

WILLIAM P. JORDAN

93-393-SPH

E/S Bay Drive, 165 ft. S of c/l Wye Road
(3729 Bay Drive)

15th Election District

RE: Special Hearing

May 7, 1993	Petition for Special Hearing for a existing residential structure with accessory structures <u>or</u> , alternatively, accessory structures on a shore property incidental to waterfront use, filed by John B. Gontrum, Esquire, on behalf of Jordan
June 15	Hearing held on Petition by the Z.C.
November 17	Order of the Zoning Commissioner in which Petition for Special Hearing was DENIED.
December 9	Notice of Appeal filed by John B. Gontrum, Esquire, on behalf of Jordan.
May 11, 1994	Hearing before the Board of Appeals.
May 24	Memorandum of Petitioners filed by John B. Gontrum, Esquire. People's Counsel Memorandum filed by Peter Max Zimmerman.
June 2	Deliberation by the Board of Appeals.
July 22	Opinion and Order of the Board in which the Petition for Special Hearing was DENIED.
August 15	Petition for Judicial Review filed in the CCT for Balto. Co. by John B. Gontrum, Esquire, on behalf Jordan.
August 17	Copy of Petition for Judicial Review received by the Board of Appeals from the CCT.
August 17	Certificate of Notice sent to interested parties.
October 14	Order Granting Extension of Time for Transmittal of Record to 12/13/94 (by CCT).
November 21	Motion to dismiss Petition for Judicial Review filed by John B. Gontrum, Esquire.
December 15	✓E Order Granting Motion to Dismiss Petition for Judicial Review signed by the Honorable Thomas J. Bollinger.

Transcript of testimony and Record of Proceedings not prepared or filed. Case DISMISSED.

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF WILLIAM & MARIE JORDAN
3800 Bay Drive
Baltimore, MD 21220

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Room 49, Old Courthouse,
400 Washington Avenue
Towson, MD 21204

IN THE CASE OF:
IN THE MATTER OF WILLIAM P. JORDAN
FOR A SPECIAL HEARING ON PROPERTY LOCATED
ON THE EAST-SIDE OF BAY DRIVE,
165 FT. S OF WYE ROAD (3729 BAY DRIVE)
15TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT
CASE NO.: 93-393-SPH

* * * * *

ORDER GRANTING MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW

Upon consideration of the foregoing Motion to Dismiss
Petition for Judicial Review, it is hereby ORDERED by the
CIRCUIT COURT FOR BALTIMORE COUNTY that this Motion is hereby
GRANTED this 15th day of Dec, 1994;

WHEREBY the Petition for Judicial Review filed by the
Petitioners, William & Marie Jordan is hereby DISMISSED.


JUDGE

FILED DEC 16 1994

⑥
Pg no. 16-17 in the case

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF WILLIAM & MARIE JORDAN
3800 Bay Drive
Baltimore, MD 21220

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Room 49, Old Courthouse,
400 Washington Avenue
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IN THE CASE OF:
IN THE MATTER OF WILLIAM P. JORDAN
FOR A SPECIAL HEARING ON PROPERTY LOCATED
ON THE EAST-SIDE OF BAY DRIVE,
165 FT. S OF WYE ROAD (3729 BAY DRIVE)
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5TH COUNCILMANIC DISTRICT
CASE NO.: 93-393-SPH

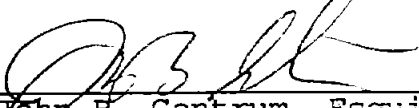
CIVIL ACTION

NO. 94-CV-07530
/89/14

* * * * *

MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW

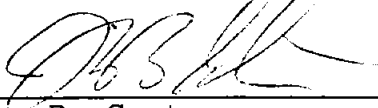
Now comes William P. Jordan and Marie Jordan, Petitioners, by and through their undersigned attorney, John B. Gontrum, Esquire, ROMADKA, GONTRUM & McLAUGHLIN, P.A., and moves that this Court Dismiss the Petition for Judicial Review filed in the above captioned matter. People's Counsel for Baltimore County joins in this request.


John B. Gontrum, Esquire
ROMADKA, GONTRUM & McLAUGHLIN, P.A.
814 Eastern Blvd.
Essex, Maryland 21221
(410)686-8274

Attorney for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of November, 1994, I mailed a copy of the foregoing Motion to Dismiss Petition for Judicial Review, postage prepaid to Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, Room 47, 400 Washington Avenue, Towson, Maryland 21204.


John B. Gontrum

FILED NOV 21 1994

5 Man

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF WILLIAM & MARIE JORDAN
3800 Bay Drive
Baltimore, MD 21220

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Room 49, Old Courthouse,
400 Washington Avenue
Towson, MD 21204

IN THE CASE OF:
IN THE MATTER OF WILLIAM P. JORDAN
FOR A SPECIAL HEARING ON PROPERTY LOCATED
ON THE EAST-SIDE OF BAY DRIVE,
165 FT. S OF WYE ROAD (3729 BAY DRIVE)
15TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT
CASE NO.: 93-393-SPH

* * * * *

ORDER GRANTING MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW

Upon consideration of the foregoing Motion to Dismiss
Petition for Judicial Review, it is hereby ORDERED by the
CIRCUIT COURT FOR BALTIMORE COUNTY that this Motion is hereby
GRANTED this ____ day of _____, 1994;

WHEREBY the Petition for Judicial Review filed by the
Petitioners, William & Marie Jordan is hereby DISMISSED.

JUDGE

12-1-94
IN THE CIRCUIT COURT FOR BALTIMORE COUNTY *
PETITION OF WILLIAM & MARIE JORDAN *
FOR JUDICIAL REVIEW OF THE DECISION OF THE *
BALTIMORE COUNTY BOARD OF APPEALS *
IN THE MATTER OF THE *
APPLICATION OF WILLIAM P. JORDAN *
FOR A SPECIAL HEARING ON *
PROPERTY LOCATED ON THE EAST-SIDE *
BAY DRIVE, 165 FT. S OF WYE ROAD *
(3729 BAY DRIVE) *
15TH ELECTION DISTRICT *
5TH COUNCILMANIC DISTRICT *
BALTIMORE COUNTY BOARD OF APPEALS *
CASE NO.: 93-393-SPH *

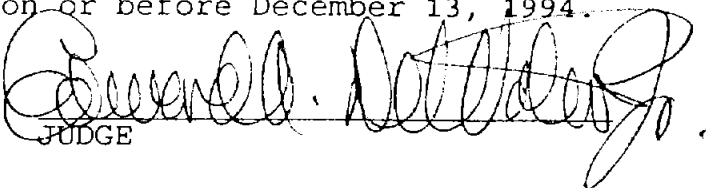
CIVIL ACTION NO.:

89/14/94CV7530

ORDER GRANTING EXTENSION of TIME FOR TRANSMITTAL OF RECORD

UPON CONSIDERATION of the Motion to Extend Time for Transmittal of Record heretofore filed in the above caption case;

IT IS HEREBY ORDERED this 14th day of Oct, 1994, that the Motion is hereby GRANTED and the Record due by the Petitioners shall be transmitted on or before December 13, 1994.


JUDGE

True Copy To
SUZANNE MENSCH, CLERK

Per Mary E. Jones
Assistant Clerk

94 OCT 14 PM 3:05

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY	*	
PETITION OF WILLIAM & MARIE JORDAN	*	
FOR JUDICIAL REVIEW OF THE DECISION OF THE	*	
BALTIMORE COUNTY BOARD OF APPEALS	*	CIVIL ACTION NO.:
IN THE MATTER OF THE	*	89/14/94CV7530
APPLICATION OF WILLIAM P. JORDAN	*	
FOR A SPECIAL HEARING ON	*	
PROPERTY LOCATED ON THE EAST-SIDE	*	
BAY DRIVE, 165 FT. S OF WYE ROAD	*	
(3729 BAY DRIVE)	*	
15TH ELECTION DISTRICT	*	
5TH COUNCILMANIC DISTRICT	*	
BALTIMORE COUNTY BOARD OF APPEALS	*	
CASE NO.: 93-393-SPH	*	
* * * * *	*	

ORDER GRANTING EXTENSION of TIME FOR TRANSMITTAL OF RECORD

UPON CONSIDERATION of the Motion to Extend Time for Transmittal of Record heretofore filed in the above caption case;

IT IS HEREBY ORDERED this _____ day of _____, 1994, that the Motion is hereby GRANTED and the Record due by the Petitioners shall be transmitted on or before December 13, 1994.

JUDGE

9-25-94

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY	*	
PETITION OF WILLIAM & MARIE JORDAN	*	
FOR JUDICIAL REVIEW OF THE DECISION OF THE	*	
BALTIMORE COUNTY BOARD OF APPEALS	*	CIVIL ACTION NO.:
IN THE MATTER OF THE	*	89/14/94CV7530
APPLICATION OF WILLIAM P. JORDAN	*	
FOR A SPECIAL HEARING ON	*	
PROPERTY LOCATED ON THE EAST-SIDE	*	
BAY DRIVE, 165 FT. S OF WYE ROAD	*	
(3729 BAY DRIVE)	*	
15TH ELECTION DISTRICT	*	
5TH COUNCILMANIC DISTRICT	*	
BALTIMORE COUNTY BOARD OF APPEALS	*	
CASE NO.: 93-393-SPH	*	
* * * * *	*	

94 SEP 22 PM 12:55
 COUNTY CLERK
 BALTIMORE COUNTY

MOTION TO EXTEND TIME FOR TRANSMITTAL OF RECORD

Now comes William and Marie Jordan, by and through their counsel, John B. Gontrum and ROMADKA, GONTRUM & McLAUGHLIN, P.A., and move pursuant to Rule 7-206(d) to extend the time for the transmittal of the record in the above referenced case, which was originally due on or about October 15, 1994, to be extended through and including December 13, 1994, and in support states as follows:

1. The Petitioners, William and Marie Jordan have appealed a decision from the Board of Appeals on or about August 15, 1994, ordering a certain structure which they own to be torn down from property located at 3729 Bay Drive in the eastern part of Baltimore County.

2. Mr. & Mrs. Jordan have applied through the zoning process of Baltimore County for a variance in order to move such structure from it's existing location onto another location on the site in order that the structure not be torn down.

3. That the Zoning Petition was filed on or about September 16, 1994, and we are waiting a time for hearing within the next

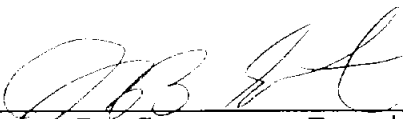
month.

4. Resolution of this matter may well dispose of the Appeal filed in the above referenced case.

5. That a decision in the Zoning Petition should be reached well prior to the time of extension sought.

6. That the extension sought is well within the 120 days of the filing of the Petition for Judicial Review as stated in Rule 7-206(d).

WHEREFORE, Petitioners pray that the time for the transmittal of the record in the above referenced case be extended to December 13, 1994, and for such other and further relief as the nature of their cause may require.



John B. Gontrum, Esquire
ROMADKA, GONTRUM & McLAUGHLIN, P.A.
814 Eastern Blvd.
Essex, Maryland 21221
(410) 686-8274

Attorney for Petitioners
William & Marie Jordan

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ~~10~~¹³th day of September, 1994, I mailed a copy of the foregoing Motion to Extend Time for Transmittal of the Record, postage prepaid to Baltimore County Board of Appeals, Old Courthouse, Room 149, 400 Washington Ave., Towson, Md 21204; Peter Max Zimmerman, People's Counsel for Baltimore County, Room 47, Courthouse, 400 Washington Ave., Towson, MD 21204; Maria Fraley, 3725 Bay Drive, Baltimore, MD 21220; Betty Johnson, 3727 Bay Drive, Baltimore, MD 21220; Billie Kozycki, 3724 Bay Drive, Baltimore, MD 21220; Iris Rosier, 3731 Bay Drive, Baltimore, MD 21220; and Jack W. Rosier, 3731 Bay Drive, Baltimore, MD 21220.



John B. Gontrum, Esq.

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF WILLIAM & MARIE JORDAN
3800 Bay Drive
Baltimore, MD 21220

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Room 49, Old Courthouse, 400 Washing-
ton Avenue, Towson, MD 21204

CIVIL
ACTION
No. 94-CV-07530
/89/14

IN THE CASE OF: IN THE MATTER OF
WILLIAM P. JORDAN
FOR A SPECIAL HEARING ON PROPERTY
LOCATED ON THE EAST-SIDE OF BAY DRIVE,
165 FT. S OF WYE ROAD (3729 BAY DRIVE)
15TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT
CASE NO. 93-393-SPH

* * * * *

CERTIFICATE OF NOTICE

Madam Clerk:

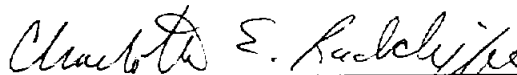
Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, William T. Hackett, S. Diane Levero, Judson H. Lipowitz, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely, John B. Gontrum, Esquire, ROMADKA, GONTRUM & MCLAUGHLIN, P.A., 814 Eastern Boulevard, Essex, Maryland 21221, Counsel for Petitioner; William & Marie Jordan, 3800 Bay Drive, Baltimore, MD 21220, Petitioner; Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Washington Avenue, Towson, MD 21204; a copy of which Notice is attached hereto and prayed that it may be made a part hereof.

Charlotte E. Radcliffe

Charlotte E. Radcliffe, Legal Secretary
County Board of Appeals, Room 49 -Basement
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180

RECEIVED AND FILED
94 AUG 17 PM 12:44
CLERK OF BALTIMORE COUNTY

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to John B. Gontrum, Esquire, ROMADKA, GONTRUM & MCLAUGHLIN, P.A., 814 Eastern Boulevard, Essex, Maryland 21221, Counsel for Petitioner; William & Marie Jordan, 3800 Bay Drive, Baltimore, MD 21220, Petitioner; Peter Max Zimmerman PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Washington Avenue, Towson, Maryland 21204, this 17th day of August, 1994.



Charlotte E. Radcliffe, Legal Secretary
County Board of Appeals, Room 49 -Basement
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

August 17, 1994

John B. Gontrum, Esquire
ROMADKA, GONTRUM & McLAUGHLIN
814 Eastern Boulevard
Baltimore, MD 21221

RE: Civil Action No. 94-CV-07530
WILLIAM P. JORDAN

Dear Mr. Gontrum:

In accordance with Rule 7-206(c) of the Maryland Rules of Procedure, the County Board of Appeals is required to submit the record of proceedings of the petition for judicial review which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty days.

The cost of the transcript of the record must be paid by you. In addition, all costs incurred for certified copies of other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court within sixty days, in accordance with Rule 7-206(c).

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

Very truly yours,

A handwritten signature in cursive script, reading "Charlotte E. Radcliffe".

Charlotte E. Radcliffe
Legal Secretary

Enclosure

cc: William and Marie Jordan



Printed with Soybean Ink
on Recycled Paper



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

August 17, 1994

Peter Max Zimmerman
People's Counsel
for Baltimore County
Room 47, Old Courthouse
400 Washington Avenue
Towson, MD 21204

RE: Civil Action No. 94-CV-07530
WILLIAM P. JORDAN

Dear Mr. Zimmerman:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that a Petition for Judicial Review was filed on August 15, 1994, in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to Rule 7-202(d)(2)(B).

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, must be filed under Civil Action No. 89/14/94-CV-07530.

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

Very truly yours,

Charlotte E. Radcliffe
Charlotte E. Radcliffe
Legal Secretary

Enclosure

cc: Mr. Andrew Jones
Mrs. Iris Rosier
Mrs. Betty Johnson
John Marek, Sr., M.D.
Ms. Deborah Brill
Pat Keller /Planning
Lawrence E. Schmidt /ZADM
W. Carl Richards /ZADM
Arnold Jablon /ZADM

Mr. John Lamantia
Ms. Billie Kozycki
Ms. Maria J. Bell and
Mrs. Maria Fraley

Timothy M. Kotroco /ZADM
Docket Clerk /ZADM



8-11-94

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY *
PETITION OF WILLIAM & MARIE JORDAN *
FOR JUDICIAL REVIEW OF THE DECISION OF THE *
BALTIMORE COUNTY BOARD OF APPEALS *
IN THE MATTER OF THE *
THE APPLICATION OF WILLIAM P. JORDAN *
FOR A SPECIAL HEARING ON *
PROPERTY LOCATED ON THE EAST-SIDE *
BAY DRIVE, 165 FT. S OF WYE ROAD *
(3729 BAY DRIVE) *
15TH ELECTION DISTRICT *
5TH COUNCILMANIC DISTRICT *

CIVIL ACTION NO.:

94CN7530
89/14

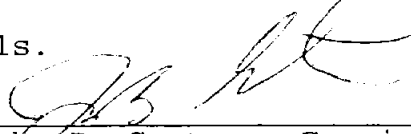
BALTIMORE COUNTY BOARD OF APPEALS
CASE NO.: 93-393-SPH

* * * * *

PETITION FOR JUDICIAL REVIEW

William and Marie Jordan, by and through their undersigned attorney, John B. Gontrum, ROMADKA, GONTRUM & McLAUGHLIN, P.A., hereby petition for Judicial Review by the Circuit Court for Baltimore County pursuant to Rule 7-202 of the Maryland Rules of Procedure, from the Decision of the County Board of Appeals denying Petitioners Petition for Special Hearing.

Petitioners were parties to the proceedings before the Baltimore County Board of Appeals.

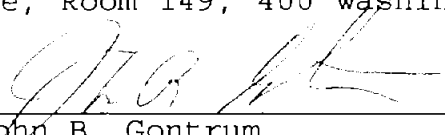


John B. Gontrum, Esquire
ROMADKA, GONTRUM & McLAUGHLIN, P.A.
814 Eastern Blvd.
Essex, Maryland 21221
(410) 686-8274

Attorney for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11 day of August, 1994, a copy of the foregoing Request for Judicial Review was mailed, postage prepaid, to Baltimore County Board of Appeals, Old Courthouse, Room 149, 400 Washington Ave., Towson, Maryland 21204.



John B. Gontrum

ROMADKA, GONTRUM & McLAUGHLIN, P.A.

814 Eastern Boulevard
Baltimore, Maryland 21221

TELEPHONE: (410)686-8274
FAX# 686-0118

ROBERT J. ROMADKA
JOHN B. GONTRUM
J. MICHAEL McLAUGHLIN, JR.*

August 11, 1994

ELIZABETH A. VANNI

*ALSO ADMITTED IN D.C.

Clerk
Circuit Court for Baltimore County
401 Bosley Ave.
Towson, MD 21204

Re: In the Circuit Court for Baltimore County
Petition of William & Marie Jordan
for Judicial Review of the Decision of the
Baltimore County Board of Appeals
Appeals Case No.: 93-393-SPH

Dear Mr./Ms. Clerk:

Enclosed herewith for filing, please find Petition for Judicial Review.

Please file and docket same.

Very truly yours,

John B. Gontrum

JBG/bjb
Enclosure

cc: Baltimore County Board of Appeals ✓

RECEIVED
COUNTY BOARD OF APPEALS
94 AUG 15 AM 11:55

IN THE MATTER OF THE	*	BEFORE THE
THE APPLICATION OF		
WILLIAM P. JORDAN	*	COUNTY BOARD OF APPEALS
FOR A SPECIAL HEARING ON		
PROPERTY LOCATED ON THE EAST-	*	OF
SIDE BAY DRIVE, 165 FT. S OF		
WYE ROAD (3729 BAY DRIVE)	*	BALTIMORE COUNTY
15TH ELECTION DISTRICT		
5TH COUNCILMANIC DISTRICT	*	CASE NO. 93-393-SPH

* * * * *

O P I N I O N

This case comes before the Board on appeal from a decision by the Zoning Commissioner denying the use of a building noted as an accessory structure on a shore property incidental to waterfront use. The case was heard this day in its entirety, and public deliberation was held on June 2, 1994.

The Board has carefully considered all the testimony and evidence presented this day and has also carefully considered memorandums submitted by both the People's Counsel and the Appellant's attorney. The Board will not in this opinion reiterate all the issues to which testimony was presented and to which the memorandums have carefully addressed. The basic facts of the case are as follows:

Mr. Jordan purchased from the Rozier's, a 50 foot lot fronting on the Chesapeake Bay. At the time the lot was purchased, there existed a small shed in the rear of the lot adjacent to the roadway and a concrete slab close to the water which was used as a picnic area. The property became in need of a new bulkhead to protect it from the Chesapeake Bay and the same was constructed. In so doing, the existing concrete slab was removed and a new slab of considerable larger area was constructed some 30 feet from the water's edge. Later on, a roof was erected over the slab supported by pipe columns. Shortly thereafter, the perimeter of the slab was encased with a brick wall 32 inches high. At some time thereafter,

the remaining open porch of this pavilion was enclosed with windows and screens, electricity was provided to the building and a water line was extended to service the building. As a result thereof, this enclosed building now contains a refrigerator, a grill, a microwave, and other appurtenances which allow the building to be used for residential purposes. A Spot-a-pot was provided on the rear of the lot for sanitary facilities. Also on the rear of the lot there now exists two (2) small sheds, each of less than 100 sq. ft. which are used for the storage of the maintenance equipment, etc. used on the property.

The Board is of the opinion that this enclosed structure on the waterfront can in no way be viewed as an accessory structure to the alleged use of the lot for recreation. To be classified as an accessory structure there must be a principle structure and none exists. In addition, an accessory structure may only be located in the rear yard if even a principle structure existed and this structure is in the front yard. In addition to its other problems, it does not meet the setback requirements from the water. As a result of all the testimony and evidence received, this can only be classified as an illegal structure. In regards to the two small sheds on the rear of the lot close to the roadway, since each of them contains less than 100 sq. ft. and no permit is therefore required for their erection, the Board will affirm their existence and allow the two (2) sheds to remain. The structure on the front of the lot can only be classified as a structure with residential use and therefore must be denied. The Board will take note of the protestant's opposition to this building due to the fact that it is out of character with the area and is a detriment to its nearby property owners who deserve an unrestricted view of the bay.

Baltimore County charges premium rates in its tax structure for waterfront property and inherently with this premium there is the assumption that there is an unobstructed view of the Chesapeake Bay.

After carefully considering all the testimony and evidence, all the memorandums submitted, the Board will find that the structure in question is a residential structure and may not be permitted to exist. There was testimony that in the foreseeable future, public sewer may be extended to service this lot and at that time, Mr. Jordan could apply for a permit to build a principle structure on the lot which would in effect answer all his problems.

O R D E R

IT IS THEREFORE this 22nd day of July, 1994 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Hearing to approve the existence of the enclosed structure on the waterfront side of the lot be and the same is hereby DENIED and the structure must be removed within 60 days of the date of this order.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman

S. Diane Levero
S. Diane Levero

Judson H. Lipowitz
Judson H. Lipowitz



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

July 22, 1994

John B. Gontrum, Esquire
ROMADKA, GONTRUM & McLAUGHLIN
814 Eastern Boulevard
Baltimore, MD 21221

RE: Case No. 93-393-SPH
William P. Jordan

Dear Mr. Gontrum:

Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Very truly yours,

Charlotte E. Radcliffe for
Kathleen C. Weidenhammer
Administrative Assistant

encl.

cc: Mr. and Mrs. William P. Jordan
Ms. Deborah Brill
Mr. John Lamantia
Mrs. Iris Rosier
Ms. Billie Kozycki
Mrs. Betty Johnson
Ms. Marie J. Bell and
Mrs. Maria Fraley
Mr. Andrew Jones
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
Timothy H. Kotroco
W. Carl Richards, Jr., /ZADM
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM
JOHN MAREK, SR. M.D.



COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: William P. Jordan -Petitioner
Case No. 93-393-SPH

DATE : June 2, 1994 @ 9:00 a.m.

BOARD /PANEL : William T. Hackett (WTH)
S. Diane Levero (SDL)
Judson H. Lipowitz (JHL)

SECRETARY : Kathleen C. Weidenhammer
Administrative Assistant

Among those present at the deliberation were John B. Gontrum, Esquire, on behalf of Petitioner; Peter Max Zimmerman, People's Counsel for Baltimore County; and Carole S. Demilio, Deputy People's Counsel.

PURPOSE --to deliberate issues and matter of petition for special hearing presented to the Board; testimony and evidence taken at hearing on May 11, 1994. Written Opinion and Order to be issued by the Board.

Opening comments by Chairman Hackett as to case name and number, and issues to be deliberated in this matter.

WTH: Has reviewed notes; has read memos and reviewed exhibits; reached following conclusions: As to special hearing regarding two small sheds on rear of property, should be permitted to remain. As to building on front of lot (waterfront), should be denied. Discussed findings as to size, setbacks which are not met, dimensions of lot; possible that variance could be obtained to permit patio.

Summary: Two small sheds can remain; special hearing as to building on front of lot should be denied.

SDL: Agrees with Petitioner's argument regarding accessory structures and feels that sheds may be permitted. As to enclosed pavilion and its location, upon review of all evidence, regulations, requirements, enclosed pavilion should not be permitted to remain. Cannot be permitted at its present location or in its present state, with walls and widows; needs building permit and cannot exist at location.

Summary: Concurs with WTH as to two small sheds; pavilion to be denied.

Deliberation /William P. Jordan -Petitioner 93-393-SPH

JHL: Agrees with colleagues; would be inclined to sign Order incorporating findings.

WTH: Additional comments regarding enclosure of building and fact that water and electricity exist; also appliances, etc.; more in category of building which could be used as dwelling.

Closing statement by Chairman Hackett: Board will issue written Opinion and Order that special hearing for enclosed building should be denied and corrections to site made.

Note: appellate period runs from date of written Opinion and Order and not from today's date.

Respectfully submitted,


Kathleen C. Weidenhammer
Administrative Assistant

file

BALTIMORE COUNTY, MARYLAND

Int r-Office Correspondence

TO: W. Hackett /J. Lipowitz /D. Levero

DATE: May 25, 1994

FROM: kathi

SUBJECT: Open Deliberation /Thursday, June 2, 1994
William P. Jordan -Petitioner
Case No. 93-393-SPH

Enclosed for your review prior to open deliberation on Thursday, June 2, 1994 at 9:00 a.m., are copies of the following filed with this office on May 24, 1994, in the subject matter:

- 1) Memorandum of Petitioners filed by John B. Gontrum, Esquire, on behalf of William and Marie Jordan, Petitioners.
- 2) People's Counsel Memorandum filed by Peter Max Zimmerman, People's Counsel for Baltimore County, and Carole S. Demilio, Deputy People's Counsel.

Should you have any questions regarding the above, please call me.

Kathi

Enclosures (2)

2/17/94 -Notice of Assignment for hearing scheduled for Thursday, April 21, 1994 at 10:00 a.m sent to following:

John B. Gontrum, Esquire
Mr. and Mrs. William P. Jordan
John Marek, Sr., M.D.
Ms. Deborah Brill
Mr. John Lamantia
Mrs. Iris Rosier
Ms. Billie Kozycki
Mrs. Betty Johnson
Ms. Marie J. Bell and
Mrs. Maria Fraley
People's Counsel for Baltimore County
P. David Fields
Lawrence E. Schmidt
Timothy H. Kotroco
W. Carl Richards, Jr. /ZADM
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM

2/28/94 -Request for postponement from John B. Gontrum, Esq. -scheduled business meeting out of town on 4/21 and 4/22/94; difficult to reschedule.

3/02/94 -PP granted; Notice of PP and Reassignment sent to parties; case reset to Wednesday, May 11, 1994 at 10:00 a.m.

4/08/94 -Letter from Andrew Jones, Secretary, Board of Directors, Bowleys Quarters Improvement Assn., requesting comment from the Board regarding this matter with a copy to John B. Gontrum, Esquire.

4/08/94 -Response to Mr. Jones /Board unable to comment at this time; case pending before the Board and scheduled for hearing on May 11, 1994; copy of Notice of Assignment to Mr. Jones.

5/11/94 -Hearing concluded before Board; memos due from J. Gontrum 5/24/94 and People's Counsel 5/24/94 May 24, 1994; deliberation to be held by Board on 6/02/94.

5/25/94 -Notice of Deliberation sent to parties; copy also sent to each Board member along with a copy of each Memorandum filed by Counsel.
Deliberation scheduled for Thursday, June 2, 1994 at 9:00 a.m.



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

May 25, 1994

NOTICE OF DELIBERATION

With all Post-Hearing Memoranda having been filed, the County Board of Appeals has scheduled the following date and time for deliberation in the matter of:

WILLIAM P. JORDAN -PETITIONER
CASE NO. 93-393-SPH

DATE AND TIME : Thursday, June 2, 1994 at 9:00 a.m.

LOCATION : Room 48, Basement, Old Courthouse

cc: John B. Gontrum, Esquire Counsel for Appellants/Petitioners
Mr. and Mrs. William P. Jordan Appellants/Petitioners

John Marek, Sr., M.D.

Ms. Deborah Brill

Mr. John Lamantia

Protestant

Mrs. Iris Rosier

"

Ms. Billie Kozycki

"

Mrs. Betty Johnson

"

Ms. Marie J. Bell and

"

Mrs. Maria Fraley

"

Mr. Andrew Jones

People's Counsel for Baltimore County

Pat Keller

Lawrence E. Schmidt

Timothy H. Kotroco

W. Carl Richards, Jr. /ZADM

Docket Clerk /ZADM

Arnold Jablon, Director /ZADM

Kathleen C. Weid nhammer
Administrative Assistant



5-24-94

IN THE MATTER OF	*	BEFORE THE
WILLIAM P. JORDAN, JR., etc ux.	*	COUNTY BOARD OF APPEALS
PETITION FOR SPECIAL HEARING	*	FOR BALTIMORE COUNTY
E/S Bay Drive, 165 ft. S of	*	
c/l Wye Road (3729 Bay Drive)	*	
15th Election District	*	
5th Councilmanic District	*	CASE NO. 93-393-SPH
* * * * *	*	* * * * *

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PEOPLE'S COUNSEL MEMORANDUM

I. STATEMENT OF THE CASE

WILLIAM P. AND MARIE JORDAN filed a Petition for Special Hearing with the Zoning Commissioner of Baltimore County. The Petitioners requested alternative relief for three structures located on property otherwise unimproved. Petitioners sought approval of the use of the subject property for "an existing residential structure with accessory structures, or alternatively, accessory structures on a shore property incidental to waterfront use." The Petition for Special Hearing was filed in response to a zoning violation issued by the Zoning Enforcement Office for Baltimore County.

The Zoning Commissioner for Baltimore County denied the Petition by written opinion dated November 12, 1993.

Mr. and Mrs. Jordan appealed the Zoning Commissioner's decision to the County Board of Appeals and a de novo hearing was held on the merits of the case on May 11, 1994. In lieu of closing argument, the County Board of Appeals requested memoranda from counsel.

II. STATEMENT OF FACTS

There are many facts in this case which are not in dispute. Mr. and Mrs. Jordan purchased the subject site approximately fourteen years ago. The subject site is zoned R.C.5 and it is located within the

Chesapeake Bay Critical Area. At the time of settlement, the property was unimproved, a small metal shed, located on the roadside of Bay Drive, blew down and was nonexistent at the time of settlement. A small unadorned patio composed of cinder blocks in the ground was located on a small portion of the site. Otherwise, the property remained unimproved until Mr. and Mrs. Jordan erected the three structures which are the subject of the Special Hearing. Mr. and Mrs. Jordan also constructed on the waterfront side of the property a pier and bulkhead, which are not the subject of the Special Hearing. The property is part of an old subdivision on the Bowley's Quarters peninsula fronting directly on the Chesapeake Bay. Most of the dwellings in the subdivision were originally constructed as summer homes, but have been converted to permanent residences by the owners. As stated, the fifty foot wide lots front on the Chesapeake Bay. Bay Drive runs north and south parallel to the Chesapeake Bay. The subject site and adjacent properties extend from the Chesapeake Bay to Bay Drive, an approximate distance of between 250 and 300 feet. It is segmented by the Miami Beach Recreational Area. The subject site, and the residences of all of the Protestants in this matter, are located on Bay Drive south of the Miami Beach Recreation Area.

The adjacent lot north of the subject site is improved by a dwelling owned by Mr. and Mrs. Jack Rosier. Their predecessors in title are Mrs. Rosier's parents. At one time, the Rosier residence and the subject site were both owned by Mrs. Rosier's parents, but remained as two separate lots. Mrs. Rosier's sister inherited the subject site from her parents and eventually sold the vacant lot to Mr. and Mrs. Jordan in 1980.

Mr. Jordan testified that in the course of constructing the pier and bulkhead, he constructed another patio on the property, approximately 30 feet from the mean high-tide mark. The patio was a cement slab, approximately 14 feet by 24 feet. The patio was the location for a picnic table. Shortly thereafter, Mr. and Mrs. Jordan constructed a shingle peaked roof on six posts over the patio, ostensibly, to provide a shaded area. These improvements occurred during a period in 1984 and 1985. Shortly thereafter, not satisfied with the shaded picnic area, Mr. and Mrs. Jordan erected a brick wall on the perimeter of the patio approximately half the distance between the ground and the roof and enclosed the posts with brick columns. Mr. and Mrs. Jordan did not obtain a building permit prior to or simultaneously with constructing this structure (hereafter referred to as a "building"). Before long the building was completely enclosed with windows (interchangeable with screens) and a door. The property owners also installed electricity and running water to the building. In his testimony, Mr. Jordan acknowledged that he and his wife and other members of his family have spent the night in this building on several occasions. The completed building provides all the amenities of a house with the exception of bathroom facilities. The Petitioner testified that due to percolation problems on much of the Bowley's Quarters peninsula, there is a building moratorium applicable to certain sites, including the subject site. However, Mr. Jordan has located a Spot-A-Pot on his property to provide the bathroom facilities. Otherwise all other amenities are included within the building, including cooking and sleeping facilities.

The two structures on the rear of the subject site adjacent to Bay Drive consist of a portable wooden shed, measuring less than 100 square feet which is used by the Petitioners to store lawn furniture and lawn maintenance equipment. The second structure consists of a cinderblock building which also measures just under 100 square feet and is used for storage and for the Spot-A-Pot.

The Protestants in this matter are the adjoining property owners to the north and south of the subject site and the property owner two doors away to the south. In addition, a property owner across Bay Drive from the subject site also testified. The Protestants also offered the testimony of Mr. Craig McGraw, who is a Zoning Enforcement Officer for Baltimore County. He issued a zoning violation notice to Mr. and Mrs. Jordan for the aforementioned three structures and also an above-ground swimming pool, which, subsequent to the zoning violation notice, was removed from the subject site.

The zoning violation was issued as a result of a complaint filed by one of the Protestants, who notified Baltimore County as early as 1986. (See Protestants' Exhibit 3).

III. ARGUMENT OF PROTESTANTS

The Protestants in this case are adamantly opposed to the larger building which they view as a dwelling constructed without a building permit. The nature of their opposition involves (a) the location of the building 30 feet from the mean high-tide; (b) size of the building; and (c) the style and design of the building. The style, size and location of this building is unlike any other on Bay Drive near the subject site. The effect of this type of building at this particular location on the property is to block the view of the bay of many

property owners. All of the Protestants testified that the frontage on the Chesapeake Bay and the accompanying view is the main reason that they continue to reside on Bay Drive. They view this building as illegal, out of character in terms of size and location with the others in the area, and a violation of the Baltimore County Zoning Regulations. Although Mr. Jordan claimed in his testimony that the location of the building was the only possible site location, his testimony was refuted by the Protestants. For instance, Mr. Jordan claimed that overhead electric wires running across the center of his property prevented construction of the residence at that location. However, he admitted in his testimony that the wires were rerouted at his request, and that in fact the aforementioned above-ground swimming pool located on the property was positioned in the center of the property. Mr. Jordan also admitted in his testimony that the site of the present structure was not the site of the original cinder block patio located on the property at the time he purchased it. Mr. Jordan also tried to convey that a water drainage problem located on the north-central portion of his lot prevented construction of any structure at that location. However, Mr. Rosier testified that he assisted Mr. Jordan in constructing the drainage pipe which successfully eliminated any standing water problem and that the drainage pipe was installed prior to construction of the larger building. Mr. Jordan also mentioned a drainage problem from Mr. and Mrs. Rosier's kitchen toward the rear of the property, but this matter was rectified by Mr. and Mrs. Rosier and did not interfere with the construction of the aforementioned smaller structures on the Bay Drive side of the subject site. Mr. Jordan attempted to justify the erection

of the half-wall at one stage of the construction of the dwelling by stating that one of his guests on the patio was injured by the neighbor's lawn cutting. Mr. Jordan stated that Mr. Rosier was present at the time of this so-called accident. In his testimony, Mr. Rosier adamantly refuted that an accident had occurred, and stated that only a few grass clippings blew onto the patio area. He stated that he would have remembered if a personal injury had occurred, as he would have been asked to provide medical supplies. Mr. Rosier also indicated that this event occurred prior to Mr. Jordan's erection of a fence along the length of his property on the north and south sides.

The Petitioners and their witness attempted to seek Board approval with so-called evidence of similar structures in the area. This argument is deficient in fact and at law. Under cross-examination, Mr. Jordan and other witnesses of the Petitioners admitted they lacked information as to whether these structures were nonconforming, approved by variance, accessory to principal uses or structures, or illegal. Without such crucial facts, this testimony is irrelevant and speculative. Moreover, lacking comparable information, it provides no basis for a decision of the Board in the instant case.

The Appellate Courts have refused consideration of such testimony in zoning cases. In Red Roof Inns v. People's Counsel, 96 Md.App. 219 (1993), in response to counsel for Red Roof Inns' claim, "that neighboring competitors enjoy significantly higher and larger rooftop signs than the one proposed by appellant", and the "Zoning Commissioner's determinations in two unrelated petitions for variances by other lodging establishments...", the Court stated at p. 227:

"Regarding the competitors' large, illuminated rooftop signs, evidence was produced showing that those competitors may not have obtained zoning approval for their signs, thus rendering them arguably illegal."

and

"The petitions of the two other lodging establishments are irrelevant to the sign request made by appellant. Zoning matters, including sign variance requests, depend upon the unique facts and circumstances of a particular location and must be analyzed individually."

In the recent case of North v. St. Mary's County, 99 Md.App. 502 (1994), the Court of Special Appeals discussed the variance requirements for a proposed gazebo located within 25 feet of mean high-water tide in the Chesapeake Bay Critical Area. The Court stated that the uniqueness of the site is a criteria to establish in the review of a variance request, and stated at p. 514:

"In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. 'Uniqueness' of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, sub-surface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls."

The Petitioner in the North case argued that other property owners in the area had constructed improvements at a similar proximity to the water. The Court rejected the comparison to other sites of perhaps permitted or nonconforming uses. This could not form a basis to find the subject site unique and deserving of a variance. Rather, the Court reversed the granting of a variance because "there was no evidence supporting any special features peculiar to the subject site". (North, p. 519).

Clearly, therefore, Mr. Jordan deliberately set out to construct a dwelling without a building permit. It has all amenities of a dwelling, with the exception of bathroom facilities. Likewise, Mr. Jordan made a conscious and deliberate selection as to the exact location of this building on his property. The selection was made for the benefit of the property owner with total disregard for its effect on the surrounding properties.

IV. LEGAL ISSUES

The Petitioners request relief on alternative theories. They are requesting (1) approval of the larger building as "an existing residential structure" and the approval of the two smaller structures adjacent to Bay Drive as accessory structures, or (2) approval of all three structures as "accessory structures on a shore property incidental to waterfront use". There is no legal basis to grant the Petition for Special Hearing on either theory.

This case must be decided on a legally sustainable understanding and application of the appropriate statutory definitions. Clearly, the questions to be resolved by this Board are legal in nature. However, the testimony of the Protestants is an important manifestation of the purpose and intent of the BCZR and its definitions. Thus the spirit and intent of the zoning Regulations cannot be overlooked by this Board.

The definitions of certain terms found in the Zoning Regulations are crucial to the decision in this case. The Board cannot ignore those definitions merely because the Petitioner fashioned his relief using other terminology. A review of the appropriate definitions and Regulations illustrate that this is a simple case and should not become a complicated matter because of the Petitioners' requested relief.

Section 101 of the BCZR defines a "dwelling" as:

"a building or portion thereof which provides living facilities for one or more families."

While the Petitioners termed the larger building as a "residential structure", the Board must look to the testimony and evidence in the case to determine the proper appellation. Mr. Jordan's testimony disclosed that this building contains a shingled roof, brick walls, a sliding glass door, interchangeable but permanent windows and screens, and a cement floor. The building is serviced by running water and electricity. Mr. and Mrs. Jordan have appliances in the building including a refrigerator, a hotplate and coffeemaker. Mr. Jordan testified that he and his wife and grandchildren have spent overnights in the building. A "Spot-A-Pot" located elsewhere on the property provides bathroom facilities. Obviously, the property owners have provided in this building the living facilities necessary to reside on the property, and it cannot be called anything but a "dwelling".

Section 101 of the BCZR also defines an "accessory building" and "accessory use or structure" as follows:

Accessory Building: One which is subordinate and customarily incidental to and on the same lot with a main building. A trailer shall not be considered an accessory building. A structure connected to a principal building by a covered passageway or with one wall in common shall not be considered an accessory building.

Accessory Use or Structure: A use or structure which - (a) is customarily incident and subordinate to and serves a principal use or structure; (b) is subordinate in area, extent, or purpose to the principal use or structure; (c) is located on the same lot as the principal use or structure served; and (d) contributes to the comfort, convenience, or necessity of occupants, business, or industry in the principal use or structure served; ... An accessory building, as defined above, shall be considered an accessory structure. ...

It is obvious that these definitions do not describe the larger building. In order for a use or structure to be accessory, there must be a principal use or structure on the same lot.

The principal uses or structures permitted in the R.C.5 zone are listed in Section 1A04.2A of the BCZR. The uses permitted by special exception in an R.C.5 zone are listed in Section 1A04.2B (see attached). There is no permitted use or special exception use which applies to the instant case, other than a "dwelling". Moreover, the property and the improvements are actually utilized as a dwelling by the Petitioners. Therefore, the larger building cannot be accessory if it is a principal use.

Since the BCZR are all-encompassing, there can be no legal use of R.C.5 property not found in the Regulations as a permitted use or a use permitted by special exception. This maxim is supported by Section 102.1, which states:

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 nonconforming use.

However, even as a dwelling, the larger building cannot be approved in its present location. The Petitioner has ignored the fifty-foot setback requirement in R.C.5 zones. He testified that the building is thirty feet from the mean high-water mark.

Section 1A04.3 provides:

(3) Building setbacks. Any principal building hereafter constructed in an R.C.5 zone shall be situated at least 75 feet from the centerline of any street and at least 50 feet from any lot line other than a street line, except as otherwise provided in Paragraph 5, below. [Bill No. 98, 1985.] (Paragraph 5 not applicable.)

A more stringent setback is required of this site under the Critical Area legislation. As stated in the facts, the subject site is located in the Chesapeake Bay Critical Area. Section 26-449 of the Baltimore County Code, entitled "Buffers", also applies to the instant case, and states as follows:

(a) A minimum one-hundred-foot buffer shall be established landward from the mean high-water line of tidal waters, tidal wetlands, and tributary streams. ...

(e) Development activities, including redevelopment activities and including structures, roads, parking areas and other impervious surface, mining and related facilities or septic systems, may not be permitted in the buffer, except for those necessarily associated with water-dependent facilities, as approved in accordance with sections 417 in the county zoning regulations and 26-454 in this Code. ...

Even if a legitimate accessory use exists, the Petitioners have not complied with crucial standards for the location of accessory uses. Accessory structures must also comply with Section 400.1, which states as follows:

Accessory buildings in residence zones, other than farm buildings (Section 404) shall be located only in the rear yard and shall occupy not more than 40% thereof. On corner lots they shall be located only in the third of the lot farthest removed from any street and shall occupy not more than 50% of such third. In no case shall they be located less than 2 1/2 feet from any side or rear lot lines, except that two private garages may be built with a common party wall straddling a side interior property line if all other requirements are met. ...

The Protestants also offered in their case the decision of the Circuit Court for Baltimore County in the matter of William Burkhardt (See Protestants' Exhibit 5). That case affirmed the definition of front and rear yards on waterfront property. In summary, the front and rear yards are reversed for lots fronting on the waterways. That is, the distance between the dwelling and the water is viewed as the front yard, regardless of the orientation of the dwelling itself.

As mentioned previously, the Petitioners have constructed a pier and bulkhead which are permitted in Section 417 of the BCZR subject to many restrictions. The pier and bulkhead provide the Petitioners with a reasonable use of their property. The three buildings are not a part of nor related to the waterfront construction. In discussing waterfront construction in Section 400.1a, the Zoning Commissioner's Manual provides for waterfront construction under Section 417, "provided that no accessory buildings/structures are constructed". (Z.C.M., p. 4-1).

The Board need only look to these definitions, Regulations, and case law to make a legal determination that the relief requested by the Petitioners cannot be granted under either alternative theory presented in the Petition for Special Hearing. The larger building, which the Petitioner refers to as a "residential structure", is a dwelling. However, it was constructed without a building permit. Mr. Jordan testified that he sought, but was unable to obtain, a building permit to construct a dwelling on the premises in the mid-1980's. Mr. Craig McGraw, the zoning inspector, emphasized that no permit was issued for the three structures and that the property owners were cited for a violation. The Board should also note that Mr. McGraw stated that the permit for the windows and screens was issued in error and was dated December, 1988, after all the construction was completed without a permit.

The interpretation of the definitions and Zoning Regulations applicable to the instant case is well-supported by the Maryland Appellate Courts. In the case of Kowalski v. Lamar, 25 Md.App. 493 (1975) (see Protestants' Exhibit 4), the Court of Special Appeals

reaffirmed that the only permitted uses in a zone are those designated as of right or permitted by special exception. Any other use is prohibited. (Kowalski at 498.) The subject sites in the Kowalski case were two waterfront lots, undeveloped except for a pier located on one of the lots. The owners permitted others to fish from the pier. The Court held that such activity was not a use permitted by right or by special exception. The Court also found that the fishing was not an accessory use since there were no other uses conducted on the property other than fishing. The Court recognized the definition of principal use under Section 101 of the zoning regulations as the "main use of land as distinguished from an accessory use." The Court ruled that the fishing activity could not be an accessory use to the vacant land since it was the only use on the property and thus the principal use, which was not permitted by right or special exception in the property's zoning classification.

An attempt by the Petitioners in the instant case to categorize use of the Bay as a principal use of waterfront property was refuted in the case of People's Counsel v. Maryland Marine, 316 Md. 491 (1989). The Court of Appeals stated that Baltimore County's power to zone extends only to those improvements which the riparian owner can build into the water bounding his property. The riparian owner has no right to build on submerged land beyond that boundary. (See Section 417 of BCZR pertaining to waterfront construction such as wharfs, pylons and docks). Baltimore County cannot establish zoning beyond this boundary. The Chesapeake Bay is not subject to local zoning regulations and cannot be a permitted or special exception use.

In summary, the three structures located on the subject site cannot be approved under the Petition for Special Hearing. The Petitioner has not requested a variance for any of these structures. The questions for the Board are legal and there can be no other interpretation of the facts other than in light of the aforementioned definitions and applicable zoning regulations.

Specifically, the larger building cannot be viewed as accessory for the following reasons:

1. This building is located in the front yard and all accessory structures must be located in the rear yard.
2. There is no principal use or structure to which the building is accessory.
3. The building cannot be accessory to waterfront use of the Bay since such a use is not a permitted or special exception use under the R.C.5 zone and the BCZR do not allow uses or structures other than those stated in the Regulations.

The larger building must be viewed as a dwelling since it falls within the definition of a dwelling as found in the BCZR, regardless of the nomenclature given by the Petitioners. As such, it cannot be approved under the Petition for Special Hearing for the following reasons:

1. It is located within the one-hundred-foot buffer of the Chesapeake Bay Critical Area, which is not permitted.
2. It is located within the fifty-foot setback required in the R.C.5 zone.
3. It is a dwelling constructed without a building permit.

The two smaller buildings cannot be approved as accessory structures under the Petition for Special Hearing for the following reasons:

1. The smaller buildings are not accessory to a principal use of the property permitted in the R.C.5 zone as a permitted use or use permitted by special exception. Waterfront use of the Chesapeake Bay is not a principal use.

2. The smaller buildings are not accessory to the dwelling (larger building) since that building is not a legal dwelling, nor a legal principal use or structure.

V. PROCEDURE

The Board of Appeals must understand the relief requested by the Petitioners and the context in which the relief is framed. The Petitioners have not requested variance relief under Section 307 of BCZR. Nor have the Petitioners requested relief from Section 26-436, et seq., of the Baltimore County Code referring to the Chesapeake Bay Critical Area requirements. Instead, the Petitioners are asking this Board to approve the structures under clearly erroneous theories of law in the Petition for Special Hearing.

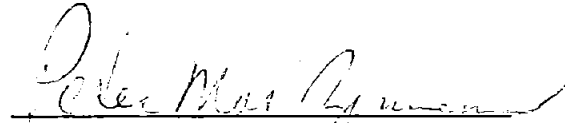
Even if Petitioners requested variance relief, it is clear there is no legally sustainable basis to grant a variance. At page 510 in the North case, the Court discusses the standards which must be met to grant a variance:

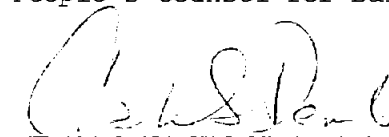
"We first point out that in zoning law a variance, if granted (unlike a special exception),E permits a use which is prohibited and presumed to be in conflict with the ordinance. An applicant for a variance bears the burden of overcoming the presumption that the proposed use is unsuitable. That is done, if at all, by satisfying fully the dictates of the statute authorizing the variance."

Moreover, the Petitioners presented several hours of testimony and numerous documents and exhibits to support their position. There was no evidence presented to support variance relief based on practical difficulty, or undue hardship. The Protestants have clearly presented evidence that the existence of the three buildings present a

substantial impairment to their general welfare. Thus, even if variance relief were requested, it must be denied.

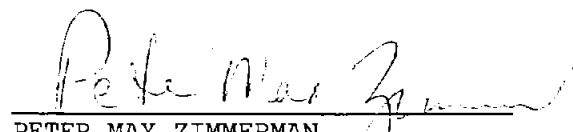
The Board cannot grant variance relief under the Petition for Special Hearing. Nor could the Board support a variance if such relief were in fact requested.


PETER MAX ZIMMERMAN
People's Counsel for Baltimore County


CAROLE S. DEMILIO
Deputy People's Counsel
Room 47, Courthouse
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of May, 1994, a copy of the foregoing People's Counsel Memorandum was mailed to John B. Gontrum, Esquire, 814 Eastern Boulevard, Baltimore, MD 21221, attorney for Petitioners.


PETER MAX ZIMMERMAN

5-27-94
PETITION FOR SPECIAL HEARING
E/S Bay Drive, 165 ft. S of
C/1 Wye Road
3729 Bay Drive
15th Election District
5th Councilmanic District

William P. Jordan, Jr., et ux
Petitioners

* * * * *

* BALTIMORE COUNTY
* BOARD OF APPEALS
* CASE NO.:
* (Zoning) 93-393-SPH

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MEMORANDUM OF PETITIONERS

STATEMENT OF THE CASE

William and Marie Jordan brought a Petition for Special Hearing before the Zoning Commissioner for Baltimore County to approve an existing residential structure with accessory uses or alternatively accessory structures on a shore property incidental to waterfront use. The Zoning Commissioner in a Findings of Fact and Conclusions of Law dated November 12, 1993, denied the Petition. A timely appeal was taken to the County Board of Appeals of Baltimore County.

STATEMENT OF FACTS

The Jordans are the owners of property known as 3729 Bay Drive in the Bowleys Quarters area of Baltimore County. It is zoned R.C. 5, and although it is served by public water, it is not served by public sewer. The property is 50 feet wide and runs in straight lines of varying lengths to the Chesapeake Bay. It is similar in size to adjoining lots recorded decades ago on a plat of Bowley's Quarters (Pet. Ex. 2). The Jordans acquired their property by deed dated September 9, 1980, from Charles and Elva Cecil (Pet. Ex. 3a). The parents of Elva Cecil had also

owned the adjoining lot and had used both lots in conjunction with one another for decades. The adjoining lot was deeded by the surviving parent to her daughter Iris Rozier and her husband in August, 1981 (Pet. Ex. 3b).

At the time the Jordans purchased their lot there was a foundation and the remnants of a small metal shed on the northern rear (roadside corner of the lot). There also was a concrete block patio underneath four trees, which supported some overhang or swing. A water line extended from the Rozier property to the small shed. The property nearest the Roziers was underwater due to drainage problems for most of the time and was unsuitable for building (Pet. Ex. 6b, 6g).

Shortly after purchase of the property the Jordans had the need to replace the existing bulkhead due to a severe storm. They were ~~advised~~ to move the patio area further back and did so toward the property of their neighbor to the south, the Johnsons. A patio and a roof over the patio was constructed of the same size as the concrete block patio, which was removed. Initially, the Jordans used the site for picnics and family get togethers. The Jordans had a boat and utilized the new dock and bulkhead. A new storage shed was built at the site of the old metal shed, and a second block shed was built for storage near the road on the Johnson property side of the lot (Pet. Ex. 3g). Neither shed was over 100 square feet, and the Jordans were advised that they did not need permits. The Jordans also inquired about the need for a permit over the patio, and were informed that a permit was not

needed for a roof of the size proposed.

In the mid-1980's the Jordans bricked up the sides of the pavilion up to about table height. The Petitioner testified that it was due to an accident where the neighbors' lawn mower had blown debris into the pavilion area. Mr. Rozier, who Petitioner believed had been injured testified that he recalled the incident, minor in nature, but had not been involved. Finally in 1987-1988 screens and windows were installed in the pavilion. Mr. Jordan testified that it was done for security and to shelter from the elements (Pet. Ex. 2e; Prot. Ex. 1b). There was a permit obtained for the work by a contractor for the Jordans; however, the permit referred to enclosure of a veranda.

A protest was raised with the zoning office back in 1986 with respect to the pavilion, but no violation citation was issued by the zoning office. Protestant Marie Fraley testified that over the years there were repeated requests to various offices of Baltimore County since the mid-1980's to find the Jordans in violation, but it was not until 1992 over four (4) years after the latest improvement to the property had occurred that a violation was actually filed against the Jordans at the request of the Protestants.

The Protestants main complaint has to do with the pavilion and its location. Despite Mr. Jordan's testimony that he has bought a home in the immediate area within recent years, the Protestants believe that the pavilion acts as a dwelling. Water and electricity serve the site.

SUMMARY OF TESTIMONY

Petitioner William Jordan was the first witness. He testified as to the purchase of the site, and the patio structure and metal shed at the rear of the property. Photos were introduced indicating the improvements to the property at the time it was purchased. Mr. Jordan also testified as to how the current structures came to be on the lot. He testified that he had tried several times to obtain permits for a dwelling on the lot, but had been denied the permits due to the lot's poor percolation. He testified as to the high water table on the property and problems with the neighbors septic systems (Pet. Ex. 5). He indicated that he located the existing pavilion in its current location because it was further back from the water than the previous patio. The center of the lot at the time had electric wires crossing it, which served other properties, and the other side of the lot was unusable due to flooding problems. These problems were corrected but only after the pavilion had been built.

Mr. Jordan testified that he used the lot for personal recreational purposes incidental to its location on the waterfront, and that sheds were constructed to house maintenance implements including fuel. The existing pavilion was built in stages. First a pad and a roof were constructed to provide shelter from the sun. Later, the sides were bricked up to protect the interior. A few years later, windows and screens were added along with a door for security to protect the

furniture and tables as well as to provide shelter from the storms. He was awaiting the ability to obtain permits to build a residence, and the existing use was the only reasonable use of the site. Records were introduced indicating that such structures were common throughout the Bowleys Quarters area.

Dr. Marek was the next witness. He had lived in Bowleys Quarters for over 60 years. He testified that pavilions and storage sheds were common throughout the waterfront area as people used the lots for recreation prior to obtaining building permits and in some cases instead of dwellings. He had long been active in the Bowleys' Quarters Improvement Association and was familiar with Petitioners' property. He felt that their use of the lot and the structures on it were typical of others throughout the community except these structures were better maintained.

Mr. John Schmidt, President of the Bowleys Quarters Improvement Association, also testified on behalf of the Association in support of the Petition. His concern was the precedent that an adverse finding would create given the fact that so many other property owners had similarly used their lots as the Jordans. He testified that public sewer was expected within the next four to five years, and he felt that with the ability of people to use their residential properties as residences that much of the problem would be alleviated. He indicated that to his knowledge the association had never brought a violation case for such use as the Jordans of their property.

The final witness for the Petitioner was Philip Edwards, a former President of the Association and former member of the Planning Board of Baltimore County. He too was familiar with many other lots with structures similar to the Jordans without a primary residence. He felt that there should be some flexibility in how these structures should be viewed given the history of the area and the problems with getting building permits.

The first witness for the People's Counsel was Craig McGraw, a Baltimore County Zoning Enforcement Officer. He indicated that the case initially had arisen as a zoning violation case on complaint from the neighbors. His investigation indicated three accessory structures plus a swimming pool, now removed, without a primary dwelling. He did not believe that accessory structures such as the pavilion and two storage buildings could exist without a residence, and he did not believe that the pavilion was a residence.

The next witness was Iris Rozier, the adjacent neighbor to the north. She testified that when her parents owned the subject property there was only a patio in the front shaded by trees and a small storage building in the rear. She felt her view was impaired by the pavilion from her porch which was a screened and windowed front room on her home. She had no objection to an open pavilion with a roof as she herself has one located behind the bulkhead next to the Jordan property. She agreed that the primary asset of the lots was the water frontage, and that she screened in her porch and put in windows to enjoy the view in the

winter time.

Betty Johnson of 3727 Bay Drive also objected to the pavilion. She herself has a similar pavilion located in front of her house, but it is located further toward the road. The Jordan pavilion blocks her view to the northeast. After the Jordan pavilion was built she added a closed in porch to her home similar to that of the Roziers for basically the same reasons to enjoy year round use of the water. The view is partially blocked by her pavilion, and she can not see the Rozier pavilion from her porch.

Mrs. Kosickyi lives across Bay Drive from the Johnson and Fraley properties, and her property is located on Petitioners' Exhibit 5. She has lived in the community since 1959, and felt that the enclosed Jordan pavilion blocked her view. This is contrary to the photos taken from Bay Drive (Pet. Ex. 6e). Maria Fraley of 2735 Bay Drive was the final witness for Protestants. She moved onto her property in 1988 after the pavilion was built, but had been familiar with the site for many years prior to that. She had complained to zoning and to licenses and permits about the structures on the Jordan property, but to no avail until the current case arose. She felt that the Jordan pavilion as constructed was really an attempt to place a dwelling on the lot without proper authority.

DISCUSSION

The structures on the Jordan property are accessory structures. An accessory use or structure is defined in Section

101 of the Baltimore County Zoning Regulations (hereinafter cited as the BCZR) as follows:

A use or structure which-(a) is customarily incident and subordinate to a principal use or structure; (b) is subordinate in area, extent, or purpose to the principal use or structure; (c) is located on the same lot as the principal use or structure served; and (d) contributes to the comfort, convenience, or necessity of occupants, business or industry in the principal use or structure served; except that, where specifically provided in the applicable regulations, accessory off-street parking need not be located on the same lot. An accessory building, as defined above, shall be considered an accessory structure. A trailer may be an accessory use or structure if hereinafter so specified. An ancillary use shall be considered as an accessory use; however, a use of such a nature or extent as to be permitted as a "use in combination" (with a service station) shall be considered a principal use.

The section makes it quite clear that accessory structures may exist without a primary building. A lot otherwise vacant but with a primary use may be served by an accessory structure. See County Commissioners of Carroll County v. Zent, 86 Md. App. 745, 587 A.2d 1205 (1991). The wording of the definition itself is very clearly worded in the alternative, and perhaps most important, common sense indicates that there are numerous uses including waterfront uses where the buildings are accessory to the principal use. In fact, piers and bulkheads, listed as accessory uses in an R.C. 5 zone (BCZR Sec. 1A04.2A.11.f) have as a policy been allowed without supporting dwellings.

The BOCA National Building Code, adopted by Baltimore County as its official building Code, in Section 201.0 defines a structure as follows: "That which is built or constructed". Any object built or constructed, whether enclosed or not, roofed or

not, intended to be of a lasting nature must, therefore, be considered to be a structure. The BCZR states that structures include tennis courts, swimming pools and utility sheds. BCZR Section 1A04.2A.11.g. Consequently, neither the size, nor the appearance of the structure is relevant to its permissibility under the zoning regulations.

The fundamental issue presented to the Board is the nature of the principal use of the property served by the accessory structures. There was much testimony from all parties that in addition to the dwellings on the lots in the waterfront community the primary focus was the water itself and the leisure activities, active or passive, generated by it. As Dr. Marek indicated, in the days when dwellings were unregulated, people still built shelters or pavilions or sheds in order to enjoy the residential, recreational amenities offered by the properties. These were not dwellings. Since Baltimore County forbade private septic systems due to contamination of ground water in the Bowley's Quarters area, accessory type structures still proliferate as people try to have a legitimate use of the property.

Experience then indicates that the primary usage of such properties, when housing is unfeasible for one reason or another, is still residential in character. By being residential, that is for the use of the occupant of the property or the occupant's invitee, it complies with the requirements of Section 101 of the BCZR, which states that an R.C. 5 zone is a "Residential Zone"

that is "zoned for residential purposes". The primary use of such properties then is either residential open space or residential recreational use. There are three (3) separate arguments supporting this conclusion.

First, Section 1A04.2A.6 lists "open space, common" as a use permitted by right in an R.C. 5 zone. "Open space, common" is defined in Section 101 of the Zoning Regulations as property privately or publicly owned which is reserved for use of the public. This lot in a very real sense is reserved for use of a certain segment of the public, that is the owners, and their invitee. This use is to be distinguished from uses open to the community and permitted by special exception in Section 1A04.2B.5. The latter use would include the tennis and swim clubs, the public beaches and the like. The former use refers to open space generally.

With respect to the subject site it is clear that the structures on the site would not exist independent of the open space enjoyed by the owners. The storage sheds are certainly considered structures, but their primary purpose is to store the equipment needed to maintain the property. The pavilion exists as a shelter and to provide security for the picnic tables, grills, etc., that one would associate with a waterfront amenity. These structures could not exist as a separate primary use, for none are dwellings, and indeed no dwelling permit could be obtained due to the sewerage restrictions. Although the pavilion can provide overnight shelter in much the same way as a tent, it

can not be said to offer the amenities of a dwelling. Consequently, the requirements that an accessory use be incidental and subordinate to the primary use are met in much the same way that the bulkhead and pier meet that use on this particular piece of property. See Zent, supra, 86 Md. App. 745, 587 A.2d 1205 (1991).

The second argument supporting the residential recreation or open space as the primary use is contained within the interpretation of the zoning office that piers or bulkheads may exist on a waterfront property without any other structure. This interpretation clearly is the result of the recognition that a bulkhead provides in many cases necessary protection for the maintenance of the property, and that piers, regulated by Section 417 of the BCZR, provide an accessory use to the waterfront enjoyment of the property. These uses are explicitly listed as accessory uses, and without a principal dwelling the question arises as with these structures accessory to what. There is not now, however, nor has there ever been any question but that these structures are permitted.

One interesting point upon which all participants agreed was that pavilions and storage sheds should be considered proper structures even on vacant lots. Even the adjoining Protestants had pavilions, enclosed and open on the waterfront side of their properties. All of them agreed it was not the structures

themselves which were at issue, but the location of the pavilion.¹

The opinion and history of these structures on these properties is entitled to weight as reinforcing the accessory nature of the structures as "customarily incidental" to a principal use. See 2 Anderson, American Law of Zoning, 3rd Ed., Sec. 9.28. Custom has long established these accessory uses.

The final argument supporting the continued usage of these lots arises in the event that neither an implied use, nor an explicit use is approved by the Board. The recreational enjoyment of this lot as with so many others without dwellings in this community, in that event, is essentially a non-conforming use. Testimony indicates that this lot was owned for many decades by Mr. and Mrs. Trager, who deeded out the Rozier and Jordan lots over 12 years ago. Mrs. Rozier testified and it is supported by the deeds (Pet. Ex. 3) that the lots were purchased by her parents in the 1920's. Her family took up residence on the one lot and used the Jordan lot for recreational, open space continuously and without interruption since the 1930's. As indicated by Petitioner's Exhibit 3, the Jordan property was always a separately deeded lot and not part of the lot now owned by the Roziers. For many years, however, it was clear that

¹On a lot the size of the subject property virtually any structure is going to obscure view from some area. The photographs show that in no case is the direct waterfront view obstructed by Petitioners' structures, and in the case of the Johnsons their own pavilion obscures some view, and their adaption to the enclosed porch was built after construction of the Jordan pavilion. The Jordan pavilion has not been protested by DEPRM except, and this is significant, that the department indicates it should not be considered a residence.

pavilion is the only issue should that not have been raised six years ago? If the issue was raised in 1986, but was not determined to be a problem so as to induce litigation before or during the construction of improvements is it appropriate now years after the final construction on the lot to raise these issues? Protestants were aware of the construction, as was the County, and did nothing. Now, years later to re-open the issue after the expenditure of sums and reliance by the Petitioners on the ability to build on these lots is blatantly unfair. This issue should not now be raised.

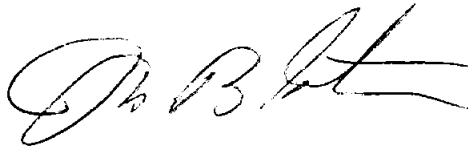
In some aspects this issue is not really one of zoning regulations but rather of permits. If the structures on the Jordan property are found to be impermissible structures then all such structures throughout the community, historically thought to be proper including those structures on neighboring sites must similarly be covered by the ruling. This was the true concern of the Bowleys Quarters Improvement Association, for it runs contrary to historic usage and would certainly have great impact on the overall community. Zoning, however, does not look at size or configuration of structures but only their existence. If an accessory structure exists with a dwelling, special rules cover its location, and variances may be obtained. BCZR, Section 400. The problems with the lots vacant of dwellings remains, however, from a zoning perspective. If the issue is the character of the structure and its construction, then that is an element to be considered at the permit stage of the proceeding. It is through

the permit process, if applicable, that site plans and construction plans would be reviewed and case by case analysis done. In this case it is clear from the Protestants' testimony that numerous complaints were registered with zoning and with licenses from the mid-1980's, but no enforcement action was brought until the pavilion had been in its current condition for approximately five (5) years. While there may be a permit issue, this is not a zoning issue.

CONCLUSION

In conclusion Petitioners request this Board to permit the existing accessory structures on their waterfront property to remain as appropriate accessory structures to the primary use of residential open space and waterfront recreation.

Respectfully submitted,

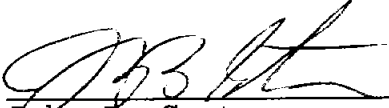
A handwritten signature in dark ink, appearing to read 'J. B. Gontrum', with a stylized flourish at the end.

John B. Gontrum
ROMADKA, GONTRUM & McLAUGHLIN, P.A.
814 Eastern Blvd.
Essex, Maryland 21221
(410) 686-8274

Attorney for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of May, 1994, I mailed a copy of the foregoing Memorandum of Petitioners, postage prepaid to Carole DeMilio, Esquire, People's Counsel for Baltimore County, Courthouse, Room 47, 400 Washington Ave., Towson, Md 21204.



John B. Gontrum

G:\wptext\bjb\jordan2.mem



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

April 8, 1994

Mr. Andrew Jones, Secretary
Bowleys Quarters Improvement
Association, Inc. /Board of Directors
P.O. Box 18051
Baltimore, MD 21220

Re: Case No. 93-393-SPH
William P. Jordan, et ux

Dear Mr. Jones:

The Board is in receipt of your letter dated April 7, 1994 wherein you have requested "response and comments" from this Board regarding the subject matter.

Inasmuch as Case No. 93-393-SPH is presently scheduled for hearing before the Board of Appeals, we cannot comment at this time. However, enclosed for your information is a copy of the Notice of Assignment for the hearing scheduled for Wednesday, May 11, 1994, at 10:00 a.m.

Very truly yours,

A handwritten signature in cursive script that reads "William T. Hackett".

William T. Hackett
Chairman

cc: John B. Gontrum, Esquire

/KCW





County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

March 2, 1994

NOTICE OF POSTPONEMENT & REASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 93-393-SPH WILLIAM P. JORDAN, JR., ET UX
E/s Bay Drive, 165' S of c/l Wye Road
(3729 Bay Drive)
15th Election District
5th Councilmanic District

SPH -Approval for use of existing residential structure with accessory structure, or, alternatively, accessory structures on a shore property incidental to waterfront use.

11/12/93 -Z.C.'s Order in which Petition for Special Hearing was DENIED.

which was scheduled for hearing on April 21, 1994 has been POSTPONED at the request of Counsel for Appellants /Petitioners due to schedule conflict; and has been

REASSIGNED FOR: WEDNESDAY, MAY 11, 1994 at 10:00 a.m.

cc: John B. Gontrum, Esquire Counsel for Appellants /Petitioners
Mr. and Mrs. William P. Jordan Appellants /Petitioners

Charles ~~John~~ Marek, Sr., M.D.
Ms. Deborah Brill

Mr. John Lamantia	Protestant
Mrs. Iris Rosier	"
Ms. Billie Kozycki	"
Mrs. Betty Johnson	"
Ms. Marie J. Bell and	"
Mrs. Maria Fraley	"
People's Counsel for Baltimore County	
P. David Fields	
Lawrence E. Schmidt	
Timothy H. Kotroco	
W. Carl Richards, Jr. /ZADM	
Docket Clerk /ZADM	
Arnold Jablon, Director /ZADM	



ROMADKA, GONTRUM & McLAUGHLIN, P.A.

814 Eastern Boulevard
Baltimore, Maryland 21221

TELEPHONE: (410)686-8274
FAX# 686-0118

ROBERT J. ROMADKA
JOHN B. GONTRUM
J. MICHAEL McLAUGHLIN, JR.*

February 24, 1994

ELIZABETH A. VANNT

*ALSO ADMITTED IN D.C.

County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, MD 21204

Re: Case No.: 93-393-SPH
William P. Jordan, et ux
Hearing Date: April 21, 1994 @ 10:00 a.m.
RGM File No.: 92.3026

RECEIVED
COUNTY BOARD OF APPEALS
94 FEB 28 PM 12:46

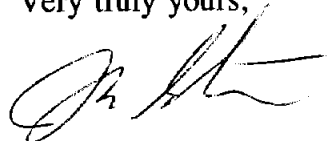
Gentlemen:

Please postpone the referenced hearing date of April 21, 1994 @ 10:00 a.m., as I have a previously scheduled business meeting out of town for April 21 and April 22, 1994. This meeting has been scheduled for sometime and would be very difficult to reschedule.

If you have any questions or if you need available dates, please contact my secretary, Belinda and she can help you.

Thank you for your anticipated prompt attention to this matter.

Very truly yours,



John B. Gontrum

*reset
May 11, 1994*

JBG/bjb

cc: Mr. & Mrs. William P. Jordan
People's Counsel for Baltimore County



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

February 17, 1994

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 93-393-SPH

WILLIAM P. JORDAN, JR., ET UX
E/s Bay Drive, 165' S of c/l Wye Road
(3729 Bay Drive)
15th Election District
5th Councilmanic District

SPH -Approval for use of existing residential structure with accessory structure, or, alternatively, accessory structures on a shore property incidental to waterfront use.

11/12/93 -Z.C.'s Order in which Petition for Special Hearing was DENIED.

ASSIGNED FOR:

THURSDAY, APRIL 21, 1994 at 10:00 a.m.

cc: John B. Gontrum, Esquire
Mr. and Mrs. William P. Jordan
John Marek, Sr., M.D.
Ms. Deborah Brill

Counsel for Appellants /Petitioners
Appellants /Petitioners

Mr. John Lamantia
Mrs. Iris Rosier
Ms. Billie Kozycki
Mrs. Betty Johnson
Ms. Marie J. Bell and
Mrs. Maria Fraley

Protestant

"
"
"
"
"

People's Counsel for Baltimore County
P. David Fields
Lawrence E. Schmidt
Timothy H. Kotroco
W. Carl Richards, Jr. /ZADM
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM

Kathleen C. Weidenhammer
Administrative Assistant



CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

93-393-SPH

District 15TH Date of Posting 12/12/93

Posted for: Appeal

Petitioner: Wm. & Marie Jordan

Location of property: 3729 Bay Drive, E/S

Location of Signs: Facing roadway on property being appealed

Remarks: _____

Posted by M. Steady Date of return: 12/23/93
Signature

Number of Signs: 1



93 DEC 10 PM 2:27

Petition for Special Hearing
E/S Bay Drive, 165 ft. S of c/l Wye Road
(3729 Bay Drive)
15th Election District - 5th Councilmanic District
William P. Jordan - PETITIONER
Case No. 93-393-SPH

- ✓ Petition(s) for Special Hearing
- ✓ Description of Property
- ✓ Certificate of Posting
- ✓ Certificate of Publication
- ✓ Zoning Plans Advisory Committee Comments
- ✓ Petitioner(s) and Protestant(s) Sign-In Sheets
- ✓ Plat to Accompany Petition for Special Hearing
- ✓ Petitioner's Exhibits: ✓ 1 - Vicinity Map and Zoning Description
 - ✓ 2A- Deed, Liber 6205, Page 238
 - ✓ 2B- Deed, Liber 6347, Page 040
- 3 Photographs of location (none marked as exhibits)
 - Six sheets of photographs
 - Twenty-six photographs
- ✓ Zoning Commissioner's Order dated November 12, 1993 (Denied)
- ✓ Notice of Appeal received on December 9, 1993 from John B. Gontrum

* c: John B. Gontrum, Esquire, 814 Eastern Blvd, Baltimore, MD 21221
Mr. and Mrs. William P. Jordan, 3800 Bay Drive, Baltimore, MD 21220
Mr. John Lamantia, 3719 Bay Drive, Baltimore, MD 21220
Mrs. Iris Rosier, 3731 Bay Drive, Baltimore, MD 21220
Ms. Billie Kozycki, 3724 Bay Drive, Baltimore, MD 21220
Mrs. Betty Johnson, 3727 Bay Drive, Baltimore, MD 21220
Ms. Maria J. Bell and Mrs. Maria Fraley, 3725 Bay Drive,
Baltimore, MD 21220
People's Counsel of Baltimore County
Rm. 304, County Office Bldg., Towson, MD 21204

Request Notification: P. David Fields, Director of Planning & Zoning
Patrick Keller, Office of Planning & Zoning
Lawrence E. Schmidt, Zoning Commissioner
W. Carl Richards, Jr., Zoning Coordinator
Docket Clerk
Arnold Jablon, Director of ZADM

In support of petition:
John Marek, Sr., M.D.
4021 Bay Drive
Baltimore, MD 21220

In support of petition:
Deborah Brill
3926 New Section Road
Baltimore, MD 21220

Mr. Andrew Jones, Secretary
Bowleys Quarters Improvement
Assn., Inc. /Board of Directors
P.O. Box 18051
Baltimore, MD 21220

Case No. 93-393-SPH
WILLIAM P. JORDAN, JR., ET UX

E/S Bay Drive, 165 Ft. S of c/l Wye Road
(3729 Bay Drive)

15th District

Appealed 12/9/93

DEED

COLUMBIA GUARANTEE
TITLE COMPANY, INC.
APP. NO. TBA 377

THIS DEED is made this 9th day of September, 1980,
by and between ELVA A. CECIL and CHARLES W. CECIL, JR., parties of the
first part, Grantors, and WILLIAM P. JORDAN, JR. and MARIE JORDAN, his
wife, parties of the second part, Grantees.

WITNESSETH: That for the actual consideration of the sum of
\$ 25,000.00, and other valuable consideration, the receipt
whereof is hereby acknowledged, the said Grantors do grant and convey
unto the Grantees, as tenants by the entireties, their assigns, the
survivor of them, his or her personal representatives and assigns, in
fee simple,-----

all that ~~XXXX~~ lot ~~XX~~ of ground situate in Baltimore County,-----
in the State of Maryland, and described as follows:

BEING KNOWN AND DESIGNATED as Lot No. 235 as shown on a Plat entitled,
"Second Addition to Plat No. 1, Bowley's Quarter" said Plat is recorded
among the Land Records of Baltimore County, Maryland in Plat Book No.
8 folio 73. The current address thereon being now or formerly known
as 3729 Bay Drive.

BEING the same property which by Deed dated November 22, 1971 and
recorded among the Land Records of Baltimore County, Maryland in Liber
5233 folio 577 was granted and conveyed by Helen V. Trager unto Elva
A. Cecil and Charles W. Cecil, Jr., the within Grantors, in fee simple.

0001*** 203016 1 03-51 DES
00021*** 20116 1 03-51 DES
00211*** 21116 1 03-51 DES
00212*** 21116 1 03-51 DES

PETITIONER'S
EXHIBIT No 2A

3A

Together with the buildings and improvements thereupon; and the rights, alleys, ways, waters, privileges, appurtenances and advantages to the same belonging or in anywise appertaining.

To have and to hold the said described lot(s) of ground and premises, unto and to the use of the said Grantees, as tenants by the entireties, their assigns, the survivor of them, his or her personal representatives and assigns, in fee simple.

And the said Grantor covenants to warrant specially the property hereby granted and conveyed, and to execute such further assurances of said land as may be requisite.

Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

Witness the hand(s) and seal(s) of the said Grantor(s):

WITNESS:

Anne G. Baker
ANNE G. BAKER

Elva A. Cecil (SEAL)
Elva A. Cecil

Anne G. Baker
ANNE G. BAKER

Charles W. Cecil, Jr. (SEAL)
Charles W. Cecil, Jr.

STATE OF MARYLAND, BALTIMORE COUNTY, TO WIT:

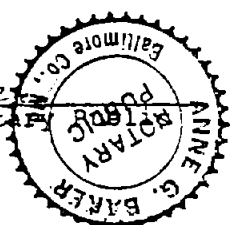
I HEREBY CERTIFY, that on this 9th day of September, 1980, before me, a Notary Public of the State aforesaid, personally appeared ELVA A. CECIL and CHARLES W. CECIL, JR.-----

known to me (or satisfactorily proven) to be the person(s) whose name is/are subscribed to the within instrument, who signed the same in my presence, and acknowledged that they executed the same for the purposes therein contained.

WITNESS my hand and Notarial Seal.

My commission expires:
July 1, 1982

Anne G. Baker Notary
ANNE G. BAKER



Rec'd for record SEP 15 1980 at 184
Per Elmer H. Kahline, Jr. Clerk
Mail to Columbia Guarantee Title
Receipt No. 1000

FEE-SIMPLE DEED-CODE-City or County

NO TITLE EXAMINATION

This Deed, Made this

4th

day of

August

in the year one thousand nine hundred and eighty-one

, by and between HELEN V. TRAGER

of Baltimore County/

in the State of Maryland, of the first part, and

IRIS A. ROSIER and JACK WESLEY ROSIER, her husband,

of the second part.

CV 23-81 284843E *****9.00
CV 23-81 284843CE *****9.00

Witnesseth, That in consideration of ~~DEED~~ mutual love and affection and no monetary consideration

the said party of the first part in exercise of the powers set forth in a Deed dated April 26, 1978 and recorded among the Land Records of Baltimore County in Liber E.H.K.Jr. No. 5886 folio 11 does grant and convey unto the said parties of the second part as tenants by the entireties, their assigns, the survivor of them and the survivor's heirs, personal representatives

~~AND~~ and assigns, in fee simple, all that lot

of ground, situate, lying and being in

Baltimore County, State of Maryland, aforesaid, and described as follows, that is to say:-

Beginning for the same on the southeast side of Bay Drive, thirty feet wide, and at the distance of ten hundred and fifty feet northeasterly from a stone heretofore planted at the northeast corner of lot No. 214, as shown on the plat No. 1 of Bowleys Quarters, heretofore recorded in plat book W.P.D. No. 7, folio 12, etc. in the Record Office of the Circuit Court for Baltimore County, and running thence northeasterly bounding on the southeast side of Bay Drive fifty feet, thence southeasterly at right angles to said Bay Drive three hundred eighty-one feet to the waters of Chesapeake Bay, thence bounding on the waters of said Chesapeake Bay fifty feet, more or less, to intersect a line drawn southeasterly at right angles to Bay Drive from the place of beginning, and thence reversing said line so drawn and bounding thereon northwesterly three hundred sixty-seven and eighty-tenths feet to the place of beginning.

Said lot being known as Lot numbered two hundred and thirty-six (236) on the second addition to Plat No. 1 of the property of Bowleys Quarters Company of Baltimore County recorded among the Plat Records of Baltimore County in Plat Book No. 8, folio 73.

BEING the same property which by a Deed dated April 26, 1978 and recorded among the Land Records of Baltimore County in Liber E.H.K.Jr. No. 5886 folio 11 was granted and conveyed by Leroy D. Trager, Elva A. Cecil and Iris A. Rosier to the within grantor.

RECORDED DATE

AGRICULTURAL TRANSFER TAX NOT APPLICABLE

DATE 11/20/81

STATE DEPARTMENT OF REVENUE & TAXATION

CHIEF

DATE

TRANSFER TAX NOT REQUIRED
RABECOLM E. ROSENKRANTZ
DIRECTOR OF REVENUE
BALTIMORE COUNTY, MARYLAND

Per

AUTHORIZED SIGNATURE

11-20-81

11-25-81

PETITIONER'S
EXHIBIT 2B-3B

Together with the buildings and improvements thereupon erected, made or being and all and every the rights, alleys, ways, waters, privileges, appurtenances and advantages, to the same belonging, or anywise appertaining.

To Have and To Hold the said lot of ground and premises, above described and mentioned, and hereby intended to be conveyed; together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said parties of the second part as tenants by the entireties, their assigns, the survivor of them and the survivor's heirs, personal representatives

~~Heirs~~ and assigns, in fee simple.

And the said party of the first part hereby covenants that she has not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that she will warrant specially the property granted and the She will execute such further assurances of the same as may be requisite.

Witness the hand and seal of said grantor.

TEST:

M. Carol Cummings
M. CAROL CUMMINGS

Helen V. Trager (SEAL)
Helen V. Trager

____ (SEAL)

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

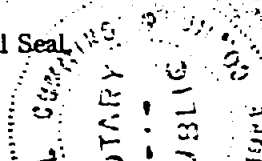
I HEREBY CERTIFY, That on this 4th day of August in the year one thousand nine hundred and eighty-one, before me, the subscriber, a Notary Public of the State of Maryland, in and for the place aforesaid, personally appeared Helen V. Trager

the above named grantor, and she acknowledged the foregoing Deed to be her act.

As Witness my hand and Notarial Seal

My Commission Expires:

MY COMMISSION EXPIRES JULY 1, 1982



Record for Record NOV 23 1981 at 957A

Per Elmer D. Kahline, Jr., Clerk

Mail to

Receipt No.

M. Carol Cummings

Notary Public.

Dorothy I Jackson

900

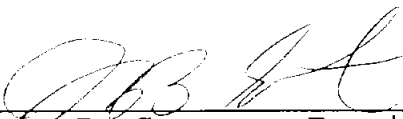
month.

4. Resolution of this matter may well dispose of the Appeal filed in the above referenced case.

5. That a decision in the Zoning Petition should be reached well prior to the time of extension sought.

6. That the extension sought is well within the 120 days of the filing of the Petition for Judicial Review as stated in Rule 7-206(d).

WHEREFORE, Petitioners pray that the time for the transmittal of the record in the above referenced case be extended to December 13, 1994, and for such other and further relief as the nature of their cause may require.



John B. Gontrum, Esquire
ROMADKA, GONTRUM & McLAUGHLIN, P.A.
814 Eastern Blvd.
Essex, Maryland 21221
(410) 686-8274

Attorney for Petitioners
William & Marie Jordan

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ~~10~~¹⁵th day of September, 1994, I mailed a copy of the foregoing Motion to Extend Time for Transmittal of the Record, postage prepaid to Baltimore County Board of Appeals, Old Courthouse, Room 149, 400 Washington Ave., Towson, Md 21204; Peter Max Zimmerman, People's Counsel for Baltimore County, Room 47, Courthouse, 400 Washington Ave., Towson, MD 21204; Maria Fraley, 3725 Bay Drive, Baltimore, MD 21220; Betty Johnson, 3727 Bay Drive, Baltimore, MD 21220; Billie Kozycki, 3724 Bay Drive, Baltimore, MD 21220; Iris Rosier, 3731 Bay Drive, Baltimore, MD 21220; and Jack W. Rosier, 3731 Bay Drive, Baltimore, MD 21220.



John B. Gontrum, Esq.

Middle River Road

3706 water side adjacent lot
3718 water side adjacent lot

N w Section Road

3706 water side adjacent lot
3718 water side adjacent lot

New Section Road

3906 rear lot across road
3932 rear lot across road
3933 and adjacent lots

Sen ca Road

1203 water side
1219 water side
1220 rear lot

South Seneca Road

1335 water side lots
1347 water side lots
1353 water side lots

Susqu hanna Avenue

1016 water side
1018 water side

Wagner Lane

410 water side
412 water side

The Bowleys Quarters Improvement Association, Inc.

P.O. BOX 18051

BALTIMORE, MARYLAND 21220

(410) 335-9802

RESOLUTION

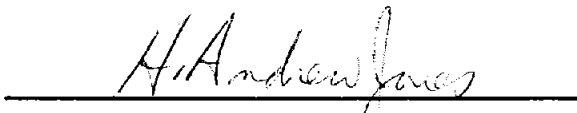
RESOLVED, that the Bowleys Quarters Improvement Association has delegated the responsibility for reviewing and acting upon all zoning matters to the zoning committee consisting of the following persons, who have been appointed to such positions by the board of directors of the association:

John Schmidt - Chairman
Philip Edwards
James Hock

The undersigned Officer of the Corporation hereby certifies that the above Resolution is a True Copy of a Resolution adopted by Bowley's Quarters Improvement Association at it's first board of directors meeting held on January 4, 1994.



John J. Schmidt
President



(Attested by) H. Andrew Jones
Secretary

Pet. Ex. 9-A

Bowleys Quarters Improvement Association
P.O. Box 18051
Baltimore, Maryland 21220
301-335-9802

RECEIVED
COUNTY BOARD OF APPEALS
94 APR -8 PM 12:35

April 7, 1994

County Board of Appeals of Baltimore County
111 West Chesapeake Avenue
Towson, Maryland 21204

RE: Case #93-393-SPH

The Bowleys Quarters Improvement Association (B.Q.I.A.) finds it necessary to respond to a zoning issue which has escalated to the County Board of Appeals, Baltimore County, known now as Case #93-393-SPH. This case involves Baltimore County vs. William P. Jordan, Jr.

For the record, William P. Jordan, Jr. is past president of the B.Q.I.A.. Mr. Jordan has been very active as an environmentalist and has strongly supported the need for sewerage on the Bowleys Quarters peninsula. This sewerage project has been delayed for many years by Baltimore County, at the expense of quality of life, due to pollution of our waters from failing septic systems.

The zoning violation effecting Mr. Jordan was initiated by Baltimore County by a Mr. Abendschoen. Are we to expect that Mr. Abendschoen will continue to select individuals in the community for zoning issues, or are we to expect a class action type of zoning violation issued?

As a result of Building Moratoriums caused by the denial of sewerage and the implementation of Critical Area laws, many similar zoning violations may be evident in this community.

Many individual lots with similar structures were at one time owned by adjacent property owners. Once the lots are sold, the same situation that has brought Mr. Jordan before this Appeals Board could also happen to other individuals.

The historical use is not being challenged in this case; however, the placement of the structure is being questioned after **6 years of existence**. Had Mr. Jordan been able to construct a home as he desired, this zoning violation would not be before the Appeals Board.

This community questions the intent of the zoning violation initiated by Baltimore County. We try to reconcile in our minds how, on one hand, Baltimore County can issue, in a "Red Line Decision", the permit to construct **200 boat racks** on the property of Chesapeake Yachting Center on **what had been designated as a Passive Recreation Site**, and yet take issue with a structure on an individual's property which has been in existence for **6 years**.

The Board of Directors representing the general membership of this community respectfully submits this letter for your response and comments. Please direct comments and/ or questions to the Bowleys Quarters Improvement Association, Inc. at the above address.

For the Bowleys Quarters Improvement Association, Inc.
Board of Directors,

Andrew Jones

Andrew Jones
Secretary

cc: John B. Gontrum, Esquire

Pct. Ex. 9-B

Scheduled for hearing 5/11/94

6/10/93
0
H/K
Pet. Ex. 7

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. Arnold E. Jablon, Director
Office of Zoning Administration
and Development Management

DATE: June 2, 1993

FROM: J. James Dieter

SUBJECT: Petition for Zoning Variance - Item 404
Jordan Property
Chesapeake Bay Critical Area Findings

43 - 343 - SPH

SITE LOCATION

The subject property is located at 3729 Bay Drive. The site is within the Chesapeake Bay Critical Area and is classified as a Limited Development Area (LDA).

APPLICANT'S NAME William and Marie Jordan

APPLICANT PROPOSAL

The applicant has requested a variance from section 500.7 of the Baltimore County Zoning Regulations to permit an existing residential structure with accessory structures or alternatively accessory structures on a shore property incidental to waterfront use.

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 finding 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
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 14.15.10.01.0>.

RECEIVED

JUN 10 1993

ZADM

REGULATIONS AND FINDINGS

1. Regulation: "A minimum 100 foot buffer shall be established landward from the mean high water line of tidal waters, tidal wetlands, and tributary streams" <Baltimore County Code Section 26-449(a)>.

Finding: This property is located adjacent to the tidal waters of the Chesapeake Bay. The existing screenhouse is approximately 30' from the mean high water of the Chesapeake Bay. This building should not be considered a primary structure. New residential dwellings and structures would need to be located 100' from tidal waters.

2. Regulation: "Dredging, filling, or construction other than approved bulkheading shall not be permitted in any non-tidal and tidal wetlands unless the proposed development consists of utility, bridge, or street development in a non-tidal wetland and unless the Director of Environmental Protection and Resource Management finds this proposed development not detrimental to the County's Wetland Management Programs" <Baltimore County Code, Section 26-447>.

Finding: No tidal or non-tidal wetlands were found on this site, or in the vicinity of the site. Therefore, no dredging, filling, or construction shall occur in any tidal or non-tidal wetland for this project, and this regulation has been met.

3. Regulation: "If a parcel or lot one-half acre or less in size was in residential use or zoned for residential purposes on or before December 1, 1985, then man-made impervious surfaces associated with that use are limited to 25% of the parcel or lot" <Baltimore County Code, Section 26-543(e)(1)>.

Findings: The amount of impervious areas shall not exceed 3,450 square feet or 25% of the lot. This includes all building structures, paved and crusher run driveways and parking pads, swimming pools, or any other impervious surfaces. Current impervious areas total approximately 668 square feet or 5% of the lot.

4. Regulation: "Infiltration of stormwater shall be maximized throughout the site, rather than directing flow to single discharge points" <Baltimore County Code, Section 26-453(h)(2)>.

Finding: Stormwater runoff shall be directed from impervious surfaces associated with this plan, to pervious areas, to encourage maximum infiltration. Rooftop runoff shall be directed through downspouts and into a seepage pit or drywell, to encourage maximum infiltration (see attached information). These measures will ensure that the requirements of this regulation are met.

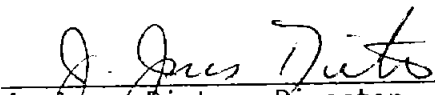
Mr. Arnold E. Jablon
June 2, 1993
Page 3

5. Regulation: "If no forest is established on proposed development sites, these sites shall be planted to provide a forest or developed woodland cover of at least 15%" <COMAR 14.15.02.04 C.(5)(e)>.

Finding: The property currently has 15% tree cover and it must be maintained to be in compliance with the above regulation.

CONCLUSION

The Zoning Variance shall be conditioned so the project proposal is in compliance with the Chesapeake Bay Critical Area Regulations and Findings listed above. This proposal does comply with Chesapeake Bay Critical Area Regulations and is therefore approved. If there are any questions, please contact Ms. Patricia M. Farr at 887-3980.



J. James Dieter, Director
Department of Environmental Protection
and Resource Management

JJD:KDK:tmm

Attachment

cc: Mr. William Jordan
3800 Bay Drive
Baltimore, Maryland 21220

JORDAN/WQBCA

① 3500 GALLOWAY ROAD
10+43 Property No.: 18-00-007326

② 3502 GALLOWAY ROAD
10+42 Property No.: 18-00-007327

③ 3504 GALLOWAY Rd
Property No.: 15-23-351370

④ 3506 GALLOWAY ROAD
Property No.: 15-04-001780

⑤ 3512 GALLOWAY Rd.
Property No.: 15-02-654260

⑥ 3514 GALLOWAY Rd.
Property No.: 15-19-321291

⑦ 3516 GALLOWAY Rd.
Property No.: 15-25-700080

⑧ 3518 GALLOWAY Rd.
Property No.: 15-11-771210

⑨ 3520 GALLOWAY Rd.
Property No.: 15-11-771780

⑩ 3522 GALLOWAY Rd.
Property No.: 15-19-072441

⑪ 3526 GALLOWAY Rd.
Property No.: 15-11-771340

- ⑬ 3528 GALLOWAY RD.
Property No.: 15-03-371020
- ⑭ 3530 GALLOWAY RD.
Property No.:
- ⑮ 3534 GALLOWAY RD
Property No.: 15-13-920580
- ⑯ 3536 GALLOWAY RD.
Property No.: 15-02-371490
- ⑰ 3600 GALLOWAY RD.
Property No.: 15-03-002761
- ⑱ 3604 GALLOWAY RD.
Property No.: 15-18-473230 (10+39)
~~052008~~ 15-19-321289 (10+41)
- ⑲ 3606 GALLOWAY RD.
Property No.:
- ⑳ 3612 GALLOWAY RD.
Property No.: 15-20-200111
- ㉑ 3614 GALLOWAY RD
Property No.: 15-11-470312
- ㉒ 3620 GALLOWAY RD
Property No.: 15-13-752920
- ㉓ 3628 GALLOWAY RD.
Property No.: 15-20-450730

23 3630 GALLOWAY RD.
PROPERTY NO.:

24 3632 GALLOWAY RD.
PROPERTY NO.: 15-19-072301

3800 Bay Drive
Baltimore, MD 21220

March 29, 1994

Mr. James H. Thompson
Zoning Enforcement Coordinator
Baltimore County Office of Zoning
Administration and Development
Management
111 West Chesapeake Avenue
Towson, Maryland 21204

Dear Mr. Thompson:

This is not a zoning complaint. We are requesting your assistance in locating documentation permitting structures situated on and at the enclosed list of addresses. We were advised by building inspections that Zoning is the only office that will have the information we require.

Your consideration and cooperation in this matter will be greatly appreciated.

Sincerely,

Mr. & Mrs. William P. Jordan, Jr.
Mr. & Mrs. William P. Jordan, Jr.

Cold Spring Road

1005 and adjacent lots

Chesapeake Avenue

1422 front adjacent lot

Chester Road

1028 front adjacent lot

Chestnut Road

4016 (new building front)

4022 rear of lot

3724 and adjacent lot

Bay Drive

3551 water side

3601 water side

3609 water side

3631 water side and adjacent lots

3637 water side and adjacent lots

3643 water side and adjacent lots

3733 rear lot

3735 rear lot

3800 adjacent lot

3811 rear lot

3815 water side and adjacent lots

3825 water side and adjacent lots

4015 rear lot across road

4017 rear lot across road

4019 rear lot across road

4027 rear lot across road

4031 rear lot across road

Briar Point Road

4009 rear

4016 front

Burke Road

1618 adjacent lot

1204 front

1324 front

1426 front

1428 front

Edwards Lane

3523 adjacent lots (in woods)

Galloway Road

3502 adjacent lot

3504 water side

3508 water side

3510 water side

3512 water side

3514 water side

3516 water side

3522 water side

3524 water side

3526 water side

3530 water side

3532 water side

3536 water side

3538 water side and adjacent lots

3612C water side

3610 water side

3620 water side

3630 water side

3632 water side

3648 water side

3650 water side

3652 water side

3654 water side

3656 water side

3660 water side

3662 water side

3664 water side

3668 water side

3690 water side

3692 water side

3694 water side

Goose Neck Road

1302 water side

1306 water side

1312 water side

1314 water side

1326 water side

1334 water side

Prot. Ex 3

ALLEGED ZONING VIOLATION

DATE: August 5, 1984

CASE NUMBER C- 87-143

ELECTION DISTRICT: 15th

LOCATION: 3729 Buf Drive

DEAR Ms. Bell:

PLEASE BE ADVISED THAT YOUR COMPLAINT, INVOLVING THE ABOVE REFERENCED PROPERTY, HAS BEEN RECEIVED BY THIS OFFICE. AN INSPECTOR HAS BEEN ASSIGNED TO THE CASE AND WILL VISIT THE LOCATION AS SOON AS POSSIBLE. YOU WILL ADDITIONALLY BE ADVISED OF ALL FURTHER DEVELOPMENTS IN OUR INVESTIGATION. SHOULD THIS MATTER BE SCHEDULED FOR A DISTRICT COURT TRIAL, YOU WILL BE NOTIFIED OF THE DATE.

ZONING ENFORCEMENT SECTION



TELEPHONE: 494-3351

Mr. Arnold Clifton Maddox and his son, Mr. William E. Maddox. The appellee obtains no profit or any other return from the use which he has authorized.

Thomas Lamar, who is employed full-time at a hardware company, possesses a "fyke and gill net license." Arnold Clifton Maddox, who is employed full-time as a longshoreman, has had a commercial fishing license for 18 years. William Maddox also has a commercial fishing license. During January, February and March, at various times when they were not working, such as evenings, Saturdays and Sundays, and depending upon weather and tides, the three men would set out, each in his own boat, often accompanied by a helper, to fish. Upon their return the fish would be hoisted onto the pier, packed into crates, loaded onto trucks and hauled away to the wholesale fish market where they were sold. But for the fact that a sufficient quantity of fish were caught to be sold, the fishing expeditions would not take place. There were no sales of fish conducted on the property nor were there any signs indicating the existence of any business operation on the property.

Section 102.1 of the zoning regulations provides, insofar as here relevant:

"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. . .*" (*Emphasis added.*)

Section 1A00.2 of the zoning regulations provides:

"A. Uses Permitted as of Right. *The following uses, only, are permitted as of right in R.D.P. zones:*

- "1. Farms. . .
- "2. One-family detached dwellings.
- "3. Churches or other buildings for religious worship.
- "4. Trailers. . .
- "5. Research institutes. . .

- "6. Hospitals.
- "7. Telephone, telegraph, electrical-power, or other electrical lines. . .
- "8. Other cables; conduits; gas, water, or sewer mains; or stormdrain systems. . .
- "9. Railroads or other transportation lines.
- "10. Animal boarding places (regardless of class), kennels, veterinarians' offices or veterinarians' . . .
- "11. Excavations, uncontrolled.
- "12. Schools . . .
- "13. Accessory uses or buildings (not subject to the provisions of Section 400), including, but not limited to:
 - "a. An office or studio of a doctor, dentist, lawyer, architect, engineer, artist, musician, or other professional person, provided that such office or studio is established within the same building as that serving as his bona fide residence . . .
 - "b. Home occupations as defined in Section 101, also subject to the sign provisions of Section 413.
 - "c. Parking space, including residential-garage space.

"B. Uses Permitted by Special Exception. *The following uses, only, are permitted as special exceptions:*

- "1. Airports.
- "2. Antique shops . . .
- "3. Boat yards.
- "4. Cemeteries.
- "5. Commercial beaches.
- "6. Community buildings, swimming pools, or other structural or land uses devoted to

Opinion of the Court.

[25 Md. App.

civic, social, recreational, or educational activities.

- "7. Conservatories for music or other arts.
- "8. Dwellings or other buildings converted to tea rooms or restaurants . . .
- "9. Excavations, controlled . . .
- "10. Golf courses, country clubs, or other outdoor recreation clubs; also quasi-public camps, including day camps.
- "11. Golf driving ranges, miniature-golf ranges, or baseball-batting ranges.
- "12. Helistops.
- "13. Marinas.
- "14. Public-utility uses not permitted as of right.
- "15. Residential art salons . . .
- "16. Riding stables . . .
- "17. Sanitary landfills . . .
- "18. Shooting ranges.
- "19. Volunteer-fire-company facilities.
- "20. Wireless transmitting and receiving structures . . .
- "21. Large-scale unit developments, as provided in Section 430."

These sections established that the only uses permitted in the R.D.P. zone are those designated as uses permitted as of right and uses permitted by special exception. Any use other than those permitted and being carried on as of right or by special exception is prohibited. *See Town of Harvard v. Maxant*, 275 N.E.2d 347, 349-50 (Mass. 1971); *Williams v. City of Bloomington, McLean County*, 247 N.E.2d 446, 449-50 (Ill. App. 1969); *Samsa v. Heck*, 234 N.E.2d 312, 315-16 (Ohio App. 1967); *Gada v. Zoning Board of Appeals of the Town of East Lyme*, 193 A. 2d 502, 503 (Conn. 1963); *Gordon v. Zoning Board of the City of Stamford*, 145 A. 2d 746, 750 (Conn. 1958); *Silver v. Zoning Board of Adjustment*, 112 A.

493]

Opinion of the Court.

2d 84, 86-87 (Penn. 1955); *City of Warwick v. Campbell*, 107 A. 2d 334, 336-37 (R.I. 1954); *City of Knoxville v. Brown*, 260 S.W.2d 264, 267 (Tenn. 1953); *Dolan v. DeCapua*, 80 A. 2d 655, 659 (N.J. Super. 1951); *Jones v. Robertson*, 180 P. 2d 929, 931 (Cal. App. 1947). Thus, the question before the Board was whether the use of vacant land, by the owner's relatives, for the berthing, storage, maintenance and launching of boats, as well as for the fishing activities described above, to which uses the owner consented, was prohibited by section 1A00.2 of the zoning regulations, rather than whether the uses complained of were boat yard, marina or commercial uses. The Board found that the uses complained of constituted neither a marina nor a boat yard, nor a commercial business or trade use. The Board failed to determine whether the uses complained of were permitted in the R.D.P. zone and, therefore, were not prohibited, and, if so, whether they were being properly conducted as a matter of right or by special exception. In so doing the Board erred.

Here there is not an iota of evidence to show that the uses complained of do or can constitute any use permitted as of right other than an accessory use. Section 101 of the zoning regulations defines an accessory use or structure as follows:

"A use or structure which — (a) is customarily incident and subordinate to and serves a principal use or structure; (b) is subordinate in area, extent, or purpose to the principal use or structure; (c) is located on the same lot as the principal use or structure served; and (d) contributes to the comfort, convenience, or necessity of occupants, business, or industry in the principal use or structure served. . . ."

A principal use is defined under this section to be a "main use of land, as distinguished from an accessory use."

The record here unequivocally establishes that the subject property is vacant, contains no buildings or structures, is not served by water or sewer facilities, and is not equipped with any electrical service. It has no use other than those authorized and permitted by the owner, all of which are

associated with the berthing, storage, maintenance and launching of boats, as well as the fishing activities previously described. Thus, the record establishes that at the present time the only uses of the subject property are the uses of which the appellant complains. Under these circumstances such uses constitute the main or principal uses of the subject property. They do not and cannot fall within the ambit of the definition of an accessory use.³ See *Town of Harvard, supra*; *City of Bloomington, supra*; *Samsa, supra*; *Silver, supra*; *City of Warwick, supra*.

Moreover, there is not an iota of evidence to show that the uses complained of are being carried on pursuant to a special exception. Section 1A00.2B provides for a "boat yard" and a "marina" as permitted uses by special exception in the R.D.P. zone. Section 101 defines a "boat yard" as:

"A commercial or *non-profit* boat basin with facilities for *one or more* of the following: sale, construction, repair, *storage, launching, berthing*, securing, fueling and *general servicing* of marine craft of all kinds." (Emphasis added.)

A "marina" is defined by section 101 as:

"A modern boat basin, restricted to recreational marine craft of all types, with facilities for one or more of the following: berthing, launching, and securing such craft, and permitting incidental minimum provision for refueling and emergency servicing, and also land (out-of-water) storage as provided in subsection 417.7."

But even assuming without deciding, that some or all of the activities complained of, particularly those centering around the berthing, launching and maintenance of boats, are permitted uses by special exception, such uses under the

3. We are not here confronted with the question of what, if any, personal use an owner can make of a vacant parcel of R.D.P. zoned waterfront land.

circumstances here would still be prohibited by section 1A00.2 because a special exception had not been obtained.

In the absence of any evidence to support a finding that the uses complained of were permitted uses, being carried on as a matter of right or by way of special exception, the order of the trial court, affirming the decision of the Board, will be reversed.

Order reversed.

Costs to be paid by appellees.

clause in a sale of a business situation. In the instant case the partial enforcement of the restrictions works no injury to the public and creates no injustice to the parties, thus the restrictions are severable and thus partially enforceable.

III Meaning of the Term "Our Customers"

The decree fashioned by the trial court included in the class of customers with whom appellant could not solicit all persons whose accounts went on Stump's books after May 21, 1971 (the date of the contract) but excluded prospective customers of Stump and any customer whose account appellant brought with him when he first affiliated with Stump. Appellant claims the trial judge incorrectly defined the term "our customers" in clause 4 of the contract as customers produced by anyone working for Stump. Appellant urges that the term should be interpreted to exclude customers whose business was generated by appellant, while he was employed by Stump. We agree with the trial judge that the only reasonable interpretation of the term "our customers" in the context in which it was used is that it includes customers generated by appellant while he was employed by Stump. The trial court expressed it in the following way:

"As was stated in *Tolman Laundry, supra* [171 Md. 7, 187 A. 836 (1936)]: 'The customers and patronage thus secured were for the benefit of the employer, and the increased good will became the property of the master, however much their procurement was to be attributed to the servant's energy, personality, and skill. Since the servant was hired and rewarded to produce these results, the employer had the right to their enjoyment. * * *'. [171 Md. 12.] Similarly in *Deuerling, supra*, [155 Md. 280, 141 A. 542 (1928)], the Court pointed out the 'good will' of the employer which was the subject of the non-competitive agreement. In *Silver v. Goldberger, supra*, [231 Md. 1, 188 A. 2d 155 (1963)], the Court recognized that restraint may be

justified 'if a part of the compensated services of the former employee consisted in the creation of the good will of customers and clients which is likely to follow the person of the former employee'. [231 Md. 7.] See also *John Roane, Inc. v. Tweed*, 89 A. 2d 548, 33 Del. Ch. 548, 41 A.L.R.2d 1 (1952), where the Supreme Court of Delaware, construing Maryland law, held that 'reasonable restrictions against competition to prevent the pirating of the employer's good will will be enforced, provided such restrictions extend no further than the necessities of the case dictate.' "

Decree affirmed.

Appellant to pay costs.

RICHARD KOWALSKI v. JOHN LAMAR ET AL.

[No. 587, September Term, 1974.]

Decided April 4, 1975.

ZONING — Conducting Of Commercial Business Upon Land Classified As Residential — Uses Permitted As Of Right Or By Special Exception — Where Any Use Of Land Other Than Those Permitted And Being Carried On As Of Right Or By Special Exception Is Prohibited — There Was Not An Iota Of Evidence To Support A Finding That Uses Complained Of Were Either Permitted Uses, Being Carried On As A Matter Of Right Or By Special Exception Nor Did They Fall Within The Ambit Of The Definition Of An Accessory Use As Provided By Zoning Regulations And The Affirmation By Trial Court Of Zoning Board's Finding Was Erroneous.

pp. 498-501

H. E. F.

Appeal from the Circuit Court for Baltimore County (MACDANIEL, J.).

Complaint filed by Richard Kowalski against John Lamar alleging violation of zoning regulations by permitting certain commercial business to be conducted on land zoned residential. From an order affirming the Baltimore County

Board of Appeals which had reversed the finding of the zoning commissioner, complainant appeals.

Order reversed. Costs to be paid by appellees.

The cause was argued before ORTH, C. J., and DAVIDSON and MELVIN, JJ.

Michael E. Murr, with whom were *Sutley & Murr* on the brief, for appellant.

Ronald J. Kearns for appellees.

DAVIDSON, J., delivered the opinion of the Court.

On 7 March 1971 Richard Kowalski, the appellant, filed a complaint with the Department of Permits and Licenses of Baltimore County, alleging that John Lamar, the appellee,¹ was violating the Baltimore County Zoning Regulations² (zoning regulations) by operating a commercial fishing business in a residential zone. On 14 February 1972 the appellant filed a second complaint with the Zoning Commissioner (Commissioner) alleging that the appellee was violating the zoning regulations by operating a boat yard in a residential zone. After hearings, the Commissioner found that the appellee was violating the zoning regulations by operating a boat yard and by conducting a commercial business upon land classified in a residential zone. He ordered that such uses cease. The County Board of Appeals for Baltimore County (Board) reversed, and, on appeal to the Circuit Court for Baltimore County, Judge H. Kemp MacDaniel on 11 July 1974 entered an order affirming the Board. This appeal is taken from that order.

Most of the facts are not in dispute. For approximately 30 years the appellee has owned three lots designated on a plat of Bengies Farm Beach (see plat attached hereto) as lots 12, 13 and 16. The appellee's year-round single family home is located on lot 16, which fronts on Saltpeter Creek. A pier is

located on this lot which extends into the navigable waters of the creek.

Lots 12 and 13, which front on Muddy Gut, are undeveloped except for a pier located on lot 13 which extends into navigable waters. In 1971 this pier was improved and extended to a length of 90 feet. There are no other buildings or structures on these lots, nor are any water or sewer facilities or any electrical connections available.

In 1954 the appellant purchased lots 14 and 15 which front on both Muddy Gut and Saltpeter Creek and which are bounded on the east by the appellee's home and on the south by appellee's vacant lots. The single family residence located on these lots is owned by the appellant and is occupied by him and his wife on a year-round basis. All of the property owned by the parties is classified in the R.D.P. zone (rural, deferred-planning) and lies in an area devoted exclusively to R.D.P. zoning and uses.

There was uncontradicted and unrefuted evidence to show that within the last two years the pier extending from lot 13 into Muddy Gut has been used extensively for fishing activities. On various occasions as many as nine boats have been moored at the pier or stored on the lots. These boats, of varying sizes, are open and equipped with outboard motors. They belong to the appellee's son and two cousins of the appellee's wife. A large number of rolled up gill and fyke nets, seines, boxes, which were utilized to lift the nets full of fish from the water onto the pier, and wooden crates used to package the fish, are stored on the pier. Several truckloads of crushed gravel have been deposited on the lots in order to provide a driveway for the trucks upon which the crated fish are loaded and hauled to the market. At various times as many as six trucks have been parked upon this driveway.

The appellee himself is a plumber who is not engaged in any way in the fishing activities. He has not authorized and does not permit the general public to use the pier extending from lot 13. While he has never leased the pier to anybody, he has given permission to use the pier to his 20 year-old son, Mr. Thomas R. Lamar, and two of his wife's cousins,

1. The Baltimore County Board of Appeals is also an appellee.

2. Baltimore County Zoning Regulations (Interim Ed. 1971).

FILE COPY

IN THE MATTER OF THE
THE APPLICATION OF
WILLIAM P. JORDAN
FOR A SPECIAL HEARING ON
PROPERTY LOCATED ON THE EAST-
SIDE BAY DRIVE, 165 FT. S OF
WYE ROAD (3729 BAY DRIVE)
15TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT

BEFORE THE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
CASE NO. 93-393-SPH

OPINION

This case comes before the Board on appeal from a decision by the Zoning Commissioner denying the use of a building noted as an accessory structure on a shore property incidental to waterfront use. The case was heard this day in its entirety, and public deliberation was held on June 2, 1994.

The Board has carefully considered all the testimony and evidence presented this day and has also carefully considered memorandums submitted by both the People's Counsel and the Appellant's attorney. The Board will not in this opinion reiterate all the issues to which testimony was presented and to which the memorandums have carefully addressed. The basic facts of the case are as follows:

Mr. Jordan purchased from the Rozier's, a 50 foot lot fronting on the Chesapeake Bay. At the time the lot was purchased, there existed a small shed in the rear of the lot adjacent to the roadway and a concrete slab close to the water which was used as a picnic area. The property became in need of a new bulkhead to protect it from the Chesapeake Bay and the same was constructed. In so doing, the existing concrete slab was removed and a new slab of considerable larger area was constructed some 30 feet from the water's edge. Later on, a roof was erected over the slab supported by pipe columns. Shortly thereafter, the perimeter of the slab was encased with a brick wall 32 inches high. At some time thereafter,

Case No. 93-393-SPH William P. Jordan /Petitioner

the remaining open porch of this pavilion was enclosed with windows and screens, electricity was provided to the building and a water line was extended to service the building. As a result thereof, this enclosed building now contains a refrigerator, a grill, a microwave, and other appurtenances which allow the building to be used for residential purposes. A Spot-a-pot was provided on the rear of the lot for sanitary facilities. Also on the rear of the lot there now exists two (2) small sheds, each of less than 100 sq. ft. which are used for the storage of the maintenance equipment, etc. used on the property.

The Board is of the opinion that this enclosed structure on the waterfront can in no way be viewed as an accessory structure to the alleged use of the lot for recreation. To be classified as an accessory structure there must be a principle structure and none exists. In addition, an accessory structure may only be located in the rear yard if even a principle structure existed and this structure is in the front yard. In addition to its other problems, it does not meet the setback requirements from the water. As a result of all the testimony and evidence received, this can only be classified as an illegal structure. In regards to the two small sheds on the rear of the lot close to the roadway, since each of them contains less than 100 sq. ft. and no permit is therefore required for their erection, the Board will affirm their existence and allow the two (2) sheds to remain. The structure on the front of the lot can only be classified as a structure with residential use and therefore must be denied. The Board will take note of the protestant's opposition to this building due to the fact that it is out of character with the area and is a detriment to its nearby property owners who deserve an unrestricted view of the bay.

Case No. 93-393-SPH William P. Jordan /Petitioner

Baltimore County charges premium rates in its tax structure for waterfront property and inherently with this premium there is the assumption that there is an unobstructed view of the Chesapeake Bay.

After carefully considering all the testimony and evidence, all the memorandums submitted, the Board will find that the structure in question is a residential structure and may not be permitted to exist. There was testimony that in the foreseeable future, public sewer may be extended to service this lot and at that time, Mr. Jordan could apply for a permit to build a principle structure on the lot which would in effect answer all his problems.

ORDER

IT IS THEREFORE this 22nd day of July, 1994 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Hearing to approve the existence of the enclosed structure on the waterfront side of the lot be and the same is hereby DENIED and the structure must be removed within 60 days of the date of this order.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William P. Hackett, Chairman

S. Diane Leverso

Judson H. Lipowitz

IN RE: PETITION FOR SPECIAL HEARING * BEFORE THE
E/S Bay Drive, 165 ft. S of * ZONING COMMISSIONER
c/1 Wye Road *
3729 Bay Drive * OF BALTIMORE COUNTY
15th Election District *
5th Councilmanic District * CASE # 93-393-SPH
William P. Jordan, Jr., et ux *
Petitioners *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Special Hearing, for that property located at 3729 Bay Drive in the Bowleys Quarters section of Baltimore County. The Petition is filed by William P. Jordan, Jr. and Marie Jordan, property owners. The precise wording of the relief requested within the Petition is significant. Specifically, the Petitioners seek approval of the use of the subject property for "an existing residential structure with accessory structures or, alternatively, accessory structures on a shore property incidental to waterfront use." (emphasis added).

Appearing at the requisite public hearing held for this case were the property owners, William P. Jordan, Jr. and Marie Jordan, his wife. Also appearing in support of the Petition was John Marek, Sr., M.D., John Lamantia and Deborah Brill. The Petitioners were represented by John Contrum, Esquire. Appearing in opposition to the request were several neighbors of the subject property. These included Iris Rosier, Billie Kozycki, Betty Johnson, Maria J. Bell and Maria Fraley.

As with many cases which come before the Commissioner, the factual scenario surrounding this case is largely not in dispute. That is, the Petitioners and Protestants do not disagree about the present use of the

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Date 11/2/93
By Mr. Hackett

subject property and its history. However, there is disagreement as to the propriety of said use, pursuant to the Baltimore County Zoning Regulations (B.C.Z.R.).

Testimony and evidence disclosed that the subject property is known as 3729 Bay Drive located in the Bowleys Quarters subdivision. The property is a waterfront property. It is located within an older subdivision which was developed many years ago. As is the case with many such subdivisions, the lots were laid out in 50 ft. widths. The subject lot, known as lot No. 235, is 50 ft. wide and ranges from a depth of 251 ft. to 300 ft. The property fronts the Chesapeake Bay. The lots to either side of the property, Nos. 234 and 236, are improved with existing dwellings. These dwellings are known as 3727 and 3731 Bay Drive. At one time, the Jordan's lot, and a neighboring lot now owned by Mr. and Mrs. Rosier known as 3731 Bay Drive were under common ownership. However, Mr. and Mrs. Jordan purchased the subject lot (No. 235) in September of 1980. Since their acquisition, the Petitioners have improved the property. The history of the site and present use thereof is shown in both the site plan, marked as Petitioners' Exhibit No. 1, and the numerous photographs submitted. On the waterfront, a pier and bulkhead have been constructed and reinforced. The concrete bulkhead extends further into the bay on the east side of the property, which accounts for the increased depth of the property from 250 ft. to 300 ft. on that side. Moreover, there are two small sheds located in the rear of the property immediately next to Bay Drive. The Petitioners testified that those sheds were constructed for storage purposes. Items such as lawn furniture, a lawn mower, etc., are kept in those storage sheds.

The controversy generated by this case involves a structure in the front of the property near the bulkhead on the water side. The Petitioners

testified that when they acquired the property, a crude lean-to existed at that location on the property. The lean to was composed of a concrete slab with boards attached to the trees which were next to the slab. Testimony was offered that this lean-to provided a crude shelter from the elements for the prior owners of the property. Since their acquisition, the Petitioners have steadily upgraded the lean-to. The photographs submitted, by both the Petitioners and Protestants, show the steady progress and evolution of the structure that now exists on the property. The Petitioners removed the slab and trees and installed a new slab with a roof to provide protection from the elements. This structure was an open air structure in that it did not have any walls. The roof was supported by 8 narrow poles. Subsequently, a brick wall was built approximately 1/2 of the distance from the ground to the roof line. This provided an increased measure of protection. Ultimately, the structure was finished and became a fully enclosed building. Windows and curtains were installed and the structure became habitable. The Petitioner noted that there are no sewage facilities serving the structure. However, it is serviced by both water and electricity.

The Petitioners argue that the structure should be permitted. They aver that it is similar to other structures on other waterfront lots in this area. They believe it is consistent with adjoining property uses and appropriate for the locale. The testimony in this respect was corroborated by Dr. Marek, Mr. Lamantia and Mrs. Brill. All of those witnesses appeared in support of the Petition.

As to the Protestants, they corroborated the history of the use of this site and the evolution of the crude lean-to into the present structure. However, they object to this structure. Their chief objection is the location of the building on the lot. As noted above, the structure is near the

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Date 11/2/93
By Mr. Hackett

waterfront and far in front of the average setback distances from other houses and the bay. The neighbors complain that the location and completion of the structure have blocked their view and enjoyment of their waterfront property. Thus, they urge that the Petition for Special Hearing should be denied.

As emphasized above, the matter comes before me as a Petition for Special Hearing. The Petitioners seek relief under alternate theories. That is, they ask for approval of the building as an existing residential structure with accessory structures (sheds) or, in the alternative, approval to continue to use the property and building thereon as accessory structures/uses, incidental to the waterfront character of the site.

Attention is initially given to the Petitioners first theory. The first issue to be resolved in considering this argument is to define the existing structure under the B.C.Z.R. The Petitioners argue that it is a "residential structure". No such use or term is defined in the B.C.Z.R. However, a dwelling is defined under Section 101 of the B.C.Z.R. That term is defined as "A building or portion thereof which provides living facilities for one or more families." For the subject structure to be a dwelling, two tests must be met; namely, that the structure be a building and that it provide living facilities. The term "building" is also defined in Section 101 of the B.C.Z.R. Building is defined as "A structure enclosed within exterior walls or firewalls for the shelter, support or enclosure of persons, animals or property of any kind." Clearly, the subject structure is a building under this definition. Through its evolution, it has become enclosed with exterior walls and a roof. Moreover, it provides a place of shelter, support and enclosure for persons or property. Having determined that the structure is a building, the second part of the definition of dwell-

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Date 11/2/93
By Mr. Hackett

ing must be considered. As the testimony indicated, the building is served by electricity and water. These services, plus the shelter from the elements inherently provided by the structure, constitute living facilities. That is, the presence of these facilities make it clear that this building is, in fact, a dwelling.

Having determined that the subject structure is a dwelling, as opposed to a "residential structure", it is to be noted that such a dwelling is permitted as of right in a R.C.5 zone (see Section 1A04.2 of the B.C.Z.R.). However, the B.C.Z.R. then goes on to list a variety of requirements which must be met for a dwelling to be located in a R.C.5 zone. The lot must be of certain size, particular setbacks must be maintained, etc. It is apparent that the Petitioners are unable to comply with many of these regulations. Moreover, the absence of a sewage disposal system on site might prohibit full time occupancy of the structure under the building code. There seems to be no doubt that this structure may not comply with the B.C.Z.R., Building Code and other minimal standards for dwellings. Nonetheless, within their Petition, the property owners request approval of the use of this property and the "residential structure". This approval cannot be granted. Simply stated, if the Petitioners seek approval for a dwelling (i.e., residential structure) on this R.C.5 lot, they must either comply with the appropriate regulations or obtain the necessary variances, nonconforming use designations, etc. That is, the Petitioners have asked for approval of the dwelling located on this property. Although the Petitioners' nomenclature is different (residential structure), the nature of what is on site is a dwelling. Although permitted as of right, this dwelling, as constructed, does not comply with the B.C.Z.R. and Building Code, and cannot be approved under the Petition for Special Hearing.

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Date 11/2/93
By Mr. Hackett

In the alternative, the Petitioners argue that structure be designated as accessory to the use of this shore property and incidental to the unique waterfront character of the property. The Petitioners present a rather novel argument here. They maintain that the waterfront character of this property makes the site unique. The distinctive opportunities provided by the waterfront character of the property make the structure and, indeed, use of the lot accessory to the waters of the State.

In considering this argument, one must be mindful of Section 102.1 of the B.C.Z.R. This section provides that "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 the lawful nonconforming use." Thus, a use of land shall be permitted only if in conformance with the B.C.Z.R. In Kowalski v. Lamar 25 Md. App. 493 (1975) the Court of Special Appeals considered and construed the provisions of the B.C.Z.R. The court held that "Any use other than those permitted and being carried on as of right or by special exception is prohibited. Kowalski, infra, page 539. Thus, if the use is not specifically identified and permitted in a given zone by the B.C.Z.R., it is not allowed.

Moreover, accessory uses are defined in Section 101 of the B.C.Z.R. In order for a use to be accessory, it must meet the 4 prong test offered by that definition. That is, the use must be; (1) customarily incident and subordinate to and serve a principal use or structure; (2) be subordinate in area, extent or purpose to the principal use or structure; (3) be located on the same lot as the principal use or structure served; and (4) contribute to the comfort, convenience or necessity of the occupants business or industry in the principal use or structure served. A principal use of land, moreover, is defined in Section 101 of the B.C.Z.R. as "A main use of land, as

distinguished from an accessory use." The practical application of these definitions is shown in the Zoning Commissioner's Policy Manual. Therein (pg. 4-1) it is provided that "You cannot variance an accessory structure on a vacant lot."

Although the Petitioners' theory is novel and intriguing, it is clear that the structure which exists cannot be considered accessory. Attempting to shoehorn the nature of this structure into the accessory use definition contained in Section 101 is inappropriate, albeit ingenious. Clearly, the accessory use definition contemplates accessory uses within the four corners of the given property in relation to the principal uses on a property. That is, an accessory use must be on the same lot as the principal use or structure served. The waters of the Chesapeake Bay are not on this lot. The use and enjoyment of this lot, therefore, by definition, cannot be accessory to the waters of the Bay. The approach suggested ignores the spirit and intent of the law. If it were adopted, the concept of accessory uses would be dramatically enlarged beyond what was intended by the drafters of the B.C.Z.R. Given uses of land and buildings thereon would then be considered in relation to the surrounding locale. This concept carries the definition of accessory uses beyond what was intended. Again, it need be emphasized that uses are accessory only when located within the four corners of the lot involved.

A denial of the Petitioners' argument in this respect is also consistent with Section 417 of the B.C.Z.R. and the case law. Section 417 clearly extends the authority of the Baltimore County Zoning Regulations to all waterfront construction such as piers, wharfs, docks, bulkheads and other work which extends into the navigable waters of the State. Under Harbor Island Marina vs. Calvert County, 286 Md. 303 (1979), it was held that

Baltimore County has the authority to reasonably regulate the exercise of a riparian right to erect an improvement upon titled land attached to shore land through zoning. That is, a non-chartered county has the authority to regulate riparian improvements since State owned submerged land takes on the characteristics of private land. Harbor Island, supra, pg. 320. However, State owned lands are not subject to County's zoning authority in the absence of a clear implication or a specific provision that the State is specifically bound by the zoning enabling act. Thus, land under water is generally not subject to zoning regulations. That is, although the County can regulate improvements from a private property owners land into the navigable waters of the State, the waters, themselves, are not subject to zoning regulations. See also People's Counsel for Baltimore County v. Maryland Marine, 560 A2d, 32 (1989). This is significant in that an accessory use, to be lawful, must be accessory or incidental to a legitimate principal use. Since the waters of the bay are not subject to zoning regulations, and since Kowalski, supra, provides that only designated uses are lawful, it, therefore, follows that an accessory use cannot be lawful to unregulated land. For these reasons, the Petitioners second argument must, likewise, be dismissed.

Having considered the Petitioners' arguments, the Petition for Special Hearing must be denied. It is also to be noted that I do not find the use and occupancy of the subject structure to be inherently detrimental to this locale. I do agree with the Protestants that it should be moved so as not to block their view. However, for the reasons set forth, it cannot be permitted, at least under the Petition for Special Hearing as filed.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 12th day of November, 1993 that, pursuant to the Petition for Special Hearing, approval of "an existing residential structure with accessory structures or, alternatively, accessory structures on a shore property incidental to waterfront use, be and is hereby DENIED.

LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

LES:mmn

ORDER RECEIVED FOR FILING
Date 11/12/93
By Mr. Jordan

-6-

ORDER RECEIVED FOR FILING
Date 11/12/93
By Mr. Jordan

-7-

ORDER RECEIVED FOR FILING
Date 11/12/93
By Mr. Jordan

-8-

ORDER RECEIVED FOR FILING
Date 11/12/93
By Mr. Jordan

-9-

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning



Suite 113, Courthouse
400 Washington Avenue
Towson, MD 21204

(410) 887-4386

November 12, 1993

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

RE: Case No. 93-393-SPH
Petition for Special Hearing
William P. Jordan, Jr., et ux, Petitioners

Dear Mr. Gontrum:

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

In the event any party finds the decision rendered unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Appeals Clerk at 887-3391.

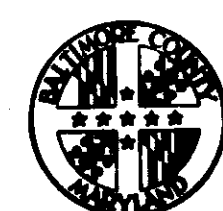
Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:mmn
encl.
cc: Mr. and Mrs. William P. Jordan
cc: Mr. John Lamantia
cc: Mrs. Iris Rosier
cc: Ms. Billie Kozyski
cc: Mrs. Betty Johnson
cc: Ms. Maria J. Bell and Mrs. Maria Fraley

CRITICAL

404



Petition for Special Hearing to the Zoning Commissioner of Baltimore County

For the property located at 3729 Bay Drive, Baltimore, Maryland 21220
which is presently zoned R.C.5

This Petition shall be filed with the Office of Zoning Administration & Development Management.
The undersigned, legal owner 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 102.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

an existing residential structure with accessory structures
or alternatively accessory structures on a shore
property incidental to waterfront use.

Property is to be posted and advertised as prescribed by Zoning Regulations.
I, or we, agree to pay expenses of 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.

Owner/Proprietor/Leaseholder

(Type or Print Name)

Signature

Address

City

Agency for Petitioner

(Type or Print Name)

Signature

Address

City

With due solemnity declare and affirm, under the penalties of perjury, that I am the legal owner of the property which is the subject of this Petition.

Legal Owner

William P. Jordan, Jr.

(Type or Print Name)

Signature

Marie Jordan

(Type or Print Name)

Signature

3800 Bay Drive (410) 335-4363

Address

Baltimore, Maryland 21220

City, address and phone number of legal owner, agent, partner or representative to be contacted.

Name

Address

City

State

Zip

Telephone

Business

Home

Mobile

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

Zoning Description for: 3729 Bay Drive, Baltimore, MD 21220

As recorded in Deed Liber 6205, Folio 73 beginning on the east side of Bay Drive 30 feet wide, at the distance of 165 feet south of the centerline of Wye Road. Being Lot 235, second addition to Plat No. 1, Plat Book 8, Folio 73. Also known as 3729 Bay Drive in the 15th Election District.

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY Towson, Maryland

District: 13th Date of Posting: 6/10/93
Posted for: Special Hearing
Petitioner: William & Marie Jordan
Location of property: 3729 Bay Drive, E.L., 165' S/W.C.S.
Location of Sign: Facing roadway on property of petitioner
Remarks:
Posted by: M. Jordan Date of return: 6/11/93
Number of Signs: 1

CERTIFICATE OF PUBLICATION

TOWSON, MD., 5/20, 1993

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 5/20, 1993.

THE JEFFERSONIAN,

S. Zeke Orlow
Publisher

93-393-SPH

Baltimore County
Zoning Administration & Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204

receipt
93-393-SPH
Account: 9-001-6150

Date: 5/7/93 #404 (WCR)

PETITION FOR SPECIAL HEARING (#030) \$50.00
POSTING OF SIGNS (#080) \$35.00
TOTAL \$85.00

Legal Owner: William P. Jordan, Jr. & Marie Jordan
Attorney: John B. Gontrum
Property Address: 3729 Bay Drive
District: 15c5

DIAD1W0079HICRC \$95.00
PA 0011:29AM05-11-93
Please Make Checks Payable To: Baltimore County

Cashier, Validation

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

DATE: 5/7/93 ACCOUNT: 9-001-6150

AMOUNT: \$85.00

RECEIVED FROM: KOLAWKA, KATHA + McLAUGHLIN

FOR: WILLIAM P. JORDAN, JR. + MARIE JORDAN

40-012-114

VALIDATION ON SIGNATURE OF CASHIER

FOR: ARNOLD JABLON, DIRECTOR

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

DATE: 5/7/93 ACCOUNT: 9-001-6150

AMOUNT: \$95.00

RECEIVED FROM: KOLAWKA, KATHA + McLAUGHLIN

FOR: WILLIAM P. JORDAN, JR. + MARIE JORDAN

40-012-114

VALIDATION ON SIGNATURE OF CASHIER

FOR: ARNOLD JABLON, DIRECTOR

Baltimore County Government
Office of Zoning Administration and Development Management

111 West Chesapeake Avenue
Towson, MD 21204 (410) 887-3353

ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

Baltimore County Zoning Regulations require that notice be given to the general public/neighborhood property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property and placement of a notice in at least one newspaper of general circulation in the County.

This office will ensure that the legal requirements for posting and advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements.

PAYMENT WILL BE MADE AS FOLLOWS:

- 1) Posting fees will be assessed and paid to this office at the time of filing.
- 2) Billing for legal advertising, due upon receipt, will come from and should be remitted directly to the newspaper.

NON-PAYMENT OF ADVERTISING FEES WILL STAY ISSUANCE OF ZONING ORDER.

Carl Jablon
ARNOLD JABLON, DIRECTOR

For newspaper advertising:
Item No.: 404
Petitioner: WILLIAM P. JORDAN, JR.
Location: 3729 Bay Drive, Baltimore, MD 21204

PLEASE FORWARD ADVERTISING BILL TO:
NAME: William P. Jordan
ADDRESS: 3729 Bay Drive
Baltimore, MD 21204
PHONE NUMBER: 335-4343

Adj:ggg (Revised 04/09/93)

TO: POTTERY PUBLISHING COMPANY
5/20/93 Tama - Jeffersonian

Please forward billing to:
William and Marie Jordan
3800 Bay Drive
Baltimore, Maryland 21220
(410) 335-4343

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204 or Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 93-393-SPH (Item 404)
3729 Bay Drive
E/S Bay Drive, 165' S of c/l Mye Road
15th Election District - 5th Councilmanic
Petitioner(s): William P. Jordan, Jr. and Marie Jordan
HEARING: TUESDAY, JUNE 15, 1993 at 11:00 a.m. in Rm. 118, Old Courthouse.

Special Hearing to approve an existing residential structure with accessory structures or alternatively accessory structures on a shore property incidental to waterfront use.

Lawrence E. Schmidt
LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

Baltimore County Government
Office of Zoning Administration and Development Management

111 West Chesapeake Avenue
Towson, MD 21204 MAY 14 1993 (410) 887-3353

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204 or Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 93-393-SPH (Item 404)
3729 Bay Drive
E/S Bay Drive, 165' S of c/l Mye Road
15th Election District - 5th Councilmanic
Petitioner(s): William P. Jordan, Jr. and Marie Jordan
HEARING: TUESDAY, JUNE 15, 1993 at 11:00 a.m. in Rm. 118, Old Courthouse.

Special Hearing to approve an existing residential structure with accessory structures or alternatively accessory structures on a shore property incidental to waterfront use.

Carl Jablon
ARNOLD JABLON
DIRECTOR

cc: William and Marie Jordan
John B. Gontrum, Esq.

NOTES: (1) ZONING SIGN & POST MUST BE RETURNED TO RM. 104, 111 W. CHESAPEAKE AVENUE ON THE HEARING DATE.
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.

Baltimore County Government
Office of Zoning Administration and Development Management

111 West Chesapeake Avenue
Towson, MD 21204 (410) 887-3353

MAY 27, 1993

NOTICE OF REASSIGNMENT

RESCHEDULED FROM JUNE 15, 1993
CASE NUMBER: 93-393-SPH (Item 404)
3729 Bay Drive
E/S Bay Drive, 165' S of c/l Mye Road
15th Election District - 5th Councilmanic
Petitioner(s): William P. Jordan, Jr. and Marie Jordan

Special Hearing to approve an existing residential structure with accessory structures or alternatively accessory structures on a shore property incidental to waterfront use.

HEARING: MONDAY, JUNE 28, 1993 at 11:00 a.m. in Rm. 118, Old Courthouse.

Carl Jablon
ARNOLD JABLON
DIRECTOR

cc: William P. and Marie Jordan
John Gontrum, Esq.

Baltimore County Government
Office of Zoning Administration and Development Management

111 West Chesapeake Avenue
Towson, MD 21204 (410) 887-3353

June 4, 1993

Mr. and Mrs. William P. Jordan, Jr.
3800 Bay Drive
Baltimore, MD 21220

RE: Case No. 93-393-SPH, Item No. 404
Petitioner: William P. Jordan, Jr., et ux
Petition for Special Hearing

Dear Mr. and Mrs. Jordan:

The Zoning Plans Advisory Committee (ZAC) has reviewed the plans submitted with the above referenced petition. The attached comments from each reviewing agency are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties, i.e., Zoning Commissioner, attorney and/or the petitioner, are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case.

Enclosed are all comments submitted thus far from the members of ZAC that offer or request information on your petition. If additional comments are received from other members of ZAC, 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 May 7, 1993, and a hearing was scheduled accordingly.

The following comments are related only to the filing of future zoning petitions and are aimed at expediting the petition filing process with this office.

1) The Director of Zoning Administration and Development Management has instituted a system whereby seasoned zoning attorneys who feel that they are capable of filing petitions that comply with all aspects of the zoning regulations and petitions filing requirements can file their petitions with this office without the necessity of a preliminary review by Zoning personnel.

Zoning Plans Advisory Committee Comments
Date: June 4, 1993
Page 2

2) Anyone using this system should be fully aware that they are responsible for the accuracy and completeness of any such petition. All petitions filed in this manner will be reviewed and commented on by Zoning personnel prior to the hearing. In the event that the petition has not been filed correctly, there is always a possibility that another hearing will be required or the Zoning Commissioner will deny the petition due to errors or incompleteness.

3) Attorneys, engineers and applicants who make appointments to file petitions on a regular basis and fail to keep the appointment without a 72 hour notice will be required to submit the appropriate filing fee at the time future appointments are made. Failure to keep these appointments without proper advance notice, i.e. 72 hours, will result in the forfeiture loss of the filing fee.

Very truly yours,
W. Carl Richards, Jr.
W. Carl Richards, Jr.
Zoning Coordinator

WCR:hak
Enclosures

SHA Maryland Department of Transportation
State Highway Administration

O. James Lighthizer
Secretary
Hal Kassoff
Administrator

5-14-93

Re: Baltimore County
Item No: 404 (WCR)

Ms. Helene Kehring
Zoning Administration and Development Management
County Office Building
Room 109
111 W. Chesapeake Avenue
Towson, Maryland 21204

Dear Ms. Kehring:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not effected by any State Highway Administration projects.

Please contact Bob Small at 410-333-1350 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,
Bob Small
for John Contestable, Chief
Engineering Access Permits
Division

My telephone number is _____
Teletypewriter for Impaired Hearing or Speech
383-7555 Baltimore Metro - 565-0451 D.C. Metro - 1-800-492-5082 Statewide Toll Free
707 North Calvert St., Baltimore, Maryland 21203-0717

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Zoning Administration and
Development Management

DATE: May 26, 1993

FROM: Pat Keller, Deputy Director
Office of Planning and Zoning

SUBJECT: Petitions from Zoning Advisory Committee

The Office of Planning and Zoning has no comments on the following petition(s):

Item Nos. 398 and 404.

If there should be any further questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3480.

Prepared by: *Jeffrey Long*

Division Chief: *Pat Keller*

PK/3L:1W

398.ZAC/ZAC1

BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

INTER-OFFICE CORRESPONDENCE

May 25, 1993

TO: Mr. Arnold Jablon, Director
Zoning Administration and
Development Management

FROM: J. Lawrence Pilson, Jr.
Development Coordinator, DEPRM

SUBJECT: Zoning Item #404, Jordan Property
3729 Bay Drive
Zoning Advisory Committee Meeting of May 17, 1993

The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item.

The Department of Environmental Protection and Resource Management requests an extension for the review of the above-referenced zoning item to determine whether the proposed development is in compliance with the Chesapeake Bay Critical Area regulations.

JLP:KK:sp

JORDAN/TXTSBP

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Zoning Advisory Committee
Captain Jerry Pfeifer
Fire Department

DATE: May 14, 1993

FROM: Comments for 05/24/93 Meeting

Item 396 Buildings, roads and systems designed to deliver water for fire protection purposes shall be approved by the Fire Department.

Item 397 Driveway shall be of a width to provide for Fire Department vehicle access.

Item 398 No Comments

Item 399 Space shall comply to the 1991 Life Safety Code and the Baltimore County Fire Prevention Code.

Item 400 Townhouses, for which the initial building permit is applied for after July 1, 1992, are required by State Law to be sprinklered.

Additional fire hydrants are needed on Binnacle Lane, Seabreeze Lane, and the north section of Marina Drive.

Item 401 No Comments

Item 402 Space shall comply to the 1991 Life Safety Code and the Baltimore County Fire Prevention Code.

Item 403 No Comments

Item 404 No Comments

RECEIVED
MAY 17 1993

ZADM

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. Arnold E. Jablon, Director
Office of Zoning Administration
and Development Management

DATE: June 2, 1993

FROM: J. James Dieter

SUBJECT: Petition for Zoning Variance - Item 404
Jordan Property
Chesapeake Bay Critical Area Findings

SITE LOCATION

The subject property is located at 3729 Bay Drive. The site is within the Chesapeake Bay Critical Area and is classified as a Limited Development Area (LDA).

APPLICANT'S NAME William and Marie Jordan

APPLICANT PROPOSAL

The applicant has requested a variance from section 500.7 of the Baltimore County Zoning Regulations to permit an existing residential structure with accessory structures or alternatively accessory structures on a shore property incidental to waterfront use.

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 finding 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
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 14.15.10.01.0>.

RECEIVED
JUN 10 1993

ZADM

Mr. Arnold E. Jablon
June 2, 1993
Page 2

REGULATIONS AND FINDINGS

1. Regulation: "A minimum 100 foot buffer shall be established landward from the mean high water line of tidal waters, tidal wetlands, and tributary streams" <Baltimore County Code Section 26-449(a)>.

Finding: This property is located adjacent to the tidal waters of the Chesapeake Bay. The existing screenhouse is approximately 30' from the mean high water of the Chesapeake Bay. This building should not be considered a primary structure. New residential dwellings and structures would need to be located 100' from tidal waters.

2. Regulation: "Dredging, filling, or construction other than approved bulkheading shall not be permitted in any non-tidal and tidal wetlands unless the proposed development consists of utility, bridge, or street development in a non-tidal wetland and unless the Director of Environmental Protection and Resource Management finds this proposed development not detrimental to the County's Wetland Management Programs" <Baltimore County Code, Section 26-447>.

Finding: No tidal or non-tidal wetlands were found on this site, or in the vicinity of the site. Therefore, no dredging, filling, or construction shall occur in any tidal or non-tidal wetland for this project, and this regulation has been met.

3. Regulation: "If a parcel or lot one-half acre or less in size was in residential use or zoned for residential purposes on or before December 1, 1985, then man-made impervious surfaces associated with that use are limited to 25% of the parcel or lot" <Baltimore County Code, Section 26-543(e)(1)>.

Finding: The amount of impervious areas shall not exceed 3,450 square feet or 25% of the lot. This includes all building structures, paved and crusher run driveways and parking pads, swimming pools, or any other impervious surfaces. Current impervious areas total approximately 668 square feet or 5% of the lot.

4. Regulation: "Infiltration of stormwater shall be maximized throughout the site, rather than directing flow to single discharge points" <Baltimore County Code, Section 26-453(h)(2)>.

Finding: Stormwater runoff shall be directed from impervious surfaces associated with this plan, to pervious areas, to encourage maximum infiltration. Rooftop runoff shall be directed through downspouts and into a seepage pit or drywell, to encourage maximum infiltration (see attached information). These measures will ensure that the requirements of this regulation are met.

Mr. Arnold E. Jablon
June 2, 1993
Page 3

5. Regulation: "If no forest is established on proposed development sites, these sites shall be planted to provide a forest or developed woodland cover of at least 15%" <COMAR 14.15.02.04 C.5(e)>.

Finding: The property currently has 15% tree cover and it must be maintained to be in compliance with the above regulation.

CONCLUSION

The Zoning Variance shall be conditioned so the project proposal is in compliance with the Chesapeake Bay Critical Area Regulations and Findings listed above. This proposal does comply with Chesapeake Bay Critical Area Regulations and is therefore approved. If there are any questions, please contact Ms. Patricia M. Farr at 887-3580.

J. James Dieter
J. James Dieter, Director
Department of Environmental Protection
and Resource Management

JJD:KDK:tm

Attachment

cc: Mr. William Jordan
3800 Bay Drive
Baltimore, Maryland 21220

JORDAN/MQCBCA

111 West Chesapeake Avenue
Towson, MD 21204

May 19, 1993

(410) 887-3353

John B. Gontrum, Esquire
814 Eastern Boulevard
Baltimore, MD 21221

RE: Preliminary Petition Review (Item #404)
Legal Owner: Marie & William Jordan, Jr.
3729 Bay Drive
15th Election District

Dear Mr. Gontrum:

At the request of the attorney/petitioner, the above referenced petition was accepted for filing without a final filing review by the staff. The petition was accepted with the understanding that all zoning issues/filing requirements would be addressed. A subsequent review by the staff has revealed unaddressed zoning issues and/or incomplete information. The following comments are advisory and do not necessarily identify all details and inherent technical zoning requirements necessary for a complete application. As with all petitions filed in this office, it is the final responsibility of the petitioner to make a proper application, address any zoning conflicts and, if necessary, to file revised petition materials. All revisions (including those required by the hearing officer) must be accompanied by a check made out to Baltimore County, Maryland for the \$100.00 revision fee.

1. There is no zoning classification indicated on the site plan.
2. There is no 200 scale map number indicated on the site plan.
3. Be advised that Section 400.1.b.4 (ZOPM) states: "You cannot variance an accessory structure on a vacant lot".

If you need further information or have any questions, please do not hesitate to contact me at 887-3391.

Very truly yours,

By: Joseph C. Morrey
Planner I

JCM:scj

cc: Zoning Commissioner

Printed on Recycled Paper

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

December 10, 1993

Mrs. Iris Rosier
3731 Bay Drive
Baltimore, MD 21220

Ms. Billie Kozycki
3727 Bay Drive
Baltimore, MD 21220

Ms. Maria J. Bell
Mrs. Maria Fraley
3725 Bay Drive
Baltimore, MD 21220

RE: Petition for Special Hearing
E/S Bay Drive, 165 Ft. S of c/l Wye Road
(3729 Bay Drive)
15th Election District
5th Councilmanic District
William P. Jordan, Jr., et ux - Petitioner
Case No. 93-393-SPH

Dear Mrs. Rosier, Ms. Kozycki, Mrs. Johnson,
Ms. Bell and Mrs. Fraley:

Please be advised that an appeal of the above-referenced case was filed in this office on December 9, 1993 by John B. Gontrum, Esquire on behalf of William P. Jordan, Jr. All materials relative to the case have been forwarded to the Board of Appeals.

If you have any questions concerning this matter, please do not hesitate to contact Julie Winiarski at 887-3391.

Sincerely,

Arnold Jablon
ARNOLD JABLON
Director

Ad:jaw

cc: Mr. and Mrs. William P. Jordan
Mr. John Lamantia
People's Counsel

Printed with Soy-based Ink
on Recycled Paper

OVERALL DESCRIPTION OF PHOTOGRAPHS INDICATING THE STRONG POINTS FOR FUTURE REFERENCES.

PHOTOGRAPHS ARE OF 3727 Bay Dr. (Curtis and Betty Johnson) 3729 Bay Dr. (William and Marie Jordan)
3731 Bay Dr. (Jack and Iris Rosier)

Photo #1B and 2B - Red arrow indicates vented sewage pipe coming from the Rosier house. This is five feet from the property line. The arrows to the rear of where I am standing indicates the location of the septic tank and the land catch basin we installed to remove the standing water.

Photo #3B and 4B - Red arrows indicate drywell, sewage pipe, septic tank and catch basin.

PET EX 6 D

OVERALL DESCRIPTION OF PHOTOGRAPHS INDICATING THE STRONG POINTS FOR FUTURE REFERENCES.

PHOTOGRAPHS ARE OF 3727 Bay Dr. (Curtis and Betty Johnson) 3729 Bay Dr. (William and Marie Jordan)
3731 Bay Dr. (Jack and Iris Rosier)

Photo #1G - Red arrow indicates the tree stumps that were part of the old shelter and became stumps after contract of sale was signed and were left for us to remove.

Photo #3G - Red arrow indicates forced 32" wall to prevent lawn mower attacks, dog attacks, and dog shit and nesting ducks, snakes, etc.

Photo #2G - Left side red arrow indicates Marie Jordan cleaning old shelter patio. Upper red arrow indicates the relocated shelter as intended to remain. Right side red arrow indicates the Johnson and Jordan property line.

Photo #4G - Red arrow indicates a blocked door way to keep out dogs, ducks, snakes, etc.



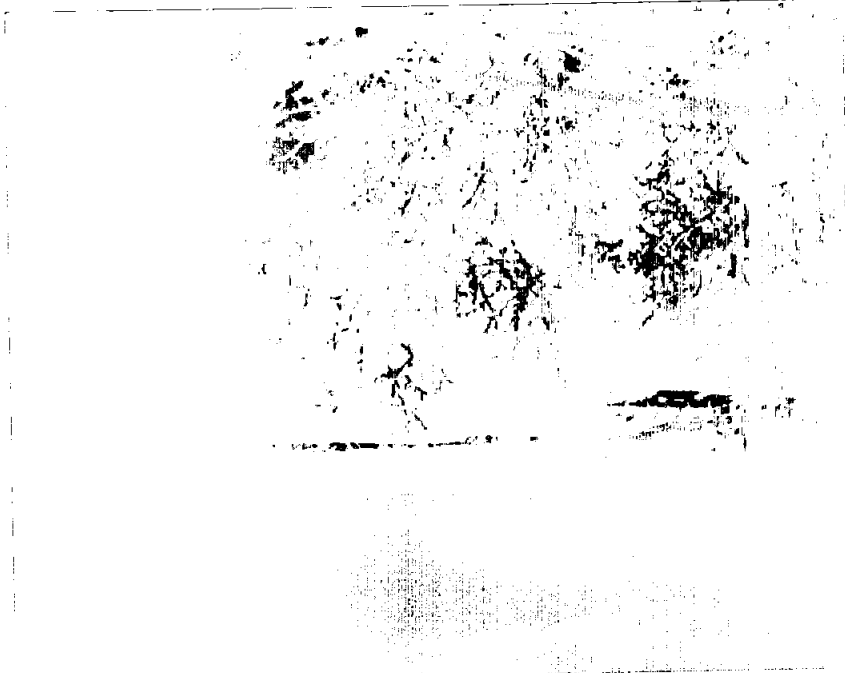
G4



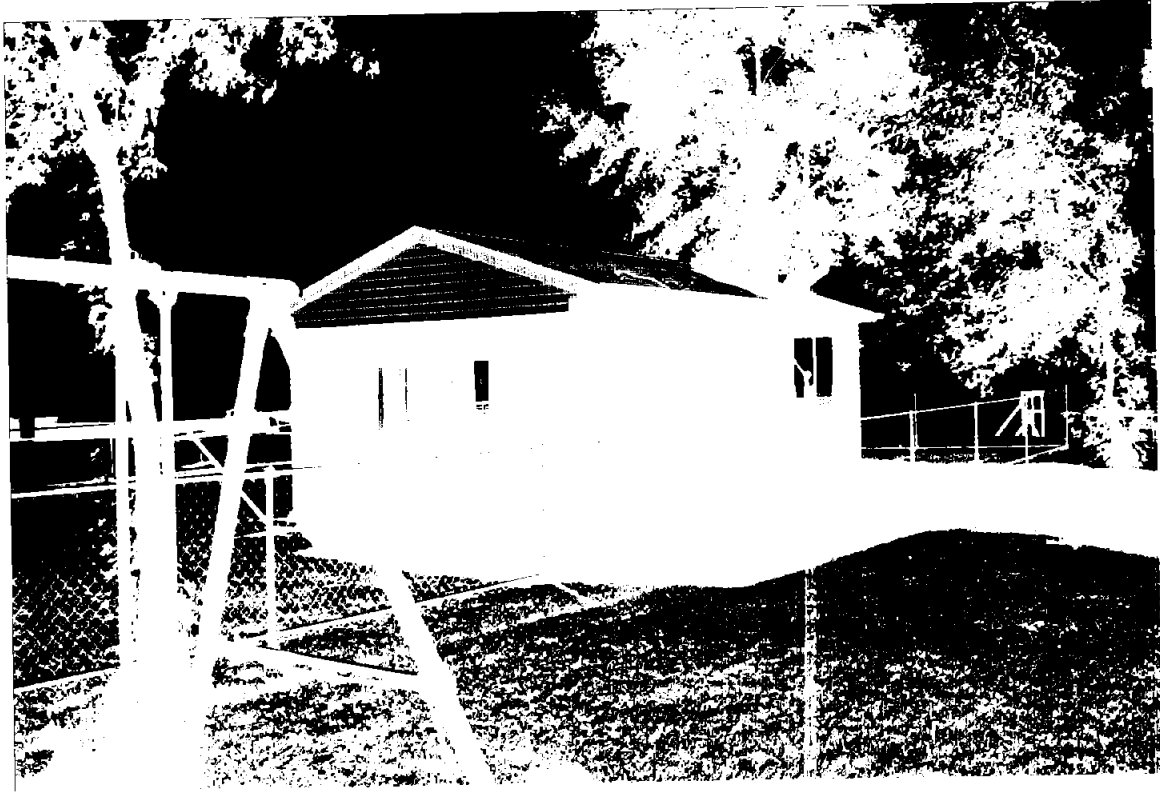


Figure 1. A long, white, single-story building with a gabled roof and a series of windows. The building is surrounded by trees and a lawn.















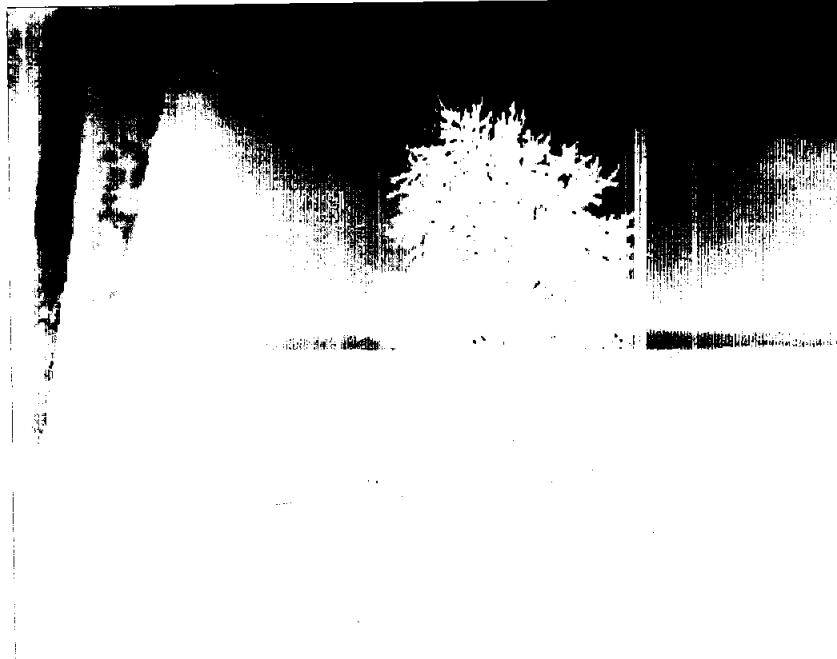


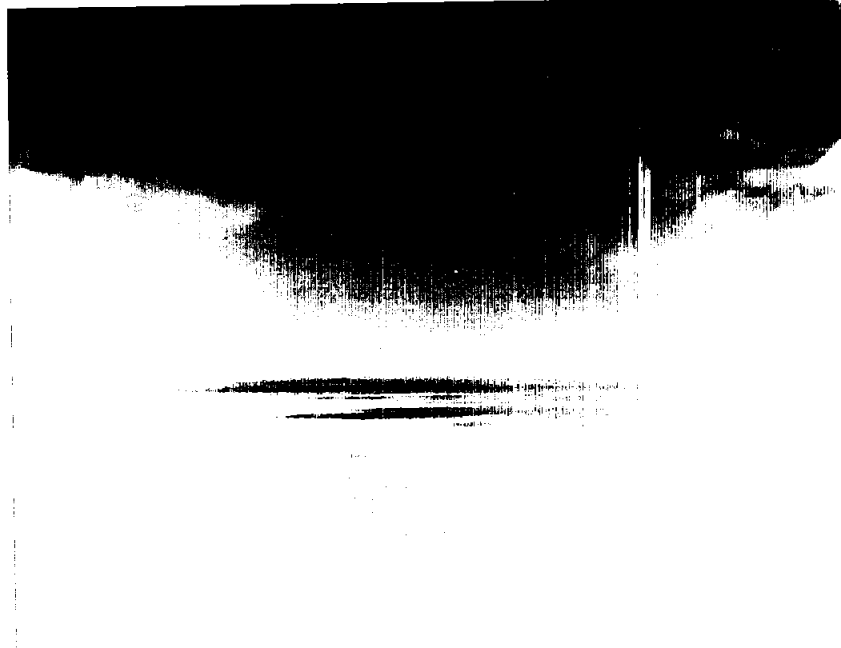


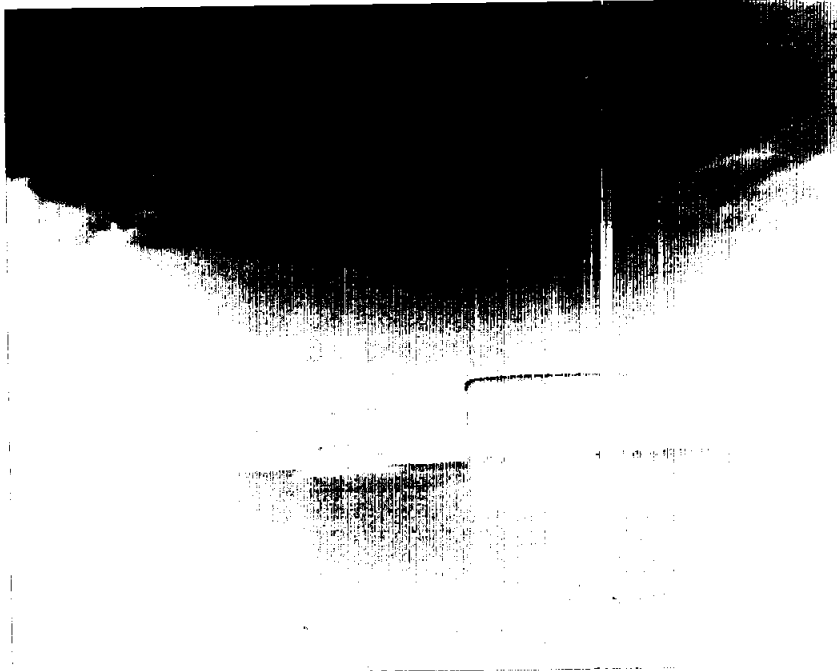




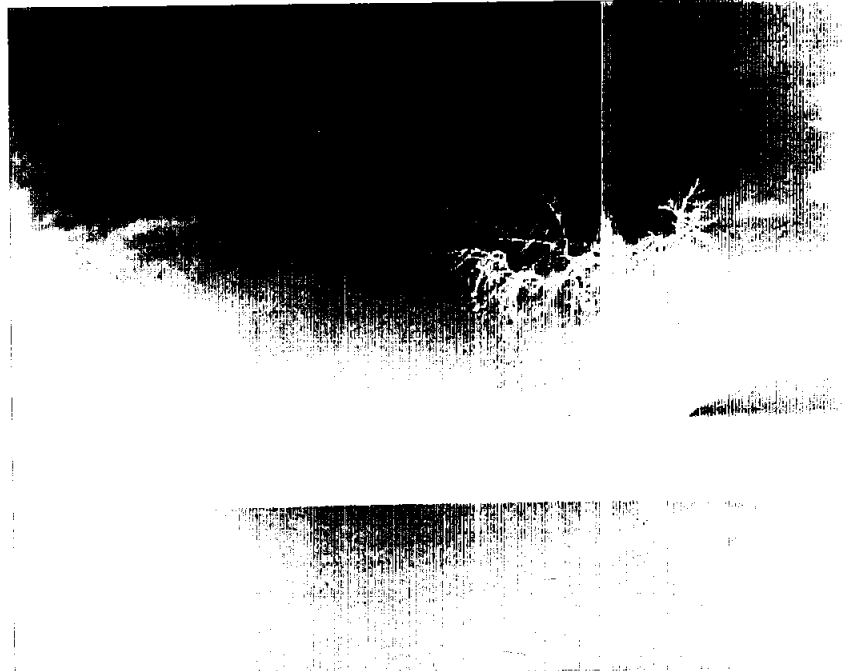




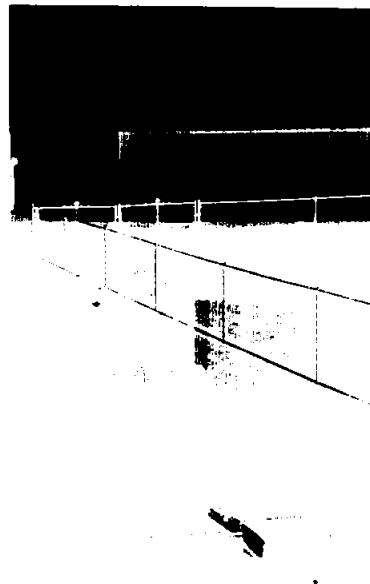
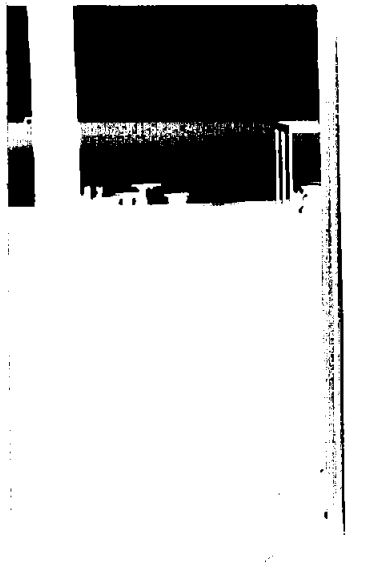








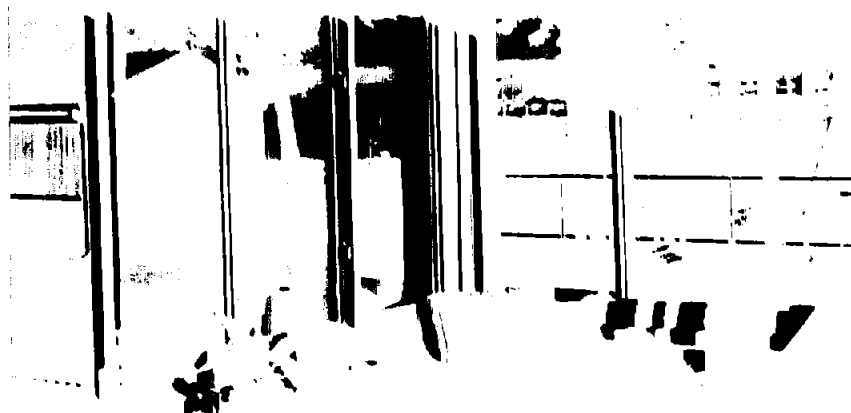


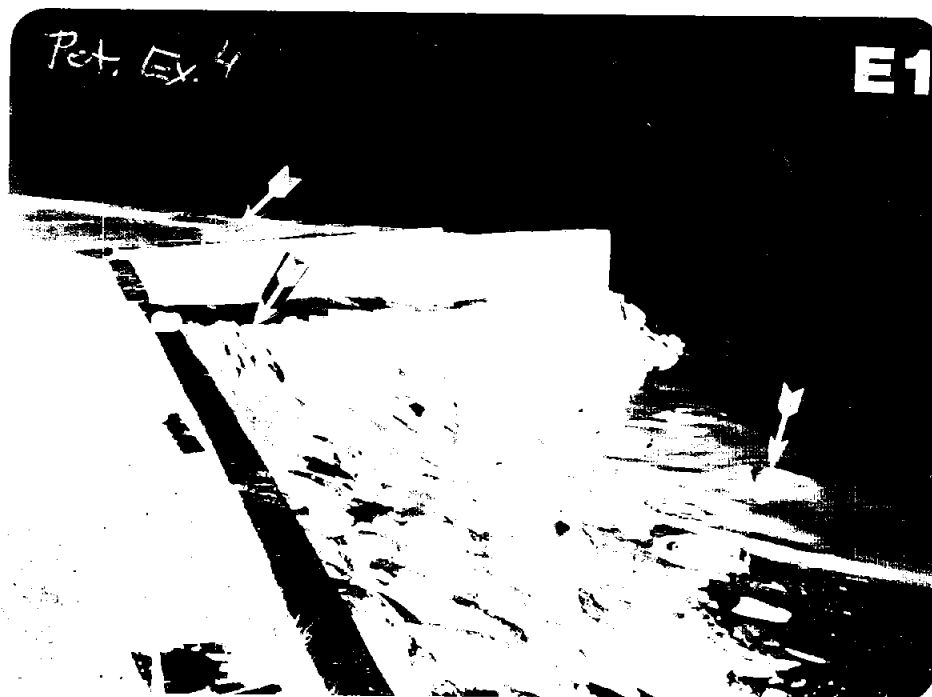








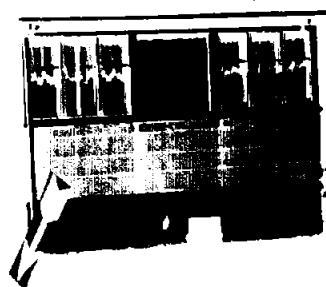






A1

A2



Pier and Boat Lift



Pier, Boat and Boat Lift



Pet. EX. 6-2

PETITIONER'S EXHIBIT

No. 1
No. 2

ZONING DESCRIPTION

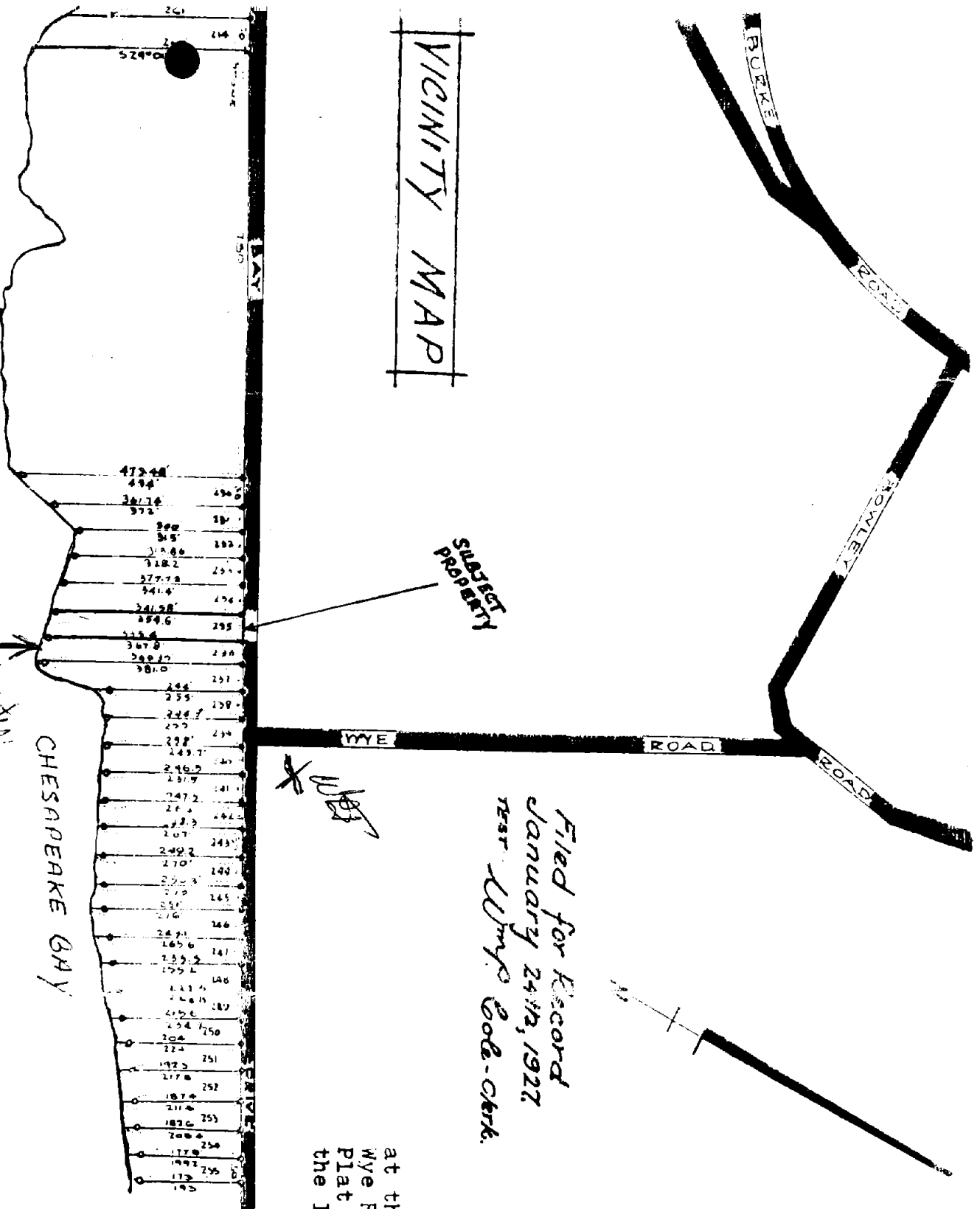
Filed for Record
January 24th, 1927.
Wm. Bode - Clerk.

Beginning on the east side of Bay Drive 30 feet wide,
at the distance of 165 feet south of the cent rline of
Wye Road. Being Lot 235, second addition to Plat No. 1,
Plat Book 8, Folio 73. Also known as 3729 Bay Drive in
the 15th Election District.

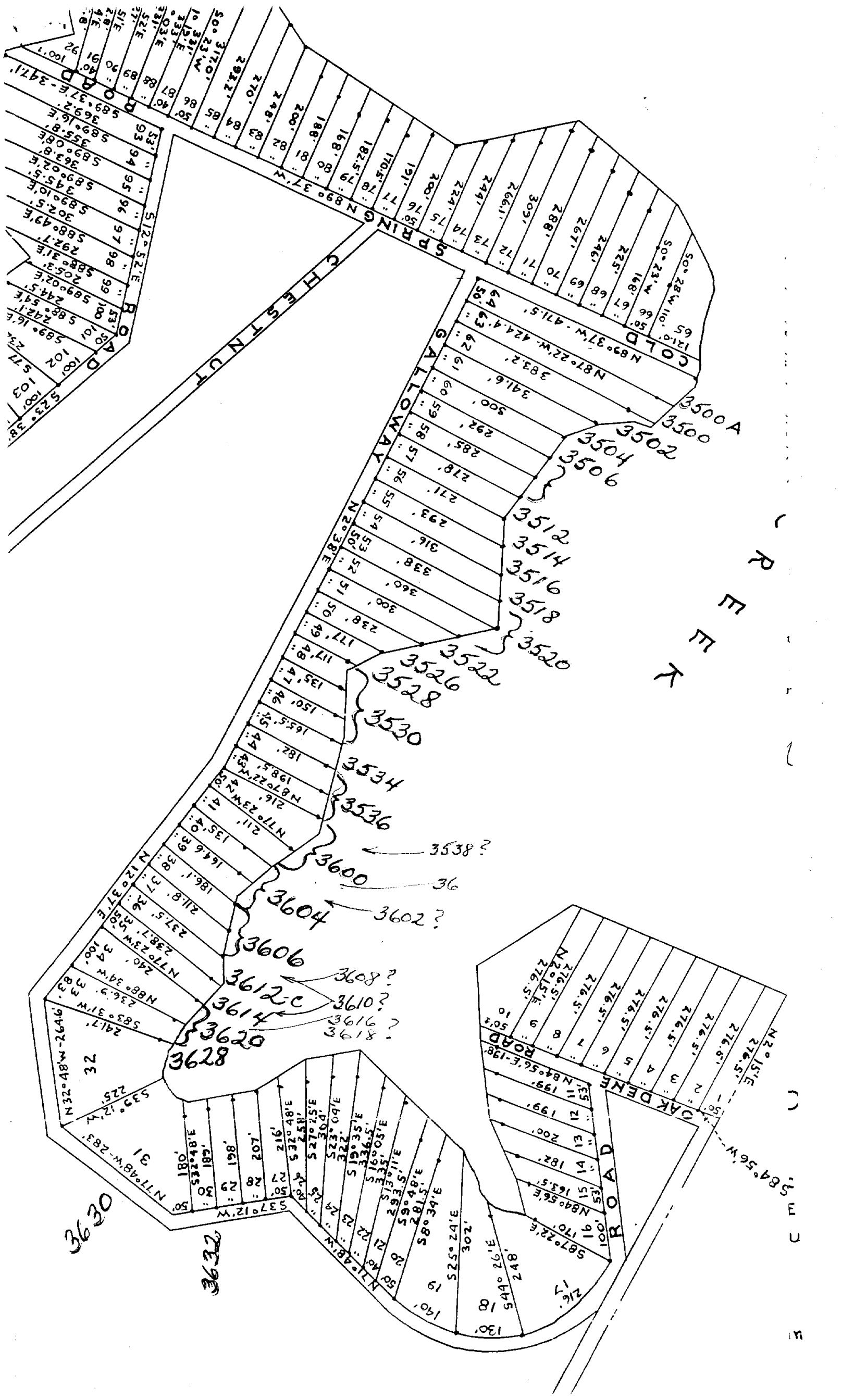
VICINITY MAP

SUBJECT
PROPERTY

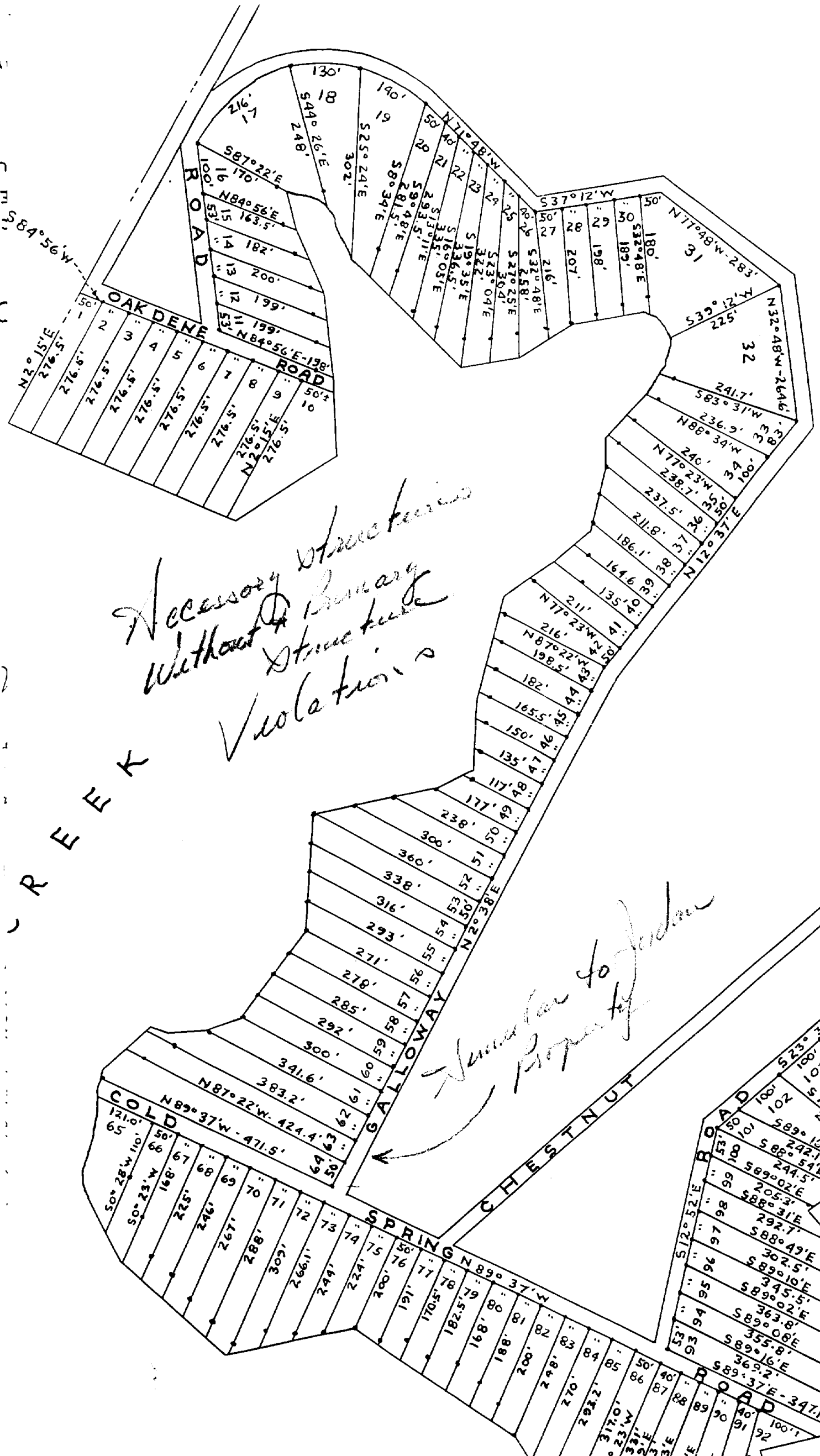
INDICATES LOCATION
OF STAKE.



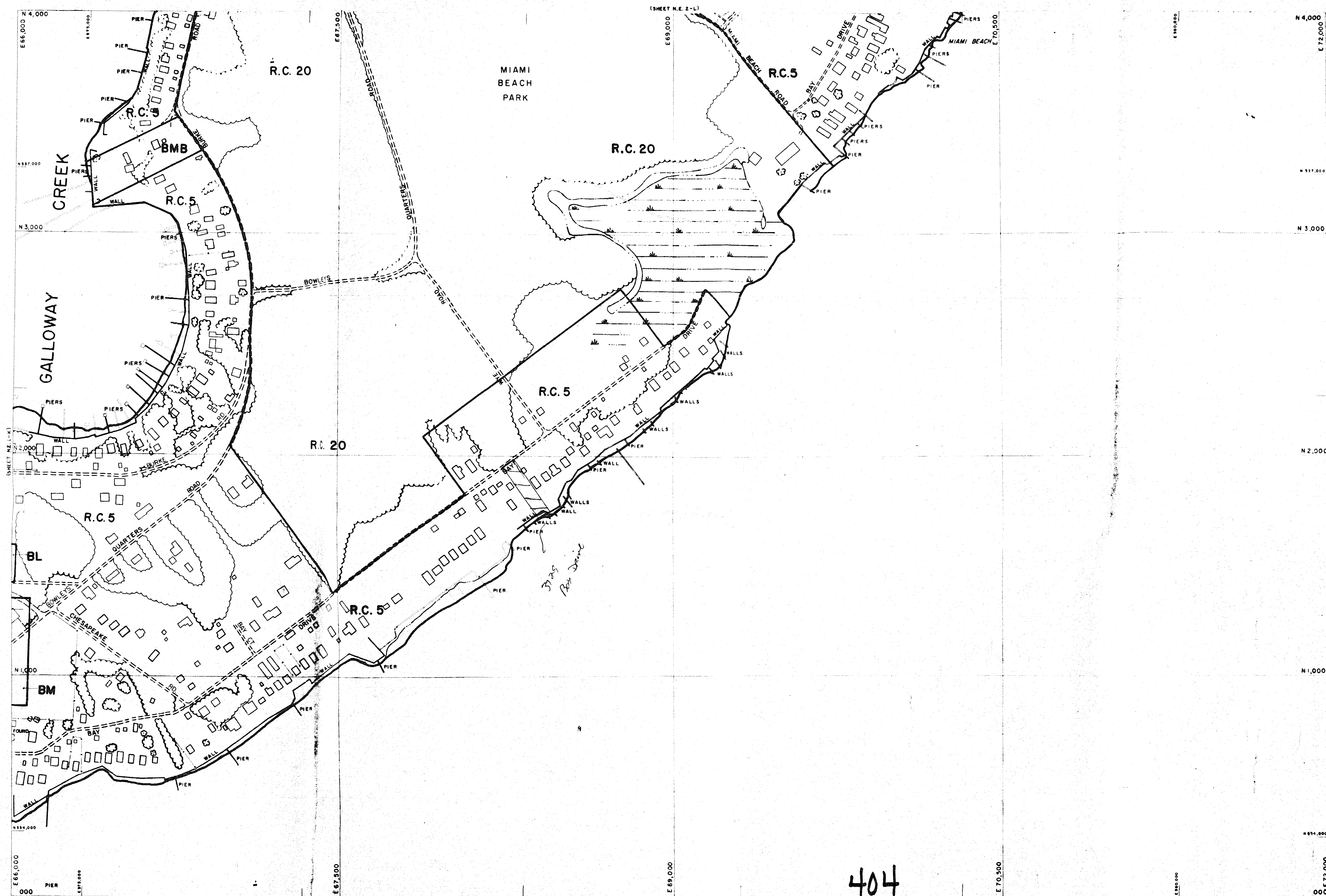
SECOND ADDITION TO PLAT NO. 1
BOWLEY'S QUARTER
SCALE 1" = 100' JAN. 14, 1927
EDWARD V. COONAN & CO.
SURVEYORS & CIVIL ENGINEERS
211 COURT LAND ST.
BALTIMORE, MD.



C M 3



*Removal to Jordan
Property*



Z -SW
ZZ -NW

THIS MAP HAS BEEN REVISED IN SELECTED AREAS.
TOPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS
BY BUCHART-HORN, INC. BALTIMORE, MD. 21210

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING OFFICIAL ZONING MAP

1992 COMPREHENSIVE ZONING MAP
Adopted by the Baltimore County Council
Oct. 15, 1992

Ord. Nos. 103-92, 104-92, 105-92, 106-92, 107-92, 108-92, 109-92

William A. Howard
Chairman, County Council

SCALE
1" = 200'

DATE
OF
PHOTOGRAPHY
JANUARY
1986

LOCATION
BOWLEYS
QUARTERS

SHEET
NE
1-L

404

93-393-SPH

PLEASE PRINT CLEARLY

POLYESTER(S) SIGN-IN SHEET

NAME

ADDRESS

1000 RIVER

3721 BAY DR. 21220

WILLIAM JORDAN, JR.

3724 BAY DR. 21220

WILLIAM JORDAN, JR.

3725 BAY DR. 21220

WILLIAM JORDAN, JR.

3725 BAY DR. 21220

WILLIAM JORDAN, JR.

3725 BAY DR. 21220

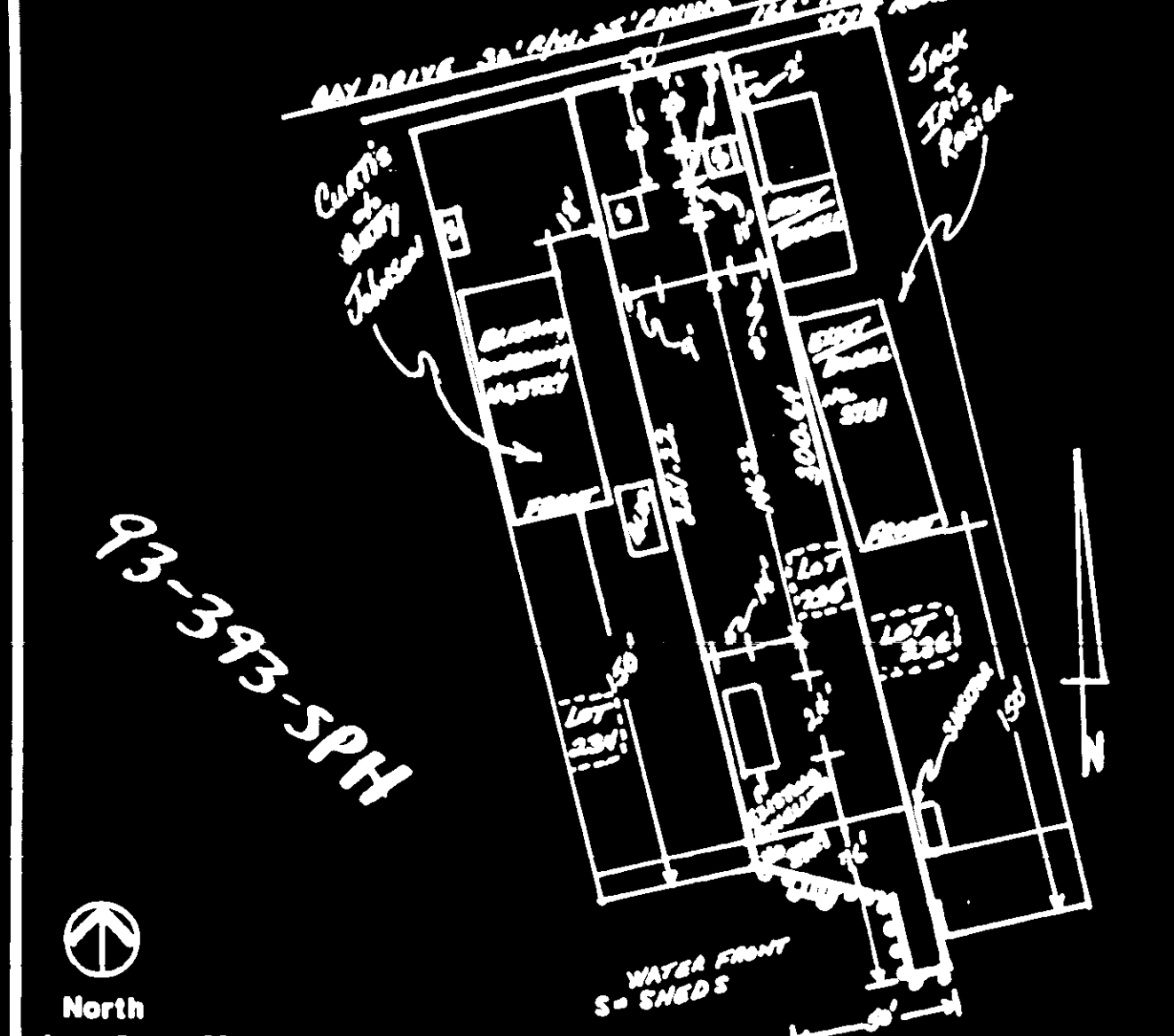
Plat to accompany Petition for Zoning ☐ Variance ☒ Special Hearing

PROPERTY ADDRESS: 3725 Bay Drive, Baltimore, Maryland 21220 see pages 5 & 6 of the CHECKLIST for additional required information

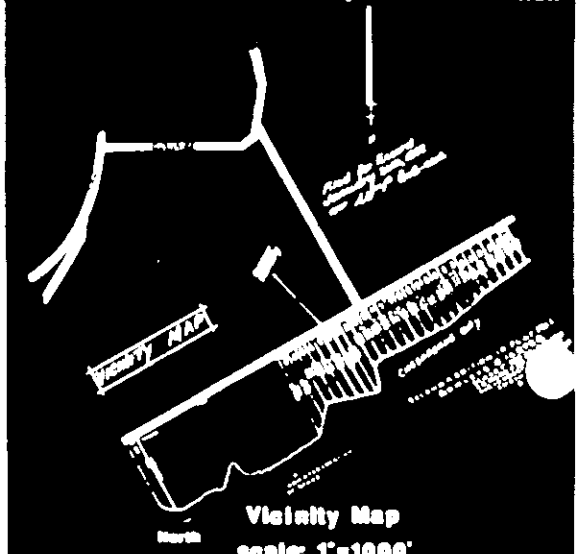
Subdividing owner: William F. Jordan, Jr.

plat book: 8, folio: 73, also 235, sheet: 7

OWNER: William F. Jordan, Jr. & Marie Jordan

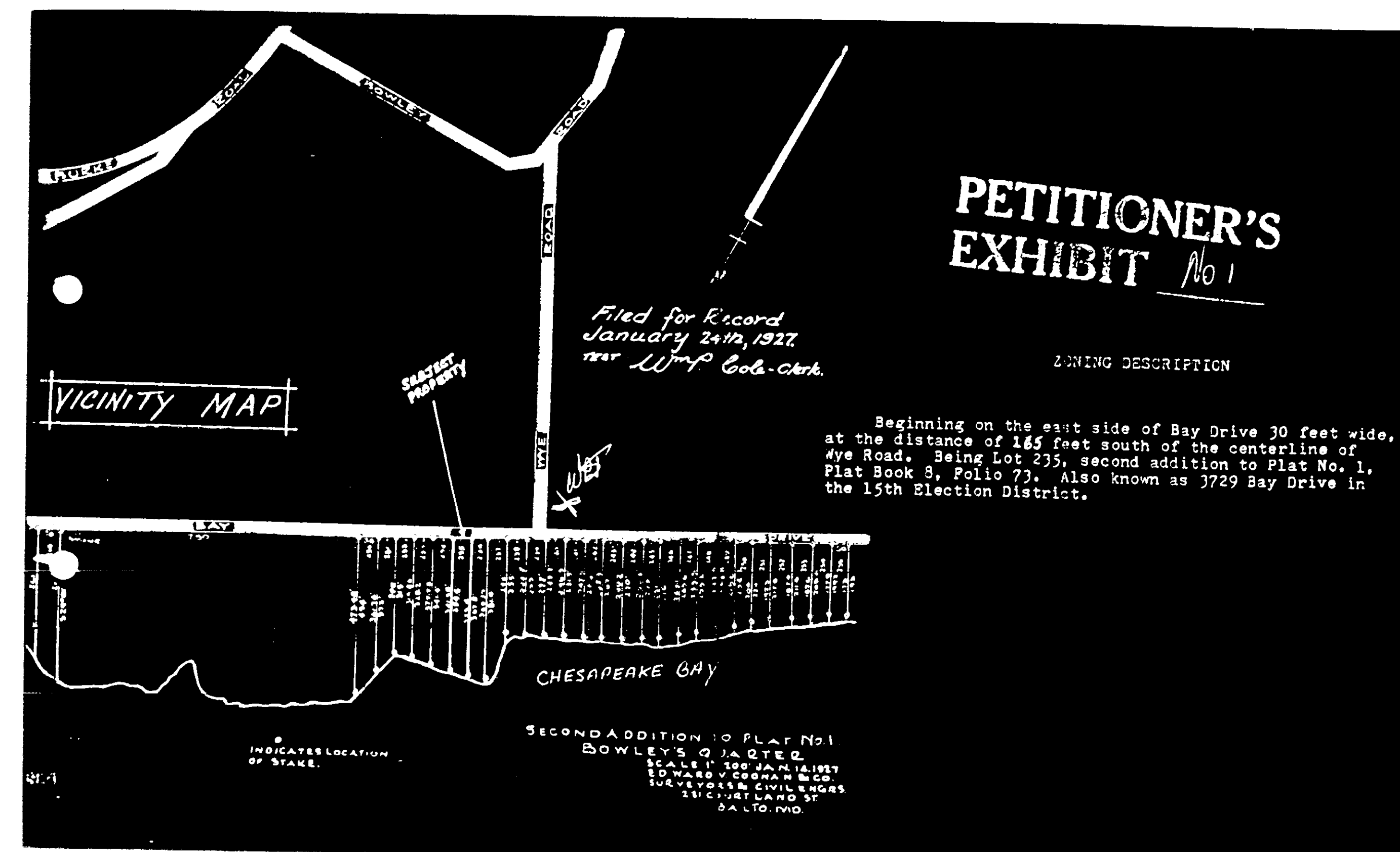


North
date: 5 Jan 53
prepared by: W. F. Jordan, Jr. Scale of Drawing: 1" = 50' (see attached)



LOCATION INFORMATION
Councilman's District: 5th
Election District: 15th
1"=200' scale map:
Zoning:
Lot area: 30' 13,900 square feet
SEWER: ☐ ☐
WATER: ☐ ☐
Chesapeake Bay Critical Area: ☐ ☐
Prior Zoning Hearings: N/A

Zoning Office USE ONLY!
reviewed by: ITEM #: CASE#:
- 404



PETITIONER'S EXHIBIT No. 1

ZONING DESCRIPTION

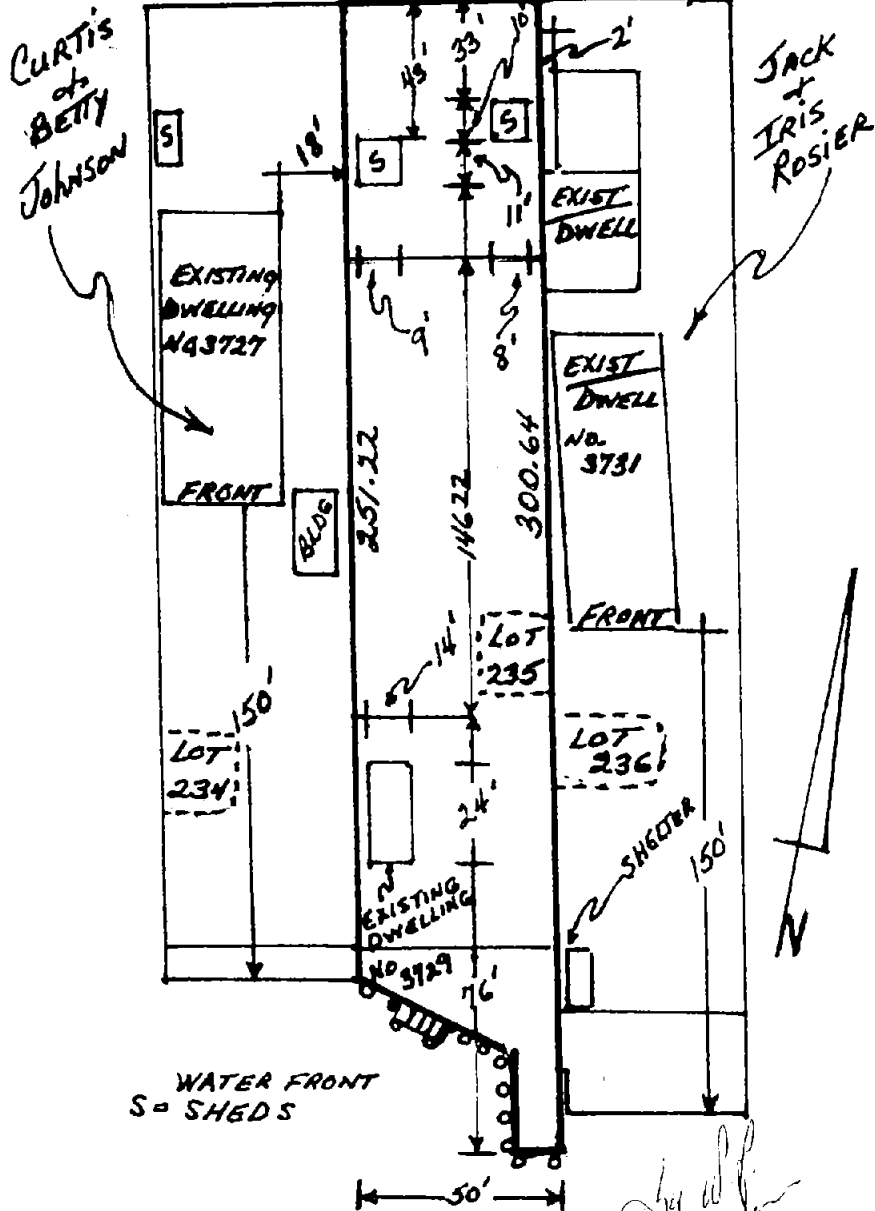
Beginning on the east side of Bay Drive 30 feet wide, at the distance of 165 feet south of the centerline of Ave Road. Being Lot 235, second addition to Plat No. 1, Plat Book 8, Folio 73. Also known as 3725 Bay Drive in the 15th Election District.

SECOND ADDITION TO PLAT NO. 1
DOWLEY'S OIA SITE C.
SCALE: 1"=100' JAN. 1953
EDWARD J. DOWLEY
SURVEYOR & CIVIL ENGINEER
211 CHASE LANE
BALTIMORE, MD.

93-393-SPH

BAY DRIVE 30' R/W, 25' PAVING

165' TO ~~THE~~ R.F.
WYF ROAD



WATER FRONT
S = SHEDS

50'