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ATTORNEY (1980)
J. EARLE PLUMHOFF
ATTORNEY (1988)
RALPH E. DEITZ
ATTORNEY (1990)
WRITER'S DIRECT DIAL
823-7855

March 9, 1998

Mr. Carl Richards
Director
Permits and Development Management
County Office Building
Towson, Maryland 21204

Re: Proposed Sale and Separation of Superfluous, Surplus Portion of Norman Creek Marina, Namely 2225 Corsica Road, from the Balance of the Marina

Dear Mr. Richards:

On behalf of Mr. and Mrs. Walter Bell, we ask pursuant to this spirit and intent letter, that your Department approve the transfer of the surplus, superfluous property, namely Lot 207, 2225 Corsica Road, not a part of the Marina use.

The Norman Creek Marina is a small marina on the south side of Corsica Road, south of Middleborough Road on Norman Creek, modified in Case No. 87-355-SPH.

The subject property is a narrow site of 0.70 acres, comprised of 3 lots, 207, 208 and 209 on an older plat. The marina use takes place on Lots 208 and 209 only.

The property was reclassified to business maritime marina (BMM) during the 1997 mapping process by the County Council, which commercial zoning supplants the special exception.

As shown on a portion of the approved site plan by Broyles, Hayes & Associates, the subject property consists of Lots 207 (2225 Corsica Road, 208 (2227) and 209 (2229), all on Corsica Road. As can be seen, 2225, located on Lot 207 is the largest of the three lots, and it includes an existing garage, a residence and a driveway all rented, not part of the marina.

As was brought out at the time of the hearing in Case No. 87-355-SPH, before the Board of Appeals, and as was affirmed by the Circuit Court for Baltimore County in Case Number 88CG2253, modest modifications to the marina were allowed, including a lengthening of the pier, and the berthing of slightly larger boats up from 28 to 30 feet in length.

Mr. Carl Richards
March 9, 1998
page two

As was testified to in front of the Zoning Commissioner, the Board of Appeals and as the record reflects in front of the Circuit Court, 2225, on Lot 207, has never formed a working part of the marina property.

The yard, driveway and grass area between the house and the water have been and will in the future continue to be used by the tenants or owners of the house, and not by the occupants, employees or leasees at the marina.

The Bells receive a separate tax bill for this parcel, and it has not been merged into the other two lots, save and excepting by virtue of the fact that it was included in the original described area of the special exception.

After many years of experience which have confirmed that it is not needed for, and does not form a part of the marina property, the Bells would like to offer 2225 for sale to purchasers, rather than renting it out.

It will be appreciated if as a part of this spirit and intent letter, that your Department will confirm that it may be sold to third parties, and if necessary, Mr. and Mrs. Bell are content to have it sold subject to all conditions and orders to which the marina is subject. Our check for \$40.00 is enclosed.

Thanking you and your staff for your kind attention in this matter, I am

Respectfully,

Newton A. Williams

Newton A. Williams

NAW:mao

cc: Mr. Walter Bell
Timothy Kotroco, Esquire
Deputy Zoning Commissioner

C:\OFFICE\WPM\WPM\DOCS\NAN\LETTER\MAR98\WFO

NORMAN CREEK MARINA, INC.
1308 CONTINENTAL DRIVE, SUITE N
P. O. BOX 720
ABINGDON, MD 21008
PH. 410-886-8545

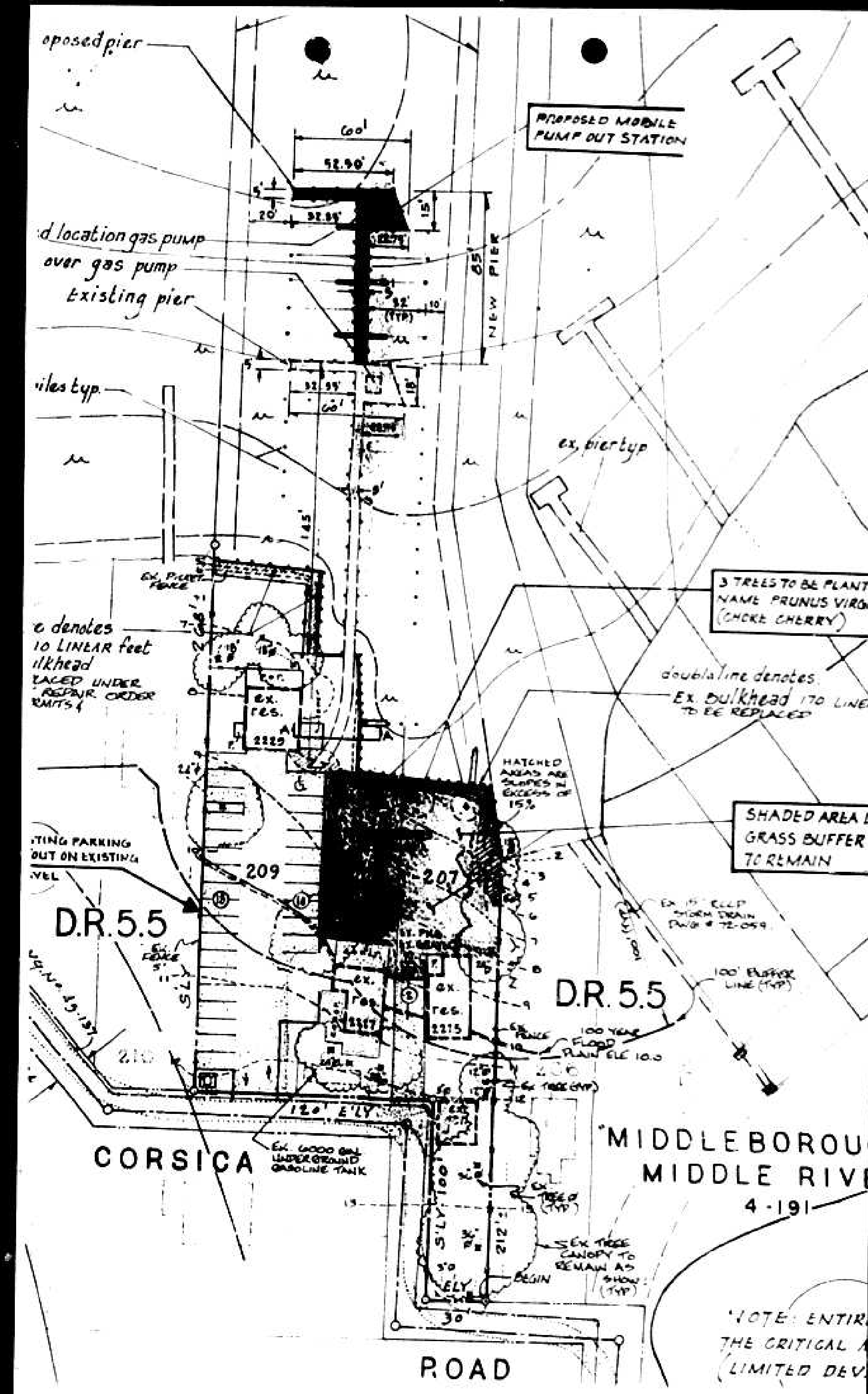
1303

March 17, 1998

PAY TO THE ORDER OF Baltimore County \$40.00 DOLLARS

FOR 5 x 7 letter EW Bell

⑆001303⑆ ⑆055002558⑆ ⑆100468⑆



IN THE MATTER OF
OF THE APPLICATION OF
WALTER BELL, ET UX
FOR A SPECIAL HEARING ON
PROPERTY LOCATED ON THE
SOUTH SIDE OF CURSICA ROAD,
5 FEET EAST OF THE
CENTERLINE OF MILES ROAD
15th ELECTION DISTRICT
5th COUNCILMANIC DISTRICT

IN RE: CASE NO. 87-395-SPH Case No.

NOTICE OF SUBSTITUTION OF COUNSEL

PLEASE strike the appearance of Newton A. Williams, Esq. as attorney for the Appellants, Donald W. Doyle, Marie Doyle, Jonathan Doyle, Brian Templeton, Mr. and Mrs. William Selig, Sr. and Mr. and Mrs. William Selig, Jr., and enter the appearance of Michael P. Tanczyn, Esq. as substitute counsel for the Appellants.

Newton A. Williams

NEWTON A. WILLIAMS, ESQ.
Nolan, Plumhoff & Williams
Suite 1109, Hampton Plaza
390 East Joppa Road
Towson, Maryland, 21204

Michael P. Tanczyn

MICHAEL P. TANCZYN, ESQ.
Suite 106, 606 Baltimore Avenue
Towson, Maryland, 21204
Telephone: (301) 296-8823

I HEREBY CERTIFY that, on this 20th day of May, 1988, a copy of the foregoing was mailed, postage prepaid, to S. Eric DiNenna, Esq., Suite 600, 409 Washington Avenue, Towson, Maryland, 21204, attorney for the Appellee; and to Phyllis Cole Friedman, Esq., Baltimore County People's Counsel, Court House, Towson, Maryland, 21204.

Michael P. Tanczyn
MICHAEL P. TANCZYN, ESQ.

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY, et al,
Appellants,
vs.
WALTER BELL, et al,
Appellees.

Case No. 56/253/38CG-2253

APPELLANTS' MEMORANDUM OF LAW

NOW COMES, Donald Doyle, et al, Appellants, by Michael P. Tanczyn, their attorney, who respectfully submit the second Memorandum of Law.

ACTION APPEALED FROM

The Petitioners, Walter Bell and Cynthia Bell, filed a Petition for Special Hearing with the Zoning Commissioner, subsequently known as Case Number 87-395-SPH, seeking to amend the site plan in prior Case Number 70-215-X to allow an extension of an existing pier, the number of slips to remain 24, to lift restrictions 1 and 3 of the Order.

In addition to the chronology contained in the first Appellants' Memorandum of Law, following the last remand to the Board of Appeals by the Circuit Court for Baltimore County, the matter was called for hearing on August 9 and October 4, 1989. Following the Opinion and Order of the Board of Appeals granting the Petitioners' requests on November 29, 1989, after the Appellants filed an appeal on December 26, 1989, and after

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preliminary motions were decided, the transcript of the hearing and further addendum to the record was filed with the Clerk of the Circuit Court on August 10, 1990.

Appellants adopt all of the issues and reasons contained in their earlier Orders for Appeal not previously decided by the Court but retained for future hearing and raise the following additional issues:

ISSUE FOUR

On further hearing the provisions of the Chesapeake Bay Critical Area Protection Program enacted by the Baltimore County Council were not followed or were misinterpreted and the Board's findings in its Opinion relating to the Petitioners' site's compliance with the critical area program were unsupported by either the modeling process chosen and were erroneously found by the Board of Appeals to have been met by the Petitioners' evidence and testimony in the case.

The Board of Appeals in its Opinion essentially adopted the findings of the Petitioners' witness, Mr. Broyles, which had been reviewed by DEPRM, whose representative, Mr. David Flowers, testified that in his opinion the Petitioners' site did not represent an intensification of use and therefore would not require water dependent facilities plan or review. Notwithstanding that opinion, he also expressed his further opinion that the evidence submitted by the Petitioners met their burden to answer the preliminary question that the Petitioners' amended site plan would

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not degrade water quality in the vicinity of the site. The evidence contained in Mr. Broyles' report represented a modeling extrapolation taken from the model which DEPRM found suspect in its report submitted to the Board of Appeals.

It relied, for instance, on monitoring stations more than 3,000 yards distant from the Petitioners' site, well outside the cove, near the Back River treatment facility, to answer the threshold question of water quality in the cove, based on what the findings were at those remote sampling sites.

The most qualified witness to testify before the Board was the Protestants' witness, Charles John Klein, III, whose testimony begins in the transcript of August 9, 1989 at T104. After a review of his qualifications he was offered and accepted as a licensed professional engineer with a Masters Degree as an environmental engineer with a specialization in estuarine assessment focused on the Chesapeake Bay and its tributaries. (T108-T111) He expressed familiarity with the protocols and with the Baltimore County Critical Area Protection Program (T112). He was familiar with the findings of DEPRM (T113) and had visited the site on several occasions (T114), including samples taken by him and analyzed by an outside laboratory.

The samples analyzed by Delmarva Labs, Inc. (T117) were admitted for the record as Protestants' Exhibit CC, were tested for PH, phosphorous, nitrogen, turbidity, and DO, with the resulting analysis that the waters at the Petitioners' site did

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not meet State standards for turbidity and PH (T118).

He disagreed with Mr. Broyles' reliance on State data concerning fecal coliform in water samples geographically distant from the site (T119) on the basis that it is one of the least reliable of the water quality parameters used to assess water quality. He noted that EPA was sponsoring a project to locate the identity of any bacteria or possibly virus as an indicator of water quality.

In his opinion the water quality in the vicinity of Petitioners' site was poor (T120), his analysis using the Nielsen Rating system of somewhere between 5 to 6 and he explained that such a rating would be characterized as poor water quality (T121). He found that the water at the Petitioners' site also had a poor rating for PH with an acidic rating which he found to indicate non-point source pollution runoff from property (T124). He found that the bottom sediment concentrations showing elevated concentrations for copper, zinc and mercury at this site are above average for the Chesapeake Bay (T124).

The Board Chairman expressed an opinion (T125) that the water quality in Norman Creek was not germane to the hearing today but the question for decision was rather whether the proposed extension of the pier is going to damage whatever is there. In response Mr. Klein was asked why water quality was considered relevant (T127) in answer he explained that the degradation of the Chesapeake Bay has caused the loss of certain natural resources

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(T127) and that the issue of poor water quality at the Petitioners' site as demonstrated should lead to a determination that the proposed activity; namely, the extension of the pier, should not occur at that site or be analyzed in terms of the effect on what it would bring into that water body (T128), which would explain why the pertinent model weighs existing water quality like a scoring criteria.

He summarized (T129) that the issues he saw were to analyze existing water quality found to be bad in terms of water quality and flushing. He found that Mr. Broyles had used an improper model (T129), relying on the Coastal Marina Assessment Handbook. He explained that flushing studies determine how often you replace the volume of water in a particular area being studied (T130). The higher the flushing the lower the stagnation and the likelihood that pollutants would exhibit themselves in enhanced concentrations. He explained that even if two systems had the same pollutant loads coming into them, if you had one which flushed faster than the other one, that one would have better water quality because it is able to dilute the pollutants quicker (T130). He found that the appropriate flushing model for this site as was indicated by DEPRM in its report was the open marina model, rather than a semi-enclosed marina model used by Mr. Broyles (T132), which he explained is only to be employed where the size of the marina equates to the size of the water body that you are modeling. In this case the model used by Mr. Broyles was

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utilized where the size of the marina was only a fraction of the total water body of Norman Creek. The analogy used was that the bigger and bigger the pot of water in which salt was put in, the less and less it is going to taste like salt (T132).

He expressed his opinion that conservative flushing time for this area would be approximately 28 days (T133) which would be unacceptable in terms of DEPRM regulations had the appropriate model been used (T133).

He recalled that Mr. Broyles had a total score of 15 for this site (T134) under the preliminary findings, and based on the best information available to him which he had earlier cited, his analysis was as follows, beginning at T135, he scored the site as possibly a 50, which would put it in the questionable range of whether it would be required to further reduce pollutant loading to inhibit site pollution prior to any other activity, such as the Petitioners' extension being put in place (T136).

He then found that such a score would require the project to undergo a second environmental assessment under Phase Two (T137) which was not done by Mr. Broyles nor required by DEPRM.

He had high confidence in his rating of poor water quality and expressed familiarity with flushing models and the use of an appropriate model in this particular case. He compared his findings to be greatly in excess of that which under County Review Group purview would be unacceptable if it exceeded 5 days flushing

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time.

He expressed his opinion (T140) that detailed analysis would be and should be required by the County for this site and that the Phase Two environmental assessment needs to be conducted based on his preliminary analysis showing poor flushing and poor water quality.

In a nutshell, the Board of Appeals rejected the expert witness, Mr. Klein's 16 years of experience focused on estuarine development with a large amount of it as described in his CV having to do with the Chesapeake Bay and its water loading sources as the focus as his work; and the Board of Appeals essentially rubber-stamped the DEPRM acceptance which they admitted was one of the first applications reviewed by DEPRM under the new regulations.

The law in effect the time the case is decided will be the law applied to a specific case O'Donnell vs Bassler, 289 Md 501. The best data available to the Board of Appeals was the water samples taken by Mr. Klein and analyzed by Delmarva Labs, Inc. which supported his conclusion of poor water quality at the site of the Petitioners' pier.

The DEPRM representative's belief that the Petitioners' activity would not be intensified by the extension of the pier a substantial distance and the increase in the number and size of the boats housed at the marina is directly contradicted by the Petitioners' witness, Mr. Broyles' testimony as to the number of

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boats and small run-abouts berthed at the Petitioners' facilities at the time of hearing.

The distinction not perceived as important by the Board of Appeals is that while the Petitioners argued for an extension of the pier as well as an increase in the size of the boats to be berthed at the pier over those previously authorized, the water quality analysis according to Mr. Klein should study the existing water quality and the uses to which it is put which have contributed to the existing conditions and study the proposed changes requested by the Petitioners to see if there is an intensification of use at the site. Clearly the Petitioners were not heretofore authorized to have boats in excess of 24 feet and requested and were granted by the Board permission to berth boats 30 feet long and also extend the pier a considerable distance further out than previously authorized under BC2R and specifically Section 417, Appendix J.

The testimony of not only Mr. Broyles but of Mr. Klein indicated that there were small rubber Zodiac boats with outboard motors attached to them and small fishing boats as contrasted with much larger boats contemplated in Petitioners' request.

Mr. Klein testified at length as to the effect on littoral drift which would be occasioned by putting pier pilings further out into the Norman Creek.

Mr. Paul Clement, called on the same date and whose testimony begins at T162, authenticated pictures accepted at T164

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and T165 showing his property and marked as CC1 or DO, and showed the proximity of the Petitioners' then existing pier with his property (T169). Mr. Clement expressed his opinion that the proposed pier extension if built and the amount of water that would normally wash past the property on the ebb tide and flood tide would decrease because of the structure of the new project since the pier extension would extend across the frontage of Mr. Clement's property as well as part of his neighbors' (T171).

He further testified that he had been sailing for approximately 15 years and that as part of that he had learned to study the tides (T172). He testified that he was an executive jet pilot for a major organization in Towson (T173) for his employment and that when he had built his own pier he had secured permits from Baltimore County and had to comply with BC2R Section 417 (T173) to stay within divisional property lines, and that none of the divisional property lines were bent to wiggle his pier in and out as was done in the case of the Petitioners' property (T173).

ISSUE FIVE

The Board of Appeals erred in approving a revised plan in violation of Appendix J of Baltimore County Zoning Regulation ("BC2R") Section 417 concerned with boundary lines the evidence before the Board after rehearing without a review by Baltimore County of the Petitioners' altered site plan.

The Protestants called as a witness Mr. Tunnie Ping (T178) who testified under oath that he was a licensed

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professional land surveyor in Maryland and Delaware, that he had been a licensed land surveyor for six years (T179), that he was offered as an expert witness as a land surveyor and was accepted by the Board (T179). He had studied Norman Creek Marina and the divisional property lines for the properties adjacent to or abutting that property (T180).

Objection raised by the Petitioners' counsel in review of Petitioners' Exhibit B (introduced by Petitioners' witness Mr. Broyles earlier that morning) was that there was a difference between the original Petition in the plat which accompanied it showing the end of the pier as being 20 feet in width and the present Petitioners' Exhibit B showing the end of the pier as being in excess of 60 feet, or substantially larger than that which had been previously considered by or shown to this Board (T180). This plat had been done by Mr. Broyles according to the plat submitted to the Board (T181).

Mr. Ping had visited the site (T186) in May of 1988 and had then drawn a plat which he put under seal showing the divisional property lines after reviewing Bill No. 64 which became Regulation 417, Waterfront Construction, of BC2R (T186) which was offered and accepted as Protestants' Exhibit FF.

In his opinion even the existing Bell pier encroached upon the required 20 foot open area as defined in BC2R Section 417 (T188). His review of the Petitioners' proposed plat on Petitioners' Exhibit B representing the extension fell even

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further outside of the divisional property lines beyond the Bell property (T189) in a cove.

In the interests of conserving the Court's time, the Protestants will adopt their argument contained in its original Issue Two of its original Memorandum of Law after noting that at the rehearing on remand the Petitioners submitted Exhibit B which presented a substantially different pier end to the extension proposed than that previously submitted to the Board and considered by the Board.

ISSUE SIX

The provisions of Section 502.1 were not met by the Petitioners' testimony rendering the Board of Appeals' decision illegal, arbitrary or capricious on the evidence and testimony submitted as the Petitioners did not meet their burden of credible proof.

In addition to the factual issues contained under the original Issue Three, the additional reasons why the Petitioners' testimony did not meet muster under BC2R Section 502.1 is that it was not in accordance with either the spirit nor the letter of the law in the analysis of the Critical Areas Protection Program for the reasons stated in the earlier Issue by the Protestants' witness, Mr. Klein.

Mr. Klein's qualifications and experience made him the most knowledgeable witness who spoke to the Board of Appeals on this issue and who made sense of the regulations for the Board of

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Appeals on the parties and whose conclusions were only attempted to be rebutted by Peter DeJong, who testified on October 4, 1989. Mr. DeJong had worked for EPA and had worked for E.A. Engineering, who had developed the protocols for Baltimore County, although he did not follow when asked by People's Counsel that he had a conflict of interest in testifying on behalf of the Regulations which his firm had generated and in which he had taken a minor role in preparing (T111).

His criticism of Mr. Klein's findings were that the second stage flushing study required a five month extensive water quality sampling effort and Mr. Klein's samples were taken on one occasion. He essentially agreed with DEPRM that the water quality sampling would not be required if the development proposed would not have a significant impact on water quality, and he found in his opinion that they had properly waived the requirement; based on his review of the record, the study done by Mr. Broyles, and DEPRM's findings, and his statement that the proposed development involved only an extension of a pier (T116).

He admitted on cross-examination that he was not familiar with all of the different flushing models (T9) and that he had had as far as hydrology courses as part of his Masters' program one course (T10).

The major premise of his testimony was that the flushing of Norman Creek will not change as a result of the pier extension (T24). On cross-examination he admitted that he had not performed

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any hydrologic studies at this site at all (T27); and that in the other six critical areas studies he had been involved in he had not done any of the hydrology work on those sites (T27); and that he had not been to Mr. Bell's marina (T28) and had not visited the site (T28); and that since he had not visited the site he was not familiar with the types of boats that Mr. Bell had at the site, whether or not that would change significantly in the future (T29); and that while he generally recalled a request on the part of the Petitioners to increase the length of the boats to be allowed at the site but he did not recall exactly the percentages nor exact numbers (T29); that he did not know that much about boating (T29), but he did not see that as a significant fact; that he had taken no water samples at this site (T29); nor had anyone else done sampling, for him (T30).

When asked if Mr. Broyles' sampling sites 3,000 yards remote from this site were more relevant than Mr. Klein's samples from the site, his answer was that only one sampling point was not relevant, making a broad judgment about water quality (T31); although he then agreed that Mr. Broyles' data bore no relation to water quality at Norman Creek when contrasted with the sample taken at that site (T31).

He testified that he conceptually understood the difference between an open marina and a semi-enclosed marina model (T32); and he agreed that the County, through DEPRM, admitted that Mr. Broyles might have used a more sophisticated model or another

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model (T33); and that the model he said he concurred with was the one that the County said was the wrong model (T33, T34).

He testified that he was not a civil engineer (T42), nor was he a member of the American Society of Civil Engineers, nor did he regularly read the Journal of Hydraulics (T42), nor the Journals of Construction, Coastal and Port Development (T43).

He was not sure how wide Norman Creek was at this location (T44).

In summary, Mr. DeJong's lack of qualifications, lack of familiarity with the site, leave his approval of what Mr. Broyles and DEPRM found to be of limited value or assistance to the Board in deciding whether the Petitioners met their burden under Critical Areas Protection Program.

The expert testimony of Mr. Klein, largely unrebutted, makes the Board's rubber-stamp approval of the Critical Areas findings of DEPRM arbitrary and capricious.

Further, the approval of the Petitioners' Exhibit B showing a vastly expanded pierhead by a factor of 300% without review by the County authorities also is an abuse of discretion and an arbitrary and capricious action by the Board of Appeals, and was found by the Protestants' expert witness on that point, Tunnie Ping, to violate the strictures of BC2R Section 417 as pictorially described in Appendix J and clearly expanding and extending over the divisional property lines of Mr. Bell's neighbors, who are essentially cut off from direct access to

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Norman Creek by the extension of Mr. Bell's pier at the marina.

CONCLUSION

On the evidence submitted to the Board of Appeals on numerous occasions the Court is respectfully requested to:

A. Reverse the Board of Appeals and deny the request for special hearing;

B. In the alternative, reverse and remand for further proceedings to the Board of Appeals; and

C. Assess the Petitioners with the costs of the transcripts and the Court costs in this case.

Respectfully submitted,

Michael P. Tanczyn
MICHAEL P. TANCZYN, ESQ.
Attorney for the Appellants
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
Telephone: (301) 296-8823

I HEREBY CERTIFY that, on this 11th day of September, 1990, a copy of the foregoing Appellants' Memorandum of Law was mailed, postage prepaid, to S. Eric DiNenna, Esq., Suite 600, Mercantile Towson Building, 409 Washington Avenue, Towson, Maryland, 21204, attorney for the Appellee; and Peter Max Zimmerman, Esq., Deputy People's Counsel for Baltimore County, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland, 21204.

Michael P. Tanczyn
MICHAEL P. TANCZYN, ESQ.

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PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY

V.

WALTER BELL, et ux



IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
CASE NO. 88 CG 2253

ORDER OF COURT REMANDING
CASE TO BOARD OF APPEALS

Following a hearing before this court on October 17, 1988 it is the decision of the Circuit Court for Baltimore County that the above captioned case be remanded to the Baltimore County Board of Appeals for a decision as follows:

1. Whether the Chesapeake Bay Critical Area Protection Program is applicable to the special hearing being the subject matter of the above captioned case, and
2. If the Program is applicable, the Board of Appeals should make its findings of fact and conclusions of law in accord with the presently existing Baltimore County Critical Areas legislation, and
3. To make such additional finding regarding Section 417 of the Baltimore County Zoning Regulations pertaining to divisional property lines as the Board of Appeals thinks proper, if they feel any additional findings should be made.

Most respectfully, this court brings to the attention of the Board of Appeals the decision of the Court of Appeals of the State of Maryland in United Steel Workers v. Beth. Steel, 298 Md. 665 (1984). At page 679 of that opinion appears the following:

Judicial review of administrative action differs from appellate review of a trial court judgment. In the latter context the appellate Court will search the record for evidence to support the judgment and will sustain the judgment for a reason plainly appearing on the record whether or not the reason was expressly relied upon by the trial court. However, in judicial review of agency action the court may not uphold the agency order unless it is

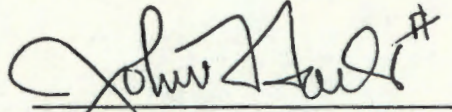
sustainable on the agency's findings and for the reasons stated by the agency. [Citations omitted]

In State Commission on Human Relations v. Malakoff, 273

Md. 214, 229 (1974), the same court emphasized the importance and necessity that administrative agencies resolve all significant conflicts in the evidence and then chronicle, in the record, full, complete and detailed findings of fact and conclusions of law.

The applicable law is set forward in this opinion because of the difference of opinion among counsel to this case as to whether the Board of Appeals has complied with the instruction of Appellate law by the findings made in this case. While this court does not mean by its referral to indicate that any exhaustive review of evidence is required, or that any further statement of facts and conclusions of law should be made, it does call to the attention of the Board of Appeals the dispute and suggestion by at least one of the attorneys to this case that the findings made are not in compliance with the Appellate Court decision.

The above captioned case remains assigned to the undersigned judge. The Board of Appeals has requested to forward a copy of its further opinion to this judge.


John F. Fader II
Judge

October 18, 1988

JFF:am

cc: Phyllis Friedman, Esq.
Michael P. Tanczyn, Esq.
S. Eric DiNenna, Esq.

IN THE MATTER OF
THE APPLICATION OF
WALTER BELL, ET UX
FOR A SPECIAL HEARING ON PROPERTY
LOCATED ON THE SOUTH SIDE OF
CORSICA RD., 65 FT. EAST OF THE
CENTER LINE OF MILES RD.
15th ELECTION DISTRICT
5th COUNCILMANIC DISTRICT

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW

PHYLLIS C. FRIEDMAN, PEOPLE'S
COUNSEL FOR BALTIMORE COUNTY,
PLAINTIFF

CG Doc. No. 56
Folio No. 253
File No. 88-CG-2253

CASE NO. 87-395-SPH

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, Thomas J. Bollinger, Harry E. Buchheister, Jr. and Arnold G. Foreman, 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, S. Eric DiNenna, Esq., Mercantile-Towson Bldg., Suite 600, 409 Washington Ave., Towson, Md. 21204, Counsel for Petitioner; Walter Bell, et ux, 8833 Belair Rd., Balto., Md. 21236, Petitioners; Newton A. Williams, Esq., 204 W. Pennsylvania Ave., Towson, Md. 21204, Counsel for Protestants; and Phyllis C. Friedman, Esq., Rm. 223, Old Court House, Towson, Md. 21204, People's Counsel for Baltimore County, Plaintiffs, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

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

Walter Bell, et ux
Case No. 87-395-SPH

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to S. Eric DiNenna, Esq., Mercantile-Towson Bldg., Suite 600, 409 Washington Ave., Towson, Md. 21204, Counsel for Petitioner; Walter Bell, et ux, 8833 Belair Rd., Balto., Md. 21236, Petitioners; Newton A. Williams, Esq., Suite 1105, Hampton Plaza, 300 E. Joppa Rd., Towson, Md. 21204, Counsel for Protestants; and Phyllis C. Friedman, Esq., Rm. 223, Old Court House, Towson, Md. 21204, People's Counsel for Baltimore County, Plaintiffs, on this 19th day of May, 1988.

June Holmen
June Holmen
County Board of Appeals of Baltimore County

of the critical area law, and no attempt has been made to comply with the criteria manual for water dependent facilities.

5. In summary, the County Board of Appeals in its April 20, 1988 decision ignored the basic state legislation for critical areas, as well as pertinent county legislation enacted both in 1986 and on March 21st and April 4, 1988.

6. The County Board of Appeals decision was otherwise arbitrary, and capricious, and inconsistent with the zoning regulations pertinent to waterfront construction.

WHEREFORE, People's Counsel prays that the Court reverse and/or remand the case to the County Board of Appeals in order that it may conduct the necessary review to determine compliance with the critical areas law.

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

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

I HEREBY CERTIFY that 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 mailed to S. Eric DiNenna, Esquire, Mercantile-Towson Bldg., Suite 600, 409 Washington Ave., Towson, MD 21204; Newton A. Williams, Esquire, Nolan, Plumbhoff & Williams, Chartered, Suite 1105, 300 E. Joppa Rd., Towson, MD 21204-3012; and Michael P. Tanczyn, Esquire, Suite 106, 606 Baltimore Ave., Towson, MD 21204, this 18th day of May, 1988.

Peter Max Zimmerman
Peter Max Zimmerman

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY,
Appellant
v.
WALTER BELL, et ux,
Appellees

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
AT LAW
Docket No. 56
Folio No. 253
File No. 88-CG-2253

PETITION ON APPEAL

People's Counsel for Baltimore County, Protestants below and Appellants herein, having heretofore filed a Notice of Appeal from the Opinion and Order of the County Board of Appeals dated April 20, 1988, in compliance with Maryland Rule B-2(e), files this Petition on Appeal setting forth the grounds upon which this Appeal is taken, viz:

1. That the Order does not comply with the Maryland law for protection of the Chesapeake Bay Critical Area. Maryland Annotated Code 8-1801, et seq., 1813 as well as relevant County legislation on the same subject.
2. That the Order does not comply with the Baltimore County legislation implementing interim status requirements for the critical area. Bill 95-86, as amended, Bill 41-88.
3. That the Order does not comply with Section 417.8 of the Baltimore County Zoning Regulations concerning waterfront construction and Section 22-40(b), 22-53, and 22-218 of the Baltimore County Code. (Bills 32-88 and 35-88).
4. That the proposed boatyard expansion is invalid because the applicable critical areas findings have not been made by the approving authority as to minimization of adverse environmental effects and other requirements

IN THE MATTER OF
THE APPLICATION OF
WALTER BELL, ET UX
FOR A SPECIAL HEARING ON PROPERTY
LOCATED ON THE SOUTH SIDE OF
CORSICA ROAD, 65 FEET EAST OF THE
CENTERLINE OF MILES ROAD
15th ELECTION DISTRICT
5th COUNCILMANIC DISTRICT

ON REMAND FROM THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY

PHYLLIS C. FRIEDMAN
PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY,
AND
DAVID W. DOYLE, ET AL
PLAINTIFFS

CASE NO. 88-CG-2253/56/253
ZONING FILE NO. 87-395-SPH

SUPPLEMENTARY OPINION AND ORDER

This case comes before this Board on a Memorandum Opinion and Order of the Circuit Court for Baltimore County remanding this case to the Board of Appeals to evaluate compliance of the proposal at issue with the Chesapeake Bay Critical Area Protection Program.

Steven E. Broyles, Professional Engineer, Surveyor and Developer, testified that he did a study on this site in regard to the Water Dependent Facilities Plan for Baltimore County which he submitted to the Department of Environmental Protection & Resource Management (hereinafter referred to as "DEPRM"), and it was his opinion that the extension of the pier by 85 feet would have minor, negligible impact on the site. He further testified that there would be little or no deterioration of water quality from this site and that it was his opinion that dredging would be far more damaging to the environment than the proposed pier extension. He testified at length to the other requirements that must be met if the extension is granted regarding safety factors and laws that govern marina use.

David Flowers representing DEPRM testified that he administers the Baltimore County Critical Areas law, that he had reviewed the proposal and found it to be in compliance with the Chesapeake Bay Critical Areas requirements.

Case No. 87-395-SPH
Circuit Court Case No. 88-CG-2253
Walter Bell, et ux

He further explained that the Water Dependent Facilities Plan in this case was not required but was considered and that the proposal complies with all the required regulations.

The Board will especially note the letter from the Chesapeake Bay Critical Areas Commission dated July 5, 1989 indicating that they had no comments in reply to the report of Robert W. Sheesley submitted to them. Mr. Sheesley's report dated June 30, 1989 addresses all of DEPRM's concerns and the Chesapeake Bay Critical Areas Program and in conclusion finds the plan to be in compliance with Baltimore County Development Regulations in the Chesapeake Bay critical areas and is therefore approved.

Protestants presented Charles John Klein, an Environmental and Civil Engineer. He testified that he reviewed the DEPRM findings, did a water quality analysis, did a flushing study, and stated that in his opinion dredging of the existing piers could be done and would in fact improve water quality.

Paul Clement, a nearby resident, entered photographs showing his pier, another adjacent pier owned by the Selig's, and the Bell's pier. He testified that his pier was approved in January of 1989 and was erected after the Bell's 85-foot extension was approved.

Tunnie Ping, a Land Surveyor and Engineer, testified that he had done a study on this site regarding the division lines and took issue with the engineer in the original hearing who did the division lines, and entered as Protestants' Exhibit No. FF the plat that he developed.

One rebuttal witness, Peter DeJong, an Environmental Planner, testified that he had studied the site, reviewed all the papers and testimony, and that it was his opinion that the proposed construction would be in conformity with the Chesapeake Bay Critical Areas Program and DEPRM's findings. This

Case No. 87-395-SPH
Circuit Court Case No. 88-CG-2253
Walter Bell, et ux

encapsulation of the testimony in no way is intended to portray the total evidence received in this hearing but will let the record speak for itself.

It is the opinion of this Board that the testimony and evidence presented indicates the 85-foot extension of the pier does not violate the Critical Bay Critical Areas Protection Program or DEPRM requirements. The remand from the Circuit Court is very specific in that the Board through testimony and evidence must find as a fact that the proposed pier extension be in compliance with the Chesapeake Bay Critical Areas Program or fail to be in compliance. The Board will find as a fact that the weight of the evidence presented in this hearing leads to the conclusion that the proposal is in compliance with all applicable regulations and will so order.

ORDER

It is therefore this 29th day of November, 1989 by the County Board of Appeals of Baltimore County ORDERED that the Board finds the Chesapeake Bay Critical Areas Protection Program is applicable to the boatyard pier extension; and that the proposal is in compliance with this Program; and IT IS FURTHER ORDERED that this Opinion and Order shall be forwarded to the Circuit Court for Baltimore County.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman

Arnold G. Foreman
Arnold G. Foreman

Harry E. Buchheister, Jr.
Harry E. Buchheister, Jr.

IN THE MATTER OF
THE APPLICATION OF
WALTER BELL, ET UX
FOR A SPECIAL HEARING ON
PROPERTY LOCATED ON THE
SOUTH SIDE OF CORSICA ROAD,
65 FEET EAST OF THE
CENTERLINE OF MILES ROAD
15th ELECTION DISTRICT
5th COUNCILMANIC DISTRICT

IN RE: CASE NO. 87-395-SPH

ORDER FOR APPEAL

NOW COMES, Donald W. Doyle and Marie Doyle, his wife, of 312 East Ridgely Road, Lutherville, Maryland, 21093, Jonathan Doyle of 350 Miles Road, Baltimore, Maryland, 21220, Brian Templeton of 348 Miles Road, Baltimore, Maryland, 21220, Mr. and Mrs. William Selig, Sr. of 354 Miles Road, Baltimore, Maryland, 21220, and Mr. and Mrs. William Selig, Jr. of 354 Miles Road, Baltimore, Maryland, 21220, Appellants, by their co-counsel, Michael P. Tanczyn, Esq., jointly and individually, and respectfully request the Court enter the appearance of their co-counsel in this matter and enter an Appeal from the decision of the Board of Appeals of Baltimore County dated April 20, 1988 to the Circuit Court for Baltimore County.

Michael P. Tanczyn
MICHAEL P. TANCZYN, ESQ.
Co-Counsel for the Appellants
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
Telephone: (301) 296-7823

I HEREBY ADMIT receipt of a copy of the Order for Appeal in Case No. 87-395-SPH.

SECRETARY, BOARD OF APPEALS OF
BALTIMORE COUNTY, MARYLAND

I HEREBY CERTIFY that, on this 2nd day of May, 1990, a copy of this Order for Appeal was mailed, postage prepaid, to Newton A. Williams, Esq., Nolan, Plunhoff & Williams, Suite 1105, Hampton Plaza, 300 East Joppa Road, Towson, Maryland, 21204-3012, co-counsel for the Appellants, and to S. Eric DiWenna, Esq., Suite 600, 409 Washington Avenue, Towson, Maryland, 21204, attorney for the Appellee.

MICHAEL P. TANCY, ESQ.



PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY, et al.
Appellants

WALTER BELL, et al.
Appellees

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
Case No.: 86/253/88CG-2253

ANSWER TO MOTION TO EXTEND TIME TO TRANSMIT RECORD

NOW COMES, Walter Bell, et al., Appellees, by their attorneys, DiWenna, Mann & Breschi, and S. Eric DiWenna, Esquire, in answer to the Appellant's Motion to Extend Time to Transmit Record, and says:

1. That on or about December 27, 1989, the Appellants, Donald W. Doyle, et al., pursuant to the B Rules of the Maryland Rules of Procedure, failed to note an appeal pursuant to said Rules;

2. That the correspondence to the Honorable John Fader, Judge of the Circuit Court for Baltimore County, dated December 27, 1989, from the County Board of Appeals, specifically makes inquiry of the Court as to the Court's wishes;

3. That by response letter of January 25, 1990, from the Honorable John F. Fader, II, Judge of the Circuit Court for Baltimore County, the Court made it clear to the County Board of Appeals that if the Appeal were to be taken by the Appellants, said Appeal should be taken in accord with the procedures provided by law;

4. That the record of the proceedings, pursuant to the B Rules, was filed with this Honorable Court on January 16, 1990;

5. That pursuant to the Rule B12, within thirty days thereafter, the Appellants are required to file a Memorandum in support of the Appeal;

6. That prior to January 16, 1990, the Appellants failed to Order the transcript of the proceedings before the County Board of Appeals and that said transcript was not filed with the Circuit Court in accordance with Rule B7;

7. Now the Appellants, pursuant to the pleading filed immediately prior hereto, on March 22, 1990, attempt to cover their failure to comply with the B Rules by filing this Motion to Extend Time to Transmit Record;

8. That the Appellees deny the allegation contained in Paragraphs 1, 2, 3, and 4 as per the above in this answer;

9. Appellants' Motion to Extend Time fails to state with particularity the grounds and authorities in support of each ground as required under Maryland Rule 2-311.

WHEREFORE, the Appellees respectfully pray this Honorable Court:

1. Dismiss the Motion to Extend Time to Transmit Record and set the above-captioned matter immediately in for hearing;
2. Grant such other and further relief as the nature of the Appellee's cause may require.

S. ERIC DIWENNA
DIWENNA, MANN & BRESCHI
P.O. Box 10508
Towson, Maryland 21285-0508
(301) 296-6820
Attorney for Appellees

- 2 -

POINTS AND AUTHORITIES

1. Annotated Code of Maryland Maryland Rules Rule B1-B13
2. Annotated Code of Maryland Maryland Rules 2-311.

S. ERIC DIWENNA

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 2nd day of May, 1990, a copy of the foregoing Answer to Motion to Extend Time to Transmit Record was mailed, postage prepaid, to Michael P. Tanczyn, Esquire, Suite 106, 606 Baltimore Avenue, Towson, Maryland 21204, Attorney for the Appellants; Phyllis Cole Friedman, Esquire, People's Counsel for Baltimore County, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland 21204; and, Peter Max Zimmerman, Deputy People's Counsel for Baltimore County, County Office Building, Towson, Maryland 21204.

S. ERIC DIWENNA

- 3 -

IN THE MATTER OF
THE APPLICATION OF
WALTER BELL, ET AL.
FOR A SPECIAL HEARING ON PETITION
LOCATED ON THE SOUTH SIDE OF
CORSICA RD., 65 FT. EAST OF THE
CENTER LINE OF MILES RD.
15TH ELECTION DISTRICT
5TH COUNCIUMASTIC DISTRICT
PHYLIS C. FRIEDMAN, PEOPLE'S
COUNSEL FOR BALTIMORE COUNTY,
AND
DONALD W. DOYLE, ET AL.,
PLAINTIFFS
CASE NO. 87-395-SPH

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
CG Doc. No. 56
Folio No. 253
File No. 86-CG-2253

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Thomas J. Bollinger, Harry E. Buchheister, Jr. and Arnold G. Foreman, constituting the County Board of Appeals of Baltimore County, and in answer to the Order for Appeal directed against them in this case, herewith return the record of proceedings had in the above entitled matter, consisting of the following certified copies or original papers on file in the office of the Zoning Department of Baltimore County:
No. 87-395-SPH

February 11, 1987 Petition of Walter Bell, et al., for special hearing on property located on south side of Corsica Rd., 65' east of the centerline of Miles Rd., in the 15th District.

February 11 Order of Zoning Commissioner directing advertisement and posting of property - date of hearing set for April 8, 1987, at 11:15 a.m.

March 14 Certificate of Posting of property filed

March 19 Certificate of Publication in newspaper filed

March 20 Consents of Baltimore County Zoning Plans Advisory Committee filed

March 30 Comments of Baltimore County Director of Planning filed

Walter Bell, et al.
Case No. 87-395-SPH

April 8, 1987 At 11:15 a.m. hearing held on petition by Deputy Zoning Commissioner

April 23 Order of Deputy Zoning Commissioner that a special hearing to approve an amendment to the site plan submitted in Case No. 70-215-X to allow an extension of the existing pier and to lift Restrictions No. 1 and 3 of the Order rendered in said case, be DENIED.

May 11 Order for Appeal to the C.B. of A. from S. Eric DiWenna, Esq., on behalf of Petitioner.

August 19 Hearing on appeal before the Board.

March 10, 1988 Continued hearing before the Board

March 15 Continued hearing before the Board

April 20 Order of the Board of Appeals ordering that the petition for special hearing be GRANTED; petition to remove restriction #1 be GRANTED; petition to remove restriction #3 be GRANTED.

May 18 Order for Appeal to the Circuit Ct. for Baltimore County from Phyllis C. Friedman, People's Counsel for Baltimore County.

May 18 Petition to accompany Order for Appeal filed in the Circuit Ct. for Baltimore County.

May 19 Certificate of Notice sent to interested parties

May 20 Order for Appeal filed in the Circuit Ct. for Baltimore County by Michael P. Tanczyn, Esq., on behalf of Protestants.

May 20 Certificate of Notice sent to interested parties

June 17, 1988 Petition to accompany Order for Appeal filed in the Circuit Ct. for Baltimore County.

Transcript of testimony filed

Protestants' Exhibit No. 1-A thru J-Series of photos of subj. property

" " " 2 - BCZR, Sec. 417

" " " 3 - Copy of site plan

" " " 4 - 1976 Cruising Md. Waters, Chart 9

" " " 5 - Series of 15 photos

Walter Bell, et al.
Case No. 87-395-SPH

Protestants' Exhibit No. 6 - Series of 12 photos

" " " 7 - Fire reports

" " " 8A, 8B - Willemain site plan drawn by him; Willemain site plan drawn by him, smaller scale

" " " 9 - 1995 Listing of O'Connor, Piper and Flynn of subj. property

" " " 10 - Deed for Lots 207 & 208 and Deed of Trust

" " " 11 - Deed for Lot 209 and Deed of Trust

" " " 12A-F - Photos

Joint Exhibit No. 1 - Section 8-18-13, Natural Resources

Petitioner's Exhibit No. 1 - Original file Case 70-215-X, includ. site plan

" " " 2 - Site plan with proposals to date, Dec. 26, 1986

" " " 3 - Site plan showing larger scale of subj. site, same as in file.

" " " 4A thru C - Aerial photos of site

" " " 5A thru L - On site photos of subj. property & surrounding area

" " " 6A thru F - Colored photos of subj. property

" " " 7 - Photo showing Baust property with Circle around Bell & Baust & circle pier on left side.

" " " 8A thru J - Photos

" " " 9 - Map - marked in pencil, location of Deinlein house.

" " " 10 - Environmental Effects Report prepared by Mr. Gill.

" " " 11 A-E - Photos

" " " 12 - Aerial photo

Walter Bell, et al.
Case No. 87-395-SPH

June 17, 1988 Record of proceedings filed in the Circuit Court for Baltimore County

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

Respectfully submitted,

Jane Holmen
County Board of Appeals of Baltimore County

cc: S. Eric DiWenna, Esq.
Phyllis C. Friedman
Michael Tanczyn, Esq.

IN THE MATTER OF
THE APPLICATION OF
WALTER BELL, ET UX
FOR A SPECIAL HEARING ON PROPERTY
LOCATED ON THE SOUTH SIDE OF
CORSICA RD., 65 FT. EAST OF THE
CENTER LINE OF MILES RD.
15th ELECTION DISTRICT
5th COUNCILMANIC DISTRICT

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
CG Doc. No. 56
Folio No. 253
File No. 88-CG-2253

DONALD W. DOYLE, ET AL,
PLAINTIFFS

CASE NO. 87-395-SPH

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, Thomas J. Bollinger, Harry E. Buchheister, Jr. and Arnold G. Foreman, 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, S. Eric DiNenna, Esq., Mercantile-Towson Bldg., Suite 600, 409 Washington Ave., Towson, Md. 21204, Counsel for Petitioner; Walter Bell, et ux, 8833 Belair Rd., Balto., Md. 21236, Petitioners; Michael P. Tanczyn, Esq., Suite 106, 606 Baltimore Ave., Towson, Md. 21204, Counsel for Plaintiffs; and Phyllis C. Friedman, Esq., Rm. 223, Old Court House, Towson, Md. 21204, People's Counsel for Baltimore County, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

June Holmen
June Holmen
County Board of Appeals of Baltimore
County, Rm. 200, Court House, Towson 21204
444-3180

Walter Bell, et ux
Case No. 87-395-SPH

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to S. Eric DiNenna, Esq., Mercantile-Towson Bldg., Suite 600, 409 Washington Ave., Towson, Md. 21204, Counsel for Petitioner; Walter Bell, et ux, 8833 Belair Rd., Balto., Md. 21236, Petitioners; Michael P. Tanczyn, Esq., Suite 106, 606 Baltimore Ave., Towson, Md. 21204, Counsel for Plaintiffs; and Phyllis C. Friedman, Esq., Rm. 223, Old Court House, Towson, Md. 21204, People's Counsel for Baltimore County, on this 20th day of May, 1988.

June Holmen
June Holmen
County Board of Appeals of Baltimore County

IN THE MATTER OF
THE APPLICATION OF
WALTER BELL, ET UX
FOR A SPECIAL HEARING ON PROPERTY
LOCATED ON THE SOUTH SIDE OF
CORSICA RD., 65 FT. EAST OF THE
CENTER LINE OF MILES RD.
15th ELECTION DISTRICT
5th COUNCILMANIC DISTRICT

IN THE
CIRCUIT COURT
FOR
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AT LAW
CG Doc. No. 56
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CASE NO. 87-395-SPH

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June Holmen
June Holmen
County Board of Appeals of Baltimore
County, Rm. 200, Court House, Towson, Md. 21204
444-3180

MICROFILMED

Walter Bell, et ux
Case No. 87-395-SPH

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June Holmen
June Holmen
County Board of Appeals of Baltimore County

MICROFILMED

of the critical area law, and no attempt has been made to comply with the criteria manual for water dependent facilities.

5. In summary, the County Board of Appeals in its April 20, 1988 decision ignored the basic state legislation for critical areas, as well as pertinent county legislation enacted both in 1986 and on March 21st and April 4, 1988.

6. The County Board of Appeals decision was otherwise arbitrary, and capricious, and inconsistent with the zoning regulations pertinent to waterfront construction.

WHEREFORE, People's Counsel prays that the Court reverse and/or remand the case to the County Board of Appeals in order that it may conduct the necessary review to determine compliance with the critical areas law.

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

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

I HEREBY CERTIFY that 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 mailed to S. Eric DiNenna, Esquire, Mercantile-Towson Bldg., Suite 600, 409 Washington Ave., Towson, MD 21204; Newton A. Williams, Esquire, Nolan, Plumhoff & Williams, Chartered, Suite 1105, 300 E. Joppa Rd., Towson, MD 21204-3012; and Michael P. Tanczyn, Esquire, Suite 106, 606 Baltimore Ave., Towson, MD 21204, this 18th day of May, 1988.

Peter Max Zimmerman
Peter Max Zimmerman

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY,

Appellant

WALTER BELL, et ux,

Appellees

IN THE CIRCUIT COURT

FOR BALTIMORE COUNTY

AT LAW

Docket No. 56

Folio No. 253

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IN THE MATTER OF
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15th ELECTION DISTRICT
5th COUNCILMANIC DISTRICT

PHYLLIS C. FRIEDMAN
PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY,
AND
DONALD W. DOYLE, ET AL
PLAINTIFFS

ON REMAND FROM THE
CIRCUIT COURT
FOR
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CASE NO. 88-CG-2253/56/253
ZONING FILE NO. 87-395-SPH

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Case No. 87-395-SPH
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IN THE MATTER OF
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WALTER BELL, ET UX
FOR A SPECIAL HEARING ON
PROPERTY LOCATED ON THE
SOUTH SIDE OF CORNSICA ROAD,
65 FEET EAST OF THE
CENTERLINE OF MILES ROAD
15th ELECTION DISTRICT
5th COUNCILMANIC DISTRICT

IN RE: CASE NO. 87-395-SPH Case No.

ORDER FOR APPEAL

NOW COMES, Donald M. Doyle and Marie Doyle, his wife, of 312 East Ridgely Road, Lutherville, Maryland, 21093, Jonathan Doyle of 350 Miles Road, Baltimore, Maryland, 21220, Brian Templeton of 348 Miles Road, Baltimore, Maryland, 21220, Mr. and Mrs. William Selig, Sr. of 354 Miles Road, Baltimore, Maryland, 21220, and Mr. and Mrs. William Selig, Jr. of 354 Miles Road, Baltimore, Maryland, 21220, Appellants, by their co-counsel, Michael P. Tanczyn, Esq., jointly and individually, and respectfully request the Court enter the appearance of their co-counsel in this matter and enter an Appeal from the decision of the Board of Appeals of Baltimore County dated April 20, 1988 to the Circuit Court for Baltimore County.

Michael P. Tanczyn
MICHAEL P. TANCZYN, ESQ.
Co-Counsel for the Appellants
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
Telephone: (301) 296-8823

Case No. 87-395-SPH
Circuit Court Case No. 88-CG-2253
Walter Bell, et ux

encapsulation of the testimony in no way is intended to portray the total evidence received in this hearing but will let the record speak for itself.

It is the opinion of this Board that the testimony and evidence presented indicates the 85-foot extension of the pier does not violate the Critical Bay Critical Areas Protection Program or DEPM requirements. The remand from the Circuit Court is very specific in that the Board through testimony and evidence must find as a fact that the proposed pier extension be in compliance with the Chesapeake Bay Critical Areas Program or fail to be in compliance. The Board will find as a fact that the weight of the evidence presented in this hearing leads to the conclusion that the proposal is in compliance with all applicable regulations and will so order.

ORDER

It is therefore this 29th day of November, 1989, by the County Board of Appeals of Baltimore County ORDERED that the Board find the Chesapeake Bay Critical Areas Protection Program is applicable to the proposed pier extension, and that the proposal is in compliance with this program, and this opinion and order shall be forwarded to the Circuit Court for Baltimore County.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman
Arnold B. Foreman
Arnold B. Foreman

Harry E. Buchheister, Jr.
Harry E. Buchheister, Jr.

DiNENNA, MANN & BRESCHI
ATTORNEYS AT LAW

S. ERIC DINENNA, P.A.
JAMES L. MANN, JR., P.A.
GEORGE A. BRESCHI, P.A.
GERALDINE A. KLAUBER
FRANCIS X. BORGERDING, JR.

P.O. BOX 10506
TOWSON, MARYLAND 21205-0506
SUITE 600
MERCANTILE TOWSON BUILDING
409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(301) 296-6820
TELEFAX (301) 296-6884

June 6, 1990

Mr. Lawrence E. Schmidt
County Board of Appeals
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

RE: Walter Bell, et ux.
Board of Appeals Case
Number 87-395-SPH

Dear Mr. Schmidt:

Enclosed herewith please find the Motion to Dismiss the Appeal of the above-captioned matter which now reflects the correct caption. By error, this Motion was filed with the Board instead of the Circuit Court for Baltimore County.

Thank you for drawing my attention to this error.

Very truly yours,

Geraldine A. Klauber
GERALDINE A. KLAUBER

GAK:bjk
Enclosure
cc: Michael P. Tanczyn, Esquire
Peter Max Zimmerman, Esquire

07-2 Wd L-NR 06
RECEIVED
COUNTY BOARD OF APPEALS

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY, et al.

Appellants

v.

WALTER BELL, et al.

Appellees

IN THE

CIRCUIT COURT

FOR

BALTIMORE COUNTY

Case No.: 56/253/88CG-2258

MOTION TO DISMISS APPEAL

WALTER BELL, et ux., Appellees, by their attorneys, S. Eric DiNenna and DiNenna, Mann & Breschi, move this Honorable Court to dismiss Appellant's Appeal and state as follows:

1. Petitioners/Appellees, Walter Bell, et ux., filed a Petition with the Zoning Commissioner seeking a special hearing to amend the site plan and lift certain restrictions. By Order dated April 23, 1987, the Deputy Zoning Commissioner denied Petitioner's Request.

2. Petitioners/Appellees, appealed the decision to the Baltimore County Board of Appeals and by Opinion and Order dated April 20, 1988, the Board granted Petitioners' Request.

3. Protestants/Appellants filed an Appeal to the Circuit Court for Baltimore County and by Order of October 19, 1988, the Circuit Court remanded the case to the Board of Appeals for Baltimore County.

4. The Board of Appeals issued its supplemental Opinion and Order on February 6, 1989, which did not change the Opinion and Order of April 20, 1988.

5. Protestants/Appellants filed an Appeal from the

- 1 -

supplemental Opinion and Order of the Board and Judge John Fader by Order of April 4, 1989, remanded the case back to the Board of Appeals of Baltimore County.

6. On August 9, 1989 and October 4, 1989, a hearing was held before the Board of Appeals of Baltimore County on remand. By supplemental opinion and Order of the Board dated November 29, 1989, the Board found that Petitioners' proposal was in compliance with the Chesapeake Bay Critical Area requirements.

7. On December 26, 1989, Appellants filed an Appeal to the Circuit Court for Baltimore County and in a response to Appellants' inquiry, by correspondence dated January 25, 1990, the Honorable John F. Fader, II clarified that Appellants' Appeal must be taken pursuant to the Maryland Rules of Procedure.

8. The record of the proceeding was filed in the Circuit Court on January 16, 1990, but Appellants failed to order and file the transcript pursuant to Maryland Rule 87.

9. On March 22, 1990, Appellants filed a Motion to Extend Time to Transmit the Record. Judge Nickerson by Order of March 26, 1990, granted Appellants' Motion without benefit of Appellees' response.

10. Upon Petitioners/Appellees' Motion to Vacate the Order to Extend Time to Transmit the Record and Appellee's Answer to the Motion to Extend Time, Judge Alfred Brennan by Order dated April 26, 1990, granted the Motion to vacate the Order and denied Appellants' request for the extension of time.

11. On May 2, 1990, Appellants filed a Motion to Vacate the Order Denying the Motion to Extend Time and Appellees filed a

- 2 -

response thereto. On May 1, 1990, Judge John F. Fader, II pulled the file to rule on the original Motion to Vacate and noted that Judge Brennan's Order of 4/26/90 disposed of the case in favor of Appellees. (See correspondence of the Honorable John F. Fader, II, attached hereto as Exhibit A)

WHEREFORE, as Appellants have failed to take an appeal in compliance with the B Rules of the Maryland Rules of Procedure, Appellees respectfully request this Honorable Court to dismiss the above-referenced case with prejudice.

S. ERIC DINENNA
DiNenna, Mann & Breschi
409 Washington Avenue
Suite 600
Towson, Maryland 21204

Attorneys for Appellees

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this day of , 1990, a copy of the foregoing Motion to Dismiss Appeal was mailed, postage prepaid, to Michael P. Tanczyn, Esquire, Suite 106, 606 Baltimore Avenue, Towson, Maryland 21204, Attorney for Protestants; and to Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland 21204.

S. ERIC DINENNA

- 3 -

POINTS AND AUTHORITIES

1. Maryland Rules of Procedure, Rule B-1 through B-12
2. Maryland Rules of Procedure, Rule 1-204

S. ERIC DINENNA
DINENNA, MANN & BRESCHI
409 Washington Avenue
Suite 600
Towson, Maryland 21204
(301) 296-6820

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this day of , 1990, a copy of the foregoing Motion to Dismiss Appeal was mailed, postage prepaid, to Michael P. Tanczyn, Esquire, 606 Baltimore Avenue, Suite 106, Towson, Maryland 21204, Attorney for Protestants; and, to Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland 21204.

S. ERIC DINENNA

- 4 -



The Circuit Court for Baltimore County

THIRD JUDICIAL CIRCUIT OF MARYLAND

May 11, 1990

JOHN F. FADER, II
JUDGE

S. Eric DiNenna, Esq.
Suite 600
Mercantile Towson Building
409 Washington Avenue
Towson, Maryland 21204

Michael P. Tanczyn, Esq.
Suite 106
606 Baltimore Avenue
Towson, Maryland 21204

Peter Max Zimmerman, Esq.
People's Counsel for Baltimore County
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: People's Counsel for Baltimore Counsel
v. Walter Bell, Et ux.
Case No. 88 CG 2253

Dear Counsel:

I pulled the above captioned case on May 1, 1990 to rule on the Motion to Vacate (paper 40) and notice that Judge Brennan had filed an order in the case dated April 26, 1990. It appears that this order disposes of the case in favor of the appellees.

Very truly yours,

John F. Fader II
John F. Fader II
Judge

JFF:am

EXHIBIT A

IN THE MATTER OF THE APPLICATION OF
WALTER BELL, ET UX FOR A SPECIAL HEARING
ON PROPERTY LOCATED ON THE SOUTH SIDE
OF CORSICA ROAD, 65 FEET EAST OF THE
CENTERLINE OF MILES ROAD
15TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT

PHYLLIS C. FRIEDMAN, ESQUIRE, PEOPLE'S
COUNSEL FOR BALTIMORE COUNTY
AND
DONALD W. DOYLE, ET AL, PLAINTIFFS
ZONING CASE NO. 87-395-SFH

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY

CG Doc. No. 56
Folio No. 253
File No. 88-CG-2253

SUPPLEMENTAL PROCEEDINGS BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE
COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come William T. Hackett, Harry E. Buchheister, Jr., and Arnold G.
Foreman, constituting the County Board of Appeals of Baltimore County, and in
answer to the Letter of Appeal directed against them in this case, herewith
forward the transcript of the proceedings had in the above-entitled matter:
No. 87-395-SFH

April 4, 1989 Order of Judge Fader - REMANDED to the Board of Appeals as the
Court found that the Board's Supplemental Order of February 6,
1989 is incorrect and that on remand the applicable law "shall
be as enacted by the Baltimore County Council on June 13, 1988
... providing that its application does not affect intervening
vested rights."
August 9 Hearing before the Board.
October 4 Hearing concluded before the Board.
November 23 Supplemental Opinion and Order of the Board finding that the
proposal is in compliance with the Chesapeake Bay Critical Areas
requirements.
December 27 Letter received from Mr. Tanczyn noting an appeal for the technical
formality of the Board's decision.
January 5, 1990 Petition to accompany Letter of Appeal filed in the Circuit
Court for Baltimore County by Michael P. Tanczyn, Esquire.
January 16, 1990 Additional Record of Proceedings filed in the Circuit Court.
August 17, 1990 Transcript of Remand Hearing attached hereto.

TRANSFERS OF REMAND HEARING FILED ON JANUARY 16, 1990.
Respectfully submitted,
Linda Lee M. Kuszmaul
Linda Lee M. Kuszmaul, Legal Secretary
County Board of Appeals of Baltimore County

IN THE MATTER OF THE APPLICATION OF
WALTER BELL, ET UX FOR A SPECIAL
HEARING ON PROPERTY LOCATED ON THE
SOUTH SIDE OF CORSICA ROAD, 65 FEET
EAST OF THE CENTERLINE OF MILES ROAD
15TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT

PHYLLIS C. FRIEDMAN, PEOPLE'S COUNSEL
FOR BALTIMORE COUNTY
AND
DONALD W. DOYLE, ET AL, PLAINTIFFS

ON REMAND FROM THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY

CG Doc. No. 56
Folio No. 253
File No. 88-CG-2253

Zoning File No. 87-395-SFH

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come William T. Hackett, Harry E. Buchheister, Jr., and Arnold G.
Foreman, constituting the County Board of Appeals of Baltimore County, and in
answer to the Order of Remand directed against them in this case, herewith
return the additional record of proceedings had in the above-entitled matter:
No. 87-395-SFH

April 4, 1989 Order of Judge Fader - REMANDED to the Board of Appeals as the
Court found that the Board's Supplemental Order of February 6,
1989 is incorrect and that on remand the applicable law "shall
be as enacted by the Baltimore County Council on June 13, 1988
... providing that its application does not affect intervening
vested rights."
August 9, 1989 Hearing before the Board.
October 4 Hearing concluded before the Board.
Petitioners' Exhibit A - study dated 3/24/89
" B - plan
" C - DEPRM report 6/20/89
" D - letter dated 7/5/89
" E - letter dated 7/5/89
" F - Resume of Peter de Jong
Protestants' Exhibit AA- Public Notice 2/2/89
" BB- C.V. of Charles J. Klein, III
" CC- Results of Sampling Analysis Invoice
" DD- 1 through 3 - photos
" EE- Microfilm copy of Case 70-215-X
" FF- Plat - divisional property lines 5/25/88
October 25 Protestants' Memorandum of Law filed by Michael P. Tanczyn, Esq.
October 27 Letter filed by People's Counsel for Baltimore County.
November 21 Petitioners' Memorandum of Law filed by S. Eric DiNenna, Esq.
November 29 Supplemental Opinion and Order of the Board finding that the
proposal is in compliance with the Chesapeake Bay Critical Areas
requirements.

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY,
Appellant
v.
WALTER BELL, et ux,
Appellees

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
AT LAW
Docket No. 56
Folio No. 253
File No. 88-CG-2253

NOTICE OF APPEAL

Please note an appeal to the Circuit Court for Baltimore County
from the Opinion and Order of the County Board of Appeals dated April
20, 1988, in the above-captioned matter.

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

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

I HEREBY CERTIFY that on this 18th day of May, 1988, a copy of
the foregoing Notice of Appeal was served on the Administrative Secretary,
County Board of Appeals, Room 200, Court House, Towson, MD 21204; and a
copy mailed to S. Eric DiNenna, Esquire, Mercantile-Towson Bldg., Suite
600, 409 Washington Ave., Towson, MD 21204; Newton A. Williams, Esquire,
Nolan, Flumhoff & Williams, Chartered, Suite 1105, 300 E. Joppa Rd., Towson,
MD 21204-3012; and Michael P. Tanczyn, Esquire, Suite 106, 606 Baltimore
Ave., Towson, MD 21204.

Peter Max Zimmerman
Peter Max Zimmerman

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY, et al.
Appellants
v.
WALTER BELL, et al.
Appellees

RESPONSE TO MOTION TO VACATE ORDER
DENYING MOTION TO EXTEND TIME

Walter Bell, et ux, Appellees, by their attorneys, S. Eric
DiNenna and DiNenna, Mann & Breschi, respond to Appellants'
Motion to Vacate Order Denying Motion to Extend Time and states:

- On March 22, 1990, Appellants filed a Motion to Extend
Time to Transmit the Record.
- On March 26, 1990, Judge Nickerson granted Appellants'
Motion.
- On March 28, 1990, Appellees filed a Motion to Vacate
the Order Extending the Time to Transmit the Record and filed a
response to Appellants' original Motion to Extend Time to
Transmit the Record.
- Upon due consideration of the Appellants' Motion to
Extend Time to Transmit the Record, Appellees' Motion to Vacate
the Order granting the Motion to Extend Time to Transmit the
Record and Appellees' Response to the Motion to Extend Time to
Transmit the Record, on April 26, 1990, Judge Brennan denied
Appellants' Motion to Extend Time to Transmit the Record.
- Appellants have filed a Motion to Vacate the Order
Denying the Motion to Extend Time to Transmit the Record under

date of May 2, 1990.

6. Appellants failed to file a response to Appellees
request that the Order be vacated. If Appellants felt that
Appellees had failed to state adequate grounds to warrant
vacating of the Order Extending the Time to Transmit the Record,
Appellants should have filed a response pursuant to Maryland
Rule 2-311.

7. Maryland Rule 2-311(b) provides that "except as
otherwise provided in this section, a party against whom a
Motion is directed shall file a response within 15 days after
being served with the Motion, or within the time allowed for a
party's original pleading pursuant to Rule 2-321(a), whichever
is later."

8. The Court Order granting Appellees' Motion to Vacate
was not granted until April 26, 1990, well beyond the fifteen
days allowed under Maryland Rule 2-311. Appellants' opposition
to Appellees' Motion to Vacate the Order should have been filed
within the fifteen day period allowed under the Rule.

9. Appellants have stated no grounds in their Motion to
support the request that the Court vacate the Order Denying the
Motion to Extend Time to Transmit the Record. The Motion states
that the failure to file the transcript "was a direct result of
confusion as to whether another Appeal even was required...".
However, Judge Fader's letter of January 25, 1990 succinctly
stated that an Appeal was necessary and should be taken in
compliance with the Rules of Procedure. Appellants' Motion to
Extend Time to Transmit the Record was not filed until March 22,

1990, almost two months beyond the written confirmation of the
necessity of the Appeal.

10. Appellants have failed to comply with the Rules of
Procedure and have failed to state sufficient grounds for
vacating the Order.

WHEREFORE, Appellees respectfully request this Honorable
Court to deny Appellants' Motion to Vacate the Order Denying the
Motion to Extend Time to Transmit the Record.

S. ERIC DINENNA
DINENNA, MANN & BRESCHI
409 Washington Avenue, Suite 600
Towson, Maryland 21204
(301) 296-6820
Attorneys for Appellees

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 10th day of May,
1990, a copy of the foregoing Response to Motion to Vacate
Order Denying Motion to Extend Time was mailed, postage prepaid,
to Michael P. Tanczyn, Esquire, Suite 106, 606 Baltimore Avenue,
Towson, Maryland 21204, Attorney for Appellants; Board of
Appeals for Baltimore County, County Office Building, 111 West
Chesapeake Avenue, Towson, Maryland 21204; and Phyllis Cole
Friedman, Esquire, People's Counsel for Baltimore County, County
Office Building, 111 West Chesapeake Avenue, Towson, Maryland
21204.

S. ERIC DINENNA

Walter Bell, File No. 88-CG-2253
Zoning Case No. 87-395-SFH

December 27, 1989 Letter received from Mr. Tanczyn noting an appeal for the
technical formality of the Board's decision.
December 27, 1989 Correspondence to Judge Fader with a copy of Mr. Tanczyn's
letter requesting instructions from the Court.
January 16, 1990 Additional record of proceedings filed in the Circuit Court
(Board's Supplemental Opinion and Order of 11/29/89 and
Circuit Court File No. 88-CG-2253).

Respectfully submitted,
Linda Lee M. Kuszmaul
Linda Lee M. Kuszmaul, Legal Secretary
County Board of Appeals of Baltimore
County

cc: S. Eric DiNenna, Esquire
Michael P. Tanczyn, Esquire
Phyllis C. Friedman, Esquire

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY, et al,

Appellants,

vs.

WALTER BELL, et al,

Appellee.

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

Case No. 56/253/88CG-2253

ORDER

UPON CONSIDERATION of the Appellants' Motion for Extension of Time to Transmit Record and any response thereto, it is by the Circuit Court for Baltimore County this 16th day of March, 1990,

ORDERED, that the time within which the transcript shall be transmitted to this Court shall be extended to on or before May 30, 1990 as prayed.

William M. Dickmann
JUDGE

True Copy Test

SUZANNE MANSUR, CLERK

Per *S. Sandas*
Deputy Clerk

RECEIVED
COUNTY BOARD OF APPEALS
MARCH 29 PM 2-04

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY, et al

Appellants,

vs.

WALTER BELL, et al,

Appellee.

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

Case No. 56/253/88CG-2253

MOTION TO EXTEND TIME TO TRANSMIT RECORD

NOW COMES, Donald W. Doyle, et al, Appellants, by their attorney, Michael P. Tanczyn, Esq., who move this Honorable Court pursuant to Maryland Rule B7(b) to extend the time within which the Appeal is to be transmitted from the Board of Appeals to the Circuit Court for Baltimore County and for reasons say

1. That the Appeal was timely filed on December 26, 1989.
2. That this case was unusual in that it had been twice remanded by the Circuit Court for Baltimore County to the Baltimore County Board of Appeals and, after the Board's most recent Decision, Appellants filed a Notice of Appeal and the Board of Appeals took the unusual measure of asking for clarification from the Circuit Court for Baltimore as to whether a new appeal was required, which was answered in the affirmative subsequently by The Honorable John Fader, II.
3. Additionally, an extended period of time will be required to transmit the transcript due to a backlog of work being

1

experienced by the Court Reporter.

4. That an extension of sixty (60) days within which to file the record will provide them adequate and sufficient time to prepare the transcript for transmission during that time period.

WHEREFORE, the Appellants respectfully pray this Honorable Court

A. Order the time within which the transcript is to be forwarded to the Circuit Court for Baltimore County be extended to on or before May 30, 1990; and

B. Grant such other and further relief as the nature of Appellants' cause may require.

Michael P. Tanczyn
MICHAEL P. TANCZYN, ESQ.
Attorney for the Appellants
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
Telephone (301) 296-8823

I HEREBY CERTIFY that, on this 22nd day of March, 1990, a copy of the foregoing was mailed, postage prepaid, to S. Eric DiNenna, Esq., Suite 600, Mercantile Towson Building, 409 Washington Avenue, Towson, Maryland, 21204, attorney for the Appellee; and to Board of Appeals for Baltimore County, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland, 21204; and to Phyllis Cole Friedman, Esq., People's Counsel for Baltimore County, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland, 21204.

Michael P. Tanczyn
MICHAEL P. TANCZYN, ESQ.

2

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY, et al,

Appellants,

vs.

WALTER BELL, et al,

Appellee.

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

Case No. 56/253/88CG-2253

ORDER

UPON CONSIDERATION of the Appellants' Motion for Extension of Time to Transmit Record and any response thereto, it is by the Circuit Court for Baltimore County this ____ day of March, 1990,

ORDERED, that the time within which the transcript shall be transmitted to this Court shall be extended to on or before May 30, 1990 as prayed.

JUDGE

IN THE MATTER OF
THE APPLICATION OF
WALTER BELL, ET UX
FOR A SPECIAL HEARING ON PROPERTY
LOCATED ON THE SOUTH SIDE OF
CORLICA ROAD, 65 FEET EACH OF THE
CENTERLINE OF MILES ROAD
15th ELECTION DISTRICT
5th COUNCILMANIC DISTRICT

PHYLIS C. FRIEDMAN, PEOPLE'S
COUNSEL FOR BALTIMORE COUNTY,
AND
DONALD W. DOYLE, ET AL,
PLAINTIFFS

ON REMAND FROM THE

CIRCUIT COURT

FOR

BALTIMORE COUNTY

CASE NO. 88-CG-2253/56/253

ZONING FILE NO. 87-395-SPH

SUPPLEMENTARY OPINION AND ORDER

In response to the Order of the Circuit Court for Baltimore County remanding the above-entitled case to the Board of Appeals, the Board has reviewed testimony in the matter, as directed by the Court, for a decision as to the effect of the following:

1. Application of the Chesapeake Bay Critical Area Protection Program to the special hearing, and
2. If applicable, findings of fact and conclusions of law should be made in accord with the presently existing Baltimore County Critical Areas legislation, and
3. If they so determine, additional findings should be made pertaining to divisional property lines as prescribed in Section 417 of the B.C.Z.R.

In consideration of the Chesapeake Bay Critical Area Protection Program, and the Baltimore County Critical Areas legislation, which postdated the hearing of this case, the Board was cognizant of the effect of the various recommendations and proposed regulations of the pending legislation as stipulated in the Annotated Code of Maryland, Natural Resources Article, Section 8-1813; and in pending local protective legislation in Baltimore County Council Bill No. 95-66 or the Critical Area Interim Development Controls Act.

Case No. 88-CG-2253/56/253
Zoning File No. 87-395-SPH
Walter Bell, et ux

2.

In the matter of minimum adverse impact on water quality that results from pollutant discharge or runoff, special note was made of the rehabilitation and improvements made to the property since 1986, and the elimination of a launching ramp and subsequent construction of a bulkhead. As prescribed in Bill No. 95-86, which states that "no special exception may be granted for a marina," it was this Board's assessment that this interim control was not applicable to a boat yard (marina) that has been in existence and in compliance with the B.C.Z.R. since 1971.

The deliberation of the Board in the matter of divisional property lines as prescribed in Section 417 of the B.C.Z.R. were lengthy and carefully considered. The site location along an irregular shoreline, the many years existence of the authorized pier, and of primary importance, the expert testimony of a professional engineer, convinced the Board that intersecting divisional lines projected from adjoining properties would not impede boat movement, nor place hardship on the neighbors.

In the above statements, this Board respectfully submits that we carefully addressed all significant conflicts set forth in the remarks of the Circuit Court in regard to the application of the existing laws as well as pending legislation.

In consideration of the discussion above, the Opinion and Order of the Board dated April 20, 1988 is supplemented to the extent ordered by the Circuit Court. The Order of the Board dated April 20, 1988 remains unchanged in consideration of the discussion above.

Case No. 88-CG-2253/56/253
Zoning File No. 87-395-SPH
Walter Bell, et ux

3.

ORDER

Therefore, having reviewed this Board's previous Order and now having addressed the concerns in the remand of the Circuit Court, it is hereby ORDERED that the further Opinion issued this 6th day of February 1989 be forwarded to the Circuit Court for Baltimore County.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Thomas J. Bollinger
Thomas J. Bollinger, Acting Chairman

Harry E. Buchheister, Jr.
Harry E. Buchheister, Jr.

Arnold G. Foreman
Arnold G. Foreman

RECEIVED
COUNTY BOARD OF APPEALS
89FEB-6 PM 1:30

IN THE MATTER OF
THE APPLICATION OF
WALTER BELL, ET UX
FOR A SPECIAL HEARING ON PROPERTY
LOCATED ON THE SOUTH SIDE OF
CORSICA ROAD, 65 FEET EAST OF THE
CENTERLINE OF MILES ROAD
15th ELECTION DISTRICT
5th COUNCILMANIC DISTRICT

PHYLIS C. FRIEDMAN
PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY,
AND
DONALD W. DOYLE, ET AL
PLAINTIFFS

ON REMAND FROM THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
CASE NO. 88-CG-2253/56/253
ZONING FILE NO. 87-395-SPH

SUPPLEMENTARY OPINION AND ORDER

This case comes before this Board on a Memorandum Opinion and Order of the Circuit Court for Baltimore County remanding this case to the Board of Appeals to evaluate compliance of the proposal at issue with the Chesapeake Bay Critical Area Protection Program.

Steven K. Broyles, Professional Engineer, Surveyor and Developer, testified that he did a study on this site in regard to the Water Dependent Facilities Plan for Baltimore County which he submitted to the Department of Environmental Protection & Resource Management (hereinafter referred to as "DEPRM"), and it was his opinion that the extension of the pier by 85 feet would have minor, negligible impact on the site. He further testified that there would be little or no deterioration of water quality from this site and that it was his opinion that dredging would be far more damaging to the environment than the proposed pier extension. He testified at length to the other requirements that must be met if the extension is granted regarding safety factors and laws that govern marina use.

David E. Brown, representing DEPRM testified that he administers the Baltimore County Critical Areas Act, that he had reviewed the proposal and found it in compliance with the Chesapeake Bay Critical Areas requirements.

Case No. 87-395-SPH
Circuit Court Case No. 88-CG-2253
Walter Bell, et ux

He further explained that the Water Dependent Facilities Plan in this case was not required but was considered and that the proposal complies with all the required regulations.

The Board will especially note the letter from the Chesapeake Bay Critical Areas Commission dated July 5, 1989 indicating that they had no comments in reply to the report of Robert W. Sheesley submitted to them. Mr. Sheesley's report dated June 20, 1989 addresses all of DEPRM's concerns and the Chesapeake Bay Critical Areas Program and in conclusion finds the plan to be in compliance with Baltimore County Development Regulations in the Chesapeake Bay critical areas and is therefore approved.

Protestants presented Charles John Klein, an Environmental and Civil Engineer. He testified that he reviewed the DEPRM findings, did a water quality analysis, did a flushing study, and stated that in his opinion dredging of the existing piers could be done and would in fact improve water quality.

Paul Clement, a nearby resident, entered photographs showing his pier, another adjacent pier owned by the Selig's, and the Bell's pier. He testified that his pier was approved in January of 1989 and was erected after the Bell's 85-foot extension was approved.

Tunnie Ping, a Land Surveyor and Engineer, testified that he had done a study on this site regarding the division lines and took issue with the engineer in the original hearing who did the division lines, and entered as Protestants' Exhibit No. FF the plat that he developed.

One rebuttal witness, Peter DeJong, an Environmental Planner, testified that he had studied the site, reviewed all the papers and testimony, and that it was his opinion that the proposed construction would be in conformity with the Chesapeake Bay Critical Areas Program and DEPRM's findings. This

Case No. 87-395-SPH
Circuit Court Case No. 88-CG-2253
Walter Bell, et ux

encapsulation of the testimony in no way is intended to portray the total evidence received in this hearing but will let the record speak for itself.

It is the opinion of this Board that the testimony and evidence presented indicates the 85-foot extension of the pier does not violate the Critical Bay Critical Areas Protection Program or DEPRM requirements. The remand from the Circuit Court is very specific in that the Board through testimony and evidence must find as a fact that the proposed pier extension be in compliance with the Chesapeake Bay Critical Areas Program or fail to be in compliance. The Board will find as a fact that the weight of the evidence presented in this hearing leads to the conclusion that the proposal is in compliance with all applicable regulations and will so order.

ORDER

It is therefore this 29th day of November, 1989 by the County Board of Appeals of Baltimore County ORDERED that the Board finds the Chesapeake Bay Critical Areas Protection Program is applicable to the boatyard pier extension; and that the proposal is in compliance with this Program; and

IT IS FURTHER ORDERED that this Opinion and Order shall be forwarded to the Circuit Court for Baltimore County.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman

Arnold A. Foreman
Arnold A. Foreman

Harry E. Buchheister, Jr.
Harry E. Buchheister, Jr.

IN THE MATTER OF
THE APPLICATION OF
WALTER BELL, ET UX
FOR A SPECIAL HEARING ON
PROPERTY LOCATED ON THE
SOUTH SIDE OF CORSICA ROAD,
65 FEET EAST OF THE
CENTERLINE OF MILES ROAD
15th ELECTION DISTRICT
5th COUNCILMANIC DISTRICT

PHYLIS C. FRIEDMAN, PEOPLE'S
COUNSEL FOR BALTIMORE COUNTY
AND
DONALD W. DOYLE, ET AL,
PLAINTIFFS

ON REMAND FROM THE
CIRCUIT COURT FOR
BALTIMORE COUNTY
CG Docket No. 56
File No. 88-CG-2253
Zoning File No. 87-395-SPH

SECOND ORDER FOR APPEAL

NOW COMES, Donald W. Doyle, Marie Doyle, Jonathan Doyle, Brian Templeton, William Selig, Sr. and William Selig, Jr., Appellants, by their co-counsel, Michael P. Tanczyn, Esq., jointly and individually, and respectfully requests the Court enter an Appeal from the Supplemental Opinion and Order of the Board of Appeals of Baltimore County dated February 6, 1989 to the Circuit Court for Baltimore County.

MICHAEL P. TANCZYN, ESQ.
Attorney for the Appellants
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
Telephone (301) 296-8823

RECEIVED
COUNTY BOARD OF APPEALS
FEB 28 PM 2:59

I HEREBY ACKNOWLEDGE receipt of a copy of the Second Order for Appeal in Case No. 87-395-SPH.

SECRETARY
Board of Appeals of Baltimore
County, Maryland

I HEREBY CERTIFY that, on this 1st day of February, 1990, a copy of this Second Order of Appeal was mailed, postage prepaid, to Newton A. Williams, Esq., Nolan, Plumhoff & Williams, 204 West Pennsylvania Avenue, Towson, Maryland, 21204, Co-Counsel for Appellants, and to S. Eric DiNenna, Esq., Suite 600, 409 East Canton Avenue, Towson, Maryland, 21204 attorney for the Appellants, and to People's Counsel for Baltimore County, 111 West Chesapeake Avenue, Room 305, Towson, Maryland, 21204.

MICHAEL P. TANCZYN, ESQ.

PEOPLE'S COUNSEL
BALTIMORE COUNTY

V.

WALTER BELL, et ux

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
CASE NO. 88 CG 2253

ORDER OF COURT REMANDING CASE TO BOARD OF APPEALS

Following a hearing before this court on October 17, 1988 it is the decision of the Circuit Court for Baltimore County that the above captioned case be remanded to the Baltimore County Board of Appeals for a decision as follows:

- Whether the Chesapeake Bay Critical Area Protection Program is applicable to the special hearing being the subject matter of the above captioned case, and
- If the Program is applicable, the Board of Appeals should make its findings of fact and conclusions of law in accord with the presently existing Baltimore County Critical Areas legislation, and
- To make such additional finding regarding Section 417 of the Baltimore County Zoning Regulations pertaining to divisional property lines as the Board of Appeals thinks proper, if they feel any additional findings should be made.

Most respectfully, this court brings to the attention of the Board of Appeals the decision of the Court of Appeals of the State of Maryland in United Steel Workers v. Beth. Steel, 298 Md. 665 (1984). At page 679 of that opinion appears the following:

Judicial review of administrative action differs from appellate review of a trial court judgment. In the latter context the appellate Court will search the record for evidence to support the judgment and will sustain the judgment for a reason plainly appearing on the record whether or not the reason was expressly relied upon by the trial court. However, in judicial review of agency action the court may not uphold the agency order unless it is

FILED OCT 19 '88

sustained on the agency's findings for the reasons stated by the agency. [Citations omitted]

In State Commission on Human Relations v. Malakoff, 273

Md. 214, 229 (1974), the same court emphasized the importance and necessity that administrative agencies resolve all significant conflicts in the evidence and then chronicle, in the record, full, complete and detailed findings of fact and conclusions of law.

The applicable law is set forward in this opinion because of the difference of opinion among counsel to this case as to whether the Board of Appeals has complied with the instruction of Appellate law by the findings made in this case. While this court does not mean by its referral to indicate that any exhaustive review of evidence is required, or that any further statement of facts and conclusions of law should be made, it does call to the attention of the Board of Appeals the dispute and suggestion by at least one of the attorneys to this case that the findings made are not in compliance with the Appellate Court decision.

The above captioned case remains assigned to the undersigned judge. The Board of Appeals has requested to forward a copy of its further opinion to this judge.

John A. Fader II
Judge

JFF:am

cc: Phyllis Friedman, Esq.
Michael P. Tanczyn, Esq.
S. Eric DiNenna, Esq.

IN THE MATTER OF
THE APPLICATION OF
WALTER BELL, ET UX
FOR A SPECIAL HEARING ON
PROPERTY LOCATED ON THE
SOUTH SIDE OF CORNICA ROAD,
65 FEET EAST OF THE
CENTERLINE OF MILES ROAD
15th ELECTION DISTRICT
5th COUNCILMANIC DISTRICT

PHYLLIS C. FRIEDMAN, PEOPLE'S
COUNSEL FOR BALTIMORE COUNTY

AND

DONALD W. DOYLE, ET AL,
PLAINTIFFS

ON REMAND FROM THE
CIRCUIT COURT FOR
BALTIMORE COUNTY

CG Docket No. 56

Folio No. 253

File No. 88-CG-2253

Zoning File No. 87-395-SPH

PETITION TO ACCOMPANY SECOND APPEAL

NOW COMES, Donald W. Doyle and Marie Doyle, his wife,
Jonathan Doyle, Brian Templeton, William Selig, Sr. and William
Selig, Jr., Appellants, Protestants below, by their attorney,
Michael P. Tanczyn, Esq., having heretofore filed a Second Order
for Appeal in compliance with Maryland Rule B-2(e), who
respectfully allege

1. That by Order of the Circuit Court for Baltimore
County dated October 19, 1988 the instant case was remanded by
Judge Fader to the Board of Appeals for Baltimore County.

2. That subsequently the Board set the matter in for
hearing with notice to all parties for hearing on February 28,
1989 and, without further notice, the Board issued its
Supplemental Opinion and Order on February 6, 1989 and cancelled

65-2-WB-82-83368

the hearing for February 28, 1989.

3. That the Appellants replicate by reference all
reasons contained in their original Petition to Accompany Order
for Appeal as well as those of People's Counsel for Baltimore
County.

4. That additionally, the Board has erred in issuing
its Supplemental Opinion not only in denying due process to all
parties by cancelling the hearing as scheduled for February 28,
1989 on February 6, 1989, but also erred as a matter of law in
that the regulations considered at the time of the original
hearing were interim regulations superceded by the Critical Areas
legislation passed by the Baltimore County Council, which required
detailed findings concerning the Petitioner's site on an
environmental perspective, some of which information was requested
of Petitioner by the Department of Environmental Planning and
Resource Management per the attached letter of David Flowers, but
which the Petitioner has failed to provide. Thus, the Board of
Appeals does not yet have the benefit of the report of the
Department of Environmental Planning and Resource Management
concerning the critical areas matters on which to base its
findings under the current law. Thus, the approval by the Board
of the Petition of Walter Bell by its Supplemental Opinion is
without foundation in fact for any findings stated.

5. That Baltimore County, Maryland has enacted an
ordinance creating Critical Area Definitions, Section 101.A of the
Baltimore County Zoning Regulations, as well as Section 22-202,

2

Definitions for the County Code, both defining marinas as follows

"Marina means any facility on tidal waters for the
mooring, berthing, storing, or securing of watercraft,
but not including community piers and other non-
commercial boat docking and storage facilities. Any
other definition referring to boatyards, boat basins,
etc., shall not be applicable."

Further, Section 103.5.C mandates that the zoning regulations in
effect at the time the right is to be exercised shall apply to
critical areas' development. Further Section 1A05.2.D.4 of the
Baltimore County Zoning Regulations provides that commercial water
dependent facilities are subject to the provisions of Section 417
and Section 22-218 of the Baltimore County Code and Section
1A05.3.B provides that all applicable Chesapeake Bay Critical Area
Regulations contained in Title 22 and Title 38 of the Baltimore
County Code apply to commercial and industrial development within
the critical areas. Finally, Section 417.8 provides that
waterfront construction must also comply with all applicable
provisions of Section 22-218 of the Baltimore County Code
pertaining to water dependent facilities in the Chesapeake Bay
Critical Area. Section 500.14 requires the decision-maker on any
Petition for Special Exception, Variance or Special Hearing to
make no decision until decision-maker has received from DEPRM
written recommendations as delineated in Section 500.14. Section
500.14(d) provides that any such decision made in violation of the
paragraph shall be null and void.

WHEREFORE, the Protestants respectfully pray this
Honorable Court, after consideration of the arguments of all

3

parties, tender an Order

A. Reversing the Decision of the Board of Appeals
of Baltimore County and remanding the matter for further
hearing; or

B. In the alternative, reverse the Decision of the
Board of Appeals of Baltimore County; and

C. Order the Petitioner to pay costs of Appeal,
including preparation of the transcript and filing fees,
if any, attorneys' fees to the Protestants and People's
Counsel, and Court costs; and

D. Grant such other and further relief as the
nature of Protestants' cause may require.

MICHAEL P. TANCZYN, ESQ.
Attorney for the Protestants
Suite 106, 606 Baltimore Avenue
Towson, Maryland, 21204
Telephone (301) 296-8823

I HEREBY CERTIFY that, on this 11th day of February,
1989, a copy of the foregoing Petition to Accompany Second Appeal
was mailed, postage prepaid, to Eric DiNenna, Esq., Suite 600, 409
Washington Avenue, Towson, Maryland, 21204, Attorney for the
Appellants; and to Phyllis C. Friedman, Esq. and Peter Max
Zimmerman, Esq., Baltimore County People's Counsel, 111 West
Chesapeake Avenue, Room 104, Towson, Maryland, 21204.

MICHAEL P. TANCZYN, ESQ.

4

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY

IN THE
CIRCUIT COURT

FOR
BALTIMORE COUNTY

CASE NO. 88 CG 2253

WALTER BELL ET UX

ORDER OF COURT REMANDING
CASE TO BOARD OF APPEALS

Following a hearing before this court on October 17, 1988
it is the decision of the Circuit Court for Baltimore County that
the above captioned case be remanded to the Baltimore County
Board of Appeals for a decision as follows:

- Whether the Chesapeake Bay Critical Area Protection
Program is applicable to the special hearing being
the subject matter of the above captioned case, and
- If the Program is applicable, the Board of Appeals
should make its findings of fact and conclusions of
law in accord with the presently existing Baltimore
County Critical Areas legislation, and
- To make such additional finding regarding Section
417 of the Baltimore County Zoning Regulations
pertaining to divisional property lines as the Board
of Appeals thinks proper, if they feel any
additional findings should be made.

Most respectfully, this court brings to the attention of
the Board of Appeals the decision of the Court of Appeals of the
State of Maryland in United Steel Workers v. Beth. Steel, 298 Md.
665 (1984). At page 679 of that opinion appears the following:

Judicial review of administrative action differs from
appellate review of a trial court judgment. In the
latter context the appellate court will search the record
for evidence to support the judgment and will sustain the
judgment for a reason plainly appearing on the record
whether or not the reason was expressly relied upon by the
trial court. However, in judicial review of agency action
the court may not uphold the agency order unless it is

sustainable on the agency's findings and for the reasons
stated by the agency. [Citations omitted]

In State Commission on Human Relations v. Malakoff, 273
Md. 214, 229 (1974), the same court emphasized the importance and
necessity that administrative agencies resolve all significant
conflicts in the evidence and then chronicle, in the record,
full, complete and detailed findings of fact and conclusions of
law.

The applicable law is set forward in this opinion because
of the difference of opinion among counsel to this case as to
whether the Board of Appeals has complied with the instruction of
Appellate law by the findings made in this case. While this court
does not mean by its referral to indicate that any exhaustive
review of evidence is required, or that any further statement of
facts and conclusions of law should be made it does call to the
attention of the Board of Appeals the dispute and suggestion by at
least one of the attorneys to this case that the findings made are
not in compliance with the Appellate Court decision.

The above captioned case remains assigned to the
undersigned judge. The Board of Appeals has requested to forward
a copy of its further opinion to this judge.

John A. Fader II
Judge

October 18, 1988

JFF:am

cc: Phyllis Friedman, Esq.
Michael P. Tanczyn, Esq.
S. Eric DiNenna, Esq.

Baltimore County
Department of Environmental Protection
& Resource Management
County Courts Building
401 Bayley Avenue
Towson, Maryland 21204
(301) 887-3723

Robert W. Sheskey
Director

February 3, 1989

Ms. Kathleen Weidenhammer
Administrative Secretary
Board of Appeals
Court House, Room 200
Towson, Maryland 21204

Re: Walter Bell Property
Case No. 87-395-SPH

Dear Ms. Weidenhammer:

We are unable to complete our Chesapeake Bay Critical Area Findings
for the Walter Bell Property because we have not received a Chesapeake
Bay Critical Area Findings Plan and a Water Dependent Facilities Plan on
the proposed project as requested.

According to Chesapeake Bay Critical Area Criteria (COMAR
14.15.02.04) and Baltimore County Development Regulations (BCL 35-08,
Section 22-218), all new or expanded water dependent facilities are
required to submit a Critical Area Findings Plan and a Water Dependent
Facilities Plan. Mr. Eric DiNenna, Mr. Steve Broyles, Mr. Paul Lee and
Mr. Walter Bell were made aware of this requirement at a meeting on
January 13, 1989.

If you have any questions or if I can be of assistance please
contact me at (887-1980).

Very truly yours,

David C. Flowers

Program Coordinator
Chesapeake Bay Critical Area Program

DCF:KLC:tjg

cc: Mr. Walter Bell
Mr. Eric DiNenna
Mr. Paul Lee
Mr. Steve Broyles
Mr. Peter Max Zimmerman

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY

v.

WALTER BELL, et ux

IN THE

CIRCUIT COURT

FOR

BALTIMORE COUNTY

CASE NO. 88 CG 2253

ORDER OF COURT REMANDING
CASE TO BOARD OF APPEALS

Following a hearing before this court on October 17, 1988, it is the decision of the Circuit Court for Baltimore County that the above captioned case be remanded to the Baltimore County Board of Appeals for a decision as follows:

1. Whether the Chesapeake Bay Critical Area Protection Program is applicable to the special hearing being the subject matter of the above captioned case, and
2. If the Program is applicable, the Board of Appeals should make its findings of fact and conclusions of law in accord with the presently existing Baltimore County Critical Areas legislation, and
3. To make such additional finding regarding Section 417 of the Baltimore County Zoning Regulations pertaining to divisional property lines as the Board of Appeals thinks proper, if they feel any additional findings should be made.

Most respectfully, this court brings to the attention of the Board of Appeals the decision of the Court of Appeals of the State of Maryland in United Steel Workers v. Beth. Steel, 298 Md. 665 (1984). At page 679 of that opinion appears the following:

Judicial review of administrative action differs from appellate review of a trial court judgment. In the latter context the appellate court will search the record for evidence to support the judgment and will sustain the judgment for a reason plainly appearing on the record, whether or not the reason was expressly relied upon by the trial court. However, in judicial review of agency action the court may not uphold the agency order unless it is

sustainable on the agency's findings and for the reasons stated by the agency. [Citations omitted]

In State Commission on Human Relations v. Malakoff, 273 Md. 214, 229 (1974), the same court emphasized the importance and necessity that administrative agencies resolve all significant conflicts in the evidence and then chronicle, in the record, full, complete and detailed findings of fact and conclusions of law.

The applicable law is set forward in this opinion because of the difference of opinion among counsel to this case as to whether the Board of Appeals has complied with the instruction of Appellate law by the findings made in this case. While this court does not mean by its referral to indicate that any exhaustive review of evidence is required, or that any further statement of facts and conclusions of law should be made, it does call to the attention of the Board of Appeals the dispute and suggestion by at least one of the attorneys to this case that the findings made are not in compliance with the Appellate Court decision.

The above captioned case remains assigned to the undersigned judge. The Board of Appeals has requested to forward a copy of its further opinion to this judge.

John F. Fader II
Judge

JFF:am

cc: Phyllis Friedman, Esq.
Michael P. Tanczyn, Esq.
S. Eric DiNenna, Esq.

PEOPLE'S COUNSEL, et al,

Appellants,

vs.

WALTER BELL, et al,

Appellees.

IN THE CIRCUIT COURT

FOR BALTIMORE COUNTY

Case No. 88-CG-2253

ORDER

UPON CONSIDERATION of the Motion to Vacate Order and the response thereto and after hearing, it is this ____ day of July, 1990, by the Circuit Court for Baltimore County,

ADJUDGED AND ORDERED, that the Motion to Vacate Order dated April 26, 1990 denying the Motion to Extend Time is granted; and it is further

ADJUDGED AND ORDERED, that the transcript in the instant case shall be forwarded to the Circuit Court for Baltimore County within thirty (30) days of this Order date; and it is further

ADJUDGED AND ORDERED, that the Clerk shall mark the file to insure that all further proceedings in this matter are directed to the Honorable John F. Fader, II, Associate Judge of this Court.

HONORABLE ALFRED L. BRENNAN, SR.
JUDGE

IN THE MATTER OF
THE APPLICATION OF
WALTER BELL, ET UX
FOR A SPECIAL HEARING
ON PROPERTY LOCATED ON
THE S/S OF CORSICA RD.
65' EAST OF THE C/L OF
MILES RD.
15TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT

ON REMAND FROM THE
CIRCUIT COURT FOR
BALTIMORE COUNTY
CG Docket No. 86
Folio No. 253
File No. 88-CG-2253

SECOND PETITION FOR APPEAL

People's Counsel for Baltimore County, Protestant below and Co-Appellant herein, having filed a Second Order for Appeal, files this Second Petition for Appeals, VIZ:

1. The February 6, 1989 Order of the County Board of Appeals, on remand, still does not satisfy the Baltimore County Critical Areas legislation, as explained in the first appeal.
2. A copy of the letter of David Flowers dated February 7, 1989 is further grounds for this appeal.
3. Petitioner requests that its memorandum filed in the first appeal be incorporated in this appeal to satisfy the B Rules so as not to delay Court proceedings scheduled for March 28, 1989 before Judge John F. Fader, II.

COUNT RECEIVED
59 MAR -0 PM 3:51

WHEREFORE, People's Counsel for Baltimore County prays that the Circuit Court reverse the Order of the County Board of Appeals, on remand, dated February 6, 1989.

Phyllis Cole Friedman

Peter Max Zimmerman
Deputy People's Counsel
Room 304, County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204
(301) 887-2188

I HEREBY CERTIFY that on this 8th day of March, 1989, a copy of the foregoing Second Petition for Appeal was delivered to the Administrative Secretary, County Board of Appeals of Baltimore County, Room 318, County Office Bldg., 111 W. Chesapeake Ave., Towson, MD 21204; and a copy was mailed to S. Eric DiNenna, Esquire, Suite 600, Mercantile-Towson Bldg., 409 Washington Ave., Towson, MD 21204; and Michael P. Tanczyn, Esquire, Suite 106, 606 Baltimore Ave., Towson, MD 21204.

Peter Max Zimmerman

IN THE MATTER OF
THE APPLICATION OF
WALTER BELL, ET UX
FOR A SPECIAL HEARING
ON PROPERTY LOCATED ON
THE S/S OF CORSICA RD.
65' EAST OF THE C/L OF
MILES RD.
15TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT

ON REMAND FROM THE
CIRCUIT COURT FOR
BALTIMORE COUNTY
CG Docket No. 86
FOLIO NO. 253
FILE NO. 88-CG-2253

SECOND ORDER FOR APPEAL

People's Counsel for Baltimore County, Protestant below and Co-Appellant herein, appeals the County Board of Appeals Order dated February 6, 1989 to the Circuit Court for Baltimore County.

Phyllis Cole Friedman
People's Counsel for Baltimore County

Peter Max Zimmerman
Deputy People's Counsel
Room 304, County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204
(301) 887-2188

COUNT RECEIVED
59 MAR -0 PM 3:51

I HEREBY CERTIFY that on this 8th day of March, 1989, a copy of the foregoing Second Order of Appeal was delivered to the Administrative Secretary, County Board of Appeals of Baltimore County, Room 318, County Office Bldg., 111 W. Chesapeake Ave., Towson, MD 21204; and a copy was mailed to S. Eric DiNenna, Esquire, Suite 600, Mercantile-Towson Bldg., 409 Washington Ave., Towson, MD 21204; and Michael P. Tanczyn, Esquire, Suite 106, 606 Baltimore Ave., Towson, MD 21204.

Peter Max Zimmerman

DONALD W. DOYLE and MARIE DOYLE, his wife,
312 East Ridgely Road,
Lutherville, Maryland, 21093;
JONATHAN DOYLE,
350 Miles Road,
Baltimore, Maryland, 21221;
BRIAN TEMPLETON,
348 Miles Road,
Baltimore, Maryland, 21221;
MR. & MRS. WILLIAM SELIG, SR.,
358 Miles Road,
Baltimore, Maryland, 21221;
MR. & MRS. WILLIAM SELIG, JR.,
327 Miles Road,
Baltimore, Maryland, 21221;
MR. & MRS. PAUL CLEMMENT,
352 Miles Road,
Baltimore, Maryland, 21221;
Protestant/Appellants.

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

vs.
WILLIAM BELL, et ux.
Petitioners/Appellees. Case No. 56/253/88CG-2253

PETITION TO ACCOMPANY APPEAL

NOW COMES, Donald W. Doyle and Marie Doyle, his wife;
Jonathan Doyle; Brian Templeton; Mr. and Mrs. William Selig, Sr.;
Mr. and Mrs. William Selig, Jr.; and Mr. and Mrs. Paul Clemment,
Protestant Appellants, by their attorney, Michael P. Tanczyn,
Esq., having heretofore filed an Order for Appeal in compliance
with Maryland Rule 2-611, who respectfully allege:

1. Action Appealed From. The Petitioner, Walter Bell,
et ux., filed a Petition with the Zoning Commissioner seeking

relief by way of special hearing to amend the site plan approved
and affirmed by the Maryland Court of Appeals in Case No. 70-215-X
on April 17, 1972 and seeking to lift restrictions numbered "1"
and "3" of the eight imposed in 1972 in order to extend an
existing pier and to berth boats in excess of the size allowed
under the prior Order; namely, 24 feet. The Deputy Zoning
Commissioner denied the Petitioner's request on April 23, 1987.
The Petitioner appealed that decision and, after hearing, the
County Board of Appeals granted the Petitioner's requests to amend
its plat approved April 17, 1972 in Case 70-215-X, to allow
restriction "1" to be removed, and granted a pier extension of an
additional 85 feet, and removed restriction "3" granting approval
to allow boats up to 30 feet so long as boats 28 to 30 feet would
be moored at the pier extension. The Protestants are the adjacent
property owners and residents to the Petitioner's property. After
second remand to the Board of Appeals and after hearing held, the
Board by Order dated November 29, 1989 found the Chesapeake Bay
Critical Areas Protection Program applicable to the boat yard pier
extension and that the Petitioner's proposal was in compliance
with this program.

2. The Protestants/Appellants allege that the Board of
Appeals acted in an illegal or in an arbitrary and capricious
manner in granting this approval in that:

A. The Board failed to make requisite findings as
required by Maryland Law pursuant to Article 8, Section 1801 et

seq., Chesapeake Bay Critical Area Protection Program, as well as
County ordinances implementing same.

B. That with the ascension of Thomas Bollinger to the
District Court Bench the Board improperly refused on remand to
appoint a new Board and erroneously denied Protestants/Appellants'
Motion to appoint a new Board for hearing after rendering its
Opinion on February 6, 1989 without a hearing following the first
remand after a hearing had been scheduled.

C. That the Board's decision misconstrues the Critical
Areas Laws and relies on faulty environmental model as found by
the County in its Department of Environmental Protection and
Resource Management report to have been used by the Petitioner and
directly contradicted by the expert testimony of the
Protestants/Appellants' witness who had conducted the only site
specific environmental studies which indicated a score of unclean
water in this cove.

D. That all the prior issues raised in the Petition to
Accompany Appeal and left for later consideration by the Court are
replicated by reference.

E. That the Board considered a Plat and Petition
amended by the Petitioner materially different from the Petition
originally approved without remanding the matter for consideration
by Baltimore County Zoning Plans Advisory Committee.

3. That the approval of the Petition for Special
Hearing which was not a variance hearing denies

Protestants/Appellants and other adjoining property owners in the
cove area equal protection of the laws in the interpretation and
application of their rights under Section 417 for waterfront
construction, under the Constitutions of the United States and of
the State of Maryland.

WHEREFORE, the Protestants/Appellants respectfully pray
this Honorable Court, after consideration, enter an Order.

A. Reversing the Decision of the Board of Appeals of
Baltimore County and denying the Petition for Special Hearing of
the Petitioner;

B. In the alternative, remanding the matter to the
Board of Appeals of Baltimore County with appropriate instructions
to the Board concerning the interpretation of Sections 417 and
502.1 and 502.3 of the Baltimore County Zoning Regulations; or

C. Remand the case to the Board of Appeals with
specific instructions without reversing or affirming same;

D. Grant such other and further relief as the nature of
Protestants/Appellants' cause may require; and

E. Order the Petitioner to pay costs of Appeal,
including preparation of the transcript and filing fees, if any,
and Court costs.

MICHAEL P. TANCZYN, ESQ.
Attorney for Protestants
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
Telephone (301) 246-8823

I HEREBY CERTIFY that, on this 14th day of January,
1990, a copy of the foregoing was mailed, postage prepaid, to S.
Eric DeNecca, Esq., Suite 600, 409 Washington Avenue, Towson,
Maryland, 21204; and to Peter Max Zimmerman, Esq., Deputy People's
Counsel, 111 West Chesapeake Avenue, Towson, Maryland, 21204.

MICHAEL P. TANCZYN, ESQ.

IN THE MATTER OF
THE APPLICATION OF
WALTER BELL, ET UX
FOR A SPECIAL HEARING ON
PROPERTY LOCATED ON THE
SOUTH SIDE OF CORSICA ROAD
65 FEET EAST OF THE
CENTER LINE OF MILES ROAD,
15th ELECTION DISTRICT
5th COUNCILMANIC DISTRICT

* BEFORE THE
* BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
* CASE NO.: 87-395-SPH

MOTION TO DISMISS APPEAL

WALTER BELL, et ux., Appellees, by their attorneys, S. Eric DiNenna and DiNenna, Mann & Breschi, move this Honorable Court to dismiss Appellant's Appeal and state as follows:

1. Petitioners/Appellees, Walter Bell, et ux., filed a Petition with the Zoning Commissioner seeking a special hearing to amend the site plan and lift certain restrictions. By Order dated April 23, 1987, the Deputy Zoning Commissioner denied Petitioner's Request.
2. Petitioners/Appellees, appealed the decision to the Baltimore County Board of Appeals and by Opinion and Order dated April 20, 1988, the Board granted Petitioners' Request.
3. Protestants/Appellants filed an Appeal to the Circuit Court for Baltimore County and by Order of October 19, 1988, the Circuit Court remanded the case to the Board of Appeals for Baltimore County.
4. The Board of Appeals issued its supplemental Opinion and Order on February 6, 1989, which did not change the Opinion and Order of April 20, 1988.
5. Protestants/Appellants filed an Appeal from the

supplemental Opinion an Order of the Board and Judge John Fader by Order of April 4, 1989, remanded the case back to the Board of Appeals of Baltimore County.

6. On August 9, 1989 and October 4, 1989, a hearing was held before the Board of Appeals of Baltimore County on remand. By supplemental Opinion and Order of the Board dated November 29, 1989, the Board found that Petitioners' proposal was in compliance with the Chesapeake Bay Critical Area requirements.

7. On December 26, 1989, Appellants filed an Appeal to the Circuit Court for Baltimore County and in a response to Appellants' inquiry, by correspondence dated January 25, 1990, the Honorable John F. Fader, II clarified that Appellants' Appeal must be taken pursuant to the Maryland Rules of Procedure.

8. The record of the proceeding was filed in the Circuit Court on January 16, 1990, but Appellants failed to order and file the transcript pursuant to Maryland Rule B7.

9. On March 22, 1990, Appellants filed a Motion to Extend Time to Transmit the Record. Judge Nickerson by Order of March 26, 1990, granted Appellants' Motion without benefit of Appellees' response.

10. Upon Petitioners/Appellees' Motion to Vacate the Order to Extend Time to Transmit the Record and Appellee's Answer to the Motion to Extend Time, Judge Alfred Brennan by Order dated April 26, 1990, granted the Motion to Vacate the Order and denied Appellants' request for the extension of time.

11. On May 2, 1990, Appellants filed a Motion to Vacate the Order Denying the Motion to Extend Time and Appellees filed a

response thereto. On May 1, 1990, Judge John F. Fader, II pulled the file to rule on the original Motion to Vacate and noted that Judge Brennan's Order of 4/26/90 disposed of the case in favor of Appellees. (See correspondence of the Honorable John F. Fader, II, attached hereto as Exhibit A)

WHEREFORE, as Appellants have failed to take an appeal in compliance with the B Rules of the Maryland Rules of Procedure, Appellees respectfully request this Honorable Court to dismiss the above-referenced case with prejudice.

S. ERIC DINENNA
DINENNA, MANN & BRESCHI
409 Washington Avenue
Suite 600
Towson, Maryland 21204

Attorneys for Appellees

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 13th day of May, 1990, a copy of the foregoing Motion to Dismiss Appeal was mailed, postage prepaid, to Michael P. Tanczyn, Esquire, Suite 106, 606 Baltimore Avenue, Towson, Maryland 21204, Attorney for Protestants; and to Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland 21204.

S. ERIC DINENNA

POINTS AND AUTHORITIES

1. Maryland Rules of Procedure, Rule B-1 through B-12
2. Maryland Rules of Procedure, Rule 1-104

S. ERIC DINENNA
DINENNA, MANN & BRESCHI
409 Washington Avenue
Suite 600
Towson, Maryland 21204
(301) 296-6820

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 13th day of May, 1990, a copy of the foregoing Motion to Dismiss Appeal was mailed, postage prepaid, to Michael P. Tanczyn, Esquire, 606 Baltimore Avenue, Suite 106, Towson, Maryland 21204, Attorney for Protestants; and to Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland 21204.

S. ERIC DINENNA

The Circuit Court for Baltimore County

May 11, 1990

S. Eric DiNenna, Esq.
Suite 600
Mercantile Towson Building
409 Washington Avenue
Towson, Maryland 21204

Michael P. Tanczyn, Esq.
Suite 106
606 Baltimore Avenue
Towson, Maryland 21204

Peter Max Zimmerman, Esq.
People's Counsel for Baltimore County
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: People's Counsel for Baltimore Counsel
v. Walter Bell, Et ux.
Case No. 88 CG 2253

Dear Counsel:

I pulled the above captioned case on May 1, 1990 to rule on the Motion to Vacate (paper 40) and notice that Judge Brennan had filed an order in the case dated April 26, 1990. It appears that this order disposes of the case in favor of the appellees.

Very truly yours,
John F. Fader II
Judge

JFF:am

EXHIBIT A

DINENNA, MANN & BRESCHI
ATTORNEYS AT LAW

S. ERIC DINENNA, P.A.
JAMES L. MANN, JR., P.A.
GEORGE A. BRESCHI, P.A.
GERALDINE A. KIALBER
FRANCIS X. BORGERDING, JR.

P.O. BOX 10108
TOWSON, MARYLAND 21205-0108

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MERCANTILE-TOWSON BUILDING
409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

(301) 296-6820
TELEFAX (301) 296-6884

November 17, 1989

RE: In the Matter of the Application
of Walter Bell, et ux.
Case No.: 87-395-SPH

Dear Sir/Madam:

Enclosed herewith for filing please find Petitioner's Memorandum which is submitted in lieu of closing argument at the hearing before the Board on October 4, 1989.

Very truly yours,

S. ERIC DINENNA

SED:cjc
Enclosure
cc: Michael Tanczyn, Esquire
Peter Max Zimmerman, Esquire
Mr. Walter Bell

IN THE MATTER OF
THE APPLICATION OF
WALTER BELL, ET UX
FOR A SPECIAL HEARING ON
PROPERTY LOCATED ON THE
SOUTH SIDE OF CORSICA ROAD,
65 FEET EAST OF THE
CENTERLINE OF MILES ROAD,
15th ELECTION DISTRICT
5th COUNCILMANIC DISTRICT

* BEFORE THE
* BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
* CASE NO. 87-395-SPH

PETITIONERS' MEMORANDUM OF LAW

Now comes Walter Bell, et ux., by their attorney, S. Eric DiNenna, Esquire, who respectfully submits this Memorandum.

This matter comes before the Board upon the "Memorandum Opinion and Order of Court Remanding Case to Board of Appeals" signed by the Honorable John F. Fader, II, Judge of the Circuit Court for Baltimore County on April 4, 1989, a copy of which is attached hereto and made a part hereof as Petitioners' Exhibit 1. As this Board might be aware, the Petition of Bell for an extension of a pier at an existing boatyard has been before the Board and the Court on numerous occasion in recent years. Judge Fader's Remand Order of April 4, 1989 sets forth the narrow issue that this Board must hear and rule upon.

In accordance with Judge Fader's Order, Bell submitted to the Department of Environmental Protection and Resource Management for Baltimore County a critical area study and evaluation of a water dependent facility as prepared by Steven K. Broyles, P.E. Professional Engineer and qualified expert herein. As a result of this submission, DEPRM issued its Findings on June 20, 1989 to the County Board of Appeals, a copy

of which is attached hereto and made a part hereof as Petitioners' Exhibit 2.

Though the hearing on this narrow issue before this Board consumed at least two (2) full days, the issue is very narrow:

Does the proposal of Bell as submitted and as petitioned for meet the requirements as dictated by law as to the Chesapeake Bay Critical Area requirements?

The answer is Yes.

Bell submitted to Baltimore County pursuant to the law his Critical Area study and as a result thereof, and, as a result of its study, DEPRM issued a conclusion that

"It is the finding of this Department that this project, with the implementation of the Best Management Practices listed in the Norman Creek Marina Water Dependent Facility Plan, is in compliance with the Baltimore County Development Regulations in the Chesapeake Bay Critical Area, and therefore, is approved."

The conclusion of DEPRM is vital but the finding that the proposal is in compliance with the Chesapeake Bay Critical Area Law is that of this Board.

Mr. Steven K. Broyles, qualified expert, engineer, specializing in water dependent facilities, testified for the Petitioners that the extension of the pier at the existing Norman Creek Marina (boatyard) meets all the criteria as set forth by the State of Maryland and the Baltimore County Council of the Chesapeake Bay Critical Area requirements. That was the

conclusion he reached following an extensive study and testimony given by him as a result of direct examination as well as extensive, in depth, cross-examination by counsel for the Protestants. I wish not to delve into each item that he discussed but his conclusion, as a qualified expert in this area, was that the Bell proposal not only meets but exceeds the requirements of the Chesapeake Bay Critical Area Law.

The Protestants offered a person as an expert, Charles John Kline, III, who is espoused to the idea that he was instrumental in the preparation of the Chesapeake Bay Critical Area Law relative to water dependent facilities and attempted to persuade the Board through his testimony that the wrong "model" was used. If his testimony is to be believed, not one more "hull" should be deposited in the Chesapeake Bay as well as any tributary of the Bay. This may be the ideal but, not the law.

I am afraid that Mr. Kline's testimony was biased, was not objective and needless to say, was not credible.

In response to Mr. Kline's testimony and as a rebuttal witness, your Petitioner called Peter deJong, qualified expert in the area of water dependent facilities. Mr. deJong was part of the firm hired as a private consultant by Baltimore County to establish the criteria used by DEPRM in the approval in findings for water dependent facilities. He heard this project. His expertise was unchallenged though questions were posed to him. His testimony completely disintegrated that testimony given by Mr. Kline in that a single water quality sample at the specific location of the pier doesn't consider the variability of water

- 3 -

quality over time. Mr. Kline had taken a sample at the specific location was unclear as to when it was tested, though upon cross-examination admitted the test was made several days after the actual taking from the water. He provided no good explanation of sampling methodology nor sample custody procedures.

DEPRM has the authority to waive water quality sampling if it determines by its review that little or no water quality impacts are anticipated. DEPRM made that determination and Mr. deJong supported that decision. DEPRM did not abuse its discretions and its decision is supported by the following. The opposite actually occurs, as per Mr. deJong's testimony in that water quality would be improved after the construction takes place in light of the fact there would be no increase in the number of slips, dredging is avoided (it was testified to by both Mr. Broyles and Mr. deJong that dredging would be the worst alternative to provide the depth for boats to use the existing pier); moving slips in a channelward direction would allow better circulation and dilution of the water. In addition thereto, Bell is providing, as proposed, a new pump out facility and emergency shut off devices for fuel pumps. This exceeds that which DEPRM would require.

Mr. David Flowers, the administrator of the Chesapeake Bay Critical Area legislation for DEPRM testified as to the finding of Mr. Robert W. Sheasley, director of the Department of Environmental Protection and Resource Management, approving this project. This is the approval necessary. Unless this Board can find from the testing that DEPRM abused its discretion and the

- 4 -

law, this Board must give DEPRM's findings great weight.

Without going into further detail, your Petitioner respectfully requests that this Board make a finding that their proposal meets the criteria set forth by the Chesapeake Bay Critical Area law and rule same.

Further, by letter of October 27, 1989 to the Chairman of the Board, Peter Max Zimmerman, Deputy People's Counsel for Baltimore County, indicated to the Board that "it is fair to say that this expansion of waterfront construction, involving the relocation of slips outward into Norman Creek, has been given a very thorough examination. It is necessary to add that this is the first time that the Critical Area review process has been the subject of such intense scrutiny". (Emphasis added).

It would be the desire of Bell that your opinion be forwarded to the Honorable John P. Fader, II at its earliest convenience.

Eric Dinenna
S. ERIC DINENNA
409 Washington Avenue, Suite 600
Towson, Maryland 21204
(301) 296-6820
Attorneys for Walter Bell, et ux.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 17th day of November, 1989, a copy of the foregoing Petitioners' Memorandum of Law was mailed, postage prepaid to Michael P. Tanczyn, Esquire, Suite 106, 606 Baltimore Avenue, Towson, Maryland 21204, Attorney for Protestants; Peter Max

- 5 -

Zimmerman, Esquire, Baltimore County People's Counsel, 111 West Chesapeake Avenue, Room 304, Towson, Maryland, 21204.

Eric Dinenna
S. ERIC DINENNA

- 6 -

IN THE MATTER OF
THE APPLICATION OF
WALTER BELL, ET UX
FOR A SPECIAL HEARING ON PROPERTY
LOCATED ON THE SOUTH SIDE OF
CORSICA ROAD, 65 FEET EAST OF THE
CENTERLINE OF MILES ROAD
15TH ELECTION DISTRICT
8th COUNCILMANIC DISTRICT

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
CASE NO. 87-395-SPH

OPINION

This matter comes before the Board as an appeal from the decision of the Deputy Zoning Commissioner on April 23, 1987, which denied the Petitioner, Mr. Walter Bell, a special hearing.

In this case, the petitioner seeks relief by way of a special hearing, specifically:

- 1) to amend the site plan which was approved and affirmed by the Maryland Court of Appeals on April 17, 1972, Case No. 70-215-X; and
- 2) the lifting of restrictions #1 and #3, among the eight imposed in 1972, in order to extend an existing pier; and to berth boats in excess of the limiting length of 24 feet as stipulated in the Order of Case No. 70-215-X.

The subject property is located on the south side of Corsica Road, 65 feet east of Miles Road in the Fourteenth Election District of Baltimore County.

Prior to a review of the testimony and exhibits presented during the three days of this hearing, a chronological history of the case is in order.

- 1) In the 1960's the property was the subject of numerous zoning considerations as the owner had a nonconforming use of the site as a limited type marine operation in a residential zone.

Case No. 87-395-SPH
Walter Bell, et ux

2.

2) In April 1970, the property owner filed for a special exception to grant the operation of a "boatyard" in the recently designated R-6 zone.

3) On June 25, 1970, the special exception was denied by Zoning Commissioner in consideration of Section 502.1 of the Zoning Regulations.

4) On December 18, 1970, the Baltimore County Board of Appeals granted a special exception for a boatyard pursuant to Section 270 of the Baltimore County Zoning Regulations (B.C.Z.R.) which allows a boatyard in an R-6 zone, if the requirements of 502.1 of the B.C.Z.R. are satisfied. The Board imposed eight restrictions on the operation and management.

5) On March 23, 1971, a hearing was held before the Circuit Court of Baltimore County in protest of the Order of the Board of Appeals in Case No. 70-215-X.

6) On April 19, 1971, the Circuit Court affirmed the Board's decision.

7) On December 14, 1971, the Court of Appeals of Maryland affirmed the Board and Circuit Court with the slight modification that the Order specify the limitations for the boatyard operation.

8) On remand from the Court of Appeals, the Board of Appeals of Baltimore County amended the Order granting the special exception to include use to be limited to the following:

Marine fueling
Snack bar sales
Miscellaneous marine supply sales
Berthing of boats at pier
Use of launching ramp

STATEMENT OF THE FACTS

The Board received lengthy testimony in this case concerning the configuration of the shore line in the area of the subject boatyard, and

Case No. 87-395-SPH
Walter Bell, et ux

3.

detailed testimony regarding the current conditions of Norman Creek, from considerations as to water depth, width, navigation and water quality.

The original Fertitta property of three lots was sold to Walter Bell in 1986. Three houses on the property were in poor repair and lacking in many aspects. Photographs bore out the neglect of the property prior to the Bell purchase, including a rickety pier of 140 feet, and a boat ramp of questionable utility.

The three-lot site is situated at the location of a curve in Corsica Road, a narrow drive of some 20 feet in width that is more like a country lane. In the neighborhood are a number of former summer cottages that have been transformed to year-around residences of high value.

Norman Creek is basically a shallow water tributary of Middle River with an average water depth of five to seven feet in the channel, and as shallow as three to four feet one hundred feet from the shore line at the site of the subject property.

OPINION

The Petitioner presented several neighbors who testified to the operation and improvements of the subject marina. Mr. Kenneth Deinlein, builder and developer and a licensed captain of a chartered fishing craft, who has resided in the neighborhood for many years, reviewed the positive changes of the boatyard since 1986. He confirmed that the water depth has been consistently low for twenty years in the creek. Mr. Deinlein voiced support of the pier extension and saw no interference with navigational rights of others. He further felt that the new owner's elimination of the small boat ramp was an asset to the operation and a big reduction to transit traffic of trailered boats.

Case No. 87-395-SPH
Walter Bell, et ux

4.

Mr. Paul Lee, professional engineer and expert witness, reviewed a plot diagram of the proposed extended pier of 125 feet and explained his application of Section 417 of the B.C.Z.R. Mr. Lee's plan and details of the proposed pier extension and the location of intersecting divisional lines from adjoining properties as prescribed in Section 417.3b (irregular shorelines) were accepted by the Zoning Advisory Committee. He further testified that the 265-foot pier would have no adverse effect on existing piers.

Mr. Gary Gill, geotechnical engineer and expert in hydrology and soil mechanics, testified that the extension of the pier would not have detrimental effects on the ecology of the tributary, as would be the case with dredging. He was of the opinion that the extension would not be in violation of the regulations of Section 502.1 of the B.C.Z.R.

Mr. J. Sullivan, commercial waterman, testified to the need of the Bell pier for fueling, and the limiting and varying depth of water at the end of the pier. He also reviewed the incident of an explosion and fire on his boat while fueling at the Bell pier.

Mr. Everett Bull, father of the Petitioner, reviewed his employment responsibilities at the marina. Photographs showing boats aground at low tide extremes and the difficulty of servicing boats at the fuel pump were described.

Mr. Frederick Klaus, appraiser and real estate consultant, testified to the effect of the marina on property values in the neighborhood. In his observations, he noted that piers are over 100 feet and often have deep draft sail boats at the end of the pier. These piers have no adverse effect on values because of the great demand for waterfront property and cited the example on the opposite shore where expensive homes are being constructed around a large marina. In his study, he also noted that Norman Creek is wider

IN THE MATTER OF
THE APPLICATION OF
WALTER BELL, ET UX
FOR A SPECIAL HEARING ON PROPERTY
LOCATED ON THE SOUTH SIDE OF
CORSIKA ROAD, 65 FEET EAST OF THE
CENTERLINE OF MILES ROAD
15th ELECTION DISTRICT
5th COUNCILMANIC DISTRICT

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
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Case No. 87-395-SPH
Walter Bell, et ux

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Case No. 87-395-SPH
Walter Bell, et ux

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Case No. 87-395-SPH
Walter Bell, et ux

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Case No. 87-395-SPH
Walter Bell, et ux

from shore to shore (1,000 feet) than many creeks in the area. With the booming boat business and its contributions to the economy, there is an increasing need for services. Mr. Klaus favored lifting of the restrictions to allow boat lengths up to 32 feet at the pier. Larger boats, he explained, look for marina amenities not available at the subject property. Mr. Klaus concluded his testimony by stating that the proposed extension would not violate Section 501.2 of the B.C.Z.R.

Counsel for the Protestants presented several expert witnesses and property owners in opposition to the special hearing. Concern about the water quality, navigation, and hazards of the marina operation were reviewed. Fuel spillage and the effect of pollutants were problems in the area.

Mr. Brian Templeton testified that the water depth at the end of his 156-foot pier is six feet where he docks his 41-foot sailboat. He voiced concern that "kids" run the pump. It was his observation that safety measures were ignored.

Mr. Donald Doyle, like several other witnesses, has extensively renovated and remodeled a former derelict property three lots removed from the marina. He expressed serious concern about enforcement of county regulations for pier extension. Along with other shoreline residents, Mr. Doyle objected to the potential hazards of the congested boat traffic at the marina as well as the effect of the expanded marina on property values. As with other protestants, he also felt that the extended pier with its docking and service facility would detract from their view.

The ability of Corsika Road to handle traffic generated by the marina, and access to the property by emergency vehicles were viewed as an infringement on the safety and welfare of area residents and a violation of Section 502.1 of the B.C.Z.R.

Case No. 87-395-SPH
Walter Bell, et ux

Mr. Bernard Willemain, consultant in zoning and site planning and expert witness, testified in opposition to the amendment to the plat. Drawing upon a long experience with boatyard zoning cases, Mr. Willemain reviewed the particulars of marina operations and facilities. In this matter he recalled the property's listing in 1985 with no reference to water depth. The site was always too shallow for normal operation and the Petitioner actually purchased a shallow water marina.

Mr. Bernie Seamon, real estate appraiser and consultant, testified as to his familiarity with the Norman Creek Marina and its "tight" situation for docking boats. He further stated that the extended pier would be out of scope with the neighboring piers.

The final protestant was Mr. William Selig, the immediate neighbor to Mr. Bell. He explained that boats had no difficulty with depth at the fuel pump in the summer season, and that winter winds and their direction caused low water.

CONSIDERATION OF THE SPECIAL HEARING

The Board has before it a request for a special hearing to, essentially, permit the extension of a pier to a length of 265 feet from its present length of 140 feet. The Petitioner also seeks relief from a present restriction to the mooring of boats no longer than 24 feet. We will address each of these in turn.

First the Petitioner seeks to amend the plat approved in April 1972 in Case No. 70-215-X. We will grant an amendment to that plat.

In consideration of Section 417 of the B.C.Z.R., we make note of the existence of this regulation in 1971 when the present pier was authorized. We also concur that there is no evidence or indication that the marina operation

Case No. 87-395-SPH
Walter Bell, et ux

is in violation of Section 502.1 of the B.C.Z.R. In review of testimony and exhibits in the case, the cove and irregular shoreline from which the present pier extends places an undue hardship on the Petitioner because of the shallow water that prevails for half the length of his 140-foot pier from its "head" on the cove shoreline. Therefore, restriction #1 is lifted to permit an extension of 85 feet to the existing pier for a total length of 225 feet.

Testimony and investigation of the water depth at the Bell marina at mean high tide confirmed a water depth of four to six feet from the mid-point to the end of the existing pier. An 85-foot extension will enable the requested utility desired without impeding navigation, and provide the wherewithal to moor the presently restricted number of twenty-four (24) boats at the marina in a marginal yet adequate water depth.

The Board also will modify restriction #3 to permit boats up to a length of 30 feet, to be restricted to those slips created along the extended section of the pier. In this change, the Board will restrict boats up to 28 feet to slips along the existing pier, and boats from 28 to 30 feet to those slips created along the extended 85-foot section of the marina pier.

All additional restrictions and limitations of the Order in Case No. 70-215-X shall remain. Amendment to the plat shall apply only to the pier extension and the facility shall be in substantial conformity to the proposal shown on Plat, Petitioner's Exhibit #2 in Case No. 70-215-X.

CONCLUSION

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

Case No. 87-395-SPH
Walter Bell, et ux

ORDER

It is therefore this 20th day of April, 1988 by the County Board of Appeals of Baltimore County ORDERED:

- 1) that the Petition for Special Hearing is GRANTED to allow amendment to the plat as was approved on April 17, 1972, in Case No. 70-215-X;
- 2) that the Petition to remove restriction #1 in Case No. 70-215-X is GRANTED for a pier extension of 85 feet; and
- 3) that the Petition to remove restriction #3 in Case No. 70-215-X is GRANTED to allow boats up to 30 feet, with boats of 28 to 30 feet moored at the extended pier.

Any appeal from this decision must be made in accordance with Rules 2-1 through B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Thomas J. Hollinger, Acting Chairman

Harry E. Buchheister, Jr.

Arnold G. Foreman

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Mr. Donald Doyle, like several other witnesses, has extensively renovated and remodeled a former derelict property three lots removed from the marina. He expressed serious concern about enforcement of county regulations for pier extension. Along with other shoreline residents, Mr. Doyle objected to the potential hazards of the congested boat traffic at the marina as well as the effect of the expanded marina on property values. As with other protestants, he also felt that the extended pier with its docking and service facility would detract from their view.

The ability of Corsica Road to handle traffic generated by the marina, and access to the property by emergency vehicles were viewed as an infringement on the safety and welfare of area residents and a violation of Section 502.1 of the B.C.Z.R.

Mr. Bernard Williams, consultant in zoning and site planning and expert witness, testified in opposition to the amendment to the plat. Drawing upon a long experience with backyard zoning cases, Mr. Williams reviewed the particulars of marina operations and facilities. In this matter he recalled the property's listing in 1985 with no reference to water depth. The site was always too shallow for normal operation and the Petitioner actually purchased a shallow water marina.

Mr. Bernie Samson, real estate appraiser and consultant, testified as to his familiarity with the Norman Creek Marina and its "tight" situation for docking boats. He further stated that the extended pier would be out of scope with the neighboring piers.

The final protestant was Mr. William Selig, the immediate neighbor to Mr. Bell. He explained that boats had no difficulty with depth at the fuel pump in the summer season, and that winter winds and their direction caused low water.

CONSIDERATION OF THE SPECIAL HEARING

The Board has before it a request for a special hearing to, essentially, permit the extension of a pier to a length of 265 feet from its present length of 140 feet. The Petitioner also seeks relief from a present restriction to the mooring of boats no longer than 24 feet. We will address each of these in turn.

First the Petitioner seeks to amend the plat approved in April 1972 in Case No. 70-215-X. We will grant an amendment to that plat.

In consideration of Section 417 of the B.C.Z.R., we make note of the existence of this regulation in 1971 when the present pier was authorized. We also concur that there is no evidence or indication that the marina operation

is in violation of Section 502.1 of the B.C.Z.R. In review of testimony and exhibits in the case, the cove and irregular shoreline from which the present pier extends places an undue hardship on the Petitioner because of the shallow water that prevails for half the length of his 140-foot pier from its "head" on the cove shoreline. Therefore, restriction #1 is lifted to permit an extension of 85 feet to the existing pier for a total length of 225 feet.

Testimony and investigation of the water depth at the Bell marina at mean high tide confirmed a water depth of four to six feet from the midpoint to the end of the existing pier. An 85-foot extension will enable the requested utility desired without impeding navigation, and provide the wherewithal to moor the presently restricted number of twenty-four (24) boats at the marina in a marginal yet adequate water depth.

The Board also will modify restriction #3 to permit boats up to a length of 30 feet, to be restricted to those slips created along the extended section of the pier. In this change, the Board will restrict boats up to 28 feet to slips along the existing pier, and boats from 28 to 30 feet to those slips created along the extended 85-foot section of the marina pier.

All additional restrictions and limitations of the Order in Case No. 70-215-X shall remain. Amendment to the plat shall apply only to the pier extension and the facility shall be in substantial conformity to the proposal shown on Plat, Petitioner's Exhibit #2 in Case No. 70-215-X.

CONCLUSION

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

ORDER

It is therefore this 20th day of April, 1988 by the County Board of Appeals of Baltimore County ORDERED:

- 1) that the Petition for Special Hearing is GRANTED to allow amendment to the plat as was approved on April 17, 1972, in Case No. 70-215-X;
- 2) that the Petition to remove restriction #1 in Case No. 70-215-X is GRANTED for a pier extension of 85 feet; and
- 3) that the Petition to remove restriction #3 in Case No. 70-215-X is GRANTED to allow boats up to 30 feet, with boats of 28 to 30 feet moored at the extended pier.

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

Thomas J. Hollinger, Acting Chairman

Harry E. Buchheiser, Jr.

Arnold G. Speman

IN RE: PETITION FOR SPECIAL HEARING
3/8 Corsica Road, 66' E of
the C.O. of Miles Road
15th Election District
5th Councilmanic District
Walter Bell, et ux
Petitioners

BEFORE THE
DEPUTY ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 87-395-SPH

The Petitioners herein request a special hearing to approve an amendment to the site plan submitted in Case No. 70-215-X to allow an extension of the existing pier (number of slips to remain 24), and to lift Restrictions No. 1 and 3 of the Order rendered in said case.

The Petitioners and their Counsel appeared and presented no testimony or evidence on behalf of the Petition.

Protestants, at least one of whom was represented by Counsel, were in attendance.

There being no testimony and/or evidence offered in support of the Petition, IT IS ORDERED, by the Deputy Zoning Commissioner of Baltimore County this 23rd day of April, 1987, that a special hearing to approve an amendment to the site plan submitted in Case No. 70-215-X to allow an extension of the existing pier and to lift Restrictions No. 1 and 3 of the Order rendered in said case, be and is hereby DENIED.

Jean M. H. Jung
Deputy Zoning Commissioner
of Baltimore County

IN THE MATTER OF
THE APPLICATION OF
WALTER BELL, ET UX
FOR A SPECIAL HEARING ON
PROPERTY LOCATED ON THE
SOUTH SIDE OF CORSICA ROAD,
65 FEET EAST OF THE
CENTERLINE OF MILES ROAD,
15th ELECTION DISTRICT
5th COUNCILMANIC DISTRICT.

BEFORE THE BOARD OF APPEALS
FOR BALTIMORE COUNTY
Case No. 87-395-SPH

PROTESTANTS' MEMORANDUM OF LAW

NOW COMES, Donald W. Doyle and Marie Doyle, his wife, Jonathan Doyle, Brian Templeton, Mr. and Mrs. William Selig, Sr., Mr. and Mrs. William Selig, Jr., and Mr. and Mrs. Paul Clement, Protestants, by their attorney, Michael P. Tanczyn, Esq., who respectfully submit their enclosed Memorandum of Law.

This matter was considered by the Board of Appeals on three separate hearing dates following remand from the Circuit Court for Baltimore County by Order of Honorable John F. Fader II dated April 4, 1989. The first hearing date was June 27, 1989 when the Protestants' request for a de novo hearing was denied and testimony was then taken on August 9, 1989 and on October 4, 1989.

The Petitioner's proof adduced through its expert witness, Steve Broyles, included submissions to Baltimore County Department of Environmental Protection and Resource Management. The plan submitted by Mr. Broyles dated March 3, 1989 disclosed a material change to the existing and proposed pier. Mr. Broyles

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COUNTY BOARD OF APPEALS
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testified that in his opinion this project as proposed would improve water quality and admitted that his first assessment under the Water Dependent Facility Regulations was for remote sampling stations under an enclosed model.

Mr. David Flowers of DEPRM testified that, based on the representations of the Petitioner, his office would not see this proposed pier extension as an intensification of any existing use and, therefore, would not believe that it was subject to a second stage review. In the report of DEPRM introduced into evidence, the Petitioner was advised that its model was not the appropriate one and that DEPRM, because it believed there was no intensification in the proposed use based on the Petitioner's representations, waived a dye test to more accurately measure water quality in the Norman Creek Cove. Mr. Flowers admitted that this was the first case to be considered under the new regulations and testified that, if there was an intensification of use proposed, the project would be subject to the remaining regulations for water dependent facilities.

The Protestants' chief witness on that point, Charles John Klein, III, was accepted by the Board as an expert professional engineer with specialized expertise in estuarine planning and development. Mr. Klein's analysis of the Petitioner's project was that it represented an intensification of use when contrasted with the type of boats used at the existing marina in that the Petitioner sought approval to berth boats 30

feet in length as opposed to the 24 foot maximum allowed under the previous Order; and further that the extension of the pier would affect water quality and siltation. He had visited the site and was familiar with the small boats presently berthed at the Norman Creek Marina and had sampled and had independently tested water samplings indicating, according to the criteria contained in the Water Dependent Facilities Regulations, poor water quality. He explained under the critical areas legislation that a two-phase screening process was established. Under the first screening he came up with a score indicating poor water quality based on his observations and test results when actual conditions in the cove were contrasted with the Petitioner's experts' report, which sampled by example fecal coliform in the water 3,000 feet distant from the marina site. Based on his scoring and opinion that there was poor water quality in this area, it was his expert opinion that the second stage review was called for and he disputed the Petitioner's position that there was no intensification of use pointing out in addition to the items mentioned that under the current proposal current proposal a mobile pump out station was now proposed to be located at the end of the pier if extended. In his opinion there was no basis for DEPRM waiving the second stage review. He concurred with DEPRM that the Petitioner's expert had used the wrong model and explained to the Board why the open model was more appropriate as well as the mistakes made by Petitioner's expert in developing his model and data included in the submission

to DEPRM.

Protestants next called Tunnie Ping, a licensed land surveyor with Windward Associates. Based on the Petitioner's submission of a different pier configuration, Mr. Ping was accepted as an expert land surveyor and testified that he had visited the site, reviewed Section 417 of the Baltimore County Zoning Regulations, and that the Petitioner's proposed extension in his expert opinion was not in accordance with Section 417 of the Baltimore County Zoning Regulations.

The Petitioners called on rebuttal Pieter deJong, who concurred with the Petitioner's expert that there was no intensification proposed for this project and concurred with the Petitioner's submission and the findings of DEPRM. On cross-examination he admitted that he had not been to the site nor was he aware of the type of boats presently berthed at the site but in his opinion that did not matter and did not affect his opinion.

ISSUE ONE

That the Baltimore County Critical Areas Regulations require a more detailed analysis than either that submitted by the Petitioner or required by DEPRM.

Baltimore County Council, in enacting the comprehensive zoning regulations for the Chesapeake Bay critical areas by Bills 37-88, 33-88, 34-88, 35-88 and 41-88, evidenced a detailed State mandated program for protection of those portions of the Chesapeake Bay which lie within the geographical jurisdiction of

Baltimore County. The submission of the Petitioner stands or falls on the judgment of DEPRM in this first case heard under the new regulations that there is no intensification of use under this proposed project.

That there is an intensification of use must be beyond serious question when the Petitioner's plans for the critical areas which were approved by the Board of Appeals in April of 1988 are compared with his present proposal and both are then compared to his prior approval. First the extension of the pier by an additional 85 feet will inevitably affect the water flow and flushing with resulting increased siltation. Second, the Petitioner's original approval was for boats not to exceed 24 feet. Clearly the spirit of the regulations as evidenced by the pictures introduced before the Board showing small rubber Zodiac boats with motors berthed far less than 20 feet in length without water closets when contrasted with Petitioner's request to berth 30 foot boats which routinely possess that amenity represents an intensification of use. Further, Protestants' witnesses attested to the axiom that the larger the boat the more it becomes a floating home as opposed to a vehicle for daytime recreation. Further, the Petitioner on his most recent submission now proposes for the first time to put a holding tank pump out station on this pier, something which had not existed heretofore and on which the Board only took testimony at the most recent set of hearings.

The clear mandate of the County Council that the

environment be protected by its passage of the Critical Areas Program should subject this project and any like it to scrutiny in the two-step screening described by the Protestants' expert, Mr. Klein.

As was pointed out by the Circuit Court on remand, the case of O'Donnell vs Bassler, 289 MD 501, stands generally for the proposition "that the law in effect at the time the case is decided will be the law applied to the specific case". The Petitioner's burden to comply with that law if the Board finds Mr. Klein's testimony persuasive will merely require him to now undergo the secondary screening to analyze and scrutinize the water quality in the manner required by the regulations. In the spirit of the law, the Board will clearly be correct if it requires the Petitioner to undergo the secondary screening on finding an intensification of the proposed use at this site.

ISSUE TWO

That the Petitioner's depiction of its proposed pier extension in the present set of hearings as well as its submission to the Corps of Engineers introduced into evidence are both at material variance with his pier as proposed and considered by the Board prior to its decision of April 20, 1988 approving a partial extension of the pier.

The Petitioners' request for amendment violates both the letter and spirit of the Zoning Regulations stated in Section 102.1 "No land shall be used or occupied and no building or

structure shall be erected, altered, located or used except in conformity with these regulations and this shall include any extension of a lawful non-conforming use." Further, in Section 102.2, "No yard space or minimum area required for a building or use shall be considered as any part of the yard space or minimum area for another building or use."

The Petitioner, Walter Bell, who stated his address was 2229 Corsica Road, (Book One, T27) testified he purchased the property in April of 1986 (Deeds were introduced Book Three, T130, Protestants' Exhibit 10 and Protestants' Exhibit 11, total consideration of \$200,000.00); that the property was in run-down condition at the time he purchased it (T27); that all of the mooring pilings (T29) or pilings to the pier had been replaced; that loads of fill dirt were brought in to expand the parking area (T29) as well as stone and that the boat ramp had been eliminated (T29); that 19 loads of fill dirt were brought in just to fill the ramp (T30); that his property is located on Norman Creek, which is reached by Back River Neck Road, via Middleborough Road by way of a right turn on Miles Road and a left turn on Corsica Road to the site; that he operates a boat yard (T32) and is zoned for 24 boat slips; that he sells gasoline; and that he determined, because of silting, that he would not be able to utilize 24 slips he was zoned for; that the slips he utilizes are occupied by recreational boaters; that the gasoline pump is located at the end of the existing pier (T32).

Mr. Bell testified on cross-examination that he did not obtain a permit to replace the pilings; nor a grading permit to add the fill dirt (T49); nor a permit to apply the crusher run paving (T50); that he had come across this property when he was looking for waterfront property (T54); and that the Board took notice that he did not buy "a pig in a poke" (T55); that he made no investigation to determine the depth of the water, the silting of the channel at the time of purchase (T56); that the size of the three lots in area is .726 acre (T57); that his existing pier as constructed was 140 feet from the land (T58, T59); that he was unaware how the shut-off valves sense whether there is a leak in the fuel line (T61); that at the time he purchased the property there were eight or ten slips being used (T64); and that his site plan showed at present that there are only 13 slips (T64); that he had not submitted a critical area study or findings (T67).

The Petitioners' expert witness for engineering, Paul Lee, testified on Day Two, beginning March 10, 1988 (Book Two, beginning at T41), and he was accepted as a professional engineer. Mr. Lee noted that it was important to determine the division lines simply because "we had to stay within our own property lines, so to speak, for the extension of the pier", and that in addition to that "there are regulations with regard to how far the mooring piles have to be from the divisional lines" (T44).

He said that the requirements are that the mooring piles have to be at least 10 feet off of the divisional line between two

adjoining properties (T46) and that his intent was basically to extend the pier to get into deeper water (T47). He next testified that his plan was accepted for filing by the Zoning Advisory Committee for Baltimore County (T47) and that he was "pretty sure that when they agreed with the division line they agreed with the alignment" (T48); and that the extension of the pier to 265 feet would not interfere with any of the existing piers simply because the piers can't cross the division lines (T49). The Zoning Regulations, Section 417, and Appendix J, were introduced as Protestants' Exhibit 2.

Mr. Lee testified that when he looked at the property and the question of division lines, he really got confused or, as restated, it just didn't come out the way he wanted it to (T54); that it did not come out the way he wanted it to because all the divisional lines came to a point while it is still in the cove there and it's very possible you can deny two property owners, three property owners the right to water even though they have frontage on it (T54); and that his object was to leave open a travelway that every property could use (T55); that if you used his plan you try to determine from the plan and his plan had divisional lines, will project out, you'll see it doesn't work; and that the divisional property line projected the way it was drawn misses the closest pier piling on the Petitioners' existing pier by ten feet, which Mr. Lee believed was an accident (T56).

Mr. Lee agreed that the object of the divisional lines

was to give everyone access to the water including everyone to the west, including the Doyles and the other neighbors (T57), also agreed that the diagrams explicating Section 417 did not show any bending or straightening of the lines once a certain point was reached for showing the divisional lines, and he agreed they did not (T58).

Mr. Lee testified that he had to sort of throw out their method of determining that the divisional lines are (T58) and that he quoted a Mr. Richards of the Zoning Office saying that Mr. Richards actually created a divisional line to give everybody the right to the creek, which Mr. Lee felt was reasonable, and that is what he put on his Petition (T61). Mr. Lee admitted (T62) that he went through Section 417 and he could not find out how he had done it as far as the bending of the lines as shown on his plat, but yet that is the way it came out (T62).

Mr. Lee testified that, if the divisional lines were not bent, the practical limits of the pier on the Petitioners' property is where it is now (T65) prior to the Petition for amendment of the prior site plan.

In the present submission of the Petitioner by the Broyles Plat the right side of the pier is sliced on an angle both for the existing pier as well as the proposed pier as extended. The explanation of both the Petitioner and DEPRM was that the pier was redrawn to show how the existing pier is actually configured. For whatever the reason, it is actually beyond serious dispute

that it represents a material variance for the pier as presented in the first round of hearings and on which the Board ruled.

The Protestants' expert witness, Mr. Ping, in interpreting Section 417 of the Baltimore County Zoning Regulations for waterfront construction explained that any extension of the Petitioner's pier would violate the rights of the other property owners in the cove who also have rights to waterfront construction under Section 417 as does the Petitioner.

It is no accident that the existing pier is sliced on the right to accommodate Section 417 as originally approved, being at the limit because of the existence of a cove or "L" in this case to afford the Petitioner's neighbors rights to both get to the water and to have navigable ingress and egress to the Norman Creek.

The reliance of the Board on Mr. Lee's interpretation of Section 417 is clear error. The Petition of Walter Bell was neither advertised nor posted, presented nor argued, as a variance case; however, the Board's decision represents a "de facto" grant of variance from the regulations, specifically Section 417 and Appendix J of the Baltimore County Zoning Regulations, by approving the amendment to his plan with bends the divisional property lines on the authority as previously recited from Mr. Lee's testimony of his and Mr. Carl Richards' interpretation of the Zoning Regulations for Baltimore County.

The Zoning Regulations introduced as Protestants'

Exhibit 2 clearly indicate the manner in which divisional property lines are to be established since the Petitioners in the original case, 70-215-V, received approval for a 140 foot pier which was previously constructed prior to the present Petitioners; ownership and which represents the longest pier in the neighborhood. Clearly, any extension of his pier must be first viewed to see if it is in compliance with the Zoning Regulations as to the creation of divisional property lines.

In answer to Protestants; counsel's questions on cross-examination, Mr. Lee stated that he thought it was by accident that the existing pier came to the exact point where the divisional property line would have cut it off, thereby affording adjacent property owners their rights as recognized under the interpretation of Section 417-J by the Zoning Regulations of Baltimore County.

Simply stated, any extension allowed the Petitioner of his pier must of necessity run afoul of Section 417 and Appendix J and Sections 102.1 and 102.2 of the Zoning Regulations by restricting the adjacent property owners' access to Norman Creek and the waterways beyond in order to afford the Petitioner a longer pier. It is also apparent that the extension of the Petitioner's pier beyond the divisional property lines as construed under Section 417 for waterfront construction and Appendix J will of necessity preclude his neighbors from having piers of a lesser length without running afoul of their neighbors'

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divisional property lines in order to have access to the Norman Creek.

There is no avoiding the simple conclusion that there is no authority for the bending of the divisional property lines done by Petitioners' engineer on Petitioners' plat which was approved by the Board of Appeals in this case. The approval of such a plan does nothing more than afford the Petitioners "super" rights over his neighbors and the Zoning Regulations are intended to afford all property owners both equal protection of the laws and rules and regulations evenly applied affecting their utilization of their respective properties as property owners.

Wherefore, the Board's opinion rests not on legal authority but on its acceptance of an apparently erroneous interpretation or one without legal foundation of Section 417 and Appendix J of the Baltimore County Zoning Regulations. Neither the Constitution nor the Baltimore County Zoning Regulations guarantee to any property owner that uses approved by right or by special exception will continue to be viable for the Petitioner, Mr. Bell, or for any property owner should the forces of nature cause conditions rendering utilization of a use by right or special exception difficult if not impossible.

The solution sought by the Petitioners and afforded by the approval by the Board of Appeals is patently illegal and their decision to approve later on is clearly arbitrary and capricious for lack of a legal foundation. The Board may not grant an

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exception or a variance where a statute or ordinance would be violated. Town of Somerset vs Montgomery County Board of Appeals, 245 Md 52, 225 A 2d 294 (1966).

It is also well established that the zoning authority, in the absence of evidence to support its action, cannot apply its expertise in granting or refusing the zoning exception. Board of County Commissioners for Prince George's County vs Siegler, 244 Md 224, 223 A 2d 255 (1966).

Further, the Maryland Declaration of Rights, Article 24, Due Process, provides, "That no man ought to be taken and imprisoned or disseized of his freehold, liberties or privileges, or outlawed or exiled or in any manner destroyed or deprived of his life, liberty or property but by the judgment of his peers or by the law of the land." The "law of the land" has been construed by the Maryland Court of Appeals to be synonymous with due process of law as that phrase is used in the 14th Amendment. McIver vs Russell, 264 F Sup 22, (District Court of Maryland 1967).

The denial of ingress and egress and the cutting off of light and air amounted to a taking without just compensation, even though there had been no actual physical invasion of the property and the municipal corporation is liable in tort for damages due to its actions which caused the loss to the property owner. Arnold vs Prince George's County, 270 Md 285, 311 A 2d 223 (1973) and Cities Service Oil Company vs Board of County Commissioners, 226 Md 204, 172 A 2d 523 (1961).

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When a municipality acts directly under a lawful delegation of police power it must exercise such power impartially and not arbitrarily or capriciously in a legal sense. LaRoque vs Board of County Commissioners, 233 Md 329, 196 A 2d 902 (1964).

The equal protection clause of the 14th Amendment and the concept of equal treatment embodied in this Article are in pari materia and generally apply in like manner and to the same extent. Nevertheless, the two provisions are independent of each other so that a violation of one is not necessarily a violation of the other. Hornbeck vs Somerset County Board of Education, 295 Md 597, 458 A 2d 758 (1983). While the Maryland Constitution does not contain an express equal protection clause, the concept of equal protection is, however, embodied in this Article. State vs Good Samaritan Hospital, 299 Md 310, 473 A 2d 892; Appeal Dismissed 469 US 802, 105 Sup Ct 56, 83 Lawyer's Ed 2d 7 (1984).

The recent case of People's Counsel for Baltimore County vs Maryland Marine, ___ MD ___, decided July 6, 1989, Chief Judge Murphy for the Court of Appeals addressed on page 5 the proper interpretation of Section 417. On page 6 the Court found that Section 417 and the illustrations in Appendix J in interpreting that section determine where waterfront structures may be placed.

Further, the case of Feudale vs Series, 190 MD 244, provides that "while an owner of land bounding on navigable waters has the right to make improvements into the waters in front of the

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and provided they do not interfere with navigation, but this right is subject to any pertinent regulations of the governing body of the locality in which the land lies as well as to such regulations of the Federal government."

Classen and Howard vs Chesapeake Guano Co., 81 MD 258 (1894) in which the right of the municipality is affirmed to establish lines within which wharfs may be built or improvements made into navigable waters within the city limits.

CONCLUSION

For the reasons stated and on the testimony before the Board, Protestants respectfully request the Board deny Petitioner's request to extend the pier.

Respectfully submitted,

Michael P. Tanczyn
MICHAEL P. TANCZYN, ESQ.
Attorney for the Protestants
Suite 104, 406 Baltimore Avenue
Towson, Maryland, 21204
Telephone (301) 296-8823

I HEREBY CERTIFY that, on this 25th day of October, 1989, a copy of the foregoing Protestants' Memorandum of Law was mailed, postage prepaid, to Eric DiNenna, Esq., Suite 600, 409 Washington Avenue, Towson, Maryland, 21204, Attorney for the Appellees; and to Phyllis C. Friedman, Esq. and Peter Max Zimmerman, Esq., Baltimore County People's Counsel, 111 West Chesapeake Avenue, Room 304, Towson, Maryland, 21204.

Michael P. Tanczyn
MICHAEL P. TANCZYN, ESQ.

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IN THE MATTER OF
WALTER BELL

- * BEFORE THE COUNTY
- * BOARD OF APPEALS
- * OF BALTIMORE COUNTY
- * Case 87-395-SPH

SUBPOENA DUCES TECUM

Madam Clerk:

Please issue a subpoena duces tecum to

Carl Richards
Office of the Zoning Commissioner
County Office Building
Towson, MD 21204

to bring with him all files, records, permits and documents concerning the Petition of Walter Bell, Case 87-395-SPH, and to make same returnable on Wednesday, August 9, 1989, at 11:00 a.m. before the County Board of Appeals of Baltimore County, County Office Building, Room 315, Towson, MD 21204.

S. Eric DiNenna
DiNenna, Mann & Breschi
409 Washington Avenue, #600
Towson, MD 21204
296-6820
Attorney for Petitioner

IN RE: PETITION FOR
SPECIAL HEARING
S/S Corsica Road, 65'
E of the c/l of Miles
Road
15th Election District
5th Councilmanic District
Walter Bell, et ux
Petitioners

- * BEFORE THE
- * COUNTY BOARD OF
- * APPEALS
- * FOR
- * BALTIMORE COUNTY
- * Case No.: 87-395-SPH

ORDER OF APPEAL

Mr. Commissioner:

Please enter an appeal on behalf of the Petitioner in the above-captioned matter to the County Board of Appeals from the Decision of the Deputy Zoning Commissioner dated April 23, 1987.

S. Eric DiNenna
DiNenna, Mann & Breschi
409 Washington Avenue, Suite 600
Towson, Maryland 21204
(301) 296-6820

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 6th day of May, 1987, a copy of the foregoing Order of Appeal was mailed, postage prepaid, to Newton A. Williams, Esquire, 204 W. Pennsylvania Avenue, Towson, Maryland 21204, Attorney for Protestants and Messrs. William Selig, Sr. and William Selig, Jr., 358 Miles Road, Baltimore, Maryland 21221, Protestants and Phyllis Friedman, People's Counsel for Baltimore County, Court House, Towson, Maryland 21204.

S. ERIC DINENNA

278 87-395-SPH **PETITION FOR SPECIAL HEARING** TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY.

The undersigned, legal owner(s) of the property situated 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 amendment to site plan in case #70-215X to allow extension of existing pier (number of slips to remain 24), and to lift restrictions #1, #2, and #3 of Order.

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

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

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

Contract Purchaser:
(Type or Print Name)
Signature
Address
City and State
Attorney for Petitioner
S. Eric DiNenna
(Type or Print Name)
Signature
406 W. Pennsylvania Avenue
Address
Towson, Maryland 21204
City and State
Attorney's Telephone No. 296-6320

Legal Owner(s):
Walter Bell
(Type or Print Name)
Signature
Cynthia Bell
(Type or Print Name)
Signature
8833 Belair Road
Address
Baltimore, Maryland 21236
City and State
Name, address and phone number of legal owner, contract purchaser or representative to be contacted
S. Eric DiNenna
Name
406 W. Pennsylvania Ave., Towson, MD
Address
Phone No. 21204
296-6820

ORDERED: By The Zoning Commissioner of Baltimore County, this _____ day of _____, 19____, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be held before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the _____ day of _____, 19____, at _____ o'clock _____.

Zoning Commissioner of Baltimore County.

Paul Lee P.R.

Paul Lee Engineering Inc.
300 W. Pennsylvania Ave.
Towson, Maryland 21204
301-221-5341

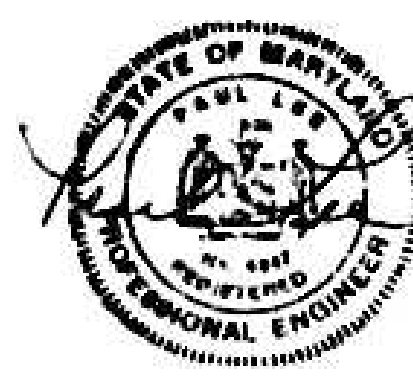
DESCRIPTION

#2225, #2227, #2229 CORNICA ROAD (LOTS 207, 208, and 209) - FIFTEENTH ELECTION DISTRICT

BALTIMORE COUNTY, MARYLAND

Beginning for the same at a point on the south side of Cornica Road at a distance of 65 feet ± from the intersection of the center of Miles Road, said point being the division line between Lots 206 and 207 as shown on the plat of Middleborough and recorded among the Land Records of Baltimore County in Liber W.P.C. 4 folio 191, running thence and binding on the south side of Cornica Road the three following courses and distances: (1) Easterly 30 feet, (2) Southerly 100 feet, (3) Easterly 120 feet to the division line between Lots 209 and 210 as shown on the aforesaid plat, thence leaving the south side of Cornica Road and binding on the line of division between Lot 209 and Lot 210 (4) Southerly 268 feet ± to the waters of Norman Creek, thence leaving the division line of Lot 209 and Lot 210 and binding on the waters of Norman Creek (5) Northwesterly 240 feet ± to the division line between Lot 206 and Lot 207 as shown on the aforesaid plat, thence leaving the waters of Norman Creek and binding on the division line between Lot 206 and Lot 207, (6) Northerly 212 feet ± to the place of beginning.

Containing 0.7264 acre ± of land.



Engineers - Surveyors - Site Planners 9/5/90

7/12/90

87-395-SPH Walter Bell - Judge Brennan ORDERED Motion to Vacate Order DENYING Motion to Extend is GRANTED; board's transcript of remand hearing to be forwarded to CCT within 30 days; also all further proceedings to be directed to Judge Fader.

PEOPLE'S COUNSEL, et al.,
Appellants,
vs.
WALTER BELL, et al.,
Appellees.

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

Case No. 88-CG-2253

ORDER

UPON CONSIDERATION of the Motion to Vacate Order and the response thereto and after hearing, it is this 12th day of July, 1990, by the Circuit Court for Baltimore County,

ADJUDGED AND ORDERED, that the Motion to Vacate Order dated April 26, 1990 denying the Motion to Extend Time is granted; and it is further

ADJUDGED AND ORDERED, that the transcript in the instant case shall be forwarded to the Circuit Court for Baltimore County within thirty (30) days of this Order date; and it is further

ADJUDGED AND ORDERED, that the Clerk shall mark the file to insure that all further proceedings in this matter are directed to the Honorable John F. Fader, II, Associate Judge of this Court.

RECEIVED
JUL 19 1990

HONORABLE ALFRED L. BRENNAN, SR.
JUDGE

ZONING OFFICE

RECEIVED AUG 6 1990

Gloria B. Smith

4/22/91 - 87-395-SPH Walter Bell, et ux
Circuit Court Affirmed C.B. of A.
(Fader)

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY * IN THE CIRCUIT COURT
v. * FOR BALTIMORE COUNTY
WALTER BELL, et ux. * CASE NO. 88 CG 2253

MEMORANDUM OPINION AND ORDER AFFIRMING BALTIMORE COUNTY BOARD OF APPEALS

This court affirms the decision of the Board of Appeals (Board) dated November 29, 1989 granting the special exception of William Bell, et ux. and allowing an extension of Mr. Bell's pier to operate a boat yard from property he owns in Middle River, Baltimore County, Maryland. The Board granted the special exception with restrictions and found that the 85-foot extension of the pier does not violate the Chesapeake Bay Critical Areas Protection Program or Department of Environmental Protection and Resource Management (DEPRM) requirements.

A.

For one and one-half days of hearing before this court (1/22/91 and 1/28/91), various Orders of the Board of Appeals, applicable code provisions and zoning regulations, exhibits and testimony were reviewed. An exhaustive record, including many exhibits for a full understanding by this court is available. What the court sets forth here is a summary of decisions made on the record on 1/22/91 and 1/28/91 and a summary of the long history of the case. This is done in chronological order.

1. On December 18, 1970 the Board of Appeals granted to Fertita (Bell's predecessor in title) a special exception to operate a boat yard in an R-6 Zone (Bell Exhibit No. 2). Some restrictions were imposed:

True Copy Test
BUREAU MEMPHIS, TENN
Mare Smith
County Clerk

FILED APR 22 1991

chronicle, in the record, full, complete and detained findings of fact and conclusions of law citing State Commission on Human Relations v. Malakoff, 217 Md. 214, 229, 329 A.2d 8 (1974).

4. A Supplementary Opinion and Order dated February 6, 1989 was filed by the Board (paper 22) in which the Board stated:

(1) The interim control of the Chesapeake Bay Critical Area Protection Program (Md. Natural Resources Code Ann. §8-1813) and the local protective legislation in Baltimore County Council Bill No. 95-86 or the Critical Area Interim Development Control Act "was not applicable to a boat yard (Marina) that has been in existence and in compliance with the B.C.Z.R. since 1971."

(2) As to B.C.Z.R. Section 417, "the deliberation of the Board in the matter of divisional property lines as prescribed in Section 417 of the B.C.Z.R. were lengthy and carefully considered. The site location along an irregular shoreline, the many years existence of the authorized pier, and of primary importance, the expert testimony of a professional engineer, convinced the Board that the intersecting divisional lines projected from adjoining properties would not impede boat movement, nor place hardship on the neighbors."

5. A second appeal to this court resulted in the court concluding by Memorandum Opinion and Order of Court dated April 4, 1989 that the Board was incorrect in its legal conclusion that the Chesapeake Bay Critical Area Protection Program was not applicable. Specifically, the court cited O'Donnell v. Bassler, 289 Md. 501, 425 A.2d 1003 (1981) and concurred that the Appellate Court must apply the law in effect at the time a case is decided provided its application does not affect vested rights. 289 Md. At 508. A remand was made to the Board.

6. A Second Supplementary Opinion and Order was handed down from the Board on November 29, 1989. That Opinion summarized the testimony of certain witnesses appearing before the Board. The Order stated:

(1) The 85 foot pier extension does not violate the Chesapeake Bay Critical Areas Protection Program or DEPRM requirements.

(2) The proposal is in compliance with all applicable regulations.

7. Another appeal was taken to this court.

This written decision decides that appeal.

B.

At the hearing on the record before this court, the protestants outlined their attack on the various rulings by the Board of Appeals:

1. Bell did not comply with B.C.Z.R. Section 417 pertaining to divisional property lines within which the pier is to be built.
2. The Board's conclusion that the pier extension plan is in compliance with the Chesapeake Bay Critical Area Protection Program (Md. Natural Resources Code Ann. 8-1801 et seq.) as well as the Baltimore County program was an arbitrary and capricious decision.
3. The protestant's request to appoint a new Board was erroneously denied without a hearing after a hearing was scheduled.
4. No variance for the building of the pier was requested as required by B.C.Z.R. Section 307.

The court has considered argument on each of these issues and each is resolved against the protestants and in favor of Bell.

1. B.C.Z.R. 417 Compliance

B.C.Z.R. Section 417 (Bell trial exhibit no. 3) sets forth regulations dealing with divisional lines. The regulations show how to draw divisional lines between adjoining properties. The purpose of the regulation is to define boundaries within which waterfront construction may take place (417.3). "No construction, beyond mean low tide, including mooring piles, will be permitted within ten feet of divisional lines as established." (417.4) Basically, the regulations assure that shore front owners have access to waterways

and to make sure that one building a pier on property will not interfere with adjacent property owners access to the waterway.

In People's Counsel v. Maryland Marine, 316 Md. 491, 360 A.2d 32 (1989), the Court considered the import of §417:

(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.

316 Md. at 497-98. (emphasis in original)

The protestants claim that the Bell pier extension runs afoul of B.C.Z.R. Section 417 and violates the divisional line regulations. At the hearing before this court various plats and exhibits were examined. Bell's property has an irregular shoreline. As far as the court can determine, it is a debatable decision whether the Bell pier extension is to be built within the divisional lines drawn and projected on the plats and other exhibits. Without engineering and draftsman training, which the court does not possess, this issue cannot be said to have been determined incorrectly by the Board of Appeals.

It is within the province of the administrative agency to resolve conflicting evidence and to draw inferences from the testimony presented. Bullock v. Pelham Woods Apts., 283 Md. 505, 513, 390 A.2d 1119 (1978). When a circuit court reviews the action taken by an administrative agency, it applies the review standard of "substantial evidence". The judicial review process is thereby narrow in scope and the decision of the administrative agency carries a presumption of correctness. If there is "substantial evidence" to

support the administrative agency decision, meaning such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, the decision of the agency must be affirmed. Snowden v. Mayor and City Council of Baltimore, 224 Md. 443, 448, 168 A.2d 390 (1961); Doctor's Hospital v. Maryland Health Resources, 65 Md. App. 656, 667, 501 A.2d 1324 (1986). See: Md. State Government Code Ann. §10-215 (g), which provides:

In a proceeding under this section [Judicial Review--Administrative Procedure Act], the court may:

- (1) remand the case for further proceedings;
- (2) affirm the decision of the agency; or
- (3) reverse or modify the decision if any substantial right of the petitioner may have been prejudiced because a finding, conclusion, or decision of the agency:
 - (i) is unconstitutional;
 - (ii) exceeds the statutory authority or jurisdiction of the agency;
 - (iii) results from an unlawful procedure;
 - (iv) is affected by any other error of law;
 - (v) is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or
 - (vi) is arbitrary or capricious.

Interpreting §10-215, the Court in State Election Bd. v. Billhimer, 314 Md. 46, 58-59, 548 A.2d 819 (1988) said:

In applying the substantial evidence test, we must not substitute our judgment for the expertise of the agency, for the test is a deferential one, requiring "restrained and disciplined judicial judgment so as not to interfere with the agency's factual conclusions. This deference applies not only to agency fact-finding, but to the drawing of inferences from the facts as well. In brief, so long as the agency's decision is not predicated solely on an error of law, we will not overturn it if a reasoning mind could reasonably have reached the conclusion reached by the agency.

A very good overall description of the standard of review

of administrative agency decisions by trial courts is found in Comm'r v. Cason, 34 Md. App. 487, 509, 368 A.2d 1067, cert denied, 290 Md. 728 (1977):

A reviewing court may, and should, examine any inference, drawn by an agency, of the existence of a fact not shown by direct proof, to see if that inference reasonably follows from other facts which are shown by direct proof. If it does, even though the agency might reasonably have drawn a different inference, the court has no power to disagree with the fact so inferred.

A reviewing court may, and should, examine any conclusion reached by an agency, to see whether reasoning minds could reasonably reach that conclusion from facts in the record before the agency, by direct proof, or by permissible inference. If the conclusion could be so reached, then it is based upon substantial evidence, and the court has no power to reject that conclusion.

A reviewing court may, and should, examine facts found by an agency, to see if there was evidence of the fact in the record before the agency, no matter how conflicting, or how questionable the credibility of the source of the evidence, the court has no power to substitute its assessment of credibility for that made by the agency, and by doing so, reject the fact.

2. The Chesapeake Bay Critical Area Protection Program

Experts testified on both sides before the Board of

Appeals. Bell's Exhibit No. 11 is a critical area study prepared by Steven K. Brogles, a professional engineer, surveyor and developer. Although the protestants claim that the Department of Environmental Protection and Resource Management (DEPRM) adopted the Bell submission without making its independent determination of compliance with the program, the evidence produced does not support this allegation. While most of the protestant's arguments center on what they allege was an incorrect determination that the pier extension will not constitute an intensification of use, other arguments abound

will not constitute an intensification of use, other arguments abound concerning flushing time (the amount of time it takes water to replace itself), fecal matter contamination, etc. Nothing alleged, presented or examined at the hearing before this court, amounts to more than the protestant's argument that its experts were superior and should have been believed over the experts presented by Bell.

Somewhat troublesome and difficult to analyze is the contention between the parties concerning an alleged intensification of use at the pier site, the quality of the water at the site and the standards by which water quality should be measured. At oral argument before this court, there was injected as an issue by the protestants the question of whether Md. Natural Resources Code §8-1801, et seq. requires critical area program compliance to be conditioned on cleaning up pollution in existence or merely requires no increase in site pollution before expansion or building will be allowed. Section 8-1801 (a)(6) & (7) speaks of both restoration and minimizing further adverse impact. Nothing pointed to by the protestants indicates to this court an eternal truth pronouncement on this point. All of this was a matter of continuing and differing opinion between the experts at the hearing. Protestant's written and spoken argument on this point is not based on program pronounced standards, but rather boils down to a battle of the experts, which the Board resolved in favor of Bell. This court may not legally interfere with that decision.

Summarily, the credibility of the evidence and the weight to be given to the evidence was for the Board as the fact finder to

determine. Substantial evidence exists of record for the decision reached by the Board of Appeals.

3. The New Board Requested

The initial Board opinion of April 20, 1988 granting the special exception and the Summary Supplementary Opinion and Order of February 6, 1989, upon remand, that the interim control bay programs were not applicable to the Bell proposal and that B.C.Z.R. Section 417 was complied with, were decided by Board Members, Thomas J. Bollinger, Harry E. Buchheister, Jr. and Arnold G. Foreman. Following the second court remand upon its conclusion that the interim legislation was applicable, Thomas J. Bollinger was appointed as a judge of the District Court of Maryland for Baltimore County. When the Board rendered its supplementary opinion and Order of November 29, 1989, considering the application of The Chesapeake Bay Critical Areas Program or DEPRM requirements, Judge Bollinger had been replaced on the three board panel by William T. Hackett, the Board Chairman.

A change in the make up of a hearing board does not automatically constitute an event of procedural, statutory or constitutional irregularity so as to void prior proceedings. No credibility or witness evaluation judgment was seen here passing from one Board hearing to another. In other words, the Board that met to render its opinion on November 29, 1989 concerning the application of The Chesapeake Bay Critical Areas Program was not required to determine credibility issues based on the testimony produced at a prior hearing. A de novo hearing was not required. Separate issues

were considered at different hearings held. No error is seen.

Citizens For Kawatide v. Comm'rs of Hebron, 67 Md. App. 466,

479-483, 508 A.2d 493 (1986).

There is no evidence to show bias or impartiality on the part of the Board of Appeals or any of its members sitting to determine the issues in this case.

4. The Variance Requested by B.C.Z.R. 307

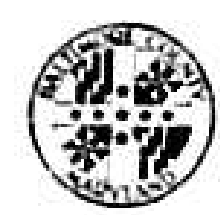
This point became moot with the Board and court decision on the other issues.

For the reasons stated above, it is the decision of the Circuit Court for Baltimore County this 17th day of April 1991 that the decision of the Board of Appeals granting the special exception to Walter Bell, et ux. for a pier extension on his marina is affirmed.

John F. Fader II
Judge

True Copy Test
SUZANNE MENSCH, Clerk

Petitioner:
Peter Max Zimmerman, Esq.
Michael P. Tanczyn, Esq.
S. Eric DiNenna, Esq.



County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
1111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

May 22, 1990

S. Eric DiNenna, Esquire
Suite 600, Mercantile-Towson Bldg.
409 Washington Avenue
Towson, MD 21204

Michael P. Tanczyn, Esquire
Suite 106
606 Baltimore Avenue
Towson, MD 21204

Peter Max Zimmerman, Esquire
People's Counsel for Baltimore County
County Office Building
111 W. Chesapeake Avenue
Towson, MD 21204

RE: Case No. 88-03-2253
Walter Bell, et ux

Dear Counsel:

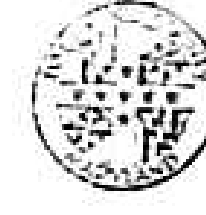
The Board is in receipt of numerous correspondence by and between the parties and the Court relative to the appeal on this case. Included within that correspondence is a copy of Judge Brennan's Order of April 26, 1990 and the letter from John F. Fader II, Judge, to counsel of May 11, 1990.

From the Board's examination of this material, it is our opinion that this matter is disposed and that, therefore, a record need not be prepared and furnished the Court by this Board as required by the Maryland B Rules.

If any counsel differs with our position, kindly contact the undersigned immediately.

Very truly yours,

Lawrence E. Schmidt
County Board of Appeals



County Board of Appeals of Baltimore County
Boardroom Court House
Towson, Maryland 21204
(301) 887-3180
May 19, 1988

S. Eric DiNenna, Esq.
Suite 600, Mercantile-Towson Bldg.
409 Washington Avenue
Towson, MD 21204

Dear Mr. DiNenna:
Re: Case No. 87-395-SPH
Walter Bell, et ux

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

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

June Holmen, Secretary

Encl.

cc: Newton A. Williams, Esq.
Walter Bell, et ux
David Fields
James Howell
J. Robert Haines
Ann Nastarowicz
James E. Dyer
Pocket Clerk

RECEIVED
MAY 20 1988
ZONING OFFICE

IN THE COURT OF THE APPLICATION OF WALTER BELL, ET UX FOR A SPECIAL HEARING ON PROPERTY LOCATED ON THE SOUTH SIDE OF CORNSICA RD., 65 FT. EAST OF THE CENTER LINE OF MILES RD., 15th ELECTION DISTRICT, 5th COUNCILMANIC DISTRICT	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW
PHYLLIS C. FRIEDMAN, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, PLAINTIFF	VS. WALTER BELL, ET UX, DEFENDANT
CASE NO. 87-395-SPH	FILE NO. 88-03-2253

Mr. Clerks:

Pursuant to the provisions of Rule B-21(d) of the Maryland Rules of Procedure, Thomas J. Bollinger, Harry E. Buchheister, Jr. and Arnold G. Foreman, 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, S. Eric DiNenna, Esq., Mercantile-Towson Bldg., Suite 600, 409 Washington Ave., Towson, Md. 21204, Counsel for Petitioner; Walter Bell, et ux, 8833 Belair Rd., Balto., Md. 21204, Counsel for Newton A. Williams, Esq., 204 W. Pennsylvania Ave., Towson, Md. 21204, Counsel for Protestants; and Phyllis C. Friedman, Esq., Rm. 223, Old Court House, Towson, Md. 21204, People's Counsel for Baltimore County, Plaintiffs, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

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

Walter Bell, et ux
Case No. 87-395-SPH

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to S. Eric DiNenna, Esq., Mercantile-Towson Bldg., Suite 600, 409 Washington Ave., Towson, Md. 21204, Counsel for Petitioner; Walter Bell, et ux, 8833 Belair Rd., Balto., Md. 21204, Counsel for Newton A. Williams, Esq., Suite 1105, Hampton Plaza, 300 E. Joppa Rd., Towson, Md. 21204, Counsel for Protestants; and Phyllis C. Friedman, Esq., Rm. 223, Old Court House, Towson, Md. 21204, People's Counsel for Baltimore County, Plaintiffs, on this 19th day of May, 1988.

June Holmen
County Board of Appeals of Baltimore County

IN THE MATTER OF
THE APPLICATION OF
WALTER BELL, ET UX
FOR A SPECIAL HEARING ON PROPERTY
LOCATED ON THE SOUTH SIDE OF
CORSICA ROAD, 65 FEET EACH OF THE
CENTERLINE OF MILES ROAD
15th ELECTRON DISTRICT
5th COUNCILMANIC DISTRICT

PHYLLIS C. FRIEDMAN, PEOPLE'S
COUNSEL FOR BALTIMORE COUNTY,

and

DONALD W. DOYLE, ET AL.

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY

CASE NO. 88-CG-2253



MEMORANDUM OPINION AND ORDER OF COURT
REMANING CASE TO COURT OF APPEALS

This court remands the above captioned case to the Board of Appeals of Baltimore County as it finds the February 6, 1989 Order of the Board to be incorrect in its conclusion that the Chesapeake Bay Critical Area Protection Program was not applicable to a boatyard (marina).

This court concludes that the Chesapeake Bay Critical Area Protection Program is in fact applicable to the subject matter of the application of Walter Bell. In addition and in accord with the Opinion of the Court of Appeals in *O'Donnell v. Bassler*, 289 Md. 501 (1981), the court concludes that on remand the applicable law shall be as enacted by the Baltimore County Council on June 13, 1988. An Appellate Court must apply the law in effect at the time

a case is decided providing that its application does not affect intervening vested rights. 289 Md. 508.

It is so ORDERED by the Circuit Court for Baltimore County this 4th day of April, 1989.

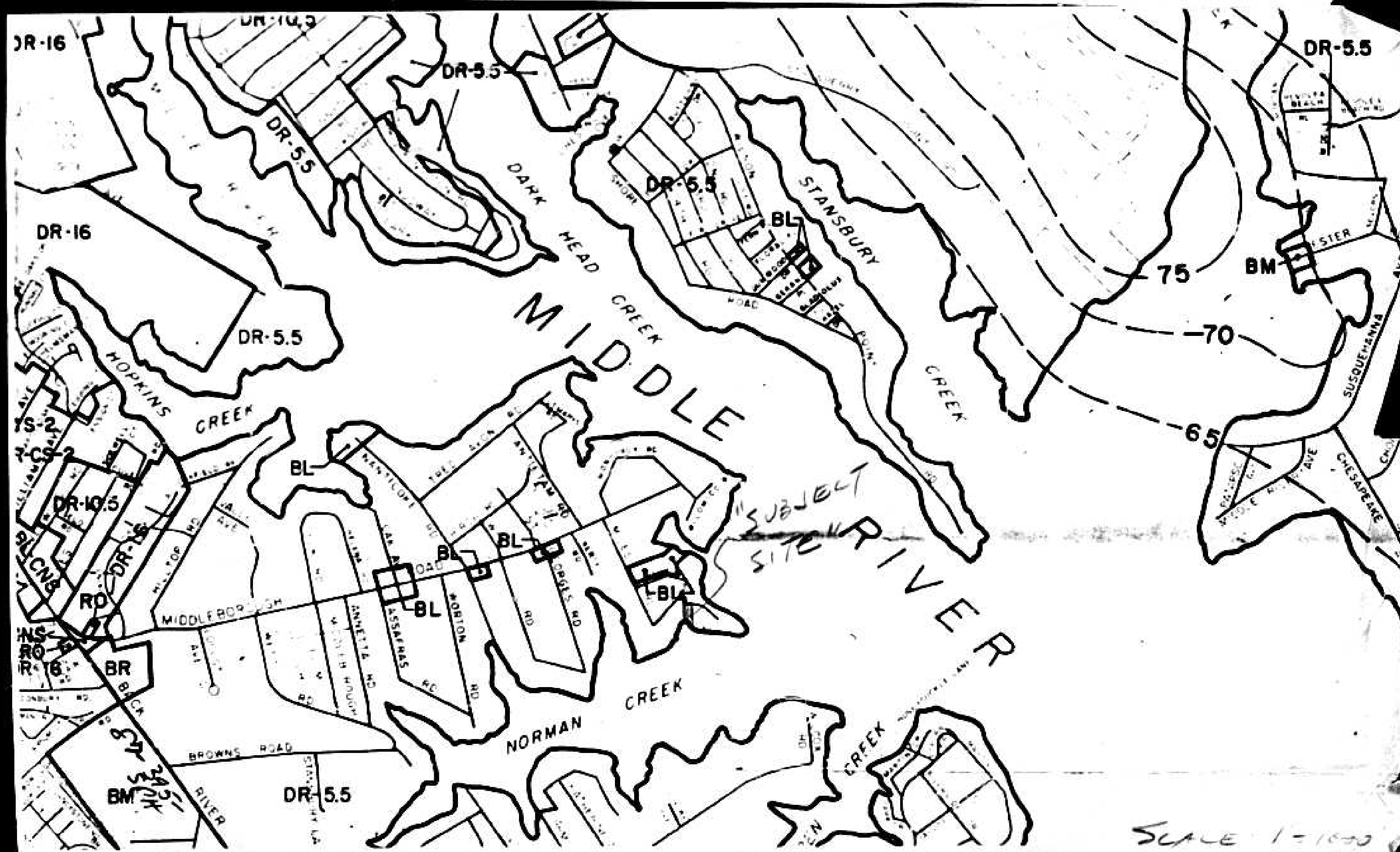
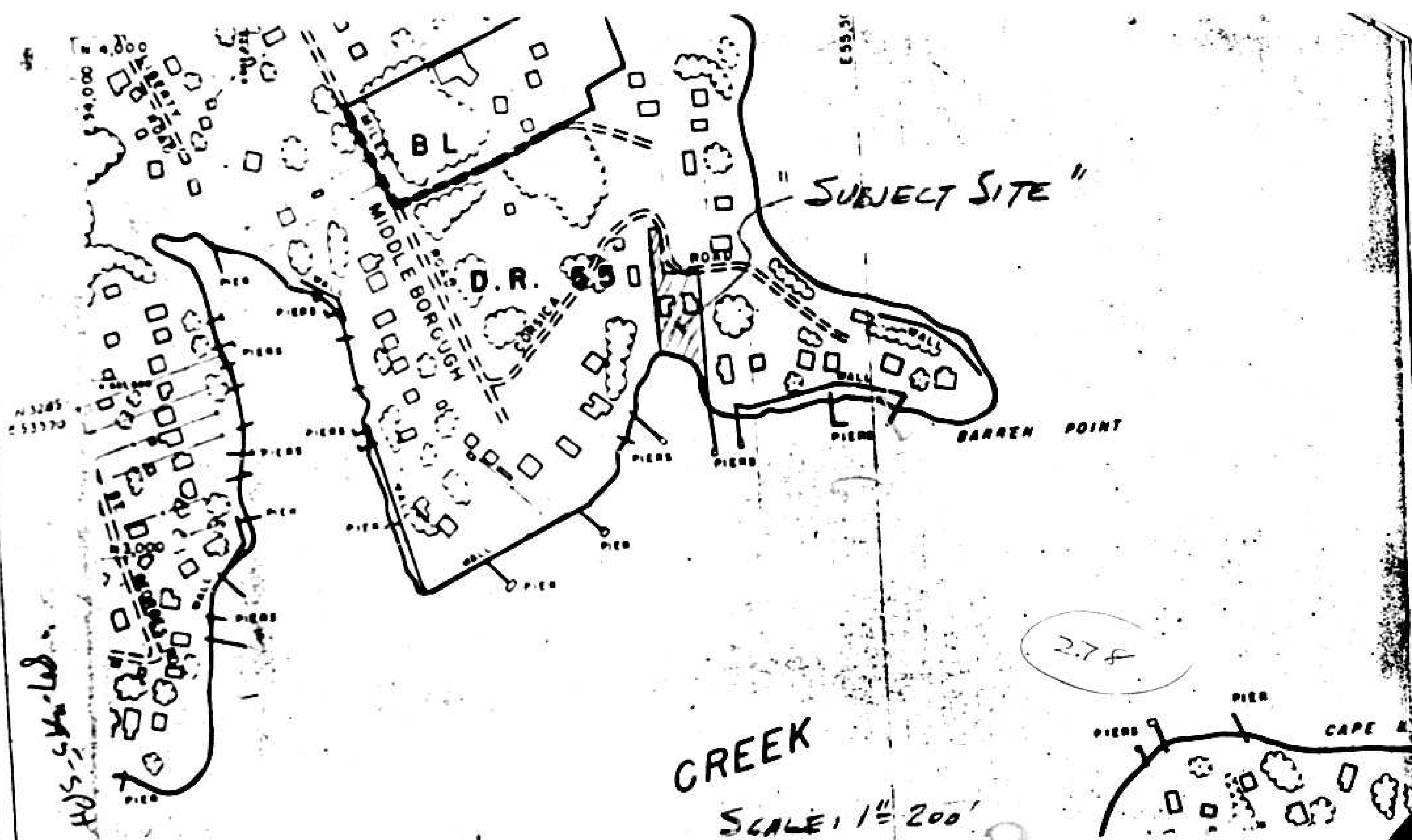
John F. Fader II
John F. Fader II
Judge

JFF:am

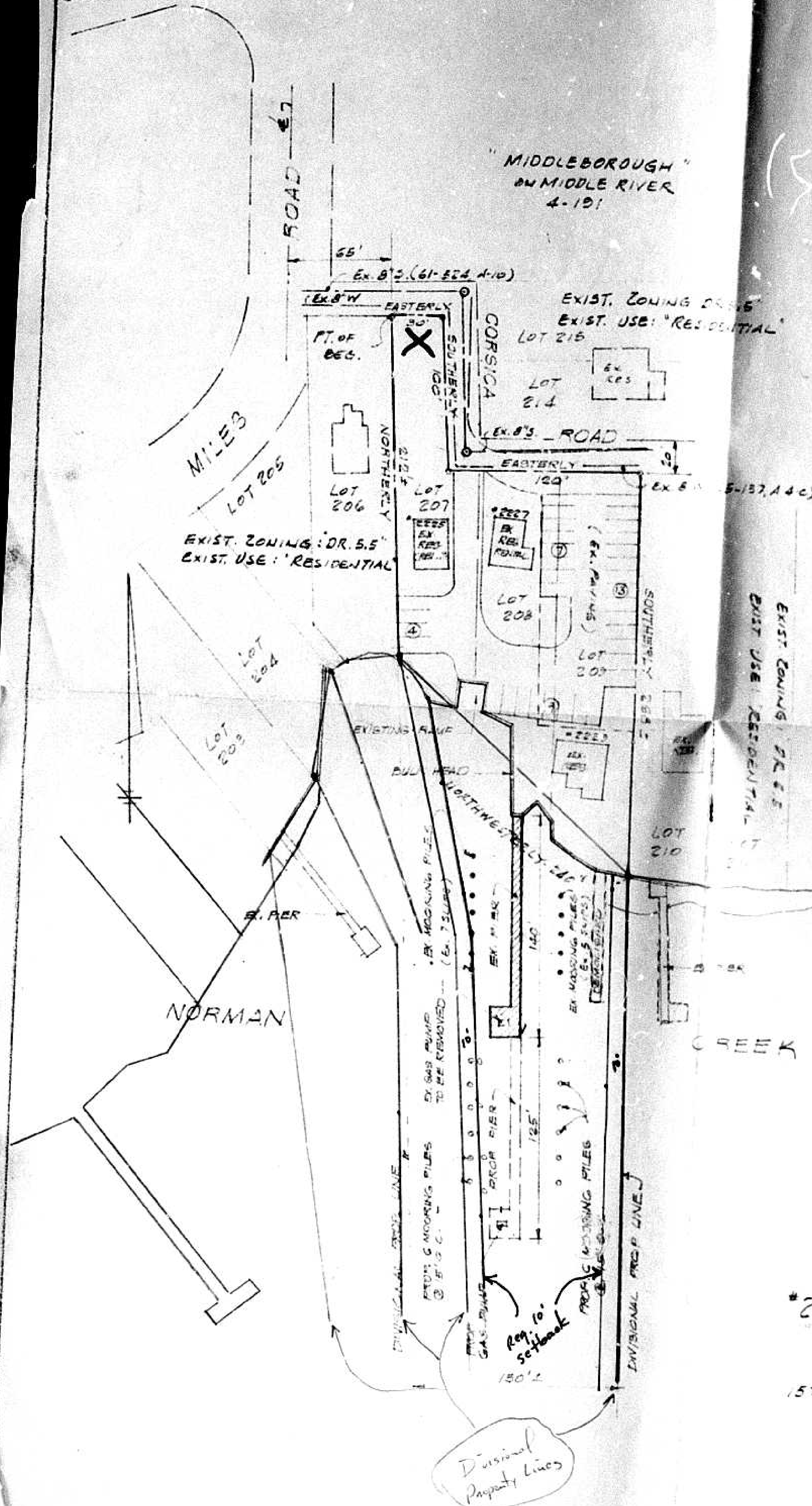
cc: Peter M. Zimmerman, Esq.
Room 223, Court House
Baltimore, Maryland 21204

Michael P. Tanczyn, Esq.
Ste. 105
506 Baltimore Avenue
Baltimore, Maryland 21204

S. Eric DiNenna, Esq.
DiNenna, Mann and Braschi
409 Washington Avenue
Ste. 600
Baltimore, Maryland 21204



CORSICA RD.



GENERAL NOTES

1. AREA OF SITE = 0.7264 AC.
2. EXIST. ZONING OF SITE = DR-5.5 (SPECIAL EXCEPTION FOR BOAT YARD)
3. EXIST. USE OF SITE = BOAT YARD & RESIDENTIAL
4. PROP. ZONING OF SITE = DR-5.5 (SPECIAL EXCEPTION FOR BOAT YARD)
5. PROP. USE OF SITE = BOAT YARD & RESIDENTIAL
6. PARKING DATA:
A. ROAD
1. RESIDENTIAL @ 175 = 175
2. RENTALS @ 175 = 350
24 SLIPS @ 1 SLIP = 24
TOTAL = 549
B. PROPOSED
7. PETITIONER REQUESTING SPECIAL HEARING TO AMEND SITE PLAN TO:
A. ALLOW FOR EXTENSION OF EXISTING PIER NUMBER 24 SLIPS TO REMAIN 24.
B. TO LIFT RESTRICTIONS #1 & 3 FROM BOARD OF APPEALS ORDER CASE # 70-218.
8. SITE SERVED BY EXIST. UTILITIES

Keep in File 1002
Preliminary plat

PLAT TO ACCOMPANY PETITION
FOR

SPECIAL HEARING

"2225," "2227," "2229" CORSICA ROAD

(LOTS 207, 208 & 209)

15th ELECT. DIST.

BALTIMORE COUNTY, MD.

SCALE: 1" = 50'

AUGUST 29, 1986

OFFICE COPY

271 395-5PM

PAUL LEE ENGINEERING, INC.
304 W. PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204

Sheet No. 47.3

86-008

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

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

Chairman

Members

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

S. Eric DiNenna, Esquire
406 W. Pennsylvania Avenue
Towson, Maryland 21204

RE: Item No. 278 - Case No. 87-395-SPH
Petitioner: Walter Bell, et ux
Petition for Special Hearing

Dear Mr. DiNenna:

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

Enclosures

cc: Paul Lee Engineering, Inc.

304 W. Pennsylvania Avenue
Towson, Maryland 21204

BALTIMORE COUNTY
DEPARTMENT OF PLANNING AND ZONING
TOWSON, MARYLAND 21204

David Fields
Acting Chief
Current Planning and Development
Towson, Maryland 21204

March 17, 1987
(Circled Area)

Re: Zoning Advisory Meeting of January 13, 1987
Item # 278
Property Owner: Walter Bell, et ux
Location: S/S Corsica Rd., 65' E. of
E. of Miles Rd.

Dear Mr. Jablon:

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

- () There are no site planning factors requiring comment.
- () A County Review Group Meeting is required.
- () A County Review Group Meeting was held and the minutes will be forwarded by the Bureau of Public Services.
- () This site is part of a larger tract; therefore it is defined as a subdivision. The plan must show the entire tract.
- () A record plat will be required and must be recorded prior to issuance of a building permit.
- () The access is not satisfactory.
- () The circulation on this site is not satisfactory.
- () The parking arrangement is not satisfactory.
- () Parking calculations must be shown on the plan.
- () This property contains soils which are defined as wetlands, and development on these soils is prohibited.
- () Construction in or alteration of the floodplain is prohibited under the provisions of Section 22-98 of the Development Regulations.
- () Development of this site may constitute a potential conflict with the Baltimore County Master Plan.
- () The amended Development Plan was approved by the Planning Board on
- () 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 is
- () The property is located in a traffic area controlled by a "D" level intersection as defined by 8111 178-79, and as conditions change are re-evaluated annually by the County Council.

THIS SITE IS LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA. ADDITIONAL COMMENTS WILL BE FORWARDED BY THE CURRENT PLANNING AND DEVELOPMENT DIVISION.

cc: James Mosigall

David Fields, Acting Chief
Current Planning and Development

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. 278 -ZAC-
Property Owner:
Location:
Existing Zoning:
Proposed Zoning:

Meeting of January 13, 1987
Walter Bell (CRITICAL AREA)
S/S Corsica Road, 65 feet E centerline
Miles Road
D.R. 6.5
Special Hearing to approve amendment to
site plan in case #70-215X to allow
extension of existing pier (number of
slips to remain 24) and to lift restrictions
#1 and #3 of Order
.72 acres
15 th Election District

Area:
District:

Dear Mr. Jablon:

Corsica Road is a very narrow road that was never intended for use by large number of vehicles or large vehicles. Any change that would encourage the use of Corsica Road for more vehicles or larger vehicles can only have an adverse influence on traffic in the area.

Very truly yours,

Michael S. Flanigan
Traffic Engineer Associate II

MSF:1c

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

PAUL H. RENCKE
CHIEF

January 27, 1987

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

RE: Property Owner: Walter Bell (Critical Area)
Location: S/S Corsica Rd., 65' E. centerline Miles Road
Item No.: 278
Zoning Agenda: Meeting of 1/13/87

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.

- (X) 1. Fire hydrants for the referenced property are required and shall be located at intervals of 250 feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works. Fire hydrants 250' from Marina.
- () 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 101A 301, 1975 edition. Fire shall have storage.
- () 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", 1978 edition prior to occupancy.
- () 6. Site plans are approved, as drawn.
- () 7. The Fire Prevention Bureau has no comments at this time.

REVIEWER: *John F. O'Neill*
Noted and Approved:
Fire Prevention Bureau
Special Inspection Division

/mb

BALTIMORE COUNTY
DEPARTMENT OF PERMITS & LICENSES
TOWSON, MARYLAND 21204

TED ZALESKI JR.
DIRECTOR

RE: Special Permit for Construction in Tidal/Riverine Areas
Bill #17-85 BALTIMORE COUNTY BUILDING CODE 1984
EFFECTIVE - APRIL 22, 1985

Comments on this Special Permit Hearing are as follows:
Property Owner: Walter Bell (Critical Area)
Location: S/S Corsica Road, 65 feet E centerline Miles Road
District: D.R. 6.5

APPLICABLE CODES AND REGULATIONS:

- () All structures shall conform to the Baltimore County Building Code as adopted by Council Bill #17-85, the Baltimore Code for the Floodplain and Special A.B.C. (1974-1980) and other applicable codes and regulations.
- () A building and other structures shall be required before the start of any construction.
- () Submittal: The plans of construction structures are required to file a permit application. The plan of a structure shall be required to file with a permit application. Submittal: The plan of a structure shall be required to file with a permit application. Submittal: The plan of a structure shall be required to file with a permit application.
- () All the Group except All Single Family Detached Buildings require a minimum of 3 hour fire rating for exterior walls taller than 6' to 10' to an exterior lot line. No two Group require a one hour wall if they are 10' to 12' to an exterior lot line. Any wall built on an exterior lot line shall require a fire or party wall. See Table 501, Section 501.1 and Table 502. No openings are permitted in an exterior wall within 10' of an exterior lot line.
- () The structure does not appear to comply with Table 501 for permissible height/area. Reply to the requester reference to this office must be considered until the necessary data pertaining to height/area and construction type is provided. See Table 501 and 502 and have your Architect/Engineer contact this Department.
- () The requested variance appears to conflict with Section 516.1 of the Baltimore County Building Code.
- () When filing for a proposed change of use/structure, an alternate permit application shall also be filed along with three sets of acceptable construction plans and zoning map showing the existing structure to be altered in order to comply with the Code requirements for the new use. Revised Architectural or Engineering plans shall be submitted. The change of use Group and from the Group to the Group to be filed.
- () The proposed project appears to be located in a Flood Plain, Tidal/Riverine. Please see the attached copy of Section 516.1 of the Building Code as adopted by Bill #17-85. Site plans shall show the correct elevation above sea level for the lot and the tidal river levels including basement.

2. Comments:

These abbreviated comments reflect only on the information provided by the drawings submitted to the Office of Planning and Zoning and are not intended to be construed as the full review of any permit. If before the applicant may obtain additional information by visiting Room 102 of the County Office Building at 111 W. Chesapeake Avenue, Towson, Maryland 21204.

Mark E. Dyer
Director
Building Plans Service

April 1985

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

SECTION 516.0 A Section added to read as follows:
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 tides, the building's lowest floor (including basement) shall be not lower than one (1) foot above the 100-year flood elevation, as established by the U.S. Army Corps of Engineers or the Federal Flood Insurance Study, whichever is 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 Corps of Engineers or the Federal Flood Insurance Study, whichever is 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 AREAS SUBJECT TO INUNDATION BY SURFACE WATERS WITHIN THE 100 YEAR FLOOD PLAIN.

- 1. 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 101.0 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, MARYLAND

INTER-OFFICE CORRESPONDENCE

RECEIVED
MAR 31 1987
ZONING OFFICE

TO: Mr. Arnold Jablon
ZONING COMMISSIONER
Date: March 30, 1987
FROM: Mr. Norman E. Gerber, AICP
DIRECTOR, OFFICE OF PLANNING & ZONING
SUBJECT: Petition for Special Hearing
Walter Bell, Et ux (87-395-SPH)

This petition requests amending and expanding a previously granted special exception for a boatyard or marina facility. Please be advised that Section 22-117(b) of the Chesapeake Bay Critical Area Interim Development Controls (Bill No. 95-86) declares that "No special exception may be granted for a marina." It is therefore not possible for this petition to be approved before the interim controls are repealed or modified.

Even if the application did not fall under the ban imposed by Section 22-117(b), the approval would, of course, have to be preceded by an affirmative "findings" from this office in accordance with Section 8-1013 of the Critical Area Law. The applicant has not submitted the information necessary for the finding to be made.

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

NEG/PJS/jat

TO: Mr. William T. Hackett, Chairman
County Board of Appeals

DATE: June 20, 1989

FROM: Robert W. Sheesley

SUBJECT: Special Hearing to Amend Special Exception #70-215-X
Norman Creek Marina, Property of Walter Bell
Chesapeake Bay Critical Area Findings

SITE LOCATION

Norman Creek Marina is located at 2229 Corsica Road along Norman Creek. The site is within the Chesapeake Bay Critical Area and is classified as a Limited Development Area and qualifies as a Water Dependent Facility. This 0.70 acre site consists of an existing 24 slip marina with one existing T-head pier 145' long, with a fuel dock. In addition, there are three residences and a gravel parking lot located on the site. The landward portion of the site is 11.9% impervious surface.

APPLICANT'S NAME: Walter Bell

APPLICANT PROPOSAL

By a Special Hearing to amend an Existing Special Exception, Norman Creek Marina requests approval to extend an existing T-pier and fuel dock 95' channelward, and add five 10' catwalks. The applicant proposes to move channelward eleven existing slips that have become shallow due to sediment deposition, maintaining the total number of slips at 24. Norman Creek Marina also requests approval to expand parking within the buffer and repair the bulkhead. No other land based alterations or improvements are proposed.

GOALS OF THE CHESAPEAKE BAY CRITICAL AREA PROGRAM

In accordance with the Chesapeake Bay Critical Area Program, all project approvals shall be based on a findings which assures that proposed projects are consistent with the following goals of the Critical Area Law:

1. Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have runoff from surrounding lands;
2. Conserve fish, wildlife and plant habitat; and

Memo to Mr. W. Hackett
June 20, 1989
Page 2

3. Establish land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts."

COMAR 14.15.10.01.03

THE WATER DEPENDENT FACILITIES PLAN

The Water Dependent Facilities Plan of the Baltimore County Chesapeake Bay Critical Area Program has two basic goals:

1. To minimize the intrusion of man-made land use within the Critical Area buffer, and
2. To establish standards so that development will have a minimal impact on water quality, fish, plant, and wildlife habitat.

In the Chesapeake Bay Critical Area, an undisturbed, vegetated buffer is required in which new development activities are prohibited. This buffer must be established and maintained a minimum of 100' landward from the Mean High Water Line of tidal waters, tidal wetlands, and tributary streams (COMAR 14.15.09.01). However, water dependent facilities such as Norman Creek Marina are directly dependent on physical access to the water. Therefore, the law allows these types of land uses to have reasonable access within the buffer, despite their adverse effects on water quality in the Chesapeake Bay.

The Water Dependent Facilities review process is structured to facilitate evaluation of the proposed development in two major phases:

- A. A preliminary site screening evaluation, and
 - B. A detailed environmental assessment,
- as presented by the applicant in a Water Dependent Facilities Plan.

REGULATIONS AND FINDINGS

1. Regulation: "All siting, development, redevelopment and expansion of water-dependent facilities within the buffer must strictly conform to the criteria set forth in the Baltimore County Water Dependent Facilities Manual." (Baltimore County Code Sec. 22-218(b)).

Memo to Mr. W. Hackett
June 20, 1989
Page 6

4. Regulation: "The stormwater management system shall be designed so that:

1. Development will not cause downstream property, watercourses, channels or conduits to receive stormwater runoff at a higher rate than would have resulted from a ten year frequency storm if the land had remained in its predevelopment state;
2. Infiltration of water is maximized throughout the site, rather than directing flow to single discharge points; and
3. Storm drain discharge points are decentralized to simulate the pre-development hydrologic regime.

4. There is sufficient storage capacity to achieve water quality goals of COMAR 14.15 and to eliminate all runoff caused by the development in excess of that which would have come from the site if it were in its predevelopment state" (Baltimore County Code, Section 22-217(h)).

Finding: The applicant's proposal will not add any additional impervious surface and therefore will not increase stormwater runoff from the site. In addition, the stormwater runoff from the three existing residences and an existing garage will be managed with dry wells, to maximize infiltration and decrease runoff from the site.

Conclusion

It is the finding of this Department that this project, with implementation of the Best Management Practices listed in the Norman Creek Marina Water Dependent Facilities Plan, is in compliance with the Baltimore County Development Regulations in the Chesapeake Bay Critical Area, and therefore, is approved.

Please contact Mr. David C. Flowers at 887-3980 if you require additional information.

Robert W. Sheesley
Robert W. Sheesley, Director
Department of Environmental
Protection and Resource Management

cc: Mr. Walter Bell
Mr. Steve Broyles
Ms. Janice Outen
The Honorable Ronald B. Hickernell
The Honorable Norman R. Lauenstein
The Honorable Dale T. Volz
Mr. Mike Nortrup

Memo to Mr. W. Hackett
June 20, 1989
Page 3

Findings: Initially, Norman Creek Marina requested approval to expand parking within the buffer, and such development requires conformance with the criteria set forth in the Baltimore County Water Dependent Facilities Manual. However, during the review process, this request was withdrawn, and parking will now be limited to an existing gravel area on the site.

A. Preliminary site screening results for Norman Creek Marina:

1. No submerged aquatic vegetation is present.
2. No tidal and non-tidal wetlands are present.
3. No shellfish beds are present.
4. No rare, threatened, or endangered species are present.
5. No anadromous fish spawning areas are present.
6. There is no dredging or expansion proposed within the shallow water habitat present on site.
7. No dredging is proposed for this project.
8. No filling is proposed on this site.
9. No disposal of dredge spoil will be made on this site.
10. All necessary State permits have been obtained. Army Corps of Engineers permit #88-3716-6 was issued April 4, 1989. A. Infringement on a federal, state, or Maryland Port Authority channel is proposed.
11. Flushing Characteristics: In accordance with the Baltimore County Water Dependent Facilities Plan, flushing characteristics are an important factor in determining overall project suitability from an environmental perspective. Marina sites with a flushing time of three or four days are determined to have a moderate impact and will require a dye study to more accurately determine flushing characteristics. A site is considered to have a minimal impact and adequate flushing characteristics if the flushing time is determined to be less than three days.

The Norman Creek Marina estimated flushing time using the 1985 EPA Flushing Model for semi-enclosed marinas. Their report, as prepared by Broyles, Hayes and Associates, states that when a worst case scenario using a fractional recirculation value of $b=0.5$ was evaluated, the resulting flushing time was 3.10 days. This is an estimated flushing time, and should only be treated as an approximate value, according to the EPA flushing model. In addition, the assumption of a semi-enclosed marina may not be accurate for this site. The use of an open marina model could yield a lower flushing rate, but more detailed field data is required for this model, and is not easily obtainable.

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

Arnold Jablon
Zoning Commissioner

April 23, 1987

S. Eric DiNenna, Esquire
406 W. Pennsylvania Avenue
Towson, Maryland 21204

RE: Petition for Special Hearing
S/S Corsica Road, 65' E of
the c/l of Miles Road
15th Election District
5th Councilmanic District
Case No. 87-395-SPH

Dear Mr. DiNenna:

Enclosed please find a copy of the decision rendered in the above-referenced case. Your Petition for Special Hearing has been Denied in accordance with the attached Order.

If you have any questions on the subject, please do not hesitate to contact this office.

Very truly yours,

Jan M. H. Jung
JAN M. H. JUNG
Deputy Zoning Commissioner

JMH:jbs
Enclosure

cc: Mr. & Mrs. Walter Bell
8833 Belair Road
Baltimore, Maryland 21236

Newton A. Williams, Esquire
204 W. Pennsylvania Avenue
Towson, Maryland 21204

Messrs. William Selig, Sr. and William Selig, Jr.
358 Miles Road
Baltimore, Maryland 21221

People's Counsel

Memo to Mr. W. Hackett
June 20, 1989
Page 4

A flushing time was also calculated for Norman Creek along which the Norman Creek Marina is located. Using the semi-enclosed model, a worst case scenario using a fractional recirculation value of $b=0.5$ resulted in a flushing time of 3.00 days.

With a flushing time of three to four days, Norman Creek Marina is considered to have a moderate impact, and will require a dye study to more accurately determine flushing characteristics for any proposed development, redevelopment, or expansion. However, since Norman Creek Marina is currently proposing to add no further slips and has revised their parking plans to eliminate expansion within the buffer, the dye study will not be required.

B. Environmental Assessment

The Water Dependent Facilities Plan requires the use of a detailed environmental assessment rating system. This is a scoring system which assigns weighted factors to cumulative impacts that would cause water quality and habitat degradation. Scores ranging from 50 to 70 indicate that the project must reduce predevelopment pollutant loadings by 20%. Scores of 75 or greater are considered unacceptable, and the projects cannot be approved.

Existing Water Quality: The existing water quality at the site of a water dependent facility is a key factor in determining the overall environmental suitability of the project. Since water quality of the receiving waters, Norman Creek Marina was required to determine the existing water quality of the site. Baltimore County may waive any water quality monitoring requirements if it is determined that little or no water quality impacts are anticipated. In addition, Norman Creek Marina was required to estimate the expected impacts the project would have on water quality and the methods by which such impacts would be minimized.

Expected pollutant loadings from the site in its pre-development and post-development stage were estimated, and the expected steady state concentrations that would result from these loadings in marina waters for the post-development condition were also estimated. The nitrogen and phosphorus loadings were below 1 on the Nielson rating. A rating below 6 indicates minimal impact or good water quality.

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

ARNOLD JABLON
ZONING COMMISSIONER

April 1, 1987

S. Eric DiNenna, Esquire
409 Washington Avenue
Suite 600 - Mercantile Towson Building
Towson, Maryland 21204

RE: PETITION FOR SPECIAL HEARING
S/S Corsica Rd., 65' E of the c/l of
Miles Rd.
15th Election District - 5th Councilmanic District
Walter Bell, et ux - Petitioners
Case No. 87-395-SPH

Dear Mr. DiNenna:

This is to advise you that \$66.86 is due for advertising and posting of the above property. This fee must be paid before an Order is issued.

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

Do not remove sign from property from the time it is placed by this office until the day of the hearing.

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

35811

DATE: 4/21/87 ACCOUNT: E-01-615-000

SIGN & POST RETURNED

AMOUNT: \$ 66.86

RECEIVED FROM: Norman Creek, Ltd., 8833 BEL AIR RD., BALTO., MD. 21236

ADVERTISING & POSTING COSTS RE CASE #87-395-SPH

FOR: [Signature]

VALIDATED ON OR SIGNATURE OF CASHIER

APPEAL

Petition for Special Hearing
S/S Corsica Road, 65' E of the c/l of Miles Road
15th Election District - 5th Councilmanic District
Walter Bell, et ux - Petitioners
Case No. 87-395-SPH

Petition for Special Hearing
Description of Property
Plat of Property, revised December 22, 1986
Certificate of Posting
Certificates of Publication
Entry of Appearance of People's Counsel
Zoning Plans Advisory Committee Comments
Director of Planning & Zoning Comments
Deputy Zoning Commissioner's Order dated April 23, 1987
Order of Appeal received May 11, 1987 from S. Eric DiNenna, Esquire, Attorney for Petitioner

S. Eric DiNenna, Esquire, Attorney for Petitioner
Mercantile-Townson Bldg., Suite 600, 409 Washington Avenue, Towson, Md. 21204

Newton A. Williams, Esquire, Attorney for Protestants
204 W. Pennsylvania Avenue, Towson, Md. 21202

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

Request for Information: Norman L. Gentry, Director of Planning
James H. Harkins, Director of Planning & Zoning
Arnold Jablon, Zoning Commissioner
Dean M. H. Jahn, Deputy Zoning Commissioner
James E. Dyer, Zoning Supervisor
Margaret E. du Bois, Docket Clerk

RE: PETITION FOR SPECIAL HEARING : BEFORE THE ZONING COMMISSIONER
S/S Corsica Rd., 65' E of C/L : OF BALTIMORE COUNTY
of Miles Rd., 15th District :
WALTER BELL, et ux, Petitioners : Case No. 87-395-SPH

ENTRY OF APPEARANCE

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

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

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

I HEREBY CERTIFY that on this 10th day of March, 1987, a copy of the foregoing Entry of Appearance was mailed to S. Eric DiNenna, Esquire, Mercantile Towson Bldg., 4th Floor, 409 Washington Ave., Towson, MD 21204, Attorney for Petitioners.

Peter Max Zimmerman
Peter Max Zimmerman

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

CERTIFICATE OF PUBLICATION

TOWSON, MD., March 19, 1987
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 March 19, 1987.

THE JEFFERSONIAN,

Susan Shuler Christ
Susan Shuler Christ
Publisher

2896

CERTIFICATE OF POSTING

15th Election District - 5th Councilmanic District
Case No. 87-395-SPH
Date of Posting: 3/14/87
Location of property: S/S Corsica Rd., 65' E of Miles Rd.
Location of Sign: S/S Corsica Rd., 65' E of Miles Rd.
Date of return: 3/10/87
Number of Signs: 1

PETITION FOR SPECIAL HEARING

15th Election District - 5th Councilmanic District
Case No. 87-395-SPH

LOCATION: South Side Corsica Road, 65 feet East of the Centerline of Miles Road
DATE AND TIME: Wednesday, April 8, 1987, at 11:15 a.m.
PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

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

Petition for Special Hearing to approve an amendment to site plan in Case No. 70-215-X to allow extension of existing pier (number of slips to remain 24) and to lift Restrictions 1 and 3 of the Order

Being the property of Walter Bell, et ux, as shown on plat 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 hearing set above or made at the hearing.

BY ORDER OF
ARNOLD JABLON
ZONING COMMISSIONER
OF BALTIMORE COUNTY



County Board of Appeals of Baltimore County

COUNTY OFFICE BUILDING
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 494-3180
August 10, 1989

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). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 87-395-SPH WALTER BELL, ET UX
(REMANDED FROM CIRCUIT COURT)
S/S Corsica Road, 65' E of c/l of Miles Road
15th Election District
5th Councilmanic District
Day 02 - continued
From August 9, 1989
SPH - Amendment to site plan - Case #70-215-X to allow extension of existing pier and to lift restr. #1 and #3 of Order.
4/04/89 - Order of the Circuit Court of Md. for Baltimore County wherein the case was REMANDED to County Board of Appeals
ASSIGNED FOR: WEDNESDAY, OCTOBER 4, 1989 at 9:00 a.m. (1 hour only)
cc: Mr. & Mrs. Walter Bell Petitioners
S. Eric DiNenna, Esquire Counsel for Petitioners
Michael P. Tanczyn, Esquire Counsel for Protestants
Phyllis C. Friedman, Esquire People's Counsel for Baltimore County
P. David Fields
Pat Keller
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
Docket Clerk - Zoning
Arnold Jablon, County Attorney
Chesapeake Bay Critical Areas Commission

RECEIVED
AUG 11 1989
ZONING OFFICE
Legal Secretary



County Board of Appeals of Baltimore County

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

August 19, 1987
(CONTINUED FROM 8/19/87)

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.

(CONTINUED FROM AUGUST 19, 1987)
CASE NO. 87-395-SPH WALTER BELL, ET UX
S/S Corsica Road, 65' E of the c/l of Miles Road
15th Election District
5th Councilmanic District
SPH - Amendment to site plan - Case #70-215-X to allow extension of existing pier and to lift restrictions #1 and #3 of Order
4/23/87 - D.Z.C. DENIED SPH
ASSIGNED FOR: TUESDAY, DECEMBER 1, 1987 at 10:00 a.m.
cc: Walter Bell, et ux Petitioners
S. Eric DiNenna, Esquire Counsel for Petitioners
Newton A. Williams, Esquire Counsel for Protestants
Phyllis Cole Friedman People's Counsel
Norman E. Gerber
Frank H. Fisher
J. Robert Haines
James E. du Bois

RECEIVED
AUG 20 1987
ZONING OFFICE
Kathi Weidenhamer
Administrative Secretary



County Board of Appeals of Baltimore County

COUNTY OFFICE BUILDING
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 494-3180
May 2, 1989

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). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 87-395-SPH WALTER BELL, ET UX
S/S Corsica Road, 65' E of the c/l of Miles Road
15th Election District
5th Councilmanic District
SPH - Amendment to site plan - Case #70-215-X to allow extension of existing pier and to lift restrictions #1 & #3 of Order.
April 4, 1989 - Order of the Circuit Court of Maryland for Baltimore County wherein the case was REMANDED to the County Board of Appeals.
ASSIGNED FOR: TUESDAY, JUNE 27, 1989 at 10:00 a.m.

cc: Walter Bell, et ux Petitioners
S. Eric DiNenna, Esquire Counsel for Petitioners
Michael Tanczyn, Esquire Counsel for Protestants
Phyllis Cole Friedman People's Counsel
P. David Fields
Pat Keller
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
Docket Clerk - Zoning
Arnold Jablon, County Attorney

LindaLee M. Kuszmarik
Legal Secretary

Arnold Jablon
Zoning Commissioner
of Baltimore County

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 30431
DATE: 8/29/86 ACCOUNT: 01-615-000
AMOUNT: \$ 100.00
RECEIVED FROM: Norman Cook Maine Inc.
SPH # 278
8 8014*****100001* 0218F
VALIDATION OR SIGNATURE OF CARRIER

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 494-3333 887-3180
June 27, 1989

HEARING ROOM -
Room 301, County Office Building

NOTICE OF ASSIGNMENT

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

CASE NO. 87-395-SPH

WALTER BELL, ET UX
S/s Corsica Road, 65' E of c/l of Miles Road
15th Election District
5th Councilmanic District
SPH - Amendment to site plan - Case #70-215-X
to allow extension of existing pier
and to lift restr. #1 and #3 of Order.
4/24/89 - Order of the Circuit Court of Md. for
Baltimore County wherein the case was
REMANDED to County Board of Appeals.

which had been set for hearing on Tuesday, June 27, 1989 has been POSTPONED
on the record at the request of Counsel for Protestants and has been
REASSIGNED FOR:

WEDNESDAY, AUGUST 9, 1989 at 11:00 a.m.

REASSIGNED FOR:

Walter Bell, et ux
S. Eric DiNenna, Esquire
Newton A. Williams, Esquire
Phyllis Cole Friedman

Petitioners
Counsel for Petitioners
Counsel for Protestants
People's Counsel for Baltimore County

RECEIVED

JUN 29 1989

ZONING OFFICE

Kathleen C. Weidenhammer
Administrative Secretary

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180
December 2, 1987

HEARING ROOM #210

NOTICE OF POSTPONEMENT AND REASSIGNMENT

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

CASE NO. 87-395-SPH

WALTER BELL, ET UX
S/s Corsica Road, 65' E of the c/l of Miles Road
15th Election District
5th Councilmanic District
SPH - Amendment to site plan - Case #70-215-X
to allow extension of existing pier
and to lift restrictions #1 and #3 of Order
4/23/87 - D.Z.C. denied SPH.

Continued from August 19, 1987.
which had been assigned for continued hearing on December 1, 1987, has been
POSTPONED in open hearing and has been

THURSDAY, March 10, 1988 at 10:00 a.m. and
TUESDAY, March 15, 1988 at 10:00 a.m.

REASSIGNED FOR:

(Hearing Day #2 and Day #3)

Petitioners
Counsel for Petitioners
Counsel for Protestants
People's Counsel for Baltimore County

cc: Walter Bell, et ux
S. Eric DiNenna, Esquire
Newton A. Williams, Esquire
Phyllis Cole Friedman

Norman E. Gerber
James G. Hoswell
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
Robin Clark
Arnold Jablon, County Attorney

RECEIVED
DEC 3 1987

ZONING OFFICE

Kathi Weidenhammer
Administrative Secretary

WALTER BELL ET UX
Case No. 87-395-SPH

p. 3

8/10/89 - Notice of Assignment continued from August 9 to Wednesday, October 4,
1989 at 9:00 a.m. in Room 301; following notified:
(one hour hearing only)

M/M W Bell
SE DiNenna, Esq
Mr. Tanczyn, Esq
PC Friedman, Esq
Fields
Keller
Haines
Nastarowicz
Dyer
Docket Clerk
Jablon
Chesapeake Bay Critical Areas Commission

10/04/89 - Hearing concluded before the Board; 21 days given for written
closing memorandums (Memos due 10/25/89)

11/29/89 - Supplementary Opinion and Order finding that the proposal is in
compliance with the Chesapeake Bay Critical Areas requirements.
(HFB).

10/25/89 - Memo filed by Michael Tanczyn, Esquire.
12/27/89 - Letter received from Mr. Tanczyn noting an appeal for the technical
formality of the Board's decision.

12/27/89 - Correspondence to Judge Fader with a copy of Mr. Tanczyn's letter
requesting instructions from the Court.
1/5/90 - Petition to accompany Letter of Appeal filed in CCT, BCO by Michael Tanczyn, Esq.
1/16/90 - Additional record of proceedings filed in CCT, BCO and Supplemental Opinion
and Order filed in CCT, BCO.

1/31/90 - Letter from Judge Fader: Court has reviewed Board's correspondence
of 12/27/89; Board should have rendered subsequent opinion in answer
to Court's Remand of 4/4/89; if there is appeal, should be taken in
accordance with "procedures provided by law."

2/02/90 - Note to File signed by L. Schmidt; file to be closed.
Transcript of Remand Hearing attached hereto, and supplemental proceedings
filed in CCT, BCO.

7/12/90 - Order of the CCT, BCO (Judge Brennan) ORDERING that Motion to Vacate Order
DENYING Motion to Extend is GRANTED; board's transcript to be forward to
CCT, BCO within 30 days; also all further proceedings to be directed to Judge
Fader.

4/22/91 - Opinion of the CCT, BCO AFFIRMING C.B. of A. (Fader)

WALTER BELL, ET UX
#87-395-SPH

p. 2

2/06/89

Order of the Board that "having reviewed this Board's
previous Order and now having addressed the concerns
in the remand of the Circuit Court, it is hereby
ORDERED that the further Opinion issued...be forwarded to
the Circuit Court...."

February 6, 1989

Additional record of proceedings filed in the
CCT, BCO (Board's Supplementary Opinion and Order
of 2/06/89). Hearing date of 2/28/89 withdrawn
as a result of issuance of Supplemental Opinion/Order.

February 28

Second Order for Appeal filed by Tanczyn on behalf
of Appellants in CCT, BCO; Petition to accompany Second
Appeal filed.

March 8, 1989

Second Order for Appeal filed by People's Counsel (Protestant
and Co-Appellant). Petition to accompany Second Appeal filed.

April 4

Order of the CCT - that the matter is REMANDED to the C.B. of A.
as the Court found that the Board's Supplementary Order of
2/06/89 is incorrect and that on remand the applicable law
"shall be as enacted by the Baltimore County Council on
June 13, 1988...providing that its application does not affect
intervening vested rights." (John F. Fader II, Judge)

5/02/89 - Certified letter to Robt. W. Sheesley requesting recommendations from
DEPRM pursuant to CCT remand regarding critical areas issue.

5/02/89 - Notice of Assignment sent to interested parties re hearing set
for Tuesday, June 27, 1989 at 10:00 a.m.

6/07/89 - Telephoned Pat Fischer (Sheesley's secretary) re status of DEPRM comments
due 6/05/89.

6/13/89 - T/C w/Pat F. regarding DEPRM comments; all comments filed in case need
time before hearing for review by experts; hearing set for 6/27/89.

6/20/89 - Letter to B. Sheesley regarding comments from DEPRM.

6/22/89 - PP requested by Tanczyn on behalf of Protestants re unavailability
of comments from Pat. Prot.

6/23/89 - Received Findings of Fact from DEPRM; sent to Judge Fader, Tanczyn
(both to be picked up by office staff and reviewed).

6/27/89 - PP on record. Remand to August 9, 1989 at 11:00 a.m. sent to above.

6/28/89 - Certified letter to PAC - Annappellants copy of remand, copy of copy of
DEPRM findings and copy of Notice of Assignment sent to above.

DINENNA, MANN & BRESCHI
ATTORNEYS AT LAW

S. ERIC DINENNA, P.A.
JAMES L. MANN, JR., P.A.
GEORGE A. BRESCHI, P.A.

SUITE 600
MERCANTILE-TOWSON BUILDING
409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(301) 294 6820

May 8, 1987

Zoning Office
County Office Building
Towson, Maryland 21204

ATTENTION: Sue

RE: My Client: Walter Bell
Zoning Case No.: 87-395-SPH
My File No.: 86-6

Dear Sue:

Supplementing my letter of May 6, 1987, wherein I filed
an appeal in the above-captioned matter, enclosed herewith
please find my check in the amount of \$90.00 covering the
cost of filing same.

Thank you for your anticipated cooperation.

Very truly yours,
S. ERIC DINENNA

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

No. 33134

DATE 5/11/87 ACCOUNT 86101010000

AMOUNT \$ 90.00

RECEIVED FROM S. Eric Dinenna, Suite 600, Mercantile-Towson Bldg
409 Washington Avenue, Towson, Md. 21204

FOR Appeal posting and filing fees in Case #87-395-SPH

8 86101010000 01101

VALIDATION OR SIGNATURE OF CASHIER

RECEIVED
MAY 11 1987

ZONING OFFICE

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

Arnold Jablon
Zoning Commissioner

May 11, 1987

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

RE: Petition for Special Hearing
S/S Corsica Road, 65' E of the c/l of Miles Road
15th Election District, 5th Councilmanic District
Walter Bell, et ux - Petitioner
Case No. 87-395-SPH

Dear Board:

Please be advised that on May 11, 1987, an appeal of the decision rendered
in the above-referenced case was filed by S. Eric DiNenna, Esquire, on behalf
of Mr. Walter Bell, the Petitioner. All materials relative to the case
are being forwarded to your office herewith.

If you have any questions concerning this matter, please do not hesitate
to contact this office.

Very truly yours,

Arnold Jablon
ARNOLD JABLON
Zoning Commissioner

AJ:bjs

cc: S. Eric DiNenna, Esquire
Mercantile-Towson Bldg., Suite 600
409 Washington Avenue, Towson, Md. 21204

Newton A. Williams, Esquire
204 W. Pennsylvania, Towson, Md. 21204

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

File

MASLAN, MASLAN AND ROTHWELL, P.A.

TEL: (301) 292-2700

M. MICHAEL MASLAN
DART M. MASLAN
RALPH E. ROTHWELL, JR.
LINDA T. COX

March 23, 1989

87-395-SPHA
white file

J. Robert Haines
Zoning Commissioner of
Baltimore County
Office of Planning & Zoning
Towson, Maryland 21204

Re Case No. 87-395-SPHA
Petitions for Special Hearing
and Zoning Variance
Hearing Date: 3/24/89 4:00 P.M.

Dear Commissioner Haines:

Please enter my appearance in the above captioned case as co-counsel with
James F. Offutt, Jr., Esquire, whose appearance is already entered in the case
on behalf of the Petitioner. I thank you for your assistance.

Very truly yours,

Ralph E. Rothwell, Jr.

RKR/saw
cc: James F. Offutt, Jr., Esquire
Edward H. Banister

RECEIVED
MAR 24 1989

ZONING OFFICE

WALTER BELL, ET UX

#87-395-SPH

S/s Corsica Road, 65' E of c/l
of Miles Road

15th E; 5th C

SPH -To amend existing site plan in Case #70-215-X
and to lift restrictions #1 and #3 to extend
existing pier; and to berth boats in excess of
24'

Feb 11, 1987

Petition for Special Hearing of Walter Bell, et ux
to amend existing site plan in Case #70-215-X, et ux

April 27

Order of D.Z.C. that Petition for Special Hearing
is DENIED.

May 11

Order for Appeal filed by S.Eric DiNenna, Esq. to
C.B. of A on behalf of Petitioner.

August 19

Hearing before Board.

March 10, 1988

Continued hearing before Board.

March 15

Hearing completed before Board.

April 20

Order of C.B. of A. that Petition for Special
hearing is GRANTED; Petition to remove restriction
#1 and #3 GRANTED.

May 18

Je Order for Appeal filed by PC in CCT, BCo

May 18

Petition for accompany appeal filed by PC

May 19

Certificate of Notice sent.

May 20

Je Order for Appeal filed in CCT, BCo by Michael Tanczyn, Esq.
on behalf of Protestants

May 20

Certificate of Notice sent.

June 17

Transcript of testimony filed; record of proceedings
filed in CCT, BCo.

Oct 18

Je REMANDED to C.B. of A. by John F. Fader, II, Judge
Circuit Court: for a decision as to whether the Critical
Area Program is applicable and if so, the Board should
make it findings in accordance thereto; and to make
such additional findings regarding divisional property
lines, if the Board feels additional findings should be
made.

11/23/88 -Notice of Assignment sent to following re hearing set for
Tuesday, February 28, 1989 at 10:00 a.m.:

S. Eric DiNenna, Esq.
Michael Tanczyn, Esq.
P. David Fields
J. Robt Haines
James E. Dyer
Arnold Jablon, Co Atty

Mr. & Mrs. Walter Bell
Phyllis C. Friedman
Pat Keller
Ann Nastarowicz
Docket Clerk -Zoning

S. ERIC DINENNA, P.A.
JAMES L. MANN, JR., P.A.
GEORGE A. BRESCHI, P.A.

DINENNA, MANN & BRESCHI
ATTORNEYS AT LAW
89 JAN 31 AM 11:31

GERALDINE A. KLAUBER
FRANCIS X. BORGERDING

January 27, 1989

County Board of Appeals
of Baltimore County
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

RE: Case No. 87-395-SPH
Walter Bell, et ux.

Dear Mr. Chairman:

The above-captioned matter has been remanded to your Board by the Circuit Court for Baltimore County.

Mr. Thomas J. Bollinger, chaired this matter and as you are aware, has been recently appointed to the District Court of Maryland for Baltimore County.

Accordingly, would you be so kind as to advise me and other parties to this matter who will be chairing this matter.

I would assume that the other two members of the Board will be present when this matter is heard by your Board.

Very truly yours,

[Signature]
S. ERIC DINENNA

SED:cjc
cc: Peter M. Zimmerman, Esquire
Michael Tanczyn, Esquire
Mr. Walter Bell

County Board of Appeals of Baltimore County

COUNTY OFFICE BUILDING
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 296-6820

November 28, 1988

Peter Max Zimmerman, Deputy People's Counsel
for Baltimore County
Room 304, County Office Building
Towson, MD 21204

S. Eric DiNenna, Esquire
Mercantile-Towson Building, Suite 600
409 Washington Avenue
Towson, MD 21204

Michael P. Tanczyn, Esquire
Suite 106, 606 Baltimore Avenue
Towson, MD 21204

RE: Case No. 87-395-SPH
Walter Bell, et ux

Dear Counsel:

The subject case has been set in for hearing on Tuesday, February 28, 1989 at 10:00 a.m. pursuant to the Order of the Circuit Court dated October 18, 1988.

In that this case returns to the Board as a remand by Order of the Circuit Court, should there be any relevant exhibits currently in the Circuit Court file, it will be the responsibility of Counsel to obtain and produce them at the Board's hearing.

Very truly yours,

[Signature]
Thomas J. Bollinger, Esquire
Acting Chairman

The Circuit Court for Baltimore County

THIRD JUDICIAL CIRCUIT OF MARYLAND

November 17, 1988

Thomas J. Bollinger, Esq.
County Board of Appeals of
Baltimore County
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: People's Counsel v. Bell
Case No. 88CG 2253

Dear Mr. Bollinger:

Reference is made to your letter of November 10, 1988.

I have responded to the letter of Mr. DiNenna telling him that the working of my remand order will remain as written.

Very truly yours,

[Signature]
John F. Fader II
Judge

JFF:am

cc: Michael P. Tanczyn, Esq.
S. Eric DiNenna, Esq.
Peter M. Zimmerman, Esq.



DINENNA, MANN & BRESCHI
ATTORNEYS AT LAW

SUITE 600
MERCANTILE-TOWSON BUILDING
409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(301) 296-6820

November 17, 1988

Mr. Thomas J. Bollinger,
Acting Chairman
County Board of Appeals
111 W. Chesapeake Avenue
Towson, Maryland 21204

RE: People's Counsel v. Bell
Case No. 88CG2253

Dear Mr. Bollinger:

I am in receipt of a copy of your letter dated November 10, 1988 to Judge Fader, concerning the above-captioned matter.

Enclosed herewith please find a copy of a letter that he forwarded to all Counsel, which basically answers your concerns of your November 10, 1988 letter.

Accordingly, would you be so kind as to have your office contact Counsel to set this matter in as soon as possible.

Very truly yours,

[Signature]
S. ERIC DINENNA

SED:cjc
Enclosure
cc: People's Counsel for Baltimore County
Michael P. Tanczyn, Esquire
Mr. Walter Bell
Peter Max Zimmerman, Esquire



The Circuit Court for Baltimore County

November 7, 1988

Peter Max Zimmerman, Esq.
Baltimore County, Maryland
People's Counsel
Room 304, County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Michael P. Tanczyn, Esq.
Suite 106
606 Baltimore Avenue
Towson, Maryland 21204

Re: People's Counsel for Baltimore County
v. Walter Bell, et ux
Case No. 88 CG-2253

Dear Counsel:

The court has received correspondence from Messrs. DiNenna and Zimmerman regarding the Order of Court dated October 18, 1988.

Under all the circumstances of this case, the Order will stand as written.

Very truly yours,

[Signature]
John F. Fader II
Judge

JFF:am

County Board of Appeals of Baltimore County

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

November 10, 1988

The Honorable John F. Fader, II
Circuit Court for Baltimore County
County Courts Building, P.O. Box 6754
Towson, MD 21285-6754

RE: People's Counsel v. Bell
Case No. 88CG2253

Dear Judge Fader:

I am in receipt of voluminous correspondence from all counsel in the above case requesting that this matter be set before the Board as quickly as possible, and at the same time requesting you, by way of Mr. DiNenna's letter of November 3, 1988, to modify, amend, and/or clarify your Opinion and Order of October 18, 1988.

My initial reaction, unless the Court directs me otherwise, is not to take any action until the Court rules on the request of Mr. DiNenna dated November 3, 1988, which I interpret to be a motion to amend the Court's Order of October 18, 1988.

I am, by copy of this letter, advising all counsel of the Board's position at this time pending further directives from the Court.

Respectfully,

[Signature]
Thomas J. Bollinger, Acting Chairman
County Board of Appeals

cc: People's Counsel for Baltimore County
Michael P. Tanczyn, Esquire
S. Eric DiNenna, Esquire
Mr. Walter Bell

TJB:kcw

DINENNA, MANN & BRESCHI
ATTORNEYS AT LAW

S. ERIC DINENNA, P.A.
JAMES L. MANN, JR., P.A.
GEORGE A. BRESCHI, P.A.
GERALDINE A. KLAUBER

November 8, 1988

Michael P. Tanczyn, Esquire
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204

RE: People's Counsel v. Bell
Circuit Court Case 88CG-2253

Dear Mike:

I am in receipt of your letter of November 4, 1988 and I note that you did not send a copy to Judge Fader.

Accordingly, by copy of this letter, I am enclosing a copy of your letter of November 4, 1988 to the Court.

Very truly yours,

S. ERIC DINENNA

SED:bk
cc: People's Counsel for Baltimore County
Baltimore County Board of Appeals
Mr. Walter Bell
The Honorable John F. Fader, II



Baltimore County, Maryland

PEOPLE'S COUNSEL
ROOM 304, COUNTY OFFICE BUILDING
111 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
494-2188

November 7, 1988

The Honorable
John F. Fader, II, Judge
Circuit Court for Baltimore County
County Courts Bldg., P.O. Box 6754
Towson, MD 21285-6754

RE: People's Counsel v. Bell
Case No. 88CG2253

Dear Judge Fader:

This letter is prompted by S. Eric DiNenna's letter dated November 3, 1988.

We think the Court's Order should stand as is, and that the remand should proceed without any further action by the Court.

Very truly yours,

[Signature]
Peter Max Zimmerman
Deputy People's Counsel

cc: S. Eric DiNenna, Esquire
Michael P. Tanczyn, Esquire
County Board of Appeals

PMZ:ah



Law Offices
Michael P. Tanczyn, P.A.
Suite 100, 600 Baltimore Avenue
Towson, Maryland 21204
(301) 226-8822
(301) 226-8824

November 4, 1988

S. Eric DiNenna, Esq.
Mercantile-Towson Building
409 Washington Avenue, Suite 600
Towson, MD 21204

Re: People's Counsel et al vs Bell et al
Board of Appeals Case No. 87-395-SPH
Circuit Court Case Number 88-CG-2253

Dear Eric:

Thank you for your letters of November 3, 1988 to the Board of Appeals and to Judge Fader. I notice with the latter that you sent a copy to the County Board of Appeals.

The Court's intent was clear to me as well and the Court clearly gave the Board latitude to make additional findings as it determined appropriate concerning Section 417. The Board's latitude clearly was recognized by the Court and I do not believe that the Court proscribed the Board from receiving further evidence if it deemed it necessary to make further findings.

Very truly yours,

Michael P. Tanczyn
Michael P. Tanczyn

MPT/ed
Enclosure

cc: Baltimore County People's Counsel
Mr. and Mrs. Donald W. Doyle
Mr. Jonathan Doyle
Mr. Brian Templeton
Mr. and Mrs. William Selig, Sr.
Mr. and Mrs. William Selig, Jr.
Baltimore County Board of Appeals



DINENNA, MANN & BRESCHI
ATTORNEYS AT LAW

S. ERIC DINENNA, P.A.
JAMES L. MANN, JR., P.A.
CHRISTOPHER A. BRESCHI, P.A.
CHESAPEAKE BAY CRITICAL AREA
TOWSON, MARYLAND 21204
(301) 226-8828

November 3, 1988

County Board of Appeals
County Office Building
Towson, Maryland 21204

RE: Walter Bell, et ux. S/S Corsica
Road, 65'E of the C/I of Miles
Road 15th Election District
5 Councilmanic District
Board of Appeals No.: 87-395-SPH
Circuit Court Case No.: 88-CG-2253

Dear Mr. Chairman and Members of the Board:

Please refer to my letter of October 21, 1988, wherein I indicated to you that you are probably in receipt of Judge Fader's Order remanding the above-captioned matter to you.

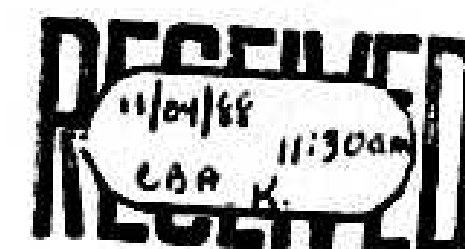
I requested at that time that this matter be set in as quickly as possible.

Would you be so kind as to advise me of a hearing date on this matter.

Very truly yours,

S. ERIC DINENNA
S. ERIC DINENNA

SED:cjc
cc: Mr. Walter Bell
People's Counsel
Michael Tanczyn, Esq.



DINENNA, MANN & BRESCHI
ATTORNEYS AT LAW

S. ERIC DINENNA, P.A.
JAMES L. MANN, JR., P.A.
CHRISTOPHER A. BRESCHI, P.A.
CHESAPEAKE BAY CRITICAL AREA
TOWSON, MARYLAND 21204
(301) 226-8828

November 3, 1988

The Honorable John F. Fader, II
Judge
Circuit Court for Baltimore County
County Courts Building
Towson, Maryland 21204

RE: People's Counsel v. Bell
Case No. 88CG2253

Dear Judge Fader:

I am in receipt of your Order of Court Remanding Case to Board of Appeals, dated October 18, 1988.

I note your third instruction to the Board of Appeals relative to Section 417 of the Baltimore County Zoning Regulations. Though I know it is clear to me as to the Court's intent, I am fearful that upon the matter being heard by the Board, it would be argued by the protestants, as well as People's Counsel, that the Board was authorized and instructed to accept additional evidence relative to Section 417.

I feel that the Court made it very clear in its comments from the bench that the Board of Appeals would not be authorized to accept additional testimony, but only would be authorized if the Board cared to, to make additional findings.

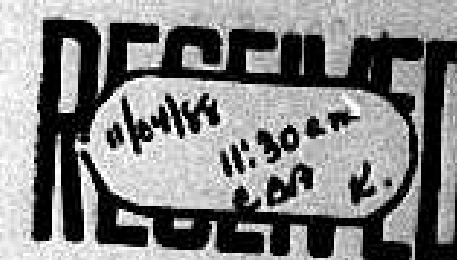
I would respectfully request that this Honorable Court make clear to the County Board of Appeals that it is not authorized, in accordance with the Order of October 18, 1988, to entertain any new evidence concerning Section 417 of the Baltimore County Zoning Regulations.

Thank you for your cooperation.

Very truly yours,

S. ERIC DINENNA
S. ERIC DINENNA

SED:cjc
cc: Phyllis Friedman, Esquire
Peter M. Zimmerman,
Deputy's People's Counsel
Michael Tanczyn, Esq.
County Board of Appeals
Mr. Walter Bell



DINENNA, MANN & BRESCHI
ATTORNEYS AT LAW

S. ERIC DINENNA, P.A.
JAMES L. MANN, JR., P.A.
CHRISTOPHER A. BRESCHI, P.A.
CHESAPEAKE BAY CRITICAL AREA
TOWSON, MARYLAND 21204
(301) 226-8828

October 21, 1988

County Board of Appeals
County Office Building
Towson, Maryland 21204

RE: Walter Bell, et ux. S/S Corsica
Road, 65'E of the C/I of Miles
Road 15th Election District
5 Councilmanic District
Board of Appeals No.: 87-395-SPH
Circuit Court Case No.: 88-CG-2253

Mr. Chairman and Members of the Board:

You are probably in receipt of an Order of Court of Judge Fader of the Circuit Court for Baltimore County remanding the above-captioned matter to you for certain findings pursuant to the Chesapeake Bay Critical Area Legislation.

In order to effectuate all rights, I would respectfully request that this matter be set in as quickly as possible and in the meantime, I am submitting to the Department of Environment, our findings and request they make comment back to us relative to this proposed use.

Very truly yours,

S. ERIC DINENNA
S. ERIC DINENNA

SED:bk
cc: Mr. Walter Bell
Mr. Paul Lee

*Copy of Court
Order received
11/14/88*

*Rec'd. 11/14/88
C.A.A.*

Baltimore County
Department of Environmental Protection
& Resource Management
County Courts Building
401 Basin Avenue
Towson, Maryland 21204
(301) 887-3723

REC'D
COUNTY BOARD
89 FEB -7 AM '89

February 3, 1989

Ms. Kathleen Weldenhammer
Administrative Secretary
Board of Appeals
County House, Room 200
Towson, Maryland 21204

Re: Walter Bell Property
Case No. 87-395-SPH

Dear Ms. Weldenhammer:

We are unable to complete our Chesapeake Bay Critical Area Findings for the Walter Bell Property because we have not received a Chesapeake Bay Critical Area Findings Plan and a Water Dependent Facilities Plan for the proposed project as requested.

According to Chesapeake Bay Critical Area Criteria (COMAC) (1, 2, 3, 4) and Baltimore County Development Regulations (Bill 39-88, Section 22-128), all new or expanded water dependent facilities are required to submit a Critical Area Findings Plan and a Water Dependent Facilities Plan. Mr. Eric DiNenna, Mr. Steve Broyles, Mr. Paul Lee and Mr. Walter Bell were made aware of this requirement at a meeting on January 13, 1989.

If you have any questions or if I can be of assistance, please contact me at 887-1980.

Very truly yours,

David C. Flowers
David C. Flowers
Program Coordinator
Chesapeake Bay Critical Area Program

DEF:ELC:jg

cc: Mr. Walter Bell
Mr. Eric DiNenna
Mr. Paul Lee
Mr. Steve Broyles
Mr. Peter Max Zimmerman

County Board of Appeals of Baltimore County

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

February 6, 1989

S. Eric DiNenna, Esquire
Mercantile-Towson Building
Suite 600, 409 Washington Avenue
Towson, MD 21204

RE: Case No. 88-CG-2253/56/253
Zoning File No. 87-395-SPH
Walter Bell, et ux

Dear Mr. DiNenna:

The Board met pursuant to the remand of the Circuit Court in the above case. A review of the evidence indicated that no further testimony was necessary in order for the Board to address the issues of the remand. Accordingly, the Board, after a thorough discussion of the matters set forth by Judge Fader, issued a Supplemental Opinion and Order this date, a copy of which is enclosed.

The Board, having issued its Supplemental Opinion and Order, withdraws Case No. 87-395-SPH from the proposed hearing date of February 28, 1989.

Very truly yours,

Thomas J. Bollinger
Thomas J. Bollinger, Acting Chairman
County Board of Appeals of
Baltimore County

Encl.

cc: The Honorable John F. Fader II
Circuit Court for Baltimore County
Michael P. Tanczyn, Esquire
Phyllis C. Friedman, Esquire
P. David Fields
Pat Keller
J. Robert Haines
Ann M. Mastarowicz
James E. Dyer
Docket Clerk - Zoning
Arnold Jablon, County Attorney

IN THE MATTER OF
THE APPLICATION OF
WALTER BELL, ET UX
FOR A SPECIAL HEARING ON PROPERTY
LOCATED ON THE SOUTH SIDE OF
CORSICA ROAD, 65 FEET EAST OF THE
CENTERLINE OF MILES ROAD
15th ELECTION DISTRICT
5th COUNCILMANIC DISTRICT
PHYLLIS C. FRIEDMAN, PEOPLE'S
COUNSEL FOR BALTIMORE COUNTY,
AND
DONALD W. DOYLE, ET AL,
PLAINTIFFS

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Thomas J. Bollinger, Harry E. Buchheister, Jr., and Arnold G. Foreman, constituting the County Board of Appeals of Baltimore County, and in answer to the Order of Remand directed against them in this case, herewith return the additional record of proceedings had in the above-entitled matter:

No. 87-395-SPH

October 19, 1988

February 6, 1989

February 6, 1989

Order of Judge Fader - REMANDED to the Board of Appeals for further opinion

Order of the Board that "having reviewed this Board's previous Order and now having addressed the concerns in the remand of the Circuit Court, it is hereby ORDERED that the further opinion issued...be forwarded to the Circuit Court...."

Additional record of proceedings filed in the Circuit Court for Baltimore County (Board's Supplementary Opinion, and Order of February 6, 1989.

Respectfully submitted

Kathleen C. Weldenhammer
Kathleen C. Weldenhammer
Administrative Secretary
County Board of Appeals of
Baltimore County

cc: S. Eric DiNenna, Esquire
Michael P. Tanczyn, Esquire
Phyllis C. Friedman, Esquire

County Board of Appeals of Baltimore County

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

February 10, 1989

Mr. Michael Tanczyn
Suite 100, 600 Baltimore Avenue
Towson, Maryland 21204

Re: Walter Bell Property
Case No. 87-395-SPH

Dear Mr. Tanczyn:

Per your request of this date, enclosed is a copy of the letter received from David C. Flowers on February 7, 1989. If I can be of any further assistance, please do not hesitate to contact me.

Very truly yours,

Linda M. Kuzmaul
Linda M. Kuzmaul

Enclosure

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353

J. Robert Haines
Zoning Commissioner

March 16, 1989



Dennis F. Rasmussen
County Engineer

S. Eric DiNenna, P.A.
Suite 600
409 Washington Avenue
Towson, MD 21204

RE: Mr. Bell's & Mr. Clemmitt's Piers,
Norman Creek
15th Election District

Dear Mr. DiNenna:

Having received your letter dated March 2, 1989 and after further review of the information this office has gathered on the above referenced matter, this office agrees that for Mr. Clemmitt to build a 130' pier (for a 120' pier as requested) would not be in conflict with Mr. Bell's pier or the possible 85' extension.

This office also agrees that the information shown on the site plan that Mr. Clemmitt provided and the information on his permit application do not agree, and I will require a revised site plan. The site plan will be required to show more detail and the existing features on the cove. The plan must be drawn to scale to reflect the 120' pier request found on Mr. Clemmitt's permit application.

If you have any questions, please do not hesitate to call me at 887-1391.

Very truly yours,

J. Robert Haines
Zoning Commissioner

cc: Mr. Bell

cc: Walter Bell
Dennis F. Rasmussen
Ted Calceola
Kristian A. Swan
John A. Winkler
John J. Martin
Paul J. Martin
William H. Evans
William A. Martin
Case File

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

December 27, 1989

The Honorable John F. Fader, II
Judge, Circuit Court for Baltimore County
County Building
401 Wesley Avenue
Towson, MD 21204

RE: Case No. 88-CR-2253/56/253
Walter Bell, et ux
(Zoning File No. 87-395-SPH)

Dear Judge Fader:

In reference to the above-captioned matter, the Board of Appeals is in receipt of the attached letter from Michael P. Tanczyn, Counsel for Mr. and Mrs. Paul Clemmitt. Although I personally did not sit on the panel of the Board of Appeals which considered this case, Chairman Hackett is presently ill and unavailable. In view of the relevant time constraints imposed by the B Rules pertaining to appeals from administrative agencies, as well as the fact that Mr. Tanczyn's letter was not copied to the Court, I felt compelled to address this correspondence to you.

I note that the Board originally considered this case and issued an Opinion April 20, 1988. That decision was appealed and subsequently remanded to the Board by your Order of October 18, 1988. Your Order indicates that this case "remains assigned to the undersigned Judge" and further that the Board should forward its further Opinion to you. The file then reflects that a subsequent Opinion was issued by the Board but again remanded by your Order of April 4, 1989. That second Order is silent as to whether this case remains assigned to you. A third Opinion was issued by this Board on November 29, 1989. Mr. Tanczyn's letter reflects his intention to seek judicial review of that Opinion.

Mr. Tanczyn's letter of December 26, 1989 states that "although Judge Fader at the time of remand of this case to the Board of Appeals stated that no further appeals need be taken...." This may well be an accurate representation of your comments from the bench to counsel but is not reflected within either Order. Under the circumstances, the Board requests the Court's instructions as to whether the standard procedures governing appeals need be followed in this instance.

Baltimore County, Maryland

PEOPLE'S COUNSEL
ROOM 304, COUNTY OFFICE BUILDING
111 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
494-2185

PHYLIS COLE FRIEDMAN
People's Counsel

October 27, 1989

The Honorable
William T. Hackett, Chairman
County Board of Appeals
Room 315, County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

RE: Walter Bell, Petitioner
Zoning Case No. 87-395-SPH

Dear Chairman Hackett:

It is a matter of record that the chief interest expressed by People's Counsel for Baltimore County involves the issue of compliance with Chesapeake Bay Critical Areas legislation. This was the reason for the appeal leading to the remand and the undertaking of the hearing just completed.

The Board has had the benefit not only of testimony by David Flowers, the Baltimore County coordinator of the program, but also by qualified experts presented by able attorneys for the Petitioner and the neighboring Protestants. It is fair to say that this expansion of waterfront construction, involving the relocation of slips outward into Norman Creek, has been given a very thorough examination. It is necessary to add that this is the first time that the critical area review process has been the subject of such intense scrutiny.

Suffice it to say that upon careful consideration, and recognizing that valid observations have been made by witnesses for the opposing points of view, I believe that the Baltimore County Department of Environmental Protection and Resource Management conducted a very fair and reasonable review. Mr. Flowers explained both the procedure and substance of the review, and there does not appear to be any specific error of law in that process.

Given the paramount interest of this office in the critical area element of the case, the comment on other special exception issues is one of neutrality.

Law Offices
Michael P. Tanczyn, P.A.
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
(301) 296-8823 (301) 296-8824
FAX (301) 296-8827

December 26, 1989

Baltimore County Board of Appeals
111 West Chesapeake Avenue
Towson, MD 21204

Re Case No. 87-395-SPH
Walter Bell, et ux, Petitioners

Gentlemen

Please note an appeal of the Board's Decision of November 29, 1989 in the above matter. Although Judge Fader at the time he remanded this case to the Board of Appeals stated that no further Appeals need be taken, please note this Appeal for the technical formality of the Decision of the Board.

This Appeal is noted on behalf of the same Protestants earlier noted as well as Mr. and Mrs. Paul Clemmitt, who participated in the most recent hearing before the Board.

The Petition to Accompany Appeal will be forwarded within the time limit specified for same.

Very truly yours,

Michael P. Tanczyn
Michael P. Tanczyn

MPT/ed

cc: S. Eric DiNenna, Esq.
Peter Max Zimmerman, Esq.
Mr. Donald W. Doyle
Mr. Jonathan Doyle
Mr. Brian Templeton
Mr. William Selig, Sr.
Mr. William Selig, Jr.
Mr. & Mrs. Paul Clemmitt

12-11-89 12:30:03
COUNTY BOARD OF APPEALS

October 27, 1989

The Honorable
William T. Hackett, Chairman
County Board of Appeals

Accordingly, the case is submitted to the Board for its usual thorough and careful analysis.

Very truly yours,

Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel

cc: S. Eric DiNenna, Esquire
Michael P. Tanczyn, Esquire
Robert W. Sheesley
David C. Flowers

PMZ:ah

The Honorable John F. Fader, II
December 27, 1989

Thank you for your advice as to this issue.

Very truly yours,

Lawrence E. Schmidt
Lawrence E. Schmidt
County Board of Appeals

LES:kcw

DICTATED BUT NOT READ.

Enclosure

cc: Michael P. Tanczyn, Esquire
S. Eric DiNenna, Esquire
Peter Max Zimmerman, Esquire

County Board of Appeals of Baltimore County

Room 200 Court House
Towson, Maryland 21204
(301) 494-3180
Fax 204-1788

Michael P. Tanczyn, Esq.
Suite 106, 606 Baltimore Ave.
Towson, Md. 21204

Re: Case No. 87-395-SPH
Walter Bell, et ux

Dear Mr. Tanczyn:

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-captioned matter within thirty days.

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

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

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

Very truly yours,

Jane Holman
Jane Holman, Secretary

Enclosure

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
494-3359

Arnold Jablon
Zoning Commissioner

May 11, 1987

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

Dennis F. L.

RE: Petition for Special Hearing
S/S Corsica Road, 65' E of the c/l of Miles Road
15th Election District, 5th Councilmanic District
Walter Bell, et ux - Petitioner
Case No. 87-395-SPH

Dear Board:

Please be advised that on May 11, 1987, an appeal of the decision rendered in the above-referenced case was filed by S. Eric DiNenna, Esquire, on behalf of Mr. Walter Bell, the Petitioner. All materials relative to the case are being forwarded to your office herewith.

If you have any questions concerning this matter, please do not hesitate to contact this office.

Very truly yours,

Arnold Jablon
ARNOLD JABLON
Zoning Commissioner

AJ:bjs

cc: S. Eric DiNenna, Esquire
Mercantile-Towson Bldg., Suite 600
409 Washington Avenue, Towson, Md. 21204

Newton A. Williams, Esquire
204 W. Pennsylvania, Towson, Md. 21204

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

File

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
494-3357

Arnold Jablon
Zoning Commissioner

May 11, 1987



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

Detrus F. ...

RE: Petition for Special Hearing
S/S Corsica Road, 65' E of the c/l of Miles Road
15th Election District, 5th Councilmanic District
Walter Bell, et ux - Petitioner
Case No. 87-395-SPH

Dear Board:

Please be advised that on May 11, 1987, an appeal of the decision rendered in the above-referenced case was filed by S. Eric DiNenna, Esquire, on behalf of Mr. Walter Bell, the Petitioner. All materials relative to the case are being forwarded to your office herewith.

If you have any questions concerning this matter, please do not hesitate to contact this office.

Very truly yours,

Arnold Jablon
ARNOLD JABLON
Zoning Commissioner

AJ:bjs

cc: S. Eric DiNenna, Esquire
Mercantile-Towson Bldg., Suite 600
409 Washington Avenue, Towson, Md. 21204

Newton A. Williams, Esquire
204 W. Pennsylvania, Towson, Md. 21204

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

File

DINENNA, MANN & BRESCHE
ATTORNEYS AT LAW
SUITE 600
MERCANTILE BUILDING
409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 296-6870
TELEFAX (410) 296-6884

February 3, 1989

RECEIVED
FEB 3 1989
ZONING OFFICE

RE: My Client: Walter Bell
Corsica Road

Dear Mr. Commissioner:

Please be advised that I represent Mr. and Mrs. Walter Bell, the owners of 2225 and 2229 Corsica Road, in the Fifteenth Election District of Baltimore County.

Much to my client's surprise, there is beginning construction of a pier on a property located at 354 Miles Road and owned by Mr. and Mrs. Paul Clemmitt. Upon my client's investigation with Baltimore County and upon inquiries he has made, no one in the applicable Baltimore County Departments have a plan that was to be approved concerning the construction of this pier.

Please be advised that my client operates a boat yard and presently enjoys a special exception and as a result of a special hearing, can expand his pier 85 feet.

I refer you to Section 417 of the Baltimore County Zoning Regulations wherein all applications for waterfront construction must be accompanied by a plan to be approved. Furthermore, notice of the proposed construction shall be given by the Department of License and Permits to adjoining property owners. My client is an adjoining property owner and has not received any notification.

As a result of his investigation, he learned that Permit No. B000721 was issued on or about January 19, 1989. No plans were in any file nor available for review as to what the anticipated construction would be.

Accordingly, I respectfully request that you withdraw your approval of this Permit and I am further requesting that the Director of Permits and Licenses withdraw his approval and his issuance of the Permit until the property owner complies with all applicable rules and regulations.

Thank you for your consideration regarding this matter.

Very truly yours,

S. ERIC DINENNA

SED:cjc
cc: Mr. Walter Bell
Director of Permits & Licenses
Army Corps of Engineers

DINENNA, MANN & BRESCHE
ATTORNEYS AT LAW
SUITE 600
MERCANTILE BUILDING
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TOWSON, MARYLAND 21204
(410) 296-6870
TELEFAX (410) 296-6884

March 2, 1989

RECEIVED
MAR 2 1989
ZONING OFFICE

RE: Walter Bell
Permit No. B000721
Location: 354 Miles Road

Dear Mr. Commissioner:

Please refer to my correspondence of both February 17, 1989 and February 22, 1989, concerning the above-captioned matter.

After a further review of the plans and the Corps of Engineers' approval, it appears that the Corps of Engineers have approved a plan for the Clemmitt's property not to exceed 130 feet. The site presented to Baltimore County shows a pier of 150 feet.

In discussing this matter further with Mr. Bell, my client, Clemmitt's pier is to be 130 feet. My client has no objection, but still very much concerned that upon the application to Baltimore for the pier permit, the entire Cove was not shown on the plan accompanied the application for the permit.

This is further to confirm our personal conversation concerning this matter and your indication that you felt that the 130 foot pier would not interfere with my client's use of his property pursuant to the zoning granted to the property. This appears to be confirmed through my client's engineer.

Accordingly, so long as the permit issued to Mr. Clemmitt is for a pier not to exceed 130 feet, including the "T" at the end of the pier, my client has no objections and therefore would withdraw any objection thereto. If the pier is to be more than 130 feet, then my client is still objecting and requesting Baltimore County look into this matter further.

I wish to further request that you inquire as to how a permit would be issued by Baltimore County on a pier showing a 150 foot pier when the Corps of Engineers have approved one for only 130 feet maximum.

Please respond in writing to me concerning the approval process as to the conflict between the Corps of Engineers' approval and Baltimore County's.

I wish to thank you and your staff for their cooperation and help in this matter.

Very truly yours,

S. ERIC DINENNA

SED:cjc
cc: Director of Permits & Licenses
Army Corps of Engineers

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(410) 887-3353

February 15, 1989

RE: 354 Miles Road
15th Election District

Mr. S. Eric Dinenna, P.A.
Suite 600, 409 Washington Avenue
Towson, Maryland 21204

Dear Mr. Dinenna:

In response to your letter dated February 3, 1989, enclosed find the following information: 1) A copy of the record plot with the two properties highlighted (Your clients' and Mr. Clemmitt's); 2) A copy of the plan and a letter from the Army Corps of Engineers, which were filed at the time of the permit application; and 3) a partial print-out of the ownership of the lot immediately to the northeast of 354 Miles Road.

The records I have reviewed from the Office of Zoning do not seem to indicate a conflict between the existing facilities and the pier Mr. Clemmitt is in the process of constructing. Therefore, no notice of proposed construction appears to have been necessary for adjoining land owners. Furthermore, as evidenced by Maryland State Tax Records, it does not appear that your client has adjoining property to Mr. Clemmitt.

If you have further questions on this matter, please feel free to contact Ms. Milton at 887-3391.

Very truly yours,

J. Robert Haines
Zoning Commissioner

JRH/cor

cc: Ted Zaleski - Director, Dept. of Permits & Licensing
Doug Swam - Processing Supervisor, Dept. of Permits & Licensing
Kate Milton - Planning & Zoning Associate II - Zoning Office

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(410) 887-3353

March 16, 1989

S. Eric Dinenna, P.A.
Suite 600
409 Washington Avenue
Towson, MD 21204

RE: Mr. Bell's & Mr. Clemmitt's Piers,
Norman Creek
15th Election District

Dear Mr. Dinenna:

Having received your letter dated March 2, 1989 and after further review of the information this office has gathered on the above referenced matter, this office agrees that for Mr. Clemmitt to build a 130' pier (or a 120' pier as requested) would not be in conflict with Mr. Bell's pier or the possible 85' extension.

This office also agrees that the information shown on the site plan that Mr. Clemmitt provided and the information on his permit application do not agree, and I will require a revised site plan. The site plan will be required to show more detail and the existing features on the Cove. The plan must be drawn to scale to reflect the 120' pier request found on Mr. Clemmitt's permit application.

If you have any questions, please do not hesitate to call me at 887-3391.

Very truly yours,

J. Robert Haines
Zoning Commissioner

CAN:scj

cc: Walter Bell
Dennis P. Rasmussen
Ted Zaleski, Jr.
Douglas A. Swam
Linda Milching
Councilman Norman W. Lauenstein
Councilman William R. Evans
Catherine A. Milton
Case File

DINENNA, MANN & BRESCHE
ATTORNEYS AT LAW
SUITE 600
MERCANTILE BUILDING
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TOWSON, MARYLAND 21204
(410) 296-6870
TELEFAX (410) 296-6884

February 17, 1989

RECEIVED
FEB 17 1989
ZONING OFFICE

RE: My Client: Walter Bell
Corsica Road

Mr. J. Robert Haines
Zoning Commissioner for
Baltimore County
County Office Building
Towson, Maryland 21204

Dear Mr. Commissioner:

Please refer to my letter of February 3, 1989, wherein I advised you that I represent Mr. and Mrs. Walter Bell concerning the property on Corsica Road in the Fifteenth Election District of Baltimore County.

I advised you as to a surprise construction of a pier on property adjoining my clients. I further advised you that there has been no notice to my client of this construction in accordance with Section 417 of the Baltimore County Zoning Regulations.

By copy of that letter I informed the Director of Permits and Licenses, but as of this date have not had a response from either you or the Director of Permits and Licenses.

This is to advise you that I have been instructed by my client that if any construction begins to take place concerning this matter, all parties thereto will be held responsible for any actions taken by the property owner and any approvals made thereof.

I phoned you on February 16th, but unfortunately you were not in. I also phoned the Director of Permits and Licenses and he was not available.

I think my letter of February 3, 1989 is fully explainable with reference to my client's rights.

If any damage is sustained by my client, we will hold all parties responsible thereof.

Please advise me of your position in this matter.

Very truly yours,

S. ERIC DINENNA

SED:cjc
cc: Director of Permits & Licenses
Army Corps of Engineers
Mr. Dennis Rasmussen
Mr. Norman Lauenstein
Mr. William Evans
Mr. and Mrs. Walter Bell

DINENNA, MANN & BRESCHE
ATTORNEYS AT LAW
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TOWSON, MARYLAND 21204
(410) 296-6870
TELEFAX (410) 296-6884

February 22, 1989

RECEIVED
FEB 22 1989
ZONING OFFICE

RE: My Client: Walter Bell
Permit No.: B000721
Location: 354 Miles Road

J. Robert Haines
Zoning Commissioner for
Baltimore County
County Office Building
Towson, Maryland 21204

Dear Mr. Commissioner:

Please refer to my letters of February 3, 1989 and February 17, 1989, wherein I indicated to you that I represent Mr. and Mrs. Walter Bell, property owners on Corsica Road, which adjoins the above-captioned property.

In my previous letters I indicated that no plans had been submitted, but I later discovered that plans had been submitted upon which the permit was based aforesaid.

Enclosed herewith please find a copy of the plan and a copy of the permit issued to the Miles Road property.

Also, enclosed herewith please find copies of a plan of my client's property pursuant to Case No. 87-395-SPH, has the authority to extend his pier 85 feet.

It is obvious from the plans submitted by the Clemmitt's, the owners of the property on Miles Road, that they did not show the curvature of the land and my client's authorization to build his pier.

Accordingly, it is my opinion that this pier was applied for in error, insufficient information was given on the plan that accompanied this application for permit, or otherwise was presented for other reasons.

Accordingly, it is my request that the permit issued and your authorization pursuant to the permit signed by your staff member, be withdrawn immediately and that you request the Director of Permits and Licenses to stop construction and issue a stop work order on this pier.

I do refer you to Section 417 of the Baltimore County Zoning Regulation and this is to advise you that no notice was given to my client nor, to the best of my knowledge, any other property owner, with reference to the construction of the pier on Miles Road.

Unless I receive a response from you within seven (7) days from the date of this letter, I will have no alternative but to request the court to issue an injunction and a mandamus relative to this matter in order to protect my client's rights.

I would respectfully request that I get a response immediately and if you have any questions, please contact me.

Very truly yours,

S. ERIC DINENNA

SED:cjc
cc: Director of Permits and Licenses
Mr. Walter Bell
Mr. Dennis Rasmussen

p.s.: J. Robert Haines

Dear Mr. Haines:

I am in receipt of your letter of February 15, 1989.

This does not change my position above in that the property owner, Clemmitt, did not show you the total picture. Your definition of adjoining may be different than our definition of adjoining, but we are directly adjoining the subject property by water and accordingly, have an interest in notice. I also remind you that Section 417.3(c) indicates a conflict with existing construction that notice of the proposed construction is to be given to the adjoining property owners affected by the Director of Permits and Licenses. We have an approved special hearing to expand a pier, that it is now on an appeal, but said granting by the Board of Appeals has the full force and effect of law. In addition thereto, the plans of Clemmitt do not show the existing pier of my client.

This is very serious and I respectfully request that all permits be withdrawn and stop work orders be issued.

SED

P.C. involved

The Circuit Court for Baltimore County

THIRD JUDICIAL CIRCUIT OF MARYLAND

JOHN F. FADER, II
JUDGE

March 30, 1990

COUNTY COURTS BUILDING
TOWSON, MARYLAND 21204
(301) 296-2900

S. Eric DiNenna, Esq.
Suite 600
Mercantile Towson Building
409 Washington Avenue
Towson, Maryland 21204

Michael P. Tanczyn, Esq.
Suite 106
606 Baltimore Ave.
Towson, Maryland 21204

✓ Peter Max Zimmerman, Esq.
People's Counsel for Baltimore County
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: People's Counsel for Baltimore Counsel
v. Walter Bell, Et ux.
Case No. 88 CG 2253

Dear Counsel:

The court has received the letter of March 22, 1990 from Mr. DiNenna regarding this case. We note that no transcript of the last hearing before the Board of Appeals is in the file and that Judge Nickerson extended the time to file the transcript until May 30, 1990.

Mr. Tanczyn should notify me upon filing the transcript with the court, at which time I will pull the file and set the matter in for hearing before me.

Very truly yours,

John F. Fader II
John F. Fader II
Judge

JFF:am

DiNENNA, MANN & BRESCHI
ATTORNEYS AT LAW

S. ERIC DINENNA, P.A.
JAMES L. MANN, JR., P.A.
CHRISTOPHER A. BRESCHI, P.A.

P.O. BOX 15308
TOWSON, MARYLAND 21204-0308

SUITE 600
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409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

(301) 296-6820
TELEFAX (301) 296-6844

March 22, 1990

The Honorable John F. Fader, II
Judge
Circuit Court for Baltimore County
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

RE: Case No.: 88-CG-2253
Docket No. 56
Folio 253
Walter Bell, et ux.

Dear Judge Fader:

You may recall that you remanded the above-captioned matter to the County Board of Appeals for taking of testimony concerning the Chesapeake Bay Critical Area Law.

All testimony has been taken and Mr. Tanczyn, Counsel for the Protestants, has filed an Appeal from the decision of the County Board of Appeals in the taking of that testimony from their Opinion and Order to this Honorable Court. It was my impression, as well as everyone's impression, that you would be hearing the total matter of the original Appeal as well as the Appeal from the Board to the Circuit Court in its totality.

Accordingly, I would respectfully request that the total matter be set back in for hearing as soon as possible.

Thank you for your cooperation.

Very truly yours,

S. Eric DiNenna
S. ERIC DINENNA

SDC:jc
cc: Michael P. Tanczyn, Esquire
County Board of Appeals
Peter Max Zimmerman, Esquire
Mr. Walter Bell

Law Offices
Michael P. Tanczyn, P.A.
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
(301) 296-6823 (301) 296-6824
FAX (301) 296-6827

May 1, 1990

Baltimore County Circuit Court
County Courts Building
401 Bosley Avenue
Towson, MD 21204

Re People's Counsel et al vs
Walter Bell, et al
Case No. 88-CG-2253

Gentlemen

Enclosed herewith please find Appellants' Motion to Vacate Order Denying Motion to Extend Time in the above captioned matter.

Very truly yours,

Michael P. Tanczyn
Michael P. Tanczyn

MPT/ed
Enclosure

cc S. Eric DiNenna, Esq.
Baltimore County Board of Appeals
Baltimore County People's Counsel
Mr. Donald W. Doyle
Mr. Jonathan Doyle
Mr. Brian Templeton
Mr. William Selig, Sr.
Mr. William Selig, Jr.
Mr. Paul Clement

19:11 MW C-14W06
RECEIVED
COUNTY BOARD OF APPEALS

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY, et al,
vs.
WALTER BELL, et al,
Appellants,
Appellees.

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

Case No. 56/253/88CG-2253

**MOTION TO VACATE ORDER
DENYING MOTION TO EXTEND TIME**

NOW COMES, Donald Doyle, et al, Appellants, by Michael P. Tanczyn, their attorney, who requests this Honorable Court vacate the Order dated April 26, 1990 denying the Motion to Extend Time and for reasons say.

1. The instant Appeal followed two remands from the Circuit Court for Baltimore County to the Baltimore County Board of Appeals.

2. The confusion was created by the Court's decision to hold the remaining issues which were neither argued nor decided at the time of hearing of the first Appeal but which were to be heard after the final decision from the Baltimore County Board of Appeals was returned to the Circuit Court for Baltimore County. The degree of confusion is represented by the letter by the Chairman of the Baltimore County Board of Appeals to Judge Fader (copy attached) questioning whether a separate Appeal was even required after the Appellant, out of an abundance of caution, chose to file one.

1

B. Schedule a hearing.

Michael P. Tanczyn
MICHAEL P. TANCZYN, ESQ.
Attorney for Appellants
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
Telephone (301) 296-6823

I HEREBY CERTIFY that, on this 3rd day of May, 1990, a copy of the foregoing was mailed, postage prepaid, to S. Eric DiNenna, Esq., Suite 600, Mercantile Towson Building, 409 Washington Avenue, Towson, Maryland, 21204, attorney for the Appellee; Board of Appeals for Baltimore County, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland, 21204; Phyllis Cole Friedman, Esq., People's Counsel for Baltimore County, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland, 21204.

Michael P. Tanczyn
MICHAEL P. TANCZYN, ESQ.

7/12/90 87-395-SPH Walter Bell - Judge Brennan ORDERED Motion to Vacate Order DENYING Motion to Extend Time GRANTED; board's transcript remand hearing to be forwarded to CCT within 30 days; also all further proceedings to be directed to Judge Fader.

PEOPLE'S COUNSEL, et al,
Appellants,
vs.
WALTER BELL, et al,
Appellees.

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

Case No. 88-CG-2253

ORDER

UPON CONSIDERATION of the Motion to Vacate Order and the response thereto and after hearing, it is this 12th day of July, 1990, by the Circuit Court for Baltimore County,

ADJUDGED AND ORDERED, that the Motion to Vacate Order dated April 26, 1990 denying the Motion to Extend Time is granted and it is further

ADJUDGED AND ORDERED, that the transcript in the instant case shall be forwarded to the Circuit Court for Baltimore County within thirty (30) days of this Order date; and it is further

ADJUDGED AND ORDERED, that the Clerk shall mark the file to insure that all further proceedings in this matter are directed to the Honorable John F. Fader, II, Associate Judge of this Court.

Alfred L. Brennan, Jr.
HONORABLE ALFRED L. BRENNAN, JR.
JUDGE

Gloria D. Gatti

RECEIVED
COUNTY BOARD OF APPEALS
30 JUL 10 1990



County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 657-3180

February 2, 1990

NOTE TO FILE:

RE Case No. 87-395-SPH Walter Bell, et ux
Circuit Case No. 88 CG 2253

Pursuant to Judge Fader's letter of January 25, 1990, no appeal has in fact been taken from the Board's November 29, 1989 Supplementary Opinion and Order in accordance with procedures provided by law.

Therefore, the Board will close the file.

Thomas E. Short
County Board of Appeals

As the case on remand was not heard by the Board, the taking of certain testimony, the transcript previously submitted contained the evidence on the Board of Appeals. The Board of Appeals has decided by the Board of Appeals that which were held pending receipt of the testimony.

The case does not involve a failure of testimony as in the case of the transcript of the first Appeal is still in the Court's hands, but rather a direct result of confusion as to whether another Appeal was requested since counsel for the parties was under the impression that the case would go back to Judge Fader for the remaining issues as well as any new issues raised in further proceedings before the Board of Appeals following the first Appeal.

The issues in this Appeal are important not only to the parties but additionally to all concerned with the environmental effects of the Petitioner's proposed pier and as well as resolution of how to properly extend property lines under the Baltimore County Zoning Regulations. The property lines under the Baltimore County Zoning Regulations are in a cove for which there is scant authority present.

WHEREFORE, Appellants request this Honorable Court:

A. Vacate the Order of April 26, 1990 denying the Motion to Extend Time and reinstate the prior Order of Judge Nickerson granting the Appellants' Motion to Extend Time; and

3. As the case on remand was not heard de novo but restricted to the taking of certain testimony, the bulk of the transcript previously submitted contained the evidence before the Board on many of the issues not decided by the first appeal decision but which were held pending receipt of the testimony.

4. The case does not involve a failure to take testimony ab initio since the bulk of the transcript from the first Appeal is still in the Court's hands, but rather is a direct result of confusion as to whether another Appeal even was required since counsel for the parties was under the correct impression that the case would go back to Judge Fader for decision on the remaining issues as well as any new issues raised by the further proceedings before the Board of Appeals following remand.

5. The issues in this Appeal are important not only to the parties but additionally to all concerned with the environmental effects of the Petitioner's proposed pier extension as well as resolution of how to properly extend divisional property lines under the Baltimore County Zoning Regulations for waterside property in a cove for which there is scant authority at present.

WHEREFORE, Appellants request this Honorable Court.

A. Vacate the Order of April 26, 1990 denying their Motion to Extend Time and reinstate the prior Order of Judge Nickerson granting the Appellants' Motion to Extend Time; and

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Towson, Maryland 21204
(301) 296-8823 (301) 296-8824
FAX (301) 296-8827

July 12, 1990

Baltimore County Board of Appeals
111 West Chesapeake Avenue
Towson, MD 21204

Re: People's Counsel et al vs Bell et al
Case Number 56/253/88-CG-2253

Gentlemen:

Judge Brennan, after hearing, granted the Appellants' Doyle, et al's Petition to Vacate on July 12, 1990 and an Order has been submitted to the Court. Once it is signed it will be forwarded to the Board of Appeals for your files.

I have separately contacted Carolyn Peatt, Court Reporter, to request that she renew transcription of the testimony, which must be filed with the Court within 30 days of the Judge's Order.

If there will be any problems whatsoever in meeting that deadline, I would appreciate receiving word back from the Board or Mr. Peatt, to whom I am sending a copy of this letter.

Thank you very much for your attention to this.

Very truly yours,

Michael P. Tanczyn

cc: Mr. Peatt, Esq.
Mr. Eric DiNenna, Esq.
Baltimore County People's Counsel
Mr. Donald W. Doyle
Mr. Jonathan Doyle
Mr. Brian Templeton
Mr. William Selig, Sr.
Mr. William Selig, Jr.
Mr. Paul Clement

DINENNA, MANN & BRESCHI
ATTORNEYS AT LAW

June 26, 1990

Judge Brennan, Sr.
Circuit Court for Baltimore County
401 South Avenue
Towson, Maryland 21204

RE: Case No.: 88-2111
People's Counsel v. Bell, et al.

Dear Judge Brennan:

I am in receipt of your notification to all counsel of the hearing scheduled for July 12, 1990 at 9:30 a.m. on the Motion to Vacate your Order.

I have a minor conflict in that I am sitting as a Master in the Circuit Court for Baltimore County with my docket beginning at 9:30 a.m. on that same date and time. I am afraid that the matter before you will take more than one-half hour and I would respectfully request that this matter be rescheduled on that same date and time, if possible, at approximately 11:00 to 11:30 a.m. I should be finished by docket by that time.

Thank you for your cooperation.

Very truly yours,

S. ERIC DINENNA

cc: Phyllis Cole Friedman, Esquire
Peter Max Zimmerman, Esquire
People's Counsel
Michael P. Tanczyn, Esquire
Mr. Walter Bell

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

May 30, 1990

S. Eric DiNenna, Esquire
DiNenna, Mann & Breschi
P.O. Box 10508
Towson, Maryland 21205-0508

Re: Case No. 87-395-SPH (Walter Bell, et ux)

Dear Mr. DiNenna:

This is to acknowledge your letter of May 23, 1990 which accompanied the Motion to Dismiss Appeal which you have filed on behalf of the Appellees. The convoluted history of this case is well set forth in your Motion. However, the fact that your Motion requests that "this Honorable Court" dismiss the appeal, notwithstanding that the Motion is filed with the Board is confusing.

In my view, the Board has concluded its involvement with this case and if the matter is active at all, such activity is before the Circuit Court. Obviously, once the matter is appealed to the Circuit Court, the Board no longer has jurisdiction.

Therefore, I am inclined to deny your Motion in that I believe it is filed improperly with this Board. However, prior to doing so, will schedule a hearing at your request if you wish to be heard.

Very truly yours,

Lawrence E. Schmidt
County Board of Appeals

LES:lmk

cc: Michael P. Tanczyn, Esquire
Peter Max Zimmerman, Esquire
Deputy People's Counsel

DINENNA, MANN & BRESCHI
ATTORNEYS AT LAW

May 23, 1990

Clerk
County Board of Appeals
of Baltimore County
County Office Building, Room 315
111 W. Chesapeake Avenue
Towson, Maryland 21204

RE: Case No.: 87-395-SPH
In The Matter Of The
Application of Walter Bell, et ux.

Dear Sir/Madam:

Enclosed herewith for filing please find Appellees' Motion to Dismiss Appeal and accompanying Order.

Thank you for your cooperation.

Very truly yours,

S. ERIC DINENNA

cc: Michael P. Tanczyn, Esquire
Peter Max Zimmerman, Esquire
Mr. Walter Bell

The Circuit Court for Baltimore County

May 11, 1990

S. Eric DiNenna, Esq.
Suite 600
Mercantile-Towson Building
409 Washington Avenue
Towson, Maryland 21204

Michael P. Tanczyn, Esq.
Suite 106
606 Baltimore Avenue
Towson, Maryland 21204

cc: Peter Max Zimmerman, Esq.
People's Counsel for Baltimore County
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: People's Counsel for Baltimore Counsel
v. Walter Bell, et ux.
Case No. 88 CG 2253

Dear Counsel:

I pulled the above captioned case on May 1, 1990 to rule on the Motion to Vacate (paper 40) and notice that Judge Brennan had filed an order in the case dated April 26, 1990. It appears that this order disposes of the case in favor of the appellees.

Very truly yours,

John F. Pader II
Judge

JFF:am

DINENNA, MANN & BRESCHI
ATTORNEYS AT LAW

May 10, 1990

Clerk
Circuit Court for Baltimore County
County Courts Building
P. O. Box 6754
Towson, Maryland 21204

RE: People's Counsel for Baltimore
County, et al. v. Bell, et al.
Case No.: 56/253/88CG-2258

Dear Clerk:

Enclosed herewith for filing please find the Response to Motion to Vacate Order Denying Motion to Extend Time in the above-captioned case. Thank you for your cooperation.

Very truly yours,

GERALDINE A. KLAUSE

cc: Michael P. Tanczyn, Esquire
Board of Appeals for Baltimore County
Phyllis Cole Friedman, Esquire

Law Offices
Michael P. Tanczyn, P.A.
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
(301) 296-8823 (301) 296-8824
FAX (301) 296-8827

May 1, 1990 CLOSED

Baltimore County Circuit Court
County Courts Building
401 Bosley Avenue
Towson, MD 21204

Re: People's Counsel et al vs
Walter Bell, et al
Case No. 88-CG-2253

Gentlemen:

Enclosed herewith please find Appellants' Motion to Vacate Order Denying Motion to Extend Time in the above captioned matter.

Very truly yours,

Michael P. Tanczyn

MPT/ed
Enclosure

cc: S. Eric DiNenna, Esq.
Baltimore County Board of Appeals
Baltimore County People's Counsel
Mr. Donald W. Doyle
Mr. Jonathan Doyle
Mr. Brian Templeton
Mr. William Selig, Sr.
Mr. William Selig, Jr.
Mr. Paul Clement