

IN THE MATTER OF
MARYLAND MARINE MANUFACTURING CO., INC.
PETITION FOR SPECIAL HEARING ON
PROPERTY LOCATED ON THE WEST SIDE
OF RED ROSE FARM ROAD, 1305.65'
WEST OF CENTERLINE OF BOWLEYS
QUARTERS ROAD
15th ELECTION DISTRICT
5th COUNCILMANIC DISTRICT
ZONING CASE NO. 87-382-SPH
PEOPLE'S COUNSEL FOR BALTIMORE
COUNTY, PLAINTIFF

ON REMAND FROM
THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
CASE NO. 48/48/87CG4578

ORDER

Pursuant to the Order of the Court of Appeals dated July 6, 1989, said Order reading that: "Judgement of the Circuit Court for Baltimore County Vacated; case remanded to that Court with directions to remand the matter to the Board of Appeals of Baltimore County with instructions to vacate its Order and that of the Zoning Commissioner of Baltimore County and to enter an Order consistent with this Opinion";

IT IS THEREFORE this 3rd day of October, 1989 by the County Board of Appeals of Baltimore County ORDERED that the Order of the Zoning Commissioner dated April 20, 1987 be VACATED and that the Order of the County Board of Appeals dated October 7, 1987 be REVERSED and that the Petition for Special Hearing requesting the interpretation is DENIED; and

IT IS FURTHER ORDERED that the amended site plan approved in Case No. 74-285-XA to reflect the additional parking be and the same is GRANTED.

BALTIMORE COUNTY BOARD OF APPEALS

William T. Hackett
William T. Hackett, Chairman

Harry E. Buchheiser, Jr.
Harry E. Buchheiser, Jr.

IN THE MATTER OF
THE APPLICATION OF
MARYLAND MARINE MANUFACTURING
COMPANY, INC.
FOR A SPECIAL HEARING REGARDING
PROPERTY LOCATED ON THE WEST SIDE
OF RED ROSE FARM ROAD, 1305.65'
WEST OF THE CENTERLINE OF BOWLEYS
QUARTERS ROAD
15th ELECTION DISTRICT
5th COUNCILMANIC DISTRICT

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
CASE NO. 87-382-SPH

OPINION

This case comes before this Board on appeal from a decision of the Zoning Commissioner granting the Special Hearing with noted restrictions.

The matter before the Board is basically a request for an interpretation of the Baltimore County Zoning Regulations (B.C.Z.R.), i.e., whether zoning classifications include the land beneath the water abutting the subject site.

The Petitioners presented Wayne Miskiewicz as their primary witness. He testified as to the long history of this marina, the existence of the improvements thereon, and presented his proposal for a restaurant and associated uses to be built on pilings and attached by walkway to his shoreline. He especially noted that the land directly abutting the proposed structure is zoned to permit the proposed restaurant as a matter of right with same to be built on shore. This structure, however, is proposed to be built on pilings and extending some 125 feet into the water area from the shoreline.

Mr. David Hawkes, the Engineer in this case, testified as to the plat submitted showing the proposed facility.

People's Counsel presented Timothy Dugan, from the Office of Planning and Zoning, who is the head of the task force developing the Chesapeake Bay Critical Areas legislation. He noted that he had no specific objection to the restaurant but noted that this was not a water-dependent facility and would have to comply with the Critical Areas legislation upon its enactment.

Case No. 87-382-SPH
Maryland Marine Manufacturing Co., Inc.

The Board has before it a Memorandum from John Hennegan, representing the Petitioner; a Memorandum from Phyllis Friedman, representing the People's Counsel; and an Opinion from Arnold Jablon, who was at that time Zoning Commissioner for Baltimore County. All of this written material provides the Board with references to cases that support either side. The Board in this Opinion will, however, direct its attention to Section 417 of the Baltimore County Zoning Regulations (B.C.Z.R.) entitled "Waterfront Construction" and enacted by Bill No. 64 in 1963. Section 417.1 states:

"All waterfront construction, such as piers, wharves, docks, bulkheads, or other work extended into navigable waters beyond mean low tide as prescribed in Baltimore County Design Manual, 1955, shall be governed by these regulations as well as by the Baltimore County Code...." (emphasis added)

Section 417.2 states:

"All applications for waterfront construction, when filed with the buildings engineer, shall be accompanied by a plot diagram suitable for filing permanently with the permit record, showing the outlines of the property in question and of adjoining properties, and showing any details of the proposed construction; whenever required by the buildings engineer, in his discretion, the application must be accompanied by a plan prepared by a professional engineer or land surveyor, showing to scale the outlines of the property in question, as well as the outlines of the adjoining properties, including any existing construction beyond mean low tide, and a plan and details of the proposed construction." (emphasis added)

Section 417.3 states:

"For the purpose of defining boundaries within which waterfront construction may take place, divisional lines shall be established in accordance with the following rules:

"(a) With straight shore lines:" (as is the case before us)

"If the shoreline is straight, the divisional lines are to be extended from the intersection of the property line and the shoreline into the water perpendicular to the shoreline, or where the property lines are parallel and it is practical to do so, the proper boundary line shall be extended in a straight line into the water." (emphasis added)

Case No. 87-382-SPH
Maryland Marine Manufacturing Co., Inc.

Section 417.5 states:

"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...." (emphasis added)

A careful examination of this entire section indicates that the passage of Bill No. 64-63 anticipated construction beyond the shoreline. The Board is of the opinion that the proposed restaurant complies with Section 417. This opinion in no way grants the approval of a building permit. This proposed facility must comply with all Baltimore County building regulations, must have Corps of Engineers approval, and must comply with all the requirements of the critical areas prior to its construction. The Board is, however, of the opinion that no zoning is needed for the land beneath the water as long as all other requirements and all those of Section 417 are complied with.

ORDER

It is therefore this 7th day of October, 1987, by the County Board of Appeals of Baltimore County ORDERED that the Petition for Special Hearing requesting the interpretation of the Baltimore County Zoning Regulations be and the same is GRANTED; and

IT IS FURTHER ORDERED that the amended site plan approved in Case No. 74-285-XA to reflect the additional parking be and the same is GRANTED.

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

William T. Hackett
William T. Hackett, Chairman

Harry E. Buchheiser, Jr.
Harry E. Buchheiser, Jr.

Patricia Phipps
Patricia Phipps

IN RE: PETITION SPECIAL HEARING
W/S of Red Rose Farm Road,
1,305.65' W of the centerline
of Bowleys Quarters Road -
15th Election District
Maryland Marine Manufacturing
Company, Inc.,
Petitioner

BEFORE THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 87-382-SPH

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests an interpretation of the Baltimore County Zoning Regulations (BCZR) as to whether zoning classifications include tide water rivers, lakes, running streams, or land under water and, additionally, to amend the site plan approved in Case No. 74-285-XA to reflect additional parking, as more particularly described on Petitioner's Exhibit 1.

The Petitioner, by Wayne Miskiewicz, President, appeared and was represented by Counsel. There were no Protestants.

The issue presented is actually a fairly simple one, i.e., whether land under water is subject to zoning. The purpose of the question is to gain a threshold opinion before proceeding any further with the proposed objective, which is to construct a restaurant over water on Frog Mortar Creek.

The Petitioner owns Maryland Marina, which is zoned D.R.5.5 and located off Bowleys Quarters Road, which is off Red Rose Farms Road. The marina surrounds two lots also owned by the Petitioner and adjacent to Frog Mortar Creek on two sides. Both of the lots are zoned B.L. and each is improved with a dwelling. The Petitioner proposes to raze the dwellings and construct a restaurant attached to the land and over the water. If this can be accomplished, additional parking will be added onto the marina property, bringing the total to 790 spaces and necessitating an amendment to the site plan

approved in Case No. 74-285-XA in which the special exception for the marina was granted. There are, of course, issues related to the one presented, namely the Chesapeake Bay Critical Area and the Development Regulations of Baltimore County; however, this request is not intended to address them.

A restaurant is a use permitted as of right in a B.L. Zone. If a zoning designation extends into the water from adjacent property parallel to that property, then the proposed restaurant, without the Chesapeake Bay legislation factored in, would be permitted. If it does not, then the other issues are moot.

In Harbor Island Marina v. Calvert County, 268 Md. 303 (1978), the Court of Appeals addressed this issue directly and held that the County had the authority to zone the water, the land which it covers, and the shoreline connected with it. Although the Court specifically interpreted Art. 66B, Section 4.01(a)-4.01(b), Annotated Code of Maryland, which is applicable only to non-chartered counties, it seems clear that the issue decided by the Court can be extrapolated and applied to charter counties as well. See also Art. 25A, Section 5(X)(2), Annotated Code of Maryland. "The purpose of the zoning law is to promote the health, safety and general welfare of the public...and the Act vests in the Counties the full measure of power which the State could exercise in pursuit of this objective." Although the Court was addressing Art. 66B, the same is no less true for Art. 25A. "The very essence of zoning is territorial division according to the character of the land and...their peculiar suitability for particular uses, and uniformity of use within the zone." Health v. M & CC Balto., 187 Md. 296 (1946). The Court's decision, therefore, is as applicable to charter counties as to non-charter counties.

Without repeating the rationale for the Court's decision, it is sufficient to state that Baltimore County has the authority to reasonably regulate the exercise of the riparian right to erect an improvement upon tidal land

attached to shore land through zoning. See Harbor Island, supra. The use of the word "land" in Art. 25A, Section 5(X)(2)(i), includes land under water. See Wynn v. Margate City, 15/A 565 (N.J., 1931). This authority to zone the "land" within Baltimore County is intended by the General Legislature to be applied to the "four corners of the County, no matter whether wet or dry." Harbor Island, supra.

It is clear that Baltimore County has utilized this authority. See Section 417, BCZR. The extension of zoning classifications from shore land to attached tidal lands seems obvious. It certainly would not be the intent of the Baltimore County Council to permit random development off shore as otherwise would not be allowed on dry land without being subject to regulations or laws. To reach any other conclusion would be contradictory.

Those uses which are permitted in the B.L. Zone, such as the proposed restaurant here, are therefore permitted on the tidal lands attached and parallel to the dry land which is zoned B.L. This conclusion does not consider possible State pre-emption pursuant to Section 8-1801, Nat. Res. Art. Maryland Code.

Pursuant to the advertisement, posting of the property, and public hearing held, the requested relief should be granted.

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 20th day of April, 1987, that those uses permitted on dry land located in that particular zone are permitted on tide water rivers, lakes, running streams, or land under water within lines extended from the zoning boundary lines of the dry land to which the "wet" land is attached, from and after the date of this Order, subject to the following:

1. This decision is contingent on any development proposed for such "wet" lands complying with the Chesapeake Bay Critical Area legislation, Section 8-1801, et seq., Nat. Res. Art., Maryland Code; COMAR, Section 14.15.02, et seq.; and the Development Regulations of Baltimore County.

2. If the proposed restaurant satisfies all of the other applicable regulations and laws, the amendment to the site plan approved in Case No. 74-285-XA shall be granted herewith to reflect the additional parking without another hearing.

AJ/srl

cc: John O. Hennegan, Esquire

People's Counsel:

John O. Hennegan
John O. Hennegan, Esquire
Zoning Commissioner of
Baltimore County

ORDER RECEIVED FOR FILING

Date *April 20, 1987*
By *John P. Hackett*

ORDER RECEIVED FOR FILING

Date *April 20, 1987*
By *John P. Hackett*

ORDER RECEIVED FOR FILING

Date *April 20, 1987*
By *John P. Hackett*

ORDER RECEIVED FOR FILING

Date *April 20, 1987*
By *John P. Hackett*

MANDATE

Court of Appeals of Maryland

No. 89, September Term, 19 88

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY

v.

MARYLAND MARINE MANUFACTURING
CO., INC.

Appeal from the Circuit Court for Baltimore County pursuant to certiorari to Court of Special Appeals.
January 26, 1989: Received supplement to briefs and appendices filed by appellant.
February 1, 1989: Received letter from John Hennegan.
July 6, 1989: Judgment of the Circuit Court for Baltimore County vacated; case remanded to that court with directions to remand the matter to the Board of Appeals of Baltimore County with instructions to vacate its order and that of the Zoning Commissioner of Baltimore County and to enter an order consistent with this opinion. Costs to be paid by the appellee.
Opinion by Murphy, C.J.

STATEMENT OF COSTS:

In Circuit Court:

Record \$50.00
Stenographer's Costs \$35.00

In Court of Appeals:

Petition Filing Fee	\$ 465.00	cc PL
Printing Brief for Appellant	624.00	
Portion of Record Extract — Appellant	91.20	
Reply Brief	10.00	
Appearance Fee — Appellant	50.00	
Filing Fee on Appeal (Court of Special Appeals)		
Printing Brief for Appellee	96.00	
Portion of Record Extract — Appellee	10.00	
Appearance Fee — Appellee		
	\$1,346.80	

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 and affixed the seal of the Court of Appeals this seventh day of August, 19 89

C. J. Murphy
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 COURT OF APPEALS OF MARYLAND

No. 89

September Term, 1988

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

v.

MARYLAND MARINE MANUFACTURING CO., INC.

Murphy, C.J.
Eldridge
Cole
Rodowsky
Michuliffe
Adkins
Blackwell,
JJ.

Opinion by Murphy, C.J.

Filed: July 6, 1989

24-0144 L-70068

STANDARD CHARTERED BANK

This case involves the right of riparian owners to construct improvements from their land into the tidal waters of the State, and the zoning power of counties in relation to these improvements. Specifically, the question presented is whether current Baltimore County Zoning Regulations (BCZR) are applicable to a riparian owner's proposed construction of a "floating" restaurant on a pier extending 125 feet from the shoreline into the water in front of the owner's property.¹

I.

Maryland Marine Manufacturing Company, Inc. (Maryland Marine) owns a parcel of land bordering on the east side of Frog Mortar Creek in Baltimore County, a tributary of the Middle River which flows into the Chesapeake Bay. It currently operates a marina on the property under a special exception to the existing D.R. 5.5. (Density Residential--5.5 dwelling units per acre) zoning. In 1984, .64 acres of the property was rezoned from D.R. 5.5 to B.L. (Business Local). This classification covers a number of permitted uses, including restaurants.

On January 16, 1987, Maryland Marine petitioned the Zoning Commissioner for a determination of the legality of its proposed

¹A riparian owner is generally defined as one who owns land bordering upon, bounded by, fronting upon, abutting or adjacent and contiguous to and in contact with a body of water, such as a river, bay, or running stream. See, e.g., *Owen v. Hubbard*, 260 Md. 146, 271 A.2d 672 (1968); *B. & O. R.R. v. Chase*, 43 Md. 23 (1875).

by reason of the curvature of the shore, the lines, when projected into the water, diverge from each other, the area excluded by both lines shall be equally divided between the two adjoining proprietors."

It was Maryland Marine's contention that the existing B.L. zoning of its .64 acres extended into the waters of Frog Mortar Creek, thereby allowing construction of its proposed restaurant as a permitted use.

The Zoning Commissioner, relying upon *Harbor Island Marina v. Calvert Co.*, 286 Md. 303, 407 A.2d 738 (1979), held that "Baltimore County has the authority to reasonably regulate the exercise of a riparian right to erect an improvement upon tidal land attached to shore land through zoning." He concluded that zoning on land must extend into the water, for it was not the intent of the Baltimore County Council "to permit random development off shore as otherwise would not be allowed on dry land without being subject to regulations or laws." The Commissioner ordered that "those uses permitted on dry land located in [a] particular zone are permitted on tide water rivers, lakes, running streams, or land under water within lines extended from the zoning boundary lines of the dry land to which the 'wet' land is attached, from and after the date of this Order" The Commissioner's order was made contingent upon compliance with the Chesapeake Bay Critical Area legislation, Maryland Code (1988 Cum. Supp.), §§ 8-1801 *et seq.* of the National Resources Article, Title 14, subtitle 15 of the Code of Maryland Regulations (COMAR), and Bill Nos. 35-88 and 32-88 of

5

and [would extend] no further into the water way than the existing structures."

People's Counsel appealed. We granted certiorari before decision by the Court of Special Appeals to consider the significant issue raised in the case.

II.

As we have frequently indicated, the order of an administrative agency must be upheld on judicial review if it is not based on an error of law, and if the agency's conclusions reasonably may be based upon the facts proven. *Ad v. Soil, Inc. v. County Comm'rs*, 307 Md. 307, 338-39, 513 A.2d 893 (1986). But a reviewing court is under no constraints in reversing an administrative decision which is premised solely upon an erroneous conclusion of law. See, e.g., *Ransav, Scarlett & Co. v. Comptroller*, 302 Md. 825, 835, 490 A.2d 1296 (1985); *Harford County v. McDonough*, 74 Md. App. 119, 122, 536 A.2d 724 (1988). The issues with which we are concerned in this case present purely legal questions, such as the proper interpretation of § 417 of the BCZR, the scope of a charter county's zoning power, and the extent of the riparian owner's right to construct improvements into the water.

People's Counsel argues before us that a specific zone must be placed on land under water before a non-water-dependent use may be developed. She contends that Baltimore County has not zoned the land under water at the boundary of Maryland Marine's property, and therefore the proposed restaurant cannot be

Both parties agree, in light of *Harbor Island, supra*, that Baltimore County has the power to zone land under water. Although *Harbor Island* involved a non-chartered county and its zoning authority under Maryland Code (1957, 1978 Repl. Vol.), Art. 66B, § 4.01, the parties agree that there is nothing in the zoning authority granted to charter counties like Baltimore County which would prevent them from exercising the same degree of zoning power as non-chartered counties.² But it is unnecessary to specifically decide this issue because even if Baltimore County has the power to zone land under water, it would not apply in this case. This is so because the scope of the County's zoning authority extends only as far as the scope of the right to construct riparian improvements.

In *Harbor Island*, we were asked to decide the extent to which a county may regulate, through zoning, the construction of riparian improvements.³ We noted that a non-chartered county's

²See Maryland Code (1957, 1987 Repl. Vol.) Art. 25A, § 5(X) (The Express Powers Act--granting zoning power to charter counties). Cf. Art. 66B, § 4.01.

³Riparian improvements are generally defined as those structures which are connected to waterfront land and built into the water. We have defined them as improvements which

"a proprietor of land bounding on navigable waters, is entitled to make into the same. . . . [They] are plainly, we think, such structures as are subservient to the land, and which used in connection with the land, enhance its value or enlarge its commercial

(Footnote Continued)

State-owned lands are not subject to the county's zoning authority in the absence of a clear implication or a specific provision that the State is specifically bound by the zoning enabling act, we held that land under water is generally not subject to local zoning regulations. *Id.* at 315. See also *City of Baltimore v. State*, 281 Md. 217, 223, 378 A.2d 1326 (1977) (State is not bound by an enactment of the General Assembly unless the statute specifically names the State or manifests a clear and indisputable intention that it be bound). But our inquiry in *Harbor Island* was not thereby ended, for we also recognized that when permitted riparian improvements are completed, they essentially become part of the dry land. Consequently, we said, the improvements become "incident to the estate, as not inherently identical in nature with land, but, from being joined to it, and contributing to its uses and value legally identified with it, as a fixture or a right of way, or other appurtenance that passes with the land." 286 Md. at 320 (quoting *Hess v. Muir*, 65 Md. 586, 598, 5 A. 540 (1886)). We therefore held that

"when improvements are made into the navigable waters by a riparian proprietor, the land utilized in their construction, which prior to completion belonged to the State, for all practical purposes becomes a part of the fast land. Thus, any limitation upon the county's ability to zone which arises because the land in question belongs to the State does not apply to improvements attached to riparian land." 286 Md. at 322.

At common law, the rights of riparian owners were generally limited to accretion and reliction.⁵ In *B. & O. R.R. Co. v. Chase*, 43 Md. 23, 34-35 (1875), we noted that, at common law,

"[a]ny increase of soil formed by the gradual and imperceptible recession of the waters [reliction], or any gain by the gradual and imperceptible formation of the water in alluvion, from the action of the river from washing it against the fast land of the shore, and there becoming fixed as part of the land itself [accretion], shall belong to the proprietor of the adjacent or contiguous land."

The rationale behind this right, "the sole purpose of the rule, was to assure to the riparian owner that he would never be

⁵There is some indication that the riparian owner's common law rights also included the right to "wharf out" for the purpose of access to navigable water. For example, in *B. & O. R.R. Co. v. Chase*, 43 Md. 23, 35 (1875), we noted that "in addition to this right by accretion or reliction, the riparian proprietor . . . has the right of access to the navigable part of the river from the front of his lot, and the right to make a landing, wharf or pier for his own use or for the use of the public These riparian rights, founded on the common law, are property, and are valuable" In *Causey v. Gray*, 250 Md. 380, 387, 243 A.2d 575 (1968), we held that "[t]he owner of fast land . . . has a common law right to land formed by accretion . . . and has the right of access to the navigable part of the river in front of his fast land, with the right to make a landing, wharf or pier in front of his fast land. . . ." There is also law to the contrary. See, e.g., *Melvin v. Schlessinger*, 138 Md. 337, 340, 113 A. 875 (1921) ("the riparian owner had no right whatsoever at common law to make improvements into the water in front of his land"); *Cahill v. Baltimore*, 173 Md. 450, 455, 196 A. 305 (1937) ("a right to build a wharf into deep water of such a navigable river as the Patapsco can be derived only from a grant or permission of the State"); *Goodsell v. Lawson*, 42 Md. 348, 362 (1875); *Wicks v. Howard*, 40 Md. App. 135, 136, 388 A.2d 1250 (1978) ("the right to extend permanent improvements into the waters in front of one's land is not an inherent or common law right").

See also Bd. of Public Works v. Larmer Corp., 262 Md. 24, 50, 277 A.2d 427 (1971) ("Indeed, it would appear that a valid distinction may be drawn between 'used' and 'unused' riparian rights and . . . that constitutional protection . . . may extend only to such rights as the riparian actually exercises before the Legislature decides to make changes or modification."); City of Baltimore v. Canton Co., 186 Md. 618, 625, 47 A.2d 775 (1946) ("the riparian owner [has] no vested title to the land covered by water, . . . nor to the improvements built out of the water, until the improvements [have] been actually completed"). Accord, Culley v. Hollis, 180 Md. 372, 376, 25 A.2d 196 (1941); Cahill v. Baltimore, supra, 173 Md. at 456; Hodson v. Nelson, 122 Md. 330, 338, 89 A. 934 (1914); Wicks v. Howard, supra, 40 Md. App. at 137. We also noted in Hodson, supra, that only when riparian improvements are made, and [only] to the extent actually occupied by the improvements, do [they] and the ground they necessarily occupy become 'incident to the estate.'" 122 Md. at 340.

In Maryland, the right to construct riparian improvements has been largely controlled by statute.⁶ In 1745, an Act which incorporated Baltimore Town provided that within the town

⁶ "In defining the exact limits of the rights of the riparian proprietor at the common law . . . there is to be found a considerable diversity of opinion among courts of high authority, as well as among the writers upon the subject. In this State, however, those

(Footnote Continued)

1862, later codified as Maryland Code (1957), Art. 54, § 45, et seq. That statute provided in part (§ 46):

"the proprietor of land bounding on any of the navigable waters of this State shall be entitled to the exclusive right of making improvements into the waters in front of his said land; such improvements and other accretions as above provided for shall pass to the successive owners of the land to which they are attached, as incident to their respective estates. But no such improvement shall be so made as to interfere with the navigation of the stream of water into which the said improvement is made."

It seems clear that both the 1745 and the 1862 Acts were meant to confer a right to construct improvements for purposes beyond mere access to the navigable portion of the water. As earlier indicated in Hess v. Muir, supra, we defined these improvements as

"such structures as are subservient to the land, and which used in connection with the land, enhance its value or enlarge its commercial or agricultural facilities, or other utility, to an extent the land alone would be incapable of, and in this way 'improve' it. . . . Wharves, piers and landings are examples of such improvements." 65 Md. at 598.

We noted that "[f]arming and commercial interests are promoted by the privilege and to encourage the development of these was the main object of conferring it." Id.

In 1970, the General Assembly repealed Art. 54, § 46, and adopted the Wetlands Act, Maryland Code, (1977), 1983 Repl. Vol.) § 9-101 et seq. of the Natural Resources Article. Section 9-201 of that act, in accordance with its objective of preserving the State's wetlands, provides for a more limited right to construct

has also been narrowed significantly; the new statute only provides specifically for improvements for the purpose of preserving the riparian's access to the water or for protecting his shore against erosion.").

III.

It is clear that Maryland Marine's right to build improvements into the waters of Frog Mortar Creek is subject to the provisions of § 9-201 of the Wetlands Act. That construction of the proposed restaurant would not, within the contemplation of § 9-201, constitute an improvement to preserve access to navigable water or to protect the shore against erosion is, of course, equally clear. Thus, even though Baltimore County may have authority to zone permitted riparian improvements, it is not presently empowered to permit construction of the restaurant in this case. Nevertheless, in furtherance of its plan, Maryland Marine may seek to acquire, by purchase or lease from the State Board of Public Works, that part of the State's submerged land upon which the restaurant is planned to be erected. Section 9-201 of the Wetlands Act provides that "[a] right covered in this subtitle does not preclude the [riparian] owner from developing any other use approved by the Board [of Public Works]." And Maryland Code (1985, 1988 Repl. Vol.), § 10-402 of the State Finance and Procurement Act allows for the conveyance of State-owned submerged land to a riparian owner under certain circumstances and under certain conditions. Section 10-305 also generally provides for the lease of State-owned land to private

INSTRUCTIONS TO VACATE ITS
ORDER AND THAT OF THE ZONING
COMMISSIONER OF BALTIMORE
COUNTY AND TO ENTER AN ORDER
CONSISTENT WITH THIS OPINION.
COSTS TO BE PAID BY THE
APPELLEE.

#87-382-3PH
To be heard by Court of Appeals
on its own motion, without hearing
at Court of Special Appeals level.

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY

v.

MARYLAND MARINE
MANUFACTURING CO., INC.

* In the
* Court of Appeals
* of Maryland
* (No. 795 - Sept. Term, 1988
* Court of Special Appeals)

ORDER

It is this 13th day of October, 1988,

ORDERED, by the Court of Appeals of Maryland, on its own motion, that a writ of certiorari to the Court of Special Appeals shall issue in the above entitled case and said case shall be docketed on the regular docket as No. 89, September Term, 1988; and it is further

ORDERED that counsel shall file briefs and printed record extract in accordance with Rules 8-501 and 8-502, appellee's brief to be filed on or before October 16, 1988.

/s/ Robert C. Murphy
Chief Judge

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY

v.

MARYLAND MARINE
MANUFACTURING CO., INC.

* In the
* Court of Appeals
* of Maryland
* (No. 795, Sept. Term, 1988
* Court of Special Appeals)

WRIT OF CERTIORARI

STATE OF MARYLAND, to wit:

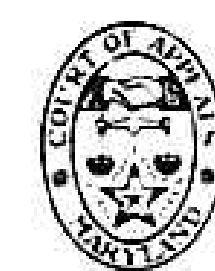
TO THE HONORABLE THE JUDGES OF THE
COURT OF SPECIAL APPEALS OF MARYLAND:

WHEREAS, People's Counsel for Baltimore County v. Maryland Marine Manufacturing Co., Inc. No. 795, September Term, 1988 is pending before your Court and the Court of Appeals is willing that the records and proceedings therein be certified to it.

YOU ARE HEREBY COMMANDED to cause them to be sent without delay to the Court of Appeals of Maryland, together with this writ, for the said Court to proceed thereon as justice may require.

WITNESS the Chief Judge of the Court of Appeals of Maryland this 13th day of October, 1988.

/s/ Alexander L. Cummings
Clerk
Court of Appeals of Maryland



ALEXANDER L. CUMMINGS
Clerk

Court of Appeals
of Maryland
Courts of Appeal Building
Annapolis, Md. 21401-1699

974-3341
WASHINGTON AREA 261-2999

October 13, 1988

Phyllis Cole Friedman, Esq.
Peter Max Zimmerman, Esq.
Deputy People's Counsel
Room 304, County Office Bldg.
111 W. Chesapeake Avenue
Towson, MD 21202

John O. Hennegan, Esq.
809 Eastern Blvd.
Baltimore, MD 21221

RE: People's Counsel for Baltimore County v. Maryland Marine Manufacturing Co., Inc., No. 89, September Term, 1988

Dear Counsel:

In accordance with the enclosed writ of certiorari and Order, the above entitled case has been docketed in this Court.

Briefs, record extract and appendices filed with the Court of Special Appeals have been transferred to this Court. The appellee's brief shall be filed on or before October 16, 1988. If copies of the printed record extract are not on file in the Court of Special Appeals, the parties shall prepare and file an extract in accordance with Maryland Rule 8-501.

You will be notified as to the exact date of argument.

Very truly yours,

Alexander L. Cummings
Alexander L. Cummings
Clerk

ALC/bj
Enc.

TTY FOR DEAF
ANNAPOLIS AREA 974-2609
WASHINGTON AREA 365-0450

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY

v.

MARYLAND MARINE
MANUFACTURING CO., INC.

* In the
* Court of Appeals
* of Maryland
* (No. 795 - Sept. Term, 1988
* Court of Special Appeals)

ORDER

It is this 13th day of October, 1988,

ORDERED, by the Court of Appeals of Maryland, on its own motion, that a writ of certiorari to the Court of Special Appeals shall issue in the above entitled case and said case shall be docketed on the regular docket as No. 89, September Term, 1988; and it is further

ORDERED that counsel shall file briefs and printed record extract in accordance with Rules 8-501 and 8-502, appellee's brief to be filed on or before October 16, 1988.

/s/ Robert C. Murphy
Chief Judge

87-382-SPH

Balto. County not empowered to permit
non-riparian uses over the water (Restaurant)
State owns the land under the water

IN THE COURT OF APPEALS OF MARYLAND

No. 89

September Term, 1988

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

v.

MARYLAND MARINE MANUFACTURING CO., INC.

RECEIVED

JUL 11 1989

ZONING OFFICE

Murphy, C.J.
Eldridge
Cole
Rodowsky
McAuliffe
Adkins
Blackwell,
JJ.

Opinion by Murphy, C.J.

Filed: July 6, 1989

89 JUL -7 AM 10:42

RECEIVED
COUNTY BOARD OF APPEALS

1987-0382-SPH

This case involves the right of riparian owners to construct improvements from their land into the tidal waters of the State, and the zoning power of counties in relation to these improvements. Specifically, the question presented is whether current Baltimore County Zoning Regulations (BCZR) are applicable to a riparian owner's proposed construction of a "floating" restaurant on a pier extending 125 feet from the shoreline into the water in front of the owner's property.¹

I.

Maryland Marine Manufacturing Company, Inc. (Maryland Marine) owns a parcel of land bordering on the east side of Frog Mortar Creek in Baltimore County, a tributary of the Middle River which flows into the Chesapeake Bay. It currently operates a marina on the property under a special exception to the existing D.R. 5.5. (Density Residential--5.5 dwelling units per acre) zoning. In 1984, .64 acres of the property was rezoned from D.R. 5.5 to B.L. (Business Local). This classification covers a number of permitted uses, including restaurants.

On January 16, 1987, Maryland Marine petitioned the Zoning Commissioner for a determination of the legality of its proposed

¹A riparian owner is generally defined as one who owns land bordering upon, bounded by, fronting upon, abutting or adjacent and contiguous to and in contact with a body of water, such as a river, bay, or running stream. See, e.g., Owen v. Hubbard, 260 Md. 146, 271 A.2d 672 (1968); B. & O. R.R. v. Chase, 43 Md. 23 (1875).

plan to build a restaurant on top of piers and pilings over the tidal waters of Frog Mortar Creek. The question before the Zoning Commissioner was whether

"zoning lines on land extend and comprehend tide water rivers, lakes and running streams or land under water and improvements proposed or erected thereon and apply to riparian owners; further to determine whether or not the Baltimore County Zoning Regulations apply to riparian rights and to improvements erected on tidal waters or land under water."

Maryland Marine argued that § 417 of the BCZR provides for the extension of existing zoning lines on land into tidal water rivers, lakes and running streams. It pointed out that § 417, entitled "Waterfront Construction," provides in § 417.1 that

"[all] waterfront construction, such as piers, wharves, docks, bulkheads, or other work extended into navigable waters beyond mean low tide . . . shall be governed by these regulations as well as the Baltimore County Code"

Maryland Marine also referred to § 417.3 which provides:

"For the purpose of defining boundaries within which waterfront construction may take place, divisional lines shall be established in accordance with the following rules:

(a) With straight shore lines:

If the shoreline is straight, the divisional lines are to be extended from the intersection of the property line and the shoreline into the water perpendicular to the shoreline, or where the property lines are parallel and it is practical to do so, the proper boundary line shall be extended in a straight line into the water.

(b) With irregular shorelines:

Where the shoreline is not straight, draw a baseline between the two corners of each lot at mean low water line. Then draw a line from the corner of each proprietor's property into the water at right angles with the base line. If

by reason of the curvature of the shore, the lines, when projected into the water, diverge from each other, the area excluded by both lines shall be equally divided between the two adjoining proprietors."

It was Maryland Marine's contention that the existing B.L. zoning of its .64 acres extended into the waters of Frog Mortar Creek, thereby allowing construction of its proposed restaurant as a permitted use.

The Zoning Commissioner, relying upon Harbor Island Marina v. Calvert Co., 286 Md. 303, 407 A.2d 738 (1979), held that "Baltimore County has the authority to reasonably regulate the exercise of a riparian right to erect an improvement upon tidal land attached to shore land through zoning." He concluded that zoning on land must extend into the water, for it was not the intent of the Baltimore County Council "to permit random development off shore as otherwise would not be allowed on dry land without being subject to regulations or laws." The Commissioner ordered that "those uses permitted on dry land located in [a] particular zone are permitted on tide water rivers, lakes, running streams, or land under water within lines extended from the zoning boundary lines of the dry land to which the 'wet' land is attached, from and after the date of this Order" The Commissioner's order was made contingent upon compliance with the Chesapeake Bay Critical Area legislation, Maryland Code (1988 Cum. Supp.), §§ 8-1801 et seq. of the National Resources Article, Title 14, subtitle 15 of the Code of Maryland Regulations (COMAR), and Bill Nos. 35-88 and 32-88 of

the County Council of Baltimore County, Maryland (Development Regulations in the Chesapeake Bay Critical Area).

An appeal was taken to the Baltimore County Board of Appeals by the People's Counsel for Baltimore County. The Board stated that § 417 of the BCZR anticipates construction of improvements beyond the shoreline of tidal waters, and that the proposed restaurant was in compliance with that section. The Board held, however, that "no zoning is needed for the land beneath the water" as long as all other requirements (e.g. Baltimore County building regulations, permission from the United States Army Corps of Engineers, state and local Critical Area Regulations) were satisfied. It did not matter, according to the Board, whether "zoning lines on land extend [into] and comprehend . . . land under water and improvements proposed or erected thereon."

On appeal to the Circuit Court for Baltimore County, People's Counsel argued that a zone must be placed upon land under water before development of a primary or non-water-dependent use is allowed. She argued that "because Baltimore County has not exercised its right to zone waterways, . . . the direct effect thereof is that a use cannot be built into those unzoned waterways." The court (Turnbull, J.) affirmed the Board's order, declining to "substitute its judgment for that of an administrative agency." Citing Harbor Island, supra, it held that "the Counties have the power to regulate and restrict use of land including land under water." It noted that the proposed restaurant would be "surrounded by a pre-existing marina

and [would extend] no further into the water way than the existing structures."

People's Counsel appealed. We granted certiorari before decision by the Court of Special Appeals to consider the significant issue raised in the case.

II.

As we have frequently indicated, the order of an administrative agency must be upheld on judicial review if it is not based on an error of law, and if the agency's conclusions reasonably may be based upon the facts proven. Ad + Soil, Inc. v. County Comm'rs, 307 Md. 307, 338-39, 513 A.2d 893 (1986). But a reviewing court is under no constraints in reversing an administrative decision which is premised solely upon an erroneous conclusion of law. See, e.g., Ramsay, Scarlett & Co. v. Comptroller, 302 Md. 825, 835, 490 A.2d 1296 (1985); Harford County v. McDonough, 74 Md. App. 119, 122, 536 A.2d 724 (1988). The issues with which we are concerned in this case present purely legal questions, such as the proper interpretation of § 417 of the BCZR, the scope of a charter county's zoning power, and the extent of the riparian owner's right to construct improvements into the water.

People's Counsel argues before us that a specific zone must be placed on land under water before a non-water-dependent use may be developed. She contends that Baltimore County has not zoned the land under water at the boundary of Maryland Marine's property, and therefore the proposed restaurant cannot be

constructed. Maryland Marine asserts that the proposed site is zoned B.L. Section 417 of the BCZR, it contends, "sets the guidelines for determining the types of improvements that may be constructed into the water" and also "provides the means for extending zoning lines on shore into tidal water." People's Counsel disagrees; she maintains that § 417.1 does not determine what types of improvements can be made, but rather lists general types of waterfront construction for illustrative purposes. People's Counsel also contends that § 417.3 does not extend zoning lines, but simply draws divisional lines to determine where waterfront construction may take place.

Considering the plain language of §§ 417.1 and 417.3, along with the illustrations in official Appendix J of the BCZR, we think it clear that the purpose of these sections is to determine divisional lines for waterfront construction as between two adjoining riparian property owners. Quite simply, these sections determine where waterfront structures may be placed, and do not purport to determine what kinds of waterfront structures may be built. Section 417.3 plainly states that it is "[f]or the purpose of defining boundaries within which waterfront construction may take place." It also discusses divisional and property lines, not zoning lines. Plainly, § 417.1 and § 417.3 were not enacted to regulate the kinds of riparian improvements which may be constructed. It is equally clear that § 417.3 does not extend or even address the placement of zoning boundary lines.

Both parties agree, in light of Harbor Island, supra, that Baltimore County has the power to zone land under water. Although Harbor Island involved a non-chartered county and its zoning authority under Maryland Code (1957, 1978 Repl. Vol.), Art. 66B, § 4.01, the parties agree that there is nothing in the zoning authority granted to charter counties like Baltimore County which would prevent them from exercising the same degree of zoning power as non-chartered counties.² But it is unnecessary to specifically decide this issue because even if Baltimore County has the power to zone land under water, it would not apply in this case. This is so because the scope of the County's zoning authority extends only as far as the scope of the right to construct riparian improvements.

In Harbor Island, we were asked to decide the extent to which a county may regulate, through zoning, the construction of riparian improvements.³ We noted that a non-chartered county's

²See Maryland Code (1957, 1987 Repl. Vol.) Art. 25A, § 5(X) (The Express Powers Act--granting zoning power to charter counties). Cf. Art. 66B, § 4.01.

³Riparian improvements are generally defined as those structures which are connected to waterfront land and built into the water. We have defined them as improvements which

"a proprietor of land bounding on navigable waters, is entitled to make into the same.
 . . . [They] are plainly, we think, such structures as are subservient to the land, and which used in connection with the land, enhance its value or enlarge its commercial

(Footnote Continued)

authority, under Art. 66B, § 4.01, to zone "land" was not limited to dry land, but included "any 'land' or 'lands' within its boundaries, . . . no matter whether wet or dry." 286 Md. at 313. We also observed that in Maryland "nearly all of the navigable waters, as well as the lands beneath them, are owned by the State for the benefit of all its citizens." Id. at 314.⁴ Since

(Footnote Continued)

or agricultural facilities, or other utility, to an extent the land alone would be incapable of, and in this way 'improve' it. . . . Wharves, piers and landings are examples of such improvements." Hess v. Muir, 65 Md. 586, 598, 5 A. 540 (1886).

⁴ "The lands in Maryland covered by water were granted to the Lord Proprietor by Section 4 of the Charter from King Charles I to Caecillius Calvert, Baron of Baltimore, his heirs, successors and assigns, who had the power to dispose of such lands, subject to the public rights of fishing and navigation. . . . By virtue of Art. 5 of the Declaration of Rights in the Maryland Constitution, the inhabitants of Maryland became entitled to all property derived from and under the Charter and thereafter the State of Maryland had the same title to, and rights in, such lands under water as the Lord Proprietor had previously held. These lands were held for the benefit of the inhabitants of Maryland and this holding is of a general fiduciary character." Kerpelman v. Bd. of Pub. Works, 261 Md. 436, 445, 276 A.2d 56 (1971).

People's Counsel suggests that the public trust doctrine applies to this case and prohibits the construction of the proposed restaurant. She contends that since Maryland's submerged lands are owned by the State in trust for its citizens, it cannot allow these lands to be placed entirely out of its control, such as by a sale or by relinquishing its rights in the land to riparian owners. In view of our disposition of the case, we do not address this question.

State-owned lands are not subject to the county's zoning authority in the absence of a clear implication or a specific provision that the State is specifically bound by the zoning enabling act, we held that land under water is generally not subject to local zoning regulations. Id. at 315. See also City of Baltimore v. State, 281 Md. 217, 223, 378 A.2d 1326 (1977) (State is not bound by an enactment of the General Assembly unless the statute specifically names the State or manifests a clear and indisputable intention that it be bound). But our inquiry in Harbor Island was not thereby ended, for we also recognized that when permitted riparian improvements are completed, they essentially become part of the dry land. Consequently, we said, the improvements become "'incident to the estate, as not inherently identical in nature with land, but, from being joined to it, and contributing to its uses and value legally identified with it, as a fixture or a right of way, or other appurtenance that passes with the land.'" 286 Md. at 320 (quoting Hess v. Muir, 65 Md. 586, 598, 5 A. 540 (1886)). We therefore held that

"when improvements are made into the navigable waters by a riparian proprietor, the land utilized in their construction, which prior to completion belonged to the State, for all practical purposes becomes a part of the fast land. Thus, any limitation upon the county's ability to zone which arises because the land in question belongs to the State does not apply to improvements attached to riparian land." 286 Md. at 322.

Under Harbor Island, therefore, a non-chartered county has the authority to reasonably regulate riparian improvements since State-owned submerged land, when covered by a permitted riparian improvement, takes on the characteristics of private land. It is essentially the same as though the riparian owner's lot had been extended to include this land; it then comes within the county's zoning authority.

Maryland Marine argues that the proposed restaurant is a riparian improvement which Baltimore County may regulate through zoning. Of course, all structures that may be built into the water cannot be classified as permissible riparian improvements. Harbor Island indicates that a county's power to zone extends only to those improvements which the riparian owner has a right to build into the water bounding its property, because it is only in relation to these improvements that the riparian has the right to the use of the submerged land upon which the improvement is constructed.

There are several rights which are enjoyed by the riparian owner. Not the least of these is the right to the flow of water by the riparian property in its natural state. Paper Company v. Zeitler, 180 Md. 395, 397, 24 A.2d 788 (1942). The riparian proprietor also has a right to reasonable use of the water, subject to the same right of every other riparian owner, for legitimate domestic, agricultural and manufacturing purposes. Id.; Kelly v. Nagle, 150 Md. 125, 137-38, 132 A.2d 587 (1926).

At common law, the rights of riparian owners were generally limited to accretion and reliction.⁵ In B. & O. R.R. Co. v. Chase, 43 Md. 23, 34-35 (1875), we noted that, at common law,

"[a]ny increase of soil formed by the gradual and imperceptible recession of the waters [reliction], or any gain by the gradual and imperceptible formation of what is called alluvion, from the action of the water in washing it against the fast land of the shore, and there becoming fixed as part of the land itself [accretion], shall belong to the proprietor of the adjacent or contiguous land."

The rationale behind this right, "the sole purpose of the rule, was to assure to the riparian owner that he would never be

⁵There is some indication that the riparian owner's common law rights also included the right to "wharf out" for the purpose of access to navigable water. For example, in B. & O. R.R. Co. v. Chase, 43 Md. 23, 35 (1875), we noted that "in addition to this right by accretion or reliction, the riparian proprietor . . . has the right of access to the navigable part of the river from the front of his lot, and the right to make a landing, wharf or pier for his own use or for the use of the public These riparian rights, founded on the common law, are property, and are valuable" In Causey v. Gray, 250 Md. 380, 387, 243 A.2d 575 (1968), we held that "[t]he owner of fast land . . . has a common law right to land formed by accretion . . . and has the right of access to the navigable part of the river in front of his fast land, with the right to make a landing, wharf or pier in front of his fast land. . . ." There is also law to the contrary. See, e.g., Melvin v. Schlessinger, 138 Md. 337, 340, 113 A. 875 (1921) ("the riparian owner had no right whatsoever at common law to make improvements into the water in front of his land"); Cahill v. Baltimore, 173 Md. 450, 455, 196 A. 305 (1937) ("a right to build a wharf into deep water of such a navigable river as the Patapsco can be derived only from a grant or permission of the State"); Goodsell v. Lawson, 42 Md. 348, 362 (1975); Wicks v. Howard, 40 Md. App. 135, 136, 388 A.2d 1250 (1978) ("the right to extend permanent improvements into the waters in front of one's land is not an inherent or common law right").

cut off from his access to water." Bd. of Pub. Works v. Larmar Corp., 262 Md. 24, 36, 277 A.2d 427 (1971). See also Steinem v. Romney, 233 Md. 16, 23, 194 A.2d 774 (1963) ("[the] fundamental riparian right--on which all others depend, and which often constitutes the principal value of land--[is] access to water"). We have noted that the right of access to the water is fundamental when "assessing the changes which have occurred in riparian rights down the corridor of years." Id. See also Rayne v. Coulbourne, 65 Md. App. 351, 500 A.2d 665 (1985).

We have held that the right to build a wharf or other structure into the water can be derived only from a grant or permission of the State, because virtually all land under water belongs to the State. Potomac Sand & Gravel v. Governor, 266 Md. 358, 364, 293 A.2d 241 (1972); Cahill v. Baltimore, 173 Md. 450, 455, 196 A. 305 (1937). The right to construct riparian improvements is also subject to revocation at any time before the improvement is actually completed. Id. at 457. In West. Md. T.R. Co. v. Baltimore City, 106 Md. 561, 68 A. 6 (1907), we stated:

"It should not be forgotten that although the riparian owner has a right to . . . make improvements into the water in front of his original land, yet until he does so, the title to the land under the water is in the State . . . '[T]he right to make improvements in navigable waters . . . [is] a mere privilege . . . and . . . until the improvement [is] completed, no title [is] acquired by the adjacent owner.'" Id. at 567 (quoting Linthicum v. Coan, 64 Md. 439, 453, 2 A. 693 (1886)).

See also Bd. of Public Works v. Larmer Corp., 262 Md. 24, 50, 277 A.2d 427 (1971) ("Indeed, it would appear that a valid distinction may be drawn between 'used' and 'unused' riparian rights and . . . that constitutional protection . . . may extend only to such rights as the riparian actually exercises before the Legislature decides to make changes or modification."); City of Baltimore v. Canton Co., 186 Md. 618, 625, 47 A.2d 775 (1946) ("the riparian owner [has] no vested title to the land covered by water, . . . nor to the improvements built out of the water, until the improvements [have] been actually completed"). Accord, Culley v. Hollis, 180 Md. 372, 376, 25 A.2d 196 (1941); Cahill v. Baltimore, supra, 173 Md. at 456; Hodson v. Nelson, 122 Md. 330, 338, 89 A. 934 (1914); Wicks v. Howard, supra, 40 Md. App. at 137. We also noted in Hodson, supra, that: only when riparian improvements are made, and [only] to the extent actually occupied by the improvements, do [they] and the ground they necessarily occupy become 'incident to the estate.'" 122 Md. at 340.

In Maryland, the right to construct riparian improvements has been largely controlled by statute.⁶ In 1745, an Act which incorporated Baltimore Town provided that within the town

⁶ "In defining the exact limits of the rights of the riparian proprietor at the common law . . . , there is to be found a considerable diversity of opinion among courts of high authority, as well as among the writers upon the subject. In this State, however, those

(Footnote Continued)

"[a]ll Improvements, of what kind soever, either Wharfs, Houses, or other Buildings, that have or shall be made out of the Water, or where it usually flows, shall (as an Encouragement to such Improvers) be for ever deemed the Right, Title and Inheritance of such Improvers, their Heirs and Assigns for ever." Ch. 69, § 10 of the Acts of 1745.

The apparent purpose of this statute was to encourage the growth of the town by expansion of its port. Harbor Island, supra, 286 Md. at 316. In order to encourage the efficient use of land near and under water, the Lord Proprietor agreed to relinquish all rights of ownership in the submerged lands covered by the improvements. Id. In Larmar, supra, we observed that the 1745 Act

"was obviously passed to accommodate the growing pains of a burgeoning colony as a prelude to the state and nation to be. Environmental factors and ecological balances were not yet the concern of the people of this new land. Their concern was the building of a bustling port on the eastern seaboard to support westward expansion of population and commerce." 262 Md. at 37.

The Act of 1745 applied only to Baltimore Town. There was no clear statutory definition of the rights of riparian owners in other parts of the State to construct improvements until 1862, when the Maryland General Assembly enacted ch. 129 of the Acts of

(Footnote Continued)

rights have been defined by statute, and secured to the proprietor to an extent beyond what the common law allowed, even according to the largest definition of those rights under that law." Garitee v. Baltimore, 53 Md. 422, 432 (1880).

1862, later codified as Maryland Code (1957), Art. 54, § 45, et seq. That statute provided in part (§ 46):

"the proprietor of land bounding on any of the navigable waters of this State shall be entitled to the exclusive right of making improvements into the waters in front of his said land; such improvements and other accretions as above provided for shall pass to the successive owners of the land to which they are attached, as incident to their respective estates. But no such improvement shall be so made as to interfere with the navigation of the stream of water into which the said improvement is made."

It seems clear that both the 1745 and the 1862 Acts were meant to confer a right to construct improvements for purposes beyond mere access to the navigable portion of the water. As earlier indicated in Hess v. Muir, supra, we defined these improvements as

"such structures as are subservient to the land, and which used in connection with the land, enhance its value or enlarge its commercial or agricultural facilities, or other utility, to an extent the land alone would be incapable of, and in this way 'improve' it. . . . Wharves, piers and landings are examples of such improvements." 65 Md. at 598.

We noted that "[f]arming and commercial interests are promoted by the privilege and to encourage the development of these was the main object of conferring it." Id.

In 1970, the General Assembly repealed Art. 54, § 46, and adopted the Wetlands Act, Maryland Code, (1973, 1983 Repl. Vol.) § 9-101 et seq. of the Natural Resources Article. Section 9-201 of that act, in accordance with its objective of preserving the State's wetlands, provides for a more limited right to construct

riparian improvements. It specifies that "[a] person who is the owner of land bounding on navigable water . . . may make improvements into the water in front of the land to preserve that person's access to the navigable water or protect the shore of that person against erosion. After an improvement is constructed, it is the property of the owner of the land to which it is attached." (Emphasis added.)⁷ A 1972 Attorney General's Opinion concluded that

"[t]he unequivocal intent of the [Wetlands] Act is to limit the rights, privileges and enjoyment of riparian ownership. . . . [T]he improvements contemplated within the wetlands law connote a more restrictive use of that term than in former Section 46 of Article 54 since the word 'improvements' is limited and defined now as 'for the purpose of preserving . . . access to navigable water or for protecting . . . shore against erosion.'"

57 Op. Att'y Gen. 445, 455 (1972).

See also Comment, Maryland's Wetlands: The Legal Quagmire, 30 Md. L. Rev. 240, 254 (1970) ("The improvement section of the 1862 Act

⁷We have, on other occasions, recognized that the Wetlands Act confers a more restrictive right to construct riparian improvements. For example, in *Owen v. Hubbard*, 260 Md. 146, 161, 271 A.2d 672 (1970), we stated that "the new wetlands act . . . has repealed and . . . replaced Art. 54, Sec. 46 with a more limited right to construct shoreline improvements." In Harbor Island, supra, we took note of the possibility that the Wetlands Act imposed additional restrictions on the right to construct riparian improvements, but found it unnecessary to reach the issue in that case. 286 Md. at 323, n.13. It is manifest that consideration must be given to the need for a permit from the State Board of Public Works before constructing the riparian improvements authorized by the Wetlands Act. See also *Hirsch v. Md. Dep't of Nat. Resources*, 288 Md. 95, 100, 416 A.2d 10 (1980) (discussing the riparian provisions of the Wetlands Act).

has also been narrowed significantly; the new statute only provides specifically for improvements for the purpose of preserving the riparian's access to the water or for protecting his shore against erosion.").

III.

It is clear that Maryland Marine's right to build improvements into the waters of Frog Mortar Creek is subject to the provisions of § 9-201 of the Wetlands Act. That construction of the proposed restaurant would not, within the contemplation of § 9-201, constitute an improvement to preserve access to navigable water or to protect the shore against erosion is, of course, equally clear. Thus, even though Baltimore County may have authority to zone permitted riparian improvements, it is not presently empowered to permit construction of the restaurant in this case. Nevertheless, in furtherance of its plan, Maryland Marine may seek to acquire, by purchase or lease from the State Board of Public Works, that part of the State's submerged land upon which the restaurant is planned to be erected. Section 9-201 of the Wetlands Act provides that "[a] right covered in this subtitle does not preclude the [riparian] owner from developing any other use approved by the Board [of Public Works]." And Maryland Code (1985, 1988 Repl. Vol.), § 10-402 of the State Finance and Procurement Act allows for the conveyance of State-owned submerged land to a riparian owner under certain circumstances and under certain conditions. Section 10-305 also generally provides for the lease of State-owned land to private

persons. We also note that, along with other requirements, State and Baltimore County Critical Area Regulations must be satisfied before the proposed project may be permitted to proceed.⁸

We therefore conclude, for the purposes of this case, that Baltimore County is not empowered to provide the required initial authorization for the construction of the proposed non-riparian restaurant use.⁹

JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY VACATED;
CASE REMANDED TO THAT COURT
WITH DIRECTIONS TO REMAND THE
MATTER TO THE BOARD OF APPEALS
OF BALTIMORE COUNTY WITH

⁸See Maryland Code (1973, 1988 Cum. Supp.) § 8-1801 et seq. of the Natural Resources Article; Code of Maryland Regulations (COMAR) Title 14, subtitle 15; and Bill No. 35-88 of the County Council of Baltimore County, Maryland (Development Regulations in the Chesapeake Bay Critical Area). The Critical Area Program was adopted by the General Assembly in 1984 to establish programs on a cooperative basis between the State and local governments to encourage "more sensitive development activity for certain shoreline areas so as to minimize damage to water quality and natural habitats." § 8-1801(b)(1) of the Natural Resources Article.

⁹Section 103.2 of the BCZR provides that "[w]hen any public use ceases or when title of unzoned public land passes into private ownership, [it] shall not be used for private purposes until . . . zoned in accordance with these Regulations." Thus, should the State Board of Public Works permit Maryland Marine to acquire title to the site, § 103.2 may permit zoning of the site by Baltimore County since title to the formerly unzoned land would pass unto private ownership.

INSTRUCTIONS TO VACATE ITS
ORDER AND THAT OF THE ZONING
COMMISSIONER OF BALTIMORE
COUNTY AND TO ENTER AN ORDER
CONSISTENT WITH THIS OPINION.
COSTS TO BE PAID BY THE
APPELLEE.

To be heard by Court of Appeals
on its own motion, without hearing
at Court of Special Appeals level.

File

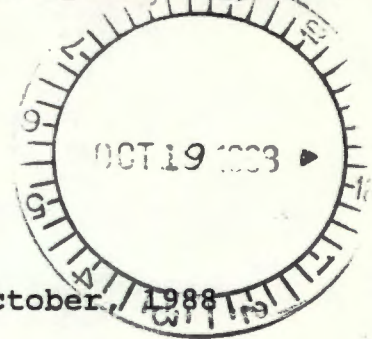
PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY

v.

MARYLAND MARINE
MANUFACTURING CO., INC.

* In the
* Court of Appeals
* of Maryland
* (No. 795 - Sept. Term, 1988
* Court of Special Appeals)
*
*
*

ORDER



It is this 13th day of October, 1988

ORDERED, by the Court of Appeals of Maryland,
on its own motion, that a writ of certiorari to the Court
of Special Appeals shall issue in the above entitled case
and said case shall be docketed on the regular docket as
No. 89, September Term, 1988; and it is further

ORDERED that counsel shall file briefs and
printed record extract in accordance with Rules 8-501 and
8-502, appellee's brief to be filed on or before October
16, 1988.

/s/ Robert C. Murphy
Chief Judge

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY

v.

MARYLAND MARINE
MANUFACTURING CO., INC.

* In the
* Court of Appeals
* of Maryland
* (No. 795, Sept. Term, 1988
* Court of Special Appeals)
*

WRIT OF CERTIORARI

STATE OF MARYLAND, to wit:

TO THE HONORABLE THE JUDGES OF THE
COURT OF SPECIAL APPEALS OF MARYLAND:

WHEREAS, People's Counsel for Baltimore County
v. Maryland Marine Manufacturing Co., Inc. No. 795, September
Term, 1988 is pending before your Court and the Court of Appeals
is willing that the records and proceedings therein be certified
to it.

YOU ARE HEREBY COMMANDED to cause them to be sent
without delay to the Court of Appeals of Maryland, together with
this writ, for the said Court to proceed thereon as justice may
require.

WITNESS the Chief Judge of the Court of Appeals
of Maryland this 13th day of October, 1988.

/s/ Alexander L. Cummings
Clerk
Court of Appeals of Maryland



Court of Appeals of Maryland

Courts of Appeal Building
Annapolis, Md. 21401-1699

ALEXANDER L. CUMMINGS
CLERK

974-3341
WASHINGTON AREA 261-2999

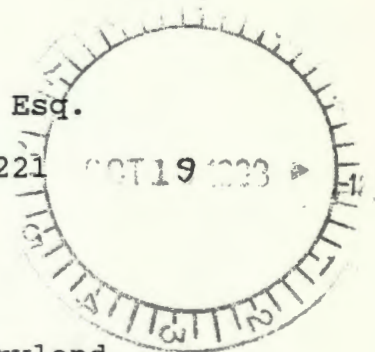
ROBERT C. FRANKE
CHIEF DEPUTY

MARY J. MORRIS
BESSIE M. DECKER
BETTY J. WILLIAMS
DEPUTIES

October 13, 1988

Phyllis Cole Friedman, Esq.
Peter Max Zimmerman, Esq.
Deputy People's Counsel
Room 304, County Office Bldg.
111 W. Chesapeake Avenue
Towson, MD 21202

John O. Hennegan, Esq.
809 Eastern Blvd.
Baltimore, MD 21221



RE: People's Counsel for Baltimore County v. Maryland
Marine Manufacturing Co., Inc., No. 89, September Term,
1988

Dear Counsel:

In accordance with the enclosed writ of certiorari and Order, the above entitled case has been docketed in this Court.

Briefs, record extract and appendices filed with the Court of Special Appeals have been transferred to this Court. The appellee's brief shall be filed on or before October 16, 1988. If copies of the printed record extract are not on file in the Court of Special Appeals, the parties shall prepare and file an extract in accordance with Maryland Rule 8-501.

You will be notified as to the exact date of argument.

Very truly yours,

Alexander L. Cummings
Clerk

RECEIVED
OCT 14 1988
JUDICIAL OFFICE

ALC/bj
Enc.

TTY FOR DEAF:
ANNAPOLIS AREA 974-2609
WASHINGTON AREA 565-0450



COPY: Bob Haines

File

5/31/88
5:00 PM
RECEIVED
K.

The Circuit Court for Baltimore County

JUN 20 1988

ZONING OFFICE
COUNTY COURTS BUILDING
TOWSON, MARYLAND 21204
(301) 494-2647

CHAMBERS OF
JOHN GRASON TURNBULL, II
JUDGE

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY

Appellant

vs.

MARYLAND MARINE MANUFACTURING
COMPANY, INC.

Appellee

* IN THE
*
* CIRCUIT COURT
*
* FOR
*
* BALTIMORE COUNTY
*
* CASE NO. 48/48/87 CG4578
*
* ZONING CASE NO. 87-382-SPH *A*

* * * * *

OPINION AND ORDER

This is an Appeal from an Order of the County Board of Appeals of Baltimore County, Maryland, under date of October 7, 1987. The Appellee filed an Answer to the Petition for Appeal setting forth several affirmative defenses. The Appellee does not aggressively pursue his claim of "standing" in this Appeal. The Court finds that People's Counsel has standing and is accordingly properly before this Court.

The issue which is strongly contested is the ruling by the Board of Appeals for Baltimore County that permitted a special hearing and interpretation of the Baltimore County Zoning Regulations that there was no zoning needed for land beneath the water when it is directly abutting land where a use is permitted as a matter of right.

Appellee's in this case own a Marina which is zoned Business Local (BL). They propose to extend the existing BL Zoning to construct

a restaurant, the restaurant an extension of BL which extends into Frog Mortar Creek, approximately one hundred twenty five feet.

The Zoning Commissioner first granted approval, an Appeal from that decision to the County Board of Appeals resulted in their ruling that no special zoning was needed for land beneath the water and thus the Appeal to the Circuit Court for Baltimore County.

The case was argued before this Judge, Memorandums submitted have been read and considered.

Appellant, Peoples' Counsel, argue a specific zoning district must be placed on a water way in order to develop a primary non-water dependent use within it. They argue that because Baltimore County has not exercised its right to zone water ways that the direct effects thereof is that a use cannot be built in these unzoned waterways.

This Court is mindful of its overall review of decisions of administrative bodies and the Board of Appeals specifically that the Court shall not substitute its judgment for that of an administrative agency even in the event that this Court would not have reached the same conclusion. Eger vs. Stone 253 Md 533 (1969).

It is uncontraverted in this case that there are existing improvements that have been built by the Appellees, operating a marina including uses such as piers and boat slips. The Board quotes the Baltimore County Zoning Regulation §417.1 entitled "Waterfront Construction" as follows:

"All waterfront construction, such as piers, wharves, docks, bulkheads, or other work extended into navigable waters beyond mean low tide as prescribed

in Baltimore County Design Manual, 1955, shall be governed by these regulations as well as by the Baltimore County Code...." (emphasis added)

The further applicable sections of the zoning regulations are §417.2 and 417.3 and 417.5 quoted hereafter:

Section 417.2 states:

"All applications for waterfront construction, when filed with the buildings engineer, shall be accompanied by a plot diagram suitable for filing permanently with the permit record, showing the outlines of the property in question and of adjoining properties, and showing any existing construction beyond mean low tide, as well as details of the proposed construction; whenever required by the buildings engineer, in his discretion, by application must be accompanied by a plan prepared by a professional engineer or land surveyor, showing to scale the outlines of the property in question, as well as the outlines of the adjoining properties, including any existing construction beyond mean low tide, and a plan and details of the proposed construction." (emphasis added)

Section 417.3 states:

"For the purpose of defining boundaries within which waterfront construction may take place, divisional lines shall be established in accordance with the following rules:

"(a) With straight shore lines:" (as is in the case before us)

"If the shoreline is straight, the divisional lines are to be extended from the intersector of the property line and the shoreline into the water perpendicular to the shoreline, or where the property lines are parallel and it is practical to do so, the proper boundary line shall be extended in a straight line into the water." (emphasis added)

Section 417.5 states:

"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...."
(emphasis added)

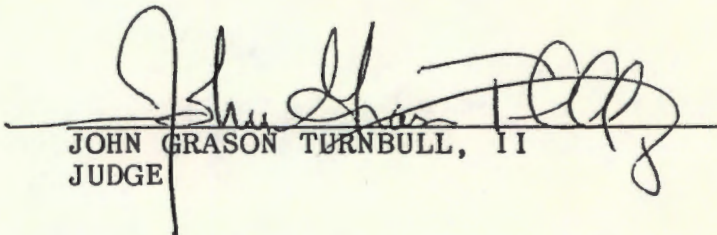
The case of Harbor Island Marina vs. Calvert County 286 Md 303 is extremely close to the case herein and sets forth the proposition that the Counties have the power to regulate and restrict use of land including land under the water. This does not include tidal waters.

The extension of the property line is covered by §417.3(a) of the Baltimore County Zoning Regulations and the lines shown on the plat in this case follow said rule. The facts in this case show that the area in which the Appellee proposes to construct a restaurant is surrounded by a pre existing marina and extends no further into the water way then the existing structures.

The Appellant's conclusion that the Council must specifically address this question prior to permitting same is in this Court's opinion without foundation. The mere fact that the Appellee may have the right to construct this restaurant on the existing zoning does not in any way finalize this project since the restaurant must comply with all other Baltimore County Regulations, must obtain approval of the Corps of Engineers and meet the requirements of the critical areas provisions.

Accordingly, this Court does not find that the Board acted in an arbitrary or capricious matter and will not substitute its judgment for that of the Board. Therefore, it is this 28th day of May, 1988,

ORDERED, by the Circuit Court for Baltimore County, that the Order of the County Board of Appeals of Baltimore County be, and the same is hereby AFFIRMED.


JOHN GRASON TURNBULL, II
JUDGE

Copies sent to: ✓ County Board of Appeals of Baltimore County
Phyllis Cole Friedman, Esquire
John O. Hennegan, Esquire

The Circuit Court for Baltimore County

JOHN GRASON TURNBULL, II
JUDGE

COUNTY COURTS BUILDING
TOWSON, MARYLAND 21204
(410) 584-2647

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY
Appellant
vs.
MARYLAND MARINE MANUFACTURING
COMPANY, INC.
Appellee
ZONING CASE NO. 87-382-SPH

OPINION AND ORDER

This is an Appeal from an Order of the County Board of Appeals of Baltimore County, Maryland, under date of October 7, 1987. The Appellee filed an Answer to the Petition for Appeal setting forth several affirmative defenses. The Appellee does not aggressively pursue his claim of "standing" in this Appeal. The Court finds that People's Counsel has standing and is accordingly properly before this Court.

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a restaurant, the restaurant an extension of BL which extends into Frog Mortar Creek, approximately one hundred twenty five feet.

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This Court is mindful of its overall review of decisions of administrative bodies and the Board of Appeals specifically that the Court shall not substitute its judgment for that of an administrative agency even in the event that this Court would not have reached the same conclusion. Eger vs. Stone 253 Md 533 (1969).

It is uncontraverted in this case that there are existing improvements that have been built by the Appellees, operating a marina including uses such as piers and boat slips. The Board quotes the Baltimore County Zoning Regulation §417.1 entitled "Waterfront Construction" as follows:

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"For the purpose of defining boundaries within which waterfront construction may take place, divisional lines shall be established in accordance with the following rules:

"(a) With straight shore lines: (as is in the case before us)

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-3-

"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:

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The extension of the property line is covered by §417.3(a) of the Baltimore County Zoning Regulations and the lines shown on the plat in this case follow said rule. The facts in this case show that the area in which the Appellee proposes to construct a restaurant is surrounded by a pre existing marina and extends no further into the water way than the existing structures.

The Appellant's conclusion that the Council must specifically address this question prior to permitting same is in this Court's opinion without foundation. The mere fact that the Appellee may have the right to construct this restaurant on the existing zoning does not in any way finalize this project since the restaurant must comply with all other Baltimore County Regulations, must obtain approval of the Corps of Engineers and meet the requirements of the critical areas provisions.

Accordingly, this Court does not find that the Board acted in an arbitrary or capricious matter and will not substitute its judgment for that of the Board. Therefore, it is this 22nd day of May, 1988,

-4-

ORDERED, by the Circuit Court for Baltimore County, that the Order of the County Board of Appeals of Baltimore County be, and the same is hereby **AFFIRMED**.

John Grason Turnbull, II
JOHN GRASON TURNBULL, II
JUDGE

Copies sent to: County Board of Appeals of Baltimore County
Phyllis Cole Friedman, Esquire
John O. Hennegan, Esquire

-5-

IN THE MATTER OF
THE APPLICATION OF
MARYLAND MARINE MANUFACTURING
COMPANY, INC.
FOR A SPECIAL HEARING REGARDING
PROPERTY LOCATED ON THE WEST SIDE
OF RED ROSE FARM RD., 1305.65' WEST
OF THE C/L OF BOWLEYS QUARTERS RD.
15th ELECTION DISTRICT
5th COUNCILMANIC DISTRICT
PEOPLE'S COUNSEL FOR BALTIMORE
COUNTY, PLAINTIFFS
FILE NO. 87-382-SPH

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW

CG Doc. No. 48

Folio No. 48

File No. 87-CG-4578

CERTIFIED COPIES OF PROCEEDINGS BEFORE THE ZONING
COMMISSIONER AND THE BOARD OF APPEALS OF BALTI-
MORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come William T. Hackett, Harry E. Buchneister, Jr. and Patricia Phipps, 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, consisting of the following certified copies or original papers on file in the office of the Zoning Department of Baltimore County:

No. 87-382-SPH

February 11, 1987 Petition of Maryland Marine Manufacturing Co., Inc., for special hearing on property located on the west side of Red Rose Farm Rd., 1305.65' west of the center line of Bowleys Quarters Rd., in the 15th Election District of Baltimore County.
March 14 Certificate of Posting of property - filed
March 18 Certificate of Publication in newspaper - filed
March 24 Comments of Balto. County Zoning Plans Advisory Committee - filed
April 9 At 10:30 a.m. hearing on petition by Zoning Commissioner
April 20 Order of Zoning Commissioner that those uses permitted on dry land located in that particular zone are permitted on tide water rivers, lakes, running streams, or land under water within lines extended from the zoning boundary lines of the dry land to which the "wet" land is

Md. Marine Manufacturing Co., Inc.
Case No. 87-382-SPH

attached, from and after the date of the Order, subject to restrictions.
May 19, 1987 Order for appeal to C.B. of A. from Phyllis C. Friedman, People's Counsel for Baltimore County.
August 27 Hearing on appeal before County Board of Appeals.
October 7 Order of County Board of Appeals ordering that the petition for special hearing requesting the interpretation of the Baltimore County Zoning Regs. be GRANTED; and FURTHER ORDERED that the amended site plan approved in Case No. 74-285-XA to reflect the additional parking be GRANTED.
October 28 Order for Appeal filed in the Circuit Ct. for Baltimore County by Phyllis C. Friedman, People's Counsel for Baltimore County.
October 28 Certificate of Notice sent to interested parties
October 28 Petition to accompany Order for Appeal filed in the Circuit Ct. for Balto. County
November 20 Transcript of testimony filed
Petitioner's Exhibit No. 1 - Bd. of Appeals' file
" " " 2 - Copy of Bill #64
" " " 3 - Copy B.C. Zoning Issues #5-178
" " " 4A,B,C - 3 sheets showing layout, Floor 1, 2, 3
" " " 5 - Photos, series of 8
People's Counsel's Exhibit No. 1 - Memo, Norman Gerber, dated Apr. 1987
" " " 2A-D - 1000 scale BC zoning maps
" " " 3 - Copy of Appellants' Brief and Appendix-Harbor Island Marina, Inc.
November 27, 1987 Record of proceedings filed in the Circuit Court for Baltimore County

Md. Marine Manufacturing Co., Inc.
Case No. 87-382-SPH

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 unsteady or bulky nature will be retained in the Board of Appeals' office, and upon request of the parties on the Court will be transmitted to the Court by whomsoever initiates the request.

Respectfully submitted,

John O. Hennegan
County Board of Appeals of Baltimore County

cc: John O. Hennegan, Esq.
Phyllis C. Friedman, Esq.

264 87-382-SPH **PETITION FOR SPECIAL HEARING** TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and 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 or determine whether or not zoning lines on land extend and comprehend tide water rivers, lakes and running streams or land under water and improvements proposed or erected thereon and apply to riparian owners; further to determine whether or not the Baltimore County Zoning Regulations apply to riparian rights and to improvements erected on tidal waters or land under water and to amend site plan to include additional parking and for parking to be shared with restaurant.

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: _____ by: _____
(Type or Print Name) _____
Signature _____
Address _____
City and State _____
Attorney for Petitioner: _____
John O. Hennegan, Esquire
(Type or Print Name) _____
Signature _____
809 Eastern Boulevard
Address _____
Baltimore, Maryland 21221
City and State _____
Attorney's Telephone No.: 686-8274
Name _____
Address _____
Phone No. _____

ORDERED By The Zoning Commissioner of Baltimore County, this _____ day of _____, 1987, 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 _____, 1987, at _____ o'clock _____ M.

Zoning Commissioner of Baltimore County.

2.C.O.-No. 1 (over)
Critical Area

PETITION FOR SPECIAL HEARING
15th Election District - 5th Councilmanic District
Case No. 87-382-SPH
LOCATION: West Side of Red Rose Farm Road, 1305.65 feet West of the Centerline of Bowleys Quarters Road
DATE AND TIME: Thursday, April 9, 1987, at 10:30 a.m.
PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland
The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

Petition for Special Hearing to determine whether or not zoning lines on land extend and comprehend tide water rivers, lakes and running streams or land under water and improvements proposed or erected thereon and apply to riparian owners; further to determine whether or not the Baltimore County Zoning Regulations apply to riparian rights and to improvements erected on tidal waters or land under water and to amend site plan to include additional parking and for parking to be shared with restaurant.

Being the property of _____, as shown on plat filed with the Zoning Office.
Maryland Marine Manufacturing Co., Inc.

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

BY ORDER OF
ARNOLD JABLON
ZONING COMMISSIONER
OF BALTIMORE COUNTY

to amend site plan to include additional parking and for parking to be shared with restaurant.

PETITION FOR SPECIAL HEARING
15th Election District - 5th Councilmanic District
Case No. 87-382-SPH
LOCATION: West Side of Red Rose Farm Road, 1305.65 feet West of the Centerline of Bowleys Quarters Road
DATE AND TIME: Thursday, April 9, 1987, at 10:30 a.m.
PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland
The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing: Petition for Special Hearing to determine whether or not zoning lines on land extend and comprehend tide water rivers, lakes and running streams or land under water and improvements proposed or erected thereon and apply to riparian owners; further to determine whether or not the Baltimore County Zoning Regulations apply to riparian rights and to improvements erected on tidal waters or land under water and to amend site plan to include additional parking and for parking to be shared with restaurant. Being the property of Maryland Marine Manufacturing Co., Inc., as shown on plat filed with the Zoning Office. In the event that this Petition(s) is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be received in writing by the date of the hearing set above or made at the hearing. By Order Of ARNOLD JABLON, Zoning Commissioner of Baltimore County 3182 Mar. 19.

"DUPLICATE" CERTIFICATE OF PUBLICATION

TOWSON, MD. _____, 1987.
THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper written and published in Towson, Baltimore County, Md., appearing on _____, 1987.

THE JEFFERSONIAN,
Publisher

38.61

DAVID A. HAWKES, P.E.
6427 Beechwood Drive
Columbia, Maryland 21043

BEGINNING at a point on the property line and the centerline of Red Rose Farm Road at the following five courses and distances along the centerline of said Red Rose Farm Road from the centerline of Bowleys Quarters Road (1) South 63 degrees 54 minutes 40 seconds West 897.85 feet more or less (2) North 74 degrees 19 minutes 20 seconds West 49.0 feet (3) North 54 degrees 33 minutes West 100.95 feet (4) North 68 degrees 09 minutes 50 seconds West 92.35 feet (5) South 64 degrees 15 minutes 50 seconds West 165.60 feet.

From the point of beginning South 22 degrees 19 minutes 20 seconds East 700.80 feet, North 68 degrees 55 minutes 20 seconds East 332.26 feet, South 23 degrees 11 minutes 40 seconds East 285.28 feet, North 83 degrees 59 minutes West 893.23 feet, North 5 degrees 13 minutes East 100.00 feet, North 84 degrees 47 minutes 0 seconds West 164.86 feet to the waters of Frog Mortar Creek, thence binding on the waters of Frog Mortar Creek the following eight courses and distances (1) North 17 degrees 42 minutes West 293.81 feet (2) North 20 degrees 16 minutes 14 seconds West 120.74 feet (3) North 71 degrees 21 minutes 47 seconds East 13.52 feet (4) North 0 degrees 37 minutes 54 seconds East 187.55 feet (5) North 6 degrees 8 minutes 20 seconds East 161.85 feet (6) North 13 degrees 11 minutes 50 seconds East 95.45 feet (7) North 85 degrees 17 minutes 20 seconds East 159.76 feet (8) North 75 degrees 45 minutes 12 seconds East 158.33 feet, thence leaving Frog Mortar Creek and running South 25 degrees 42 minutes 10 seconds East 329.36 feet to the centerline of Red Rose Farm Road, then South 64 degrees 15 minutes 50 seconds West 19.78 feet along the centerline to the point of beginning. Containing 13.2 acres.

The property subject to the zoning hearing shall include an extension of the portion of the property presently zoned BL, beginning at the end of Rose Farm Road as shown on the amended site plan and proceeds North 19 degrees 15 minutes 10 seconds West 128.04 feet, South 69 degrees 37 minutes West 196.08 feet to the waters of Frog Mortar Creek, thence binding on these waters South 0 degrees 37 minutes 54 seconds West 134.04 feet, and North 69 degrees 07 minutes east 241.36' to the point of beginning, to enclose a rectangular area into Frog Mortar Creek between the two existing piers as shown on the amended site plan the purpose there being to extend the north and south zoning lines into Frog Mortar Creek.

RE: PETITION FOR SPECIAL HEARING : BEFORE THE ZONING COMMISSIONER
W/S of Red Rose Farm Rd., : OF BALTIMORE COUNTY
1305.75' W of C/L of Bowleys :
Quarters Rd., 15th District :
MARYLAND MARINE MANUFACTURING : Case No. 87-382-SPH
CO., INC., Petitioner :
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
Room 223, Court House
Towson, Maryland 21204
494-2188

I HEREBY CERTIFY that on this 10th day of March, 1987, a copy of the foregoing Entry of Appearance was mailed to John O. Hennegan, Esquire, 809 Eastern Blvd., Essex, MD 21221, Attorney for Petitioner.

Peter Max Zimmerman

PETITION FOR SPECIAL HEARING 15th Election District - 5th Councilmanic District Case No. 87-382-SPH LOCATION: West Side of Red Rose Farm Road, 1305.65 feet West of the Centerline of Bowleys Quarters Road. DATE AND TIME: Thursday, April 9, 1987, at 10:30 a.m. PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland. The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing: Petition for Special Hearing to determine whether or not zoning lines on land extend and comprehend tide water rivers, lakes and running streams or land under water and improvements proposed or erected thereon and apply to riparian owners; further to determine whether or not the Baltimore County Zoning Regulations apply to riparian rights and to improvements erected on tidal waters or land under water and to amend site plan to include additional parking and for parking to be shared with restaurant. Being the property of Maryland Marine Manufacturing Co., Inc., as shown on plat filed with the Zoning Office. In the event that this Petition(s) is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be received in writing by the date of the hearing set above or made at the hearing.

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.

The Times

River, Md., _____, 1987

This is to Certify, That the annexed

was inserted in The Times, a newspaper printed and published in Baltimore County, once in each of _____ successive weeks before the _____ day of _____, 1987.

Publisher.

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY Towson, Maryland

District: _____ Date of Posting: _____
Posted for: _____
Petitioner: _____
Location of property: _____
Location of Signs: _____
Remarks: _____
Posted by: _____ Date of return: _____
Number of Signs: _____

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

ARNOLD JABLON
ZONING COMMISSIONER

JEAN M. H. JUNG
DEPUTY ZONING COMMISSIONER

April 1, 1987

John O. Hennegan, Esquire
809 Eastern Boulevard
Baltimore, Maryland 21221

RE: PETITION FOR SPECIAL HEARING
W/S Red Rose Farm Rd., 1305.65' W of the c/l of Bowleys Quarters Rd.,
15th Election District - 5th Councilmanic District
Maryland Marine Manufacturing Co., Inc. - Petitioner
Case No. 87-382-SPH

Dear Mr. Hennegan:

This is to advise you that \$111.09 is due for advertising and posting of the above property. This fee must be paid before an Order is issued.

THIS FEE MUST BE PAID AND THE ZONING SIGN AND POST RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT BE ISSUED.

Do not remove sign from this property until time it is placed by _____

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
DATE 4/1/87 ACCOUNT R-01-513-000
3 SIGNS & POSTS RETURNED AMOUNT \$ 111.09
Maryland Marine Manufacturing Co., Inc.,
3501 Red Rose Farm Rd., Balto., Md. 21220
RECEIVED FROM ADVERTISING & POSTING COSTS RE CASE #87-382-SPH
FOR B D22*****110518 4034F
VALIDATION OR SIGNATURE OF CASHIER

NOTICE OF HEARING

RE: PETITION FOR SPECIAL HEARING
W/S of Red Rose Farm Rd., 1305.65' W of the c/l of Bowleys Quarters Rd.,
15th Election District - 5th Councilmanic District
Maryland Marine Manufacturing Co., Inc. - Petitioner
Case No. 87-382-SPH

TIME: 10:30 a.m.
DATE: Thursday, April 9, 1987

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

Alfred
Zoning Commissioner
of Baltimore County

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 30402

DATE 4/1/87 ACCOUNT 87-382-SPH
AMOUNT \$ 111.09
RECEIVED FROM Maryland Marine Manufacturing Co., Inc.
FOR 3 Signs & Posters - Special Hearing # 364
VALIDATION OR SIGNATURE OF CASHIER

ORDER RECEIVED FOR FILING
Date 4/1/87
By John O. Hennegan

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY
Appellant
v.
MARYLAND MARINE MANUFACTURING
COMPANY, INC.
Appellee

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
AT LAW
Docket No. HP
File No. 87-382-SPH

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 7, 1987, in the above-captioned matter.

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

Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel
Room 227, Court House
Towson, Maryland 21204
494-2188

I HEREBY CERTIFY that on this 28 day of October,
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 G.
Hennegan, Esquire, 809 Eastern Blvd., Baltimore, MD 21221.

Peter Max Zimmerman
Peter Max Zimmerman

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY
Appellant
v.
MARYLAND MARINE MANUFACTURING
COMPANY, INC.
Appellee

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
AT LAW
Docket No. _____
File No. _____

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 7, 1987, in compliance with Maryland Rule 8-2(e), files this Petition on Appeal setting forth the grounds upon which this Appeal is taken, viz:

That the County Board of Appeals had no legally sufficient evidence upon which to base its conclusion and therefore their Order passed herein is illegal, arbitrary, and capricious.

WHEREFORE, Appellant prays that the Opinion and Order of the Board of Appeals of Baltimore County under date of October 7, 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 227, Court House
Towson, Maryland 21204
494-2188

I HEREBY CERTIFY that on this 28 day of October,
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, 809 Eastern Blvd., Baltimore, MD 21221.

Peter Max Zimmerman
Peter Max Zimmerman

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
day of October, 1987.

Arnold Jablon
Arnold Jablon
Zoning Commissioner

Petitioner Maryland Marine Manufacturing Co., Inc.
Petitioner's Attorney John G. Hennegan, Esquire
Received by: James E. Dyer
Chairman, Zoning Plans
Advisory Committee

FROG MORTAR CREEK
RESTAURANT



BALTIMORE COUNTY, MARYLAND

OFFICE OF LAW

Inter-Office Correspondence

TO: Carl Richards
Zoning Office
DATE: August 20, 1987
FROM: Patrick D. Hanley,
Assistant County Attorney
SUBJECT: Maryland Marine Manufacturing Co., Inc.
Petition No. 87-382-SPH

An appeal from the decision of the Zoning Commissioner will be heard by the County Board of Appeals next Thursday, August 27, 1987. This office will be participating in that appeal.

If possible, I would like to have a copy of the applicable zoning map. I also need a map that will depict Frog Mortar Creek, and the fact that it lies within the jurisdictional limits of Baltimore County.

Please let me know if these are available for use by the County in this matter.

Patrick D. Hanley
Patrick D. Hanley
Assistant County Attorney

PDH:raj

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

March 24, 1987

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

CHAIRMAN

MEMBERS

Bureau of
Engineering
Department of
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. 264 - Case No. 87-382-SPH
Petitioner: Maryland Marine
Manufacturing Co., Inc.
Petition for Special Hearing

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.

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,
James E. Dyer
James E. Dyer
Chairman
Zoning Plans Advisory Committee

JED:kbb

Enclosures

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3211

NORMAN E. GERBER
DIRECTOR

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

MARCH 4, 1987
(CRITICAL AREA)

Re: Zoning Advisory Meeting of JANUARY 20, 1987
Item # 264
Property Owner: MARYLAND MARINE
MANUFACTURING CO., INC.
Location: MANUFACTURING CO., INC.
W/S OF RED ROSE FARM RD.
1305.65' W. OF G. BOWLENS CRT. RD.

Dear Mr. Jablon:

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

- () There are no site planning factors requiring comment.
- () A County Review Group Meeting is required.
- () A County Review Group meeting was held and the minutes will be forwarded by the Bureau of Public Services.
- () This site is part of a larger tract; therefore it is defined as a subdivision. The plan must show the entire tract.
- () A record plat will be required and must be recorded prior to issuance of a building permit.
- () The access is not satisfactory.
- () The circulation on this site is not satisfactory.
- () The parking arrangement is not satisfactory.
- () The 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 _____.
- (X) Landscaping: Must comply with Baltimore County Landscape Manual. The property is located in a deficient service area as defined by 811 178-79. 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 811 178-79, and as conditions change traffic capacity may become more limited. The Basic Services Areas are re-evaluated annually by the County Council.
- (X) Additional comments:
① - THIS SITE IS LOCATED IN THE CHESAPEAKE BOY CRITICAL AREA. ADDITIONAL COMMENTS WILL BE PROVIDED BY THE COMPREHENSIVE PLANNING DIVISION.
② - FOR LANDSCAPE REQUIREMENTS CONSULT AUBREY HARRIS

AT 494-3335

David Fields, Acting Chief
Current Planning and Development

cc: James Hodge

BALTIMORE COUNTY DEPARTMENT OF HEALTH

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

Zoning Item # 264, Zoning Advisory Committee Meeting of 1-20-87
Property Owner: MD Marine Manufacturing Co., Inc.
Location: W/S Red Rose Farm Rd. District 15
Water Supply metro Sewage Disposal proposed metro

COMMENTS ARE AS FOLLOWS:

- (X) 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.

WWQ 1 4/86

From earlier discussions between my staff and the Petitioner's representatives, we had understood that the Petitioner would first request only a determination about the off-shore effect of the Baltimore County Zoning Regulations and maps. Thus, we had not requested, and the Petitioner has not submitted any of the detailed information by which we could evaluate the effects of the parking modifications in relation to the Critical Area standards.

Until I am able to make the required "findings" from analysis of such information, you would only be able to make a conditional approval on the conformance to the Baltimore County Zoning Regulations 502.1 or other applicable sections of the regulations, and subject to later action on the "findings" (most likely, via the CRG process).

My comments in this memo should not be taken as an indication that I am necessarily against (or for) this proposed over-the-water restaurant. I simply believe that: 1) the implementation of the Critical Area law has at least temporarily superseded whatever opportunity might have been conferred by County zoning; 2) it is slightly too soon to know how the zoning will have to be amended in regard to off-shore uses; and, thus, 3) only a tentative approval could be given on the parking issue (in the absence of the necessary "findings"). If the proposal is, somehow, merely accessory to the existing marina, it is not now allowable because of the IDC (Sec. 22-117(b)). If it is new zoning it likewise is not allowable because of IDC Sec. 22-116(c) in conjunction with COMAR 14.14.02.050(5).

Norman E. Gerber
Norman E. Gerber, AICP, Director

NEG/TD/sf

cc: John O. Hennegan, Esquire
Thomas L. Vidmar, Public Works Dept., Engineering
People's Counsel
Uri P. Arvin, AICP
David Fields
Paul Solomon
James G. Hoswell
Tia Dugan

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

June 1, 1987

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. 87-382-SPH

MARYLAND MARINE MANUFACTURING CO., INC.

W/s of Red Rose Farm Road, 1,305.65' W
of the c/l of Bowleys Quarters Road

15th Election District
5th Councilmanic District

SPH -interpretation of BCZR --whether
zoning classifications include tide water
rivers, lakes, etc or land under water;
to amend site plan appvd in Case No. 74-285-XA
to reflect additional parking

4/20/87 -Z.C.'s Order GRANTING SPH w/
restrictions

THURSDAY, August 27, 1987 at 10:00 a.m.

ASSIGNED FOR:

cc: Phyllis Cole Friedman, Esquire Appellant/People's Counsel
Md. Marine Mfg. Co., Inc. Petitioner/Appellee
John O. Hennegan, Esquire Attorney for Petitioner

Norman E. Gerber

James G. Hoswell

Arnold Jablon

Jean M. H. Jung

James E. Dyer

Margaret E. du Bois

Kathi Weidenhammer
Administrative Secretary

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 687-340

October 3, 1989

RECEIVED
OCT 5 1989
ZONING OFFICE

Phyllis Cole Friedman
People's Counsel for Baltimore County
Room 304, County Office Building
111 W. Chesapeake Avenue
Towson, MD 21204

RE: Case No. 87-382-SPH
Maryland Marine Manufacturing Co., Inc.

Dear Ms. Friedman:

Enclosed is a copy of the final Order of the Board issued this date pursuant to the Order of the Court of Appeals dated July 6, 1989.

Sincerely,

Kathleen C. Weidenhammer
Kathleen C. Weidenhammer
Administrative Assistant

Encl.

cc: John O. Hennegan, Esquire
Maryland Marine Manufacturing Co., Inc.
P. David Fields
Pat Keller
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
Docket Clerk -Zoning
W. Carl Richards, Jr.
Arnold Jablon, County Attorney

IN THE MATTER OF
MARYLAND MARINE MANUFACTURING CO., INC.
PETITION FOR SPECIAL HEARING ON
PROPERTY LOCATED ON THE WEST SIDE
OF RED ROSE FARM ROAD, 1305.65'
WEST OF CENTERLINE OF BOWLEYS
QUARTERS ROAD
15th ELECTION DISTRICT
5th COUNCILMANIC DISTRICT
ZONING CASE NO. 87-382-SPH
PEOPLE'S COUNSEL FOR BALTIMORE
COUNTY, PLAINTIFF

ON REMAND FROM
THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
CASE NO. 48/48/87CG-578

ORDER

Pursuant to the Order of the Court of Appeals dated July 6, 1989, said Order reading that: "Judgement of the Circuit Court for Baltimore County vacated; case remanded to that Court with directions to remand the matter to the Board of Appeals of Baltimore County with instructions to vacate its Order and that of the Zoning Commissioner of Baltimore County and to enter an Order consistent with this Opinion";

IT IS THEREFORE this 3rd day of October, 1989 by the County Board of Appeals of Baltimore County ORDERED that the Order of the Zoning Commissioner dated April 20, 1987 be VACATED and that the Order of the County Board of Appeals dated October 7, 1987 be REVERSED and that the Petition for Special Hearing requesting the interpretation is DENIED; and IT IS FURTHER ORDERED that the amended site plan approved in Case No. 74-285-XA to reflect the additional parking be and the same is GRANTED.

BALTIMORE COUNTY BOARD OF APPEALS

William T. Hackett
William T. Hackett, Chairman

Harry E. Buchmeister, Jr.
Harry E. Buchmeister, Jr.

Case No. 87-382-SPH - Circuit Court
Order REMANDING case to C.B. to
vacate its Order and that of the Z.C.
and to enter an Order consistent with
the Opinion of Court of Appeals.

The Circuit Court for Baltimore County

CHIEF CLERK
JOHN GRASON TURNBULL, II
JUDGE

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY

Appellant

vs.

MARYLAND MARINE MANUFACTURING
COMPANY, INC.

Appellee

IN THE

CIRCUIT COURT

FOR

BALTIMORE COUNTY

CASE NO. 48/48/87CG4578

ORDER

In accordance with the Mandate issued by the Court of Special Appeals of Maryland, it is this 21st day of August, 1989, ORDERED, by the Circuit Court for Baltimore County, that the above entitled case is hereby Remanded to the Board of Appeals of Baltimore County with instructions to Vacate its Order and that of the Zoning Commissioner of Baltimore County and they are Ordered to enter an Order consistent with the Opinion.

John Grason Turnbull, II
JOHN GRASON TURNBULL, II
JUDGE

Copies sent to: John O. Hennegan, Esquire
Peter Max Zimmerman, Esquire
52-6 IN 88 JN 88

RECEIVED
AUG 25 1989
ZONING OFFICE

ROBERT J. ROMADKA
JOHN B. GONTRUM
JOHN O. HENNEGAN
DONALD R. SHEFFY
NANCY E. DWYER

James E. Dyer
Zoning Supervisor
Baltimore County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

RE: Maryland Marine Manufacturing Company, Inc.
87-382-SPH

Dear Mr. Dyer:

This is in reference to our discussion on July 25, 1989 concerning the above referenced matter, this will confirm our conversation concerning the following:

1. The site plan as amended pursuant to a hearing before the Zoning Commissioner and Board of Appeals, in the above referenced case includes and allows the parking as well as the additional parking on-site to be used for both the restaurant and the marina, granted by special exception in Case No. 74-85XA.
2. The removal of any parking provided as a result of the site plan and any amendments thereto is permissible without a hearing to amend the site plan for the marina as long as a reduction in parking is not less than the parking which is required by the zoning regulations.
3. That the setbacks for the restaurant, pursuant to the zoning regulations are: (a) side yard setback, 10 feet from the property line; (b) front yard setback is 10 feet from the property line and 40 feet from the center line to the street; (c) the rear yard setback is 0, no setback is required unless there is an adjoining residential zone, then in that event, a 20 foot setback would be required, but since the rear abuts the water, no setback will be required.

LAW FIRM
Romadka, Gontrum & Hennegan
IRVINGTON FEDERAL BUILDING
600 EASTERN BOULEVARD
ESSEX, MARYLAND 21221
TELEPHONE (301) 686-8274
FAX 686-0118

7-27-11-3ED

RECEIVED
JUL 28 1989

ZONING OFFICE

4. That it is established that the front of the restaurant or building faces the roadway.
 5. The maximum height of the building allowed by the zoning regulations is 40 feet or a 1 to 5 slope and that any greater height will require a variance.
 6. We further have based the setbacks for the side yard and front yard based on the theory that the adjoining residential lots are recorded lots.
- In the event that your memory of our conversation is other than what has been said above, please do not hesitate to contact me and I will be glad to discuss the matter with you.

Very truly yours,

John O. Hennegan

JOH/cfh

cc: Maryland Marine Manufacturing Company, Inc.

OK JLD 8/1/89

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180
October 28, 1987

John O. Hennegan, Esq.
809 Eastern Blvd.
Baltimore, Md. 21221

Dear Mr. Hennegan:

Re: Case No. 87-382-SPH
Maryland Marine Manufacturing Co., Inc.

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,

Jane Holmen
Jane Holmen, Secretary
cc: Md. Marine Manufacturing Co., Inc.
Norman E. Gerber
James Hoswell
J. Robert Haines
Ann Nastarowicz
James E. Dyer
Margaret E. duBois

REC
OCT 29 1987
ZONING OFFICE

IN THE MATTER OF
THE APPLICATION OF
MARYLAND MARINE MANUFACTURING
COMPANY, INC.
FOR A SPECIAL HEARING REGARDING
PROPERTY LOCATED ON THE WEST SIDE
OF RED ROSE FARM ROAD, 1305.65'
WEST OF THE CENTERLINE OF BOWLEYS
QUARTERS ROAD
15th ELECTION DISTRICT
5th COUNCILMANIC DISTRICT
PEOPLE'S COUNSEL FOR BALTIMORE
COUNTY, PLAINTIFFS
FILE NO. 87-328-SPH

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
CG Dec. No. 48
Folio No. 48
File No. 87-CG-4578

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, William T. Hackett, Harry E. Buchheister, Jr. and Patricia Phipps, Constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, Maryland Marine Manufacturing Co., Inc., Wayne Miskiewicz, President, 3501 Red Rose Farm Rd., Baltimore, Md. 21220, Petitioner; John O. Hennegan, Esq., 809 Eastern Boulevard, Baltimore, Md. 21221, Counsel for Petitioner; and Phyllis C. Friedman, Esq., Court House, 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.

John O. Hennegan
John O. Hennegan
County Board of Appeals of Baltimore County
Rm. 200, Court House, Towson, Md. 21204
410-2180

Maryland Marine Manufacturing Co., Inc.
Case No. 87-328-SPH

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Maryland Marine Manufacturing Co., Inc., Wayne Miskiewicz, President, 3501 Red Rose Farm Rd., Baltimore, Md. 21220, Petitioner; John O. Hennegan, Esq., 809 Eastern Blvd., Baltimore, Md. 21221, Counsel for Petitioner; and Phyllis C. Friedman, Esq., Court House, Towson, Md. 21204, People's Counsel for Baltimore County, Plaintiff, on this 28th day of October, 1987.

John O. Hennegan
John O. Hennegan
County Board of Appeals for Baltimore County



County Board of Appeals of Baltimore County

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

October 7, 1987

Phyllis Cole Friedman
People's Counsel for Baltimore County
Room 223, Old Courthouse
Towson, MD 21204

RE: Case No. 87-328-SPH
Maryland Marine Manufacturing Co., Inc.

Dear Ms. Friedman:

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

Sincerely,

Kathleen C. Weidenhammer
Kathleen C. Weidenhammer
Administrative Secretary

Encl

cc: John O. Hennegan, Esquire
Maryland Marine Manufacturing Co., Inc.
(Mr. Wayne Miskiewicz, President)
Norman E. Gerber
James C. Hoswell
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
Margaret E. du Bois

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OCT 9 1987

ZONING OFFICE



The Circuit Court for Baltimore County

JOHN GRASON TURNBULL, II

COUNTY COURTS BUILDING
TOWSON, MARYLAND 21204
301-494-2647

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY

Appellant

vs.

MARYLAND MARINE MANUFACTURING
COMPANY, INC.

Appellee

IN THE

CIRCUIT COURT

FOR

BALTIMORE COUNTY

CASE NO. 48/48/87 CG4578

DURING CASE NO. 87-328-SPH

OPINION AND ORDER

This is an Appeal from an Order of the County Board of Appeals of Baltimore County, Maryland, under date of October 7, 1987. The Appellee filed an Answer to the Petition for Appeal setting forth several affirmative defenses. The Appellee does not aggressively pursue his claim of "standing" in this Appeal. The Court finds that People's Counsel has standing and is accordingly properly before this Court.

The issue which is strongly contested is the ruling by the Board of Appeals for Baltimore County that permitted a special hearing and interpretation of the Baltimore County Zoning Regulations that there was no zoning needed for land beneath the water when it is directly abutting land where a use is permitted as a matter of right.

Appellee's in this case own a Marina which is zoned Business Local (BL). They propose to extend the existing BL Zoning to construct

a restaurant, the restaurant an extension of BL which extends into Frog Mortar Creek, approximately one hundred twenty five feet.

The Zoning Commissioner first granted approval. an Appeal from that decision to the County Board of Appeals resulted in their ruling that no special zoning was needed for land beneath the water and thus the Appeal to the Circuit Court for Baltimore County.

The case was argued before this Judge. Memorandums submitted have been read and considered.

Appellant, Peoples' Counsel, argue a specific zoning district must be placed on a water way in order to develop a primary non-water dependent use within it. They argue that because Baltimore County has not exercised its right to zone water ways that the direct effects thereof is that a use cannot be built in these unzoned waterways.

This Court is mindful of its overall review of decisions of administrative bodies and the Board of Appeals specifically that the Court shall not substitute its judgment for that of an administrative agency even in the event that this Court would not have reached the same conclusion. Eger vs. Stone 253 Md 533 (1969).

It is uncontraverted in this case that there are existing improvements that have been built by the Appellees, operating a marina including uses such as piers and boat slips. The Board quotes the Baltimore County Zoning Regulation §417.1 entitled "Waterfront Construction" as follows:

"All waterfront construction, such as piers, wharves, docks, bulkheads, or other work extended into navigable waters beyond mean low tide as prescribed

in Baltimore County Design Manual, 1955, shall be governed by these regulations as well as by the Baltimore County Code...." (emphasis added)

The further applicable sections of the zoning regulations are §417.2 and 417.3 and 417.5 quoted hereafter:

Section 417.2 states:

"All applications for waterfront construction, when filed with the buildings engineer, shall be accompanied by a plot diagram suitable for filing permanently with the permit record, showing the outlines of the property in question and of adjoining properties, and showing any existing construction beyond mean low tide, as well as details of the proposed construction; whenever required by the buildings engineer, in his discretion, by application must be accompanied by a plan prepared by a professional engineer or land surveyor, showing to scale the outlines of the property in question, as well as the outlines of the adjoining properties, including any existing construction beyond mean low tide, and a plan and details of the proposed construction." (emphasis added)

Section 417.3 states:

"For the purpose of defining boundaries within which waterfront construction may take place, divisional lines shall be established in accordance with the following rules:

"(a) With straight shore lines:" (as is in the case before us)

"If the shoreline is straight, the divisional lines are to be extended from the intersection of the property line and the shoreline into the water perpendicular to the shoreline, or where the property lines are parallel and it is practical to do so, the proper boundary line shall be extended in a straight line into the water." (emphasis added)

Section 417.5 states:

"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...." (emphasis added)

The case of Harbor Island Marina vs. Calvert County 286 Md 303 is extremely close to the case herein and sets forth the proposition that the Counties have the power to regulate and restrict use of land including land under the water. This does not include tidal waters.

The extension of the property line is covered by §417.3(a) of the Baltimore County Zoning Regulations and the lines shown on the plat in this case follow said rule. The facts in this case show that the area in which the Appellee proposes to construct a restaurant is surrounded by a pre existing marina and extends no further into the water way than the existing structures.

The Appellant's conclusion that the Council must specifically address this question prior to permitting same is in this Court's opinion without foundation. The mere fact that the Appellee may have the right to construct this restaurant on the existing zoning does not in any way finalize this project since the restaurant must comply with all other Baltimore County Regulations, must obtain approval of the Corps of Engineers and meet the requirements of the critical areas provisions.

Accordingly, this Court does not find that the Board acted in an arbitrary or capricious matter and will not substitute its judgment for that of the Board. Therefore, it is this 28th day of May, 1988,

ORDERED, by the Circuit Court for Baltimore County, that the Order of the County Board of Appeals of Baltimore County be, and the same is hereby AFFIRMED.

John Grason Turnbull, II
JOHN GRASON TURNBULL, II
JUDGE

Copies sent to: County Board of Appeals of Baltimore County
Phyllis Cole Friedman, Esquire
John O. Hennegan, Esquire

IN THE MATTER OF
THE APPLICATION OF
MARYLAND MARINE MANUFACTURING
COMPANY, INC.
FOR A SPECIAL HEARING REGARDING
PROPERTY LOCATED ON THE WEST SIDE
OF RED ROSE FARM RD., 1305.65' WEST
OF THE C/L OF BOWLEYS QUARTERS RD.
15th ELECTION DISTRICT
5th COUNCILMANIC DISTRICT

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW

CG Doc. No. 48
Folio No. 48
File No. 87-CG-4578

PEOPLE'S COUNSEL FOR BALTIMORE
COUNTY, PLAINTIFFS

FILE NO. 87-382-SPH

CERTIFIED COPIES OF PROCEEDINGS BEFORE THE ZONING
COMMISSIONER AND THE BOARD OF APPEALS OF BALTI-
MORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come William T. Hackett, Harry E. Buchheister, Jr.
and Patricia Phipps, 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, consisting of the following certified copies or original papers on
file in the office of the Zoning Department of Baltimore County:

No. 87-382-SPH

February 11, 1987 Petition of Maryland Marine Manufacturing Co., Inc.,
for special hearing on property located on the west side
of Red Rose Farm Rd., 1305.65' west of the center line
of Bowleys Quarters Rd., in the 15th Election District
of Baltimore County.

March 14 Certificate of Posting of property - filed

March 18 Certificate of Publication in newspaper - filed

March 24 Comments of Balto. County Zoning Plans Advisory
Committee - filed

April 9 At 10:30 a.m. hearing on petition by Zoning Commissioner

April 20 Order of Zoning Commissioner that those uses permitted
on dry land located in that particular zone are permitted
on tide water rivers, lakes, running streams, or land
under water within lines extended from the zoning
boundary lines of the dry land to which the "wet" land is

Md. Marine Manufacturing Co., Inc.
Case No. 87-382-SPH

May 19, 1987

August 27

October 7

October 28

October 28

October 28

November 20

November 27, 1987

attached, from and after the date of the Order, subject
to restrictions.

Order for Appeal to C.B. of A. from Phyllis C. Friedman,
People's Counsel for Baltimore County.

Hearing on appeal before County Board of Appeals.

Order of County Board of Appeals ordering that the
petition for special hearing requesting the interpretation
of the Baltimore County Zoning Regs. be GRANTED; and
FURTHER ORDERED that the amended site plan approved in
Case No. 74-285-KA to reflect the additional parking
be GRANTED.

Order for Appeal filed in the Circuit Ct. for Baltimore
County by Phyllis C. Friedman, People's Counsel for
Baltimore County.

Certificate of Notice sent to interested parties

Petition to accompany Order for Appeal filed in the
Circuit Ct. for Balto. County

Transcript of testimony filed

Petitioner's Exhibit No. 1 - Bd. of Appeals' file

" " " 2 - Copy of Bill #64

" " " 3 - Copy B.C. Zoning Issues-#5-128

" " " 4A,B,C - 3 sheets showing layout,
Floor 1, 2, 3

" " " 5 - Photos, series of 8

People's Counsel's Exhibit No. 1 - Memo. Norman Gerber,
dated Apr. 1987

" " " 2A-D - 1000 scale BC
zoning maps

" " " 3 - Copy of Appellants'
Brief and Appendix-Harbor Island Marine, Inc.

Record of proceedings filed in the Circuit Court for
Baltimore County

Md. Marine Manufacturing Co., Inc.
Case No. 87-382-SPH

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 whomsoever institutes the request.

Respectfully submitted,

June Holmen
June Holmen
County Board of Appeals of Baltimore County

IN THE MATTER OF
THE APPLICATION OF
MARYLAND MARINE MANUFACTURING
COMPANY, INC.
FOR A SPECIAL HEARING REGARDING
PROPERTY LOCATED ON THE WEST SIDE
OF RED ROSE FARM ROAD, 1305.65'
WEST OF THE CENTERLINE OF BOWLEYS
QUARTERS ROAD
15th ELECTION DISTRICT
5th COUNCILMANIC DISTRICT

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW

CG Doc. No. 48
Folio No. 48
File No. 87-CG-4578

PEOPLE'S COUNSEL FOR BALTIMORE
COUNTY, PLAINTIFFS

FILE NO. 87-382-SPH

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland
Rules of Procedure, William T. Hackett, Harry E. Buchheister, Jr. and Patricia
Phipps, constituting the County Board of Appeals of Baltimore County, have
given notice by mail of the filing of the appeal to the representative of
every party to the proceeding before it; namely, Maryland Marine Manufacturing
Co., Inc., Wayne Miskiewicz, President, 3501 Red Rose Farm Rd., Baltimore,
Md. 21220, Petitioner; John O. Hennegan, Esq., 809 Eastern Boulevard,
Baltimore, Md. 21221, Counsel for Petitioner; and Phyllis C. Friedman, Esq.,
Court House, 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.

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

Maryland Marine Manufacturing Co., Inc.
Case No. 87-382-SPH

I HEREBY CERTIFY that a copy of the foregoing Certificate of
Notice has been mailed to Maryland Marine Manufacturing Co., Inc., Wayne
Miskiewicz, President, 3501 Red Rose Farm Rd., Baltimore, Md. 21220, Petitioner;
John O. Hennegan, Esq., 809 Eastern Blvd., Baltimore, Md. 21221, Counsel for
Petitioner; and Phyllis C. Friedman, Esq., Court House, Towson, Md. 21204,
People's Counsel for Baltimore County, Plaintiff, on this 28th day of
October, 1987.

June Holmen
June Holmen
County Board of Appeals for Baltimore
County



County Board of Appeals of Baltimore County

Room 200 Court House

Towson, Maryland 21204

(301) 494-3180

October 28, 1987

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

Dear Mrs. Friedman:

Re: Case No. 87-382-SPH
Maryland Marine Manufacturing Co.

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.

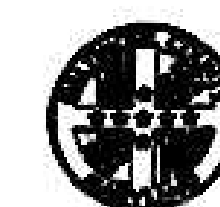
The cost of the transcript, plus any other documents, must be paid
in time to transmit the same to the Circuit Court not later than thirty days
from the date of any petition you file in court, in accordance with Rule B-7
(a).

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



County Board of Appeals of Baltimore County

Room 200 Court House

Towson, Maryland 21204

(301) 494-3180

October 28, 1987

John O. Hennegan, Esq.
809 Eastern Blvd.
Baltimore, Md. 21221

Dear Mr. Hennegan:

Re: Case No. 87-382-SPH
Maryland Marine Manufacturing Co., Inc.

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.

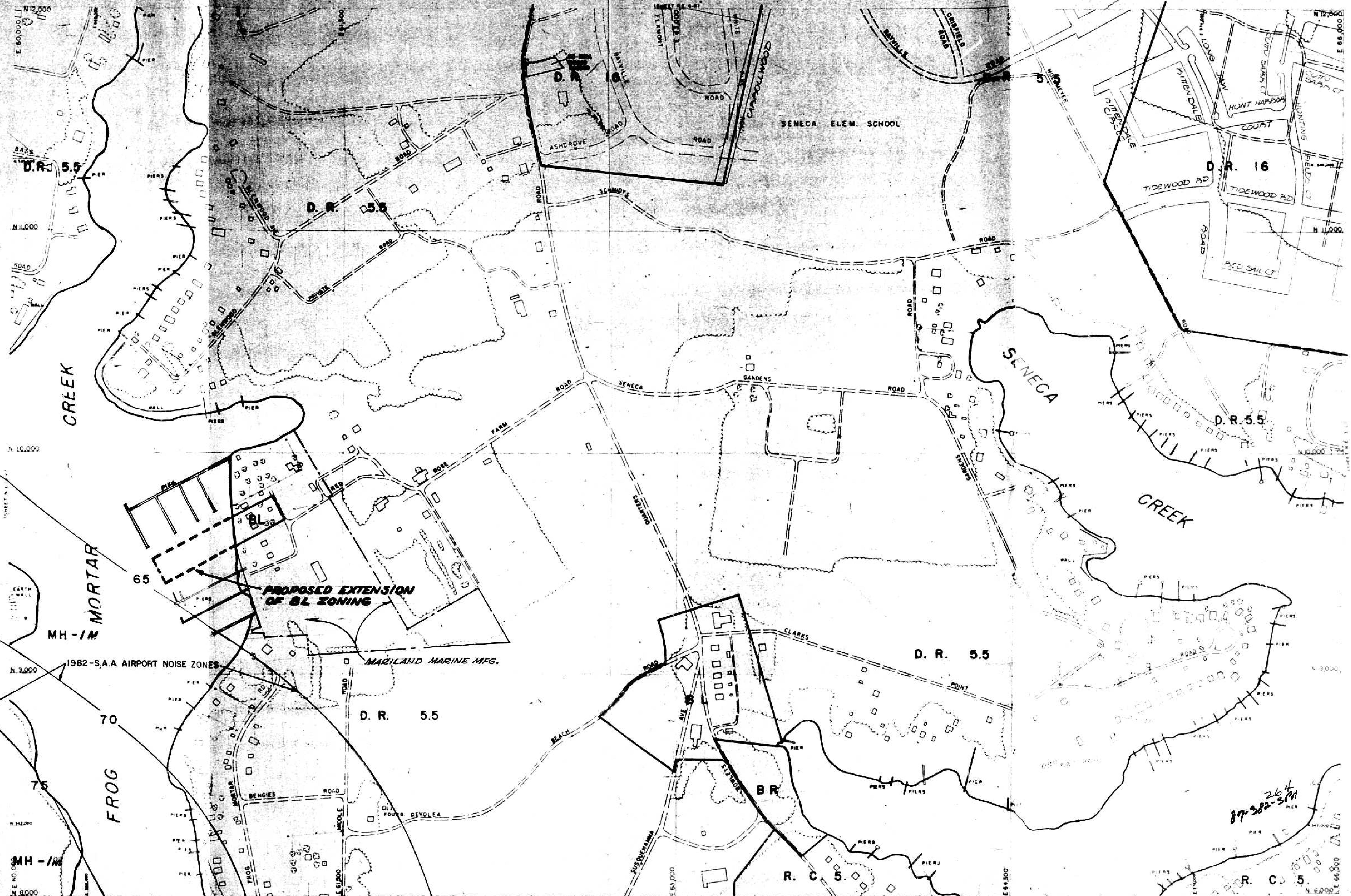
Enclosed is a copy of the Certificate of Notice.

Very truly yours,

June Holmen
June Holmen, Secretary

Encl.

cc: Md. Marine Manufacturing Co., Inc.
Norman E. Gerber
James Hoswell
J. Robert Haines
Ann Nastarowicz
James E. Dyer
Margaret E. duBois



1-SE 2-SW
1-NE 2-NW

1984 COMPREHENSIVE ZONING MAP
ADOPTED BY THE
BALTIMORE COUNTY COUNCIL
NOV. 13, 1984
BILL NOS. 133-84, 134-84, 135-84,
136-84, 137-84, 138-84, 139-84
[Signature]
CHAIRMAN, COUNTY COUNCIL

PHOTOGRAMMETRIC MAP OF BALTIMORE COUNTY METROPOLITAN AREA OFFICIAL ZONING MAP

REVISION	DATE	SCALE
B	2/82	1" = 200'
St. Nurse Zone	E	
DATE OF PHOTOGRAPHY		DEC 3-84
Topography Compiled By Photogrammetric Methods AERIAL SURVEY CORP LANSING MICH		

LOCATION
BOWLEYS
QUARTERS

SHEET
264
87-382-504
NE
3-K

FROG MORTAR CREEK

SPECIAL EXCEPTION
CASE # 74-205 KA
6/21/74 SEE NOTES 1,2

PROPOSED RESTAURANT

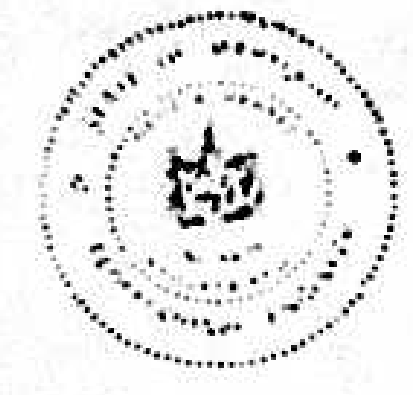
PROPOSED BL ZONING
EXTENSION

MARYLAND MARINE MFG. CO.

WIDTH OF CREEK 1360'

FROG MORTAR CREEK
RESTAURANT
15TH DIST. BALTIMORE CO.
SCALE: 1"=50' D- 12/2/56

NOTES:
1. THE PROPOSED PIER IS TO BE USED
EXCLUSIVELY FOR SAIL BOATS.
2. NO BUILDING OF BOATS OR MAJOR REPAIRS
SHALL TAKE PLACE ON THIS PORTION OF THE
PETITIONERS' PROPERTY THAT IS THE SUBJECT
OF THIS PETITION.
3. SURVEY DATA FRANK LEE PEARL
DATED 2/17/56

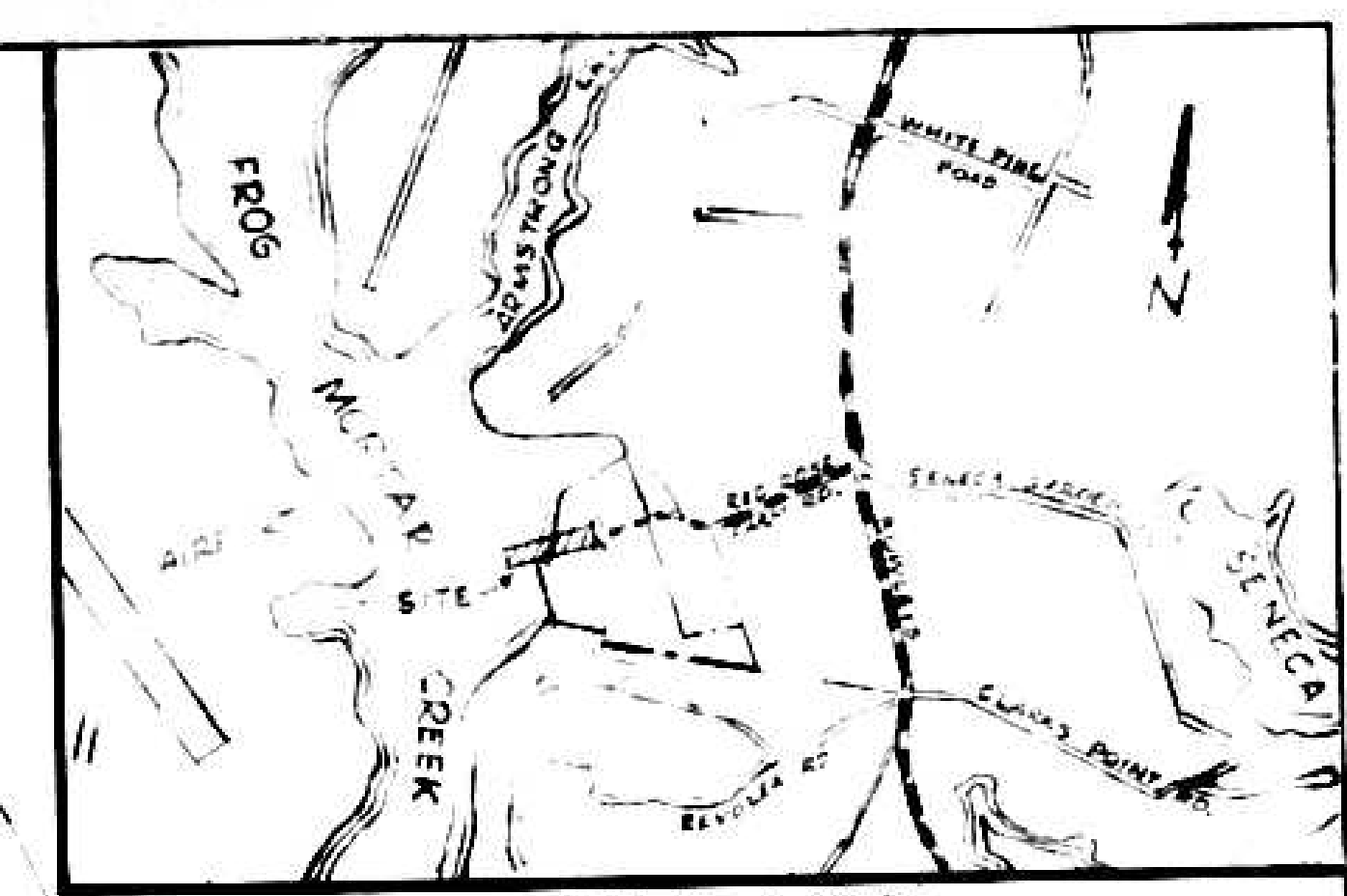


PLAT FOR PETITION FOR
SPECIAL HEARING ON RESTAURANT
AND AMENDED SITE PLAN

RED ROSE FARM RD.

JULIA YAMANIAK
P. 171 3442/212

MELVIN M. &
MARILYN A. D-2
P. 117 1150/124



LOCATION MAP
P. 2000
ZONING:
EXISTING USE: WARE
PROPOSED: RESTAURANT
EX. ZONING: BL
AREA OF LOT: 0.64 AC ±
AREA OF BL ZONED: 11.2 AC ±
TOTAL: 11.84 AC ±

TYPE OF FACILITY	PARKING SPA RES.
BOAT SLIPS: 360x1	260
EX. STORE: 2000±100 SF	15
EX. OFFICE: 1175±500 SF	4
EX. SHOP: 2000 SF NO MORE THAN 3 EMPLOYEES	1
PROPOSED RESTAURANT: 1st & 2nd FLS: 10,000 SF ± 50' DIA	300
3RD FLOOR: 2100±500 SF	7
TOTAL PARKING PROVIDED	727

TOTAL PARKING SPACE 9415'

RISE & YOUNG CHART
P. 344 7027/200

20' PRIVATE RD
82533'

264
87-382-
SPH