466. Thence along the perimeter of said second tract of Bahram Sina, the following two (2) courses and distances: (1) North 77 degrees 58 minutes 54 seconds West, a distance of 893.19 feet to a point for corner; (2) South 86 degrees 58 minutes 08 seconds West, a distance of 435.36 feet to a point for corner. Said tract being on a easterly line of a tract of land now or formerly owned by Martha C. Thompson as described in deed to Martha C. Thompson recorded among the Land Records of Baltimore County in Liber GLB 1832, Folio 243. Thence along the perimeter of said Martha C. Thompson tract, the following two (2) courses and distances: (1) North 01 degrees 55 minutes 08 seconds East, a distance of 739.26 feet to a point for corner; (2) South 82 degrees 57 minutes 37 seconds West, a distance of 24.75 feet to a point for corner. Said point being a easterly corner of a tract of land now or formerly owned by P. Bealefield as described in deed recorded among the Land Records of Baltimore County in Liber EHK, Jr. 6542, Folio 420. Thence along the perimeter of said P. Bealefield tract, the following two (2) courses and distances: (1) North 00 degrees 00 minutes 46 seconds East, a distance of 604.94 feet to a point for corner; (2) North 21 degrees 23 minutes 37 seconds East, a distance of 1014.07 feet to a point for corner. Said point being the most easterly corner of a tract of land now or formerly owned by BG&E, Co. as described in deed recorded among the Land Records of Baltimore County in Liber GLB 2911, Folio 289. Thence along said BG&E, Co. tract, the following two (2) courses and distances: (1) North 42 degrees 30 minutes 18 seconds West, a distance of 98.92 feet to a point for corner; (2) North 42 degrees 18 minutes 58 seconds West, a distance of 42.67 feet to a point for corner. Said point being within the right-of-way of hereinbefore mentioned Ridge Road. Thence along and within the right-of-way of said Ridge Road, the following four (4) courses and distances: (1) North 62 degrees 29 minutes 37 seconds East, a distance of 106.92 feet to a point for corner; (2) North 55 degrees 45 minutes 07 seconds East, a distance of 137.23 feet to a point for corner; (3) North 66 degrees 29 minutes East, a distance of 137.46 feet to a point for corner; (4) North 77 degrees 29 minutes 37 seconds East, a distance of 277.86 feet to the point of beginning.

CONTAINING 79.457 acres of land.

May 24, 1994

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY

Towson, Maryland

91-152-XA

District 7th Date of Posting 6/3/91

Posted for: Special Exception for Boat

Petitioner: Bella Boat Inc. & Lawrence A. Bella

Location of property: Fuller Rd. & Bel-Mar Ct.

Location of Signs: Facing roadway in front of property being posted

Remarks:

Posted by W. A. Peake Date of return: 6/10/91

Signature

Number of Signs: 1

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY 91-132-XA

Towson, Maryland

District 7th Date of Posting 7/24/91

Posted for: Appeal

Petitioner: Bethlehem Steel & Penn Realty Co. et al

Location of property: S/E/Cor. Ridge Rd & Steel Court

Location of Signs: Facing Ridge Rd approx 50' from Bay Drive

Remarks:

Posted by _____ Date of return: 7/26/91
Signature

Number of Signs: 1

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204 or Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

Case: #94-452-XA
(Item 430)
Ivy Hill Substation
S/W corner of intersection of Ridge Road and Joel Court
8th Election District
3rd Councilmanic
Legal Owner, Tracts A & C:
Baltimore Gas & Electric Company
Legal Owner, Tract B:
Frederick R. Vinup and Ann L. Vinup
Hearing: Tuesday, June 21, 1994 at 2:00 p.m. in Rm. 118, Old Courthouse.

Special Exception for an outdoor electric public utility service center (electric substation) and to amend the Fox Ridge Estates Final Development Plan, if necessary. **Variance** to permit structures as close as zero feet from interior lot lines in lieu of the required 50 foot building setback.

LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

NOTES: (1)Hearings are Handicapped Accessible; for special accommodations Please Call 887-3353.
(2)For information concerning the File and/or Hearing, Please Call 887-3391.
5/325 May 26.

CERTIFICATE OF PUBLICATION

TOWSON, MD., May 27, 1994

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on May 26, 1994.

THE JEFFERSONIAN,

A. Hennessy

LEGAL AD. - TOWSON

94-452-XA

BG & E /IVY HILL SUBSTATION
Exhibit No.: Pet. #2

Taken for purpose of duplication
(to the COB)

BY: Sterling Leese 6/23/95
Sterling Leese
HOLZER & LEE

RETURNED: 6/23/95
#2

Exhibit No.: Pet. #3

Taken for purpose of duplication
(to the COB)

BY: Sterling Leese
Sterling Leese
HOLZER & LEE

RETURNED: 6/23/95
#3

PETITION OF: Friends of the Ridge, et al

CIVIL ACTION # 3-C-95-5315

IN THE MATTER OF BALTIMORE GAS & ELECTRIC CO.
(IVY HILL SUBSTATION)

RECEIVED FROM THE COUNTY BOARD OF APPEALS EXHIBITS, BOARD'S RECORD EXTRACT & TRANSCRIPT FILED IN THE ABOVE-ENTITLED CASE, AND ZONING COMMISSIONER'S FILE AND EXHIBITS

Mary Ross

Clerk's Office

Date: 7/13/95

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

No.

DATE _____ ACCOUNT _____

AMOUNT $ _____

RECEIVED
FROM: _____

FOR: _____

_____
VALIDATION OR SIGNATURE OF CASHIER

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

Zoning Administration &
Development Management
[illegible] Avenue
[illegible], Maryland 21202

Receipt

Number

Date

94-482-XA

SPA CODE 050

FEE 020

EXISTING 080

TOT

CK - BG+E / VINUP

LOC [illegible] WITH ADDEND [illegible]

Please Make Checks Payable To: Baltimore [illegible]

Cashier Validation

We shall hold that a landowner who clearly desires to combine or merge several parcels or lots of land into one larger parcel may do so. One way he or she may do so is to integrate or utilize the contiguous lots in the service of a single structure or project, as respondent proposes in the instant case.[11] Although this is not the general application of the doctrine of merger as it relates to zoning, we perceive no rational objection to applying the same principles to the circumstances of this case, resulting in a larger parcel. For title purposes, the platted lot lines may remain, but by operation of law a single parcel emerges for zoning purposes. At least three of our sister jurisdictions appear to have moved in the same direction. For example, the New Jersey Superior Court in *Bridge v. Neptune Township Zoning Board*, 233 N.J. Super. 587, 592-93, 595, 559 A.2d 855, 858, 859 (1989), discussed merger where a house had been constructed so it extended across the property lines of two parcels in common ownership:

> The pivotal question is whether lot 686 retained its identity as a separate and distinct parcel for land use regulation purposes. Integral to that issue is the distinction, for land subdivision regulation purposes, between (1) the assembling in common ownership of two contiguous non-conforming lots both of which front on existing streets where the owner constructs a single-family residential dwelling so as to cover all or part of both lots, and (2) such similarly assembled lots where one or both of the lots remains entirely vacant. In the latter instance, the lots *may* retain their identity, but in the former instance, the lots lose their identity and merge into a single parcel.

---

[11] An owner of contiguous parcels who erects a structure in what would ordinarily be a setback of one of the individual parcels might, under this doctrine, although we do not now decide it, also cause a combination of lots thus restricting the future alienability of the unbuilt upon parcel because the conveyance of that parcel would cause the property upon which the structure is built to be in violation of the ordinance. Such an owner would also risk being forced to bring that parcel into conformity by removing the structure from the setback.

A30

LEGAL DESCRIPTION
LANDS OF
FREDERICK R. VINUP
ANN L. VINUP

94-452-XA

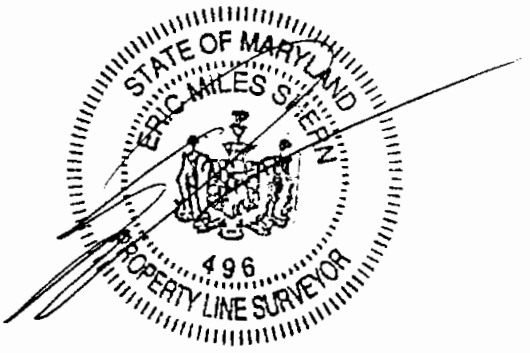
ALL THAT CERTAIN tract of land situated in Baltimore County, Maryland. Said tract being more particularly described as follows:

BEGINNING at a concrete monument found on the northwesterly line of Tract "A" as shown on the Subdivision Plan for Fox Ridge Estates dated April 4, 1988 and recorded among the Land Records of Baltimore County in Plat Book 59, Folio 29. Said point being the southeast corner of a tract of land described in deed to Bankers Trust Company and Baltimore Gas and Electric Company from Frank J. Marsden, Jr. and Dorothy Louise Marsden and Fidelity-Baltimore National Bank & Trust Company dated April 10, 1956 and recorded among the Land Records of Baltimore County in Liber 2911, Folio 289. Thence South 21 degrees 23 minutes 37 seconds West, along said northwesterly line of Tract "A", a distance of 167.03 feet to a 1/2" pipe found for corner. Said point being the northeast corner of Lot 1 as shown on plan of the Marsden Property dated May 26, 1978 and recorded among the Land Records of Baltimore County in Plat Book 43, Folio 7. Thence North 42 degrees 30 minutes 18 seconds West, along the northeasterly line of said Lot 1, passing a 1/2" pipe found at a distance of 290.77 feet and continuing for a distance of 7.65 feet to a concrete monument set and continuing for a distance of 23.48 feet for a total distance of 321.90 feet to a point within the right-of-way of Ridge Road. Thence North 60 degrees 30 minutes 00 seconds East, along said Ridge Road, a distance of 153.95 feet to a point for corner. Said point being the southwest corner of hereinbefore mentioned tract of land described in deed to Bankers Trust Company and Baltimore Gas and Electric Company. Thence South 42 degrees 30 minutes 18 seconds East, passing a concrete monument found at a distance of 12.63 feet and continuing for a distance of 201.16 feet for a total distance of 213.79 feet to the point of beginning. Said tract being as shown on survey dated December 6, 1993 prepared for Baltimore Gas and Electric Company by ASM Technologies, Inc. (Project No. 9368x5).

CONTAINING 0.9224 acres or 40,179 square feet of land.

BEING all that tract of land described in deed to Frederick R. Vinup and Ann L. Vinup from Frank J. Marsden, Jr. and Suzanne S. Marsden dated November 21, 1968 and recorded among the Land Records of Baltimore County, Maryland in Liber 4941, Folio 720.

December 6, 1993



ASM TECHNOLOGIES, INC

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

Drop off
Called RH
needs to be completed.

94-453-XA

ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

Baltimore County Zoning Regulations require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property and placement of a notice in at least one newspaper of general circulation in the County.

This office will ensure that the legal requirements for posting and advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements.

PAYMENT WILL BE MADE AS FOLLOWS:

1) Posting fees will be accessed and paid to this office at the time of filing.

2) Billing for legal advertising, due upon receipt, will come from and should be remitted directly to the newspaper.

NON-PAYMENT OF ADVERTISING FEES WILL STAY ISSUANCE OF ZONING ORDER.

ARNOLD JABLON, DIRECTOR

For newspaper advertising:

Item No.: 430

Petitioner: BG & E

Location: Ivy Hill

PLEASE FORWARD ADVERTISING BILL TO:

NAME: Barbara Armord

ADDRESS: Venable Baetjer & Howard
210 Allegheny Ave, Towson, MD 21204

* PHONE NUMBER: 494-6201

*MUST BE SUPPLIED

Item Number: 430
Planner: JLL
Date Filed: 5-10-94

PETITION PROCESSING FLAG

94-452-XA

This petition has been accepted for filing, after an initial review, and has been placed on the agenda for the zoning advisory committee. However, the following items were found to be missing or incomplete when the petition was included on the agenda by Sophia. A copy of this "flag" will be placed in the case file for the Zoning Commissioner's review. The planner that accepted the petition for filing has the option of notifying the petitioner and/or attorney prior to the hearing or Zoning Commissioner's review of the petition regarding the items noted below. If the petitioner/attorney is contacted by the planner, it is the petitioner's ultimate decision and responsibility to make a proper application, address any zoning conflicts, and to file revised petition materials if necessary. Delays and unnecessary additional expenses may be avoided by correcting the petition to the proper form.

_____ Need an attorney

✓ The following information is missing:

_____ Descriptions, including accurate beginning point
_____ Actual address of property
_____ Zoning
_____ Acreage
_____ Plats (need 12, only ____ submitted)
_____ 200 scale zoning map with property outlined
_____ Election district
_____ Councilmanic district
_____ BCZR section information and/or wording
_____ Hardship/practical difficulty information
✓ Owner's ~~signature (need minimum 1 original signature) and/or printed name and/or address and/or~~ telephone number TRACT "B"
_____ Contract purchaser's signature (need minimum 1 original signature) and/or printed name and/or address
_____ Signature (need minimum 1 original signature) and/or printed name and/or title of person signing for legal owner/contract purchaser
_____ Power of attorney or authorization for person signing for legal owner and/or contract purchaser
_____ Attorney's signature (need minimum 1 original signature) and/or printed name and/or address and/or telephone number
_____ Notary Public's section is incomplete and/or incorrect and/or commission has expired
_____ _____

PET-FLAG (TXTSOPH)
11/17/93

TO: PUTUXENT PUBLISHING COMPANY
May 26, 1994 Issue - Jeffersonian

Please foward billing to:

Barbara Ormord
Venable, Baetjer & Howard
210 Allegheny Avenue
Towson, Maryland 21204
494-6201

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204
or
Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 94-452-XA (Item 430)
Ivy Hill Substation
S/W corner of intersection of Ridge Road and Joel Court
8th Election District - 3rd Councilmanic
Legal Owner, Tracts A & C: Baltimore Gas & Electric Company
Legal Owner, Tract B: Frederick R. Vinup and Ann L. Vinup
HEARING: TUESDAY, JUNE 21, 1994 at 2:00 p.m. Rm. 118 Old Courthouse

Special Exception for an outdoor electric public utility service center (electric substation) and to amend the Fox Ridge Estates Final Development Plan, if necessary.
Variance to permit structures as close as zero feet from interior lot lines in lieu of the required 50 foot building setback.

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(2) FOR INFORMATION CONCERING THE FILE AND/OR HEARING, PLEASE CALL 887-3391.

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

MAY 20, 1994

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204
or
Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 94-452-XA (Item 430)
Ivy Hill Substation
S/W corner of intersection of Ridge Road and Joel Court
8th Election District - 3rd Councilmanic
Legal Owner, Tracts A & C: Baltimore Gas & Electric Company
Legal Owner, Tract B: Frederick R. Vinup and Ann L. Vinup
HEARING: TUESDAY, JUNE 21, 1994 at 2:00 p.m. Rm. 118 Old Courthouse

Special Exception for an outdoor electric public utility service center (electric substation) and to amend the Fox Ridge Estates Final Development Plan, if necessary.
Variance to permit structures as close as zero feet from interior lot lines in lieu of the required 50 foot building setback.

Arnold Jablon
Director

cc: Baltimore Gas & Electric Company
Frederick and Ann Vinup
Robert A. Hoffman, Esq.

NOTES: (1) ZONING SIGN & POST MUST BE RETURNED TO RM. 104, 111 W. CHESAPEAKE AVENUE ON THE HEARING DATE.
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(3) FOR INFORMATION CONCERING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.

Printed with Soybean Ink
on Recycled Paper

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

September 2, 1994

NOTICE OF ASSIGNMENT

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

CASE NO. 94-452-XA

BALTIMORE GAS & ELECTRIC CO. /Legal Owners, Tract A & B; FREDERICK R. VINUP, ET UX /Legal Owners, Tract C
S/w Corner of Ridge Road and Joel Court (Ivy Hill Substation)
8th Election District
3rd Councilmanic District

Note: Day #1 = 10/04/94
Postponed on the red 10/06/94; Day #2 = 1/10/95

SE -Outdoor electric substation in R.C. 5 zone;
VAR -Structures as close as 0' from interior lot line in lieu of required 50' bldg setback.

6/24/94 -Z.C.'s Order in which Petition for Special Exception and Petition for Variance were GRANTED.

ASSIGNED FOR: **TUESDAY, OCTOBER 4, 1994 at 10:30 a.m. /Day #1 and THURSDAY, OCTOBER 6, 1994 at 10:30 a.m. /Day #2**

cc: J. Carroll Holzer, Esquire — Counsel for Appellants /Protestants
Andrew Lansman, et al — Appellants /Protestants

Robert A. Hoffman, Esquire — Counsel for Petitioners
Martha A. Delea, Esquire — Counsel for Petitioners
Baltimore Gas & Electric Co. — Petitioner
Mr. & Mrs. Frederick Vinup — Petitioners

W/D appearance 9-14-94 ~~Mark K. Cohen, Esquire — Counsel for Protestant~~ R. Hanley
Mr. & Mrs. Raymond Fischer
Mrs. Dorothy Marsden
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
Timothy H. Kotroco
W. Carl Richards /ZADM
Docket Clerk /ZADM
Arnold Jablon /ZADM

Copy sent 9/08/94: Hon. Paula C. Hollinger

Kathleen C. Weidenhammer
Administrative Assistant

PLEASE RETURN SIGN AND POST TO ROOM 49 ON DAY OF HEARING.

Printed with Soybean Ink on Recycled Paper

10/04/94 -T/C from Carroll Holzer 4:15 p.m. - Has ZC case (continued case) in Upper Marlboro on 1/11/95; is available remaining two dates being held.

TO BE BROUGHT TO ATTENTION OF BOARD PRIOR TO START OF DAY #2 ON 10/06/94.

7/27/94 -Letter from R. Hoffman, Counsel for Petitioner, requesting consideration by Board for scheduling additional consecutive days for hearing of this appeal (preferably three days) based upon prior hearing on this matter, and his belief that more than one day, and probably more than two days, will be needed.

8/05/94 -T/C from Carroll Holzer; is in agreement with R. Hoffman that more than one day will be required for this matter. Advised Mr. HOlzer that Board's docket is now being set into November 1994.

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

October 6, 1994

NOTICE OF ASSIGNMENT

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

CASE NO. 94-452-XA — BALTIMORE GAS & ELECTRIC CO. /Legal Owners, Tract A & B; FREDERICK R. VINUP, ET UX /Legal Owners, Tract C
S/w Corner of Ridge Road and Joel Court (Ivy Hill Substation)
8th Election District
3rd Councilmanic District

SE -Outdoor electric substation in R.C. 5 zone;
VAR -Structures as close as 0' from interior lot line in lieu of required 50' bldg setback.
6/24/94 -Z.C.'s Order in which Petition for Special Exception and Petition for Variance were GRANTED.

Which was **POSTPONED** on the record 10/06/94 has been scheduled for the following agreed-upon dates:

ASSIGNED FOR: ~~**TUESDAY, JANUARY 10, 1995 at 10:00 a.m. /Day #2;**~~
THURSDAY, JANUARY 12, 1995 at 10:00 a.m. /Day #3;
TUESDAY, JANUARY 17, 1995 at ~~10:00~~ a.m. /Day #4; and
THURSDAY, JANUARY 19, 1995 at ~~10:00~~ a.m. /Day #5

start @ 9 am 1/19

NOTE: The Board is also holding Friday, January 20, 1995, if n ded for completion of the hearing in this matter.

cc: J. Carroll Holzer, Esquire — Counsel for Appellants /Protestants
Andrew Lansman, et al — Appellants /Protestants

Robert A. Hoffman, Esquire — Counsel for Petitioners
Martha A. Delea, Esquire — Counsel for Petitioners
Baltimore Gas & Electric Co. — Petitioner
Mr. & Mrs. Frederick Vinup — Petitioners

Mr. & Mrs. Raymond Fischer
Mrs. Dorothy Marsden
People's Counsel for Balto Co
Lawrence E. Schmidt
Timothy Kotroco
The Hon. Paula C. Hollinger

Pat Keller
W. Carl Richards /ZADM
Docket Clerk /ZADM
Arnold Jablon, Dir /ZADM

Commercial Notice Sent 10/25/94

Kathleen C. Weidenhammer
Administrative Assistant

Printed with Soybean Ink on Recycled Paper

PLEASE RETURN SIGN AND POST TO ROOM 49 ON DAY OF HEARING.

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue January 12, 1995

AMENDED NOTICE OF ASSIGNMENT ***Days #4 and #5**

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

CASE NO. 94-452-XA

BALTIMORE GAS & ELECTRIC CO. /Legal Owners, Tract A & B; FREDERICK R. VINUP, ET UX /Legal Owners, Tract C
S/w Corner of Ridge Road and Joel Court (Ivy Hill Substation)
8th Election District
3rd Councilmanic District

SE -Outdoor electric substation in R.C. 5 zone;
VAR -Structures as close as 0' from interior lot line in lieu of required 50' bldg setback.
6/24/94 -Z.C.'s Order in which Petition for Special Exception and Petition for Variance were GRANTED.

which is scheduled for Day #4 (1/17/95) and Day #5 (1/19/95), the last two days scheduled for hearing in this matter, will begin on those dates at the amended hour as indicated below; and has been

REASSIGNED FOR: **TUESDAY, JANUARY 17, 1995 at 9:00 a.m. /Day #4; and THURSDAY, JANUARY 19, 1995 at 9:00 a.m. /Day #5**

cc: J. Carroll Holzer, Esquire — Counsel for Appellants /Protestants
Andrew Lansman, et al — Appellants /Protestants

Robert A. Hoffman, Esquire — Counsel for Petitioners
Martha A. Delea, Esquire — Counsel for Petitioners
Baltimore Gas & Electric Co. — Petitioner
Mr. & Mrs. Frederick Vinup — Petitioners

Mr. & Mrs. Raymond Fischer
Mrs. Dorothy Marsden
People's Counsel for Balto Co
Lawrence E. Schmidt
Timothy Kotroco
The Hon. Paula C. Hollinger

Pat Keller
W. Carl Richards /ZADM
Docket Clerk /ZADM
Arnold Jablon, Dir /ZADM

Kathleen C. Weidenhammer
Administrative Assistant

Printed with Soybean Ink on Recycled Paper

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

February 10, 1995

NOTICE OF DELIBERATION

Memorandums having been filed, the County Board of Appeals has scheduled the following date and time for deliberation in the matter of:

IVY HILL SUBSTATION /BALTIMORE GAS & ELECTRIC COMPANY - PETITIONER
CASE NO. 94-452-XA

DATE AND TIME : Wednesday, February 22, 1995 at 9:00 a.m.

LOCATION : Room 48, Basement, Old Courthouse

---

cc: J. Carroll Holzer, Esquire — Counsel for Appellants /Protestants
Andrew Lansman, et al — Appellants /Protestants

Robert A. Hoffman, Esquire — Counsel for Petitioners
Martha A. Delea, Esquire — Counsel for Petitioners
Baltimore Gas & Electric Co. — Petitioner
Mr. & Mrs. Frederick Vinup — Petitioners

Mr. & Mrs. Raymond Fischer
Mrs. Dorothy Marsden
People's Counsel for Balto Co
Lawrence E. Schmidt
Timothy Kotroco
The Hon. Paula C. Hollinger
Pat Keller
W. Carl Richards /ZADM
Docket Clerk /ZADM
Arnold Jablon, Dir /ZADM
Joseph V. Maranto /ZADM

HRM

Kathleen C. Weidenhamm r
Administrative Assistant

Printed with Soybean Ink on Recycled Paper

CASE NO. 94-452-XA

BALTIMORE GAS & ELECTRIC CO. - Legal Owner, Tract A & C
FREDERICK R. VINUP, ET UX - Legal Owner, Tract B

S/W cor. of inters. of Ridge Road and
Joel Court (Ivy Hill Substation)

8th District

Appealed: 7/21/94

A30

LEGAL DESCRIPTION
LANDS OF
BANKERS TRUST COMPANY
BALTIMORE GAS AND ELECTRIC COMPANY

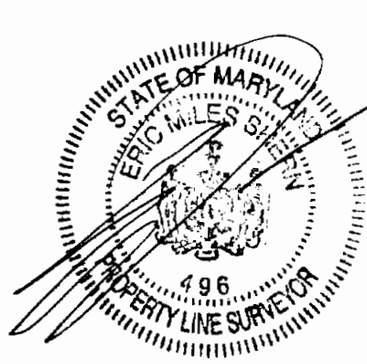
94-252-M

ALL THAT CERTAIN tract of land situated in Baltimore County, Maryland. Said tract being known as Tract "A" as shown on the Subdivision Plan for Fox Ridge Estates dated April 4, 1988 and recorded among the Land Records of Baltimore County in Plat Book 59, Folio 29. Said tract being more particularly described as follows:

BEGINNING at a concrete monument set on the westerly right-of-way line of Joel Court. Said point being the most easterly corner of Lot 24 as shown on the above referenced Subdivision Plan for Fox Ridge Estates. Thence North 73 degrees 49 minutes 47 seconds West, along the northerly line of said Lot 24 as shown on the Subdivision Plan for Fox Ridge Estates, a distance of 208.95 feet to a concrete monument set for corner. Said point being on the easterly line of Lot 1 as shown on the plan of the Marsden Property dated May 26, 1978 and recorded among the Land Records of Baltimore County in Plat Book 43, Folio 7. Thence North 21 degrees 23 minutes 37 seconds East, along the easterly line of said Lot 1 as shown on the plan of the Marsden Property, a distance of 51.61 feet to a 1/2" pipe found for corner. Said point being the most southerly corner of a tract of land described in deed to Frederick R. Vinup and Ann L. Vinup from Frank J. Marsden, Jr. and Suzanne S. Marsden dated November 21, 1968 and recorded among the Land Records of Baltimore County in Liber 4941, Folio 720. Thence North 21 degrees 23 minutes 37 seconds East, along the easterly line of said Frederick R. Vinup and Ann L. Vinup tract, a distance of 167.03 feet to a concrete monument found for corner. Said point being the most southerly corner of a tract of land described in deed to Bankers Trust Company and Baltimore Gas and Electric Company from Frank J. Marsden, Jr. and Dorothy Louise Marsden and Fidelity-Baltimore National Bank & Trust Company dated April 10, 1956 and recorded among the Land Records of Baltimore County in Liber 2911, Folio 289. Thence along the property line of said Bankers Trust Company and Baltimore Gas and Electric Company tract, the following two (2) courses and distances: (1) North 21 degrees 23 minutes 42 seconds East, a distance of 111.36 feet to a concrete monument found for corner; (2) North 42 degrees 30 minutes 18 seconds West, passing a "+" in stone found at a distance of 98.92 feet and continuing 14.68 feet for a total distance of 113.60 feet to a point for corner. Said point being on the southeasterly right-of-way line of Ridge Road. Thence along said right-of-way line of Ridge Road, the following two (2) courses and distances: (1) North 61 degrees 30 minutes 00 seconds East, a distance of 75.00 feet to a concrete monument set for corner; (2) South 78 degrees 17 minutes 10 seconds East, a distance of 35.42 feet to a concrete monument set for corner. Said point being on the southwesterly right-of-way line of hereinbefore mentioned Joel Court. Thence along said right-of-way line of Joel Court, the following three (3) courses and distances: (1) South 28 degrees 00 minutes 00 seconds East, a distance of 75.00 feet to a 5/8" rebar with cap set for corner; (2) along a curve to the right, said curve having a central angle of 43 degrees 30 minutes 00 seconds, a radius of 475.00 feet, an arc length of 360.63 feet, a chord bearing of South 06 degrees 15 minutes 00 seconds East, and a chord distance of 352.03 feet to a 5/8" rebar with cap set for corner; (3) South 15 degrees 30 minutes 00 seconds West, a distance of 64.00 feet to the point of beginning. Said tract being as shown as Tract "A" on Boundary & Topographic Survey of Ivy Hill Substation dated January 10, 1994 prepared for Baltimore Gas and Electric Company by ASM Technologies, Inc. (Project No. 9368x5).

CONTAINING 1.5628 acres or 68,075 square feet of land.

May 4, 1994



ASM TECHNOLOGIES, INC.

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

June 10, 1994

Martha A. Delea, Esquire
Baltimore Gas & Electric Company
Charles Center
P.O. Box 1475
Baltimore, Maryland 21203-1475

RE: Case No. 94-452-XA, Item No. 430
Petitioner: Baltimore Gas & Electric and
Frederick R. and Ann L. Vinup
Petitions for Special Exception and Variance

Dear Ms. Delea:

The Zoning Plans Advisory Committee (ZAC) has reviewed the plans submitted with the above-referenced petition, which was accepted for filing on May 10, 1994 and scheduled for a hearing accordingly. Any attached comments from a reviewing agency are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties, i.e., zoning commissioner, attorney and/or the petitioner, are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case.

Any comments submitted thus far from the members of ZAC that offer or request information on your petition are attached. Only those comments that are informative will be forwarded to you; those that are not informative will be placed in the hearing file.

The following comments are related only to the filing of future zoning petitions and are aimed at expediting the petition filing process with this office.

1. The director of Zoning Administration and Development Management has instituted a system whereby seasoned zoning attorneys who feel that they are capable of filing petitions that comply with all aspects of the zoning regulations and petitions filing requirements can file their petitions with this office without the necessity of a preliminary review by zoning personnel.

2. Anyone using this system should be fully aware that they are responsible for the accuracy and completeness of any such petition. All petitions filed in this manner will be reviewed and commented on by zoning personnel prior to the hearing. In the event that the petition has not been filed correctly, there is always a possibility that another hearing will be required or the zoning commissioner will deny the petition due to errors or incompleteness.

3. Attorneys, engineers and applicants who make appointments to file petitions on a regular basis and fail to keep the appointment without a 72-hour notice will be required to submit the appropriate filing fee at the time future appointments are made. Failure to keep these appointments without proper advance notice, i.e. 72 hours, will result in the forfeiture loss of the filing fee.

If you have any questions concerning the enclosed comments, please feel free to contact Charlotte Minton in the zoning office at 887-3391 or the commenting agency.

Sincerely,

W. Carl Richards, Jr.

W. Carl Richards, Jr.
Zoning Supervisor

WCR:cmm
Enclosures

B A L T I M O R E C O U N T Y, M A R Y L A N D

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Zoning Administration &
Development Management

FROM: Pat Keller, Director
Office of Planning and Zoning

DATE: June 2, 1994

SUBJECT: Southwest corner of the intersection of Ridge Road and Joel Court

INFORMATION:

Item Number: 430

Petitioner: Baltimore Gas & Electric Company

Property Size: _____

Zoning: R.C. 5

Requested Action: _____

Hearing Date: ___/___/___

SUMMARY OF RECOMMENDATIONS:

This project received approval of a limited exemption on April 4, 1994. At that time, in reaction to the plan submitted with the request, staff requested that additional landscaping be provided to screen the subject site from adjacent homes located along Joel Court. The plat accompanying this Petition satisfies the concern regarding the provision of additional landscaping. Therefore, staff recommends the applicant's request be granted.

Prepared by: _____

Division Chief: _____

PK/JL:lw

B A L T I M O R E C O U N T Y, M A R Y L A N D

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Zoning Administration &
Development Management

FROM: Pat Keller, Director
Office of Planning and Zoning

DATE: June 14, 1994

SUBJECT: 1205 York Road & 3 Greenridge Road

INFORMATION:

Item Number: 452

Petitioner: Mangione Property

Property Size: _____

Zoning: D.R. 5.5

Requested Action: _____

Hearing Date: / /

SUMMARY OF RECOMMENDATIONS:

The applicant's site is located within an area designated as a Community Conservation Area in the Baltimore County Master Plan 1989-2000.

As is noted on the plat accompanying this petition, there is a lengthy zoning history regarding Parcels A-D. The most recent hearing, 87-335SPH was adjudicated by the Circuit Court (88CG4761). Access to Tenbury Road and the preservation of the residential character of that local street were issues in that prior case, and these same issues are currently being revisited in the subject case.

In addition to the issues pertaining to parcel (A-D), the applicant seeks a use permit to allow off street parking on Parcel E, and to permit permanent access from Parcel E to Greenridge Road. In terms of the access issue, staff recommends that the petitioner work with the State Highway Administration and Baltimore County to develop solutions to on-going traffic safety related issues. Access to Greenridge Road may be useful in improving site access, however, it seems premature to consider the use permit for parking until such time as further development takes place.

Any access to Tenbury Road, whether it be temporary or permanent, should be denied. Tenbury Road is a residential street and this unwarranted intrusion would negatively impact the well maintained community of Dulaney Village.

Prepared by: _____

Division Chief: _____

PK/JL:lw

Maryland Department of Transportation
State Highway Administration

O. James Lighthizer
Secretary
Hal Kassoff
Administrator

5-25-94

Ms. Charlotte Minton
Zoning Administration and
Development Management
County Office Building
Room 109
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Baltimore County
Item No.: #430 (JLL)

Dear Ms. Minton:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not effected by any State Highway Administration project.

Please contact Bob Small at 410-333-1350 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,
Bob Small
for DAVID N. RAMSEY, ACTING CHIEF
~~John Contestabile, Chief~~
Engineering Access Permits
Division

BS/

Baltimore County Government
Fire Department

700 East Joppa Road Suite 901
Towson, MD 21286-5500

(410) 887-4500

DATE: 05/19/94

Arnold Jablon
Director
Permits Administration and
Development Management
Baltimore County Office Building
Towson, MD 21204
MAIL STOP-1105

RE: Property Owner: SEE BELOW

LOCATION: SEE BELOW

Item No.: SEEBELOW Zoning Agenda:

Gentlemen:

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

A. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operations.

B. REFERENCE TO THE FOLLOWING ITEM NUMBERS: NONE

RECEIVED
MAY 20 1994
ZADM

REVIEWER: LT. ROBERT P. SAUERWALD
Fire Marshal Office, PHONE 887-4881, MS-1102F

cc: File

Printed on Recycled Paper

BALTIMORE COUNTY, MARYLAND
I N T E R O F F I C E C O R R E S P O N D E N C E

TO: Arnold Jablon, Director DATE: May 27, 1994
Zoning Administration and Development Management

FROM: Robert W. Bowling, P.E., Chief RWB/DAK
Developers Engineering Section

RE: Zoning Advisory Committee Meeting
for May 31, 1994
Item No. 430

The Developers Engineering Section has reviewed the subject zoning item. The submitted schematic landscape plan is tentatively approved. A final landscape plan is required prior to release of permits.

RWB:sw

BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

INTER-OFFICE CORRESPONDENCE

June 14, 1994

TO: Mr. Arnold Jablon, Director
Zoning Administration and
Development Management

FROM: J. Lawrence Pilson
Development Coordinator, DEPRM

SUBJECT: Zoning Item #430 - Ivy Hill Substation
Intersection of Ridge Road & Joel Court
Zoning Advisory Committee Meeting of May 23, 1994

The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item.

Regarding the Forest Conservation Regulations:

1. Provide a plan showing the existing woods lines on the property.

2. Provide data on current acreage of forest on site and what acreage of forest will be left on site after all necessary clearing has been performed. Provide data on how much square footage of forest is to be removed.

3. If more than 40,000 square feet of forest is to be disturbed then the property will have to comply with Baltimore County's Forest Conservation Regulations. In addition, what will be the fate of the parcel lines?

JLP:GCS:sp

IVYHILL/DEPRM/TXTSBP

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

6/21

June 16, 1994

Martha A. Delea, Esquire
Baltimore Gas & Electric Company
Charles Center
P. O. Box 1475
Baltimore, Maryland 21203-1475

RE: Case No. 94-452-XA, Item No.430
Petitions for Special Exception and Variance

Dear Ms. Delea:

Enclosed are copies of comments received from the Department of Environmental Protection and Resource Management on June 16, 1994 for the above-referenced case.

If there are any questions, please do not hesitate to call me at 887-3391.

Sincerely,

Charlotte Minton

Charlotte Minton

Enclosure

Printed with Soybean Ink on Recycled Paper

LEGAL DESCRIPTION
FOX RIDGE ESTATES

ALL THAT CERTAIN tract of land situated in Baltimore County, Maryland. Said tract being known as Fox Ridge Estates as shown on Subdivision Plan dated April 4, 1988 and recorded among the Land Records of Baltimore County in Plat Book 59, Folio 29. Said tract being more particularly described as follows:

BEGINNING at a point at the intersection of the centerlines of Falls Road and Ridge Road. Thence along and within the right-of-way of Falls Road the following seven (7) courses and distances: (1) South 08 degrees 39 minutes 52 seconds East, a distance of 100.93 feet to a point for corner; (2) South 36 degrees 13 minutes 42 seconds East, a distance of 1372.94 feet to a point for corner; (3) South 37 degrees 11 minutes 10 seconds East, a distance of 121.29 feet to a point for corner; (4) South 53 degrees 29 minutes 18 seconds West, a distance of 49.05 feet to a point for corner; (5) South 33 degrees 16 minutes 19 seconds East, a distance of 410.74 feet to a point for corner; (6) Along a curve to the left, said curve having a radius of 2506.48 feet, an arc length of 31.33 feet, a chord bearing of South 32 degrees 54 minutes 52 seconds East, and a chord distance of 31.33 feet to a point for corner; (7) South 49 degrees 31 minutes 17 seconds East, a distance of 120.88 feet to a point for corner. Said point being on the most northerly corner of a tract of land now or formerly owned by Bahram Sina as described in deed recorded among the Land Records of Baltimore County in Liber OTG 4541, Folio 164. Thence along the perimeter of said Bahram Sina tract, the following two (2) courses and distances: (1) South 77 degrees 30 minutes 52 minutes West, a distance of 852.21 feet to a point for corner; (2) South 04 degrees 30 minutes 38 seconds East, a distance of 831.05 feet to a point for corner. Said point being a northeast corner of a second tract of land now or formerly owned by Bahram Sina as described in deed recorded among the Land Records of Baltimore County in Liber EHK, Jr. 6005, Folio 466. Thence along the perimeter of said second tract of Bahram Sina, the following two (2) courses and distances: (1) North 77 degrees 58 minutes 54 seconds West, a distance of 893.19 feet to a point for corner; (2) South 86 degrees 58 minutes 08 seconds West, a distance of 435.36 feet to a point for corner. Said tract being on a easterly line of a tract of land now or formerly owned by Martha C. Thompson as described in deed to Martha C. Thompson recorded among the Land Records of Baltimore County in Liber GLB 1832, Folio 243. Thence along the perimeter of said Martha C. Thompson tract, the following two (2) courses and distances: (1) North 01 degrees 55 minutes 08 seconds East, a distance of 739.26 feet to a point for corner; (2) South 82 degrees 57 minutes 37 seconds West, a distance of 24.75 feet to a point for corner. Said point being a easterly corner of a tract of land now or formerly owned by P. Bealefield as described in deed recorded among the Land Records of Baltimore County in Liber EHK, Jr. 6542, Folio 420. Thence along the perimeter of said P. Bealefield tract, the following two (2) courses and distances: (1) North 00 degrees 00 minutes 46 seconds East, a distance of 604.94 feet to a point for corner; (2) North 21 degrees 23 minutes 37 seconds East, a distance of 1014.07 feet to a point for corner. Said point being the most easterly corner of a tract of land now or formerly owned by BG&E, Co. as described in deed recorded among the Land Records of Baltimore County in Liber GLB 2911, Folio 289. Thence along said BG&E, Co. tract, the following two (2) courses and distances: (1) North 42 degrees 30 minutes 18 seconds West, a distance of 98.92 feet to a point for corner; (2) North 42 degrees 18 minutes 58 seconds West, a distance of 42.67 feet to a point for corner. Said point being within the right-of-way of hereinbefore mentioned Ridge Road. Thence along and within the right-of-way of said Ridge Road, the following four (4) courses and distances: (1) North 62 degrees 29 minutes 37 seconds East, a distance of 106.92 feet to a point for corner; (2) North 55 degrees 45 minutes 07 seconds East, a distance of 137.23 feet to a point for corner; (3) North 66 degrees 29 minutes East, a distance of 137.46 feet to a point for corner; (4) North 77 degrees 29 minutes 37 seconds East, a distance of 277.86 feet to the point of beginning.

CONTAINING 79.457 acres of land.

May 24, 1994

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

July 6, 1994

Mr. Joseph C. Laverghett
1205 York Road
Lutherville, Maryland 21093

RE: Case No. 94-466-SPH, Item No.452
Petition for Special Hearing

Dear Mr. Laverghett:

Enclosed are copies of comments received from the Office of Planning and Zoning on July 5, 1994 for the above-referenced case.

If there are any questions, please do not hesitate to call me at 887-3391.

Sincerely,

Charlotte Minton

Charlotte Minton

Enclosure

Printed with Soybean Ink
on Recycled Paper

9/02/94 -Notice of Assignment for hearing scheduled for Tuesday, October 4, 1994 at 10:30 a.m. (Day #1) and Thursday, October 6, 1994 a 10:30 a.m. (Day #2) sent to the following:

J. Carroll Holzer, Esquire
Andrew Lansman, et al
Robert A. Hoffman, Esquire
Martha A. Delea, Esquire
Mr. & Mrs. Frederick Vinup
Mark K. Cohen, Esquire
Mr. & Mrs. Raymond Fischer
Mrs. Dorothy Marsden
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
Timothy H. Kotroco
W. Carl Richards /ZADM
Docket Clerk /ZADM
Arnold Jablon /ZADM

9/14/94 -Letter from Mark Cohen, Esquire -withdrawing appearance as counsel for R. Hanley, Protestant.

9/23/94 -Rule 8 papers filed by Falls Road Community Association.

10/04/94 -Day #1 completed before the Board; continued to Thursday, October 6, 1994 for Day #2. With agreement of all counsel and Board, holding January 10, January 11 and January 12, 1995 for Days #3, 4 and 5.

4:15 p.m. T/C from Carroll Holzer; has continued ZC case in Upper Marlboro on Wednesday, January 11, 1995. Available two remaining dates and all of following week as well. Requested that this be brought to attention of Board before start of Day #2 on 10/06/94.

10/06/94 -Postponed on the record at request of Counsel for Petitioner without objection by Counsel for Protestants /Appellants; case reassigned for Day #2 to January 10, 1995; remainder of dates scheduled as follows: Day #3 - January 12; Day #4 -January 17; Day #5 -January 19. Also holding Friday, January 20, 1995 as possible Day #6 if needed for completion of case.

10/07/94 -Notice of Assignment sent to parties reflecting above dates; case to resume on Tuesday, January 10, 1995 at 10:00 a.m.

1/12/95 -Hearings held on Days 2 (1/10/95) and 3 (1/12/95); due to resignation of Mr. Clark from the Board effective 1/16/95, Mr. Schuetz, with the agreement of counsel, has replaced him as the third member of the panel (H.R.M.).

- With the agreement of parties, prior to hearing of 1/12/95, the starting time for 1/17/95 and 1/19/95 was changed to 9:00 a.m.; Friday, 1/20/95 is no longer available for the Board. This change was announced in hearing room.

- Amended Notice of Assignment sent to parties advising of (1) change in start time on 1/17/95 and 1/19/95 and (2) that these are last two dates scheduled for this matter on the Board's docket at this time.

1/19/95 -Hearing concluded before the Board; Memorandums due February 6, 1995.
Public Deliberation to be scheduled and notices sent. (H.R.M.)
Memos filed: Hoffman /BG&E 2-6-95 (+ TRANSCRIPT / 5 DAYS)
Holzer 2-6-95

2/10/95 -Notice of Deliberation sent to parties (copies to 3 Board members);
deliberation scheduled for Wednesday, February 22, 1995 at 9:00 a.m.

BALTIMORE GAS & ELECTRIC CO (Ivy Hill Substation) 94-452-XA

95-CV-5315

May 10, 1994	Petitions filed by Martha A. Delea, Esquire, and Robert A. Hoffman, Esquire, on behalf of BG&E and Frederick and Ann Vinup, for: Special Exception to use property for an outdoor electric public utility service center (electric substation); and Variance to permit structures as close as 0' from an interior lot line in lieu of required 50' building setback.
June 21	Hearing held on Petition by the Zoning Commissioner.
June 24	Order of the Zoning Commissioner in which Petitions for Special Exception and Variance were GRANTED.
July 21	Notice of Appeal filed by J. Carroll Holzer, Esquire, on behalf of residents and Friends of the Ridge.
September 13	Request to withdraw appearance filed by Cohen.
October 4	Hearing before the Board of Appeals (Day #1)
January 10, 1995	Hearing before the Board of Appeals (Day #2)
January 12	Hearing before the Board of Appeals (Day #3)
January 17	Hearing before the Board of Appeals (Day #4)
January 19	Hearing before the Board of Appeals (Day #5)
February 6	Memorandum in Lieu of Final Argument filed Holzer. Petitioner's Memorandum filed by Hoffman.
February 22	Deliberation completed.
May 31	Order of the Board wherein Petitions were GRANTED.
June 7	Amendment to Board's opinion to indicate that People's Counsel did not participate in proceedings.
June 16	Petition for Judicial Review filed in the CCt by Holzer, on behalf of Friends.
June 26	Certificate of Notice sent to interested parties.
July 7	T/C to counsel for Petitioner: confirmed that record transmittal date for recording expedited per Judge DeWaters' order due to early hearing scheduled in CCt.
July 17	Transcript of testimony filed; Record of Proceedings filed in the CCt.
December 30, 1996	Order issued by the Circuit Court; decision of CBA AFFIRMED (Lawrence R. Daniels, J.)
April 1, 1998	Order of the Court of Special Appeals; decision of the Circuit Court is AFFIRMED (Harrell, Bloom and Alpert, JJ.)
February 11, 1999	Mandate issued by the Court of Appeals; Judgment of the Court of Special Appeals is AFFIRMED in part and VACATED in part; portion of CSA judgment relating to the variance is vacated; case REMANDED to the CCt with instructions to REMAND to the CBA for a decision consistent with this opinion.

APPEAL

Petition for Special Exception and Variance
S/W Corner of Ridge Road and Joel Court
(Ivy Hill Substation)
8th Election District - 3rd Councilmanic District
Baltimore Gas & Electric Co.-Legal Owners/Tract A & B
Frederick R. Vinup, et ux-Legal Owners/Tract C
Case No. 94-452-XA

Petition(s) for Special Exception and Variance

Description of Property

Certificate of Posting

Certificate of Publication

Zoning Plans Advisory Committee Comments

Petitioner(s) and Protestant(s) Sign-In Sheets

Petitioner's Exhibits:
1 - Plat to Accompany Petition for Special Exception and Variance
2 - Proposed Ivy Hill Substation Expansion
3 - One photograph of site out-lined in yellow
4 - Plat to Accompany Petition for Special Exception and Variance
4A-4T - Twenty photographs of site
5A-5B - Two photographs of substation
6 - Forwood Property Final Development Plan
7 - Walter A. Reiter, Jr.-Qualifications

Four miscellaneous letters

Zoning Commissioner's Order dated June 24, 1994 (Granted)

Notice of Appeal received on July 21, 1994 from J. Carroll Holzer, Esquire

c: J. Carroll Holzer, Holzer and Lee, Suite 502, 305 Washington Avenue, Towson, MD 21204
Robert A. Hoffman, Esquire, Venable, Baetjer and Howard, 210 West Allegheny Avenue, Towson, MD 21204
Martha A. Delea, Esquire, Baltimore Gas and Electric Company, P.O. Box 1475, Charles Center, Baltimore, MD 21203-1475
Mr. and Mrs. Frederick Vinup, 1821 Ridge Road, Reisterstown, 21136
Mark K. Cohen, Esquire, 120 E. Baltimore Street, Baltimore, 21202
Mr. and Mrs. Raymond Fischer, 1822 Ridge Road, Reisterstown, 21136
Mrs. Dorothy Marsden, 1823 Ridge Road, Reisterstown, 21136
People's Counsel of Baltimore County, M.S. 2010

Request Notification: Patrick Keller, Director, Planning & Zoning
Lawrence E. Schmidt, Zoning Commissioner
W. Carl Richards, Jr., Zoning Manager
Docket Clerk
Arnold Jablon, Director of ZADM

APPEAL

Petition for Special Exception and Variance
S/W Corner of Ridge Road and Joel Court
(Ivy Hill Substation)
8th Election District - 3rd Councilmanic District
Baltimore Gas & Electric Co.-Legal Owners/Tract A & B
Frederick R. Vinup, et ux-Legal Owners/Tract C
Case No. 94-452-XA

✓ Petition(s) for Special Exception and Variance ✓

✓ Description of Property

✓ Certificate of Posting

✓ Certificate of Publication

✓ Zoning Plans Advisory Committee Comments

✓ Petitioner(s) and Protestant(s) Sign-In Sheets

Petitioner's Exhibits: ✓1 - Plat to Accompany Petition for Special Exception and Variance
✓2 - Proposed Ivy Hill Substation Expansion
✓3 - One photograph of site out-lined in yellow
✓4 - Plat to Accompany Petition for Special Exception and Variance
✓4A-4T - Twenty photographs of site
✓5A-5B - Two photographs of substation
✓6 - Forwood Property Final Development Plan
✓7 - Walter A. Reiter, Jr.-Qualifications

✓ Four miscellaneous letters

✓ Zoning Commissioner's Order dated June 24, 1994 (Granted)

✓ Notice of Appeal received on July 21, 1994 from J. Carroll Holzer, Esquire

* c: J. Carroll Holzer, Holzer and Lee, Suite 502, 305 Washington Avenue, Towson, MD 21204, COUNSEL FOR APPELLANTS / PROTESTANTS)
Robert A. Hoffman, Esquire, Venable, Baetjer and Howard, 210 West Allegheny Avenue, Towson, MD 21204
Martha A. Delea, Esquire, Baltimore Gas and Electric Company, P.O. Box 1475, Charles Center, Baltimore, MD 21203-1475
Mr. and Mrs. Frederick Vinup, 1821 Ridge Road, Reisterstown, 21136
~~Mark K. Cohen, Esquire, 120 E. Baltimore Street, Baltimore, 21202~~ out per ltr. 9/14/94
Mr. and Mrs. Raymond Fischer, 1822 Ridge Road, Reisterstown, 21136
Mrs. Dorothy Marsden, 1823 Ridge Road, Reisterstown, 21136
People's Counsel of Baltimore County, M.S. 2010

Request Notification: Patrick Keller, Director, Planning & Zoning
Lawrence E. Schmidt, Zoning Commissioner
W. Carl Richards, Jr., Zoning Manager
Docket Clerk
Arnold Jablon, Director of ZADM

ANDREW LANSMAN ET AL
9 JOEL COURT
REISTERSTOWN MD 21136
(APPELLANTS/PROTESTANTS

94 JUL 22 AM 11:15

The Honorable Paula C. Hollinger
Senate Office Building
Room 206
Annapolis, MD 21401-1991

The Honorable T. Bryan McIntire
County Council

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

July 21, 1994

Robert A. Hoffman, Esquire
Venable, Baetjer and Howard
210 West Allegheny Avenue
Towson, MD 21204

Martha A. Delea, Esquire
Baltimore Gas and Electric Co.
P.O. Box 1475, Charles Center
Baltimore, MD 21203-1475

RE: Petition for Special Exception and Variance
S/W Corner of Ridge Road and Joel Court
(Ivy Hill Substation)
8th Election District
3rd Councilmanic District
Baltimore Gas and Electric-Legal Owner &
Contract Purchaser/Tract A & C
Fredrick R. Vinup, et ux-Legal Owner/Tract B
Case No. 94-452-XA

Dear Mr. Hoffman and Ms. Delea:

Please be advised that an appeal of the above-referenced case was filed in this office on July 21, 1994 by J. Carroll Holzer, Esquire on behalf of Nigel Howse, Robert O'Hara, ron Hanley, Carl Follo, Robert Rytter, Ira Brownk Dieter Langendorf, Andrew Lansman, Jeffrey Bozell, Bruce Pitcher, Joe Czajkowski and Friends of the Ridge.. All materials relative to the case have been forwarded to the Board of Appeals.

If you have any questions concerning this matter, please do not hesitate to contact Julie Winiarski at 887-3391.

Sincerely,

ARNOLD JABLON
Director

AJ:jaw
c: Mr. & Mrs. Frederick Vinup
Mark K. Cohen, Esquire
Mr. & Mrs. Raymond Fisher
Mrs. Dorothy Marsden
People's Counsel

94 JUL 22 AM 11:15

Printed with Soybean Ink
on Recycled Paper

Court of Appeals of Maryland

No. 76, SEPTEMBER TERM, 19 98

FRIENDS OF THE RIDGE et al.

v.

BALTIMORE GAS AND ELECTRIC COMPANY

DISPOSITION OF APPEAL IN COURT OF APPEALS:
February 11, 1999 - Judgment of the Court of Special Appeals affirmed in part and vacated in part; that portion of the Court of Special Appeals' judgment relating to the variance is vacated; case remanded to that Court with instructions to vacate that portion of the judgment of the Circuit Court relating to the variance and remand the case to the Circuit Court with instructions to remand the case to the Board of Appeals for a decision consistent with this opinion; costs in this Court and in the Court of
TRANSCRIPT Special Appeals to be paid by petitoners. Opinion by Cathell, J.

RETURNED TO CIRCUIT COURT FOR BALTIMORE COUNTY

Date 3-15-99

BY Cassandra L. Conway

REMARKS:

Three-vol. record and box)

No. 474 - 1997 T. - CSA

No. 03-C-95-005315 - CC for Baltimore Co.

FILED MAR 17 1999 BY

MANDATE

Court of Appeals of Maryland

No. 76 **, September Term, 19** 98

FRIENDS OF THE RIDGE et al.

v.

BALTIMORE GAS AND ELECTRIC COMPANY

Certiorari to the Court of Special Appeals (Circuit Court for Baltimore County)
February 11, 1999 - Judgment of the Court of Special Appeals affirmed in part and vacated in part: that portion of the Court of Special Appeals' judgment relating to the variance is vacated; case remanded to that Court with instructions to vacate that portion of the judgment of the Circuit Court relating to the variance and remand the case to the Circuit Court with instructions to remand the case to the Board of Appeals for a decision consistent with this opinion; costs in this Court and in the Court of Special Appeals to be paid by petitioners.
Opinion by Cathell, J.

STATEMENT OF COSTS:

In Circuit Court:

Record	
Stenographer's Costs	

In Court of Appeals:

Petition Filing Fee	$ 336.00
Printing Brief for Appellant	
Portion of Record Extract — Appellant	124.50
Reply Brief	
Appearance Fee — Appellant	10.00
Filing Fee on Appeal (Court of Special Appeals)	50.00
Printing Brief for Appellee	244.80
Portion of Record Extract — Appellee	
Appearance Fee — Appellee	10.00
	$ 775.30

STATE OF MARYLAND, ss:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Appeals.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Appeals this fifteenth *day of* March *, 19* 99.

Clerk of the Court of Appeals of Maryland.

Costs shown on this Mandate are to be settled between counsel and NOT THROUGH THIS OFFICE.

HO 430

Plan dropped (Left out final filing review. Rob H. said will attempt to use SPX to also amend F.D.P. I said its your decision since this is usually handled by special hearing! ~~and~~ overall plan provided but not referenced with amendments) (No Overall description for Fox ridge East in file called Rob H.)
on 5/10/94. 5/11/94

Eventually some will need amended FDP plans.

JLL

To: John Lewis
From: Page Wingert

John,
Attached is the filing package for BG&E, re: Ivy Hill substation. You have already reviewed w/ Barb White & we have made requested revisions. Call if any questions arise. Thanks. Page

Don't necessarily agree with how this is being addressed but I bow to the attorneys privelage of asking for what they want.

Told R. H about possible DRC issues needing to be covered

Spoke to Paige Wingert. Possible Revisions to fax to R.H.
Some revisions made, comments still stand.

~~No hearing is~~

No Post Hearing Letter with package called R.H.

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY

Towson, Maryland

91-152-XA

District 7th Date of Posting 6/3/91

Posted for: Special Exception for Boat

Petitioner: Bella Boat Inc. & Lawrence A. Bella

Location of property: Fuller Rd. & Bel-Mar Ct.

Location of Signs: Facing roadway in front of property being posted

Remarks:

Posted by W. A. Peake Date of return: 6/10/91

Signature

Number of Signs: 1

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: Baltimore Gas & Electric Co. -Petitioner
Case No. 94-452-XA

DATE : February 22, 1995 @ 9:10 a.m.

BOARD /PANEL : William T. Hackett, Chairman (WTH)
Robert O. Schuetz (ROS)
S. Diane Levero (SDL)

SECRETARY : Kathleen C. Weidenhammer
Administrative Assistant

Those present included Robert A. Hoffman, Venable, Baetjer and Howard, LLP, and Martha A. Delea, BGE, on behalf of Petitioner; and J. Carroll Holzer, Holzer and Lee, on behalf of Protestants. (No participation by People's Counsel in this case.)

PURPOSE --to deliberate issues and matter of petitions for special exception and variance presented to the Board; testimony and evidence taken October 4, 1994; January 10, January 12, January 17 and January 19, 1995. Opinion and Order to be issued by Board setting forth written findings of fact.

WTH: As requested by law, Board is here for purpose of deliberation of Case No. 94-452-XA, Ivy Hill Substation property. Wished to indicate that very competent memorandums were received from both parties; Board has carefully gone over these memos.

ROS: Always start these things with little bit of preamble; these deliberations can be somewhat emotional experience for folks; liken it to being on a jury and then being asked to deliberate whatever is found as fact; how those facts are countered with other facts; how each sees things; those present will hear things they won't want to hear; can be a rather uncomfortable situation for anyone; requested that all present refrain from comments during course of deliberation; difficult situation being here for everyone.

Where variances are concerned, generally one who takes a rather difficult position for developer to achieve; views variance as part of the law which allows developer to say "the law does not apply to me." Believes the Court of Special Appeals of Maryland generally agrees with that position; only granted three variances in 70 years. But that's not to say

that that should never happen; just means that three of cases which have gone that far have had sufficient question in content which would case that Court to find thusly. Position is still one that assumes that whatever it is that is proposed is not something that will be on landscape for 5, 10 or 20 years; assumption that what is being discussed is going to remain on landscape forever; maybe will undergo alteration over time in part; but will still be there; questioned relief granted over years; architecture along strips like Reisterstown Road, Liberty Road, Belair Road, etc. Be that as it may, does not abide the "not in my back yard" thinking; genuine need to be sitting in hearing room with the use of artificial lighting to read and see each other; situation where everyone in room, including BGE, employees, attorneys, etc. would like to have own power source running underground encased in lead and concrete through middle of earth to center of home; not going to happen; emotional thinking must be thrown out; real issues considered.

Utility companies have rather tenuous future; does not take a Jules Verne imagination to realize we are depleting fossil fuel; technology associated with nuclear power forcing utility companies around country and world to rethink distribution. Conditions exist to which we are all subjected; utility companies are mandated in this State to provide power; and to provide power uninterrupted; reality where we do have occasions where we do not have power; one day, who knows when, either children or possibly grandchildren, will see alternate power generated in back yard; going to be a certain amount of ugliness going along with that; what can we do to minimize that part of the consequence associated with the need for power? Do substations belong in residential areas? Believes counsel for protestants raised it as an issue in closing memorandum; answer is resounding "yes, absolutely." Practical issue; what can Board do, what can society do, to minimize effects of existence of that need. EMFs as it stands now in this State is an emotional issue; utility companies like BGE have lot of risk; if one day the Courts or the legislature or even the Federal Government decides that EMFs are in fact tangible issue which must be addressed, then utility companies like BGE are going to be forced to alter their systems to accommodate necessary changes. Putting emotional issues aside, Board must get down to real issues: need, special exception, and issues surrounding variance and what Board is empowered to do.

Absolutely clear that there is a need; evidence and testimony on both sides which points to a genuine need; protestants' analysis has actually helped in coming to conclusion since capacity is something which must exceed demand. As

engineering practice, BGE is not expected to increase its capacity year by year, or month by month, or day by day in order to just barely accommodate demand; that's bad engineering practice and issue which is impractical; would cause additional costs to citizens. Believes that Section 411 of BCZR has been met and met resoundingly. 502.1, dealing with special exceptions - issues of health, safety and general welfare, roads, overcrowding, schools, transportation, etc., also have been met; can be argued that Baltimore/Washington real estate market is overpriced; however, fact remains that folks bought homes and have certain expected return on investment; not here to help retain expected return; but here to protect from acts of others which would negatively impact property. Visual impact is one area under 502.1 which is even in question at this point; evidence and testimony from protestants which indicates that BGE does not have solid history of providing landscaping at other facilities. BGE has submitted landscaping plan which goes long way toward meeting that goal; because it's a visual issue, will discuss conditions later in deliberation; regarding design standards and codes, potential for fire and other panic, we have building codes, national electrical code, design standards -- BGE expected to meet and must meet by law. Issue of whether child will climb over fence -- at what point is developer expected to exceed standard or exceed level of care; circuit breaker in home is secured with four screws; does not take a lot to dismantle that; far more dangers here that if child should transverse BGE property. Regarding stormwater management pond, electrical dangers, all go away because of design standards which will be met.

Again, that leaves visual issue; consistent with zoning classification; what is practical way of distributing electrical power; facilities do belong in residential areas. Only question is where; would even say that issue of health, safety and general welfare would be negatively impacted if BGE were not allowed to place this facility there because of need to provide electricity to homes; regarding cold weather last winter, testimony surrounded issue of meeting demand; we had one day; that one day established new standard; that was peak day; BGE did not meet it; that is standard by their mandate; at this point in time, health, safety and welfare of others outside of this community is at question because of the fact that they were not able to meet that demand.

Concerning variances, most difficult issue. Again, does not take variances lightly; variances are very serious part of code; spent overwhelming majority of time thinking about this; variance language is very strong; law says that there must be conditions which are peculiar to the land; and further where

following the code in its strictest sense would cause the property owner practical difficulty or unreasonable hardship; not in the additive / "or undue hardship." And again, that language is taken and construed as meaning forever; go afield here from just what is seen in testimony and evidence; have to look deeply into what is meant by what is presented. What BGE has done in past is not necessarily what BGE will always do in future; great deal of hue and cry over what BGE does now relative to commercial enterprise and competing with mechanical contractors; so I look at that type of situation and wonder what happens if variance is granted and BGE alters what they have proposed at some point in future. They have a 0' setback variance from interior lot lines, and then they sell off a piece of property; will that then overcrowd the land? Will they then do things contrary to spirit and intent of BCZR? And are they then moving away from issues which are peculiar to the land given their initial proposed development?

Great deal of concern that the variance must be considered only within the constraints that have been placed as a part of this request; from equitable standpoint, variance is granted given set of circumstances prescribed in presentation of case; fair to assume that if variance is granted and those conditions change, the variance is lost; reason for that position is a special exception speaks to the use but a variance speaks to the land; from fairness standpoint would say that in granting variance would place rather unusual restrictions on BGE; equitable standpoint is intent of law; mere fact that BGE is mandated to provide power; is constrained to build in a certain fashion; they are constrained to do work in a certain manner and therefore to deny them the ability to construct this facility centrally within the three parcels would create a practical difficulty and an undue hardship; again, that's because of proposed development; with that, would say that variance can only stay with BGE's proposed development, and if proposed development changes in configuration or location, then variance would be lost.

Will find as a fact that they do have conditions peculiar to the land; that the denial of the variance would be practical difficulty and undue hardship. Now to conditions with which BGE would have to deal; lot of discussion in both attorney's presentations and closing memos regarding Schultz v. Pritts. Again, effects of this are largely visual; until law determines that EMFs or other conditions associated with these facilities determine otherwise. Therefore, one of conditions which would be imposed on BGE is to double the number of trees surrounding the facility, making it four rows of trees; would also increase the height of the trees from 8-10' to 10-12';

going to require BGE to absorb much more cost related to the protection of the surrounding residents from visual effects of facility; that has been most compelling argument presented by protestants, including real estate expert. Believe this will alleviate these concerns.

Therefore, will find in favor of BGE for the special exceptions and variance from the interior lot line setback on all three properties; and will further place conditions on the variance that the development go forward as proposed; any reduction will result in the loss of the variance; and also require the doubling of the landscaping surrounding the facility to alleviate visual concerns of residents.

SDL: This Board listened to five days of intensive testimony regarding whether BGE substation complies with certain specific Baltimore County zoning regulations; in addition, Board received and studied lengthy memorandums. Not going to outline or summarize all evidence and arguments included in testimony and memos; will cite most important evidence and state opinion. Want to emphasize that points are not only factors considered in arriving at decision; just the major ones.

Section 411.1 - requires proof that proposed substation is needed; was convinced by testimony of BGE witnesses that proposed expansion is necessary due to increased demand; did not find rebuttal testimony convincing. 411.1 also requires that proposed substation will not impact use of neighboring properties; covers some of same areas of concern as 502.1; agrees with Petitioner's memorandum that while protestants addressed negative impacts /stormwater management pond and potential fires, chief concerns are harm from EMFs and whether proposed substation would lower property values. Expert testimony on EMF issue given by BGE; measurements taken at similar existing substations; concluded that exposure at property line would be same or less as exists at existing substation; equal to or less than average American exposed to in home. Based on these measurements, no risk to neighborhood residents. Protestants' expert on EMF's did not offer testimony refuting that testimony; could not cite standard at which there is a health risk. Cannot find, under 502.1, that proposed substation would pose threat to health, safety or general welfare based on EMF at property line equal to that in American household; will also say that EMF issue is emotional one; attempt made at hearing to relate this to use of tobacco and asbestos, which could not be proven until recently. Without belaboring this issue, alarms have been raised concerning other products /factors; later proved to be false alarms. Wrong to expect this Board to deal in possibilities

and maybe's; must be based upon solid evidence.

Regarding effect on property values - conflicting evidence from two real estate appraisers; Mr. Reiter testified to no effect because of proposed substation; would be screened and buffered; Kern based his conclusion that there would be detrimental effect on study of literature on subject and discussions with developers; did not discuss issue on whether area with existing substation would suffer if station expanded. Homes in area have substantial dollar value despite existing substation; whatever effect there is in this neighborhood due to EMF issue has already been incorporated in existing property values; would they still be affected because of bigger, more visible facility? Photographs showed that other substations are screened little or not at all; BGE plans have taken area into account; have made substantial effort to buffer accordingly. Confident that community spirit exhibited in these hearings will see to it that BGE complies with plans; visual intrusion kept to minimum. BGE has complied with 502.1 and 411.1; should be granted special exception.

As to variance, 307.1 is basically two-step process: (1) subject property has special or unique characteristics; and (2) this would create practical difficulty or unreasonable hardship. Fact that this property is made up of three tracts with internal lot lines is what is creating special circumstances; would create practical difficulty. Mr. Gavrelis testified to zoning regulation requirement of 50-foot setback from tract A, B and C; in order to place substation in this site, require 130' x 130'. Could not do that on any one tract; compliance would create difficulty; by centrally locating substation, existing woodlands could be preserved; substation screened from surrounding neighborhood. Mr. Gavrelis concluded that granting variance would be in spirit and intent of BCZR; agrees; existing requirements for internal lot lines when using for one purpose makes no sense; would grant variance.

Regarding question - would final plan have to be amended for Tract A under site plan; concluded that the use of Tract A does not constitute an amendment to the final development plan.

WTH: Sees little or no reason to redundantly go through what other members have gone through; thought amendment would not be addressed; Ms. Levero covered that; will agree in general principle that the proposal by BGE indicates potential need for a much bigger substation, especially with addition of Hickory Meadows, extra houses, and extra current each house will demand; from reviewing testimony and evidence, convinced

they have complied with 411.1 in that they have demonstrated the need for the substation; no point in arguing or discussing special exception and 502; been handled very well by other Board members; would only add, as far as the landscaping consideration, the photographs presented were graphic; however, this is operating under special exception; Board is authorized to demand that it be done and that it not only be constructed but maintained; if not, special exception is lost; if they lose special exception, they lose substation. Screening as proposed is absolutely vital; cannot emphasize that strongly enough; if they neglect screening and maintenance of screening, they stand a very good chance of coming back before the Board; will remove the special exception.

Therefore, will agree with colleagues and will grant special exception; will grant from 411 and will grant variance; no need to discuss variance; practical difficulty met; if they had gone, prior to hearing, and consolidated parcels, internal lines would not exist. BGE owns properties, and variance on internal lot lines should be granted.

Summary: Petitions to be granted; Board will issue a written Opinion and Order. Appellate period will run from the date of the Order and not from today's date.

Respectfully submitted,

Kathleen C. Weidenhammer

Kathleen C. Weidenhammer
Administrative Assistant

County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

February 23, 1995

J. Carroll Holzer, P.A.
HOLZER and LEE
305 Washington Avenue, Suite 502
Towson, MD 21204

Re: Case No. 94-452-XA
Baltimore Gas & Electric Co. -
Ivy Hill Substation

Dear Carroll:

As you've requested, enclosed is a copy of the minutes taken at the Board's public deliberation of the subject case on February 22, 1995.

Very truly yours,

Kathleen C. Weidenhammer
Administrative Assistant

Enclosure

Printed with Soybean Ink
on Recycled Paper

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning

Suite 112 Courthouse
400 Washington Avenue
Towson, MD 21204

(410) 887-4386

January 27, 1995

Master Anthony Fusco
27 Salt Hill Court
Timonium, Maryland 21093

Dear Master Fusco:

Thank you for your recent letter regarding the proposed power station located near your father's house at 5 Forward Court.

Although your letter was directed to me, the case involving the proposed power station is actually before the Baltimore County Board of Appeals. The Board is an agency which is responsible for reviewing decisions from both my office and other County agencies. The Board is now considering my previous decision which approved the power station.

From my understanding of the proceedings before the Board, they have just recently concluded a lengthy hearing regarding this project. At that hearing, all persons with an interest in the matter were allowed to testify and present evidence and information in support of their position. I am sure that your father and his neighbors were given an opportunity to voice their opinions.

I expect that the Board will issue a decision shortly. Their decision will be based upon all of the facts and information presented to them.

Thank you for your interest in this matter. It is gratifying to see citizens take an interest in the zoning process in Baltimore County, particularly citizens of your age.

Please do not hesitate to call me if you would like to discuss this matter further.

Very truly yours,

Lawrence E. Schmidt
Zoning Commissioner

LES:mmn

cc: Board of Appeals of Baltimore County w/ attachment

Printed with Soybean Ink

27 Salt Hill court
Tiomumon, MD 201930
January 13, 1995

400 Washington Ave
Towson, MD 21204

Dear Zoning Commity,

My name is Anthony Fusco. I'am 12 years old. I go to Ridgely Middle school. On the weekend I vist my dad. He lives at 5 Forward court. You said that you going to make a the power statoin there bigger. Right now you can't even tell that it is there. According to you you want to make alot bigger. When you make it it is going to make the property value go down. It will all so make it unsafe for the childern to play around there. I don't know much about these station but I think it still going to make alot of noise to make and won't it make some pollition. I not sure about this but wouldn't it do that. I close now saying please don't don't make it any bigger that it is now if not the goodness of your heart but for the residents there.

Sincerly,

Anthony Fusco

Anthony Fusco

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY 91-132-XA

Towson, Maryland

District 7th Date of Posting 7/24/91

Posted for: Appeal

Petitioner: Bethlehem Steel & Penn Realty Co. et al

Location of property: S/E/Cor. Ridge Rd & Steel Court

Location of Signs: Facing Ridge Rd approx 50' from Bay Drive

Remarks:

Posted by _____ Date of return: 7/26/91
Signature

Number of Signs: 1

C.A. Dutch Ruppersberger, III
Baltimore County Executive

Executive Office
400 Washington Avenue
Towson, Maryland 21204
(410) 887-2450
Fax: (410) 887-5781

February 1, 1995

Ms. Pam Fallo
"Friends of the Ridge"
1 Joel Court
Reisterstown, MD 21136

RE: Ivy Hill Substation
Zoning Case No. 94-452-XA

Dear Ms. Fallo:

This letter is written in response to a referral from the Honorable Paul S. Sarbanes, United States Senator, regarding the proposal by the Baltimore Gas and Electric Company (BGE) to expand the Ivy Hill substation which is located at the intersection of Ridge Road and Joel Court in the Chestnut Ridge area of Baltimore County.

Public utility service centers are one of the uses listed in the Baltimore County Zoning Regulations that are not permitted as a matter of right in a residential zone; such use may only be permitted by special exception. All of the uses permitted by special exception are considered to be proper use of the land, but have certain aspects which call for special consideration of each proposal. Because the uses could be detrimental to the public welfare under certain conditions, the uses listed as special exceptions are permitted by law only if granted by the zoning commissioner, and subject to an appeal to the board of appeals (board).

As you know, the board has recently concluded five days of testimony on this matter as a result of an appeal of the zoning commissioner's decision to grant a special exception and variance to BGE for the construction of an outdoor electric public utility service center in an R.C. 5 zone. Closing arguments, in the form of written memoranda, are due to be submitted to the board by February 6, 1995; thereafter, a date to deliberate this matter in a public forum will be scheduled.

Neither the executive nor the legislative branch of government may interfere with a process that is adopted by law to culminate in a quasi-judicial forum. The law clearly establishes the parameters for the zoning commissioner, acting as an independent officer of the county, to have sole authority to grant the above-referenced special exception. Similarly, the board is authorized by the Baltimore County Code to review the zoning commissioner's decision upon appeal.

With this is mind, I can assure you that this project will receive a complete and thorough review by the board based on the record and testimony presented to them. Baltimore County will consistently review all proposals within the confines required by law; additionally, proposals will be scrutinized with an emphasis toward the issues and concerns raised by the community.

I remain confident that the board will act in the best interests of the citizens of Baltimore County as they consider issues that are so critical to the welfare of the community. Thank you for sharing your concerns with Senator Sarbanes and me as we await the board's decision.

Sincerely,

C. A. Ruppersberger

C.A. Dutch Ruppersberger, III
County Executive

CADR:jvm
c: Hon. Paul S. Sarbanes

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director **DATE:** June 18, 1999
Permits & Development Management

FROM: Charlotte E. Radcliffe
County Board of Appeals

SUBJECT: Closed File:
Case No. 94-452-XA / Baltimore Gas & Electric Co.

Since no appeal was taken from Board's Order (on remand from the Circuit Court) issued April 22, 1999, in the above captioned case, we are hereby closing our file and returning same to you herewith.

Attachment (Case No. 94-452-XA - contained in box)

4331-94

8/29/94

COMMITTEES:
ECONOMIC AND ENVIRONMENTAL AFFAIRS
CHAIR-HEALTH SUBCOMMITTEE

SENATE CHAIR
ADMINISTRATIVE, EXECUTIVE, LEGISLATIVE REVIEW COMMITTEE

JOINT COMMITTEE ON HEALTH CARE DELIVERY AND FINANCING

NATIONAL CONFERENCE OF STATE LEGISLATURES

SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401-1991

PAULA C. HOLLINGER
11 DISTRICT
BALTIMORE COUNTY
HOME ADDRESS:
55 RAISIN TREE CIRCLE
BALTIMORE, MD 21208-1364
(410) 484-4888
DISTRICT OFFICE:
SENATE OFFICE BUILDING
ROOM 206
ANNAPOLIS, MARYLAND 21401-1991
TELEPHONE (410) 841-3131

August 29, 1994

Arnold Jablon
Director
Zoning Administration & Development
Management Office
111 W. Chesapeake Avenue
Towson, Maryland 21204

Dear Mr. Jablon:

I am writing in support of the Hunt Cup Hill Association's opposition to the expansion of Baltimore Gas & Electric's substation on Ridge Road.

I was surprised to learn that BGE did not notify the community appropriately before the hearing on the project on June 21 and subsequent granting of their petition on June 24. I understand this petition has now been appealed by the community.

I agree with the community's assessment that a substation some seventeen times the size of the present one does not belong in a residential area. With Hunt Valley 's industrial area only three miles away, I cannot understand why the Ridge Road site was chosen.

The community has cited several reasons for their opposition: 1) a health threat to the community due to increased emission of EMF, 2) a threat to the children of the community, 3) an environmental hazard to wildlife, and, 4) would give a toehold in the area for future industrial development. I agree with their analysis of this issue and look forward to working with them to successfully appeal BGE's petition. I hope the county will re-think this proposal and listen carefully to the concerns of the residents who will be affected by such invasive construciton.

Sincerely,

Paula C. Hollinger

pch/lt
cc: Jack Lodge, BGE
Margaret Worrall

RECEIVED
AUG 30 1994
ZADM

BALTIMORE
GAS AND
ELECTRIC

CHARLES CENTER • P.O. BOX 1475 • BALTIMORE, MARYLAND 21203-1475

MARTHA A. DELEA
ATTORNEY
(410) 234-5697

430

May 6, 1993

91-452-XA

VIA COURIER

Robert A. Hoffman, Esquire
Venable, Baetjer and Howard
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21285-5517

Re: Ivy Hill Substation

Dear Rob:

Enclosed herewith for filing are the following documents:

1. Six signed copies of the Petition for Special Exception.

2. Six signed copies of the Petition for Variance.

3. Twenty copies of the drawing entitled "Plat To Accompany Petition For Zoning Special Exception And Variances".

4. Four copies of each of the metes and bounds descriptions for the properties.

It is my understanding from Barbara that you already have a copy of the 200 foot scale map marked NW17E; therefore one in not included in this package.

Please let me know when the Petitions have been accepted for filing by the Zoning Office.

Very truly yours,

Martha

Martha A. Delea

Enclosures
CC: Monica McGrady

HOLZER & LEE

LAW OFFICES
J. CARROLL HOLZER, PA
THOMAS J. LEE
J. HOWARD HOLZER
1907-1989

TOWSON OFFICE
305 WASHINGTON AVENUE
SUITE 502
TOWSON, MD 21204
(410) 825-6961
FAX: (410) 825-4923

CARROLL COUNTY OFFICE
1315 LIBERTY ROAD
ELDERSBURG, MD 21784
(410) 795-8556
FAX: (410) 795-5535

July 20, 1994

HAND DELIVERED

Mr. Arnold Jablon, Director
Zoning Administration and Development Management
County Office Building
111 West Chesapeake Ave.
Towson, MD 21204

Re: Appeal of Case No. 94-452-XA

Dear Mr. Jablon:

On behalf of my clients Nigel Howse, Robert O'Hara, Ron Hanley, Carl Follo, Robert Rytter, Ira Brown, Dieter Langendorf, Andrew Lansman, Jeffrey Bozell, Bruce Pitcher, Joe Czajkowski, and Friends of the Ridge, I hereby note an appeal of the decision of the Zoning Commissioner in the above referenced Petitions for Special Exception and Zoning Variance decided on June 24, 1994.

On behalf of my clients I am submitting a check in the amount of $460.00 to cover the cost of the appeal to the County Board of Appeals. If you have any questions, please call me at 825-6961.

Very truly yours,

J. Carroll Holzer

J. Carroll Holzer

JCH:tll

7/21/94 mw
ZONING OFFICE

OBER, KALER, GRIMES & SHRIVER

ATTORNEYS AT LAW

120 EAST BALTIMORE STREET

BALTIMORE, MARYLAND 21202-1643

(410) 685-1120

FACSIMILE (410) 547-0699

CABLE "RITNEY"

TELEX 8-7774

MARC K. COHEN

DIRECT DIAL NUMBER

(410) 347-7663

OFFICES IN

WASHINGTON, D. C.

NEW YORK

NEW JERSEY

September 13, 1994

County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

Attention: Kathleen C. Weidenhammer, Administrative Assistant

RE: Case No. 94-452-XA
Baltimore Gas & Electric Co./Ivy Hill Substation

Dear Ms. Weidenhammer:

Please withdraw my appearance as counsel for Protestant R. Hanley in the above-captioned case. It is my understanding that this Protestant is now represented by Mr. J. Carroll Holzer.

Should you have any questions or require any additional information, please feel free to communicate with me at any time.

Very truly yours,

Marc K. Cohen

MKC:th

cc: Ms. Rosemary Hanley
J. Carroll Holzer, Esquire

MKC:307473.1:09/13/94

96 SEP 14 [illegible]:00

JOHN C. ERICKSON
13008 HEIL MANOR DRIVE
REISTERSTOWN, MARYLAND 21136

August 22, 1994

The Board of Appeals of Baltimore County
400 Washington Avenue
The Old Courthouse
Room 49
Towson, MD 21204

RE: Case Number 94-452-XA

Dear Sirs:

I live in the area where the proposed substation improvements are being requested by Baltimore Gas & Electric. I fully support BG&E's efforts to upgrade the electric power for our region. I believe it is ludicrous that a group of "not in my backyard" protesters would attempt to block the good faith efforts of BG&E to keep our power requirements at proper levels. I am sure these protesters are the first to scream when they experience brownouts and outages on the extreme temperature days. BG&E has been a responsible provider of power for years. Let us trust their technical judgment and assist them in every possible way to get on with their work. With a few less lawsuits and protests, our electric costs might be more reasonable.

Sincerely,

John C. Erickson

cc: Carroll Holzer, Esq.
305 Washington Avenue, Suite 502
Towson, MD 21204

Baltimore Gas & Electric Company
Clare Miller, Local Affairs Director
31 West Lexington Street
Baltimore, MD 21201

Dutch Ruppersberger (Councilman)
400 Washington Avenue
Old Courthouse, 2nd Floor
Towson, MD 21204

Helen Bentley (State Congresswoman)
200 E. Joppa Road, Suite 400
Towson, MD 21286

Janice Piccinini (State Senator)
204 River Way Court, #104
Owings Mills, MD 21117

94 AUG 24 PM 12:12

VENABLE, BAETJER AND HOWARD

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

210 ALLEGHENY AVENUE

P.O. BOX 5517

TOWSON, MARYLAND 21285-5517

(410) 494-6200

FAX (410) 821-0147

BALTIMORE, MD
WASHINGTON, D.C.
MCLEAN, VA
ROCKVILLE, MD

RICHARD M. VENABLE (1839-1910)
EDWIN G. BAETJER (1868-1945)
CHARLES MCH. HOWARD (1870-1942)

ROBERT A. HOFFMAN

WRITER'S DIRECT NUMBER IS

(410) 494-6262

July 27, 1994

94 JUL 27 PM 7:06

HAND-DELIVERED

County Board of Appeals of
Baltimore County
Old Court House
400 Washington Avenue
Towson, Maryland 21204

Attn.: Ms. Kathy Weidenhammer

Re: Baltimore Gas & Electric Co. - Ivy Hill
Case No. 94-452-XA

Dear Ms. Weidenhammer:

On behalf of our client, Baltimore Gas & Electric Co., I am writing to inform the Board that the I believe that the hearing for this matter may well take more than one day. Accordingly, I would respectfully request that two or three consecutive hearing dates be scheduled.

Should you have any questions, please do not hesitate to call. I thank you for your consideration of this matter.

Sincerely,

Rob Hoffman BY: GPW

Robert A. Hoffman

RAH/dok

cc: J. Carroll Holzer, Esq.
Martha A. Delea, Esq.

Falls Road Community Association

P.O. Box 555 Brooklandvile, Maryland 21022

ESTABLISHED
1947

February 11, 1995

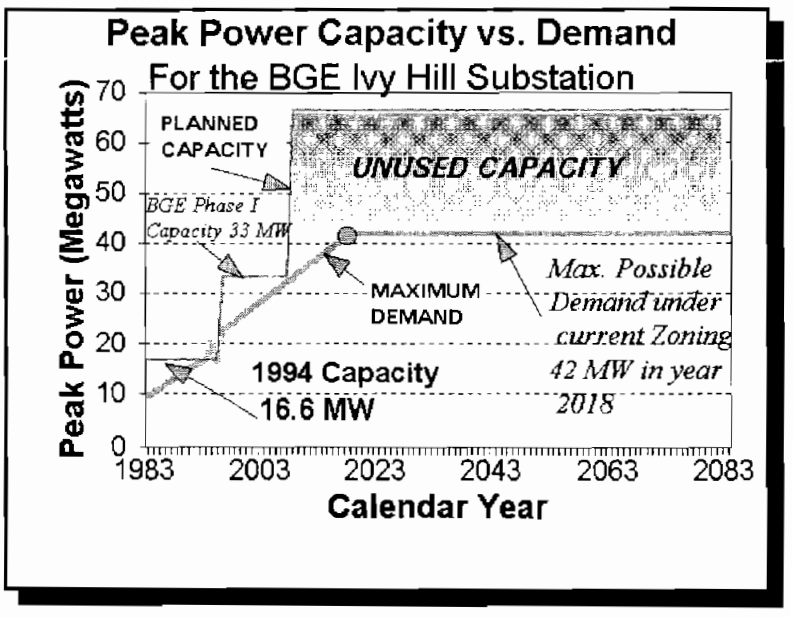
Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Ave.
Towson, MD 21204

Gentlemen,

This is in reference to case 94-452-XA regarding the request by the Baltimore Gas & Electric Co. for a special exception to upgrade their Ivy Hill power distribution substation. You may recall that the Board of Appeals called me, as the representative of the Falls Road Community Association to testify as a "friend of the Court" on the first day of the hearing, October 4, 1994. At that time I stated the position of the Falls Road Community Association, Inc. which was: "not opposed to Phase I but opposed to Phase II" of the BGE plan. That position remains the same today.

In my testimony I stated that it was the opinion of the FRCA Board of Directors that this station was over-designed. That opinion at that time was based on a general familiarity with our community and the extent that FRCA anticipated further development could occur given the limitations imposed by existing zoning. At that point in time BGE had not seen fit to provide the community with sufficient information regarding the service area, the number of customers now served, the historical growth rate (new homes being constructed), and other factors which would permit an independent evaluation of future potential growth.

On the second day of the hearing, January 10, 1995 BGE witness James Ryan provided sufficient data to permit such an assessment. The 100 year chart shown to the right summarizes the impact of the BGE plan in terms our community can relate to. It was evident from witness Ryan's testimony that *BGE did not take into account in any way the limitations that zoning imposes on the maximum number of homes.*



NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204 or Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

Case: #94-452-XA
(Item 430)
Ivy Hill Substation
S/W corner of intersection of Ridge Road and Joel Court
8th Election District
3rd Councilmanic
Legal Owner, Tracts A & C:
Baltimore Gas & Electric Company
Legal Owner, Tract B:
Frederick R. Vinup and Ann L. Vinup
Hearing: Tuesday, June 21, 1994 at 2:00 p.m. in Rm. 118, Old Courthouse.

Special Exception for an outdoor electric public utility service center (electric substation) and to amend the Fox Ridge Estates Final Development Plan, if necessary. **Variance** to permit structures as close as zero feet from interior lot lines in lieu of the required 50 foot building setback.

LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

NOTES: (1)Hearings are Handicapped Accessible; for special accommodations Please Call 887-3353.
(2)For information concerning the File and/or Hearing, Please Call 887-3391.
5/325 May 26.

CERTIFICATE OF PUBLICATION

TOWSON, MD., May 27, 1994

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on May 26, 1994.

THE JEFFERSONIAN,

A. Hennessy

LEGAL AD. - TOWSON

Falls Road Community Association
P.O. Box 555 Brooklandvile, Maryland 21022

ESTABLISHED
1947

September 16, 1994

Chairman
Board of Appeals for Baltimore County
111 West Chesapeake Avenue
Towson, MD 21204

Dear Sir,

This letter is to present the position of the Officers and Directors of the Falls Road Community Association (FRCA) with regard to the request for Special Exception by the Baltimore Gas & Electric Co. for the upgrading of their Ivy Hill power substation, case number 94-452-XA scheduled to be heard by the Board on October 4 and October 6, 1994.

Attached you will find the original and a duplicate copy of the necessary papers to comply with Paragraph 2 of Rule 8 of the Board of Appeals which authorize me to testify on this matter. I am submitting these in advance due to a potential travel conflict which I have which may not allow me to testify personally. Please enter the position of our Association on this matter into the record as clearly enunciated in the attached Resolution in the event I am unable to attend.

Sincerely,

A. Douglas McComas, Executive Director

94 SEP 23 AM 11:56

AFFIDAVIT

STATE OF MARYLAND
BALTIMORE COUNTY, SS
September 15, 1994

TO WIT:

I hereby swear upon penalty of perjury that I am currently a duly elected member of the Board of Directors of the Falls Road Community Association, Inc.

A. Douglas McComas, Executive Director

ATTEST: **The Falls Road Community Association, Inc.**

Dasha Bindler, Secretary

H. George Meredith, Acting President

AFFIDAVIT

STATE OF MARYLAND
BALTIMORE COUNTY, SS
September 15, 1994

TO WIT:

I hereby swear upon penalty of perjury that I am currently a duly elected member of the Board of Directors of the Falls Road Community Association, Inc.

A. Douglas McComas, Executive Director

ATTEST: **The Falls Road Community Association, Inc.**

Dasha Bindler, Secretary

H. George Meredith, Acting President

THE FALLS ROAD COMMUNITY ASSOCIATION, Inc.

P.O. Box 555, Brooklandville, Maryland 21022

RESOLVED: That the position of the Falls Road Community Association, Inc. as adopted by the Board of Directors on the zoning matter related to the proposed upgrade of the IVY HILL SUBSTATION by the Baltimore Gas and Electric Co., Inc.

The Board of Directors supports the PHASE I upgrade which would approximately double the capacity of the existing facility as being necessary and desirable to the ability of BG&E to provide adequate power to the community served. However it is opposed to the inclusion of the PHASE II upgrade in this Special Exception (which would quadruple the present capacity of this facility.) Specifically the Board of Directors at its monthly meeting on September 15, 1994 moved as follows:

> "As an organization we will not oppose the proposed Phase I but ask the Board of Appeals to eliminate the request for any construction beyond that required by Phase I, and that the perimeter and supporting infrastructure be reduced approximately 50% in order that the existing woodland be preserved to the greatest extent possible."

AS WITNESS OUR HANDS AND SEAL THIS 15th day of September 1994.

ATTEST: **The Falls Road Community Association, Inc.**

Dasha Bindler, Secretary

H. George Meredith, President

June 28, 1995

County Executive C.A. "Dutch" Ruppersberger
400 Washington Avenue
Old Court House
Towson, MD

Dear Mr. Ruppersberger;

Why are you and Mr. Jablon so anxious to proceed with the construction of the Ivy Hill Substation? Mr. Ruppersberger, what role do you play in bringing this nightmare to our community? Many of us are becoming extremely disheartened, disillusioned and frustrated with our judicial system as well as our elected representatives.

We hang onto the slim hope that one of our elected officials will be able to stop this until we are able to exercise our rights in the judicial process. You should know **the following new information has come to light.**

1. **The site plan that was approved by the Baltimore County Board of Appeals shows no structure higher than 14ft. 6in., with most structure being 13ft. 6 in. or less.** These specs were also verified by Ms. Monica McGrady, BGE Project Manager. in testimony before the Baltimore County Board of Appeals on October 4, 1994. (Exhibit II) **The actual construction plans filed by BGE, with permits issued by Mr. Arnold Jablon, Director - Department of Permits and Development Administration in Baltimore County, show that these structures are now 15ft 9in.** (See comparison - Exhibit III) The Board ruled that the initial landscaping plan was inadequate to screen structures which are 14 1/2 feet high. Clearly, structures which are 23% taller will be even more difficult to hide. So much for that...BGE decided to basically say "in your face".

2. **The site plan that was approved by the Baltimore County Board of Appeals shows a large vacant area at the center section of the subject site.** We asked several times; why does this facility have to be so big...BGE always evaded the question...now we know ***some*** of the reasons why. **It is very clear on the construction plans that were approved by ZADM that this area is in reality to be converted into a permanent garage/storage area for BGE mobile transformers.** The mobile equipment will be 45ft. X 10ft. It is obvious that this was BGE's intent from the very beginning. This is **INCREDULOUS.** One of our main concerns throughout this entire process has been that once BGE received the approval BGE could do anything they wanted. From the beginning we believed that the actual intended use of the expanded substation was not to supply electricity to the existing service area. County figures show that the unit growth will grow by only 4% to the year 2010. BGE plans to expand capacity to 400%. (See Chart, Exhibit IV attached) BGE does not need to expand the capacity of this substation to meet demand caused by the 4% growth, a conclusion drawn from their own testimony. Once again BGE said "in your face". What next? A nuclear power plant.

BGE does not have to proceed with construction plans. BGE Engineer Lawrence Taylor testified on October 4, 1994 before the Baltimore County Board of Appeals that a mobile

EXHIBIT I

IN THE CIRCUIT COURT	*	
FOR	*	
BALTIMORE COUNTY	*	
	*	
PETITION OF: Friends of the Ridge, individuals Mr. & Mrs. Nigel Howse, Mr. & Mrs. Robert O'Hara, Mr. & Mrs. Ron Hanley, Mr. & Mrs. Carl Follo, Mr. & Mrs. Robert Rytter, Mr. & Mrs. Ira Brown, Mr. & Mrs. Dieter Langendorf, Mr. & Mrs. Andrew Lansman, Mr. & Mrs. Jeffrey Bozel, Mr. & Mrs. Bruce Pitcher, and Mr. & Mrs. Joe Czajkowski at 305 Washington Avenue, Suite 502, Towson, Maryland 21204	*	
	*	
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY 400 Washington Avenue, Room 49 Old Courthouse Towson, Maryland 21204	*	Civil Action Case No.: 03-C-95-5315
	*	
IN THE MATTER OF: THE APPLICATION OF BALTIMORE GAS & ELECTRIC CO. (IVY HILL SUBSTATION) FOR SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE SOUTHWEST CORNER OF RIDGE ROAD AND JOEL COURT 8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT Case No.: 94-452-XA	*	

* * * * * * * * * * * * * * *

EX-PARTE INJUNCTION TO STAY OPERATION OF PERMITS

Petitioners Friends of the Ridge and individuals Mr. and Mrs. Nigel Howse, Mr. and Mrs. Robert O'Hara, Mr. and Mrs. Ron Hanley, Mr. and Mrs. Carl Follo, Mr. and Mrs. Robert Rytter, Mr. and Mrs. Ira Brown, Mr. and Mrs. Dieter Langendorf, Mr. and Mrs. Andrew Lansman, Mr. and Mrs. Jeffrey Bozel, Mr. and Mrs. Bruce Pitch r, and Mr. and Mrs. Joe Czajkowski, by and through their attorney, J. Carroll Holzer and Holzer and Lee, pursuant to Rules 7-205 and BB

LAW OFFICE
HOLZER AND LEE
305 WASHINGTON AVENUE
SUITE 502
TOWSON, MARYLAND
21204
(410) 825-6961
FAX: (410) 825-4923

72, fil this Motion to Stay the Operation f Permits from the Baltimore County Department of Licensing and Permits in c nnection with expansion of the BGE substation at 1821 Ridge Road, Ivy Hill. The application of Baltimore Gas and Electric Company, case Number 94-452-XA was tried and heard in five (5) days of testimony bef re the County Board of Appeals which rendered its decision on May 31, 1995 Ordering that BGE's Petition for Special Exception for an electrical substation in an R.C. 5 zone, and their Petition for Variance be granted.

On or about June 14, 1995, Baltimore County Department of Licenses and Permits issued a grading permit for subject BGE site at 1821 Ridge Road, permit number B237378. On June 21, 1995, th County Department of Licenses and Permits issued permit number B237372 to construct 11 foundations for the substation addition.

On June 16, 1995, Petitioners filed a Petition for Judicial Review, case number 03-C-95-5315, from the decision of the County Board of Appeals (CBA). Petitioners will raise valid issues before the Circuit Court, including the need to amend the final development plan for the substation that would be required to g to the County Planning Board. The CBA erred as a matter of law in granting BGE's Petition for Variance because the utility failed t establish the "uniqueness" of this site which would permit th application of the practical difficulty, or unreasonable hardship standard as described in Cromwell v. Ward, 102 Md. App. 691 (1995). Additionally, the CBA erred in granting the Special Exception when

it failed to consider all the tests set forth in Sec. 502.1 and Sec. 411 of the Baltimore County Zoning Regulations.

Petitioners will be irreparably harmed by the operation of said grading and foundation permits because the buffers and screening provided by the mature stand of 80-year old hardwood trees between the BGE substation and Petitioners' residences are being cut down in large numbers reducing the value of Petitioners' real property, significantly diminishing the peaceful enjoyment of their residential neighborhood. The large number of tall hardwood trees on the .7 acre site between the BGE substation and residential homes that have already been cleared, with many stumps sticking out of the ground is an obvious blight and major hardship to the adjoining property owners. With the grading, cutting and removal of trees comes a constant flow of trucks, heavy equipment, parked vehicles owned by BGE and their subcontractors along Ridge Road, impeding neighbors' vehicle access to Joel Court, along with loud construction noises emanating from the substation commencing at 7 a.m. are a nuisance and dramatically reduces adjoining property owners from fully utilizing their homes. See Affidavit of Carol Rytter, Exhibit A, attached hereto and incorporated herein.

Affidavit of Rosemary Hanley, attached hereto and incorporated herein as Exhibit B, says that she is being permanently injured by construction of the substation pending its appeal because of the diminution of the value of her home having a 22,100 square feet electrical facility operating within ten feet of her property line. She believes that construction of the substation with electrical

equipment, cables, and support structures will likely be a permanent feature in her neighborhood even if the Courts r vers the CBA.

Excavation, stripping of mature hardwood trees, and construction of the expanded substation in a R.C. 5 zone pri r t review by the Circuit Court will create a use incompatible with the adjoining property, irreparably harming Petitioners. Petitioner Pamela Follo through her Affidavit attached hereto as Exhibit C, testifies that on June 19, 1995, she listed her house at 1 Joel Court for sale. Her house was appraised at a value of $425,000 prior to the issuance of the permits and construction and she has been advised by several real estate agents that she and her husband could expect to get only 75% of the appraised value, a reduction of $106,250, because of the construction and substantial increase in size of the BGE substation. This is both immediate and substantial harm. Carl Follo, through his affidavit attached hereto as Exhibit D, says that he and his wife, Pamela, are suffering immediate harm by the expansion of the substation because he will be unable to attract interest from prospective buyers to his house with the cutting down of so many mature hardwood trees, operation of trucks, heavy equipment, grading, and erection of the planned electric substation this summer. Issuance of the permit to construct 11 concrete foundations and work to perform same will cause immediate and irreparable harm to petitioners because it sets in m tion placing upon the substation site electrical equipment, lines and superstructures necessary to generate the requested electricity

despite the fact your Petitioners hav filed an appeal to this Court challenging the CBA's approval of the variances and special exception.

Petitioner Ira Brown of 5 Joel Court through his affidavit attached hereto as Exhibit E, testifies that BEG's proceeding with plans to dramatically expand the substation has caused him severe anxiety and frequent panic attacks. The demolition of mature trees, exposing the substation, and the realization that the greatly enlarged facility will encroach upon residential property, permanently reducing the value of his home, making it impossible to get full value for his home.

The Petition for Judicial Review before the Circuit Court has a likelihood of success based on the legitimate legal issues raised and the facts preserved in the record.

Petitioners respectfully request that any requirement for posting bond be waived.

J. Carroll Holzer
Holzer and Lee
305 Washington Avenue
Suite 502
Towson, Maryland 21204
(410) 825-6961
Attorney for Petitioners

94-452-XA

BG & E /IVY HILL SUBSTATION
Exhibit No.: Pet. #2

Taken for purpose of duplication
(to the COB)

BY: Sterling Leese 6/23/95
Sterling Leese
HOLZER & LEE

RETURNED: 6/23/95
#2

Exhibit No.: Pet. #3

Taken for purpose of duplication
(to the COB)

BY: Sterling Leese
Sterling Leese
HOLZER & LEE

RETURNED: 6/23/95
#3

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the 22nd day of June 1995, a copy of the foregoing Ex-Parte Injunction to Stay operation of Permits was sent via facsimile transmission, to Robert Hoffman, Esquire, Venable Baetjer and Howard, 210 Allegheny Avenue, P.O. Box 5517, Towson, Maryland 21204.

J. Carroll Holzer

J. Carroll Holzer

A:\Ridge.INJ

You're certainly welcome to go back and get something to look at.

A. I don't have it with me.

Q. You don't have it with you. Okay. Do you know the amount of impervious surface that you're adding to the existing three tracts?

A. No, I don't know.

Q. Did you try to calculate it?

A. It will be calculated by the two engineers I have contracted. We comply with all the regulations of Baltimore County.

Q. But you can't tell us right now what you'r substituting in terms of the forest areas with impervious surface?

A. No.

Q. What will the base or all of these various transformers and so forth be? The area that is marked in white, is that to be gravel?

A. That is crushed stone.

Q. When you originally testified about the various heights of the components to this substation, it app ared

over

Exhibit III

Differences in Height of Structures

(Approved Board of Appeals Plan vs Building Permit)

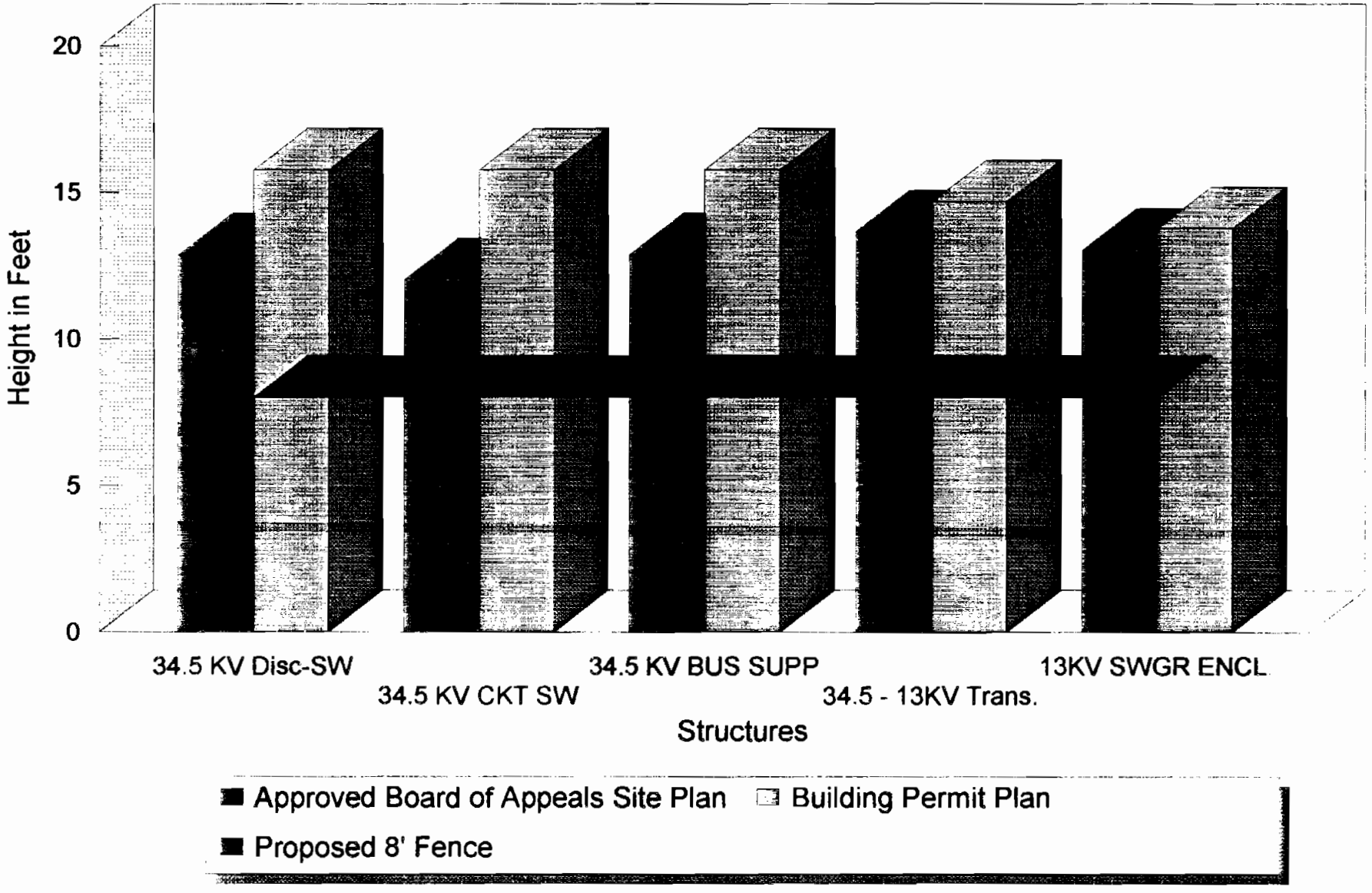
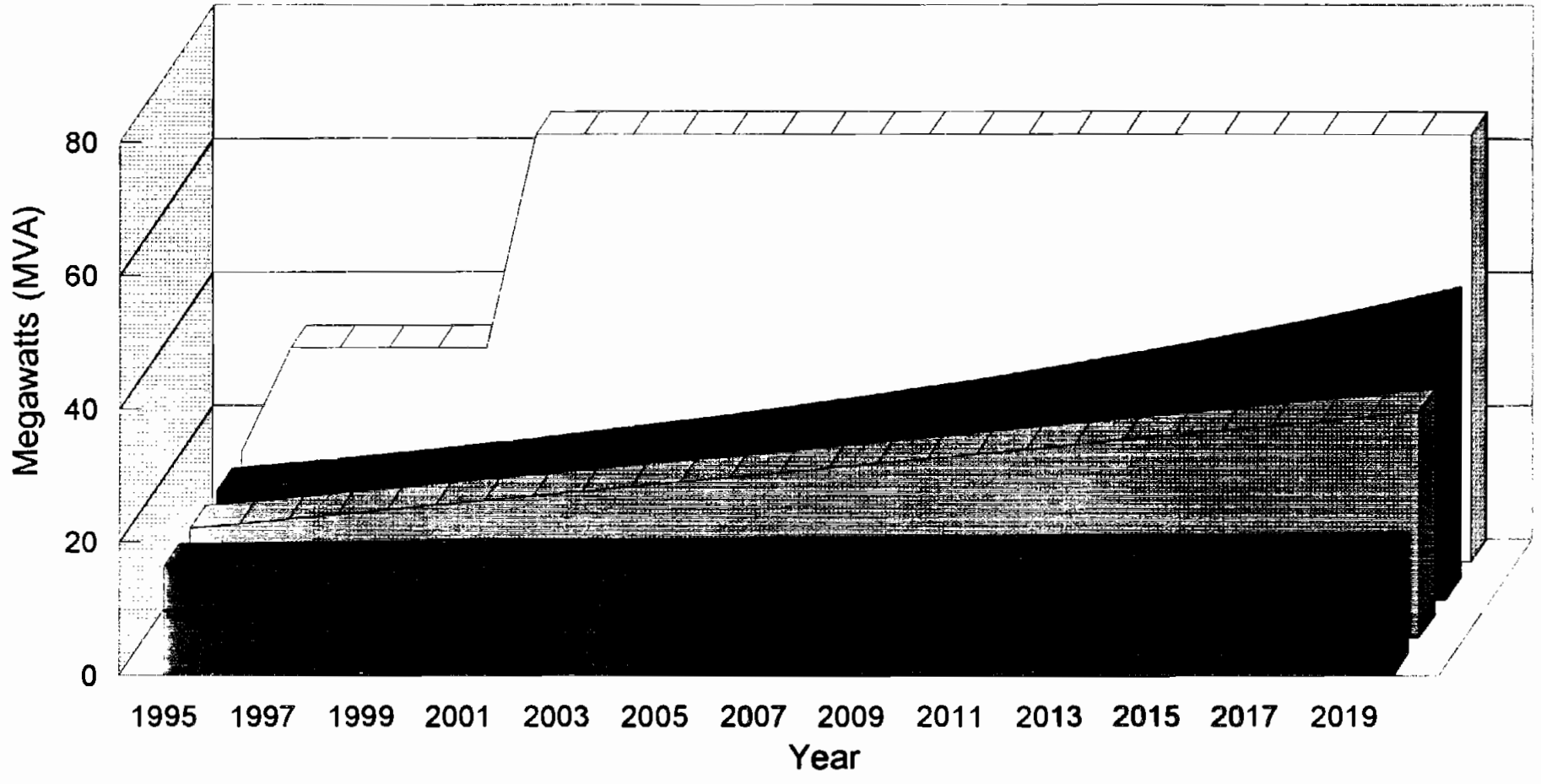


Exhibit IK

Need Comparisons vs Capacity



assumes 75 units = .7megawatt

Exhibit V

rating it the same. I guess that means it can do the same?

A. We like to feel we know all things, but we don't.

Q. I think there are a lot of people in this audience that might agree with you.

Now, insofar as the concerns that you had for 1995, the winter of 1995, how at the present time are you anticipating resolving that matter if the Ivy Hill substation is not yet on line?

A. Well, my preferred plan if the substation is not available at the time is to put in a mobile substation at the Ivy Hill site which would have enough capacity to supply the demand for load.

Q. What does that mobile transformer consist of?

A. Well, it consists of a high voltage switch, a transformer on a trailer type assembly, controls and protection equipment, and a low side abraiter (phonetic), which is essentially a fuse.

Q. In addition to that temporary trailer operation, do you have any plans to alleviate or supply power through any other distribution center to this area in the event of another occurrence like in January of 1994?

CORPORATE AFFAIRS

Baltimore Gas and Electric Company
P.O. Box 1475
Baltimore, Maryland 21203-1475

EXHIBIT VI

BGE

December 1, 1994

Dear Neighbor:

Over the past ten months, there have been three outages at our Ivy Hill Substation that are directly related to the age of the equipment. One outage was on the coldest day of 1994. However, the other two, on September 18 and November 4, occurred in mild weather.

Not only is the equipment old, but the replacement parts are obsolete. We cannot buy new parts to fix or replace the ones we have.

In order to assure that there are minimal outages due to the age of the equipment, we may have to roll in a mobile substation (temporary equipment on a trailer) as an emergency measure when the weather turns cold.

We regret any inconvenience this action may cause. As you know we are trying to expand this station with new equipment. Your support of our proposed substation upgrade is appreciated.

If you should have any questions or would like us to meet with your community, please contact me at 234/6543.

Sincerely,

Clare C. Miller

EXHIBIT VII

Friends of Ridge angered by appeals board decision

BY PAT VAN DEN BEEMT

Members of the Friends of the Ridge community group say they are so outraged by Baltimore County Board of Appeals' approval of an enlarged electrical substation in their neighborhood that they pledge to amend county law while seeking to have the decision reversed.

"We will take this appeal as far as we can and we're very serious about pursuing a change in public utility zoning laws," said Carol Rytter after the Board's decision last week.

Rytter is a member of a group that formed this summer to fight Baltimore Gas & Electric Co.'s plans to significantly expand the Ivy Hill substation in her neighborhood near Ridge and Falls Road.

BGE received a special exception from zoning commissioner Lawrence Schmidt in June to add on to a small substation that has been on Joel Court since 1956.

In order to have enough land for the larger facility, BGE purchased a residential lot and a house next to the substation. The house will be razed, giving BGE a total of three acres for the substation.

The zoning commissioner's ruling allowed BGE to build a substation in a residential area. BGE will expand the existing 1,500 square-foot substation to one measuring 19,125 square feet. That decision was appealed by the Friends group to the Board of Appeals.

While BGE says the larger substation is needed to provide electricity to the local service area that is steadily growing, neighbors complained that it would pose a threat to their health, safety, and property values.

After listening to five days of testimony, the three-member board decided unanimously last week to support the special exception.

"Paramount in our decision is the fact that there is already a substation there," said board Chairman William Hackett several days after the decision was announced. "BGE is mandated to provide electricity, and we feel a three-acre wooded site where one already exists is a proper place."

But the Friends group says the board merely "rubber-stamped the zoning commissioner's approval." They will continue the appeal to the Circuit Court.

"We feel the board acted in a cavalier and condescending manner and never really gave our concerns any serious consideration," Rytter said.

BGE spokeswoman Nancy Caplan said the original goal was to have the new substation in service by December, 1995. She noted delays in construction could mean a mobile transformer would have to be brought to the site to handle increased demand next year.

IN THE MATTER OF	*	BEFORE THE
BGE IVY HILL SUBSTATION	*	COUNTY BOARD OF APPEALS
S/W CORNER OF RIDGE ROAD AND JOEL COURT	*	BALTIMORE COUNTY
8th ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT	*	CASE NO. 94-452-XA

* * * * * * * * * * * * * * *

MEMORANDUM IN LIEU OF FINAL ARGUMENT

I.

Statement of the Case

Prots, Friends of the Ridge, and individuals Mr. & Mrs. Nigel Howse, Mr. & Mrs. Robert O'Hara, Mr. & Mrs. Ron Hanley, Mr. & Mrs. Carl Follo, Mr. & Mrs. Robert Rytter, Mr. & Mrs. Ira Brown, Mr. & Mrs. Dieter Langendorf, Mr. & Mrs. Andrew Lansman, Mr. & Mrs. Jeffrey Bozel, Mr. & Mrs. Bruce Pitcher, and Mr. & Mrs. Joe Czajkowski, by J. Carroll Holzer, Holzer and Lee, hereby submit the following Memorandum in Lieu of Closing Final Argument as request d by the County Board of Appeals.

This matter comes before the Board as both a Petition for Special Exception and a Petition for Zoning Variance for the property located on the southwest corner of the intersection of Ridge Road and Joel Court in northern Baltimore County. Within the Petition for Special Exception, relief is requested to approve an outdoor electric public utility service center (electric substation) in an RC-5 zone, pursuant to Section 1A04.2.B.1.1 of the Baltimore County Zoning Regulations (hereinafter B.C.Z.R.) and if necessary, to amend the Fox Ridge Estates (formerly Forewood Property) final development plan. The Petition for Zoning Variance

LAW OFFICE
HOLZER AND LEE
VASHINGTON AVENUE
SUITE 502
TOWSON MARYLAND
21204

(410) 825-6961
FAX (410) 825-4923

PETITION OF: Friends of the Ridge, et al

CIVIL ACTION # 3-C-95-5315

IN THE MATTER OF BALTIMORE GAS & ELECTRIC CO.
(IVY HILL SUBSTATION)

RECEIVED FROM THE COUNTY BOARD OF APPEALS EXHIBITS, BOARD'S RECORD EXTRACT & TRANSCRIPT FILED IN THE ABOVE-ENTITLED CASE, AND ZONING COMMISSIONER'S FILE AND EXHIBITS

Mary Ross

Clerk's Office

Date: 7/13/95

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

June 20, 1995

Ms. Carol Ritter
3 Joel Court
Reisterstown, Maryland 21136

RE: BGE Ivy Hill Substation
8th Election District

Dear Ms. Ritter:

As you know, BGE has applied for and received permits to grade for construction of its Ivy Hill Substation.

These permits have been issued pursuant and subject to a recent Board of Appeals (Board) hearing decision approving the project.

As an appeal to Circuit Court has been filed by an attorney on behalf of many protestants, you request that these permits be rescinded or stayed pending the appeal.

Section 26-209 (e) of the Baltimore County Code states, as follows:

> "While an appeal is pending before the Board, no permit may be issued and no plat recorded in connection with a plan which is the subject of such appeal. If the Board's order is appealed, the appellant may request that the court stay the issuance of a permit or the recordation of a plat pending its decision."

The law does not provide me with the authority to withhold permits once the Board has rendered its decision, providing, of course, that the request for permits comports with the Board's order.

I certainly understand your concern and the issue you raise. If the courts should reverse the Board's decision, BGE will be required to return the property, to the extent possible, to its condition prior to the grading of the property.

I recognize this incongruity. How are mature trees replaced? However, the courts and the law itself do not provide me with the authority to prevent the issuance of otherwise lawful permits, even though an appeal is pending before the courts.

Printed with Soybean Ink

6/29 H
TO LES
J

JOSEPH H. CZAJKOWSKI
6 JOEL COURT
REISTERSTOWN, MD 21136

Mr. Larry Schmidt
Zoning Commissioner
Baltimore City Zoning Commissioner's Office
400 Washington Avenue
Towson, MD 21204

June 29, 1994

94-452 X-A

Re: BG&E Petition
Case #'s 3760-X and 4535-X

Dear Mr. Schmidt:

I am a resident of the Fox Ridge Estates development where BG&E is planning the **MAJOR EXPANSION** of their Ivy Hill sub-station. I reside at 6 Joel Court with my wife, Joann, and two young children. My wife attended the June 21, 1994 hearing regarding the "Special Variance and Exception" requested by BG&E. Had the magnitude of the proposed expansion been properly made public prior to this hearing, many more residents would have been in attendance to express their discontent.

Our family, like others in our development and surrounding developments, is vehemently opposed to BG&E's plan. It makes no sense to jeopardize the health and safety of our families because it is "convenient" for BG&E to use this location. In addition, this dangerous eye sore will have a significantly negative impact on the value of all neighboring homes. With all of the other available, undeveloped farmland in this area, certainly another less intrusive site could be used.

As I understand it, you are responsible for approving or denying BG&E's request. As such, you will also be held accountable by all of the adversely affected families should a decision to approve this project be made. We strongly recommend your denial of BG&E's petition.

Our community is united and committed in preventing this **MAJOR EXPANSION** at this site. We will not simply "roll-over" and accept this expansion. We will not quietly go away if the petition is approved. A rubber stamp, automatic approval of BG&E's plan is unacceptable.

Please advise me in writing of your decision including all supporting rationale.

Sincerely,

Joseph H. Czajkowski

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

No.

DATE _____ ACCOUNT _____

AMOUNT $ _____

RECEIVED
FROM: _____

FOR: _____

_____
VALIDATION OR SIGNATURE OF CASHIER

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

R. W. BOZEL Transfer, Inc.
REFRIGERATED TRUCK SERVICE
2000 HAMMONDS FERRY ROAD • BALTIMORE, MD 21227 • (410) 247-3966 • FAX (410) 247-6849



June 27, 1994

Baltimore County Zoning Commission
4000 Washington Avenue
Towson, MD 21204

Attention: Larry Schmidt

Reference: Case #3760-X, 4535-X
Variance Request for Special Exception

Dear Mr. Schmidt,

On behalf of my fellow residents of Fox Ridge Estates, I am writing this letter in opposition to the special exception request by the Baltimore Gas & Electric Company for the proposed Ivy Hill Substation. We strongly urge you to deny Baltimore Gas & Electric's request for two main reasons.

First, and foremost - Safety. As a parent of three small children myself, as well as a neighbor to many other families with small children, I am deeply concerned with potential safety problems should the proposed substation by constructed. The health hazards associated with living in close proximity to electrical substations have been well documented and reported in newspapers and television alike. While I realize that there have been no conclusive studies done as yet, I , for one, do not feel that the possible health hazard is worth the risk.

Second, Fox Ridge Estates is an upper-middle class neighborhood inhabited by families who have worked hard, saved their money, and purchased homes in a community where they can live in an aesthetically pleasing, safe environment. In many cases, families have sunk their entire savings into their home - an asset that should appreciate in value. The proposed substation jeopardizes this. An eyesore, and a health risk, the proposed substation is a blight on our neighborhood. Without question, this would cause our property value to plummet.

On a personal note, when I purchased my home approximately one year ago I was assured by the builder that the lot now planned for the utility station would only be used to build another single family home. Now I am faced with the prospect of the unsightly Ivy Hill Substation.

Larry Schmidt
Baltimore County Zoning Commission
June 27, 1994
Page Two

In imploring you to deny this request, your consideration of our thoughts and fears will be greatly appreciated.

Respectfully,

Jeffrey B. Bozel

Jeffrey B. Bozel
Vice President

JBB:le

June 27, 1994

L. Schmidt
Zoning Commissioner
Baltimore County
Zoning Commissions Office
400 Washington Avenue
Towson, Maryland 21204

Re: Application by
Baltimore Gas & Electric
System Engineering &
Construction Department
Lexington & Liberty St.
1020 G&E Building
Baltimore, Maryland 21201

Property located in
Election District
3rd Council District
Zoned RC5
Tax Map 50
Parcel #247, 338 & 79
Tract A. Zoning Map D2

Dear Mr. Schmidt:

I wish to register my strong objections to petitions made by the BG&E Co. applying for variance of planning and for special exception to use the residential property to erect an electric substation. I own land next to the proposed unacceptable development and the BG&E Co. have not contacted me, nor the previous owners of the land (the Kircheners) to explain their proposals.

I am therefore requesting you to delay your decision re their applications pending a public and residents meeting which is to be held shortly. Obviously I and many other residents in Joel Court, Fox Ridge, Ridge Road and Gent Road, would prefer you to reject their applications.

Yours sincerely,

N. R. Howse

N. R. Howse
4 Joel Court
Fox Ridge
Reisterstown, MD 21136

Business Phone (410) 525-1800

cc: J. Francomano
Francomano & Karpook, P.A.
Legal Offices
20 S. Charles Street
Sun Life Building
Baltimore, Maryland 21201

VIA FACSIMILE
(410) 887-5708

1 Joel Court
Reisterstown, MD 21136
June 27, 1994

Mr. Larry Schmidt, Zoning Commissioner
Baltimore County Zoning Commissioners Office
400 Washington Avenue
Towson, MD 21204

RE: **BG&E PETITION**
CASE NOS. 3760-X and 4535-X

Dear Mr. Schmidt:

My wife, Pam and I live at 1 Joel Court, Reisterstown, MD, directly across the street from BG&E's Ivy Hill sub-station, which they are planning to expand if you grant them a special exception and variance.

I was unable to personally attend the hearing on Tuesday, June 21, 1994 at 2:00 p.m.. My wife did attend and returned quite upset with BG&E's plan to remove the existing sub-station and replace it with one that is 21,277 square feet. This is over 17 times larger than the existing sub-station which is 1,237 square feet. In BG&E's earlier notification, they presented this project as a minor expansion and indicated they would be building towards the Vinup property on Ridge Road and not towards Joel Court where 11 new homes have been built in the past three years.

I have just received a copy of BG&E revised plan and I am very upset, as are my Joel Court and Ridge Road neighbors. Their plan would bring the 7 foot enclosure fence, topped with barbed wire, within 110 feet of Joel Court. They will have to clear much of the existing woods and would make the enclosure very visible. The 7 foot chain link fence would do nothing to hide the very unsightly and numerous transformers, capacitors and switching structures.

I certainly would not have built my home here if I had known of this massive sub-st[illegible]n, and I'm sure I will be unable to sell my house at anywhere near its current value. I feel the market value on all of the houses in the Fox Ridge Estates (27 houses), as well as scores of houses on Ridge and Falls Roads, will also plummet.

JUN-27-1994 14:16 FROM CLARK LEGAL SERVICES TO 6887S708 P.01

Had more knowledge of BG&E's extensive plan for this sub-station been made available to this community, you would have seen a much larger and more vocal turnout at the hearing. My neighbors are gathering at my home on Monday, June 27, 1994 at 7:00 p.m. to discuss our options and means to communicate our concerns. Many are deeply concerned about the health hazards associated with electromagnetic power lines and transformers, particularly on young children. Some are concerned that the existence of a much larger and visible sub-station will be an attractive nuisance that their young children may try to explore.

All are concerned with the unsightliness of the structures and the signficant decrease in the values of our homes, which to most represent our entire life savings.

I would appreciate your declining BG&E's petition for an exception and variance and ending our nightmare and saving us a nerve racking and costly legal battle.

Sincerely,

Carl Follo

Carl Follo

CF/kld

Zoning Administration &
Development Management
[illegible] Avenue
[illegible], Maryland 21202

Receipt

Number

Date

94-482-XA

SPA CODE 050

FEE 020

EXISTING 080

TOT

CK - BG+E / VINUP

LOC [illegible] WITH ADDEND [illegible]

Please Make Checks Payable To: Baltimore [illegible]

Cashier Validation

RECEIVED
ZONING OFFICE
'05 JUN 30 P 3:28

TO: MR. RUPPERSBURGER

RE: GLYNDON MEWS DEVELOPMENT IN GLYNDON
ASHLEY HOMES
PRESTIGE DEVELOPERS

Glyndon Mews is a proposed development on 18 acres of property owned by the Maryland Diabetic Asso. in Glyndon.

Prestige Developers plan 21 Ashley homes on 10 acres of the property (the other acreage must be set aside). These 1/3 - 1/4 acre lots would be contiguous with properties of an acre or more, all of which are designated historic on the Baltimore County register.

Access would be via Gaskins (a proposed new road the developer wants to build) or Pennington (already in existance and reportedly preferred by the county).

There are several areas of concern which need to be addressed on the county level.

(1) The size of the lots <u>would not be appropriate</u> even though the zoning would allow it. Larger lots (at least 1 acre) would mean that more vegetation could be left for screening. This, I feel, would be acceptable to the community.

(A) Prestige Development feels that the impact on the community would be minimal because of the natural buffer and older growth trees that would screen the developed area so that it would not be seen from Central ave. In fact, the visibility of the new development <u>can not be accurately determined</u> until the homes (price range $200,000 - $250,000) are actually in place

(B) The <u>larger issue</u> is what will happen to the character and integrity of the community. The historically protected area in Glyndon has absorbed the building of at least one new home every year for the 16 years I have lived here without causing a major adverse effect. 21 houses (even if they are not all built the first year) would produce a very different and deleterious result.

(2) The use of Pennington Ave. for access would be a poor choice. This right of way is bounded on both sides by land that is designated historic (National, State, and County). Widening it would be out of character. Improving it would remove a critical strip of old growth vegetation and place the road <u>in very close proximity</u> to existing structures.

RECEIVED
JUL 11 1995
ZADM



6/28

Mr. Ruppenberger,

Thank you for your attention. Community conservation is very much at stake here and we appreciate anything you can do to help us.

M.T.

91 DEC 19 PM 12:06

Dec 15

I'm writing this note in support of the expansion of the Ivy Hill Substation. It seems as though BG+E has purchased more than enough land to surround the station, and plans adequate landscaping surrounding it. Since the substation effects me and my family for effective + efficient service of lights + heat I felt a need to perhaps counteract some of the negativity of such an important service. It's unfortunate that with every positive Change there has to be road blocks. In the letter I recieved on Nov 10 it talked of associations to

met with "Friends of the Ridge" to discuss the situation and they refused. How do they expect to compromise? Meanwhile we could have another winter where we had no electric for almost 24 hour. Where are the other people in this community who support ~~the~~ BG+E? Well I'm one who does support the substation and I'm sure there are many, many more! If I can help, let me know,

Thanks

Abby Stevens
3006 Walnut Ave
Owings Mills, Md 21117
581 5377

BARRY KOH, PH.D.
12110 RIDGE VALLEY DRIVE
OWINGS MILLS, MD 21117
410/252-3180

November 21, 1994

Baltimore County Board of Appeals
Attention: Mr. William Hackett
400 Washington Avenue
Towson, MD 21204

Dear Mr. Hackett:

I am a resident of Chestnut Ridge and recently became aware of BGE's attempt to expand the Ivy Hill Substation. I am also aware that BGE was granted permission to expand the station in June of 1994. However, this permission was appealed by a group of eleven families calling themselves, "Friends of the Ridge."

I would like to make it clear that I, a long-time resident of Chestnut Ridge, am in favor of the substation expansion. I have confidence that BGE has the expertise to recognize that the substation's capacity must be increased. I also feel that the opposition of the Friends of the Ridge is self-serving and not in the best interest of the overall community. I believe these families all purchased their property and built their homes long after the original substation was erected. BGE appears to be going out of their way to accommodate the reasonable concerns of these homeowners in the substation expansion. I object to any further delay in granting approval to BGE.

Sincerely yours,

Barry Koh, Ph.D.

BK/cmw

cc: Clare C. Miller, BGE

W/Chrono/BaltCty-1

Dec 2, 1994

Vince Laudicina
P.O. Box 603
Owings Mills, MD 21117

To: William Hackett

Dear Mr. Hackett:

Certainly my family and I are in favor of BGE being granted the Zoning necessary to expand their Ivy Hill Substation. I can't understand how the 11 or 12 families that appose the enlargment; can, Stand in the way of the other 2000 or so families receiving uninterrupted Services from this facility.

Seems to me that the opposition moved "TO" the nuisance, IF, you can Call the Substation a nuisance. Even if our family lived next to the Substation we would not Consider it a nuisance.

We live on the corner of Greenspring + Walnut Aves. and our Electric Power Comes through the Ivy Hill Substation. Last winter on a very Icy day our power was cut off for 9 hours or so, do to the demand for Electric Power that the Substation Couldn't deliver because it was overloaded.

I certainly hope that Common sense will prevail in this Controversy.

Sincerely Yours
Vince Laudicina

. . . .

> When a person acquires ownership of contiguous non-conforming lots that are delineated as separate tracts on any map, and then builds a single-family structure so that it overlaps both lots, the lots merge into a single tract and are subject to the [Municipal Land Use Law] and its restrictions for future subdivision purposes as long as the structure remains on any part of both lots. Lot 686 cannot recover its separate identity so long as a portion of the house remains where it is. . . .

In *Molic v. Zoning Board of Appeals*, 18 Conn. App. 159, 163-65, 556 A.2d 1049, 1051-52 (1989), which did not involve the zoning doctrine of merger, the court, upholding an agency's finding that no merger had occurred where a swimming pool had been constructed across two parcels of land, nonetheless stated:

> The plaintiffs claimed that all of the property . . . had been merged by use and intent into one parcel, and that the 1984 map that showed three lots was an unapproved subdivision. . . .
>
> An owner of contiguous parcels of land *may merge those parcels to form one tract if he desires to do so.* An intent on the part of the owner to do so may be inferred from his conduct with respect to the land and the use which he makes of it. . . . Intent is a question of fact.
>
> The plaintiffs have cited no authority . . . for the proposition that an owner *must* be deemed to have merged contiguous lots. The one exception we have found . . . is that . . . some zoning regulations . . . may require, either expressly or implicitly, that under certain conditions a nonconforming lot merges with contiguous land owned by the same owner [the zoning concept of the doctrine of merger]. This is an understandable requirement because it furthers the general zoning purpose of eliminating nonconforming lots. . . .

. . . .

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

Drop off
Called RH
needs to be completed.

94-453-XA

ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

Baltimore County Zoning Regulations require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property and placement of a notice in at least one newspaper of general circulation in the County.

This office will ensure that the legal requirements for posting and advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements.

PAYMENT WILL BE MADE AS FOLLOWS:

1) Posting fees will be accessed and paid to this office at the time of filing.

2) Billing for legal advertising, due upon receipt, will come from and should be remitted directly to the newspaper.

NON-PAYMENT OF ADVERTISING FEES WILL STAY ISSUANCE OF ZONING ORDER.

ARNOLD JABLON, DIRECTOR

For newspaper advertising:

Item No.: 430

Petitioner: BG & E

Location: Ivy Hill

PLEASE FORWARD ADVERTISING BILL TO:

NAME: Barbara Armord

ADDRESS: Venable Baetjer & Howard
210 Allegheny Ave, Towson, MD 21204

* PHONE NUMBER: 494-6201

*MUST BE SUPPLIED

Thursday January 12th

Mr.William Hackett
Chairman
Baltimore County Board of Appeals
Towson, Maryland

Dear Sir -

Baltimore Gas and Electric people claim the electrial sub station in this area of Ridge and Falls Road is seriously obsolete and difficult to maintain since at least some replacement parts are hard to get.They also claim some power outages are a result of the condition of this equipment. We strongly support a project to correct this problem.

My wife and I have lived in this immediate area, on Ivy Hill Road, for more than thirty years. We have been very much concerned about power outages, especially in the last ten years. As a matter of fact which I am sure you can check, power was out for a period this very day.

"Friends of the Ridge" say Baltimore Countys growth by the year 2010 is forecast at only 3.6%. This statement does not take into account two much more relevant factors - the growth in this area in the last decade is certainly far in excess of 3.6%, and that growth would certainly seem to promise a high rate for some time to come.

"Friends" contest BGEs statement that a new sub station could enhance property values. On the other hand, what would happen to property values if it becomes true, and generally known that sub station facilities, at a point in the fairly near future, become even more obviously inadequate and hard to keep in repair.

"Friends" suggests that the sub station improvement can be done instead in an industrial park area. Thatis easy to suggest and may even be true but what are the penalties.Is it practical? How much would this cost? Would this distribution equipment from such a sub station beeven more unsightly?

Lets be sure there is a practical and better alternative plan before opposing this one.

Sincerly,

R.Burt Schulze

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

94 OCT 13 AM 10:54

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

John Rolph
NAME

37 WANDSWORTH BRIDGE WAY
ADDRESS

LUTHERVILLE, MD. 21093

RECEIVED
OCT 12 1994
ZADM

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY, Richard J. Little

RICHARD J. LITTLE
NAME

1907 RIDGE ROAD
ADDRESS

REISTERSTOWN MD. 21136

RECEIVED
OCT 12 1994
ZADM

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

Daniel T. Tony Tosco
NAME

5 Forward Ct
ADDRESS

Cockeysville, Md 21030

RECEIVED
OCT 12 1994
ZADM

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

Judy Card
NAME

ADDRESS

2 SPRINGHILL FARM CT.
HUNT VALLEY, MD 21030

RECEIVED
OCT 12 1994
ZADM

Item Number: 430
Planner: JLL
Date Filed: 5-10-94

PETITION PROCESSING FLAG

94-452-XA

This petition has been accepted for filing, after an initial review, and has been placed on the agenda for the zoning advisory committee. However, the following items were found to be missing or incomplete when the petition was included on the agenda by Sophia. A copy of this "flag" will be placed in the case file for the Zoning Commissioner's review. The planner that accepted the petition for filing has the option of notifying the petitioner and/or attorney prior to the hearing or Zoning Commissioner's review of the petition regarding the items noted below. If the petitioner/attorney is contacted by the planner, it is the petitioner's ultimate decision and responsibility to make a proper application, address any zoning conflicts, and to file revised petition materials if necessary. Delays and unnecessary additional expenses may be avoided by correcting the petition to the proper form.

_____ Need an attorney

✓ The following information is missing:

_____ Descriptions, including accurate beginning point
_____ Actual address of property
_____ Zoning
_____ Acreage
_____ Plats (need 12, only ____ submitted)
_____ 200 scale zoning map with property outlined
_____ Election district
_____ Councilmanic district
_____ BCZR section information and/or wording
_____ Hardship/practical difficulty information
✓ Owner's ~~signature (need minimum 1 original signature) and/or printed name and/or address and/or~~ telephone number TRACT "B"
_____ Contract purchaser's signature (need minimum 1 original signature) and/or printed name and/or address
_____ Signature (need minimum 1 original signature) and/or printed name and/or title of person signing for legal owner/contract purchaser
_____ Power of attorney or authorization for person signing for legal owner and/or contract purchaser
_____ Attorney's signature (need minimum 1 original signature) and/or printed name and/or address and/or telephone number
_____ Notary Public's section is incomplete and/or incorrect and/or commission has expired
_____ _____

PET-FLAG (TXTSOPH)
11/17/93

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

William M. Ley
NAME

9 Briarwood Farm Court
ADDRESS

Reisterstown Md 21136

RECEIVED
OCT 12 1994
ZADM

Post Script: This absolutely is the wrong place to build a substation. With all the other open land in Baltimore County, certainly BG&E could find an alternative sight without a problem

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

Josephine A. Eisher

NAME

Walnut Spring Farm, 4331 Black Rock Rd.

ADDRESS

Upperco, MD 21155

RECEIVED
OCT 12 1994
ZADM

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

John Theodore Dee
NAME

1127 Greenway Road
ADDRESS

Cockeysville. 21030

RECEIVED
OCT 12 1994
ZADM

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

Robert A Brown
NAME

13007 Talisman Rd.
ADDRESS

Reisterstown, Md 21136

RECEIVED
OCT 12 1994
ZADM

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

NO

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

Judith A. Marsh
NAME

12420 Falls Road
ADDRESS

Cockeysville, Md.
21030

Bruce D. Marsh

12420 Falls Rd
Cockeysville Md. 21030

RECEIVED
OCT 12 1994
ZADM

TO: PUTUXENT PUBLISHING COMPANY
May 26, 1994 Issue - Jeffersonian

Please foward billing to:

Barbara Ormord
Venable, Baetjer & Howard
210 Allegheny Avenue
Towson, Maryland 21204
494-6201

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204
or
Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 94-452-XA (Item 430)
Ivy Hill Substation
S/W corner of intersection of Ridge Road and Joel Court
8th Election District - 3rd Councilmanic
Legal Owner, Tracts A & C: Baltimore Gas & Electric Company
Legal Owner, Tract B: Frederick R. Vinup and Ann L. Vinup
HEARING: TUESDAY, JUNE 21, 1994 at 2:00 p.m. Rm. 118 Old Courthouse

Special Exception for an outdoor electric public utility service center (electric substation) and to amend the Fox Ridge Estates Final Development Plan, if necessary.
Variance to permit structures as close as zero feet from interior lot lines in lieu of the required 50 foot building setback.

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(2) FOR INFORMATION CONCERING THE FILE AND/OR HEARING, PLEASE CALL 887-3391.

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

94 OCT 17 AM 10:38

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

James Norman
NAME

12909 Falls Rd
ADDRESS

Cockeysville MD 21030

RECEIVED
OCT 14 1994
ZADM

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

Mrs. Edith B. Tolley
NAME

7 Hickory Hill Rd.
ADDRESS

Cockeysville 21030

94 OCT 17 PM 2:33

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

MR. AND MRS. TRUXTON CRAIN HOUSTON
NAME

1901 RIDGE ROAD
ADDRESS

REISTERSTOWN, MD 21136 –

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

NANCY M gill
NAME

1911 Billy Ruston Cr
ADDRESS

Reisterstown MD 21136

94 NOV -1 PM 2:40

RECEIVED
OCT 31 1994
ZADM

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

Nancy M Gill
NAME

1911 Billy Barton Ct
ADDRESS

Reisterstown MD 21136

94 NOV -1 PM 2:40

RECEIVED
OCT 31 1994
ZADM

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

MAY 20, 1994

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204
or
Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 94-452-XA (Item 430)
Ivy Hill Substation
S/W corner of intersection of Ridge Road and Joel Court
8th Election District - 3rd Councilmanic
Legal Owner, Tracts A & C: Baltimore Gas & Electric Company
Legal Owner, Tract B: Frederick R. Vinup and Ann L. Vinup
HEARING: TUESDAY, JUNE 21, 1994 at 2:00 p.m. Rm. 118 Old Courthouse

Special Exception for an outdoor electric public utility service center (electric substation) and to amend the Fox Ridge Estates Final Development Plan, if necessary.
Variance to permit structures as close as zero feet from interior lot lines in lieu of the required 50 foot building setback.

Arnold Jablon
Director

cc: Baltimore Gas & Electric Company
Frederick and Ann Vinup
Robert A. Hoffman, Esq.

NOTES: (1) ZONING SIGN & POST MUST BE RETURNED TO RM. 104, 111 W. CHESAPEAKE AVENUE ON THE HEARING DATE.
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(3) FOR INFORMATION CONCERING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.

Printed with Soybean Ink
on Recycled Paper

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

Eileen Semanine
NAME

1525 Applecroft Ln
ADDRESS

Cockeysville, MD 21030

RECEIVED
OCT 31 1994
ZADM

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

Charles P. McCausland III
NAME

13421 Falls Rd
ADDRESS

Cockeysville Md. 21030

RECEIVED
OCT 31 1994
ZADM

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

94 OCT 25 AM 11:15

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

Karen A. Collett
NAME

12910 Falls Rd
ADDRESS

Cockeysville Md 21030

RECEIVED
OCT 25 1994
ZADM

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

94 OCT 2[illegible] 11:15

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

Karen A. Collett
NAME

11910 Falls Rd
ADDRESS

Cockeysville Md 21030

RECEIVED
OCT 25 1994
ZADM

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

94 OCT 20 PM 2:11

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

Diane M Gosbee
NAME

1113 Justa Lane
ADDRESS

Lakeperth Md
21030

RECEIVED
OCT 19 1994
ZADM

My husband died of cancer this year after 30 years of living next to high-power lines. I have cancer, My neighbors died of cancer. Need I say more?

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

September 2, 1994

NOTICE OF ASSIGNMENT

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

CASE NO. 94-452-XA

BALTIMORE GAS & ELECTRIC CO. /Legal Owners, Tract A & B; FREDERICK R. VINUP, ET UX /Legal Owners, Tract C
S/w Corner of Ridge Road and Joel Court (Ivy Hill Substation)
8th Election District
3rd Councilmanic District

Note: Day #1 = 10/04/94
Postponed on the red 10/06/94; Day #2 = 1/10/95

SE -Outdoor electric substation in R.C. 5 zone;
VAR -Structures as close as 0' from interior lot line in lieu of required 50' bldg setback.

6/24/94 -Z.C.'s Order in which Petition for Special Exception and Petition for Variance were GRANTED.

ASSIGNED FOR: **TUESDAY, OCTOBER 4, 1994 at 10:30 a.m. /Day #1 and THURSDAY, OCTOBER 6, 1994 at 10:30 a.m. /Day #2**

cc: J. Carroll Holzer, Esquire — Counsel for Appellants /Protestants
Andrew Lansman, et al — Appellants /Protestants

Robert A. Hoffman, Esquire — Counsel for Petitioners
Martha A. Delea, Esquire — Counsel for Petitioners
Baltimore Gas & Electric Co. — Petitioner
Mr. & Mrs. Frederick Vinup — Petitioners

W/D appearance 9-14-94 ~~Mark K. Cohen, Esquire — Counsel for Protestant~~ R. Hanley
Mr. & Mrs. Raymond Fischer
Mrs. Dorothy Marsden
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
Timothy H. Kotroco
W. Carl Richards /ZADM
Docket Clerk /ZADM
Arnold Jablon /ZADM

Copy sent 9/08/94: Hon. Paula C. Hollinger

Kathleen C. Weidenhammer
Administrative Assistant

PLEASE RETURN SIGN AND POST TO ROOM 49 ON DAY OF HEARING.

Printed with Soybean Ink on Recycled Paper

10/04/94 -T/C from Carroll Holzer 4:15 p.m. - Has ZC case (continued case) in Upper Marlboro on 1/11/95; is available remaining two dates being held.

TO BE BROUGHT TO ATTENTION OF BOARD PRIOR TO START OF DAY #2 ON 10/06/94.

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

94 OCT 12 AM 10 11

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

Kathy D. Snyder
NAME

1513 Heather Hill Lane
ADDRESS

Hunt Valley, Md. 21030

RECEIVED
OCT 11 1994
ZADM

4983-94

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

R. Alan Scharf
NAME

1905 Billy Barton Circle
ADDRESS

Reisterstown, Md 21136

RECEIVED
OCT 11 1994
ZADM

4984-94

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

C. Z. Hanks
NAME

1509 HEATHER HILL LN.
ADDRESS

COCKEYSVILLE 21030

RECEIVED
OCT 11 1994
ZADM

#94-452-XA

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

James M. Smith
NAME

13 Dellwood Court
ADDRESS

Hunt Valley, Md
21030

RECEIVED
OCT 11 1994
ZADM

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

Elizabeth Anne Davis
NAME
John H Wood III

ADDRESS
12807 Gent Road
Reisterstown Md
21136

7/27/94 -Letter from R. Hoffman, Counsel for Petitioner, requesting consideration by Board for scheduling additional consecutive days for hearing of this appeal (preferably three days) based upon prior hearing on this matter, and his belief that more than one day, and probably more than two days, will be needed.

8/05/94 -T/C from Carroll Holzer; is in agreement with R. Hoffman that more than one day will be required for this matter. Advised Mr. HOlzer that Board's docket is now being set into November 1994.

"Never doubt that a small group of thoughtful, committed citizens can change the world: indeed, it's the only thing that ever has."

- Margaret Mead

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #~~94-452-XA~~

I am unable to attend the appeal hearing on the above captioned case, but I wish to formally register my opposition to the proposed expansion of the Baltimore Gas & Electric Ivy Hill substation for the following reasons:

1. Industrial substations **do not** belong in any residential neighborhood.

2. The unknown effects of electro magnetic fields to the public.

3. The electrical expansion will create the infrastructure for future industrial and commercial development in the entire area.

Sincerely,

John J. McLaughlin

NAME

ADDRESS

94 SEP 29 PM 3:34

Carolyn Kleintank
1116 Greenway Road
Cockeysville, Maryland 21030

October 6, 1994

Mr. Arnold Jablon, Director
Zoning Administration & Development
Management Office
111 West Chesapeake Avenue
Towson, Maryland 212204

RE: Case #94-452-XA

Dear Mr. Jablon:

I was unable to attend the appeal hearing on the above captioned case, but I wish to formally register my opposition to the proposed expansion of the Baltimore Gas & Electric Ivy Hill substation for the following reasons.

1. Industrial substations DO NOT belong in any residential neighborhood.

2. The electrical expansion will create the infrastructure for future industrial and commercial development in the entire area. I live in an area that is primarily residential and I want to maintain this as there are so few areas that have this beauty without all the congestion of commercial and industrial

3. The unknown effects of electro magnetic fields to the public.

Yours very truly,

Carolyn Kleintank

RECEIVED
OCT 12 1994
ZADM

PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
Rosemary Hanley by Marc K. Cohen esq 120 E. Balto.	Balto., MD 21202
Andrew Lawman	1 Jael Ct Reisterstown MD
Sam Jaeb	1 Jael Court Reisterstown, Md 21136
Joann Gajkowski	6 Jael Court Reisterstown, Md 21136
Raymond Fisher	1822 Ridge Rd 21136
Dorothy P. Fisher	1822 Ridge Road 21136
Peggy Beard	1825 Ridge Rd
Dorothy Marsden	1523 Ridge Rd 21136
Ann & Fred Vinup	1821 Ridge Rd. 21136

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
Rob Hoffman	711 Hedgbury Ave 21204
Martha Delea	BCHE P.O Box 1475, Balti Md 21203
Ed Carmen	BCHE P.O. Box 1475, Balto, MD 21203
MONICA P. MCGRADY	BCHE " " " "
WALTER A. REITER JR	Real Property Consultants - 5730 Executive Dr. 21228

Printed with Soybean Ink on Recycled Paper

Case No. 94-452-XA /Baltimore Gas & Electric Co., Inc. /F. Vinup

Petitioner's Exhibit No. 11 -- For purpose of copy and return

By: Sterling Leese Signature: Sterling Leese

Date: 10/13/94

Returned 10/13/94 2:50 p.m.

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

October 6, 1994

NOTICE OF ASSIGNMENT

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

CASE NO. 94-452-XA — BALTIMORE GAS & ELECTRIC CO. /Legal Owners, Tract A & B; FREDERICK R. VINUP, ET UX /Legal Owners, Tract C
S/w Corner of Ridge Road and Joel Court (Ivy Hill Substation)
8th Election District
3rd Councilmanic District

SE -Outdoor electric substation in R.C. 5 zone;
VAR -Structures as close as 0' from interior lot line in lieu of required 50' bldg setback.
6/24/94 -Z.C.'s Order in which Petition for Special Exception and Petition for Variance were GRANTED.

Which was **POSTPONED** on the record 10/06/94 has been scheduled for the following agreed-upon dates:

ASSIGNED FOR: ~~**TUESDAY, JANUARY 10, 1995 at 10:00 a.m. /Day #2;**~~
THURSDAY, JANUARY 12, 1995 at 10:00 a.m. /Day #3;
TUESDAY, JANUARY 17, 1995 at ~~10:00~~ a.m. /Day #4; and
THURSDAY, JANUARY 19, 1995 at ~~10:00~~ a.m. /Day #5

start @ 9 am 1/19

NOTE: The Board is also holding Friday, January 20, 1995, if n ded for completion of the hearing in this matter.

cc: J. Carroll Holzer, Esquire — Counsel for Appellants /Protestants
Andrew Lansman, et al — Appellants /Protestants

Robert A. Hoffman, Esquire — Counsel for Petitioners
Martha A. Delea, Esquire — Counsel for Petitioners
Baltimore Gas & Electric Co. — Petitioner
Mr. & Mrs. Frederick Vinup — Petitioners

Mr. & Mrs. Raymond Fischer
Mrs. Dorothy Marsden
People's Counsel for Balto Co
Lawrence E. Schmidt
Timothy Kotroco
The Hon. Paula C. Hollinger

Pat Keller
W. Carl Richards /ZADM
Docket Clerk /ZADM
Arnold Jablon, Dir /ZADM

Commercial Notice Sent 10/25/94

Kathleen C. Weidenhammer
Administrative Assistant

Printed with Soybean Ink on Recycled Paper

PLEASE RETURN SIGN AND POST TO ROOM 49 ON DAY OF HEARING.

QUALIFICATIONS

Walter A. Reiter, Jr., JD, ASA
Certified General Appraiser, #56

EDUCATION	- Georgetown University Loyola College - B.S. Degree University of Maryland Law School - J.D. Degree
CONTINUING EDUCATION	- AIREA - Courses I, II and Industrial VII AIREA - Uniform Standards Professional Practice Appraisal Standards of Practice and Workshop
CERTIFICATION	- Certified General Real Estate Appraiser, State of MD, #04-056 General Appraiser, Commonwealth of Pennsylvania, #GA-000724-L Appraiser - Certified General, State of Delaware, #XL-0000079 Senior Member - American Society of Appraisers Member - Baltimore and Howard Counties Appraisers' Society Member - Maryland Bar
QUALIFIED EXPERT WITNESS	- U.S. Federal Court of Baltimore City and Rockville Circuit Courts of Baltimore City and County, Allegany, Howard, Frederick, Washington, Carroll, Harford, Anne Arundel, Montgomery, and Queen Anne's Counties
EXPERIENCE	- Real estate appraiser, 1967 to present Real estate business since 1958
INSTRUCTOR	- The Johns Hopkins University - 12 years, Real Estate and Appraisal Principles Towson State University AIREA - Condemnation - Mock Trial Loyola College - Seminar, 1991 IRWA - Skills of An Expert Witness, 1990
SERVED AS OFFICER AND/OR DIRECTOR	- American Society of Appraisers, MD Chapter, President and Director Baltimore County Appraisers' Society - President and Director

Pet No 7

MD Association of Realtors - Director and Treasurer
Real Estate Board of Greater Baltimore - Executive Committee and Director
Society of Real Estate Appraisers - Director

MAJOR CONTRACTS - HUD - U.S. Department of Housing and Urban Development - Multi-Housing Projects (Apts.)
State of MD Department of Health & Mental Hygiene - Nursing Homes (2, three year contracts)
State of Maine - Consultant - Nursing Homes
MD Stadium Authority - appraisal, relocation, negotiation Camden Site, 1987-1989
Baltimore Gas and Electric Company
Potomac Electric Power Company
Washington Suburban Sanitary Company

SOME SPECIFIC APPRAISALS - Industrial Plants -
Allied, Agrico, and Lebanon Chemical Plants
Rennenberg Industries
Western Electric - Point Breeze
MD Shipbuilding & Drydock Company
Seagirt, Dundalk, North & South Locust Point, Port Covington, Sealand, Rukert Marine Terminals
Ashland, BP, Gulf - BWI, Exxon - Dundalk Marine Terminals

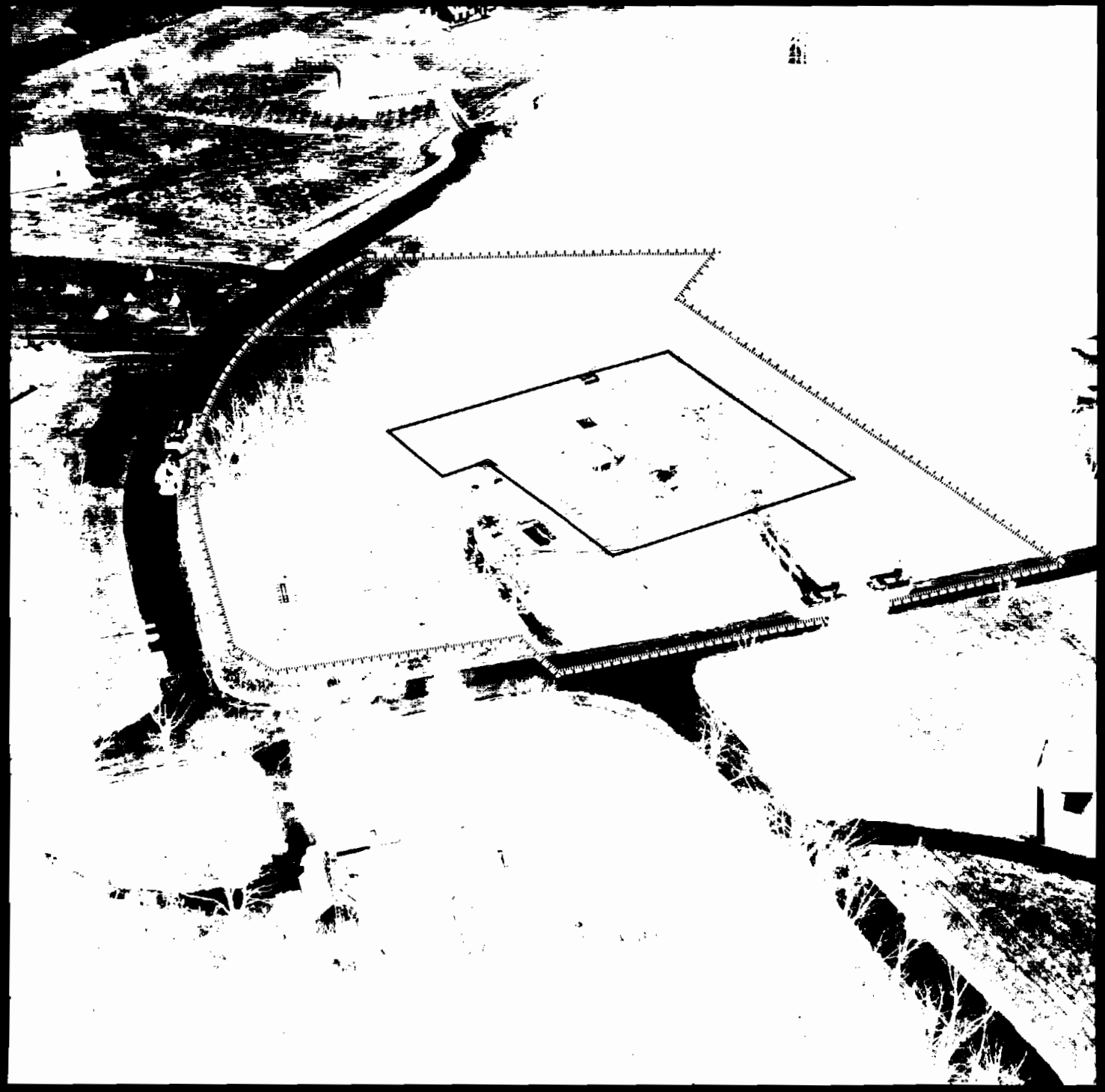
Industrial Sites -
Camden Yards
Union Stock Yards
Brandon Shores Park

Land Sites and Study -
Leakin Park - I-70 Corridor
Solley Road Energy Park
Fort Carroll Island

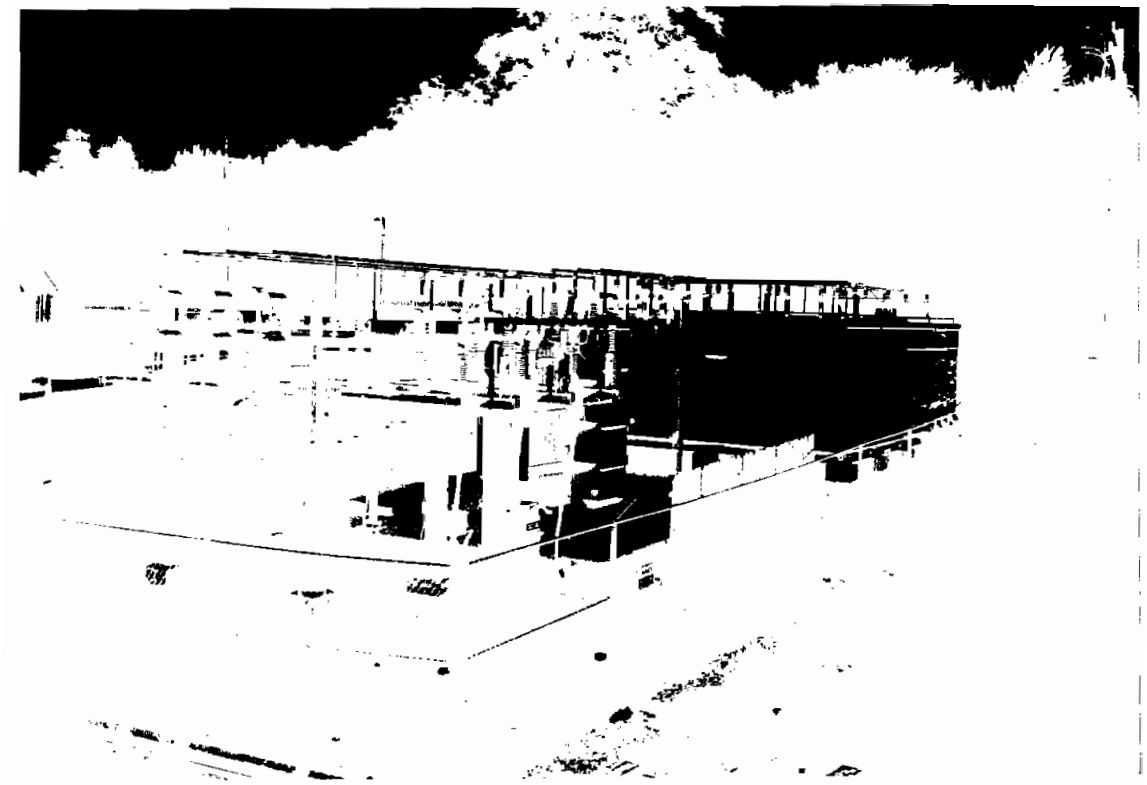
Railroads -
Penn Central Railroad
Chessie System
Several short lines incl. B & A Railroad Company
Busway/Light Rail Line

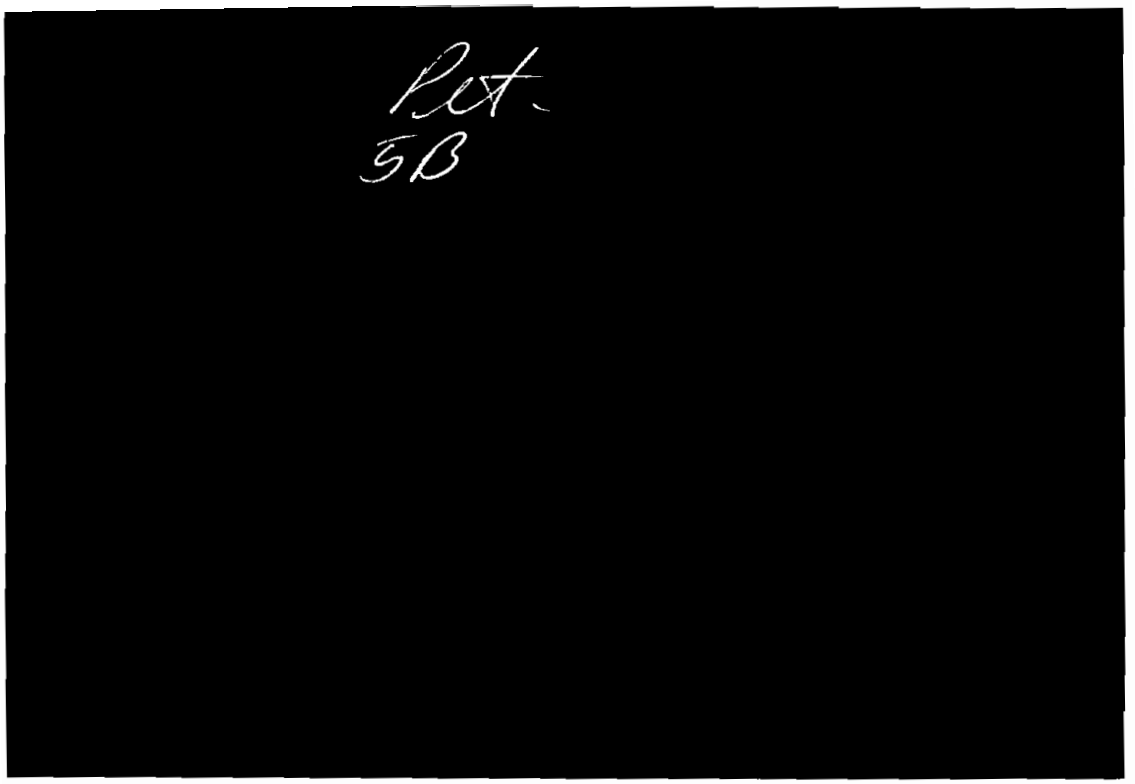
TYPES OF ASSIGNMENTS COMPLETED - Easements - conservation, aerial, subterranean, surface, construction, perpetual, temporary

Tenancies - life estates, leasehold/lessor interests
Large industrial complexes - various uses
Marine terminals
Railroads - right of way, marshalling yards, terminals
Large undeveloped sites - feasibility and land use studies, R41c studies
Nursing homes and living care units
Most types of retail, commercial, and office uses including shopping centers, banks, restaurants
Cemeteries
Oil depot and distribution terminals
Machinery and equipment evaluations
Working farms - house, dairy, general crops
Nurseries including Christmas tree farm
Small business evaluations
Truck terminals
Mobile home parks and marinas



Pict No. 2




Ref.
5B

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue January 12, 1995

AMENDED NOTICE OF ASSIGNMENT ***Days #4 and #5**

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

CASE NO. 94-452-XA

BALTIMORE GAS & ELECTRIC CO. /Legal Owners, Tract A & B; FREDERICK R. VINUP, ET UX /Legal Owners, Tract C
S/w Corner of Ridge Road and Joel Court (Ivy Hill Substation)
8th Election District
3rd Councilmanic District

SE -Outdoor electric substation in R.C. 5 zone;
VAR -Structures as close as 0' from interior lot line in lieu of required 50' bldg setback.
6/24/94 -Z.C.'s Order in which Petition for Special Exception and Petition for Variance were GRANTED.

which is scheduled for Day #4 (1/17/95) and Day #5 (1/19/95), the last two days scheduled for hearing in this matter, will begin on those dates at the amended hour as indicated below; and has been

REASSIGNED FOR: **TUESDAY, JANUARY 17, 1995 at 9:00 a.m. /Day #4; and THURSDAY, JANUARY 19, 1995 at 9:00 a.m. /Day #5**

cc: J. Carroll Holzer, Esquire — Counsel for Appellants /Protestants
Andrew Lansman, et al — Appellants /Protestants

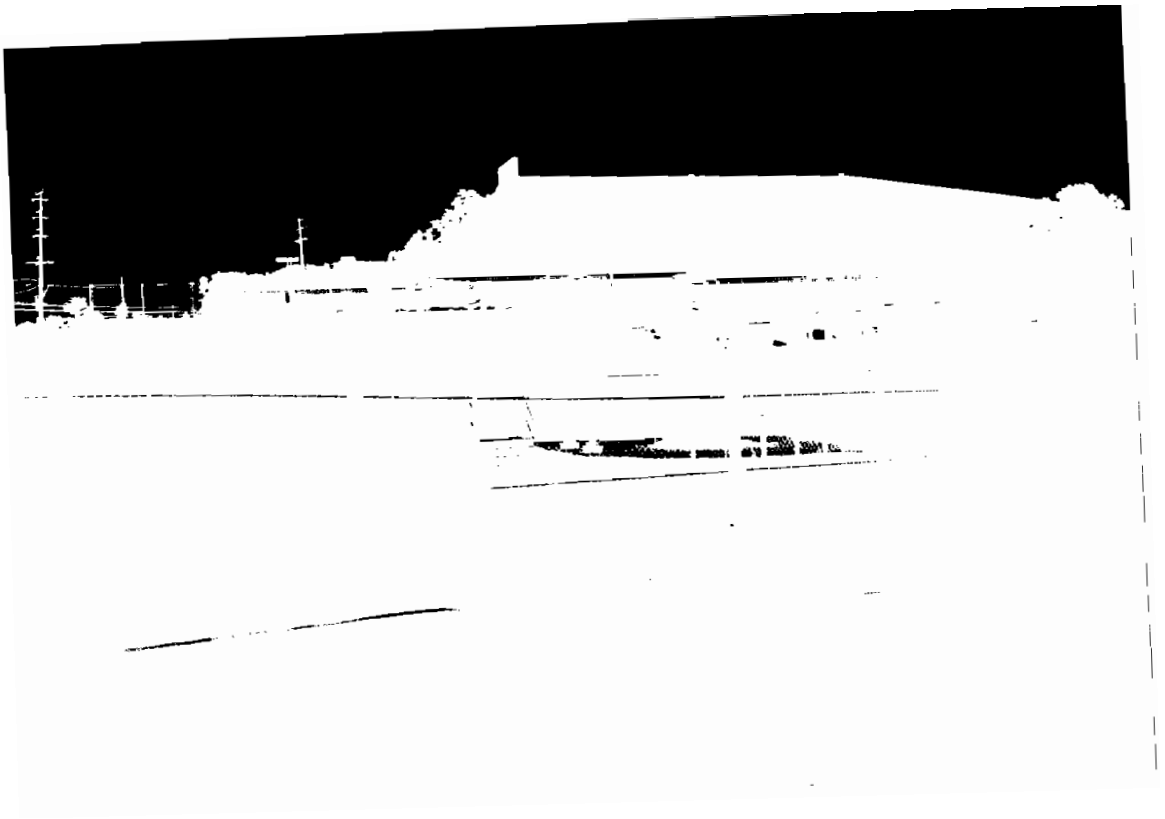
Robert A. Hoffman, Esquire — Counsel for Petitioners
Martha A. Delea, Esquire — Counsel for Petitioners
Baltimore Gas & Electric Co. — Petitioner
Mr. & Mrs. Frederick Vinup — Petitioners

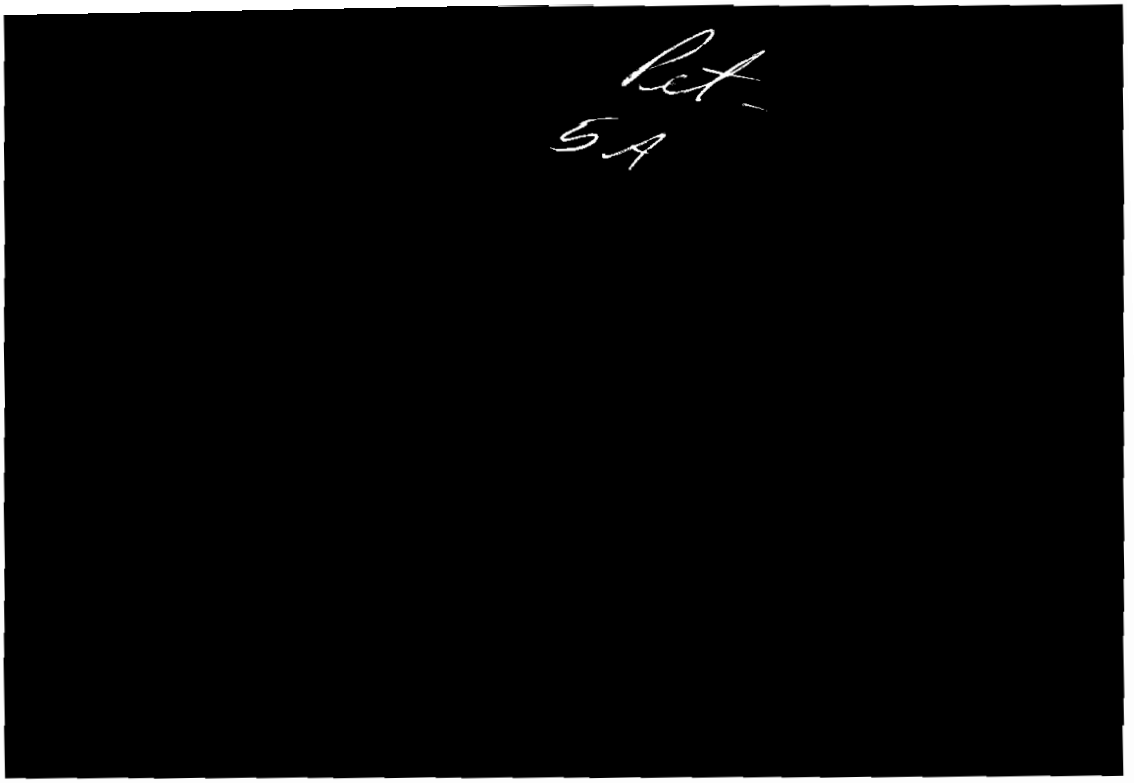
Mr. & Mrs. Raymond Fischer
Mrs. Dorothy Marsden
People's Counsel for Balto Co
Lawrence E. Schmidt
Timothy Kotroco
The Hon. Paula C. Hollinger

Pat Keller
W. Carl Richards /ZADM
Docket Clerk /ZADM
Arnold Jablon, Dir /ZADM

Kathleen C. Weidenhammer
Administrative Assistant

Printed with Soybean Ink on Recycled Paper




Lot
54



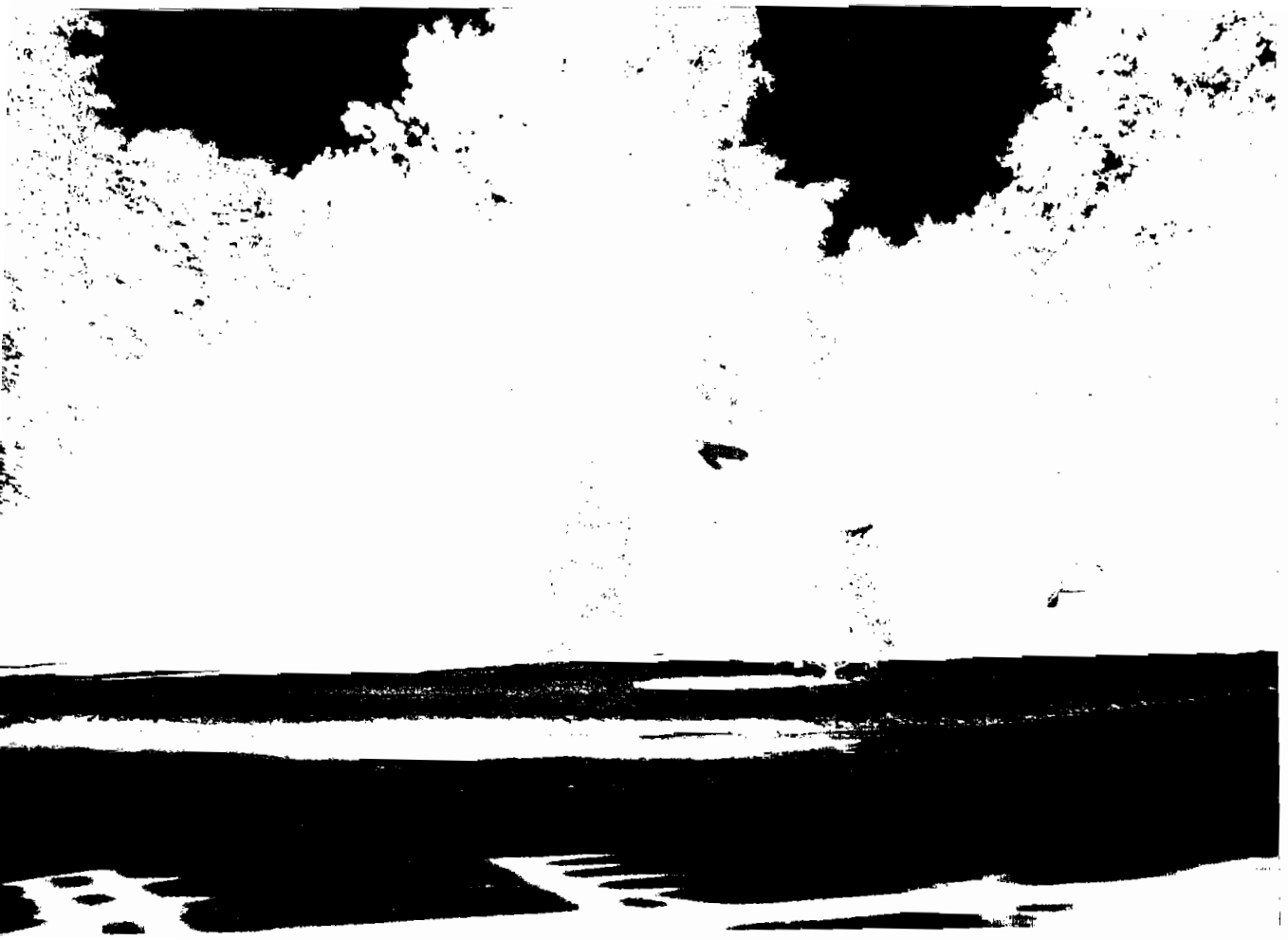
#4

4D



BLAKESLEE GROUP
ADVERTISING/DESIGN/PHOTOGRAPHY

Peter Andrews
916 N. Charles St.
Baltimore, MD 21201-5378
410-727-8800
Fax 410-752-1302



#5

Y/E



BLAKESLEE GROUP
ADVERTISING/DESIGN/PHOTOGRAPHY

Peter Andreen
916 N. Charles St.
Baltimore, MD 21201-5378
410-727-8800
Fax 410-752-1302

#6

4/09 F

BLAKESLEE GROUP
ADVERTISING/DESIGN/PHOTOGRAPHY

Peter Andersen
916 N. Charles St.
Baltimore, MD 21201-5378
410-727-8800
Fax 410-752-1302



#7

5/G



BLAKESLEE GROUP
ADVERTISING/DESIGN/PHOTOGRAPHY

Peter Anderson

916 N. Charles St.
Baltimore, MD 21201-5378
410-727-8800
Fax 410-752-1302

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

February 10, 1995

NOTICE OF DELIBERATION

Memorandums having been filed, the County Board of Appeals has scheduled the following date and time for deliberation in the matter of:

IVY HILL SUBSTATION /BALTIMORE GAS & ELECTRIC COMPANY - PETITIONER
CASE NO. 94-452-XA

DATE AND TIME : Wednesday, February 22, 1995 at 9:00 a.m.

LOCATION : Room 48, Basement, Old Courthouse

---

cc: J. Carroll Holzer, Esquire — Counsel for Appellants /Protestants
Andrew Lansman, et al — Appellants /Protestants

Robert A. Hoffman, Esquire — Counsel for Petitioners
Martha A. Delea, Esquire — Counsel for Petitioners
Baltimore Gas & Electric Co. — Petitioner
Mr. & Mrs. Frederick Vinup — Petitioners

Mr. & Mrs. Raymond Fischer
Mrs. Dorothy Marsden
People's Counsel for Balto Co
Lawrence E. Schmidt
Timothy Kotroco
The Hon. Paula C. Hollinger
Pat Keller
W. Carl Richards /ZADM
Docket Clerk /ZADM
Arnold Jablon, Dir /ZADM
Joseph V. Maranto /ZADM

HRM

Kathleen C. Weidenhamm r
Administrative Assistant

Printed with Soybean Ink on Recycled Paper



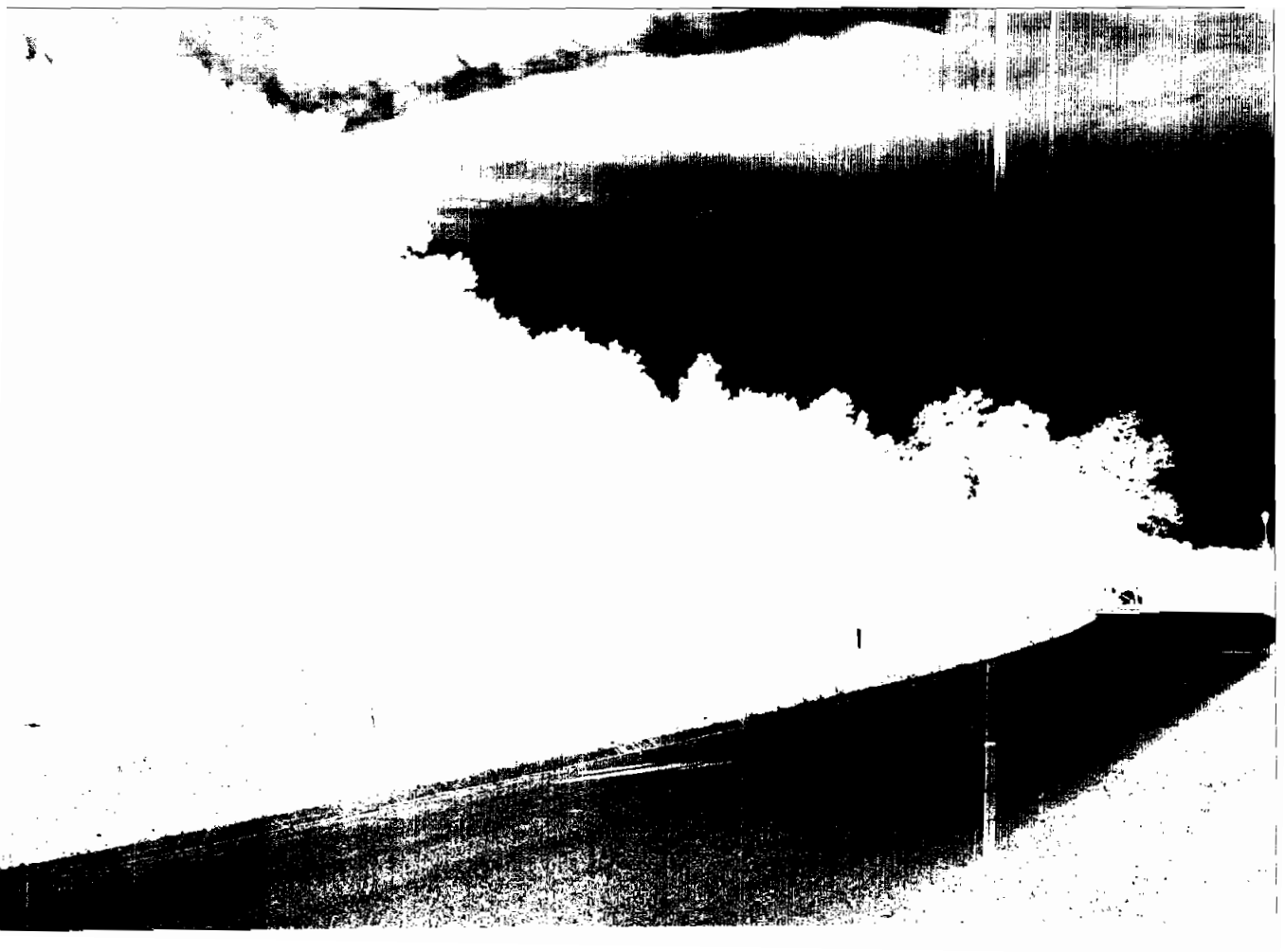
#8

4/4



BLAKESLEE GROUP
ADVERTISING/DESIGN/PHOTOGRAPHY

Pete Andrews
916 N. Charles St.
Baltimore, MD 21201-5378
410-727-8800
Fax 410-752-1302



#9

4 I



BLAKESLEE GROUP
ADVERTISING/DESIGN/PHOTOGRAPHY

Peter Andreas
916 N. Charles St.
Baltimore, MD 21201-5378
410-727-8800
Fax 410-752-1302



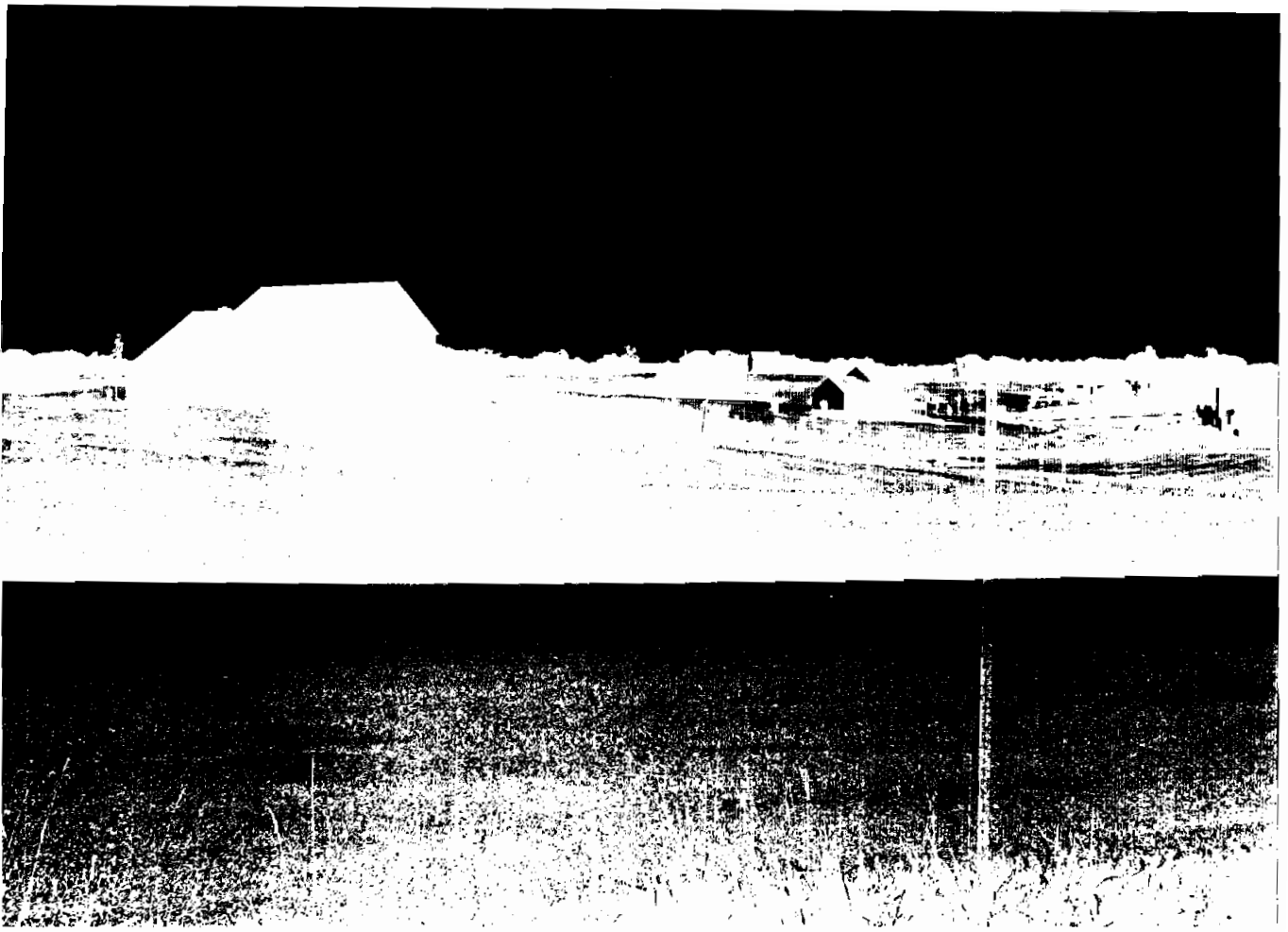
#10

4 J



BLAKESLEE GROUP
ADVERTISING/DESIGN/PHOTOGRAPHY

Peter Andreen
916 N. Charles St.
Baltimore, MD 21201-5378
410-727-8800
Fax 410-752-1302



#11

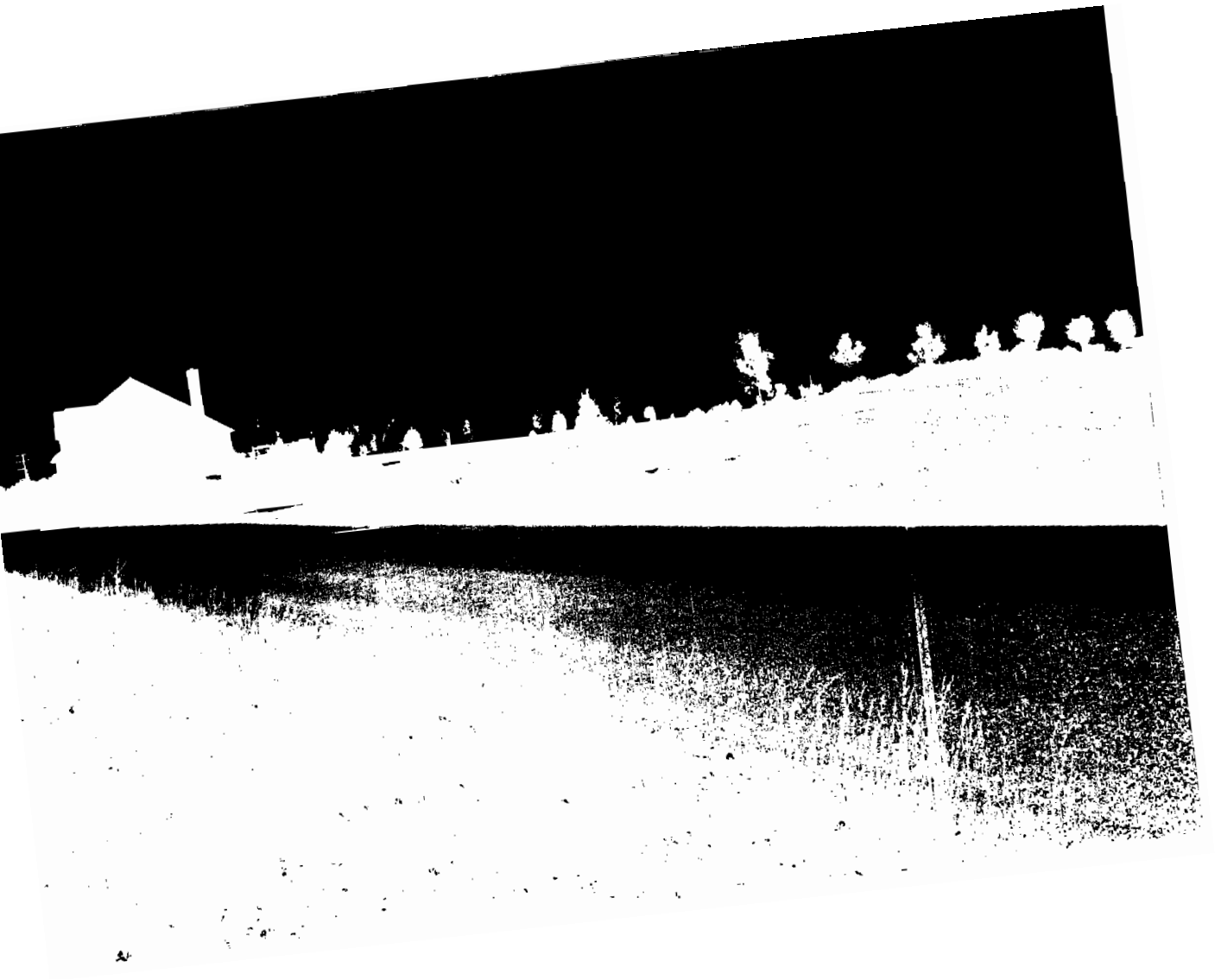
4/K



BLAKESLEE GROUP
ADVERTISING/DESIGN/PHOTOGRAPHY

Debi Andrew

916 N. Charles St.
Baltimore, MD 21201-5378
410-727-8800
Fax 410-752-1302



#12

4L



BLAKESLEE GROUP
ADVERTISING/DESIGN/PHOTOGRAPHY

Peter Andreau

916 N. Charles St.
Baltimore, MD 21201-5378
410-727-8800
Fax 410-752-1302

CASE NO. 94-452-XA

BALTIMORE GAS & ELECTRIC CO. - Legal Owner, Tract A & C
FREDERICK R. VINUP, ET UX - Legal Owner, Tract B

S/W cor. of inters. of Ridge Road and
Joel Court (Ivy Hill Substation)

8th District

Appealed: 7/21/94



#13

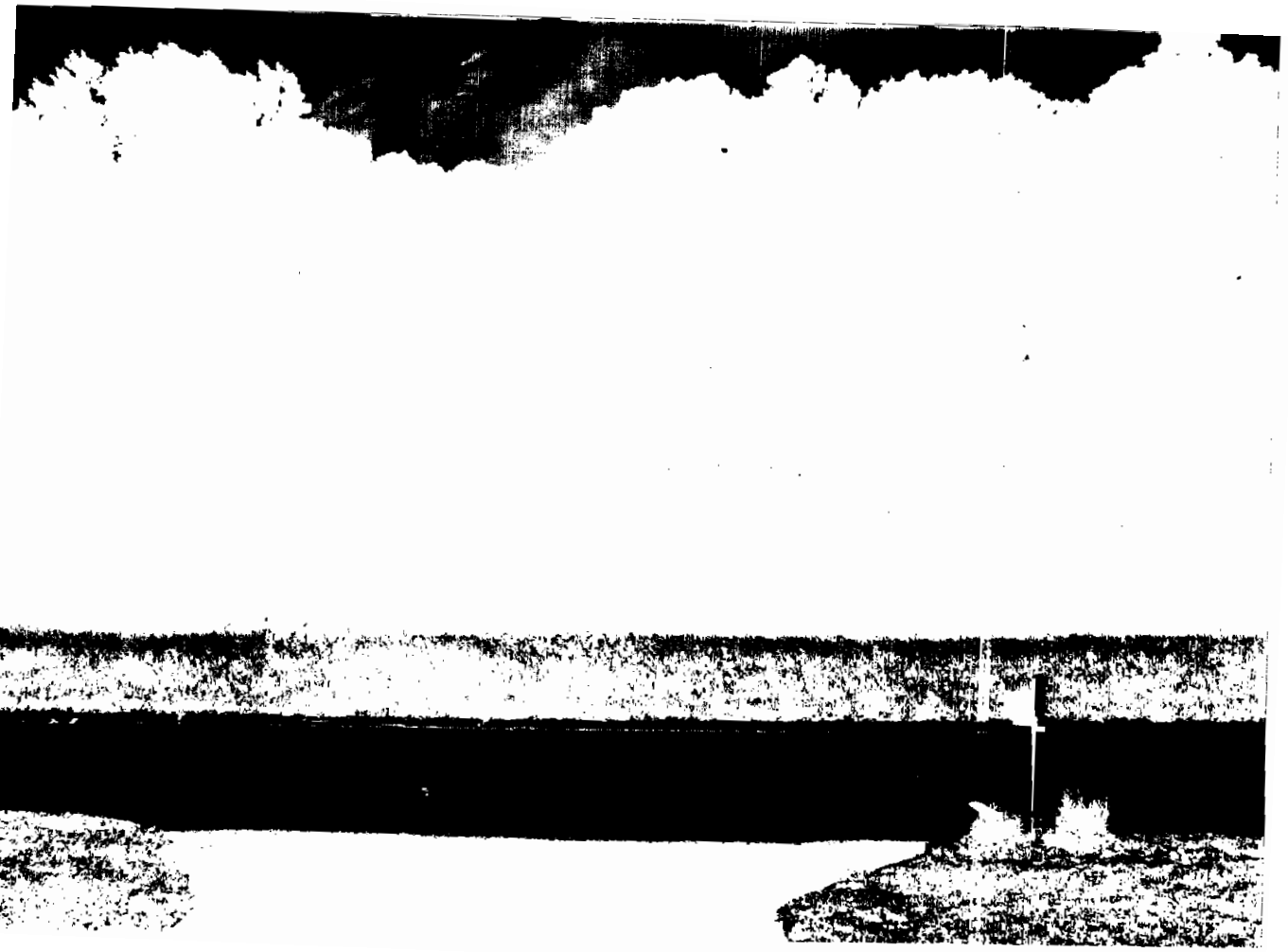
4/11



BLAKESLEE GROUP
ADVERTISING/DESIGN/PHOTOGRAPHY

Peter Anderson

916 N. Charles St.
Baltimore, MD 21201-5378
410-727-8800
Fax 410-752-1302



#14

9/N



BLAKESLEE GROUP
ADVERTISING/DESIGN/PHOTOGRAPHY

Peter Andreas
916 N. Charles St.
Baltimore, MD 21201-5378
410-727-8800
Fax 410-752-1302



#15

4/ "O"



BLAKESLEE GROUP
ADVERTISING/DESIGN/PHOTOGRAPHY

916 N. Charles St.
Baltimore, MD 21201-5378
410-727-8800
Fax 410-752-1302



#16

4P



BLAKESLEE GROUP
ADVERTISING/DESIGN/PHOTOGRAPHY

Peter Andrews
916 N. Charles St.
Baltimore, MD 21201-5378
410-727-8800
Fax 410-752-1302



#17

4/9

Peter Andrews

BLAKESLEE GROUP
ADVERTISING/DESIGN/PHOTOGRAPHY

916 N. Charles St.
Baltimore, MD 21201-5378
410-727-8800
Fax 410-752-1302

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258

12/31/96

Case Number: 03-C-95-005315 AA
Date Filed: 06/16/95
Status: Closed/Active
Previous Case ID:
Reference Number:
Judge Assigned: To Be Assigned,

Friends Of The Ridge, et al vs Baltimore Gas & Electric Company

C A S E H I S T O R Y

INVOLVED PARTIES

Type	Num	Name(Last,First,Mid,Title) / Dispo	Entered
PLT	001	Friends Of The Ridge	CT DO 12/30/96 06/16/95
	Attorney	0012186 Holzer, J Carroll Holzer And Lee 305 Washington Ave Suite 502 Towson MD 21204 (410)825-6961	
PLT	002	Howse, Nigel, Mr	CT DO 12/30/96 06/16/95
	Attorney:	0012186 Holzer, J Carroll Holzer And Lee 305 Washington Ave Suite 502 Towson, MD 21204 (410)825-6961	
PLT	003	Howse, Nigel, Mrs	CT DO 12/30/96 06/16/95
	Attorney:	0012186 Holzer, J Carroll Holzer And Lee 305 Washington Ave Suite 502 Towson, MD 21204 (410)825-6961	
PLT	004	O Hara, Robert, Mr	CT DO 12/30/96 06/16/95
	Attorney:	0012186 Holzer, J Carroll	

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

June 10, 1994

Martha A. Delea, Esquire
Baltimore Gas & Electric Company
Charles Center
P.O. Box 1475
Baltimore, Maryland 21203-1475

RE: Case No. 94-452-XA, Item No. 430
Petitioner: Baltimore Gas & Electric and
Frederick R. and Ann L. Vinup
Petitions for Special Exception and Variance

Dear Ms. Delea:

The Zoning Plans Advisory Committee (ZAC) has reviewed the plans submitted with the above-referenced petition, which was accepted for filing on May 10, 1994 and scheduled for a hearing accordingly. Any attached comments from a reviewing agency are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties, i.e., zoning commissioner, attorney and/or the petitioner, are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case.

Any comments submitted thus far from the members of ZAC that offer or request information on your petition are attached. Only those comments that are informative will be forwarded to you; those that are not informative will be placed in the hearing file.

The following comments are related only to the filing of future zoning petitions and are aimed at expediting the petition filing process with this office.

1. The director of Zoning Administration and Development Management has instituted a system whereby seasoned zoning attorneys who feel that they are capable of filing petitions that comply with all aspects of the zoning regulations and petitions filing requirements can file their petitions with this office without the necessity of a preliminary review by zoning personnel.



#18

4R



BLAKESLEE GROUP
ADVERTISING/DESIGN/PHOTOGRAPHY

Peter Andreu
916 N. Charles St.
Baltimore, MD 21201-5378
410-727-8800
Fax 410-752-1302



#19

5/5



BLAKESLEE GROUP
ADVERTISING/DESIGN/PHOTOGRAPHY

Peter Andreus

916 N. Charles St.
Baltimore, MD 21201-5378
410-727-8800
Fax 410-752-1302



#20

4/"T"



BLAKESLEE GROUP
ADVERTISING/DESIGN/PHOTOGRAPHY

Peter Andreae
916 N. Charles St.
Baltimore, MD 21201-5378
410-727-8800
Fax 410-752-1302



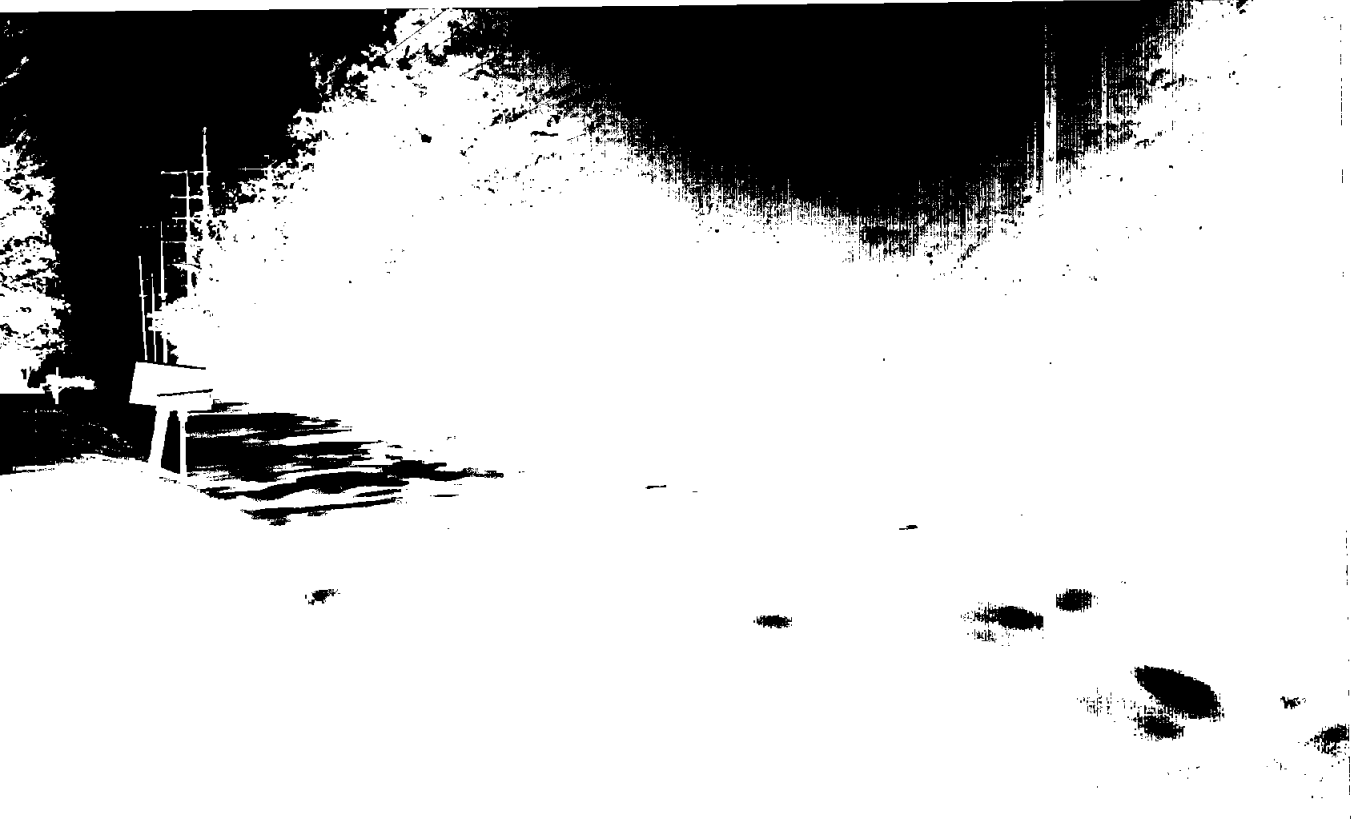
#3

Ref 4C



BLAKESLEE GROUP
ADVERTISING/DESIGN/PHOTOGRAPHY

Pete Andrews
916 N. Charles St.
Baltimore, MD 21201-5378
410-727-8800
Fax 410-752-1302



#2

Ref 4B



BLAKESLEE GROUP
ADVERTISING/DESIGN/PHOTOGRAPHY

Peter Andrews
916 N. Charles St.
Baltimore, MD 21201-5378
410-727-8800
Fax 410-752-1302

2. Anyone using this system should be fully aware that they are responsible for the accuracy and completeness of any such petition. All petitions filed in this manner will be reviewed and commented on by zoning personnel prior to the hearing. In the event that the petition has not been filed correctly, there is always a possibility that another hearing will be required or the zoning commissioner will deny the petition due to errors or incompleteness.

3. Attorneys, engineers and applicants who make appointments to file petitions on a regular basis and fail to keep the appointment without a 72-hour notice will be required to submit the appropriate filing fee at the time future appointments are made. Failure to keep these appointments without proper advance notice, i.e. 72 hours, will result in the forfeiture loss of the filing fee.

If you have any questions concerning the enclosed comments, please feel free to contact Charlotte Minton in the zoning office at 887-3391 or the commenting agency.

Sincerely,

W. Carl Richards, Jr.

W. Carl Richards, Jr.
Zoning Supervisor

WCR:cmm
Enclosures



#1

Bid 4.1



BLAKESLEE GROUP
ADVERTISING/DESIGN/PHOTOGRAPHY

Peter Andrews
916 N. Charles St.
Baltimore, MD 21201-5378
410-727-8800
Fax 410-752-1302

Case No. 94-452-XA /Baltimore Gas & Electric Co., Inc. /F. Vinup

Petitioner's Exhibit No. 11 -- For purpose of copy and return

By: Sterling Leese Signature: Sterling Leese

Date: 10/13/94

Returned
10/13/94
2:50 p.m.

IN THE MATTER OF	*	BEFORE THE
BG&E, legal owner	*	COUNTY BOARD OF APPEALS
(Ivy Hill Substation)	*	OF BALTIMORE COUNTY
8th Election District	*	Case No. 94-452-XA
3rd Councilmanic District	*	October 4, 1994

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, Towson, Maryland 21204 at 10 o'clock a.m., October 4, 1994.

* * * * *

ORIGINAL

Reported by:

C.E. Peatt

IN THE MATTER OF	*	BEFORE THE
BG&E, legal owner	*	COUNTY BOARD OF APPEALS
(Ivy Hill Substation)	*	OF BALTIMORE COUNTY
8th Election District	*	Case No. 94-452-XA
3rd Councilmanic District	*	January 10, 1995

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, Towson, Maryland 21204 at 10 o'clock a.m., January 10, 1995.

* * * * *

ORIGINAL

Reported by:

C.E. Peatt

IN THE MATTER OF	*	BEFORE THE
BG&E, legal owner	*	COUNTY BOARD OF APPEALS
(Ivy Hill Substation)	*	OF BALTIMORE COUNTY
8th Election District	*	Case No. 94-452-XA
3rd Councilmanic District	*	January 12, 1995

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, Towson, Maryland 21204 at 10 o'clock a.m., January 10, 1995.

* * * * *

ORIGINAL

Reported by:

C.E. Peatt

B A L T I M O R E C O U N T Y, M A R Y L A N D

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Zoning Administration &
Development Management

FROM: Pat Keller, Director
Office of Planning and Zoning

DATE: June 2, 1994

SUBJECT: Southwest corner of the intersection of Ridge Road and Joel Court

INFORMATION:

Item Number: 430

Petitioner: Baltimore Gas & Electric Company

Property Size: _____

Zoning: R.C. 5

Requested Action: _____

Hearing Date: ___/___/___

SUMMARY OF RECOMMENDATIONS:

This project received approval of a limited exemption on April 4, 1994. At that time, in reaction to the plan submitted with the request, staff requested that additional landscaping be provided to screen the subject site from adjacent homes located along Joel Court. The plat accompanying this Petition satisfies the concern regarding the provision of additional landscaping. Therefore, staff recommends the applicant's request be granted.

Prepared by: _____

Division Chief: _____

PK/JL:lw

ORIGINAL

TRANSCRIPT OF PROCEEDINGS

IN THE MATTER OF BALTIMORE GAS & ELECTRIC CO./ Legal Owners, Tract A & B; FREDERICK R. VINUP, et ux/Legal Owners, Tract C (Ivy Hill Substation) 8th Election District 3rd Councilmanic District	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case No.: 94-452-XA
	*	January 17, 1995

* * * * *

The above matter came on for hearing before the Board of Appeals of Baltimore County at 9:10 a.m., January 17, 1995, at the Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204.

* * * * *

BEFORE: WILLIAM T. HACKETT, Chairman
ROBERT O. SCHUETZ
S. DIANE LEVERO

Reported by:
Diane M. Hebert

ORIGINAL

IN THE MATTER OF BG&E, legal owner (Ivy Hill Substation) 8th Election District 3rd Councilmanic District	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	
	*	Case No. 94-452-XA	
	*	Janauary 17, 1995	

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, Towson, Maryland 21204 at 1:30 o'clock p.m., January 17, 1995.

* * * * *

BOARD MEMBERS:

WILLIAM T. HACKETT, Chairman

ROBERT O. SCHUETZ

S. DIANE LEVERO

Reported by:
Lorne Langer

IN THE MATTER OF	*	BEFORE THE
BG&E, legal owner	*	COUNTY BOARD OF APPEALS
(Ivy Hill Substation)	*	OF BALTIMORE COUNTY
8th Election District	*	Case No. 94-452-XA
3rd Councilmanic District	*	January 19, 1995

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, Towson, Maryland 21204 at 9 o'clock a.m., January 19, 1995.

* * * * *

ORIGINAL

Reported by:

C.E. Peatt

Prot. Ex. 1

Press Release
May 3, 1994

For more information, contact:

The National EMR Alliance
410 West 53rd Street, Suite 402
New York, NY 10019
(212) 554-4073

President Clinton Asks EPA To Address EMF Issue

"... Sweden has concluded that EMFs do lead to higher rates of cancer...I, frankly was somewhat impressed by the arguments made by the Swedes."
President Bill Clinton

An ABC Special hosted by Peter Jennings, "Answering Childrens Questions" has brought the issue of electromagnetic field (EMF) radiation to President Clinton's attention.

President Clinton met with a number of children at the White House on March 19th and responded to questions about issues that concern them. Kevin Larm, a twelve year old boy from Omaha, Nebraska was invited to participate in this televised event but was hospitalized in Washington, D.C. the evening before the broadcast.

Kevin Larm is suffering from leukemia. Kevin's home has a pad mounted electrical transformer in his backyard. There is an electrical substation near his school. Kevin and his family believe that exposure to electromagnetic (EMF) radiation is the cause of his leukemia.

Kevin's brother Patrick, attended the ceremony at The White House on March 19th in Kevin's place and presented President Clinton with a package the Larm family had put together that included letters from neighbors and other children in the neighborhood who have contracted brain tumors and other various forms of cancer. Although Kevin was unable to attend the ceremony, a videotape was shown that Kevin made to show the President the enormity of the EMF problem in their town in Omaha, Nebraska. In the video, Kevin spoke of his friend Joshua whom recently died of a brain tumor. Kevin said "the power company says there's nothing to electromagnetic fields, EMFs. I just think it's a big cover up."

Julie Larm, Kevin's mother, told the National EMR Alliance that she believes that "EMF is the great American holocaust." She said, "My son survived the chemo death camp. We are doing what we can so that other children will not have to suffer like Kevin has."

Peter Jennings introduced Patrick to President Clinton. Patrick asked the President, "I have heard that recent studies have linked EMFs to

"Never doubt that a small group of thoughtful, committed citizens can change the world: indeed, it's the only thing that ever has."

- Margaret Mead

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: **CASE #94-452-XA**

I am unable to attend the appeal hearing on the above captioned case, but I wish to formally register my opposition to the proposed expansion of the Baltimore Gas & Electric Ivy Hill substation for the following reasons:

1. Industrial substations **do not** belong in any residential neighborhood.

2. The unknown effects of electro magnetic fields to the public.

3. The electrical expansion will create the infrastructure for future industrial and commercial development in the entire area.

Sincerely,

Adam S. Kuhn

NAME

1907 Billy Barton Circle

ADDRESS

Reisterstown Md 21136

Prot. Exh 2 Identi

B A L T I M O R E C O U N T Y, M A R Y L A N D

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Zoning Administration &
Development Management

FROM: Pat Keller, Director
Office of Planning and Zoning

DATE: June 14, 1994

SUBJECT: 1205 York Road & 3 Greenridge Road

INFORMATION:

Item Number: 452

Petitioner: Mangione Property

Property Size: _____

Zoning: D.R. 5.5

Requested Action: _____

Hearing Date: / /

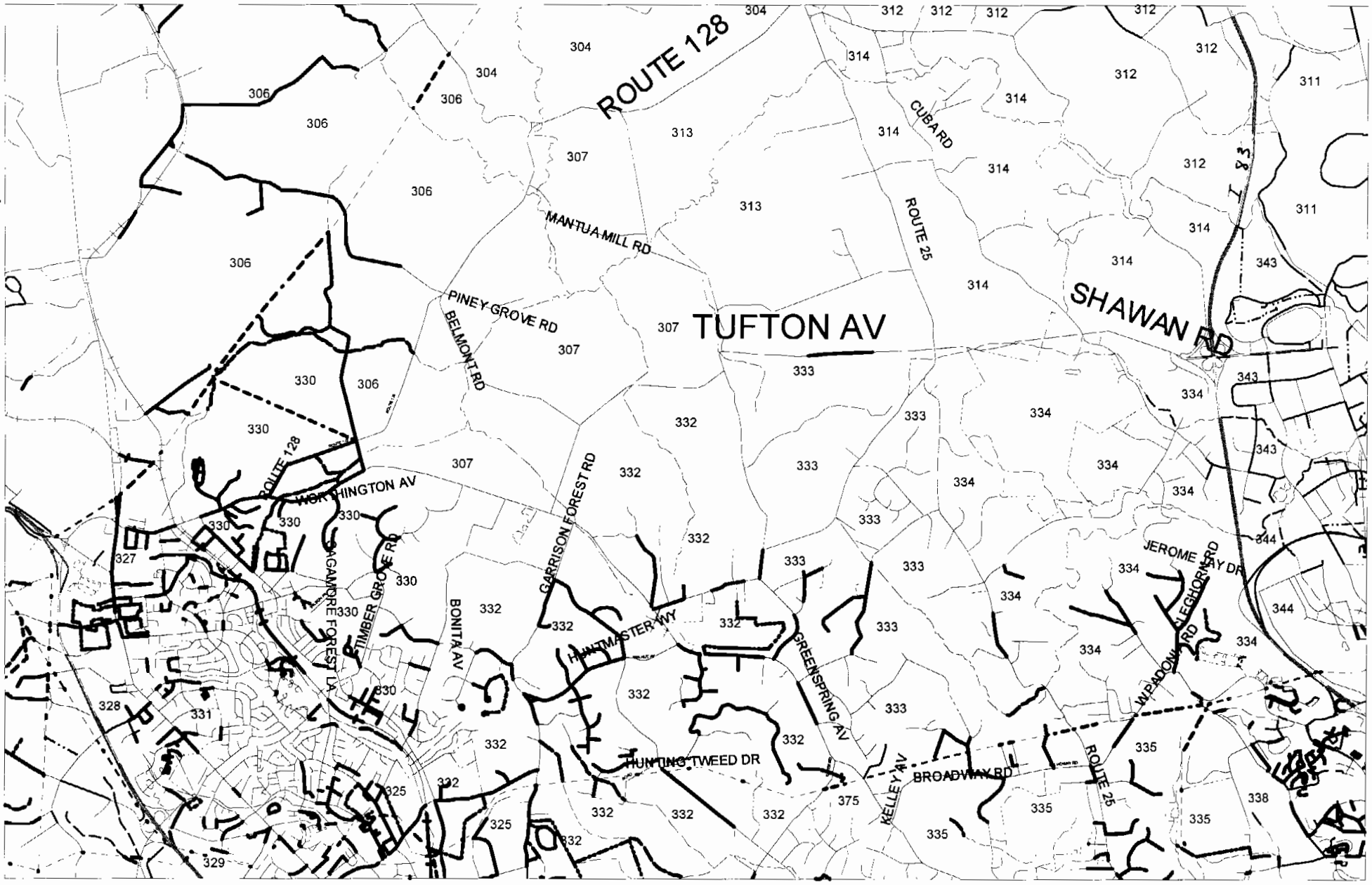
SUMMARY OF RECOMMENDATIONS:

The applicant's site is located within an area designated as a Community Conservation Area in the Baltimore County Master Plan 1989-2000.

As is noted on the plat accompanying this petition, there is a lengthy zoning history regarding Parcels A-D. The most recent hearing, 87-335SPH was adjudicated by the Circuit Court (88CG4761). Access to Tenbury Road and the preservation of the residential character of that local street were issues in that prior case, and these same issues are currently being revisited in the subject case.

In addition to the issues pertaining to parcel (A-D), the applicant seeks a use permit to allow off street parking on Parcel E, and to permit permanent access from Parcel E to Greenridge Road. In terms of the access issue, staff recommends that the petitioner work with the State Highway Administration and Baltimore County to develop solutions to on-going traffic safety related issues. Access to Greenridge Road may be useful in improving site access, however, it seems premature to consider the use permit for parking until such time as further development takes place.

Prot. Ex. 6-A


ROUTE 128
TUFTON AV
SHAWAN RD
MANTUA MILL RD
PINEY GROVE RD
BELMONT RD
ROUTE 25
CUBA RD
I 83
WORTHINGTON AV
TIMBER GROVE RD
SAGAMORE FOREST LA
BONITA AV
GARRISON FOREST RD
HUNTMASTER WY
GREENSPRING AV
HUNTINGTWEED DR
KELLEY AV
BROADWAY RD
W P ADOMS LEGHORN RD
JEROME AY DR
306
304
307
313
314
312
311
330
332
333
334
343
344
327
328
329
331
325
335
338
375

Prot. Ex. 6 B

FRIENDS OF THE RIDGE

TZ	1990 UNITS	1990 POP	1995 UNITS	DRAFT 1995 POP	FINAL 1995 POP	2010 UNITS	DRAFT 2010 POP	FINAL 2010 POP	2020 UNITS	DRAFT 2020 POP	FINAL 2020 POP
307	100	209	100	202	215	100	190	207	100	187	205
313	90	231	94	234	235	119	279	280	119	274	275
330	1720	5449	2035	6244	6247	2239	6448	6449	2258	6394	6396
332	840	2740	883	2789	2791	957	2839	2841	967	2820	2820
333	700	2293	736	2334	2336	788	2347	2347	817	2393	2393
334	530	1644	624	1874	1875	2605	7346	7348	2634	7302	7303
	3980	12566	4472	13677	13699	6808	19448	19472	6897	19369	19392

SOURCE: ROUND 5 COOPERATIVE FORECAST-FINAL AS ADJUSTED BY BMC

Prot. Ex. 11

COMMISSIONERS

FRANK O. HEINTZ
CHAIRMAN

CLAUDE M. LIGON
E. MASON HENDRICKSON
SUSANNE BROGAN
GERALD L. THORPE

STATE OF MARYLAND
PUBLIC SERVICE COMMISSION
ENGINEERING DIVISION
6 ST. PAUL CENTRE
BALTIMORE, MARYLAND 21202-6806
(410) 767-8056
FAX (410) 333-6086

JOSEPH H. WALTER
CHIEF ENGINEER

CARL S. WEINBERGER, P.E.
ASSISTANT CHIEF ENGINEER

December 8, 1994

Martha Delea, Esq.
Baltimore Gas & Electric Company
P.O. Box 1475
17th Floor
Baltimore, Md 21203-1475

Dear Ms. Delea:

Pam Follo has sent me a letter requesting some information regarding PSC regulations and details of BGE's operating system. I would appreciate it if you would have someone provide me with the following information or materials.

1. A current copy of the BGE system operating diagrams (one line diagrams).

2. A set of plans for the proposed expansion of the Ivy Hill substation.

3. A system map showing the configuration of the distribution circuits currently fed from Ivy Hill and the substations immediately surrounding it.

4. A system map showing the configuration of the distribution circuits to be fed from Ivy Hill and the substations immediately surrounding it, once the expansion has been completed.

5. The substation load information for the Ivy Hill substation for the last three years.

Prot Ex 11

Thank you for your help in this matter. Ms. Follo has requested that she receive this information as soon as possible. Please respond to this request by December 23, 1994.

Sincerely,

Phillip VanderHeyden
Public Service Engineer

cc: P. Follo
J. H. Walter, Chief Engineer
A. M. Freifeld, Staff Counsel

Prof. Ex. 12

ERNEST J. KERN, MAI, SRA

Education
B.S. Commerce, University of Virginia - 1953
Sales Management, Youngstown, Ohio, University of Youngstown
Millwork Course, Michigan State University

Real Estate and Appraisal Courses Successfully Completed
Commercial Real Estate, Johns Hopkins University
Industrial Real Estate, Johns Hopkins University
Residential and Commercial Appraisal, Johns Hopkins University
Society of Real Estate Appraisers, Course 1, University of KY
Certified Property Management, Course 1, Atlanta, GA - 1967
Certified Property Management, Course 2, Washington, DC - 1967
Certified Property Management, Course 3, Miami, FL - 1968

Case Studies in Real Estate Valuation, Course 2-1, American Institute of Real Estate Appraisers, 1982, University of Houston

Valuation Analysis and Report Writing, Course 2-2, American Institute of Real Estate Appraisers, 1983, University of Georgia

Standards of Professional Practice, Course 2-3, American Institute of Real Estate Appraisers, 1982, Richmond Metropolitan Chapter

Introduction to Real Estate Investment Analysis, Course 006, American Institute of Real Estate Appraisers, 1983, Eckerd College

Instructor's Course, Society of Real Estate Appraisers Course 101, Indiana University, 1976
Instructor's Course, Society of Real Estate Appraisers Course 102, Purdue University, 1982
Society of Real Estate Appraisers Course 201, Loyola College, Baltimore, MD - 1973

Real Estate and Appraisal Courses Attended
Society of Real Estate Appraisers Course 301

Capitalization Theory & Techniques Part A, Course 1BA, American Institute of Real Estate Appraisers, 1985, University of North Carolina

Capitalization Theory & Techniques Part B, Course 1BB, American Institute of Real Estate Appraisers, 1985, University of North Carolina

Case Studies in Real Estate Valuation, Course 2-1, American Institute of Real Estate Appraisers, 1986, University of Central Florida

General State Appraiser's Exam, Review Course - January 1991
SREA Appraiser's Symposium, San Antonio, TX - September 1990, 4 days
SREA Appraiser's Symposium, Minneapolis, MN - September 1989

Prot. Ex. 13

Consultation Report for

FRIENDS OF THE RIDGE

1 JOEL COURT

REISTERSTOWN, MARYLAND 21136

Proposed BGE Ivy Hill Substation

September 30, 1994

Prepared by

Kern Realty & Appraising, Inc.
606 Baltimore Avenue, Suite 103
Baltimore, MD 21204

Any access to Tenbury Road, whether it be temporary or permanent, should be denied. Tenbury Road is a residential street and this unwarranted intrusion would negatively impact the well maintained community of Dulaney Village.

Prepared by: _____

Division Chief: _____

PK/JL:lw

LONG & FOSTER® REALTORS®

Executive Offices
11351 Random Hills Road • Fairfax, Virginia 22030
(703) 359-1500
MD/DC/PA/DE Division
9094 Baltimore Boulevard • College Park, Maryland 20740
(301) 441-8101

Listing Office: _____
Phone: _____
Selling Office: Pikesville
Phone: 410-653-1700

CONTRACT OF SALE

(Baltimore, Carroll, Harford and Howard Counties)

Liber 8627 Folio 825 Date of Deed 90/10

LISTING BROKER O'Conor, Piper & Flynn BROKER NO. 6907
LISTING AGENT Roni Schultz TELEPHONE(S) 821-1700
SELLING BROKER Long & Foster BROKER NO. 6315
SELLING AGENT Norma Moritz TELEPHONE(S) 653-1700

This CONTRACT OF SALE made this 27 day of DEC. ~~November~~ 19 94 by and between AMG EEG

SELLER NAME Michael AND MARY Glynn
ADDRESS 11 FORWOOD CT COCKEYSVILLE, MD 21030 ZIP _____
SOCIAL SECURITY NUMBER _____ AND
BUYER NAME Robert N. Gensler & Elizabeth E. Gensler
ADDRESS 8637 Tower Bridge ZIP 21093
SOCIAL SECURITY NUMBER 219-70-5650 - 536-43-4945

1. PROPERTY DESCRIPTION: Seller does sell to Buyer and Buyer does purchase from Seller, all of the following described Property (hereinafter "Property") known as 11 Forwood Ct. 12/1/94
located in Balto., County City/County, Maryland _____ Zip 21030
together with the improvements thereon, and all rights and appurtenances thereto belonging.

2. ESTATE: The Property is being conveyed: x in fee simple or _____ subject to an annual ground rent, now existing / to be created of _____ Dollars ($ n/a) payable semi-annually, as now or to be recorded among the Land Records of n/a City/County, Maryland. EMG EEG AMG

If the Property is subject to a ground rent and the ground rent is not timely paid, the owner of the reversionary interest may bring an action of ejectment against the leasehold owner pursuant to Section 8-402.2 of the Real Property Article, Annotated Code of Maryland (as amended). As a result of this action, the owner of the reversionary interest may be discharged from the lease and obtain title to the Property in fee. AMG EEG AMG EEG

3. PURCHASE PRICE: The purchase price is ~~FIVE~~ FOUR HUNDRED AND ~~THIRTY~~ SIXTY-TWO THOUSAND - FIVE HUNDRED Dollars ($ ~~430,000.00~~ 462,500 AMG EEG AMG EEG

4. PAYMENT TERMS: The payment of the purchase price shall be made by Buyer as follows:
(a) An initial deposit by way of check, in the amount of Five thousand Dollars ($ 5,000.00) at the time of execution of this Contract.
(b) An additional deposit, by way of _____, in the amount of n/a Dollars ($ _____) to be paid within _____ (_____) calendar days from the date of execution of this Contract by all parties, and
(c) The purchase price less any and all deposits shall be paid in full by Buyer in cash, wired funds, bank check or by certified check at settlement.

5. SETTLEMENT: Settlement shall be on 60 days from above 19 _____ or sooner by mutual agreement between the parties.

6. HOME AND/OR ENVIRONMENTAL INSPECTION: If Buyer desires the right to condition Buyer's obligations under this Contract upon the results of a home inspection and/or environmental inspection, **the right to do this must be included in an Addendum to this Contract at the time it is signed.** Buyer acknowledges that neither the Brokers nor their agents are responsible for defect Addendum Attached AMG EEG Inspection(s) Declined _____
Buyer's Initials Buyer's Initials

7. FINANCING: This Contract is contingent upon Buyer obtaining a written commitment for a mortgage loan secured by the Property as follows:

(CHECK ONE) ☒ No Financing Contingency

☐ See FHA Financing Addendum
☐ See attached VA Financing Addendum
☐ See attached Assumption Addendum
☐ See attached Owner Financing Addendum

☐ Conventional Loan as follows:
Loan Amount $ _____
Term of Note _____ years
Amortization _____ years
Interest Rate _____ %
Type _____

8. LENDER FEES/CHARGES: Buyer agrees to pay to the Lender loan origination/loan discount fees of n/a % of the Loan Amount and Seller agrees to pay loan origination/loan discount fees of n/a % of the Loan Amount. Any reduction in the loan origination/loan discount fees shall be shared by the Seller and Buyer on a basis equal to their respective proportionate obligation for the original total of said fees. All mortgage insurance premiums as required by Lender shall be paid by Buyer. If the existing loan is to be transferred to/assumed by Buyer, Buyer agrees to pay all fees and charges required by Lender.

9. MORTGAGE APPLICATION AND COMMITMENT: Buyer expressly agrees to make written application for the mortgage as herein described within n/a (_____) calendar days from the date of execution of this Contract by all parties. If such written mortgage commitment is not obtained by Buyer, or by Seller, at Seller's option, for Buyer, within n/a (_____) calendar days from the date of this Contract, this Contract of Sale shall be null and void and of no further legal effect, and all deposits hereunder shall be disbursed in accordance with the terms of the "**Deposit**" Paragraph. If Buyer has complied with all of Buyer's obligations under this Contract, including those with respect to applying for financing and seeking to obtain financing, then the release of deposit agreement shall provide that all monies on deposit shall be returned to Buyer.

10. DEPOSIT: Buyer hereby authorizes and directs the Listing Broker to hold the initial deposit without negotiation or deposit until the parties have executed and accepted this Contract. Upon acceptance by Seller, the Listing Broker shall expeditiously cause the initial deposit to be placed in escrow as specified below. If Seller does not execute and deliver this Contract, the initial deposit shall be immediately returned to the Buyer. All deposit money paid under this Contract shall be held in escrow by the Listing Broker. If the Seller and the Buyer do not instruct the Listing Broker otherwise, deposits of $5,000 or more shall be placed, at the sole discretion of the Listing Broker, in a non-interest bearing account or an interest bearing account that pays all interest to the Maryland Housing Resource Corporation. If the Seller and the Buyer do not instruct otherwise, deposit money of less than $5,000 shall be placed in an interest bearing account that pays all interest to the Maryland Housing Resource Corporation. Listing broker may charge a fee for establishing an interest bearing account.

The Seller and the Buyer instruct the Listing Broker to place all deposit monies in:

☐ An interest bearing account, with interest payable to the Maryland Housing Resource Corporation; interest may be taxable to the Buyer.
☑ A non-interest bearing account.
☐ An interest bearing account, the interest on which, in the absence of default by the Buyer, shall accrue to the benefit of the Buyer.

The deposit shall be disbursed by the Listing Broker at settlement. Otherwise the deposit shall be disbursed in accordance with a properly executed release of deposit agreement by Buyer and Seller. If a dispute arises between the parties to the transaction as to the disposition of the deposit, refer to the "**Broker Liability**" Paragraph.

This is a legally binding contract. If not understood, seek competent advice.

THE PARTIES' INITIALS ARE FOR IDENTIFYING PAGES 1 AND 2 (ON REVERSE) OF THIS CONTRACT OF SALE: AMG (Buyer) EEG (Buyer) Emg (Seller) _____ (Seller)

Prot. Exh 14

11. **TERMITE INSPECTION**: Buyer, at Buyer's expense (or Seller's expense for VA financing), is authorized to obtain a written statement from a Maryland licensed pest control company that, based on a careful visual inspection, there is no evidence of termite or other wood-destroying insect infestation in the residence, including garage, but not including fences or other outbuildings (unless within 3 feet of main dwelling and garage) and, if such infestation previously existed, it has been corrected, and any damage due to such infestation has been corrected.

If any such infestation is present, or if any evidence of damage caused by such present or prior infestation is discovered, Seller, at Seller's expense, shall treat such infestation and repair any damage caused by such present or prior infestation. However, if the cost of treatment and repair of such damage exceeds the greater of 1% of the purchase price or $800, Seller may, at Seller's option, cancel this Contract, unless the Buyer, at Buyer's option, should choose to pay for the cost of treatment and repairs exceeding the greater of 1% of the purchase price or $800, then this Contract shall remain in full force and effect. If such report reveals damage for which the cost of treatment and repair may exceed the greater of 1% of the purchase price or $800, Seller's decision regarding treatment and repair of damage shall be communicated in writing to Buyer within five (5) days from receipt of the report, after which Buyer shall respond to Seller in writing with Buyer's decision within three (3) days from receipt of Seller's notification of Seller's decision.

In the event this Contract is terminated under the terms of this provision, then all deposits hereunder shall be returned to Buyer in accordance with the terms of the **"Deposit"** Paragraph.

12. **SALE OF OTHER REAL ESTATE: Neither this Contract nor the granting of Buyer's mortgage loan referred to herein is to be conditioned or contingent in any manner upon the sale and/or settlement of any other real estate unless a contingency for the sale of Buyer's other real estate is contained in an addendum to this Contract. Unless this Contract is expressly contingent upon the sale and/or settlement of any real estate owned by Buyer, Buyer shall not apply for or accept a mortgage loan commitment which is contingent upon or requires as a pre-condition to funding that any real estate of Buyer be sold and/or settled.**

13. **ALTERNATE FINANCING**: Buyer may obtain a written commitment for financing in which the interest, terms of payment, amount of loan, or any one of these differs from the financing conditions herein set forth, and, if so, the preceding financing conditions of the Contract shall be deemed to have been fully satisfied. This alternate financing may not increase costs to Seller or exceed the time allowed to secure the mortgage commitment as stated herein. Nothing in this paragraph shall relieve Buyer of the obligation to apply for and diligently pursue the financing described in the **"Financing"** Paragraph.

14. **BUYER RESPONSIBILITY**: If Buyer has misrepresented Buyer's financial ability to consummate the purchase of the Property, or, if this Contract is contingent upon Buyer securing a written commitment for mortgage financing and Buyer fails to apply for such financing within the time period herein specified, fails to pursue financing diligently and in good faith, makes any misrepresentations in any document relating to financing, or takes (or fails to take) any action which causes Buyer's disqualification for financing, then Buyer shall be in default and Seller may elect by written notice to Buyer, to terminate this Contract and/or pursue the remedies set forth under the **"Breach of Contract and Default"** Paragraph.

15. **PROPERTY INSURANCE AND RISK OF LOSS**: The Property is to be held at the risk of Seller until legal title has passed or possession has been given to Buyer. If, prior to the time legal title has passed or possession has been given to Buyer, whichever shall occur first, all or a substantial part of the Property is destroyed or damaged, without fault of Buyer, then this Contract, at the option of Buyer, upon written notice to Seller, shall be null and void and of no further effect, and all deposit(s) hereunder shall be returned to Buyer in accordance with the terms of the **"Deposit"** Paragraph. If Buyer elects not to terminate this Contract and settles upon the Property, the purchase price shall not be adjusted and Buyer shall be entitled to all insurance proceeds, except proceeds for Seller's personal property not included in the sale.

It is also understood and agreed that Seller shall immediately have any insurance policies on the Property endorsed so as to protect all parties hereto, as their interests may appear, if such an endorsement may be obtained by Seller without additional cost and shall continue said insurance in force during the life of this Contract. In the event it shall be determined by Buyer that the Property is inadequately insured by Seller, or if Seller is not able to obtain an endorsement naming the Buyer as an additional insured, Buyer shall have the right, at Buyer's option and expense, to obtain such insurance, or additional insurance, as shall be satisfactory to Buyer.

16. **LEASES**: Seller may not negotiate new leases or renew existing leases except on a month to month basis without Buyer's written consent.

17. **TENANT RIGHT OF FIRST REFUSAL**: If the Property is located within Baltimore City and is or has been, within six (6) months of the date hereof, a single family residential rental dwelling, the validity of this Contract is contingent upon compliance with the provisions of Sections 46-55 of Article 13 of the Baltimore City Code.

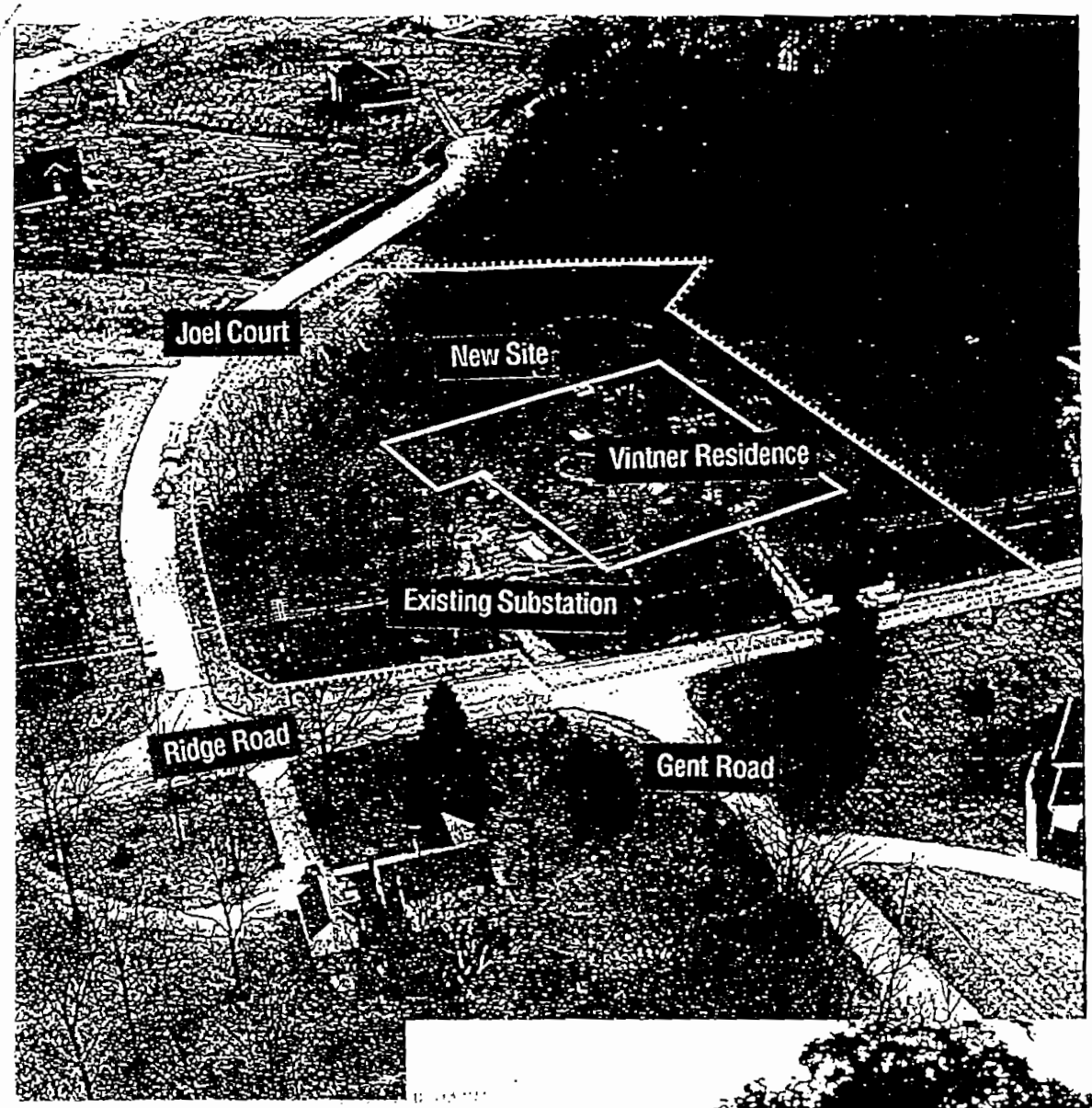
18. **CONDITION OF PROPERTY & POSSESSION**: At settlement, Seller shall deliver possesion of the Property and shall deliver the Property vacant, clear of trash and debris, broom clean and in substantially the same condition as existed on the date of this Contract. All electrical, heating, air conditioning (if any), plumbing (including well and septic), and any other mechanical systems and related equipment, appliances and smoke detector(s) included in this Contract shall be in working condition. Buyer reserves the right to inspect the Property within five (5) days prior to settlement. **EXCEPT AS OTHERWISE SPECIFIED HEREIN THE PROPERTY IS SOLD "AS IS."**

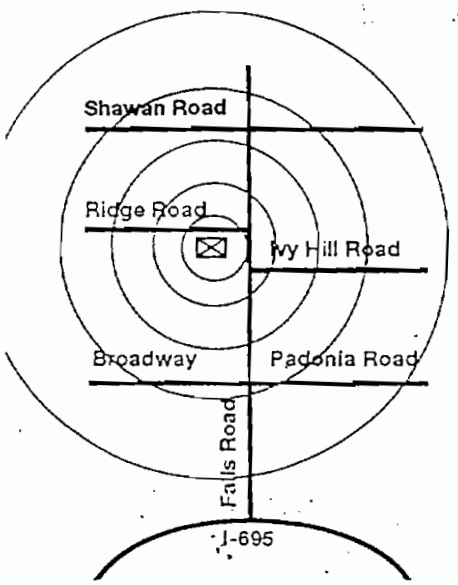
19. **BROKER LIABILITY**: Buyer and Seller understand and acknowledge that Broker and any agents, subagents or employees of Broker are not and were not at any time authorized to make any representations with respect to this Contract or the Property other than those expressly set forth herein. Broker and agents, subagents and employees of Broker do not assume any responsibility for the condition of the Property or for the performance of this Contract by any or all other parties hereto. By signing this Contract, Buyer acknowledges that Buyer has not relied on any representations made by Broker or any agents, subagents or employees of Broker, except those representations expressly set forth herein.

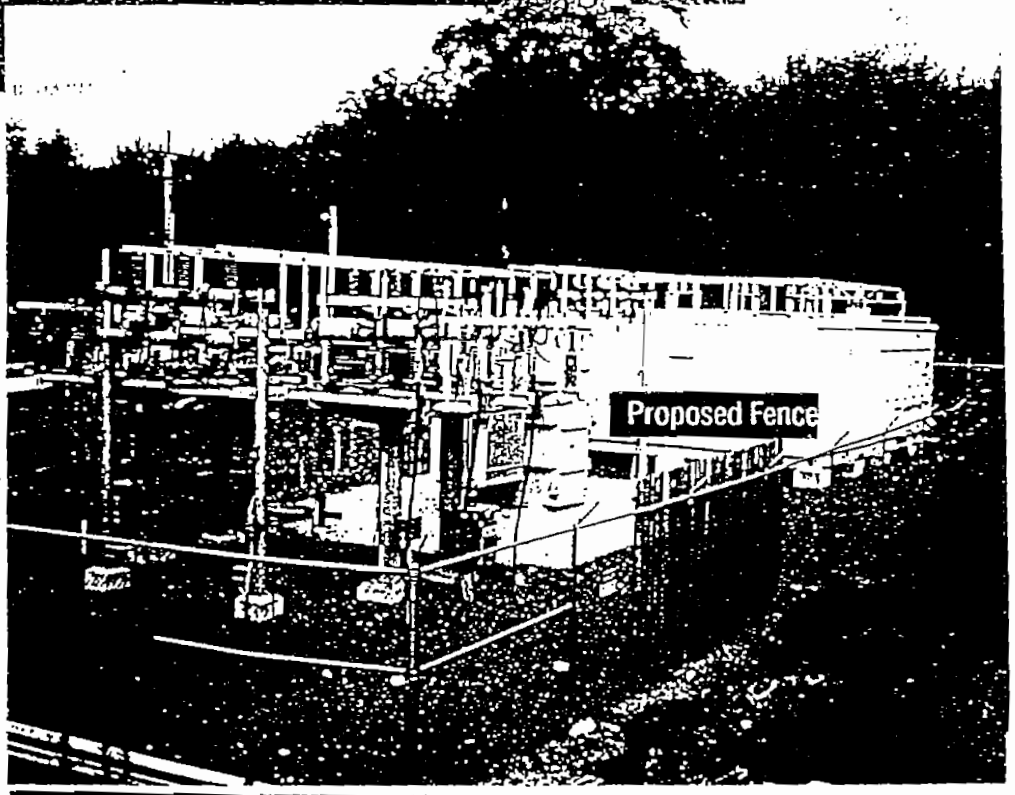
In the event of any litigation or dispute between Seller and Buyer concerning the release of the deposit, Broker's sole responsibility may be met, at Broker's option, by paying the deposit into the court in which such litigation is pending, or by paying the deposit into the court of proper jurisdiction by a bill of interpleader. Buyer and Seller agree that, upon Broker's payment of the deposit into court, neither Buyer nor Seller shall have any further right, claim, demand or action against Broker regarding the release of the deposit and Buyer and Seller, jointly and severally, shall indemnify and hold the Broker harmless from any and all such rights, claims, demands or actions. In the event of such dispute and election by the Broker to file a bill of interpleader as herein provided, Buyer and Seller further agree and hereby expressly and irrevocably authorize the Broker to deduct from the deposit all costs incurred by the Broker in the filing and maintenance of such a bill of interpleader including but not limited to filing fees, court costs, service of process fees and attorneys' fees, provided that the amount deducted shall not exceed the lesser of $500 or the amount of the deposit held by the Broker. All such fees and costs authorized herein to be deducted may be deducted by Broker from the deposit prior to paying the balance of the deposit to the court. Buyer and Seller further agree and expressly declare that all such fees and costs so deducted shall be the exclusive property of the Broker. If the amount deducted by the Broker is less than the total of all of the costs incurred by the Broker in filing and maintaining the interpleader action, then Seller and Buyer jointly and severally agree to reimburse the Broker for all such excess costs upon the conclusion of the interpleader action.

In the event that any dispute arises under this Contract between Seller and Buyer resulting in Broker or any agents, subagents or employees of Broker being made a party to any litigation, Seller and Buyer, jointly and severally, agree to indemnify and hold Broker and its agents, subagents and employees harmless from any liability, loss, cost, damage or expense resulting therefrom (including filing fees, court costs, service of process fees and attorneys' fees) as a result thereof, provided that such litigation does not result in a judgement against Broker, its agents, subagents or employees for acting improperly under this Contract.

Prot. Ex. 15







Similar Project Provided by BGE

Prot. Ex. 22

Updated 12/92

GLASER, Zory (Zorach) Raphael, Ph.D., M.P.H. October 1990
CAPTAIN, U.S. Public Health Service (PHS # 44964)

VITA

BORN October 12, 1940, in Philadelphia, PA Age ~~49~~ 52

EDUCATION (and early Military Training)

Philadelphia College of Textiles and Science (1958-'62), B.S. in Chemistry, Awarded with highest honors, 1962.

Military Service-Connected (As an enlisted Naval Reservist, and with periods of Active Duty), Highest grade attained: Aviation Electronics Technician First Class (Aircrew), E-6 (AT1(AC)), (1958-'69).
(Commissioned Service in USN and USPHS listed under Professional Experience)
Navy Electronics Schools: Navigation, Radar, and Communications Equipment Operation and Maintenance, and Flightcrew Communications Operation. Correspondence courses in a variety of subjects, and from many different schools, were also completed during this period. Subjects included: Mathematics and Electronic Engineering courses, and Instrumentation.

Polytechnic Institute of Brooklyn*, N.Y. (1963-'68), Ph.D. in Polymer and Physical Chemistry (Minor-Biophysics); Awarded with honors, 1969.
(* Presently known as Polytechnic University of New York)

Additional Graduate Training (1969-'85) in Physiology, Physiologic Psychology, Pharmacology, Toxicology, Immunochemistry, Microbiology, Biophysics, Biochemistry, Endocrinology, Biomedical Instrumentation, Health Physics, Radiation Physics, Occupational Medicine, Computer Programming, Cancer Chemotherapy, Oceanography, Industrial Hygiene Techniques, and 21 credits in the fields of Management and Public/ R&D Administration (Univ. VA).

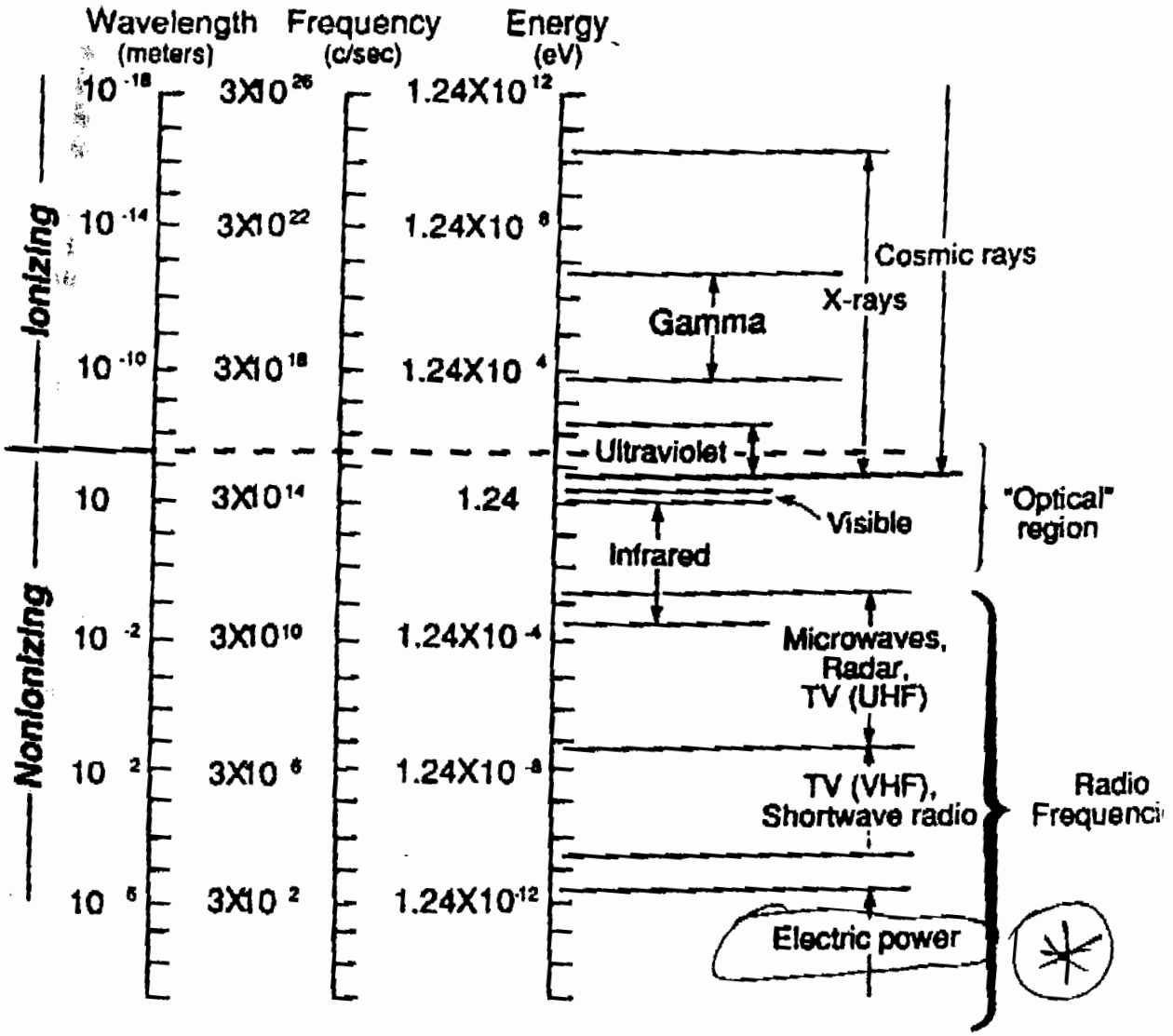
Johns Hopkins University, School of Hygiene and Public Health, Baltimore MD (1987-'90*), M.P.H.,Masters Degree in Public Health, Areas of emphasis: Toxicology, Risk Assessment, Environmental Health Engineering, Industrial Hygiene, Radiation Health, and Occupational Medicine. (* Degree earned while attending classes on a part-time basis)

PROFESSIONAL OCCUPATIONAL EXPERIENCE

1960 (Summer)	U.S. Army Chemical Center, Edgewood Arsenal, MD (Chemistry Technician & Statistical Analysis of Toxicology data)
1961 & '62 (Summers)	National Starch & Chemical Corp., Research Lab., Plainfield, N.J. (Chemist, Polymer synthesis and characterization)
1963-'64	Teaching Fellow, Chemistry Dept., Polytechnic Institute of Brooklyn
1964-'66	Research Fellow, Chemistry Dept., Polytechnic Institute of Brooklyn

Prot. Ex. 23

The Electromagnetic Spectrum



Fox Ridge
ESTATES

FEATURES

EXTERIORS

- ☐ Brick Front—Oversized Brick—Many Choices Available
- ☐ Low Maintenance Designer Vinyl Siding—Beaded Edge Style Available
- ☐ Timberline Composition Self Sealing Roof Shingles
- ☐ Aluminum Gutters and Downspouts
- ☐ Steel Insulated Front Entry Doors
- ☐ Insulated Glass French Door Depending on House Design (or)
  Insulated Glass Sliding Door with Screen Depending on House Design
- ☐ Two Weatherproof Exterior Electrical Outlets
- ☐ Front and Rear Hose Connection
- ☐ Andersen Energy Saving Insulated Windows with Screens
- ☐ Pressure Treated Wood Deck
- ☐ Two Automatic Garage Door Openers
- ☐ Seeded Yard and Landscape Package

INTERIORS

- ☐ Hardwood Flooring in Entry Foyer, Powder Room, Dining Room, and Living Room
- ☐ Architecturally Enhancing Crown Molding in Living Room, Dining Room, Foyer, and Chair Rail Molding in Dining Room
- ☐ Colonial Style Stained Oak Hand Rail with Painted Wood Railings
- ☐ Six Panel Colonial Style or Classique Style Interior Doors
- ☐ Masonry Fireplace in Family Room
- ☐ Front Entrance Two Car Garage
- ☐ Door Chimes
- ☐ Ventilated Closet Shelving
- ☐ Decorator Lighting Package
- ☐ Recessed Fixtures in Kitchen, Morning Room, and Family Room
- ☐ Two Zone Electric Energy Efficient Heat Pump/Air Conditioning System
- ☐ Smoke Detectors
- ☐ Pre-Wire for Telephone and Cable Television, and Security Hook Up
- ☐ Washer/Dryer Connection
- ☐ Laundry Tub
- ☐ R-30 Insulation in Attic
- ☐ R-13 Insulation in Sidewalls
- ☐ R-11 Insulation in Basement Ceiling
- ☐ 400 Amp Electric Service
- ☐ Two 52 Gallon Hot Water Heater
- ☐ Two Piece Plumbing Rough-In/Basement (When Grade Allows)
- ☐ Ten Year Warranty Program—Residential Warranty Corporation (RWC)

Continued on back page

Plot Exh #24

SPECIAL KITCHEN FEATURES

- ☐ KitchenAide Applicance Package—(Individual House Package May Differ)
- ☐ Instant Hot
- ☐ Double Bowl Stainless Steel Gourmet Sink with Single Lever Faucet
- ☐ Choice of Designer Oak Cabinetry
- ☐ Choice of Complimenting Countertop Color
- ☐ 8x8 Ceramic Tile Flooring—Kitchen and Morning Room
- ☐ Cold Water Line For Automatic Ice Maker

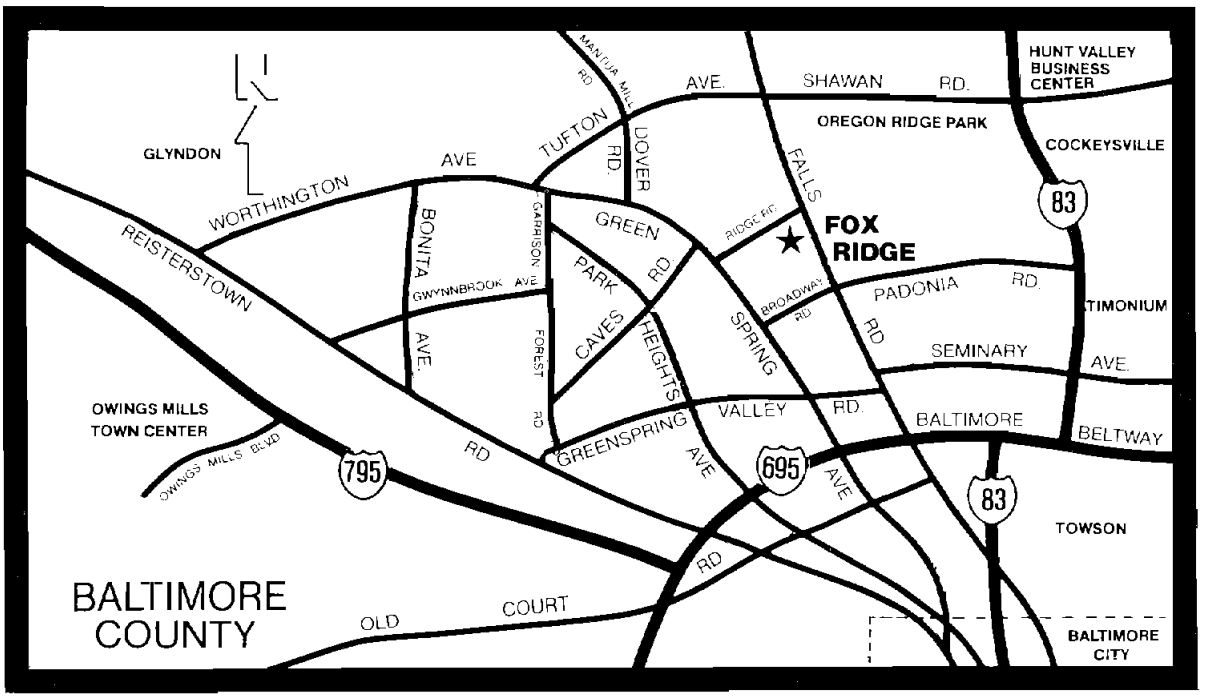
SPECIAL BATHROOM FEATURES

- ☐ Master Bathroom with Separate Oversized Soaking Tub and Glass Enclosed Shower
- ☐ Double Bowl Vanity in Master Bath and Family Bath
- ☐ Ceramic Wall and Floor Tile in Master Bath and Family Bath
- ☐ White Wood Vanity in Master Bath and Family Bath
- ☐ Pedestal Sink in First Floor Powder Room

CONVENIENCE, CONVENIENCE, CONVENIENCE...

- ☐ Downtown Baltimore
- ☐ Hunt Valley
- ☐ Towson
- ☐ Route 695, Interstate 83, Jones Falls Expressway
- ☐ Owings Mills Town Center, Hunt Valley Mall, Harborplace, Galleria
- ☐ Oregon Ridge Park
- ☐ Maryland's Finest Private and Public-Schools and Colleges
- ☐ Much, Much, More.....

ALL FEATURES LISTED ARE SUBJECT TO CHANGE WITHOUT FURTHER NOTICE



FOX RIDGE ESTATES COMMUNITY

JGS
CORPORATION

Maryland Department of Transportation
State Highway Administration

O. James Lighthizer
Secretary
Hal Kassoff
Administrator

5-25-94

Ms. Charlotte Minton
Zoning Administration and
Development Management
County Office Building
Room 109
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Baltimore County
Item No.: #430 (JLL)

Dear Ms. Minton:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not effected by any State Highway Administration project.

Please contact Bob Small at 410-333-1350 if you have any questions.

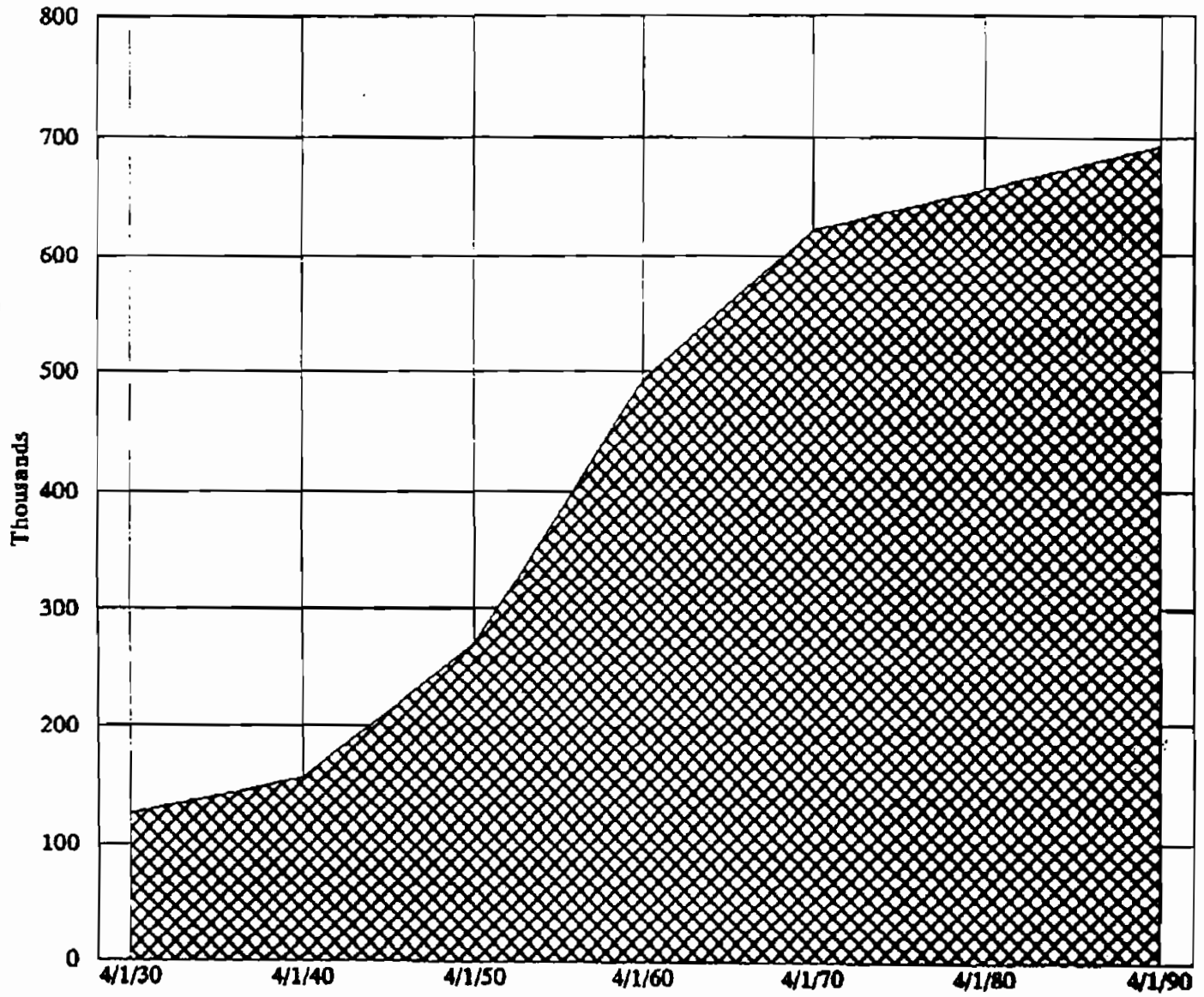
Thank you for the opportunity to review this item.

Very truly yours,
Bob Small
for DAVID N. RAMSEY, ACTING CHIEF
~~John Contestabile, Chief~~
Engineering Access Permits
Division

BS/

BALTIMORE COUNTY POPULATION[1]

DATE	POPULATION	PERCENT CHANGE
4/1/30	124585	
4/1/40	155825	25.10%
4/1/50	270273	73.45%
4/1/60	492428	82.20%
4/1/70	621077	26.13%
4/1/80	655615	5.56%
4/1/90	692134	5.57%



[1]Population information provided by the Bureau of the Census

PROT Exh #11 26

Prot. Ex. 27

CURRICULUM VITAE

NORMAN E. GERBER, AICP

35 Pickburn Court Cockeysville, MD 21030

Business
(410)667-4543

Facsimilie
(410)683-4079

PROFESSIONAL EXPERIENCE

Preparation of Master Plans and Land Use Regulations

Prepared comprehensive, policy, small-area, facility and revitalization plans, capital programs and capital budgets.

Prepared zoning and development ordinances, agricultural land preservation and historic district regulations and growth management programs.

Conducted demographic, transportation, economic and market studies.

Implementation of Plans and Programs

Reviewed and approved new development.

Enforced zoning, agricultural and historic preservation regulations.

Negotiated plan and facilities projects with community groups, local and state legislative bodies and private sector business.

Other

Testified before local, state and national boards, commissions and legislatures on the behalf of plans and programs.

Testified before boards of appeals, circuit courts and the U. S. Tax Court of Appeals on land use issues.

Prepared RFP's, grant applications, selected consultants and administered contracts.

WORK EXPERIENCE

2/88 to present — NORMAN E. GERBER, AICP, Cockeysville, MD
Principal
Private practice as planning consultant specializing in land planning, preparation of land use regulations, property evaluation for potential use and expert testimony in zoning and development issues.

2/89 to 10/90 — The City of Laurel, Laurel, MD
The Office of Planning and Zoning
Director
Administered the planning program and enforced the zoning code.

9/80 to 1/88 — Baltimore County, Baltimore County Maryland
The Office of Planning and Zoning
Director
Administered the planning program, and the budgets of the Office of Zoning and the Peoples Council. Baltimore County Baltimore County Maryland The Office of Planning and Zoning

Planning Board

401 Bosley Avenue
Towson, MD 21204

887-3211

June 25, 1991

The Honorable Douglas B. Riley
Chairman, Baltimore County Council
The Old Courthouse
Towson, MD 21204

Dear Councilman Riley:

Enclosed is a Final Report of the Baltimore County Planning Board which I am submitting to you in accordance with Section 22-21 of the Baltimore County Code, 1978, as amended.

This report is in response to a request from the Zoning Commissioner to update and streamline the requirements for Final Development Plans. The legislation includes changes to the submittal and plan amendment requirements which will shorten the approval process while making the plan a more effective zoning enforcement tool. In addition, the name will be changed to Zoning Plan to more clearly differentiate the document from other development plans.

Sincerely,

Dave Fields

P. David Fields
Secretary to the Planning Board

PDF/prh
Riley#2/TXTPRH

cc: The Honorable Roger B. Hayden, County Executive
Members, Baltimore County Council
Merreen E. Kelly, Administrative Officer
Thomas Toporovich, Secretary to County Council
J. Robert Haines, Zoning Commissioner
H. Emslie Parks, County Attorney
Harold Reid, Chairman of the Planning Board
Members, Baltimore County Planning Board
Nicholas Spinnato, Sr., Senior Executive Assistant
Arnold Jablon, Director, ZADM

Prot Exh 28 for IDen.

Prot. Ex. 29

THE VALLEYS
PLANNING COUNCIL, INC.

212 Washington Avenue
P.O. Box 5402
Towson, Maryland 21285-5402
410-337-6877
410-296-5409 (FAX)

January 1, 1995

To Whom It May Concern:

John Bernstein is the Executive Director of The Valleys Planning Council, Inc. As such he is authorized to represent the views of the organization. He is authorized to speak at public meetings, before the County Council, and in legal proceedings before the Zoning Commissioner, the Board of Appeals, in District of Circuit Court and in any other proceeding in which The Valleys Planning Council may have an interest.

Richard B. Buck
President

Kathleen Pontone, Esq.
Secretary

Prot. Ex. 30

"Never doubt that a small group of thoughtful, committed citizens can change the world: indeed, it's the only thing that ever has."

- Margaret Mead

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

I am unable to attend the appeal hearing on the above captioned case, but I wish to formally register my opposition to the proposed expansion of the Baltimore Gas & Electric Ivy Hill substation for the following reasons:

1. Industrial substations do not belong in any residential neighborhood.

2. The unknown effects of electro magnetic fields to the public.

3. The electrical expansion will create the infrastructure for future industrial and commercial development in the entire area.

Sincerely,

Susan A. Pentuk
NAME

11130 Reisterstown Rd
ADDRESS

Owings Mills, MD 21117

Baltimore County Government
Fire Department

700 East Joppa Road Suite 901
Towson, MD 21286-5500

(410) 887-4500

DATE: 05/19/94

Arnold Jablon
Director
Permits Administration and
Development Management
Baltimore County Office Building
Towson, MD 21204
MAIL STOP-1105

RE: Property Owner: SEE BELOW

LOCATION: SEE BELOW

Item No.: SEEBELOW Zoning Agenda:

Gentlemen:

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

A. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operations.

B. REFERENCE TO THE FOLLOWING ITEM NUMBERS: NONE

RECEIVED
MAY 20 1994
ZADM

REVIEWER: LT. ROBERT P. SAUERWALD
Fire Marshal Office, PHONE 887-4881, MS-1102F

cc: File

Printed on Recycled Paper

Prot. Ex. 31

SHAWAN VALLEY ASSOCIATION

RESOLVED: That at the Annual Membership meeting of the SHAWAN VALLEY Association held on October 18, 1994, it was decided by the Association that responsibility for review and action on all zoning matters for the period INDEFINITE as per Article III of Bylaws be placed in the (Board of Directors) (~~Zoning Committee~~) consisting of the following members: LIZA EBELING, KATHY HOOPER, SONJA SOUTHERN, STAN KRASKA, NEIL ADLERBERG, LIBBY DAVIS, MARTHA LESSNICK, ~~BOB POLLOCK~~, TOM SEYBOLD

AS WITNESS OUR HANDS AND SEAL THIS 18th day of January, 1995.

ATTEST: SHAWAN VALLEY ASSOCIATION

Sonja Southern
Secretary

Liza Ebeling
President

Prot. Ex. 32

RESOLUTION

Hunt Cup Hill Community ASSOCIATION

RESOLVED: That the position of the Hunt Cup Hill Community Association as adopted by the Board of Directors on the zoning matter known as: The expansion of the Ivy Hill Substation is that: We are against the proposed Phase 1 and Phase 2 residential substation expansion.

AS WITNESS our hands and seal this 9th day of JAN, 1995.
Hunt Cup Hill Community ASSOCIATION

Nancy L. Linde
SECRETARY

PRESIDENT

Heather Hill Homeowners Association
P. O. Box 721
Brooklandville, Maryland 21022 0721

Friends of the Ridge
Attn: Pam Follo
1 Joel Court
Reisterstown, Md

Dear Pam,

The Heather Hill Homeowners Association has looked at the plans for the BG&E substation upgrade. We have examined the various points put forth by both sides. In the end we have decided that it is not in our best interest to ignore this process without our input.

After polling most of the home owners and discussion among the members of the board, we have decided to support your position that BG&E should revise their plan to quadruple the size of the substation at Joel Court and Ridge Road. The general consensus is that there are other areas in which a substation could be built that is away from already developed housing. Considering that extensive development is planned for the Falls Road Corridor, it makes more sense to place discreetly landscaped substations in several of the as yet undeveloped areas. Potential residents could make their decision to buy or not buy with the substation already in place.

On the matter of EMFs, we know the studies are not conclusive. This being the case, we prefer that the utility err on the side of conservatism. The families that live nearby should not have their health jeopardized should the studies exonerating EMFs be wrong.

Enclosed is a check to help defray the cost of challenging the proposed substation. We hope you are successful and support your efforts on behalf of our communities.

Sincerely,

Kathy Dell

Kathy Dell
President for the
Heather Hill Homeowners Association

ProtEch #33

Prot Exh. #34

[illegible]
31 Longfield Avenue
Reisterstown, MD 21136

January 11, 1995

To: Baltimore County Board of Appeals

Re: Case # 94-452-XA

I am unable to attend the appeal hearing on the above captioned case, but wish to formally register my opposition to the proposed expansion of the B.W.I. Industrial Park.

While we all understand the need to upgrade and expand, decision to permit the expansion of the Airy Hill subdivision threatens the safety, health and welfare well being of residents and the environment we live in all. Responsible to ensure

Prot Exh # 35

NATIONAL EMR ALLIANCE

January 18, 1995

Mrs. Carol Rytter
Friends of the Ridge
One Joel Court
Reisterstown, MD 21136

Dear Carol:

The National EMR Alliance is a forum for effective communication, networking and organization of citizen action groups involved in the electromagnetic field (EMF) radiation issue.

We believe that EMF is hazardous to life and constitutes a significant threat to the public's health.

To that end, the Alliance is in favor of, and hopes to foster, local, regional, national and international efforts to reduce, mitigate and, where possible, eliminate hazardous exposure to EMF. Friends of the Ridge is one of over three hundred and fifty grassroots organizations involved with the National EMR Alliance who are committed to improving the electrical environment for their selves, their families and their communities.

The National EMR Alliance applauds the efforts of its member group Friends of Ridge who are working to protect the rights of the citizens of Baltimore County from hazardous levels of EMF. In particular, its opposition of the enlargement by Baltimore Gas & Electric Company of an electrical substation within a residential area.

The Savitz-Loomis study published on January 15th by the *American Journal of Epidemiology* joins a growing list of over fifty positive residential and occupational studies which support the conclusion that exposure to elevated EMF promotes the development of various forms of cancers and leukemias including brain cancer, female *and* male breast cancer, spontaneous abortions (miscarriages) and other serious health maladies. Never in the history of environmental research has there been so much evidence that a substance is carcinogenic than there is with EMF.

The issue of adverse health effects associated with exposure to EMF radiation is fast becoming the health and environmental issue of the decade. The following statements indicate the seriousness of this issue.

410 West 53rd Street • Suite 402 • New York, New York 10019
(212) 554-4073 phone • (212) 977-5541 fax

BALTIMORE COUNTY, MARYLAND
I N T E R O F F I C E C O R R E S P O N D E N C E

TO: Arnold Jablon, Director DATE: May 27, 1994
Zoning Administration and Development Management

FROM: Robert W. Bowling, P.E., Chief RWB/DAK
Developers Engineering Section

RE: Zoning Advisory Committee Meeting
for May 31, 1994
Item No. 430

The Developers Engineering Section has reviewed the subject zoning item. The submitted schematic landscape plan is tentatively approved. A final landscape plan is required prior to release of permits.

RWB:sw

Prot. Ex. 36

IN THE MATTER OF	*	BEFORE THE
BGE Ivy Hill Substation	*	COUNTY BOARD OF APPEALS
S/w Corner of Ridge Rd. &	*	BALTIMORE COUNTY
Joel Ct. 3rd Council Dist.	*	CASE NO. 94-452-XA

* * * * * * * * * * * * * *

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Tuesday Jan. 10, 1995 at 10:00 a.m. at Room 48, located at Basement, Old Courthouse, 400 Washington Ave. Towson and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Witness: Custodian of the Records, Balto. Gas & Electric
Address: Charles Center, P.O. Box 1475
Balto., MD 21203

SERVE ON: Martha Delea, Esq., BG & E and Robert Hoffman, Esq.
210 Allegheny Ave. , P.O. Box 5517, Towson, MD 21204
Towson, 21204

SEE ATTACHED SHEET FOR DOCUMENTS

Name: J. Carroll Holzer
Firm: Holzer & Lee
Address: 305 Washington Ave. #502
Towson, MD 21204
825-6961

The witness named above is hereby ordered to so appear before the County Board of Appeals. The Board requests the Sheriff to issue the summons set forth herein.

Charlotte E. Radcliffe
County Board of Appeals of
Baltimore County

Cost: $_____

Summoned: _____, 19____

Not served: _____, 19____

Sheriff of Baltimore County

Pet. Ex. 1

Monica P. McGrady, P.E.
4532 Rusty Gate
Ellicott City, MD 21043, U.S.A.
(410) 461-0792 home, (410) 234-5294 office

Experience

Senior Project Engineer, Baltimore Gas and Electric Co., Baltimore,MD. 01/91 - present: Responsible for the design, engineering and construction of high voltage electric substations. Project management functions include planning, scheduling, budget preparation, cost control, contract development and management, equipment procurement, leading and coordinating people and activities.

Engineer, Baltimore Gas and Electric Company, Baltimore, MD. 02/89 - 12/90: Performed power system analysis studies to plan for proper reactive power compensation and steady state voltage on the electric system. Also performed selected planning studies to assure reliable and economical operation and expansion of the electric system through extensive use of load flow programs.

Engineer, HMJ Corporation, Washington, DC. 10/88 - 12/88: Verified and completed a research report on power conditioning systems for the Strategic Defense Initiative Organization.

Teaching Assistant, The George Washington University, Washington, DC. 1/88 - 12/88: Taught a power systems laboratory to students in their senior year. Major emphasis of the course was on transformers and measurements of the characteristics of devices used to generate electricity.

Education

Registered Professional Engineer, State of Maryland, June 1993.

The George Washington University, Washington, DC. - Master of Science with a concentration in Energy Conversion, Power Systems and Transmission Engineering, February 1989. GPA: 4.0/4.0

Syracuse University, Syracuse, NY. - Bachelor of Science in Electrical Engineering (Summa Cum Laude), May 1986. GPA: 3.8/4.0

Areas of Expertise

o Substation grounding design, electric and magnetic field analysis, equipment rating, power system analysis, transient analysis, design of electric transmission and distribution systems, design of emergency and standby power systems, electromechanical and direct energy conversion.

o Fluent in Spanish and knowledge of Italian.

Professional Memberships

o Member of the Advisory Committee for the Substation Magnetic Fields Research Group of the Electric Power Research Institute.
o Member of the IEEE and the Power Engineering Society.
o Member of Eta Kappa Nu and Tau Beta Pi engineering honor societies.

Pet. Ex. 27

L. H. Rosenberg
& Associates Inc.
13010 Heil Manor Drive
Reisterstown MD 21136

January 18, 1995

Clare Miller
Baltimore Gas & Electric Co.
PO Box 1475
Baltimore MD 21203

FAX DELIVER

Dear Ms Miller:

I am a resident of the Shawan Valley community and reside at 13010 Heil Manor Drive, Reisterstown MD 21136. My house is approximately ¼ mile from your current substation at Ridge Road off of Falls Road.

I have over the past several months been reading the literature provided by both BGE and the group opposed to your proposed substation expansion. I was shocked to learn that the community association that represents my area (Shawan Valley Community Association) has taken a stand opposing the proposed expansion. I am further dismayed that the Association is using "scare" tactics ("Save our children" etc.) to bolster there position. The following facts are important to put the Association's position into perspective.

A. The Association **does not** represent all of the properties in the community and in fact is not a "Property Owners Association" as defined in Maryland Law. It is merely a voluntary organization of property owners in the area that wish to join together for common purposes.

B. The only function that the Association performs that could be construed as coming close to a POA is that it appoints the "Architecture Review Committee" that reviews and approves building plans as required by the deed covenants.

C. All the dues paying members of the Association were not present at the meeting that voted on the Association's position opposing the expansion. Also since all the dues paying members do not represent all the property owners in the area the statement that the community is opposed is not exactly accurate.

(410) 252-2439

Pet. Ex. 22



PLANNING BOARD POLICIES AND RESOLUTIONS

Final Development Plans.....3

Pet. Ex. 12

James F. Ryan, Jr.
900 Gas and Electric Building
P.O. Box 1475
Baltimore, MD 21203

(410) 234-5129

PROFESSIONAL QUALIFICATIONS

State of Maryland
Department of Licensing and Regulation
Baltimore, MD
REGISTERED PROFESSIONAL ENGINEER/ELECTRICAL, APRIL, 1993
LICENSE #19849

District of Columbia
Department of Consumer and Regulatory Affairs
Washington, DC
REGISTERED PROFESSIONAL ENGINEER/ELECTRICAL, AUGUST, 1992
LICENSE #9820

EDUCATION

Virginia Polytechnic Institute and State University *1980 - 1985*
Blacksburg, VA
BACHELOR OF SCIENCE IN ELECTRICAL ENGINEERING, JUNE 1985.

University of Baltimore *1987 - 1990*
Baltimore, MD
MASTER OF BUSINESS ADMINISTRATION, JUNE 1990.

PROFESSIONAL EXPERIENCE

Baltimore Gas and Electric Company
Baltimore, MD

DECEMBER, 1992 TO PRESENT - AREA FORECAST LEADER: PROVIDE TECHNICAL LEADERSHIP AND DIRECTION TO A TEAM OF THREE RESPONSIBLE FOR THE DEVELOPMENT OF SMALL AREA DISTRIBUTION FACILITY PLANNING FORECASTS. FORECASTS ARE DEVELOPED USING ENGINEERING, STATISTICAL, AND GEOGRAPHIC ANALYSIS OF ELECTRIC DEMAND, DEMOGRAPHICS, AND LAND USE. POSITION REQUIRES STRONG BACKGROUND IN PRINCIPLES OF ELECTRIC DISTRIBUTION, AND FREQUENT COMMUNICATION WITH ENGINEERS RESPONSIBLE FOR DISTRIBUTION SYSTEM PLANNING AND OPERATION.

JUNE, 1985 TO NOVEMBER, 1992 - FORECASTER, AREA FORECASTING: PREPARED FORECASTS OF SMALL AREA DEMAND TO SUPPORT THE PLANNING OF

BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

INTER-OFFICE CORRESPONDENCE

June 14, 1994

TO: Mr. Arnold Jablon, Director
Zoning Administration and
Development Management

FROM: J. Lawrence Pilson
Development Coordinator, DEPRM

SUBJECT: Zoning Item #430 - Ivy Hill Substation
Intersection of Ridge Road & Joel Court
Zoning Advisory Committee Meeting of May 23, 1994

The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item.

Regarding the Forest Conservation Regulations:

1. Provide a plan showing the existing woods lines on the property.

2. Provide data on current acreage of forest on site and what acreage of forest will be left on site after all necessary clearing has been performed. Provide data on how much square footage of forest is to be removed.

3. If more than 40,000 square feet of forest is to be disturbed then the property will have to comply with Baltimore County's Forest Conservation Regulations. In addition, what will be the fate of the parcel lines?

JLP:GCS:sp

IVYHILL/DEPRM/TXTSBP

Tech. Ex. 14

Updated: 11/16/94

CURRICULUM VITAE

Linda Schuman Erdreich, Ph.D.
Bailey Research Associates, Inc.
292 Madison Avenue
New York, N.Y. 10017

EDUCATION

1979	Ph.D., University of Oklahoma, Epidemiology
1977	M.S., University of Oklahoma, Biostatistics and Epidemiology
1968	M.Ed., Temple University, Science Education
1964	B.A., Temple University, Biological Sciences

EXPERIENCE

1991-Present Principal Scientist
Bailey Research Associates, Inc.
New York, NY

1989-1991 Senior Research Associate
Environmental Research Information, Inc.
New York, NY

1987-1989 Senior Associate
ICF-Clement Associates, Inc.
Edison, N.J.

1984-1987 Group Leader
Methods Evaluation and Development Staff
Office of Research and Development
Environmental Criteria and Assessment Office
U.S. Environmental Protection Agency
Cincinnati, OH

1981-1984 Senior Epidemiologist
Office of Research and Development
Environmental Criteria and Assessment Office
U.S. Environmental Protection Agency
Cincinnati, OH

Pet. Ex. 15

PAUL W. TAYLOR, P.E.
Associate, Project Manager
George William Stephens, Jr. & Associates, Inc.

Registration: Professional Engineer, Maryland (Md. Reg. No. 13741)

Education: The Johns Hopkins University, Civil Engineering, 1983

Professional Experience:

Mr. Taylor has over twenty-three years of experience in site development engineering, with design and project management experience on a broad range of projects. In addition to site design, Mr. Taylor has expertise in the areas of utility design, stormwater management design, sediment control design, and road and bridge design. In addition, while serving as a staff engineer for Harford County Department Public Works, Mr. Taylor was responsible for the design, bid document preparation and construction management on several public sector road, bridge & recreation projects.

Mr. Taylor has provided site design and engineering for the following commercial and institutional projects:

* State Highway Administration, Bel Air Maryland - Bel Air Complex Site, Utilities and Storm Water Management.

* Joppa-Magnolia Fire Station No. 3, Edgewood, Maryland - Site, Utilities and Stormwater Management.

* Fashion Park Commercial, Joppa, Maryland - Site, Sediment Control and Utilities and Public Roads.

* Amoco Service Station, Havre de Grace, Maryland - Site, Utilities, Sediment Control and Stormwater Management.

* Unitarian Universalist Church, Churchville, Maryland - Site, Septic System Design, Sediment Control & Stormwater Management.

In addition, Mr. Taylor has project management experience on a wide range of site development projects including:

Durham Manor, Harford Co., Md.
Grace Harbour, Havre de Grace, Md.
Amyclae Business Center, Harford Co., Md.

ZONING EXHIBIT

Pet. Ex. 16

BGE IVY HILL

TOTAL AREA IN ACRES	TRACT "A" 1.5628 AC.	TRACT "B" 0 9224 AC.	TRACT "C" 0.4081 AC.	TOTAL 2.8933 AC.
EXISTING WOODED AREA	1.0008 AC.	0.3958	0.2011 AC.	1.5977 AC.
EXISTING LAWN AREA	0.562 AC.	0.3818	0.0562 AC.	1 AC.
EXISTING GRAVEL AREA	0 AC.	0.0551 AC.	0.1149 AC.	0.17 AC.
EXISTING IMPERVIOUS AREA	0 AC.	0.0395 AC.	0.0193 AC.	0.0588 AC.
EXISITNG BUILDING AREA	0 AC.	0 0502 AC.	0.0166 AC.	0.0668 AC.
BUILDING COVERAGE	0.00 %	5 44 %	4.07 %	2.31 %
PROPOSED WOODED AREA	0.7308 AC.	0.1846 AC.	0 1111 AC.	1 0265 AC.
PROPOSED LAWN AREA	0.7712 AC.	0.2794 AC	0 1297 AC.	1.1803 AC
PROPOSED GRAVEL AREA	0.0297 AC.	0.3151 AC.	0.1442 AC.	0.489 AC.
PROPOSED IMPERVIOUS AREA	0.0311 AC.	0.1240 AC.	0.0231 AC.	0.1782 AC.
PROPOSED BUILDING AREA	0 AC.	0.0193 AC.	0 AC.	0.0193 AC.
BUILDING COVERAGE	0.00 %	2.09 %	0.00 %	0.67 %
AREA OF SWM POND	0.1856 AC.	0.0565 AC.	0 AC.	0.2421 AC
AREA OF WOODS REMOVED TO CONSTRUCT POND	0.1765 AC.	0.0061 AC.	0 AC.	0.1826 AC.
AREA OF WOODS REMOVED FOR PROPOSED SITE	0.2700 AC.	0.2112 AC.	0.0900 AC.	0.5712 AC.
AREA INSIDE FENCE EXCLUDING SWM POND	0.0331 AC.	0.3566 AC.	0.0569 AC.	0.4466 AC.

Jan. 5, 1995

GEORGE WILLIAM STEPHENS, JR. ASSOCIATES, INC.

Pet. Ex. 17



PROPOSED IVY HILL SUBSTATION PLANTING

TREE SPECIES INFORMATION

SPECIES	SIZE AT PLANTING (FT.) HT.	WIDTH	GROWTH RATE (FT./YR.)	MATURE HEIGHT (FT.)	MATURE WIDTH (FT.)	COMMENTS
LEYLAND CYPRESS	8'	3'	2 - 3'	60 - 70'	10 - 15'	Considered fastest growing conifer. Will reach 100' in 60 years.
WHITE PINE	8 - 10'	4 - 5'	2'	50 - 80'	20 - 40'	Considered fastest growing pine. Will reach 50 - 75' in 25 - 40 years.
NORWAY SPRUCE	8 - 10'	3 - 4'	1 - 1.5'	40 - 60'	25 - 30'	Medium to fast growth, especially when young. Will reach 75' after 50 years.
EASTERN HEMLOCK	8 - 10'	4 - 5'	1 - 1.5'	40 - 70'	25 - 30'	Medium growth in full sunlight, slower in shade. Will reach 25 - 50' in 15 - 30 years.



Pet. Ex. 18

GEORGE E. GAVRELIS

Vice President



George Gavrelis has broad, extensive training and background in planning and zoning, particularly in Baltimore County. He has a thorough knowledge of planning and zoning procedures, as well as the detailed requirements and standards of the zoning and development regulations. His expertise assures that projects comply with applicable standards and move more expediently through the approval process.

Mr. Gavrelis is recognized as an expert witness in planning, zoning and land use issues and testifies before the Zoning Commissioner, the Board of Appeals and the Circuit Court.

Professional Background

Daft·McCune·Walker, Inc.
Towson, Maryland
1984 - Present

Private Planning Consultant
1982 - 1984

Developers General Corporation
1972 - 1982

Baltimore County Office of Planning and Zoning
Towson, Maryland
1951 - 1972
Director, 1963 - 1972

Education

Master of City Planning
Harvard University Graduate School of Design

Bachelor of Arts
Harvard College

Associations

American Institute of Certified Planners, Charter Member

American Planning Association

Committees

The Towson Partnership
Urban Design and Towson Core Subcommittees

Executive Steering Committee, Baltimore County Master Plan, Strategic Plan 2000

Long Range Planning Committee, Trinity Episcopal Church

Advisory Group
1992 Comprehensive Zoning Map Guidelines

Significant Projects

Towson Commons
Towson, Maryland

Mays Chapel North Planned Unit Development
Timonium, Maryland

Caves Valley Golf Club
Documented Site Plan
Reclassification and Special Exception

Land Owners Council, Reciprocal Regional Development Agreement
Owings Mills Growth Area
Baltimore County, Maryland

New Density Residential Zones
Baltimore County, Maryland

The Guide Plan, a Comprehensive Plan for Baltimore County, Maryland

Guest Lecturer

National Conventions, National Association of Home Builders
Houston, Texas
Las Vegas, Nevada

Development Seminar, National Association of Home Builders
Phoenix, Arizona

Home Builders Institute, Home Builders Association of Maryland

Awards

Home Builders Association of Maryland, Distinguished Service Award
1979 and 1980

Baltimore County Chamber of Commerce Leadership Award, Growth Management Committee
1981

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

6/21

June 16, 1994

Martha A. Delea, Esquire
Baltimore Gas & Electric Company
Charles Center
P. O. Box 1475
Baltimore, Maryland 21203-1475

RE: Case No. 94-452-XA, Item No.430
Petitions for Special Exception and Variance

Dear Ms. Delea:

Enclosed are copies of comments received from the Department of Environmental Protection and Resource Management on June 16, 1994 for the above-referenced case.

If there are any questions, please do not hesitate to call me at 887-3391.

Sincerely,

Charlotte Minton

Charlotte Minton

Enclosure

Printed with Soybean Ink on Recycled Paper

Pet. Ex. 9

Lawrence S. Taylor

8774 Cloudleap Court T3
Columbia, Maryland 21045
410-992-7768

EXPERIENCE:

Baltimore Gas and Electric Company, Baltimore, Maryland

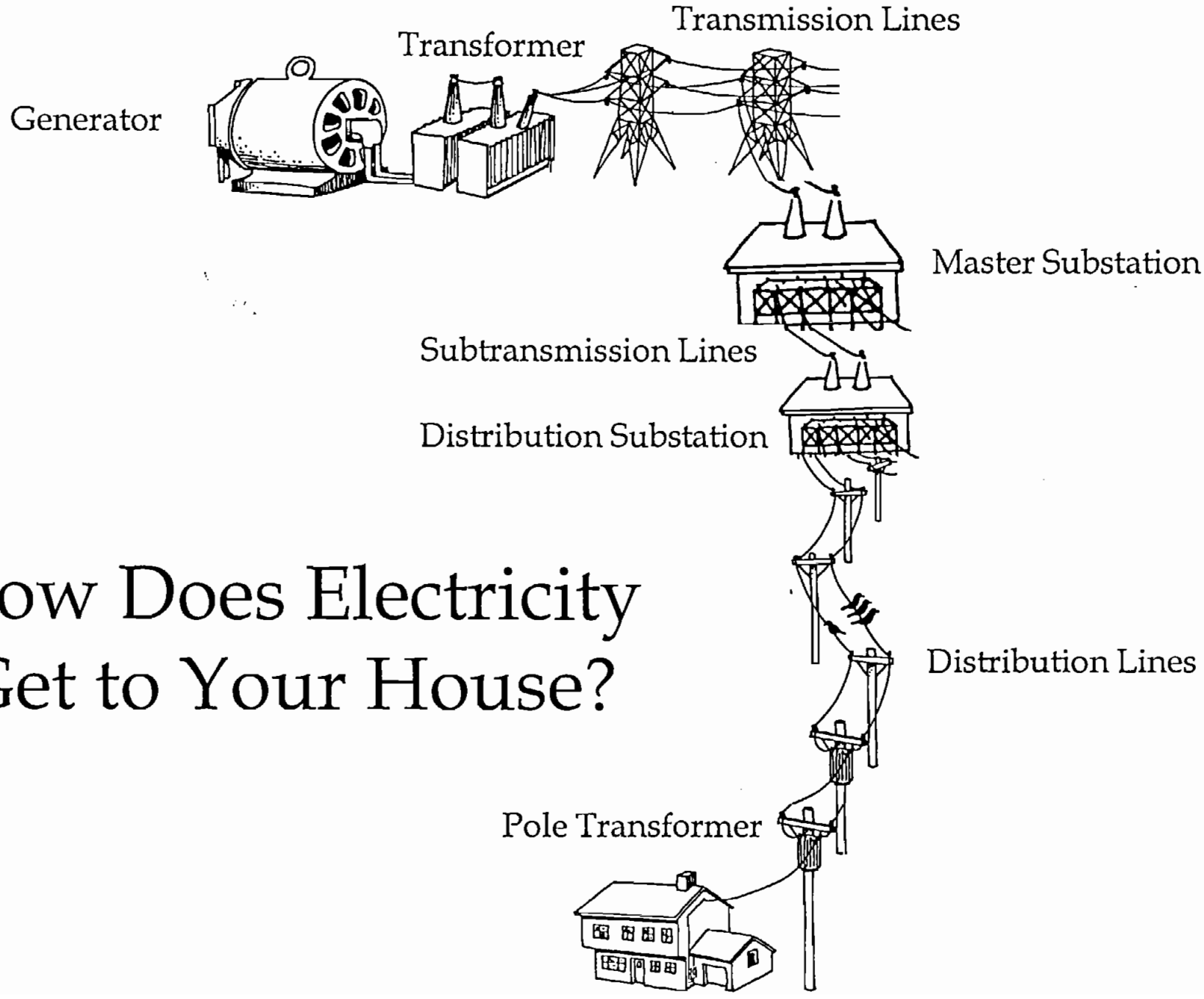
Principal Engineer, Area Planning 4/93 to present:
Supervised a unit of 6 engineers, 1 secretary and 2 technicians responsible for expanding the BGE area supply system and developing system reactive support plans. Managed the downsizing of the unit from 12 engineers and 3 technicians. Reviewed all plans for quality of design before issue. Prioritized discretionary projects to reduced capital expenditures. Established direction and strategy for the inclusion of demand side management and distributed generation concepts into the distribution planning process. Managed the job proficiency system for salary adjustments; promoted and terminated employees as appropriate. Served on strategic management team that developed strategies for the distribution division response to increased competition and the information superhighway. Performed a technical study of the impact on the distribution system of future electric vehicle use.

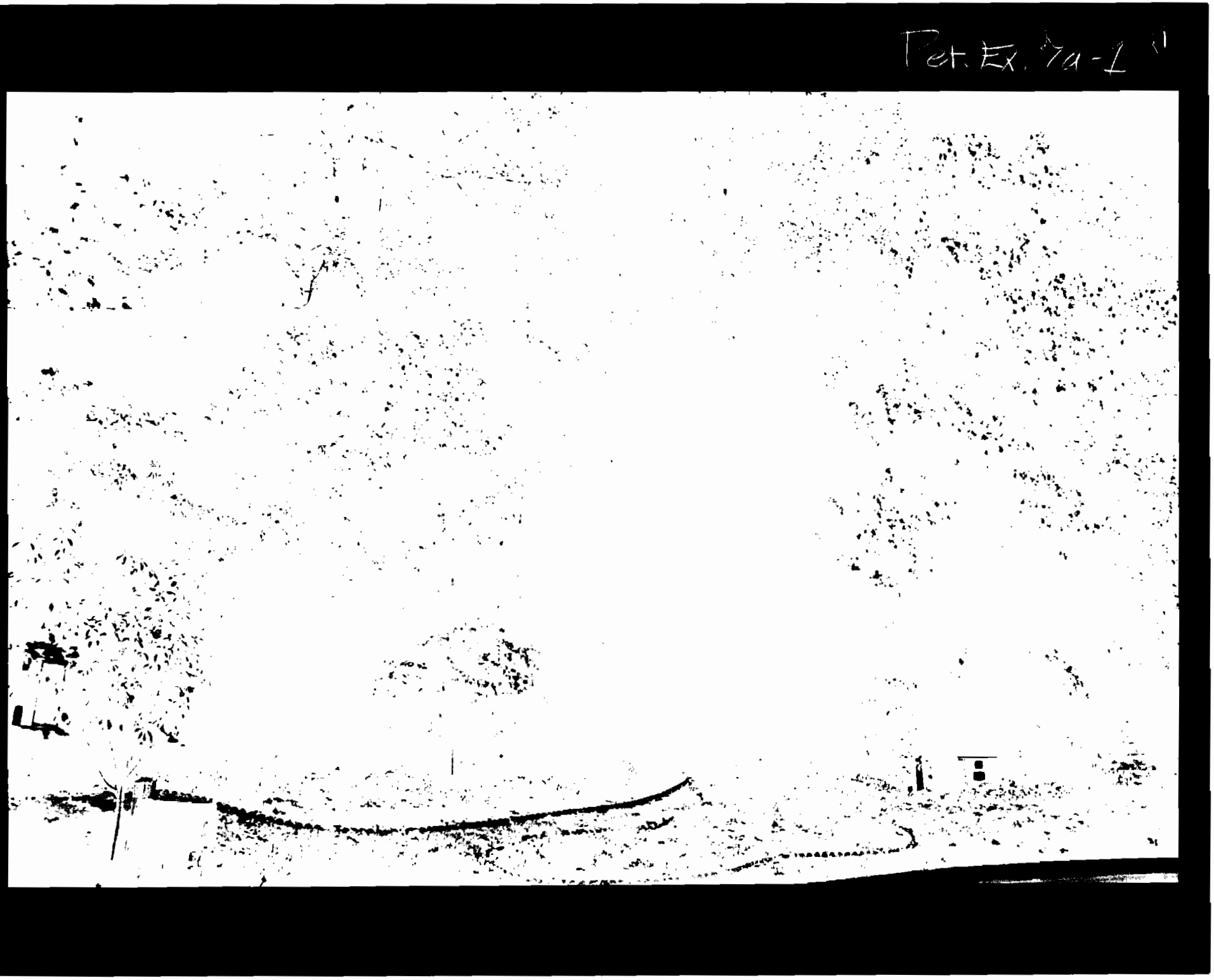
Principal Planner,Substation and Subtransmission Planning Group,11/89- 3/93:
Led a team of 6 engineers and 2 technicians in developing expansion plans for the area supply system. Assigned projects and did performance evaluations of group members. Reviewed all plans for quality of design before issue to the substation design engineers. Managed a $30 million capital budget, recommending cuts as necessary to achieve budget objectives. Over 600 MW of distribution station capacity added while leading the team.

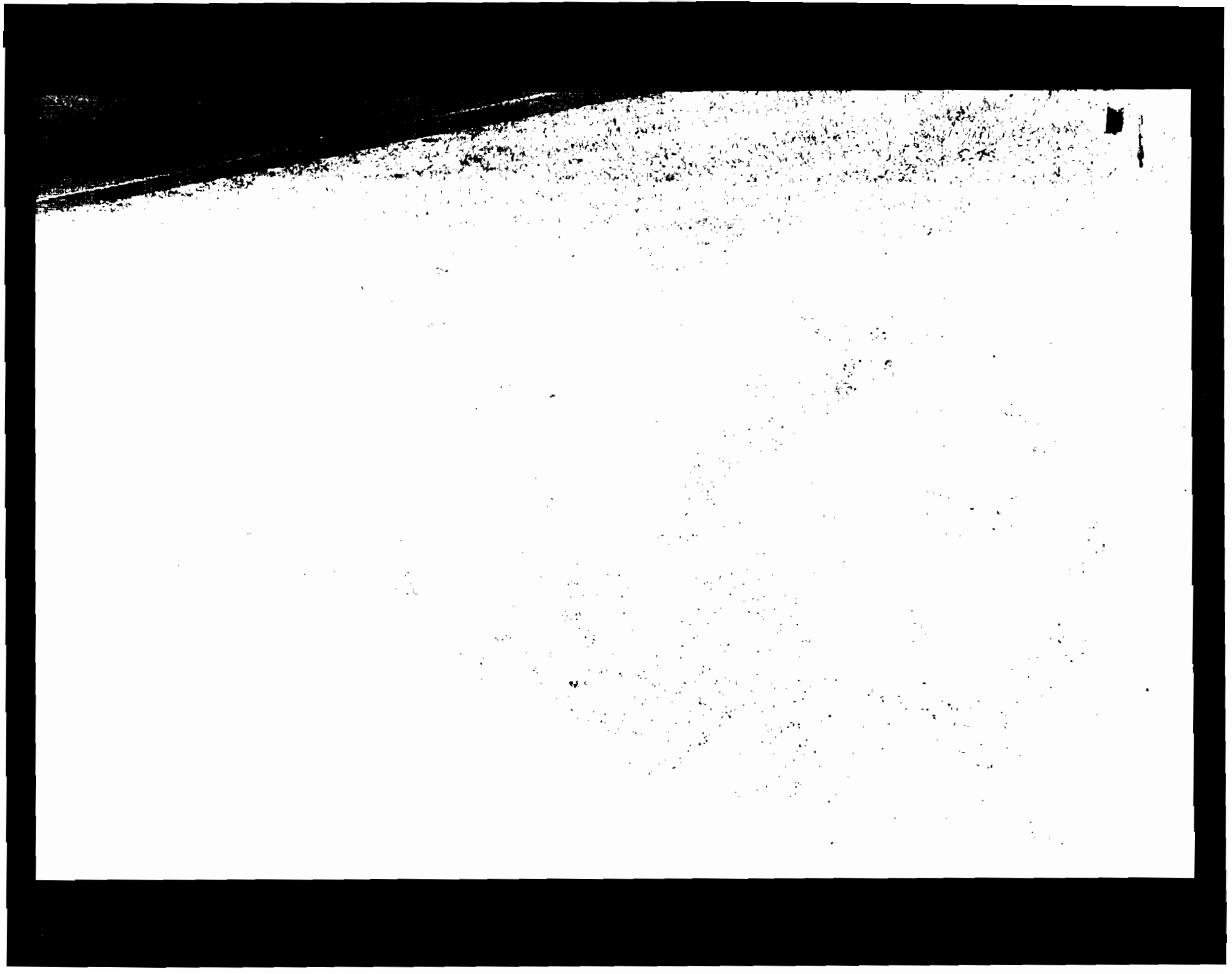
General Supervisor of Operations, Southern Department 10/87 -10/89:
Supervised a section of 30 (field and office) technicians and clerks, with 3 hourly supervisors as direct reports. Supervised the analysis of operating problems for the portion of the distribution system serving about 500,000 customers. Provided engineering direction to the field technicians resolving customer power quality complaints. Engineered system design changes to improve power quality to electric customers, including all buried cable replacement projects. Worked closely with construction to minimize disruption of existing neighborhoods. Provided the customer relations department with technical advice on customer damage cases from surges, low and high voltage, etc.

Pet. Ex. 10

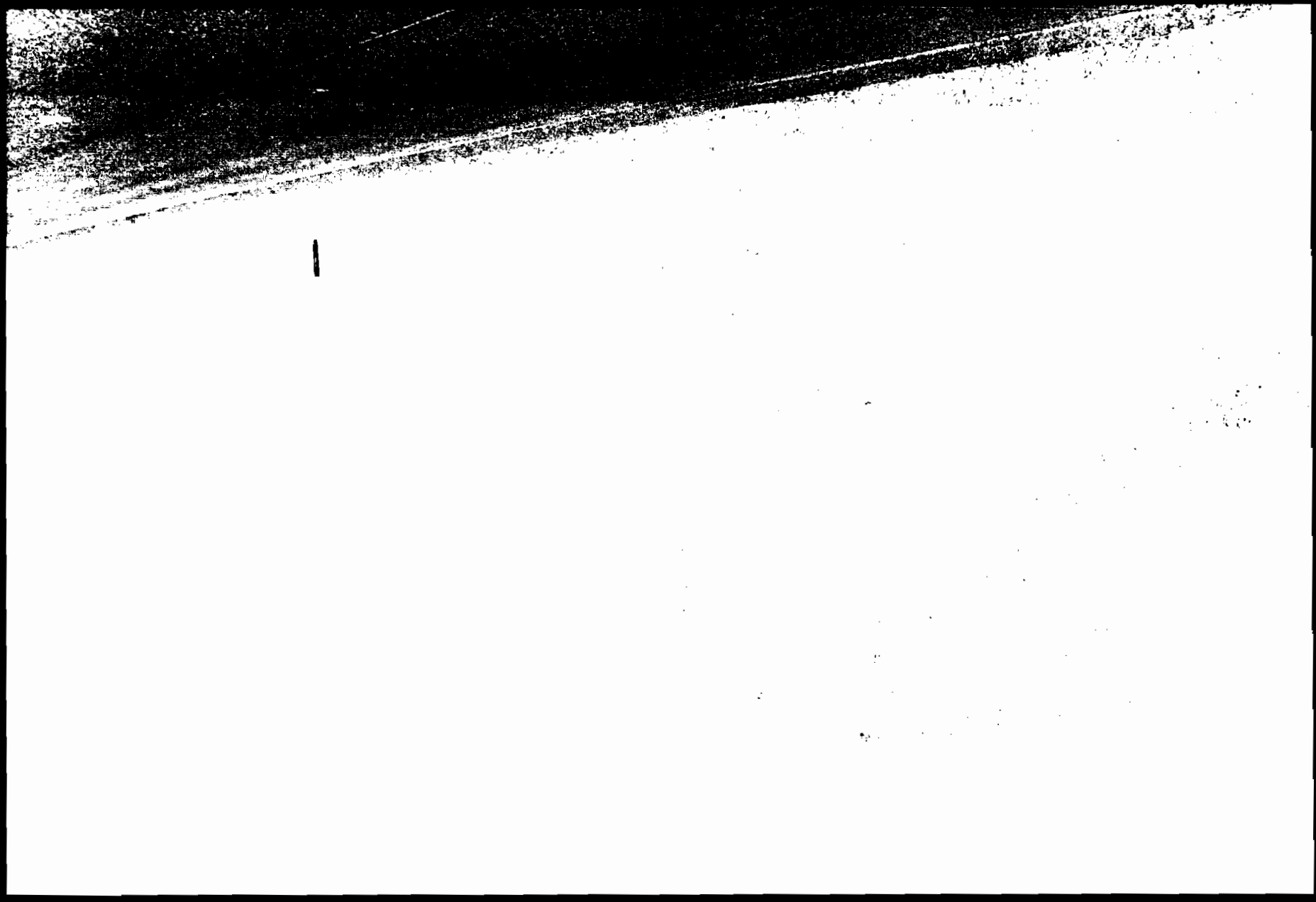
How Does Electricity Get to Your House?




Pet. Ex. 7a-1



Pet. Ex. 7 b - 2



Pet. Ex 7C-3

Holzer And Lee
305 Washington Ave
Suite 502
Towson, MD 21204
(410)825-6961

Type	Num	Name(Last,First,Mid,Title) / Dispo	Entered
PLT	005	O Hara, Robert, Mrs	CT DO 12/30/96 06/16/95
Attorney	0012186	Holzer, J Carroll Holzer And Lee 305 Washington Ave Suite 502 Towson, MD 21204 (410)825-6961	
PLT	006	Hanley, Ron, Mr	CT DO 12/30/96 06/16/95
Attorney	0012186	Holzer, J Carroll Holzer And Lee 305 Washington Ave Suite 502 Towson, MD 21204 (410)825-6961	
PLT	007	Hanley, Ron, Mrs	CT DO 12/30/96 06/16/95
Attorney:	0012186	Holzer, J Carroll Holzer And Lee 305 Washington Ave Suite 502 Towson, MD 21204 (410)825-6961	
PLT	008	Follo, Carl, Mr	CT DO 12/30/96 06/16/95
Attorney	0012186	Holzer, J Carroll Holzer And Lee 305 Washington Ave Suite 502 Towson, MD 21204 (410)825-6961	
PLT	009	Follo, Carl, Mrs	CT DO 12/30/96 06/16/95
Attorney	0012186	Holzer, J Carroll Holzer And Lee 305 Washington Ave Suite 502 Towson, MD 21204 (410)825-6961	
PLT	010	Brown, Ira, Mr	CT DO 12/30/96 06/16/95
Attorney.	0012186	Holzer, J Carroll Holzer And Lee 305 Washington Ave Suite 502	

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

July 6, 1994

Mr. Joseph C. Laverghett
1205 York Road
Lutherville, Maryland 21093

RE: Case No. 94-466-SPH, Item No.452
Petition for Special Hearing

Dear Mr. Laverghett:

Enclosed are copies of comments received from the Office of Planning and Zoning on July 5, 1994 for the above-referenced case.

If there are any questions, please do not hesitate to call me at 887-3391.

Sincerely,

Charlotte Minton

Charlotte Minton

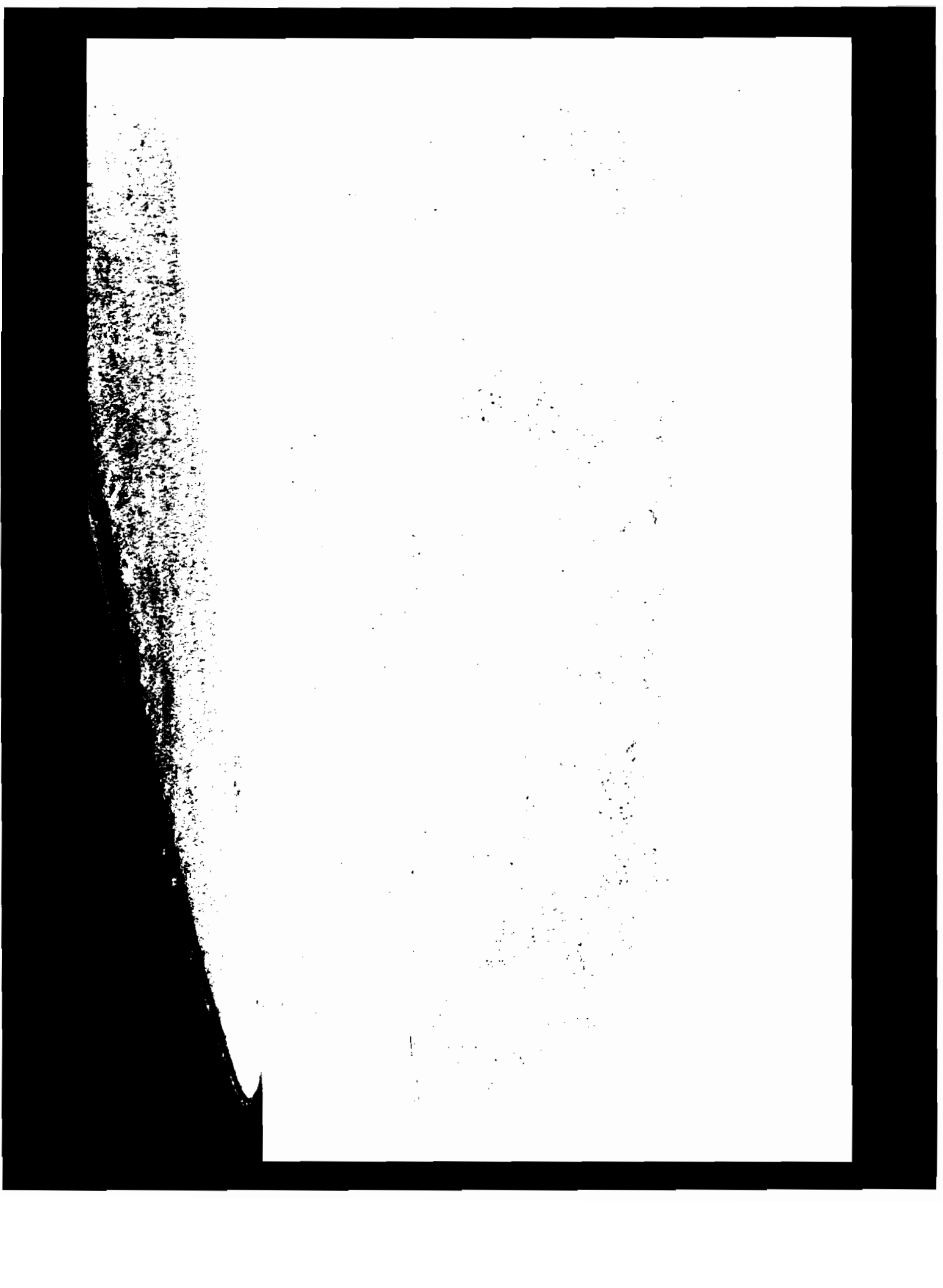
Enclosure

Printed with Soybean Ink
on Recycled Paper

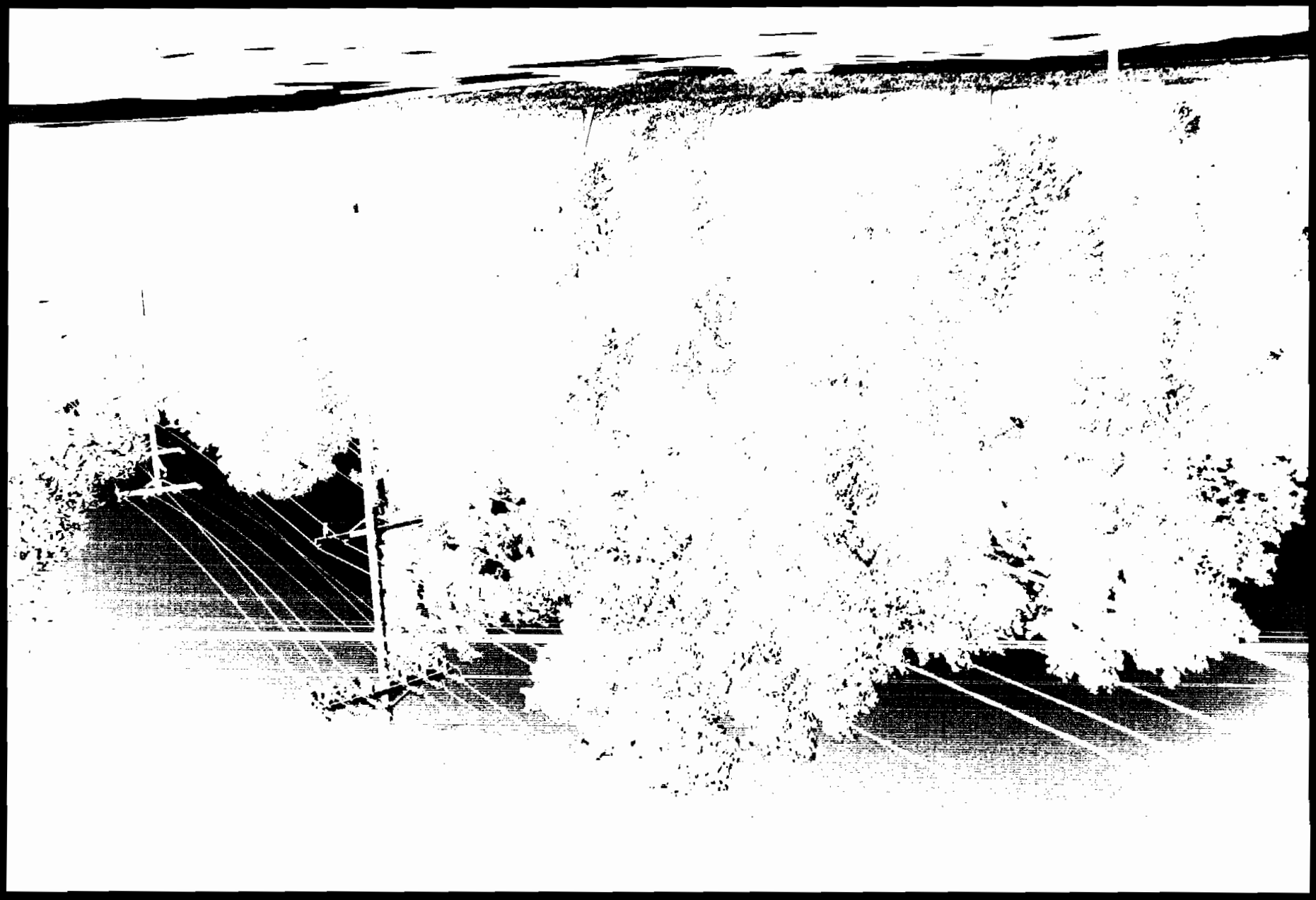
Pet. Ex 7D-4



Pet. Ex 7E - 5



Pet. Ex 7 F-6



Pet Ex. 7 C - 7



Ref. Ex 74-S

9/02/94 -Notice of Assignment for hearing scheduled for Tuesday, October 4, 1994 at 10:30 a.m. (Day #1) and Thursday, October 6, 1994 a 10:30 a.m. (Day #2) sent to the following:

J. Carroll Holzer, Esquire
Andrew Lansman, et al
Robert A. Hoffman, Esquire
Martha A. Delea, Esquire
Mr. & Mrs. Frederick Vinup
Mark K. Cohen, Esquire
Mr. & Mrs. Raymond Fischer
Mrs. Dorothy Marsden
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
Timothy H. Kotroco
W. Carl Richards /ZADM
Docket Clerk /ZADM
Arnold Jablon /ZADM

9/14/94 -Letter from Mark Cohen, Esquire -withdrawing appearance as counsel for R. Hanley, Protestant.

9/23/94 -Rule 8 papers filed by Falls Road Community Association.

10/04/94 -Day #1 completed before the Board; continued to Thursday, October 6, 1994 for Day #2. With agreement of all counsel and Board, holding January 10, January 11 and January 12, 1995 for Days #3, 4 and 5.

4:15 p.m. T/C from Carroll Holzer; has continued ZC case in Upper Marlboro on Wednesday, January 11, 1995. Available two remaining dates and all of following week as well. Requested that this be brought to attention of Board before start of Day #2 on 10/06/94.

10/06/94 -Postponed on the record at request of Counsel for Petitioner without objection by Counsel for Protestants /Appellants; case reassigned for Day #2 to January 10, 1995; remainder of dates scheduled as follows: Day #3 - January 12; Day #4 -January 17; Day #5 -January 19. Also holding Friday, January 20, 1995 as possible Day #6 if needed for completion of case.

10/07/94 -Notice of Assignment sent to parties reflecting above dates; case to resume on Tuesday, January 10, 1995 at 10:00 a.m.

1/12/95 -Hearings held on Days 2 (1/10/95) and 3 (1/12/95); due to resignation of Mr. Clark from the Board effective 1/16/95, Mr. Schuetz, with the agreement of counsel, has replaced him as the third member of the panel (H.R.M.).

- With the agreement of parties, prior to hearing of 1/12/95, the starting time for 1/17/95 and 1/19/95 was changed to 9:00 a.m.; Friday, 1/20/95 is no longer available for the Board. This change was announced in hearing room.

- Amended Notice of Assignment sent to parties advising of (1) change in start time on 1/17/95 and 1/19/95 and (2) that these are last two dates scheduled for this matter on the Board's docket at this time.

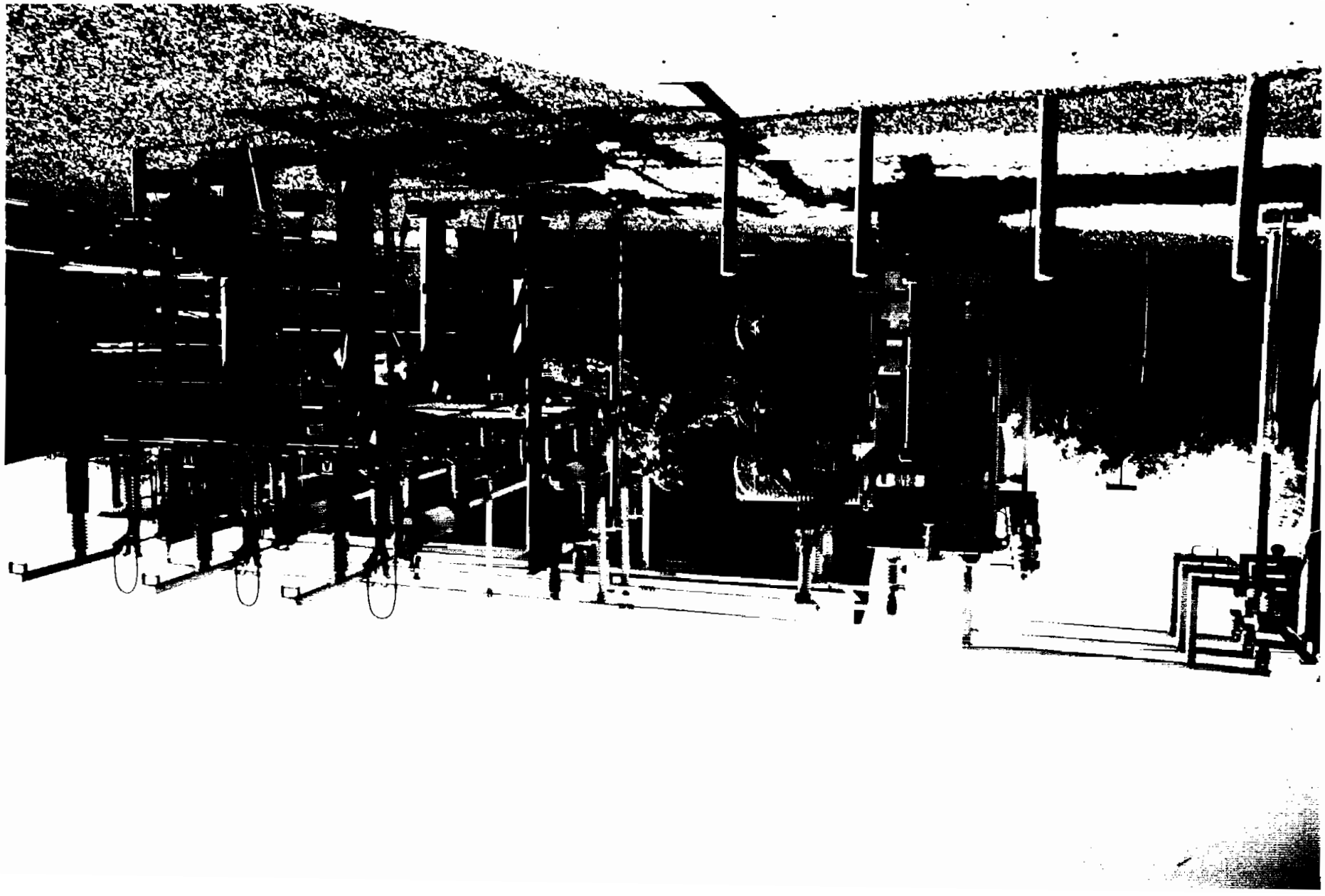


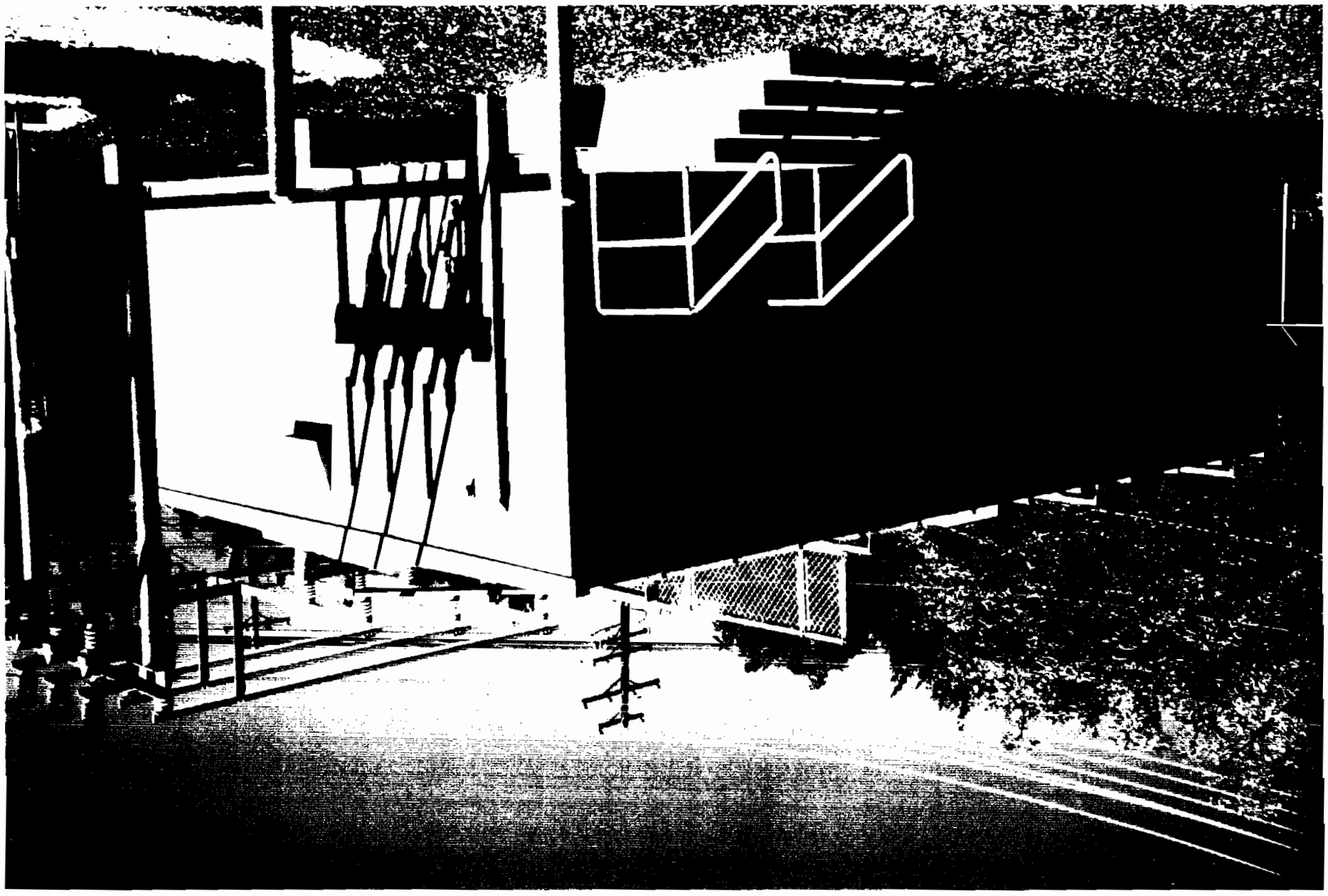
Pet. Ex. 7I-9

Pet Ex 7-J-10



Pet. Ex. 7-K-11



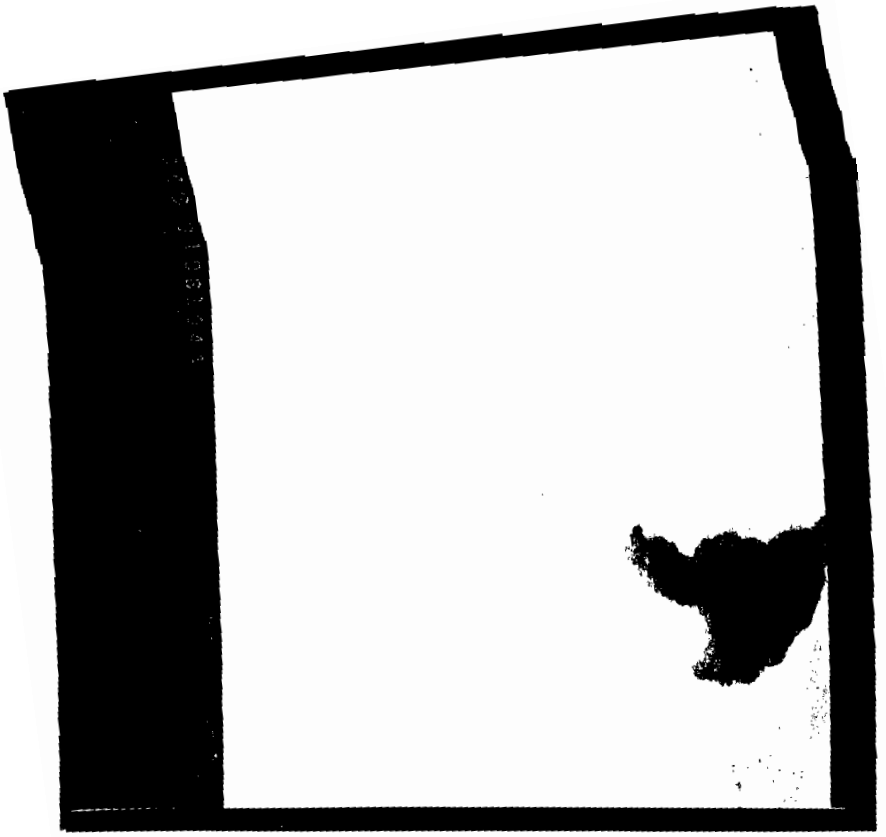


Pet. Ex 6B

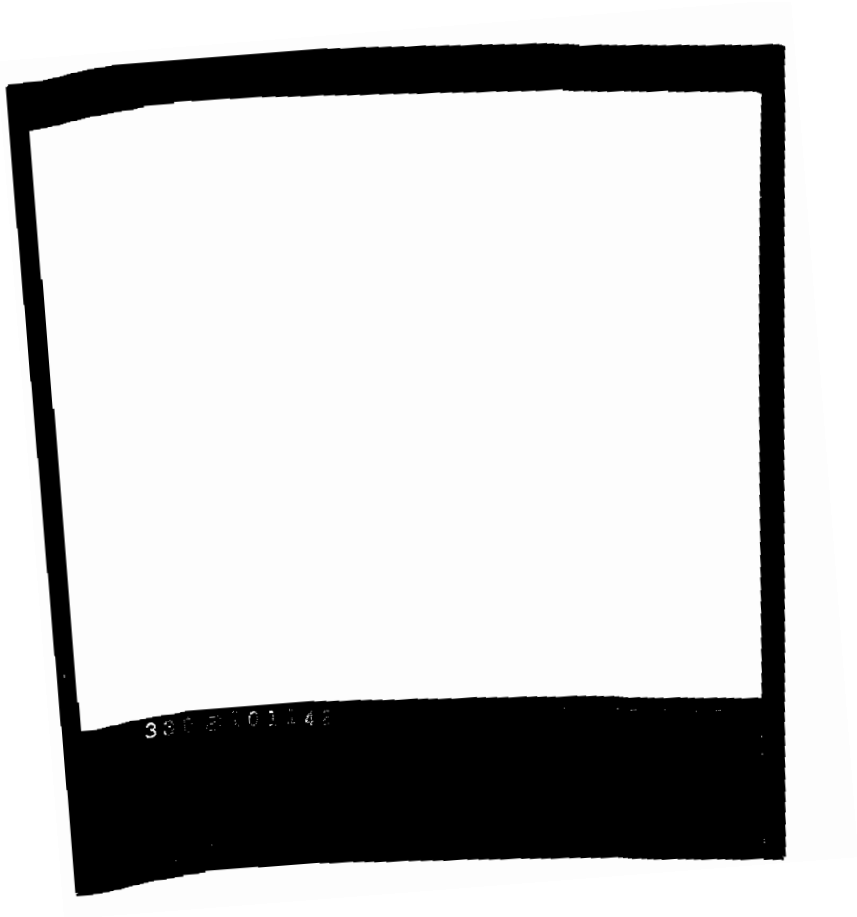
1/19/95 -Hearing concluded before the Board; Memorandums due February 6, 1995.
Public Deliberation to be scheduled and notices sent. (H.R.M.)
Memos filed: Hoffman /BG&E 2-6-95 (+ TRANSCRIPT / 5 DAYS)
Holzer 2-6-95

2/10/95 -Notice of Deliberation sent to parties (copies to 3 Board members);
deliberation scheduled for Wednesday, February 22, 1995 at 9:00 a.m.

Pat. 6 C



Pat Ex 60



CIRCUIT COURT FOR BALTIMORE COUNTY

CIVIL GENERAL

DOCKET 19 PAGE 117 CASE NO. 86CG22 CATEGORY APPEAL

IN THE MATTER OF PETITIONS FOR
SPECIAL EXCEPTION, SPECIAL HEARING
AND ZONING VARIANCES,
N/S of Chester Rd., 590' W of
Serern Rd. (800 Chester Rd.)
15th Election District

JOSEPH F. EVERING, JR., et ux,
PETITIONERS

Zoning Case 85-65-XSPHA

ATTORNEYS

Malcolm F. Spicer, Jr.
Thomas J. Bollinger
Court House- Mezzanine (04)

John O. Hennegan
Donald E. Brand
Romadka, Gontrum, Hennegan & Foos
809 Eastern Blvd (21) 686-8274

T. Rogers Harrison
Mudd, Harrison & Burch
306 W. Joppa Rd. (4) 828-1335
(Protestants-Appellants)
Phyllis Cole Friedman,
Peter Max Zimmerman,
Rm. 223 Court House (4) 494-2188
(People's Council Balto. Co.)

Judith A. Armold
Assistant Atty General
301 W. Preston St. (01)
Peter W. Taliaferro
P.O. Box 8766
Baltimore/Washington International
Airport 21240-0766

6/2/88 d/e & Order path Board of Appeals

(1) January 3, 1986 People's Counsel for Baltimore County, Protestants and Appellants Order for Appeal from Ruling of the County Board of Appeals and Petition fd.

(2) Jan. 10, 1986 - Baltimore County' Cross Appeal fd.

(3) Jan. 13, 1986 Certificate of Notice fd.

(4) Jan. 20, 1986 - Pltff's Petition for Appeal fd.

(5) Jan. 21, 1986 Appellees' Motion to Consolidate case with case86CG240 fd.

(6) Feb. 3, 1986 - Transcript of Record fd.

(7) Feb. 3, 1986 - Notice of Filing of Record fd.

(8) Feb 3,1986- Joseph F Evering Jr. et ux Motion to dismiss and answer to petition on appeal fd.

(9) Feb. 13, 1986 - Correspondence fd.

(10) Feb. 20, 1986 - People's Counsel for Baltimore County's Request for Hearing on all open Motions fd.

(11) April 23,1986- People's counsel memorandum on pending motions fd.

July 22, 1986 - Hon. James S. Sfekas. Hearing had. Plaintiffs to file Supplementary Memorandum within One Week from this date.

(12) Aug. 7, 1986 = Ruling from Judge Sfekas that Pltff's Motion for consolidation Granted, Pltffs Petition on Appeal is Dismissed and Remanded to the Bd. of Appeals for a final judgment, Defts Motion to Dismiss Petition on appeal Granted, Defts Petition for Atty Fees Denied, Costs to be paid by Pltffs apportioned equally fd. (JSS)

Rec'd. 6/6/88 J.A.

COSTS

CV GEN (S.J.) 8622 #
CV CLK 70.00
CKCHECK TL 70.00
#25822 C001 R02 T15:47
01/03/86

100
105
2p
22—

DOCKET 19 PAGE 117 CASE NO 86CG0022

(13) December 9, 1987 - Transcript of ord, fd.

CASE NO. 86CG22 19/117

(14) December 9, 1987 - Notice of Filing of Record, fd.

(15) Dec 16, 1987 - Stipulation fd.

May 23, 1988 Hon. J. William Hinkel. Hearing had. Order to be filed.

(16) May 26,1988 - Order of Court That Case no 86 CG 22 is hereby Dismissed with Costs to the Appellants fd. (JWH)

CIRCUIT COURT FOR BALTIMORE COUNTY

CIVIL GENERAL

DOCKET 48 PAGE 225 CASE NO. 87CG4755 CATEGORY APPEAL

	ATTORNEYS
PEOPLE'S COUNSEL FOR BALTIMORE COUNTY	Phyllis Cole Friedman Peter Max Zimmerman Rm 223, Courthouse (04) 494-2188
KENNETH ENGELKE, et al protestants/appellants v	T. Rogers Harrison Mudd, Harrison & Burch Ste 300, Jefferson Bldg 105 W. Chesapeake Ave (4) 828-1335
JOSEPH F. EVERING, JR., et al cross appellant	John B. Gontrum Romadka, Gontrum & Hennegan 809 Eastern Blvd (21) 686-8274

6/3/88 d/s Judgment of Board of Appeals, Balto Co

COSTS

(1) Nov 10, 1987 - Pltff's Order for Appeal from the opinion and order of the County Board of Appeals of Balto. Co. and Petition for Appeal fd.

(2) Nov 12,1987 - Certificate of Notice fd.

(3) Nov 16, 1987 - Appellant's (Kenneth Engelke, et al) Order for Appeal from the Order of the County Board of Appeals fd.

(4) Nov. 16, 1987 - Appellant's (KennethEngelke, et al) Petition on Appeal fd.

(5) Nov 16, 1987 - Certificate of Notice fd.

(6) Nov 20, 1987 - Appellant's (Joseph F. Evering, Jr., et us) Order for Appeal and Petition w/ Exhibits fd.

(7) Nov 24,1987 - Certificate of Notice fd.

(8) Dec. 9, 1987 - App. of Phyllis Cole Friedman & Peter Max Zimmerman for the Deft PEOPLE COUNSEL & Same Day Petition on Appeal fd.

(9) Dec 16, 1987 - App of John B. Gontrum for the Petitioner (Joseph F. Evering, Jr., et ux) and Same Day Answer to Protestant's/Appellant's, Kenneth Engelke, et al) Petition on Appeal fd.

(10) Dec 16, 1987 - Petitioner's (Joseph F. Evering, Jr, et ux) Answer to People's Counsel/Appellants Petition on Appeal fd.

Rec'd. 6/6/88
Bd. of Appeals

(11) Jan 7,1988 - Cross Appellant's (Joseph F. Evering, Jr) Memorandum fd.

BALTIMORE GAS & ELECTRIC CO (Ivy Hill Substation) 94-452-XA

95-CV-5315

May 10, 1994	Petitions filed by Martha A. Delea, Esquire, and Robert A. Hoffman, Esquire, on behalf of BG&E and Frederick and Ann Vinup, for: Special Exception to use property for an outdoor electric public utility service center (electric substation); and Variance to permit structures as close as 0' from an interior lot line in lieu of required 50' building setback.
June 21	Hearing held on Petition by the Zoning Commissioner.
June 24	Order of the Zoning Commissioner in which Petitions for Special Exception and Variance were GRANTED.
July 21	Notice of Appeal filed by J. Carroll Holzer, Esquire, on behalf of residents and Friends of the Ridge.
September 13	Request to withdraw appearance filed by Cohen.
October 4	Hearing before the Board of Appeals (Day #1)
January 10, 1995	Hearing before the Board of Appeals (Day #2)
January 12	Hearing before the Board of Appeals (Day #3)
January 17	Hearing before the Board of Appeals (Day #4)
January 19	Hearing before the Board of Appeals (Day #5)
February 6	Memorandum in Lieu of Final Argument filed Holzer. Petitioner's Memorandum filed by Hoffman.
February 22	Deliberation completed.
May 31	Order of the Board wherein Petitions were GRANTED.
June 7	Amendment to Board's opinion to indicate that People's Counsel did not participate in proceedings.
June 16	Petition for Judicial Review filed in the CCt by Holzer, on behalf of Friends.
June 26	Certificate of Notice sent to interested parties.
July 7	T/C to counsel for Petitioner: confirmed that record transmittal date for recording expedited per Judge DeWaters' order due to early hearing scheduled in CCt.
July 17	Transcript of testimony filed; Record of Proceedings filed in the CCt.
December 30, 1996	Order issued by the Circuit Court; decision of CBA AFFIRMED (Lawrence R. Daniels, J.)
April 1, 1998	Order of the Court of Special Appeals; decision of the Circuit Court is AFFIRMED (Harrell, Bloom and Alpert, JJ.)
February 11, 1999	Mandate issued by the Court of Appeals; Judgment of the Court of Special Appeals is AFFIRMED in part and VACATED in part; portion of CSA judgment relating to the variance is vacated; case REMANDED to the CCt with instructions to REMAND to the CBA for a decision consistent with this opinion.

CASE NO. 87 CG 4755

(12) Jan 29,1988 - Pltff's (People's Counsel for Baltimore County) Memorandum fd.

(13) May 26,1988 - Joint Motion to Remand to County Board and Same Day Order of Court that Case 87 CG 4755 be Remanded to the Baltimore County Board of Appeals fd.

IN THE MATTER OF THE APPLICATION OF JOSEPH F. EVERING, JR., ET UX FOR SPECIAL EXCEPTION FOR A BOAT YARD, SPECIAL HEARING TO AMEND SITE PLAN, AND VARIANCES ON PROPERTY LOCATED ON THE NORTH SIDE OF CHESTER ROAD, 490' WEST OF SEVERN ROAD (800 CHESTER ROAD) 15th ELECTION DISTRICT	:	ON REMAND FROM THE CIRCUIT COURT FOR BALTIMORE COUNTY - AT LAW CASE NO. 87-CG-4755 ZONING CASE NO. 85-65-XSPHA

: :

AMENDED OPINION AND ORDER

This matter comes before the Board on remand from the Circuit Court by Order dated May 26, 1988, whereby the Circuit Court directed that the Board consider an amended site plan and make a determination that this plan satisfies the critical area criteria as set forth in the COMAR regulations. The facts of this case are set forth in our Opinion of October 21, 1987. Although the Board ruled on December 12, 1985 that the critical area requirements were not applicable to this particular case for the reasons set forth in our Ruling, substantial evidence concerning critical area requirements was introduced, including several reports and expert testimony provided by petitioners.

An amended site plan has been prepared by the petitioner which plan has been consented to by the protestants and by People's Counsel. This amended plan eliminates 16 slips from the southern pier extension and approximately 38 slips from the northern pier extension. This proposal addresses the Board's concerns which were raised in our October 21, 1987 Opinion that the proposed slips not interfere with navigation in Frog Mortar Creek. A review of the testimony of this matter indicates that the protestants were concerned with both pier extensions, and the Board notes that the protestants who testified actually lived closer to the southern pier extension. Testimony also was presented with respect to the fact that the proposed pier extensions would not in any way

interfere with any submerged aquatic vegetation, in that none existed in the area. The piers, being extended in the manner as now proposed, minimize necessary dredging and the effects of propeller wash on the bottom of Frog Mortar Creek. Additionally, there was much testimony that these slips will be used primarily for sailboats rather than motor boats, which will also minimize propeller wash on the river bottom. No endangered species of plant life or of fish were found in the area. Pollution studies which were performed by petitioner indicate that there is good fishing of the water at this particular location because it is located at the mouth of Frog Mortar Creek in Middle River.

Based upon the testimony and evidence received, the Board finds that the marina extension as amended satisfies the criteria as set forth in the critical area law and in the regulations promulgated by the State of Maryland. See COMAR Section 14.15.03.04. In addition, petitioner's proposal to buffer the creek from existing land improvements and place a pump station for boat facilities will minimize the impact of the proposed marina extension on the critical area.

O R D E R

It is therefore this 15th day of June, 1988 by the County Board of Appeals of Baltimore County ORDERED

(1) That the Petition for Special Exception be and is hereby GRANTED with restrictions as hereinafter provided;

(2) That the variance from B.C.Z.R. 409.2.c(2) be and is hereby GRANTED:

(3) That in view of the Board's restriction on the number of slips, the petitioner's variance relief under B.C.Z.R. 409.2.b is MOOT;

(4) That the Petition for Variance under B.C.Z.R. 417.5 is GRANTED to the extent as shown on the amended site plan submitted by the petitioner, thereby allowing expansion in conformance with the site plan offered and identified and attached hereto as part hereof. This plan is identified as Petitioner's Exhibit #1A and amends Petitioner's Exhibit #1 by removing 16 and 38 slips from the southern and the northern pier extensions, respectively.

(5) That the Petition for Special Hearing is GRANTED to allow amendments to the site plan as was approved on January 16, 1967, in Case No. 64-160-X in order to construct additional piers and slips, in conformance with the variance as set forth in #4 of this Order;

(6) That the Petition for Special Hearing to remove restrictions #1 and #3 in Case No. 64-57-SPH will be GRANTED;

(7) That the Petition for Special Hearing to remove restrictions #1 and #6 in Case No. 64-160-X will be GRANTED in part and DENIED in part and that restriction #1 is AFFIRMED and re-incorporated herein and restriction #6 amended so as to allow maintenance and minor repairs on site and in the water immediately adjacent thereto from 8:00 a.m. to 7:00 p.m., seven days per week, year round;

(8) That the Petition for Special Hearing for a determination of the recreational activities on site is GRANTED so that the use is exempt from Residential Transition Area requirements;

(9) That the on-shore improvements of a pump-out facility for boats and landscaping be completed simultaneously with the construction of the proposed piers; and

(10) That the following best management practices guidelines be utilized in the operation of the facility at such time as the construction commences:

(a) Wording in lease agreements to enforce use of trash receptacles and controlling of washing of boats;

(b) Replacing existing fuel pumping facility with newer equipment having back-pressure automatic shut off valves and restriction of fuel service to trained Marina personnel, education of boat owners regarding fuel spill sources, and on-site sales of fuel recovery products;

(c) Restrict the use of antifouling paints to boat hulls and avoid painting piers and other in-water structures;

(d) Conduct scraping and painting operations away from the water in protected areas to avoid the loss of particulate and raw paint;

(e) Avoid repainting hulls after a year during which fouling to the hulls was minimal;

(f) Dry store boats not in use for extended periods;

(g) Post signs prohibiting overboard disposal of sewage and inform the public of contamination levels resulting from violations;

(h) Require compliance with federal "head Laws" as a prerequisite to slip rental, and indicate violations will result in cancellation of rental contract;

(i) Require all through-hull discharge ports of Type III MSD's to be sealed on those vessels "permanently" moored; and

(j) Require use of on-site pump-out facilities.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence E. Schmidt, Acting Chairman

William T. Hackett

APPEAL

Petition for Special Exception and Variance
S/W Corner of Ridge Road and Joel Court
(Ivy Hill Substation)
8th Election District - 3rd Councilmanic District
Baltimore Gas & Electric Co.-Legal Owners/Tract A & B
Frederick R. Vinup, et ux-Legal Owners/Tract C
Case No. 94-452-XA

Petition(s) for Special Exception and Variance

Description of Property

Certificate of Posting

Certificate of Publication

Zoning Plans Advisory Committee Comments

Petitioner(s) and Protestant(s) Sign-In Sheets

Petitioner's Exhibits:
1 - Plat to Accompany Petition for Special Exception and Variance
2 - Proposed Ivy Hill Substation Expansion
3 - One photograph of site out-lined in yellow
4 - Plat to Accompany Petition for Special Exception and Variance
4A-4T - Twenty photographs of site
5A-5B - Two photographs of substation
6 - Forwood Property Final Development Plan
7 - Walter A. Reiter, Jr.-Qualifications

Four miscellaneous letters

Zoning Commissioner's Order dated June 24, 1994 (Granted)

Notice of Appeal received on July 21, 1994 from J. Carroll Holzer, Esquire

c: J. Carroll Holzer, Holzer and Lee, Suite 502, 305 Washington Avenue, Towson, MD 21204
Robert A. Hoffman, Esquire, Venable, Baetjer and Howard, 210 West Allegheny Avenue, Towson, MD 21204
Martha A. Delea, Esquire, Baltimore Gas and Electric Company, P.O. Box 1475, Charles Center, Baltimore, MD 21203-1475
Mr. and Mrs. Frederick Vinup, 1821 Ridge Road, Reisterstown, 21136
Mark K. Cohen, Esquire, 120 E. Baltimore Street, Baltimore, 21202
Mr. and Mrs. Raymond Fischer, 1822 Ridge Road, Reisterstown, 21136
Mrs. Dorothy Marsden, 1823 Ridge Road, Reisterstown, 21136
People's Counsel of Baltimore County, M.S. 2010

Request Notification: Patrick Keller, Director, Planning & Zoning
Lawrence E. Schmidt, Zoning Commissioner
W. Carl Richards, Jr., Zoning Manager
Docket Clerk
Arnold Jablon, Director of ZADM

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

June 15, 1988

Robert J. Romadka, Esquire
809 Eastern Boulevard
Essex, MD 21221

RE: Case No. 85-65-XSPHA
Joseph F. Evering, Jr., et ux

Dear Mr. Romadka:

Enclosed is a copy of the Amended Opinion and Order issued this date by the County Board of Appeals in the subject case.

Sincerely,

Kathleen C. Weidenhammer
Administrative Secretary

Encl.

cc: John B. Gontrum, Esquire
John O. Hennegan, Esquire
Joseph F. Evering, Jr.
T. Rogers Harrison, Esquire
Phyllis C. Friedman, Esquire
Assistant Attorney General
P. David Fields
James G. Hoswell
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
Docket Clerk -Zoning
Arnold Jablon, County Attorney

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, MARYLAND	*	IN THE
	*	CIRCUIT COURT FOR
and	*	BALTIMORE COUNTY
BALTIMORE COUNTY, MARYLAND	*	CASES NOS. 86CG22
VS.	*	86CG0240
	*	87CG4755
JOSEPH F. EVERING, JR. and CATHERINE L. EVERING	*	

* * * * * * * * * * * * * *

ORDER

Upon consideration of the Joint Motion for Dismissal and Remand and consideration of the reasons stated therein and presented in open hearing on May 23, 1988, it is hereby, ORDERED, this 26 day of May, 1988, that Circuit Court Cases Nos. 86CG22 and 86CG0240 be and the same are hereby dismissed with costs to the appellants and that Case No. 87CG4755 be remanded to the Baltimore County Board of Appeals for consideration of the amended site plan and a determination that the plan meets critical area criteria.

Judge

LAW FIRM
ROMADKA, GONTRUM & HENNEGAN
ESSEX, MARYLAND

FILED MAY 26 1988

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, MARYLAND	*	IN THE
	*	CIRCUIT COURT FOR
and	*	BALTIMORE COUNTY
BALTIMORE COUNTY, MARYLAND	*	CASES NOS. 86CG22
VS.	*	86CG0240
	*	87CG4755
JOSEPH F. EVERING, JR. and CATHERINE L. EVERING	*	

* * * * * * * * * * * * * *

JOINT MOTION FOR DISMISSAL AND REMAND TO COUNTY BOARD OF APPEALS

All the parties in the above referenced cases hereby jointly move this court to dismiss case Nos. 86CG22 and 86CG0240 and to Remand 87CG4755 to the Board of Appeals for Baltimore County to consider a joint revised plan. The grounds for this Motion are:

1. Case No. 86CG22 pertained to a preliminary interlocutory appeal taken by People's Counsel to Circuit Court. This matter was heard by Judge Sfekas and was held pending a final determination by the Board of Appeals. That matter was finally determined by the Board and is at issue in Case No. 87CG4755. The grounds for appeal in Case 86CG22 have been incorporated into 87CG4755.

2. Case No. 86CG0240 pertained to a Bill of Complaint for declaratory judgment filed by People's Counsel which the parties believe was dismissed by Judge Sfekas in a previous hearing. In any event the parties believe that the issues raised in that declaratory judgment have also been raised in Case No. 87CG4755.

LAW FIRM
ROMADKA, GONTRUM & HENNEGAN
ESSEX, MARYLAND

3. Since the appeal in Case No. 86CG22 and the issues in the Bill of Complaint in Case No. 86CG0240 are contained in Case No. 87CG4755, there is now no good reason for these cases to be independently pursued and accordingly the parties feel that a dismissal is appropriate.

4. A revised plan has been prepared by Petitioners, Joseph F. Evering, Jr. and Catherine L. Evering in Case No. 87CG4755 that addresses the concerns of all parties. A copy of the plan is attached hereto and made a part hereof.

5. All parties are agreed that the Board of Appeals for Baltimore County could and should make a critical area finding that based upon existing testimony the revised plan meets the critical area requirements.

6. That the parties believe that the appropriate remedy at this time is for the court to remand Case No. 87CG4755 to the Board to consider the revised plan and to make a finding that based upon existing testimony the revised plan meets the critical area requirements.

7. Such other and further reasons that exist for remand of Case No. 87CG4755.

John B. Gontrum

Phyllis Cole Friedman

T. Rogers Harrison

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, MARYLAND	*	IN THE
	*	CIRCUIT COURT FOR
and		
	*	BALTIMORE COUNTY
BALTIMORE COUNTY, MARYLAND		
	*	CASES NOS. 86CG22
VS.		86CG0240
	*	87CG4755
JOSEPH F. EVERING, JR. and CATHERINE L. EVERING	*	

* * * * * * * * * * * * *

ORDER

Upon consideration of the Joint Motion for Dismissal and Remand and consideration of the reasons stated therein and presented in open hearing on May 23, 1988, it is hereby, ORDERED, this ____ day of May, 1988, that Circuit Court Cases Nos. 86CG22 and 86CG0240 be and the same are hereby dismissed with costs to the appellants and that Case No. 87CG4755 be remanded to the Baltimore County Board of Appeals for consideration of the amended site plan and a determination that the plan meets critical area criteria.

_____
Judge

LAW FIRM
ROMADKA, GONTRUM & HENNEGAN
ESSEX, MARYLAND

APPEAL

Petition for Special Exception and Variance
S/W Corner of Ridge Road and Joel Court
(Ivy Hill Substation)
8th Election District - 3rd Councilmanic District
Baltimore Gas & Electric Co.-Legal Owners/Tract A & B
Frederick R. Vinup, et ux-Legal Owners/Tract C
Case No. 94-452-XA

✓ Petition(s) for Special Exception and Variance ✓

✓ Description of Property

✓ Certificate of Posting

✓ Certificate of Publication

✓ Zoning Plans Advisory Committee Comments

✓ Petitioner(s) and Protestant(s) Sign-In Sheets

Petitioner's Exhibits: ✓1 - Plat to Accompany Petition for Special Exception and Variance
✓2 - Proposed Ivy Hill Substation Expansion
✓3 - One photograph of site out-lined in yellow
✓4 - Plat to Accompany Petition for Special Exception and Variance
✓4A-4T - Twenty photographs of site
✓5A-5B - Two photographs of substation
✓6 - Forwood Property Final Development Plan
✓7 - Walter A. Reiter, Jr.-Qualifications

✓ Four miscellaneous letters

✓ Zoning Commissioner's Order dated June 24, 1994 (Granted)

✓ Notice of Appeal received on July 21, 1994 from J. Carroll Holzer, Esquire

* c: J. Carroll Holzer, Holzer and Lee, Suite 502, 305 Washington Avenue, Towson, MD 21204, COUNSEL FOR APPELLANTS / PROTESTANTS)
Robert A. Hoffman, Esquire, Venable, Baetjer and Howard, 210 West Allegheny Avenue, Towson, MD 21204
Martha A. Delea, Esquire, Baltimore Gas and Electric Company, P.O. Box 1475, Charles Center, Baltimore, MD 21203-1475
Mr. and Mrs. Frederick Vinup, 1821 Ridge Road, Reisterstown, 21136
~~Mark K. Cohen, Esquire, 120 E. Baltimore Street, Baltimore, 21202~~ out per ltr. 9/14/94
Mr. and Mrs. Raymond Fischer, 1822 Ridge Road, Reisterstown, 21136
Mrs. Dorothy Marsden, 1823 Ridge Road, Reisterstown, 21136
People's Counsel of Baltimore County, M.S. 2010

Request Notification: Patrick Keller, Director, Planning & Zoning
Lawrence E. Schmidt, Zoning Commissioner
W. Carl Richards, Jr., Zoning Manager
Docket Clerk
Arnold Jablon, Director of ZADM

ANDREW LANSMAN ET AL
9 JOEL COURT
REISTERSTOWN MD 21136
(APPELLANTS/PROTESTANTS

94 JUL 22 AM 11:15

The Honorable Paula C. Hollinger
Senate Office Building
Room 206
Annapolis, MD 21401-1991

The Honorable T. Bryan McIntire
County Council

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, MARYLAND	*	IN THE
	*	CIRCUIT COURT FOR
and	*	BALTIMORE COUNTY
BALTIMORE COUNTY, MARYLAND	*	CASES NOS. 86CG22
VS.	*	86CG0240
	*	87CG4755
JOSEPH F. EVERING, JR. and CATHERINE L. EVERING	*	

* * * * * * * * * * * * * *

ORDER

Upon consideration of the Joint Motion for Dismissal and Remand and consideration of the reasons stated therein and presented in open hearing on May 23, 1988, it is hereby, ORDERED, this 26 day of May, 1988, that Circuit Court Cases Nos. 86CG22 and 86CG0240 be and the same are hereby dismissed with costs to the appellants and that Case No. 87CG4755 be remanded to the Baltimore County Board of Appeals for consideration of the amended site plan and a determination that the plan meets critical area criteria.

Judge

1692

LAW FIRM
ROMADKA, GONTRUM & HENNEGAN
ESSEX, MARYLAND

FILED MAY 26 1988

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et al.,	:	IN THE CIRCUIT COURT
	:	FOR BALTIMORE COUNTY
Appellants	:	
v.	:	
JOSEPH F. EVERING, JR., et ux,	:	Case No. 86-CG-0022
Appellees	:	

: : : : : : :

STIPULATION

People's Counsel for Baltimore County and the attorney for Joseph F. Evering, Jr., et ux, stipulate that the time by which People's Counsel may file their Memorandum on appeal is hereby extended to and including January 22, 1988.

John B. Gontrum

John B. Gontrum
Romadka, Gontrum, Hennegan & Foos
809 Eastern Boulevard
Baltimore, MD 21221
686-8274

Phyllis Cole Friedman

Phyllis Cole Friedman
People's Counsel for Baltimore County
Room 223, Court House
Towson, MD 21204
494-2188

I HEREBY CERTIFY that on this 16th day of December, 1987, a copy of the foregoing Stipulation was mailed to T. Rogers Harrison, Esquire, Mudd, Harrison & Burch, 306 W. Joppa Rd., Towson, MD 21204; Assistant Attorney General, Md. Dept. of State Planning, The Munsey Building, Seven N. Calvert St., Baltimore, MD 21201; and Nancy C. West, Esquire, Assistant County Attorney, Room 202, Court House, Towson, MD 21204.

Phyllis Cole Friedman

Phyllis Cole Friedman

RECEIVED
COUNTY BOARD OF APPEALS
'87 DEC 15 P 4:25

IN THE MATTER OF THE APPLICATION OF JOSEPH F. EVERING, JR., ET UX FOR SPECIAL EXCEPTION FOR A BOAT YARD, SPECIAL HEARING TO AMEND SITE PLAN AND VARIANCES FROM SEC. 409.2.c(2), 409.2.b and 417.5(a) OF THE BCZR N/S CHESTER RD., 590' W of SEVERN RD. (800 CHESTER RD.) 15th ELECTION DISTRICT	:	ON REMAND FROM THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW
PHYLLIS C. FRIEDMAN, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, PLAINTIFF	:	CG Doc. No. 19 Folio No. 117 File No. 86-CG-0022
T. ROGERS HARRISON, ESQ., ON BEHALF OF PROTESTANTS, PLAINTIFFS	:	
JOSEPH F. EVERING, JR., ET UX, PETITIONER-PLAINTIFF	:	
ZONING FILE NO. 85-65-XSPHA	:	

PROCEEDINGS BEFORE THE ZONING COMMISSIONER AND THE BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come William T. Hackett and Lawrence E. Schmidt, constituting the County Board of Appeals of Baltimore County, and in answer to the Order for Appeal directed against them in this case, herewith return the record of proceedings had in the above entitled matter:

No. 85-65-XSPHA

August 7, 1986	REMANDED to the County Board of Appeals by the Circuit Ct. for Baltimore County, Judge James S. Sfekas, "this Court does not believe the Board of Zoning Appeals has issued a final determination of the rights of the parties."
December 16	Hearing held before the Board of Appeals
December 17	Continued hearing held before the Bcard of Appeals
April 22, 1987	Continued hearing held before the Board of Appeals
October 21	Board's Order: GRANTED Petition for Special Exception w/ restrictions; GRANTED variance from 409.2.c(2); GRANTED in part and DENIED in part variance from 417.5; GRANTED Petition for Special Hearing in part.
November 10	Order for Appeal filed in Circuit Ct. for Baltimore County by People's Counsel for Baltimore County
November 10	Petition to accompany Order for Appeal filed in the Circuit Ct. for Baltimore County
November 12	Certificate of Notice sent to interested parties

November 16, 1987	Order for Appeal filed in the Circuit Ct. for Baltimore County by T. Rogers Harrison, Counsel for Protestants.
November 16	Petition to accompany Order for Appeal filed in the Circuit Court for Baltimore County
November 16	Certificate of Notice sent to interested parties
November 20	Order for Appeal filed in the Circuit Ct. for Baltimore County by John B. Gontrum, Esq., Counsel for Petitioners
November 20	Petition to accompany Order for Appeal filed in the Circuit Ct. for Baltimore County
November 24	Certificate of Notice sent to interested parties
December 9	Transcript of testimony filed
	Protestants' Exhibit No. 2 - List of protestants present at hearing, Dec. 16, 1986
	" " " 3 - Resolution of Bowley's Quarters Improv. Assn. in opposition to petition,10/28/85.
	" " " 4 - Guide for Cruising Md. Waters
	" " " 5 - Portion of site plan showing measurement of shoreline distance
	" " " 6 - Portion of site plan showing measurement of pier extensions
	" " " 7a - f -Photos of area around subj. site.
	" " " 8 - List of protestants present at hearing, Dec. 17, 1986.
	People's Counsel's Exhibit No. 5a-o - Photos of roads in neighborhood
	" " " " 6 - Trip generation numbers for Long Beach Marina.
	" " " " 7a-l - Photos of subject property and surrounding neighborhood
	Petitioner's Exhibit No. 7 - Md. Dept. of Transportation Bd. of Airport Zoning Appeals decision permitting variance for subj. property
	" " " 8 - Petition for Special Hearing, Special Exception, Variance
	" " " 9 - Map of Bowleys Quarters and surrounding areas

IN THE MATTER OF THE APPLICATION OF JOSEPH F. EVERING, JR., ET UX NORTH SIDE OF CHESTER RD., 590' WEST OF SEVERN RD. (800 CHESTER RD.) 15th ELECTION DISTRICT SPECIAL EXCEPTION FOR A BOAT YARD; SPECIAL HEARING TO AMEND SITE PLAN; and VARIANCES	:	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW
JOSEPH F. EVERING, JR., ET UX - PETITIONERS/PLAINTIFFS	:	CG Doc. No. 48
ZONING FILE NO. 85-65-XSPHA	:	Folio No. 225
	:	File No. 87-CG-4755

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, Lawrence E. Schmidt and William T. Hackett, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, John O. Hennegan, Esq., John B. Gontrum, Esq. and Robert J. Romadka, Esq., 809 Eastern Blvd., Essex, Md. 21221, Counsel for Petitioners/Plaintiffs; Joseph F. Evering, Jr., et ux, 800 Chester Rd., Baltimore, MD. 21220, Petitioners/Plaintiffs; T. Rogers Harrison, Esq., 306 W. Joppa Rd., Towson, Md. 21204, Counsel for Protestants; Judith A. Armold, Dept. of State Planning, 301 W. Preston St., Balto., Md. 21201, Asst. Attorney General; Arnold Jablon, Esq., Rm. 202, Court House, Towson, Md. 21204, County Attorney for Baltimore County; and Phyllis C. Friedman, Rm. 223, Court House, Towson, Md. 21204, People's Counsel for Baltimore County, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

June Holmen

June Holmen
County Board of Appeals of Baltimore County
Rm. 200, Court House, Towson, Md. 21204

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

July 21, 1994

Robert A. Hoffman, Esquire
Venable, Baetjer and Howard
210 West Allegheny Avenue
Towson, MD 21204

Martha A. Delea, Esquire
Baltimore Gas and Electric Co.
P.O. Box 1475, Charles Center
Baltimore, MD 21203-1475

RE: Petition for Special Exception and Variance
S/W Corner of Ridge Road and Joel Court
(Ivy Hill Substation)
8th Election District
3rd Councilmanic District
Baltimore Gas and Electric-Legal Owner &
Contract Purchaser/Tract A & C
Fredrick R. Vinup, et ux-Legal Owner/Tract B
Case No. 94-452-XA

Dear Mr. Hoffman and Ms. Delea:

Please be advised that an appeal of the above-referenced case was filed in this office on July 21, 1994 by J. Carroll Holzer, Esquire on behalf of Nigel Howse, Robert O'Hara, ron Hanley, Carl Follo, Robert Rytter, Ira Brownk Dieter Langendorf, Andrew Lansman, Jeffrey Bozell, Bruce Pitcher, Joe Czajkowski and Friends of the Ridge.. All materials relative to the case have been forwarded to the Board of Appeals.

If you have any questions concerning this matter, please do not hesitate to contact Julie Winiarski at 887-3391.

Sincerely,

ARNOLD JABLON
Director

AJ:jaw
c: Mr. & Mrs. Frederick Vinup
Mark K. Cohen, Esquire
Mr. & Mrs. Raymond Fisher
Mrs. Dorothy Marsden
People's Counsel

94 JUL 22 AM 11:15

Printed with Soybean Ink
on Recycled Paper

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

November 24, 1987

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

Re: Case No. 85-65-XSPHA
Joseph F. Evering, Jr., et ux

Dear Mr. Gontrum:

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

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

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

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

June Holmen

June Holmen, Secretary

Enclosures
cc: Joseph F. Evering, Jr., et ux

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

IN THE MATTER OF THE APPLICATION OF JOSEPH F. EVERING, JR. ET UX. FOR SPECIAL EXCEPTION FOR A BOAT YARD, SPECIAL HEARING TO AMEND SITE PLAN, AND VARIANCES	*	Case No.: 48
	*	Docket: 87-CG-4755
	*	Folio: 225
N/S OF CHESTER ROAD, 590' WEST OF SEVERN ROAD (800 CHESTER ROAD) 15TH ELECTION DISTRICT	*	

*** *** *** *** *** *** * *** *** *** *** *** ***

ORDER FOR APPEAL

Appellants, Joseph F. Evering, Jr., et ux, by their attorneys, John B. Gontrum, Robert J. Romadka and John O. Hennegan, file pursuant to Maryland Rule B2 a. this Order for Appeal to the Circuit Court for Baltimore County from the October 21, 1987, Opinion and Order of the County Board of Appeals of Baltimore County (Case 85-65-XSPHA). A copy of the Board of Appeals' Opinion and Order is attached to and incorporated in this Order for Appeal.

John B. Gontrum
Romadka, Gontrum & Hennegan
809 Eastern Boulevard
Baltimore, Maryland 21221
686-8274
Attorneys for Appellants
Joseph F. Evering, et ux.

RECEIVED
COUNTY BOARD OF APPEALS
'87 NOV 20 P 3:30

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

CERTIFICATE OF SERVICE AND COMPLIANCE

I HEREBY CERTIFY that a copy of the foregoing ORDER FOR APPEAL was served pursuant to Maryland Rule 1-321 and B2 c. this 20 day of November, 1987, on the following:

The Administrative Secretary
Baltimore County Board of Appeals
Room 200
Court House
Towson, Maryland 21204

John B. Gontrum

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing ORDER FOR APPEAL was mailed, this 20 day of November, 1987, to each of the following:

T. Rogers Harrison
Suite 300--Jefferson Building
105 West Chesapeake Avenue
Towson, Maryland 21204

Phyllis Cole Friedman, Esquire
Peter Max Zimmerman
People's Counsel for Baltimore County
Room 223, Court House
Towson, Maryland 21204

Assistant Attorney General
Maryland Department of State Planning
Baltimore, Maryland 21201

Nancy C. West, Esquire
Assistant County Attorney
Room 202
Court House
Towson, Maryland 21204

John B. Gontrum

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

IN THE MATTER OF THE APPLICATION OF JOSEPH F. EVERING JR. ET UX. FOR SPECIAL EXCEPTION FOR A BOAT YARD, SPECIAL HEARING TO AMEND SITE PLAN, AND VARIANCES	*	Case:
	*	Docket:
	*	Folio:
N/S OF CHESTER ROAD, 590' WEST OF SEVERN ROAD (800 CHESTER ROAD) 15TH ELECTION DISTRICT	*	
	*	

****

ORDER FOR APPEAL

Protestants/Appellants Kenneth Engelke et al., by their attorneys, T. Rogers Harrison and Mudd, Harrison & Burch, file pursuant to Md. Rule B2 a. this Order for Appeal to the Circuit Court for Baltimore County from the October 21, 1987, Opinion and Order of the County Board of Appeals of Baltimore County (Case 85-65-XSPHA). A copy of the Board of Appeals' Opinion and Order is attached to and incorporated in this Order for Appeal.

T. Rogers Harrison
Mudd, Harrison & Burch
Suite 300--Jefferson Building
105 West Chesapeake Avenue
Towson, Maryland 21204
(301) 828-1335
Attorneys for
Protestants/Appellants
Kenneth Engelke et al.

RECEIVED
COUNTY BOARD OF APPEALS
1987 NOV 19 A 9: 42

Court of Appeals of Maryland

No. 76, SEPTEMBER TERM, 19 98

FRIENDS OF THE RIDGE et al.

v.

BALTIMORE GAS AND ELECTRIC COMPANY

DISPOSITION OF APPEAL IN COURT OF APPEALS:
February 11, 1999 - Judgment of the Court of Special Appeals affirmed in part and vacated in part; that portion of the Court of Special Appeals' judgment relating to the variance is vacated; case remanded to that Court with instructions to vacate that portion of the judgment of the Circuit Court relating to the variance and remand the case to the Circuit Court with instructions to remand the case to the Board of Appeals for a decision consistent with this opinion; costs in this Court and in the Court of
TRANSCRIPT Special Appeals to be paid by petitoners. Opinion by Cathell, J.

RETURNED TO CIRCUIT COURT FOR BALTIMORE COUNTY

Date 3-15-99

BY Cassandra L. Conway

REMARKS:

Three-vol. record and box)

No. 474 - 1997 T. - CSA

No. 03-C-95-005315 - CC for Baltimore Co.

FILED MAR 17 1999 BY

CERTIFICATE OF SERVICE AND COMPLIANCE

I HEREBY CERTIFY that a copy of the forgoing ORDER FOR APPEAL was served pursuant to Md. Rule 1-321 and B2 c. this 16th day of November, 1987, on the following:

The Administrative Secretary
Baltimore County Board of Appeals
Room 200
Court House
Towson, Maryland 21204

T. Rogers Harrison

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing ORDER FOR APPEAL was mailed, this 16th day of November, 1987, to each of the following:

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

Phyllis Cole Friedman, Esquire
Peter Max Zimmerman
People's Counsel for Baltimore County
Room 223, Court House
Towson, Maryland 21204

Judith A. Armold, Esquire
Assistant Attorney General
Maryland Department of State Planning
Baltimore, Maryland 21201

Nancy C. West, Esquire
Assistant County Attorney
Room 202
Court House
Towson, Maryland 21204

T. Rogers Harrison

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

IN THE MATTER OF THE APPLICATION OF JOSEPH F. EVERING JR. ET UX. FOR SPECIAL EXCEPTION FOR A BOAT YARD, SPECIAL HEARING TO AMEND SITE PLAN, AND VARIANCES	*	CG Docket No. 48
	*	Folio No. 225
	*	File No. 87-CG-4755
N/S OF CHESTER ROAD, 590' WEST OF SEVERN ROAD (800 CHESTER ROAD) 15TH ELECTION DISTRICT	*	

RECEIVED
COUNTY BOARD OF APPEALS
1987 NOV 20 P 3:30

PETITION ON APPEAL

Petitioner, Joseph F. Evering, Jr. et ux, by their attorneys, John B. Gontrum, Robert J. Romadka and John O. Hennegan, file pursuant to Md. Rule B2 this Petition on Appeal.

1. That Board of Appeals erroneously determined that 80 slips should be eliminated from the northern prong of the pier extensions without substantial basis in the record.

2. That Board of Appeals erroneously determined that the northern prong extended further into the water way then neighboring piers and also hindered boating traffic without substantial justification in the record and, therefore, eliminated the 80 slips erroneously.

WHEREFORE, Petitioner, Joseph F. Evering, Jr. et ux, asks that the October 21, 1987 Opinion and Order of the Board of Appeals by affirmed in all respects except for the

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

determination of the removal of 80 slips and be reversed on that issue or be remanded for further testimony with respect to the elimination of the 80 slips from the northern prong of the proposed extension.

John B. Gontrum
Romadka, Gontrum & Hennegan
809 Eastern Boulevard
Essex, Maryland 21221
686-8274

CERTIFICATE OF SERVICE AND COMPLIANCE

I HEREBY CERTIFY that a copy of the foregoing Petition on Appeal was served pursuant to Md. Rule 1-321 and B2 c. this 20 day of November, 1987, on the following:

The Administrative Secretary
Baltimore County Board of APpeals
Room 200
Court House
Towson, Maryland 21204

John B. Gontrum

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petition was mailed this 20 day of November, 1987, to each of the following:

T. Rogers Harrison
Mudd, Harison & Burch
Suite 300 Jefferson Building
105 W. Chesapeake Avenue
Towson, Maryland 21204

Phyllis Cole Friedman, Esquire
Peter Max Zimmerman
People's Counsel for Baltimore County
Room 223, Court House
Towson, Maryland 21204

Assistant Attoney General
Maryland Department of State Planning
Baltimore, Maryland 21201

Nancy C. West, Esquire
Assistant County Attorney
Room 202
Court House
Towson, Maryland 21204

John B. Gontrum

MANDATE

Court of Appeals of Maryland

No. 76 **, September Term, 19** 98

FRIENDS OF THE RIDGE et al.

v.

BALTIMORE GAS AND ELECTRIC COMPANY

Certiorari to the Court of Special Appeals (Circuit Court for Baltimore County)
February 11, 1999 - Judgment of the Court of Special Appeals affirmed in part and vacated in part: that portion of the Court of Special Appeals' judgment relating to the variance is vacated; case remanded to that Court with instructions to vacate that portion of the judgment of the Circuit Court relating to the variance and remand the case to the Circuit Court with instructions to remand the case to the Board of Appeals for a decision consistent with this opinion; costs in this Court and in the Court of Special Appeals to be paid by petitioners.
Opinion by Cathell, J.

STATEMENT OF COSTS:

In Circuit Court:

Record	
Stenographer's Costs	

In Court of Appeals:

Petition Filing Fee	$ 336.00
Printing Brief for Appellant	
Portion of Record Extract — Appellant	124.50
Reply Brief	
Appearance Fee — Appellant	10.00
Filing Fee on Appeal (Court of Special Appeals)	50.00
Printing Brief for Appellee	244.80
Portion of Record Extract — Appellee	
Appearance Fee — Appellee	10.00
	$ 775.30

STATE OF MARYLAND, ss:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Appeals.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Appeals this fifteenth *day of* March *, 19* 99.

Clerk of the Court of Appeals of Maryland.

Costs shown on this Mandate are to be settled between counsel and NOT THROUGH THIS OFFICE.

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

IN THE MATTER OF THE APPLICATION OF JOSEPH F. EVERING JR. ET UX. FOR SPECIAL EXCEPTION FOR A BOAT YARD, SPECIAL HEARING TO AMEND SITE PLAN, AND VARIANCES	*	Case:
	*	Docket:
	*	Folio:
N/S OF CHESTER ROAD, 590' WEST OF SEVERN ROAD (800 CHESTER ROAD) 15TH ELECTION DISTRICT	*	
	*	

****

PETITION ON APPEAL

Protestants/Appellants Kenneth Engelke et al., by their attorneys, T. Rogers Harrison and Mudd, Harrison & Burch, file pursuant to Md. Rule B2 a. this Petition on Appeal.

1. The Board of Appeals erroneously granted relief from BCZR 417.5a to allow the extension of piers to a distance of 419 feet into Frog Mortar Creek beyond the mean low tide rather than the allowed 300 feet.

2. The Board of Appeals erroneously determined that the boatyard, piers, and related parking activities and other structures were exempt from the residential transitional area requirements under Section 1B01.1.B.c.9.

3. The Board of Appeals erroneously determined that the Petitioners, Joseph F. Evering Jr. et ux., had utilized the 1964 Special Exception for the Brown Parcel.

4. The Board of Appeals erroneously ruled that the land in question was not subject to the Chesapeake Bay Critical

RECEIVED
COUNTY BOARD OF APPEALS

Area Protection Act, Md. Nat. Res. Ann. Code secs. 8-1801--8-1816 (1983 Repl. Vol.).

5. The Board of Appeals' ruling was otherwise arbitrary, capricious, and not based on legally sufficient evidence.

Wherefore, Appellants/Protestants Kenneth Engelke et al. ask that the October 21, 1987, Opinion and Order of the Board of Appeals of Baltimore County be reversed.

T. Rogers Harrison
Mudd, Harrison & Burch
Suite 300--Jefferson Building
105 West Chesapeake Avenue
Towson, Maryland 21204
(301) 828-1335
Attorneys for
Protestants/Appellants
Kenneth Engelke et al.

CERTIFICATE OF SERVICE AND COMPLIANCE

I HEREBY CERTIFY that a copy of the foregoing PETITION ON APPEAL was served pursuant to Md. Rule 1-321 and B2 c. this 16th day of November, 1987, on the following:

The Administrative Secretary
Baltimore County Board of Appeals
Room 200
Court House
Towson, Maryland 21204

T. Rogers Harrison

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing PETITION ON APPEAL was mailed, this 16th day of November, 1987, to each of the following:

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

Phyllis Cole Friedman, Esquire
Peter Max Zimmerman
People's Counsel for Baltimore County
Room 223, Court House
Towson, Maryland 21204

Judith A. Armold, Esquire
Assistant Attorney General
Maryland Department of State Planning
Baltimore, Maryland 21201

Nancy C. West, Esquire
Assistant County Attorney
Room 202
Court House
Towson, Maryland 21204

T. Rogers Harrison

IN THE MATTER OF	:	CIRCUIT COURT
THE APPLICATION OF		
JOSEPH F. EVERING, JR., ET UX	:	FOR
NORTH SIDE OF CHESTER ROAD, 590'		
WEST OF SEVERN ROAD	:	BALTIMORE COUNTY
(800 CHESTER ROAD)		
15th ELECTION DISTRICT	:	AT LAW
SPECIAL EXCEPTION FOR A BOAT		
YARD; SPECIAL HEARING TO AMEND	:	CG Doc. No. 48
SITE PLAN; AND VARIANCES		
	:	Folio No. 225
KENNETH ENGELKE, ET AL -		
PROTESTANTS/APPELLANTS	:	File No. 87-CG-4755
ZONING FILE NO. 85-65-XSPHA	:	

: : : : : : : : : : : : : : :

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, Lawrence E. Schmidt and William T. Hackett, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, John O. Hennegan, Esquire, John B. Gontrum, Esquire, and Robert J. Romadka, Esquire, 809 Eastern Boulevard, Essex, MD 21221, Counsel for Petitioners; Joseph F. Evering, Jr., et ux, 800 Chester Road, Baltimore, MD 21220, Petitioners; T. Rogers Harrison, Esquire, 306 W. Joppa Road, Towson, MD 21204, Counsel for Protestants/Appellants; Judith A. Armold, Department of State Planning, 301 W. Preston Street, Baltimore, MD 21201, Assistant Attorney General; Arnold Jablon, Room 202, Courthouse, Towson, MD 21204, County Attorney for Baltimore County; and Phyllis Cole Friedman, Room 223, Courthouse, Towson, MD 21204, People's Counsel for Baltimore County, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

Kathleen C. Weidenhammer

Kathleen C. Weidenhammer
County Board of Appeals of Baltimore County
Room 200, Courthouse, Towson, MD 21204

HO 430

Plan dropped (Left out final filing review. Rob H. said will attempt to use SPX to also amend F.D.P. I said its your decision since this is usually handled by special hearing! ~~and~~ overall plan provided but not referenced with amendments) (No Overall description for Fox ridge East in file called Rob H.)
on 5/10/94. 5/11/94

Eventually some will need amended FDP plans.

JLL

To: John Lewis
From: Page Wingert

John,
Attached is the filing package for BG&E, re: Ivy Hill substation. You have already reviewed w/ Barb White & we have made requested revisions. Call if any questions arise. Thanks. Page

Don't necessarily agree with how this is being addressed but I bow to the attorneys privelage of asking for what they want.

Told R. H about possible DRC issues needing to be covered

Spoke to Paige Wingert. Possible Revisions to fax to R.H.
Some revisions made, comments still stand.

~~No hearing is~~

No Post Hearing Letter with package called R.H.

I HEREBY CERTIFY that a copy of the aforegoing Certificate of Notice has been mailed to John O. Hennegan, Esquire, John B. Gontrum, Esquire, and Robert J. Romadka, Esquire, 809 Eastern Boulevard, Essex, MD 21221, Counsel for Petitioners; Joseph F. Evering, Jr., et ux, 800 Chester Road, Baltimore, MD 21220, Petitioners; T. Rogers Harrison, Esquire, 306 W. Joppa Road, Towson, MD 21204, Counsel for Protestants/Appellants; Judith A. Armold, Department of State Planning, 301 W. Preston Street, Baltimore, MD 21201, Assistant Attorney General; Arnold Jablon, Room 202, Courthouse, Towson, MD 21204, County Attorney for Baltimore County; and Phyllis Cole Friedman, Room 223, Courthouse, Towson MD 21204, People's Counsel for Baltimore County, on this 16th day of November, 1987.

Kathleen C. Weidenhammer
County Board of Appeals of Baltimore County

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

November 16, 1987

Robert J. Romadka, Esquire
809 Eastern Boulevard
Baltimore, MD 21221

RE: Joseph F. Evering, Jr., et ux
Case No. 85-65-XSPHA
Appeal: T. Rogers Harrison, Esq. for
Protestants -Kenneth Engelke, et al

Dear Mr. Romadka:

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

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Kathleen C. Weidenhammer

Kathleen C. Weidenhammer
Administrative Secretary

Encl.

cc: John B. Gontrum, Esquire
John O. Hennegan, Esquire
Joseph F. Evering, Jr., et ux
Judith A. Armold, Esquire
Norman E. Gerber
James G. Hoswell
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
Robin Clark
Phyllis Cole Friedman, Esquire
Arnold Jablon, County Attorney

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

November 16, 1987

T. Rogers Harrison, Esquire
Suite 300, Jefferson Building
105 W. Chesapeake Avenue
Towson, MD 21204

RE: Joseph F. Evering, Jr., et ux
Case No. 85-65-XSPHA

Dear Mr. Harrison:

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

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

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

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

Kathleen C. Weidenhammer
Administrative Secretary

Enclosures

IN THE MATTER OF THE APPLICATION OF JOSEPH F. EVERING, JR., ET UX NORTH SIDE OF CHESTER ROAD, 590' WEST OF SEVERN ROAD (800 CHESTER ROAD) 15th ELECTION DISTRICT SPECIAL EXCEPTION FOR A BOAT YARD; SPECIAL HEARING TO AMEND SITE PLAN; AND VARIANCES	:	CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW
	:	CG Doc. No. 48
	:	Folio No. 225
PHYLLIS COLE FRIEDMAN, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, PLAINTIFF	:	File No. 87-CG-4755
ZONING FILE NO. 85-65-XSPHA	:	

: : : : : : : : : : : : : : :

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, Lawrence E. Schmidt and William T. Hackett, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, John O. Hennegan, Esquire, John B. Gontrum, Esquire, and Robert J. Romadka, Esquire, Germania Federal Building, 809 Eastern Boulevard, Essex, MD 21221, Counsel for Petitioners; Joseph F. Evering, Jr., et ux, 800 Chester Road, Baltimore, MD 21220, Petitioners; T. Rogers Harrison, Esquire, 306 W. Joppa Road, Towson, MD 21204, Counsel for Protestants; Judith A. Armold, Department of State Planning, 301 W. Preston Street, Baltimore, MD 21201, Assistant Attorney General; Arnold Jablon, Room 202, Courthouse, Towson, MD 21204, County Attorney for Baltimore County; and Phyllis Cole Friedman, Room 223, Courthouse, Towson, MD 21204, People's Counsel for Baltimore County, Plaintiff, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

Kathleen C. Weidenhammer

Kathleen C. Weidenhammer
County Board of Appeals of Baltimore County
Room 200, Courthouse, Towson, MD 21204

I HEREBY CERTIFY that a copy of the aforegoing Certificate of Notice has been mailed to John O. Hennegan, Esquire, John B. Gontrum, Esquire, and Robert J. Romadka, Esquire, Germania Federal Building, 809 Eastern Boulevard, Essex, MD 21221, Counsel for Petitioners; Joseph F. Evering, Jr., et ux, 800 Chester Road, Baltimore, MD 21220, Petitioners; T. Rogers Harrison, Esquire, 306 W. Joppa Road, Towson, MD 21204, Counsel for Protestants; Judith A. Armold, Department of State Planning, 301 W. Preston Street, Baltimore, MD 21201, Assistant Attorney General; Arnold Jablon, Room 202, Courthouse, Towson, MD 21204, County Attorney for Baltimore County; and Phyllis C. Friedman, Room 223, Courthouse, Towson, MD 21204, People's Counsel for Baltimore County, Plaintiff, on this 12th day of November, 1987.

Kathleen C. Weidenhammer
County Board of Appeals of Baltimore County

County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180

April 2, 1999

J. Carroll Holzer, P.A.
508 Fairmount Avenue
Towson, MD 21286

RE: Circuit Case #95-CV-5315 /In the Matter of BG&E /Ivy Hill Substation (Friends of the Ridge, et al) Zoning Case No. 94-452-XA

Dear Mr. Holzer:

Enclosed please find a copy of the Board's Order on Remand issued this date in response to the Remand Order of the Circuit Court pursuant to the March 15, 1999 Disposition of the Maryland Court of Appeals.

Very truly yours,

Charlotte E. Radcliffe for
Kathleen C. Bianco
Administrator

Enclosure

cc: Friends of the Ridge, et al c/o J. C. Holzer
Robert A. Hoffman, Esquire
Kathleen Gallogly Cox, Esquire
John H. Zink, Esquire
Martha A. Delea, Esquire
Mr. and Mrs. Frederick Vinup
Mr. and Mrs. Raymond Fischer
Mrs. Dorothy Marsden
The Honorable T. Bryan McIntire
Baltimore County Council
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
Arnold Jablon, Director /PDM
The Honorable Lawrence R. Daniels, Judge
Circuit Court for Baltimore County
Clerk of the Court /Case No. 95-CV-5315
Virginia W. Barnhart, County Attorney

FILE RETURNED / HAND DELIVERED w/ Clerk 4-2-99

FILED APR - 2 1999

Printed with Soybean Ink on Recycled Paper

Towson, MD 21204
(410)825-6961

Type	Num	Name(Last,First,Mid,Title) / Dispo	Entered
PLT	011	Brown, Ira, Mrs	CT DO 12/30/96 06/16/95
	Attorney:	0012186 Holzer, J Carroll Holzer And Lee 305 Washington Ave Suite 502 Towson, MD 21204 (410)825-6961	
PLT	012	Langendorf, Dieter, Mr	CT DO 12/30/96 06/16/95
	Attorney:	0012186 Holzer, J Carroll Holzer And Lee 305 Washington Ave Suite 502 Towson, MD 21204 (410)825-6961	
PLT	013	Langendorf, Dieter, Mrs	CT DO 12/30/96 06/16/95
	Attorney:	0012186 Holzer, J Carroll Holzer And Lee 305 Washington Ave Suite 502 Towson, MD 21204 (410)825-6961	
PLT	014	Lansman, Andrew, Mr	CT DO 12/30/96 06/16/95
	Attorney:	0012186 Holzer, J Carroll Holzer And Lee 305 Washington Ave Suite 502 Towson, MD 21204 (410)825-6961	
PLT	015	Lansman, Andrew, Mrs	CT DO 12/30/96 06/16/95
	Attorney:	0012186 Holzer, J Carroll Holzer And Lee 305 Washington Ave Suite 502 Towson, MD 21204 (410)825-6961	
PLT	016	Bozel, Jeffrey, Mr	CT DO 12/30/96 06/16/95
	Attorney:	0012186 Holzer, J Carroll Holzer And Lee 305 Washington Ave Suite 502 Towson, MD 21204 (410)825-6961	

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: Baltimore Gas & Electric Co. -Petitioner
Case No. 94-452-XA

DATE : February 22, 1995 @ 9:10 a.m.

BOARD /PANEL : William T. Hackett, Chairman (WTH)
Robert O. Schuetz (ROS)
S. Diane Levero (SDL)

SECRETARY : Kathleen C. Weidenhammer
Administrative Assistant

Those present included Robert A. Hoffman, Venable, Baetjer and Howard, LLP, and Martha A. Delea, BGE, on behalf of Petitioner; and J. Carroll Holzer, Holzer and Lee, on behalf of Protestants. (No participation by People's Counsel in this case.)

PURPOSE --to deliberate issues and matter of petitions for special exception and variance presented to the Board; testimony and evidence taken October 4, 1994; January 10, January 12, January 17 and January 19, 1995. Opinion and Order to be issued by Board setting forth written findings of fact.

WTH: As requested by law, Board is here for purpose of deliberation of Case No. 94-452-XA, Ivy Hill Substation property. Wished to indicate that very competent memorandums were received from both parties; Board has carefully gone over these memos.

ROS: Always start these things with little bit of preamble; these deliberations can be somewhat emotional experience for folks; liken it to being on a jury and then being asked to deliberate whatever is found as fact; how those facts are countered with other facts; how each sees things; those present will hear things they won't want to hear; can be a rather uncomfortable situation for anyone; requested that all present refrain from comments during course of deliberation; difficult situation being here for everyone.

Where variances are concerned, generally one who takes a rather difficult position for developer to achieve; views variance as part of the law which allows developer to say "the law does not apply to me." Believes the Court of Special Appeals of Maryland generally agrees with that position; only granted three variances in 70 years. But that's not to say

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

November 12, 1987

Robert J. Romadka, Esquire
Germania Federal Building
809 Eastern Boulevard
Essex, MD 21221

RE: Case No. 85-65-XSPHA
Joseph F. Evering, Jr., et ux

Dear Mr. Romadka:

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

Enclosed is a copy of the Certificate of Notice.

Sincerely,

Kathleen C. Weidenhammer

Kathleen C. Weidenhammer
Administrative Secretary

Encl.

cc: John B. Gontrum, Esquire
John O. Hennegan, Esquire
Joseph F. Evering, Jr.
T. Rogers Harrison, Esquire
Judith A. Armold, Esquire
Norman E. Gerber
James G. Hoswell
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
Robin Clark
Arnold Jablon, County Attorney

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

November 12, 1987

Phyllis C. Friedman
People's Counsel for Balto County
Room 223, Courthouse
Towson, MD 21204

RE: Case No. 85-65-XSPHA
Joseph F. Evering, Jr., et ux

Dear Ms. Friedman:

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

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

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

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

Kathleen C. Weidenhammer
Administrative Secretary

Enclosures

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

Appellant

v.

JOSEPH F. EVERING, JR., et al.

Appellee

: IN THE CIRCUIT COURT

: FOR BALTIMORE COUNTY

: AT LAW

: Docket No. 48

: Folio No. 225

: File No. 87CG4755

: : : : : :

NOTICE OF APPEAL

Please note an appeal to the Circuit Court for Baltimore County from the Opinion and Order of the County Board of Appeals of Baltimore County, under date of October 21, 1987, in the above-captioned matter.

RECEIVED
COUNTY BOARD OF APPEALS
1987 NOV 10 P 4: 26

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

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

I HEREBY CERTIFY that on this 10th day of November, 1987, a copy of the foregoing Notice of Appeal was served on the Administrative Secretary, County Board of Appeals, Room 200, Court House, Towson, MD 21204; and a copy was mailed to John O. Hennegan, Esquire, and John B. Gontrum, Esquire, 809 Eastern Blvd., Baltimore, MD 21221; T. Rogers Harrison, Esquire, 306 W. Joppa Rd., Towson, MD 21204; Judith P. Arnold, Esquire,

Assistant Attorney General, Maryland Dept. of State Planning, The Munsey Building, Seven N. Calvert Street, Baltimore, MD 21201; and Nancy C. West, Esquire, Assistant County Attorney, Room 202, Court House, Towson, MD 21204.

Phyllis Cole Friedman

Phyllis Cole Friedman

RECEIVED
COUNTY BOARD OF APPEALS
1981 NOV 10 P 4:26

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY	:	IN THE CIRCUIT COURT
	:	FOR BALTIMORE COUNTY
Appellant	:	AT LAW
v.	:	Docket No. 45
JOSEPH F. EVERING, JR., et al.	:	Folio No. 225
Appellee	:	File No. 87C64755

: : : : : :

PETITION ON APPEAL

People's Counsel for Baltimore County, Protestant below and Appellant herein, having heretofore filed a Notice of Appeal from the Opinion and Order of the County Board of Appeals under date of October 21, 1981, in compliance with Maryland Rule B-2(a), files this Petition on Appeal setting forth the grounds upon which this Appeal is taken, and states that the following rulings of the Board were in error:

1. That the Board erroneously granted relief from BCZR 417.6a to allow the extension of piers to a distance of 419 feet into Frog Mortar Creek beyond the mean low tide rather than the allowed 300 feet.

2. That the Board erroneously granted an exemption from the critical areas legislation which was previously appealed and held by the Circuit Court to be an interlocutory ruling the appeal of which was untimely.

3. That the Board erroneously determined that the boatyard, piers and related parking activities and other structures were exempt from the residential transitional area requirements under Section 101.1.B.1.a 9.

that that should never happen; just means that three of cases which have gone that far have had sufficient question in content which would case that Court to find thusly. Position is still one that assumes that whatever it is that is proposed is not something that will be on landscape for 5, 10 or 20 years; assumption that what is being discussed is going to remain on landscape forever; maybe will undergo alteration over time in part; but will still be there; questioned relief granted over years; architecture along strips like Reisterstown Road, Liberty Road, Belair Road, etc. Be that as it may, does not abide the "not in my back yard" thinking; genuine need to be sitting in hearing room with the use of artificial lighting to read and see each other; situation where everyone in room, including BGE, employees, attorneys, etc. would like to have own power source running underground encased in lead and concrete through middle of earth to center of home; not going to happen; emotional thinking must be thrown out; real issues considered.

Utility companies have rather tenuous future; does not take a Jules Verne imagination to realize we are depleting fossil fuel; technology associated with nuclear power forcing utility companies around country and world to rethink distribution. Conditions exist to which we are all subjected; utility companies are mandated in this State to provide power; and to provide power uninterrupted; reality where we do have occasions where we do not have power; one day, who knows when, either children or possibly grandchildren, will see alternate power generated in back yard; going to be a certain amount of ugliness going along with that; what can we do to minimize that part of the consequence associated with the need for power? Do substations belong in residential areas? Believes counsel for protestants raised it as an issue in closing memorandum; answer is resounding "yes, absolutely." Practical issue; what can Board do, what can society do, to minimize effects of existence of that need. EMFs as it stands now in this State is an emotional issue; utility companies like BGE have lot of risk; if one day the Courts or the legislature or even the Federal Government decides that EMFs are in fact tangible issue which must be addressed, then utility companies like BGE are going to be forced to alter their systems to accommodate necessary changes. Putting emotional issues aside, Board must get down to real issues: need, special exception, and issues surrounding variance and what Board is empowered to do.

Absolutely clear that there is a need; evidence and testimony on both sides which points to a genuine need; protestants' analysis has actually helped in coming to conclusion since capacity is something which must exceed demand. As

4. That the Order of the Board was otherwise arbitrary, capricious, and not based on legally sufficient evidence.

WHEREFORE, Appellant prays that the Opinion and Order of the Board of Appeals of Baltimore County under date of October 21, 1987 be reversed.

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

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

I HEREBY CERTIFY that on this 10th day of November, 1987, a copy of the foregoing Petition on Appeal was served on the Administrative Secretary, County Board of Appeals, Room 200, Court House, Towson, MD 21204; and a copy was mailed to John G. Hennegan, Esquire, and John G. Gontrum, Esquire, 200 Eastern Ave., Baltimore, MD 21221; T. Rogers Harrison, Esquire, 306 W. Joppa Rd., Towson, MD 21204; Judith A. Arnold, Esquire, Esquire, Assistant Attorney General, Maryland Dept. of State Planning, The Nunsey Building, Seven N. Calvert St., Baltimore, MD 21201; and Nancy C. West, Esquire, Assistant County Attorney, Room 202, Court House, Towson, MD 21204.

Phyllis Cole Friedman
Phyllis Cole Friedman

IN THE MATTER OF THE APPLICATION OF JOSEPH F. EVERING, JR., ET UX FOR SPECIAL EXCEPTION FOR A BOAT YARD, SPECIAL HEARING TO AMEND SITE PLAN AND VARIANCES N/s OF CHESTER ROAD, 590' WEST OF SEVERN ROAD (800 CHESTER ROAD) 15th ELECTION DISTRICT	:	BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 85-65-XSPHA

: :

O P I N I O N

This matter comes before the Board as an appeal from the decision of the Zoning Commissioner dated April 25, 1985, wherein the Commissioner granted a special exception and variances with restriction, all petitioned for by the property owner, Joseph F. Evering.

STATEMENT OF THE CASE

Prior to a discussion of the merits of the case, a statement of the procedural history of the case is in order. On August 6, 1984, the Petitioner, Joseph F. Evering, et al, filed the following three petitions:

1. A Petition for Special Exception: This request was made to allow two lots on the north and south sides of Chester Road to be used as part of a boatyard. The lots, as is the entire property, are zoned D.R. 5.5 and, under Section 1B01.1.C.2 of the Baltimore County Zoning Regulations (hereinafter B.C.Z.R.), may only be used as a boatyard upon granting of a special exception. As will be discussed later, the two parcels for which the special exception is sought are properties acquired by Mr. Evering in the relative recent past, and the petitioner seeks permission to consolidate the uses on these parcels with adjacent properties owned by him and operated as a boatyard, pursuant to special exceptions granted to him a number of years ago.

2. A Petition for Zoning Variance: Within this petition, the petitioner seeks relief by way of variance from three sections of the Baltimore

County Zoning Regulations. To wit: a) To allow existing compacting stone instead of the required durable and dustless surface (B.C.Z.R. Sec. 409.2.c.(2)); b) To allow 318 parking spaces in lieu of the required 384 spaces, or, if the special exception petitioned for is granted, to allow 363 spaces instead of the required 384 spaces (B.C.Z.R. 409.2.b); and c) To allow the extension of piers to extend 419 feet into Frog Mortar Creek beyond the mean low tide, rather than the allowed 300 feet (B.C.Z.R. 417.5(a)).

3. A Petition for Special Hearing: The petitioner also seeks other relief by way of special hearing, specifically: a) To amend the site plan which was approved on January 16, 1967 in connection with the granted petition for special exception in Case No. 64-160-X, in order to construct additional piers and slips; b) To remove the restrictions numbered 1 and 3 in Case No. 64-57-SPH, in order to allow marine craft to be stored within twenty feet of the eastern-most property line and to request the variance for the parking surface heretofore referred; c) To remove restrictions in Case No. 64-160-X numbered 1 and 6, in order to allow major repairs of boats both on the premises and in the waters, and to change the times and days of the week and year the repairs will be permitted; and d) To determine that a boatyard, piers and related parking activities and other structures are devoted to civic, commercial and recreational activities and are, therefore, exempt from the residential transitional area requirements.

As indicated above, the Zoning Commissioner on April 25, 1985, granted the special exception and variances, subject to restriction. Cross appeals were then filed to this Board, by both the petitioner and neighboring protestants. In a hearing before this Board in October of 1985, a Motion was raised by the petitioner relative to sub-title 18 of the Natural Resources Article

of the Annotated Code of Maryland, seeking a ruling as to the applicability of this legislation (generally known as the Chesapeake Bay Critical Area Protection Program). After entertaining lengthy argument, this Board held on December 12, 1985 that the Critical Area legislation was not applicable.

Following this ruling, People's Counsel and the protestants filed an appeal of the Board's ruling to the Circuit Court for Baltimore County. Additionally, an action for declaratory judgment was filed within that Court by the protestants and People's Counsel. After consideration of the various pleadings, arguments, etc., Judge Sfekas denied the Complaint for Declaratory Judgment and dismissed the appeal. Although Judge Sfekas' opinion speaks for itself, it is noted that the matter was remanded to the Board of Appeals for its consideration as to the merits of the case.

STATEMENT OF THE FACTS

The Board received lengthy testimony and legal memoranda in this case which elicited the following facts regarding the history of these parcels and their current use. The current Evering property actually consists of four separate parcels, which have been acquired over the years. These parcels total approximately 3.3 acres and, as shown from the aerial photo exhibits introduced, represent the tip of a peninsula which extends into Frog Mortar Creek.

The original Evering parcel of approximately 1.2 acres lies on the south side of Chester Road. After acquiring this property, the Everings applied for and were granted special exception for the use of that property as a boatyard (see Case No. 35-35-X). After acquiring this special exception, Mr. Evering constructed four piers which extended into Frog Mortar Creek for the purpose of mooring his customers' boats. In January of 1964, the Everings filed a Petition for Special Hearing, seeking clarification of that special exception granted to

them. Specifically, they sought, and received, approval to store marine craft on the shore. This approval, however, was subject to three restrictions; to wit: 1) the prohibition of storing marine craft within thirty feet of the eastern-most portion of the property owned by the Everings; 2) limiting the use of the boatyard to pleasure craft only; and 3) mandating that the Everings comply with off-street parking requirements contained within the Baltimore County Zoning Regulations.

On August 1, 1960, the Everings acquired the second parcel of what eventually became the entire Evering property. This parcel was obtained from Mr. and Mrs. Henry J. Brown. This lot lies directly north, across Chester Road from the original parcel. In contemplation of purchase of the same, the petitioner filed for a special exception in the spring of 1964, seeking permission to develop the second parcel into a boatyard. This special exception was also granted, again, however, subject to numerous restrictions as more fully described within the record of this case. Generally, the granted petition restricted the use of the property by prohibiting (1) major repairs on boats, (2) the construction of boats, and (3) the mooring of commercial vessels, barges or similar type craft. Additionally, the extent of and time frame for repairs to boats were limited. Furthermore, as had been the case with the initial special exception applicable to parcel one, the boatyard facility was restricted to pleasure craft only.

The third parcel of the Evering property was purchased in 1969 and encompasses the adjacent lot on the southern side of Chester Road. The fourth and final piece of the Evering property puzzle was purchased by the petitioner in 1970 and includes that lot adjacent to the old Brown parcel, located on the northern side of Chester Road. It is these parcels, designated as #3 and #4, for which the Everings currently seek a special exception.

engineering practice, BGE is not expected to increase its capacity year by year, or month by month, or day by day in order to just barely accommodate demand; that's bad engineering practice and issue which is impractical; would cause additional costs to citizens. Believes that Section 411 of BCZR has been met and met resoundingly. 502.1, dealing with special exceptions - issues of health, safety and general welfare, roads, overcrowding, schools, transportation, etc., also have been met; can be argued that Baltimore/Washington real estate market is overpriced; however, fact remains that folks bought homes and have certain expected return on investment; not here to help retain expected return; but here to protect from acts of others which would negatively impact property. Visual impact is one area under 502.1 which is even in question at this point; evidence and testimony from protestants which indicates that BGE does not have solid history of providing landscaping at other facilities. BGE has submitted landscaping plan which goes long way toward meeting that goal; because it's a visual issue, will discuss conditions later in deliberation; regarding design standards and codes, potential for fire and other panic, we have building codes, national electrical code, design standards -- BGE expected to meet and must meet by law. Issue of whether child will climb over fence -- at what point is developer expected to exceed standard or exceed level of care; circuit breaker in home is secured with four screws; does not take a lot to dismantle that; far more dangers here that if child should transverse BGE property. Regarding stormwater management pond, electrical dangers, all go away because of design standards which will be met.

Again, that leaves visual issue; consistent with zoning classification; what is practical way of distributing electrical power; facilities do belong in residential areas. Only question is where; would even say that issue of health, safety and general welfare would be negatively impacted if BGE were not allowed to place this facility there because of need to provide electricity to homes; regarding cold weather last winter, testimony surrounded issue of meeting demand; we had one day; that one day established new standard; that was peak day; BGE did not meet it; that is standard by their mandate; at this point in time, health, safety and welfare of others outside of this community is at question because of the fact that they were not able to meet that demand.

Concerning variances, most difficult issue. Again, does not take variances lightly; variances are very serious part of code; spent overwhelming majority of time thinking about this; variance language is very strong; law says that there must be conditions which are peculiar to the land; and further where

In addition to the lengthy testimony regarding the chronological history of this property, the Board received extensive testimony regarding the current use of the property. Both the petitioners and protestants produced numerous witnesses as to the operation, both past and present, of this facility and its effect on the general locale. Suffice it to say, the Board will not repeat here at length all the testimony which is contained in the record. This testimony has largely been summarized by all counsel and will not be repeated. However, certain relevant portions of the testimony will be drawn from and cited during discussion of the numerous issues which the Board will address in considering the petitioner's request.

UTILIZATION OF THE SPECIAL EXCEPTION FOR THE SECOND (BROWN) PARCEL AS GRANTED ON JULY 30, 1964

The initial issue facing this Board concerns the present state of the special exception granted by the County Zoning Commissioner in June of 1964. As indicated earlier, the Zoning Commissioner in 1964 granted a special exception for the secondly acquired parcel, purchased from Mr. and Mrs. Brown. The protestants argue that the Everings did not utilize this special exception. As such, they maintain that the factual basis on which the presently requested relief is sought does not exist. Expressed otherwise, since the special exception for the second parcel was not utilized, the petitioners cannot now seek an additional special exception and variances for the subsequently acquired property. The protestants therefore urge this Board to deny the current petitions because of the failure of the Everings to utilize the special exception which they obtained in 1964. As a factual basis for this position, the protestants point to the site plan submitted by the Everings in 1967 wherein the petitioners propose to exercise the use granted by the extension of Chester Road, filling in

and extending of the Brown parcel, the construction of a bulkhead off the Brown parcel, the building and delineation of parking areas, and building three piers off the western shore from the Brown parcel and a fourth from parcel one. In that the petitioners did not fully complete all of their plans, the protestants urge this Board to hold that the 1964 special exception was not utilized and is therefore invalid. As a legal basis for this condition, the protestants point to Section 502.3, B.C.Z.R.; particularly, subsection A which provides:

> "[A] special exception which has not been utilized within a period of two years from the date of the final Order granting same, or such longer period not exceeding five years, as may have been specified therein, shall thereafter be void...."

Later, this section provides that:

> "[a] special exception which requires any construction for its utilization shall be deemed to have been used within its authorized time, if such construction shall have been commenced during the authorized period, or any extension thereof, provided said construction is thereafter pursued to completion with reasonable diligence."

The protestants argue that the petitioner has not complied with this section of the B.C.Z.R., in that construction has not been commenced and/or completed pursuant to the petitioner's site plan.

In opposition to this conclusion, the petitioners, although acknowledging that not all construction was completed, argue that substantial utilization was undertaken. Although the petitioners admit that the three piers in front of the parcel were not in fact constructed, they point to the construction of a repair shop barge and additional 36 slips constructed from the front of the initial parcel. Additionally, the petitioners point to a number of improvements on the Brown property itself. Specifically, marine craft were stored on the parcel, the property was graded, the rudiments of a parking lot

were completed and recreational facilities, including a swimming pool, showers and sanitary house, were built. The petitioners also point to the pilings which were driven for the bulkhead, although the bulkhead was never constructed.

In consideration of this issue, the Board looks to prior decisions for guidance. Although the Zoning Commissioner questioned its applicability, the Board views the standards as set forth in Case No. 84-89-SPH, In re: Joseph L. Soley, as controlling. Particularly, we look to not only the Board's initial Opinion in that case, but, also, Judge Hinkel's Opinion and the Board's subsequent Opinion. It should be noted that the Board's second Opinion, after remand, was affirmed by the Circuit Court (Fader, J.).

The standard which must be applied here, as was applied in Soley, is whether the petitioner exercised reasonable diligence in utilizing his special exception. As Zoning Commissioner Jablon pointed out, "reasonable diligence is nowhere defined in the B.C.Z.R." Although the B.C.Z.R. nowhere defines the standard under which the Board is to determine "reasonable diligence," that standard was unmistakenly provided to this Board in Judge Hinkel's Order. Specifically, the Board was instructed to apply a two-prong test; that is, 1) the commencement of some readily identifiable work, and 2) the work begun with the intention then formed to continue said work to its completion.

Applying that test to the facts found by us, we are persuaded that the special exception granted in 1964 was utilized. Certainly, the Board acknowledges that not all the petitioner's plans were completed fully. However, there appeared to be a sufficient and extensive developed use of the Brown parcel, in a manner which must be described as a boatyard. Particularly, the petitioner completed one pier, stored marine craft on the site, constructed facilities (bath house, showers, pool) thereon, etc. More significantly, there is no doubt that the boatyard use exists, and has existed on this site.

As was evident from the testimony of not only Mr. Evering but other longstanding residents of the community, parcels 1 and 2 were considered, from a practical standpoint, in conjunction. That is, their use was consistent and in a joint manner; and that both parcels 1 and 2 have been used continuously since 1964 as a boatyard.

CONSIDERATION OF THE SPECIAL EXCEPTIONS

Having settled the utilization of the 1964 special exception and concluded that in fact the special exception on the former Brown parcel has been utilized, the Board next turns its attention to the Petition for Special Exception before us for parcels 3 and 4. As is the case in all special exception matters before this Board, we are obligated to determine whether the conditions set forth in Section 502.1 of the B.C.Z.R. have been satisfied by the petitioners. As to the factual consideration of this issue, the Board has received lengthy testimony and evidence, all of which is reflected in the record of this case. This evidence will not be repeated here. However, in conclusion, the Board finds that the proposed use would not be detrimental to the neighborhood and surrounding area and would not adversely affect any public interest. Specifically, we find that the proposed use meets all of the tests as set forth in B.C.Z.R. Section 502.1. The Board has received lengthy evidence as to the effects of the already existing boatyard use on portions of the property. This evidence is telling and convinces us that the proposed use is consistent with the spirit and intent of the Baltimore County Zoning Regulations. We will, therefore, grant the Petition for Special Exception with restrictions.

CONSIDERATION OF THE PROPOSED VARIANCES

As indicated above, the property owner seeks three zoning variances. They are: (1) relief from B.C.Z.R. Section 409.2.c(2), to allow existing com-

pacting stone instead of the required durable and dustless surface; (2) relief from B.C.Z.R. 409.2.b, to allow 363 parking spaces instead of the required 384 spaces, in that, the Board has in this Opinion heretofore stated that the Petition for Special Exception will be granted; and (3) relief from B.C.Z.R. 417.5(a), to allow the extension of piers to a distance of 419 feet into Frog Mortar Creek beyond the mean low tide, rather than the allowed 300 feet. We shall address each of these requests in turn, pursuant to the standards as set forth in B.C.Z.R., Section 307 and the applicable core law, e.g., Anderson v Board of Appeals, Town of Chesapeake Beach 22 M App 28, 322 A2d 220 (1970). McLean v Soley 270 MD 208, 31 A2d 787 (1973). This body of law requires the petitioner to demonstrate that practical difficulty or undue hardship would result if strict compliance with the regulations were imposed.

Parking Lot Paving

The parking surfaces may remain compacted stone. As the property owner testified, crushed stone is cleaner, more dust free, and provides a reduced rate of storm water runoff than a macadam or impenetrable surface. We agree. In our view, practical difficulty would exist if the petitioner were forced to comply with B.C.Z.R. 409.2.c(2). Further, a parking surface of crushed stone is, in our view, more compatible with the intended purposes of the B.C.Z.R. than would the required macadam surface. We also note that, among the many issues before us, this is the sole question about which there is unanimous agreement among all concerned.

Required Number of Parking Spaces

As did the Zoning Commissioner, the Board will reduce the number of additional slips requested. Therefore, the petitioner's variance for relief from B.C.Z.R. 409.2.b is rendered moot. The Board finds as fact, however, that

following the code in its strictest sense would cause the property owner practical difficulty or unreasonable hardship; not in the additive / "or undue hardship." And again, that language is taken and construed as meaning forever; go afield here from just what is seen in testimony and evidence; have to look deeply into what is meant by what is presented. What BGE has done in past is not necessarily what BGE will always do in future; great deal of hue and cry over what BGE does now relative to commercial enterprise and competing with mechanical contractors; so I look at that type of situation and wonder what happens if variance is granted and BGE alters what they have proposed at some point in future. They have a 0' setback variance from interior lot lines, and then they sell off a piece of property; will that then overcrowd the land? Will they then do things contrary to spirit and intent of BCZR? And are they then moving away from issues which are peculiar to the land given their initial proposed development?

Great deal of concern that the variance must be considered only within the constraints that have been placed as a part of this request; from equitable standpoint, variance is granted given set of circumstances prescribed in presentation of case; fair to assume that if variance is granted and those conditions change, the variance is lost; reason for that position is a special exception speaks to the use but a variance speaks to the land; from fairness standpoint would say that in granting variance would place rather unusual restrictions on BGE; equitable standpoint is intent of law; mere fact that BGE is mandated to provide power; is constrained to build in a certain fashion; they are constrained to do work in a certain manner and therefore to deny them the ability to construct this facility centrally within the three parcels would create a practical difficulty and an undue hardship; again, that's because of proposed development; with that, would say that variance can only stay with BGE's proposed development, and if proposed development changes in configuration or location, then variance would be lost.

Will find as a fact that they do have conditions peculiar to the land; that the denial of the variance would be practical difficulty and undue hardship. Now to conditions with which BGE would have to deal; lot of discussion in both attorney's presentations and closing memos regarding Schultz v. Pritts. Again, effects of this are largely visual; until law determines that EMFs or other conditions associated with these facilities determine otherwise. Therefore, one of conditions which would be imposed on BGE is to double the number of trees surrounding the facility, making it four rows of trees; would also increase the height of the trees from 8-10' to 10-12';

the number of parking spaces as mandated by B.C.Z.R. 409 et cet is not necessary. The property owner testified that he had "plenty of parking." Other witnesses testifying on behalf of the petitioner, including both expert witnesses and patrons of the facility, opined that parking congestion was not an issue. Even the protestants, who primarily objected to the anticipated increased traffic on the local roads leading to the facility, did not present any convincing testimony as to parking overflow. In our view, the parking on site is sufficient. As it stands to reason, the land vehicle parking needed is greatest when the boats are in the water, which frees additional room.

Extension of the Piers

The petitioner's final request for variance, from B.C.Z.R. 417.5, is most difficult for this Board to decide and elicited complex and conflicting testimony. It is uncontroverted that the site currently offers 201 slips for rent, and the petitioner requests that the capacity be increased by 178, for a total of 379. The Board received conflicting and detailed testimony regarding the current state of Frog Mortar Creek, from navigational, traffic and water quality standpoints. Additionally, both proponent and opponent witnesses of the project rendered lengthy opinions about the impact of the proposed expansion. We will not repeat all of this testimony at length here; suffice it to say that the Board carefully considered all of the opinions expressed in an effort to apply the practical difficulty/undue hardship test to the proposed use.

On the petitioner's side, the property owner testified as to current conditions on Frog Mortar Creek at this location. He testified that this waterway was not overcrowded, the condition of the water itself was sufficient to support marine life and the proposed use would not adversely impact the area from either an ecological or overcrowding standpoint. In his view, Frog Mortar

Creek can well handle the intensification of use which will result if this project is approved. This view was supported by several patrons of Mr. Evering's existing marina, who envisioned no adverse impact with the consequential results of marina expansion.

Also supportive of this view was the petitioner's expert, Frank Pine. This witness testified that the water quality here was marginally adequate, at the present time. However, additional boat slips and traffic would reduce the quality only an infinitesimal amount in that, in this witness' view, boat traffic contributes an insignificant amount of pollutants.

In opposition to these views were several neighborhood protestants. These witnesses testified as to the current crowded and dangerous conditions on the waterway and poor water quality. In their view, further expansion into the creek would be a hazard to navigation, further reduce water quality and further tax beyond its limits the capacity of this creek to support the uses demanded of it.

In addressing this particular variance, the Zoning Commissioner's opinion deserves note. Within this opinion, the Commissioner reviews the staid and mundane legal standards by which we are to judge the requested relief and tempers their application in an aesthetic manner by considering the people's right to the use of this natural resource, government's obligation to protect same, and the right of a property owner to use his land in a manner which he so desires. After pondering the Zoning Commissioner's approach, the Board is persuaded that it is the proper manner in which to consider the requested variance for a pier extension. After all, it is the spirit and intent of the B.C.Z.R. to serve the purposes heretofore set forth.

After due consideration, we are persuaded that the proposed expansion should be limited by the deletion of the 80 slips which run northward from the northern prong of the proposed expansion. That is, the northern prong may be expanded into Frog Mortar Creek in an "L" configuration, not in the proposed "T" configuration. We find that the slips which we delete are the most objectionable as they protrude into the navigable portion of Frog Mortar Creek. We impose this restriction not to strike a compromise but because, in our view, the increase must be limited so as to strike a balance between the property owner's right to the use of his land with the public's need for safeguards as to its health, safety and welfare.

CONSIDERATION OF SECTION 417.7 (B.C.Z.R.)

In its post-hearing memorandum, the Office of the People's Counsel raised yet another issue for this Board to consider. Specifically, People's Counsel argues that Section 417.7 of the B.C.Z.R. was not addressed by the Petitioner. That section provides that:

> "Marinas located on property consisting of five or more acres shall be permitted to establish out-of-water storage facilities for recreational marine craft provided that no such facilities thereon shall be located within 60 feet of any property line, and provided, further, that screening shall be provided and maintained of such types and at such locations as may be required by the zoning commissioner or board of appeals, on appeal."

As indicated earlier in this Opinion, the petitioners did not seek a variance from the requirements of 417.7. In fact, the issue as to whether a variance can be granted from the mandates of this section is among the issues raised by the People's Counsel.

We will not address those issues here. Although this appeal is de novo, the issues presented herein are the Petition for Special Exception,

Petition for Special Hearing, and variances from B.C.Z.R. sections 409.2.c(2), 409.2.b, and 417.5(a). In that those are the only issues raised by the petitioner, we will not explore throughout the zoning regulations to find others. Although People's Counsel may or may not have alternative means for relief available to them if they believe that the petitioner has improperly ignored 417.7, those arguments must be addressed not in this forum, but elsewhere.

CONSIDERATION OF THE SPECIAL HEARING

As indicated earlier in this Opinion, the property owner has also presented a Petition for Special Hearing seeking amendments and changes to the earlier site plans and orders of this Board and, further, a determination as to whether the use of this site is exempted from Residential Transition Area requirements. We will address each of these in turn.

A) First, the petitioner seeks to amend the site plan approved on January 16, 1967 in connection with the granted Petition for Special Exception in Case No. 64-160-X. We will grant an amendment to that site plan to conform with the mandates expressed herein. That is, the site plan is to be amended so as to conform with the petitioner's proposed expanded facility, less the 80 slips which we have ordered deleted.

B) The petitioner also seeks the removal of restrictions #1 and #3 in Case No. 64-57-SPH. Those restrictions in essence prohibited the storage of marine craft within 20 feet of the easternmost property line at the time and also delineated the nature of the parking surface. Removal of restriction #3 is rendered moot by the Board's granting of the petitioned variance from section 409.2.c(2) in that this Board will allow a compacting stone parking area. Likewise, the request to remove restriction #1 to permit marine craft to

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

October 21, 1987

Robert J. Romadka, Esquire
Germania Federal Building
809 Eastern Boulevard
Essex, MD 21221

RE: Case No. 85-65-XSPHA
Joseph F. Evering, Jr., et al

Dear Mr. Romadka:

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

Sincerely,

Kathleen C. Weidenhammer

Kathleen C. Weidenhammer
Administrative Secretary

Encl.

cc: John O. Hennegan, Esquire
John B. Gontrum, Esquire
T. Rogers Harrison, Esquire
Phyllis C. Friedman, Esquire
Mr. Joseph F. Evering, Jr., et ux
Judith A. Armold, Esquire
Arnold Jablon, County Attorney
Nancy C. West, Esquire
Norman E. Gerber
James G. Hoswell
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
Margaret E. du Bois

File

going to require BGE to absorb much more cost related to the protection of the surrounding residents from visual effects of facility; that has been most compelling argument presented by protestants, including real estate expert. Believe this will alleviate these concerns.

Therefore, will find in favor of BGE for the special exceptions and variance from the interior lot line setback on all three properties; and will further place conditions on the variance that the development go forward as proposed; any reduction will result in the loss of the variance; and also require the doubling of the landscaping surrounding the facility to alleviate visual concerns of residents.

SDL: This Board listened to five days of intensive testimony regarding whether BGE substation complies with certain specific Baltimore County zoning regulations; in addition, Board received and studied lengthy memorandums. Not going to outline or summarize all evidence and arguments included in testimony and memos; will cite most important evidence and state opinion. Want to emphasize that points are not only factors considered in arriving at decision; just the major ones.

Section 411.1 - requires proof that proposed substation is needed; was convinced by testimony of BGE witnesses that proposed expansion is necessary due to increased demand; did not find rebuttal testimony convincing. 411.1 also requires that proposed substation will not impact use of neighboring properties; covers some of same areas of concern as 502.1; agrees with Petitioner's memorandum that while protestants addressed negative impacts /stormwater management pond and potential fires, chief concerns are harm from EMFs and whether proposed substation would lower property values. Expert testimony on EMF issue given by BGE; measurements taken at similar existing substations; concluded that exposure at property line would be same or less as exists at existing substation; equal to or less than average American exposed to in home. Based on these measurements, no risk to neighborhood residents. Protestants' expert on EMF's did not offer testimony refuting that testimony; could not cite standard at which there is a health risk. Cannot find, under 502.1, that proposed substation would pose threat to health, safety or general welfare based on EMF at property line equal to that in American household; will also say that EMF issue is emotional one; attempt made at hearing to relate this to use of tobacco and asbestos, which could not be proven until recently. Without belaboring this issue, alarms have been raised concerning other products /factors; later proved to be false alarms. Wrong to expect this Board to deal in possibilities

IN THE MATTER OF

PETITION FOR SPECIAL EXCEPTION PETITION FOR SPECIAL HEARING PETITION FOR VARIANCES N/S Chester Rd., 590' W of Severn Rd. (800 Chester Rd.) 15th District	:	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
JOSEPH F. EVERING, JR., et ux, Petitioners	:	Case No. 85-65-CSPHA

: : : : : :

RECEIVED
COUNTY BOARD OF APPEALS
JAN 9 A 11: 29

PEOPLE'S COUNSEL'S MEMORANDUM

People's Counsel submits this memorandum in response to the request by the Board of Appeals for written closing argument.

INTRODUCTION

The Everings ("Petitioner") have requested an expansion of their marina facility on Frog Mortar Creek to encompass two adjacent lots and additional piers that would provide a total of 379 boat slips with a total land area of 3.3 acres. Based on a prior Special Exception, Petitioner contends the proposed new slips number only 178. This number is disputed due to a controversy over the utilization of a prior Special Exception.

In order to proceed, Petitioner has asked for a Special Exception; a Special Hearing; a Declaration that the "RTA" does not apply; a Declaration that compliance with the "Critical Area" Legislation is not necessary; a variance from Section 409 (BCZR), requiring macadam paving; and a waiver from Section 417.5(a), requiring that structures in the waterway not extend beyond 300 feet beyond mean low tide. Based on testimony Petitioner should also have addressed the issue of Section 417.7, which requires that:

> "Marinas located on property consisting of five or more acres shall be permitted to establish out of water

storage facilities for recreational marine craft provided that no such facilities thereon shall be located within 60 feet of any property line, and provided, further, that screening shall be provided and maintained of such types and at such locations as may be required by the zoning commissioner or board of appeals, on appeal.

Since Petitioner does not have five acres, it cannot comply with this requirement for out-of-water storage facilities. The significance of this is discussed below. This Board has already ruled that "Critical Areas" does not apply, and People's Counsel has preserved its right to appeal from this decision.

FACTS

Testimony showed that Frog Mortar Creek abounds with existing marinas. In excess of 1,000 boat slips already exist on this narrow and fragile waterway that was characterized by Petitioner's expert witness as "stressed." Further identification of environmental problems was limited due to Petitioner's failure to provide information required by the "Critical Areas" legislation. However, there was evidence that suggests such problems exist.

There is little dispute that at the site of Petitioner's marina the width of Frog Mortar Creek is in the range of 1,000 feet; and it is undisputed that Petitioner's proposal would jut out 419 feet, into this waterway, or 119 feet beyond the 300 foot limit described in Section 417.5 BCZR.

Mike Flanigan, a traffic expert from the County, stated that Chester Road leading into the property is only 14 feet wide in places and could not accomodate emergency vehicles. He also pointed out other potential traffic problems and congestion, supporting the anectodal testimony of other witnesses, and testified to parking problems created by out-of-water storage

facilities of boats on Petitioner's parking lot. Petitioner's expert produced some figures that purported to show automobile traffic would not be a problem, but the dates and times of these traffic counts raises serious doubts as to their probative value. In addition to Mr. Flanigan's testimony, there was other clear evidence that Petitioner has established out-of-water storage facilities on its parking lot for marinecraft. This evidence consisted both of oral testimony and of visual observation of the January, 1986 aerial photo of the subject site.

ARGUMENT

People's Counsel contends the expansion of the proposed Special Exception should be denied, and to avoid redundancy adopts the Memorandum and Argument submitted by Protestants, Bowley's Quarters Improvement Association, Inc. on this issue.

People's Counsel also objects to any acquiescence to the out-of-water storage facilities for marinecraft that are clearly located on the parking lot of the property. While People's Counsel agrees with the Zoning Commissioner that the RTA does not ordinarily apply to parking for a marina, in this case, the parking lot is being used for boat storage. As a result, unless this Board prohibits the use of the parking lot for boat storage, the RTA must be complied with.

However, and most importantly, People's Counsel does not believe this Board has the authority to grant any variance from Section 417 of the Baltimore County Zoning Regulations dealing with Waterfront Construction. These Regulations are not height and area regulations, but are mandatory standards imposed upon waterfront construction.

Two analogous Baltimore County cases have addressed requests to deviate from mandatory standards: Miller v. Forty West Builders, 62 Md. App. 320 (1985) and In the Matter of the Application of Joseph L. Soley for Rezoning, No. R-83-62-A, Before the County Board of Appeals. In both cases, the final ruling denied the requests because waivers were beyond the scope of statutory authority.

In Miller, the Zoning Commissioner granted a de facto variance from the buffer requirement of the RTA. (Id. at 335.) The Court of Special Appeals overturned this grant because the proposal did not satisfy the regulations; and it held that the specifically defined restrictions imposed by the regulations must be adhered to. Similarly, in Soley, this Board refused to grant a Petition for Reclassification to an O-2 zone for a parcel that contained less than the required 10 acres.

A recent New York case dealing with a request similar to the variance requested from Section 417.5 provides guidance in this matter. In Knadle v. Zoning Board of Appeals, 503 N.Y.S.2d 141 (A.D. 2 Dept. 1986), the Petitioner, in connection with a Special Exception, had requested a modification of the setback requirements for a radio tower. The Board granted the modification calling it "a variance" and the Supreme Court of New York reversed, holding that the "board has no power to waive or modify this requirement or to alter this condition under the guise of a variance." (Id. at 142.)

The Knadle Court relied upon an earlier New York case, Cappadoro Land Development Corp. v. Amelkin, et al., 432 N.Y.S.2d 513 (1980), which held, in even stronger terms, that conditions

RECEIVED
COUNTY BOARD OF APPEALS
87 JAN 14 P 3:38

IN THE MATTER OF	:	BEFORE THE
	:	BOARD OF APPEALS
JOSEPH F. EVERING, JR.,	:	OF
	:	BALTIMORE COUNTY
ET UX.	:	CASE NO. 85-65 XSPHA

MEMORANDUM OF PETITIONERS

STATEMENT OF CASE

The Petitioners in this case have filed under the Baltimore County Zoning Regulations (hereinafter referred to as the BCZR) for a special exception for a boat yard and for zoning variances to permit the continuation of the existing compacted stone parking surface instead of the required durable and dustless surface, 318 parking spaces instead of the required 384 spaces if the special exception is denied or 363 parking spaces instead of the required 384 spaces if it is granted, and to permit piers to extend 419 feet beyond the mean low tide instead of the allowed 300 feet. In addition, a special hearing was requested to amend the previously granted special exceptions for boatyards and site plans in Cases 3535-X and 64-160-X in accord with the requests filed herein, to utilize that portion of Chester Road lying entirely within the site and to remove in Case No. 64-57 SPH restrictions 1 and 3 in order to permit marine craft to be stored within 20 feet of the easternmost property line and to permit the variance for the parking surface requested herein, and to remove in Case No. 64-160 X restrictions 1 and 6 to allow major repair of boats on the premises and in the water

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

and maybe's; must be based upon solid evidence.

Regarding effect on property values - conflicting evidence from two real estate appraisers; Mr. Reiter testified to no effect because of proposed substation; would be screened and buffered; Kern based his conclusion that there would be detrimental effect on study of literature on subject and discussions with developers; did not discuss issue on whether area with existing substation would suffer if station expanded. Homes in area have substantial dollar value despite existing substation; whatever effect there is in this neighborhood due to EMF issue has already been incorporated in existing property values; would they still be affected because of bigger, more visible facility? Photographs showed that other substations are screened little or not at all; BGE plans have taken area into account; have made substantial effort to buffer accordingly. Confident that community spirit exhibited in these hearings will see to it that BGE complies with plans; visual intrusion kept to minimum. BGE has complied with 502.1 and 411.1; should be granted special exception.

As to variance, 307.1 is basically two-step process: (1) subject property has special or unique characteristics; and (2) this would create practical difficulty or unreasonable hardship. Fact that this property is made up of three tracts with internal lot lines is what is creating special circumstances; would create practical difficulty. Mr. Gavrelis testified to zoning regulation requirement of 50-foot setback from tract A, B and C; in order to place substation in this site, require 130' x 130'. Could not do that on any one tract; compliance would create difficulty; by centrally locating substation, existing woodlands could be preserved; substation screened from surrounding neighborhood. Mr. Gavrelis concluded that granting variance would be in spirit and intent of BCZR; agrees; existing requirements for internal lot lines when using for one purpose makes no sense; would grant variance.

Regarding question - would final plan have to be amended for Tract A under site plan; concluded that the use of Tract A does not constitute an amendment to the final development plan.

WTH: Sees little or no reason to redundantly go through what other members have gone through; thought amendment would not be addressed; Ms. Levero covered that; will agree in general principle that the proposal by BGE indicates potential need for a much bigger substation, especially with addition of Hickory Meadows, extra houses, and extra current each house will demand; from reviewing testimony and evidence, convinced

and to change the times and days of the week and year that repairs will be permitted, and, additionally, to determine that the boat yard, piers, and related parking areas are other "structures" devoted to civic, commercial, and recreational activities and , therefore, exempt from the residential transition area requirements set forth in Section 1B01.1.B.1.c.9 and 10 in the B.C.Z.R.

Cross appeals were filed to the order of the Zoning Commissioner dated April 25, 1985, granting the requested relief in part and denying it in part. The matter then came on for hearing before the Board of Appeals for Baltimore County in October, 1985. At that time testimony was taken and arguments heard pertaining to the applicability of the state legislation pertaining to the Chesapeake Bay critical area. The Board ruled on December 12, 1985, that the Chesapeake Bay critical area protection program was not applicable to the relief requested. On January 3, 1986, an appeal was fil d by People's Counsel for Baltimore County and on January 10, 1986, an appeal was also taken by Baltimore County. These appeals were dismissed on August 7, 1986, by the Circuit Court for Baltimore County in a ruling on motions to dismiss filed by Petitioners. A Complaint for Declaratory Relief filed by People's Counsel on the same subject matter also was dismissed by the Circuit Court.

The case came on for hearing by the Board of Appeals of

Baltimore County (hereinafter referred to as the "Board") on December 14 and 15, 1986.

STATEMENT OF FACTS

The Everings purchased their first parcel of property at the end and to the south of Chester Road in 1954. They were granted a special exception for use of that property as a boatyard in Case No. 3535-X. In 1960 they purchased property directly across Chester Road from the original parcel, and a special exception was granted for a boatyard covering that parcel in case no 64-160-X. Prior to that case, however, an issue arose under the original special exception as to the storage of marine craft on shore, and this was allowed in Case No. 64-57-SPH. A site plan was filed indicating the amendments granted in these cases to the original special exception and incorporating both parcels. (Pet. Ex. 15). Case No. 64-57-SPH also contained a prohibition against parking of boats within twenty (20) feet of the easternmost portion of the southern property. In 1969 the Everings purchased the adjacent lot on the southern side of Chester Road and in 1970 purchased a lot adjacent to their 1960 purchase on the northern side of Chester Road.

Mr. Evering testified that the primary purpose of this special exception request was to allow additional on-shore parking facilities. This area encompasses the two most recently acquired tracts of land. It is indicated by the cross-hatched area on the site plan accompanying the Petition. (Pet. Ex. 2).

The site plan also contains the amendments to the two previous special exceptions granted the Everings, including the requested pier extensions.

The site plans and the aerial maps which were introduced indicate that the marina and boatyard are located on the eastern side of Frog Mortar Creek where it empties into Middle River. At the site the creek widens substantially, and the channel was indicated by all to be near the other shore closer to the airport. Directly upstream from the Evering property a private pier extends out into the Creek occupying a much larger portion of Creek area than the extensions sought by the Everings.

Mr. Evering testified that it was his intention to rent the additional slips created by the extension primarily to sailboat users. It has been his experience that sailboaters less intensively use the marina facilities and afford a cleaner type of operation than power boat users. By extending the piers Mr. Evering reaches water sufficiently deep that not only will dredging not be necessary but also the effects of propeller rotation or wash will be minimized.

Two aspects of traffic were at issue at the hearing. Mr. Evering testified that the busiest days of the year were the two summer holidays, the Fourth of July and Labor Day. Even on those days, however, use of the site never exceeded forty percent (40%). The marina currently offers 201 slips and with the proposed extensions will have 379 slips. Even eithout the special exception the site as now constituted offers 318 spaces. With the special exception it will offer 363 spaces, only slightly less than one for each boat. There has never been any testimony that the site with or without the special exception has not been able to accommodate the necessary parking. Mr. Evering's testimony was corroborated on this point by Dr. Ewell's observations of cars parked over the Labor Day weekend. He observed fifty-five (55) cars on the site at 5 PM on Labor Day in 1985. (Pet. Ex. 20). Although there was testimony as to the crowded conditions of Bowley's Quarters Road primarily in connection with Miami Beach, there was no indication that the subject marina contributed any more to the traffic than any of the other numerous marinas in the area. Furthermore, there was testimony that the primary hours of utilization were "off-peak" hours which do not conflict with regular commuter traffic. There was no testimony as to undue congestion on either Chester Road or on Susquehanna Avenue, the two closest roads.

The testimony of Mr. Flannigan of the County was to the effect that Chester Road was substandard and that the intersections of Chester Road and Susquehanna and of Susquehanna and Bowleys Quarters Roads were substandard. He admitted, however, that these intersections were not dissimilar to numerous other intersections on the Bowley's Quarters peninsula. He further admitted that neither public works nor fire had any adverse comments to the petition in terms of access. He also did not know whether the County had easements to bring the intersections or the roadways up to standard. Finally, Mr. Flannigan testified as to the "book traffic count" to be expected of marinas. According to the "book" the current usage during the week was over eight hundred trips or three and a half trips per slip. This in no way corresponds to any of the actual observations of anyone actually visiting the site. The book count estimated up to eight (8) trips on the average per slip per day on every weekend. (P.C. Ex. 6). He admitted that the book count was not based on any personal observations nor on any local marina activities. He also did not know the kinds of marinas providing the information. Some marinas, for instance, allow trailer boating and have ramps. The Evering marina does not have these facilities and does not intend to provide them. This logically would eliminate a lot of traffic projected from the marina.

they have complied with 411.1 in that they have demonstrated the need for the substation; no point in arguing or discussing special exception and 502; been handled very well by other Board members; would only add, as far as the landscaping consideration, the photographs presented were graphic; however, this is operating under special exception; Board is authorized to demand that it be done and that it not only be constructed but maintained; if not, special exception is lost; if they lose special exception, they lose substation. Screening as proposed is absolutely vital; cannot emphasize that strongly enough; if they neglect screening and maintenance of screening, they stand a very good chance of coming back before the Board; will remove the special exception.

Therefore, will agree with colleagues and will grant special exception; will grant from 411 and will grant variance; no need to discuss variance; practical difficulty met; if they had gone, prior to hearing, and consolidated parcels, internal lines would not exist. BGE owns properties, and variance on internal lot lines should be granted.

Summary: Petitions to be granted; Board will issue a written Opinion and Order. Appellate period will run from the date of the Order and not from today's date.

Respectfully submitted,

Kathleen C. Weidenhammer

Kathleen C. Weidenhammer
Administrative Assistant

The other potential area of traffic is from the boats in the waterway. There was testimony from Mr. Evering, slip renters, and Mr. Greenwood, a longtime neighborhood resident, that the increase in slips would not prove to be any danger. There was testimony from Mr. Jones and from Mr. Stumpf from the community that the waterway already was overcrowded. Mr. Stumpf now keeps his boat in Bear Creek, and Mr. Jones moved into the cove adjacent to the marina three (3) years ago. He testified, however, that he had been familiar with the area and the Creek for many years. He submitted numerous photos from the headwaters of the Creek showing boats up in the narrower portions of the Creek as well as utilization of the airport property by picnickers. He did acknowledge that Everings' marina was located right where the channel widens. He further acknowledged that the new extensions were located proportionately no further out into the cove in which he lived than the existing piers.

The testimony was that the major problems in the creek come from speeding boats and people using the airport property. No one, however, contradicted the safety record attested to by Mr. Evering in the creek and with the marina. None of the slip renters felt that there was a safety problem in their utilization of the marina. Furthermore, a review of the site plan and of the traffic map (Pet. Ex. 9) indicates that this marina's slips will be located much further from the channel than the slips of other marinas in the area.

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

Mr. Frederick Klaus testified that in his opinion there would be no diminution in the value of neighboring homes in the event that the special exception, variances and amendments were granted. He had visited the subject site on numerous occasions and was familiar with the area. He felt that if the requests were granted that there would be no injury to the health, safety or general welfare of the community.

Dr. Frank Pines also testified with respect to the environmental aspect of the Petitioners' requests. He very definitely thought that Petitioners' request for a durable and dustfree surface other than macadam, cement or tar and chip was environmentally more sound than these alternatives and that the variance request should be granted from an environmental standpoint alone. He further felt that the additional facilities proposed by Petitioner to go along with the additional piers such as the sewage pump out facilities and the back-fill behind new bulkheading would so improve on existing conditions that the facility with the amendments and additional slips would not in any way create a worsening of an existing condition and would in fact minimize pollutants into the water. His studies indicated that only a minimal amount of the overall pollution in the immediate waterways was contributed by the boats. The increment added by additional facilities at this marina was infinitesimal. With best management practices and the above noted improvements he did not see any worsening in condition if the requests were

granted. In comparison with other locations he noted that in this instance the marina has fully developed its land resources. It has no wetlands or aquatic vegetation. The backfilling behind that bulkheads proposed to be replaced by the Everings would reduce sediment runoff into the water by up to eighty percent (80%).

With respect to the lifting of the restrictions in the previous cases Mr. Evering testified that he had purchased the property from which he was supposed to set back twenty (20) feet and that, therefore, the restriction should no longer apply. Neighboring properties are now much further from the repair facilites. The additional area, he believed, could best be used for parking and storage of boats on land. He felt that the restriction as to major repairs was confusing. Originally, he believed it to be the intent of the restriction that he not be allowed to perform work on commercial vessels. He has no objection to that restriction. Now some of his customers in performing work on their boats may be in violation depending on the work performed and the meaning of "major repairs".

With respect to the hours of the repairs he felt that most repairs again would take place during the daylight hours of the work week, but occasionally, minor in water repairs limited to emergencies might be undertaken by the slip renters on weekends. It was to accommodate this perceived need of the

renters as well as to make use of daylight hours in the summer that this restriction was sought to be removed.

Amendment to the plan to allow the inclusion of that portion of Chester Road surrounded by the boatyard is also requested. Chester road deadends onto the Evering site. Over the years with the acquisition of additional parcels the roadbed has become necessary to the utilization of the special exceptions for the site, but it itself has never been part of the previous special exceptions. Consequently, the Petitioners are requesting that this area along with the additional parcels be considered as part of the marina and boatyard facility for the purpose of the special exception.

There was no adverse testimony to the removal of any of the restrictions or to the variance for the parking surface or to the special exception for parking area. No adverse comments were filed by any agency of the county zoning advisory committee. The testimony of People's Counsel witnesses and Protestants went exclusively to the pier extensions and perceived problems associated with that sole request.

One final request by Petitioners calls for an interpretation under the BCZR of whether the piers, boatyard facilities including the swimming pool and parking areas can be classified as structures for recreational activities and be exempt from residential transition area (RTA) requirements. There has never been any factual dispute that the Evering

marina supports only recr ational boating craft due in part from the restrictions in previous zoning cases. No one has contested that the use by boat owners who live either in the neighborhood such as Mr. Greenwood or up in Reisterstown such as Mr. Butterworth are not recreational and therefore exempt from the residential transition requirements.

APPLICABLE LAW

The standards applicable to special exceptions are contained in Section 502 of the BCZR. Under the note to Section 502 is the consideration that the special exception uses are proper uses of land, but have aspects which call for special consideration of each proposal. Similar wording has been interpreted in the Court of Appeals. In Schultz v. Pritts, 291 Md. 1 at 23, 432 A. 2d 1319 (1981), the Court said: " We now hold that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone."

Section 502.1 goes on to list eight (8) factors which should not be detrimentally affected by the award of the special exception. These factors are to be taken into consideration in light of Schultz.

County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

February 23, 1995

J. Carroll Holzer, P.A.
HOLZER and LEE
305 Washington Avenue, Suite 502
Towson, MD 21204

Re: Case No. 94-452-XA
Baltimore Gas & Electric Co. -
Ivy Hill Substation

Dear Carroll:

As you've requested, enclosed is a copy of the minutes taken at the Board's public deliberation of the subject case on February 22, 1995.

Very truly yours,

Kathleen C. Weidenhammer
Administrative Assistant

Enclosure

Printed with Soybean Ink
on Recycled Paper

Protestants have raised the issue as to the continuing validity of the special exception granted in Case No,64-160-X and depicted in the 1967 site plan wherein building permits were sought. (Pet. Ex. 15). There is no question but that the onshore facilities depicted in the site plan as well as the pier and location of the barge on the southern property were all placed pursuant to the special exception. The proposed piers on the northern side of the property as allowed in the 1964 special exception were not built. The Zoning Commissioner disagreed with the Board's decision in Case No. 84-89-SPH, In Re: Joseph L. Soley. In that case the Board found that to satisfy the conditions of Section 502.3 one must merely initiate construction. The Zoning Commissioner also felt that more was needed than would satisfy the "vested rights" criteria. See Petitioners' Memorandum to the Zoning Commissioner attached hereto addressing this issue. The Commissioner felt that the reasonable diligence test required more. However, in this case he felt that the test had been met. He felt that "There has certainly been 'reasonable diligence' - a fair, proper and due degree of care and activity, measured with reference to the particular circumstances. The strictures of Section 502.3 have been satisfied." Consequently, the Board is asked to make a factual determination as to the validity of the previous special exception because in place of the piers and additional slips shown on the northern side of Chester Road in the 1967 plat,

Petitioner is now seeking additional slips in deeper water in a different configuration.

Section 307 of the BCZR sets the standard for an area variance by stating that the Petitioner should show that the regulation sought to be varied would result in practical difficulty if enforced. It further must be shown that the variance is in strict harmony with the spirit and intent of the regulations and would not be cause substantial injury to the health, safety or general welfare. The easier standard of "practical difficulty" has been held to be applicable to the variances sought herein by the Court of Special Appeals in Anderson v. Board of Appeals, Town of Chesapeake Beach, 22 Md. App. 28, 322 A. 2d 220 (1970). According to that case to prove practical difficulty it must be determined whether strict compliance with the requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome ; whether th grant of the variance would do substantial justice to the petitioner as well as other property owners or whether a lesser relaxation than that applied for would give substantial relief; and whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured. McLean v. Soley, 270 Md. 208, 214-215, 31 A. 2d 783, 787(1973), quoting 2 Rathkopf, The Law of Zoning and Planning, 45-28-29 (3d ed. 1972).

The standards of adjudication under the special hearing provisions are much more nebulous,but it may be assumed that the relief sought may be granted if found to be within the spirit and intent of the regulations and not injurious to the public health, safety and general welfare. This assumption is based on Section 502.2 where the Board or the Zoning Commissioner may impose such restrictions onto special exceptions as may be deemed advisable for the protection of surrounding or neighboring properties. In this case restrictions earlier imposed on previously granted special exceptions are sought to be lifted because of the change in configuration of the site and in the neighborhood.

The Opinion and Order of the Zoning Commissioner also makes reference to the residential transition area requirements contained in Section 1B01.1.B.1.b et seq. of the BCZR. These provisions relate to all uses permitted as of right or by special exception in residential areas unless specifically exempt. An exception is provided in Section 1B01.1.B.1.c.9 and 10 for other structures devoted to social , civic or recreational activities including parking. Questions arise as to whether the use of piers and storage buildings under the residential area apply to the previously granted special exception and whether piers qualify as structures. In the event that they do not qualify as structures then it is apparent that the RTA requirements will not apply. If, however, the piers do qualify as structures, then the only

question is whether they are used for a social or recreational use. The Petitioners have no disagreement with the findings of the Zoning Commissioner that the piers are recreational in nature and as such are structures exempted from the RTA requirements. Neither Protestants nor People's Counsel have contested this finding.

The issue as to the applicability of the Chesapeake Bay Critical Area legislation to these proceedings has already been addressed in earlier proceedings and in an earlier Memorandum, a copy of which is attached.

DISCUSSION

Although numerous issues have been presented to the Board for review, we believe that the case is best viewed as a zoning case involving questions of use under the zoning regulations. The Board has to decide whether the requirements of a special exception have been met on the site under Section 502 of the BCZR, whether the previous special exceptions are still alive, and whether the previous special exception site plans and restrictions can be amended as indicated on the site plan filed by Petitioner. (Pet. Ex. 2). In addition, the Board has to determine whether Petitioners should be granted the variances requested for paving, parking and pier extension in order to overcome the practical difficulties involved with strict compliance of the zoning regulations. Finally, the Board has to interpret the residential transition area (RTA)

requirements and exemptions to determin if the facilities are exempt.

Petitioners obviously believe that the previously granted special exceptions for boatyard use are still valid. There has been no question over the actual existence of the boatyard and marina since 1955. There also has been no question that the usage involves properties on both sides of Chester Road. Ever since the acquisition of the northern property in 1960 and special exception in 1964 boats have been stored along with parking for renters' cars on shore. Recreational facilities indicated on the 1967 site plan (Pet. Ex. 15) including swimming pool and showers have also been built. Finally the pier including 36 slips and the permitted barge were placed in accord with the site plan on the southern parcel. As all of the photos introduced into evidence suggest, the various parcels are all used as one in the use of a boatyard and marina. We agree with the Zoning Commissioner that the special exceptions previously granted have been pursued with due diligence even though the piers proposed on the 1967 plan were not built. For further discussion of this issue please see attached memorandum. Mr. Evering testified that this improvement did not occur due to the cost involved with necessary dredging to obtain the necessary depth for either sail or power boats. Now, of course, dredging is acknowledged to have certain environmental impacts which the new configuration avoids. We believe that the new

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning

Suite 112 Courthouse
400 Washington Avenue
Towson, MD 21204

(410) 887-4386

January 27, 1995

Master Anthony Fusco
27 Salt Hill Court
Timonium, Maryland 21093

Dear Master Fusco:

Thank you for your recent letter regarding the proposed power station located near your father's house at 5 Forward Court.

Although your letter was directed to me, the case involving the proposed power station is actually before the Baltimore County Board of Appeals. The Board is an agency which is responsible for reviewing decisions from both my office and other County agencies. The Board is now considering my previous decision which approved the power station.

From my understanding of the proceedings before the Board, they have just recently concluded a lengthy hearing regarding this project. At that hearing, all persons with an interest in the matter were allowed to testify and present evidence and information in support of their position. I am sure that your father and his neighbors were given an opportunity to voice their opinions.

I expect that the Board will issue a decision shortly. Their decision will be based upon all of the facts and information presented to them.

Thank you for your interest in this matter. It is gratifying to see citizens take an interest in the zoning process in Baltimore County, particularly citizens of your age.

Please do not hesitate to call me if you would like to discuss this matter further.

Very truly yours,

Lawrence E. Schmidt
Zoning Commissioner

LES:mmn

cc: Board of Appeals of Baltimore County w/ attachment

Printed with Soybean Ink

configuration will not only allow us the expansion in the most environmentally sensitive manner but also will allow the marina to shift its service more to the less intensive sail boat use.

The special exception requests pertain to the newly acquired properties and to the roadbed of Chester Road within the site. If the new special exceptions are denied, the practical effect would be to deny additional parking and storage area. No protestant complained of the on land facilities or objected to these proposals.

Petitioners have met the standards under Section 502 of the BCZR in their application for the special exception and amendments to the previous special exceptions. All of the evidence indicated that location of the additional facilities as this marina presented no problems greater than those normally associated with a marina or boatyard use at any other location. Under the criteria of Schultz v. Pritts there has been no showing that this location for a marina or boatyard use presents any special problems. Testimony from Petitioner and his expert witnesses indicated that there would be no detriment to the health, safety or general welfare by the location and expansion of the marina use at this location. Even Mr. Flannigan who was concerned over the condition of the County roads and intersections indicated that these problems are common to the entire Bowleys Quarters area in which there are numerous marina and boatyard facilities. Dr. Ewell

indicated that the additional traffic generated by the marina is of minimal impact given its timing and quantity. His study was based on actual observations and not on a theoretical number not based on similar operations or on data from the area.

Even though the critical area program for the Chesapeake Bay is not applicable to the petitions, Petitioners presented evidence indicating that the criteria under the critical area program had been met. Dr. Pines testified as to the extensive studies which have occurred both at the subject site and in the Middle River area in general. His studies indicated that the contribution of marinas in general to the pollutant levels was minimal. He pointed out that in this case the on-shore facilities already are in place so that the relative pollutant levels to the construction of a new marina on vacant land are much less. Furthermore, this marina facility is located at the mouth of the creek where the water action is such as to be more cleansing than at the headwaters or where the Creek is narrower.

Perhaps most important are the mitigative measures which will be taken in the event that the petitions are granted which will serve to minimize any contribution to existing pollutant levels. First, Mr. Evering has agreed to be bound by the "best management" practices outlined in Dr. Pines report. (Pet. Ex. 19). These practices include:

1. Wording in lease agreements to enforce use of trash receptacles and controlling of washing of boats.

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

2.Replacing existing fuel pumping facility with newer equipment having back-pressure automatic shut off valves and restriction of fuel service to trained Marina personnel, education of boat owners regarding fuel spill sources, and on-site sales of fuel recovery products.

3. Restrict the use of antifouling paints to boat hulls and avoid painting piers and other in-water structures.

4. Conduct scraping and painting operations away from the water in protected areas to avoid the loss of particulate and raw paint.

5. Avoid repainting hulls after a year during which fouling to the hulls was minimal.

6. Dry store boats not in use for extended periods.

7. Post signs prohibiting overboard disposal of sewage and inform the public of contamination levels resulting from violations.

8. Require compliance with federal "head laws" as a prerequisite to slip rental, and indicate violations will result in cancellation of rental contract.

9. Require all through-hull discharge ports of Type III MSD's to be sealed on those vessels "permanently" moored.

10. Require use of on-site pump-out facilities.

In addition, Mr. Evering has agreed to install on site pump-out facilities which currently do not exist on site. These facilities should significantly encourage slip owners to properly discharge their wastes. Investigation of the sewage facilities by the Health Department indicate that the marina has an approved and properly functioning septic system. As Dr. Pines indicated, most of the private septic systems in Bowley's Quarters are failing and are a primary source of pollution in the river.

Finally, Mr. Evering has agreed to backfill behind the new bulkheading which he intends to install so as to create a filter from runoff on the site. The fact that the site has a porous gravel surface is important in alleviating runoff and reducing surface pollutants, but Dr. Pines felt that with the filtration almost all surface pollutants would be eliminated

which would improve on the existing condition and minimize the contribution of pollution from the additional development.

These factors not only function to meet critical area criteria with respect to minimizing impact on water quality but also indicate that there would be no detriment to the health, safety and general welfare on an environmental level from the proposed development. This also meets the test under the variances requested of not causing substantial detriment to the neighborhood.

It should also be noted that by placing the new piers in deeper water the marina not only eliminates disturbance of the bottom by dredging or by the boats but also the marina minimizes the impact of additional usage on the water. The second criterion of the critical area program has to do with the impact of the population on the environment. Testimony at the hearing indicated that power boats not only contributed to much more intensive on-shore use but also had more effect on the bottom areas through propeller wash and through engine discharge. It is Mr. Evering's stated intention to conv rt the marina to almost exclusive sail boat use. His reasoning candidly has more to do with economic advantages than with environmental advantages but the latter benefits can not and should not be ignored. The application, therefore, has considered and responded to the concern as to the impact of population on the critical area.

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

There was no response from either the Protestants or from People's Counsel to any of the environmental or health related issues addressed by Petitioner. None of their witnesses produced any evidence in contradiction to Dr. Pines, Frederick Klaus, or Mr. Evering. Indeed, there was no contradiction to the testimony of Petitioners' witnesses who testified as to the cleanliness and efficiency of the Evering operation.

With respect to the variances requested we believe that we have shown the practical difficulty and undue burden in strict compliance with the zoning regulations and the absence of harm to the community if they are granted. No evidence was submitted opposing the parking variance nor the paving variance. We believe that the only evidence before the Board on these requests illustrates the benefits of not paving the site from the standpoint of run-off and the fact that there already exists a durable and dust-free surface. The parking requirements on the site are more than sufficient to meet the existing and proposed development. The variance sought will not overcrowd the site since over twice the needed parking from the evidence already is provided.

With respect to the pier extension variance we believe that it is necessary in order to obtain the needed deep water and attendant environmental advantages. We believe that already we have the right to construct piers along the northern parcel close to shore. To effectively use these

27 Salt Hill court
Tiomumon, MD 201930
January 13, 1995

400 Washington Ave
Towson, MD 21204

Dear Zoning Commity,

My name is Anthony Fusco. I'am 12 years old. I go to Ridgely Middle school. On the weekend I vist my dad. He lives at 5 Forward court. You said that you going to make a the power statoin there bigger. Right now you can't even tell that it is there. According to you you want to make alot bigger. When you make it it is going to make the property value go down. It will all so make it unsafe for the childern to play around there. I don't know much about these station but I think it still going to make alot of noise to make and won't it make some pollition. I not sure about this but wouldn't it do that. I close now saying please don't don't make it any bigger that it is now if not the goodness of your heart but for the residents there.

Sincerly,

Anthony Fusco

Anthony Fusco

piers, however, would not only be costly but also environmentally damaging. To minimize the impact of the additions on the community and on the river we have sought pier additions in the configuration indicated on the plan. At this point the channel is still over a hundred yards from the proposed extensions and should be of no danger to either the boats moored at the extensions or to boats using the waterway. We do not need a variance of Section 417.5 (c) which specifically prohibits extension of piers into the channel area. None of the witnesses actually using the facility felt that the piers would in any way endanger the safety of the users of the river or of the marina. Of all configurations of additional piers both within the 300 foot limit and outside of it, we believe that this configuration will best serve all interests.

It clearly would be unduly burdensome on the Petioners to comply with this regulation given the relationship of this marina to the water and other facilities in the area.

The special hearing requests to amend the conditions of the previous plans and hearings also were not contested. The twenty (20) foot limitation (Condition 1 of Case No. 64-57-Sph) should no longer apply since we now own the property to which it referred and propose to use it for parking. We believe that the appropriate screening will be far more beneficial to the neighbors and be more attractive to the site than the maintenance of the restriction.

We also have sought removal of restrictions as above noted for the conduct of major repairs on the site for the reasons stated above. The facilities for the conduct of the repairs are already in place. We do not believe that a meaningful and fair distinction can be made between so-called "major" and "minor" repairs. Furthermore, it is clear from the context in which this restriction appears (Restriction 1 of Case No. 64-160-X) that it was intended to apply primarily to commercial boats, which we do not intend to have on the site. The restriction as to hours for the conduct of repairs also was sought to be lifted primarily as Mr. Evering said in order to take advantage of daylight hours in the summer and to allow emergency repairs on the weekends. The restriction also does not speak to what is allowable on Saturdays. (Restriction 6 of Case 64-160-X). There was no adverse comment to the lifting of either restriction and in view of the additional properties acquired by the Everings, the repairs will no longer be taking place adjacent to neighboring properties. We do not believe that the lifting of these restrictions will be adverse to the health, safety or general welfare.

Finally, site plan amendments were sought in light of the special exception and variance requests and to utiliz the roadbed of Chester Road within the site. The object of the request is simply to bring the site plan up to date, in harmony with the other requests. Again, there was no opposition to this request.

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

CONCLUSION

In conclusion, we respectfully request the Board to approve our requests for special exception and for amendment of the previous special exceptions for boatyard and marina use, for the variances requested to parking, paving, and 300 foot pier limitation, for lifting of the restrictions as above indicated and revision of the site plans and for determination that the residential transition area does not apply to the subject parcel's recreational and social use.

Respectfully submitted,

John B. Gontrum
Romadka, Gontrum, Hennegan and Foos
809 Eastern Blvd.
Essex, Maryland 21221

IN RE

PETITION FOR SPECIAL EXCEPTION PETITION FOR SPECIAL HEARING PETITION FOR VARIANCES N/S CHESTER ROAD, 590' W OF SEVERN ROAD (800 CHESTER ROAD)	*	BEFORE THE BOARD OF ZONING APPEALS OF
	*	BALTIMORE COUNTY
JOSEPH F. EVERING, JR., et ux	*	
Petitioners	*	
BOWLEY'S QUARTERS IMPROVEMENT ASSOCIATION, INC. and KENNETH ENGLEKE et al	*	Case No. 8565XSPHA
Protestants	*	

****

MEMORANDUM AND ARGUMENT

The Protestants, Bowley's Quarters Improvement Association, Inc. Ken Engleke, et al, by their attorney, T. Rogers Harrison, submit this Memorandum and Argument in support of their position that (1) the subject property falls under the Chesapeake Bay Critical Area Protection Program, Md. Nat. Res. Code, Ann. Sections 8-1801-8-1816 (1974 and 1984 Cum. Supp.); (2) the Petitioners have not met the requirements of Section 8-1813 of the aforementioned Act; (3) the Special Exception granted in 1964 as to parcel #2, i.e., Brown Parcel located at north side of Chester Road, has long since expired and was never utilized pursuant to Section 502.3 of the Zoning Regulations of Baltimore County; (4) that the variance requested to extend new piers

419 feet beyond mean low tide should be denied; (5) that Petitioners should not be permitted to construct any new piers at the subject site; (6) that parcels 3 and 4, i.e., south and north parking parcels should be restricted as to use; (7) that Petitioner should be required to screen and landscape subject site and required to participate in storm water management; (8) that all currently existing restrictions regarding use of subject property should be maintained.

DESCRIPTION OF LAND

The property of the Petitioners, Joseph J. Evering, Jr. and his wife, Catherine (hereinafter the "Everings"), consists of approximately 3.3 acres located on the north and south sides of Chester Road, 1000 feet west of Susquehanna Avenue in the Fifteenth Election District, Baltimore, County, Maryland. The property is known as the Long Beach Marina, 800 Chester Road, and can be described as the tip of a peninsula jutting into Frog Mortar Creek. Frog Mortar Creek is a part of the Middle River Tidal Basin.

The property is best understood as consisting of four separate pieces of land: (1) the original Evering parcel, approximately 1.2 acres in size, located on the south side of Chester Road and comprising Lots 1, 82 and 83 of the Long Beach Estates (Parcel 1); (2) the Brown parcel, approximately 1.75 acres in size, located on the north side of Chester Road (Parcel 2); (3) the south parking parcel,

Type	Num	Name(Last,First,Mid,Title) / Dispo	Entered
PLT	017	Bozel, Jeffrey, Mrs	CT DO 12/30/96 06/16/95
		Attorney: 0012186 Holzer, J Carroll Holzer And Lee 305 Washington Ave Suite 502 Towson, MD 21204 (410)825-6961	
PLT	018	Pitcher Bruce, Mr	CT DO 12/30/96 06/16/95
		Attorney: 0012186 Holzer, J Carroll Holzer And Lee 305 Washington Ave Suite 502 Towson, MD 21204 (410)825-6961	
PLT	019	Pitcher, Bruce, Mrs	CT DO 12/30/96 06/16/95
		Attorney: 0012186 Holzer J Carroll Holzer And Lee 305 Washington Ave Suite 502 Towson, MD 21204 (410)825-6961	
PLT	020	Czajkowski, Joe, Mr	CT DO 12/30/96 06/16/95
		Attorney: 0012186 Holzer, J Carroll Holzer And Lee 305 Washington Ave Suite 502 Towson, MD 21204 (410)825-6961	
PLT	021	Czajkowski, Joe, Mrs	CT DO 12/30/96 06/16/95
		Attorney: 0012186 Holzer, J Carroll Holzer And Lee 305 Washington Ave Suite 502 Towson, MD 21204 (410)825-6961	
PLT	022	Rytter, Robert, Mr	CT DO 12/30/96 06/16/95
		Attorney: 0012186 Holzer, J Carroll Holzer And Lee 305 Washington Ave Suite 502 Towson, MD 21204 (410)825-6961	
PLT	023	Rytter, Robert Mrs	CT DO 12/30/96 06/19/95
		Attorney: 0012186 Holzer, J Carroll Holzer And Lee	

C.A. Dutch Ruppersberger, III
Baltimore County Executive

Executive Office
400 Washington Avenue
Towson, Maryland 21204
(410) 887-2450
Fax: (410) 887-5781

February 1, 1995

Ms. Pam Fallo
"Friends of the Ridge"
1 Joel Court
Reisterstown, MD 21136

RE: Ivy Hill Substation
Zoning Case No. 94-452-XA

Dear Ms. Fallo:

This letter is written in response to a referral from the Honorable Paul S. Sarbanes, United States Senator, regarding the proposal by the Baltimore Gas and Electric Company (BGE) to expand the Ivy Hill substation which is located at the intersection of Ridge Road and Joel Court in the Chestnut Ridge area of Baltimore County.

Public utility service centers are one of the uses listed in the Baltimore County Zoning Regulations that are not permitted as a matter of right in a residential zone; such use may only be permitted by special exception. All of the uses permitted by special exception are considered to be proper use of the land, but have certain aspects which call for special consideration of each proposal. Because the uses could be detrimental to the public welfare under certain conditions, the uses listed as special exceptions are permitted by law only if granted by the zoning commissioner, and subject to an appeal to the board of appeals (board).

As you know, the board has recently concluded five days of testimony on this matter as a result of an appeal of the zoning commissioner's decision to grant a special exception and variance to BGE for the construction of an outdoor electric public utility service center in an R.C. 5 zone. Closing arguments, in the form of written memoranda, are due to be submitted to the board by February 6, 1995; thereafter, a date to deliberate this matter in a public forum will be scheduled.

Neither the executive nor the legislative branch of government may interfere with a process that is adopted by law to culminate in a quasi-judicial forum. The law clearly establishes the parameters for the zoning commissioner, acting as an independent officer of the county, to have sole authority to grant the above-referenced special exception. Similarly, the board is authorized by the Baltimore County Code to review the zoning commissioner's decision upon appeal.

With this is mind, I can assure you that this project will receive a complete and thorough review by the board based on the record and testimony presented to them. Baltimore County will consistently review all proposals within the confines required by law; additionally, proposals will be scrutinized with an emphasis toward the issues and concerns raised by the community.

Lot 83 of the Long Beach Estates, located on the south side of Chester Road (Parcel 3); and (4) the north parking parcel, located on the north side of Chester Road (Parcel 4). All of these four pieces of land are in a D.R. 5.5 zone.

STATEMENT OF FACTS

In 1955, Joseph F. Evering, Jr., (hereinafter "Joseph Evering") filed a petition for special exception, requesting that he be allowed to use his property on Chester Road, then and now in a D.R. 5.5. zone, for a boat yard. At that time, he owned only the 1.2 acre original Evering Parcel located on the south side of Chester Road. On June 6, 1955, the Special Exception was granted (Case No. 3535X) and Joseph Evering thereafter converted his property into a boat yard by, among other things, building four piers which extended west into Frog Mortar Creek, for the mooring of power and sail boats.

On August 1, 1960, Mr. and Mrs. Henry J. Brown conveyed to the Everings the 1.75 acre Brown Parcel located on the north side of Chester. Road. In January 1964, the Everings filed a Petition for Special Hearing "for a clarification and extension of the uses heretofore granted under the special exception, granted on the 6th day of June, 1955 (File No. 3535) to specifically include the storage of marine craft on the land." On March 9, 1964, the Everings'

request was granted (Case No. 64-57SH) subject to three restrictions:

1. No marine craft may be stored within 30 feet of the easternmost portion of the property presently owned by ...[the Everings];

2. The use of the boat yard, both on land and in the water, shall be limited to pleasure craft.

3. The Petitioners [the Everings] shall comply with the off-street parking requirements of Section 409 of the Baltimore County Zoning Regulations.

About one month later, on April 10, 1964, the Everings filed a Petition for Special Exception.

The Petition for Special Exception requested that the Everings be allowed to develop a boat yard on the Brown Parcel. The Everings planned to fill and level the land, build a bulkhead on the north side of the Brown Parcel and extend Chester Road to the water's edge. On June 30, 1964, the Petition for Special Exception (Case No. 64-160X) was granted subject to the following restrictions:

1. No major repairs of any boats shall be permitted on the premises or waters immediately adjacent thereto.

2. Construction of boats is prohibited.

3. No commercial vessels will be permitted to patronize said establishment.

4. Services will be restricted to pleasure craft only.

5. Barges or similar type craft will not be allowed on or tied up at the property, with the exception of the one small barge which is presently being used by the Petitioner[s]. [The Everings.]

6. Minor repairs and maintenance will be permitted from 8 a.m. to 7 p.m. week-days [sic], May through September and 8 a.m. to 6 p.m. on week-days [sic] during the other months of the year. No repairs will be permitted on Sundays.

The site plan, which was approved by the Office of Planning and Zoning on January 16, 1967, called for four additional piers, approximately 168 additional boat slips and approximately 168 additional parking spaces for automobiles. Three of the proposed piers were to be built off the Brown Parcel, more or less parallel to the four existing piers which extended west from the original Evering Parcel. Each was to contain 44 boat slips. The fourth proposed pier was to be built off the south side of the original Evering Parcel, perpendicular and to the rear of the four existing piers. It was to contain 36 boat slips. The site plan also called for the Everings to extend Chester Road to the water's edge, to fill in and extend the Brown Parcel to conform with the original Evering Parcel, to build a bulkhead and to use a macadam surface for the parking areas.

In 1966, the Ev rings applied for and received three building permits for the northwest Brown Parcel piers. Little, if any, construction was commenced and, in 1970, the Everings again applied for and received building permits for the same three piers. Again, the Everings did not commence any substantial construction. It is apparent that they did drive in some mooring piles along the western shore line of the Brown Parcel, but it is just as apparent that this construction was soon abandoned. No effort was made to fill in and extend the Brown Parcel, to extend Chester Road, to build the bulkhead and to comply with the plans for the required parking spaces. Sometime between 1966 and 1984, they did construct the southern pier off the original Evering Parcel. During this time they also acquired the north and south parking parcels.

In August, 1984, the Everings filed the following three petitions:

1. Petition for Zoning Variance

(a) to allow existing compacted stone in lieu of the required macadam paving. A variance from B.C.Z.R. Sec. 409.2.c.(2) (1981 and 1983 Supp.)

(b) to allow 318 parking spaces in lieu of the required 384, or, if the special exception is granted, to allow 363 parking spaces in lieu of the required 384. A variance from B.C.Z.R. Sec. 409.2.b (1981 and 1983 Supp.)

(c) to allow the extension of the piers to exceed 300 feet beyond the mean low tide. A variance of B.C.Z.R. Sec. 417.5(a) (1981 and 1983 Supp.)

2. Petition for Special Exception

(a) to allow the two lots on the north and south sides of Chester Road (the North and South Parking Parcels) to be used as part of the boat yard. The lots are zoned D.R. 5.5.

3. Petition for Special Hearing

(a) to amend the site plan which was approved on January 1, 1967, in connection with the June 30, 1964 Petition for Special Exception (Case No. 64-160X) in order to construct additional piers and slips.

(b) to remove restrictions 1 and 3 in Case No. 64-57SPH in order to allow marine craft to be stored within 20 feet of the easternmost property line and to request a variance of the parking.

(c) to remove restrictions 1 and 6 in Case No. 64-160X in order to allow major repairs on the premises and in the waters and to change the times that repairs are permitted.

(d) to determine that a boat yard and related parking areas are structures devoted to civic, commercial and recreational activities and are, therefore, exempt from the residential transitional requirements et out in B.C.Z.R. Sec. 1B01.1B.1.c (1981 and 1983 Supp.)

I remain confident that the board will act in the best interests of the citizens of Baltimore County as they consider issues that are so critical to the welfare of the community. Thank you for sharing your concerns with Senator Sarbanes and me as we await the board's decision.

Sincerely,

C. A. Ruppersberger

C.A. Dutch Ruppersberger, III
County Executive

CADR:jvm
c: Hon. Paul S. Sarbanes

The Protestants do not oppose Petitioners' request 1(a) (stone, in lieu of macadam paving) if the Petitioner is required to engage in meaningful storm water management practices at the site (Protestants contend that Petitioner was impliedly required to do this by way of bulkheading prior to the last pier construction off Parcel 1 permitted by way of the approval of the amended site plan in 1964). Otherwise, Protestants oppose each of Petitioner's requests before this Board.

For reasons fully briefed and argued at the hearing on the merits, the Protestants contend that the Petitioners' requests do fall under Chesapeake Bay Critical Area Protection Program, Md. Nat. Res. Code, Am. Sections 8-1801-8-1816 (1974 and 1984 Cum. Supp.) and have failed to comply with the requirements of said Act. However, given this Honorable Board's determination that the "Act" does not apply, Protestants will not further argue this point in this Memorandum.

The preliminary issue presented in this case is, simply put, whether the Everings utilized the Special Exception they were granted on June 30, 1964. Section 502.3 of the Baltimore County Zoning Regulations (1981 and 1983 Supplements) states, in pertinent part, that:

> "[a] Special Exception which has not been utilized within a period of two years from the date of the final order granting same, or such longer period not exceeding five years, as may have been specified therein, shall thereafter be void... After a final

> order granting a Special Exception, the Zoning Commissioner, at any time prior to expiration of the period of time authorized for its utilization, may grant one or more extensions of such period, provided that a maximum time for utilization of the Special Exception is not thereby extended for a period of more than five years from the date of the final order granting same."

The same section also provides that:

> "[a] Special Exception which requires any construction for its utilization shall be deemed to have been used within its authorized time if such construction shall have been commenced during the authorized period, or any extension thereof, provided said construction is thereafter pursued to completion with reasonable diligence." (Emphasis added.)

Phrased differently, then, the issue here is whether the Everings, under the June 30, 1964, order granting them a Special Exception (as to Parcel 2), commenced construction during the authorized time period and thereafter pursued that construction to completion with reasonable diligence.

The requirements set forth by Section 502.3 are twofold: (1) the petitioner must commence construction within the authorized time period; and (2) he must pursue that construction to completion with reasonable diligence. If the Petitioner fails to do both, the Special Exception is void. While the record is not clear, it is assumed that the Everings had five years from the date of the Special Exception in which to commence construction.

It is apparent that the Everings have not attempted to utilize the Special Exception they were granted on June 30, 1964. As of September 1984, they had not extended Chester

Road, had not filled in and extended the Brown Parcel, had not built the bulkhead, had not built the parking areas as detailed on the site plan, and had not implemented their plans to build three piers off the western shore of the Brown Parcel. As the June 30, 1964, Special Exception was surely one requiring construction for its utilization and the Everings did not commence any substantial construction during the ensuing five years (1964-1969), the Special Exception is void.

The Everings, in essence, have failed to meet both requirements of Section 502.3: They did not begin any substantial, easily recognized construction and they did not pursue what little construction they did commence to completion with reasonable diligence. It must be remembered that the June 30, 1964, Special Exception concerned the Brown Parcel (Parcel 2).

The only apparent action taken by the Everings with regard to the Brown Parcel during the authorized five-year period was applying for building permits in 1966 for the three Brown Parcel piers. This, by itself, does not constitute the commencement of construction. Even if it did, the Everings did not pursue the construction to completion with reasonable diligence. More than eighteen years have passed since the Everings secured the building permits and, during this time, the Everings, at best, drove a few piles along the western and northern shores of the

Brown Parcel (Parcel 2). Mr. Evering himself characterized his intentions in the 1970-1980 period as an "abandonment" of expansion because of lack of money, gas crisis, and so forth. Perhaps the fact that this marina is not filled, played a role.

The meaning of the language in Section 502.3 requiring construction to be pursued to completion with reasonable diligence is clear, unambiguous and should be given its literal meaning.

The Everings did not have a substantial construction beginning. All they did was obtain building permits and drive in a few mooring piles. Neither action, as noted earlier, constitutes a readily recognizable commencement or a substantial construction beginning. It has been repeatedly held that the mere issuance of a building permit alone does not confer any vested right and, therefore, would not constitute a construction under Section 502.3. See Stewart Petroleum Co. v. Board of County Commr's., 276 Md. 435, 347 A.2d 854 (1975); County Council v. District Land, 274 Md. 691, 337 A.2d 712 (1975); Rockville Fuel & Feed Co. v. City of Gaithersburg, 266 Md. 117, 291 A.2d 672 (1972); and Ross v. Montgomery County, 252 Md. 497, 250 A.2d 635 (1969). See generally 3 Rathkopf, The Law of Zoning and Planning, 57-6 (45th ed. 1976). As it was stated in County Council, "the obtention of a building permit creates no vested right... unless substantial construction has been

reasonable diligence. It has been eighteen years since the building permits were issued, and the piles are the only evidence of a construction attempt. While it may very well have been the intention and purpose of the Everings to secure building permits, drive the piles, and pursue to completion the landfill, road extension and the bulkhead, parking lot and pier constructions, this intention was quickly abandoned.

It is true that in 1970 the Everings renewed the building permits, thus in some sense evidencing their continued intention to implement the 1967 site plan, but, again, no substantial construction occurred immediately thereafter or in the ensuing fourteen years. It cannot, therefore, be maintained that the Everings have been pursuing to completion the utilization of their 1964 Special Exception with reasonable diligence, but this is exactly what they would have to prove in order for that Special Exception to still be valid. HB.C.Z.R. Sec. 502.3. It should be remembered that the Everings have the burden of proving that the 1964 Special Exception is still valid and that they both commenced construction within the authorized time period and pursued that construction to completion with reasonable diligence. As this burden has not been met, and all evidence suggests that it cannot be met, the 1964 Special Exception is void. A Special Hearing, therefore, is not proper and the Everings should be required to re-

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director **DATE:** June 18, 1999
Permits & Development Management

FROM: Charlotte E. Radcliffe
County Board of Appeals

SUBJECT: Closed File:
Case No. 94-452-XA / Baltimore Gas & Electric Co.

Since no appeal was taken from Board's Order (on remand from the Circuit Court) issued April 22, 1999, in the above captioned case, we are hereby closing our file and returning same to you herewith.

Attachment (Case No. 94-452-XA - contained in box)

petition for a special exception for Brown Parcel. Furthermore, the Petition for Variances and the Petition for Special Exception should both be denied because the invalidity of the 1964 Special Exception changes the factual basis on which they rest.

Counsel for Petitioners, as did the Zoning Commission for Baltimore County, seemed to confuse what Protestants were saying, interpreting their argument solely as an issue of "vested rights," rather than a question of "use." Although a helpful insight can be drawn from cases dealing solely with the vested rights issue -- it is rather the specific fact that Petitioners herein failed to construct the improvements specifically requested in a prior Special Exception which spells demise for their attempt to receive what has been clearly abandoned and, therefore, expired.

Certainly, the Petitioners cannot be allowed to revive the 1964 Special Exception by bootstrapping it with their 1984 Petition and the transparent argument that use of the overall property is the key which facilitates construction they choose, when they choose, from 1964 to the end of time.

Essentially, the Petitioners are asking for permission to extend the new piers four hundred nineteen feet out into Frog Mortar Creek 419 feet beyond mean low tide.

Section 417.5 of the Baltimore County Zoning Regulations provides as follows:

Appraiser) whose historical narrative, although well presented and quite interesting, failed to reflect compliance with 502.1, and last, but not least, Mr. Pine, who capably verified that Frog Mortar Creek is already in violation of Class I water quality standards, for existence of fecal coliforms, undissolved nitrogen, dissolved oxygen and Ph. Moreover, Mr. Pines admitted that Frog Mortar Creek is a narrow and shallow body of water and that additional pollutants resulting from further development may well result in a failure in continued re-invasion of aquatic life already being experienced.

The Protestants produced testimony from a number of witnesses whose testimony clearly reflected an adverse impact above and beyond that which is arguably associated with a special exception use.

The roadways serving the subject site are already congested and overtaxed. Frog Mortar Creek already contains over 1,000 slips and experiences serious navigational problems which could only be compromised further by additional expansion, particularly this expansion which consumes more than 45% of the total width of Frog Mortar Creek at its point of entry into Middle River.

It is respectfully submitted that Petitioners' proposed uses could clearly be detrimental to the health, safety and general welfare of the Bowley's Quarters area, that it will <u>further</u> create congestion in an already insufficient and

overtaxed road system. Any further development of Long Beach Marina, particularly development which entails extension more than 300 feet beyond mean low tide, compromises and is inconsistent with the spirit and intent of Baltimore County's Zoning Regulations.

Respectfully submitted:

T. Rogers Harrison

T. ROGERS HARRISON
Mudd, Harrison & Burch
306 West Joppa Road
Towson, Maryland 21204
828-1335
Attorney for Protestants

RECEIVED
COUNTY BOARD OF APPEALS
1987 JAN 14 P 3:46

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, MARYLAND LYNNE LOMBARDI ANDREW JONES	*	IN THE
	*	CIRCUIT COURT
Plaintiffs	*	FOR
V.	*	
JOSEPH F. EVERING, JR. and CATHERINE L. EVERING STATE AVIATION ADMINISTRATION MARYLAND DEPT. OF STATE PLANNING	*	BALTIMORE COUNTY Case No. 86-CG-22 consolidated
Defendants	*	Case No. 86-CG-240

* *

MOTIONS RULING

Case No. 86-CG-240

1. Plaintiffs' Motion for Partial Summary Judgment/Declaratory Judgment - DENIED.

2. Plaintiffs' Motion for Consolidation - GRANTED.

3. Maryland Department of State Planning's Motion to Intervene - GRANTED.

4. The Everings' Motion to Dismiss and Answer to Complaint for Declaratory Judgment - GRANTED.

5. Motion of State Aviation Administration to Dismiss Complaint for Declaratory Judgment - GRANTED.

6. Maryland Department of State Planning's Motion to Dismiss Complaint for Declaratory Judgment for More Definite Statement - GRANTED.

7. Defendants' Motion for Attorneys Fees - DENIED.

8. Costs to be paid by the Plaintiffs, apportioned equally.

RECEIVED
COUNTY BOARD OF APPEALS
1986 JUL 16 P 1:42

Case No. 86-CG-22

Plaintiffs' Motion for Consolidation - GRANTED.

2. Plaintiffs' Petition on Appeal is DISMISSED and REMANDED to the Board of Appeals for a final judgment.

3. Defendants' Motion to Dismiss Petition on Appeal - GRANTED.

4. Defendants' Petition for Attorneys Fees - DENIED.

5. Costs to be paid by the Plaintiffs, apportioned equally.

MEMORANDUM IN SUPPORT OF COURT'S RULING ON THE PLAINTIFFS' MOTION FOR DECLARATORY JUDGMENT AND PLAINTIFFS' APPEAL TAKEN FROM THE RULING MADE BY THE BOARD OF ZONING APPEALS

This matter comes before the Circuit Court for Baltimore County on appeal (Case No. 86-CG-22) and on a Motion for Declaratory Judgment (Case No. 86-CG-240) from the Board of Appeals of Baltimore County (Case No. 85-86-XSPHA). The Zoning Commissioner for Baltimore County granted the Defendants', Joseph and Catherine Evering, request for special exception to construct an extension to their existing marina-boat yard in the vicinity of Martin Airport. The County Board of Appeals ruled that Subtitle 18 of the Natural Resources Article, Chesapeake Bay Critical Area Protection Program, does not apply to the Evering's request for special exception, although the Board has still not decided whether or not it will affirm the Order of the Zoning Commissioner to allow the special exception.

4331-94

8/29/94

COMMITTEES:
ECONOMIC AND ENVIRONMENTAL AFFAIRS
CHAIR-HEALTH SUBCOMMITTEE

SENATE CHAIR
ADMINISTRATIVE, EXECUTIVE, LEGISLATIVE REVIEW COMMITTEE

JOINT COMMITTEE ON HEALTH CARE DELIVERY AND FINANCING

NATIONAL CONFERENCE OF STATE LEGISLATURES

SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401-1991

PAULA C. HOLLINGER
11 DISTRICT
BALTIMORE COUNTY
HOME ADDRESS:
55 RAISIN TREE CIRCLE
BALTIMORE, MD 21208-1364
(410) 484-4888
DISTRICT OFFICE:
SENATE OFFICE BUILDING
ROOM 206
ANNAPOLIS, MARYLAND 21401-1991
TELEPHONE (410) 841-3131

August 29, 1994

Arnold Jablon
Director
Zoning Administration & Development
Management Office
111 W. Chesapeake Avenue
Towson, Maryland 21204

Dear Mr. Jablon:

I am writing in support of the Hunt Cup Hill Association's opposition to the expansion of Baltimore Gas & Electric's substation on Ridge Road.

I was surprised to learn that BGE did not notify the community appropriately before the hearing on the project on June 21 and subsequent granting of their petition on June 24. I understand this petition has now been appealed by the community.

I agree with the community's assessment that a substation some seventeen times the size of the present one does not belong in a residential area. With Hunt Valley 's industrial area only three miles away, I cannot understand why the Ridge Road site was chosen.

The community has cited several reasons for their opposition: 1) a health threat to the community due to increased emission of EMF, 2) a threat to the children of the community, 3) an environmental hazard to wildlife, and, 4) would give a toehold in the area for future industrial development. I agree with their analysis of this issue and look forward to working with them to successfully appeal BGE's petition. I hope the county will re-think this proposal and listen carefully to the concerns of the residents who will be affected by such invasive construciton.

Sincerely,

Paula C. Hollinger

pch/lt
cc: Jack Lodge, BGE
Margaret Worrall

RECEIVED
AUG 30 1994
ZADM

The Plaintiffs, People's Counsel for Baltimore County, Maryland, Baltimore County, Lynne Lombardi and Andrew Jones, have filed an appeal (86-CG-22) from the Board's ruling naming the Everings as party defendants. Subsequently, a complaint was filed to obtain a declaratory judgment (86-CG-240) regarding the applicability of the State Aviation Administration Regulations, Chapters 11.03.05 and 11.03.06, Code of Maryland Regulations, and the Chesapeake Bay Critical Areas Law, Natural Resources Article, Title 8, Subtitle 18, Annotated Code of Maryland, to the Everings request for special exception. The Plaintiffs have named the Everings and the State Aviation Administration parties defendant to this declaratory action. The Maryland Department of State Planning has intervened as co-defendants in the action for declaratory judgment.

This Court will first discuss the motion for declaratory judgment and then rule on the appeal.

I. Motion for Declaratory Judgment.

Defendants contend the Plaintiffs do not have sufficient interest in this matter to give them standing and that the Circuit Court for Baltimore County lacks subject matter jurisdiction.

A. Lack of Standing

The Maryland Uniform Declaratory Judgment Act, Courts and Judicial Proceedings Article, Title 3, Subtitle 4, gives the Maryland courts authority to render a declaratory judgment in appropriate cases. The Act provides "[a]ny person...whose rights, status, or legal relations are affected by a statute,

municipal ordinance, administrative rule or regulation,...contract, or franchise [can] obtain a declaration of rights status or other legal relations under it." Courts and Judicial Proceedings Article, Section 3-406 (An. Code 1957, art. 31A, Section 2; 1973, 1st Sp. Sess., ch. 2, Section 1; 1976, ch. 915, Section 4.). Section 3-409(a), Discretionary relief, provides a court may grant a declaratory judgment or decree if: "(1) [a]n actual controversy exists between contending parties; (2) [a]ntagonistic claims are present between parties involved which indicate imminent and inevitable litigation; or (3) [a] party asserts a legal relation, status, right, or privilege and this is challenged or denied by an adversary party, who also has or asserts a concrete interest in it." Courts and Judicial Proceedings Article, Section 3-409.

This Court does not believe the Plaintiffs have demonstrated a legally cognizable interest in this matter. The applicability of the State Aviation Administration's zoning regulations is a matter between the Everings and the State Aviation Administration. This Court does not see where the Plaintiffs in this case would have a greater interest in upholding the Aviation zoning regulations than the Administration would. The State Aviation Administration even stated during argument that the regulations did not apply in this case.

As to the applicability of the Chesapeake Bay Critical Areas Law, the individual Plaintiffs lack a real and substantial interest different from any member of the public. Lombardi

resides some distance away from the Evering's marina and Jones has not shown any substantial interest being affected. Thus, the individual Plaintiffs lack standing to bring this motion for declaratory judgment.

B. This Court Lacks Subject Matter Jurisdiction

More important than the Plaintiffs' lack of standing is this Court's lack of subject matter jurisdiction over their motion for declaratory judgment. Section 3-409(b) of the Declaratory Judgment Act specifically provides that:

> "If a statute provides a special form of remedy for a specific type of case, that statutory remedy shall be followed in lieu of proceeding under this subtitle."

Courts and Judicial Proceedings Article, Section 3-409(b). Section 5-507 of the Maryland Transportation Article authorizes applicants to appeal to the Maryland Department of Transportation's Board of Airport Zoning Appeals. This Court believes the Board of Airport Zoning Appeals to be the appropriate forum for an appeal from the Board's ruling on the applicability of the State Aviation Administration Zoning Regulations.

This Court also lacks subject matter jurisdiction because the issues raised are the subject of another proceeding. There is still an appeal pending before the Board of Zoning Appeals. In Haynie v. Gold Bond Building Products, (Court of Appeals, No. 26, September Term, 1985, Filed July 11, 1986; See Daily Record, July 31, 1986), the Court of Appeals did not allow the use of a declaratory judgment to resolve an issue when another action is pending where the same issue can be resolved. Id. at 11. The Court stated in dicta that a declaratory judgment

may be appropriate in "very unusual and compelling circumstances." Id. at 12. The Plaintiffs here have not shown "very unusual or compelling circumstances."

Furthermore, the Court of Appeals has reasoned that the use of a declaratory judgment to invalidate a ruling of the Board of Appeals that is subject to direct appeal would be inappropriate. See, Hamilton v. McAuliffe, 277 Md. 336, 342 (1976) (quoting Ferititta v. Brown, 252 Md. 594, 599-600 (1969): "[d]eclaratory proceedings were not intended to and should not serve as a substitute for appellate review.").

Accordingly, this Court hereby denies the Plaintiffs' Motion for Declaratory Judgment.

II. On Appeal

In regard to the appeal the Plaintiffs have filed in this matter (86-CG-22), this Court believes it to be premature. Section 12-301, Right of appeal from final judgments, Courts and Judicial Proceedings Article, gives the right to appeal from a final judgment. The Court of Appeals has held that an appealable judgment is one that is so final as to determine or conclude the rights of the parties involved, or deny the appellant further means of defending their rights and interest in that proceeding. See, Cant v. Bartlett, 292 Md. 611, 614 (1982). The purpose of this provision is to prohibit piecemeal disposition of litigation. Jolley v. State, 282 Md. 353, 355 (1978).

In this case, the Plaintiffs have only appealed the Board's ruling on the applicability of the Aviation Zoning Regulations

and the Critical Areas Law, the remaining portion of the case is still pending before the Board. The Board has also affirmed the Zoning Commissioner's ruling on the applicability of the Chesapeake Bay Critical Areas Legislation. They have not affirmed the granting of the Evering's special exception. For these reasons, this Court does not believe the Board of Zoning Appeals has issued a final determination of the rights of the parties. To allow an appeal of the Board's ruling, at this time, would encourage piecemeal litigation, thus imposing an increased burden on the judicial system and the parties.

Accordingly, this Court grants the Defendants' Motion to Dismiss the Plaintiffs' Petition for Appeal. Costs to be paid by the Plaintiffs, apportioned equally.

James S. Sfekas.

JUDGE JAMES S. SFEKAS

Dated: August 7, 1986.

Copies to:
Peter Max Zimmerman
Judith A. Armold
Peter W. Taliaferro
T. Rodgers Harrison
Thomas J. Bollinger
John B. Gontrum
Court File

BALTIMORE
GAS AND
ELECTRIC

CHARLES CENTER • P.O. BOX 1475 • BALTIMORE, MARYLAND 21203-1475

MARTHA A. DELEA
ATTORNEY
(410) 234-5697

430

May 6, 1993

91-452-XA

VIA COURIER

Robert A. Hoffman, Esquire
Venable, Baetjer and Howard
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21285-5517

Re: Ivy Hill Substation

Dear Rob:

Enclosed herewith for filing are the following documents:

1. Six signed copies of the Petition for Special Exception.

2. Six signed copies of the Petition for Variance.

3. Twenty copies of the drawing entitled "Plat To Accompany Petition For Zoning Special Exception And Variances".

4. Four copies of each of the metes and bounds descriptions for the properties.

It is my understanding from Barbara that you already have a copy of the 200 foot scale map marked NW17E; therefore one in not included in this package.

Please let me know when the Petitions have been accepted for filing by the Zoning Office.

Very truly yours,

Martha

Martha A. Delea

Enclosures
CC: Monica McGrady

IN THE MATTER OF THE APPLICATION OF JOSEPH F. EVERING, JR., ET UX FOR SPECIAL EXCEPTION FOR A BOAT YARD, SPECIAL HEARING TO AMEND SITE PLAN AND VARIANCES FROM SEC. 409.2.c(2), 409.2.b and 417.5(a) OF THE BCZR N/S CHESTER RD., 590' W. OF SEVERN RD. (800 CHESTER RD.) 15th DISTRICT	:	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW
PHYLLIS C. FRIEDMAN, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, PLAINTIFF	:	CG Doc. No. 19 Folio No. 117 File No. 86-CG-0022
MALCOLM F. SPICER, JR., ESQ., and THOMAS J. BOLLINGER, ESQ., ATTORNEYS FOR BALTIMORE COUNTY, PLAINTIFF	:	
ZONING FILE NO. 85-65-XSPHA	:	

CERTIFIED COPIES OF PROCEEDINGS BEFORE THE ZONING COMMISSIONER AND THE BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Lawrence E. Schmidt, Keith S. Franz and Diana K. Vincent, constituting the County Board of Appeals of Baltimore County, and in answer to the Orders for Appeal directed against them in this case, herewith return the record of proceedings had in the above entitled matter, consisting of the following certified copies or original papers on file in the office of the Zoning Department of Baltimore County:

ZONING ENTRIES FROM DOCKET OF ZONING COMMISSIONER OF BALTIMORE COUNTY

Case No. 85-65-XSPHA

August 6, 1984	Petitions of Joseph F. Evering, Jr., for special hearing to approve an amendment to the site plan in Case No. 64-57-SPH, 64-160-X and 35-35-X, to construct an addition to the piers, etc.; for variances from Sec. 409.2.c(2) to allow existing compacted stone in lieu of req. macadam paving, 409.2.b to allow 318 pkg. spaces in lieu of 384, etc.; and special exception for 2 lots in a D.R. 5.5 zone to be used as a boat yard.

August 6, 1984	Order of Zoning Commissioner directing advertisement and posting of property, date of hearing set for Sept.10,'84.
August 18	Certificate of Posting of Property - filed
August 23	Certificate of Publication in newspaper - filed
September 4	Comments of Baltimore County Zoning Plans Advisory Committee - filed
September 7	Comments of Baltimore County Director of Planning - filed
September 10	At 1:30 p.m. hearing held on petitions by Zoning Commissioner.
May 10, 1985	Order for Appeal to County Board of Appeals from Order of Zoning Commissioner by People's Counsel for Baltimore County
May 20	Order for Appeal to C.B. of A. from Order of Zoning Commissioner by Robert J. Romadka, Esq., counsel for Petitioners.
May 20	Order for Appeal to C.B. of A. from Order of Zoning Commissioner by T. Rogers Harrison, Esq., on behalf of Protestants, Ken Engelke, et al.
May 20	Order for Appeal to C.B. of A. from Order of Zoning Commissioner by Norman E. Gerber, Director, Office of Planning & Zoning.
October 29	Hearing on ~~appeals~~ before County Board of Appeals
December 12	Ruling on Motion by the Board of Appeals majority states that the Chesapeake Bay Critical Area Protection Program is not applicable to the proposed petition; Dissent on Ruling on Motion states that the Board member would deny Petitioner's Motion and hold that the provisions of Sec. 8-1801 et seq of Natural Resources Article of the Annotated Code of Maryland are applicable to the petitions in this matter.
January 3, 1986	Order for Appeal filed in the Circuit Ct. for Balto. County by People's Counsel for Balto. County.
January 3	Petition to accompany Order for Appeal filed in the Circuit Ct. for Baltimore County
January 10	Order for Appeal filed in the Circuit Ct. for Baltimore County by Malcolm F. Spicer, Jr., and Thomas J. Bollinger, Esq., County Attorneys for Baltimore County.

January 13, 1986 — Certificate of Notice sent to all interested parties.

January 21, — Petition to accompany order for appeal filed in the Circuit Court for Baltimore County.

February 3, — Transcript of testimony - filed

Exhibit - Zoning Commissioner's file and exhibits

Exhibits on Motion - 1st day

Petitioner's Exhibit No. 1 - Plat to accompany petition for pier extension

" " " 2 - Plat to accompany petition for special exception, special hearing, and variances

" " " 3 - Copy of receipt #123264 for the amt. of $100 for item #166.

" " " 4 - Zoning Commissioner's file

" " " 5 - Petition for Zoning Variance, undated

" " " 6 - Copy of receipt #133200 for the amt. of $150 for item 166.

People's Counsel's Exhibit No. 1 - Series of letters from Baltimore County

" " " " 2 - Receipt (notice that the petition has been accepted for filing dated Aug. 6, 1984.

" " " " 3 - Memo to A. Jablon from Norman Gerber, Plan. & Zoning

" " " " 4 - Letter to M/M Evering from Eugene Bober, Planning & Develop.

Exhibits on 2nd hearing day:

Protestants' Exhibit No. 1 - List of Protestants

State Planning Dept.'s Exhibit No. 1 - Plat of Clear Zone for Martin Airport

" " " " " 2 - Regulations - Title II

February 3, 1986 Record of proceedings filed in the Circuit Court for Baltimore County

Record of proceedings pursuant to which said Order was entered and said Board acted are permanent records of the Zoning Department of Baltimore County and your respondents respectively suggest that it would be inconvenient and inappropriate to file the same in this proceeding, but your respondents will produce any and all such rules and regulations whenever directed to do so by this Court.

Respectfully submitted,

June Holmen

June Holmen
County Board of Appeals of Baltimore County

cc: John O. Hennegan, Esq.
Robt. J. Romadka, Esq.
T. Rogers Harrison, Esq.
Phyllis C. Friedman
Judith A. Armold
Malcolm Spicer, Jr., Esq.
Thomas J. Bollinger, Esq.

IN THE MATTER OF PETITIONS FOR SPECIAL EXCEPTION, SPECIAL HEARING, AND ZONING VARIANCES N/S of Chester Rd., 590' W of Severn Rd. (800 Chester Rd.), 15th Election District	*	IN THE CIRCUIT COURT
	*	FOR
	*	BALTIMORE COUNTY
	*	AT LAW
JOSEPH F. EVERING, JR., et ux. Petitioners	*	CG DOCKET NO. 86CG0022
		FOLIO NO.
Zoning Case No. 85-65-XSPHA	*	FILE NO.

*** *** *** *** *** *** *** *** * *** *** *** *** *** *** ***

MOTION TO DISMISS AND
ANSWER TO PETITION ON APPEAL

NOW COMES Joseph F. Evering, Jr., et ux, by John O. Hennegan, Donald E. Brand and ROMADKA, GONTRUM, HENNEGAN & FOOS, in answer to the Petition for Appeal states as follows:

1. That they deny the allegations contained in paragraphs 1, 2 and 3 of the Petition.

FIRST AFFIRMATIVE DEFENSE

The decision of the County Board of Appeals was an Interrlocutory Order and as a result the Appeal filed herein is premature.

GROUNDS FOR MOTION

1. The issues raised by the Appellants are interlocutory or preliminary in nature and are not a matter which determines all the issues both law and fact in the aboved captioned case. The resolution of these issues will

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

HOLZER & LEE

LAW OFFICES
J. CARROLL HOLZER, PA
THOMAS J. LEE
J. HOWARD HOLZER
1907-1989

TOWSON OFFICE
305 WASHINGTON AVENUE
SUITE 502
TOWSON, MD 21204
(410) 825-6961
FAX: (410) 825-4923

CARROLL COUNTY OFFICE
1315 LIBERTY ROAD
ELDERSBURG, MD 21784
(410) 795-8556
FAX: (410) 795-5535

July 20, 1994

HAND DELIVERED

Mr. Arnold Jablon, Director
Zoning Administration and Development Management
County Office Building
111 West Chesapeake Ave.
Towson, MD 21204

Re: Appeal of Case No. 94-452-XA

Dear Mr. Jablon:

On behalf of my clients Nigel Howse, Robert O'Hara, Ron Hanley, Carl Follo, Robert Rytter, Ira Brown, Dieter Langendorf, Andrew Lansman, Jeffrey Bozell, Bruce Pitcher, Joe Czajkowski, and Friends of the Ridge, I hereby note an appeal of the decision of the Zoning Commissioner in the above referenced Petitions for Special Exception and Zoning Variance decided on June 24, 1994.

On behalf of my clients I am submitting a check in the amount of $460.00 to cover the cost of the appeal to the County Board of Appeals. If you have any questions, please call me at 825-6961.

Very truly yours,

J. Carroll Holzer

J. Carroll Holzer

JCH:tll

7/21/94 mw
ZONING OFFICE

leave other issues of law and fact undetermined needing a final hearing resulting in a final order in which to conclude said matters.

2. The Interlocutory Order or subject matter appealed from is not matter which is specifically prescribed by statute as appealable nor a final judgment and as a result is not a posture by which this Court can make a judicial determination.

3. And for such other and further reasons as will be set forth at a hearing hereon.

WHEREFORE, the Appellees pray that the Petition on Appeal and the Notice of Appeal be dismissed and the ruling of the County Board of Appeals be affirmed with cost and attorney's fees to the Appellees.

John O. Hennegan

Donald E. Brand
ROMADKA, GONTRUM, HENNEGAN & FOOS
809 Eastern Boulevard
Baltimore, Maryland 21221
686-8274

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the aforegoing Answer to Petition on Appeal was mailed this 3 day of ~~January~~ Feb., 1986, to T. Rogers Harrison, Mudd, Harrison & Burch, 306 West Joppa Road, Towson, Maryland 21204, Attorneys for Ken Engelke,

et al., Protestants/Appellants; Phyllis Cole Friedman, People's Counsel for Baltimore County; Peter Max Zimmerman, Deputy People's Counsel, Room 223, Court House, Towson, Maryland 21204; Administrative Secretary, County Board of Appeals, Room 200, Court House, Towson, Maryland 21204; Judith A. Armold, Esquire, Assistant Attorney General, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201; Malcom F. Spicer, Jr., County Attorney, Office of Law, Mezzanine, Court House, Towson, Maryland 21204; and Peter W. Taliaferro, Assistant Attorney General, P.O. Box 8766, Baltimore/Washington International Airport, Baltimore, Maryland 21240-0766.

John O. Hennegan

MEMORANDUM OF POINTS AND AUTHORITIES

Courts Article 12-303, Annotated Code of Maryland

Eastgate Associates et al v. Apper, 350 A 2nd 661

Rule B1; Maryland Rules of Procedure

RECEIVED
COUNTY BOARD OF APPE
1991 FEB -6 A 10:5

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, MARYLAND	*	IN THE
and	*	CIRCUIT COURT
BALTIMORE COUNTY, MARYLAND a Body Corporate and Politic County Attorney	*	FOR
and	*	BALTIMORE COUNTY
LYNNE LOMBARDI	*	
and	*	CASE NO.: 86CG240
ANDREW JONES	*	Docket No.: 20
Plaintiffs	*	Folio No.: 10
vs.	*	
JOSEPH F. EVERING, JR. and CATHERINE L. EVERING	*	
and	*	
STATE AVIATION ADMINISTRATION	*	
Serve On: Stephen H. Sachs, Attorney General	*	
Defendants	*	

*** *** *** *** *** *** *** *** * *** *** *** *** *** *** ***

MOTION TO DISMISS AND ANSWER TO COMPLAINT FOR DECLARATORY JUDGMENT

Defendant, Joseph F. Evering, Jr. and Catherine L. Evering by John O. Hennegan and ROMADKA, GONTRUM, HENNEGAN & FOOS move for Dismissal and file this Answer to the Complaint for Declaratory Judgment and state as their reasons therefore, the following:

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

1. That they admit the allegations contained in paragraphs 5, 10, 12, 13 and 14 of the Complaint for Declaratory Judgment.

2. That they deny the allegations contained in paragraphs 1, 2, 7, 8, 9, 11 (a) and (b), 15, and 16 of the Complaint for Declaratory Judgment.

3. They neither admit nor deny the allegations contained in paragraphs 3, 4 and 6 of the Complaint for Declaratory Judgment.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a cause of action upon which relief can be granted.

2. That the Court lacks jurisdiction over the subject matter.

3. The Plaintiffs have failed to exhaust their administrative remedies and therefore relief cannot be granted until such an event occurrs.

4. This action involves the same parties, the same subject matter and the same issues as an action which has been appealed from the Board of Appeals for Baltimore County and therefore is res judicata.

GROUNDS FOR MOTION

1. The Complaint makes a Request for Relief from questions of law and fact which remedy has been provided by statute before an administrative agency. Since the requested action does not involve a constitutional question or involve a question for which there is no statutory remedy, the relief must be sought initially from an administrative agency and such remedy must be exhausted before court action can be resorted to.

2. The Court lacks jurisdiction over the subject matter since the subject matter is presently pending before this very Court on appeal from the Board of Appeals from Baltimore County and that the relief requested by the Plaintiffs can be disposed of appropriately in the processing of said appeal.

WHEREFORE, Defendant, Joseph F. Evering, Jr. and Catherine L. Evering pray that the relief requested and the Complaint for Declaratory Judgment be denied and the Complaint for Declaratory Judgment be dismissed with cost to be paid by the Plaintiffs and reasonable attorney's fees to be awarded to the Defendant.

John O. Hennegan
ROMADKA, GONTRUM, HENNEGAN & FOOS
809 Eastern Boulevard
Baltimore, Maryland 21221
686-8274

RECEIVED
COUNTY BOARD OF APPEALS
1990 FEB -6 A 10: 52

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

OBER, KALER, GRIMES & SHRIVER

ATTORNEYS AT LAW

120 EAST BALTIMORE STREET

BALTIMORE, MARYLAND 21202-1643

(410) 685-1120

FACSIMILE (410) 547-0699

CABLE "RITNEY"

TELEX 8-7774

MARC K. COHEN

DIRECT DIAL NUMBER

(410) 347-7663

OFFICES IN

WASHINGTON, D. C.

NEW YORK

NEW JERSEY

September 13, 1994

County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

Attention: Kathleen C. Weidenhammer, Administrative Assistant

RE: Case No. 94-452-XA
Baltimore Gas & Electric Co./Ivy Hill Substation

Dear Ms. Weidenhammer:

Please withdraw my appearance as counsel for Protestant R. Hanley in the above-captioned case. It is my understanding that this Protestant is now represented by Mr. J. Carroll Holzer.

Should you have any questions or require any additional information, please feel free to communicate with me at any time.

Very truly yours,

Marc K. Cohen

MKC:th

cc: Ms. Rosemary Hanley
J. Carroll Holzer, Esquire

MKC:307473.1:09/13/94

96 SEP 14 [illegible]:00

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the aforegoing Motion to Dismiss and Answer to Complaint for Declaratory Judgment was mailed this 3 day of Feb., 1986, to Malcom F. Spicer, Jr., County Attorney, 20 Dixie Drive, Towson, Maryland 21204; Phyllis Cole Friedman, People's Counsel for Baltimore County, and Peter Max Zimmerman, Deputy People's Counsel, Room 223, Court House, Towson, Maryland 21204; Thomas J. Bollinger, Assistant County Attorney, Office of Law, Mezzanine, Court House, Towson, Maryland 21204; T. Rogers Harrison and Mudd, Harrison & Burch, 306 West Joppa Road, Towson, Maryland 21204, Attorneys for Lynne Lombardi and Andrew Jones, Plaintiffs; Peter W. Taliaferro, Assistant Attorney General, P.O. Box 8766, Baltimore/Washington International Airport, Baltimore, Maryland 21240-0766; and Judith Armold, Attorney General's Office, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201-2365.

John O. Hennegan

STATEMENT OF POINTS AND AUTHORITIES

Maryland Rule 2-322 and 2-323.

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, MARYLAND	*	IN THE
and	*	CIRCUIT COURT
BALTIMORE COUNTY, MARYLAND a Body Corporate and Politic County Attorney	*	FOR
and	*	BALTIMORE COUNTY
LYNNE LOMBARDI	*	
and	*	CASE NO.: 86CG240
ANDREW JONES	*	Docket No.: 20
Plaintiffs	*	Folio No.: 10
vs.	*	
JOSEPH F. EVERING, JR. and CATHERINE L. EVERING	*	
and	*	
STATE AVIATION ADMINISTRATION	*	
Serve On: Stephen H. Sachs, Attorney General	*	
Defendants	*	

*** *** *** *** *** *** *** *** * *** *** *** *** *** *** ***

RESPONSE TO MOTION
FOR PARTIAL SUMMARY DECLARATORY JUDGMENT

Joseph F. Evering, Jr. and Catherine L. Evering pursuant to Rule 2-501 respond to the Motion for Partial Summary Judgment and states as their reasons therefor the following:

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

1. The Defendants incorporate herein by reference its statements and answers contained in their Motion to Dismiss and Answer to Complaint for Declaratory Judgment.

2. That the Defendants deny that they are subject to the state critical areas legislation since the relief requested was filed prior to March 1, 1984 before the Zoning Commissioner for Baltimore County. Further deny that the Plaintiffs are entitled to a Declaration of their rights concerning the critical areas statutes since they have failed to exhaust their administrative remedies. Further, the Defendants claim that this Court is without jurisdiction of the subject matter to make any decisions or judgments herein.

3. That Maryland Rule 2-501 (a) requires that a Motion for Summary Judgment shall be supported by an Affidavit if filed before the day on which the adverse party's initial pleading or motion is filed and therefor the Motion for Partial Summary Declaratory Judgment is not a posture in which this Court can make a decision and the Plaintiffs have failed to comply with the Maryland Rules of Procedure as a result the Motion should be dismissed.

4. Therefore, the Plaintiffs are not entitled to judgment as a matter of law.

WHEREFORE, the Defendants, Joseph F. Evering, Jr. and Catherine L. Evering pray that the Motion for Partial Declaratory Judgment be dismissed with cost and reasonable attorney's fees being awarded to said Defendants.

John O. Hennegan
ROMADKA, GONTRUM, HENNEGAN & FOOS
809 Eastern Boulevard
Baltimore, Maryland 21221
686-8274

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the aforegoing Motion to Dismiss and Answer to Complaint for Declaratory Judgment was mailed this 3 day of Feb., 1986, to Malcom F. Spicer, Jr., County Attorney, 20 Dixie Drive, Towson, Maryland 21204; Phyllis Cole Friedman, People's Counsel for Baltimore County, and Peter Max Zimmerman, Deputy People's Counsel, Room 223, Court House, Towson, Maryland 21204; Thomas J. Bollinger, Assistant County Attorney, Office of Law, Mezzanine, Court House, Towson, Maryland 21204; T. Rogers Harrison and Mudd, Harrison & Burch, 306 West Joppa Road, Towson, Maryland 21204, Attorneys for Lynne Lombardi and Andrew Jones, Plaintiffs; Peter W. Taliaferro, Assistant Attorney General, P.O. Box 8766, Baltimore/Washington International Airport, Baltimore, Maryland 21240-0766; and

RECEIVED
COUNTY BOARD OF APPE
1986 FEB -6 A 10: 5

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

Judith Armold, Attorney General's Office, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201-2365.

John O. Hennegan

MEMORANDUM OF POINTS AND AUTHORITIES

Maryland Rule 2-501.

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

JOHN C. ERICKSON
13008 HEIL MANOR DRIVE
REISTERSTOWN, MARYLAND 21136

August 22, 1994

The Board of Appeals of Baltimore County
400 Washington Avenue
The Old Courthouse
Room 49
Towson, MD 21204

RE: Case Number 94-452-XA

Dear Sirs:

I live in the area where the proposed substation improvements are being requested by Baltimore Gas & Electric. I fully support BG&E's efforts to upgrade the electric power for our region. I believe it is ludicrous that a group of "not in my backyard" protesters would attempt to block the good faith efforts of BG&E to keep our power requirements at proper levels. I am sure these protesters are the first to scream when they experience brownouts and outages on the extreme temperature days. BG&E has been a responsible provider of power for years. Let us trust their technical judgment and assist them in every possible way to get on with their work. With a few less lawsuits and protests, our electric costs might be more reasonable.

Sincerely,

John C. Erickson

cc: Carroll Holzer, Esq.
305 Washington Avenue, Suite 502
Towson, MD 21204

Baltimore Gas & Electric Company
Clare Miller, Local Affairs Director
31 West Lexington Street
Baltimore, MD 21201

Dutch Ruppersberger (Councilman)
400 Washington Avenue
Old Courthouse, 2nd Floor
Towson, MD 21204

Helen Bentley (State Congresswoman)
200 E. Joppa Road, Suite 400
Towson, MD 21286

Janice Piccinini (State Senator)
204 River Way Court, #104
Owings Mills, MD 21117

94 AUG 24 PM 12:12

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, MARYLAND, et al.,	:	IN THE CIRCUIT COURT
	:	FOR BALTIMORE COUNTY
Plaintiffs	:	No. 86CG2240
v.	:	
JOSEPH F. EVERING, JR., et al.,	:	
	:	
Defendants		

: : : : : : :

MOTION FOR PARTIAL SUMMARY DECLARATORY JUDGMENT

Plaintiffs, pursuant to Rule 2-501, move for partial summary declaratory judgment on the following grounds:

1. Plaintiffs incorporate by reference the facts alleged in the Complaint, and the attached exhibits.

2. Plaintiffs further refer to the transcript of the evidentiary hearing before the County Board of Appeals in Case No. 86CG0022, which appealed case is the subject of a Motion for Consolidation filed simultaneously herewith.

3. There is no genuine dispute as to any material fact.

4. Beyond these facts, the Plaintiffs are entitled to a Declaration or Rights that the State Critical Areas Legislation is applicable to the subject petitions.

WHEREFORE, Plaintiffs pray that the Court enter partial summary declaratory judgment declaring the said State Critical Areas Legislation to be applicable to the petitions for variance, special exception and special hearing filed by Joseph F. Evering and Catherine L. Evering in Case No. 86CG0022.

Malcolm F. Spicer, Jr.
County Attorney

Phyllis Cole Friedman
People's Counsel for Baltimore County

Thomas J. Bollinger
Assistant County Attorney
Office of Law, Mezzanine
Court House
Towson, Maryland 21204
494-4420

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

T. Rogers Harrison and
Mudd, Harrison & Burch
306 West Joppa Road
Towson, Maryalnd 21204
828-1335
Attorneys for Lynne Lombardi and
Andrew Jones, Protestants/Plaintiffs

STATEMENT OF POINTS AND AUTHORITIES

1. The declaratory judgment procedure is appropriate. Md. Ann. Code CJ Article Section 3-401, et seq.; See Lohrmann v. Arundel Corporation, 65 Md. App. 309, 500 A.2d 344 (1985).

2. The Critical Areas Legislation does apply. Md. Ann. Code NR Article Section 8-1813; Rule II of the Rules of Practice and Procedure of the Zoning Commissioner of Baltimore County.

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et al.,	:	IN THE CIRCUIT COURT
	:	FOR BALTIMORE COUNTY
Plaintiffs	:	
v.	:	~~ESP~~ No. 86CG240
JOSEPH F. EVERING, JR., et al.,	:	
Defendants	:	

: : : :

T. Rogers Harrison

T. Rogers Harrison and
Mudd, Harrison & Burch
306 West Joppa Road
Towson, Maryland 21204
828-1335
Attorneys for Lynne Lombardi and
Andrew Jones, Protestants/Plaintiffs

I HEREBY CERTIFY that on this 21st day of January, 1986, a copy of the foregoing Motion for Consolidation was mailed to John O. Hennegan, Esquire, and Robert J. Romadka, Esquire, 809 Eastern Boulevard, Essex, MD 21221; Judith A. Arnold, Esquire, Assistant Attorney General, Dept. of State Planning, 301 W. Preston Street, Baltimore, MD 21201; and a copy was delivered to the Administrative Secretary, County Board of Appeals, Room 200, Court House, Towson, MD 21204.

Peter Max Zimmerman

Peter Max Zimmerman

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et al.,	:	IN THE CIRCUIT COURT
	:	FOR BALTIMORE COUNTY
Plaintiffs	:	
v.	:	No. 86CG240
JOSEPH F. EVERING, JR., et al.,	:	
Defendants	:	

: : : : : : :

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of January, 1986, I served upon Joseph F. Evering, Jr. a copy of the Complaint for Declaratory Judgment, Motion for Partial Summary Declaratory Judgment, and Motion for Consolidation in the above-captioned matter.

Shirley M. Hess

Shirley M. Hess, Legal Assistant
People's Counsel for Baltimore County
Room 223, Court House
Towson, Maryland 21204
494-2188

VENABLE, BAETJER AND HOWARD

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

210 ALLEGHENY AVENUE

P.O. BOX 5517

TOWSON, MARYLAND 21285-5517

(410) 494-6200

FAX (410) 821-0147

BALTIMORE, MD
WASHINGTON, D.C.
MCLEAN, VA
ROCKVILLE, MD

RICHARD M. VENABLE (1839-1910)
EDWIN G. BAETJER (1868-1945)
CHARLES MCH. HOWARD (1870-1942)

ROBERT A. HOFFMAN

WRITER'S DIRECT NUMBER IS

(410) 494-6262

July 27, 1994

94 JUL 27 PM 7:06

HAND-DELIVERED

County Board of Appeals of
Baltimore County
Old Court House
400 Washington Avenue
Towson, Maryland 21204

Attn.: Ms. Kathy Weidenhammer

Re: Baltimore Gas & Electric Co. - Ivy Hill
Case No. 94-452-XA

Dear Ms. Weidenhammer:

On behalf of our client, Baltimore Gas & Electric Co., I am writing to inform the Board that the I believe that the hearing for this matter may well take more than one day. Accordingly, I would respectfully request that two or three consecutive hearing dates be scheduled.

Should you have any questions, please do not hesitate to call. I thank you for your consideration of this matter.

Sincerely,

Rob Hoffman BY: GPW

Robert A. Hoffman

RAH/dok

cc: J. Carroll Holzer, Esq.
Martha A. Delea, Esq.

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et al.,	:	IN THE CIRCUIT COURT
	:	FOR BALTIMORE COUNTY
Plaintiffs	:	
v.	:	No. 86CG240
JOSEPH F. EVERING, JR., et al.,	:	
Defendants	:	

: : : : : : :

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of January, 1986, I served upon Catherine L. Evering a copy of the Complaint for Declaratory Judgment, Motion for Partial Summary Declaratory Judgment, and Motion for Consolidation in the above-captioned matter.

Shirley M. Hess

Shirley M. Hess, Legal Assistant
People's Counsel for Baltimore County
Room 223, Court House
Towson, Maryland 21204
494-2188

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et al.,	:	IN THE CIRCUIT COURT
	:	FOR BALTIMORE COUNTY
Plaintiffs	:	
v.	:	No. 86CG240
JOSEPH F. EVERING, JR., et al.,	:	
Defendants	:	

: : : : : : :

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of January, 1986, I served upon Peter W. Taliaferro, Assistant Attorney General, Counsel to the State Aviation Administration a copy of the Complaint for Declaratory Judgment, Motion for Partial Summary Declaratory Judgment, and Motion for Consolidation in the above-captioned matter.

Shirley M. Hess

Shirley M. Hess, Legal Assistant
People's Counsel for Baltimore County
Room 223, Court House
Towson, Maryland 21204
494-2188

IN THE MATTER OF PETITIONS FOR SPECIAL EXCEPTION, SPECIAL HEARING, AND ZONING VARIANCES N/S of Chester Rd., 590' W of Severn Rd. (800 Chester Rd.), 15th Election District	:	IN THE CIRCUIT COURT
	:	FOR BALTIMORE COUNTY
	:	AT LAW
JOSEPH F. EVERING, JR., et ux, Petitioners	:	CG Docket No. 19 Folio No. 117 File No. 86-CG0022
Zoning Case No. 85-86 XSPHA	:	

. . . . . .

PETITION ON APPEAL

Baltimore County, Maryland, by Malcolm F. Spicer, Jr., County Attorney, and Thomas J. Bollinger, Assistant County Attorney, having heretofore filed in October an Appeal in the above entitled case files this Petition and states:

1. Baltimore County, Maryland hereby adopts and incorporates herein the Petition on Appeal filed on behalf of People's Counsel.

WHEREFORE, Appellant prays that the Ruling on Motion of the Board of Appeals be reversed.

/S/
MALCOLM F. SPICER, JR.
County Attorney

/S/
THOMAS J. BOLLINGER
Assistant County Attorney
Courthouse, 2M07
Towson, Maryland 21204 494-4420

RECEIVED
COUNTY BOARD OF APPEALS
1986 JAN 24 A 10: 00

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of January, 1986, a copy of the aforegoing Petition on Appeal was served on the Administrative Secretary, County Board of Appeals, Room 200, Courthouse, Towson, Maryland 21204; a copy mailed to John O. Hennegan, Esquire and Robert J. Romadka, Esquire, 809 Eastern Boulevard, Essex, Maryland 21221; Judith A. Arnold, Assistant Attorney General, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201; and Peter Max Zimmerman, Deputy People's Counsel, Room 223, Courthouse, Towson, Maryland 21204.

/S/
THOMAS J. BOLLINGER
Assistant County Attorney

IN THE MATTER OF THE APPLICATION OF JOSEPH F. EVERING, JR., ET UX FOR SPECIAL EXCEPTION FOR A BOAT YARD, SPECIAL HEARING TO AMEND SITE PLAN AND VARIANCES FROM SEC. 409.2.c(2), 409.2.b and 417.5(a) OF THE BCZR N/S CHESTER RD., 590' W. OF SEVERN RD. (800 CHESTER RD.) 15th DISTRICT	:	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW CG Doc. No. 19
PHYLLIS C. FRIEDMAN, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, PLAINTIFF	:	Folio No. 117 File No. 86-CG-0022
MALCOLM F. SPICER, JR., ESQ., AND THOMAS J. BOLLINGER, ESQ., ATTORNEYS FOR BALTIMORE COUNTY, PLAINTIFF	:	
FILE NO. 85-65-XSPHA	:	

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, Lawrence E. Schmidt, Keith S. Franz and Diana K. Vincent, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, John O. Hennegan, Esq. and Robert J. Romadka, Esq., 809 Eastern Blvd., Essex, Md. 21221, Counsel for Petitioners; T. Rogers Harrison, Esq., 306 W. Joppa Rd., Towson, Md. 21204, Counsel for Protestants; Judith A. Armold, Assistant Attorney General, Department of State Planning, 301 W. Preston St., Baltimore, Md. 21201; Phyllis C. Friedman, Court House, Towson, Md. 21204, People's Counsel for Baltimore County; and Malcolm F. Spicer, Jr., Esq. and Thomas J. Bollinger, Esq., Mezzanine, Court House, Towson, Md. 21204, County Attorneys for Baltimore County, Maryland, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

June Holmen

June Holmen
County Board of Appeals of Baltimore County
Rm. 200, Court House, Towson, Md. 21204
494-3180

I HEREBY CERTIFY that a copy of the aforegoing Certificate of Notice has been mailed to John O. Hennegan, Esq. and Robert J. Romadka, Esq., 809 Eastern Blvd., Essex, Md. 21221, Counsel for Petitioners; T. Rogers Harrison, Esq., 306 W. Joppa Rd., Towson, Md. 21204, Counsel for Protestants; Judith A. Armold, Assistant Attorney General, Department of State Planning, 301 W. Preston St., Baltimore, Md. 21201; Phyllis C. Friedman, Court House, Towson, Md. 21204, People's Counsel for Baltimore County; and Malcolm F. Spicer, Jr., Esq. and Thomas J. Bollinger, Esq., Mezzanine, Court House, Towson, Md. 21204, County Attorneys for Baltimore County, Maryland, on this 13th day of January, 1986.

June Holmen

June Holmen
County Board of Appeals of Baltimore County

Falls Road Community Association

P.O. Box 555 Brooklandvile, Maryland 21022

ESTABLISHED
1947

February 11, 1995

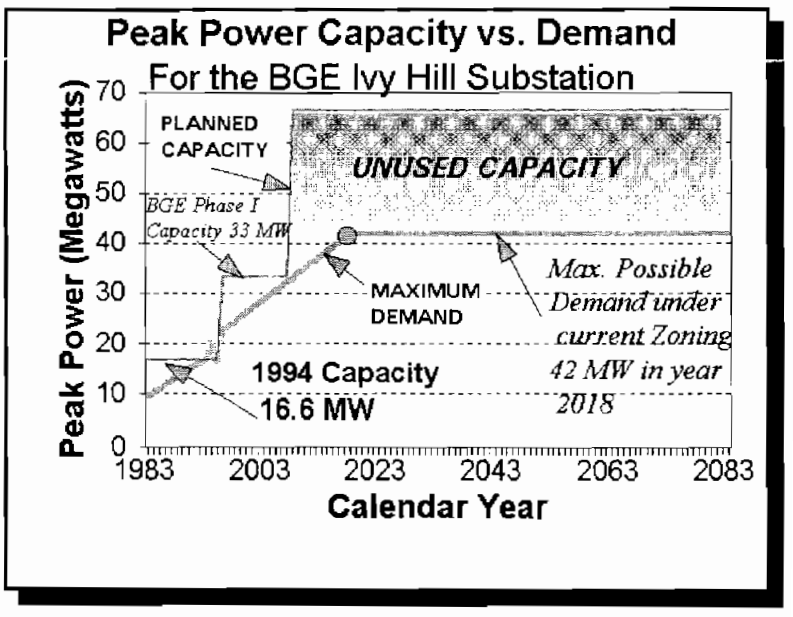
Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Ave.
Towson, MD 21204

Gentlemen,

This is in reference to case 94-452-XA regarding the request by the Baltimore Gas & Electric Co. for a special exception to upgrade their Ivy Hill power distribution substation. You may recall that the Board of Appeals called me, as the representative of the Falls Road Community Association to testify as a "friend of the Court" on the first day of the hearing, October 4, 1994. At that time I stated the position of the Falls Road Community Association, Inc. which was: "not opposed to Phase I but opposed to Phase II" of the BGE plan. That position remains the same today.

In my testimony I stated that it was the opinion of the FRCA Board of Directors that this station was over-designed. That opinion at that time was based on a general familiarity with our community and the extent that FRCA anticipated further development could occur given the limitations imposed by existing zoning. At that point in time BGE had not seen fit to provide the community with sufficient information regarding the service area, the number of customers now served, the historical growth rate (new homes being constructed), and other factors which would permit an independent evaluation of future potential growth.

On the second day of the hearing, January 10, 1995 BGE witness James Ryan provided sufficient data to permit such an assessment. The 100 year chart shown to the right summarizes the impact of the BGE plan in terms our community can relate to. It was evident from witness Ryan's testimony that *BGE did not take into account in any way the limitations that zoning imposes on the maximum number of homes.*

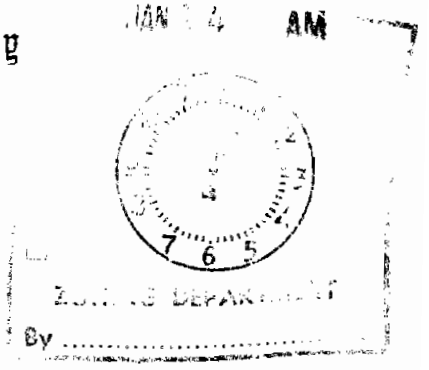


86-1444
Case file

County Board of Appeals of Baltimore County

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

January 13, 1986



Robert J. Romadka, Esq.
John O. Hennegan, Esq.
809 Eastern Blvd.
Essex, Md. 21221

Re: Case No. 85-65-XSPHA
Joseph F. Evering, Jr., etux

Gentlemen:

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

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

June Holmen, Secretary

Enclosures
cc: T. Rogers Harrison, Esq.
Joseph F. Evering, Jr., et ux
Judith A. Armold
Norman E. Gerber
James Hoswell
Arnold Jablon
Jean Jung
James E. Dyer

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

January 13, 1986

Phyllis C. Friedman
People's Counsel for Baltimore County
Court House
Towson, Md. 21204

Malcolm F. Spicer, Jr., Esq.
Thomas J. Bollinger, Esq.
County Attorneys for Baltimore County
Court House
Towson, Md. 21204

Re: Case No. 85-65-XSPHA
Joseph F. Evering, Jr., et ux

Dear Mrs. Friedman and Messrs. Spicer and Bollinger:

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

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

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

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

June Holmen

June Holmen, Secretary

Enclosures

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, MARYLAND Room 223, Court House Towson, Maryland 21204	:	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
and	:	
BALTIMORE COUNTY, MARYLAND, a Body Corporate and Politic County Attorney, Office of Law, Mezzanine, Court House, Towson, Maryland 21204	:	No. 86C6270
and	:	
LYNNE LOMBARDI 1124 Bowley's Quarters Road Baltimore, Maryland 21220	:	
and	:	
ANDREW JONES 1026 Susquehanna Avenue Baltimore, Maryland 21220	:	
Plaintiffs	:	
v.	:	
JOSEPH F. EVERING, JR. and CATHERINE L. EVERING 600 Chester Road Baltimore, Maryland 21220	:	
and	:	
STATE AVIATION ADMINISTRATION Department of Transportation P. O. Box 8766, Balto.-Wash. Intl. Airport Baltimore, Maryland 21240	:	
SERVE ON: Stephen H. Sachs, Attorney General Munsey Building 7 N. Calvert Street Baltimore, MD 21202	:	
Defendants	:	

: : : : : : :

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiffs, People's Counsel for Baltimore County, Maryland, Baltimore County, Maryland, a Body Corporate and Politic, and Lynne Lombardi and

Andrew Jones, sue the Defendants, Joseph F. Evering, Jr. and Catherine L. Evering, and State Aviation Administration, as follows:

1. The purpose of this Complaint is to obtain a Declaration of Rights on important questions of public interest.

2. People's Counsel for Baltimore County, Maryland, is authorized pursuant to Section 524.1(b) of the Baltimore County Charter to defend the Baltimore County Master Plan and Comprehensive Zoning Maps in cases involving zoning reclassifications, variances, and special exceptions and to initiate, and appear as a party in, proceedings in State Courts involving the preservation of the quality of the air, land, and water resources of Baltimore County. See Exhibit A1.

3. Baltimore County, Maryland, is a body corporate and politic interested in land use matters affecting the public safety, health, and welfare of the County.

4. Lynne Lombardi and Andrew Jones are property owners who live in the immediate neighborhood, whose property rights are affected, and who are interested parties in these proceedings.

5. Joseph F. and Catherine L. Evering are residents and property owners in Baltimore County, and have filed petitions for variances, special exception, and special hearing (hereinafter "the petitions").

6. The State Aviation Administration is the duly constituted state agency responsible for the administration of Maryland law and regulations concerning obstructions to air navigation and airport zoning.

7. In the course of review at the County Board of Appeals, there have arisen two extraordinary issues of public interest which affect and may be dispositive of the pending proceedings, and which are of public interest generally, so that a Declaration of Rights is appropriate at this time.

8. Questions have arisen concerning the application of the Maryland Chesapeake Bay Critical Areas Legislation, Md. Ann. Code Natural Resources Article Section 8-1813 and, in particular, the interpretation of its time provision.

9. A second extraordinary question has arisen in reference to the application of State Aviation Administration Regulations, COMAR Sections 11.03.05 and 11.03.06 as to whether the petitions conflict with state regulations concerning obstructions to air navigation and airport zoning.

10. On December 12, 1985, following an evidentiary hearing, the County Board of Appeals delivered a "Ruling on Motion" in reference to the applicability of the Critical Areas Legislation and an accompanying letter in reference to the State Aviation Administration Regulations. The Board ruled that the Critical Areas Legislation does not apply, and that the State Aviation Administration Regulations would not prohibit the granting of the subject petition. A copy of the Board's Ruling and accompanying letter is attached as Exhibit A_2.

11. The Ruling of the County Board of Appeals is invalid on its face, and as a matter of law, because:

(a) Pursuant to Natural Resources Article 8-1813 and Rule II of the Rules of Practice and Procedure of the Zoning Commissioner of Baltimore County, none of the petitions were "accepted for filing" until after June 1, 1984. Furthermore, while a petition for variance was submitted (but not accepted for filing) prior to June 1, 1984, it is undisputed that no petition for special exception or petition for special hearing was even submitted until after June 1, 1984. Accordingly, the subject petitions are not grandfathered or beyond the scope of the State law governing Chesapeake Bay

305 Washington Ave
Suite 502
Towson MD 21204
(410)825-6961

Type	Num	Name(Last,First,Mid,Title) / Dispo	Entered
DEF	001	Baltimore Gas & Electric Company	CT DO 12/30/96 06/16/95
		Capacity : Ivy Hill Substation	
	Attorney:	0008166 Delea, Martha	
		1700 Gas & Electric Bldg	
		P O Box 1475	
		Baltimore, MD 21203	
		(301)234-5697	
		0016339 Zink, John H	
		Venable, Baetjer & Howard, LLP	
		210 Allegheny Avenue	
		Towson, MD 21204	
		(410)494-6200	

CALENDAR EVENTS

Date	Time	Dur	Cer	Evnt	Jdg	L	Day	Of	Rslt	By	ResultDt	Jdg	T	Notice	Rec
05/01/96	09:30A	006	yes	CIVI	TBA		01	/01	CON	C	12/30/96		P		

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal RSN
TBA To Be Assigned,	J	06/16/95	

DOCUMENT TRACKING

Num/Seq	Description	Filed	Received	Tickle	For	Party	Routed	D	Closed	User ID
001000	Petition for Judicial Review	06/16/95	06/16/95		TBA	PLT000		M	12/30/96	JMG PS
	jg #1 Petition of Friends of the Ridge for Judicial Review of the Decision of the County Board of Appeals for Balto. Co in the Matter of: The Application of Balto. Gas & Elec. Co.(Ivy Hill Substation) for special exception and variance on property located on the Southwest corner of ridge road and Joel Court 8th Election District 3rd Councilmanic District Case # 94-452-XA. Copy sent to agency.									
002000	ex parte injunction to stay operation	06/23/95	06/23/95		TBA	PLT001			06/23/95	PH PH

Falls Road Community Association
P.O. Box 555 Brooklandvile, Maryland 21022

ESTABLISHED
1947

September 16, 1994

Chairman
Board of Appeals for Baltimore County
111 West Chesapeake Avenue
Towson, MD 21204

Dear Sir,

This letter is to present the position of the Officers and Directors of the Falls Road Community Association (FRCA) with regard to the request for Special Exception by the Baltimore Gas & Electric Co. for the upgrading of their Ivy Hill power substation, case number 94-452-XA scheduled to be heard by the Board on October 4 and October 6, 1994.

Attached you will find the original and a duplicate copy of the necessary papers to comply with Paragraph 2 of Rule 8 of the Board of Appeals which authorize me to testify on this matter. I am submitting these in advance due to a potential travel conflict which I have which may not allow me to testify personally. Please enter the position of our Association on this matter into the record as clearly enunciated in the attached Resolution in the event I am unable to attend.

Sincerely,

A. Douglas McComas, Executive Director

94 SEP 23 AM 11:56

Critical Areas. Copies of the pertinent State law and Zoning Commissioner Rule are attached as Exhibit B.

(b) At the hearing, a representative of the office of the Attorney General for the State of Maryland advised that there was a serious question as to whether the proposed development would be prohibited because in conflict with the State regulations prohibiting construction in the vicinity of existing airports. Following the hearing, on November 6 and again on December 17, 1985, People's Counsel requested from the State Aviation Administration its advice concerning the impact of the airport regulations on the subject petitions. However, there has been no reply. A copy of the correspondence and pertinent airport regulations are attached as Exhibit C.

12. On January 3, 1986, People's Counsel and interested property owners filed an appeal of the Board's Ruling in order to resolve, in particular, the Critical Areas question because of its major impact on the scope of the case, and in order to preserve the question for judicial decision. The appeal is pending as Case No. 86CG0022.

13. On January 9, 1986, the County Board of Appeals wrote to the parties and questioned the timeliness and appropriateness of the appeal. A copy of the Board's letter is attached as Exhibit D.

14. On January 10, 1986, Baltimore County, Maryland, filed its appeal, also docketed in Case No. 86CG0022.

15. Because of the public interest in the resolution of the questions raised in this Complaint, and further because of the apparent question concerning the timing of the appeal, the Plaintiffs find it appropriate to file separately this Complaint for Declaratory Judgment, thereby removing any procedural question.

16. The Plaintiffs believe that the prompt resolution of these issues is in the interest of all parties because it will set the parameters and applicable law for the petitions under consideration.

WHEREFORE, Plaintiffs pray:

(a) That the Court enter a Declaratory Judgment and issue a Declaration of Rights.

(b) That the Court declare the Maryland Chesapeake Bay Critical Areas Legislation and Regulations to be applicable to the petitions for variance, special exception and special hearing filed by Joseph F. Evering, Jr. and Catherine L. Evering pending before the County Board of Appeals and that the "Ruling on Motion" of the County Board of Appeals is in error and unenforceable.

(c) That the Court declare and clarify the rights of the parties in reference to the applicability of State Aviation Administration Regulations, COMAR Title 11, Subtitle 03, 11.03.05 Obstructions to Air Navigation, and 11.03.06 Airport Zoning Regulations.

(d) That the Court grant such other relief as is necessary and appropriate.

Malcolm F. Spicer, Jr.
County Attorney

Phyllis Cole Friedman
People's Counsel for Baltimore County

Thomas J. Bollinger
Assistant County Attorney
Office of Law, Mezzanine
Court House
Towson, Maryland 21204
494-4420

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

T. Rogers Harrison

T. Rogers Harrison and
Mudd, Harrison & Burch
306 West Joppa Road
Towson, Maryland 21204
828-1335
Attorneys for Lynne Lombardi and
Andrew Jones, Protestants/Plaintiffs

IN THE MATTER OF PETITIONS FOR SPECIAL EXCEPTION, SPECIAL HEARING, AND ZONING VARIANCES N/S of Chester Rd., 590' W of Severn Rd. (800 Chester Rd.), 15th Election District	"	IN THE CIRCUIT COURT
	"	FOR BALTIMORE COUNTY
	"	AT LAW
	"	CG Docket No. 19
JOSEPH F. EVERING, JR., et ux, Petitioners	"	Folio No. 117
Zoning Case No. 85-65 XSPHA	"	File No. 86-CG0022

" " " " " "

NOTICE OF APPEAL

Please note an appeal on behalf of Baltimore County, Maryland to the Circuit Court for Baltimore County from the Ruling on Motion under date of December 12, 1985, in the above entitled matter.

RECEIVED
COUNTY BOARD OF APPEALS
1986 JAN 10 P 3:39

Malcolm F. Spicer, Jr.
County Attorney

Thomas J. Bollinger
Assistant County Attorney
Courthouse-Mezzanine
Towson, Maryland 21204
494-4420

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 10th day of January, 1986, a copy of the foregoing Notice of Appeal was served on the Administrative Secretary, County Board of Appeals, Room 200, Court House, Towson, Maryland 21204; a copy mailed to John O. Hennegan, Esquire and Robert J. Romadka, Esquire, 809 Eastern Boulevard, Essex, Maryland 21221; Judith A. Arnold, Assistant Attorney General, Department of State Planning, 301 W. Preston Street, Baltimore, Maryland 21201; and Peter Max Zimmerman, Deputy People's Counsel, Room 223 Courthouse, Towson, Maryland 21204.

Thomas J. Bollinger

IN THE MATTER OF PETITIONS FOR SPECIAL EXCEPTION, SPECIAL HEARING, AND ZONING VARIANCES N/S of Chester Rd., 590' W of Severn Rd. (800 Chester Rd.), 15th Election District

JOSEPH F. EVERING, JR., et ux, Petitioners

Zoning Case No. 85-65-XSPHA

: IN THE CIRCUIT COURT

: FOR BALTIMORE COUNTY

: AT LAW

: CG Docket No. 19

: Folio No. 111

: File No. 85-65-XSPHA

: : : : : : :

COUNTY BOARD OF APPEALS RECEIVED
1986 JAN -3 P 2:00

NOTICE OF APPEAL

Please note an appeal to the Circuit Court for Baltimore County from the Ruling on Motion under date of December 12, 1985, in the above-entitled matter.

T. Rogers Harrison and
Mudd, Harrison & Burch
306 West Joppa Road
Towson, Maryland 21204
828-1335
Attorneys for Ken Engelke, et al., Protestants/Appellants

Phyllis Cole Friedman
People's Counsel for Baltimore County

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

I HEREBY CERTIFY that on this 3rd day of January, 1986, a copy of the foregoing Notice of Appeal was served on the Administrative Secretary, County Board of Appeals, Room 200, Court House, Towson, MD 21204; and a copy mailed to John O. Hennegan, Esquire, and Robert J. Romadka, Esquire, 809 Eastern Blvd., Essex, MD 21221; Judith A. Arnold, Esquire, Assistant Attorney General, Dept. of State Planning, 301 W. Preston St., Baltimore, MD 21201; and Malcolm F. Spicer, Jr., County Attorney, Office of Law, Mezzanine, Court House, Towson, MD 21204.

Peter Max Zimmerman

AFFIDAVIT

STATE OF MARYLAND
BALTIMORE COUNTY, SS
September 15, 1994

TO WIT:

I hereby swear upon penalty of perjury that I am currently a duly elected member of the Board of Directors of the Falls Road Community Association, Inc.

A. Douglas McComas, Executive Director

ATTEST: **The Falls Road Community Association, Inc.**

Dasha Bindler, Secretary

H. George Meredith, Acting President

IN THE MATTER OF PETITIONS FOR SPECIAL EXCEPTION, SPECIAL HEARING, AND ZONING VARIANCES N/S of Chester Rd., 590' W of Severn Rd. (800 Chester Rd.), 15th Election District	:	IN THE CIRCUIT COURT
	:	FOR BALTIMORE COUNTY
	:	AT LAW
	:	CG Docket No. _____
JOSEPH F. EVERING, JR., et ux, Petitioners	:	Folio No. _____
Zoning Case No. 85-65-XSPHA	:	File No. _____

: : : : : : :

PETITION ON APPEAL

RECEIVED
COUNTY BOARD OF APPEALS
1985 JAN -3 P 2:01

People's Counsel for Baltimore County and T. Rogers Harrison and Mudd, Harrison & Burch, Attorneys for Ken Engelke, et al., Protestants below and Appellants herein, having heretofore filed an Order for Appeal from the Ruling on Motion of the County Board of Appeals, under date of December 12, 1985, in compliance with Maryland Rule B-2(e), file this Petition on Appeal setting forth the grounds upon which this Appeal is taken, viz:

1. That the decision of the County Board of Appeals exempting the subject petition from the requirements of Maryland State Law pertaining to Chesapeake Bay Critical Areas, Natural Resources Article Section 8-1801, et seq., was arbitrary, capricious, and erroneous as a matter of law.

2. That the Board of Appeals' decision, furthermore, is crucial to the framing of issues in the case and the course of subsequent proceedings. Therefore, it is in the interest of justice to have a judicial determination of this question at this time.

3. That the question of the application, timing, and implementation of the Maryland Critical Areas Legislation is a subject of State-wide importance which should be resolved at the earliest possible opportunity.

WHEREFORE, Appellants pray that the Ruling on Motion of the Board of Appeals of Baltimore County under date of December 12, 1985 be reversed.

T. Rogers Harrison/sh

T. Rogers Harrison and
Mudd, Harrison & Burch
306 West Joppa Road
Towson, Maryland 21204
828-1335
Attorneys for Ken Engelke,
et al., Protestants/Appellants

Phyllis Cole Friedman/sh

Phyllis Cole Friedman
People's Counsel for Baltimore County

Peter M. Zimmerman

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

I HEREBY CERTIFY that on this 3rd day of January, 1986, a copy of the foregoing Notice of Appeal was served on the Administrative Secretary, County Board of Appeals, Room 200, Court House, Towson, MD 21204; and a copy mailed to John O. Hennegan, Esquire, and Robert J. Romadka, Esquire, 809 Eastern Blvd., Essex, MD 21221; Judith A. Arnold, Esquire, Assistant Attorney General, Dept. of State Planning, 301 W. Preston St., Baltimore, MD 21201; and Malcolm F. Spicer, Jr., County Attorney, Office of Law, Mezzanine, Court House, Towson, MD 21204.

Peter M. Zimmerman

Peter Max Zimmerman

IN THE MATTER OF THE APPLICATION OF JOSEPH F. EVERING, JR., ET UX FOR SPECIAL EXCEPTION FOR A BOAT YARD, SPECIAL HEARING TO AMEND SITE PLAN AND VARIANCES FROM §409.2.c(2), 409.2.b and 417.5(a) OF THE BCZR N/S OF CHESTER ROAD, 590' W. OF SEVERN ROAD (800 CHESTER ROAD) 15th DISTRICT	:	BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY NO. 85-65-XSPHA

: :

DISSENT ON RULING ON MOTION

I dissent. Section 500.8 of the Baltimore County Zoning Regulations (BCZR) provides that the Zoning Commissioner shall have the authority to prescribe rules for the conduct of proceedings before him. Such rules have been promulgated, including Rule 2(a), which I believe properly and reasonably governs the filing of petitions for those types of relief requested in this matter. Clearly, under this rule, the petitions were not filed, as that term is defined by the Rule, until August 6, 1984. All submissions prior to that date constituted only preliminary application, and the actions by the Zoning Commissioner thereafter were in accordance with the checklist for compliance mandated by Rule 2(a). The Zoning Commissioner did not "accept for filing" the petition until after the exception date.

I also note that Section 8-1818(a) of the Natural Resources Article provides that findings must be made for each variance, special exception, etc. Although a petition for variance was submitted prior to March 1, 1984, the petitions for special hearing and special exception were first filed in August, 1984. As this was the first time this relief was requested, I believe that

IN THE MATTER OF THE APPLICATION OF JOSEPH F. EVERING, JR., ET UX FOR SPECIAL EXCEPTION FOR A BOAT YARD, SPECIAL HEARING TO AMEND SITE PLAN AND VARIANCES FROM §409.2.c(2), 409.2.b and 417.5(a) OF THE BCZR N/S OF CHESTER ROAD, 590' W. OF SEVERN ROAD (800 CHESTER ROAD) 15th DISTRICT	:	BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY NO. 85-65-XSPHA

: :

RULING ON MOTION

This case comes before the Board on appeal from the Order of the Zoning Commissioner of Baltimore County, dated April 25, 1985, granting the petitions of Joseph F. Evering, Jr., et ux, for a special exception, special hearing and variances, with restrictions.

Prior to testimony on the merits of the requested relief, a Preliminary Motion was raised by the Petitioner relative to Sub-title 18 of the Natural Resources Article of the Annotated Code of Maryland. This Sub-title, enacted in 1984 and known as the Chesapeake Bay Critical Area Protection Program (the "Act"), was enacted by the Maryland Legislature for the purpose of protecting the Chesapeake Bay and its tributaries from the ravages of development. The Petitioner's Motion challenged the applicability of the Act to the development sought in the petitions

Section 8-1813 of the Act, Sub-section (a) thereof, entitled "Specific Findings Required" provides:

> "From June 1, 1984 with regard to any subdivision plat approval or approval of a zoning amendment, variance, special exception, conditional use permit or use of a floating zone, affecting any land or water area located within the initial planning area identified in § 8-1807 (a) of this subtitle, for which application is completed after that date, the approving authority of the local jurisdiction in rendering its decision to approve an application shall make specific findings. . . "

The section then goes on to delineate the specific findings required. Later, in Section 8-1813 (d), it is provided, "This section does not apply to any

These communications included comments from the Zoning Advisory Committee meeting of January 3, 1984, and numerous letters and memoranda from the County. After months of this give and take, Mr. Hennegan, pursuant to the County's request, supplemented his request by resubmitting another petition for variance and, for the first time, requesting a special hearing and special exception on August 6, 1984. At this time, an additional $150.00 fee was paid, this amount representing the costs for submitting the petitions for special hearing and special exception. Finally, Mr. Hennegan testified that at no time did he withdraw his petition submitted in December, 1983.

Despite this testimony, the Protestants and People's Counsel argue that the exception does not insulate the petition. In support of their proposition, they offer a two pronged argument. First, that Rule 2(a) of the Rules of Practice of the Zoning Commissioner of Baltimore County specifically sets forth when a petition is considered to be filed. This rule provides that the Zoning Commissioner will refer a received petition to the Zoning Plans Advisory Committee, and he will further review the petition to ensure its compliance with the Zoning Commissioner's Rules, the County Code, the Baltimore County Zoning Regulations (BCZR) and all reasonable requests of the Zoning Advisory Committee. Upon compliance with all these standards, the Zoning Commissioner will then accept the petitions for filing. Therefore, the Protestants argue, because the Zoning Commissioner did not accept the petition for filing until August 6, 1984, the exception set forth in Sec. 1813 (d) does not apply. Secondly, the Protestants argue that the petitions submitted in August 1984 should be considered as new filings, as they were not labeled as amendments, and it was at that time that the petitions for special exception and special hearing were first submitted.

AFFIDAVIT

STATE OF MARYLAND
BALTIMORE COUNTY, SS
September 15, 1994

TO WIT:

I hereby swear upon penalty of perjury that I am currently a duly elected member of the Board of Directors of the Falls Road Community Association, Inc.

A. Douglas McComas, Executive Director

ATTEST: **The Falls Road Community Association, Inc.**

Dasha Bindler, Secretary

H. George Meredith, Acting President

After due consideration of the evidence before us, applicable law and argument, we are not persuaded by the Protestants and People's Counsel and, therefore, hold that Section 8-1813 of the Natural Resources Article of the Annotated Code of Maryland is not applicable to the petitions before us.

In interpreting any statute the clear meaning of the words used therein must be considered. The wording in Section 8-1813 of the Chesapeake Bay Critical Area Protection Program is clear and cannot be disregarded. The exception set forth in that section provides: "This section does not apply to any application initially filed. . ." (Emphasis added). Clearly, by the use of the word "initially," the Legislature intended for the Act to be applicable only to that proposed development for which approval had not be requested, in any manner, until after March 1, 1984. We might agree with the Protestants' and People's Counsel's reasoning if the exception had not included the word "initially". However, as it was included we must conclude that the Legislature so intended the clear meaning of that language to be applied.

Insofar as the impact of Rule 2 (a), we do not question its validity or the Zoning Commissioner's authority to adopt reasonable rules of procedure. However, that rule cannot be interpreted so literally as to allow the Zoning Commissioner the authority to determine when petitions are filed in the context of the Natural Resources legislation. To abide by such a literal interpretation could conceivably allow the Zoning Commissioner carte blanche authority to prevent petitions from being filed and ever considered on their merits. Certainly, the intention of Rule 2 (a) is not to regulate the filing of petitions insofar as limitations issues and the nature of the matter before us; rather, the rule was enacted to provide a mechanism for the orderly filing

and consideration of petitions.

We also note the testimony of Mr. Hennegan in regard to the payment of filing fees to Baltimore County. He testified that the County charges $100.00 per petition, or a maximum of $250.00. When the initial request for variance was submitted in December, 1983, a receipt for $100.00 was provided. Later, when the subsequent petitions were submitted, the County charged the Petitioner $150.00 more, indicating that they accepted these petitions as a continued and amended filing. As Baltimore County considered this subsequent submission as a continuation of the earlier filing, we must likewise believe that the initial application for the relief sought in this case was filed prior to March 1, 1984.

Therefore, for the aforegoing reasons, we will hold that the Chesapeake Bay Critical Area Protection Program is not applicable to the proposed petition.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence E. Schmidt, Acting Chairman

Keith S. Franz

Date: December 12, 1985

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

December 12, 1985

John O. Hennegan, Esquire
Robert J. Romadka, Esquire
809 Eastern Boulevard
Essex, MD 21221

T. Rogers Harrison, Esquire
306 W. Joppa Road
Towson, MD 21204

Judith A. Armold
Assistant Attorney General
Department of State Planning
301 W. Preston Street
Baltimore, MD 21201

Re: Case No. 85-65-XSPHA
Joseph F. Evering, Jr., et ux

Dear Counsel:

Enclosed please find the Board of Appeals' Ruling on the Petitioner's Preliminary Motion to determine the applicability of Subtitle 18 of the Natural Resources Article of the Annotated Code of Maryland. This ruling is self-explanatory.

Additionally, at the conclusion of the hearing, counsel requested the Board's advice as to the COMAR regulations promulgated by the State Aviation Administration. Although we will reserve all parties' rights to be heard on this matter, the Board has reviewed the regulations. We note that Subtitle 03, Section 11.03.05 prohibits actual construction, and does not prohibit the filing and granting of the petitions before us. Also, Section 11.03.06 provides for relief through the Board of Airport Zoning Appeals, outside of the jurisdiction of this Board.

Finally, please note the next hearing date for this matter is Tuesday, January 21, 1986 at 10 a.m. We must deny the Protestants' request for a continuance from that date. The Board clearly remembers all parties' agreement to the January 21st date at the conclusion of the initial day's hearing. Also, although this Board has granted postponements for conflicting trial dates, we cannot grant a postponement

for a conflict with the preparation for another trial. With the numerous parties involved in this matter, the Board has already found it impossible to schedule additional hearing days on an agreed date.

Very truly yours,

Lawrence E. Schmidt
Acting Chairman

LES:e

cc: People's Counsel
Norman E. Gerber
Joseph Evering Jr., et ux
James Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer

IN THE MATTER OF	*	BEFORE THE
JOSEPH F. EVERING, JR., et ux.,	*	BOARD OF APPEALS
Petitioners	*	FOR
(Appeal from the Decision of the Zoning Commissioner of Baltimore County)	*	BALTIMORE COUNTY
	*	Case No. 85-65-XSPHA

* * * * * * * * * * * * * * * *

NOTICE OF INTENTION TO OBJECT TO ADMISSION OF EVIDENCE WITHOUT TESTIMONY

The Maryland Department of State Planning filed a Motion to Intervene in this appeal late in May, 1985, and no party has opposed that motion. However, the Department has not been advised of any formal action on that motion as of the date of this notice. Nevertheless, Counsel to the Department has been receiving notices and copies of pleadings in the case and assumes that the Board of Appeals will rule formally on the Department's motion at the beginning of the hearing scheduled for October 29, 1985.

On the assumption that the Department will be made a party Appellant and will be permitted to participate in the October 29 hearing, the Department wishes to advise the Board that it will object to the admission of certain evidence without testimony.

Under §22-28 of the Baltimore County Code, all exhibits introduced in evidence at the hearing before the Zoning Commissioner, as well as certain other items, "shall be considered in evidence by the Board without testimony thereto, absent objection by any party". While the Department of State Planning does not object to the admission of the petitions or to the admission of any report or comments of a county agency, it does

RECEIVED
COUNTY BOARD OF APPEALS
1985 OCT 21 A 9:45

THE FALLS ROAD COMMUNITY ASSOCIATION, Inc.

P.O. Box 555, Brooklandville, Maryland 21022

RESOLVED: That the position of the Falls Road Community Association, Inc. as adopted by the Board of Directors on the zoning matter related to the proposed upgrade of the IVY HILL SUBSTATION by the Baltimore Gas and Electric Co., Inc.

The Board of Directors supports the PHASE I upgrade which would approximately double the capacity of the existing facility as being necessary and desirable to the ability of BG&E to provide adequate power to the community served. However it is opposed to the inclusion of the PHASE II upgrade in this Special Exception (which would quadruple the present capacity of this facility.) Specifically the Board of Directors at its monthly meeting on September 15, 1994 moved as follows:

> "As an organization we will not oppose the proposed Phase I but ask the Board of Appeals to eliminate the request for any construction beyond that required by Phase I, and that the perimeter and supporting infrastructure be reduced approximately 50% in order that the existing woodland be preserved to the greatest extent possible."

AS WITNESS OUR HANDS AND SEAL THIS 15th day of September 1994.

ATTEST: **The Falls Road Community Association, Inc.**

Dasha Bindler, Secretary

H. George Meredith, President

IN THE MATTER OF	*	BEFORE THE
JOSEPH F. EVERING, JR., et ux	*	BOARD OF APPEALS
Petitioners	*	FOR
(Appeal from the Decision of the Zoning Commissioner of Baltimore County)	*	BALTIMORE COUNTY
	*	Case No. 85-65-XSPHA

* * * * * * * * * * *

SUBPOENA DUCES TECUM

Please issue a subpoena duces tecum for the following-named individual to appear and testify at the hearing of the above matter before the County Board of Appeals and make the writ returnable to the Baltimore County Board of Appeals, County Office Building, Towson, Maryland 21204, at 10:00 a.m. on October 29, 1985.

Mr. Joseph F. Evering, Jr.
800 Chester Road
Baltimore, Maryland 21220

and he is to bring with him the following:

1. All contracts or agreements of sale, or any options, option agreements, rights-of-first refusal, or any correspondence depicting or reflecting a sale or proposed sale of the land (i.e., the Long Beach Marina) which is the subject of this case.

RECEIVED
1985 OCT 10 PM 2:23
SHERIFF'S OFFICE
BALTO. CO.

COST $ 15.00
SUMMONED 10/20/85 19
NOT SERVED _____ 19
REASON NOT SERVED _____

SHERIFF
OF BALTIMORE COUNTY
J. EDWARD MALONE

T. Rogers Harrison
Mudd, Harrison & Burch
306 West Joppa Road
Towson, Maryland 21204
828-1335
Attorneys for Protestants

Mr. Sheriff:

Please issue the above summons.

June Holmen, Bd. of Appeals

RECEIVED
1985 OCT 10 A 8:56
COUNTY BOARD OF APPEALS

413

IN THE MATTER OF	*	BEFORE THE
JOSEPH F. EVERING, JR., et ux	*	BOARD OF APPEALS
Petitioners	*	FOR
(Appeal from the Decision of the Zoning Commissioner of Baltimore County)	*	BALTIMORE COUNTY
	*	Case No. 85-65-XSPHA

* * * * * * * * *

SUBPOENA DUCES TECUM

Please issue a subpoena duces tecum for the following-named individual to appear and testify at the hearing of the above matter before the County Board of Appeals and make the writ returnable to the Baltimore County Board of Appeals, County Office Building, Towson, Maryland 21204, at 10:00 a.m. on October 29, 1985.

Mrs. Catherine L. Evering
800 Chester Road
Baltimore, Maryland 21220

and she is to bring with her the following:

1. All contracts or agreements of sale, or any options, option agreements, rights-of-first refusal, or any correspondence depicting or reflecting a sale or proposed sale of the land (i.e., the Long Beach Marina) which is the subject of this case.

COST $ .00
SUMMONED _____ 19
NOT SERVED C/L w HAND 10/8/85 19
REASON NOT SERVED _____

SHERIFF
OF BALTIMORE COUNTY
J. EDWARD MALONE

RECEIVED
COUNTY BOARD OF APPEALS
1985 OCT 10 A 8:56

T. Rogers Harrison
Mudd, Harrison & Burch
306 West Joppa Road
Towson, Maryland 21204
828-1335
Attorney for Protestants

Mr. Sheriff:

Please issue the above summons.

June Holmen, Board of Appeals

IN THE MATTER OF	*	BEFORE THE
JOSEPH F. EVERING, JR., et ux	*	BOARD OF APPEALS
Petitioners	*	FOR
(Appeal from the Decision of the Zoning Commissioner of Baltimore County)	*	BALTIMORE COUNTY
	*	Case No. 85-65-XSPHA

* * * * * * * * * * *

APPLICATION FOR ISSUANCE OF SUBPOENA

TO THE BOARD OF APPEALS:

The Protestants, Ken Engelke, et al, by their attorney, request pursuant to Rule 5 of the Rules of Practice and Procedure of the County Board of Appeals that the Board issue subpoenas compelling Joseph F. Evering, Jr. and Catherine L. Evering, husband and wife, to attend the October 29, 1985, hearing and to produce at the hearing the documents listed in the attached Subpoena, which is incorporated herein.

The purpose of this Subpoena is to ascertain evidence showing that the Everings have plans to sell the land which is the subject of this case and that the contract purchaser has plans to develop it in a manner different than what is presented in the Everings' petitions. This evidence and material is relevant and material.

WHEREFORE, the Protestants ask that the subpoenas be issued and served by Sheriff on Joseph F. Evering, Jr. and Catherine L. Evering.

T. Rogers Harrison
Mudd, Harrison & Burch
306 West Joppa Road
Towson, Maryland 21204
828-1335
Attorney for Protestants

In the Matter of JOSEPH F. EVERING, JR., et ux., Petitioners	*	BEFORE THE
	*	BOARD OF APPEALS
(Appeal from decision of the Zoning Commissioner of Baltimore County)	*	FOR
	*	BALTIMORE COUNTY
	*	Case No. 85-65-XSPHA

* *

Motion to Intervene

The Maryland Department of State Planning, by its Counsel, Judith A. Armold, Assistant Attorney General, hereby requests that it be made a party Appellant to the captioned appeal. As authority in support of its motion, the Department cites Article 88C, §2(r), Annotated Code of Maryland. That section provides that the Department shall "[h]ave the right and authority to intervene in and become a party to any administrative, judicial, or other proceeding in this State concerning land use, development or construction." See also Department of State Planning v. Mayor and Council of Hagerstown, 288 Md. 9 (1980).

The Department believes that the Zoning Commissioner failed to respond properly to the requirements of §8-1813 of the Natural Resources Article of the Annotated Code of Maryland. In particular, the Department asserts:

1. That the Zoning Commissioner acted improperly when he made initial determinations to grant the Petitioners a special exception and certain variances, without considering the requirements of §8-1813. The Department contends that, as a matter of law, an approving authority must consider §8-1813 requirements as an integral part of any decision to grant a special exception or variance.

2. That the Zoning Commissioner erred when he concluded that the Petitioners' requests did not involve "development", as that term is

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

ARNOLD JABLON
ZONING COMMISSIONER

JEAN M. H. JUNG
DEPUTY ZONING COMMISSIONER

May 21, 1985

John O. Hennegan, Esquire
Germania Federal Building
809 Eastern Boulevard
Essex, Maryland 21221

RE: PETITIONS FOR SPECIAL EXCEPTION, SPECIAL HEARING, AND ZONING VARIANCES
N/S of Chester Road, 590' W of Severn Road (800 Chester Road) - 15th Election District
Case No. 85-65-XSPHA (Item 166)

Joseph F. Evering, Jr., et ux, Petitioners

Dear Mr. Hennegan:

The following appeals have been filed, in addition to the appeal filed by the People's Counsel for Baltimore County, from the decision rendered by the Zoning Commissioner of Baltimore County in the above referenced matter.

1. Appeal from Norman E. Gerber, Director
   Office of Planning and Zoning, Baltimore County

2. Appeal from T. Rogers Harrison, Esquire
   Attorney for Protestants

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

Sincerely,

Arnold Jablon
Zoning Commissioner

RECEIVED
COUNTY BOARD OF APPEALS
1985 MAY 22 P 1:00

AJ:bg

cc: Robert J. Romadka, Esquire
T. Rogers Harrison, Esquire
Board of Appeals
People's Counsel

June 28, 1995

County Executive C.A. "Dutch" Ruppersberger
400 Washington Avenue
Old Court House
Towson, MD

Dear Mr. Ruppersberger;

Why are you and Mr. Jablon so anxious to proceed with the construction of the Ivy Hill Substation? Mr. Ruppersberger, what role do you play in bringing this nightmare to our community? Many of us are becoming extremely disheartened, disillusioned and frustrated with our judicial system as well as our elected representatives.

We hang onto the slim hope that one of our elected officials will be able to stop this until we are able to exercise our rights in the judicial process. You should know **the following new information has come to light.**

1. **The site plan that was approved by the Baltimore County Board of Appeals shows no structure higher than 14ft. 6in., with most structure being 13ft. 6 in. or less.** These specs were also verified by Ms. Monica McGrady, BGE Project Manager. in testimony before the Baltimore County Board of Appeals on October 4, 1994. (Exhibit II) **The actual construction plans filed by BGE, with permits issued by Mr. Arnold Jablon, Director - Department of Permits and Development Administration in Baltimore County, show that these structures are now 15ft 9in.** (See comparison - Exhibit III) The Board ruled that the initial landscaping plan was inadequate to screen structures which are 14 1/2 feet high. Clearly, structures which are 23% taller will be even more difficult to hide. So much for that...BGE decided to basically say "in your face".

2. **The site plan that was approved by the Baltimore County Board of Appeals shows a large vacant area at the center section of the subject site.** We asked several times; why does this facility have to be so big...BGE always evaded the question...now we know ***some*** of the reasons why. **It is very clear on the construction plans that were approved by ZADM that this area is in reality to be converted into a permanent garage/storage area for BGE mobile transformers.** The mobile equipment will be 45ft. X 10ft. It is obvious that this was BGE's intent from the very beginning. This is **INCREDULOUS.** One of our main concerns throughout this entire process has been that once BGE received the approval BGE could do anything they wanted. From the beginning we believed that the actual intended use of the expanded substation was not to supply electricity to the existing service area. County figures show that the unit growth will grow by only 4% to the year 2010. BGE plans to expand capacity to 400%. (See Chart, Exhibit IV attached) BGE does not need to expand the capacity of this substation to meet demand caused by the 4% growth, a conclusion drawn from their own testimony. Once again BGE said "in your face". What next? A nuclear power plant.

BGE does not have to proceed with construction plans. BGE Engineer Lawrence Taylor testified on October 4, 1994 before the Baltimore County Board of Appeals that a mobile

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO BOARD OF APPEALS Date May 21, 1985

FROM ARNOLD JABLON
Zoning Commissioner

SUBJECT Case No. 85-65-XSPHA (Item No. 166)
Petitions for Special Exception,
Special Hearing, and Zoning Variances
Joseph F. Evering, Jr., et ux - Petitioners

Please find attached an additional appeal filed this date from the decision rendered by the Zoning Commissioner of Baltimore County.

ARNOLD JABLON
Zoning Commissioner

AJ:bg

cc: Norman E. Gerber, Director
Office of Planning and Zoning

RECEIVED
COUNTY BOARD OF APPEALS
1985 MAY 22 P 1:00

5-31-85

RE:	PETITION FOR SPECIAL EXCEPTION PETITION FOR SPECIAL HEARING PETITION FOR VARIANCES N/S of Chester Road, 590' West of Severn Road (800 Chester Rd) 15th District JOSEPH F. EVERING, JR., et ux, Petitioners	*	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY CASE NO: 85-65-XSPHA

*** *** *** *** *** *** *** *** *** *** ***

NOTICE OF APPEAL

Please note an appeal from your decision in the above captioned matter, under date of April 25, 1985, to the County Board of Appeals and forward all papers in connection therewith to the Board for hearing.

Robert J. Romadka

John O. Hennegan

ROMADKA, GONTRUM, HENNEGAN & FOOS
809 Eastern Boulevard
Baltimore, Maryland 21221
PHONE: 686-8274
Attorneys for the Petitioners

I HEREBY CERTIFY that on this 20th day of May, 1985, a copy of the foregoing Notice of Appeal was mailed to Phyllis Cole Friedman, People's Counsel for Baltimore County, and Peter Max Zimmerman, People's Counsel for Baltimore County, Room 223, Court House, Towson, Maryland, 21204; and T. Rogers Harrison, Esquire, 306 West Joppa Road, Towson, Maryland, 21204.

John O. Hennegan

MAY 21 AM

ZONING DEPARTMENT

By .....

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

RE: PETITIONS SPECIAL EXCEPTION, SPECIAL HEARING, AND ZONING VARIANCES
N/S of Chester Road, 590' W. of Severn Road (800 Chester Road - 15th Election District

JOSEPH F. EVERING, JR., et ux

: BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY

: Case No. 85-65-XSPHA

: : : : : : :

NOTICE OF APPEAL

Please note an appeal from your decision in the above-captioned matter, under date of April 25, 1985, to the County Board of Appeals and forward all papers in connection therewith to the Board for hearing.

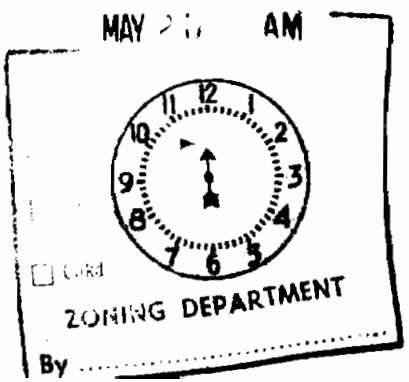
Norman E. Gerber

Norman E. Gerber, Director
Office of Planning and Zoning
Room 406, County Courts Building
Towson, Maryland 21204
494-3211

I HEREBY CERTIFY that on this 20th day of May, 1985, a copy of the foregoing Notice of Appeal was mailed to John O. Hennegan, Esquire, 809 Eastern Boulevard, Baltimore, Maryland 21221, Attorney for Petitioners.

Norman E. Gerber

Norman E. Gerber



RE: PETITION FOR SPECIAL EXCEPTION : BEFORE THE ZONING COMMISSIONER
PETITION FOR SPECIAL HEARING
PETITION FOR VARIANCES : OF BALTIMORE COUNTY
N/S of Chester Rd., 590' W of
Severn Rd. (800 Chester Rd.) :
15th District
:
JOSEPH F. EVERING, JR., et ux, Case No. 85-65-XSPHA
Petitioners :

: : : : : : :

NOTICE OF APPEAL

Please note an appeal from your decision in the above-captioned matter, under date of April 25, 1985, to the County Board of Appeals and forward all papers in connection therewith to the Board for hearing.

Phyllis Cole Friedman
People's Counsel for Baltimore County

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

I HEREBY CERTIFY that on this 10th day of May, 1985, a copy of the foregoing Notice of Appeal was mailed to John O. Hennegan, Esquire, and Robert J. Romadka, Esquire, 809 Eastern Blvd., Baltimore, MD 21221; and T. Rogers Harrison, Esquire, 306 W. Joppa Rd., Towson, MD 21204.

Peter Max Zimmerman

MAY 10 19[illegible]
☐ Appd
☐ Rec
☐ Post
☐ Entd
☐ Chkd
ZONING DEPARTMENT
By .....

IN RE: PETITIONS SPECIAL EXCEPTION, SPECIAL HEARING, AND ZONING VARIANCES N/S of Chester Road, 590' W of Severn Road (800 Chester Road) - 15th Election District

Joseph F. Evering, Jr., et ux,

Petitioners

* BEFORE THE

* ZONING COMMISSIONER

* OF BALTIMORE COUNTY

* Case No. 85-65-XSPHA

* * * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a special exception for a boat yard, variances to permit the existing compacted-stone parking surface instead of the required durable and dustless surface, 318 parking spaces instead of the required 384 spaces if the special exception is denied or 363 parking spaces instead of the required 384 spaces if it is granted, and structures (piers) to extend 419 feet beyond the mean-low tide instead of the allowed 300 feet; and to amend the site plans filed in Case No. 3535-X in order to construct an addition to their existing piers, in Case No. 64-57-SPH to remove Restrictions 1 and 3 in order to permit marine craft to be stored within 20 feet of the easternmost property line and the variance for the parking surface requested herein, and in Case No. 64-160-X to remove Restrictions 1 and 6 in order to allow major repair of boats on the premises and in the water and to change the times and days of the weeks and year that repairs will be permitted and, additionally, to determine that the boat yard, piers, and related parking areas are other "structures" devoted to civic, commercial, and recreational activities and, therefore, exempt from the Residential Transition Area (RTA) requirements set forth in Section 1B01.1.B.1.c.9 and 10, Baltimore County Zoning Regulations (BCZR).

The Petitioner, Joseph F. Evering, Jr., appeared and testified and was represented by Counsel. Testifying on behalf of the Petitioners were Paul

EXHIBIT I

IN THE CIRCUIT COURT	*	
FOR	*	
BALTIMORE COUNTY	*	
	*	
PETITION OF: Friends of the Ridge, individuals Mr. & Mrs. Nigel Howse, Mr. & Mrs. Robert O'Hara, Mr. & Mrs. Ron Hanley, Mr. & Mrs. Carl Follo, Mr. & Mrs. Robert Rytter, Mr. & Mrs. Ira Brown, Mr. & Mrs. Dieter Langendorf, Mr. & Mrs. Andrew Lansman, Mr. & Mrs. Jeffrey Bozel, Mr. & Mrs. Bruce Pitcher, and Mr. & Mrs. Joe Czajkowski at 305 Washington Avenue, Suite 502, Towson, Maryland 21204	*	
	*	
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY 400 Washington Avenue, Room 49 Old Courthouse Towson, Maryland 21204	*	Civil Action Case No.: 03-C-95-5315
	*	
IN THE MATTER OF: THE APPLICATION OF BALTIMORE GAS & ELECTRIC CO. (IVY HILL SUBSTATION) FOR SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE SOUTHWEST CORNER OF RIDGE ROAD AND JOEL COURT 8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT Case No.: 94-452-XA	*	

* * * * * * * * * * * * * * *

EX-PARTE INJUNCTION TO STAY OPERATION OF PERMITS

Petitioners Friends of the Ridge and individuals Mr. and Mrs. Nigel Howse, Mr. and Mrs. Robert O'Hara, Mr. and Mrs. Ron Hanley, Mr. and Mrs. Carl Follo, Mr. and Mrs. Robert Rytter, Mr. and Mrs. Ira Brown, Mr. and Mrs. Dieter Langendorf, Mr. and Mrs. Andrew Lansman, Mr. and Mrs. Jeffrey Bozel, Mr. and Mrs. Bruce Pitch r, and Mr. and Mrs. Joe Czajkowski, by and through their attorney, J. Carroll Holzer and Holzer and Lee, pursuant to Rules 7-205 and BB

LAW OFFICE
HOLZER AND LEE
305 WASHINGTON AVENUE
SUITE 502
TOWSON, MARYLAND
21204
(410) 825-6961
FAX: (410) 825-4923

Canatella, a neighbor; Vincent Elliott and Leonard Gardiner, individuals who maintain their boats at the Long Beach Marina; John Schneider, a registered landscape architect and environmental consultant and Chief of the Environmental Design Section, Bureau of Landscape Architecture, State Highway Administration, Maryland Department of Transportation; and William Bafitis, a registered engineer.

Ken Engelke and Richard Stumpf appeared and testified as Protestants as did many others (see Protestants' Exhibit 2). The Protestants later retained counsel who, after entering his appearance, submitted a memorandum and appeared at the continued hearing.

In addition to the relief prayed for, two other issues are an integral part of this proceeding, i.e., the impact of the proposed project on the Chesapeake Bay and the requirement by the Office of Planning that the proposed project be submitted to the County Review Group (CRG). The continued hearing involved only these two issues.

Testimony indicated that the Petitioners originally purchased the major portion of the subject property in 1954 and were granted a special exception to operate a marina in 1955, Case No. 3535-X. In 1960, they purchased an adjoining 35' x 245' lot on the north side of Chester Road and were granted a special exception to extend their boat yard to include that property in 1964, Case No. 64-160-X. Prior to that case, the Petitioners were granted permission to store marine craft on their property, but were restricted to not storing boats within 20 feet of their easternmost property line, Case No. 64-57-SPH. In 1969, the Petitioners purchased an adjoining 50' x 252' lot on the south side of Chester Road. In 1974, they bought the lot adjacent to the one purchased in 1960 and have utilized that lot for parking. There are 24 parking spaces on the north lot and 23 spaces on the south lot.

When the Petitioners were granted the special exception in 1964, they had four piers and were entitled to construct four more, of which only one was built because it was not financially feasible to build all four. They now wish to amend their site plans to construct two new piers at different locations. The feasibility of constructing the piers granted in 1964 was negated due to the depth of the water at the locations cited because boats could not be tied up at those piers without dredging at a prohibitive cost. At the new locations, they could be. The Petitioners will need to extend two of the existing piers so that they will meet at right angles with the new piers in what is described as a "T" formation. Presently, the Petitioners have 201 slips and want another 178 slips, which would be about 40 more than originally approved. In addition, they want to do major repair of boats on the property and in the water, to change when repairs are permitted, to store marine craft within 20 feet of the easternmost property line, and to be permitted the existing compacted-stone parking surface.

Mr. Evering testified that they have 318 parking spaces, 363 spaces with the two lots included, and yet, this past Fourth of July and Labor Day, the busiest days of the year, there were only approximately 55 vehicles parked on the site. Further, they believe that the existing parking surface is better than an impermeable surface because it allows a more efficient run-off since the property is on the water. Mr. Evering's testimony regarding the proposed piers extending 419 feet rather than the 300 feet allowed was that they would not impede the free flow of navigation on the channel or the use of the channel by their neighbors.

The Protestants oppose the expansion and maintain that more slips are not needed. The traffic generated by the increased number of boats utilizing the new slips would adversely impact the already congested waterways in the area.

They maintain that the new slips would cause a hazardous condition by creating "blind spots" around which boat traffic could not see. The Protestants also stated that the additional slips would hinder their view and adversely affect the value of their properties which have already been devalued by the air traffic generated by Martin Marietta directly across from the marina and the existing heavy boat traffic. There is only one access road to the marina, Chester Road, and traffic is already heavy during the boating season. If the expansion is permitted, the traffic would be unbearable.

Mr. Evering contested these suppositions and presented testimony to the contrary. At the request of both sides, the Zoning Commissioner personally visited the site on two separate occasions and went out into the water with each of them.

I

The first issue to be determined is whether the special exception granted in Case No. 64-160-X has been utilized. Both the Petitioners and the Protestants have submitted memoranda on this issue, and upon consideration of both, it is determined that the requirements of Section 502.3, BCZR, have been satisfied, although not for the reasons argued by the Petitioners and contrary to the conclusion recommended by the Protestants. The issue is more than just "vested rights" and certainly more than what the Board of Appeals for Baltimore County held in Case No. 84-89-SPH, In Re: Joseph L. Soley. In that decision, which addressed this very issue, the Board reversed the Zoning Commissioner and found that to satisfy Section 502.3 one must merely initiate construction. "Mere commencement of work appears to be the test", stated the Board. However, the Zoning Commissioner believes that the Board wrongly merged the doctrine of "vested rights", as it operates to protect property fr[illegible] rezoning, with the doctrine of "utilization", which specifically and legislatively makes a special exception

conditioned on the commencement of construction that is pursued to completion with "reasonable diligence".

There is no need to expound on the doctrine of "vested rights". Certainly, both parties clearly set out the law in their memoranda dated October 3, 1984, October 31, 1984, and November 13, 1984. The principles set forth therein, however, are not entirely applicable to Section 502.3. As pointed out by the Protestants, there must be more than just a building permit issued or work or labor readily seen and recognized by the public.

Nowhere in the BCZR is "reasonable diligence" defined. Therefore, as the Court of Appeals suggested in Kastendike v. Balto. Assoc. for Retarded Children, 267 Md. 389 (1972), where no definition is found, the phrase must be given its ordinary meaning in the context in which it appears. The term is defined in Black's Law Dictionary as "[a] fair, proper and due degree of care and activity, measured with reference to the particular circumstances; such diligence, care, or attention as might be expected from a man of ordinary prudence and activity."

Was it enough, therefore, that the Petitioners completed one pier, which provided an additional 36 rental slips, instead of the four shown on the site plan approved in Case No. 64-160-X or that the pool, bath house, and showers were provided? Was it enough that the lot was graded and surfaced and that marine craft were stored or that they "began" construction of the bulkhead and the repair shop barge? The Protestants contest whether some of the work claimed was actually performed; however, they do not contest that a boat yard exists.

The Petitioners did not complete construction of the piers because of the expense involved in dredging the bottom of the waters around the projected location of the piers to permit sail boats to utilize them. Another reason given was the trend away from power boats and toward sail boats (which would require a deeper channel) as a result of rising gasoline prices which had not been

foreseen by the Petitioners when they submitted their request for the special exception in 1964. Failure to construct the three piers does not deflect the use granted. There has certainly been "reasonable diligence"—a fair, proper, and due degree of care and activity, measured with reference to the particular circumstances. The strictures of Section 502.3 have been satisfied. A boat yard existed after 1955, and an expanded boat yard has existed continuously since 1964.

II

The Petitioners now request that they be granted a special exception for a boat yard for the two lots, zoned D.R.5.5, located on the north and south sides of Chester Road, including the roadbed of Chester Road. The lots adjoin the property presently operating as a boat yard pursuant to the special exceptions previously granted.

It is clear that the BCZR permits the use requested by the Petitioners in a D.R.5.5 Zone by special exception. It is equally clear that the proposed use would not be detrimental to the primary uses in the vicinity. Therefore, it must be determined whether the conditions as delineated by Section 502.1, BCZR, are satisifed by the Petitioners.

After reviewing all of the testimony and evidence presented, it appears that the special exception should be granted with certain restrictions, as more fully described below.

The Petitioners had the burden of adducing testimony and evidence which would show that the proposed use met the prescribed standards and requirements set forth in Section 502.1. In fact, the Petitioners have shown that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest. The facts and circumstances do not show that the proposed use at the particular location described

72, fil this Motion to Stay the Operation f Permits from the Baltimore County Department of Licensing and Permits in c nnection with expansion of the BGE substation at 1821 Ridge Road, Ivy Hill. The application of Baltimore Gas and Electric Company, case Number 94-452-XA was tried and heard in five (5) days of testimony bef re the County Board of Appeals which rendered its decision on May 31, 1995 Ordering that BGE's Petition for Special Exception for an electrical substation in an R.C. 5 zone, and their Petition for Variance be granted.

On or about June 14, 1995, Baltimore County Department of Licenses and Permits issued a grading permit for subject BGE site at 1821 Ridge Road, permit number B237378. On June 21, 1995, th County Department of Licenses and Permits issued permit number B237372 to construct 11 foundations for the substation addition.

On June 16, 1995, Petitioners filed a Petition for Judicial Review, case number 03-C-95-5315, from the decision of the County Board of Appeals (CBA). Petitioners will raise valid issues before the Circuit Court, including the need to amend the final development plan for the substation that would be required to g to the County Planning Board. The CBA erred as a matter of law in granting BGE's Petition for Variance because the utility failed t establish the "uniqueness" of this site which would permit th application of the practical difficulty, or unreasonable hardship standard as described in Cromwell v. Ward, 102 Md. App. 691 (1995). Additionally, the CBA erred in granting the Special Exception when

by Petitioners' Exhibit 1 would have any adverse impact above and beyond that inherently associated with such a special exception use irrespective of its location within the zone. Schultz v. Pritts, 432 A.2d 1319 (1981).

The proposed use will not be detrimental to the health, safety, or general welfare of the locality, nor tend to create congestion in roads, streets, or alleys therein, nor be inconsistent with the purposes of the property's zoning classification, nor in any other way inconsistent with the spirit and intent of the BCZR.

Therefore, without consideration as to the potential impact on the critical area of the Chesapeake Bay, the special exception will be granted.

III

The Petitioners request that they be permitted the existing compacted-stone parking surface rather than an impermeable surface for their parking areas, 363 parking spaces instead of the required 384 spaces, and to extend two of the piers 419 feet beyond the mean-low tide instead of the allowed 300 feet.

A

The parking surfaces may remain compacted stone, provided the Petitioners comply with Section 10.18.06.03D., COMAR, State Health Department, which will insure limitation of particulate into the air and water (see attached, which is herein made a part of this Order). The reasons described in their petition and further described in their testimony for this particular request are sufficient bases to satisfy the burden of proof required by Section 307, BCZR, in that a practical difficulty would exist if it were denied, the variance will satisfy the spirit and intent of the BCZR, and there would be no adverse impact on the public health, safety, and general welfare.

B

The variance to permit 363 parking spaces instead of the required 384 spaces will be moot. It is clear that 384 spaces are not necessary if the

parking area is never full. Indeed, even with the storage of boats during the winter, the "down-period" for a boat yard, there will never be a need for 384 spaces. However, inasmuch as the number of slips requested will be reduced, as indicated below, the Petitioners will be able to provide the requisite parking spaces, i.e., a total of 324, and a variance would not be necessary.

C

The variance to extend the piers is more difficult to decide. The Petitioners maintain that the piers cannot be located anywhere within the 300-foot limitation due to the lack of depth needed for sail boats and argued that by extending the piers, in order to provide an additional 178 slips, there would be no obstruction or hindrance to the use of the water or to the public safety. The Protestants strenuously object, with validity, to these contentions.

It would definitely appear that an additional 178 slips, and the resultant increase in boats, would have to obstruct or, at the very least, hinder existing boat traffic and usage of the surrounding waters by adjoining property owners. Of the 201 slips, 75% to 80% are rented. Although Mr. Evering's testimony was that there would be no such obstruction or hindrance, this Commissioner is not convinced. On the other hand, the Protestants must recognize that the waters are free and available to anyone with a boat and the Petitioners' right to attract these people, i.e., the right of free enterprise, must be accepted within the confines of the State's responsibility to protect this valuable resource, even from the very persons to whom the State is guaranteeing its usage. The right of the Petitioners must be weighed against the responsibility of the State to insure the waters continued existence as a natural resource.

After visiting the site and experiencing the lure of a calm Autumn afternoon on the water, the Zoning Commissioner is convinced that the extension of the piers to permit an additional 178 slips would create a danger to the public

health, safety, and welfare. It is just too many. Therefore, it is recommended that the Petitioners limit the expansion to 118 slips. If this is acceptable, they shall provide the Zoning Commissioner with a revised site plan showing the distance the projected piers will extend beyond the mean-low tide line. At that time, a decision on this issue will be rendered based on the testimony and evidence already provided.

IV

A

The requested relief to amend the site plans filed in Case Nos. 3535-X, 64-57-SPH, and 64-160-X in order to construct additional piers and to extend existing ones must be stayed pending resolution of the number of slips permitted as explained above.

B

The request to remove Restriction 1 in Case No. 64-57-SPH to permit marine craft to be stored within 20 feet of the easternmost property line will be granted. However, removal of Restriction 3 is a moot issue since the existing parking surface is to be granted, although it shall be subject to the conditions precedent in Section III, A above. The conditions are the means to justify the end, i.e., the variance to permit the compacted-stone surface.

C

The request to remove Restrictions 1 and 6 in Case No. 64-160-X to permit major repair of boats on the premises and in the waters and to change the hours, days, and months that repairs can be made will be denied in part. With the proliferation of boat traffic since 1964 and the public's increased concern with its natural resources, there is an even greater need to prevent the defilement and deterioration of our rivers, bay, and tributaries. Therefore, no major repairs of any kind will be permitted on the premises or in the waters. Restriction 1 will not be removed and shall remain in full force and effect.

However, it is equally clear that the Petitioners should have expanded time frames within which they can perform minor repair and maintenance of boats. The hours of operation for such minor repairs and maintenance shall be from 8:00 a.m. to 7:00 p.m., seven days per week, year-round.

D

The last request is to exempt the projected piers and parking areas from the application of the RTA. Section 1B01.1.B.1.c.9 excepts an addition to an existing community building, or other structures devoted to civic, social, recreational, fraternal, or educational activity, including parking areas and driveways. A pier at a marina would classify as a structure devoted to recreational activity and, therefore, be exempt from the RTA.

V

The Petitioners have been informed that this project must be submitted to the County Review Group (CRG) for approval. The Petitioners argued that the CRG does not have this authority and the Zoning Commissioner agrees.

It is clear that the CRG was created by the Baltimore County Council, at the suggestion and advice of the Baltimore County Planning Board (Planning Board), to relieve the Planning Board of the responsibility of approving development plans, a time consuming and detailed job. Its purpose is clearly development oriented, not use oriented. Development is defined in Section 22-39 of the Development Regulations, BCC, as meaning (1) the improvement of property for any purpose involving building; (2) subdivision; (3) combination of any two or more lots, tracts, or parcels of property for any purpose; (4) subjecting property to the provisions of the Maryland Condominium Act; and (5) preparation of land for any of the purposes listed in 1 through 4. The legislative history strongly indicates that the purpose of the CRG is to oversee development in the County, and there seems to be no suggestion that jurisdiction over actual use would be conferred.

None of the constrictions to the CRG's authority, as delineated by Section 22-39, would impart the power to require the construction of piers to be the subject of its review. Indeed, the development regulations define "building" as a structure enclosed within exterior walls or firewalls for the shelter, support, or enclosure of persons, animals, or property of any kind. A pier or boat slip is not a building. The statute is unambiguous. If the proposed project does not come within specific statutory authority, then the CRG on its own cannot expand its power to be all inclusive.

VI

The final issue to be resolved is whether the Petitioners have satisified the burden imposed by the Chesapeake Bay Critical Area Protection Program, Section 8-1813, Nat. Res. Art., Md. Code. This section requires, from June 1, 1984 (until such time as the local jurisdiction's program is approved by the Commission created by this legislation), with regard to approval of any subdivision plat, special exception, or variance, affecting any land or water area located within the area identified as being within the critical area of the Bay, that the "approving authority of the local jurisdiction in rendering its decision to approve an application shall make specific findings that: (1) [t]he proposed development [which is defined as any activity that materially affects the condition or use of dry land, land under water, or any structure (Section 8-1801(a)(3)] will minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands; and (2) [t]he applicant has identified fish, wildlife, and plant habitat which may be adversely affected by the proposed development and has designed the development so as to protect those identified habitats." The approving authority has the power to require such additional information from an applicant as is necessary in order to make the findings required.

it failed to consider all the tests set forth in Sec. 502.1 and Sec. 411 of the Baltimore County Zoning Regulations.

Petitioners will be irreparably harmed by the operation of said grading and foundation permits because the buffers and screening provided by the mature stand of 80-year old hardwood trees between the BGE substation and Petitioners' residences are being cut down in large numbers reducing the value of Petitioners' real property, significantly diminishing the peaceful enjoyment of their residential neighborhood. The large number of tall hardwood trees on the .7 acre site between the BGE substation and residential homes that have already been cleared, with many stumps sticking out of the ground is an obvious blight and major hardship to the adjoining property owners. With the grading, cutting and removal of trees comes a constant flow of trucks, heavy equipment, parked vehicles owned by BGE and their subcontractors along Ridge Road, impeding neighbors' vehicle access to Joel Court, along with loud construction noises emanating from the substation commencing at 7 a.m. are a nuisance and dramatically reduces adjoining property owners from fully utilizing their homes. See Affidavit of Carol Rytter, Exhibit A, attached hereto and incorporated herein.

Affidavit of Rosemary Hanley, attached hereto and incorporated herein as Exhibit B, says that she is being permanently injured by construction of the substation pending its appeal because of the diminution of the value of her home having a 22,100 square feet electrical facility operating within ten feet of her property line. She believes that construction of the substation with electrical

It is clear that the approving authority for any special exception or variance is the Zoning Commissioner, unless the proposed project meets the definition of "development" found in Section 22-39, hereinbefore mentioned, which is substantially different than the definition found in Section 8-1802(a)(3), Nat. Res. Art., Md. Code. If the CRG does not have the approving authority, then the Zoning Commissioner is solely responsible as to whether or not a special exception or variance is required. If the CRG does have the responsibility, and if a special exception and/or variance is required, co-approving authorities would exist, i.e., the CRG and the Zoning Commissioner. Since the proposed expansion of an already existing marina by adding only piers is not "development", as defined by Section 22-39, then the sole responsibility is that of the Zoning Commissioner.

In the instant case, the Petitioners filed a Motion with the Zoning Commissioner to schedule a second hearing for the sole purpose of presenting evidence aimed at satisfying the precepts delineated in Section 8-1813. The hearing before the Zoning Commissioner was, and is, an adversary proceeding with both the Petitioners and the Protestants being given the opportunity to present evidence and testimony and to cross-examine and refute any given. Indeed, the Petitioners' Counsel, Protestants' Counsel, and Office of Planning and Zoning were notified of the hearing date and purpose of that hearing by letter dated January 3, 1985. The Protestants appeared and presented rebuttal evidence and cross-examined Mr. Schneider, the Petitioners' expert witness. The Office of Planning and Zoning elected not to appear. Inasmuch as Mr. Evering requested the opportunity to present his evidence, and by law it is the responsibility of the Zoning Commissioner to determine whether the Petitioners have satisifed the burden required by Section 8-1813(a)(1) and (2), the Zoning Commissioner must make his decision based on the facts and evidence presented. Although the Zoning

Commissioner may expressly require additional information, it has been determined that no such additional information is needed.

Mr. Schneider's testimony was convincing that the proposed expansion would not "materially affect" the condition or use of dry land, land under water, or any structure. The evidence submitted by the Petitioners, specifically the Hydrogeological Study and Environmental Effects Report for Long Beach Marina, prepared by Bafitis & Associates, Petitioners' Exhibit 1A, contradicted any potential adverse impact that might result. The report found that the proposed expansion would not increase the amount of biochemical oxygen demand, total phosphorus, total nitrogen, lead, zinc, or sediment in any measurable amount.

For example, the potentiality for overboard discharge of wastes from the additional boats would be minimized by the provision of "pump-out" facilities. The Department of Health, in its comments dated February 8, 1984, found that the on-site disposal facilities were functioning adequately. Additionally, the capacity of the facilities would be enlarged to minimize any future adverse impact. Cross-examination of Mr. Schneider pointed out the importance of cooperation by boaters inthis regard. It seems that many do not. Obviously, there would be an impact created by an aditional 118 boats moored at the Petitioners' marina, but Mr. Schneider testified that these additional boats would not increase the adverse impact already caused by the existing recreational boating. In fact, testimony indicated that the additional boats using the marina were not additional boats to the area; that is, the expansion of the marina would not attract additional boats but would induce present boaters to utilize the new services proposed.

Further, the Petitioners pointed out that the location of the new piers would minimize any adverse environmental process which would result if dredging were required. Since the water's depth where the piers are proposed is

approximately 12 feet, no dredging will occur. In fact, the requested variances to allow extension of the piers more than 300 feet beyond the mean-low tide line and the compacted-stone parking surface would minimize any adverse impact. It is important to note that there is no proposed change on or alteration of land, and therefore, any change to water quality, wildlife, and land habitat would be for the better. Mr. Schneider testified that, in his expert opinion, there was no submerged vegetation in the off-shore area; therefore, there would be no adverse impact.

Although the Protestants disagreed point by point, they presented no expert testimony or study to specifically contradict those presented by the Petitioners. It is left to the trier of the facts to weigh the evidence and evaluate the testimony, and after long and thoughtful consideration of the memoranda submitted on this issue by both the Petitioners and the Protestants and the evidence and testimony presented, it is found that there would be no material effect. Therefore, the proposed project does not fall within the purview of Section 8-1801, et. seq. However, even assuming that the project would satisfy the definition of "development", Section 8-1802, it is determined that the Petitioners have met the burden of Section 8-1813(a). The proposed project will minimize adverse impact on the water quality, as further defined by Section 8-1813(a)(1), and the Petitioners have identified those fish, wildlife, and plant habitat and designed the project so as to protect those identified habitats, as further defined by Section 8-1813(a)(2).

The contradictions presented by the Protestants need careful consideration; however, this is an administrative proceeding, i.e., quasi-judicial in nature, and the burden of proof is not "beyond a reasonable doubt". There was no expert testimony presented and no specific findings as to this site in contradiction of the Petitioners, and the Zoning Commissioner has no choice but to accept the

testimony and evidence of Mr. Schneider and Mr. Bafitis, as experts in the field. The Petitioners have satisfied their burden of proof.

SUMMARY

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 25th day of April, 1985, that the Petition for Special Exception for a boat yard for two lots, one located on the north side and the other on the south side of Chester Road, including the roadbed of Chester Road, be and the same is hereby GRANTED; the Petition for Zoning Variances to permit the existing compacted-stone parking surface instead of the required durable and dustless surface be and the same is hereby GRANTED; and the amendments to the site plans filed in Case No. 3535-X to permit an additional 118 slips, in Case No. 64-57-SPH to remove Restrictions 1 and 3 in order to permit marine craft to be stored within 20 feet of the easternmost property line and the variance for the parking surface requested herein, subject to Section 10.18.06.03D. CCMAR, and in Case No. 64-160-X to amend Restriction 6 in order to allow the hours of operation for minor repair and maintenance of boats to be 8:00 a.m. to 7:00 p.m., seven days per week, year-round are approved and that the criteria of Section 8-1801, et. seq., has been satisfied and, as such, the Petition for Special Hearing is hereby GRANTED, from and after the date of this Order, subject, however, to the following restrictions which are conditions precedent to the relief herein granted:

1. A revised site plan, showing the placement of the 118 slips and the distance of their extension beyond the mean-low tide, shall be submitted to the Zoning Commissioner for approval.

2. The requested variance to permit the piers to extend 419 feet beyond the mean-low tide instead of the allowed 300 feet shall be stayed pending submission of the revised site plan, at which time a decision shall be rendered without further hearing necessary.

It is FURTHER ORDERED that in Case No. 64-160-X, Restriction 1 shall not be removed and shall remain in full force and effect.

Zoning Commissioner of
~~Baltimore~~ County

AJ/srl

Attachment

cc: John O. Hennegan, Esquire

Robert J. Romadka, Esquire

T. Rogers Harrison, Esquire

People's Counsel

equipment, cables, and support structures will likely be a permanent feature in her neighborhood even if the Courts r vers the CBA.

Excavation, stripping of mature hardwood trees, and construction of the expanded substation in a R.C. 5 zone pri r t review by the Circuit Court will create a use incompatible with the adjoining property, irreparably harming Petitioners. Petitioner Pamela Follo through her Affidavit attached hereto as Exhibit C, testifies that on June 19, 1995, she listed her house at 1 Joel Court for sale. Her house was appraised at a value of $425,000 prior to the issuance of the permits and construction and she has been advised by several real estate agents that she and her husband could expect to get only 75% of the appraised value, a reduction of $106,250, because of the construction and substantial increase in size of the BGE substation. This is both immediate and substantial harm. Carl Follo, through his affidavit attached hereto as Exhibit D, says that he and his wife, Pamela, are suffering immediate harm by the expansion of the substation because he will be unable to attract interest from prospective buyers to his house with the cutting down of so many mature hardwood trees, operation of trucks, heavy equipment, grading, and erection of the planned electric substation this summer. Issuance of the permit to construct 11 concrete foundations and work to perform same will cause immediate and irreparable harm to petitioners because it sets in m tion placing upon the substation site electrical equipment, lines and superstructures necessary to generate the requested electricity

(a) A person may not cause or permit to be discharged into the outdoor atmosphere from any other installation, particulate matter in excess of 0.03 gr/SCFD (68.7 mg/dscm).

(b) Exceptions. Section B(2)(a) does not apply to the following:

(i) Iron and steel production installations;

(ii) Soda-lime recipe and opal recipe glass melting furnaces in compliance with COMAR 10.18.15.04.

C. Particulate Matter from Unconfined Sources in Areas III and IV.

(1) In Areas III and IV, a person may not cause or permit emissions from an unconfined source without taking reasonable precautions to prevent particulate matter from becoming airborne. These reasonable precautions shall include, when appropriate as determined by the Department, the installation and use of hoods, fans, and dust collectors to enclose, capture, and vent emissions. In making this determination, the Department shall consider technological feasibility, practicality, economic impact, and the environmental consequences of the decision.

(2) Exceptions. The following are exempt from the provisions of §C(1):

(a) Iron and steel production installations which are subject to COMAR 10.18.10.04B and C;

(b) Grain drying and grain handling installations;

(c) Batch-type hot-dip galvanizing installations which are subject to COMAR 10.18.12.

D. Particulate Matter from Materials Handling and Construction.

(1) A person may not cause or permit any material to be handled, transported, or stored, or a building, its appurtenances, or a road to be used, constructed, altered, repaired, or demolished without taking reasonable precautions to prevent particulate matter from becoming airborne. These reasonable precautions shall include, but not be limited to, the following when appropriate as determined by the control officer:

(a) Use of water or chemicals for control of dust in the demolition of existing buildings or structures, construction operations, the grading of roads, or the clearing of land.

(b) Application of asphalt, oil, water, or suitable chemicals on dirt roads, materials stockpiles, and other surfaces which can create airborne dusts.

(c) Installation and use of hoods, fans, and dust collectors to enclose and vent the handling of dusty materials. Adequate containment methods shall be employed during sandblasting of buildings or other similar operations.

(d) Covering, at all times when in motion, open-bodied vehicles transporting materials likely to create air pollution. Alternate means may be employed to achieve the same results as would covering the vehicles.

(e) The paving of roadways and their maintenance in clean condition.

(See page 1142)

ORDER RECEIVED FOR FILING
DATE April 25, 1985
BY [illegible]
ADMINISTRATIVE ASSISTANT

IN RE:	*	BEFORE THE
Petition for Special Exception Petition for Special Hearing Petition for Variances N/S Chester Road, 590' W. of Severn Road (800 Chester Road)	*	ZONING COMMISSIONER OF BALTIMORE COUNTY
JOSEPH F. EVERING, JR., et ux	*	Case No. 85-65-XSPHA
Petitioners	*	

* * * * * * * * * * *

MEMORANDUM OF LAW

The Protestants, Ken Engelke, et al, by their attorneys, T. Rogers Harrison and Mudd, Harrison & Burch, submit this Memorandum in support of their position that the Everings have not met the requirements of Md. Nat. Res. Code Ann., Section 8-1813 (1974 & 1984 Cum. Supp.).

Description of the Land

The Protestants adopt the description of the land set forth in their original Memorandum.

MAR 5 ZONING DEPARTMENT By

On December 18, 1984, the Everings, by their attorney, filed with the Zoning Commissioner of Baltimore County a Motion for [a] Hearing, requesting:

"1. That a hearing be set at the earliest possible date for the Petitioner to present expert testimony.

2. That the Hearing be limited to determine whether or not the proposed development will (a) minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have runoff from surrounding lands; (b) the applicant has identified fish, wildlife and plant habitat which may be adversely affected by the proposed development and has designed the development so as to protect those identified habitat whose loss would substantially diminish the continued ability of populations of affected species to sustain themselves.

3. That the Hearing also be set to determine whether or not this proposed development is subject to Section 8-1801 through 8-816 [sic] entitled Chesapeake Bay Critical Area Protection Program of the Natural Resources Article of the Annotated Code of Maryland."

On January 3, 1985, the Zoning Commissioners scheduled a hearing for February 1, 1985 on the two issues raised in the Everings' Motion.

At the hearing, the Zoning Commissioner decided that the Everings' land was subject to the Chesapeake Bay Critical Area Protection Program, Md. Nat. Res. Code Ann., Sections 8-1801 to 8-1816 (1974 & 1984 Cum. Supp.). He also heard and considered evidence on the other issue, including testimony from Mr. Schneider, a landscape architect, who was called by the Petitioners. In addition, the Petitioners introduced a "Hydrogeological Study and Environmental Effects Report," prepared by Mr. Schneider and William Bafitis (both of Bafitis & Associates) (hereinafter called the "Bafitis Report").

The Protestants introduced into evidence a Memorandum of Law and several supporting pamphlets, brochures and documents.

At the close of the evidence, the Zoning Commissioner reserved decision on the issue of whether the Everings had satisfied the requirements of Section 8-1813 of the Chesapeake Bay Critical Area Protection Program and gave the Petitioners and the Protestants thirty days in which to file a Memorandum on whether the Everings, as Petitioners, had met their burden of proof under Section 8-1813

Statement of the Law

Section 8-1813 of the Chesapeake Bay Critical Area Protection Program provides:

"(a) Specific findings required - From June 1, 1984 with regard to any subdivision plat approval or approval of a zoning amendment, variance, special exception, conditional use permit or use of a floating zone, affecting any land or water area located within the initial planning area identified in Sec. 8-1807(a) of this subtitle, for which application is completed after that date, the approving authority of the local jurisdiction in rendering its decision to approve an application shall make specific findings that:

(1) The proposed development will minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands; and

(2) The applicant has identified fish, wildlife and plant habitat which may be adversely affected by the proposed development and has designed the development so as to protect those identified habitats whose loss would substantially diminish the continued ability of populations of affected species to sustain themselves.

(b) Information required from applicant - With regard to any application for project approval described in subsection (a) of this section, a local approving authority shall require such additional information from an applicant as is necessary in order to make the findings required by subsection (a).

(c) Section in effect until program effective - This section shall remain in effect in a local jurisdiction until such time as an approved program becomes effective.

(d) Exception - This section does not apply to any application initially filed prior to March 1, 1984."(1984 Ch. 794).

A close reading of Section 8-1813 itself, as well a consideration of other interrelated sections and the general purpose behind the program, reveals that the Everings have not met the requirements of Section 8-1813. Therefore, their Petitions should be denied.

Under Section 8-1813, the Everings' primary responsibility is informational. They have the burden of producing certain specified information, which can be divided into two types: statutorily mandated information and additional County information. The contours of the mandated information are

despite the fact your Petitioners hav filed an appeal to this Court challenging the CBA's approval of the variances and special exception.

Petitioner Ira Brown of 5 Joel Court through his affidavit attached hereto as Exhibit E, testifies that BEG's proceeding with plans to dramatically expand the substation has caused him severe anxiety and frequent panic attacks. The demolition of mature trees, exposing the substation, and the realization that the greatly enlarged facility will encroach upon residential property, permanently reducing the value of his home, making it impossible to get full value for his home.

The Petition for Judicial Review before the Circuit Court has a likelihood of success based on the legitimate legal issues raised and the facts preserved in the record.

Petitioners respectfully request that any requirement for posting bond be waived.

J. Carroll Holzer
Holzer and Lee
305 Washington Avenue
Suite 502
Towson, Maryland 21204
(410) 825-6961
Attorney for Petitioners

1, 1985 hearing to meet the statutorily mandated requirements of Section 8-1813.

In addition to failing to meet the statutorily mandated informational requirements of Section 8-1813, the Everings failed to meet the additional informational requirements established and promulgated by Baltimore County. See the Bober Memo and the Protestants' February 1, 1985 Memorandum. Requiring the additional information is not unique or burdensome, given the purpose behind Section 8-1813 specifically and the Chesapeake Bay Program in general.

The Chesapeake Bay Program is an attempt to coordinate the efforts of the State and affected local governments in restoring and preserving the Bay. See Section 8-1801(b). It is the intent of the Program "that each local jurisdiction have primary responsibility for developing and implementing a program ...to:

> (1) Minimize adverse impacts on water quality that result from pollutants that are discharged from structure or conveyances or that have run off from surrounding lands;
>
> (2) Conserve fish, wildlife and plant habitat; and
>
> (3) Establish land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement and activities of persons in that area can create adverse environmental impacts."

Section 8-1808(a)(1), 8-1808(b)(1)(2)& (B). It is while these local programs are being developed that Section 8-1813 comes into play as an interim protection devise. See Sections 8-1808(d), 8-1809, 8-1810, 8-1811 and 8-1813. And as the purpose of the

"(a) Specific findings required - From June 1, 1984 with regard to any subdivision plat approval or approval of a zoning amendment, variance, special exception, conditional use permit or use of a floating zone, affecting any land or water area located within the initial planning area identified in Sec. 8-1807(a) of this subtitle, for which application is completed after that date, the approving authority of the local jurisdiction in rendering its decision to approve an application shall make specific findings that:

(1) The proposed development will minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands; and

(2) The applicant has identified fish, wildlife and plant habitat which may be adversely affected by the proposed development and has designed the development so as to protect those identified habitats whose loss would substantially diminish the continued ability of populations of affected species to sustain themselves.

(b) Information required from applicant - With regard to any application for project approval described in subsection (a) of this section, a local approving authority shall require such additional information from an applicant as is necessary in order to make the findings required by subsection (a).

(c) Section in effect until program effective - This section shall remain in effect in a local jurisdiction until such time as an approved program becomes effective.

(d) Exception - This section does not apply to any application initially filed prior to March 1, 1984."(1984 Ch. 794).

A close reading of Section 8-1813 itself, as well a consideration of other interrelated sections and the general purpose behind the program, reveals that the Everings have not met the requirements of Section 8-1813. Therefore, their Petitions should be denied.

Under Section 8-1813, the Everings' primary responsibility is informational. They have the burden of producing certain specified information, which can be divided into two types: statutorily mandated information and additional County information. The contours of the mandated information are

delineated in Section 8-1813(a). The Baltimore County informational requirements are set forth in the October 29, 1984, memo from Eugene Bober (hereinafter the "Bober Memo"). At the February 1, 1985 hearing, the Everings failed to satisfy their informational burden: They did not submit the statutorily mandated information and they did not satisfy Baltimore County's additional requirements.

In order to understand the informational burdens of Section 8-1813, it is necessary to review the role of the approving authority under the same Act. Section 8-1813 requires the approving authority to make three specific findings. First, it must find that the proposed development will minimize adverse impacts on water quality. Second, it must find that the applicant/petitioner has identified fish, wildlife and plant habitat which may be adversely affected by the proposed development. Third, it must find that the proposed development has been designed to protect the identified habitats. In order for an approving authority to make these three specific findings, it must have certain information corresponding to its three findings.

Section 8-1813 requires the applicant/petitioner to show that the proposed development will minimize adverse impacts on water quality, to identify fish, wildlife, and plant habitat which may be adversely affected by the proposed development, and to show that the proposed development has been designed to protect the identified habitat. The applicant/petitioner is absolutely required to produce this information and he cannot escape the requirement. See Sections 8-1813(a), 8-1813(b).

In addition to the statutorily mandated information, the applicant/petitioner, under Section 8-1813(b), may be required by the approving authority to produce "such additional information...as is necessary in order [for the approving authority] to make the [three specific] findings required by [8-1813(a)]." Pursuant to Section 8-1813, Baltimore County, and most of the other Counties bordering the Bay, has promulgated informational requirements which land developers, such as the Everings, must comply with before their projects can be reviewed and approved. These requirements were delineated in the Bober Memo and accompanying outline. See the Protestants' Memorandum submitted at the February 1, 1985 hearing.

It is clear that the Petitioners did not satisfy either the statutorily mandated informational requirements or Baltimore County's informational requirements at the February 1, 1985 hearing. While Schneider's testimony and the Bafitis Report did address the first statutorily mandated requirement (whether the proposed development will minimize the adverse effects on the water quality), they did so in a cursory and conclusionary fashion. Moreover, they reached this conclusion based on improperly obtained data, or, in several instances, on no data at all. See the Protestants' Memorandum submitted at the February 1, 1985 hearing. Neither Schneider nor the Bafitis Report, however, identified, as is mandated by Section 8-1813, the fish, wildlife and plant habitat which may be adversely affected by the proposed development, and neither addressed how the proposed development had been designed to protect these habitats. Simply put, then, the Everings failed in the February

1, 1985 hearing to meet the statutorily mandated requirements of Section 8-1813.

In addition to failing to meet the statutorily mandated informational requirements of Section 8-1813, the Everings failed to meet the additional informational requirements established and promulgated by Baltimore County. See the Bober Memo and the Protestants' February 1, 1985 Memorandum. Requiring the additional information is not unique or burdensome, given the purpose behind Section 8-1813 specifically and the Chesapeake Bay Program in general.

The Chesapeake Bay Program is an attempt to coordinate the efforts of the State and affected local governments in restoring and preserving the Bay. See Section 8-1801(b). It is the intent of the Program "that each local jurisdiction have primary responsibility for developing and implementing a program ...to:

(1) Minimize adverse impacts on water quality that result from pollutants that are discharged from structure or conveyances or that have run off from surrounding lands;

(2) Conserve fish, wildlife and plant habitat; and

(3) Establish land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement and activities of persons in that area can create adverse environmental impacts."

Section 8-1808(a)(1), 8-1808(b)(1)(2)& (B). It is while these local programs are being developed that Section 8-1813 comes into play as an interim protection devise. See Sections 8-1808(d), 8-1809, 8-1810, 8-1811 and 8-1813. And as the purpose of the

PETITION OF FRIENDS OF THE RIDGE, et al FOR JUDICIAL REVIEW	*	IN THE CIRCUIT COURT
IN THE MATTER OF BALTIMORE GAS & ELECTRIC COMPANY (IVY HILL SUBSTATION) FOR SPECIAL EXCEPTION AND VARIANCE	*	FOR BALTIMORE COUNTY Case No. 95 CV 5315
ZONING CASE: 94-452-XA	*	

* * * * * * * * * * * * *

OPINION

This matter comes before the Circuit Court on appeal from the County Board of Appeals' (hereinafter, CBA) decision affirming the Zoning Commissioner's Order of June 24, 1994*, in which Appellee BGE's Petition for Variance and Petition for Special Exception for the subject properties was granted. The Zoning Commissioner's Order granted BGE's request for approval of a special exception to construct a local electrical distribution substation on the subject property and for approval of a variance permitting a lot line setback distance of less than the 50 feet required by Section 1A04.3.B.3 of the Baltimore County Zoning Regulations (hereinafter BCZR). The property in question is made up of three adjoining tracts located in an RC-5 zone. These tracts, delineated tracts A, B, and C, on the Site Plan, are all owned by BGE. The combined area of the three tracts is approximately 2.9 acres. On March 28, 1956, BGE was granted a special

*Noting the importance of this case to each of the parties, this Court found it appropriate to attempt to foster an out-of-court settlement between the parties. Accordingly, this Court referred the case to the Honorable Frank E. Cicone, presiding judge of the Baltimore County Settlement Court, noting that Judge Cicone had extensive experience with zoning matters prior to his investiture as a Circuit Court Judge. Judge Cicone held three lengthy negotiation sessions over a six-month period without definitive results.

FILED DEC 30 19

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the 22nd day of June 1995, a copy of the foregoing Ex-Parte Injunction to Stay operation of Permits was sent via facsimile transmission, to Robert Hoffman, Esquire, Venable Baetjer and Howard, 210 Allegheny Avenue, P.O. Box 5517, Towson, Maryland 21204.

J. Carroll Holzer

J. Carroll Holzer

A:\Ridge.INJ

Chesapeake Bay Program is to coordinate State and local efforts, a County under Section 8-1813(b) has great latitude in determining exactly what type of additional information a petitioner/applicant is required to submit.

Baltimore County's additional informational requirements are well within the parameters of the Chesapeake Bay Program's purpose and, in fact, do not vary drastically from the requirements established by other Counties bordering the Bay. See the attached requirement outlines from Harford County, Prince George's County and Anne Arundel County. The other Counties touching the Bay are currently, but slowly, developing similar informational requirements, waiting, as are Baltimore, Harford, Prince George's and Anne Arundel Counties, for further direction from the State. The Department of State Planning has plans to publish a Critical Areas Handbook within the next few weeks which should serve as a guide to the Counties. Likewise, the Chesapeake Bay Critical Area Commission is working on publishing criteria for coordinating State and affected local government efforts. See Section 8-1808(d).

A simple review of Schneider's testimony and the Bafitis Report reveals that the Everings absolutely did not satisfy Baltimore County's informational requirements. See the Protestants' February 1, 1985 Memorandum. Furthermore, in some respects, Schneider's testimony and the Bafitis report are seriously flawed.

In preparing the Bafitis Report, neither William Bafitis nor Schneider made the extensive field inspections and testing

necessary to satisfy the Baltimore County informational requirements. See the Protestants' February 1, 1985 Memorandum. And what little inspection was performed was done during the fall months, not the summer months, the time designated by Baltimore County's Office of Planning and Zoning as proper for such testing. The flawed nature of the Bafitis report can most readily be seen in Schneider's testimony about his field observation of submerged aquatic vegetation (SAV).

Section I of the Environmental Effects portion of the Bafitis Report, which is titled "Aquatic Organisms," states that the Everings' land "drains to low salinity estuarine waters with no submerged aquatic vegetation observed in [the] vicinity." At the hearing, Schneider testified that he reached the conclusion that there was no SAV by walking along the perimeters of the Everings land and observing the water to a depth of four feet. He also stated that his visual observation extended approximately fifteen feet from the shoreline. Page three of the Bober memo delineates the method of mapping the SAV on or near a proposed development. It requires that "[s]ite investigations should be to a water depth of 15 [feet]." Merely observing the water to a depth of four feet, then, is patently defective, and it becomes more defective considering the fact that Schneider only walked the perimeters of the Everings' land and did not walk out on the existing piers or attempt to observe the SAV from the proposed pier locations. For a short discussion of the importance of SAV to the Bay's ecosystem, see the Protestants' Memorandum of February 1, 1985. In most other respects, the

Bafitis Report, when compared to the Baltimore County Informational Requirements outlined in the Bober Memo, fails to provide the required information. See the Protestants' February 1, 1985 Memorandum.

Conclusion

At the February 1, 1985, hearing before the Zoning Commissioner, the Everings failed to meet their burden of providing information required under Section 8-1813. Neither Schneider's testimony nor the Bafitis Report satisfied the statutorily mandated requirements or Baltimore County's additional informational requirements. Therefore, the Everings' Petitions should be denied.

Respectfully submitted,

T. Rogers Harrison
Mudd, Harrison & Burch
306 West Joppa Road
Towson, Maryland 21204
828-1335
Attorneys for Ken Engelke, et al

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Memorandum of Law was mailed, postage prepaid, this 4th day of March, 1985, to Arnold Jablon, Zoning Commissioner, Baltimore County, Room 113, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland 21204; and to John O. Hennegan, Esquire, 809 Eastern Boulevard, Baltimore, Maryland 21221, attorney for Petitioners.

T. Rogers Harrison

IN RE:	*	
		BEFORE THE
Petition for Special Exception	*	
Petition for Special Hearing		ZONING COMMISSIONER
Petition for Variances	*	
N/S Chester Road, 590' W. of		OF
Severn Road (800 Chester Road)	*	
		BALTIMORE COUNTY
JOSEPH F. EVERING, JR., et ux	*	
		Case No. 85-65-XSPHA
Petitioners	*	

* * * * * * * *

MEMORANDUM OF LAW

Ken Engelke, et al, by their attorneys, T. Rogers Harrison and Mudd, Harrison & Burch, submit this Memorandum of Law in support of their position that (1) the Petition for Special Hearing filed in this matter is improper because the Special Exception it attempts to amend and alter is no longer valid; (2) the Petition for Variances filed in this matter should be denied because the invalidity of the aforementioned Special Exception changes the factual basis on which it rests; and (3) the Petition for Special Exception filed in this matter should be denied because the invalidity of the aforementioned Special Exceptions changes the factual basis on which it rests.

Description of Land

The property of the Petitioners, Joseph J. Evering, Jr. and his wife, Catherine (hereinafter the "Everings"), consists of approximately 3.3 acres located on the north and south sides of Chester Road, 1000 feet west of Susquehanna Avenue in the Fifteenth Electrion District, Baltimore County, Maryland. The property is known as the Long Beach Marina, 800 Chester Road, and can be described as the tip of a peninsula jutting into Frog Mortar Creek.

You're certainly welcome to go back and get something to look at.

A. I don't have it with me.

Q. You don't have it with you. Okay. Do you know the amount of impervious surface that you're adding to the existing three tracts?

A. No, I don't know.

Q. Did you try to calculate it?

A. It will be calculated by the two engineers I have contracted. We comply with all the regulations of Baltimore County.

Q. But you can't tell us right now what you'r substituting in terms of the forest areas with impervious surface?

A. No.

Q. What will the base or all of these various transformers and so forth be? The area that is marked in white, is that to be gravel?

A. That is crushed stone.

Q. When you originally testified about the various heights of the components to this substation, it app ared

over

The property is best understood as consisting of four separate pieces of land: (1) the original Evering parcel, approximately 1.2 acres in size, located on the south side of Chester Road and comprising Lots 1, 82 and 83 of the Long Beach Estates; (2) the Brown parcel, approximately 1.75 acres in size, located on the north side of Chester Road; (3) the south parking parcel, Lot 83 of the Long Beach Estates, located on the south side of Chester Road; and (4) the north parking parcel, located on the north side of Chester Road. All of these four pieces of land are in a D.R.5.5 zone.

Statement of Facts

In 1955, Joseph F. Evering, Jr. (hereinafter "Joseph Evering") filed a Petition for Special Exception, requesting that he be allowed to use his property on Chester Road, then and now in a D.R.5.5 zone, for a boat yard. At that time, he owned only the 1.2 acre Original Evering Parcel located on the south side of Chester Road. On June 6, 1955, the Special Exception was granted (Case No. 3535X) and Joseph Evering thereafter converted his property into a boat yard by, among other things, building four piers which extended west into Frog Mortar Creek, for the mooring of power and sail boats.

On August 1, 1960, Mr. and Mrs. Henry J. Brown conveyed to the Everings the 1.75 acre Brown Parcel located on the north side of Chester Road. In January 1964, the Everings filed a Petition for Special Hearing "for a clarification and extension of the uses heretofore granted under the special exception

granted on the 6th day of June, 1955 (File No. 3535) to specifically include the storage of marine craft on the land." On March 9, 1964, the Everings' request was granted (Case No. 64-57SH) subject to three restrictions:

1. No marine craft may be stored within 30 feet of the easternmost portion of the property presently owned by...[the Everings]

2. The use of the boat yard, both on land and in the water, shall be limited to pleasure craft.

3. The Petitioners [the Everings] shall comply with the off-street parking requirements of Section 409 of the Baltimore County Zoning Regulations.

About one month later, on April 10, 1964, the Everings filed a Petition for Special Exception.

The Petition for Special Exception requested that the Everings be allowed to develop a boat yard on the Brown Parcel. The Everings planned to fill and level the land, build a bulkhead on the north side of the Brown Parcel and extend Chester Road to the water's edge. On June 30, 1964, the Petition for Special Exception (Case No. 64-160X) was granted subject to the following restrictions:

1. No major repairs of any boats shall be permitted on the premises or waters immediately adjacent thereto.

2. Construction of boats is prohibited.

3. No commercial vessels will be permitted to patronize said establishment.

4. Services will be restricted to pleasure craft only.

5. Barges or similar type craft will not be allowed on or tied up at the property, with the exception of the one small barge which is presently being used by the Petitioner[s]. [The Everings.]

6. Minor repairs and maintenance will be permitted from 8 a.m. to 7 p.m. week-days [sic], May through September and 8 a.m. to 6 p.m. on week-days [sic] during the other months of the year. No repairs will be permitted on Sundays.

The site plan, which was approved by the Office of Planning and Zoning on January 16, 1967, called for four additional piers, approximately 168 additional boat slips and approximately 168 additional parking spaces for automobiles. Three of the proposed piers were to be built off the Brown Parcel, more or less parallel to the four existing piers which extended west from the Original Evering Parcel. Each was to contain 44 boat slips. The fourth proposed pier was to be built off the south side of the Original Evering Parcel, perpendicular and to the rear of the four existing piers. It was to contain 36 boat slips. The site plan also called for the Everings to extend Chester Road to the water's edge, to fill in and extend the Brown Parcel to conform with the Original Evering Parcel, to build a bulkhead and to use a macadam surface for the parking areas.

In 1966, the Everings applied for and received three building permits for the northwest Brown Parcel piers. Little, if any, construction was commenced and, in 1970, the Everings again applied for and received building permits for the same three piers. Again, the Everings did not commence any substantial construction. It is apparent that they did drive in some mooring piles along the western shore line of the Brown Parcel, but it is just as apparent that this construction was soon abandoned. No effort was made to fill in and extend the Brown

Parcel, to extend Chester Road, to build the bulkhead and to comply with the plans for the required parking spaces. Sometime between 1966 and 1984, they did construct the southern pier off the Original Evering Parcel. During this time they also acquired the north and south parking parcels.

In August, 1984, the Everings filed the following three petitions:

1. Petition for Zoning Variance

    a. to allow existing compacted stone in lieu of the required macadam paving. A variance from B.C.Z.R. Sec. 409.2.c.(2)(1981 and 1983 Supp.)

    b. to allow 318 parking spaces in lieu of the required 384, or, if the special exception is granted, to allow 363 parking spaces in lieu of the required 384. A variance from B.C.Z.R. Sec. 409.2.b (1981 and 1983 Supp.)

    c. to allow the extension of the piers to exceed 300 feet beyond the mean low tide. A variance of B.C.Z.R. Sec. 417.5(a) (1981 and 1983 Supp.)

2. Petition for Special Exception

    a. to allow the two lots on the north and south sides of Chester Road (the North and South Parking Parcels) to be used as part of the boat yard. The lots are zoned D.R.5.5.

3. Petition for Special Hearing

    a. to amend the site plan which was approved on January 1, 1967 in connection with the June 30, 1964 Petition for Special Exception (Case No. 64-160X) in order to construct additional piers and slips.

    b. to remove restrictions 1 and 3 in Case No. 64-57SPH in order to allow marine craft to be stored within 20 feet of the easternmost property line and to request a variance of the parking.

c. to remove restrictions 1 and 6 in Case No. 64-160X in order to allow major repairs on the premises and in the waters and to change the times that repairs are permitted.

d. to determine that a boat yard and related parking areas are structures devoted to civic, commercial and recreational activities and are, therefore, exempt from the residential transitional requirements set out in B.C.Z.R. Sec. 1B01.1B.1.c (1981 and 1983 Supp.)

Statement of the Law

The issue presented in this case is, simply put, whether the Everings utilized the Special Exception they were granted on June 30, 1964. Section 502.3 of the Baltimore County Zoning Regulations (1981 and 1983 Supplements) states, in pertinent part, that:

> "[a] Special Exception which has not been utilized within a period of two years from the date of the final order granting same, or such longer period not exceeding five years, as may have been specified therein, shall thereafter be void...After a final order granting a Special Exception, the Zoning Commissioner, at any time prior to expiration of the period of time authorized for its utilization, may grant one or more extensions of such period, provided that a maximum time for utilization of the Special Exception is not thereby extended for a period of more than five years from the date of the final order granting same."

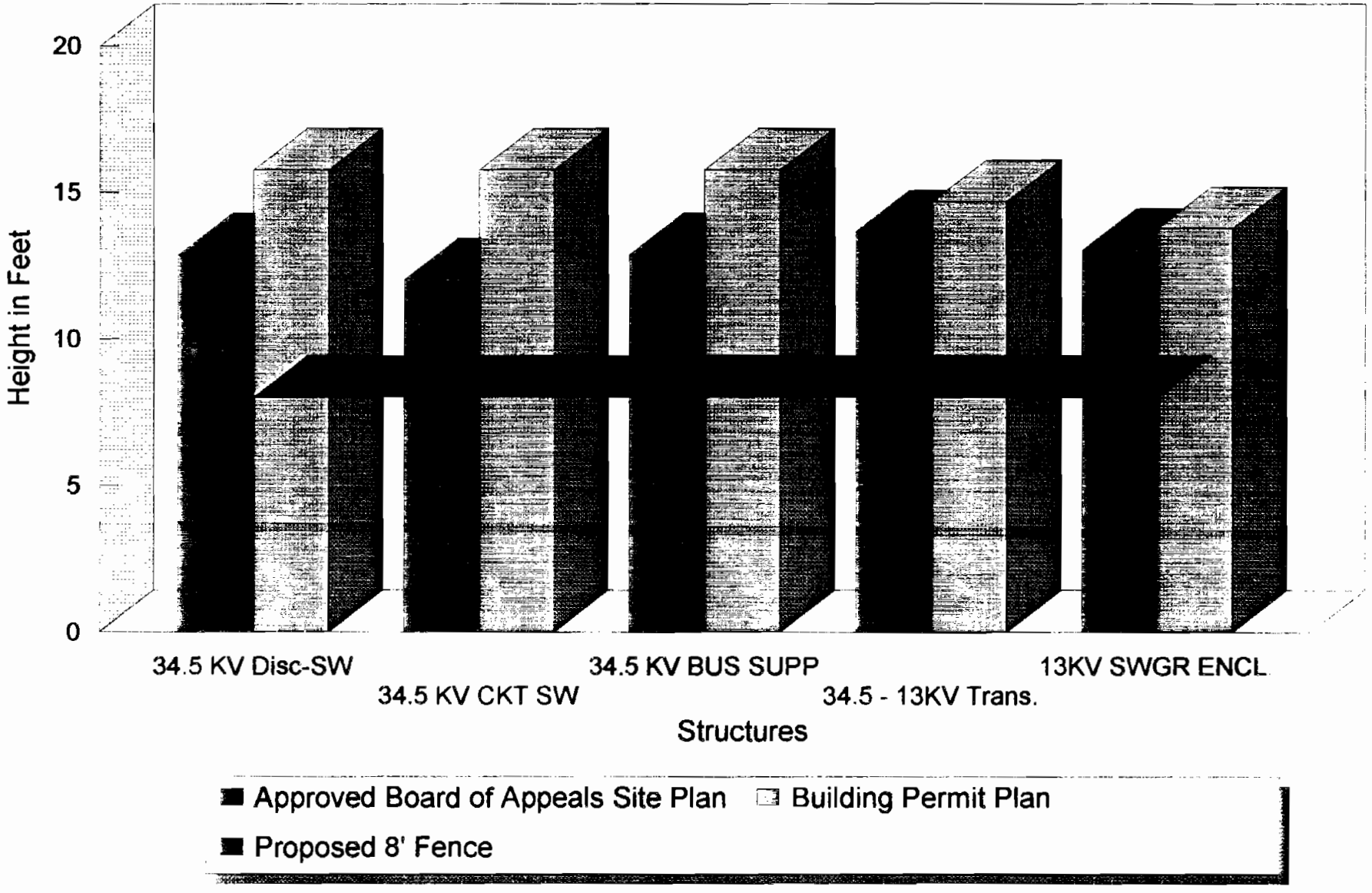
The same section also provides that:

> "[a] Special Exception which requires any construction for its utilization shall be deemed to have been used within its authorized time if such construction shall have been commenced during the authorized period, or any extension thereof, provided said construction is thereafter pursued to completion with reasonable diligence." (Emphasis added.)

Exhibit III

Differences in Height of Structures

(Approved Board of Appeals Plan vs Building Permit)



Phrased differently, then, the issue here is whether the Everings, under the June 30, 1964 order granting them a Special Exception, commenced construction during the authorized time period and thereafter pursued that construction to completion with reasonable diligence.

The requirements set forth by Section 502.3 are twofold: (1) The Petitioner must commence construction within the authorized time period; and (2) he must pursue that construction to completion with reasonable diligence. If the Petitioner fails to do both, the Special Exception is void. While the record is not clear, it is assumed that the Everings had five years from the date of the Special Exception in which to commence construction.

It is apparent that the Everings have not attempted to utilize the Special Exception they were granted on June 30, 1964. As of September 1984, they had not extended Chester Road, had not filled in and extended the Brown Parcel, had not built the bulkhead, had not built the parking areas as detailed on the site plan, and had not implemented their plans to build three piers off the western shore of the Brown Parcel. As the June 30, 1964 Special Exception was surely one requiring construction for its utilization and the Everings did not commence any substantial construction during the ensuing five years (1964-1969), the Special Exception is void.

The Everings, in essence, have failed to meet both requirements of Section 502.3: They did not begin any substantial, easily recognized construction and they did not pursue what little construction they did commence to completion with reasonable diligence. While it is true that the Everings did build the southern pier off the Original Evering Parcel sometime after 1966, the record is not clear as to exactly when this structure was constructed. Furthermore, even if construction on this southern pier was commenced within the five-year time period, it would not toll Section 502.3. It must be remembered that the June 30, 1964 Special Exception concerned the Brown Parcel. The southern pier is built within the property boundaries of the Original Evering Parcel and, therefore, relates to the 1955 Special Exception, not the 1964 Special Exception. The Everings could have built the southern pier at any time after the 1955 Special Exception was granted. Its mere inclusion in the 1967 site plan, which included both the Brown and the Original Evering Parcels, does not make it part of the 1964 Special Exception.

The only apparent action taken by the Everings with regard to the Brown Parcel during the authorized five-year period was securing building permits in 1966 for the three Brown Parcel piers. This, by itself, does not constitute the commencement of construction. Even if it did, the Everings did not pursue the construction to completion with reasonable diligence. More than eighteen years have passed since the Everings secured the building permits and, during this time, the Everings, at best,

drove a few piles along the western and northern shores of the Brown Parcel. Again, the record is not clear as to when these piles were driven, but even if they were driven in within the authorized time period, this action does not constitute "construction" as contemplated by Section 502.3.

The meaning of the language in Section 502.3 requiring construction to be pursued to completion with reasonable diligence was recently addressed by the Baltimore County Zoning Commissioner in the case of In Re Petition for Special Hearing of Joseph L. Soley, Case No. 84-89-SPH (hereinafter "Joseph Soley"). There, the Petitioner, Joseph Soley (hereinafter "Soley") sought approval of the Zoning Commissioner to continue his special exception on the grounds that he had fulfilled his reasonable diligence construction obligation under Section 502-3.

Soley had been granted a Special Exception on April 28, 1977. On October 18, 1978, the time for the utilization of the Special Exception was extended for a period of three years, April 28, 1979 to April 28, 1982. On September 22, 1981, Soley requested the Zoning Commissioner to further extend his utilization of the Special Exception, but the Zoning Commissioner noted that no further extensions could be granted because the total period for utilization would reach five years by April 28,1982. On April 14, 1982, Soley filed for and received a building permit. He then hired an engineer to do a land survey and in quick succession cleared the site for construction, excavated to an

average of three and one-half feet, placed sediment control devices around the perimeter of the property and even poured a concrete footing.

In deciding that Soley had not acted with reasonable diligence in pursuing the construction to completion, the Zoning Commissioner first adopted the definition of "Reasonable Diligence" set forth in Black's Law Dictionary (rev. 5th ed. 1979):

> "[a] fair, proper and due degree of care and activity, measured with reference to the particular circumstances; such diligence, care or attention as might be expected from a man of ordinary prudence and activity." Joseph Soley, p.

Next, the Zoning Commissioner found it appropriate to compare the language of and intent behind Section 502.3 to a string of Maryland cases concerning a property owner's "vested rights."

A vested right is the right to initiate or continue the establishment of a use or construction of a structure which, when completed, will be contrary to the restrictions or regulation of a zoning ordinance or an amendment to it which has become effective in the meantime. See generally, 3 Rathkopf, The Law of Zoning and Planning, 57-6 (4th ed. 1976). A vested right usually arises "where the owner seeks to proceed in accordance with prior zoning despite an existing or pending amendment to the zoning regulations." Joseph Soley, p. 4. A vested right is held to accrue in Maryland when:

> "[a] manifest commencement of some work or labor on the ground which everyone can readily see and recognize as the commencement of a building...begun with the inten-

> tion and purpose then formed to continue the work until the completion of the building." Rupp v. Earl H. Cline & Sons, 230 Md. 573, 578, 188 A.2d 146 (1963).

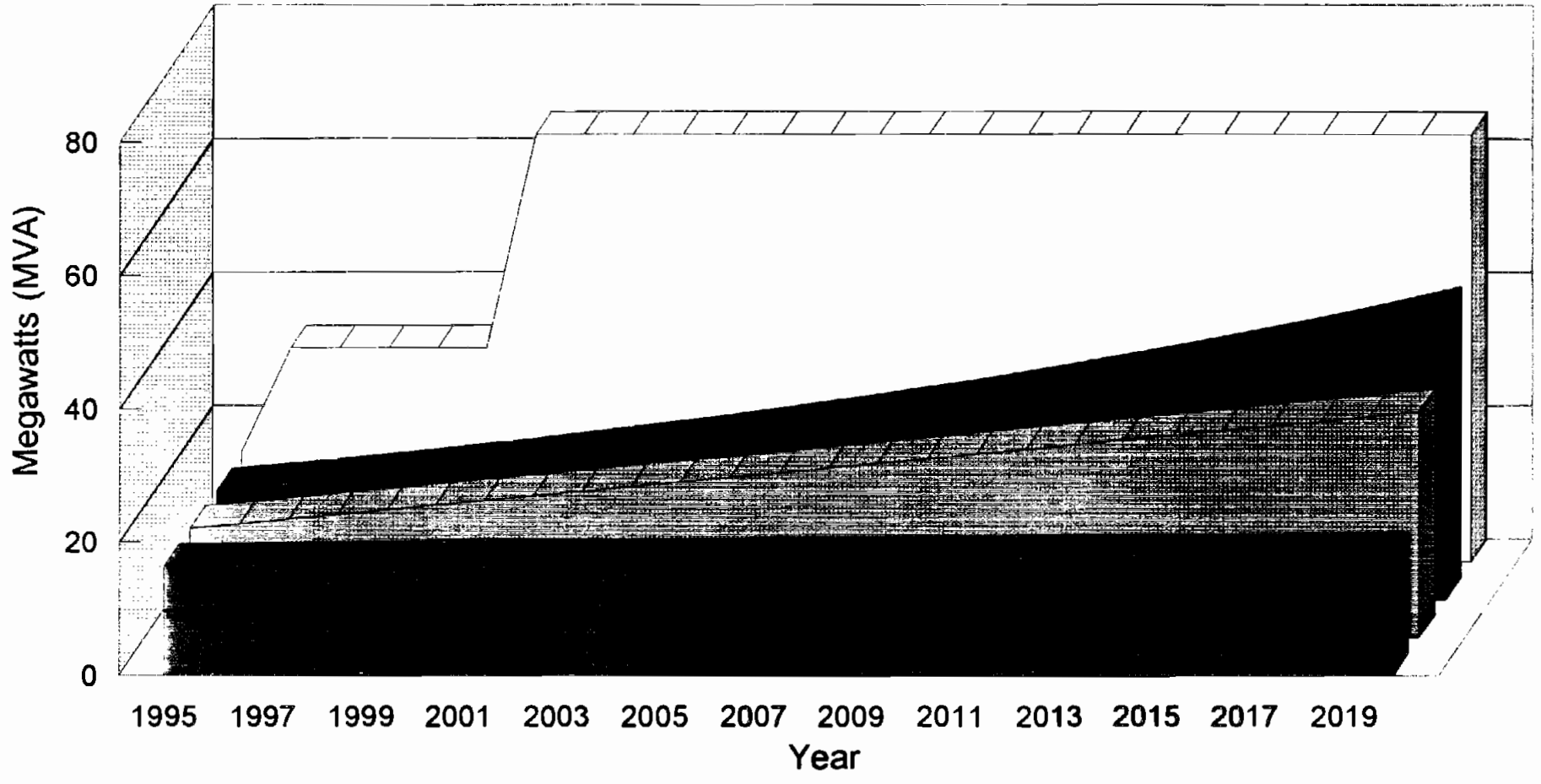
Noting that "Section 502.3 provides that any special exception which requires the construction for its utilization be commenced during an authorized time period...provided that the construction is pursued to completion with reasonable diligence," the Zoning Commissioner concluded that "[t]he language found in Rupp and in Section 502.3 is similar and must be read in conjunction." Joseph Soley, p. 5 (emphasis in original). In this regard, the Zoning Commissioner then held that the Rupp test was virtually identical to the language in Section 502.3 and that case law determining what action amounts "to work or labor readily seen and recognized as the commencement of a building and done with the intention and purpose to continue until completion" should also determine what action constitutes "construction pursued to completion with reasonable diligence." Joseph Soley, p. 6.

Having made the comparison between the language in Section 502.3 and Rupp, the Zoning Commissioner stated that Soley:

> "did not comply with Section 502.3 nor with the strictures as mandated by the Court of Appeals [in Rupp]. He did excavate; he did pour concrete; he did provide sediment control devices. He did not pursue to completion with reasonable diligence; he did not begin in April, 1982, with the intention and purpose to continue the work until completion of the building. He did begin with the intention of tolling 502.3... [Soley's] testimony and by his actions clearly show that what he did constituted "construction," and that it was an acceptable beginning [but]...it is clear that...[Soley]...has not met his burden proving that he began construction on the subject site...with the intention and purpose to continue the work until completion of the building with reasonable diligence." Joseph Soley, p. 7

Exhibit IK

Need Comparisons vs Capacity



assumes 75 units = .7megawatt

In brief, Soley met the first requirement of Section 502.3 by having a substantial construction beginning, or, at least, to paraphrase Rupp, a readily recognizable commencement. However, he failed to meet the second requirement of pursuing that construction to completion with reasonable diligence because he lacked the requisite intent.

In the Evering situation, the Everings did not have a substantial construction beginning. All they did was obtain building permits and drive in a few mooring piles. Neither action, as noted earlier, constitutes a readily recognizable commencement or a substantial construction beginning. Using, as the Zoning Commissioner in Joseph Soley did, Rupp and its progeny as guides, it has been repeatedly held that the mere issuance of a building permit alone does not confer any vested right and, therefore, would not constitute a construction under Section 502.3. See Stewart Petroleum Co. v. Board of County Commr's, 276 Md. 435, 347 A.2d 854 (1975); County Council v. District Land, 274 Md. 691, 337 A.2d 712 (1975); Rockville Fuel & Feed Co. v. City of Gaithersburg, 266 Md. 117, 291 A.2d 672 (1972); and Ross v. Montgomery County, 252 Md. 497, 250 A.2d 635 (1969). See generally 3 Rathkopf, The Law of Zoning and Planning, 57-6 (4th ed. 1976). As it was stated in County Council, "the obtention of a building permit creates no vested right...unless substantial construction has been undertaken in reliance thereon..." 274 Md. at 707, citing Rockville Fuel, 266 Md. 117.

The driving of a few piles along the western and northern

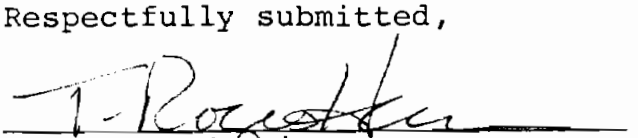
shores of the Brown Parcel does not constitute a substantial construction because, under the Rupp test, everyone would not be able to recognize these few piles as the manifest commencement of the land-fill extension of the Brown Parcel, the extension of Chester Road, the construction of a bulkhead, the leveling and paving of a parking area, and the construction of three piers. See Rupp, 230 Md. at 578. Indeed, these few files barely protrude out of the water. At best, they constitute an incomplete and ambiguous outline of the northern and western shores of the Brown Parcel. In this regard, the piles can be likened to the footing of a building. In Ross v. Montgomery County, the Court of Appeals held that the pouring of a single footing was not enough to give the property owner a vested right to build an apartment hotel under a building permit issued prior to a change in the zoning classification of the property. 252 Md. 497. See Pemberton v. Montgomery County, 275 Md. 363, 340 A.2d 240 (1975) and Stewart Petroleum, 276 Md. 435.

Assuming that the driving of the piles coupled with the building permit does constitute a substantial, readily recognizable construction beginning, the Everings still have failed to pursue that construction to completion with reasonable diligence. It has been eighteen years since the building permits for the three permits were issued, and the piles are the only evidence of a construction attempt. While it may very well have been the intention and purpose of the Everings to secure building permits, drive the piles, and pursue to completion the land-

fill, road extension and the bulkhead, parking lot and pier constructions, this intention was quickly abandoned.

It is true that in 1970 the Everings renewed the building permits, thus in some sense evincing their continued intention to implement the 1967 site plan, but, again, no substantial construction occurred immediately thereafter or in the ensuing fourteen years. It cannot, therefore, be maintained that the Everings have been pursuing to completion the utilization of their 1964 Special Exception with reasonable diligence, but this is exactly what they would have to prove in order for that Special Exception to still be valid. B.C.Z.R. Sec. 502.3. It should be remembered that the Everings have the burden of proving that the 1964 Special Exception is still valid and that they both commenced construction within the authorized time period and pursued that construction to completion with reasonable diligence. See Joseph Soley, p. 7. As this burden has not been met, and all evidence suggests that it cannot be met, the 1964 Special Exception is void. A Special Hearing, therefore, is not proper and the Everings should be required to re-petition for a special exception for the Brown Parcel. Furthermore, the Petition for Variances and the Petition for Special Exception should both be denied because the invalidity of the 1964 Special Exception changes the factual basis on which they rest.

Respectfully submitted,



T. Rogers Harrison
Mudd, Harrison & Burch
306 West Joppa Road
Towson, Maryland 21204
828-1335
Attorneys for Ken Engelke, et al

IN RE:	*	BEFORE THE
PETITION FOR SPECIAL HEARING, PETITION FOR SPECIAL EXCEPTION, PETITION FOR ZONING VARIANCE. NORTH SIDE OF CHESTER ROAD, JOSEPH F. EVERING, JR.	*	ZONING COMMISSIONER OF BALTIMORE COUNTY
	*	85-65-H-XSPHA

*** *** *** *** *** *** *** ** * ** *** *** *** *** *** ***

MEMORANDUM OF LAW AS TO HEARING ON FEBRUARY 1, 1985

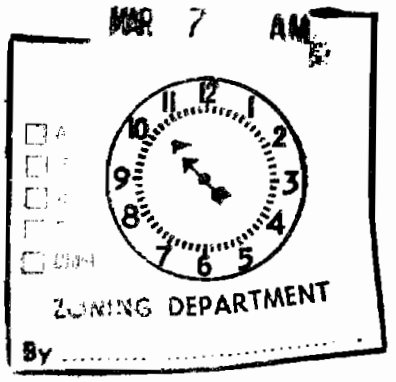
LONG BEACH MARINA and **JOSEPH F. EVERING, JR.** by their attorneys, John O. Hennegan and ROMADKA, GONTRUM, HENNEGAN & FOOS, submit this Memorandum of Law applicable to the Hearing before the Zoning Commissioner on February 1, 1985, in support of their position that the proposed change in uses will have no adverse impact on water quality and will have no adverse impact on fish, wildlife or plant habitat.

ISSUES

I. What is the identity of the approving authority of the local jurisdiction as used in Section 8-1813 of the Natural Resources Article of the Annotated Code of Maryland?

II. What is the Burden of Proof?

III. Have adequate facts been presented from which the Zoning Commissioner can approve the requested changes in use as required in Section 8-1813 of the Natural Resources Article of the Annotated Code of Maryland?



LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

IV. Is there an adequate source of scientific knowledge or facts to support findings required by Section 8-1813 of the Natural Resources Article over and above the mitigation measures proposed by the Petitioner?

DISCUSSION OF THE LAW

The Chesapeake Bay Critical Area Program, as set forth in Section 8-1813 of the Natural Resources Article of the Annotated Code of Maryland (Critical Area Program), requires any Zoning Amendment, Variance or Special Exception after June 1st, 1984, and prior to either state approval of the Baltimore County program or state adoption of a Baltimore County program, sometime after December 1st, 1985, to be reviewed by "The approving authority of the local jurisdiction". The approving authority, in rendering a decision to approve an application, shall make findings that:

(1) The proposal will minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run-off from surrounding lands; and

(2) The applicant has identified fish, wildlife, and land habitat which may be adversely affected by the proposed development and has designed the development so as to protect those identified habitats whose loss would substantially diminish the continued ability of populations of affected species to sustain themselves.

Exhibit V

rating it the same. I guess that means it can do the same?

A. We like to feel we know all things, but we don't.

Q. I think there are a lot of people in this audience that might agree with you.

Now, insofar as the concerns that you had for 1995, the winter of 1995, how at the present time are you anticipating resolving that matter if the Ivy Hill substation is not yet on line?

A. Well, my preferred plan if the substation is not available at the time is to put in a mobile substation at the Ivy Hill site which would have enough capacity to supply the demand for load.

Q. What does that mobile transformer consist of?

A. Well, it consists of a high voltage switch, a transformer on a trailer type assembly, controls and protection equipment, and a low side abraiter (phonetic), which is essentially a fuse.

Q. In addition to that temporary trailer operation, do you have any plans to alleviate or supply power through any other distribution center to this area in the event of another occurrence like in January of 1994?

In addition, Section 8-1813 of the Critical Area Program provides that the approving authority can require additional information as is necessary to make the beforementioned findings.

Except as provided in Section 2-58.1 of the Baltimore County Code, which deals with change in zoning classifications and reclassifications, not the subject of this matter, the Zoning Commissioner may grant Variances and make Special Exceptions to the Zoning Regulations in harmony with their general purpose and intent. Such power is subject to appropriate principals, standards, rules, conditions and safeguards set forth in the Baltimore County Zoning Regulations (BCZR). Section 22-26, Baltimore County Code, 1978, as amended. Pursuant to Section 500.7, BCZR, the Zoning Commissioner has the power to conduct such Hearings (called "Special Hearings") and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations. Such power includes the right "to determine any rights whatsoever" in any property insofar as affected by zoning regulations.

Viewing the above in light of the existing case law, it is clear that the "approving authority" under Section 8-1813 of the Critical Area Program is the Zoning Commissioner. For example, in May v. Warnick, 227 Md. 77, 175 A.2d 413, (1961), the Court of Appeals stated:

> "It is well-established law that in construing legislative enactments, all statutes relating to the same subject matter are to be considered harmonized as far as possible. This rule applies when the statutes were passed at different dates, separated by long or short intervals. The statutes are to be compared and brought into full accord if possible, but if they are insusceptible of a construction which would permit all their provisions to fall into complete agreement, they are to be made to operate together as far as possible, consistent with the evident intent of the latest enactment."

Applying the principal of a harmonious reading to the Critical Area Program, it is the Zoning Commissioner who must make specific findings that the proposed development will minimize adverse impacts on water quality that result from pollutants that discharged from structures or conveyances, or that have run from surrounding lands, and that the applicant has identified fish, wildlife, and plant habitat which may be adversely affected by the proposed development and has designed the development so as to protect those identified habitats whose loss would substantially diminish the continuing ability of populations of affected species to sustain themselves.

After making the required specific findings, the Zoning Commissioner must then exercise his legislative function of granting or denying the petitions insofar as the proposed changes in uses comply with the Critical Area Program. See, In Board of County Com'rs. of Prince George's

County v. Levitt and Sons, Inc., 235 Md. 151, 200 A.2d 670 (1964) and Dal Maso v. Board of County Comm'rs., 182 Md. 200, 34 A.2d 464 (1943).

One of the basic requirements of fair procedure is that an agency's decision must be based upon the evidence produced at the hearing before the agency and not on evidence not contained in the record. See, 24 Md. L. Rev. 1 (1964) at 15-18.

The law is settled that questions of fact may be finally determined by an administrative agency (in this case, the County Zoning Commissioner) so long as the Courts retain their inherent power to assess the sufficiency of evidence to support such factual conclusions and to review the actions of administrative agencies which are illegal, arbitrary, unreasonable or which impair personal or property rights. See, Johnsontown Coal and Coke Co. v. Dishong, 198 Md. 467, 84 A.2d 847 (1951). This final determination has been defined as "compulsory arbitration". See, State Insurance Commissioner v. National Bureau of Casualty Underwriters, 248 Md. 292, 236 A.2d 282 (1967).

The duty of the Board (in this case, the Zoning Commissioner) is to exercise the discretion of experts. The court, although it may not arrive at the same conclusion, will not disturb a decision of the Board on review, if the Board has complied with all legal requirements of notice and hearing and the record shows substantial evidence to sustain the

finding. Aaron v. City of Baltimore, 207 Md. 401, 114 A.2d 639 (1955). Substantial evidence is such evidence as a reasonable mind might accept as adequate to support a conclusion. Snowden v. City of Baltimore, 224 Md. 443, 168 A.2d 390 (1961). See also, Department of Nat. Res. v. Linchester Sand and G. Corp., 274 Md. 211, 334 A.2d 514 (1975).

The scope of the Zoning Commissioner's fact finding process, including conclusions is confined to the wording contained in Section 8-1813 (1) and (2) of the Critical Area Program. The administrative agency, when acting in a manner which may be considered legislative in nature, must act within its legal boundaries. See, Department of Nat. Res. v. Linchester Sand and G. Corp., cited previously. The Petitioner's Burden of Proof under local, County regulations is not applicable to the Commissioner's fact finding procedure under Section 8-1813. For example, the Zoning Commissioner must find that the applicant has met his Burden of Proof if there is evidence before it which would make the issues "fairly debatable, that is, evidence from which a reasonable mind could reasonably have reached a result the Zoning Commissioner reached upon a fair consideration of the fact picture painted by the entire record. Board of County Commissioners for Prince George's County v. Oakhill Farms, Inc., 232 Md. 274, 192 A.2d 761 (1963). Also, the law with regard to Burden of Proof in the case of Use Variances and Area Variances does not

apply. For example, the standard of "practical difficulty" does not apply should not be considered by the Zoning Commissioner with regard to his findings under Section 8-1813. The administrative agency, when acting in a manner which may be considered legislative in nature, must act within its legal boundaries. See, Department of Nat. Res. v. Linchester Sand and G. Corp., as cited previously.

DISCUSSION OF THE EVIDENCE PRESENTED

In light of the need for such evidence as a reasonable mind might accept as adequate to support a conclusion and to avoid an arbitrary or unreasonable finding, Protestants' Exhibit 3A, a Federal Environmental Protection Agency (EPA) report entitled, Chesapeake Bay Program+ Finding and Recommendations, is particularly alarming. For example, the report states, at page 25, that " there is also a similar, but not a precise, relationship between nutrients and bay fisheries". The run-off of the subject site is referred to as a non-point source. The report states, at page 28, that "the diffuse nature of non-point sources render them difficult both to quantify and control". Overall, the report states that the relationships between man-made activities on and off shore and water quality is not well understood. It recommends studies and the collection of more data from which the relationships can be better defined. It further states that once these relationships are defined they can be transformed to management practices to mitigate or minimize adverse impacts

CORPORATE AFFAIRS

Baltimore Gas and Electric Company
P.O. Box 1475
Baltimore, Maryland 21203-1475

EXHIBIT VI

BGE

December 1, 1994

Dear Neighbor:

Over the past ten months, there have been three outages at our Ivy Hill Substation that are directly related to the age of the equipment. One outage was on the coldest day of 1994. However, the other two, on September 18 and November 4, occurred in mild weather.

Not only is the equipment old, but the replacement parts are obsolete. We cannot buy new parts to fix or replace the ones we have.

In order to assure that there are minimal outages due to the age of the equipment, we may have to roll in a mobile substation (temporary equipment on a trailer) as an emergency measure when the weather turns cold.

We regret any inconvenience this action may cause. As you know we are trying to expand this station with new equipment. Your support of our proposed substation upgrade is appreciated.

If you should have any questions or would like us to meet with your community, please contact me at 234/6543.

Sincerely,

Clare C. Miller

on water quality and mitigate against the loss of fish, wildlife and land habitat populations. The report makes specific reference to the lack of knowledge in the areas of anti-fouling paints and urban run-off (page 46). The specific management activities recommended apply to (1) point sources such as sewage treatment plants, (2) poor agricultural practices, (3) urban run-off, (4) industrial activities involving chemicals and toxins. None of these activities apply to the changes in uses requested.

Protestants' Exhibit 4A,an EPA report entitled Chesapeake Bay Program Technical Studies, A. Synthesis describes the findings to-date with regard to Nutrient Enrichment, Toxic Substances, and the Decline of Submerged Aquatic Vegitation. No where does this report show a known relationship or trend between any of the proposed change in uses and water quality or fish, wildlife or land habitat.

Also admitted into evidence was an Environmental Effects Report which was prepared by the Petitioner which discussed, among other things, the impact of the proposed changes on water quality, pollutant loadings, land disturbance, aquatic organisms and vegitation. One adverse impact described was the potential for over-board discharge of wastes from boats. The report stated that this would be minimized by providing pump-out facilities. Evidence from the Health Department dated February 8, 1984, revealed on-site disposal facilities are functioning adequately. In addition, evidence

was presented that the capacity of this system would be enlarged to minimize any future adverse impact. The Environmental Effects Report also shows, based upon information recommended to the Petitioner's engineer by the County Health Department, that the proposed change in uses will not increase the amount of biochemical oxygen demand, total phosphorus, total nitrogen, lead, zinc or sediment in any measurable amount. Also, evidence was presented that water conservation practices would be implemented to minimize adverse impacts on water quality.

The proposed location of new piers in areas where the depth of water is approximately twelve feet (12') is a significant practice in minimizing the adverse environmental process associated with dredging should the piers be located within three hundred feet (300') of mean-low tide as currently required by the BCZR. In other words a variance is requested in order to minimize any adverse impact on water quality caused by the extension of existing piers. Since no changes are proposed which would alter the present configuration of the land, on-shore, there is little if any change in the impact of the proposed uses on water quality, wildlife and land habitat. In fact, evidence was presented that the unpaved, water bound macadam parking area functions as a filter and traps any pollutants and other adverse particulars from reaching the bay waters, thus minimizing any adverse impact caused by additional parking of motor vehicles. Also,

evidence showed no submerged aquatic vegitation in the off-shore area. To the degree that practices are known and available to mitigate against water quality, fish, wildlife and land habitat, they are being implemented at this site to minimize any adverse impact proposed uses may have.

Protestant's Exhibit 2A, "Interim Critical Areas Requirements for Baltimore County" makes reference to the necessity for the developers to provide additional environmental information. Although the Petitioner is not a developer, it bears emphasizing that according to the EPA's findings and recommendations set forth in Protestants' Exhibits 3A, and 4A, ~~it bears emphasizing that~~, detailed information is presently unknown as to the relationship between any zoning proposal and its site-specific impact on water quality and fish, wildlife and land habitat. The "Interim Critical Areas Requirements for Baltimore County" are not supported by existing and available scientific knowledge of activities harmful to Chesapeake Bay and environs and existing and available comprehensive management tools to properly and equitably mitigate against harm to the Bay and environs according to the Protestants' Exhibits 3 and 4. To expect this Petitioner to undertake any studies and/or research to develop state-of-the-art best management practices is clearly unreasonable. This also applies to Mr. Bober's September 7, 1984 letter to Frank S. Lee requesting information. According to the EPA Reports, admitted into evidence,

known and available methods to mitigate against the deterioration of bay waters apply to soils, fertilizer application, animal waste, sediment, agricultural chemicals, and bacteria from animal waste. None of these issues is a problem at the subject site.

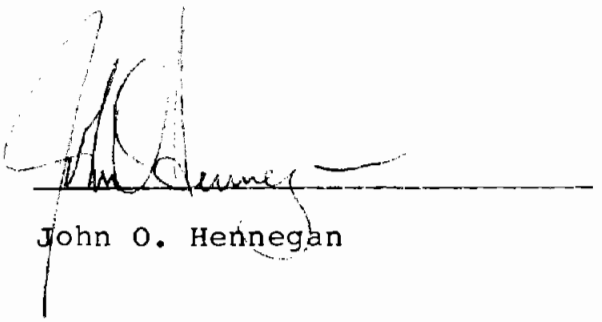
The testimony of John C. Schneider, an expert witness as to environmental impact, stated the Long Beach Marina location was an advantage in that it was located immediately upstream of its discharge into Middle River. As a result there is a greater flushing effect and increase in the assimilation of potential additional pollutants. This process loses its efficiency as you proceed upstream in Frog Mortar Creek. Siting considerations are important in light of Section 8-1808 (c) (9) of the Critical Area Program which states that, as a minimum, the program must designate those shoreline areas suitable for marinas.

SUMMARY

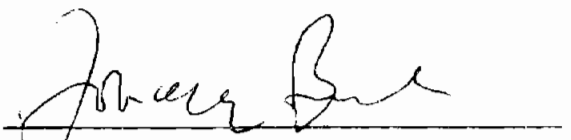
It is important to stress that the State legislation being applied is interim in nature. By its very terms, it shows a recognition of a need for more study, research and evaluation of physical, commercial and governmental forces before developing a comprehensive approach to changes in the Bay shoreline. The burden on the Petitioner is to minimize the impact his proposed changes may have on water quality, fish, wildlife and land habitat according to known and acceptable methods. The evidence clearly shows that this can

be accomplished, and that the Petitioner has taken the correct preliminary steps to implement such methods. Several Exhibits were introduced which would require the Petitioner to provide certain information and evaluation. This information and evaluation was performed to the extent that known and acceptable information and evaluation tools exist. More importantly, no evidence was presented that the mitigation measures (to minimize any adverse impact) were incorrect, not comprehensive, inadequate or property applied.

Respectfully submitted,



John O. Hennegan



Donald E. Brand
ROMADKA, GONTRUM, HENNEGAN & FOOS
809 Eastern Boulevard
Baltimore, Maryland 21221
Phone No.: 686-8274

Attorneys for Petitioner

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

EXHIBIT VII

Friends of Ridge angered by appeals board decision

BY PAT VAN DEN BEEMT

Members of the Friends of the Ridge community group say they are so outraged by Baltimore County Board of Appeals' approval of an enlarged electrical substation in their neighborhood that they pledge to amend county law while seeking to have the decision reversed.

"We will take this appeal as far as we can and we're very serious about pursuing a change in public utility zoning laws," said Carol Rytter after the Board's decision last week.

Rytter is a member of a group that formed this summer to fight Baltimore Gas & Electric Co.'s plans to significantly expand the Ivy Hill substation in her neighborhood near Ridge and Falls Road.

BGE received a special exception from zoning commissioner Lawrence Schmidt in June to add on to a small substation that has been on Joel Court since 1956.

In order to have enough land for the larger facility, BGE purchased a residential lot and a house next to the substation. The house will be razed, giving BGE a total of three acres for the substation.

The zoning commissioner's ruling allowed BGE to build a substation in a residential area. BGE will expand the existing 1,500 square-foot substation to one measuring 19,125 square feet. That decision was appealed by the Friends group to the Board of Appeals.

While BGE says the larger substation is needed to provide electricity to the local service area that is steadily growing, neighbors complained that it would pose a threat to their health, safety, and property values.

After listening to five days of testimony, the three-member board decided unanimously last week to support the special exception.

"Paramount in our decision is the fact that there is already a substation there," said board Chairman William Hackett several days after the decision was announced. "BGE is mandated to provide electricity, and we feel a three-acre wooded site where one already exists is a proper place."

But the Friends group says the board merely "rubber-stamped the zoning commissioner's approval." They will continue the appeal to the Circuit Court.

"We feel the board acted in a cavalier and condescending manner and never really gave our concerns any serious consideration," Rytter said.

BGE spokeswoman Nancy Caplan said the original goal was to have the new substation in service by December, 1995. She noted delays in construction could mean a mobile transformer would have to be brought to the site to handle increased demand next year.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of _____, 1985, a copy of the aforegoing Memorandum of Law, was mailed to T. Rogers Harrison, Esquire, Mudd, Harrison & Burch, 306 West Joppa Road, Towson, Maryland 21204, Attorneys for Protestants'; and to Arnold Jablon, Zoning COmmissioner, Baltimore County, Room 113, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland 21204.

John O. Hennegan

Donald E. Brand

LAW FIRM

ROMADKA, GONTRUM, HENNEGAN & FOOS

ESSEX, MARYLAND

IN RE: *

Petition for Special Exception *
Petition for Special Hearing
Petition for Variances *
N/S Chester Road, 590' W. of
Severn Road (800 Chester Road) *

JOSEPH F. EVERING, JR., et ux *

Petitioners *

BEFORE THE

ZONING COMMISSIONER

OF

BALTIMORE COUNTY

Case No. 85-65-XSPHA

* * * * * * * * * *

MEMORANDUM OF LAW

The Protestants, Ken Engelke, et al., by their attorneys, T. Rogers Harrison and Mudd, Harrison & Burch, submit this Memorandum in support of their position that (1) the Everings' land falls under the Chesapeake Bay Critical Area Protection Program, Md. Nat. Res. Code Ann., Sections 8-1801 - 8-1816 (1974 & 1984 Cum. Supp.); (2) the Everings have not met the requirements of Section 8-1813 of the aforementioned Act; and (3) the proposed expansion and reshaping of the Everings' land will adversely affect the surrounding environment and will contribute to the decline of the Chesapeake Bay's ecosystem.

Description of the Land

The Protestants adopt the description of the land set forth in their original Memorandum.

Statement of Facts

The Protestants adopt the Statement of Facts set forth in their original Memorandum but amend that statement as follows:

On December 18, 1984, the Everings, by their attorney, filed with the Zoning Commissioner of Baltimore County a Motion for [a] Hearing, requesting:

"1. That a hearing be set at the earliest possible date for the Petitioner to present expert testimony.

2. That the Hearing be limited to determine whether or not the proposed development will (a) minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have runoff from surrounding lands; (b) the applicant has identified fish, wildlife and plant habitat which may be adversely affected by the proposed development and has designed the development so as to protect those identified habitat whose loss would substantially diminish the continued ability of populations of affected species to sustain themselves.

3. That the Hearing also be set to determine whether or not this proposed development is subject to Section 8-1801 through 8-816 [sic] entitled Chesapeake Bay Critical Area Protection Program of the Natural Resources Article of the Annotated Code of Maryland."

On January 3, 1985, the Zoning Commissioners scheduled a hearing on the two issues raised in the Everings' Motion. The Protestants, by their attorneys, have prepared this Memorandum in response to the issues raised in the Everings' Motion and as a supplement to their arguments raised at the hearing.

Law

In order to properly consider the two issues raised in the Everings' Motion, the second issue -- whether the Everings' land is subject to the Chesapeake Bay Critical Area Protection Program -- must be considered first because the other issue arises only if the Chesapeake Bay Critical Area Protection Program applies.

THE EVERINGS' LAND IS SUBJECT TO THE CHESAPEAKE BAY CRITICAL AREA PROTECTION PROGRAM

The Chesapeake Bay Critical Area Protection Program, Md. Nat. Res. Code Ann. Sections 8-1801 - 8-1816 (1974 & 1984 Cum. Supp.), was enacted in June 1984 to:

1. Establish a Resource Protection Program for the Chesapeake Bay and its tributaries by fostering more sensitive development activity for certain shoreline areas so as to minimize damage to water quality and natural habitats; and

2. Implement the Resource Protection Program on a cooperative basis between the State and affected local governments, with local governments establishing and implementing their programs in a consistent and uniform manner subject to State criteria and oversight.

Section 8-1801(b). The Program was implemented because of recent natural studies which showed "that the quality and productivity of the waters of the Chesapeake Bay and its tributaries have declined due to the cumulative effects of human activity that have caused increased levels of pollutants, nutrients and toxics in the Bay System and declines in more protective land uses such as forestland and agriculatural land in the Bay Region." Section 8-1801(a)(14).

According to the Program, the Chesapeake Bay Critical Area, or at least the initial planning area for determination of the Critical Area, consists of:

1. All waters of and lands under the Chesapeake Bay and its tributories to the head of tide as indicated on the State Wetlands Maps, and all State and private wetlands designated under Title 9 of [the Natural Resources] article; and

2. All land and water areas within 1,000 feet beyond the landward boundaries of State or private wetlands and the heads of tides designated under Title 9 of [the Natural Resources] article.

Section 8-1807(a). The Program also enabled local jurisdictions to exclude certain areas. Under Section 8-1807(b)(1)(i), a local jurisdiction may exclude from the Critical Area land which is:

1. Part of a developed, urban area in which...the imposition of a program would not substantially improve protection of tidal water quality or conservation of fish, wildlife or plant habitats; or

2. Located at least 1,000 feet from open water and separated from open water by an area of wetlands which...will serve to protect tidal water quality and fish, wildlife or plant habitats from adverse impacts of development in the excluded area.

In order to fall within the urban exclusion, the urban area must "be at least 50 percent developed and may not be less than 2,640,000 sqaure feet (60 acres) in contiguous area or the entire initial planning area located within the boundaries of a municipality, whichever is less." Section 8-1807(b)(1)(ii).

The Everings' land, located as it is on Frog Mortar Creek, is clearly within the Chesapeake Bay Critical Area as defined by Sections 8-1807(a)(1), (c)(1). Moreover, the Everings' land falls into neither the urban exclusion nor the wetlands exclusion as defined by Section 8-1807(b)(1). It is not located 1,000 feet from open water or separated from the open water by wetlands; and it is not a portion of an urban area. A review of the State Wetlands Map covering the Middle River/Frog Mortar Creek area reveals that, indeed, the Everings' land is part of the Critical Area. See State Wetlands Map, Baltimore County, No. 25. Therefore, the Chesapeake Bay Critical Areas Protection Program applies.

THE EVERINGS HAVE NOT MET THE REQUIREMENTS OF SECTION 8-1813 OF THE CHESAPEAKE BAY CRITICAL AREA PROTECTION PROGRAM

As the Chesapeake Bay Critical Area Protection Program applies to the Everings' land, the Everings must abide by the Program's directives, including Section 8-1813:

"(a) Specific findings required - From June 1, 1984 with regard to any subdivision plat approval or approval of a zoning amendment, variance, special exception, conditional use permit or use of a floating zone, affecting any land or water area

located within the initial planning area identified in Sec. 8-1807(a) of this subtitle, for which application is completed after that date, the approving authority of the local jurisdiction in rendering its decision to approve an application shall make specific findings that:

(1) The proposed development will minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands; and

(2) The applicant has identified fish, wildlife and plant habitat which may be adversely affected by the proposed development and has designed the development so as to protect those identified habitats whose loss would substantially diminish the continued ability of populations of affected species to sustain themselves.

(b) Information required from applicant - With regard to any application for project approval described in subsection (a) of this section, a local approving authority shall require such additional information from an applicant as is necessary in order to make the findings required by subsection (a).

(c) Section in effect until program effective - This section shall remain in effect in a local jurisdiction until such time as an approved program becomes effective."

(d) Exception - This section does not apply to any application initially filed prior to March 1, 1984. (1984. ch. 794).

The Everings filed their Petitions on August 16, 1984 and, therefore, the Section 8-1813(d) Exception is inapplicable. Thus, in order for the Everings to have their Petitions for Variances and Special Exceptions approved, they would have to submit information under Section 8-1813(b) from which Baltimore County could determine if the proposed expansion of the marina met the Section 8-1813(a) requirements. That is, Baltimore County would determine from the submitted information if the proposed expansion was environmentally compatible.

Apparently, the Everings' Motion for [a] Hearing is an attempt to fulfill the informational requirements under Section 8-1813. In other words, the Everings are attempting to prove

through expert testimony at a public hearing that their proposed expansion is environmentally compatible. Merely offering expert testimony, however, will not satisfy the informational requirements of Section 8-1813.

The purpose of Section 8-1813 is to prevent further deterioration of the critical area while the State is promulgating and approving statewide criteria for protecting the Bay. See Section 8-1808. Such a program is several years away and Section 8-1813, then, can be seen as an interim protection device. Pursuant to Section 8-1813, Baltimore County has promulgated informational requirements which land developers, such as the Everings, must comply with before their projects can be reviewed and approved. These requirements were delineated in an October 29, 1984 memorandum from Eugene A. Bober, Chief, Current Planning & Development Division, Office of Planning and Zoning, entitled "Interim Critical Areas Requirements for Baltimore [County]."

The Bober memo includes an outline of the informational requirements. The requirements can be divided into two categories: (1) baseline environmental data and (2) information on the environmental impact of the developer's plan. Before any formal review of a developer's plan can be taken by Baltimore County, the developer must submit the baseline environmental data.

The baseline environmental information includes (1) a description and mapping of the critical areas boundary; (2) a mapping of the water depth within 50 feet of the shoreline; (3) a description of the shoreline rates of erosion; (4) a mapping of the shoreline erosion control structures; (5) an analysis of

of surrounding soil, including a description and identification of wetlands soil, drainage patterns, and the site's soil erodibility and permeability characteristics; (6) a mapping of the topography, underground and surface waters, floodplains and the site's unique features; and (7) a description and mapping of plant, fish and wildlife habitats.

The description and mapping of the plant habitats should include a mapping of submerged aquatic vegetation (SAV) and a description of species composition and extent. It should also include a mapping of (1) the different vegetative habitats and a description of the plant communities and associations; (2) the presence of rare or endangered species; (3) the presence of coastal species; (4) the vegetation lawyers; (5) the successional stage vegetation; (6) any unique vegetation; and (7) the approximate acreage of each habitat type.

The description and mapping of the fish and wildlife habitats should be made in terms of (1) the availability and suitability of food and cover; (2) the continuity of habitats to determine corridor effects; (3) the actual or potential presence of coastal/Bay species; (4) the presence of rare or endangered species; (5) the quality of nesting, breeding or nursery sites; and (6) the migrational stopovers. Fish and wildlife is defined by the Bober memo to include finfish, crustaceans, mollusks, mammals, birds, amphibians and reptiles.

The environmental impact information includes (1) a description and mapping of the impervious surfaces; (2) a de-

description of the water quality, including a description of the extent and types of pollutants likely to occur because of the development, a detailed analysis of the impacts that the pollutant loadings will have on water quality and habitats, and a description of the effects that the velocity and volume of stormwater will have on water quality and habitats; and (3) a detailed comprehensive summary of the measures the developer will take to minimize run-off, soil erosion, sedimentation, population pressure and other adverse impacts. The summary of the mitigative measures should include a discussion of the stormwater management alternatives, a discussion of the sediment control practices to be implemented and a discussion of environmental protection design measures.

In addition to supplying the baseline environmental information and the environmental impact information, a developer may have to submit additional information depending on the site or the project characteristics. All three of these categories of information must be submitted in what is termed a "Critical Areas Information Text." This, according to the definition provided in the Bober memo, "is a written report describing the requested environmental information." The developer also has to submit a "Critical Areas Information Map," which is a map of the site detailing the requested environmental information. Bober memo, Critical Areas Information, Outline, page 1.

As is made abundantly clear by the Bober memo and the Critical Areas Information Requirements, the Everings cannot satisfy the requirements of Section 8-1813 merely by offering

expert testimony. Indeed, in order to satisfy Section 8-1813 and the additional informational requirements delineated by Baltimore County, the Everings would have to undertake an extensive and highly technical examination of the environment surrounding their land and would then have to submit the results of this examination in the form of the Critical Areas Information Text and Map. Moreover, the Baltimore County Office of Planning and Zoning has indicated that any testing or examination of a critical area must be conducted during the summer months. This is so because the ecosystem of the Bay varies dramatically from summer to winter. The levels of oxygen, nitrogen, phosphorous and toxic substances differ drastically in the summer. The requirement of a summer examination is even more appropriate in the case of a marina, a land use which has the greatest effect on the ecosystem during the summer months.

There is no indication that the Everings have met the informational requirements. They, apparently, have not submitted either the baseline environmental data or the environmental impact information. Nor have they submitted the required Critical Areas Information Text and Map. Nor, for that matter, does it appear that they have undertaken the type of thorough examination of the surrounding environment contemplated by the drafters of the Baltimore County Critical Areas Information Requirements; and, furthermore, even if the expert testimony offered by the Everings reveals that an examination of the surrounding environment was conducted, this examination would not be valid because

IN THE MATTER OF	*	BEFORE THE
BGE IVY HILL SUBSTATION	*	COUNTY BOARD OF APPEALS
S/W CORNER OF RIDGE ROAD AND JOEL COURT	*	BALTIMORE COUNTY
8th ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT	*	CASE NO. 94-452-XA

* * * * * * * * * * * * * * *

MEMORANDUM IN LIEU OF FINAL ARGUMENT

I.

Statement of the Case

Prots, Friends of the Ridge, and individuals Mr. & Mrs. Nigel Howse, Mr. & Mrs. Robert O'Hara, Mr. & Mrs. Ron Hanley, Mr. & Mrs. Carl Follo, Mr. & Mrs. Robert Rytter, Mr. & Mrs. Ira Brown, Mr. & Mrs. Dieter Langendorf, Mr. & Mrs. Andrew Lansman, Mr. & Mrs. Jeffrey Bozel, Mr. & Mrs. Bruce Pitcher, and Mr. & Mrs. Joe Czajkowski, by J. Carroll Holzer, Holzer and Lee, hereby submit the following Memorandum in Lieu of Closing Final Argument as request d by the County Board of Appeals.

This matter comes before the Board as both a Petition for Special Exception and a Petition for Zoning Variance for the property located on the southwest corner of the intersection of Ridge Road and Joel Court in northern Baltimore County. Within the Petition for Special Exception, relief is requested to approve an outdoor electric public utility service center (electric substation) in an RC-5 zone, pursuant to Section 1A04.2.B.1.1 of the Baltimore County Zoning Regulations (hereinafter B.C.Z.R.) and if necessary, to amend the Fox Ridge Estates (formerly Forewood Property) final development plan. The Petition for Zoning Variance

LAW OFFICE
HOLZER AND LEE
VASHINGTON AVENUE
SUITE 502
TOWSON MARYLAND
21204

(410) 825-6961
FAX (410) 825-4923

it was not taken during the summer months. Finally, because of the uniqueness of the marina, Baltimore County will, no doubt, require the Everings to submit additional information regarding the impact of the marina on the environment. A hint of this required information was given in a September 7, 1984 letter from Paul Solomon, Current Planning & Development Division, Baltimore County Office of Planning and Zoning, to Frank S. Lee, a surveyor hired by the Everings to draw up the plans for the expansion and reshaping of their marina.

In the Solomon letter, Paul Solomon writes "the County needs a very detailed, comprehensive analysis in order to determine the impact of the proposed marina on water quality." He then lists five areas of additional information "deemed necessary" by the County before it can determine whether the proposed expansion meets the Section 8-1813 Critical Area Requirements:

"1. Existing water quality in Frog Mortar Creek in the immediate adjacent and downstream area. Testing should be performed for biological, chemical and other properties which will in any way be affected by the proposed marina.

2. Identify the types, amounts and sources of pollutants that will be generated by the full range of activities of the proposed marina. Determine what absolute amounts of these pollutants will directly or indirectly flow into Frog Mortar Creek. Indicate the effect of mitigating measures on both the amount and impacts of the identified pollutants.

3. Determine or assess the anticipated overboard discharge of wastes (including oil products) from the boats utilizing the marina and its effect on water quality and biota from any turbidity created by boat propellers and generated wave action.

4. Survey of the biota of Frog Mortar Creek or Middle River for the area that you determine may be impacted by the proposed marina. Assess any impacts from the proposed marina on the identified biota. The biota is to be interpreted in a broad sense including both flora and fauna.

5. Rate of flushing or exchange rate in Frog Mortar Creek adjacent to the site."

Paul Solomon, in the same letter, also directed Frank S. Lee to submit the baseline environmental data and the environmental impact information. All three categories of information (baseline, impact and additional), Paul Solomon wrote, should be obtained through "methods which are generally accepted as the state of the art with respect to reliability, accurancy and completeness." The Office of Planning and Zoning then withheld consideration of the Everings' Petitions until such time as the Everings provided the required information. See Inter-Office Correspondence between Norman E. Gerber, Director, Office of Planning and Zoning, and Arnold Jablon, Zoning Commissioner, September 7, 1984.

As the Everings have not conducted the proper tests during the summer months, have not submitted the required Critical Area Information Text and Map, and as merely offering expert testimony will not satisfy the Section 8-1813 requirements or the Baltimore County Informational Requirements, the Everings' Petitions should be denied.

THE PROPOSED EXPANSION AND RESHAPING OF THE EVERINGS' LAND WILL ADVERSELY AFFECT THE SURROUNDING ENVIRONMENT AND WILL CONTRIBUTE TO THE DECLINE OF THE CHESAPEAKE BAY'S ECOSYSTEM

As the Everings requested a hearing on whether they had met the requirements of Section 8-1813 of the Chesapeake Bay Critical Area Protection Program on December 18, 1984, the Protestants, like the Everings, have not had the opportunity to study and examine the environment surrounding the Everings' land

during the summer months, the time the Baltimore County Office has designated as the proper time for such studies. Therefore, the Protestants, like the Everings, cannot possibly offer extensive data on the environmental impact of the proposed expansion and reshaping of the Everings' land. Still, the Protestants would like to offer evidence that the proposed expansion and reshaping of the Everings' land will have an adverse impact on the surrounding environment.

The Everings' land, located in the Frog Mortar Creek/ Middle River area, is in a part of the Chesapeake Bay which various national studies, most notably the Environmental Protection Agency's Chesapeake Bay Program (CBA), have designated as a highly sensitive, perhaps even a critical, area. The Everings' land, for example, is in an area of the Bay which is heavily enriched with nutrients, mostly nitrogen and phosphorous.

While nutrients are crucial to the ecosystem of the Bay, an overabundance of nutrients, often called nutrient enrichment, causes serious environmental problems.

> "Nutrient enrichment occurs when extensive additions of nitrogen and phosphorous compounds enter the water. Enrichment can lead to undesirable consequences such as phytoplankton blooms, depletion of oxygen and changes in kinds of fish present. When an estuary, such as [the] Chesapeake Bay, becomes nutrient-enriched, algae can thrive and accumulate in the water column. Their presence decreases light transparency, and, when they degrade, they use up dissolved oxygen that other plants and animals need."

Chesapeake Bay Program Technical Studies: A Synthesis, (E.P.A. Sept. 1982) p. 2 (hereinafter "Technical Studies"). The CBA has designated riverine sources as the major contributor of nitrogen and phosphorous to the Bay. Id, p. 4.

The Frog Mortar Creek/Middle River area is also in the part of the Bay which has the highest concentration of inorganic and organic toxic substances. Technical Studies, p. 7. "In the main Bay, the highest metals concentrations in sediment occur in the northern Bay and particularly near the western shore [the area which includes Frog Mortar Creek] where cadmium, cobalt, copper, manganese, nickel, lead and zinc are enriched...two to eight times above natural levels." Id. Human sources are responsible for "[a]t least half of the metal loads for chromium, cadmium, copper and lead." Id.

One of the major human sources of toxic substances is what is termed urban runoff. It is anticipated that the urban runoff from the Everings' land will drastically increase if the plans for the expansion and reshaping of the marina are approved. According to their Petition, the Everings plan to expand the parking facilities of their marina. Automobiles generate various toxic substances, many of which drip out of the engine and exhaust system while an automobile is parked. Even the most cursory examination of a parking lot or driveway will reveal an array of toxic substances: splotches of oil, spots of coolants, puddles of exhaust emissions. When it rains, a macadam or compacted stone surface prevents these substances from perculating through the soil, which acts as a cleansing filter, and, instead, the substances are carried by the rainwater. In the case of the Everings' marina, the substances would be carried into Frog Mortar Creek. Automobiles also send pollutants, especially lead, into the air and these also find their way into

the Bay's ecosystem. See Chesapeake Bay Program: Findings and Recommendations (E.P.A. September 1983), page 33, (hereinafter "Findings and Recommendations").

It is also anticipated that the Everings' marina, if expanded and reshaped, will contribute pollutants and toxic substances to the Bay through the overboard discharge of wastes from the boats using the marina. See Paul Solomon letter. These will, no doubt, include human excrement and oil wastes from motor boats. Using a portion of the marina as a boatyard to repair boats will also generate similar wastes which will flow directly into Frog Mortar Creek. Finally, the expansion and reshaping of the Everings' land will adversely affect the Bay's delicate environment because of the expected increase of week-end human activity and population. This increase, no doubt, will produce a corresponding increase in pollutants and toxic substances.

The Frog Mortar Creek/Middle River area also has a low level of dissolved oxygen and little submerged aquatic vegetation (SAV). The low level of dissolved oxygen, the small amount of SAV and the high concentration of nutrients are all closely related. Briefly, the nutrients foster the "growth of undesirable weed-like plants such as blue-green algae." These undesirable plants decrease the level of dissolved oxygen because they reduce the light available to other desirable floating and rooted aquatic plants, thus preventing photosynthesis. See Findings and Recommendations, page 25. Without light and dissolved oxygen, the submerged aquatic vegetation declines.

> "The severity of [this] decline is heightened by the importance of SAV to the vitality of the Bay. The Bay grasses are vitally important to the Bay because of their value as large primary producers, food sources for waterfowl, habitat and nursery areas for many commercially important fish, controls for shoreline erosion and mechanisms to buffer negative effects of excessive nutrients."

Technical Studies, page 12. An increase of the turbidity of the water has been sited as a source of SAV decline. Id. p. 14-15.

It is anticipated that the expansion and reshaping of the Everings' marina will further contribute to the decrease in the levels of dissolved oxygen and to the decline of the SAV. The repositioning of the piers will reduce the availability of light and will affect the natural flow of the water, thus increasing the water's turbidity. If power motorboats are used in the water, their propellors will also increase the turbidity. See Paul Solomon letter.

Because of the fragile ecosystem of the area surrounding the Everings' land, an ecosystem which has been placed in peril by generations of abuse, and the evidence that the expansion and reshaping of the Everings' land will adversely affect that ecosystem, the Everings' Petitions should be denied.

CONCLUSION

The Chesapeake Bay Critical Area Protection Program applies to the Petitions filed by the Everings because their land is in a critical area and does not fall within the two recognized exclusions. The Everings have not met the requirements of Section 8-1813 of the aforementioned Act because they have not con-

IN RE:	*	BEFORE THE
Petition for Special Exception, Petition for Special Hearing and Petition for Variances of North side of Chester Road, Joseph F. Evering, et ux	*	ZONING COMMISSIONER
	*	OF
	*	BALTIMORE COUNTY
	*	85-65-H-XSPHA

*** *** *** *** *** *** *** ** * ** *** *** *** *** *** ***

MOTION FOR HEARING

NOW COMES, LONG BEACH MARINA and JOSEPH F. EVERING, JR., by John O. Hennegan, ROMADKA, GONTRUM, HENNEGAN & FOOS, their attorneys and request the following:

1. That a Hearing be set at the earliest possible date for the Petitioner to present expert testimony.

2. That the Hearing be limited to determine whether or not the proposed development will (a) minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have runoff from surrounding lands; (b) the applicant has identified fish, wildlife and plant habitat which may be adversely affected by the proposed development and has designed the development so as to protect those identified habitat whose loss would substantially diminish the continued ability of populations of affected species to sustain themselves.

ROBERT J. ROMADKA
ATTORNEY AT LAW
ESSEX, MARYLAND

LAW FIRM

Romadka, Gontrum, Hennegan & Foos

GERMANIA FEDERAL BUILDING
809 EASTERN BOULEVARD
ESSEX, MARYLAND 21221
TELEPHONE (301) 686-8274

ROBERT J. ROMADKA
JOHN B. GONTRUM
JOHN O. HENNEGAN
CHARLES E. FOOS, III

OF COUNSEL
ALFRED M. WALPERT

December 18, 1984

Mr. Arnold Jablon
Zoning Commissioner
OFFICE OF PLANNING AND ZONING
County Courts Building
Towson, Maryland 21204

Reference: Case Number 85-65-H-XSPHA
Joseph F. Evering, Jr., Petitioner

Dear Mr. Jablon:

Enclosed you will find the Motion for Hearing to be filed in the above captioned case. If you have any questions, please do not hesitate to contact me.

Thank you for your assistance in this matter.

Very truly yours,

John O. Hennnegan

JOH/dlw

Enclosure

cc: T. Rogers Harrison, Esquire
Mr. Joseph F. Evering, Jr.

IN RE: * BEFORE THE

Petition for Special Exception * ZONING COMMISSIONER
Petition for Special Hearing
Petition for Variances * OF
N/S Chester Road, 590' W of
Severn Road (800 Chester Road) * BALTIMORE COUNTY

JOSEPH F. EVERING, JR., et ux * Case No. 85-65-XSPHA

Petitioners *

* * * * * * * * *

PROTESTANTS' REPLY TO PETITIONERS' MEMORANDUM

Ken Engelke, et al., the Protestants, by their attorney, T. Rogers Harrison and Mudd, Harrison & Burch, submit this Memorandum in reply to the Memorandum submitted by the Petitioners, Joseph F. Evering, Jr., and his wife, Catherine.

Description of Land

The Protestants adopt the description of the land set forth in their original Memorandum.

Statement of Facts

The Protestants adopt the Statement of Facts set forth in their original Memorandum.

Statement of the Law

I. Vested Rights

Both the Protestants and the Petitioners apparently agree that the primary issue in this case is whether the Everings met the requirements of the second paragraph of Section 502.3 of the Baltimore County Zoning Regulations (1981 and 1983 Supplements). The requirements of that paragraph are twofold: (1) The Petitioners must commence construction within the authorized time period; and (2) they must pursue that construction to com-

pletion with reasonable diligence. The Petitioners argue that they have acquired a vested right because they have in good faith made a substantial change of position in relation to the land and have substantially altered their own position by making substantial expenditures. Each of these contentions is without merit, both factually and legally.

First, the Petitioners have not made a substantial change of position in relation to the land. It is their contention that they constructed a swimming pool, showers, and a sanitary house on the Brown parcel, drove in pilings for the bulkhead, stored marine craft on the Brown parcel, graded the land, laid stone for the parking areas, and obtained building permits for the three piers. The only construction, according to the Petitioners, which they did not pursue was the three Brown parcel piers.

Attached to this memorandum is a photocopy of four aerial photographs of the Everings' land taken in the late summer of 1984. Comparing these photographs to the 1967 site plan and the 1955 plat reveals that the 1984 Evering land more clearly resembles the 1955 plat than the 1967 site plan. Contrary to what the Petitioners allege, the construction of the three Brown parcel piers was not the only construction which they did not pursue. It is evident that the Petitioners did not extend Chester Road, did not build the bulkhead and did not fill in and extend the Brown parcel. It is also apparent that very little, if anything, was done to the land to convert it into a parking lot. The color versions of the photographs demonstrate that the so-called parking area is covered by grass, and not macadam as

exception for the operation of a local electrical distribution substation, known as the Ivy Hill Substation on Tract C. This local distribution substation accepts higher voltage electricity from a master substation and lowers the voltage of that electricity to a level usable by its customers in the area. BGE's purpose in requesting the special exception and variance, *sub judice*, is to permit the replacement and expansion of the equipment at the Ivy Hill Substation in order to accommodate an increased demand for electricity caused by continued development and other changes in the area. The improvement of the Ivy Hill Substation as envisioned by BGE would locate the expanded substation equipment in the geographical center of the three tracts. This equipment configuration will result in BGE's equipment straddling interior lot lines within Tracts A, B, and C.

ISSUES PRESENTED

The Appellants present the following issues on Page 5 of their Memorandum:

"A. Need to Amend Final Development Plan - The CBA erred as a matter of law in failing to require compliance with the B.C.Z.R.

B. Failure to Meet Burden of Proof on Variances - The CBA erred as a matter of law in granting the variance.

C. Lack of Need - BGE's failure to establish need by evidence to support the CBA's finding.

D. The CBA factual finding that "all property owners prior to the purchase of their properties were apprised of the ownership of Tract A and the ultimate disposition of that property..." is without any factual basis in the entire transcript of the case.

E. Failure to Comply with 605.1 Criteria - CBA erred by failing to require compliance with B.C.Z.R., Section 502.1."

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

June 20, 1995

Ms. Carol Ritter
3 Joel Court
Reisterstown, Maryland 21136

RE: BGE Ivy Hill Substation
8th Election District

Dear Ms. Ritter:

As you know, BGE has applied for and received permits to grade for construction of its Ivy Hill Substation.

These permits have been issued pursuant and subject to a recent Board of Appeals (Board) hearing decision approving the project.

As an appeal to Circuit Court has been filed by an attorney on behalf of many protestants, you request that these permits be rescinded or stayed pending the appeal.

Section 26-209 (e) of the Baltimore County Code states, as follows:

> "While an appeal is pending before the Board, no permit may be issued and no plat recorded in connection with a plan which is the subject of such appeal. If the Board's order is appealed, the appellant may request that the court stay the issuance of a permit or the recordation of a plat pending its decision."

The law does not provide me with the authority to withhold permits once the Board has rendered its decision, providing, of course, that the request for permits comports with the Board's order.

I certainly understand your concern and the issue you raise. If the courts should reverse the Board's decision, BGE will be required to return the property, to the extent possible, to its condition prior to the grading of the property.

I recognize this incongruity. How are mature trees replaced? However, the courts and the law itself do not provide me with the authority to prevent the issuance of otherwise lawful permits, even though an appeal is pending before the courts.

Printed with Soybean Ink

required by the 1967 site plan. Indeed, the Petition for Zoning Variance filed by the Petitioners in August 1984 recognizes the fact that the parking areas do not conform with the 1967 site plan. It is also not true that the Petitioners built the showers and sanitary house on the Brown parcel in accordance with the 1967 site plan: That plan plainly shows that the sanitary house was an existing structure. While the Petitioners might have modified or altered the house, they certainly did not built it from scratch.

What the aerial photographs do demonstrate is that since 1967 the Petitioners have driven in pilings for the bulkhead and have built a pool. They also show that the Petitioners currently store marine craft on the land. In their Memorandum of Law, the Petitioners acknowledge that they abandoned the plans to build the three Brown parcel piers. The photographs suggest that when these plans were abandoned, the Petitioners also abandoned their plans to use the Brown parcel as a boatyard in accordance with the 1967 site plan and the underlying 1964 Special Exceptions.

It cannot be argued that driving in a few piling and building a pool secured the Petitioners a vested right to use the 1964 Special Exception. The actions alone or together would not meet the test in Rupp v. Earl H. Cline & Sons, 230 Md. 573, 578, 188 A.2d 146 (1963). While it may be true that the Petitioners built a pier off the south end of the original Evering parcel and a workshop on that piece of land within five years of the 1964 Special Exception, these structures relate to the 1955

Special Exception, not the 1964 Special Exception. As they were built on the original Evering parcel, they certainly would not have advised the neighborhood that the Everings were planning to use the Brown parcel as a boatyard. In addition, merely obtaining building permits for the piers would not create a vested right without substantial construction. See Rockville Fuel & Feed Co. v. Gaithersburg, 266 Md. 117, 291 A.2d 672 (1972).

Even if driving in the pilings and building the pool constitutes a readily recognizable construction beginning, the Petitioners have still failed to meet the second requirement of BCZR 502.3: They have not, in the words of the statute, pursued the construction to completion with reasonable diligence. And, in fact, they admit in their Memorandum that they abandoned their plans to build the Brown parcel piers. As evidence demonstrates that they also abandoned their plans to implement the 1967 site plan and the underlying 1964 Special Exception, it cannot be argued that they have pursued converting the Brown parcel into a boatyard with reasonable diligence.

The Petitioners, in addition to arguing that they substantially altered the land, advance the position that they acquired a vested right because they have materially altered their position by making substantial expenditures. They argue that "many other criteria outside of construction should be considered when determining the issue of whether or not a land owner [sic] has a vested right." In support of their position, they site what they term the "majority rule." This rule, taken from

Rathkopf, The Law of Zoning and Planning and badly misquoted by the Petitioners, see 3 Rathkopf, The Law of Zoning and Planning, 57-6 (4th ed. 1976); Steuart Petroleum Co. v. Board of County Commr's, 276 Md. 435, 347 A.2d 854 (1975); Ross v. Montgomery County, 252 Md. 497, 250 A.2d 635 (1969); has never been adopted by the Maryland courts. Indeed, the Court of Appeals in County Council v. District Land, 274 Md. 691, 337 A.2d 712 (1975) specifically rejected Rathkopf's formulation of the rule as a statement of the majority rule in Maryland.

While the Rathkopf passage has been cited by Maryland Courts with approval, it is considered only a general principle. See Ross, 252 Md. at 506. The rule followed in Maryland is somewhat stricter. See Rockville Fuel, 266 Md. 117. Contrary to what the Petitioners contend, substantial expenditures or a material change of position without a substantial construction beginning will not create a vested right. See County Council, 274 Md. 691, 707, and cases cited therein. Moreover, the Petitioners' position that construction is not the only criteria which should be considered in deciding whether they have acquired a vested right ignores the plain language of B.C.Z.R. Sec. 502-3.

II. The Constitutionality of B.C.Z.R. Section 502-3.

The Petitioners argue, basically, that B.C.Z.R. Section 502-3 is unconstitutional because it is arbitrary, unreasonable, capricious or discriminatory and deprives the Petitioners of the use of their land. They cite Northwest Merchants Terminal, Inc. v. O'Rourke, 191 Md. 171, 60 A.2d 743 (748).

The O'Rourke case bears absolutely no resemblance to the Evering situation. O'Rourke concerned a change from one entire zoning classification to another after the commercial use had been established. Furthermore, O'Rourke is a classic example of "a special law for a special case:" The sole basis for the zoning change was an amendment which was passed specifically to restrict the owner from using his land for any reasonable purpose. See Rockville Fuel, 266 Md. 117, 128-131 [distinguishing O'Rourke].

In the Evering situation, as in Rockville Fuel, there is no "special law for a special case." Section 502.3 was not passed solely for the purpose of preventing the Petitioners from using their land. The Evering situation is not a case of a "plebiscite of the neighbors." See Steuart Petroleum, 276 Md. 435, at 445, and cases cited therein.

The Petitioners, apparently combining a claim that Section 502-3 represents an unconstitutional taking of their land with their argument that Section 502-3 is an unconstitutional exercise of the State's police power, also argue that a ruling that the 1964 Special Exception was abandoned would amount to an unconstitutional taking which "would restrict the Petitioner[s] from using the property for any other reasonable purpose." The Petitioners allege that "the only permissible use in a D.R.5.5. zone as a matter of right" is residential development and that the Noise Act of Maryland would permit only a recreational use.

In order to prove an unconstitutional confiscation, it must be shown that the landowner "has been deprived of all

reasonable use of his property and that it cannot be used for any of the permitted uses in the existing zone." Stratakis v. Beauchamp, 268 Md. 643, 652, 304 A.2d 244 (1973). Evidence of mere financial hardship is "insufficient to establish that there is no reasonable use for [the] property..." Id. And [i]t is not enough for the property owners to show that the zoning action results in substantial loss or hardship." Mayor & City Council of Baltimore v. Borinsky, 239 Md. 611, 622, 212 A.2d 508 (1965). Finally, it should be noted that the burden of establishing "an unconstitutional taking is a heavy one." Franklin Constr. Co. v. Welch, 251 Md. 715, 248 A.2d 639 (1968).

The Petitioners misapply the law governing the unconstitutional taking of land. First, Section 502-3 does not amount to a taking of the Petitioners' land. The land can still be used for residential development. The notion that denying the Petitioners' the right to use the 1964 Special Exception would amount to a taking because the Noise Act of Maryland would allow only recreational uses is totally without merit; if anything, the Petitioners' argument reveals that it is the Noise Act and not Section 502-3 which amounts to an unconstitutional taking. Moreover, even if the Petitioners cannot use the Brown parcel for residential development, special exceptions are available in the D.R.5.5. zone; therefore, the Petitioners cannot be said to be deprived of all reasonable uses. See Trainer v. Lipchin, 269 Md. 667, 309 A.2d 468 (1973).

III. The Scope of the August 1, 1984 Petition for Special Exception

The Petitioners argue that the Petition for Special Excep-

tion for the south and north parking parcels filed on August 1, 1984, encompasses the entire Evering land because the "advertised description advertised the entire parcel of land" and, therefore, the Zoning Commission can grant the Special Exception and ratify "what was previously granted, including the additional piers requested by the Petitioner[s]." They cite Amberly Community Association v. Board of Appeals, 229 Md. 261, 182 A.2d 811 (1962) for the proposition that "[e]vidence of granting a prior application for special zoning exception which had lapsed... may properly be admitted at a hearing before the Zoning Commisioner on subsequent application for an exception involving the same property." (Emphasis added.)

The August 1, 1984, Petition for Special Exception involves the north and south parking parcels, not the Brown parcel; therefore, under the proposition stated by the Petitioners, evidence that the 1964 Special Exception was granted would not be admitted because the 1984 Petition for Special Exception does not concern the same property. Furthermore, the Petitioners fail to recognize that if the 1964 Special Exception has expired, the factual foundation on which the August 1, 1984 Petitions for Special Exception, Special Hearing and Variances rest is substantially altered. Certainly the Petitioners cannot be allowed to revive the 1964 Special Exception by bootstrapping it up with the 1984 Petitions.

Conclusion

The Petitions for Special Exception, Variance and Special Hearing should be denied.

Respectfully submitted,

T. Rogers Harrison
Mudd, Harrison & Burch
306 West Joppa Road
Towson, Maryland 21204
828-1335
Attorneys for Ken Engelke, et al

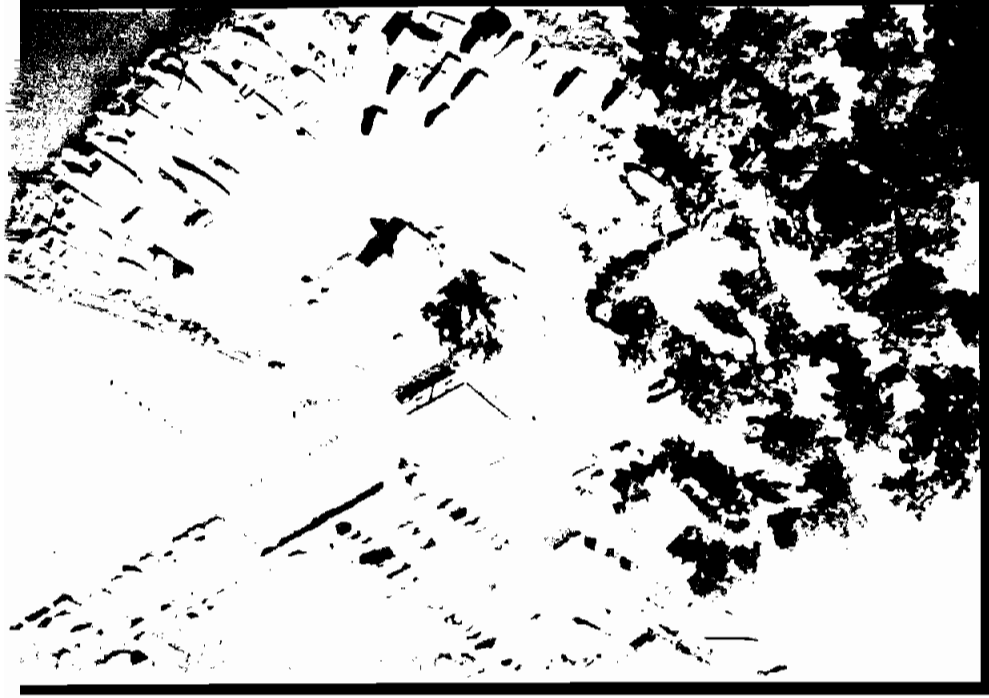
CERTIFICATE OF SERVICE

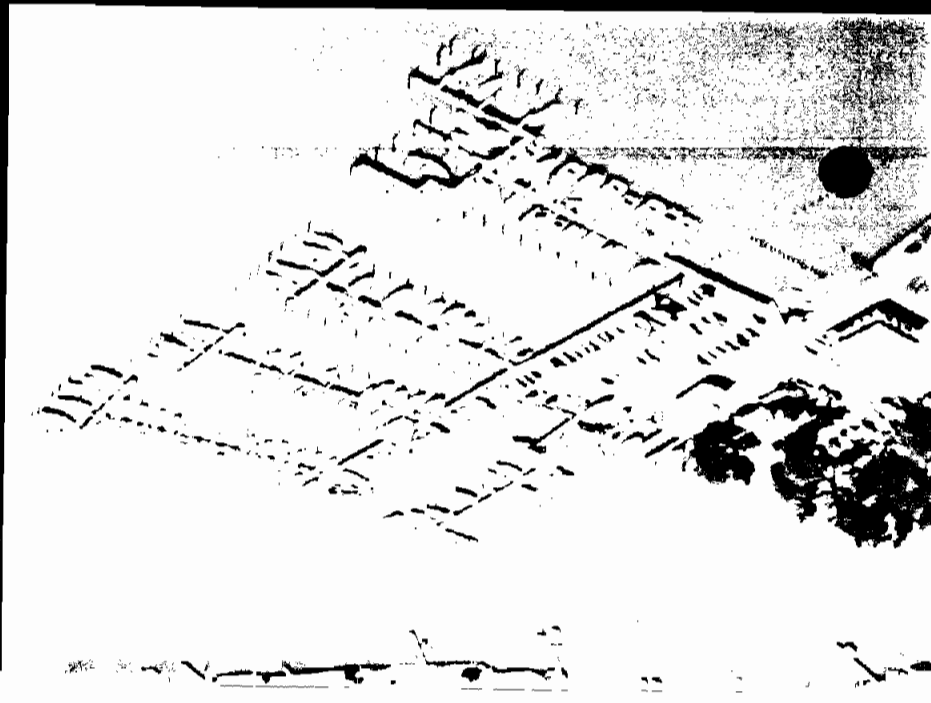
I hereby certify that on this 13th day of November 1984, a copy of the PROTESTANT'S REPLY TO PETITIONERS' MEMORANDUM was mailed, postage prepaid, to John O. Hennegan, Esquire, 809 Eastern Boulevard, Baltimore, Maryland 21221, the attorney for the Petitioners.

T. Rogers Harrison









IN RE:	*	BEFORE THE
Petition for Special Exception, Petition for Special Hearing and Petition for Variances of North side of Chester Road, Joseph F. Evering, et ux	*	ZONING COMMISSIONER
	*	OF
	*	BALTIMORE COUNTY
	*	85-65-H-XSPHA

*** *** *** *** *** *** *** ** * ** *** *** *** *** *** ***

MEMORANDUM OF PETITIONERS

The Petitioner herein, Joseph F. Evering, et ux, has filed a petition for Special Hearing requesting the Zoning Commissioner to approve an amendment to the site plan in Case number 64-57 SPH, 64-160 X and 35-35 X to construct an addition to the piers; to remove restriction number 1 and 3 in Case number 64-57 SPH to allow marine craft to be stored within 20 feet of the eastern most property line and to request a variance to the parking; to remove restriction number 1 and 6 in Case number 64-16DX to allow major repairs on the premises and in the waters and to change the times and days a week in years that repairs will be permitted; also to determine that a boat yard, related parking or other structures devoted to the civic, commericial and recreational activities and are therefore exempt from residential, transitional requirements set out in Section BO 1.1, BO 1.C.9 and or 10. Secondly, the Petitioners filed a Petition for Special Exceptions under the Zoning Law and Zoning Regulations of Baltimore County to use the two lots located on north and south side of Chester Road not included in Special Exception cases 35-35 X, 64-57 SPH, 64-160 X in a DR 5.5 zone, to be used as a boat yard including the road bed of Chester Road. Thirdly, Petition for Variance was filed from Section 409.2.C (2) to allow existing compact stone in lieu of requirement macadam paving and from 409.2.B to allow three hundred and eighteen (318) in lieu of the required three hundred and eighty-four (384), in the event that Special Exception is

LAW FIRM
ROMADKA, GONTRUM,
HENNEGAN & FOOS
ESSEX, MARYLAND
21221

granted to allow three hundred and sixty-three (363) parking spaces in lieu of the required three hundred and eighty-four (384); and a variance from Section 417.5 (a) requiring a structure not to exceed three hundred feet (300') beyond the mean low tide, to allow the structure to exceed four hundred and nineteen feet (419) beyond the mean low tide. Filed along with the various Petitions was a site development plan revised and dated 8/1/84 which is entitled "Plat to accompany Petition for Special Exception, Special Hearing and Variances".

STATEMENT OF FACTS

The facts of the case indicate that in 1954 Petitioners purchased a piece of land off of Chester Road in Baltimore County, Maryland, and in 1955 filed a Petition requesting a Special Exception to use the land for a boat yard, case #35-35 X. As a result of said petition on the 6th day of June 1955 it was ordered by the Zoning Commissioner of Baltimore County that the Petition for Special Exception was granted for the purpose of slip-rental services and services to a boat yard and slips only. As a result the property was developed which resulted in the construction of a repair shop, a travel lift, train railway, office, restrooms, paving, grading and servicing of a parking lot along with approximately one hundred and sixty-five (165) slips including a gas pier.

The operation was continued as a boat yard, slips were rented and marine craft were stored on land without difficulty from that period on. In March 9th, 1964 the Petitioner, by necessity, filed a Petition for a Special Hearing to determine what use the Petitioner was entitled to as a result of the June 6th, 1955 granting the special exception which resulted in the Petitioner being granted a right to store marine craft on land. In addition, Petitioner filed a Special Exception in 64-160 X for some one and three quarter (1-3/4) acres situated on the north side of Chester Road six hundred twenty-five feet (625')

LAW FIRM
ROMADKA, GONTRUM,
HENNEGAN & FOOS
ESSEX, MARYLAND
21221

ISSUE

The issue to be addressed is the application of Regulation 502.3, second paragraph:

> "A special exception which requires any construction for utilization shall be deemed to have been used within its authorized time, if such construction shall commence during the authorized period, or any extension thereof, provided said construction is thereafter pursued to completion with reasonable diligence."

STATEMENT OF LAW

I. VESTED RIGHT

In order for the Petitioner to comply with Section 502.3 of the Zoning Rules and Regulations he must have vested rights from said special exception in order to be protected against a subsequent change in Zoning Ordinance prohibiting or limiting the use.

Vested right is a right to initiate or continue the establishment of a use or construction of a structure which when completed will be contrary to the restrictions or regulations of the Zoning Ordinance or an amendment to it which has become effective in the meantime. Particular use or structure will continue after the effective date of the Ordinance or amended as a vested right. 4 Rathkopf, the Law of Zoning and Planning, 50-2. Rockville Fuel and Feed Company vs. City of Gaithersburg, 266 Md. 172, 291 A2nd 672, 1972 case and in Richmond Corporation vs. Board of County Commissioners of Prince George's County, 254 Md. 244, 255 A2nd 398, 1969 general law in regard to vested rights and existing zoning use was reviewed in Maryland and stated:

> "In Maryland it is established that in order to obtain a vested right in the existing zoning use which will be constitutionally protected against the subsequent change in the Zoning Ordinance prohibiting or limiting that use, the owner must (1) obtain a permit or occupancy certificate where required by the applicable Ordinance and (2) must proceed under that permit or certificate to exercise on the land involved so that the neighborhood may be advised that the land is being devoted to that use."

LAW FIRM
ROMADKA, GONTRUM,
HENNEGAN & FOOS
ESSEX, MARYLAND
21221

It is clear that Building permits having been obtained by the Petitioner satisfying requirement one (1) as set out in the above cited cases. As a result, we must direct our attention to the second requirement of Rockville Fuel and Feed Company and Richmond Corporation, supra, which is whether or not the Petitioner proceeded under that permit or certificate to exercise it on the land involved so that the neighborhood may be advised that the land is being devoted to that use. In accordance with the site plan that was approved 1/16/67 and the building permits that were issued the Petitioner proceeded with construction in accordance with the Special Exception that was granted to him on the 30th day of June 1964 in case number 64-168 whereby he constructed a swimming pool, showers and sanitary house on the one and three quarter (1-3/4) acres situated on the north side of Chester Road, drove in pilings for bulk head, stored marine craft on land and permitted and did repairs on pleasure craft on said land, property was graded and stone was laid for parking and access to and from said site. In addition, across from said site and in accordance with the approved site plan a repair shop barge was constructed along with an additional thirty-six (36) piers. The only construction which was not pursued by the Petitioner was the three (3) piers in front of the parcel and the Petitioner testified that to construct said piers would have been in fact economically detrimental and environmentally harmful, since the piers would not have been used due to the shift from power boating to sail boating and the depth of the waters in which those piers were to be located was not at all suitable for sail boating.

It certainly can not be argued that the Petitioner did not obtain building permits required, that he proceeded under the permit to exercise his right on the land by substantial to beginning construction so that the neighborhood was advised as to the intended land use. The intended land use has been for

LAW FIRM
ROMADKA, GONTRUM,
HENNEGAN & FOOS
ESSEX, MARYLAND
21221

twenty (20) years more or less as a boat yard in accordance with the Special Exception that was granted along with pool facilities and a bath house, for use of those customers that rent slips from the Petitioner. The Petitioner has in good faith made substantial change in relation to the land and has made substantial expenditures and construction by increasing the number of slips, constructing repair facilities and recreational facilities that were available to his customers in addition to land being used for parking and marine craft storage.

The Majority rule which can be synthesized from the multitudinous decisions in this area may be stated as follows:

"A land owner will be held to have acquired a vested right to continue the construction of a building or structure to initiate and continue a use to spite a restriction or certain ordinance where, prior to the effective date of the ordinance, in reliance of a permit thereto validly issued, he has in good faith, made a substantial change of position in relation to the land, made substantial expenditures, or has incurred substantial obligations ***" (252 Md. at 506, 250 A.2nd at 640). See also Board of County Commissioners of Anne Arundel County vs. Snyder, 186 Md. 342, 46 A.2nd 689 (1946) and Mayor and City Council vs. Shapiro, 187 Md. 623, 51 A.2nd 273 (1947) and also quoted with approval, from(2) Rathkopf, the Land for Zoning and Planning (third [3rd] edition, chapter 57, Section 3 at 57-6 to 57-7. To deprive the Petitioner of a Special Exception in 64-160 X since he has not constructed three (3) piers which are economically and environmentally not feasible as previously stated and to hold that he did not pursue to complete the construction with reasonable diligence when in fact the only matter remaining is the construction of the three (3) piers which are in fact as previously stated not feasible would be flying in the face of the spirit of Section 502.3 and depriving the Petitioner of the use of his land.

LAW FIRM
ROMADKA, GONTRUM,
HENNEGAN & FOOS
ESSEX, MARYLAND

It certainly seems that one of the key issues as cited in the cases referred to above and in O'Donnell vs. Blaser, 425 A2nd, 1003 289 Md. 501, 1981, is that the owner make a substantial change of position in relation to land that is to be committed to the use for which the special exception or the permits were obtained and that good faith be exercised by the developer. The passage of time alone is not necessarily the main criteria for lapse of permits or a Special Exception and certainly the two elements referred to above cry out for recognition in this particular case and any argument that the parcel on the north side of Chester Road has not been substantially committed to the use as a boat yard in accordance with the Special Exception in 1964 would be far reaching. To support the argument that time is not necessarily the criteria for lapsing the Petitioner sites Putnam Armonk, Inc. vs. Town of Southeast 382 NYS2nd 538 which is a New York case where a developer built half the homes that he was permitted to construct pursuant to his permit and during construction water and sewer problems developed and no new construction took place for fifteen (15) years. The court held that developers right to complete development of a tract despite later changes in the zoning ordinance did not terminate through the simple passage of time. The court indicated that you should consider:

1. Whether or not the rights of the developer have been abandoned.

2. Whether the owner has recouped the financial investment providing for the basis for the right to complete the development.

3. Have any contravening considerations of public health, safety and welfare supervened during the period when the right and issue has not been used.

LAW FIRM
ROMADKA, GONTRUM,
HENNEGAN & FOOS
ESSEX, MARYLAND
21221

Further, the Petitioners' argue that they have materially altered their position as a result of the granting of the Special Exception by constructing a pool, showers and bath house on the property and using the property to store boats, for parking and for the minor repair of marine craft which his customers rely on; they also have constructed the additional piers and the repair barge, and as a result have substantially altered their position thereby acquiring a vested right in the Special Exception of 1964. When such acts occur a vested right is acquired if the land owner has materially altered his position usually by commencement of construction before the zoning class is changed or permit is revoked, Mayor and City Council of Baltimore vs. Crane, 352 A2nd 786, 277 Md. 198, 1976. the above cited case obviously by using the word "usually" supports the Petitioners' position that many other criteria outside of construction should be considered when determining the issue of whether or not a land owner has a vested right.

The Protestants argue that the

> "southern pier is built within the property boundaries of the original Evering parcel and therefore relates to the 1955 Special Exception, not the 1964 Special Exception. The Everings could have built the southern pier at any time after the 1955 Special Exception was granted. It's mere inclusion in the 1967 site plan which included both the Brown and the original Evering parcels, does not make it part of 1964 Special Exception.

Though it is clear the Petitioner has argued that the construction of that pier along with the repair shop barge are to be considered as part of the substantial construction and expenditures pursuant to the granting of the 1964 Special Exceptions, the Petitioners do not at this time wish to contest

LAW FIRM
ROMADKA, GONTRUM,
HENNEGAN & FOOS
ESSEX, MARYLAND

the merits of this statement, but wish to draw the attention of the Zoning Commissioner to the site plan revised 8/1/84 which is filed in the case which is the subject of this memorandum.

The piers which Petitioner wishes to construct are the natural extension of the existing piers which were constructed as a result of the Special Exception granted in 1955 in case number 35-35 X. The Petitioner has not only filed a Petition for Special Hearing to Amend 64-160 X by eliminating those piers but has filed a Special Hearing to Amend 35-35 X and 64-50-SPX to add the additional piers which he previously had intended to extend off the 1964 Special Exception, but found said construction unfeasible and now has requested them to be constructed off of the property which is the subject of the 1955 Special Exception. Since the Protestants indicate that additional construction off this parcel can occur at any time after the 1955 Special Exception was granted when referring to the southern pier it would seem that the same logic and arguments would accrue to the construction of the additional piers off the previous existing piers that were constructed after the 1955 Special Exception was granted off of the parcel which was the subject of that Special Exception. Certainly there can be no argument that the 1955 Special Exception was not completed pursuant to permits and Zoning Laws and Regulations and therefore there is no need to file an additional Special Exception and that a mere amendment of the site plan as the Petitioner has proposed would be all that is necessary; provided the Zoning Commissioner feels that the addition is in compliance with the general character of the property and in accordance with the previous Special Exception and is not detrimental to the public health or welfare.

LAW FIRM
ROMADKA, GONTRUM,
HENNEGAN & FOOS
ESSEX, MARYLAND
21221

II. THE CONSTITUTIONALITY OF DEPRIVING THE LAND OWNER OF HIS RIGHTS TO USE THE ONE AND THREE QUARTER ACRES ON THE NORTH SIDE OF CHESTER ROAD AS A BOAT YARD.

The question comes to mind as whether or not the zoning ordinance being strictly construed in this incidence would be unconstitutional as being arbitrary or unreasonable, capricious or discriminatory and thus a violation of the provisions of Article 23 of the Declaration of Rights of the Maryland Constitution and a denial of due process of the law provided by the 14th Amendment of the United States Constitution by depriving the Petitioner of his right to continue to use the parcel as provided for in Special Exception 64-160 X. "In Northwest Merchants Terminal, Inc. vs. O'Rourk, 191 Md. 171, 60 A2nd 743, 1948, the Baltimore City property had been a commercial use district since the original Zoning Ordinance in 1931 and in the immediate vicinity was a large area of residential classification. In 1945, the Appellant purchased property in the commercial district for expansion of its storage facilities which it required for its building materials and manufacturing business, and because of the property's access to a railroad siting. After obtaining an occupancy permit, it cleared and filled the property and otherwise prepared it for use at a cost of Fifty Thousand Dollars ($50,000.00) which included the purchase price. By 1946 preparations were completed and the property was being used.

In October 1945, and amendment to the Ordinance was proposed which changed the property and the second commercial use district to a residential use district. While this amendment was under consideration, the Appellant filed three applications for building permits. This incurred considerable neighborhood oppositions but the permits were issued. In April 1946, after undergoing a tortuous journey through the various public agencies, the Ordinance was approved. A group of nearby property owners sued for injuction in a Declaration that the

LAW FIRM
ROMADKA, GONTRUM,
HENNEGAN & FOOS
ESSEX, MARYLAND

three building permits were void. On an Appeal from a decree enjoining the Appellant from erecting the three warehouse buildings and from using the property for any use not permitted by the Ordinance Amendment, the Appellant contended, inter alia that the amendment was unconstitutional as applied to it and depriving the property without due process and denying it equal protection under the law. Court of Appeals reversed the Decree, holding the Ordinance Amendment was invalid as applied to the Appellant for being unreasonable, arbitrary and contrary to the section of the zoning enabling act (acts of 1927, Chapter 7 and 5, Article 66 B, Section 3, which requires zoning regulations to be made in accordance with the comprehensive plan and with reasonable consideration among other things, to the character of the district and it's suitability for particular purposes)."

To deny the Plaintiff this Special Exception that was granted in 1964 in case number 64-160-X would be an unconstitutional taking of his land and depriving him of the use thereof without due process and would restrict the Petitioner from using the property for any other reasonable purpose. The Petitioner testified at the time of the hearing that the property was subject to the Noise Act of the State of Maryland which would not allow any residential development which is the only permissible use in a DR 5.5 zone as a matter of right and that the only use permitted as a result of the Noise Act is recreational which is in fact the manner in which the property is presently being used by the Petitioner. See also, Vine vs. Zabriskie, 122 N.J.L.4, 6, 3 A.2nd 886, 887, (1939).

III. SPECIAL EXCEPTION CAN BE GRANTED FOR THE ADDITIONAL PIERS ON BEHALF OF THE PETITIONER.

The Petitioner filed a Special Exception for two lots located on the north and south side of Chester Road not included in Special Exception cases 35-35 X, 64-57 SPH, 64-160 X in a DR 5.5 zone to be used as a boat yard including the road bed of

LAW FIRM
ROMADKA, GONTRUM,
HENNEGAN & FOOS
ESSEX, MARYLAND
21221

Chester Road. A hearing was conducted on that Petition and the elements as required by 502.1 were offered to the Court and were not contravened by the Protestants. A site development plan date 8/1/84 was submitted and entitled Plat to accompany Petition for Special Exception, Special Hearing and Variances with the Petition for Special Exception and was submitted to the Court at the time of the hearing and placed in evidence. Plat indicated the additional piers on it and was obtained by the Protestants prior to the hearing.

The Protestants indicate that the only method by which the Petitioner can obtain his request is by way of a new Special Exception since 64-160 X in their opinion has expired or terminated. The Petitioners have in addition to the other alternatives proceeded in this manner and have given the Zoning Commissioner the opportunity to grant a Special Exception on the north side and south side parcels in accordance with the petition and site plans that had been submitted and it is the Petitioners position that in the event that the Zoning Commissioner feels the criteria for 502.1 has been satisfied by the Petitioner and that the Special Exception requested will not adversely affect that criteria then the Commissioner can grant the Special Exception including the new lots and ratifying what was previously granted, including the additional piers requested by the Petitioner.

Evidence of granting a prior application for special zoning exception which had lapsed (which the Petitioners in this case contend has not occurred) may properly be admitted at a hearing before the zoning commissioner on subsequent application for an exception involving the same property. "Amberly Community Association vs. Board of Appeals of Anne Arundel County, 182 A.2nd 811, 229 Md. 261, (1962)."

LAW FIRM
ROMADKA, GONTRUM,
HENNEGAN & FOOS
ESSEX, MARYLAND
21221

IV. CONCLUSION.

It is the Petitioners' position that the rights of the Petitioner to the Special Exception granted in 64-160 X have vested for all the reasons cited above and that he has the right to continue to use the property in accordance with the Order of 30th day of June 1964. However, the Special Hearing involves an amendment of a site plan and the addition of piers to the 1955 Special Exception in case number 35-35 X and the removal of the piers that were granted in Special Exception 64-160 X and that the granting of said petitions would not be harmful, detrimental to the general public health, safety and welfare. In the event that the Zoning Commissioner would find that there are no vested rights in 64-160 X, such a ruling would be unconstitutional since it would deprive the owner of any reasonable use of his land and that the only reasonable use is the use that it is presently being used for and that finally Zoning Commissioner can grant a Special Exception for the uses as set out on the site plan dated and revised 8/1/84 since the advertised description advertised the entire parcel of land as part of the hearing.

Respectfully submitted,

John O. Hennegan
809 Eastern Boulevard
Baltimore, Maryland 21221
Phone No.: 686-8274

Attorney for Petitioner

LAW FIRM
ROMADKA, GONTRUM,
HENNEGAN & FOOS
ESSEX, MARYLAND

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 31st day of October, 1984, the aforegoing Memorandum of Petitioners was mailed to D. Rodgers Harrison, Mudd, Harrison and Birch, 306 West Joppa Road, Towson, Maryland 21204, attorneys for the Protestants.

John O. Hennegan

85-1017
Case file

LAW FIRM

Romadka, Gontrum, Hennegan & Foos

GERMANIA FEDERAL BUILDING
809 EASTERN BOULEVARD
ESSEX, MARYLAND 21221
TELEPHONE (301) 686-8274

ROBERT J. ROMADKA
JOHN B. GONTRUM
JOHN O. HENNEGAN
CHARLES E. FOOS, III

OF COUNSEL
ALFRED M. WALPERT

October 29, 1984

Mr. Arnold Jablon
Zoning Commissioner
OFFICE OF PLANNING AND ZONING
County Courts Building
Towson, Maryland 21204

Reference: Petition for Special Exception,
Petition for Special Hearing
Petition for Variances of North
Side of Chester Road, Joseph F.
Evering, et ux, 85-65-H-XSPHA

Dear Mr. Jablon:

Enclosed you will find the original and ~~one copy~~ of the Memorandum of Petitioners to be filed in the above captioned case.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

John O. Hennegan

JOH/dlw

Enclosure

cc: T. Rodgers Harrison, Esquire
Mr. Joseph F. Evering, Jr.

RE: PETITION FOR SPECIAL EXCEPTION: BEFORE THE ZONING COMMISSIONER
PETITION FOR SPECIAL HEARING
PETITION FOR VARIANCES : OF BALTIMORE COUNTY
N/S Chester Rd., 590' W of
Severn Rd. (800 Chester Rd.) :
15th District
:
JOSEPH F. EVERING, JR., et ux, Case No. 85-65-XSPHA
Petitioners :

: : : : : : :

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 the passage of any preliminary or final Order.

Phyllis Cole Friedman
People's Counsel for Baltimore County

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

I HEREBY CERTIFY that on this 20th day of August, 1984, a copy of the foregoing Entry of Appearance was mailed to John O. Hennegan, Esquire, and Robert J. Romadka, Esquire, Romadka, Gontrum, Hennegan & Foos, 809 Eastern Blvd., Baltimore, MD 21221, Attorneys for Petitioners.

Peter Max Zimmerman

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

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

o0o

Nicholas B. Commodari
Chairman

MEMBERS

Bureau of
Engineering

Department of
Traffic Engineering

State Roads Commission

Bureau of
Fire Prevention

Health Department

Project Planning

Building Department

Board of Education

Zoning Administration

Industrial
Development

September 4, 1984

John O. Hennegan, Esquire
809 Eastern Boulevard
Baltimore, Maryland 21221

RE: Item No. 166 - Case No. 85-65-XSPHA
Joseph F. Evering, Jr., et ux
Special Exception, Special Hearing
and Variance Petition

Dear Mr. Hennegan:

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.

This combination hearing is required as a result of your clients' proposal to expand the existing boatyard/marina operation. In addition to the expansion of the piers and land utilized by this operation, variances are also required for the number of parking spaces provided and the paving of said spaces. A determination of whether this use should be exempted from the residential transition requirements (Section 1B01.1B.1.c of the Baltimore County Zoning Regulations) is also included.

In view of the fact that revised plans reflecting the comments from the Current Planning Office, were submitted, the petition was scheduled for a hearing.

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

Very truly yours,

Nicholas B Commodari

NICHOLAS B. COMMODARI, Chairman
Zoning Plans Advisory Committee

NBC:bsc
Enclosures
cc: Frank S. Lee
1277 Neighbors Ave., 21237

BALTIMORE COUNTY
DEPARTMENT OF PUBLIC WORKS
TOWSON, MARYLAND 21204

HARRY J. PISTEL, P. E.
DIRECTOR

February 23, 1984

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

Re: Item #166 (1983-1984)
Property Owner: Joseph F. Evering, Jr., et ux
N/S Chester Rd. 1,000' W. Susquehanna Ave.
Acres: 3.30 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.

Highways:

Chester Road, an existing public road, is proposed to be further improved in the future on a 50-foot right-of-way with a standard type roadway termination.

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

Storm Drains:

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

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

Water and Sanitary Sewer:

There is an 8-inch public water main in Chester Road.

Public sanitary sewerage is not available to serve this property, which is utilizing private onsite sewage disposal facilities.

Water and Sanitary Sewer: (Cont'd)

This property is within the Baltimore County Metropolitan District and the Comprehensive Metropolitan Facilities Planning Area. Baltimore County Water Supply and Sewerage Plans W and S-23B, as amended through January 1982, indicate respectively, "Existing Service" and "Planned Service in 1 to 6 Years".

Very truly yours,

ROBERT A. MORTON, P.E., Chief
Bureau of Public Services

RAM:EAM:FWR:ss

Z-SW Key Sheet
7 & 8 NE 41 Pos. Sheets
NE 2 K Topo
91 Tax Map

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
TOWSON, MARYLAND 21204
494-3211

NORMAN E. GERBER
DIRECTOR

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

Re: Zoning Advisory Meeting of 1-3-84
Item # 166
Property Owner: JOSEPH F. EVERING, JR. ET UX
Location: N/S CHESTER RD. 100' W. OF SUSQUEHANNA AVE.

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 forward by the Bureau of Public Services.
( )This site is part of a larger tract; therfore 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 on _____.
(✓)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:

SCREENING MUST BE PROVIDED AROUND THE PARKING AREA.
PARKING BREAKDOWN MUST INCLUDE REQUIREMENTS FOR OFFICE AREAS AND, IF ANY, RETAIL SPACE.
RECOMMEND ENVIRONMENTAL IMPACT STATEMENT & ANALYSIS OF ADJACENT PARK USE, ETC.

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

BALTIMORE COUNTY
DEPARTMENT OF TRAFFIC ENGINEERING
TOWSON, MARYLAND 21204
494-3550

STEPHEN E. COLLINS
DIRECTOR

February 6, 1984

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

Item No. 166	-ZAC- Meeting of January 3, 1984
Property Owner:	Mr. Joseph F. Evering, Jr., et ux
Location:	N/S Chester Road 1000' W. Susquehanna Avenue
Existing Zoning:	D.R. 5.5
Proposed Zoning:	Variance requiring the structure not to exceed 300' beyond mean low tide to allow the structure to extend 419' beyond the mean low tide.
Acres:	3.30
District:	15th

Dear Mr. Jablon:

This site is served by very narrow roads and traffic problems can be expected. All parking areas should be shown.

Michael S. Flanigan
Traffic Engineering Assoc. II

MSF/ccm

February 3, 1984
Date

BALTIMORE COUNTY DEPARTMENT OF HEALTH

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

Zoning Item # 166, Zoning Advisory Committee Meeting of January 3, 1984

Property Owner: Joseph F. Evening, Jr., et ux

Location: N/S Chester Road District 15

Water Supply public 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, 494-3775, 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)

( ) Any existing 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.

( ) Soil percolation tests have been conducted.
( ) The results are valid until _____.
( ) Revised plans must be submitted prior to approval of the percolation tests.

( ) Prior to occupancy approval, the potability of the water supply must be verified by collection of bacteriological and chemical water samples.

( ) 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 or approval of Building Permit Applications.

( ) All roads and parking areas should be surfaced with a dustless, bonding material.

( ) No health hazards are anticipated.

(✓) Others The private sewage disposal system serving this property appears in satisfactory condition. Owner should contact the Army Corps of Engineers at 962-4252 and the Maryland State Water Resources Administration at 269-3871 for information regarding permits required for the proposed pier extension.

Ian J. Forrest, Director
BUREAU OF ENVIRONMENTAL SERVICES

6/29 H
TO LES
J

BALTIMORE COUNTY
FIRE DEPARTMENT
TOWSON, MARYLAND 21204
825-7310

PAUL H. REINCKE
CHIEF

February 14, 1984

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

Attention: Nick Commodari, Chairman
Zoning Plans Advisory Committee

RE: Property Owner: Joseph F. Evering, Jr., et ux

Location: N/S Chester Road 1000' W. Susquehanna Avenue

Item No.: 166 Zoning Agenda: Meeting of January 3, 1984

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 or _____ 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.

* (X) 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.

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

REVIEWER: Capt. Joseph Kelly 2-14-84 Noted and Approved: Leonard M. Liegel
Planning Group
Special Inspection Division
Fire Prevention Bureau

/mb

* Where piers exceed 250 feet, each should be provided with a two (2) inch water line extending the length of the pier and be equipped with 1½ hour connections at 75 feet intervals according to NFPA Std. 303, Sec. 2-2.3.

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

TED ZALESKI, JR.
DIRECTOR

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

January 20, 1984

Dear Mr. Jablon:

Comments on Item # 166 Zoning Advisory Committee Meeting are as follows:

Property Owner: Joseph F. Evering, Jr., et ux
Location: N/W Chester Road 1000' W. Susquehanna Avenue
Existing Zoning: D.R. 5.5
Proposed Zoning: Variance requiring the structure not to exceed 300' beyond mean low tide to allow the structure to extend 419' beyond the mean low tide.
Acres: 3.30
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 Handicapped and Aged; and other applicable Codes.

B. A building/ & other / miscellaneous 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 uses 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, line 2, Section 1407 and Table 1402, also Section 503.2.

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

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

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

I. Comments

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

Very truly yours,

Charles E. Burnham, Chief
Plans Review

CEB:es

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO Nick Commodari Date August 31, 1984

FROM Edward A. McDonough, P.E.

SUBJECT Zoning Items - Critical Area

Attached are comments from James Markle for critical area items requested by your office.

EDWARD A. MCDONOUGH, P.E., Chief
Developers Engineering Division

EAM:ss

Attachment

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO Ed McDonough Date August 30, 1984

FROM James A. Markle

SUBJECT Critical Areas Review

1. Item 166 (1983-1984) Ewing

   No adverse impact expected.

2. Item 249 (1983-1984) 84-311

   No adverse impact expected.

3. Item 278 (1983-1984) 84-344

   No adverse impact expected.

4. Item 301 (1983-1984) 84-361

   No adverse impact expected.

5. Item 324 (1983-1984) Konigh

   No adverse impact expected.

6. Item 337 (1983-1984) Sokolski

   No adverse impact expected.

7. Item 366 (1983-1984) 85-61-A

   No adverse impact expected.

8. Item 365 (1983-1984) 85-62-SPH

   No adverse impact expected.

9. Item 3 (1983-1984) 85-67-A

   No adverse impact expected.

RECEIVED
AUG 30 1984
ZONING OFFICE
BUREAU OF PUBLIC SERVICES

All of the above comments are made concerning the three items that were given as Public Works review responsibility in the June 1, 1984 memo from Norman Gerber to Don Hutchinson concerning Critical Areas.

These three items are flood plains, effect of increased impervious areas and effects of points of storm water discharge.

JAMES A. MARKLE, P.E.
Chief, Storm Drain Design
and Approval Section

JAM:hhm

BALTIMORE COUNTY PUBLIC SCHOOLS

Robert Y. Dubel, Superintendent

Towson, Maryland – 21204

Date: January 3, 1984

Mr. Arnold Jablon
Zoning Commissioner
Baltimore County Office Building
1111 West Chesapeake Avenue
Towson, Maryland 21204

Z.A.C. Meeting of:
January 3, 1984

RE: Item No: 158,159,160,161,162,163,164,165,166,167, & 168.
Property Owner:
Location:
Present Zoning:
Proposed Zoning:

District:
No. Acres:

Dear Mr. Jablon:

The above items have no bearing on student population.

Very truly yours,

Wm. Nick Petrovich, Assistant
Department of Planning

WNP/lh

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. Carl Richards
Office of Planning and Zoning

DATE: November 24, 1989

FROM: David C. Flowers, Coordinator
Chesapeake Bay Critical Area Program

SUBJECT: Long Beach Marina

The Chesapeake Bay Critical Area Program requests a case chronology for Long Beach Marina which has been involved in the following Zoning Cases; 35-35X, 64-57SPH, 64-160X, and 85-65XSPHA. Specifically, what are the current restrictions on the property under the existing Special Exception, as amended by the court order from Case No. 85-65-XSPHA? Also, could we meet to discuss this case at your earliest convenience. Thank you.

David Flowers

David C. Flowers, Coordinator
Chesapeake Bay Critical Area Program

DCF:SO:ju

cc: Mrs. Janice B. Outen

Baltimore County, Maryland

PEOPLE'S COUNSEL
RM. 223, COURT HOUSE
TOWSON, MARYLAND 21204
494-2188

PHYLLIS COLE FRIEDMAN
People's Counsel

PETER MAX ZIMMERMAN
Deputy People's Counsel

May 10, 1988

Robert J. Romadka, Esquire
John B. Gontrum, Esquire
Romadka, Gontrum, Hennegan & Foos
809 Eastern Boulevard
Baltimore, Maryland 21221

T. Rogers Harrison, Esquire
Andrew N. Janquitto, Esquire
Mudd, Harrison & Burch
306 W. Joppa Road
Towson, Maryland 21204

RE: People's Counsel, et al. v. Joseph F. Evering, Jr., et ux, Circuit Court No. 87CG4755

Dear Counsel:

This will confirm that there will be a meeting in People's Counsel's office on Tuesday, May 17th at 9:00 a.m. for the purpose of resolving the status of the above-referenced case. Currently, there is a hearing set for Monday, May 23rd and I have been told by the Court that their file is incomplete. If we wish to proceed, we must refile certain papers.

Please come prepared to decide whether you wish to go forward on any of the issues raised on appeal or whether there are currently proposals for resolving these issues without further litigation.

If for some reason you will be unable to make this meeting, please contact Shirley Hess in my office as soon as possible.

Sincerely,

Phyllis Cole Friedman/sh

Phyllis Cole Friedman
People's Counsel for Baltimore County

cc: The Honorable
J. William Hinkel, Judge
Baltimore County Circuit Court

Circuit Court Assignment Office

'88 MAY 10 P 12:28
COUNTY BOARD OF APPEALS
RECEIVED

PCF:sh

Baltimore County, Maryland

PEOPLE'S COUNSEL
RM. 223. COURT HOUSE
TOWSON, MARYLAND 21204
494-2188

PHYLLIS COLE FRIEDMAN
People's Counsel

PETER MAX ZIMMERMAN
Deputy People's Counsel

April 29, 1987

T. Rogers Harrison, Esquire
Mudd, Harrison & Burch
306 W. Joppa Road
Towson, MD 21204

John B. Gontrum, Esquire
Romadka, Gontrum, Hennegan & Foos
809 Eastern Boulevard
Baltimore, MD 21221

RE: People's Counsel, et al.
v. Joseph F. Evering, Jr.,
et ux, Ckt. Ct. #86-CG-0022

Gentlemen:

Before I submit the enclosed addendum to the testimony of Mr. Evering, I am sending you a copy of the final version. If I do not hear from you to the contrary by Tuesday, May 5, 1987, I will submit the original to the Board of Appeals.

Sincerely yours,

Phyllis Cole Friedman
People's Counsel for Baltimore County

Enclosures

PCF:sh

JOSEPH EVERING DIRECT EXAMINATION

Mr. Evering testified in direct examination as follows:

That you could see 10 feet down into the creek from the piers - that there was no question that the northern pier (i.e., not on the subject site, but north of the subject site) definitely impedes both traffic and maneuverability in the channel - that he recalls testifying in the 1960 zoning hearing that he intended to bulkhead, fill in the land, extend ~~and pave~~ Chester Road - ~~admits that~~ other than building ~~the~~ bulkhead, ~~he did not do these improvements.~~) Evering testified he was willing to limit himself to emergency repairs on Saturday and Sunday and also limit himself as to the time of day that repairs are completed - ~~admits that no work done on the north side of Chester~~ Road pursuant to the earlier zoning, other than the driving of several piles. - The reason he didn't do any of the construction facilitated by the original zoning was an issue of money - he got a couple of extensions - gas shortage came along - there was a problem with shallow water - and "I just abandoned it." - Saw no need for slips, cost of dredging would be expensive - dredging could be done and make additional slips slips for power boats but he would just rather have sail boats - he says that they do do repairs till dark in the summer time - sail boat people are more inclined to ~~use their boat more often and~~, therefore, generate more boat traffic - testified that there was no detriment to boat traffic by the pier extension. There isn't any navigation problem in the river now; sailboats only move 2 m.p.h. - everything is slow moving, no problem - no waterskiing is allowed - used to have a fuel system on the piers, is not selling any gas now, won't sell any until he installs new pumps with a gas recovery system - never has been any congestion on Chester Road, Susquehanna, or Bowley's Quarters Roads. Again says the opposite shoreline is navigable by boats.

CROSS EXAMINATION OF EVERING

Admits to greatly increasing boat traffic over the last 30 years - again states the opposite side shoreline is navigable - says there's real good fishing for perch, pike and bass - Frog Mortar Creek even in the areas off the piers - admits that no one ever found any samplings of vegetation in the water in this area.

He did not build 3 piles requested because of money

Built the bulkhead, bathhouse, swimming pool, parking, storage

take their boat out of the slip,

JOSEPH H. CZAJKOWSKI
6 JOEL COURT
REISTERSTOWN, MD 21136

Mr. Larry Schmidt
Zoning Commissioner
Baltimore City Zoning Commissioner's Office
400 Washington Avenue
Towson, MD 21204

June 29, 1994

94-452 X-A

Re: BG&E Petition
Case #'s 3760-X and 4535-X

Dear Mr. Schmidt:

I am a resident of the Fox Ridge Estates development where BG&E is planning the **MAJOR EXPANSION** of their Ivy Hill sub-station. I reside at 6 Joel Court with my wife, Joann, and two young children. My wife attended the June 21, 1994 hearing regarding the "Special Variance and Exception" requested by BG&E. Had the magnitude of the proposed expansion been properly made public prior to this hearing, many more residents would have been in attendance to express their discontent.

Our family, like others in our development and surrounding developments, is vehemently opposed to BG&E's plan. It makes no sense to jeopardize the health and safety of our families because it is "convenient" for BG&E to use this location. In addition, this dangerous eye sore will have a significantly negative impact on the value of all neighboring homes. With all of the other available, undeveloped farmland in this area, certainly another less intrusive site could be used.

As I understand it, you are responsible for approving or denying BG&E's request. As such, you will also be held accountable by all of the adversely affected families should a decision to approve this project be made. We strongly recommend your denial of BG&E's petition.

Our community is united and committed in preventing this **MAJOR EXPANSION** at this site. We will not simply "roll-over" and accept this expansion. We will not quietly go away if the petition is approved. A rubber stamp, automatic approval of BG&E's plan is unacceptable.

Please advise me in writing of your decision including all supporting rationale.

Sincerely,

Joseph H. Czajkowski

JOSEPH EVERING DIRECT EXAMINATION

Mr. Evering testified in direct examination as follows:

That you could see 10 feet down into the creek from the piers - that there was no question that the northern pier (i.e., not on the subject site, but north of the subject site) definitely impedes both traffic and maneuverability in the channel - that he recalls testifying in the 1960 zoning hearing that he intended to bulkhead, fill in the land, extend Chester Road - he built the bulkhead, bathhouse, swimming pool, parking, storage. Evering testified he was willing to limit himself to emergency repairs on Saturday and Sunday and also limit himself as to the time of day that repairs are completed - he did not build 3 piers requested because of money, other than the driving of several piles. - The reason he didn't do any of the construction facilitated by the original zoning was an issue of money - he got a couple of extensions - gas shortage came along - there was a problem with shallow water - and "I just abandoned it." - Saw no need for slips, cost of dredging would be expensive - dredging could be done and make additional slips for power boats but he would just rather have sail boats - he says that they do do repairs till dark in the summer time - sail boat people are more inclined to take their boat out of the slip, therefore, generate more boat traffic - testified that there was no detriment to boat traffic by the pier extension. There isn't any navigation problem in the river now; sailboats only move 2 m.p.h. - everything is slow moving, no problem - no waterskiing is allowed - used to have a fuel system on the piers, is not selling any gas now, won't sell any until he installs new pumps with a gas recovery system - never has been any congestion on Chester Road, Susquehanna, or Bowley's Quarters Roads. Again says the opposite shoreline is navigable by boats.

CROSS EXAMINATION OF EVERING

Admits to greatly increasing boat traffic over the last 30 years - again states the opposite side shoreline is navigable - says there's real good fishing for perch, pike and bass - Frog Mortar Creek even in the areas off the piers - admits that no one ever found any samplings of vegetation in the water in this area.

RECEIVED
COUNTY BOARD OF APPEALS
1981 MAY -7 P 5:16

JOSEPH EVERING DIRECT EXAMINATION

Mr. Evering testified in direct examination as follows:

That you could see 10 feet down into the creek from the piers - that there was no question that the northern pier (i.e., not on the subject site, but north of the subject site) definitely impedes both traffic and maneuverability in the channel - that he recalls testifying in the 1960 zoning hearing that he intended to bulkhead, fill in the land, extend Chester Road - he built the bulkhead, bathhouse, swimming pool, parking, storage. Evering testified he was willing to limit himself to emergency repairs on Saturday and Sunday and also limit himself as to the time of day that repairs are completed - he did not build 3 piers requested because of money, other than the driving of several piles. - The reason he didn't do any of the construction facilitated by the original zoning was an issue of money - he got a couple of extensions - gas shortage came along - there was a problem with shallow water - and "I just abandoned it." - Saw no need for slips, cost of dredging would be expensive - dredging could be done and make additional slips for power boats but he would just rather have sail boats - he says that they do do repairs till dark in the summer time - sail boat people are more inclined to take their boat out of the slip, therefore, generate more boat traffic - testified that there was no detriment to boat traffic by the pier extension. There isn't any navigation problem in the river now; sailboats only move 2 m.p.h. - everything is slow moving, no problem - no waterskiing is allowed - used to have a fuel system on the piers, is not selling any gas now, won't sell any until he installs new pumps with a gas recovery system - never has been any congestion on Chester Road, Susquehanna, or Bowley's Quarters Roads. Again says the opposite shoreline is navigable by boats.

CROSS EXAMINATION OF EVERING

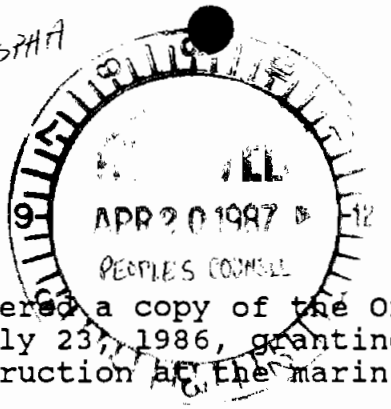
Admits to greatly increasing boat traffic over the last 30 years - again states the opposite side shoreline is navigable - says there's real good fishing for perch, pike and bass - Frog Mortar Creek even in the areas off the piers - admits that no one ever found any samplings of vegetation in the water in this area.

RECEIVED
COUNTY BOARD OF APPEALS
1981 MAY -7 P 5:16

JOINT STIPULATED NO 1 P.C. PET & PROT.

Re: Evering #85-65-XSPHA

PCF



Hearing on 12/16/87

Prior to testimony Petitioner offered a copy of the Order of the Board of Airport Appeals dated July 23, 1986, granting Petitioner a variance for the proposed construction at the marina. (Pet. Ex. 7).
Pet. No. 8 was copies of the Petitions for Special Exception, Special Hearing and Variances filed in the case. There were no objections to either exhibit.
Joseph Evering
800 Chester Road

Petitioner's Exhibit No. 10 was a 1986 photogrammetric plan of the site and of the channel which Petitioner put into evidence at the request of People's Counsel.

Direct testimony:

Joseph Evering
Chester Road

Petitioners have filed Petitions for Special Exception, Special Hearing and for Variances in this case. The purpose of the requested Special Exception is only to allow additonal parking for the boatyard on the two cross-hatched areas on the site plan, which were properties purchased since the last Special Exception and to include the roadbed of Chester Road where it is encompassed by the Evering property as part of the Special Exception.

Petitioners have also filed for zoning variances in order not to pave the gravel lot now in existence with a bituminous or concrete or tar chip surface in order to minimize run-off. Mr. Evering testified that neither dust nor rutting had been a problem and that the surface was replenished regularly. It was pointed out that this appeared to more environmentally sound than paving the lot. In addition variances of the parking requirement for marinas and boatyards was sought to be modified to 318 spaces in lieu of the 384 spaces required if the requested Special Exception was denied or to 363 spaces out of the required 384 spaces if the Special Exception were to be granted. In addition, a variance was sought to extend the existing piers 419' beyond mean low tide in lieu of the allowed 300' so as to reach deeper water and avoid dredging.

A special hearing was requested to modify existing site plans in Special Exception Cases No. 3535-X, 64-160-X and in Special Hearing Case No. 64-57SPH to construct the additional piers and to reflect the additional special exceptions. Restrictions 1 and 3 in Case No. 64-57SPH were sought to be eliminated so that

JOINT NO
SIP 2
all parties
Pet & Prot.

DIRECT TESTIMONY OF DR. FRANK PINE

After questioning as to qualifications and background and the introduction of his resume (Pet. Ex. 18) without objection, Dr. Pine was presented to the Board as an expert as to the environmental impact aspects of the case including water quality. The Board accepted Dr. Pine as an expert on water quality and on the environment without objection.

Dr. Pine was hired by the Petitioners to investigate the environmental impact of the expansion plans of the marina and boatyard. After being retained he had the occasion of visiting the site on a number of occasions to perform aquatic assessments and to perform water quality studies. As part of his study he reviewed available information on the water quality in Middle River and in Frog Mortar Creek including studies which he had previously prepared on another marina in the mouth of Middle River. In addition, he reviewed reports and sutdies prepared by the State Natural Resources and Health Departments as well as private studies in order to evaluate water quality and envirnomental toxicology and to arrive at an aquatic assessment.

He checked the previous calculations and performed his own calculations based on acceptable scientific methodology and on his training and experience. He had reviewed the proposed expansion of the existing facility as well as the current operation and had sat through all of the testimony of Mr. Evering.

He was asked: "Do you have an opinion as to the impact, if any, of the proposed expansion plans described here today on the water, fish and wildlife at and in the vicinity of the site?" He did have an opinion and that opinion was that the proposed expansion with appropriate mitigative measures would not have a net adverse impact on the water quality, fish or wildlife.

He had prepared a report on the site which was introduced as Petitioner's Exhibit 19. It was accepted for identification purposes only as other counsel had not had the opportunity to review it and offer objections as to admissibility.

His examination of the site indicated that there was little or no aquatic vegetation on the bottom at the site. He felt that the proposed construction would disturb the bottom at the time the piles were driven, but that there would be sufficient depth so

Baltimore County, Maryland

PEOPLE'S COUNSEL
RM. 223, COURT HOUSE
TOWSON, MARYLAND 21204
494-2188

PHYLLIS COLE FRIEDMAN
People's Counsel

PETER MAX ZIMMERMAN
Deputy People's Counsel

February 26, 1986

The Honorable
Lawrence E. Schmidt, Acting Chairman
Keith S. Franz, Member
William T. Hackett, Member
County Board of Appeals of Baltimore County
Room 200, Court House
Towson, Maryland 21204

RE: Joseph F. Evering, Jr., et ux,
Petitioners - Zoning Case No.
85-65-XSPHA

Gentlemen:

I am enclosing herewith a copy of a recent decision approving the State Airport Zoning Regulations, Greenberg v. State, 66 Md. App. 24, 502 A.2d 522 (1986).

Greenberg challenged the State Airport Zoning Regulations on the ground that they amounted to an unlawful "taking" or confiscation of his 14.496 acre property in Glen Burnie. The regulations totally prohibited residential development, and the Board of Airport Zoning Appeals had denied a request for variance. As a result, he was limited to certain other designated non-residential uses permitted by the zoning law.

Judge Robert Karwacki delivered an excellent opinion reviewing cases of the United States Supreme Court, the United States District Court of Maryland, and State court decisions. He found that there was no "taking" because it appeared from the complaint that Greenberg was not denied all reasonable use of his property and because the State had a legitimate interest in protecting the health and general welfare of occupants of land near airports and in minimizing the impact of harmful airport noise. Accordingly, the Court of Special Appeals affirmed the dismissal of the complaint.

I realize the Evering case is currently in Circuit Court but my recollection is that in argument, I mentioned the Greenberg case, although not by name, and I thought you might have some continued interest in the issue.

Very truly yours,

Phyllis Cole Friedman

Phyllis Cole Friedman
People's Counsel for Baltimore County

Enclosures

RECEIVED
1986 FEB 26 P 2:32
COUNTY BOARD OF APPEALS

court's analysis, although partially couched in the appropriate statutory language, reveals that the court applied, in reality, the wrong standard. The precipitating event in the chain leading to appellant's arrest was the officer's belief that appellant secreted a bag from him. Thereafter, the way in which the officer viewed appellant's actions was colored by the officer's suspicions that appellant was engaged in criminal activity: appellant's nervousness was attributed to a cause other than his having violated the traffic laws and appellant's display of a prison identification card was viewed as corroborating those suspicions. Fortuitously, appellant did not have a driver's license. This fact thus became, for the officer, the vehicle to discover the nature of the criminal activity he suspected. As the concluding comments of his ruling demonstrate, the trial judge adopted and legitimized this faulty premise. This arrest was a mere subterfuge for the search for evidence that followed.

---

502 A.2d 522

Erwin L. GREENBERG, et al.

v.

The STATE of Maryland.

No. 381, Sept. Term, 1985.

Court of Special Appeals of Maryland

Jan. 10, 1986.

Landowners brought action for declaratory judgment and ancillary relief alleging that airport noise regulations which imposed restrictions on property, in addition to county zoning ordinances, constituted an unlawful "taking" of their property without compensation. The Circuit Court, Anne Arundel County, Eugene M. Lerner, J., granted summary judgment against them, and landowners appealed. The Court of Special Appeals, Karwacki, J., held that: (1) motion for dismissal could be treated as a motion for summary judgment, and (2) the combined effects of the restrictions was not an unconstitutional "taking" without compensation.

Affirmed.

1. Judgment ⇐183

Motion to dismiss claim alleging that zoning regulations resulted in an unconstitutional "taking" of property could be treated as one for summary judgment since there was no issue of material fact where State conceded factual premise that combined effect of noise regulations and zoning ordinance severely diminished the value of property. Md.Rules 2–322, 2–501.

2. Eminent Domain ⇐2(1.2)

Combined effects of airport noise zone law and county zoning ordinance, which restricted uses to which property could be put, did not constitute an unconstitutional "taking" in exercise of power of eminent domain to require compensation, although regulations restricted development and duced value of property, since regulations were legitimate exercise of police power and did not deny owner of reasonable use of property where there were number of permitted uses of property remaining. U.S.C.A. Const.Amends. 5, 14; Const. Art. 3, §§ 40–40D; Code, Transportation, §§ 5–801 to 5–823.

Warren K. Rich (Richard E. Rich, Lester O. Brown, and Niles, Barton & Wilmer on brief), Annapolis, for appellants.

Andrew H. Baida, Sp. Asst. Atty. Gen. (Stephen H. Sachs, Atty. Gen., Diana G. Motz, Peter E. Keith, Janis Ashman and Peter W. Taliaferro, Asst. Attys. Gen. on brief), Baltimore, for appellee.

Baltimore County, Maryland

PEOPLE'S COUNSEL
RM. 223, COURT HOUSE
TOWSON, MARYLAND 21204
494-2188

PHYLLIS COLE FRIEDMAN
People's Counsel

PETER MAX ZIMMERMAN
Deputy People's Counsel

January 14, 1986

The Honorable
Lawrence E. Schmidt
Acting Chairman
County Board of Appeals
Room 200, Court House
Towson, Maryland 21204

RE: Joseph F. Evering, Jr., et ux, Petitioners
Zoning Case No. 85-65-XSPHA (Item 166);
Circuit Court Case No. 86CG0022 (19/117)

Dear Mr. Schmidt:

This is in response to your letter of January 9, 1986 in the above-referenced matter in which you state that in your opinion our appeal was untimely and the Board is considering noncompliance with Rule B2(d) and B-7(a) until ordered by the Circuit Court.

While you have correctly surmised that one reason for our appeal was a fear of later being untimely, your suggestion that the parties stipulate to preserve our rights is, unfortunately, not a viable alternative. The time for appeal is jurisdictional and not subject to waiver by stipulation of the parties. In addition, the appeal will be accompanied by a request for a Declaratory Judgment as to the applicability of the airport regulations as well as critical areas.

We feel that the appeal accompanied as it is by a request for Declaratory Judgment is proper and in the public interest. It will enable us to resolve a number of issues in a timely fashion that will make further proceedings of the Board more meaningful. I hope with this explanation in mind, you will comply with Rule B2(d) and B-7(a).

Sincerely yours,

Phyllis Cole Friedman

Phyllis Cole Friedman
People's Counsel for Baltimore County

cc: Malcolm F. Spicer, Jr., Esquire
John O. Hennegan, Esquire
Robert J. Romadka, Esquire
Judith A. Arnold, Esquire

PCF:sh

RECEIVED
COUNTY BOARD OF APPEALS
1986 JAN 14 P 12: 36

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

January 9, 1986

T. Rogers Harrison, Esq.
306 W. Joppa Road
Towson, Md. 21204

Phyllis C. Friedman
People's Counsel for Baltimore County
Peter Max Zimmerman, Esq.
Deputy People's Counsel
Court House
Towson, Md. 21204

Re: Case No. 85-65-XSPHA
Special Hearing, Special Exception,
and Variances petitioned for
by Joseph F. Evering, Jr., et ux

Dear Mrs. Friedman, Messrs. Harrison
and Zimmerman:

The Board has received the Notice of Appeal filed by you on January 3, 1986, in the above matter. Needless to say, we are distressed at the timing of this action.

As you know, Maryland Rule B-[illegible] requires that the Board submit the record of proceedings before it to the [illegible] Baltimore County. Under the mandate of this rule, the Board in this case has, as a matter of practice, forwarded its entire file to the Clerk of Court. Additionally, past decisions of the Court have held that the filing of the appeal immediately removes the matter from before the Board; as jurisdiction is assumed by the Circuit Court.

These two considerations, the transmittal of the record and the Board's loss of jurisdiction, are of great concern to the Board in view of the present status of the matter. That is, the Board has to date heard testimony only on the preliminary motion and has yet to hear or consider the merits of the petitioned relief. As the next day's testimony, January 21st, is rapidly approaching, the Board is concerned over its authority to hear the matter on that date and if the appeal is proper.

After consideration, it is the Board's view that the appeal is improper and we will treat it as such. Our reasons for this conclusion are several. First, the Board's published "Ruling on Motion" dated December 12, 1985, is just that, a ruling on the Petitioner's preliminary motion. There is no opinion or, more importantly, Order of the Board which can be appealed.

T. Rogers Harrison, Esq.
Phyllis C. Friedman
Peter Max Zimmerman, Esq.

Additionally, it is well settled that an appeal may only be commenced when there has been some finality of judgment. Here, obviously, there has been none, as the Board has yet to even hear evidence upon the merits. Finally, the language of both the majority and dissent is clear, that is, "we will hold" and "I would deny". This language must be construed as prospective, in that the Board has not ruled on the motion in open hearing, rather, is merely advising counsel of its intention.

For these reasons, the Board views the appeal as untimely and will proceed with the hearing scheduled for January 21, 1986. Additionally, the Board may well consider not to comply with Rule B-2(d) and B-7(a) until ordered to do so by the Circuit Court.

Finally, although not attempting to advise the Appellants' and/or People's Counsel how to conduct their case, the Board surmises that the timing of the appeal was based upon a fear that failure to file within 30 days from December 12, 1985, would forfeit the right to appeal on this ruling. If that is indeed the case, we suggest that all parties reach a binding stipulation to preserve their rights to appeal this ruling, and then dismiss the current appeal. Certainly, it is in the best interests of the Petitioners to have this entire matter expeditiously heard and decided by the Board.

Very truly yours,

Lawrence E. Schmidt
Acting Chairman

cc: John O. Hennegan, Esq.
Robert J. Romadka, Esq.
Judith A. Armold
Malcolm Spicer, Jr., Esq.

LES:jh

Baltimore County, Maryland

PEOPLE'S COUNSEL
RM 223, COURT HOUSE
TOWSON, MARYLAND 21204
494-2188

PHYLLIS COLE FRIEDMAN
People's Counsel

PETER MAX ZIMMERMAN
Deputy People's Counsel

November 6, 1985

Mr. Theodore E. Mathison
State Aviation Administration
Department of Transportation
P. O. Box 8766, Balto.-Wash. Intl. Airport
Baltimore, Maryland 21240

RE: Joseph F. Evering, Jr., et ux, Petitioners
Zoning Case No. 85-65-XSPHA
N/S Chester Rd., 590' W of Severn Rd.
(800 Chester Rd.), 15th District (3.30 acs.)

Dear Mr. Mathison:

Enclosed herewith is a site plan for the above-referenced Petition for a Special Exception. During the course of a preliminary hearing, the issue of the applicability of Title 11, Subtitle 03, 11.03.05 Obstructions to Air Navigation, and 11.03.06 Airport Zoning Regulations, was raised.

Would you please advise us at the earliest possible moment as to whether development of the site in question is in any way impacted by these regulations and if so, how? This matter is presently pending before the County Board of Appeals.

Thank you for your prompt attention to this.

Sincerely yours,

Phyllis Cole Friedman
People's Counsel for Baltimore County

Enclosure

cc: John O. Hennegan, Esquire
Robert J. Romadka, Esquire
T. Rogers Harrison, Esquire
Judith A. Arnold, Asst. Attorney General
Norman E. Gerber, Director, OPZ

PCF:sh

RECEIVED
COUNTY BOARD OF APPEALS
1985 NOV -7 P 3:27

a special exception and variance. The Board of Appeals addressed the Appellants' argument on Pages 1 and 2 of its Opinion:

> Protestants allege that, due to the presence of a note on the final development plan indicating disposition of the parcel known as Tract A, the plan which is the subject of this hearing should have gone to the planning board for advice on the appropriateness of the instant case in relation to the final development plan.

The Board rejected this position and found:

> Having heard the testimony of expert witnesses Norman Goerber, for the Protestants, and George Gavrelis, for the Petitioner, the Board agrees with the Petitioner that the subject case is not a deviation from the final development plan, and, in fact, that the transfer of title of Tract A to the Baltimore Gas & Electric Company (hereinafter "BGE") occurred prior to the sale of other lots within the development.

Though this Court must grant appropriate deference to the findings of fact made by the Board of Appeals, it is, "... under no constraints in reversing an administrative decision which is premised solely upon an erroneous conclusion of law." *People's Counsel v. Maryland Marine*, 316 Md. 491 (1989), 497. Whether, vel non, the final development plan for the Fox Ridge subdivision should have been amended prior to the Board of Appeals consideration of BGE's request for special exception and variance is, perforce, a matter of law; consequently, this court must provide its own independent analysis of the property of the Board's finding in that regard. *People's Counsel v. Maryland Marine, supra.*

The use of plans and plats in the development process serves the following purpose:

> To provide for the disclosure of development plans to prospective residents and to protect those who have made decisions based on such plans from inappropriate changes therein; B.C.Z.R. 1B01.3A.1.a.

The final development plan for Fox Ridge contained in the record below, identifies Tract

R. W. BOZEL Transfer, Inc.
REFRIGERATED TRUCK SERVICE
2000 HAMMONDS FERRY ROAD • BALTIMORE, MD 21227 • (410) 247-3966 • FAX (410) 247-6849



June 27, 1994

Baltimore County Zoning Commission
4000 Washington Avenue
Towson, MD 21204

Attention: Larry Schmidt

Reference: Case #3760-X, 4535-X
Variance Request for Special Exception

Dear Mr. Schmidt,

On behalf of my fellow residents of Fox Ridge Estates, I am writing this letter in opposition to the special exception request by the Baltimore Gas & Electric Company for the proposed Ivy Hill Substation. We strongly urge you to deny Baltimore Gas & Electric's request for two main reasons.

First, and foremost - Safety. As a parent of three small children myself, as well as a neighbor to many other families with small children, I am deeply concerned with potential safety problems should the proposed substation by constructed. The health hazards associated with living in close proximity to electrical substations have been well documented and reported in newspapers and television alike. While I realize that there have been no conclusive studies done as yet, I , for one, do not feel that the possible health hazard is worth the risk.

Second, Fox Ridge Estates is an upper-middle class neighborhood inhabited by families who have worked hard, saved their money, and purchased homes in a community where they can live in an aesthetically pleasing, safe environment. In many cases, families have sunk their entire savings into their home - an asset that should appreciate in value. The proposed substation jeopardizes this. An eyesore, and a health risk, the proposed substation is a blight on our neighborhood. Without question, this would cause our property value to plummet.

On a personal note, when I purchased my home approximately one year ago I was assured by the builder that the lot now planned for the utility station would only be used to build another single family home. Now I am faced with the prospect of the unsightly Ivy Hill Substation.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO Ted Zaleski, Jr., Director
Department of Permits and Licenses Date November 4, 1985

FROM Norman E. Gerber, Director
Office of Planning and Zoning

SUBJECT Joseph F. Evering, Jr., et ux
Long Beach Marina
N/A of Chester Road, 590' W. of Severn Road (800 Chester Road)
15th Election District
Zoning Petition No. 85-65-XSpHA

In view of the apparent controversy in the zoning cycle case involving the subject site, I decided to clarify this office's position in the building permit application process, if and when an application is filed.

Please be advised that the subject site is within the State of Maryland Chesapeake Bay Critical Area, and that it is my policy not to grant waivers to the CRG for any such properties. Therefore, I request that no building permit be issued unless the applicant has obtained approval from the CRG.

Your cooperation in this matter is appreciated and, if you have any questions, please call.

Norman E. Gerber

Norman E. Gerber, AICP
Director

NEG:slm

cc: John O. Hennegan
Romadka, Gontrum, Hennegan & Foos

Phyllis Cole Friedman ✓
People's Counsel

Gary Kerns, Acti g Chief
Division of Current Planning & Development

James Dyer
Zoning Supervisor

J.G. Hoswell

RECEIVED
COUNTY BOARD OF APPEALS
1985 NOV -8 A 9:04

BALTIMORE COUNTY
OFFICE OF LAW
TOWSON, MARYLAND 21204
494-4420

MALCOLM F. SPICER, JR.
COUNTY ATTORNEY

JUL 10 AM
ZONING DEPARTMENT

July 8, 1985

Arnold Jablon, Esquire
Zoning Commissioner
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Dear Mr. Jablon:

You have requested an opinion from this Office concerning the role of the Zoning Commissioner and the Office of Planning & Zoning in implementing the provisions of Title 8, subtitle 18, Chesapeake Bay Critical Area Protection Program of the Natural Resources Article. In your request for an Opinion you raise the following questions:

1) Who is the "approving authority" in Baltimore County?

2) Under what circumstances can the Office of Planning & Zoning require information?

The questions which you raise occur primarily in three (3) possible settings. Those settings are (1) where a subdivision plat or site plan approval is required by the County Review Group under Baltimore County's Development Regulations; (2) where there is a need for a project to receive both C.R.G. approval and issuance of a special exception or variance by the Zoning Commissioner; (3) where only a variance or special exception is required which would be issued by the Zoning Commissioner.

A review of the definitional section in subtitle 18 "Chesapeake Bay Critical Area Program" is useful in determining the appropriate "approval authority" for purposes of the Interim Control Program established by §8-1813 of the Natural Resources Article. Section 8-1802 defines "development" to mean "any activity that materially affects the condition or use of dry land, land under water or any structure." In our view this definition is intended to include any activity, even though there is no structure involved, if that activity materially affects the condition or use of dry land or land under water. It also includes any structure but there is no requirement that the structure "materially affect" the condition or use

of dry land or land underwater. That Section also defines "project approval" to mean "approval of development including approval of subdivision plats and plans; issuance of variances, special exceptions and conditional use permits." The term, however, does not include building permits. The Chesapeake Bay Critical Area legislation does not contain a definition for "approving authority" and this is understandable due to the fact that the State legislation has application to a number of local jurisdictions which would have different powers in respect to Planning & Zoning functions and which would have various "approving authorities." Local jurisdiction is defined to mean a County or a municipal corporation with planning and zoning powers in which any part of the Chesapeake Bay Critical Area is located. Baltimore County clearly is included under this definition of "local jurisdiction." The State law, in determining the "approving authority" is designed to be flexible to allow for the different review and approval procedures that may exist in any local jurisdiction.

A review of these definitions as well as the provisions of §8-1813 indicates that the event which triggers the need to make the specific findings of subsection (a)(1) and (2) of that Section is an application for "project approval." See Natural Resources §8-1813(b). So long as the application for project approval includes or proposes "development", the findings must be made.

In Baltimore County, the Development Regulations which were adopted by Bill #56-82 contemplates that for all matters involving development which come within the scope of Bill #56-82, the County Review Group (C.R.G.) is the approving authority. Utilizing the C.R.G. as the "approving authority" contemplated by the Chesapeake Bay Critical Area legislation is consistent with the mandates of the Interim Control Program established by §8-1813 which contemplates that the approving authority would make specific findings with regard to any proposed development within the initial planning area identified in §8-1807(a). Clearly for a development which requires only C.R.G. approval under the County's Development Regulations the C.R.G. should be the approving authority and in instances where a proposed development would require both C.R.G. approval and granting of a special exception or variance, the C.R.G. should be the approval authority for that proposed development in terms making the specific findings required by §8-1813 of the Natural Resources Article. Utilizing the review function contemplated by the Critical Area's legislation would be consistent with the development policies adopted by the County

in §22-37(b)(4) of the Baltimore County Code. That Section provides, in part:

> "These regulations are designed and intended to insure the safety, adequacy and convenience of proposed provisions for the following:
>
> ...(4) prevention of environmental degradation and promotion of environmental enhancement, including adequacy of landscaping and energy conservation measures, and of protection of floodplains, steep slopes, watersheds, wetlands, vegetation, and other natural features and historical sites or areas."

In addition, State law mandates that the approving authority require an applicant for project approval to submit additional information as may be necessary to make the findings required by §8-1813(a)(1) and (2). The C.R.G. under the County Development Regulations is also empowered to require an applicant to submit additional information regarding his plan and to continue its meeting in order that such additional information may be received. The procedures before the Zoning Commissioner involving often times an adversarial hearing do not lend themselves to the interruption of the process in order that additional information may be submitted. While it is true that the Zoning Commissioner could conceivably suspend or continue his hearing to allow for additional evidence, such interruptions of quasi-judicial hearings should not be encouraged. The Zoning Commissioner, as a quasi-judicial officer is required to make findings of fact and to apply the law to those facts. In the case of special exceptions the findings required are set forth in §502.1 of the Baltimore County Zoning Regulations. While it is possible that the Zoning Commissioner could make the findings required by the State legislation, it is more appropriate that the C.R.G. be the approving authority under the State legislation for purposes of making those required findings. There is nothing in the State law which suggests that the findings should be made in adversarial setting where testimony is produced from a witness stand and a witness is subject to cross-examination. Rather, the State law contemplates that certain administrative findings will be made by those individuals who, during the course of the implementation of the Chesapeake Bay Program, will have developed the expertise necessary to make the findings required. The C.R.G. process as established in the Baltimore County Development Regulations is uniquely suited to process the proposed development and, with its input from various agencies, is uniquely suited to make

the required findings. This is not to suggest that the findings or non-findings made by the C.R.G. under the Chesapeake Bay legislation would not be subject to review but that the C.R.G. decision, as in the case of other C.R.G. decisions, would have the presumption of correctness and the person challenging that decision would have the burden of establishing that such action was arbitrary or capricious, procured by fraud or otherwise illegal.

In the remaining instance which you have presented wherein a special exception or variance would be required but for some reason the C.R.G. is not required to take action under the County's Development Regulations, the Zoning Commissioner should follow the procedures outlined in §22-26 of the Baltimore County Code and forward the Petition and supporting documentation to the Director of Planning (or his Deputy) for his consideration and written report thereon containing his findings with regard to planning factors. The Director's findings with regard to planning factors would include the findings required by §8-1813 of the Natural Resources Article and for purposes of making those findings with regard to the proposed development, the Director of Planning & Zoning is the "approving authority." The Director, of course, in making his findings would consult with other interested departments and agencies of the County and would have the authority under the State law to require additional information. The Zoning Commissioner should not conduct a hearing on a Petition for Special Exception or Variance prior to receipt of the Director's findings.

In connection with the second question which you have raised, the provisions of §8-1813(b) of the Natural Resources Article contemplate that whenever additional information is deemed necessary in order to make the findings required by subsection (a), the approving authority (either the C.R.G. or the Director of Planning & Zoning) shall require the applicant to submit such additional information. While there are no apparent limitations on the ability to require additional information, common sense dictates that it only be required when reasonably necessary and that the request for additional information not be arbitrary or capricious.

In the instance whether neither a C.R.G. approval nor a Zoning Commissioner approval is required by County law, it is probable that the findings would not be required because there would be no application for project approval and therefore no development. For example, in the case of a

Petition for Reclassification filed before the Board of Appeals under §2-58.1 of the County Code which does not include a plan showing the proposed use, the required findings would not need to be made. Only when there was a plan for the development of a property submitted would the findings be made and they would be made by the C.R.G. during the course of its review. If, in connection with a reclassification, there is a proposed plan submitted, that plan or a substantially similar plan would, in all probability, be submitted for contemporaneous C.R.G. approval. The C.R.G. in that instance and not the Board of Appeals would make the necessary findings. As with the instances of dual approvals involving the C.R.G. and Zoning Commissioner, dual approval involving the Board of Appeals and C.R.G. should not result in dual findings which may be inconsistent. There should be only one approving authority for purposes of making the findings and the C.R.G. should be that authority.

Sincerely,

Malcolm F. Spicer, Jr.
County Attorney

MFSJR:gh

cc: Gene Bober, Chief - Current
Planning & Development
James Markle, Chief - Bureau
of Public Services

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

ARNOLD JABLON
ZONING COMMISSIONER

January 11, 1985

T. Rogers Harrison, Esquire
306 West Joppa Road
Towson, Maryland 21204

RE: Case No. 85-65-XSPHA
Joseph F. Evering, Jr., et ux - Petitioners

Dear Mr. Harrison:

I am in receipt of your letter dated January 10, 1985.

The hearing scheduled is on the Motion filed by Mr. Hennegan. He will be permitted to present any witnesses or evidence in support of his position, and you as counsel for the Protestants may do likewise. They will be permitted to argue fully as to the points raised by the Motion filed. This shall be a continuation of the hearing on the Petitions filed, and after evaluating all of the evidence and testimony presented, I will decide on the merits and on the impact of the proposals on the Chesapeake Bay, pursuant to the Critical Area Protection Program.

No decision on the special exception can be made until there is a resolution of the issues raised in Mr. Hennegan's Motion. If you have any further questions, please feel free to call me.

Sincerely,

ARNOLD JABLON
Zoning Commissioner

AJ:aj

cc: John O. Hennegan, Esquire

Mr. Norman Gerber

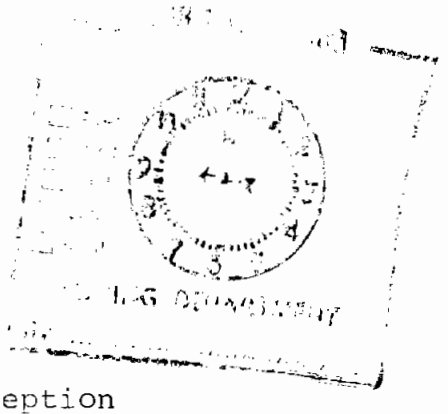
Mr. Eugene Bober

LAW OFFICES
MUDD, HARRISON & BURCH
306 WEST JOPPA ROAD
TOWSON, MARYLAND 21204
AREA CODE 301-828-1335

JOHN E. MUDD
T. ROGERS HARRISON
RICHARD C. BURCH
DOUGLAS W. HOSER
H. PATRICK STRINGER, JR.

900 MARYLAND TRUST BUILDING
24 SOUTH CALVERT STREET
BALTIMORE, MARYLAND 21202
301-539-0206

January 10, 1985



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

Re: Petition for Special Exception
Special Hearing Variances
N/S Chester Road, 590' W of
Severn Road (800 Chester Road)
Joseph F. Evering, Jr., et ux
Petitioners Case No. 85-65XSPHA

Dear Mr. Jablon:

I have received a copy of your letter of January 3, 1985, to John O. Hennegan, Esquire, the attorney for the Everings, in which you set up a hearing to determine whether or not the Everings' property is subject to the Chesapeake Bay Critical Area Protection Program, Md. National Resources Code Ann., §8-1801 - 8-1816 (1974 and 1984 Comm. Supp.).

It would be greatly appreciated if you would provide me with information about the scope of the hearing and what type of input Ken Engelke and the other Protestants will be allowed to make. Also, unless I am mistaken, I believe you mentioned in your November 9, 1984, letter to me that you would by the end of November (or thereabouts) decide whether the Everings fulfilled the requirements of Section 502.3 of the B.C.Z.R. (1981 and 1983 Supplements).

A prompt reply would be appreciated because I will need adequate time to prepare for the hearing.

Thank you.

Very truly yours,

T. Rogers Harrison

TRH/djb

September 11, 1984

Mr. Ken Engelke
828 Chester Road
Baltimore, Maryland 21220

RE: Case No. 85-65-XSPHA
Joseph F. Evering, Jr.,
et ux, Petitioners

Dear Mr. Engelke:

I have decided that a view from the water would be appropriate in light of the circumstances presented at the hearing. Therefore, I am making a request to both parties to provide me with a means to make an inspection so that each may have the same opportunity to show me their perspective. Please advise.

Sincerely,

ARNOLD JABLON
Zoning Commissioner

AJ/srl

cc: John O. Hennegan, Esquire

Larry Schmidt
Baltimore County Zoning Commission
June 27, 1994
Page Two

In imploring you to deny this request, your consideration of our thoughts and fears will be greatly appreciated.

Respectfully,

Jeffrey B. Bozel

Jeffrey B. Bozel
Vice President

JBB:le

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO Arnold Jablon
Zoning Commissioner

Date September 7, 1984

FROM Norman E. Gerber, Director
Office of Planning and Zoning

SUBJECT Joseph F. Evering, Jr., et ux
No. 85-65-XSpHA

In view of the comments concerning the State's Chesapeake Bay Critical Area regulations (see letter to Frank S. Lee from Paul J. Solomon dated September 7, 1984), this office cannot offer final comments on the subject petition.

Norman E. Gerber, Director
Office of Planning and Zoning

NEG/JGH/sf

Pump-out station
On-shore sanitary facil - we need more info.

BALTIMORE COUNTY DEPARTMENT OF HEALTH

September 5, 1984
Date

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

CRITICAL AREA REVIEW

Zoning Item # 166 Zoning Advisory Committee Meeting of January 3, 1984

Property Owner: Joseph F Ewing

Location: N/S Chester Rd. District 15

Stream(s) on Property Yes ___ No ___

COMMENTS Will be required after Environmental Effects Report is submitted

Wetlands/Hydric Soils Yes ___ No ___

COMMENTS Will be required after Environmental Effects Report is submitted

Note: As per Baltimore County Health Department Wetland Guidelines, development or grading is prohibited in upland and tidal wetlands.

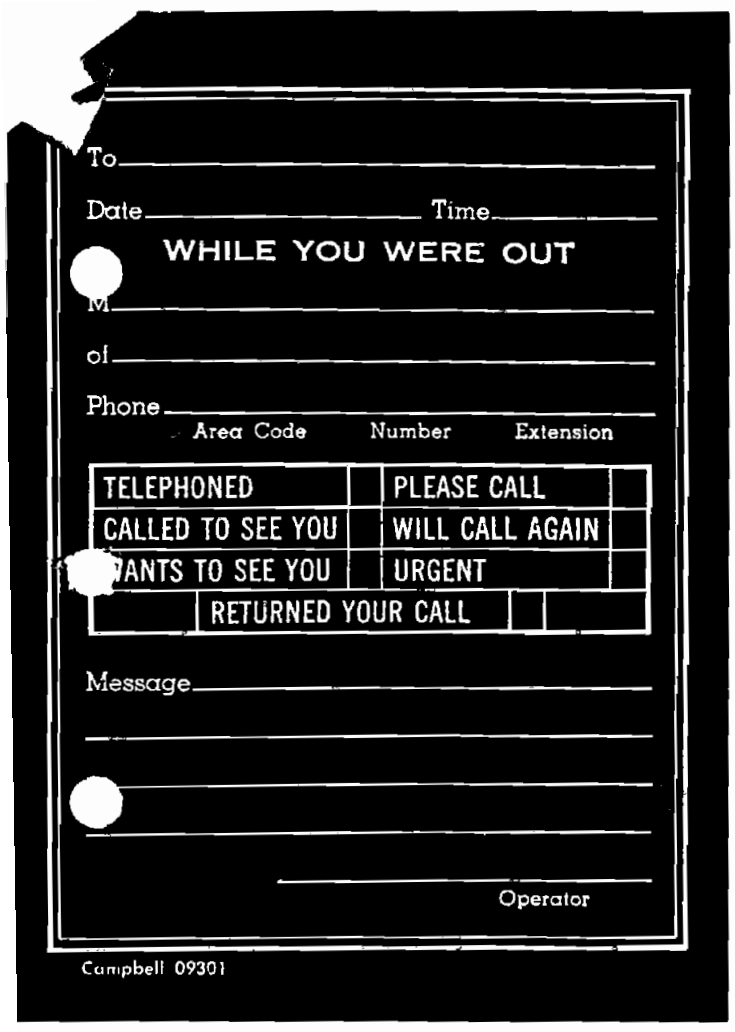
OTHER COMMENTS Long Beach Marina - Health Dept. strongly recommends installation of sewage pump-out station. More information is needed on on-shore sanitary facilities, ex. ability of septic system to accommodate anticipated marina uses. Environmental Effects Report will be required and final comments on the environmental impact of the proposed improvements will be made after EER has been submitted

B. H. Stafford

11/27/85 - Sent cc of this letter to Larry

12/2/85 - Per phone call from Ronalda's office; he objects to granting this request as Larry had notified everyone that 1/21 date was firm.

E


To
Date
Time
WHILE YOU WERE OUT
M
of
Phone
Area Code
Number
Extension
TELEPHONED
PLEASE CALL
CALLED TO SEE YOU
WILL CALL AGAIN
ANTS TO SEE YOU
URGENT
RETURNED YOUR CALL
Message
Operator
Campbell 09301

To Mr. Hackett

Date _____ Time _____ A.M. P.M.

WHILE YOU WERE OUT

M RE: Evering case

of Has been remanded to the Board

Phone by the Circuit Court

Area Code Number Extension

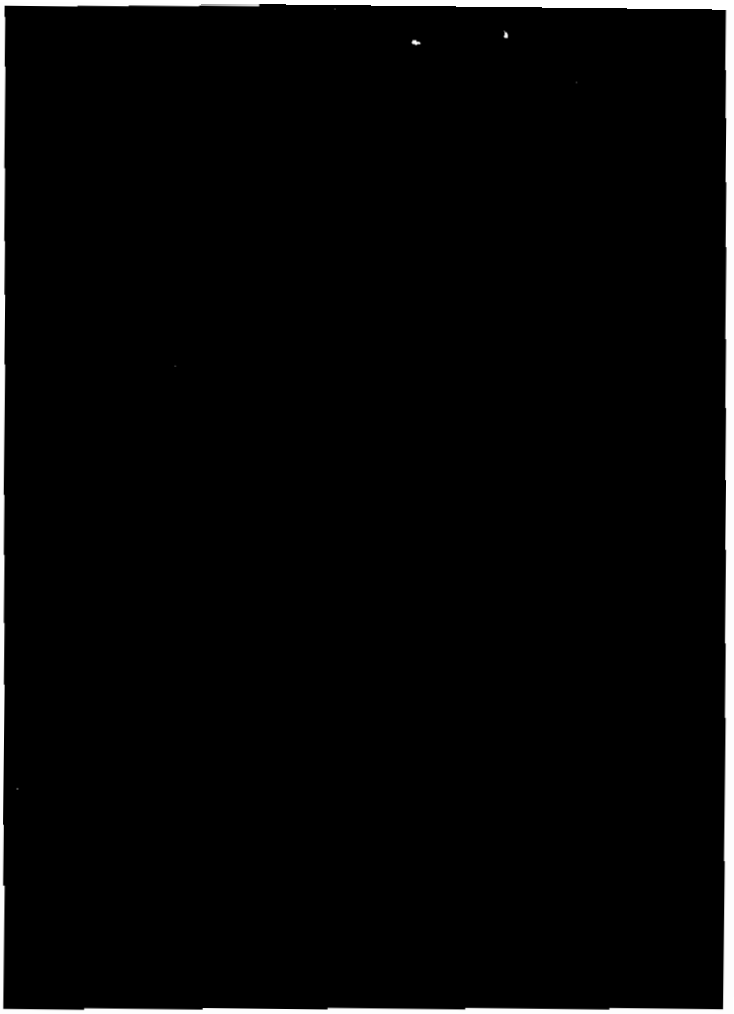
TELEPHONED		PLEASE CALL	
CALLED TO SEE YOU		WILL CALL AGAIN	
WANTS TO SEE YOU		URGENT	
RETURNED YOUR CALL			

Message Judge Sfekas wants the Board to make a final determination, therefore, dismissed the appeals filed from the Board's RULING on the Motions only.

Board Schmidt, Franz & Vincent

Operator

Campbell 09301



MPORTANT MESSAG

FOR

DATE 4/11/03 TIME 1103 A.M. P.M.

WHILE YOU WERE OUT

M Bill Beckwith

OF

PHONE NO. 828-6207

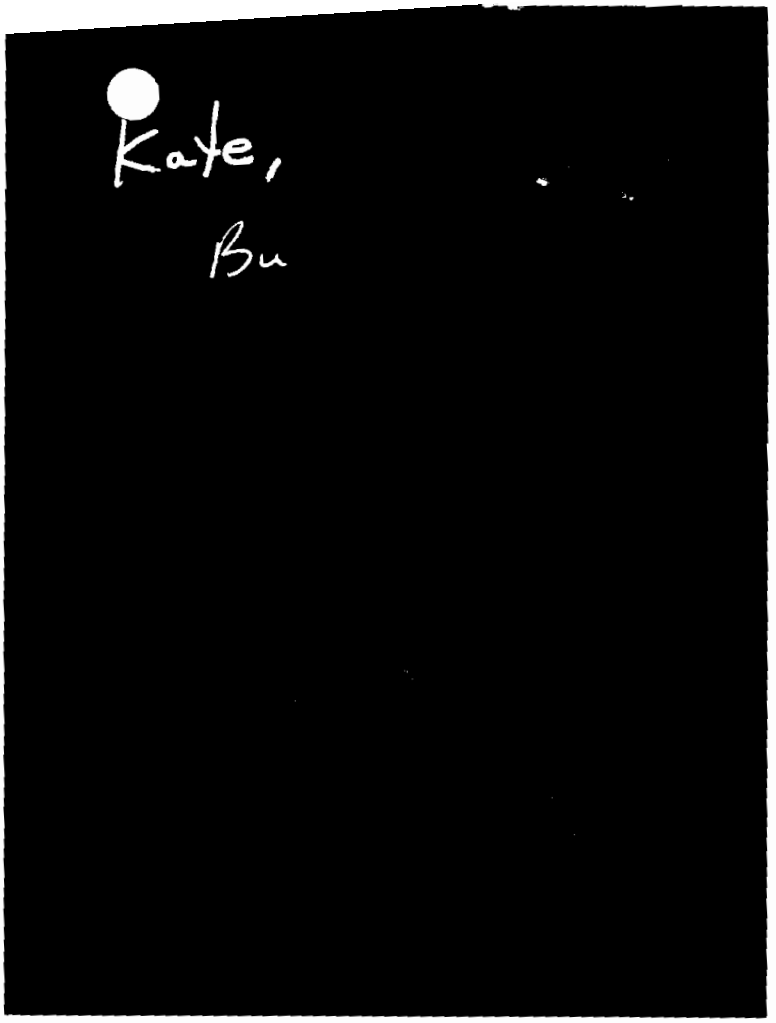
TELEPHONED	✓	PLEASE CALL	✓
CALLED TO SEE YOU		WILL CALL AGAIN	
WANTS TO SEE YOU		RUSH	

RETURNED YOUR CALL

MESSAGE Kate ↑ said Flowers was going to sign off 4/12 - if you don't have any conflicting info. or problems sign off + make sure "IN ACCORDANCE WITH ZONING CASE # " IS TYPED ON FACE of permit.

SIGNED

Associated L1-A2334 PRINTED IN U.S.A.


Kate,
Bu

subject to restrictions.

October 17,1984	Order for Appeal to C.B. of A. from Phyllis C. Friedman, People's Counsel for Baltimore County.
October 19, 1984	Order for Appeal to C.B. of A. from Austin W. Brizendine, Jr., Esq., on behalf of Petitioners.
Feb. 7, 1985	Hearing held before the Board (F.S.V.)
" 12	" " " " " "
April 9	Board GRANTED SE with restrictions (Franz, Spurrier, Vincent)
May 8	Order for Appeal filed in the Circuit Court by S. Barhight for Protestants, Jean Duvall, et al (85-CG-1433)
June 21	Order of Dismissal filed in the Circuit Court on behalf of Protestants-Appellants by Mr. Barhight and case DISMISSED

#85-65-XSPHA (Item No. 166)	N/s Chester Rd., 590' W of Severn Rd. (800 Chester Road)	15th District	Joseph F. Evering, Jr., et ux

August 6, 1984	Petitions filed - for special exception for 2 lots located on the north and south side of Chester Rd. not included in special exception Cases 35-35X, 64-57 SPH, 64-160-X in a D.R. 5.5 zone to be used as a boat yard; variance from Sec. 409.2.c(2) to allow existing compacted stone in lieu of req. macadam paving. 409.2.b to allow 318 pkg. spaces in lieu of the req. 384; & from Sec. 417.5(a) requiring the structure not to exceed 300' beyond mean low tide to allow the structure to extend 419 ft. beyond the mea low tide; and special hearing to approve an amendment to th site plan in Case No. 64-57-SPH, 64-160-X and 35-35-X to construct an addition to the piers; etc.
April 25, 1985	Z.C.'s Order - That the Petition for Special Exception be GRANTED: that the Petition for Zoning Variances be GRANTED: That the amendments to the site plans be approved: That the Petition for Special Hearing be GRANTED, subject to restrictions.
May 10, 1985	Order for Appeal to C. B. of A. from Phyllis C. Friedman, People's Counsel of Baltimore County.
May 20, 1985	Order for Appeal to C.B. of A. from Robert J. Romadka, Esq., on behalf Petitioners.
May 20, 1985	Order for Appeal to C.B. of A. from Norman E. Gerber, Director, Planning & Zoning Office.
May 20, 1985	Order for Appeal to C.B. of A. from T. Rodgers Harrison, Esq., on behalf of Protestants.

----------OVER---------->

#85-65-XSPHA	N/S Chester Rd. 590' W. of Severn Rd.	15th District	Joseph F. Evering, Jr.

Oct.	29, 1985	Hearing held by the Board on MOTION ONLY (L.F.V.)
Dec.	12	Board issued RULING ON MOTION - ". . that the Chesapeake Bay Critical Area Protection Program is not applicable to the proposed petition." (Majority Opinion by Schmidt and Franz) DISSENT filed by Diana K. Vincent
Jan.	3, 1986	Order for Appeal filed in the Circuit Court by People's Counsel (#86-CG-0022)
Jan.	10	Order for Appeal filed in the Circuit Court by County Attorney (#86-CG-240) CONSOLIDATED IN COURT
"	21	Hearing held by the Board (L.F.H.) - Case was to open on merits, therefore, did not need same Board. After much discussion, case did not open but was continued until after the Circuit Court has rendered an Order on the above appeals.
Aug.	7	Order of Judge Sfekas: "In this case the Plaintiffs have only appealed the Board's ruling on the applicability of the Aviation Zoning Regulations and the Critical Areas Law, the remaining portion of the case is still pending before the Board. The Board has also affirmed the Z.C.'s ruling on the applicability of the Chesapeake Bay Critical Areas Legislation. They have not affirmed the granting of the Evering's SE. For these reasons, this Court coes not believe the Board of Zoning Appeals has issued a final determination of the rights of the parties. To allow an appeal of the Board's ruling, at this time, would encourage piecemeal litigation, thus imposing an increased burden on the judicial system and the parties." --- Case remanded to Board to have a hearing on the merits.
Dec.	16	Hearing held by the Board (L.F.H.) (continued to 12/17/86)
Dec.	17	Continued hearing before Board. Case completed. (L.F.H.)

LAW OFFICES
MUDD, HARRISON & BURCH
306 WEST JOPPA ROAD
TOWSON, MARYLAND 21204
AREA CODE 301-828-1335

JOHN E MUDD
T ROGERS HARRISON
RICHARD C BURCH
DOUGLAS W BISER
H. PATRICK STRINGER, JR.
ANDREW JANQUITTO

900 MARYLAND TRUST BUILDING
14 SOUTH CALVERT STREET
BALTIMORE, MARYLAND 21202
301-323-0266

January 14, 1987

HAND DELIVERED

Mr. William T. Hackett, Chairman
Board of Zoning Appeals
Baltimore County, Maryland
Room 200
Court House
Towson, Maryland 21204

Re: Joseph F. Evering, Jr., et ux,
Petitioners v. Bowley's Quarters
Improvement Association, Inc. et
al, Protestants, #8565XSPHA

Dear Mr. Hackett:

Enclosed please find the original and three copies of Memorandum and Argument filed in the captioned matter on behalf of the Protestants.

Very truly yours,

T. Rogers Harrison

TRH:lfc

c.c. - John Gontrum, Esquire
Phyllis Friedman, Esquire
Mr. Andy Jones

RECEIVED
COUNTY BOARD OF APPEALS
1987 JAN 14 P 3:45

LAW OFFICES
MUDD, HARRISON & BURCH
306 WEST JOPPA ROAD
TOWSON, MARYLAND 21204
AREA CODE 301-828-1335

JOHN E. MUDD
T. ROGERS HARRISON
RICHARD C. BURCH
DOUGLAS W. BISER
H. PATRICK STRINGER, JR.
ANDREW JANQUITTO

900 MARYLAND TRUST BUILDING
14 SOUTH CALVERT STREET
BALTIMORE, MARYLAND 21202
301-323-0266

November 26, 1985

Mr. William T. Hackett, Chairman
Baltimore County Board of Zoning Appeals
Room 200 Court House
Towson, Maryland 21204

Re: Case No. 85-65-XSPHA
Joseph F. Evering - Protestants
Chester Road, W. Severn
15th District
Boat Yard

Dear Mr. Hackett:

We have received a notice rescheduling the continuance of the above-captioned zoning case for Tuesday, January 21, 1986, at 10 a.m. I hope that it is everyone's understanding that it is not my desire to create any unnecessary inconvenience for anyone; however, my practice is primarily that of trial work and I do have a previously scheduled trial in the Circuit Court for Baltimore County, Hoffman v. High's, beginning on January 22, 1986, and I will be preparing for that trial several days prior. However, we all know there are always cases that are postponed, settled, etc. In light of this previously scheduled trial, I have no alternative but to ask that the zoning case be postponed to another date and my secretary would be more than willing to provide all the available dates on my calendar from the first of the year forward.

Thank you for your kind cooperation.

Very truly yours,

T. Rogers Harrison

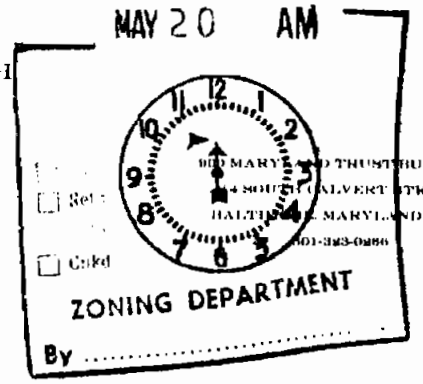
TRH:sw

c.c. John O. Hennegan, Esquire, Robert J. Romadka, Esquire, Judith A. Arnold, Esquire, Phyllis C. Friedman, Esquire, Mr. Norman E. Gerber, Mr. James Hoswell, Mr. Arnold Jablon, Jean Jung, Mr. James Dyer

RECEIVED
COUNTY BOARD OF APPEALS
1985 NOV 27 A 11:07

LAW OFFICES
MUDD, HARRISON & BURCH
306 WEST JOPPA ROAD
TOWSON, MARYLAND 21204
AREA CODE 301-828-1345

JOHN E. MUDD
T. ROGERS HARRISON
RICHARD C. BURCH
DOUGLAS W. BIRKE
H. PATRICK STRINGER, JR.



May 17, 1985

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

Re: Petition for Spec Ex
Petition for Spec Hearing
Petition for Variances
Case No. 85-65-XPHA

Dear Mr. Jablon:

The Protestents, Ken Engelke, et al., would like to appeal your decision in the above-captioned matter.

Our firm's check in the amount of $260.00 is enclosed. This amount represents the fee for the appeal from the granting of the special exception $100.00), the fee for the appeal from the granting of the variance ($75.00), the fee for the appeal from the granting of the special hearing ($75.00), and the costs for posting two signs ($10.00) on the Everings' property.

If you have any questions, please feel free to contact me.

Very truly yours,

T. Rogers Harrison

TRH/djb
Enclosure

RECEIVED
COUNTY BOARD OF APPEALS
1985 MAY 22 P 1:01

June 27, 1994

L. Schmidt
Zoning Commissioner
Baltimore County
Zoning Commissions Office
400 Washington Avenue
Towson, Maryland 21204

Re: Application by
Baltimore Gas & Electric
System Engineering &
Construction Department
Lexington & Liberty St.
1020 G&E Building
Baltimore, Maryland 21201

Property located in
Election District
3rd Council District
Zoned RC5
Tax Map 50
Parcel #247, 338 & 79
Tract A. Zoning Map D2

Dear Mr. Schmidt:

I wish to register my strong objections to petitions made by the BG&E Co. applying for variance of planning and for special exception to use the residential property to erect an electric substation. I own land next to the proposed unacceptable development and the BG&E Co. have not contacted me, nor the previous owners of the land (the Kircheners) to explain their proposals.

I am therefore requesting you to delay your decision re their applications pending a public and residents meeting which is to be held shortly. Obviously I and many other residents in Joel Court, Fox Ridge, Ridge Road and Gent Road, would prefer you to reject their applications.

Yours sincerely,

N. R. Howse

N. R. Howse
4 Joel Court
Fox Ridge
Reisterstown, MD 21136

Business Phone (410) 525-1800

cc: J. Francomano
Francomano & Karpook, P.A.
Legal Offices
20 S. Charles Street
Sun Life Building
Baltimore, Maryland 21201

November 9, 1984

T. Rogers Harrison, Esquire
306 West Joppa Road
Towson, Maryland 21204

RE: Case No. 85-65-XSPHA
Joseph F. Evering, et ux,
Petitioners

Dear Mr. Harrison:

I am in receipt of your letter dated November 5, 1984.

Although I can imagine a scenario that both sides to the above matter will request time ad nausem to respond to the other side's memorandums, I will permit you ten days from the date of this letter to respond. I will then permit Mr. Hennegan ten days from his receipt of a copy of your response to answer, after which I will issue my decision.

Sincerely,

ARNOLD JABLON
Zoning Commissioner

AJ/srl

cc: John O. Hennegan, Esquire

85-1050
Over file

11/7/84

LAW OFFICES
MUDD, HARRISON & BURCH
306 WEST JOPPA ROAD
TOWSON, MARYLAND 21204
AREA CODE 301-828-1335

JOHN E. MUDD
T. ROGERS HARRISON
RICHARD C. BURCH
DOUGLAS W. BISER
H. PATRICK STRINGER, JR.

900 MARYLAND TRUST BUILDING
14 SOUTH CALVERT STREET
BALTIMORE, MARYLAND 21202
301-323-0288

November 5, 1984

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

Re: Petitions of Joseph F. Evering, et ux
85-65-H-XSPHA

Dear Mr. Jablon:

We just received our copy of the Memorandum filed by Petitioners' counsel in the above-captioned matter. It had been my understanding that both parties were to file a Memorandum within a specified period of time and not that the Petitioners would have weeks of time to review and then respond to the Memorandum filed by the Protestants. Therefore, I am requesting an additional 10 days period of time to file a response to the Petitioners' Memorandum prior to any ruling by your office. Positive consideration of this request would be greatly appreciated.

Very truly yours,

T. Rogers Harrison

TRH:lfc

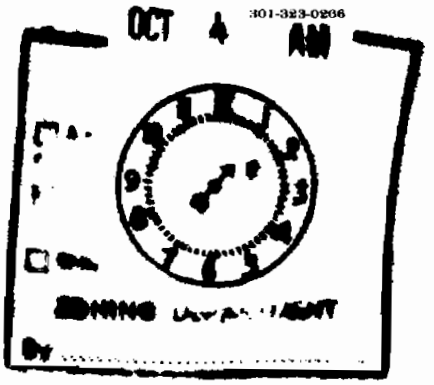
c.c. - John O. Hennegan, Esquire

7 '84 AM

LAW OFFICES
MUDD, HARRISON & BURCH
306 WEST JOPPA ROAD
TOWSON, MARYLAND 21204
AREA CODE 301-828-1335

JOHN K. MUDD
T. ROGERS HARRISON
RICHARD C. BURCH
DOUGLAS W. BISER
H. PATRICK STRINGER, JR.

900 MARYLAND TRUST BUILDING
14 SOUTH CALVERT STREET
BALTIMORE, MARYLAND 21202
301-323-0266



October 3, 1984

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

Re: Petition of Joseph F. Evering, Jr., et ux
Petition for Special Exception
Petition for Special Hearing
Petition for Variances
Case No. 85-65-XSPHA

Dear Mr. Jablon:

Enclosed please find the original and one copy of our Memorandum filed on behalf of all protestants at the Zoning hearing which occurred on September 10, 1984. It is my understanding that your primary area of interest was the protestants' position regarding validity and legality of the existing zoning and the petitions utilized to bring the current issues before the Zoning Commissioner. In accordance with that indication, we have not developed the myriad of additional arguments which exist on the merits of this case.

We are sending a copy of our memorandum to Petitioners' counsel and if you require any additional information, please don't hesitate to contact me.

Very truly yours,

T. Rogers Harrison

TRH:lfc
Enclosures

c.c. - Robert Romadka, Esquire
Mr. Ken Engelke

LAW OFFICES
MUDD, HARRISON & BURCH
306 WEST JOPPA ROAD
TOWSON, MARYLAND 21204
AREA CODE 301-828-1335

JOHN E. MUDD
T. ROGERS HARRISON
RICHARD C. BURCH
DOUGLAS W. BISER
H. PATRICK STRINGER, JR.

900 MARYLAND TRUST BUILDING
14 SOUTH CALVERT STREET
BALTIMORE, MARYLAND 21202
301-323-0200

27 September 1984

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

Re: Case No. 85-65-XSPHA
Item No. 166
Petitions for Special Exceptions, Special Hearing, and Variances
Property Owner: Joseph F. Evering, Jr., et ux.

Dear Mr. Jablon:

Pursuant to the conversation we had yesterday, I have written this letter to confirm that I shall be assisting Tom Harrison in the above-captioned case. I also want to thank you for allowing me to make copies of the documents in the file. If you have any questions, please feel free to contact Tom Harrison or me.

Very truly yours,

Andrew Jahquitto

AJ:aj

85-65-A
Case file

9/17/84

LAW OFFICES
MUDD, HARRISON & BURCH
306 WEST JOPPA ROAD
TOWSON, MARYLAND 21204
AREA CODE 301-828-1335

JOHN E. MUDD
T. ROGERS HARRISON
RICHARD C. BURCH
DOUGLAS W. BISER
H. PATRICK STRINGER, JR

900 MARYLAND TRUST BUILDING
14 SOUTH CALVERT STREET
BALTIMORE, MARYLAND 21202
301-323-0266

13 September 1984

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

Re: Case No. 85-65-XSPHA
Item No. 166 (1983-1984)
Petitions for Special Exception, Special Hearing, and Variances
Property owner: Joseph F. Evering, Jr., et ux.

Dear Mr. Jablon:

Please be advised that Ken Engelke and other members of Mr. Evering's neighborhood have retained our services to represent their interests in the above-captioned matter. Also, let this letter serve as confirmation of today's telephone conversation between our offices in which you gave us until 5 October 1984 to file the memorandum of law you requested in the 10 September 1984 hearing. If there are any questions, please feel free to contact me. Thank you.

Very truly yours,

Tom

T. Rogers Harrison

TRH:aj

PCF: seen
PMZ: /

OFFICES OF

STEPHEN H. SACHS
ATTORNEY GENERAL

ELEANOR M. CAREY
DENNIS M. SWEENEY
CHARLES O. MONK, II
DEPUTY ATTORNEYS GENERAL

JUDITH A. ARMOLD
ASSISTANT ATTORNEY GENERAL

COUNSEL
DEPARTMENT OF STATE PLANNING

THE ATTORNEY GENERAL

DEPARTMENT OF STATE PLANNING
301 WEST PRESTON STREET
BALTIMORE, MARYLAND 21201-2365
301-383-7700

September 8, 1986

noted

County Board of Appeals of Baltimore
County
Room 200 Court House
Towson, Maryland 21204

c/o Ms. Edith T. Eisenhart, Administrative Secretary

Re: Case No. 85-65-XSPHA
Joseph F. Evering, Jr., et ux.

Dear Chairman and Members of the Board:

I have just received notice of the assignment of the referenced case for December 10, 16, and 17, 1986. While December 16 and 17 present no problems for me, I do have a scheduling conflict on December 10. I am a member of the Review Board of the Attorney Grievance Commission, and the Review Board has scheduled its regular monthly meeting, in Annapolis, beginning at 1:00 P.M. on Wednesday, December 10. In order that the business of the Review Board can be handled expeditiously, it is important that each of the members makes every effort to attend. For that reason, I respectfully request that the case be set for a day other than December 10 if a third day of hearing is necessary.

Thank you for your cooperation.

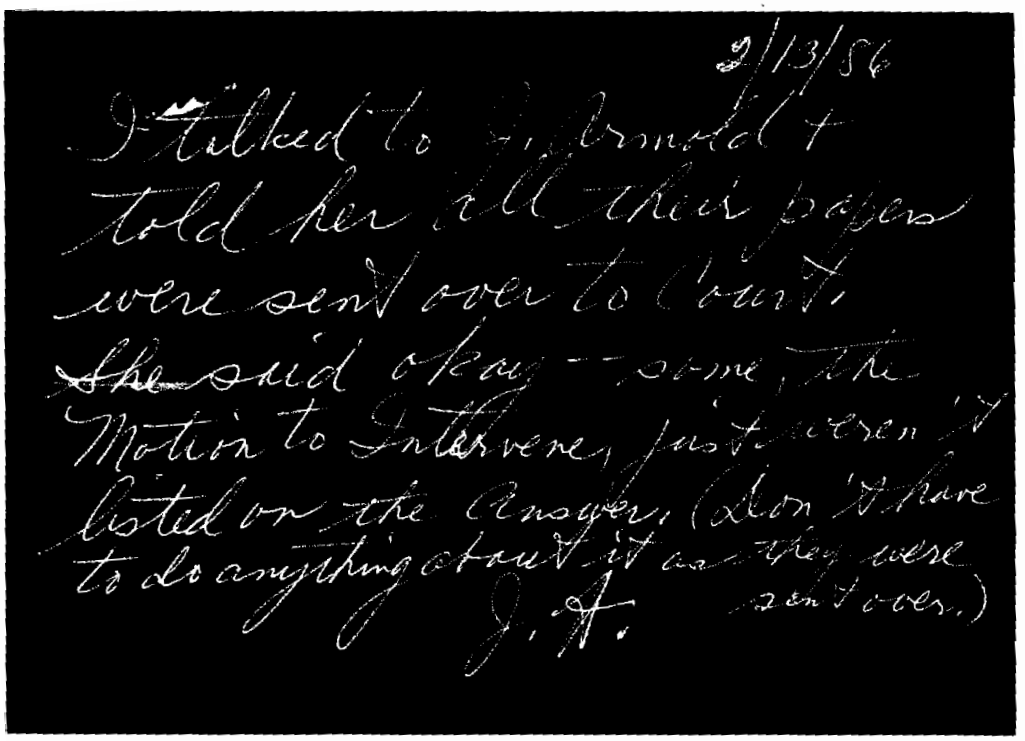
Very truly yours,

Judith Armold

Judith A. Armold

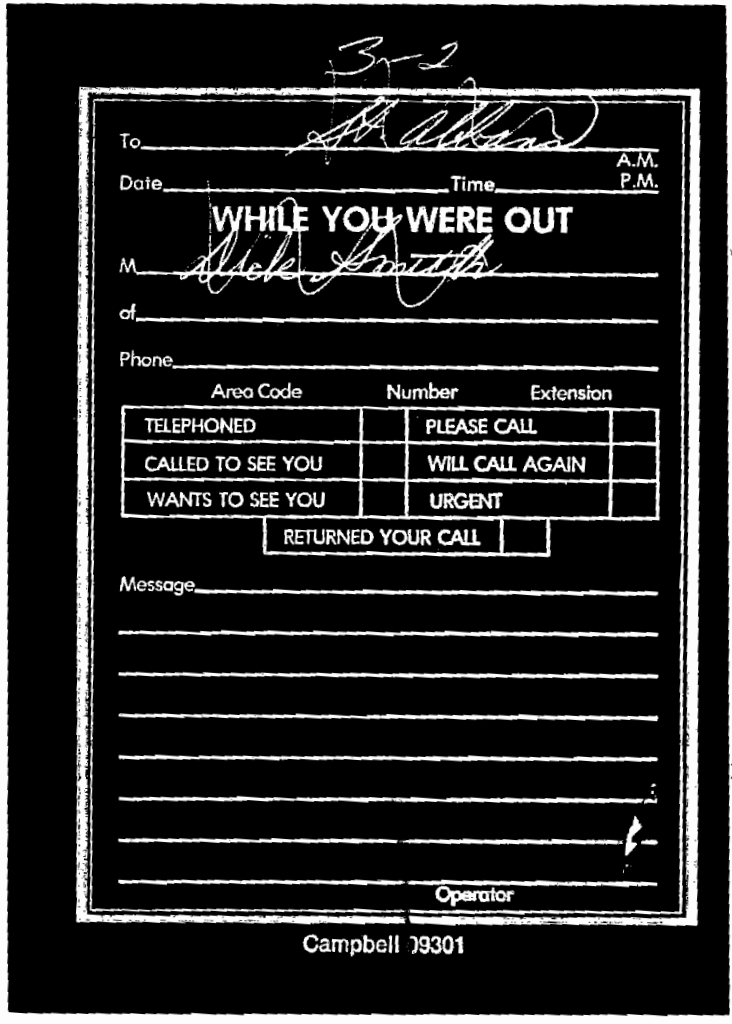
cc: John B. Gontrum, Esquire
T. Rogers Harrison, Esquire
Phyllis C. Friedman, Esquire ✓
Thomas J. Bollinger, Esquire

JAA:mp


2/13/86

I talked to Schmoldt told her all their papers were sent over to Court. She said okay -- some, the Motion to Intervene, just weren't listed on the Answer, (don't have to do anything about it as they were sent over.)

J. F.



3-2

To Mikes

Date Time A.M. P.M.

WHILE YOU WERE OUT

M Mike Smith

of

Phone

Area Code Number Extension

TELEPHONED		PLEASE CALL	
CALLED TO SEE YOU		WILL CALL AGAIN	
WANTS TO SEE YOU		URGENT	
RETURNED YOUR CALL			

Message

Operator

Campbell 09301

OFFICES OF

STEPHEN H. SACHS
ATTORNEY GENERAL

ELEANOR M. CAREY
DENNIS M. SWEENEY
CHARLES O. MONK, II
DEPUTY ATTORNEYS GENERAL

JUDITH A. ARMOLD
ASSISTANT ATTORNEY GENERAL

COUNSEL
DEPARTMENT OF STATE PLANNING

THE ATTORNEY GENERAL
DEPARTMENT OF STATE PLANNING
301 WEST PRESTON STREET
BALTIMORE, MARYLAND 21201-2365
(301) 225-4507

February 10, 1986

Ms. June Holmen
Secretary, Board of Appeals of
Baltimore County
Room 200, Court House
Towson, Maryland 21204

Re: In re Application of Joseph F. Evering, Jr. et ux., Board Case No. 85-65XSPHA, Circuit Court Case No. 86CG0022 (Doc. 19, Folio 117)

Dear Ms. Holmen:

In reviewing the Certified Copies of Proceedings Before the Zoning Commissioner and the Board of Appeals of Baltimore County, I note that the Department of State Planning's Motion to Intervene, filed with the Board on or about May 24, 1985, as well as a number of other less significant documents, were not included. While the Department continues to take no position on the date of filing issue that is the essence of the referenced appeal, I believe that the record should reflect that the Department was a proper party to the proceedings before the Board. Therefore, I respectfully request that the record be amended to include the Department's Motion to Intervene.

Thank you for your attention to this matter.

Very truly yours,

Judith Armold

Judith A. Armold

cc: Phyllis C. Friedman, Esquire
Thomas J. Bollinger, Esquire
T. Rogers Harrison, Esquire
John O. Hennegan, Esquire
Clerk, Circuit Court for Balto. Co.

JAA:mp

RECEIVED
COUNTY BOARD OF APPEALS
1986 FEB 13 P 12: 24

OFFICES OF

STEPHEN H. SACHS
ATTORNEY GENERAL

ELEANOR M. CAREY
DENNIS M. SWEENEY
CHARLES O. MONK, II
DEPUTY ATTORNEYS GENERAL

JUDITH A. ARMOLD
ASSISTANT ATTORNEY GENERAL

COUNSEL
DEPARTMENT OF STATE PLANNING

THE ATTORNEY GENERAL

DEPARTMENT OF STATE PLANNING
301 WEST PRESTON STREET
BALTIMORE, MARYLAND 21201-2365
301-383-7700

May 23, 1985

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

Re: Case No. 85-65-XSPHA

Dear Mr. Hackett:

Please file the enclosed motion in the referenced case and present it at the earliest appropriate time for the Board's action. Thank you.

Very truly yours,

Judith Armold

Judith A. Armold

Enclosure

JAA:mr

RECEIVED
COUNTY BOARD OF APPEALS
1985 MAY 24 A 11: 17

OFFICES OF

STEPHEN H. SACHS
ATTORNEY GENERAL

ELEANOR M. CAREY
DENNIS M. SWEENEY
CHARLES O. MONK, II
DEPUTY ATTORNEYS GENERAL

JUDITH A. ARMOLD
ASSISTANT ATTORNEY GENERAL

COUNSEL
DEPARTMENT OF STATE PLANNING

THE ATTORNEY GENERAL

DEPARTMENT OF STATE PLANNING
301 WEST PRESTON STREET
BALTIMORE, MARYLAND 21201-2365
(301) 225-4507

October 18, 1985

Secretary
Board of Appeals for Baltimore County
Room 200, Old Courthouse
Towson, Maryland 21204

Dear Sir or Madam:

Please file the enclosed notice in the case identified in the heading of the notice.

Thank you.

Very truly yours,

Judith Arnold

Judith A. Armold

Enclosure

JAA:mr

RECEIVED
COUNTY BOARD OF APPEALS
1985 OCT 21 A 9:44

VIA FACSIMILE
(410) 887-5708

1 Joel Court
Reisterstown, MD 21136
June 27, 1994

Mr. Larry Schmidt, Zoning Commissioner
Baltimore County Zoning Commissioners Office
400 Washington Avenue
Towson, MD 21204

RE: **BG&E PETITION**
CASE NOS. 3760-X and 4535-X

Dear Mr. Schmidt:

My wife, Pam and I live at 1 Joel Court, Reisterstown, MD, directly across the street from BG&E's Ivy Hill sub-station, which they are planning to expand if you grant them a special exception and variance.

I was unable to personally attend the hearing on Tuesday, June 21, 1994 at 2:00 p.m.. My wife did attend and returned quite upset with BG&E's plan to remove the existing sub-station and replace it with one that is 21,277 square feet. This is over 17 times larger than the existing sub-station which is 1,237 square feet. In BG&E's earlier notification, they presented this project as a minor expansion and indicated they would be building towards the Vinup property on Ridge Road and not towards Joel Court where 11 new homes have been built in the past three years.

I have just received a copy of BG&E revised plan and I am very upset, as are my Joel Court and Ridge Road neighbors. Their plan would bring the 7 foot enclosure fence, topped with barbed wire, within 110 feet of Joel Court. They will have to clear much of the existing woods and would make the enclosure very visible. The 7 foot chain link fence would do nothing to hide the very unsightly and numerous transformers, capacitors and switching structures.

I certainly would not have built my home here if I had known of this massive sub-st[illegible]n, and I'm sure I will be unable to sell my house at anywhere near its current value. I feel the market value on all of the houses in the Fox Ridge Estates (27 houses), as well as scores of houses on Ridge and Falls Roads, will also plummet.

JUN-27-1994 14:16 FROM CLARK LEGAL SERVICES TO 6887S708 P.01

August 20, 1986

TO: Keith S. Franz and Larry Schmidt

FROM: E. T. Eisenhart

SUBJECT: Case No. 85-65-XSPHA - Joseph F. Evering, Jr.

The above case has been remanded to the Board for hearing on its merits. We have received a letter from John Gontrum requesting that the case be assigned for hearing as soon as possible, and also requesting that we set it for two hearing days. We are presently scheduled through the first week in December, therefore, the first open date would be Tuesday, December 9th and any hearing day after that.

Mr. Hackett requested that inasmuch as you were the Board which ruled on the Motion which was appealed to Circuit Court (Diana was the third member) - you should contact John Gontrum to see if they are going forward with the case (T. Bollinger thought it was going to be dismissed) and if so then arrange for hearing dates suitable to you and the attorneys in the file. T. Bollinger, Esq.

Petitioners	Hennegan, Gontrum, Romadka
Protestants	Harrison
Judith A. Armold	Asst. Attorney General
Phyllis C. Friedman	P.C.

1/3/84
To file
gs

J. Melvin Cole
County Administrative Officer

January 3, 1984

Norman E. Gerber, AICP, Director
Office of Planning and Zoning

Appeal to Circuit Court
Zoning Petition No. 85-65-XSpH
Joseph F. Evering, Jr., et ux

Enclosed please find a copy of both the majority and minority opinions of the County Board of Appeals on a Preliminary Motion by the petitioner in the subject case. I am concerned by the finding of the CBA in its majority opinion, not just as to the impact of this case but, more importantly, the impact of this ruling on the normal procedures followed by my office.

For quite some time, it has been the practice of the Division of Zoning Administration to accept petitions and then at the counter, review them with input from appropriate agencies, notifying the petitioner of any necessary revisions, and then transmit a form letter accepting the petition for filing. At this point in the process, the petition is scheduled for hearing by the Zoning Commissioner.

Were the majority opinion of the CBA to be binding, it would mean that anything taken over the counter with a check would be "accepted for filing", and this could create difficulties in day to day operations.

One other point should be noted. If the majority opinion is allowed to stand in the instant case, the petitioner will not be required to submit information with the petition that can be evaluated to determine conformance to the requirements of the Chesapeake Bay Critical Area Protection Program.

I am therefore notifying you of our intention to appeal the subject decision by the CBA. This appeal will be filed prior to January 13, 1984.

Norman E. Gerber

Norman E. Gerber, AICP
Director

NEG:JGH:slm

enclosure

cc: Arnold Jablon ✓
Malcolm Spicer
Phyllis Cole Friedman

86-1163 Case file

11/21/85 pc file

QED Reid 11-22-85

DINENNA, MANN & BRESCHI
ATTORNEYS AT LAW

S. ERIC DINENNA, P.A.
JAMES L. MANN, JR., P.A.
GEORGE A. BRESCHI, P.A.

ROBERT A. BRESCHI

406 WEST PENNSYLVANIA AVE.
TOWSON, MARYLAND 21204

(301) 296-6820

November 20, 1985

Zoning Commissioner for
Baltimore County
County Office Building
Towson, Maryland 21204

RE: Variance Petition
H. C. Kim and Wife, Petitioners
Case #: 86-207A

Item 92

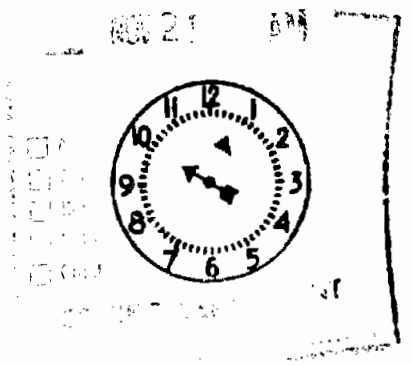
Dear Mr. Commissioner:

Please enter my appearance in the above-captioned matter on behalf of the Petitioners.

Very truly yours,

S. ERIC DINENNA

SED:bk



LAW FIRM

Romadka, Gontrum, Hennegan & Foos

IRVINGTON FEDERAL BUILDING
809 EASTERN BOULEVARD
ESSEX, MARYLAND 21221
TELEPHONE (301) 686-8274

ROBERT J. ROMADKA
JOHN B. GONTRUM
JOHN O. HENNEGAN
CHARLES E. FOOS, III

DONALD E. BRAND

OF COUNSEL
ALFRED M. WALPERT

August 18, 1986

Chairman William Hackett
Baltimore County Board
of Appeals
Court House
Towson, Maryland 21204

Re: Joseph F. Evering, Jr., et ux.

Dear Chairman Hackett:

Please enter my appearance as attorney for Joseph F. Evering, Jr., et ux. with respect to his Petition for Special Exceptions, Special Hearing and Zoning Variance before you. It is my understanding that the court, on August 7, 1986, dismissed People's Counsel's appeal and this matter may proceed with a hearing on the merits. We would appreciate the board assigning us, at this time, two days of hearing time as soon as possible.

Unfortunately, this matter has been before the board and the courts for more than a year without resolution, and we would appreciate any assistance which you could give in scheduling a prompt hearing.

Respectfully yours,

John B. Gontrum

JBG/rc

cc to: Judith A. Armold, Esquire
Peter Max Zimmerman, Esquire
T. Rogers Harrison, Esquire
Peter W. Taliaferro, Esquire
Thomas J. Bollinger, Esquire
Mr. Joseph F. Evering, Jr.

RECEIVED
COUNTY BOARD OF APPEALS
19 AUG 20 A 11: 24

Evening Petition
Item # 166
Re: 85-65-XBPHA

27 September 1984

→ I have taken the file in the above-captioned case to my office for copying, and shall return it tomorrow, 28 September 1984

Andrew Jianquitto, Esquire
Munn, Harrison & Burch

85-65 - XSPHA Colvin 9/10/64 1:30

* Jack Kenney, Esq
* Bob Ronalds, Esq
Joseph Colvin, Pet
* Ken Engelke, 828 Chesterfield Rd 21220
* Richard Stewart, III, 816 " "

marina operates w/2 lots that have been bought by Pets but for some reason not included in the original spx request -

Colvin - owner of marina - bought prop 1953 - obtained spx in 1955 to operate marina - can use 3535X operated as boat yard - in 1960, bought adjoining prop on south side of Chesterfield Rd - in 1964, applied for spx to have boat yard - 64-57-SPH to allow marine craft & parking on prop - 3 restrictions - ~~adjoining~~ prop owner on easternmost portion of prop required no craft stored w/in 20' of their prop line - side prop owners, & Pet bought their prop, which is on south side of Chesterfield Rd - purchased lot in July, 1969 - spx in 1964 granted spx for new prop on north side of Chesterfield - mariner - personal boat - storage for recreation - season begins July 4th & continues to Labor Day - will pull out of H2O if people want, if not let stay in H2O - people can come & any time - in 1974, bought another lot adjacent to prop bought in 1960 - utilized for parking - Chesterfield pays Rd never improved - Pet improved - wants to continue usage of 2 lots as been for past 15 years - utilized for parking - ~~30~~ 23 spaces on south & 24 on north - on south 50' x 25', north side 35' x 295' - less than 20% of total prop 2 lots -

1964 when sat mod up R, had
~~piers~~ in ~~1955~~, ~~when bought + piers existed~~ 4 piers
in existence - sat up R ~~&~~ + to include 4 additional
piers, of which built 1 - at this time, bet determined
not to be financially feasible to build all 4 + Coppel
now wants to amend 1967 site plan - to construct
2 new piers @ different location due to depth
of H-C - ~~can't~~ can't tie up sail boats @ piers
at old location but can @ new location -
wants to relocate piers - wants to extend
2 existing piers + extend them to a T formation -
have 201 slips + wants to add 178, about 40
more than previously app'd - need greater depth -
has permission to dredge for Army, but doesn't
want to - expense + greater impact on surrounding
grass - wants removed rest 1 (64-160R) +
rest 6 (64-160-R) - in 64-57 wants rest 1
+ rest 3 removed - RTR not applicable because
pier ~~adjacent~~ utilized for recreational purposes only -
compact stone used for parking areas - allows for use of -
w/o 2 lots has 318 parking spaces - 4th of July + Labor Day
busiest days of year - this year had only 55 cars parked
on site - piers would extend 418' rather than 300'
from land - piers would not impede free flow of
navigation in channel -

cross R - 75% to 80% slips rented - 12 to 14 boats stored
on land - during off season 100 boats
stored - DR 5.5 -

II Paul Caravatella - lives across ~~water~~ way for pier -
repair boats - 178 additional boats would
adversely impact due to seasonal comings +
goings - also piers are on land +
boats would be going out into channel
+ not affect pier surrounding marina

III Vincent Elliott - boat owner - doesn't believe new piers will impact on use of marina -

IV Leonard Gerstein - boat owner at Marina for > years -

Scots read statement - don't need more slips for marina - traffic generated will adversely impact - equates 178 slips w/ 178 new homes - new slips will be dangerous by creating blind spots -

Stumpf - new slips would limit view - don't want boats stored on lot, cars w/in 20' for prop line - concerned about speed & safety -

Jackie Cymek - concerned about use of paper road -

Diane Stumpf - concerned about blind spots in H-O - & about speeding -

Katherine Reese - concerned about traffic - traffic very bad on weekends which would prevent fire dept from servicing any fire -

Helen Demuth - opposed to removal of restrictions -

Edward Brunwell -

Bertha Carson -

Evening -

81-45 XSFHA — Evening — 2/11/85 — 1:38

* Jack Hennigan, Esq
Neil Boufetis, Engineer
John Schmidt, Landscape Arch + Environmental consultant
* Tom Hannon, Esq Asst

Hennigan - requests variance CAC or Setting Bay req'mt - 88-181 S(2)(2) - not applicable to any subdivision plans prior to 3/1/84 - application originally filed in Nov, 1983 - originally filed then w/ subsequent plat filed due to alignment of additional street - application not followed thru by 6/2 - then required changes + wanted to wait til Frank Lee + other factors followed - filed lot of variance to build piers + to waive requirements that piers not be closer than 300' from Conn Turn - Lots 4 by X + SH filed on 8/8/84 -

Schmidt - represented Landscape architect + environmental consultant - chief environmental design for State Hwy Admin - Bureau of Landscape Architecture - Has worked + will continue to site 3 times - the previous hydrological study - flat site, not affected by proposed development - no changes or removal trees - stone base permeable base - to the least coliform (more than requirement) - if response is to take 3 days, will continue data collection - wet to dry - Sensitive testing will be conducted to address impact - Most undisturbed state except new piers + not contribute to problem - Best time now - will not take any trees at site - no Hydrological test - use sampling of vegetation + bioassay - only by-pass

JOSEPH F. EVERING, JR., ET UX # 85-65-XSPHA

Aug.	6, 1984	Petition filed
Apr.	25, 1985	Z.C. GRANTED SE for Boat Yard for two lots, one located on the north side and the other on the south side of Chester Road, including the roadbed of Chester Road; GRANTED variances to permit the existing compacted-stone parking surface instead of the required durable and dustless surface; GRANTED special hearing subject to restrictions (see ZC Order)
May	10	Order for Appeal filed by People's Counsel
"	20	Order for Appeal filed by Mr. Romadka for Petitioners
"	20	Order for Appeal filed by Mr. Harrison for Protestants, Ken Engelke, et al
"	20	Order for Appeal filed by Mr. Gerber, Director, Office of Planning and Zoning
Oct.	29	Hearing before the Board on MOTION by the Petitioner relative to sub-title 18 of the Natural Resources Article of the Annotated Code of Md. (Critical Area Protection). Petitioner's Motion challenged the applicability of the Act.
Dec.	12	Majority RULING on Motion filed by Lawrence E. Schmidt, Acting Chairman, and Keith S. Franz holding that the Chesapeake Bay Critical Area Protection Program is not applicable to the proposed petition
"	12	Dissent on Ruling on Motion filed by Diana K. Vincent
Jan.	3, 1986	Order for Appeal filed in Circuit Court by People's Counsel & Harrison
"	10	" " " " " " " County Attorney
Feb.	3	Record of proceedings filed in the Circuit Court
Aug.	7	REMANDED TO THE BOARD by Judge Sfekas "In this case the Plaintiffs (P.C., County Attorney & Counsel for Protestants) have only appealed the Board's ruling on the applicability of the Aviation Zoning Regulations and the Critical Areas Law, the remaining portion of the case is still pending before the Board. The Board has also affirmed the Z.C. ruling on the applicability of the Chesapeake Bay Critical Areas Legislation. They have not affirmed the granting of the Evering's special exception. For these reasons, this Court does not believe the Board of Zoning Appeals has issued a final determination of the rights of the parties. To allow an appeal of the Board' ruling, at this time, would encourage piecemeal litigation, thus imposing an increased burden on the judicial system and the parties.
Dec 17		Per LES: All Counsel have thirty (30) days (specifically, close of business on January 16) to submit their closing arguments. All written arguments to be submitted by that date; no extensions will be given.
		Hearing before Board - December 16 & December 17.
Febr 17		As per telephone conversation, meeting of all attorneys involved in Evering case in CBA office to discuss appro. steps.

JOSEPH F. EVERING, JR., ET UX (continued)

April 22, 1987	Continued hearing held before C.B. of A.
October 21	Order of C.B. of A. GRANTING Petition for SE w/ restrictions; GRANTING variance from 409.2.c(2); GRANTING in part and DENYING in part variance from 417.5; GRANTING Petition for Special Hearing in part.
November 10	Order for Appeal filed in CCt for BCo by People's Counsel; Petition to accompany Appeal filed.
November 12	Certificate of Notice sent.
November 16	Order for Appeal filed in CCt for BCo by T. Rogers Harrison, Counsel for Protestants; Petition to accompany appeal filed.
November 16	Certificate of Notice sent.
November 20	Order for Appeal filed in CCt for BCo by John B. Gontrum, Esquire, Counsel for Petitioners; Petition to accompany appeal filed.
November 24	Certificate of Notice sent.
December 9	Record of Proceedings filed in CCt.
Nov 10	Order for Appeal fd by PC in CCt, BCo.
Nov 16	Appellant's (Kenneth Engelke, et al) Order for Appeal filed in CCt, BCo
Nov 20	Appellant's (Jos Evering) Order for Appeal/Petition filed in CCt, BCo
May 26, 1988	Joint Motion to Remand to CBA and Court's Order that Case 87-CG-4755 be REMANDED to Board "...for consideration of the amended site plan and a determination that the plan meets critical area criteria." (Hinkle, J)

VE

Note: CCt Case # 88-CG-0002. Dism by above Order.

Had more knowledge of BG&E's extensive plan for this sub-station been made available to this community, you would have seen a much larger and more vocal turnout at the hearing. My neighbors are gathering at my home on Monday, June 27, 1994 at 7:00 p.m. to discuss our options and means to communicate our concerns. Many are deeply concerned about the health hazards associated with electromagnetic power lines and transformers, particularly on young children. Some are concerned that the existence of a much larger and visible sub-station will be an attractive nuisance that their young children may try to explore.

All are concerned with the unsightliness of the structures and the signficant decrease in the values of our homes, which to most represent our entire life savings.

I would appreciate your declining BG&E's petition for an exception and variance and ending our nightmare and saving us a nerve racking and costly legal battle.

Sincerely,

Carl Follo

Carl Follo

CF/kld

85-65-XSPHA	N/S of Chester Road, 590' W of Severn Rd. (800 Chester Road) 15th
	Petitions - Special Exception, Special Hearing and Variances of Joseph F. Evering, Jr.etux
8/8/84	Filing Fee - $250.00
9/25/84	Advertising and Posting - $111.90
8/6/84	Hearing date set for September 10, 1984 at 1:30 P.M.
8/23/84	Certificate of Publication filed
8/18/84	Certificate of Posting filed
4/25/85	Ordered by Zoning Commissioner that Special Exception for boat yard for 2 lots be GRANTED; Special Hearing to amend site plans and to permit an additional 118 slips be GRANTED; Variances for parking surfaces GRANTED; FURTHER ORDERED that Restriction No. 1 in Case No. 64-160-X shall not be removed and shall remain in full force and effect.
5/10/85	Appeal by People's Counsel
5/20/85	Appeal by Norman E. Gerber, Director/Office of Planning & Zoning
5/17/85	Appeal by T. Rogers Harrison - $260.00
5/20/85	Appeal by John O. Hennegan, Esquire - $260.00
12/12/85	Ruling of County Board of Appeals for Baltimore County holding that the Chesapeake Bay Critical Area Protection Program is not applicable to the proposed petition.
12/12/85	Dissent of Diana K. Vincent, of County Board of Appeals, DENYING Petitioner's Motion and HOLDING provisions of Section 8-1801 et seq. of the Natural Resources Article of the Annotated Code of Md. are applicable to petitions in this matter.
10/21/87	ORDERED by the County Board of Appeals; that the Petition for Special Exception is GRANTED; that the Variance from B.C.Z.R. 409.2.c(2) is GRANTED; that the restriction on the number of slips is MOOT; that the Variance from B.C.Z.R. 417.5 is GRANTED in part and DENIED in part; that the Special Hearing is GRANTED in Case No. 64-160-X, in conformance with the variance set forth in #4 of this Order; that the Special Hearing to remove restrictions #1 and #3 in Case #64-57-SPH will be GRANTED; that the Petition for Special Hearing to remove strictions in #1 and #6 in Case No. 64-160-X will be GRANTED in part and DENIED in part and that restriction #1 is AFFIRMED and re-incorporated herein and restriction #6 amended to allow maintenance and minor repairs on site and in the water immediately adjacent thereto from 8:00 a.m. to 7:00 p.m., seven days per week, year round; that Special Hearing for a determination of recreational activities is GRANTED.
11/24/87	Appeal filed by with the Circuit Court of Baltimore County by Joseph F. Evering, Jr., et ux
5/26/89	ORDERED by Circuit Court for Baltimore County, that the herein #87CG4755 be remanded to the Baltimore County Board of Appeals.
6/15/88	ORDERED by County Board of Appeals that the Petition for Special Exceptions be and is hereby GRANTED with restrictions. 2) That the variance from B.C.Z.R. 409.c.(2) be and is hereby GRANTED; that the variance relief under B.C.Z.R. 409.2.8 is MOOT; that the variance under B.C.Z.R. 417.5 is GRANTED to the extent as shwon on the amended site plan (Petitioner's Exhibit #1A); that the Petition for Special Hearing is GRANTED, amending CASE #64-160-X; to all construction of additional piers and slips, in conformance with the variance as set forth in #4 of this Order; that the Petition for Spcial Hearing to remove restrictions #3 and 3 in case No. 64-57-SPH be GRANTED; that the Petition for Special Hearing to remove restrictions #1 and #6 in CASE No. 64-160-X be GRANTED in part and DENIED in part and that restriction #1 is AFFIRMED and re-incorporated herein and restriction #6 amended so as to allow maintenance and minor repairs on site and in the water immediately adjacent thereto from 8:00 a.m. to 7:00 p.m., seven days a week, year round; that the Petition for Special Hearing for a determination of the recreational activities on site is GRANTED, so that the use is exempt from Residential Transition Area requirements; that the on-shore improvements of a pump-out facility for boats and landscaping be completed simutaneously with the construction of the proposed piers; and; that the following best management practies guidelines be utilized in the operation of the facility at such time as the construction commences.

A-5

PETITION FOR SPECIAL EXCEPTION

85-65-XSPH

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property for two lots located on the north and south side of Chester Road not included in Special Exception Cases 35 35X, 64-57SPH, 64-160X in a D.R. 5.5 Zone to be used as a Boat Yard. including the roadbed of Chester Road

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

I, or we, agree to pay expenses of above Special Exception advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

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

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Attorney for Petitioner:

John O. Hennegan, Esquire
Robert J. Romadka, Esquire
(Type or Print Name)

Signature

ROMADKA, GONTRUM, HENNEGAN & FOOS
809 Eastern Boulevard
Address

Baltimore, Maryland 21221
City and State

Attorney's Telephone No.: 686-8274

Legal Owner(s):

Joseph F. Evering, Jr.
(Type or Print Name)

Signature

Catherine L. Evering
(Type or Print Name)

Signature

800 Chester Road 335-8602
Address Phone No.

Baltimore, Maryland 21220
City and State

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

John O. Hennegan
Name
809 Eastern Boulevard
Baltimore, Maryland 21221 686-8274
Address Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 6th day of August, 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 10th day of September, 1984, at 1:30 o'clock P. M.

Zoning Commissioner of Baltimore County.

Z.C.O.—No. 1

(over)

Pursuant to the advertisement, posting of property, and public hearing on the Petition and it appearing that by reason of the requirements of Section 502.1 of the Baltimore County Zoning Regulations

Phone: 687-6922

FRANK S. LEE

Registered Land Surveyor

1277 NEIGHBORS AVE. — BALTIMORE, MD. 21237



August 2, 1984

Long Beach Marina
No. 800 Chester Road
15th District Baltimore County, Maryland

Beginning for the same on the north side of Chester Road at the distance of 590 feet more or less measured along the north side of Chester Road from the west side of Severn Road, thence running and binding on the north side of Chester Road South 77 degrees 25 minutes W 115 feet more or less, thence crossing the end of Chester Road and continuing the same direction in all South 12 degrees 35 minutes West 252 feet more or less to the waters of Frog Mortor Creek, thence binding on the waters of Frog Mortor Creek as follows: North 71 degrees 00 minutes West 50 feet more or less, South 86 degrees 00 minutes West 260 feet more or less, North 16 degrees 00 minutes East 570 feet more or less and North 77 degrees 25 minutes East 320 feet more or less, thence running for a line of division South 27 degrees 33 minutes East 245 feet more or less to the place of beginning.

Containing 3.30 acres of land more or less.

Special Exception includes all of the above described area not included in Case #3535, 64-57-SPH and 64-160-X.

Variances and Special Exceptions includes entire site.

PETITION FOR SPECIAL HEARING 85-66-XSPH

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve an amendment to the site plan in case number 64-57SPH, 64-160X and 35-35X to construct an addition to the piers; remove restriction number 1 and 3 in case number 64-57SPH to allow marine (CONTINUED ON ATTACHED SHEET)

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

Legal Owner(s):

Joseph F. Evering, Jr.
(Type or Print Name)

Joseph F. Evering Jr
Signature

Catherine L. Evering
(Type or Print Name)

Catherine L Evering
Signature

Attorney for Petitioner:
John O. Hennegan, Esquire
Robert J. Romadka, Esquire
(Type or Print Name)

John O Hennegan
Signature

ROMADKA, GONTRUM, HENNEGAN & FOOS
Address

809 Eastern Boulevard
Baltimore, Maryland 21221
City and State

Attorney's Telephone No.: 686-8274

800 Chester Road 335-8602
Address Phone No.

Baltimore, Maryland 21220
City and State

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

John O. Hennegan, Esquire
Name
809 Eastern Boulevard
Baltimore, Maryland 21221
Address 686-8274 Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 6th day of August, 19 84, 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 10th day of September, 19 84, at 1:30 o'clock P. M.

Zoning Commissioner of Baltimore County.

(over)

Z.C.O.—No. 1

ORDER RECEIVED FOR FILING
DATE
BY ADMINISTRATIVE ASSISTANT

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 :

PETITION FOR SPECIAL HEARING - CONTINUED

Joseph F. Evering, Jr. and
Catherine L. Evering, Legal Owners

craft to be stored within 20 feet of the easternmost property line and to request a variance to the parking; to remove restriction number 1 and 6 in 64-160X to allow major repairs on the premises and in the waters and to change the times and days of the weeks and years that repairs will be permitted; also to determine that a boatyard and related parking areas are other structures devoted to civic, commercial and recreational activities and therefore exempt from the residential, transitional requirements as set out in Sections 1B01.1B.1.c.9/10

PETITION FOR ZONING VARIANCE

85-65-XSPHA

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a

Variance from Section 409.2.c(2) to allow existing compacted stone in lieu of required macadam paving. 409.2.b. to allow 318 parking spaces in lieu of the required 384, in the event that special exception is granted to allow 363 parking spaces in lieu of the required 384; and variance from Section 417.5(a) requiring the structure not to exceed 300 feet beyond mean low tide to allow the structure to extend 419 feet beyond the mean low tide.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (indicate hardship or practical difficulty)

1. The hardship is that under special exception granted the 6th day of June, 1955, in a site plan improved therewith, said use was permitted with compacted stone in lieu of required macadam and said matter was reaffirmed and allowed to continue in 1964 in cases 64-57SPH and 64-160X.

2. That the practical difficulty is that macadam would require extensive repairs and alteration in the event that sewerage is brought into the area. Also, during winter months, large boats are stored on the parking area which would cause deep depressions in the macadam due to the weight of the boats that would be in place for six to seven months. (CONTINUED ON ATTACHED SHEET)

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

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

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

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Legal Owner(s):

Joseph F. Evering, Jr.
(Type or Print Name)

Joseph F. Evering Jr.
Signature

Catherine L. Evering
(Type or Print Name)

Catherine L Evering
Signature

Attorney for Petitioner:
Robert J. Romadka, Esquire
John O. Hennegan, Esquire
(Type or Print Name)
ROMADKA, GONTRUM, HENNEGAN & FOOS
809 Eastern Boulevard
Signature
Baltimore, Maryland 21221
Address

John O. Hennegan
City and State

Attorney's Telephone No.: 686-8274

800 Chester Road 335-8602
Address Phone No.
Baltimore, Maryland 21220
City and State

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

John O. Hennegan, Esquire
Name
809 Eastern Boulevard
Baltimore, Maryland 21221 686-8274
Address Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 6th day of August, 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 10th day of September, 1984, at 1:30 o'clock P. M.

Zoning Commissioner of Baltimore County.

(over)

ORDER RECEIVED FOR FILING
DATE
BY
ADMINISTRATIVE ASSISTANT

Pursuant to the advertisement, posting of property, and public hearing on the Petition and it appearing that strict compliance with the Baltimore County Zoning Regulations would/would not result in practical difficulty and unreasonable hardship upon the Petitioner(s) and the granting of the variance(s) requested will/will not adversely affect the health, safety, and general welfare of the community, the variance(s) should /should not be granted.

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this ———— day of ————————, 19———, that the herein Petition for Variance(s) to permit

EVERING
PETITION FOR ZONING VARIANCE (Continued)

3. The structure or pier that the Petitioner desires to construct cannot be located in any other area within the 300 feet limitations due to the depths of the water in the surrounding area.

4. A hardship exists in that the Petitioner has no other location in which to locate the additional slips and pier which are needed to adequately provide for his clientele. The construction will not interfere with the public free access to Frog Mortar Creed nor hinder or obstruct use of the waterways and in no way interfere with public safety and is not more than one third (1/3) the width of waterway nor beyond rear boundary of a defineable channel.

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY 85-65-XSPHA

Towson, Maryland

District 15th **Date of Posting** 5/31/85

Posted for: Appeal

Petitioner: Joseph F. Evering Jr. et ux

Location of property: N/s Chester Rd, 390' w of Severn Rd.

700 Chester Rd.

Location of Signs: (1) Facing Chester, Approx. 8' fr. roadway, on property of Petitioner

(2) Facing intersection of Chester & Severn Rd., Approx. 3' fr. roadway.

Remarks:

Posted by W. P. Healy **Date of return:** 5/24/85

Signature

Number of Signs: 2

PETITIONS FOR SPECIAL EXCEPTION, SPECIAL HEARING AND VARIANCES
15th Election District

ZONING: Petitions for Special Exception, Special Hearing and Variances
LOCATION: North side Chester Road, 590 ft. West of Severn Road (800 Chester Road)
DATE & TIME: Monday, September 10, 1984 at 1:30 P.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 Exception for 2 lots located on the north and south sides of Chester Road, not included in Special Exception Case Nos. 3535-X, 64-57-SPH, 64-160-X in a D.R. 5.5 zone to be used as a boat yard including the roadbed of Chester Road; Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve an amendment to the site plan in Case Nos. 3535-X, 64-57-SPH and 64-160-X to construct an addition to the piers, remove Restriction Nos. 1 and 3 in Case No. 64-57-SPH to allow marine craft to be stored within 20 ft. of the easternmost property line and to request a variance to the parking, to remove Restrictions Nos. 1 and 6 in Case No. 64-160-X to allow major repairs on the premises and in the waters and to change the times and days of the weeks and years that repairs will be permitted, also to determine that a boat yard and related parking areas are other structures devoted to civic, commercial and recreational activities and therefore exempt from the residential, transitional requirements as set out in Sections 1B01 1B 1 c 9/10. Variances to allow existing compacted stone in lieu of required macadam paving, to allow 318 parking spaces in lieu of the required 384, in the event that Special Exception

"DUPLICATE"

CERTIFICATE OF PUBLICATION

TOWSON, MD., _____, 19____

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., appearing on

_____, 19____.

THE JEFFERSONIAN,

_____
Publisher

Cost of Advertising

From THE JEFFERSONIAN

CERTIFICATE OF PUBLICATION

OF

Filed ----------, 19----



PETITIONS FOR SPECIAL EXCEPTION, SPECIAL HEARING AND VARIANCES
15th Election District

ZONING: Petitions for Special Exception, Special Hearing and Variances
LOCATION: North side Chester Road, 590 ft. West of Severn Road (800 Chester Road)
DATE & TIME: Monday, September 10, 1984 at 1:30 P.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 Exception for 2 lots located on the north and south sides of Chester Road, not included in Special Exception Case Nos. 3535-X, 64-57-SPH, 64-160-X in a D.R. 5.5 zone to be used as a boat yard including the roadbed of Chester Road; Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve an amendment to the site plan in Case Nos. 3535-X, 64-57-SPH and 64-160-X to construct an addition to the piers, remove Restriction Nos. 1 and 3 in Case No. 64-57-SPH to allow marine craft to be stored within 20 ft. of the easternmost property line and to request a variance to the parking, to remove Restrictions Nos. 1 and 6 in Case No. 64-160-X to allow major repairs on the premises and in the waters and to change the times and days of the weeks and years that repairs will be permitted, also to determine that a boat yard and related parking areas are other structures devoted to civic, commercial and recreational activities and therefore exempt from the residential, transitional requirements as set out in Sections 1B01.1B.1.c.9/10; Variances to allow existing compacted stone in lieu of required macadam paving, to allow 318 parking spaces in lieu of the required 384, in the event that Special Exception is granted, to allow 363 parking spaces in lieu of the required 384, and variance requiring the structure not to exceed 300 ft. beyond mean low tide to allow the structure to extend 419 ft. beyond the mean low tide

Being the property of Joseph F. Evering, Jr., et ux, as shown on plat plan filed with the Zoning Department.

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

By Order Of
ARNOLD JABLON,
Zoning Commissioner
of Baltimore County

Aug 23

"DUPLICATE"

CERTIFICATE OF PUBLICATION

TOWSON, MD., _____, 19____

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., appearing on _____, 19____.

THE JEFFERSONIAN,

_____
Publisher

Cost of Advertising

[redacted]

From THE JEFFERSONIAN

CERTIFICATE OF PUBLICATION

OF

Filed ----------, 19__

[redacted]

Tiny Shrimp
FISHERMEN NET
Sardin s •OI
•MUST
HORMEL
Potted M at
HORMEL
Vienna Saus
TABLE JOY STUFFED
Manzanilla Oli
•SWEET •HOT DOG •HAMB
Vlasic R lish

. 22nd THRU TUES. A

A as having been "conveyed to adjoining property owner BG&E Co." An arrow on the Plan clearly depicts the association of Tract A with the lot on which the Ivy Hill Substation is situate. As represented on the Plan, Tract A does not contain a building envelope, septic disposal system, well or any other indicia of residential development. Given this description, the reasonable prospective resident of the Fox Ridge subdivision would have no basis for concluding that Tract A had a use apart from that of the BGE substation on the abutting lot.[2] Accordingly, this Court finds that the Final Development Plan sufficiently discloses BGE's development plans for Tract A, i.e., that it be developed as part of the Ivy Hill substation.

Having so ruled, the Court also disposes of Protestants' "Issue D" by implication. In "Issue D" the Protestants' challenge the factual finding that "... all property owners prior to the purchase of their properties were apprised of the ownership of Tract A and the ultimate disposition of that property...". As noted, *supra*, the purpose served by plans like the final development plan for Fox Ridge is "to provide for the disclosure of development..." BCZR 1B01.3A.1.a. "Disclosure" is defined by the American Heritage College Dictionary as "the act or process of revealing or uncovering." The writing contained on the final development planned for Fox Ridge which identifies Tract A as

---

[2]It is significant that the Final Development Plan was approved by the appropriate County authorities prior to the sale of any of the twenty-four residential lots in the Fox Ridge subdivision. Had any lot been sold prior to that approval, section 1B01.3 Par. A.7. of the BCZR would have required an amendment to the Final Development Plan before BGE could develop Tract A as part of the substation. *Quare:* Whether the end result would be altered, even if BGE were required to undergo the amendment process set out in 1B01.3, supra, since "...the plans may be amended through special exception procedures, in the manner provided under Section 502..." BCZR Section 1B01.3.A.7; with the exception of obtaining approval of the Planning Board, Section 502 criteria are the equivalent of those considered by the Board in this case.

RECEIVED
ZONING OFFICE
'05 JUN 30 P 3:28

TO: MR. RUPPERSBURGER

RE: GLYNDON MEWS DEVELOPMENT IN GLYNDON
ASHLEY HOMES
PRESTIGE DEVELOPERS

Glyndon Mews is a proposed development on 18 acres of property owned by the Maryland Diabetic Asso. in Glyndon.

Prestige Developers plan 21 Ashley homes on 10 acres of the property (the other acreage must be set aside). These 1/3 - 1/4 acre lots would be contiguous with properties of an acre or more, all of which are designated historic on the Baltimore County register.

Access would be via Gaskins (a proposed new road the developer wants to build) or Pennington (already in existance and reportedly preferred by the county).

There are several areas of concern which need to be addressed on the county level.

(1) The size of the lots <u>would not be appropriate</u> even though the zoning would allow it. Larger lots (at least 1 acre) would mean that more vegetation could be left for screening. This, I feel, would be acceptable to the community.

(A) Prestige Development feels that the impact on the community would be minimal because of the natural buffer and older growth trees that would screen the developed area so that it would not be seen from Central ave. In fact, the visibility of the new development <u>can not be accurately determined</u> until the homes (price range $200,000 - $250,000) are actually in place

(B) The <u>larger issue</u> is what will happen to the character and integrity of the community. The historically protected area in Glyndon has absorbed the building of at least one new home every year for the 16 years I have lived here without causing a major adverse effect. 21 houses (even if they are not all built the first year) would produce a very different and deleterious result.

(2) The use of Pennington Ave. for access would be a poor choice. This right of way is bounded on both sides by land that is designated historic (National, State, and County). Widening it would be out of character. Improving it would remove a critical strip of old growth vegetation and place the road <u>in very close proximity</u> to existing structures.

Petitions f r Special Excepti n, Special H ar- ing & Variances

15th Election District

ZONING: Petitions for Special Exception, Special Hearing and Variances

LOCATION: North side Chester Road, 590 ft. West of Severn Road (800 Chester Road)

DATE & TIME: Monday, Sept. 10, 1984, at 1:30 p.m.

PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Ave., Towson, Md.

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

Petition for Special Exception for 2 lots located on the north and south sides of Chester Road, not included in Special Exception Case Nos. 3535-X, 64-57-SPH, 64-160-X in a D.R. 5.5 zone to be used as a boat yard including the roadbed of Cbester Road; Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve an amendment to the site plan in Case Nos. 3535-X, 64-57-SPH and 64-160-X to construct an addition to the piers, remove Restriction Nos. 1 and 3 in Case No. 64-57-SPH to allow marine craft to be stored within 20 ft. of the easternmost property line and to request a variance to the parking, to remove Restriction Nos. 1 and 6 in Case No. 64-160-X to allow major repairs on the premises and in the waters and to change the times and days of the weeks and years that repairs will be permitted, also to determine that a boat yard and related parking areas are other structures devoted to civic, commercial and recreational activities and therefore exempt from the residential, transitional requirements as set out in Sections 1B01.1B.1.c.9/10; Variances to allow existing compacted stone in lieu of required macadam paving, to allow 318 parking spaces in lieu of the required 384, in the event that Special Exception is granted, to allow 363 parking apaces in lieu of the required 384, and variance requiring the structure not to exceed 300 ft. beyond mean low tide to allow the structure to extend 419 ft. beyond the mean low tide.

Being the proprty of Joseph F. Evering, Jr., et ux, as shown on plat plan filed with the Zoning Department.

In the event that these Petitions are granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commisaioner 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

The Times

Middle River, Md., Aug 23 19 84

~~This is to Certify~~, That the annexed

Petition

was inserted in The Times, a newspaper printed and published in Baltimore County, once in each of One successive weeks before the 23rd day of Aug, 19 84

S. D. Wyatt

Publisher.

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY

Towson, Maryland

District 13 **Date of Posting** 5/15/84

Posted for: Petition for Special Hearing etc.

Petitioner: Orwin E. Lerch, Jr. et ux

Location of property: W/S Eastern Blvd. 300' S/E of Fitzgerald Rd.

Location of Signs: Facing roadway on property of petitioner

Remarks: 1 sign

Posted by [signature] **Date of return:** 5/23/84

Signature

Number of Signs: 1

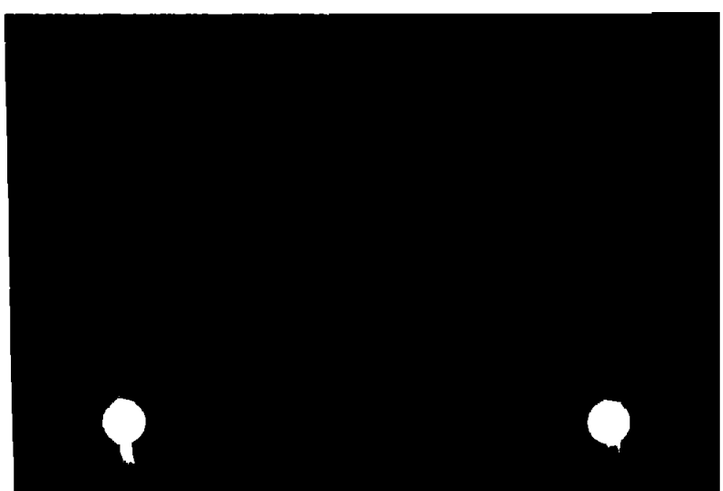
CASE NO. 19/117/86-CG-0022 AT LAW

Joseph F. Evering, Jr., VS. Phyllis Friedman, et ux & Malcolm Spicer, etal

RECEIVED FROM THE COUNTY BOARD OF APPEALS EXHIBITS, BOARD'S ANSWER & TRANSCRIPT FILED IN THE ABOVE ENTITLED CASE. ALSO FILED IS THE ZONING COMMISSIONER'S FILE AND EXHIBITS.

Clerk's Office

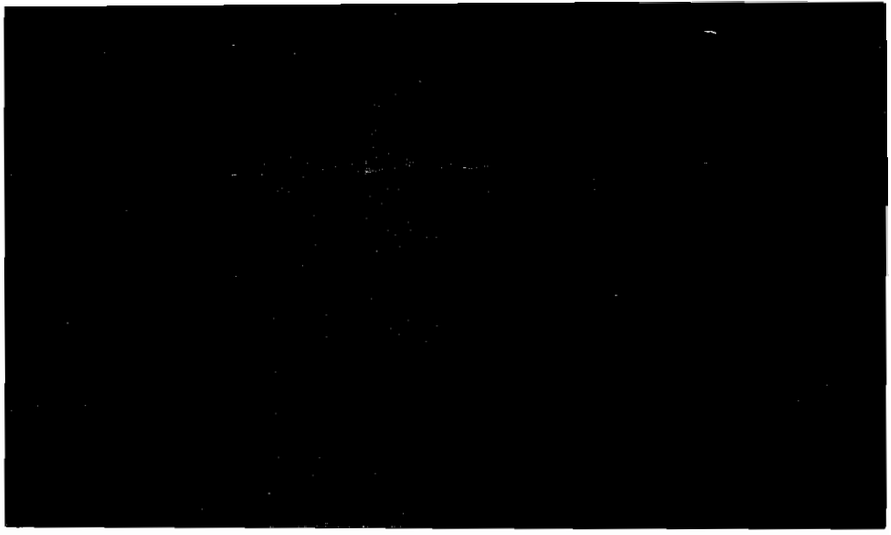
Date: Feb. 3, 1986



#85-65-XSPHA 15th District

N/S Chester Rd., 590' W of Severn Rd.
(800 Chester Road)
JOSEPH F. EVERING, JR., et ux

1 SIGN and 1 LOCATION SIGN



85-65-XSPHA

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 6th day of August, 1984.

ARNOLD JABLON
Zoning Commissioner

Petitioner Joseph F. Evering, Jr., Received by:

Petitioner's Attorney John O. Hennegan, Esq.

Nicholas B. Commodari
Chairman, Zoning Plans
Advisory Committee

People's Counsel Ex. #4

RECEIVED
JUL 11 1995
ZADM

LAW OFFICES
MUDD, HARRISON & BURCH
306 WEST JOPPA ROAD
TOWSON, MARYLAND 21204
AREA CODE 301-828-1335

JOHN E. MUDD
T. ROGERS HARRISON
RICHARD C. BURCH
DOUGLAS W. BISER
H. PATRICK STRINGER, JR.

MAY 20 AM
ZONING DEPARTMENT
By .....

May 17, 1985

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

Re: Petition for Spec Ex
Petition for Spec Hearing
Petition for Variances
Case No. 85-65-XPHA

Dear Mr. Jablon:

The Protestents, Ken Engelke, et al., would like to appeal your decision in the above-captioned matter.

Our firm's check in the amount of $260.00 is enclosed. This amount represents the fee for the appeal from the granting of the special exception $100.00), the fee for the appeal from the granting of the variance ($75.00), the fee for the appeal from the granting of the special hearing ($75.00), and the costs for posting two signs ($10.00) on the Everings' property.

If you have any questions, please feel free to contact me.

Very truly yours,

T. Rogers Harrison

TRH/djb
Enclosure

RECEIVED
COUNTY BOARD OF APPEALS
1985 MAY 22 P 1:

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

No.

DATE _____ ACCOUNT _____

AMOUNT $ _____

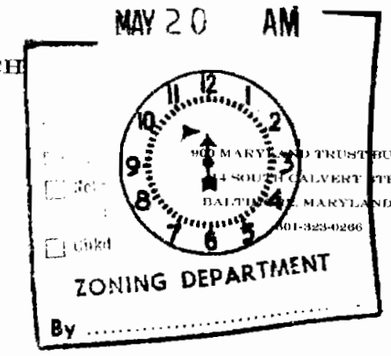
RECEIVED
FROM: _____

FOR: _____

_____
VALIDATION OR SIGNATURE OF CASHIER

LAW OFFICES
MUDD, HARRISON & BURCH
306 WEST JOPPA ROAD
TOWSON, MARYLAND 21204
AREA CODE 301-828-1335

JOHN E. MUDD
T. ROGERS HARRISON
RICHARD C. BURCH
DOUGLAS W. BISER
H. PATRICK STRINGER, JR.



May 17, 1985

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

Re: Petition for Spec Ex
Petition for Spec Hearing
Petition for Variances
Case No. 85-65-XPHA

Dear Mr. Jablon:

The Protestents, Ken Engelke, et al., would like to appeal your decision in the above-captioned matter.

Our firm's check in the amount of $260.00 is enclosed. This amount represents the fee for the appeal from the granting of the special exception $100.00), the fee for the appeal from the granting of the variance ($75.00), the fee for the appeal from the granting of the special hearing ($75.00), and the costs for posting two signs ($10.00) on the Everings' property.

If you have any questions, please feel free to contact me.

Very truly yours,

T. Rogers Harrison

T. Rogers Harrison

TRH/djb
Enclosure

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

No.

DATE _____ ACCOUNT _____

AMOUNT $ _____

RECEIVED
FROM: _____

FOR: _____

_____
VALIDATION OR SIGNATURE OF CASHIER

Form CA2

CIRCUIT COURT FOR BALTIMORE COUNTY

Jobi Adams — 494-2660
Civil Assignment Commissioner
Settlement Court

Maria Ercolano — 494-2662
Masters Assignment Clerk
Medical Records

ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Bosley Avenue
P.O. Box 6754
Towson, Maryland, 21204-0754

Kathy Rushton — 494-2660
Assignment — Jury — Motions
Marcia Fennell
Assistant Clerk Typist

Irene Summers - 494-2661
Assignment — Non-Jury — Motions
Freddie Grove
Assistant Clerk Typist

February 7, 1986.

TO: Malcolm F. Spicer,Jr., Esq.
Thomas J. Bollinger, Esq.

T. Rogers Harrison, Esq.

Phyllis Cole Friedman, Esq.
Peter Max Zimmerman, Esq.

County Board of Appeals of Balto. Co.

RE:

HEARING DATE:

ON THE FOLLOWING:

RECEIVED
COUNTY BOARD OF APPEALS
1986 FEB 10 P 12:50

POSTPONEMENTS: If the above date is not agreeable to any counsel, a request for a postponement MUST BE MADE IN WRITING to the Assignment Office AS SOON AS POSSIBLE, with a copy to all counsel involved. POSTPONEMENTS WITHIN 15 DAYS OF TRIAL must be made to the attention of the Director of Central Assignments — Joyce Grimm — 494-3497.

SETTLEMENT CONFERENCES: All counsel must secure the attendance of all parties necessary to effect a binding settlement, including clients and insurance representatives. THERE WILL BE NO EXCEPTIONS PER ORDER OF JUDGE FRANK E. CICONE. Please direct all inquiries to the attention of Jobi Adams.

SETTLEMENTS: If a settlement is reached prior to the hearing date, the Assignment Office must be notified immediately. All settlements must be put on the record if no order of satisfaction is filed prior to trial.

IN THE MATTER OF PETITIONS FOR

SPECIAL EXCEPTION, SPECIAL HEARING AND ZONING VARIANCES

Vs.

IN THE CIRCUIT COURT

FOR

BALTIMORE COUNTY

Docket 19 Folio 117

Case No. 86CG22 19/117

NOTICE OF FILING OF RECORD

TO:

Malcolm F. Spicer, Jr.
Thomas J. Bollinger
Courthouse Mezzanine
Baltimore, Md. (04)

John O. Hennegan
Donald J. Brand
Romadka, Gontrum, Hennegan & Foos
809 Eastern Blvd., (21221

T. Rogers Harrison
Mudd, Harrison & Burch
306 W. Joppa Rd.
Baltimore, 21204

Phyllis Cole Friedman
Peter Max Zimmerman
Room 223 Court House
Baltimore, 21204

Judith A. Arnold
301 W. Preston St.
Baltimore, 21201

Peter W. Taliaferro
P.O Box 8766
Balto/Wash. International
Airport 21240

In accordance with Maryland Rule of Procedure B12, you are notified that the record in the above entitled case was filed on December 9, 1987.

Suzanne Mensh

Clerk

Copies Sent

FILED DEC.9 1987

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

March 26, 1987

N O T I C E O F A S S I G N M E N T

CONTINUED HEARING

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

CASE NO. 85-65-XSPHA

JOSEPH F. EVERING, JR., ET UX

FOR SE -BOAT YARD
VARIANCES
SPH ON SITE PLAN

N/s CHESTER ROAD, 590' W SEVERN ROAD

15th Election District

As per agreement with all Counsel relative to the difficulties encountered in the hearing transcript, the continued hearing on these matters is scheduled for April 22, 1987 at 10:00 a.m.

ASSIGNED FOR: WEDNESDAY, APRIL 22, 1987 at 10:00 a.m.

cc: John O. Hennegan, Esquire — Counsel for Petitioners
John B. Gontrum, Esquire — " " "
Robert J. Romadka, Esquire — " " "

Joseph F. Evering, Jr., et ux — Petitioners

T. Rogers Harrison, Esquire — Counsel for Protestants

Phyllis Cole Friedman, Esquire — People's Counsel

Patrick D. Hanley, Esquire — Office of Law

Judith A. Armold — Assistant Attorney General

Norman E. Gerber
James G. Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Margaret E. du Bois

Kathi C. Weidenhammer
Administrative Secretary



6/28

Mr. Ruppenberger,

Thank you for your attention. Community conservation is very much at stake here and we appreciate anything you can do to help us.

M.T.

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

February 5, 1987

TO: Phyllis C. Friedman, Esquire
John B. Gontrum, Esquire
T. Rogers Harrison, Esquire
Robert J. Romadka, Esquire

FROM: William T. Hackett, Chairman
County Board of Appeals

RE: Case No. 85-65-XSPHA
Joseph F. Evering

As per our telephone conversation of February 5, 1987, there will be a meeting of all the attorneys involved in the Evering case in the Board of Appeals office at 9:00 a.m. on February 17, 1987 for the purpose of discussing the appropriate steps to be taken because of the problem that has arisen.

Sincerely,

William T. Hackett

William T. Hackett, Chairman

WTH:kcw

August 20, 1986

TO: Keith S. Franz and Larry Schmidt

FROM: E. T. Eisenhart

SUBJECT: Case No. 85-65-XSPHA - Joseph F. Evering, Jr.

The above case has been remanded to the Board for hearing on its merits. We have received a letter from John Gontrum requesting that the case be assigned for hearing as soon as possible, and also requesting that we set it for two hearing days. We are presently scheduled through the first week in December, therefore, the first open date would be Tuesday, December 9th and any hearing day after that.

Mr. Hackett requested that inasmuch as you were the Board which ruled on the Motion which was appealed to Circuit Court (Diana was the third member) - you should contact John Gontrum to see if they are going forward with the case (T. Bollinger thought it was going to be dismissed) and if so then arrange for hearing dates suitable to you and the attorneys in the file.

Petitioners	Hennegan, Gontrum, Romadka
Protestants	Harrison
Judith A. Armold	Asst. Attorney General
Phyllis C. Friedman	P.C.
T. J. Bollinger, Esq.	Law

County Board of Appeals of Baltimore County

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

NOTICE OF POSTPONEMENT and REASSIGNMENT

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

CASE NO. 85-65-XSPHA — JOSEPH F. EVERING, JR., ET UX

FOR SE FOR A BOAT YARD
" VARIANCES
" SPH ON SITE PLAN

N/S CHESTER ROAD 590' W. SEVERN ROAD

15th DISTRICT

8/7/86 - REMANDED BY JUDGE SFEKAS FOR TESTIMONY

First hearing day, Wednesday, December 10, 1986, has been postponed at the request of the Assistant Attorney General. Case is

ASSIGNED FOR:

TUESDAY, DECEMBER 16, 1986 at 10 a.m.
WEDNESDAY, DECEMBER 17, 1986 at 10 a.m.
THURSDAY, DECEMBER 18, 1986 at 10 a.m.

cc:	John O. Hennegan, Esq.	Counsel for Petitioners
	John B. Gontrum, Esq.	" " "
	Robert J. Romadka, Esq.	" " "
	Joseph F. Evering, Jr., et ux	Petitioners
	T. Rogers Harrison, Esq.	Counsel for Protestants
	Phyllis Cole Friedman	People's Counsel
	Thomas J. Bollinger, Esq.	Office of Law
	Judith A. Armold	Assistant Attorney General
	Norman E. Gerber	
	James G. Hoswell	
	Arnold Jablon	
	Jean M. H. Jung	
	James E. Dyer	

Kathi C. Weidenhammer
Administrative Secretary

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

September 5, 1986

NOTICE OF ASSIGNMENT

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

CASE IS BEING SPECIALLY SET BECAUSE IT HAS BEEN REMANDED TO THE BOARD BY THE COURT -- NO POSTPONEMENTS WILL BE CONSIDERED UNLESS REQUESTED WITHIN TEN (10) DAYS OF THE DATE OF THIS NOTICE

CASE NO. 85-65-XSPHA — JOSEPH F. EVERING, JR., ET UX

FOR SE FOR A BOAT YARD
" VARIANCES
" SPH ON SITE PLAN

N/S CHESTER ROAD 590' W. SEVERN ROAD

15th DISTRICT

8/7/86 - REMANDED BY JUDGE SFEKAS FOR TESTIMONY

ASSIGNED FOR:

WEDNESDAY, DECEMBER 10, 1986 at 10 a.m.
TUESDAY, DECEMBER 16, 1986 at 10 a.m.
WEDNESDAY, DECEMBER 17, 1986 at 10 a.m.

cc: John O. Hennegan, Esq. — Counsel for Petitioners
John B. Gontrum, Esq. — " " "
Robert J. Romadka, Esq. — " " "
Joseph F. Evering, Jr., et ux — Petitioners
T. Rogers Harrison, Esq. — Counsel for Protestants
Phyllis Cole Friedman — People's Counsel
Thomas J. Bollinger, Esq. — Office of Law
Judith A.Armold — Asst. Attorney General
Norman E. Gerber
James G. Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer

Edith T. Eisenhart, Adm. Secretary

County Board of Appeals of Baltimore County

Room 200 Court House (Hearing Room #218)
Towson, Maryland 21204
(301) 494-3180

June 18, 1985

NOTICE OF ASSIGNMENT

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

CASE NO. 85-65-XSPHA

JOSEPH F. EVERING, JR., ET UX

N/s Chester Rd., 590' W of Severn Rd.
(800 Chester Rd.)

15th District

SE-Two lots located on N & S side of Chester Rd., DR 5.5 zone to be used as a boat yard.
Variance-Stone in lieu of macadam; 318 parking spaces in lieu of 384; structure not to exceed 300' beyond low tide;
SH-Amendment to site plan.

ASSIGNED FOR: THURSDAY, SEPTEMBER 12, 1985, at 10 a.m.

cc: John O. Hennegan, Esq. — Attorney for Petitioners
Robert J. Romadka, Esq. — " " "
T. Rogers Harrison, Esq. — Attorney for Protestants
Joseph F. Evering, Jr., et ux — Petitioners
Judith A. Armold
Phyllis C. Friedman — People's Counsel
Norman Gerber
James Hoswell
Arnold Jablon
Jean Jung
James Dyer

494-3180

County Board of Appeals

Room 219 Court House

TOWSON, MARYLAND 21204

June 28, 1985

NOTICE OF POSTPONEMENT and REASSIGNMENT

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

CASE NO. 85-65-XSPHA

JOSEPH F. EVERING, JR., ET UX

N/s Chester Rd., 590' W of Severn Rd.
(800 Chester Rd.)

15th District

SE-Two lots located on N & S side of Chester Rd., DR 5.5 zone to be used as a boat yard.
Variance-Stone in lieu of macadam; 318 parking spaces in lieu of 384; structure not to exceed 300' beyond low tide;
SH-Amendment to site plan

Scheduled for hearing on Thursday, September 12, 1985, at 10 a.m. has been

POSTPONED at the request of Counsel for the Protestants, and has been

REASSIGNED FOR: TUESDAY, OCTOBER 29, 1985, at 10 a.m.

cc: DONALD BRAND - Retired
John O. Hennegan, Esq. Counsel for Petitioners

Robert J. Romadka, Esq. " " "

T. Rogers Harrison, Esq. Counsel for Protestants
ANDY SANQUITTO
Joseph F. Evering, Jr., et ua Petitioners

Judith A. Armold - office

Phyllis C. Friedman People's Counsel

Norman Gerber

James Hoswell

Arnold Jablon

Jean Jung

James Dyer

11/8/85 - NOTE TO FILE PER L. E. SCHMIDT AND E. T. EISENHART

After trying unsuccessfully to get two agreeable hearing dates for continuation of this case all the way through the middle of February, Mr. Schmidt, while in the office today, talked to Mr. Romadka's secretary and informed her that the case would definitely be set for hearing on 1/21/86 as agreed to at the close of the hearing on the Motion. Inasmuch as it has been quite difficult to get another agreed date at this time we cannot set the continued hearings on consecutive days. Therefore, if this additional date is needed, Mr. Romadka will have to get an agreeable date and submit it to the Board for confirmation. This must be done immediately as of now January and February are not scheduled but after next week when Mr. Hackett sets up the docket, these dates will no longer be available. Also, if they let the continuation date go to the hearing on 1/21 and then try to get another date, it will then mean sometime in April or May before the case can be completed.

6/18/85 - Following were notified of hearing set for Thursday, Sept. 12, 1985, at 10 a.m.

John Hennegan
Robt. Romadka
T. R. Harrison
Phyllis C. Friedman
Norman Gerber
James Hoswell
Arnold Jablon
Jean Jung
James Dyer
Joseph Evering, Jr., et ux
Judith Armold

Postponed 6-28-85

6/28/85 - Above have been notified of hearing postponement & reassignment for Tues. Oct. 29, '85, at 10 am.
ON MOTION ONLY

11/13/85 - Above notified of hearing on MERITS scheduled for TUESDAY, JANUARY 21, 1986 at 10 a.m.

~~11/13/85 - " " " CONTINUED HEARING scheduled for TUESDAY, FEBRUARY 25, 1986 at 10 a.m.~~
Postponed

6/18/85 - Following were notified of hearing set for Thursday, Sept. 12, 1985, at 10 a.m.

John Hennegan
Robt. Romadka
T. R. Harrison
Phyllis C. Friedman
Norman Gerber
James Hoswell
Arnold Jablon
Jean Jung
James Dyer
Joseph Evering, Jr., et ux
Judith Armold

Postponed 6-28-85

6/28/85 - Above have been notified of hearing postponement & reassignment for Tues. Oct. 29, '85, at 10 am.
ON MOTION ONLY.

11/13/85 - Above notified of hearing on MERITS scheduled for TUESDAY, JANUARY 21, 1986 at 10 a.m.

11/13/85 - " " " CONTINUED HEARING scheduled for TUESDAY, FEBRUARY 25, 1986 at 10 a.m.
HOLD

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

November 13, 1985

NOTICE OF ASSIGNMENT

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

CASE NO. 85-65-XSPHA — JOSEPH F. EVERING

Chester Rd. W. Severn

15th District

Re: Boat Yard

ASSIGNED FOR: TUESDAY, JANUARY 21, 1986, at 10 a.m.

CC: John O. Hennegan, Esq. — Counsel for Petitioners

Robert J. Romadka, Esq. — " " "

T. Rogers Harrison, Esq. — Counsel for Protestants

Joseph F. Evering, Jr., et ux — Petitioners

Judith A. Armold, Asst. Attorney General

Phyllis C. Friedman — People's Counsel

Norman E. Gerber

James Hoswell

Arnold Jablon

Jean Jung

James Dyer

June Holmen, Secretary

91 DEC 19 PM 12:06

Dec 15

I'm writing this note in support of the expansion of the Ivy Hill Substation. It seems as though BG+E has purchased more than enough land to surround the station, and plans adequate landscaping surrounding it. Since the substation effects me and my family for effective + efficient service of lights + heat I felt a need to perhaps counteract some of the negativity of such an important service. It's unfortunate that with every positive Change there has to be road blocks. In the letter I recieved on Nov 10 it talked of associations to

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

November 13, 1985

NOTICE OF ASSIGNMENT

(CONTINUED HEARING, 3rd DAY)

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

CASE NO. 85-65-XSPHA — JOSEPH F. EVERING

Chester Rd. W. Severn

15th District

RE: Boat Yard

ASSIGNED FOR: TUESDAY, FEBRUARY 25, 1986, at 10 a.m. HOLD

cc: John O. Hennegan, Esq. — Counsel for Petitioners

Robert J. Romadka, Esq. — " " "

T. Rogers Harrison, Esq. — Counsel for Protestants

Joseph F. Evering, Jr., et ux — Petitioners

Judith A. Armold, Asst. Attorney General

Phyllis C. Friedman — People's Counsel

Norman E. Gerber

James Hoswell

Arnold Jablon

Jean Jung

James Dyer

June Holmen, Secretary

86/197

File Case file

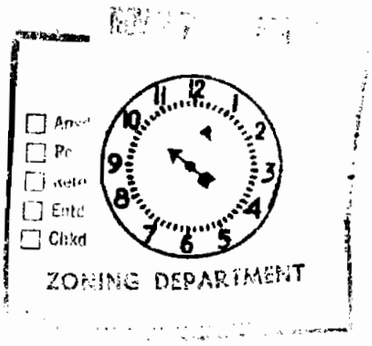
JED Reid 11/27/85

LAW OFFICES
MUDD, HARRISON & BURCH
306 WEST JOPPA ROAD
TOWSON, MARYLAND 21204
AREA CODE 301-828-1335

JOHN R. MUDD
T. ROGERS HARRISON
RICHARD C. BURCH
DOUGLAS W. RISER
H. PATRICK STRINGER, JR.
ANDREW JANQUITTO

900 MARYLAND TRUST BUILDING
14 SOUTH CALVERT STREET
BALTIMORE, MARYLAND 21202
301-323-0866

November 26, 1985



Mr. William T. Hackett, Chairman
Baltimore County Board of Zoning Appeals
Room 200 Court House
Towson, Maryland 21204

Re: Case No. 85-65-XSPHA
Joseph F. Evering - Protestants
Chester Road, W. Severn
15th District
Boat Yard

Dear Mr. Hackett:

We have received a notice rescheduling the continuance of the above-captioned zoning case for Tuesday, January 21, 1986, at 10 a.m. I hope that it is everyone's understanding that it is not my desire to create any unnecessary inconvenience for anyone; however, my practice is primarily that of trial work and I do have a previously scheduled trial in the Circuit Court for Baltimore County, Hoffman v. High's, beginning on January 22, 1986, and I will be preparing for that trial several days prior. However, we all know there are always cases that are postponed, settled, etc. In light of this previously scheduled trial, I have no alternative but to ask that the zoning case be postponed to another date and my secretary would be more than willing to provide all the available dates on my calendar from the first of the year forward.

Thank you for your kind cooperation.

Very truly yours,

T. Rogers Harrison

TRH:sw

c.c. John O. Hennegan, Esquire, Robert J. Romadka, Esquire, Judith A. Arnold, Esquire, Phyllis C. Friedman, Esquire, Mr. Norman E. Gerber, Mr. James Hoswell, Mr. Arnold Jablon, Jean Jung, Mr. James Dyer

LAW OFFICES
MUDD, HARRISON & BURCH
306 WEST JOPPA ROAD
TOWSON, MARYLAND 21204
AREA CODE 301-828-1335

JOHN E. MUDD
T. ROGERS HARRISON
RICHARD C. BURCH
DOUGLAS W. RISER
H. PATRICK STRINGER, JR.

900 MARYLAND TRUST BUILDING
14 SOUTH CALVERT STREET
BALTIMORE, MARYLAND 21202
301-423-0266

June 25, 1985

County Board of Appeals
of Baltimore County
Room 200
Court House
Towson, Maryland 21204

Re: Petitions of Joseph F. Evering, Jr.
Case No. 85-65-XSPHA

To The Board:

I have received the Board's Notice of Assignment, dated June 18, 1985, scheduling the appeal in the above matter for September 12, 1985.

I have plans to be in England from September 9th to 25th; therefore, I would appreciate it if the appeal were rescheduled. I have the following open dates:

October 11, 14, 21, 22, 23, 24, 28, 29, 30, 31

November 1, 2, 7, 8, 18, 19, 20, 21, 22

I also have several dates open in December.

If you have any questions, please feel free to contact me.

Very truly yours,

T. Rogers Harrison

TRH:sw

cc: All Counsel

RECEIVED
COUNTY BOARD OF APPEALS
JUN 27 AM 10 47

Circuit Court file and 12/2/86
exhibits are in back
of drawer. Keep separate
from our file + exhibits,

J. Holmen

UFFICIENT
TING AND IN
NO POSTPONE-
CHEDULED HEAR-
IL BILL #59-79

CASE NO. 85-85-ASPHA

FOR SE FOR A BOAT YARD
" VARIANCES
" SPH ON SITE PLAN

N/S CHESTER ROAD 590' W. SEVERN ROAD

15th DISTRICT

8/7/86 - REMANDED BY JUDGE SFEKAS FOR TESTIMONY

First hearing day, Wednesday, December 10, 1986, has been postponed at the request of the Assistant Attorney General. Case is

ASSIGNED FOR: TUESDAY, DECEMBER 16, 1986 at 10 a.m.
WEDNESDAY, DECEMBER 17, 1986 at 10 a.m.
THURSDAY, DECEMBER 18, 1986 at 10 a.m.

cc: John O. Hennegan, Esq. — Counsel for Petitioners
John B. Gontrum, Esq. — " " "
Robert J. Romadka, Esq. — " " "
Joseph F. Evering, Jr., et ux — Petitioners
T. Rogers Harrison, Esq. — Counsel for Protestants
Phyllis Cole Friedman — People's Counsel
Thomas J. Bollinger, Esq. — Office of Law
Judith A. Armold — Assistant Attorney General
Norman E. Gerber
James G. Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer

Kathi C. Weidenhammer
Administrative Secretary

In The Circuit Court for Baltimore County

Docket 19 Folio 117

Case No. 86CG 22

..... TERM, 19....

IN THE MATTER OF PETITIONS FOR SPECIAL EXCEPTIONS, SPECIAL HEARING AND ZONING, ETC. Vs. JOSEPH F. EVERING, JR., ET UX

ORIGINAL PROCEEDINGS BEFORE THE ZONING BOARD COMMISSIONER AND THE BOARD OF APPEALS OF BALTIMORE COUNTY RECEIVED BY CATHERINE MILTON PLANNER NO. 1 FROM THE ZONING OFFICE.

Susanne Marsh Clerk.

I Hereby Certify, That I have this day received under cover from the Clerk of the Circuit Court for Baltimore County, process as above.

IN TESTIMONY WHEREOF, I hereto subscribe my name and affix the Seal of the ZONING OFFICE OF BALTIMORE COUNTY Court for ..... County—City, on the 14th day of December nineteen hundred and 89

Catherine A. Milton Clerk

Rm 113 x3391

met with "Friends of the Ridge" to discuss the situation and they refused. How do they expect to compromise? Meanwhile we could have another winter where we had no electric for almost 24 hour. Where are the other people in this community who support ~~the~~ BG+E? Well I'm one who does support the substation and I'm sure there are many, many more! If I can help, let me know,

Thanks

Abby Stevens
3006 Walnut Ave
Owings Mills, Md 21117
581 5377

JOS. L. EVERING JR., et ux
85-65-XSPHA

Maryland Department of Transportation

STATE AVIATION ADMINISTRATION

William K. Hellmann
Secretary

T. James Truby
Administrator

85-1039
Case file

November 1, 1984

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

RE: Long Beach Marina
Case No. 3535-X, 64-57-SPH,
64-160-X

Dear Mr. Jablon:

This is to advise you that the area delineated on the above-referenced re-zoning application lies within the clear zone of the approach end of Runway 32 of Martin State Airport (MTN). A copy of the existing airport layout plan is enclosed.

The Federal Aviation Administration (FAA), in its Advisory Circular 150/5300-4B, has expressed its view that it is unacceptable to develop real or personal property in a clear zone in a manner that will bring about a congregation of people in that zone. The FAA deems such a congregation to be a hazard to the landing, taking-off, or maneuvering of aircraft. The State Aviation Administration (SAA), as owner and operator of MTN, concurs with the FAA in this matter.

Furthermore, 14 CFR Part 77 sets dimensional standards for all approach surfaces to all runways in the United States. The three-dimensional requirements for the primary approach surface to R/W 32 basically involve a 50:1 obstruction-free slope beginning 200 feet from the end of the pavement and extending upward and outward from the extended runway center-line. The proposed expansion of the marina would most likely involve several penetrations of this plane by masts of moored sailboats. Such penetrations would violate the Federal regulations for obstructions and airport hazards.

Section 5-502 of the Transportation Article of the Annotated Code of Maryland provides in sub-section (a) that the SAA may adopt zoning regulations to protect the aerial approaches to any State-owned airport. Additionally,

P.O. Box 8766, Baltimore/Washington Int'l Airport, Maryland 21240, -0766 Telephone: (301) 859-7100
TTY For the Deaf: (301) 859-7227

Maryland Department of Transportation

STATE AVIATION ADMINISTRATION
APPLICATION FOR AIRPORT ZONING PERMIT

Lowell K. Bridwell
Secretary
T. James Truby
Administrator

APPROVAL OF THIS APPLICATION IS NOT A SUBSTITUTE FOR ANY OTHER PERMITS OR APPROVALS REQUIRED BY THE STATE OR LOCAL JURISDICTIONS.

FOR ADMINISTRATION USE ONLY

APPLICATION NO. _____ DATE RECEIVED _____
PERMIT NO. _____ DATE ISSUED _____
COUNTY PERMIT NO. _____

AIRPORT
- ☐ BALTIMORE-WASHINGTON INTERNATIONAL
- ☐ MARTIN STATE AIRPORT

COUNTY
- ☐ BALTIMORE
- ☐ ANNE ARUNDEL
- ☐ HOWARD

ZONE
- ☐ NOISE
- ☐ HIGH STRUCTURE

1. BUILDING/SITE ADDRESS _____
House No. Street Town Development

A. N.S.E.W. SIDE OF _____ B. _____ FEET N.E.S.W. FROM INTERSECTION WITH _____

SUBDIVISION _____ LOT NO. _____ BLOCK _____ SECTION _____

OR ACREAGE _____ TAX MAP NO. _____ PARCEL NO. _____ BLOCK _____

MARYLAND GRID COORDINATES _____ N. _____ E. 200' SCALE MAP REFERENCE _____

2. TYPE OF IMPROVEMENT
- A. ☐ NEW BUILDING
- B. ☐ ADDITION
- C. ☐ ALTERATION
- D. ☐ REPAIR
- E. ☐ OTHER

3. CONTRACT PRICE OR ESTIMATED VALUE OF IMPROVEMENT _____

4. PROPOSED USE(S)

A. RESIDENTIAL
1. ☐ ONE FAMILY
2. ☐ TWO FAMILY
3. ☐ MULTI FAMILY No. of Units _____
4. ☐ OTHER _____

B. NON RESIDENTIAL
1. ☐ HOSPITAL, NURSING HOME, INSTITUTIONAL CARE
2. ☐ SCHOOL, LIBRARY, CHURCH
3. ☐ HOTEL, MOTEL, TRANSIENT LODGING
4. ☐ OUTDOOR SPECTATOR SPORTS
5. ☐ PARK, PLAYGROUND
6. ☐ PLACE OF ASSEMBLY
7. ☐ OFFICE
8. ☐ STORES, THEATERS, RESTAURANTS
9. ☐ INDUSTRY Type _____
10. ☐ AGRICULTURE Type _____
11. ☐ TOWER, TANK Type _____
12. ☐ OTHER _____

5. PRESENT USE(S) (IF DIFFERENT FROM ABOVE) _____

6. DESCRIBE PROPOSED STRUCTURE(S) (IF ANY): _____

SIZE OF STRUCTURE: HEIGHT _____ FT. LENGTH _____ FT. WIDTH _____ FT.

ELEVATION (MEAN SEA LEVEL) OF STRUCTURE: BASE _____ FT.
HIGHEST POINT _____ FT.

THE APPLICANT HEREBY CERTIFIES AND AGREES AS FOLLOWS: (1) THAT HE IS AUTHORIZED TO MAKE THIS APPLICATION: (2) THAT THE INFORMATION IS CORRECT: (3) THAT HE WILL COMPLY WITH ALL REGULATIONS WHICH ARE APPLICABLE HERETO: (4) THAT HE WILL PERFORM NO WORK ON THE ABOVE PROPERTY NOT SPECIFICALLY DESCRIBED IN THIS APPLICATION.

APPLICANT

NAME _____
CONNECTION WITH PROPERTY _____
(E.G. OWNER, LEASE HOLDER, ETC.)
SIGNED _____
MAILING ADDRESS _____
_____
ZIP CODE
PHONE _____

OWNER (IF OTHER THAN APPLICANT)

NAME _____
MAILING ADDRESS _____
_____
ZIP CODE

FOR ADMINISTRATIVE USE ONLY

APPLICATION

HIGH STRUCTURE ZONE ☐ APPROVED ☐ DENIED
BY _____
DATE _____

NOISE ZONE ☐ APPROVED ☐ DENIED
BY _____
DATE _____

REASON _____

Approval of this Application, if granted, will terminate if construction is not begun within one year of approval date.

Approval of this Permit does not preclude disturbance of the applicant or occupants from aircraft operations. Applicants are encouraged to call 859-7070 for further information.

State Aviation Administration, Office of Planning and Engineering, P.O. Box 8766, Baltimore/Washington International Airport, Maryland 21240.

SAA-010
R 11/83

ANNE ARUNDEL COUNTY
ANNAPOLIS, MARYLAND 21401

OFFICE OF PLANNING AND ZONING

Re: CRITICAL AREA - CHESAPEAKE BAY - NOTIFICATION

This is to notify you that your project _____ is subject to Senate Bill No. 664 of 1984.

This act requires that the County in rendering its decision to approve this project shall make specific findings that:

8-1813 (A)(1) The proposed development will minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands; and

(2) The applicant has identified fish, wildlife, and plant habitat which may be adversely affected by the proposed development and has designed the development so as to protect those identified habitats whose loss would substantially diminish the continued ability of populations of affected species to sustain themselves.

Subsection (B) states that: ... a local approving authority shall require such additional information from an applicant as is necessary in order to make the findings required by subsection (A).

Please provide the information on the attached list that applies to your project. A list of references and consultants has been included to assist you in compiling the information. Four copies of the site plan and accompanying report are needed for review.

Florence Beck Kurdle
Planning and Zoning Officer

FBK/PC/mw

Attachments

HARFORD COUNTY GOVERNMENT

Department of Planning and Zoning

Re: Notification of Requirements of the Chesapeake Bay Critical Areas Act

This is to notify you that your project _____ is subject to the State of Maryland Senate Bill No. 847 of 1985.

This act requires that the County by rendering its decision to approve this project shall make specific findings that:

S-1815 (A)(1) The proposed development will minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands; and

(2) The applicant has identified fish, wildlife, and plant habitat which may be adversely affected by the proposed development and has designed the development so as to protect those identified habitats whose loss would substantially diminish the continued ability of populations of affected species to sustain themselves.

Subsection (B) states that: ... a local approving authority shall require such additional information from an applicant as is necessary in order to make the findings required by subsection (A).

Please provide the information requested on the attached list that applies to your project. A list of information sources has been included to assist you in compiling the information. Three copies of the site plan and accompanying report are needed for review.

_____
Robert S. Lynch, Planning Director

RSL:mkz
Attachments

220 SOUTH MAIN STREET Bel Air, MARYLAND 21014
(301) 638-6000 (D.C. Area) (301) 879-2000

Md. Natl Resources Code Ann §§ 8-1801 - 8-1816 (1974 & 1983 Cum Supp)

(7) 1 individual who represents the sport fishing or crabbing industry in Baltimore County;

(8) 1 individual from the Greater Dundalk Community Council; and

(9) 1 individual from the Hart and Miller Island Area Environmental Group, Inc.

(c) *Duties.* — The Oversight Committee shall:

(1) Monitor the redeposit of spoil and Baltimore County tributary spoil within 5 miles of the Hart-Miller-Pleasure Island chain; and

(2) Hear and dispose of complaints lodged by individuals affected by the redeposit of spoil and Baltimore County tributary spoil within 5 miles of the Hart-Miller-Pleasure Island chain. (1981, ch. 587; 1983, ch. 557.)

Effect of amendment. — The 1983 amendment, approved May 31, 1983, and effective from date of passage, in subsection (b), substituted "2" for "three" in paragraph (1), and "1" for "one" in paragraphs (2) and (3), rewrote paragraph (4), and substituted "1" for "one" in paragraphs (5), (6), (7), (8) and (9).

Subtitle 18. Chesapeake Bay Critical Area Protection Program.

§ 8-1801. Declaration of public policy.

(a) *Findings.* — The General Assembly finds and declares that:

(1) The Chesapeake Bay and its tributaries are natural resources of great significance to the State and the nation;

(2) The shoreline and adjacent lands constitute a valuable, fragile, and sensitive part of this estuarine system, where human activity can have a particularly immediate and adverse impact on water quality and natural habitats;

(3) The capacity of these shoreline and adjacent lands to withstand the continuing demands upon them, without further degradation to water quality and natural habitats is limited;

(4) National studies have documented that the quality and productivity of the waters of the Chesapeake Bay and its tributaries have declined due to the cumulative effects of human activity that have caused increased levels of pollutants, nutrients, and toxics in the Bay System and declines in more protective land uses such as forestland and agricultural land in the Bay region;

(5) Those portions of the Chesapeake Bay and its tributaries within Maryland are particularly stressed by the continuing population growth and development activity concentrated in the Baltimore-Washington metropolitan corridor;

(6) The quality of life for the citizens of Maryland is enhanced through the restoration of the quality and productivity of the waters of the Chesapeake Bay and its tributaries;

(7) The restoration of the Chesapeake Bay and its tributaries is dependent, in part, on minimizing further adverse impacts to the water quality and natural habitats of the shoreline and adjacent lands;

(8) The cumulative impact of current development in inimical to these purposes; and

(9) There is a critical
and future generations
consistent and uniform
and its tributaries so a
habitats.

(b) *Purposes.* — It i
enacting this subtitle t

(1) Establish a Resou
tributaries by fosterin
shoreline areas so as
habitats; and

(2) Implement the R
tween the State and affe
lishing and implementi
subject to State criteria

Editor's note. — Section
1984, provides that "of the ir
the Chesapeake Bay Critical A
the member from Anne Ar
members at large, and the me
Queen Anne's, Talbot, and D
serve for terms of 4 years; th
Baltimore City and Wico
Calvert, Charles, and St. Mar
for terms of 3 years; and th
Baltimore, Prince George's,
Caroline, and Worcester co
terms of 2 years."

Section 3 of ch. 794 provides

§ 8-1802. Definitio
Prince

(a) *In general.* — (1) I
indicated.

(2) "Commission" me
established in this subt

(3) "Development" me
or use of dry land, land

(4) "Includes" means
way of limitation.

(5) "Local jurisdiction
planning and zoning pow
Area as defined in this

(6) "Program" means
tion including any amer

(7) "Project approval"
development by a state
Critical Area by the app

BARRY KOH, PH.D.
12110 RIDGE VALLEY DRIVE
OWINGS MILLS, MD 21117
410/252-3180

November 21, 1994

Baltimore County Board of Appeals
Attention: Mr. William Hackett
400 Washington Avenue
Towson, MD 21204

Dear Mr. Hackett:

I am a resident of Chestnut Ridge and recently became aware of BGE's attempt to expand the Ivy Hill Substation. I am also aware that BGE was granted permission to expand the station in June of 1994. However, this permission was appealed by a group of eleven families calling themselves, "Friends of the Ridge."

I would like to make it clear that I, a long-time resident of Chestnut Ridge, am in favor of the substation expansion. I have confidence that BGE has the expertise to recognize that the substation's capacity must be increased. I also feel that the opposition of the Friends of the Ridge is self-serving and not in the best interest of the overall community. I believe these families all purchased their property and built their homes long after the original substation was erected. BGE appears to be going out of their way to accommodate the reasonable concerns of these homeowners in the substation expansion. I object to any further delay in granting approval to BGE.

Sincerely yours,

Barry Koh, Ph.D.

BK/cmw

cc: Clare C. Miller, BGE

W/Chrono/BaltCty-1

EXHIBIT A1

Baltimore County Code, § 524.1. People's Counsel.

...

(b) Notwithstanding any other provision of this Charter, within thirty (30) days after the effective date of this Charter amendment, the county executive shall appoint a people's council who shall represent the interests of the public in general in zoning matter as hereinafter set forth, subject, however, to confirmation by the county council, and such person so appointed shall continue to serve as people's counsel until such time as he or she resigns or has been removed pursuant to the provisions herein contained:

...

...

(3) Powers and duties: The people's counsel shall have the following powers and duties:

A. He shall appear as a party before the zoning commissioner of Baltimore County, his deputy, the county board of appeals, the planning board, and the courts on behalf of the interests of the public in general, to defend any duly enacted master plan and/or comprehensive zoning maps as adopted by the county council, and in any matter or proceeding now pending or hereafter brought involving zoning reclassification and/or variance from or special exception under the Baltimore County Zoning Regulations, as now or hereafter in force and effect, in which he may deem the public interest to be involved. In defense of the zoning maps or master plan, he may appear as a party in interest before all state and federal agencies, boards, and courts on matters involving the preservation of the quality of the air, land, and water resources of Baltimore County, and/or may initiate such proceedings in the public interest. He shall have in such appearance, all the rights of counsel for a party in interest, including but not limited to the right to present his case, to cross examine, to object, to be heard, and to file and prosecute an appeal in his capacity as people's counsel from any order or act of the zoning commissioner of Baltimore County or his deputy, or of the county board of appeals to the courts as an aggrieved party pursuant to the provisions of Section 604 of this Charter to promote and protect the health, safety and general welfare of the community. The people's counsel may also prosecute an application before any state or federal court for injunctive and other relief incidental thereto, to enjoin violation of any Baltimore County zoning maps or master plan or as authorized by resolution by the county council.

(Bill No. 90, 1978, § 1)

(Approved by voters Nov. 7, 1978. Effective Dec. 8, 1978)

...

EXHIBIT A 2

PCF: seen

PMZ: seen

County Board of Appeals of Baltimore County

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

December 12, 1985

John O. Hennegan, Esquire
Robert J. Romadka, Esquire
809 Eastern Boulevard
Essex, MD 21221

T. Rogers Harrison, Esquire
306 W. Joppa Road
Towson, MD 21204

Judith A. Armold
Assistant Attorney General
Department of State Planning
301 W. Preston Street
Baltimore, MD 21201

Re: Case No. 85-65-XSPHA
Joseph F. Evering, Jr., et ux

Dear Counsel:

Enclosed please find the Board of Appeals' Ruling on the Petitioner's Preliminary Motion to determine the applicability of Subtitle 18 of the Natural Resources Article of the Annotated Code of Maryland. This ruling is self-explanatory.

Additionally, at the conclusion of the hearing, counsel requested the Board's advice as to the COMAR regulations promulgated by the State Aviation Administration. Although we will reserve all parties' rights to be heard on this matter, the Board has reviewed the regulations. We note that Subtitle 03, Section 11.03.05 prohibits actual construction, and does not prohibit the filing and granting of the petitions before us. Also, Section 11.03.06 provides for relief through the Board of Airport Zoning Appeals, outside of the jurisdiction of this Board.

Finally, please note the next hearing date for this matter is Tuesday, January 21, 1986 at 10 a.m. We must deny the Protestants' request for a continuance from that date. The Board clearly remembers all parties' agreement to the January 21st date at the conclusion of the initial day's hearing. Also, although this Board has granted postponements for conflicting trial dates, we cannot grant a postponement

EXHIBIT B

APPENDIX E

RULES OF PRACTICE AND PROCEDURE OF THE ZONING COMMISSIONER OF BALTIMORE COUNTY*

The following rules and regulations are prescribed under the provisions of Subsection 500.8, Baltimore County Zoning Regulations, 1955:

RULE I

Locations and Times of Hearings—In General

Hearings shall be held in the County Office Building, 111 West Chesapeake Avenue, Towson, Maryland, Monday through Friday. (The times for hearings on petitions will be set in accordance with Sections 22-22 and 22-23 of the Baltimore County Code 1968, as amended by Bills No. 72, 1969, and No. 42, 1970.[1]) Special sessions of the Zoning Commissioner for any and all authorized purposes may be held at such times and places as the Zoning Commissioner may direct.

RULE II

Petitions and Preliminary Review

A. Acceptance. On receiving a petition, the Zoning Commissioner will refer it to the office staff and Zoning Plans Advisory Committee (see Section C, below) for examination and comment. If it is found to be in accordance with these rules, with the Baltimore County Code, with the Baltimore County Zoning Regulations, and with all reasonable requirements of the Committee, the Zoning Commissioner will accept the petition for filing and so notify the petitioner by letter. If it does not conform, the petitioner will be advised of the defects which must be corrected before the petition will be accepted for filing.

B. Form, contents, and accompanying documentation

1. Any petition to be accepted for filing must be on the form supplied by the Zoning Commissioner.

2. The petition shall be submitted in triplicate, and each copy shall be signed by the petitioner(s). All information on the petition other than the printed impression and the signature(s) shall be typewritten.

---

* *Revised 1974.*

1. *See Appendix D.*

EXHIBIT C

Baltimore County, Maryland

PEOPLE'S COUNSEL
RM. 223, COURT HOUSE
TOWSON, MARYLAND 21204
494-2188

PHYLLIS COLE FRIEDMAN
People's Counsel

PETER MAX ZIMMERMAN
Deputy People's Counsel

November 6, 1985

Mr. Theodore E. Mathison
State Aviation Administration
Department of Transportation
P. O. Box 8766, Balto.-Wash. Intl. Airport
Baltimore, Maryland 21240

RE: Joseph F. Evering, Jr., et ux, Petitioners
Zoning Case No. 85-65-XSPHA
N/S Chester Rd., 590' W of Severn Rd.
(800 Chester Rd.), 15th District (3.30 acs.)

Dear Mr. Mathison:

Enclosed herewith is a site plan for the above-referenced Petition for a Special Exception. During the course of a preliminary hearing, the issue of the applicability of Title 11, Subtitle 03, 11.03.05 Obstructions to Air Navigation, and 11.03.06 Airport Zoning Regulations, was raised.

Would you please advise us at the earliest possible moment as to whether development of the site in question is in any way impacted by these regulations and if so, how? This matter is presently pending before the County Board of Appeals.

Thank you for your prompt attention to this.

Sincerely yours,

Phyllis Cole Friedman

Phyllis Cole Friedman
People's Counsel for Baltimore County

Enclosure

cc: John O. Hennegan, Esquire
Robert J. Romadka, Esquire
T. Rogers Harrison, Esquire
Judith A. Arnold, Asst. Attorney General
Norman E. Gerber, Director, OPZ

PCF:sh

(2) A generator who accumulates hazardous waste [for more than 90 days] is an operator of a storage facility and is subject to the requirements of COMAR 10.51.05[.] *; unless the hazardous waste:*

(a) Is accumulated for 90 days or less; or

(b) Accumulated is less than 500 kilograms, contains less than 1 kilogram of acute hazardous waste, and is accumulated for 180 days or less from the date of initial generation or accumulation.

ADELE WILZACK
Secretary of Health and Mental Hygiene

[Md. R. Doc. No. 85-R-139-P. Filed at Div. of St. Doc. April 2, 1985.]

Title 11
DEPARTMENT OF TRANSPORTATION

Subtitle 03 STATE AVIATION ADMINISTRATION

11.03.05 Obstructions to Air Navigation

Authority: Transportation Article, §§5-204(d), 5-208 and 5-702, Annotated Code of Maryland

Notice of Proposed Action

The State Aviation Administration proposes to adopt new Regulations .01 — .11 under a new chapter, **COMAR 11.03.05 Obstructions to Air Navigation.** The purpose of these regulations is to comply with the provisions of Transportation Article, §5-702(a), and govern the erection and maintenance of any obstruction to air navigation that endangers the lives and property of persons using the air space for transportation or occupying land within this State.

Estimate of Economic Impact

I. Summary of Economic Impact. These regulations will govern the erection and maintenance of any structure, personalty, or vegetation that, due to its location, would endanger the lives or property of those persons using a licensed public-use airport or occupying adjoining lands. Authority to grant exemptions is provided to the local subdivisions for use through their existing appeal processes. When exemptions are granted, provisions are included to require precautionary measures consistent with the degree of risk. Both the State and local sub-divisions will incur expense in processing requests for exemptions, as will those property owners who might be required to install obstruction lighting and markings.

II. Types of Economic Impacts.	Revenue (+) Expense (–)	Magnitude
A. On issuing agency: The State Aviation Administration will incur expense in reviewing requests for exemptions and providing testimony at local hearings.	(–)	$6,000
B. On other State or local agencies affected: Local sub-divisions will incur added expense as a result of hearings to consider requests for exemptions.	(–)	$8,000
	Benefit (+) Cost (–)	**Magnitude**
C. On regulated industries or trade groups:	NONE	
D. On other industries or trade groups affected: There may be an indirect effect due to the purchase of goods and services to mark or remove obstructions.	(+)	Determined at the local level
E. Direct and indirect effects on public: Added expenses may be expected on the part of builders in the installation of obstruction lighting and markings, and by others in limiting the growth of vegetation.	(–)	Determined at the local level

III. Assumptions.

A. This figure is based upon the review of an estimated 100 construction applications per year for determination as to their impact on air navigation and participation in 20 hearings relative to exemptions.

B. This figure is the estimated local cost of processing 20 requests for exemptions.

D. Extent of expense will be determined by local zoning officials in connections with requests for vacancies.

E. Extent of expense will be determined by local zoning officials in connections with requests for vacancies.

Opportunity for Public Comment

Written comments may be sent to Evelyn M. Kellner, Chief, Administrative Services, State Aviation Administration, P.O. Box 8766, Baltimore/Washington International Airport, Maryland 21240 or call (301) 859-7228. These comments must be received by May 31, 1985. No public hearing will be scheduled.

.01 Definitions.

A. As used in these regulations, the following terms have the meanings indicated unless the context requires otherwise. Words not specifically defined that relate to aeronautical practices, processes, and equipment shall be construed according to their general usage in the aviation industry.

B. Terms Defined.

(1) "Administration" means the State Aviation Administration of the Maryland Department of Transportation, established pursuant to Transportation Article, §2-102(b)(2), Annotated Code of Maryland.

(2) "Administrator" means the State Aviation Administrator, whose office is established pursuant to Transportation Article, §2-102(b)(2), Annotated Code of Maryland, or his duly authorized representative.

EXHIBIT D

County Board of Appeals of Baltimore County

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

January 9, 1986

T. Rogers Harrison, Esq.
306 W. Joppa Road
Towson, Md. 21204

Phyllis C. Friedman
People's Counsel for Baltimore County
Peter Max Zimmerman, Esq.
Deputy People's Counsel
Court House
Towson, Md. 21204

Re: Case No. 85-65-XSPHA
Special Hearing, Special Exception, and Variances petitioned for by Joseph F. Evering, Jr., et ux

Dear Mrs. Friedman, Messrs. Harrison and Zimmerman:

The Board has received the Notice of Appeal filed by you on January 3, 1986, in the above matter. Needless to say, we are distressed at the timing of this action.

As you know, Maryland Rule B-7(a) requires that the Board submit the record of proceedings before it to the Circuit Court for Baltimore County. Under the mandate of this rule, the Board in the past has, as a matter of practice, forwarded its entire file to the Circuit Court. Additionally, past decisions of the Court have held that the filing of the appeal immediately removes the matter from before the Board; as jurisdiction is assumed by the Circuit Court.

These two considerations, the transmittal of the record and the Board's loss of jurisdiction, are of great concern to the Board in view of the present status of the matter. That is, the Board has to date heard testimony only on the preliminary motion and has yet to hear or consider the merits of the petitioned relief. As the next day's testimony, January 21st, is rapidly approaching, the Board is concerned over its authority to hear the matter on that date and if the appeal is proper.

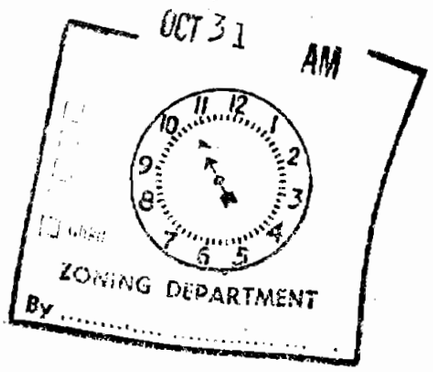
After consideration, it is the Board's view that the appeal is improper and we will treat it as such. Our reasons for this conclusion are several. First, the Board's published "Ruling on Motion" dated December 12, 1985, is just that, a ruling on the Petitioner's preliminary motion. There is no opinion or, more importantly, Order of the Board which can be appealed.

85-1007
Case file

BAFITIS & ASSOCIATES
CIVIL ENGINEERS • SURVEYORS

WILLIAM N. BAFITIS
3482 DUNHAVEN RD.
BALTIMORE, MD. 21222

301-285-3212



October 31, 1984

Paul J. Solomon
County Court Office Building
Office of Planning and Zoning
Towson, Maryland 21204

Dear Mr. Solomon,

Reference: Long Beach Marine Additional Slips
Joseph F. Evering, Jr.,
No. 85-65-XSpHA
Hydrogeological Study and Environmental Effects Report

As requested, we are submitting one copy of the above referenced report for the additional boat slips proposed at Long Beach Marine.

If there are any questions concerning this project, please do not hesitate to call me at 323-8100.

Very Truly Yours
BAFITIS AND ASSOCIATES

William N. Bafitis, P.E.

cc: Mr. Arnold Jablon
Mr. B. H. Stafford
Mr. J. Hennegan
Mr. Joseph F. Evering, Jr.

LAW OFFICES
MUDD, HARRISON & BURCH
306 WEST JOPPA ROAD
TOWSON, MARYLAND 21204
AREA CODE 301-828-1335

JOHN E. MUDD
T. ROGERS HARRISON
RICHARD C. BURCH
DOUGLAS W. HISER
H. PATRICK STRINGER, JR.

900 MARYLAND TRUST BUILDING
14 SOUTH CALVERT STREET
BALTIMORE, MARYLAND 21202
301-323-0266

February 4, 1985

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

Re: Petitioners Case No. 85-65XSPHA

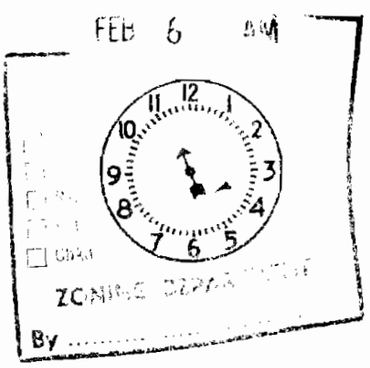
Dear Mr. Jablon:

Please find enclosed copies of the Chesapeake Bay Program: Findings and Recommendations (E.P.A., September 1983), the Chesapeake Bay Program Techincal Studies: A Synthesis (E.P.A., September 1982) and the Bober memo of October 29, 1984, all which the Protestants introduced into evidence during the February 1, 1985 hearing.

After the hearing, Mr. Hennigan was presented with copies of the Findings and Recommendations brochure and the Bober memo. I mailed him a copy of the Technical Studies brochure today, and once he receives it, he should have copies of all the exhibits introduced by the Protestants. I anticipate that he will have the brochure copy of February 7th.

This letter will also confirm that both the Petioners and the Protestants will each have thirty days from the time Mr. Hennigan receives the Technical Studies brochure to submit a memorandum on the issue of whether the Petitioners have fulfilled their evidentiary burden under Md. Nat. Res. Code Ann. Section 8-1813 (1974 & 1984 Cum. Supp.).

Thank you.



Very truly yours,

T. Rogers Harrison

TRH:sw
enc.

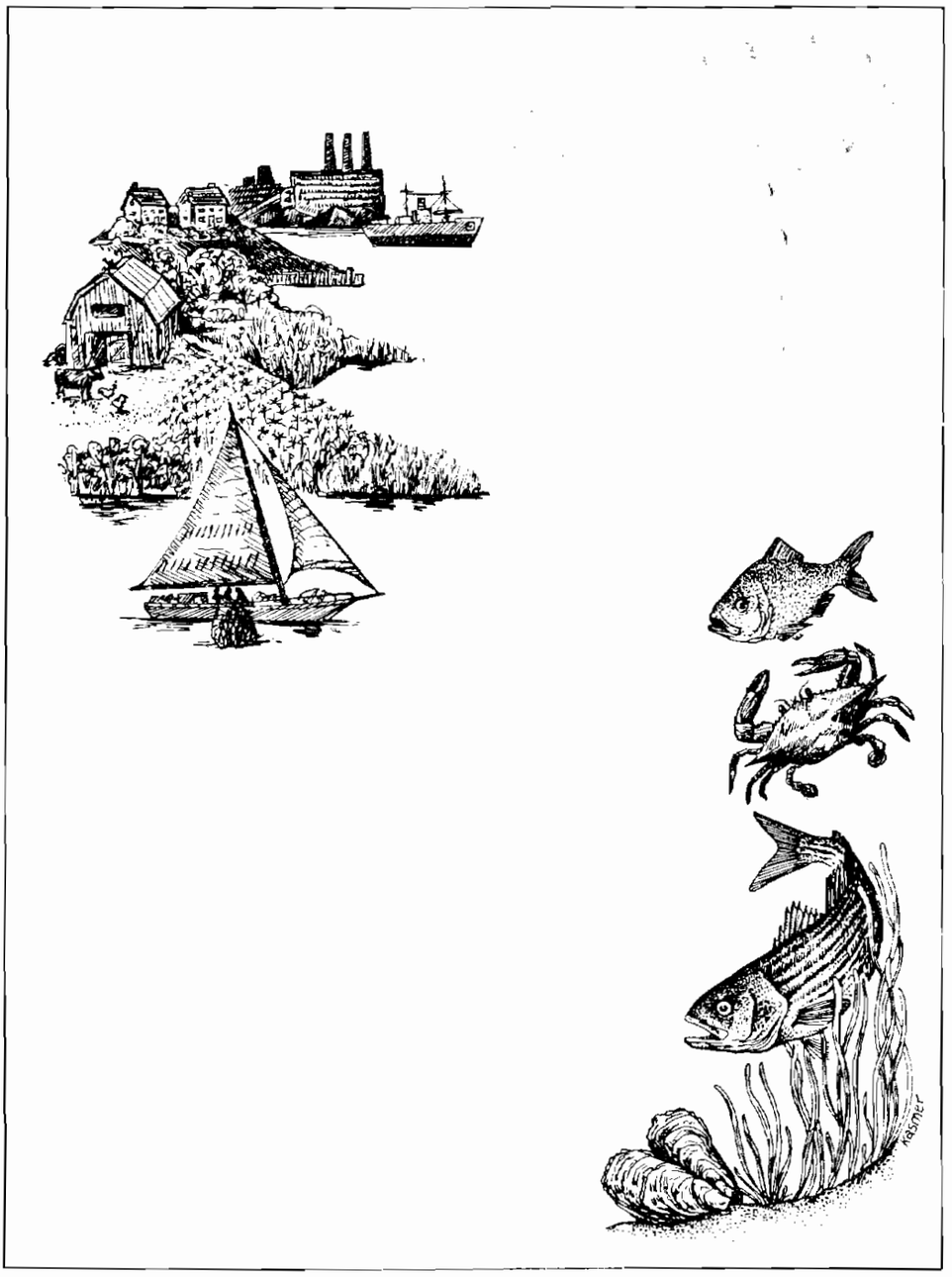
United States
Environmental Protection
Agency

Region 3
Sixth and Walnut Streets
Philadelphia, PA 19106

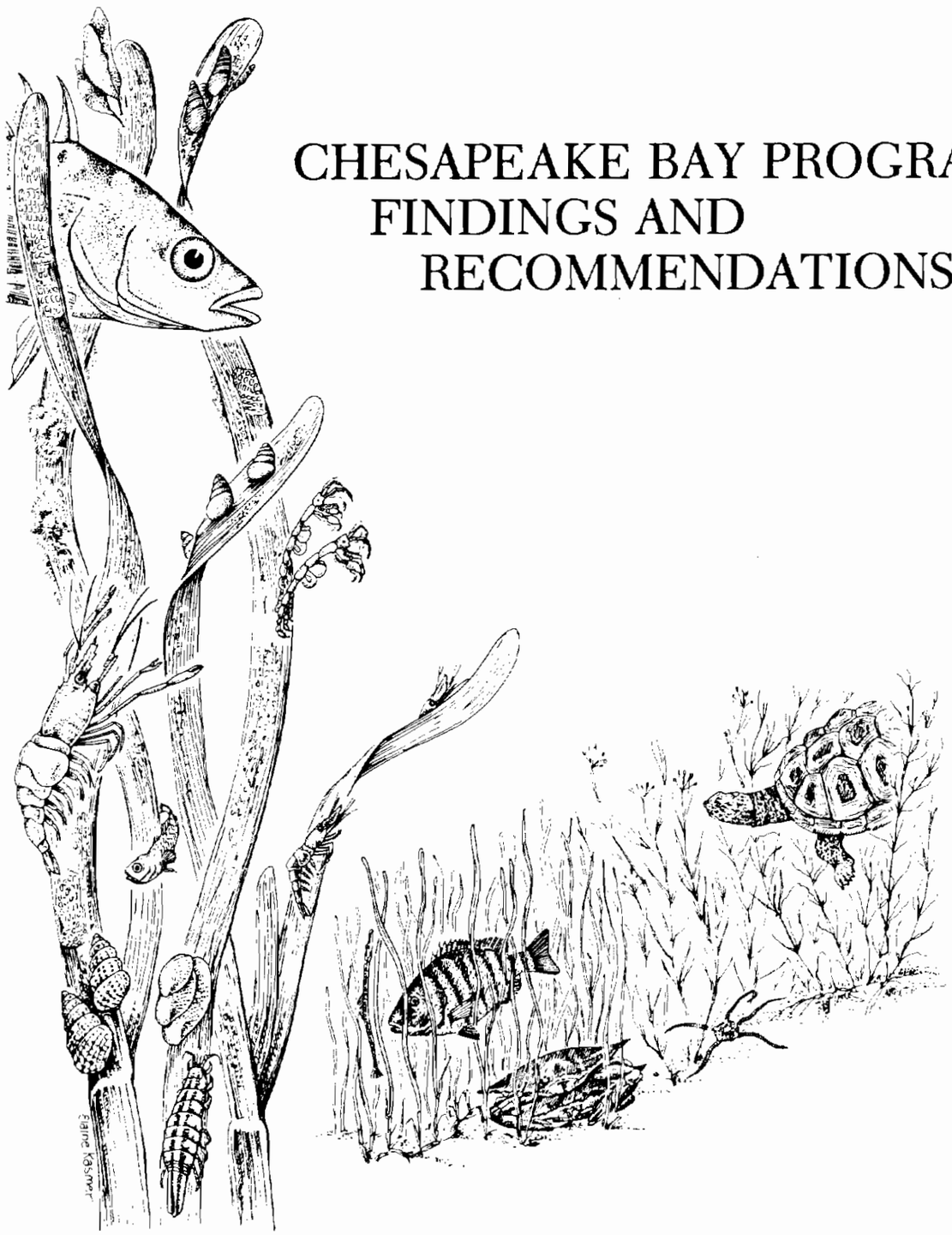
September 1983

CHESAPEAKE BAY PROGRAM: FINDINGS AND RECOMMENDATIONS

EPA



CHESAPEAKE BAY PROGRAM: FINDINGS AND RECOMMENDATIONS



Dec 2, 1994

Vince Laudicina
P.O. Box 603
Owings Mills, MD 21117

To: William Hackett

Dear Mr. Hackett:

Certainly my family and I are in favor of BGE being granted the Zoning necessary to expand their Ivy Hill Substation. I can't understand how the 11 or 12 families that appose the enlargment; can, Stand in the way of the other 2000 or so families receiving uninterrupted Services from this facility.

Seems to me that the opposition moved "TO" the nuisance, IF, you can Call the Substation a nuisance. Even if our family lived next to the Substation we would not Consider it a nuisance.

We live on the corner of Greenspring + Walnut Aves. and our Electric Power Comes through the Ivy Hill Substation. Last winter on a very Icy day our power was cut off for 9 hours or so, do to the demand for Electric Power that the Substation Couldn't deliver because it was overloaded.

I certainly hope that Common sense will prevail in this Controversy.

Sincerely Yours
Vince Laudicina

CRITICAL AREAS INFORMATION REQUIREMENTS

BALTIMORE COUNTY

SUBJECT	SPECIFIC INFORMATION	SOURCE	SUBMITTAL FORM
CRITICAL AREA	Critical Areas Boundary	Map in Office of Planning and Zoning, Current Planning & Development Div.	Critical Areas Information Map*
WATER DEPTH	Average water depth within 50' of shoreline at mean high tide to be shown at 1' intervals. This is to be done for water bodies on and adjacent to the site as well as for the major tributaries into which the site drains.	Nautical Maps	Critical Areas Information Map. If data are unavailable, field estimates and descriptions may be substituted.
SHORELINE	1. Shoreline rates of erosion or accretion	Historical Shorelines and Erosion Rates, Maryland Geological Survey, 1975	Critical Areas Information Text**
	2. Shoreline erosion control structures or projects	Shoreline Structures in Maryland: Their Location and Extent, Maryland Geological Survey, 1976 or latest available information	Critical Areas Information Map

*Critical Areas Information Map is a map of the site detailing the requested environmental information. Lot lines, roads, utility lines, etc. should not be included and the scale and size must be the same as that used for the site development plan.

**Critical Areas Information Text is a written report, describing the requested environmental information.













THIS DEED, Made this 25th day of June, in the year one thousand nine hundred and sixty-nine, by and between JOHN R. HINRICHS and MARGARET M. HINRICHS, his wife, of Darien, State of Connecticut; D.JASON COE and MARY H. COE, his wife, of Baltimore County, State of Maryland; and E. HENRY HINRICHS, JR. and SUSANNE HINRICHS, his wife, of Baltimore County, State of Maryland, parties of the first part, Grantors; and ALBERT CRAWFORD HUBBARD, JR. and PENNEY COX HUBBARD, his wife, of Baltimore County, State of Maryland ,parties of the second part, Grantees.

WITNESSETH, that in consideration of the sum of Five ($5.00) Dollars and other good and valuable considerations, the receipt whereof is hereby acknowledged, the said parties of the first part do hereby grant and convey unto the said parties of the second part, as tenants by the entireties, their assigns, the survivor of them, and such survivor's heirs and assigns, in fee-simple, all that lot of ground, situate, lying and being in Baltimore County, in the State of Maryland, and described as follows, that is to say·

BEGINNING for the same in the centre of an avenue twenty-five feet wide and at the distance of six hundred and ninety-seven feet north westerly from a stone heretofore planted at the intersection of the centre line of the aforesaid avenue with the centre line of another avenue twenty-five feet wide both avenues being laid out on the plat of Walnut Hill, said plat being recorded among the Plat Records of Baltimore County in Plat Book #2 folio 131 the centre line of the said last mentioned avenue being the division line between lots 9 and 10 on said plat said place of beginning being also at the distance of twelve and five tenths feet south three degrees fifty-three minutes west from an iron pipe planted on the north side of the first mentioned avenue thence north three degrees fifty-three minutes east to said pipe and continuing the same course in all two hundred and thirty-six feet to an iron pipe thence north sixty degrees forty-four minutes west three hundred and fifty-five and two tenths feet to an iron pipe and to the centre of another twenty-five foot avenue thence binding on the centre of said last mentioned avenue as laid out on the aforesaid plat the six following courses and distances viz south one hundred and thirty-two feet, south nine degrees forty minutes east eighty-two feet south twenty-one degrees twenty minutes east ninety-nine feet, south forty degrees thirteen minutes east forty-nine and five tenths feet and south fifty-five degrees ten minutes east fifty-one and eight tenths feet to the centre of the twenty-five foot avenue first above mentioned and thence binding thereon south seventy-seven degrees fourteen minutes east one hundred andsixty-four feet to the place of beginning. Containing 1.9 acres of land more or less.

BEING the same lot of ground which by Deed dated October 5, 1936 and recorded among the Land Records of Baltimore County inLiber C.W.B.Jr. No.983 folio 268, was granted and conveyed by George C.Carey,Jr.,et al, to Ernest H.Hinrichs and Elizabeth Sadler Hinrichs,his wife, in fee-simple. The said Elizabeth Sadler Hinrichs having predeceased the said Ernest H.Hinrichs; on or about the 29th day of March, 1967 , thereby vesting fee-simple title absolutely in the said Ernest H.Hinrichs.

[illegible] 325.00

Case No. 85-65-XSPHA
Item No. 166
Date: May 10, 1985

N/S of ChesterRoad, 590' W of Severn Road (800 Chester Road) - 15th Election District
Joseph F. Evering, Jr., et ux, Petitioners

SE-2 lots located on N & S side of Chester Rd., DR 5.5 zone to be used as a boat yd.
Var.-Stone in lieu of macadam; 318 pkg. sps. in lieu of 384; structure not to exceed 300' beyond low tide; SH-Amend. to site plan

- X 1. Copy of Petition
- X 2. Copy of Description of Property
- X 3. Copy of Certificate of Posting 1 sign & 1 location sign
- X 4. Copy of Certificates of Publication
- X 5. Copy of Zoning Advisory Committee Comments
- X 6. Copy of Comments from the Director of Planning
- ____ 7. Planning Board Comments and Accompanying Map
- X 8. Copy of Order to Enter Appearance
- X 9. Copy of Order - Zoning/[redacted] Commissioner-4/25/85,GRANTED, w/restrictions
- X 10. Copy of Plat of Property (Petitioner's Exhibit #1)
- ____ 11. 200' Scale Location Plan
- ____ 12. 1000' Scale Location Plan
- X 13. Memorandum in Support of Petition
- X 14. Letter(s) from Protestant(s)
- ____ 15. Letter(s) from Petitioner(s)
- X 16. Protestants' Exhibits 1 to 5a - #'s 2+3 missing from file
- X 17. Petitioners' Exhibits 1 to 7
- X 18. Letter of Appeal, 5/10/85 by People's Counsel, Phyllis Friedman.
- X 19. Protestants' Reply to Petitioners' Memorandum
- X 20. Critical Area Review/Baltimore County Dept. of Health

John O. Hennegan, Esquire — Attorney for Petitioners
Germania Federal Building
809 Eastern Boulevard
Essex, Maryland 21221

JOHN B. GONTRUM, ESQUIRE
*Robert J. Romadka, Esquire — Attorney for Petitioners
Germania Federal Building
809 Eastern Boulevard
Essex, Maryland 21221

*T. Rogers Harrison, Esquire — Attorney for Protestants
306 West Joppa Road
Towson, Maryland 21204

*Phyllis C. Friedman, Esquire — People's Counsel
*Norman E. Gerber — Request Notification
James Hoswell — Request Notification
Arnold Jablon — Request Notification
Jean M. H. Jung — Request Notification
James E. Dyer — Request Notification

Joseph F. Evering, Jr., et ux — Petitioners
800 Chester Rd. (21220)

Judith A. Armold

T. B. Ballweber, Esq.

#1: Plat of Property

#1a: Hydrogeological Study and Environmental Effects Report

#2: Long Beach Marina Location Plan

#3: Department of The Army Permit

#4: Baltimore County Permit

#5: Long Beach Marina Post Card/picturing Marina

#6: Photograph/Marina

#7: Application for Building Permit

PROTESTANT'S EXHIBITS

#1: Photographs/Booklet

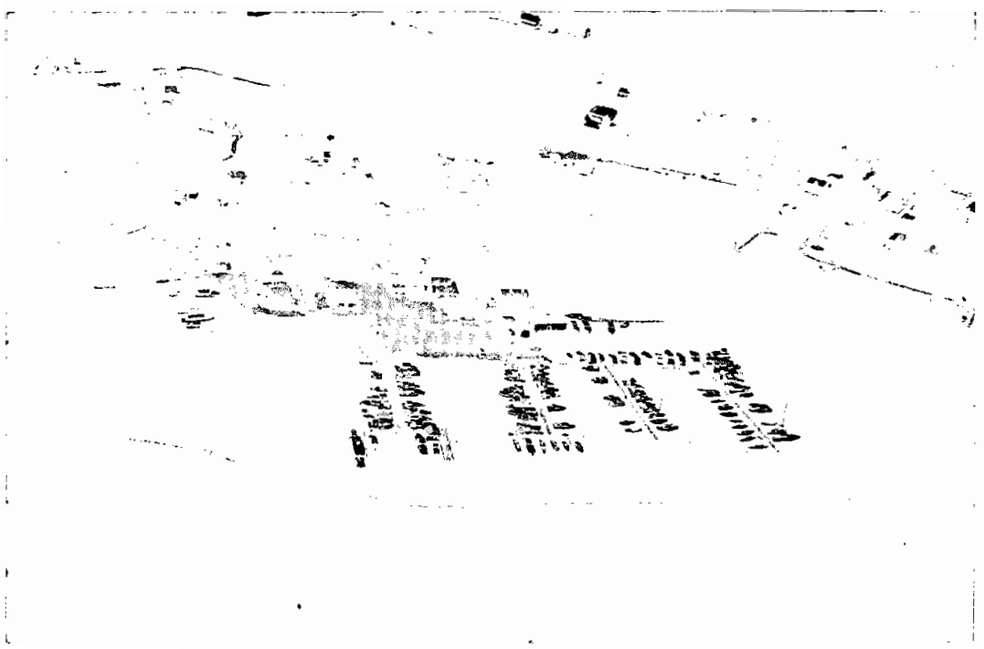
#1a: Letter from Eugene Bober to Frank S. Lee Re: Required information relative to the Chesapeake Bay Critical Areas

#2: Exhibit missing from file

#3: Exhibit missing from file

#4a: Chesapeake Bay Program Technical Studies: A Synthesis

#5a: Petition (2 pages)



LONG BEACH MARINE
Located on Middle River
opposite Martin Plant,
North Side of Baltimore, Md.
Near the Beltway.
Shopping facilities, Restaurant and Transportation Available. Full Marine Services. Phillips 66 gas. Open 24 Hours During Season.
Phone: 301 - 335-8602
Owner - Jack Evering

The Country Studio, P.O. Box 206, Aberdeen, Md. 21001

55724-C

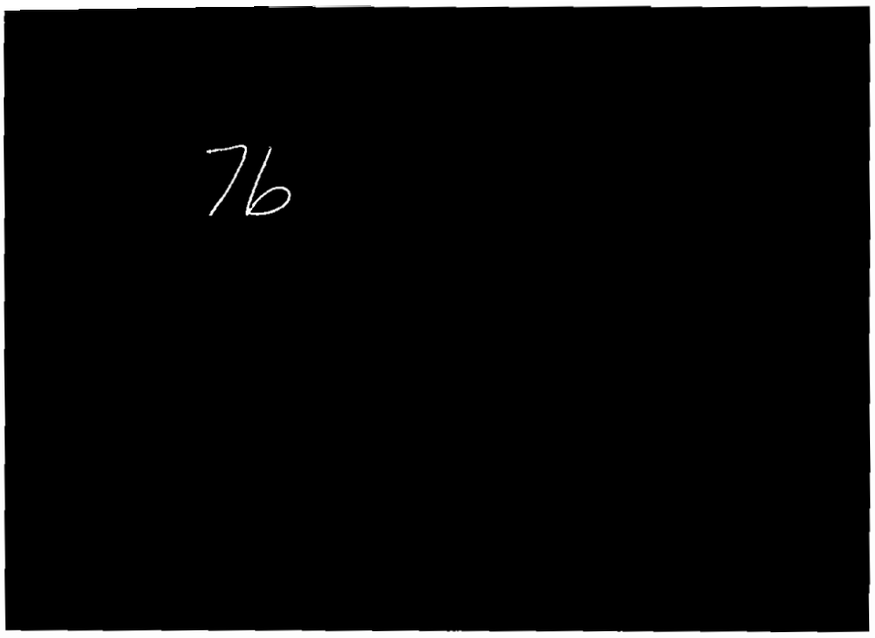
MADE BY DEXTER PRESS, INC. WEST NYACK, NEW YORK

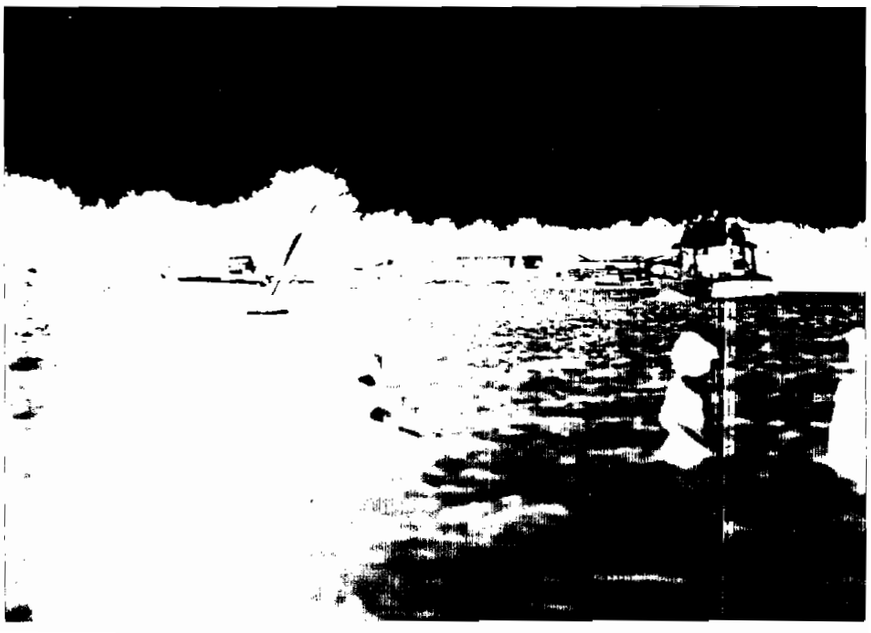
Pict No 22

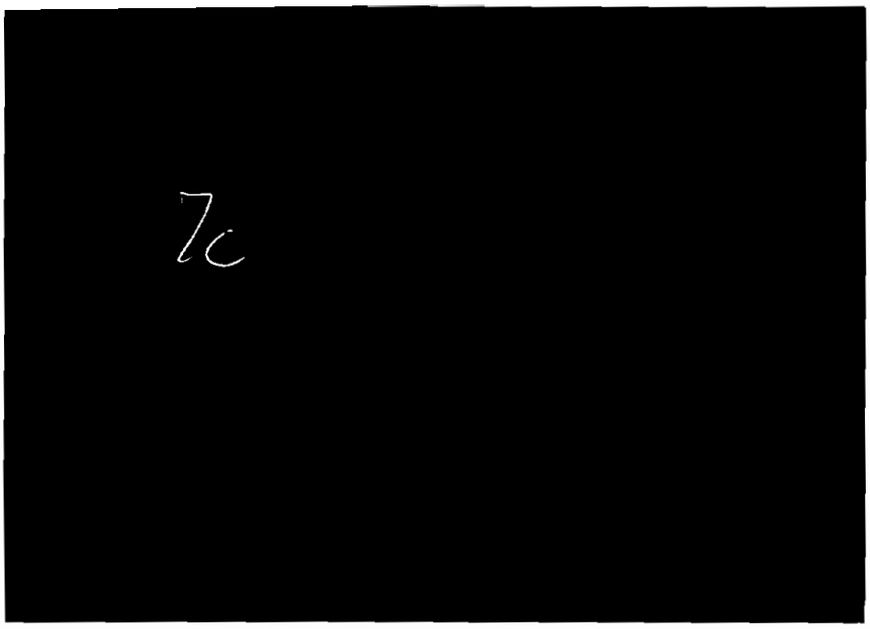
PLACE STAMP HERE

Post Card

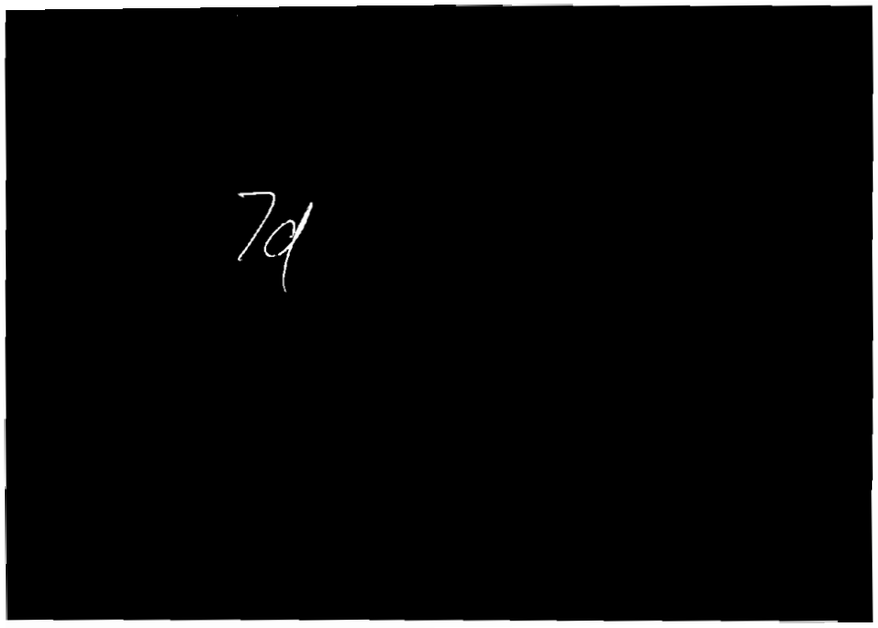



76




7c

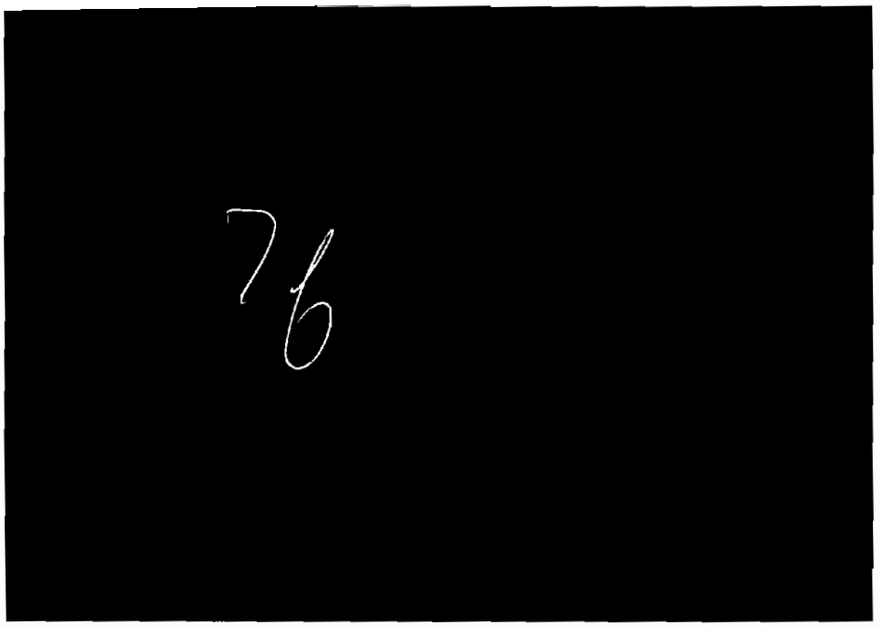



7d




7e




76

having been "conveyed to adjoining property owner BG & E Company" and the arrow on the plan indicating the association of Tract A with the lot on which the Ivy Hill Substation is situate do, in this Court's opinion, "reveal" or "uncover" the use of this property as an electrical substation.[3] The word "apprise", as used by the CBA in making its finding, is defined by the same dictionary as "to give notice to; inform". The definitions of disclose and apprise are not synonymous with one another. However, the connotation of these two words is roughly the same. The use of the word "disclosure" in the Zoning Regulations and "apprise" in the Findings of the Board of Appeals present the Protestants with a linguistical Hobson's Choice. If the definition of "disclose" is the rough equivalent of "apprise", then the notations on the Final Development Plan for Fox Ridge do substantiate the factual finding of the CBA that "all property owners prior to the purchase of their properties were apprised of the ownership of Tract A and the ultimate disposition of that property...". On the other hand, if the Protestants adhere to a strict definition of these two words then the factual finding that "all property owners... were apprised..." is irrelevant: the Zoning Regulations call for "disclosure" and not "appraisal".

B. FAILURE TO MEET BURDEN OF PROOF ON VARIANCES - THE CBA ERRED AS A MATTER OF LAW IN GRANTING THE VARIANCE.

BGE filed for a variance from the height and area regulations contained in Section 1A.04.3 of the BCZR to accommodate the location of the substation equipment which is at the heart of this controversy. BGE is a public service utility which is required by State

---

[3]None of the Protestants' witnesses testified to having personally reviewed the Final Development Plan for Fox Ridge, let alone to having been misled in some fashion by the notations thereon.

Thursday January 12th

Mr.William Hackett
Chairman
Baltimore County Board of Appeals
Towson, Maryland

Dear Sir -

Baltimore Gas and Electric people claim the electrial sub station in this area of Ridge and Falls Road is seriously obsolete and difficult to maintain since at least some replacement parts are hard to get.They also claim some power outages are a result of the condition of this equipment. We strongly support a project to correct this problem.

My wife and I have lived in this immediate area, on Ivy Hill Road, for more than thirty years. We have been very much concerned about power outages, especially in the last ten years. As a matter of fact which I am sure you can check, power was out for a period this very day.

"Friends of the Ridge" say Baltimore Countys growth by the year 2010 is forecast at only 3.6%. This statement does not take into account two much more relevant factors - the growth in this area in the last decade is certainly far in excess of 3.6%, and that growth would certainly seem to promise a high rate for some time to come.

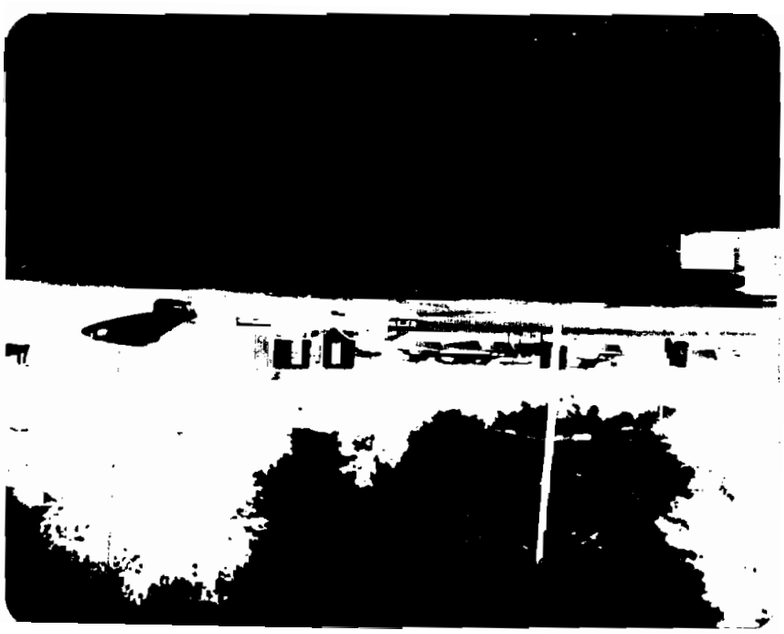
"Friends" contest BGEs statement that a new sub station could enhance property values. On the other hand, what would happen to property values if it becomes true, and generally known that sub station facilities, at a point in the fairly near future, become even more obviously inadequate and hard to keep in repair.

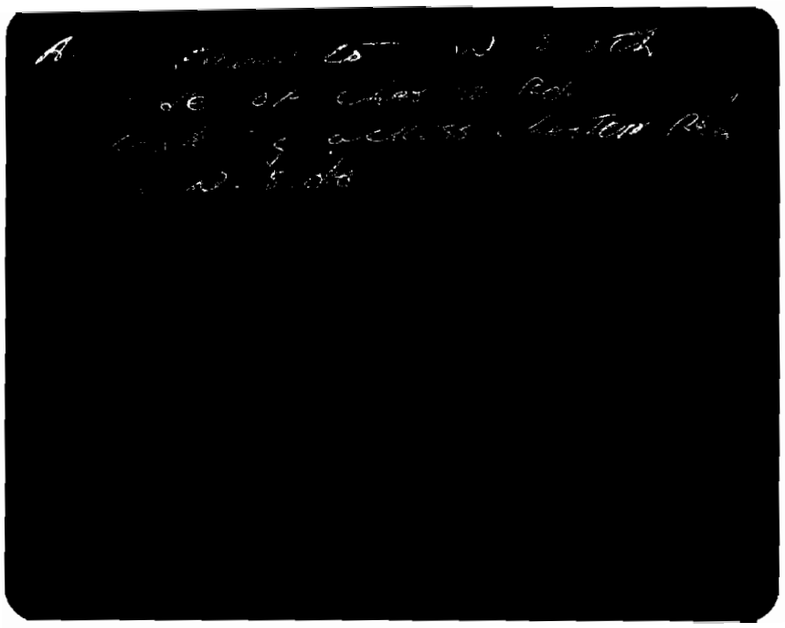
"Friends" suggests that the sub station improvement can be done instead in an industrial park area. Thatis easy to suggest and may even be true but what are the penalties.Is it practical? How much would this cost? Would this distribution equipment from such a sub station beeven more unsightly?

Lets be sure there is a practical and better alternative plan before opposing this one.

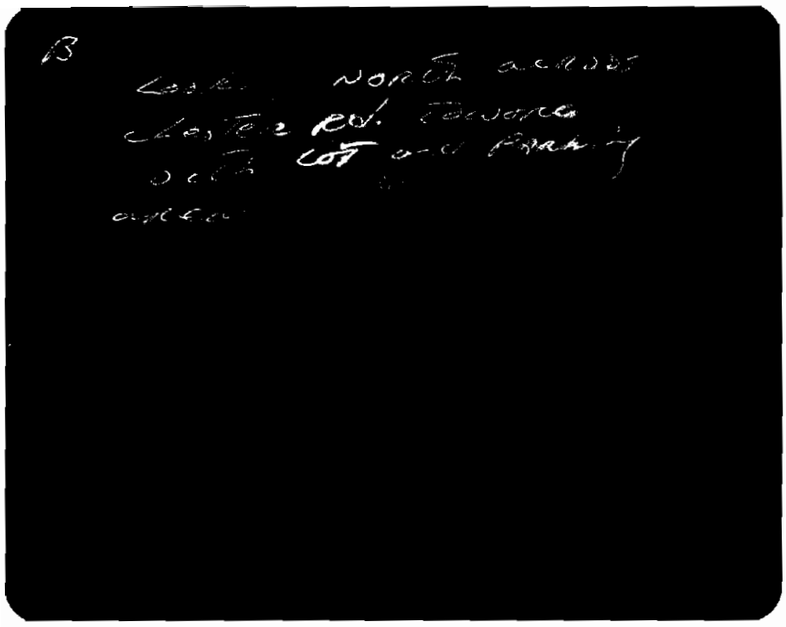
Sincerly,

R.Burt Schulze

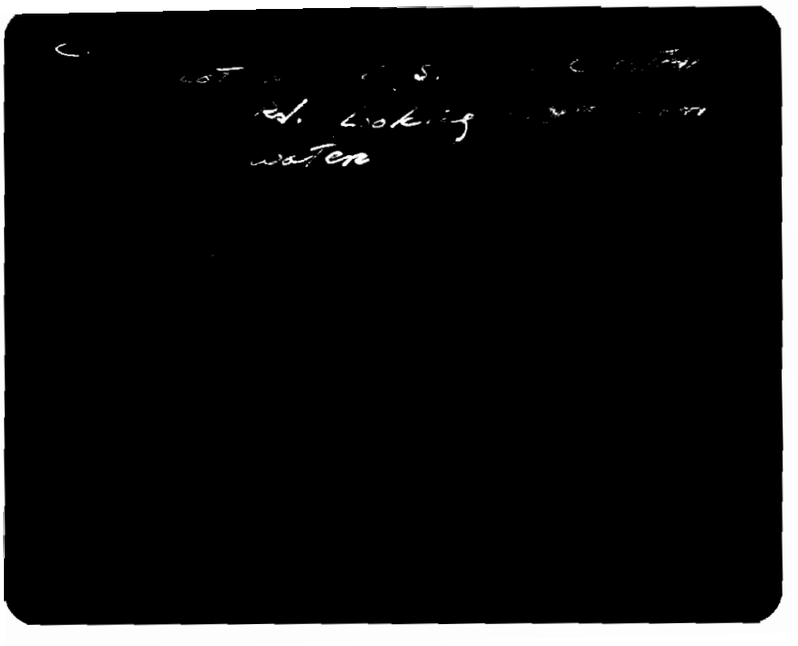


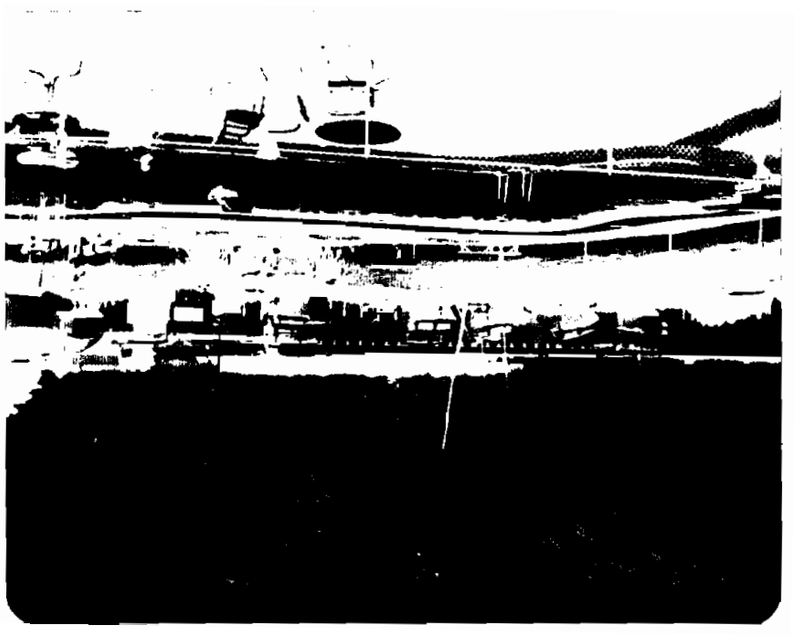


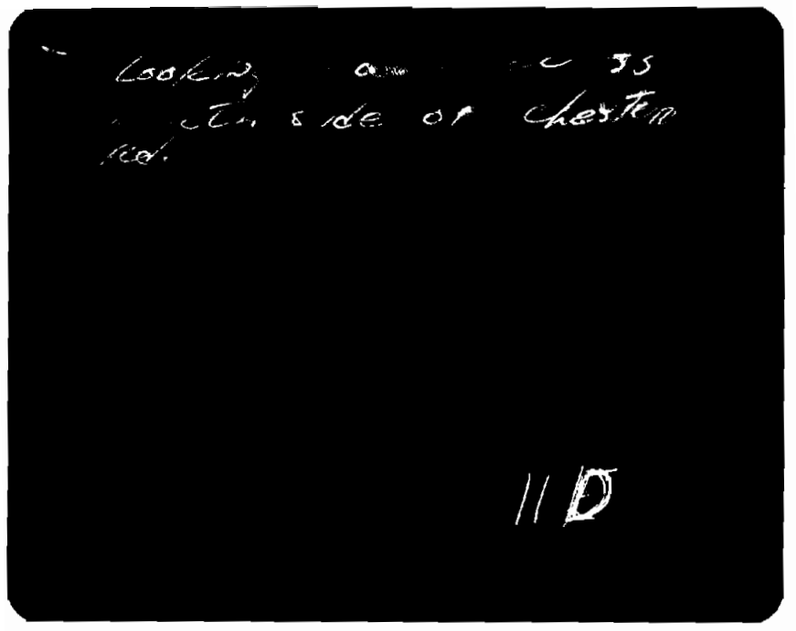



13

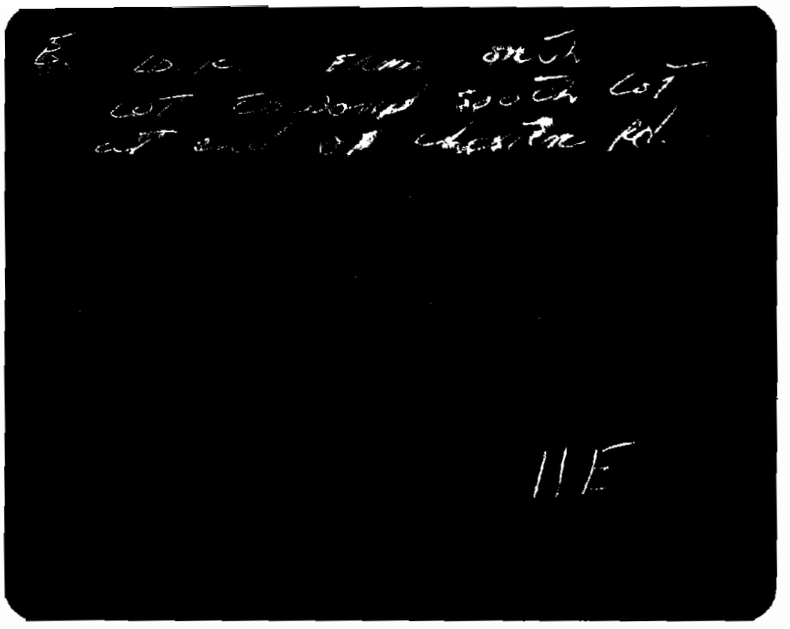




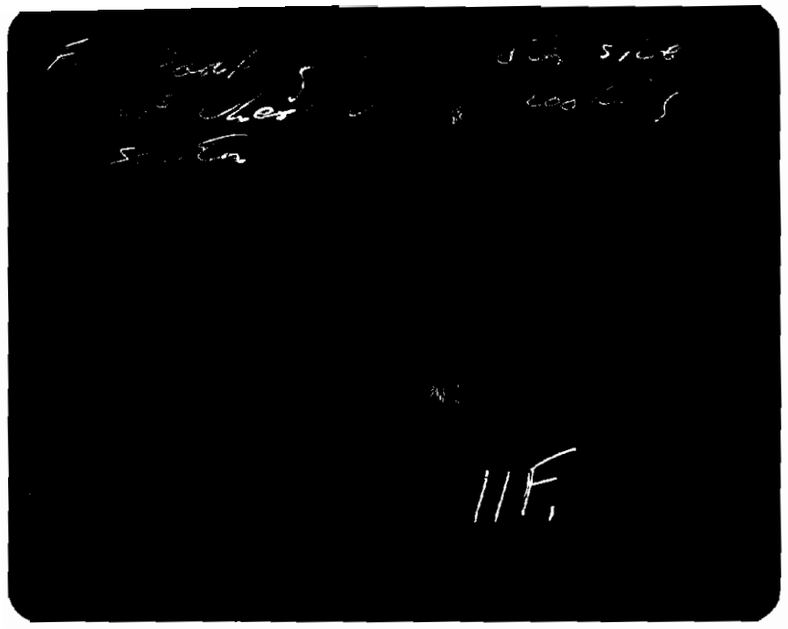



Looking
E. side of Chester
Rd.
11D











LONG BEACH MARINE
Located on Middle River
opposite Martin Plant,
North Side of Baltimore, Md.
Near the Beltway.
Shopping facilities, Restaurant and Transportation Available. Full Marine Services. Phillips 66 gas. Open 24 Hours During Season.
Phone: 301 - 335-8602
Owner - Jack Evering

PLACE
STAMP
HERE

Post Card

The Country Studio, P.O. Box 206, Aberdeen, Md. 21001



55724-C

MADE BY DEXTER PRESS, INC. WEST NYACK, NEW YORK

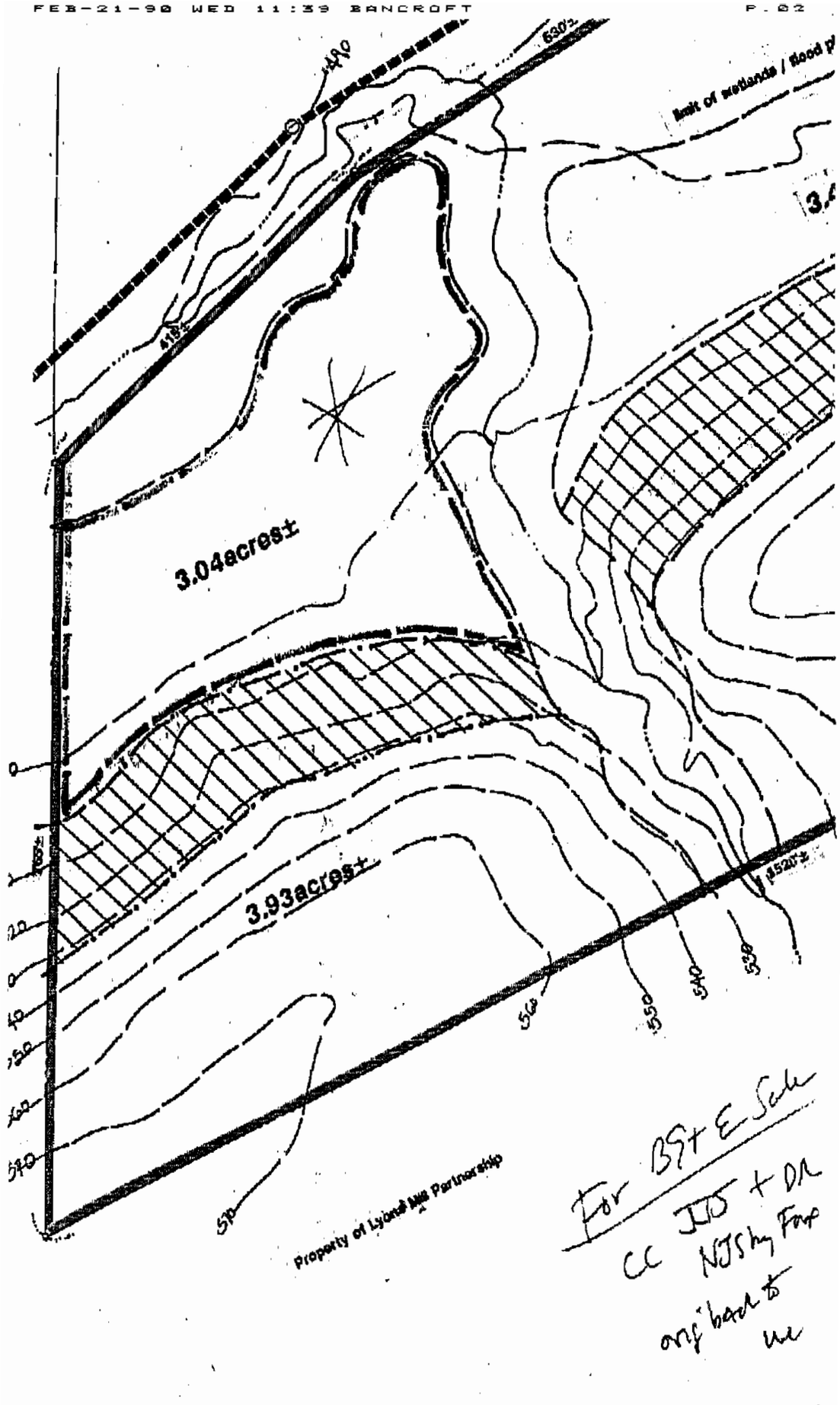


View to the South

Negative # 6291-3
© '82 TADDER/BALTIMORE
501 St. Paul Place 21202
Phone 301 837-7427

Pot. Ea 24

View toward the North


limit of wetlands / flood p
3.04acres±
3.93acres±
Property of Lyons Mill Partnership
For BS+E Sale
cc JJO + DR
NJSky Fax
original to
me

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

94 OCT 13 AM 10:54

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

John Rolph
NAME

37 WANDSWORTH BRIDGE WAY
ADDRESS

LUTHERVILLE, MD. 21093

RECEIVED
OCT 12 1994
ZADM

LAW OFFICES
MILES & STOCKBRIDGE
600 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

TELEPHONE 301-821-6565
TELECOPIER 301-823-8123

10 LIGHT STREET
BALTIMORE, MARYLAND 21202

101 BAY STREET
EASTON, MARYLAND 21601

11350 RANDOM HILLS ROAD
FAIRFAX, VIRGINIA 22030

30 WEST PATRICK STREET
FREDERICK, MARYLAND 21701

22 WEST JEFFERSON STREET
ROCKVILLE, MARYLAND 20850

1701 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20006

January 3, 1990

HAND-DELIVERY

Department of Permits & Licenses
111 West Chesapeake Avenue
Towson, MD 21204

Re: In Re: Merritt Boulevard
Shopping Center
F & M Distributors, Inc.,
Appellant

Gentlemen:

Enclosed herewith please find a Notice of Appeal concerning the above-captioned property. Also enclosed is our check in the amount of $75.00 to cover the cost of the filing fee. Please be advised that there is a related appeal which we have noted to the Baltimore County Office of Planning & Zoning, also relating to the above property.

Many thanks for your cooperation.

Very truly yours,

Kenneth F. Spence, III

KFS/lrs

Enclosures

cc: Arnold G. Foreman, Esquire
Board of Appeals (Hand-Delivered)

Ros read

Dave Fields

FYI Gene

1/25

Baltimore County
Office of Law
400 Washington Avenue
Towson, Maryland 21204
(301) 887-4420
Fax (301) 296-0931

Arnold Jablon
County Attorney

January 18, 1990

Dennis F. Rasmussen
County Executive

Mr. Gene L. Neff
Director
Department of Public Works
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: Waiver of Public Works Standards/Waiver of Public Works Standards

Dear Mr. Neff:

We are in receipt of a request from you and Dave Fields, Director of Planning, asking for us to render an opinion as to a waiver of public works standards, when such is granted as a waiver of subdivision regulations. You point to potential conflicts with applicable statutes that require the independent judgment and approval of the Director of Public Works. More specifically, you have indicated that the Director of Planning has become involved in requests for waivers of subdivision regulations pursuant to Code Sec. 22-43, which have involved engineering questions. Your concern is that such waivers may circumvent the authority of the Director of Public Works, and whether the Director of Planning, by approving a waiver, can bind the Director of Public Works. It is our opinion that the determination of engineering questions, whether separate issues in and of themselves or subissues contained in requests for waivers of subdivision regulations, are the exclusive province of the Director of Public Works, and the Director of Planning does not have the authority to rule on engineering questions, whether part of a proposed subdivision waiver or otherwise.

We base this conclusion as follows. Sec. 2-15 of the Baltimore County Code reads as follows:

> "The director of public works shall have supervision over all engineering questions and over all matters concerned or connected with any and every public improvement in the county and elsewhere, made by the county or any department, officer, board, commission or agency thereof, and all plans and specifications of such public improvements shall be submitted to the director of public works and be subject to this approval."

EVERING - EXHIBITS - ON MOTION
#85-65-XSPHA - 1ST DAY

Petitioners Exhibit

1. Plat to accompany petition for pet extension Revised Nov. 25, 1983
2. Plat to accompany petition for special exception special hearing and variances, Revised 8-6-84
3. Copy of Receipt #123264 issued by Balto. Co. for the amount of $100 for item #166 - Evering.
4. Zoning Commissioners File Case No. 85-65-XSPHA-166
5. Petition for Zoning Variance - undated
6. Copy of Receipt #133200 issued by Balto. Co. for the amount of $150.00 for item #66 - Evering

People's Council Exhibits

1. Series of letters from Balto. Co.
2. Receipt / Notice that the petition has been accepted for filing dated Aug. 6, 1984
3. Memo to A. Jablon from Norman E. Gerber, Office of Planning and Zoning
4. Letter to m/m Evering from Eugene A. Bober, Chief Planning & Development

To ALL Board Members

AND

Counsel

Please keep this file and all ephibits in tact, as I am responsible for them and must return them to the Circuit Court when case is finished.

June Holmon
Dec. 12, 1986

DEPARTMENT OF THE ARMY

NOTE.—It is to be understood that this instrument does not give any property rights either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to private property or invasion of private rights, or any infringement of Federal, State, or local laws or regulations, nor does it obviate the necessity of obtaining *State assent* to the work authorized. IT MERELY EXPRESSES THE ASSENT OF THE FEDERAL GOVERNMENT SO FAR AS CONCERNS THE PUBLIC RIGHTS OF NAVIGATION. (See *Cummings* v. *Chicago*, 188 U. S., 410.) 16—12163-8

PERMIT

NABOP-P (Evering, Joseph, Jr.)10

U. S. Army Engineer District, Baltimore.
Corps of Engineers.
P. O. Box 1715, Baltimore, Md. 21203.
1 September, 19 66.

Mr. Joseph Evering, Jr.
Route 15, Box 177
Chester Road
Baltimore, Maryland 21220

Referring to written request dated 31 January 1966,

I have to inform you that, upon the recommendation of the Chief of Engineers, and under the provisions of Section 10 of the Act of Congress approved March 3, 1899, entitled "An act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," you are hereby authorized by the Secretary of the Army.

to construct a pier and to install mooring piles
(Here describe the proposed structure or work.)

in Frog Mortar Creek
(Here to be named the river, harbor, or waterway concerned.)

at a point on the north shore at the foot of Chester Road at Long Beach Estates,
(Here to be named the nearest well-known locality—preferably a town or city—and the distance in miles and tenths from some definite point in the same, stating whether above or below or giving direction by points of compass.)
Baltimore County, Maryland,

in accordance with the plans shown on the drawing attached hereto titled: "Proposed Pier - Piling in Frog Mortar Creek at Long Beach Estates - Baltimore County, Md. - Election Dist. 15 - Application by: Joseph F. Evering, Jr. & Wf. - Route 15, Box 177 - Chester Road - Balto. Md. 21220 - Phone: Ed. 5-8602 - January 31, 1966",
(Or drawings; give file number or other definite identification marks.)

subject to the following conditions:

PETITIONER'S
EXHIBIT 3

PETITIONER'S EXHIBIT 4

D.P.L. 32—Revised 5-15-63

BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF PERMITS AND LICENSES

WALTER J. RASMUSSEN, Director

Office of the Buildings Engineer

County Office Building, Towson, Md. 21204

No. 15727

District 15

Date February 17, 1966

MISCELLANEOUS PERMIT

SUBDIVISION

This Miscellaneous Permit Is Hereby Granted To

Long Beach Estates

Jos. F. Evering Jr. & Catherine L. (Owner)

Lot No 1-81-82

2 Randall Avenue (Address)

Block

White Marsh, Md. 21162

Section

Plat No.

To construct (Erect, Install, renew, etc.) the following described structure

Location S. S. Chester Rd. S. E. Cor. Frog Mortar Creek

Setback of Structure: Front 0 ft. Side Setbacks 100' and 960' ft. Corner lot ft. from side street.

Complete Description, Dimensions, Etc. To construct pier- 165' with a side T 30' long.

M. H. W. - 3' M. L. W. - 1.5' from 68' Depth 10' Height M.L.W. 3'

All work to be done on property of which owner has legal right

Issued By The Buildings Engineer

Fee Paid $ 7.50

BUILDING ENGINEER

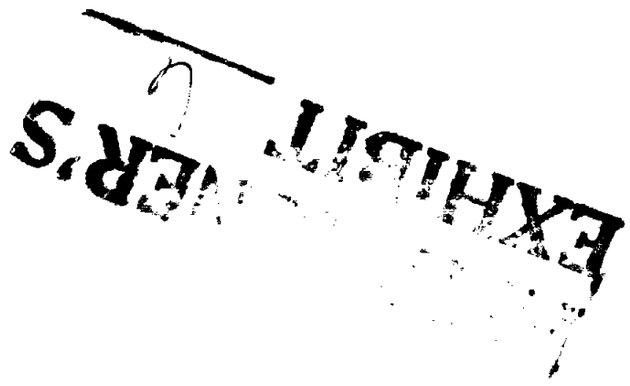
This Permit shall be kept on the premises open to public inspection during the prosecution of the work and until completion of same. **LIMITATION.** After a new building permit is issued, if the operation or work authorized and approved thereunder is not commenced within one year after the issue, or if after commencement of the operation or work, the operation or work is suspended or discontinued for a period of one year, then, in either case, the said permit shall be null and void, and no operations or work shall be again commenced unless and until another proper permit shall have been issued for such work.

1 Feb 85

Name	address	
Ken Engelke	828 Chester Rd	21220
Jackie Cornek	843 Chester Rd	21220
Richard Stumpf	816 Chester Rd	21220
A.R. Bowman	1220 Susquehanna Ave	21220
E.D. Bowman	"	"
Stanley A. Bishop	827 Chester Rd.	21220
William Fell	1130 Susquehanna Ave	21220
Diana E Fell	1130 Susquehanna Ave.	21220
Walter E. Wuchter Sr	13119 E. Greenbank Rd	21220
Bertha Casson	1202 Susquehanna Ave	21220
Beatrice Baker	1206 Susquehanna ave	21220
Ronald P Baker	1206 Susquehanna ave	21220
Elmer J. Norberg	1216 Susquehanna Ave	21220
Christopher D'Allacco	3703 Boy Scout Blvd 21220 Pres Baltimore Co. Jaycees	

PROTESTANT'S EXHIBIT 5A

/



Negative # 6291-1

© '82 TADDER/BALTIMORE

501 St. Paul Place 21202
Phone 301 837-7427

CONSTR. PLANS	PLOT PLANS	RECORD PLAT	PLANS WAIVED	LETTER OF INTENT	DATA	AFF.	SUPERVISION WAIVER
3	8				0		

TAX ACCOUNT NUMBER 15-05-880[illegible]140

APPLICATION FOR PERMIT
BALTIMORE COUNTY MARYLAND
OFFICE OF THE BUILDING ENGINEER
TOWSON, MARYLAND 21204

CENSUS TRACT	CENSUS BLOCK	ELEC YES	ELEC NO	PLUMB YES	PLUMB NO
			X		X

BY PO

DATE ISSUED

BUILDING PERMIT NO	DISTRICT	PRECINCT
CONTROL NO.	15	

Building Address	S. S. Chesto Road - SE Cor Frog Mantar Creek
Owners Name	John F. Eggering Jr. + Catherine L.
Mailing Address	[illegible] Chesto Road - White Marsh Md. 21220

IDENTIFICATION	NAME / ADDRESS / CITY / STATE / ZIP / PHONE NO. / LICENSE
TENANT	
BUILDING CONTRACTOR	owner
ENGINEER OR ARCHITECT	
IF UNDER CONTRACT OF SALES GIVE SELLER'S NAME AND ADDRESS	
TRANSFER DESCRIPTION	S. S. Chesto Road - SE Cor Frog Mantar Creek

A. TYPE OF IMPROVEMENT

1. ☐ NEW BUILDING CONSTRUCTION
2. ☑ ADDITION
3. ☐ ALTERATION
4. ☐ REPAIR
5. ☐ WRECKING (ENTER NO. UNITS DEDUCTED _____)
6. ☐ MOVING
7. ☐ OTHER

DESCRIBE PROPOSED WORK

1 OR 2 FAM. CODE ☐ 1978 BOCA CODE ☑

add. to 2 existing piers T shaped into Frog Mantar Creek. [illegible] S.W. Pier 70' X 45' add. S.W. Pier 195' X 615' add. These additions are to be built in lieu of 3 [illegible] piers permits issued in 1966 (18729) and removed in 1970. These 3 piers will not be reconstructed.

Total 200. Mooring piles

B. OWNERSHIP

1. ☑ PRIVATELY OWNED 2. ☐ PUBLICLY OWNED

ESTIMATED COST OF MATERIAL & LABOR $_____.00

RESIDENTIAL

01. ☐ ONE FAMILY
02. ☐ TWO FAMILY
03. ☐ THREE AND FOUR FAMILY
04. ☐ FIVE OR MORE FAMILY (ENTER NO UNITS _____)
05. ☐ SWIMMING POOL
06. ☐ GARAGE
07. ☐ OTHER

TYPE FOUNDATION
- ☐ SLAB
- ☐ BLOCK
- ☐ CONCRETE
- ☐ BASEMENT
- ☐ FULL
- ☐ PARTIAL
- ☐ NONE

CHECK APPROPRIATE CATEGORIES: FOR RESIDENTIAL ONLY

DETACHED	SEMI-DETACHED	GROUP	TOWN HOUSE	MID RISE	HI RISE	RENT	SALE
1.	2	3.	4	5	6.	1.	2.

C. TYPE OF USE

NON-RESIDENTIAL

08. ☐ AMUSEMENT, RECREATION, PLACE OF ASSEMBLY
09. ☐ CHURCH, OTHER RELIGIOUS BUILDING
10. ☐ FENCE (LENGTH_____ HEIGHT_____)
11. ☐ INDUSTRIAL, STORAGE BUILDING
12. ☐ PARKING GARAGE
13. ☐ SERVICE STATION, REPAIR GARAGE
14. ☐ HOSPITAL, INSTITUTIONAL, NURSING HOME
15. ☐ OFFICE, BANK, PROFESSIONAL
16. ☐ PUBLIC UTILITY
17. ☐ SCHOOL, COLLEGE, OTHER EDUCATIONAL
18. ☐ SIGN
19. ☐ STORE ☐ MERCANTILE ☐ RESTAURANT
    SPECIFY TYPE:
20. ☐ SWIMMING POOL (MD. HEALTH DEPT. APPR. REQ.)
21. ☐ TANK, TOWER
22. ☐ TRANSIENT HOTEL, MOTEL (NO. UNITS _____)
23. ☑ OTHER Piers

24. PROPOSED USE(S) Same + add to Piers
    EXISTING USE(S) Marina

COMPLETE ALL ITEMS IN "D" AND "E" FOR NEW BUILDINGS, ADDITIONS AND ALTERATIONS ONLY

D. TYPE OF CONSTRUCTION

1. ☐ MASONRY
2. ☐ WOOD FRAME
3. ☐ STRUCTURE STEEL
4. ☐ REINF. CONCRETE

TYPE OF HEATING FUEL

1. ☐ GAS
2. ☐ OIL
3. ☐ ELECTRICITY
4. ☐ COAL

TYPE OF SEWAGE DISPOSAL

1. ☐ PUBLIC SEWER
2. ☑ PRIVATE SYSTEM ☐ EXISTS ☐ PROPOSED
   SEPTIC ☑ EXISTS ☐ PROPOSED
   PRIVY ☐ EXISTS ☐ PROPOSED

TYPE OF WATER SUPPLY

1. ☐ PUBLIC SYSTEM ☑ EXISTS ☐ PROPOSED
2. ☐ PRIVATE SYSTEM ☐ EXISTS ☐ PROPOSED

IS THERE CENTRAL AIR CONDITIONING

1. ☐ YES 2. ☐ NO

IS THERE AN INCINERATOR

1. ☐ NO 2. ☐ YES - WITH AIR POLLUTION CONTROL
3. ☐ YES - WITHOUT AIR POLLUTION CONTROL

NO. OF ELEVATORS TO BE INSTALLED _____

NUMBER OF OFF STREET PARKING SPACES

ENCLOSED _____ OUTDOORS _____

E. RESIDENTIAL ONLY

SINGLE FAMILY UNITS

1. TOTAL NO. OF BEDROOMS _____

MULTI FAMILY UNITS HOW MANY APARTMENTS HAVE

2. EFFICIENCY (NO SEPARATE BEDROOMS) _____
3. ONE BEDROOM _____
4. TWO BEDROOMS _____
5. THREE BEDROOMS OR MORE _____
6. TOTAL NO OF BEDROOMS _____
7. TOTAL NO. OF APARTMENTS _____

F DIMENSIONS

GARBAGE DISPOSAL YES	GARBAGE DISPOSAL NO	POWDER ROOMS	BATHROOMS	KITCHENS

BUILDING SIZE - LARGEST OVERALL DIMENSIONS INCLUDING BASEMENT FLOOR AREA	WIDTH	DEPTH	HEIGHT	STORIES
	Rec. above			

LOT SIZE	CENTER LINE SETBACKS (FROM STREET CENTER) FRONT STREET	SIDE STREET
200 X 250		

PROPERTY LINE SETBACKS	FRONT	SIDE	SIDE STREET	REAR
	NC.			

IN LINE WITH EXISTING BLDGS YES	IN LINE WITH EXISTING BLDGS NO	CORNER LOT YES	CORNER LOT NO	LOT NUMBERS
				1-81-82

ZONING INFORMATION	ZONE DISTRICT	ZONING MAP NO.	PETITION NO	DATE
			[illegible]	

ASSESSMENT LAND	SUBDIVISION NAME	BLOCK	SECTION	LIBER	FOLIO
38,150.-	H Long Beach Estates			4	131
IMPROVEMENTS 82,000.-					
TOTAL 120,150.-	BUILDINGS (29) 8897				

G.

(I HAVE CAREFULLY READ THIS APPLICATION AND KNOW THE SAME IS CORRECT AND TRUE, AND THAT IN DOING THIS WORK ALL PROVISIONS OF THE BALTIMORE COUNTY CODE AND APPROPRIATE STATE REGULATIONS WILL BE COMPLIED WITH WHETHER HEREIN SPECIFIED OR NOT AND WILL REQUEST ALL REQUIRED INSPECTIONS)

COMPANY _____ DATE _____

ADDRESS _____ CITY _____ STATE _____ ZIP _____

☐ AGENT ☐ OWNER

SIGNATURE OF APPLICANT _____ PHONE _____

MAKE CHECKS PAYABLE TO BALTIMORE COUNTY MARYLAND

PERMIT FEE	RECEIPT NO.	DATE
20.00		

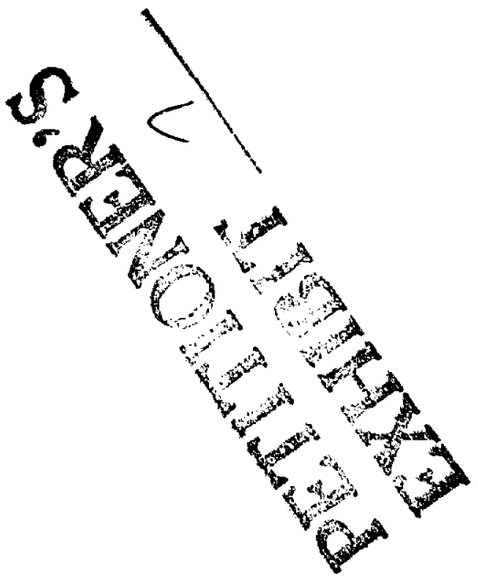
AGENCY	APPROVAL SIGNATURE	DATE
PRELIMINARY INSPECTION		
ZONING	[illegible]	10/26/83
PLANNING		
BUREAU OF PUBLIC SERVICES		
HEALTH DEPARTMENT	O/C to file - [illegible]	10/26/83
CONSTRUCTION PLANS REVIEW		
BARD CHIEF		

INVESTIGATION FEE

NO PERMIT FEES REFUNDED

OCCUPANCY FEE

15-05-580141 pt Lot 292-
15-12-202790 ft. of 291-292
~~15-05-580132~~
140 ft.
142 ft.



BEFORE THE MARYLAND DEPARTMENT OF TRANSPORTATION
BOARD OF AIRPORT ZONING APPEALS

Ref No 7

IN THE MATTER OF:	*	
Joseph F. Evering	*	BAZA Docket No. MTN-9
and	*	
Catherine L. Evering	*	
	*	

MEMORANDUM AND ORDER

Joseph F. Evering and Catherine L. Evering ("Applicants") applied to the Maryland Department of Transportation State Aviation Administration ("SAA") for a permit to expand their existing marina by constructing a pier for 178 boat slips on Applicants' property located at 800 Chester Road in Baltimore County, Maryland. On February 24, 1986, SAA denied Applicants' application. SAA determined that, while Applicants' proposed construction would not violate airport height or noise zone restrictions, the proposed marina expansion would cause congregation in the Martin State Airport Clear Zone District and would pose a public hazard, in violation of COMAR 11.03.06.05F and .06E. Applicants appealed to the Board of Airport Zoning Appeals (the "Board"). The Board heard the above entitled petition on June 9, 1986. Applicants were duly notified of the hearing and were represented by John E. Hennegan, Esquire and Robert J. Romadka, Esquire. The proceedings were duly recorded and transcribed.

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY, Richard J. Little

RICHARD J. LITTLE
NAME

1907 RIDGE ROAD
ADDRESS

REISTERSTOWN MD. 21136

RECEIVED
OCT 12 1994
ZADM

Pet No 8a

PETITION FOR SPECIAL HEARING

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve an amendment to the site plan in case number 64-57SPH, 64-160X and 35-35X to construct an addition to the piers; remove restriction number 1 and 3 in case number 64-57SPH to allow marine (CONTINUED ON ATTACHED SHEET)

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

Attorney for Petitioner:
John O. Hennegan, Esquire
Robert J. Romadka, Esquire
(Type or Print Name)

Signature

ROMADKA, GONTRUM, HENNEGAN & FOOS
Address
809 Eastern Boulevard
Baltimore, Maryland 21221
City and State

Attorney's Telephone No.: 686-8274

Legal Owner(s):

Joseph F. Evering, Jr.
(Type or Print Name)

Joseph F. Evering Jr.
Signature

Catherine L. Evering
(Type or Print Name)

Catherine L Evering
Signature

800 Chester Road 335-8602
Address Phone No.

Baltimore, Maryland 21220
City and State

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

John O. Hennegan, Esquire
Name
809 Eastern Bouelvard
Baltimore, Maryland 21221
Address 686-8274 Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this _____ day of _____, 19_____, 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 _____ day of _____, 19_____, at _____ o'clock _____M.

Zoning Commissioner of Baltimore County.

Z.C.O.—No. 1

(over)

8/6/84

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 :

Plat No 13

PETITION FOR SPECIAL HEARING FOR A Clarification and Extension of the Uses heretofore gramted under Special Exception on June 6, 1955 (File No. 3535) to Specifically include the Storage of Marine Craft on S.S. Chester Road 1000' W. Susquehanna Ave., 15th Dist., Jos. F. Evering, Jr. and Catherine L. Evering, Petitioners

BEFORE

ZONING COMMISSIONER

OF

BALTIMORE ~~COUNTY~~

No. 64-57-SPH

: : : : : : : : : : : : : : : : :

The petitioners, in the above matter, have requested an extension of the special exception granted on June 6, 1955, (File No. 3535) to specifically include the storage of marine craft on the land. The previous hearing resulted in the granting of a boat yard which has been used as a boat yard including the storage of marine craft on the land up until the present date. This use has been questioned and for that reason the present hearing was held.

It is quite obvious that if the petitioner is to continue to use his property as a boat yard, he must of necessity have the right to store marine craft on the land. The original Order gave the petitioner a use without the means to make use of it.

It is this 9th day of March, 1964, ORDERED that the petitioners' request is granted subject to:

1. No marine craft may be stored within 20 feet of the easternmost portion of the property presently owned by Joseph F. Evering, Jr., and Catherine L. Evering.

2. The use of the boat yard, both on land and in the water, shall be limited to pleasure craft.

3. The petitioners shall comply with the off-street parking requirements of Section 409 of the Baltimore County Zoning Regulations.

MICROFILMED

The granting of the above request is subject to approval of the Office of Planning and Zoning.

Zoning Commissioner

64-160-X

RE: PETITION FOR SPECIAL EXCEPTION : BEFORE THE
N/S Chester Road, 625' W. of :
Severn Road - 15th District : DEPUTY ZONING COMMISSIONER
Joseph Evering Jr., Petitioner :
OF
BALTIMORE COUNTY
No. 64-160-X

MAP 15-C "X"

: : : : : : : : : : : : :

The petitioner's property consists of some 1 3/4 acres situated on the North side of Chester Road, 625 feet West of Severn Road in 15th Election District.

The petitioner now seeks a Special Exception to the Zoning Regulations for permission to build and develop a Boat Yard. There was testimony that if the Special Exception is granted, the develope will fill and level the land, build a bulkhead, and extend Chester Road to the waters edge.

The requirements of Section 502.1 of the Zoning Regulations having been met and the safety, health and general welfare of the locality involved not being detrimentally affected, the Special Exception should be granted, subject, however, to the following restrictions:

(1) No major repairs of any boats shall be permitted on the premises or waters immediately adjacent thereto.

(2) Construction of boats is prohibited.

(3) No commercial vessels will be permitted to patronize said establishment.

(4) Services will be restricted to pleasure craft only.

(5) Barges or similar type craft will not be allowed on or tied up at the property, with the exception of the one small barge which is presently being used by the Petitioner.

(6) Minor repairs and maintenance will be permitted from 8 a.m. to 7 p.m. week-days, May through September and 8 a.m. to 6 p.m. on week-days during the other months of the year. No repairs will be permitted on Sundays.

IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County, this 22 day of June, 1964, that a Special Exception for a Boat Yard, subject to the aforementioned restrictions, should be and the same is granted from and after the date of this order subject to approval of the site plan by the Bureau of Public Services and the Office of Planning and Zoning.

Edward D. Gundrum
Deputy Zoning Commissioner
of
Baltimore County

Pet No 14

Pot. #169

Buckley/bcb/8395
1 September 1966
BUCKLEY
LEINEWEBER
TRIESCHMAN

NABOP-P(Evering, Joseph, Jr.)10

Mr. and Mrs. Alfred J. Kaufman
Susquehanna Avenue
Baltimore, Maryland 21220

Dear Mr. and Mrs. Kaufman:

This will acknowledge your letter of 29 June 1966, wherein you and other interested parties expressed objections to the issuance of a Department of the Army permit to Mr. Joseph Evering, Jr. to construct a pier and to install mooring piles in Frog Mortar Creek at Long Beach Estates, Baltimore County, Maryland.

A permit authorizing Mr. Evering to construct a pier and to install mooring piles in front of his property was issued today. Prior to its issuance, Mr. Evering revised his plans by eliminating the five (5) mooring piles that he proposed to install channelward of the head of the proposed pier. A copy of the revised plans is inclosed.

The objections expressed by you were given careful consideration by this office prior to issuance of the permit. However, before a decision was made in this matter, a field investigation was conducted at the site of the proposed work. The investigation resulted in an opinion by this office that the proposed work would not unreasonably affect general navigation in the creek and the permit was therefore issued.

A permit, when issued, merely expresses the assent of the Federal Government so far as concerns the public rights of navigation. (See Cummings v. Chicago, 188 U. S. 410.) It does not give any property rights either in real estate or material, or any exclusive privileges; and it does not authorize any injury to private property or invasion of private rights, or any infringement of Federal, State, or local laws or regulations; nor does it obviate the necessity of obtaining State assent to the work authorized.

Sincerely yours,

Incl
as

WILLIAM E. TRIESCHMAN, JR.
Assistant Chief
Operations Division

DEPARTMENT OF THE ARMY

NOTE.—It is to be understood that this instrument does not give any property rights either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to private property or invasion of private rights, or any infringement of Federal, State, or local laws or regulations, nor does it obviate the necessity of obtaining *State assent* to the work authorized. IT MERELY EXPRESSES THE ASSENT OF THE FEDERAL GOVERNMENT SO FAR AS CONCERNS THE PUBLIC RIGHTS OF NAVIGATION. (See *Cummings* v. *Chicago*, 188 U. S., 410.) 16—12163-2

PERMIT

NABOP-P (Evering, Joseph, Jr.)10

U. S. Army Engineer District, Baltimore.
Corps of Engineers.
P. O. Box 1715, Baltimore, Md. 21203.
1 September, 19 66.

Mr. Joseph Evering, Jr.
Route 15, Box 177
Chester Road
Baltimore, Maryland 21220

Referring to written request dated 31 January 1966,

I have to inform you that, upon the recommendation of the Chief of Engineers, and under the provisions of Section 10 of the Act of Congress approved March 3, 1899, entitled "An act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," you are hereby authorized by the Secretary of the Army.

to construct a pier and to install mooring piles
(Here describe the proposed structure or work.)

in Frog Mortar Creek
(Here to be named the river, harbor, or waterway concerned.)

at a point on the north shore at the foot of Chester Road at Long Beach Estates,
(Here to be named the nearest well-known locality—preferably a town or city—and the distance in miles and tenths from some definite point in the same, stating whether above or below or giving direction by points of compass.)
Baltimore County, Maryland,

in accordance with the plans shown on the drawing attached hereto titled: "Proposed Pier - Piling in Frog Mortar Creek at Long Beach Estates - Baltimore County, Md. - Election Dist. 15 - Application by: Joseph F. Evering, Jr. & Wf. - Route 15, Box 177 - Chester Road - Balto. Md. 21220 - Phone: Ed. 5-8602 - January 31, 1966",
(Or drawings; give file number or other definite identification marks.)

subject to the following conditions:

Pt. #165

D.P.L. 32—Revised 5-15-63

BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF PERMITS AND LICENSES

WALTER J. RASMUSSEN, Director

Office of the Buildings Engineer

County Office Building, Towson, Md. 21204

MISCELLANEOUS PERMIT

No. 18727

District 15

Date February 17, 1966

SUBDIVISION

Long Reach Estates

Lot No. 1-81-82

Block

Section

Plat No.

This Miscellaneous Permit Is Hereby Granted To

Jos. F. Evering Jr. & Catherine L. (Owner)

2 Randall Avenue (Address)

White Marsh, Md. 21162

To construct (Erect, install, renew, etc.) the following described structure:

Location S. S. Chester Rd. S. E. Cor. Frog Mortar Creek

Setback of Structure: Front 0 ft. Side Setbacks 100' and 960' ft. Corner lot ft. from side street.

Complete Description, Dimensions, Etc. To construct pier- 165' with 6' wide T-60' long.

M. H. W. - 3' M. L. W. - 1.5 Front 68' Depth 165' Height M.H.W. at M.L.W. 1.5

All work to be done on property on which owner has legal right

Issued By The Buildings Engineer

Fee Paid $ 7.50

BUILDING ENGINEER

This Permit shall be kept on the premises open to public inspection during the prosecution of the work and until completion of same. LIMITATION. After a new building permit is issued, if the operation or work authorized and approved thereunder is not commenced within one year, after the issue, or if, after commencement of the operation or work, the operation or work is suspended or discontinued for a period of one year, then, in either case, the said permit shall be null and void, and no operations or work shall be again commenced unless and until another proper permit shall have been issued for such work.

EA ENGINEERING, SCIENCE, AND TECHNOLOGY, INC.

Pet No 14

FRANK W. PINE, Ph.D.
Program Manager, Environmental Assessments
Coordinator, Terrestrial and Wetland Studies
Mid-Atlantic Region

Dr. Pine coordinates terrestrial and wetland studies for the Mid-Atlantic Region and is responsible for designing and reviewing terrestrial and wetland research and for writing scopes of work and cost proposals dealing with these disciplines. He is also responsible for guiding proposal writing and costing for the Mid-Atlantic Operations Group and for marketing in a number of areas, managing projects, and reviewing study plans and reports to ensure proper completion of contracted studies.

EXPERIENCE:

TERRESTRIAL AND WETLAND ECOLOGY: Trained in ecology and animal behavior with emphasis upon environmental biology and public health. Conducted studies and research on biological uptake of trace metals in estuarine ecosystems. Surveyed effects of oil drilling operations upon population dynamics of migratory waterfowl. Managed multidisciplinary studies to define baseline conditions in tidal fresh wetland communities, estuarine communities, and upland terrestrial and wetland areas. Studies included water quality, nutrient flux determinations, soil types and conditions, plant community structure, invertebrate and vertebrate populations, and potential influences of adjacent land-use practices. Experienced in environmental impact assessments, aerial photographic surveying and mapping, taxonomic and community structure analyses, and quantitative assessment of environmental effects. Defined potential effects of disturbances upon rare, threatened, or endangered species and upon sensitive communities.

WATER QUALITY AND ENVIRONMENTAL TOXICOLOGY: Trained in mammalian physiology and toxicology. Conducted research in water-borne pollutant dynamics and water quality. Studies included sources, bioaccumulation potential, sinks, and comparison of contaminant concentrations with federal and state guidelines, criteria, and standards for all classes of surface water, ground water, and drinking water.

PROJECT MANAGEMENT: Directed multidisciplinary studies involving combined field and laboratory research as well as literature reviews and laboratory studies. Responsible for directing proposal preparation, costing, management, and completion of projects. Training has included seminars concerning personnel and project management and short courses in proposal preparation.

EA Report Number: JFE51A

Pet 19

ENVIRONMENTAL ISSUES ASSOCIATED WITH THE PROPOSED PIER EXTENSION PROJECT AT LONG BEACH MARINA, FROG MORTAR CREEK, BALTIMORE COUNTY, MARYLAND

IN PREPARATION FOR AN APPEALS HEARING BEFORE THE BALTIMORE COUNTY ZONING COMMISSIONER

Prepared for

Mr. Joseph F. Evering, Jr. (owner)
800 Chester Road
Baltimore, Maryland 21220

Prepared by

EA Engineering, Science, and Technology, Inc.
Hunt Valley/Loveton Center
15 Loveton Circle
Sparks, Maryland 21152

NOVEMBER 1986

ADDENDUM A

WATER QUALITY SAMPLING RESULTS - LONG BEACH MARINA

On 1 September, 30 September and 17 November 1986, water quality samples were collected off the end of the piers at Long Beach Marina. Samples were taken using a standard Van Dorn bottle. Samples were taken at high and low tide on each of the three dates. A vertical composite of the water column was collected by combining one sample collected from the surface with one from the bottom. At the time of each collection weather conditions were noted and standard water quality data were collected utilizing a Hydrolab field water quality analyzer on-site. The data for temperature, pH, dissolved oxygen and conductivity are all provided in Table 1. Times of high and low tide as well as general weather conditions are also provided.

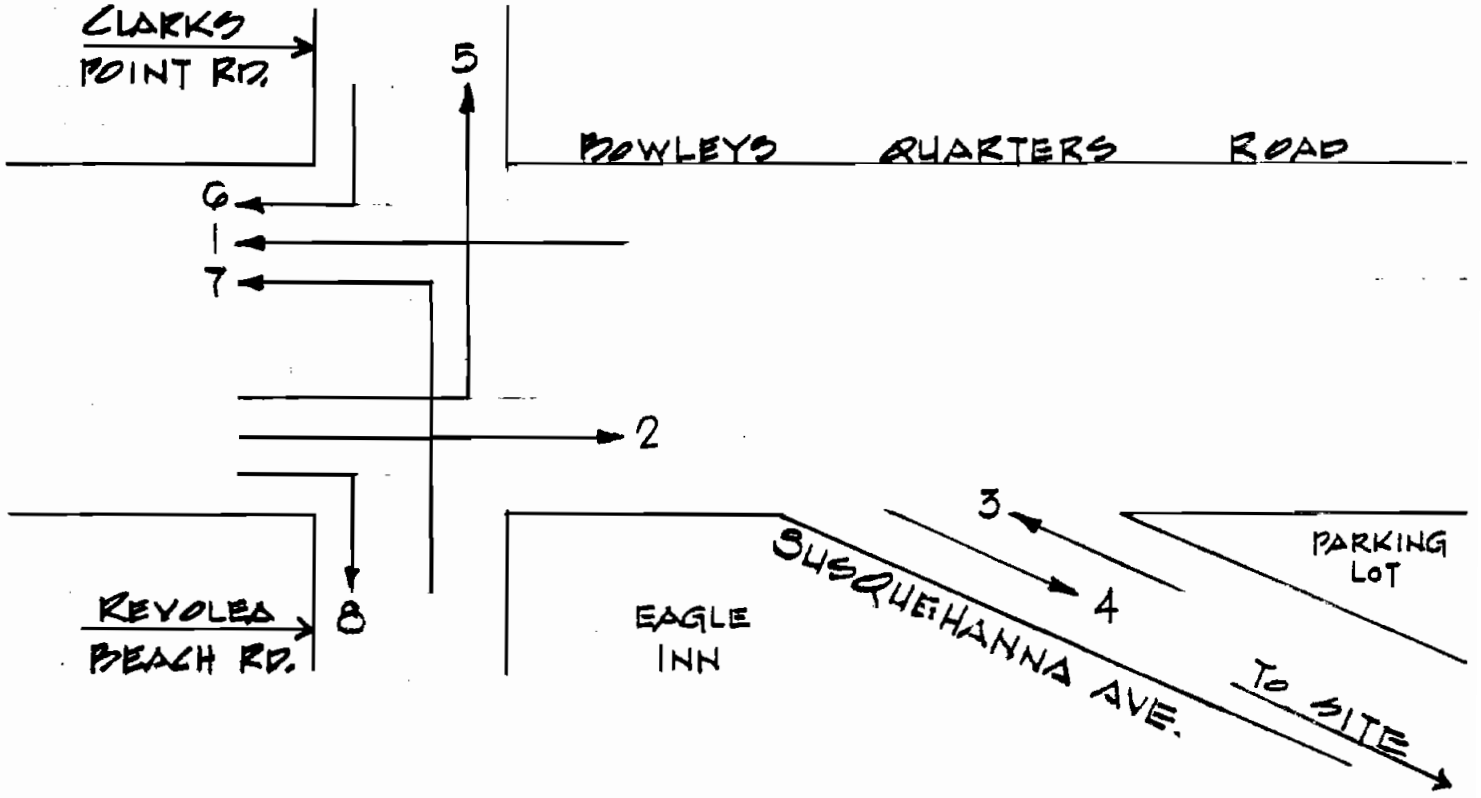
The results of the water quality analyses are given in Tables 2, 3 and 4. All analytical procedures were undertaken according to standard EPA methodology and holding times for all parameters were met.

The results of the analyses of samples collected on 1 September are given in Table 2 and indicate moderately eutrophic conditions. Water temperatures on this date were the highest of the three collection dates and the total and fecal coliform concentrations were also the highest. Based upon chlorophyll a concentrations and phosphorus and nitrogen concentrations, Middle River would be considered eutrophic and marginally acceptable as rated by a Neilson index for estuarine waters (D' Elia, 1982). Chlorophyll a concentrations specifically indicate that the system lies between 30 and 60 micrograms per liter which is indicative of moderate enrichment. The bio-chemical oxygen demand was low while chemical oxygen demand was moderate. Total organic carbon would be considered to be within normal ranges. Trace metal concentrations were extremely low indicating no existing environmental problems related to copper or lead in the water column. On this date the phosphorus concentrations where less than .2 milligrams per liter and orthophosphorus (.07 milligrams per liter) concentrations were also low.

STV/LYON ASSOCIATES.
ENGINEERS, ARCHITECTS & PLANNERS.
21 GOVERNOR'S COURT
BALTIMORE, MD 21207-2722
301/944-9112

SUBJECT TRAFFIC STUDY
BOWLEYS QUARTERS RD. & SUSQUEHANNA AVE.

SHEET NO. ... OF
JOB NO.
BY ... DATE
CHK'D ... DATE
REV. ... DATE



DATE	TIME	DIRECTIONS							
		1	2	3	4	5	6	7	8
FRI. 8-16-85	5-6 P.M.	142	230	39	60	11	7	8	15
FRI. 8-23-85	5-6 P.M.	153	218	44	70	17	9	16	15
SAT. 8-24-85	8-9 A.M.	61	52	38	20	5	11	0	1
FRI. 8-30-85	5-6 P.M.	135	216	36	71	21	13	10	18
* MON. 9-2-85	5-6 P.M.	353	130	62	67	16	18	20	13

* LABOR DAY

CARS ON SITE

8-30-85 13/15

9-2-85 55/40

P1 No. 202

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

Daniel T. Tony Tosco
NAME

5 Forward Ct
ADDRESS

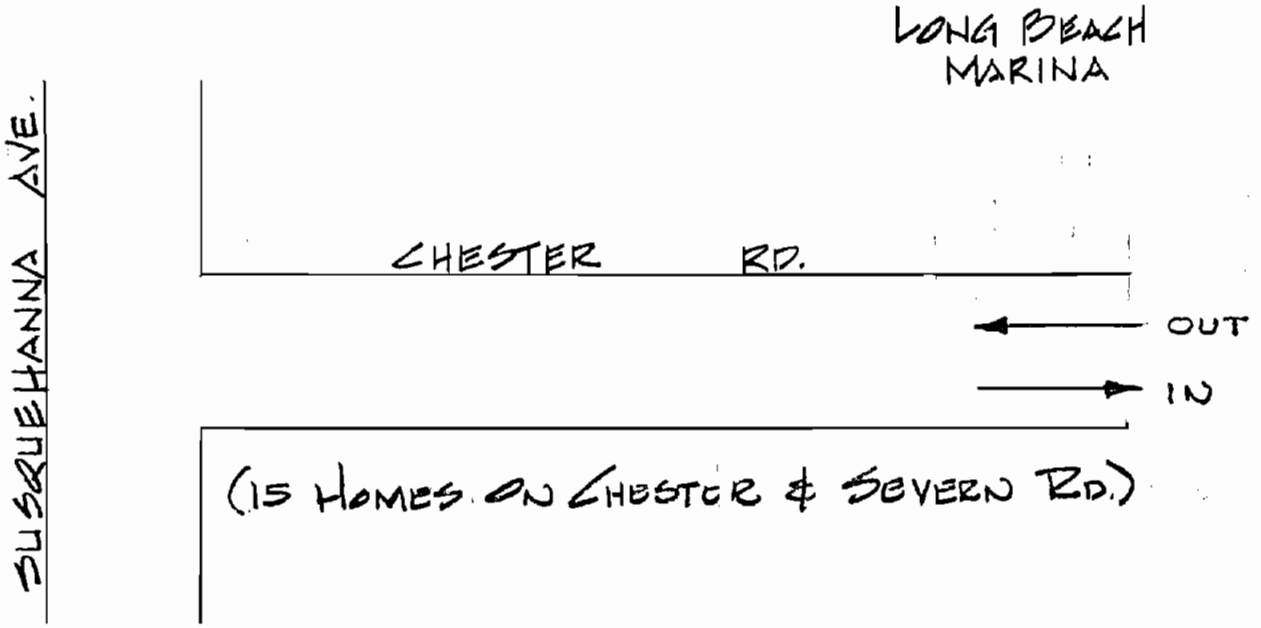
Cockeysville, Md 21030

RECEIVED
OCT 12 1994
ZADM

STV/LYON ASSOCIATES.
ENGINEERS ARCHITECTS PLANNERS.
21 GOVERNOR'S COURT
BALTIMORE, MD 21207-2722
301/944-9112

SUBJECT LONG BEACH MARINA

SHEET NO. ..... OF .....
JOB NO. .....
BY ..... DATE .....
CHK'D ..... DATE .....
REV. ..... DATE .....



BEGIN. OF HOUR.

DATE	TIME	IN	OUT	CARS ON LOT
SAT. 5-24-86	8-9 A.M.	5	4	29
SUN. 5-25.86	5-6 P.M.	5	14	85
MON. 5-26-86	7-8 P.M.	8	17	42

- 127. No. 205

PROTESTANTS

Date: December 16, 1986

No 2

Name	Address	
(1) H. Andrew Jones	1026 Susquehanna Ave	21220
(2) Karen Jones	1026 Susquehanna Ave,	21220
(3) PHILIP EDWARDS	1016 SUSQUEHANNA AVE.	21220
(4) ANN EDWARDS	1016 Susquehanna Ave	21220
(5) MICHELE A. KEHL	103 BAY COURT	21220
(6) Fred Conrad	3301 Edwards Lane	21220
(7) Faye Conrad	3301 Edwards Lane	21220
(8) Richard Stumpf	816 Chester Rd	21220
(9) MARK STUMPF	816 CHESTER RD	21220
(10) Diana Stumpf	816 Chester Rd	21220
(11) William Spence	3504 Glenwood Rd	21220
(12) Mary E. Spence	3504 Glenwood Rd.	21220
(13) Bertha Casson	1202 Susquehanna Ave	21220
(14) Thomas Casson	1202 Susquehanna Ave	21220
(15) Beatrice Baker	1206 Susquehanna ave.	21220
(16) Donald P Baker	1206 Susquehanna ave	21220
(17) Elmer J Norberg	1216 Susquehanna Ave	21220
(18) Millard A. Bierman	3141 Bay Dr.	21220
19 George P Huber	1110 Susquehanna	21220
20 John Schmidt	3833 Clarks Pt. Rd	21220

BOWLEY'S QUARTERS IMPROVEMENT ASSN., Inc.

1124 BOWLEY'S QUARTERS ROAD

BALTIMORE, MARYLAND 21220

Telephone: 335-9802

October 28, 1985

Re: Long Beach Marina Expansion

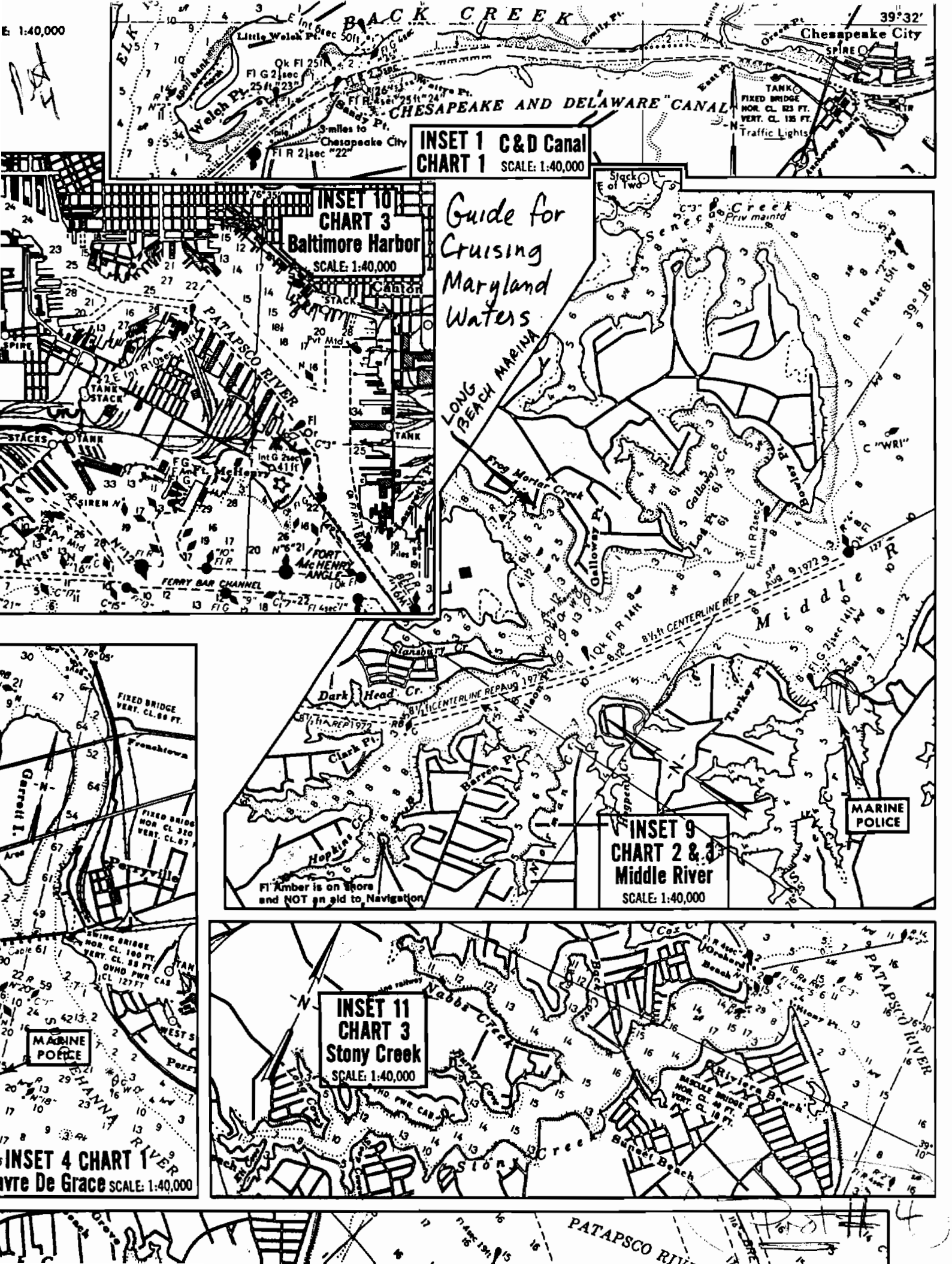
The Board of Directors of the Bowley's Quarters Improvement Association, Inc. is responsible for the review and action on any matters regarding zoning within its territorial jurisdiction. The Board of Directors appoints one member as their spokesperson who is authorized to testify on the behalf of the entire organization. The person authorized by the Board of Directors to testify in this case is Mr. H. Andrew Jones who is a current member of the Board of Directors.

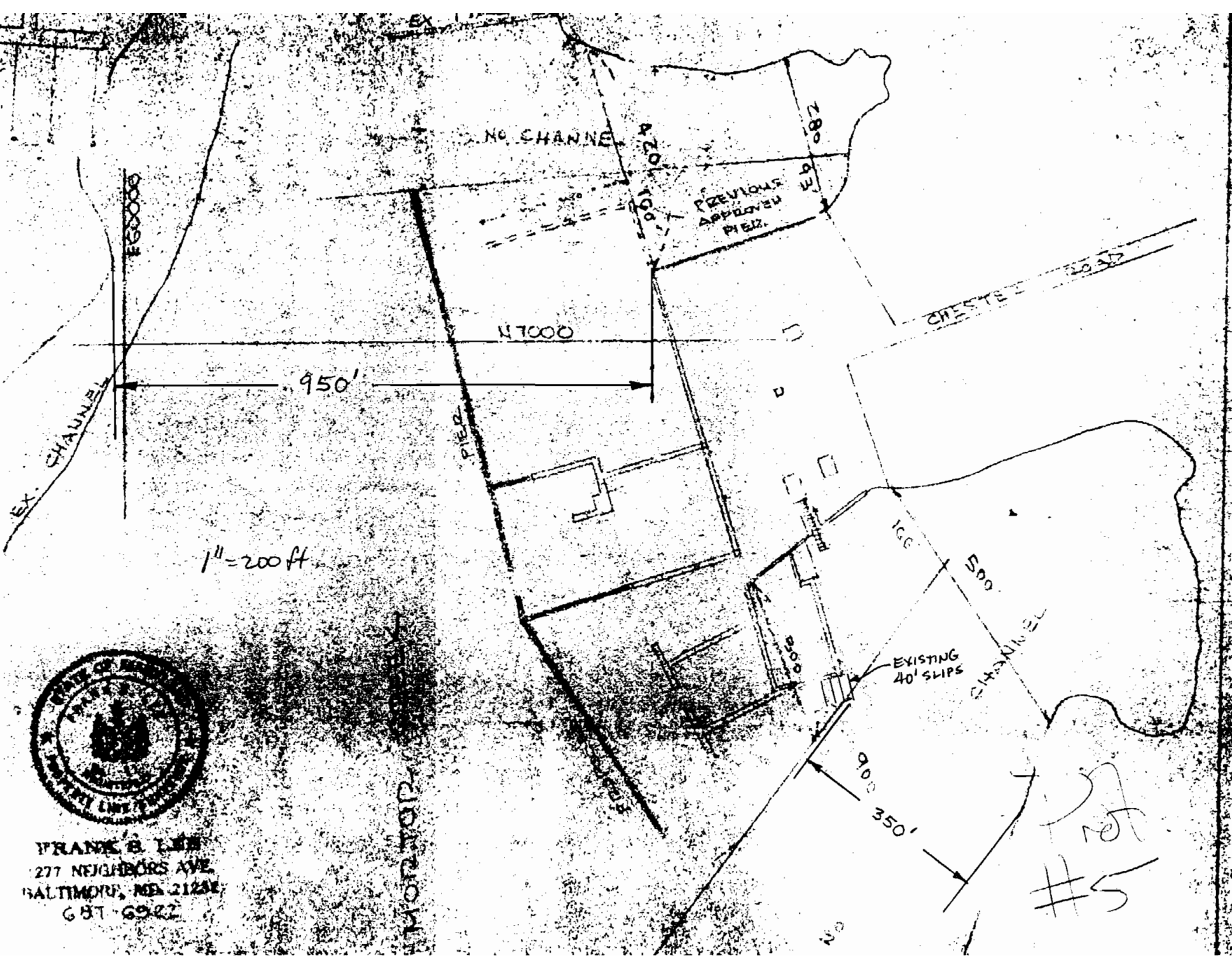
It has been resolved that the Bowley's Quarters Improvement Association, Inc. is against the expansion of the Long Beach Marina due to the adverse effect it will have on the safety, health and welfare of the community as well as the environmental impact on the Frog Mortar Creek, Middle River and Chesapeake Bay. The additional vehicular traffic to an already limited access location will be detrimental to the safety of the residents and their children in the area. The additional boat traffic created will be detrimental to the already overcrowded Frog Mortar Creek which currently contains at least (6) six major marinas, and Middle River which currently contains an additional (19) nineteen marinas, eleven (11) yacht clubs and numerous private homes with boats. Finally, the environmental affect to the water and land surrounding the marina could also be detrimental to the residents of the area.

President

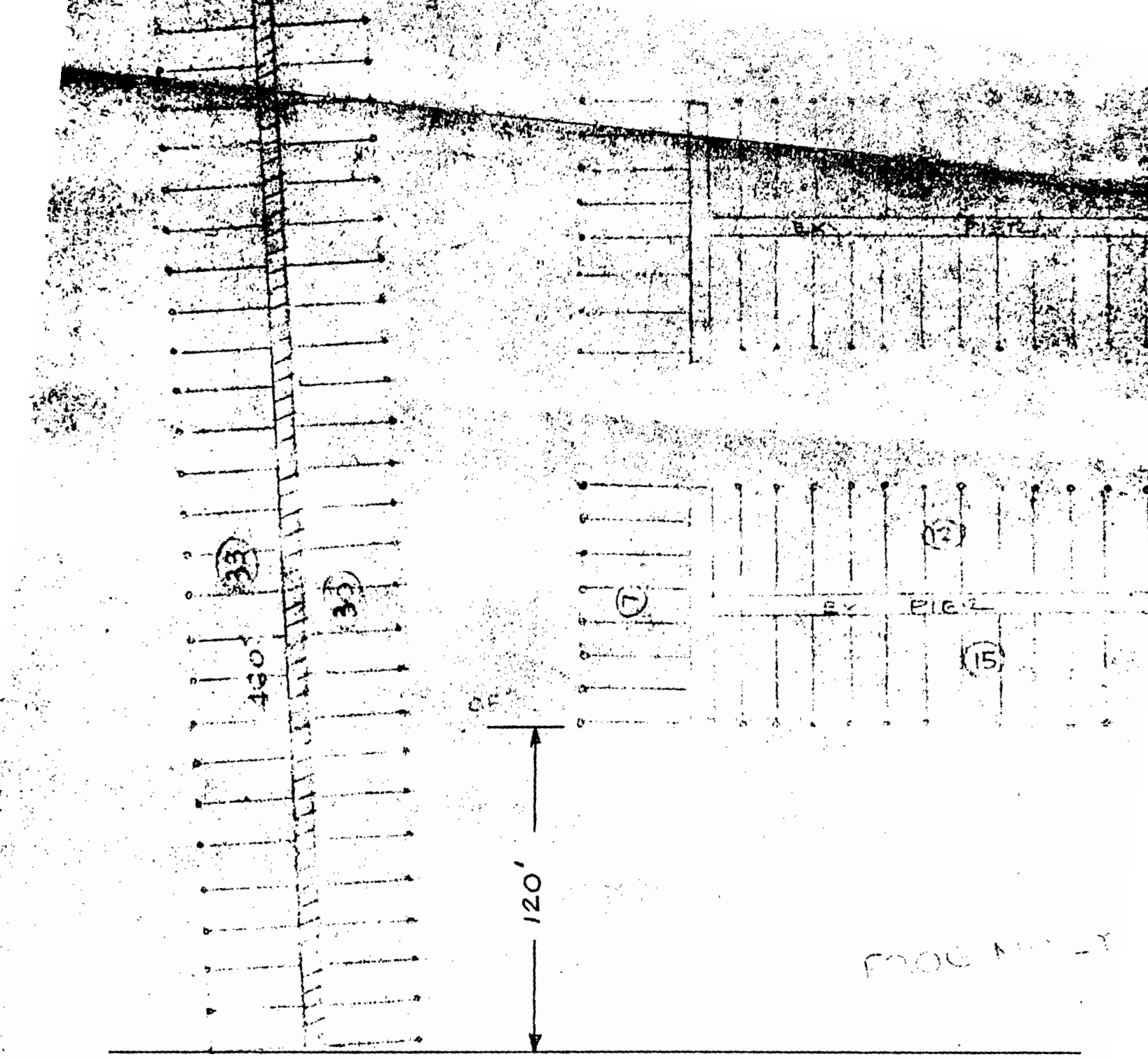
Secretary

Prot. No 3


INSET 1 C&D Canal
CHART 1 SCALE: 1:40,000
INSET 10
CHART 3
Baltimore Harbor
SCALE: 1:40,000
Guide for Cruising Maryland Waters
INSET 9
CHART 2 & 3
Middle River
SCALE: 1:40,000
MARINE POLICE
INSET 11
CHART 3
Stony Creek
SCALE: 1:40,000
INSET 4 CHART 1
Havre De Grace SCALE: 1:40,000
BACK CREEK
CHESAPEAKE AND DELAWARE CANAL
Chesapeake City
PATAPSCO RIVER
LONG BEACH MARINA
Middle R.
Dark Head Cr.
Frog Mortar Creek
Seneca Creek
Stony Creek
Riviera Beach
Bodkin Creek
Nabbs Creek
Perryville
Havre de Grace
Fl Amber is on shore and NOT an aid to Navigation



FRANK B. LEE
277 NEIGHBORS AVE.
BALTIMORE, MD. 21237
687-6922



1" = 50 ft.

Prot Mb

Petition #8

Richard Stumpf	816 Chester Rd
Margaret Baker	1110 Susquehanna Ave
George Baker	1110 Susquehanna Ave
John Franck	1114 Susquehanna Ave
Donald P Baker	1206 Susquehanna Ave 21220
Beatrice H Baker	1206 Susquehanna Ave 21220
Bertha Casson	1202 Susquehanna Ave 21220
Thomas Casson	1202 Susquehanna Ave 21220
Frederick Brant	1226 Susquehanna Ave 21220
Ernest C Remmith	1132 Susquehanna Ave 21220
Carol H Reavis	3308 Chaplark Ave 21220
H. ANDREW JONES	1026 Susquehanna Ave 21220
Mary E Spence	3504 Glenwood Rd 21220
Peggy King	1114 Susquehanna Ave 21220
Richard Stumpf III	816 Chester Rd. 21220

United States
Environmental Protection
Agency

Washington, D.C. 20460
September 1982

EPA

CHESAPEAKE BAY PROGRAM TECHNICAL STUDIES: A SYNTHESIS

SUMMARY



PROTESTANT'S EXHIBIT 4A

Protestants #1

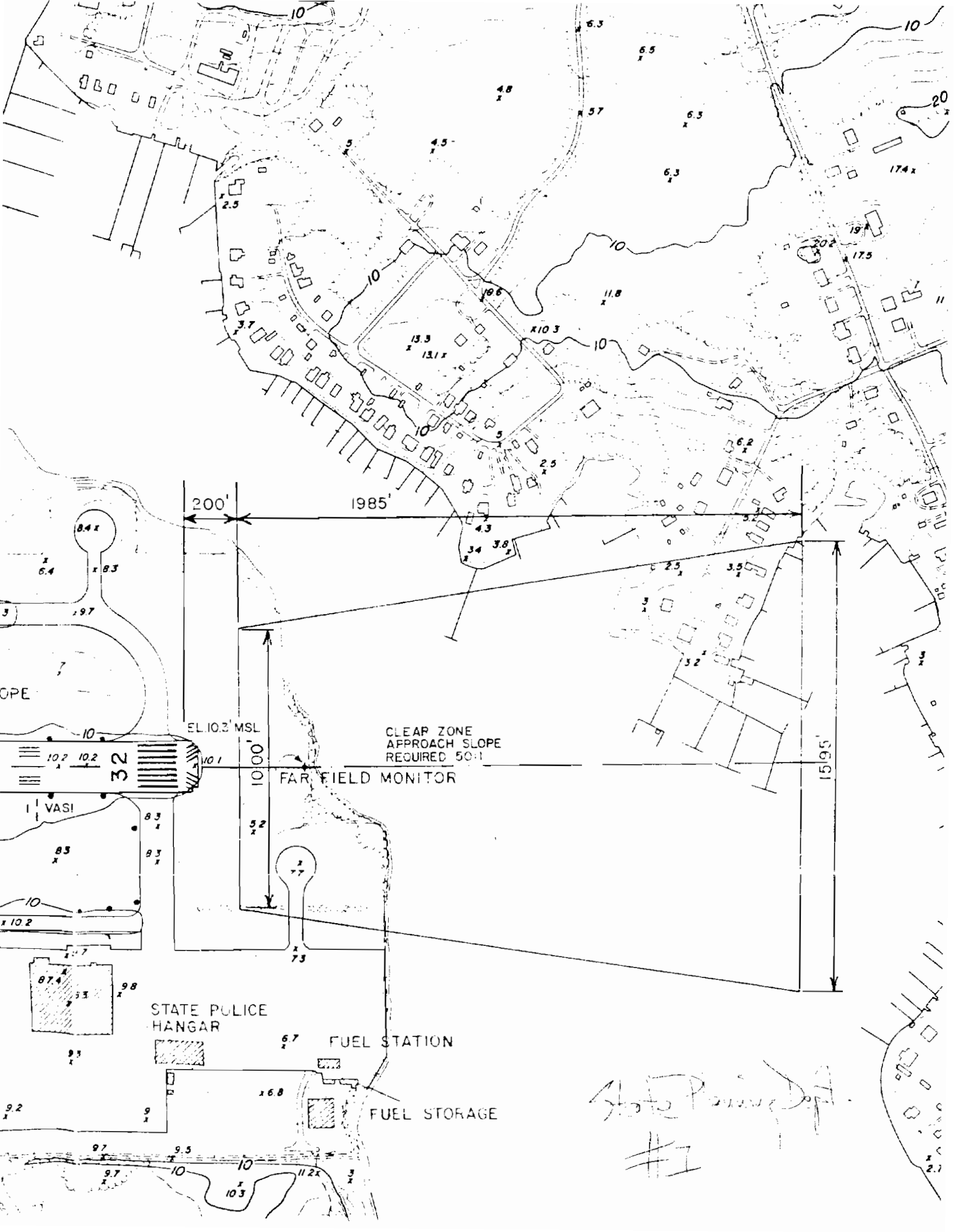
Jan. 21, 1986

PROTESTANTS

NAME	ADDRESS	
Mr. & Mrs. H. Andrew Jones	1026 Susquehanna Ave.	21220
Greg McKibbin	1208 Susquehanna Ave	
Mary E. Spencer	3504 Glenwood Rd	21220
Wm F. Spencer	3504 Glenwood Rd	21220
Elmer J. Norberg	1216 Susquehanna Ave	21220
J & R. Bowman	1220 Susquehanna ave	" "
Fred Conrad	3301 Edwards La	
John Lifer	3694 Galloway Rd.	21220
Mary Hubbard	4023 Bay Dr	21220
Frank Hubbard	4023 Bay Dr.	21220
Beatrice Baker	1206 Susquehanna Ave	21220
Bertha Cazzon	1202 Susquehanna Avenue	21220
Carl - Edward Bromwell	1234 Susquehanna Ave	21220
Ronald P. Baker	1206 Susquehanna Ave	21220
Carl L. Lewis	3308 Choptank ave.	21220
Lillian Yates	1914 Williams Fork Rd	21220
Paul Hayes	4027 Bay Dr	21220
Mary Limerick	823 Sheets Rd	21220
Margaret Schuler	824 Chesterfield	21220
Ralph Edwards	1016 Susquehanna Ave	21220
Ernest C. Kenneth	1134 " "	21220

ON BEHALF OF BOWLEY'S QUARTERS IMPROVEMENT ASSOCIATION

H. Andrew Jones


200'
1985'
EL 10.3' MSL
1000'
CLEAR ZONE
APPROACH SLOPE
REQUIRED 50:1
FAR FIELD MONITOR
1595'
32
VASI
STATE POLICE
HANGAR
FUEL STATION
FUEL STORAGE
#1

(2) A generator who accumulates hazardous waste [for more than 90 days] is an operator of a storage facility and is subject to the requirements of **COMAR 10.51.05[.]** *; unless the hazardous waste:*

(a) Is accumulated for 90 days or less; or

(b) Accumulated is less than 500 kilograms, contains less than 1 kilogram of acute hazardous waste, and is accumulated for 180 days or less from the date of initial generation or accumulation.

ADELE WILZACK
Secretary of Health and Mental Hygiene

[Md. R. Doc. No. 85-R-139-P. Filed at Div. of St. Doc. April 2, 1985.]

Title 11
DEPARTMENT OF TRANSPORTATION

Subtitle 03 STATE AVIATION ADMINISTRATION

11.03.05 Obstructions to Air Navigation

Authority: Transportation Article, §§5-204(d), 5-208 and 5-702, Annotated Code of Maryland

Notice of Proposed Action

The State Aviation Administration proposes to adopt new Regulations .01 — .11 under a new chapter, **COMAR 11.03.05 Obstructions to Air Navigation.** The purpose of these regulations is to comply with the provisions of Transportation Article, §5-702(a), and govern the erection and maintenance of any obstruction to air navigation that endangers the lives and property of persons using the air space for transportation or occupying land within this State.

Estimate of Economic Impact

I. Summary of Economic Impact. These regulations will govern the erection and maintenance of any structure, personalty, or vegetation that, due to its location, would endanger the lives or property of those persons using a licensed public-use airport or occupying adjoining lands. Authority to grant exemptions is provided to the local subdivisions for use through their existing appeal processes. When exemptions are granted, provisions are included to require precautionary measures consistent with the degree of risk. Both the State and local sub-divisions will incur expense in processing requests for exemptions, as will those property owners who might be required to install obstruction lighting and markings.

II. Types of Economic Impacts.	Revenue (+) Expense (–)	Magnitude
A. On issuing agency: The State Aviation Administration will incur expense in reviewing requests for exemptions and providing testimony at local hearings.	(–)	$6,000
B. On other State or local agencies affected: Local sub-divisions will incur added expense as a result of hearings to consider requests for exemptions.	(–)	$8,000
	Benefit (+) Cost (–)	Magnitude
C. On regulated industries or trade groups:	NONE	
D. On other industries or trade groups affected: There may be an indirect effect due to the purchase of goods and services to mark or remove obstructions.	(+)	Determined at the local level
E. Direct and indirect effects on public: Added expenses may be expected on the part of builders in the installation of obstruction lighting and markings, and by others in limiting the growth of vegetation	(–)	Determined at the local level

III. Assumptions.

A. This figure is based upon the review of an estimated 100 construction applications per year for determination as to their impact on air navigation and participation in 20 hearings relative to exemptions.

B. This figure is the estimated local cost of processing 20 requests for exemptions.

D. Extent of expense will be determined by local zoning officials in connections with requests for vacancies.

E. Extent of expense will be determined by local zoning officials in connections with requests for vacancies.

Opportunity for Public Comment

Written comments may be sent to Evelyn M. Kellner, Chief, Administrative Services, State Aviation Administration, P.O. Box 8766, Baltimore/Washington International Airport, Maryland 21240 or call (301) 859-7228. These comments must be received by May 31, 1985. No public hearing will be scheduled.

.01 Definitions.

A. As used in these regulations, the following terms have the meanings indicated unless the context requires otherwise. Words not specifically defined that relate to aeronautical practices, processes, and equipment shall be construed according to their general usage in the aviation industry.

B. Terms Defined.

(1) "Administration" means the State Aviation Administration of the Maryland Department of Transportation, established pursuant to Transportation Article, §2-102(b)(2), Annotated Code of Maryland.

(2) "Administrator" means the State Aviation Administrator, whose office is established pursuant to Transportation Article, §2-102(b)(2), Annotated Code of Maryland, or his duly authorized representative.

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
TOWSON, MARYLAND 21204
494-3211

NORMAN E. GERBER
DIRECTOR

September 7, 1984

Mr. Frank S. Lee
1277 Neighbors Avenue
Baltimore, MD 21237

Dear Mr. Lee:

I am writing you in regard to the petitions submitted for special exception, special hearing, and variance in regard to the expansion of Long Beach Marina on Frog Mortar Creek in Baltimore County. This facility is located within the State of Maryland Chesapeake Bay Critical Area and, therefore, you are required to provide the following information so that impacts on water quality and wildlife and plant habitats can be assessed in order to determine whether this proposed expansion meets the State of Maryland Critical Area Requirements. In order for us to make this review, the following information is required. (The attached outline provides you with the specific information that is necessary regarding each of the items listed below.)

1. Water depth
2. Soils
3. Impervious surfaces
4. Points of stormwater storage
5. Wildlife and fish habitat
6. Water quality
7. Mitigative measures

In regard to water quality, one of the items listed above, the County needs a very detailed, comprehensive analysis in order to determine the impact of the proposed marina on water quality. The information that is deemed necessary is as follows:

1. Existing water quality in Frog Mortar Creek in the immediate adjacent and downstream area. Testing should be performed for biological, chemical, and other properties which will in any way be affected by the proposed marina.

2. Identify the types, amounts, and sources of pollutants that will be generated by the full range of activities of the proposed marina. Determine what

absolute amounts of these pollutants will directly or indirectly flow into Frog Mortar Creek. Indicate the effect of mitigating measures on both the amount and impacts of the identified pollutants.

3. Determine or assess the anticipated overboard discharge of wastes (including oil products) from the boats utilizing the marina and its effect on water quality and biota from any turbidity created by boat propellers and generated wave action.

4. Survey of the biota of Frog Mortar Creek or Middle River for the area that you determine may be impacted by the proposed marina. Assess any impacts from the proposed marina on the identified biota. The biota is to be interpreted in a broad sense including both flora and fauna.

5. Rate of flushing or exchange rate in Frog Mortar Creek adjacent to site.

It is essential that the information being requested be obtained by these methods which are generally accepted as state of the art with respect to reliability, accuracy, and completenesss.

Should you have any questions regarding this matter, pleaase cal me at 494-3335.

Sincerely,

Paul J. Solomon for
EUGENE A. BOBER, Chief
Current Planning & Development Div.

EAB:PHS:eds

cc: Mr. Arnold Jablon
Zoning Commissioner
Baltimore County

Mr. Norman E. Gerber, Director
Office of Planning & Zoning

Mr. Robert W. Marriott, Jr.
Deputy Director of Planning

Ms. Andrea VanArsdale
Coastal Zone Planner

Mr. James G. Hoswell, Planner
Office of the Director

Ms. Stephanie Taylor
Department of Health

COASTAL ZONE

People's Ex. #1

BALTIMORE COUNTY
DEPARTMENT OF TRAFFIC ENGINEERING
TOWSON, MARYLAND 21204
494-3550

STEPHEN E. COLLINS
DIRECTOR

February 6, 1984

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

Item No. 166	-ZAC- Meeting of January 3, 1984
Property Owner:	Mr. Joseph F. Evering, Jr., et ux
Location:	N/S Chester Road 1000' W. Susquehanna Avenue
Existing Zoning:	D.R. 5.5
Proposed Zoning:	Variance requiring the structure not to exceed 300' beyond mean low tide to allow the structure to extend 419' beyond the mean low tide.
Acres:	3.30
District:	15th

Dear Mr. Jablon:

This site is served by very narrow roads and traffic problems can be expected. All parking areas should be shown.

Michael S. Flanigan
Traffic Engineering Assoc. II

MSF/ccm

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO Arnold Jablon
Zoning Commissioner Date September 7, 1984

FROM Norman E. Gerber, Director
Office of Planning and Zoning

SUBJECT Joseph F. Evering, Jr., et ux
No. 85-65-XSpHA

In view of the comments concerning the State's Chesapeake Bay Critical Area regulations (see letter to Frank S. Lee from Paul J. Solomon dated September 7, 1984), this office cannot offer final comments on the subject petition.

Norman E. Gerber, Director
Office of Planning and Zoning

NEG/JGH/sf

People's Counsel
Ex. #3

1/4/13/R1
8

85-65-XSPHA

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
TOWSON, MARYLAND 21204
494-3211

NORMAN E. GERBER
DIRECTOR

85-175-C

December 7, 1984

Joseph F.
Mr. & Mrs. Evering, Jr.
800 Chester Road
Baltimore, Maryland 21220

Re: Proposed Slips for Long Beach Marina

Dear Mr. & Mrs. Evering:

This office has reviewed your plans for the proposed additional slips to the Long Beach Marina. It will be necessary for you to submit plans for a County Review Group Meeting so that we may determine if the proposal complies with the County requirements and so that we may make a finding that the property can comply with the Chesapeake Bay Critical Areas Legislation. If you have any questions please contact me at 494-3335.

Sincerely yours,

Eugene A. Bober
Chief, Current Planning & Development

EAB:rh

cc: James Markle
Arnold Jablon

People's Counsel Ex. #4

P.C. Exh 6

Long Beach Marina

Location - Chester Rd.

No. of existing slips 201
" " proposed " 178
Aver. trips per slip weekday 3
" " " " Sat. 3.2
" " " " Sun 7.9

} Source - Trip Gen 3rd edition I.T.E.

Existing

Wk. day	3 x 201	=	603	≈ 603
Sat	3.2 x 201	=	643.2	≈ 643
Sun	7.9 x 201	=	1587.9	≈ 1588

Proposed

Wk. day	3 x 178	=	534	534
Sat.	3.2 x 178	=	569.6	≈ 570
Sun.	7.9 x 178	=	1406.2	≈ 1406

Totals

Wk. day	603 + 534	=	1137
Sat	643 + 570	=	1213
Sun	1588 + 1406	=	2994

M. S. Flanigan




LONG BEACH
MARINA

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

Judy Card
NAME

ADDRESS

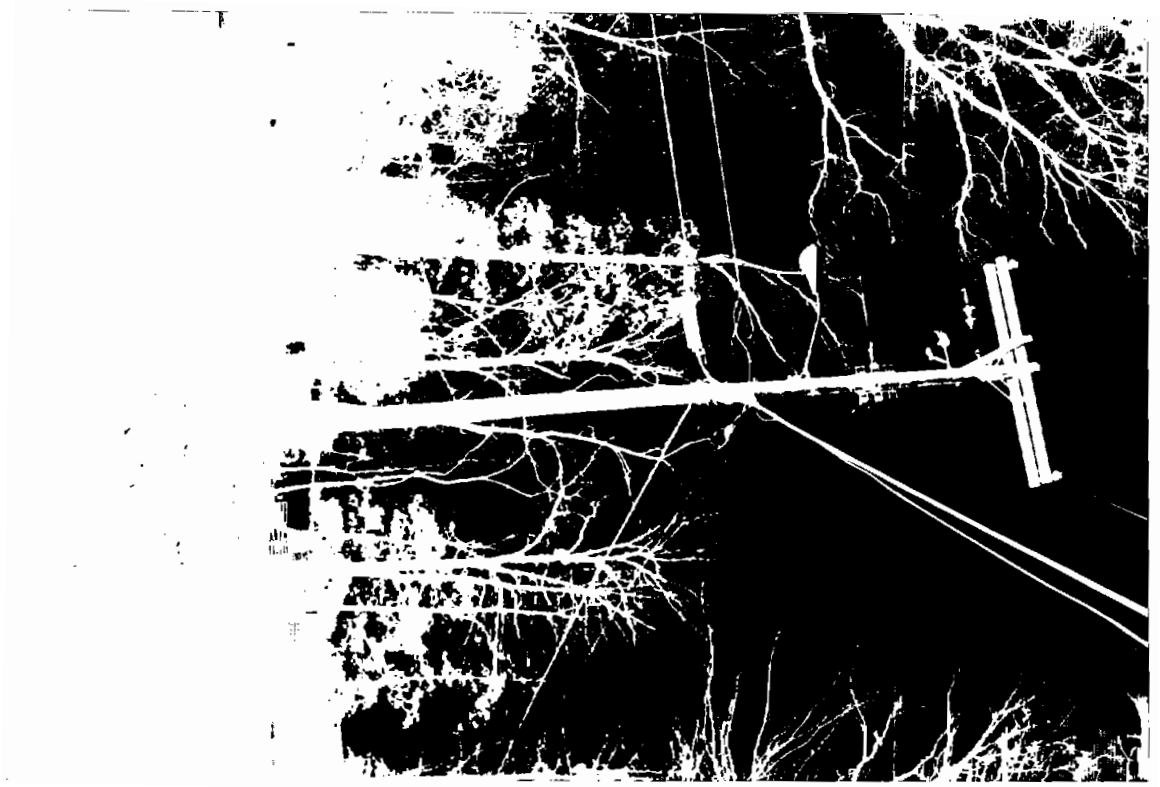
2 SPRINGHILL FARM CT.
HUNT VALLEY, MD 21030

RECEIVED
OCT 12 1994
ZADM



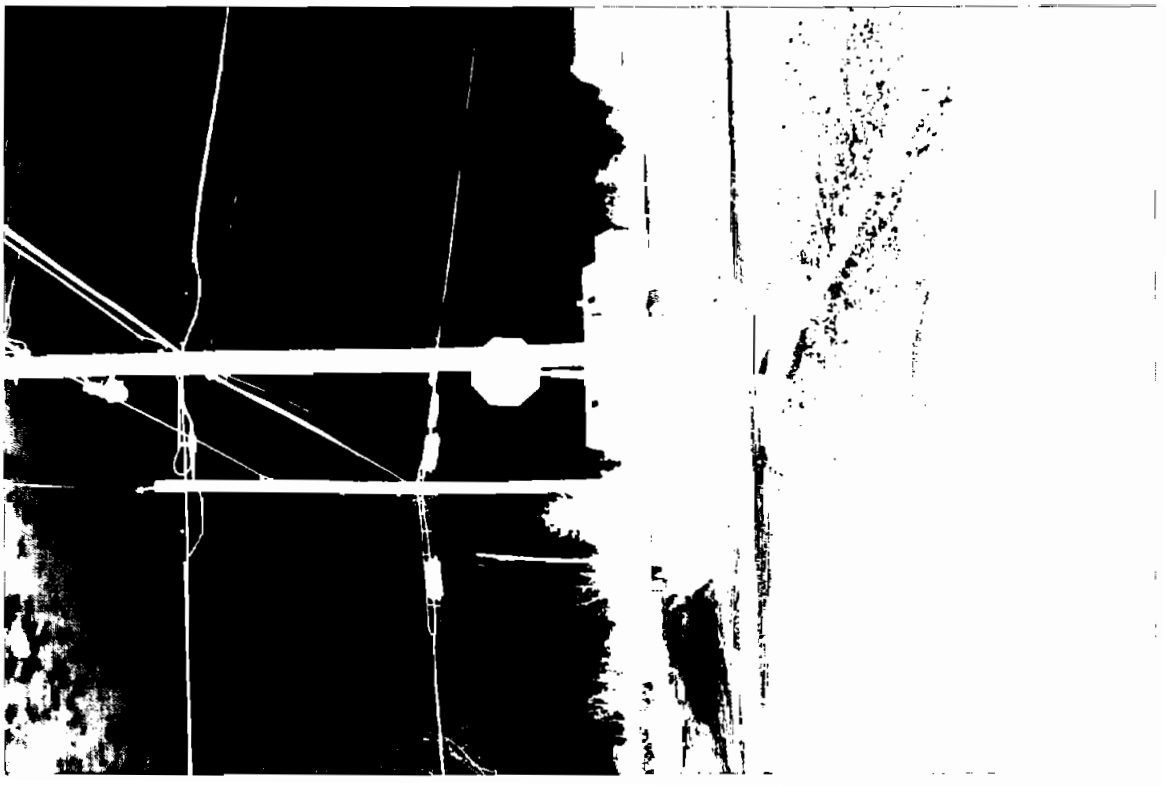


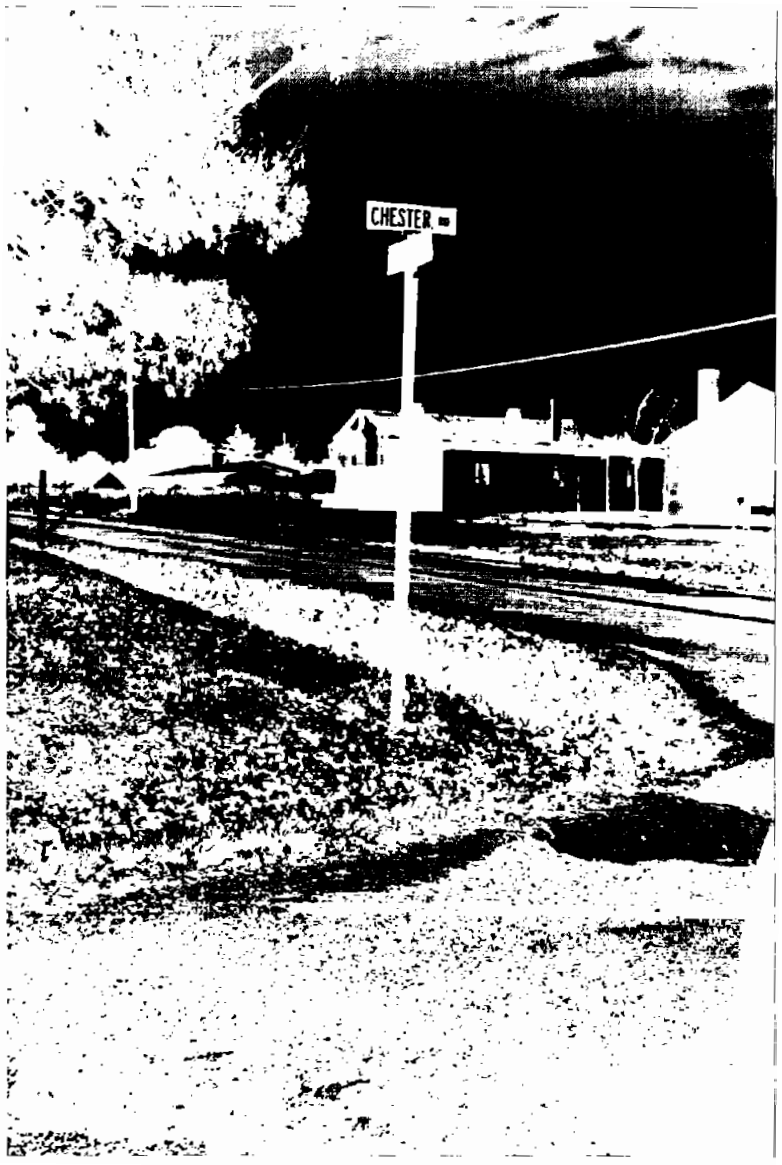




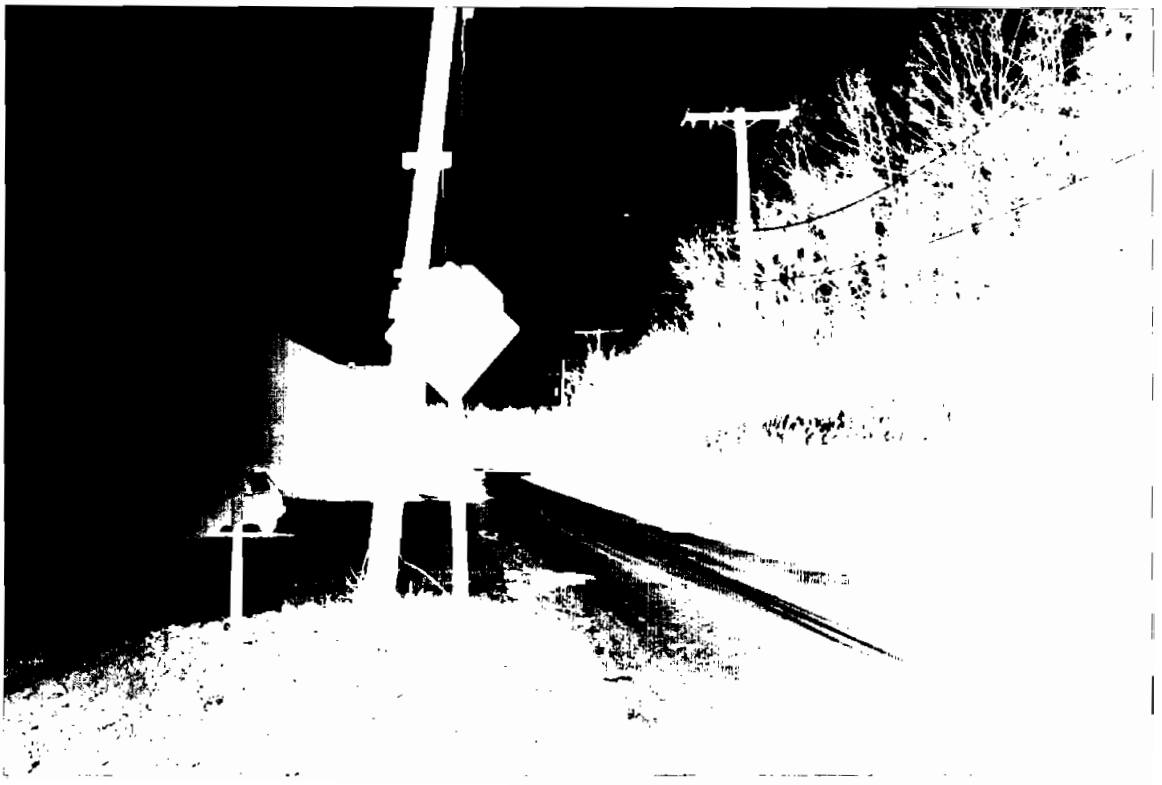






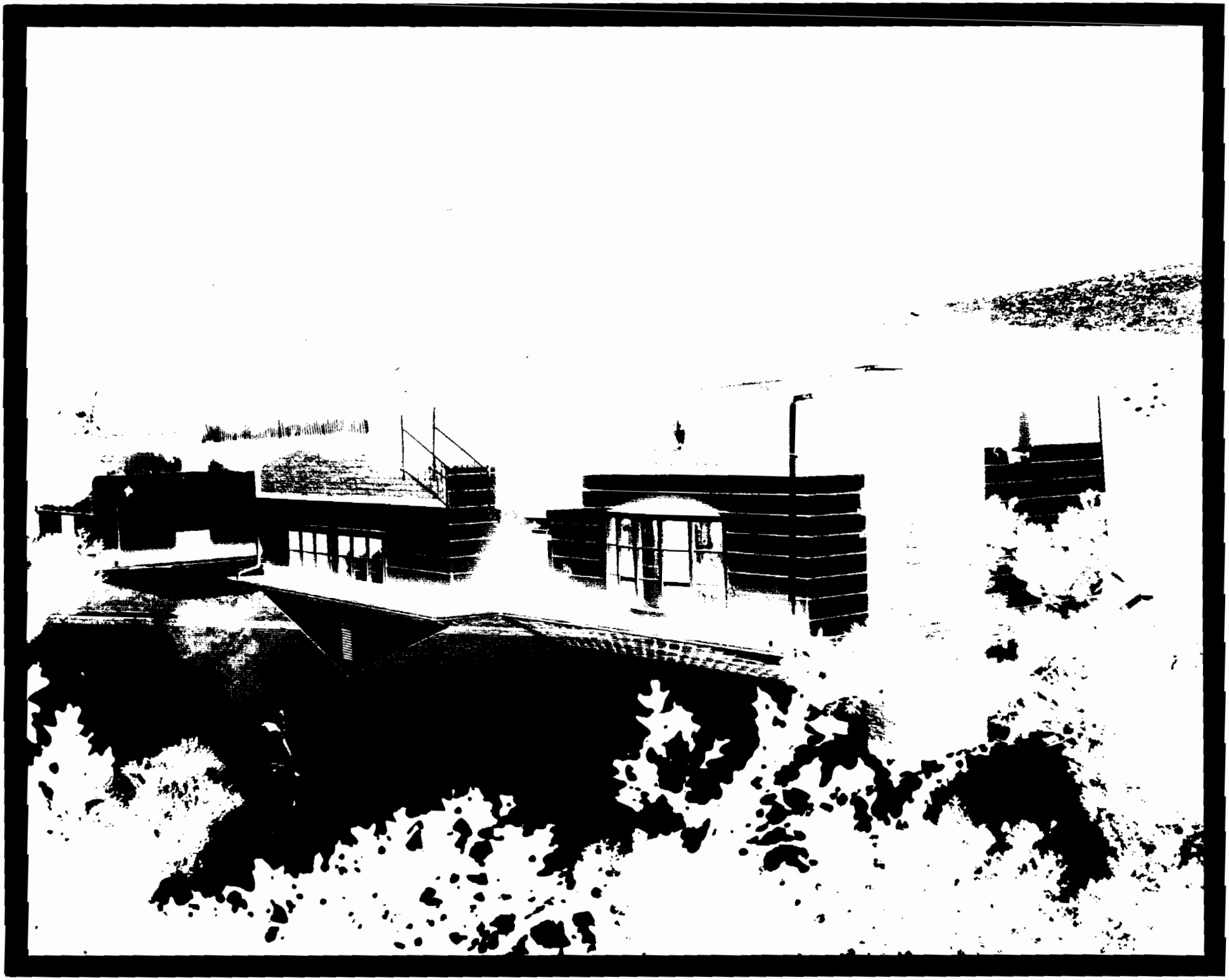

CHESTER RD








STOP



law to provide electrical generating capacity "sufficiently large enough to meet all normal demands for service and provide a reasonable reserve for emergencies." MD. Regs. Code Tit. 20, §50.02.03(1981); see also MD. Code Ann. Article 78, §§28(c), 75(a)(1994). BGE argues that, in order to meet these regulatory requirements, it must install and position new substation equipment in a configuration which will perforce result in the equipment's crossing the interior lot lines on the subject Tract of land.[4]

The CBA found as a matter of fact that Section 306 of the BCZR entitled BGE to a variance as a matter of law.

> Section 306 Minor Public Utility Structures. Minimum lot area regulations in any Zone shall not apply to repeater, booster, or transformer stations, or small community dial offices.

Having so found, the CBA should have found that BGE's request for a variance from lot line setback requirements was moot. Simply put, because BGE intended to install transformer equipment on the three-lot site, minimum lot area restrictions such as the 50 foot setback mandated by BCZR 1A04.3B.3 simply do not apply. Nevertheless, "the Board is compelled to address the issue of 307.1 pursuant to the Petition." (Op. 10)

Though this Court disagrees with the necessity found by the Board to apply the test for variances found in BCZR 307.1, the Court, nevertheless, finds that the Board's analysis approving the variance was correct.

The first step in the application of Section 307.1 is to determine whether or not the subject property is in some way unique or peculiar.

---

[4]Building setbacks. Any principal building hereafter constructed in an R.C. 5 Zone shall be situated at least 75 feet from the central line of any street and at least 50 feet from any lot line other than a street line,... 1A04.3.B.3.

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

William M. Ley
NAME

9 Briarwood Farm Court
ADDRESS

Reisterstown Md 21136

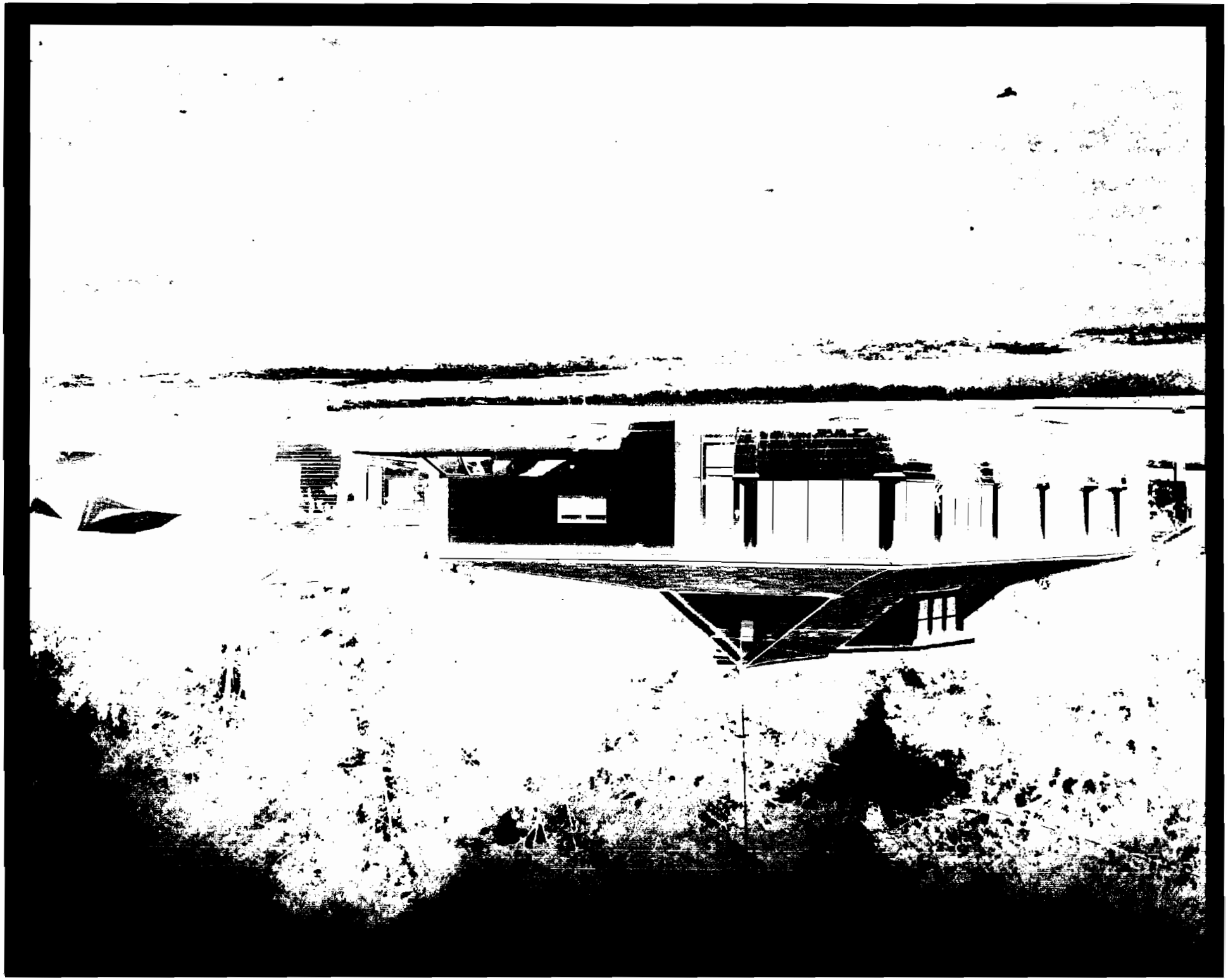
RECEIVED
OCT 12 1994
ZADM

Post Script: This absolutely is the wrong place to build a substation. With all the other open land in Baltimore County, certainly BG&E could find an alternative sight without a problem



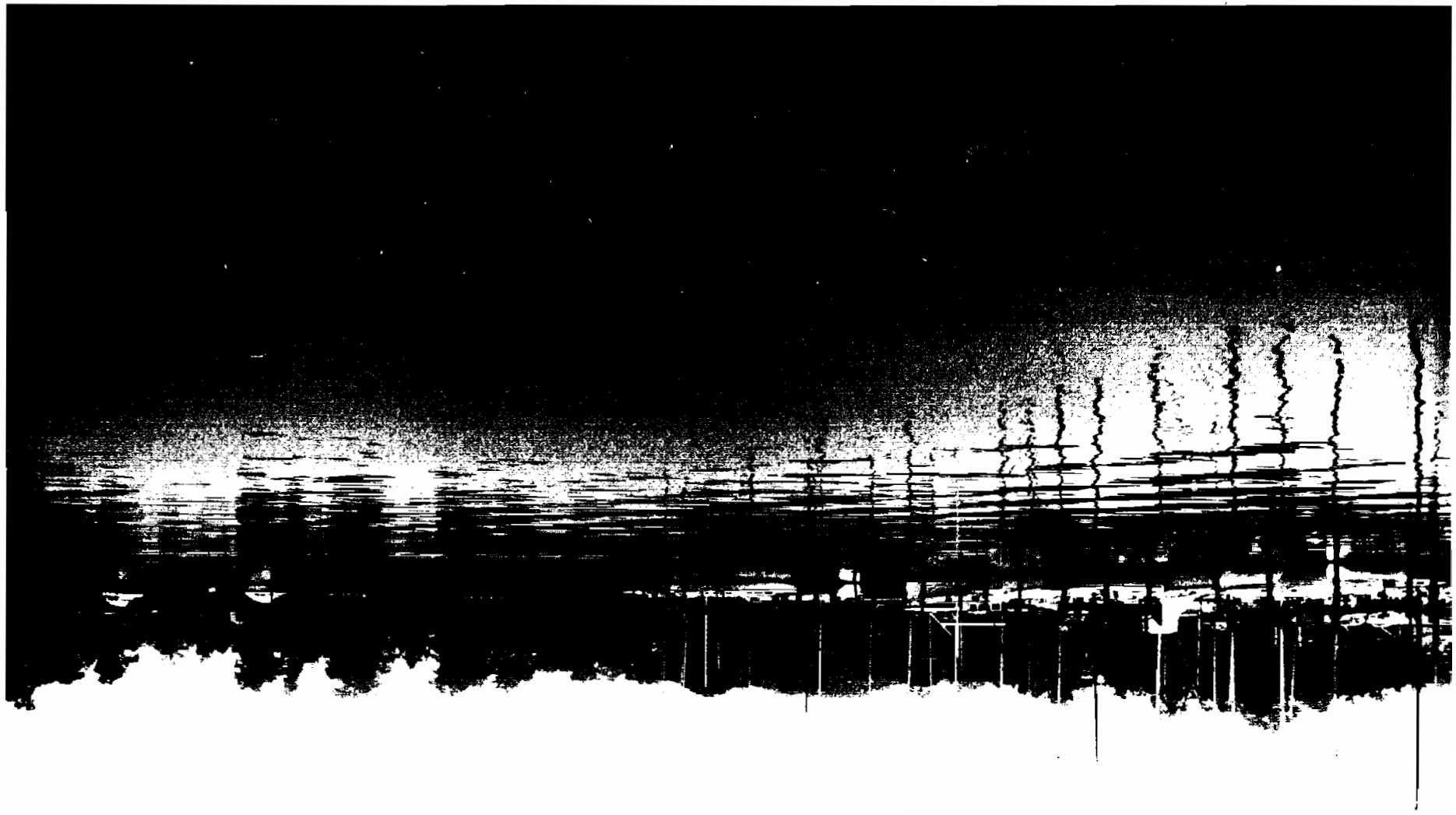



SUSQUEHANNA PL

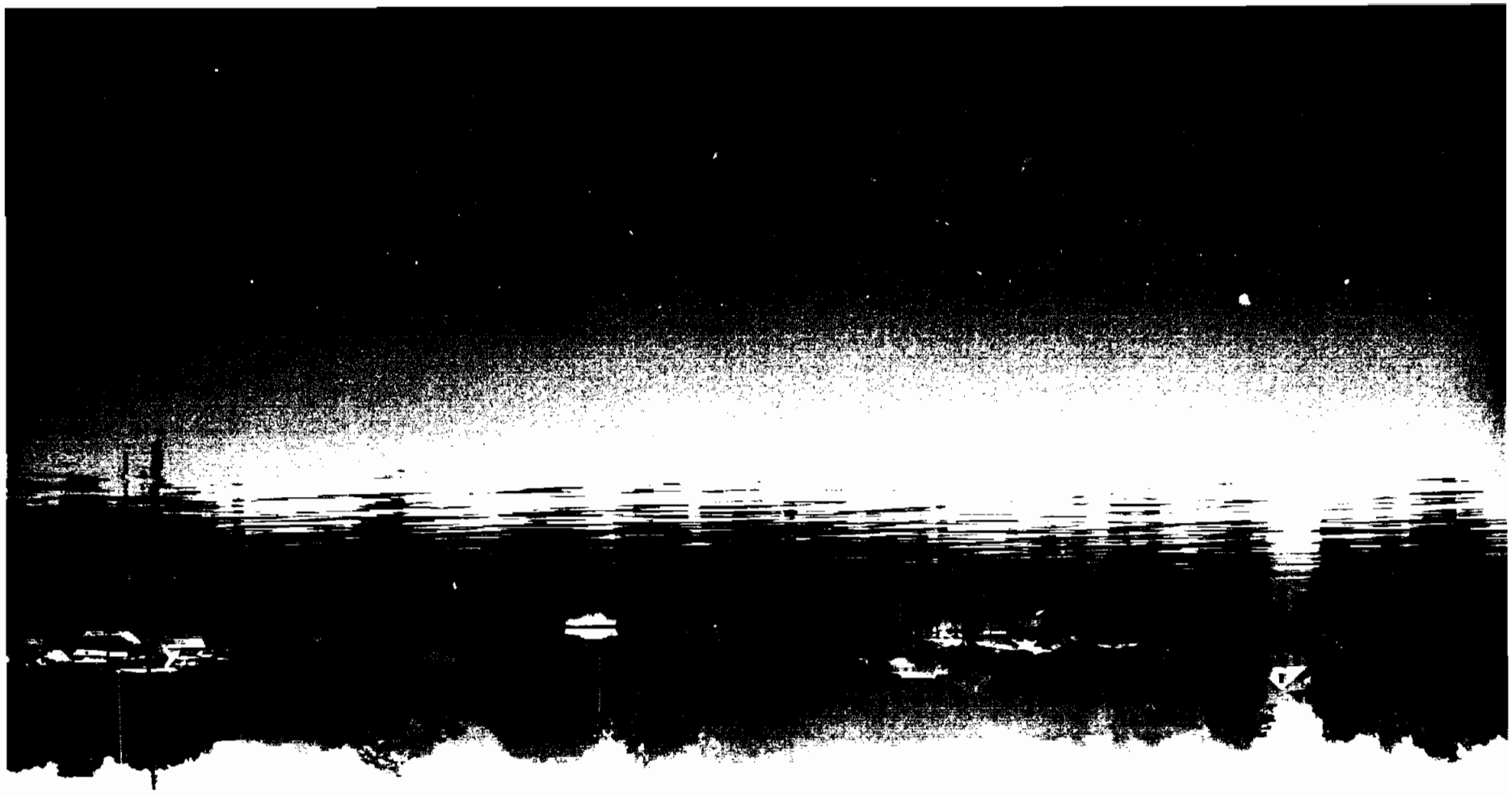




LONG BEACH
MARINE







NOTES - Joseph Evering 4/21/87

08/06/84 Petition filed

04/25/85 Zoning Commissioner grants special exception and variances subject to restriction

05/85 Appeals filed by all parties: People's Counsel
Petitioners
Protestants
Planning & Zoning

10/29/85 First hearing day -hearing as to applicability of Critical Areas legislation (transcript of testimony is complete)

12/12/85 Majority ruling on motion by Board holding that Critical Areas legislation is not applicable

01/86 Appealed by People's Counsel and Protestants of Board's ruling

01/21/86 Hearing before Board as to applicability of Aviation Zoning Regulations and ruling from bench that Aviation Regulations not applicable. (Transcript of testimony is complete)

08/07/86 People's Counsel and Protestants appeals remanded to Board by Judge Sfekas of Circuit Court in that appeal not timely because Board has not ruled upon entire motion.

12/16/86) Hearing on merits per Judge Sfekas
12/17/86) " " " " " "

12/16/86 Missing: Testimony of Joseph Evering and all but last seven (7) pages of Dr. Pine, which is end of cross-exam by Friedman.

Have : Walter Ewell by Gontrum p 8
By Harrison p 19
by Friedman p 32
(complete transcript of Ewell)

12/17/86 Complete transcript:

Fred Klaus	by Gontrum	p 3
	by Harrison	p 35
Joseph Boone	by Gontrum	p 48
	by Friedman	p 52
Owen Butterworth	by Gontrum	p 59
Burton Greenwood	by Gontrum	p 65
	by Harrison	p 70
Richard Stumpf	by Harrison	p 74
	by Gontrum	p 83
	by Harrison	p 87
Andrew Jones	by Harrison	p 88
*Reporters change here & Danker begins transcript	by Gontrum	p 14

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

Josephine A. Eisher

NAME

Walnut Spring Farm, 4331 Black Rock Rd.

ADDRESS

Upperco, MD 21155

RECEIVED
OCT 12 1994
ZADM

ORIGINAL

IN THE MATTER OF JOSEPH F. EVERING, JR., et ux.	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
	*	Case No. 85-65-XSPH
	*	April 22, 1987

* * * * *

The above-entitled cause came on for hearing before the County Board of Appeals of Baltimore County at the Courthouse, Towson, Maryland 21204 at 10 o'clock a.m., on April 22, 1987.

* * * * *

BOARD MEMBERS:

LAWRENCE E. SCHMIDT, Acting Chairman
WILLIAM T. HACKETT

APPEARANCES:

JOHN B. GONTRUM, Esquire
ROBERT J. ROMADKA, Esquire
On behalf of the Petitioners

T. ROGERS HARRISON, Esquire
On behalf of Protestants

PHYLLIS COLE FRIEDMAN, Esquire
On behalf of People's Counsel

Reported by:
C.E. Peatt

BEFORE THE BALTIMORE COUNTY BOARD OF APPEALS

IN THE MATTER OF	:	No. 8565XSPHA
JOSEPH F. EVERING, JR.,	:	December 17, 1986 12:00 noon
ET UX	:	Old Court House Towson, Maryland
	:	
	: :	

BOARD MEMBERS:

LAWRENCE E. SCHMIDT
KEITH S. FRANZ
WILLIAM T. HACKETT

APPEARANCES:

JOHN GONTRUM, ESQUIRE,
In behalf of the Petitioners

T. ROGERS HARRISON, ESQUIRE,
In behalf of the Protestants

PHYLLIS COLE FRIEDMAN, ESQUIRE,
Assistant County Solicitor,
People's Counsel

Reported by:

Susan A. Kambouris

BERNARD DANKER ASSOCIATES
14401 OLD YORK ROAD
PHOENIX, MD 21131
666-8877

SERVING MARYLAND ATTORNEYS SINCE 1947

ORIGINAL

IN THE MATTER OF JOSEPH F. EVERING, JR., et ux.	*	BEFORE THE
	*	COUNTY BOARD OF APPEALS
	*	OF BALTIMORE COUNTY
	*	Case No. 85-65-XSPH
	*	December 17, 1986

* * * * *

The above-entitled cause came on for hearing before the County Board of Appeals of Baltimore County at the Courthouse, Towson, Maryland 21204 at 10 o'clock a.m., December 17, 1986.

* * * * *

BOARD MEMBERS:

KEITH S. FRANZ, Chairman
WILLIAM T. HACKETT
LAWRENCE E. SCHMIDT

APPEARANCES:

JOHN B. GONTRUM, Esquire
ROBERT J. ROMADKA, Esquire
On behalf of Petitioners

T. ROGERS HARRISON, Esquire
On behalf of Protestants

PHYLLIS COLE FRIEDMAN, Esquire
People's Counsel

Reported by:
C.E. Peatt

ORIGINAL

IN THE MATTER OF JOSEPH F. EVERING, JR., et ux.	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
	*	Case No. 85-65-XSPH
	*	December 16, 1986

* * * * *

The above-entitled cause came on for hearing before the County Board of Appeals of Baltimore County at the Courthouse, Towson, Maryland 21204 at 10 o'clock a.m., December 16, 1986.

* * * * *

BOARD MEMBERS:

KEITH S. FRANZ, Chairman
WILLIAM T. HACKETT
LAWRENCE E. SCHMIDT

APPEARANCES:

JOHN B. GONTRUM, Esquire
ROBERT J. ROMADKA, Esquire
On behalf of Petitioners

T. ROGERS HARRISON, Esquire
On behalf of Protestants

PHYLLIS COLE FRIEDMAN, Esquire
People's Counsel

Reported by:
C.E. Peatt

IN THE MATTER OF JOSEPH EVERING	*	BEFORE THE
	*	COUNTY BOARD OF APPEALS
	*	OF BALTIMORE COUNTY
	*	CASE NO. 85-65-XSPHA
	*	October 29, 1986

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County, at Room 218, at the Courthouse, Towson, Maryland 21204 at 10 a.m., October 29, 1985.

* * * * *

BOARD MEMBERS:

LAWRENCE SCHMIDT, Esquire
Chairman
KEITH FRANZ, Esquire
DIANA VINCENT

APPEARANCES:

ROBERT J. ROMADKA, Esquire
JOHN O. HENNEGAN, Esquire
DONALD BRAND, Esquire
On behalf of Petitioner

T. ROGERS HARRISON, Esquire
On behalf of Protestants

JUDITH A. ARNOLD, Esquire
On behalf of Assistant Attorney General

PHYLLIS COLE FRIEDMAN, Esquire
PETER MAX ZIMMERMAN, Esquire
On behalf of People's Counsel

IN THE MATTER OF JOSEPH F. EVERING * BEFORE THE COUNTY BOARD OF

* APPEALS OF BALTIMORE COUNTY

* CASE NO. 85-65-XSPHA

* January 21, 1986

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County, Room 218, at the Courthouse, Towson, Maryland 21204 at 10 a.m., January 21, 1986.

* * * * *

BOARD MEMBERS:

LAWRENCE SCHMIDT, Esquire
Chairman
WILLIAM T. HACKETT
KEITH S. FRANZ, Esquire

APPEARANCES:

ROBERT J. ROMADKA, Esquire
JOHN O. HENNEGAN, Esquire
On behalf of Petitioner

T. ROGERS HARRISON, Esquire
On behalf of Protestants

JUDITH A. ARNOLD, Esquire
Assistant Attorney General

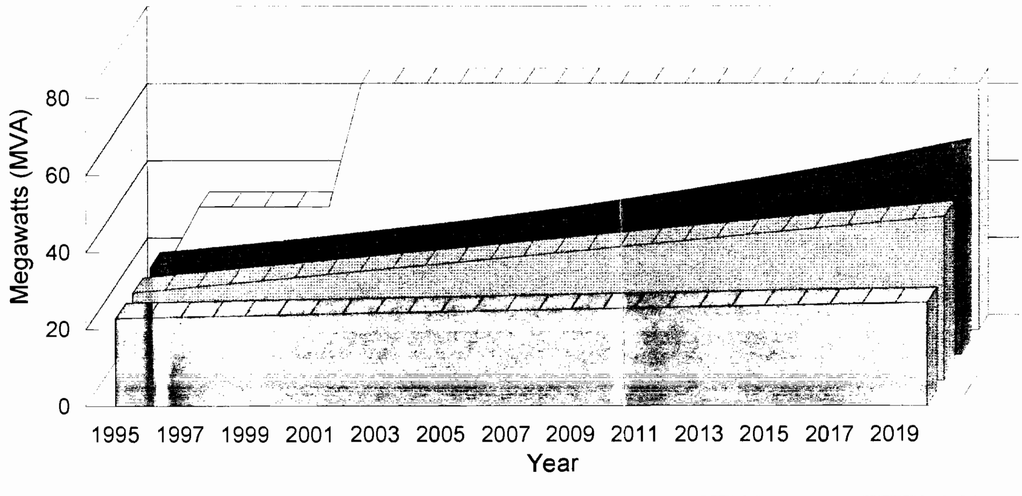
PHYLLIS COLE FRIEDMAN, Esquire
On behalf of People's Counsel

Second half of Day 1,
begins with conclusion
of Dr. Pine; witness
before Dr. Pine (Ms. Evering)
is gone, rest of day is
complete

Day 2 - Complete Transcript -
Where Mr. Gontrum begins
to speak on Pg. 99 is
Where reporters change
& Barker has conclusion of
transcript which I believe
has been distributed.

Need Comparison vs Capacity

(All Projections include Hickory Meadow)



assume 75 units = .7megawatt

P. 228 : LOT A2
RAYMOND JAY FISHER
RAYMOND H. FISHER, ET. AL.
1822 RIDGE ROAD
REISTERSTOWN, MD. 21136-5600
TAX ACCOUNT : 08-0819035868
LIBER / FOLIO : 5426 / 87
ZONED R.C.5

P. 228 : LOT A1
RONALD P. HANLEY
ROSEMARY HANLEY
1820 RIDGE ROAD
REISTERSTOWN, MD. 21136-5600
TAX ACCOUNT : 08-0819035867
LIBER / FOLIO : 6059 / 411
ZONED R.C.5

P. 51
GRACE METHODIST CHURCH, INC.
FALLS ROAD
COCKEYSVILLE, MD. 21030

TAX ACCOUNT : 08-0807060575
2.940 ACRES
LIBER / FOLIO : 2335 / 99
ZONED R.C.5

EX. DRIVEWAY

EX. GRAVEL DRIVEWAY

WIDENING STRIP
75.00'

N 61° 30' 00 E

S 28° 17' 10" E
35.42'

WIDE GATE

EXISTING SUBSTATION (TO BE REMOVED)

PROPOSED FENCE

EX. GRAVEL PARKING AREA

EX. ANTENNA MAST

EX. POOL & DECK (TO BE REMOVED)

EX. EARTH DRIVEWAY

N 42° 30' 18" W

12 WHITE PINE AT 15' O.C.

P. 386
DOROTHY L. MARSDEN
1823 RIDGE ROAD
REISTERSTOWN, MD. 21136-5617
TAX ACCOUNT : 08-1900006034
2.759 ACRES
ZONED R.C.5

EX. HOUSE & CONC. WALK (TO BE REMOVED)

EX. WOODS

EX. SEPTIC CLEAN OUT

EX. SHEDS (TO BE REMOVED)

LEGEND

A = FUTURE 34.5 KV CAPACITOR
B = 34.5 KV DISC SWITCHING STRUCTURE
C = 34.5 KV CIRCUIT SWITCHER
D = 34.5 KV BUS SUPPORT
E = 34.5 KV TRANSFORMER
F = 13 KV BUS SUPPORT
G = 13 KV LOAD BRK. SWITCHING STRUCTURE
H = 13 KV SWITCHGEAR

P. 79 : LOT 15
CARL FOLLO
1 JOEL COURT
REISTERSTOWN, MD. 21136-5643
TAX ACCOUNT : 08-2100008993
2.950 ACRES
LIBER / FOLIO : 8816 / 620
ZONED : R.C.5

5 WHITE PINE AT 15' O.C.

CH= S 06° 15' 00" E

L= 360.63'

R= 475.00'

5 NORWAY SPRUCE AT 15' O.C.

9 WHITE PINE AT 15' O.C.

3 NORWAY SPRUCE AT 15' O.C.

5 WHITE PINE AT 15' O.C.

EX. DRIVEWAY

R. 338
FREDRICK R. VINUP
ANN L. VINUP
1821 RIDGE ROAD
REISTERSTOWN, MD. 21136-5617
TAX ACCOUNT : 08-0822035540
LIBER / FOLIO : 4941 / 720
ZONED : R.C.5

N 21° 23' 37" E
51.61'

N 73° 49' 47" W
208.99'

P. 79 : LOT 24
JAMES J. KIRCHNER, JR.
TINA M. KIRCHNER
4 JOEL COURT
REISTERSTOWN, MD. 21136
TAX ACCOUNT : 08-2100009002
3.662 ACRES
LIBER / FOLIO : 9657 / 396
ZONED : R.C.5

TRACT A
ELECTRIC CO.
ACCOUNTING UNIT
P.O. BOX 1475
MORE, MD. 21203
ACCOUNT : 08-2100008988
LIBER / FOLIO : 8085 / 474
ZONED R.C.5

P. 79 : LOT 16
ROBERT J. RYTTER
CAROL P. RYTTER
3 JOEL COURT
REISTERSTOWN, MD. 21136-5643
TAX ACCOUNT : 08-2100008994
2.972 ACRES
LIBER / FOLIO : 9403 / 619
ZONED : R.C.5

S 15° 30' 00" W
64.00'

D= 49° 30' 00"

P. 79 : LOT 17
IRA N. BROWN
CYNTHIA M. BROWN
5 JOEL COURT
REISTERSTOWN, MD. 21136-5643
TAX ACCOUNT : 08-2100006995
3.173 ACRES
LIBER / FOLIO : 8858 / 720
ZONED R.C.5

FENCE 8'-0"
34.5 KV DISC SW 12'-10¼"
34.5 KV CKT SW STRUCT 12'-0"
34.5 KV BUS SUPP 12'-10¼"
34.5-13KV TRANSF 13'-7¾"
13 KV SWITCHING STRUCTURE 14'-6"
13 KV SWGR ENCLOSURE 13'-0"

MAXIMUM HEIGHT OF STRUCTURES

Petitioner's #1

TUFTON AVE. SHAWAN ROAD
HMX AVE.
SITE
OLD COURT RD
FALLS RD
RIDGE RD

LOCATION MAP
SCALE: 1" = 2000'

NOTES:

1. IVY HILL SUBSTATION IS AN UNATTENDED STATION AND NO PERMANENT EMPLOYEES ARE TO BE LOCATED ON THE PREMISES. AVERAGE DAILY TRIPS: 1/WEEK.
2. THERE ARE NO EXISTING OR PROPOSED WATER AND SEWER TO THE STATION.
3. FENCE: 8 FT. OVERALL HEIGHT CONSISTING OF 7 FT. OF CHAIN LINK FABRIC AND THREE STRANDS OF BARBED WIRE (TURNED OUT).
4. ROADWAY: COMPACT SUBGRADE TO 95% DENSITY AS DETERMINED BY ASTM 1557-70. INSTALL 8" OF CR-6? CRUSHED STONE BASE IN TWO LIFTS AND COMPACT EACH LIFT WITH A 10 TON ROLLER. INSTALL 2" BITUMINOUS BINDER COURSE (B1 BAND). INSTALL 1" BITUMINOUS CONCRETE SURFACE (SM BAND) AS PER MARYLAND STATE HIGHWAY ADMINISTRATION SPECIFICATIONS.
5. AREA WITHIN FENCE TO BE COVERED WITH 4" OF STONE OVER NEW GRADE. STONE SHALL BE GRAY IN COLOR, WITH A LOS ANGELES ABRASION RATING LESS THAN 50% AND GRADATION IN ACCORDANCE WITH MARYLAND STATE HIGHWAY ADMINISTRATION SHA-4.
6. ALL AREAS NOT COVERED BY STONE OR PAVING WILL BE SEEDED WITH GRASS ACCORDING TO MARYLAND S.C.S. AND/OR BALTIMORE COUNTY SPECIFICATIONS.
7. ALL ELECTRIC STRUCTURES ARE FUNCTIONALLY ATTACHED.
8. TOPOGRAPHIC AND BOUNDARY INFORMATION TAKEN FROM SURVEY PERFORMED BY: ASM TECHNOLOGIES, INC.
   2 WEST FORREST AVENUE
   SHREWSBURY, PA. 17361
   717-235-8325
9. EXISTING SEPTIC SYSTEM SHALL BE PURIFIED AND BACKFILLED OR REMOVED AT TIME OF RAZING THE EXISTING HOUSE.
10. EXISTING WELL SHALL BE BACKFILLED BY A LICENSED WELL DRILLER WHO MUST SUBMIT A WELL ABANDONMENT REPORT AT THE TIME OF RAZING THE EXISTING STRUCTURE.
11. PETITION FOR A VARIANCE FROM SECTION 1A04.3.B.3 OF THE BALTIMORE COUNTY ZONING REGULATIONS TO PERMIT STRUCTURES AS CLOSE AS 0 FEET FROM INTERIOR LOT LINES IN LIEU OF THE REQUIRED 50 FOOT BUILDING SETBACK.
12. PETITION FOR A SPECIAL EXCEPTION UNDER THE ZONING REGULATIONS OF BALTIMORE COUNTY TO USE THE HEREIN DESCRIBED PROPERTY FOR AN OUTDOOR ELECTRIC PUBLIC UTILITY SERVICE CENTER (ELECTRIC SUBSTATION) IN A RC5 ZONE PURSUANT TO SECTION 1A04.2.B.11 OF THE BALTIMORE COUNTY ZONING REGULATIONS.

CASE NO. 3780-X — PETITIONER: BALTIMORE GAS & ELECTRIC COMPANY PETITION FOR SPECIAL EXCEPTION TO USE SAID PROPERTY FOR THE CONSTRUCTION OF AN ELECTRICAL TRANSFORMER SUBSTATION. DEPUTY ZONING COMMISSIONER BY ORDER DATED MARCH 14, 1958, GRANTED SPECIAL EXCEPTION REQUEST.

CASE NO. 4536-X — PETITIONER: BALTIMORE GAS & ELECTRIC COMPANY PETITION FOR SPECIAL EXCEPTION FOR WIRELESS TRANSMITTING AND RECEIVING STATION. ZONING COMMISSIONER BY ORDER DATED MARCH 9, 1959, GRANTED SPECIAL EXCEPTION REQUEST.

APPLICANT/OWNER/CONTRACT PURCHASER
BALTIMORE GAS & ELECTRIC COMPANY
SYSTEM ENGINEERING & CONSTRUCTION DEPARTMENT
LEXINGTON & LIBERTY STREETS
1020 G & E BUILDING
BALTIMORE, MD. 21201
C/O MONICA P. McGRADY, P.E.
1-410-234-5294

THIS PROPERTY LOCATED IN THE
6TH ELECTION DISTRICT OF,
3RD COUNCIL DISTRICT
BALTIMORE COUNTY, MARYLAND
ZONED R.C.5
TAX MAP NO. 30
PARCEL NO. 247, 338, & 79 - TRACT A
TOTAL AREA : 2.8933 ACRES
ZONING MAP NO. D-2

Rev	Date	J.O./Est. No.	Description	Approved

ENGINEERING
Civil
Elec.
Proj. Engr.
Mgr.
Prin. Engr.
Supv. Engr.

DESIGN GROUP
Designer
Drawn
Checked
Appd.
Date Appd.

PLAT TO ACCOMPANY PETITION FOR ZONING SPECIAL EXCEPTION AND VARIANCES

34.5-13.8 KV SUBSTATION

IVY HILL

BALTIMORE GAS AND ELECTRIC COMPANY
DISTRIBUTION & TRANSMISSION ENGINEERING DEPT.
SYSTEM ENGINEERING SECTION

File | Scale: 1" = 20'
Microfilmed Orig. ☐ Rev. ..... | Dwg. No. 400-701-E

30X

Petitioners Ex 2

P. 228 : LOT A2
RAYMOND JAY FISHER
RAYMOND H. FISHER, ET. AL
1822 RIDGE ROAD
REISTERSTOWN, MD. 21136-5600
TAX ACCOUNT : 08-0819035868
LIBER / FOLIO : 5426 / 87
ZONED R.C.5

P. 228 : LOT A1
RONALD P. HANLEY
ROSEMARY HANLEY
1820 RIDGE ROAD
REISTERSTOWN, MD. 21136-5600
TAX ACCOUNT : 08-0819035867
LIBER / FOLIO : 6059 / 411
ZONED R.C.5

P. 51
GRACE METHODIST CHURCH, INC.
FALLS ROAD
COCKEYSVILLE, MD. 21030

TAX ACCOUNT : 08-0807060575
2.940 ACRES
LIBER / FOLIO : 2335 / 99
ZONED R.C.5

EX. DRIVEWAY

GENT ROAD

RIDGE ROAD

EX. PAVING

N 60° 30' 02" E 153.95'

256.59'
102.64'

45'

20'

655

EX. DRIVEWAY

EX. GRAVEL DRIVEWAY

28.10'

N 61° 30' 00 E

WIDENING STRIP
75.00'

S 28° 17' 10" E

S 25° 48' 25" E 352.03'

30'

670

660

5' WIDE GATE

EXISTING SUBSTATION (TO BE REMOVED)

EX. WELL

PROPOSED FENCE

EX. GRAVEL PARKING AREA

EX. SHED

EX. ANTENNA MAST

EX. POOL & DECK (TO BE REMOVED)

EX. EARTH DRIVEWAY

WHITE PINE AT 15' O.C.

CH S 06° 15' 00" E

662

661

660

659

658

657

656

655

654

653

652

651

650

649

648

647

646

645

644

643

642

641

640

639

638

637

636

635

634

633

632

631

630

629

628

627

626

625

624

623

622

621

620

619

618

617

616

615

614

613

612

611

610

609

608

607

606

605

604

603

602

601

600

599

598

597

596

595

594

593

592

591

590

589

588

587

586

585

584

583

582

581

580

579

578

577

576

575

574

573

572

571

570

569

568

567

566

565

564

563

562

561

560

559

558

557

556

555

554

553

552

551

550

549

548

547

546

545

544

543

542

541

540

539

538

537

536

535

534

533

532

531

530

529

528

527

526

525

524

523

522

521

520

519

518

517

516

515

514

513

512

511

510

509

508

507

506

505

504

503

502

501

500

499

498

497

496

495

494

493

492

491

490

489

488

487

486

485

484

483

482

481

480

479

478

477

476

475

474

473

472

471

470

469

468

467

466

465

464

463

462

461

460

459

458

457

456

455

454

453

452

451

450

449

448

447

446

445

444

443

442

441

440

439

438

437

436

435

434

433

432

431

430

429

428

427

426

425

424

423

422

421

420

419

418

417

416

415

414

413

412

411

410

409

408

407

406

405

404

403

402

401

400

399

398

397

396

395

394

393

392

391

390

389

388

387

386

385

384

383

382

381

380

379

378

377

376

375

374

373

372

371

370

369

368

367

366

365

364

363

362

361

360

359

358

357

356

355

354

353

352

351

350

349

348

347

346

345

344

343

342

341

340

339

338

337

336

335

334

333

332

331

330

329

328

327

326

325

324

323

322

321

320

319

318

317

316

315

314

313

312

311

310

309

308

307

306

305

304

303

302

301

300

299

298

297

296

295

294

293

292

291

290

289

288

287

286

285

284

283

282

281

280

279

278

277

276

275

274

273

272

271

270

269

268

267

266

265

264

263

262

261

260

259

258

257

256

255

254

253

252

251

250

249

248

247

246

245

244

243

242

241

240

239

238

237

236

235

234

233

232

231

230

229

228

227

226

225

224

223

222

221

220

219

218

217

216

215

214

213

212

211

210

209

208

207

206

205

204

203

202

201

200

199

198

197

196

195

194

193

192

191

190

189

188

187

186

185

184

183

182

181

180

179

178

177

176

175

174

173

172

171

170

169

168

167

166

165

164

163

162

161

160

159

158

157

156

155

154

153

152

151

150

149

148

147

146

145

144

143

142

141

140

139

138

137

136

135

134

133

132

131

130

129

128

127

126

125

124

123

122

121

120

119

118

117

116

115

114

113

112

111

110

109

108

107

106

105

104

103

102

101

100

99

98

97

96

95

94

93

92

91

90

89

88

87

86

85

84

83

82

81

80

79

78

77

76

75

74

73

72

71

70

69

68

67

66

65

64

63

62

61

60

59

58

57

56

55

54

53

52

51

50

49

48

47

46

45

44

43

42

41

40

39

38

37

36

35

34

33

32

31

30

29

28

27

26

25

24

23

22

21

20

19

18

17

16

15

14

13

12

11

10

9

8

7

6

5

4

3

2

1

0

-1

-2

-3

-4

-5

-6

-7

-8

-9

-10

-11

-12

-13

-14

-15

-16

-17

-18

-19

-20

-21

-22

-23

-24

-25

-26

-27

-28

-29

-30

-31

-32

-33

-34

-35

-36

-37

-38

-39

-40

Petitioners Ex 3

P 228 LOT A2
RAYMOND JAY FISHER
RAYMOND H. FISHER, ET AL
1822 RIDGE ROAD
REISTERSTOWN, MD 21136-5600
TAX ACCOUNT 08-0819035868
LIBER / FOLIO 5426 / 87
ZONED R.C.5

P 228 LOT A1
RONALD P. HANLEY
ROSEMARY HANLEY
1820 RIDGE ROAD
REISTERSTOWN, MD. 21136-5600
TAX ACCOUNT 08-0819035867
LIBER / FOLIO 6059 / 411
ZONED R.C.5

P 51
GRACE METHODIST CHURCH, INC
FALLS ROAD
COCKEYSVILLE, MD. 21030

TAX ACCOUNT 08-0807060575
2.940 ACRES
LIBER / FOLIO 2335 / 99
ZONED R.C.5

EX. DRIVEWAY

EX. PAVING

GENT ROAD

RIDGE ROAD

N.60° 30' 02" E
153.95'

256.59'
102.64'

45'

20'

WIDENING STRIP
75.00'

N 61° 30' 00 E

S 28° 17' 10" E

S 28° 00' 00" E
352.03'

75.00'

24'

EX. DRIVEWAY

EX. GRAVEL PARKING AREA

EXISTING SUBSTATION (TO BE REMOVED)

EX. POLE & LEAD (TO BE REMOVED)

EX. GRAVEL

EX. PAVING

EX. CURB

EX. DRIVEWAY

CHS 66° 15' 00" E

L=360.63'

R=875.00'

S 15° 30' 00" W
64.00'

S 43° 30' 00" W

15 WHITE PINE AT 15' O.C.

8 NORWAY SPRUCE AT 15' O.C.

15 WHITE PINE AT 15' O.C.

5 NORWAY (SPRUCE AT 15' O.C.

JOI'L COURT

670

665

660

655

650

645

640

30'

30x

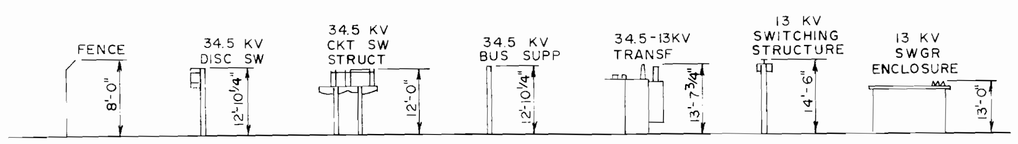
P 79 LOT 15
CARL FOLLO
1 JOEL COURT
REISTERSTOWN, MD 21136-5643
TAX ACCOUNT 08-2100008993
2.950 ACRES
LIBER / FOLIO 8816 / 620
ZONED R.C.5

P 79 LOT 16
ROBERT J. RYTTER
CAROL P. RYTTER
3 JOEL COURT
REISTERSTOWN, MD. 21136-5643
TAX ACCOUNT 08-2100008994
2.972 ACRES
LIBER / FOLIO 9403 / 619
ZONED R.C.5

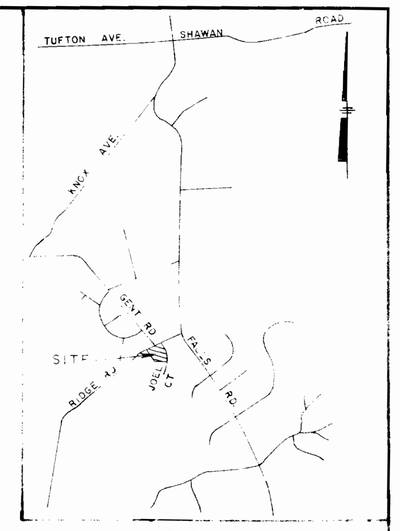
P 79 LOT 17
IRA N. BROWN
CYNTHIA M. BROWN
5 JOEL COURT
REISTERSTOWN, MD. 21136-5643
TAX ACCOUNT 08-2100008995
3.173 ACRES
LIBER / FOLIO 8858 / 720
ZONED R.C.5

LEGEND

A = FUTURE 34.5 KV CAPACITOR
B = 34.5 KV DISC SWITCHING ST
C = 34.5 KV CIRCUIT SWITCHER
D = 34.5 KV BUS SUPPORT
E = 34.5 KV TRANSFORMER
F = 13 KV BUS SUPPORT
G = 13 KV LOAD BRK. SWITCHING
H = 13 KV SWITCHGEAR



MAXIMUM HEIGHT OF STRUCTURES



LOCATION MAP
SCALE: 1" = 2000'

PLANT LIST

QUANTITY	COMMON NAME/ BOTANICAL NAME	SIZE	REMARKS
64	EASTERN WHITE PINE/ PINUS STROBUS	8' HT.	B&B - WELL BRANCHED
13	NORWAY SPRUCE/ PICEA ABIES	8' HT.	B&B - WELL BRANCHED
76	LEYLAND CYPRESS/ CUPRESSOCYPARIS LEYLANDII	8' HT.	B&B - WELL BRANCHED
6	CANADIAN HEMLOCK/ TSUGA CANADENSIS	8' HT.	B&B - WELL BRANCHED

NOTES:

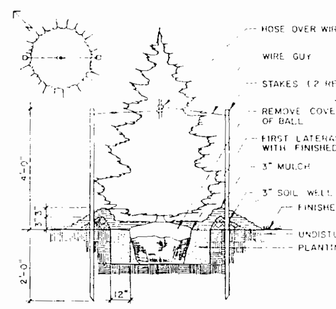
1. IVY HILL SUBSTATION IS AN UNATTENDED STATION AND NO PERMANENT EMPLOYEES ARE TO BE LOCATED ON THE PREMISES. AVERAGE DAILY TRIPS: 1/WEEK.
2. THERE ARE NO EXISTING OR PROPOSED WATER AND SEWER TO THE STATION.
3. FENCE: 8 FT. OVERALL HEIGHT CONSISTING OF 7 FT. OF CHAIN LINK FABRIC AND THREE STRANDS OF BARBED WIRE (TURNED OUT).
4. ROADWAY: COMPACT SUBGRADE TO 95% DENSITY AS DETERMINED BY ASTM 1557-70. INSTALL 8" OF CR-6? CRUSHED STONE BASE IN TWO LIFTS AND COMPACT EACH LIFT WITH A 10 TON ROLLER. INSTALL 2" BITUMINOUS BINDER COURSE (B1 BAND). INSTALL 1" BITUMINOUS CONCRETE SURFACE (SN BAND) AS PER MARYLAND STATE HIGHWAY ADMINISTRATION SPECIFICATIONS.
5. AREA WITHIN FENCE TO BE COVERED WITH 4" OF STONE OVER NEW GRADE. STONE SHALL BE GRAY IN COLOR, WITH A LOS ANGELES ABRASION RATING LESS THAN 50% AND GRADATION IN ACCORDANCE WITH MARYLAND STATE HIGHWAY ADMINISTRATION SHA-4.
6. ALL AREAS NOT COVERED BY STONE OR PAVING WILL BE SEEDED WITH GRASS ACCORDING TO MARYLAND S.C.S. AND/OR BALTIMORE COUNTY SPECIFICATIONS.
7. ALL ELECTRIC STRUCTURES ARE FUNCTIONALLY ATTACHED.
8. TOPOGRAPHIC AND BOUNDARY INFORMATION TAKEN FROM SURVEY PERFORMED BY: ASM TECHNOLOGIES, INC.
   2 WEST FORREST AVENUE
   SHREWSBURY, PA. 17361
   717-235-8325
9. EXISTING SEPTIC SYSTEM SHALL BE PURIFIED AND BACKFILLED OR REMOVED AT TIME OF RAZING THE EXISTING HOUSE.
10. EXISTING WELL SHALL BE BACKFILLED BY A LICENSED WELL DRILLER WHO MUST SUBMIT A WELL ABANDONMENT REPORT AT THE TIME OF RAZING THE EXISTING STRUCTURE.
11. PETITION FOR A VARIANCE FROM SECTION 1A04.3.B.3 OF THE BALTIMORE COUNTY ZONING REGULATIONS TO PERMIT STRUCTURES AS CLOSE AS 0 FEET FROM INTERIOR LOT LINES IN LIEU OF THE REQUIRED 50 FOOT BUILDING SETBACK.
12. PETITION FOR A SPECIAL EXCEPTION UNDER THE ZONING REGULATIONS OF BALTIMORE COUNTY TO USE THE HEREIN DESCRIBED PROPERTY FOR AN OUTDOOR ELECTRIC PUBLIC UTILITY SERVICE CENTER (ELECTRIC SUBSTATION) IN A RC5 ZONE PURSUANT TO SECTION 1A04.2.B.11 OF THE BALTIMORE COUNTY ZONING REGULATIONS.

CASE NO 3760-X PETITIONER: BALTIMORE GAS & ELECTRIC COMPANY PETITION FOR SPECIAL EXCEPTION TO USE SAID PROPERTY FOR THE CONSTRUCTION OF AN ELECTRICAL TRANSFORMER SUBSTATION. DEPUTY ZONING COMMISSIONER BY ORDER DATED MARCH 14, 1956 GRANTED SPECIAL EXCEPTION REQUEST

CASE NO 4535-X PETITIONER: BALTIMORE GAS & ELECTRIC COMPANY PETITION FOR SPECIAL EXCEPTION FOR WIRELESS TRANSMITTING AND RECIEVING STATION. ZONING COMMISSIONER BY ORDER DATED MARCH 9, 1959 GRANTED SPECIAL EXCEPTION REQUEST

PLANTING NOTES:

1. ALL TREES SHALL BE NURSERY STOCK GROWN IN MARYLAND, DELAWARE, NEW JERSEY, OHIO, PENNSYLVANIA, VIRGINIA, OR WEST VIRGINIA FOR AT LEAST TWO (2) YEARS PRIOR TO DIGGING.
2. PLANTING SOIL SHALL CONSIST OF A MIXTURE OF ONE (1) PART PEAT MOSS, THREE (3) PARTS TOPSOIL AND 10 LBS/C.Y. OF 0-20-0 FERTILIZER. PLANTING SOIL MIX SHALL BE PREPARED AT AN ON-SITE LOCATION DESIGNATED BY THE OWNER.
3. BACKFILL PLANTS WITH PLANTING SOIL; TAMP TO TWO-THIRDS DEPTH OF PIT AND THOROUGHLY WATER BEFORE BRINGING BACKFILL UP TO PROPER GRADE. THOROUGHLY WATER THE PLANT AGAIN AFTER THE SOIL WELL HAS BEEN COMPLETELY FORMED IN-PLACE.
4. WELLS AROUND TREES AND SHRUBS: AFTER PLANTING IS COMPLETE, FORM A SOIL WELL 3-INCHES HIGH AROUND EACH PLANT, EXTENDING TO THE OUTER LIMIT OF THE PLANT PIT IN ACCORDANCE WITH THE PLANTING DETAILS SHOWN ON THE DRAWINGS.
5. WHERE WATER IS NOT AVAILABLE ON-SITE, THE CONTRACTOR SHALL FURNISH SUFFICIENT QUANTITIES TO COMPLETE THE WORK AT NO ADDITIONAL COST TO THE OWNER.
6. STAKE ALL TREES REQUIRING STAKING WITHIN 24 HOURS AFTER PLANTING.
7. GUYING:
   a. GUYING SHALL BE IN ACCORDANCE WITH PLANTING DETAILS.
   b. STAKES SHALL BE SECURELY DRIVEN IN GROUND AND PLANTS GUYED TO PROVIDE AND MAINTAIN ADEQUATE SUPPORT UNTIL REMOVAL.
8. MULCH SHALL BE SHREDDED LONG FIBER HARDWOOD. MULCHING SHALL BE PERFORMED IN ACCORDANCE WITH THE PLANTING DETAILS ON THIS SHEET.
9. ALL TREES IN AN IMPAIRED, DEAD, OR DYING CONDITION AFTER ONE FULL GROWING SEASON SHALL BE REMOVED AND REPLACED.



EVERGREEN TREE DETAIL
N.T.S.

APPLICANT/OWNER/CONTRACT PURCHASER
BALTIMORE GAS & ELECTRIC COMPANY
SYSTEM ENGINEERING & CONSTRUCTION DEPARTMENT
LEXINGTON & LIBERTY STREETS
1020 G & E BUILDING
BALTIMORE, MD 21201
C/O MONICA P. McGRADY, P.E.
1-410-234-5294

THIS PROPERTY LOCATED IN THE
8TH ELECTION DISTRICT OF,
3RD COUNCIL DISTRICT
BALTIMORE COUNTY, MARYLAND
ZONED R.C.5
TAX MAP NO. 50
PARCEL NO. 247, 338, & 79 TRACT A
TOTAL AREA 2.8933 ACRES
ZONING MAP NO. D-2

Rev.	Date	W.O./Est. No.	Description	Approved

ENGINEERING
Civil .....
Elec. .....
Proj. Engr. .....
Proj. Mgr. .....
Str. Engr. .....
Supv. Engr. .....
.....

DESIGN GROUP
Designer .....
Drawn .....
Checked .....
Appd .....
Date Appd .....

LANDSCAPE PLAN

34.5-13.8 KV SUBSTATION

IVY HILL

BALTIMORE GAS AND ELECTRIC COMPANY
DISTRIBUTION & TRANSMISSION ENGINEERING DEPT.
SYSTEM ENGINEERING SECTION

File | Scale: 1" = 20' | Rev.
Microfilmed | Dwg. No.
Orig. ☐ Rev. .....

7

CASE 3760-X Pet Ex 1

3760

PETITION FOR SPECIAL EXCEPTION
FOR THE ERECTION OF AN ELECTRICAL TRANSFORMER SUBSTATION
IN THE ZONING DISTRICT OF BALTIMORE COUNTY

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY

IN THE MATTER OF : BEFORE THE
BALTIMORE GAS AND ELECTRIC COMPANY : ZONING COMMISSIONER
: OF BALTIMORE COUNTY

For a Special Exception Under the Zoning Regulations and Restrictions of Baltimore County

To the Zoning Commissioner of Baltimore County:

Baltimore Gas and Electric Company hereby petitions for a Special Exception under the Zoning Regulations and Restrictions of Baltimore County, passed by the County Commissioners of Baltimore County, agreeable to Chapter 577 of the Acts of the General Assembly of Maryland of 1943, and amendments thereto, for a certain use and exception as provided under said Regulations as follows:

A Special Exception for the construction of an electrical transformer substation on a parcel of land situate on the southeast side of Ridge Road 685 feet westerly from Falls Road in the Eighth Election District of Baltimore County, Maryland.

The location and the description of the land to be used for said electrical transformer substation is shown outlined in red on the plat attached hereto marked Petitioner's Exhibit "A" and made a part hereof.

Said parcel of land is described as follows:

BEGINNING for the same on the southeast side of Ridge Road at the distance of 1425 feet measured westerly along said road from the distance formed by the intersection of the south side of Ridge Road with the west side of the Falls Road, thence binding on the southeast side of Ridge Road, South 67 degrees 30 minutes West 100.3 feet, thence leaving said road and running South 22 degrees 30 minutes East 199 feet, more or less, thence binding on the division lines between Frank J. Marsden, Jr., and Dorothy L. Marsden and the three following courses and distances, viz: North 89 degrees 35 minutes East 111.36 feet, North 34 degrees 39 minutes West 99 feet to a point marked "P" and North 34 degrees 08 minutes West 30 feet more or less to the place of beginning.

Dorothy L. Marsden
Dorothy L. Marsden

Frank J. Marsden
Frank J. Marsden

BALTIMORE GAS AND ELECTRIC COMPANY

By: [illegible]
Vice President

Witness:

3/17/56

X 1028

X-Ref

3760-X

8:00 AM

ORDERED by the Zoning Commissioner of Baltimore County this 28th day of February, 1956, that the subject matter of this petition be advertised in a newspaper of general circulation throughout Baltimore County and that the property be posted, as required by the Zoning Regulations and Act of Assembly aforesaid, and that a public hearing thereon be had in the office of the Zoning Commissioner of Baltimore County, Maryland, on the 14th day of March, 1956, at 1 o'clock P. M.

Zoning Commissioner
of Baltimore County

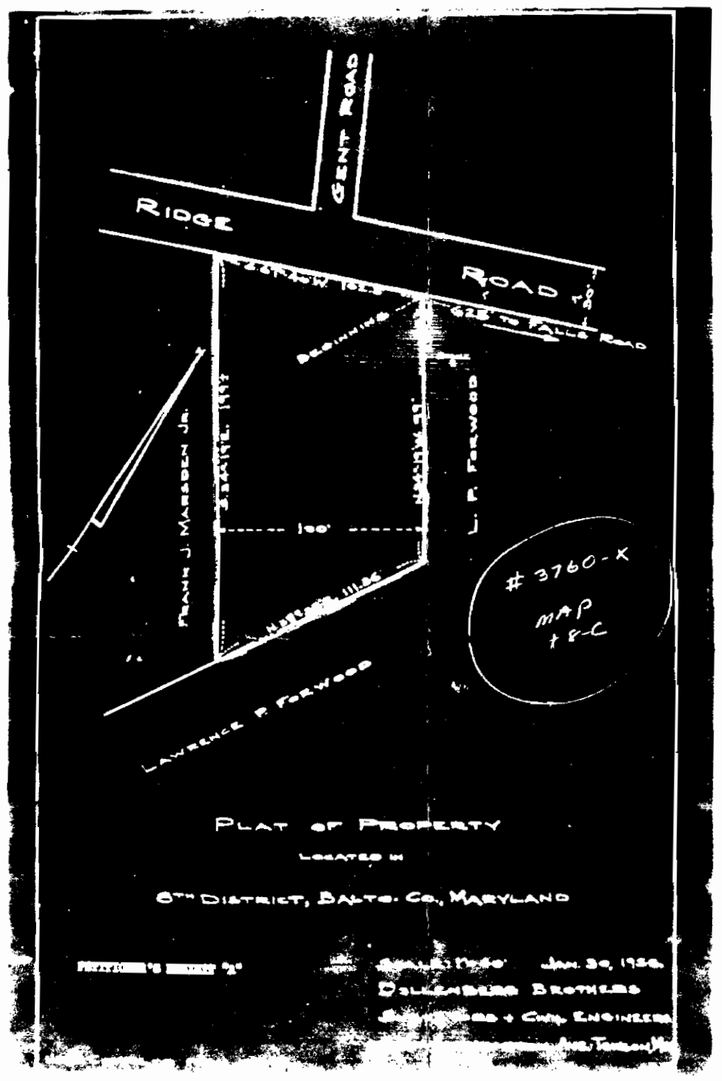
Upon hearing on the above petition for a special exception to use said property for the construction of an electrical transformer substation, and it appearing that by reason of location, the safety, health and the general welfare of the community not being detrimentally affected, the said petition should be granted, therefore:

It is this 29th day of March, 1956, ORDERED by the Deputy Zoning Commissioner of Baltimore County, that the aforesaid petition for a special exception, be and the same is hereby granted.

Deputy Zoning Commissioner
of Baltimore County

CERTIFICATE OF POSTING

CERTIFICATE OF PUBLICATION


GENT ROAD
RIDGE
ROAD
BEGINNING
FRANK J. MARSDEN JR.
L. P. FORWOOD
LAWRENCE P. FORWOOD
#3760-K
MAP
PLAT OF PROPERTY
LOCATED IN
6TH DISTRICT, BALTO. CO., MARYLAND
SCALE 1"=50'
JAN. 24, 1956
BLANKENBERG BROTHERS
CIVIL ENGINEERS

P. 228 : LOT A2
RAYMOND JAY FISHER
& BOND H. FISHER, ET. AL.
1822 RIDGE ROAD
REISTERSTOWN, MD. 21136-5600
TAX ACCOUNT : 08-0819035868
LIBER / FOLIO : 5426 / 87
ZONED R.C.5

EX. DRIVEWAY

P. 228 : LOT A1
RONALD P. HANLEY
ROSEMARY HANLEY
1820 RIDGE ROAD
REISTERSTOWN, MD. 21136-5600
TAX ACCOUNT : 08-0819035867
LIBER / FOLIO : 6059 / 411
ZONED R.C.5

P. 51
GRACE METHODIST CHURCH, INC.
FALLS ROAD
COCKEYSVILLE, MD. 21030

TAX ACCOUNT : 08-0807060575
2.940 ACRES
LIBER / FOLIO : 2335 / 99
ZONED R.C.5

EX. DRIVEWAY

GENT ROAD

RIDGE ROAD

EX. PAVING

N 60° 30' 02" E
153.95'
45'
256.59'
102.64'

TRACT B
0.9224 AC.

TRACT C
0.4081 AC.

6 WHITE PINE AT 15' O.C.

EX. WOODS

EX. GRAVEL DRIVEWAY

WIDENING STRIP
75.00'

N 61° 30' 00 E

S 28° 17' 10" E
35.42'

S 22° 30' 18" E
128.10'
113.60'
141.70'

38 LEYLAND CYPRESS AT 8'O.C.

MIN. BLDG. SETBACK

16' WIDE GATE

PROPOSED PARK & TURN AREA

EXISTING SUBSTATION (TO BE REMOVED)

EX. WOODS

NOTE : 50 FOOT LOT LINE SETBACK RENDERS BUILDING ENVELOPE FOR PARCEL 247 (TRACT C) VIRTUALLY NONEXISTENT

P. 247
BALTIMORE GAS & ELECTRIC CO.
TAX ACCOUNTING UNIT
P.O. BOX 1475
BALTIMORE, MD. 21203
TAX ACCOUNT : 08-0802002467
LIBER / FOLIO : 2911 / 289
ZONED R.C.5

PROPOSED FENCE

FUTURE CAR STR.

EX. GRAVEL PARKING AREA

N 42° 30' 18" W
321.90'

P. 386
DOROTHY L. MARSDEN
1823 RIDGE ROAD
REISTERSTOWN, MD. 21136-5617
TAX ACCOUNT : 08-1900006034
2.759 ACRES
ZONED R.C.5

12 WHITE PINE AT 15'O.C.

EX. HOUSE & CONC. WALK (TO BE REMOVED)

EX. POOL & DECK (TO BE REMOVED)

EX. SHED

EX. ANTENNA MAST

6 CANADIAN HEMLOCK AT 15' O.C.

PROP. ROADWAY LINE

S 21° 23' 34" W
167.03'

EX. WOODS

EX. SEPTIC CLEAN OUT

EX. SHEDS (TO BE REMOVED)

15 WHITE PINE AT 15'O.C.

PROPOSED STORM WATER MANAGEMENT AREA

NOTE: LIMIT OF WOODS SHOWN REFLECTS AFTER GRADING CONDITION.

P. 338
FREDRICK R. VINUP
ANN L. VINUP
1821 RIDGE ROAD
REISTERSTOWN, MD. 21136-5617
TAX ACCOUNT : 08-0822035540
LIBER / FOLIO : 4941 / 720
ZONED : R.C.5

N 21° 23' 37" E
516.61'

8 NORWAY SPRUCE AT 15' O.C.

R-412.00'

JOEL COURT

EX. WOODS

SETBACK LINE

EX. DRIVEWAY

TRACT A
1.5628 AC.

10' DRAINAGE & UTILITY EASEMENT

N 73° 49' 47" W
208.95'

15 WHITE PINE AT 15' O.C.

BLDG. RESTRICTION LINE

L=409.50.00'

5 NORWAY SPRUCE AT 15' O.C.

P. 79 : LOT 24
JAMES J. KIRCHNER, JR.
TINA M. KIRCHNER
4 JOEL COURT
REISTERSTOWN, MD. 21136
TAX ACCOUNT : 08-2100001002
3.662 / 2325
LIBER / FOLIO : 9657 / 356
ZONED : R.C.5

P. 79 : TRACT A
BALTIMORE GAS & ELECTRIC CO.
TAX ACCOUNTING UNIT
P.O. BOX 1475
BALTIMORE, MD. 21203
TAX ACCOUNT : 08-2100009003
LIBER / FOLIO : 8085 / 676
ZONED R.C.5

EX. PAVING

11 WHITE PINE AT 15' O.C.

S 21° 30' 00" W
640.00'

EX. DRIVEWAY

EX. CURB

P. 79 : LOT 16
ROBERT J. RYTTER
CAROL P. RYTTER
3 JOEL COURT
REISTERSTOWN, MD. 21136-5643
TAX ACCOUNT : 08-2100008994
2.972 ACRES
LIBER / FOLIO : 9403 / 619
ZONED : R.C.5

P. 79 : LOT 17
IRA N. BROWN
CYNTHIA M. BROWN
5 JOEL COURT
REISTERSTOWN, MD. 21136-5643
TAX ACCOUNT : 08-2100008995
3.173 ACRES
LIBER / FOLIO : 8858 / 720
ZONED R.C.5

P. 79 : LOT 15
CARL FOLLO
1 JOEL COURT
REISTERSTOWN, MD. 21136-5643
TAX ACCOUNT : 08-2100008993
2.950 ACRES
LIBER / FOLIO : 8816 / 620
ZONED : R.C.5

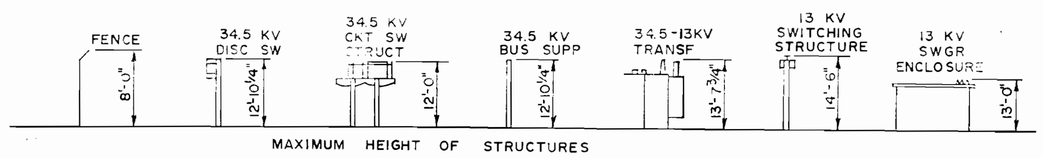
L=360.63'
CH=S 06° 15' 00" E
352.03'

655 660 665 670 650 645

LOCATION MAP
SCALE: 1"= 2000'

LEGEND

A = FUTURE 34.5 KV CAPACITOR
B = 34.5 KV DISC SWITCHING STRUCTURE
C = 34.5 KV CIRCUIT SWITCHER
D = 34.5 KV BUS SUPPORT
E = 34.5 KV TRANSFORMER
F = 13 KV BUS SUPPORT
G = 13 KV LOAD BRK. SWITCHING STRUCTURE
H = 13 KV SWITCHGEAR



MAXIMUM HEIGHT OF STRUCTURES

PLANT LIST

QUANTITY	COMMON NAME / BOTANICAL NAME	SIZE	REMARKS
53	EASTERN WHITE PINE / PINUS STROBUS	8' HT.	B&B - WELL BRANCHED
13	NORWAY SPRUCE / PICEA ABIES	8' HT.	B&B - WELL BRANCHED
38	LEYLAND CYPRESS / CUPRESSOCYPARIS LEYLANDII	8' HT.	B&B - WELL BRANCHED
6	CANADIAN HEMLOCK / TSUGA CANADENSIS	8' HT.	B&B - WELL BRANCHED

NOTES:

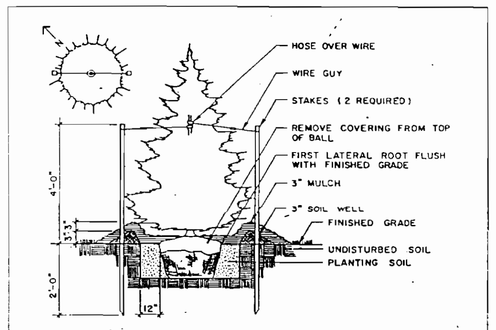
1. IVY HILL SUBSTATION IS AN UNATTENDED STATION AND NO PERMANENT EMPLOYEES ARE TO BE LOCATED ON THE PREMISES. AVERAGE DAILY TRIPS: 1/WEEK.
2. THERE ARE NO EXISTING OR PROPOSED WATER AND SEWER TO THE STATION.
3. FENCE: 8 FT. OVERALL HEIGHT CONSISTING OF 7 FT. OF CHAIN LINK FABRIC AND THREE STRANDS OF BARBED WIRE (TURNED OUT).
4. ROADWAY: COMPACT SUBGRADE TO 95% DENSITY AS DETERMINED BY ASTM 1557-70. INSTALL 8" OF CR-6? CRUSHED STONE BASE IN TWO LIFTS AND COMPACT EACH LIFT WITH A 10 TON ROLLER. INSTALL 2" BITUMINOUS BINDER COURSE (B1 BAND). INSTALL 1" BITUMINOUS CONCRETE SURFACE (SH BAND) AS PER MARYLAND STATE HIGHWAY ADMINISTRATION SPECIFICATIONS.
5. AREA WITHIN FENCE TO BE COVERED WITH 4" OF STONE OVER NEW GRADE. STONE SHALL BE GRAY IN COLOR, WITH A LOS ANGELES ABRASION RATING LESS THAN 50% AND GRADATION IN ACCORDANCE WITH MARYLAND STATE HIGHWAY ADMINISTRATION SHA-4.
6. ALL AREAS NOT COVERED BY STONE OR PAVING WILL BE SEEDED WITH GRASS ACCORDING TO MARYLAND S.C.S. AND/OR BALTIMORE COUNTY SPECIFICATIONS.
7. ALL ELECTRIC STRUCTURES ARE FUNCTIONALLY ATTACHED.
8. TOPOGRAPHIC AND BOUNDARY INFORMATION TAKEN FROM SURVEY PERFORMED BY: ASM TECHNOLOGIES, INC.
   2 WEST FORREST AVENUE
   SHREWSBURY, PA. 17361
   717-235-8325
9. EXISTING SEPTIC SYSTEM SHALL BE PURIFIED AND BACKFILLED OR REMOVED AT TIME OF RAZING THE EXISTING HOUSE.
10. EXISTING WELL SHALL BE BACKFILLED BY A LICENSED WELL DRILLER WHO MUST SUBMIT A WELL ABANDONMENT REPORT AT THE TIME OF RAZING THE EXISTING STRUCTURE.
11. PETITION FOR A VARIANCE FROM SECTION 1A04.3.B.3 OF THE BALTIMORE COUNTY ZONING REGULATIONS TO PERMIT STRUCTURES AS CLOSE AS 0 FEET FROM INTERIOR LOT LINES IN LIEU OF THE REQUIRED 50 FOOT BUILDING SETBACK.
12. PETITION FOR A SPECIAL EXCEPTION UNDER THE ZONING REGULATIONS OF BALTIMORE COUNTY TO USE THE HEREIN DESCRIBED PROPERTY FOR AN OUTDOOR ELECTRIC PUBLIC UTILITY SERVICE CENTER (ELECTRIC SUBSTATION) IN A RC5 ZONE PURSUANT TO SECTION 1A04.2.B.11 OF THE BALTIMORE COUNTY ZONING REGULATIONS.

PLANTING NOTES:

1. ALL TREES SHALL BE NURSERY STOCK GROWN IN MARYLAND, DELAWARE, NEW JERSEY, OHIO, PENNSYLVANIA, VIRGINIA, OR WEST VIRGINIA FOR AT LEAST TWO (2) YEARS PRIOR TO DIGGING.
2. PLANTING SOIL SHALL CONSIST OF A MIXTURE OF ONE (1) PART PEAT MOSS, THREE (3) PARTS TOPSOIL AND 10 LBS/C.Y. OF 0-20-0 FERTILIZER. PLANTING SOIL MIX SHALL BE PREPARED AT AN ON-SITE LOCATION DESIGNATED BY THE OWNER.
3. BACKFILL PLANTS WITH PLANTING SOIL; TAMP TO TWO-THIRDS DEPTH OF PIT AND THOROUGHLY WATER BEFORE BRINGING BACKFILL UP TO PROPER GRADE. THOROUGHLY WATER THE PLANT AGAIN AFTER THE SOIL WELL HAS BEEN COMPLETELY FORMED IN-PLACE.
4. WELLS AROUND TREES AND SHRUBS: AFTER PLANTING IS COMPLETE, FORM A SOIL WELL 3-INCHES HIGH AROUND EACH PLANT, EXTENDING TO THE OUTER LIMIT OF THE PLANT PIT IN ACCORDANCE WITH THE PLANTING DETAILS SHOWN ON THE DRAWINGS.
5. WHERE WATER IS NOT AVAILABLE ON-SITE, THE CONTRACTOR SHALL FURNISH SUFFICIENT QUANTITIES TO COMPLETE THE WORK AT NO ADDITIONAL COST TO THE OWNER.
6. STAKE ALL TREES REQUIRING STAKING WITHIN 24 HOURS AFTER PLANTING.
7. GUYING:
   a. GUYING SHALL BE IN ACCORDANCE WITH PLANTING DETAILS.
   b. STAKES SHALL BE SECURELY DRIVEN IN GROUND AND PLANTS GUYED TO PROVIDE AND MAINTAIN ADEQUATE SUPPORT UNTIL REMOVAL.
8. MULCH SHALL BE SHREDDED LONG FIBER HARDWOOD. MULCHING SHALL BE PERFORMED IN ACCORDANCE WITH THE PLANTING DETAILS ON THIS SHEET.
9. ALL TREES IN AN IMPAIRED, DEAD, OR DYING CONDITION AFTER ONE FULL GROWING SEASON SHALL BE REMOVED AND REPLACED.

CASE NO. 3780-X — PETITIONER: BALTIMORE GAS & ELECTRIC COMPANY PETITION FOR SPECIAL EXCEPTION TO USE SAID PROPERTY FOR THE CONSTRUCTION OF AN ELECTRICAL TRANSFORMER SUBSTATION. DEPUTY ZONING COMMISSIONER BY ORDER DATED MARCH 14, 1955, GRANTED SPECIAL EXCEPTION REQUEST.

CASE NO. 4535-X — PETITIONER: BALTIMORE GAS & ELECTRIC COMPANY PETITION FOR SPECIAL EXCEPTION FOR WIRELESS TRANSMITTING AND RECIEVING STATION. ZONING COMMISSIONER BY ORDER DATED MARCH 9, 1959, GRANTED SPECIAL EXCEPTION REQUEST.



EVERGREEN TREE DETAIL
N.T.S.

APPLICANT/OWNER/CONTRACT PURCHASER
BALTIMORE GAS & ELECTRIC COMPANY
SYSTEM ENGINEERING & CONSTRUCTION DEPARTMENT
LEXINGTON & LIBERTY STREETS
1020 G & E BUILDING
BALTIMORE, MD. 21201
C/O MONICA P. McGRADY, P.E.
1-410-234-5294

THIS PROPERTY LOCATED IN THE
8TH ELECTION DISTRICT OF,
3RD COUNCIL DISTRICT
BALTIMORE COUNTY, MARYLAND
ZONED R.C.5
TAX MAP NO. 50
PARCEL NO. 247, 338, & 79 : TRACT A
TOTAL AREA : 2.8933 ACRES
ZONING MAP NO. D-2

No.			Approved

Engineering Department Approval
Civil .....
Elec. .....
Proj. Engr. .....
Proj. Mgr. .....
Prin. Engr. .....
Supv. Engr. .....

DESIGN GROUP
Designer .....
Drawn .....
Checked .....
Appd. .....
Date Appd .....

LANDSCAPE PLAN
34.5-13.8 KV SUBSTATION
IVY HILL
BALTIMORE GAS AND ELECTRIC COMPANY
DISTRIBUTION & TRANSMISSION ENGINEERING DEPT.
SYSTEM ENGINEERING SECTION

File | Scale: 1"= 20' | Rev.
Microfilmed | Dwg. No.
Orig. ☐ Rev. .....

30X

Petitioner's #7 with attach photos

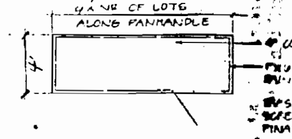
FINAL DEVELOPMENT PLAN
"FORWOOD PROPERTY"

LOCATED IN
8th ELEC. DIST. - BALTO. CO. - MD.
SCALE 1"=100' MARCH 22nd 1988
C.R.G. #87422 (SEE PRIOR #86272)
AMENDED 1-21-88

REVISED - 5-2-88

trash & mail pad detail

NO SCALE



TRASH & MAIL PADS SHALL HAVE EVERGREEN SCREEN PLANTING AS PER THE APPROVED FINAL LANDSCAPE PLAN.

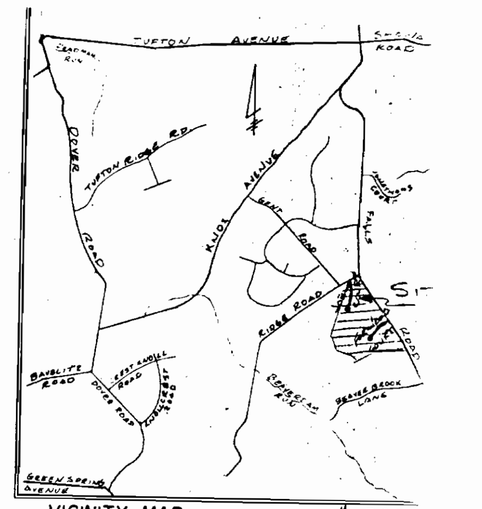
● INDICATES LOCATION OF TRASH & MAIL PADS ON PLAN.

NOTE:

THE DEVELOPER IS TO MAKE EVERY REASONABLE EFFORT TO PROVIDE MAIL & REFUSE SERVICES ALONG PANHANDLE DRIVES. IF EFFORT FAILS, TRASH & MAIL PAD AREAS WILL BE PROVIDED. IN EFFORT TO PROVIDE MAIL & TRASH COLLECTION, REFUSE COLLECTION, SNOW REMOVAL, MAIL DELIVERY & ROAD MAINTENANCE WILL BE PICK-UP TO THE RIGHT OF WAY ONLY & NOT ONTO THE PRIVATE DRIVE.

VICINITY MAP

1" = 3000'

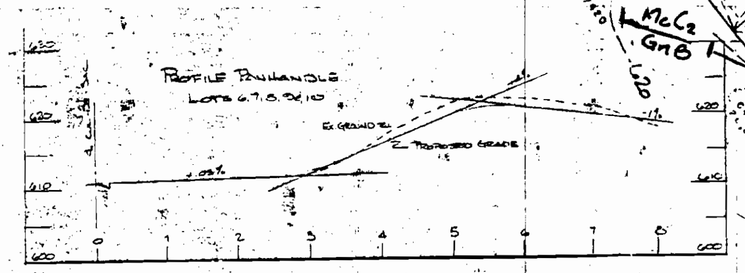


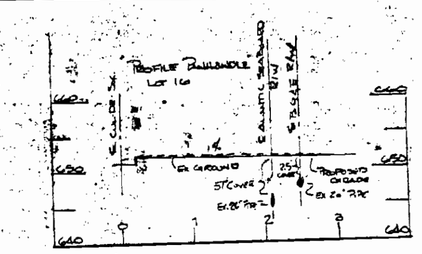
General Notes

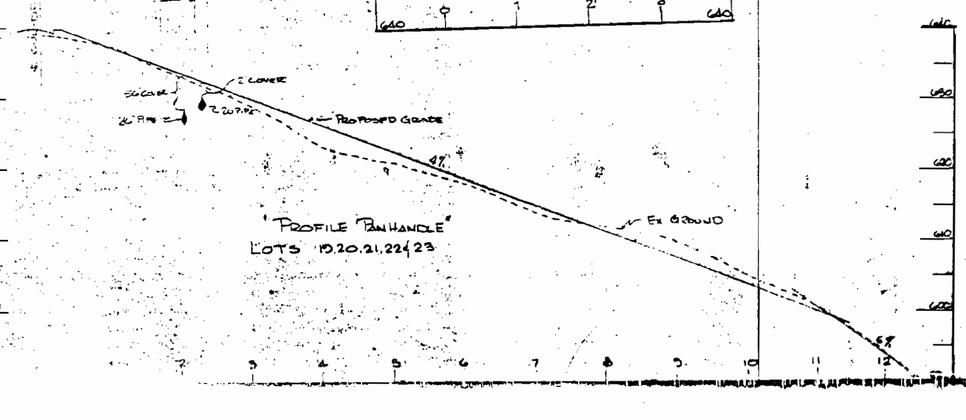
1. Watershed 11; Subwatershed 36. Councilmanic District 3. Census Tract #6087
2. Bldg. Data: Current Zoning and Acreage:
   Net = 77.03 Acres +/- RC-5
   Gross = 78.66 Acres +/- RC-5
   (Excludes 33' of ex. Falls Rd R/W).
   Density: Permitted - 78.66 Acres x 0.667 Dwelling/Acre = 52.47 Units
   Proposed - 24 Single Family Units = / Units
3. All units will be for sale.
4. Parking: Required - 16 units @ 2 Spaces/Dwelling Unit = 48 Spaces
   Proposed - A minimum of two off-street driveway spaces will be provided for each lot. 8 1/2' x 18' minimum.
5. Landscape Requirements:
   Required - 24 units @ 1 tree/unit = 24 trees
   Proposed - A minimum of 24 major deciduous trees.
6. Existing vegetation consists of hardwood forest and cultivated fields. Only trees for house and panhandle construction will be removed. The developer will require contractors to restrict work areas & maximum 7000 sq ft of clearing per lot shall be permitted.
7. There are no existing buildings on site as shown on plan.
8. There is one existing residence, an existing barn and an old root cellar which will be retained on the site. The remaining existing structures will be removed. None of the existing structures are on the Baltimore County Landmark List or the National Register.
9. Open space is not required in this zone.
10. Stormwater management quantity has been waived. Management of storm water quality will be provided by on lot swales. Letter dated 12-4-86.
11. The limit of 100 year flood coincides with the limits of the wetlands on the final plat and will approved by applicable State and County agencies having jurisdiction. Has been located on the site plan.
12. Wetlands on the site have been delineated by Environmental Planning & Design, Inc. The RSI site evaluation system was used to determine the ecological sites, endangered species habitats, or hazardous materials on the site.
13. Panhandle drive will have 16 feet wide bituminous pavement and will be maintained equally by all parties having rights to their use.
14. Construction or grading will occur within the limits of the vegetated stream buffer.
15. Refuse collection pads will provide 16 sq ft per unit served. Pad will provide an unobstructed opening facing the cul-de-sac. 22 meets Section 400 (Baltimore County Zoning Regulations).
16. There will be no access to Falls Rd except from Forwood Ct.
17. Each lot will be a minimum of one acre.
18. All buildings will be 75 ft from centerline of [illegible] and 50 ft from other tract boundaries and lot lines.
19. No more than 15% of any lot may be covered by buildings.
20. The existing gas tank and pump is to be removed.
21. Grading for lots to be performed by individual lot owners for grading of the proposed panhandles, and driveways.
22. Panhandle lots subject to declaration and maintenance agreements to be recorded among the Land Records of Baltimore County at the time of Plat Recordation. Panhandle lots for refuse collection. Snow removal and maintenance will be provided to the junction of the panhandle and street R/W line only and not onto the panhandle lot driveway. (Refuse to be collected by Baltimore County). The proposed paving sections shall be 3" of stone with 1 1/2 in. bituminous concrete surface on panhandle roads. Widths are shown hereon.
23. All septic systems are a minimum 200 ft from all wells.
24. No further subdivision of the parcel shown hereon is allowed unless approved by the Baltimore County Planning and Zoning Commission.
25. Where applicable, utilities shall be installed in accordance with the regulations or as amended by the Public Service Commission of Maryland regarding underground services.
26. If and when water & sewer facilities become available to the subdivision, connection thereto shall be required by the agency having jurisdiction.
27. No building permit shall be issued for the construction of a dwelling on a lot shown on the final plat until well approved by applicable State and County agencies having jurisdiction, has been located on the site for any lot.
28. In accordance with Sec. 22-29 of the Development Regulations, the following measures taken to protect the soil in this development which have moderate to severe limitations to move all building envelopes out of the Soil areas and to place a 30-ft building setback on the 15% slopes. In addition, the developer will place areas currently cultivated, in a grass cover.
29. Accessory structures, fences, or projections into yard cannot be located in flood plain areas or hydric soils.
30. This development plan is approved by the Zoning Commissioner based on his interpretation of the Zoning Regulations, that it complies with the present policies, policy and controls as they are delineated in the Zoning Regulations. [illegible] has been established [illegible] dwellings shown hereon. No lot shown hereon may be further divided, subdivided or developed for additional dwellings or any purpose other than that indicated presently on said plan. Utilization of this plan will have occurred when a dwelling is constructed and transferred for the purpose of occupancy.
31. The Development Plan complies with the C.R.G. Plan and all C.R.G. comments. 1-21-88
32. ● indicates flexibility in granting the dwelling, change in direction requires an amendment to the Development Plan prior to permit approval. Contact current Planning Office prior to any amendment application.
33. A LANDSCAPE PLAN MUST BE APPROVED BY THE OFFICE OF PLANNING PRIOR TO THE ISSUANCE OF A BUILDING PERMIT.
34. ENVELOPES SHOWN HEREON ARE FOR THE LOCATION OF ALL PRINCIPAL BUILDINGS ONLY. ACCESSORY STRUCTURES, FENCES & PROJECTIONS INTO YARDS MAY BE CONSTRUCTED OUTSIDE THE ENVELOPES BUT MUST COMPLY WITH SEC. 400.1, 301 OF THE B.C.Z.R.
35. DRIVEWAY CURB CUT LOCATION TO BE STAKED AFTER MODEL SELECTION BUT BEFORE INSTALLATION OF STREET CURBS.

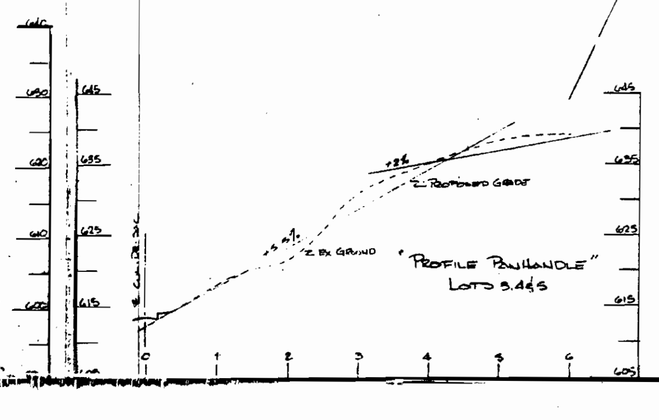
SOIL TYPES AND LIMITATIONS

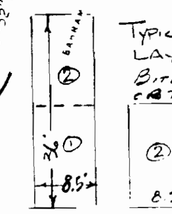
Symbol	Name	Slope Class	With Severe Limitations	Without Severe Limitations	Street and Parking
BaA	Baile	B	Severe: High Water Table; Poor Natural Drainage	Severe: High Water Table; Poor Natural Drainage	Severe: Hi Water Tabl Poor Natur Drainage
FlC2	Flinchum	B	Slight	Moderate: Slope	Moderate: Sl
FlC3		C	Moderate: Slope	Moderate: Slope	Severe: Sl
GnB	Glenelg	B	Moderate: Slope	Moderate: Slope	Severe: Sl
GoC2	Glenville	C	Severe: High Water Table	Moderate: High Water Table	Severe: Hi Water Tabl
GoD2		D	Slight	Slight	Moderate: Sl
MeC2	Manor	C	Slight	Slight	Moderate: Sl
MeD2		D	Severe: Slope	Severe: Slope	Severe: Sl
(Hi-D, Ma)					











LEGEND:

- 25% GRADE
- ST. LIGHT
- TRASH PAD
- SEPTIC AREA
- WELL AREA
- EXISTING WELL

STATE OF MARYLAND — GEORGE V. PALMER — No. 5302 — REGISTERED PROFESSIONAL LAND SURVEYOR

ENGINEER:
GERHOLD, CROSS & ETZEL
Registered Professional Land Surveyors
412 Delaware Avenue
TOWSON, MARYLAND 21204
#823-4470

OWNER & DEVELOPER:
GEO. V. PALMER
BUTLER MD. 21023 #771-4311
TAX # 21-00-000-795

OWNER LOT 21
LAWRENCE P. FORWOOD
REISTERSTOWN MD 21136
TAX # 08-06-04-5300 & 5302

Office of Planning and Zoning
Approved by:
Director of Planning
5/27/88
Zoning Commissioner

Petitioner's Exh. #8

PROPOSED IVY HILL SUBSTATION EXPANSION

IVY HILL SERVICE TERRITORY

TEMPORARILY MOVED TO DELIGHT

BEAVER DAM GATE STATION

OWINGS MILLS GATE STATION

NORTHERN DISTRIBUTION DIVISION DEPT.
203 GREEN SPRING DRIVE

LONG QUARTER PUMPING STA.

CAVES VALLEY EAST TERM.

CAVES VALLEY WEST TERM.

LAKESIDE NORTH TERM.

LAKESIDE SOUTH TERM.

PAINTERS MILL

Ret #19

R.C. 5

R C 5

R.C. 5

R C 5

R.C. 5

R C 5



PRINTED
JAN 05 1995
DAFT-McCUNE-WALKER

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
PHOTOGRAPHIC MAP

SCALE	LOCATION	SHEET
1" = 200' ±	GRACE CHURCH	N.W. 17-E

DATE OF PHOTOGRAPHY
JANUARY 1986

PREPARED BY AIR PHOTOGRAPHICS, INC.
MARTINSBURG, W.V. 25401

P. 228 : LOT A2
RAYMOND JAY FISHER
RAYMOND H. FISHER, ET. AL.
1822 RIDGE ROAD
REISTERSTOWN, MD. 21136-5600
TAX ACCOUNT : 08-0819035668
LIBER / FOLIO : 5426 / 87
ZONED R.C.5

P. 228 : LOT A1
RONALD P. HANLEY
ROSEMARY HANLEY
1820 RIDGE ROAD
REISTERSTOWN, MD. 21136-5600
TAX ACCOUNT : 08-0819035867
LIBER / FOLIO : 6059 / 411
ZONED R.C.5

P. 51
GRACE METHODIST CHURCH, INC.
FALLS ROAD
COCKEYSVILLE, MD. 21030
TAX ACCOUNT : 08-0807060575
2.940 ACRES
LIBER / FOLIO : 2335 / 99
ZONED R.C.5

EX. DRIVEWAY

RIDGE ROAD

EX. PAVING

N 60° 30' 02" E
153.95'
45'
256.59'
102.64'

TRACT B
0.9224 AC.

TRACT C
0.4081 AC.

EX. WOODS

EX. GRAVEL DRIVEWAY

EX. DRIVEWAY

38 EMERALD GREEN ARBORVITAE AT 8' O.C.

MIN. BLDG. SETBACK LINE

16' WIDE GATE

PROPOSED PARK & TURN AREA

EXISTING SUBSTATION (TO BE REMOVED)

EX. WELL

FUTURE CAP. STR.

PROPOSED FENCE

EX. GRAVEL PARKING AREA

12 WHITE PINE AT 15' O.C.

P. 386
DOROTHY L. MARSDEN
1823 RIDGE ROAD
REISTERSTOWN, MD. 21136-5617
TAX ACCOUNT : 08-1900006034
2.759 ACRES
ZONED R.C.5

EX. HOUSE & CONC. WALK (TO BE REMOVED)

PROP. ROADWAY

EX. POOL & DECK (TO BE REMOVED)

EX. SHED

EX. ANTENNA MAST

EX. EARTH DRIVEWAY

EX. WOODS

EX. SEPTIC CLEAN OUT

EX. SHEDS (TO BE REMOVED)

7 WHITE PINE AT 15' O.C.

P. 247
BALTIMORE GAS & ELECTRIC CO.
TAX ACCOUNTING UNIT
P.O. BOX 1475
BALTIMORE, MD. 21203
TAX ACCOUNT : 08-0802002467
LIBER / FOLIO : 2911 / 289
ZONED R.C.5

NOTE : 50 FOOT LOT LINE SETBACK RENDERS BUILDING ENVELOPE FOR PARCEL 247 (TRACT C) VIRTUALLY NONEXISTENT

WIDENING STRIP
75.00'

N 61° 30' 00 E

S 28° 17' 10" E
352.42'

S 42° 30' 18" E
113.60'
141.70'

S 29° 00' 00" E
528.00'

CH. S 06° 15' 00" E
352.03'

P. 79 : LOT 15
CARL FOLLO
1 JOEL COURT
REISTERSTOWN, MD. 21136-5643
TAX ACCOUNT : 08-2100008993
2.950 ACRES
LIBER / FOLIO : 8816 / 620
ZONED : R.C.5

5 NORWAY SPRUCE AT 15' O.C.

JOEL COURT

R=415.00'

9 WHITE PINE AT 15' O.C.

NOTE: LIMIT OF WOODS SHOWN REFLECTS AFTER GRADING CONDITION.

P. 338
FREDRICK R. VINUP
ANN L. VINUP
1821 RIDGE ROAD
REISTERSTOWN, MD. 21136-5617
TAX ACCOUNT : 08-0822035540
LIBER / FOLIO : 4941 / 720
ZONED : R.C.5

PROPOSED STORM WATER MANAGEMENT AREA

S 21° 23' 34" W
167.03'

N 21° 23' 37" E
51.61'

TRACT A
1.5628 AC.

10' DRAINAGE & UTILITY EASEMENT

N 73° 49' 47" W
208.95'

50'

3 NORWAY SPRUCE AT 15' O.C.

BLDG. SETBACK LINE

Δ=43° 30' 00"

P. 79 : TRACT A
BALTIMORE GAS & ELECTRIC CO.
TAX ACCOUNTING UNIT
P.O. BOX 1475
BALTIMORE, MD. 21203
TAX ACCOUNT : 08-2100009003
LIBER / FOLIO : 8085 / 676
ZONED R.C.5

5 WHITE PINE AT 15' O.C.

S 15° 30' 00" W
64.00'

EX. CURB

EX. PAVING

EX. DRIVEWAY

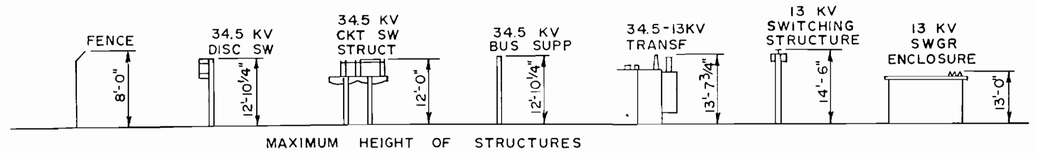
P. 79 : LOT 24
JAMES J. KIRCHNER, JR.
TINA M. KIRCHNER
4 JOEL COURT
REISTERSTOWN., MD. 21136
TAX ACCOUNT : 08-2100009002
3.662 ACRES
LIBER / FOLIO : 9657 / 396
ZONED : R.C.5

P. 79 : LOT 16
ROBERT J. RYTTER
CAROL P. RYTTER
3 JOEL COURT
REISTERSTOWN, MD. 21136-5643
TAX ACCOUNT : 08-2100008994
2.972 ACRES
LIBER / FOLIO : 9403 / 619
ZONED : R.C.5

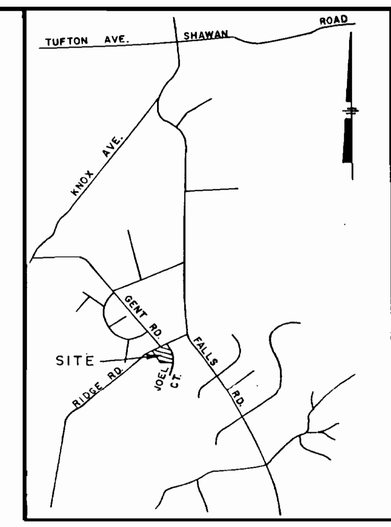
P. 79 : LOT 17
IRA N. BROWN
CYNTHIA M. BROWN
5 JOEL COURT
REISTERSTOWN, MD. 21136-5643
TAX ACCOUNT : 08-2100008995
3.173 ACRES
LIBER / FOLIO : 8858 / 720
ZONED R.C.5

LEGEND

A = FUTURE 34.5 KV CAPACITOR
B = 34.5 KV DISC SWITCHING STRUCTURE
C = 34.5 KV CIRCUIT SWITCHER
D = 34.5 KV BUS SUPPORT
E = 34.5 KV TRANSFORMER
F = 13 KV BUS SUPPORT
G = 13 KV LOAD BRK. SWITCHING STRUCTURE
H = 13 KV SWITCHGEAR



MAXIMUM HEIGHT OF STRUCTURES



LOCATION MAP
SCALE: 1"=2000'

NOTES:

1. IVY HILL SUBSTATION IS AN UNATTENDED STATION AND NO PERMANENT EMPLOYEES ARE TO BE LOCATED ON THE PREMISES. AVERAGE DAILY TRIPS: 1/WEEK.
2. THERE ARE NO EXISTING OR PROPOSED WATER AND SEWER TO THE STATION.
3. FENCE: 8 FT. OVERALL HEIGHT CONSISTING OF 7 FT. OF CHA IN LINK FABRIC AND THREE STRANDS OF BARBED WIRE (TURNED OUT).
4. ROADWAY: COMPACT SUBGRADE TO 95% DENSITY AS DETERMINED BY ASTM 1557-70. INSTALL 8" OF CR-4&7 CRUSHED STONE BASE IN TWO LIFTS AND COMPACT EACH LIFT WITH A 10 TON ROLLER. INSTALL 2" BITUMINOUS BINDER COURSE (B1 BAND). INSTALL 1" BITUMINOUS CONCRETE SURFACE (SH BAND) AS PER MARYLAND STATE HIGHWAY ADMINISTRATION SPECIFICATIONS.
5. AREA WITHIN FENCE TO BE COVERED WITH 4" OF STONE OVER NEW GRADE. STONE SHALL BE GRAY IN COLOR, WITH A LOS ANGELES ABRASION RATING LESS THAN 50% AND GRADATION IN ACCORDANCE WITH MARYLAND STATE HIGHWAY ADMINISTRATION SHA-4.
6. ALL AREAS NOT COVERED BY STONE OR PAVING WILL BE SEEDED WITH GRASS ACCORDING TO MARYLAND S.C.S. AND/OR BALTIMORE COUNTY SPECIFICATIONS.
7. ALL ELECTRIC STRUCTURES ARE FUNCTIONALLY ATTACHED.
8. TOPOGRAPHIC AND BOUNDARY INFORMATION TAKEN FROM SURVEY PERFORMED BY: ASM TECHNOLOGIES, INC.
   2 WEST FORREST AVENUE
   SHREWSBURY, PA. 17361
   717-235-8325
9. EXISTING SEPTIC SYSTEM SHALL BE PURIFIED AND BACKFILLED OR REMOVED AT TIME OF RAZING THE EXISTING HOUSE.
10. EXISTING WELL SHALL BE BACKFILLED BY A LICENSED WELL DRILLER WHO MUST SUBMIT A WELL ABANDONMENT REPORT AT THE TIME OF RAZING THE EXISTING STRUCTURE.
11. PETITION FOR A VARIANCE FROM SECTION 1A04.3.B.3 OF THE BALTIMORE COUNTY ZONING REGULATIONS TO PERMIT STRUCTURES AS CLOSE AS 0 FEET FROM INTERIOR LOT LINES IN LIEU OF THE REQUIRED 50 FOOT BUILDING SETBACK.
12. PETITION FOR A SPECIAL EXCEPTION UNDER THE ZONING REGULATIONS OF BALTIMORE COUNTY TO USE THE HEREIN DESCRIBED PROPERTY FOR AN OUTDOOR ELECTRIC PUBLIC UTILITY SERVICE CENTER (ELECTRIC SUBSTATION) IN A RCS ZONE PURSUANT TO SECTION 1A04.2.B.11 OF THE BALTIMORE COUNTY ZONING REGULATIONS.

CASE NO. 3760-X — PETITIONER : BALTIMORE GAS & ELECTRIC COMPANY PETITION FOR SPECIAL EXCEPTION TO USE SAID PROPERTY FOR THE CONSTRUCTION OF AN ELECTRICAL TRANSFORMER SUBSTATION. DEPUTY ZONING COMMISSIONER BY ORDER DATED MARCH 14, 1956, GRANTED SPECIAL EXCEPTION REQUEST.

CASE NO. 4535-X — PETITIONER : BALTIMORE GAS & ELECTRIC COMPANY PETITION FOR SPECIAL EXCEPTION FOR WIRELESS TRANSMITTING AND RECIEVING STATION. ZONING COMMISSIONER BY ORDER DATED MARCH 9, 1959, GRANTED SPECIAL EXCEPTION REQUEST.

94-452-XA

APPLICANT/OWNER/CONTRACT PURCHASER
BALTIMORE GAS & ELECTRIC COMPANY
SYSTEM ENGINEERING & CONSTRUCTION DEPARTMENT
LEXINGTON & LIBERTY STREETS
1020 G & E BUILDING
BALTIMORE, MD. 21201
C/O MONICA P. McGRADY, P.E.
1-410-234-5294

THIS PROPERTY LOCATED IN THE
8TH ELECTION DISTRICT OF,
3RD COUNCIL DISTRICT
BALTIMORE COUNTY, MARYLAND
ZONED R.C.5
TAX MAP NO. 50
PARCEL NO. 247, 338, & 79 : TRACT A
TOTAL AREA : 2.8933 ACRES
ZONING MAP NO. D-2

Rev	Date	J.O./Est No.	Description	Approved
			430	

ENGINEERING
Civil
Elec
Proj. Engr.
Proj. Mgr.
Prin. Engr.
Supv. Engr.

DESIGN GROUP
Designer
Drawn
Checked
Appd.
Date Appd.

PLAT TO ACCOMPANY PETITION FOR ZONING SPECIAL EXCEPTION AND VARIANCES

34.5-13.8 KV SUBSTATION

IVY HILL

BALTIMORE GAS AND ELECTRIC COMPANY
DISTRIBUTION & TRANSMISSION ENGINEERING DEPT.
SYSTEM ENGINEERING SECTION

File | Scale: 1" = 20' | Rev.
Microfilmed Orig. ☐ Rev. ..... | Dwg. No. 400-701-E

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

John Theodore Dee
NAME

1127 Greenway Road
ADDRESS

Cockeysville. 21030

RECEIVED
OCT 12 1994
ZADM

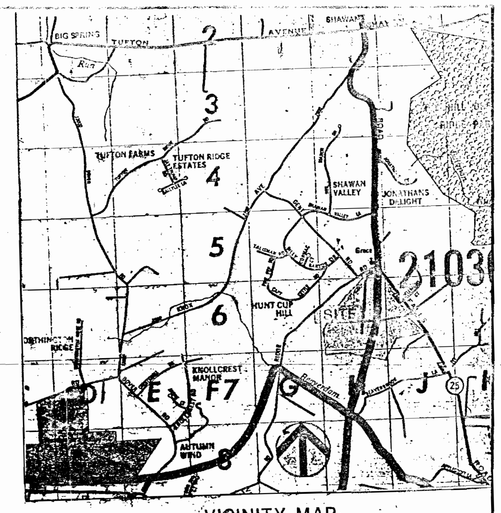
METROPOLITAN DISTRICT LINE BOUNDARY

12/15/92

Pet Ex 21

"SOIL TYPES AND LIMITATIONS"

Soil Series and Symbol		Hydrologic Class	With Basements	Without Basements	Street and Parking
Baile	(BaA)	D Hydric	Severe: High Water Table; Poor Natural Drainage	Severe: High Water Table; Poor Natural Drainage	Severe: Hi Water Tabl Poor Natur Drainage
Elioak	(ElbB2)	B	Slight	Slight	Moderate: Sl
	(ElC3)		Moderate: Slope	Moderate: Slope	Severe: Sl
Glenelg	(GcC2)	B	Moderate: Slope	Moderate: Slope	Severe: Sl
Glenville	(GnB)	C	Severe: High Water Table	Moderate: High Water Table	Severe: Hi Water Tabl
Manor	(McB2)	B	Slight	Slight	Moderate: Sl
	(MaD), (MaE)		Severe: Slope	Severe: Slope	Severe: Sl



VICINITY MAP
SCALE: 1" = 2000'

DENNIS, THOMAS MARY LOU FEDDY
7651/0015

MARION & JUDITH KEYS
6378/417

ROBERT & NANCY FLOWER
6280/0526

LEE & SANDRA BAUSTIAN
6490/0402

EUGENE & JOANNE LINDSAY
6334/0172

BAHRAM SINA
4541/164

BAHRAM SINA
6005/466

MARSDEN COMPANY
43/17

PEGGY BEALEFIELD
6042/420

Zoned R.C.-5

Dellwood Court

Falls Road

FORWOOD COURT

JOEL COURT

Ridge

General Notes

1. Watershed 11; Subwatershed 36, Councilmanic District 3, Census Tract 8403
2. Site Data: Current Zoning and Acreage:
   Net = 77.01 Acres +/- RC-5
   Gross = 78.66 Acres +/- RC-5
   (Includes 33' of ex. Falls Rd R/W).
   Density: Permitted - 79.66 Acres x 0.667 Dwelling/Acre = 52.47 Units
   Proposed - =25 Single Family Units
3. All units will be for Sale.
4. Parking: Required - 25 units @ 2 Spaces/Dwelling Unit = 50 Spaces
   Proposed - A minimum of two off-street driveway spaces will be provided for each lot..8 1/2' x 18'min.
5. Landscape Requirements:
   Required - 25 units @ 1 tree/unit = 25 trees (25 major deciduous trees)
   Proposed - A minimum of 1 tree/unit provided
6. Existing vegetation consists of hardwood forest, pasture, meadow, and trees for fence and pondline.
7. Existing streams and bodies of water are as shown on Plan.
8. There is one existing residential structure, an existing Barn and an existing root cellar which will be retained on the site. The remaining existing structures will be removed. None of the existing structures are on the Baltimore County Landmark List or the National Register.
9. Open space is not required in this zone.
10. Stormwater management quantity has been waived. Management of water quality will be handled on a lot by lot basis.
11. The limit of the wetlands coincides with the limits of the Belle (BaA) soils as determined from the 1" = 400' soil maps. There are no known critical areas, archeological sites, endangered species habitats, or hazardous materials on the site.
12. Panhandle drives will have 16 feet wide bituminous pavement. It will be maintained equally by all parties having rights to the same. Lot 16 will be 12' wide.
13. No construction or grading will occur within the limits of the vegetated stream buffer, with exception of the well to be drilled on Lot 22.
14. Refuse collection pads will provide 16 sq ft per unit served. Pad will provide an unobstructed opening facing the cul-de-sac.
15. The root cellar on Lot 22 meets Section 400 (Baltimor County Zoning Regulations).
16. There will be no access to Falls Rd except from Forwood Ct.
17. Each lot will be a minimum of one acre.
18. All buildings will be 75 ft from centerline of street and 50 ft from other tract boundaries and lot lines.
19. No more than 15% of any lot may be covered by buildings.
20. The existing gas tank and pump is not permitted to remain on Lot 21, it conflicts with zoning policy no. A-16. If the owner/developer does not agree, a public hearing may be requested for an interpretation/justification for it to remain.
21. Grading for lots to be performed by individual lot owners. For grading of the proposed panhandles, see profiles.
22. Panhandle lots subject to declaration and maintenance agreements to be recorded among the land Records of Baltimore County at the time of Plat Recordation. For panhandle lots: refuse collection, snow removal and road maintenance will be provided to the junction of the panhandle and street R/W line only and not on the panhandle to be collected by Baltimore County). The proposed paving sections shall be 8 in. CR-6 stone with a 3 in. bituminous concrete surface on all panhandle roads. Widths are shown hereon.
23. All septic systems are a minimum 200 ft from all streams.
24. No further subdivision of the parcel shown hereon will be allowed unless approved by the Baltimore County Planning and Zoning Commission.
25. Where applicable, utilities shall be installed in accordance with current regulations or as amended by the Maryland Service Commission of Maryland regarding underground services.
26. All wells when water & sewer facilities become available to the subdivision, connection thereto shall be required by the agency having jurisdiction.
27. No building permit shall be issued for the construction of a dwelling on a lot shown on the final plat until a well approved by applicable State and County agencies having jurisdiction, has been located on the site of any lot.
28. In accordance with Sec. 22-29 of the Development Regulations, the Mitigative Measures taken to protect the soils in this development which have moderate to severe limitations is to move all building envelope out of the Hydric Soil areas and to place a 20 ft building setback off the 25% slopes. In addition, the developer will place all areas currently cultivated, in a grass cover.
29. A letter to the Zoning Commissioner has been written to justify the barn on Lot 21 as a farm use. In the event the Commissioner does not agree, a variance for an accessory building, will be filed for.

VIII-472

BALTIMORE COUNTY MD
COUNTY REVIEW GROUP
12/6/88 Plan Was Reviewed By The CRG Ca With The Following Action Taken
AMENDED PLAN APPROVED 1/21/88
Plan Approved By Robert P. Crowley
Plan Approved By Gary Kepp
Approval Expiration Date 1/21/91
Plan Disapproved
Continued to Be Revised
Plan PROPERTY

REVISED C.R.G. PLAN

FORWOOD

8th ELECTION DISTRICT
SCALE 1"=100'
BALTIMORE CO., MD
DEC. 15th, 1987
PUBLIC SERVICES CRG # 87122 (Site Work # 322)
RUNNING No

LEGEND:
- STREET LIGHT
- TRASH PAD
- 25% GRADE
- GOOD WELL
- PERC TEST
- SOIL LINE
- PROPOSED DRIVE (Minimum 16' Wide Bituminous Pav. Surface)

OWNERS:
LOT 21 - LAWRENCE P. FORWOOD
REISTERSTOWN MD. 21136
3155/300 - 2645/161 #08-04-04-6300, 6302
PART OF LOTS 3 1/4 - DENNIS PEDDY ETAL
10829 FALLS ROAD
LUTHERVILLE MARYLAND 21093
7051/0045 # 08-16-015703

OWNER & DEVELOPER:
GEO. V. PALMER % GRAY & SONS
BOWLING MD 21023 # 21-00-000700
#771-4511

GERHOLD, CROSS & ETZEL
REGISTERED PROFESSIONAL LAND SURVEYORS
412 DELAWARE AVENUE
TOWSON MARYLAND 21204
823-4470

REVISION	
DATE	
12-21	Plan Cklg Comments
2-1	DEPRM COMMENTS
2-9	B.C.C.P.D. (CONST. ROAD, NOTE 30)

"PROFILE PANHANDLE"
LOTS 19,20,21,22&23
SCALE: HORZ 1"=100'
VERT 1"=10'

"PROFILE PANHANDLE"
LOTS 9,14&15
SCALE: HORZ 1"=100'
VERT 1"=10'

PROFILE PANHANDLE
LOTS 6,7,8,9&10
SCALE HORZ 1"=100'
VERT 1"=10'

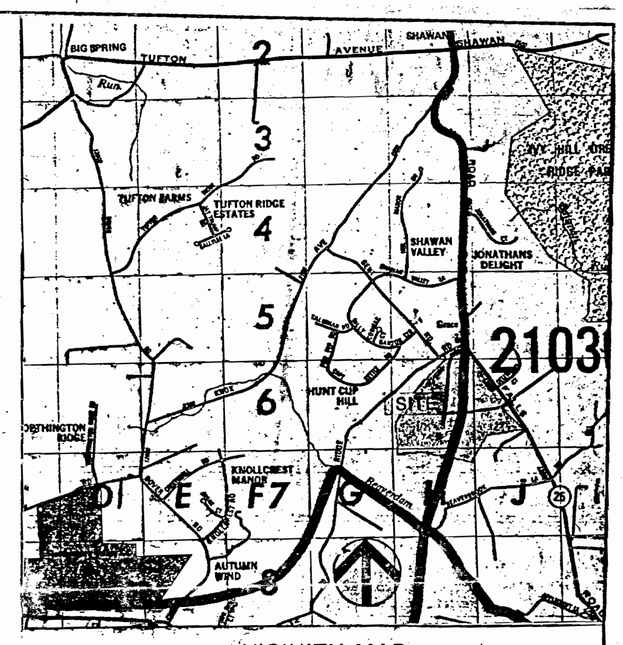
"PROFILE PANHANDLE"
LOT 16
SCALE: HORZ 1"=100'
VERT 1"=10'

Pet. Ex. 25



"SOIL TYPES AND LIMITATIONS"

Soil Series and Symbol		Hydrp Class	With Basements	Without Basements	Street and Parking
Built	(Bad)	D Hydric	Severe: High Water Table; Poor Natural Drainage	Severe: High Water Table; Poor Natural Drainage	Severe: Hi Water Tabl Poor Natur Drainage
Elioak	(ElhB2)	B	Slight	Slight	Moderate: Sl
	(ElC5)		Moderate: Slope	Moderate: Slope	Severe: Sl
Glenelg	(GcC2)	B	Moderate: Slope	Moderate: Slope	Severe: Sl
Glenville	(GnB)	C	Severe: High Water Table	Moderate: High Water Table	Severe: Hi Water Tabl
Manor	(McB2)	B	Slight	Slight	Moderate: Sl
	(MaD3, MdD)		Severe: Slope	Severe: Slope	Severe: Sl



VICINITY MAP
SCALE: 1" = 2000'

General Notes

1. Watershed 11; Subwatershed 36, Councilmanic District 3, Census Tract #4083
2. Site Data: Current Zoning and Acreage:
   Net = 77.03 Acres +/- RC-5
   Gross = 78.66 Acres +/- RC-5
   (Includes 33' of ex. Falls Rd R/W).
   Density: Permitted = 78.66 Acres x 0.667 Dwelling/Acre = 52.47 Units
   Proposed = 24 Single Family Units @ 1 TRACT
3. All units will be for sale.
4. Parking: Required = 24 Units @ 2 Spaces/Dwelling Unit = 48 Spaces
   Proposed = A minimum of two off-street driveway spaces will be provided for each lot, 8 1/2' x 40'min.
5. Landscape Requirements:
   Required = 24 Units @ 1 tree/unit = 25 trees (24 major deciduous trees)
   Proposed = A minimum of 1 tree/unit provided
6. Existing vegetation consists of hardwood forest and cultivated fields. Only trees for house and panhandle construction will be removed. The development will require by restrictive covenant whenever a maximum 7000 sq ft of clearing per lot shall be permitted.
7. Existing streams and bodies of water are as shown on plan.
8. There is one existing residence, an existing barn and an existing root cellar which will remain on the site. The remaining existing structures will be removed. None of the existing structures are on the Baltimore County Landmark List or the National Register.
9. Open space is not required in this zone.
10. Stormwater management quantity has been waived. Management of water quality will be handled on a lot by lot basis. Letter dated 12-4-86.
11. The limit of the wetlands coincides with the limits of the 100' (BRA) zone as determined by [illegible] biological assay, endangered species habitats, or hazardous materials on the site.
12. Panhandle drives will have 16 feet wide bituminous paving and will be maintained equally by all parties having rights to their use. Lot 16 will be 12' wide.
13. No construction or grading will occur within the limits of the vegetated stream buffer, with exception of the well to be drilled on Lot 22.
14. Refuse collection pads will provide 16 sq ft per unit served. Pad will provide an unobstructed opening facing the cul-de-sac.
15. The root cellar on Lot 22 meets Section 400 (Baltimore County Zoning Regulations).
16. There will be no access to Falls Rd except from Forwood Ct.
17. Each lot will be a minimum of one acre.
18. All buildings will be 75 ft from centerline of street and 50 ft from other tract boundaries and lot lines.
19. No more than 15% of any lot may be covered by buildings.
20. The existing gas tank and pump is not permitted to remain on Lot 21, it conflicts with zoning policy no. A-16. If the owner/developer does not agree, a public hearing may be requested for an interpretation/justification for it to remain.
21. Grading for lots to be performed by individual lot owners. For grading of the proposed panhandles, see profiles.
22. Panhandle lots subject to declaration and maintenance agreements to be recorded among the Land Records of Baltimore County at the time of Plat Recordation. For panhandle lots; refuse collection, snow removal and road maintenance will be provided to the junction of the panhandle and street R/W line only and not onto the panhandle lot driveway. (Refuse to be collected by Baltimore County). The proposed paving sections shall be 6 in. CR-6 stone with a 1 in. bituminous concrete surface on all panhandle roads. Widths are shown hereon.
23. All septic systems are a minimum 200 ft from all streams.
24. No further subdivision of the parcel shown hereon will be allowed unless approved by the Baltimore County Planning and Zoning Commission.
25. Where applicable, [illegible] shall be installed in accordance with current regulations or as amended by the Public Service Commission of Maryland regarding underground services.
26. If and when water & sewer facilities become available to the subdivision, connection thereto shall be required by the agency having jurisdiction.
27. No building permit shall be issued for the construction of [illegible] lot shown on the plat until [illegible] Section, has been located on the site of [illegible] by [illegible].
28. In accordance with Sec. 22-29 of the Development Regulations, the Mitigative Measures taken to protect the soils in this development which have moderate to severe limitations is to rove all building envelope out of the Hydric Soil areas and to place a 20 ft building setback off the 15% slopes. In addition, the developer will place all areas currently cultivated, in a grass cover.
29. A letter to the Zoning Commissioner has been written to justify the barn on Lot 21 as a farm use. In the event the Commissioner does not agree, a variance for an accessory building, will be filed for.

BALTIMORE COUNTY MD.
COUNTY REVIEW GROUP
12-4-86 This Plan Was Reviewed By The CRG On [illegible] With The Following Action Taken
REVISED PLAN APPROVED
AMENDED 12/15
Plan Approved DPW Robert W. Crosby 5-20-88
Plan Approved OPZ Lloyd T. Evans
Approval Expiration Date 11-21-91
Plan Disapproved
Continued Revised
Plan Referred To Plan. Bd.
C.R.G. PLAN

VIII-472

LEGEND:
- Street Light
- Trash Pad
- 25% Grade
- Good Well
- Failed Perc Test
- Good Perc Test
- Dry Hole
- Soil Line

"FORWOOD PROPERTY"

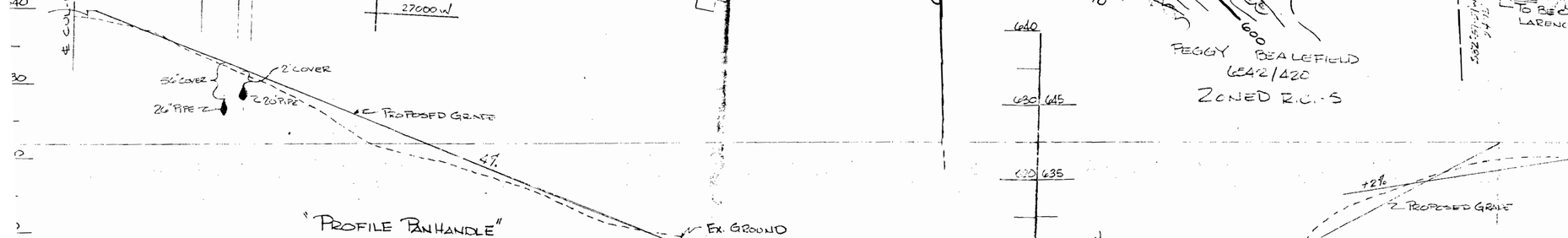
8th Election District
Scale 1"=100
Public Services CRG # 87-122 (see also 87-122)
Planning No.
Baltimore Co., MD
Dec 15th, 1987

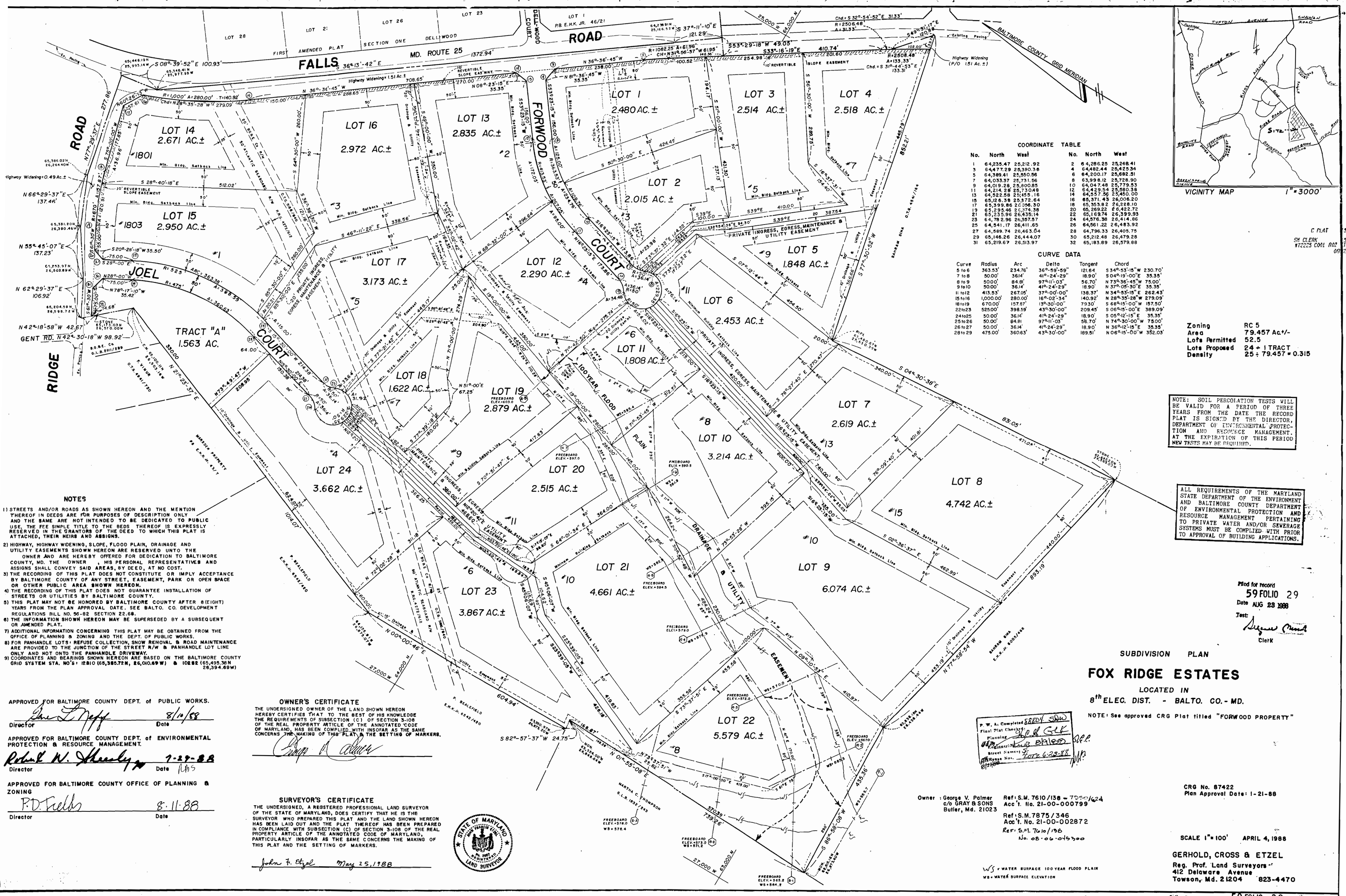
OWNERS:
LOT 21 - LAWRENCE P. FORWOOD
RE: STE STOWN MD. 21136
3185/539 - 2645/161 FOR: 04-08-88 0,5302
PART OF LOTS 3 1/4 - DENNIS PEGGY ETAL
10820 FALLS ROAD
LUTHERVILLE MARYLAND 21093
[illegible]

OWNER: [illegible]
GEO [illegible] PALMER & GRAY & SONS
BUILT MD 21023 # 21-00-000 [illegible]
#771-

GERHOLD, CROSS & ETZEL
REGISTERED PROFESSIONAL ENGINEERS
412 DELAWARE AVENUE
TOWSON, MARYLAND
#823

REVISI
DATE





No.	North	West	No.	North	West
1	64,235.47	25,212.92	2	64,286.25	25,248.41
3	64,477.29	25,390.36	4	64,482.44	25,425.34
5	64,389.41	25,550.56	6	64,200.17	25,682.51
7	64,033.37	25,731.56	8	63,998.12	25,728.90
9	64,019.28	25,800.85	10	64,047.48	25,779.53
11	64,214.28	25,730.48	12	64,429.54	25,580.38
13	64,522.58	25,455.16	14	64,557.86	25,450.00
15	65,126.38	25,572.64	16	65,371.43	26,006.20
17	65,399.86	26,056.30	18	65,353.82	26,228.10
19	65,295.46	26,376.38	20	65,269.22	26,422.72
21	65,235.96	26,435.14	22	65,169.74	26,599.93
23	64,782.96	26,357.57	24	64,576.38	26,414.86
25	64,541.17	26,411.65	26	64,561.22	26,483.92
27	64,589.74	26,463.04	28	64,796.33	26,405.75
29	65,146.26	26,444.07	30	65,212.48	26,479.28
31	65,219.67	26,513.97	32	65,183.89	26,579.88

Curve	Radius	Arc	Delta	Tangent	Chord
5 to 6	363.53'	234.76'	36°-59'-59"	121.64'	S 34°-53'-15"W 230.70'
7 to 8	50.00'	36.14'	41°-24'-29"	18.90'	S 04°-19'-00"E 35.35'
8 to 9	50.00'	84.81'	97°-11'-03"	56.70'	N 73°-36'-45"W 75.00'
9 to 10	50.00'	36.14'	41°-24'-29"	18.90'	N 37°-05'-30"E 35.35'
11 to 12	413.53'	267.05'	37°-00'-00"	138.37'	N 34°-53'-15"E 262.43'
15 to 16	1,000.00'	280.00'	16°-02'-34"	140.92'	N 28°-35'-28"W 279.09'
18 to 19	670.00'	157.87'	13°-30'-00"	79.30'	S 68°-15'-00"W 157.50'
22 to 23	525.00'	398.59'	43°-30'-00"	209.45'	S 06°-15'-00"E 389.09'
24 to 25	50.00'	36.14'	41°-24'-29"	18.90'	S 05°-12'-15"E 35.35'
25 to 26	50.00'	84.81'	97°-11'-03"	58.70'	N 74°-30'-00"W 75.00'
26 to 27	50.00'	36.14'	41°-24'-29"	18.90'	N 36°-12'-15"E 35.35'
28 to 29	475.00'	360.63'	43°-30'-00"	189.51'	N 06°-15'-00"W 352.03'

Zoning	RC 5
Area	79.457 Ac+/-
Lots Permitted	52.5
Lots Proposed	24 + 1 TRACT
Density	25 ÷ 79.457 = 0.315

NOTE: SOIL PERCOLATION TESTS WILL BE VALID FOR A PERIOD OF THREE YEARS FROM THE DATE THE RECORD PLAT IS SIGNED BY THE DIRECTOR, DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT. AT THE EXPIRATION OF THIS PERIOD NEW TESTS MAY BE REQUIRED.

ALL REQUIREMENTS OF THE MARYLAND STATE DEPARTMENT OF THE ENVIRONMENT AND BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT PERTAINING TO PRIVATE WATER AND/OR SEWERAGE SYSTEMS MUST BE COMPLIED WITH PRIOR TO APPROVAL OF BUILDING APPLICATIONS.

NOTES

1) STREETS AND/OR ROADS AS SHOWN HEREON AND THE MENTION THEREOF IN DEEDS ARE FOR PURPOSES OF DESCRIPTION ONLY AND THE SAME ARE NOT INTENDED TO BE DEDICATED TO PUBLIC USE, THE FEE SIMPLE TITLE TO THE BEDS THEREOF IS EXPRESSLY RESERVED IN THE GRANTORS OF THE DEED TO WHICH THIS PLAT IS ATTACHED, THEIR HEIRS AND ASSIGNS.
2) HIGHWAY, HIGHWAY WIDENING, SLOPE, FLOOD PLAIN, DRAINAGE AND UTILITY EASEMENTS SHOWN HEREON ARE RESERVED UNTO THE OWNER AND ARE HEREBY OFFERED FOR DEDICATION TO BALTIMORE COUNTY, MD. THE OWNER , HIS PERSONAL REPRESENTATIVES AND ASSIGNS SHALL CONVEY SAID AREAS, BY DEED, AT NO COST.
3) THE RECORDING OF THIS PLAT DOES NOT CONSTITUTE OR IMPLY ACCEPTANCE BY BALTIMORE COUNTY OF ANY STREET, EASEMENT, PARK OR OPEN SPACE OR OTHER PUBLIC AREA SHOWN HEREON.
4) THE RECORDING OF THIS PLAT DOES NOT GUARANTEE INSTALLATION OF STREETS OR UTILITIES BY BALTIMORE COUNTY.
5) THIS PLAT MAY NOT BE HONORED BY BALTIMORE COUNTY AFTER 8(EIGHT) YEARS FROM THE PLAN APPROVAL DATE. SEE BALTO. CO. DEVELOPMENT REGULATIONS BILL NO. 56-82 SECTION 22.68.
6) THE INFORMATION SHOWN HEREON MAY BE SUPERSEDED BY A SUBSEQUENT OR AMENDED PLAT.
7) ADDITIONAL INFORMATION CONCERNING THIS PLAT MAY BE OBTAINED FROM THE OFFICE OF PLANNING & ZONING AND THE DEPT. OF PUBLIC WORKS.
8) FOR PANHANDLE LOTS: REFUSE COLLECTION, SNOW REMOVAL & ROAD MAINTENANCE ARE PROVIDED TO THE JUNCTION OF THE STREET R/W & PANHANDLE LOT LINE ONLY AND NOT ONTO THE PANHANDLE DRIVEWAY.
9) COORDINATES AND BEARINGS SHOWN HEREON ARE BASED ON THE BALTIMORE COUNTY GRID SYSTEM STA. NO'S: 12810 (65,385.72N, 26,010.69W) & 10282 (65,495.38N 26,394.69W)

APPROVED FOR BALTIMORE COUNTY DEPT. of PUBLIC WORKS.
Director — Date 8/10/88

APPROVED FOR BALTIMORE COUNTY DEPT. of ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT.
Director — Date 7-29-88

APPROVED FOR BALTIMORE COUNTY OFFICE OF PLANNING & ZONING
P.D. Fields — Director — Date 8.11.88

OWNER'S CERTIFICATE

THE UNDERSIGNED OWNER OF THE LAND SHOWN HEREON HEREBY CERTIFIES THAT TO THE BEST OF HIS KNOWLEDGE THE REQUIREMENTS OF SUBSECTION (C) OF SECTION 3-108 OF THE REAL PROPERTY ARTICLE OF THE ANNOTATED CODE OF MARYLAND, HAS BEEN COMPLIED WITH INSOFAR AS THE SAME CONCERNS THE MAKING OF THIS PLAT & THE SETTING OF MARKERS.

SURVEYOR'S CERTIFICATE

THE UNDERSIGNED, A REGISTERED PROFESSIONAL LAND SURVEYOR OF THE STATE OF MARYLAND, DOES CERTIFY THAT HE IS THE SURVEYOR WHO PREPARED THIS PLAT AND THE LAND SHOWN HEREON HAS BEEN LAID OUT AND THE PLAT THEREOF HAS BEEN PREPARED IN COMPLIANCE WITH SUBSECTION (C) OF SECTION 3-108 OF THE REAL PROPERTY ARTICLE OF THE ANNOTATED CODE OF MARYLAND, PARTICULARLY INSOFAR AS THE SAME CONCERNS THE MAKING OF THIS PLAT AND THE SETTING OF MARKERS.

John F. Etzel May 25, 1988

STATE OF MARYLAND — JOHN FRANCIS ETZEL — No. 7997 — REGISTERED LAND SURVEYOR

Filed for record
59 FOLIO 29
Date AUG 23 1988
Test:
Clerk

SUBDIVISION PLAN

FOX RIDGE ESTATES

LOCATED IN
8th ELEC. DIST. - BALTO. CO. - MD.

NOTE: See approved CRG Plat titled "FORWOOD PROPERTY"

P. W. As Completed 88804 SDW
Final Plat Checked GLE
Planning
Transcribed 8/19/88
Street Names
House Nos. Date 6-23-88

Owner : George V. Palmer
c/o GRAY & SONS
Butler, Md. 21023

Ref: S.M. 7610/138 - 7959/624
Acc't. No. 21-00-000799
Ref: S.M. 7875/346
Acc't. No. 21-00-002872
Ref: S.M. 7610/138
No. 08-06-045300

WS = WATER SURFACE 100 YEAR FLOOD PLAIN
WS = WATER SURFACE ELEVATION

CRG No. 87422
Plan Approval Date: 1-21-88

SCALE 1"= 100' APRIL 4, 1988

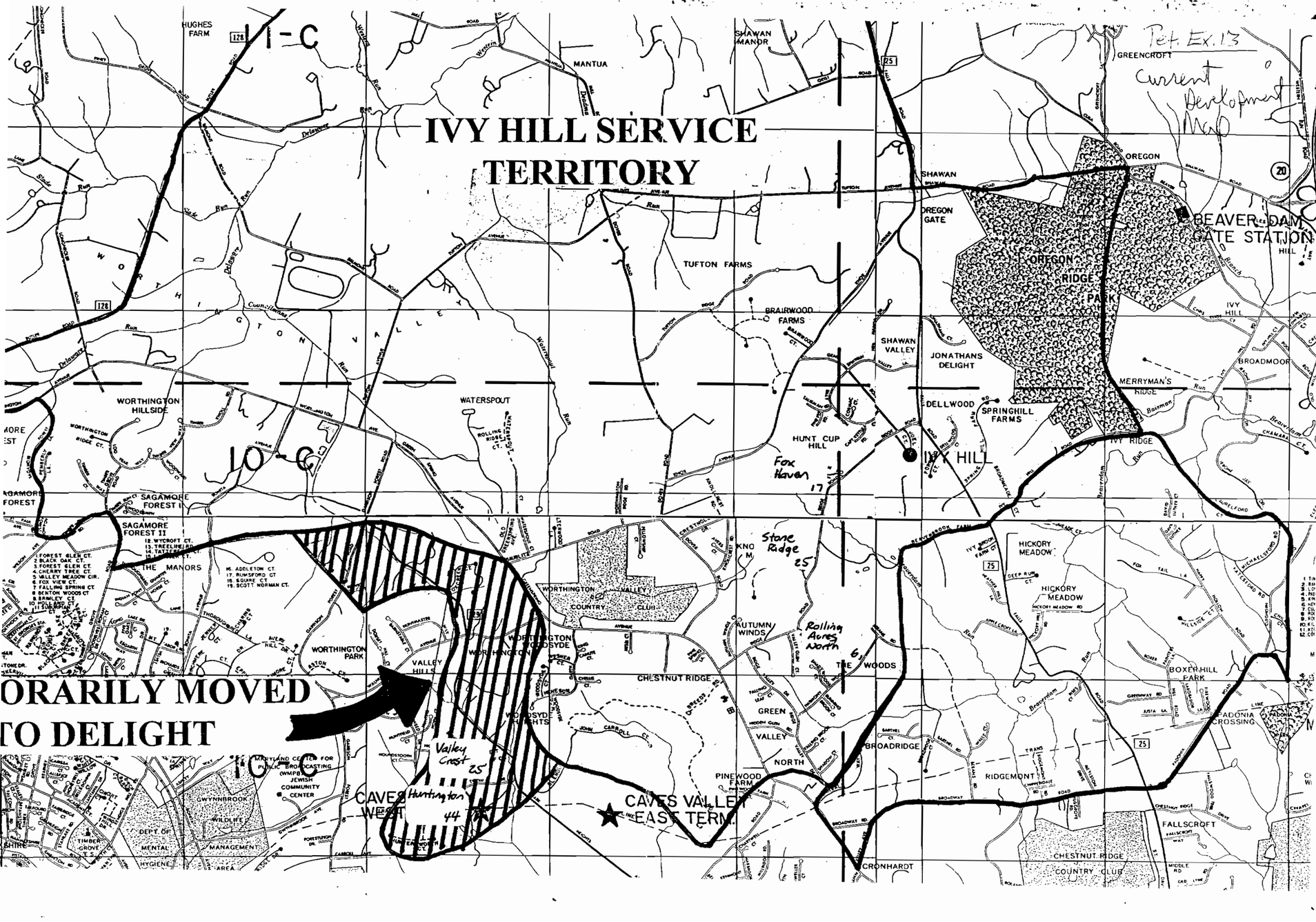
GERHOLD, CROSS & ETZEL
Reg. Prof. Land Surveyors
412 Delaware Avenue
Towson, Md. 21204 823-4470

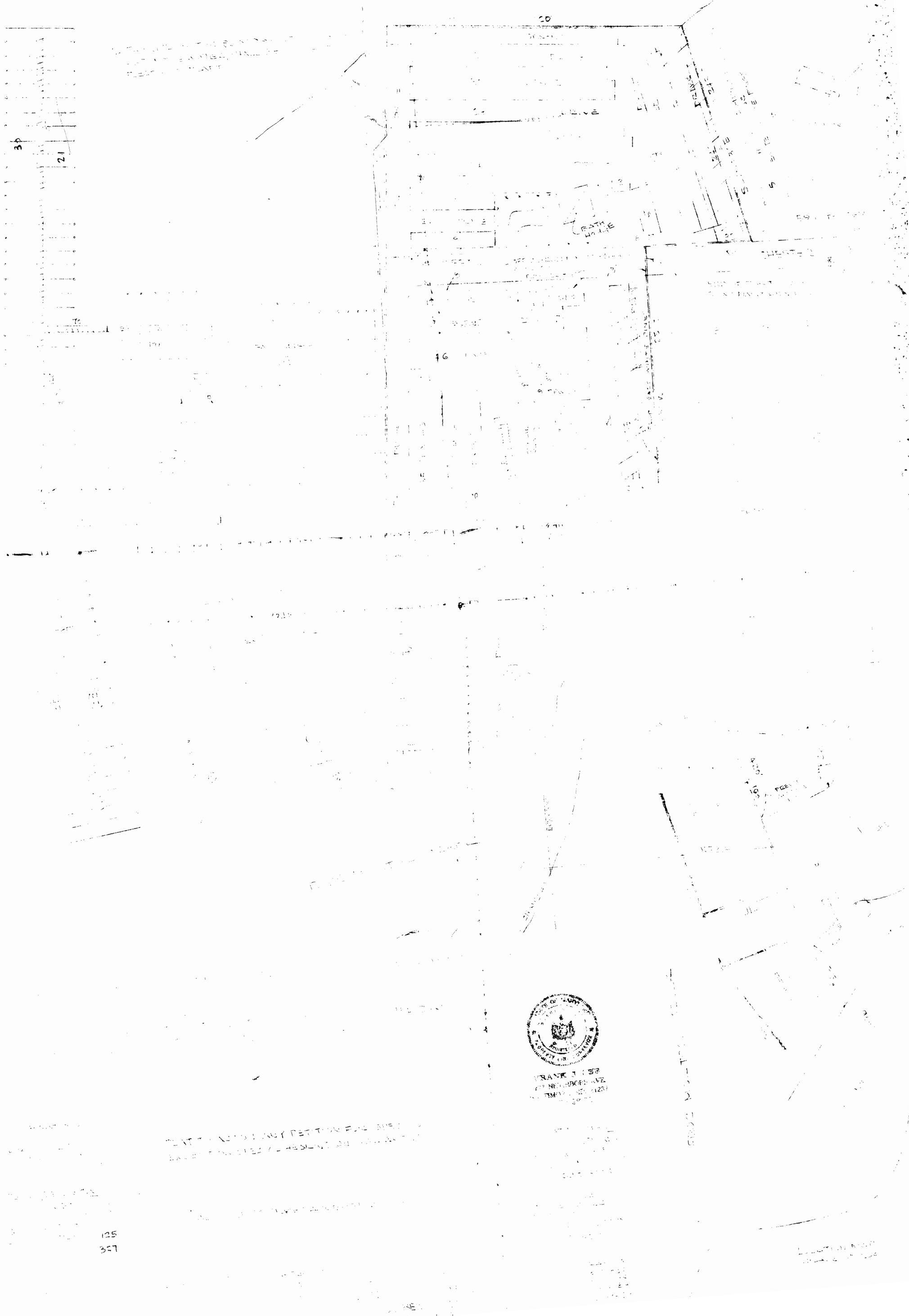
59-29 59 FOLIO 29 Proof Sht #2

IVY HILL SERVICE TERRITORY

Pet. Ex. 13
Current Development Map

ORARILY MOVED
TO DELIGHT




20
16
DEATH HOUSE
125
367





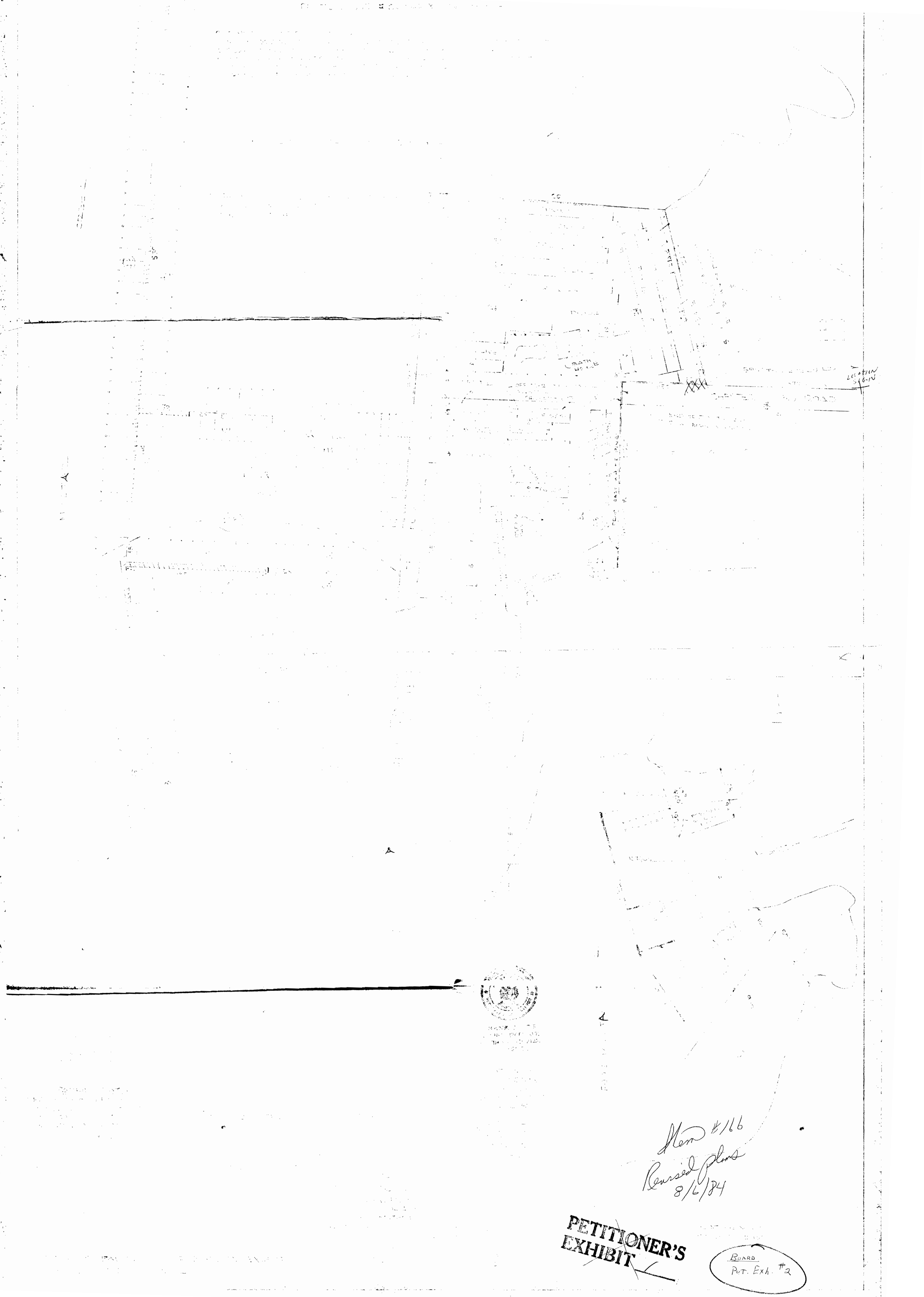
FRANK S. LEE
277 NEIGHBORS AVE.
BALTIMORE, MD. 21237
687-6922

ATTORNEY
ROBERT ROMADKA
809 EASTERN BLVD.
ESSEX, MD. 21221
686-8274

OWNER
[illegible]
[illegible] CHESTER ROAD
[illegible], MD. 21220
335-8002

COMPANY PETITION FOR VARIANCE FOR PIER EXTENSION IN LIEU OF THE REQ. 300 FEET.

Bet Eh #1

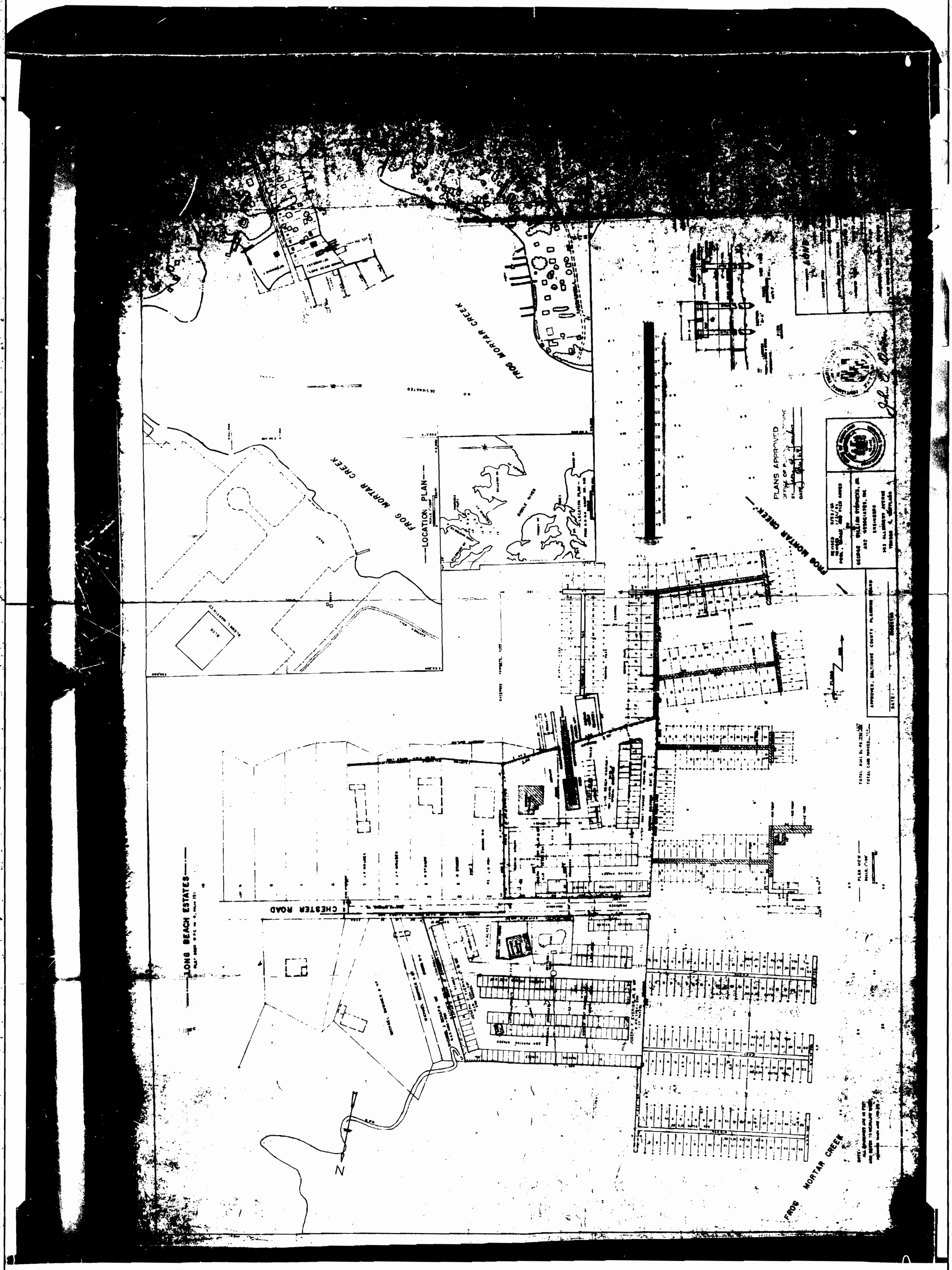


Item #16
Revised Plans
8/6/84

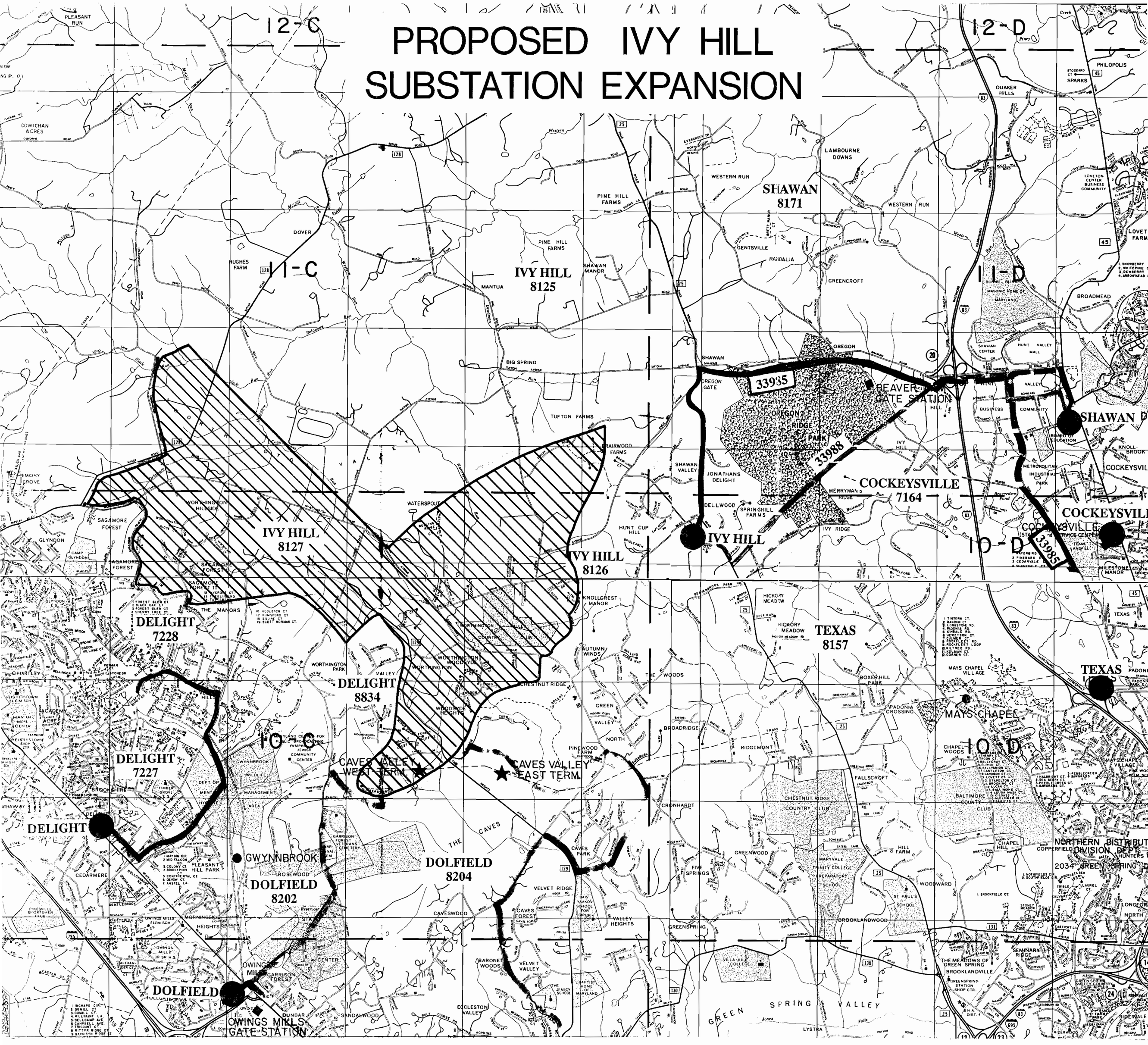
PETITIONER'S EXHIBIT

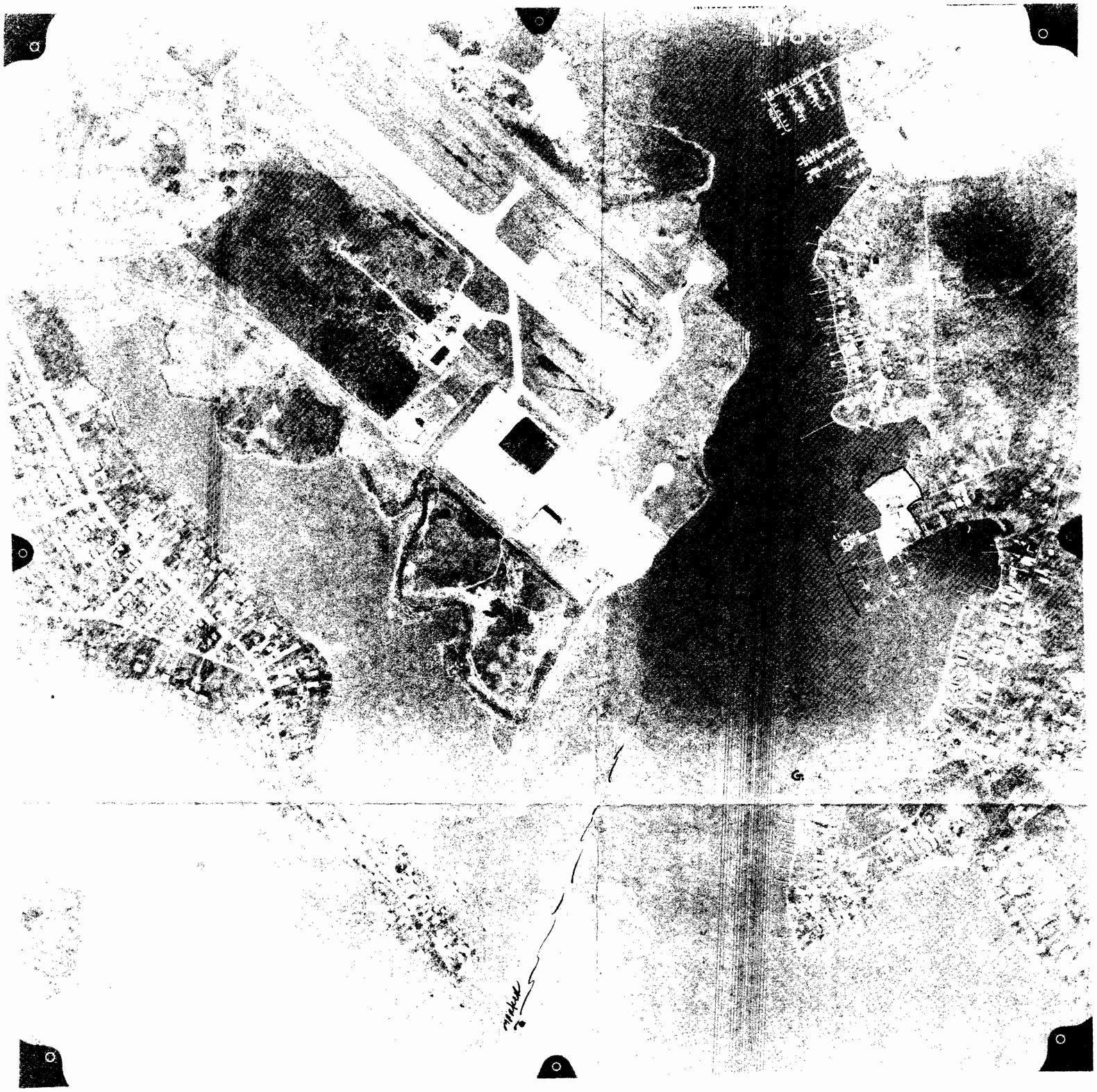
BOARD
PET. EXH. #2

PET. EX. #2 & #15

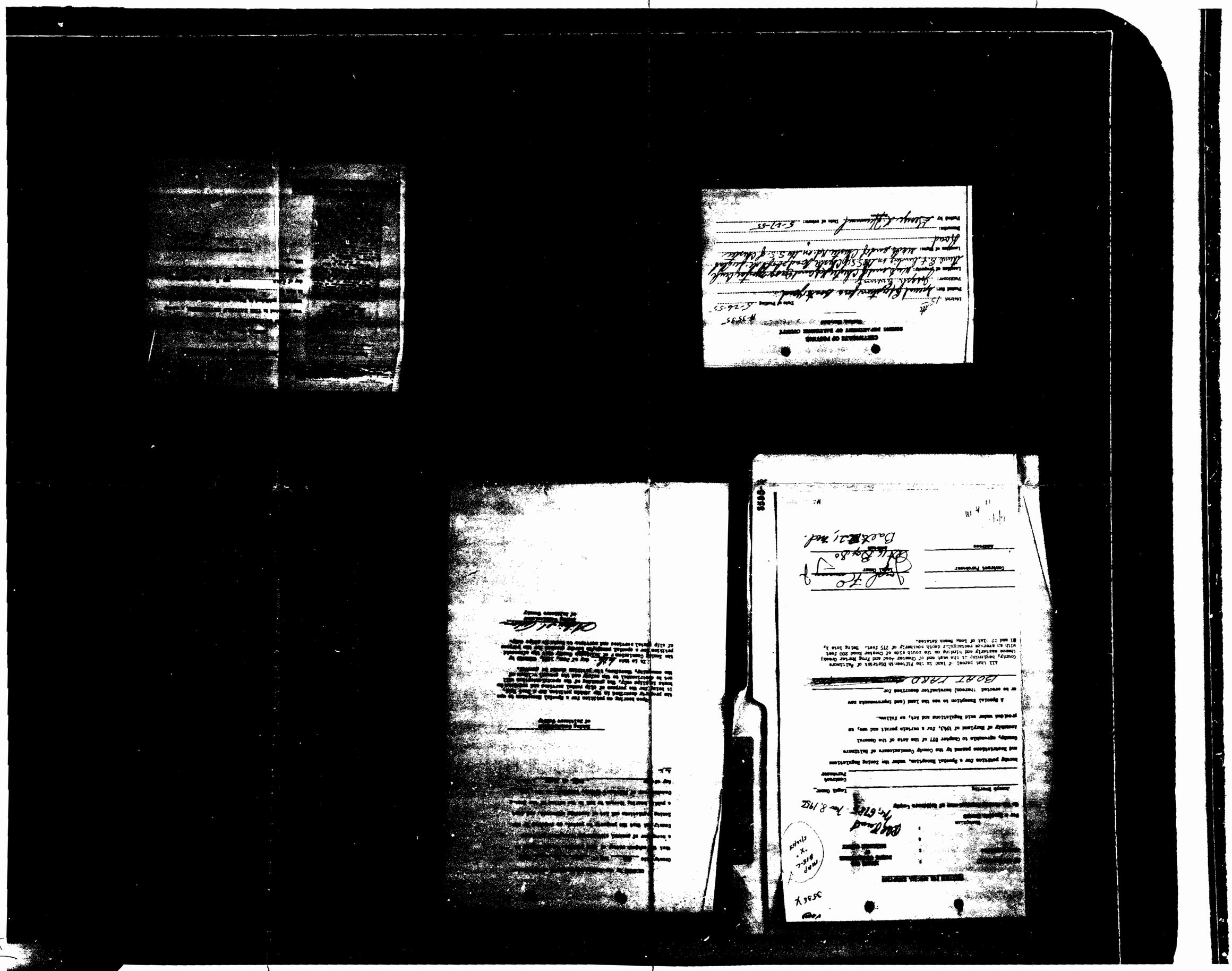

FROG MORTAR CREEK
LOCATION PLAN
FROG MORTAR CREEK
PLANS APPROVED
FROG MORTAR CREEK
CHESTER ROAD
LONG BEACH ESTATES
N
FROG MORTAR CREEK

PROPOSED IVY HILL SUBSTATION EXPANSION





Ref No
10





BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
PHOTOGRAPHIC MAP

PREPARED BY AIR PHOTOGRAPHICS, INC.
MARTINSBURG, W.V. 25401

SCALE	LOCATION	SHEET
1" = 200'±	BOWLEYS QUARTERS	N.E. 2-K

DATE OF PHOTOGRAPHY
JANUARY



BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
PHOTOGRAPHIC MAP

SCALE	LOCATION	SHEET
1" = 200' ±	BOWLEYS QUARTERS	N.E. 2-K
DATE OF PHOTOGRAPHY JANUARY		

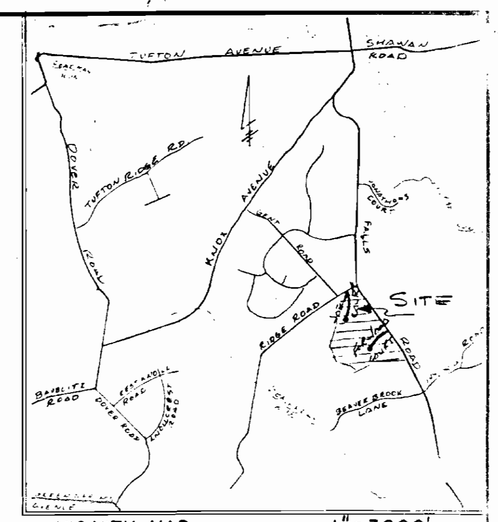
PREPARED BY AIR PHOTOGRAPHICS, INC.
MARTINSBURG, W.V. 25401

FINAL DEVELOPMENT PLAN
"FORWOOD PROPERTY"

LOCATED IN
8th ELEC. DIST. - BALTO. CO. - MD.
SCALE 1"=100 MARCH 22nd 1988
C.R.G.#87422 (SEE PRIOR # 86222)
AMENDED 1-21-88

REVISED - 5-2-88

VICINITY MAP 1"=3000'

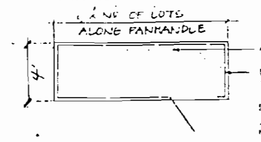


"SOIL TYPES AND LIMITATIONS"

	Hydro Class	With Basements	Without Basements	Street and Parking
(GaA)	D Hydric	Severe: High Water Table; Poor Natural Drainage	Severe: High Water Table; Poor Natural Drainage	Severe: Hi Water Tabl Poor Natur Drainage
(GbB2)	B	Slight	Slight	Moderate: Si
(GbC3)		Moderate: Slope	Moderate: Slope	Severe: Si
(GcC2)	B	Moderate: Slope	Moderate: Slope	Severe: Si
(MaB2)	C	Severe: High Water Table	Moderate: High Water Table	Severe: Hi Water Tabl
(MaD2), (MaE)	B	Slight Severe: Slope	Slight Severe: Slope	Moderate: Si Severe: Si

trash & mail pad detail

NO SCALE



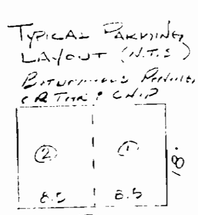
4" CONCRETE PAD
PERPENDICULAR BOARDS, TREATED OR PAINTED MIN. 5'-0" HIGH, W/GATE, ONE SIDE

TRASH & MAIL PADS SHALL HAVE EVERGREEN SCREEN PLANTING AS PER THE APPROVED FINAL LANDSCAPE PLAN.

* INDICATES LOCATION OF TRASH & MAIL PAD ON PLAN

NOTE:
THE DEVELOPER IS TO HAVE EVERY REASONABLE EFFORT TO PROVIDE MAIL & REFUSE SERVICES USING PANHANDLE DRIVES IF EFFORT FAILS, TRASH & MAIL PAD AREAS WILL BE PROVIDED. IT IS UP TO PROVIDE MAIL & TRASH COLLECTION. REFUSE COLLECTION, SNOW REMOVAL, MAIL DELIVERY WILL BE WITHIN THE RIGHT OF WAY ONLY & NOT ONTO INDIVIDUAL DRIVES

TYPICAL PARKING LAYOUT (NTS)



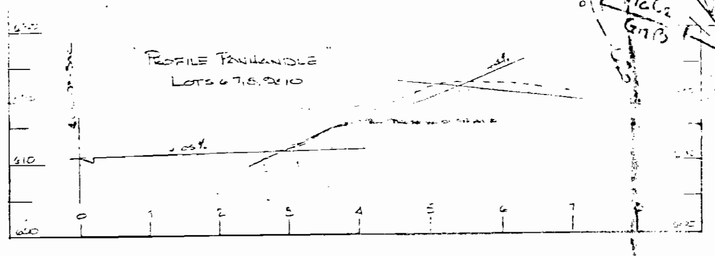
BITUMINOUS PAVING (SEE SECTION C-C)

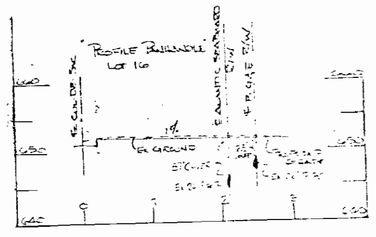
LEGEND:

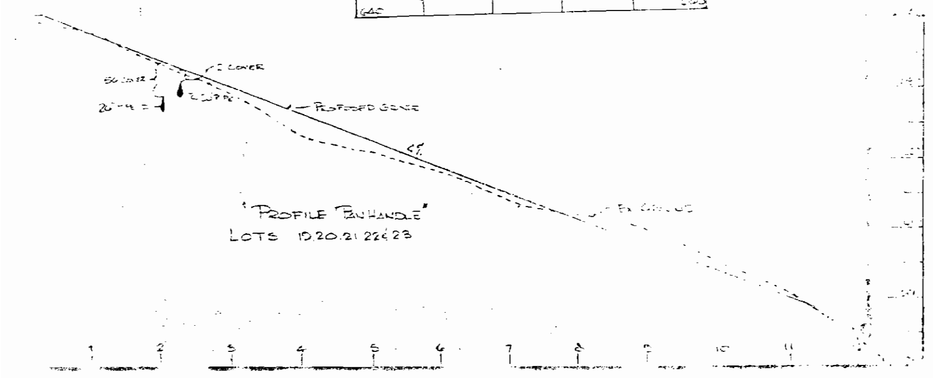
- 25% GRADE
- ST. LIGHT
- TRASH PAD
- SEPTIC FIELD
- WELL AREA
- EXISTING WELL

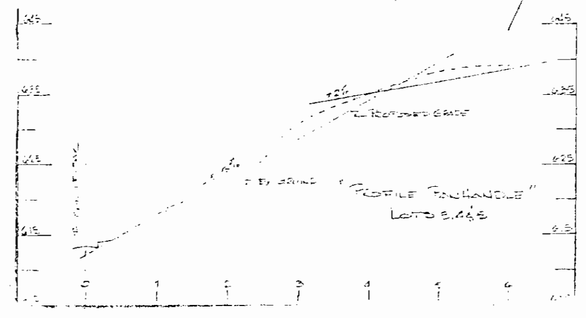
General Notes

1. Tax Map 31, Parcel 33, Subdivision 36, Councilmanic District 3, Census Tract 4033
2. Current Zoning and Acreage:
   - RAE1 = 77.03 Acres +/- RC-5
   - RAE2 = 78.66 Acres +/- RC-5
   - (Includes 33' of ex. Falls Rd R/W).
3. Permitted - 78.66 Acres x 0.45 Dwelling/Acre = 35.47 Units
   Proposed - 34 Single Family Units + 7 Lots = 41 Units
4. 7 Lots will be for sale.
5. Density:
   - Required - 26 units @ 2 Acres/Dwelling Unit = 52 Spaces
   - Proposed - A minimum of two off-street driveway spaces to be provided for each lot.8 1/2' x 18' min.
6. Landscape Requirements:
   - Required - 26 units @ 1 tree/unit = 26 trees (24 major deciduous trees)
   - Proposed - A minimum of 1 tree/unit provided
7. Existing vegetation consists of hardwood forest and cultivated fields. Only trees for house and panhandle construction will be removed. The developer will require a restrictive covenant wherein a maximum 7000 sq ft of lot area per unit shall be approved.
8. Existing streams and bodies of water are as shown on plan.
9. There are no existing residences, or existing barn, and no existing pool cellar which will be retained on the site. Any and all existing structures will be removed. None of the existing structures are on the Baltimore County Historical List or the National Register.
10. A Phase I study is not required for this zone.
11. Stormwater management quantity has been waived. Management of water quality will be handled on a lot by lot basis. Letter dated 12-4-86.
12. The limit of the wetlands coincides with the limits of the "Flood Plain" as delineated on the Falls Road Study. There are no known historical sites, archeological sites, endangered species, habitats, or hazardous materials on the site.
13. All roads will have 26 feet wide bituminous pavement and will be maintained equally by all parties having access to their use.
14. No construction or grading will occur within the limits of the vegetated stream buffer.
15. Refuse collection pads will provide 16 sq ft per unit (4'x4'). Pad will provide an unobstructed opening parallel to the cul-de-sac.
16. Pavement collar on Lot 27 meets Section 400 (Baltimore County Zoning Regulations).
17. Each lot will be a minimum of one acre.
18. All buildings will be 75 ft from centerline of street and 50 ft from other tract boundaries and lot lines.
19. No more than 15% of any lot may be covered by buildings
20. The existing gas tank and pump is to be removed.
21. Grading for lots to be performed by individual lot owners. For grading of the panhandles, see profiles.
22. Panhandle lots subject to declaration and maintenance agreements to be recorded among the Land Records of Baltimore County at the time of Plat Recordation. For panhandle lots: refuse collection, snow removal and road maintenance will be provided to the junction of the panhandle and Forwood R/W line only and not onto the panhandle lot driveway. (Refuse to be collected by Baltimore County). The proposed paving sections shall be 8 in. CR-6 stone with a 2 in. bituminous concrete surface on all panhandle roads. Widths are shown hereon.
23. All septic systems are a minimum 20' ft from all streams.
24. No further subdivision of the parcel shown hereon will be allowed unless approved by the Baltimore County Planning and Zoning Commission.
25. Where applicable, utilities shall be installed in accordance with current regulations as administered by the Public Service Commission of Maryland regarding underground services.
26. If and when water & sewer facilities become available to the subdivision, connection thereto shall be required by the agency having jurisdiction.
27. No building permit shall be issued for the construction of a dwelling on a lot shown on the final plat until a well approved by applicable State and County Agencies having jurisdiction, has been located on the site of any lot.
28. In accordance with Sec. 22-26 of the Development Regulations, the Mitigative Measures taken to protect the soils in this development which have moderate to severe limitations is to move all building envelopes out of the Hydric Soil areas and to place a 30 ft building setback off the 25% slopes. In addition, the developer will place all areas currently cultivated, in a grass cover.
29. Accessory structures, fences and projections into yard cannot be located in flood plain areas or hydric soils.
30. This development plan is approved by the Zoning Commissioner based on his interpretation of the Zoning Regulations, that it complies with present policy, density and bulk controls as they are delineated in the Regulations. Any part or parcel of this tract that has been utilized for density to support dwellings shown thereon shall not be further divided, subdivided or developed for additional dwellings or any purpose other than that indicated presently on said plan. Utilization will have occurred when a dwelling is constructed and transferred for the purpose of occupancy.
31. The Development Plan complies with the C.R.G. Plan and all C.R.G. comments.
32. "C" indicates flexibility in fronting the dwelling, change in direction requires an amendment to the Development Plan prior to any permit approval. Contact current Planning Office prior to any amendment application.
33. A LANDSCAPE PLAN MUST BE APPROVED BY THE OFFICE OF PLANNING PRIOR TO THE ISSUANCE OF A BUILDING PERMIT.
34. ENVELOPES SHOWN HEREON ARE FOR THE LOCATION OF ALL PRINCIPAL BUILDINGS ONLY, ACCESSORY STRUCTURES, FENCES & PROJECTIONS INTO YARDS MAY BE CONSTRUCTED OUTSIDE THE ENVELOPE BUT MUST COMPLY WITH SEC. 301.4.C.2. OF THE B.C.Z.R.
35. DRIVEWAY CURB CUT LOCATION TO BE DETERMINED AFTER MODEL SELECTION BUT BEFORE INSTALLATION OF STREET CURBS.









Rod No 6

ENGINEER:
GERHOLD, CROSS & ETZEL
Registered Professional Land Surveyors
412 Delaware Avenue
TOWSON, MARYLAND 21204
#633-4170

STATE OF MARYLAND — JOHN THOMAS GIRE — REGISTERED LAND SURVEYOR

OWNER & DEVELOPER:
GEO. V. PALMER
SUITER MD. 21023 #771-4311
TAX # 21-00-000-795

OWNER LOT 21
LAWRENCE P. FORWOOD
REISTERSTOWN, MD 21136

Office of Planning and Zoning
Approved by:

Director of Planning — Date 5/27/88

Zoning Commissioner — Date

(SHEET NW 18-E)

R.C. 5

STA ZINK (MBCS & M)
92-381-A

KNOX AVE

MANOR DR

JONATHAN CT

GENT

GAS PIPELINE

25

LALIEWAY RD

MILL

BARON

STA GENT (USC&GS)

GRACE CHURCH

RIDGE RD

92-381-AA (G.P.)

W-28,500

W-27,000

W-25,500

W-24,000

N-68,000

N-67,000

N-66,000

N 65,000

N 64,000

(SHEET NW 16-E)

1988 COMPREHENSIVE ZONING MAP
Adopted by the Baltimore County Council
Oct. 17, 1988
(Bill Nos. 144-88, 145-88, 146-88, 147-88, 148-88, 149-88, 150-88)

Chairman, County Council

N REVISED IN SELECTED AREAS.
PILED BY PHOTOGRAMMETRIC METHODS
INC. BALTIMORE, MD. 21210

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
OFFICIAL ZONING MAP

1992 COMPREHENSIVE ZONING MAP
Adopted by the Baltimore County Council
Oct. 15, 1992
(Bill Nos. 183-92, 184-92, 185-92, 186-92, 187-92, 188-92, 189-92)

William A. Howard IV
Chairman, County Council

SCALE	LOCATION	SHEET
1" = 200' ±	GRACE CHURCH	N.W. 17-E
DATE OF PHOTOGRAPHY JANUARY 1986		

94-76
IV-C-1
A30

P. 228 : LOT A2
RAYMOND JAY FISHER
RAYMOND H. FISHER, ET. AL.
1822 RIDGE ROAD
REISTERSTOWN, MD. 21136-5600
TAX ACCOUNT : 08-0819035868
LIBER / FOLIO : 5426 / 87
ZONED R.C.5

P. 228 : LOT A1
RONALD P. HANLEY
ROSEMARY HANLEY
1820 RIDGE ROAD
REISTERSTOWN, MD. 21136-5600
TAX ACCOUNT : 08-0819035867
LIBER / FOLIO : 6059 / 411
ZONED R.C.5

P. 51
GRACE METHODIST CHURCH, INC.
FALLS ROAD
COCKEYSVILLE, MD. 21030
TAX ACCOUNT : 08-0807060575
2.940 ACRES
LIBER / FOLIO : 2335 / 99
ZONED R.C.5

EX. DRIVEWAY

GENT ROAD

RIDGE ROAD

EX. PAVING

TRACT B
0.9224 AC.

TRACT C
0.4081 AC.

EX. WOODS

EX. GRAVEL DRIVEWAY

38 EMERALD GREEN ARBORVITAE AT 8' O.C.

16' WIDE GATE

MIN.1 BLDG

PROPOSED PARK & TURN AREA

EXISTING SUBSTATION (TO BE REMOVED)

EX. WELL

FUTURE CAP. STR.

PROPOSED FENCE

EX. GRAVEL PARKING AREA

12 WHITE PINE AT 15' O.C.

P. 386
DOROTHY L. MARSDEN
1823 RIDGE ROAD
REISTERSTOWN, MD. 21136-5617
TAX ACCOUNT : 08-1900006034
2.759 ACRES
ZONED R.C.5

EX. HOUSE & CONC. WALK (TO BE REMOVED)

EX. ANTENNA MAST

EX. SHED

EX. POOL & DECK (TO BE REMOVED)

PROP. ROADWAY

EX. EARTH DRIVEWAY

EX. SEPTIC CLEAN OUT

EX. SHEDS (TO BE REMOVED)

7 WHITE PINE AT 15' O.C.

5 NORWAY SPRUCE AT 15' O.C.

PROPOSED STORM WATER MANAGEMENT AREA

NOTE: LIMIT OF WOODS SHOWN REFLECTS AFTER GRADING CONDITION.

9 WHITE PINE AT 15' O.C.

3 NORWAY SPRUCE AT 15' O.C.

5 WHITE PINE AT 15' O.C.

EX. CURB

EX. DRIVEWAY

WIDENING STRIP

NOTE : 50 FOOT LOT LINE SETBACK RENDERS BUILDING ENVELOPE FOR PARCEL 247 (TRACT C) VIRTUALLY NONEXISTENT

P. 247
BALTIMORE GAS & ELECTRIC CO.
TAX ACCOUNTING UNIT
P.O. BOX 1475
BALTIMORE, MD. 21203
TAX ACCOUNT : 08-0802002467
LIBER / FOLIO : 2911 / 289
ZONED R.C.5

P. 79 : LOT 15
CARL FOLLO
1 JOEL COURT
REISTERSTOWN, MD. 21136-5643
TAX ACCOUNT : 08-2100008993
2.950 ACRES
LIBER / FOLIO : 8816 / 620
ZONED : R.C.5

P. 338
FREDRICK R. VINUP
ANN L VINUP
1821 RIDGE ROAD
REISTERSTOWN, MD. 21136-5617
TAX ACCOUNT : 08-0822035540
LIBER / FOLIO : 4941 / 720
ZONED : R.C.5

P. 79 : LOT 24
JAMES J. KIRCHNER, JR.
TINA M. KIRCHNER
4 JOEL COURT
REISTERSTOWN, MD. 21136
TAX ACCOUNT : 08-2100009002
3.662 ACRES
LIBER / FOLIO : 9657 / 396
ZONED : R.C.5

TRACT A
1.5628 AC.

10' DRAINAGE & UTILITY EASEMENT

P. 79 : TRACT A
BALTIMORE GAS & ELECTRIC CO.
TAX ACCOUNTING UNIT
P.O. BOX 1475
BALTIMORE, MD. 21203
TAX ACCOUNT : 08-2100029003
LIBER / FOLIO : 8085 / 676
ZONED R.C.5

P. 79 : LOT 16
ROBERT J. RYTTER
CAROL P. RYTTER
3 JOEL COURT
REISTERSTOWN, MD. 21136-5643
TAX ACCOUNT : 08-2100008994
2.972 ACRES
LIBER / FOLIO : 9403 / 619
ZONED : R.C.5

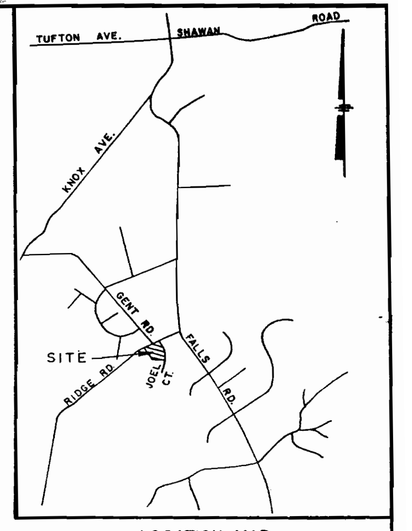
P. 79 : LOT 17
IRA N. BROWN
CYNTHIA M. BROWN
5 JOEL COURT
REISTERSTOWN, MD. 21136-5643
TAX ACCOUNT : 08-2100008995
3.173 ACRES
LIBER / FOLIO : 8858 / 720
ZONED R.C.5

JOEL COURT

EX. DRIVEWAY

Part No 4

LOCATION MAP
SCALE: 1" = 2000'



NOTES:

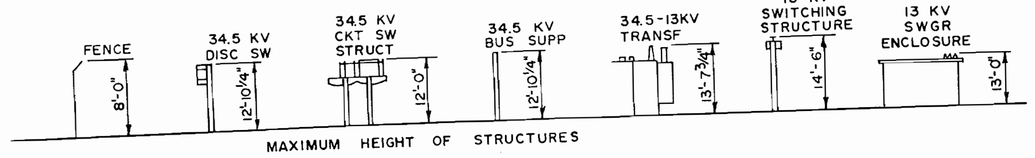
1. IVY HILL SUBSTATION IS AN UNATTENDED STATION AND NO PERMANENT EMPLOYEES ARE TO BE LOCATED ON THE PREMISES. AVERAGE DAILY TRIPS: 1/WEEK.
2. THERE ARE NO EXISTING OR PROPOSED WATER AND SEWER TO THE STATION.
3. FENCE: 8 FT. OVERALL HEIGHT CONSISTING OF 7 FT. OF CHAIN LINK FABRIC AND THREE STRANDS OF BARBED WIRE (TURNED OUT).
4. ROADWAY: COMPACT SUBGRADE TO 95% DENSITY AS DETERMINED BY ASTM 1557-70. INSTALL 8" OF GR-467 CRUSHED STONE BASE IN TWO LIFTS AND COMPACT EACH LIFT WITH A 10 TON ROLLER. INSTALL 2" BITUMINOUS BINDER COURSE (BT BAND). INSTALL 1" BITUMINOUS CONCRETE SURFACE (SN BAND) AS PER MARYLAND STATE HIGHWAY ADMINISTRATION SPECIFICATIONS.
5. AREA WITHIN FENCE TO BE COVERED WITH 4" OF STONE OVER NEW GRADE. STONE SHALL BE GRAY IN COLOR, WITH A LOS ANGELES ABRASION RATING LESS THAN 50% AND GRADATION IN ACCORDANCE WITH MARYLAND STATE HIGHWAY ADMINISTRATION SHA-4.
6. ALL AREAS NOT COVERED BY STONE OR PAVING WILL BE SEEDED WITH GRASS ACCORDING TO MARYLAND S.C.S. AND/OR BALTIMORE COUNTY SPECIFICATIONS.
7. ALL ELECTRIC STRUCTURES ARE FUNCTIONALLY ATTACHED.
8. TOPOGRAPHIC AND BOUNDARY INFORMATION TAKEN FROM SURVEY PERFORMED BY: A S M TECHNOLOGIES, INC.
   2 WEST FORREST AVENUE
   SHREWSBURY, PA. 17361
   717-235-8325
9. EXISTING SEPTIC SYSTEM SHALL BE PURIFIED AND BACKFILLED OR REMOVED AT TIME OF RAZING THE EXISTING HOUSE.
10. EXISTING WELL SHALL BE BACKFILLED BY A LICENSED WELL DRILLER WHO MUST SUBMIT A WELL ABANDONMENT REPORT AT THE TIME OF RAZING THE EXISTING STRUCTURE.
11. PETITION FOR A VARIANCE FROM SECTION 1A04.3.B.3 OF THE BALTIMORE COUNTY ZONING REGULATIONS TO PERMIT STRUCTURES AS CLOSE AS 0 FEET FROM INTERIOR LOT LINES IN LIEU OF THE REQUIRED 50 FOOT BUILDING SETBACK.
12. PETITION FOR A SPECIAL EXCEPTION UNDER THE ZONING REGULATIONS OF BALTIMORE COUNTY TO USE THE HEREIN DESCRIBED PROPERTY FOR AN OUTDOOR ELECTRIC PUBLIC UTILITY SERVICE CENTER (ELECTRIC SUBSTATION) IN A RC5 ZONE PURSUANT TO SECTION 1A04.2.B.11 OF THE BALTIMORE COUNTY ZONING REGULATIONS.

CASE NO. 3760-X — PETITIONER : BALTIMORE GAS & ELECTRIC COMPANY PETITION FOR SPECIAL EXCEPTION TO USE SAID PROPERTY FOR THE CONSTRUCTION OF AN ELECTRICAL TRANSFORMER SUBSTATION. DEPUTY ZONING COMMISSIONER BY ORDER DATED MARCH 14, 1956, GRANTED SPECIAL EXCEPTION REQUEST.

CASE NO. 4535-X — PETITIONER : BALTIMORE GAS & ELECTRIC COMPANY PETITION FOR SPECIAL EXCEPTION FOR WIRELESS TRANSMITTING AND RECIEVING STATION. ZONING COMMISSIONER BY ORDER DATED MARCH 9, 1959, GRANTED SPECIAL EXCEPTION REQUEST.

LEGEND

A = FUTURE 34.5 KV CAPACITOR
B = 34.5 KV DISC SWITCHING STRUCTURE
C = 34.5 KV CIRCUIT SWITCHER
D = 34.5 KV BUS SUPPORT
E = 34.5 KV TRANSFORMER
F = 13 KV BUS SUPPORT
G = 13 KV LOAD BRK. SWITCHING STRUCTURE
H = 13 KV SWITCHGEAR



APPLICANT/OWNER/CONTRACT PURCHASER
BALTIMORE GAS & ELECTRIC COMPANY
SYSTEM ENGINEERING & CONSTRUCTION DEPARTMENT
LEXINGTON & LIBERTY STREETS
1020 G & E BUILDING
BALTIMORE, MD. 21201
C/O MONICA P. McGRADY, P.E.
1-410-234-5294

THIS PROPERTY LOCATED IN THE
6TH ELECTION DISTRICT OF,
3RD COUNCIL DISTRICT
BALTIMORE COUNTY, MARYLAND
ZONED R.C.5
TAX MAP NO. 50
PARCEL NO. 247, 338, & 79 : TRACT A
TOTAL AREA : 2.8933 ACRES
ZONING MAP NO. D-2

Rev	Date	J.O./Est. No	Description	Approved

ENGINEERING
Civil
Elec.
Proj. Engr.
Proj. Mgr.
Prin. Engr.
Supv. Engr.

DESIGN GROUP
Designer
Drawn
checked
Appd.
Date Appd.

PLAT TO ACCOMPANY PETITION FOR ZONING SPECIAL EXCEPTION AND VARIANCES

34.5-13.8 KV SUBSTATION

IVY HILL

BALTIMORE GAS AND ELECTRIC COMPANY
DISTRIBUTION & TRANSMISSION ENGINEERING DEPT.
SYSTEM ENGINEERING SECTION

File — Scale: 1" = 20' — Rev.
Microfilmed — Orig. ☐ Rev. ..... — Dwg. No. 400-701-E

30X

Traffic Zones

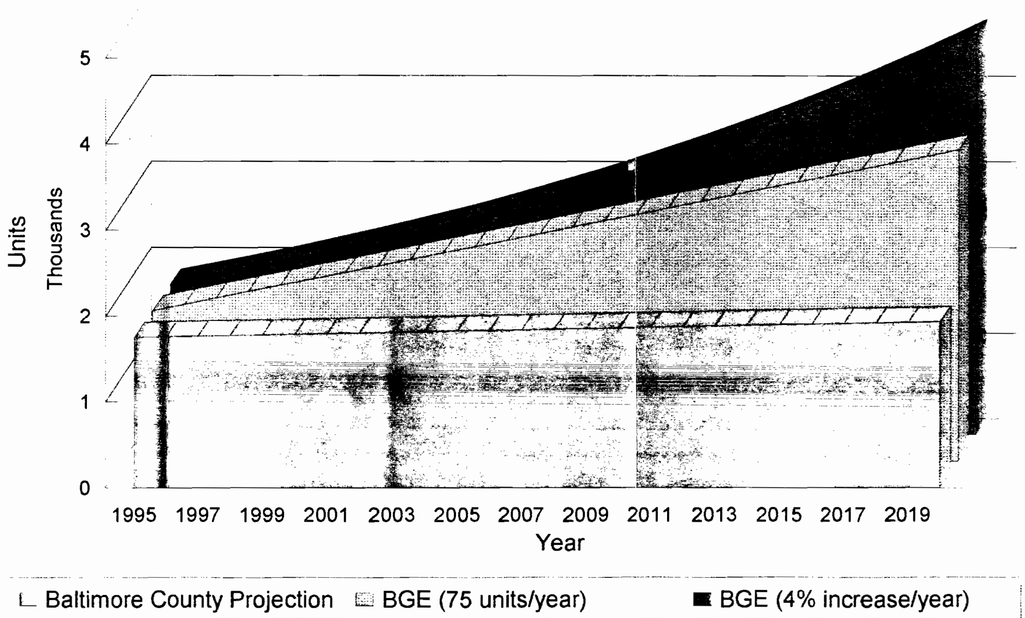
	1990	1995	2010	2020		
307	100	100	100	100		
313	90	94	119	119		
330	1,720	2,035	2,239	2,258		
332	840	883	957	967		
333	700	736	788	817		
	3,450	3,848	4,203	4,261	***10.7%***	*Since 1995*

BGE Data

	1994	1995	2010	2020		
Assumes 75 units/year	1,750	1,825	2,950	3,700	***111.4%***	*Since 1995*
Assumes 4% inc./year	1,750	1,820	3,278	4,852	***177.3%***	*Since 1995*

Unit Growth Comparison

(1995 - 2020)



ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

Robert A Brown
NAME

13007 Talisman Rd.
ADDRESS

Reisterstown, Md 21136

RECEIVED
OCT 12 1994
ZADM

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

NO

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

Judith A. Marsh
NAME

12420 Falls Road
ADDRESS

Cockeysville, Md.
21030

Bruce D. Marsh

12420 Falls Rd
Cockeysville Md. 21030

RECEIVED
OCT 12 1994
ZADM

> A property's peculiar characteristic or unusual circumstances relating only and uniquely to that property must exist in conjunction with the Ordinance's more severe impact on the specific property because of the property's uniqueness before any consideration will be given to whether practical difficulty or unnecessary hardship exists. Cromwell v. Ward, 102 MD App. 691 (1995), page 721.

The Board found as a matter of fact that unusual circumstances existed with regard to the extent electrical substation. It found that:

> "...the existing electrical substation is a substation which is far undersized in capacity for the required demand in the existing locale. An immediate (*sic*) need in increased capacity has been adequately demonstrated to address the issue of an unusual condition which exists with the existing structure. BGE is mandated to increase the capacity of any substation in order to stay ahead of demand. The conditions which exist in the existing substation are unique in that BGE has been unable to even meet existing demand. The Board finds that the existing conditions and insufficient capacity force BGE to increase capacity; (Op. 11)

The transcript of the proceeding before the Board of Appeals indicates that the existing Ivy Hill Substation is almost 40 years old. It has a single transformer with the capacity of 16.6 megawatts. (T. 1/10/95, p. 19). During the length of its service, the number of customers served by the Ivy Hill Substation has grown to approximately 1750 to 1800 customers over a 15 to 20 square mile area without any increase in its capacity to generate electricity. (T. 10/4/94, pp. 124-125, 132) (T. 1/10/95, pp. 54, 57). A further strain on the substation's capacity to generate electricity comes from an average increase of 75 new customers per year added to the substation's service area. (T. 10/4/94, p. 103) (T. 1/10/95, pp. 25-28). In the winter of 1994, the substation's 16.6 megawatt capacity was exceeded by almost 20% when it was required to generate 20.1 megawatts of power. (T. 10/4/94, pp. 103-104). This above-capacity demand for electricity caused an overload and interruption in electrical power to the service area. The Board heard testimony that

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

94 OCT 17 AM 10:38

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

James Norman
NAME

12909 Falls Rd
ADDRESS

Cockeysville MD 21030

RECEIVED
OCT 14 1994
ZADM

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

Mrs. Edith B. Tolley
NAME

7 Hickory Hill Rd.
ADDRESS

Cockeysville 21030

94 OCT 17 PM 2:33

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

MR. AND MRS. TRUXTON CRAIN HOUSTON
NAME

1901 RIDGE ROAD
ADDRESS

REISTERSTOWN, MD 21136 –

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

NANCY M gill
NAME

1911 Billy Ruston Cr
ADDRESS

Reisterstown MD 21136

94 NOV -1 PM 2:40

RECEIVED
OCT 31 1994
ZADM

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

Nancy M Gill
NAME

1911 Billy Barton Ct
ADDRESS

Reisterstown MD 21136

94 NOV -1 PM 2:40

RECEIVED
OCT 31 1994
ZADM

3-5-99

94-452-XA -BG&E (Ivy Hill Sub. CCt REMANDS to CBA pursuant to Court of Appeals Disposition 3/17/99 (Cathell, J.) 3/24/99 -Lawrence Daniels, J

PETITION OF FRIENDS OF THE RIDGE, et al FOR JUDICIAL REVIEW	*	IN THE
	*	CIRCUIT COURT
IN THE MATTER OF BALTIMORE GAS & ELECTRIC COMPANY (IVY HILL SUBSTATION) FOR SPECIAL EXCEPTION AND VARIANCE	*	FOR
	*	BALTIMORE COUNTY
	*	Case No. 95 CV 5315
ZONING CASE: 94-452-XA	*	

* * * * * * * * * * * * *

ORDER

The Court of Appeals of Maryland having issued its Disposition on March 15, 1999, it is this 24TH day of March, 1999

ORDERED that the above-captioned case is hereby remanded to the Board of Appeals for a decision consistent with the decision of the Court of Appeals.

SO ORDERED.

LAWRENCE R. DANIELS
JUDGE

cc: County Board of Appeals
J. Carroll Holzer, Esquire
John H. Zink, III, Esquire

no other distribution station is available to relieve the demand from Ivy Hill. (T. 10/4/94, pp. 120-124). Based upon its statutory mandate, BGE is required to supply its customers with adequate electric service to have a generating capacity, "sufficiently large enough to meet all normal demands for service and provide a reasonable reserve for emergencies." COMAR Tit. 20, §50.02.03 (1981). Given this mandate, and the increased demands on its generating capacity, the Board heard testimony that BGE's only option was to expand the Ivy Hill substation. (T. 10/4/94, pp. 106-107).

Having found BGE's obligation to expand the Ivy Hill substation to be "special circumstances" in terms of BCZR §307.1, the CBA then went on to consider whether strict compliance with the Zoning Regulations would result in "practical difficulty or unreasonable hardship". The CBA reached the appropriate legal conclusion with regard to the character of the variance requested by BGE. The CBA determined that BGE's Petition for Relief from setback requirements implicated an area variance, the requirement for which is "practical difficulty" rather than a use variance which would have required a showing of "unreasonable hardship". *Red Roof Inns v. People's Counsel*, 96 MD. App. 219 (1993) p. 224.

> In order to require BGE to comply strictly with the setback requirements, the Board would be asking BGE to deviate from the aforementioned nationally recognized building and electrical codes, as well as sound engineering practices, on consolidating all substation equipment to the extent possible under this Petition. That deviation creates a practical difficulty in causing BGE to design a facility which would not conform to those standards. (Op. 12).

The record supports the CBA's finding. BGE developed a two-stage plan for the upgrading of the Ivy Hill Substation and its equipment. In the first stage, the current

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

Eileen Semanine
NAME

1525 Applecroft Ln
ADDRESS

Cockeysville, MD 21030

RECEIVED
OCT 31 1994
ZADM

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

Charles P. McCausland III
NAME

13421 Falls Rd
ADDRESS

Cockeysville Md. 21030

RECEIVED
OCT 31 1994
ZADM

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

94 OCT 25 AM 11:15

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

Karen A. Collett
NAME

12910 Falls Rd
ADDRESS

Cockeysville Md 21030

RECEIVED
OCT 25 1994
ZADM

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

94 OCT 2[illegible] 11:15

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

Karen A. Collett
NAME

11910 Falls Rd
ADDRESS

Cockeysville Md 21030

RECEIVED
OCT 25 1994
ZADM

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

94 OCT 20 PM 2:11

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

Diane M Gosbee
NAME

1113 Justa Lane
ADDRESS

Lakeperth Md
21030

RECEIVED
OCT 19 1994
ZADM

My husband died of cancer this year after 30 years of living next to high-power lines. I have cancer, My neighbors died of cancer. Need I say more?

transformer would be removed and replaced by a 32 megawatt capacity transformer. (T. 10/4/94, p. 104) (T. 1/10/95, pp. 28, 65). BGE intends to install a second transformer at Ivy Hill to meet anticipated demands for electrical power in the future. (T. 10/4/94, p. 105)(T. 1/10/95, pp. 28, 65). The existing equipment and that proposed in the two-stage development program must, necessarily, operate in close proximity. (T. 10/4/94, p. 39). In order to situate and operate the transformer equipment in accord with nationally recognized engineering codes, the only configuration in which the equipment can be situate on the three-acre tract will necessitate the equipment's straddling interior lot lines. (T. 10/4/94, pp. 39, 104-105, 109-110)(T. 1/10/95, pp. 21-23, 28-30, 63-65, 69-70).

In summary, the CBA found that unusual circumstances were inherent in the Ivy Hill Substation site. Coupling this finding with an additional finding that interior lot line setback requirements would result in practical difficulty in the proper location of power generating equipment on the site, the CBA properly granted a variance from those lot setback requirements. The record contains substantial evidence to support those findings and, therefore, the Court will not substitute its judgment for that of the CBA.

C. LACK OF NEED - "BGE'S FAILURE TO ESTABLISH NEED BY EVIDENCE TO SUPPORT THE CBA'S FINDING"

Protestants note that the grant of a special exception for the Ivy Hill Substation would require BGE to meet the requirements of Section 411.1 of the BCZR: "the use must be needed for the proper rendition of the public utility's service and the location thereof shall not seriously impair the use of neighboring property" as well as those requirements set out in Section 502.1 BCZR. The Protestants assert that BGE failed to demonstrate the "need" for the upgrade of the Ivy Hill Substation. This Court disagrees.

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

94 OCT 12 AM 10 11

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

Kathy D. Snyder
NAME

1513 Heather Hill Lane
ADDRESS

Hunt Valley, Md. 21030

RECEIVED
OCT 11 1994
ZADM

4983-94

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

R. Alan Scharf
NAME

1905 Billy Barton Circle
ADDRESS

Reisterstown, Md 21136

RECEIVED
OCT 11 1994
ZADM

4984-94

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

C. Z. Hanks
NAME

1509 HEATHER HILL LN.
ADDRESS

COCKEYSVILLE 21030

RECEIVED
OCT 11 1994
ZADM

#94-452-XA

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

James M. Smith
NAME

13 Dellwood Court
ADDRESS

Hunt Valley, Md
21030

RECEIVED
OCT 11 1994
ZADM

ARNOLD JABLON
DIRECTOR
ZONING ADMINISTRATION & DEVELOPMENT
MANAGEMENT OFFICE
111 WEST CHESAPEAKE AVE.
TOWSON, MD. 21204

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

DEAR MR. JABLON:

I WAS UNABLE TO ATTEND THE APPEAL HEARING ON THE ABOVE CAPTIONED CASE, BUT I WISH TO FORMALLY REGISTER MY OPPOSITION TO THE PROPOSED EXPANSION OF THE BALTIMORE GAS & ELECTRIC IVY HILL SUBSTATION FOR THE FOLLOWING REASONS:

1. INDUSTRIAL SUBSTATIONS **DO NOT** BELONG IN ANY RESIDENTIAL NEIGHBORHOOD.

2. THE UNKNOWN EFFECTS OF ELECTRO MAGNETIC FIELDS TO THE PUBLIC.

3. THE ELECTRICAL EXPANSION WILL CREATE THE INFRASTRUCTURE FOR FUTURE INDUSTRIAL AND COMMERCIAL DEVELOPMENT IN THE ENTIRE AREA.

SINCERELY,

Elizabeth Anne Davis
NAME
John H Wood III

ADDRESS
12807 Gent Road
Reisterstown Md
21136

Prior judicial decisions indicate that the requirement to show "need" is not a very stringent one in the context in which it presents itself in this case. In the case of *Neuman v. City of Baltimore*, 92 MD 251 (1967), the Court of Appeals considered the propriety of the grant of a special exception which permitted a physician to practice in a residential apartment building. The Protestants in that case, Neuman, argued the lack of need for this special exception and offered evidence to the affect that there were numerous doctors' offices already in the area. In considering this argument, the court stated: "Need for the services of a physician likewise must be considered as elastic and relative." Clearly it does not mean absolute necessity. Need has been judicially held to mean "expedient, reasonably convenient, and useful to the public... ." *Neuman v. City of Baltimore, supra*, at page 99. (See also, *Baltimore City v. C & P Telephone Company*, 92 MD 692 (1901), in which the court found that the term "necessary", "for the purpose of making distribution and forming connections", as contained in a City Ordinance, should have been interpreted to allow the C & P Telephone Company to leave standing those telephone poles "reasonably" necessary to achieve the purpose of the Ordinance.) Having defined "need" as such, the *Neuman* court upheld the granting of the special exception based upon countervailing evidence to the effect that 95% of the patients of the subject physician were in the "immediate area". *Neuman v. Baltimore City, supra*, page 94.

Expert witness testimony presented by BGE to the CBA amounted to more than a mere scintilla of evidence upon which the CBA could find need for the upgrade of the Ivy Hill Substation. The CBA received competent evidence that the capacity of the Ivy Hill

"Never doubt that a small group of thoughtful, committed citizens can change the world: indeed, it's the only thing that ever has."

- Margaret Mead

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #~~94-452-XA~~

I am unable to attend the appeal hearing on the above captioned case, but I wish to formally register my opposition to the proposed expansion of the Baltimore Gas & Electric Ivy Hill substation for the following reasons:

1. Industrial substations **do not** belong in any residential neighborhood.

2. The unknown effects of electro magnetic fields to the public.

3. The electrical expansion will create the infrastructure for future industrial and commercial development in the entire area.

Sincerely,

John J. McLaughlin

NAME

ADDRESS

94 SEP 29 PM 3:34

Carolyn Kleintank
1116 Greenway Road
Cockeysville, Maryland 21030

October 6, 1994

Mr. Arnold Jablon, Director
Zoning Administration & Development
Management Office
111 West Chesapeake Avenue
Towson, Maryland 212204

RE: Case #94-452-XA

Dear Mr. Jablon:

I was unable to attend the appeal hearing on the above captioned case, but I wish to formally register my opposition to the proposed expansion of the Baltimore Gas & Electric Ivy Hill substation for the following reasons.

1. Industrial substations DO NOT belong in any residential neighborhood.

2. The electrical expansion will create the infrastructure for future industrial and commercial development in the entire area. I live in an area that is primarily residential and I want to maintain this as there are so few areas that have this beauty without all the congestion of commercial and industrial

3. The unknown effects of electro magnetic fields to the public.

Yours very truly,

Carolyn Kleintank

RECEIVED
OCT 12 1994
ZADM

PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
Rosemary Hanley by Marc K. Cohen esq 120 E. Balto.	Balto., MD 21202
Andrew Lawman	1 Jael Ct Reisterstown MD
Sam Jaeb	1 Jael Court Reisterstown, Md 21136
Joann Gajkowski	6 Jael Court Reisterstown, Md 21136
Raymond Fisher	1822 Ridge Rd 21136
Dorothy P. Fisher	1822 Ridge Road 21136
Peggy Beard	1825 Ridge Rd
Dorothy Marsden	1523 Ridge Rd 21136
Ann & Fred Vinup	1821 Ridge Rd. 21136

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
Rob Hoffman	711 Hedgbury Ave 21204
Martha Delea	BCHE P.O Box 1475, Balti Md 21203
Ed Carmen	BCHE P.O. Box 1475, Balto, MD 21203
MONICA P. MCGRADY	BCHE " " " "
WALTER A. REITER JR	Real Property Consultants - 5730 Executive Dr. 21228

Printed with Soybean Ink on Recycled Paper

Case No. 94-452-XA /Baltimore Gas & Electric Co., Inc. /F. Vinup

Petitioner's Exhibit No. 11 -- For purpose of copy and return

By: Sterling Leese Signature: Sterling Leese

Date: 10/13/94

Returned 10/13/94 2:50 p.m.

Substation was exceeded by nearly 20% during the winter of 1994. (T. 10/4/94, pp. 103-104). This power overload resulted in an interruption in service which necessitated that a portion of the load served by the Ivy Hill Substation be temporarily transferred to the Delight Substation. (T. 10/4/94, pp. 103-105). However, because of rapid growth in the area served by the Delight Substation, the transferred energy generation potential would necessarily be returned to the Ivy Hill Substation. (T. 10/4/94, pp. 104-105, 122-123). Further, the necessary energy generation potential to supply the needs of the residents served by the Ivy Hill Substation were not available from any other distribution substation in the area. (T. 10/4/94, pp. 120-124). The CBA also heard testimony that the demand on the Ivy Hill Substation for the production of electric power will increase arithmetically in years to come. That the CBA found this testimony probative and compelling is obvious from its Opinion:

> It was well established during the course of evidence and testimony that existing demand, prior to the single-day occurrence in 1994, is not met by the existing substation capacity; therefore, need for enlargement of the substation giving current demand is justified. As indicated by Petitioners' experts, future demand is forecasted and is the basis for establishing future demand in designing facilities such as the Ivy Hill substation. (Opinion pp.4-5)

The CBA made its finding of "need" in the face of testimony presented by the Protestants' witnesses. Pam Budeshein, and employee of the Baltimore County Office of Planning and Zoning prepared a projection of population increase in the subject area upon which the Protestants argued that an increase in generating power to only 17.7 megawatts would meet any increase need for generating capacity to the Ivy Hill service area. The Protestants also offered the testimony of one Ron Hanley who interpreted the factual evidence presented by BGE's witnesses in such a manner to show that no need existed

QUALIFICATIONS

Walter A. Reiter, Jr., JD, ASA
Certified General Appraiser, #56

EDUCATION	- Georgetown University Loyola College - B.S. Degree University of Maryland Law School - J.D. Degree
CONTINUING EDUCATION	- AIREA - Courses I, II and Industrial VII AIREA - Uniform Standards Professional Practice Appraisal Standards of Practice and Workshop
CERTIFICATION	- Certified General Real Estate Appraiser, State of MD, #04-056 General Appraiser, Commonwealth of Pennsylvania, #GA-000724-L Appraiser - Certified General, State of Delaware, #XL-0000079 Senior Member - American Society of Appraisers Member - Baltimore and Howard Counties Appraisers' Society Member - Maryland Bar
QUALIFIED EXPERT WITNESS	- U.S. Federal Court of Baltimore City and Rockville Circuit Courts of Baltimore City and County, Allegany, Howard, Frederick, Washington, Carroll, Harford, Anne Arundel, Montgomery, and Queen Anne's Counties
EXPERIENCE	- Real estate appraiser, 1967 to present Real estate business since 1958
INSTRUCTOR	- The Johns Hopkins University - 12 years, Real Estate and Appraisal Principles Towson State University AIREA - Condemnation - Mock Trial Loyola College - Seminar, 1991 IRWA - Skills of An Expert Witness, 1990
SERVED AS OFFICER AND/OR DIRECTOR	- American Society of Appraisers, MD Chapter, President and Director Baltimore County Appraisers' Society - President and Director

Pet No 7

MD Association of Realtors - Director and Treasurer
Real Estate Board of Greater Baltimore - Executive Committee and Director
Society of Real Estate Appraisers - Director

MAJOR CONTRACTS - HUD - U.S. Department of Housing and Urban Development - Multi-Housing Projects (Apts.)
State of MD Department of Health & Mental Hygiene - Nursing Homes (2, three year contracts)
State of Maine - Consultant - Nursing Homes
MD Stadium Authority - appraisal, relocation, negotiation Camden Site, 1987-1989
Baltimore Gas and Electric Company
Potomac Electric Power Company
Washington Suburban Sanitary Company

SOME SPECIFIC APPRAISALS - Industrial Plants -
Allied, Agrico, and Lebanon Chemical Plants
Rennenberg Industries
Western Electric - Point Breeze
MD Shipbuilding & Drydock Company
Seagirt, Dundalk, North & South Locust Point, Port Covington, Sealand, Rukert Marine Terminals
Ashland, BP, Gulf - BWI, Exxon - Dundalk Marine Terminals

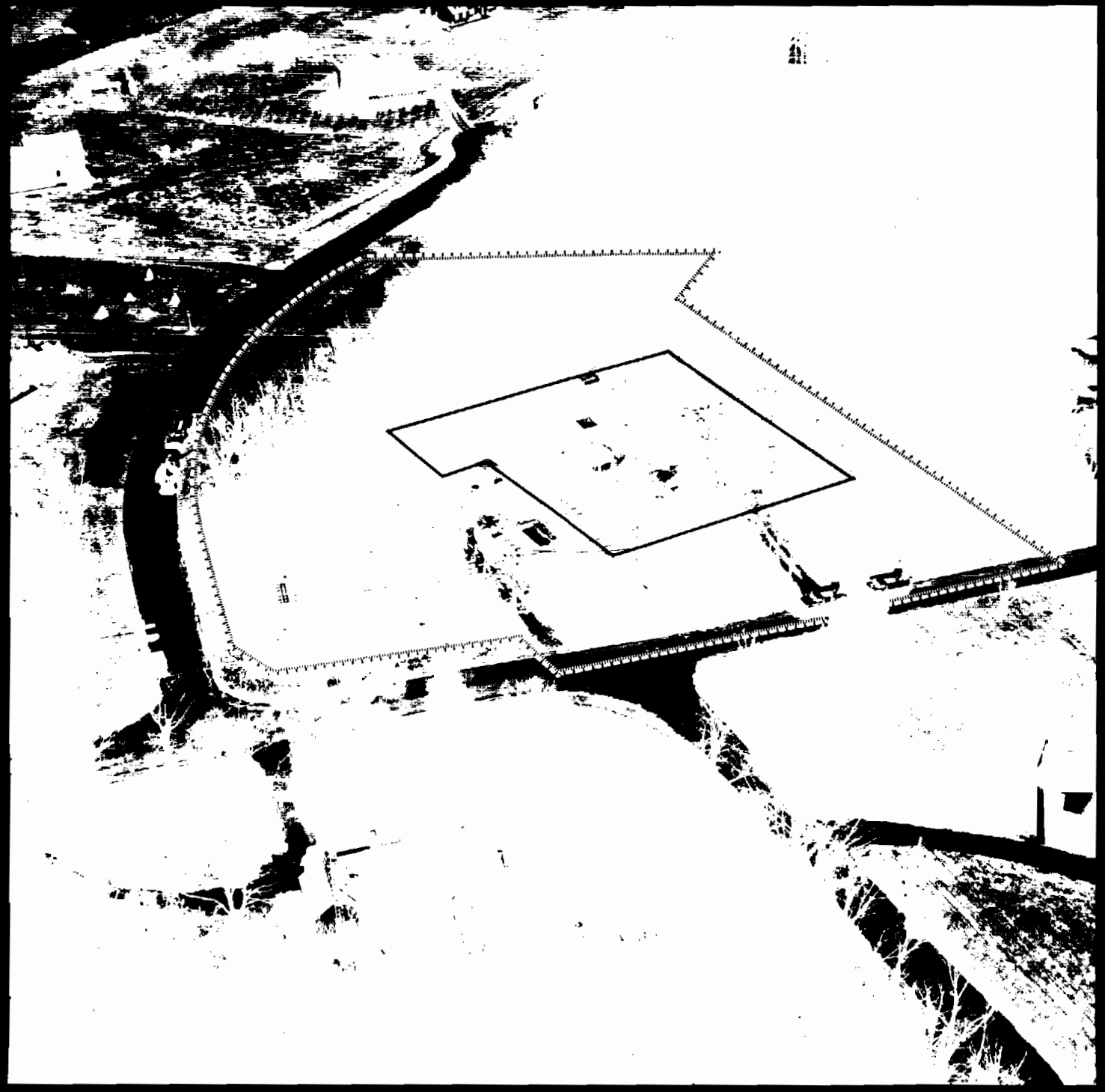
Industrial Sites -
Camden Yards
Union Stock Yards
Brandon Shores Park

Land Sites and Study -
Leakin Park - I-70 Corridor
Solley Road Energy Park
Fort Carroll Island

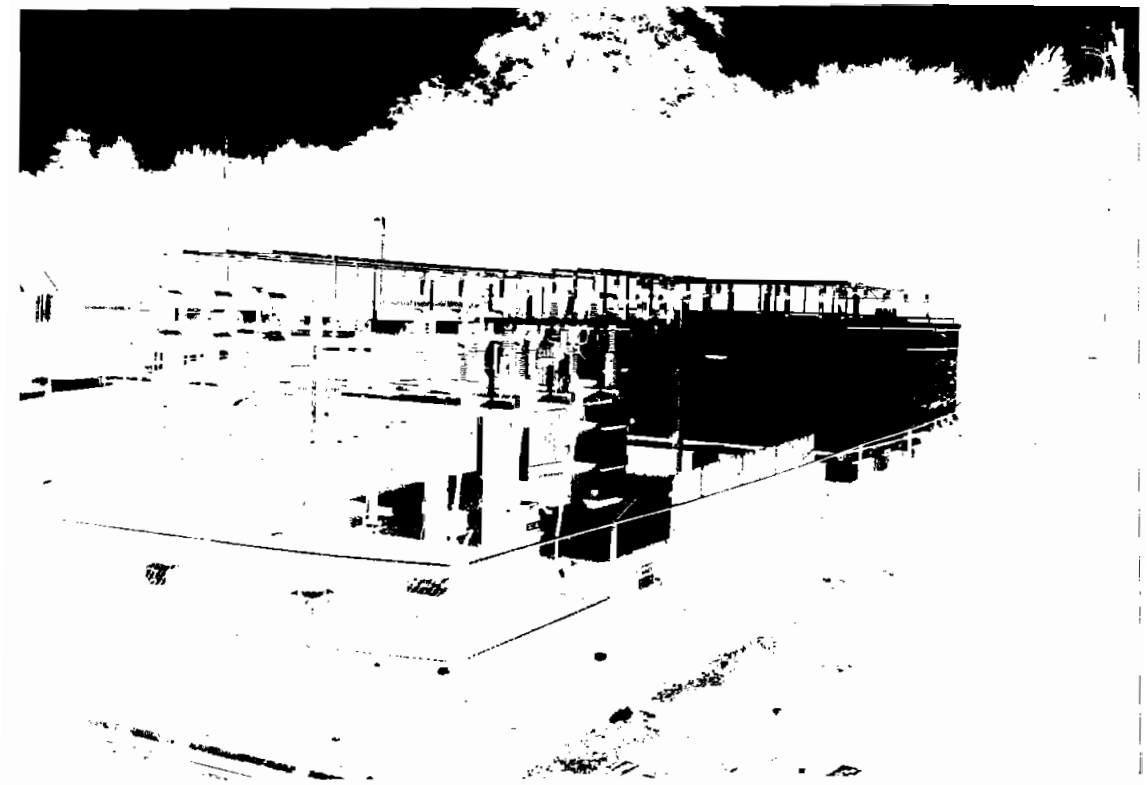
Railroads -
Penn Central Railroad
Chessie System
Several short lines incl. B & A Railroad Company
Busway/Light Rail Line

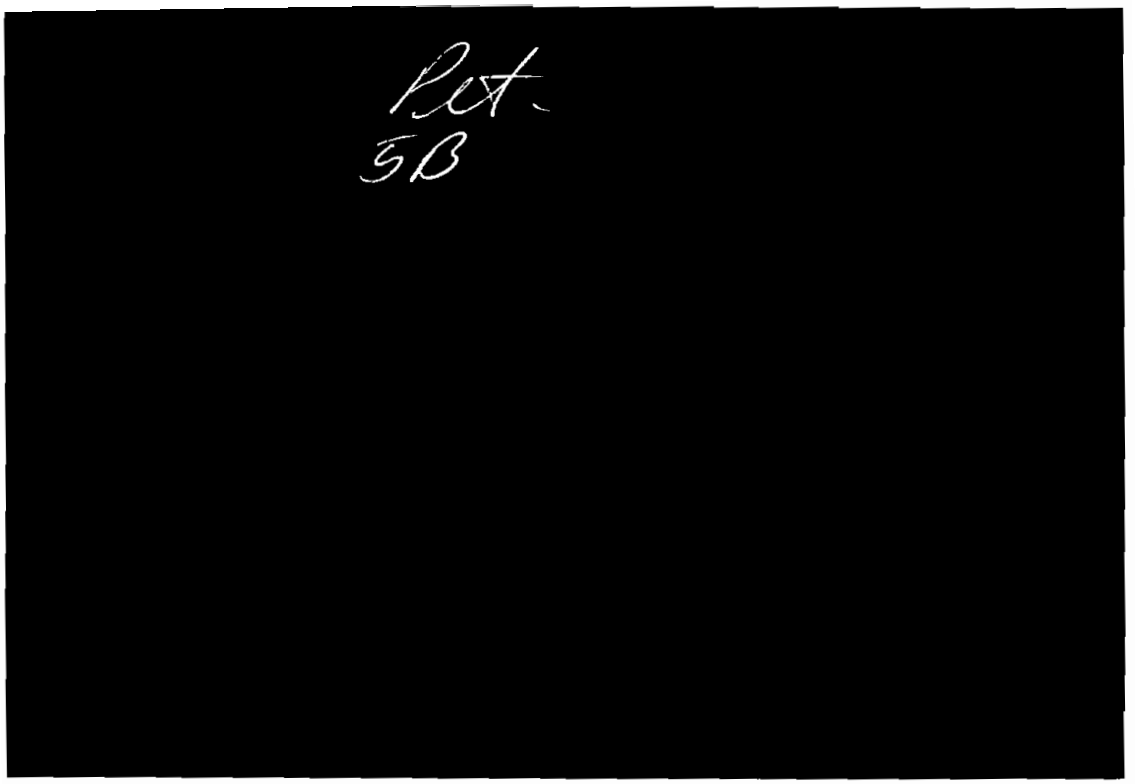
TYPES OF ASSIGNMENTS COMPLETED - Easements - conservation, aerial, subterranean, surface, construction, perpetual, temporary

Tenancies - life estates, leasehold/lessor interests
Large industrial complexes - various uses
Marine terminals
Railroads - right of way, marshalling yards, terminals
Large undeveloped sites - feasibility and land use studies, R41c studies
Nursing homes and living care units
Most types of retail, commercial, and office uses including shopping centers, banks, restaurants
Cemeteries
Oil depot and distribution terminals
Machinery and equipment evaluations
Working farms - house, dairy, general crops
Nurseries including Christmas tree farm
Small business evaluations
Truck terminals
Mobile home parks and marinas



Pict No. 2




Ref.
5B

for an increase in the substation's capacity to the extent requested by BGE.

The case of *Snowden v. Mayor and City Council of Baltimore*, 224 Md. 443 (1961) is apposite to disputes, like the one before this court, in which each side argues that different inferences should be drawn from the same set of facts.

> The heart of the fact-finding process often is the drawing of inferences from the facts. The administrative agency is the one to whom is committed the drawing of whatever inferences reasonably are to be drawn from the factual evidence. *Snowden*, supra, p. 448.

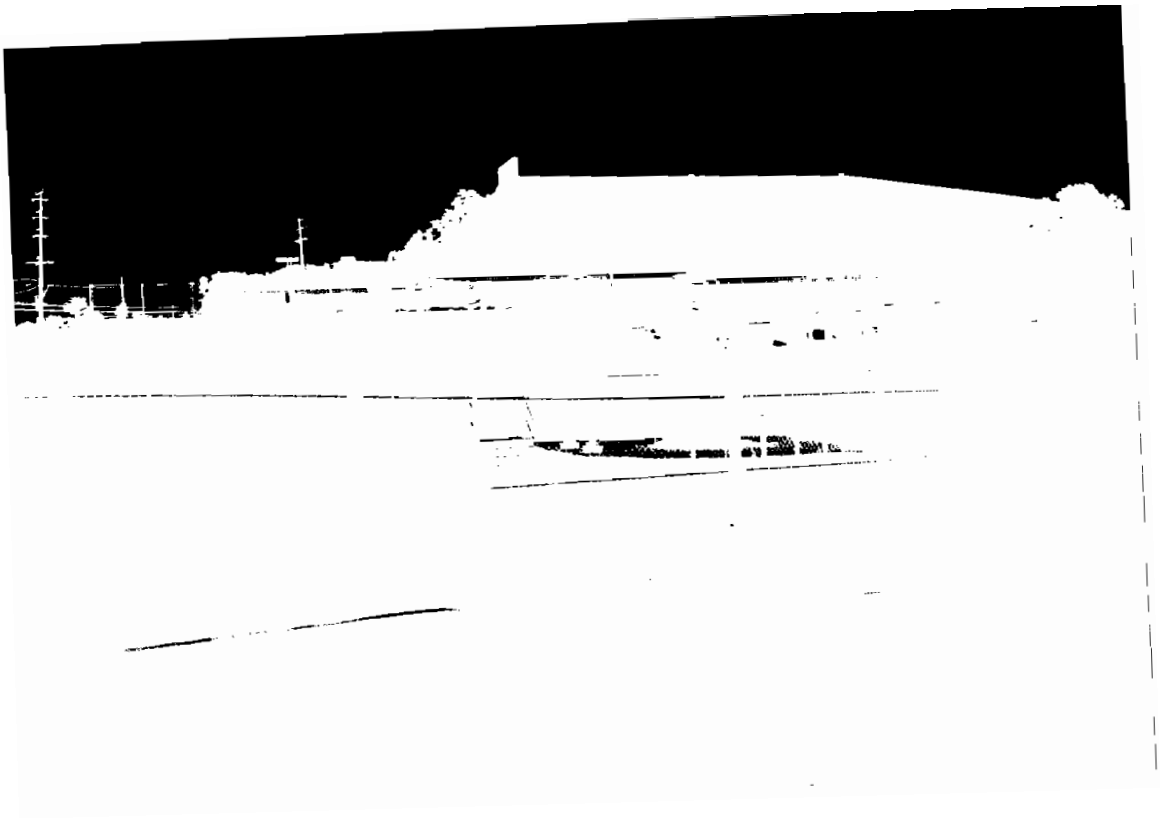
Accordingly, it is not for this court to determine whether or not the CBA was "right" in finding a need to expand the Ivy Hill Substation. Though this court might well find the evidence presented by the Protestants to be logical and commanding, that finding is not a basis for the court to substitute its opinion for that of the CBA as long as the opinion of the CBA is a reasonable one.

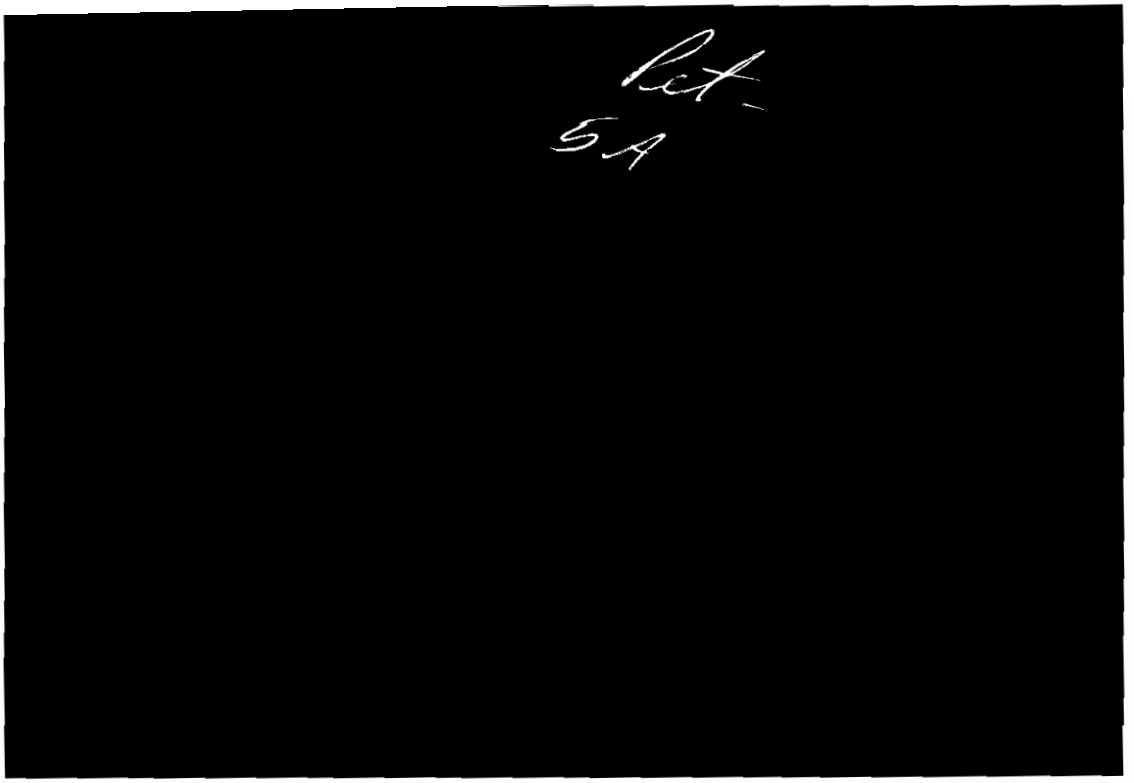
E. DID THE CBA ERR BY FAILING TO REQUIRE COMPLIANCE WITH BCZR SECTIONS 502.1 AND 411.1?

The BCZR's specifically addressed Public Utility uses in Section 411.

> For Public Utility uses permitted only by special exceptions in addition to the provisions of Section 502, the following regulations shall apply.
> 411.1 The use must be needed for the proper rendition of the Public Utility's service and the location thereof shall not seriously impair the use of the neighborhood.

The Protestants heatedly debate the CBA's finding: "... that any effect on property values in relation to the existence of the substation were already felt in the purchase of their respective properties." At the hearing before the CBA, the Protestants presented testimonial and documentary evidence probative of the negative effect the mere proposal to upgrade the substation had on properties bordering the Ivy Hill Substation. BGE




Lot
54



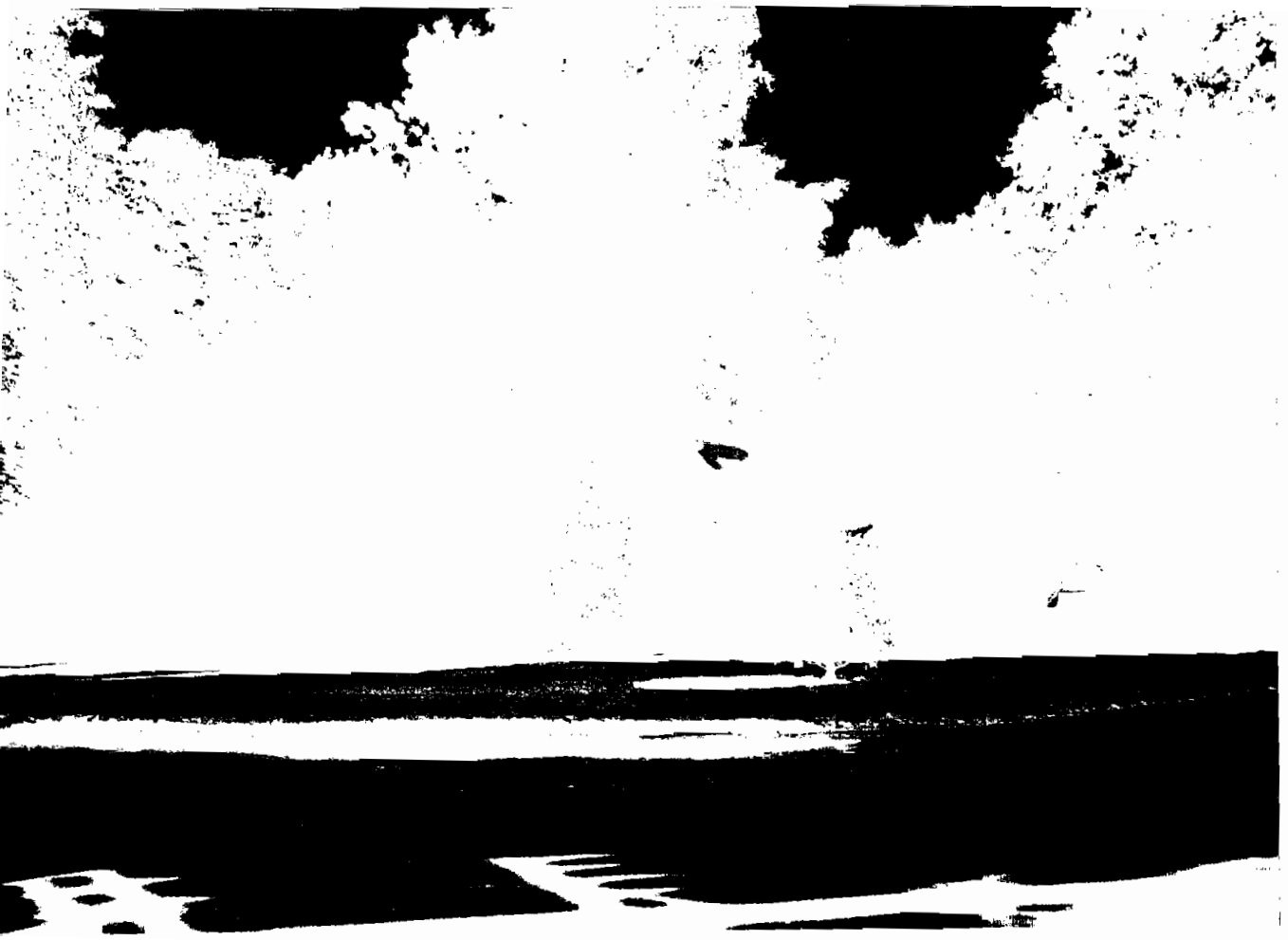
#4

4D



BLAKESLEE GROUP
ADVERTISING/DESIGN/PHOTOGRAPHY

Peter Andrews
916 N. Charles St.
Baltimore, MD 21201-5378
410-727-8800
Fax 410-752-1302



#5

Y/E



BLAKESLEE GROUP
ADVERTISING/DESIGN/PHOTOGRAPHY

Peter Andreen
916 N. Charles St.
Baltimore, MD 21201-5378
410-727-8800
Fax 410-752-1302

#6

4/09 F

BLAKESLEE GROUP
ADVERTISING/DESIGN/PHOTOGRAPHY

Peter Andersen
916 N. Charles St.
Baltimore, MD 21201-5378
410-727-8800
Fax 410-752-1302



#7

5/G



BLAKESLEE GROUP
ADVERTISING/DESIGN/PHOTOGRAPHY

Peter Anderson

916 N. Charles St.
Baltimore, MD 21201-5378
410-727-8800
Fax 410-752-1302

opposed that evidence with the testimony of Walter A. Reiter, Jr., an appraiser, who testified that the plan for enlarging the substation would not seriously impair the use of the surrounding properties because the plan provided for adequate screening by extant woodlands and additional landscaping and planting.

The Court of Appeals was presented with strikingly similar arguments based upon parallel facts in *Deen v. Baltimore Gas & Electric*, 240 Md. 317 (1965). The issue presented in *Deen* was whether or not the Baltimore Gas & Electric Company would be allowed to place its 115,000 volt transmission line above ground throughout its right-of-way from Summerfield to an East Towson substation in Baltimore County. In considering the effect that high tension wires would have on property values in the residential areas affected, the Court stated:

> Besides Mr. Gavrelis, other witnesses, including Hugh E. Gelston, a real estate expert, testified before the Board that in their opinion high tension wires in this area would adversely affect property values. To rebut this, the Company produced Mr. Magee and Mr. Heinmuller, both expert real estate appraisers, who testified that in their opinions overhead lines do not have an adverse affect on property values. Because of the evidence as to safety, coupled with the conclusions which reasonable men could have gleaned from the conflicting testimony as to the effect of high tension wires on nearby property values, we conclude that under the test used in *Meltzer*, the Board was not clearly erroneous when, pursuant to the authority given the Board under Section 411.3, it ordered these high tension wires underground. For that reason, this portion of the Board's findings we consider to be supported by competent, material and substantial evidence upon the whole record, and therefore, was not arbitrary and capricious. *Deen* p. 326.

That the CBA found that the erection of high tension lines would deflate residential property values in the *Deen* case, and that the improvement of the Ivy Hill substation would not deflate residential property values in the case *sub judice* is unimportant. What is significant is that the quality of analysis by the CBA is the same in both cases. The



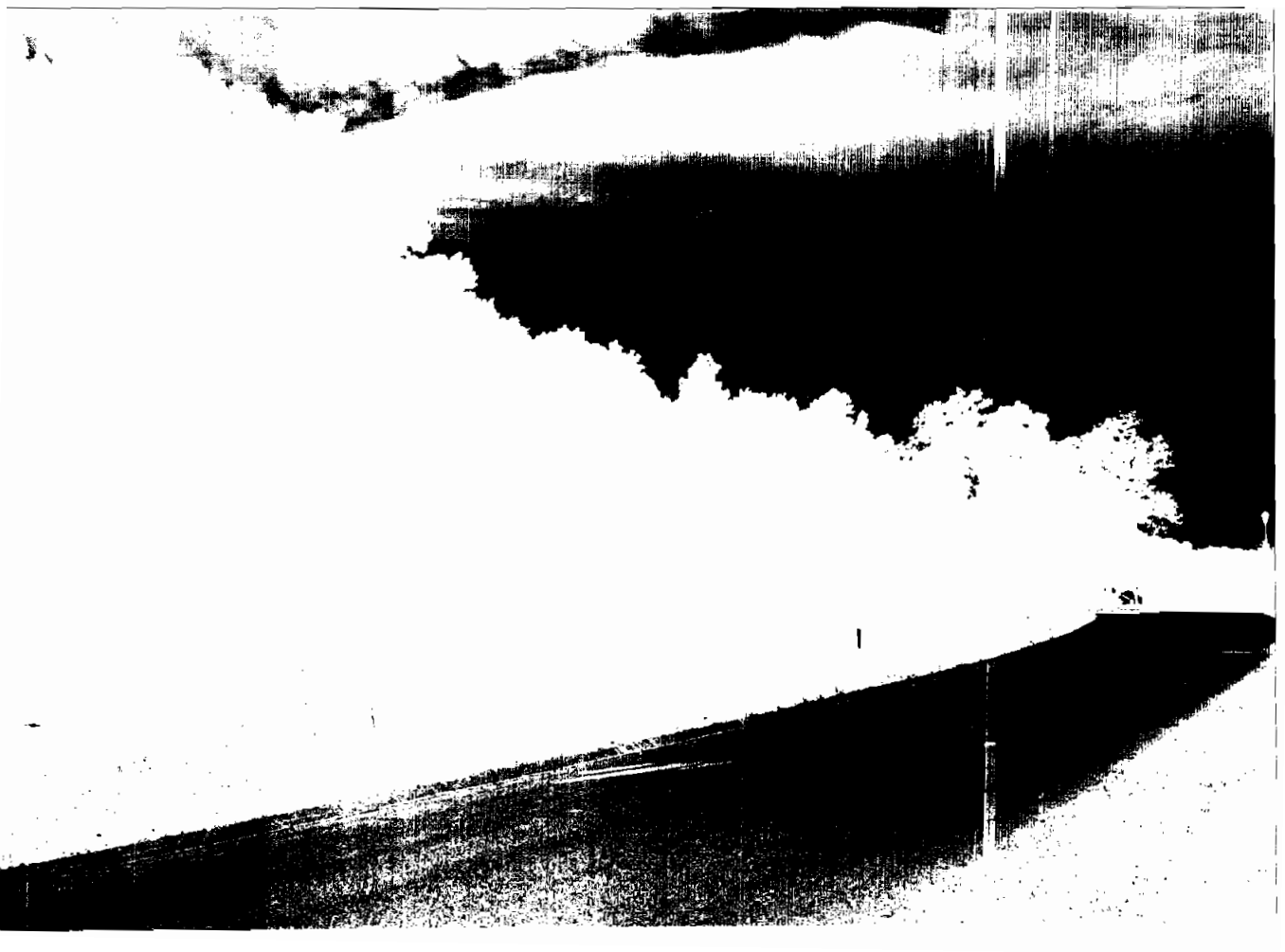
#8

4/4



BLAKESLEE GROUP
ADVERTISING/DESIGN/PHOTOGRAPHY

Pete Andrews
916 N. Charles St.
Baltimore, MD 21201-5378
410-727-8800
Fax 410-752-1302



#9

4 I



BLAKESLEE GROUP
ADVERTISING/DESIGN/PHOTOGRAPHY

Peter Andreas
916 N. Charles St.
Baltimore, MD 21201-5378
410-727-8800
Fax 410-752-1302



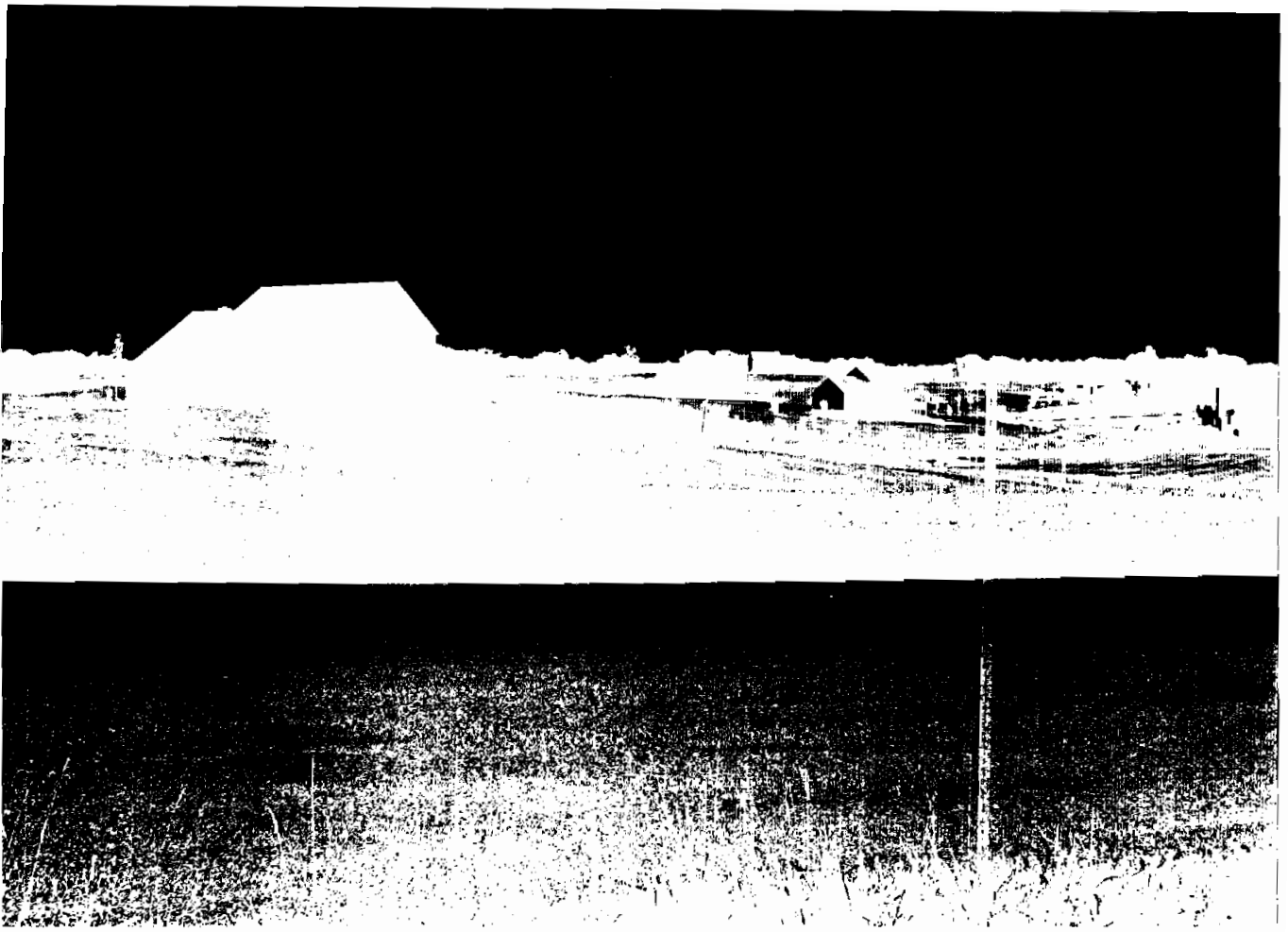
#10

4 J



BLAKESLEE GROUP
ADVERTISING/DESIGN/PHOTOGRAPHY

Peter Andreen
916 N. Charles St.
Baltimore, MD 21201-5378
410-727-8800
Fax 410-752-1302



#11

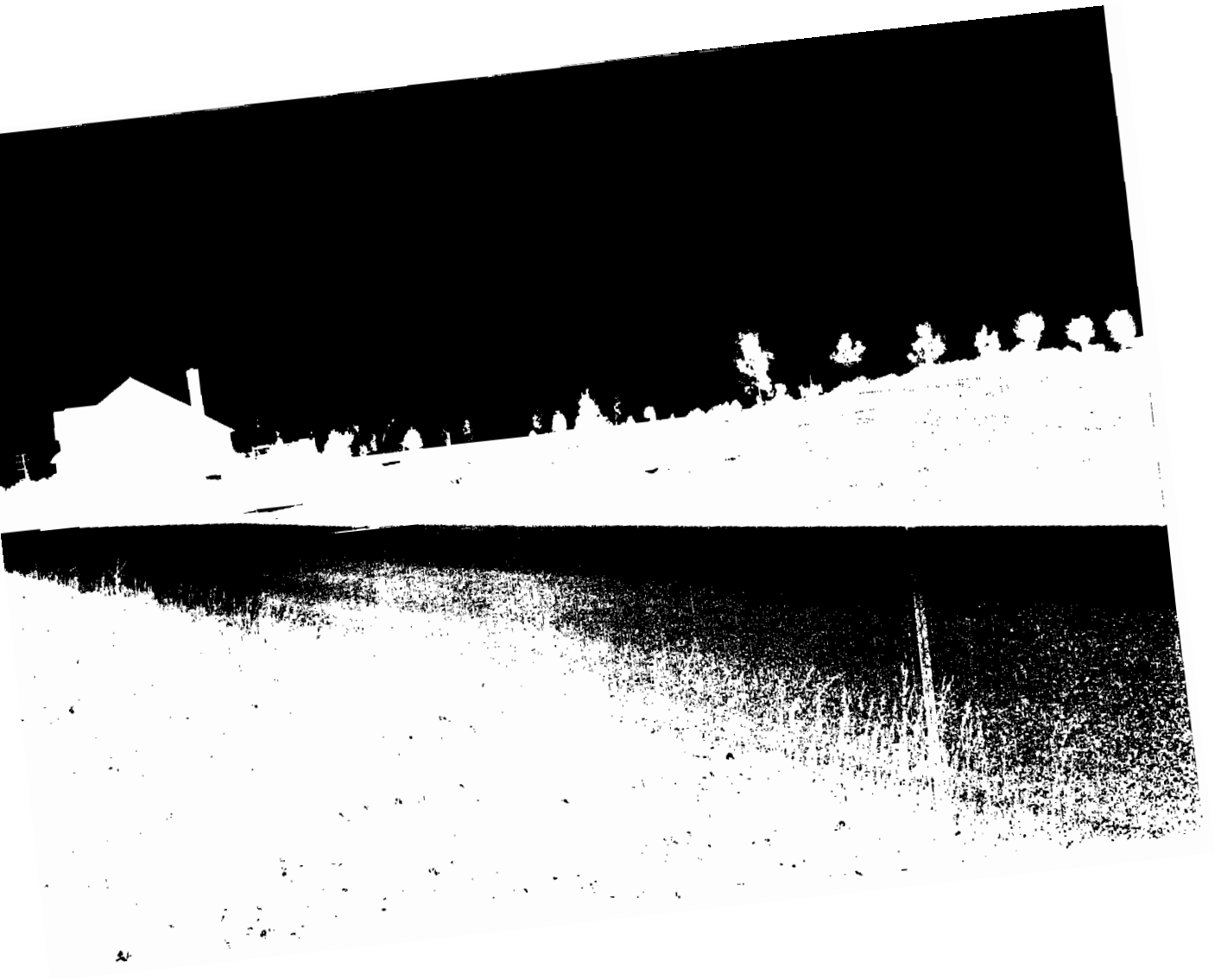
4/K



BLAKESLEE GROUP
ADVERTISING/DESIGN/PHOTOGRAPHY

Debi Andrew

916 N. Charles St.
Baltimore, MD 21201-5378
410-727-8800
Fax 410-752-1302



#12

4L



BLAKESLEE GROUP
ADVERTISING/DESIGN/PHOTOGRAPHY

Peter Andreau

916 N. Charles St.
Baltimore, MD 21201-5378
410-727-8800
Fax 410-752-1302

In distilling this case down to its essence: the evidence presented to the CBA supports each and every relevant, dispositive finding of fact made by the CBA and having so decided, this Court should not presume to substitute its judgment for that of the CBA.

Accordingly, it is

ORDERED, this 24TH of December, 1996, that the Petition of Friends of the Ridge for Judicial Review be, and it is hereby, **DENIED**.

Lawrence R Daniels

LAWRENCE R. DANIELS
JUDGE

DATE: DEC 24, 1996

cc: J. Carroll Holzer, Esquire
John H. Zink, III, Esquire



#13

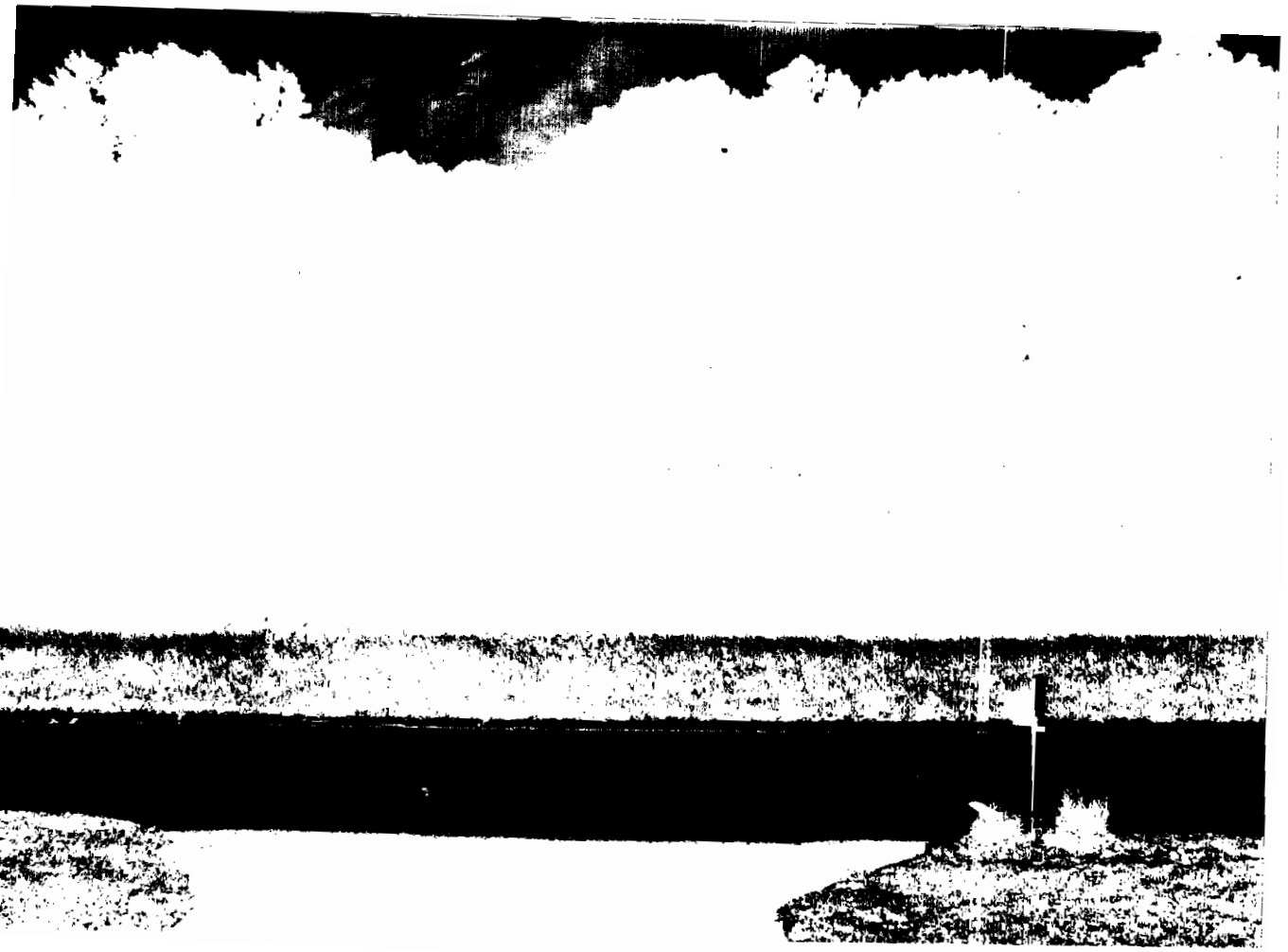
4/11



BLAKESLEE GROUP
ADVERTISING/DESIGN/PHOTOGRAPHY

Peter Anderson

916 N. Charles St.
Baltimore, MD 21201-5378
410-727-8800
Fax 410-752-1302



#14

9/N



BLAKESLEE GROUP
ADVERTISING/DESIGN/PHOTOGRAPHY

Peter Andreas
916 N. Charles St.
Baltimore, MD 21201-5378
410-727-8800
Fax 410-752-1302



#15

4/ "O"



BLAKESLEE GROUP
ADVERTISING/DESIGN/PHOTOGRAPHY

916 N. Charles St.
Baltimore, MD 21201-5378
410-727-8800
Fax 410-752-1302



#16

4P



BLAKESLEE GROUP
ADVERTISING/DESIGN/PHOTOGRAPHY

Peter Andrews
916 N. Charles St.
Baltimore, MD 21201-5378
410-727-8800
Fax 410-752-1302



#17

4/9

Peter Andrews

BLAKESLEE GROUP
ADVERTISING/DESIGN/PHOTOGRAPHY

916 N. Charles St.
Baltimore, MD 21201-5378
410-727-8800
Fax 410-752-1302

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY
*
PETITION OF FRIENDS OF THE RIDGE, INDIVIDUALS MR. & MRS. NIGEL HOWSE, MR. & MRS. ROBERT O'HARA, MR. & MRS. RON HANLEY, MR. & MRS. CARL FOLLO, MR. & MRS. ROBERT RYTTER, MR. & MRS. IRA BROWN, MR. & MRS. DIETER LANGENDORF, MR. & MRS. ANDREW LANSMAN, MR. & MRS. JEFFREY BOZEL, MR. & MRS. BRUCE PITCHER, AND MR. & MRS. JOE CZAJKOWSKI AT 305 WASHINGTON AVENUE, SUITE 502, TOWSON, MARYLAND 21204 *
*
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Room 49, Old Courthouse, 400 Washington Avenue, Towson, MD 21204 * CIVIL ACTION No. 3-C-95-5315
*
IN THE CASE OF: IN THE MATTER OF THE APPLICATION OF BALTIMORE GAS & ELECTRIC CO. (IVY HILL SUBSTATION) FOR SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE SOUTHWEST CORNER OF RIDGE ROAD AND JOEL COURT 8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT *
*
CASE NO. 94-452-XA
* * * * * * * * * * * * *

PROCEEDINGS BEFORE THE ZONING COMMISSIONER AND THE BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Kristine K. Howanski and S. Diane Levero, constituting the County Board of Appeals of Baltimore County, and in answer to the Petition for Judicial Review directed against the Board in this case, herewith return the record of proceedings had in the above-entitled matter, consisting of the following certified copies or original papers on file in the Office of Permits and Development Management and the Board of Appeals of Baltimore

RECEIVED AND FILED
95 JUL 17 PM 2:50



#18

4R



BLAKESLEE GROUP
ADVERTISING/DESIGN/PHOTOGRAPHY

Peter Andreu
916 N. Charles St.
Baltimore, MD 21201-5378
410-727-8800
Fax 410-752-1302



#19

5/5



BLAKESLEE GROUP
ADVERTISING/DESIGN/PHOTOGRAPHY

Peter Andreus

916 N. Charles St.
Baltimore, MD 21201-5378
410-727-8800
Fax 410-752-1302



#20

4/"T"



BLAKESLEE GROUP
ADVERTISING/DESIGN/PHOTOGRAPHY

Peter Andreae
916 N. Charles St.
Baltimore, MD 21201-5378
410-727-8800
Fax 410-752-1302



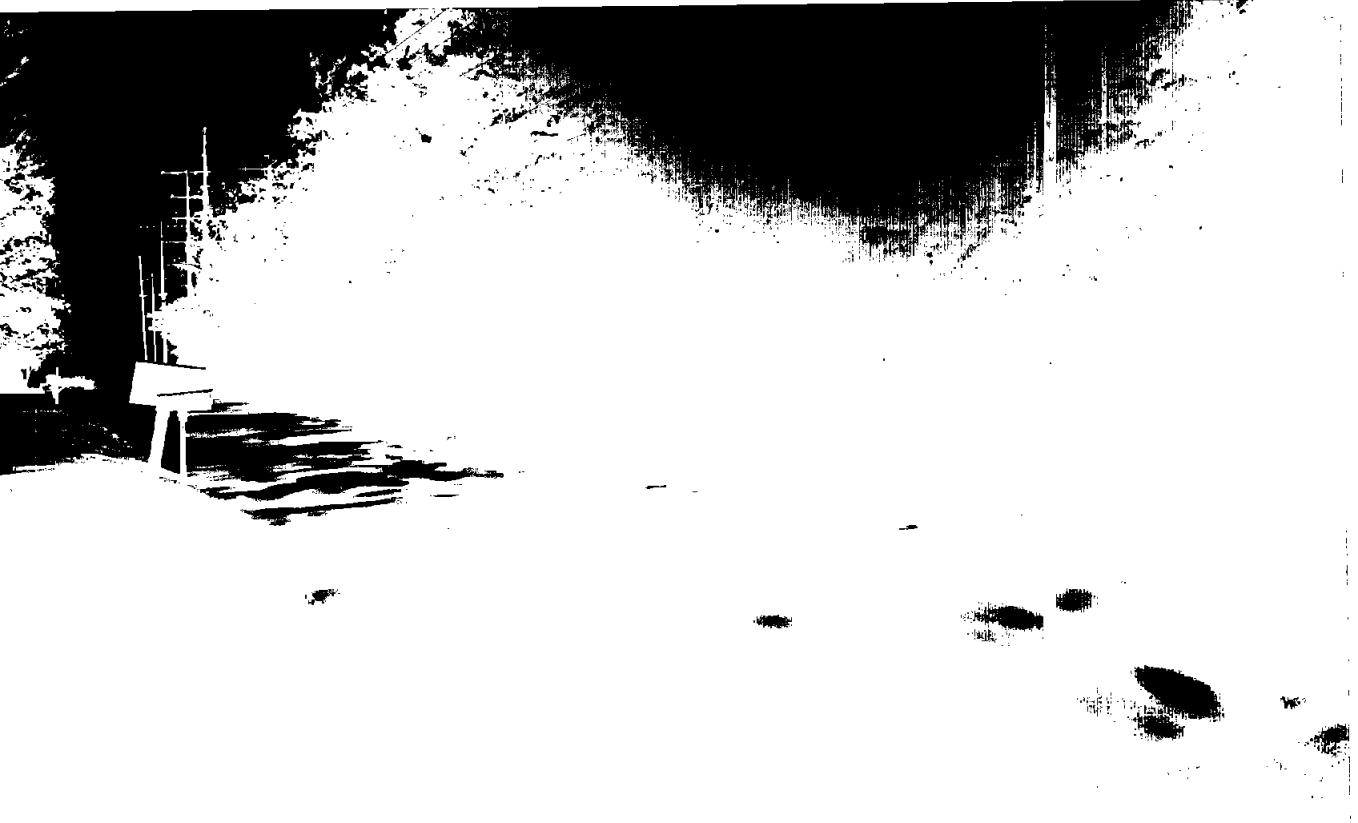
#3

Ref 4C



BLAKESLEE GROUP
ADVERTISING/DESIGN/PHOTOGRAPHY

Pete Andrews
916 N. Charles St.
Baltimore, MD 21201-5378
410-727-8800
Fax 410-752-1302



#2

Ref 4B



BLAKESLEE GROUP
ADVERTISING/DESIGN/PHOTOGRAPHY

Peter Andrews
916 N. Charles St.
Baltimore, MD 21201-5378
410-727-8800
Fax 410-752-1302

County:

ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND OFFICE OF PERMITS AND DEVELOPMENT MANAGEMENT OF BALTIMORE COUNTY

No. 94-452-XA

May 10, 1994	Petitions filed by Martha A. Delea, Esquire, and Robert A. Hoffman, Esquire, on behalf of BG&E and Frederick and Ann Vinup, for: Special Exception to use property for an outdoor electric public utility service center (electric substation); and Variance to permit structures as close as 0' from an interior lot line in lieu of required 50' building setback.
May 26	Publication in newspapers.
June 3	Certificate of Posting of property.
June 10	Zoning Advisory Committee (ZAC) comments.
June 21	Hearing held on Petition by the Zoning Commissioner.
June 24, 1994	Order of the Zoning Commissioner in which Petitions for Special Exception and Variance were GRANTED.
July 21	Notice of Appeal filed by J. Carroll Holzer, Esquire, on behalf of Nigel Howse, Robert O'Hara, Ron Hanley, Carl Follo, Robert Rytter, Ira Brown, Dieter Langendorf, Andrew Lansman, Jeffrey Bozell, Bruce Pitcher, Joe Czajkowski, and Friends of the Ridge.
September 13	Request to withdraw appearance filed by Marc K. Cohen, Esquire (Holzer representing client).
October 4	Hearing before the Board of Appeals (Day #1)
January 10, 1995	Hearing before the Board of Appeals (Day #2)
January 12	Hearing before the Board of Appeals (Day #3)
January 17	Hearing before the Board of Appeals (Day #4)
January 19	Hearing before the Board of Appeals (Day #5)



#1

Bid 4.1



BLAKESLEE GROUP
ADVERTISING/DESIGN/PHOTOGRAPHY

Peter Andrews
916 N. Charles St.
Baltimore, MD 21201-5378
410-727-8800
Fax 410-752-1302

Case No. 94-452-XA /Baltimore Gas & Electric Co., Inc. /F. Vinup

Petitioner's Exhibit No. 11 -- For purpose of copy and return

By: Sterling Leese Signature: Sterling Leese

Date: 10/13/94

Returned
10/13/94
2:50 p.m.

IN THE MATTER OF	*	BEFORE THE
BG&E, legal owner	*	COUNTY BOARD OF APPEALS
(Ivy Hill Substation)	*	OF BALTIMORE COUNTY
8th Election District	*	Case No. 94-452-XA
3rd Councilmanic District	*	October 4, 1994

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, Towson, Maryland 21204 at 10 o'clock a.m., October 4, 1994.

* * * * *

ORIGINAL

Reported by:

C.E. Peatt

IN THE MATTER OF	*	BEFORE THE
BG&E, legal owner	*	COUNTY BOARD OF APPEALS
(Ivy Hill Substation)	*	OF BALTIMORE COUNTY
8th Election District	*	Case No. 94-452-XA
3rd Councilmanic District	*	January 10, 1995

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, Towson, Maryland 21204 at 10 o'clock a.m., January 10, 1995.

* * * * *

ORIGINAL

Reported by:

C.E. Peatt

IN THE MATTER OF	*	BEFORE THE
BG&E, legal owner	*	COUNTY BOARD OF APPEALS
(Ivy Hill Substation)	*	OF BALTIMORE COUNTY
8th Election District	*	Case No. 94-452-XA
3rd Councilmanic District	*	January 12, 1995

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, Towson, Maryland 21204 at 10 o'clock a.m., January 10, 1995.

* * * * *

ORIGINAL

Reported by:

C.E. Peatt

February 6, 1995	Memorandum in Lieu of Final Argument filed by J. Carroll Holzer, Esquire on behalf the Friends of the Ridge, et al.
February 6	Petitioner's Memorandum in Support of Petition for Special Exception and Variance filed by Robert A. Hoffman, Esquire, on behalf of BGE.
February 22	Deliberation completed.
May 31	Opinion and Order of the Board in which the Petition for Variance was GRANTED and the Petition for Special Exception was GRANTED with restrictions.
June 7	Amendment to Opinion of the Board to indicate that People's Counsel did not participate in the proceedings.
June 16	Petition for Judicial Review filed in the Circuit Court for Baltimore County by J. Carroll Holzer, Esquire, on behalf of Friends of the Ridge, et al.
June 23	Copy of Petition for Judicial Review received by the Board of Appeals from the Circuit Court for Baltimore County.
June 26	Certificate of Notice sent to interested parties.
July 17	Transcript of testimony filed.

Petitioner's Exhibits No.

1 -Curriculum vitae - Monica P. McGrady
2 -Plat for proposed substation
3 -Plat of site plan shows company's proposed landscaping plan
4 -Existing special exception for substation currently on Tract B
5 -Aerial photo - March, 1994 - black & white lines - external
6a-Photo -Circuit switches -12' high, Transformer
7 -Location Chart for photos
7a-1- thru 7-K-11- Joel Court
8 -Final Development Plan for Forwood
9 -Curriculum vitae - Lawrence S. Taylor

ORIGINAL

TRANSCRIPT OF PROCEEDINGS

IN THE MATTER OF BALTIMORE GAS & ELECTRIC CO./ Legal Owners, Tract A & B; FREDERICK R. VINUP, et ux/Legal Owners, Tract C (Ivy Hill Substation) 8th Election District 3rd Councilmanic District	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case No.: 94-452-XA
	*	January 17, 1995

* * * * *

The above matter came on for hearing before the Board of Appeals of Baltimore County at 9:10 a.m., January 17, 1995, at the Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204.

* * * * *

BEFORE: WILLIAM T. HACKETT, Chairman
ROBERT O. SCHUETZ
S. DIANE LEVERO

Reported by:
Diane M. Hebert

ORIGINAL

IN THE MATTER OF BG&E, legal owner (Ivy Hill Substation) 8th Election District 3rd Councilmanic District	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	
	*	Case No. 94-452-XA	
	*	Janauary 17, 1995	

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, Towson, Maryland 21204 at 1:30 o'clock p.m., January 17, 1995.

* * * * *

BOARD MEMBERS:

WILLIAM T. HACKETT, Chairman

ROBERT O. SCHUETZ

S. DIANE LEVERO

Reported by:
Lorne Langer

IN THE MATTER OF	*	BEFORE THE
BG&E, legal owner	*	COUNTY BOARD OF APPEALS
(Ivy Hill Substation)	*	OF BALTIMORE COUNTY
8th Election District	*	Case No. 94-452-XA
3rd Councilmanic District	*	January 19, 1995

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, Towson, Maryland 21204 at 9 o'clock a.m., January 19, 1995.

* * * * *

ORIGINAL

Reported by:

C.E. Peatt

Prot. Ex. 1

Press Release
May 3, 1994

For more information, contact:

The National EMR Alliance
410 West 53rd Street, Suite 402
New York, NY 10019
(212) 554-4073

President Clinton Asks EPA To Address EMF Issue

"... Sweden has concluded that EMFs do lead to higher rates of cancer...I, frankly was somewhat impressed by the arguments made by the Swedes."
President Bill Clinton

An ABC Special hosted by Peter Jennings, "Answering Childrens Questions" has brought the issue of electromagnetic field (EMF) radiation to President Clinton's attention.

President Clinton met with a number of children at the White House on March 19th and responded to questions about issues that concern them. Kevin Larm, a twelve year old boy from Omaha, Nebraska was invited to participate in this televised event but was hospitalized in Washington, D.C. the evening before the broadcast.

Kevin Larm is suffering from leukemia. Kevin's home has a pad mounted electrical transformer in his backyard. There is an electrical substation near his school. Kevin and his family believe that exposure to electromagnetic (EMF) radiation is the cause of his leukemia.

Kevin's brother Patrick, attended the ceremony at The White House on March 19th in Kevin's place and presented President Clinton with a package the Larm family had put together that included letters from neighbors and other children in the neighborhood who have contracted brain tumors and other various forms of cancer. Although Kevin was unable to attend the ceremony, a videotape was shown that Kevin made to show the President the enormity of the EMF problem in their town in Omaha, Nebraska. In the video, Kevin spoke of his friend Joshua whom recently died of a brain tumor. Kevin said "the power company says there's nothing to electromagnetic fields, EMFs. I just think it's a big cover up."

Julie Larm, Kevin's mother, told the National EMR Alliance that she believes that "EMF is the great American holocaust." She said, "My son survived the chemo death camp. We are doing what we can so that other children will not have to suffer like Kevin has."

Peter Jennings introduced Patrick to President Clinton. Patrick asked the President, "I have heard that recent studies have linked EMFs to

"Never doubt that a small group of thoughtful, committed citizens can change the world: indeed, it's the only thing that ever has."

- Margaret Mead

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: **CASE #94-452-XA**

I am unable to attend the appeal hearing on the above captioned case, but I wish to formally register my opposition to the proposed expansion of the Baltimore Gas & Electric Ivy Hill substation for the following reasons:

1. Industrial substations **do not** belong in any residential neighborhood.

2. The unknown effects of electro magnetic fields to the public.

3. The electrical expansion will create the infrastructure for future industrial and commercial development in the entire area.

Sincerely,

Adam S. Kuhn

NAME

1907 Billy Barton Circle

ADDRESS

Reisterstown Md 21136

Prot. Exh 2 Identi

Circuit Court for Baltimore County
Case # 95 CV 5315

94-452-XA /BG&E (Ivy Hill Sub)
COA AFFIRMED in part and VACATED in part the CSA Judgment Case REMANDED to the CCt w/ instructions to REMAND to CBA for decision consistent with opinion relating to VARIANCE

IN THE COURT OF APPEALS OF

MARYLAND

No. 76

September Term, 1998

FRIENDS OF THE RIDGE *et al.*

v.

BALTIMORE GAS AND ELECTRIC COMPANY

Eldridge
Chasanow
Raker
Wilner
Cathell,
Karwacki, Robert L.
(retired, specially assigned),
Murphy, Joseph F. Jr.
(specially assigned)

JJ.

Opinion by Cathell, J.

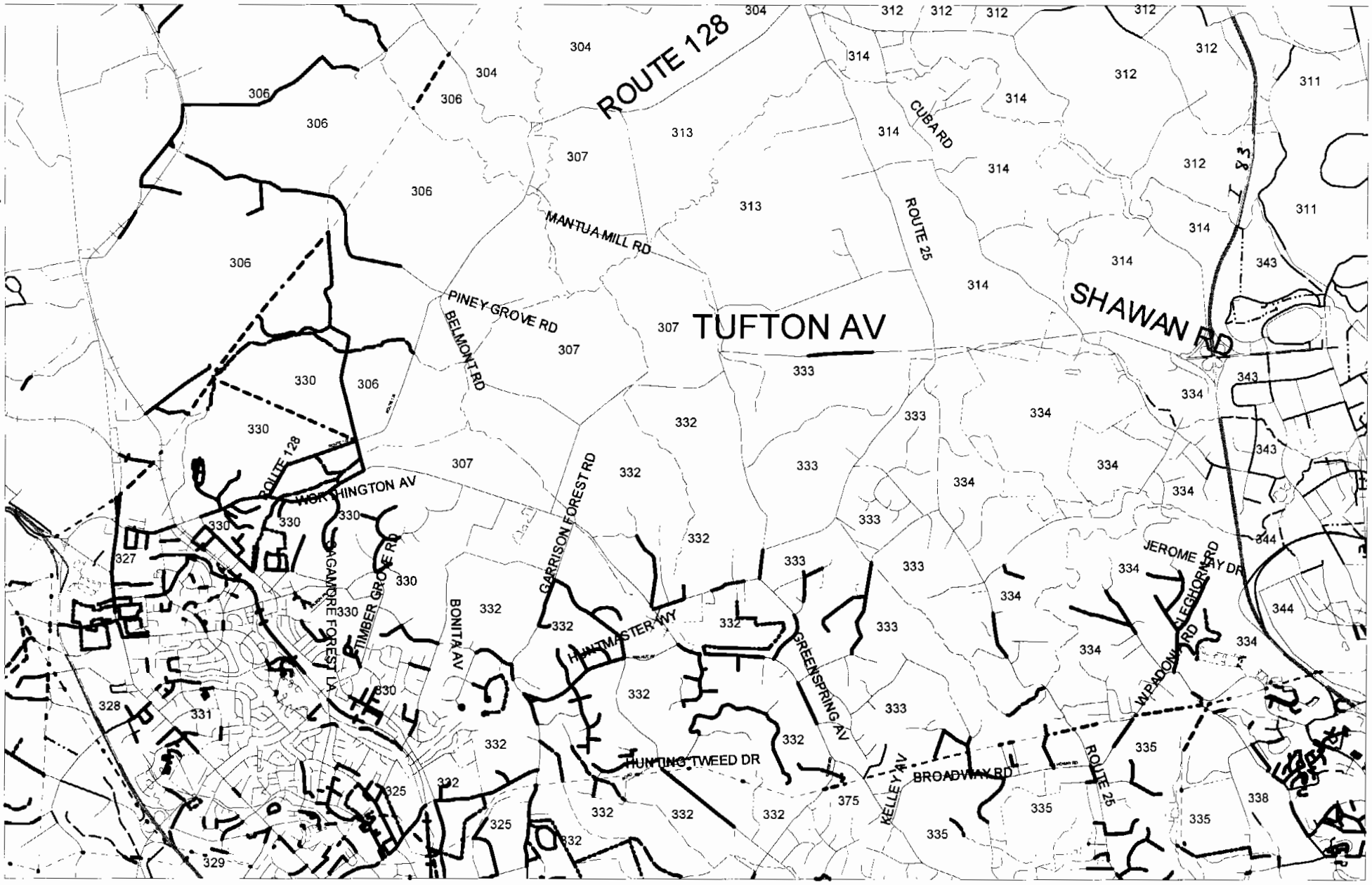
Filed: February 11, 1999

10 -Chart: "How Does Electricity Get to Your House?"
11 -Map of Service area for Proposed Ivy Hill Substation Expansion
12 -Curriculum Vitae - James F. Ryan, Jr.
13 -Portion of Pet. Ex. 11 - Current Development Map
14 -Curriculum Vitae - Linda Erdreich
15 -Curriculum Vitae - Paul Taylor
16 -Breakdown of coverage areas 1/5/95
17 -Chart showing projected growth rate of trees
18 -Resume -George E. Gavrelis
19 -200-scale zoning map
20 -Aerial photographic map
21 -Map from Dept. of Public Works - Metropolitan District Map 12/15/92
22 -Planning Board Policies & Resolutions: Final Development Plans
23 -Inter-Office Correspondence to Jablon from Keller 6/2/94
24 -Qualifications: Walter A. Reiter
25 -Revised CRG Plan for Forwood property Approved 1/21/88
26 -Revised CRG Plan for Forwood property Approved
27 -Packet of letters -top letter to Clare Miller 1/18/95

Protestant's Exhibits:

1 -Press release: "President Clinton Asks EPA to address EMF Issue" 5/3/94
2 -Letters from neighbors - For I.D. Only
3 -Underlying site drawing with green tract overlays (**IN CLOSET - LARGE EXHIBIT**)
4 -Overlay on western side to show property line (overlays Pet. Ex. 3)
5 -Chart showing Community Associations that will testify - For I.D. Only.
6A-Map of transportation zones and attachments.

Prot. Ex. 6-A


ROUTE 128
TUFTON AV
SHAWAN RD
MANTUA MILL RD
PINEY GROVE RD
BELMONT RD
ROUTE 25
CUBA RD
I 83
WORTHINGTON AV
TIMBER GROVE RD
SAGAMORE FOREST LA
BONITA AV
GARRISON FOREST RD
HUNTMASTER WY
GREENSPRING AV
HUNTINGTWEED DR
KELLEY AV
BROADWAY RD
W P ADOMS LEGHORN RD
JEROME AY DR
306
304
307
313
314
312
311
330
332
333
334
343
344
327
328
329
331
325
335
338
375

Prot. Ex. 6 B

FRIENDS OF THE RIDGE

TZ	1990 UNITS	1990 POP	1995 UNITS	DRAFT 1995 POP	FINAL 1995 POP	2010 UNITS	DRAFT 2010 POP	FINAL 2010 POP	2020 UNITS	DRAFT 2020 POP	FINAL 2020 POP
307	100	209	100	202	215	100	190	207	100	187	205
313	90	231	94	234	235	119	279	280	119	274	275
330	1720	5449	2035	6244	6247	2239	6448	6449	2258	6394	6396
332	840	2740	883	2789	2791	957	2839	2841	967	2820	2820
333	700	2293	736	2334	2336	788	2347	2347	817	2393	2393
334	530	1644	624	1874	1875	2605	7346	7348	2634	7302	7303
	3980	12566	4472	13677	13699	6808	19448	19472	6897	19369	19392

SOURCE: ROUND 5 COOPERATIVE FORECAST-FINAL AS ADJUSTED BY BMC

Prot. Ex. 11

COMMISSIONERS

FRANK O. HEINTZ
CHAIRMAN

CLAUDE M. LIGON
E. MASON HENDRICKSON
SUSANNE BROGAN
GERALD L. THORPE

STATE OF MARYLAND
PUBLIC SERVICE COMMISSION
ENGINEERING DIVISION
6 ST. PAUL CENTRE
BALTIMORE, MARYLAND 21202-6806
(410) 767-8056
FAX (410) 333-6086

JOSEPH H. WALTER
CHIEF ENGINEER

CARL S. WEINBERGER, P.E.
ASSISTANT CHIEF ENGINEER

December 8, 1994

Martha Delea, Esq.
Baltimore Gas & Electric Company
P.O. Box 1475
17th Floor
Baltimore, Md 21203-1475

Dear Ms. Delea:

Pam Follo has sent me a letter requesting some information regarding PSC regulations and details of BGE's operating system. I would appreciate it if you would have someone provide me with the following information or materials.

1. A current copy of the BGE system operating diagrams (one line diagrams).

2. A set of plans for the proposed expansion of the Ivy Hill substation.

3. A system map showing the configuration of the distribution circuits currently fed from Ivy Hill and the substations immediately surrounding it.

4. A system map showing the configuration of the distribution circuits to be fed from Ivy Hill and the substations immediately surrounding it, once the expansion has been completed.

5. The substation load information for the Ivy Hill substation for the last three years.

Prot Ex 11

Thank you for your help in this matter. Ms. Follo has requested that she receive this information as soon as possible. Please respond to this request by December 23, 1994.

Sincerely,

Phillip VanderHeyden
Public Service Engineer

cc: P. Follo
J. H. Walter, Chief Engineer
A. M. Freifeld, Staff Counsel

Prof. Ex. 12

ERNEST J. KERN, MAI, SRA

Education
B.S. Commerce, University of Virginia - 1953
Sales Management, Youngstown, Ohio, University of Youngstown
Millwork Course, Michigan State University

Real Estate and Appraisal Courses Successfully Completed
Commercial Real Estate, Johns Hopkins University
Industrial Real Estate, Johns Hopkins University
Residential and Commercial Appraisal, Johns Hopkins University
Society of Real Estate Appraisers, Course 1, University of KY
Certified Property Management, Course 1, Atlanta, GA - 1967
Certified Property Management, Course 2, Washington, DC - 1967
Certified Property Management, Course 3, Miami, FL - 1968

Case Studies in Real Estate Valuation, Course 2-1, American Institute of Real Estate Appraisers, 1982, University of Houston

Valuation Analysis and Report Writing, Course 2-2, American Institute of Real Estate Appraisers, 1983, University of Georgia

Standards of Professional Practice, Course 2-3, American Institute of Real Estate Appraisers, 1982, Richmond Metropolitan Chapter

Introduction to Real Estate Investment Analysis, Course 006, American Institute of Real Estate Appraisers, 1983, Eckerd College

Instructor's Course, Society of Real Estate Appraisers Course 101, Indiana University, 1976
Instructor's Course, Society of Real Estate Appraisers Course 102, Purdue University, 1982
Society of Real Estate Appraisers Course 201, Loyola College, Baltimore, MD - 1973

Real Estate and Appraisal Courses Attended
Society of Real Estate Appraisers Course 301

Capitalization Theory & Techniques Part A, Course 1BA, American Institute of Real Estate Appraisers, 1985, University of North Carolina

Capitalization Theory & Techniques Part B, Course 1BB, American Institute of Real Estate Appraisers, 1985, University of North Carolina

Case Studies in Real Estate Valuation, Course 2-1, American Institute of Real Estate Appraisers, 1986, University of Central Florida

General State Appraiser's Exam, Review Course - January 1991
SREA Appraiser's Symposium, San Antonio, TX - September 1990, 4 days
SREA Appraiser's Symposium, Minneapolis, MN - September 1989

Prot. Ex. 13

Consultation Report for

FRIENDS OF THE RIDGE

1 JOEL COURT

REISTERSTOWN, MARYLAND 21136

Proposed BGE Ivy Hill Substation

September 30, 1994

Prepared by

Kern Realty & Appraising, Inc.
606 Baltimore Avenue, Suite 103
Baltimore, MD 21204

6B-Revised population figures
7 -Comparison of Transportation zone growth figures with BGE growth figures
8 -Unit Growth Comparison
9 -Need Comparison vs. Capacity
10 -Need Comparison vs. Capacity (includes Hickory Meadow)
11 -Packett of letters -top letter to Martha Delea, BGE 12/8/94
12 -Curriculum Vitae, Ernest J. Kern
13 -Consultation Report for Friends of the Ridge 9/30/94
14 -Contract of sale (copy) for 11 Forwood Court
15 -Copy of photo of proposed site
16 -Map -Subtransmission map showing 13 KV to 34 KV feeders (IN CLOSET - LARGE EXHIBIT)
17 -Photos - 9 photos of substations (IN CLOSET - LARGE EXHIBIT)
18 -Photos - 9 photos of substations (IN CLOSET - LARGE EXHIBIT)
19 -Photo Album - substation site in county (Large Album)
20 -Small photo album of Ivy Hill substation from Ridge Road & property of Mr. & Mrs. Follo, also Hanley property, etc. in summer & fall
21 -Poster: Alternate location - Oregon Ridge Park (IN CLOSET - LARGE EXHIBIT)
22 -Curriculum Vitae - Zory Glaser
23 -Chart: The electromagnetic Spectrum
24 -Brochure on Fox Ridge Estates
25 -Fox Ridge Estate plan
26 -Graph: Baltimore County population
27 -Curriculum Vitae, Norman Gerber
28 -For I.D. - Planning Board report 6/25/91
29 -Rule 8 Document 1/1/95
30 -Packet of Letters from parents and staff of Chestnut Grace Preschool
31 -Rule 8 Documents for Shawan Valley
32 -Rule 8 Documents for Hunt Cup

LONG & FOSTER® REALTORS®

Executive Offices
11351 Random Hills Road • Fairfax, Virginia 22030
(703) 359-1500
MD/DC/PA/DE Division
9094 Baltimore Boulevard • College Park, Maryland 20740
(301) 441-8101

Listing Office: _____
Phone: _____
Selling Office: Pikesville
Phone: 410-653-1700

CONTRACT OF SALE

(Baltimore, Carroll, Harford and Howard Counties)

Liber 8627 Folio 825 Date of Deed 90/10

LISTING BROKER O'Conor, Piper & Flynn BROKER NO. 6907
LISTING AGENT Roni Schultz TELEPHONE(S) 821-1700
SELLING BROKER Long & Foster BROKER NO. 6315
SELLING AGENT Norma Moritz TELEPHONE(S) 653-1700

This CONTRACT OF SALE made this 27 day of DEC. ~~November~~ 19 94 by and between AMG EEG

SELLER NAME Michael AND MARY Glynn
ADDRESS 11 FORWOOD CT COCKEYSVILLE, MD 21030 ZIP _____
SOCIAL SECURITY NUMBER _____ AND
BUYER NAME Robert N. Gensler & Elizabeth E. Gensler
ADDRESS 8637 Tower Bridge ZIP 21093
SOCIAL SECURITY NUMBER 219-70-5650 - 536-43-4945

1. PROPERTY DESCRIPTION: Seller does sell to Buyer and Buyer does purchase from Seller, all of the following described Property (hereinafter "Property") known as 11 Forwood Ct. 12/1/94
located in Balto., County City/County, Maryland _____ Zip 21030
together with the improvements thereon, and all rights and appurtenances thereto belonging.

2. ESTATE: The Property is being conveyed: x in fee simple or _____ subject to an annual ground rent, now existing / to be created of _____ Dollars ($ n/a) payable semi-annually, as now or to be recorded among the Land Records of n/a City/County, Maryland. EMG EEG AMG

If the Property is subject to a ground rent and the ground rent is not timely paid, the owner of the reversionary interest may bring an action of ejectment against the leasehold owner pursuant to Section 8-402.2 of the Real Property Article, Annotated Code of Maryland (as amended). As a result of this action, the owner of the reversionary interest may be discharged from the lease and obtain title to the Property in fee. AMG EEG AMG EEG

3. PURCHASE PRICE: The purchase price is ~~FIVE~~ FOUR HUNDRED AND ~~THIRTY~~ SIXTY-TWO THOUSAND - FIVE HUNDRED Dollars ($ ~~430,000.00~~ 462,500 AMG EEG AMG EEG

4. PAYMENT TERMS: The payment of the purchase price shall be made by Buyer as follows:
(a) An initial deposit by way of check, in the amount of Five thousand Dollars ($ 5,000.00) at the time of execution of this Contract.
(b) An additional deposit, by way of _____, in the amount of n/a Dollars ($ _____) to be paid within _____ (_____) calendar days from the date of execution of this Contract by all parties, and
(c) The purchase price less any and all deposits shall be paid in full by Buyer in cash, wired funds, bank check or by certified check at settlement.

5. SETTLEMENT: Settlement shall be on 60 days from above 19 _____ or sooner by mutual agreement between the parties.

6. HOME AND/OR ENVIRONMENTAL INSPECTION: If Buyer desires the right to condition Buyer's obligations under this Contract upon the results of a home inspection and/or environmental inspection, **the right to do this must be included in an Addendum to this Contract at the time it is signed.** Buyer acknowledges that neither the Brokers nor their agents are responsible for defect Addendum Attached AMG EEG Inspection(s) Declined _____
Buyer's Initials Buyer's Initials

7. FINANCING: This Contract is contingent upon Buyer obtaining a written commitment for a mortgage loan secured by the Property as follows:

(CHECK ONE) ☒ No Financing Contingency

☐ See FHA Financing Addendum
☐ See attached VA Financing Addendum
☐ See attached Assumption Addendum
☐ See attached Owner Financing Addendum

☐ Conventional Loan as follows:
Loan Amount $ _____
Term of Note _____ years
Amortization _____ years
Interest Rate _____ %
Type _____

8. LENDER FEES/CHARGES: Buyer agrees to pay to the Lender loan origination/loan discount fees of n/a % of the Loan Amount and Seller agrees to pay loan origination/loan discount fees of n/a % of the Loan Amount. Any reduction in the loan origination/loan discount fees shall be shared by the Seller and Buyer on a basis equal to their respective proportionate obligation for the original total of said fees. All mortgage insurance premiums as required by Lender shall be paid by Buyer. If the existing loan is to be transferred to/assumed by Buyer, Buyer agrees to pay all fees and charges required by Lender.

9. MORTGAGE APPLICATION AND COMMITMENT: Buyer expressly agrees to make written application for the mortgage as herein described within n/a (_____) calendar days from the date of execution of this Contract by all parties. If such written mortgage commitment is not obtained by Buyer, or by Seller, at Seller's option, for Buyer, within n/a (_____) calendar days from the date of this Contract, this Contract of Sale shall be null and void and of no further legal effect, and all deposits hereunder shall be disbursed in accordance with the terms of the "**Deposit**" Paragraph. If Buyer has complied with all of Buyer's obligations under this Contract, including those with respect to applying for financing and seeking to obtain financing, then the release of deposit agreement shall provide that all monies on deposit shall be returned to Buyer.

10. DEPOSIT: Buyer hereby authorizes and directs the Listing Broker to hold the initial deposit without negotiation or deposit until the parties have executed and accepted this Contract. Upon acceptance by Seller, the Listing Broker shall expeditiously cause the initial deposit to be placed in escrow as specified below. If Seller does not execute and deliver this Contract, the initial deposit shall be immediately returned to the Buyer. All deposit money paid under this Contract shall be held in escrow by the Listing Broker. If the Seller and the Buyer do not instruct the Listing Broker otherwise, deposits of $5,000 or more shall be placed, at the sole discretion of the Listing Broker, in a non-interest bearing account or an interest bearing account that pays all interest to the Maryland Housing Resource Corporation. If the Seller and the Buyer do not instruct otherwise, deposit money of less than $5,000 shall be placed in an interest bearing account that pays all interest to the Maryland Housing Resource Corporation. Listing broker may charge a fee for establishing an interest bearing account.

The Seller and the Buyer instruct the Listing Broker to place all deposit monies in:

☐ An interest bearing account, with interest payable to the Maryland Housing Resource Corporation; interest may be taxable to the Buyer.
☑ A non-interest bearing account.
☐ An interest bearing account, the interest on which, in the absence of default by the Buyer, shall accrue to the benefit of the Buyer.

The deposit shall be disbursed by the Listing Broker at settlement. Otherwise the deposit shall be disbursed in accordance with a properly executed release of deposit agreement by Buyer and Seller. If a dispute arises between the parties to the transaction as to the disposition of the deposit, refer to the "**Broker Liability**" Paragraph.

This is a legally binding contract. If not understood, seek competent advice.

THE PARTIES' INITIALS ARE FOR IDENTIFYING PAGES 1 AND 2 (ON REVERSE) OF THIS CONTRACT OF SALE: AMG (Buyer) EEG (Buyer) Emg (Seller) _____ (Seller)

Prot. Exh 14

11. **TERMITE INSPECTION**: Buyer, at Buyer's expense (or Seller's expense for VA financing), is authorized to obtain a written statement from a Maryland licensed pest control company that, based on a careful visual inspection, there is no evidence of termite or other wood-destroying insect infestation in the residence, including garage, but not including fences or other outbuildings (unless within 3 feet of main dwelling and garage) and, if such infestation previously existed, it has been corrected, and any damage due to such infestation has been corrected.

If any such infestation is present, or if any evidence of damage caused by such present or prior infestation is discovered, Seller, at Seller's expense, shall treat such infestation and repair any damage caused by such present or prior infestation. However, if the cost of treatment and repair of such damage exceeds the greater of 1% of the purchase price or $800, Seller may, at Seller's option, cancel this Contract, unless the Buyer, at Buyer's option, should choose to pay for the cost of treatment and repairs exceeding the greater of 1% of the purchase price or $800, then this Contract shall remain in full force and effect. If such report reveals damage for which the cost of treatment and repair may exceed the greater of 1% of the purchase price or $800, Seller's decision regarding treatment and repair of damage shall be communicated in writing to Buyer within five (5) days from receipt of the report, after which Buyer shall respond to Seller in writing with Buyer's decision within three (3) days from receipt of Seller's notification of Seller's decision.

In the event this Contract is terminated under the terms of this provision, then all deposits hereunder shall be returned to Buyer in accordance with the terms of the **"Deposit"** Paragraph.

12. **SALE OF OTHER REAL ESTATE: Neither this Contract nor the granting of Buyer's mortgage loan referred to herein is to be conditioned or contingent in any manner upon the sale and/or settlement of any other real estate unless a contingency for the sale of Buyer's other real estate is contained in an addendum to this Contract. Unless this Contract is expressly contingent upon the sale and/or settlement of any real estate owned by Buyer, Buyer shall not apply for or accept a mortgage loan commitment which is contingent upon or requires as a pre-condition to funding that any real estate of Buyer be sold and/or settled.**

13. **ALTERNATE FINANCING**: Buyer may obtain a written commitment for financing in which the interest, terms of payment, amount of loan, or any one of these differs from the financing conditions herein set forth, and, if so, the preceding financing conditions of the Contract shall be deemed to have been fully satisfied. This alternate financing may not increase costs to Seller or exceed the time allowed to secure the mortgage commitment as stated herein. Nothing in this paragraph shall relieve Buyer of the obligation to apply for and diligently pursue the financing described in the **"Financing"** Paragraph.

14. **BUYER RESPONSIBILITY**: If Buyer has misrepresented Buyer's financial ability to consummate the purchase of the Property, or, if this Contract is contingent upon Buyer securing a written commitment for mortgage financing and Buyer fails to apply for such financing within the time period herein specified, fails to pursue financing diligently and in good faith, makes any misrepresentations in any document relating to financing, or takes (or fails to take) any action which causes Buyer's disqualification for financing, then Buyer shall be in default and Seller may elect by written notice to Buyer, to terminate this Contract and/or pursue the remedies set forth under the **"Breach of Contract and Default"** Paragraph.

15. **PROPERTY INSURANCE AND RISK OF LOSS**: The Property is to be held at the risk of Seller until legal title has passed or possession has been given to Buyer. If, prior to the time legal title has passed or possession has been given to Buyer, whichever shall occur first, all or a substantial part of the Property is destroyed or damaged, without fault of Buyer, then this Contract, at the option of Buyer, upon written notice to Seller, shall be null and void and of no further effect, and all deposit(s) hereunder shall be returned to Buyer in accordance with the terms of the **"Deposit"** Paragraph. If Buyer elects not to terminate this Contract and settles upon the Property, the purchase price shall not be adjusted and Buyer shall be entitled to all insurance proceeds, except proceeds for Seller's personal property not included in the sale.

It is also understood and agreed that Seller shall immediately have any insurance policies on the Property endorsed so as to protect all parties hereto, as their interests may appear, if such an endorsement may be obtained by Seller without additional cost and shall continue said insurance in force during the life of this Contract. In the event it shall be determined by Buyer that the Property is inadequately insured by Seller, or if Seller is not able to obtain an endorsement naming the Buyer as an additional insured, Buyer shall have the right, at Buyer's option and expense, to obtain such insurance, or additional insurance, as shall be satisfactory to Buyer.

16. **LEASES**: Seller may not negotiate new leases or renew existing leases except on a month to month basis without Buyer's written consent.

17. **TENANT RIGHT OF FIRST REFUSAL**: If the Property is located within Baltimore City and is or has been, within six (6) months of the date hereof, a single family residential rental dwelling, the validity of this Contract is contingent upon compliance with the provisions of Sections 46-55 of Article 13 of the Baltimore City Code.

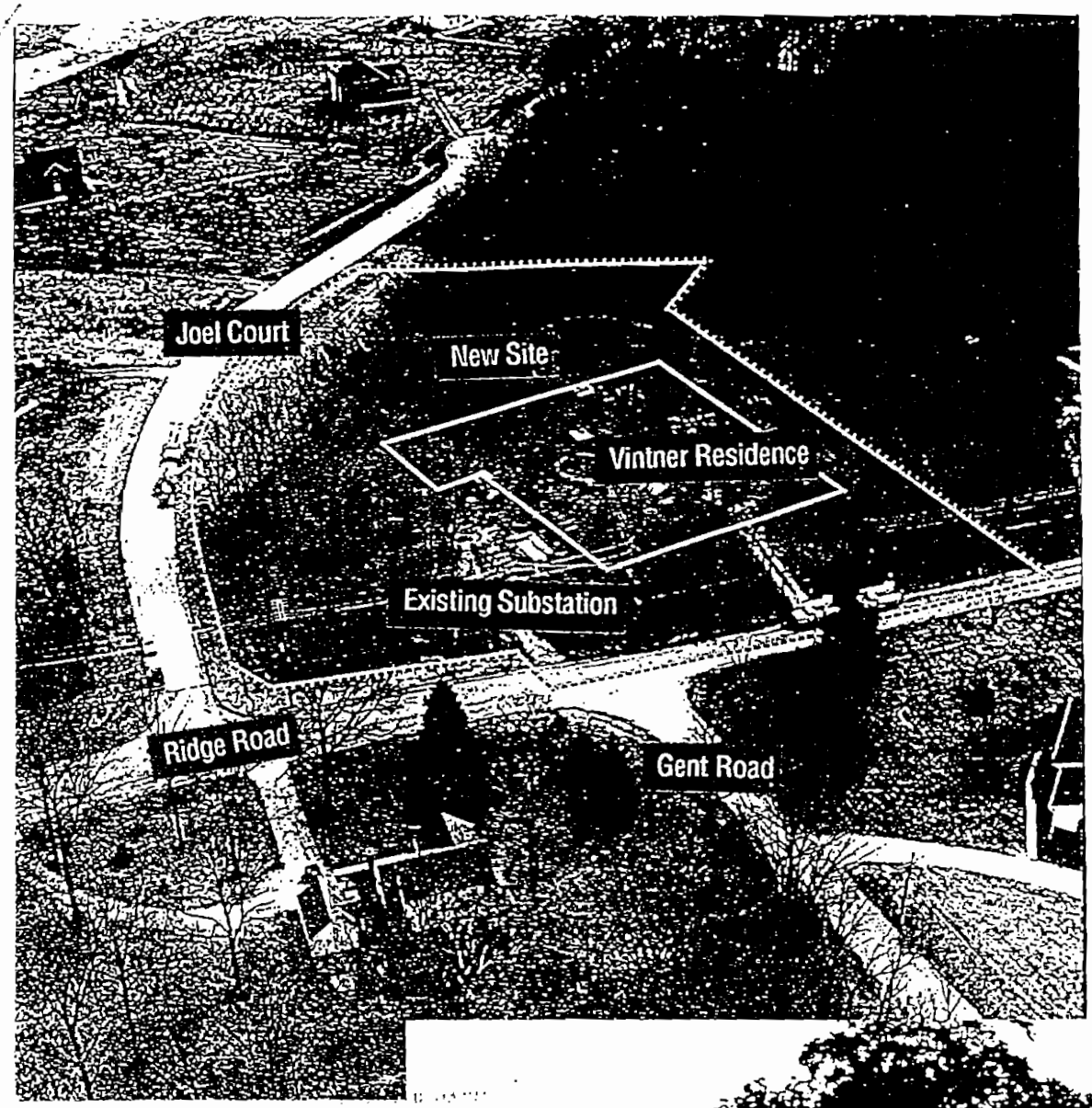
18. **CONDITION OF PROPERTY & POSSESSION**: At settlement, Seller shall deliver possesion of the Property and shall deliver the Property vacant, clear of trash and debris, broom clean and in substantially the same condition as existed on the date of this Contract. All electrical, heating, air conditioning (if any), plumbing (including well and septic), and any other mechanical systems and related equipment, appliances and smoke detector(s) included in this Contract shall be in working condition. Buyer reserves the right to inspect the Property within five (5) days prior to settlement. **EXCEPT AS OTHERWISE SPECIFIED HEREIN THE PROPERTY IS SOLD "AS IS."**

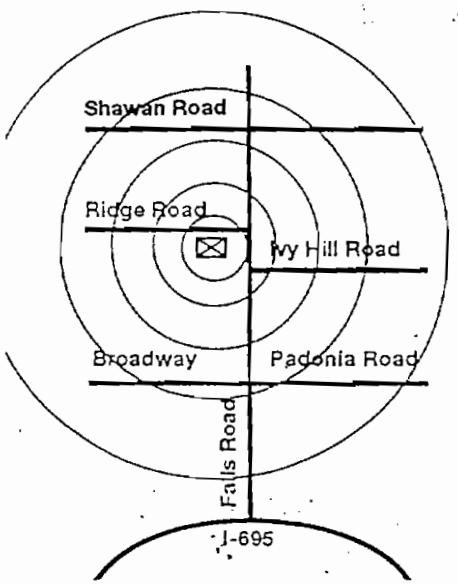
19. **BROKER LIABILITY**: Buyer and Seller understand and acknowledge that Broker and any agents, subagents or employees of Broker are not and were not at any time authorized to make any representations with respect to this Contract or the Property other than those expressly set forth herein. Broker and agents, subagents and employees of Broker do not assume any responsibility for the condition of the Property or for the performance of this Contract by any or all other parties hereto. By signing this Contract, Buyer acknowledges that Buyer has not relied on any representations made by Broker or any agents, subagents or employees of Broker, except those representations expressly set forth herein.

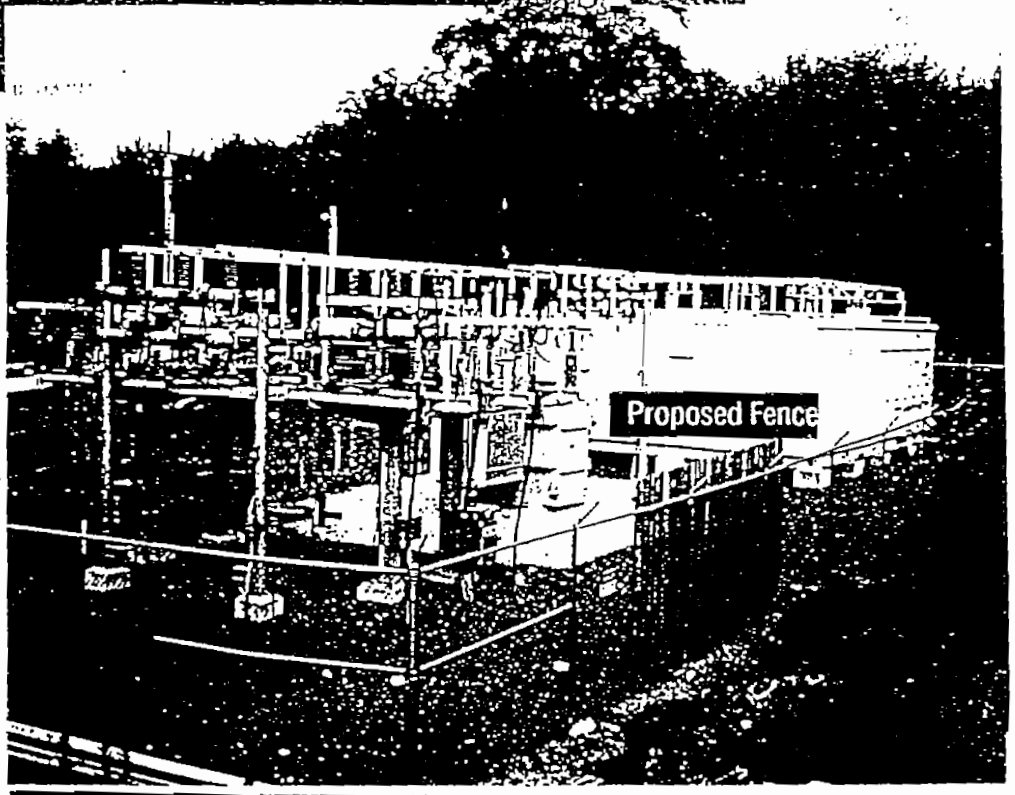
In the event of any litigation or dispute between Seller and Buyer concerning the release of the deposit, Broker's sole responsibility may be met, at Broker's option, by paying the deposit into the court in which such litigation is pending, or by paying the deposit into the court of proper jurisdiction by a bill of interpleader. Buyer and Seller agree that, upon Broker's payment of the deposit into court, neither Buyer nor Seller shall have any further right, claim, demand or action against Broker regarding the release of the deposit and Buyer and Seller, jointly and severally, shall indemnify and hold the Broker harmless from any and all such rights, claims, demands or actions. In the event of such dispute and election by the Broker to file a bill of interpleader as herein provided, Buyer and Seller further agree and hereby expressly and irrevocably authorize the Broker to deduct from the deposit all costs incurred by the Broker in the filing and maintenance of such a bill of interpleader including but not limited to filing fees, court costs, service of process fees and attorneys' fees, provided that the amount deducted shall not exceed the lesser of $500 or the amount of the deposit held by the Broker. All such fees and costs authorized herein to be deducted may be deducted by Broker from the deposit prior to paying the balance of the deposit to the court. Buyer and Seller further agree and expressly declare that all such fees and costs so deducted shall be the exclusive property of the Broker. If the amount deducted by the Broker is less than the total of all of the costs incurred by the Broker in filing and maintaining the interpleader action, then Seller and Buyer jointly and severally agree to reimburse the Broker for all such excess costs upon the conclusion of the interpleader action.

In the event that any dispute arises under this Contract between Seller and Buyer resulting in Broker or any agents, subagents or employees of Broker being made a party to any litigation, Seller and Buyer, jointly and severally, agree to indemnify and hold Broker and its agents, subagents and employees harmless from any liability, loss, cost, damage or expense resulting therefrom (including filing fees, court costs, service of process fees and attorneys' fees) as a result thereof, provided that such litigation does not result in a judgement against Broker, its agents, subagents or employees for acting improperly under this Contract.

Prot. Ex. 15







Similar Project Provided by BGE

Prot. Ex. 22

Updated 12/92

GLASER, Zory (Zorach) Raphael, Ph.D., M.P.H. October 1990
CAPTAIN, U.S. Public Health Service (PHS # 44964)

VITA

BORN October 12, 1940, in Philadelphia, PA Age ~~49~~ 52

EDUCATION (and early Military Training)

Philadelphia College of Textiles and Science (1958-'62), B.S. in Chemistry, Awarded with highest honors, 1962.

Military Service-Connected (As an enlisted Naval Reservist, and with periods of Active Duty), Highest grade attained: Aviation Electronics Technician First Class (Aircrew), E-6 (AT1(AC)), (1958-'69).
(Commissioned Service in USN and USPHS listed under Professional Experience)
Navy Electronics Schools: Navigation, Radar, and Communications Equipment Operation and Maintenance, and Flightcrew Communications Operation. Correspondence courses in a variety of subjects, and from many different schools, were also completed during this period. Subjects included: Mathematics and Electronic Engineering courses, and Instrumentation.

Polytechnic Institute of Brooklyn*, N.Y. (1963-'68), Ph.D. in Polymer and Physical Chemistry (Minor-Biophysics); Awarded with honors, 1969.
(* Presently known as Polytechnic University of New York)

Additional Graduate Training (1969-'85) in Physiology, Physiologic Psychology, Pharmacology, Toxicology, Immunochemistry, Microbiology, Biophysics, Biochemistry, Endocrinology, Biomedical Instrumentation, Health Physics, Radiation Physics, Occupational Medicine, Computer Programming, Cancer Chemotherapy, Oceanography, Industrial Hygiene Techniques, and 21 credits in the fields of Management and Public/ R&D Administration (Univ. VA).

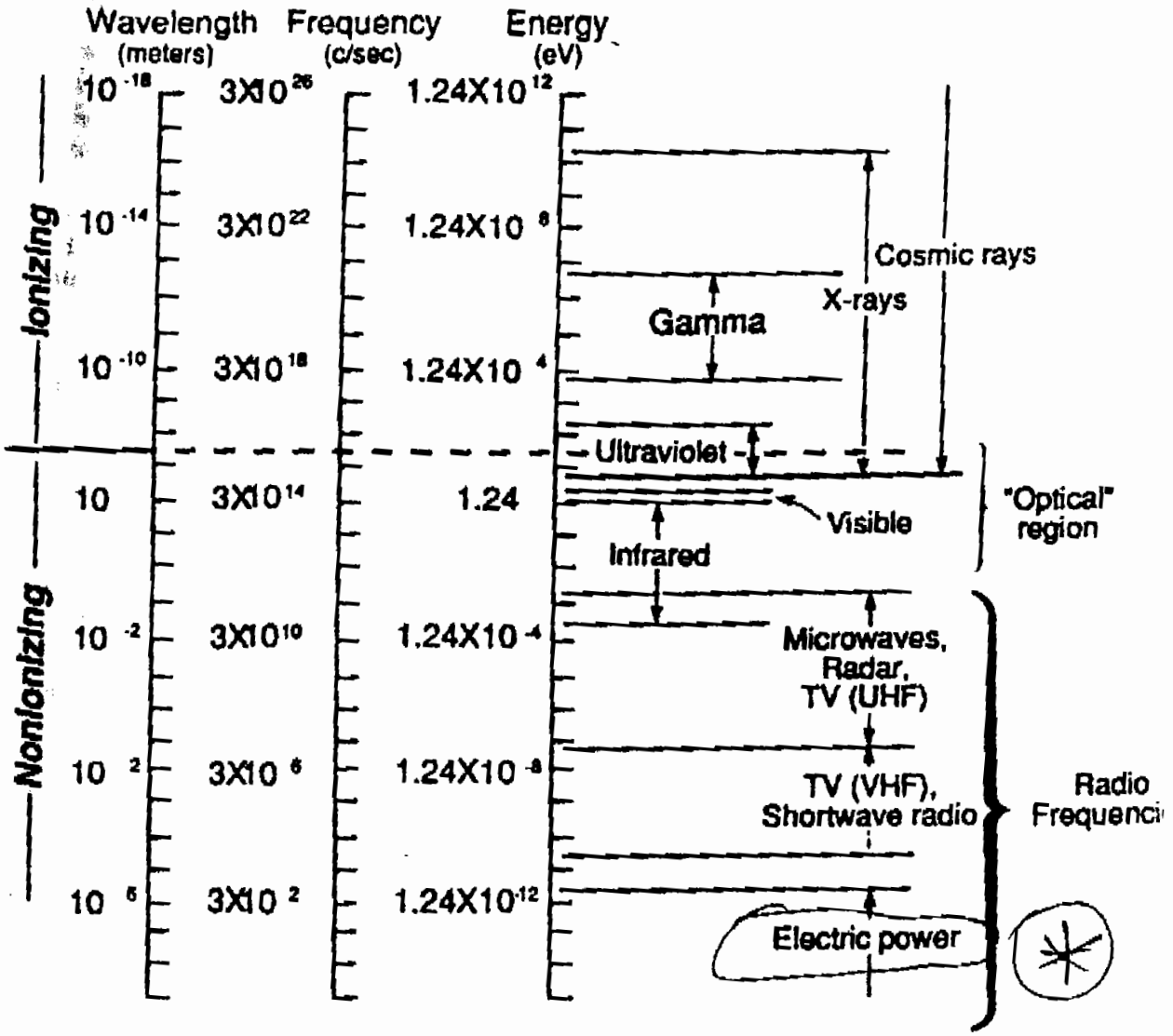
Johns Hopkins University, School of Hygiene and Public Health, Baltimore MD (1987-'90*), M.P.H.,Masters Degree in Public Health, Areas of emphasis: Toxicology, Risk Assessment, Environmental Health Engineering, Industrial Hygiene, Radiation Health, and Occupational Medicine. (* Degree earned while attending classes on a part-time basis)

PROFESSIONAL OCCUPATIONAL EXPERIENCE

1960 (Summer)	U.S. Army Chemical Center, Edgewood Arsenal, MD (Chemistry Technician & Statistical Analysis of Toxicology data)
1961 & '62 (Summers)	National Starch & Chemical Corp., Research Lab., Plainfield, N.J. (Chemist, Polymer synthesis and characterization)
1963-'64	Teaching Fellow, Chemistry Dept., Polytechnic Institute of Brooklyn
1964-'66	Research Fellow, Chemistry Dept., Polytechnic Institute of Brooklyn

Prot. Ex. 23

The Electromagnetic Spectrum



Fox Ridge
ESTATES

FEATURES

EXTERIORS

- ☐ Brick Front—Oversized Brick—Many Choices Available
- ☐ Low Maintenance Designer Vinyl Siding—Beaded Edge Style Available
- ☐ Timberline Composition Self Sealing Roof Shingles
- ☐ Aluminum Gutters and Downspouts
- ☐ Steel Insulated Front Entry Doors
- ☐ Insulated Glass French Door Depending on House Design (or)
  Insulated Glass Sliding Door with Screen Depending on House Design
- ☐ Two Weatherproof Exterior Electrical Outlets
- ☐ Front and Rear Hose Connection
- ☐ Andersen Energy Saving Insulated Windows with Screens
- ☐ Pressure Treated Wood Deck
- ☐ Two Automatic Garage Door Openers
- ☐ Seeded Yard and Landscape Package

INTERIORS

- ☐ Hardwood Flooring in Entry Foyer, Powder Room, Dining Room, and Living Room
- ☐ Architecturally Enhancing Crown Molding in Living Room, Dining Room, Foyer, and Chair Rail Molding in Dining Room
- ☐ Colonial Style Stained Oak Hand Rail with Painted Wood Railings
- ☐ Six Panel Colonial Style or Classique Style Interior Doors
- ☐ Masonry Fireplace in Family Room
- ☐ Front Entrance Two Car Garage
- ☐ Door Chimes
- ☐ Ventilated Closet Shelving
- ☐ Decorator Lighting Package
- ☐ Recessed Fixtures in Kitchen, Morning Room, and Family Room
- ☐ Two Zone Electric Energy Efficient Heat Pump/Air Conditioning System
- ☐ Smoke Detectors
- ☐ Pre-Wire for Telephone and Cable Television, and Security Hook Up
- ☐ Washer/Dryer Connection
- ☐ Laundry Tub
- ☐ R-30 Insulation in Attic
- ☐ R-13 Insulation in Sidewalls
- ☐ R-11 Insulation in Basement Ceiling
- ☐ 400 Amp Electric Service
- ☐ Two 52 Gallon Hot Water Heater
- ☐ Two Piece Plumbing Rough-In/Basement (When Grade Allows)
- ☐ Ten Year Warranty Program—Residential Warranty Corporation (RWC)

Continued on back page

Plot Exh #24

SPECIAL KITCHEN FEATURES

- ☐ KitchenAide Applicance Package—(Individual House Package May Differ)
- ☐ Instant Hot
- ☐ Double Bowl Stainless Steel Gourmet Sink with Single Lever Faucet
- ☐ Choice of Designer Oak Cabinetry
- ☐ Choice of Complimenting Countertop Color
- ☐ 8x8 Ceramic Tile Flooring—Kitchen and Morning Room
- ☐ Cold Water Line For Automatic Ice Maker

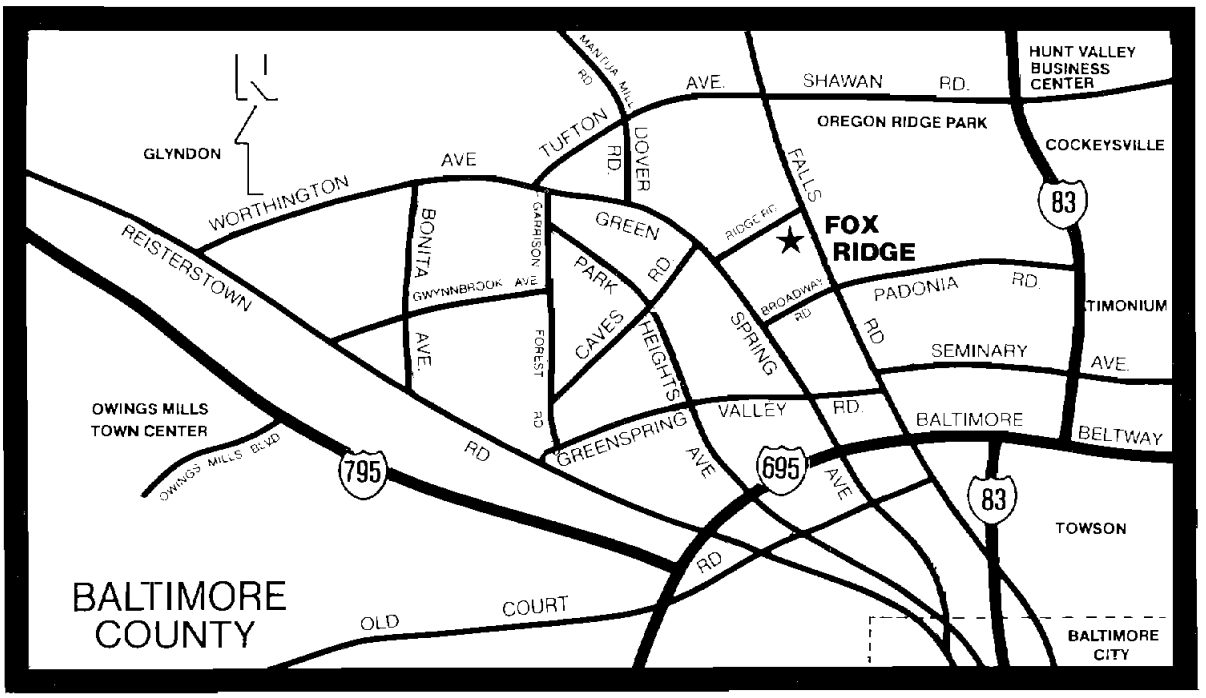
SPECIAL BATHROOM FEATURES

- ☐ Master Bathroom with Separate Oversized Soaking Tub and Glass Enclosed Shower
- ☐ Double Bowl Vanity in Master Bath and Family Bath
- ☐ Ceramic Wall and Floor Tile in Master Bath and Family Bath
- ☐ White Wood Vanity in Master Bath and Family Bath
- ☐ Pedestal Sink in First Floor Powder Room

CONVENIENCE, CONVENIENCE, CONVENIENCE...

- ☐ Downtown Baltimore
- ☐ Hunt Valley
- ☐ Towson
- ☐ Route 695, Interstate 83, Jones Falls Expressway
- ☐ Owings Mills Town Center, Hunt Valley Mall, Harborplace, Galleria
- ☐ Oregon Ridge Park
- ☐ Maryland's Finest Private and Public-Schools and Colleges
- ☐ Much, Much, More.....

ALL FEATURES LISTED ARE SUBJECT TO CHANGE WITHOUT FURTHER NOTICE



FOX RIDGE ESTATES COMMUNITY

JGS
CORPORATION

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY
*
PETITION OF FRIENDS OF THE RIDGE, *
INDIVIDUALS MR. & MRS. NIGEL HOWSE, *
MR. & MRS. ROBERT O'HARA, MR. & MRS.
RON HANLEY, MR. & MRS. CARL FOLLO, *
MR. & MRS. ROBERT RYTTER, MR.
& MRS. IRA BROWN, MR. & MRS. DIETER *
LANGENDORF, MR. & MRS. ANDREW LANSMAN,
MR. & MRS. JEFFREY BOZEL, MR. & MRS. *
BRUCE PITCHER, AND MR. & MRS. JOE
CZAJKOWSKI AT 305 WASHINGTON AVENUE, *
SUITE 502, TOWSON, MARYLAND 21204
*
FOR JUDICIAL REVIEW OF THE DECISION OF CIVIL
THE COUNTY BOARD OF APPEALS * ACTION
OF BALTIMORE COUNTY No. 3-C-95-5315
Room 49, Old Courthouse, 400 Washing- *
ton Avenue, Towson, MD 21204
*
IN THE CASE OF: IN THE MATTER OF
THE APPLICATION OF *
BALTIMORE GAS & ELECTRIC CO.
(IVY HILL SUBSTATION) *
FOR SPECIAL EXCEPTION AND VARIANCE
ON PROPERTY LOCATED ON THE SOUTHWEST *
CORNER OF RIDGE ROAD AND JOEL COURT
8TH ELECTION DISTRICT *
3RD COUNCILMANIC DISTRICT
*
CASE NO. 94-452-XA
* * * * * * * * * * * * *

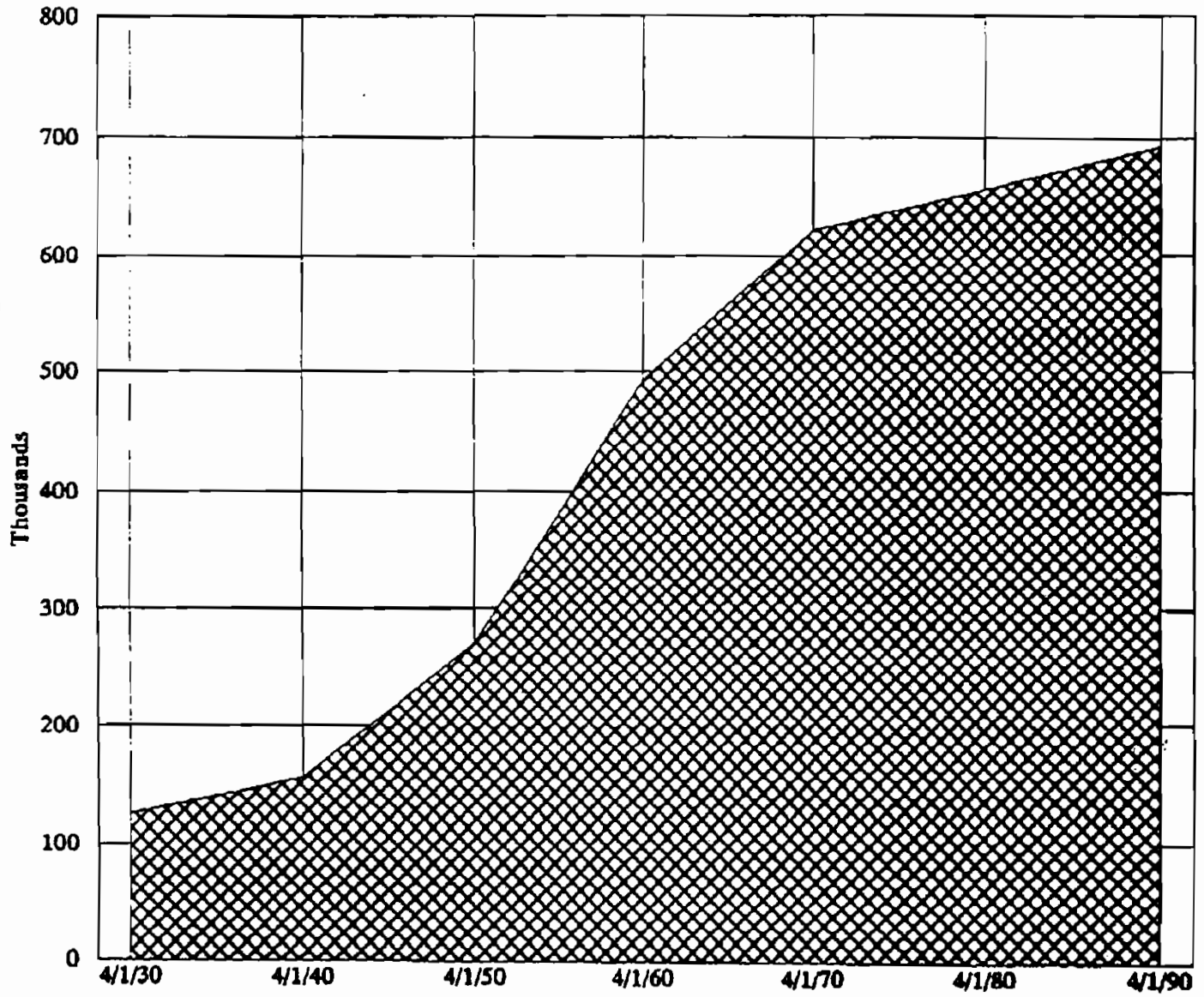
CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, Robert O. Schuetz and S. Diane Levero, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely, J. Carroll Holzer, P.A., HOLZER AND LEE, 305 Washington Avenue, Suite 502, Towson, MD 21204, Counsel for Friends of the Ridge, et al, Petitioners, at 305 Washington Avenue, Suite 502, Towson, Maryland 21204; Martha A. Delea, Esquire, Baltimore Gas & Electric Company, P.O. Box 1475, Charles Center, Baltimore, MD 21203-1475; Mr. and Mrs. Frederick Vinup, 1821 Ridg Road, Reisterstown, MD 21136; Robert A. Hoffman, Esquire, VENABLE, BAETJER AND HOWARD, 210 West Allegheny Avenue, Towson, MD 21204,

BALTIMORE COUNTY POPULATION[1]

DATE	POPULATION	PERCENT CHANGE
4/1/30	124585	
4/1/40	155825	25.10%
4/1/50	270273	73.45%
4/1/60	492428	82.20%
4/1/70	621077	26.13%
4/1/80	655615	5.56%
4/1/90	692134	5.57%



[1]Population information provided by the Bureau of the Census

PROT Exh #11 26

Prot. Ex. 27

CURRICULUM VITAE

NORMAN E. GERBER, AICP

35 Pickburn Court Cockeysville, MD 21030

Business
(410)667-4543

Facsimilie
(410)683-4079

PROFESSIONAL EXPERIENCE

Preparation of Master Plans and Land Use Regulations

Prepared comprehensive, policy, small-area, facility and revitalization plans, capital programs and capital budgets.

Prepared zoning and development ordinances, agricultural land preservation and historic district regulations and growth management programs.

Conducted demographic, transportation, economic and market studies.

Implementation of Plans and Programs

Reviewed and approved new development.

Enforced zoning, agricultural and historic preservation regulations.

Negotiated plan and facilities projects with community groups, local and state legislative bodies and private sector business.

Other

Testified before local, state and national boards, commissions and legislatures on the behalf of plans and programs.

Testified before boards of appeals, circuit courts and the U. S. Tax Court of Appeals on land use issues.

Prepared RFP's, grant applications, selected consultants and administered contracts.

WORK EXPERIENCE

2/88 to present — NORMAN E. GERBER, AICP, Cockeysville, MD
Principal
Private practice as planning consultant specializing in land planning, preparation of land use regulations, property evaluation for potential use and expert testimony in zoning and development issues.

2/89 to 10/90 — The City of Laurel, Laurel, MD
The Office of Planning and Zoning
Director
Administered the planning program and enforced the zoning code.

9/80 to 1/88 — Baltimore County, Baltimore County Maryland
The Office of Planning and Zoning
Director
Administered the planning program, and the budgets of the Office of Zoning and the Peoples Council. Baltimore County Baltimore County Maryland The Office of Planning and Zoning

Planning Board

401 Bosley Avenue
Towson, MD 21204

887-3211

June 25, 1991

The Honorable Douglas B. Riley
Chairman, Baltimore County Council
The Old Courthouse
Towson, MD 21204

Dear Councilman Riley:

Enclosed is a Final Report of the Baltimore County Planning Board which I am submitting to you in accordance with Section 22-21 of the Baltimore County Code, 1978, as amended.

This report is in response to a request from the Zoning Commissioner to update and streamline the requirements for Final Development Plans. The legislation includes changes to the submittal and plan amendment requirements which will shorten the approval process while making the plan a more effective zoning enforcement tool. In addition, the name will be changed to Zoning Plan to more clearly differentiate the document from other development plans.

Sincerely,

Dave Fields

P. David Fields
Secretary to the Planning Board

PDF/prh
Riley#2/TXTPRH

cc: The Honorable Roger B. Hayden, County Executive
Members, Baltimore County Council
Merreen E. Kelly, Administrative Officer
Thomas Toporovich, Secretary to County Council
J. Robert Haines, Zoning Commissioner
H. Emslie Parks, County Attorney
Harold Reid, Chairman of the Planning Board
Members, Baltimore County Planning Board
Nicholas Spinnato, Sr., Senior Executive Assistant
Arnold Jablon, Director, ZADM

Prot Exh 28 for IDen.

Prot. Ex. 29

THE VALLEYS
PLANNING COUNCIL, INC.

212 Washington Avenue
P.O. Box 5402
Towson, Maryland 21285-5402
410-337-6877
410-296-5409 (FAX)

January 1, 1995

To Whom It May Concern:

John Bernstein is the Executive Director of The Valleys Planning Council, Inc. As such he is authorized to represent the views of the organization. He is authorized to speak at public meetings, before the County Council, and in legal proceedings before the Zoning Commissioner, the Board of Appeals, in District of Circuit Court and in any other proceeding in which The Valleys Planning Council may have an interest.

Richard B. Buck
President

Kathleen Pontone, Esq.
Secretary

Prot. Ex. 30

"Never doubt that a small group of thoughtful, committed citizens can change the world: indeed, it's the only thing that ever has."

- Margaret Mead

TO: BALTIMORE COUNTY BOARD OF APPEALS

RE: CASE #94-452-XA

I am unable to attend the appeal hearing on the above captioned case, but I wish to formally register my opposition to the proposed expansion of the Baltimore Gas & Electric Ivy Hill substation for the following reasons:

1. Industrial substations do not belong in any residential neighborhood.

2. The unknown effects of electro magnetic fields to the public.

3. The electrical expansion will create the infrastructure for future industrial and commercial development in the entire area.

Sincerely,

Susan A. Pentuk
NAME

11130 Reisterstown Rd
ADDRESS

Owings Mills, MD 21117

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

June 26, 1995

Robert A. Hoffman, Esquire
VENABLE, BAETJER & HOWARD, LLP
210 Allegheny Avenue
Towson, MD 21204

RE: Civil Action No. 3-C-95-5315
BALTIMORE GAS & ELECTRIC CO.
(IVY HILL SUBSTATION)

Dear Mr. Hoffman:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that a Petition for Judicial Review was filed on June 16, 1995, in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to Rule 7-202(d)(2)(B).

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, must be filed under Civil Action No. 3-C-95-5315.

Enclosed is a copy of the Certificate of Notice, which has been filed in the Circuit Court.

Very truly yours,

Charlotte E. Radcliffe

Charlotte E. Radcliffe
Legal Secretary

Enclosure

cc: Martha A. Delea, Esquire
Baltimore Gas & Electric Co.
Mr. & Mrs. Frederick Vinup
Pat Keller /Planning
Joseph V. Maranto /ZADM
Lawrence E. Schmidt /ZADM
Arnold Jablon /ZADM
W. Carl Richards /ZADM
Docket Clerk /ZADM
Virginia W. Barnhart, County Attorney
People's Counsel for Baltimore County

Printed with Soybean Ink on Recycled Paper

Prot. Ex. 31

SHAWAN VALLEY ASSOCIATION

RESOLVED: That at the Annual Membership meeting of the SHAWAN VALLEY Association held on October 18, 1994, it was decided by the Association that responsibility for review and action on all zoning matters for the period INDEFINITE as per Article III of Bylaws be placed in the (Board of Directors) (~~Zoning Committee~~) consisting of the following members: LIZA EBELING, KATHY HOOPER, SONJA SOUTHERN, STAN KRASKA, NEIL ADLERBERG, LIBBY DAVIS, MARTHA LESSNICK, ~~BOB POLLOCK~~, TOM SEYBOLD

AS WITNESS OUR HANDS AND SEAL THIS 18th day of January, 1995.

ATTEST: SHAWAN VALLEY ASSOCIATION

Sonja Southern
Secretary

Liza Ebeling
President

Prot. Ex. 32

RESOLUTION

Hunt Cup Hill Community ASSOCIATION

RESOLVED: That the position of the Hunt Cup Hill Community Association as adopted by the Board of Directors on the zoning matter known as: The expansion of the Ivy Hill Substation is that: We are against the proposed Phase 1 and Phase 2 residential substation expansion.

AS WITNESS our hands and seal this 9th day of JAN, 1995.
Hunt Cup Hill Community ASSOCIATION

Nancy L. Linde
SECRETARY

PRESIDENT

Heather Hill Homeowners Association
P. O. Box 721
Brooklandville, Maryland 21022 0721

Friends of the Ridge
Attn: Pam Follo
1 Joel Court
Reisterstown, Md

Dear Pam,

The Heather Hill Homeowners Association has looked at the plans for the BG&E substation upgrade. We have examined the various points put forth by both sides. In the end we have decided that it is not in our best interest to ignore this process without our input.

After polling most of the home owners and discussion among the members of the board, we have decided to support your position that BG&E should revise their plan to quadruple the size of the substation at Joel Court and Ridge Road. The general consensus is that there are other areas in which a substation could be built that is away from already developed housing. Considering that extensive development is planned for the Falls Road Corridor, it makes more sense to place discreetly landscaped substations in several of the as yet undeveloped areas. Potential residents could make their decision to buy or not buy with the substation already in place.

On the matter of EMFs, we know the studies are not conclusive. This being the case, we prefer that the utility err on the side of conservatism. The families that live nearby should not have their health jeopardized should the studies exonerating EMFs be wrong.

Enclosed is a check to help defray the cost of challenging the proposed substation. We hope you are successful and support your efforts on behalf of our communities.

Sincerely,

Kathy Dell

Kathy Dell
President for the
Heather Hill Homeowners Association

ProtEch #33

Prot Exh. #34

[illegible]
31 Longfield Avenue
Reisterstown, MD 21136

January 11, 1995

To: Baltimore County Board of Appeals

Re: Case # 94-452-XA

I am unable to attend the appeal hearing on the above captioned case, but wish to formally register my opposition to the proposed expansion of the B.W.I. Industrial Park.

While we all understand the need to upgrade and expand, decision to permit the expansion of the Airy Hill subdivision threatens the safety, health and welfare well being of residents and the environment we live in all. Responsible to ensure

Prot Exh # 35

NATIONAL EMR ALLIANCE

January 18, 1995

Mrs. Carol Rytter
Friends of the Ridge
One Joel Court
Reisterstown, MD 21136

Dear Carol:

The National EMR Alliance is a forum for effective communication, networking and organization of citizen action groups involved in the electromagnetic field (EMF) radiation issue.

We believe that EMF is hazardous to life and constitutes a significant threat to the public's health.

To that end, the Alliance is in favor of, and hopes to foster, local, regional, national and international efforts to reduce, mitigate and, where possible, eliminate hazardous exposure to EMF. Friends of the Ridge is one of over three hundred and fifty grassroots organizations involved with the National EMR Alliance who are committed to improving the electrical environment for their selves, their families and their communities.

The National EMR Alliance applauds the efforts of its member group Friends of Ridge who are working to protect the rights of the citizens of Baltimore County from hazardous levels of EMF. In particular, its opposition of the enlargement by Baltimore Gas & Electric Company of an electrical substation within a residential area.

The Savitz-Loomis study published on January 15th by the *American Journal of Epidemiology* joins a growing list of over fifty positive residential and occupational studies which support the conclusion that exposure to elevated EMF promotes the development of various forms of cancers and leukemias including brain cancer, female *and* male breast cancer, spontaneous abortions (miscarriages) and other serious health maladies. Never in the history of environmental research has there been so much evidence that a substance is carcinogenic than there is with EMF.

The issue of adverse health effects associated with exposure to EMF radiation is fast becoming the health and environmental issue of the decade. The following statements indicate the seriousness of this issue.

410 West 53rd Street • Suite 402 • New York, New York 10019
(212) 554-4073 phone • (212) 977-5541 fax

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

June 26, 1995

J. Carroll Holzer, P.A.
HOLZER and LEE
305 Washington Avenue, Suite 502
Towson, MD 21204

RE: Civil Action No. 3-C-95-5315
BALTIMORE GAS & ELECTRIC CO.
(IVY HILL SUBSTATION)

Dear Mr. Holzer:

In accordance with Rule 7-206(c) of the Maryland Rules of Procedure, the County Board of Appeals is required to submit the record of proceedings of the petition for judicial review which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty days.

The cost of the transcript of the record must be paid by you. In addition, all costs incurred for certified copies of other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court within sixty days, in accordance with Rule 7-206(c).

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

Charlotte E. Radcliffe
Legal Secretary

Enclosure

c: Friends of the Ridge, et al

Printed with Soybean Ink on Recycled Paper

Prot. Ex. 36

IN THE MATTER OF	*	BEFORE THE
BGE Ivy Hill Substation	*	COUNTY BOARD OF APPEALS
S/w Corner of Ridge Rd. &	*	BALTIMORE COUNTY
Joel Ct. 3rd Council Dist.	*	CASE NO. 94-452-XA

* * * * * * * * * * * * * *

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Tuesday Jan. 10, 1995 at 10:00 a.m. at Room 48, located at Basement, Old Courthouse, 400 Washington Ave. Towson and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Witness: Custodian of the Records, Balto. Gas & Electric
Address: Charles Center, P.O. Box 1475
Balto., MD 21203

SERVE ON: Martha Delea, Esq., BG & E and Robert Hoffman, Esq.
210 Allegheny Ave. , P.O. Box 5517, Towson, MD 21204
Towson, 21204

SEE ATTACHED SHEET FOR DOCUMENTS

Name: J. Carroll Holzer
Firm: Holzer & Lee
Address: 305 Washington Ave. #502
Towson, MD 21204
825-6961

The witness named above is hereby ordered to so appear before the County Board of Appeals. The Board requests the Sheriff to issue the summons set forth herein.

Charlotte E. Radcliffe
County Board of Appeals of
Baltimore County

Cost: $_____

Summoned: _____, 19____

Not served: _____, 19____

Sheriff of Baltimore County

Pet. Ex. 1

Monica P. McGrady, P.E.
4532 Rusty Gate
Ellicott City, MD 21043, U.S.A.
(410) 461-0792 home, (410) 234-5294 office

Experience

Senior Project Engineer, Baltimore Gas and Electric Co., Baltimore,MD. 01/91 - present: Responsible for the design, engineering and construction of high voltage electric substations. Project management functions include planning, scheduling, budget preparation, cost control, contract development and management, equipment procurement, leading and coordinating people and activities.

Engineer, Baltimore Gas and Electric Company, Baltimore, MD. 02/89 - 12/90: Performed power system analysis studies to plan for proper reactive power compensation and steady state voltage on the electric system. Also performed selected planning studies to assure reliable and economical operation and expansion of the electric system through extensive use of load flow programs.

Engineer, HMJ Corporation, Washington, DC. 10/88 - 12/88: Verified and completed a research report on power conditioning systems for the Strategic Defense Initiative Organization.

Teaching Assistant, The George Washington University, Washington, DC. 1/88 - 12/88: Taught a power systems laboratory to students in their senior year. Major emphasis of the course was on transformers and measurements of the characteristics of devices used to generate electricity.

Education

Registered Professional Engineer, State of Maryland, June 1993.

The George Washington University, Washington, DC. - Master of Science with a concentration in Energy Conversion, Power Systems and Transmission Engineering, February 1989. GPA: 4.0/4.0

Syracuse University, Syracuse, NY. - Bachelor of Science in Electrical Engineering (Summa Cum Laude), May 1986. GPA: 3.8/4.0

Areas of Expertise

o Substation grounding design, electric and magnetic field analysis, equipment rating, power system analysis, transient analysis, design of electric transmission and distribution systems, design of emergency and standby power systems, electromechanical and direct energy conversion.

o Fluent in Spanish and knowledge of Italian.

Professional Memberships

o Member of the Advisory Committee for the Substation Magnetic Fields Research Group of the Electric Power Research Institute.
o Member of the IEEE and the Power Engineering Society.
o Member of Eta Kappa Nu and Tau Beta Pi engineering honor societies.

Pet. Ex. 27

L. H. Rosenberg
& Associates Inc.
13010 Heil Manor Drive
Reisterstown MD 21136

January 18, 1995

Clare Miller
Baltimore Gas & Electric Co.
PO Box 1475
Baltimore MD 21203

FAX DELIVER

Dear Ms Miller:

I am a resident of the Shawan Valley community and reside at 13010 Heil Manor Drive, Reisterstown MD 21136. My house is approximately ¼ mile from your current substation at Ridge Road off of Falls Road.

I have over the past several months been reading the literature provided by both BGE and the group opposed to your proposed substation expansion. I was shocked to learn that the community association that represents my area (Shawan Valley Community Association) has taken a stand opposing the proposed expansion. I am further dismayed that the Association is using "scare" tactics ("Save our children" etc.) to bolster there position. The following facts are important to put the Association's position into perspective.

A. The Association **does not** represent all of the properties in the community and in fact is not a "Property Owners Association" as defined in Maryland Law. It is merely a voluntary organization of property owners in the area that wish to join together for common purposes.

B. The only function that the Association performs that could be construed as coming close to a POA is that it appoints the "Architecture Review Committee" that reviews and approves building plans as required by the deed covenants.

C. All the dues paying members of the Association were not present at the meeting that voted on the Association's position opposing the expansion. Also since all the dues paying members do not represent all the property owners in the area the statement that the community is opposed is not exactly accurate.

(410) 252-2439

Pet. Ex. 22



PLANNING BOARD POLICIES AND RESOLUTIONS

Final Development Plans.....3

Pet. Ex. 12

James F. Ryan, Jr.
900 Gas and Electric Building
P.O. Box 1475
Baltimore, MD 21203

(410) 234-5129

PROFESSIONAL QUALIFICATIONS

State of Maryland
Department of Licensing and Regulation
Baltimore, MD
REGISTERED PROFESSIONAL ENGINEER/ELECTRICAL, APRIL, 1993
LICENSE #19849

District of Columbia
Department of Consumer and Regulatory Affairs
Washington, DC
REGISTERED PROFESSIONAL ENGINEER/ELECTRICAL, AUGUST, 1992
LICENSE #9820

EDUCATION

Virginia Polytechnic Institute and State University *1980 - 1985*
Blacksburg, VA
BACHELOR OF SCIENCE IN ELECTRICAL ENGINEERING, JUNE 1985.

University of Baltimore *1987 - 1990*
Baltimore, MD
MASTER OF BUSINESS ADMINISTRATION, JUNE 1990.

PROFESSIONAL EXPERIENCE

Baltimore Gas and Electric Company
Baltimore, MD

DECEMBER, 1992 TO PRESENT - AREA FORECAST LEADER: PROVIDE TECHNICAL LEADERSHIP AND DIRECTION TO A TEAM OF THREE RESPONSIBLE FOR THE DEVELOPMENT OF SMALL AREA DISTRIBUTION FACILITY PLANNING FORECASTS. FORECASTS ARE DEVELOPED USING ENGINEERING, STATISTICAL, AND GEOGRAPHIC ANALYSIS OF ELECTRIC DEMAND, DEMOGRAPHICS, AND LAND USE. POSITION REQUIRES STRONG BACKGROUND IN PRINCIPLES OF ELECTRIC DISTRIBUTION, AND FREQUENT COMMUNICATION WITH ENGINEERS RESPONSIBLE FOR DISTRIBUTION SYSTEM PLANNING AND OPERATION.

JUNE, 1985 TO NOVEMBER, 1992 - FORECASTER, AREA FORECASTING: PREPARED FORECASTS OF SMALL AREA DEMAND TO SUPPORT THE PLANNING OF

IN THE CIRCUIT COURT *
FOR *
BALTIMORE COUNTY *
*
PETITION OF Friends of the Ridge, *
individuals Mr. & Mrs. Nigel *
Howse, Mr. & Mrs. Robert *
O'Hara, Mr. & Mrs. Ron Hanley, *
Mr. & Mrs. Carl Follo, Mr. & Mrs. *
Robert Rytter, Mr. & Mrs. Ira *
Brown, Mr. & Mrs. Dieter *
Langendorf, Mr. & Mrs. Andrew *
Lansman, Mr. & Mrs. Jeffrey *
Bozel, Mr. & Mrs. Bruce Pitcher, *
and Mr. & Mrs. Joe Czajkowski at *
305 Washington Avenue, Suite 502, *
Towson, Maryland 21204 *
*
FOR JUDICIAL REVIEW OF THE * Civil Action
DECISION OF THE COUNTY BOARD OF *
APPEALS FOR BALTIMORE COUNTY * Case No.: 3C-95-5315
400 Washington Avenue, Room 49 *
Old Courthouse *
Towson, Maryland 21204 *
*
IN THE MATTER OF: *
THE APPLICATION OF *
BALTIMORE GAS & ELECTRIC CO. *
(IVY HILL SUBSTATION) *
FOR SPECIAL EXCEPTION AND *
VARIANCE ON PROPERTY LOCATED *
ON THE SOUTHWEST CORNER OF *
RIDGE ROAD AND JOEL COURT *
8TH ELECTION DISTRICT *
3RD COUNCILMANIC DISTRICT *
Case No.: 94-452-XA *
* * * * * * * * * * * * * *

PETITION FOR JUDICIAL REVIEW

Petitioners, Friends of the Ridge and individuals Mr. & Mrs. Nigel Howse, Mr. & Mrs. Robert O'Hara, Mr. & Mrs. Ron Hanley, Mr. & Mrs. Carl Follo, Mr. & Mrs. Robert Rytter, Mr. & Mrs. Ira Brown, Mr. & Mrs. Dieter Langendorf, Mr. & Mrs. Andrew Lansman, Mr. & Mrs. Jeffrey Bozel, Mr. & Mrs. Bruce Pitcher, and Mr. & Mrs. Joe Czajkowski by and through their attorney, J. Carroll Holzer and Holzer and Lee, hereby Petition for Judicial Review by

LAW OFFICE
HOLZER AND LEE
305 WASHINGTON AVENUE
SUITE 502
TOWSON, MARYLAND
21204

(410) 825-6961
FAX (410) 825-4923

Tech. Ex. 14

Updated: 11/16/94

CURRICULUM VITAE

Linda Schuman Erdreich, Ph.D.
Bailey Research Associates, Inc.
292 Madison Avenue
New York, N.Y. 10017

EDUCATION

1979	Ph.D., University of Oklahoma, Epidemiology
1977	M.S., University of Oklahoma, Biostatistics and Epidemiology
1968	M.Ed., Temple University, Science Education
1964	B.A., Temple University, Biological Sciences

EXPERIENCE

1991-Present Principal Scientist
Bailey Research Associates, Inc.
New York, NY

1989-1991 Senior Research Associate
Environmental Research Information, Inc.
New York, NY

1987-1989 Senior Associate
ICF-Clement Associates, Inc.
Edison, N.J.

1984-1987 Group Leader
Methods Evaluation and Development Staff
Office of Research and Development
Environmental Criteria and Assessment Office
U.S. Environmental Protection Agency
Cincinnati, OH

1981-1984 Senior Epidemiologist
Office of Research and Development
Environmental Criteria and Assessment Office
U.S. Environmental Protection Agency
Cincinnati, OH

Pet. Ex. 15

PAUL W. TAYLOR, P.E.
Associate, Project Manager
George William Stephens, Jr. & Associates, Inc.

Registration: Professional Engineer, Maryland (Md. Reg. No. 13741)

Education: The Johns Hopkins University, Civil Engineering, 1983

Professional Experience:

Mr. Taylor has over twenty-three years of experience in site development engineering, with design and project management experience on a broad range of projects. In addition to site design, Mr. Taylor has expertise in the areas of utility design, stormwater management design, sediment control design, and road and bridge design. In addition, while serving as a staff engineer for Harford County Department Public Works, Mr. Taylor was responsible for the design, bid document preparation and construction management on several public sector road, bridge & recreation projects.

Mr. Taylor has provided site design and engineering for the following commercial and institutional projects:

* State Highway Administration, Bel Air Maryland - Bel Air Complex Site, Utilities and Storm Water Management.

* Joppa-Magnolia Fire Station No. 3, Edgewood, Maryland - Site, Utilities and Stormwater Management.

* Fashion Park Commercial, Joppa, Maryland - Site, Sediment Control and Utilities and Public Roads.

* Amoco Service Station, Havre de Grace, Maryland - Site, Utilities, Sediment Control and Stormwater Management.

* Unitarian Universalist Church, Churchville, Maryland - Site, Septic System Design, Sediment Control & Stormwater Management.

In addition, Mr. Taylor has project management experience on a wide range of site development projects including:

Durham Manor, Harford Co., Md.
Grace Harbour, Havre de Grace, Md.
Amyclae Business Center, Harford Co., Md.

ZONING EXHIBIT

Pet. Ex. 16

BGE IVY HILL

TOTAL AREA IN ACRES	TRACT "A" 1.5628 AC.	TRACT "B" 0 9224 AC.	TRACT "C" 0.4081 AC.	TOTAL 2.8933 AC.
EXISTING WOODED AREA	1.0008 AC.	0.3958	0.2011 AC.	1.5977 AC.
EXISTING LAWN AREA	0.562 AC.	0.3818	0.0562 AC.	1 AC.
EXISTING GRAVEL AREA	0 AC.	0.0551 AC.	0.1149 AC.	0.17 AC.
EXISTING IMPERVIOUS AREA	0 AC.	0.0395 AC.	0.0193 AC.	0.0588 AC.
EXISITNG BUILDING AREA	0 AC.	0 0502 AC.	0.0166 AC.	0.0668 AC.
BUILDING COVERAGE	0.00 %	5 44 %	4.07 %	2.31 %
PROPOSED WOODED AREA	0.7308 AC.	0.1846 AC.	0 1111 AC.	1 0265 AC.
PROPOSED LAWN AREA	0.7712 AC.	0.2794 AC	0 1297 AC.	1.1803 AC
PROPOSED GRAVEL AREA	0.0297 AC.	0.3151 AC.	0.1442 AC.	0.489 AC.
PROPOSED IMPERVIOUS AREA	0.0311 AC.	0.1240 AC.	0.0231 AC.	0.1782 AC.
PROPOSED BUILDING AREA	0 AC.	0.0193 AC.	0 AC.	0.0193 AC.
BUILDING COVERAGE	0.00 %	2.09 %	0.00 %	0.67 %
AREA OF SWM POND	0.1856 AC.	0.0565 AC.	0 AC.	0.2421 AC
AREA OF WOODS REMOVED TO CONSTRUCT POND	0.1765 AC.	0.0061 AC.	0 AC.	0.1826 AC.
AREA OF WOODS REMOVED FOR PROPOSED SITE	0.2700 AC.	0.2112 AC.	0.0900 AC.	0.5712 AC.
AREA INSIDE FENCE EXCLUDING SWM POND	0.0331 AC.	0.3566 AC.	0.0569 AC.	0.4466 AC.

Jan. 5, 1995

GEORGE WILLIAM STEPHENS, JR. ASSOCIATES, INC.

Pet. Ex. 17



PROPOSED IVY HILL SUBSTATION PLANTING

TREE SPECIES INFORMATION

SPECIES	SIZE AT PLANTING (FT.) HT.	WIDTH	GROWTH RATE (FT./YR.)	MATURE HEIGHT (FT.)	MATURE WIDTH (FT.)	COMMENTS
LEYLAND CYPRESS	8'	3'	2 - 3'	60 - 70'	10 - 15'	Considered fastest growing conifer. Will reach 100' in 60 years.
WHITE PINE	8 - 10'	4 - 5'	2'	50 - 80'	20 - 40'	Considered fastest growing pine. Will reach 50 - 75' in 25 - 40 years.
NORWAY SPRUCE	8 - 10'	3 - 4'	1 - 1.5'	40 - 60'	25 - 30'	Medium to fast growth, especially when young. Will reach 75' after 50 years.
EASTERN HEMLOCK	8 - 10'	4 - 5'	1 - 1.5'	40 - 70'	25 - 30'	Medium growth in full sunlight, slower in shade. Will reach 25 - 50' in 15 - 30 years.



Pet. Ex. 18

GEORGE E. GAVRELIS

Vice President



George Gavrelis has broad, extensive training and background in planning and zoning, particularly in Baltimore County. He has a thorough knowledge of planning and zoning procedures, as well as the detailed requirements and standards of the zoning and development regulations. His expertise assures that projects comply with applicable standards and move more expediently through the approval process.

Mr. Gavrelis is recognized as an expert witness in planning, zoning and land use issues and testifies before the Zoning Commissioner, the Board of Appeals and the Circuit Court.

Professional Background

Daft·McCune·Walker, Inc.
Towson, Maryland
1984 - Present

Private Planning Consultant
1982 - 1984

Developers General Corporation
1972 - 1982

Baltimore County Office of Planning and Zoning
Towson, Maryland
1951 - 1972
Director, 1963 - 1972

Education

Master of City Planning
Harvard University Graduate School of Design

Bachelor of Arts
Harvard College

Associations

American Institute of Certified Planners, Charter Member

American Planning Association

Committees

The Towson Partnership
Urban Design and Towson Core Subcommittees

Executive Steering Committee, Baltimore County Master Plan, Strategic Plan 2000

Long Range Planning Committee, Trinity Episcopal Church

Advisory Group
1992 Comprehensive Zoning Map Guidelines

Significant Projects

Towson Commons
Towson, Maryland

Mays Chapel North Planned Unit Development
Timonium, Maryland

Caves Valley Golf Club
Documented Site Plan
Reclassification and Special Exception

Land Owners Council, Reciprocal Regional Development Agreement
Owings Mills Growth Area
Baltimore County, Maryland

New Density Residential Zones
Baltimore County, Maryland

The Guide Plan, a Comprehensive Plan for Baltimore County, Maryland

Guest Lecturer

National Conventions, National Association of Home Builders
Houston, Texas
Las Vegas, Nevada

Development Seminar, National Association of Home Builders
Phoenix, Arizona

Home Builders Institute, Home Builders Association of Maryland

Awards

Home Builders Association of Maryland, Distinguished Service Award
1979 and 1980

Baltimore County Chamber of Commerce Leadership Award, Growth Management Committee
1981

the Circuit Court for Baltimore County pursuant to Rule 7-207 of Civil Procedure from the opinion of the County Board of Appeals dated May 31, 1995.

J. Carroll Holzer
Holzer and Lee
305 Washington Avenue
Suite 502
Towson, Maryland 21204
(410) 825-6961
Attorney for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the 16th day of June 1995, a copy of the foregoing Petition for Judicial Review was mailed, postage pre-paid, to Robert Hoffman, Esquire, Venable Baetjer and Howard, 210 Allegheny Avenue, P.O. Box 5517, Towson, Maryland 21204

J. Carroll Holzer

Petitions\Ridge

Pet. Ex. 9

Lawrence S. Taylor

8774 Cloudleap Court T3
Columbia, Maryland 21045
410-992-7768

EXPERIENCE:

Baltimore Gas and Electric Company, Baltimore, Maryland

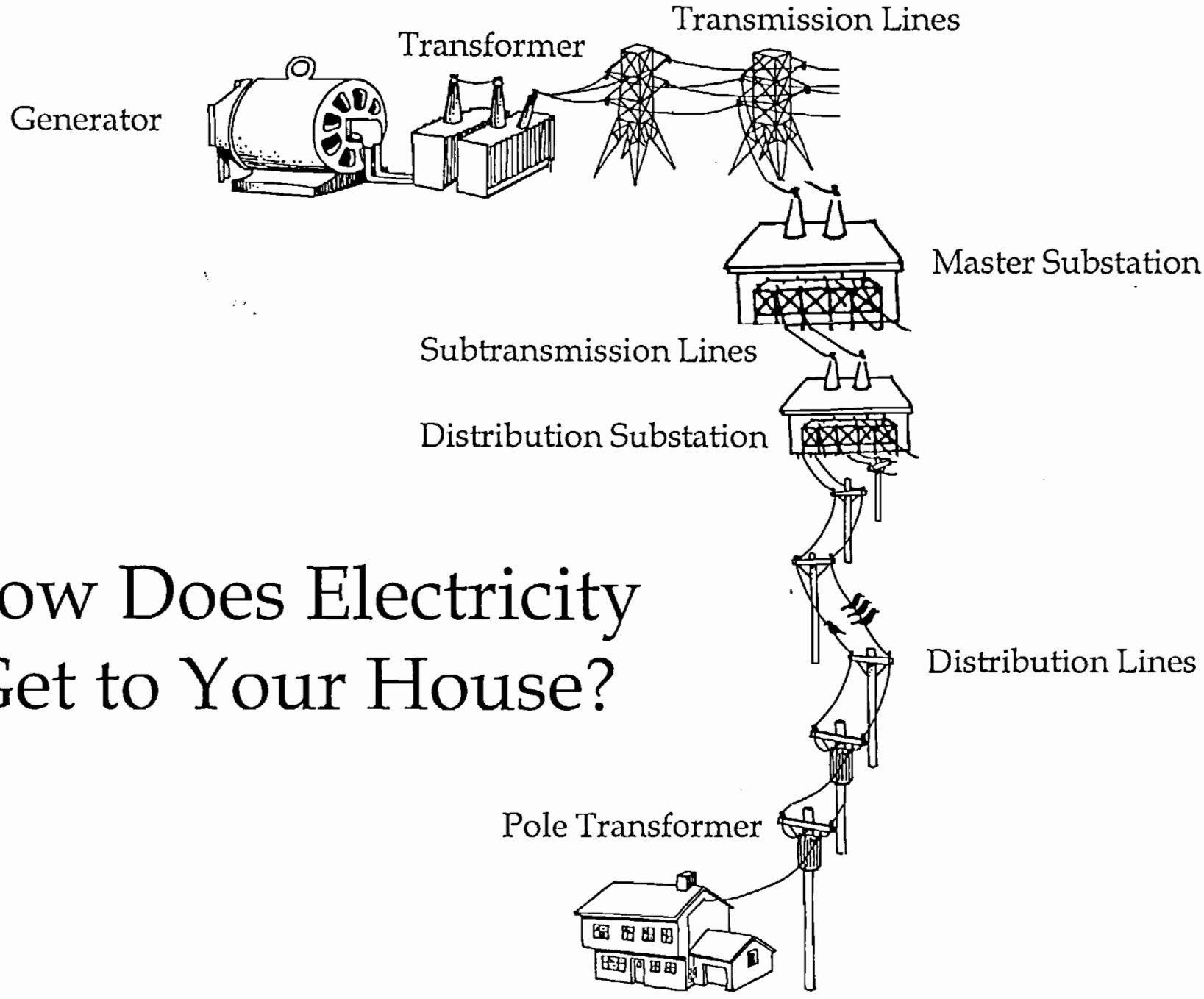
Principal Engineer, Area Planning 4/93 to present:
Supervised a unit of 6 engineers, 1 secretary and 2 technicians responsible for expanding the BGE area supply system and developing system reactive support plans. Managed the downsizing of the unit from 12 engineers and 3 technicians. Reviewed all plans for quality of design before issue. Prioritized discretionary projects to reduced capital expenditures. Established direction and strategy for the inclusion of demand side management and distributed generation concepts into the distribution planning process. Managed the job proficiency system for salary adjustments; promoted and terminated employees as appropriate. Served on strategic management team that developed strategies for the distribution division response to increased competition and the information superhighway. Performed a technical study of the impact on the distribution system of future electric vehicle use.

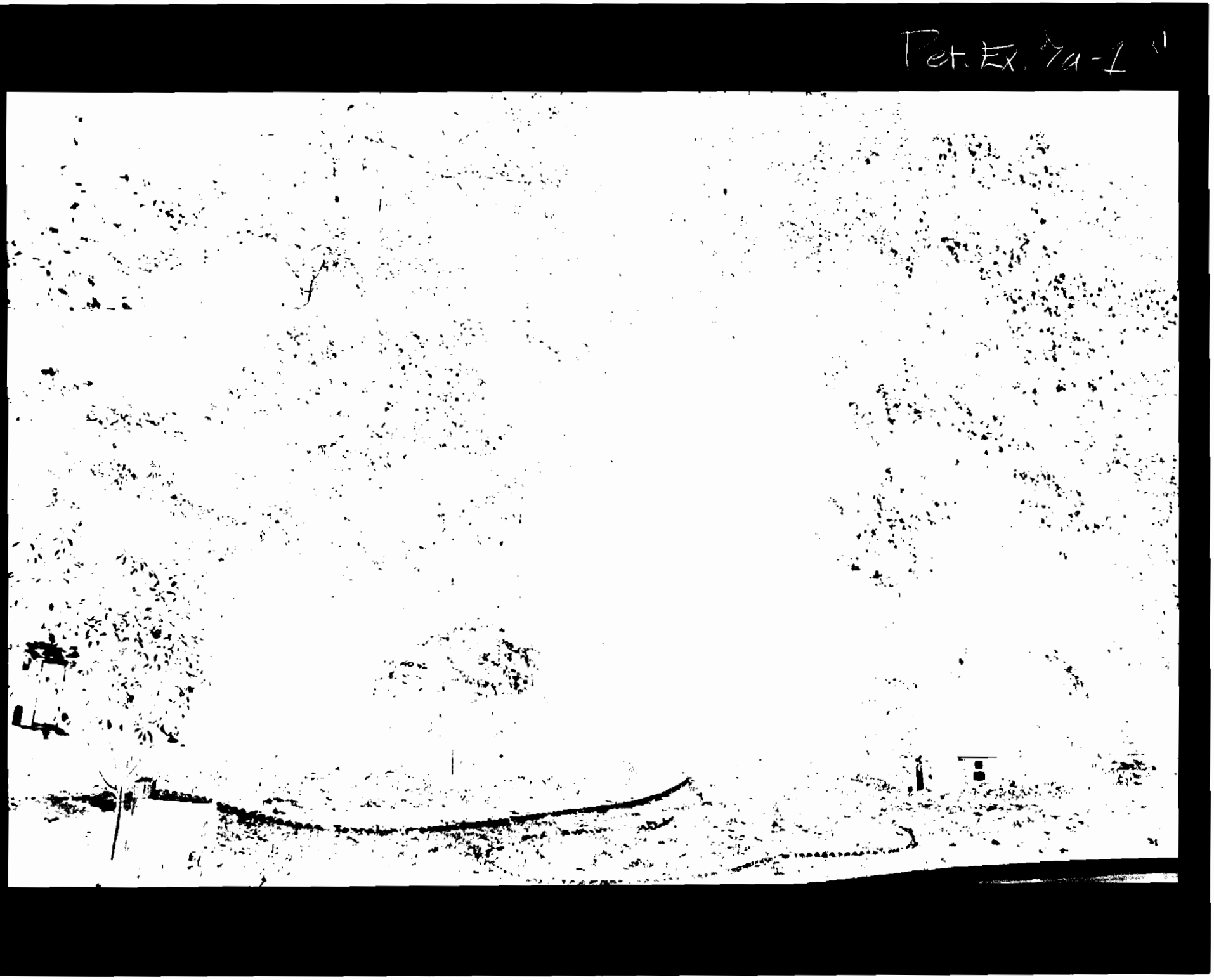
Principal Planner,Substation and Subtransmission Planning Group,11/89- 3/93:
Led a team of 6 engineers and 2 technicians in developing expansion plans for the area supply system. Assigned projects and did performance evaluations of group members. Reviewed all plans for quality of design before issue to the substation design engineers. Managed a $30 million capital budget, recommending cuts as necessary to achieve budget objectives. Over 600 MW of distribution station capacity added while leading the team.

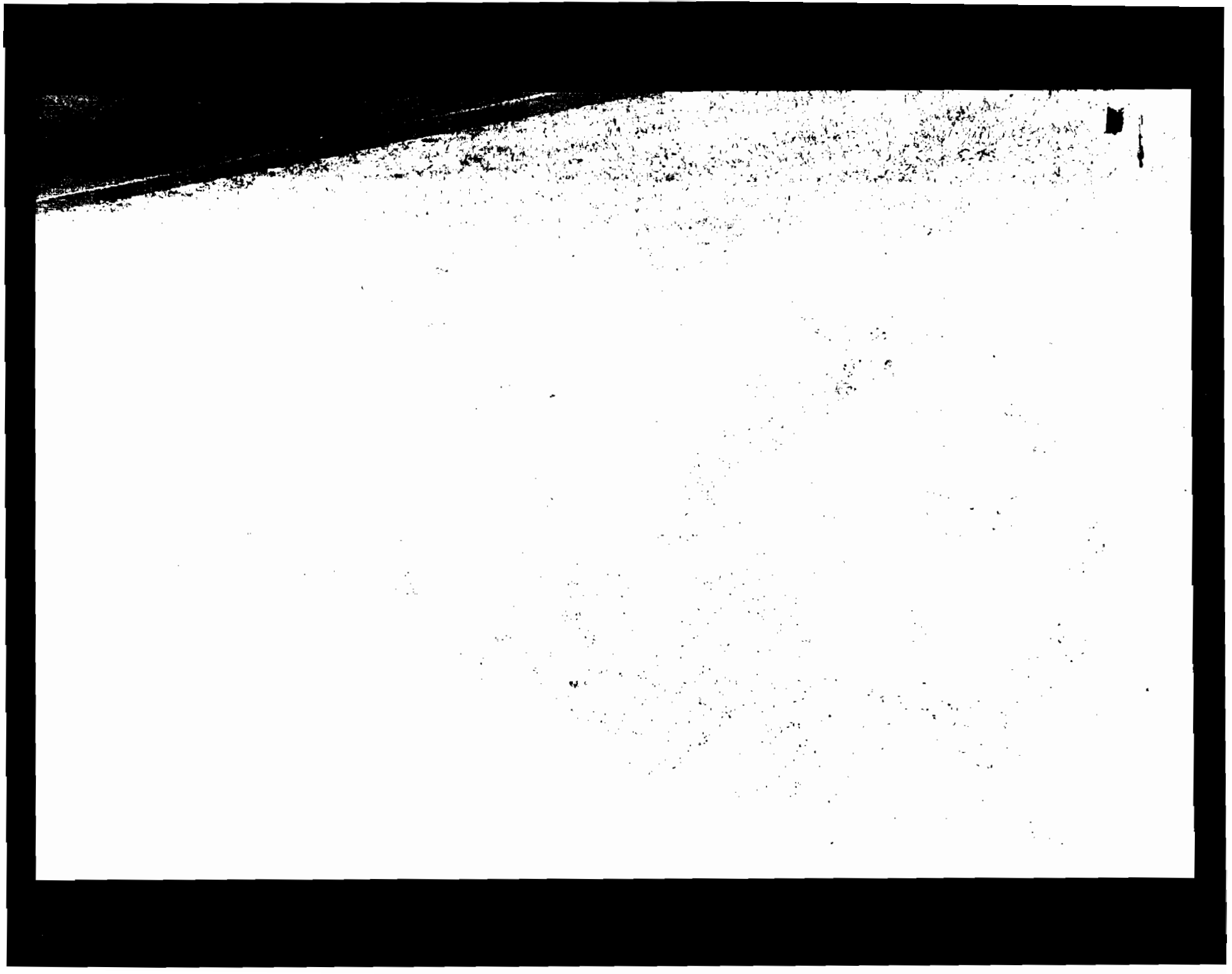
General Supervisor of Operations, Southern Department 10/87 -10/89:
Supervised a section of 30 (field and office) technicians and clerks, with 3 hourly supervisors as direct reports. Supervised the analysis of operating problems for the portion of the distribution system serving about 500,000 customers. Provided engineering direction to the field technicians resolving customer power quality complaints. Engineered system design changes to improve power quality to electric customers, including all buried cable replacement projects. Worked closely with construction to minimize disruption of existing neighborhoods. Provided the customer relations department with technical advice on customer damage cases from surges, low and high voltage, etc.

Pet. Ex. 10

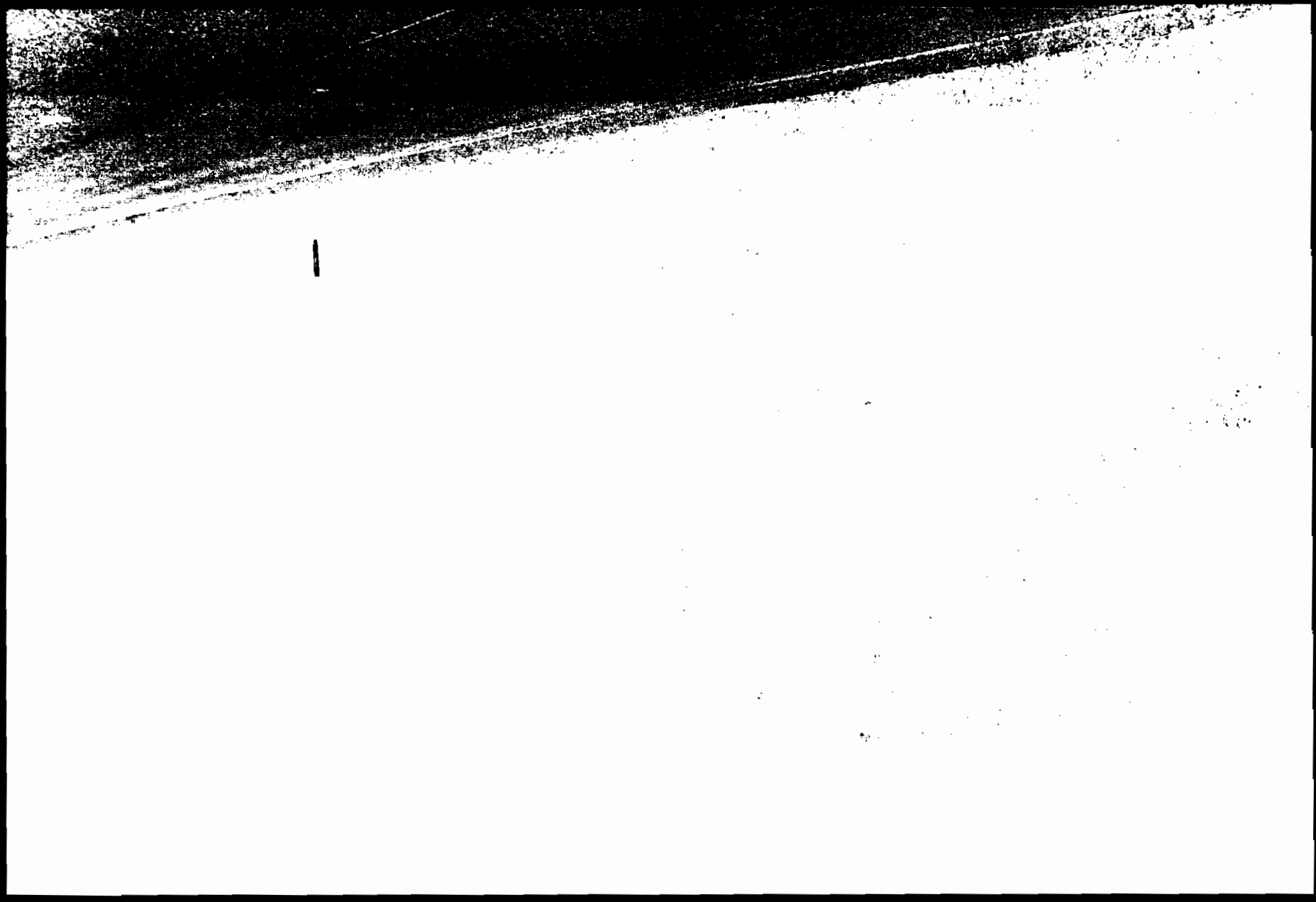
How Does Electricity Get to Your House?




Pet. Ex. 7a-1



Pet. Ex. 7 b - 2



Pet. Ex 7C-3

IN THE MATTER OF THE THE APPLICATION OF BALTIMORE GAS & ELECTRIC CO. (IVY HILL SUBSTATION) FOR SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE SOUTHWEST CORNER OF RIDGE ROAD AND JOEL COURT 8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 94-452-XA

* * * * * * * * *

AMENDMENT TO OPINION

On May 31, 1995, this Board issued an Opinion and Order in the above-captioned matter. The Board, on its own initiative, pursuant to Rule 10, has reviewed its Opinion issued in the proceedings and finds that an error exists within that Opinion. Specifically, the last sentence of the first paragraph on page 1 of the Board's Opinion is hereby deleted, inasmuch as the Office of People's Counsel did not participate in these proceedings.

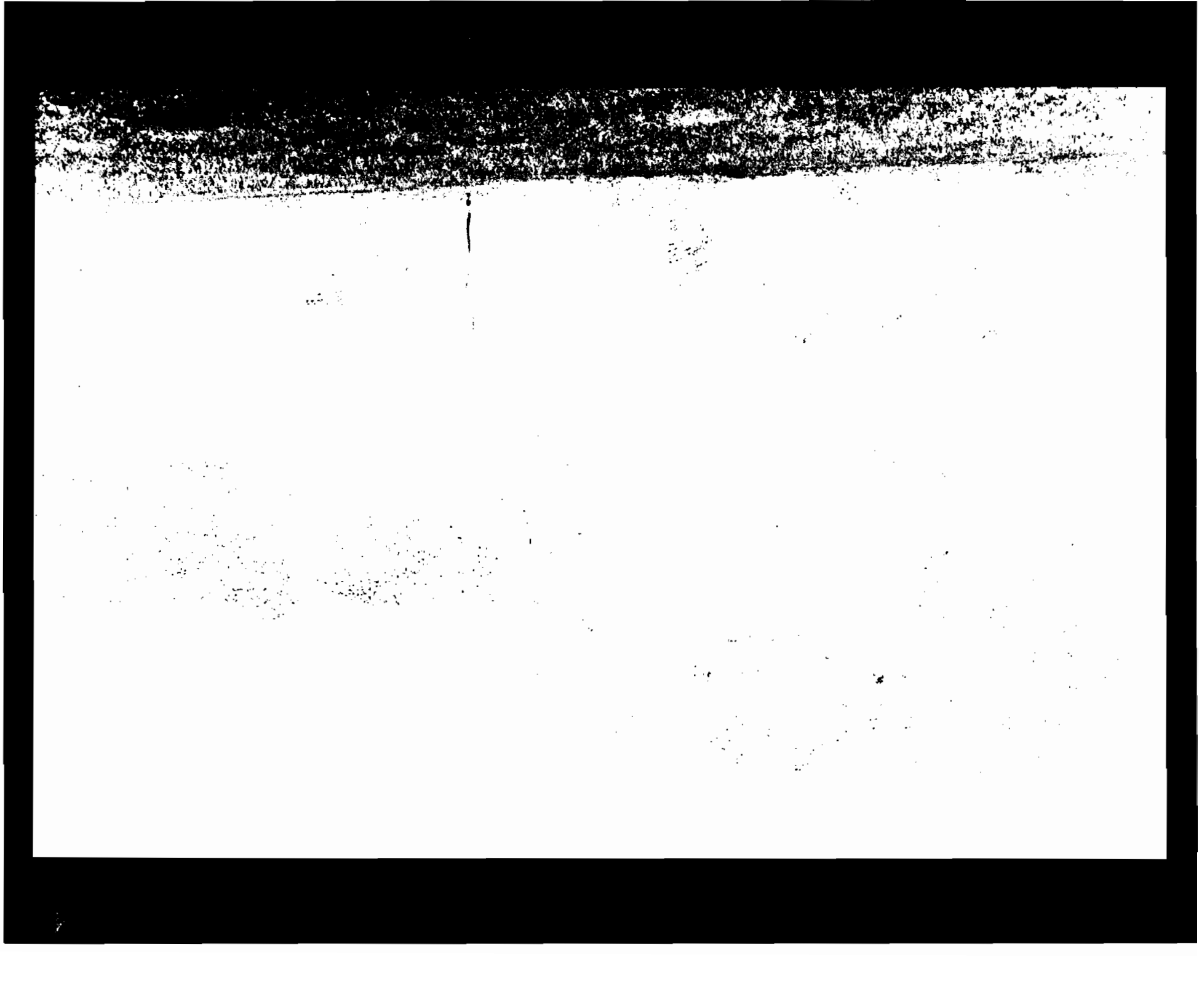
No other changes having been made, any Petition for Judicial Review shall be filed from the date of the Board's final Opinion and Order as issued on May 31, 1995.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Robert O. Schuetz, Chairman

Harry E. Buchheister, Jr.

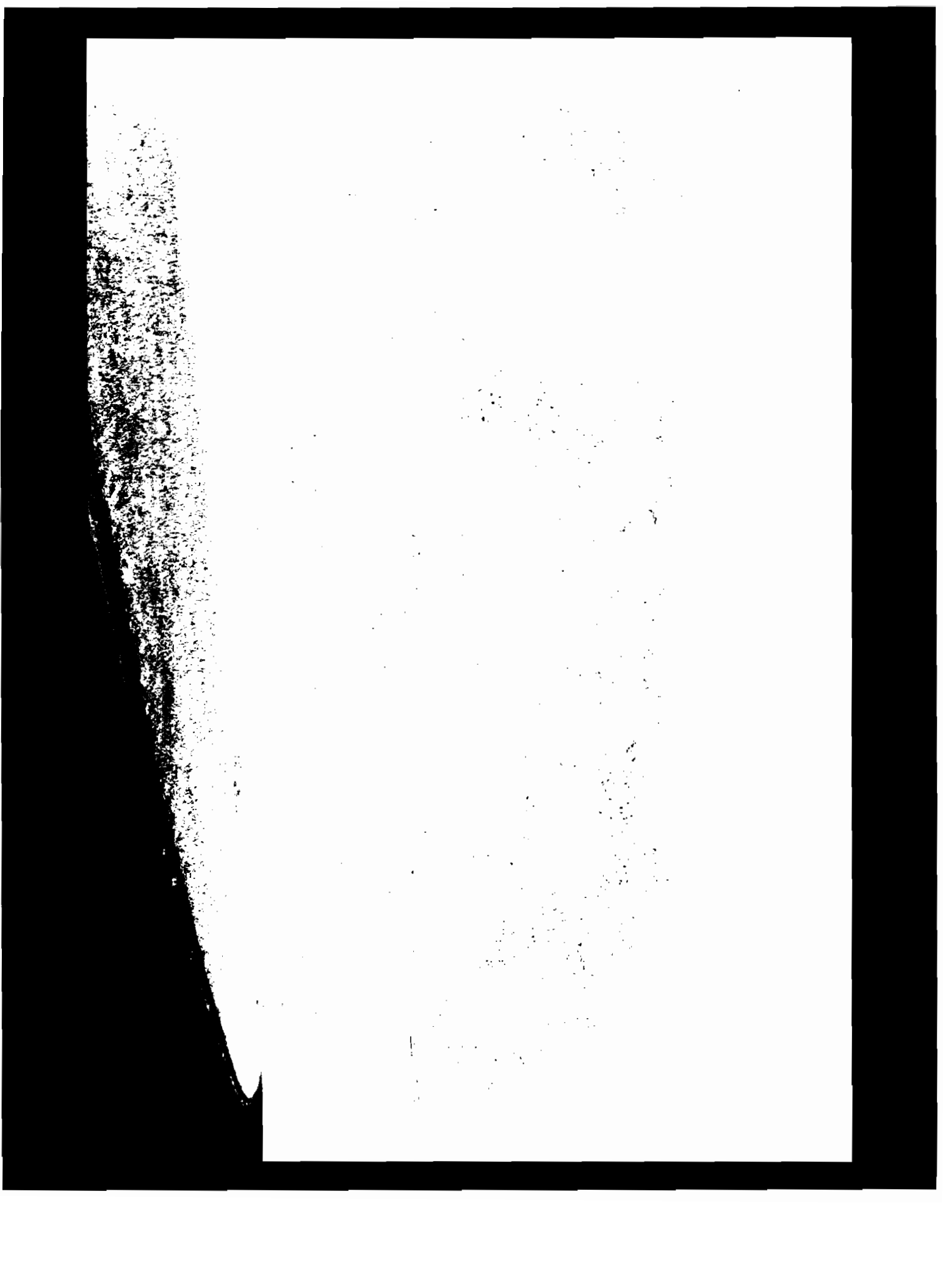
DATE: June 7, 1995

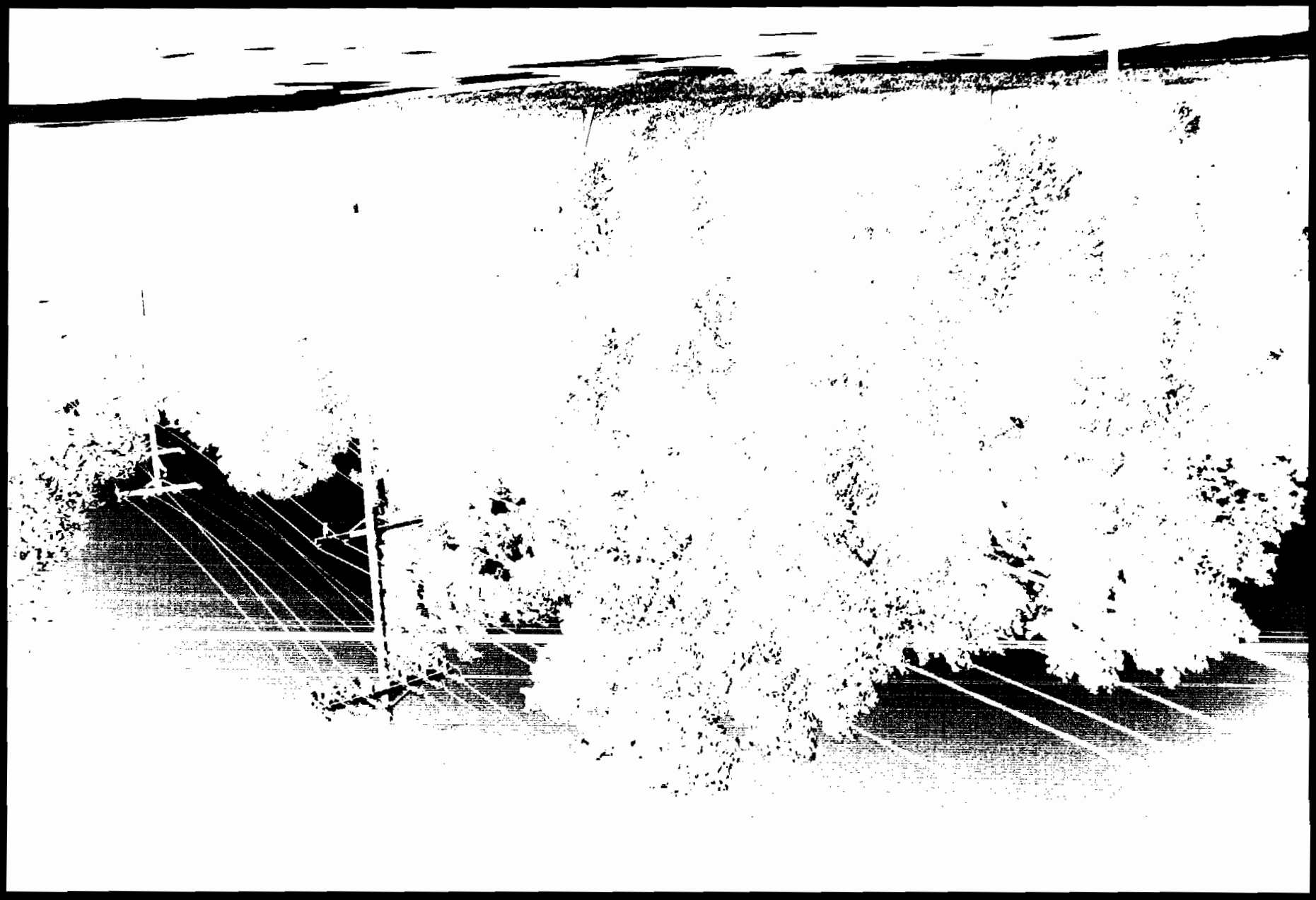


Pet. Ex 7D-4



Pet. Ex 7E - 5





Pet Ex. 7 C - 7



Ref. Ex 74-S

County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

June 7, 1995

J. Carroll Holzer, P.A.
HOLZER and LEE
305 Washington Avenue, Suite 502
Towson, MD 21204

RE: Case No. 94-452-XA
Baltimore Gas & Electric Co. /Ivy Hill Substation -- Amended Opinion

Dear Mr. Holzer:

Enclosed please find a copy of the Amended Opinion issued this date by the County Board of Appeals of Baltimore County in the subject matter to correct an error in the Board's original Opinion issued May 31, 1995.

Very truly yours,

Kathleen C. Weidenhammer
Administrative Assistant

encl.

cc: Andrew Lansman, et al
Robert A. Hoffman, Esquire
Martha A. Delea, Esquire
Baltimore Gas & Electric Co.
Mr. & Mrs. Frederick Vinup
Mr. & Mrs. Raymond Fischer
Mrs. Dorothy Marsden
The Honorable Paula C. Hollinger
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
W. Carl Richards, Jr. /ZADM
Joseph V. Maranto /ZADM
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM
Virginia W. Barnhart, County Attorney

bcc: The Hon. Bryan T. McIntire

Printed with Soybean Ink on Recycled Paper

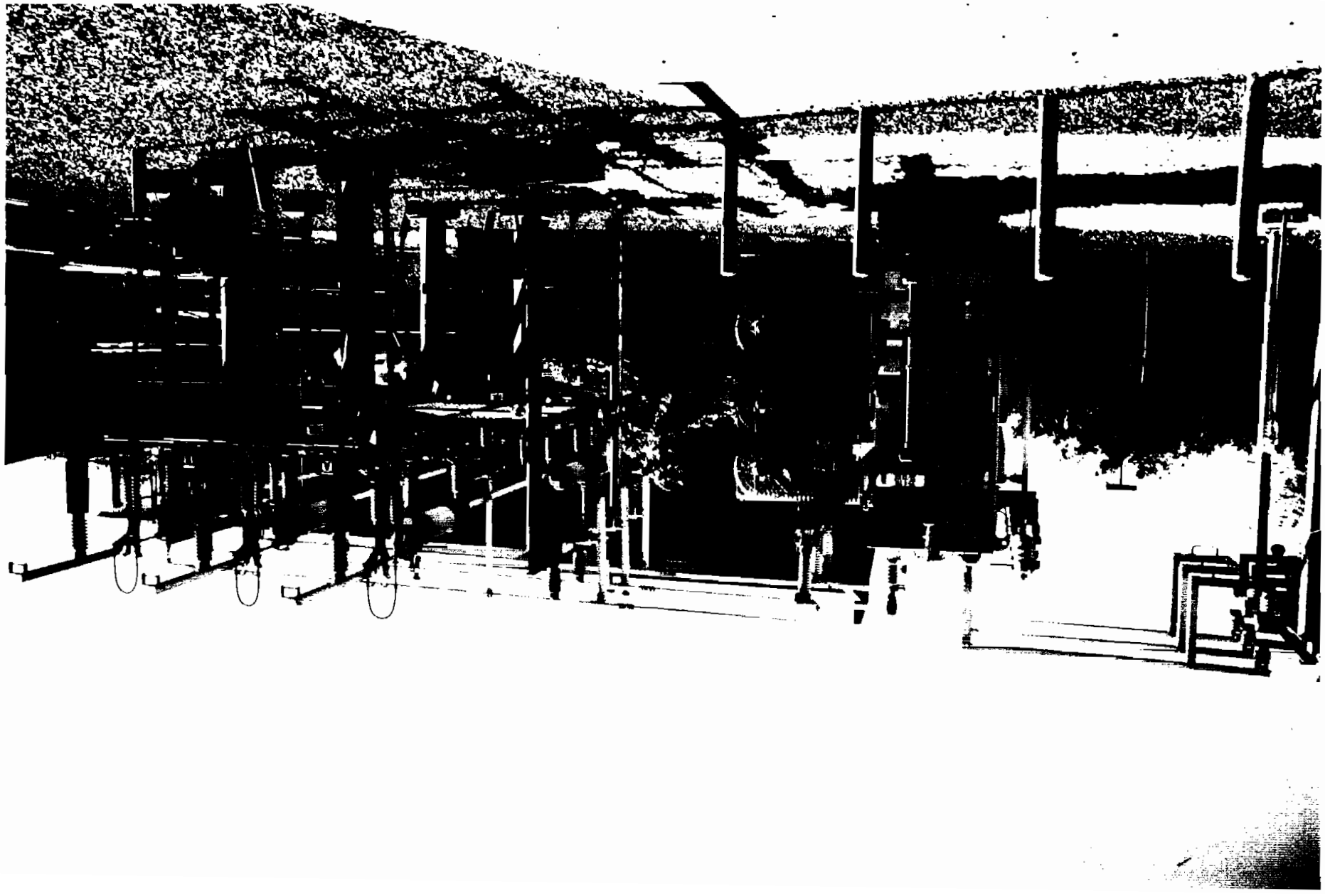


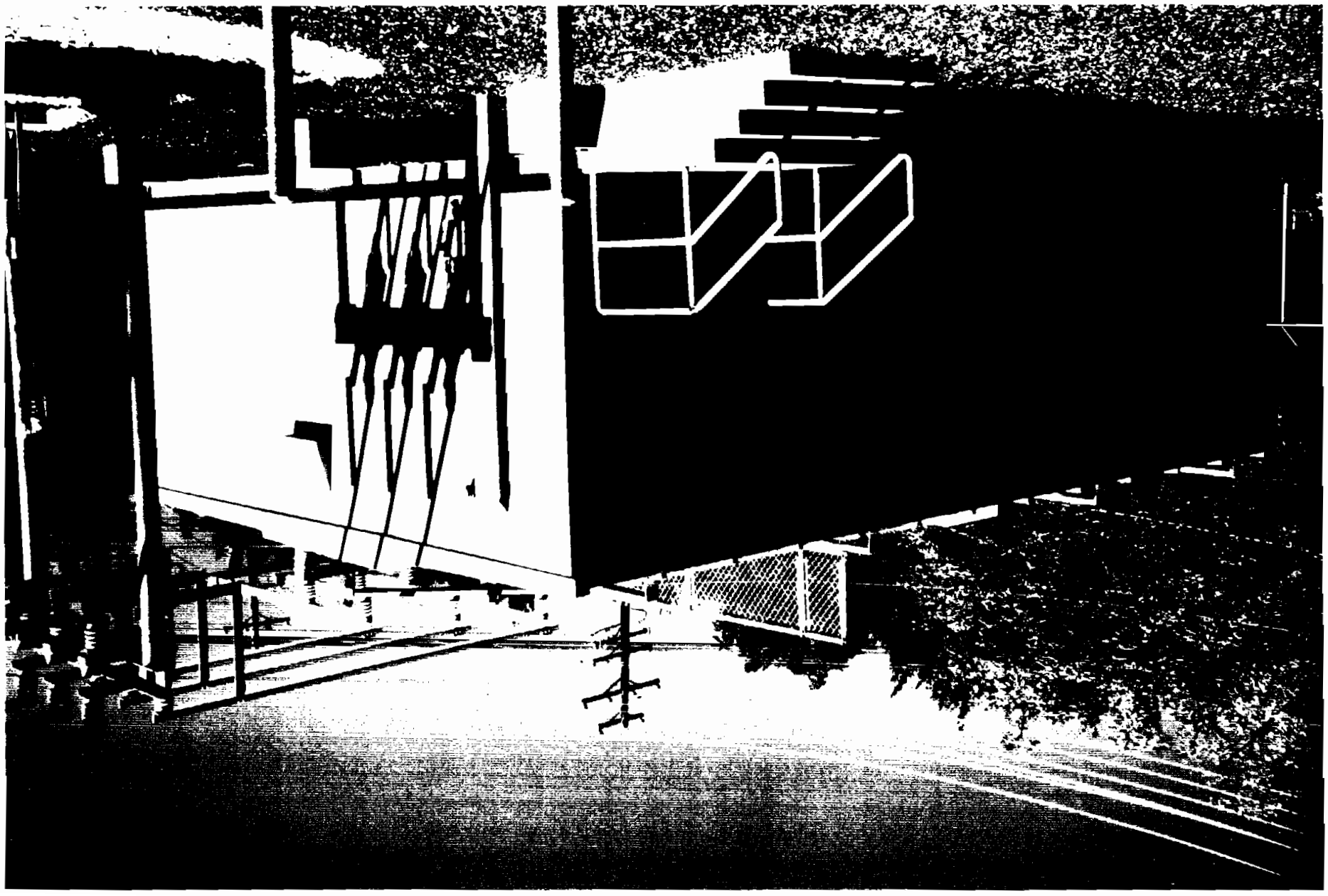
Pet. Ex. 7I-9

Pet Ex 7-J-10



Pet. Ex. 7-K-11





Pet. Ex 6B

IN THE MATTER	*	BEFORE THE
THE APPLICATION OF		
BALTIMORE GAS & ELECTRIC CO.	*	COUNTY BOARD OF APPEALS
(IVY HILL SUBSTATION)		
FOR SPECIAL EXCEPTION AND	*	OF
VARIANCE ON PROPERTY LOCATED		
ON THE SOUTHWEST CORNER OF	*	BALTIMORE COUNTY
RIDGE ROAD AND JOEL COURT		
8TH ELECTION DISTRICT	*	Case No. 94-452-XA
3RD COUNCILMANIC DISTRICT		

* * * * * * * * * * * * *

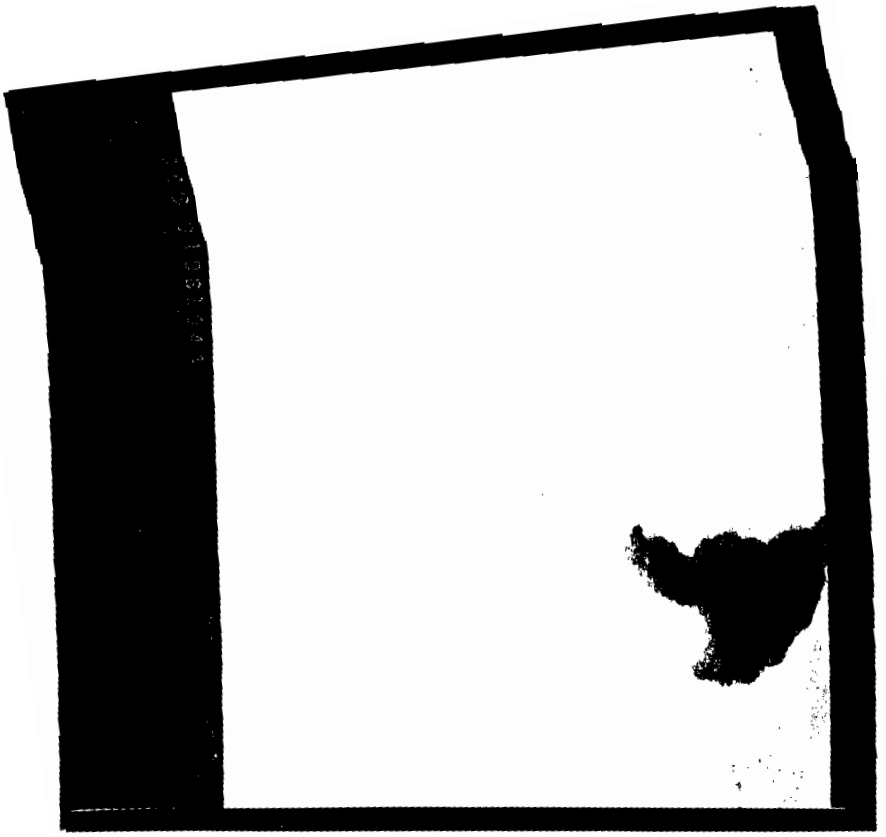
O P I N I O N

This case comes on appeal to this Board from the Zoning Commissioner's Order dated June 24, 1994 in which a Petition for Special Exception and Petition for Variance for the subject properties were granted. The case was heard in five days of testimony: October 4, 1994; January 10, 1995; January 12, 1995; January 17, 1995; and January 19, 1995. It should be noted that one Board member was replaced, prior to commencing Day #2, with no objection from either Counsel. Petitioner was represented by Robert A. Hoffman, Esquire, and C. Carey Deeley, Jr., Esquire, VENABLE, BAETJER, HOWARD, LLP; and Martha A. Delea, Esquire, of Baltimore Gas & Electric Company. Protestants were represented by J. Carroll Holzer, Esquire, HOLZER & LEE. People's Counsel for Baltimore County also participated in these proceedings.

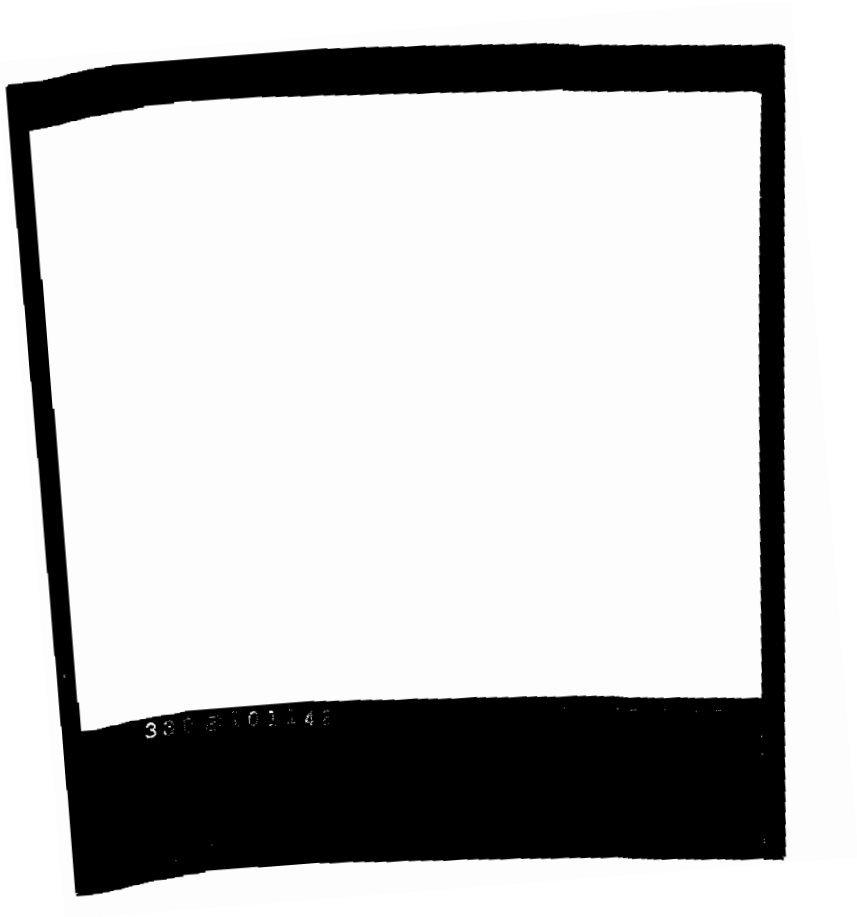
Due to the length of the case, transcripts were prepared for use by the Board in preparing for deliberation in this matter; said deliberation being in open meeting on February 22, 1995. Because of the presence of the transcripts, the evidence and testimony will not be recounted herein.

Argument was made on the part of the Protestants regarding the jurisdiction of this case before the Board. Protestants allege

Pat. 6 C



Pat Ex 60



CIRCUIT COURT FOR BALTIMORE COUNTY

CIVIL GENERAL

DOCKET 19 PAGE 117 CASE NO. 86CG22 CATEGORY APPEAL

IN THE MATTER OF PETITIONS FOR
SPECIAL EXCEPTION, SPECIAL HEARING
AND ZONING VARIANCES,
N/S of Chester Rd., 590' W of
Serern Rd. (800 Chester Rd.)
15th Election District

JOSEPH F. EVERING, JR., et ux,
PETITIONERS

Zoning Case 85-65-XSPHA

ATTORNEYS

Malcolm F. Spicer, Jr.
Thomas J. Bollinger
Court House- Mezzanine (04)

John O. Hennegan
Donald E. Brand
Romadka, Gontrum, Hennegan & Foos
809 Eastern Blvd (21) 686-8274

T. Rogers Harrison
Mudd, Harrison & Burch
306 W. Joppa Rd. (4) 828-1335
(Protestants-Appellants)
Phyllis Cole Friedman,
Peter Max Zimmerman,
Rm. 223 Court House (4) 494-2188
(People's Council Balto. Co.)

Judith A. Armold
Assistant Atty General
301 W. Preston St. (01)
Peter W. Taliaferro
P.O. Box 8766
Baltimore/Washington International
Airport 21240-0766

6/2/88 d/e & Order path Board of Appeals

(1) January 3, 1986 People's Counsel for Baltimore County, Protestants and Appellants Order for Appeal from Ruling of the County Board of Appeals and Petition fd.

(2) Jan. 10, 1986 - Baltimore County' Cross Appeal fd.

(3) Jan. 13, 1986 Certificate of Notice fd.

(4) Jan. 20, 1986 - Pltff's Petition for Appeal fd.

(5) Jan. 21, 1986 Appellees' Motion to Consolidate case with case86CG240 fd.

(6) Feb. 3, 1986 - Transcript of Record fd.

(7) Feb. 3, 1986 - Notice of Filing of Record fd.

(8) Feb 3,1986- Joseph F Evering Jr. et ux Motion to dismiss and answer to petition on appeal fd.

(9) Feb. 13, 1986 - Correspondence fd.

(10) Feb. 20, 1986 - People's Counsel for Baltimore County's Request for Hearing on all open Motions fd.

(11) April 23,1986- People's counsel memorandum on pending motions fd.

July 22, 1986 - Hon. James S. Sfekas. Hearing had. Plaintiffs to file Supplementary Memorandum within One Week from this date.

(12) Aug. 7, 1986 = Ruling from Judge Sfekas that Pltff's Motion for consolidation Granted, Pltffs Petition on Appeal is Dismissed and Remanded to the Bd. of Appeals for a final judgment, Defts Motion to Dismiss Petition on appeal Granted, Defts Petition for Atty Fees Denied, Costs to be paid by Pltffs apportioned equally fd. (JSS)

Rec'd. 6/6/88 J.A.

COSTS

CV GEN (S.J.) 8622 #
CV CLK 70.00
CKCHECK TL 70.00
#25822 C001 R02 T15:47
01/03/86

100
105
2p
22—

DOCKET 19 PAGE 117 CASE NO 86CG0022

(13) December 9, 1987 - Transcript of ord, fd.

CASE NO. 86CG22 19/117

(14) December 9, 1987 - Notice of Filing of Record, fd.

(15) Dec 16, 1987 - Stipulation fd.

May 23, 1988 Hon. J. William Hinkel. Hearing had. Order to be filed.

(16) May 26,1988 - Order of Court That Case no 86 CG 22 is hereby Dismissed with Costs to the Appellants fd. (JWH)

CIRCUIT COURT FOR BALTIMORE COUNTY

CIVIL GENERAL

DOCKET 48 PAGE 225 CASE NO. 87CG4755 CATEGORY APPEAL

	ATTORNEYS
PEOPLE'S COUNSEL FOR BALTIMORE COUNTY	Phyllis Cole Friedman Peter Max Zimmerman Rm 223, Courthouse (04) 494-2188
KENNETH ENGELKE, et al protestants/appellants v	T. Rogers Harrison Mudd, Harrison & Burch Ste 300, Jefferson Bldg 105 W. Chesapeake Ave (4) 828-1335
JOSEPH F. EVERING, JR., et al cross appellant	John B. Gontrum Romadka, Gontrum & Hennegan 809 Eastern Blvd (21) 686-8274

6/3/88 d/s Judgment of Board of Appeals, Balto Co

COSTS

(1) Nov 10, 1987 - Pltff's Order for Appeal from the opinion and order of the County Board of Appeals of Balto. Co. and Petition for Appeal fd.

(2) Nov 12,1987 - Certificate of Notice fd.

(3) Nov 16, 1987 - Appellant's (Kenneth Engelke, et al) Order for Appeal from the Order of the County Board of Appeals fd.

(4) Nov. 16, 1987 - Appellant's (KennethEngelke, et al) Petition on Appeal fd.

(5) Nov 16, 1987 - Certificate of Notice fd.

(6) Nov 20, 1987 - Appellant's (Joseph F. Evering, Jr., et us) Order for Appeal and Petition w/ Exhibits fd.

(7) Nov 24,1987 - Certificate of Notice fd.

(8) Dec. 9, 1987 - App. of Phyllis Cole Friedman & Peter Max Zimmerman for the Deft PEOPLE COUNSEL & Same Day Petition on Appeal fd.

(9) Dec 16, 1987 - App of John B. Gontrum for the Petitioner (Joseph F. Evering, Jr., et ux) and Same Day Answer to Protestant's/Appellant's, Kenneth Engelke, et al) Petition on Appeal fd.

(10) Dec 16, 1987 - Petitioner's (Joseph F. Evering, Jr, et ux) Answer to People's Counsel/Appellants Petition on Appeal fd.

Rec'd. 6/6/88
Bd. of Appeals

(11) Jan 7,1988 - Cross Appellant's (Joseph F. Evering, Jr) Memorandum fd.

In this case, Pamela and Carl Follo and Friends of the Ridge *et al.*, petitioners, appeal the affirmance by the Court of Special Appeals[1] of the decision of the Circuit Court for Baltimore County, which upheld the granting of a variance from side yard setback requirements to Baltimore Gas and Electric Company, respondent. Petitioners present three issues for our review, which we rearrange:

> [1]. Whether the Court of Special Appeals' preference given to utility companies in this zoning case conflicts with this Court's decision in *Kahl vs. Consolidated Gas and Electric,* 191 Md. 249 (1949)[.]
>
> [2]. Whether in the absence of statutory authority, an electric utility company's status, *vel non*, as a utility, may be used to justify a zoning variance, generally, and the prerequisite of "uniqueness" specifically[.]
>
> 3. Whether the evidence relied on by the Court of Special Appeals in the instant case was sufficient to support a variance, both as to the uniqueness and practical difficulty, and whether its decision conflicts with the Court of Special Appeals' decision in *Cromwell vs. Ward*, 102 Md. App. 691 (1995)[.]

We shall not directly address the questions presented.[2] We shall direct that this case be remanded to the Baltimore County Board of Appeals (Board) with instructions to enter an

---

[1] *Friends of the Ridge v. Baltimore Gas & Elec. Co.*, 120 Md. App. 444, 707 A.2d 866 (1998).

[2] We note that Respondent argues that the provisions of the ordinance applicable to variances ("where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request") should be read to indicate that a structure intended to be built once a variance is granted could itself be so unusual as to satisfy the uniqueness requirement of the statute. Under this argument, respondent contends that, given the characteristics of the equipment respondent proposes to erect and for which it seeks a variance, combined with the necessity that the equipment be within a certain distance of each other, its situation creates "peculiar or unusual circumstances relating to the substation *structures* which are the subject of the variance." Our failure to address this issue should not be construed as our approval or acceptance of that approach. We are reluctant to say that a proposition we are not resolving is wrong. Accordingly, we shall instead describe it as of doubtful logical force.

that, due to the presence of a note on the final development plan indicating disposition of the parcel known as Tract A, the plan which is the subject of this hearing should have gone to the Planning Board for advice on the appropriateness of the instant case in relation to the final development plan. Having heard the testimony of expert witnesses Norman Gerber, for the Protestants, and George Gavrelis, for the Petitioner, the Board agrees with the Petitioner that the subject case is not a deviation from the final development plan, and, in fact, that the transfer of title of Tract A to the Baltimore Gas & Electric Company (hereinafter "BGE") occurred prior to the sale of other lots within the development. Therefore, this case is properly before the Board.

The facts in the case are essentially undisputed. The subject property is located in the R.C. 5 zone and is made up of three adjoining tracts. The combined area of all three tracts is approximately 2.9 acres. The area known as Tract C on Petitioner's Exhibit 2 is the subject of an existing special exception granted on March 28, 1956, for the operation of a local electric distribution substation known as Ivy Hill Substation. BGE proposes to replace existing equipment within the substation, enlarge the area for placement of electrical equipment, and increase the capacity of the Ivy Hill Substation. The issues before this Board are whether (a) BGE is able to meet the tests under Section 411 of the Baltimore County Zoning Regulations (hereinafter "BCZR") for public utility uses; (b) whether, due to the nature of the proposed development, the tests pursuant to Section 502.1, Special

CASE NO. 87 CG 4755

(12) Jan 29,1988 - Pltff's (People's Counsel for Baltimore County) Memorandum fd.

(13) May 26,1988 - Joint Motion to Remand to County Board and Same Day Order of Court that Case 87 CG 4755 be Remanded to the Baltimore County Board of Appeals fd.

IN THE MATTER OF THE APPLICATION OF JOSEPH F. EVERING, JR., ET UX FOR SPECIAL EXCEPTION FOR A BOAT YARD, SPECIAL HEARING TO AMEND SITE PLAN, AND VARIANCES ON PROPERTY LOCATED ON THE NORTH SIDE OF CHESTER ROAD, 490' WEST OF SEVERN ROAD (800 CHESTER ROAD) 15th ELECTION DISTRICT	:	ON REMAND FROM THE CIRCUIT COURT FOR BALTIMORE COUNTY - AT LAW CASE NO. 87-CG-4755 ZONING CASE NO. 85-65-XSPHA

: :

AMENDED OPINION AND ORDER

This matter comes before the Board on remand from the Circuit Court by Order dated May 26, 1988, whereby the Circuit Court directed that the Board consider an amended site plan and make a determination that this plan satisfies the critical area criteria as set forth in the COMAR regulations. The facts of this case are set forth in our Opinion of October 21, 1987. Although the Board ruled on December 12, 1985 that the critical area requirements were not applicable to this particular case for the reasons set forth in our Ruling, substantial evidence concerning critical area requirements was introduced, including several reports and expert testimony provided by petitioners.

An amended site plan has been prepared by the petitioner which plan has been consented to by the protestants and by People's Counsel. This amended plan eliminates 16 slips from the southern pier extension and approximately 38 slips from the northern pier extension. This proposal addresses the Board's concerns which were raised in our October 21, 1987 Opinion that the proposed slips not interfere with navigation in Frog Mortar Creek. A review of the testimony of this matter indicates that the protestants were concerned with both pier extensions, and the Board notes that the protestants who testified actually lived closer to the southern pier extension. Testimony also was presented with respect to the fact that the proposed pier extensions would not in any way

interfere with any submerged aquatic vegetation, in that none existed in the area. The piers, being extended in the manner as now proposed, minimize necessary dredging and the effects of propeller wash on the bottom of Frog Mortar Creek. Additionally, there was much testimony that these slips will be used primarily for sailboats rather than motor boats, which will also minimize propeller wash on the river bottom. No endangered species of plant life or of fish were found in the area. Pollution studies which were performed by petitioner indicate that there is good fishing of the water at this particular location because it is located at the mouth of Frog Mortar Creek in Middle River.

Based upon the testimony and evidence received, the Board finds that the marina extension as amended satisfies the criteria as set forth in the critical area law and in the regulations promulgated by the State of Maryland. See COMAR Section 14.15.03.04. In addition, petitioner's proposal to buffer the creek from existing land improvements and place a pump station for boat facilities will minimize the impact of the proposed marina extension on the critical area.

O R D E R

It is therefore this 15th day of June, 1988 by the County Board of Appeals of Baltimore County ORDERED

(1) That the Petition for Special Exception be and is hereby GRANTED with restrictions as hereinafter provided;

(2) That the variance from B.C.Z.R. 409.2.c(2) be and is hereby GRANTED:

(3) That in view of the Board's restriction on the number of slips, the petitioner's variance relief under B.C.Z.R. 409.2.b is MOOT;

(4) That the Petition for Variance under B.C.Z.R. 417.5 is GRANTED to the extent as shown on the amended site plan submitted by the petitioner, thereby allowing expansion in conformance with the site plan offered and identified and attached hereto as part hereof. This plan is identified as Petitioner's Exhibit #1A and amends Petitioner's Exhibit #1 by removing 16 and 38 slips from the southern and the northern pier extensions, respectively.

(5) That the Petition for Special Hearing is GRANTED to allow amendments to the site plan as was approved on January 16, 1967, in Case No. 64-160-X in order to construct additional piers and slips, in conformance with the variance as set forth in #4 of this Order;

(6) That the Petition for Special Hearing to remove restrictions #1 and #3 in Case No. 64-57-SPH will be GRANTED;

(7) That the Petition for Special Hearing to remove restrictions #1 and #6 in Case No. 64-160-X will be GRANTED in part and DENIED in part and that restriction #1 is AFFIRMED and re-incorporated herein and restriction #6 amended so as to allow maintenance and minor repairs on site and in the water immediately adjacent thereto from 8:00 a.m. to 7:00 p.m., seven days per week, year round;

(8) That the Petition for Special Hearing for a determination of the recreational activities on site is GRANTED so that the use is exempt from Residential Transition Area requirements;

(9) That the on-shore improvements of a pump-out facility for boats and landscaping be completed simultaneously with the construction of the proposed piers; and

(10) That the following best management practices guidelines be utilized in the operation of the facility at such time as the construction commences:

(a) Wording in lease agreements to enforce use of trash receptacles and controlling of washing of boats;

(b) Replacing existing fuel pumping facility with newer equipment having back-pressure automatic shut off valves and restriction of fuel service to trained Marina personnel, education of boat owners regarding fuel spill sources, and on-site sales of fuel recovery products;

(c) Restrict the use of antifouling paints to boat hulls and avoid painting piers and other in-water structures;

(d) Conduct scraping and painting operations away from the water in protected areas to avoid the loss of particulate and raw paint;

(e) Avoid repainting hulls after a year during which fouling to the hulls was minimal;

(f) Dry store boats not in use for extended periods;

(g) Post signs prohibiting overboard disposal of sewage and inform the public of contamination levels resulting from violations;

(h) Require compliance with federal "head Laws" as a prerequisite to slip rental, and indicate violations will result in cancellation of rental contract;

(i) Require all through-hull discharge ports of Type III MSD's to be sealed on those vessels "permanently" moored; and

(j) Require use of on-site pump-out facilities.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence E. Schmidt, Acting Chairman

William T. Hackett

Exceptions, are met; and (c) whether the Petitioner is due variances from interior lot lines between Tracts A, B and C, pursuant to Section 307, Variances, of the BCZR.

The Protestants attempted to illustrate for the Board that (a) need can be maintained by placement of similar substation equipment in other areas outside the area served by the Ivy Hill Substation; (b) the tests prescribed under Section 502 concerning special exceptions could not be met by the subject Petition; and (c) the Petitioner is not entitled to a variance subject to Section 307 of the BCZR, attempting to prove that no special conditions exist on the site.

Over the five days of testimony, much was discussed regarding various unresolved issues as they relate to this Board; namely, the effects of electromagnetic fields (hereinafter EMF's) and what standing those forces may have in regard to Section 502.1. In response to a question from the bench, the Protestants' expert witness, Zory Raphael Glaser, revealed that no legal standard for exposure to EMF's exists in the State of Maryland; further, the collection of data by the Petitioner's field personnel and witness, Bonnie L. Johansen, reveals that levels of EMF readings in and around the community, and more specifically around the subject site, are, and are expected to be, at levels below those which are commonly found in the average American household. As there is no legal standard by which this Board is compelled to judge the effects of EMF's pursuant to Section 502.1, coupled with the fact that aging equipment will be replaced by new and, from an

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

June 15, 1988

Robert J. Romadka, Esquire
809 Eastern Boulevard
Essex, MD 21221

RE: Case No. 85-65-XSPHA
Joseph F. Evering, Jr., et ux

Dear Mr. Romadka:

Enclosed is a copy of the Amended Opinion and Order issued this date by the County Board of Appeals in the subject case.

Sincerely,

Kathleen C. Weidenhammer
Administrative Secretary

Encl.

cc: John B. Gontrum, Esquire
John O. Hennegan, Esquire
Joseph F. Evering, Jr.
T. Rogers Harrison, Esquire
Phyllis C. Friedman, Esquire
Assistant Attorney General
P. David Fields
James G. Hoswell
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
Docket Clerk -Zoning
Arnold Jablon, County Attorney

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, MARYLAND	*	IN THE
	*	CIRCUIT COURT FOR
and	*	BALTIMORE COUNTY
BALTIMORE COUNTY, MARYLAND	*	CASES NOS. 86CG22
VS.	*	86CG0240
	*	87CG4755
JOSEPH F. EVERING, JR. and CATHERINE L. EVERING	*	

* * * * * * * * * * * * * *

ORDER

Upon consideration of the Joint Motion for Dismissal and Remand and consideration of the reasons stated therein and presented in open hearing on May 23, 1988, it is hereby, ORDERED, this 26 day of May, 1988, that Circuit Court Cases Nos. 86CG22 and 86CG0240 be and the same are hereby dismissed with costs to the appellants and that Case No. 87CG4755 be remanded to the Baltimore County Board of Appeals for consideration of the amended site plan and a determination that the plan meets critical area criteria.

Judge

LAW FIRM
ROMADKA, GONTRUM & HENNEGAN
ESSEX, MARYLAND

FILED MAY 26 1988

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, MARYLAND	*	IN THE
	*	CIRCUIT COURT FOR
and	*	BALTIMORE COUNTY
BALTIMORE COUNTY, MARYLAND	*	CASES NOS. 86CG22
VS.	*	86CG0240
	*	87CG4755
JOSEPH F. EVERING, JR. and CATHERINE L. EVERING	*	

* * * * * * * * * * * * * *

JOINT MOTION FOR DISMISSAL AND REMAND TO COUNTY BOARD OF APPEALS

All the parties in the above referenced cases hereby jointly move this court to dismiss case Nos. 86CG22 and 86CG0240 and to Remand 87CG4755 to the Board of Appeals for Baltimore County to consider a joint revised plan. The grounds for this Motion are:

1. Case No. 86CG22 pertained to a preliminary interlocutory appeal taken by People's Counsel to Circuit Court. This matter was heard by Judge Sfekas and was held pending a final determination by the Board of Appeals. That matter was finally determined by the Board and is at issue in Case No. 87CG4755. The grounds for appeal in Case 86CG22 have been incorporated into 87CG4755.

2. Case No. 86CG0240 pertained to a Bill of Complaint for declaratory judgment filed by People's Counsel which the parties believe was dismissed by Judge Sfekas in a previous hearing. In any event the parties believe that the issues raised in that declaratory judgment have also been raised in Case No. 87CG4755.

LAW FIRM
ROMADKA, GONTRUM & HENNEGAN
ESSEX, MARYLAND

3. Since the appeal in Case No. 86CG22 and the issues in the Bill of Complaint in Case No. 86CG0240 are contained in Case No. 87CG4755, there is now no good reason for these cases to be independently pursued and accordingly the parties feel that a dismissal is appropriate.

4. A revised plan has been prepared by Petitioners, Joseph F. Evering, Jr. and Catherine L. Evering in Case No. 87CG4755 that addresses the concerns of all parties. A copy of the plan is attached hereto and made a part hereof.

5. All parties are agreed that the Board of Appeals for Baltimore County could and should make a critical area finding that based upon existing testimony the revised plan meets the critical area requirements.

6. That the parties believe that the appropriate remedy at this time is for the court to remand Case No. 87CG4755 to the Board to consider the revised plan and to make a finding that based upon existing testimony the revised plan meets the critical area requirements.

7. Such other and further reasons that exist for remand of Case No. 87CG4755.

John B. Gontrum

Phyllis Cole Friedman

T. Rogers Harrison

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, MARYLAND	*	IN THE
	*	CIRCUIT COURT FOR
and		
	*	BALTIMORE COUNTY
BALTIMORE COUNTY, MARYLAND		
	*	CASES NOS. 86CG22
VS.		86CG0240
	*	87CG4755
JOSEPH F. EVERING, JR. and CATHERINE L. EVERING	*	

* * * * * * * * * * * * *

ORDER

Upon consideration of the Joint Motion for Dismissal and Remand and consideration of the reasons stated therein and presented in open hearing on May 23, 1988, it is hereby, ORDERED, this ____ day of May, 1988, that Circuit Court Cases Nos. 86CG22 and 86CG0240 be and the same are hereby dismissed with costs to the appellants and that Case No. 87CG4755 be remanded to the Baltimore County Board of Appeals for consideration of the amended site plan and a determination that the plan meets critical area criteria.

_____
Judge

LAW FIRM
ROMADKA, GONTRUM & HENNEGAN
ESSEX, MARYLAND

engineering standpoint, a technologically superior brand of equipment, and the testimony indicating the expected levels of exposure to EMF's, the Board can find no probative value to the evidence presented in opposition to the Petition on the basis of the argument of the presence of EMF's.

The first issue to be decided by this Board, therefore, is the question of need pursuant to Section 411 of the BCZR regarding distribution of electric power. Petitioner brought evidence and testimony by an expert in forecasting electric demand, James F. Ryan. Protestants offered the testimony of Ronald P. Hanley, an employee for a waste collection and recycling company, and one who had three courses in statistics at Pennsylvania State University, and who prepared various graphs which were introduced into evidence. According to the testimony of Charles S. Taylor, an engineer and expert in the area of electrical system planning, the BGE franchise with the Public Services Commission in the State of Maryland is required to supply power at all times and satisfy all demands. In short, the obligation of the Petitioner is to serve the demand at peak periods. The Protestants allege that the peak demand experienced on one day in the winter of 1994 was, admittedly by the Petitioner's witness, a one-time occurrence; however, that one-time occurrence established the new demand.

It was well established during the course of evidence and testimony that existing demand, prior to the single-day occurrence in 1994, is not met by the existing substation capacity; therefore, need for enlargement of the substation given current demand is

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, MARYLAND	*	IN THE
	*	CIRCUIT COURT FOR
and	*	BALTIMORE COUNTY
BALTIMORE COUNTY, MARYLAND	*	CASES NOS. 86CG22
VS.	*	86CG0240
	*	87CG4755
JOSEPH F. EVERING, JR. and CATHERINE L. EVERING	*	

* * * * * * * * * * * * * *

ORDER

Upon consideration of the Joint Motion for Dismissal and Remand and consideration of the reasons stated therein and presented in open hearing on May 23, 1988, it is hereby, ORDERED, this 26 day of May, 1988, that Circuit Court Cases Nos. 86CG22 and 86CG0240 be and the same are hereby dismissed with costs to the appellants and that Case No. 87CG4755 be remanded to the Baltimore County Board of Appeals for consideration of the amended site plan and a determination that the plan meets critical area criteria.

Judge

1692

LAW FIRM
ROMADKA, GONTRUM & HENNEGAN
ESSEX, MARYLAND

FILED MAY 26 1988

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et al.,	:	IN THE CIRCUIT COURT
	:	FOR BALTIMORE COUNTY
Appellants	:	
v.	:	
JOSEPH F. EVERING, JR., et ux,	:	Case No. 86-CG-0022
Appellees	:	

: : : : : : :

STIPULATION

People's Counsel for Baltimore County and the attorney for Joseph F. Evering, Jr., et ux, stipulate that the time by which People's Counsel may file their Memorandum on appeal is hereby extended to and including January 22, 1988.

John B. Gontrum

John B. Gontrum
Romadka, Gontrum, Hennegan & Foos
809 Eastern Boulevard
Baltimore, MD 21221
686-8274

Phyllis Cole Friedman

Phyllis Cole Friedman
People's Counsel for Baltimore County
Room 223, Court House
Towson, MD 21204
494-2188

I HEREBY CERTIFY that on this 16th day of December, 1987, a copy of the foregoing Stipulation was mailed to T. Rogers Harrison, Esquire, Mudd, Harrison & Burch, 306 W. Joppa Rd., Towson, MD 21204; Assistant Attorney General, Md. Dept. of State Planning, The Munsey Building, Seven N. Calvert St., Baltimore, MD 21201; and Nancy C. West, Esquire, Assistant County Attorney, Room 202, Court House, Towson, MD 21204.

Phyllis Cole Friedman

Phyllis Cole Friedman

RECEIVED
COUNTY BOARD OF APPEALS
'87 DEC 15 P 4:25

IN THE MATTER OF THE APPLICATION OF JOSEPH F. EVERING, JR., ET UX FOR SPECIAL EXCEPTION FOR A BOAT YARD, SPECIAL HEARING TO AMEND SITE PLAN AND VARIANCES FROM SEC. 409.2.c(2), 409.2.b and 417.5(a) OF THE BCZR N/S CHESTER RD., 590' W of SEVERN RD. (800 CHESTER RD.) 15th ELECTION DISTRICT	:	ON REMAND FROM THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW
PHYLLIS C. FRIEDMAN, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, PLAINTIFF	:	CG Doc. No. 19 Folio No. 117 File No. 86-CG-0022
T. ROGERS HARRISON, ESQ., ON BEHALF OF PROTESTANTS, PLAINTIFFS	:	
JOSEPH F. EVERING, JR., ET UX, PETITIONER-PLAINTIFF	:	
ZONING FILE NO. 85-65-XSPHA	:	

PROCEEDINGS BEFORE THE ZONING COMMISSIONER AND THE BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come William T. Hackett and Lawrence E. Schmidt, constituting the County Board of Appeals of Baltimore County, and in answer to the Order for Appeal directed against them in this case, herewith return the record of proceedings had in the above entitled matter:

No. 85-65-XSPHA

August 7, 1986	REMANDED to the County Board of Appeals by the Circuit Ct. for Baltimore County, Judge James S. Sfekas, "this Court does not believe the Board of Zoning Appeals has issued a final determination of the rights of the parties."
December 16	Hearing held before the Board of Appeals
December 17	Continued hearing held before the Bcard of Appeals
April 22, 1987	Continued hearing held before the Board of Appeals
October 21	Board's Order: GRANTED Petition for Special Exception w/ restrictions; GRANTED variance from 409.2.c(2); GRANTED in part and DENIED in part variance from 417.5; GRANTED Petition for Special Hearing in part.
November 10	Order for Appeal filed in Circuit Ct. for Baltimore County by People's Counsel for Baltimore County
November 10	Petition to accompany Order for Appeal filed in the Circuit Ct. for Baltimore County
November 12	Certificate of Notice sent to interested parties

November 16, 1987	Order for Appeal filed in the Circuit Ct. for Baltimore County by T. Rogers Harrison, Counsel for Protestants.
November 16	Petition to accompany Order for Appeal filed in the Circuit Court for Baltimore County
November 16	Certificate of Notice sent to interested parties
November 20	Order for Appeal filed in the Circuit Ct. for Baltimore County by John B. Gontrum, Esq., Counsel for Petitioners
November 20	Petition to accompany Order for Appeal filed in the Circuit Ct. for Baltimore County
November 24	Certificate of Notice sent to interested parties
December 9	Transcript of testimony filed
	Protestants' Exhibit No. 2 - List of protestants present at hearing, Dec. 16, 1986
	" " " 3 - Resolution of Bowley's Quarters Improv. Assn. in opposition to petition,10/28/85.
	" " " 4 - Guide for Cruising Md. Waters
	" " " 5 - Portion of site plan showing measurement of shoreline distance
	" " " 6 - Portion of site plan showing measurement of pier extensions
	" " " 7a - f -Photos of area around subj. site.
	" " " 8 - List of protestants present at hearing, Dec. 17, 1986.
	People's Counsel's Exhibit No. 5a-o - Photos of roads in neighborhood
	" " " " 6 - Trip generation numbers for Long Beach Marina.
	" " " " 7a-l - Photos of subject property and surrounding neighborhood
	Petitioner's Exhibit No. 7 - Md. Dept. of Transportation Bd. of Airport Zoning Appeals decision permitting variance for subj. property
	" " " 8 - Petition for Special Hearing, Special Exception, Variance
	" " " 9 - Map of Bowleys Quarters and surrounding areas

IN THE MATTER OF THE APPLICATION OF JOSEPH F. EVERING, JR., ET UX NORTH SIDE OF CHESTER RD., 590' WEST OF SEVERN RD. (800 CHESTER RD.) 15th ELECTION DISTRICT SPECIAL EXCEPTION FOR A BOAT YARD; SPECIAL HEARING TO AMEND SITE PLAN; and VARIANCES	:	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW
JOSEPH F. EVERING, JR., ET UX - PETITIONERS/PLAINTIFFS	:	CG Doc. No. 48
ZONING FILE NO. 85-65-XSPHA	:	Folio No. 225
	:	File No. 87-CG-4755

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, Lawrence E. Schmidt and William T. Hackett, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, John O. Hennegan, Esq., John B. Gontrum, Esq. and Robert J. Romadka, Esq., 809 Eastern Blvd., Essex, Md. 21221, Counsel for Petitioners/Plaintiffs; Joseph F. Evering, Jr., et ux, 800 Chester Rd., Baltimore, MD. 21220, Petitioners/Plaintiffs; T. Rogers Harrison, Esq., 306 W. Joppa Rd., Towson, Md. 21204, Counsel for Protestants; Judith A. Armold, Dept. of State Planning, 301 W. Preston St., Balto., Md. 21201, Asst. Attorney General; Arnold Jablon, Esq., Rm. 202, Court House, Towson, Md. 21204, County Attorney for Baltimore County; and Phyllis C. Friedman, Rm. 223, Court House, Towson, Md. 21204, People's Counsel for Baltimore County, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

June Holmen

June Holmen
County Board of Appeals of Baltimore County
Rm. 200, Court House, Towson, Md. 21204

justified. As indicated by Petitioner's experts, future demand is forecasted and is the basis for establishing future demand in designing facilities such as the Ivy Hill Substation. The analysis of the need comparison versus capacity presented by Prot stants' witness, Mr. Hanley, points to a future need for increased capacity from this substation. Protestants would have the Petitioner increase the capacity of the substation in increments which stay just ahead of demand. The Board notes that such alteration of the substation places unreasonable engineering constraints and unnecessary additional cost to the ultimate development of this site. Such costs would be unnecessarily borne by all electric consumers for the benefit of those in the surrounding community. The Public Services Commission dictates that BGE must provide sufficient power to exceed demand. Petitioner has obviously met its burden of proof pursuant to Section 411 as buttressed by the evidence presented by Protestants in their graphic analysis of need versus capacity.

The Protestants further allege that the Ivy Hill Substation should not be used to supply power to areas outside of their own locale. Again, BGE was able to demonstrate that, because of its requirement to provide power, it was forced into the position of switching power distribution away from the Ivy Hill Substation as a result of the peak demands in 1994, creating a similar condition at the nearby Delight Substation in Owings Mills, an area growing even faster than the area surrounding Ivy Hill.

The Board therefore finds as a fact that not only has need

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

November 24, 1987

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

Re: Case No. 85-65-XSPHA
Joseph F. Evering, Jr., et ux

Dear Mr. Gontrum:

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

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

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

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

June Holmen

June Holmen, Secretary

Enclosures
cc: Joseph F. Evering, Jr., et ux

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

IN THE MATTER OF THE APPLICATION OF JOSEPH F. EVERING, JR. ET UX. FOR SPECIAL EXCEPTION FOR A BOAT YARD, SPECIAL HEARING TO AMEND SITE PLAN, AND VARIANCES	*	Case No.: 48
	*	Docket: 87-CG-4755
	*	Folio: 225
N/S OF CHESTER ROAD, 590' WEST OF SEVERN ROAD (800 CHESTER ROAD) 15TH ELECTION DISTRICT	*	

*** *** *** *** *** *** * *** *** *** *** *** ***

ORDER FOR APPEAL

Appellants, Joseph F. Evering, Jr., et ux, by their attorneys, John B. Gontrum, Robert J. Romadka and John O. Hennegan, file pursuant to Maryland Rule B2 a. this Order for Appeal to the Circuit Court for Baltimore County from the October 21, 1987, Opinion and Order of the County Board of Appeals of Baltimore County (Case 85-65-XSPHA). A copy of the Board of Appeals' Opinion and Order is attached to and incorporated in this Order for Appeal.

John B. Gontrum
Romadka, Gontrum & Hennegan
809 Eastern Boulevard
Baltimore, Maryland 21221
686-8274
Attorneys for Appellants
Joseph F. Evering, et ux.

RECEIVED
COUNTY BOARD OF APPEALS
'87 NOV 20 P 3:30

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

CERTIFICATE OF SERVICE AND COMPLIANCE

I HEREBY CERTIFY that a copy of the foregoing ORDER FOR APPEAL was served pursuant to Maryland Rule 1-321 and B2 c. this 20 day of November, 1987, on the following:

The Administrative Secretary
Baltimore County Board of Appeals
Room 200
Court House
Towson, Maryland 21204

John B. Gontrum

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing ORDER FOR APPEAL was mailed, this 20 day of November, 1987, to each of the following:

T. Rogers Harrison
Suite 300--Jefferson Building
105 West Chesapeake Avenue
Towson, Maryland 21204

Phyllis Cole Friedman, Esquire
Peter Max Zimmerman
People's Counsel for Baltimore County
Room 223, Court House
Towson, Maryland 21204

Assistant Attorney General
Maryland Department of State Planning
Baltimore, Maryland 21201

Nancy C. West, Esquire
Assistant County Attorney
Room 202
Court House
Towson, Maryland 21204

John B. Gontrum

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

IN THE MATTER OF THE APPLICATION OF JOSEPH F. EVERING JR. ET UX. FOR SPECIAL EXCEPTION FOR A BOAT YARD, SPECIAL HEARING TO AMEND SITE PLAN, AND VARIANCES	*	Case:
	*	Docket:
	*	Folio:
N/S OF CHESTER ROAD, 590' WEST OF SEVERN ROAD (800 CHESTER ROAD) 15TH ELECTION DISTRICT	*	
	*	

****

ORDER FOR APPEAL

Protestants/Appellants Kenneth Engelke et al., by their attorneys, T. Rogers Harrison and Mudd, Harrison & Burch, file pursuant to Md. Rule B2 a. this Order for Appeal to the Circuit Court for Baltimore County from the October 21, 1987, Opinion and Order of the County Board of Appeals of Baltimore County (Case 85-65-XSPHA). A copy of the Board of Appeals' Opinion and Order is attached to and incorporated in this Order for Appeal.

T. Rogers Harrison
Mudd, Harrison & Burch
Suite 300--Jefferson Building
105 West Chesapeake Avenue
Towson, Maryland 21204
(301) 828-1335
Attorneys for
Protestants/Appellants
Kenneth Engelke et al.

RECEIVED
COUNTY BOARD OF APPEALS
1987 NOV 19 A 9: 42

been demonstrated but that in further reviewing the requirements of 502.1 the health, safety and welfare of the general public is suspect when required power is not delivered to the homes served by the substations as mandated.

Much of the five days of testimony surrounded the requirements of Section 502.1. The first test under 502.1 is that the propos d use for which the special exception is required will not be detrimental to the health, safety or general welfare of the locality involved. The Board has already commented on the issue of EMF's; the Board can find no reason to believe that the presence of the proposed enlarged substation would have any impact on th health, safety or general welfare of the locality as a result of the presence of EMF's. Concerning the presence of the requisite stormwater management pond as part of the development of the site, the Protestants allege that said pond presents a breach of the safety to be enjoyed by the residents of the neighborhood and their children. Evidence and testimony by the Petitioner point to the fact that legal design standards for the pond will be maintained; therefore, the Board finds that no safety concerns are generated by the presence of a well-designed and well-constructed stormwater management pond.

Pursuant to the issue of general welfare under this subsection, the Protestants allege that property values will be negatively impacted on the expansion of the proposed substation. The Board finds as a fact that the Ivy Hill Substation has existed since 1958; the Board also finds as a fact that all property owners

CERTIFICATE OF SERVICE AND COMPLIANCE

I HEREBY CERTIFY that a copy of the forgoing ORDER FOR APPEAL was served pursuant to Md. Rule 1-321 and B2 c. this 16th day of November, 1987, on the following:

The Administrative Secretary
Baltimore County Board of Appeals
Room 200
Court House
Towson, Maryland 21204

T. Rogers Harrison

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing ORDER FOR APPEAL was mailed, this 16th day of November, 1987, to each of the following:

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

Phyllis Cole Friedman, Esquire
Peter Max Zimmerman
People's Counsel for Baltimore County
Room 223, Court House
Towson, Maryland 21204

Judith A. Armold, Esquire
Assistant Attorney General
Maryland Department of State Planning
Baltimore, Maryland 21201

Nancy C. West, Esquire
Assistant County Attorney
Room 202
Court House
Towson, Maryland 21204

T. Rogers Harrison

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

IN THE MATTER OF THE APPLICATION OF JOSEPH F. EVERING JR. ET UX. FOR SPECIAL EXCEPTION FOR A BOAT YARD, SPECIAL HEARING TO AMEND SITE PLAN, AND VARIANCES	*	CG Docket No. 48
	*	Folio No. 225
	*	File No. 87-CG-4755
N/S OF CHESTER ROAD, 590' WEST OF SEVERN ROAD (800 CHESTER ROAD) 15TH ELECTION DISTRICT	*	

RECEIVED
COUNTY BOARD OF APPEALS
1987 NOV 20 P 3:30

PETITION ON APPEAL

Petitioner, Joseph F. Evering, Jr. et ux, by their attorneys, John B. Gontrum, Robert J. Romadka and John O. Hennegan, file pursuant to Md. Rule B2 this Petition on Appeal.

1. That Board of Appeals erroneously determined that 80 slips should be eliminated from the northern prong of the pier extensions without substantial basis in the record.

2. That Board of Appeals erroneously determined that the northern prong extended further into the water way then neighboring piers and also hindered boating traffic without substantial justification in the record and, therefore, eliminated the 80 slips erroneously.

WHEREFORE, Petitioner, Joseph F. Evering, Jr. et ux, asks that the October 21, 1987 Opinion and Order of the Board of Appeals by affirmed in all respects except for the

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

determination of the removal of 80 slips and be reversed on that issue or be remanded for further testimony with respect to the elimination of the 80 slips from the northern prong of the proposed extension.

John B. Gontrum
Romadka, Gontrum & Hennegan
809 Eastern Boulevard
Essex, Maryland 21221
686-8274

CERTIFICATE OF SERVICE AND COMPLIANCE

I HEREBY CERTIFY that a copy of the foregoing Petition on Appeal was served pursuant to Md. Rule 1-321 and B2 c. this 20 day of November, 1987, on the following:

The Administrative Secretary
Baltimore County Board of APpeals
Room 200
Court House
Towson, Maryland 21204

John B. Gontrum

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petition was mailed this 20 day of November, 1987, to each of the following:

T. Rogers Harrison
Mudd, Harison & Burch
Suite 300 Jefferson Building
105 W. Chesapeake Avenue
Towson, Maryland 21204

Phyllis Cole Friedman, Esquire
Peter Max Zimmerman
People's Counsel for Baltimore County
Room 223, Court House
Towson, Maryland 21204

Assistant Attoney General
Maryland Department of State Planning
Baltimore, Maryland 21201

Nancy C. West, Esquire
Assistant County Attorney
Room 202
Court House
Towson, Maryland 21204

John B. Gontrum

prior to the purchase of their properties were apprised of the ownership of Tract A and the ultimate disposition of that property being with BGE, and that any effect on property values in relation to the existence of the substation were already felt in the purchase of their respective properties. Furthermore, as indicated above, the health, safety and general welfare of other localities served by the Ivy Hill Substation continues to be suspect so long as the substation sits unaltered, as most homes in the area served by the Ivy Hill Substation rely on uninterrupted transmission of electric power as the sole source of energy for the heating of their homes.

Regarding 502.1B, the subject proposal obviously does not tend to create congestion in roads, streets or alleys in the community; testimony was presented that the subject substation would be only periodically visited for maintenance of equipment.

The Protestants commented on the potential hazard from fire or other dangers, namely explosions, emitting from the expanded substation. The Board recognizes that the existence of electric equipment on the site presents an inherent danger. Nonetheless, design standards are established both locally and nationwide for the siting and construction of such facilities, in addition to design and construction standards of the equipment to be placed thereon. BGE obviously agrees to adhere to any and all building and electric codes and standards in the construction of the proposed enlarged substation. Therefore, the potential for fire or explosion at this particular substation is no greater than would

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

IN THE MATTER OF THE APPLICATION OF JOSEPH F. EVERING JR. ET UX. FOR SPECIAL EXCEPTION FOR A BOAT YARD, SPECIAL HEARING TO AMEND SITE PLAN, AND VARIANCES	*	Case:
	*	Docket:
	*	Folio:
N/S OF CHESTER ROAD, 590' WEST OF SEVERN ROAD (800 CHESTER ROAD) 15TH ELECTION DISTRICT	*	
	*	

****

PETITION ON APPEAL

Protestants/Appellants Kenneth Engelke et al., by their attorneys, T. Rogers Harrison and Mudd, Harrison & Burch, file pursuant to Md. Rule B2 a. this Petition on Appeal.

1. The Board of Appeals erroneously granted relief from BCZR 417.5a to allow the extension of piers to a distance of 419 feet into Frog Mortar Creek beyond the mean low tide rather than the allowed 300 feet.

2. The Board of Appeals erroneously determined that the boatyard, piers, and related parking activities and other structures were exempt from the residential transitional area requirements under Section 1B01.1.B.c.9.

3. The Board of Appeals erroneously determined that the Petitioners, Joseph F. Evering Jr. et ux., had utilized the 1964 Special Exception for the Brown Parcel.

4. The Board of Appeals erroneously ruled that the land in question was not subject to the Chesapeake Bay Critical

RECEIVED
COUNTY BOARD OF APPEALS

Area Protection Act, Md. Nat. Res. Ann. Code secs. 8-1801--8-1816 (1983 Repl. Vol.).

5. The Board of Appeals' ruling was otherwise arbitrary, capricious, and not based on legally sufficient evidence.

Wherefore, Appellants/Protestants Kenneth Engelke et al. ask that the October 21, 1987, Opinion and Order of the Board of Appeals of Baltimore County be reversed.

T. Rogers Harrison
Mudd, Harrison & Burch
Suite 300--Jefferson Building
105 West Chesapeake Avenue
Towson, Maryland 21204
(301) 828-1335
Attorneys for
Protestants/Appellants
Kenneth Engelke et al.

CERTIFICATE OF SERVICE AND COMPLIANCE

I HEREBY CERTIFY that a copy of the foregoing PETITION ON APPEAL was served pursuant to Md. Rule 1-321 and B2 c. this 16th day of November, 1987, on the following:

The Administrative Secretary
Baltimore County Board of Appeals
Room 200
Court House
Towson, Maryland 21204

T. Rogers Harrison

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing PETITION ON APPEAL was mailed, this 16th day of November, 1987, to each of the following:

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

Phyllis Cole Friedman, Esquire
Peter Max Zimmerman
People's Counsel for Baltimore County
Room 223, Court House
Towson, Maryland 21204

Judith A. Armold, Esquire
Assistant Attorney General
Maryland Department of State Planning
Baltimore, Maryland 21201

Nancy C. West, Esquire
Assistant County Attorney
Room 202
Court House
Towson, Maryland 21204

T. Rogers Harrison

IN THE MATTER OF	:	CIRCUIT COURT
THE APPLICATION OF		
JOSEPH F. EVERING, JR., ET UX	:	FOR
NORTH SIDE OF CHESTER ROAD, 590'		
WEST OF SEVERN ROAD	:	BALTIMORE COUNTY
(800 CHESTER ROAD)		
15th ELECTION DISTRICT	:	AT LAW
SPECIAL EXCEPTION FOR A BOAT		
YARD; SPECIAL HEARING TO AMEND	:	CG Doc. No. 48
SITE PLAN; AND VARIANCES		
	:	Folio No. 225
KENNETH ENGELKE, ET AL -		
PROTESTANTS/APPELLANTS	:	File No. 87-CG-4755
ZONING FILE NO. 85-65-XSPHA	:	

: : : : : : : : : : : : : : :

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, Lawrence E. Schmidt and William T. Hackett, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, John O. Hennegan, Esquire, John B. Gontrum, Esquire, and Robert J. Romadka, Esquire, 809 Eastern Boulevard, Essex, MD 21221, Counsel for Petitioners; Joseph F. Evering, Jr., et ux, 800 Chester Road, Baltimore, MD 21220, Petitioners; T. Rogers Harrison, Esquire, 306 W. Joppa Road, Towson, MD 21204, Counsel for Protestants/Appellants; Judith A. Armold, Department of State Planning, 301 W. Preston Street, Baltimore, MD 21201, Assistant Attorney General; Arnold Jablon, Room 202, Courthouse, Towson, MD 21204, County Attorney for Baltimore County; and Phyllis Cole Friedman, Room 223, Courthouse, Towson, MD 21204, People's Counsel for Baltimore County, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

Kathleen C. Weidenhammer

Kathleen C. Weidenhammer
County Board of Appeals of Baltimore County
Room 200, Courthouse, Towson, MD 21204

exist at any other substation; further, the existing conditions, already being beyond capacity of the existing substation, present a greater danger from fire or explosion than a substantially enlarged substation equipped to handle ever-increasing demand. There were no facts or circumstances presented to indicate that the particular use proposed at the particular location proposed would have any adverse effect above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981)

The case presented here is one in which the Petitioner plans to expand an existing substation, accommodate existing and future demand with a reasonable buffer for same, and to do so on a part of the combined three tracts which allows for the greatest amount of space between the proposed expanded substation and nearby properties. The Board finds as a fact that not only has BGE met the standard in Schultz v. Pritts, but in fact has worked diligently to mitigate such ordinary hazards from the subject property to a degree that those hazards are below the standard normally found at similar sites. Therefore, the requirements of 502.1C have been easily met.

Section 502.1D speaks to the overcrowding of the land and concentration of population. The subject Petition includes evidence and testimony which indicates that BGE intends to raze an existing home on Tract B; the Board finds as a fact that the Petition will actually reduce the concentration of population and

I HEREBY CERTIFY that a copy of the aforegoing Certificate of Notice has been mailed to John O. Hennegan, Esquire, John B. Gontrum, Esquire, and Robert J. Romadka, Esquire, 809 Eastern Boulevard, Essex, MD 21221, Counsel for Petitioners; Joseph F. Evering, Jr., et ux, 800 Chester Road, Baltimore, MD 21220, Petitioners; T. Rogers Harrison, Esquire, 306 W. Joppa Road, Towson, MD 21204, Counsel for Protestants/Appellants; Judith A. Armold, Department of State Planning, 301 W. Preston Street, Baltimore, MD 21201, Assistant Attorney General; Arnold Jablon, Room 202, Courthouse, Towson, MD 21204, County Attorney for Baltimore County; and Phyllis Cole Friedman, Room 223, Courthouse, Towson MD 21204, People's Counsel for Baltimore County, on this 16th day of November, 1987.

Kathleen C. Weidenhammer
County Board of Appeals of Baltimore County

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

November 16, 1987

Robert J. Romadka, Esquire
809 Eastern Boulevard
Baltimore, MD 21221

RE: Joseph F. Evering, Jr., et ux
Case No. 85-65-XSPHA
Appeal: T. Rogers Harrison, Esq. for
Protestants -Kenneth Engelke, et al

Dear Mr. Romadka:

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

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Kathleen C. Weidenhammer

Kathleen C. Weidenhammer
Administrative Secretary

Encl.

cc: John B. Gontrum, Esquire
John O. Hennegan, Esquire
Joseph F. Evering, Jr., et ux
Judith A. Armold, Esquire
Norman E. Gerber
James G. Hoswell
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
Robin Clark
Phyllis Cole Friedman, Esquire
Arnold Jablon, County Attorney

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

November 16, 1987

T. Rogers Harrison, Esquire
Suite 300, Jefferson Building
105 W. Chesapeake Avenue
Towson, MD 21204

RE: Joseph F. Evering, Jr., et ux
Case No. 85-65-XSPHA

Dear Mr. Harrison:

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

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

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

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

Kathleen C. Weidenhammer
Administrative Secretary

Enclosures

IN THE MATTER OF THE APPLICATION OF JOSEPH F. EVERING, JR., ET UX NORTH SIDE OF CHESTER ROAD, 590' WEST OF SEVERN ROAD (800 CHESTER ROAD) 15th ELECTION DISTRICT SPECIAL EXCEPTION FOR A BOAT YARD; SPECIAL HEARING TO AMEND SITE PLAN; AND VARIANCES	:	CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW
	:	CG Doc. No. 48
	:	Folio No. 225
PHYLLIS COLE FRIEDMAN, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, PLAINTIFF	:	File No. 87-CG-4755
ZONING FILE NO. 85-65-XSPHA	:	

: : : : : : : : : : : : : : :

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, Lawrence E. Schmidt and William T. Hackett, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, John O. Hennegan, Esquire, John B. Gontrum, Esquire, and Robert J. Romadka, Esquire, Germania Federal Building, 809 Eastern Boulevard, Essex, MD 21221, Counsel for Petitioners; Joseph F. Evering, Jr., et ux, 800 Chester Road, Baltimore, MD 21220, Petitioners; T. Rogers Harrison, Esquire, 306 W. Joppa Road, Towson, MD 21204, Counsel for Protestants; Judith A. Armold, Department of State Planning, 301 W. Preston Street, Baltimore, MD 21201, Assistant Attorney General; Arnold Jablon, Room 202, Courthouse, Towson, MD 21204, County Attorney for Baltimore County; and Phyllis Cole Friedman, Room 223, Courthouse, Towson, MD 21204, People's Counsel for Baltimore County, Plaintiff, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

Kathleen C. Weidenhammer

Kathleen C. Weidenhammer
County Board of Appeals of Baltimore County
Room 200, Courthouse, Towson, MD 21204

I HEREBY CERTIFY that a copy of the aforegoing Certificate of Notice has been mailed to John O. Hennegan, Esquire, John B. Gontrum, Esquire, and Robert J. Romadka, Esquire, Germania Federal Building, 809 Eastern Boulevard, Essex, MD 21221, Counsel for Petitioners; Joseph F. Evering, Jr., et ux, 800 Chester Road, Baltimore, MD 21220, Petitioners; T. Rogers Harrison, Esquire, 306 W. Joppa Road, Towson, MD 21204, Counsel for Protestants; Judith A. Armold, Department of State Planning, 301 W. Preston Street, Baltimore, MD 21201, Assistant Attorney General; Arnold Jablon, Room 202, Courthouse, Towson, MD 21204, County Attorney for Baltimore County; and Phyllis C. Friedman, Room 223, Courthouse, Towson, MD 21204, People's Counsel for Baltimore County, Plaintiff, on this 12th day of November, 1987.

Kathleen C. Weidenhammer
County Board of Appeals of Baltimore County

the intensity of overcrowding on the land. Section 502.1E is similarly unaffected by the subject Petition as is 502.1F. Schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements, and adequate light and air all are unaffected by the proposed expanded substation.

Regarding 502.1G, the Board agrees with the testimony of Mr. Gavrelis when he states that the R.C. 5 zone permits some public utility uses as a matter of right and others as special exceptions which are presumed to be valid uses. The mere existence of homes in the R.C. 5 zone points to their need for power transmission; therefore, the reasoning follows that facilities to provide the transmission of power as a natural consequence of the existenc of those homes dictates that not only are electric substations consistent with the purposes of the property's zoning classification but are a need to be fulfilled, in the allowance of development in the R.C. 5 zone.

Regarding 502.1H, the Board heard testimony from Mr. Gavrelis and Monica McGrady, BGE project engineer and an expert in site planning, that because of the intent to raze the existing structures which include a residence and swimming pool, coupled with the planned siting of equipment within the cleared area and the additional landscaping, the impermeable surface and vegetative retention provisions are met by the subject Petition. Concerning 502.1A, the Board did hear testimony from experts in property values from both the Petitioner and Protestants; the Board recognizes that one of the concerns in regard to property values is

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

November 12, 1987

Robert J. Romadka, Esquire
Germania Federal Building
809 Eastern Boulevard
Essex, MD 21221

RE: Case No. 85-65-XSPHA
Joseph F. Evering, Jr., et ux

Dear Mr. Romadka:

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

Enclosed is a copy of the Certificate of Notice.

Sincerely,

Kathleen C. Weidenhammer

Kathleen C. Weidenhammer
Administrative Secretary

Encl.

cc: John B. Gontrum, Esquire
John O. Hennegan, Esquire
Joseph F. Evering, Jr.
T. Rogers Harrison, Esquire
Judith A. Armold, Esquire
Norman E. Gerber
James G. Hoswell
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
Robin Clark
Arnold Jablon, County Attorney

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

November 12, 1987

Phyllis C. Friedman
People's Counsel for Balto County
Room 223, Courthouse
Towson, MD 21204

RE: Case No. 85-65-XSPHA
Joseph F. Evering, Jr., et ux

Dear Ms. Friedman:

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

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

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

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

Kathleen C. Weidenhammer
Administrative Secretary

Enclosures

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

Appellant

v.

JOSEPH F. EVERING, JR., et al.

Appellee

: IN THE CIRCUIT COURT

: FOR BALTIMORE COUNTY

: AT LAW

: Docket No. 48

: Folio No. 225

: File No. 87CG4755

: : : : : :

NOTICE OF APPEAL

Please note an appeal to the Circuit Court for Baltimore County from the Opinion and Order of the County Board of Appeals of Baltimore County, under date of October 21, 1987, in the above-captioned matter.

RECEIVED
COUNTY BOARD OF APPEALS
1987 NOV 10 P 4: 26

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

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

I HEREBY CERTIFY that on this 10th day of November, 1987, a copy of the foregoing Notice of Appeal was served on the Administrative Secretary, County Board of Appeals, Room 200, Court House, Towson, MD 21204; and a copy was mailed to John O. Hennegan, Esquire, and John B. Gontrum, Esquire, 809 Eastern Blvd., Baltimore, MD 21221; T. Rogers Harrison, Esquire, 306 W. Joppa Rd., Towson, MD 21204; Judith P. Arnold, Esquire,

Assistant Attorney General, Maryland Dept. of State Planning, The Munsey Building, Seven N. Calvert Street, Baltimore, MD 21201; and Nancy C. West, Esquire, Assistant County Attorney, Room 202, Court House, Towson, MD 21204.

Phyllis Cole Friedman

Phyllis Cole Friedman

RECEIVED
COUNTY BOARD OF APPEALS
1981 NOV 10 P 4:26

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY	:	IN THE CIRCUIT COURT
	:	FOR BALTIMORE COUNTY
Appellant	:	AT LAW
v.	:	Docket No. 45
JOSEPH F. EVERING, JR., et al.	:	Folio No. 225
Appellee	:	File No. 87C64755

: : : : : :

PETITION ON APPEAL

People's Counsel for Baltimore County, Protestant below and Appellant herein, having heretofore filed a Notice of Appeal from the Opinion and Order of the County Board of Appeals under date of October 21, 1981, in compliance with Maryland Rule B-2(a), files this Petition on Appeal setting forth the grounds upon which this Appeal is taken, and states that the following rulings of the Board were in error:

1. That the Board erroneously granted relief from BCZR 417.6a to allow the extension of piers to a distance of 419 feet into Frog Mortar Creek beyond the mean low tide rather than the allowed 300 feet.

2. That the Board erroneously granted an exemption from the critical areas legislation which was previously appealed and held by the Circuit Court to be an interlocutory ruling the appeal of which was untimely.

3. That the Board erroneously determined that the boatyard, piers and related parking activities and other structures were exempt from the residential transitional area requirements under Section 101.1.B.1.a 9.

the visual impact that an enlarged substation presents. The Board is not compelled by the argument that property values will be negatively impacted; however, the Board recognizes that the residents have come to be familiar and comfortable with what has been termed the pastoral setting of the neighborhood. In recognizing that BGE is meeting the requirements for vegetative retention provisions of the regulations, the Board is compelled to require as part of any improvements pursuant to this Petition to include landscaping which serves to provide a visual buffer between the subject site and surrounding properties, in deference to the adjoining property owners. Therefore, the Board will grant the special exception, subject to restrictions.

The Petitioner finally must meet the tests under Section 307.1 in pursuing variance from lot line setbacks, said lot lines existing between tracts owned by the Petitioner. George Gavrelis clearly points out in his testimony that Section 306 of the BCZR speaks to lot area regulations for erecting substations. The Petitioner seeks a variance under 307.1 from BCZR 1A04.3B.3 which requires a 50-foot setback from any lot line other than a street line. The Board finds as a fact that Section 306 applies in this case and that the application for a variance under 307.1 may be treated as moot. The Petitioner recognizes that its placement of electric utility structures on the subject site, straddling interior lot lines and certainly within otherwise required setbacks, may be construed under 1A04.3B.3 as a principal building, and is therefore requesting such variance. The Board is compelled

4. That the Order of the Board was otherwise arbitrary, capricious, and not based on legally sufficient evidence.

WHEREFORE, Appellant prays that the Opinion and Order of the Board of Appeals of Baltimore County under date of October 21, 1987 be reversed.

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

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

I HEREBY CERTIFY that on this 10th day of November, 1987, a copy of the foregoing Petition on Appeal was served on the Administrative Secretary, County Board of Appeals, Room 200, Court House, Towson, MD 21204; and a copy was mailed to John G. Hennegan, Esquire, and John G. Gontrum, Esquire, 200 Eastern Ave., Baltimore, MD 21221; T. Rogers Harrison, Esquire, 306 W. Joppa Rd., Towson, MD 21204; Judith A. Arnold, Esquire, Esquire, Assistant Attorney General, Maryland Dept. of State Planning, The Nunsey Building, Seven N. Calvert St., Baltimore, MD 21201; and Nancy C. West, Esquire, Assistant County Attorney, Room 202, Court House, Towson, MD 21204.

Phyllis Cole Friedman
Phyllis Cole Friedman

IN THE MATTER OF THE APPLICATION OF JOSEPH F. EVERING, JR., ET UX FOR SPECIAL EXCEPTION FOR A BOAT YARD, SPECIAL HEARING TO AMEND SITE PLAN AND VARIANCES N/s OF CHESTER ROAD, 590' WEST OF SEVERN ROAD (800 CHESTER ROAD) 15th ELECTION DISTRICT	:	BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 85-65-XSPHA

: :

O P I N I O N

This matter comes before the Board as an appeal from the decision of the Zoning Commissioner dated April 25, 1985, wherein the Commissioner granted a special exception and variances with restriction, all petitioned for by the property owner, Joseph F. Evering.

STATEMENT OF THE CASE

Prior to a discussion of the merits of the case, a statement of the procedural history of the case is in order. On August 6, 1984, the Petitioner, Joseph F. Evering, et al, filed the following three petitions:

1. A Petition for Special Exception: This request was made to allow two lots on the north and south sides of Chester Road to be used as part of a boatyard. The lots, as is the entire property, are zoned D.R. 5.5 and, under Section 1B01.1.C.2 of the Baltimore County Zoning Regulations (hereinafter B.C.Z.R.), may only be used as a boatyard upon granting of a special exception. As will be discussed later, the two parcels for which the special exception is sought are properties acquired by Mr. Evering in the relative recent past, and the petitioner seeks permission to consolidate the uses on these parcels with adjacent properties owned by him and operated as a boatyard, pursuant to special exceptions granted to him a number of years ago.

2. A Petition for Zoning Variance: Within this petition, the petitioner seeks relief by way of variance from three sections of the Baltimore

County Zoning Regulations. To wit: a) To allow existing compacting stone instead of the required durable and dustless surface (B.C.Z.R. Sec. 409.2.c.(2)); b) To allow 318 parking spaces in lieu of the required 384 spaces, or, if the special exception petitioned for is granted, to allow 363 spaces instead of the required 384 spaces (B.C.Z.R. 409.2.b); and c) To allow the extension of piers to extend 419 feet into Frog Mortar Creek beyond the mean low tide, rather than the allowed 300 feet (B.C.Z.R. 417.5(a)).

3. A Petition for Special Hearing: The petitioner also seeks other relief by way of special hearing, specifically: a) To amend the site plan which was approved on January 16, 1967 in connection with the granted petition for special exception in Case No. 64-160-X, in order to construct additional piers and slips; b) To remove the restrictions numbered 1 and 3 in Case No. 64-57-SPH, in order to allow marine craft to be stored within twenty feet of the eastern-most property line and to request the variance for the parking surface heretofore referred; c) To remove restrictions in Case No. 64-160-X numbered 1 and 6, in order to allow major repairs of boats both on the premises and in the waters, and to change the times and days of the week and year the repairs will be permitted; and d) To determine that a boatyard, piers and related parking activities and other structures are devoted to civic, commercial and recreational activities and are, therefore, exempt from the residential transitional area requirements.

As indicated above, the Zoning Commissioner on April 25, 1985, granted the special exception and variances, subject to restriction. Cross appeals were then filed to this Board, by both the petitioner and neighboring protestants. In a hearing before this Board in October of 1985, a Motion was raised by the petitioner relative to sub-title 18 of the Natural Resources Article

of the Annotated Code of Maryland, seeking a ruling as to the applicability of this legislation (generally known as the Chesapeake Bay Critical Area Protection Program). After entertaining lengthy argument, this Board held on December 12, 1985 that the Critical Area legislation was not applicable.

Following this ruling, People's Counsel and the protestants filed an appeal of the Board's ruling to the Circuit Court for Baltimore County. Additionally, an action for declaratory judgment was filed within that Court by the protestants and People's Counsel. After consideration of the various pleadings, arguments, etc., Judge Sfekas denied the Complaint for Declaratory Judgment and dismissed the appeal. Although Judge Sfekas' opinion speaks for itself, it is noted that the matter was remanded to the Board of Appeals for its consideration as to the merits of the case.

STATEMENT OF THE FACTS

The Board received lengthy testimony and legal memoranda in this case which elicited the following facts regarding the history of these parcels and their current use. The current Evering property actually consists of four separate parcels, which have been acquired over the years. These parcels total approximately 3.3 acres and, as shown from the aerial photo exhibits introduced, represent the tip of a peninsula which extends into Frog Mortar Creek.

The original Evering parcel of approximately 1.2 acres lies on the south side of Chester Road. After acquiring this property, the Everings applied for and were granted special exception for the use of that property as a boatyard (see Case No. 35-35-X). After acquiring this special exception, Mr. Evering constructed four piers which extended into Frog Mortar Creek for the purpose of mooring his customers' boats. In January of 1964, the Everings filed a Petition for Special Hearing, seeking clarification of that special exception granted to

them. Specifically, they sought, and received, approval to store marine craft on the shore. This approval, however, was subject to three restrictions; to wit: 1) the prohibition of storing marine craft within thirty feet of the eastern-most portion of the property owned by the Everings; 2) limiting the use of the boatyard to pleasure craft only; and 3) mandating that the Everings comply with off-street parking requirements contained within the Baltimore County Zoning Regulations.

On August 1, 1960, the Everings acquired the second parcel of what eventually became the entire Evering property. This parcel was obtained from Mr. and Mrs. Henry J. Brown. This lot lies directly north, across Chester Road from the original parcel. In contemplation of purchase of the same, the petitioner filed for a special exception in the spring of 1964, seeking permission to develop the second parcel into a boatyard. This special exception was also granted, again, however, subject to numerous restrictions as more fully described within the record of this case. Generally, the granted petition restricted the use of the property by prohibiting (1) major repairs on boats, (2) the construction of boats, and (3) the mooring of commercial vessels, barges or similar type craft. Additionally, the extent of and time frame for repairs to boats were limited. Furthermore, as had been the case with the initial special exception applicable to parcel one, the boatyard facility was restricted to pleasure craft only.

The third parcel of the Evering property was purchased in 1969 and encompasses the adjacent lot on the southern side of Chester Road. The fourth and final piece of the Evering property puzzle was purchased by the petitioner in 1970 and includes that lot adjacent to the old Brown parcel, located on the northern side of Chester Road. It is these parcels, designated as #3 and #4, for which the Everings currently seek a special exception.

to address the issue of 307.1 pursuant to the Petition. As stated by Mr. Gavrelis in his testimony, the Board finds that the application of Section 306 points to the fact that public utilities are unique in their requirements. Therefore, the spirit and intent of the BCZR in height, area, off-street parking and sign regulations are met by the subject Petition. Since the Petitioner seeks relief from 1A04.3B.3, the Petitioner must meet the tests in trying to prove that special circumstances or conditions exist that are peculiar to this land or structure that is the subject of the variance request. In David Cromwell v. Arthur Thomas Ward, III, CSA No. 94-617, filed January 4, 1995, Judge Cathell, the Court of Special Appeals, states that the conditions which are peculiar to the land or structure must be met before the tests for strict application of the BCZR and any resulting practical difficulty or unreasonable hardship are reviewed. The Board finds as a fact that the existing electrical substation is a substation which is far undersized in capacity for the required demand in the existing locale. An immediate need in increased capacity has been adequately demonstrated to address the issue of an unusual condition which exists with the existing structure. BGE is mandated to increase the capacity of any substation in order to stay ahead of demand. The conditions which exist in the existing substation are unique in that BGE has been unable to even meet existing demand. The Board finds that the existing conditions and insufficient capacity force BGE to increase capacity; furthermore, in order to accommodate existing and increasing demand, in

In addition to the lengthy testimony regarding the chronological history of this property, the Board received extensive testimony regarding the current use of the property. Both the petitioners and protestants produced numerous witnesses as to the operation, both past and present, of this facility and its effect on the general locale. Suffice it to say, the Board will not repeat here at length all the testimony which is contained in the record. This testimony has largely been summarized by all counsel and will not be repeated. However, certain relevant portions of the testimony will be drawn from and cited during discussion of the numerous issues which the Board will address in considering the petitioner's request.

UTILIZATION OF THE SPECIAL EXCEPTION FOR THE SECOND (BROWN) PARCEL AS GRANTED ON JULY 30, 1964

The initial issue facing this Board concerns the present state of the special exception granted by the County Zoning Commissioner in June of 1964. As indicated earlier, the Zoning Commissioner in 1964 granted a special exception for the secondly acquired parcel, purchased from Mr. and Mrs. Brown. The protestants argue that the Everings did not utilize this special exception. As such, they maintain that the factual basis on which the presently requested relief is sought does not exist. Expressed otherwise, since the special exception for the second parcel was not utilized, the petitioners cannot now seek an additional special exception and variances for the subsequently acquired property. The protestants therefore urge this Board to deny the current petitions because of the failure of the Everings to utilize the special exception which they obtained in 1964. As a factual basis for this position, the protestants point to the site plan submitted by the Everings in 1967 wherein the petitioners propose to exercise the use granted by the extension of Chester Road, filling in

and extending of the Brown parcel, the construction of a bulkhead off the Brown parcel, the building and delineation of parking areas, and building three piers off the western shore from the Brown parcel and a fourth from parcel one. In that the petitioners did not fully complete all of their plans, the protestants urge this Board to hold that the 1964 special exception was not utilized and is therefore invalid. As a legal basis for this condition, the protestants point to Section 502.3, B.C.Z.R.; particularly, subsection A which provides:

> "[A] special exception which has not been utilized within a period of two years from the date of the final Order granting same, or such longer period not exceeding five years, as may have been specified therein, shall thereafter be void...."

Later, this section provides that:

> "[a] special exception which requires any construction for its utilization shall be deemed to have been used within its authorized time, if such construction shall have been commenced during the authorized period, or any extension thereof, provided said construction is thereafter pursued to completion with reasonable diligence."

The protestants argue that the petitioner has not complied with this section of the B.C.Z.R., in that construction has not been commenced and/or completed pursuant to the petitioner's site plan.

In opposition to this conclusion, the petitioners, although acknowledging that not all construction was completed, argue that substantial utilization was undertaken. Although the petitioners admit that the three piers in front of the parcel were not in fact constructed, they point to the construction of a repair shop barge and additional 36 slips constructed from the front of the initial parcel. Additionally, the petitioners point to a number of improvements on the Brown property itself. Specifically, marine craft were stored on the parcel, the property was graded, the rudiments of a parking lot

were completed and recreational facilities, including a swimming pool, showers and sanitary house, were built. The petitioners also point to the pilings which were driven for the bulkhead, although the bulkhead was never constructed.

In consideration of this issue, the Board looks to prior decisions for guidance. Although the Zoning Commissioner questioned its applicability, the Board views the standards as set forth in Case No. 84-89-SPH, In re: Joseph L. Soley, as controlling. Particularly, we look to not only the Board's initial Opinion in that case, but, also, Judge Hinkel's Opinion and the Board's subsequent Opinion. It should be noted that the Board's second Opinion, after remand, was affirmed by the Circuit Court (Fader, J.).

The standard which must be applied here, as was applied in Soley, is whether the petitioner exercised reasonable diligence in utilizing his special exception. As Zoning Commissioner Jablon pointed out, "reasonable diligence is nowhere defined in the B.C.Z.R." Although the B.C.Z.R. nowhere defines the standard under which the Board is to determine "reasonable diligence," that standard was unmistakenly provided to this Board in Judge Hinkel's Order. Specifically, the Board was instructed to apply a two-prong test; that is, 1) the commencement of some readily identifiable work, and 2) the work begun with the intention then formed to continue said work to its completion.

Applying that test to the facts found by us, we are persuaded that the special exception granted in 1964 was utilized. Certainly, the Board acknowledges that not all the petitioner's plans were completed fully. However, there appeared to be a sufficient and extensive developed use of the Brown parcel, in a manner which must be described as a boatyard. Particularly, the petitioner completed one pier, stored marine craft on the site, constructed facilities (bath house, showers, pool) thereon, etc. More significantly, there is no doubt that the boatyard use exists, and has existed on this site.

As was evident from the testimony of not only Mr. Evering but other longstanding residents of the community, parcels 1 and 2 were considered, from a practical standpoint, in conjunction. That is, their use was consistent and in a joint manner; and that both parcels 1 and 2 have been used continuously since 1964 as a boatyard.

CONSIDERATION OF THE SPECIAL EXCEPTIONS

Having settled the utilization of the 1964 special exception and concluded that in fact the special exception on the former Brown parcel has been utilized, the Board next turns its attention to the Petition for Special Exception before us for parcels 3 and 4. As is the case in all special exception matters before this Board, we are obligated to determine whether the conditions set forth in Section 502.1 of the B.C.Z.R. have been satisfied by the petitioners. As to the factual consideration of this issue, the Board has received lengthy testimony and evidence, all of which is reflected in the record of this case. This evidence will not be repeated here. However, in conclusion, the Board finds that the proposed use would not be detrimental to the neighborhood and surrounding area and would not adversely affect any public interest. Specifically, we find that the proposed use meets all of the tests as set forth in B.C.Z.R. Section 502.1. The Board has received lengthy evidence as to the effects of the already existing boatyard use on portions of the property. This evidence is telling and convinces us that the proposed use is consistent with the spirit and intent of the Baltimore County Zoning Regulations. We will, therefore, grant the Petition for Special Exception with restrictions.

CONSIDERATION OF THE PROPOSED VARIANCES

As indicated above, the property owner seeks three zoning variances. They are: (1) relief from B.C.Z.R. Section 409.2.c(2), to allow existing com-

pacting stone instead of the required durable and dustless surface; (2) relief from B.C.Z.R. 409.2.b, to allow 363 parking spaces instead of the required 384 spaces, in that, the Board has in this Opinion heretofore stated that the Petition for Special Exception will be granted; and (3) relief from B.C.Z.R. 417.5(a), to allow the extension of piers to a distance of 419 feet into Frog Mortar Creek beyond the mean low tide, rather than the allowed 300 feet. We shall address each of these requests in turn, pursuant to the standards as set forth in B.C.Z.R., Section 307 and the applicable core law, e.g., Anderson v Board of Appeals, Town of Chesapeake Beach 22 M App 28, 322 A2d 220 (1970). McLean v Soley 270 MD 208, 31 A2d 787 (1973). This body of law requires the petitioner to demonstrate that practical difficulty or undue hardship would result if strict compliance with the regulations were imposed.

Parking Lot Paving

The parking surfaces may remain compacted stone. As the property owner testified, crushed stone is cleaner, more dust free, and provides a reduced rate of storm water runoff than a macadam or impenetrable surface. We agree. In our view, practical difficulty would exist if the petitioner were forced to comply with B.C.Z.R. 409.2.c(2). Further, a parking surface of crushed stone is, in our view, more compatible with the intended purposes of the B.C.Z.R. than would the required macadam surface. We also note that, among the many issues before us, this is the sole question about which there is unanimous agreement among all concerned.

Required Number of Parking Spaces

As did the Zoning Commissioner, the Board will reduce the number of additional slips requested. Therefore, the petitioner's variance for relief from B.C.Z.R. 409.2.b is rendered moot. The Board finds as fact, however, that

order that no variance was needed in the case *sub judice*.[3]

Under the ordinance at issue here, and indeed in most ordinances of which we are aware, unless the ordinance's language specifically and clearly prohibits it, an owner of contiguous parcels of real property, such as respondent, is free to combine them into larger and fewer parcels without violating the *zoning* code. In this case we are concerned only with the zoning ordinance. We first shall recite the facts and conclude by furnishing the reasons for holding that no variance was necessary in the present case.

FACTS

Respondent, at all times pertinent to the case at bar has operated a facility called the "Ivy Hill Substation," which is situated on one of the parcels it owns near the intersection of Falls and Ridge Roads in Baltimore County, Maryland. The site, and all of the relevant surrounding area, is zoned RC-5. Under that classification, public utility facilities are permitted as special exceptions if they comply with the requirements of the Baltimore County zoning ordinance. Respondent, anticipating a need for additional capacity in the region, proposed to increase the capacity at the Ivy Hill Substation. In order to do so, respondent was required to apply for a special exception to operate an enlarged facility. Respondent applied for and obtained a special exception. In their petition for certiorari, petitioners did not challenge the granting of the special exception. Accordingly, the granting

[3] This is consistent with the Board's initial finding that no variance was necessary. The Board apparently felt it was required to address the variance issue because respondent filed a variance petition. Respondent may have filed the variance request because opponents to the project asserted that a variance was necessary.

accordance with its requirements under its Public Services franchise, as well as nationally recognized and accepted building codes and standards, a condition exists which requires sufficient area to accommodate the needs of an enlarged substation. The Board therefore finds that the first test under 307.1 has been met. The land on which the substation will sit is divided by interior lot lines.

The second test under 307.1, assuming the first has been met, is that strict compliance with the zoning regulations would result in practical difficulty or unreasonable hardship. In order to require BGE to comply strictly with the setback requirements, the Board would be asking BGE to deviate from the aforementioned nationally recognized building and electrical codes, as well as sound engineering practices, on consolidating all substation equipment to the extent possible under this Petition. That deviation creates a practical difficulty in causing BGE to design a facility which would not conform to those standards. Furthermore, the Board finds as a fact that BGE's proposal, in consolidating the substation equipment to a central location within the three tracts, provides for the maximum setback from adjoining property owners, allowing for the greatest opportunity from visual and other alleged impacts. Because the Board finds that strict compliance would result in practical difficulty, the Board is not required to address the issue of unreasonable hardship.

O R D E R

IT IS THEREFORE this 31st day of May, 1995 by the

the number of parking spaces as mandated by B.C.Z.R. 409 et cet is not necessary. The property owner testified that he had "plenty of parking." Other witnesses testifying on behalf of the petitioner, including both expert witnesses and patrons of the facility, opined that parking congestion was not an issue. Even the protestants, who primarily objected to the anticipated increased traffic on the local roads leading to the facility, did not present any convincing testimony as to parking overflow. In our view, the parking on site is sufficient. As it stands to reason, the land vehicle parking needed is greatest when the boats are in the water, which frees additional room.

Extension of the Piers

The petitioner's final request for variance, from B.C.Z.R. 417.5, is most difficult for this Board to decide and elicited complex and conflicting testimony. It is uncontroverted that the site currently offers 201 slips for rent, and the petitioner requests that the capacity be increased by 178, for a total of 379. The Board received conflicting and detailed testimony regarding the current state of Frog Mortar Creek, from navigational, traffic and water quality standpoints. Additionally, both proponent and opponent witnesses of the project rendered lengthy opinions about the impact of the proposed expansion. We will not repeat all of this testimony at length here; suffice it to say that the Board carefully considered all of the opinions expressed in an effort to apply the practical difficulty/undue hardship test to the proposed use.

On the petitioner's side, the property owner testified as to current conditions on Frog Mortar Creek at this location. He testified that this waterway was not overcrowded, the condition of the water itself was sufficient to support marine life and the proposed use would not adversely impact the area from either an ecological or overcrowding standpoint. In his view, Frog Mortar

Creek can well handle the intensification of use which will result if this project is approved. This view was supported by several patrons of Mr. Evering's existing marina, who envisioned no adverse impact with the consequential results of marina expansion.

Also supportive of this view was the petitioner's expert, Frank Pine. This witness testified that the water quality here was marginally adequate, at the present time. However, additional boat slips and traffic would reduce the quality only an infinitesimal amount in that, in this witness' view, boat traffic contributes an insignificant amount of pollutants.

In opposition to these views were several neighborhood protestants. These witnesses testified as to the current crowded and dangerous conditions on the waterway and poor water quality. In their view, further expansion into the creek would be a hazard to navigation, further reduce water quality and further tax beyond its limits the capacity of this creek to support the uses demanded of it.

In addressing this particular variance, the Zoning Commissioner's opinion deserves note. Within this opinion, the Commissioner reviews the staid and mundane legal standards by which we are to judge the requested relief and tempers their application in an aesthetic manner by considering the people's right to the use of this natural resource, government's obligation to protect same, and the right of a property owner to use his land in a manner which he so desires. After pondering the Zoning Commissioner's approach, the Board is persuaded that it is the proper manner in which to consider the requested variance for a pier extension. After all, it is the spirit and intent of the B.C.Z.R. to serve the purposes heretofore set forth.

After due consideration, we are persuaded that the proposed expansion should be limited by the deletion of the 80 slips which run northward from the northern prong of the proposed expansion. That is, the northern prong may be expanded into Frog Mortar Creek in an "L" configuration, not in the proposed "T" configuration. We find that the slips which we delete are the most objectionable as they protrude into the navigable portion of Frog Mortar Creek. We impose this restriction not to strike a compromise but because, in our view, the increase must be limited so as to strike a balance between the property owner's right to the use of his land with the public's need for safeguards as to its health, safety and welfare.

CONSIDERATION OF SECTION 417.7 (B.C.Z.R.)

In its post-hearing memorandum, the Office of the People's Counsel raised yet another issue for this Board to consider. Specifically, People's Counsel argues that Section 417.7 of the B.C.Z.R. was not addressed by the Petitioner. That section provides that:

> "Marinas located on property consisting of five or more acres shall be permitted to establish out-of-water storage facilities for recreational marine craft provided that no such facilities thereon shall be located within 60 feet of any property line, and provided, further, that screening shall be provided and maintained of such types and at such locations as may be required by the zoning commissioner or board of appeals, on appeal."

As indicated earlier in this Opinion, the petitioners did not seek a variance from the requirements of 417.7. In fact, the issue as to whether a variance can be granted from the mandates of this section is among the issues raised by the People's Counsel.

We will not address those issues here. Although this appeal is de novo, the issues presented herein are the Petition for Special Exception,

Petition for Special Hearing, and variances from B.C.Z.R. sections 409.2.c(2), 409.2.b, and 417.5(a). In that those are the only issues raised by the petitioner, we will not explore throughout the zoning regulations to find others. Although People's Counsel may or may not have alternative means for relief available to them if they believe that the petitioner has improperly ignored 417.7, those arguments must be addressed not in this forum, but elsewhere.

CONSIDERATION OF THE SPECIAL HEARING

As indicated earlier in this Opinion, the property owner has also presented a Petition for Special Hearing seeking amendments and changes to the earlier site plans and orders of this Board and, further, a determination as to whether the use of this site is exempted from Residential Transition Area requirements. We will address each of these in turn.

A) First, the petitioner seeks to amend the site plan approved on January 16, 1967 in connection with the granted Petition for Special Exception in Case No. 64-160-X. We will grant an amendment to that site plan to conform with the mandates expressed herein. That is, the site plan is to be amended so as to conform with the petitioner's proposed expanded facility, less the 80 slips which we have ordered deleted.

B) The petitioner also seeks the removal of restrictions #1 and #3 in Case No. 64-57-SPH. Those restrictions in essence prohibited the storage of marine craft within 20 feet of the easternmost property line at the time and also delineated the nature of the parking surface. Removal of restriction #3 is rendered moot by the Board's granting of the petitioned variance from section 409.2.c(2) in that this Board will allow a compacting stone parking area. Likewise, the request to remove restriction #1 to permit marine craft to

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

October 21, 1987

Robert J. Romadka, Esquire
Germania Federal Building
809 Eastern Boulevard
Essex, MD 21221

RE: Case No. 85-65-XSPHA
Joseph F. Evering, Jr., et al

Dear Mr. Romadka:

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

Sincerely,

Kathleen C. Weidenhammer

Kathleen C. Weidenhammer
Administrative Secretary

Encl.

cc: John O. Hennegan, Esquire
John B. Gontrum, Esquire
T. Rogers Harrison, Esquire
Phyllis C. Friedman, Esquire
Mr. Joseph F. Evering, Jr., et ux
Judith A. Armold, Esquire
Arnold Jablon, County Attorney
Nancy C. West, Esquire
Norman E. Gerber
James G. Hoswell
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
Margaret E. du Bois

File

County Board of Appeals of Baltimore County

ORDERED that Petition for Variance from Section 1A04.3B.3 is hereby **GRANTED**; and it is further

ORDERED that the Petition for Special Exception for an electrical substation in R.C. 5 zone is hereby **GRANTED** subject to the following restrictions:

1. To the extent possible due to site conditions, the Board will require, as a condition of the special exception, that landscaping around the proposed substation and stormwater management pond shall be double that shown on the Landscape Plan, and that the height of the specimen trees to be planted shall be increased from 8'-10' to 10'-12'; and

2. The screening shall be strictly maintained; any specimens which are planted pursuant to this Order which do not survive shall be immediately replaced, and that understory vegetation will be encouraged to increas in density. Failure of the Petitioner to maintain the screening shall result in the forfeiture of the special exception.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Robert O. Schuetz, Chairman

William T. Hackett

S. Diane Levero

IN THE MATTER OF

PETITION FOR SPECIAL EXCEPTION PETITION FOR SPECIAL HEARING PETITION FOR VARIANCES N/S Chester Rd., 590' W of Severn Rd. (800 Chester Rd.) 15th District	:	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
JOSEPH F. EVERING, JR., et ux, Petitioners	:	Case No. 85-65-CSPHA

: : : : : :

RECEIVED
COUNTY BOARD OF APPEALS
JAN 9 A 11: 29

PEOPLE'S COUNSEL'S MEMORANDUM

People's Counsel submits this memorandum in response to the request by the Board of Appeals for written closing argument.

INTRODUCTION

The Everings ("Petitioner") have requested an expansion of their marina facility on Frog Mortar Creek to encompass two adjacent lots and additional piers that would provide a total of 379 boat slips with a total land area of 3.3 acres. Based on a prior Special Exception, Petitioner contends the proposed new slips number only 178. This number is disputed due to a controversy over the utilization of a prior Special Exception.

In order to proceed, Petitioner has asked for a Special Exception; a Special Hearing; a Declaration that the "RTA" does not apply; a Declaration that compliance with the "Critical Area" Legislation is not necessary; a variance from Section 409 (BCZR), requiring macadam paving; and a waiver from Section 417.5(a), requiring that structures in the waterway not extend beyond 300 feet beyond mean low tide. Based on testimony Petitioner should also have addressed the issue of Section 417.7, which requires that:

> "Marinas located on property consisting of five or more acres shall be permitted to establish out of water

storage facilities for recreational marine craft provided that no such facilities thereon shall be located within 60 feet of any property line, and provided, further, that screening shall be provided and maintained of such types and at such locations as may be required by the zoning commissioner or board of appeals, on appeal.

Since Petitioner does not have five acres, it cannot comply with this requirement for out-of-water storage facilities. The significance of this is discussed below. This Board has already ruled that "Critical Areas" does not apply, and People's Counsel has preserved its right to appeal from this decision.

FACTS

Testimony showed that Frog Mortar Creek abounds with existing marinas. In excess of 1,000 boat slips already exist on this narrow and fragile waterway that was characterized by Petitioner's expert witness as "stressed." Further identification of environmental problems was limited due to Petitioner's failure to provide information required by the "Critical Areas" legislation. However, there was evidence that suggests such problems exist.

There is little dispute that at the site of Petitioner's marina the width of Frog Mortar Creek is in the range of 1,000 feet; and it is undisputed that Petitioner's proposal would jut out 419 feet, into this waterway, or 119 feet beyond the 300 foot limit described in Section 417.5 BCZR.

Mike Flanigan, a traffic expert from the County, stated that Chester Road leading into the property is only 14 feet wide in places and could not accomodate emergency vehicles. He also pointed out other potential traffic problems and congestion, supporting the anectodal testimony of other witnesses, and testified to parking problems created by out-of-water storage

facilities of boats on Petitioner's parking lot. Petitioner's expert produced some figures that purported to show automobile traffic would not be a problem, but the dates and times of these traffic counts raises serious doubts as to their probative value. In addition to Mr. Flanigan's testimony, there was other clear evidence that Petitioner has established out-of-water storage facilities on its parking lot for marinecraft. This evidence consisted both of oral testimony and of visual observation of the January, 1986 aerial photo of the subject site.

ARGUMENT

People's Counsel contends the expansion of the proposed Special Exception should be denied, and to avoid redundancy adopts the Memorandum and Argument submitted by Protestants, Bowley's Quarters Improvement Association, Inc. on this issue.

People's Counsel also objects to any acquiescence to the out-of-water storage facilities for marinecraft that are clearly located on the parking lot of the property. While People's Counsel agrees with the Zoning Commissioner that the RTA does not ordinarily apply to parking for a marina, in this case, the parking lot is being used for boat storage. As a result, unless this Board prohibits the use of the parking lot for boat storage, the RTA must be complied with.

However, and most importantly, People's Counsel does not believe this Board has the authority to grant any variance from Section 417 of the Baltimore County Zoning Regulations dealing with Waterfront Construction. These Regulations are not height and area regulations, but are mandatory standards imposed upon waterfront construction.

Two analogous Baltimore County cases have addressed requests to deviate from mandatory standards: Miller v. Forty West Builders, 62 Md. App. 320 (1985) and In the Matter of the Application of Joseph L. Soley for Rezoning, No. R-83-62-A, Before the County Board of Appeals. In both cases, the final ruling denied the requests because waivers were beyond the scope of statutory authority.

In Miller, the Zoning Commissioner granted a de facto variance from the buffer requirement of the RTA. (Id. at 335.) The Court of Special Appeals overturned this grant because the proposal did not satisfy the regulations; and it held that the specifically defined restrictions imposed by the regulations must be adhered to. Similarly, in Soley, this Board refused to grant a Petition for Reclassification to an O-2 zone for a parcel that contained less than the required 10 acres.

A recent New York case dealing with a request similar to the variance requested from Section 417.5 provides guidance in this matter. In Knadle v. Zoning Board of Appeals, 503 N.Y.S.2d 141 (A.D. 2 Dept. 1986), the Petitioner, in connection with a Special Exception, had requested a modification of the setback requirements for a radio tower. The Board granted the modification calling it "a variance" and the Supreme Court of New York reversed, holding that the "board has no power to waive or modify this requirement or to alter this condition under the guise of a variance." (Id. at 142.)

The Knadle Court relied upon an earlier New York case, Cappadoro Land Development Corp. v. Amelkin, et al., 432 N.Y.S.2d 513 (1980), which held, in even stronger terms, that conditions

RECEIVED
COUNTY BOARD OF APPEALS
87 JAN 14 P 3:38

IN THE MATTER OF	:	BEFORE THE
	:	BOARD OF APPEALS
JOSEPH F. EVERING, JR.,	:	OF
	:	BALTIMORE COUNTY
ET UX.	:	CASE NO. 85-65 XSPHA

MEMORANDUM OF PETITIONERS

STATEMENT OF CASE

The Petitioners in this case have filed under the Baltimore County Zoning Regulations (hereinafter referred to as the BCZR) for a special exception for a boat yard and for zoning variances to permit the continuation of the existing compacted stone parking surface instead of the required durable and dustless surface, 318 parking spaces instead of the required 384 spaces if the special exception is denied or 363 parking spaces instead of the required 384 spaces if it is granted, and to permit piers to extend 419 feet beyond the mean low tide instead of the allowed 300 feet. In addition, a special hearing was requested to amend the previously granted special exceptions for boatyards and site plans in Cases 3535-X and 64-160-X in accord with the requests filed herein, to utilize that portion of Chester Road lying entirely within the site and to remove in Case No. 64-57 SPH restrictions 1 and 3 in order to permit marine craft to be stored within 20 feet of the easternmost property line and to permit the variance for the parking surface requested herein, and to remove in Case No. 64-160 X restrictions 1 and 6 to allow major repair of boats on the premises and in the water

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

May 31, 1995

J. Carroll Holzer, P.A.
HOLZER and LEE
305 Washington Avenue, Suite 502
Towson, MD 21204

RE: Case No. 94-452-XA
Baltimore Gas & Electric Co.
/Ivy Hill Substation

Dear Mr. Holzer:

Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules and Procedure. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Charlotte E. Radcliffe for
Kathleen C. Weidenhammer
Administrative Assistant

encl.

cc: Andrew Lansman, et al
Robert A. Hoffman, Esquire
Martha A. Delea, Esquire
Baltimore Gas & Electric Co.
Mr. & Mrs. Frederick Vinup
Mr. & Mrs. Raymond Fischer
Mrs. Dorothy Marsden
The Honorable Paula C. Hollinger
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
W. Carl Richards, Jr. /ZADM
Joseph V. Maranto /ZADM
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM
Virginia W. Barnhart, County Attorney
The Honorable T. Bryan McIntire

Printed with Soybean Ink
on Recycled Paper

and to change the times and days of the week and year that repairs will be permitted, and, additionally, to determine that the boat yard, piers, and related parking areas are other "structures" devoted to civic, commercial, and recreational activities and , therefore, exempt from the residential transition area requirements set forth in Section 1B01.1.B.1.c.9 and 10 in the B.C.Z.R.

Cross appeals were filed to the order of the Zoning Commissioner dated April 25, 1985, granting the requested relief in part and denying it in part. The matter then came on for hearing before the Board of Appeals for Baltimore County in October, 1985. At that time testimony was taken and arguments heard pertaining to the applicability of the state legislation pertaining to the Chesapeake Bay critical area. The Board ruled on December 12, 1985, that the Chesapeake Bay critical area protection program was not applicable to the relief requested. On January 3, 1986, an appeal was fil d by People's Counsel for Baltimore County and on January 10, 1986, an appeal was also taken by Baltimore County. These appeals were dismissed on August 7, 1986, by the Circuit Court for Baltimore County in a ruling on motions to dismiss filed by Petitioners. A Complaint for Declaratory Relief filed by People's Counsel on the same subject matter also was dismissed by the Circuit Court.

The case came on for hearing by the Board of Appeals of

Baltimore County (hereinafter referred to as the "Board") on December 14 and 15, 1986.

STATEMENT OF FACTS

The Everings purchased their first parcel of property at the end and to the south of Chester Road in 1954. They were granted a special exception for use of that property as a boatyard in Case No. 3535-X. In 1960 they purchased property directly across Chester Road from the original parcel, and a special exception was granted for a boatyard covering that parcel in case no 64-160-X. Prior to that case, however, an issue arose under the original special exception as to the storage of marine craft on shore, and this was allowed in Case No. 64-57-SPH. A site plan was filed indicating the amendments granted in these cases to the original special exception and incorporating both parcels. (Pet. Ex. 15). Case No. 64-57-SPH also contained a prohibition against parking of boats within twenty (20) feet of the easternmost portion of the southern property. In 1969 the Everings purchased the adjacent lot on the southern side of Chester Road and in 1970 purchased a lot adjacent to their 1960 purchase on the northern side of Chester Road.

Mr. Evering testified that the primary purpose of this special exception request was to allow additional on-shore parking facilities. This area encompasses the two most recently acquired tracts of land. It is indicated by the cross-hatched area on the site plan accompanying the Petition. (Pet. Ex. 2).

The site plan also contains the amendments to the two previous special exceptions granted the Everings, including the requested pier extensions.

The site plans and the aerial maps which were introduced indicate that the marina and boatyard are located on the eastern side of Frog Mortar Creek where it empties into Middle River. At the site the creek widens substantially, and the channel was indicated by all to be near the other shore closer to the airport. Directly upstream from the Evering property a private pier extends out into the Creek occupying a much larger portion of Creek area than the extensions sought by the Everings.

Mr. Evering testified that it was his intention to rent the additional slips created by the extension primarily to sailboat users. It has been his experience that sailboaters less intensively use the marina facilities and afford a cleaner type of operation than power boat users. By extending the piers Mr. Evering reaches water sufficiently deep that not only will dredging not be necessary but also the effects of propeller rotation or wash will be minimized.

Two aspects of traffic were at issue at the hearing. Mr. Evering testified that the busiest days of the year were the two summer holidays, the Fourth of July and Labor Day. Even on those days, however, use of the site never exceeded forty percent (40%). The marina currently offers 201 slips and with the proposed extensions will have 379 slips. Even eithout the special exception the site as now constituted offers 318 spaces. With the special exception it will offer 363 spaces, only slightly less than one for each boat. There has never been any testimony that the site with or without the special exception has not been able to accommodate the necessary parking. Mr. Evering's testimony was corroborated on this point by Dr. Ewell's observations of cars parked over the Labor Day weekend. He observed fifty-five (55) cars on the site at 5 PM on Labor Day in 1985. (Pet. Ex. 20). Although there was testimony as to the crowded conditions of Bowley's Quarters Road primarily in connection with Miami Beach, there was no indication that the subject marina contributed any more to the traffic than any of the other numerous marinas in the area. Furthermore, there was testimony that the primary hours of utilization were "off-peak" hours which do not conflict with regular commuter traffic. There was no testimony as to undue congestion on either Chester Road or on Susquehanna Avenue, the two closest roads.

The testimony of Mr. Flannigan of the County was to the effect that Chester Road was substandard and that the intersections of Chester Road and Susquehanna and of Susquehanna and Bowleys Quarters Roads were substandard. He admitted, however, that these intersections were not dissimilar to numerous other intersections on the Bowley's Quarters peninsula. He further admitted that neither public works nor fire had any adverse comments to the petition in terms of access. He also did not know whether the County had easements to bring the intersections or the roadways up to standard. Finally, Mr. Flannigan testified as to the "book traffic count" to be expected of marinas. According to the "book" the current usage during the week was over eight hundred trips or three and a half trips per slip. This in no way corresponds to any of the actual observations of anyone actually visiting the site. The book count estimated up to eight (8) trips on the average per slip per day on every weekend. (P.C. Ex. 6). He admitted that the book count was not based on any personal observations nor on any local marina activities. He also did not know the kinds of marinas providing the information. Some marinas, for instance, allow trailer boating and have ramps. The Evering marina does not have these facilities and does not intend to provide them. This logically would eliminate a lot of traffic projected from the marina.

IN THE MATTER OF BALTIMORE GAS & ELECTRIC COMPANY	*	BEFORE THE
	*	COUNTY BOARD
PETITION FOR SPECIAL EXCEPTION AND VARIANCE FOR PROPERTY LOCATED AT SOUTHWEST CORNER OF INTERSECTION OF RIDGE ROAD AND JOEL COURT	*	OF APPEALS OF
	*	BALTIMORE COUNTY
	*	
		Case No. 94-452-XA
8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	
	*	

* * * * * * *

PETITIONER'S MEMORANDUM IN SUPPORT OF PETITION FOR SPECIAL EXCEPTION AND VARIANCE

Baltimore Gas and Electric Company ("BGE"), Petitioner, by Robert A. Hoffman with Venable, Baetjer and Howard, LLP, and Martha A. Delea with BGE, its attorneys, respectfully submits this Memorandum in support of its Petition for Special Exception and Variance, as follows:

INTRODUCTION

BGE has requested a special exception and variance for property located at the southwest corner of the intersection of Ridge Road and Joel Court in north central Baltimore County. The subject property, which is located in an RC-5 zone, is made up of three adjoining tracts. See Petitioner's Exhibit 2. Tracts A, B, and C, as delineated on the Site Plan, are owned by BGE. The combined area of the three tracts is approximately 2.9 acres.

A portion of the property, Tract C, is the subject of an existing special exception, granted on March 28, 1956, for the operation of a local electric distribution substation, known as the Ivy Hill substation. See Petitioner's Exhibit 4. A local distribution substation,

The other potential area of traffic is from the boats in the waterway. There was testimony from Mr. Evering, slip renters, and Mr. Greenwood, a longtime neighborhood resident, that the increase in slips would not prove to be any danger. There was testimony from Mr. Jones and from Mr. Stumpf from the community that the waterway already was overcrowded. Mr. Stumpf now keeps his boat in Bear Creek, and Mr. Jones moved into the cove adjacent to the marina three (3) years ago. He testified, however, that he had been familiar with the area and the Creek for many years. He submitted numerous photos from the headwaters of the Creek showing boats up in the narrower portions of the Creek as well as utilization of the airport property by picnickers. He did acknowledge that Everings' marina was located right where the channel widens. He further acknowledged that the new extensions were located proportionately no further out into the cove in which he lived than the existing piers.

The testimony was that the major problems in the creek come from speeding boats and people using the airport property. No one, however, contradicted the safety record attested to by Mr. Evering in the creek and with the marina. None of the slip renters felt that there was a safety problem in their utilization of the marina. Furthermore, a review of the site plan and of the traffic map (Pet. Ex. 9) indicates that this marina's slips will be located much further from the channel than the slips of other marinas in the area.

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

Mr. Frederick Klaus testified that in his opinion there would be no diminution in the value of neighboring homes in the event that the special exception, variances and amendments were granted. He had visited the subject site on numerous occasions and was familiar with the area. He felt that if the requests were granted that there would be no injury to the health, safety or general welfare of the community.

Dr. Frank Pines also testified with respect to the environmental aspect of the Petitioners' requests. He very definitely thought that Petitioners' request for a durable and dustfree surface other than macadam, cement or tar and chip was environmentally more sound than these alternatives and that the variance request should be granted from an environmental standpoint alone. He further felt that the additional facilities proposed by Petitioner to go along with the additional piers such as the sewage pump out facilities and the back-fill behind new bulkheading would so improve on existing conditions that the facility with the amendments and additional slips would not in any way create a worsening of an existing condition and would in fact minimize pollutants into the water. His studies indicated that only a minimal amount of the overall pollution in the immediate waterways was contributed by the boats. The increment added by additional facilities at this marina was infinitesimal. With best management practices and the above noted improvements he did not see any worsening in condition if the requests were

granted. In comparison with other locations he noted that in this instance the marina has fully developed its land resources. It has no wetlands or aquatic vegetation. The backfilling behind that bulkheads proposed to be replaced by the Everings would reduce sediment runoff into the water by up to eighty percent (80%).

With respect to the lifting of the restrictions in the previous cases Mr. Evering testified that he had purchased the property from which he was supposed to set back twenty (20) feet and that, therefore, the restriction should no longer apply. Neighboring properties are now much further from the repair facilites. The additional area, he believed, could best be used for parking and storage of boats on land. He felt that the restriction as to major repairs was confusing. Originally, he believed it to be the intent of the restriction that he not be allowed to perform work on commercial vessels. He has no objection to that restriction. Now some of his customers in performing work on their boats may be in violation depending on the work performed and the meaning of "major repairs".

With respect to the hours of the repairs he felt that most repairs again would take place during the daylight hours of the work week, but occasionally, minor in water repairs limited to emergencies might be undertaken by the slip renters on weekends. It was to accommodate this perceived need of the

renters as well as to make use of daylight hours in the summer that this restriction was sought to be removed.

Amendment to the plan to allow the inclusion of that portion of Chester Road surrounded by the boatyard is also requested. Chester road deadends onto the Evering site. Over the years with the acquisition of additional parcels the roadbed has become necessary to the utilization of the special exceptions for the site, but it itself has never been part of the previous special exceptions. Consequently, the Petitioners are requesting that this area along with the additional parcels be considered as part of the marina and boatyard facility for the purpose of the special exception.

There was no adverse testimony to the removal of any of the restrictions or to the variance for the parking surface or to the special exception for parking area. No adverse comments were filed by any agency of the county zoning advisory committee. The testimony of People's Counsel witnesses and Protestants went exclusively to the pier extensions and perceived problems associated with that sole request.

One final request by Petitioners calls for an interpretation under the BCZR of whether the piers, boatyard facilities including the swimming pool and parking areas can be classified as structures for recreational activities and be exempt from residential transition area (RTA) requirements. There has never been any factual dispute that the Evering

marina supports only recr ational boating craft due in part from the restrictions in previous zoning cases. No one has contested that the use by boat owners who live either in the neighborhood such as Mr. Greenwood or up in Reisterstown such as Mr. Butterworth are not recreational and therefore exempt from the residential transition requirements.

APPLICABLE LAW

The standards applicable to special exceptions are contained in Section 502 of the BCZR. Under the note to Section 502 is the consideration that the special exception uses are proper uses of land, but have aspects which call for special consideration of each proposal. Similar wording has been interpreted in the Court of Appeals. In Schultz v. Pritts, 291 Md. 1 at 23, 432 A. 2d 1319 (1981), the Court said: " We now hold that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone."

Section 502.1 goes on to list eight (8) factors which should not be detrimentally affected by the award of the special exception. These factors are to be taken into consideration in light of Schultz.

such as that located at Ivy Hill, accepts higher voltage electricity from a master substation and lowers the voltage of that electricity to a usable level for its customers in the area. This use is permitted in an RC-5 zone by special exception. Section 1A04.2.B.11 of the Baltimore County Zoning Regulations ("B.C.Z.R.").

BGE now proposes, in requesting the present special exception and variance, to replace and expand the Ivy Hill substation in order to accommodate the increased demand for electricity that has been placed on its facility by continued development and changes in the area. Without this much needed expansion, the electrical capacity of the existing substation will be overloaded by the Winter of 1995. Realizing it would eventually have to expand the substation to meet the increased demand, in 1989, BGE purchased the adjoining Tract A. Tract A is currently unimproved and is heavily wooded. Similarly, in 1994 , BGE purchased Tract B. Tract B is improved with a residence and a pool, which will be razed under the proposed plan to allow for placement of the new substation.

Under the plan submitted to the Board, BGE proposes to replace the existing equipment and to expand the capacity of the Ivy Hill substation in two distinct phases based on existing and predicted need. In order to ensure adequate and reliable service, the Phase One expansion must be implemented immediately. According to predictions, the electrical capacity provided by Phase One, though, will also be exceeded, necessitating the Phase Two expansion.

Because of the configuration and natural features of the three tracts and because of BGE's desire to preserve the maximum amount of wooded areas to serve as a buffer between the substation and the surrounding neighborhood, BGE has planned to centrally locate the

Protestants have raised the issue as to the continuing validity of the special exception granted in Case No,64-160-X and depicted in the 1967 site plan wherein building permits were sought. (Pet. Ex. 15). There is no question but that the onshore facilities depicted in the site plan as well as the pier and location of the barge on the southern property were all placed pursuant to the special exception. The proposed piers on the northern side of the property as allowed in the 1964 special exception were not built. The Zoning Commissioner disagreed with the Board's decision in Case No. 84-89-SPH, In Re: Joseph L. Soley. In that case the Board found that to satisfy the conditions of Section 502.3 one must merely initiate construction. The Zoning Commissioner also felt that more was needed than would satisfy the "vested rights" criteria. See Petitioners' Memorandum to the Zoning Commissioner attached hereto addressing this issue. The Commissioner felt that the reasonable diligence test required more. However, in this case he felt that the test had been met. He felt that "There has certainly been 'reasonable diligence' - a fair, proper and due degree of care and activity, measured with reference to the particular circumstances. The strictures of Section 502.3 have been satisfied." Consequently, the Board is asked to make a factual determination as to the validity of the previous special exception because in place of the piers and additional slips shown on the northern side of Chester Road in the 1967 plat,

Petitioner is now seeking additional slips in deeper water in a different configuration.

Section 307 of the BCZR sets the standard for an area variance by stating that the Petitioner should show that the regulation sought to be varied would result in practical difficulty if enforced. It further must be shown that the variance is in strict harmony with the spirit and intent of the regulations and would not be cause substantial injury to the health, safety or general welfare. The easier standard of "practical difficulty" has been held to be applicable to the variances sought herein by the Court of Special Appeals in Anderson v. Board of Appeals, Town of Chesapeake Beach, 22 Md. App. 28, 322 A. 2d 220 (1970). According to that case to prove practical difficulty it must be determined whether strict compliance with the requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome ; whether th grant of the variance would do substantial justice to the petitioner as well as other property owners or whether a lesser relaxation than that applied for would give substantial relief; and whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured. McLean v. Soley, 270 Md. 208, 214-215, 31 A. 2d 783, 787(1973), quoting 2 Rathkopf, The Law of Zoning and Planning, 45-28-29 (3d ed. 1972).

The standards of adjudication under the special hearing provisions are much more nebulous,but it may be assumed that the relief sought may be granted if found to be within the spirit and intent of the regulations and not injurious to the public health, safety and general welfare. This assumption is based on Section 502.2 where the Board or the Zoning Commissioner may impose such restrictions onto special exceptions as may be deemed advisable for the protection of surrounding or neighboring properties. In this case restrictions earlier imposed on previously granted special exceptions are sought to be lifted because of the change in configuration of the site and in the neighborhood.

The Opinion and Order of the Zoning Commissioner also makes reference to the residential transition area requirements contained in Section 1B01.1.B.1.b et seq. of the BCZR. These provisions relate to all uses permitted as of right or by special exception in residential areas unless specifically exempt. An exception is provided in Section 1B01.1.B.1.c.9 and 10 for other structures devoted to social , civic or recreational activities including parking. Questions arise as to whether the use of piers and storage buildings under the residential area apply to the previously granted special exception and whether piers qualify as structures. In the event that they do not qualify as structures then it is apparent that the RTA requirements will not apply. If, however, the piers do qualify as structures, then the only

question is whether they are used for a social or recreational use. The Petitioners have no disagreement with the findings of the Zoning Commissioner that the piers are recreational in nature and as such are structures exempted from the RTA requirements. Neither Protestants nor People's Counsel have contested this finding.

The issue as to the applicability of the Chesapeake Bay Critical Area legislation to these proceedings has already been addressed in earlier proceedings and in an earlier Memorandum, a copy of which is attached.

DISCUSSION

Although numerous issues have been presented to the Board for review, we believe that the case is best viewed as a zoning case involving questions of use under the zoning regulations. The Board has to decide whether the requirements of a special exception have been met on the site under Section 502 of the BCZR, whether the previous special exceptions are still alive, and whether the previous special exception site plans and restrictions can be amended as indicated on the site plan filed by Petitioner. (Pet. Ex. 2). In addition, the Board has to determine whether Petitioners should be granted the variances requested for paving, parking and pier extension in order to overcome the practical difficulties involved with strict compliance of the zoning regulations. Finally, the Board has to interpret the residential transition area (RTA)

requirements and exemptions to determin if the facilities are exempt.

Petitioners obviously believe that the previously granted special exceptions for boatyard use are still valid. There has been no question over the actual existence of the boatyard and marina since 1955. There also has been no question that the usage involves properties on both sides of Chester Road. Ever since the acquisition of the northern property in 1960 and special exception in 1964 boats have been stored along with parking for renters' cars on shore. Recreational facilities indicated on the 1967 site plan (Pet. Ex. 15) including swimming pool and showers have also been built. Finally the pier including 36 slips and the permitted barge were placed in accord with the site plan on the southern parcel. As all of the photos introduced into evidence suggest, the various parcels are all used as one in the use of a boatyard and marina. We agree with the Zoning Commissioner that the special exceptions previously granted have been pursued with due diligence even though the piers proposed on the 1967 plan were not built. For further discussion of this issue please see attached memorandum. Mr. Evering testified that this improvement did not occur due to the cost involved with necessary dredging to obtain the necessary depth for either sail or power boats. Now, of course, dredging is acknowledged to have certain environmental impacts which the new configuration avoids. We believe that the new

new equipment on the three tracts. Centrally locating this equipment is also important because the different pieces of equipment for the substation work in concert and necessarily must be placed close together, making placement on any one tract impossible.

This placement, though, will result in the structures straddling the interior lot lines of Tracts A, B, and C and, consequently, will violate the setback distance required by B.C.Z.R. Section 1A04.3.B.3. While this placement will violate the interior lot lines, necessitating a variance, such placement will maximize the distance of the equipment from the exterior lot lines and, in fact, this distance to the exterior lot lines will meet or exceed that required by the zoning regulations. As a further barrier between the substation and the surrounding locale, BGE further proposes to enclose all equipment in a seven foot fenced area, topped with one foot of barbed wire. The proposed plan also provides for substantial landscaping and planting to provide increased year-round screening.

In appearing before the Board of Appeals on October 4, 1994, January 10, 1995, January 12, 1995, January 17, 1995, and January 19, 1995, BGE had the burden of proving its entitlement to the requested special exception and variance by demonstrating that the requirements of the following sections of the Baltimore County Zoning Regulations have been met: Section 502.1 (Special Exceptions); Section 411.1 (Public Utility Uses); and Section 307.1 (Variances). As outlined below, BGE produced strong and substantial evidence on each of these requirements. The Board of Appeals, therefore, should grant the requested relief, enabling BGE to fulfill its responsibility to provide adequate and reliable service to its customers.

configuration will not only allow us the expansion in the most environmentally sensitive manner but also will allow the marina to shift its service more to the less intensive sail boat use.

The special exception requests pertain to the newly acquired properties and to the roadbed of Chester Road within the site. If the new special exceptions are denied, the practical effect would be to deny additional parking and storage area. No protestant complained of the on land facilities or objected to these proposals.

Petitioners have met the standards under Section 502 of the BCZR in their application for the special exception and amendments to the previous special exceptions. All of the evidence indicated that location of the additional facilities as this marina presented no problems greater than those normally associated with a marina or boatyard use at any other location. Under the criteria of Schultz v. Pritts there has been no showing that this location for a marina or boatyard use presents any special problems. Testimony from Petitioner and his expert witnesses indicated that there would be no detriment to the health, safety or general welfare by the location and expansion of the marina use at this location. Even Mr. Flannigan who was concerned over the condition of the County roads and intersections indicated that these problems are common to the entire Bowleys Quarters area in which there are numerous marina and boatyard facilities. Dr. Ewell

indicated that the additional traffic generated by the marina is of minimal impact given its timing and quantity. His study was based on actual observations and not on a theoretical number not based on similar operations or on data from the area.

Even though the critical area program for the Chesapeake Bay is not applicable to the petitions, Petitioners presented evidence indicating that the criteria under the critical area program had been met. Dr. Pines testified as to the extensive studies which have occurred both at the subject site and in the Middle River area in general. His studies indicated that the contribution of marinas in general to the pollutant levels was minimal. He pointed out that in this case the on-shore facilities already are in place so that the relative pollutant levels to the construction of a new marina on vacant land are much less. Furthermore, this marina facility is located at the mouth of the creek where the water action is such as to be more cleansing than at the headwaters or where the Creek is narrower.

Perhaps most important are the mitigative measures which will be taken in the event that the petitions are granted which will serve to minimize any contribution to existing pollutant levels. First, Mr. Evering has agreed to be bound by the "best management" practices outlined in Dr. Pines report. (Pet. Ex. 19). These practices include:

1. Wording in lease agreements to enforce use of trash receptacles and controlling of washing of boats.

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

2.Replacing existing fuel pumping facility with newer equipment having back-pressure automatic shut off valves and restriction of fuel service to trained Marina personnel, education of boat owners regarding fuel spill sources, and on-site sales of fuel recovery products.

3. Restrict the use of antifouling paints to boat hulls and avoid painting piers and other in-water structures.

4. Conduct scraping and painting operations away from the water in protected areas to avoid the loss of particulate and raw paint.

5. Avoid repainting hulls after a year during which fouling to the hulls was minimal.

6. Dry store boats not in use for extended periods.

7. Post signs prohibiting overboard disposal of sewage and inform the public of contamination levels resulting from violations.

8. Require compliance with federal "head laws" as a prerequisite to slip rental, and indicate violations will result in cancellation of rental contract.

9. Require all through-hull discharge ports of Type III MSD's to be sealed on those vessels "permanently" moored.

10. Require use of on-site pump-out facilities.

In addition, Mr. Evering has agreed to install on site pump-out facilities which currently do not exist on site. These facilities should significantly encourage slip owners to properly discharge their wastes. Investigation of the sewage facilities by the Health Department indicate that the marina has an approved and properly functioning septic system. As Dr. Pines indicated, most of the private septic systems in Bowley's Quarters are failing and are a primary source of pollution in the river.

Finally, Mr. Evering has agreed to backfill behind the new bulkheading which he intends to install so as to create a filter from runoff on the site. The fact that the site has a porous gravel surface is important in alleviating runoff and reducing surface pollutants, but Dr. Pines felt that with the filtration almost all surface pollutants would be eliminated

which would improve on the existing condition and minimize the contribution of pollution from the additional development.

These factors not only function to meet critical area criteria with respect to minimizing impact on water quality but also indicate that there would be no detriment to the health, safety and general welfare on an environmental level from the proposed development. This also meets the test under the variances requested of not causing substantial detriment to the neighborhood.

It should also be noted that by placing the new piers in deeper water the marina not only eliminates disturbance of the bottom by dredging or by the boats but also the marina minimizes the impact of additional usage on the water. The second criterion of the critical area program has to do with the impact of the population on the environment. Testimony at the hearing indicated that power boats not only contributed to much more intensive on-shore use but also had more effect on the bottom areas through propeller wash and through engine discharge. It is Mr. Evering's stated intention to conv rt the marina to almost exclusive sail boat use. His reasoning candidly has more to do with economic advantages than with environmental advantages but the latter benefits can not and should not be ignored. The application, therefore, has considered and responded to the concern as to the impact of population on the critical area.

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

There was no response from either the Protestants or from People's Counsel to any of the environmental or health related issues addressed by Petitioner. None of their witnesses produced any evidence in contradiction to Dr. Pines, Frederick Klaus, or Mr. Evering. Indeed, there was no contradiction to the testimony of Petitioners' witnesses who testified as to the cleanliness and efficiency of the Evering operation.

With respect to the variances requested we believe that we have shown the practical difficulty and undue burden in strict compliance with the zoning regulations and the absence of harm to the community if they are granted. No evidence was submitted opposing the parking variance nor the paving variance. We believe that the only evidence before the Board on these requests illustrates the benefits of not paving the site from the standpoint of run-off and the fact that there already exists a durable and dust-free surface. The parking requirements on the site are more than sufficient to meet the existing and proposed development. The variance sought will not overcrowd the site since over twice the needed parking from the evidence already is provided.

With respect to the pier extension variance we believe that it is necessary in order to obtain the needed deep water and attendant environmental advantages. We believe that already we have the right to construct piers along the northern parcel close to shore. To effectively use these

ARGUMENT

I. Based on the Evidence Presented before the Board of Appeals, BGE is Entitled to the Requested Special Exception.

BGE has requested a special exception so that it may expand the Ivy Hill electric substation. Such a use is permitted in an RC-5 zone by special exception pursuant to B.C.Z.R. Section 1A04.2.B.11. According to the well-developed law of Maryland, such a special exception use is *presumed* to be valid and is *presumed* to be consistent with the general welfare. Schultz v. Pritts, 291 Md. 1, 11, 432 A.2d 1319 (1981). Therefore, once a petitioner demonstrates that the proposed use satisfies the specific requirements of the applicable ordinances, *i.e.,* Section 411.1 and Section 502.1, the special exception must be granted unless a protestant produces strong and substantial evidence that placement in this particular location will have adverse effects *above and beyond* those inherently associated with such a special exception use regardless of where it may be located within the zone. Schultz , 291 Md. at 14, 22-23. In other words, a protestant must do more than show that the use may have adverse effects that are common to the use generally. Id. See also Sharp v. Howard County Board of Appeals, 98 Md. App. 57, 632 A.2d 248 (1993).

As outlined below, BGE produced sufficient evidence at the hearings before the Board to prove that no adverse impact would result from the proposed use and that the requirements of Section 411.1 and Section 502.1 have, in fact, been met. The Protestants were unable to produce any credible evidence to show otherwise.

piers, however, would not only be costly but also environmentally damaging. To minimize the impact of the additions on the community and on the river we have sought pier additions in the configuration indicated on the plan. At this point the channel is still over a hundred yards from the proposed extensions and should be of no danger to either the boats moored at the extensions or to boats using the waterway. We do not need a variance of Section 417.5 (c) which specifically prohibits extension of piers into the channel area. None of the witnesses actually using the facility felt that the piers would in any way endanger the safety of the users of the river or of the marina. Of all configurations of additional piers both within the 300 foot limit and outside of it, we believe that this configuration will best serve all interests.

It clearly would be unduly burdensome on the Petioners to comply with this regulation given the relationship of this marina to the water and other facilities in the area.

The special hearing requests to amend the conditions of the previous plans and hearings also were not contested. The twenty (20) foot limitation (Condition 1 of Case No. 64-57-Sph) should no longer apply since we now own the property to which it referred and propose to use it for parking. We believe that the appropriate screening will be far more beneficial to the neighbors and be more attractive to the site than the maintenance of the restriction.

We also have sought removal of restrictions as above noted for the conduct of major repairs on the site for the reasons stated above. The facilities for the conduct of the repairs are already in place. We do not believe that a meaningful and fair distinction can be made between so-called "major" and "minor" repairs. Furthermore, it is clear from the context in which this restriction appears (Restriction 1 of Case No. 64-160-X) that it was intended to apply primarily to commercial boats, which we do not intend to have on the site. The restriction as to hours for the conduct of repairs also was sought to be lifted primarily as Mr. Evering said in order to take advantage of daylight hours in the summer and to allow emergency repairs on the weekends. The restriction also does not speak to what is allowable on Saturdays. (Restriction 6 of Case 64-160-X). There was no adverse comment to the lifting of either restriction and in view of the additional properties acquired by the Everings, the repairs will no longer be taking place adjacent to neighboring properties. We do not believe that the lifting of these restrictions will be adverse to the health, safety or general welfare.

Finally, site plan amendments were sought in light of the special exception and variance requests and to utiliz the roadbed of Chester Road within the site. The object of the request is simply to bring the site plan up to date, in harmony with the other requests. Again, there was no opposition to this request.

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

CONCLUSION

In conclusion, we respectfully request the Board to approve our requests for special exception and for amendment of the previous special exceptions for boatyard and marina use, for the variances requested to parking, paving, and 300 foot pier limitation, for lifting of the restrictions as above indicated and revision of the site plans and for determination that the residential transition area does not apply to the subject parcel's recreational and social use.

Respectfully submitted,

John B. Gontrum
Romadka, Gontrum, Hennegan and Foos
809 Eastern Blvd.
Essex, Maryland 21221

IN RE

PETITION FOR SPECIAL EXCEPTION PETITION FOR SPECIAL HEARING PETITION FOR VARIANCES N/S CHESTER ROAD, 590' W OF SEVERN ROAD (800 CHESTER ROAD)	*	BEFORE THE BOARD OF ZONING APPEALS OF
	*	BALTIMORE COUNTY
JOSEPH F. EVERING, JR., et ux	*	
Petitioners	*	
BOWLEY'S QUARTERS IMPROVEMENT ASSOCIATION, INC. and KENNETH ENGLEKE et al	*	Case No. 8565XSPHA
Protestants	*	

****

MEMORANDUM AND ARGUMENT

The Protestants, Bowley's Quarters Improvement Association, Inc. Ken Engleke, et al, by their attorney, T. Rogers Harrison, submit this Memorandum and Argument in support of their position that (1) the subject property falls under the Chesapeake Bay Critical Area Protection Program, Md. Nat. Res. Code, Ann. Sections 8-1801-8-1816 (1974 and 1984 Cum. Supp.); (2) the Petitioners have not met the requirements of Section 8-1813 of the aforementioned Act; (3) the Special Exception granted in 1964 as to parcel #2, i.e., Brown Parcel located at north side of Chester Road, has long since expired and was never utilized pursuant to Section 502.3 of the Zoning Regulations of Baltimore County; (4) that the variance requested to extend new piers

419 feet beyond mean low tide should be denied; (5) that Petitioners should not be permitted to construct any new piers at the subject site; (6) that parcels 3 and 4, i.e., south and north parking parcels should be restricted as to use; (7) that Petitioner should be required to screen and landscape subject site and required to participate in storm water management; (8) that all currently existing restrictions regarding use of subject property should be maintained.

DESCRIPTION OF LAND

The property of the Petitioners, Joseph J. Evering, Jr. and his wife, Catherine (hereinafter the "Everings"), consists of approximately 3.3 acres located on the north and south sides of Chester Road, 1000 feet west of Susquehanna Avenue in the Fifteenth Election District, Baltimore, County, Maryland. The property is known as the Long Beach Marina, 800 Chester Road, and can be described as the tip of a peninsula jutting into Frog Mortar Creek. Frog Mortar Creek is a part of the Middle River Tidal Basin.

The property is best understood as consisting of four separate pieces of land: (1) the original Evering parcel, approximately 1.2 acres in size, located on the south side of Chester Road and comprising Lots 1, 82 and 83 of the Long Beach Estates (Parcel 1); (2) the Brown parcel, approximately 1.75 acres in size, located on the north side of Chester Road (Parcel 2); (3) the south parking parcel,

A. The Evidence Confirms that the Proposed Plan Complies with B.C.Z.R. Section 411.1.

In order to prove its entitlement to the requested special exception, BGE first must demonstrate that the requirements of Section 411.1 have been met. According to Section 411.1, BGE has the burden of proving that: (1) the proposed substation is needed for the proper rendition of electric service to its customers; and (2) the proposed substation will not seriously impair the use of the neighboring properties. In the hearings before the Board of Appeals, BGE produced substantial evidence, by way of numerous exhibits and expert witnesses, to prove that these requirements have, in fact, been met.

To prove that the improvements to the Ivy Hill substation are necessary, at the hearings before the Board, BGE produced the testimony of Lawrence S. Taylor, an engineer, who was qualified as an expert in the area of electrical system planning, and the testimony of James F. Ryan, Jr., a registered professional engineer, who was qualified as an expert in power station engineering and in forecasting electrical demand. As these experts testified, both phases of the proposed expansion are necessary to allow BGE to properly render electric service to its customers.

The existing Ivy Hill substation, which is almost forty years old, has a single transformer with a capacity of 16.6 megawatts. (T. 1/10/95, p. 19) Although the demand placed on the substation has increased over the years, its capacity, unfortunately, has remained unchanged. The Ivy Hill substation presently serves approximately 1750-1800 customers over a 15-20 square mile area. (T. 10/04/94, pp. 124-125, 132) (T. 1/10/95, pp. 54, 57) See Petitioner's Exhibit 11. In addition to those customers, an average of 75 new customers are being added to this service area every year. (T. 10/04/94, p. 103) (T. 1/10/95,

Lot 83 of the Long Beach Estates, located on the south side of Chester Road (Parcel 3); and (4) the north parking parcel, located on the north side of Chester Road (Parcel 4). All of these four pieces of land are in a D.R. 5.5 zone.

STATEMENT OF FACTS

In 1955, Joseph F. Evering, Jr., (hereinafter "Joseph Evering") filed a petition for special exception, requesting that he be allowed to use his property on Chester Road, then and now in a D.R. 5.5. zone, for a boat yard. At that time, he owned only the 1.2 acre original Evering Parcel located on the south side of Chester Road. On June 6, 1955, the Special Exception was granted (Case No. 3535X) and Joseph Evering thereafter converted his property into a boat yard by, among other things, building four piers which extended west into Frog Mortar Creek, for the mooring of power and sail boats.

On August 1, 1960, Mr. and Mrs. Henry J. Brown conveyed to the Everings the 1.75 acre Brown Parcel located on the north side of Chester. Road. In January 1964, the Everings filed a Petition for Special Hearing "for a clarification and extension of the uses heretofore granted under the special exception, granted on the 6th day of June, 1955 (File No. 3535) to specifically include the storage of marine craft on the land." On March 9, 1964, the Everings'

request was granted (Case No. 64-57SH) subject to three restrictions:

1. No marine craft may be stored within 30 feet of the easternmost portion of the property presently owned by ...[the Everings];

2. The use of the boat yard, both on land and in the water, shall be limited to pleasure craft.

3. The Petitioners [the Everings] shall comply with the off-street parking requirements of Section 409 of the Baltimore County Zoning Regulations.

About one month later, on April 10, 1964, the Everings filed a Petition for Special Exception.

The Petition for Special Exception requested that the Everings be allowed to develop a boat yard on the Brown Parcel. The Everings planned to fill and level the land, build a bulkhead on the north side of the Brown Parcel and extend Chester Road to the water's edge. On June 30, 1964, the Petition for Special Exception (Case No. 64-160X) was granted subject to the following restrictions:

1. No major repairs of any boats shall be permitted on the premises or waters immediately adjacent thereto.

2. Construction of boats is prohibited.

3. No commercial vessels will be permitted to patronize said establishment.

4. Services will be restricted to pleasure craft only.

5. Barges or similar type craft will not be allowed on or tied up at the property, with the exception of the one small barge which is presently being used by the Petitioner[s]. [The Everings.]

6. Minor repairs and maintenance will be permitted from 8 a.m. to 7 p.m. week-days [sic], May through September and 8 a.m. to 6 p.m. on week-days [sic] during the other months of the year. No repairs will be permitted on Sundays.

The site plan, which was approved by the Office of Planning and Zoning on January 16, 1967, called for four additional piers, approximately 168 additional boat slips and approximately 168 additional parking spaces for automobiles. Three of the proposed piers were to be built off the Brown Parcel, more or less parallel to the four existing piers which extended west from the original Evering Parcel. Each was to contain 44 boat slips. The fourth proposed pier was to be built off the south side of the original Evering Parcel, perpendicular and to the rear of the four existing piers. It was to contain 36 boat slips. The site plan also called for the Everings to extend Chester Road to the water's edge, to fill in and extend the Brown Parcel to conform with the original Evering Parcel, to build a bulkhead and to use a macadam surface for the parking areas.

In 1966, the Ev rings applied for and received three building permits for the northwest Brown Parcel piers. Little, if any, construction was commenced and, in 1970, the Everings again applied for and received building permits for the same three piers. Again, the Everings did not commence any substantial construction. It is apparent that they did drive in some mooring piles along the western shore line of the Brown Parcel, but it is just as apparent that this construction was soon abandoned. No effort was made to fill in and extend the Brown Parcel, to extend Chester Road, to build the bulkhead and to comply with the plans for the required parking spaces. Sometime between 1966 and 1984, they did construct the southern pier off the original Evering Parcel. During this time they also acquired the north and south parking parcels.

In August, 1984, the Everings filed the following three petitions:

1. Petition for Zoning Variance

(a) to allow existing compacted stone in lieu of the required macadam paving. A variance from B.C.Z.R. Sec. 409.2.c.(2) (1981 and 1983 Supp.)

(b) to allow 318 parking spaces in lieu of the required 384, or, if the special exception is granted, to allow 363 parking spaces in lieu of the required 384. A variance from B.C.Z.R. Sec. 409.2.b (1981 and 1983 Supp.)

(c) to allow the extension of the piers to exceed 300 feet beyond the mean low tide. A variance of B.C.Z.R. Sec. 417.5(a) (1981 and 1983 Supp.)

2. Petition for Special Exception

(a) to allow the two lots on the north and south sides of Chester Road (the North and South Parking Parcels) to be used as part of the boat yard. The lots are zoned D.R. 5.5.

3. Petition for Special Hearing

(a) to amend the site plan which was approved on January 1, 1967, in connection with the June 30, 1964 Petition for Special Exception (Case No. 64-160X) in order to construct additional piers and slips.

(b) to remove restrictions 1 and 3 in Case No. 64-57SPH in order to allow marine craft to be stored within 20 feet of the easternmost property line and to request a variance of the parking.

(c) to remove restrictions 1 and 6 in Case No. 64-160X in order to allow major repairs on the premises and in the waters and to change the times that repairs are permitted.

(d) to determine that a boat yard and related parking areas are structures devoted to civic, commercial and recreational activities and are, therefore, exempt from the residential transitional requirements et out in B.C.Z.R. Sec. 1B01.1B.1.c (1981 and 1983 Supp.)

pp. 25-28) These new customers equate to approximately seven-tenths of a megawatt per year in additional demand for electricity from the Ivy Hill location. (T. 1/10/95, p. 27)

During the Winter of 1994, the capacity of the Ivy Hill substation (16.6 megawatts) was exceeded by close to 20% (20.1 megawatts). (T. 10/04/94, pp. 103-104) (T. 1/10/95, pp. 19, 32-33)[1/] As a result of this overload, there was an interruption in service, and a portion of the load served by the Ivy Hill substation had to be temporarily transferred to the Delight substation. (T. 10/04/94, pp. 103-105) (T. 1/10/95, p. 22) This transfer brought the load at the Ivy Hill substation back to under 16.6 megawatts. The demand from Ivy Hill's total service area with the transferred portion included, though, still exceeds its capacity.

Because the Delight substation is experiencing even more rapid growth than the Ivy Hill substation, the transferred load must be returned to Ivy Hill. (T. 10/04/94, pp. 104-105, 122-123) (T. 1/10/95, pp. 29, 49-50) No other distribution substation is available to relieve the demand from Ivy Hill. (T. 10/04/94, p. 120-124) As both Mr. Taylor and Mr. Ryan testified, with the added demand from new customers, the load for the Ivy Hill substation is again expected to exceed 16.6 megawatts in the Winter of 1995. (T. 10/04/94, pp. 103-105, 108-109, 159) (T. 1/10/95, pp. 21-23, 27-28) The substation's capacity will be exceeded this year even if the transferred area were not returned to Ivy Hill. (T. 10/04/94, pp. 103-105, 108-109, 159)

1/ While this load is considered a "peak usage," because BGE is required to supply adequate power at all times, BGE must plan for and be able to supply its customers with electricity even during a peak usage period.

The Protestants do not oppose Petitioners' request 1(a) (stone, in lieu of macadam paving) if the Petitioner is required to engage in meaningful storm water management practices at the site (Protestants contend that Petitioner was impliedly required to do this by way of bulkheading prior to the last pier construction off Parcel 1 permitted by way of the approval of the amended site plan in 1964). Otherwise, Protestants oppose each of Petitioner's requests before this Board.

For reasons fully briefed and argued at the hearing on the merits, the Protestants contend that the Petitioners' requests do fall under Chesapeake Bay Critical Area Protection Program, Md. Nat. Res. Code, Am. Sections 8-1801-8-1816 (1974 and 1984 Cum. Supp.) and have failed to comply with the requirements of said Act. However, given this Honorable Board's determination that the "Act" does not apply, Protestants will not further argue this point in this Memorandum.

The preliminary issue presented in this case is, simply put, whether the Everings utilized the Special Exception they were granted on June 30, 1964. Section 502.3 of the Baltimore County Zoning Regulations (1981 and 1983 Supplements) states, in pertinent part, that:

> "[a] Special Exception which has not been utilized within a period of two years from the date of the final order granting same, or such longer period not exceeding five years, as may have been specified therein, shall thereafter be void... After a final

> order granting a Special Exception, the Zoning Commissioner, at any time prior to expiration of the period of time authorized for its utilization, may grant one or more extensions of such period, provided that a maximum time for utilization of the Special Exception is not thereby extended for a period of more than five years from the date of the final order granting same."

The same section also provides that:

> "[a] Special Exception which requires any construction for its utilization shall be deemed to have been used within its authorized time if such construction shall have been commenced during the authorized period, or any extension thereof, provided said construction is thereafter pursued to completion with reasonable diligence." (Emphasis added.)

Phrased differently, then, the issue here is whether the Everings, under the June 30, 1964, order granting them a Special Exception (as to Parcel 2), commenced construction during the authorized time period and thereafter pursued that construction to completion with reasonable diligence.

The requirements set forth by Section 502.3 are twofold: (1) the petitioner must commence construction within the authorized time period; and (2) he must pursue that construction to completion with reasonable diligence. If the Petitioner fails to do both, the Special Exception is void. While the record is not clear, it is assumed that the Everings had five years from the date of the Special Exception in which to commence construction.

It is apparent that the Everings have not attempted to utilize the Special Exception they were granted on June 30, 1964. As of September 1984, they had not extended Chester

Road, had not filled in and extended the Brown Parcel, had not built the bulkhead, had not built the parking areas as detailed on the site plan, and had not implemented their plans to build three piers off the western shore of the Brown Parcel. As the June 30, 1964, Special Exception was surely one requiring construction for its utilization and the Everings did not commence any substantial construction during the ensuing five years (1964-1969), the Special Exception is void.

The Everings, in essence, have failed to meet both requirements of Section 502.3: They did not begin any substantial, easily recognized construction and they did not pursue what little construction they did commence to completion with reasonable diligence. It must be remembered that the June 30, 1964, Special Exception concerned the Brown Parcel (Parcel 2).

The only apparent action taken by the Everings with regard to the Brown Parcel during the authorized five-year period was applying for building permits in 1966 for the three Brown Parcel piers. This, by itself, does not constitute the commencement of construction. Even if it did, the Everings did not pursue the construction to completion with reasonable diligence. More than eighteen years have passed since the Everings secured the building permits and, during this time, the Everings, at best, drove a few piles along the western and northern shores of the

Brown Parcel (Parcel 2). Mr. Evering himself characterized his intentions in the 1970-1980 period as an "abandonment" of expansion because of lack of money, gas crisis, and so forth. Perhaps the fact that this marina is not filled, played a role.

The meaning of the language in Section 502.3 requiring construction to be pursued to completion with reasonable diligence is clear, unambiguous and should be given its literal meaning.

The Everings did not have a substantial construction beginning. All they did was obtain building permits and drive in a few mooring piles. Neither action, as noted earlier, constitutes a readily recognizable commencement or a substantial construction beginning. It has been repeatedly held that the mere issuance of a building permit alone does not confer any vested right and, therefore, would not constitute a construction under Section 502.3. See Stewart Petroleum Co. v. Board of County Commr's., 276 Md. 435, 347 A.2d 854 (1975); County Council v. District Land, 274 Md. 691, 337 A.2d 712 (1975); Rockville Fuel & Feed Co. v. City of Gaithersburg, 266 Md. 117, 291 A.2d 672 (1972); and Ross v. Montgomery County, 252 Md. 497, 250 A.2d 635 (1969). See generally 3 Rathkopf, The Law of Zoning and Planning, 57-6 (45th ed. 1976). As it was stated in County Council, "the obtention of a building permit creates no vested right... unless substantial construction has been

reasonable diligence. It has been eighteen years since the building permits were issued, and the piles are the only evidence of a construction attempt. While it may very well have been the intention and purpose of the Everings to secure building permits, drive the piles, and pursue to completion the landfill, road extension and the bulkhead, parking lot and pier constructions, this intention was quickly abandoned.

It is true that in 1970 the Everings renewed the building permits, thus in some sense evidencing their continued intention to implement the 1967 site plan, but, again, no substantial construction occurred immediately thereafter or in the ensuing fourteen years. It cannot, therefore, be maintained that the Everings have been pursuing to completion the utilization of their 1964 Special Exception with reasonable diligence, but this is exactly what they would have to prove in order for that Special Exception to still be valid. HB.C.Z.R. Sec. 502.3. It should be remembered that the Everings have the burden of proving that the 1964 Special Exception is still valid and that they both commenced construction within the authorized time period and pursued that construction to completion with reasonable diligence. As this burden has not been met, and all evidence suggests that it cannot be met, the 1964 Special Exception is void. A Special Hearing, therefore, is not proper and the Everings should be required to re-

Because the infrastructure already exists at the Ivy Hill site and because this site is a good load center, the only reasonable option is to expand the existing substation. (T. 10/04/94, pp. 106-108) As Mr. Taylor noted, the term "load center" refers to the proximity to the bulk of demand, not the strict geographic center of the service area. (T. 10/04/94, pp. 106-108) Because most of the demand in the area serviced by the Ivy Hill substation comes from the southern end of the service area, the location at Ivy Hill is optimal. (T. 10/04/94, pp. 74, 106-108) Being close to the demand ensures that BGE will be able to provide its customers with an adequate and reliable supply of power. (T. 10/04/94, pp. 107-108) Therefore, as BGE has proved through the testimony of its expert witnesses, in order to properly serve its customers, BGE must expand the Ivy Hill substation.

BGE proposes to expand the substation in two phases. In Phase One, the existing transformer would be replaced with a 32 megawatt capacity transformer. (T. 10/04/94, p. 104) (T. 1/10/95, pp., 28, 65) This new transformer would allow BGE to supply the existing demand, which will again exceed 16.6 megawatts when the transferred portion of the service area is returned to the Ivy Hill substation, and the added demand expected by the Winter of 1995. (T. 10/04/94, p. 104) (T. 1/10/95, pp. 21-23, 28-29) Because of anticipated continued growth and changes within the service area, however, the capacity of the single 32 megawatt transformer will likewise be exceeded by the year 2001, necessitating the Phase Two expansion. (T. 10/04/94, p. 109-110) (T. 1/10/95, pp. 28-30, 63-65, 69-70)[2/] In Phase Two,

---

2/ As Mr. Ryan explained, an additional area of service, called Hickory Meadow, must be added to the southeast portion of the Ivy Hill service territory due to a transmission project, which will eliminate the means of supplying this area from the Texas substation. (T. 1/10/95, pp. 29-30, 37-41, 47-49) Hickory Meadow contains approximately 700 units presently, and this area is expected to grow at a pace of 10 units per year. (T. 1/10/95, pp. 29-30, 37-41, 47-49)

petition for a special exception for Brown Parcel. Furthermore, the Petition for Variances and the Petition for Special Exception should both be denied because the invalidity of the 1964 Special Exception changes the factual basis on which they rest.

Counsel for Petitioners, as did the Zoning Commission for Baltimore County, seemed to confuse what Protestants were saying, interpreting their argument solely as an issue of "vested rights," rather than a question of "use." Although a helpful insight can be drawn from cases dealing solely with the vested rights issue -- it is rather the specific fact that Petitioners herein failed to construct the improvements specifically requested in a prior Special Exception which spells demise for their attempt to receive what has been clearly abandoned and, therefore, expired.

Certainly, the Petitioners cannot be allowed to revive the 1964 Special Exception by bootstrapping it with their 1984 Petition and the transparent argument that use of the overall property is the key which facilitates construction they choose, when they choose, from 1964 to the end of time.

Essentially, the Petitioners are asking for permission to extend the new piers four hundred nineteen feet out into Frog Mortar Creek 419 feet beyond mean low tide.

Section 417.5 of the Baltimore County Zoning Regulations provides as follows:

Appraiser) whose historical narrative, although well presented and quite interesting, failed to reflect compliance with 502.1, and last, but not least, Mr. Pine, who capably verified that Frog Mortar Creek is already in violation of Class I water quality standards, for existence of fecal coliforms, undissolved nitrogen, dissolved oxygen and Ph. Moreover, Mr. Pines admitted that Frog Mortar Creek is a narrow and shallow body of water and that additional pollutants resulting from further development may well result in a failure in continued re-invasion of aquatic life already being experienced.

The Protestants produced testimony from a number of witnesses whose testimony clearly reflected an adverse impact above and beyond that which is arguably associated with a special exception use.

The roadways serving the subject site are already congested and overtaxed. Frog Mortar Creek already contains over 1,000 slips and experiences serious navigational problems which could only be compromised further by additional expansion, particularly this expansion which consumes more than 45% of the total width of Frog Mortar Creek at its point of entry into Middle River.

It is respectfully submitted that Petitioners' proposed uses could clearly be detrimental to the health, safety and general welfare of the Bowley's Quarters area, that it will <u>further</u> create congestion in an already insufficient and

overtaxed road system. Any further development of Long Beach Marina, particularly development which entails extension more than 300 feet beyond mean low tide, compromises and is inconsistent with the spirit and intent of Baltimore County's Zoning Regulations.

Respectfully submitted:

T. Rogers Harrison

T. ROGERS HARRISON
Mudd, Harrison & Burch
306 West Joppa Road
Towson, Maryland 21204
828-1335
Attorney for Protestants

RECEIVED
COUNTY BOARD OF APPEALS
1987 JAN 14 P 3:46

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, MARYLAND LYNNE LOMBARDI ANDREW JONES	*	IN THE
	*	CIRCUIT COURT
Plaintiffs	*	FOR
V.	*	
JOSEPH F. EVERING, JR. and CATHERINE L. EVERING STATE AVIATION ADMINISTRATION MARYLAND DEPT. OF STATE PLANNING	*	BALTIMORE COUNTY Case No. 86-CG-22 consolidated
Defendants	*	Case No. 86-CG-240

* *

MOTIONS RULING

Case No. 86-CG-240

1. Plaintiffs' Motion for Partial Summary Judgment/Declaratory Judgment - DENIED.

2. Plaintiffs' Motion for Consolidation - GRANTED.

3. Maryland Department of State Planning's Motion to Intervene - GRANTED.

4. The Everings' Motion to Dismiss and Answer to Complaint for Declaratory Judgment - GRANTED.

5. Motion of State Aviation Administration to Dismiss Complaint for Declaratory Judgment - GRANTED.

6. Maryland Department of State Planning's Motion to Dismiss Complaint for Declaratory Judgment for More Definite Statement - GRANTED.

7. Defendants' Motion for Attorneys Fees - DENIED.

8. Costs to be paid by the Plaintiffs, apportioned equally.

RECEIVED
COUNTY BOARD OF APPEALS
1986 JUL 16 P 1:42

Case No. 86-CG-22

Plaintiffs' Motion for Consolidation - GRANTED.

2. Plaintiffs' Petition on Appeal is DISMISSED and REMANDED to the Board of Appeals for a final judgment.

3. Defendants' Motion to Dismiss Petition on Appeal - GRANTED.

4. Defendants' Petition for Attorneys Fees - DENIED.

5. Costs to be paid by the Plaintiffs, apportioned equally.

MEMORANDUM IN SUPPORT OF COURT'S RULING ON THE PLAINTIFFS' MOTION FOR DECLARATORY JUDGMENT AND PLAINTIFFS' APPEAL TAKEN FROM THE RULING MADE BY THE BOARD OF ZONING APPEALS

This matter comes before the Circuit Court for Baltimore County on appeal (Case No. 86-CG-22) and on a Motion for Declaratory Judgment (Case No. 86-CG-240) from the Board of Appeals of Baltimore County (Case No. 85-86-XSPHA). The Zoning Commissioner for Baltimore County granted the Defendants', Joseph and Catherine Evering, request for special exception to construct an extension to their existing marina-boat yard in the vicinity of Martin Airport. The County Board of Appeals ruled that Subtitle 18 of the Natural Resources Article, Chesapeake Bay Critical Area Protection Program, does not apply to the Evering's request for special exception, although the Board has still not decided whether or not it will affirm the Order of the Zoning Commissioner to allow the special exception.

of the special exception is no longer at issue.

The new, enlarged substation was planned to extend onto a contiguous parcel from the original site of the existing substation. The original substation was situated on a 0.4 acre parcel. Subsequently, respondents acquired an adjacent 1.5 acre parcel and, during the proceedings at the administrative level, acquired another 0.9 acre adjoining parcel. The record reflects that all three parcels are contiguous with each other. Petitioners assert in their brief that because the parcels never were "legally combined," the Baltimore County ordinance required respondent to obtain a variance to use the three parcels as one parcel. Respondent asserts that it since has caused the three lots to be combined by a resubdivision. Petitioner alleges that this was done improperly. If, in fact, it was done improperly, that is a matter for another day.[4] We are concerned here only with the applicability of the zoning ordinance's variance provisions and not Baltimore County subdivision regulations.

RESOLUTION

We again note that in this case we are concerned only with the issue of the variance.

---

[4] We often have held that subdivision is not zoning. In most jurisdictions, including Baltimore County, subdivision regulations are enacted and codified separately. We did state in our recent case of *Wesley Chapel Bluemount Ass'n v. Baltimore County*, 347 Md. 125, 699 A.2d 434 (1997), that planning and subdivision matters were in the nature of zoning for the purposes of the State Open Meetings Act. That opinion was based on our perception that the Legislature intended planning and subdivision processes to be considered as zoning *under that Act*. *See generally id.* Our opinion on that matter in that case was meant to apply only to Open Meetings Act concerns, and was not meant to be of general application changing, as Judge Eldridge discussed in his dissent, the holdings of "numerous opinions of this Court which have drawn a sharp distinction between 'planning' and 'zoning.' The approval or disapproval of a development plan is simply not a 'zoning matter.' " *Id.* at 151, 699 A.2d at 447. The holding in *Wesley Chapel* is limited to the context of the Open Meetings Act.

BGE proposes to add a second transformer to the substation to meet the additional expected demand. (T. 10/04/94, p. 105) (T. 1/10/95, pp. 28, 65)

In considering the issue of necessity, the Board must keep an important point in mind. As a public utility company, BGE is required, under its franchise agreement with the State of Maryland, to supply its customers with adequate and reliable electric service regardless of the circumstances. (T. 10/04/94, pp. 108-110, 157-158) BGE must be prepared to meet whatever demand occurs, even if that demand actually happens to be *higher* than expected. (T. 10/04/94, p. 108-110) (T. 1/10/95, p. 75) Therefore, BGE is acting reasonably and responsibly in preparing to meet future demand and is asking the Board to approve both phases of this special exception. Based on all the evidence and testimony presented during the hearings, this Board should find that, in accordance with Section 411.1, BGE has proved that both the Phase One expansion and the Phase Two expansion are necessary for the proper rendition of electric service to its customers.[3/]

As further required by Section 411.1, BGE produced substantial evidence through its expert witnesses that the proposed use will not seriously impair the use of neighboring properties. As Walter A. Reiter, Jr., expert appraiser, testified, because the plan provides for adequate screening by the surrounding woods and additional landscaping and planting, the

---

3/ The evidence and testimony presented by BGE was not rebutted by any credible evidence presented by the Protestants. To rebut "necessity," the Protestants offered only the testimony of Mr. Ronald P. Hanley, who admittedly has no experience or training in estimating the demands that are placed on public utility companies. Further, Mr. Hanley based his lay opinion that expansion of the substation is not necessary on the County's transportation zone maps. However, the representative from the Office of Planning, Pam Budesheim, openly admitted that this map has no correlation to the number of people or units contained in Ivy Hill's service area. (T. 1/17/95, Part One, p. 46) Further, Mr. Hanley calculated need based upon 16.6 megawatts, rather than actual current demand for the service area, which is 20.1 megawatts. Therefore, it is obvious that the very basis for Mr. Hanley's opinion is fundamentally flawed.

The Plaintiffs, People's Counsel for Baltimore County, Maryland, Baltimore County, Lynne Lombardi and Andrew Jones, have filed an appeal (86-CG-22) from the Board's ruling naming the Everings as party defendants. Subsequently, a complaint was filed to obtain a declaratory judgment (86-CG-240) regarding the applicability of the State Aviation Administration Regulations, Chapters 11.03.05 and 11.03.06, Code of Maryland Regulations, and the Chesapeake Bay Critical Areas Law, Natural Resources Article, Title 8, Subtitle 18, Annotated Code of Maryland, to the Everings request for special exception. The Plaintiffs have named the Everings and the State Aviation Administration parties defendant to this declaratory action. The Maryland Department of State Planning has intervened as co-defendants in the action for declaratory judgment.

This Court will first discuss the motion for declaratory judgment and then rule on the appeal.

I. Motion for Declaratory Judgment.

Defendants contend the Plaintiffs do not have sufficient interest in this matter to give them standing and that the Circuit Court for Baltimore County lacks subject matter jurisdiction.

A. Lack of Standing

The Maryland Uniform Declaratory Judgment Act, Courts and Judicial Proceedings Article, Title 3, Subtitle 4, gives the Maryland courts authority to render a declaratory judgment in appropriate cases. The Act provides "[a]ny person...whose rights, status, or legal relations are affected by a statute,

municipal ordinance, administrative rule or regulation,...contract, or franchise [can] obtain a declaration of rights status or other legal relations under it." Courts and Judicial Proceedings Article, Section 3-406 (An. Code 1957, art. 31A, Section 2; 1973, 1st Sp. Sess., ch. 2, Section 1; 1976, ch. 915, Section 4.). Section 3-409(a), Discretionary relief, provides a court may grant a declaratory judgment or decree if: "(1) [a]n actual controversy exists between contending parties; (2) [a]ntagonistic claims are present between parties involved which indicate imminent and inevitable litigation; or (3) [a] party asserts a legal relation, status, right, or privilege and this is challenged or denied by an adversary party, who also has or asserts a concrete interest in it." Courts and Judicial Proceedings Article, Section 3-409.

This Court does not believe the Plaintiffs have demonstrated a legally cognizable interest in this matter. The applicability of the State Aviation Administration's zoning regulations is a matter between the Everings and the State Aviation Administration. This Court does not see where the Plaintiffs in this case would have a greater interest in upholding the Aviation zoning regulations than the Administration would. The State Aviation Administration even stated during argument that the regulations did not apply in this case.

As to the applicability of the Chesapeake Bay Critical Areas Law, the individual Plaintiffs lack a real and substantial interest different from any member of the public. Lombardi

resides some distance away from the Evering's marina and Jones has not shown any substantial interest being affected. Thus, the individual Plaintiffs lack standing to bring this motion for declaratory judgment.

B. This Court Lacks Subject Matter Jurisdiction

More important than the Plaintiffs' lack of standing is this Court's lack of subject matter jurisdiction over their motion for declaratory judgment. Section 3-409(b) of the Declaratory Judgment Act specifically provides that:

> "If a statute provides a special form of remedy for a specific type of case, that statutory remedy shall be followed in lieu of proceeding under this subtitle."

Courts and Judicial Proceedings Article, Section 3-409(b). Section 5-507 of the Maryland Transportation Article authorizes applicants to appeal to the Maryland Department of Transportation's Board of Airport Zoning Appeals. This Court believes the Board of Airport Zoning Appeals to be the appropriate forum for an appeal from the Board's ruling on the applicability of the State Aviation Administration Zoning Regulations.

This Court also lacks subject matter jurisdiction because the issues raised are the subject of another proceeding. There is still an appeal pending before the Board of Zoning Appeals. In Haynie v. Gold Bond Building Products, (Court of Appeals, No. 26, September Term, 1985, Filed July 11, 1986; See Daily Record, July 31, 1986), the Court of Appeals did not allow the use of a declaratory judgment to resolve an issue when another action is pending where the same issue can be resolved. Id. at 11. The Court stated in dicta that a declaratory judgment

may be appropriate in "very unusual and compelling circumstances." Id. at 12. The Plaintiffs here have not shown "very unusual or compelling circumstances."

Furthermore, the Court of Appeals has reasoned that the use of a declaratory judgment to invalidate a ruling of the Board of Appeals that is subject to direct appeal would be inappropriate. See, Hamilton v. McAuliffe, 277 Md. 336, 342 (1976) (quoting Ferititta v. Brown, 252 Md. 594, 599-600 (1969): "[d]eclaratory proceedings were not intended to and should not serve as a substitute for appellate review.").

Accordingly, this Court hereby denies the Plaintiffs' Motion for Declaratory Judgment.

II. On Appeal

In regard to the appeal the Plaintiffs have filed in this matter (86-CG-22), this Court believes it to be premature. Section 12-301, Right of appeal from final judgments, Courts and Judicial Proceedings Article, gives the right to appeal from a final judgment. The Court of Appeals has held that an appealable judgment is one that is so final as to determine or conclude the rights of the parties involved, or deny the appellant further means of defending their rights and interest in that proceeding. See, Cant v. Bartlett, 292 Md. 611, 614 (1982). The purpose of this provision is to prohibit piecemeal disposition of litigation. Jolley v. State, 282 Md. 353, 355 (1978).

In this case, the Plaintiffs have only appealed the Board's ruling on the applicability of the Aviation Zoning Regulations

and the Critical Areas Law, the remaining portion of the case is still pending before the Board. The Board has also affirmed the Zoning Commissioner's ruling on the applicability of the Chesapeake Bay Critical Areas Legislation. They have not affirmed the granting of the Evering's special exception. For these reasons, this Court does not believe the Board of Zoning Appeals has issued a final determination of the rights of the parties. To allow an appeal of the Board's ruling, at this time, would encourage piecemeal litigation, thus imposing an increased burden on the judicial system and the parties.

Accordingly, this Court grants the Defendants' Motion to Dismiss the Plaintiffs' Petition for Appeal. Costs to be paid by the Plaintiffs, apportioned equally.

James S. Sfekas.

JUDGE JAMES S. SFEKAS

Dated: August 7, 1986.

Copies to:
Peter Max Zimmerman
Judith A. Armold
Peter W. Taliaferro
T. Rodgers Harrison
Thomas J. Bollinger
John B. Gontrum
Court File

proposed use will not seriously impair the use of the surrounding properties. (T. 1/12/95, p. 138)

Mr. George S. Gavrelis, expert land planner and former Director of the Office of Planning and Zoning, also concluded that, because the proposed expansion of the substation would not have an adverse impact on the health, safety, and general welfare of the locality or on any other aspect of residential life, the proposed use will not seriously impair the use of the neighboring properties as residential properties. (T. 1/12/95, pp. 89-101) This conclusion was further supported by Monica McGrady, the engineer who designed the proposed substation. (T. 10/04/95, p. 44)

That the community prefers not to have a substation in their neighborhood is not a sufficient reason to overcome the solid and rational evidence presented by BGE. Their preference not to have a substation in their neighborhood is, in fact, ironic given that, while these neighbors are recent arrivals, the substation has been operating in this location for close to forty years. As the Zoning Commissioner found below,

> [t]his matter appears to be a case of the most recent residents of the community objecting to a use which has been in the locale for many years....Clearly, the Protestants were aware of the long history of this use when their homes were built and on legal notice of BG&E's intentions.

Findings of Fact and Conclusions of Law of Zoning Commissioner, dated June 24, 1994. Because BGE presented sufficient evidence demonstrating that the proposed use would not seriously impair the use of the neighboring properties, this Board should find that no such impairment will occur.

IN THE MATTER OF THE APPLICATION OF JOSEPH F. EVERING, JR., ET UX FOR SPECIAL EXCEPTION FOR A BOAT YARD, SPECIAL HEARING TO AMEND SITE PLAN AND VARIANCES FROM SEC. 409.2.c(2), 409.2.b and 417.5(a) OF THE BCZR N/S CHESTER RD., 590' W. OF SEVERN RD. (800 CHESTER RD.) 15th DISTRICT	:	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW
PHYLLIS C. FRIEDMAN, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, PLAINTIFF	:	CG Doc. No. 19 Folio No. 117 File No. 86-CG-0022
MALCOLM F. SPICER, JR., ESQ., and THOMAS J. BOLLINGER, ESQ., ATTORNEYS FOR BALTIMORE COUNTY, PLAINTIFF	:	
ZONING FILE NO. 85-65-XSPHA	:	

CERTIFIED COPIES OF PROCEEDINGS BEFORE THE ZONING COMMISSIONER AND THE BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Lawrence E. Schmidt, Keith S. Franz and Diana K. Vincent, constituting the County Board of Appeals of Baltimore County, and in answer to the Orders for Appeal directed against them in this case, herewith return the record of proceedings had in the above entitled matter, consisting of the following certified copies or original papers on file in the office of the Zoning Department of Baltimore County:

ZONING ENTRIES FROM DOCKET OF ZONING COMMISSIONER OF BALTIMORE COUNTY

Case No. 85-65-XSPHA

August 6, 1984	Petitions of Joseph F. Evering, Jr., for special hearing to approve an amendment to the site plan in Case No. 64-57-SPH, 64-160-X and 35-35-X, to construct an addition to the piers, etc.; for variances from Sec. 409.2.c(2) to allow existing compacted stone in lieu of req. macadam paving, 409.2.b to allow 318 pkg. spaces in lieu of 384, etc.; and special exception for 2 lots in a D.R. 5.5 zone to be used as a boat yard.

August 6, 1984	Order of Zoning Commissioner directing advertisement and posting of property, date of hearing set for Sept.10,'84.
August 18	Certificate of Posting of Property - filed
August 23	Certificate of Publication in newspaper - filed
September 4	Comments of Baltimore County Zoning Plans Advisory Committee - filed
September 7	Comments of Baltimore County Director of Planning - filed
September 10	At 1:30 p.m. hearing held on petitions by Zoning Commissioner.
May 10, 1985	Order for Appeal to County Board of Appeals from Order of Zoning Commissioner by People's Counsel for Baltimore County
May 20	Order for Appeal to C.B. of A. from Order of Zoning Commissioner by Robert J. Romadka, Esq., counsel for Petitioners.
May 20	Order for Appeal to C.B. of A. from Order of Zoning Commissioner by T. Rogers Harrison, Esq., on behalf of Protestants, Ken Engelke, et al.
May 20	Order for Appeal to C.B. of A. from Order of Zoning Commissioner by Norman E. Gerber, Director, Office of Planning & Zoning.
October 29	Hearing on ~~appeals~~ before County Board of Appeals
December 12	Ruling on Motion by the Board of Appeals majority states that the Chesapeake Bay Critical Area Protection Program is not applicable to the proposed petition; Dissent on Ruling on Motion states that the Board member would deny Petitioner's Motion and hold that the provisions of Sec. 8-1801 et seq of Natural Resources Article of the Annotated Code of Maryland are applicable to the petitions in this matter.
January 3, 1986	Order for Appeal filed in the Circuit Ct. for Balto. County by People's Counsel for Balto. County.
January 3	Petition to accompany Order for Appeal filed in the Circuit Ct. for Baltimore County
January 10	Order for Appeal filed in the Circuit Ct. for Baltimore County by Malcolm F. Spicer, Jr., and Thomas J. Bollinger, Esq., County Attorneys for Baltimore County.

January 13, 1986 — Certificate of Notice sent to all interested parties.

January 21, — Petition to accompany order for appeal filed in the Circuit Court for Baltimore County.

February 3, — Transcript of testimony - filed

Exhibit - Zoning Commissioner's file and exhibits

Exhibits on Motion - 1st day

Petitioner's Exhibit No. 1 - Plat to accompany petition for pier extension

" " " 2 - Plat to accompany petition for special exception, special hearing, and variances

" " " 3 - Copy of receipt #123264 for the amt. of $100 for item #166.

" " " 4 - Zoning Commissioner's file

" " " 5 - Petition for Zoning Variance, undated

" " " 6 - Copy of receipt #133200 for the amt. of $150 for item 166.

People's Counsel's Exhibit No. 1 - Series of letters from Baltimore County

" " " " 2 - Receipt (notice that the petition has been accepted for filing dated Aug. 6, 1984.

" " " " 3 - Memo to A. Jablon from Norman Gerber, Plan. & Zoning

" " " " 4 - Letter to M/M Evering from Eugene Bober, Planning & Develop.

Exhibits on 2nd hearing day:

Protestants' Exhibit No. 1 - List of Protestants

State Planning Dept.'s Exhibit No. 1 - Plat of Clear Zone for Martin Airport

" " " " " 2 - Regulations - Title II

February 3, 1986 Record of proceedings filed in the Circuit Court for Baltimore County

Record of proceedings pursuant to which said Order was entered and said Board acted are permanent records of the Zoning Department of Baltimore County and your respondents respectively suggest that it would be inconvenient and inappropriate to file the same in this proceeding, but your respondents will produce any and all such rules and regulations whenever directed to do so by this Court.

Respectfully submitted,

June Holmen

June Holmen
County Board of Appeals of Baltimore County

cc: John O. Hennegan, Esq.
Robt. J. Romadka, Esq.
T. Rogers Harrison, Esq.
Phyllis C. Friedman
Judith A. Armold
Malcolm Spicer, Jr., Esq.
Thomas J. Bollinger, Esq.

IN THE MATTER OF PETITIONS FOR SPECIAL EXCEPTION, SPECIAL HEARING, AND ZONING VARIANCES N/S of Chester Rd., 590' W of Severn Rd. (800 Chester Rd.), 15th Election District	*	IN THE CIRCUIT COURT
	*	FOR
	*	BALTIMORE COUNTY
	*	AT LAW
JOSEPH F. EVERING, JR., et ux. Petitioners	*	CG DOCKET NO. 86CG0022
		FOLIO NO.
Zoning Case No. 85-65-XSPHA	*	FILE NO.

*** *** *** *** *** *** *** *** * *** *** *** *** *** *** ***

MOTION TO DISMISS AND
ANSWER TO PETITION ON APPEAL

NOW COMES Joseph F. Evering, Jr., et ux, by John O. Hennegan, Donald E. Brand and ROMADKA, GONTRUM, HENNEGAN & FOOS, in answer to the Petition for Appeal states as follows:

1. That they deny the allegations contained in paragraphs 1, 2 and 3 of the Petition.

FIRST AFFIRMATIVE DEFENSE

The decision of the County Board of Appeals was an Interrlocutory Order and as a result the Appeal filed herein is premature.

GROUNDS FOR MOTION

1. The issues raised by the Appellants are interlocutory or preliminary in nature and are not a matter which determines all the issues both law and fact in the aboved captioned case. The resolution of these issues will

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

B. The Evidence Confirms that the Proposed Plan Complies with B.C.Z.R. Section 502.1.

In addition to proving that the proposed use is needed for the proper rendition of electricity to BGE's customers, BGE also proved that the proposed use complies with Section 502.1.

Health, Safety, and General Welfare of the Locality

The Protestants expressed concern over two primary issues, which fall under the ambit of health, safety, and general welfare of the locality. These two issues can be stated as a concern over the potential harm from electromagnetic fields ("EMFs") and a concern that the proposed use would lower property values in the neighborhood.

1. Electromagnetic Fields

Although the Protestants raised much speculation about the possible effect on the neighborhood, in terms of exposure to EMFs, from the proposed expansion of the substation, the expert testimony presented by BGE on the issue of EMFs was clear that the proposed plan would have *no* adverse impact because there would be *no* exposure at any of the surrounding homes to EMFs as a result of the expansion of the substation.

As Bonnie L. Johansen, an expert in industrial hygiene who specializes in electric and magnetic fields, testified, the average home has an EMF measurement in the range of .5 to 10 milligauss. (T. 1/10/95, pp. 90, 118) From the measurements she took of the existing substation and of substations similar in design and capacity to the proposed substation, Ms. Johansen concluded that any exposure at the property line of the proposed substation would be the same or less as the existing substation (between .5 and 2 milligauss depending on the distance from the equipment). (T. 1/10/95, pp. 92-97) This "exposure" is equal to or less

leave other issues of law and fact undetermined needing a final hearing resulting in a final order in which to conclude said matters.

2. The Interlocutory Order or subject matter appealed from is not matter which is specifically prescribed by statute as appealable nor a final judgment and as a result is not a posture by which this Court can make a judicial determination.

3. And for such other and further reasons as will be set forth at a hearing hereon.

WHEREFORE, the Appellees pray that the Petition on Appeal and the Notice of Appeal be dismissed and the ruling of the County Board of Appeals be affirmed with cost and attorney's fees to the Appellees.

John O. Hennegan

Donald E. Brand
ROMADKA, GONTRUM, HENNEGAN & FOOS
809 Eastern Boulevard
Baltimore, Maryland 21221
686-8274

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the aforegoing Answer to Petition on Appeal was mailed this 3 day of ~~January~~ Feb., 1986, to T. Rogers Harrison, Mudd, Harrison & Burch, 306 West Joppa Road, Towson, Maryland 21204, Attorneys for Ken Engelke,

et al., Protestants/Appellants; Phyllis Cole Friedman, People's Counsel for Baltimore County; Peter Max Zimmerman, Deputy People's Counsel, Room 223, Court House, Towson, Maryland 21204; Administrative Secretary, County Board of Appeals, Room 200, Court House, Towson, Maryland 21204; Judith A. Armold, Esquire, Assistant Attorney General, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201; Malcom F. Spicer, Jr., County Attorney, Office of Law, Mezzanine, Court House, Towson, Maryland 21204; and Peter W. Taliaferro, Assistant Attorney General, P.O. Box 8766, Baltimore/Washington International Airport, Baltimore, Maryland 21240-0766.

John O. Hennegan

MEMORANDUM OF POINTS AND AUTHORITIES

Courts Article 12-303, Annotated Code of Maryland

Eastgate Associates et al v. Apper, 350 A 2nd 661

Rule B1; Maryland Rules of Procedure

RECEIVED
COUNTY BOARD OF APPE
1991 FEB -6 A 10:5

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, MARYLAND	*	IN THE
and	*	CIRCUIT COURT
BALTIMORE COUNTY, MARYLAND a Body Corporate and Politic County Attorney	*	FOR
and	*	BALTIMORE COUNTY
LYNNE LOMBARDI	*	
and	*	CASE NO.: 86CG240
ANDREW JONES	*	Docket No.: 20
Plaintiffs	*	Folio No.: 10
vs.	*	
JOSEPH F. EVERING, JR. and CATHERINE L. EVERING	*	
and	*	
STATE AVIATION ADMINISTRATION	*	
Serve On: Stephen H. Sachs, Attorney General	*	
Defendants	*	

*** *** *** *** *** *** *** *** * *** *** *** *** *** *** ***

MOTION TO DISMISS AND ANSWER TO COMPLAINT FOR DECLARATORY JUDGMENT

Defendant, Joseph F. Evering, Jr. and Catherine L. Evering by John O. Hennegan and ROMADKA, GONTRUM, HENNEGAN & FOOS move for Dismissal and file this Answer to the Complaint for Declaratory Judgment and state as their reasons therefore, the following:

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

1. That they admit the allegations contained in paragraphs 5, 10, 12, 13 and 14 of the Complaint for Declaratory Judgment.

2. That they deny the allegations contained in paragraphs 1, 2, 7, 8, 9, 11 (a) and (b), 15, and 16 of the Complaint for Declaratory Judgment.

3. They neither admit nor deny the allegations contained in paragraphs 3, 4 and 6 of the Complaint for Declaratory Judgment.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a cause of action upon which relief can be granted.

2. That the Court lacks jurisdiction over the subject matter.

3. The Plaintiffs have failed to exhaust their administrative remedies and therefore relief cannot be granted until such an event occurrs.

4. This action involves the same parties, the same subject matter and the same issues as an action which has been appealed from the Board of Appeals for Baltimore County and therefore is res judicata.

GROUNDS FOR MOTION

1. The Complaint makes a Request for Relief from questions of law and fact which remedy has been provided by statute before an administrative agency. Since the requested action does not involve a constitutional question or involve a question for which there is no statutory remedy, the relief must be sought initially from an administrative agency and such remedy must be exhausted before court action can be resorted to.

2. The Court lacks jurisdiction over the subject matter since the subject matter is presently pending before this very Court on appeal from the Board of Appeals from Baltimore County and that the relief requested by the Plaintiffs can be disposed of appropriately in the processing of said appeal.

WHEREFORE, Defendant, Joseph F. Evering, Jr. and Catherine L. Evering pray that the relief requested and the Complaint for Declaratory Judgment be denied and the Complaint for Declaratory Judgment be dismissed with cost to be paid by the Plaintiffs and reasonable attorney's fees to be awarded to the Defendant.

John O. Hennegan
ROMADKA, GONTRUM, HENNEGAN & FOOS
809 Eastern Boulevard
Baltimore, Maryland 21221
686-8274

RECEIVED
COUNTY BOARD OF APPEALS
1990 FEB -6 A 10: 52

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

than that to which the average American is exposed in their home. (T. 1/10/95, pp. 90, 118) Ms. Johansen further noted that no federal, state, or local exposure limits to EMFs have been established. (T. 1/10/94. p. 91)

Taking into consideration Ms. Johansen's measurements, Dr. Linda S. Erdreich, environmental scientist and expert epidemiologist, concluded that no risk to health would result from the proposed substation. (T. 1/10/95, pp. 146-148, 150-151) (T. 1/12/95, p. 30) The EMF levels would be so low as to be considered no exposure at all. (T. 1/10/95, pp. 146-151) (T. 1/12/95, p. 30) In further explaining the findings with respect to EMFs generally, Dr. Erdreich further testified that there are no known health effects even from exposure to levels of EMFs up to 1000 milligauss. (T. 1/10/95, pp. 177-181) Nor are there any cumulative effects from exposure to low levels of EMFs. (T. 1/10/95, p. 172)

It is interesting to note that the Protestant's own expert on EMFs, Dr. Zory R. Glaser, did not testify contrary to the findings of no adverse effects under the circumstances of this case. In fact, when asked directly by one of the Board members, Mr. Schuetz, Dr. Glaser was unable to provide even an estimate for a threshold at which there is an increased health risk associated with EMFs. (T. 1/19/95, pp. 89-94).

2. Property Values

The Protestants were also very vocal at the hearings about their fears that expansion of the Ivy Hill substation would have a negative impact of their property values. As with the EMFs, the only credible evidence in this case as to property values, that of BGE's expert, Walter A. Reiter, Jr., certified appraiser, proves that these fears are unfounded.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the aforegoing Motion to Dismiss and Answer to Complaint for Declaratory Judgment was mailed this 3 day of Feb., 1986, to Malcom F. Spicer, Jr., County Attorney, 20 Dixie Drive, Towson, Maryland 21204; Phyllis Cole Friedman, People's Counsel for Baltimore County, and Peter Max Zimmerman, Deputy People's Counsel, Room 223, Court House, Towson, Maryland 21204; Thomas J. Bollinger, Assistant County Attorney, Office of Law, Mezzanine, Court House, Towson, Maryland 21204; T. Rogers Harrison and Mudd, Harrison & Burch, 306 West Joppa Road, Towson, Maryland 21204, Attorneys for Lynne Lombardi and Andrew Jones, Plaintiffs; Peter W. Taliaferro, Assistant Attorney General, P.O. Box 8766, Baltimore/Washington International Airport, Baltimore, Maryland 21240-0766; and Judith Armold, Attorney General's Office, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201-2365.

John O. Hennegan

STATEMENT OF POINTS AND AUTHORITIES

Maryland Rule 2-322 and 2-323.

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, MARYLAND	*	IN THE
and	*	CIRCUIT COURT
BALTIMORE COUNTY, MARYLAND a Body Corporate and Politic County Attorney	*	FOR
and	*	BALTIMORE COUNTY
LYNNE LOMBARDI	*	
and	*	CASE NO.: 86CG240
ANDREW JONES	*	Docket No.: 20
Plaintiffs	*	Folio No.: 10
vs.	*	
JOSEPH F. EVERING, JR. and CATHERINE L. EVERING	*	
and	*	
STATE AVIATION ADMINISTRATION	*	
Serve On: Stephen H. Sachs, Attorney General	*	
Defendants	*	

*** *** *** *** *** *** *** *** * *** *** *** *** *** *** ***

RESPONSE TO MOTION
FOR PARTIAL SUMMARY DECLARATORY JUDGMENT

Joseph F. Evering, Jr. and Catherine L. Evering pursuant to Rule 2-501 respond to the Motion for Partial Summary Judgment and states as their reasons therefor the following:

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

1. The Defendants incorporate herein by reference its statements and answers contained in their Motion to Dismiss and Answer to Complaint for Declaratory Judgment.

2. That the Defendants deny that they are subject to the state critical areas legislation since the relief requested was filed prior to March 1, 1984 before the Zoning Commissioner for Baltimore County. Further deny that the Plaintiffs are entitled to a Declaration of their rights concerning the critical areas statutes since they have failed to exhaust their administrative remedies. Further, the Defendants claim that this Court is without jurisdiction of the subject matter to make any decisions or judgments herein.

3. That Maryland Rule 2-501 (a) requires that a Motion for Summary Judgment shall be supported by an Affidavit if filed before the day on which the adverse party's initial pleading or motion is filed and therefor the Motion for Partial Summary Declaratory Judgment is not a posture in which this Court can make a decision and the Plaintiffs have failed to comply with the Maryland Rules of Procedure as a result the Motion should be dismissed.

4. Therefore, the Plaintiffs are not entitled to judgment as a matter of law.

WHEREFORE, the Defendants, Joseph F. Evering, Jr. and Catherine L. Evering pray that the Motion for Partial Declaratory Judgment be dismissed with cost and reasonable attorney's fees being awarded to said Defendants.

John O. Hennegan
ROMADKA, GONTRUM, HENNEGAN & FOOS
809 Eastern Boulevard
Baltimore, Maryland 21221
686-8274

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the aforegoing Motion to Dismiss and Answer to Complaint for Declaratory Judgment was mailed this 3 day of Feb., 1986, to Malcom F. Spicer, Jr., County Attorney, 20 Dixie Drive, Towson, Maryland 21204; Phyllis Cole Friedman, People's Counsel for Baltimore County, and Peter Max Zimmerman, Deputy People's Counsel, Room 223, Court House, Towson, Maryland 21204; Thomas J. Bollinger, Assistant County Attorney, Office of Law, Mezzanine, Court House, Towson, Maryland 21204; T. Rogers Harrison and Mudd, Harrison & Burch, 306 West Joppa Road, Towson, Maryland 21204, Attorneys for Lynne Lombardi and Andrew Jones, Plaintiffs; Peter W. Taliaferro, Assistant Attorney General, P.O. Box 8766, Baltimore/Washington International Airport, Baltimore, Maryland 21240-0766; and

RECEIVED
COUNTY BOARD OF APPE
1986 FEB -6 A 10: 5

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

Judith Armold, Attorney General's Office, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201-2365.

John O. Hennegan

MEMORANDUM OF POINTS AND AUTHORITIES

Maryland Rule 2-501.

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

According to his analysis of the effect of the proposed substation, Mr. Reiter concluded that the proposed use would have no adverse effect on property values in the neighborhood. (T. 1/12/95, pp. 137-139, 140) Mr. Reiter further concluded that the proposed use would not impair the use of the neighboring properties. (T. 1/12/95, p. 138) Mr. Reiter based his conclusions on the improvements being centered on the three tracts and the wooded areas being preserved to the greatest extent possible, which, in combination with the additional landscaping and planting, would provide a substantial screen and buffer from the rest of the neighborhood. (T. 1/12/95, pp. 138-139) Mr. Reiter also noted that the neighborhood might actually benefit from the proposed use because, under the plan, the overhead electric lines will be buried underground from Falls Road to the proposed substation, improving the general appearance of the neighborhood. (T. 1/12/95, pp. 138-139)

3. Summary of Health, Safety, and General Welfare

Ultimately, BGE produced overwhelming evidence from credible expert witnesses to demonstrate that the proposed use would not have any adverse impact on the health, safety, and general welfare of the community. George S. Gavrelis, expert land planner, wholly concurred with this conclusion, citing the large site, the plan's retention of much of the surrounding woods, the excellent screening of the equipment, and the many safety components of the plan. (T. 1/12/95, pp. 89-91)

Traffic Congestion

Monica McGrady, an expert in electrical substation engineering and construction and the engineer responsible for the design of the proposed expansion of the Ivy Hill substation, testified that the proposed use would not result in increased traffic or congestion in the roads.

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, MARYLAND, et al.,	:	IN THE CIRCUIT COURT
	:	FOR BALTIMORE COUNTY
Plaintiffs	:	No. 86CG2240
v.	:	
JOSEPH F. EVERING, JR., et al.,	:	
	:	
Defendants		

: : : : : : :

MOTION FOR PARTIAL SUMMARY DECLARATORY JUDGMENT

Plaintiffs, pursuant to Rule 2-501, move for partial summary declaratory judgment on the following grounds:

1. Plaintiffs incorporate by reference the facts alleged in the Complaint, and the attached exhibits.

2. Plaintiffs further refer to the transcript of the evidentiary hearing before the County Board of Appeals in Case No. 86CG0022, which appealed case is the subject of a Motion for Consolidation filed simultaneously herewith.

3. There is no genuine dispute as to any material fact.

4. Beyond these facts, the Plaintiffs are entitled to a Declaration or Rights that the State Critical Areas Legislation is applicable to the subject petitions.

WHEREFORE, Plaintiffs pray that the Court enter partial summary declaratory judgment declaring the said State Critical Areas Legislation to be applicable to the petitions for variance, special exception and special hearing filed by Joseph F. Evering and Catherine L. Evering in Case No. 86CG0022.

Malcolm F. Spicer, Jr.
County Attorney

Phyllis Cole Friedman
People's Counsel for Baltimore County

Thomas J. Bollinger
Assistant County Attorney
Office of Law, Mezzanine
Court House
Towson, Maryland 21204
494-4420

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

T. Rogers Harrison and
Mudd, Harrison & Burch
306 West Joppa Road
Towson, Maryalnd 21204
828-1335
Attorneys for Lynne Lombardi and
Andrew Jones, Protestants/Plaintiffs

STATEMENT OF POINTS AND AUTHORITIES

1. The declaratory judgment procedure is appropriate. Md. Ann. Code CJ Article Section 3-401, et seq.; See Lohrmann v. Arundel Corporation, 65 Md. App. 309, 500 A.2d 344 (1985).

2. The Critical Areas Legislation does apply. Md. Ann. Code NR Article Section 8-1813; Rule II of the Rules of Practice and Procedure of the Zoning Commissioner of Baltimore County.

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et al.,	:	IN THE CIRCUIT COURT
	:	FOR BALTIMORE COUNTY
Plaintiffs	:	
v.	:	~~ESP~~ No. 86CG240
JOSEPH F. EVERING, JR., et al.,	:	
Defendants	:	

: : : :

T. Rogers Harrison

T. Rogers Harrison and
Mudd, Harrison & Burch
306 West Joppa Road
Towson, Maryland 21204
828-1335
Attorneys for Lynne Lombardi and
Andrew Jones, Protestants/Plaintiffs

I HEREBY CERTIFY that on this 21st day of January, 1986, a copy of the foregoing Motion for Consolidation was mailed to John O. Hennegan, Esquire, and Robert J. Romadka, Esquire, 809 Eastern Boulevard, Essex, MD 21221; Judith A. Arnold, Esquire, Assistant Attorney General, Dept. of State Planning, 301 W. Preston Street, Baltimore, MD 21201; and a copy was delivered to the Administrative Secretary, County Board of Appeals, Room 200, Court House, Towson, MD 21204.

Peter Max Zimmerman

Peter Max Zimmerman

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et al.,	:	IN THE CIRCUIT COURT
	:	FOR BALTIMORE COUNTY
Plaintiffs	:	
v.	:	No. 86CG240
JOSEPH F. EVERING, JR., et al.,	:	
Defendants	:	

: : : : : : :

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of January, 1986, I served upon Joseph F. Evering, Jr. a copy of the Complaint for Declaratory Judgment, Motion for Partial Summary Declaratory Judgment, and Motion for Consolidation in the above-captioned matter.

Shirley M. Hess

Shirley M. Hess, Legal Assistant
People's Counsel for Baltimore County
Room 223, Court House
Towson, Maryland 21204
494-2188

(T. 10/04/94, pp. 106-108) The substation is designed to operate automatically and is unmanned with the exception of weekly visits by a single employee. (T. 10/04/94, pp. 40, 90)

Mr. Gavrelis also concluded that, because the proposed use would not generate traffic, the proposed use would not result in additional traffic or congestion in the roads. (T. 1/12/95, p. 94) This conclusion was further confirmed by the Protestant's own expert land planner, Norman E. Gerber. (T. 1/19/95, p. 169)

Potential Hazard from Fire, Panic, or Other Dangers

Ms. McGrady, the engineer responsible for the design of the proposed expansion of the Ivy Hill substation, testified as to the safety features of the substation, and it was her expert opinion, based upon her experience, that the proposed use will not present a potential hazard from fire, panic, or other dangers. (T. 10/04/94, pp. 40-41, 70-73) Mr. Gavrelis similarly testified that, due to the safety equipment built into the substation, in his opinion there is no danger of fire or other dangers. (T. 1/12/95, pp. 93-94)

The Protestants' fear that the proposed substation will create a potential for fires amounts to pure conjecture and speculation, wholly unsupported by any valid evidence of an increased risk. (T. 1/17/95, Part Two, p. 77, 102-105)

Overcrowding of Land or Undue Concentration of Population

Mr. Gavrelis testified, in his expert opinion, that the proposed substation would not overcrowd the land or cause undue concentration of population. (T. 1/12/95, p. 95) In stating this conclusion, Mr. Gavrelis noted that the total site is approximately 2.9 acres and that the area of actual improvements (.45 acres) is minimal in comparison. (T. 1/12/95, p.

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et al.,	:	IN THE CIRCUIT COURT
	:	FOR BALTIMORE COUNTY
Plaintiffs	:	
v.	:	No. 86CG240
JOSEPH F. EVERING, JR., et al.,	:	
Defendants	:	

: : : : : : :

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of January, 1986, I served upon Catherine L. Evering a copy of the Complaint for Declaratory Judgment, Motion for Partial Summary Declaratory Judgment, and Motion for Consolidation in the above-captioned matter.

Shirley M. Hess

Shirley M. Hess, Legal Assistant
People's Counsel for Baltimore County
Room 223, Court House
Towson, Maryland 21204
494-2188

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et al.,	:	IN THE CIRCUIT COURT
	:	FOR BALTIMORE COUNTY
Plaintiffs	:	
v.	:	No. 86CG240
JOSEPH F. EVERING, JR., et al.,	:	
Defendants	:	

: : : : : : :

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of January, 1986, I served upon Peter W. Taliaferro, Assistant Attorney General, Counsel to the State Aviation Administration a copy of the Complaint for Declaratory Judgment, Motion for Partial Summary Declaratory Judgment, and Motion for Consolidation in the above-captioned matter.

Shirley M. Hess

Shirley M. Hess, Legal Assistant
People's Counsel for Baltimore County
Room 223, Court House
Towson, Maryland 21204
494-2188

IN THE MATTER OF PETITIONS FOR SPECIAL EXCEPTION, SPECIAL HEARING, AND ZONING VARIANCES N/S of Chester Rd., 590' W of Severn Rd. (800 Chester Rd.), 15th Election District	:	IN THE CIRCUIT COURT
	:	FOR BALTIMORE COUNTY
	:	AT LAW
JOSEPH F. EVERING, JR., et ux, Petitioners	:	CG Docket No. 19 Folio No. 117 File No. 86-CG0022
Zoning Case No. 85-86 XSPHA	:	

. . . . . .

PETITION ON APPEAL

Baltimore County, Maryland, by Malcolm F. Spicer, Jr., County Attorney, and Thomas J. Bollinger, Assistant County Attorney, having heretofore filed in October an Appeal in the above entitled case files this Petition and states:

1. Baltimore County, Maryland hereby adopts and incorporates herein the Petition on Appeal filed on behalf of People's Counsel.

WHEREFORE, Appellant prays that the Ruling on Motion of the Board of Appeals be reversed.

/S/
MALCOLM F. SPICER, JR.
County Attorney

/S/
THOMAS J. BOLLINGER
Assistant County Attorney
Courthouse, 2M07
Towson, Maryland 21204 494-4420

RECEIVED
COUNTY BOARD OF APPEALS
1986 JAN 24 A 10: 00

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of January, 1986, a copy of the aforegoing Petition on Appeal was served on the Administrative Secretary, County Board of Appeals, Room 200, Courthouse, Towson, Maryland 21204; a copy mailed to John O. Hennegan, Esquire and Robert J. Romadka, Esquire, 809 Eastern Boulevard, Essex, Maryland 21221; Judith A. Arnold, Assistant Attorney General, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201; and Peter Max Zimmerman, Deputy People's Counsel, Room 223, Courthouse, Towson, Maryland 21204.

/S/
THOMAS J. BOLLINGER
Assistant County Attorney

IN THE MATTER OF THE APPLICATION OF JOSEPH F. EVERING, JR., ET UX FOR SPECIAL EXCEPTION FOR A BOAT YARD, SPECIAL HEARING TO AMEND SITE PLAN AND VARIANCES FROM SEC. 409.2.c(2), 409.2.b and 417.5(a) OF THE BCZR N/S CHESTER RD., 590' W. OF SEVERN RD. (800 CHESTER RD.) 15th DISTRICT	:	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW CG Doc. No. 19
PHYLLIS C. FRIEDMAN, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, PLAINTIFF	:	Folio No. 117 File No. 86-CG-0022
MALCOLM F. SPICER, JR., ESQ., AND THOMAS J. BOLLINGER, ESQ., ATTORNEYS FOR BALTIMORE COUNTY, PLAINTIFF	:	
FILE NO. 85-65-XSPHA	:	

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, Lawrence E. Schmidt, Keith S. Franz and Diana K. Vincent, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, John O. Hennegan, Esq. and Robert J. Romadka, Esq., 809 Eastern Blvd., Essex, Md. 21221, Counsel for Petitioners; T. Rogers Harrison, Esq., 306 W. Joppa Rd., Towson, Md. 21204, Counsel for Protestants; Judith A. Armold, Assistant Attorney General, Department of State Planning, 301 W. Preston St., Baltimore, Md. 21201; Phyllis C. Friedman, Court House, Towson, Md. 21204, People's Counsel for Baltimore County; and Malcolm F. Spicer, Jr., Esq. and Thomas J. Bollinger, Esq., Mezzanine, Court House, Towson, Md. 21204, County Attorneys for Baltimore County, Maryland, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

June Holmen

June Holmen
County Board of Appeals of Baltimore County
Rm. 200, Court House, Towson, Md. 21204
494-3180

I HEREBY CERTIFY that a copy of the aforegoing Certificate of Notice has been mailed to John O. Hennegan, Esq. and Robert J. Romadka, Esq., 809 Eastern Blvd., Essex, Md. 21221, Counsel for Petitioners; T. Rogers Harrison, Esq., 306 W. Joppa Rd., Towson, Md. 21204, Counsel for Protestants; Judith A. Armold, Assistant Attorney General, Department of State Planning, 301 W. Preston St., Baltimore, Md. 21201; Phyllis C. Friedman, Court House, Towson, Md. 21204, People's Counsel for Baltimore County; and Malcolm F. Spicer, Jr., Esq. and Thomas J. Bollinger, Esq., Mezzanine, Court House, Towson, Md. 21204, County Attorneys for Baltimore County, Maryland, on this 13th day of January, 1986.

June Holmen

June Holmen
County Board of Appeals of Baltimore County

95) Additionally, Mr. Gavrelis noted that, according to B.C.Z.R. Section 306, there is no minimum lot requirement for transformer stations. (T. 1/12/95, pp. 106-108) Even so, the property's size exceeds the minimum lot size required in an RC-5 zone by a factor of three. Therefore, the proposed use is an unintensive use of the land. (T. 1/12/95, p. 95) Mr. Gavrelis further recognized that population is not an issue in that the station is unmanned. (T. 1/12/95, p. 95)

Adequate Provisions for Schools, Parks, Etc.

Mr. Gavrelis concluded that, because BGE is not a consumer of these services, the proposed use would not interfere with the adequate provision of these services. (T. 1/12/95, pp. 95-96) Mr. Gerber, Protestant's expert, testified in agreement with this conclusion of no impact. (T. 1/19/95, p. 171)

Interference with Adequate Light and Air

Mr. Gavrelis likewise testified that the proposed Ivy Hill substation would not interfere with adequate light and air. (T. 1/12/95, pp. 96-97) His conclusion was based on the fact that the use will be unintensive in terms of height of equipment and use of the land. (T. 1/12/95, pp. 95-96) Mr. Gerber, Protestant's expert, likewise testified that the proposed use would not interfere with adequate light and air. (T. 1/19/95, p. 171)

Inconsistency with Zoning Regulations

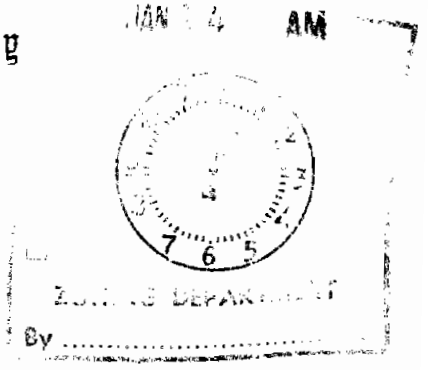
Mr. Gavrelis testified that the plan to expand the Ivy Hill substation is not inconsistent with the property's RC-5 classification, nor is the plan inconsistent with the spirit and intent of the zoning regulations generally. (T. 1/12/95, pp. 97-98) In stating this opinion, Mr. Gavrelis took into consideration that RC-5 zones permit some public utility uses

86-1444
Case file

County Board of Appeals of Baltimore County

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

January 13, 1986



Robert J. Romadka, Esq.
John O. Hennegan, Esq.
809 Eastern Blvd.
Essex, Md. 21221

Re: Case No. 85-65-XSPHA
Joseph F. Evering, Jr., etux

Gentlemen:

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

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

June Holmen, Secretary

Enclosures
cc: T. Rogers Harrison, Esq.
Joseph F. Evering, Jr., et ux
Judith A. Armold
Norman E. Gerber
James Hoswell
Arnold Jablon
Jean Jung
James E. Dyer

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

January 13, 1986

Phyllis C. Friedman
People's Counsel for Baltimore County
Court House
Towson, Md. 21204

Malcolm F. Spicer, Jr., Esq.
Thomas J. Bollinger, Esq.
County Attorneys for Baltimore County
Court House
Towson, Md. 21204

Re: Case No. 85-65-XSPHA
Joseph F. Evering, Jr., et ux

Dear Mrs. Friedman and Messrs. Spicer and Bollinger:

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

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

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

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

June Holmen

June Holmen, Secretary

Enclosures

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, MARYLAND Room 223, Court House Towson, Maryland 21204	:	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
and	:	
BALTIMORE COUNTY, MARYLAND, a Body Corporate and Politic County Attorney, Office of Law, Mezzanine, Court House, Towson, Maryland 21204	:	No. 86C6270
and	:	
LYNNE LOMBARDI 1124 Bowley's Quarters Road Baltimore, Maryland 21220	:	
and	:	
ANDREW JONES 1026 Susquehanna Avenue Baltimore, Maryland 21220	:	
Plaintiffs	:	
v.	:	
JOSEPH F. EVERING, JR. and CATHERINE L. EVERING 600 Chester Road Baltimore, Maryland 21220	:	
and	:	
STATE AVIATION ADMINISTRATION Department of Transportation P. O. Box 8766, Balto.-Wash. Intl. Airport Baltimore, Maryland 21240	:	
SERVE ON: Stephen H. Sachs, Attorney General Munsey Building 7 N. Calvert Street Baltimore, MD 21202	:	
Defendants	:	

: : : : : : :

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiffs, People's Counsel for Baltimore County, Maryland, Baltimore County, Maryland, a Body Corporate and Politic, and Lynne Lombardi and

Andrew Jones, sue the Defendants, Joseph F. Evering, Jr. and Catherine L. Evering, and State Aviation Administration, as follows:

1. The purpose of this Complaint is to obtain a Declaration of Rights on important questions of public interest.

2. People's Counsel for Baltimore County, Maryland, is authorized pursuant to Section 524.1(b) of the Baltimore County Charter to defend the Baltimore County Master Plan and Comprehensive Zoning Maps in cases involving zoning reclassifications, variances, and special exceptions and to initiate, and appear as a party in, proceedings in State Courts involving the preservation of the quality of the air, land, and water resources of Baltimore County. See Exhibit A1.

3. Baltimore County, Maryland, is a body corporate and politic interested in land use matters affecting the public safety, health, and welfare of the County.

4. Lynne Lombardi and Andrew Jones are property owners who live in the immediate neighborhood, whose property rights are affected, and who are interested parties in these proceedings.

5. Joseph F. and Catherine L. Evering are residents and property owners in Baltimore County, and have filed petitions for variances, special exception, and special hearing (hereinafter "the petitions").

6. The State Aviation Administration is the duly constituted state agency responsible for the administration of Maryland law and regulations concerning obstructions to air navigation and airport zoning.

7. In the course of review at the County Board of Appeals, there have arisen two extraordinary issues of public interest which affect and may be dispositive of the pending proceedings, and which are of public interest generally, so that a Declaration of Rights is appropriate at this time.

8. Questions have arisen concerning the application of the Maryland Chesapeake Bay Critical Areas Legislation, Md. Ann. Code Natural Resources Article Section 8-1813 and, in particular, the interpretation of its time provision.

9. A second extraordinary question has arisen in reference to the application of State Aviation Administration Regulations, COMAR Sections 11.03.05 and 11.03.06 as to whether the petitions conflict with state regulations concerning obstructions to air navigation and airport zoning.

10. On December 12, 1985, following an evidentiary hearing, the County Board of Appeals delivered a "Ruling on Motion" in reference to the applicability of the Critical Areas Legislation and an accompanying letter in reference to the State Aviation Administration Regulations. The Board ruled that the Critical Areas Legislation does not apply, and that the State Aviation Administration Regulations would not prohibit the granting of the subject petition. A copy of the Board's Ruling and accompanying letter is attached as Exhibit A_2.

11. The Ruling of the County Board of Appeals is invalid on its face, and as a matter of law, because:

(a) Pursuant to Natural Resources Article 8-1813 and Rule II of the Rules of Practice and Procedure of the Zoning Commissioner of Baltimore County, none of the petitions were "accepted for filing" until after June 1, 1984. Furthermore, while a petition for variance was submitted (but not accepted for filing) prior to June 1, 1984, it is undisputed that no petition for special exception or petition for special hearing was even submitted until after June 1, 1984. Accordingly, the subject petitions are not grandfathered or beyond the scope of the State law governing Chesapeake Bay

as a matter of right, and others, such as this use, by special exception, which are presumed to be valid uses. (T. 1/12/95, p. 98) Mr. Gavrelis took this as proof that the drafters of the zoning regulations recognized that there has to be some way for utilities, such as BGE, to provide the residences located in these rural residential zones with services. (T. 1/12/95, p. 98) Ms. McGrady also stated her opinion that the proposed substation would be consistent with the zoning regulations. (T. 10/04/95, p. 42)

Inconsistent with Impermeable Surface/Vegetation

According to Mr. Gavrelis, the proposed use will not be inconsistent with any impermeable surface, building coverage, or vegetation retention requirements of the zoning regulations. (T. 1/12/95, pp. 98-99) See Petitioner's Exhibit 16, which shows the total area covered by buildings, both existing and proposed.

Ms. McGrady agreed that there would be no inconsistency and further testified that, because there is already clearing on the property, due to the residence and pool, clustering the equipment within this cleared area will preserve as much of the forest resources as possible. (T. 10/04/94, p. 42) With the additional landscaping, as testified to by Danny L. Davis, an expert forester, the condition of the property in terms of vegetation will actually be improved. (T. 1/12/95, pp. 51-53, 69)

Because the Site Plan includes a stormwater management area, any increase in impervious area will not result in a drainage problem for the neighboring property owners. See Petitioner's Exhibit 2. On behalf of BGE, Paul Taylor, registered professional engineer and expert in stormwater management facilities, testified concerning the stormwater management area shown on the Site Plan and stated that the proposed use would have no

Critical Areas. Copies of the pertinent State law and Zoning Commissioner Rule are attached as Exhibit B.

(b) At the hearing, a representative of the office of the Attorney General for the State of Maryland advised that there was a serious question as to whether the proposed development would be prohibited because in conflict with the State regulations prohibiting construction in the vicinity of existing airports. Following the hearing, on November 6 and again on December 17, 1985, People's Counsel requested from the State Aviation Administration its advice concerning the impact of the airport regulations on the subject petitions. However, there has been no reply. A copy of the correspondence and pertinent airport regulations are attached as Exhibit C.

12. On January 3, 1986, People's Counsel and interested property owners filed an appeal of the Board's Ruling in order to resolve, in particular, the Critical Areas question because of its major impact on the scope of the case, and in order to preserve the question for judicial decision. The appeal is pending as Case No. 86CG0022.

13. On January 9, 1986, the County Board of Appeals wrote to the parties and questioned the timeliness and appropriateness of the appeal. A copy of the Board's letter is attached as Exhibit D.

14. On January 10, 1986, Baltimore County, Maryland, filed its appeal, also docketed in Case No. 86CG0022.

15. Because of the public interest in the resolution of the questions raised in this Complaint, and further because of the apparent question concerning the timing of the appeal, the Plaintiffs find it appropriate to file separately this Complaint for Declaratory Judgment, thereby removing any procedural question.

16. The Plaintiffs believe that the prompt resolution of these issues is in the interest of all parties because it will set the parameters and applicable law for the petitions under consideration.

WHEREFORE, Plaintiffs pray:

(a) That the Court enter a Declaratory Judgment and issue a Declaration of Rights.

(b) That the Court declare the Maryland Chesapeake Bay Critical Areas Legislation and Regulations to be applicable to the petitions for variance, special exception and special hearing filed by Joseph F. Evering, Jr. and Catherine L. Evering pending before the County Board of Appeals and that the "Ruling on Motion" of the County Board of Appeals is in error and unenforceable.

(c) That the Court declare and clarify the rights of the parties in reference to the applicability of State Aviation Administration Regulations, COMAR Title 11, Subtitle 03, 11.03.05 Obstructions to Air Navigation, and 11.03.06 Airport Zoning Regulations.

(d) That the Court grant such other relief as is necessary and appropriate.

Malcolm F. Spicer, Jr.
County Attorney

Phyllis Cole Friedman
People's Counsel for Baltimore County

Thomas J. Bollinger
Assistant County Attorney
Office of Law, Mezzanine
Court House
Towson, Maryland 21204
494-4420

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

T. Rogers Harrison

T. Rogers Harrison and
Mudd, Harrison & Burch
306 West Joppa Road
Towson, Maryland 21204
828-1335
Attorneys for Lynne Lombardi and
Andrew Jones, Protestants/Plaintiffs

IN THE MATTER OF PETITIONS FOR SPECIAL EXCEPTION, SPECIAL HEARING, AND ZONING VARIANCES N/S of Chester Rd., 590' W of Severn Rd. (800 Chester Rd.), 15th Election District	"	IN THE CIRCUIT COURT
	"	FOR BALTIMORE COUNTY
	"	AT LAW
	"	CG Docket No. 19
JOSEPH F. EVERING, JR., et ux, Petitioners	"	Folio No. 117
Zoning Case No. 85-65 XSPHA	"	File No. 86-CG0022

" " " " " "

NOTICE OF APPEAL

Please note an appeal on behalf of Baltimore County, Maryland to the Circuit Court for Baltimore County from the Ruling on Motion under date of December 12, 1985, in the above entitled matter.

RECEIVED
COUNTY BOARD OF APPEALS
1986 JAN 10 P 3:39

Malcolm F. Spicer, Jr.
County Attorney

Thomas J. Bollinger
Assistant County Attorney
Courthouse-Mezzanine
Towson, Maryland 21204
494-4420

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 10th day of January, 1986, a copy of the foregoing Notice of Appeal was served on the Administrative Secretary, County Board of Appeals, Room 200, Court House, Towson, Maryland 21204; a copy mailed to John O. Hennegan, Esquire and Robert J. Romadka, Esquire, 809 Eastern Boulevard, Essex, Maryland 21221; Judith A. Arnold, Assistant Attorney General, Department of State Planning, 301 W. Preston Street, Baltimore, Maryland 21201; and Peter Max Zimmerman, Deputy People's Counsel, Room 223 Courthouse, Towson, Maryland 21204.

Thomas J. Bollinger

IN THE MATTER OF PETITIONS FOR SPECIAL EXCEPTION, SPECIAL HEARING, AND ZONING VARIANCES N/S of Chester Rd., 590' W of Severn Rd. (800 Chester Rd.), 15th Election District

JOSEPH F. EVERING, JR., et ux, Petitioners

Zoning Case No. 85-65-XSPHA

: IN THE CIRCUIT COURT

: FOR BALTIMORE COUNTY

: AT LAW

: CG Docket No. 19

: Folio No. 111

: File No. 85-65-XSPHA

: : : : : : :

COUNTY BOARD OF APPEALS RECEIVED
1986 JAN -3 P 2:00

NOTICE OF APPEAL

Please note an appeal to the Circuit Court for Baltimore County from the Ruling on Motion under date of December 12, 1985, in the above-entitled matter.

T. Rogers Harrison and
Mudd, Harrison & Burch
306 West Joppa Road
Towson, Maryland 21204
828-1335
Attorneys for Ken Engelke, et al., Protestants/Appellants

Phyllis Cole Friedman
People's Counsel for Baltimore County

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

I HEREBY CERTIFY that on this 3rd day of January, 1986, a copy of the foregoing Notice of Appeal was served on the Administrative Secretary, County Board of Appeals, Room 200, Court House, Towson, MD 21204; and a copy mailed to John O. Hennegan, Esquire, and Robert J. Romadka, Esquire, 809 Eastern Blvd., Essex, MD 21221; Judith A. Arnold, Esquire, Assistant Attorney General, Dept. of State Planning, 301 W. Preston St., Baltimore, MD 21201; and Malcolm F. Spicer, Jr., County Attorney, Office of Law, Mezzanine, Court House, Towson, MD 21204.

Peter Max Zimmerman

adverse impact in terms of impervious area and drainage. (T. 1/12/95, pp. 33-35, 37-38, 41, 45-46). The Protestants offered no proof to the contrary on this issue.

II. Based on the Substantial Evidence Presented to the Board of Appeals, BGE is entitled to the Requested Variance.

In addition to the requested special exception, BGE also requested that a variance be granted from B.C.Z.R. Section 1A04.3.B.3 to permit the structures comprising the substation to be placed across the interior lot lines of Tracts A, B, and C in lieu of the required fifty foot building setback. Variances, such as the one requested by BGE, are permitted under B.C.Z.R. Section 307.1. At the hearings before the Board, BGE produced substantial evidence, through numerous expert witnesses, that the requirements for granting a variance under B.C.Z.R. 307.1 had been met: (1) that special circumstances exist that are peculiar to Ivy Hill; and (2) that requiring BGE to strictly comply with B.C.Z.R. Section 1A04.3.B.3 would result in practical difficulty.

A. The Evidence Confirms that Special Circumstances or Conditions Exist that are Peculiar to Ivy Hill.

BGE produced sufficient evidence to prove that the subject property is unique and that special circumstances exist peculiar to the Ivy Hill site that create a practical difficulty for BGE under the proposed plan in terms of strictly complying with the setback requirements of Section 1A04.3.B.3. The subject property is unique in that, as shown on the Site Plan, it is comprised of three adjoining tracts: Tract A, Tract B, and Tract C. See Petitioner's Exhibit 2 (T. 10/04/94, pp. 20-24) (T. 1/12/95, pp. 39-40, 101-106) BGE owns all three tracts. (T. 10/04/94, pp. 54, 58) (T. 1/12/95, pp. 39-40) These tracts are located in a residential neighborhood.

IN THE MATTER OF PETITIONS FOR SPECIAL EXCEPTION, SPECIAL HEARING, AND ZONING VARIANCES N/S of Chester Rd., 590' W of Severn Rd. (800 Chester Rd.), 15th Election District	:	IN THE CIRCUIT COURT
	:	FOR BALTIMORE COUNTY
	:	AT LAW
	:	CG Docket No. _____
JOSEPH F. EVERING, JR., et ux, Petitioners	:	Folio No. _____
Zoning Case No. 85-65-XSPHA	:	File No. _____

: : : : : : :

PETITION ON APPEAL

RECEIVED
COUNTY BOARD OF APPEALS
1985 JAN -3 P 2:01

People's Counsel for Baltimore County and T. Rogers Harrison and Mudd, Harrison & Burch, Attorneys for Ken Engelke, et al., Protestants below and Appellants herein, having heretofore filed an Order for Appeal from the Ruling on Motion of the County Board of Appeals, under date of December 12, 1985, in compliance with Maryland Rule B-2(e), file this Petition on Appeal setting forth the grounds upon which this Appeal is taken, viz:

1. That the decision of the County Board of Appeals exempting the subject petition from the requirements of Maryland State Law pertaining to Chesapeake Bay Critical Areas, Natural Resources Article Section 8-1801, et seq., was arbitrary, capricious, and erroneous as a matter of law.

2. That the Board of Appeals' decision, furthermore, is crucial to the framing of issues in the case and the course of subsequent proceedings. Therefore, it is in the interest of justice to have a judicial determination of this question at this time.

3. That the question of the application, timing, and implementation of the Maryland Critical Areas Legislation is a subject of State-wide importance which should be resolved at the earliest possible opportunity.

WHEREFORE, Appellants pray that the Ruling on Motion of the Board of Appeals of Baltimore County under date of December 12, 1985 be reversed.

T. Rogers Harrison/sh

T. Rogers Harrison and
Mudd, Harrison & Burch
306 West Joppa Road
Towson, Maryland 21204
828-1335
Attorneys for Ken Engelke,
et al., Protestants/Appellants

Phyllis Cole Friedman/sh

Phyllis Cole Friedman
People's Counsel for Baltimore County

Peter M. Zimmerman

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

I HEREBY CERTIFY that on this 3rd day of January, 1986, a copy of the foregoing Notice of Appeal was served on the Administrative Secretary, County Board of Appeals, Room 200, Court House, Towson, MD 21204; and a copy mailed to John O. Hennegan, Esquire, and Robert J. Romadka, Esquire, 809 Eastern Blvd., Essex, MD 21221; Judith A. Arnold, Esquire, Assistant Attorney General, Dept. of State Planning, 301 W. Preston St., Baltimore, MD 21201; and Malcolm F. Spicer, Jr., County Attorney, Office of Law, Mezzanine, Court House, Towson, MD 21204.

Peter M. Zimmerman

Peter Max Zimmerman

IN THE MATTER OF THE APPLICATION OF JOSEPH F. EVERING, JR., ET UX FOR SPECIAL EXCEPTION FOR A BOAT YARD, SPECIAL HEARING TO AMEND SITE PLAN AND VARIANCES FROM §409.2.c(2), 409.2.b and 417.5(a) OF THE BCZR N/S OF CHESTER ROAD, 590' W. OF SEVERN ROAD (800 CHESTER ROAD) 15th DISTRICT	:	BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY NO. 85-65-XSPHA

: :

DISSENT ON RULING ON MOTION

I dissent. Section 500.8 of the Baltimore County Zoning Regulations (BCZR) provides that the Zoning Commissioner shall have the authority to prescribe rules for the conduct of proceedings before him. Such rules have been promulgated, including Rule 2(a), which I believe properly and reasonably governs the filing of petitions for those types of relief requested in this matter. Clearly, under this rule, the petitions were not filed, as that term is defined by the Rule, until August 6, 1984. All submissions prior to that date constituted only preliminary application, and the actions by the Zoning Commissioner thereafter were in accordance with the checklist for compliance mandated by Rule 2(a). The Zoning Commissioner did not "accept for filing" the petition until after the exception date.

I also note that Section 8-1818(a) of the Natural Resources Article provides that findings must be made for each variance, special exception, etc. Although a petition for variance was submitted prior to March 1, 1984, the petitions for special hearing and special exception were first filed in August, 1984. As this was the first time this relief was requested, I believe that

IN THE MATTER OF THE APPLICATION OF JOSEPH F. EVERING, JR., ET UX FOR SPECIAL EXCEPTION FOR A BOAT YARD, SPECIAL HEARING TO AMEND SITE PLAN AND VARIANCES FROM §409.2.c(2), 409.2.b and 417.5(a) OF THE BCZR N/S OF CHESTER ROAD, 590' W. OF SEVERN ROAD (800 CHESTER ROAD) 15th DISTRICT	:	BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY NO. 85-65-XSPHA

: :

RULING ON MOTION

This case comes before the Board on appeal from the Order of the Zoning Commissioner of Baltimore County, dated April 25, 1985, granting the petitions of Joseph F. Evering, Jr., et ux, for a special exception, special hearing and variances, with restrictions.

Prior to testimony on the merits of the requested relief, a Preliminary Motion was raised by the Petitioner relative to Sub-title 18 of the Natural Resources Article of the Annotated Code of Maryland. This Sub-title, enacted in 1984 and known as the Chesapeake Bay Critical Area Protection Program (the "Act"), was enacted by the Maryland Legislature for the purpose of protecting the Chesapeake Bay and its tributaries from the ravages of development. The Petitioner's Motion challenged the applicability of the Act to the development sought in the petitions

Section 8-1813 of the Act, Sub-section (a) thereof, entitled "Specific Findings Required" provides:

> "From June 1, 1984 with regard to any subdivision plat approval or approval of a zoning amendment, variance, special exception, conditional use permit or use of a floating zone, affecting any land or water area located within the initial planning area identified in § 8-1807 (a) of this subtitle, for which application is completed after that date, the approving authority of the local jurisdiction in rendering its decision to approve an application shall make specific findings. . . "

The section then goes on to delineate the specific findings required. Later, in Section 8-1813 (d), it is provided, "This section does not apply to any

These communications included comments from the Zoning Advisory Committee meeting of January 3, 1984, and numerous letters and memoranda from the County. After months of this give and take, Mr. Hennegan, pursuant to the County's request, supplemented his request by resubmitting another petition for variance and, for the first time, requesting a special hearing and special exception on August 6, 1984. At this time, an additional $150.00 fee was paid, this amount representing the costs for submitting the petitions for special hearing and special exception. Finally, Mr. Hennegan testified that at no time did he withdraw his petition submitted in December, 1983.

Despite this testimony, the Protestants and People's Counsel argue that the exception does not insulate the petition. In support of their proposition, they offer a two pronged argument. First, that Rule 2(a) of the Rules of Practice of the Zoning Commissioner of Baltimore County specifically sets forth when a petition is considered to be filed. This rule provides that the Zoning Commissioner will refer a received petition to the Zoning Plans Advisory Committee, and he will further review the petition to ensure its compliance with the Zoning Commissioner's Rules, the County Code, the Baltimore County Zoning Regulations (BCZR) and all reasonable requests of the Zoning Advisory Committee. Upon compliance with all these standards, the Zoning Commissioner will then accept the petitions for filing. Therefore, the Protestants argue, because the Zoning Commissioner did not accept the petition for filing until August 6, 1984, the exception set forth in Sec. 1813 (d) does not apply. Secondly, the Protestants argue that the petitions submitted in August 1984 should be considered as new filings, as they were not labeled as amendments, and it was at that time that the petitions for special exception and special hearing were first submitted.

As the various photographs of the vicinity that were introduced into evidence indicate, and as the testimony of numerous witnesses demonstrates, a majority of the subject property is densely wooded. See Petitioner's Exhibits 5, 7, and 7a (T. 10/04/94, pp. 36-37) (T. 1/1/2/95, pp. 105-106) A portion of Tract B, though, is cleared. This clearing is improved with a residence and a pool. (T. 10/04/94, pp. 23, 58-59) Further, a portion of Tract C is cleared. The existing substation is located in the cleared area of Tract C. (T. 10/04/94, pp. 23-24) This combination of wooded and cleared areas and where these areas fall, in terms of the lot lines, make this property unique. (T. 1/12/95, pp. 129-131)

According to the proposed plan to expand the substation, in order to preserve as much of the existing woods as possible and to make use of the already cleared areas, BGE proposes to centrally locate the equipment on the three tracts. Petitioner's Exhibits 2 and 3. (T. 1/12/95, pp. 89-91, 99-106) Because the pieces of equipment, which work in concert, must be placed in close proximity to each other, centrally locating the substation also serves BGE's purposes. (T. 10/04/94, p. 39) This placement achieves the goals of utilizing the cleared spaces, preserving the natural resources, and providing the community with adequate screening. However, because the property is made up of three separate tracts, such placement violates the setback requirements for the interior lot lines of Section 1A04.3.B.3. (T. 1/12/95, pp. 99-106) Section 1A04.3.B.3 requires that the structures be set at least 50 feet back from any lot lines. While the setback requirement as to the interior lot lines will be violated, the central location of the equipment will, in fact, preserve the greatest distance from the equipment to the exterior lot lines. (T. 1/12/95, pp. 101-106) This distance will meet or exceed that required by the zoning regulations. (T. 1/12/95, pp. 101-106)

After due consideration of the evidence before us, applicable law and argument, we are not persuaded by the Protestants and People's Counsel and, therefore, hold that Section 8-1813 of the Natural Resources Article of the Annotated Code of Maryland is not applicable to the petitions before us.

In interpreting any statute the clear meaning of the words used therein must be considered. The wording in Section 8-1813 of the Chesapeake Bay Critical Area Protection Program is clear and cannot be disregarded. The exception set forth in that section provides: "This section does not apply to any application initially filed. . ." (Emphasis added). Clearly, by the use of the word "initially," the Legislature intended for the Act to be applicable only to that proposed development for which approval had not be requested, in any manner, until after March 1, 1984. We might agree with the Protestants' and People's Counsel's reasoning if the exception had not included the word "initially". However, as it was included we must conclude that the Legislature so intended the clear meaning of that language to be applied.

Insofar as the impact of Rule 2 (a), we do not question its validity or the Zoning Commissioner's authority to adopt reasonable rules of procedure. However, that rule cannot be interpreted so literally as to allow the Zoning Commissioner the authority to determine when petitions are filed in the context of the Natural Resources legislation. To abide by such a literal interpretation could conceivably allow the Zoning Commissioner carte blanche authority to prevent petitions from being filed and ever considered on their merits. Certainly, the intention of Rule 2 (a) is not to regulate the filing of petitions insofar as limitations issues and the nature of the matter before us; rather, the rule was enacted to provide a mechanism for the orderly filing

and consideration of petitions.

We also note the testimony of Mr. Hennegan in regard to the payment of filing fees to Baltimore County. He testified that the County charges $100.00 per petition, or a maximum of $250.00. When the initial request for variance was submitted in December, 1983, a receipt for $100.00 was provided. Later, when the subsequent petitions were submitted, the County charged the Petitioner $150.00 more, indicating that they accepted these petitions as a continued and amended filing. As Baltimore County considered this subsequent submission as a continuation of the earlier filing, we must likewise believe that the initial application for the relief sought in this case was filed prior to March 1, 1984.

Therefore, for the aforegoing reasons, we will hold that the Chesapeake Bay Critical Area Protection Program is not applicable to the proposed petition.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence E. Schmidt, Acting Chairman

Keith S. Franz

Date: December 12, 1985

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

December 12, 1985

John O. Hennegan, Esquire
Robert J. Romadka, Esquire
809 Eastern Boulevard
Essex, MD 21221

T. Rogers Harrison, Esquire
306 W. Joppa Road
Towson, MD 21204

Judith A. Armold
Assistant Attorney General
Department of State Planning
301 W. Preston Street
Baltimore, MD 21201

Re: Case No. 85-65-XSPHA
Joseph F. Evering, Jr., et ux

Dear Counsel:

Enclosed please find the Board of Appeals' Ruling on the Petitioner's Preliminary Motion to determine the applicability of Subtitle 18 of the Natural Resources Article of the Annotated Code of Maryland. This ruling is self-explanatory.

Additionally, at the conclusion of the hearing, counsel requested the Board's advice as to the COMAR regulations promulgated by the State Aviation Administration. Although we will reserve all parties' rights to be heard on this matter, the Board has reviewed the regulations. We note that Subtitle 03, Section 11.03.05 prohibits actual construction, and does not prohibit the filing and granting of the petitions before us. Also, Section 11.03.06 provides for relief through the Board of Airport Zoning Appeals, outside of the jurisdiction of this Board.

Finally, please note the next hearing date for this matter is Tuesday, January 21, 1986 at 10 a.m. We must deny the Protestants' request for a continuance from that date. The Board clearly remembers all parties' agreement to the January 21st date at the conclusion of the initial day's hearing. Also, although this Board has granted postponements for conflicting trial dates, we cannot grant a postponement

for a conflict with the preparation for another trial. With the numerous parties involved in this matter, the Board has already found it impossible to schedule additional hearing days on an agreed date.

Very truly yours,

Lawrence E. Schmidt
Acting Chairman

LES:e

cc: People's Counsel
Norman E. Gerber
Joseph Evering Jr., et ux
James Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer

IN THE MATTER OF	*	BEFORE THE
JOSEPH F. EVERING, JR., et ux.,	*	BOARD OF APPEALS
Petitioners	*	FOR
(Appeal from the Decision of the Zoning Commissioner of Baltimore County)	*	BALTIMORE COUNTY
	*	Case No. 85-65-XSPHA

* * * * * * * * * * * * * * * *

NOTICE OF INTENTION TO OBJECT TO ADMISSION OF EVIDENCE WITHOUT TESTIMONY

The Maryland Department of State Planning filed a Motion to Intervene in this appeal late in May, 1985, and no party has opposed that motion. However, the Department has not been advised of any formal action on that motion as of the date of this notice. Nevertheless, Counsel to the Department has been receiving notices and copies of pleadings in the case and assumes that the Board of Appeals will rule formally on the Department's motion at the beginning of the hearing scheduled for October 29, 1985.

On the assumption that the Department will be made a party Appellant and will be permitted to participate in the October 29 hearing, the Department wishes to advise the Board that it will object to the admission of certain evidence without testimony.

Under §22-28 of the Baltimore County Code, all exhibits introduced in evidence at the hearing before the Zoning Commissioner, as well as certain other items, "shall be considered in evidence by the Board without testimony thereto, absent objection by any party". While the Department of State Planning does not object to the admission of the petitions or to the admission of any report or comments of a county agency, it does

RECEIVED
COUNTY BOARD OF APPEALS
1985 OCT 21 A 9:45

The primary concern of the Board, however, was the simultaneously considered special exception request. The grant of that special exception is not before us. The Board originally found that the variance provisions, section 307.1, did not apply to respondent's request. The Board, for reasons we shall discuss, was correct in that finding.[5] Nonetheless, apparently assuming it was required to address the variance issue because respondent filed a petition requesting a variance, the Board granted the petition. Because no variance was required, we direct the Court of Special Appeals to remand this matter to the circuit court for it to remand to the Board. The Board shall render a finding, consistent with its initial finding, that no variance is required for respondent to utilize the entire parcel for its proposal, so long as setback requirements are met from the exterior property lines of respondent's combined parcel.

DISCUSSION

---

[5] The Board discussed the variance request, stating, in relevant part:

> [Respondent] finally must meet the tests under Section 307.1 in pursuing variance from lot line setbacks, said lot lines existing between tracts owned by [respondent]. George Gavrelis clearly points out in his testimony that Section 306 of the BCZR speaks to lot area regulations for erecting substations. [Respondent] seeks a variance under 307.1 from BCZR 1A04.3B.3 which requires a 50-foot setback from any lot line other than a street line. *The Board finds as a fact that Section 306 applies in this case and that the application for a variance under 307.1 may be treated as moot.* [Respondent] recognizes that its placement of electric utility structures on the subject site, straddling interior lot lines and certainly within *otherwise* required setbacks, *may be construed* under 1A04.3B.3 as a principal building, and is therefore requesting such variance. The Board is *compelled* to address the issue of 307.1 pursuant to the Petition. [Emphasis added.]

Based on the substantial evidence presented by BGE, the Board should find that this property has peculiar characteristics or unusual circumstances, which relate uniquely to this property, in that this property is made up of three tracts, all owned by BGE, and that this property has a unique distribution, in terms of lots lines and for building purposes, of cleared areas and heavily wooded areas. The Board should further find, based on these factors, that the setback ordinance has a more severe impact on this property as a result of this uniqueness.

B. The Evidence Confirms that Strict Compliance with the Baltimore County Zoning Regulations would Result in Practical Difficulty for BGE.

At the hearings before the Board, BGE produced sufficient evidence, demonstrating that requiring BGE to strictly comply with Section 1A04.3.B.3 would result in a practical difficulty for BGE.[4/] In deciding whether BGE has, in fact, proved that a "practical difficulty" exists, the Board should consider the following criteria: whether conformity with the applicable zoning regulation would be unnecessarily burdensome; whether granting the variance would do substantial justice; and whether the requested variance would be consistent with the spirit of the ordinance and would preserve the public safety and welfare. B.C.Z.R. § 307.1; McLean v. Solely, 270 Md. 208, 214-215, 310 A.2d 783 (1973). BGE

4/ Because this type of variance is an area variance, BGE is required to meet only the lesser standard of proof of "practical difficulty" rather than the stricter standard of "unreasonable hardship," which applies to use variances. McLean v. Soley, 270 Md. 208, 213-214, 310 A.2d 783 (1973); Loyola Fed. Sav. & Loan Ass'n v. Buschman, 227 Md. 243, 248-249, 176 A.2d 355 (1961); Red Roof Inns, Inc. v. People's Counsel, 96 Md. App. 219, 223-224, 624 A.2d 1281 (1993); Anderson v. Board of Appeals, 22 Md. App. 28, 38-40, 322 A.2d 220 (1974).

IN THE MATTER OF	*	BEFORE THE
JOSEPH F. EVERING, JR., et ux	*	BOARD OF APPEALS
Petitioners	*	FOR
(Appeal from the Decision of the Zoning Commissioner of Baltimore County)	*	BALTIMORE COUNTY
	*	Case No. 85-65-XSPHA

* * * * * * * * * * *

SUBPOENA DUCES TECUM

Please issue a subpoena duces tecum for the following-named individual to appear and testify at the hearing of the above matter before the County Board of Appeals and make the writ returnable to the Baltimore County Board of Appeals, County Office Building, Towson, Maryland 21204, at 10:00 a.m. on October 29, 1985.

Mr. Joseph F. Evering, Jr.
800 Chester Road
Baltimore, Maryland 21220

and he is to bring with him the following:

1. All contracts or agreements of sale, or any options, option agreements, rights-of-first refusal, or any correspondence depicting or reflecting a sale or proposed sale of the land (i.e., the Long Beach Marina) which is the subject of this case.

RECEIVED
1985 OCT 10 PM 2:23
SHERIFF'S OFFICE
BALTO. CO.

COST $ 15.00
SUMMONED 10/20/85 19
NOT SERVED _____ 19
REASON NOT SERVED _____

SHERIFF
OF BALTIMORE COUNTY
J. EDWARD MALONE

T. Rogers Harrison
Mudd, Harrison & Burch
306 West Joppa Road
Towson, Maryland 21204
828-1335
Attorneys for Protestants

Mr. Sheriff:

Please issue the above summons.

June Holmen, Bd. of Appeals

RECEIVED
1985 OCT 10 A 8:56
COUNTY BOARD OF APPEALS

413

IN THE MATTER OF	*	BEFORE THE
JOSEPH F. EVERING, JR., et ux	*	BOARD OF APPEALS
Petitioners	*	FOR
(Appeal from the Decision of the Zoning Commissioner of Baltimore County)	*	BALTIMORE COUNTY
	*	Case No. 85-65-XSPHA

* * * * * * * * *

SUBPOENA DUCES TECUM

Please issue a subpoena duces tecum for the following-named individual to appear and testify at the hearing of the above matter before the County Board of Appeals and make the writ returnable to the Baltimore County Board of Appeals, County Office Building, Towson, Maryland 21204, at 10:00 a.m. on October 29, 1985.

Mrs. Catherine L. Evering
800 Chester Road
Baltimore, Maryland 21220

and she is to bring with her the following:

1. All contracts or agreements of sale, or any options, option agreements, rights-of-first refusal, or any correspondence depicting or reflecting a sale or proposed sale of the land (i.e., the Long Beach Marina) which is the subject of this case.

COST $ .00
SUMMONED _____ 19
NOT SERVED C/L w HAND 10/8/85 19
REASON NOT SERVED _____

SHERIFF
OF BALTIMORE COUNTY
J. EDWARD MALONE

RECEIVED
COUNTY BOARD OF APPEALS
1985 OCT 10 A 8:56

T. Rogers Harrison
Mudd, Harrison & Burch
306 West Joppa Road
Towson, Maryland 21204
828-1335
Attorney for Protestants

Mr. Sheriff:

Please issue the above summons.

June Holmen, Board of Appeals

IN THE MATTER OF	*	BEFORE THE
JOSEPH F. EVERING, JR., et ux	*	BOARD OF APPEALS
Petitioners	*	FOR
(Appeal from the Decision of the Zoning Commissioner of Baltimore County)	*	BALTIMORE COUNTY
	*	Case No. 85-65-XSPHA

* * * * * * * * * * *

APPLICATION FOR ISSUANCE OF SUBPOENA

TO THE BOARD OF APPEALS:

The Protestants, Ken Engelke, et al, by their attorney, request pursuant to Rule 5 of the Rules of Practice and Procedure of the County Board of Appeals that the Board issue subpoenas compelling Joseph F. Evering, Jr. and Catherine L. Evering, husband and wife, to attend the October 29, 1985, hearing and to produce at the hearing the documents listed in the attached Subpoena, which is incorporated herein.

The purpose of this Subpoena is to ascertain evidence showing that the Everings have plans to sell the land which is the subject of this case and that the contract purchaser has plans to develop it in a manner different than what is presented in the Everings' petitions. This evidence and material is relevant and material.

WHEREFORE, the Protestants ask that the subpoenas be issued and served by Sheriff on Joseph F. Evering, Jr. and Catherine L. Evering.

T. Rogers Harrison
Mudd, Harrison & Burch
306 West Joppa Road
Towson, Maryland 21204
828-1335
Attorney for Protestants

In the Matter of JOSEPH F. EVERING, JR., et ux., Petitioners	*	BEFORE THE
	*	BOARD OF APPEALS
(Appeal from decision of the Zoning Commissioner of Baltimore County)	*	FOR
	*	BALTIMORE COUNTY
	*	Case No. 85-65-XSPHA

* *

Motion to Intervene

The Maryland Department of State Planning, by its Counsel, Judith A. Armold, Assistant Attorney General, hereby requests that it be made a party Appellant to the captioned appeal. As authority in support of its motion, the Department cites Article 88C, §2(r), Annotated Code of Maryland. That section provides that the Department shall "[h]ave the right and authority to intervene in and become a party to any administrative, judicial, or other proceeding in this State concerning land use, development or construction." See also Department of State Planning v. Mayor and Council of Hagerstown, 288 Md. 9 (1980).

The Department believes that the Zoning Commissioner failed to respond properly to the requirements of §8-1813 of the Natural Resources Article of the Annotated Code of Maryland. In particular, the Department asserts:

1. That the Zoning Commissioner acted improperly when he made initial determinations to grant the Petitioners a special exception and certain variances, without considering the requirements of §8-1813. The Department contends that, as a matter of law, an approving authority must consider §8-1813 requirements as an integral part of any decision to grant a special exception or variance.

2. That the Zoning Commissioner erred when he concluded that the Petitioners' requests did not involve "development", as that term is

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

ARNOLD JABLON
ZONING COMMISSIONER

JEAN M. H. JUNG
DEPUTY ZONING COMMISSIONER

May 21, 1985

John O. Hennegan, Esquire
Germania Federal Building
809 Eastern Boulevard
Essex, Maryland 21221

RE: PETITIONS FOR SPECIAL EXCEPTION, SPECIAL HEARING, AND ZONING VARIANCES
N/S of Chester Road, 590' W of Severn Road (800 Chester Road) - 15th Election District
Case No. 85-65-XSPHA (Item 166)

Joseph F. Evering, Jr., et ux, Petitioners

Dear Mr. Hennegan:

The following appeals have been filed, in addition to the appeal filed by the People's Counsel for Baltimore County, from the decision rendered by the Zoning Commissioner of Baltimore County in the above referenced matter.

1. Appeal from Norman E. Gerber, Director
   Office of Planning and Zoning, Baltimore County

2. Appeal from T. Rogers Harrison, Esquire
   Attorney for Protestants

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

Sincerely,

Arnold Jablon
Zoning Commissioner

AJ:bg

cc: Robert J. Romadka, Esquire
T. Rogers Harrison, Esquire
Board of Appeals
People's Counsel

RECEIVED
COUNTY BOARD OF APPEALS
1985 MAY 22 P 1:00

presented sufficient evidence to permit the Board to make factual findings with respect to each of these criteria.

As described in the section above, the subject property is actually made up of three individual tracts, all of which are effectively owned by BGE. Being owned by one party, the lot lines between the adjoining tracts are essentially unimportant except in terms of their legal effect. The purpose of a setback requirement is to protect neighboring property owners from encroachment. However, because BGE is its own "neighbor" with respect to these interior lot lines, this requirement becomes irrelevant under the circumstances. Requiring BGE to strictly comply with the setback requirements would serve no purpose as BGE does not need to be protected from itself. Therefore, requiring BGE to strictly comply with Section 1A04.3.B.3 would be unnecessarily burdensome. (T. 1/12/95, pp. 101-106) Because of the necessity to place the pieces of equipment close together, BGE cannot place the substation entirely on any one lot and still comply with the setback requirements. (T. 10/04/94, pp. 39) (T. 1/12/95, pp. 101-103, 106-108)

As presented in Section I.A. of this Memorandum, during the hearings before the Board, BGE presented convincing evidence as to the need to expand the substation. BGE is under its franchise agreement with the State of Maryland to provide adequate and reliable service to its customers. (T. 10/04/94, pp. 108-110, 157-158) (T. 1/10/95, p. 75) BGE has recognized that, without the expansion of the Ivy Hill substation, it will be unable to provide such quality service because of the ever-increasing demand for electricity for the service area. (T. 10/04/94, pp. 103-105, 108-110, 159) (T. 1/10/95, pp. 21-23, 27-30, 63-65, 69-70)

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO BOARD OF APPEALS Date May 21, 1985

FROM ARNOLD JABLON
Zoning Commissioner

SUBJECT Case No. 85-65-XSPHA (Item No. 166)
Petitions for Special Exception,
Special Hearing, and Zoning Variances
Joseph F. Evering, Jr., et ux - Petitioners

Please find attached an additional appeal filed this date from the decision rendered by the Zoning Commissioner of Baltimore County.

ARNOLD JABLON
Zoning Commissioner

AJ:bg

cc: Norman E. Gerber, Director
Office of Planning and Zoning

RECEIVED
COUNTY BOARD OF APPEALS
1985 MAY 22 P 1:00

5-31-85

RE:	PETITION FOR SPECIAL EXCEPTION PETITION FOR SPECIAL HEARING PETITION FOR VARIANCES N/S of Chester Road, 590' West of Severn Road (800 Chester Rd) 15th District JOSEPH F. EVERING, JR., et ux, Petitioners	*	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY CASE NO: 85-65-XSPHA

*** *** *** *** *** *** *** *** *** *** ***

NOTICE OF APPEAL

Please note an appeal from your decision in the above captioned matter, under date of April 25, 1985, to the County Board of Appeals and forward all papers in connection therewith to the Board for hearing.

Robert J. Romadka

John O. Hennegan

ROMADKA, GONTRUM, HENNEGAN & FOOS
809 Eastern Boulevard
Baltimore, Maryland 21221
PHONE: 686-8274
Attorneys for the Petitioners

I HEREBY CERTIFY that on this 20th day of May, 1985, a copy of the foregoing Notice of Appeal was mailed to Phyllis Cole Friedman, People's Counsel for Baltimore County, and Peter Max Zimmerman, People's Counsel for Baltimore County, Room 223, Court House, Towson, Maryland, 21204; and T. Rogers Harrison, Esquire, 306 West Joppa Road, Towson, Maryland, 21204.

John O. Hennegan

MAY 21 AM

ZONING DEPARTMENT

By .....

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

RE: PETITIONS SPECIAL EXCEPTION, SPECIAL HEARING, AND ZONING VARIANCES
N/S of Chester Road, 590' W. of Severn Road (800 Chester Road - 15th Election District

JOSEPH F. EVERING, JR., et ux

: BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY

: Case No. 85-65-XSPHA

: : : : : : :

NOTICE OF APPEAL

Please note an appeal from your decision in the above-captioned matter, under date of April 25, 1985, to the County Board of Appeals and forward all papers in connection therewith to the Board for hearing.

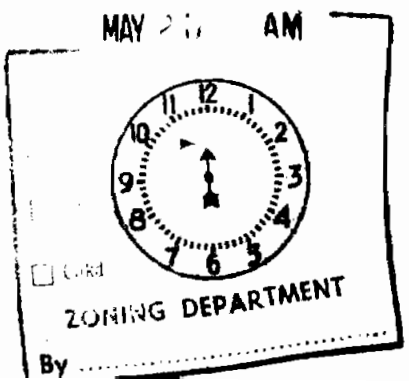
Norman E. Gerber

Norman E. Gerber, Director
Office of Planning and Zoning
Room 406, County Courts Building
Towson, Maryland 21204
494-3211

I HEREBY CERTIFY that on this 20th day of May, 1985, a copy of the foregoing Notice of Appeal was mailed to John O. Hennegan, Esquire, 809 Eastern Boulevard, Baltimore, Maryland 21221, Attorney for Petitioners.

Norman E. Gerber

Norman E. Gerber



RE: PETITION FOR SPECIAL EXCEPTION : BEFORE THE ZONING COMMISSIONER
PETITION FOR SPECIAL HEARING
PETITION FOR VARIANCES : OF BALTIMORE COUNTY
N/S of Chester Rd., 590' W of
Severn Rd. (800 Chester Rd.) :
15th District
:
JOSEPH F. EVERING, JR., et ux, Case No. 85-65-XSPHA
Petitioners :

: : : : : : :

NOTICE OF APPEAL

Please note an appeal from your decision in the above-captioned matter, under date of April 25, 1985, to the County Board of Appeals and forward all papers in connection therewith to the Board for hearing.

Phyllis Cole Friedman
People's Counsel for Baltimore County

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

I HEREBY CERTIFY that on this 10th day of May, 1985, a copy of the foregoing Notice of Appeal was mailed to John O. Hennegan, Esquire, and Robert J. Romadka, Esquire, 809 Eastern Blvd., Baltimore, MD 21221; and T. Rogers Harrison, Esquire, 306 W. Joppa Rd., Towson, MD 21204.

Peter Max Zimmerman

MAY 10 19[illegible]
☐ Appd
☐ Rec
☐ Post
☐ Entd
☐ Chkd
ZONING DEPARTMENT
By .....

IN RE: PETITIONS SPECIAL EXCEPTION, SPECIAL HEARING, AND ZONING VARIANCES N/S of Chester Road, 590' W of Severn Road (800 Chester Road) - 15th Election District

Joseph F. Evering, Jr., et ux,

Petitioners

* BEFORE THE

* ZONING COMMISSIONER

* OF BALTIMORE COUNTY

* Case No. 85-65-XSPHA

* * * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a special exception for a boat yard, variances to permit the existing compacted-stone parking surface instead of the required durable and dustless surface, 318 parking spaces instead of the required 384 spaces if the special exception is denied or 363 parking spaces instead of the required 384 spaces if it is granted, and structures (piers) to extend 419 feet beyond the mean-low tide instead of the allowed 300 feet; and to amend the site plans filed in Case No. 3535-X in order to construct an addition to their existing piers, in Case No. 64-57-SPH to remove Restrictions 1 and 3 in order to permit marine craft to be stored within 20 feet of the easternmost property line and the variance for the parking surface requested herein, and in Case No. 64-160-X to remove Restrictions 1 and 6 in order to allow major repair of boats on the premises and in the water and to change the times and days of the weeks and year that repairs will be permitted and, additionally, to determine that the boat yard, piers, and related parking areas are other "structures" devoted to civic, commercial, and recreational activities and, therefore, exempt from the Residential Transition Area (RTA) requirements set forth in Section 1B01.1.B.1.c.9 and 10, Baltimore County Zoning Regulations (BCZR).

The Petitioner, Joseph F. Evering, Jr., appeared and testified and was represented by Counsel. Testifying on behalf of the Petitioners were Paul

This evidence of need must be considered along with the strong evidence presented by BGE that granting the requested variance will not harm the neighboring property owners. Central placement of the substation will actually preserve the wooded areas as a buffer, utilize the already cleared areas, and maximize the distance of the substation from the neighboring residences, reducing the possibility of any exposure to EMFs at the external property lines. Therefore, granting the requested variance would do substantial justice to BGE, the 1750-1800 customers presently served by the Ivy Hill substation, future customers to be served by this substation, and the surrounding property owners.

BGE also presented sufficient facts upon which the Board could conclude that granting the variance would be consistent with the spirit and intent of the zoning regulations. As Mr. Gavrelis testified, the zoning regulations have recognized that public utility companies must be permitted to provide service to their customers, even in rural residential areas. (T. 1/12/95, pp. 106-108) Again, it must be reiterated that the reason for having setback requirements, to protect adjoining property owners, is not being served under the circumstances because BGE owns all three lots on which the setback requirements are an issue. Granting the requested variance would be consistent with the spirit of the ordinance because exterior setbacks are being preserved, and the public safety and welfare will be secured.

From the substantial and uncontroverted evidence presented by BGE, the Board should find that requiring BGE to strictly comply with the setback requirements of Section 1A04.3.B.3 would result in practical difficulty for BGE in that requiring such compliance does not serve the purpose behind the ordinance, that granting the variance would result in

Canatella, a neighbor; Vincent Elliott and Leonard Gardiner, individuals who maintain their boats at the Long Beach Marina; John Schneider, a registered landscape architect and environmental consultant and Chief of the Environmental Design Section, Bureau of Landscape Architecture, State Highway Administration, Maryland Department of Transportation; and William Bafitis, a registered engineer.

Ken Engelke and Richard Stumpf appeared and testified as Protestants as did many others (see Protestants' Exhibit 2). The Protestants later retained counsel who, after entering his appearance, submitted a memorandum and appeared at the continued hearing.

In addition to the relief prayed for, two other issues are an integral part of this proceeding, i.e., the impact of the proposed project on the Chesapeake Bay and the requirement by the Office of Planning that the proposed project be submitted to the County Review Group (CRG). The continued hearing involved only these two issues.

Testimony indicated that the Petitioners originally purchased the major portion of the subject property in 1954 and were granted a special exception to operate a marina in 1955, Case No. 3535-X. In 1960, they purchased an adjoining 35' x 245' lot on the north side of Chester Road and were granted a special exception to extend their boat yard to include that property in 1964, Case No. 64-160-X. Prior to that case, the Petitioners were granted permission to store marine craft on their property, but were restricted to not storing boats within 20 feet of their easternmost property line, Case No. 64-57-SPH. In 1969, the Petitioners purchased an adjoining 50' x 252' lot on the south side of Chester Road. In 1974, they bought the lot adjacent to the one purchased in 1960 and have utilized that lot for parking. There are 24 parking spaces on the north lot and 23 spaces on the south lot.

When the Petitioners were granted the special exception in 1964, they had four piers and were entitled to construct four more, of which only one was built because it was not financially feasible to build all four. They now wish to amend their site plans to construct two new piers at different locations. The feasibility of constructing the piers granted in 1964 was negated due to the depth of the water at the locations cited because boats could not be tied up at those piers without dredging at a prohibitive cost. At the new locations, they could be. The Petitioners will need to extend two of the existing piers so that they will meet at right angles with the new piers in what is described as a "T" formation. Presently, the Petitioners have 201 slips and want another 178 slips, which would be about 40 more than originally approved. In addition, they want to do major repair of boats on the property and in the water, to change when repairs are permitted, to store marine craft within 20 feet of the easternmost property line, and to be permitted the existing compacted-stone parking surface.

Mr. Evering testified that they have 318 parking spaces, 363 spaces with the two lots included, and yet, this past Fourth of July and Labor Day, the busiest days of the year, there were only approximately 55 vehicles parked on the site. Further, they believe that the existing parking surface is better than an impermeable surface because it allows a more efficient run-off since the property is on the water. Mr. Evering's testimony regarding the proposed piers extending 419 feet rather than the 300 feet allowed was that they would not impede the free flow of navigation on the channel or the use of the channel by their neighbors.

The Protestants oppose the expansion and maintain that more slips are not needed. The traffic generated by the increased number of boats utilizing the new slips would adversely impact the already congested waterways in the area.

They maintain that the new slips would cause a hazardous condition by creating "blind spots" around which boat traffic could not see. The Protestants also stated that the additional slips would hinder their view and adversely affect the value of their properties which have already been devalued by the air traffic generated by Martin Marietta directly across from the marina and the existing heavy boat traffic. There is only one access road to the marina, Chester Road, and traffic is already heavy during the boating season. If the expansion is permitted, the traffic would be unbearable.

Mr. Evering contested these suppositions and presented testimony to the contrary. At the request of both sides, the Zoning Commissioner personally visited the site on two separate occasions and went out into the water with each of them.

I

The first issue to be determined is whether the special exception granted in Case No. 64-160-X has been utilized. Both the Petitioners and the Protestants have submitted memoranda on this issue, and upon consideration of both, it is determined that the requirements of Section 502.3, BCZR, have been satisfied, although not for the reasons argued by the Petitioners and contrary to the conclusion recommended by the Protestants. The issue is more than just "vested rights" and certainly more than what the Board of Appeals for Baltimore County held in Case No. 84-89-SPH, In Re: Joseph L. Soley. In that decision, which addressed this very issue, the Board reversed the Zoning Commissioner and found that to satisfy Section 502.3 one must merely initiate construction. "Mere commencement of work appears to be the test", stated the Board. However, the Zoning Commissioner believes that the Board wrongly merged the doctrine of "vested rights", as it operates to protect property fr[illegible] rezoning, with the doctrine of "utilization", which specifically and legislatively makes a special exception

conditioned on the commencement of construction that is pursued to completion with "reasonable diligence".

There is no need to expound on the doctrine of "vested rights". Certainly, both parties clearly set out the law in their memoranda dated October 3, 1984, October 31, 1984, and November 13, 1984. The principles set forth therein, however, are not entirely applicable to Section 502.3. As pointed out by the Protestants, there must be more than just a building permit issued or work or labor readily seen and recognized by the public.

Nowhere in the BCZR is "reasonable diligence" defined. Therefore, as the Court of Appeals suggested in Kastendike v. Balto. Assoc. for Retarded Children, 267 Md. 389 (1972), where no definition is found, the phrase must be given its ordinary meaning in the context in which it appears. The term is defined in Black's Law Dictionary as "[a] fair, proper and due degree of care and activity, measured with reference to the particular circumstances; such diligence, care, or attention as might be expected from a man of ordinary prudence and activity."

Was it enough, therefore, that the Petitioners completed one pier, which provided an additional 36 rental slips, instead of the four shown on the site plan approved in Case No. 64-160-X or that the pool, bath house, and showers were provided? Was it enough that the lot was graded and surfaced and that marine craft were stored or that they "began" construction of the bulkhead and the repair shop barge? The Protestants contest whether some of the work claimed was actually performed; however, they do not contest that a boat yard exists.

The Petitioners did not complete construction of the piers because of the expense involved in dredging the bottom of the waters around the projected location of the piers to permit sail boats to utilize them. Another reason given was the trend away from power boats and toward sail boats (which would require a deeper channel) as a result of rising gasoline prices which had not been

foreseen by the Petitioners when they submitted their request for the special exception in 1964. Failure to construct the three piers does not deflect the use granted. There has certainly been "reasonable diligence"—a fair, proper, and due degree of care and activity, measured with reference to the particular circumstances. The strictures of Section 502.3 have been satisfied. A boat yard existed after 1955, and an expanded boat yard has existed continuously since 1964.

II

The Petitioners now request that they be granted a special exception for a boat yard for the two lots, zoned D.R.5.5, located on the north and south sides of Chester Road, including the roadbed of Chester Road. The lots adjoin the property presently operating as a boat yard pursuant to the special exceptions previously granted.

It is clear that the BCZR permits the use requested by the Petitioners in a D.R.5.5 Zone by special exception. It is equally clear that the proposed use would not be detrimental to the primary uses in the vicinity. Therefore, it must be determined whether the conditions as delineated by Section 502.1, BCZR, are satisifed by the Petitioners.

After reviewing all of the testimony and evidence presented, it appears that the special exception should be granted with certain restrictions, as more fully described below.

The Petitioners had the burden of adducing testimony and evidence which would show that the proposed use met the prescribed standards and requirements set forth in Section 502.1. In fact, the Petitioners have shown that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest. The facts and circumstances do not show that the proposed use at the particular location described

substantial justice for BGE, the many customers served by the Ivy Hill substation, whose service would be made more reliable, and the surrounding property owners, and that granting the variance would be consistent with the spirit and intent of the zoning regulations.

III. Use of Tract A for the Proposed Substation is Not an "Amendment" to the Forwood Final Development Plan.

At the initial hearing before the Board of Appeals, which took place on October 10, 1994, the Protestants asserted that this proceeding was actually, in part, premature because the Final Development Plan for Forwood had to be amended to incorporate the uses proposed for Tract A under the Site Plan. No such additional proceedings are necessary, however, and this proceeding is not premature because, as the Zoning Commissioner found and as BGE proved at the hearings before the Board of Appeals, the use of Tract A for the proposed substation does not constitute an amendment to the Forwood Final Development Plan.

The Final Development Plan for Forwood, which was submitted as Petitioner's Exhibit 8, identifies Tract A as being "conveyed to adjoining property owner BG&E Co." The transfer of Tract A to BGE is further indicated by an arrow from the subdivision to the property on which the Ivy Hill substation is located. The substation property is clearly labeled "BG&E Company" with the deed reference. The written notation and graphic representation of the transfer in the form of an arrow clearly evidence an intention that the property not be developed as a residential lot and that the property was to be conveyed to BGE for a nonresidential use.[5/]

5/ BGE also presented copies of two CRG approved plans for the Forwood subdivision. The first plan has Tract A labeled as "Lot 25" with the same data as the other twenty-four residential lots. Petitioner's Exhibit 25. The second plan amends the first to change "Lot 25" to "Tract A" with a note "to be conveyed to adjoining lot owner" and an arrow showing transfer to the adjoining BGE property.
Footnote continued on next page

by Petitioners' Exhibit 1 would have any adverse impact above and beyond that inherently associated with such a special exception use irrespective of its location within the zone. Schultz v. Pritts, 432 A.2d 1319 (1981).

The proposed use will not be detrimental to the health, safety, or general welfare of the locality, nor tend to create congestion in roads, streets, or alleys therein, nor be inconsistent with the purposes of the property's zoning classification, nor in any other way inconsistent with the spirit and intent of the BCZR.

Therefore, without consideration as to the potential impact on the critical area of the Chesapeake Bay, the special exception will be granted.

III

The Petitioners request that they be permitted the existing compacted-stone parking surface rather than an impermeable surface for their parking areas, 363 parking spaces instead of the required 384 spaces, and to extend two of the piers 419 feet beyond the mean-low tide instead of the allowed 300 feet.

A

The parking surfaces may remain compacted stone, provided the Petitioners comply with Section 10.18.06.03D., COMAR, State Health Department, which will insure limitation of particulate into the air and water (see attached, which is herein made a part of this Order). The reasons described in their petition and further described in their testimony for this particular request are sufficient bases to satisfy the burden of proof required by Section 307, BCZR, in that a practical difficulty would exist if it were denied, the variance will satisfy the spirit and intent of the BCZR, and there would be no adverse impact on the public health, safety, and general welfare.

B

The variance to permit 363 parking spaces instead of the required 384 spaces will be moot. It is clear that 384 spaces are not necessary if the

parking area is never full. Indeed, even with the storage of boats during the winter, the "down-period" for a boat yard, there will never be a need for 384 spaces. However, inasmuch as the number of slips requested will be reduced, as indicated below, the Petitioners will be able to provide the requisite parking spaces, i.e., a total of 324, and a variance would not be necessary.

C

The variance to extend the piers is more difficult to decide. The Petitioners maintain that the piers cannot be located anywhere within the 300-foot limitation due to the lack of depth needed for sail boats and argued that by extending the piers, in order to provide an additional 178 slips, there would be no obstruction or hindrance to the use of the water or to the public safety. The Protestants strenuously object, with validity, to these contentions.

It would definitely appear that an additional 178 slips, and the resultant increase in boats, would have to obstruct or, at the very least, hinder existing boat traffic and usage of the surrounding waters by adjoining property owners. Of the 201 slips, 75% to 80% are rented. Although Mr. Evering's testimony was that there would be no such obstruction or hindrance, this Commissioner is not convinced. On the other hand, the Protestants must recognize that the waters are free and available to anyone with a boat and the Petitioners' right to attract these people, i.e., the right of free enterprise, must be accepted within the confines of the State's responsibility to protect this valuable resource, even from the very persons to whom the State is guaranteeing its usage. The right of the Petitioners must be weighed against the responsibility of the State to insure the waters continued existence as a natural resource.

After visiting the site and experiencing the lure of a calm Autumn afternoon on the water, the Zoning Commissioner is convinced that the extension of the piers to permit an additional 178 slips would create a danger to the public

health, safety, and welfare. It is just too many. Therefore, it is recommended that the Petitioners limit the expansion to 118 slips. If this is acceptable, they shall provide the Zoning Commissioner with a revised site plan showing the distance the projected piers will extend beyond the mean-low tide line. At that time, a decision on this issue will be rendered based on the testimony and evidence already provided.

IV

A

The requested relief to amend the site plans filed in Case Nos. 3535-X, 64-57-SPH, and 64-160-X in order to construct additional piers and to extend existing ones must be stayed pending resolution of the number of slips permitted as explained above.

B

The request to remove Restriction 1 in Case No. 64-57-SPH to permit marine craft to be stored within 20 feet of the easternmost property line will be granted. However, removal of Restriction 3 is a moot issue since the existing parking surface is to be granted, although it shall be subject to the conditions precedent in Section III, A above. The conditions are the means to justify the end, i.e., the variance to permit the compacted-stone surface.

C

The request to remove Restrictions 1 and 6 in Case No. 64-160-X to permit major repair of boats on the premises and in the waters and to change the hours, days, and months that repairs can be made will be denied in part. With the proliferation of boat traffic since 1964 and the public's increased concern with its natural resources, there is an even greater need to prevent the defilement and deterioration of our rivers, bay, and tributaries. Therefore, no major repairs of any kind will be permitted on the premises or in the waters. Restriction 1 will not be removed and shall remain in full force and effect.

However, it is equally clear that the Petitioners should have expanded time frames within which they can perform minor repair and maintenance of boats. The hours of operation for such minor repairs and maintenance shall be from 8:00 a.m. to 7:00 p.m., seven days per week, year-round.

D

The last request is to exempt the projected piers and parking areas from the application of the RTA. Section 1B01.1.B.1.c.9 excepts an addition to an existing community building, or other structures devoted to civic, social, recreational, fraternal, or educational activity, including parking areas and driveways. A pier at a marina would classify as a structure devoted to recreational activity and, therefore, be exempt from the RTA.

V

The Petitioners have been informed that this project must be submitted to the County Review Group (CRG) for approval. The Petitioners argued that the CRG does not have this authority and the Zoning Commissioner agrees.

It is clear that the CRG was created by the Baltimore County Council, at the suggestion and advice of the Baltimore County Planning Board (Planning Board), to relieve the Planning Board of the responsibility of approving development plans, a time consuming and detailed job. Its purpose is clearly development oriented, not use oriented. Development is defined in Section 22-39 of the Development Regulations, BCC, as meaning (1) the improvement of property for any purpose involving building; (2) subdivision; (3) combination of any two or more lots, tracts, or parcels of property for any purpose; (4) subjecting property to the provisions of the Maryland Condominium Act; and (5) preparation of land for any of the purposes listed in 1 through 4. The legislative history strongly indicates that the purpose of the CRG is to oversee development in the County, and there seems to be no suggestion that jurisdiction over actual use would be conferred.

None of the constrictions to the CRG's authority, as delineated by Section 22-39, would impart the power to require the construction of piers to be the subject of its review. Indeed, the development regulations define "building" as a structure enclosed within exterior walls or firewalls for the shelter, support, or enclosure of persons, animals, or property of any kind. A pier or boat slip is not a building. The statute is unambiguous. If the proposed project does not come within specific statutory authority, then the CRG on its own cannot expand its power to be all inclusive.

VI

The final issue to be resolved is whether the Petitioners have satisified the burden imposed by the Chesapeake Bay Critical Area Protection Program, Section 8-1813, Nat. Res. Art., Md. Code. This section requires, from June 1, 1984 (until such time as the local jurisdiction's program is approved by the Commission created by this legislation), with regard to approval of any subdivision plat, special exception, or variance, affecting any land or water area located within the area identified as being within the critical area of the Bay, that the "approving authority of the local jurisdiction in rendering its decision to approve an application shall make specific findings that: (1) [t]he proposed development [which is defined as any activity that materially affects the condition or use of dry land, land under water, or any structure (Section 8-1801(a)(3)] will minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands; and (2) [t]he applicant has identified fish, wildlife, and plant habitat which may be adversely affected by the proposed development and has designed the development so as to protect those identified habitats." The approving authority has the power to require such additional information from an applicant as is necessary in order to make the findings required.

This interpretation of the Final Development Plan was confirmed by Mr. Gavrelis, expert land planner. (T. 1/12/95, pp. 76-81) Mr. Gavrelis explained that, in his opinion, the arrow "links" Tract A with the property owned by BGE. (T. 1/12/95, pp. 77-78) It is evident, from a review of the Final Development Plan, that Tract A is not a residential lot; the only markings on this tract are the boundary lines and those referencing the transfer to BGE. Further, unlike the other twenty-four residential lots, this property, which is labeled "tract," has no building envelope, nor is there a septic disposal area or well shown. (T. 1/12/95, pp. 78-79) From the notations on the Plan, Mr. Gavrelis concluded that, based on his experience, the Final Development Plan effectively removed Tract A from potentially being developed as a part of the Forwood residential development and inextricably linked Tract A with the uses, existing or proposed, on the adjoining BGE property. (T. 1/12/95, pp. 79, 131-133)

According to Section 1B01.3, the purpose of a final development plan is to provide for disclosure to prospective residents and for proper review of residential developments by the zoning authority. Mr. Gavrelis properly concluded that those purposes were served under these circumstances because the Plan gives clear notice to those concerned what the future use of Tract A will be. (T. 1/12/95, pp. 80-81, 131-133) In Mr. Gavrelis' opinion, because the Final Development Plan forewarns of the future use of Tract A by BGE, the utilization of Tract A as proposed is not an amendment or modification of the Forwood Final Development Plan. (T. 1/12/95, p. 81)

Footnote continued from previous page

Petitioner's Exhibit 26. Because this last CRG plan predates the Final Development Plan, it further substantiates the intent of the developer, Baltimore County, and BGE to remove Tract A from the Forwood Final Development Plan.

It is clear that the approving authority for any special exception or variance is the Zoning Commissioner, unless the proposed project meets the definition of "development" found in Section 22-39, hereinbefore mentioned, which is substantially different than the definition found in Section 8-1802(a)(3), Nat. Res. Art., Md. Code. If the CRG does not have the approving authority, then the Zoning Commissioner is solely responsible as to whether or not a special exception or variance is required. If the CRG does have the responsibility, and if a special exception and/or variance is required, co-approving authorities would exist, i.e., the CRG and the Zoning Commissioner. Since the proposed expansion of an already existing marina by adding only piers is not "development", as defined by Section 22-39, then the sole responsibility is that of the Zoning Commissioner.

In the instant case, the Petitioners filed a Motion with the Zoning Commissioner to schedule a second hearing for the sole purpose of presenting evidence aimed at satisfying the precepts delineated in Section 8-1813. The hearing before the Zoning Commissioner was, and is, an adversary proceeding with both the Petitioners and the Protestants being given the opportunity to present evidence and testimony and to cross-examine and refute any given. Indeed, the Petitioners' Counsel, Protestants' Counsel, and Office of Planning and Zoning were notified of the hearing date and purpose of that hearing by letter dated January 3, 1985. The Protestants appeared and presented rebuttal evidence and cross-examined Mr. Schneider, the Petitioners' expert witness. The Office of Planning and Zoning elected not to appear. Inasmuch as Mr. Evering requested the opportunity to present his evidence, and by law it is the responsibility of the Zoning Commissioner to determine whether the Petitioners have satisifed the burden required by Section 8-1813(a)(1) and (2), the Zoning Commissioner must make his decision based on the facts and evidence presented. Although the Zoning

Commissioner may expressly require additional information, it has been determined that no such additional information is needed.

Mr. Schneider's testimony was convincing that the proposed expansion would not "materially affect" the condition or use of dry land, land under water, or any structure. The evidence submitted by the Petitioners, specifically the Hydrogeological Study and Environmental Effects Report for Long Beach Marina, prepared by Bafitis & Associates, Petitioners' Exhibit 1A, contradicted any potential adverse impact that might result. The report found that the proposed expansion would not increase the amount of biochemical oxygen demand, total phosphorus, total nitrogen, lead, zinc, or sediment in any measurable amount.

For example, the potentiality for overboard discharge of wastes from the additional boats would be minimized by the provision of "pump-out" facilities. The Department of Health, in its comments dated February 8, 1984, found that the on-site disposal facilities were functioning adequately. Additionally, the capacity of the facilities would be enlarged to minimize any future adverse impact. Cross-examination of Mr. Schneider pointed out the importance of cooperation by boaters inthis regard. It seems that many do not. Obviously, there would be an impact created by an aditional 118 boats moored at the Petitioners' marina, but Mr. Schneider testified that these additional boats would not increase the adverse impact already caused by the existing recreational boating. In fact, testimony indicated that the additional boats using the marina were not additional boats to the area; that is, the expansion of the marina would not attract additional boats but would induce present boaters to utilize the new services proposed.

Further, the Petitioners pointed out that the location of the new piers would minimize any adverse environmental process which would result if dredging were required. Since the water's depth where the piers are proposed is

approximately 12 feet, no dredging will occur. In fact, the requested variances to allow extension of the piers more than 300 feet beyond the mean-low tide line and the compacted-stone parking surface would minimize any adverse impact. It is important to note that there is no proposed change on or alteration of land, and therefore, any change to water quality, wildlife, and land habitat would be for the better. Mr. Schneider testified that, in his expert opinion, there was no submerged vegetation in the off-shore area; therefore, there would be no adverse impact.

Although the Protestants disagreed point by point, they presented no expert testimony or study to specifically contradict those presented by the Petitioners. It is left to the trier of the facts to weigh the evidence and evaluate the testimony, and after long and thoughtful consideration of the memoranda submitted on this issue by both the Petitioners and the Protestants and the evidence and testimony presented, it is found that there would be no material effect. Therefore, the proposed project does not fall within the purview of Section 8-1801, et. seq. However, even assuming that the project would satisfy the definition of "development", Section 8-1802, it is determined that the Petitioners have met the burden of Section 8-1813(a). The proposed project will minimize adverse impact on the water quality, as further defined by Section 8-1813(a)(1), and the Petitioners have identified those fish, wildlife, and plant habitat and designed the project so as to protect those identified habitats, as further defined by Section 8-1813(a)(2).

The contradictions presented by the Protestants need careful consideration; however, this is an administrative proceeding, i.e., quasi-judicial in nature, and the burden of proof is not "beyond a reasonable doubt". There was no expert testimony presented and no specific findings as to this site in contradiction of the Petitioners, and the Zoning Commissioner has no choice but to accept the

testimony and evidence of Mr. Schneider and Mr. Bafitis, as experts in the field. The Petitioners have satisfied their burden of proof.

SUMMARY

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 25th day of April, 1985, that the Petition for Special Exception for a boat yard for two lots, one located on the north side and the other on the south side of Chester Road, including the roadbed of Chester Road, be and the same is hereby GRANTED; the Petition for Zoning Variances to permit the existing compacted-stone parking surface instead of the required durable and dustless surface be and the same is hereby GRANTED; and the amendments to the site plans filed in Case No. 3535-X to permit an additional 118 slips, in Case No. 64-57-SPH to remove Restrictions 1 and 3 in order to permit marine craft to be stored within 20 feet of the easternmost property line and the variance for the parking surface requested herein, subject to Section 10.18.06.03D. CCMAR, and in Case No. 64-160-X to amend Restriction 6 in order to allow the hours of operation for minor repair and maintenance of boats to be 8:00 a.m. to 7:00 p.m., seven days per week, year-round are approved and that the criteria of Section 8-1801, et. seq., has been satisfied and, as such, the Petition for Special Hearing is hereby GRANTED, from and after the date of this Order, subject, however, to the following restrictions which are conditions precedent to the relief herein granted:

1. A revised site plan, showing the placement of the 118 slips and the distance of their extension beyond the mean-low tide, shall be submitted to the Zoning Commissioner for approval.

2. The requested variance to permit the piers to extend 419 feet beyond the mean-low tide instead of the allowed 300 feet shall be stayed pending submission of the revised site plan, at which time a decision shall be rendered without further hearing necessary.

It is FURTHER ORDERED that in Case No. 64-160-X, Restriction 1 shall not be removed and shall remain in full force and effect.

Zoning Commissioner of
~~Baltimore~~ County

AJ/srl

Attachment

cc: John O. Hennegan, Esquire

Robert J. Romadka, Esquire

T. Rogers Harrison, Esquire

People's Counsel

At the time BGE purchased Tract A, because none of the lots in the Forwood development had been sold, if the developer, BGE, or Baltimore County believed that the notations contained in the Final Development Plan were insufficient to put the public on notice, the plan could have, and would have, been amended by simple resubmission of the plan. B.C.Z.R. Section 1B01.3.A.7. (T. 1/12/95, p. 131-133, 142) Obviously, everyone involved understood that the notations were to give notice to future lot owners that BGE would be utilizing the property for a non-residential purpose, *i.e.*, for purposes of the local distribution substation.

Even if the Board believes that the proposed use of Tract A constitutes an amendment to the Final Development Plan for Forwood, this proceeding is still not be premature, and further proceedings on the "amendment" are not necessary because the procedures for amendment, under Section 1B01.3.7, have effectively been complied with by BGE under the circumstances of this case.

As drafted, the zoning regulations indicate that an amendment to a final development plan must first be approved by the Planning Board as being in accord with the provisions adopted by the Board under the authority of B.C.Z.R. Section 504. Exercising its authority under Section 504 , the Planning Board adopted the Comprehensive Manual of Development Policies ("C.M.D.P."), and, in turn, authorized the Director of Planning to make the

(a) A person may not cause or permit to be discharged into the outdoor atmosphere from any other installation, particulate matter in excess of 0.03 gr/SCFD (68.7 mg/dscm).

(b) Exceptions. Section B(2)(a) does not apply to the following:

(i) Iron and steel production installations;

(ii) Soda-lime recipe and opal recipe glass melting furnaces in compliance with COMAR 10.18.15.04.

C. Particulate Matter from Unconfined Sources in Areas III and IV.

(1) In Areas III and IV, a person may not cause or permit emissions from an unconfined source without taking reasonable precautions to prevent particulate matter from becoming airborne. These reasonable precautions shall include, when appropriate as determined by the Department, the installation and use of hoods, fans, and dust collectors to enclose, capture, and vent emissions. In making this determination, the Department shall consider technological feasibility, practicality, economic impact, and the environmental consequences of the decision.

(2) Exceptions. The following are exempt from the provisions of §C(1):

(a) Iron and steel production installations which are subject to COMAR 10.18.10.04B and C;

(b) Grain drying and grain handling installations;

(c) Batch-type hot-dip galvanizing installations which are subject to COMAR 10.18.12.

D. Particulate Matter from Materials Handling and Construction.

(1) A person may not cause or permit any material to be handled, transported, or stored, or a building, its appurtenances, or a road to be used, constructed, altered, repaired, or demolished without taking reasonable precautions to prevent particulate matter from becoming airborne. These reasonable precautions shall include, but not be limited to, the following when appropriate as determined by the control officer:

(a) Use of water or chemicals for control of dust in the demolition of existing buildings or structures, construction operations, the grading of roads, or the clearing of land.

(b) Application of asphalt, oil, water, or suitable chemicals on dirt roads, materials stockpiles, and other surfaces which can create airborne dusts.

(c) Installation and use of hoods, fans, and dust collectors to enclose and vent the handling of dusty materials. Adequate containment methods shall be employed during sandblasting of buildings or other similar operations.

(d) Covering, at all times when in motion, open-bodied vehicles transporting materials likely to create air pollution. Alternate means may be employed to achieve the same results as would covering the vehicles.

(e) The paving of roadways and their maintenance in clean condition.

(See page 1142)

ORDER RECEIVED FOR FILING
DATE April 25, 1985
BY [illegible]
ADMINISTRATIVE ASSISTANT

IN RE:	*	BEFORE THE
Petition for Special Exception Petition for Special Hearing Petition for Variances N/S Chester Road, 590' W. of Severn Road (800 Chester Road)	*	ZONING COMMISSIONER OF BALTIMORE COUNTY
JOSEPH F. EVERING, JR., et ux	*	Case No. 85-65-XSPHA
Petitioners	*	

* * * * * * * * * * *

MEMORANDUM OF LAW

The Protestants, Ken Engelke, et al, by their attorneys, T. Rogers Harrison and Mudd, Harrison & Burch, submit this Memorandum in support of their position that the Everings have not met the requirements of Md. Nat. Res. Code Ann., Section 8-1813 (1974 & 1984 Cum. Supp.).

Description of the Land

The Protestants adopt the description of the land set forth in their original Memorandum.

MAR 5 ZONING DEPARTMENT By

On December 18, 1984, the Everings, by their attorney, filed with the Zoning Commissioner of Baltimore County a Motion for [a] Hearing, requesting:

"1. That a hearing be set at the earliest possible date for the Petitioner to present expert testimony.

2. That the Hearing be limited to determine whether or not the proposed development will (a) minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have runoff from surrounding lands; (b) the applicant has identified fish, wildlife and plant habitat which may be adversely affected by the proposed development and has designed the development so as to protect those identified habitat whose loss would substantially diminish the continued ability of populations of affected species to sustain themselves.

3. That the Hearing also be set to determine whether or not this proposed development is subject to Section 8-1801 through 8-816 [sic] entitled Chesapeake Bay Critical Area Protection Program of the Natural Resources Article of the Annotated Code of Maryland."

On January 3, 1985, the Zoning Commissioners scheduled a hearing for February 1, 1985 on the two issues raised in the Everings' Motion.

At the hearing, the Zoning Commissioner decided that the Everings' land was subject to the Chesapeake Bay Critical Area Protection Program, Md. Nat. Res. Code Ann., Sections 8-1801 to 8-1816 (1974 & 1984 Cum. Supp.). He also heard and considered evidence on the other issue, including testimony from Mr. Schneider, a landscape architect, who was called by the Petitioners. In addition, the Petitioners introduced a "Hydrogeological Study and Environmental Effects Report," prepared by Mr. Schneider and William Bafitis (both of Bafitis & Associates) (hereinafter called the "Bafitis Report").

The Protestants introduced into evidence a Memorandum of Law and several supporting pamphlets, brochures and documents.

At the close of the evidence, the Zoning Commissioner reserved decision on the issue of whether the Everings had satisfied the requirements of Section 8-1813 of the Chesapeake Bay Critical Area Protection Program and gave the Petitioners and the Protestants thirty days in which to file a Memorandum on whether the Everings, as Petitioners, had met their burden of proof under Section 8-1813

Statement of the Law

Section 8-1813 of the Chesapeake Bay Critical Area Protection Program provides:

"(a) Specific findings required - From June 1, 1984 with regard to any subdivision plat approval or approval of a zoning amendment, variance, special exception, conditional use permit or use of a floating zone, affecting any land or water area located within the initial planning area identified in Sec. 8-1807(a) of this subtitle, for which application is completed after that date, the approving authority of the local jurisdiction in rendering its decision to approve an application shall make specific findings that:

(1) The proposed development will minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands; and

(2) The applicant has identified fish, wildlife and plant habitat which may be adversely affected by the proposed development and has designed the development so as to protect those identified habitats whose loss would substantially diminish the continued ability of populations of affected species to sustain themselves.

(b) Information required from applicant - With regard to any application for project approval described in subsection (a) of this section, a local approving authority shall require such additional information from an applicant as is necessary in order to make the findings required by subsection (a).

(c) Section in effect until program effective - This section shall remain in effect in a local jurisdiction until such time as an approved program becomes effective.

(d) Exception - This section does not apply to any application initially filed prior to March 1, 1984."(1984 Ch. 794).

A close reading of Section 8-1813 itself, as well a consideration of other interrelated sections and the general purpose behind the program, reveals that the Everings have not met the requirements of Section 8-1813. Therefore, their Petitions should be denied.

Under Section 8-1813, the Everings' primary responsibility is informational. They have the burden of producing certain specified information, which can be divided into two types: statutorily mandated information and additional County information. The contours of the mandated information are

determination as to compliance of development plans. See Petitioner's Exhibit 22 (T/ 12/95, pp. 81-83)[6/]

BGE has essentially received such approval from the Director of Planning. The Office of Planning and Zoning has reviewed the Site Plan, which shows the proposed use, and, through their comment, has approved the requested special exception and variance. See Petitioner's Exhibit 23. Because the issue of an additional hearing was raised in the Petition for Special Exception and because no hearing was, in fact, required, this comment supports the conclusion that the proposal complies with the requirements of Section 504. (T. 1/12/95, pp. 81-84, 126-127)

According to Section 1B01.3.7, a determination must also be made as to whether the "amendment" is consistent with the spirit and intent of the original plan and with the development policies. (T. 1/12/95, pp. 127-128) At the hearings before the Board, BGE produced testimony demonstrating that use of the proposed substation was, in fact, consistent with the spirit and intent of the original final development plan. As Mr. Gavrelis testified, because the Final Development Plan evidences an intent that "Tract A" was to be conveyed to and used by BGE for other than residential purposes, placement of a stormwater management facility and a minute portion of the substation equipment on the tract is in accord with the intent of the original plan. (T. 1/12/95, pp. 84-85) The Board, therefore,

---

6/ As required, the C.M.D.P., with the provision granting the Director of Planning this authority, was submitted to the County Council for approval. Because the Council raised no objection within 45 days after submission, the C.M.D.P. is deemed to have been approved. B.C.Z.R. Section 504.

1, 1985 hearing to meet the statutorily mandated requirements of Section 8-1813.

In addition to failing to meet the statutorily mandated informational requirements of Section 8-1813, the Everings failed to meet the additional informational requirements established and promulgated by Baltimore County. See the Bober Memo and the Protestants' February 1, 1985 Memorandum. Requiring the additional information is not unique or burdensome, given the purpose behind Section 8-1813 specifically and the Chesapeake Bay Program in general.

The Chesapeake Bay Program is an attempt to coordinate the efforts of the State and affected local governments in restoring and preserving the Bay. See Section 8-1801(b). It is the intent of the Program "that each local jurisdiction have primary responsibility for developing and implementing a program ...to:

> (1) Minimize adverse impacts on water quality that result from pollutants that are discharged from structure or conveyances or that have run off from surrounding lands;
>
> (2) Conserve fish, wildlife and plant habitat; and
>
> (3) Establish land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement and activities of persons in that area can create adverse environmental impacts."

Section 8-1808(a)(1), 8-1808(b)(1)(2)& (B). It is while these local programs are being developed that Section 8-1813 comes into play as an interim protection devise. See Sections 8-1808(d), 8-1809, 8-1810, 8-1811 and 8-1813. And as the purpose of the

"(a) Specific findings required - From June 1, 1984 with regard to any subdivision plat approval or approval of a zoning amendment, variance, special exception, conditional use permit or use of a floating zone, affecting any land or water area located within the initial planning area identified in Sec. 8-1807(a) of this subtitle, for which application is completed after that date, the approving authority of the local jurisdiction in rendering its decision to approve an application shall make specific findings that:

(1) The proposed development will minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands; and

(2) The applicant has identified fish, wildlife and plant habitat which may be adversely affected by the proposed development and has designed the development so as to protect those identified habitats whose loss would substantially diminish the continued ability of populations of affected species to sustain themselves.

(b) Information required from applicant - With regard to any application for project approval described in subsection (a) of this section, a local approving authority shall require such additional information from an applicant as is necessary in order to make the findings required by subsection (a).

(c) Section in effect until program effective - This section shall remain in effect in a local jurisdiction until such time as an approved program becomes effective.

(d) Exception - This section does not apply to any application initially filed prior to March 1, 1984."(1984 Ch. 794).

A close reading of Section 8-1813 itself, as well a consideration of other interrelated sections and the general purpose behind the program, reveals that the Everings have not met the requirements of Section 8-1813. Therefore, their Petitions should be denied.

Under Section 8-1813, the Everings' primary responsibility is informational. They have the burden of producing certain specified information, which can be divided into two types: statutorily mandated information and additional County information. The contours of the mandated information are

delineated in Section 8-1813(a). The Baltimore County informational requirements are set forth in the October 29, 1984, memo from Eugene Bober (hereinafter the "Bober Memo"). At the February 1, 1985 hearing, the Everings failed to satisfy their informational burden: They did not submit the statutorily mandated information and they did not satisfy Baltimore County's additional requirements.

In order to understand the informational burdens of Section 8-1813, it is necessary to review the role of the approving authority under the same Act. Section 8-1813 requires the approving authority to make three specific findings. First, it must find that the proposed development will minimize adverse impacts on water quality. Second, it must find that the applicant/petitioner has identified fish, wildlife and plant habitat which may be adversely affected by the proposed development. Third, it must find that the proposed development has been designed to protect the identified habitats. In order for an approving authority to make these three specific findings, it must have certain information corresponding to its three findings.

Section 8-1813 requires the applicant/petitioner to show that the proposed development will minimize adverse impacts on water quality, to identify fish, wildlife, and plant habitat which may be adversely affected by the proposed development, and to show that the proposed development has been designed to protect the identified habitat. The applicant/petitioner is absolutely required to produce this information and he cannot escape the requirement. See Sections 8-1813(a), 8-1813(b).

In addition to the statutorily mandated information, the applicant/petitioner, under Section 8-1813(b), may be required by the approving authority to produce "such additional information...as is necessary in order [for the approving authority] to make the [three specific] findings required by [8-1813(a)]." Pursuant to Section 8-1813, Baltimore County, and most of the other Counties bordering the Bay, has promulgated informational requirements which land developers, such as the Everings, must comply with before their projects can be reviewed and approved. These requirements were delineated in the Bober Memo and accompanying outline. See the Protestants' Memorandum submitted at the February 1, 1985 hearing.

It is clear that the Petitioners did not satisfy either the statutorily mandated informational requirements or Baltimore County's informational requirements at the February 1, 1985 hearing. While Schneider's testimony and the Bafitis Report did address the first statutorily mandated requirement (whether the proposed development will minimize the adverse effects on the water quality), they did so in a cursory and conclusionary fashion. Moreover, they reached this conclusion based on improperly obtained data, or, in several instances, on no data at all. See the Protestants' Memorandum submitted at the February 1, 1985 hearing. Neither Schneider nor the Bafitis Report, however, identified, as is mandated by Section 8-1813, the fish, wildlife and plant habitat which may be adversely affected by the proposed development, and neither addressed how the proposed development had been designed to protect these habitats. Simply put, then, the Everings failed in the February

1, 1985 hearing to meet the statutorily mandated requirements of Section 8-1813.

In addition to failing to meet the statutorily mandated informational requirements of Section 8-1813, the Everings failed to meet the additional informational requirements established and promulgated by Baltimore County. See the Bober Memo and the Protestants' February 1, 1985 Memorandum. Requiring the additional information is not unique or burdensome, given the purpose behind Section 8-1813 specifically and the Chesapeake Bay Program in general.

The Chesapeake Bay Program is an attempt to coordinate the efforts of the State and affected local governments in restoring and preserving the Bay. See Section 8-1801(b). It is the intent of the Program "that each local jurisdiction have primary responsibility for developing and implementing a program ...to:

(1) Minimize adverse impacts on water quality that result from pollutants that are discharged from structure or conveyances or that have run off from surrounding lands;

(2) Conserve fish, wildlife and plant habitat; and

(3) Establish land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement and activities of persons in that area can create adverse environmental impacts."

Section 8-1808(a)(1), 8-1808(b)(1)(2)& (B). It is while these local programs are being developed that Section 8-1813 comes into play as an interim protection devise. See Sections 8-1808(d), 8-1809, 8-1810, 8-1811 and 8-1813. And as the purpose of the

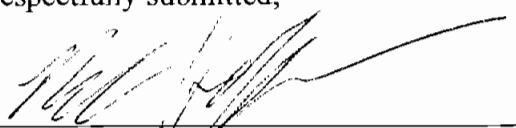
could find, based on the testimony presented before it, that this "amendment" is consistent with the Final Development Plan and the development policies.

Further, under Section 1B01.3.7, a determination must be made that the amendment complies with the requirements of Section 502.1 (Special Exception). As outlined in detail in Section I.B. of this Memorandum, BGE presented overwhelming testimony as to each of these requirements. Therefore, the procedure for amending a final development plan has essentially been met under the circumstances of this case. For this reason, the Board should not permit this purely technical argument to prevent it from reaching the merits of this case.

CONCLUSION

As the above recitation of the evidence demonstrates, Petitioner BGE produced strong and substantial evidence of its entitlement to the requested special exception and variance. Therefore, BGE respectfully requests that the Board grant the special exception and variance, which would allow BGE to expand the Ivy Hill substation and fulfill its statutory obligation of proving adequate and reliable electric service to its customers.

Respectfully submitted,



ROBERT A. HOFFMAN
Venable, Baetjer and Howard, LLP
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21285
(410) 494-6200

Chesapeake Bay Program is to coordinate State and local efforts, a County under Section 8-1813(b) has great latitude in determining exactly what type of additional information a petitioner/applicant is required to submit.

Baltimore County's additional informational requirements are well within the parameters of the Chesapeake Bay Program's purpose and, in fact, do not vary drastically from the requirements established by other Counties bordering the Bay. See the attached requirement outlines from Harford County, Prince George's County and Anne Arundel County. The other Counties touching the Bay are currently, but slowly, developing similar informational requirements, waiting, as are Baltimore, Harford, Prince George's and Anne Arundel Counties, for further direction from the State. The Department of State Planning has plans to publish a Critical Areas Handbook within the next few weeks which should serve as a guide to the Counties. Likewise, the Chesapeake Bay Critical Area Commission is working on publishing criteria for coordinating State and affected local government efforts. See Section 8-1808(d).

A simple review of Schneider's testimony and the Bafitis Report reveals that the Everings absolutely did not satisfy Baltimore County's informational requirements. See the Protestants' February 1, 1985 Memorandum. Furthermore, in some respects, Schneider's testimony and the Bafitis report are seriously flawed.

In preparing the Bafitis Report, neither William Bafitis nor Schneider made the extensive field inspections and testing

necessary to satisfy the Baltimore County informational requirements. See the Protestants' February 1, 1985 Memorandum. And what little inspection was performed was done during the fall months, not the summer months, the time designated by Baltimore County's Office of Planning and Zoning as proper for such testing. The flawed nature of the Bafitis report can most readily be seen in Schneider's testimony about his field observation of submerged aquatic vegetation (SAV).

Section I of the Environmental Effects portion of the Bafitis Report, which is titled "Aquatic Organisms," states that the Everings' land "drains to low salinity estuarine waters with no submerged aquatic vegetation observed in [the] vicinity." At the hearing, Schneider testified that he reached the conclusion that there was no SAV by walking along the perimeters of the Everings land and observing the water to a depth of four feet. He also stated that his visual observation extended approximately fifteen feet from the shoreline. Page three of the Bober memo delineates the method of mapping the SAV on or near a proposed development. It requires that "[s]ite investigations should be to a water depth of 15 [feet]." Merely observing the water to a depth of four feet, then, is patently defective, and it becomes more defective considering the fact that Schneider only walked the perimeters of the Everings' land and did not walk out on the existing piers or attempt to observe the SAV from the proposed pier locations. For a short discussion of the importance of SAV to the Bay's ecosystem, see the Protestants' Memorandum of February 1, 1985. In most other respects, the

Bafitis Report, when compared to the Baltimore County Informational Requirements outlined in the Bober Memo, fails to provide the required information. See the Protestants' February 1, 1985 Memorandum.

Conclusion

At the February 1, 1985, hearing before the Zoning Commissioner, the Everings failed to meet their burden of providing information required under Section 8-1813. Neither Schneider's testimony nor the Bafitis Report satisfied the statutorily mandated requirements or Baltimore County's additional informational requirements. Therefore, the Everings' Petitions should be denied.

Respectfully submitted,

T. Rogers Harrison
Mudd, Harrison & Burch
306 West Joppa Road
Towson, Maryland 21204
828-1335
Attorneys for Ken Engelke, et al

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Memorandum of Law was mailed, postage prepaid, this 4th day of March, 1985, to Arnold Jablon, Zoning Commissioner, Baltimore County, Room 113, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland 21204; and to John O. Hennegan, Esquire, 809 Eastern Boulevard, Baltimore, Maryland 21221, attorney for Petitioners.

T. Rogers Harrison

IN RE:	*	
		BEFORE THE
Petition for Special Exception	*	
Petition for Special Hearing		ZONING COMMISSIONER
Petition for Variances	*	
N/S Chester Road, 590' W. of		OF
Severn Road (800 Chester Road)	*	
		BALTIMORE COUNTY
JOSEPH F. EVERING, JR., et ux	*	
		Case No. 85-65-XSPHA
Petitioners	*	

* * * * * * * *

MEMORANDUM OF LAW

Ken Engelke, et al, by their attorneys, T. Rogers Harrison and Mudd, Harrison & Burch, submit this Memorandum of Law in support of their position that (1) the Petition for Special Hearing filed in this matter is improper because the Special Exception it attempts to amend and alter is no longer valid; (2) the Petition for Variances filed in this matter should be denied because the invalidity of the aforementioned Special Exception changes the factual basis on which it rests; and (3) the Petition for Special Exception filed in this matter should be denied because the invalidity of the aforementioned Special Exceptions changes the factual basis on which it rests.

Description of Land

The property of the Petitioners, Joseph J. Evering, Jr. and his wife, Catherine (hereinafter the "Everings"), consists of approximately 3.3 acres located on the north and south sides of Chester Road, 1000 feet west of Susquehanna Avenue in the Fifteenth Electrion District, Baltimore County, Maryland. The property is known as the Long Beach Marina, 800 Chester Road, and can be described as the tip of a peninsula jutting into Frog Mortar Creek.

MARTHA. A. DELEA
Baltimore Gas and Electric Company
Charles Center
P.O. Box 1475
Baltimore, Maryland 21203
(410) 234-5697

Attorneys for Petitioner Baltimore Gas
and Electric Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6TH day of February, 1995, a copy of the foregoing PETITIONER'S MEMORANDUM IN SUPPORT OF PETITION FOR SPECIAL EXCEPTION AND VARIANCE was mailed to J. Carroll Holzer, P.A., Holzer & Lee, 305 Washington Avenue, Suite, Towson, Maryland 21204.

ROBERT A. HOFFMAN

TO1DOCS1/PAM01/0000705.01

The property is best understood as consisting of four separate pieces of land: (1) the original Evering parcel, approximately 1.2 acres in size, located on the south side of Chester Road and comprising Lots 1, 82 and 83 of the Long Beach Estates; (2) the Brown parcel, approximately 1.75 acres in size, located on the north side of Chester Road; (3) the south parking parcel, Lot 83 of the Long Beach Estates, located on the south side of Chester Road; and (4) the north parking parcel, located on the north side of Chester Road. All of these four pieces of land are in a D.R.5.5 zone.

Statement of Facts

In 1955, Joseph F. Evering, Jr. (hereinafter "Joseph Evering") filed a Petition for Special Exception, requesting that he be allowed to use his property on Chester Road, then and now in a D.R.5.5 zone, for a boat yard. At that time, he owned only the 1.2 acre Original Evering Parcel located on the south side of Chester Road. On June 6, 1955, the Special Exception was granted (Case No. 3535X) and Joseph Evering thereafter converted his property into a boat yard by, among other things, building four piers which extended west into Frog Mortar Creek, for the mooring of power and sail boats.

On August 1, 1960, Mr. and Mrs. Henry J. Brown conveyed to the Everings the 1.75 acre Brown Parcel located on the north side of Chester Road. In January 1964, the Everings filed a Petition for Special Hearing "for a clarification and extension of the uses heretofore granted under the special exception

granted on the 6th day of June, 1955 (File No. 3535) to specifically include the storage of marine craft on the land." On March 9, 1964, the Everings' request was granted (Case No. 64-57SH) subject to three restrictions:

1. No marine craft may be stored within 30 feet of the easternmost portion of the property presently owned by...[the Everings]

2. The use of the boat yard, both on land and in the water, shall be limited to pleasure craft.

3. The Petitioners [the Everings] shall comply with the off-street parking requirements of Section 409 of the Baltimore County Zoning Regulations.

About one month later, on April 10, 1964, the Everings filed a Petition for Special Exception.

The Petition for Special Exception requested that the Everings be allowed to develop a boat yard on the Brown Parcel. The Everings planned to fill and level the land, build a bulkhead on the north side of the Brown Parcel and extend Chester Road to the water's edge. On June 30, 1964, the Petition for Special Exception (Case No. 64-160X) was granted subject to the following restrictions:

1. No major repairs of any boats shall be permitted on the premises or waters immediately adjacent thereto.

2. Construction of boats is prohibited.

3. No commercial vessels will be permitted to patronize said establishment.

4. Services will be restricted to pleasure craft only.

5. Barges or similar type craft will not be allowed on or tied up at the property, with the exception of the one small barge which is presently being used by the Petitioner[s]. [The Everings.]

6. Minor repairs and maintenance will be permitted from 8 a.m. to 7 p.m. week-days [sic], May through September and 8 a.m. to 6 p.m. on week-days [sic] during the other months of the year. No repairs will be permitted on Sundays.

The site plan, which was approved by the Office of Planning and Zoning on January 16, 1967, called for four additional piers, approximately 168 additional boat slips and approximately 168 additional parking spaces for automobiles. Three of the proposed piers were to be built off the Brown Parcel, more or less parallel to the four existing piers which extended west from the Original Evering Parcel. Each was to contain 44 boat slips. The fourth proposed pier was to be built off the south side of the Original Evering Parcel, perpendicular and to the rear of the four existing piers. It was to contain 36 boat slips. The site plan also called for the Everings to extend Chester Road to the water's edge, to fill in and extend the Brown Parcel to conform with the Original Evering Parcel, to build a bulkhead and to use a macadam surface for the parking areas.

In 1966, the Everings applied for and received three building permits for the northwest Brown Parcel piers. Little, if any, construction was commenced and, in 1970, the Everings again applied for and received building permits for the same three piers. Again, the Everings did not commence any substantial construction. It is apparent that they did drive in some mooring piles along the western shore line of the Brown Parcel, but it is just as apparent that this construction was soon abandoned. No effort was made to fill in and extend the Brown

Parcel, to extend Chester Road, to build the bulkhead and to comply with the plans for the required parking spaces. Sometime between 1966 and 1984, they did construct the southern pier off the Original Evering Parcel. During this time they also acquired the north and south parking parcels.

In August, 1984, the Everings filed the following three petitions:

1. Petition for Zoning Variance

    a. to allow existing compacted stone in lieu of the required macadam paving. A variance from B.C.Z.R. Sec. 409.2.c.(2)(1981 and 1983 Supp.)

    b. to allow 318 parking spaces in lieu of the required 384, or, if the special exception is granted, to allow 363 parking spaces in lieu of the required 384. A variance from B.C.Z.R. Sec. 409.2.b (1981 and 1983 Supp.)

    c. to allow the extension of the piers to exceed 300 feet beyond the mean low tide. A variance of B.C.Z.R. Sec. 417.5(a) (1981 and 1983 Supp.)

2. Petition for Special Exception

    a. to allow the two lots on the north and south sides of Chester Road (the North and South Parking Parcels) to be used as part of the boat yard. The lots are zoned D.R.5.5.

3. Petition for Special Hearing

    a. to amend the site plan which was approved on January 1, 1967 in connection with the June 30, 1964 Petition for Special Exception (Case No. 64-160X) in order to construct additional piers and slips.

    b. to remove restrictions 1 and 3 in Case No. 64-57SPH in order to allow marine craft to be stored within 20 feet of the easternmost property line and to request a variance of the parking.

c. to remove restrictions 1 and 6 in Case No. 64-160X in order to allow major repairs on the premises and in the waters and to change the times that repairs are permitted.

d. to determine that a boat yard and related parking areas are structures devoted to civic, commercial and recreational activities and are, therefore, exempt from the residential transitional requirements set out in B.C.Z.R. Sec. 1B01.1B.1.c (1981 and 1983 Supp.)

Statement of the Law

The issue presented in this case is, simply put, whether the Everings utilized the Special Exception they were granted on June 30, 1964. Section 502.3 of the Baltimore County Zoning Regulations (1981 and 1983 Supplements) states, in pertinent part, that:

> "[a] Special Exception which has not been utilized within a period of two years from the date of the final order granting same, or such longer period not exceeding five years, as may have been specified therein, shall thereafter be void...After a final order granting a Special Exception, the Zoning Commissioner, at any time prior to expiration of the period of time authorized for its utilization, may grant one or more extensions of such period, provided that a maximum time for utilization of the Special Exception is not thereby extended for a period of more than five years from the date of the final order granting same."

The same section also provides that:

> "[a] Special Exception which requires any construction for its utilization shall be deemed to have been used within its authorized time if such construction shall have been commenced during the authorized period, or any extension thereof, provided said construction is thereafter pursued to completion with reasonable diligence." (Emphasis added.)

IN THE MATTER OF	*	BEFORE THE
BGE IVY HILL SUBSTATION	*	COUNTY BOARD OF APPEALS
S/W CORNER OF RIDGE ROAD AND JOEL COURT	*	BALTIMORE COUNTY
	*	
8th ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT	*	CASE NO. 94-452-XA

* * * * * * * * * * * * * * *

MEMORANDUM IN LIEU OF FINAL ARGUMENT

I.

Statement of the Case

Prots, Friends of the Ridge, and individuals Mr. & Mrs. Nigel Howse, Mr. & Mrs. Robert O'Hara, Mr. & Mrs. Ron Hanley, Mr. & Mrs. Carl Follo, Mr. & Mrs. Robert Rytter, Mr. & Mrs. Ira Brown, Mr. & Mrs. Dieter Langendorf, Mr. & Mrs. Andrew Lansman, Mr. & Mrs. Jeffrey Bozel, Mr. & Mrs. Bruce Pitcher, and Mr. & Mrs. Joe Czajkowski, by J. Carroll Holzer, Holzer and Lee, hereby submit the following Memorandum in Lieu of Closing Final Argument as requested by the County Board of Appeals.

This matter comes before the Board as both a Petition for Special Exception and a Petition for Zoning Variance for the property located on the southwest corner of the intersection of Ridge Road and Joel Court in northern Baltimore County. Within the Petition for Special Exception, relief is requested to approve an outdoor electric public utility service center (electric substation) in an RC-5 zone, pursuant to Section 1A04.2.B.1.1 of the Baltimore County Zoning Regulations (hereinafter B.C.Z.R.) and if necessary, to amend the Fox Ridge Estates (formerly Forewood Property) final development plan. The Petition for Zoning Variance

LAW OFFICE
HOLZER AND LEE
305 WASHINGTON AVENUE
SUITE 502
TOWSON, MARYLAND
21204

(410) 825-6961
FAX (410) 825-4923

Phrased differently, then, the issue here is whether the Everings, under the June 30, 1964 order granting them a Special Exception, commenced construction during the authorized time period and thereafter pursued that construction to completion with reasonable diligence.

The requirements set forth by Section 502.3 are twofold: (1) The Petitioner must commence construction within the authorized time period; and (2) he must pursue that construction to completion with reasonable diligence. If the Petitioner fails to do both, the Special Exception is void. While the record is not clear, it is assumed that the Everings had five years from the date of the Special Exception in which to commence construction.

It is apparent that the Everings have not attempted to utilize the Special Exception they were granted on June 30, 1964. As of September 1984, they had not extended Chester Road, had not filled in and extended the Brown Parcel, had not built the bulkhead, had not built the parking areas as detailed on the site plan, and had not implemented their plans to build three piers off the western shore of the Brown Parcel. As the June 30, 1964 Special Exception was surely one requiring construction for its utilization and the Everings did not commence any substantial construction during the ensuing five years (1964-1969), the Special Exception is void.

The Everings, in essence, have failed to meet both requirements of Section 502.3: They did not begin any substantial, easily recognized construction and they did not pursue what little construction they did commence to completion with reasonable diligence. While it is true that the Everings did build the southern pier off the Original Evering Parcel sometime after 1966, the record is not clear as to exactly when this structure was constructed. Furthermore, even if construction on this southern pier was commenced within the five-year time period, it would not toll Section 502.3. It must be remembered that the June 30, 1964 Special Exception concerned the Brown Parcel. The southern pier is built within the property boundaries of the Original Evering Parcel and, therefore, relates to the 1955 Special Exception, not the 1964 Special Exception. The Everings could have built the southern pier at any time after the 1955 Special Exception was granted. Its mere inclusion in the 1967 site plan, which included both the Brown and the Original Evering Parcels, does not make it part of the 1964 Special Exception.

The only apparent action taken by the Everings with regard to the Brown Parcel during the authorized five-year period was securing building permits in 1966 for the three Brown Parcel piers. This, by itself, does not constitute the commencement of construction. Even if it did, the Everings did not pursue the construction to completion with reasonable diligence. More than eighteen years have passed since the Everings secured the building permits and, during this time, the Everings, at best,

drove a few piles along the western and northern shores of the Brown Parcel. Again, the record is not clear as to when these piles were driven, but even if they were driven in within the authorized time period, this action does not constitute "construction" as contemplated by Section 502.3.

The meaning of the language in Section 502.3 requiring construction to be pursued to completion with reasonable diligence was recently addressed by the Baltimore County Zoning Commissioner in the case of In Re Petition for Special Hearing of Joseph L. Soley, Case No. 84-89-SPH (hereinafter "Joseph Soley"). There, the Petitioner, Joseph Soley (hereinafter "Soley") sought approval of the Zoning Commissioner to continue his special exception on the grounds that he had fulfilled his reasonable diligence construction obligation under Section 502-3.

Soley had been granted a Special Exception on April 28, 1977. On October 18, 1978, the time for the utilization of the Special Exception was extended for a period of three years, April 28, 1979 to April 28, 1982. On September 22, 1981, Soley requested the Zoning Commissioner to further extend his utilization of the Special Exception, but the Zoning Commissioner noted that no further extensions could be granted because the total period for utilization would reach five years by April 28,1982. On April 14, 1982, Soley filed for and received a building permit. He then hired an engineer to do a land survey and in quick succession cleared the site for construction, excavated to an

average of three and one-half feet, placed sediment control devices around the perimeter of the property and even poured a concrete footing.

In deciding that Soley had not acted with reasonable diligence in pursuing the construction to completion, the Zoning Commissioner first adopted the definition of "Reasonable Diligence" set forth in Black's Law Dictionary (rev. 5th ed. 1979):

> "[a] fair, proper and due degree of care and activity, measured with reference to the particular circumstances; such diligence, care or attention as might be expected from a man of ordinary prudence and activity." Joseph Soley, p.

Next, the Zoning Commissioner found it appropriate to compare the language of and intent behind Section 502.3 to a string of Maryland cases concerning a property owner's "vested rights."

A vested right is the right to initiate or continue the establishment of a use or construction of a structure which, when completed, will be contrary to the restrictions or regulation of a zoning ordinance or an amendment to it which has become effective in the meantime. See generally, 3 Rathkopf, The Law of Zoning and Planning, 57-6 (4th ed. 1976). A vested right usually arises "where the owner seeks to proceed in accordance with prior zoning despite an existing or pending amendment to the zoning regulations." Joseph Soley, p. 4. A vested right is held to accrue in Maryland when:

> "[a] manifest commencement of some work or labor on the ground which everyone can readily see and recognize as the commencement of a building...begun with the inten-

> tion and purpose then formed to continue the work until the completion of the building." Rupp v. Earl H. Cline & Sons, 230 Md. 573, 578, 188 A.2d 146 (1963).

Noting that "Section 502.3 provides that any special exception which requires the construction for its utilization be commenced during an authorized time period...provided that the construction is pursued to completion with reasonable diligence," the Zoning Commissioner concluded that "[t]he language found in Rupp and in Section 502.3 is similar and must be read in conjunction." Joseph Soley, p. 5 (emphasis in original). In this regard, the Zoning Commissioner then held that the Rupp test was virtually identical to the language in Section 502.3 and that case law determining what action amounts "to work or labor readily seen and recognized as the commencement of a building and done with the intention and purpose to continue until completion" should also determine what action constitutes "construction pursued to completion with reasonable diligence." Joseph Soley, p. 6.

Having made the comparison between the language in Section 502.3 and Rupp, the Zoning Commissioner stated that Soley:

> "did not comply with Section 502.3 nor with the strictures as mandated by the Court of Appeals [in Rupp]. He did excavate; he did pour concrete; he did provide sediment control devices. He did not pursue to completion with reasonable diligence; he did not begin in April, 1982, with the intention and purpose to continue the work until completion of the building. He did begin with the intention of tolling 502.3... [Soley's] testimony and by his actions clearly show that what he did constituted "construction," and that it was an acceptable beginning [but]...it is clear that...[Soley]...has not met his burden proving that he began construction on the subject site...with the intention and purpose to continue the work until completion of the building with reasonable diligence." Joseph Soley, p. 7

Zoning ordinances, including Baltimore County's ordinances, **do not create lots.** Zoning does not create parcels of real property. What zoning ordinances normally do, with respect to residential districts, is establish dimensional minimums, such as minimal lot, parcel or tract size, yard sizes (the distance between buildings and property lines), and the height of structures. In addition, such ordinances specify the number of residential units that may be placed upon the area of a tract or parcel (density), ancillary requirements such as parking minimums, bathroom minimums, and square footage minimums of buildings. Additionally, zoning ordinances can, to some extent, regulate uses of property, as distinct from dimensional requirements.[6]

Baltimore County's ordinance, like most zoning ordinances, does not define lots to include only lots delineated on plats in approved subdivisions. Section 101 defines "corner

---

[6] When variance issues are involved, some cases regarding setbacks or height restrictions refer to them as "dimensional" variances, *see Bressman v. Gash*, 131 N.J. 517, 523-26, 621 A.2d 476, 479-81 (1993), and some as "deviational" variances. *See Sako v. Delsesto*, 688 A.2d 1296, 1298 (R.I. 1997). In Maryland, they are commonly referred to as "yard" variances, distinguishing them from "use" variances, but on occasion have been referred to as "dimensional" variances. *See Easter v. Mayor of Baltimore*, 195 Md. 395, 401, 73 A.2d 491, 493 (1950) ("Use variances are doubtless more serious than dimensional changes, but that is only a matter of degree."). The proof required, however, assuming the uniqueness of a subject property, can be much greater with respect to use variances when the terms "practical difficulties" and "unwarranted [undue, unusual or unreasonable] hardship" are framed in the disjunctive, "practical difficulties *or* unwarranted hardship." We noted in *Zengerle v. Board of County Commissioners*, 262 Md. 1, 21, 276 A.2d 646, 656 (1971): "a use variance is customarily concerned with unusual [unwarranted] hardship where the land cannot yield a reasonable return without a variance whereas an area variance is primarily concerned with practical difficulties." Although the phrase "reasonable return" has all but disappeared from the vocabulary of zoning, except to the extent the term "reasonable investment backed expectations," has crept into "takings" jurisprudence, *see Penn Central Transp. Co. v. City of New York*, 438 U.S. 104, 98 S. Ct. 2646, 57 L. Ed. 2d 631 (1978) and its progeny, the distinction between yard and use variances consistently has been applied through the selective application of the practical difficulty/unwarranted hardship terminology.

requests a variance from Section 1A04.3.B.3 of th B.C.Z.R. to permit structures as close as zero feet (0') from an interior lot line in lieu of the required fifty feet (50') building setback. The relief requested was shown on Petitioner's Exhibit Number Three.

A hearing was conducted before the Zoning Commissioner of Baltimore County and on the 24th day of June 1994, the Petitions for Special Exception and Variance were granted. An appeal to the commissioner's order was filed by the protestants to this Board.

The Board conducted hearings on five days beginning in October 1994 and ending on January 19, 1995.

II.

Summary of Protestants' Position

- BGE's proposed increase of an existing one-transformer substation containing approximately twelve hundred (1,200) square feet to a two-transformer, multiple switch-gear and circuit equipment increasing the size to a 22,000+ square foot serving an increased service area does not belong in this residential neighborhood and because of its size and capacity, it will serve an area in excess of the xisting service area for the present facility. In addition to its increased size, it is spilling out of its original lot confines to include expansion into a parcel of the original Fox Ridge subdivision as well as a current residential lot serving the Vinup family as a residence. The service area for the existing facility will be increased to take in

In brief, Soley met the first requirement of Section 502.3 by having a substantial construction beginning, or, at least, to paraphrase Rupp, a readily recognizable commencement. However, he failed to meet the second requirement of pursuing that construction to completion with reasonable diligence because he lacked the requisite intent.

In the Evering situation, the Everings did not have a substantial construction beginning. All they did was obtain building permits and drive in a few mooring piles. Neither action, as noted earlier, constitutes a readily recognizable commencement or a substantial construction beginning. Using, as the Zoning Commissioner in Joseph Soley did, Rupp and its progeny as guides, it has been repeatedly held that the mere issuance of a building permit alone does not confer any vested right and, therefore, would not constitute a construction under Section 502.3. See Stewart Petroleum Co. v. Board of County Commr's, 276 Md. 435, 347 A.2d 854 (1975); County Council v. District Land, 274 Md. 691, 337 A.2d 712 (1975); Rockville Fuel & Feed Co. v. City of Gaithersburg, 266 Md. 117, 291 A.2d 672 (1972); and Ross v. Montgomery County, 252 Md. 497, 250 A.2d 635 (1969). See generally 3 Rathkopf, The Law of Zoning and Planning, 57-6 (4th ed. 1976). As it was stated in County Council, "the obtention of a building permit creates no vested right...unless substantial construction has been undertaken in reliance thereon..." 274 Md. at 707, citing Rockville Fuel, 266 Md. 117.

The driving of a few piles along the western and northern

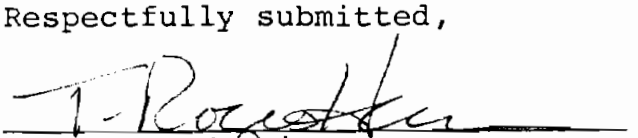
shores of the Brown Parcel does not constitute a substantial construction because, under the Rupp test, everyone would not be able to recognize these few piles as the manifest commencement of the land-fill extension of the Brown Parcel, the extension of Chester Road, the construction of a bulkhead, the leveling and paving of a parking area, and the construction of three piers. See Rupp, 230 Md. at 578. Indeed, these few files barely protrude out of the water. At best, they constitute an incomplete and ambiguous outline of the northern and western shores of the Brown Parcel. In this regard, the piles can be likened to the footing of a building. In Ross v. Montgomery County, the Court of Appeals held that the pouring of a single footing was not enough to give the property owner a vested right to build an apartment hotel under a building permit issued prior to a change in the zoning classification of the property. 252 Md. 497. See Pemberton v. Montgomery County, 275 Md. 363, 340 A.2d 240 (1975) and Stewart Petroleum, 276 Md. 435.

Assuming that the driving of the piles coupled with the building permit does constitute a substantial, readily recognizable construction beginning, the Everings still have failed to pursue that construction to completion with reasonable diligence. It has been eighteen years since the building permits for the three permits were issued, and the piles are the only evidence of a construction attempt. While it may very well have been the intention and purpose of the Everings to secure building permits, drive the piles, and pursue to completion the land-

fill, road extension and the bulkhead, parking lot and pier constructions, this intention was quickly abandoned.

It is true that in 1970 the Everings renewed the building permits, thus in some sense evincing their continued intention to implement the 1967 site plan, but, again, no substantial construction occurred immediately thereafter or in the ensuing fourteen years. It cannot, therefore, be maintained that the Everings have been pursuing to completion the utilization of their 1964 Special Exception with reasonable diligence, but this is exactly what they would have to prove in order for that Special Exception to still be valid. B.C.Z.R. Sec. 502.3. It should be remembered that the Everings have the burden of proving that the 1964 Special Exception is still valid and that they both commenced construction within the authorized time period and pursued that construction to completion with reasonable diligence. See Joseph Soley, p. 7. As this burden has not been met, and all evidence suggests that it cannot be met, the 1964 Special Exception is void. A Special Hearing, therefore, is not proper and the Everings should be required to re-petition for a special exception for the Brown Parcel. Furthermore, the Petition for Variances and the Petition for Special Exception should both be denied because the invalidity of the 1964 Special Exception changes the factual basis on which they rest.

Respectfully submitted,



T. Rogers Harrison
Mudd, Harrison & Burch
306 West Joppa Road
Towson, Maryland 21204
828-1335
Attorneys for Ken Engelke, et al

IN RE:	*	BEFORE THE
PETITION FOR SPECIAL HEARING, PETITION FOR SPECIAL EXCEPTION, PETITION FOR ZONING VARIANCE. NORTH SIDE OF CHESTER ROAD, JOSEPH F. EVERING, JR.	*	ZONING COMMISSIONER OF BALTIMORE COUNTY
	*	85-65-H-XSPHA

*** *** *** *** *** *** *** ** * ** *** *** *** *** *** ***

MEMORANDUM OF LAW AS TO HEARING ON FEBRUARY 1, 1985

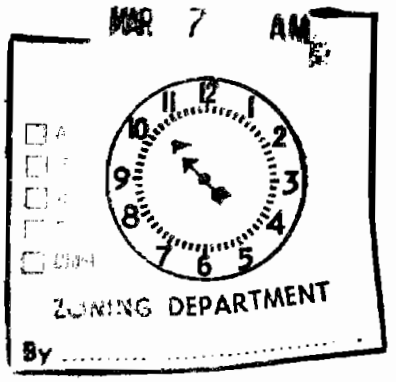
LONG BEACH MARINA and **JOSEPH F. EVERING, JR.** by their attorneys, John O. Hennegan and ROMADKA, GONTRUM, HENNEGAN & FOOS, submit this Memorandum of Law applicable to the Hearing before the Zoning Commissioner on February 1, 1985, in support of their position that the proposed change in uses will have no adverse impact on water quality and will have no adverse impact on fish, wildlife or plant habitat.

ISSUES

I. What is the identity of the approving authority of the local jurisdiction as used in Section 8-1813 of the Natural Resources Article of the Annotated Code of Maryland?

II. What is the Burden of Proof?

III. Have adequate facts been presented from which the Zoning Commissioner can approve the requested changes in use as required in Section 8-1813 of the Natural Resources Article of the Annotated Code of Maryland?



LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

IV. Is there an adequate source of scientific knowledge or facts to support findings required by Section 8-1813 of the Natural Resources Article over and above the mitigation measures proposed by the Petitioner?

DISCUSSION OF THE LAW

The Chesapeake Bay Critical Area Program, as set forth in Section 8-1813 of the Natural Resources Article of the Annotated Code of Maryland (Critical Area Program), requires any Zoning Amendment, Variance or Special Exception after June 1st, 1984, and prior to either state approval of the Baltimore County program or state adoption of a Baltimore County program, sometime after December 1st, 1985, to be reviewed by "The approving authority of the local jurisdiction". The approving authority, in rendering a decision to approve an application, shall make findings that:

(1) The proposal will minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run-off from surrounding lands; and

(2) The applicant has identified fish, wildlife, and land habitat which may be adversely affected by the proposed development and has designed the development so as to protect those identified habitats whose loss would substantially diminish the continued ability of populations of affected species to sustain themselves.

additional area of Baltimore County which is subject to additional development in the coming years. The protestants do not believe that their neighborhood should be required to serve additional areas of the county which could properly contain their own substation and accompanying equipment.

- BGE failed to establish the need for such a huge facility to be located at Ivy Hill on the basis of their own figur s projecting a four percent (4%) growth per year or seventy-five (75) units to be added per year. Such minimal projected growth rates from Baltimore County as well as BGE itself fails to justify an increased megawattage from 16.6 megawatts currently to 64 megawatts, or a four hundred percent (400%) increase.
- The physical threat demonstrated to the community consists of, in addition to the heavy electrical equipment contain d within BGE's fencing, a proposed stormwater management pond three to four feet (3' - 4') deep, which poses a significant risk to children. There is a strong likelihood that the fence and equipment will pose an attractive nuisance to young children. In addition, evidence was submitted by protestants indicating that this location is susceptible to lightning, fire, explosion, and noise.
- The extensive discussion of electromagnetic fields (EMF's) was not designed to prove to the Board that there is a direct link between EMF's and possible cancer effects among residents. Electromagnetic field testimony was designed,

In addition, Section 8-1813 of the Critical Area Program provides that the approving authority can require additional information as is necessary to make the beforementioned findings.

Except as provided in Section 2-58.1 of the Baltimore County Code, which deals with change in zoning classifications and reclassifications, not the subject of this matter, the Zoning Commissioner may grant Variances and make Special Exceptions to the Zoning Regulations in harmony with their general purpose and intent. Such power is subject to appropriate principals, standards, rules, conditions and safeguards set forth in the Baltimore County Zoning Regulations (BCZR). Section 22-26, Baltimore County Code, 1978, as amended. Pursuant to Section 500.7, BCZR, the Zoning Commissioner has the power to conduct such Hearings (called "Special Hearings") and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations. Such power includes the right "to determine any rights whatsoever" in any property insofar as affected by zoning regulations.

Viewing the above in light of the existing case law, it is clear that the "approving authority" under Section 8-1813 of the Critical Area Program is the Zoning Commissioner. For example, in May v. Warnick, 227 Md. 77, 175 A.2d 413, (1961), the Court of Appeals stated:

> "It is well-established law that in construing legislative enactments, all statutes relating to the same subject matter are to be considered harmonized as far as possible. This rule applies when the statutes were passed at different dates, separated by long or short intervals. The statutes are to be compared and brought into full accord if possible, but if they are insusceptible of a construction which would permit all their provisions to fall into complete agreement, they are to be made to operate together as far as possible, consistent with the evident intent of the latest enactment."

Applying the principal of a harmonious reading to the Critical Area Program, it is the Zoning Commissioner who must make specific findings that the proposed development will minimize adverse impacts on water quality that result from pollutants that discharged from structures or conveyances, or that have run from surrounding lands, and that the applicant has identified fish, wildlife, and plant habitat which may be adversely affected by the proposed development and has designed the development so as to protect those identified habitats whose loss would substantially diminish the continuing ability of populations of affected species to sustain themselves.

After making the required specific findings, the Zoning Commissioner must then exercise his legislative function of granting or denying the petitions insofar as the proposed changes in uses comply with the Critical Area Program. See, In Board of County Com'rs. of Prince George's

County v. Levitt and Sons, Inc., 235 Md. 151, 200 A.2d 670 (1964) and Dal Maso v. Board of County Comm'rs., 182 Md. 200, 34 A.2d 464 (1943).

One of the basic requirements of fair procedure is that an agency's decision must be based upon the evidence produced at the hearing before the agency and not on evidence not contained in the record. See, 24 Md. L. Rev. 1 (1964) at 15-18.

The law is settled that questions of fact may be finally determined by an administrative agency (in this case, the County Zoning Commissioner) so long as the Courts retain their inherent power to assess the sufficiency of evidence to support such factual conclusions and to review the actions of administrative agencies which are illegal, arbitrary, unreasonable or which impair personal or property rights. See, Johnsontown Coal and Coke Co. v. Dishong, 198 Md. 467, 84 A.2d 847 (1951). This final determination has been defined as "compulsory arbitration". See, State Insurance Commissioner v. National Bureau of Casualty Underwriters, 248 Md. 292, 236 A.2d 282 (1967).

The duty of the Board (in this case, the Zoning Commissioner) is to exercise the discretion of experts. The court, although it may not arrive at the same conclusion, will not disturb a decision of the Board on review, if the Board has complied with all legal requirements of notice and hearing and the record shows substantial evidence to sustain the

finding. Aaron v. City of Baltimore, 207 Md. 401, 114 A.2d 639 (1955). Substantial evidence is such evidence as a reasonable mind might accept as adequate to support a conclusion. Snowden v. City of Baltimore, 224 Md. 443, 168 A.2d 390 (1961). See also, Department of Nat. Res. v. Linchester Sand and G. Corp., 274 Md. 211, 334 A.2d 514 (1975).

The scope of the Zoning Commissioner's fact finding process, including conclusions is confined to the wording contained in Section 8-1813 (1) and (2) of the Critical Area Program. The administrative agency, when acting in a manner which may be considered legislative in nature, must act within its legal boundaries. See, Department of Nat. Res. v. Linchester Sand and G. Corp., cited previously. The Petitioner's Burden of Proof under local, County regulations is not applicable to the Commissioner's fact finding procedure under Section 8-1813. For example, the Zoning Commissioner must find that the applicant has met his Burden of Proof if there is evidence before it which would make the issues "fairly debatable, that is, evidence from which a reasonable mind could reasonably have reached a result the Zoning Commissioner reached upon a fair consideration of the fact picture painted by the entire record. Board of County Commissioners for Prince George's County v. Oakhill Farms, Inc., 232 Md. 274, 192 A.2d 761 (1963). Also, the law with regard to Burden of Proof in the case of Use Variances and Area Variances does not

apply. For example, the standard of "practical difficulty" does not apply should not be considered by the Zoning Commissioner with regard to his findings under Section 8-1813. The administrative agency, when acting in a manner which may be considered legislative in nature, must act within its legal boundaries. See, Department of Nat. Res. v. Linchester Sand and G. Corp., as cited previously.

DISCUSSION OF THE EVIDENCE PRESENTED

In light of the need for such evidence as a reasonable mind might accept as adequate to support a conclusion and to avoid an arbitrary or unreasonable finding, Protestants' Exhibit 3A, a Federal Environmental Protection Agency (EPA) report entitled, Chesapeake Bay Program+ Finding and Recommendations, is particularly alarming. For example, the report states, at page 25, that " there is also a similar, but not a precise, relationship between nutrients and bay fisheries". The run-off of the subject site is referred to as a non-point source. The report states, at page 28, that "the diffuse nature of non-point sources render them difficult both to quantify and control". Overall, the report states that the relationships between man-made activities on and off shore and water quality is not well understood. It recommends studies and the collection of more data from which the relationships can be better defined. It further states that once these relationships are defined they can be transformed to management practices to mitigate or minimize adverse impacts

however, to establish that the scientific community has proven that EMF's penetrate the human body and catalyze cellular changes and that multiple studies have indicated that there is a risk to humans from exposure to EMF's. Until safety standards can be established and a definitive link proven, BGE must act prudently and does not have the right to impose higher risk on present residents, nor to determine th degree of risk to which private citizens should be exposed. The net effect of the EMF testimony is to further establish that an electrical substation with the accompanying increase of high-current wires, as in this case, belongs in an area properly insulated from human activity and homes.

♦ Detrimental effect of this facility on property values

The Board has had the opportunity to see prot stants' Exhibit Numbers 17-19 which are photographs of numerous substations of BGE around Baltimore County and surrounding areas. These photos, as well as the Board's own knowledge of the equipment to be placed in the Ivy Hill Substation, are just one half of the detrimental effects of this proposal on the property values in the community. In addition, the perception of human health risk created by the multipl studies that have become so widespread and publicized over the last few years have produced a reluctance in numerous buyers of real estate to acquire property located in or near power lines or substations. These two combined effects, the aesthetic and the perceived human health risk, clearly in the

on water quality and mitigate against the loss of fish, wildlife and land habitat populations. The report makes specific reference to the lack of knowledge in the areas of anti-fouling paints and urban run-off (page 46). The specific management activities recommended apply to (1) point sources such as sewage treatment plants, (2) poor agricultural practices, (3) urban run-off, (4) industrial activities involving chemicals and toxins. None of these activities apply to the changes in uses requested.

Protestants' Exhibit 4A,an EPA report entitled Chesapeake Bay Program Technical Studies, A. Synthesis describes the findings to-date with regard to Nutrient Enrichment, Toxic Substances, and the Decline of Submerged Aquatic Vegitation. No where does this report show a known relationship or trend between any of the proposed change in uses and water quality or fish, wildlife or land habitat.

Also admitted into evidence was an Environmental Effects Report which was prepared by the Petitioner which discussed, among other things, the impact of the proposed changes on water quality, pollutant loadings, land disturbance, aquatic organisms and vegitation. One adverse impact described was the potential for over-board discharge of wastes from boats. The report stated that this would be minimized by providing pump-out facilities. Evidence from the Health Department dated February 8, 1984, revealed on-site disposal facilities are functioning adequately. In addition, evidence

was presented that the capacity of this system would be enlarged to minimize any future adverse impact. The Environmental Effects Report also shows, based upon information recommended to the Petitioner's engineer by the County Health Department, that the proposed change in uses will not increase the amount of biochemical oxygen demand, total phosphorus, total nitrogen, lead, zinc or sediment in any measurable amount. Also, evidence was presented that water conservation practices would be implemented to minimize adverse impacts on water quality.

The proposed location of new piers in areas where the depth of water is approximately twelve feet (12') is a significant practice in minimizing the adverse environmental process associated with dredging should the piers be located within three hundred feet (300') of mean-low tide as currently required by the BCZR. In other words a variance is requested in order to minimize any adverse impact on water quality caused by the extension of existing piers. Since no changes are proposed which would alter the present configuration of the land, on-shore, there is little if any change in the impact of the proposed uses on water quality, wildlife and land habitat. In fact, evidence was presented that the unpaved, water bound macadam parking area functions as a filter and traps any pollutants and other adverse particulars from reaching the bay waters, thus minimizing any adverse impact caused by additional parking of motor vehicles. Also,

evidence showed no submerged aquatic vegitation in the off-shore area. To the degree that practices are known and available to mitigate against water quality, fish, wildlife and land habitat, they are being implemented at this site to minimize any adverse impact proposed uses may have.

Protestant's Exhibit 2A, "Interim Critical Areas Requirements for Baltimore County" makes reference to the necessity for the developers to provide additional environmental information. Although the Petitioner is not a developer, it bears emphasizing that according to the EPA's findings and recommendations set forth in Protestants' Exhibits 3A, and 4A, ~~it bears emphasizing that~~, detailed information is presently unknown as to the relationship between any zoning proposal and its site-specific impact on water quality and fish, wildlife and land habitat. The "Interim Critical Areas Requirements for Baltimore County" are not supported by existing and available scientific knowledge of activities harmful to Chesapeake Bay and environs and existing and available comprehensive management tools to properly and equitably mitigate against harm to the Bay and environs according to the Protestants' Exhibits 3 and 4. To expect this Petitioner to undertake any studies and/or research to develop state-of-the-art best management practices is clearly unreasonable. This also applies to Mr. Bober's September 7, 1984 letter to Frank S. Lee requesting information. According to the EPA Reports, admitted into evidence,

known and available methods to mitigate against the deterioration of bay waters apply to soils, fertilizer application, animal waste, sediment, agricultural chemicals, and bacteria from animal waste. None of these issues is a problem at the subject site.

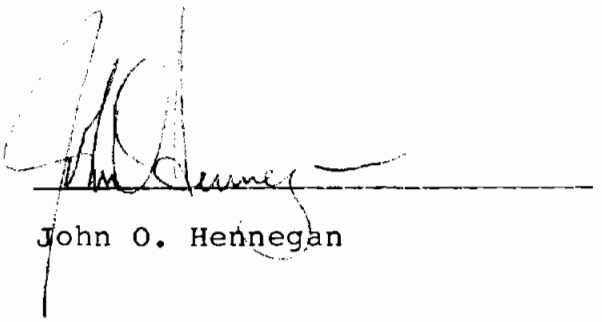
The testimony of John C. Schneider, an expert witness as to environmental impact, stated the Long Beach Marina location was an advantage in that it was located immediately upstream of its discharge into Middle River. As a result there is a greater flushing effect and increase in the assimilation of potential additional pollutants. This process loses its efficiency as you proceed upstream in Frog Mortar Creek. Siting considerations are important in light of Section 8-1808 (c) (9) of the Critical Area Program which states that, as a minimum, the program must designate those shoreline areas suitable for marinas.

SUMMARY

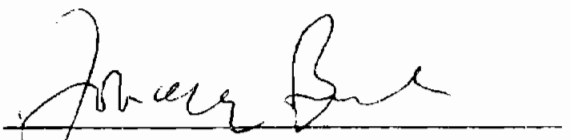
It is important to stress that the State legislation being applied is interim in nature. By its very terms, it shows a recognition of a need for more study, research and evaluation of physical, commercial and governmental forces before developing a comprehensive approach to changes in the Bay shoreline. The burden on the Petitioner is to minimize the impact his proposed changes may have on water quality, fish, wildlife and land habitat according to known and acceptable methods. The evidence clearly shows that this can

be accomplished, and that the Petitioner has taken the correct preliminary steps to implement such methods. Several Exhibits were introduced which would require the Petitioner to provide certain information and evaluation. This information and evaluation was performed to the extent that known and acceptable information and evaluation tools exist. More importantly, no evidence was presented that the mitigation measures (to minimize any adverse impact) were incorrect, not comprehensive, inadequate or property applied.

Respectfully submitted,



John O. Hennegan



Donald E. Brand
ROMADKA, GONTRUM, HENNEGAN & FOOS
809 Eastern Boulevard
Baltimore, Maryland 21221
Phone No.: 686-8274

Attorneys for Petitioner

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

opinion of both experts who testified, have established potential detrimental effects in regard to property value. More importantly, testimony from individual witnesses established an actual reduction in value of acquired property in the neighborhood after this case arose as well as the unique situation of one prospective buyer determining not to locate in the subdivision because of this issue. Clearly, detrimental effect on the property value has been established in this case.

- The current law still requires the need to amend th final development plan in this case which amendment needs to be reviewed by the planning board. The delegation to the Director of Planning is not correct as a matter of law and is in conflict with the Baltimore County Code. Even if the proper procedure was performed in this matter, it is clear that a BGE substation can not conceivably comply with the original purpose of the Fox Ridge Estates. Certainly, there can be no consistency between a residential subdivision and a proposal for an electric substation on one parcel of that subdivision.
- BGE has failed to establish the uniqueness of this site which would permit the application of the standard of practical difficulty or unreasonable hardship for the purpose of variance. This site and this property is "no different than any other parcel in the neighborhood in that it is flat,

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of _____, 1985, a copy of the aforegoing Memorandum of Law, was mailed to T. Rogers Harrison, Esquire, Mudd, Harrison & Burch, 306 West Joppa Road, Towson, Maryland 21204, Attorneys for Protestants'; and to Arnold Jablon, Zoning COmmissioner, Baltimore County, Room 113, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland 21204.

John O. Hennegan

Donald E. Brand

LAW FIRM

ROMADKA, GONTRUM, HENNEGAN & FOOS

ESSEX, MARYLAND

IN RE: *

Petition for Special Exception *
Petition for Special Hearing
Petition for Variances *
N/S Chester Road, 590' W. of
Severn Road (800 Chester Road) *

JOSEPH F. EVERING, JR., et ux *

Petitioners *

BEFORE THE

ZONING COMMISSIONER

OF

BALTIMORE COUNTY

Case No. 85-65-XSPHA

* * * * * * * * * *

MEMORANDUM OF LAW

The Protestants, Ken Engelke, et al., by their attorneys, T. Rogers Harrison and Mudd, Harrison & Burch, submit this Memorandum in support of their position that (1) the Everings' land falls under the Chesapeake Bay Critical Area Protection Program, Md. Nat. Res. Code Ann., Sections 8-1801 - 8-1816 (1974 & 1984 Cum. Supp.); (2) the Everings have not met the requirements of Section 8-1813 of the aforementioned Act; and (3) the proposed expansion and reshaping of the Everings' land will adversely affect the surrounding environment and will contribute to the decline of the Chesapeake Bay's ecosystem.

Description of the Land

The Protestants adopt the description of the land set forth in their original Memorandum.

Statement of Facts

The Protestants adopt the Statement of Facts set forth in their original Memorandum but amend that statement as follows:

On December 18, 1984, the Everings, by their attorney, filed with the Zoning Commissioner of Baltimore County a Motion for [a] Hearing, requesting:

"1. That a hearing be set at the earliest possible date for the Petitioner to present expert testimony.

2. That the Hearing be limited to determine whether or not the proposed development will (a) minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have runoff from surrounding lands; (b) the applicant has identified fish, wildlife and plant habitat which may be adversely affected by the proposed development and has designed the development so as to protect those identified habitat whose loss would substantially diminish the continued ability of populations of affected species to sustain themselves.

3. That the Hearing also be set to determine whether or not this proposed development is subject to Section 8-1801 through 8-816 [sic] entitled Chesapeake Bay Critical Area Protection Program of the Natural Resources Article of the Annotated Code of Maryland."

On January 3, 1985, the Zoning Commissioners scheduled a hearing on the two issues raised in the Everings' Motion. The Protestants, by their attorneys, have prepared this Memorandum in response to the issues raised in the Everings' Motion and as a supplement to their arguments raised at the hearing.

Law

In order to properly consider the two issues raised in the Everings' Motion, the second issue -- whether the Everings' land is subject to the Chesapeake Bay Critical Area Protection Program -- must be considered first because the other issue arises only if the Chesapeake Bay Critical Area Protection Program applies.

THE EVERINGS' LAND IS SUBJECT TO THE CHESAPEAKE BAY CRITICAL AREA PROTECTION PROGRAM

The Chesapeake Bay Critical Area Protection Program, Md. Nat. Res. Code Ann. Sections 8-1801 - 8-1816 (1974 & 1984 Cum. Supp.), was enacted in June 1984 to:

1. Establish a Resource Protection Program for the Chesapeake Bay and its tributaries by fostering more sensitive development activity for certain shoreline areas so as to minimize damage to water quality and natural habitats; and

2. Implement the Resource Protection Program on a cooperative basis between the State and affected local governments, with local governments establishing and implementing their programs in a consistent and uniform manner subject to State criteria and oversight.

Section 8-1801(b). The Program was implemented because of recent natural studies which showed "that the quality and productivity of the waters of the Chesapeake Bay and its tributaries have declined due to the cumulative effects of human activity that have caused increased levels of pollutants, nutrients and toxics in the Bay System and declines in more protective land uses such as forestland and agriculatural land in the Bay Region." Section 8-1801(a)(14).

According to the Program, the Chesapeake Bay Critical Area, or at least the initial planning area for determination of the Critical Area, consists of:

1. All waters of and lands under the Chesapeake Bay and its tributories to the head of tide as indicated on the State Wetlands Maps, and all State and private wetlands designated under Title 9 of [the Natural Resources] article; and

2. All land and water areas within 1,000 feet beyond the landward boundaries of State or private wetlands and the heads of tides designated under Title 9 of [the Natural Resources] article.

Section 8-1807(a). The Program also enabled local jurisdictions to exclude certain areas. Under Section 8-1807(b)(1)(i), a local jurisdiction may exclude from the Critical Area land which is:

1. Part of a developed, urban area in which...the imposition of a program would not substantially improve protection of tidal water quality or conservation of fish, wildlife or plant habitats; or

2. Located at least 1,000 feet from open water and separated from open water by an area of wetlands which...will serve to protect tidal water quality and fish, wildlife or plant habitats from adverse impacts of development in the excluded area.

In order to fall within the urban exclusion, the urban area must "be at least 50 percent developed and may not be less than 2,640,000 sqaure feet (60 acres) in contiguous area or the entire initial planning area located within the boundaries of a municipality, whichever is less." Section 8-1807(b)(1)(ii).

The Everings' land, located as it is on Frog Mortar Creek, is clearly within the Chesapeake Bay Critical Area as defined by Sections 8-1807(a)(1), (c)(1). Moreover, the Everings' land falls into neither the urban exclusion nor the wetlands exclusion as defined by Section 8-1807(b)(1). It is not located 1,000 feet from open water or separated from the open water by wetlands; and it is not a portion of an urban area. A review of the State Wetlands Map covering the Middle River/Frog Mortar Creek area reveals that, indeed, the Everings' land is part of the Critical Area. See State Wetlands Map, Baltimore County, No. 25. Therefore, the Chesapeake Bay Critical Areas Protection Program applies.

THE EVERINGS HAVE NOT MET THE REQUIREMENTS OF SECTION 8-1813 OF THE CHESAPEAKE BAY CRITICAL AREA PROTECTION PROGRAM

As the Chesapeake Bay Critical Area Protection Program applies to the Everings' land, the Everings must abide by the Program's directives, including Section 8-1813:

"(a) Specific findings required - From June 1, 1984 with regard to any subdivision plat approval or approval of a zoning amendment, variance, special exception, conditional use permit or use of a floating zone, affecting any land or water area

moderately forested, with no unusual physical features that would permit the granting of the variance."

- The character of this neighborhood, a peaceful, pastoral atmosphere, will be forever and dramatically altered if permission is granted for the increased Special Exception. It will never resemble the neighborhood which residents built and cherished. Homes and lifestyles will be dramatically altered by the granting of this Special Exception to accommodate BGE. Infrastructure, which BGE indicates is required to place the facility in this location is only wires and poles. They can be safely buried anywhere to lead to an installation which does not wreak havoc on homeowners and a neighborhood.
- Evidence revealed that no regulatory agency in the state of Maryland or Baltimore County monitors or regulates in any meaningful way substation activities. BGE is monitored by no legal authority in the placing, enlargement, or increased service area, but to their stockholders. This Board is the only regulatory agency evaluating this proposed r quest in monitoring or conditioning the activities of BGE.

III.

Outline of Issues

I. Increased Size

A. Physical: 1,200 square feet to 22,000 square feet

located within the initial planning area identified in Sec. 8-1807(a) of this subtitle, for which application is completed after that date, the approving authority of the local jurisdiction in rendering its decision to approve an application shall make specific findings that:

(1) The proposed development will minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands; and

(2) The applicant has identified fish, wildlife and plant habitat which may be adversely affected by the proposed development and has designed the development so as to protect those identified habitats whose loss would substantially diminish the continued ability of populations of affected species to sustain themselves.

(b) Information required from applicant - With regard to any application for project approval described in subsection (a) of this section, a local approving authority shall require such additional information from an applicant as is necessary in order to make the findings required by subsection (a).

(c) Section in effect until program effective - This section shall remain in effect in a local jurisdiction until such time as an approved program becomes effective."

(d) Exception - This section does not apply to any application initially filed prior to March 1, 1984. (1984. ch. 794).

The Everings filed their Petitions on August 16, 1984 and, therefore, the Section 8-1813(d) Exception is inapplicable. Thus, in order for the Everings to have their Petitions for Variances and Special Exceptions approved, they would have to submit information under Section 8-1813(b) from which Baltimore County could determine if the proposed expansion of the marina met the Section 8-1813(a) requirements. That is, Baltimore County would determine from the submitted information if the proposed expansion was environmentally compatible.

Apparently, the Everings' Motion for [a] Hearing is an attempt to fulfill the informational requirements under Section 8-1813. In other words, the Everings are attempting to prove

through expert testimony at a public hearing that their proposed expansion is environmentally compatible. Merely offering expert testimony, however, will not satisfy the informational requirements of Section 8-1813.

The purpose of Section 8-1813 is to prevent further deterioration of the critical area while the State is promulgating and approving statewide criteria for protecting the Bay. See Section 8-1808. Such a program is several years away and Section 8-1813, then, can be seen as an interim protection device. Pursuant to Section 8-1813, Baltimore County has promulgated informational requirements which land developers, such as the Everings, must comply with before their projects can be reviewed and approved. These requirements were delineated in an October 29, 1984 memorandum from Eugene A. Bober, Chief, Current Planning & Development Division, Office of Planning and Zoning, entitled "Interim Critical Areas Requirements for Baltimore [County]."

The Bober memo includes an outline of the informational requirements. The requirements can be divided into two categories: (1) baseline environmental data and (2) information on the environmental impact of the developer's plan. Before any formal review of a developer's plan can be taken by Baltimore County, the developer must submit the baseline environmental data.

The baseline environmental information includes (1) a description and mapping of the critical areas boundary; (2) a mapping of the water depth within 50 feet of the shoreline; (3) a description of the shoreline rates of erosion; (4) a mapping of the shoreline erosion control structures; (5) an analysis of

of surrounding soil, including a description and identification of wetlands soil, drainage patterns, and the site's soil erodibility and permeability characteristics; (6) a mapping of the topography, underground and surface waters, floodplains and the site's unique features; and (7) a description and mapping of plant, fish and wildlife habitats.

The description and mapping of the plant habitats should include a mapping of submerged aquatic vegetation (SAV) and a description of species composition and extent. It should also include a mapping of (1) the different vegetative habitats and a description of the plant communities and associations; (2) the presence of rare or endangered species; (3) the presence of coastal species; (4) the vegetation lawyers; (5) the successional stage vegetation; (6) any unique vegetation; and (7) the approximate acreage of each habitat type.

The description and mapping of the fish and wildlife habitats should be made in terms of (1) the availability and suitability of food and cover; (2) the continuity of habitats to determine corridor effects; (3) the actual or potential presence of coastal/Bay species; (4) the presence of rare or endangered species; (5) the quality of nesting, breeding or nursery sites; and (6) the migrational stopovers. Fish and wildlife is defined by the Bober memo to include finfish, crustaceans, mollusks, mammals, birds, amphibians and reptiles.

The environmental impact information includes (1) a description and mapping of the impervious surfaces; (2) a de-

description of the water quality, including a description of the extent and types of pollutants likely to occur because of the development, a detailed analysis of the impacts that the pollutant loadings will have on water quality and habitats, and a description of the effects that the velocity and volume of stormwater will have on water quality and habitats; and (3) a detailed comprehensive summary of the measures the developer will take to minimize run-off, soil erosion, sedimentation, population pressure and other adverse impacts. The summary of the mitigative measures should include a discussion of the stormwater management alternatives, a discussion of the sediment control practices to be implemented and a discussion of environmental protection design measures.

In addition to supplying the baseline environmental information and the environmental impact information, a developer may have to submit additional information depending on the site or the project characteristics. All three of these categories of information must be submitted in what is termed a "Critical Areas Information Text." This, according to the definition provided in the Bober memo, "is a written report describing the requested environmental information." The developer also has to submit a "Critical Areas Information Map," which is a map of the site detailing the requested environmental information. Bober memo, Critical Areas Information, Outline, page 1.

As is made abundantly clear by the Bober memo and the Critical Areas Information Requirements, the Everings cannot satisfy the requirements of Section 8-1813 merely by offering

expert testimony. Indeed, in order to satisfy Section 8-1813 and the additional informational requirements delineated by Baltimore County, the Everings would have to undertake an extensive and highly technical examination of the environment surrounding their land and would then have to submit the results of this examination in the form of the Critical Areas Information Text and Map. Moreover, the Baltimore County Office of Planning and Zoning has indicated that any testing or examination of a critical area must be conducted during the summer months. This is so because the ecosystem of the Bay varies dramatically from summer to winter. The levels of oxygen, nitrogen, phosphorous and toxic substances differ drastically in the summer. The requirement of a summer examination is even more appropriate in the case of a marina, a land use which has the greatest effect on the ecosystem during the summer months.

There is no indication that the Everings have met the informational requirements. They, apparently, have not submitted either the baseline environmental data or the environmental impact information. Nor have they submitted the required Critical Areas Information Text and Map. Nor, for that matter, does it appear that they have undertaken the type of thorough examination of the surrounding environment contemplated by the drafters of the Baltimore County Critical Areas Information Requirements; and, furthermore, even if the expert testimony offered by the Everings reveals that an examination of the surrounding environment was conducted, this examination would not be valid because

B. Capacity: 16.6 megawatt transformers to 64 megawatt transformers

C. Geographical: Expansion from Tract C, 0.40 acres, to Tract A, 1.5 acres and Tract B, 0.9 acres

D. Service Territory: Increase Over Existing Service Territory

II. Lack of Need: BGE's Failure to Establish Need

III. Physical Threat to Neighborhood

A. Stormwater management pond does not presently exist; fencing inadequate

B. Susceptible to lightning, fire, and explosion

C. Noise

IV. EMF's

V. Detrimental Effects on Property Value

A. Expert Opinion

B. Individual Opinion

VI. Need to Amend Final Development Plan

VII. Failure to Meet Burden of Proof on Variances

IV.

Statement of General Facts of Protestants' Case

A. BGE Case

Monica McGrady, the Project Engineer, and Lawrence S. Taylor, the Area Planner identified the site plan for the Ivy Hill substation as being 2.9 acres including 1.5 acres of the parcel located in the protestants' subdivision of Fox Ridge

it was not taken during the summer months. Finally, because of the uniqueness of the marina, Baltimore County will, no doubt, require the Everings to submit additional information regarding the impact of the marina on the environment. A hint of this required information was given in a September 7, 1984 letter from Paul Solomon, Current Planning & Development Division, Baltimore County Office of Planning and Zoning, to Frank S. Lee, a surveyor hired by the Everings to draw up the plans for the expansion and reshaping of their marina.

In the Solomon letter, Paul Solomon writes "the County needs a very detailed, comprehensive analysis in order to determine the impact of the proposed marina on water quality." He then lists five areas of additional information "deemed necessary" by the County before it can determine whether the proposed expansion meets the Section 8-1813 Critical Area Requirements:

"1. Existing water quality in Frog Mortar Creek in the immediate adjacent and downstream area. Testing should be performed for biological, chemical and other properties which will in any way be affected by the proposed marina.

2. Identify the types, amounts and sources of pollutants that will be generated by the full range of activities of the proposed marina. Determine what absolute amounts of these pollutants will directly or indirectly flow into Frog Mortar Creek. Indicate the effect of mitigating measures on both the amount and impacts of the identified pollutants.

3. Determine or assess the anticipated overboard discharge of wastes (including oil products) from the boats utilizing the marina and its effect on water quality and biota from any turbidity created by boat propellers and generated wave action.

4. Survey of the biota of Frog Mortar Creek or Middle River for the area that you determine may be impacted by the proposed marina. Assess any impacts from the proposed marina on the identified biota. The biota is to be interpreted in a broad sense including both flora and fauna.

5. Rate of flushing or exchange rate in Frog Mortar Creek adjacent to the site."

Paul Solomon, in the same letter, also directed Frank S. Lee to submit the baseline environmental data and the environmental impact information. All three categories of information (baseline, impact and additional), Paul Solomon wrote, should be obtained through "methods which are generally accepted as the state of the art with respect to reliability, accurancy and completeness." The Office of Planning and Zoning then withheld consideration of the Everings' Petitions until such time as the Everings provided the required information. See Inter-Office Correspondence between Norman E. Gerber, Director, Office of Planning and Zoning, and Arnold Jablon, Zoning Commissioner, September 7, 1984.

As the Everings have not conducted the proper tests during the summer months, have not submitted the required Critical Area Information Text and Map, and as merely offering expert testimony will not satisfy the Section 8-1813 requirements or the Baltimore County Informational Requirements, the Everings' Petitions should be denied.

THE PROPOSED EXPANSION AND RESHAPING OF THE EVERINGS' LAND WILL ADVERSELY AFFECT THE SURROUNDING ENVIRONMENT AND WILL CONTRIBUTE TO THE DECLINE OF THE CHESAPEAKE BAY'S ECOSYSTEM

As the Everings requested a hearing on whether they had met the requirements of Section 8-1813 of the Chesapeake Bay Critical Area Protection Program on December 18, 1984, the Protestants, like the Everings, have not had the opportunity to study and examine the environment surrounding the Everings' land

during the summer months, the time the Baltimore County Office has designated as the proper time for such studies. Therefore, the Protestants, like the Everings, cannot possibly offer extensive data on the environmental impact of the proposed expansion and reshaping of the Everings' land. Still, the Protestants would like to offer evidence that the proposed expansion and reshaping of the Everings' land will have an adverse impact on the surrounding environment.

The Everings' land, located in the Frog Mortar Creek/ Middle River area, is in a part of the Chesapeake Bay which various national studies, most notably the Environmental Protection Agency's Chesapeake Bay Program (CBA), have designated as a highly sensitive, perhaps even a critical, area. The Everings' land, for example, is in an area of the Bay which is heavily enriched with nutrients, mostly nitrogen and phosphorous.

While nutrients are crucial to the ecosystem of the Bay, an overabundance of nutrients, often called nutrient enrichment, causes serious environmental problems.

> "Nutrient enrichment occurs when extensive additions of nitrogen and phosphorous compounds enter the water. Enrichment can lead to undesirable consequences such as phytoplankton blooms, depletion of oxygen and changes in kinds of fish present. When an estuary, such as [the] Chesapeake Bay, becomes nutrient-enriched, algae can thrive and accumulate in the water column. Their presence decreases light transparency, and, when they degrade, they use up dissolved oxygen that other plants and animals need."

Chesapeake Bay Program Technical Studies: A Synthesis, (E.P.A. Sept. 1982) p. 2 (hereinafter "Technical Studies"). The CBA has designated riverine sources as the major contributor of nitrogen and phosphorous to the Bay. Id, p. 4.

The Frog Mortar Creek/Middle River area is also in the part of the Bay which has the highest concentration of inorganic and organic toxic substances. Technical Studies, p. 7. "In the main Bay, the highest metals concentrations in sediment occur in the northern Bay and particularly near the western shore [the area which includes Frog Mortar Creek] where cadmium, cobalt, copper, manganese, nickel, lead and zinc are enriched...two to eight times above natural levels." Id. Human sources are responsible for "[a]t least half of the metal loads for chromium, cadmium, copper and lead." Id.

One of the major human sources of toxic substances is what is termed urban runoff. It is anticipated that the urban runoff from the Everings' land will drastically increase if the plans for the expansion and reshaping of the marina are approved. According to their Petition, the Everings plan to expand the parking facilities of their marina. Automobiles generate various toxic substances, many of which drip out of the engine and exhaust system while an automobile is parked. Even the most cursory examination of a parking lot or driveway will reveal an array of toxic substances: splotches of oil, spots of coolants, puddles of exhaust emissions. When it rains, a macadam or compacted stone surface prevents these substances from perculating through the soil, which acts as a cleansing filter, and, instead, the substances are carried by the rainwater. In the case of the Everings' marina, the substances would be carried into Frog Mortar Creek. Automobiles also send pollutants, especially lead, into the air and these also find their way into

the Bay's ecosystem. See Chesapeake Bay Program: Findings and Recommendations (E.P.A. September 1983), page 33, (hereinafter "Findings and Recommendations").

It is also anticipated that the Everings' marina, if expanded and reshaped, will contribute pollutants and toxic substances to the Bay through the overboard discharge of wastes from the boats using the marina. See Paul Solomon letter. These will, no doubt, include human excrement and oil wastes from motor boats. Using a portion of the marina as a boatyard to repair boats will also generate similar wastes which will flow directly into Frog Mortar Creek. Finally, the expansion and reshaping of the Everings' land will adversely affect the Bay's delicate environment because of the expected increase of week-end human activity and population. This increase, no doubt, will produce a corresponding increase in pollutants and toxic substances.

The Frog Mortar Creek/Middle River area also has a low level of dissolved oxygen and little submerged aquatic vegetation (SAV). The low level of dissolved oxygen, the small amount of SAV and the high concentration of nutrients are all closely related. Briefly, the nutrients foster the "growth of undesirable weed-like plants such as blue-green algae." These undesirable plants decrease the level of dissolved oxygen because they reduce the light available to other desirable floating and rooted aquatic plants, thus preventing photosynthesis. See Findings and Recommendations, page 25. Without light and dissolved oxygen, the submerged aquatic vegetation declines.

Estates and 0.9 acres owned by the Vinup family, whose property will be adversely affected to make room for the expanded substation. McGrady testified to the extensive increase in switch-gears, transformers, and switch and bus supports that will be located within the fenced portion of the proposed substation. Taylor was instrumental in disclosing in cross-examination what has been mark d as Developers' Exhibit Number Ten, the Service Territory. That Exhibit establishes that BGE intends to service a larger territory than is portions of Mays Chapel area. Taylor testified that the growth of the area is consistent according to the BGE forecast of seventy-five (75) units added per year with a projected growth rate of four percent (4%) per year. It was these figures of Mr. Taylor and James Ryan, Area forecaster for BGE, that the citizens used in formulating their testimony. Ryan testified that he did not obtain the statistics or figures from Baltimore County in his forecast but used information through the new business activity center of BGE to track and develop his projections. Most importantly, he testified that they used a land use base model provided by the utility industry standard for other utilities all over the country. It is <u>not</u> localized for Baltimore County and it is certainly not personal to the projections of Baltimore County as are the figures which later were admitted into evidence by the Baltimore County Planning Department. Ryan characterized the growth as "low

> "The severity of [this] decline is heightened by the importance of SAV to the vitality of the Bay. The Bay grasses are vitally important to the Bay because of their value as large primary producers, food sources for waterfowl, habitat and nursery areas for many commercially important fish, controls for shoreline erosion and mechanisms to buffer negative effects of excessive nutrients."

Technical Studies, page 12. An increase of the turbidity of the water has been sited as a source of SAV decline. Id. p. 14-15.

It is anticipated that the expansion and reshaping of the Everings' marina will further contribute to the decrease in the levels of dissolved oxygen and to the decline of the SAV. The repositioning of the piers will reduce the availability of light and will affect the natural flow of the water, thus increasing the water's turbidity. If power motorboats are used in the water, their propellors will also increase the turbidity. See Paul Solomon letter.

Because of the fragile ecosystem of the area surrounding the Everings' land, an ecosystem which has been placed in peril by generations of abuse, and the evidence that the expansion and reshaping of the Everings' land will adversely affect that ecosystem, the Everings' Petitions should be denied.

CONCLUSION

The Chesapeake Bay Critical Area Protection Program applies to the Petitions filed by the Everings because their land is in a critical area and does not fall within the two recognized exclusions. The Everings have not met the requirements of Section 8-1813 of the aforementioned Act because they have not con-

IN RE:	*	BEFORE THE
Petition for Special Exception, Petition for Special Hearing and Petition for Variances of North side of Chester Road, Joseph F. Evering, et ux	*	ZONING COMMISSIONER
	*	OF
	*	BALTIMORE COUNTY
	*	85-65-H-XSPHA

*** *** *** *** *** *** *** ** * ** *** *** *** *** *** ***

MOTION FOR HEARING

NOW COMES, LONG BEACH MARINA and JOSEPH F. EVERING, JR., by John O. Hennegan, ROMADKA, GONTRUM, HENNEGAN & FOOS, their attorneys and request the following:

1. That a Hearing be set at the earliest possible date for the Petitioner to present expert testimony.

2. That the Hearing be limited to determine whether or not the proposed development will (a) minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have runoff from surrounding lands; (b) the applicant has identified fish, wildlife and plant habitat which may be adversely affected by the proposed development and has designed the development so as to protect those identified habitat whose loss would substantially diminish the continued ability of populations of affected species to sustain themselves.

ROBERT J. ROMADKA
ATTORNEY AT LAW
ESSEX, MARYLAND

LAW FIRM

Romadka, Gontrum, Hennegan & Foos

GERMANIA FEDERAL BUILDING
809 EASTERN BOULEVARD
ESSEX, MARYLAND 21221
TELEPHONE (301) 686-8274

ROBERT J. ROMADKA
JOHN B. GONTRUM
JOHN O. HENNEGAN
CHARLES E. FOOS, III

OF COUNSEL
ALFRED M. WALPERT

December 18, 1984

Mr. Arnold Jablon
Zoning Commissioner
OFFICE OF PLANNING AND ZONING
County Courts Building
Towson, Maryland 21204

Reference: Case Number 85-65-H-XSPHA
Joseph F. Evering, Jr., Petitioner

Dear Mr. Jablon:

Enclosed you will find the Motion for Hearing to be filed in the above captioned case. If you have any questions, please do not hesitate to contact me.

Thank you for your assistance in this matter.

Very truly yours,

John O. Hennnegan

JOH/dlw

Enclosure

cc: T. Rogers Harrison, Esquire
Mr. Joseph F. Evering, Jr.

IN RE: * BEFORE THE

Petition for Special Exception * ZONING COMMISSIONER
Petition for Special Hearing
Petition for Variances * OF
N/S Chester Road, 590' W of
Severn Road (800 Chester Road) * BALTIMORE COUNTY

JOSEPH F. EVERING, JR., et ux * Case No. 85-65-XSPHA

Petitioners *

* * * * * * * * *

PROTESTANTS' REPLY TO PETITIONERS' MEMORANDUM

Ken Engelke, et al., the Protestants, by their attorney, T. Rogers Harrison and Mudd, Harrison & Burch, submit this Memorandum in reply to the Memorandum submitted by the Petitioners, Joseph F. Evering, Jr., and his wife, Catherine.

Description of Land

The Protestants adopt the description of the land set forth in their original Memorandum.

Statement of Facts

The Protestants adopt the Statement of Facts set forth in their original Memorandum.

Statement of the Law

I. Vested Rights

Both the Protestants and the Petitioners apparently agree that the primary issue in this case is whether the Everings met the requirements of the second paragraph of Section 502.3 of the Baltimore County Zoning Regulations (1981 and 1983 Supplements). The requirements of that paragraph are twofold: (1) The Petitioners must commence construction within the authorized time period; and (2) they must pursue that construction to com-

pletion with reasonable diligence. The Petitioners argue that they have acquired a vested right because they have in good faith made a substantial change of position in relation to the land and have substantially altered their own position by making substantial expenditures. Each of these contentions is without merit, both factually and legally.

First, the Petitioners have not made a substantial change of position in relation to the land. It is their contention that they constructed a swimming pool, showers, and a sanitary house on the Brown parcel, drove in pilings for the bulkhead, stored marine craft on the Brown parcel, graded the land, laid stone for the parking areas, and obtained building permits for the three piers. The only construction, according to the Petitioners, which they did not pursue was the three Brown parcel piers.

Attached to this memorandum is a photocopy of four aerial photographs of the Everings' land taken in the late summer of 1984. Comparing these photographs to the 1967 site plan and the 1955 plat reveals that the 1984 Evering land more clearly resembles the 1955 plat than the 1967 site plan. Contrary to what the Petitioners allege, the construction of the three Brown parcel piers was not the only construction which they did not pursue. It is evident that the Petitioners did not extend Chester Road, did not build the bulkhead and did not fill in and extend the Brown parcel. It is also apparent that very little, if anything, was done to the land to convert it into a parking lot. The color versions of the photographs demonstrate that the so-called parking area is covered by grass, and not macadam as

to moderate pace" and confirmed the seventy-five (75) customers per year and four percent (4%) increase. He admitted that the increase in additional development was due to the adding of additional service area to the substation's territory.

Ryan testified that the current transformers rated at 16.6 megawatts and has not exceeded that wattage except for one day last winter (1994) when they recorded a demand of 20.1 megawatts. He acknowledged that that figure was a on - day extraordinary event. He testified that 150 added units would ad 1.5 megawatts of demand to the substation. He further testified that ten (10) years ago the Ivy Hill substation served one thousand (1,000) homes, and now approximately one thousand seven hundred fifty (1,750) homes, with a projected growth of four percent (4%) per y ar. He testified that both phases would bring a total of 64 megawatts or a four hundred percent (400%) increase to the capacity of the substation. Mrs. Bonnie Johansen testified in regard to the EMF issue as to the milli-Gauss readings as well as Linda Erdreich, Ph.D., Environmental Scientist, who likewise testified as an expert in risk assessment and an epidemiologist. The clear import of Ms. Erdreich's testimony was that she was not a medical doctor, she was not an engineer, she was not an electrical engineer, and she was not an active working scientist in the laboratory doing analysis. She testified that her function as an epidemiologist was

required by the 1967 site plan. Indeed, the Petition for Zoning Variance filed by the Petitioners in August 1984 recognizes the fact that the parking areas do not conform with the 1967 site plan. It is also not true that the Petitioners built the showers and sanitary house on the Brown parcel in accordance with the 1967 site plan: That plan plainly shows that the sanitary house was an existing structure. While the Petitioners might have modified or altered the house, they certainly did not built it from scratch.

What the aerial photographs do demonstrate is that since 1967 the Petitioners have driven in pilings for the bulkhead and have built a pool. They also show that the Petitioners currently store marine craft on the land. In their Memorandum of Law, the Petitioners acknowledge that they abandoned the plans to build the three Brown parcel piers. The photographs suggest that when these plans were abandoned, the Petitioners also abandoned their plans to use the Brown parcel as a boatyard in accordance with the 1967 site plan and the underlying 1964 Special Exceptions.

It cannot be argued that driving in a few piling and building a pool secured the Petitioners a vested right to use the 1964 Special Exception. The actions alone or together would not meet the test in Rupp v. Earl H. Cline & Sons, 230 Md. 573, 578, 188 A.2d 146 (1963). While it may be true that the Petitioners built a pier off the south end of the original Evering parcel and a workshop on that piece of land within five years of the 1964 Special Exception, these structures relate to the 1955

Special Exception, not the 1964 Special Exception. As they were built on the original Evering parcel, they certainly would not have advised the neighborhood that the Everings were planning to use the Brown parcel as a boatyard. In addition, merely obtaining building permits for the piers would not create a vested right without substantial construction. See Rockville Fuel & Feed Co. v. Gaithersburg, 266 Md. 117, 291 A.2d 672 (1972).

Even if driving in the pilings and building the pool constitutes a readily recognizable construction beginning, the Petitioners have still failed to meet the second requirement of BCZR 502.3: They have not, in the words of the statute, pursued the construction to completion with reasonable diligence. And, in fact, they admit in their Memorandum that they abandoned their plans to build the Brown parcel piers. As evidence demonstrates that they also abandoned their plans to implement the 1967 site plan and the underlying 1964 Special Exception, it cannot be argued that they have pursued converting the Brown parcel into a boatyard with reasonable diligence.

The Petitioners, in addition to arguing that they substantially altered the land, advance the position that they acquired a vested right because they have materially altered their position by making substantial expenditures. They argue that "many other criteria outside of construction should be considered when determining the issue of whether or not a land owner [sic] has a vested right." In support of their position, they site what they term the "majority rule." This rule, taken from

Rathkopf, The Law of Zoning and Planning and badly misquoted by the Petitioners, see 3 Rathkopf, The Law of Zoning and Planning, 57-6 (4th ed. 1976); Steuart Petroleum Co. v. Board of County Commr's, 276 Md. 435, 347 A.2d 854 (1975); Ross v. Montgomery County, 252 Md. 497, 250 A.2d 635 (1969); has never been adopted by the Maryland courts. Indeed, the Court of Appeals in County Council v. District Land, 274 Md. 691, 337 A.2d 712 (1975) specifically rejected Rathkopf's formulation of the rule as a statement of the majority rule in Maryland.

While the Rathkopf passage has been cited by Maryland Courts with approval, it is considered only a general principle. See Ross, 252 Md. at 506. The rule followed in Maryland is somewhat stricter. See Rockville Fuel, 266 Md. 117. Contrary to what the Petitioners contend, substantial expenditures or a material change of position without a substantial construction beginning will not create a vested right. See County Council, 274 Md. 691, 707, and cases cited therein. Moreover, the Petitioners' position that construction is not the only criteria which should be considered in deciding whether they have acquired a vested right ignores the plain language of B.C.Z.R. Sec. 502-3.

II. The Constitutionality of B.C.Z.R. Section 502-3.

The Petitioners argue, basically, that B.C.Z.R. Section 502-3 is unconstitutional because it is arbitrary, unreasonable, capricious or discriminatory and deprives the Petitioners of the use of their land. They cite Northwest Merchants Terminal, Inc. v. O'Rourke, 191 Md. 171, 60 A.2d 743 (748).

The O'Rourke case bears absolutely no resemblance to the Evering situation. O'Rourke concerned a change from one entire zoning classification to another after the commercial use had been established. Furthermore, O'Rourke is a classic example of "a special law for a special case:" The sole basis for the zoning change was an amendment which was passed specifically to restrict the owner from using his land for any reasonable purpose. See Rockville Fuel, 266 Md. 117, 128-131 [distinguishing O'Rourke].

In the Evering situation, as in Rockville Fuel, there is no "special law for a special case." Section 502.3 was not passed solely for the purpose of preventing the Petitioners from using their land. The Evering situation is not a case of a "plebiscite of the neighbors." See Steuart Petroleum, 276 Md. 435, at 445, and cases cited therein.

The Petitioners, apparently combining a claim that Section 502-3 represents an unconstitutional taking of their land with their argument that Section 502-3 is an unconstitutional exercise of the State's police power, also argue that a ruling that the 1964 Special Exception was abandoned would amount to an unconstitutional taking which "would restrict the Petitioner[s] from using the property for any other reasonable purpose." The Petitioners allege that "the only permissible use in a D.R.5.5. zone as a matter of right" is residential development and that the Noise Act of Maryland would permit only a recreational use.

In order to prove an unconstitutional confiscation, it must be shown that the landowner "has been deprived of all

reasonable use of his property and that it cannot be used for any of the permitted uses in the existing zone." Stratakis v. Beauchamp, 268 Md. 643, 652, 304 A.2d 244 (1973). Evidence of mere financial hardship is "insufficient to establish that there is no reasonable use for [the] property..." Id. And [i]t is not enough for the property owners to show that the zoning action results in substantial loss or hardship." Mayor & City Council of Baltimore v. Borinsky, 239 Md. 611, 622, 212 A.2d 508 (1965). Finally, it should be noted that the burden of establishing "an unconstitutional taking is a heavy one." Franklin Constr. Co. v. Welch, 251 Md. 715, 248 A.2d 639 (1968).

The Petitioners misapply the law governing the unconstitutional taking of land. First, Section 502-3 does not amount to a taking of the Petitioners' land. The land can still be used for residential development. The notion that denying the Petitioners' the right to use the 1964 Special Exception would amount to a taking because the Noise Act of Maryland would allow only recreational uses is totally without merit; if anything, the Petitioners' argument reveals that it is the Noise Act and not Section 502-3 which amounts to an unconstitutional taking. Moreover, even if the Petitioners cannot use the Brown parcel for residential development, special exceptions are available in the D.R.5.5. zone; therefore, the Petitioners cannot be said to be deprived of all reasonable uses. See Trainer v. Lipchin, 269 Md. 667, 309 A.2d 468 (1973).

III. The Scope of the August 1, 1984 Petition for Special Exception

The Petitioners argue that the Petition for Special Excep-

simply to read all of the materials available and assess in her opinion whether or not there was risk attached to EMF's. She acknowledged that there were a number of studies to support the concern for the effects of EMF's on residences (as opposed to workers) but that she believed the weight of the evidence did not favor those studies. Paul Taylor, Civil Engineer for G. W. Stevens, testified as to the stormwater management facility planned. Danny Davis was pres nted as a forester who testified in regard to his land planting activities and management of BGE's substations and landscaping. Examples of his involvement in designing landscaping plans can be seen in protestants' Exhibits Seventeen through Twenty. Protestants submit that the landscaping of all of the substations, including the ones that this witness designed are an abomination to the neighborhoods in which they are located. The Board can examine for themselves the photographs and come to their own conclusion.

Finally, George Gavrelis qualified as an expert Land Planner and testified as to the satisfaction of the 502.1 criteria as well as his theory for the final development plan. Discussion of this will be presented in the Legal Argument dealing with that issue.

B. Protestants' Case

The protestants' case was generally organized along issues beginning with a general discussion of the size of

tion for the south and north parking parcels filed on August 1, 1984, encompasses the entire Evering land because the "advertised description advertised the entire parcel of land" and, therefore, the Zoning Commission can grant the Special Exception and ratify "what was previously granted, including the additional piers requested by the Petitioner[s]." They cite Amberly Community Association v. Board of Appeals, 229 Md. 261, 182 A.2d 811 (1962) for the proposition that "[e]vidence of granting a prior application for special zoning exception which had lapsed... may properly be admitted at a hearing before the Zoning Commisioner on subsequent application for an exception involving the same property." (Emphasis added.)

The August 1, 1984, Petition for Special Exception involves the north and south parking parcels, not the Brown parcel; therefore, under the proposition stated by the Petitioners, evidence that the 1964 Special Exception was granted would not be admitted because the 1984 Petition for Special Exception does not concern the same property. Furthermore, the Petitioners fail to recognize that if the 1964 Special Exception has expired, the factual foundation on which the August 1, 1984 Petitions for Special Exception, Special Hearing and Variances rest is substantially altered. Certainly the Petitioners cannot be allowed to revive the 1964 Special Exception by bootstrapping it up with the 1984 Petitions.

Conclusion

The Petitions for Special Exception, Variance and Special Hearing should be denied.

Respectfully submitted,

T. Rogers Harrison
Mudd, Harrison & Burch
306 West Joppa Road
Towson, Maryland 21204
828-1335
Attorneys for Ken Engelke, et al

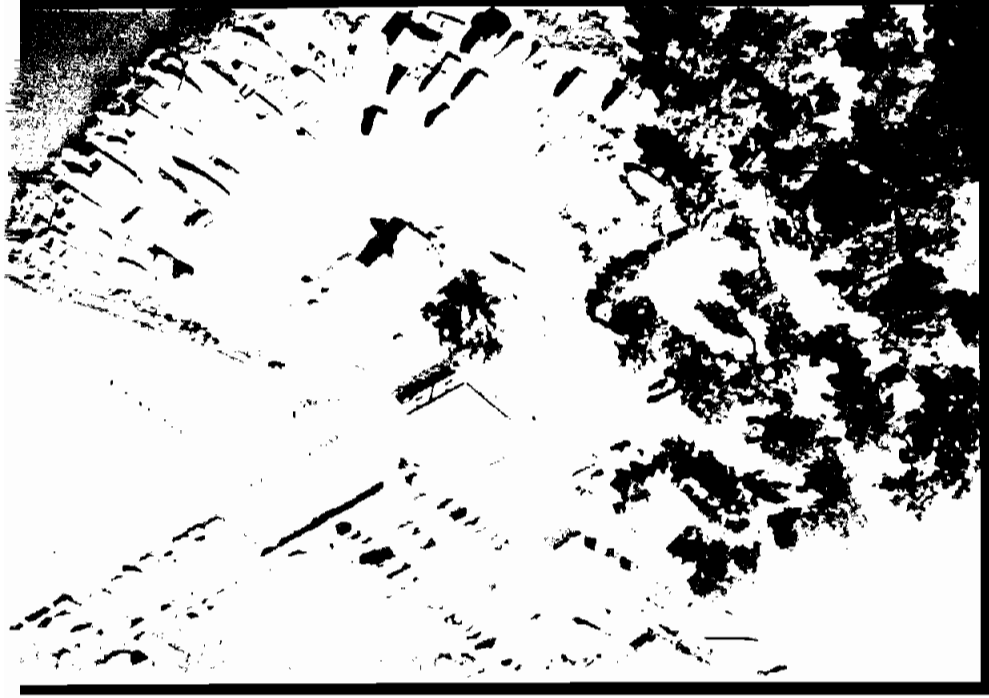
CERTIFICATE OF SERVICE

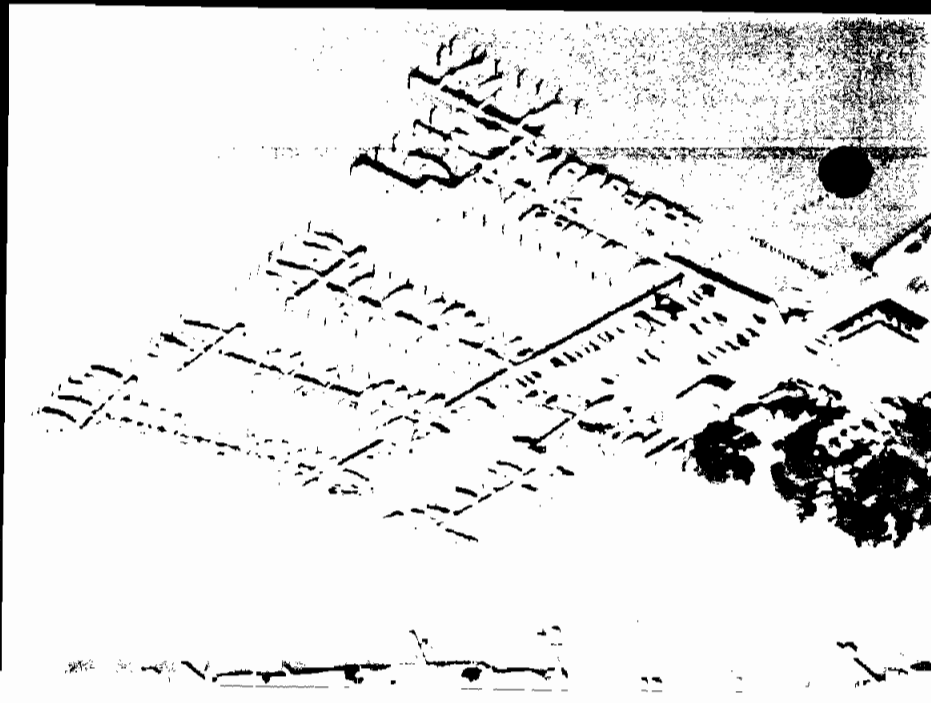
I hereby certify that on this 13th day of November 1984, a copy of the PROTESTANT'S REPLY TO PETITIONERS' MEMORANDUM was mailed, postage prepaid, to John O. Hennegan, Esquire, 809 Eastern Boulevard, Baltimore, Maryland 21221, the attorney for the Petitioners.

T. Rogers Harrison









IN RE:	*	BEFORE THE
Petition for Special Exception, Petition for Special Hearing and Petition for Variances of North side of Chester Road, Joseph F. Evering, et ux	*	ZONING COMMISSIONER
	*	OF
	*	BALTIMORE COUNTY
	*	85-65-H-XSPHA

*** *** *** *** *** *** *** ** * ** *** *** *** *** *** ***

MEMORANDUM OF PETITIONERS

The Petitioner herein, Joseph F. Evering, et ux, has filed a petition for Special Hearing requesting the Zoning Commissioner to approve an amendment to the site plan in Case number 64-57 SPH, 64-160 X and 35-35 X to construct an addition to the piers; to remove restriction number 1 and 3 in Case number 64-57 SPH to allow marine craft to be stored within 20 feet of the eastern most property line and to request a variance to the parking; to remove restriction number 1 and 6 in Case number 64-16DX to allow major repairs on the premises and in the waters and to change the times and days a week in years that repairs will be permitted; also to determine that a boat yard, related parking or other structures devoted to the civic, commericial and recreational activities and are therefore exempt from residential, transitional requirements set out in Section BO 1.1, BO 1.C.9 and or 10. Secondly, the Petitioners filed a Petition for Special Exceptions under the Zoning Law and Zoning Regulations of Baltimore County to use the two lots located on north and south side of Chester Road not included in Special Exception cases 35-35 X, 64-57 SPH, 64-160 X in a DR 5.5 zone, to be used as a boat yard including the road bed of Chester Road. Thirdly, Petition for Variance was filed from Section 409.2.C (2) to allow existing compact stone in lieu of requirement macadam paving and from 409.2.B to allow three hundred and eighteen (318) in lieu of the required three hundred and eighty-four (384), in the event that Special Exception is

LAW FIRM
ROMADKA, GONTRUM,
HENNEGAN & FOOS
ESSEX, MARYLAND
21221

granted to allow three hundred and sixty-three (363) parking spaces in lieu of the required three hundred and eighty-four (384); and a variance from Section 417.5 (a) requiring a structure not to exceed three hundred feet (300') beyond the mean low tide, to allow the structure to exceed four hundred and nineteen feet (419) beyond the mean low tide. Filed along with the various Petitions was a site development plan revised and dated 8/1/84 which is entitled "Plat to accompany Petition for Special Exception, Special Hearing and Variances".

STATEMENT OF FACTS

The facts of the case indicate that in 1954 Petitioners purchased a piece of land off of Chester Road in Baltimore County, Maryland, and in 1955 filed a Petition requesting a Special Exception to use the land for a boat yard, case #35-35 X. As a result of said petition on the 6th day of June 1955 it was ordered by the Zoning Commissioner of Baltimore County that the Petition for Special Exception was granted for the purpose of slip-rental services and services to a boat yard and slips only. As a result the property was developed which resulted in the construction of a repair shop, a travel lift, train railway, office, restrooms, paving, grading and servicing of a parking lot along with approximately one hundred and sixty-five (165) slips including a gas pier.

The operation was continued as a boat yard, slips were rented and marine craft were stored on land without difficulty from that period on. In March 9th, 1964 the Petitioner, by necessity, filed a Petition for a Special Hearing to determine what use the Petitioner was entitled to as a result of the June 6th, 1955 granting the special exception which resulted in the Petitioner being granted a right to store marine craft on land. In addition, Petitioner filed a Special Exception in 64-160 X for some one and three quarter (1-3/4) acres situated on the north side of Chester Road six hundred twenty-five feet (625')

LAW FIRM
ROMADKA, GONTRUM,
HENNEGAN & FOOS
ESSEX, MARYLAND
21221

the increase for the BGE facility b ing presented by Carol Rytter and her husband Robert Rytter. Protestants' Exhibit Numbers Three, Four, and Five basically established that the present site of the substation is being enlarged onto adjacent parcels as previously noted. The Rytter overlay on Protestants' Exhibit Number Four establishes that much of th green forest buffer on developer's Exhibit Number Three is actually located on property not owned by BGE, and the protestants' overlay established that fact very clearly, as well the fact that the relative proportions of the enlarged substation versus what is existing at the present time.

Concerning the need for this enlarged facility, protestants presented Caroline Beatty and Pam Budashine who testified as members of the County Planning Staff that they obtained and developed figures for the current Ivy Hill service area as well as the addition of the Hickory Ridge section by utilizing transportation zones of the County. The thrust of protestants' Exhibits Six A and B indicated that the transportation zones for the area when adjusted because some of them went outside of the actual service area showed a relatively minor increase of units up to the year 2020 in both units and population figures. Dave Thomas from the Department of Public Works likewise testified that to the best of his ability within the service area no water and sewer was being proposed for the existing service area in the future by Baltimore County.

ISSUE

The issue to be addressed is the application of Regulation 502.3, second paragraph:

> "A special exception which requires any construction for utilization shall be deemed to have been used within its authorized time, if such construction shall commence during the authorized period, or any extension thereof, provided said construction is thereafter pursued to completion with reasonable diligence."

STATEMENT OF LAW

I. VESTED RIGHT

In order for the Petitioner to comply with Section 502.3 of the Zoning Rules and Regulations he must have vested rights from said special exception in order to be protected against a subsequent change in Zoning Ordinance prohibiting or limiting the use.

Vested right is a right to initiate or continue the establishment of a use or construction of a structure which when completed will be contrary to the restrictions or regulations of the Zoning Ordinance or an amendment to it which has become effective in the meantime. Particular use or structure will continue after the effective date of the Ordinance or amended as a vested right. 4 Rathkopf, the Law of Zoning and Planning, 50-2. Rockville Fuel and Feed Company vs. City of Gaithersburg, 266 Md. 172, 291 A2nd 672, 1972 case and in Richmond Corporation vs. Board of County Commissioners of Prince George's County, 254 Md. 244, 255 A2nd 398, 1969 general law in regard to vested rights and existing zoning use was reviewed in Maryland and stated:

> "In Maryland it is established that in order to obtain a vested right in the existing zoning use which will be constitutionally protected against the subsequent change in the Zoning Ordinance prohibiting or limiting that use, the owner must (1) obtain a permit or occupancy certificate where required by the applicable Ordinance and (2) must proceed under that permit or certificate to exercise on the land involved so that the neighborhood may be advised that the land is being devoted to that use."

LAW FIRM
ROMADKA, GONTRUM,
HENNEGAN & FOOS
ESSEX, MARYLAND
21221

It is clear that Building permits having been obtained by the Petitioner satisfying requirement one (1) as set out in the above cited cases. As a result, we must direct our attention to the second requirement of Rockville Fuel and Feed Company and Richmond Corporation, supra, which is whether or not the Petitioner proceeded under that permit or certificate to exercise it on the land involved so that the neighborhood may be advised that the land is being devoted to that use. In accordance with the site plan that was approved 1/16/67 and the building permits that were issued the Petitioner proceeded with construction in accordance with the Special Exception that was granted to him on the 30th day of June 1964 in case number 64-168 whereby he constructed a swimming pool, showers and sanitary house on the one and three quarter (1-3/4) acres situated on the north side of Chester Road, drove in pilings for bulk head, stored marine craft on land and permitted and did repairs on pleasure craft on said land, property was graded and stone was laid for parking and access to and from said site. In addition, across from said site and in accordance with the approved site plan a repair shop barge was constructed along with an additional thirty-six (36) piers. The only construction which was not pursued by the Petitioner was the three (3) piers in front of the parcel and the Petitioner testified that to construct said piers would have been in fact economically detrimental and environmentally harmful, since the piers would not have been used due to the shift from power boating to sail boating and the depth of the waters in which those piers were to be located was not at all suitable for sail boating.

It certainly can not be argued that the Petitioner did not obtain building permits required, that he proceeded under the permit to exercise his right on the land by substantial to beginning construction so that the neighborhood was advised as to the intended land use. The intended land use has been for

LAW FIRM
ROMADKA, GONTRUM,
HENNEGAN & FOOS
ESSEX, MARYLAND
21221

twenty (20) years more or less as a boat yard in accordance with the Special Exception that was granted along with pool facilities and a bath house, for use of those customers that rent slips from the Petitioner. The Petitioner has in good faith made substantial change in relation to the land and has made substantial expenditures and construction by increasing the number of slips, constructing repair facilities and recreational facilities that were available to his customers in addition to land being used for parking and marine craft storage.

The Majority rule which can be synthesized from the multitudinous decisions in this area may be stated as follows:

"A land owner will be held to have acquired a vested right to continue the construction of a building or structure to initiate and continue a use to spite a restriction or certain ordinance where, prior to the effective date of the ordinance, in reliance of a permit thereto validly issued, he has in good faith, made a substantial change of position in relation to the land, made substantial expenditures, or has incurred substantial obligations ***" (252 Md. at 506, 250 A.2nd at 640). See also Board of County Commissioners of Anne Arundel County vs. Snyder, 186 Md. 342, 46 A.2nd 689 (1946) and Mayor and City Council vs. Shapiro, 187 Md. 623, 51 A.2nd 273 (1947) and also quoted with approval, from(2) Rathkopf, the Land for Zoning and Planning (third [3rd] edition, chapter 57, Section 3 at 57-6 to 57-7. To deprive the Petitioner of a Special Exception in 64-160 X since he has not constructed three (3) piers which are economically and environmentally not feasible as previously stated and to hold that he did not pursue to complete the construction with reasonable diligence when in fact the only matter remaining is the construction of the three (3) piers which are in fact as previously stated not feasible would be flying in the face of the spirit of Section 502.3 and depriving the Petitioner of the use of his land.

LAW FIRM
ROMADKA, GONTRUM,
HENNEGAN & FOOS
ESSEX, MARYLAND

It certainly seems that one of the key issues as cited in the cases referred to above and in O'Donnell vs. Blaser, 425 A2nd, 1003 289 Md. 501, 1981, is that the owner make a substantial change of position in relation to land that is to be committed to the use for which the special exception or the permits were obtained and that good faith be exercised by the developer. The passage of time alone is not necessarily the main criteria for lapse of permits or a Special Exception and certainly the two elements referred to above cry out for recognition in this particular case and any argument that the parcel on the north side of Chester Road has not been substantially committed to the use as a boat yard in accordance with the Special Exception in 1964 would be far reaching. To support the argument that time is not necessarily the criteria for lapsing the Petitioner sites Putnam Armonk, Inc. vs. Town of Southeast 382 NYS2nd 538 which is a New York case where a developer built half the homes that he was permitted to construct pursuant to his permit and during construction water and sewer problems developed and no new construction took place for fifteen (15) years. The court held that developers right to complete development of a tract despite later changes in the zoning ordinance did not terminate through the simple passage of time. The court indicated that you should consider:

1. Whether or not the rights of the developer have been abandoned.

2. Whether the owner has recouped the financial investment providing for the basis for the right to complete the development.

3. Have any contravening considerations of public health, safety and welfare supervened during the period when the right and issue has not been used.

LAW FIRM
ROMADKA, GONTRUM,
HENNEGAN & FOOS
ESSEX, MARYLAND
21221

Further, the Petitioners' argue that they have materially altered their position as a result of the granting of the Special Exception by constructing a pool, showers and bath house on the property and using the property to store boats, for parking and for the minor repair of marine craft which his customers rely on; they also have constructed the additional piers and the repair barge, and as a result have substantially altered their position thereby acquiring a vested right in the Special Exception of 1964. When such acts occur a vested right is acquired if the land owner has materially altered his position usually by commencement of construction before the zoning class is changed or permit is revoked, Mayor and City Council of Baltimore vs. Crane, 352 A2nd 786, 277 Md. 198, 1976. the above cited case obviously by using the word "usually" supports the Petitioners' position that many other criteria outside of construction should be considered when determining the issue of whether or not a land owner has a vested right.

The Protestants argue that the

> "southern pier is built within the property boundaries of the original Evering parcel and therefore relates to the 1955 Special Exception, not the 1964 Special Exception. The Everings could have built the southern pier at any time after the 1955 Special Exception was granted. It's mere inclusion in the 1967 site plan which included both the Brown and the original Evering parcels, does not make it part of 1964 Special Exception.

Though it is clear the Petitioner has argued that the construction of that pier along with the repair shop barge are to be considered as part of the substantial construction and expenditures pursuant to the granting of the 1964 Special Exceptions, the Petitioners do not at this time wish to contest

LAW FIRM
ROMADKA, GONTRUM,
HENNEGAN & FOOS
ESSEX, MARYLAND

IN RE: * BEFORE THE

Petition for Special Exception *
Petition for Special Hearing *
Petition for Variances * ZONING COMMISSIONER
N/S Chester Road, 590' W. of *
Severn Road (800 Chester Road) * OF
* BALTIMORE COUNTY
JOSEPH F. EVERING, JR., et ux *
* Case No. 85-65-XSPHA
Petitioners *

* * * * * * * * *

MEMORANDUM OF LAW

Ken Engelke, et al, by their attorneys, T. Rogers Harrison and Mudd, Harrison & Burch, submit this Memorandum of Law in support of their position that (1) the Petition for Special Hearing filed in this matter is improper because the Special Exception it attempts to amend and alter is no longer valid; (2) the Petition for Variances filed in this matter should be denied because the invalidity of the aforementioned Special Exception changes the factual basis on which it rests; and (3) the Petition for Special Exception filed in this matter should be denied because the invalidity of the aforementioned Special Exceptions changes the factual basis on which it rests.

Description of Land

The property of the Petitioners, Joseph J. Evering, Jr. and his wife, Catherine (hereinafter the "Everings"), consists of approximately 3.3 acres located on the north and south sides of Chester Road, 100 feet west of Susquehanna Avenue in the Fifteenth Electrion District, Baltimore County, Maryland. The property is known as the Long Beach Marina, 800 Chester Road, and can be described as the tip of a peninsula jutting into Frog Mortar Creek.

The property is best understood as consisting of four separate pieces of land: (1) the original Evering parcel, approximately 1.2 acres in size, located on the south side of Chester Road and comprising Lots 1, 82 and 83 of the Long Beach Estates; (2) the Brown parcel, approximately 1.75 acres in size, located on the north side of Chester Road; (3) the south parking parcel, Lot 83 of the Long Beach Estates, located on the south side of Chester Road; and (4) the north parking parcel, located on the north side of Chester Road. All of these four pieces of land are in a D.P.5.5 zone.

Statement of Facts

In 1955, Joseph F. Evering, Jr. (hereinafter "Joseph Evering") filed a Petition for Special Exception, requesting that he be allowed to use his property on Chester Road, then and now in a D.R.5.5 zone, for a boat yard. At that time, he owned only the 1.2 acre Original Evering Parcel located on the south side of Chester Road. On June 6, 1955, the Special Exception was granted (Case No. 3535X) and Joseph Evering thereafter converted his property into a boat yard by, among other things, building four piers which extended west into Frog Mortar Creek, for the mooring of power and sail boats.

On August 1, 1960, Mr. and Mrs. Henry J. Brown conveyed to the Everings the 1.75 acre Brown Parcel located on the north side of Chester Road. In January 1964, the Everings filed a Petition for Special Hearing "for a clarification and extension of the uses heretofore granted under the special exception

granted on the 6th day of June, 1955 (File No. 3535) to specifically include the storage of marine craft on the land." On March 9, 1964, the Everings' request was granted (Case No. 64-57SH) subject to three restrictions:

1. No marine craft may be stored within 20 feet of the easternmost portion of the property presently owned by...[the Everings]

2. The use of the boat yard, both on land and in the water, shall be limited to pleasure craft.

3. The Petitioners [the Everings] shall comply with the off-street parking requirements of Section 409 of the Baltimore County Zoning Regulations.

About one month later, on April 10, 1964, the Everings filed a Petition for Special Exception.

The Petition for Special Exception requested that the Everings be allowed to develop a boat yard on the Brown Parcel. The Everings planned to fill and level the land, build a bulkhead on the north side of the Brown Parcel and extend Chester Road to the water's edge. On June 30, 1964, the Petition for Special Exception (Case No. 64-160X) was granted subject to the following restrictions:

1. No major repairs of any boats shall be permitted on the premises or waters immediately adjacent thereto.

2. Construction of boats is prohibited.

3. No commercial vessels will be permitted to patronize said establishment.

4. Services will be restricted to pleasure craft only.

5. Barges or similar type craft will not be allowed on or tied up at the property, with the exception of the one small barge which is presently being used by the Petitioner[s]. [The Everings.]

6. Minor repairs and maintenance will be permitted from 8 a.m. to 7 p.m. week-days [sic], May through September and 8 a.m. to 6 p.m. on week-days [sic] during the other months of the year. No repairs will be permitted on Sundays.

The site plan, which was approved by the Office of Planning and Zoning on January 16, 1967, called for four additional piers, approximately 168 additional boat slips and approximately 168 additional parking spaces for automobiles. Three of the proposed piers were to be built off the Brown Parcel, more or less parallel to the four existing piers which extended west from the Original Evering Parcel. Each was to contain 44 boat slips. The fourth proposed pier was to be built off the south side of the Original Evering Parcel, perpendicular and to the rear of the four existing piers. It was to contain 16 boat slips. The site plan also called for the Everings to extend Chester Road to the water's edge, to fill in and extend the Brown Parcel to conform with the Original Evering Parcel, to build a bulkhead and to use a macadam surface for the parking areas.

In 1966, the Everings applied for and received three building permits for the northwest Brown Parcel piers. Little, if any, construction was commenced and, in 1970, the Everings again applied for and received building permits for the same three piers. Again, the Everings did not commence any substantial construction. It is apparent that they did drive in some mooring piles along the western shore line of the Brown Parcel, but it is just as apparent that this construction was soon abandoned. No effort was made to fill in and extend the Brown

Parcel, to extend Chester Road, to build the bulkhead and to comply with the plans for the required parking spaces. Sometime between 1966 and 1984, they did construct the southern pier off the Original Evering Parcel. During this time they also acquired the north and south parking parcels.

In August, 1984, the Everings filed the following three Petitions:

1. Petition for Zoning Variance

   a. to allow existing compacted stone in lieu of the required macadam paving. A variance from B.C.Z.R. Sec. 409.2.c.(2) (1981 and 1983 Supp.)

   b. to allow 318 parking spaces in lieu of the required 384, or, if the special exception is granted, to allow 363 parking spaces in lieu of the required 384. A variance from B.C.Z.R. Sec. 409.2.b (1981 and 1983 Supp.)

   c. to allow the extension of the piers to exceed 300 feet beyond the mean low tide. A variance of B.C.Z.R. Sec. 417.5(a) (1981 and 1983 Supp.)

2. Petition for Special Exception

   a. to allow the two lots on the north and south sides of Chester Road (the North and South Parking Parcels) to be used as part of the boat yard. The lots are zoned D.R.5.5.

3. Petition for Special Hearing

   a. to amend the site plan which was approved on January 1, 1967 in connection with the June 30, 1964 Petition for Special Exception (Case No. 64-160X) in order to construct additional piers and slips.

   b. to remove restrictions 1 and 3 in Case No. 64-57SPH in order to allow marine craft to be stored within 20 feet of the easternmost property line and to request a variance of the parking.

   c. to remove restrictions 1 and 6 in Case No. 64-160X in order to allow major repairs on the premises and in the waters and to change the times that repairs are permitted.

   d. to determine that a boat yard and related parking areas are structures devoted to civic, commercial and recreational activities and are, therefore, exempt from the residential transitional requirements set out in B.C.Z.R. Sec. 1B01.1B.1.C (1981 and 1983 Supp.)

Statement of the Law

The issue presented in this case is, simply put, whether the Everings utilized the Special Exception they were granted on June 30, 1964. Section 502.3 of the Baltimore County Zoning Regulations (1981 and 1983 Supplements) states, in pertinent part, that:

"[a] Special Exception which has not been utilized within a period of two years from the date of the final order granting same, or such longer period not exceeding five years, as may have been specified therein, shall thereafter be void...After a final order granting a Special Exception, the Zoning Commissioner, at any time prior to expiration of the period of time authorized for its utilization, may grant one or more extensions of such period, provided that a maximum time for utilization of the Special Exception is not thereby extended for a period of more than five years from the date of the final order granting same."

The same section also provides that:

"[a] Special Exception which requires any construction for its utilization shall be deemed to have been used within its authorized time if such construction shall have been commenced during the authorized period, or any extension thereof, provided said construction is thereafter pursued to completion with reasonable diligence." [Emphasis added.]

Phrased differently, then, the issue here is whether the Everings, under the June 30, 1964 order granting them a Special Exception, commenced construction during the authorized time period and thereafter pursued that construction to completion with reasonable diligence.

The requirements set forth by Section 502.3 are twofold: (1) The Petitioner must commence construction within the authorized time period; and (2) he must pursue that construction to completion with reasonable diligence. If the Petitioner fails to do both, the Special Exception is void. While the record is not clear, it is assumed that the Everings had five years from the date of the Special Exception in which to commence construction.

It is apparent that the Everings have not attempted to utilize the Special Exception they were granted on June 30, 1964. As of September 1984, they had not extended Chester Road, had not filled in and extended the Brown Parcel, had not built the bulkhead, had not built the parking areas as detailed on the site plan, and had not implemented their plans to build three piers off the western shore of the Brown Parcel. As the June 30, 1964 Special Exception was surely one requiring construction for its utilization and the Everings did not commence any substantial construction during the ensuing five years (1964-1969), the Special Exception is void.

The Everings, in essence, have failed to meet both requirements of Section 502.3. They did not begin any substantial easily recognized construction and they did not pursue what little construction they did commence to completion with reasonable diligence. While it is true that the Everings did build the southern pier off the Original Evering Parcel sometime after 1966, the record is not clear as to exactly when this structure was constructed. Furthermore, even if construction on this southern pier was commenced within the five-year time period, it would not toll Section 502.3. It must be remembered that the June 30, 1964 Special Exception concerned the Brown Parcel. The southern pier is built within the property boundaries of the Original Evering Parcel and, therefore, relates to the 1955 Special Exception, not the 1964 Special Exception. The Everings could have built the southern pier at any time after the 1955 Special Exception was granted. Its mere inclusion in the 1967 site plan, which included both the Brown and the Original Evering Parcels, does not make it part of the 1964 Special Exception.

The only apparent action taken by the Everings with regard to the Brown Parcel during the authorized five-year period was securing building permits in 1966 for the three Brown Parcel piers. This, by itself, does not constitute the commencement of construction. Even if it did, the Everings did not pursue the construction to completion with reasonable diligence. More than eighteen years have passed since the Everings secured the building permits and, during this time, the Everings, at best,

drove a few piles along the western and northern shores of the Brown Parcel. Again, the record is not clear as to when these piles were driven, but even if they were driven in within the authorized time period, this action does not constitute "construction" as contemplated by Section 502.3.

The meaning of the language in Section 502.3 requiring construction to be pursued to completion with reasonable diligence was recently addressed by the Baltimore County Zoning Commissioner in the case of In Re Petition for Special Hearing of Joseph L. Soley, Case No. 84-89-SPH (hereinafter "Joseph Soley"). There, the Petitioner, Joseph Soley (hereinafter "Soley") sought approval of the Zoning Commissioner to continue his special exception on the grounds that he had fulfilled his reasonable diligence construction obligation under Section 502-3.

Soley had been granted a Special Exception on April 28, 1977. On October 18, 1978, the time for the utilization of the Special Exception was extended for a period of three years, April 28, 1979 to April 28, 1982. On September 22, 1981, Soley requested the Zoning Commissioner to further extend his utilization of the Special Exception, but the Zoning Commissioner noted that no further extensions could be granted because the total period for utilization would reach five years by April 28,1982. On April 14, 1982, Soley filed for and received a building permit. He then hired an engineer to do a land survey and in quick succession cleared the site for construction, excavated to an

average of three and one-half feet, placed sediment control devices around the perimeter of the property and even poured a concrete footing.

In deciding that Soley had not acted with reasonable diligence in pursuing the construction to completion, the Zoning Commissioner first adopted the definition of "Reasonable Diligence" set forth in Black's Law Dictionary (rev. 5th ed. 1979):

> "[a] fair, proper and due degree of care and activity, measured with reference to the particular circumstances; such diligence, care or attention as might be expected from a man of ordinary prudence and activity." Joseph Soley, p.

Next, the Zoning Commissione found it appropriate to compare the language of and intent behind Section 502.3 to a string of Maryland cases concerning a property owner's "vested rights."

A vested right is the right to initiate or continue the establishment of a use or construction of a structure which, when completed, will be contrary to the restrictions or regulation of a zoning ordinance or an amendment to it which has become effective in the meantime. See generally, 3 Rathkopf, The Law of Zoning and Planning, 57-6 (4th ed. 1976). A vested right usually arises "where the owner seeks to proceed in accordance with prior zoning despite an existing or pending amendment to the zoning regulations." Joseph Soley, p. 4. A vested right is held to accrue in Maryland when:

> "[a] manifest commencement of some work or labor on the ground which everyone can readily see and recognize as the commencement of a building...begun with the intention and purpose then formed to continue the work until the completion of the building." Rupp v. Earl H. Cline & Sons, 230 Md. 573, 578, 188 A.2d 146 (1963).

Noting that "Section 502.3 provides that any special exception which requires the construction for its utilization be commenced during an authorized time period...provided that the construction is pursued to completion with reasonable diligence," the Zoning Commissioner concluded that "[t]he language found in Rupp and in Section 502.3 is similar and must be read in conjunction." Joseph Soley, p. 5 (emphasis in original). In this regard, the Zoning Commissioner then held that the Rupp test was virtually identical to the language in Section 502.3 and that case law determining what action amounts "to work or labor readily seen and recognized as the commencement of a building and done with the intention and purpose to continue until completion" should also determine what action constitutes "construction pursued to completion with reasonable diligence." Joseph Soley, p. 6.

Having made the comparison between the language in Section 502.3 and Rupp, the Zoning Commissioner stated that Soley:

> "did not comply with Section 502.3 nor with the strictures as mandated by the Court of Appeals [in Rupp]. He did excavate; he did pour concrete; he did provide sediment control devices. He did not pursue to completion with reasonable diligence; he did not begin in April, 1982, with the intention and purpose to continue the work until completion of the building. He did begin with the intention of tolling 502.3... [Soley's] testimony and by his actions clearly show that what he did constituted "construction," and that it was an acceptable beginning [but]...it is clear that...[Soley]...has not met his burden proving that he began construction on the subject site...with the intention and purpose to continue the work until completion of the building with reasonable diligence." Joseph Soley, p. 7

In brief, Soley met the first requirement of Section 502.3 by having a substantial construction beginning, or, at least, to paraphrase Rupp, a readily recognizable commencement. However, he failed to meet the second requirement of pursuing that construction to completion with reasonable diligence because he lacked the requisite intent.

In the Evering situation, the Everings did not have a substantial construction beginning. All they did was obtain building permits and drive in a few mooring piles. Neither action, as noted earlier, constitutes a readily recognizable commencement or a substantial construction beginning. Using, as the Zoning Commissioner in Joseph Soley did, Rupp and its progeny as guides, it has been repeatedly held that the mere issuance of a building permit alone does not confer any vested right and, therefore, would not constitute a construction under Section 502.3. See Stewart Petroleum Co. v. Board of County Comm'rs, 276 Md. 435, 347 A.2d 854 (1975); County Council v. District Land, 274 Md. 691, 337 A.2d 712 (1975); Rockville Fuel & Feed Co. v. City of Gaithersburg, 266 Md. 117, 291 A.2d 672 (1972); and Ross v. Montgomery County, 252 Md. 497, 250 A.2d 635 (1969). See generally 3 Rathkopf, The Law of Zoning and Planning, 57-6 (4th ed. 1976). As it was stated in County Council, "the obtention of a building permit creates no vested right...unless substantial construction has been undertaken in reliance thereon..." 274 Md. at 707, citing Rockville Fuel, 266 Md. 117.

The driving of a few piles along the western and northern

shores of the Brown Parcel does not constitute a substantial construction because, under the Rupp test, everyone would not be able to recognize these few piles as the manifest commencement of the land-fill extension of the Brown Parcel, the extension of Chester Road, the construction of a bulkhead, the leveling and paving of a parking area, and the construction of three piers. See Rupp, 230 Md. at 578. Indeed, these few files barely protrude out of the water. At best, they constitute an incomplete and ambiguous outline of the northern and western shores of the Brown Parcel. In this regard, the piles can be likened to the footing of a building. In Ross v. Montgomery County, the Court of Appeals held that the pouring of a single footing was not enough to give the property owner a vested right to build an apartment hotel under a building permit issued prior to a change in the zoning classification of the property. 252 Md. 497. See Pemberton v. Montgomery County, 275 Md. 363, 340 A.2d 240 (1975) and Stewart Petroleum, 276 Md. 435.

Assuming that the driving of the piles coupled with the building permit does constitute a substantial, readily recognizable construction beginning, the Everings still have failed to pursue that construction to completion with reasonable diligence. It has been eighteen years since the building permits for the three permits were issued, and the piles are the only evidence of a construction attempt. While it may very well have been the intention and purpose of the Everings to secure building permits, drive the piles, and pursue to completion the land-

fill, road extension and the bulkhead, parking lot and pier constructions, this intention was quickly abandoned.

It is true that in 1970 the Everings renewed the building permits, thus in some sense evincing their continued intention to implement the 1967 site plan, but, again, no substantial construction occurred immediately thereafter or in the ensuing fourteen years. It cannot, therefore, be maintained that the Everings have been pursuing to completion the utilization of their 1964 Special Exception with reasonable diligence, but this is exactly what they would have to prove in order for that Special Exception to still be valid. B.C.Z.R. Sec. 502.3. It should be remembered that the Everings have the burden of proving that the 1964 Special Exception is still valid and that they both commenced construction within the authorized time period and pursued that construction to completion with reasonable diligence. See Joseph Soley, p. 7. As this burden has not been met, and all evidence suggests that it cannot be met, the 1964 Special Exception is void. A Special Hearing, therefore, is not proper and the Everings should be required to re-petition for a special exception for the Brown Parcel. Furthermore, the Petition for Variances and the Petition for Special Exception should both be denied because the invalidity of the 1964 Special Exception changes the factual basis on which they rest.

Respectfully submitted,

T. Rogers Harrison

T. Rogers Harrison
Mudd, Harrison & Burch
306 West Joppa Road
Towson, Maryland 21204
828-1335
Attorneys for Ken Engelke, et al

IN RE: PETITIONS SPECIAL EXCEPTION, SPECIAL HEARING, AND ZONING VARIANCES
N/S of Chester Road, 590' W of Severn Road (800 Chester Road) - 15th Election District
Joseph F. Evering, Jr., et ux,
Petitioners

BEFORE THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 85-65-XSPHA

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a special exception for a boat yard, variances to permit the existing compacted-stone parking surface instead of the required durable and dustless surface, 318 parking spaces instead of the required 384 spaces if the special exception is denied or 363 parking spaces instead of the required 384 spaces if it is granted, and structures (piers) to extend 419 feet beyond the mean-low tide instead of the allowed 300 feet; and to amend the site plans filed in Case No. 3535-X in order to construct an addition to their existing piers, in Case No. 64-57-SPH to remove Restrictions 1 and 3 in order to permit marine craft to be stored within 20 feet of the easternmost property line and the variance for the parking surface requested herein, and in Case No. 64-160-X to remove Restrictions 1 and 6 in order to allow major repair of boats on the premises and in the water and to change the times and days of the weeks and year that repairs will be permitted and, additionally, to determine that the boat yard, piers, and related parking areas are other "structures" devoted to civic, commercial, and recreational activities and, therefore, exempt from the Residential Transition Area (RTA) requirements set forth in Section 1B01.1.B.1.c.9 and 10, Baltimore County Zoning Regulations (BCZR).

The Petitioner, Joseph F. Evering, Jr., appeared and testified and was represented by Counsel. Testifying on behalf of the Petitioners were Paul

ORDER RECEIVED FOR FILING
DATE April 28, 1982
BY ADMINISTRATIVE ASSISTANT

Canatella, a neighbor; Vincent Elliott and Leonard Gardiner, individuals who maintain their boats at the Long Beach Marina; John Schneider, a registered landscape architect and environmental consultant and Chief of the Environmental Design Section, Bureau of Landscape Architecture, State Highway Administration, Maryland Department of Transportation; and William Bafitis, a registered engineer.

Ken Engelke and Richard Stumpf appeared and testified as Protestants as did many others (see Protestants' Exhibit 2). The Protestants later retained counsel who, after entering his appearance, submitted a memorandum and appeared at the continued hearing.

In addition to the relief prayed for, two other issues are an integral part of this proceeding, i.e., the impact of the proposed project on the Chesapeake Bay and the requirement by the Office of Planning that the proposed project be submitted to the County Review Group (CRG). The continued hearing involved only these two issues.

Testimony indicated that the Petitioners originally purchased the major portion of the subject property in 1954 and were granted a special exception to operate a marina in 1955, Case No. 3535-X. In 1960, they purchased an adjoining 35' x 245' lot on the north side of Chester Road and were granted a special exception to extend their boat yard to include that property in 1964, Case No. 64-160-X. Prior to that case, the Petitioners were granted permission to store marine craft on their property, but were restricted to not storing boats within 15 feet of their easternmost property line, Case No. 64-57-SPH. In 1969, the Petitioners purchased an adjoining 50' x 252' lot on the south side of Chester Road. In 1974, they bought the lot adjacent to the one purchased in 1960 and have utilized that lot for parking. There are 24 parking spaces on the north lot and 23 spaces on the south lot.

ORDER RECEIVED FOR FILING
DATE April 28, 1982
BY ADMINISTRATIVE ASSISTANT

When the Petitioners were granted the special exception in 1964, they had four piers and were entitled to construct four more, of which only one was built because it was not financially feasible to build all four. They now wish to amend their site plans to construct two new piers at different locations. The feasibility of constructing the piers granted in 1964 was negated due to the depth of the water at the locations cited because boats could not be tied up at those piers without dredging at a prohibitive cost. At the new locations, they could be. The Petitioners will need to extend two of the existing piers so that they will meet at right angles with the new piers in what is described as a "T" formation. Presently, the Petitioners have 201 slips and want another 178 slips, which would be about 40 more than originally approved. In addition, they want to do major repair of boats on the property and in the water, to change when repairs are permitted, to store marine craft within 20 feet of the easternmost property line, and to be permitted the existing compacted-stone parking surface.

Mr. Evering testified that they have 318 parking spaces, 363 spaces with the two lots included, and yet, this past Fourth of July and Labor Day, the busiest days of the year, there were only approximately 55 vehicles parked on the site. Further, they believe that the existing parking surface is better than an impermeable surface because it allows a more efficient run-off since the property is on the water. Mr. Evering's testimony regarding the proposed piers extending 419 feet rather than ths 300 feet allowed was that they would not impede the free flow of navigation on the channel or the use of the channel by their neighbors.

The Protestants oppose the expansion and maintain that more slips are not needed. The traffic generated by the increased number of boats utilizing the new slips would adversely impact the already congested waterways in the area.

ORDER RECEIVED FOR FILING
DATE April 25, 1985
BY Susan Lawrence
ADMINISTRATIVE ASSISTANT

They maintain that the new slips would cause a hazardous condition by creating "blind spots" around which boat traffic could not see. The Protestants also stated that the additional slips would hinder their view and adversely affect the value of their properties which have already been devalued by the air traffic generated by Martin Marietta directly across from the marina and the existing heavy boat traffic. There is only one access road to the marina, Chester Road, and traffic is already heavy during the boating season. If the expension is permitted, the traffic would be unbearable.

Mr. Evering contested these suppo. ions and presented testimony to the contrary. At the request of both sides, the Zoning Commissioner personally visited the site on two separate occasions and went out into the water with each of them.

I

The first issue to be determined is whether the special exception granted in Case No. 64-160-X has been utilized. Both the Petitioners and the Protestants have submitted memoranda on this issue, and upon consideration of both, it is determined that the requirements of Section 502.3, BCZR, have been satisfied, although not for the reasons argued by the Petitioners and contrary to the conclusion recommended by the Protestants. The issue is more than just "vested rights" and certainly more than what the Board of Appeals for Baltimore County held in Case No. 84-89-SPH, In Re: Joseph L. Soley. In that decision, which addressed this very issue, the Board reversed the Zoning Commissioner and found that to satisfy Section 502.3 one must merely initiate construction. "Mere commencement of work appears to be the test", stated the Board. However, the Zoning Commissioner believes that the Board wrongly merged the doctrine of "vested rights", as it operates to protect property from rezoning, with the doctrine of "utilization", which specifically and legislatively makes a special exception

ORDER RECEIVED FOR FILING
DATE April 25, 1985
BY Susan Lawrence
ADMINISTRATIVE ASSISTANT

conditioned on the commencement of construction that is pursued to completion with "reasonable diligence".

There is no need to expound on the doctrine of "vested rights". Certainly, both parties clearly set out the law in their memoranda dated October 3, 1984, October 31, 1984, and November 13, 1984. The principles set forth therein, however, are not entirely applicable to Section 502.3. As pointed out by the Protestants, there must be more than just a building permit issued or work or labor readily seen and recognized by the public.

Nowhere in the BCZR is "reasonable diligence" defined. Therefore, as the Court of Appeals suggested in Kastendike v. Balto. Assoc. for Retarded Children, 267 Md. 389 (1972), where no definition is found, the phrase must be given its ordinary meaning in the context in which it appears. The term is defined in Black's Law Dictionary as "[a] fair, proper and due degree of care and activity, measured with reference to the particular circumstances; such diligence, care, or attention as might be expected from a man of ordinary prudence and activity."

Was it enough, therefore, that the Petitioners completed one pier, which provided an additional 36 rental slips, instead of the four shown on the site plan approved in Case No. 64-160-X or that the pool, bath house, and showers were provided? Was it enough that the lot was graded and surfaced and that marine craft were stored or that they "began" construction of the bulkhead and the repair shop barge? The Protestants contest whether some of the work claimed was actually performed; however, they do not contest that a boat yard exists.

The Petitioners did not complete construction of the piers because of the expense involved in dredging the bottom of the waters around the projected locations of the piers to permit sail boats to utilize them. Another reason given was a trend away from power boats and toward sail boats (which would require a deeper channel) as a result of rising gasoline prices which had not been

ORDER RECEIVED FOR FILING
DATE April 25, 1985
BY Susan Lawrence
ADMINISTRATIVE ASSISTANT

foreseen by the Petitioners when they submitted their request for the special exception in 1964. Failure to construct the three piers does not deflect the use granted. There has certainly been "reasonable diligence"--a fair, proper, and due degree of care and activity, measured with reference to the particular circumstances. The strictures of Section 502.3 have been satisfied. A boat yard existed after 1955, and an expanded boat yard has existed continuously since 1964.

II

The Petitioners now request that they be granted a special exception for a boat yard for the two lots, zoned D.R.5.5, located on the north and south sides of Chester Road, including the roadbed of Chester Road. The lots adjoin the property presently operating as a boat yard pursuant to the special excentions previously granted.

It is clear that the BCZR permits the use requested by the Petitioners in a D.R.5.5 Zone by special exception. It is equally clear that the proposed use would not be detrimental to the primary uses in the vicinity. Therefore, it must be determined whether the conditions as delineated by Section 502.1, BCZR, are satisifed by the Petitioners.

After reviewing all of the testimony and evidence presented, it appears that the special exception should be granted with certain restrictions, as more fully described below.

The Petitioners had the burden of adducing testimony and evidence which would show that the proposed use met the prescribed standards and requirements set forth in Section 502.1. In fact, the Petitioners have shown that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest. The facts and circumstances do not show that the proposed use at the particular location described

ORDER RECEIVED FOR FILING
DATE April 25, 1985
BY Susan Lawrence
ADMINISTRATIVE ASSISTANT

by Petitioners' Exhibit 1 would have any adverse impact above and beyond that inherently associated with such a special exception use irrespective of its location within the zone. Schultz v. Pritts, 432 A.2d 1319 (1981).

The proposed use will not be detrimental to the health, safety, or general welfare of the locality, nor tend to create congestion in roads, streets, or alleys therein, nor be inconsistent with the purposes of the property's zoning classification, nor in any other way inconsistent with the spirit and intent of the BCZR.

Therefore, without consideration as to the potential impact on the critical area of the Chesapeake Bay, the special exception will be granted.

III

The Petitioners request that they be permitted the existing compacted-stone parking surface rather than an impermeable surface for their parking areas, 363 parking spaces instead of the required 384 spaces, and to extend two of the piers 419 feet beyond the mean-low tide instead of the allowed 300 feet.

A

The parking surfaces may remain compacted stone, provided the Petitioners comply with Section 10.18.06.03D., COMAR, State Health Department, which will insure limitation of particulate into the air and water (see attached, which is herein made a part of this Order). The reasons described in their petition and further described in their testimony for this particular request are sufficient bases to satisfy the burden of proof required by Section 307, BCZR, in that a practical difficulty would exist if it were denied, the variance will satisfy the spirit and intent of the BCZR, and there would be no adverse impact on the public health, safety, and general welfare.

B

The variance to permit 363 parking spaces instead of the required 384 spaces will be moot. It is clear that 384 spaces are not necessary if the

ORDER RECEIVED FOR FILING
DATE April 25, 1985
BY Susan Lawrence
ADMINISTRATIVE ASSISTANT

parking area is never full. Indeed, even with the storage of boats during the winter, the "down-period" for a boat yard, there will never be a need for 384 spaces. However, inasmuch as the number of slips requested will be reduced, as indicated below, the Petitioners will be able to provide the requisite parking spaces, i.e., a total of 324, and a variance would not be necessary.

C

The variance to extend the piers is more difficult to decide. The Petitioners maintain that the piers cannot be located anywhere within the 300-foot limitation due to the lack of depth needed for sail boats and argued that by extending the piers, in order to provide an additional 178 slips, there would be no obstruction or hindrance to the use of the water or to the public safety. The Protestants strenuously object, with validity, to these contentions.

It would definitely appear that an additional 178 slips, and the resultant increase in boats, would have to obstruct or, at the very least, hinder existing boat traffic and usage of the surrounding waters by adjoining property owners. Of the 201 slips, 75% to 80% are rented. Although Mr. Evering's testimony was that there would be no such obstruction or hindrance, this Commissioner is not convinced. On the other hand, the Protestants must recognize that the waters are free and available to anyone with a boat and the Petitioners' right to attract these people, i.e., the right of free enterprise, must be accepted within the confines of the State's responsibility to protect this valuable resource, even from the very persons to whom the State is guaranteeing its usage. The right of the Petitioners must be weighed against the responsibility of the State to insure the waters continued existence as a natural resource.

After visiting the site and experiencing the lure of a calm Autumn afternoon on the water, the Zoning Commissioner is convinced that the extension of the piers to permit an additional 178 slips would create a danger to the public

ORDER RECEIVED FOR FILING
DATE April 25, 1985
BY Susan Lawrence
ADMINISTRATIVE ASSISTANT

health, safety, and welfare. It is just too many. Therefore, it is recommended that the Petitioners limit the expansion to 118 slips. If this is acceptable, they shall provide the Zoning Commissioner with a revised site plan showing the distance the projected piers will extend beyond the mean-low tide line. At that time, a decision on this issue will be rendered based on the testimony and evidence already provided.

IV

A

The requested relief to amend the site plans filed in Case Nos. 3535-X, 64-57-SPH, and 64-160-X in order to construct additional piers and to extend existing ones must be stayed pending resolution of the number of slips permitted as explained above.

B

The request to remove Restriction 1 in Case No. 64-57-SPH to permit marine craft to be stored within 20 feet of the easternmost property line will be granted. However, removal of Restriction 3 is a moot issue since the existing parking surface is to be granted, although it shall be subject to the conditions precedent in Section III, A above. The conditions are the means to justify the end, i.e., the variance to permit the compacted-stone surface.

C

The request to remove Restrictions 1 and 6 in Case No. 64-160-X to permit major repair of boats on the premises and in the waters and to change the hours, days, and months that repairs can be made will be denied in part. With the proliferation of boat traffic since 1964 and the public's increased concern with its natural resources, there is an even greater need to prevent the defilement and deterioration of our rivers, bay, and tributaries. Therefore, no major repairs of any kind will be permitted on the premises or in the waters. Restriction will not be removed and shall remain in full force and effect.

ORDER RECEIVED FOR FILING
DATE April 25, 1985
BY Susan Lawrence
ADMINISTRATIVE ASSISTANT

However, it is equally clear that the Petitioners should have expanded time frames within which they can perform minor repair and maintenance of boats. The hours of operation for such minor repairs and maintenance shall be from 8:00 a.m. to 7:00 p.m., seven days per week, year-round.

D

The last request is to exempt the projected piers and parking areas from the application of the RTA. Section 1B01.1.B.1.c.9 excepts an addition to an existing community building, or other structures devoted to civic, social, recreational, fraternal, or educational activity, including parking areas and driveways. A pier at a marina would classify as a structure devoted to recreational activity and, therefore, be exempt from the RTA.

V

The Petitioners have been informed that this project must be submitted to the County Review Group (CRG) for approval. The Petitioners argued that the CRG does not have this authority and the Zoning Commissioner agrees.

It is clear that the CRG was created by the Baltimore County Council, at the suggestion and advice of the Baltimore County Planning Board (Planning Board), to relieve the Planning Board of the responsibility of approving development plans, a time consuming and detailed job. Its purpose is clearly development oriented, not use oriented. Development is defined in Section 22-39 of the Development Regulations, BCC, as meaning (1) the improvement of property for any purpose involving building; (2) subdivision; (3) combination of any two or more lots, tracts, or parcels of property for any purpose; (4) subjecting property to the provisions of the Maryland Condominium Act; and (5) preparation of land for any of the purposes listed in 1 through 4. The legislative history strongly indicates that the purpose of the CRG is to oversee development in the County and there seems to be no suggestion that jurisdiction over actual use would be conferred.

ORDER RECEIVED FOR FILING
DATE April 25, 1985
BY Susan Lawrence
ADMINISTRATIVE ASSISTANT

None of the constrictions to the CRG's authority, as delineated by Section 22-39, would impart the power to require the construction of piers to be the subject of its review. Indeed, the development regulations define "building" as a structure enclosed within exterior walls or firewalls for the shelter, support, or enclosure of persons, animals, or property of any kind. A pier or boat slip is not a building. The statute is unambiguous. If the proposed project does not come within specific statutory authority, then the CRG on its own cannot expand its power to be all inclusive.

VI

The final issue to be resolved is whether the Petitioners have satisified the burden imposed by the Chesapeake Bay Critical Area Protection Program, Section 8-1813, Nat. Res. Art., Md. Code. This section requires, from June 1, 1984 (until such time as the local jurisdiction's program is approved by the Commission created by this legisiation), with regard to approval of any subdivision plat, special exception, or variance, affecting any land or water area located within the area identified as being within the critical area of the Bay, that the "approving authority of the local jurisdiction in rendering its decision to approve an application shall make specific findings that: (1) [t]he proposed development [which is defined as any activity that materially affects the condition or use of dry land, land under water, or any structure (Section 8-1801(a)(3)] will minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands; and (2) [t]he applicant has identified fish, wildlife and plant habitat which may be adversely affected by the proposed development and has designed the development so as to protect those identified habitats. The approving authority has the power to require such additional information from an applicant as is necessary in order to make the findings required.

ORDER RECEIVED FOR FILING
DATE April 25, 1989
BY Jack P. Dwyer
ADMINISTRATIVE ASSISTANT

It is clear that the approving authority for any special exception or variance is the Zoning Commissioner, unless the proposed project meets the definition of "development" found in Section 22-39, hereinbefore mentioned, which is substantially different than the definition found in Section 8-1802(a)(3), Nat. Res. Art., Md. Code. If the CRG does not have the approving authority, then the Zoning Commissioner is solely responsible as to whether or not a special exception or variance is required. If the CRG does have the responsibility, and if a special exception and/or variance is required, co-approving authorities would exist, i.e., the CRG and the Zoning Commissioner. Since the proposed expansion of an already existing marina by adding only piers is not "development", as defined by Section 22-39, then the sole responsibility is that of the Zoning Commissioner.

In the instant case, the Petitioners filed a Motion with the Zoning Commissioner to schedule a second hearing for the sole purpose of presenting evidence aimed at satisfying the precepts delineated in Section 8-1813. The hearing before the Zoning Commissioner was, and is, an adversary proceeding with both the Petitioners and the Protestants being given the opportunity to present evidence and testimony and to cross-examine and refute any given. Indeed, the Petitioners' Counsel, Protestants' Counsel, and Office of Planning and Zoning were notified of the hearing date and purpose of that hearing by letter dated January 3, 1985. The Protestants appeared and presented rebuttal evidence and cross-examined Mr. Schneider, the Petitioners' expert witness. The Office of Planning and Zoning elected not to appear. Inasmuch as Mr. Evering requested the opportunity to present his evidence, and by law it is the responsibility of the Zoning Commissioner to determine whether the Petitioners have satisifed the burden required by Section 8-1813(a)(1) and (2), the Zoning Commissioner must make his decision based on the facts and evidence presented. Although the Zoning

ORDER RECEIVED FOR FILING
DATE April 25, 1989
BY Jack P. Dwyer
ADMINISTRATIVE ASSISTANT

Commissioner may expressly require additional information, it has been determined that no such additional information is needed.

Mr. Schneider's testimony was convincing that the proposed expansion would not "materially affect" the condition or use of dry land, land under water, or any structure. The evidence submitted by the Petitioners, specifically the Hydrogeological Study and Environmental Effects Report for Long Beach Marina, prepared by Bafitis & Associates, Petitioners' Exhibit 1A, contradicted any potential adverse impact that might result. The report found that the proposed expansion would not increase the amount of biochemical oxygen demand, total phosphorus, total nitrogen, lead, zinc, or sediment in any measurable amount.

For example, the potentiality for overboard discharge of wastes from the additional boats would be minimized by the provision of "pump-out" facilities. The Department of Health, in its comments dated February 8, 1984, found that the on-site disposal facilities were functioning adequately. Additionally, the capacity of the facilities would be enlarged to minimize any future adverse impact. Cross-examination of Mr. Schneider pointed out the importance of cooperation by boaters inthis regard. It seems that many do not. Obviously, there would be an impact created by an aditional 118 boats moored at the Petitioners' marina, but Mr. Schneider testified that these additional boats would not increase the adverse impact already caused by the existing recreational boating. In fact, testimony indicated that the additional boats using the marina were not additional boats to the area; that is, the expansion of the marina would not attract additional boats but would induce present boaters to utilize the new services as proposed.

Further, the Petitioners pointed out that the location of the new piers would minimize any adverse environmental process which would result if dredging were required. Since the water's depth where the piers are proposed is

ORDER RECEIVED FOR FILING
DATE April 25, 1989
BY Jack P. Dwyer
ADMINISTRATIVE ASSISTANT

approximately 12 feet, no dredging will occur. In fact, the requested variances to allow extension of the piers more than 300 feet beyond the mean-low tide line and the compacted-stone parking surface would minimize any adverse impact. It is important to note that there is no proposed change on or alteration of land, and therefore, any change to water quality, wildlife, and land habitat would be for the better. Mr. Schneider testified that, in his expert opinion, there was no submerged vegetation in the off-shore area; therefore, there would be no adverse impact.

Although the Protestants disagreed point by point, they presented no expert testimony or study to specifically contradict those presented by the Petitioners. It is left to the trier of the facts to weigh the evidence and evaluate the testimony, and after long and thoughtful consideration of the memoranda submitted on this issue by both the Petitioners and the Protestants and the evidence and testimony presented, it is found that there would be no material effect. Therefore, the proposed project does not fall within the purview of Section 8-1801, et. seq. However, even assuming that the project would satisfy the definition of "development", Section 8-1802, it is determined that the Petitioners have met the burden of Section 8-1813(a). The proposed project will minimize adverse impact on the water quality, as further defined by Section 8-1813(a)(1), and the Petitioners have identified those fish, wildlife, and plant habitat and designed the project so as to protect those identified habitats, as further defined by Section 8-1813(a)(2).

The contradictions presented by the Protestants need careful consideration; however, this is an administrative proceeding, i.e., quasi-judicial in nature, and the burden of proof is not "beyond a reasonable doubt". There was no expert testimony presented and no specific findings as to this site in contradiction of the Petitioners, and the Zoning Commissioner has no choice but to accept the

ORDER RECEIVED FOR FILING
DATE April 25, 1989
BY Jack P. Dwyer
ADMINISTRATIVE ASSISTANT

testimony and evidence of Mr. Schneider and Mr. Bafitis, as experts in the field. The Petitioners have satisfied their burden of proof.

SUMMARY

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 25th day of April, 1985, that the Petition for Special Exception for a boat yard for two lots, one located on the north side and the other on the south side of Chester Road, including the roadbed of Chester Road, be and the same is hereby GRANTED; the Petition for Zoning Variances to permit the existing compacted-stone parking surface instead of the required durable and dustless surface be and the same is hereby GRANTED; and the amendments to the site plans filed in Case No. 3535-X to permit an additional 118 slips, in Case No. 64-57-SPH to remove Restrictions 1 and 3 in order to permit marine craft to be stored within 20 feet of the easternmost property line and the variance for the parking surface requested herein, subject to Section 10.18.06.03D. COMAR, and in Case No. 64-160-X to amend Restriction 6 in order to allow the hours of operation for minor repair and maintenance of boats to be 8:00 a.m. to 7:00 p.m., seven days per week, year-round are approved and that the criteria of Section 8-1801, et. seq., has been satisfied and, as such, the Petition for Special Hearing is hereby GRANTED, from and after the date of this Order, subject, however, to the following restrictions which are conditions precedent to the relief herein granted:

1. A revised site plan, showing the placement of the 118 slips and the distance of their extension beyond the mean-low tide, shall be submitted to the Zoning Commissioner for approval.

2. The requested variance to permit the piers to extend 419 feet beyond the mean-low tide instead of the allowed 300 feet shall be stayed pending submission of the revised site plan, at which time a decision shall be rendered without further hearing necessary.

ORDER RECEIVED FOR FILING
DATE April 25, 1989
BY Jack P. Dwyer
ADMINISTRATIVE ASSISTANT

It is FURTHER ORDERED that in Case No. 64-160-X, Restriction 1 shall not be removed and shall remain in full force and effect.

Zoning Commissioner of
Baltimore County

AJ/srl

Attachment

cc: John O. Hennegan, Esquire
Robert J. Romadka, Esquire
T. Rogers Harrison, Esquire
People's Counsel

ORDER RECEIVED FOR FILING
DATE April 25, 1989
BY Jack P. Dwyer
ADMINISTRATIVE ASSISTANT

IN THE MATTER OF
THE APPLICATION OF
JOSEPH F. EVERING, JR., ET UX
FOR SPECIAL EXCEPTION FOR A BOAT YARD, SPECIAL HEARING TO AMEND SITE PLAN, AND VARIANCES ON PROPERTY LOCATED ON THE NORTH SIDE OF CHESTER ROAD, 490' WEST OF SEVERN ROAD (800 CHESTER ROAD)
15th ELECTION DISTRICT

ON REMAND FROM THE
CIRCUIT COURT
FOR BALTIMORE COUNTY -
AT LAW
CASE NO. 87-CG-4755
ZONING CASE NO. 85-65-XSPHA

AMENDED OPINION AND ORDER

This matter comes before the Board on remand from the Circuit Court by Order dated May 26, 1988, whereby the Circuit Court directed that the Board consider an amended site plan and make a determination that this plan satisfies the critical area criteria as set forth in the COMAR regulations. The facts of this case are set forth in our Opinion of October 21, 1987. Although the Board ruled on December 12, 1985 that the critical area requirements were not applicable to this particular case for the reasons set forth in our Ruling, substantial evidence concerning critical area requirements was introduced, including several reports and expert testimony provided by petitioners.

An amended site plan has been prepared by the petitioner which plan has been consented to by the protestants and by People's Counsel. This amended plan eliminates 16 slips from the southern pier extension and approximately 38 slips from the northern pier extension. This proposal addresses the Board's concerns which were raised in our October 21, 1987 Opinion that the proposed slips not interfere with navigation in Frog Mortar Creek. A review of the testimony of this matter indicates that the protestants were concerned with both pier extensions, and the Board notes that the protestants who testified actually lived closer to the southern pier extension. Testimony also was presented with respect to the fact that the proposed pier extensions would not in any way

interfere with any submerged aquatic vegetation, in that none existed in the area. The piers, being extended in the manner as now proposed, minimize necessary dredging and the effects of propeller wash on the bottom of Frog Mortar Creek. Additionally, there was much testimony that these slips will be used primarily for sailboats rather than motor boats, which will also minimize propeller wash on the river bottom. No endangered species of plant life or of fish were found in the area. Pollution studies which were performed by petitioner indicate that there is good fishing of the water at this particular location because it is located at the mouth of Frog Mortar Creek in Middle River.

Based upon the testimony and evidence received, the Board finds that the marina extension as amended satisfies the criteria as set forth in the critical area law and in the regulations promulgated by the State of Maryland. See COMAR Section 14.15.03.04. In addition, petitioner's proposal to buffer the creek from existing land improvements and place a pump station for boat facilities will minimize the impact of the proposed marina extension on the critical area.

O R D E R

It is therefore this 15th day of June, 1988 by the County Board of Appeals of Baltimore County ORDERED

(1) That the Petition for Special Exception be and is hereby GRANTED with restrictions as hereinafter provided;

(2) That the variance from B.C.Z.R. 409.2.c(2) be and is hereby GRANTED;

(3) That in view of the Board's restriction on the number of slips, the petitioner's variance relief under B.C.Z.R. 409.2.b is MOOT;

(4) That the Petition for Variance under B.C.Z.R. 417.5 is GRANTED to the extent as shown on the amended site plan submitted by the petitioner, thereby allowing expansion in conformance with the site plan offered and identified and attached hereto as part hereof. This plan is identified as Petitioner's Exhibit #1A and amends Petitioner's Exhibit #1 by removing 16 and 38 slips from the southern and the northern pier extensions, respectively.

(5) That the Petition for Special Hearing is GRANTED to allow amendments to the site plan as was approved on January 16, 1967, in Case No. 64-160-X in order to construct additional piers and slips, in conformance with the variance as set forth in #4 of this Order;

(6) That the Petition for Special Hearing to remove restrictions #1 and #3 in Case No. 64-57-SPH will be GRANTED;

(7) That the Petition for Special Hearing to remove restrictions #1 and #6 in Case No. 64-160-X will be GRANTED in part and DENIED in part and that restriction #1 is AFFIRMED and re-incorporated herein and restriction #6 amended so as to allow maintenance and minor repairs on site and in the water immediately adjacent thereto from 8:00 a.m. to 7:00 p.m., seven days per week, year round;

(8) That the Petition for Special Hearing for a determination of the recreational activities on site is GRANTED so that the use is exempt from Residential Transition Area requirements;

(9) That the on-shore improvements of a pump-out facility for boats and landscaping be completed simultaneously with the construction of the proposed piers; and

(10) That the following best management practices guidelines be utilized in the operation of the facility at such time as the construction commences:

(a) Wording in lease agreements to enforce use of trash receptacles and controlling of washing of boats;

(b) Replacing existing fuel pumping facility with newer equipment having back-pressure automatic shut off valves and restriction of fuel service to trained Marina personnel, education of boat owners regarding fuel spill sources, and on-site sales of fuel recovery products;

(c) Restrict the use of antifouling paints to boat hulls and avoid painting piers and other in-water structures;

(d) Conduct scraping and painting operations away from the water in protected areas to a. 1 the loss of particulate and raw paint;

(e) Avoid repainting hulls after a year during which fouling to the hulls was minimal;

(f) Dry store boats not in use for extended periods;

(g) Post signs prohibiting overboard disposal of sewage and inform the public of contamination levels resulting from violations;

(h) Require compliance with federal "head Laws" as a prerequisite to slip rental, and indicate violations will result in cancellation of rental contract;

(i) Require all through-hull discharge ports of Type III MSD's to be sealed on those vessels "permanently" moored; and

(j) Require use of on-site pump-out facilities.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence E. Schmidt, Acting Chairman

William T. Hackett

IN THE MATTER OF THE APPLICATION OF JOSEPH F. EVERING, JR., ET UX FOR SPECIAL EXCEPTION FOR A BOAT YARD, SPECIAL HEARING TO AMEND SITE PLAN AND VARIANCES N/s OF CHESTER ROAD, 590' WEST OF SEVERN ROAD (800 CHESTER ROAD) 15th ELECTION DISTRICT	:	BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 85-65-XSPHA

: :

OPINION

This matter comes before the Board as an appeal from the decision of the Zoning Commissioner dated April 25, 1985, wherein the Commissioner granted a special exception and variances with restriction, all petitioned for by the property owner, Joseph F. Evering.

STATEMENT OF THE CASE

Prior to a discussion of the merits of the case, a statement of the procedural history of the case is in order. On August 6, 1984, the Petitioner, Joseph F. Evering, et al, filed the following three petitions:

1. A Petition for Special Exception: This request was made to allow two lots on the north and south sides of Chester Road to be used as part of a boatyard. The lots, as is the entire property, are zoned D.R. 5.5 and, under Section 1B01.1.C.2 of the Baltimore County Zoning Regulations (hereinafter B.C.Z.R.), may only be used as a boatyard upon granting of a special exception. As will be discussed later, the two parcels for which the special exception is sought are properties acquired by Mr. Evering in the relative recent past, and the petitioner seeks permission to consolidate the uses on these parcels with adjacent properties owned by him and operated as a boatyard, pursuant to special exceptions granted to him a number of years ago.

2. A Petition for Zoning Variance: Within this petition, the petitioner seeks relief by way of variance from three sections of the Baltimore

County Zoning Regulations. To wit: a) To allow existing compacting stone instead of the required durable and dustless surface (B.C.Z.R. Sec. 409.2.c.(2)); b) To allow 318 parking spaces in lieu of the required 384 spaces, or, if the special exception petitioned for is granted, to allow 363 spaces instead of the required 384 spaces (B.C.Z.R. 409.2.b); and c) To allow the extension of piers to extend 419 feet into Frog Mortar Creek beyond the mean low tide, rather than the allowed 300 feet (B.C.Z.R. 417.5(a)).

3. A Petition for Special Hearing: The petitioner also seeks other relief by way of special hearing, specifically: a) To amend the site plan which was approved on January 16, 1967 in connection with the granted petition for special exception in Case No. 64-160-X, in order to construct additional piers and slips; b) To remove the restrictions numbered 1 and 3 in Case No. 64-57-SPH, in order to allow marine craft to be stored within twenty feet of the easternmost property line and to request the variance for the parking surface heretofore referred; c) To remove restrictions in Case No. 64-160-X numbered 1 and 6, in order to allow major repairs of boats both on the premises and in the waters, and to change the times and days of the week and year the repairs will be permitted; and d) To determine that a boatyard, piers and related parking activities and other structures are devoted to civic, commercial and recreational activities and are, therefore, exempt from the residential transitional area requirements.

As indicated above, the Zoning Commissioner on April 25, 1985, granted the special exception and variances, subject to restriction. Cross appeals were then filed to this Board, by both the petitioner and neighboring protestants. In a hearing before this Board in October of 1985, a Motion was raised by the petitioner relative to sub-title 18 of the Natural Resources Article

of the Annotated Code of Maryland, seeking a ruling as to the applicability of this legislation (generally known as the Chesapeake Bay Critical Area Protection Program). After entertaining lengthy argument, this Board held on December 12, 1985 that the Critical Area legislation was not applicable.

Following this ruling, People's Counsel and the protestants filed an appeal of the Board's ruling to the Circuit Court for Baltimore County. Additionally, an action for declaratory judgment was filed within that Court by the protestants and People's Counsel. After consideration of the various pleadings, arguments, etc., Judge Sfekas denied the Complaint for Declaratory Judgment and dismissed the appeal. Although Judge Sfekas' opinion speaks for itself, it is noted that the matter was remanded to the Board of Appeals for its consideration as to the merits of the case.

STATEMENT OF THE FACTS

The Board received lengthy testimony and legal memoranda in this case which elicited the following facts regarding the history of these parcels and their current use. The current Evering property actually consists of four separate parcels, which have been acquired over the years. These parcels total approximately 3.3 acres and, as shown from the aerial photo exhibits introduced, represent the tip of a peninsula which extends into Frog Mortar Creek.

The original Evering parcel of approximately 1.2 acres lies on the south side of Chester Road. After acquiring this property, the Everings applied for and were granted special exception for the use of that property as a boatyard (see Case No. 35-35-X). After acquiring this special exception, Mr. Evering constructed four piers which extended into Frog Mortar Creek for the purpose of mooring his customers' boats. In January of 1964, the Everings filed a Petition for Special Hearing, seeking clarification of that special exception granted to

them. Specifically, they sought, and received, approval to store marine craft on the shore. This approval, however, was subject to three restrictions; to wit: 1) the prohibition of storing marine craft within thirty feet of the easternmost portion of the property owned by the Everings; 2) limiting the use of the boatyard to pleasure craft only; and 3) mandating that the Everings comply with off-street parking requirements contained within the Baltimore County Zoning Regulations.

On August 1, 1960, the Everings acquired the second parcel of what eventually became the entire Evering property. This parcel was obtained from Mr. and Mrs. Henry J. Brown. This lot lies directly north, across Chester Road from the original parcel. In contemplation of purchase of the same, the petitioner filed for a special exception in the spring of 1964, seeking permission to develop the second parcel into a boatyard. This special exception was also granted, again, however, subject to numerous restrictions as more fully described within the record of this case. Generally, the granted petition restricted the use of the property by prohibiting (1) major repairs on boats, (2) the construction of boats, and (3) the mooring of commercial vessels, barges or similar type craft. Additionally, the extent of and time frame for repairs to boats were limited. Furthermore, as had been the case with the initial special exception applicable to parcel one, the boatyard facility was restricted to pleasure craft only.

The third parcel of the Evering property was purchased in 1969 and encompasses the adjacent lot on the southern side of Chester Road. The fourth and final piece of the Evering property puzzle was purchased by the petitioner in 1970 and includes that lot adjacent to the old Brown parcel, located on the northern side of Chester Road. It is these parcels, designated as #3 and #4, for which the Everings currently seek a special exception.

In addition to the lengthy testimony regarding the chronological history of this property, the Board received extensive testimony regarding the current use of the property. Both the petitioners and protestants produced numerous witnesses as to the operation, both past and present, of this facility and its effect on the general locale. Suffice it to say, the Board will not repeat here at length all the testimony which is contained in the record. This testimony has largely been summarized by all counsel and will not be repeated. However, certain relevant portions of the testimony will be drawn from and cited during discussion of the numerous issues which the Board will address in considering the petitioner's request.

UTILIZATION OF THE SPECIAL EXCEPTION FOR THE SECOND (BROWN) PARCEL AS GRANTED ON JULY 30, 1964

The initial issue facing this Board concerns the present state of the special exception granted by the County Zoning Commissioner in June of 1964. As indicated earlier, the Zoning Commissioner in 1964 granted a special exception for the secondly acquired parcel, purchased from Mr. and Mrs. Brown. The protestants argue that the Everings did not utilize this special exception. As such, they maintain that the factual basis on which the presently requested relief is sought does not exist. Expressed otherwise, since the special exception for the second parcel was not utilized, the petitioners cannot now seek an additional special exception and variances for the subsequently acquired property. The protestants therefore urge this Board to deny the current petitions because of the failure of the Everings to utilize the special exception which they obtained in 1964. As a factual basis for this position, the protestants point to the site plan submitted by the Everings in 1967 wherein the petitioners propose to exercise the use granted by the extension of Chester Road, filling in

and extending of the Brown parcel, the construction of a bulkhead off the Brown parcel, the building and delineation of parking areas, and building three piers off the western shore from the Brown parcel and a fourth from parcel one. In that the petitioners did not fully complete all of their plans, the protestants urge this Board to hold that the 1964 special exception was not utilized and is therefore invalid. As a legal basis for this condition, the protestants point to Section 502.3, B.C.Z.R., particularly, subsection A which provides:

> "[A] special exception which has not been utilized within a period of two years from the date of the final Order granting same, or such longer period not exceeding five years, as may have been specified therein, shall thereafter be void...."

Later, this section provides that:

> "[A] special exception which requires any construction for its utilization shall be deemed to have been used within its authorized time, if such construction shall have been commenced during the authorized period, or any extension thereof, provided said construction is thereafter pursued to completion with reasonable diligence."

The protestants argue that the petitioner has not complied with this section of the B.C.Z.R., in that construction has not been commenced and/or completed pursuant to the petitioner's site plan.

In opposition to this conclusion, the petitioners, although acknowledging that not all construction was completed, argue that substantial utilization was undertaken. Although the petitioners admit that the three piers in front of the parcel were not in fact constructed, they point to the construction of a repair shop barge and additional 36 slips constructed from the front of the initial parcel. Additionally, the petitioners point to a number of improvements on the Brown property itself. Specifically, marine craft were stored on the parcel, the property was graded, the rudiments of a parking lot

were completed and recreational facilities, including a swimming pool, showers and sanitary house, were built. The petitioners also point to the pilings which were driven for the bulkhead, although the bulkhead was never constructed.

In consideration of this issue, the Board looks to prior decisions for guidance. Although the Zoning Commissioner questioned its applicability, the Board views the standards as set forth in Case No. 84-89-SPH, In re: Joseph L. Soley, as controlling. Particularly, we look to not only the Board's initial Opinion in that case, but, also, Judge Hinkel's Opinion and the Board's subsequent Opinion. It should be noted that the Board's second Opinion, after remand, was affirmed by the Circuit Court (Fader, J.).

The standard which must be applied here, as was applied in Soley, is whether the petitioner exercised reasonable diligence in utilizing his special exception. As Zoning Commissioner Jablon pointed out, "reasonable diligence is nowhere defined in the B.C.Z.R." Although the B.C.Z.R. nowhere defines the standard under which the Board is to determine "reasonable diligence," that standard was unmistakenly provided to this Board in Judge Hinkel's Order. Specifically, the Board was instructed to apply a two-prong test; that is, 1) the commencement of some readily identifiable work, and 2) the work begun with the intention then formed to continue said work to its completion.

Applying that test to the facts found by us, we are persuaded that the special exception granted in 1964 was utilized. Certainly, the Board acknowledges that not all the petitioner's plans were completed fully. However, there appeared to be a sufficient and extensive developed use of the Brown parcel, in a manner which must be described as a boatyard. Particularly, the petitioner completed one pier, stored marine craft on the site, constructed facilities (bath house, showers, pool) thereon, etc. More significantly, there is no doubt that the boatyard use exists, and has existed on this site.

As was evident from the testimony of not only Mr. Evering but other longstanding residents of the community, parcels 1 and 2 were considered, from a practical standpoint, in conjunction. That is, their use was consistent and in a joint manner; and that both parcels 1 and 2 have been used continuously since 1964 as a boatyard.

CONSIDERATION OF THE SPECIAL EXCEPTIONS

Having settled the utilization of the 1964 special exception and concluded that in fact the special exception on the former Brown parcel has been utilized, the Board next turns its attention to the Petition for Special Exception before us for parcels 3 and 4. As is the case in all special exception matters before this Board, we are obligated to determine whether the conditions set forth in Section 502.1 of the B.C.Z.R. have been satisfied by the petitioners. As to the factual consideration of this issue, the Board has received lengthy testimony and evidence, all of which is reflected in the record of this case. This evidence will not be repeated here. However, in conclusion, the Board finds that the proposed use would not be detrimental to the neighborhood and surrounding area and would not adversely affect any public interest. Specifically, we find that the proposed use meets all of the tests as set forth in B.C.Z.R. Section 502.1. The Board has received lengthy evidence as to the effects of the already existing boatyard use on portions of the property. This evidence is telling and convinces us that the proposed use is consistent with the spirit and intent of the Baltimore County Zoning Regulations. We will, therefore, grant the Petition for Special Exception with restrictions.

CONSIDERATION OF THE PROPOSED VARIANCES

As indicated above, the property owner seeks three zoning variances. They are: (1) relief from B.C.Z.R. Section 409.2.c(2), to allow existing com-

pacting stone instead of the required durable and dustless surface; (2) relief from B.C.Z.R. 409.2.b, to allow 363 parking spaces instead of the required 384 spaces, in that, the Board has in this Opinion heretofore stated that the Petition for Special Exception will be granted; and (3) relief from B.C.Z.R. 417.5(a), to allow the extension of piers to a distance of 419 feet into Frog Mortar Creek beyond the mean low tide, rather than the allowed 300 feet. We shall address each of these requests in turn, pursuant to the standards as set forth in B.C.Z.R., Section 307 and the applicable core law, e.g., Anderson v Board of Appeals, Town of Chesapeake Beach 22 M App 28, 322 A2d 220 (1970). McLean v Soley 270 MD 208, 31 A2d 787 (1973). This body of law requires the petitioner to demonstrate that practical difficulty or undue hardship would result if strict compliance with the regulations were imposed.

Parking Lot Paving

The parking surfaces may remain compacted stone. As the property owner testified, crushed stone is cleaner, more dust free, and provides a reduced rate of storm water runoff than a macadam or impenetrable surface. We agree. In our view, practical difficulty would exist if the petitioner were forced to comply with B.C.Z.R. 409.2.c(2). Further, a parking surface of crushed stone is, in our view, more compatible with the intended purposes of the B.C.Z.R. than would the required macadam surface. We also note that, among the many issues before us, this is the sole question about which there is unanimous agreement among all concerned.

Required Number of Parking Spaces

As did the Zoning Commissioner, the Board will reduce the number of additional slips requested. Therefore, the petitioner's variance for relief from B.C.Z.R. 409.2.b is rendered moot. The Board finds as fact, however, that

the number of parking spaces as mandated by B.C.Z.R. 409 et cet is not necessary. The property owner testified that he had "plenty of parking." Other witnesses testifying on behalf of the petitioner, including both expert witnesses and patrons of the facility, opined that parking congestion was not an issue. Even the protestants, who primarily objected to the anticipated increased traffic on the local roads leading to the facility, did not present any convincing testimony as to parking overflow. In our view, the parking on site is sufficient. As it stands to reason, the land vehicle parking needed is greatest when the boats are in the water, which frees additional room.

Extension of the Piers

The petitioner's final request for variance, from B.C.Z.R. 417.5, is most difficult for this Board to decide and elicited complex and conflicting testimony. It is uncontroverted that the site currently offers 201 slips for rent, and the petitioner requests that the capacity be increased by 178, for a total of 379. The Board received conflicting and detailed testimony regarding the current state of Frog Mortar Creek, from navigational, traffic and water quality standpoints. Additionally, both proponent and opponent witnesses of the project rendered lengthy opinions about the impact of the proposed expansion We will not repeat all of this testimony at length here; suffice it to say that the Board carefully considered all of the opinions expressed in an effort to apply the practical difficulty/undue hardship test to the proposed use.

On the petitioner's side, the property owner testified as to current conditions on Frog Mortar Creek at this location. He testified that this waterway was not overcrowded, the condition of the water itself was sufficient to support marine life and the proposed use would not adversely impact the area from either an ecological or overcrowding standpoint. In his view, Frog Mortar

Creek can well handle the intensification of use which will result if this project is approved. This view was supported by several patrons of Mr. Evering's existing marina, who envisioned no adverse impact with the consequential results of marina expansion.

Also supportive of this view was the petitioner's expert, Frank Piz. This witness testified that the water quality here was marginally adequate, at the present time. However, additional boat slips and traffic would reduce the quality only an infinitesimal amount in that, in this witness' view, boat traffic contributes an insignificant amount of pollutants.

In opposition to these views were several neighborhood protestants. These witnesses testified as to the current crowded and dangerous conditions on the waterway and poor water quality. In their view, further expansion into the creek would be a hazard to navigation, further reduce water quality and further tax beyond its limits the capacity of this creek to support the uses demanded of it.

In addressing this particular variance, the Zoning Commissioner's opinion deserves note. Within this opinion, the Commissioner reviews the staid and mundane legal standards by which we are to judge the requested relief and tempers their application in an aesthetic manner by considering the people's right to the use of this natural resource, government's obligation to protect same, and the right of a property owner to use his land in a manner which he so desires. After pondering the Zoning Commissioner's approach, the Board is persuaded that it is the proper manner in which to consider the requested variance for a pier extension. After all, it is the spirit and intent of the B.C.Z.R. to serve the purposes heretofore set forth.

After due consideration, we are persuaded that the proposed expansion should be limited by the deletion of the 80 slips which run northward from the northern prong of the proposed expansion. That is, the northern prong may be expanded into Frog Mortar Creek in an "L" configuration, not in the proposed "T" configuration. We find that the slips which we delete are the most objectionable as they protrude into the navigable portion of Frog Mortar Creek. We impose this restriction not to strike a compromise but because, in our view, the increase must be limited so as to strike a balance between the property owner's right to the use of his land with the public's need for safeguards as to its health, safety and welfare.

CONSIDERATION OF SECTION 417.7 (B.C.Z.R.)

In its post-hearing memorandum, the Office of the People's Counsel raised yet another issue for this Board to consider. Specifically, People's Counsel argues that Section 417.7 of the B.C.Z.R. was not addressed by the Petitioner. That section provides that:

> "Marinas located on property consisting of five or more acres shall be permitted to establish out-of-water storage facilities for recreational marine craft provided that no such facilities thereon shall be located within 60 feet of any property line, and provided, further, that screening shall be provided and maintained of such types and at such locations as may be required by the zoning commissioner or board of appeals, on appeal."

As indicated earlier in this Opinion, the petitioners did not seek a variance from the requirements of 417.7. In fact, the issue as to whether a variance can be granted from the mandates of this section is among the issues raised by the People's Counsel.

We will not address those issues here. Although this appeal is de novo, the issues presented herein are the Petition for Special Exception,

Petition for Special Hearing, and variances from B.C.Z.R. sections 409.2.c(2), 409.2.b, and 417.5(a). In that those are the only issues raised by the petitioner, we will not explore throughout the zoning regulations to find others. Although People's Counsel may or may not have alternative means for relief available to them if they believe that the petitioner has improperly ignored 417.7, those arguments must be addressed not in this forum, but elsewhere.

CONSIDERATION OF THE SPECIAL HEARING

As indicated earlier in this Opinion, the property owner has also presented a Petition for Special Hearing seeking amendments and changes to the earlier site plans and orders of this Board and, further, a determination as to whether the use of this site is exempted from Residential Transition Area requirements. We will address each of these in turn.

A) First, the petitioner seeks to amend the site plan approved on January 16, 1967 in connection with the granted Petition for Special Exception in Case No. 64-160-X. We will grant an amendment to that site plan to conform with the mandates expressed herein. That is, the site plan is to be amended so as to conform with the petitioner's proposed expanded facility, less the 80 slips which we have ordered deleted.

B) The petitioner also seeks the removal of restrictions #1 and #3 in Case No. 64-57-SPH. Those restrictions in essence prohibited the storage of marine craft within 20 feet of the easternmost property line at the time and also delineated the nature of the parking surface. Removal of restriction #3 is rendered moot by the Board's granting of the petitioned variance from section 409.2.c(2) in that this Board will allow a compacting stone parking area. Likewise, the request to remove restriction #1 to permit marine craft to

be stored within 20 feet of the easternmost property line will be granted.

C) The petitioners also seek to remove restrictions from the Deputy Zoning Commissioner's Order of June 30, 1964, in Case No. 64-160-X. In that Order, the Deputy Zoning Commissioner prohibited any major repairs of any boats on premises or the waters immediately adjacent thereto. Further, minor repairs and maintenance were permitted on a set schedule. We are in agreement with the analysis of the Zoning Commissioner regarding the proliferation of recreational boating in this area. What made good sense in 1964 applies equally today; therefore, we will continue restriction #1 in Deputy Zoning Commissioner Hardesty's Order, and thereby prohibit any major repairs on-site or in the waters immediately adjacent thereto. On the other hand, minor repairs and maintenance should be unfettered. Therefore, we will strike restriction #6 in the Deputy Zoning Commissioner's Order and permit the petitioner to perform minor repairs and maintenance on boats from 8:00 a.m. to 7:00 p.m., seven days per week, year round.

D) The petitioners also seek a determination that the activity on site is devoted to civic, commercial, or recreational purposes and therefore exempt from Residential Transition Area requirements. Section 1B01.1.B.1.c.9 specifically sets forth an exemption for structures devoted to civic, social, recreational, fraternal or educational activity. There can be little doubt that in fact the use of the site presently and its proposed expansion fall within the recreational exemption. Therefore, this Board will hold that the petitioner's use is exempt from said Residential Transition Area requirements.

CONCLUSION

Based upon all of the testimony, exhibits, and arguments offered, the Board adopts as its findings and conclusion the Opinion heretofore stated and will incorporate it fully within its Order.

ORDER

It is therefore this 21st day of October, 1987 by the County Board of Appeals of Baltimore County ORDERED:

1) that the Petition for Special Exception be and is hereby GRANTED with restrictions as hereinafter provided;

2) that the variance from B.C.Z.R. 409.2.c(2) be and is hereby GRANTED;

3) that in view of the Board's restriction on the number of slips, the petitioner's variance relief under B.C.Z.R. 409.2.b is MOOT;

4) that the Petition for Variance from B.C.Z.R. 417.5 is GRANTED in part and DENIED in part so that the petitioner may expand in conformance with the site plan offered and identified as Petitioner's Exhibit #1 subject, however, to the removal of 80 slips as set forth in the Opinion attached hereto and made a part hereof;

5) that the Petition for Special Hearing is GRANTED to allow amendments to the site plan as was approved on January 16, 1967, in Case No. 64-160-X in order to construct additional piers and slips, in conformance with the variance as set forth in #4 of this Order;

6) that the Petition for Special Hearing to remove restrictions #1 and #3 in Case No. 64-57-SPH will be GRANTED;

7) that the Petition for Special Hearing to remove restrictions #1 and #6 in Case No. 64-160-X will be GRANTED in part and DENIED in part and that restriction #1 is AFFIRMED and re-incorporated herein and restriction #6 amended so as to allow maintenance and minor repairs on site and in the water immediately adjacent thereto from 8:00 a.m. to 7:00 p.m., seven days per week, year round; and

8) that the Petition for Special Hearing for a determination of the recreational activities on site is GRANTED so that the use is exempt from Residential Transition Area requirements.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence E. Schmidt, Acting Chairman

William T. Hackett

William T. Hackett

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, MARYLAND
and
BALTIMORE COUNTY, MARYLAND
VS.
JOSEPH F. EVERING, JR. and CATHERINE L. EVERING

* IN THE
* CIRCUIT COURT FOR
* BALTIMORE COUNTY
* CASES NOS. 86CG22
86CG0240
87CG4755

* * * * * * * * * * * * * *

ORDER

Upon consideration of the Joint Motion for Dismissal and Remand and consideration of the reasons stated therein and presented in open hearing on May 23, 1988, it is hereby, ORDERED, this 26 day of May, 1988, that Circuit Court Cases Nos. 86CG22 and 86CG0240 be and the same are hereby dismissed with costs to the appellants and that Case No. 87CG4755 be remanded to the Baltimore County Board of Appeals for consideration of the amended site plan and a determination that the plan meets critical area criteria.

Judge

1692

LAW FIRM
ROMADKA GONTRUM & HENNEGAN
ESSEX, MARYLAND

FILED MAY 26 1988

LAW FIRM

Romadka, Gontrum, Hennegan & Foos

GERMANIA FEDERAL BUILDING
808 EASTERN BOULEVARD
ESSEX, MARYLAND 21221
TELEPHONE (301) 686-8274

ROBERT J. ROMADKA
JOHN B. GONTRUM
JOHN G. HENNEGAN
CHARLES E. FOOS, III

OF COUNSEL
ALFRED M. WALPERT

October 29, 1984

Mr. Arnold Jablon
Zoning Commissioner
OFFICE OF PLANNING AND ZONING
County Courts Building
Towson, Maryland 21204

Reference: Petition for Special Exception,
Petition for Special Hearing
Petition for Variances of North
Side of Chester Road, Joseph F.
Evering, et ux, 85-65-H-XSPHA

Dear Mr. Jablon:

Enclosed you will find the original ~~and one copy~~ of the Memorandum of Petitioners to be filed in the above captioned case.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

John G. Hennegan

JOH/dlw

Enclosure

cc: T. Rodgers Harrison, Esquire
Mr. Joseph F. Evering, Jr.

IN RE: Petition for Special Exception, Petition for Special Hearing and Petition for Variances of North side of Chester Road, Joseph F. Evering, et ux

* BEFORE THE
* ZONING COMMISSIONER
* OF
* BALTIMORE COUNTY
* 85-65-H-XSPHA

MEMORANDUM OF PETITIONERS

The Petitioner herein, Joseph F. Evering, et ux, has filed a petition for Special Hearing requesting the Zoning Commissioner to approve an amendment to the site plan in Case number 64-57 SPH, 64-160 X and 35-35 X to construct an addition to the piers; to remove restriction number 1 and 3 in Case number 64-57 SPH to allow marine craft to be stored within 20 feet of the eastern most property line and to request a variance to the parking; to remove restriction number 1 and 6 in Case number 64-160X to allow major repairs on the premises and in the waters and to change the times and days a week in years that repairs will be permitted; also to determine that a boat yard, related parking or other structures devoted to the civic, commercial and recreational activities and are therefore exempt from residential, transitional requirements set out in Section BO 1.1, BO 1.C.9 and or 10. Secondly, the Petitioners filed a Petition for Special Exceptions under the Zoning Law and Zoning Regulations of Baltimore County to use the two lots located on north and south side of Chester Road not included in Special Exception cases 35-35 X, 64-57-SPH, 64-160 X in a DR 5.5 zone, to be used as a boat yard including the road bed of Chester Road. Thirdly, Petition for Variance was filed from Section 409.2.C (2) to allow existing compact stone in lieu of requirement macadam paving and from 409.2.B to allow three hundred and eighteen (318) in lieu of the required three hundred and eighty-four (384), in the event that Special Exception is

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND
21221

granted to allow three hundred and sixty-three (363) parking spaces in lieu of the required three hundred and eighty-four (384), and a variance from Section 417.5 (a) requiring a structure not to exceed three hundred feet (300') beyond the mean low tide, to allow the structure to exceed four hundred and nineteen feet (419) beyond the mean low tide. Filed along with the various Petitions was a site development plan revised and dated 8/1/84 which is entitled "Plat to accompany Petition for Special Exception, Special Hearing and Variances".

STATEMENT OF FACTS

The facts of the case indicate that in 1954 Petitioners purchased a piece of land off of Chester Road in Baltimore County, Maryland, and in 1955 filed a Petition requesting a Special Exception to use the land for a boat yard, case #35-35 X. As a result of said petition on the 6th day of June 1955 it was ordered by the Zoning Commissioner of Baltimore County that the Petition for Special Exception was granted for the purpose of slip-rental services and services to a boat yard and slips only. As a result the property was developed which resulted in the construction of a repair shop, a travel lift, train railway, office, restrooms, paving, grading and servicing of a parking lot along with approximately one hundred and sixty-five (165) slips including a gas pier.

The operation was continued as a boat yard, slips were rented and marine craft were stored on land without difficulty from that period on. In March 9th, 1964 the Petitioner, by necessity, filed a Petition for a Special Hearing to determine what use the Petitioner was entitled to as a result of the June 6th, 1955 granting the special exception which resulted in the Petitioner being granted a right to store marine craft on land. In addition, Petitioner filed a Special Exception in 64-160 X for some one and three quarter (1-3/4) acres situate on the north side of Chester Road six hundred twenty-five feet (625') west of Severn Road in the Fifteenth (15th) Election District for permission to build and develop said property as a boat yard. As a result of testimony, said Special Exception was granted on the 30th day of June 1964 subject to restrictions and approval of a site plan by the Bureau of Public Services and Office Planning and Zoning, which site plan was approved on 1/16/67 for the construction of a pool, bath house, showers, barge and additional piers. Subsequent to the granting of Special Exception, the Petitioner obtained permits and approval from Baltimore County, the Office of Planning and Zoning to construct said improvements and in fact engaged in doing so. The Petitioner constructed a pool on the parcel subject to Special Exception 64-160 X along with bath house, showers, graded said lot and surfaced it, stored marine craft on said lot along with parking and began construction of a bulk head along with the construction of the repair shop barge and additional thirty-six (36) rental slips. The Petitioner was unable to complete the construction of the remaining piers due to economic conditions then existing and depth of the waters in that area. A gas shortage and the trend from power boats to sail boats and the depth of the water which was insufficient to or was insufficient for the maintenance and storage of sailing craft caused the Petitioner to reconsider the viability of locating piers in that area.

The Petitioner continued to use the total site as a boat yard including the use of the pool and bath house for the customers of said boat yard along with the storage of craft on the property subject to 64-160 X, 35-35 X and 64-57-SPH for the benefit of the customers of the boat yard along with parking for automobiles and the facilities on said site for the repair and maintenance of marine craft up until the present time.

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND
21221

2

3

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND
21221

ISSUE

The issue to be addressed is the application of Regulation 502.3, second paragraph:

"A special exception which requires any construction for/utilization shall be deemed to have been used within its authorized time, if such construction shall commence during the authorized period, or any extension thereof, provided said construction is thereafter pursued to completion with reasonable diligence."

STATEMENT OF LAW

I. VESTED RIGHT

In order for the Petitioner to comply with Section 502.3 of the Zoning Rules and Regulations he must have vested rights from said special exception in order to be protected against a subsequent change in Zoning Ordinance prohibiting or limiting the use.

Vested right is a right to initiate or continue the establishment of a use or construction of a structure which when completed will be contrary to the restrictions or regulations of the Zoning Ordinance or an amendment to it which has become effective in the meantime. Particular use or structure will continue after the effective date of the Ordinance or amended as a vested right. 4 Rathkopf, the Law of Zoning and Planning, 50-2. Rockville Fuel and Feed Company vs. City of Gaithersburg, 266 Md. 172, 291 A2nd 672, 1972 case and in Richmond Corporation vs. Board of County Commissioners of Prince George's County, 254 Md. 244, 255 A2nd 398, 1969 general law in regard to vested rights and existing zoning use was reviewed in Maryland and stated:

"In Maryland it is established that in order to obtain a vested right in the existing zoning use which will be constitutionally protected against the subsequent change in the Zoning Ordinance prohibiting or limiting that use, the owner must (1) obtain a permit or occupan. certificate where required by the applicable Ordinance and (2) must proceed under that permit or certificate to exercise on the land involved so that the neighborhood may be advised that the land is being devoted to that use."

LAW FIRM
ROMADKA, GONTRUM,
HENNEGAN & POOS
ESSEX, MARYLAND
21221

Further, the Petitioners' argue that they have materially altered their position as a result of the granting of the Special Exception by constructing a pool, showers and bath house on the property and using the property to store boats for parking and for the minor repair of marine craft which his customers rely on; they also have constructed the additional piers and the repair barge, and as a result have substantially altered their position thereby acquiring a vested right in the Special Exception of 1964. When such acts occur a vested right is acquired if the land owner has materially altered his position usually by commencement of construction before the zoning class is changed or permit is revoked, Mayor and City Council of Baltimore vs. Crane, 352 A2nd 786, 277 Md. 198, 1976, the above cited case obviously by using the word "usually" supports the Petitioners' position that many other criteria outside of construction should be considered when determining the issue of whether or not a land owner has a vested right.

The Protestants argue that the

"southern pier is built within the property boundaries of the original Evering parcel and therefore relates to the 1955 Special Exception, not the 1964 Special Exception. The Everings could have built the southern pier at any time after the 1955 Special Exception was granted. It's mere inclusion in the 1967 site plan which included both the Brown and the original Evering parcels, does not make it part of 1964 Special Exception.

Though it is clear the Petitioner has argued that the construction of that pier along with the repair shop barge are to be considered as part of the substantial construction and expenditures pursuant to the granting of the 1964 Special Exceptions, the Petitioners do not at this time wish to contest

LAW FIRM
ROMADKA, GONTRUM,
HENNEGAN & POOS
ESSEX, MARYLAND
21221

Gilbert Legal

It is clear that Building permits having been obtained by the Petitioner satisfying requirement one (1) as set out in the above cited cases. As a result, we must direct our attention to the second requirement of Rockville Fuel and Feed Company and Richmond Corporation, supra, which is whether or not the Petitioner proceeded under that permit or certificate to exercise it on the land involved so that the neighborhood may be advised that the land is being devoted to that use. In accordance with the site plan that was approved 1/16/67 and the building permits that were issued the Petitioner proceeded with construction in accordance with the Special Exception that was granted to him on the 30th day of June 1964 in case number 64-168 whereby he constructed a swimming pool, showers and sanitary house on the one and three quarter (1-3/4) acres situated on the north side o. Chester Road, drove in pilings for bulk head, stored marine craft on land and permitted and did repairs on pleasure craft on said land, property was graded and stone was laid for parking and access to and from said site. In addition, across from said site and in accordance with the approved site plan a repair shop barge was constructed along with an additional thirty-six (36) piers. The only construction which was not pursued by the Petitioner was the three (3) piers in front of the parcel and the Petitioner testified that to construct said piers would have been in fact economically detrimental and environmentally harmful, since the piers would not have been used due to the shift from power boating to sail boating and the depth of the waters in which those piers were to be located was not at all suitable for sail boating.

It certainly can not be argued that the Petitioner did not obtain building permits required, that he proceeded under the permit to exercise his right on the land by substantial to beginning construction so that the neighborhood was advised as to the intended land use. The intended land use has been for

LAW FIRM
ROMADKA, GONTRUM,
HENNEGAN & POOS
ESSEX, MARYLAND
21221

the merits of this statement, but wish to draw the attention of the Zoning Commissioner to the site plan revised 8/1/84 which is filed in the case which is the subject of this memorandum. The piers which Petitioner wishes to construct are the natural extension of the existing piers which were constructed as a result of the Special Exception granted in 1955 in case number 35-35 X. The Petitioner has not only filed a Petition for Special Hearing to Amend 64-160 X by eliminating those piers but has filed a Special Hearing to Amend 35-35 X and 64-50-SPX to add the additional piers which he previously had intended to extend off the 1964 Special Exception, but found said construction unfeasible and now has requested them to be constructed off of the property which is the subject of the 1955 Special Exception. Since the Protestants indicate that additional construction off this parcel can occur at any time after the 1955 Special Exception was granted when referring to the southern pier it would seem that the same logic and arguments would accrue to the construction of the additional piers off the previous existing piers that were constructed after the 1955 Special Exception was granted off of the parcel which was the subject of that Special Exception. Certainly there can be no argument that the 1955 Special Exception was not completed pursuant to permits and Zoning Laws and Regulations and therefore there is no need to file an additional Special Exception and that a mere amendment of the site plan as the Petitioner has proposed would be all that is necessary; provided the Zoning Commissioner feels that the addition is in compliance with the general character of the property and in accordance with the previous Special Exception and is not detrimental to the public health of welfare.

LAW FIRM
ROMADKA, GONTRUM,
HENNEGAN & POOS
ESSEX, MARYLAND
21221

twenty (20) years more or less as a boat yard in accordance with the Special Exception that was granted along with pool facilities and a bath house, for use of those customers that rent slips from the Petitioner. The Petitioner has in good faith made substantial change in relation to the land and has made substantial expenditures and construction by increasing the number of slips, constructing repair facilities and recreational facilities that were available to his customers in addition to land being used for parking and marine craft storage.

The Majority rule which can be synthesized from the multitudinous decisions in this area may be stated as follows:

"A land owner will be held to have acquired a vested right to continue the construction of a building or structure to initiate and continue a use to spite a restriction or certain ordinance where, prior to the effective date of the ordinance, in reliance of a permit thereto validly issued, he has in good faith, made a substantial change of position in relation to the land, made substantial expenditures, or has incurred substantial obligations ..." (252 Md. at 506, 250 A.2nd at 640). See also Board of County Commissioners of Anne Arundel County vs. Snyder, 186 Md. 342, 46 A.2nd 689 (1946) and Mayor and City Council vs. Shapiro, 187 Md. 623, 51 A.2nd 273 (1947) and also quoted with approval, from (2) Rathkopf, the Land for Zoning and Planning (third [3rd] edition, chapter 57, Section 3 at 57-6 to 57-7. To deprive the Petitioner of a Special Exception in 64-160 X since he has not constructed three (3) piers which are economically and environmentally not feasible as previously stated and to hold that he did not pursue to complete the construction with reasonable diligence when in fact the only matter remaining is the construction of the three (3) piers which are in fact as previously stated not feasible would be flying in the face of the spirit of Section 502.3 and depriving the Petitioner of the use of his land.

LAW FIRM
ROMADKA, GONTRUM,
HENNEGAN & POOS
ESSEX, MARYLAND
21221

II. THE CONSTITUTIONALITY OF DEPRIVING THE LAND OWNER OF HIS RIGHTS TO USE THE ONE AND THREE QUARTER ACRES ON THE NORTH SIDE OF CHESTER ROAD AS A BOAT YARD.

The question comes to mind as whether or not the zoning ordinance being strictly construed in this incidence would be unconstitutional as being arbitrary or unreasonable, capricious or discriminatory and thus a violation of the provisions of Article 23 of the Declaration of Rights of the Maryland Constitution and a denial of due process of the law provided by the 14th Amendment of the United States Constitution by depriving the Petitioner of his right to continue to use the parcel as provided for in Special Exception 64-160 X. "In Northwest Merchants Terminal, Inc. vs. O'Rourk, 191 Md. 171, 60 A2nd 743, 1948, the Baltimore City property had been a commercial use district since the original Zoning Ordinance in 1931 and in the immediate vicinity was a large area of residential classification. In 1945, the Appellant purchased property in the commercial district for expansion of its storage facilities which it required for its building materials and manufacturing business, and because of the property's access to a railroad siting. After obtaining an occupancy permit, it cleared and filled the property and otherwise prepared it for use at a cost of Fifty Thousand Dollars ($50,000.00) which included the purchase price. By 1946 preparations were completed and the property was being used.

In October 1945, and amendment to the Ordinance was proposed which changed the property and the second commercial use district to a residential use district. While this amendment was under consideration, the Appellant filed three applications for building permits. This incurred considerable neighborhood oppositions but the permits were issued. In April 1946, after undergoing a tortuous journey through the various public agencies, the Ordinance was approved. A group of nearby property owners sued for injuction in a Declaration that the

LAW FIRM
ROMADKA, GONTRUM,
HENNEGAN & POOS
ESSEX, MARYLAND
21221

It certainly seems that one of the key issues as cited in the cases referred to above and in O'Donnell vs. Blaser, 425 A2nd, 1003 289 Md. 5017, 1981, is that the owner, make a substantial change of position in relation to land that is to be committed to the use for which the special exception or the permits were obtained and that good faith be exercised by the developer. The passage of time alone is not necessarily the main criteria for lapse of permits or a Special Exception and certainly the two elements referred to above cry out for recognition in this particular case and any argument that the parcel on the north side of Chester Road has not been substantially committed to the use as a boat yard in accordance with the Special Exception in 1964 would be far reaching. To support the argument that time is not necessarily the criteria for lapsing the Petitioner sites Putnam Armonk, Inc. vs. Town of Southeast 382 NYS2nd 538 which is a New York case where a developer built half the homes that he was permitted to construct pursuant to his permit and during construction water and sewer problems developed and no new construction took place for fifteen (15) years. The court held that developers right to complete development of a tract despite later changes in the zoning ordinance did not terminate through the simple passage of time. The court indicated that you should consider:

1. Whether or not the rights of the developer have been abandoned.

2. Whether the owner has recouped the financial investment providing for the basis for the right to complete the development.

3. Have any contravening considerations of public health, safety and welfare supervened during the period when the right and issue has not been used.

LAW FIRM
ROMADKA, GONTRUM,
HENNEGAN & POOS
ESSEX, MARYLAND
21221

three building permits were void. On an Appeal from a decree enjoining the Appellant from erecting the three warehouse buildings and from using the property for any use not permitted by the Ordinance Amendment, the Appellant contended, inter alia that the amendment was unconstitutional as applied to it and depriving the property without due process and denying it equal protection under the law. Court of Appeals reversed the Decree, holding the Ordinance Amendment was invalid as applied to the Appellant for being unreasonable, arbitrary and contrary to the section of the zoning enabling act (acts of 1927, Chapter 7 and 5, Article 66 B, Section 3, which requires zoning regulations to be made in accordance with the comprehensive plan and with reasonable consideration among other things, to the character of the district and it's suitability for particular purposes)."

To deny the Plaintiff this Special Exception that was granted in 1964 in case number 64-160-X would be an unconstitutional taking of his land and depriving him of the use thereof without due process and would restrict the Petitioner from using the property for any other reasonable purpose. The Petitioner testified at the time of the hearing that the property was subject to the Noise Act of the State of Maryland which would not allow any residential development which is the only permissible use in a DR 5.5 zone as a matter of right and that the only use permitted as a result of the Noise Act is recreational which is in fact the manner in which the property is presently being used by the Petitioner. See also, Vine vs. Zabriskie, 122 N.J.L.4, 6, A.2nd 886, 887 (1939)

III. SPECIAL EXCEPTION CAN BE GRANTED FOR THE ADDITIONAL PIERS ON BEHALF OF THE PETITIONER.

The Petitioner filed a Special Exception for two lots located on the north and south side of Chester Road not included in Special Exception cases 35-35 X, 64-57 SPH, 64-160 X in a DR 5.5 zone to be used as a boat yard including the road bed of

LAW FIRM
ROMADKA, GONTRUM,
HENNEGAN & POOS
ESSEX, MARYLAND
21221

Chester Road. A hearing was conducted on that Petition and the elements as required by 502.1 were offered to the Court and were not contravened by the Protestants. A site developmen plan date 8/1/84 was submitted and entitled Plat to accompany Petition for Special Exception, Special Hearing and Variances with the Petition for Special Exception and was submitted to the Court at the time of the hearing and placed in evidence. Plat indicated the additional piers on it and was obtained by the Protestarts prior to the hearing.

The Protestants indicate that the only method by which the Petitioner can obtain his request is by way of a new Special Exception since 64-160 X in their opinion has expired or terminated. The Petitioners have in addition to the other alternatives proceeded in this manner and have given the Zoning Commissioner the opportunity to grant a Special Exception on the north side and south side parcels in accordance with the petition and site plans that had been submitted and it is the Petitioners position that in the event that the Zoning Commissioner feels the criteria for 502.1 has been satisfied by the Petitioner and that the Special Exception requested will not adversely affect that criteria then the Commissioner can grant the Special Exception including the new lots and ratifying what was previously granted, including the additional piers requested by the Petitioner.

Evidence of granting a prior application for special zoning exception which had lapsed (which the Petitioners in this case contend has not occurred) may properly be admitted at a hearing before the zoning commissioner on subsequent application for an exception involving the same property. "Amberly Community Association vs. Board of Appeals of Anne Arundel County, 182 A.2nd 811, 229 Md. 261, (1962)."

superseas
Gilbert bond
25% cotton
LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
BSMC, MARYLAND
21221

PETITION FOR SPECIAL HEARING - CONTINUED

Joseph F. Evering, Jr. and
Catherine L. Evering, Legal Owners

craft to be stored within 20 feet of the easternmost property line and to request a variance to the parking; to remove restriction number 1 and 6 in 64-160X to allow major repairs on the premises and in the waters and to change the times and days of the weeks and years that repairs will be permitted; also to determine that a boatyard and related parking areas are other structures devoted to civic, commercial and recreational activities and therefore exempt from the residential, transitional requirements as set out in Sections 1801.1B.1.c.9/10

IV. CONCLUSION:

It is the Petitioners' position that the rights of the Petitioner to the Special Exception granted in 64-160 X have vested for all the reasons cited above and that he has the right to continue to use the property in accordance with the Order of th day of June 1964. However, the Special Hearing involves an amendment of a site plan and the addition of piers to the 1955 Special Exception in case number 35-35 X and the removal of the piers that were granted in Special Exception 64-160 X and that the granting of said petitions would not be harmful, detrimental to the general public health, safety and welfare. In the event that the Zoning Commissioner would find that there are no vested rights in 64-160 X, such a ruling would be unconstitutional since it would deprive the owner of any reasonable use of his land and that the only reasonable use is the use that it is presently being used for and that finally Zoning Commissioner can grant a Special Exception for the uses as set out on the site plan dated and revised 8/1/84 since the advertised description advertised the entire parcel of land as part of the hearing.

Respectfully submitted,

John O. Hennegan
809 Eastern Boulevard
Baltimore, Maryland 21221
Phone No.: 686-8274

Attorney for Petitioner

PETITION FOR SPECIAL EXCEPTION 85-65-XSPHA

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property for two lots located on the north and south side of Chester Road not included in Special Exception Cases 35 35X, 64-57SPH, 64-160X in a D.R. 5.5 Zone to be used as a Boat Yard, including the roadbed of Chester Road

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

I, or we, agree to pay expenses of above Special Exception advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

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

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Legal Owner(s):

Joseph F. Evering, Jr.
(Type or Print Name)

Signature

Catherine L. Evering
(Type or Print Name)

Signature

Attorney for Petitioner:
John O. Hennegan, Esquire
Robert J. Romadka, Esquire
(Type or Print Name)

Signature

ROMADKA, GONTRUM, HENNEGAN & FOOS
809 Eastern Boulevard
Baltimore, Maryland 21221
City and State

Attorney's Telephone No.: 686-8274

800 Chester Road 335-8602
Address Phone No.

Baltimore, Maryland 21220
City and State

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

John O. Hennegan
Name
809 Eastern Boulevard
Baltimore, Maryland 21221 686-8274
Address Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 6th day of August, 19 84, 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 10th day of September, 19 84, at 1:30 o'clock P.M.

Zoning Commissioner of Baltimore County.

(over)

ORDER RECEIVED FOR FILING
DATE April 25, 1985
BY Linda L. Schmidt
ADMINISTRATIVE ASSISTANT

Gilbert bond
25% cotton

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 31st day of October, 1984, the aforegoing Memorandum of Petitioners was mailed to D. Rodgers Harrison, Mudd, Harrison and Birch, 306 West Joppa Road, Towson, Maryland 21204, attorneys for the Protestants.

John O. Hennegan

superseas
Gilbert bond
25% cotton

PETITION FOR ZONING VARIANCE 85-65-XSPHA

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 2.c(2) 409 to allow existing compacted stone in lieu of required macadam paving; 409.2.b. to allow 318 parking spaces in lieu of the required 384, in the event that special exception is granted to allow 363 parking spaces in lieu of the required 384; and variance from Section 417.5(a) requiring the structure not to exceed 300 feet beyond mean low tide to allow the structure to extend 419 feet beyond the mean low tide.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (indicate hardship or practical difficulty)

1. The hardship is that under special exception granted the 6th day of June, 1955, in a site plan improved therewith, said use was permitted with compacted stone in lieu of required macadam and said matter was reaffirmed and allowed to continue in 1964 in cases 64-57SPH and 64-160X.

2. That the practical difficulty is that macadam would require extensive repairs and alteration in the event that sewerage is brought into the area. Also, during winter months large boats are to the south of the docks that would be in place for six to seven months. (CONTINUED ON ATTACHED SHEET)

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

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

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

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Legal Owner(s):

Joseph F. Evering, Jr.
(Type or Print Name)

Signature

Catherine L. Evering
(Type or Print Name)

Signature

Attorney for Petitioner:
Robert J. Romadka, Esquire
John O. Hennegan, Esquire
(Type or Print Name)

Signature

ROMADKA, GONTRUM, HENNEGAN & FOOS
809 Eastern Boulevard
Baltimore, Maryland 21221
City and State

Attorney's Telephone No.: 686-8274

800 Chester Road 335-8602
Address Phone No.

Baltimore, Maryland 21220
City and State

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

John O. Hennegan, Esquire
Name
809 Eastern Boulevard
Baltimore, Maryland 21221 686-8274
Address Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 6th day of August, 19 84, 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 10th day of September, 19 84, at 1:30 o'clock P.M.

Zoning Commissioner of Baltimore County.

(over)

ORDER RECEIVED FOR FILING
DATE April 25, 1985
BY Linda L. Schmidt
ADMINISTRATIVE ASSISTANT

PETITION FOR SPECIAL HEARING 85-65-XSPHA

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve An amendment to the site plan in case number 64-57SPH, 64-160X and 35 35X to construct an addition to the piers; remove restriction number 1 and 3 in case number 64-57SPH to allow marine (CONTINUED ON ATTACHED SHEET)

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

Legal Owner(s):

Joseph F. Evering, Jr.
(Type or Print Name)

Signature

Catherine L. Evering
(Type or Print Name)

Signature

Attorney for Petitioner:
John O. Hennegan, Esquire
Robert J. Romadka, Esquire
(Type or Print Name)

Signature

ROMADKA, GONTRUM, HENNEGAN & FOOS
809 Eastern Boulevard
Baltimore, Maryland 21221
City and State

Attorney's Telephone No.: 686-8274

800 Chester Road 335-8602
Address Phone No.

Baltimore, Maryland 21220
City and State

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

John O. Hennegan, Esquire
Name
809 Eastern Boulevard
Baltimore, Maryland 21221 686-8274
Address Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 6th day of August, 19 84, 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 10th day of September, 19 84, at 1:30 o'clock P.M.

Zoning Commissioner of Baltimore County.

(over)

ORDER RECEIVED FOR FILING
DATE April 25, 1985
BY Linda L. Schmidt
ADMINISTRATIVE ASSISTANT

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
TOWSON, MARYLAND 21204
494-3211

NORMAN E. GERBER
DIRECTOR

October 29, 1984

TO: ALL INTERESTED PARTIES

FROM: EUGENE A. BOBER, Chief
Current Planning & Development Division, OPZ

RE: Interim Critical Areas Requirements for Baltimore

On June 1, 1984, Governor Hughes signed into law the Chesapeake Bay Critical Areas Commission Bill. Among other things, this law designates a "critical area" of concern around the Bay which essentially is 1,000 feet from the landward edge of State wetlands or the shoreline of the Chesapeake Bay and its tidal tributaries. A special administrative commission was established with one of its principal purposes being the development of criteria for the protection of the water quality and plant and wildlife habitats of the Chesapeake Bay. Counties are to use these criteria to develop and implement programs to guide coastal land use in an environmentally sensitive manner. These programs will not be in effect for at least three to four years and, until then, the County must abide by the interim regulations set forth in Section 1813 of the law. The relevant portions of this section are quoted below.

From June 1, 1984 with regard to any subdivision plat approval or approval of a zoning amendment, variance, special exception, conditional use permit or use of a floating zone, affecting any land or water area located within the initial planning area identified in Section 8-1807(A) of this subtitle, for which application is completed after that date, the approving authority of the local jurisdiction in rendering its decision to approve an application shall make specific findings that:

(1) The proposed development will minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands; and

(2) The applicant has identified fish, wildlife, and plant habitat which may be adversely affected by the proposed development and has designed the development so as to protect those identified habitats whose loss would substantially diminish the continued ability of populations of affected species to sustain themselves.

SUBJECT	SPECIFIC INFORMATION	SOURCE	SUBMITTAL FORM
PLANT HABITATS	1. Mapping of submerged aquatic vegetation (SAV) and description of species composition and extent of this is to be done for SAV beds on and/or adjacent to the site as well as for beds in the vicinity into which the site drains.	State Wetlands Maps and SAV Distribution 1978 USGS Quads 7-1/2' (available only for SAVs in vicinity of site.	Critical Areas Information Map or map of similar scale
	2. Mapping of different vegetative habitats (ex., tidal and nontidal wetlands, woodlands, old fields, cultivated fields, etc.) and description of these plant communities and associations, diversity; presence of locally or regionally rare or endangered species; potential effects; presence of coastal vegetation layers (significant canopy, understory, herbaceous layer); successional stage, unique vegetation; etc.	Field inspection and attached references	Critical Areas Information Map and Text
	3. Approximate acreage of each habitat type to be preserved; percentage of each type to be removed.	Field inspection	Critical Areas Text
WILDLIFE AND FISH HABITAT	Description of wildlife and fish habitats in relation to the site; quality of habitats and in terms of the site's continuity and suitability of food and cover; potential effects; presence of locally or regionally rare, endangered, or threatened species; quality of nesting, breeding, or nursery areas; migrational stopovers, etc.	Field inspection and attached references	Critical Areas Text and Map
	NOTE: "Fish and wildlife" is defined to include finfish, crustacea, mollusks, mammals, birds, amphibians, and reptiles.		

SUBJECT	SPECIFIC INFORMATION	SOURCE	SUBMITTAL FORM
SOILS	1. Wetland Soils	Baltimore Co. Wetland Guidelines, Baltimore Co. Soil Survey	Site Plan
	2. Description of site's soil's erodibility, permeability characteristics	Baltimore Co. Soil Survey or best available information	Site Plan or Critical Areas Information Map or Text
	3. Drainage patterns		
TOPOGRAPHY	1. Existing topography	Updated aerials of a scale of 1"=100' with 2' intervals or field run data	Site Plan or Critical Areas Information Map
	2. Slopes greater than 15% and 25%	"	Crosshatched on Site Plan or Critical Areas Information Map
STREAMS/WATER	Streams (intermittent and perennial), springheads, seeps, and all water bodies	Baltimore Co. Soil Survey, field inspections, or best available data	Site Plan or Critical Areas Information Map
FLOODPLAINS	Limits of 100-year riverine and tidal floodplains	Inquiries may be made at Dept. of Public Works.	Site Plan or Critical Areas Information Map
UNIQUE FEATURES	Location and description of unique characteristics or features	Field inspection	Critical Areas Information Map or Text
IMPERVIOUS SURFACES	Calculations of percent impervious surface before and after development should be based on Calculation should be based only on developable land.		Critical Areas Information Text
POINTS OF DISCHARGE for stormwater management, sewage, agricultural practices, sediment control, industry, etc.	Points of discharge from structures or those which are not visible, i.e. swales, storm drains, pipes, etc.	Field inspections, permits	Critical Areas Information Map

SUBJECT	SPECIFIC INFORMATION	SOURCE	SUBMITTAL FORM
CRITICAL AREA	Critical Areas Boundary	Map in Office of Planning & Zoning & Current Planning & Development Div.	Critical Areas Information Map*
WATER DEPTH	Average water depth within 50' of shoreline at mean high tide to be shown in 1' increments. This should be done for water bodies on and adjacent to the site, as well as for the major tributaries into which the site drains.	Nautical Maps	Critical Areas Information Map. Where data are unavailable, field estimates and descriptions may be substituted.
SHORELINE	1. Shoreline rates of erosion or accretion	Historical Shorelines and Erosion Rates, Maryland Geological Survey, 1975	Critical Areas Information Text**
	2. Shoreline erosion control structures or projects	Shoreline Structures in Maryland: Their Location and Extent, Survey Completed 1976 or latest available information	Critical Areas Information Map

*Critical Areas Information Map is a map of the site detailing the significant information. Existing conditions, such as utility lines, etc. should not be included and the scale and size must be the same as that used for the site development plan.

**Critical Areas Information Text is a written report describing the requested environmental information.

October 29, 1984

TO: ALL INTERESTED PARTIES

In order for the County to comply with this section, it will be necessary for developers to provide additional environmental information. These informational requirements are outlined in checklist form on the attached table entitled 'Critical Areas Information Requirements for Baltimore County.' Please note that the items on pages 1 to 3 pertain to baseline environmental data. The items on pages 4 and 5 pertain to the development's design and the impacts it may have on the environment.

During the initial project planning phase, developers are invited to contact Eugene Bober at 494-3335 to begin informal discussions about the site. Prior to any formal review, the baseline environmental information must be submitted. With this information, the Planning staff can then more fully discuss the environmental characteristics of the site and offer guidance about the development plan. During the design phase, the developer is encouraged to discuss major design points as they relate to the environment. A final review of the project will be made following the submission of the remaining information requirements that refer to the development itself.

Should you have any questions or comments about this process, please contact Eugene Bober at 494-3335.

Eugene Bober

EUGENE A. BOBER, Chief
Current Planning & Development Div.

CRITICAL AREAS INFORMATION REQUIREMENTS
BALTIMORE COUNTY

SUBJECT	SPECIFIC INFORMATION	SOURCE	SUBMITTAL FORM
WATER QUALITY AND QUANTITY	Description of the extent and types of pollutants generated by the proposed development. A detailed analysis of the impacts that the pollutant loadings will have on water quality and habitats. This should be provided for the construction phase and after development is completed.	Guidebook for Screening Urban Nonpoint Pollution Management Strategies	Critical Areas Information Text
	Description of the effects that the velocity and volume of stormwater will have on water quality and habitats.		
MITIGATIVE MEASURES	A detailed comprehensive summary of the measures the applicant will take to minimize runoff, the entrance of pollutants, people pressure, etc. This is to include (1) a discussion of stormwater management alternatives including each alternative's potential impacts on water quality and/or habitats; (2) the sediment control practices to be implemented including the additional measures the applicant will be taking to protect water quality and critical habitats; (3) a discussion of the vegetation removal, covenants regarding pesticide and fertilizer applications, reduction of impervious surfaces, etc.	Critical Areas Information Text	

Additional information may be required depending upon the site and/or project characteristics.

References
for Plant, Wildlife, and Fish Habitat

* BUCK, LEWIS. 1974. Wetlands, bogs, marshes, and swamps.

* COLE, GERALD A. 1983. Textbook of limnology. Toronto: C.V. Mosby Company.

CONQUIST, ARTHUR and H. A. GLEASON. 1963. Manual of vascular plants of northeastern United States and adjacent Canada. New York: D. Van Nostrand.

* DAUBENMIRE, REXFORD F. 1968. Plant Communities. New York: Harpers.

FASSETT, NORMAN C. 1975. A manual of aquatic plants. Madison, Wisc: University of Wisconsin Press.

FERNALD, M. L. 1950. Gray's manual of botany 8th ed. New York: American Book Co.

* GLEASON, HENRY A, 1952. Illustrated flora of northeastern United States and adjacent Canada. New York: Dover Publications, Inc.

* HARLOW, WILLIAM. 1964. Fruit key and twig key to trees and shrubs. New York: Dover Publications, Inc.

HOTCHKISS, N. 1972. Common marsh, underwater, and floating-leaved plants of the United States and Canada. New York: Dover Publications.

* KLOTS, ELSIE B. 1966. Freshwater life. New York: G. P. Putnam's Sons.

* MARTIN, A.C., H.S. ZIM and A.L. NELSON. 1955. American wildlife and plants. A guide to wildlife food habits. New York: Dover Publications, Inc.

* MC CORMICK, J.A. and H. SOMES, JR. 1982. The coastal wetlands of Maryland. Annapolis, MD: Maryland Department of Natural Resources, Coastal Zone Management Program.

* NEWCOMB, L. 1977. Newcomb's wildflower guide. Boston: Little, Brown and Co.

* ODUM, EUGENE. 1963. Ecology.

* _____. 1971. Fundamentals of ecology.

* PETERSON, R.T. and M. McKENNY. 1968. A field guide to wildflowers of northeastern and north-central North America. Boston: Houghton Mifflin Co.

* PETRIDES, G.A. 1972. A field guide to trees and shrubs. Boston: Houghton Mifflin Co.

PIERCE, ROBERT J. 1977. Wetland plants of the eastern United States. New York: Army Corps of Engineers.

References (continued) Page Two

* PRESTON, R.J., Jr. 1961. North American trees. Cambridge Press: The M.I.T. Press.

* RAMWELL, D.S. 1972. Ecology of salt marshes and sand dunes.

* REID, GEORGE K. 1976. Ecology of inland waters and estuaries, 2nd Edition. London: Chapman and Hall.

SILBERHORN, G.M. 1976. Tidal wetland plants of Virginia. Virginia Inst. of Mar. Sci. Ed. Series No. 19.

* _____. 1982. Common plants of the mid-Atlantic coast.

* SMITH, ROBERT LEO. 1980. Ecology and field biology.

* WATTS, MARY T. 1975. Reading the landscape of America. New York: MacMilliam Publishing Co.

*Available in Baltimore County Library, Towson.

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

ARNOLD JABLON
ZONING COMMISSIONER

January 11, 1985

T. Rogers Harrison, Esquire
306 West Joppa Road
Towson, Maryland 21204

RE: Case No. 85-65-XSPHA
Joseph F. Evering, Jr., et ux - Petitioners

Dear Mr. Harrison:

I am in receipt of your letter dated January 10, 1985.

The hearing scheduled is on the Motion filed by Mr. Hennegan. He will be permitted to present any witnesses or evidence in support of his position, and you as counsel for the Protestants may do likewise. They will be permitted to argue fully as to the points raised by the Motion filed. This shall be a continuation of the hearing on the Petitions filed, and after evaluating all of the evidence and testimony presented, I will decide on the merits and on the impact of the proposals on the Chesapeake Bay, pursuant to the Critical Area Protection Program.

No decision on the special exception can be made until there is a resolution of the issues raised in Mr. Hennegan's Motion. If you have any further questions, please feel free to call me.

Sincerely,

ARNOLD JABLON
Zoning Commissioner

AJ:aj

cc: John O. Hennegan, Esquire
Mr. Norman Gerber
Mr. Eugene Bober

85-165-A

LAW OFFICES
MUDD, HARRISON & BURCH
305 WEST JOPPA ROAD
TOWSON, MARYLAND 21204
AREA CODE 301-828-1355

300 MARYLAND TRUST BUILDING
14 SOUTH CALVERT STREET
BALTIMORE, MARYLAND 21202
301-685-0666

JOHN S. MUDD
T. ROGERS HARRISON
RICHARD C. BURCH
DOUGLAS W. BRESS
H. PATRICK REYNOLDS, JR.

January 10, 1985

JAN 10 AM
Road
Recd
Bmtd
Entd
Chkd
ZONING DEPARTMENT
By

Mr. Arnold Jablon
Zoning Commissioner
Baltimore County
Office of Planning & Zoning
Towsen, Maryland 21204

Re: Petition for Special Exception
Special Hearing Variances
N/S Chester Road, 590' W of
Severn Road (800 Chester Road)
Joseph F. Evering, Jr., et ux
Petitioners Case No. 85-65XSPHA

Dear Mr. Jablon:

I have received a copy of your letter of January 3, 1985, to John O. Hennegan, Esquire, the attorney for the Everings, in which you set up a hearing to determine whether or not the Everings' property is subject to the Chesapeake Bay Critical Area Protection Program, Md. National Resources Code Ann., §8-1801 - 8-1816 (1974 and 1984 Comm. Supp.).

It would be greatly appreciated if you would provide me with information about the scope of the hearing and what type of input Ken Engelke and the other Protestants will be allowed to make. Also, unless I am mistaken, I believe you mentioned in your November 9, 1984, letter to me that you would by the end of November (or thereabouts) decide whether the Everings fulfilled the requirements of Section 502.3 of the B.C.Z.R. (1981 and 1983 Supplements).

Mr. Arnold Jablon
January 10, 1985
Page Two

A prompt reply would be appreciated because I will need adequate time to prepare for the hearing.

Thank you.

Very truly yours,

T. Rogers Harrison

TRH/djb

EVERING
PETITION FOR ZONING VARIANCE (Continued)

3. The structure or pier that the Petitioner desires to construct cannot be located in any other area within the 300 feet limitations due to the depths of the water in the surrounding area.

4. A hardship exists in that the Petitioner has no other location in which to locate the additional slips and pier which are needed to adequately provide for his clientele. The construction will not interfere with the public free access to Frog Mortar Creed nor hinder or obstruct use of the waterways and in no way interfere with public safety and is not more than one third (1/3) the width of waterway nor beyond rear boundary of a defineable channel.

Petitioner's Ex. #3

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

No. 123264

DATE 12-23-83 ACCOUNT R-01-615-000

AMOUNT $100.00

RECEIVED FROM: Attorney

FOR: Filing Fee for Var. 166 Evering

C 051*****10000:0 F23GA

VALIDATION OR SIGNATURE OF CASHIER

Pet. #82

PETITION FOR ZONING VARIANCE

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 409.2.c(1) to allow existing compacted stone in lieu of required macadam paving, 409.2.b. to allow 318 parking spaces in lieu of the required 384, in the event that special exception is granted to allow 363 parking spaces in lieu of the required 384, and variance from section 417.5(e) requiring the structure not to exceed 300 feet beyond mean low tide to allow the structure to extend 419 feet beyond the mean low tide.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (indicate hardship or practical difficulty)

1. The hardship is that under special exception granted the 6th day of June, 1955, in a site plan improved therewith, said use was permitted with compacted stone in lieu of required macadam and said matter was reaffirmed and allowed to continue in 1964 in cases 64-57SPH and 64-160X.

2. That the practical difficulty is that macadam would require extensive repairs and alteration in the event that sewerage is brought into the area. Also, during winter months, large boats are stored on the parking area which would cause deep depressions in the macadam due to the weight of the boats that would remain there for six to seven months. (continued on attached sheet)

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

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

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

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Attorney for Petitioner:
Robert J. Romadka, Esquire
John O. Hennegan, Esquire
(Type or Print Name)

Signature

ROMADKA, GONTRUM, HENNEGAN & FOOS
609 Eastern Boulevard
Address
Baltimore, Maryland 21221
City and State

Attorney's Telephone No.: 686-8274

Legal Owner(s):
Joseph F. Evering, Jr.
(Type or Print Name)
Joseph F. Evering, Jr.
Signature
Catherine L. Evering
(Type or Print Name)
Catherine L. Evering
Signature

800 Chester Road 335-8602
Address Phone No.
Baltimore, Maryland 21220
City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted
John O. Hennegan
Name
809 Eastern Boulevard
Baltimore, Maryland 21221 686-8274
Address Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this _____ day of _____ 19____, 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 _____ day of _____ 19____, at _____ o'clock _____M.

8/6/84
Zoning Commissioner of Baltimore County.

(over)

EVERING
PETITION FOR ZONING VARIANCE (Continued)

3. The structure or pier that the Petitioner desires to construct cannot be located in any other area within the 300 feet limitations due to the depths of the water in the surrounding area.

4. A hardship exists in that the Petitioner has no other location in which to locate the additional slips and pier which are needed to adequately provide for his clientele. The construction will not interfere with the public free access to Frog Mortar Creed nor hinder or obstruct use of the waterways and in no way interfere with public safety and is not more than one third (1/3) the width of waterway nor beyond rear boundary of a defineable channel.

PETITION FOR SPECIAL EXCEPTION 85-65-XSPHA

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property for two lots located on the north and south side of Chester Road not included in Special Exception Cases 35-35X, 64-57SPH, 64-160X in a D.R. 5.5 zone to be used as a Boat Yard, including the roadbed of Chester Road

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

I, or we, agree to pay expenses of above Special Exception advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

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

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Attorney for Petitioner:
John O. Hennegan, Esquire
Robert J. Romadka, Esquire
(Type or Print Name)

Signature

809 Eastern Boulevard
Address
Baltimore, Maryland 21221
City and State

Attorney's Telephone No.: 686-8274

Legal Owner(s):
Joseph F. Evering, Jr.
(Type or Print Name)
Joseph F. Evering, Jr.
Signature
Catherine L. Evering
(Type or Print Name)
Catherine L. Evering
Signature

800 Chester Road 335-8602
Address Phone No.
Baltimore, Maryland 21220
City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted
John O. Hennegan
Name
809 Eastern Boulevard
Baltimore, Maryland 21221 686-8274
Address Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 6th day of August, 19 84, 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 10th day of September, 19 84, at 1:30 o'clock P. M.

Zoning Commissioner of Baltimore County.

Z.C.O.—No. 1

(over)

PETITION FOR SPECIAL HEARING 85-65-XSPHA

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve an amendment to the site plan in case number 64-57SPH, 64-160X and 35-35X to construct an addition to the piers; remove restriction number 1 and 3 in case number 64-57SPH to allow marine (CONTINUED ON ATTACHED SHEET)

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

Attorney for Petitioner:
John O. Hennegan, Esquire
Robert J. Romadka, Esquire
(Type or Print Name)

Signature

ROMADKA, GONTRUM, HENNEGAN & FOOS
809 Eastern Boulevard
Address
Baltimore, Maryland 21221
City and State

Attorney's Telephone No.: 686-8274

Legal Owner(s):
Joseph F. Evering, Jr.
(Type or Print Name)
Joseph F. Evering, Jr.
Signature
Catherine L. Evering
(Type or Print Name)
Catherine L. Evering
Signature

800 Chester Road 335-8602
Address Phone No.
Baltimore, Maryland 21220
City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted
John O. Hennegan, Esquire
Name
809 Eastern Boulevard
Baltimore, Maryland 21221 686-8274
Address Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 6th day of August, 19 84, 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 10th day of September, 19 84, at 1:30 o'clock

Zoning Commissioner of Baltimore County.

(over)

ORDER RECEIVED FOR FILING
DATE
BY
ADMINISTRATIVE ASSISTANT

PETITION FOR SPECIAL HEARING - CONTINUED

Joseph F. Evering, Jr. and
Catherine L. Evering, Legal Owners

craft to be stored within 20 feet of the easternmost property line and to request a variance to the parking; to remove restriction number 1 and 6 in 64-160X to allow major repairs on the premises and in the waters and to change the times and days of the weeks and years that repairs will be permitted; also to determine that a boatyard and related parking areas are other structures devoted to civic, commercial and recreational activities and therefore exempt from the residential, transitional requirements as set out in Sections 1B01.1B.1.c.9/10

PETITION FOR ZONING VARIANCE 85-65-XSPHA

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a

Variance from Section 409.2.c.(2) to allow existing compacted stone in lieu of required macadam paving; 409.2.b. to allow 316 parking spaces in lieu of the required 384, in the event that special exception is granted to allow 363 parking spaces in lieu of the required 384; and variance from Section 417.4(a) requiring the structure not to exceed 300 feet beyond mean low tide to allow the structure to extend 419 feet beyond the mean low tide

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (indicate hardship or practical difficulty)

1. The hardship is that under special exception granted the 6th day of June, 1955, in a site plan improved therewith, said use was permitted with compacted stone in lieu of required macadam and said matter was reaffirmed and allowed to continue in 1964 in cases 64-57SPH and 64-160X.

2. That the practical difficulty is that macadam would require extensive repairs and alteration in the event that sewerage is brought into the area. Also, during winter months, large boats are stored on the parking area which would cause deep depressions in the macadam due to the weight of the boats that would be in place for six to seven months. (Continued on Attached Sheet)

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

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

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

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Legal Owner(s):

Joseph F. Evering, Jr. (Type or Print Name)

Signature

(Type or Print Name)

Signature

Attorney for Petitioner:

Robert J. Romadka, Esquire
John O. Hennegan, Esquire
(Type or Print Name)

Signature

ROMADKA, GONTRUM, HENNEGAN & FOOS
809 Eastern Boulevard
Address

Baltimore, Maryland 21221
City and State

Attorney's Telephone No.: 686-8274

800 Chester Road 335-8602
Address Phone No.

Baltimore, Maryland 21220
City and State

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

John O. Hennegan
Name
809 Eastern Boulevard
Baltimore, Maryland 21221 686-8274
Address Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 6th day of August, 19 84, 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 10th day of September, 19 84, at 1:30 o'clock P. M.

Zoning Commissioner of Baltimore County.

(over)

ORDER RECEIVED FOR FILING
DATE
BY
ADMINISTRATIVE ASSISTANT

EVERING
PETITION FOR ZONING VARIANCE (Continued)

3. The structure or pier that the Petitioner desires to construct cannot be located in any other area within the 300 feet limitations due to the depths of the water in the surrounding area.

4. A hardship exists in that the Petitioner has no other location in which to locate the additional slips and pier which are needed to adequately provide for his clientele. The construction will not interfere with the public free access to Frog Mortar Creed nor hinder or obstruct use of the waterways and in no way interfere with public safety and is not more than one third (1/3) the width of waterway nor beyond rear boundary of a defineable channel.

RE: PETITION FOR SPECIAL EXCEPTION:
PETITION FOR SPECIAL HEARING :
PETITION FOR VARIANCES :
N/S Chester Rd., 590' W of Severn Rd. (600 Chester Rd.) :
15th District :
JOSEPH F. EVERING, JR., et ux, Petitioners :

BEFORE THE ZONING COMMISSIONER
OF BALTIMORE COUNTY

Case No. 85-65-XSPHA

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 the passage of any preliminary or final Order.

Phyllis Cole Friedman
People's Counsel for Baltimore County

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

I HEREBY CERTIFY that on this 20th day of August, 1984, a copy of the foregoing Entry of Appearance was mailed to John O. Hennegan, Esquire, and Robert J. Romadka, Esquire, Romadka, Gontrum, Hennegan & Foos, 809 Eastern Blvd., Baltimore, MD 21221, Attorneys for Petitioners.

Peter Max Zimmerman

85-65-XSPHA

CERTIFICATE OF PUBLICATION

TOWSON, MD., August 23, 19 84

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., appearing on August 23, 19 84.

THE JEFFERSONIAN,

Publisher

Cost of Advertising: 40.00

Petitions for Special Exception, Special Hearing & Variances

16th Election District

ZONING: Petitions for Special Exception, Special Hearing and Variances

LOCATION: North side Chester Road, 590 ft. West of Severn Road (600 Chester Road)

DATE & TIME: Monday, Sept. 10, 1984, at 1:30 P.M.

PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Ave., Towson, Maryland

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

Petition for Special Exception for 2 lots located on the north and south sides of Chester Road, not included in Special Exception Case Nos. 3535-X, 64-57-SPH, 64-160-X in a D.R. 5.5 zone to be used as a boat yard including the roadbed of Chester Road; Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve an amendment to the site plan in Case Nos. 3535-X, 64-57-SPH and 64-160-X to construct an addition to the piers, remove Restriction Nos. 1 and 3 in Case No. 64-57-SPH to allow marine craft to be stored within 20 ft. of the easternmost property line and to request a variance to the parking, to remove Restriction Nos. 1 and 6 in Case No. 64-160-X to allow major repairs on the premises and in the roadbed of Chester Road and to change the times and days of the weeks and years that repairs will be permitted, also to determine that a boat yard and related parking areas are other structures devoted to civic, commercial and recreational activities and therefore exempt from the residential, transitional requirements as set out in Sections 1B01.1B.1.c.9/10; Variances to allow existing compacted stone in lieu of required macadam paving, to allow 318 parking spaces in lieu of the required 384, in the event that Special Exception is granted, to allow 363 parking spaces in lieu of the required 384, and variance requiring the structure not to exceed 300 ft. beyond mean low tide to allow the structure to extend 419 ft. beyond the mean low tide

Being the property of Joseph F. Evering, Jr., et ux, as shown on plat plan filed with the Zoning Department.

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

BY ORDER OF
ARNOLD JABLON
Zoning Commissioner
of Baltimore County

The Times

Middle River, Md., Aug 23 19 84

This is to Certify, That the annexed Petition

was inserted in The Times, a newspaper printed and published in Baltimore County, once in each of One successive weeks before the 23rd day of Aug 19 84

Publisher.

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

ARNOLD JABLON
ZONING COMMISSIONER

September 7, 1984

John O. Hennegan, Esquire
809 Eastern Boulevard
Baltimore, Maryland 21221

RE: Petitions for Special Hearing, Special Exception and Variance
N/S Chester Road, 590' W of Severn Road (800 Chester Road)
Joseph F. Evering, Jr. - Petitioner
Case No. 85-65-XSPHA (Item No. 166)

Dear Mr. Hennegan:

This is to advise you that $111.90 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,

ARNOLD JABLON
Zoning Commissioner

AJ:j

August 7, 1984

John O. Hennegan, Esquire
809 Eastern Boulevard
Baltimore, Maryland 21221

NOTICE OF HEARING

Re: Petitions for Special Exception, Special Hearing and Variances
N/S Chester Rd., 590' W of Severn Road
(800 Chester Road)
Joseph F. Evering, Jr., et ux - Petitioners
Case No. 85-65-XSPHA

TIME: 1:30 P.M.

DATE: Monday, September 10, 1984

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

Zoning Commissioner
of Baltimore County

PETITIONS FOR SPECIAL EXCEPTION, SPECIAL HEARING AND VARIANCES

15th Election District

ZONING: Petitions for Special Exception, Special Hearing and Variances

LOCATION: North side Chester Road, 590 ft. West of Severn Road (800 Chester Road)

DATE & TIME: Monday, September 10, 1984 at 1:30 P.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 Exception for 2 lots located on the north and south sides of Chester Road, not included in Special Exception Case Nos. 3535-X, 64-57-SPH, 64-160-X in a D.R. 5.5 zone to be used as a boat yard including the roadbed of Chester Road; Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve an amendment to the site plan in Case Nos. 3535-X, 64-57-SPH and 64-160-X to construct an addition to the piers, remove Restriction Nos. 1 and 3 in Case No. 64-57-SPH to allow marine craft to be stored within 20 ft. of the easternmost property line and to request a variance to the parking, to remove Restriction Nos. 1 and 6 in Case No. 64-160-X to allow major repairs on the premises and in the roadbed of Chester Road and to change the times and days of the weeks and years that repairs will be permitted, also to determine that a boat yard and related parking areas are other structures devoted to civic, commercial and recreational activities and therefore exempt from the residential, transitional requirements as set out in Sections 1B01.1B.1.c.9/10; Variances to allow existing compacted stone in lieu of required macadam paving, to allow 318 parking spaces in lieu of the required 384, in the event that Special Exception is granted, to allow 363 parking spaces in lieu of the required 384, and variance requiring the structure not to exceed 300 ft. beyond mean low tide to allow the structure to extend 419 ft. beyond the mean low tide

Being the property of Joseph F. Evering, Jr., et ux, as shown on plat plan filed with the Zoning Department.

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

BY ORDER OF
ARNOLD JABLON
ZONING COMMISSIONER
OF BALTIMORE COUNTY

85-65-XSPHA

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY

Towson, Maryland

District 15 Date of Posting 8/18/84

Posted for: Petition for Special Exception, Special Hearing & Var.

Petitioner: Joseph F. Evering, Jr., et ux

Location of property: N/S Chester Rd., 590' W of Severn Rd.

Location of Signs: Facing entrance to property at Chester Rd.; Located at intervals of Severn & Chester

Remarks:

Posted by [illegible] Date of return: 8/23/84

Number of Signs: 6

11/5/84 8

J.S. F. EVERING, JR., et ux
85-65-XSPHA

Maryland Department of Transportation
STATE AVIATION ADMINISTRATION

William K. Hellmann
Secretary
Thomas Truby
Administrator

NOV 5 AM
ZONING DEPARTMENT
By

9:10 39
Out Ltr

November 1, 1984

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

RE: Long Beach Marina
Case No. 3535-X, 64-57-SPH,
64-160-X

Dear Mr. Jablon:

This is to advise you that the area delineated on the above-referenced re-zoning application lies within the clear zone of the approach end of Runway 32 of Martin State Airport (MTN). A copy of the existing airport layout plan is enclosed.

The Federal Aviation Administration (FAA), in its Advisory Circular 150/5300-4B, has expressed its view that it is unacceptable to develop real or personal property in a clear zone in a manner that will bring about a congregation of people in that zone. The FAA deems such a congregation to be a hazard to the landing, taking-off, or maneuvering of aircraft. The State Aviation Administration (SAA), as owner and operator of MTN, concurs with the FAA in this matter.

Furthermore, 14 CFR Part 77 sets dimensional standards for all approach surfaces to all runways in the United States. The three-dimensional requirements for the primary approach surface to R/W 32 basically involve a 50:1 obstruction-free slope beginning 200 feet from the end of the pavement and extending upward and outward from the extended runway centerline. The proposed expansion of the marina would most likely involve several penetrations of this plane by masts of moored sailboats. Such penetrations would violate the Federal regulations for obstructions and airport hazards.

Section 5-502 of the Transportation Article of the Annotated Code of Maryland provides in sub-section (a) that the SAA may adopt zoning regulations to protect the aerial approaches to any State-owned airport. Additionally,

P.O. Box 8766, Baltimore/Washington Int'l Airport, Maryland 21240, -0766 Telephone: (301) 859-7100
TTY For the Deaf: (301) 859-7227

Section 5-702 enables the SAA to "adopt rules and regulations to govern the erection and maintenance of obstructions to air navigation." The SAA has developed draft regulations applicable throughout the State; it is anticipated that these shall become final in early January 1985. The clear zones, approach zones, etc. and related obstruction/hazard prohibitions will be incorporated in these regulations. As expressed in the law, (§5-503), existing non-conforming use may not be interfered with by the adopted regulations. Thus, the State would not require that portion of the Long Beach Marina presently in the approach/clear zone be removed. It is quite likely, however, that the SAA would (a) deny issuance of the permit to be required for construction of any additional building within the clear zone, and (b) prohibit maintenance of personalty that would interfere with the clear zone at the approach surface.

This advice is provided for your informational purposes only. It is not intended to address the propriety of the zoning of this property/water area, but rather the anticipated construction of structures and storage of personalty there.

Please do not hesitate to contact me at 859-7074 if you wish to discuss this matter further.

Sincerely,

Margaret M. Ballard, Manager
Planning and Environmental Services

MMB:lab

Enclosure

cc: Peter Taliaferro, Esq.
J. Hennegan, Esq.
K. Engelke

Gary E

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, MARYLAND
and
BALTIMORE COUNTY, MARYLAND
VS.
JOSEPH F. EVERING, JR. and CATHERINE L. EVERING

* IN THE
* CIRCUIT COURT FOR
* BALTIMORE COUNTY
* CASES NOS. 86CG22
86CG0240
87CG4755

* * * * * * * * * * * * * * *

ORDER

Upon consideration of the Joint Motion for Dismissal and Remand and consideration of the reasons stated therein and presented in open hearing on May 23, 1988, it is hereby, ORDERED, this 26 day of May, 1988, that Circuit Court Cases Nos. 86CG22 and 86CG0240 be and the same are hereby dismissed with costs to the appellants and that Case No. 87CG4755 be remanded to the Baltimore County Board of Appeals for consideration of the amended site plan and a determination that the plan meets critical area criteria.

Judge

LAW FIRM
ROMADKA, GONTRUM & HENNEGAN
ESSEX, MARYLAND

FILED MAY 26 1988

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL GENERAL

DOCKET 48 PAGE 225 CASE NO. 87CG4755 CATEGORY APPEAL

	ATTORNEYS
PEOPLE'S COUNSEL FOR BALTIMORE COUNTY	Phyllis Cole Friedman Peter Max Zimmerman Rm 223, Courthouse (04) 494-2188
KENNETH ENGELKE, et al protestants/appellants	T. Rogers Harrison Todd, Harrison & Burch Ste 300, Jefferson Bldg 105 W. Chesapeake Ave (4) 828-1335
JOSEPH F. EVERING, JR., et al cross appellant	John B. Gontrum Romadka, Gontrum & Hennegan 809 Eastern Blvd (21) 686-8274

COSTS

(1) Nov 10, 1987 - Plff's Order for Appeal from the opinion and order of the County Board of Appeals of Balto. Co. and Petition for Appeal fd.

(2) Nov 12,1987 - Certificate of Notice fd.

(3) Nov 16, 1987 - Appellant's (Kenneth Engelke, et al) Order for Appeal from the Order of the County Board of Appeals fd.

(4) Nov. 16, 1987 - Appellant's (KennethEngelke, et al) Petition on Appeal fd.

(5) Nov 16, 1987 - Certificate of Notice fd.

(6) Nov 20, 1987 - Appellant's (Joseph F. Evering, Jr., et ux) Order for Appeal and Petition w/ Exhibits fd.

(7) Nov 24,1987 - Certificate of Notice fd.

(8) Dec. 9, 1987 - App. of Phyllis Cole Friedman & Peter Max Zimmerman for the Def: PEOPLE COUNSEL & Same Day Petition on Appeal fd.

(9) Dec 16, 1987 - App of John B. Gontrum for the Petitioner (Joseph F. Evering, Jr., et ux) and Same Day Answer to Protestant's/Appellant's, Kenneth Engelke, et al) Petition on Appeal fd.

(10) Dec 16, 1987 - Petitioner's (Joseph F. Evering, Jr, et ux) Answer to People's Counsel/Appellants Peciton on Appeal fd.

(11) Jan 7,1988 - Cross Appellant's (Joseph F. Evering, Jr) Memorandum fd.

DOCKET 48 PAGE 225 CASE NO. 87CG4755

CASE NO. 87 CG 4755

(12) Jan 29,1988 - Plff's (People's Counsel for Baltimore County) Memorandum fd.

(13) May 26,1988 - Joint Motion to Remand to County Board and Same Day Order of Court that Case 87 CG 4755 be Remanded to the Baltimore County Board of Appeals fd.

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL GENERAL

DOCKET 19 PAGE 117 CASE NO. 86CG0022 CATEGORY APPEAL

IN THE MATTER OF PETITIONS FOR SPECIAL EXCEPTION, SPECIAL HEARING AND ZONING VARIANCES,
N/S of Chester Rd., 590' W of Severn Rd. (800 Chester Rd.)
15th Election District

JOSEPH F. EVERING, JR., et ux,
PETITIONERS

Zoning Case 85-65-XSPHA

ATTORNEYS
Malcolm F. Spicer, Jr.
Thomas J. Bollinger
Court House- Mezzanine (04)

John O. Hennegan
Donald E. Brand
Romadka, Gontrum, Hennegan & Foos
809 Eastern Blvd (21) 686-8274

T. Rogers Harrison
Todd, Harrison & Burch
306 W. Joppa Rd. (4) 828-1335
(Protestants-Appellants)
Phyllis Cole Friedman,
Peter Max Zimmerman,
Rm. 223 Court House (4) 494-2188
(People's Council Balto. Co.)

Judith A. Arnold
Assistant Atty General
301 W. Preston St. (01)
Peter W. Taliaferro
P.O. Box 8766
Baltimore/Washington International
Airport 21240-0766

4/19 d/s + Order path Remand Opinion

COSTS

CV CLK 70.00
CoDKT 70.00
#22022-C001 R02 T15147 01/03/86

(1) January 3, 1986 People's Counsel for Baltimore County, Protestants and Appellants Order for Appeal from Ruling of the County Board of Appeals and Petition fd.

(2) Jan. 10, 1986 - Baltimore County' Cross Appeal fd.

(3) Jan. 13, 1986 Certificate of Notice fd.

(4) Jan. 20, 1986 - Piff's Petition for Appeal fd.

(5) Jan. 21, 1986 Appellees' Motion to Consolidate case with case#6CG240 fd.

(6) Feb. 3, 1986 - Transcript of Record fd.

(7) Feb. 3, 1986 - Notice of Filing of Record fd.

(8) Feb 3,1986- Joseph F Evering Jr. et ux Motion to dismiss and answer to petition on appeal fd.

(9) Feb. 13, 1986 - Correspondence fd.

(10) Feb. 20, 1986 - People's Counsel for Baltimore County's Request for Hearing on all open Motions fd.

(11) April 23,1986- People's counsel memorandum on pending motions fd.

July 22, 1986 - Hon. James S. Sfekas. Hearing had. Plaintiffs to file Supplementary Memorandum within One Week from this date.

(12) Aug. 7, 1986 - Ruling from Judge Sfekas that Piff's Motion for consolidation Granted, Piffs Petition on Appeal is Dismissed and Remanded to the Bd. of Appeals for a final judgment. Defts Motion to Dismiss Petition on appeal Granted, Defts Petition for Atty Fees Denied, Costs to be paid by Piffs apportioned equally fd. (JSS)

DOCKET 19 PAGE 117 CASE NO. 86CG0022

LAW FIRM
Romadka, Gontrum & Hennegan
IRVINGTON FEDERAL BUILDING
809 EASTERN BOULEVARD
ESSEX, MARYLAND 21221
TELEPHONE (301) 686-8274

ROBERT J. ROMADKA
JOHN B. GONTRUM
JOHN O. HENNEGAN
DONALD H. SHEFFY
JEAN E. TULLIUS
TIMOTHY M. KOTROCO

May 31, 1988

Lawrence Schmidt, Acting Chairman
County Board of Appeals of Baltimore County
200 Courthouse
Towson, Maryland 21204

Dear Mr. Schmidt:

As I am sure you are aware by now the Circuit Court has remanded at the joint request of all the parties Case No. 85-65-XSPHA the Joseph Evering matter to the Board for consideration of an amended site plan and for a finding that this plan meets critical area criteria. The parties to this case have agreed that no further hearing is necessary for the Board to make the findings required. The plan which was attached to the Motion was agreed upon by People's Counsel as well as by protestants and petitioner. This plan calls for the eliminations of slips on both the northern and southern pier extensions. In short, approximately 16 slips would be eliminated from the southern pier and 38 slips would be eliminated from the northern pier. The idea is to bring these extensions into conformance with the property lines. Since no further hearings are deemed necessary at least by the parties, I have taken the liberty of preparing a proposed Opinion and Order for your consideration. A copy of this is being sent along with a copy of this letter to the parties for their consideration. It is our hope to bring this matter once and for all to a speedy conclusion. Your consideration is most appreciated.

Very truly yours,

John B. Gontrum

JBG:kb
cc: Phyllis Friedman
T. Rogers Harrison
Mr. Evering

RECEIVED 6/07/88 CBR

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

ARNOLD JABLON
ZONING COMMISSIONER

JEAN M. H. JUNG
DEPUTY ZONING COMMISSIONER

May 21, 1985

John O. Hennegan, Esquire
Germania Federal Building
809 Eastern Boulevard
Essex, Maryland 21221

RE: PETITIONS FOR SPECIAL EXCEPTION, SPECIAL HEARING, AND ZONING VARIANCES
N/S of Chester Road, 590' W of Severn Road (800 Chester Road) - 15th Election District
Case No. 85-65-XSPHA (Item 166)
Joseph F. Evering, Jr., et ux, Petitioners

Dear Mr. Hennegan:

The following appeals have been filed, in addition to the appeal filed by the People's Counsel for Baltimore County, from the decision rendered by the Zoning Commissioner of Baltimore County in the above referenced matter.

1. Appeal from Norman E. Gerber, Director
Office of Planning and Zoning, Baltimore County

2. Appeal from T. Rogers Harrison, Esquire
Attorney for Protestants

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

Sincerely,

Arnold Jablon
Zoning Commissioner

AJ:bg

cc: Robert J. Romadka, Esquire
T. Rogers Harrison, Esquire
Board of Appeals
People's Counsel

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO BOARD OF APPEALS Date May 21, 1985

FROM ARNOLD JABLON
Zoning Commissioner

SUBJECT Case No. 85-65-XSPHA (Item No. 166)
Petitions for Special Exception,
Special Hearing, and Zoning Variances
Joseph F. Evering, Jr., et ux - Petitioners

Please find attached an additionel appeal filed this date from the decision rendered by the Zoning Commissioner of Baltimore County.

ARNOLD JABLON
Zoning Commissioner

AJ:bg

cc: Norman E. Gerber, Director
Office of Planning and Zoning

Case No. 85-65-XSPHA
Item No. 166
Date: May 10, 1985

N/S of ChesterRoad, 590' W of Severn Road (800 Chester Road) - 15th Election District
Joseph F. Evering, Jr., et ux,
Petitioners

X	1.	Copy of Petition
X	2.	Copy of Description of Property
X	3.	Copy of Certificate of Posting 1 sign & 1 location sign
X	4.	Copy of Certificates of Publication
X	5.	Copy of Zoning Advisory Committee Comments
X	6.	Copy of Comments from the Director of Planning
	7.	Planning Board Comments and Accompanying Map
X	8.	Copy of Order to Enter Appearance
X	9.	Copy of Order - Zoning/Deputy Zoning Commissioner
X	10.	Copy of Plat of Property (Petitioner's Exhibit #1)
	11.	200' Scale Location Plan
	12.	1000' Scale Location Plan
X	13.	Memorandum in Support of Petition
X	14.	Letter(s) from Protestant(s)
	15.	Letter(s) from Petitioner(s)
X	16.	Protestants' Exhibits 1 to 5a
X	17.	Petitioners' Exhibits 1 to 7
X	18.	Letter of Appeal
X	19.	Protestants' Reply to Petitioners' Memorandum
X	20.	Critical Area Review/Baltimore County Dept. of Health

John O. Hennegan, Esquire — Attorney for Petitioners
Germania Federal Building
809 Eastern Boulevard
Essex, Maryland 21221

Robert J. Romadka, Esquire — Attorney for Petitioners
Germania Federal Building
809 Eastern Boulevard
Essex, Maryland 21221

T. Rogers Harrison, Esquire — Attorney for Protestants
306 West Joppa Road
Towson, Maryland 21204

Phyllis C. Friedman, Esquire — People's Counsel
Norman E. Gerber — Request Notification
James Hoswell — Request Notification
Arnold Jablon — Request Notification
Jean M. H. Jung — Request Notification
James E. Dyer — Request Notification

PETITIONER'S EXHIBITS

#1: Plat of Property
#1a: Hydrogeological Study and Environmental Effects Report
#2: Long Beach Marina Location Plan
#3: Department of The Army Permit
#4: Baltimore County Permit
#5: Long Beach Marina Post Card/picturing Marina
#6: Photograph/Marina
#7: Application for Building Permit

PROTESTANT'S EXHIBITS

#1: Photographs/Booklet
#1a: Letter from Eugene Bober to Frank S. Lee Re: Required information relative to the Chesapeake Bay Critical Areas
#2: Exhibit missing from file
#3: Exhibit missing from file
#4a: Chesapeake Bay Program Technical Studies: A Synthesis
#5a: Petition (2 pages)

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

ARNOLD JABLON
ZONING COMMISSIONER

JEAN M. H. JUNG
DEPUTY ZONING COMMISSIONER

May 14, 1985

John O. Hennegan, Esquire
Germania Federal Building
809 Eastern Boulevard
Essex, Maryland 21221

RE: PETITIONS FOR SPECIAL EXCEPTION, SPECIAL HEARING, AND ZONING VARIANCES
N/S of Chester Road, 590' W of Severn Road (800 Chester Road) - 15th Election District
Case No. 85-65-XSPHA (Item No. 166)

Joseph F. Evering, Jr., et ux,
Petitioners

Dear Mr. Hennegan:

Please be advised that an appeal has been filed by the People's Counsel for Baltimore County, 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.

Sincerely,

Arnold Jablon
Zoning Commissioner

AJ:bg

cc: Robert J. Romadka, Esquire
Germania Federal Building
809 Eastern Boulevard
Essex, Maryland 21221

T. Rogers Harrison, Esquire
306 West Joppa Road
Towson, Maryland 21204

RE: PETITION FOR SPECIAL EXCEPTION : BEFORE THE ZONING COMMISSIONER
PETITION FOR SPECIAL HEARING : OF BALTIMORE COUNTY
PETITION FOR VARIANCES :
N/S of Chester Rd., 590' W of Severn Rd. (800 Chester Rd.) :
15th District :
JOSEPH F. EVERING, JR., et ux, : Case No. 85-65-XSPHA
Petitioners :

NOTICE OF APPEAL

Please note an appeal from your decision in the above-captioned matter, under date of April 25, 1985, to the County Board of Appeals and forward all papers in connection therewith to the Board for hearing.

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 10th day of May, 1985, a copy of the foregoing Notice of Appeal was mailed to John O. Hennegan, Esquire, and Robert J. Romadka, Esquire, 809 Eastern Blvd., Baltimore, MD 21221; and T. Rogers Harrison, Esquire, 306 W. Joppa Rd., Towson, MD 21204.

Peter Max Zimmerman
Peter Max Zimmerman

MAY 10 AM
Appeal Rec'd
Paid
Entr
Case
ZONING DEPARTMENT
By

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

January 26, 1984

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

000

Nicholas B. Commodari
Chairman

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

John O. Hennegan, Esquire
809 Eastern Boulevard
Baltimore, Maryland 21221

RE: Item No. 166 - J. F. Evering, Jr., et ux
N/S Chester Rd. 1000'W Susquehanna Ave
Variance Petition

Dear Mr. Hennegan:

I have reviewed the above referenced petition and have some questions concerning the site plan and/or petition forms. In order to avoid any extended delays in processing this petition, you should contact me immediately, at 494-3391, to discuss my concerns.

Very truly yours,

NBC

NICHOLAS B. COMMODARI
Chairman
Zoning Plans Advisory Committee

NBC:bsc

cc: Frank S. Lee
1277 Neighbors Avenue
Baltimore, Md. 21237

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

ARNOLD JABLON
ZONING COMMISSIONER

January 3, 1985

John O. Hennegan, Esquire
809 Eastern Boulevard
Baltimore, Maryland 21221

RE: Petition for Special Exception,
Special Hearing and Variances
N/S Chester Road, 590' W of
Severn Road (800 Chester Road)
Joseph F. Evering, Jr., et ux - Petitioners
Case No. 85-65-XSPHA

Dear Mr. Hennegan:

Please be advised that a hearing will be held on Friday, February 1, 1985 at 1:30 p.m., County Office Building, Room 106, 111 West Chesapeake Avenue, Towson, Maryland. This hearing is being held in response to your Motion for Hearing to determine whether or not the above referenced property is subject to the Chesapeake Bay Critical Area Protection Program.

Sincerely,

ARNOLD JABLON
Zoning Commissioner

AJ:eoh

cc: T. Rogers Harrison, Esquire
306 West Joppa Road
Towson, Maryland 21204

Mr. Norman E. Gerber, Director
Office of Planning and Zoning

Mr. Robert W. Marriott, Jr., Deputy Director
Office of Planning and Zoning

Mr. Eugene A. Bober, Chief
Current Planning and Development Division

Phone: 687-6922

FRANK S. LEE
Registered Land Surveyor
1277 NEIGHBORS AVE. — BALTIMORE, MD. 21237

STATE OF MARYLAND — FRANK S. LEE — No. 11 — REGISTERED — PROPERTY LINE SURVEYOR

August 2, 1984

Long Beach Marina
No. 800 Chester Road
15th District Baltimore County, Maryland

Beginning for the same on the north side of Chester Road at the distance of 590 feet more or less measured along the north side of Chester Road from the west side of Severn Road, thence running and binding on the north side of Chester Road South 77 degrees 25 minutes W 115 feet more or less, thence crossing the end of Chester Road and continuing the same direction in all South 12 degrees 35 minutes West 272 feet more or less to the waters of Frog Mortor Creek, thence binding on the waters of Frog Mortor Creek as follows: North 71 degrees 00 minutes West 50 feet more or less, South 86 degrees 00 minutes West 260 feet more or less, North 16 degrees 00 minutes East 570 feet more or less and North 77 degrees 25 minutes East 320 feet more or less, thence running for a line of division South 27 degrees 33 minutes East 245 feet more or less to the place of beginning.

Containing 3.30 acres of land more or less.

Special Exception includes all of the above described area not included in Case #3535, 64-57-SPH and 64-160-X.

Variances and Special Exceptions includes entire site.

HEARING

86-833

10/10/85
T. Rogers

IN THE MATTER OF
JOSEPH F. EVERING, JR., et ux
Petitioners

(Appeal from the Decision of the Zoning Commissioner of Baltimore County)

BEFORE THE
BOARD OF APPEALS
FOR
BALTIMORE COUNTY
Case No. 85-65-XSPHA

APPLICATION FOR ISSUANCE OF SUBPOENA

TO THE BOARD OF APPEALS:

The Protestants, Ken Engelke, et al, by their attorney, request pursuant to Rule 5 of the Rules of Practice and Procedure of the County Board of Appeals that the Board issue subpoenas compelling Joseph F. Evering, Jr. and Catherine L. Evering, husband and wife, to attend the October 29, 1985, hearing and to produce at the hearing the documents listed in the attached Subpoena, which is incorporated herein.

The purpose of this Subpoena is to ascertain evidence showing that the Everings have plans to sell the land which is the subject of this case and that the contract purchaser has plans to develop it in a manner different than what is presented in the Everings' petitions. This evidence and material is relevant and material.

WHEREFORE, the Protestants ask that the subpoenas be issued and served by Sheriff on Joseph F. Evering, Jr. and Catherine L. Evering.

T. Rogers Harrison
Mudd, Harrison & Burch
306 West Joppa Road
Towson, Maryland 21204
828-1335
Attorney for Protestants

OCT 10 '85
ZONING DEPARTMENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Application for Issuance of Subpoena was mailed, this 9th day of October, 1985, to Judith A. Armold, Esquire, Assistant Attorney General, Room 1101, 301 West Preston Street, Baltimore, Maryland 21201; Arnold E. Jablon, Esquire, Zoning Commissioner, County Office Building, Towson, Maryland 21204; John O. Hennegan, Esquire, 809 Eastern Boulevard, Baltimore, Maryland 21221; Robert J. Romadka, Esquire, 809 Eastern Boulevard, Baltimore, Maryland 21221; Phyllis C. Friedman, Esquire, People's Counsel, Room 223, Courthouse, Towson, Maryland 21204; and to Mr. Norman E. Gerber, Director, Office of Planning and Zoning, Room 406, County Courts Building, Towson, Maryland 21204.

T. Rogers Harrison

IN THE MATTER OF
JOSEPH F. EVERING, JR., et ux
Petitioners

(Appeal from the Decision of the Zoning Commissioner of Baltimore County)

BEFORE THE
BOARD OF APPEALS
FOR
BALTIMORE COUNTY
Case No. 85-65-XSPHA

SUBPOENA DUCES TECUM

Please issue a subpoena duces tecum for the following-named individual to appear and testify at the hearing of the above matter before the County Board of Appeals and make the writ returnable to the Baltimore County Board of Appeals, County Office Building, Towson, Maryland 21204, at 10:00 a.m. on October 29, 1985.

Mrs. Catherine L. Evering
800 Chester Road
Baltimore, Maryland 21220

and she is to bring with her the following:

1. All contracts or agreements of sale, or any options, option agreements, rights-of-first refusal, or any correspondence depicting or reflecting a sale or proposed sale of the land (i.e., the Long Beach Marina) which is the subject of this case.

T. Rogers Harrison
Mudd, Harrison & Burch
306 West Joppa Road
Towson, Maryland 21204
828-1335
Attorney for Protestants

IN THE MATTER OF
JOSEPH F. EVERING, JR., et ux
Petitioners

(Appeal from the Decision of the Zoning Commissioner of Baltimore County)

BEFORE THE
BOARD OF APPEALS
FOR
BALTIMORE COUNTY
Case No. 85-65-XSPHA

SUBPOENA DUCES TECUM

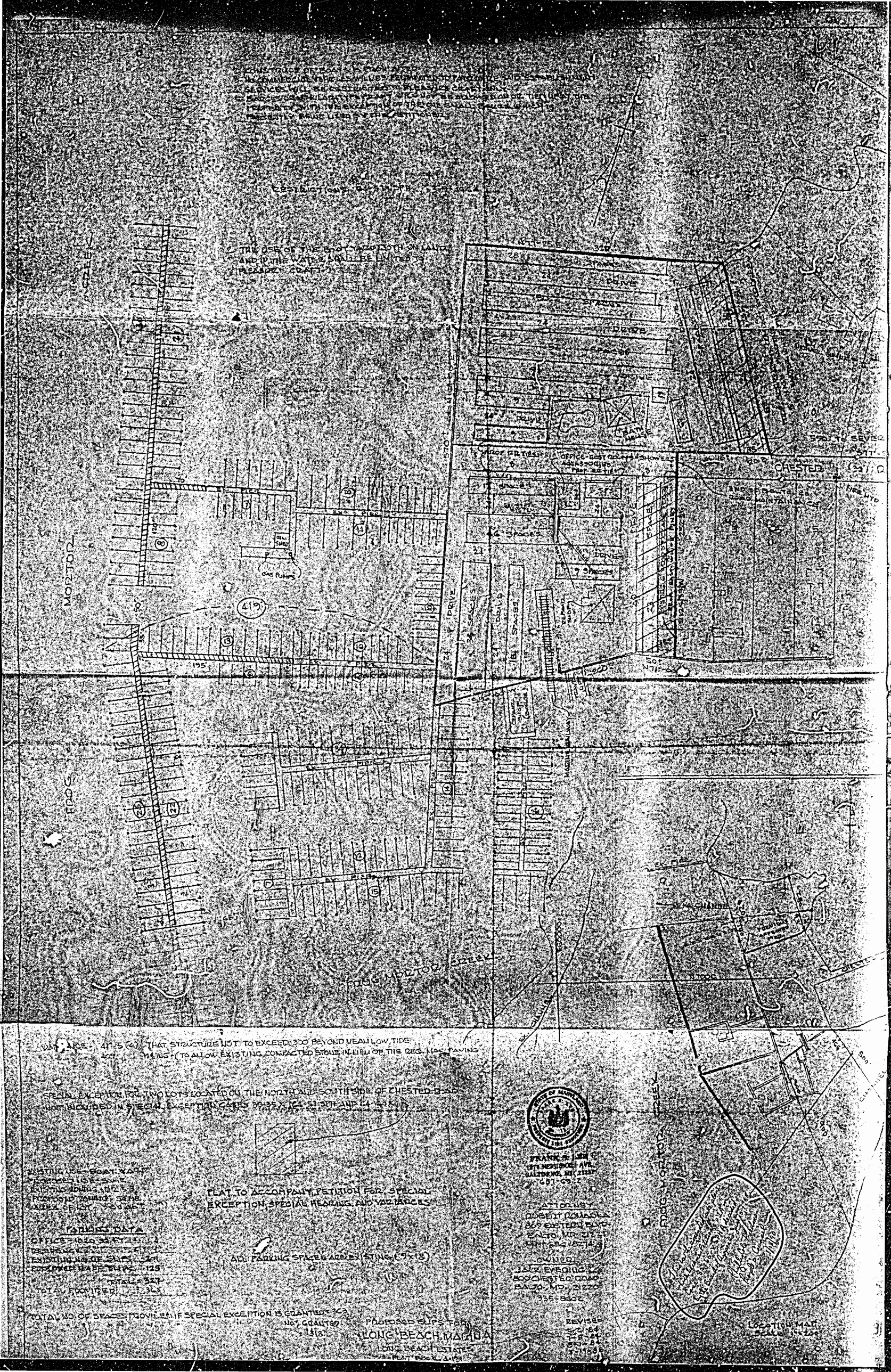
Please issue a subpoena duces tecum for the following-named individual to appear and testify at the hearing of the above matter before the County Board of Appeals and make the writ returnable to the Baltimore County Board of Appeals, County Office Building, Towson, Maryland 21204, at 10:00 a.m. on October 29, 1985.

Mr. Joseph F. Evering, Jr.
800 Chester Road
Baltimore, Maryland 21220

and he is to bring with him the following:

1. All contracts or agreements of sale, or any options, option agreements, rights-of-first refusal, or any correspondence depicting or reflecting a sale or proposed sale of the land (i.e., the Long Beach Marina) which is the subject of this case.

T. Rogers Harrison
Mudd, Harrison & Burch
306 West Joppa Road
Towson, Maryland 21204
828-1335
Attorneys for Protestants



VARIANCE 417.5(c) THAT STRUCTURE NOT TO EXCEED 300' BEYOND MEAN LOW TIDE
409 PARKING (TO ALLOW EXISTING COMPACTED STONE IN LIEU OF THE REQ. HOT PAVING

SPECIAL EXCEPTION FOR TWO LOTS LOCATED ON THE NORTH SIDE OF CHESTED ROAD NOW INCLUDED IN SPECIAL EXCEPTION CASES 79-152-X, 84-53-SPH AND 84-150-SPH

PLAT TO ACCOMPANY PETITION FOR SPECIAL EXCEPTION, SPECIAL HEARING AND VARIANCES

EXISTING USE - BOAT YARD
PROPOSED USE - SAME
EXISTING BUILDING - 1,872 S.F.
PROPOSED ADDITION - SAME
AREA OF LOT - 1.00 AC.

PARKING DATA
OFFICE - 1,872 SQ. FT. = 4
RESTAURANT - 0
EXISTING NO. OF SLIPS = 201
PROPOSED NO. OF SLIPS = 125
TOTAL = 327
TOTAL PROVIDED = 363

ALL PARKING SPACES ARE EXISTING (9'x18')

TOTAL NO. OF SPACES PROVIDED IF SPECIAL EXCEPTION IS GRANTED = 363
NOT GRANTED = 318

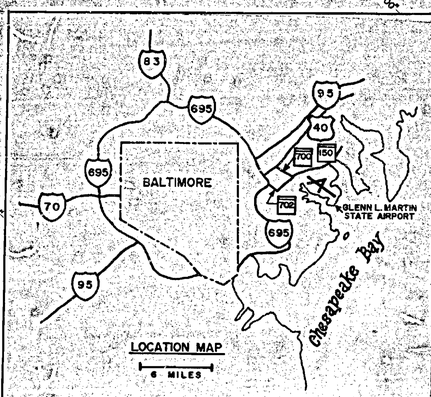
PROPOSED SLIPS FOR
LONG BEACH MARINA
LONG BEACH ESTATES
PLAT BOOK 4 - 152

FRANK
1875 NEWBOLD AVE.
BALTIMORE, MD. 21226
687-0917

ATTORNEY
ROBERT ROMASCO
869 EASTERN BLVD.
BALTO., MD. 21221
574-8582

OWNER
JANE EVELYN LEE
800 CHESTED ROAD
BALTO., MD. 21220
335-8332

REVISED
5-10-84
7-19-84



BASIC DATA TABLE

RUNWAY DATA	RUNWAY 14-32		RUNWAY 4-22	
	EXISTING	FUTURE	EXISTING	FUTURE
EFFECTIVE GRADIENT (IN %)	0.17	0.18	—	0.40
% WIND COVERAGE — 13 KTS ALL	96.2	SAME	—	ALL: 83.8
10.5 KTS IFR	89.7		—	IFR: 95.8
INSTRUMENT RUNWAY	NP	NP, 32P	—	NP
PAVEMENT STRENGTH ✕	65S, 82D, 140DT		—	12.5S
APPROACH SURFACES REQ.	34:1	34:1, 50:1	—	20:1
RUNWAY LIGHTING	MIRL	SAME	—	MIRL
RUNWAY MARKING	NP	P	—	NP
AIRPORT VISUAL AIDS	REILS, VASI	REILS, VASI	—	VASI

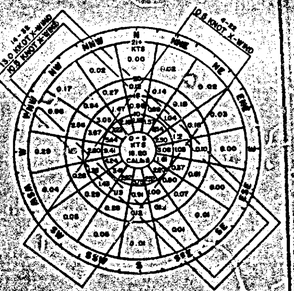
✕ IN 1000 LBS.; S-SINGLE WHEEL, D-DUAL WHEEL, DT-DUAL TANDEM
NP-NON-PRECISION, P-PRECISION

LEGEND

ARP ⊕	AIRPORT REFERENCE POINT
	AIRPORT BOUNDRY
-x-x-	FENCING
• • •	RUNWAY LIGHTS
BRL	BUILDING RESTRICTION LINE (BRL)
APRL	AIRCRAFT PARKING RESTRICTION LINE
	EXISTING BUILDINGS
	PREVIOUS PHASE STRUCTURES
	AREA OF NEW PHASE CONSTRUCTION
	*PREVIOUS PHASE TAXIWAY & RUNWAY

AMTRAK NORTHEAST CORRIDOR
POWER LINES
EASTERN BLVD
RD. TWO 150
LYNBROOK
RUNWAY 14 APPROACH SURFACE
500'
1000'
NEW TAXIWAY
POL FUEL FACILITY
ANG NEW EXPANSION
COMPASS ROSE
PROPOSED VOR
EXISTING VOR
PROPOSED ANG EXPANSION AREA
Frog Mortar Creek
BRL
1700'
200'
3200' X 75'
LOCALIZER
CLEAR ZONE APPROACH SLOPE REQUIRED 34:1
1425'
WIND CONE
VASI
EL 23 MSL
LAT. 39°19'34"
LONG. 76°24'54"
ARP ⊕
7000' X 180'
N 45°11'59" W (TRUE)
CONTROL TOWER & ADMINISTRATION BLDG.
CORPORATE HANGARS
HANGAR # 1-5
HANGAR # 6
POST OFFICE
WILSON POINT RD.
CHESAPEAKE INDUSTRIAL PARK
N 17°30'45" W (TRUE)
TWY A
TWY B
TWY C
TWY D
TWY E
TWY F
TWY G
TRANSIENT RAMP AREA
T. HANGARS RAMP
EXEC. HANGARS RAMP
FBO AREA / RAMP
AUTO PARKING
T HANGAR RAMP
TIE DOWN RAMP
EL 14 MSL
STRAWBERRY POINT RD.
STRAWBERRY PT. HANGAR
STATE POLICE HANGAR
MARINE POLICE
FUEL STORAGE
EL 103 MSL
CLEAR ZONE APPROACH SLOPE REQUIRED 50:1
FAR FIELD MONITOR
Louis Beach MARINA
Stansbury Creek
Dark Head Creek
9°30' W (TRUE)
True North
Magnetic North
2500'
2000'
1000'
800'
600'
500'
200'
700'

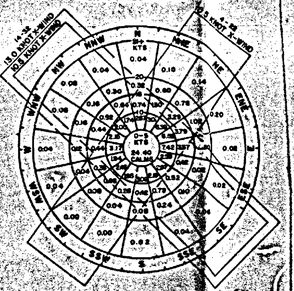
ALL WEATHER WIND ROSE



CROSS WIND COVERAGE (% OF TIME)

RUNWAY	10.5 KNOT	13 KNOT
14-32	88.7%	96.2%
4-22	83.8%	—
COMBINED	97.0%	98.2%

IFR WIND ROSE (LESS THAN 1000' CEILING OR 3 MILES VISIBILITY)



CROSS WIND COVERAGE (% OF TIME)

RUNWAY	10.5 KNOT	13 KNOT
14-32	88.7%	96.2%
4-22	83.8%	—
COMBINED	98.8%	98.8%

SOURCE - BALTIMORE-WASHINGTON INTERNATIONAL AIRPORT WEATHER STATION
PERIOD - 1960-1964 (43,847 TOTAL OBSERVATIONS)

% VFR WEATHER - 88.6 %
% IFR WEATHER - 11.4 %

BASIC DATA TABLE

AIRPORT DATA

AIRPORT ELEVATION	23 FEET (MSL)
AIRPORT REFERENCE POINT (ARP) COORDINATES	LAT. 39°19'34" LONG. 76°24'54"
AIRPORT AND TERMINAL NAVAIDS	VOR, TACAN, NDB, CONTROL TOWER, UNICOM, ILS
MEAN MAX. TEMP. HOTTEST MONTH	86° F.

FEDERAL AVIATION ADMINISTRATION

APPROVED: _____ DATE: _____
CHIEF, WASHINGTON AIRPORTS DISTRICT OFFICE

MARYLAND DEPARTMENT OF TRANSPORTATION
STATE AVIATION ADMINISTRATION

APPROVED: _____ DATE: _____

SCALE IN FEET
400 200 0 400

REVISIONS	
BY	DATE
AC	12-8-83

MARYLAND DEPARTMENT OF TRANSPORTATION
STATE AVIATION ADMINISTRATION

MARTIN STATE AIRPORT

AIRPORT LAYOUT PLAN

SCALE: 1"=400' DRAWN BY: A.C DATE: 12-9-83
FA-EA-1582 CHECKED BY: SHEET: 2 OF 2

MICROFILMED