ON REMAND FROM

CIRCUIT COURT

BALTIMORE COUNTY

CASE NO. 48/48/87CG4578

PEOPLE'S COUNSEL FOR PALTIMORE COUNTY, PLAINTIFF

ZONING CASE NO. 87-382-SPH

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

Harry E. Buchheister, Jr.

Case No. 87-382-SPH

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

COUNTY BOARD OF APPEALS

BEFORE

BALTIMORE COUNTY CASE NO. 87-328-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 i-provements thereon, and presented his proposal for a restaurant and associated uses to be built on pilings and attached by walkway to his shoreline. He aspecially 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 Upinion 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 existing construction beyond mean low tide, as well as 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 intersecof 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 Marin: 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 starr 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 in GRANTED; and

IT IS FURTHER ORDERFD 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

Harry E. Buchheister, Jr.

IN RE: PETITION SPECIAL HEARING W/S of Red Rose Farm Road,

BEFORE THE ZONING COMMISSIONER 1.305.65' W of the centerline * of Bowleys Quarters Road -OF BALTIMORE COUNTY 15th Election District

Maryland Marine Manufacturing * Company, Inc.,

Petitioner

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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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 acqually 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 Prog 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 accorplished, 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 exter's 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

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 shc.eline 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(Y.) (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 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 reparian right to erect an improvement upon tidal land

- 2 -

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 unitized this authority. See Section 4:7, 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 Paltimore County, _____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:

> This decision is contingent on any development proposed for such "wet" lands complying with the Che_speake Bay Critical Area legislation, Section 9-1801, et seq., Nat. Res. Ar'., Maryland Code; COMAR, Section 14.15.02, et seq.; nd the Development Regulations of Baltimore County.

> > _ 3 _

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 her with to reflect the additional parking without another hearing.

AJ/srl

cu: John O. Hennedan, Esquire

People's Counsel

MANDATE

Court of Appeals of Maryland

No. 39 , September Term, 19 88

Appeal from the Circuit Court for Balti-

more County pursuant to certiorari to

January 26, 1989: Received supplement to

February 1, 1989: Received letter from

July o, 1989: Judgment of the Circuit Court for Baltimore County vacated; case

to remand the matter to the Board of

Appeals of Baltimore County with in-

Opinion by Murphy, C.J. - 11.11.

\$1,346.80

Commings

Clerk of the Court of Appeals of Maryland,

In testimony whereof, I have hereunto set my hand as Clerk and affixed

the seal of the Court of Appeals this seventh.

August . 19 89

day of

remanded to that court with directions

structions 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

briefs and appendices filed by appellant.

Court of Special Appeals.

John Hennegan.

the appellee.

BALTIMORE COUNTY

PEUPLL'S COUNSEL FOR

MARYLAND MARINE MANUPACTURING CO., INC.

STATEMENT OF COSTS:

In Circuit Court:

Record \$50.00 Stenographer's Costs \$35.00 In Court of Appeals:

Petition Filing Fee . Portion of Record Extract — Appellant

Reply Brief Appearance Fee — Appellant Filing Fee on Appeal (Court of Special Appeals). Printing Brief for Appellee

Portion of Record Extract - Appellee . . . STATE OF MARYLAND, ss:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Lourt of Appeals.

Costs shown on this Mandate are to be settled between counsel and NOT THROUGH THIS OFFICE.

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.

improvements into the water.

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, 336-39, 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., Ransay, 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 wit. which we are concerned in this case present purely legal questions, such as the proper interpretation of § 417 of the BCZR, the score of a charter county's zoning power, and the extent of the riparian owner's right to construct

II.

administrative agency must be uphold on judicial review if it is

As we have frequently indicated, the order of an

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

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 Rodovsky McAuliffe Adkins Blackwell,

Opinion by Murphy, C.J.

Filed: July 6, 1989

27:01 HT L- 701 68

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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

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

right to construct riparian improvements.

"a proprietor of land bounding on navigable

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.

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 tributar; of the Middle River which flows into the Chesapeake Bay. It currently operates a marina on the property under a special exception to the wasting 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

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

clear and indisputable intention that it be bound). But our

inquiry in <u>Harbor Island</u> was not thereby ended, for we also

Consequently, we said, the improvements become "'incident to the

estate, as not inhelantly 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 <u>Hess v. Muir</u>, 65 Md. 586, 598, 5 A. 540 (1886)). We

"when improvements are made into the navigable

utilized in their construction, which prior to

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

waters by a riparian proprietor, the land

completion belonged to the State, for all

to improvements acrached to riparian land."

therefore held that

286 Md. at 322.

recognized that when permitted riparian improvements are

completed, they essentially become part of the dry land.

This case involves the right of riparian owners to construct

number of permitted uses, including restaurants.

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,

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 rast land of the shore, and there becoming fixed as part of the land itself [sccretion], shall belong to the

by reason of the curvature of the shore, the

from each other, the area excluded by both

adjoining proprietors."

permitted use.

lines, when projected into the water, diverge

lines shall be equally divided between the two

It was Maryland Marine's contention that the existing B.L. zoning

The Zoning Commissioner, relying upon Harbor Island Marina

of its .64 acres extended into the waters of Frog Mortar Creek,

thereby allowing construction of its proposed restaurant as a

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

development off shore as otherwise would not be allowed on dry

intent of the Baltimore County Council "to permit random

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

the 'wet' land is attached, from and after the date of this

compliance with the Chesapeake Bay Critical Area legislation,

Maryland Code (1988 Cum. Supp.), \$\$ 8-1801 et seq. of the

rivers, lakes, running streams, or land under water within lines

extended from the zoning boundary lines of the dry land to which

Order . . . " The Commissioner's order was made contingent upon

National Resources Article, Title 14, subtitle 15 of the Code of

Maryland Regulations (COMAR), and Bill Nos. 35-88 and 32-88 of

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

There is some indication that the riparian awner's common

State-owned lands are not subject to the county's zoning authority in the absence of a clear implication or a specific "[a]ny increase of soil formed by the gradual 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) proprie or of the adjacent or contiguous land." (State is not bound by an enactment of the General Assembly unless the statute specifically names the State or munifests a

² See 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.

Riparian 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

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)

A 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. <u>See</u> e.g. Owen v. Hubbard, 260 Md. 146, 271 A.2d 672 (1968); B. & O. R.R. v. Chase, 43 Md. 23 (1875) -

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").

See also Bd. of Public Works v. Larmar 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 ripari n 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 <u>Hodson</u>, 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

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 seg. 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.").

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 Acc. 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

Court of Appeals of Maryland

Courts of Appeal Building Annapolis, Ald. 21401-1699

ACREAT C FRANKE EMERIDADES. MARK J. MORRIS BESSEM DECKER BETTY J. WILLIAMS

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. Baltimore, MD 21221

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

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

ANNAPOLIS AREA 974 2609 WASHINGTON AREA 565-0450

ALEXANDER L. CUMMINGS

809 Eastern Blvd.

Dear Counsel:

In accordance with the enclosed writ of cortionari and Order, the above entitled case been docketed in this

Briefs, record extract and appendices filed with

Very truly yours,

ALC/bj Enc.

TTY FOR DEAF

Court of Special Appeals)

It is this 13th day of October, 19887.

ORDERED that counsel shall file briefs and 16, 1988.

In the

Court of Appeals

of Maryland

" (No. 795 - Sept. Term, 1988

MARYLAND MARINE MANUFACTURING CO , INC.

#37-382-3PH

To be heard by Tou of Appeals on its own motion, without hearing

at Court of Special Appeals level.

٧.

PEOPLE'S COUNSEL FOR

BALTIMORE COUNTY

. ORDER

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. 83, September Term, 1988; and it is further

printed record extract in accordance with Rules 8-501 and 8-502, appellee's brief to be filed on or before October

> /s/ Robert C. Murphy Chief Judge

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

In the

Court of Appeals of Maryland

> (No.795, Sept. Term, 1988 Court of Special Appeals)

MARYLAND MARINE MANUFACTURING CO., INC.

WRIT OF CERTIORARI

STATE OF MARYLAND, to wit: TO THE HONOPABLE THE JULGES 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

90**4**00 81925

MARYLAND MARINE MANUFACTURING CO., INC.

> ORDER It is this 13ch day of October . 1988 T.

In the

Court of Appeals

of Maryland

* (No. 795 - Sept. Term, 1988

Court of Special Appeals)

INSTRUCTIONS TO VACATE ITS

COMMISSIONER OF BALTIMORE

COSTS TO BE PAID BY THE

APPELLEE.

ORDER AND THAT OF THE ZONING

COUNTY AND TO ENTER AN ORDER

CONSISTENT WITH THIS OPINION.

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

Destroy to the contraction

per per control appears force.

PEOPLE'S COUNSEL FOR

BALTIMORE COUNTY

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

> /s/ Robert C. Murphy Chief Judge

[&]quot;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)

#87-382-5PH Ballo. County not empowered to point non-Riparian uses over the water (Ristoment) State ours the land andlar 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.

DE ... 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

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

A 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. <u>See</u>, <u>e.g.</u>, Owen v. Hubbard, 260 Md. 146, 271 A.2d 672 (1968); B. & O. R.R. v. Chase, 43 Md. 23 (1875).

the .

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 i.t 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 <u>Harbor Island</u>, <u>supra</u>, that

Baltimore County has the power to zone land under water.

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

² See 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

[&]quot;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. Since

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.

⁽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).

[&]quot;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).

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 <u>Harbor Island</u> 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 <u>Hess v. Muir</u>, 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 <u>Harbor Island</u>, 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 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. Larmar 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.'" 1.22 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

[&]quot;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).

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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.) 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

We 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 <u>specifically</u> 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.

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.

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

See 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.

copy: R. Haines

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

In the

* Court of Appeals

of Maryland

(No. 795 - Sept. Term, 1988 Court of Special Appeals)

MARYLAND MARINE MANUFACTURING CO., INC.

v.

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

In the

Court of Appeals

v.

of Maryland

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

MARYLAND MARINE MANUFACTURING CO., INC.

WRIT OF CERTIORARI

STATE OF MARYLAND, to wit:

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

whereas, <u>People's Counsel for Baltimore County</u>

v. <u>Maryland Marine Manufacturing Co., Inc.</u> 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, Ald. 21401-1699

> 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. John O. Hennegan, Esq. Peter Max Zimmerman, Esq. 809 Eastern Blvd. Peter Max Zimmerman, Esq. 809 Eastern Brown Baltimore, MD 21221 Room 304, County Office Bldg. 111 W. Chesapeake Avenue Towson, MD 21202

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

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



COPY: Bob Haines

CETY EN

The Circuit Court for Baltimore County

JUN 20 1988

JOHN GRASON TURNBULL, II

COUNTY COURTS BUILDING TOWSON, MARYLAND 21204 13011494-2647

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

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.

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, aproximately 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 <u>Harbor Island Marina vs. Calvert County</u> 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 28 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 JUDGE

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



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THE

COURT

CIRCUIT

IN THE MATTER OF

COMPANY, INC.

THE APPLICATION OF

MARYLAND MARINE MANUFACTURING

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Section 417.5 states:

-3-

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

	SPECIAL HEAR						FOF	8				
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15th E	LECTION DIST	RICT	eng no.	** ::		AT LAW						
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on dry land located in that particular zone are permitted on tide water rivers, lakes, running streams, or land

boundary lines of the dry land to which the "wet" land is

under water within lines extended from the zoning

Md. Marine Manufacturing Co., Inc. Case No. 87-382-SPH attached, from and after the date of the Order, subject to restrictions. Order for appeal to C.B. of A. from Phyllis C. Friedman, May 19, 1987 People's Council for Baltimore Scunty. Hearing on appeal before County Board of Appeals. August 27 Order of County Board of Appeals ordering that the pecition for special hearing requesting the interpretation October 7 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. Order for Appeal filed in the Circuit Ct. for Baltimore October 28 County by Phyllis C. Friedman, People's Counsel for Baltimore County. Certificate of Notice sent to interested parties October 28 Petition to accompany Order for Appeal filed in the October 26 Circuit Ct. for Balto. County Transcript of estimony filed Hovember 20 Petitioner's Exhibit No. 1 - Bd. of Appeals' file # " 2 - Copy of Bill #64 • • 3 = Copy B.C. Zoning Issues-#5-118. # 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 н н 2A-D - 1000 scale BC zoning maps H 3 - Copy of Appellants' Brief and Appendix-Harbor Island Marine, Inc. Record of proceedings filed in the Circuit Court for November 27, 1987 Baltimore Tounty

"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

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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 28 that of May, 1988.

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

entered and upon which said Board acted are tereby forwarded to the Touri, together with exhibits entered into evidence before the Board. However, all tangible material or evidence of an unwieldy or fulky nature will be retained in the Board of Appealst office, and upon request of the parties on the Touri will be transmitted to the Touri by whomever institutes the request.

Respectfully substitted.

Jounty Board of Appeals of Paltimore Tourity

cc: John D. Hennegan, Ecq. Phyllip C. Friedman, Esq.

-5-

Section 3

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 com---prehend tide water rivers, lakes and running streams or land under water and improvements proposed or erected thereon and apply to ---reparian owners; further to determine whether or not the Baltimore County Soning Regulations apply to riparian rights and to improvements erected on tidal waters or land under water: (SEE ATTACHED)
Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of the above Special Hearing advertising, posting, etc., upon filing of this Petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

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

264

Legal Owner(s): Maryland Marine Manufacturing Co. Contract Purchaser: Wayne Miskiewicz Pres. by: Type or Print Name) (Type or Print Name) Signature (Type or Print Name) Cionatura Z.F. Attorney for Petitioner: John O. Hennegan (Type or Fright Name) 3501 Red Rose Farm Koad 335-8722 Am O Daney Baltimore, Maryland 21220 909 Eastern Boulevard Name, address and phone number of legal owner, con-._____ tract purchaser or representative to be contacted Baltimore, Maryland 21221 City and State Attorney's Telephone No.: 686-8274 -----

ORDERED By The Zoning Commissioner of Baltimore County, this11:h....... day

of ____February _____, 19__87, that the subject matter of this petition be advertised, as required by the Zorling 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 _____ QIA ____ day of _____ April ____, 19_87_, at _____ o'clock

Gretical area

PETITION FOR SPECIAL HEARING

15th Election District - 5th Councilmanic District

Case No. 87-382-SPH

Z.C.O.-No. 1

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 PEARING: 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:

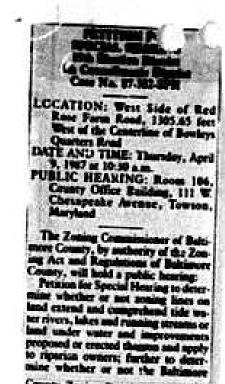
Petition for Special Hearing to determine whether or not moning lines on land extend and comprehend tide water rivers, lakes and running streams or land under water and improvements proposed or crected thereon and apply to r parian owners; further to determine whether or not the Baltimore County Zoning 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

Maryland Marine Manufacturing , as shown on plat Co., Inc. Being the property of plan 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 nearing set above or made at the hearing.

> BY OPDER OF ARNOLD JABLON ZONING COMMISSIONER OF BALTIMORE COUNTY

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



"DUPLICATE" CERTIFICATE OF PUBLICATION

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

THE JEFFERSONIAN.

Publisher

38.41

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 5 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.

THE CUPY

RE: PETITION FOR SPECIAL HEARING : BEFORE THE ZONING COMMISSIONER W/S of Red Rose Farm Rd. . 1305.75' W of C/L of Bowleys Quarters Rd., 15th District MARYLAND MARINE MANUFACTURING

CO., INC., Petitioner

OF BALTIMORE COUNTY

Case No. 87-382-SPH

1 1 1 1 1 1 1

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the abovecaptioned 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.

> 12,000 People's Counsel for Baltimore County

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

Peter Max Zimmerman

for a stay of the issuance of said per-mit during this period for good cause shown. Such request must be received in writing by the date of the bearing set above or made at the hearing. PETITION FOR SPECIAL HEARING 15th Election District 5th Councilmanic District Case No. 87-383-SPH LOCATION: West Side of Red Rose Farm Road, 1906.65 feet West of the Centerline of Bowleys Quarters Road.
DATE AND TIME: Thursday

BY ORDER OF Arresta Johns

This is to Certify, That the annexed K-1 L61608

was inserted in the Times, a newspaper printed and published in Baltimore County, once in each successive

weeks before the Knest

Thur:day, April 9, 1987

John O. Hennegan, Esquire

Baltimore, Maryland 21221

809 Eastern Boulevard

PLACE: Room 106 County Office Building, 111 West Chesapeake

A.f: med

BALTIMORE COUNTY, MARYLAND

Me. 30402

OFFICE OF FINANCE - REVENUE DIVISION MISCELLANEOUS CASH RECEIPY

VAL:DATION OR SIGNATURE OF CASHIER

April 9, 1987, at 10.80 a.m.
PUBLIC HVARING: Room 106,
County Office Suilding, 111, W. Cheeapeaks Avenue, Towson, Maryland.
The Zoning Cot missioner 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 soning lines on
land extend and comprehend tide water rivers, Irkes and running streams
or land under water and improvements or land under water and improvements proposed or erected thereon and apply to riperies owners; further to determine whether or not the Baltimore County Zoning Regulations apply to riperian rights and to improvements erected on tidal waters or land under water and to amend site p'an to in-clude additional parking and for parking to be shared with restaurant
Being the property of Maryland Merine Manufacturing Co., Inc., as shown on plat plan filed with the Zer-

84-32 25

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY

1511	Date of Posting
Posted for:)
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Remarks: X. J.	Data of return: 3/20/17
Posted by - ///// Signature	Date of Lectum.
Posted by Signature	

Zoning Commissioner

VALIDATION OR SIGNATURE OF CASHIER

. .

Bring the property of Maryland Marine Manufacturing Co., Inc., at shown on plot plan filed with the Zon-In the event that this Petition(s)

County Zoning Regulations apply to ripurine rights and to improvements erected on tidal waters or land under water and to enemd site plan to include siddicional parking and for parking to at shared with resonance.

Bring the accountries grasted, a building permit may be insued within the thirty (30) day appeal period. The Zoning Commissioner will, however, untertain any request for a stay of the insuence of said permit during this period for good cause though. Such request ment be received in writing by the date of the hearing set above or made at the hearing. above or made at the hearing. By Order Of ARNOLD JABLON Zoning Commissions of Bullimore County

ing Office.
In the event that this :
granted, a building permit ma;
sued within the thirty (30) day appeared. The Zoning Commissioner
will, however, entertain any request

A STREET AND LINES OF THE PROPERTY AND ADDRESS OF THE PROPERTY OF THE PROPERTY

THE DAY OF THE HEARING OR THE ORDER SHALL NOT BE ISSUED. Do not remove sin- (22191 time it is placed by BALTIMORE COUNTY, MARYLAND OFFICE OF FINANCE - REVENUE DIVISION 1 County, Maryland, and remit ing, Towson, Maryland

3501 Red Rose Farm Rd., Balto., Md. 2122. Maryland Marine Manufactu.

ADVERTISING & POSTING COSTS DE CASE #87-382-5PH

JEAN M. H. JUNG DEPUTY ZONING COMMISSIONER

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204

April 1, 1987

ARNOLD JABLON

ZONING COMMISSIONER

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/1 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 ______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

MISCELLANEOUS CASH RECEIPT

B 8222 *** ** 11169: 8 &338F

Phyllis Cole Friedman

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

February +7, 1987

NOTICE OF HEARING RE: PETITION FOR SPECIAL HEARING W/S of Red Rose Farm Rd.. 1305.65° k of the c/l of Bowleys Quarters Rd. 15th Election District - 5th Councilmanic District

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

Avenue, Towson, Maryland

of Baltimore County

PEOPLE'S COUNSEL FOR IN THE CIRCUIT COURT BALTIMORE COUNTY FOR BALTIMORE COUNTY Appellant : File No. 87-CG-45-78

NOILCE RE ARREAL

1::::

Please note an appeal to the Circuit Court for Baltimore County from the Opinion and Order of the Crunty Board of Appeals of Baltimore County, under date of October 7, 1987, in the abovecaptioned matter.

People's Countel for Baltimore

Deputy People's Counsel Room 227. Court House Towson. Maryland 21204

I HEREBY CERTIFY that on this 28 day of Octibes. copy of the foregoing Notice of Appeal was served on the Administrative Secretary, Count. Scard of Appeals. Room 200. Court House, Towson, MD 21204; and a copy was mailed to John O. Hernegan, Escuire. 809 Eastern 91.d.. Baltimore. MD 21221.

Ket May Commerger

People's Counsel for Baltimore County

Deput, Feople's Louisel Room 223. Court House

BALTIMORE COUNTY

PEOPLE'S COUNSEL FOR

IN THE CIRCUIT COURT

FOR BALTIMORE COUNTY

MARYLAND MARINE MANUACTURING

: Docket No. _____ Folic No.

Appellee

: File No.

.

PETITION_ON_AFPEAL

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 cate of October 7. 1987. in compliance with Maryland Rule B-2(e). files this Petition on Appeal setting forth the grounds upon which this Appeal is taken. viz:

That the County Spars 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. \$27 be reversed.

DALTIMORE COUNTY DE ZONING TOWSON MARYLAND 21204

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

MARCH 4, 1987 (CRITICOL ARBA)

Re: Zoning Advisory Meeting of JANUARY 20, 1967 Item # 264 Property Owner: MARYLAND MARINE Location: MANUFACTURING Co., INC . W/S OF RED ROSE FARM RO.

Advisory Committee

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.

Landscaping: Must comply with Baltimore County Landscape Manual.

The property is located in a deficient service area as defined by 8111 178-79. No building permit may be issued until a Reserve Capacity Use Certificate has been issued. The deficient service

intersection as defined by Bill 178-79, and as conditions change traffic capacity may become more limited. The Basic Services Areas are re-evaluated annually by the County Council.

MADDITIONAL COMMENTS: PROVIDED BY THE COMPREHENSIVE PROMINE DIVISION @- FOR LOUDSCOPE REQUIREMENTS CONTOCT AVERY HORDEY

> David Fields, Acting Chief Current Planning and Development

FROG MORTAR CREEK RESTAURANT



BAL'TMORE COUNTY DEPARTMENT OF HEALTH

Zoning Item # 264, Zoning Advisory Committee Meeting of _ 1-20-87

Sevage Disposal pudposed nutto

Property Owner: <u>Ha Manne Manufacturing Co. Onc.</u>

Location: <u>W/S Red Rose Farm Rd</u>

District 15

(V) Prior to approval of a Building Permit for construction, renovation and/or

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

ments for such installation/s before work begins.

of Health and Mental Hygiene for review and approval.

the Division of Maternal and Child Health.

installation of equipment for any existing or proposed food service facility,

contact the Division of Air Pollution Control, 494-3775, to obtain require-

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 ge lone or more) and any other equipment or process which exhausts

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

() Prior to approval of a Building Permit Application for renovations to existing or construction of new health care facilities, complete plans and

) Prior to any new construction or substantial alteration of public swimming

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

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

Prior to approval for a nursery school, owner or applicant must comply with

all Baltimore County regulations. For more complete information, contact

BALITIMORE COUNTY. MARYLAND

OFFICE OF LAW

Inter-Office Correspondence

TO: Carl Richards ?oning 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.

Assistant County Attorney

PDH:raj

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

March 24, 1987

COUNTY OFFICE BLDG. 111 W. Chesapeake Ave. Towson, Maryland 2120

Chairman.

MEMBERS Bureau of Engl sering

Department of Traffic Engineering State Poads Commissio

Bureau of Fire Prevention Health Department Project Planning **Building Department** Poard of Education **Coming 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 Chairman

Zoning Plans Advisory Committee

JED: kkb

Enclosures

NORMAN E. GERBER

Dear Mr. Jablon:

. cc: James Hoswell

1305.65' W. OF & BOWLEYS QTS RD

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 O.

Hennegan. Esquire. B09 Eastern Blvd., Baltimore, MJ 21221.

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

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

Your petition has been received and accepted for filing this

brulend Haring Doubetterin Deceived by: James E. Dyer

)A County Review Group Meeting is required.
A County Review Group meeting was held and the minutes will be forward by the Bureau of Public Services.
)This site is part of a larger tract; therfore it is defined as a subdivision. The plan must show the entire tract.
)A record plat will be required and must be recorded prior to issuance of a building permit.
)The access is not satisfactory.
The circulation on this site is not satisfactory.
)The parking arrangement is not satisfactory.
Parking calculations must be shown on the plan.
This property contains soils which are defined as wetlands, and
development on these soils is prohibited.
)Construction in or alteration of the floodplain is prohibited under the provisions of Section 22-98 of the Development
Regulations.
]Oevelopment of this site may constitute a potential conflict wit
the Baltimore County Master Plan.
)The amended Developmen: Plan was approved by the Planning Board
g e paga mana na marangan menangan menangan menangan menangan kelabi- at an kelabi- ang mambuna ang at . Ma na n

()The property is located in a traffic area controlled by a "D" level

AT 494 -3335

Services.

Zoning Commissioner

Water Supply ___

County Office Building

Towson, Maryland 21204

COMMENTS ARE AS FOLLOWS:

into the atmosphere.

(5) square feet or more.

Office of Planning and Zoning

() 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

SPECIAL OF FOR CONSTRUCTION IN TIDAL OF VERINE AREAS
BILL #17-85 BALTIMORE COUNTY BUILDING CODE 1984
EFFECTIVE - APRIL 22, 1985

Ins J. Forrest, Director

BURRAU OF ENVIRONMENTAL SERVICES

SECTION 516.0 A Section added to read as follows:

WWQ 2 4/86

SECTION 516.0 CONSTRUCTION IN AREAS SUBJECT TO FLOODING

516.1 AREAS SUBJECT TO INUNDATION BY TIDEWATERS:

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

Areas beneath buildings will not be considered as basements if headroom to underside of floor joists is less than six feet or if enclosure walls are at least 50 percent open.

- 2. Crawl spaces under buildings constructed in the tidal plain, as determined by the U.S. Army Corp of Engineers or the Federal Flood Insurance Study, whichever is the more restrictive, shall be constructed so that water will pass through without resulting debris causing damage to the improvements of any property.
- 3. New or replacement utility systems, including but not limited to water supply, sanitary sewage, electric, gas and oil, must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and require on-site waste disposal systems to be located so as to avoid impairment of them or contamination from them during flooding.
- 516.2 RIVERINE AFRAS SUBJECT TO INUNDATION BY SURFACE WATERS WITHIN THE 100 YEAR FLOOD PLAIN.
- 2. No structures or additions shall be within the 100-year flood plain of any watercourse. The 100-year flood plain shall be based upon the Federal Flood Insurance Study or the Department of Public Works, whichever is the more restrictive. This determination shall include planned future development of the watershed area.
- 2. Reconstruction of residential dwelling units shall be governed by Sections 103.0 or 120.0 as applicable, except that rebuilding of residential dwelling units damaged in excess of 50 percent of physical value shall also be governed by the provisions of Subsection 516.1 of this Section.
- 3. Reconstruction of other than residential buildings or structures in the riverine areas shall be made to conform to 516.1 when damage exceeds 50 percent of physical value.

BALTIMORE COUNTY
DEPARTMENT OF TRAFFIC ENGINEERING
TOWSON, MARYLAND 21204
494-3550

STEPHEN E. COLLINS DIRECTOR

January 30, 1987

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

> Item No. 264 -ZAC Property Owner:

Location:

Existing Zoning: Proposed Zoning: Meeting of January 20, 1987
Maryland Marine Manufacturing Co., INC.
(CRITICAL AREA)
W/S Red Rose Farm Road, 1305.65 feet W of
Bowleys Quarters Road
B.L. and D.R. 5.5
Special Hearing to approve or determine
whether or not zoning lines on land extent
and comprehend tide water rivers, lakes and
running streams or land under water and
improvements proposed or erected thereon

and apply to reparian owners; further to determine whether or not the Baltimore County Zoning Regulations apply to reparian rights and to improvements erected on tidal waters or land under water; to amend site plan to include additional parking and for parking to be shared with restaurant 13.2 acres

15th Election District

Dear Mr. Jablon:

District:

Red Rose Farm Road is a very narrow road which was never intended for use by a large volume of traffic, and any change that would tend to increase the traffic will have an adverse effect on the area.

Michael S. Flanigan
Traffic Engineer Associate II

MSF:1t

BALTIMORE COUNTY, MARYLAN

APR 7 1987

INTER-OFFICE CORRESPONDENCE

Arnold Jablon
To Zoning Commissioner

April 7 ZONING OFFICE

Norman E. Gerber, AICP, Director
Office of Planning and Zoning

Petition for Special Hearing: Maryland Marine SUBJECT Manufacturing Co., Inc. - Petition No. 87-382-SpH

The referenced petition poses three distinct issues. The first two question what effect the Jounty's zoning maps and regulations would have in relation to an intended construction of improvements over tidal waters, i.e., a restaurant to be erected on land lying beneath tidal water. The third requests approval for specific amendments to the previously-approved site plan for the Maryland Marina property.

This memo presents my comments regarding the first two, and my conclusion that only a strongly conditional approval, if any, would be possible on the third point.

Authority for "off-shore" zoning - As stated in the petition, the first two questions ask the Zoning Commissioner to

...determine whether or not zoning lines on land extend and comprehend tide waters, 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....

Alternatively, the question could be stated: Has Baltimore County enacted zoning that regulates development "off-shore" in tidal areas? Thus re-phrased, the question leads the inquiry to consider first what authority (and/or limits) there may be for the County to enact such zoning.

No doubt you'll wish to consult Harbor Island Marina v. Calvert Co. (286 Md. 303, 407 A.2d 738), wherein the Court held "that the rights acquired as a riparian owner may be properly subjected to the zoning requirements enacted pursuant to the authority contained in Article 66B" (286 Md. 319; see also 286 Md. 323). Although the Court carefully noted that the case applies to non-chartered counties and most municipalities (286 Md. 305), I'm not aware of anything in Article 25A, Sec. 5(X) or in this County's Charter or Code by which our initial zoning authority over riparian land would be less than that affirmed in 1979 by this case.

Thus, I would conclude from the rationale in the Harbor Island case that Baltimore County does have authority for off-shore zoning. The more difficult question, then, is whether the County's current zoning actually does cover off-shore situations. Regardless of the answer before 1984, I believe that the sequence of State law, State regulations and County law enacted since then have rendered the question temporarily most, at least as it pertains to the property covered by this Petition and probably along the County's entire tidal shareline.

BALTIMORE COUNTY
FIRE DEPARTMENT
TOWSON, MARYLAND 21204-2586
494-4500

PAUL H. REINCKE CHIEF

January 27, 1987

Mr. Arnold Jablon
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towsor Marylan 21204

RE: Property Owner: Maryland Marine Manufacturing Co., Inc. (Critical Area)

Location: W/S Red Rose Farm Rd., 1305.65' W. of Bowleys Quarters Road

Item No.: 264

Zoning Agenda: Meeting of 1/20/87

Gentlemen:

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

- () 1. Fire hydrants for the referenced property are required and shall be located at intervals or ______feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.
- () 2. A second means of vehicle access is required for the site.
- () 3. The vehicle dead end condition shown at

EXCEEDS the maximum allowed by the Fire Department.

- (X) 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation. Site shall comply with NFPA 303, 1975 Edition.
- (X) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1976 edition prior to occupancy. 101 Life Safety Code.
- ') 6. Site plans are approved, as drawn.
- .) 7. The Fire Prevention Bureau has no comments, at this time.

Planning Group

Planning Group

Special Inspection Division

Noted and

Fire Prevention Bureau

/mb

DEPARTMENT OF PERMITS & LICENSES TOWSON, MARYLAND 21204

TED ZALESKI, JR. DIRECTOR

Mr. Arnold Joblan, Joning Commissioner Office of Flamming and Zoning Towner, Maryland 2120,

Door Mr. Jobles.

Property Comper: Maryland Marine Manufacturing Co., Inc. (Critical Area)
Location: Quarters Road
District: BoL. and D.R. 5.5

TASTICISTS TIME WE CONCID!

- All structures shall confers to the Baltimore County Building Code as adopted by Council Bill #17-25, the Maryland Code for the Handicapped and Ages (A.S.S.I. #117-1 1980) and other applicable Codes and Standards.
- (2) A building and other miscellaneous permits shall be required before the start of any construction.
- C. Residential: Two sets of cometraction drawings are required to file a permit application. The seal of a registered in Maryland Architect or Engineer is/is not required on plens and technical data.
- Compercial: Three sets of construction treatings seeled and signed by a registered in Haryland treniters or Ingineer shall be required to file with a permit application. Reproduced seeks are not acceptable.
- 8. All Use Groupe except N-L Single Featly Detected Declings require a sintern of 1 hour fire rating for exterior walls closer than 6'-C to an interior lot line, N-L Use Groupe require a one hour well if there than 3'-O to an interior let line, key wall built on an interior lot line shall require a fire or party wall. See Table 101, Section 1107, Section 1106.2 and Table 1102. No openings are paralited in an exterior wall within 3'-O of an interior lot line.
- F. The expecture does not appear to comply with Table 505 for permissible height/area. Reply to the requested variance by this office cannot be considered until the necessary data pertaining to height/area and construction type is provided. See Table 601 and 505 and have your Architect/Engineer contact this department.
- G. The requested variance appears to conflict with Section(e) _______ of the Beltimore County Building Code.
- I. The preposed project appears to be located in a Flood Plain, Tital/Riverine. Please see the attached copy of Section 516.0 of the Building Code as adopted by Bill #17-85. Site plans shall entwite correct elevations above see level for the lot and the finish floor levels including beament.
- common Although the variance is on a subject other than building the exit discharge is insufficient from the structure to a public way. At least two remote and independent bridges would be required, 14 to 16 handicapped parking spaces would be required.

E. These abbreviated comments reflect only on the information provided by the drawings submitted to the Office of Flerning and Louise and are not intended to be construed as the full estent of any permit. If ferries the applicant may obtain additional information by visiting Acce 122 of the lounty office building at 11.

It also appears there could be additional building code problems that would need to be resolved. It may also require at 0.5. Surname. Prof. Building Flexa Series.

Building Flexa Series.

L/22/80 apprinklers as well as fire separations between various use groups.

Marks & Shoule

Arnold Jablon April 7, 1987 •

Page Two

Effect of the Critical Area law - In 1984, however, the General Assembly enacted legislation significantly altering the traditional authority of local governments to regulate land uses on and near the shoreline of Chesapeake Bay and its tidal tributaries. The law (codified at Sec. 8-1801, et seq. in the Natural Resources Article of the Annotated Code) established the Chesapeake Bay Critical Area Commission (the Commission) which, in turn, has promulgated an elaborate set of regulations (the "Criteria") under COMAR Title 14, Subtitle 15. The Criteria were explicitly affirmed by Resolution of the 1986 General Assembly as meeting the law's requirements.

Among many other things, the Criteria require the County to classify all land within 1000 feet inland from the shoreling into one of three types of "Areas" (COMAR 14.15.02.02A) based on land use conditions on December 1, 1985 (14.15.02.07C). The County will be required to enact strict new regulations on future development in each type of Area (14.15.02, generally) even where such regulations are contrary to current County policy. The work of preparing the draft plans and regulations required by the Criteria is now underway in this Office and is scheduled to be submitted to the Commission at the beginning of August. After receiving the Commission's approval, the County must then enact these as new and/or amended local plans, zoning and other regulations (Nat. Res. Art., Sec. 8-1809(e)).

County's Interia Development Controls (IDC) - Although the Criteria already have the effect of law, the local controls by which the Criteria will be implemented will not be enacted before late 1987 at the earliest. To encourage the localities to begin regulating development sconer, the Criteria contain a retroactive penalty feature (COMAR 14.15.02.07B(4)) by which certain development counts against the "growth allocation" by which the County could otherwise have allowed certain future development.

Responding to this incentive, Baltimore Courty enacted Bill No. 95-86 last summer to establish controls over development in the Critical Area during the interim until we receive the Commission's approval (and enact the new final regulations).

The 20 maps which form an integral pert of the IDC classify the landward portion of the Critical Area either as Intensely Developed Areas (IDA) or Resource Conservation Areas (RCA; not to be confused with the County's RC zoning) The IDC text (Sec. 22-166(b) ani (c)) allows development during the interimonly if it complies with the respective regulations in the Criteria for each type of Area as well as with all other applicable provisions of the Criteria.

Off-shore coverage by the IDC - In defining the geographic extent of the Critical Area, the interim controls (Sec. 22-113(a)) simply copies the definition in the State law (Sec. 8-1807(a)(1)), which begins by encompassing "all waters of and lands under the Chesapeake Bay and its tributaries to the head of tide..." (emphasis added).

We have not yet had to decide whether the classification of territory inland from the tide-line for Critical Area purposes also confers the same classification to the submerged land off-shore. Clearly, however, the IDC maps do not show (and were not intended to show) such an effect for the IDA's. At most, the IDC maps could be read to indicate that the submerged land carries an RCA classification.

. Arnold Jablon
. April 7, 1987

Pe

Page Three

Regulation of "Water-Dependent Facilities" - Despite their volume, the Criteria are nearly silent about the future development of structures on the off-shore side of the tidal line. Through a chain of cross-references (IDC Sec. 22-116(c)(2) to COMAR 14.15.02.05C(7) to 14.15.02.04C(1)(a) to 14.15.03; see also 14.15.09C(2)), development within the first 100 feet on the landward side is allowed, in Resource Conservation Areas, only for certain "water-dependent facilities". From the definition of that term (14.15.03.01), it seems clear enough that it does not include restaurants, per se, no matter how a waterfront (or over-the-water) setting would be to the patrons.

Although the effects of the Criteria on new off-shore water-dependent facilities are not as clear as they might have been. I believe that the combined effect of COMAR 14.15.03.06B, 14.15.05.04A and the Legislative Intent in the IDC (Sec. 22-112) clearly require a finding that an off-shore restaurant is not a permissible use adjoining a territory classified as RCA under the interim controls.

Effect .. pre-1984 zoning - The Petition, of course, has asked the question broadly in reference to the County zoning throughout the shoreline (albeit the accompanying site plan "proposed BL zoning extension" and "proposed restaurant"). My conclusion remains the same. The Criteria requires us to have a process for identifying the effects of development along the shoreline, and the process clearly (COMAR 14.15.03.64B) sust consider effects on both sides of the tidal line. Until that process is accepted by the Council and approved by the Commission, Sec. 22-112(b) of the IDC clearly should be read to "supercede and abrogate" whatever riparian zoning rights might have been derived by interpretation of the Baltimore County Zoning Regulations as it existed before the Critical Area program.

Alternative Interpretation on off-shore zoning - Even in the absence of the Critical Area program, I probably would still have concluded that Baltimore County's zoning maps do not currently confer any authority for off-shore develorment. My rationale rests on the Baltimore County Zoning Regulations, Sec. 103.2 and the commentary on that Section in Youngstown Cartage Co. v. N. Pt. Peninsula Community Coordinating Council (24 Md. App. 624, 332 A.2d 718).

Baltimore County has never (to my knowledge) attempted to extend zoning classification boundaries on the maps into tidal waters, even though Section 417 does regulate certain aspects of "waterfront construction". Perhaps this was because of a perception of exclusive State sovereignty to land under tidewater (as discussed in the <u>Harbor Island case</u>). In any event, the site plan accompanying the Petition clearly maps a "proposed BL zoning extension". It appears that the proposal is not just "wharfing out" (as discussed in the Harbor Island case and covered in the Baltimore County Zoning Regulations, Sec. 417); its purpose clearly is to make available additional land (albeit submerged) for establishing a new principal use, and I believe that mapping of this sort is clearly a County Council prerogative.

Conditional action on the Amended Site Plan - Finally, in reference to the third element of the Petition, for approval of an amended site plan to provide additional parking, I can only conclude that the requested action (even though labeled a "Special Hearing") falls within the kinds of actions on which I must first make the specified "findings" in accordance with Section F-1813 of the Critical Area law.

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 superceded 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).



NEG/TD/sf

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

County Board of Appeals of Baltimore County

Room 200 Court Mouse Coteson, Maryland 2120-1 (301)-194-3180

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

ASSIGNED FOR:

THURSDAY, August 27, 1987 at 10:00 a.m. Appellant/Feople's Counsel

cc: Phyllis Cole Friedman, Esquire Md. Marine Mfg. Co., Inc.

Petilioner/Appellee

John O. Hennegan, Esquire

Attorney for Petitioner

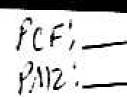
Norman E. Gerber James G. Hoswell Arrold Jablon Jean M. H. Jung .'ames E. Dyer

Margaret E. du Bois

Kathi Weldenhammer Administrative Secretary

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





COUNTY COURTS BULLDING

OMBON, MARYLAND 21304

100) 887-3847

P/112:___

The Tircuit Court for Bultimore County

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY Appellant

MARYLAND MARINE MANUFACTURING COMPANY, INC. Appellee

ACCOUNT COMMON

BALTIMORE COUNTY CASE NO. 48/48/87CG4578

CIRCUIT COURT

建压制发生的

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 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 O. Henregan, Esquire

SZ:6 !!V EZ SW 68 Esquire

Copies sent to:

COUNTY BUARD OF APPEALS

AUC 25 1989 ZONING OFFICE



LAW FIRM Romadka, Gentrum & Kennegari INVINGTON FEDERAL BUILDING 809 EASTERN BOULEVARD ESSEX, MARYLAND 21221

TELEPHONE (301) 686-8274

FAX # 686-0118

0K910 ECENAEL

ZONING OFFICE

July 25, 1989

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:

ROBERT J. ROMADKA

JOHN B. GONTRUM JOHN O. NENNEGAN

DONALD IL SHEFFY

NANCY E. DWYER

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 permissable 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.
- 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.



County Moard of Appeals of Maltimore County

COUNTY OFFICE BUILDING, ROOM 315 111 W. CHESAPEAKE AVENUE TOWSON, MARYLAND 21204 (301) 887-3-90

October J, 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. 87-382-5PH 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, 1909.

Sincerely,

4. That it is established that the front of the restaurant

5. The maximum height of the building allowed by the zoning

6. We further have based the setbacks for the side yard and

In the event that your memory of our conversation is other

Very truly yours,

John O. Hennegan

than what has been said above, please do not hesitate to contact

me and I will be glad to discuss the matter with you.

cc: Maryland Marine Manufacturing Company, Inc.

regulations is 40 feet or a 1 to 5 slope and that any greater

front yard based on the theory that the adjoining residential

Kathleen C. Weidenhammer Administrative Assistant

Encl.

JOH/cfh

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

or building faces the roadway.



IN THE MATTER OF

QUARTERS ROAD

COUNTY, PLAINTIFF

MARYLAND MARINE MANUFACTURING CO., INC

PETITION FOR SPECIAL HEARING ON

OF RED ROSE FARM ROAD, 1305.65*

WEST OF CENTERLINE OF BOWLEYS

15th ELECTION DISTRICT

5th COUNCILMANIC DISTRICT

ZONING CASE NO. 87-382-SPH

PEOPLE'S COUNSEL FOR BALTIMORE

consistent with this Opinion";

PROPERTY LOCATED ON THE WEST SIDE

County Board of Appeals of Baltimore County

Room 200 Court House Cotoson, Maryland 2120-1 (301) 494-3180

October 28, 1487

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

Dear Mr. Hennegan:

Encl.

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

ON REMAND FROM

CIRCUIT COURT

BALTIMORE COUNTY

CASE NO. 48/48/87CG4578

THE

FOR

Pursuant to the Order of the Court of Appeals dated July 6, 1989.

IT IS THEREFORE this 3rd day of October , 1989 by the

IT IS FURTHER ORDERED that the amended site plan approved in

BALTIMORE COUNTY BOARD OF APPEALS

Harry E. Buchkeister of

Case No. 74-285-XA to reflect the additional parking be and the same is GRANTED.

ORDER

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

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 DENJED; and

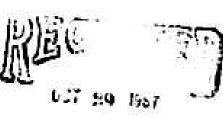
Notice is hereby given, in accordance with the Rules of Procedure of the Court of Appeals of Maryland, that an appeal has been taken to the Circuit Court for Bultimore County from the decision of the County Board of Appeals rendered in the above matter.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Jone Holmen. Secretary

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



ZONING OFFICE

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, Canstituting the County Board of Appeals of Baltimore County, have given natice 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, Fresident, 3501 Red Rose Farm Rd., Baltimore, Md. 21220, Petitioner: John O. Hennegan, Esq., 809 Eastern Boulevard, Baltimore, Md. 71221, Counsel for Petitioner; and Phyllis C. Friedman, Esq., | Sourt House, Towson, Md. 21204, People's Counsel for Baltimore County, Flaintiff, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

> unity Board of Appeals of Baltimore County 200, Sourt House, Towson, Md. 21204

Case No. 87-328-SPH

Notice has been mailed to Maryland Marine Manufacturing Co., Inc., Wayne 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.

Maryland Marine Manufacturing Co., Inc.

I HEREBY CERTIFY that a copy of the aforegoing Certificate of Miskiewicz, President, 3501 Hed Rose Farm Rd., Baltimore, Md. 21220, Petitioner;

County Board of Appeals of Beltimore County Room 200 Court House Towson, Maryland 21204 (301) 191-3180

October 7, 1987

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

> RE: Case No. 87-382-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,

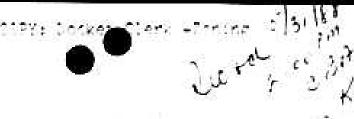
Kathern I Wuderhammer Kathleen C. Weidenhammer Administrative Secretary

Encl

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



ZONING OFFICE



Che Circuit Court for Baltimore County

COUNTY COURTS BUILDING TOWSON MARYLAND 21204 301 494 2647 PEOPLE'S COUNSEL FOR IN THE BALTIMORE COUNTY CIRCUIT COURT Appellant BALTIMORE COUNTY MARYLAND MARINE MANUFACTURING COMPANY, INC. CASE NO. 48/48/87 CG4578 Appellee 2001NG CASE NO. 87-162-5P9 •

OPINION AND ORDER

This is an Appeal from an Order f 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 (PL). They propose to extend the existing BL Zoning to construct

a restaurant, the restaurant an extension of BL which extends into Frog Mortar Creek, aproximately 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 nonwater 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 ertitled "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 cutlines 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 shail be established in accordance with the following rules:

"(e) 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)

- 3 -

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

"(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 roundation. 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 28 May of May, 1988,

ORDERFD, 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.

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

-4-

Petition for Special Hearing

Description of Property

Certificate of Posting

Certificates of Publication

Entry of Appearance of People's Counsel

Zoning Plans Advisory Committee Comments

Director of Planning & Zoning Comments

Petitioner's Exhibits: 1 - Plat of Property dated 12/2/86

2 - Copy of Baltimore County Council Final Issues

Zoning Commissioner's Order dated April 20, 1987

Notice of Appeal received May 19, 1987 from People's Counsel

John O. Hennegan, Esquire, Attorney for Petitioner 809 Eastern Boulevard, Baltimore, Haryland 21221

Phyllis Cole Friedman, Esquire, People's Counsel of Baltimore County Rm. 223, Old Courthouse, Towson, Maryland 21204

Request Notification: Norman E. Gerber, Director of Planning James Hoswell, Office of Planning & Zoning Arnold Jablon, Zoning Commissioner Jean M. H. Jung, Deputy Zoning Commissioner James E. Dyer, Zoning Supervisor Margaret E. duBois, Docket Clerk

County Board of Appeals of Ballimore County

COUNTY OFFICE BUILDING, ROOM 315 111 W. CHESAPEAKE AVENUE TOWSON, MARYLAND 21204 (301) 887-3180

October 3, 1989

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 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

Baltimore County Zoning Commissioner Office of Planning & Zoning Towson, Maryland 21204 494-3353

Arnold Jubion Zoning Commissioner



Baltimore County Board of Appeals Old Courthouse, Room #205 Towson, Maryland 21204



RE: Petition for Special Hearing W/S of Red Rose Farm Road, 1,305.65' W of the c/l of Bowleys Quarters Road Maryland Marine Manufacturing Company, Inc. - Petitioners Case No. 87-382-SPH

May 20, 1987

Dear Board:

Please be advised that on May 19, 1987 an appeal of the decision rendered in the above-referenced case was filed by the People's Counsel for Baltimore County.

Please notify all parties to the case of the appeal hearing date and time when it has been scheduled. If you have any questions concerning this matter, please do not hesitate to contact this office.

Very truly yours,

Zoning Commissioner

AJ:bjs

cc: John O. Hennegan, Esquire, Attorney for Petitioner 809 Eastern Boulevard, Baltimore, Md. 21221

Phyllis Cole Friedman, Esquire People's Counsel for Baltimore County Old Courthouse, Rm. 223 Towson, Maryland 21204 File

CASE NO. 87-382-SPH

15th Election District

MARYLAND MARINE MFG. COMPANY W/s of Red Rose Farm Road, 1,305.65' W of the centerline of Bowleys Quarters

October 28

October 13

July 6

√F August 7

5th Councilmanic District SPH -interpretation of B.C.Z.R.;

amendment to site plan -Case No. 74-285-XA to reflect additional parking Petition of Maryland Marine Mfg. Co. for special February 11, 1987

hearing on subject property requesting interpretation of zoning regulations and approval of amendment to existing site plan (Case No. 74-285-XA) to reflect additional parking. Hearing on petition by Zoning Commissioner. April 9

Order of Zoning Commissioner that those uses April 20 permitted on dry land within a particular zone are permitted on tide water rivers, lakes, etc., to which the wet land is attached subject to restrictions.

Order for Appeal to C.B. of A. from Paople's May 19 Counsel.

Hearing had on appeal before the C.B. of A. August 27 Order of the C.B. of A. ordering that the Petition October 7 for Special Hearing requesting the interpretation

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

Order for Appeal filed in CCt for BCo by People's 14 October 28 Counsel: Petition to accompany appeal filed in CCt.

Certificate of Notice sent.

Record of Proceedings filed in CCt for BCo. November 27

Hearing had on appeal in Circuit Court. April 6, 1988 Order of CCt AFFIRMING C.B. of A. (Turnbull, J) 1 May 28 Order for Appeal to Court of Special Appeals Jt, June 22 by People's Counsel.

> Order of the Court of Appeals -on its own motion, that case is to be docketed on Court of Appeals docket as No. 89, Sept. Term, 1988, without being heard at CSA

Order of the Court of Appeals of Maryland that the decision of the Circuit Court for BCo is VACATED; case REMANDED to that Court with directions to REMAND the matter to the C.B. of A. of BCo with instructions to vacate its Order and that of the Z.C. and to enter an Order consistent with said Opinion of C of A. (Conclusion: BCo is not empowered to provide required initial authorization for construction of proposed

non-riparian restaurant use.) Mandate issued by the Court of Appeals. Order of the CCt REMANDING case to the Board to vacate 1ts Order and that of the Z.C. and to enter an Order consistent with the Opinion of C. of A.

RE: PETITION FOR SPECIAL HEARING W/S of Red Rose Farm Rd. 1,305.65' W of C/L of

Bowleys Quarters Rd.,

15th District

: BEFORE THE JONING COMMISSIONER OF BALTIMORE COUNTY

MARYLAND MARINE MANUFACTURING : Case No. 87-382-SPH COMPANY, INC., Petitioner

NOTICE OF APPEAL

Please note an appeal from your decision in the above-captioned matter, under date of April 20, 1987, to the County Board of Appeals and forward all papers in connection therewith to the Board for hearing.

.

Phyllis Cole 7 medman Phyllis Cole Friedman People's Counsel for Baltimore County

ZONING OFFICE

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

I HEREBY CERTIFY that on this 19th day of May, 1987, a copy of the foregoing Notice of Appeal was mailed to John O. Hennegen, Esquire, 809 Eastern Blvd., Essex, MD 21221, Attorney for Petitioner.

Peter Max Zimmerman

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



PCF', ___ PA12: ___

The Circuit Court for Baltimore County

THIRD POLEAL CIACUUS DE MARYLAND

COUNTY COURTS BUILDING TOWSON, MARYLAND 21204 (361) 687-2647

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY Appellant

IN THE CIRCUIT COURT FOR

MARYLAND MARINE MANUFACTURING COMPANY, INC.

BALTIMORE COUNTY CASE NO. 48/48/87CG4578

Appellee * * * * * * * *

In accordance with the Mandate issued by the Court of Special Appeals of Maryland, it is this ?1st 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.

SZ:6 NV EZ 90V 68

Copies sent to: John O. Hennegan, Esquire



The Circuit Court for Beltimore County

THIRD JUDICIAL CIRCUIT OF MARYLAND

PEOPLE'S COUNSEL FOR

BALTIMORE COUNTY

Appellant

IN THE

COUNTY COURTS BUILDING

TOWISCO, MARYLAND PUBLIC

CIRCUIT COURT

BALTIMORE COUNTY MARYLAND MARINE MANUFACTURING

COMPANY, INC. CASE NO. 48/48/87CG4578 Appellee

.

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.

Copies sent to: John O. Hennegan, Esquire Peter Max Zimmerman, Esquire

EILED NG 23'89



County Board of Appeals of Ballimore County

COUNTY OFFICE BUILDING 111 W. CHESAPEAKE AVENUE TOWSON, MARYLAND 21204 (301) 494-3180

September 30, 1988

Howard E. Friedman, Clerk Court of Special Appeals of Maryland Annapolis, MD 21401-1698

> RE: Case No. 87-00-4578 Maryland Marine Menutacturing Co., Inc.

Dear Mr. Friedman:

Thank you.

We would appreciate your noting our request for a copy of the Opinion in the subject case when it is filed by the Court of Special Appeals.

John & Eledenhammer Administrative Secretary

Sincerely,

				•	1510			
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THE MATTER OF					co	/IRT		
E APPLICATION OF RYLAND MARINE MANUFACTU	RING	34		CIRCUIT		VII.		
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E A ESECTAL HEARING REG	ARDING	1223		1/2				
THE M	F21 21DF			BALTIMORE	E COUNT			
RED ROSE FARM RD., 130 THE C/L OF BOWLEYS QUA	RTERS RD.	1933		2027				
ELECTION DISTRICT		1910		AT	LAW			
h COUNCILMANIC DISTRICT	•			CG Doc. No	2	48		
AND A COURT OF SHARE AND REAL PROPERTY.		3.9						
COPLE'S COUNSEL FOR BALT	THORE			Folio No.		48		
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and Patricia Phipps, con County, and in answer to case, herewith return to matter, consisting of to	now come wastituting the Order the record the following	the Court for Apof proce	T. Hanty Bopeal ecding	directed ag s had in the copies or	peals of gainst the ne above original	Balting hem in e entit	this	
file in the office of t								
	Petition of for special of Red Ros	f Maryla l heari se Farm	and Ma ng on Rd.	property 1	acturing ocated st of t 5th Ele	g Co., on the he cent ction I	Inc., west: ter li Distri	

of Baltimore County.

Cormittee - filed

Maryland Marine Manufacturing Co., Inc.

Case No. 87-308-SPH

Cotober, 1987.

March 14

March 18

March 24

April 9

April 20

of Bowleys Quarters Rd., in the 15th Election District

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

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

boundary lines of the dry land to which the "wet" land is

under water within lines extended from the zoning

I HEREBY CERTIFY that a copy of the aforegoing Certificate of

Sunty Board of Appeals for Baltimore

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

Certificate of Posting of property - filed

Certificate of Publication in newspaper - filed

Comments of Balto. County Zoning Plans Advisory

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

August 27

October 7

October 28

October 28

October 28

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

Order for Appeal to C.B. of A. from Phyllis C. Friedman, May 19, 1987

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 Case No. 74-285-XA to reflect the additional parking

FURTHER ORDERED that the amended site plan approved in be GRANTED. Order for Appeal filed in the Circuit Ct. for Baltimore

County by Phyllis C. Friedman, People's Counsel for Baltirore 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 November 20 Petitioner's Exhibit No. 1 - Bd. of Appeals' file

> " 2 - Copy of Bill #64 " " 3 - Copy B.C. Zoning Issues-#5-1|18

> > * 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 Hovember 27, 1987 Baltimore County

Count Court of Appeals of Baltimor County Room 200 Court Mouse Comeon, Margland 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

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

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

Very truly yours,

June Holmen, Secretary

Enclosures

THE RESIDENCE OF THE PARTY OF T

Md. Marine Manufacturing Co., Inc. Case No. 87-382-5PH

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

Respectfully submitted,

County Board of Appeals of Baltimore County

CERTIFICATE OF NOTICE Mr. Clerk: Pursuant to the provisions of Rule B-2'd) of the Maryland

IN THE MATTER OF

COMPANY, INC.

QUARTERS ROAD

15th ELECTION DISTRICT

COUNTY, PLAINTIFFS

FILE NO. 87-328-SFH

5th COUNCILMANIC DISTRICT

THE APPLICATION OF

MARYLAND MARINE MANUFACTURING

FOR A SPECIAL HEARING REGARDING

OF RED ROSE FARM ROAD, '1305.65'

PEOPLE'S COUNSEL FOR BALTIMORE

WEST OF THE CENTERLINE OF BOWLEYS

PROPERTY LOCATED ON THE WEST SIDE :

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 Manufasturing 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.

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

IN

FOR

BALTIMORE COUNTY

AT LAW

CG Doc. No. ____48

Folio No. _____48

File No. 87-CG-4578

THE

County Board of Appeals of Baltimore County Room 200 Court Mouse Comson, 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 horeby 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,

Jone Holmen, Secretary

cc: Md. Marine Manufacturing Co., Inc.

Norman E. Gerber James Hoswell J. Robert Haines Ann Nastarowicz James E. Dyer Margaret E. duBois

