

IN RE: PETITION FOR SPECIAL HEARING * BEFORE THE
 NES Gooseneck Road, 700' west *
 of Goose Harbor Road * ZONING COMMISSIONER
 (1326 Goose Harbor Rd) *
 15th Election District * OF BALTIMORE COUNTY
 5th Councilmanic District *
 James Myrick, et ux * CASE # 89-2-SPH
 Petitioners *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests a Special Hearing to amend a site plan (to include fuel tanks) approved 9-20-78 which accompanied permit No. CFC-13, as more particularly described on Petitioner's Exhibits 1.

The Petitioners appeared and were represented by John B. Gontum, Esquire. The Petitioners were supported by the testimony of Mrs. Cecile Myrick, Dennis Fandl and David Jorio. The Protestants, Ruth Gress and Theodore Gress appeared, were represented by Ralph K. Rothwell, Jr. and testimony was provided by Mrs. Ruth Gress.

The evidence and testimony clearly establishes that the parties are extreme adversaries and do not agree or cooperate on any issue or subject. The testimony of the Petitioner, clearly, establishes that the smaller 250 gallon oil tank, as noted on Petitioner's Exhibit 1 is in error because the tank is actually 275 gallons. This tank services the home with heating oil and has been in existence since the Petitioner purchased the property. The property in question is commonly referred to as 1326 Goose Harbor Road, Baltimore, Maryland 21220. The property is currently zoned R.C.5. and is subject to a zoning use permit for secondary commercial fishing, crabbing and shellfish operation. The property is located on Seneca Creek and is improved with

a residence garage and cool box structure.

The purpose for this hearing is to provide an amended site plan indicating the two fuel oil tanks, the first of which has been described above as a residential fuel oil tank. The second fuel oil tank, located at the water's edge is for the specific purpose of fueling the Petitioner's commercial fishing vessels and is 500 gallons in size. Cecile Myrick, testified that there is an ongoing fishing operation which has been in continuous uninterrupted operation since 1978. Mr. James Myrick has been vacant from the home due to domestic problems on various occasions. That the fishing operation has continued uninterrupted even during those periods of time. That the Petitioners' son, Terry A. Myrick, is actively engaged in the commercial fishing operation which is currently ongoing. That the 500 gallon fuel oil tank was placed at its location in the late 1960s or early 1970s.

There was a great deal of testimony and proffered testimony by Petitioner's attorney as to the necessity for commercial fuel oil tanks and the need to service commercial fishing boats. Likewise, there was a great deal of testimony concerning the unavailability of this type of fuel oil in the nearby harbors.

The Protestant, Mrs. Gress, testified that she is extremely opposed to the operation of a commercial fishing establishment next door to her property. She explained at great length how ugly and unsightly the Petitioner's project is and how the zoning regulations, by permitting such a use, work a direct hardship upon her. She also

testified to the ongoing expansion of the fishing operation and the fact that Mr. James Myrick is not living in the same household with Mrs. Myrick at 1326 Goose Harbor Road.

There was also a great deal of testimony by Mrs. Gress, that the Petitioners are mean and un-neighborly. That they have caused her and her husband a great deal of stress and inconvenience. Mrs. Gress also talked about her unhappiness with the Baltimore County Government and the lack of what she considers to be appropriate action and enforcement against Mr. and Mrs. Myrick. Mrs. Gress explained at great length her unhappiness with the Zoning Commissioner and the Zoning Commissioner's staff. She believes she is not receiving proper consideration by County employees.

The evidence, clearly, establishes that Mrs. Gress is very unhappy with almost everyone and she does not approve of the decisions made by the County Council when they enacted the Baltimore County Zoning Regulations (B.C.Z.R.) permitting commercial fishing, crabbing and shellfish operations in the D.R. zone. The Baltimore County Zoning Commissioner is not empowered to re-write the B.C.Z.R. and I will not attempt to second guess the Baltimore County Council on the issue of desirability.

The issue before the Zoning Commissioner would appear to be whether or not particular items, namely, fuel oil tanks, were appropriately included as part of the fishing and shellfishing operation at the time the use permit was issued, but were inadvertently not included on the site plan filed at that time and, furthermore, whether or not any additional requirements set forth in the B.C.Z.R. have been or will be complied with by this project.

This is not a hearing about residency requirements for Mr. Myrick or whether or not earlier site plans were produced in an inappropriate manner. The question before the Zoning Commissioner is as to the currently offered site plan which is marked Petitioner's Exhibit 1. There is no evidence this plan is not correct.

The Protestants claim the Petitioners are expanding or increasing the amount of site area devoted to this fishing and shellfishing use by amending this site plan. This is a very valid issue to be raised in this type of case. A quick review of the law, clearly, establishes that the Myricks may not expand this operation without the benefit of a Special Exception.

The Baltimore County Council has made this point very clear. In Bill No. 97-75, enacted by the Baltimore County Council on November 7, 1975, effective December 22, 1975, established commercial fishing, crabbing or shellfishing operations in R.C. 2, 3, and 5 zones. This legislation mandated that any such use existing on the date of enactment of the law could continue at the same level of intensity provided the user obtained a use permit from the Zoning Commissioner. The R.C. Zones were not created until the adoption of the comprehensive zoning maps by the Council in October, 1976, effective November, 1976. In June, 1978, the Council passed Bill No. 30-78, effective June 22, 1978, which repealed Bill No. 98-75 and, in effect, deleted any reference to use permits and provided that fishing and shellfishing facilities in R.C. 2, 3, and 5 Zones be allowed only by special exception. In the interim period, between 1976 and the passage of Bill No. 30-78, use permits were submitted for approval to the Zoning Commissioner and were subsequently approved after Bill No. 30-78

not violate the requirements of the Chesapeake Bay Critical Area Protection Laws and that the water quality is not adversely impacted by this oil tank or its operation. This certification shall be obtained on or before March 1, 1989 and an original copy of the certification shall be filed with the Zoning Commissioner when obtained by the Petitioner and made a permanent part of the Zoning Commissioner's file.

J. Robert Haines
 J. ROBERT HAINES
 Zoning Commissioner for
 Baltimore County

JRF:mmm
 cc: Peoples Counsel
 John B. Gontum, Esquire
 Ralph K. Rothwell, Jr., Esquire
 James and Cecile Myrick
 Ruth and Theodore Gress
 Chesapeake Bay Critical Area Commission

does spill into the water when the boat is filled. The recommendations of the Department of Environmental Protection and Resource Management are, clearly, just that recommendation. The Inter Office Correspondence of June 14, 1988 is a statement of law and a recommendation, pursuant to the requirements of the B.C.Z.R. However, an official recommendation dealing with only water runoff is not enough to establish that there is no adverse impact on water quality from pollutants from structures or conveyances, such as the fuel oil tanks.

The restrictions set forth below will correct any possible pollution problem. The Petitioner shall correct any actual pollution problem as directed by the Baltimore County Department of Environmental Protection and Resource Management.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the requested Special Hearing should be Granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 24th day of August, 1988, that the Petitioner for Special Hearing to amend a site plan (to include fuel tank) approved 9-20-78 which accompanied permit No. CFC-13, as more particularly described on Petitioner's Exhibits 1, be and is hereby GRANTED, subject to the following restrictions which are conditions precedent upon the Order:

1. The Petitioner shall install any and all equipment required by the Baltimore County Department of Environmental Protection and Resource Management to correct any water quality problems that may or may not result from the improper storage or handling of fuel oil at the water's edge.
2. The Petitioner shall obtain written certification from the Department of Environmental Protection and Resource Management that the operation of the 500 gallon fuel oil tank does

both of the fuel oil tanks were not present when the original use permit was issued on October 10, 1978.

The Protestants argue that no change in a site plan may take place after the use permit is issued. The Protestants cite Section 1B01.1.C.7A.d. of the B.C.Z.R. They claim that all amendments of a site plan is by nature an expansion and not permitted.

This argument is based on two incorrect foundations. First, as stated above, expansion is a factual determination and I find no expansion in this amended plan. Secondly, the Protestant has misapplied the facts of this case. The subject property is zoned R.C.5. Section 1B01.1.C.7A.d. does not apply to the R.C.5. zoned properties; this section only applies to D.R. zoned land. Section 1A04.2.B.7. applies to this case and does not contain the same restrictions as 1B01.1.C.7A.d. about new site plans.

The regulations do not prevent a holder of a valid commercial fishing, crabbing or shellfishing use permit from filing a revised or amended site plan. The question for the Zoning Commissioner is whether or not that new site plan increases the site area or changes the operation. In the case at bar, the amended plan does not expand, change or increase the operation.

No testimony was offered by the Petitioners to substantiate all of the requirements of the Chesapeake Bay Critical Area program and the Chesapeake Bay Critical Area protection laws, as set forth in the B.C.Z.R.

Specifically, the Petitioners presented no evidence that the fuel oil tanks would or would not result in water pollution or harm to the Chesapeake Bay. There was testimony by the Protestant that fuel oil

went into effect. Approval, however, was contingent upon a site plan being submitted and total compliance being attained by the user. Because of the confusion rendered by the late approvals, the Council passed Bill No. 139-83 validating the continuation of such shellfishing activities by those who submitted site plans in 1977 and which were approved in 1978. This legislation recognized the importance of those site plans by reemphasizing the language of Bill No. 98-75, to wit, limiting the continued use to that which existed at the time the use permit was approved. Any attempt to expand the use as defined by the site plan would require a special exception and would not be allowed by amending the site plan.

The issue of an expanded use of the Myrick property was addressed by Zoning Commissioner, Arnold Jablon, in case No. 84-147XSPA. The Zoning Commissioner found that an expansion may not take place by filing an amended site plan, but required a full Special Exception. He, therefore, denied the attempt to expand this site. I agree with the reasoning of that case and would likewise not permit an expansion without benefit of a Special Exception.

The facts before me in this matter are very different. There is no evidence of an expansion. The evidence is that the fuel oil tank for the house was installed when the house was built. The boat fuel oil tank was installed before 1975.

Even the Protestants must agree that a lot of improved land, called a site, cannot be expanded when the items, namely, fuel oil tanks, were unquestionably present prior to the effective date of the legislation. I refuse to find, as a matter of fact, that either one or

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Townson, Maryland 21204
494-3353
J. Robert Haines
Zoning Commissioner

August 24, 1988



Dennis F. Rasmussen
County Executive

John B. Contrum, Esquire
809 Eastern Boulevard
Essex, Maryland 21221

RE: Petition for Special Hearing
Case No. 89-2-SPH
James Myrick, et ux, Petitioners

Dear Mr. Contrum:

Enclosed please find the decision rendered on the above captioned case. The Petition for Special Hearing has been granted, in accordance with the attached Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days of the date of the Order to the County Board of Appeals. If you require additional information concerning filing an appeal, please feel free to contact our Appeals Clerk at 494-3391.

Very truly yours,

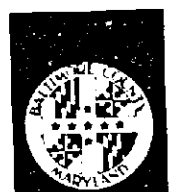
J. Robert Haines
Zoning Commissioner

JRH:mmm
att.

cc: Peoples Counsel
Ralph K. Rothwell, Esquire
James and Cecile Myrick
Ruth and Theodore Gress
Chesapeake Bay Critical Area Commission

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Townson, Maryland 21204
494-3353
J. Robert Haines
Zoning Commissioner

May 26, 1988



Dennis F. Rasmussen
County Executive

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

Petition for Special Hearing
CASE NUMBER: 89-2-SPH
NE3 Goose Neck Road, 700' W Goose Harbor Road
(1326 Goose Harbor Road)
15th Election District - 5th Councilmanic
Petitioner(s): James Myrick, et ux
HEARING SCHEDULED: THURSDAY, JULY 14, 1988 at 11:00 a.m.

Special Hearings to amend site plan approved 8/20/78 which accompanied permit number C70-14, to include fuel tank.

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

J. ROBERT HAINES
Zoning Commissioner of
Baltimore County
cc: Mr. & Mrs. James Myrick
John B. Contrum, Esq.
File

PETITION FOR SPECIAL HEARING TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plan attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 506.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve to amend site plan to include fuel tank approved 9-26-78 which accompanied permit no. C70-14.

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

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

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

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Legal Owner(s):

(Type or Print Name)

Signature

(Type or Print Name)

Signature

Attorney for Petitioner:

(Type or Print Name)

Signature

Address

City and State

Attorney's Telephone No.:

1326 Goose Harbor Road, 335-4284

Address

Baltimore, Maryland 21220

City and State

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

Name

Address

Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 4th day of May, 1988, 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, Maryland, and that the public hearing be held before the Zoning Commission on the 14th day of July, 1988, at 11 o'clock.

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

No. 50455

DATE 3-31-88 ACCOUNT R-01-615-000

AMOUNT \$ 35.00

RECEIVED FROM: J. Robert Haines

FOR: Petition for Special Hearing

VALIDATION OR SIGNATURE OF CASHIER

6/28 June 23, 1988

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"DUPLICATE" CERTIFICATE OF PUBLICATION

TOWSON, MD., June 23, 1988

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., once in each of successive weeks, the first publication appearing on June 23, 1988.

THE JEFFERSONIAN,

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CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY Towson, Maryland

District 15th

Posted for: Special Hearing

Petitioner: James Myrick, et ux

Location of property: NE3 Goose Neck Rd., 700' W Goose Harbor Rd.

1326 Goose Harbor Rd.

Location of Sign: NE3 Goose Neck Rd., 700' W Goose Harbor Rd.

Property of: James Myrick, et ux

Remarks: None

Posted by: J. Robert Haines

Date of return: 6/29/88

442 Eastern Blvd.
Towson, MD 21221

June 23, 1988

THIS IS TO CERTIFY, that the annexed advertisement of

was inserted in The Avenue News a weekly newspaper

listed in Baltimore County, Maryland once a week for one

successive week(s) before the 24th day of June, 1988.

that is to say, the same was inserted in the issue of 6/23/1988

The Avenue Inc.

per publisher

6/23/1988

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6/23/1988

RE: PETITION FOR SPECIAL HEARING : BEFORE THE ZONING COMMISSIONER
NE3 Goose Neck Rd., 700' W Goose Harbor (1326 Goose Harbor Rd.), : OF BALTIMORE COUNTY
15th District :
JAMES MYRICK, et ux, Petitioners : Case No. 89-2-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 13th day of June, 1988, a copy of the foregoing Entry of Appearance was mailed to John B. Contrum, Esquire, 809 Eastern Blvd., Essex, MD 21221, Attorney for Petitioners.

Peter Max Zimmerman
Peter Max Zimmerman

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Townson, Maryland 21204
494-3353
J. Robert Haines
Zoning Commissioner

Date: June 23, 1988

Mr. & Mrs. James Myrick
1326 Goose Harbor Road
Baltimore, Maryland 21220

Re: Petition for Special Hearing
CASE NUMBER: 89-2-SPH
NE3 Goose Neck Road, 700' W Goose Harbor Road
(1326 Goose Harbor Road)
15th Election District - 5th Councilmanic
Petitioner(s): James Myrick, et ux
HEARING SCHEDULED: THURSDAY, JULY 14, 1988 at 11:00 a.m.

Dear Mr. & Mrs. Myrick:

Please be advised that \$93.02 is due for advertising and posting of the above-referenced property. All fees must be paid prior to the hearing. Do not remove the sign and post set(s) from the property from the time it is posted by this office until the day of the hearing itself.

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

BALTIMORE COUNTY, MARYLAND No. 52957
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

DATE 7/14/88 ACCOUNT R-01-615-000

AMOUNT \$ 93.02

RECEIVED FROM: James Myrick

FOR: Petition for Special Hearing

VALIDATION OR SIGNATURE OF CASHIER

6/28 June 23, 1988

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PAGE 2

Section 1, section 101, paragraph 2 of Exhibit No. 1 (Bill 30-78) sets forth a description of the Class One License and provides "that is situated on a lot also occupied by the primary residence of its operator, who is a person required to have a license by any of the provisions of Title 4 of the Natural Resources Article of the Annotated Code of Maryland." At the instant hearing, it was made quite clear that the primary residence of the operator of the business was no longer 1326 Goose Harbor Road. Furthermore, there was no testimony that Mr. Myrick, at this time, possessed a license as required under Title 4 of the Natural Resources Article of the Annotated Code of Maryland which said license would appear to be a continuing requirement for his use permit and any attendant or subsequent modifications of the site plan attached to his use permit.

Furthermore, Section 3, subparagraph d of the same bill indicates that "no increase in the amount of floor or site area or in the number of boats devoted to the use nor any other change in the site plan is made." That refers, of course, to the site plan which was to have been originally filed with the application for the use permit. (Emphasis in both quotes added by the writer here).

It is, therefore, clear that as the subject property is no longer the primary residence of the operator of the business, the operator has no standing to request an amendment to the site plan; may, in fact, have no right to continue the use of the premises under the original use permit. Furthermore, the law makes it very clear that it contemplates no change from the site plan originally approved in 1978. There is no provision in that law to amend or modify subsequent thereto.

In closing, while the issue in this case may seem insignificant when compared to others heard by Zoning Commissioner, it is of importance to the Gresses as there has been continual and unrelenting attempts by the Myricks to increase the use of their property since obtaining their permit in 1978 and through their behavior in operating their business to aggravate the Gresses. Thus, each and every zoning matter which arises out of the Myrick property is of great significance to the Gresses. The applicant argues that there is relevance in the site plans of other fishing facility operators as to whether or not they show fuel tanks. Testimony would seem to indicate to the contrary. Although Mrs. Myrick testifies and Mr. Gontum proffers certain alleged proffers about other site plans and the existence of fuel tanks, Mrs. Gress testifies that when she had inquired of certain of those operators about the existence of fuel tanks, they denied it. Is the reason for the denial, in fact, the knowledge that those tanks are there illicitly? The simple fact of the matter is that other operators and other site plans are irrelevant. The fact that one may have zoning violations on an adjacent property does not legitimize zoning violations on your property.

The credibility of the applicant is a part of any hearing, especially so in this case, given the long history of litigation. As Mrs. Myrick testified and was verified by Mr. Gontum upon the commissioner's question, the applicant had produced a fraudulent site plan in 1982 which involved the use of a surveyors certificate without authorization by the person allegedly preparing a plan for the applicant. Even more significantly though and related to the reason for the introduction by the protestants of several additional site plans is the fact that the operator has had more than ample

Baltimore County
Department of Public Works
Bureau of Traffic Engineering
County Office Building
Towson, Maryland 21204
494-3554

May 23, 1988

Mr. J. Robert Haines
Zoning Commissioner
County Office Building
Towson, Maryland, 21204

Dear Mr. Haines:

The Bureau of Traffic Engineering has no comments for items number
362 381, 382, 383, 384, 385, 386 and 389.

Very truly yours,

Stephen E. Weber, P.E.
Assistant Traffic Engineer

SEW/RF/pml-b

#89-2-SPH

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

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

Your petition has been received and accepted for filing this
4th day of May, 1988.

Petitioner: James Myrick, et ux
Petitioner's Attorney: John B. Gontum, Esquire

Received by: James E. Dyer
Chairman, Zoning Plans
Advisory Committee

MASLAN, MASLAN AND ROTHWELL, P.A.

M. MICHAEL MASLAN
GARY R. MASLAN
RALPH K. ROTHWELL, JR.
LINDA EVE PERCY

July 21, 1988

Mr. Robert Haines
Zoning Commissioner for Baltimore County
111 West Chesapeake Avenue, Room 113
Towson, Maryland 21204

Re: Case No: 89-2-SPH
Northeast Side Gooseneck Road
700 Ft. West Gooseneck Harbor (1326
Goose Harbor Road)
Special Hearing to Amend Site Plan
Approved 9/20/78 Accompanying Permit
No: CFC-13 to Include Fuel Tank
Petitioner- James Myrick

Dear Commissioner Haines:

On behalf of my clients, Mr. & Mrs. Theodore Gress, the only protestants to attend the hearing in this matter, I am submitting this closing brief. It is my understanding that counsel should address in their brief the issues of any residence requirements contained in the shellfishing and commercial fishing regulations and to use this opportunity as a summation.

Enclosed and attached hereto as Exhibit No. 1, is a photocopy of bill number 30-78 of the County Council of Baltimore County Maryland. This bill is the operative legislation that created the categories of fishing and shellfishing facility, shoreline which is the subject of this case. The original application for a zoning use permit referred to by the applicant in this case was submitted by James R. Myrick, Sr. alone. I refer to a copy of that application contained in the zoning file and attach for quick reference purpose, a photocopy as Exhibit No. 2 of this brief. That application was approved October 10, 1978 as a "Secondary commercial fishing, crabbing and shellfishing operation." The present application to amend the site plan was filed by both James R. Myrick, Sr. and his wife. At the hearing, only his wife testified. There was testimony that Mr. Myrick no longer resides at 1326 Goose Harbor Road and has not lived there for about a year. There was also testimony elicited on my cross examination that there had been an earlier period also of approximately a year prior to this separation when he did not reside at the premises. Very clear testimony by Mrs. Myrick elicited on my cross examination that the primary operator of the licensed facility was Mr. Myrick assisted by one or more of his sons. Mrs. Myrick alleged that she had some involvement with the business relative to book-keeping and that she had, on occasion, been on the boats but not recently. The fact that Mr. Myrick is the operator of the business is clear and undisputed and is evidenced by his earlier application and the testimony of his wife.

Baltimore County
Fire Department
Towson, Maryland 21204-2586
494-4500

May 18, 1988

Paul H. Reinke
Chief
J. Robert Haines
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, MD 21204

Re: Property Owner: James Myrick, et ux

Location: NE/S Gooseneck Rd., 700' W. of Goose Harbor

Item No.: 362

Zoning Agenda: Meeting of 5/3/88

Gentlemen:

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

() 1. Fire hydrants for the referenced property are required and shall be located at intervals of _____ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.

() 2. A second means of vehicle access is required for the site.

() 3. The vehicle dead end condition shown at _____

EXCEEDS the maximum allowed by the Fire Department.

(X) 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

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

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

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

REVIEWER: [Signature] Noted and Approved: [Signature]
Planning Group Fire Prevention Bureau
Special Inspection Division

* - 500 gallon fuel tank shall be installed in accordance with NFPA Std. 30, 1981 Edition, after tank permit is obtained from Permits & Licenses.

Memo to Mr. J. Robert Haines
June 14, 1988
Page Two

The proposed development will comply with the law provided that the zoning petition is conditioned on compliance with the following requirements:

1) Three major deciduous trees or six conifers or six minor deciduous trees are planted and maintained on the lot. A combination of these three tree types is acceptable provided that 3,000 square feet of tree cover is provided. A large deciduous tree is estimated to cover 1,000 square feet and a minor deciduous or conifer 500 square feet.

2) Storm water run-off from impervious surfaces associated with this petition should be directed over pervious areas such as lawn to encourage maximum infiltration.

Please contact Mr. David C. Flowers at 494-3980 if you have any questions.

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

RWS:DCF:tjg

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

June 28, 1988

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

John B. Gontum, Esquire
809 Eastern Boulevard
Essex, Maryland 21221

RE: Item No. 362 - Case No. 89-2-SPH
Petitioner: James Myrick, et ux
Petition for Special Hearing

Dear Mr. Gontum:

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. Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning. Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,

JAMES E. DYER
Chairman
Zoning Plans Advisory Committee

JED:dt

Enclosures

cc: Frank S. Lee
1277 Neighbors Avenue
Baltimore, Maryland 21237

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Mr. J. Robert Haines
Zoning Commissioner

DATE: June 14, 1988

FROM: Mr. Robert W. Sheesley

SUBJECT: Petition for Special Hearing, Proposed Fuel
Oil Storage Tanks for Shellfishing Facility
James & Cecil Myrick

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JUN 24 1988
ZONING OFFICE

Subject property is located on the north side of Gooseneck Road west of Goose Harbor Road situated on Seneca Creek. There is an existing fish- ing and shellfishing facility. The request is for two fuel oil tanks, one for 500 gallon and the other for 250 gallon.

This property is within the Chesapeake Bay Critical Area and is classified as Limited Development Area.

Commercial water-dependent fishery facilities including, but not limited to, structures for crab shedding, fish off-loading docks, shellfish culture operations, and shore-based facilities necessary for aquaculture operations, and fisheries activities, may be permitted in the Buffer in [COMAR 14.15.03.10(B)]

However, the fuel tanks must adhere to County regulation, but not limited to location, safety standards of design and use.

In accordance with the Chesapeake Bay Critical Area Program, all project approvals shall be based on a finding that 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
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(C)(1)(2)(3)]

IN THE MATTER OF
JAMES R. MYRICK, ET UX.
FOR SPECIAL HEARING
TO AMEND SITE PLAN
ON GOOSENECK ROAD

BEFORE
ZONING COMMISSIONER
FOR
BALTIMORE COUNTY
CASE NO. 89-2-SFH

MEMORANDUM OF PETITIONERS

STATEMENT OF CASE

This case came before the Zoning Commissioner for Baltimore County on July 14, 1988, based on a Petition for Special Hearing to Amend a site plan to include fuel tanks. The Petition was accepted for filing on May 4, 1988. The Site Plan was accepted on September 20, 1978, as part of a use permit granted for a secondary commercial fishing and crabbing and shellfish operation.

STATEMENT OF FACTS

On October 10, 1978, a zoning use permit was granted for a secondary commercial fishing and crabbing and shellfishing operation at the Myrick premises on Gooseneck Road. The use permit was granted pursuant to Bill No. 98-75, which defined a secondary commercial fishing, crabbing and shellfishing operation as follows:

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HENNEGAN
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Secondary-A residential property which is the domicile of a person engaged full or part time as a commercial fisherman and who is required under Title 4 of the Department of Natural Resources to possess a license for the purpose of catching by net, line, trap or tongs, of fish, crabs (sic) or shellfish and has limited facilities for the storage and berthing of a commercial fishing boat and the loading or unloading of catches and gear.

This legislation subsequently was amended by Bill No. 30-78, which established new definitions for the use as follows:

Fishing and shellfishing facility, shoreline: A principal use that consists of the buildings, equipment or other facilities necessary to accommodate the onshore activities of a fishing and shellfishing business (including retailing or wholesaling of the catches) and that is situated on a lot on the shoreline of tidal waters.

Fishing and shellfishing facility, shoreline, Class I: A shoreline fishing shellfishing facility that can accommodate a fishing business no larger than that entailing the use of not more than 2 commercial fishing boats and that is situated on a lot also occupied by the primary residence of its operator, who is a person required to have a license by any of the provisions of Title 4 of the Natural Resources Article of the Annotated Code of Maryland. For the purposes of these Regulations, a "commercial fishing boat" does not include a boat more than 45 feet long.

Fishing and shellfishing facility, shoreline, Class II: A shoreline fishing and shellfishing facility other than a Class I shoreline fishing facility.

At the hearing it was established that the subject property was owned by James and Cecile Myrick and had been occupied by Mrs. Myrick and her sons continuously and without interruption since 1978. Mr. Myrick has from time to time lived elsewhere for periods less than one (1) year due to domestic problems. No evidence was offered that the sons also engaged in the business and living on the premises ever lived

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elsewhere, nor was there any evidence offered as to any other location being Mr. Myrick's "primary residence".

Testimony with respect to the fuel tanks indicated that there were two above-ground fuel tanks on the property in the locations indicated by the May, 1988 site plan (Pet. Ex. 1). One fuel tank located on the side of the residence was used solely for fuel oil for the residence. The other fuel tank located on the waterfront of the property contained fuel oil plus an additive and was used for the diesel-engine boats. The site plan indicated location for a 500 gallon tank at this location.

There was no dispute over the fact that fuel tanks had been so located on the property since 1978 and the inspections involved in the use permit. No previously filed site plan, however, had ever indicated the fuel tanks, and the Myricks had been told in the past by the zoning office that they did not have to be so indicated on the site plan. It was uncontroverted that other residences on Gooseneck Road also had above-ground tanks for fuel oil.

There was dispute over the availability of fuel oil for boat use. Mrs. Myrick testified that to her knowledge no marina in the area sold fuel oil from pumps and that it was simply unavailable. Mrs. Gress stated that she had talked to another commercial fisherman, Robert Eurice, and that he had told her it was available. Mr. Eurice was cited by Mrs. Myrick as one of the commercial watermen in the area who also

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used diesel fuel for his boats from a tank on his site. The fuel tank issue has not been the subject of any violations before the Zoning Commissioner or the District Court although the issue was raised by Judge Baldwin in *dicta* in a proceeding before him last year. During the same proceeding the issue of Mr. Myrick's absence from the site was raised, again with no further proof, and no mention was made of it by Judge Baldwin in his notes or in his findings.

DISCUSSION

I.

The fact that Mr. Myrick has been periodically absent from the property has absolutely no relevance or material bearing on the issue before the Zoning Commissioner on the proposed site plan amendment. First, this case is about the inclusion of fuel tanks now and previously existing on a site plan. Whether Mr. Myrick is or is not residing on the property is not germane to this amendment. Obviously, if the requirements of the permitted facility are not being met, then that issue may be raised at an appropriate violation proceeding. If the requirements of the zoning regulations are not met in an area, the proper forum is a zoning violation proceeding to resolve them or an independent action. Assuming, for example, that a violation of some sort existed with respect to use of the site existed whether it be an

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unqualified user or an improper use itself or a mislocated use, none of these issues pertain to whether or not the site plan itself should be amended. All of these issues should be dealt with separately. At this proceeding it is a true "red herring".

The zoning regulations restrict operation of a Class I facility to a resident who is qualified to be the holder of the appropriate state licenses. There is no mention in the regulations that the resident must also be the owner. Usually, the owner is also the resident in this business but not always. In this case we would contend that although Mr. Myrick has been absent from time to time he still uses the premises as his primary residence. As an owner of the premises along with his wife they have the standing to request a change in the site plan.

Even if the argument as to an appropriate user is viewed as an affirmative defense to the proceeding then the burden is on the party raising it to prove it. The only testimony presented was that Mr. Myrick at present and from time to time in the past has lived elsewhere periodically. No testimony was presented, however, that this location was not his "primary residence". The Protestants offered no proof with respect to this matter, and it was asserted by Mrs. Myrick that despite marital difficulties it was still considered his primary residence. In addition, it was incumbent for the Protestants to show that no other resident of the property was

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qualified, but although there was testimony that the business involved the entire family from Mrs. Myrick, this issue was not addressed by Protestants. In fact, not only does Mrs. Myrick work actively in the business, but her son who also lives on the property and is engaged in commercial fishing and shellfishing also has all the appropriate licenses. (See Attachment A). It is up to Protestants to show that no person using the property as their primary residence is engaged in the commercial fishing or shellfishing business. They clearly have not and in fact can not meet their burden of proof.

It is clear that the use permit like other zoning runs with the land and is not personal to the individual user. It is the property which may be used in a particular way and like a special exception, now required for the use in an R.C. zone, it is not personal to the user who made the original application. See 3 Anderson, American Law of Zoning 3rd ed., Sec. 21.32.

II.

In this case all that Petitioners tried to do was to indicate on a site plan the current usage of the site and to locate the two long-existing fuel tanks on the property. It is true that perhaps the location of these tanks on the site plan was not necessary. Location of such tanks in the past on similar applications has not been required. If the tanks were

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used solely in connection with a residence and recreational boats, there would surely be no argument that these or similar proceedings would not be necessary. Obviously, homes heated by fuel oil must have fuel oil tanks and given the proximity of the tanks to the waterfront and the high water table they must be located above ground. As Mr. Fandel testified, all of the homes along Gooseneck Road have them.

With respect to the fuel tank for the boats common sense dictates its location near the water; otherwise, a long hose which would have to be stored would be required to reach the boats. The fuel tank has existed at this location since the mid-1970's, and has never constituted a hazard or a zoning issue. Its location corresponds to the portion of the site most heavily used and designated on the existing site plans for the commercial operation. It obviously does not constitute any environmental hazard as evidenced by the comments of the Department of Environmental Protection and Resource Management. The proposed plantings by that department are acceptable to Petitioners.

Failure to permit the tank would cause a true burden to Petitioners as it would require bringing fuel oil on-site in cans. This surely would be unduly burdensome as it would not be required if the boats were used recreationally.

The comment of the Planning Department makes no sense at all, and frankly we do not understand it. On the one hand it is against the request; on the other hand it recommends a

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larger tank. The record indicates that the site is being utilized in compliance with approved site plans per Judge Baldwin's finding. This was not disputed at the hearing. The fuel required by the boats is slightly different than the fuel used by the oil heater in the house as it contains an additive. Surely mixing the additive independent of the tank would create greater problems than the current arrangement. The Gress's stated that their objection was not to the tank located along their property line next to the house, but they might well object if it were enlarged.

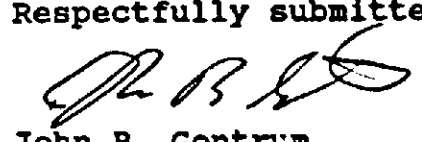
Granting the request to amend the site plan in no way enlarges or expands the existing usage of the site. The site plan indicates that the waterfront tank will be located within the already permitted crab pot storage area. It is located away from the neighbors' residences where it has been located for many years without complaint. Mrs. Gress's complaints as articulated by her were not aimed at this use but at the commercial usage generally. This does not expand on it but provides a practical and least obtrusive way of serving it. There is no detriment to the health, safety or general welfare of the community in this request as evidenced by the comments and the historic nature of the use as requested. Failure to grant the request would create a practical difficulty for Petitioners that would not be justified by any other gain.

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SUMMARY

In conclusion Petitioners respectfully request that their Petition to amend their site plan to show the fuel tanks as indicated by granted subject to compliance with fire and environmental comments.

Respectfully submitted,

 John B. Gontrum
 Attorney for Petitioners

cc. Ralph Rothwell, Esq., Atty. for Protestants

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 HENNEGAN
 & FODS
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BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: J. Robert Walnes, Zoning Commissioner
 Date: June 7, 1988
 FROM: P. David Fields, Director, Office of Planning and Zoning
 SUBJECT: Zoning Petition 88-2-SPH

This office is opposed to the proposed location of the tank. It is suggested that the existing tank be replaced with one of additional capacity. Finally, this office believes that the property is already utilized excessively.

P. David Fields per J. Walnes
 P. David Fields, Director
 Office of Planning and Zoning

PDF/jat
 cc: Shirley Reas, People's Counsel
 J. Howell
 Zoning File

cc: John B. Gontrum, Esquire

CP5-008

STATE OF MARYLAND
 DEPARTMENT OF NATURAL RESOURCES
 TIDAL FISH LICENSE
 Licensee: TERRY A. MYRICK
 1228 Goose Neck Rd
 Baltimore, MD 21220
 License No. 94-2111
 License Type: 000014
 License Fee: \$11.89
 License Period: 12-22-89
 License Status: M

RECEIVED
 JUL 29 1988
 ZONING OFFICE

STATE OF MARYLAND • DEPARTMENT OF NATURAL RESOURCES
 LICENSING AND CONSUMER SERVICES • PO BOX 1569 • ANNAPOLIS, MARYLAND 21404-1569
 APPLICATION FOR TIDAL FISH LICENSE
 DATE: 7-22-88
 NAME: James R. Myrick
 STREET, BOX OR APT. NO.: 1326 Goose Neck Rd.
 CITY: Baltimore, MD 21220
 COUNTY: Baltimore
 STATE: MD
 ZIP: 21220
 SEX: ☒ MALE ☐ FEMALE
 LENGTH OF MD. RESIDENCE: 2 yrs.
 CLERK OF COURT: [Signature]
 TIDAL FISH LICENSE — (Please check regulations on each type of license before use)
 CHECK LICENSE DESIRED:
 I. TO PROVIDE SERVICES AS A FISHING GUIDE IN TIDAL WATERS
 FISHING GUIDE RESIDENT (must present a copy of Coast Guard Captain's license) \$ 35.00 FGR
 FISHING GUIDE NON-RESIDENT (must present a copy of Coast Guard Captain's license) 100.00 FGR
 II. TO CATCH FOR SALE FINFISH AND EELS (Net applicants sign statement on reverse)
 *1. LIMITED OCEAN NET (nets, seines, trawls, and pots used in ocean but including not more than 200 yards of gill nets) 100.00 LON
 *2. LIMITED BAY NET (nets and seines used in bays but including not more than 200 yards of gill nets) 50.00 LIN
 *3. BAY POT AND FISHES (FINFISH AND EELS) (pots and seines used in bays - Ed license required in Worcester County only see reverse side) 25.00 BPP
 *4. HOOK & LINE (hook and line anywhere including Potomac River) 25.00 HLL
 *5. UNLIMITED NET (More than 200 yards of gill nets and all equipment in 1. through 4. above) 125.00 UNE
 III. TO CATCH FINFISH FOR PERSONAL CONSUMPTION WITH A RESTRICTED GILL NET
 *RESTRICTED GILL NET (Up to 50 yards of gill net (Special Regulations for Worcester County. See reverse).) 25.00 RGN
 IV. TO CATCH CRABS FOR SALE
 *1. LIMITED CRAB CATCHER (Up to 50 pots, trotlines, nets, dip nets, traps, pounds, and scrapes) 50.00 LCC
 *2. MORE THAN 50 CRAB POT (Worcester County restricted to 150 pots - see reverse) 150.00 APT
 *3. UNLIMITED CRAB CATCHER (All equipment in 1. and 2. above) 175.00 UCC
 V. TO CATCH CRABS FOR NON-COMMERCIAL PURPOSES
 NON-COM. CRAB CATCHER (Resident) (trotline and up to 50 collapsible crab traps) 10.00 NCR
 NON-COM. CRAB CATCHER (Non-Resident) (trotline and up to 50 collapsible crab traps) 20.00 NCH
 VI. TO CATCH CONCH AND TERRAPIN FOR SALE
 *CONCH & TERRAPIN 20.00 CTC
 VII. TO CATCH OYSTERS, SOFT-SHELL CLAMS, AND HARD-SHELL CLAMS FOR SALE
 1. CLAM HYDRAULIC DREDGE (Soft-shell clams and hard-shell clams using hydraulic dredge) 100.00 CHD
 2. OYSTER HARVESTER (Oysters by dredge, tonging, handpicking in authorized areas) (No use using dredge separator) 50.00 OHT
 3. OCEAN CLAM (Soft clams and ocean quahogs by any lawful method) 50.00 OCL
 4. HARD-SHELL CLAM RAKE (Hard-shell clams by rake only) 30.00 HCR
 5. UNLIMITED SHELLFISH HARVESTER (All equipment in 1. through 4. above) 200.00 USH
 6. OYSTER DREDGE BOAT (Oysters by dredge boat) (Boat No. Name Board No. Owner) 250.00 ODB
 OYSTER POWER DREDGE (SOMERSET COUNTY ONLY) (Must surrender Oyster Harvester License to qualify) 50.00 OPD
 VIII. FOR A RESIDENT TO CATCH ANY FISH IN TIDAL WATERS BY METHODS OUTLINED IN I. through VII. 25.00 TRP
 IX. TO BUY, PROCESS, PACK, RESELL, MARKET, OR OTHERWISE DEAL IN FISH
 FISH DEALER (ALL SPECIES) 150.00 RDL
 X. NON-RESIDENT OYSTER TONGER PERMIT 25.00 NOP
 XI. RESIDENT OYSTER DREDGE BOAT PERMIT 15.00 ROD
 XII. JUNIOR/SENIOR CRAB (RESIDENT) NO FEE JSC
 XIII. SENIOR CRAB POT (RESIDENT) NO FEE SPC
 XIV. INACTIVE COMMERCIAL FINFISH 5.00 ICF
 LATE FEE - FINFISH OR CLAM LICENSE ONLY, LATE FEE ADD AFTER 8:31 - 50% OF FEE LISTED ABOVE 0.15 LFE
 *NON-RESIDENT SURCHARGE (350.00 or reimport)
 TOTALS: \$200.00

CFC-13
 APPLICATION FOR ZONING
 USE PERMIT
 This Use Permit is requested in accordance with Section 500.4 and B. Co. Bill 98-1 of the Baltimore County Zoning Regulations.
 The property in question is situated in the 15th Election District of Baltimore County, and is more specifically located on the East side of Goose Neck Road, 2/10 of a mile north of Goose Neck Road. The total net area is 12,750 sq. feet.
 This property is presently zoned RC-5.
 The use for which this permit is requested is commercial fishing and crabs and shellfish operation, wholesale & retail sale of fish and the following items can be utilized in the operation and/or will be stored on the premises: storage and use of crab pots, netting, slough boxes and live boxes, sale of fish and crabs from cool box, use and storage and deckage of boats, and use of dockage facilities.
 Approximately 25% of the total area of the property will be utilized in the operation.
 Said use is more specifically detailed on the attached scale drawing.
 Licensee: James R. Myrick, Esq.
 Address: 1326 Goose Neck Rd., Baltimore, Maryland 21220
 Legal Owner: [Signature]
 Address: 501 E. Joppa Rd., Baltimore, Maryland 21220
 IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 10th day of Oct, 1988, that the herein described property should be and the same is hereby approved as a Secondary Commercial fishing, crabs and shellfish operation.
 [Signature]
 Zoning Commissioner of Baltimore County

County Council of Baltimore County Maryland

Legislative Session 1978, Legislative Day No. 10

BILL NO. 30-78

Mr. John W. O'Rourke, Councilman

By the County Council, April 3, 1978

A BILL ENTITLED

AN ORDINANCE to allow shoreline fishing AND SHELLFISHING facilities, by special exception, in D.R. zones in addition to permitting the continuation of existing shoreline fishing AND SHELLFISHING facilities in such zones, by repealing the definitions of "commercial fishing, crabs, and shellfish operation" and enacting in lieu thereof the definitions "fishing AND SHELLFISHING facility, shoreline; fishing AND SHELLFISHING facility, shoreline, Class I; and fishing AND SHELLFISHING facility, shoreline, Class II" in Section 101 of the Baltimore County Zoning Regulations; by repealing and re-enacting subparagraph 1A01.2.C.6, 1A02.2.B.10, 1A04.2.B.7, and by adding new subparagraph 7A to paragraph 1B01.1.C; all of the Baltimore County Zoning Regulations.

WHEREAS, the County Council has received a final report from the Baltimore County Planning Board, and has held a public hearing thereon, recommending the adoption of legislation allowing shoreline fishing AND SHELLFISHING facilities by special exception in D.R. zones in addition to permitting the continuation of existing shoreline fishing AND SHELLFISHING facilities in such zones; and

WHEREAS, the County Council has determined that the adoption of the legislation referred to herein is in the best interests of the citizens of Baltimore County and that it affects

(Page 3 — Bill No. 30-78)

1A02.2.B.10. [Commercial fishing, crabs and shellfish operation, Primary or Secondary, except that any such use existing at the time of date of enactment of this subsection may continue at the same level of intensity provided that within 365 days of the enactment date of this legislation, they shall file for a use permit as prescribed under Section 500.4 of the Zoning Regulations] Fishing AND SHELLFISHING facilities, shoreline, Class I or II

1A04.2.B.7. [Commercial fishing, crabs and shellfish operation-Primary or Secondary, except that any such use existing at the time of date of enactment of this subsection may continue at the same level of intensity provided that within 365 days of the enactment date of this legislation, they shall file for a use permit as prescribed under Section 500.4 of the Zoning Regulations] Fishing AND SHELLFISHING facilities, shoreline, Class I or II

SECTION 3. Be it further ordained, that new subparagraph 7A is hereby added to paragraph 1B01.1.C of the Baltimore County Zoning Regulations, to read as follows:

7A. Fishing AND SHELLFISHING facilities, shoreline, Class I or II, except that a facility existing on July 1, 1977, may continue without a special exception if a use permit has been granted for it, provided:

a. that the owner (or his legally authorized representative) applies for the use permit within 6 months hereafter (see Subsection 500.4);

b. that with the application for the use permit is filed a site plan in accordance with the zoning Commissioner's Rules of Practice and Procedure;

c. that any fencing, screening, or other change in the site OR LIMITATIONS ON THE MANNER OF SELLING THE CATCH necessary to make the facility more compatible with its surroundings that is required by the Zoning Commissioner is completed within the time limits for partial and full compliance set by the Zoning Commissioner and in accordance with a program of compliance submitted to him; and

d. that no increase in the amount of floor or site area or in the number of boats devoted to the use nor any other change in the site plan is made.

SECTION 4. And be it further ordained, that this ordinance shall take effect forty-five days after its enactment.

BETITIONER'S EXHIBIT 2

IN THE MATTER OF
JAMES R. MYRICK, et ux
FOR SPECIAL EXCEPTION FOR
A FISHING FACILITY IN AN R-C
ZONE; FOR SPECIAL HEARING
REGARDING AMENDED SITE PLAN;
FOR VARIANCES TO PERMIT SET-
BACKS AND TO ALLOW PARKING
AREAS TO BE PAVED WITH CRUSHER
RUN IN LIEU OF MACADAM
ON PROPERTY LOCATED ON THE
SOUTHWEST SIDE OF GOOSE NECK
RD., 626.89' NORTHWEST OF THE
CENTER LINE OF GOOSE HARBOR
RD. - 15TH DISTRICT

OPINION

This case comes before this Board on remand from the Circuit Court Ordered by Judge William R. Buchanan, Sr. This amended Order by the Baltimore County Board of Appeals is filed in accordance with the above noted Remand Order.

Item #1 on the Remand Order cites the Board for a misnomer in noting as Lot 246, the parcel of land owned by James R. Myrick, that lies behind Lot #247. Notes taken by the Board during the hearing indicate that this parcel was identified as Lot #246 by both Petitioners' counsel and Protestants' attorney, but it is evident that testimony before the Circuit Court prove these notes to be in error, so the Board will Order in this Amended Order that wherever the designation as Lot #246 is noted that it be amended to designate this parcel as a "parcel of land owned by James R. Myrick that lies behind Lot #247".

Item #2 on the Remand Order states that the Board's Order on page 4 ordering that a building permit for an existing building (garage and cool box) be issued is illegal. The Board in this Order will amend that portion of its Order on page 4 by striking the sentence that states, "The Board will therefore reluctantly order that a building permit for this existing building be issued", but leaving the portion of that sentence that requires an

James R. Myrick, et ux
Case No. 84-147-XSPHA

amended site plan be submitted accurately portraying its exact dimensions and its exact position on the lot, said site plan to accompany the existing use permit.

Items 3 and 4 address the need for variances necessary to the building noted on the plat as Brick Garage and Cool Box. Petitioner has submitted a site plan by a Registered Professional Engineer as noted in Item #2. This site plan indicates a need for a side yard variance from 50' to 1.8', a variance from 75' to 17.5' from the center line of the street and a variance from 100' to 52' for the distance between the two buildings on this parcel. The need for these variances is discussed in detail on pages 3 and 4 of the Board's original Order. Section 307 of the Baltimore County Zoning Regulations gives the Board the authority to grant these variances where strict compliance would result in practical difficulty and unreasonable hardship. In this case, it would mean removal of the building which, admittedly, was constructed without proper permits. The denial of these variances and subsequent removal of this building would in the Board's opinion, cause substantial injury to the general welfare of the neighborhood when consideration is accorded to that which may legally be replaced on the parcel, should this building be removed. The Board is therefore of the opinion that the requested variances as shown on Petitioners' site plan be granted and will so Order. It is therefore ordered that the side yard variance from 50' to 1.8' be granted, the variance from 75' to 17.5' from the center line of the street be granted and the variance from 100' to 52' for the distance between the two buildings on this parcel be granted. Since the Special Exception for the use proposed on the parcel of land owned by James R. Myrick that lies behind Lot #247 is denied, the request for 15' side yard setbacks on that parcel is moot and need not be addressed.

James R. Myrick, et ux
Case No. 84-147-XSPHA

ORDER

For the reasons set forth in the foregoing Opinion, it is this 7th day of November, 1985, by the County Board of Appeals, ORDERED that:

- 1) Wherever the designation as Lot #246 is noted in the original Order that the designation Lot 246 be amended to designate this parcel as a parcel of land owned by James R. Myrick that lies behind Lot #247.
- 2) The Board will amend that portion of its Order on page 4 by striking the sentence that states, "the Board will therefore reluctantly order that a building permit for this existing building be issued", but leaving the remainder of that sentence.
- 3) Items 3 and 4 in the Remand Order address the need for variances. The Board will grant a side yard variance from 50' to 1.8', a variance from 75' to 17.5' from the center line of the street, and a variance from 100' to 52' for the distance between the two buildings. The request for the 15' side yard setbacks on that parcel lying behind Lot #247 are moot and therefore DENIED.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett, Chairman

William R. Evans

Patricia Phillips

TRUE TEST COPY:

Kathi G. Weidenhammer
Administrative Secretary, Board of Appeals

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME

ADDRESS

James Myrick
Cecil Myrick
William Land
Dwight J. Jario
1325 Green Harbor Rd 21220
1740 Shomard Rd 21220
18 Kingship Ct 21226

OFFICE: 282-2700

Protestants

RALPH K. ROTHWELL, JR.

ATTORNEY AT LAW

MASLAN, MASLAN & ROTHWELL, P.A.

7508 EASTERN AVENUE

BALTIMORE, MD 21224

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

The Honorable Norman W. Lauenstein
TO: Chairman, County Council Date: October 23, 1987

Arnold Jablon
FROM: County Attorney

SUBJECT: Myrick/Gress

The matter is currently back in District Court for the third time.

The Zoning Office prosecuted the Myricks' in District Court on March 21, 1986, at which time Judge Baldwin signed an injunction pursuant to a consent agreement agreed to by all of the parties. Immediately thereafter, Mr. and Mrs. Gress notified me that the Myricks were violating the consent order. Although we did not believe that violations were occurring, we filed a Motion to Punish on August 6, 1986. This came to a hearing before Judge Baldwin in July, at which time, after taking testimony and evidence from everyone, including Mrs. Gress and Mrs. Bauer, he found the Myricks not guilty. Judge Baldwin then went on to say that a gas tank on the property was not on the approved site plan and therefore had to be removed. The Zoning Office has filed another action in District Court on this issue.

In the meantime, there was another hearing before the Board of Appeals to determine whether a garage the Myricks constructed without a building permit would be permitted. (I had ordered it to be removed in 1985). The Board reversed me and found that the garage was permitted.

The Gresses have written to me twice since I became County Attorney, and I have attached hereto copies of those responses.

AJ/srl

Attachment

BALTIMORE COUNTY, MARYLAND
Inter-Office Correspondence

June 10, 1988

To: J. Robert Haines
Zoning Commissioner
From: Norman W. Lauenstein
Councilman, Fifth District
Subject: Zoning Hearing, Thursday, July 14, 1988
1326 Goose Neck Road
89-2-SP
#362

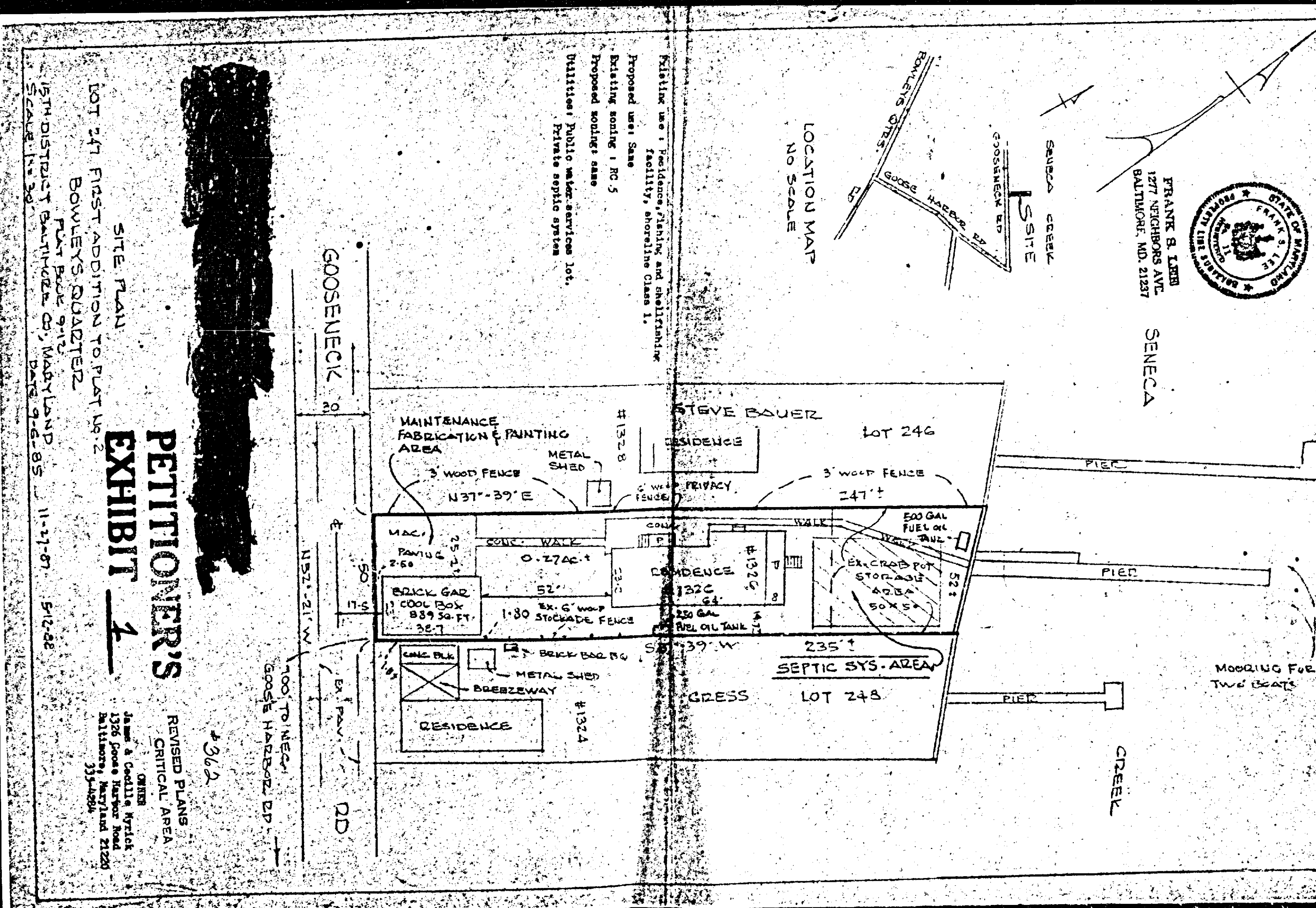
I have been informed that there is a special hearing scheduled to amend the site plan for an existing, very old, free standing fuel tank, which is setting above ground near the water line.

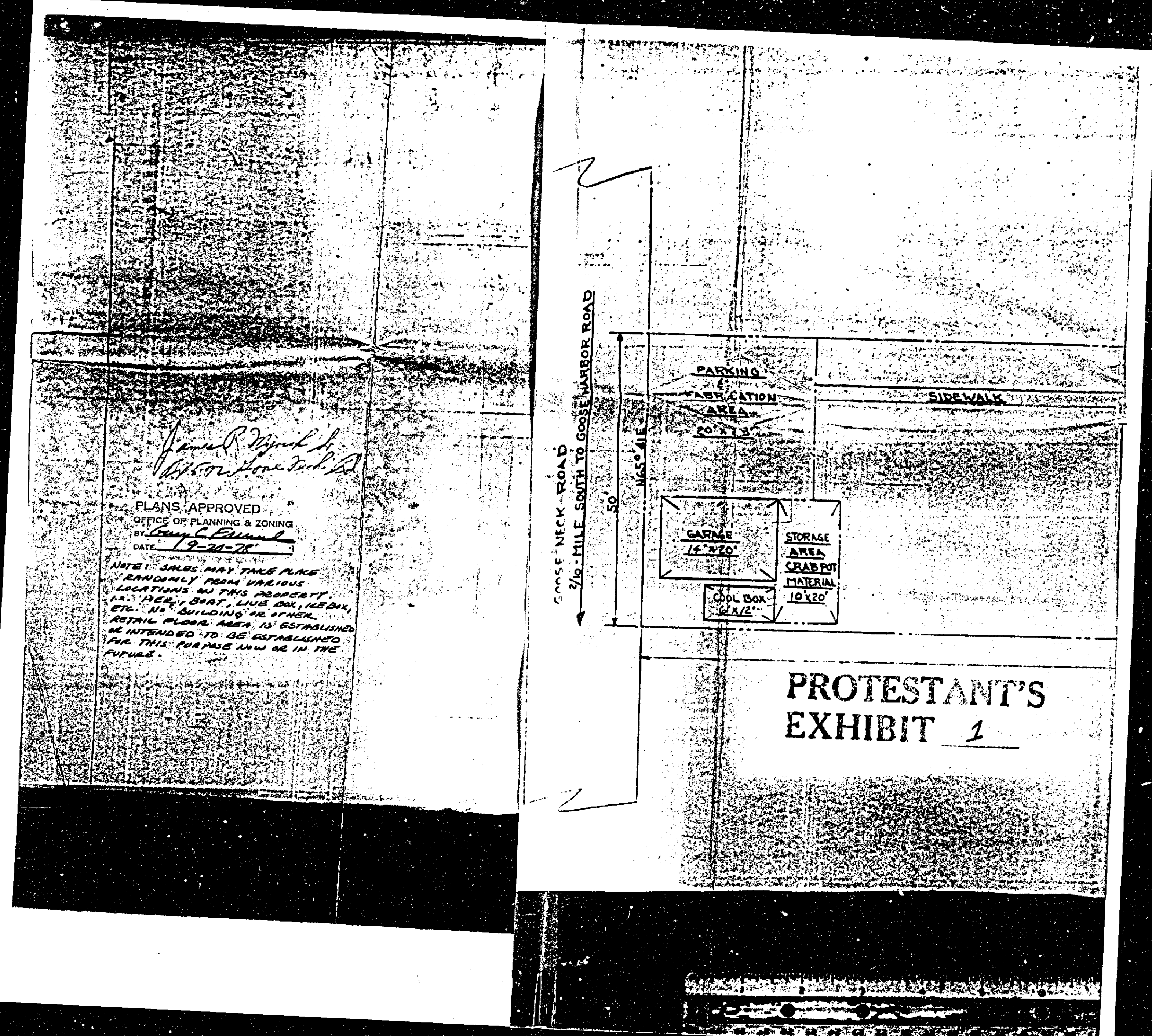
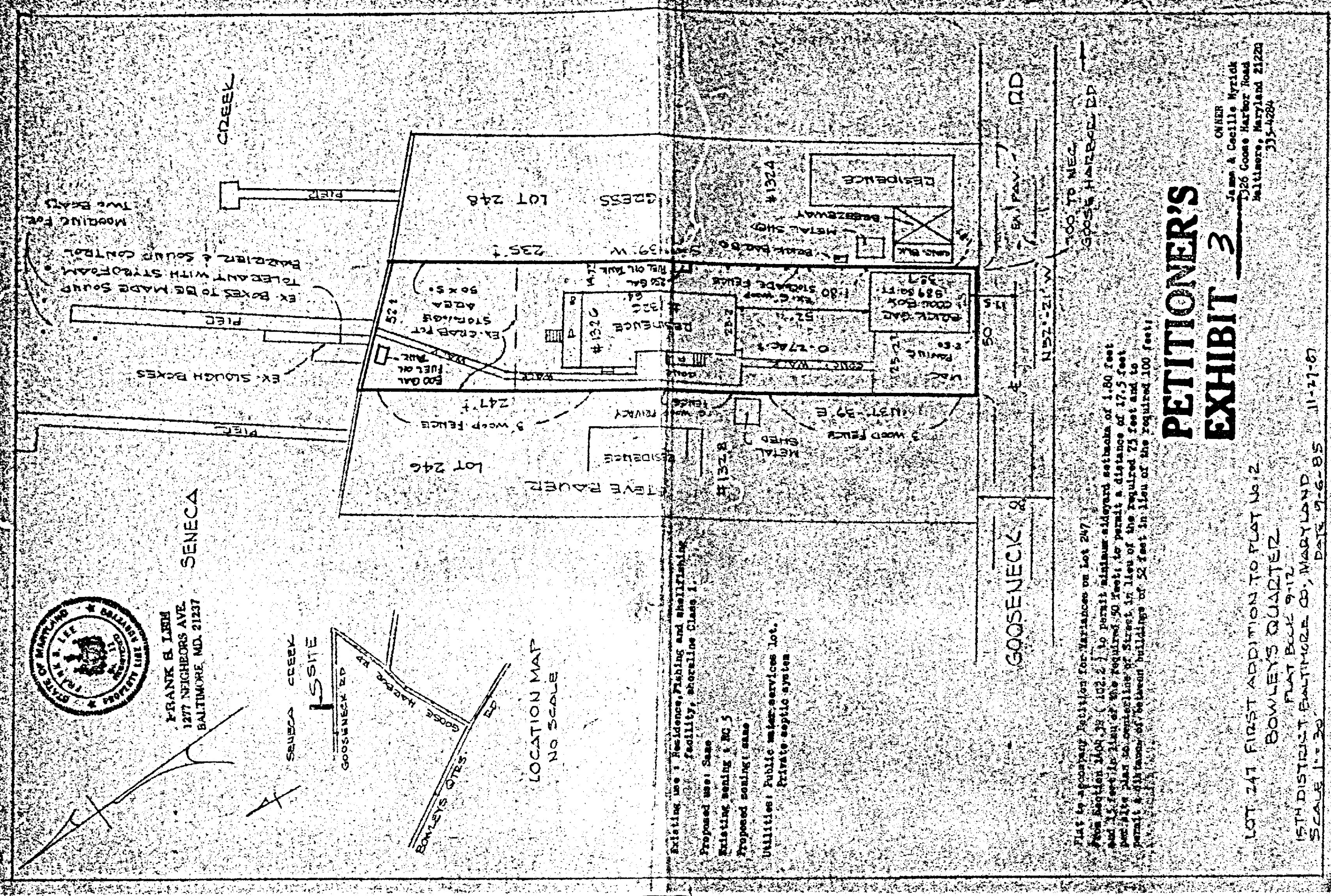
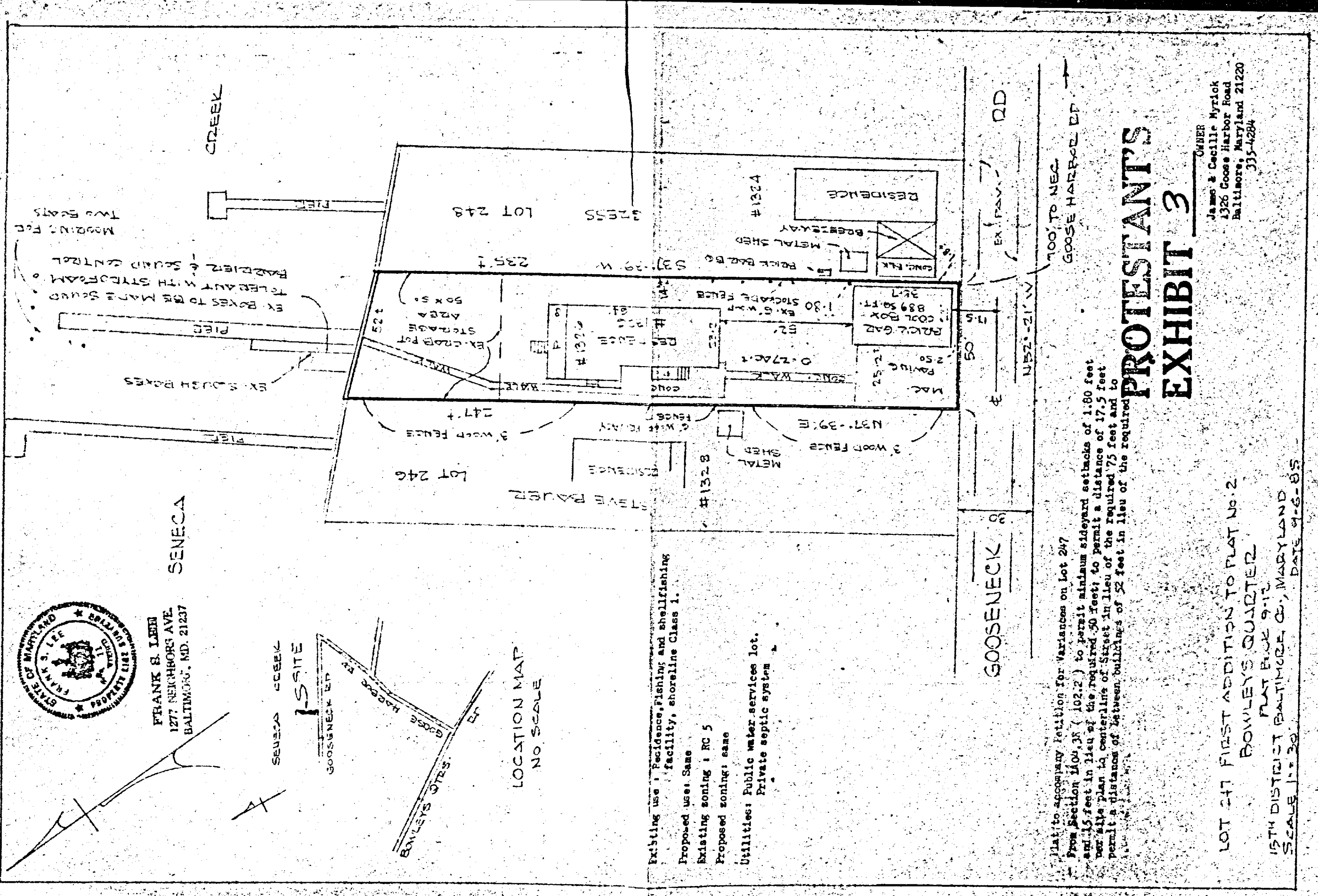
It seems to me that with all the critical bay legislation and the public interest in cleaning up our waterways, this fuel tank is a no-no.

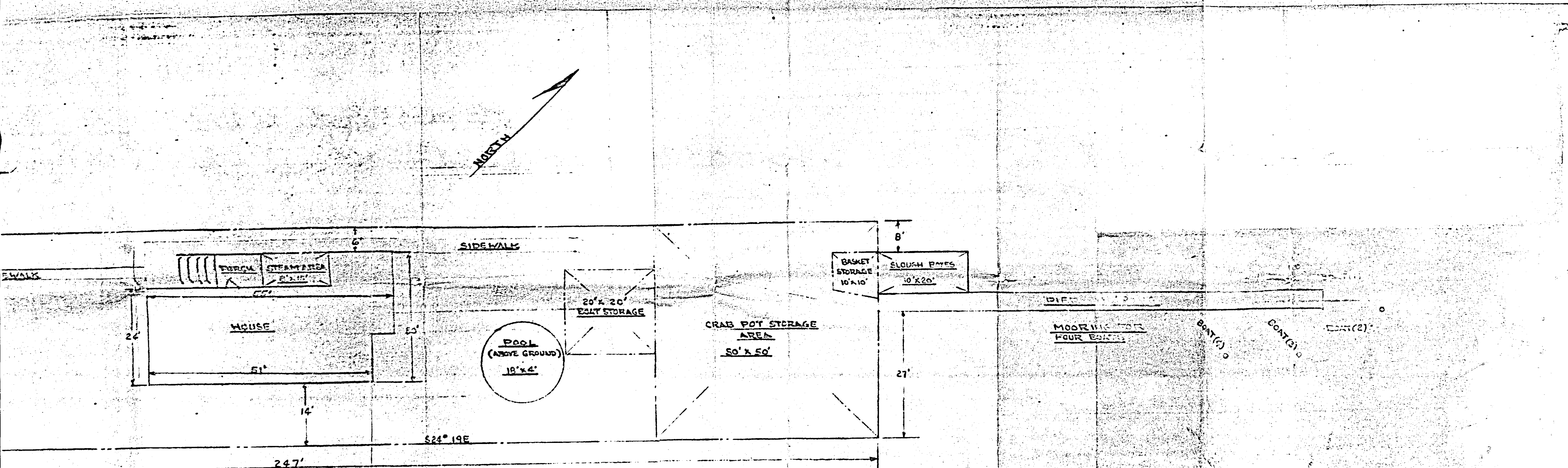
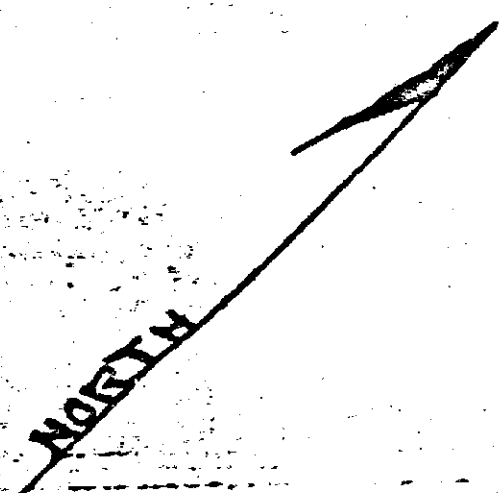
Your comment, please.

NWL:mcc
cc: Arnold Jablon
Robert Sheesley

RECEIVED
JUN 13 1988
ZONING OFFICE







Note:
Sales may take place
randomly from various location
on this property. i.e. Pier, Boat,
Live Box, Sea Box, etc. No building
or other retail from area is established
or intended to be established for
this purpose now or in the future.

SCALE 1" = 10'
PLAT BOOK - LMCLM #9-12
LOT NO. 0247
1ST ADDITION PLAT #2
BOWLEYS QUARTERS

Box 592, Goose Neck Rd.
15TH ELECTION DISTRICT
ZONED RL-5.

PROTESTANT'S
EXHIBIT 1