

1-21-00

IN THE MATTER OF
THE APPLICATION OF
WILLIAM H. WILSON, ET UX
FOR A SPECIAL EXCEPTION AND
VARIANCE ON PROPERTY LOCATED
ON THE NORTH SIDE POPLAR ROAD,
820 FT EAST OF THE CENTERLINE OF
LOURDES ROAD (2120 POPLAR ROAD)
15TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT

* ON REMAND
* FROM THE
* CIRCUIT COURT FOR
* BALTIMORE COUNTY
* Civil Action
* No. 03-C-95-5862
*

ZONING CASE NO. 95-46-XA

* * * * *

AMENDED ORDER OF THE BOARD PURSUANT TO
REMAND ORDER OF THE CIRCUIT COURT FOR BALTIMORE COUNTY

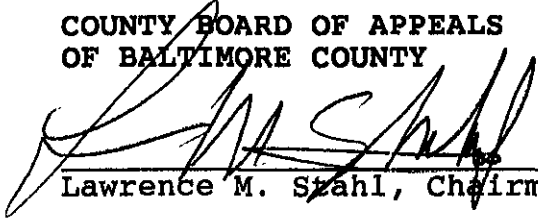
This matter comes before the Board on remand by Order of Judge Robert E. Cahill, Sr., Circuit Court for Baltimore County, dated December 15, 1999, in which Judge Cahill orders as follows:

Having considered and rejected all of the contentions raised by People's Counsel, the decision of the Board of Appeals granting the special exception is **AFFIRMED** and the matter is remanded to the Board with instructions to amend its Order of May 31, 1995 by deleting the condition (No. 8) which limited the grant of the special exception to the Wilsons or their survivors.

IT IS THEREFORE this 21st day of January, 2000, by the County Board of Appeals of Baltimore County

ORDERED that, consistent with the Remand Order of the Honorable Robert E. Cahill, Sr., Judge, Circuit Court for Baltimore County, dated December 15, 1999, the Board's Order of May 31, 1995 is hereby **AMENDED** by deleting condition #8.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY


Lawrence M. Szahl, Chairman

BoA
for Rev
Rem #8

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County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

January 21, 2000

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

RE: Circuit Case #03-C-95-005862 /In the Matter of
William H. Wilson, et ux /Zoning Case No.
95-46-XA /On Remand from Circuit Court

Dear Mr. Zimmerman:

Enclosed please find a copy of the Board's Amended Order issued this date in response to the Remand Order of the Circuit Court for Baltimore County.

Very truly yours;

Kathleen C. Bianco

Kathleen C. Bianco
Administrator

Enclosure

cc: Wayne & Donna Berk
Mr. & Mrs. Rodney Dize
Mr. Carl Maynard
Mr. David A. Kline
J. Carroll Holzer, Esquire
Mr. & Mrs. William Wilson
James S. Patton
Pat Keller /Planning Director
Lawrence E. Schmidt /Zoning Commissioner
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

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WILLIAM H. WILSON, ET UX

95-46-XA

N/S Poplar Road, 820' E of c/l of Lourdes Road
(2120 Poplar Road)

15th Election District

RE: Special Exception and Variance

No. 95-46-XA

August 3, 1994 Petitions for Special Exception and Variance filed by J. Carroll Holzer, Esquire, on behalf of William H. and Laura S. Wilson: SE /to allow a marina with 17 slips or, confirm the nonconforming use of the site as a marina with 6 slips pursuant to Board's findings in case No. 74-9-V and permit an intensification of use by 11 slips resulting in a total of 17 slips; and Var /to allow for mooring with 10 ft. of bulkheads and piers.

September 12 Hearing held on Petition by the Zoning Commissioner.

October 13 Order issued by the Zoning Commissioner in which Petition for Special Exception was GRANTED; and Petition for Variance was GRANTED with restrictions.

November 10 Notice of Appeal filed by Wayne and Donna Berk, Protestants.

May 2 Hearing held before the Board of Appeals and concluded.

May 16 Petitioner's Memorandum filed by J. Carroll Holzer, Esquire, on behalf of William H. Wilson.

May 17 People's Counsel's Hearing Memorandum filed by Peter Max Zimmerman.

May 24 Deliberation by the Board of Appeals.

May 31 Opinion and Order of the Board in which the Petition for Special Exception was GRANTED; Variance withdrawn by Petitioner 5/02/95. (concurring opinion by ROS).

June 7, 1995 Petitioners' Motion for Reconsideration filed by J. Carroll Holzer, Esquire on behalf of Mr and Mrs. Wilson.

June 8 Letter to J. Carroll Holzer from Robert O. Schuetz, explaining the Board's imposition to amend Order due to the "make-up" of the Board changing over the last few months.

June 30 Petition for Judicial Review filed in the Circuit Court for Baltimore County by J. Carroll Holzer, Esquire, on behalf of William H. and Laura Wilson.

July 10 Cross-Petition for Judicial Review filed in the Circuit Court for Baltimore County by People's Counsel for Baltimore County, et al

October 25 Upon learning this date of the above filings, copies of Petitions for Judicial Review obtained by the Board of Appeals from the Circuit Court for Baltimore County.

October 25 ✓ Transcript of testimony filed; Record of Proceedings filed in the Circuit Court.

Dec. 15, 1999 - Memorandum Opinion issued by the CCT for Balto. Co.; decision of the
✓ E CBA is AFFIRMED; case REMANDED to the CBA to amend 5/31/95 Order by deleting condition #8 (Robert Cahill, Sr.,J)

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12-17-99

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

12/17/99

Case Number: 03-C-95-005862 AA
Date Filed: 06/30/1995
Status: Closed/Active
Reference Number: 95-46-xa
Judge Assigned: To Be Assigned,

Wilson, et al vs County Board Of Appeals For Baltimore County

CASE HISTORY

OTHER REFERENCE NUMBERS

Description	Number
Reference Number	95-46-xa C9505862

INVOLVED PARTIES

Type Num	Name(Last,First,Mid,Title)	Addr Str/End	Disposition Addr Update	Entered
XPL 001	Peoples Counsel For Baltimore County Mail: 400 Washington Ave Room 47 Towson, MD 21204	07/18/95	CT DO 12/16/99	07/18/95
	Attorney: 0005744 Demilio, Carole Deputy People's Counsel For Baltimore County Room 47, Old Courthouse 400 Washington Avenue Towson, MD 21204 (410)887-2188		08/17/95	
XPL 002	Back River Neck Peninsula Community Association Inc Mail: P.O. Box 16754 Baltimore, MD 21221	07/18/95	CT DO 12/16/99	07/18/95

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Type Num	Name(Last,First,Mid,Title)	Addr Str/End	Disposition Addr Update	Entered
XPL 003	Shrader, Richard Mail: 2016 Poplar Road Baltimore, MD 21221	07/18/95	CT DO 12/16/99	07/18/95
XPL 004	Berk, Wayne Mail: 2200 Poplar Road Baltimore, MD 21221	07/18/95	CT DO 12/16/99	07/18/95
XPL 005	Berk, Donna Mail: 2200 Poplar Road Baltimore, MD 21221	07/18/95	CT DO 12/16/99	07/18/95
PLT 001	Wilson, William H Mail: 305 Washington Avenue Suite 502 Towson, MD 21204 Attorney: 0012186 Holzer, J Carroll Holzer And Lee The 508 Building 508 Fairmount Avenue Towson, MD 21286-5448 (410)825-6961	06/30/95	CT DO 12/16/99 07/03/95	06/30/95
PLT 002	Wilson, Laura Mail: 305 Washington Avenue Suite 502 Towson, MD 21204 Attorney: 0012186 Holzer, J Carroll Holzer And Lee The 508 Building 508 Fairmount Avenue Towson, MD 21286-5448 (410)825-6961	06/30/95	CT DO 12/16/99 07/03/95	06/30/95
DEF 001	County Board Of Appeals For Baltimore County Mail: 400 Washington Avenue Old Courthouse Room 49 Towson, MD 21204 Attorney: 0029075 Zimmerman, Peter M People's Counsel For Baltimore County Room 47 Courthouse 400 Washington Ave Towson, MD 21204 (410)887-2188	06/30/95	CT DO 12/16/99 07/03/95	06/30/95
CND 001	County Board Of Appeals Of Baltimore County		CT DO 12/16/99	07/18/95

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CALENDAR EVENTS

Date	Time	Dur	Cer	Evnt	Lvl	Atty	Jdg	Day	Of	Rslt	By	ResultDt	Jdg	T	Notice	Rec	User	ID
09/29/95	09:30A	02Q	yes	MOTN	D		TBA	01	/01	CON	C	12/16/99	P	09/13/95		BK	PH	
07/02/96	09:30A	02Q	yes	CIVI	D		TBA	01	/01	RES	C	08/10/96	P	03/26/96		JD	JD	
09/19/96	09:30A	01H	yes	CIVI	D		TBA	01	/01	CON	C	12/16/99	P			JD	PH	

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign	Date	Removal	RSN
TBA To Be Assigned,	J		07/03/95		

DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User	ID
0001000	Petition for Judicial Review es#1 for special exception and variance on property located on the north side of Poplar Rd. Copy sent to agency.	06/30/95	07/03/95	000	TBA		12/16/99	ES	PH
0002000	Cross-Complaint lg#2	07/18/95	07/18/95	XPL001	TBA		12/16/99	LG	PH
0003000	Motion jc 3 (rec'd 7/31/95)	08/03/95	08/03/95	PLT001	TBA		12/16/99	GC	PH
0003001	Answer et al To Motion To Waive Appellant's Request For Transcript. (rec'd 8/9/95)	08/17/95	08/17/95	XPL001	TBA		12/16/99	JH	PH
0004000	request to Extend Time 5. William and Laura Wilson's request with request for hearing. (rec'd 8/30/95)	09/07/95	09/07/95	PLT001	TBA		12/16/99	CG	PH
0005000	Hearing Notice	09/13/95	09/13/95	000	TBA		09/13/95	BK	BK
0006000	Open Court Proceeding September 29, 1995 Hon. Robert E. Cadigan. Hearing had. Order signed.	09/29/95	09/29/95	000	TBA		12/16/99	EL	PH
0007000	Order extending time to transmit the record for a period of 60 days	10/06/95	10/08/95	000	BEC		10/08/95	PH	PH

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Num/Seq	Description	Filed	Entered	Party	Jdg Ruling	Closed	User ID
0008000	Certificate of Notice	10/25/95	10/26/95	000	TBA	12/16/99	JH PH
0009000	proceeding before the zoning Comm. commissioner and the board of appeals of Baltimore county.	11/27/95	11/28/95	DEF001	TBA	11/28/95	CG CG
0010000	transcript of record	11/27/95	11/28/95	000	TBA	11/28/95	CG CG
0011000	notice of filing transcript notices sent.	11/27/95	11/28/95	PLT001	TBA	11/28/95	CG CG
0012000	Memorandum	12/27/95	12/28/95	PLT001	TBA	12/16/99	KP PH
0013000	Peoples Counsel Memorandum with exhibits	01/24/96	01/25/96	XPL001	TBA	01/25/96	JMG JMG
0014000	Hearing Notice	03/26/96	03/26/96	000	TBA	03/26/96	JD JD
0015000	Reply to memorandum and Laura Wilson	08/02/96	08/05/96	PLT001	TBA	12/16/99	PH PH
0016000	Scheduling Order	08/10/96	08/10/96	000	TBA	08/10/96	JD JD
0017000	Scheduling Order	08/10/96	08/10/96	000	TBA	08/10/96	JD JD
0018000	memorandum	10/24/96	10/25/96	XPL001	TBA	12/16/99	LG PH
0019000	Stipulation extending time to respond **	02/03/97	02/04/97	000	TBA	02/04/97	PH PH
0020000	Stipulation extending time to file ** reply memorandum	02/19/97	02/26/97	000	TBA	02/26/97	PH PH
0021000	Stipulation For Extension Of Time ** To File Petitioners' Reply Memorandum Of Law. Filed by PLT002-Wilson, Laura, PLT001-Wilson, William H	03/18/97	03/19/97	PLT002	TBA	03/19/97	JH JH
0022000	Reply Memorandum ** Filed by PLT001-Wilson, William H, PLT002-Wilson, Laura	04/04/97	04/10/97	PLT001	TBA	12/16/99	JH PH
0023000	*Peoples Counsel Supplemental Memorandum Regarding Chesapeake Bay Critical Area Protection Program	04/21/97	04/22/97	XPL001	TBA	04/22/97	CB CB
0024000	Notice of Cont. Dismissal Lack of Pros. 2-507 notice	06/30/98	06/30/98	000	REC Withdrawn	07/10/98	PA PH
0025000	Order withdrawing the Notice of contemplated dismissal, etc	07/10/98	07/10/98	000	REC Granted	07/10/98	PH PH
0026000	Order affirming decision and remanding case	12/16/99	12/16/99	000	REC Granted	12/16/99	PH PH
0027000	Invoice 8890 sent to J Carroll Holzer	12/16/99	12/16/99	000	TBA		CKC CKC

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03-C-95-005862 Date: 12/17/99 Time: 09:42

Page: 6

Milestone	Scheduled	Target	Actual	Status
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TRIAL DATE is	09/19/96	06/24/96	12/16/99	CLOSED

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IN THE (12/15/99 (Robert Cahill, Sr., J)

RE: PETITION OF PEOPLE'S COUN-
SEL FOR BALTIMORE COUNTY, ET AL.FOR JUDICIAL REVIEW OF THE
DECISION OF THE COUNTY BOARD
OF APPEALSIN THE MATTER OF THE APPLI-
CATION OF WILLIAM H. WILSON,
et ux. for a Special Excep-
tion and Variance on property
located on the north side
Poplar Road, 820 ft. east of
the center line of Lourdes
Road, (2120 Poplar Road), 15th
Election District, 5th
CouncilmanicIN THE COUNTY BOARD OF APPEALS*
CASE NO. 95-46-XA

CIRCUIT COURT

FOR

BALTIMORE COUNTY

Case No. 03-C-95-5862

RECEIVED
COUNTY BOARD OF APPEALS
99 DEC 16 PM 3:03

* * * * *

MEMORANDUM OPINION

On August 3, 1994, William and Laura Wilson filed separate petitions seeking a special exception, and variances in order to enlarge their non-conforming use marina of "approximately six slips" to a 17-slip facility. The marina had been operated on their Middle River property de facto since the 1930's and with the Board of Appeals' imprimatur since 1974. Zoning Commissioner Lawrence E. Schmidt conducted an evidentiary hearing on the Petitions on September 12, 1994. A month later he filed his Findings of Fact and Conclusions of Law with an Order granting a the special exception for a 12-slip marina, and the variances as well, subject, however, to 12 restrictions, which he described as "conditions precedent to the relief granted."

Several individual and community association protestants appealed the Zoning Commissioner's decision to the Board of

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Appeals, which heard the case de novo on May 2, 1995. None of the protestants had private counsel. Their interests were protected, nonetheless, by People's Counsel, who had entered his appearance prior to the hearing before Zoning Commissioner Schmidt and joined in the appeal of his decision.

Before the Board's de novo hearing, the Wilsons amended the Special Exception Petition to request permission for a marina of only 12 slips or, alternatively, ratification of the non-conforming use of their six-slip marina plus a special exception for an additional six slips and, since they had reduced the number of slips being requested from 17 to 12 and removed some existing pilings, the Wilsons deemed the conditional variances approved by the Zoning Commissioner to be no longer necessary. Therefore, they voluntarily dismissed that Petition at the start of the hearing. (Op.pp.1,8).

After considering virtually the same testimony that the Zoning Commission had heard, a two-member majority of the Board granted the Wilsons a special exception for a marina with 12 slips but "only for as long as the marina is owned and operated by the Wilsons, or their heirs." (Op.p.7). The third member of the Board filed a concurring opinion solely for the purpose of taking exception to restriction number eight in the Order, which made the special exception "personal" to the Wilsons and their heirs. When the Board's majority denied the Wilsons' Motion for Reconsideration of the ownership restriction, the Wilsons noted an appeal to this Court limited "solely to the issue of whether

or not condition number eight in the majority opinion of the CBA was correct, legal and enforceable." People's Counsel and the protestants cross-appealed.

Interspersed amongst the issues presented in the initial Memorandum filed by People's Counsel is a concession that the Board lacked the authority to limit the special exception to the current owners of the property. However, People's Counsel contends that the circuit court cannot cure this admitted error by striking this one condition, but must remand to the Board with instructions to take that action, citing O'Donnell v. Bassler, 289 Md. 501 (1981) (P.C.Mem.p.15). The Wilsons agree, pointing out that this is precisely what happened in Perdue Farms v. Hadden, 109 Md. App. 582 (1996). (Wilson Rely Br.,p.15).

The above concession also makes it unnecessary for this Court to deal with purported issue IV in the People's Counsel Memorandum, which, for reasons which are not apparent, was briefed in the Memorandum after an acknowledgment that it was moot. The remaining three issues raised in the cross-appeal, all of which challenge the Board's right to even grant a special exception, will be considered in the order in which they appear in the People's Counsel Memorandum.

People's Counsel first argues that a statute enacted by the County Council in 1993, which became Section 415A.2 of the BCZR, placed a limitation on the Board's right to grant a special exception for a marina with more than six slips for a residential waterfront lot. The Wilsons, in their response, dispute this

interpretation of Section 415A.2 "for a number of practical, as well as legal reasons."

It is unclear whether People's Counsel presented this legal argument either to the Zoning Commissioner or the Board, although their opinions would lead one to conclude that it was not raised. However, since it involves the interpretation of several statutes and the Wilsons do not claim a failure to preserve this point for appeal, this Court will consider it.

The Wilsons point out that, when Section 415A was repealed and re-enacted in 1993, the County Council did not repeal or amend Section 1A04.2.B.9, which is the regulation under which the special exception was granted and, since the two regulations are not incompatible, the Board had the authority to grant the special exception for a 12-slip marina. The Court finds this argument to be both logical and legally sound.

People's Counsel's counter-argument, at page 7 of its Memorandum, is that this Court should ignore what the law was at the time the Board decided the matter and apply the law in effect at the time this appeal is decided - provided that does not affect intervening vested rights. Sections 1A04.2.B.9 and 502.9 of the BCZR were repealed seven months after the Board issued its Order on May 31, 1995. However, the Wilsons, unlike the property owner in O'Donnell v. Bassler, 289 Md. 501 (1980), had acquired "intervening vested rights" with respect to their marina before this appeal was noted. Moreover, the repealing statute, Bill #179-95, contained a grandfather clause as to any marina for

which a special exception had been granted and on which construction had taken place prior to its effective date. There is evidence in this record that the Wilsons were qualified for its protection.

In Argument II, People's Counsel challenges the sufficiency of the evidence or, to be more accurate, the failure of the Board to decide the case based solely upon the testimony of the protestants. The Board is accused of having "...missed the boat, so to speak, when it substituted a decision for a proposed use with a commentary on appearance and image ... [thereby having] shirked its responsibility." (P.C.Mem.12). The detailed analysis of the testimony, pro and con, that the Board considered in granting this special exception (Bd.Op.pp.2-6), indicates that this criticism is unwarranted.

In order to grant relief based upon this contention, this Court would have to find that the record is so lacking of supporting evidence that the Board's decision to grant the special exception was not even fairly debatable. That is not the situation here. A reasonable person, after hearing the testimony during this hearing could have come down on either side of the dispute. Therefore, even if this Court legitimately believed that the evidence warranted rejecting the Wilsons' Petition, the Board's decision would have to be affirmed. Red Roof Inns v. People's Counsel, 96 Md. App. 219 at 223-224 (1973).

The bald statement in Argument III(A) that the reviewing court cannot strike the admittedly erroneous condition requiring

continuing ownership by the Wilsons while affirming the special exception is correct. Belvoir Farms v. North, 355 Md. 259 (1999). However, a reviewing court can affirm the grant of a special exception and remand the matter with instructions to the administrative body to delete an illegal condition from its order. Perdue Farms v. Hadden, *supra*, p.3. Since Argument III(B), in addition to heaping additional invective on the Wilsons for trying to preserve their marina, merely embellishes the same contention, it need not be dealt with separately.

The fact that the parties agree that condition number 8 is contrary to law and, therefore, invalid does not end it, however. This Court must render an independent judgment on this question of law. Based upon the authorities cited and arguments made in the Wilsons' original Memorandum, the Court agrees that a special exception involves the use of land - not its ownership, and, therefore, condition number 8 in the Board's Order was invalid ab initio and should be stricken.

Argument V (P.C.Mem.p.17), poses the "serious question" of whether "a new or even an expanded, commercial marina" in the Wilsons' residential zone is allowed by the Baltimore County Chesapeake Bay Critical Areas Ordinance. The answer to this serious question is not articulated by People's Counsel. It is provided by the Wilsons at page 16 of their Reply Brief. The County Agencies were aware that the Wilsons' property was located in a Limited Development Area (LDA) within the Chesapeake Bay Critical Area. Both the Zoning Commissioner and the Board knew

that because it was part of the record they considered. Moreover, the Board provided in its Order that DEPRM, the county agency charged with enforcing the Critical Areas Ordinance, must review and approve "the use of this site." (Condition Number 10).

The argument to support the "logical inference" that the County Council viewed the matter of commercial marinas in the LDA differently than the State is rejected. It is more logical to conclude that the Council did not intend the implementing ordinance passed in 1988 to be an implied limitation on the single word "marinas" in Section 1A04.2.B.9, which had been in existence since 1975.

Before the scheduled argument date in this Court, People's Counsel filed a paper entitled "Pre-Hearing Memorandum: Additional Issue: Critical Area Commission Review", wherein he raised, for the first time, an "issue common to Chesapeake Bay Critical Area cases, previously overlooked." The last two words are significant in that this newly discovered issue indeed had been "overlooked" by People's Counsel and the Protestants throughout the entire administrative proceedings.

Obviously realizing that this further ground for challenging the Board's authority to act should have been raised below, (as it had been in the decision of the Board attached to his Memorandum), People's Counsel argues that, since the Zoning Commissioner failed to have the Wilson's Petition reviewed by the Critical Area Commission in Annapolis, the Board lacked appellate

Having considered and rejected all of the contentions raised by People's Counsel, the decision of the Board of Appeals granting the special exception is AFFIRMED and the matter is remanded to the Board with instructions to amend its Order of May 31, 1995 by deleting the condition (No.8) which limited the grant of the special exception to the Wilsons or their survivors.

It is so ORDERED.

Date: December 15, 1994

Robert E. Cahill
Judge

Copies sent to:

J. Carroll Holzer, Esq.

Peter Max Zimmerman, Esq.
People's Counsel

Board of Appeals

*Cor. Ct - upheld
BOA
order #8 BOA
be removed*

11/95
IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF WILLIAM H. AND LAURA
WILSON at 305 Washington Avenue
Suite 502, Towson, MD 21204

AND

PETITION OF PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY, 400 Washington Avenue,
Room 47, Old Courthouse, Towson, MD
21204, BACK RIVER NECK PENINSULA COMM-
UNITY ASSOCIATION, INC., P.O. Box 16754
Baltimore, MD 21221, RICHARD SHRADER,
2016 Poplar Road, Baltimore, MD 21221,
and WAYNE AND DONNA BERK, 220 Poplar
Road, Baltimore, MD 21221

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. 3-C-95-005862

IN THE MATTER OF:
THE APPLICATION OF
WILLIAM H. WILSON, ET UX
FOR SPECIAL EXCEPTION AND VARIANCE
ON PROPERTY LOCATED ON THE NORTH SIDE
OF POPLAR ROAD, 820 FT. EAST OF
CENTERLINE OF LOURDES ROAD
(2120 POPLAR ROAD)
15TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT
CASE NO. 95-46-XA
* * * * *

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Harry E. Buchheister, Jr., constituting the
County Board of Appeals of Baltimore County, and in answer to the
Petition for Judicial Review directed against the Board in this
case, herewith return the record of proceedings had in the above-
entitled matter, consisting of the following certified copies or
original papers on file in the Office of Permits and Development

RECEIVED AND FILED
95 NOV 27 PM 2:25
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY
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Management and the Board of Appeals of Baltimore County:

ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND
OFFICE OF PERMITS AND DEVELOPMENT MANAGEMENT
OF BALTIMORE COUNTY

No. 95-46-XA

August 3, 1994	Petitions for Special Exception and Variance filed by J. Carroll Holzer, Esquire, on behalf of William H. and Laura S. Wilson: SE /to allow a marina with 17 slips or, confirm the nonconforming use of the site as a marina with 6 slips pursuant to Board's findings in case No. 74-9-V and permit an intensification of use by 11 slips resulting in a total of 17 slips; and Var /to allow for mooring with 10 ft. of bulkheads and piers.
August 19	Publication in newspapers.
August 20	Certificate of Posting of property.
September 12	Hearing held on Petition by the Zoning Commissioner.
October 13	Order issued by the Zoning Commissioner in which Petition for Special Exception was GRANTED; and Petition for Variance was GRANTED with restrictions.
November 10	Notice of Appeal filed by Wayne and Donna Berk, Protestants.
May 2	Hearing held before the Board of Appeals and concluded.
May 16	Petitioner's Memorandum filed by J. Carroll Holzer, Esquire, on behalf of William H. Wilson.
May 17	People's Counsel's Hearing Memorandum filed by Peter Max Zimmerman.
May 24	Deliberation by the Board of Appeals.
May 31	Opinion and Order of the Board in which the Petition for Special Exception was GRANTED; Variance withdrawn by Petitioner 5/02/95.

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(concurring opinion by ROS).

June 7, 1995	Petitioners' Motion for Reconsideration filed by J. Carroll Holzer, Esquire on behalf of Mr and Mrs. Wilson.
June 8	Letter to J. Carroll Holzer from Robert O. Schuetz, explaining the Board's imposition to amend Order due to the "make-up" of the Board changing over the last few months.
June 30	Petition for Judicial Review filed in the Circuit Court for Baltimore County by J. Carroll Holzer, Esquire, on behalf of William H. and Laura Wilson.
July 10	Cross-Petition for Judicial Review filed in the Circuit Court for Baltimore County by People's Counsel for Baltimore County, et al
October 25	Upon learning this date of the above filings, copies of Petitions for Judicial Review obtained by the Board of Appeals from the Circuit Court for Baltimore County.
October 25	Certificate of Notice sent to interested parties.
November 27	Transcript of testimony filed.

Petitioner's Exhibit No.	1 -Plat
	2 -Plat from Z.C. #52
	3 -Letter from DEPRM (Z.C. #54) 9/8/94
	4 -Letter from J. Dillon to L. Schmidt
	5 -Office of P&Z (Z.C. #56) to A. Jablon
	6 -Photographs of site
	1-Pier to property
	2-property to creek
	3-Same boat in 2
	4-Marine RW & Hoist
	5-View of side yard
	6-Burch house & boat
	8-13 Photos at Z.C. hearing
	14-16 Access to bathroom
	17-20 Neighbors house (Burch)
	21-25 Pile removed (circled),

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- etc.
- 26-29 View of boats moored at pier
- 30-34 View of boats and pier
- 35-44 Parking facility
- 7 -Photographs
 - ABC -House
 - DE -Distance from pilings to property line
 - FGHI -Neighbors properties
 - J -Neighbor piers
 - K -View to East from subj pier
 - LMN -Photos showing Hutton property line
 - PQRSTU -Photos showing parking.
- 8 -Letter from Mr. Hutton to Wilson
- 9A&B -Application for Permit from B.C. & Vicinity Map
- 10 -Agreement between Pet. & Holly Neck
- 11 -Corp of Eng. Comments for their approval
- 12 -Letter from Kreamer (Z.C. #51)
- 13 -Resume of J. Patton
- 14 -Letters from Mr. Stone, James
- 15 -Letter from Mr. Pullara
- 16 -Letter from Mr. Huffines
- 17 -Zoning Map

- People Counsel's Exhibit No. 1 -Three pages of maps of location
- 2 -ADC Map (Road system)
 - 3A-F Photographs (aerial) of location
 - 4 -Plat of properties
 - 5 -Aerial of Cedar Creek location (1986)
 - 6A&B -View from Poplar Road & from Burke House
 - 7A-7C-View of Wilson boat & slips
 - 8A-D-View of shore line curvature & wetland
 - 9 -View of av. no. of boats at Wilson
 - 10, 11, 12 & 13 - NOT ENTERED
 - 14 -Lower Back River Neck Com. Action Plan
 - 15AB&C-Affidavits from Holly

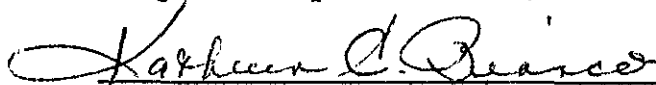
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Neck for Rule 8

November 27, 1995 Record of Proceedings filed in the Circuit
Court for Baltimore County.

Record of Proceedings pursuant to which said Order was entered
and upon which said Board acted are hereby forwarded to the Court,
together with exhibits entered into evidence before the Board.

Respectfully submitted,



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

cc: J. Carroll Holzer, Esquire
William H. and Laura Wilson
People's Counsel for Baltimore County
Back River Neck Peninsula Comm. Assoc., Inc.
Wayne and Donna Berk

MICROFILMED

10-25 95

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF WILLIAM H. AND LAURA
WILSON at 305 Washington Avenue
Suite 502, Towson, MD 21204

AND

PETITION OF PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY, 400 Washington Avenue,
Room 47, Old Courthouse, Towson, MD
21204, BACK RIVER NECK PENINSULA COMM-
UNITY ASSOCIATION, INC., P.O. Box 16754
Baltimore, MD 21221, RICHARD SHRADER,
2016 Poplar Road, Baltimore, MD 21221,
and WAYNE AND DONNA BERK, 220 Poplar
Road, Baltimore, MD 21221

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

IN THE MATTER OF:
THE APPLICATION OF
WILLIAM H. WILSON, ET UX
FOR SPECIAL EXCEPTION AND VARIANCE
ON PROPERTY LOCATED ON THE NORTH SIDE
OF POPLAR ROAD, 820 FT. EAST OF
CENTERLINE OF LOURDES ROAD
(2120 POPLAR ROAD)
15TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT
CASE NO. 95-46-XA
* * * * *

CIVIL
ACTION
No. 3-C-95-005862

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland
Rules of Procedure, Harry E. Buchheister, Jr., constituting the
County Board of Appeals of Baltimore County, has given notice by
mail of the filing of the Petition for Judicial Review and Cross-
Petition for Judicial Review to the representative of every party
to the proceeding before it; namely, J. Carroll Holzer, Esquire,
HOLZER AND LEE, 305 Washington Avenue, Suite 502, Towson, MD
21204, counsel for Petitioners; William H. and Laura Wilson, at 305
Washington Avenue, Suite 502, Towson, MD 21204, Petitioners;

RECEIVED AND FILED
95 OCT 25 PM 2:18
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

MICROFILMED

Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Washington Avenue, Towson, MD 21204; Back River Neck Peninsula Community Association, Inc., P.O. Box 16754, Baltimore, MD 21221, Richard Shrader, 2016 Poplar Road, Baltimore, MD 21221, and Wayne and Donna Berk, 2200 Poplar Road, Baltimore, MD 21221, Petitioners on Cross-Petition; 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

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to J. Carroll Holzer, Esquire, HOLZER AND LEE, 305 Washington Avenue, Suite 502, Towson, MD 21204, counsel for Petitioners; William H. and Laura Wilson, at 305 Washington Avenue, Suite 502, Towson, MD 21204, Petitioners; Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Washington Avenue, Towson, MD 21204; Back River Neck Peninsula Community Association, Inc., P.O. Box 16754, Baltimore, MD 21221, Richard Shrader, 2016 Poplar Road, Baltimore, MD 21221, and Wayne and Donna Berk, 2200 Poplar Road, Baltimore, MD 21221, Petitioners on Cross-Petition, this 25th day of October, 1995.

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

MICROFILMED



County Board of Appeals of Baltimore County

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

October 25, 1995

J. Carroll Holzer, P.A.
HOLZER and LEE
305 Washington Ave., Suite 502
Towson, MD 21204

Peter Max Zimmerman, People's Counsel
for Baltimore County, et al
Room 47, Old Courthouse
Towson, MD 21204

RE: Civil Action No. 03-C-95-5862
WILLIAM H. WILSON, ET UX

Dear Counsel:

In accordance with the Maryland Rules of Procedure, the County Board of Appeals is required to submit the record of proceedings of the petition /cross-petition for judicial review which you have taken to the Circuit Court for Baltimore County in the above-entitled matter sixty days from September 29, 1995, pursuant to the attached Order of the Circuit Court for Baltimore County.

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 the above timeframe.

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



9-29-95

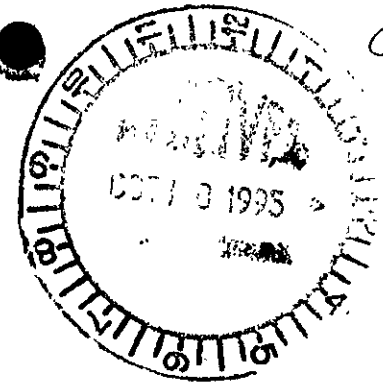
IN THE CIRCUIT COURT
FOR
BALTIMORE COUNTY

PETITION OF William H. and Laura
Wilson at 305 Washington Avenue,
Suite 502, Towson, Maryland

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

IN THE MATTER OF:
THE APPLICATION OF
WILLIAM H. WILSON, ET UX
FOR SPECIAL EXCEPTION AND
VARIANCE ON PROPERTY LOCATED
ON THE NORTH SIDE OF POPLAR RD.
820 FT. E OF C/L LOURDES ROAD
2120 POPLAR ROAD
5TH COUNCILMANIC DISTRICT
Case No. 95-46-XA

* * * * *



cod
PMZ

Civil Action

Case No.: 03-C-95-5862

95 OCT 25 PM 3:01
COMMUNICATIONS SECTION

ORDER

It is this the 29th Day of September, 1995 ORDERED:

1. The time for the transmittal of the Record in the above
captioned matter has been extended pursuant to Rule 7-206(d) to

60 days from 9/29/95

on
delivered
- Malcom
call
Jury
due
APX 1/06/96
afg

[Signature]
Judge

True Copy Test

Petitions\WILSON2.ORD SUZANNE MENSCH, Clerk

Per *[Signature]*
Assistant Clerk

MICROFILMED

FILED OCT 06 1995

9-13 95

CIRCUIT COURT FOR BALTIMORE COUNTY

Suzanne Mensh

Clerk of the Circuit Court

County Courts Building

401 Bosley Avenue

P.O. Box 6754

Towson, MD 21285-6754

(410)-887-2601, TTY for Deaf: (800)-735-2258

95 SEP 18 PM 2:46

95-46-XA

NOTICE OF MOTIONS HEARING

Case Number : 03-C-95-005862

Old Case number:

C I V I L

LAURA, WM. BURK PEARCE'S COUNSEL

Wilson, et al vs County Board Of Appeals For Baltimore County

STATE OF MARYLAND, BALTIMORE COUNTY, TO WIT:

TO: County Board Of Appeals Of Baltimore County
Towson, MD 21285-6754

This case has been assigned a hearing on all open motions on:

CIRCUIT COURT FOR BALTIMORE COUNTY
County Courts Building
401 Bosley Avenue
Towson, MD 21285-6754

Court date:
September 29, 1995
At: 09:30 AM
Motion Hearing (Civil)
NOTE: AGREED COUNSEL DATE

PLEASE NOTE: If you desire to submit prior to this hearing date, please contact the Motion Assignment Clerk. A total of no more that one-half hour is allotted for a hearing on "Motion Days". If motions will take more than one-half hour, please contact the Motion Assignment Clerk for reassignment.

If you, a party represented by you, or a witness to be called on behalf of that party need an accomodation under the Americans with Disabilities Act, please contact the Court Administrator's Office at (410) 887-2687 or use the Court's TDD line, (410) 887-3081, or or the Voice/TDD M.D. Relay Service, (800) 735-2258.

A court reporter will not be present at the motion hearing unless specifically requested. Requests for reporters should be directed to the Motion Assignment Clerk. All requests for a postponement **MUST BE MADE IN WRITING AS SOON AS POSSIBLE**. This should be directed to the Motion Assignment Clerk with a copy to all counsel. Claim of not receiving this notice will not constitute reason for postponement.

Please refer to Information Desk for Court Room Designation.

Assignment Clerk: Beverly Karmasek
Assignment Office Phone: (410)-887-2660

Date Issued: 09/13/95

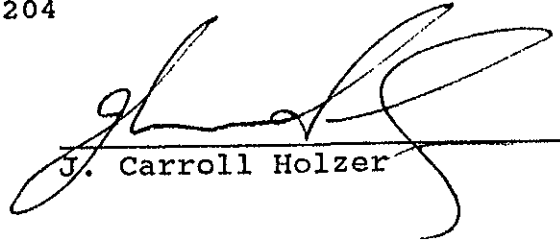
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* * * * *

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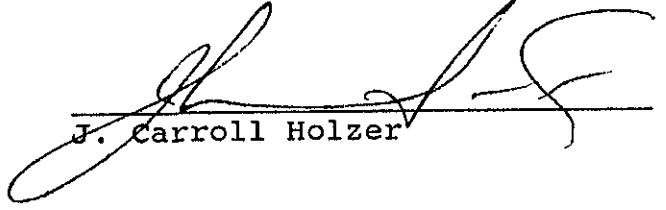
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the 30th day of August 1995, a copy of the foregoing Request For Hearing was mailed, postage pre-paid, to Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, Washington Avenue, Basement, Old Courthouse, Towson, Maryland, 21204


J. Carroll Holzer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the 30th day of August 1995, a copy of the foregoing was mailed, postage pre-paid, to Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, Washington Avenue, Old Courthouse, Towson, Maryland 21204


J. Carroll Holzer

Petitions\WILSON.EXT

Civil Action

Case No.: 03-C-95-5862

* * * * *

ORDER

1. The time for the transmittal of the Record in the above captioned matter has been extended pursuant to Rule 7-206(d) to

Petitions\WILSON2.ORD

MICROFILMED

no provision for omission of "testimony"; the Rule clearly uses the words "testimony", "exhibits", and "papers" to identify separate contents in the record.

3. Maryland Rule 7-206(b) permits use of a statement in lieu of the record if the parties agree; there is no provision for one party to omit all or a portion of the record:

"(b) Statement in Lieu of Record. - If the parties agree that the questions presented by the action for judicial review can be determined without the examination of the entire record, they may sign and, upon approval by the agency, file a statement showing how the questions arose and were decided and setting forth only those facts or allegations that are essential to a decision of the questions. The parties are strongly encouraged to agree to such a statement. The statement, any exhibits to it, the agency's order of which review is sought, and any opinion of the agency shall constitute the record in the action for judicial review."

4. In any event, the Appellees object to omission of all or any portion of the transcript from the County Board of Appeals (CBA); the testimony of the witnesses is the primary, if not, the exclusive, evidence in the instant case. Judicial review requires a review of the evidence to decide the issues raised by the Appellant and Appellees. The nature of the evidence to review the decision of the CBA is found exclusively in the transcript in this case.

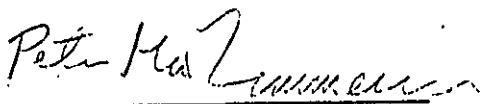
5. The matter can be affirmed, reversed, or remanded by the Circuit Court. The testimony will aid the Court in its decision and allow the parties to present an accurate portrayal of the nature of the evidence at the hearing.

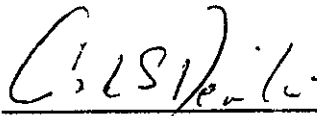
6. The Appellants have not disclosed the reasoning for their appeal; the Appellees would be prejudiced in the preparation of the Memorandum and at oral argument if they could not refer to the transcript.

MICROFILMED

7. Every Appellant would attempt to reduce the costs of an appeal by omitting all or a portion of the transcript, which would handicap the Circuit Court and put the Appellees at a disadvantage to defend an appeal without the benefit of the record.

WHEREFORE, Appellees request that the Motion be DENIED.


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

STATEMENT OF POINTS AND AUTHORITIES

Rule 2-311(c), Maryland Rules of Procedure
Rule 7-206(a), Maryland Rules of Procedure
Brown v. Prince George's County, 47 Md.App. 717 (1980)
Link v. Link, 35 Md.App. 684 (1977)
Nationwide Motor Sales Corp. v. Trusty, 24 Md.App. 407 (1975)


PETER MAX ZIMMERMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of August, 1995, a copy of the foregoing Answer was mailed to J. Carroll Holzer, Esquire, 305 Washington Avenue, Suite 502, Towson, MD 21204, attorney for Appellants WILLIAM AND LAURA WILSON.


PETER MAX ZIMMERMAN

IN THE CIRCUIT COURT
FOR
BALTIMORE COUNTY

PETITION OF William H. and Laura
Wilson at 305 Washington Avenue,
Suite 502, Towson, Maryland

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

IN THE MATTER OF:
THE APPLICATION OF
WILLIAM H. WILSON, ET UX
FOR SPECIAL EXCEPTION AND
VARIANCE ON PROPERTY LOCATED
ON THE NORTH SIDE OF POPLAR RD.
820 FT. E OF C/L LOURDES ROAD
2120 POPLAR ROAD
5TH COUNCILMANIC DISTRICT
Case No. 95-46-XA

Civil Action

Case No.: 03-C-95-5862

RECEIVED AND FILED

95 JUL 31 AM 11:14

CLERK OF BALTIMORE COUNTY

MOTION TO WAIVE APPELLANT'S REQUEST FOR TRANSCRIPT

Petitioners, William H. Wilson, et ux, by and through their attorney, J. Carroll Holzer and Holzer and Lee, hereby file this Motion to Waive Appellant's Request for Transcript pursuant to Rule 7-206(a) and says :

1. Petitioners William H. Wilson, et ux, filed their Petition For Judicial Review on June 30, 1995.

2. Petitioners noted their appeal solely on the issue of condition #8 in the majority Opinion of the County Board of Appeals and the apparent contradiction with the Minutes of Deliberation.

3. Transcript of the proceedings is not necessary for the instant review of the opinion, Concurring Opinion and Minutes of Deliberation as far as Petitioners Wilson are concerned because the

LAW OFFICE
HOLZER AND LEE
WASHINGTON AVENUE
SUITE 502
TOWSON, MARYLAND
21204

(410) 825-6981
AX: (410) 825-4923

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appeal to the Circuit Court does not involve the testimony before the Board of Appeals, but the proceedings after the testimony.

Respectfully submitted,

J. Carroll Holzer

J. Carroll Holzer
Holzer and Lee
305 Washington Avenue
Suite 502
Towson, Maryland 21204
(410) 825-6961
Attorney for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the 31st day of July 1995, a copy of the foregoing Petition for Judicial Review was mailed, postage pre-paid, to Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County Avenue, Basement, Old Courthouse, Towson, Maryland, 21204

J. Carroll Holzer
J. Carroll Holzer

IN THE CIRCUIT COURT
FOR
BALTIMORE COUNTY

PETITION OF William H. and Laura
Wilson at 305 Washington Avenue,
Suite 502, Towson, Maryland

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

IN THE MATTER OF:
THE APPLICATION OF
WILLIAM H. WILSON, ET UX
FOR SPECIAL EXCEPTION AND
VARIANCE ON PROPERTY LOCATED
ON THE NORTH SIDE OF POPLAR RD.
820 FT. E OF C/L LOURDES ROAD
2120 POPLAR ROAD
5TH COUNCILMANIC DISTRICT
Case No. 95-46-XA

Civil Action

Case No.: 03-C-95-5862

ORDER

It is this the _____ Day of _____, 1995 ORDERED:

1. Petitioners William and Laura Wilson, pursuant to their
Motion To Waive Request For Transcript, are not required to order
and pay costs associated with the preparation of the transcript of
testimony before the County Board of Appeals in the above matter.

Judge

LAW OFFICE
HOLZER AND LEE
WASHINGTON AVENUE
SUITE 502
TOWSON, MARYLAND
21204

Petitions\WILSON.ORD

(410) 825-6961
FAX: (410) 825-4923

MICROFILMED

PETITION OF PEOPLE'S COUNSEL FOR BALTI-
MORE COUNTY, 400 Washington Avenue,
Room 47, Towson, Maryland 21204,
BACK RIVER NECK PENINSULA COMMUNITY
ASSOCIATION, INC., P. O. Box 16754
Baltimore, MD 21221, RICHARD SHRADER,
2016 Poplar Road, Baltimore, MD 21221,
and WAYNE AND DONNA BERK, 2200
Poplar Road, Baltimore, MD 21221

FOR JUDICIAL REVIEW OF THE
DECISION OF THE COUNTY BOARD OF
APPEALS OF BALTIMORE COUNTY

IN THE CASE OF: IN THE MATTER OF THE
APPLICATION OF WILLIAM H. WILSON, et UX.
FOR A SPECIAL EXCEPTION AND VARIANCE
ON PROPERTY LOCATED ON THE NORTH SIDE
OF POPLAR ROAD, 820' EAST OF C/L LOURDES
ROAD (2120 POPLAR ROAD)
15th ELECTION DISTRICT
5th COUNCILMANIC DISTRICT

IN THE BALTIMORE COUNTY BOARD OF
APPEALS, CASE NO.: 95-46-XA

IN THE
CIRCUIT COURT

FOR

BALTIMORE COUNTY

Civil Action No.:

03-C-95-5862

95 OCT 25 PM 3:01

* * * * *

CROSS-PETITION FOR JUDICIAL REVIEW

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, BACK RIVER NECK PENINSULA
COMMUNITY ASSOCIATION, INC., RICHARD SHRADER, and WAYNE AND DONNA BERK,
hereby request judicial review of the May 31, 1995 County Board of
Appeals' Opinion in the above case. PEOPLE'S COUNSEL, BACK RIVER NECK
PENINSULA COMMUNITY ASSOCIATION, INC., RICHARD SHRADER, and WAYNE AND
DONNA BERK were parties to the proceedings before the County Board of
Appeals in this matter.

This Cross-Petition is filed pursuant to Rule 7-203(b) of the
Maryland Rules of Procedure.

Peter M. Zimmerman
PETER M. ZIMMERMAN
People's Counsel for Baltimore County

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

RECEIVED AND FILED
95 JUL 10 PM 4:12
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

MICROFILMED

BACK RIVER NECK PENINSULA COMMUNITY
ASSOCIATION, INC.

BY Carl Maynard
Carl Maynard, Chairman,
Board of Governors
P. O. Box 16754
Baltimore, Maryland 21221
(410) 687-4011

Richard Shrader
RICHARD SHRADER
2016 Poplar Road
Baltimore, Maryland 21221
(410) 682-6681

Wayne Berk
WAYNE BERK
2200 Poplar Road
Baltimore, MD 21221
(410) 574-8679

Donna Berk
DONNA BERK
2200 Poplar Road
Baltimore, MD 21221
(410) 574-8679

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of July, 1995, a copy of the foregoing Cross-Petition for Judicial Review was mailed to J. Carroll Holzer, Esquire, 305 Washington Avenue, Suite 502, Towson, MD 21204, attorney for Petitioners William H. Wilson, et ux.

Peter Max Zimmerman
PETER MAX ZIMMERMAN

MICROFILMED

95 OCT 25 PM 3:01

PETITION OF William H. and Laura
Wilson at 305 Washington Avenue,
Suite 502, Towson, Maryland

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

Civil Action

Case No.: 03-C-95-5862

IN THE MATTER OF:
THE APPLICATION OF
WILLIAM H. WILSON, ET UX
FOR SPECIAL EXCEPTION AND
VARIANCE ON PROPERTY LOCATED
ON THE NORTH SIDE OF POPLAR RD.
820 FT. E OF C/L LOURDES ROAD
2120 POPLAR ROAD
5TH COUNCILMANIC DISTRICT
Case No. 95-46-XA

PETITION FOR JUDICIAL REVIEW

Petitioners, William H. Wilson, et ux, by and through their attorney, J. Carroll Holzer and Holzer and Lee, hereby Petition for Judicial Review by the Circuit Court for Baltimore County pursuant to Rule 7-207 of Civil Procedure from only condition number 8 in the majority opinion of the County Board of Appeals dated May 31, 1995. Petitioners submit that the decision of the concurring member of the CBA accurately reflects the law in the instant matter. Petitioners are not appealing the CBA's granting of the Special Exception, but only condition number 8. Petitioners were parties before the County Board of Appeals.

RECEIVED AND FILED

95 JUN 30 PM 2: 55

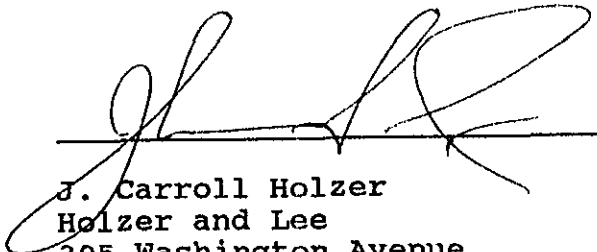
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

LAW OFFICE
HOLZER AND LEE
15 WASHINGTON AVENUE
SUITE 302
TOWSON, MARYLAND
21204

(410) 825-6961
FAX: (410) 825-4923

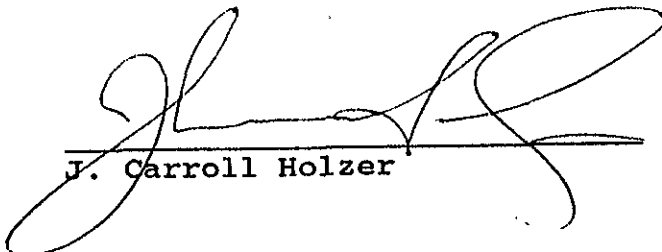
MICROFILMED

Respectfully submitted,


J. Carroll Holzer
Holzer and Lee
305 Washington Avenue
Suite 502
Towson, Maryland 21204
(410) 825-6961
Attorney for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the 30th day of June 1995,
a copy of the foregoing Petition for Judicial Review was mailed,
postage pre-paid, to Peter Max Zimmerman, Esquire, People's Counsel
for Baltimore County Avenue, Basement, Old Courthouse, Towson,
Maryland, 21204


J. Carroll Holzer



County Board of Appeals of Baltimore County

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

June 8, 1995

J. Carroll Holzer, P.A.
HOLZER and LEE
305 Washington Avenue, Suite 502
Towson, MD 21204

RE: Case No. 95-46-XA
William H. Wilson, et ux -Petitioners

Dear Mr. Holzer:

The Board is in receipt of your clients' Motion for Reconsideration of the Board's May 31, 1995 Order in which you request an amended Order, to be consistent with the Concurring Opinion of the undersigned.

As you are aware, the make-up of the Board of Appeals has changed over the last few months. The subject case involved one Board member, William T. Hackett, who no longer sits on the Board. With Mr. Hackett's tenure ending on May 31, 1995, his power to consider on-going cases and sign amended orders was removed effective June 1, 1995. Therefore, the Board is not in a position to amend its Order pursuant to this matter.

If your client believes he is aggrieved by the decision of the Board, he certainly may file a Petition for Judicial Review in the Circuit Court for Baltimore County, pursuant to the Maryland Rules of Procedure. Your Motion for Reconsideration is hereby denied.

Very truly yours,

A handwritten signature in cursive script, reading "Robert O. Schuetz".

Robert O. Schuetz, Chairman
County Board of Appeals

ROS/kcw

cc: People's Counsel for Baltimore County



6-6-95

IN RE.:
PETITION FOR SPECIAL EXCEPTION
N/S POPLAR ROAD, 820 FEET EAST OF
C/L LORDS ROAD, 2120 POPLAR ROAD
15th ELECTION DISTRICT
5th COUNCILMANIC DISTRICT
WILLIAM H. WILSON, et ux,
PETITIONER

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 95-46-XA

* * * * *

PETITIONERS' MOTION FOR RECONSIDERATION

William H. Wilson, and his wife, Laura Stern Wilson by J. Carroll Holzer and Holzer and Lee, hereby submit this Motion For Reconsideration and say:

1. County Board of Appeals (CBA) members Robert Schuetz, Chairman, William T. Hackett and Harry E. Buchheister met in Open Deliberation on May 24, 1995 in the above captioned matter pursuant to State Government Article, Sec. 10-501 et seq.

2. On May 31, 1995 CBA members William Hackett and Harry Buchheister joined in the opinion that Petitioners' request for Special Exception should be granted with certain restrictions, including Restriction #8 which reads: "The special exception relief granted herein shall be personal to the Petitioners, William H. Wilson and Laura Stern Wilson, his wife, or their survivor, subject to the right of a subsequent owner/operator to petition for a removal of this restriction."

3. Board Chairman, Robert Schuetz, on May 31, 1995 filed a concurring opinion in the instant matter taking exception only to restriction #8 in the majority opinion wherein Mr. Schuetz writes on page 3, " However, I do not believe that the 'proper use' as

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indicated in Section 502 needs to be limited to the Wilsons, and/or their heirs." Chairman Schuetz concurs in every other way with the majority opinion.

4. On June 5, 1995, counsel for Petitioners requested the Minutes of the Deliberation, required by State Government Article Sec. 10-509, attached hereto and incorporated herein as **Exhibit A**.

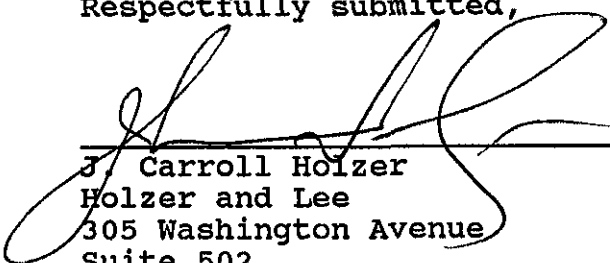
On page 5 of said Minutes, CBA member William Hackett said, "... The granting of the Special Exception provides that you grant that with reasonable restrictions. I do not think that to limit the special exception to this particular owner, the use is whatever the use is, and I think the special exception will run with the land and not with the owner (emphasis supplied). The Minutes reflect that CBA member Buchheister said on page 5, "I withdraw the restriction" (Restriction #8).

5. It is clear from the Minutes of the Deliberation that the Opinion rendered on May 31 by CBA members Hackett and Buchheister are inconsistent and in opposition to the positions taken by those Board members expressed in Open Deliberation on May 24, 1994 as it relates solely to Restriction #8.

6. Petitioners herein do not take exception to any other restrictions listed in the opinions of the CBA, save restriction #8 of the opinion of Hackett and Buchheister.

WHEREFORE, Petitioners respectfully request the County Board of Appeals pass an Amended Order consistent with the Minutes Of Deliberation dated May 24, 1995 and consistent with the Concurring Opinion of CBA Chairman Robert O. Schuetz.

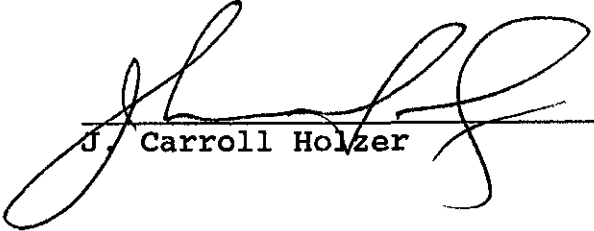
Respectfully submitted,



J. Carroll Holzer
Holzer and Lee
305 Washington Avenue
Suite 502
Towson, Maryland 21204
(410) 825-6961
Attorney for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the 6th day of June 1995, a copy of the foregoing Motion for Reconsideration was mailed, postage pre-paid, to Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, Office of People's Counsel, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland, 21204.



J. Carroll Holzer

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: William H. Wilson, et ux -Petitioners
Case No. 95-46-XA

DATE : Wednesday, May 24, 1995

BOARD /PANEL : Robert O. Schuetz, Chairman (ROS)
William T. Hackett (WTH)
Harry E. Buchheister, Jr. (HEB)

SECRETARY : Kathleen C. Weidenhammer
Administrative Assistant

Those present included J. Carroll Holzer, Esquire, counsel for Petitioners; 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 exception presented to the Board; testimony and evidence taken May 2, 1995. Opinion and Order to be issued by Board setting forth written findings of fact.

ROS: Opening comments; matter on appeal from Zoning Commissioner regarding special exception and variance to provide for a marina with 12 slips. This particular part of the proceedings is the deliberation process which we are required to perform in open meeting. Minutes taken by Board's Administrative Assistant.

During the course of the hearing, the Petition for the variance was withdrawn by the Petitioner, having made alterations negating the necessity for the variance. No need to discuss variance as part of this proceeding. The issue of nonconforming use is one where the burden of proof rests squarely with the Petitioner to provide evidence which would prove that the nonconforming use had been an uninterrupted service over an extended period of time; when the zoning regulations changed. However, in this particular instance, I believe that the Petitioner did not prove nonconforming use.

We have evidence which suggests that the ownership ceased but that's not to say that the nonconforming use ceased. The burden of proof still rested with the Petitioner to prove that the marina was not, as People's Counsel indicated in closing memorandum, not only did ownership cease but operations did or did not cease. I concur in that regard that they did not prove that. This case boils down strictly to special

EXH. A

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exception case in my view.

The R.C. 5 zoning classification under Section 1A04.B1, its purpose, speaks to the issue of basic services. In this particular case, we have R.C. 5 classification which has now received basic services, water, sewer, etc. Petitioner has connected to County system. Therefore, the remaining portions of the purpose, having reviewed them, it is my belief that the purpose is observed by the Petition for Special Exception in providing for a marina, and, in fact, marina, as defined in Section 101, includes certain incidental services such as repairs, fuel service, sales, land storage of boats, etc., nearly all of which the Petitioner has agreed not to provide.

I have reviewed the evidence and testimony and find that 417 has been met by the Petitioner and so what I would like to do is read into the record here and for the benefit of those in the room the preamble of 502 which speaks to special exceptions:

"...Others, like a cemetery, do not fit into any of the zone categories, that is, residential, business, and industrial, and therefore must be located with discrimination in relation to their surroundings. All the items listed are proper uses of land, but have certain aspects which call for special consideration of each proposal...."

It's that language which allows the Board, under 502.1, to consider issues (a) through (h) which would allow the Board to grant a special exception. I've reviewed again the evidence and testimony and the memorandums from both counsel, and find that the requirements of 502.1 (a) through (h) have been met, that includes item (g) in particular, where there was some issue about use of R.C. 5 for marinas. However, I would provide the approval under 502.1 with some restrictions. First, would limit number of slips to 12, including number of slips Petitioner uses for his own boats. Second, I would require the permanent provision of 9 parking spaces, and that they must be maintained clear and available for use with no permanent parking of trailers, etc., to insure all 9 spaces available at all times, and further would include those restrictions to which the Petitioner has agreed; that he will not provide gasoline, pumping stations, land repairs, sale or storage of boats on the subject property. Would grant the Petition subject to restrictions.

WTH: I will not repeat the bulk of those things Mr. Schuetz has mentioned. I do want to mention a couple of things. As far as I'm concerned, the only matter is the special exception for

the 12 slips. No variance required. However, I do not agree with Mr. Zimmerman that if special exception needs variances, it cannot be granted. But no variances are required in this case. Would like to mention that 12 slips is a very small marina. When you see a marina, they are huge things with zillions of boats. Twelve slips is almost a family-type use to moor the boats.

Purchased in 1980 in poor condition; Mr. Wilson has renovated property, renovated pier, brought everything up. Has been definite asset to the neighborhood. Pier was renovated right away upon purchase of property; had Corps of Engineers approval. In 1992, Holly Neck Improvement Assn. agreed that marina of 17 slips was not excessive; DEPRM also indicated approval for 12 slips; Planning Office in Baltimore County not opposed to 17 slips; most neighbors not opposed. In 1985, marina had 12 slips with 1980 Baltimore County approval, and now has water and sewer on site. And since April 1993, has complied with Corps of Engineers request; removed piles and eliminated one slip. Twelve requested same as 1985. No hard evidence to indicate that there was abandonment of property's use. It's the degree of use that seems to be in question.

In favor of granting the special exception for 12 slips were Tom Ellis, Steve Kaiser, Tim Fisher, Harry Kramer, and Mr. Hutton. Only protestants /Mr. & Mrs. Berk citing pier overcrowding and noise from moored boats. The Board will also note for the record that a marina with 12 slips will not generate any additional traffic; whoever uses that small number of slips will be someone who is already using a slip in the area.

All requirements of 502.1 have been met; would grant the special exception with restrictions as agreed to by Mr. Wilson: no further change in the pier configuration; no sales, repairs or services of any kind; merely mooring marina. No gasoline sales; restroom as noted, provided on shore, should remain.

HEB: Everything has been said that I had prepared for remarks. Again, will not repeat. One consideration which I would like to address; that concerns the Back River Neck Community Association, which is obviously trying to do an impossible job, considering the number of boats on Middle River and all Chesapeake Bay tributaries, to improve water quality, etc. Concerned about unauthorized proliferation of marinas. The Back River study and its plan of October 1993 was accepted by County Council, which obviously was accepted because it has merit. It's references to illegal boat rack marinas do not apply to the subject site, and it's long existence as a

marina. However, I do believe that objectives of the association have particular meaning in this case. All of the things that describe this marina that Mr. Schuetz and Mr. Hackett touched upon are most encouraging about such a marina. However, and I might say also that the Petitioner in modifying, changing what was there and reducing the number from 17 to 12, has certainly brought to the location a more acceptable situation. In acknowledgement of the objectives of the County to improve water quality and reduce boat traffic in Middle River area and tributaries, while also recognizing the extensive investment and excellent management by Mr. Wilson, I also feel that the special exception should be granted, but with a special restriction that has not been mentioned, and my colleagues do not know about my thoughts on this. This is a public deliberation, and I have this thought. I believe that the special exception should only apply as long as Mr. & Mrs. Wilson are the owners, and that it not be transferrable to any of their heirs. Those heirs might indeed continue it but they would have to go through the process of getting a special exception. Also one of the restrictions, and I pull this out of the air because I do not know if there are any children or not -- says something about no boats should be launched from the ground. I'm simply going to recommend that the Petitioner be allowed to store and launch one small dinghy and something like a sailfish sailboat under 12 ft. from that shore line for the benefit of any children he has. That is contrary to what the Zoning Commissioner said.

So in summary, I think the special exception should be approved but with the restriction that it only lies as long as Mr. Wilson and his wife are the owners, and only that they have this one special opportunity to provide a small dinghy; should be launched from shore line.

ROS: Would agree with additional restriction Mr. Buchheister put on; would concur on issue of allowance of launching from shoreline small boats, which are something handled by one or two people by picking up and placing in water; limit to 12 ft.; rowboat, etc. But on the issue of limiting special exception to the current owner, I do not concur. To me, it's an issue of legality in that 502 specifically states there are proper uses and special exception is a proper use in R.C. 5 zone, and therefore by placing this type of a restriction, it recognizes that we are placing specific value on who owns that particular piece of property. That I believe is not the intention of the BCZR, and therefore I would not agree to that particular restriction. I think that strips away the rights of future owners for enjoyment of the property that the zoning regulations specifically prescribe as proper use. Therefore I would not concur with that restriction.

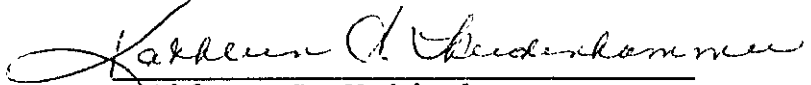
Minutes of Deliberation /William H. Wilson, et ux 95-46-XA

WTH: Agrees with Mr. Schuetz. The special exception issue, compliance with 502.1, leaves no choice but to grant the special exception. In this case, we are granting the special exception. The granting of the special exception provides that you can grant that with reasonable restrictions. I do not think that to limit the special exception to this particular owner, the use is whatever the use is, and I think the special exception will run with the land and not with the owner. I would not put that restriction in there.

HEB: I withdraw the restriction.

ROS: This concludes the matter. Will be written Opinion and Order associated with this proceeding. Will caution you in that the comments heard today are not official opinion. The official Opinion and Order to be issued by the Board is that document upon which you should base your subsequent action, should anyone decide to file a Petition for Judicial Review, to be filed within 30 days of that written Order, and not today's date.

Respectfully submitted,


Kathleen C. Weidenhammer
Administrative Assistant

IN THE MATTER OF THE
THE APPLICATION OF
WILLIAM H. WILSON, ET UX
FOR A SPECIAL EXCEPTION AND
VARIANCE ON PROPERTY LOCATED
ON THE NORTH SIDE OF POPLAR
ROAD, 820 FT. E OF C/L
LOURDES ROAD
(2120 POPLAR ROAD)
15TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT
* * * *

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
*
* CASE NO. 95-46-XA
* * * * *

O P I N I O N

This matter comes before the Board of Appeals on an appeal of the decision of the Zoning Commissioner granting a Petition for Special Exception to permit a marina with 12 slips, from which the Protestants entered a timely appeal. Also participating in these proceedings, heard on May 2, 1995 was People's Counsel for Baltimore County. Public deliberation by members of the Board was held at 9:00 a.m., May 23, 1995.

With approval by the Zoning Commissioner for Special Exception to permit 12 slips, in the interim leading to the Board's hearing, a reduction in requested slips from 17 to 12 and the subsequent removal of existing piles, has led the Petitioner to dismiss the need for variances in this case.

The subject property is located on Sue Creek, a tributary of Middle River. The property is zoned R.C.5 and is approximately .488 acre with a waterfront of 100 ft. and a length of 210 ft. +/- As shown on Petitioners' Exhibit No. 1, the property is improved by a 1-1/2 story dwelling, a garage, and a paved parking area, which can provide spaces for 9 vehicles.

A T-shaped pier extends from a bulkhead 130 ft. into Sue Creek, with additional finger piers from either end of the "T"

reaching out another 36 ft. to a water depth adequate for large sailboats.

The history of this site as a marina originates in the 1930's and continued to the 1970's with a legal, nonconforming use in an R.C.5 zone. William Wilson bought the property in April, 1980 from the heirs of the deceased owner, who died in June, 1978. Based on the Deed of Transfer to the heirs, and the ultimate sale to Mr. Wilson, there is no factual exhibit or testimony to accurately denote that the subject property discontinued or continued as a marina. Photographs of the property showed it to be in a state of disrepair, with one boat moored to a derelict pier. Prior to 1980, the property was used as a yacht club, as well as boat yard serviced by a marine railway and hoist that were operable by Mr. Wilson but in derelict condition.

In 1974, the Board of Appeals issued an Order that the non-conforming use could accommodate 6 slips. After his purchase in 1980, Petitioner added extensions and improved the pier over the years to its present length of 168 ft. This latest (1990) addition was done without permit, and the change eliminated all semblance of a nonconforming use with 17 slips. Section 104.1 specifies that "upon any change from such nonconforming use to any other use whatsoever the right to continue use shall terminate."

In operating his marina, Mr. Wilson described a facility where boat services are not available. Fuel is not sold nor are any kind of marine supplies. Sailboats and power boats are moored at the pier, but may not be moved from shore to land since Petitioner

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discontinued the launching facility (1986). He does provide a separate restroom in his dwelling for use by renters. The former septic system was recently connected to the county system.

Witnesses for the Petitioner testified to the excellent manner in which Mr. Wilson has maintained the marina and of his concern for the neighborhood environment as follows: Thomas Ellis has rented a slip since 1982 for a deep hull sailboat and commented on the lack of any kind of problem in regard to parking his car; Steve Kaiser remarked that he only uses his 25 ft. sailboat a dozen times a year and remarked that he had no in-and-out difficulties with his boat. He referred to the marina as a quiet place; Timothy Fisher, a long-time friend of Petitioner, thought he was foolish to buy the derelict property, but praised the incredible turn around; and Robert Jones, recent purchaser of property adjacent to the Protestant, Ms. Berk, had no objection to the marina.

As a life-long resident and neighbor to the subject site, Harry Kramer recalled the marina in the 1930's and from his permanent residence in 1970 as a rat infested property with a derelict house, a seven day-week boat yard operation, and a "yacht club" operation into the early hours. His protest at a personal expense of \$1,000 led to the 1974 case before the Board of Appeals. Mr. Kramer remarked of Petitioner's assurances in 1980 of improvements and of how Mr. Wilson kept his promises. He said there are no parking problems and that boat owners are hardly noticeable.

James Patton, civil engineer and expert witness, prepared the

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plat for Petitioner, and later revised the plan for the new pier configuration for 12 slips, and subsequent removal of need for variances. He explained that the parallel piers of the shoreline were allowed as the determinant of divisional lines rather than the property lines of owners, a problem raised by the Protestant. As suggested by the Corps., by removing piles and slips at the end of the Wilson pier, the divisional line variances were no longer required. Mr. Patton testified that the Plan meets all regulations of Section 502 of the Baltimore County Zoning Regulations (BCZR), and is consistent with the zoning.

In protest to the special exception requested by Mr. Wilson are Donna and Wayne Berk, Mr. & Mrs. Rodney Dize, David Kline and the Back River Neck Improvement Association.

Donna Berk testified to her objections of the overwhelming aspects of Petitioner's 168 ft. pier in relation to her property and a 50 ft. pier. Occupants of their water front property since 1990, Ms. Berk protested in 1990 about the re-configuration of the L-shaped pier to a "T" by Mr. Wilson with additional boat slips provided. A year later, the County acknowledged but never talked to her, nor corrected the pier expansion which was completed without authorization. She observed that there were usually 14 boats at the Wilson pier.

Ms. Berk remarked of their difficulty in navigating a 16 ft. rowboat clear of the Wilson pier and its boats, and of the pier's obstruction to her view. She expressed fear of power boats departing to the endangerment of her children riding in a rowboat.

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The clanking of sailboat sheet lines against the metal masts is a noise at night that is very disturbing. She further asserted that the marina is a detriment to the health and safety of the neighborhood particularly since Poplar Road is narrow and dead-ends at the property, limiting access by emerging vehicles.

In response to Petitioner's counsel, Ms. Berk acknowledges that there were two other marina's less than 800 ft. from her property, but which do not impact her as the Wilson pier, that her pier is actually 100 ft. long and that Wilson's neighbors had no objection, did not change her opinion that the subject marina is too much for a small and tight shoreline.

Carl Maynard, Vice President, of the Back River Neck Community Association (BRNCA), objected referring to the rise of bootleg marinas. He cited the lack of pumping-out stations and the poor water quality of Sue Creek, and the stress upon natural resources caused by the abundance of boats. Mr. Maynard referred to the Back River Neck Community Action Plan adopted by Baltimore County in 1993 calling for the elimination of bootleg and illegal marinas to help restore water quality in this area.

Wayne Berk, representing the Holly Neck Improvement Association, reinforced his wife's testimony, and that the marina doesn't belong in the residential community.

Richard Schrader, resident since 1969, recalled the Geschwendt Marina. He questioned the legality of a mooring ball anchored in the channel out from the pier as placed by Mr. Wilson. Mr. Schrader remarked that the property is much better today, but not

for locating a marina.

Concluding protestant's testimony was David Klein, who was particularly concerned about the availability of parking at the marina and the affect of marina on property values.

From the testimony and evidence offered in this case, a long existing and neglected marina that once was a detriment to surrounding properties underwent a rehabilitation process by Petitioner that transformed the property through improvements that has greatly up-graded the site. From photographs (Petitioners' Exhibit Nos. 6 & 7), it is very clear and from comments by Timothy Fisher, an original renter at the marina, that Mr. Wilson's restoration of the property has been "incredible". All of his neighbors approve the Special Exception for marina agreeing that the site is a well maintained and attractive property.

The issue of opposition by the Berk family should have been relieved by changes to the pier as shown in Petitioners' Exhibit No. 1 and as directed by Army Corps. of Engineers. The removal of finger piers on the east side of the pier should open up the Berk's pier access and reduce boat traffic in proximity to their pier. In regard to the availability of parking and the width of Poplar Road, testimony was persuasive that the owner's use of their boats and visits to the Wilson pier are limited, and that parking has never been a problem. With the request for a reduced number of slips (12) the parking provision in the revised plan (Petitioners' Exhibit No. 1) is more than adequate. It is noteworthy that the 12 slips available in 1985 and requested for in today's hearing were

initially approved in 1980 by Baltimore County.

In consideration of the regulations of Section 502.1 (BCZR) concerns were raised that the Wilson pier reaches halfway to the opposite shores of the Pottery Farm Park and can impact its future utilization by the County. In the observation of this Board photographs show clearly that the Park is well removed and distanced from the pier (People's Counsel Exhibit Nos. 3A-3E).

The objection of the BRNCA to limit boat traffic on Middle River and its tributaries to improve water quality is important, but the Board is compelled to recognize that the subject marina operated by Petitioner for 13 years prior to the Action Plan has had only limited activity from a small number of boats.

Testimony has not substantiated any negative environmental impact emanating from the Wilson marina, and the Department of Environmental Protection and Resource Management (DEPRM) and the Army Corps of Engineers acknowledge no threats to the environment with the elimination of shallow water slips. This Board concurs that the history of the Wilson management and improvements warrants that the marina should be approved. However, in view of the County's support of the BRNCA action plan, the Board agrees that the Special Exception for a marina should be granted only for as long as the marina is owned and operated by the Wilsons, or their heirs.

O R D E R

THEREFORE, IT IS this 31st day of May, 1995 by the
County Board of Appeals for Baltimore County

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ORDERED that the Petition for Variance is DISMISSED; and
it is further

ORDERED that the Petition for Special Exception to allow a
marina with 12 slips be and the same is hereby GRANTED, subject,
however, to the following:

1. The Petitioners are hereby made aware that proceeding
at this time is at their own risk until such time as the
30 day appellate process from this Order has expired.
If, for whatever reason, this Order is reversed, the
Petitioners would be required to return, and be
responsible for returning, said property to its original
condition.

2. There shall be no sales and/or repairs of boats from
the site.

3. There shall be no sales of gasoline or other fuels
from this site. The marina operation shall be limited
only to rental of slips and providing of restroom
facilities.

4. The Petitioner shall allow not more than 12 boats,
including his own, to be stored on the entire property,
both on land and water.

5. There shall be no launching of boats from land on
this site, with the exception of a 9 ft. to 12 ft. dingy
and/or sailboat available for the Wilson's family, which
may be stored on land.

6. The boat lift presently on the pier shall be used
only for the Petitioner's own boat and shall be counted
as one of the twelve slips.

7. The boat lift carriage shall raise the boat to a
level above the water so as not to obstruct a neighbor's
view.

8. The special exception relief granted herein shall be
personal to the Petitioners, William H. Wilson and Laura
Stern Wilson, his wife, or their survivor, subject to the
right of a subsequent owner/operator to petition for a
removal of this restriction.

9. A copy of the Order and opinion shall be filed with
the Land Records of Baltimore County to provide notice of
this Order and restrictions to subsequent property

Boat Order

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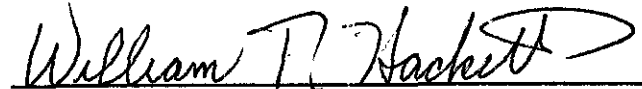
owners. A copy of this Order reflecting such recording shall be filed with this office with 180 days.

10. The use of this site is subject to review and approval by DEPRM, pursuant to the standards of the Chesapeake Bay Critical Area Act.

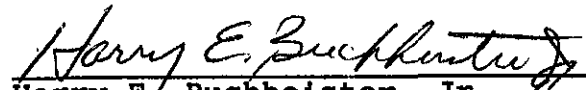
11. Upon request and reasonable notice, the Petitioner shall permit a representative of the Zoning Enforcement Division to make an inspection of the subject property to ensure compliance with this Order.

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



Harry E. Buchheister, Jr.

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IN THE MATTER OF THE
 THE APPLICATION OF
WILLIAM H. WILSON, ET UX
 FOR A SPECIAL EXCEPTION AND
 VARIANCE ON PROPERTY LOCATED
 ON THE NORTH SIDE OF POPLAR
 ROAD, 820 FT. E OF C/L
 LOURDES ROAD
 (2120 POPLAR ROAD)
 15TH ELECTION DISTRICT
 5TH COUNCILMANIC DISTRICT

* BEFORE THE
 * COUNTY BOARD OF APPEALS
 * OF
 * BALTIMORE COUNTY
 *
 * CASE NO. 95-46-XA
 *
 * * * * *

CONCURRING OPINION

This is a Concurring Opinion, with exceptions taken to the majority Opinion on the above-referenced case. The exceptions taken from the majority Opinion are on one issue. In the Opinion and in the Order, the majority write that the special exception for a marina should be granted only for as long as the marina is owned and operated by the Wilsons or their heirs. Restriction #8 of the Order states:

"The special exception relief granted herein shall be personal to the Petitioners, William H. Wilson and Laura Stern Wilson, his wife, or their survivor, subject to the right of a subsequent owner/operator to petition for a removal of this restriction."

During public deliberation on this particular matter, I read into the record the preamble to Section 502 of the Baltimore County Zoning Regulations (BCZR), and more particularly that portion of the note which reads: "...All the items listed are proper uses of land, but have certain aspects which call for special consideration of each proposal...." It is on that presumption that the marina is considered to be a proper use that I take exception to Restriction #8. The majority writes that such a restriction provides protection of the neighbors against such an operation. It is my contention that if that is true, than the converse is true as well,

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in that they are therefore rewarding the Wilsons a special exception for doing no more than what they are required to do under the law, and in accordance with other restrictions placed upon them in this matter.

Those areas which cause concern for the neighbors and required consideration of a variance at the inception of this hearing have been thoroughly addressed by the majority Opinion in Restrictions #1 through #7, mitigating those forces which would cause concern for neighboring property owners. Those constraints as conditions to the special exception are conferred upon any subsequent property owner regardless of whether or not they are the heirs of the current property owner. Section 502 specifically states there are proper uses and that a special exception is a proper use in the R.C. 5 zone; therefore, by placing this type of a restriction, it recognizes that we are placing specific value on who owns that particular piece of property. The preamble to Section 502, in my opinion, precludes this Board from placing any more weight in one particular property owner's history for a maintained use than any future property owner. Future property owners, be they heirs or otherwise, would be required to live within the constraints provided in the majority Opinion as a matter of law; therefore, I also then find that removal of future property owner's right of use is superfluous.

The Wilsons are not due special dispensation because they have improved their property. It is my opinion that this is a proper use in the current zone, and that the tests for a marina on this

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particular site and in this particular part of the County have been met, and that it is only coincidence that this particular property owner is the Petitioner. Future property owners will be expected to do as good a job in maintaining their property as the Wilsons have in improving and maintaining theirs. That is not a legal issue in this case. The legal issues have been addressed, the Wilsons have satisfied the requirements, and are therefore to be conferred the special exception for the marina. However, I do not believe that the "proper use" as indicated in Section 502 needs to be limited to the Wilsons, and/or their heirs.



Robert O. Schuetz, Chairman

DATE: May 31, 1995

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County Board of Appeals of Baltimore County

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

May 31, 1995

Wayne and Donna Berk
2200 Poplar Road
Baltimore, MD 21221

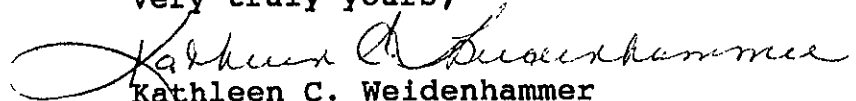
RE: Case No. 95-46-SPH
William H. Wilson, et ux

Dear Mr. & Mrs. Berk:

Enclosed please find a copy of the majority Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter. Also enclosed is a copy of Mr. Schuetz's Concurring Opinion.

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 and Procedure. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,


Kathleen C. Weidenhammer
Administrative Assistant

encl.

cc: J. Carroll Holzer, Esquire
Mr. & Mrs. William Wilson
Mr. & Mrs. Rodney Dize
Mr. Carl Maynard
Back River Neck Improvement Assn.
Mr. David A. Kline
James S. Patton
People's Counsel for Balto. County
Pat Keller
Lawrence E. Schmidt
W. Carl Richards, Jr. /ZADM
Docket Clerk /ZADM
Arnold Jablon, Director/ZADM
Virginia W. Barnhart, County Attorney

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9 17 95

RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
PETITION FOR VARIANCE	*	BOARD OF APPEALS
2120 Poplar Road, N/S Poplar Road,	*	FOR BALTIMORE COUNTY
820' E of c/l Lourdes Road, 15th	*	
Election Dist., 5th Councilmanic	*	
WILLIAM H. WILSON, et ux.	*	CASE NO.: 95-46-XA
Petitioners	*	

* * * * *

PEOPLE'S COUNSEL'S HEARING MEMORANDUM

The nub of this controversy is the following:

(1) There is no nonconforming use left, and hasn't been for a long time. The use approved for Paul Geschwendt in the 1974 petition ended in the late 1970's. Paul Geschwendt died in June, 1978 (see attached estate records). Wilson purchased the property by deed dated April 11, 1980 (copy attached). Subsequently, he embarked, without authorization, on a dramatically different and expanded use. BCZR 104.1 dictates the termination of nonconforming use under either of the above scenarios: discontinuity for more than one year, or expansion.

The January 6, 1975 Geschwendt CBA decision in Case No. 74-9-V found a long-standing nonconforming use for a marina railway and the use of slips for personal use by friends at a pier 115 feet in length. But the Geschwendts died and there is no evidence of use in the 1975 to 1979 time period. By late 1979, when Wilson came on the scene to negotiate the purchase of the property from the estate, the property was by all accounts decrepit and in disuse. The 1980 photographs show one boat at the pier. Wilson testified to use for a few friends in 1981; this gradually increased to about six to eight in the mid-1980's. By this

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 COMMUNICATIONS SECTION

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time, with 1980 renovations, the pier had been lengthened to 130 feet. The marine railway was never used by Wilson and was subsequently dismantled.

Upon these undisputed facts, the nonconforming use was discontinued for more than a year in all respects and therefore terminated. BCZR Section 104.1. See Canada's Tavern v. Town of Glen Echo, 260 Md. 206 (1970). That the marine railway may potentially have been operational is irrelevant. The issue is use.

Subsequently, in 1990, Wilson extended the pier out to 168 feet, with finger piers, adding to the length and square footage. The new commercial rental use included 17 slips. Even had there been no prior cessation of use, this significant expansion involved a material change in the area, facilities and impact of the use. This unauthorized expansion also terminated the nonconforming use. Jahnigen v. Staley, 245 Md. 130 (1967).

Accordingly, this case must proceed as if the use were entirely a new proposal. In this connection, the established policy of the law of nonconforming uses is to bring them gradually to an end, not for their perpetuation or expansion. County Council for Prince George's County v. Gardner, 293 Md. 24 (1982).

(2) There is a serious question as to whether the Baltimore County Chesapeake Bay Critical Areas Ordinance allows a new or even an expanded commercial marina in the R.C.-5 zone here. The property is in the "Limited Development Area" (LDA), one of the three overlay districts established under the aegis of State law. Md. Ann. Code N.R. Art. Sec. 8-1801, et seq. The State has established a regulatory system and minimum standards under COMAR Title 27, but the County may establish more

restrictive standards. Md. Ann. Code N.R. Art., Sec. 8-1808-09; COMAR 27.01.02.02F(2)

Although the State regulations allow, in separate sections, for both commercial and noncommercial (residential development) marinas in the LDA (27.01.03.06 and 27.01.03.07), the Baltimore County implementing ordinance (Bill 35-88) adopts only the provision for noncommercial marinas. There is a logical inference that commercial marinas are excluded. Baltimore County Code Sec. 26-454.

Moreover, with the discontinuation of the Geschwendt marina in the late 1970's, there is no "grandfather" protection under the State Critical Area provision allowing for uses legally approved by June 1, 1984. Md. Ann. Code N.R. Art., Sec. 8-1813. The DEPRM comment on grandfathering is based on the incorrect assumption that the marina was legal for 9 slips in 1984. Even had the Geschwendt use continued, the State law would not grandfather the 1990 expansion to 168 feet and the finger piers.

* * * *

Maryland law calls for local critical area programs which meet or exceed minimum statewide standards. Md. Ann. Code N.R. Art., Sec. 8-1808.

The attached COMAR Sections 27.01.03.06 and 27.01.03.07, together with County Code Sec. 26-454, reveal serious issues concerning marina use in the Limited Development Area. Although the State regulations allow for both commercial and noncommercial (community or residential subdivision) marinas, the County program incorporates only the noncommercial section.

The structure of zoning allows only such uses as are enumerated. BCZR 102.1. Kowalski v. Lamar, 25 Md.App. 493 (1975). Moreover, there is a well-known doctrine of statutory construction, *Expressio Unius est*

Exclusio Alterius: the expression of one thing in a statute implies the exclusion of another thing not mentioned. TVA v. Hill, 437 U.S. 153 (1978); Graham v. Joyce, 151 Md. 298 (1926).

Therefore, if the Wilson use is viewed as a commercial use, its allowance is questionable for lack of County Code authority, particularly in a rural-residential district. On the other hand, if the use is viewed as comparable to a community or residential subdivision marina, it does not meet the standard of Code Section 26-454. This allows one slip for each 50 feet of shoreline. See Section 26-454(2)e1. The Wilson property has about 100 feet of shoreline, allowing a maximum of two slips.

The proposed marina thus appears to be contrary to the spirit and intent of the County Code provisions concerning marinas in Limited Development Areas. In the absence of more specific authorization, it is difficult to justify any marina of the size proposed on a half-acre lot with 100 feet of waterfront in a rural residential area.

In 1988, the County Council passed Bill 32-88, allowing for "commercial water-dependent facilities" in the new RC-20 and RC-50 zones. BCZR 1A05.2D. In 1992, the County Council established two new business marina zones by Bill 149. BCZR 215 to 224. But the subject property is not in any of these zones. Under these circumstances, the Critical Area legislation and the recent zoning ordinances appear to impose new limits on the granting of commercial marina special exceptions: there is no allowance here for commercial marinas in the R.C.-5 zone of the LDA.

(3) Even if there is no problem with the Critical Area legislation, the special exception for a marina in the rural-residential zone presents unique problems for the character of the pristine,

unspoiled cove area of Cedar Creek and the Pottery Farm preserve. It would be the first, and presumably not the last, commercial invader of the enjoyment, health, safety, and welfare of this exclusively residential inlet. The location here, at the easterly end, as the cove takes a sharp turn to the north, aggravates the problem for several nearby properties, the Berks being a prominent example.

(A) All the Protestants described the low-key residential use of the cove by its occupants. No pier approximates the size and extent and extent of the Petitioner's, both in length and number of slips.

The water-related activity generated by the other residents of the cove collectively does not reach the level of the Petitioner's use by his tenants, most of whom reside in far reaching areas of the County. The renters are anxious to avail themselves and their families of the serene and peaceful setting of the cove for a modest monthly rental to the Petitioner. When the renters use their boats on a weekend when the residents are free to recreate, they cause congestion in the waterway, generate noise from the motors, impact adversely of the wildlife and water quality, and affect negatively the waterfront advantage for panorama and vista for which the residents pay costly real property taxes. When the renters dock their boats at the pier year-round, the clanking noise of the mast and rigging disturb the neighbors' quiet enjoyment of their homes.

These problems and disturbances are proportionately increased by the number of boats the Petitioner intends to moor at the site.

(B) The geography of the instant site differentiates it from other waterfront communities along Sue Creek, Back River, Middle River and the Chesapeake Bay. It is analogous to the variations in neighborhoods

wherein the uses permitted, size of structures and setback requirements vary with the zoning density and size of lots. What may be an appropriate use or structure for one community may be intrusive and incompatible in another.

Likewise, not all waterfront sites are comparable. A twelve slip marina may have no adverse affect on an open waterway where the residences are not nestled together virtually circling the water. In the instant case, the curve of the shoreline renders more residents "adjacent" to the subject site than with a straight shoreline on an open waterway.

Perhaps in other communities, the problems of boat traffic congestion, noise concentration, view and aesthetics, may not create as severe an impact on the neighbors as it does in the instant case, where we see relatively small lots laid out in a 1925 subdivision plat. However, it is incumbent on the Board to determine the effect and appropriateness of the requested use on this specific neighborhood. It is irrelevant if the use may be appropriate at another location.

The instant site is located on a cove which is defined in Webster's as a sheltered recess in the shoreline, whereas a creek is defined as a small bay. The nearest existing marinas referred to in the testimony are located directly on Sue Creek, an open waterway whose width to the opposite shoreline appears twice as large as the cove on which the instant site exists. This is best depicted in the aerial photograph presented as People's Counsel's Exhibit 5 and the attached map from People's Counsel's Exhibit 14.

(C) Moreover, the shoreline opposite and north of the Petitioner's site is Pottery Farm Park, a 105-acre environmentally sensitive site

zoned R.C.-20. It is proposed for nondevelopment and for passive recreation as a Baltimore County park. The park is located approximately 150 feet from the Petitioner's pier, according to the dimensions in Petitioner's Exhibits 9A & B. If the special exception is granted, it would permit the first commercial development along this boundary of the park.

It is submitted that a commercial marina is not compatible with this unencumbered park site on the north side of the cove. Nor is a commercial marina of this size and intensity compatible with the residential, subdued neighborhood on the southern shoreline of the cove.

(D) The Protestants also addressed the automobile traffic generated by the marina. The Petitioner's property is located on Poplar Road, a narrow, dead-end street with residences located on both sides. The Petitioner proposes to locate parking for as many as nine automobiles on his lot, which contains about a half-acre (see People's Counsel's Exhibit 12A-C). Presumably, if all the slips are rented, as many as eleven additional automobiles, in addition to those owned by the Petitioner and his wife, could be located on the site at the same time. There is no turn-around area where Poplar Road dead-ends.

The sheer number of cars generated by a twelve-slip marina, and parked on a residential lot, is not harmonious with the surrounding area, which has not been disturbed by commercial development, either on the land or the water for many years.

(4) The proposal is in direct conflict with the Lower Back River Neck Master Plan provisions for Sue Creek. In view of the lack of explicit authority for commercial marinas in the LDA, it would appear that, if allowed at all, they must comply with the plan.

The concerns of the neighborhood are not the retributive remarks of a cliquish group of neighbors. The entire Back River Neck community recognizes the problems created by the unauthorized proliferation of marinas along the waterways, particularly Sue Creek. These apprehensions were described at length in the Back River Neck Community Action Plan adopted by the County Council on October 18, 1993, and entered as People's Counsel's Exhibit 14. Mr. Carl Maynard served on the Community Advisory Committee and the Planning Board Subcommittee in the development of the Plan. He described the position of the Back River Neck Community Association opposing the Petition. His testimony highlighted the language in the Community Action Plan describing the condition of Sue Creek and the impact of unmonitored and unrestricted boat traffic.

The water quality for the entire peninsula was described in Issue V on page eight:

"Water quality continues to decline rapidly on Sue Creek and Middle River and in turn has had an adverse impact on upper Chesapeake Bay. Nearly all SAV's (submerged aquatic vegetation) have been lost in creeks along Middle River.

Alarming declines in fin fish, shell fish, waterfowl and other species continue to demise at a rate that is consistent with the escalating decline of SAV and water quality. Some areas within the creeks are unfit for swimming or other contacts or are in other ways unhealthy."

Mr. Maynard noted that Issue VI on page nine of the body of the Plan is devoted entirely to Sue Creek. It was described as follows:

"Although nearly all of Middle River is deeply stressed, Sue Creek is particularly in a rapid rate of decline. This was once a fisherman's paradise and supported great numbers of bass, pickerel, yellow perch, blue gills, shiners, crappies, rockfish and other species with lush beds of grasses blanketing the entire creek except for a narrow channel strip that managed to be kept open by boat traffic. Aside from the channel it was with great effort one could even row through it. Today the creek is nearly devoid of the grasses, waterfowl in large numbers can no longer be supported and clam

and fish species either no longer are there or are in greatly diminished number. The creek suffers all the stresses of the rest of Middle River but is especially distressed by its very poor flushing ability - a large portion of this being attributed to the filling of 200 feet of its opening between the mainland and Sue Island."

One of the Plan's recommendations to save the Creek is the "Elimination of all illegal bootleg marinas." In addition, Issue X states specific recommendations for Marinas/Boat Yards and Yacht Clubs:

"The business marina legislation recently put into place, which regulates marinas and boat yards, greatly aids in the harmonious operations of such uses with surrounding communities. However, there still exists concern about the operation of 'bootleg' marinas on insufficiently zoned land, or the extension of marina-oriented uses beyond the original zone line of the property.

Recommendations for Marinas/Boat Yards, Yacht Clubs"...

... "1. Enforce zoning, Critical Areas regulations and other legislation to protect existing communities and the environment, the spirit of these regulations and policies being of equal or greater significance than the letter of the law.

2. Boat slips at private piers should be limited to 3 or 4 slips per property.

3. As existing marinas expand, or new marinas develop, strict adherence to the marina zoning (BMM & BMB) should occur. No marinas should begin operation on any land until the proper zoning governing that use is in place.

4. Carrying capacities for boat traffic on the entirety of Middle River should be investigated and encouraged with emphasis on safety and environmental impact.

5. Marine related businesses, DEPRM and the community should alert boaters of legal and moral obligations to dispose of litter and waste properly. Implement plans for awareness and enforcement."

See BMM Zone, BCZR Sections 215 to 224.

For all these reasons, the petitions as amended should be denied.



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

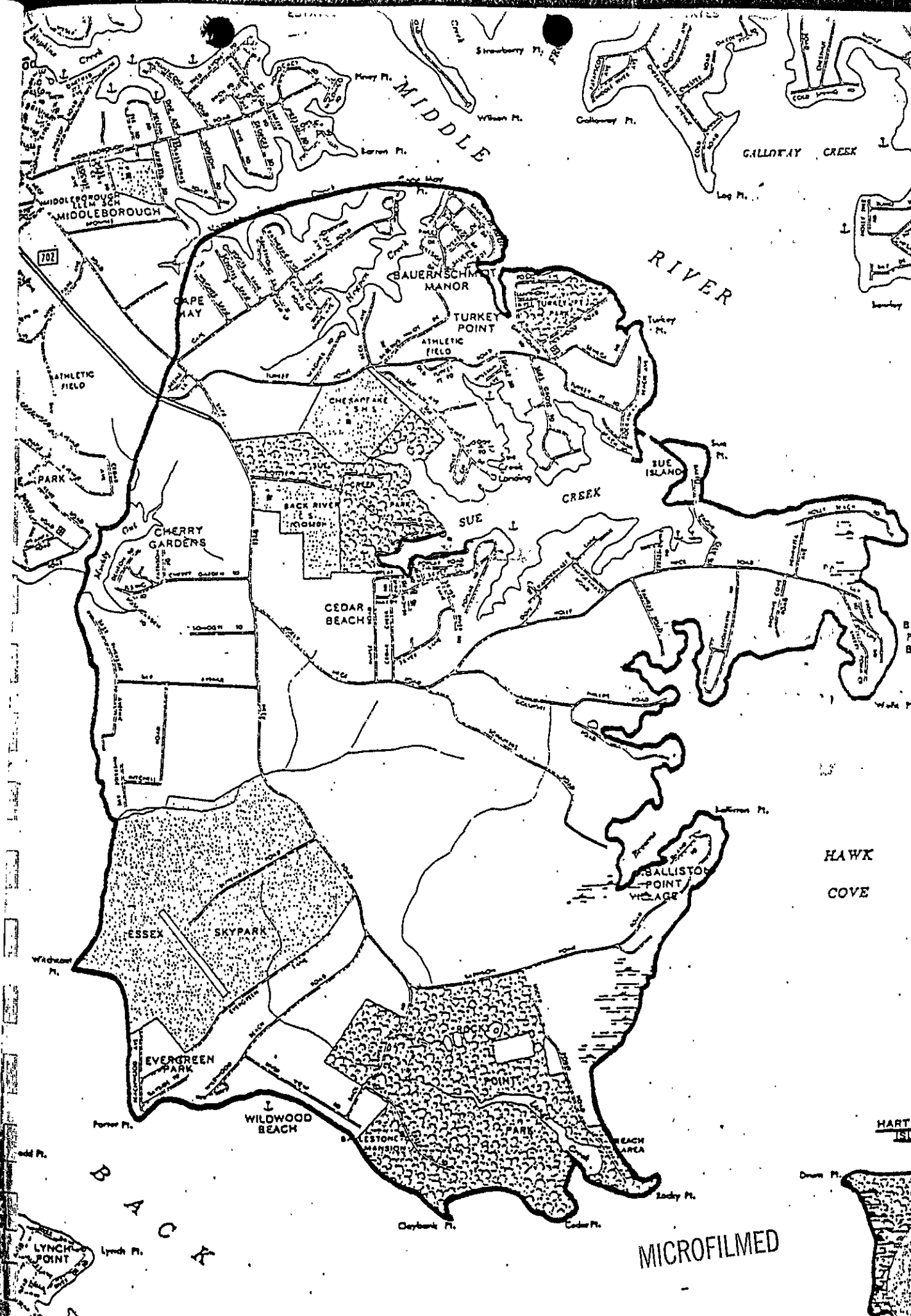
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of May, 1995, a copy of the foregoing People's Counsel's Hearing Memorandum was mailed to J. Carroll Holzer, Esquire, Holzer and Lee, 305 Washington Avenue, Suite 502, Towson, MD 21204, attorney for Petitioner.



PETER MAX ZIMMERMAN



MICROFILMED

1.

Estate of PAUL GESCHWENDT

133 Silver Lane

Late of Baltimore County, Baltimore, Maryland 21221, Died June 8, 1978, testate

PERSON TO WHOM LETTERS WERE GRANTED	Amount of Bond	SURETIES	SOLICITORS
Frieda Cushing (Known in Will as Frida Cushing)	\$3,000.00	Insurance Company of North America	Irvin N. Caplan
946 Barron Avenue Baltimore, Maryland 21221			Irvin N. Caplan, Robert J. Romadka 809 Eastern Blvd. Baltimore, Md. 21221
PERSONAL REPRESENTATIVE			

PROCEEDINGS

1970									
July	6	Will	Wills J.L.D. 168 Folio 381						
	6	Renunciation	Adm. Proceedings P.J.B.						
	6	Petition for Probate	"	"					
	6	Bond	"	"					
	6	Order	"	"					
	6	Notice to Creditors (Jeff)	"	"					
	6	Information Report							
1979	27	Certificate of Publication - filed - Jeff							
February	28	Inventory	"	"					
May	29,	Petition & Order to pay Funeral Expenses	"	"					
	29,	Petition & Order for Counsel Fee	"	"					
	29,	First & Final Administration Account	"	"	P.J.B. 354, folio 442-460.				

MICROFILMED

No. 42688

Estate of WILLIAM GESCHWENDT
133 Silver Ave.
Baltimore County, Baltimore, Maryland 21221
Late of Baltimore County, Baltimore, Maryland 21221, Died Dec. 11, 19 63, IN testate

PERSON TO WHOM LETTERS WERE GRANTED		Amount of Bond	SURETIES	SOLICITORS
Frieda Cushing A/K/A Frida Cushing		\$2,000.00	Northwestern National	Irvin N. Caplan
946 Barron Avenue			Casualty Co.	809 Eastern Blvd.
Baltimore, Maryland 21221				Baltimore, Md. 21221
PERSONAL REPRESENTATIVE				
1978	DATE	PROCEEDINGS		
July	28	Renunciations (3)	Adm. Proceedings P.J.B.	
	28	Letters of Administration	" "	
	28	Bond	" "	
	28	Oath	Oath J.L.D. 30 Folio 422	
	28	Order	Proceedings J.L.D. 198 Folio 381	
	28	Order	" " Folio 381	
	28	Notice to Creditors (Jeff)	Adm. Proceedings P.J.B. Date <u>May 23, 1978</u>	
	28	Information Report	Closed as Assets	
Aug. 1979	24	Certificate of Publication - filed - Jeff	Ward & Son Return Due	
February 1979	27	Inventory - Real	Date filed <u>March 1, 1979</u>	
		"	" P.J.B. 353, folio 574-587.	

LIB 6158 PA 579

FEE-SIMPLE DEED -- LONG RANGE -- INDIVIDUAL GRANTOR AND GRANTEE --
THIS DEED, Made this 11th day of April in the year one thousand
nine hundred and eighty, by and between LILLIAN HESS, LEONARD W.
CUSHING and FRIEDA CUSHING, (also known as Frida Cushing) his wife,
and LOUISE HOFFMAN, DOROTHY HOFFMAN, HELEN RAMIA and DORA
GESCHWENDT, of the first part, and
WILLIAM H. WILSON, of the second part,

WITNESSETH, that in consideration of the sum of FIFTY FIVE
THOUSAND DOLLARS AND NO CENTS-----\$55,000.00---the receipt of
which is hereby acknowledged, the said LILLIAN HESS, LEONARD W.
CUSHING and FRIEDA CUSHING, (also known as Frida Cushing) his
wife, and LOUISE HOFFMAN, DOROTHY HOFFMAN, HELEN RAMIA AND DORA
GESCHWENDT, do hereby hereby grant and convey unto the said
WILLIAM H. WILSON, Individually, his heirs, personal representatives
and assigns, in fee simple, all that lot of ground, situate lying
and being in the County of Baltimore, State of Maryland, and
described as follows, that is to say:-----

BEGINNING for the first, being known as Lot Number Eighty
Two (82) as shown on the plat of Cedar Beach Incorporated, of
Baltimore City, and recorded among the Land Records of Baltimore
County in Plat Book W.P.C. No. 7, folio 186.

BEGINNING for the second, lying and being in the 15th Election
District of Baltimore County and being described as Lot No. 83 as
shown on the Plat of Cedar Beach Incorporated of Baltimore City,
recorded among the plat records of Baltimore County in Plat Book
W.P.C. No. 7, folio 186. (Also referred to as Plat Book W.C.P. No.
7, folio 325).

BEGINNING for the third, lying opposite Lot #82 of Cedar Beach
Incorporated of Baltimore City as shown on plat of the said Cedar
Beach Incorporated of Baltimore City and recorded among the Land
Records of Baltimore County in Plat Book W.P.C. No. 7, folio 186,
at a point on the South side of Poplar Road, said point is located
by turning a 90 degree angle from the south east corner of the said
Lot #82 and thence 30 feet southerly across Poplar Road to the
beginning point; thence south 1 degree 13' W. 114.51 feet thence
north 88 degrees 24' west 49.36 feet, thence north 1 degree 13'
east 114.37 feet to the south side of Poplar Road; thence bounding
on said road South 88 dgrees 47' east 49.35 feet to the point of
beginning, containing 0.1296 acres more or less, as shown on plat
recorded among the Land Records of Baltimore County in Plat Book
C.W.B. Jr. No. 12, folio 90.

LAW OFFICE OF
JOSEPH K. POKORNY
408 JEFFERSON BLDG.
105 W. CHESAPEAKE AVE.
TOWSON, MD. 21204
823-2000

0012*** 2 03-82
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BEGINNING for the fourth, lying opposite Lot #83 as shown on the said plat of Cedar Beach Incorporated of Baltimore City and recorded among the Land Records of Baltimore County in Map Book W.P.C. No. 7, folio 186, at a point on the South side of Poplar Road, said point is located by turning a 90 degree angle from the South East Corner of said Lot #83, and thence 30 feet southerly across Poplar Road to the beginning point, thence South 1 degree 13' W. 114.65 feet thence North, 88 degree 24' West 49.36 feet, Thence North 1 degree 13' East, 114.51 feet to the South side of Poplar Road; thence bounding said road South 88 degrees 47' East 49.35 feet to the point of beginning, containing 0.1297 acres of land more or less, as shown on plat recorded among the Land Records of Baltimore County in Plat Book C.W.B. Jr. No. 12, folio 90.

BEING the same lots of ground which by Deed dated May 28, 1979 and recorded among the Land Records of Baltimore County in Liber E.H.K. Jr. No. 6028, folio 202 from Frieda Cushing, Personal Representative of the Estate of Paul Geschwendt.

BEING the same lots of ground by Deed dated May 26, 1937 and recorded among the Land Records of Baltimore County in Liber C.W.B. Jr. No. 999 folio 464 from George L. Schnader and Anna B. Schnader, his wife, unto William Geschwendt, et al.

BEING the same lot of ground which by Deed dated April 30, 1937 and recorded among the Land Records of Baltimore County in Liber C.W.B. Jr. No. 1003 folio 1, from Edwin W. Shanklin and Mary A. Shanklin, his wife unto William Geschwendt, et al.

BEING The same lots of ground by Deed dated April 30, 1937, and recorded among the Land Records of Baltimore County in Liber C.W.B. Jr No. 1003 folio 2 from George L. Schnader and Anna B. Schnader, his wife unto William Geschwendt, et al, said William Geschwendt having deceased on or about December 11, 1963, leaving as his only heirs at law and survivors his wife, Dora Geschwendt and daughters, Louise Hoffman, Dorothy Hoffman, Helen Ramia, Lillian Hess and Frieda Cushing. Estate filed in the Orphans Court of Baltimore County in Department 43/107 file #42688.

SUBJECT to the legal effect and operations of Agreements Conditions, Restrictions, and easements of records.

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 lots 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 WILLIAM H. WILSON, Individually, his heirs, personal representatives and assigns, in fee simple.

AND the said parties of the first part hereby covenant that they have not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that they will warrant specially the property granted and that they will execute such further assurances of the same as may be requisite.

WITNESS, the hand and seal of said grantor

TEST:

Lillian Hess (SEAL)
LILLIAN HESS

(SEAL)

STATE OF California COUNTY OF Ventura, to wit:

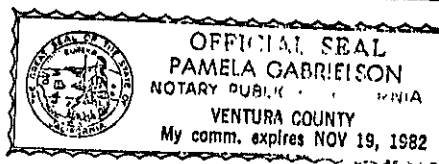
I HEREBY CERTIFY, That on this 9th day of April, 1980,
before me, the subscriber, a Notary Public of the State of
California in and for the County of Ventura
personally appeared LILLIAN HESS, known to me (or satisfactorily
proven) to be the person whose name is subscribed to the within
instrument and acknowledged that she executed the same for the
purposes therein contained, and in my presence signed and sealed
the same.

IN WITNESS WHEREOF, I hereunto set my hand and official seal

Pamela Gabrielson
Notary Public

My Commission Expires:

11-19-82



WITNESS, the hand and seal of grantor

TEST:

Leonard W. Cushing (SEAL)
LEONARD W. CUSHING

Frieda Cushing (SEAL)
FRIEDA CUSHING

Louise Hoffman (SEAL)
LOUISE HOFFMAN

Dorothy Hoffman (SEAL)
DOROTHY HOFFMAN

Helen Ramia (SEAL)
HELEN RAMIA

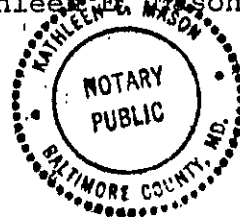
X Dora Geschwendt (SEAL)
DORA GESCHWENDT

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, That on this 11th day of April, 1980, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County of Baltimore, personally appeared LEONARD W. CUSHING, FRIEDA CUSHING (also known as Frida Cushing), his wife, LOUISE HOFFMAN, DOROTHY HOFFMAN, HELEN RAMIA, and DORA GESCHWENDT, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained, and in my presence signed and sealed the same.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Kathleen E. Mason
Kathleen E. Mason Notary



My commission Expires:

July 1, 1982.

Rec'd for record APR 28 1980 at 12 P²⁹
Per Elmer H. Kahline, Jr., Clerk
Mail to Joseph K. Pokorny
Receipt No. 71-100

THIS DEED OF DISTRIBUTION, Made this 28th day of May, 1979, between Frieda Cushing, Personal Representative of the Estate of Paul Geschwendt, deceased, party of the first part, and Leonard W. Cushing and Frieda Cushing (also known as Frida Cushing) his wife, parties of the second part.

WHEREAS, Paul Geschwendt departed this life on June 8, 1978, testate, and Letters of Administration were granted on his estate by the Orphan's Court of Baltimore County to his Personal Representative on July 6, 1978, and by ITEM TWO of his Will bequeathed the fee simple property to Leonard W. Cushing and Frieda Cushing (also known as Frida Cushing) his wife, parties of the second part.

WHEREAS, the said Personal Representative by her Administration Account filed in the Estate of Paul Geschwendt in the Orphan's Court for Baltimore County in Estate #42574 did distribute the fee simple property hereinafter described unto the parties of the second part.

WHEREAS, by the provisions of Section 9-105, Estates and Trusts Article of the Annotated Code of Maryland, the Personal Representative is required to execute and deliver a deed of distribution transferring the title to said fee simple property to the distributees, parties of the second part.

NOW THEREFORE, THIS DEED WITNESSETH, that for and in consideration of the sum of Five (\$5.00) Dollars and pursuant to and in compliance with the provisions of the aforesaid Section 9-105 of the Estates and Trusts Article, the said Personal Representative does grant, convey, assign, transfer and distribute unto Leonard W. Cushing and Frieda Cushing, (also known as Frida Cushing) his wife, as tenants by the entireties, their assigns, and unto the survivor of them, his or her personal representatives, heirs and assigns, an undivided one half interest, in and to all those lots of ground situate in Baltimore County, State aforesaid, and described as follows, that is to say:

NOTARIAL PUBLIC NOT REQUIRED
 RANDOLPH B. ROSENKRANTZ
 DIRECTOR OF FINANCE
 BALTIMORE COUNTY, MARYLAND
 Per: [Signature] 6-1-79 AUTHORIZED SIGNATURE (S. 11-10-77)

ROBERT J. ROMADKA
 ATTORNEY AT LAW
 ESSEX, MARYLAND

BEGINNING for the first, being known as Lot Number Eighty Two (82) as shown on the plat of Cedar Beach Incorporated, of Baltimore City, and recorded among the Land Records of Baltimore County in Plat Book W.P.C. No. 7, folio 186.

BEGINNING for the second, lying and being in the 15th Election District of Baltimore County and being described as Lot No. 83 as shown on the Plat of Cedar Beach Incorporated of Baltimore City, recorded among the plat records of Baltimore County in Plat Book W.P.C. No. 7, folio 186. (Also referred to as Plat Book W.C.P. No. 7, folio 325).

BEGINNING for the third, lying opposite Lot #82 of Cedar Beach Incorporated of Baltimore City as shown on the plat of the said Cedar Beach Incorporated of Baltimore City and recorded among the Land Records of Baltimore County in Plat Book W.P.C. 7, folio 186, at a point on the South side of Poplar Road, said point is located by turning a 90° angle from the south east corner of the said Lot #82 and thence 30 feet southerly across Poplar Road to the beginning point; thence south 1° 13' W. 114.51 feet thence north 88° 24' west 49.36 feet, thence north 1° 13' east 114.37 feet to the south side of Poplar Road; thence bounding on said road South 88° 47' east 49.35 feet to the point of beginning, containing 0.1296 acres more or less.

BEGINNING for the fourth, lying opposite Lot #83 as shown on the said plat of Cedar Beach Incorporated of Baltimore City and recorded among the land records of Baltimore County in Map Book W.P.C. #7, folio 186 at a point on the South side of Poplar Road, said point is located by turning a 90° angle from the South East Corner of said Lot #83, and thence 30 feet southerly across Poplar Road to the beginning point, thence South 1° 13' W. 114.65 feet thence North, 88° 24' West 49.36 feet, Thence North 1° 13' East, 114.51 feet to the south side of Poplar Road; thence bounding said road South 88° 47' East 49.35 feet to the point of beginning, containing 0.1297 acres of land more or less.

BEING the same lots of ground acquired by Paul Geschwendt and William Geschwendt, as tenants in common, by virtue of the following deeds:

Deed dated April 30, 1937 and recorded among the Land Records of Baltimore County in Liber CWB.Jr. 1003, folio 1 from Edwin W. Shanklin and Mary A. Shanklin, his wife unto Paul Geschwendt and William Geschwendt.

Deed dated April 30, 1937 and recorded among the Land Records of Baltimore County in Liber C.W.B., Jr. 1003, folio 2 from George L. Schnader and Anna B. Schnader, his wife, unto Paul Geschwendt and William Geschwendt.

Deed dated May 26, 1937 and recorded among the Land Records of Baltimore County in Liber C.W.B., Jr. 999, folio 464 from George L. Schnader and Anna B. Schnader, his wife, unto Paul Geschwendt and William Geschwendt.

It being the intention of this deed to convey unto the Grantees herein the undivided one half interest acquired by Paul Geschwendt by virtue of said deeds.

See proceedings in the Orphan's Court for Baltimore County in the matter of the estate of Paul Geschwendt, Estate No. 42574.

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 Leonard W. Cushing and Frieda Cushing (also known as Frida Cushing) his wife, as tenants by the entireties, their assigns, and unto the survivor of them, his or her personal representatives heirs and assigns, an undivided one half interest, in fee simple.

WITNESS, the hand and seal of the said Grantor:

Witness:

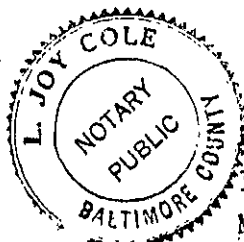
L. Joy Cole

Frieda Cushing (SEAL)
Frieda Cushing
Personal Representative
of the Estate of Paul Geschwendt

STATE OF MARYLAND, Baltimore County to wit:

I hereby certify that on this *18th* day of *May*, 1979, before me, the subscriber, a Notary Public of the State of Maryland, County of Baltimore aforesaid, personally appeared Frieda Cushing, Personal Representative of the Estate of Paul Geschwendt, known to me (or satisfactorily proven) to be the person described in the foregoing instrument, and acknowledged that they executed the same in the capacities therein stated and for the purposes therein contained, and in my presence signed and sealed the same.

As Witness my hand and Notarial Seal



L. Joy Cole
Notary Public

Rec'd for record JUN 14 1979 at *7-1-8290*

Per Elmer H. Kahline, Jr., Clerk

Mail to *Robert J. Romadka*

-3- Receipt No. *1400*

Section 104--NONCONFORMING USES [B.C.Z.R., 1955.]

- 104.1--A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these regulations; provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, the right to continue or resume such nonconforming use shall terminate. [B.C.Z.R., 1955; Bill No. 18, 1976; Bill No. 124, 1991.]
- 104.2--A structure damaged to any extent or destroyed by fire or other casualty may be restored within two years after such destruction or damage but may not be enlarged. In the case of residentially used structures which are nonconforming in density, the number of dwelling units or density units rebuilt may be equal to but may not exceed the number of units which existed before the casualty. {Bill No. 124, 1991.}
- 104.3--No nonconforming building or structure and no nonconforming use of a building, structure, or parcel of land shall hereafter be extended more than 25% of the ground floor area of the building so used. This provision does not apply to structures or uses restored pursuant to Section 104.2, except as authorized by the zoning commissioner pursuant to Section 307. {Bill No. 124, 1991.}
- 104.4--Exception. Any contrary provision of these regulations notwithstanding, an office building that was authorized by grant of a special exception and that becomes damaged to any extent or destroyed by casualty may be fully restored in accordance with the terms of the special exception. [Bill No. 167, 1980; Bill No. 124, 1991.]
- 104.5--Any use which becomes or continues to be nonconforming which exists within the Chesapeake Bay Critical Area on or after the effective date of this subsection is subject to the provisions of Section 104.1, Section 104.2 and Section 104.3 above, and to the provisions of Section 307.2, BCZR. [Bill No. 32, 1988; Bill No. 124, 1991.]
- 104.6--A striptease business lawfully operating prior to the effective date of this legislation that is in violation of the requirements contained herein shall be deemed a nonconforming use. A striptease business which is a nonconforming use:
1. shall be permitted to continue for a period not to exceed one (1) year, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more; and
 2. shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. [Bill No. 137, 1990.]

280 Md. 206

CANADA'S TAVERN, INC. et al.

v.

TOWN OF GLEN ECHO.

No. 150.

Court of Appeals of Maryland.

Dec. 16, 1970.

Action challenging certificate of occupancy to use building in single-family residential zone for nonconforming restaurant purposes. The Department of Inspections and Licenses issued certificate of occupancy. The County Board of Appeals affirmed, and the town appealed. The Circuit Court for Montgomery County, Plummer M. Shearin, J., reversed, and appeal was taken. The Court of Appeals, McWilliams, J., held that where operation of building in single-family residential zone for nonconforming restaurant purposes had ceased for more than six months, nonconforming use had been abandoned within meaning of ordinance defining abandoned as cessation of nonconforming use for period of six months or more, notwithstanding that owner had not intended to abandon use and that interregnum was merely for purpose of finding suitable successor to prior tenant.

Affirmed.

Barnes, J., dissented and filed opinion.

1. Zoning Ⓒ337

Under zoning ordinance providing that no nonconforming use, once abandoned, shall thereafter be reestablished with "abandoned" defined as cessation of a nonconforming use for a period of six months or more, extinguishment of nonconforming use requires only cessation of such use for a period of six months or more and does not require showing of accompanying intention to abandon.

2. Zoning Ⓒ337

Where operation of building in single-family residential zone for nonconforming restaurant purposes had ceased for more than six months, nonconforming use had been abandoned within meaning of ordinance defining abandoned as cessation of nonconforming use for period of six months or more, notwithstanding that owner had not intended to abandon use and that interregnum was merely for purpose of finding suitable successor to prior tenant.

G. Vann Canada, Jr., Rockville (Shaffer, McKeever & Fitzpatrick and Arthur v. King, Rockville, on the brief), for Canada's Tavern, Inc.

Philip J. Tierney, Asst. County Atty. (David L. Cahoon, County Atty., and Alfred H. Carter, Deputy County Atty., Rockville, on the brief), for Montgomery County.

Rourke J. Sheehan, Rockville (Gary H. Simpson, Rockville, on the brief), for appellee.

Argued before HAMMOND, C. J., and BARNES, McWILLIAMS, SINGLEY, SMITH and DIGGES, JJ.

McWILLIAMS, Judge.

The demise of a nonconforming use and appellants' efforts to resurrect it require us to construe Section 111-57(c) of the Montgomery County Code (1965), the pertinent part of which is:

" * * * No nonconforming use, once abandoned, shall thereafter be reestablished. For the purpose of this section, 'abandoned' shall be defined as the cessation of a nonconforming use for a period of six months or more." (Emphasis added.)

The facts are simple enough and they seem not to be in dispute.

[1, 2] For an unstated number of years Mrs. Sally Peters has been the owner of No. 2 Harvard Street in the Town of Glen Echo, which is on the north bank of the Potomac River about two and one-half miles northwesterly from the northern boundary of the District of Columbia. The lot is improved by a frame building which for a period prior to 1966 was used, as a nonconforming use, as a single family residential neighborhood establishment known as Canada's Tavern. An injury made it impossible to do any work so in December of 1967 the premises were sold to James Dozier who continued the operation of the restaurant in response to public pressure. The County License Commissioners refused to issue Dozier's liquor license which expired in April 1968. Understandably because of the turn of events Dozier shut up shop and retired from the scene. Efforts to find a suitable successor to Dozier were unproductive until the early spring of 1969 when the appellant Canada's Tavern, Inc. (Canada), became the lessee. It is agreed, however, that during the interregnum whatever was made of the premises met the requirements having been satisfied by the approval of the County Attorney. After having obtained the Department of Inspections and Licenses, on 25 April 1969, Canada a certificate of occupancy. Promptly thereafter the appellee, Town of Glen Echo (Town) filed its appeal with the County Board of Appeals charging a misinterpretation of Section 111-57(c). The hearing took place on 23 July 1969. On 23 September 1970 the Board announced its decision, a portion of which follows:

"Based on the testimony and the evidence of record, including the County Attorney's memorandum, Exhibit A, the Board finds that the only issue is:

"The Town, in a footnote to its decision, 'Statement of Facts,' indicates that the restaurant was opened for business on 25 April 1968. On that day the certificate of occupancy was issued, that it closed again around 1 September, and that on 4 November 1967 it was sold to James Dozier."

[1,2] For an unstated number of years Mrs. Sally Peters has been the owner of No. 2 Harvard Street in the Town of Glen Echo, which is on the north bank of the Potomac River about two and one-half miles northwesterly from the northwestern boundary of the District of Columbia. Her lot is improved by a frame building in which for a period prior to 1968 she operated, as a nonconforming use in an R-60 (single family residential) neighborhood, an establishment known as Canada's Restaurant. An injury made it impossible for her to work so in December of 1967 she leased the premises to James Dozier who continued the operation of the restaurant. Responding to public pressure the Board of License Commissioners refused to renew Dozier's liquor license which expired on 30 April 1968. Understandably bitter at this turn of events Dozier shut up shop and retired from the scene. Efforts to find a suitable successor to Dozier were unproductive until the early spring of 1969 when the appellant Canada's Tavern, Inc. (Canada), became the lessee. It is agreed, however, that during the interregnum, no use whatever was made of the premises. Its requirements having been satisfied and the approval of the County Attorney having been obtained the Department of Inspections and Licenses, on 25 April 1969, issued to Canada a certificate of occupancy.¹ Promptly thereafter the appellee, the Town of Glen Echo (Town) filed its appeal with the County Board of Appeals (Board), charging a misinterpretation of Section 111-57(c). The hearing took place on 17 July 1969. On 23 September the Board announced its decision, a portion of which follows:

"Based on the testimony and exhibits of record, including the County Attorney's memorandum, Exhibit 14, the Board finds that the only issue left be-

fore it is whether or not the non-conforming use had been terminated at the time the occupancy permit was issued. Based on the evidence, the Board finds that the owner had diligently attempted to find a tenant to continue the operation of the premises as a restaurant. The restaurant remained as it had been without any change and no intention had been demonstrated that any other use would be made of the property. The only changes were alterations to comply with the safety standard, which would be permitted under the non-conforming use status. The Board cannot find that the Chief of the Building Inspection, Department of Inspection and Licenses, erred in granting the occupancy permit and hereby sustains his decision in issuing the permit."

The Town appealed to the Circuit Court for Montgomery County and shortly thereafter Montgomery County (County) intervened. The trial judge, Shearin, J., reversed the action of the Board. He rejected the contention of Canada and the County "that the extinguishment of a nonconforming use requires not only a cessation of such use for a period of six months or more, but an accompanying *intention* to abandon." Both Canada and the County urge us to reverse Judge Shearin and to reinstate the decision of the Board but we are satisfied that he reached the correct result.

In the appellants' argument there is discernible but one basic concept, i. e., when the District Council enacted Section 111-57 (c) it did not really mean what it said. We are prompted to paraphrase the deathless dictum of Lord Mildeu—if the Council did not mean what it said, it should have said so.² We think the Council not only meant what it said but that the language it chose is clear and unequivocal.

restaurant was reopened under a new name.

1. The Town, in a footnote to its "Statement of Facts," indicates that Canada opened for business on 25 April 1968, the day the certificate of occupancy was issued, that it closed again around 1 September, and that on 4 November the

2. A. P. Herbert, *Uncommon Law* 192 (1st ed. 1938). Lord Mildeu is the mythical judge.

Nevertheless we shall consider the appellants' sophistic endeavors.

They hark back to *Landay v. Board of Zoning Appeals*, 173 Md. 460, 196 A. 293 (1938), where we said that *abandonment* "depends upon the occurrence of two, and only two, factors: one, an *intention* to abandon or relinquish; and, two, some *overt act*, or some failure to act * * *." (Emphasis added.) And, they say, we have indicated our approval of the *Landay* definition of *abandonment* in *Dorman v. Mayor and City Council of Baltimore*, 187 Md. 678, 51 A.2d 658 (1947); *Vogl v. Mayor and City Council of Baltimore*, 228 Md. 283, 179 A.2d 693 (1962); *Stieff v. Collins*, 237 Md. 601, 207 A.2d 489 (1965); and *Harris Used Car Co. v. Anne Arundel County*, 257 Md. 412, 253 A.2d 520 (1970). They continue with the citation of *McCoy v. City of Knoxville*, 41 Ill.App.2d 378, 190 N.E.2d 622 (1963), which held that *discontinuance* means *abandonment*, adding, in support of *McCoy*, *Smith v. Howard*, 407 S.W.2d 139 (Ky.1966), and *Bither v. Baker Rock Crushing Co.*, 249 Or. 640, 438 P.2d 988 (1968). They go on to argue that since we have used *discontinuance* and *cessation* synonymously, *Landay, supra*, 173 Md. at 467, 196 A. at 296 and since *abandonment*, *discontinuance* and *cessation* are "cognative" (we shall assume they mean *cognate*) terms, the "existing legal requisites of *abandonment* must be merged into any general definition of [any one of] the [three] words," thus compelling the conclusion that *cessation* cannot be used without connoting intent. We are signally unimpressed with this forensic foray. Even a cursory reading of *Landay* discloses its expressed inapplicability to the case at bar. Speaking for the Court, Judge Offutt said:

"Since the ordinance provides one way, and only one way, in which a non-

conforming use may be lost, to supply another way in which such a right may be lost would be to do what the Mayor and City Council alone was authorized to do, but which it refrained from doing. Since, therefore, the ordinance does not provide that mere cessation of the non-conforming use shall prevent its resumption, this court is not authorized to give to such cessation that effect." *Id.* at 466-467, 196 A. at 296. (Emphasis added.)

* * * * *

"The reasoning as well as the conclusions in these cases is consistent with the principle that, *unless so stated in the statute*, cessation or discontinuance of a non-conforming use without the substitution of another use, or without evidence of an intent to abandon the nonconforming use, will not prevent its resumption." *Id.* at 469, 196 A. at 297. (Emphasis added.)

Appellants shrug off the explicit language of Section 111-57(c) with the argument that it was enacted only for the purpose of clearing up the "time" ambiguities created by *Landay* and *Dorman*. This seems most unlikely for, if true, then, in effect, what the Council said was "'abandoned' shall be defined as the * * * [abandonment] of a nonconforming use for a period of six months or more." We think the Council, having in mind a larger purpose, intended to align itself with those local governments which have found it desirable to delete the factor of intent in respect of the abandonment, discontinuance or cessation of nonconforming uses rather than continuing to run the gamut of its judicial determination in a succession of infinitely variable factual situations.³

discontinuance * * * for a period of one year * * * [the use] shall terminate." Following a 1953 amendment it appears in the 1955 Code as Section 107-47(c), which provided that "no non-conforming use, once abandoned, shall

It is suggested that the use of *abandonment* and *cessation*, in the latter creates an ambiguity. We cannot see any reason why this should be so. There is certainly no ambiguity in the Baltimore City ordinance which provides that "such discontinuance for a period of six months] * * * shall prevent the resumption of such non-conforming use." We think Section 111-57(c), less explicit, is not less clear.⁴

Order affirmed. Appellate costs.

BARNES, Judge (dissenting).

I dissent because, in my view, the majority has misinterpreted § 111-57(c) of the Montgomery County Code. It has not perceived the correct intent of that statutory provision.

In seeking to ascertain the intent in a statutory enactment, we must not merely assume that the legislature intended to depart from the existing law—but rather, we must consider the legislative process and decisional—and enact the law within the framework of that process. *Food, Inc. v. Gooch*, 245 Md.

thereafter be re-established" and "abandonment * * * as the termination of the use "for one month or more." (Emphasis added.) The present section 111-57(c), is a re-enactment (without change) of Section 104-48(c) of the 1955 Code.

4. It is interesting to note that the dissenting approaches other counties have taken in dealing with nonconforming uses which have ceased for one reason or another. The diversity is all the more reason for the adoption of such ordinances literally without attempting to extract strained interpretations. "[I]n the case of the *abandonment* of such non-conforming use for a period of one year, the right to continue the original non-conforming use shall be preserved." Code of Anne Arundel County, as amended Supp. #5 (1969) provides that "any *abandonment* or *discontinuance* of such non-conforming use for a period of one year or more * * * shall not prevent the owner from continuing or resuming such non-con-

3. The legislative history of Section 111-57(c) seems to support the view we have expressed. The earliest version, enacted in September 1941, appears in the 1950 Montgomery County Code as Sec. 176-10. It provided that "upon * * *

It is suggested that the use of both *abandonment* and *cessation*, in the same section, creates an ambiguity. We can think of no reason why this should be so. For instance, there is certainly no ambiguity in the Baltimore City ordinance which provides that "such discontinuance for [six consecutive months] * * * shall constitute an abandonment * * * regardless of any reservation of an intent not to abandon same or of intent to resume actual operations." We think Section 111-57(c), while less explicit, is not less clear.⁴

Order affirmed. Appellants to pay the costs.

BARNES, Judge (dissenting):

I dissent because, in my opinion, the majority has misinterpreted § 111-57(c) of the Montgomery County Code, 1965, and has not perceived the correct legislative intent of that statutory provision.

In seeking to ascertain the legislative intent in a statutory enactment, we properly assume that the legislators are familiar with the existing law—both statutory and decisional—and enact the legislation within the framework of that law. *Giant Food, Inc. v. Gooch*, 245 Md. 160, 225 A.

thereafter be re-established" and defining "abandonment * * * as the cessation" of the use "for one month or more." (Emphasis added.) The present section, 111-57(c), is a re-enactment (without change) of Section 104-48(c) of the 1960 code.

4. It is interesting to note the diverse approaches other counties have taken in attacking nonconforming uses which have ceased for one reason or another. This diversity is all the more reason for reading such ordinances literally without attempting to extract strained interpretations. "[I]n the case of the abandonment of such non-conforming use for the period of one year, the right to continue such original non-conforming use shall cease," Code of Anne Arundel County, § 13-310 as amended Supp. #5 (1969). "[O]n any abandonment or discontinuance of such non-conforming use for a period of one year or more * * * the right to continue or resume such non-conforming

2d 431 (1967); *St. Joseph Hospital v. Quinn*, 241 Md. 371, 216 A.2d 732 (1966); *Gibson v. State*, 204 Md. 423, 104 A.2d 800 (1954).

Since the landmark case in regard to abandonment of nonconforming uses, *Lan-day v. Board of Zoning Appeals*, 173 Md. 460, 196 A. 293 (1938), and continuing through the decision of the Court in *Harris Used Car Co. v. Anne Arundel County*, 257 Md. 412, 263 A.2d 520 (1970), there has been no doubt that such abandonment consists of two elements (1) an intention to abandon or relinquish and (2) some overt act, or some failure to act, which carries the implication that the owner neither claims nor retains any interest in the subject matter of the abandonment. It is in this judicial setting that § 111-57(c) was enacted.

With this well established law in mind, Subsection (c) should be carefully considered. It provides:

"(c) No building in which a nonconforming use has been changed in whole or in part to a more restricted use shall again be devoted to a less restricted use. No nonconforming use, once abandoned, shall thereafter be re-established. For the purpose of this section, 'abandoned'

use shall terminate." Baltimore County Zoning Regulations (1955) § 104.1. "No building, structure or premises where a non-conforming use has ceased for six (6) months or more shall thereafter be used * * *." Carroll County Zoning Ordinance § 4.3(d). "No building, structure or premises where a non-conforming use has ceased for two years or more shall again be put to a non-conforming use." Code of Frederick County (1959) as amended § 40-124. "A non-conforming use * * * which shall remain idle and unused for a continuous period of three years, shall be considered abandoned as a non-conforming use * * *." Zoning Regulations of Howard County (1961) as amended § 20.05. "No non-conforming use may be re-established * * * where such non-conforming use has been discontinued for a period of at least two years." Zoning Ordinance of Prince George's County (1949) as amended § 12.41(b). (All emphasis added.)

* for a period of [the use] shall terminate. 1953 amendment it reads as Section 107-1(d) that "no non-abandoned, shall

hicle immediately to the rear when there is opportunity to give such signal."

Testimony in behalf of Mrs. Clark was that no signal whatever was given of an intention to turn (Junkins admitted this) or of an intention to stop or suddenly decrease speed (Junkins, testifying for the plaintiff as a hostile witness, said he thought it was probable that his brake lights went on—that they worked before and after the accident—but this testimony could at best produce only a question for the jury in view of Christopher's testimony that there was no brake light signal, *Bernardi v. Roedel*, supra, at page 23 of 225 Md., 168 A.2d 886; *Cobourn v. Morrison*, 227 Md. 96, 175 A.2d 589). The alleged sudden stop without warning occurred in the middle of a block, at a point where a stop or sudden decrease of speed or a turn is not a probability ordinarily to be anticipated. It is clear to us that whether Junkins was or was not negligent was a matter for the jury to decide. *Bernardi v. Roedel*, supra; *Kantor v. Ash*, 215 Md. 285, 137 A.2d 661, 69 A.L.R. 2d 585; *Baltimore Transit Co. v. Prinz*, 215 Md. 398, 137 A.2d 700; *Brehm v. Lorenz*, 206 Md. 500, 505-506, 112 A.2d 475; *Sieland v. Gallo*, 194 Md. 282, 71 A.2d 45; cf. *Yellow Cab Co. v. Bonds*, Md., 225 A.2d 41, and *Hillebrecht v. Stein*, Md., 225 A.2d 44, both just decided.

[4, 5] The case must be remanded for a new trial. If the evidence as to agency is the same as it was in the first trial, there would have to be, as a matter of law, a finding of non-agency. *Grier v. Rosenberg*, 213 Md. 248, 254-255, 131 A.2d 737. If there was no agency, it would be immaterial to a determination of Junkins' liability to Mrs. Clark whether Christopher was or was not contributorily negligent since his negligence would not bind the owner of the car. *Price v. Miller*, 165 Md. 578, 169 A. 800; 2 Restatement, Torts, § 485; 2 Restatement (Second), Agency, § 317. See also *Sklar v. Southcomb*, 194 Md. 626, 630, 72 A.2d 11. Cf. *Slutter v. Homer*, 244 Md. 131, 223 A.2d 141. If on

the new trial agency is found as a matter of law or by the trier of fact, *Grier v. Rosenberg*, supra, the issue of whether Christopher was following Junkins too closely or was inattentive or otherwise did not act as a reasonably prudent man would have acted would have to be decided by the trier of fact.

Judgment reversed, with costs, and case remanded for further proceedings.



245 Md. 130

William JAHNIGEN et ux.

v.

William W. STALEY et al.

No. 531.

Court of Appeals of Maryland.

Jan. 9, 1967.

Proceeding on appeal from a decree of the Circuit Court, Anne Arundel County, George Sachse, J., restricting nonconforming use of marina property fronting on creek. The Court of Appeals, Marbury, J., held that where, prior to comprehensive zoning ordinance placing marina property in agricultural classification, marina owners' predecessor had rented up to seven rowboats, increase in number of rowboats rented thereafter would be intensification of nonconforming use and not extension thereof.

Decree modified, and as modified affirmed.

I. Zoning §571

Party has standing to contest rezoning decision by appeal to courts if decision affects his specific interest or property

MICROFILMED

right in way different from that suffered
by public generally.

2. Zoning 571

Owners of property in close proximity to marina property had standing to institute suit to set aside decision rezoning marina property from agricultural use to heavy commercial use.

3. Zoning 163

Basic premise underlying rezoning regulations is to restrict rather than expand nonconforming uses.

4. Zoning 331

Intensification of nonconforming use is permissible so long as nature and character of use is unchanged and substantially the same facilities are used.

5. Zoning 329

Construction of new pier and other facilities and rental of space for dockage or wet storage at facilities other than ninety-foot wharf and T, which were in existence prior to effective date of zoning ordinance placing property in agricultural classification, were invalid extensions of nonconforming use.

6. Zoning 331

Where, prior to comprehensive zoning ordinance placing marina property in agricultural classification, marina owners' predecessor had rented up to seven rowboats, increase in number of rowboats rented thereafter would be intensification of non-conforming use and not extension thereof.

7. Zoning 327

Right of landowner to continue same kind of use to which property was devoted on critical date does not confer on him right to subsequently change or add to that use a new and different one amounting to drastic

enlargement or extension of prior existing use.

8. Zoning 788

In suit seeking injunction limiting nonconforming use of marina property, testimony as to launching of boats was too vague to establish that such use was regularly made before enactment of comprehensive zoning ordinance placing marina property in agricultural classification or that it was carried on thereafter.

9. Zoning 328

Twenty-five-foot strip of land adjacent to marina property purchased subsequent to enactment of comprehensive zoning ordinance placing property in agricultural classification could not be set aside by owners for construction of new launching ramp.

10. Zoning 323

Intention to use is not sufficient to establish nonconforming use.

11. Zoning 788

In action seeking injunction limiting nonconforming use of marina property, testimony as to storage, repair and maintenance of boats other than those owned by predecessors in title was too vague and inconclusive to establish that such use was regularly made before date of enactment of comprehensive zoning ordinance placing property in agricultural classification.

Jerome F. Connell, Glen Burnie (Biener & Connell, Glen Burnie, on the brief), for appellants.

Nicholas Goldsborough, Annapolis, for appellees.

Before HAMMOND, C. J., and MAR-
BURY, OPPENHEIMER, BARNES and
FINAN, JJ.

MARBURY,

This is an appeal from the Circuit Court for the District of Columbia. Judge Sachse presided at the trial. The appellants' (Wilsons) boat is a non-conforming structure, fronting on Broadway 263 feet, to the rear of the lot and to the rear of the lot for wet storage of boats, exceeding ninety feet in width, six feet in width, four foot long and at the end of the wharf, so that the launching of the boats, other than their property.

Appellants acquired property, approximately 1884. Third Election I County, by deed from Stanley H. who acquired the years prior to February 1884. Comprehensive zoning Third Election I County became effective in an agricultural Kirchenbauers c ninety foot long ninety foot T and rent and approximately ordinance restricting use to those uses late of its adoption. ere issued a no late on which "rowboats." During sixteen rowboats they increased the cut down on that year the 104 foot pier, permit, parallel from the s connected to the

MARBURY, Judge.

This is an appeal from a decree of the Circuit Court for Anne Arundel County, Judge Sachse presiding, which restricted appellants' (William Jahnigen and wife) non-conforming use of their property, fronting on Broad Creek for approximately 263 feet, to the rental of seven rowboats and to the rental of space for the dockage or wet storage of boats at a wharf not exceeding ninety feet of over-all length and six feet in width together with a twenty-four foot long and six foot wide "T" at the end of the wharf. It was also decreed that the launching facility constructed by appellants was an unlawful expansion of a non-conforming use and that they had no right to maintain dry storage or to repair boats, other than the seven rowboats, on their property.

Appellants acquired the waterfront property, approximately four acres in the Third Election District of Anne Arundel County, by deed dated December 14, 1962, from Stanley H. Kirchenbauer and wife, who acquired their title in 1945. In the years prior to February 15, 1949, when the comprehensive zoning ordinance for the Third Election District of Anne Arundel County became effective, placing the property in an agricultural classification, the Kirchenbauers constructed (in 1946) a ninety foot long pier with a twenty-four foot T and rented up to seven rowboats and approximately ten slips. The zoning ordinance restricted any non-conforming use to those uses in effect prior to the date of its adoption. On July 6, 1951, they were issued a non-conforming use certificate on which was stated, "Hiring of Rowboats." During 1951, they rented out sixteen rowboats and ten slips. In 1952, they increased the slip rental to twenty, but cut down on the renting of rowboats. In that year the Kirchenbauers also built a 104 foot pier, without first securing a permit, parallel to and about thirty-two feet from the shoreline. This pier was connected to the left side of the ninety

foot pier about thirty-two feet from the shore. They built a garage in 1953 and a stable in 1954. They provided no toilet facilities except for those in their home, which they would allow others to use on occasions. Between 1947 and 1952 people would pull their boats upon the property in the winter until about April or May, at various places and at various times. Mr. Kirchenbauer occasionally put his own boats in the garage for repairs, but he did little boat repair work for others. He had no facilities for the launching of boats, and when he did launch them it would not always be at the same place. This was an occasional operation, a dozen times in about fifteen years, and this operation required men to snake the boats down the hillside to the water.

In 1962 the Kirchenbauers purchased a twenty-five foot strip of land from a neighbor on the north side of the property, and appellants purchased the entire property from the Kirchenbauers in late 1962. In the advertisement of the property for sale, twenty-five boat slips and nine rowboats were mentioned. In May of 1963, William Jahnigen requested and received a permit to repair ice damage to the existing ninety foot pier with the T. When he applied for the permit, he misrepresented the ninety foot original pier as having been 130 feet, claiming that the original pier was 130 feet, the last forty feet of which he said was damaged by ice and had to be replaced, but the forty feet of pier never existed. In August of that year, the Jahnigens petitioned the Board of County Commissioners of Anne Arundel County to rezone 1.5 acres of their property from its agricultural use to heavy commercial use, primarily for the purpose of allowing sales of gasoline in connection with the operation of the marina that was already in existence on the property. On August 8, 1963, the Board of County Commissioners granted the petition, and later that month appellants requested and were granted a permit to extend the pier and to construct a travel lift ramp

for the launching of boats, and gas pumps. In the construction under the permit of August 1963, appellants built two toilets and other improvements, and the pier they actually built bore no relation in appearance, size or direction to the one for which they received the permit. As the result of the rezoning, some of the appellees filed a bill of complaint in the Circuit Court for Anne Arundel County to set aside the rezoning. The bill of complaint also sought an injunction to limit the non-conforming use and to restrict the property in such a way that the Jahnigens could only use it for the hiring of rowboats.

For the purpose of clarity, the court below divided the case into two parts. The first part concerned the question of whether the rezoning was valid, and the second part dealt with the extent of the existing non-conforming use. In the trial of the first part, the court below found the rezoning to be null and void. The appellants have not appealed from this finding. Prior to the hearing of the second part of the case on the merits, the appellants filed a motion raising preliminary objection to the right of the appellees to bring such an action. The motion was overruled and the court found in favor of the complainants after the trial on the merits. The appellants contend that the chancellor erred in overruling their motion and in imposing certain restrictions on the non-conforming use of the property.

[1] A party has standing to contest a rezoning decision by appeal to the courts if the decision affects his specific interest or property right in a way different from that suffered by the public generally. *Alvey v. Hedin*, 243 Md. 334, 221 A.2d 62; *DuBay v. Crane*, 240 Md. 180, 213 A.2d 487.

[2] It is evident from the record that the protestants are within the class as defined above "because their closeness to the marina property, their special problems with lights and noise as well as with the

refuse emanating from the operation of the marina, make the effect of this commercialization on them different from its effect upon members of the public generally." *Alvey v. Hedin*, supra, 243 Md. at page 339, 221 A.2d at page 64.

Mr. Edmund Birk, one of the protestants who owns the property adjacent to the Jahnigen property on the south side, testified that the cruisers which were moored at the Jahnigen property pumped their bilges and deteriorated his waterfront property, and that he would not swim in the creek due to the fact that the boats had toilet facilities.

Mr. Otis B. French, another protestant whose property is located 125 feet at the water line from the Jahnigen property, testified that due to the increased facilities and activities, the value of his property deteriorated considerably and that peace and quiet had departed. He testified that he was reluctant to swim in the creek because of the increased summer boat traffic which came very close to the front of his property and because of the increased junk and debris in the water, including beer cans, bottles, spoiled food and other refuse.

Mr. William Staley testified that the increased facilities had devalued his property which is about 300 yards southwest from the appellants' property, directly across the water. He testified that he had been unable to sell his property, even though it had been on the market for ten months, because of the fact that the marina was operating directly across from his property. He also stated that an extremely bright light on the Jahnigen property shone into his house every night and that the Jahnigen workboats had covered the whole east end of the creek with an oil slick.

An expert real estate appraiser, Maurice C. Ogle, who was thoroughly familiar with the property, was called by the appellees; and he stated that the increased operations

of the appellants on the value of the

Appellants argue that the water area used by the appellants was used by the Kirschners, owners, in that the several boats tied up at the T on the creek. The appellants contend that the construction of the pier constituted a mere non-conforming use of the use.

The Anne Arundel County Court, as amended, defines the continuing use as the occupation of the area, measured in ground area or square feet, as of the effective date of the rezoning. The ground area, and the area considered separately, substituted for the original batters and the non-conforming use, square feet, which the effective date of the rezoning to 2,526 square feet. The Jahnigens used the property, and it remains that the use was expanded to the original pier and piers and other facilities. The case are analogous to *County v. Gold*, 263 P.2d 321 (1953). At the time he obtained the use, used a field of approximately thirty acres, built permanent cattle. The court was an invalid non-conforming use.

"It is quite a material change in use by the appellants, as described in the present foundation.

of the appellants had an adverse effect on the value of the surrounding property.

Appellants argued that the amount of water area used by them was less than that used by the Kirchenbauers, the former owners, in that the former owners had several boats tied to buoys off the end of the T on the original ninety foot pier. The appellants contended that the construction of the additional pier facilities constituted a mere intensification of the non-conforming use as opposed to an expansion of the use.

The Anne Arundel County Code (1957 ed. as amended), Section 35-10, page 882, defines the continuance of a non-conforming use as the occupation of the same building area, measured in cubic feet, and the same ground area or water area, measured in square feet, as was occupied on the effective date of the ordinance. Building area, ground area, and water area are to be considered separately and one may not be substituted for the other. The Kirchenbauers and the appellants increased the non-conforming use of the piers from 648 square feet, which existed at the time of the effective date of the zoning ordinance, to 2,526 square feet. Whether or not the Jahnigens used less water area, the fact remains that the original non-conforming use was expanded by the extension of the original pier and by the construction of new piers and other facilities. The facts of this case are analogous to those in *Orange County v. Goldring*, 121 Cal.App.2d 442, 263 P.2d 321 (1953), where defendant, at the time he obtained a non-conforming use, used a field for the feeding of approximately thirty to fifty cattle. He later built permanent feed pens for 200 to 300 cattle. The court said in holding that this was an invalid extension of a non-conforming use:

"It is quite apparent that there was a material change in the condition of the use by the construction of the feeding pens described, by the building of permanent foundations for watering troughs,

and no doubt the number of cattle now confined in the limited quarters where cattle are being fattened for market by feeding the new formula, caused added noises, stench, and disagreeable odors, which disturb the near-by residents and school children. The facts found clearly demonstrate that the present use is such a formidable change and departure from the established use, both in magnitude and character, that it constitutes a wholly new and different use, and an unlawful enlargement or extension of a non-conforming use, * * *"
262 P.2d at 323.

[3, 4] The basic premise underlying zoning regulations is to restrict rather than expand non-conforming uses. *Phillips v. Zoning Commissioner*, 225 Md. 102, 169 A.2d 410; *Grant v. Mayor and City Council of Baltimore*, 212 Md. 301, 129 A.2d 363; *Colati v. Jirout*, 186 Md. 652, 47 A.2d 613. However, an intensification of a non-conforming use is permissible so long as the nature and character of the use is unchanged and substantially the same facilities are used. *Phillips v. Zoning Commissioner*, supra; *Nyburg v. Solmson*, 205 Md. 150, 106 A.2d 483, 46 A.L.R.2d 1051. In *Nyburg* the area of the property which was under a prior non-conforming use as a parking area for a garage was not enlarged, but the volume of cars parked thereon was increased from a small number to about thirty to fifty. This was held to be a mere intensification of the non-conforming use, and the restrictions imposed by the zoning board limiting the space used for parking to ten vehicles at one time were struck down.

[5-6] In the case at bar, the chancellor limited the rental of rowboats to seven and restricted the rental of space for the dockage or wet storage of boats at the ninety foot pier with the twenty-four foot T at its end. He also found that in light of Section 35-38(g) (4) of the Anne Arundel County Code, supra, which provides that

piers for private use are permitted in an agricultural zone only as accessory buildings or uses to the permitted residential use, the 104 foot pier, erected approximately thirty-two feet out from the bulkhead, built in 1952 and attached to the original ninety foot pier, was a reasonable accessory to the part of the appellants' property that was agricultural and for residential use. He ordered that the other piers erected by the appellants be removed. We agree that the construction of new pier and other facilities, and the rental of space for the dockage or wet storage at any facilities other than the ninety foot wharf and T, which were in existence prior to the effective date of the zoning ordinance, were invalid extensions of the non-conforming use. However, we hold that the rental of rowboats can not be so limited. Any increase in the number of rowboats rented would be an intensification of non-conforming use and would not be an extension. *Nyburg v. Solmson*, supra.

[7-10] The right of a landowner to continue the same kind of use to which the property was devoted on the critical date does not confer on him the right to subsequently change or add to that use a new and different one amounting to a drastic enlargement or extension of the prior existing use. *Phillips v. Zoning Commissioner*, supra. Appellants argued that the launching of boats by means of a travel lift and ramp was an intensification of the launching that was done by the Kirchenbauers. The evidence showed that only a dozen or more boats were launched in the years prior to the enactment of the ordinance. There was no permanent launching site nor structures to aid in the launchings. Boat launching was performed at no specific place during the years the Kirchenbauers owned the property, and it was so infrequent as not to have been part of their business. The testimony as to the launching of boats was too vague and inconclusive to establish that such use was regularly made before 1949, or that it was carried on thereafter. *Boulevard Scrap Co. v.*

City of Baltimore, 213 Md. 6, 130 A.2d 743; *Daniels v. Board of Zoning Appeals*, 205 Md. 36, 106 A.2d 57. The launching ramp was constructed on the twenty-five foot strip which the Kirchenbauers purchased in 1962. The appellants can not now set aside that particular portion of their property and construct a launching ramp. *Chayt v. Zoning Appeals Board*, 177 Md. 426, 9 A.2d 747. Although the Kirchenbauers may have intended to provide such services attendant to a marina, such intention to use is not enough to establish a non-conforming use. *Beyer v. City of Baltimore*, 182 Md. 444, 34 A.2d 765; *Chayt v. Zoning Appeals Board*, supra.

[11] As to the storage of boats on the property, there was nothing in the record to show that the former owners allowed individuals other than themselves to store or repair boats on their property, other than at the shoreline, prior to the adoption of the zoning ordinance. After the ordinance was passed a few boats belonging to others were stored on the property, but again the number was insignificant. Also there was little repair work done on boats other than on the ones that were owned by the Kirchenbauers. Again the testimony as to the storage, repair and maintenance of boats other than those owned by the Kirchenbauers was too vague and inconclusive to establish that such use was regularly made before 1949. *Boulevard Scrap Co. v. City of Baltimore*, and *Daniels v. Board of Zoning Appeals*, both supra.

We affirm the decree of the chancellor in all respects except that portion thereof which restricted the rental, dry storage, repair or maintenance to the seven rowboats owned by the appellants, which is modified so as to permit the rental of rowboats which appellants might own and the storage, repair, and maintenance of those rowboats.

Decree modified, and as modified affirmed. Costs to be paid by appellants.

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(ii) A portion of urban area to be excluded shall be at least 50% developed and may not be less than 2,640,000 square feet in contiguous area or the entire initial planning area located within the boundaries of a municipality, whichever is less.

(2) A local jurisdiction shall include in any program submitted to the Commission under § 8-1809 of this subtitle a designation of those portions of the Chesapeake Bay Critical Area proposed for exclusion under paragraph (1) of this subsection, together with all factual information and expert opinion supporting its findings under this subsection.

(3) The Commission shall approve a local jurisdiction's designation of portions to be excluded unless the Commission finds, based on stated reasons, that the decision of the local jurisdiction was:

- (i) Not supported by competent and material evidence; or
- (ii) Arbitrary or capricious.

(4) If the Commission develops the program to be applied in a local jurisdiction, the program shall exclude areas as appropriate to meet the intent of paragraph (1) of this subsection.

(c) *Area designated as critical area.* — The Chesapeake Bay Critical Area shall consist of:

(1) Those areas designated in subsection (a) of this section, except any areas excluded in accordance with subsection (b) of this section; and

(2) Additional areas proposed for inclusion by local jurisdictions and approved by the Commission. (1984, ch. 794; 1990, ch. 6, § 2.)

Effect of amendment. — The 1990 amendment, approved Feb. 16, 1990, and effective from date of passage, in (b) (1) (ii), substituted "%" for "percent"; in (b) (2), inserted "of this subtitle"; and in (b) (4), substituted "the program shall" for "it shall."

Maryland Law Review. — For article, "Protection of the Chesapeake Bay: Environmentally Legal, Eminently Uninhabitable," see 47 Md. L. Rev. 406 (1988).

For article, "Coastal Seas Governance: An

International Project for Management Policy on Threatened Coastal Seas," see 47 Md. L. Rev. 481 (1988).

University of Baltimore Law Forum. — For discussion of the need for and future under the Critical Areas Legislation, see 17, No. 1 U. Balt. Law Forum 3 (1986).

For article, "The Fifth Amendment's Takings Clause: New Twists to an Evolving Doctrine," see 18.2 U. Balt. Law Forum 22 (1988).

§ 8-1808. Program development.

(a) *Local jurisdictions to implement; grants.* — (1) It is the intent of this subtitle that each local jurisdiction shall have primary responsibility for developing and implementing a program, subject to review and approval by the Commission.

(2) The Governor shall include in the budget a sum of money to be used for grants to reimburse local jurisdictions for the reasonable costs of developing a program under this section. Each local jurisdiction shall submit to the Governor by October 31, 1984 a detailed request for funds that are equivalent to the additional costs incurred in developing the program under this section.

(3) The Governor shall include in the budget annually a sum of money to be used for grants to assist local jurisdictions with the reasonable costs of implementing a program under this section. Each local jurisdiction shall submit to

the Governor by May 1 of each year a detailed request for funds to assist in the implementation of a program under this section.

(b) *Goals of program.* — A program shall consist of those elements which are necessary or appropriate:

(1) To minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands;

(2) To conserve fish, wildlife, and plant habitat; and

(3) To 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.

(c) *Elements of program.* — At a minimum, a program sufficient to meet the goals stated in subsection (b) of this section includes:

(1) A map designating the critical area in a local jurisdiction;

(2) A comprehensive zoning map for the critical area;

(3) As necessary, new or amended provisions of the jurisdiction's:

(i) Subdivision regulations;

(ii) Comprehensive or master plan;

(iii) Zoning ordinances or regulations;

(iv) Provisions relating to enforcement; and

(v) Provisions as appropriate relating to grandfathering of development at the time the program is adopted or approved by the Commission;

(4) Provisions requiring that project approvals shall be based on findings that projects are consistent with the standards stated in subsection (b) of this section;

(5) Provisions to limit the amount of land covered by buildings, roads, parking lots, or other impervious surfaces, and to require or encourage cluster development, where necessary or appropriate;

(6) Establishment of buffer areas along shorelines within which agriculture will be permitted only if best management practices are used, provided that structures or any other use of land which is necessary for adjacent agriculture shall also be permitted in any buffer area;

(7) Requirements for minimum setbacks for structures and septic fields along shorelines;

(8) Designation of shoreline areas, if any, that are suitable for parks, hiking, biking, wildlife refuges, scenic drives, public access or assembly, and water-related recreation such as boat slips, piers, and beaches;

(9) Designation of shoreline areas, if any, that are suitable for ports, marinas, and industries that use water for transportation or derive economic benefits from shore access;

(10) Provisions requiring that all harvesting of timber in the Chesapeake Bay Critical Area be in accordance with plans approved by the district forestry board; and

(11) Provisions establishing that the controls in a program which are designed to prevent runoff of pollutants will not be required on sites where the topography prevents runoff from directly or indirectly reaching tidal waters.

(d) *Criteria for* mission shall adopt program development achieve the standards ing its criteria and hold at least 6 re

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Effect of amend amendment, effective section (d) (3).

The 1990 amendment 1990, and effective fr provided the provisions language and (b) (1) inserted "of this section" guage, and substituted "areas if any that" in (the former introductory ignated former (i) thro through (i) 6., designa tence of the paragraph ductory language of (i) "promulgate" and "19 criteria" in the first se in the second sentence "the Joint Committeee considers"; and in (e), sub lations" for "laws, rul the second sentence.

Editor's note. — S 1988, provides that:

(d) *Criteria for program development; joint committee.* — (1) (i) The Commission shall adopt by regulation on or before December 1, 1985 criteria for program development and approval, which are necessary or appropriate to achieve the standards stated in subsection (b) of this section. Prior to developing its criteria and also prior to adopting its criteria, the Commission shall hold at least 6 regional public hearings, 1 in each of the following areas:

1. Harford, Cecil, and Kent Counties;
2. Queen Anne's, Talbot, and Caroline Counties;
3. Dorchester, Somerset, and Wicomico Counties;
4. Baltimore City and Baltimore County;
5. Charles, Calvert, and St. Mary's Counties; and
6. Anne Arundel and Prince George's Counties.

(ii) During the hearing process, the Commission shall consult with each affected local jurisdiction.

(2) The President of the Senate and the Speaker of the House shall appoint 5 senators and 5 delegates respectively to serve as the Joint Committee on Chesapeake Bay Critical Areas. The Joint Committee shall be staffed by the Department of Legislative Reference. The Commission shall meet with the Joint Committee on Chesapeake Bay Critical Areas periodically as the Committee requests to review development and implementation of the criteria for program development.

(3) The Joint Committee may study and make recommendations to the Legislative Policy Committee on any other area of the Chesapeake Bay Critical Area Protection Program the Joint Committee considers appropriate.

(e) *Dredging not prevented.* — Nothing in this section shall impede or prevent the dredging of any waterway in a critical area. However, dredging in a critical area is subject to other applicable federal and State laws and regulations. (1984, ch. 794; 1987, ch. 631; 1988, ch. 234; 1990, ch. 6, § 2.)

Effect of amendments. — The 1988 amendment, effective July 1, 1988, added subsection (d) (3).

The 1990 amendment, approved Feb. 16, 1990, and effective from date of passage, divided the provisions of (b) into introductory language and (b) (1) through (3); in (c), inserted "of this section" in the introductory language, and substituted "areas, if any, that" for "areas if any that" in (8); in (d) (1), designated the former introductory language as (i), redesignated former (i) through (vi) as present (i) 1. through (i) 6., designated the former last sentence of the paragraph as (ii), and, in the introductory language of (i), substituted "adopt" for "promulgate" and "1985 criteria" for "1985, criteria" in the first sentence and "1" for "one" in the second sentence; in (d) (3), substituted "the Joint Committee considers" for "it considers"; and in (e), substituted "laws and regulations" for "laws, rules, and regulations" in the second sentence.

Editor's note. — Section 2, ch. 234, Acts 1988, provides that:

"(a) The Joint Committee on Chesapeake Bay Critical Areas shall meet with the Critical Areas Commission, representatives of counties and municipalities having land within the critical areas, and any other interested parties to study and determine:

(1) Whether adequate flexibility exists under the current criteria to meet the special characteristics and needs of the individual counties and municipalities having land within the critical areas;

(2) Whether the current timetable for review of approved local critical area protection programs is adequate to meet the special characteristics and needs of the individual counties and municipalities having land within the critical areas; and

(3) Whether the criteria need to be strengthened in any area so as to make the Chesapeake Bay Critical Area Protection Program more effective in the protection of the water quality and habitat of the Chesapeake Bay and its tributaries.

(b) The Joint Committee shall study and de-

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§ 8-1809. Approval and adoption of program.

(a) *Statements of intent.* — Within 45 days after the criteria adopted by the Commission under § 8-1808 of this subtitle become effective, each local jurisdiction shall submit to the Commission a written statement of its intent either:

(1) To develop a critical area protection program to control the use and development of that part of the Chesapeake Bay Critical Area located within its territorial limits; or

(2) Not to develop such a program.

(b) *Commission may adopt program.* — If a local jurisdiction states the local jurisdiction's intent not to develop a program or fails to submit a timely statement of intent, the Commission shall prepare and adopt a program for the part of the Chesapeake Bay Critical Area in that local jurisdiction.

(c) *Submission of locally developed program.* — If a local jurisdiction states the local jurisdiction's intent to develop a program, the local jurisdiction shall prepare a proposed program and submit the program to the Commission within 270 days after the effective date of the criteria adopted under § 8-1808 of this subtitle. However, if the local jurisdiction submits evidence satisfactory to the Commission that the local jurisdiction is making reasonable progress in the development of a program, the Commission may extend this period for up to an additional 180 days. Before submission of a program to the Commission within the time allowed by this subsection, a local jurisdiction shall hold at least 1 public hearing on the proposed program, for which 2-weeks notice shall be published in a newspaper of general circulation in the local jurisdiction.

(d) *Public hearing; approval by Commission.* — (1) Within 30 days after a program is submitted, the Commission shall appoint a panel of 5 of its members to conduct, in the affected jurisdiction, a public hearing on the proposed program.

(2) Within 90 days after the Commission receives a proposed program from a local jurisdiction, the Commission shall approve the proposal or notify the local jurisdiction of specific changes that must be made in order for the proposal to be approved. If the Commission does neither, the proposal shall be deemed approved.

(3) A changed proposal shall be submitted to the Commission in the same manner as the original proposal, within 40 days after the Commission's notice. Unless the Commission approves a changed proposal or disapproves a changed proposal and states in writing the reasons for the Commission's disapproval within 40 days, the changed proposal shall be deemed approved.

(e) *Adoption of program.* — Within 90 days after the Commission approves a proposed program, the local jurisdiction shall hold hearings and adopt the program in accordance with legislative procedures for enacting ordinances. If the governing body of the local jurisdiction wishes to change any part of the approved proposal before adoption, the governing body shall submit the proposed change to the Commission for approval. Unless the Commission approves the change or disapproves the change and states in writing the reasons for the Commission's disapproval within 30 days after the Commission re-

ceives the change, the change shall be deemed approved. A changed part may not be adopted until the changed part is approved by the Commission.

(f) *Programs effective within 760 days.* — Within 760 days after criteria adopted by the Commission become effective, there shall be in effect throughout the Chesapeake Bay Critical Area programs approved or adopted by the Commission.

(g) *Proposed amendments.* — Each local jurisdiction shall review and propose any necessary amendments to the local jurisdiction's program, including local zoning maps, at least every 4 years. Amendments shall be submitted to and acted on by the Commission in the same manner as the original program.

(h) *Program not to be amended without approval of Commission.* — A program may not be amended except with the approval of the Commission. Except for amendments developed during program review under subsection (g) of this section, an amendment to a zoning map may be granted by a local approving authority only on proof of a mistake in the existing zoning.

(i) *Standards for approval by Commission.* — The Commission shall approve programs and amendments that meet:

(1) The standards set forth in § 8-1808 (b) (1) through (3) of this subtitle; and

(2) The criteria adopted by the Commission under § 8-1808 of this subtitle.

(j) *Program to be available for public inspection.* — Copies of each approved program, as the program is amended from time to time, shall be maintained by the local jurisdiction and the Commission in a form available for public inspection. (1984, ch. 794; 1986, ch. 601; 1987, ch. 11, § 1; 1990, ch. 6, § 2.)

Effect of amendment. — The 1990 amendment, approved Feb. 16, 1990, and effective from date of passage, in (b), substituted "the local jurisdiction's" for "its"; in (c), substituted "the local jurisdiction's" for "its," "the local jurisdiction" for "it" and "the program" for "it" in the first sentence, and substituted "the local jurisdiction is" for "it is" in the second sentence, and "1" for "one" in the third sentence; in (d) (2), substituted "the Commission shall approve" for "it shall either approve" in the first sentence, and "neither, the" for "neither the" in the second sentence; in (d) (3), substituted "the Commission's" for "its" in the second sentence; in (e), substituted "the governing body shall" for "it shall" in the second sentence, and substituted "the Commission's" for "its" and "the Commission receives" for "it receives" in the third sentence, and "the changed part" for "it" in the last sentence; in (g), substituted "the local jurisdiction's" for "its"; and in (j), substituted "the program" for "it."

University of Baltimore Law Forum. — For discussion of the need for and future under the Critical Areas Legislation, see 17, No. 1 U. Balt. Law Forum 3 (1986).

For article, "The Fifth Amendment's Takings Clause: New Twists to an Evolving Doctrine," see 18.2 U. Balt. Law Forum 22 (1988).

Legislative intent regarding criteria. — The process set up in subsections (a), (c), (f), and (i) of this section reflects the General Assembly's intent that the criteria, once implemented, are not to be changed in ways that would vitiate the efforts of local governments to develop complying programs. 72 Op. Att'y Gen. 14 (1987).

Power of Commission to amend program development criteria. — The Commission does not have authority to adopt amendments to its program development criteria that would change their substance significantly. However, it does have authority to adopt amendments that would not effect a significant substantive change. 72 Op. Att'y Gen. 14 (1987).

Power of General Assembly to amend criteria. — The General Assembly has authority to amend the criteria of the Chesapeake Bay Critical Area Commission, just as it may amend the regulations of any agency. However, to do so, it must enact a statute. 72 Op. Att'y Gen. 14 (1987).

Program approval guidelines. — In determining whether local programs meet the standards of this subtitle and the criteria established by the Commission thereunder, the Commission should follow these guidelines: (1) Mandatory criteria must be applied by the

Commission as written without variance by apply; (2) criteria v should be construed paring, submitting, grams at least consi but absence of such sole cause of disapp admit of more than tion should be consi ular program eleme the Commission's u While the Commissi program element th the pertinent crite broad discretion to element is consisten ing the criterion. 73 5, 1988).

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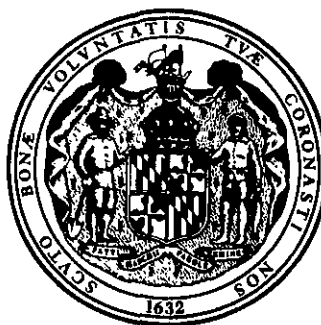
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(b) *Public hea* local jurisdiction the Commission lations in accord tive, Executive, tive Procedure A sion adopts a pr panel of 3 of the at least 2 public which 2 weeks n in the local juri subsection shall

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(d) *Local prog* after the Commi jurisdiction subr ria adopted und sion, the alterna mission. (1984,

CODE OF MARYLAND REGULATIONS



Title 27

CHESAPEAKE BAY CRITICAL AREA COMMISSION

45 Calvert Street
Annapolis, MD 21401

MICROFILMED

discharge from land activities or vessels, or from boat cleaning and maintenance operations, is minimized;

(5) That shellfish beds will not be disturbed or be made subject to discharge that will render them unsuitable for harvesting;

(6) That dredging shall be conducted in a manner, and using a method, which causes the least disturbance to water quality and aquatic and terrestrial habitats in the area immediately surrounding the dredging operation or within the Critical Area, generally;

(7) That dredged spoil will not be placed within the Buffer or elsewhere in that portion of the Critical Area which has been designated as a habitat protection area except as necessary for:

- (a) Backfill for permitted shore erosion protection measures,
- (b) Use in approved vegetative shore erosion projects,
- (c) Placement on previously approved channel maintenance spoil disposal areas, and
- (d) Beach nourishment; and

(8) That interference with the natural transport of sand will be minimized.

C. The information necessary for evaluating the above factors, if not available locally, should be obtained from appropriate State and federal agencies.

.05 Industrial and Port-Related Water-Dependent Facilities.

New, expanded, or redeveloped industrial or port-related facilities and the replacement of these facilities may be permitted only in those portions of intensely developed areas exempted from Buffer designation in COMAR 27.01.09 and are subject to the requirements set forth in Regulation .03A of this chapter.

.06 Marinas and Other Water-Dependent Commercial Maritime Facilities.

A. New or expanded marinas and related facilities may be permitted in the Buffer within intensely developed areas and limited development areas subject to the requirements of Regulation .03A of this chapter.

B. New marinas or related maritime facilities may not be permitted in the Buffer within resource conservation areas, except as provided in Regulation .08 of this chapter.

C. Expansion of existing marinas may be permitted by local jurisdictions within resource conservation areas provided that it is sufficiently demonstrated that the expansion will not adversely affect water quality, and that it will result in an overall net improvement in water quality at or leaving the site of the marina.

D. New and existing marinas shall meet the sanitary requirements of the Department of the Environment as required in COMAR 26.04.02.

E. New marinas shall establish a means of minimizing the discharge of bottom wash waters into tidal waters.

→ **.07 Community Piers and Other Related Noncommercial Boat Docking and Storage Facilities.**

A. New or expanded community marinas and other noncommercial boat-docking and storage facilities may be permitted in the Buffer subject to the requirements of Regulations .03A and .07B of this chapter, provided that:

(1) These facilities may not offer food, fuel, or other goods and services for sale and shall provide adequate and clean sanitary facilities;

(2) The facilities are community-owned and established and operated for the benefit of the residents of a platted and recorded riparian subdivision;

(3) The facilities are associated with a residential development approved by the local jurisdiction for the Critical Area and consistent with all criteria and local regulations for the Critical Area;

(4) Disturbance to the Buffer is the minimum necessary to provide a single point of access to the facilities; and

(5) If community piers, slips, or moorings are provided as part of the new development, private piers in the development are not allowed.

B. The number of slips, piers, or mooring buoys permitted at the facility shall be the lesser of §B(1) or (2), below:

→ (1) One slip for each 50 feet of shoreline in the subdivision in the intense and limited development areas and one slip for each 300 feet of shoreline in the subdivision in the resource conservation area; or

(2) A density of slips, piers, or mooring buoys to platted lots or dwellings within the subdivision in the Critical Area according to the following schedule:

*Platted Lots or Dwellings
in the Critical Area*

Slips and Moorings



up to 15	1 for each lot
16 — 40	15 or 75%, whichever is greater
41 — 100	30 or 50%, whichever is greater
101 — 300	50 or 25%, whichever is greater
over 300	75 or 15%, whichever is greater

.08 Public Beaches and Other Public Water-Oriented Recreation or Education Areas.

A. Public beaches or other public water-oriented recreation or education areas including, but not limited to, publicly owned boat launching and docking facilities and fishing piers may be permitted in the Buffer in intensely developed areas.

B. These facilities may be permitted within the Buffer in limited development areas and resource conservation areas provided that:

- (1) Adequate sanitary facilities exist;
- (2) Service facilities are, to the extent possible, located outside the Buffer;
- (3) Permeable surfaces are used to the extent practicable, if no degradation of ground water would result;
- (4) Disturbance to natural vegetation is minimized; and
- (5) Areas for passive recreation, such as nature study, and hunting and trapping, and for education, may be permitted in the Buffer within resource conservation areas, if service facilities for these uses are located outside of the Buffer.

.09 Research Areas.

Water-dependent research facilities or activities operated by State, federal, or local agencies, or educational institutions, may be permitted in the Buffer, if nonwater-dependent structures or facilities associated with these projects are, to the extent possible, located outside of the Buffer.

.10 Fisheries Activities.

A. Lands and water areas with high aquacultural potential should be identified by the local jurisdictions in cooperation with the State. These areas are encouraged for that use and, if so used, should be

PLANNING, ZONING AND SUBDIVISION CONTROL

§ 26-454

idential purposes on or before December 1, 1985, then man-made impervious surfaces associated with that use are limited to twenty-five (25) percent of the parcel or lot.

- (2) If a parcel or lot one-fourth ($\frac{1}{4}$) acre or less in size was in nonresidential use on or before December 1, 1985, then man-made impervious surfaces associated with that development are limited to twenty-five (25) percent of the parcel or lot.
- (3) If an individual lot one (1) acre or less in size is part of a subdivision approved after December 1, 1985, then man-made impervious surfaces of the lot may not exceed twenty-five (25) percent of the lot. However, the total of the impervious surfaces over the entire subdivision may not exceed fifteen (15) percent.
- (4) This subsection does not apply to a trailer park that was in residential use on or before December 1, 1985.
- (5) Notwithstanding any section in this Code to the contrary, the director of DEPRM may grant a special variance from the provisions of this subsection, in accordance with the regulations adopted by the critical area commission concerning variances as part of local program development set forth in COMAR 27.01.11 and notification of project applications set forth in COMAR 27.03.01. Notice shall be given of an applicant's variance proposal by publication notice in an official paper of general circulation no less than fifteen (15) days prior to variance approval.
- (6) In granting a request for a special variance in accordance with section 26-453(e)(5), the director of DEPRM may require site design and variance approval conditions, including mitigation, to minimize adverse impacts on water quality and fish, wildlife or plant habitat.
- (7) Any person or persons, jointly or severally, or any taxpayer aggrieved or feeling aggrieved by any decision of the director of DEPRM made in accordance with section 26-453(e)(5) shall have the right to appeal

the decision before the county board of appeals de novo.

(f) A reduction in the road standards as set forth in the county standard specifications and details for construction may be allowed to reduce impacts from new development sites on critical area resources, provided that the reduced standards shall not significantly reduce safety.

(g) Development on soils having development constraints as set forth in the county water quality manual may be allowed if it includes mitigation measures that adequately address identified constraints and that will not have significant adverse impacts on water quality or plant, fish or wildlife habitat.

(h) The stormwater management system shall be designed so that:

- (1) Development will not cause downstream property, watercourses, channels, or conduits to receive stormwater runoff at a higher rate than would have resulted from a 10-year frequency storm if the land had remained in its predevelopment state;
- (2) Infiltration of water is maximized throughout the site, rather than directing flow to single discharge points;
- (3) Storm drain discharge points are decentralized to simulate the predevelopment hydrologic regime; and
- (4) There is sufficient storage capacity to achieve water quality goals of COMAR 14.15 and to eliminate all runoff caused by the development in excess of that which would have come from the site if it were in its predevelopment state.

(Code 1978, § 22-217; Bill No. 74, 1991, § 1; Bill No. 222, 1992, § 1; Bill No. 120-93, 1993, § 1)

Sec. 26-454. Water-dependent facilities. ←

In addition to section 417 in the county zoning regulations, all new or expanded water-dependent facilities are subject to the following procedures and standards, as specified more fully in the county water-dependent facilities manual:

- (1) *Scope.* A water-dependent facility includes those structures or works associated with

industrial, maritime, recreational, educational or fisheries activities that require location at or near the shoreline. An activity is water dependent if it cannot exist outside the buffer and is dependent on the water by the intrinsic nature of its operation.

- (2) *Buffer.* All silting, development, redevelopment, and expansion of water-dependent facilities within the buffer must strictly conform to the criteria set forth in the county water-dependent facilities manual:

a. May be allowed in the buffer in the IDA and LDA overlay areas if adverse effects to water quality, fish, plant and wildlife habitat are minimized; accessory structures are located outside the buffer; and meets a recognized private right or public need;

b. Are not allowed in the buffer in the RC-20 and RC-50 zones, except that public beaches or public wateroriented recreation or education areas including publicly owned boat launching and docking facilities and fishing piers may be allowed in the buffer if:

1. Adequate sanitary facilities exist;
2. Service facilities other than pumps, lifts and the like are located outside the buffer;
3. Permeable surfaces are primarily used if no degradation of ground-water would result; and
4. Disturbance to natural vegetation is minimized.

c. Marinas shall meet the sanitary requirements of the state department of health and mental hygiene set forth in COMAR 10.17.02.

d. Marinas shall minimize the discharge of bottom-wash waters into tidal waters.

e. New or expanded community marinas and other noncommercial boat docking and storage facilities may be permitted in the IDA and LDA overlay areas if: The facilities do not offer food, fuel or other goods and services for sale; are

community owned and established and operated for the benefit of the residents of a platted and recorded riparian subdivision; the disturbance to the buffer is the minimum necessary to provide a single point of access to the facilities; and the number of slips, piers or mooring buoys is the lesser of:

1. One (1) slip for each fifty (50) feet of shoreline in the subdivision in the IDA or LDA and one (1) slip for each three hundred (300) feet of shoreline in the subdivision in the RCA; or
2. A density of slips, piers or mooring buoys to plotted lots or dwellings within the subdivision in the critical area according to:

*Platted Lots or
Dwellings in
the Critical Area*

Up to 15
16-40

41-100

101-300

Over 300

Slips and Moorings

1 for each lot

15 or 75%, whichever is greater

30 or 50%, whichever is greater

50 or 25%, whichever is greater

75 or 15%, whichever is greater

- f. If community piers, slips or moorings are provided as part of the new development, private piers in the development are not allowed.

(Code 1978, § 22-218)

Sec. 26-455. Approval of use and occupancy permits.

Before the issuance of any use and occupancy permit within the critical area by the department of permits and licenses, the director of the department of environmental protection and resource management or designee shall determine that the development is in compliance with the findings and findings plan as determined by the approving authority. The use and occupancy permit shall not be issued unless and until the director of the department of environmental protection and resource management or designee certifies to the

BALTIMORE COUNTY ZONING REGULATIONS

1987 EDITION

AS AMENDED IN LOOSELEAF FORM

3. Assure that encroachments onto productive or critical natural resource areas will be minimized. [Bill No. 98, 1975.]
4. Provide a minimum lot size which is sufficient to provide adequate area for the proper functioning of on-lot sewer and water systems. [Bill No. 98, 1975.]

1A04.2--Use regulations [Bill No. 98, 1975.]

A. Uses permitted as of right. The following uses, only, are permitted as of right in R.C. 5 zones: [Bill No. 98, 1975.]

1. Churches or other buildings for religious worship including church schools. [Bill No. 98, 1975.]
2. Dwellings, one-family detached. [Bill No. 98, 1975.]
3. Farms and limited-acreage wholesale flower farms. [Bills No. 98, 1975; No. 51, 1993.]
- {4. "Farmettes." added by Bill No. 98, 1975; deleted by Bill No. 110, 1993.}
- [5. "Hospitals." added by Bill No. 98, 1975; deleted by Bill No. 37, 1988.]
6. Open space, common. [Bill No. 98, 1975.]
7. Schools, including but not limited to private preparatory schools, colleges, conservatories or other fine arts schools. [Bills No. 98, 1975; No. 63, 1980; No. 47, 1982; No. 47, 1985.]
8. Streets or ways. [Bill No. 98, 1975.]
9. Telephone, telegraph, electrical-power, or other similar lines or cables--all underground; underground gas, water, or sewer mains or storm drains; other underground conduits except underground interstate and intercontinental pipe lines. [Bill No. 98, 1975.]
10. Trailers, provided that any trailer allowed under this provision must be used or stored in accordance with the provisions of Paragraphs B, C, E, or F of Subsection 415.1 and Subsection 415.2A.1 as applicable. [Bill No. 98, 1975.]

- 10a. Antennas used by CATV systems operated by companies franchised under Title 2, Article VI, Division 2 of the Baltimore County Code 1978, if situated on property owned by the county, State, or Federal government or by a governmental agency. [Bill No. 220, 1981.]
11. Accessory uses or structures, including, but not limited to, the following: [Bill No. 98, 1975.]
 - a. Excavations, uncontrolled. [Bill No. 98, 1975.]
 - b. Farmer's roadside stand and produce stand, subject to the provisions of Section 404.4. [Bill No. 98, 1975; Bill No. 41, 1992.]
 - c. Home occupations. [Bill No. 98, 1975.]
 - [d. Offices or studios...: Repealed by Bill No. 124, 1982.]
 - e. Parking spaces including recreational vehicles (subject to the provisions of Section 415A). [Bill No. 98, 1975.]
 - f. Piers, wharves, docks, and bulkheads (subject to the provisions of Section 417). [Bill No. 98, 1975.]
 - g. Swimming pools, tennis courts, garages, utility sheds, satellite receiving dishes (subject to Section 429), or other accessory structures or uses (subject to the height and area provisions for buildings as set forth in Section 400). [Bill No. 98, 1975; Bill No. 71, 1987.]
12. Life care or continuing care facilities--subject to the provisions of Subsection 1A04.4. [Bill No. 6, 1984.]
13. Commercial film production, subject to Section 435. [Bill No. 57, 1990.]
14. Transit facilities. [Bill No. 91, 1990]
- B. Uses permitted by special exception. The following uses, only, are permitted by special exception in R.C.5 zones. [Bill No. 98, 1975.]
 1. Antique shops (subject to the provisions of Section 402B). [Bill No. 98, 1975.]
 2. Boat yards (see Section 417 & 101). [Bill No. 98, 1975.]

3. Camps, including day camps. [Bill No. 98, 1975.]

4. Cemeteries. [Bill No. 98, 1975.]

→ 5. Community buildings, swimming pools, or other uses of a civic, social, recreational, or educational nature, including tennis facilities, provided that no tennis facility shall comprise more than 4 courts. (see Section 406A). [Bill No. 98, 1975; No. 62, 1978.]

→ 5a. Community care centers provided that no residential community care center (i.e. a center which serves as the residence of the persons for whom care is provided) shall provide care for more than 15 persons per site, and no day community care center shall provide care for more than 15 persons per acre nor more than 75 persons per site. [Bills No. 142, 1979; No. 157, 1986.]

6. Excavations, controlled. [Bill No. 98, 1975.]

7. Fishing and shellfishing facilities, shoreline, Class I or II. [Bill No. 30, 1978.]

8. Golf courses, country clubs, or other similar outdoor recreation clubs. [Bill No. 98, 1975.]

8a. Home occupations of disabled persons, where the use is established in a structure originally constructed as a dwelling or as accessory to a dwelling or where the use is established in a structure that is situated on the same lot as a dwelling and which the zoning commissioner finds to be compatible with its surrounding neighborhood; provided that:

- (1) only three persons including the disabled person and the members of his immediate family who are residents of the dwelling are employed in the use on the premises; and
- (2) in any case the use is conducted by a disabled person whose domicile is the dwelling to which the use is accessory and whom the hearing authority finds is so severely disabled as to be unable to engage in his occupation away from the premises of his home.

Any provision of subsection 502.2 to the contrary notwithstanding, any special exception granted pursuant to this item shall expire upon the first to occur of the following:

- (1) five years after the issuance of the permit;
- (2) the death of the disabled person;
- (3) the termination of the disability; or
- (4) the failure of the disabled person to permanently reside at the premises.

A new special exception for the use may be granted when the previous special exception expires but only upon the completion of the entire application and hearing process in the same manner as if it were the initial application for this special exception. It is the purpose of this provision to prevent the use of residential property for business purposes by an occupant other than a disabled person and to ensure that any occupation permitted pursuant to this item will be conducted in a manner appropriate to its surroundings [Bill No. 27, 1981.]

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- 8b. Horticultural nurseries, subject to the provisions of Section 404.1 and 404.2. [Bill No. 41, 1992.]
 9. Marinas (See Section 417 & 101). [Bill No. 98, 1975.]
 - [10. Office of doctor or dentist. [Bill No. 98, 1975.] Deleted by Bill No. 37, 1988.]
 - 10a. Offices or studios of physicians, dentists, lawyers, architects, engineers, artists, musicians, or other professional persons as an accessory use, provided that any such office or studio is established within the same building as that serving as the professional person's primary residence; does not occupy more than 25 per cent of the total floor area of that residence; and does not involve the employment of more than one non-resident professional associate nor two other non-resident employees. [Bill No. 105, 1982.]
 11. Public-utility uses not permitted as of right, including underground interstate and intercontinental pipe lines. [Bill No. 98, 1975.]
 12. Rail passenger station, subject to Section 434. [Bill No. 91, 1990.]
 - [12. Research institutes (subject to the provisions of Section 418). [Bill No. 98, 1975; repealed by Bill No. 122, 1984.]
 13. Railroads or other transportation lines or ways. [Bill No. 98, 1975.]

14. Residential art salons (subject to the provisions of Section 402C). [Bill No. 98, 1975.]
15. Standard restaurants or tea rooms, converted from dwellings or other buildings as provided in Subsection 402.3. [Bills No. 98, 1975; No. 110, 1993.]
16. Riding stables (commercial or non-commercial). [Bill No. 98, 1975.]
17. Sanitary or rubble landfills (see Section 412). [Bills No. 98, 1975; No. 97, 1987.]
18. Schools, not permitted as of right. [Bill No. 98, 1975.]
19. Trailers (subject to the provisions of Section 415.1D). [Bill No. 98, 1975.]
20. Volunteer fire company or ambulance-rescue facilities. [Bill No. 98, 1975.]
21. Wireless transmitting and receiving structures, except that a radio antenna in conjunction with transmitting and receiving facilities used by a resident amateur radio operator possessing an amateur radio operator's license issued by the Federal Communications Commission shall be considered an accessory structure, or, if attached to another structure, an accessory use, and, as such, is permitted without a special exception, provided: (a) that if it is an accessory structure, it shall be subject to the provisions of Section 400; (b) that if it is a rigid-structure antenna, it shall be no higher than 100 feet or the horizontal distance to the nearest property line, whichever is less, above grade level, and no supporting structure thereof shall be closer than 50 feet to any property line; and, further, (c) that it does not extend closer to the street on which the lot fronts than the front building line. [Bill No. 98, 1975.]

1A04.3--Height and area regulations. [Bill No. 98, 1975.]

- A. Height regulation. No structure hereafter erected in an R.C. 5 zone shall exceed a height of 35 feet, except as provided under Section 300. [Bill No. 98, 1975.]
- B. Area regulations. [Bill No. 98, 1975.]

Section 1A05--R.C. 20 AND R.C. 50 ZONES [Bill No. 32, 1988.]

1A05.1--General Provisions [Bill No. 32, 1988.]

A. Legislative Findings [Bill No. 32, 1988.]

1. The Chesapeake Bay and its tributaries constitute a unique natural resource of great importance to the state and nation; [Bill No. 32, 1988.]
2. Because of the cumulative effects of human activity and development in and around the Chesapeake Bay and its tributaries, the assimilative capacity of the bay has become stressed, threatening biotic productivity, natural habitat, and water quality; [Bill No. 32, 1988.]
3. The restoration of the Chesapeake Bay is dependent upon limiting development and restricting land uses within the Chesapeake Bay Critical Area with the goal of conserving the land and water resource base; [Bill No. 32, 1988.]
4. Maintaining undeveloped or minimally developed land in its natural state is the preferred method of conserving the productivity of the land and water base of the Chesapeake Bay and its tributaries; [Bill No. 32, 1988.]
5. The county is obligated to enact zoning and other regulations for implementing the "Resource Conservation Area" requirement of the critical area criteria (Comar 14.15.02.05); [Bill No. 32, 1988.]
6. Enactment of new R.C. 20 and R.C. 50 zones is an appropriate part of the county's actions for fulfilling this obligation. [Bill No. 32, 1988.]

B. Purpose and Intent [Bill No. 32, 1988.]

The R.C. 20 and R.C. 50 zones are established to implement the Chesapeake Bay Critical Area Criteria, as promulgated and affirmed in compliance with the critical area law, and the Local Protection Program as approved by the Chesapeake Bay Critical Area Commission. Recognizing that the capacity of the critical area to withstand additional development

and still protect water quality and natural habitat is limited, the following regulations are adopted to: maintain the land and water resource base necessary to sustain the protective uses; conserve, protect, and enhance the biological productivity and diversity within the critical area; provide breeding, feeding and wintering habitat to sustain wildlife populations; and to conserve existing developed woodlands and forests for the water quality and habitat benefits they provide. [Bill No. 32, 1988.]

1A05.2--Table of Land Use Regulations [Bill No. 32, 1988.]

In the R.C. 20 and R.C. 50 zones, the letter "P" in the following table indicates a land use permitted by right in the respective zone(s), and the letters "SE" indicate a use permitted by special exception pursuant to Section 502.7: [Bill No. 32, 1988.]

A. Natural Resources and Agricultural Uses. {Bill No. 32, 1988.}	ZONE	
	R.C.20	R.C.50
1. Forests, and the management and conservation of forests, including harvesting or thinning of forest products in accordance with Title 38 of the Baltimore County Code. [Bill No. 32, 1988.]	P	P
2. Fish and wildlife preserves, propagation areas and the like, maintained and operated by a not-for-profit organization. [Bill No. 32, 1988.]	P	P
3. Wildlife propagation and hunting preserves, including preserves, operated with a use or admission fee. [Bill No. 32, 1988.]	SE	SE
4. Agriculture and agricultural uses including farms and limited acreage wholesale flower farms, produce stands, farmers' roadside stands, subject to the provisions of Section 38-23 of the Baltimore County Code. [Bills No. 32, 1988; No.41, 1992; No. 51, 1993.]	P	P
5. Farm market. {Bills No. 32, 1988; No. 41, 1992.}	SE	SE

6. Agricultural support services
including: [Bill No. 32, 1988.]

a. Farm machinery storage, sales and service, including blacksmithing. [Bill No. 32, 1988.]	SE	P
b. Feed or grain mills or driers. [Bill No. 32, 1988.]	SE	SE
c. Fertilizer sales or storage. [Bill No. 32, 1988.]	SE	SE
d. Sawmills. [Bill No. 32, 1988.]	SE	SE
e. Firewood operations. {Bill No. 151, 1992.}	SE	SE

7. Aquaculture, including the con-
struction and maintenance of
necessary equipment, buildings
and growing areas for the
hatching, cultivating planting,
feeding, raising and harvesting
of finfish, shellfish and other
aquatic plants and animals.
[Bills No. 32, 1988; No. 51, 1993.]

P P

→ 8. Commercial fisheries facilities,
subject to the provisions of
Section 417, and to Section 22-
218 of the Baltimore County Code.
[Bill No. 32, 1988.]

SE SE

9. Surface mining by controlled exca-
vation subject to the provisions
of Section 403. [Bill No. 32,
1988.]

SE SE

10. Horticultural nurseries {Bill No. 41,
1991.}

SE SE

B. Residential Uses [Bill No. 32, 1988.]

1. Dwellings, single family detached.
[Bill No. 32, 1988.]

P P

2. Trailers, subject to the provi-
sions in Section 415 pertaining
to trailers in R.C. 2 zones.
[Bill No. 32, 1988.]

SE P

3. Dwelling unit in conjunction with a permitted principal non-residential, non-agricultural use. [Bill No. 32, 1988.]	SE	SE
4. Customary home occupations, and home professional offices subject to the limitations specified in Section 1A01.2.C.12a. [Bill No. 32, 1988.]	P	P
C. Institutional, Public and Quasi-Public Uses [Bill No. 32, 1988.]		
1. Schools, including publicly or privately operated day care or nursery programs as an ancillary use of schools. [Bill No. 32, 1988.]	P	P
2. Streets and ways. [Bill No. 32, 1988.]	P	P
3. Telephone, telegraph, electrical power or other similar lines or cables--all underground; underground gas, water or sewer mains or storm drains; other underground conduits, except underground or interstate pipe lines. [Bill No. 32, 1988.]	P	P
3a. Transit facilities. [Bill No. 91, 1990.]	P	P
4. Public utility uses not permitted as of right, including underground or interstate pipe lines. [Bill No. 32, 1988.]	SE	SE
4a. Rail passenger station, subject to Section 434. [Bill No. 91, 1990.]	SE	SE
5. Research institutes, subject to the provisions of Section 417, and Section 22-218 of the Baltimore County Code. [Bill No. 32, 1988.]	SE	SE
6. Wireless transmission or receiving and relay facilities as a principal use. [Bill No. 32, 1988.]	SE	SE
7. Volunteer fire company and related rescue service facilities. [Bill No. 32, 1988.]	SE	SE

8. Commercial film production, subject to Section 435. [Bill No. 57, 1990.]

D. Recreational Uses [Bill No. 32, 1988.]

	1. Common open space, or other parks or land designed or intended principally for passive recreation. [Bill No. 32, 1988.]	P	P
→	2. Community piers, subject to the provisions of Section 417, and Section 22-218 of the Baltimore County Code. [Bill No. 32, 1988.]	P	P
→	3. Non-Commercial or not-for-profit water-dependent facilities other than community piers, subject to the provisions of Section 417, and Section 22-218 of the Baltimore County Code. [Bill No. 32, 1988.]	SE	P
→ →	4. Commercial water-dependent facilities subject to the provisions of Section 417, and Section 22-218 of the Baltimore County Code. [Bill No. 32, 1988.]	SE	SE
	5. Publicly-owned and operated water-dependent facilities, including beaches; public water-oriented recreation or education areas, including boat launching, docking and fishing piers; waterfront passive recreation areas; and research facilities, subject to the provisions of Section 417, and Section 22-218 of the Baltimore County Code. [Bill No. 32, 1988.]	P	P
	6. Non-commercial riding stables. [Bill No. 32, 1988.]	SE	SE
	7. Transient or temporary recreational activity such as carnival, circus, fair or the like provided that no premises shall be used for such activity for more than 14 days in a single year. [Bill No. 32, 1988.]	SE	P
	8. Camps, including day camps. [Bill No. 32, 1988.]	SE	SE

9. Golf course, country clubs, or other similar outdoor recreation clubs. [Bill No. 32, 1988.]	SE	SE
10. Shooting ranges. [Bill No. 32, 1988.]	SE	SE
E. Non-Recreational Water-Dependent Facilities Subject to the Provisions of Section 417, and Section 22-218 of the Baltimore County Code [Bill No. 32, 1988.]	SE	SE
F. Accessory Uses [Bill No. 32, 1988.]		
1. Buildings, structures, and uses accessory to agriculture, including, but not limited to, barns, silos, stables, feed yards; farmers' roadside stands; produce stands, tenant houses, including trailers used as tenant houses. [Bill No. 32, 1988; Bill No. 41, 1992.]	P	P
2. Buildings, structures, and uses accessory to residential use, including home occupations as defined in Section 101; home professional offices subject to the limits specified in Section 1A01.2.B.7.d; radio antennae subject to the limits specified in Section 1A01.2B.7.g; further including but not limited to swimming pools, tennis courts, garages, storage sheds and the like. [Bill No. 32, 1988.]	P	P
3. Other customary or required accessory buildings, structures and uses including parking areas; uncontrolled excavations as defined in Section 101A; private, non-commercial piers, wharves, and buildings subject to the provisions of Section 417. [Bill No. 32, 1988.]	P	P
G. Other Uses Substantially Similar in Character and Impact to the Uses Ordinarily Permitted by Right or by	SE	SE

9-17-95

IN RE.:	*	BEFORE THE
PETITION FOR SPECIAL EXCEPTION	*	COUNTY BOARD OF APPEALS
N/S POPLAR ROAD, 820 FEET EAST OF	*	OF
C/L LORDS ROAD, 2120 POPLAR ROAD	*	BALTIMORE COUNTY
15th ELECTION DISTRICT	*	Case No. 95-46-XA
5th COUNCILMANIC DISTRICT	*	
WILLIAM H. WILSON, et ux,	*	
PETITIONER	*	
* * * * *		

PETITIONER'S MEMORANDUM

William H. Wilson, by J. Carroll Holzer and Holzer and Lee, hereby submits this Memorandum as requested before the County Board of Appeals in Lieu of Final Argument.

STATEMENT OF THE CASE

This matter comes before the County Board of Appeals by way of an Appeal by the Protestants from a decision of the Baltimore Zoning Commissioner granting a Petition for Special Exception to permit a marina with twelve (12) slips and further granting variances pursuant to Sections 417.3.a and 417.3.b and 417.4 of the Baltimore County Zoning Regulations. Protestants entered a timely appeal, and Protestants represented by People's Counsel appeared before the Board.

In the interim between the Zoning Commissioner's decision of October 13, 1994, and the Board's hearing on May 2, 1995, the Petitioner amended the Petition for Special Exception to request permission for a marina of twelve slips, or, in the alternative, find a legal non-conforming use pursuant to the Baltimore County Board of Appeals Case No. 74-9-V for a six-slip marina and an additional six slips by way of Special Exception for a total of

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twelve slips. As a result of the reduction in requested slips, the variances were no longer necessary, and the request for variance, even though approved by the Zoning Commissioner, was dismissed by the Petitioner.

STATEMENT OF FACTS

The subject property is located on Sue Creek in the Middle River area of Baltimore County. The property is owned by William H. Wilson and wife, is zoned RC-5, and is 0.488 acres in area. The site abuts Poplar Road to the south, and Sue Creek to the north, as shown on Petitioner's Exhibit Number One. The property is improved by an existing garage next to Poplar Road with a concrete patio area and a bituminous paved parking area which can support seven spaces, as well as an existing driveway and a parking area between the garage and dwelling, which permit an additional two parking spaces. The property has been improved by a one-and-a-half story A-frame dwelling in which the Wilsons reside. A restored bulkhead abuts Sue Creek to the north of the site, leading to a T-shaped pier and moorings adjacent thereto. The pier, including the T, extends 130 feet from the bulkhead into Sue Creek, with an additional 34 feet consisting of finger piers emanating from the T pier. There are four internal slips on the T and one external slip providing whip mooring on the west side. On the west side of the stem of the pier, there are two slips, and on the east side, there are five slips, including a boat lift, for a total of twelve slips currently existing on the pier. The property is more

particularly described and shown on Petitioner's Exhibit Number One, the revised plat to accompany Petition for Special Exception.

LEGAL ARGUMENT AND EVIDENCE

A. Petitioner's Case

The Petitioner submitted before the Board the following exhibits which indicated approval of this request by Baltimore County:

1. Mr. Wilson, when he acquired the property in 1980, sought and obtained Baltimore County's permission to change the existing pier configuration (Petitioner's Exhibit 9A and 9B). Mr. Wilson made no effort to conceal his intentions or not comply with the regulations. In fact, the testimony of Jim Patton was to the effect that the Corps of Engineers' file contains the approval for that pier configuration. Mr. Wilson's testimony also was that he obtained Corps' permission at that time in 1980.
2. The Holly Neck Improvement Association in 1992 executed a Restrictive Covenant Agreement on behalf of their association with Mr. Wilson, for a marina of seventeen slips (Petitioner's Exhibit Number 10).
3. Baltimore County Department of the Environment (DEPRM) in Exhibit #3 indicated their approval of at least a nine-slip marina. The testimony of Mr. Wilson and Mr. Patton indicated that DEPRM will be approving a twelve-slip marina for this site.

4. Jack Dillon in Petitioner's Exhibit Number #4 indicated that in his opinion this site was the same site as that indicated in the previous Board decision, cited as Case No. 74-9V. Dillon also expressed the improved nature of Wilson's efforts on this location.
5. Petitioner's Exhibit Number 5 indicates that the Planning Office was not opposed to and did in fact approve a marina for seventeen slips. Of course, this has since been reduced to twelve.
6. The Corps of Engineers has indicated their approval of the existing pier if Mr. Wilson in fact amended the pier subject to their order (Petitioner's Exhibit #11). The testimony of both Patton and Wilson is that he has complied completely with the Corps of Engineers' Order. No evidence was presented by the Protestants to the contrary.
7. Petitioner presented the letter of Mr. Hutton, property owner immediately adjacent on the west side, who indicated no objection to the proposed marina (Petitioner's Exhibit Number 8).
8. The testimony of Mr. Jones, the immediate neighbor to the east, was that he had no opposition to Petitioner's request. The next easterly property owner is Mr. Carroll Huffines, Sr., whose letter was introduced, indicating no objections (Petitioner's Exhibit Number 16). Finally, the letter of Mr. Pullara, Jr., who owned the property immediately adjacent to

the Burkes', likewise indicated no objection to the request (Petitioner's Exhibit #15).

The Petitioner presented the following testimony and exhibits during the course of the hearing:

Mr. Wilson testified that he acquired the property in 1980 and he produced photographs (Petitioner's Exhibit 6-1 through 6-5) which established that the property was in a state of great disrepair at the time of his acquisition as a boat yard, marina, yacht club, and the site of professional crabbing operations. Photographs submitted show the dilapidated condition of the property. The site was improved at that time by a pier which extended into Sue Creek. From this pier, commercial operations were conducted for a marina which the Board of Appeals in Case No. 74-9-V found a legal non-conforming use existed for "approximately six slips" and for a marine railway. Wilson testified that at the time he acquired the property there were slips on the pier for ten to twelve boats. He testified that the marine railway was in operating condition, and he further testified that he began to improve the property. By 1985, he had twelve slips at his pier constructed after the Baltimore County approval in 1980. These twelve slips predate the enactment of the Baltimore County regulations as they relate to the Chesapeake Bay Critical Area legislation. The photographs depicted and the testimony was un rebutted that in the summer of 1985, twelve slips existed on the Wilson property. Wilson further testified that he cleaned up the property with four to six truckloads of trash and debris and

reconstructed the existing dwelling to the A-frame that currently exists, that he cleaned up the garage area, and repaired the pier which was in existence subject to the Baltimore County permit which he obtained in 1980 and the Corps of Engineers approval. In 1992 he entered into a Restrictive Covenant Agreement with the Holly Neck Community Association that he intended to ask for and to have no more than seventeen slips on his pier. He also agreed with them not to have various activities on the site, with which he has complied. Wilson further testified that the current operation includes twelve slips and that there have been approximately six sailboats and three power boats on the site. The largest sailboat does not exceed thirty-two (32) feet (owned by Wilson), and most of the sailboats are in the mid-twenty foot range; the power boats are between nineteen (19) and twenty-four (24) feet. Wilson testified he has been operating for fifteen years without any complaints from the neighbors. He provides rest room facilities only in his house by way of a special entry for the boat owners.

In 1980 Wilson testified that he did not extend the pier out into Sue Creek any farther than it had been under its previous occupant, but that he did add fifteen feet of decking and reduce the end slips from fifty feet to thirty-five feet. Wilson testified that he is careful to whom he rents on his property, as was illustrated by the witnesses that ultimately appeared and testified on his behalf.

Wilson further testified that he voluntarily removed the marine railway and crane in 1986. Wilson testified that he presently maintains two of his boats in the slips, one sailboat and one powerboat. He testified that most of his tenants are weekend sailors who rarely use their boats. Wilson testified that he does not intend to provide for sales of any kind, repairs or service on any of the boats, nor does he sell gasoline. The sole land facility provided for the renters is a rest room.

Wilson further testified that at the time of the Zoning Commissioner's hearing he was on a septic system. The county has since extended sewer and water to his property, and he is currently connected to the county sewer system.

Since the Zoning Commissioner's hearing, Mr. Wilson has corrected his pier to be in compliance with the Corps' request. He has removed the pilings as requested by the Corps, he has eliminated a slip on the end pier on the eastern side to which the Burkes objected at the Zoning Commissioner's hearing. His neighbor, Mr. Dees who objected at the Zoning Commissioner's hearing has since sold the property to Mr. Hutton who by letter indicated he has no objection. In fact, Mr. Hutton has removed a piling which was previously within the property line of Mr. Wilson and has removed the decking on his own pier and is satisfied with the existing operation. Mr. Wilson also testified that he removed eighteen feet of finger pier on the east side of the T in further compliance with the Corps' request, as well as removing finger piers on the east side of the existing stem of the pier as per the

Corps' request. He testified that the twelve slip marina is today the same as it was five years ago when the Burkes acquired their property in 1990. As a matter of fact, he testified that the twelve slips is the same number in existence in 1985 before the Chesapeake Bay Critical Areas legislation.

The Petitioners then presented the testimony of the principal of Sparks Elementary School, Thomas Ellis, Mr. Steve Kaiser, and Mr. Tim Fisher, all of whom were extremely impressive witnesses who testified as to their limited use of their boats at the Wilson marina as well as the nature of the community and the maintenance of the property by Wilson. Mr. Harry Kramer a property owner immediately to the south of the Wilson property, testified as to the horrendous situation that existed there in 1979 prior to Mr. Wilson's acquisition of the property. Mr. Kramer used a number of superlatives to describe the difference between the property as it existed in 1979 and the changes brought by Mr. Wilson to the property. The Board itself can see the difference between the photographs of the old and new conditions as it presently exists on the subject site.

In addition, Mr. Kramer submitted as Petitioner's Exhibit Number 12 his affidavit which was un rebutted and undisputed that the marina has existed continuously on the site with the pier and slips for rent since prior to 1945. There has been no evidence to the contrary to indicate that any hiatus or interruption to the operation of this property as a marina existed either before 1974 when the Board heard the first case or since 1974 to the present

when this Board took testimony. The Protestants have intimated that there was a cessation of the operation; however, they presented no evidence that there was in fact any hiatus or interruption of the non-conforming use. To the contrary, Petitioners, through the affidavit of Mr. Kramer, have established to the extent necessary under the law the fact that it has continually operated as a marina with slips for rent since before 1945 (Petitioner's Exhibit Number 12).

The Petitioners in addition presented as previously stated letters from adjoining neighbors Huffines, Stones, and Pullara as to their support.

PROTESTANTS' CASE

The Protestants' case consisted of the testimony of Mr. and Mrs. Burke as the only neighbors in any close proximity who objected to this Petition for Special Exception. Their objections centered on their inability to take their sixteen foot rowboat out into Sue Creek. The Board is capable of examining the photographs and heard the testimony about this matter. Petitioners submit that the alleged inability of Mrs. Burke to utilize an over fifty-foot entrance between the Pullara pier and the Wilson pier belies the fact that Mr. Jones is easily capable of getting a twenty-six foot sailboat in and out of his pier as he testified. Patton's testimony was further unrebutted that the site was clearly accessible to boats such as the sixteen foot motorboat and sixteen foot speed boat of Mrs. Burke.

Mrs. Burke's testimony lacks credibility in face of other testimony. In a number of other respects she underestimated the length of her pier as being less than half its actual size; she underestimated the distance from her property to the Wilson property by seventy-five feet; she alleged a lack of any detailed knowledge of three commercial operations/marinas currently existing on Sue Creek, namely, the Sue Creek Boatyard, which is 550 feet from her property, the Red Eye Yacht Club, which is 800 feet from her property, and John Bahel's marina, which is 1900 feet from her property.

Mrs. Burke, after complaining about parking and traffic access behind the Wilson property on Poplar Road, acknowledged on cross-examination that she did not even use that section of Poplar Road to gain access to her property. She testified on cross-examination that it dead-ended at the Wilson site and that she used Silver Lane to access her property and never even used the Poplar Road section behind Wilson's.

The Protestants' case was further presented by Carl Maynard, who does not live in the area but who was testifying on behalf of the Back River Neck Peninsula Community Association. He introduced the Community Plan marked as People's counsel Exhibit Number Fourteen. Petitioners would suggest that that study was done in 1993, almost thirteen years after Mr. Wilson's operation began at the subject site. Certainly, Mr. Wilson's pier and operation should not be considered a "bootleg marina" as suggested by Mr. Maynard. In addition the current use of the twelve slips would not

bring increased boat traffic as suggested by Mr. Maynard because that boat traffic was already there in the early 1980's as a result of this operation, so the increased boat traffic that is suggested in the 1993 area study already included the operations of Mr. Wilson. In addition, Petitioners would suggest that this study was simply that, a plan, and it did not eliminate the legal authority for this Board to grant a Special Exception.

In addition, the Protestants suggested some sort of vague environmental concern as a result of this marina; however, they have presented no specific evidence from any experts or qualified individuals as to an environmental problem with this operation. In fact, the most that the Protestants could come up with in terms of evidence was the vague testimony of Mrs. Burke that as boats utilize these slips, the water may be "cloudy." To counter that evidence, Petitioners would suggest that the Corps of Engineers is the ultimate authority on this issue and the Corps has approved this plan requested by the Petitioner. Secondly, DEPRM has approved this plan as submitted by the Petitioners.

The testimony of Richard Schroeder was so unworthy of being believed as to not need comment in this memorandum. His testimony regarding the subject site as it existed prior to 1979 was obviously motivated by his antagonism to Mr. Harry Kramer who testified in regard to the problems that he had with the Key Yacht Club and the fact that Mr. Schroeder was a member of the Key Yacht club was a fact not lost by the Board.

LEGAL ARGUMENT

Petitioners submit as to the non-conforming sue of the six-slip marina that the Petitioners have clearly established by the submission of the previous Board case in 1974 that as of 1974 a non-conforming use had existed for approximately six slips as well as a marine railway and crane. While the Petitioner voluntarily abandoned the use of the railway, there is no evidence that the marina for six slips has been abandoned. On the contrary, the affidavit of Mr. Harry Kramer stands unrebutted as a basis for the continuous use of this site as a marina with slips for rent. To the present, no evidence has been presented to the contrary; no allegations have been made that a year of abandonment has existed, nor was there any proof submitted by way of exhibits or testimony that in fact the non-conforming use had been abandoned. Therefore, Petitioners respectfully request that this Board find that a non-conforming use for a marina for six slips has continued.

In the alternative, Petitioners would respectfully request that the Board grant a Special Exception for a twelve-slip marina to the Petitioner on the basis that Section 502.1 has been complied with. It is clear that the testimony of Mr. Wilson and the testimony of Jim Patton have established all of the necessary elements of the granting of the Special Exception pursuant to Section 502.1. At this point it is suggested that it is not necessary to summarize all of the testimony concerning the elements of Section 502.1, but witnesses William Wilson and James Patton touched on and explained their reasons for their opinions that

there would be no harm or danger as a result of the Board's approval of this Petition for Special Exception.

People's Counsel, on the other hand, has in some way attempted to establish that a Special Exception should not be granted in that the site is unique by being on Sue Creek. The People's Counsel has not submitted any evidence by way of testimony, any experts, or any individuals qualified to establish that this site is in fact unique in any way from the hundreds of miles of shoreline that currently touch the water in Baltimore County. In fact, the Sue Creek is not unique in having approved boatyards as evidence by the three marinas that are currently within a thousand feet of the subject site. In addition, the People's Counsel has failed to provide any evidence for this Board to consider other than the opinions of the residents so testifying that there is any negative environmental impact of this particular marina, the subject of this request. On the contrary, the Petitioner has established through the Corps of Engineers permit and DEPRM that no such negative environmental impact exists or threatens to exist.

In addition, there have been vague allegations that somehow this marina will interfere with a County park on the far side of Sue Creek known as Pottery Farm Park. The People's Counsel failed to even identify that location on the map for the benefit of the record, but it would be pointed out that in the photographs submitted by all parties it can not be seen in those photographs from this site. In addition, other than the vague allegation that there may somehow be some harm if the specific allegations were not

even testified to by the People's Counsel's witnesses. At this point it is unclear how the operation of this marina can negatively impact the Pottery Farm Park, if, in fact, it can.

On examination of People's Counsel's exhibit numbers four through eighteen which were presented to the Board, there is nothing in any of those exhibits which in any way negates the ability of this Board to grant this Special Exception as requested.

Petitioners submit that this site has been an existing marina since the 1940's; it had an extremely negative impact on the community prior to Mr. Wilson's acquiring it, and that the marina has continued to exist in this location and in this neighborhood for over fifty years. Petitioners would also suggest that at the present time with the limitations agreed to by Mr. Wilson, that the subject property is the best it has looked in many, many years and that it is not contributing to any environmental degradation at the subject location. Finally, there have been allegations of potential property devaluation; however, no experts have been presented to testify as to the degree of loss sustained nor did the witness specify the amount of devaluation. Petitioners suggest that in fact the reality is that the improvements on the subject site by Mr. Wilson more than enhanced the value of the property of the Protestants' witnesses who testified.

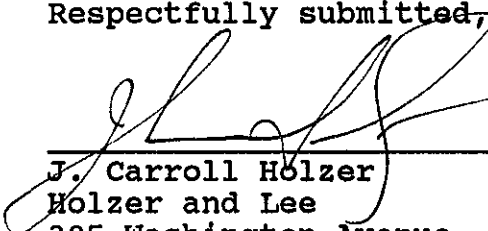
In fact, in the whole case of the People's Counsel and Protestants, there is no substantive evidence in regard to traffic problems, environmental problems, non-conforming use abandonment, nor evidence of diminished property values. In addition, there is

no evidence at all to support the denial of a Special Exception under the criteria of Section 502.1, nor is there evidence that this property is unique in any fashion. The Court of Special Appeals in Anderson v. Sawyer, 23 Md. App. 612, supports the proposition that the general approval by the county Council of marinas being permitted by way of Special Exceptions in the RC-5 zone "can not be overcome unless there are strong and substantial existing facts or circumstances showing that the particularized proposed use has detrimental effects above and beyond the inherent ones ordinarily associated with such use(s)...Consequently, the bald allegation that a funeral home use is inherently psychologically depressing and adversely influences adjoining property values...is insufficient to overcome the presumption that such a use promotes the general welfare of a local community. Because there were neither facts nor valid reasons to support the conclusion that the grant of the requested Special Exception would adversely affect adjoining and surrounding properties in any way other than would result from the location of any funeral home in a residential zone, the evidence presented by the Protestants was in effect no evidence at all" (emphasis supplied) (at page 625).

Petitioner here submits that the testimony of the Protestants constituted no evidence at all as it related to the issues contained within the Baltimore County Zoning Regulations, Section 502.1.

Therefore, Petitioners respectfully request that the County Board of Appeals grant the Special Exception for a twelve-slip marina as requested.

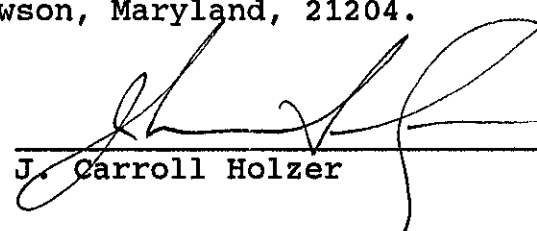
Respectfully submitted,



J. Carroll Holzer
Holzer and Lee
305 Washington Avenue
Suite 502
Towson, Maryland 21204
(410) 825-6961
Attorney for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the 17th day of May 1995, a copy of the foregoing Petitioner's Memorandum was mailed, postage pre-paid, to Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, Office of People's Counsel, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland, 21204.



J. Carroll Holzer

3-13-95

RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
PETITION FOR VARIANCE		
N/S Poplar Road, 820' E of c/l	*	COUNTY BOARD OF APPEALS
Lourdes Road (2120 Poplar Road)		
15th Election Dist., 5th Councilmanic	*	OF BALTIMORE COUNTY
WILLIAM H. WILSON, et ux	*	CASE NO.: 95-46-XA
Petitioners		
* * * * *		

AFFIDAVIT OF SERVICE

I HEREBY CERTIFY that on the 13th day of March, 1995, I served copy of the attached Subpoena upon MS. SANDRA MUES, Enforcement Officer, U.S. Army Corps of Engineers, 10 S. Howard Street, Baltimore, MD 21201, via United States First Class Mail. Said Subpoena directed said witness to personally appear and produce documents (any and all files, documents, etc. pertaining to WILLIAM H. WILSON, 2120 POPLAR ROAD, BALTIMORE, MD 21221, including but not limited to the entire contents of files regarding alleged violations by said William H. Wilson of Section 10 - River and Harbor Act of 1899, and of Section 404 Clean Water Act) before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Tuesday, May 2, 1995, at 10:00 a.m. in Room 48 Basement, Old Courthouse, 400 Washington Avenue, Towson, MD 21204, and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.



CAROL A. FISHER
Legal Secretary II
People's Counsel for Baltimore County
Room 47, Courthouse
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

COUNTY BOARD OF APPEALS

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RE: PETITION FOR SPECIAL EXCEPTION * BEFORE THE
 PETITION FOR VARIANCE *
 N/S Poplar Road, 820' E of c/l * COUNTY BOARD OF APPEALS
 Lourdes Road (2120 Poplar Road) * OF BALTIMORE COUNTY
 15th Election Dist., 5th Councilmanic *
 WILLIAM H. WILSON, et ux * CASE NO.: 95-46-XA
 Petitioners *
 * * * * *

SUBPOENA

Please issue a Subpoena to the following named witness to personally appear and produce documents before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Tuesday, May 2, 1995, at 10:00 a.m. in Room 48 Basement, Old Courthouse, 400 Washington Avenue, Towson, MD 21204, and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

WITNESS: MS. SANDRA MUES
 Enforcement Officer
 U.S. Army Corps of Engineers
 10 S. Howard Street
 Baltimore, MD 21201

Documents to be brought to said hearing by said witness are: Any and all files, documents, etc. pertaining to WILLIAM H. WILSON, 2120 POPLAR ROAD, BALTIMORE, MD 21221, including but not limited to the entire contents of files regarding alleged violations by said William H. Wilson of Section 10 - River and Harbor Act of 1899, and of Section 404 Clean Water Act.



PETER MAX ZIMMERMAN
 People's Counsel for Baltimore County
 Room 47, Courthouse
 400 Washington Avenue
 Towson, MD 21204
 (410) 887-2188

The witness named above is hereby ORDERED to so appear before the County Board of Appeals. The Board requests () the Sheriff, () Private Process Server, to issue the Summons set forth herein.


 COUNTY BOARD OF APPEALS
 OF BALTIMORE COUNTY

Cost: \$ _____ }
 Summoned: _____, 19____ } SHERIFF OF BALTIMORE COUNTY
 Not Served: _____, 19____ }

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IN RE: PETITIONS FOR SPECIAL EXCEPTION * BEFORE THE
 AND ZONING VARIANCE
 N/S Poplar Road, 820 ft. E of * ZONING COMMISSIONER
 c/l Lourdes Road
 2120 Poplar Road * OF BALTIMORE COUNTY
 15th Election District
 5th Councilmanic District * Case No. 95-46-XA
 William H. Wilson, et ux
 Petitioner *

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Special Exception and Petition for Zoning Variance for the property located at 2120 Poplar Road in the Lower Back River Neck section of Baltimore County. The property is a waterfront property, with frontage on Sue Creek.

As to the Petition for Special Exception, relief is requested to allow a marina with 17 slips or, in the alternative, confirm the nonconforming use of the site as a marina with 6 slips pursuant to the Board of Appeals findings in case No. 74-9-V and permit an intensification of the said use by 11 slips, resulting in a total number of slips of 17.

As to the Petition for Zoning Variance, relief is requested from Sections 417.3.A & B and 417.4 of the Baltimore County Zoning Regulations (BCZR), so as to allow for mooring within 10 ft. of divisional lines based upon pre-existing bulkheads and piers rather than straight or regular shorelines. The subject property and requested relief are all as more particularly shown on Petitioners' Exhibit No. 52, the plat to accompany the Petitions for Special Exception and Zoning Variance.

Appearing at the requisite public hearing held for this case was the property owner/Petitioner, William H. Wilson and his wife, Laura Stern Wilson. Numerous individuals appeared in support of the Petition. Some of these individuals were renters of slips at the Wilson Marina and others were residents of the locale. Also appearing in support of the Petition

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was James Patton, an engineer/land use consultant who prepared the site plan. The Petitioner was represented by J. Carroll Holzer, Esquire. Numerous individuals also appeared in opposition to the request. These include Wayne and Donna Berk of 2200 Poplar Road, Rodney and Julia Dize who own property next door, Carl Maynard from the Back River Neck Community Association and David A. Kline. Also, a significant volume of correspondence, including both letters and Petitions, were received in support of and in opposition to the subject Petitions.

The owner of the subject property, William H. Wilson, testified and described the property and its history in great detail. The subject site is zoned R.C.5 and is .488 acres in area. As noted above, the site abuts Poplar Road to the south and Sue Creek to the north. On the south side of the site next to Poplar Road, there exists a garage, a concrete patio area and a bituminous paved parking area which can support 9 motor vehicles. The center of the site is occupied by 1-1/2 story A-frame dwelling in which the Wilsons reside. A restored bulkhead abuts Sue Creek to the north of the site leading to a T shaped pier which extends into that waterway. The farthest portion of the pier and moorings adjacent thereto extends approximately 130 ft. into Sue Creek. As noted above, the property is more particularly described and clearly shown on Petitioners' Exhibit No. 52, the site plan.

Mr. Wilson further testified that he acquired the property in 1980. He produced photographs of the site taken around that time which corroborated his testimony that the property was in a great state of disrepair at the time of his acquisition. Prior to that time, the tract was used as a boat yard, yacht club and the site of a professional crabbing operation. Photos submitted of the site at that time show dilapidated conditions throughout the property. The site was also improved at that time by a pier which

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extended into Sue Creek. It was from this pier which the above described commercial operations were conducted and apparently which the Board of Appeals concluded a 6 slip marina existed as a nonconforming use in 1974.

Since his acquisition of the property, Mr. Wilson has significantly upgraded and improved same. It is clear that he has invested significant sums in the restoration of the property and the photos of the site's present condition show a well maintained, attractive property. Mr. Wilson is truly to be commended for the improvements that he has made in restoring this site.

Part of his restoration efforts included an extensive renovation of the existing improvements on the site and the construction of an attractive A frame dwelling. Moreover, the bulkhead was upgraded and improved and landscaping was installed. In 1980, Mr. Wilson also upgraded the pier. His testimony regarding the pier and its present and past capacity was at times inconsistent. However, the following can be surmised from the evidence presented. The pier, in 1974, could accommodate 6 slips, pursuant to the Board of Appeals findings in their Order issued at that time. When Mr. Wilson acquired the property, only two boats were on site. Thus, it can be argued that the 6 slip nonconforming use was abandoned by the prior owner.

In any event, upon his acquisition, Mr. Wilson improved the pier. In 1980, he extended same into Sue Creek by 15 ft. However, this extension did not actually cause additional interference with the navigable waters of Sue Creek, in that the outer most slips were contemporaneously reduced from a 50 ft. depth to a 35 ft. depth.

Mr. Wilson also testified that although 6 slips existed when he acquired the site, another 6 to 7 boats could be accommodated by mooring same to the outside of the pier. Moreover, he testified that he added 5 slips in 1990, which apparently brings the current number of slips to 17. He

also stated that he concurred with an analysis of the history of the site by the Department of Environmental Protection and Resource Management (DEPRM) which included that 9 slips existed at the time of the enactment of the Chesapeake Bay Critical Area legislation on 12/1/85. Lastly, he confirmed that the present configuration of the pier as shown on the site plan, but for noting that there are 6 deep water slips (4-1/2 ft. low tide) at the end of the pier, rather than the 7 shown.

Mr. Wilson acknowledged on cross examination that not all of the required permits were obtained when the pier was upgraded. As to the use of the site, the property is presently maintained as Mr. and Mrs. Wilson's dwelling, as well as a marina. As shown on the site plan, 17 slips are available on the pier. Mr. Wilson testified that he presently rents 12 of the slips and maintains two of his boats from this property. Three slips are not in use at the present time. Moreover, 8 sailboats and 6 powerboats are presently moored at the property. In describing the marina operation, Mr. Wilson noted that most of his tenants are weekend sailors who rarely use their boats. He has removed the marine railway which at one time existed on the property which allowed for launching of boats from the shore. Moreover, there is no lift for the boats to be removed from the water except for a single lift used to hoist his boat in bad weather. Moreover, the marina operation does not provide for sales or repairs of boats. The marina does not sell gasoline and the sole land facility provided for the renters is a restroom within the dwelling which can be utilized by renters and guests. Mr. Wilson also testified that he has had his septic system checked twice since his ownership of the property (1980 and 1992) and same was found to be properly operated by representatives from DEPRM.

Mr. Wilson also testified about the legal history of the site. Introduced as Petitioner's Exhibit No. 4 is a copy of a Board of Appeals opinion

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By J. J. [Signature]

authored in 1975. As noted above, the Board ruled that the marina railway and docks for approximately 6 boats on the then existing pier was a legal nonconforming use. The marina railway has been removed for many years and has clearly been abandoned.

As noted above, the Petitioners now come before me seeking alternative relief; either approval of the 17 slip marina under the special exception or a confirmation of the 6 slip marina under the authority of the nonconforming use, with an additional 11 slips pursuant to the Petition for Special Exception. In view of the abandonment of the railway, the possible abandonment of the active use of 6 slips by the prior owner, and disfavor upon which expansion of nonconforming uses is to be considered, I will deny any relief requesting expansion of the nonconforming use.

Testimony was also received from several renters of slips at this facility. Among those testifying was Thomas Ellis, Timothy Fisher and Heinz E. Oest. Mr. Ellis testified that he has rented his slip for approximately 10 years. He indicated that he has never had a parking problem or access problem when visiting the site. He stated that he uses his boat on an infrequent basis and testified that he has always found the property well maintained. Mr. Ellis' comments were echoed by Mr. Fisher. He corroborated the testimony offered by Mr. Wilson and stated that the marina is well maintained and not a detriment to the surrounding locale. Mr. Oest, a former renter, testified that although he no longer maintains a boat on the property, his son rents a slip at the present time. He corroborated the testimony given by Mr. Ellis and Mr. Fisher as to the use of the site.

Also testifying was Francis H. Kreamer who lives across Poplar Road from the subject site. He has resided in this area since the 1960s and has been familiar with this portion of the County since his childhood in the 1920s. He testified about the previous use of the site prior to Mr. Wil-

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By

M. J. Hark

son's acquisition. He corroborated that the property at that time was in a state of disrepair and was the scene of loud parties which were disruptive to the peaceful enjoyment of the neighborhood. He supports Mr. Wilson's use and applauds the Petitioner for the efforts that he has made in rehabilitating and restoring the property.

Lastly, James S. Patton, a professional engineer, testified on behalf of the Petitioner. He addressed the legal requirements contained in Sections 417 and 502.1 of the BCZR as they relate to the proposed use. He also described the history of the pier, including its appearance in the 1950s, an addition thereto in 1961 and Mr. Wilson's additional construction in 1980. Mr. Patton testified that, although Mr. Wilson extended the pier further into Sue Creek, the location of the mooring of water craft was not appreciably different because of the reduction in the depth of the slips.

Mr. Patton also testified extensively about the subject variance and the County's methods for determining proper setbacks as shown by the illustration in Appendix J of the BCZR. Mr. Patton computed the setbacks as measured from the outer most slips, which utilize whip moorings. On the west side, towards the Dize property, the outer most slip extends 9 ft. into the required 10 ft. divisional line setback. On the east side, towards the Jones property, the slip extends 3-1/2 ft. into the 10 ft. divisional setback distance. These distances and requested variances are clearly shown on Petitioner's Exhibit No. 52, a colorized plan showing how the divisional lines were computed and their location relative to the pier and moorings.

Mr. Patton also testified that he believes the present use of the site is not detrimental to the health, safety and general welfare. In his view, the boat traffic produced from the site is minimal and significantly less than would be produced if the original marina railway device was still in

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Date 10/3/90
By [Signature]

place. Moreover, Mr. Patton observed that Mr. Wilson offers limited services to his renters and that no repairs or sales are performed on site.

Testimony was also received from a number of Protestants. These included Wayne Berk who resides nearby at 2200 Poplar Road. He testified that his site will be adversely affected if Mr. Wilson continues to use the property as a 17 slip marina. He believes there is inadequate parking for automobiles and that the pier blocks his access to Sue Creek. These comments were corroborated by Rodney Dize who owns the property immediately next door. Although Mr. Dize does not presently reside on the site, he plans to move there. He believes that the Wilson pier is inappropriate and that the special exception for the marina should be denied.

Also testifying was Carl Maynard on behalf of the Back River Neck Community Association. He described the poor condition of Sue Creek and the stress which the natural resources in the area are under. The water is presently unsafe due to pollution and much aquatic life has disappeared from the creek. This is partly blamed on the abundance of boats in the area. Mr. Maynard also noted and introduced into evidence the lower Back River Neck Community Action Plan which was adopted by the Baltimore County Council on October 18, 1993. This plan calls for the elimination of all bootleg and illegal marinas as part of an effort to restore the waterways in this area.

Lastly, testimony was received from David A. Klein who also opposes the marina. He supports the comments offered by Messrs. Berk, Dize and Maynard.

The issues presented are difficult. From the testimony and evidence offered, it is clear that Mr. Wilson has rehabilitated a neglected and abused property and that the improvements that he has made to this site have upgraded the entire area. The testimony of Mr. Kremer, a long time

ORDER RECEIVED FOR FILING
Date 10/13/94
By [Signature]

resident, was particularly telling on this point. As Mr. Kreamer noted, the property use before Mr. Wilson's acquisition was detrimental to the entire neighborhood. In this respect, Mr. Wilson's rehabilitative efforts on the site are to be applauded. On the other hand, the intent of the County Council, by its adoption of the lower Back River Neck Community Action Plan is clear. The Chesapeake Bay and its tributaries are severely stressed. A leading contributor to the stress on these natural resources is the heavy boat traffic volumes on the bays tributaries. The Council's intent is clear that illegal marinas are to be eliminated.

As to the Petition for Special Exception, same must be adjudged within the standards set forth in Section 502.1 of the BCZR. A special exception is a use which has been predetermined by the Baltimore County Council to be conditionally compatible with the uses permitted as of right in a given zone. See Rockville Fuel and Feed Company, Inc., v. Board of Appeals of the City of Gaithersburg, 257 Md. 183, 262 A.2d 499 (1970). The Zoning Commissioner must decide under the specific standards set forth in Section 502 of the BCZR, whether the presumptive compatibility does exist in this case. The Commissioner must decide if there are any unique factors which would adversely affect the surrounding locale and justify a denial of the grant of the special exception. See Schultz v. Pritts, 291 Md. 1, 432 A2d 1319 (1981).

Much of the testimony offered by the Petitioners' witnesses related to the personal operation of the facility by the Petitioners, Mr. and Mrs. Wilson. For example, in Petitioners' Exhibit No. 45, Robert E. Jones, owners of the property next door to the subject site, described Mr. and Mrs. Wilson as model neighbors ". . . with a love of the water and a concern over maintaining a peaceful coexistence with their neighbors and the environment". Similar statements were made by other witnesses who testi-

ORIGINAL FILED
8/6/91
M. H. H. H.
625
62

fied on Mr. and Mrs. Wilson's behalf and in other correspondence which was received in support of the Petition.

These statements make the decision to be rendered more difficult. In most cases, a grant of the special exception runs with the land. Although it is clear that the Wilsons have maintained their property admirably and operate their marina responsibly, doubts are present over the operation of the facility in the event Mr. and Mrs. Wilson sell the property or are unable to operate the facility for reasons of health, age or death. Will Sue Creek continue to be protected by the Wilsons' successors in title? In view of these concerns, I will grant the Petition for Special Exception as modified, and impose a condition not normally imposed by this office, but deemed appropriate here, pursuant to Section 502.2 of the BCZR. That is, the special exception relief for a marina shall be granted for so long as the marina is owned and operated by Mr. and Mrs. Wilson, or their survivor. At such time that Mr. and Mrs. Wilson do not own the property or actively operate the marina, the validity of the special exception shall terminate, subject to the rights of the then owner/operator to repetition the then Zoning Commissioner for a removal of this restriction. In my view, continued operation of this site by the Wilsons will not be detrimental to the health, safety and general welfare and complies with the standards set forth in Section 502.1 of the BCZR. The history of Mr. and Mrs. Wilsons' use of this property, their extensive improvements and renovations thereto are convincing that their marina should be legitimized, notwithstanding the Council's clear direction that bootleg marinas in this area of the County need be eliminated. However, the marina use should continue only if operated in the manner presently managed by the Wilsons.

As to the Petition for Zoning Variance, I shall grant a modification of what is requested. Section 307 of the BCZR provides the standards for

ORDER RECEIVED FOR FILING

Date

By

10/17/90
M. G. [Signature]

variance relief. Therein, it is provided that the Petitioner must demonstrate that a practical difficulty would be suffered if the variance relief were denied; that the relief requested can be granted without detriment to the surrounding locale and that a grant of the relief is consistent with the spirit and intent of the zoning regulations. As modified, I believe that the Petitioner has satisfied that test. In reviewing photographs of the site, as well as the site plan, it is clear that the Wilsons' pier inhibits both the view and access to the water from the neighboring properties. The mere fact that Mr. Dize and his family do not reside on his site, nor keep the property as well maintained as the Wilsons, is not justification that their access be limited. Clearly, the mooring of 17 watercraft at this facility is a significant number and strain on the natural resources. For these reasons, I will limit the number of craft to be moored on the Wilsons' pier to be 12 in number. To accomplish same, slips designated on the site plan as Nos. 1 and 7 shall be eliminated. Moreover, Mr. Wilson shall remove the four pilings, two each on the outside of slips Nos. 1 and 7. In my view, elimination of berthing of boats on the outside of the pier (i.e. slips 1 and 7) and the elimination of the four mooring poles which serve those slips will improve access to the water for neighboring landowners. Indeed, it will eliminate the need for a variance on the east (Jones) side of the property and diminish, but not eliminate, the variance requested on the west (Dize) side of the property. I will also order the elimination of slips 13, 14 and 15 as shown on the site plan. These slips are in extremely shallow water (2-1/2 ft.) and are presently unoccupied.

Pursuant to the advertisement, posting of the property, and public hearing on these Petitions held, and for the reasons given above, the relief requested should be granted.

CHIEF CLERK
10/13/90
M. H. H. H.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 13th day of October, 1994 that, pursuant to the Petition for Special Exception, approval to allow a marina with 12 slips, as provided hereinabove, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that a variance from Sections 417.3.A & B and 417.4 of the Baltimore County Zoning Regulations (BCZR), to allow for a variance to the divisional line setback requirements on the west side of the property as provided herein, be and is hereby GRANTED, subject, however, to the following restrictions which are conditions precedent to the relief granted:

1. The Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. There shall be no sales and/or repairs of boats from the site.
3. There shall be no sales of gasoline or other fuels from this site. The marina operation shall be limited only to rental of slips and providing of restroom facilities.
4. The Petitioners shall, within 180 days from the date of this Order, remove the four mooring pilings on the outside of slips Nos. 1 and 7 as shown on the site plan.
5. The Petitioners shall allow not more than 12 boats, including his own, to be stored on the entire property, both on land and water.
6. Slips 1, 7, 13, 14 and 15 shall be removed within 180 days from the date of this Order.
7. There shall be no launching of boats from land on this site.
8. The boat lift presently on the pier shall be used only for the Petitioners' own boats and shall not be counted as a slip or used to

ORDER RECEIVED FOR FILING
Date 10/13/94
By J. Mark

increase the number of boats (12) to be stored on the property.

9. The special exception relief granted herein shall be personal to the Petitioners, William H. Wilson and Laura Stern Wilson, his wife, or their survivor, subject to the right of a subsequent owner/operator to petition for a removal of this restriction.

10. A copy of this Order and opinion shall be filed within the Land Records of Baltimore County to provide notice of this Order and restrictions to subsequent property owners. A copy of this Order reflecting such recording shall be filed with this office within 180 days.

11. The use of this site is subject to review and approval by DEPRM, pursuant to the standards of the Chesapeake Bay Critical Area Act.

12. Upon request and reasonable notice, the Petitioner shall permit a representative of the Zoning Enforcement Division to make an inspection of the subject property to ensure compliance with this Order.



LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

LES:mmm

*ZC order
granted SE
for 12 slips
& Van.*

ORDER RECORDED FOR FILING
6/6/01
Jm Howard

MICROFILMED

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning



Suite 112 Courthouse
400 Washington Avenue
Towson, MD 21204

(410) 887-4386

October 12, 1994

J. Carroll Holzer, Esquire
305 Washington Avenue
Towson, Maryland 21204

RE: Petitions for Special Exception and Zoning Variance
Case No. 95-46-XA
Property: 2120 Poplar Road
William H. Wilson and Laura S. Wilson, Petitioners

Dear Mr. Holzer:

Enclosed please find the decision rendered on the above captioned case. The Petitions for Special Exception and Zoning Variance have been granted, with restrictions, in accordance with the attached Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days of the date of the Order to the County Board of Appeals. If you require additional information concerning filing an appeal, please feel free to contact our Appeals Clerk at 887-3391.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Lawrence E. Schmidt".
Lawrence E. Schmidt
Zoning Commissioner

LES:mmm
att.

cc: Mr. and Mrs. William H. Wilson
Mr. and Mrs. Wayne Berk
Mr. and Mrs. Rodney Dize
Mr. Carl Maynard, Back River Neck Community Assoc.
Mr. David A. Kline
Mr. James S. Patton, P.E.

MICROFILMED



RE: PETITION FOR SPECIAL HEARING * BEFORE THE
PETITION FOR VARIANCE *
2120 Poplar Road N/S Poplar Road, * ZONING COMMISSIONER
820' E of c/l Lourdes Road, 15th * OF BALTIMORE COUNTY
Election Dist., 5th Councilmanic *
William H. and Laura Stern Wilson * CASE NO. 95-46-XA
Petitioners *

* * * * *

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

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 18th day of August, 1994, a copy of the foregoing Entry of Appearance was mailed to J. Carroll Holzer, Esquire, 305 Washington Avenue, Towson, MD 21204, attorney for Petitioners.

RECEIVED

AUG 19 1994

ZADM

Peter Max Zimmerman

PETER MAX ZIMMERMAN

MICROFILMED



CRITICAL

Petition for Special Exception

95-46-XA

to the Zoning Commissioner of Baltimore County

for the property located at 2120 Poplar Road

which is presently zoned RC-5

This Petition shall be filed with the Office of Zoning Administration & Development Management.

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Regulations of Baltimore County, to use the herein described property for

Marina - 17 Slips

In the alternative, grant a special exception for the marina, approximately six (6) boats and marine railway as granted by the Board of Appeals Case No. 74-9-V as a legal non-conforming use; and for a marina of eleven (11) slips. The total number of slips thus being seventeen (17).

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

I, or we, agree to pay expenses of above Special Exception 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.

Contract Purchaser/Lessee:

N/A

(Type or Print Name)

Signature

Address

City State Zip Code

Attorney for Petitioner:

J. Carroll Holzer

(Type or Print Name)

Signature

305 Washington Ave. (410) 825-6961

Address Phone No

Towson, MD. 21204

City State Zip Code

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

Legal Owner(s)

William H. Wilson

(Type or Print Name)

Signature

Laura Stern Wilson

(Type or Print Name)

Signature

2120 Poplar Road (410) 391-3846

Address Phone No

Baltimore, MD. 21222

City State Zip Code

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

James S. Patton, P.E.

Name

305 W. Chesapeake Ave. (410) 296-2140

Address Phone No

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for hearing

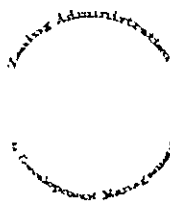
the following dates _____ Next Two Months

ALL _____ OTHER _____

REVIEWED BY: JS DATE 8/3/94

#38

MICROFILMED





Petition for Variance

95-46-XA

to the Zoning Commissioner of Baltimore County

for the property located at

2120 Poplar Road

which is presently zoned

RC-5

This Petition shall be filed with the Office of Zoning Administration & Development Management.

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s)

BCZR 417.3 A & B and 417.4

to provide for mooring within ten feet of divisional lines based on pre-existing bulkheads and piers rather than straight or irregular shorelines.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (indicate hardship or practical difficulty)

See Attached

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

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

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

Contract Purchaser/Lessee:

N/A

(Type or Print Name)

Signature

Address

City

State

Zipcode

Attorney for Petitioner.

J. Carroll Holzer

(Type or Print Name)

Signature

305 Washington Ave. (410) 825-6961

Address Towson, MD. Phone No 21204

City State Zipcode

Legal Owner(s):

William H. Wilson

(Type or Print Name)

Signature

Laura Stern Wilson

(Type or Print Name)

Signature

2120 Poplar Road (410) 391-3846

Address Phone No

Baltimore, MD. 21222

City State Zipcode

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

James S. Patton, P.E.

Name 305 W. Chesapeake Ave. (410) 296-2140

Address Phone No

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing

the following dates Next Two Months

ALL OTHER

REVIEWED BY: DATE 8-3-74

MICROFILMED

#38

ATTACHMENT TO PETITION FOR VARIANCE FOR
2120 POPLAR ROAD

Due to the improper construction of the pier serving the property to the east of the petitioner, there is inadequate aisle width to comply with Section 417.3 A & R. The Commissioner is requested to grant a variance to permit mooring piles within one foot (1') of the divisional line had the adjoining pier been constructed in accordance with 417.3B.

This pier and slips have been in existence prior to 1961 based on aerial evidence and has been used as a marina with marine railway. Since 1980 the petitioner has used this facility strictly for the berthing of boats, i.e. no marine servicing or repair.

The petitioner requests that additional variances from Section 417, as may be determined at the time of the Commissioner's Hearing, based on the location of pier and mooring piles as shown on sheet 2 of 2 of the accompanying plats, may be granted.

*Separate Petition
for
Sp Exception
and
Variance
filed on about
8/3/94*

MICROFILMED

PATTON

Patton
Consultants
Ltd.
Engineering
& Site
Planning

95-46-XA

ZONING DESCRIPTION FOR 2120 Poplar Road

ELECTION DISTRICT 15

COUNCILMANIC DISTRICT 5

BEGINNING AT A POINT ON THE North

SIDE OF _____

Poplar Road
(street on which property fronts)

WHICH IS 30 Feet
(number of feet of right-of-way width)

wide at a distance of 820 Feet East of the
(number of feet) (north, south, east or west)

centerline of the nearest improved intersecting street Lourdes
(name of street)

WHICH IS 30 Feet WIDE.
(number of feet of right-of-way width)

*BEING LOT # 82-83.

BLOCK _____, SECTION # _____ IN THE SUBDIVISION OF

Cedar Beach AS RECORDED IN BALTIMORE COUNTY PLAT
(name of subdivision)

BOOK # _____, FOLIO # _____, CONTAINING

20,887 Square Feet - 0.48 Acres
(square feet and acres)



38

MICROFILMED

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

95-46-X12

District 15th Date of Posting 8/20/94
Posted for: Special Exception Variance
Petitioner: Wm. & Laura Wilson
Location of property: 2120 Poplar Rd., N/S
Location of Sign: Facing road way, on property being zoned
Remarks: _____
Posted by [Signature] Date of return: 8/26/94
Number of Signs: 1



MICROFILMED

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: #95-48-XA
(Item 38)

2120 Poplar Road
N/S Poplar Road, 820' E of
of Lourdes Road
15th Election District
5th Councilmanic
Reitioner(s):

William H. Wilson and
Laura Stern Wilson

Hearing: Monday

September 12, 1994 at
9:00 a.m. in Rm. 118, Old
Courthouse

Special Exception for
marina, 17 slips. In the alter-
native, grant a special excep-
tion for the marina, ap-
proximately 6 boats and marine
railway as granted by the Board
of Appeals case #74-9-V as a
legal non-conforming use; and
for a marina of 11 slips (the total
number of slips thus being 17)

Variance to provide for
mooring within 10 feet of
divisional lines based on pre-
existing bulkheads and piers
rather than straight or irregular
shorelines.

LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

NOTES: (1) Hearings are Handi-
capped Accessible; for special ac-
commodations Please Call
887-3353.

(2) For information concern-
ing the File and/or Hearing, Please
Call 887-3391.
8/192 August 18.

CERTIFICATE OF PUBLICATION

TOWSON, MD., 8/19, 19 94

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 8/18, 19 94.

THE JEFFERSONIAN,

A. Henickson

LEGAL AD. - TOWSON

~~Publication~~

MICROFILMED





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

receipt

95-46-XA

Account: R-001-6150

Number 38

Date 8/3/94

Taken by: JRF

Wilson ... 2120 Poplar Rd.

020 - Variance -- \$250.00

050 - Spec. Ex. - - - \$300.00

080 - Signs (2) - - - \$70.00

620.00

MICROFILMED

01A0180092NICHRC

\$620.00

BA 0003:13F M08-03-94

Please Make Checks Payable To: Baltimore County

Cashier Validation

Mr. Arnold Jablon
Director of Zoning
Z.A.D.M.
Room 109
111 W Chesapeake Avenue
Towson, MD 21204

November 10, 1994

Dear Mr. Jablon

Please enter an appeal to Baltimore County. This decision was made by Zoning Commissioner Lawrence Schmidt, order dated October 13, 1994.

IN RE: PETITIONS FOR SPECIAL EXCEPTION
AND ZONING VARIANCE
N/S Poplar Road, 820 ft. E of
c/I Lourdes Road
2120 Poplar Road
15th Election District
5th Councilmanic District
Petitioner: William H. Wilson &
Laura Stern Wilson
Case # 95-46-XA

Please find attached check for \$285.00 to cover filing fee and posting.

Sincerely,

Wayne & Donna Berk

Wayne & Donna Berk
Rodney Dize
Hilary Figinski
Back River Neck Peninsula Community Association
Holly Neck Community Association

*2200 Poplar Rd.
Baltimore, MD 21221*

RECEIVED

NOV 10 1994

ZADM

MICROFILMED

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

No. 50273

DATE 11/18/94 ACCOUNT R-001-6150

AMOUNT \$ 175.00

RECEIVED FROM: Wayne and Donna Berk
Appeal of Variance
2120 Poplar Road - Case No. 95-46-XA

FOR:

MICROFILMED

01A01#0030MICHR

\$175.00

BA 6009:05AM11-21-94

VALIDATION OR SIGNATURE OF CASHIER

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

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

No. 50273

DATE 11/18/94 ACCOUNT R-001-6150

AMOUNT \$ 285.00

RECEIVED FROM: Wayne and Donna Berk
Appeal of Special Exception - Sign
2120 Poplar Road - Case No. 95-46-XA

FOR:

MICROFILMED

01A01#0029MICHR

\$285.00

BA 6009:05AM11-21-94

VALIDATION OR SIGNATURE OF CASHIER

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

Mr. Arnold Jablon
Director of Zoning
Z.A.D.M.
Room 109
111 W Chesapeake Avenue
Towson, MD 21204

November 10, 1994

Dear Mr. Jablon

Please enter an appeal to Baltimore County. This decision was made by Zoning Commissioner Lawrence Schmidt, order dated October 13, 1994.

IN RE: PETITIONS FOR SPECIAL EXCEPTION
AND ZONING VARIANCE
N/S Poplar Road, 820 ft. E of
c/1 Lourdes Road
2120 Poplar Road
15th Election District
5th Councilmanic District
Petitioner: William H. Wilson &
Laura Stern Wilson
Case # 95-46-XA

Please find attached check for \$285.00 to cover filing fee and posting.

Sincerely,

Wayne & Donna Berk

Wayne & Donna Berk
Rodney Dize
Hilary Figinski
Back River Neck Peninsula Community Association
Holly Neck Community Association

*2200 Poplar Rd.
Baltimore, MD 21221*

RECEIVED

NOV 10 1994

ZADM

MICROFILMED

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

95-46-XA

District: 15th Date of Posting: 12/11/94

Posted for: Appeal

Petitioner: Wm. H. Wilson, et ux

Location of property: 2120 Poplar Rd., N/S

Location of Signs: Facing road way, on property being appealed

Remarks: _____

Posted by: [Signature] Date of return: 12/16/94
Signature

Number of Signs: 1

MICROFILMED

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/neighbor 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 accessed 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.

ARNOLD JABLON, DIRECTOR

For newspaper advertising:

Item No.: 38

Petitioner: William Wilson

Location: 2120 Poplar Road

PLEASE FORWARD ADVERTISING BILL TO:

NAME: William H. Wilson

ADDRESS: 2120 Poplar Road

BALTIMORE, MD. 21222

PHONE NUMBER: (410) 391-3846

MICROFILMED

AJ:ggs

(Revised 04/09/93)

TO GWEN

Re: 38

NOT

9-15

MICROFILMED

Item 38 / Gwen

Not 1st week of Sept.

Need 12, 13, 14

Jim Patton

296-2140

TO: PUTUXENT PUBLISHING COMPANY
August 18, 1994 Issue - Jeffersonian

Please forward billing to:

William Wilson
2120 Poplar Road
Baltimore, Maryland 21222
391-3846

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: 95-46-XA (Item 38)
2120 Poplar Road
N/S Poplar Road, 820' E of c/l Lourdes Road
15th Election District - 5th Councilmanic
Petitioner(s): William H. Wilson and Laura Stern Wilson
HEARING: MONDAY, SEPTEMBER 12, 1994 at 9:00 a.m. in Room 118 Old Courthouse.

Special Exception for marina, 17 slips. In the alternative, grant a special exception for the marina, approximately 6 boats and marine railway as granted by the Board of Appeals case #74-9-V as a legal non-conforming use; and for a marina of 11 slips (the total number of slips thus being 17).
Variance to provide for mooring within 10 feet of divisional lines based on pre-existing bulkheads and piers rather than straight or irregular shorelines.

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, PLEASE CALL 887-3391.

MICROFILMED

Baltimore County Government
Office of Zoning Administration
and Development Management



111 West Chesapeake Avenue
Towson, MD 21204

AUG. 12 1994

(410) 887-3353

COPY

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: 95-46-XA (Item 38)
2120 Poplar Road
N/S Poplar Road, 820' E of c/l Lourdes Road
15th Election District - 5th Councilmanic
Petitioner(s): William H. Wilson and Laura Stern Wilson
HEARING: MONDAY, SEPTEMBER 12, 1994 at 9:00 a.m. in Room 118 Old Courthouse.

Special Exception for marina, 17 slips. In the alternative, grant a special exception for the marina, approximately 6 boats and marine railway as granted by the Board of Appeals case #74-9-V as a legal non-conforming use; and for a marina of 11 slips (the total number of slips thus being 17).
Variance to provide for mooring within 10 feet of divisional lines based on pre-existing bulkheads and piers rather than straight or irregular shorelines.

A handwritten signature in cursive script, reading "Arnold Jablon".

Arnold Jablon
Director

cc: William and Laura Wilson
J. Carroll Holzer, Esq.
James S. Patton, P.E.
bcc: Wayne Berk

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.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.

MICROFILMED





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

January 31, 1995

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. 95-46-XA

WILLIAM H. WILSON, ET UX
N/s Poplar Road, 820' E of c/l of Lourdes Road
(2120 Poplar Road)
15th Election District
5th Councilmanic District

SE -To allow marina w/17 slips; or in alternative, confirm nonconforming use as marina w/6 slips per CBA findings in 74-9-V and permit intensification of use by 11 slips for total of 17; VAR -To allow mooring within 10' of divisional lines based upon pre-existing bulkheads & piers rather than straight or regular shorelines.

10/13/94 -Z.C.'s Order in which Petition for Special Exception GRANTED for 12 slips; and Petition for Variance GRANTED, subject to restrictions.

ASSIGNED FOR: TUESDAY, MAY 2, 1995 at 10:00 a.m.

cc: Wayne & Donna Berk
Holly Neck Improvement Assn.
Mr. & Mrs. Rodney Dize
Mr. Carl Maynard
Back River Improvement Assn.
Mr. David A. Kline

Appellants /Protestants

J. Carroll Holzer, Esquire
Mr. & Mrs. William Wilson
James S. Patton

Counsel for Petitioners
Petitioners
Engineer

People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
Timothy M. Kotroco

W. Carl Richards, Jr. /ZADM
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM

Kathleen C. Weidenhammer
Administrative Assistant

MICROFILMED



CASE NO. 95-46-XA

N/s Poplar Road, 820' E of c/l of Lourdes Road
(2120 Poplar Road)

WILLIAM H. WILSON, ET UX - Petitioner

15th District

Appealed 11/10/94

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Baltimore County Government
Office of Zoning Administration
and Development Management



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

AUG. 29 1994

J. Carroll Holzer, Esq.
305 Washington Avenue
Towson, Maryland 21204

RE: Item No. 38, Case No. 95-46-XA
Petitioner: William and Laura Wilson

Dear Mr. Holzer:

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 August 3, 1994, and a hearing 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.
- 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,

A handwritten signature in dark ink, reading "W. Carl Richards, Jr." in a cursive style.

W. Carl Richards, Jr.
Zoning Coordinator

WCR:ggs



Printed with Soybean Ink
on Recycled Paper

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BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

INTER-OFFICE CORRESPONDENCE

95-46

August 30, 1994

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

FROM: J. Lawrence Pilson *JLP*
Development Coordinator, DEPRM

SUBJECT: Zoning Item #38 - Wilson Property
2120 Poplar Road
Zoning Advisory Committee Meeting of August 15, 1994

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. The applicant may contact the Environmental Impact Review Section at 887-3980 for details.

✓
JLP:LS:sp

WILSON/DEPRM/TXTSBP

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BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

95-46-XA
9/12

TO: Arnold Jablon, Director
Zoning Administration &
Development Management

FROM: Pat Keller, Director
Office of Planning and Zoning

DATE: August 23, 1994

SUBJECT: 2120 Poplar Road

INFORMATION:

Item Number: 38

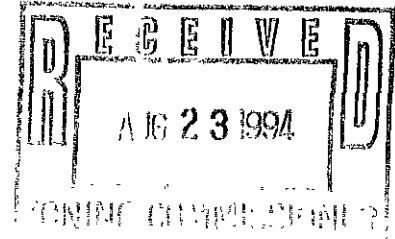
Petitioner: William H. Wilson

Property Size: _____

Zoning: R.C. 5

Requested Action: _____

Hearing Date: ____/____/____



SUMMARY OF RECOMMENDATIONS:

Staff does not oppose the subject request provided that the applicant is able to satisfy all Department of Environmental Protection and Resource Management requirements.

Prepared by: Jeffrey W. Long

Division Chief: Dennis West for Gary Kerns

PK/JL:lw

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Maryland Department of Transportation
State Highway Administration

O. James Lighthizer
Secretary
Hal Kassoff
Administrator

8-12-94

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

Re: Baltimore County
Item No.: +38 (JRF)

Dear Ms. Winiarski:

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 project.

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

David Ramsey, Acting Chief
Engineering Access Permits
Division

BS/

Ad 57

My telephone number is _____

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Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202

Baltimore County Government
Fire Department



700 East Joppa Road Suite 901
Towson, MD 21286-5500

(410) 887-4500

DATE: 08/11/94

Arnold Tablon
Director
Zoning Administration and
Development Management
Baltimore County Office Building
Towson, MD 21204
MAIL STOP-1105

RE: Property Owners: WILLIAM H. WILSON & LAURA STERN WILSON

LOCATION: N/S POPLAR RD., 820' E OF CENTERLINE LOURDES RD.
(2120 POPLAR RD.)

Item No.: 38

Zoning Agenda: SPECIAL EXCEPTION

Gentlemen:

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

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

RECEIVED

AUG 11 1994

ZADM

REVIEWER: LT. ROBERT P. SAUERWALD
Fire Marshal Office, PHONE 887-4881, MS-1102F

cc: File



Printed on Recycled Paper

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9/13/94
TO JW
aX
4534-94

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

FROM: J. James Dieter

SUBJECT: Petition for Zoning Variance - Item 38
Wilson Property
Chesapeake Bay Critical Area Findings

DATE: September 8, 1994

RECEIVED

SEP 13 1994

ZADM

SITE LOCATION

The subject property is located at 2120 Poplar Road. The site is within the Chesapeake Bay Critical Area and is classified as a Limited Development Area (LDA).

APPLICANT'S NAME Mr. William Wilson

APPLICANT PROPOSAL

The applicant has requested a special exception from the Baltimore County Zoning Regulations to permit, "a 17 slip marina. In the alternative, grant a special exception for the marina, approximately six (6) boats and marine railway as granted by the Board of Appeals Case No. 74-9-V as a legal non-conforming use; and for a marina of eleven (11) slips. The total number of slips thus being seventeen (17)."

The applicant has also requested a variance from the Baltimore County Zoning Regulations, "to provide for mooring within ten feet of divisional lines based on pre-existing bulkheads and piers rather than straight or irregular shorelines."

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>.

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REGULATIONS AND FINDINGS

- 1a. Regulation: "Grandfathering - after program approval, local jurisdictions shall permit the continuation, but not necessarily the intensification or expansion, of any use in existence on the date of program approval, unless the use has been abandoned for more than one year or is otherwise restricted by existing local ordinances. If any existing use does not conform with the provisions of a local program, its intensification or expansion may be permitted only in accordance with the variance procedures outlined in COMAR 14.15.11" <COMAR 14.15.02.07.A>.
- 1b. Regulation: "In addition to section 417 in the county zoning regulations, all new or expanded water-dependent facilities are subject to the following procedures and standards, as specified more fully in the county water-dependent facilities manual:
- (1) Scope. A water-dependent facility includes those structures or works associated with industrial, maritime, recreational, educations, or fisheries activities that require location at or near the shoreline. An activity is water dependent if it cannot exist outside the buffer and is dependent on the water by the intrinsic nature of its operation.
 - (2) Buffer. All siting, development, redevelopment, and expansion of water-dependent facilities within the buffer must strictly conform to the criteria set forth in the county water-dependent facilities manual:" <Baltimore County Code Section 26-454>.

Finding: This property appears to be currently operating a marina use without the proper zoning in place. Documentation, available at the Department of Environmental Protection and Resource Management (DEPRM), indicates that on the date of the Critical Area Program approval this property had, at the most, nine in-water boat slips. Some pilings and pier extensions are new, since the date of program approval. The Baltimore County permit tracking system does not show permits for these structures since 1992.

The current zoning petition is requesting 17 boat slips. This is considered expansion and intensification. This would not be grandfathered and would require a water-dependent facility plan for review and approval. In addition two of these slips are located in water that only has a depth of approximately 2.5 feet and approximately five slips are located in water that has a depth less than 4 feet. This is inadequate for most boats and would result in

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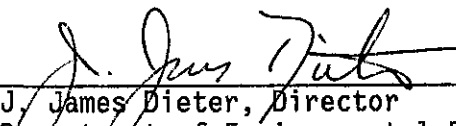
Mr. Arnold E. Jablon
September 8, 1994
Page 3

the disruption of the bottom sediments. Shallow water areas are considered habitat for submerged aquatic vegetation (SAV), which are currently established in nearby areas of Sue Creek. These are habitat protection areas because they are important for water quality and the survival of aquatic life.

The proposed alternative petition, which includes the marine railway, is not grandfathered under the Critical Area program. This use has been abandoned for more than one year and would therefore be considered an expansion. A water-dependent facilities plan would also be required for this petition.

CONCLUSION

If the zoning commissioner's order allows more than 9 in-water boat slips, then an approved water-dependent facilities plan should also be required as a condition of the special exception approval. If there are any questions, please contact Ms. Nancy Pentz at 887-3980.



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

JJD/NSSP/tmm

c: Mr. William Wilson
Mr. James Patton
Mr. Carroll Holzer

WILSON2/DEPRM/WQCBCA

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Baltimore County Government
Office of Zoning Administration
and Development Management



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

November 18, 1994

J. Carroll Holzer, Esquire
305 Washington Avenue
Towson, MD 21204

RE: Petition for Special Exception and
Variance
N/S Poplar Road, 820' E of c/l of
Lourdes Road, 2120 Poplar Road
15th Election District
5 Councilmanic District
William H. Wilson, et ux-Petitioners
Case No. 95-46-XA

Dear Mr. Holzer:

Please be advised that an appeal of the above-referenced case was filed in this office on November 10, 1994 by Wayne and Donna Berk. 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 Eileen O. Hennegan at 887-3353.

Sincerely,

ARNOLD JABLON
Director

AJ:eoh

c: Mr. and Mrs. William H. Wilson, 2120 Poplar Rd., 21222
Mr. and Mrs. Wayne Berk, 2200 Poplar Road, 21222
Mr. and Mrs. Rodney Dize, 3 Hohe Ct., Reisterstown 21136
Mr. Carl Maynard, Back River Neck Imp. Assoc., 1546 Denton Rd 21221
Mr. David A. Kline, 2102 Poplar Road, 21222
James S. Patton, 305 Chesapeake Avenue, Towson, MD 21204
People's Counsel

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APPEAL

Petition for Special Exception and Variance
N/S Poplar Road, 820' E of c/l of Lourdes Road
(2120 Poplar Road)
15th Election District - 5th Councilmanic District
William H. Wilson, et ux-PETITIONERS
Case No. 95-46-XA

Petitions for Special Exception and Variance

Description of Property

Certificate of Posting

Certificate of Publication

Entry of Appearance of People's Counsel

Zoning Plans Advisory Committee Comments

Petitioners and Protestants Sign-In Sheets

Petitioner's Exhibits:

- 1 - 4 Photographs
- 2 - Copy of a Permit No. 23750
- 2A- Vicinity Map
- 3 - Declaration by William Wilson
- 4 - Copy of Board of Appeals' Order 74-9-V
- 5 - No exhibit marked No. 5
- 6 through 44 - Photographs
- 45- Letter of support-Robert & Barbara Jones
- 46 through 48 - Letters of support
- 49 - Affidavit-Carroll W. Huffines, Sr.
- 50 - Letter of Support-Stephen Kaiser
- 51 - Affidavit - Francis H. Kreamer
- 52 - Plat to accompany Petition for Variance
- 53 - Photographic Map
- 54 - Plat of Cedar Beach
- 54 - Copy of memo from J. James Dieter to Arnold Jablon, dated 9/8/94
- 55 - Copy of memo from Jack Dillon to Larry Schmidt, dated 9/2/94
- 56 - Copy of comments from Pat Keller to Arnold Jablon, dated 8/23/94

Protestant's Exhibits:

- 1 - Letter of protest-Holly Neck Improvement Assoc., dated 9/6/94
- 2 - Memo from Holly Neck Imp. Assoc. appointing Wayne Berk as spokesperson
- 3 - Letter of protest from Ellin Dize, dated 8/23/94
- 4 - Letter of protest from Julia Dize, dated 8/23/94
- 5A-5C-List of protestants
- 6 - Letter of protest from Bonnie M. Smith, President, BMIA
- 6A-6E - 10 Photographs
- 7 - Letter of protest from Norbert J. Anderson, President, Turkey Point Imp. Assoc., Inc.
- 7A-7B - 4 Photographs
- 8 - Letter of protest from Jackie Nickel, Pres., Rockaway Beach Imp. Assn., Inc.
- 8A-8F - 6 Photographs
- 9A-9C - 6 Photographs
- 10 - Copy of Lower Back River Neck Community Action Plan

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Miscellaneous:

- 1 - 6 Photographs taken by Rodney Dize
- 2 - Copy of 200 scale map
- 3 - Letter of Protest frp, Debby Hyson, Pres.,
Barrison Point Imp Assn., Inc., dated
9/8/94
- 4 - Letter of protest from Mr. Hilary W.
Figinski, dated 9/19/94, with 2 photos
attached
- 5 - Letter of Protest from Donna Berk, dated
9/20/94, with newspaper attachment
- 6 - Memo to File by Cragin McGraw

Zoning Commissioner's Order dated October 13, 1994 (GRANTED-BOTH
PETITIONS)

Notice of Appeal received on November 10, 1994 from Wayne and Donna
Berk

c: Mr. and Mrs. William Wilson, 2120 Poplar Rd., 21222
J. Carroll Holzer, 305 Washinton Avenue, 21204
Mr. and Mrs. Wayne Berk, 2200 Poplar Road, 21222
Mr. and Mrs. Rodney Dize, 12455 Howard Lodge, Sykesville 21784
Mr. Carl Maynard, Back River Imp. Assoc., 1546 Denton Rd 21221
Mr. David A. Kline, 2102 Poplar Road, 21222
James S. Patton, 305 Chesapeake Avenue, 21204
People's Counsel of Baltimore County, M.S. 2010

Request Notification: Patrick Keller, Director, Planning & Zoning
Lawrence E. Schmidt, Zoning Commissioner
Timothy M. Kotroco, Deputy Zoning Commissioner
W. Carl Richards, Jr., Zoning Supervisor
Docket Clerk
Arnold Jablon, Director of ZADM

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IN THE MATTER OF * BEFORE THE ZONING
2120 Poplar Rd. N/S Poplar * COMMISSIONER OF
Rd. Petition of William & * BALTIMORE COUNTY
Laura Wilson * CASE NO. 95-46-XA

* * * * *

SUBPOENA

Please process in accordance with Zoning Commission
Rule IV (c).

TO: Jack Dillon
Office of Planning
County Courts Bldg.
Towson, MD

YOU ARE HEREBY COMMANDED TO: (X) Personally appear; () Produce
documents and or objects only; () Personally appear and produce
documents or objects;

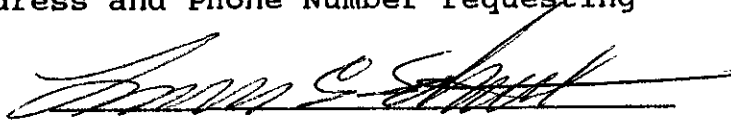
at Room 118, Old Courthouse, 400 Washington Ave.
(Place where attendance is required)

on Monday the 12th day of September
19 94, at 9:00 a.m. ~~XXXX~~

YOU ARE COMMANDED TO produce the following documents or
objects:

J. Carroll Holzer, 305 Washington Ave., 825-6961 for Petitioners
(Name of Party or Attorney, Address and Phone Number requesting
subpoena)

Date September 6, 1994


Zoning Commissioner

SHERIFF'S RETURN

() -Served and copy delivered on date indicated below.

() -Unserved, by reason of _____

Date: _____ Fee: \$ _____

SHERIFF

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County Board of Appeals of Baltimore County

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

May 4, 1995

NOTICE OF DELIBERATION

Having concluded the hearing in this matter on May 2, 1995, the Board has scheduled the following date and time for deliberation in the matter of:

(PLEASE NOTE THAT MEMORANDUMS ARE DUE WEDNESDAY, MAY 17, 1995 /Original and three copies.)

WILLIAM H. WILSON, ET UX
CASE NO. 95-46-XA

DATE AND TIME : Wednesday, May 24, 1995 at 9:00 a.m.
LOCATION : Room 48, Basement, Old Courthouse

cc: Wayne & Donna Berk	Appellants /Protestants
Holly Neck Improvement Assn.	
Mr. & Mrs. Rodney Dize	
Mr. Carl Maynard	
Back River Improvement Assn.	
Mr. David A. Kline	
J. Carroll Holzer, Esquire	Counsel for Petitioners
Mr. & Mrs. William Wilson	Petitioners
James S. Patton	Engineer
People's Counsel for Baltimore County	
Pat Keller	W. Carl Richards, Jr. /ZADM
Lawrence E. Schmidt	Docket Clerk /ZADM
Timothy M. Kotroco	Arnold Jablon, Director /ZADM

RHB

Kathleen C. Weidenhammer
Administrative Assistant



COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: William H. Wilson, et ux -Petitioners
Case No. 95-46-XA

DATE : Wednesday, May 24, 1995

BOARD /PANEL : Robert O. Schuetz, Chairman (ROS)
William T. Hackett (WTH)
Harry E. Buchheister, Jr. (HEB)

SECRETARY : Kathleen C. Weidenhammer
Administrative Assistant

Those present included J. Carroll Holzer, Esquire, counsel for Petitioners; 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 exception presented to the Board; testimony and evidence taken May 2, 1995. Opinion and Order to be issued by Board setting forth written findings of fact.

ROS: Opening comments; matter on appeal from Zoning Commissioner regarding special exception and variance to provide for a marina with 12 slips. This particular part of the proceedings is the deliberation process which we are required to perform in open meeting. Minutes taken by Board's Administrative Assistant.

During the course of the hearing, the Petition for the variance was withdrawn by the Petitioner, having made alterations negating the necessity for the variance. No need to discuss variance as part of this proceeding. The issue of nonconforming use is one where the burden of proof rests squarely with the Petitioner to provide evidence which would prove that the nonconforming use had been an uninterrupted service over an extended period of time; when the zoning regulations changed. However, in this particular instance, I believe that the Petitioner did not prove nonconforming use.

We have evidence which suggests that the ownership ceased but that's not to say that the nonconforming use ceased. The burden of proof still rested with the Petitioner to prove that the marina was not, as People's Counsel indicated in closing memorandum, not only did ownership cease but operations did or did not cease. I concur in that regard that they did not prove that. This case boils down strictly to special

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exception case in my view.

The R.C. 5 zoning classification under Section 1A04.B1, its purpose, speaks to the issue of basic services. In this particular case, we have R.C. 5 classification which has now received basic services, water, sewer, etc. Petitioner has connected to County system. Therefore, the remaining portions of the purpose, having reviewed them, it is my belief that the purpose is observed by the Petition for Special Exception in providing for a marina, and, in fact, marina, as defined in Section 101, includes certain incidental services such as repairs, fuel service, sales, land storage of boats, etc., nearly all of which the Petitioner has agreed not to provide.

I have reviewed the evidence and testimony and find that 417 has been met by the Petitioner and so what I would like to do is read into the record here and for the benefit of those in the room the preamble of 502 which speaks to special exceptions:

"...Others, like a cemetery, do not fit into any of the zone categories, that is, residential, business, and industrial, and therefore must be located with discrimination in relation to their surroundings. All the items listed are proper uses of land, but have certain aspects which call for special consideration of each proposal...."

It's that language which allows the Board, under 502.1, to consider issues (a) through (h) which would allow the Board to grant a special exception. I've reviewed again the evidence and testimony and the memorandums from both counsel, and find that the requirements of 502.1 (a) through (h) have been met, that includes item (g) in particular, where there was some issue about use of R.C. 5 for marinas. However, I would provide the approval under 502.1 with some restrictions. First, would limit number of slips to 12, including number of slips Petitioner uses for his own boats. Second, I would require the permanent provision of 9 parking spaces, and that they must be maintained clear and available for use with no permanent parking of trailers, etc., to insure all 9 spaces available at all times, and further would include those restrictions to which the Petitioner has agreed; that he will not provide gasoline, pumping stations, land repairs, sale or storage of boats on the subject property. Would grant the Petition subject to restrictions.

WTH: I will not repeat the bulk of those things Mr. Schuetz has mentioned. I do want to mention a couple of things. As far as I'm concerned, the only matter is the special exception for

Minutes of Deliberation /William H. Wilson, et ux 95-46-XA

the 12 slips. No variance required. However, I do not agree with Mr. Zimmerman that if special exception needs variances, it cannot be granted. But no variances are required in this case. Would like to mention that 12 slips is a very small marina. When you see a marina, they are huge things with zillions of boats. Twelve slips is almost a family-type use to moor the boats.

Purchased in 1980 in poor condition; Mr. Wilson has renovated property, renovated pier, brought everything up. Has been definite asset to the neighborhood. Pier was renovated right away upon purchase of property; had Corps of Engineers approval. In 1992, Holly Neck Improvement Assn. agreed that marina of 17 slips was not excessive; DEPRM also indicated approval for 12 slips; Planning Office in Baltimore County not opposed to 17 slips; most neighbors not opposed. In 1985, marina had 12 slips with 1980 Baltimore County approval, and now has water and sewer on site. And since April 1993, has complied with Corps of Engineers request; removed piles and eliminated one slip. Twelve requested same as 1985. No hard evidence to indicate that there was abandonment of property's use. It's the degree of use that seems to be in question.

In favor of granting the special exception for 12 slips were Tom Ellis, Steve Kaiser, Tim Fisher, Harry Kramer, and Mr. Hutton. Only protestants /Mr. & Mrs. Berk citing pier overcrowding and noise from moored boats. The Board will also note for the record that a marina with 12 slips will not generate any additional traffic; whoever uses that small number of slips will be someone who is already using a slip in the area.

All requirements of 502.1 have been met; would grant the special exception with restrictions as agreed to by Mr. Wilson: no further change in the pier configuration; no sales, repairs or services of any kind; merely mooring marina. No gasoline sales; restroom as noted, provided on shore, should remain.

HEB: Everything has been said that I had prepared for remarks. Again, will not repeat. One consideration which I would like to address; that concerns the Back River Neck Community Association, which is obviously trying to do an impossible job, considering the number of boats on Middle River and all Chesapeake Bay tributaries, to improve water quality, etc. Concerned about unauthorized proliferation of marinas. The Back River study and its plan of October 1993 was accepted by County Council, which obviously was accepted because it has merit. It's references to illegal boat rack marinas do not apply to the subject site, and it's long existence as a

marina. However, I do believe that objectives of the association have particular meaning in this case. All of the things that describe this marina that Mr. Schuetz and Mr. Hackett touched upon are most encouraging about such a marina. However, and I might say also that the Petitioner in modifying, changing what was there and reducing the number from 17 to 12, has certainly brought to the location a more acceptable situation. In acknowledgement of the objectives of the County to improve water quality and reduce boat traffic in Middle River area and tributaries, while also recognizing the extensive investment and excellent management by Mr. Wilson, I also feel that the special exception should be granted, but with a special restriction that has not been mentioned, and my colleagues do not know about my thoughts on this. This is a public deliberation, and I have this thought. I believe that the special exception should only apply as long as Mr. & Mrs. Wilson are the owners, and that it not be transferrable to any of their heirs. Those heirs might indeed continue it but they would have to go through the process of getting a special exception. Also one of the restrictions, and I pull this out of the air because I do not know if there are any children or not -- says something about no boats should be launched from the ground. I'm simply going to recommend that the Petitioner be allowed to store and launch one small dinghy and something like a sailfish sailboat under 12 ft. from that shore line for the benefit of any children he has. That is contrary to what the Zoning Commissioner said.

So in summary, I think the special exception should be approved but with the restriction that it only lies as long as Mr. Wilson and his wife are the owners, and only that they have this one special opportunity to provide a small dinghy; should be launched from shore line.

ROS: Would agree with additional restriction Mr. Buchheister put on; would concur on issue of allowance of launching from shoreline small boats, which are something handled by one or two people by picking up and placing in water; limit to 12 ft.; rowboat, etc. But on the issue of limiting special exception to the current owner, I do not concur. To me, it's an issue of legality in that 502 specifically states there are proper uses and special exception is a proper use in R.C. 5 zone, and therefore by placing this type of a restriction, it recognizes that we are placing specific value on who owns that particular piece of property. That I believe is not the intention of the BCZR, and therefore I would not agree to that particular restriction. I think that strips away the rights of future owners for enjoyment of the property that the zoning regulations specifically prescribe as proper use. Therefore I would not concur with that restriction.

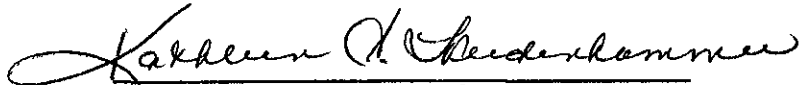
Minutes of Deliberation /William H. Wilson, et ux 95-46-XA

WTH: Agrees with Mr. Schuetz. The special exception issue, compliance with 502.1, leaves no choice but to grant the special exception. In this case, we are granting the special exception. The granting of the special exception provides that you can grant that with reasonable restrictions. I do not think that to limit the special exception to this particular owner, the use is whatever the use is, and I think the special exception will run with the land and not with the owner. I would not put that restriction in there.

HEB: I withdraw the restriction.

ROS: This concludes the matter. Will be written Opinion and Order associated with this proceeding. Will caution you in that the comments heard today are not official opinion. The official Opinion and Order to be issued by the Board is that document upon which you should base your subsequent action, should anyone decide to file a Petition for Judicial Review, to be filed within 30 days of that written Order, and not today's date.

Respectfully submitted,


Kathleen C. Weidenhammer
Administrative Assistant

1/31/95 -Notice of Assignment for hearing scheduled for Tuesday,
May 2, 1995 at 10:00 a.m. sent to the following:

Wayne & Donna Berk
Holly Neck Improvement Assn.
Mr. & Mrs. Rodney Dize
Mr. Carl Maynard
Back River Improvement Assn.
Mr. David A. Kline
J. Carroll Holzer, Esquire
Mr. & Mrs. William Wilson
James S. Patton
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr. /ZADM
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM

5/02/95 -Hearing held before the Board and concluded. Memos due from counsel
by May 17, 1995. Holzer 5/16/95 PC 5/17/95
Notice of Deliberation to be sent to parties. *Copies to RHB*

5/04/95 -Notice of Deliberation sent to parties; scheduled for Wednesday, May 24,
1995 at 9:00 a.m.

5/24/95 -Deliberated; written Opinion/Order to be issued pursuant to public
deliberation; G -SE; Variance withdrawn by Petitioner 5/02/95.

5/31/95 -Opinion/Order issued by Board: Majority Opinion by WTH and HEB; concurring
Opinion by ROS.

6/07/95 -Petitioners' Motion for Reconsideration filed by J. Carroll Holzer, Esquire
on behalf of M/M Wilson.

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BALTIMORE COUNTY, MARYLAND

MEMO TO FILE

Mr. William H. Wilson has filed for a special exception and variance to allow 17 boats at piers on his property, 2120 Poplar Road. He is filing due to zoning enforcement sending him a correction notice for being in violation of Section 415A.2 of the Baltimore County Zoning Regulations. His site plan for 2120 Poplar Avenue references two prior hearings which are highly questionable.

The hearing for Case 74-9-V was for an alleged zoning violation at 133 Silver Lane with Paul Geschwendt as the property owner. Zoning Commissioner Eric DiNenna ruled the property was a marina and a boatyard and all activity must cease within 30 days of this order. The case was appealed to the Board of Appeals. The board ruling allowed a nonconforming use of a marine railway and the docking of approximately six boats. The property was identified in this hearing also as 133 Silver Lane not 2120 Poplar Road.

In the variance request for case No. 92-315-A, Mr. Wilson wanted to double the size of his residence at 2120 Poplar Road. This filing does not reference Case No. 74-9-V. The file also contains a handwritten letter from the petitioner stating that he will file for a nonconforming use of his boatyard within 60 days of his petition being granted. This petition for a variance was withdrawn when opposition arose to the request.

CMG/hek

Item # 38

MICROFILMED

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director DATE: February 8, 2000
Permits & Development Management

FROM: Charlotte E. Radcliffe *CR*
County Board of Appeals

SUBJECT: Closed File:
Case No. 95-046-XA /William H. Wilson

Since the above captioned case has recently been completed with the issuance of the Board's Amended Order of the Board Pursuant to Remand Order of the Circuit Court for Baltimore County, we are hereby closing and returning the Board's case file to you herewith. The original file and exhibits will be returned to your office by John Almond, Records Manager of the Circuit Court.

Attachments: Case File No. 95-46-XA

MICROFILMED

MR. LAWRENCE SCHMIDT
111 W. CHESAPEAKE AVE.
ROOM 113
TOWSON, MD 21204

RE: CASE # 95-465-XA
WILLIAM WILSON AND LAURA STERN WILSON
2120 POPLAR ROAD

4688-24
9/22/94
28
RECEIVED

SEP 21 1994

SEPTEMBER 20, 1994

95-46

ZADM

DEAR SIR:

THIS IS TO STRONGLY OPPOSE ANY SPECIAL EXCEPTION OR VARIANCE THIS PROPERTY. MR WILSON HAD NEVER HAD PERMITS ISSUED FOR HIS EXPANSION. HE HAS NEVER HAD A BUSINESS LICENSE OR BUSINESS INSURANCE TO COVER A LIABILITY. IT WOULD BE A CATASTROPHE IF ANY OF HIS BOATS CAUGHT ON FIRE. WITH ANY TYPE OF BOAT FIRE THERE IS USUALLY AND EXPLOSION. HIS TWO GARDEN HOSES WOULD NOT BE SUFFICIENT TO PUT OUT THIS TYPE FIRE. THIS WOULD ENDANGER THE NEIGHBORS AND ADJOINING PROPERTIES.

HE DOESN'T HAVE A PUMP OUT STATION FOR HIS BOATS. WHEN THE TIDE IS OUT HIS BOATS STIR UP THE MUD AND EVEN GET STUCK ON THE BOTTOM. WHEN HIS BOATS PARKED AT THE SIDE OF HIS PIER GO TO LEAVE THE PIER THEY HAVE PROBLEMS. BECAUSE THE AISLE SPACE IS NOT WIDE ENOUGH FOR THEM. I HAVE SEEN THEM HIT THE NEIGHBORS PIER. I HAVE SEEN THEM HOLD ONTO THE PILING TO ENABLE THEM TO TURN THEIR BOAT TO GET OUT OF THE SLIP.

MR WILSON'S PARKING IS INADEQUATE. THERE IS ONLY FOUR PARKING SPACES AT THE ROAD. IF THERE HAS BEEN ANYONE ELSE TO COME THEY PARK ON THE ROAD. THEY DO NOT PARK IN HIS YARD. HE OWNS THREE CARS AND THIS TAKES AWAY FROM HIS NINE SPACES. THIS STREET IS A NARROW DEAD END STREET. THERE IS NO ROOM TO TURN AROUND AT THE END OF THIS STREET WITHOUT USING SOMEONE'S DRIVEWAY OR BACKING UP THE STREET. THIS IS A DANGER TO OUR CHILDREN. OUR CHILDREN DESERVE TO BE ABLE TO PLAY ON THIS STREET AND TO RIDE THEIR BIKES. THIS ROAD IS NOT MEANT TO ACCOMODATE MORE TRAFFIC IT HARDLY ACCOMODATES THE RESIDENCE THAT LIVE THERE.

MR WILSON AND HIS BOATERS TESTIFIED THAT THERE WAS NEVER ANYONE THERE WHEN THEY WENT OUT ON THEIR BOATS. THIS IS NOT TRUE. I HAVE SEEN SEVERAL OF THE BOATERS AT THIS PIER GOING OUT. THEY SOMETIMES STAY AT THE PIER AND STAY ON THE BOAT ALL DAY AND SOMETIMES AT NIGHT. HIS BOATERS MAKE IT SOUND LIKE PARADISE TO THEM, BUT TO HIS NEIGHBORS WHO HAVE TO LOOK AT IT DAY IN AND DAY OUT DON'T FEEL THIS WAY.

WE WOULD LIKE TO ENJOY THE SERENITY OF OUR WATERFRONT. MY CHILDREN AND FAMILY PLAY AT THE WATER. THEY LIKE TO ROW THE BOAT AROUND. IT IS NOT SAFE TO DO THIS AFTER SEEING ONE

MICROFILMED

OF MR WILSON'S BOATERS HIT THE PIER. THIS PERSON HAD NO CONTROL OVER HIS BOAT. IF MY CHILDREN HAD OF BEEN OUT THERE HE COULD HAVE HIT THEM. WE HAVE A SWIMMING POOL IN OUR YARD. WE DON'T WANT TO LOOK AT THIS CONGESTION OF BOATS AT THIS PIER OR HEAR THEM COMING AND GOING.

SUE CREEK IS ALREADY AN OVERSTRESSED CREEK. THERE IS TREMENDOUS TRAFFIC ON IT ALL SUMMER AND ESPECIALLY ON THE WEEKENDS. HE HAS GIVEN NO THOUGHT TO HIS NEIGHBORS, ONLY TO HIS OWN SELFISH NEEDS. WE HAVE LAWS IN PLACE TO PROTECT THE PEOPLE. MR WILSON DID NOT FOLLOW THESE LAWS. HE DESERVES NO EXCEPTION TO THESE LAWS. WE CAN'T KEEP CHANGING THE LAW TO SUIT PEOPLE LIKE MR WILSON. MY HUSBAND AND I ARE IN GREAT FAVOR OF THE BOOTLEG MARINA LAW. IT IS TIME TO ENFORCE THIS LAW.

THANK YOU FOR YOUR TIME AND CONSIDERATION OF THIS MATTER.

SINCERELY,

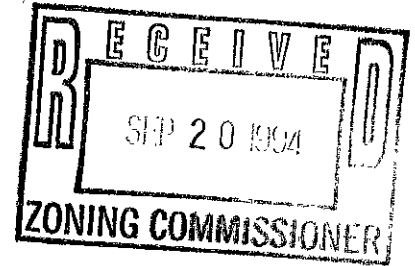
Donna Berk

DONNA BERK
2200 POPLAR ROAD
BALTO., MD 21221

MICROFILMED

September 19, 1994

Mr. Lawrence E. Schmidt
400 Washington Ave.
Suite 112
Baltimore, Md. 21204



Re: Mr. William Wilson
2120 Poplar Road
Baltimore, Md. 21221
Zoning Hearing 9/12/94

Dear Mr. Schmidt:

I am writing with regard to a recent zoning hearing for Mr. William Wilson which took place on September 12th regarding his property at 2120 Poplar Road.

I also own property on Poplar Road and it has been in my family for over 50 years. This is why I am greatly concerned about the marina Mr. Wilson started to operate the last two years. I recently spoke with the Chief of Resource Planning & Utilization at the Maryland Department of Natural Resources and she could not believe that Mr. Wilson has been able to operate the marina, as he has been breaking the law.

There are many reasons I feel that this marina should not be there, but some of my greatest concerns are:

- 1) The marina is blocking the view of all private waterfront lots that side on the same side of the creek.
- 2) Seventeen (17) boats is too much for a 99 foot residential lot. This is not a commercial lot.
- 3) His lot is on a dead-end road which many children play on and ride bikes and his marina has brought a lot more traffic.
- 4) There is a law which says you must have a septic pump-out on your pier for over 10 boats which he does not have.
- 5) The boat owners say they only use their boats two times a month but the other property owner must look at them all the time.

MICROFILMED

- 6) There is a State Park for Conservation across the creek that is trying to discourage boats.
- 7) Washing & hosing off the fiberglass boats contributes to pollution in the creek.

Mr. Schmidt, I appreciate all you can do to help with the problem we are having in the Sue Creek area with the illegal marina that Mr. Wilson is operating.

Please feel free to call me if you have any questions with this and I thank you in advance for your help in this matter.

Sincerely,

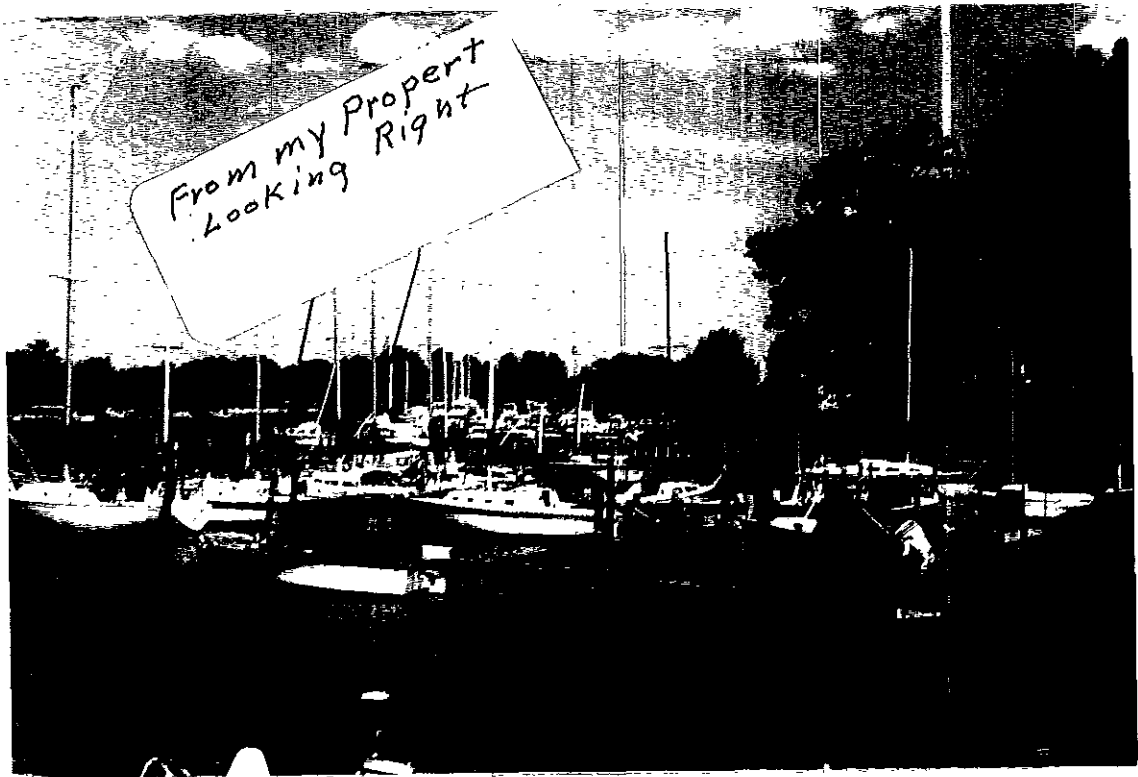
Hilary W. Figinski

Mr. Hilary W. Figinski
7306 Fait Avenue
Baltimore, Md. 21224
288-1868

*From my Property
Looking Left*



MICROFILMED



4508-94

Barrison Point Improvement Association, Inc.

September 8, 1994

9/12/94
to file

County Office Bldg.
111 W. Chesapeake Ave.
Rm. 106
Towson, MD. 21204

To Whom It May Concern,

95-46-xA
Item 38

The Barrison Point Improvement Assoc. Strongly opposes any special acception of the bootleg marina owned by William H. Wilson and Laura Stern Wilson and would like to see the law uphold the Marine Association's guidelines for marinas. Just suppose all of our waterfront owners decided to make a few extra bucks and rent boatslips, what's fair for one is fair for all.

Sincerely,

Debby Hyson

Debby Hyson
President, B.P.I.A.
2411 Barrison Point Rd.
Essex, MD. 21221

RECEIVED
SEP 12 1994

ZADM

BALTIMORE, MARYLAND 21221

MICROFILMED



PATTON CONSULTANTS, LTD.

305 W. Chesapeake Avenue, Suite 118
Towson, Maryland 21204
(410) 296-2140
Fax (410) 296-0419

TRANSMITTAL

Date: 7/19/94	Proj. No.: 94018
RE: Wilson Marina	
Special Exception	

TO: ZADM

ATTN: _____

TRANSMITTED VIA

- ☐ Fax No. () _____
☐ Messenger _____
☒ Hand Carried _____

WE ARE PLEASED TO SEND YOU:

- ☒ Attached ☐ Under separate cover

THE FOLLOWING ITEMS:

- ☐ Sketch Drawings ☐ Plans ☐ Reports ☐ _____
☐ Prints ☐ Specifications ☐ Copy of Letter ☐ _____

COPIES	DATE	DESCRIPTION	DWG. NO.
3	7/19/94	Original Petitions for Special Exception	
3	7/5/94	Property Description	Sh 1 & 2 of 2
1		Zoning Map	
12		Plats	

THIS TRANSMITTAL IS

- ☐ For your approval ☐ _____ ☐ Approved with exceptions noted
☐ For your use ☐ Your documents returned after loan ☐ Returned for corrections
☐ At your request ☐ to us ☐ _____
☐ For review and comment ☐ Approved as submitted

FURTHER ACTION REQUIRED

- ☐ Resubmit _____ copies for approval ☐ Submit _____ copies for distribution ☐ Return _____ corrected prints
☐ _____

REMARKS: _____

COPY TO Carroll Holzer, Esq 825-6961
Mr. Bill Wilson
Sterling C. Gese

SIGNED: _____
James S. Patton

MICROFILMED

Back River Neck Peninsula Comm. ASSOCIATION

RESOLVED: That at the Board of Directors meeting of the Back River Neck Peninsula Community Association held on August 2nd, 1994, it was decided by the Association that responsibility for review and action on all zoning matters for the period covering our Community Action Plan be placed in the (Board of Directors) (Zoning Committee) consisting of the following members: Theresa Luckert, Betty Christopher Bruce Laing, Carl Maynard, Bob Christopher, Debbie Hyson William Azud, Marion MacGraham, Jack Hession Al Clasing Jr.

AS WITNESS OUR HANDS AND SEAL THIS 7th day of May, 19 95. Constance M. Pakaski
clerk 4-1-98
ATTEST: BRNPCA Association

Marion E. MacGraham
Secretary

John M. Hession
President

RULE 8

WM. WILSON

95-46-XA

MICROFILMED

Back River Neck Peninsula Comm. ASSOCIATION

RESOLVED: That the position of the Back River Neck Peninsula Community Association as adopted by the (Board of Directors) (Zoning Committee) on the zoning matter known as:
WILLIAM H. WILSON 2120 POPLAR ROAD 21221
95-46-XA

is that: we are in opposition to granting a special exception and variance for this property. It conflicts with our Community Action Plan as adopted by the Baltimore County Council on October 18, 1993.

AS WITNESS OUR HANDS AND SEAL THIS 7th day of May, 19 95. Constance M. Pakaski
expires 4-1-98
ATTEST: B.R.N.P.C.A Association

Marion E. MacCrehan
Secretary

John M. Hession
President

AFFIDAVIT

STATE OF MARYLAND
BALTIMORE COUNTY, SS:

TO WIT:

I hereby swear upon penalty of perjury that I am currently a
duly elected member of the (Board of Directors) ^{C.A.M.} (Zoning Committee)
of the Back River Neck Peninsula Community Association.

Carl A. Maynard

ATTEST:

B.R.N.P.C.A Association

Marion E. MacCrehan
Secretary

John M. Hession
President

DATE:

May 7, 1995

Constance M. Pakoski
expires 4-1-98

MAILED

! For 2114 Poplar Rd) ADDRESS

3 Hohenet Reisterstown MD
21130

2200 Polar Re

2200 POPLAR RD

2102 Poplar RD

2102 POPLAR RD.

2110 Poplar Rd.

1026 Maple Rd 21221

1807 Cape New RD

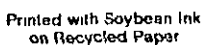
2114 Poplar Rd

1546 DEWTON RD B.R.W.P, CA

PETITIONER(S) SIGN-IN SHEET

ADDRESS

2120 Poplar Rd. Balto Md. 21221
2126 Poplar Rd BALTO, 21224
1011 Donnanwood Drive Towson 21085
1011 Donnanwood Dr. Joppa 21085
2222 Silver Lea. BALTO MD. 2121
2222 Silver Lea 21221
14 E. Jefferson Ave Cockeysville, MD 21030
1705 CHARTSWORTH RD FALLS CH 21009
12275 BONMOT PL. REISTERSTOWN 21136
8608 Cottingham Rd., Baltimore, MD 21236
34 Salthill Court, Timonium 21093
1147 Seneca Rd 21220
1147 Seneca Rd. Balto Md 21220
2029 Sue Creek Dr 21221
36 BATHOEN RD 21009



MODIFIED

R.C. 20

SUE

95-46-XA

#35

SITE

89-41SPH

LANE

ROAD

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WALL

RD.

POPULAR

ROAD

R.C. 5

RD.

P.C. Ltd.

Patton Consultants, Ltd.

305 W. CHESAPEAKE AVE., SUITE 118

TOWSON, MARYLAND 21204

(301) 296-3140 FAX (301) 296-0119

SITE PLANNERS - ENGINEERS
LAND DEVELOPMENT CONSULTANTS

31

LOURDES

SILVER

SILVER

32

SCALE
1" = 200' ±

LOCATION

HOLLY NECK

SHEET

S.E.
2-J

DATE
OF
PHOTOGRAPHY
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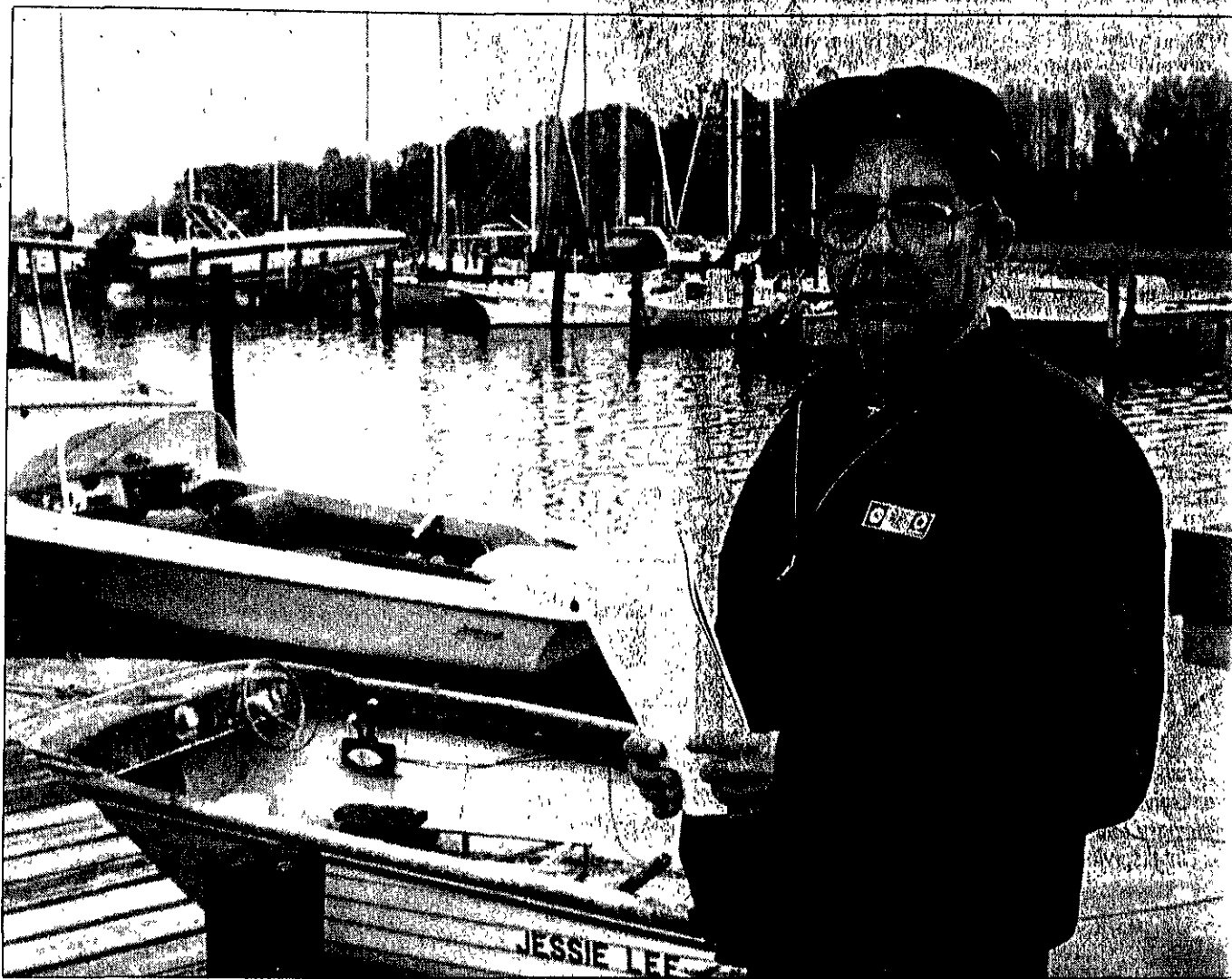
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THE SUN/PAUL F.

Back River Neck Peninsula resident Robert Christopher says the plight of polluted Sue Creek is "an absolute disgrace

Overcrowding fouls Baltimore County wate

Longtime residents' call for help may get answer

By Dennis O'Brien

Baltimore County Bureau of The Sun

When Robert Christopher moved to a waterfront home on the Back River Neck Peninsula 30 years ago, he thought he had found his own slice of heaven.

These days, he's not so sure.

In the 1970s, Mr. Christopher could take his boat out into Sue Creek and catch pike, bass, yellow perch and white perch. His two children often spent afternoons swimming in the creek, and on summer

nights the only sounds they heard were the chirping of crickets and the occasional drone of a boat engine.

But Mr. Christopher sold the boat about 10 years ago. He and his neighbors say more and more boaters are clogging the waterways with their boats and the narrow roads with their parked cars. The proliferation of boats also has meant more noise and has helped to silt up Sue Creek, a waterway so polluted that most neighbors have stopped letting their children swim in it.

"What's happened here is an absolute disgrace," Mr. Christopher said. "This creek has degenerated and it's continuing to degenerate so quickly that if nothing's done pretty soon it's going to be completely

dead."

Mr. Christopher is not the only concerned resident, nor is Sue Creek the county's only polluted waterway. Dozens of similar complaints are filed each year by people who live along the county's miles of jagged coastline.

Just about everywhere you find a problem, you'll find problems associated with polluted water," said Milton Durham, president of the Wilson Point Civic Improvement Association.

But residents say that after years of complaints, their calls for help may be getting some attention. Just last week, County Councilman Vincent G.

See MARINA, 3B, C

MICROFILMED

Waterfront residents call for help as boaters, 'bootleg marinas' clog tributaries

MARINA, from 1B

D-5th, sponsored a resolution last Monday asking the planning board to consider restricting the number of boats on residential piers. A recommendation is due early next year.

□ Zoning Commissioner Lawrence E. Schmidt held a zoning hearing Wednesday on a request from the operator of a 33-slip marina, built on Sue Creek at least 30 years ago without proper zoning approval, to permit him to continue operating. A decision on John Bahel's request is due in 30 days, and residents hope the issue will focus attention on the need for increased regulation of marinas and boaters.

□ A community group released a consultant's report Wednesday that warns about pollution in the Middle River and the effect of increasing numbers of boats on its tributaries. "Boat discharges can potentially endanger public health and add to the nutrient-enriched and low oxygen conditions, particularly in congested harbors," says the Back River Neck Community Association's report by Richard D. Klein, an environmental consultant.

Residents say the clogged waterways also have meant problems similar to those experienced near crowded housing developments — traffic, litter and noise. But they say the problems are magnified because they occur on the water and surrounding land.

"Believe me, on a sunny Sunday afternoon it can look like Interstate 95 or Eastern Boulevard out there, the water's so full of boats," said Mr. Durham, whose community lies on the Middle River.

Too many boats?

The number of boats registered to Baltimore County residents has more than doubled in the past 10 years, jumping from 12,681 in 1980 to 27,097 on Dec. 31, 1990, according to the state Department of Natural Resources Boating Administration.

Critics of the boating industry say that has meant more pollution, because more boaters using the waterways mean more chances some will dump litter and waste from on-board toilets.

"Every weekend, you'll see boats down here from Philadelphia and from New York. If they weren't here, maybe the waters would still be clean enough to swim in," Mr. Christopher said.

But boaters, marina operators and some environmental officials

say that just isn't so.

David Flowers, coordinator of the Chesapeake Bay Critical Area program for Baltimore County's Department of Environment and Resource Management, said boaters may contribute some pollution to waterways, but it's negligible compared to pollution caused by failing septic tanks, residential development and industrial discharge.

"By pointing a finger at any one source, you're not going to solve the problem," he said. "You have to look at the whole drainage area and see what's flowing into the water from all of the sources."

Boaters and marina operators say they are helping to clean up waterways.

Robert Palmer, president of the Marine Trade Association of Baltimore County, said the association is encouraging marinas to install pump-out facilities that enable boaters to flush out the human waste stored in holding tanks on larger boats, rather than dumping it at sea.

Besides, he added, roughly 60 percent of the boats registered in Maryland have no toilet facilities — so most boaters don't dump human waste at sea.

The boating industry represents a \$50 million-a-year business in Baltimore County and contributes far more in ringing cash registers and payrolls than it dumps in pollution, he said.

"It's illogical that there is so much emotion over pollution because of boats," Mr. Palmer said. "The facts just don't support that."

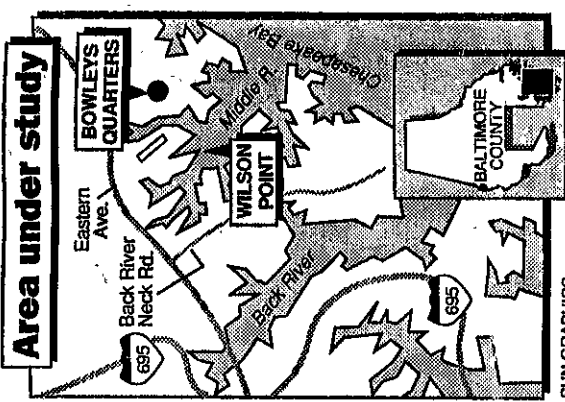
He said it isn't the licensed marina operators that create the problem but the "bootleg marinas," or homeowners who rent out slips on their private piers without county permits.

Licensed marina operators have to pay higher property taxes because county records show that they operate as businesses. They also must meet strict rules on trash collection and trash storage, restrooms for customers and parking, Mr. Palmer said. The bootleg marinas do not.

"Right now, there's no limit to the number of boats you can tie up on a residential pier, so you have one guy renting out slips and not facing the rules while the next guy has to follow them," he said. "We're saying we need an even playing field."

Lease rates vary for boat slips, depending on the location of the pier, its depth and the size of the boat. But a slip usually will cost about \$900 per season to tie up a 20-foot boat, Mr. Palmer said.

But those who operate bootleg



SUN GRAPHICS

marinas say they just provide a legitimate service and that if the county cracked down they probably would have to stop.

"If they were to rule against me I

would probably just pull out the pilings," said William H. Wilson, who each year depends on word-of-mouth advertising to lease 15 slips behind his home on Sue Creek.

Mr. Wilson said he didn't consider the operation a full-fledged business. "It started out friends and then friends of friends," he said. "I do try to keep a good relationship with my neighbors."

Zoning laws little help

County zoning officials say they hope Mr. Gardina's resolution will lead to a tightening of the county codes because their hands are tied by the current law.

Although bootleg marinas may be violating zoning codes that prohibit commercial uses in residential communities, prosecuting a case is nearly impossible, said James H. Thompson, Baltimore County zoning enforcement coordinator.

He said that even in cases where there is evidence that money changes hands, the courts have been

reluctant to levy penalties.

"The courts have consistently held that barter or exchange of services does not constitute a commercial operation. This is a very difficult case to prove," says a Sept. 25, 1989, memo by former Zoning Commissioner J. Robert Haines.

Based on the memo — and unsuccessful attempts to go after bootleg marinas — the zoning office decided two years ago not to cite illegal marinas for zoning violations because the current law is so ambiguous, Mr. Thompson said.

"It's a sticky issue. The question becomes where do you set the limit," Mr. Thompson said. "If I have a pier and I have four kids, why shouldn't I have five slips, one for me and one for each kid? What's to keep me from renting out those slips if my kids move away?"

Residents say the county has a history of ignoring their complaints about parking problems, water quality and bootleg marinas.

"This has been a very neglected

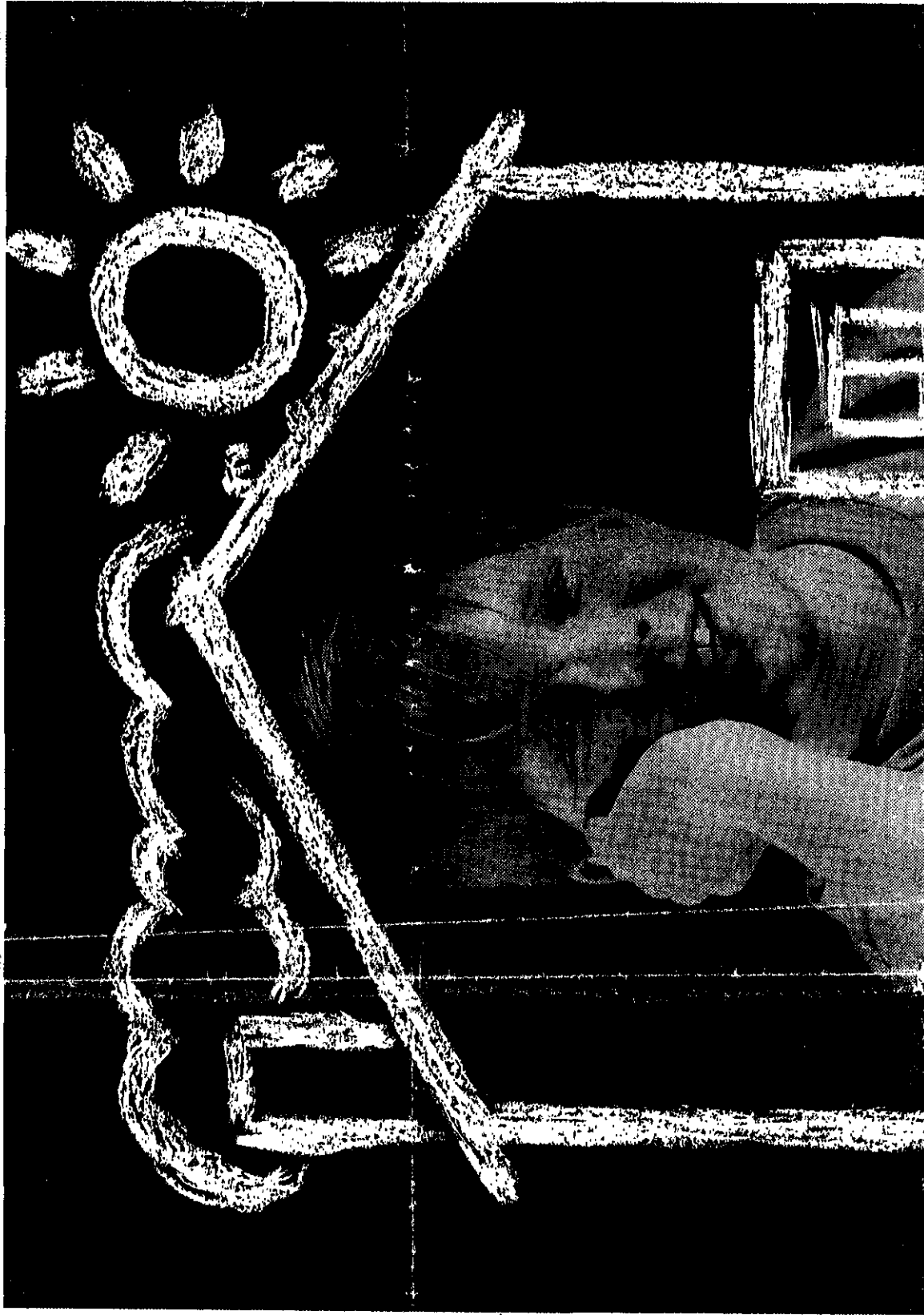
area from a standpoint of the needs of the residents," said Regina Beasman, who lives in the 2300 block of Poplar Road near Mr. Christopher.

"They hope that the county will tighten the law and begin to crack down. At stake, they say, is an integral part of the Chesapeake Bay.

"Look at the creek — there's no bay grasses here, there's no water quality here anymore," said Wayne Berk, 37, who lives along Sue Creek.

Mr. Berk said his two daughters suffered ear infections last summer after they went swimming in the creek. When the family doctor said their infections may have been caused by the quality of the water, he put in an above-ground pool.

"I can go back 25 years ago and we used to go down to the water and rent a boat. That creek was loaded with grass. You could drop your line down and you had no problem catching bass, white perch, rockfish," Mr. Berk said. "It isn't like that any more."



EDIE EVE EXAMAS

HOLLY NECK IMPROVEMENT ASSOC.



September 6, 1994

Mr. Arnold Jablon
Director of Zoning
111 W. Chesapeake Avenue
Room 106
Towson, MD 21204

Not No 1

Dear Mr. Jablon,

In reference to: Case Number 95-46-XA (Item 38)
2120 Poplar Road
Petitioner(s): William H. Wilson and Laura Stern Wilson

The members of the Holly Neck Improvement Association have voted to oppose Mr. Wilson's illegal boatyard. The members of the Holly Neck Improvement Association voted on June 17, 1991 not to support any residential property to be used as a public marina. Then on August 15, 1994 the Association voted to oppose the illegal marina once again.

Mr. Wilson is in noncompliance with the board of appeals decision of January 6, 1975 in Case Number 74-9-V regarding the mooring of more than six boats.

Please be aware that Poplar Road is a narrow dead end street. There is inadequate parking for these seventeen slips. The requirements is nine spaces. Mr. Wilson shows on his plat that there is nine spaces, however Mr. Wilson and Mrs. Wilson own three cars.

On this narrow street many children play and ride bikes upon which Mr. Wilson's added traffic makes it hazardous to this residential area.

At this time Sue Creek is already stressed due to the numerous boat traffic. Mr. Wilson is impacting his neighbors and our waterways with his seventeen slips.

Please respond at this time to our plea as members of the Association and Community to keep our zoning residential with no special exceptions.

Any contact needed can be made to:

Liz Neukam
391-2174
President of the Holly Neck Improvement Assoc.

Secretary
Janet Palasik

Janet Palasik

MICROFILMED

Pro 1102

THE HOLLY NECK IMPROVEMENT ASSOC. INC. ASSOCIATION

RESOLVED: That at the SPECIAL meeting of the
HOLLY NECK IMPROVEMENT ASSOC. INC Association held on
SEPT. 10, 19 94, it was decided by the
Association that responsibility for review and action on all zoning
matters for the period 9-12-94 be
placed in the (~~Board of Directors~~) (Zoning Committee) consisting of
the following members:

WAYNE BERK

AS WITNESS OUR HANDS AND SEAL THIS 10 day of
SEPT., 19 94.

ATTEST:

THE HOLLY NECK IMPROVEMENT Association

Janet Palasik
Secretary

Mary E. Neukam
President

MICROFILMED

AFFIDAVIT

STATE OF MARYLAND
BALTIMORE COUNTY, SS:

WAYNE BERK

TO WIT:

I hereby swear upon penalty of perjury that I am currently a
duly elected member of the (~~Board of Directors~~) (Zoning Committee)
of the HOLLY NECK IMPROVEMENT ASSOC. Association.

ATTEST:

THE HOLLY NECK IMPROVEMENT Association

Janet Salasik
Secretary

Mary E. Yunka
President

DATE: 9-10-94

THE HOLLY NECK IMPROVEMENT ASSOCIATION

RESOLVED: That the position of the HOLLY NECK
IMPROVEMENT Association as adopted by the (Board
GENERAL MEMBERSHIP
~~of Directors~~) (~~Zoning Committee~~) on the zoning matter known as:
APPLICATION FOR A SPECIAL EXCEPTION AND VARIANCE
ON THE PROPERTY LOCATED AT 2120 POPAR RD.
21221

is that:

WE ARE OPPOSED TO THE GRANTING
OF THE SPECIAL EXCEPTION AND VARIANCE

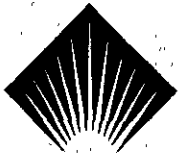
AS WITNESS OUR HANDS AND SEAL THIS 10 day of
SEPT., 19 94.

ATTEST:

HOLLY NECK IMPROVEMENT Association

Janet Palasik
Secretary

Mary E. Yunkan
President



Maryland

Small Business Development Center
N E T W O R K

AJ-65
1414 Key Highway, Suite 310
Baltimore, Maryland 21230
(410) 234-0505 427-94

Central Region

August 23, 1994

Richard B. Palmer, Ph.D.
Executive Director

Arnold Jablon
Director of Zoning
111 W. Chesapeake Avenue
Room 109
Towson, MD 21204

Re: Case 95-46-XA
SA

Dear Mr. Jablon:

This is to vehemently protest your issuing a license to Bill Wilson on Poplar Rd. for any boats much less 17 boats.

He has been a menace to Poplar Rd. since he moved in: He has killed much of the wild life in the area. Ducks that were plentiful are being killed because of the increase human population (boat renters and guests) frequenting his money making empire of boat rental slips.

The crabs that we caught in front of our house are dead or moved away to calmer waters.

The beautiful plant life that frequented the area has succumbed to ugly plants that can survive in oil and gasoline spilled from his crew in front of his house.

No longer can we sit on our porch in serenity either summer or winter and enjoy the quiet and the view. There is no longer any quiet. People are coming and going to and from his property.

We cannot see the water anymore. All of his boat have barricaded us in and we can only see the water under out pier.

He has inhibited us from boating ourselves. We must go through a maze of boats to reach the creek.

BECAUSE OF THE ABOVE REASONS, PLEASE DO NOT ISSUE BILL WILSON A PERMIT FOR A MONEY MAKING BUSINESS AT THE EXPENSE OF ALL THE RESIDENTS WHO WANT TO ENJOY THE PROPERTIES THEY OWN FOR THEIR OWN PLEASURE AND DO NOT INTEND TO OBTAIN EXTRA DOLLARS THROUGH A MONEY MAKING BUSINESS. MR. WILSON'S MOTIVE IS ONLY A SELFISH ONE SINCE HIS BUSINESS WILL NOT EVEN EMPLOYEE ANYONE.

Sincerely,

Ellin Dize

Director of Business Development

RECEIVED

AUG 25 1994

ZADM

MICROFILMED





Julia R. Dize
2114 Poplar Road
Essex, MD 21221

8/30/94

70 68

4329-94

Proty

August 23, 1994

Mr. Arnold Jablon
Director of Zoning
111 W. Chesapeake Ave.
Room #109
Towson, MD 21204

Re: Case # 95-46-XA

Dear Mr. Jablon,

I would like to protest the zoning of a marina next door to my property.

The increase traffic could not be handled by our one lane road. The community would be disrupted and already is by the increased traffic.

I have trouble docking my boat because Mr. Wilson has his pier extended so far with so may boats I can not gain access to the west side of my pier.

I can no longer look out onto the water toward the bay because my view is obstructed by boats.

In considering all the facts I feel the maria would be a detriment to the area.

Thank you .

Julia Dize
Julia Dize

RECEIVED
AUG 30 1994

ZADM

MICROFILMED

Q. C. *Handwritten initials*

WE THE UNDERSIGNED, OPPOSE ANY VARIANCE OR SPECIAL EXCEPTION TO THIS PROPERTY. WE WOULD LIKE TO SEE IT STAY RESIDENTIAL. ANY CHANGES TO THIS ZONING WOULD HAVE ADVERSE EFFECTS TO OUR COMMUNITY. IT WOULD MAKE MORE TRAFFIC ON THIS NARROW ROAD, CREATING AN UNSAFE ENVIRONMENT FOR THE CHILDREN. IT WOULD CREATE MORE TRAFFIC ON OUR WATERWAY. SUE CREEK IS ALREADY OVERCROWDED. IT BLOCKS THE VIEW OF THE WATER. IT SHOULD BE RETURNED TO ITS ORIGINAL STATE.

NAME	ADDRESS	PHONE#
1. <i>Sheila Stark</i>	2110 Poplar Rd.	574-3057
2. <i>JOHN BIGGIE JR</i>	2024 Poplar Rd.	
3. <i>VERONICA H. SHRADER</i>	2016 Poplar Rd	682-6681
4. <i>Thelma Nowak</i>	2012 Poplar Rd	686-2795
5. <i>Raymond Avery</i>	2006 Poplar Rd.	686-9335
6. <i>Raymond E. Avery</i>	2006 Poplar Rd.	686-9335
7. <i>Karen Kulczynski</i>	2206 Silver Lane	391-3287
8. <i>Muriel C. Sample</i>	2210 Silver La.	687-9423
9. <i>Paul & Charles Murray</i>	1004 Lourdes Rd	391-9365
10. <i>Edward Mamolito</i>	1003 Pine Rd	574-5226
11. <i>Jeannett Maier</i>	1926 Poplar Rd	
12. <i>Tina Weber</i>	1920 Poplar Rd	686 8604
13. <i>William Bernick</i>	1912 Poplar Rd	687-8309
14. <i>James E. Roberts</i>	1026 Maple Rd.	391-5709
15. <i>Patricia L. Roberts</i>	1026 Maple Rd	391-5709
16. <i>James E. Roberts Jr</i>	1026 Maple Rd	391-5709
17. <i>Cynthia Beldi</i>	1028 MAPLE Rd.	682-6033
18. <i>Janet Palasik</i>	1128 Maple Rd	
19. <i>Diana L. Schettler</i>	1132 Maple Rd.	686-2954
20. <i>Mary Gast</i>	1107 Maple Rd.	687 7533
21. <i>Heriberto M. Muriel Jr</i>	1031 MAPLE RD.	574-5447
22. <i>Daniel D. Cartwright</i>	Maple Rd.	
23. <i>Regina Brown</i>	poplar Rd	574-3517
24. <i>Mullis</i>	2202 Silver Ln	574-1874
25. <i>CJ Hignel</i>	2121 Silver Ln	687-2063

MICROFILMED

REFERENCE TO CASE: 95-46-XA (ITEM 38)
WILLIAM WILSON AND LAURA STERN WILSON
2120 POPLAR ROAD

WE THE UNDERSIGNED, OPPOSE ANY VARIANCE OR SPECIAL EXCEPTION TO THIS PROPERTY. WE WOULD LIKE TO SEE IT STAY RESIDENTIAL. ANY CHANGES TO THIS ZONING WOULD HAVE ADVERSE EFFECTS TO OUR COMMUNITY. IT WOULD MAKE MORE TRAFFIC ON THIS NARROW ROAD, CREATING AN UNSAFE ENVIRONMENT FOR THE CHILDREN. IT WOULD CREATE MORE TRAFFIC ON OUR WATERWAY. SUE CREEK IS ALREADY OVERCROWDED. IT BLOCKS THE VIEW OF THE WATER. IT SHOULD BE RETURNED TO ITS ORIGINAL STATE.

NAME ADDRESS PHONE#

1. Diane M Klein 2102 Poplar Rd 391-9324
2. Daniel A. Klein 2102 POPLAR RD 391-9324
3. Bernard C. Larson 2102 Poplar Rd. 391-9324
4. Robert G. Schmidt 2105 Silver Lane 687-3603
5. Joseph P. Schmidt 2100 Poplar Rd 391-3709
6. Josh White 2100 POPLAR RD 391-3709
7. Susan Smith 2100 Poplar Rd 391-3709
8. Annette Schmidt 2105 Silver Lane 687-3603
9. ~~Bob~~ Mae Wayne Scanlon 2104 Poplar Rd 687-0559
10. Michael Moerschel 2110 Poplar Rd 574-3057
11. Mark Fingrich 2110 POPLAR RD 682-5109
12. Mark Gulezynski 2206 Silver Lane 391-3287
13. Harry A. Sample 2210 SILVER LANE 687-9423
14. Joe Keannebetter 2020 Poplar Rd 687-8010
15. Wayne Benk 2200 Poplar Rd 574-6794
- 16.
- 17.
- 18.
- 19.
- 20.
- 21.
- 22.
- 23.
- 24.
- 25.

PROT 5B
#2
MICROFILMED

Not
SC

WE THE UNDERSIGNED, OPPOSE ANY VARIANCE OR SPECIAL EXCEPTION TO THIS PROPERTY. WE WOULD LIKE TO SEE IT STAY RESIDENTIAL. ANY CHANGES TO THIS ZONING WOULD HAVE ADVERSE EFFECTS TO OUR COMMUNITY. IT WOULD MAKE MORE TRAFFIC ON THIS NARROW ROAD. CREATING AN UNSAFE ENVIRONMENT FOR THE CHILDREN. IT WOULD CREATE MORE TRAFFIC ON OUR WATERWAY. SUE CREEK IS ALREADY OVERCROWDED. IT BLOCKS THE VIEW OF THE WATER. IT SHOULD BE RETURNED TO ITS ORIGINAL STATE.

NAME	ADDRESS	PHONE#
1. James E. Keller	2307 Silver Lane	687-4641
2. Liz Newkum	2208 Poplar Rd	391-2174
3. Keith Roberts	1910 Marsh Rd	687-6794
4. Rodney Eliff	2114 Poplar Rd	442-1566
5. Phil Gha	2310 Silver Lane	687-0771
6. Louis Mueller	2206 Poplar	886-2280
7. Marie Brown	2210 Poplar	686-4051
8. Ed Cash	2214 Poplar Rd	574-4842
9. Joan Bryant	2106 Marsh Rd	674-8942
10. David Schwan	2110 Marsh Rd	780-3685
11. John V. Bassett Jr	2100 Marsh Rd	686-9231
12. Jean M. Hahn	1020 Cedar CK	574-100X
13. Wayne Margaret Harlow	1023 Cedar Creek Rd	687-4080
14. Thomas J. Brady Jr	1032 Cedar Creek Rd	682-4460
15. Thomas B. Clark	2212 Poplar Rd	686-1035
16. Lisa M. Harlow	2212 Poplar Rd	686-1035
17.		
18.		
19.		
20.		
21.		
22.		
23.		
24.		
25.		

MICROFILMED

Bauernschmidt Manor
IMPROVEMENT ASSOCIATION, INC.

not 6

September 9, 1994

Arnold Jablon, Director
Zoning Administration and
Development Management
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: 2120 Poplar Road
Case No. 95-46-XA

Dear Mr. Jablon:

On behalf of the Bauernschmidt Manor Improvement Association, we would request the County adhere to the existing Residential Pier law which limits the number of boats allowed on residentially-zoned property by not granting a variance in the above matter.

Thank you for your time and consideration in this regard.

Very truly yours,

Bonnie M. Smith

Bonnie M. Smith
BMIA, President

BMS:pm

MICROFILMED

TURKEY POINT IMPROVEMENT ASSOCIATION, INC.
858 Sue Groave Road, Baltimore, Maryland 21221
TURKEY POINT — MIDDLE RIVER
BALTIMORE COUNTY, MARYLAND
21221

Prot 7

September 9, 1994

TO WHOM IT MAY CONCERN:

This letter refers to Case No. 95-46 XA (Item 38), an application for a Special Exception for Marina, 17 slips, at 2120 Poplar Road, Baltimore, Maryland 21221.

This is to advise that the members of the Turkey Point Improvement Association, recommended NON APPROVAL of subject application on the grounds that the area, in which this Marina would be operating is already saturated with boat traffic.

There are already hundreds of boat slips in this area.

Water pollution is already rampant in this area and wildlife is already threatened due to boat traffic.

Yours truly,

Norbert J. Anderson

Norbert J. Anderson
President
The Turkey Point Improvement Ass.

NJA:sa

MICROFILMED

Rockaway Beach Improvement Assn., Inc.

**721 Rockaway Beach Ave.
Essex, MD 21221
(410) 686-1358**

ref 8

TO WHOM IT MAY CONCERN:

Re: Case 95-46 XA (item 38), applicationn for Special
Exception for Marina at 2120 Poplar Rd., Essex, MD 21221

Rockaway Beach Improvement Association joins with other civic groups in the community in vehemently opposing the legalization of what has operated as an illegal "bootleg" marina for many years. Rewarding the owner with such an exception to Baltimore County Code would be a blatant disregard to the law as well as the citizens of the area.

Sue Creek is already dying because of the proliferation of boats, not only in the water but stacked four levels high on racks at Anderson Brothers and other boating centers. Those of us who have lived here a lifetime are dedicated to restoring Sue Creek to its former vibrance and preserving the fish, fowl and wildlife that inhabit the area.

Sincerely,

Jackie Nickel
Jackie Nickel, President

MICROFILMED



NOTE: A SEPARATE PERMIT IS REQUIRED FOR ALL ELECTRICAL & PLUMBING WORK WHICH MUST BE DONE BY AN ELECTRICIAN OR PLUMBER LICENSED IN BALTIMORE COUNTY.

CONSTR PLANS	PLOT PLANS	RECORD PLAT	PLANS WAIVED	LETTER OF INTENT	DATA	AFF	SUPERVISION WAIVER
5	5						

**APPLICATION FOR PERMIT
BALTIMORE COUNTY MARYLAND
OFFICE OF THE BUILDING ENGINEER
TOWSON, MARYLAND 21204**

CENSUS		ELEC		PLUMBING	
TRACT	BLOCK	YES	NO	YES	NO
			X		X

BY **MP JOSEPH M. NOLAN**

TAX ACCOUNT NUMBER **15-07-150721**
15-07-150722

BUILDING ADDRESS	133 SILVER LANE				
OWNER'S NAME	WILLIAM H. WILSON				
MAILING ADDRESS	1011 DONNAWOOD DR., 21085				
IDENTIFICATION	NAME	ADDRESS	CITY	STATE	ZIP
TENANT					
BUILDING CONTRACTOR					
ENGINEER OR ARCHITECT					
IF UNDER CONTRACT OF SALES GIVE SELLER'S NAME AND ADDRESS	GESCHIVENDT				
TRANSFER DESCRIPTION	N/S POPLAR ROAD				

DATE ISSUED **2/5/80**

BUILDING PERMIT NO	DISTRICT	PRECINCT
23750		
CONTROL NO WF	15	19

THIS PERMIT
EXPIRES ONE
YEAR FROM DATE
OF ISSUE

A. TYPE OF IMPROVEMENT

- 1 ☒ NEW BUILDING CONSTRUCTION
- 2 ☐ ADDITION
- 3 ☐ ALTERATION
- 4 ☐ REPAIR
- 5 ☐ WRECKING (ENTER NO. UNITS DEDUCTED _____)
- 6 ☐ MOVING
- 7 ☐ OTHER _____

RESIDENTIAL

- 01 ☐ ONE FAMILY
- 02 ☐ TWO FAMILY
- 03 ☐ THREE AND FOUR FAMILY
- 04 ☐ FIVE OR MORE FAMILY (ENTER NO. UNITS _____)
- 05 ☐ SWIMMING POOL
- 06 ☐ GARAGE
- 07 ☒ **PIER**

C. TYPE OF USE

NON-RESIDENTIAL

- 08 ☐ AMUSEMENT, RECREATION, PLACE OF ASSEMBLY
- 09 ☐ CHURCH, OTHER RELIGIOUS BUILDING
- 10 ☐ FENCE (LENGTH _____ FEET)
- 11 ☐ INDUSTRIAL, STORAGE BUILDING
- 12 ☐ PARKING GARAGE
- 13 ☐ SERVICE STATION, REPAIR GARAGE
- 14 ☐ HOSPITAL, INSTITUTIONAL, NURSING HOME
- 15 ☐ OFFICE, BANK, PROFESSIONAL
- 16 ☐ PUBLIC UTILITY
- 17 ☐ SCHOOL, COLLEGE, OTHER EDUCATIONAL
- 18 ☐ SIGN
- 19 ☐ STORE ☐ MERCANTILE ☐ RESTAURANT
SPECIFY TYPE _____
- 20 ☐ SWIMMING POOL (MD HEALTH DEPT APPR REQ)
- 21 ☐ TANK, TOWER
- 22 ☐ TRANSIENT HOTEL, MOTEL (NO. UNITS _____)
- 23 ☐ OTHER _____

DESCRIBE PROPOSED WORK

**CHANGE THE EXISTING PIER CONFIGURATION
CEDAR CREEK OFF OF SUE CREEK OFF OF
MIDDLE RIVER. NO CHANNEL-DEPTH IS A
CONSTANT 4' AT NEW FRM. OUTER PILINGS
TO A DISTANCE OF 150' FRM. FAR SHORE.**

TYPE FOUNDATION

☐ LAB
☐ BLOCK
☐ CONCRETE
☐ BASEMENT
☐ FULL
☐ PARTIAL
☐ NONE

B. OWNERSHIP

- 1 ☒ PRIVATELY OWNED 2 ☐ PUBLICLY OWNED

ESTIMATED COST OF
MATERIAL & LABOR

1,000

CHECK APPROPRIATE CATEGORIES FOR RESIDENTIAL ONLY

ATTACHED	SEAL	GROUP	TOWN	MO	RISE	RISE
1	2	3	4	5	6	7

RENT	SALE
1	2

24 PROPOSED USE(S)

SAME

S. F. RES. AND PIER

EXISTING USE(S)

SEE OTHER SIDE FOR INSPECTIONS

DO NOT BE POSTED MICROFILMED

NOTE: SEPARATE PERMIT REQUIRED FOR ALL ELECTRICAL AND PLUMBING WORK

Inspections are required at 9:00 A.M. & 2:30 P.M. with one day's notice on the day of inspection, which require at least 3 days. Plumbing & electrical inspections must be called for by registered licensed personnel. For inspections call: BLDG. 494-3953, PLUMBING 494-3620, ELECTRICAL 494-3960, FIRE DEPT. 825-7310 Ext. 216. The following inspections are required for construction indicated:

1. Footing inspection: shall be called for as soon as the trenches are completed and before pouring concrete.
2. Foundation inspection: shall be called for when the foundation has been waterproofed and before backfilling with earth.
3. Slab inspection: shall be called for when all reinforcing, piping, wiring, weepholes, drain tile, etc., are in place or completed and inspected by Plumbing/Electrical inspection and before pouring concrete.
4. Framing inspection: shall be called for when all structural members are in place, electric and plumbing roughed in and inspected, chimney and duct work installed and before covering with lath, insulation or drywall.
5. Occupancy or Final inspection: shall be called for after all other County Agencies concerned have approved but before the structure is used or occupied.

New Buildings: 5 Inspections Required

Footing - Foundation - Slab - Framing - Occupancy

Alterations: 2 Inspections Required

Framing - Occupancy or Final

Towers: 2 Inspections Required

Footing - Final

Factory Built Fireplace and Stoves: 2 Inspections Required

Framing - Final

Masonry Fireplace: 4 Inspections Required

Footing - Throat inspection shall be called for when the throat of the unit is complete but prior to the erection of the chimney.

Framing - Final

Tanks: 3 Inspections Required

Hydrostatic (Fire Dept.) - Piping (Bldg. Insp.) - Final

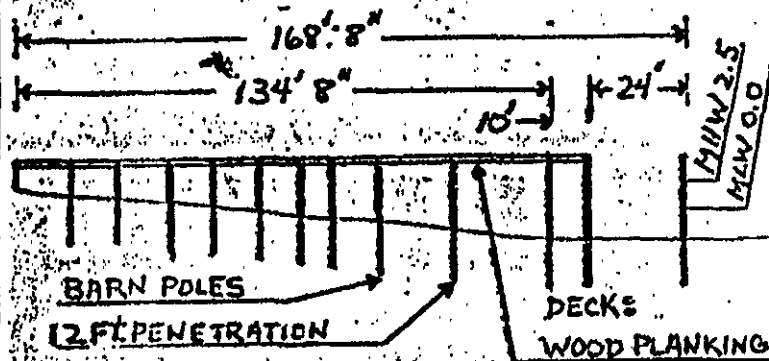
Swimming Pools: 4 Inspections Required

Steel in place and bonded - Concrete poured - Fence erected - Final

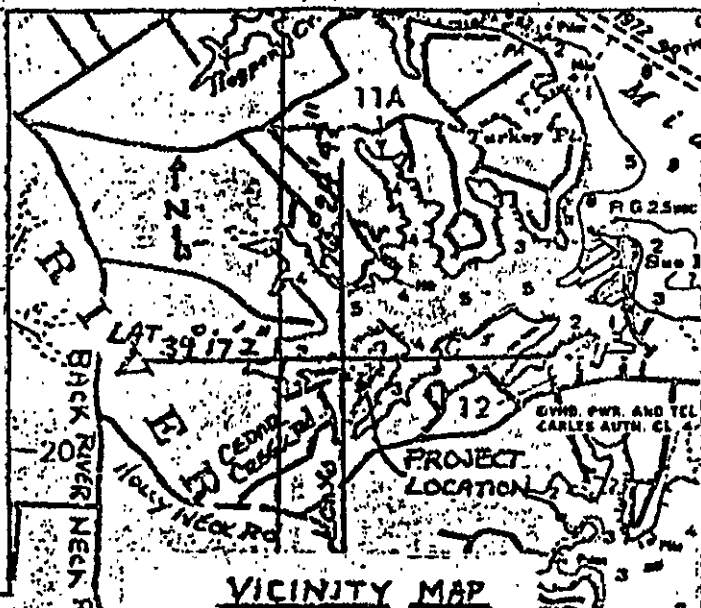
Fencing, Siding, Razing, Grading and Temporaries- 1 Inspection Required

Final - (when all work completed per permit)

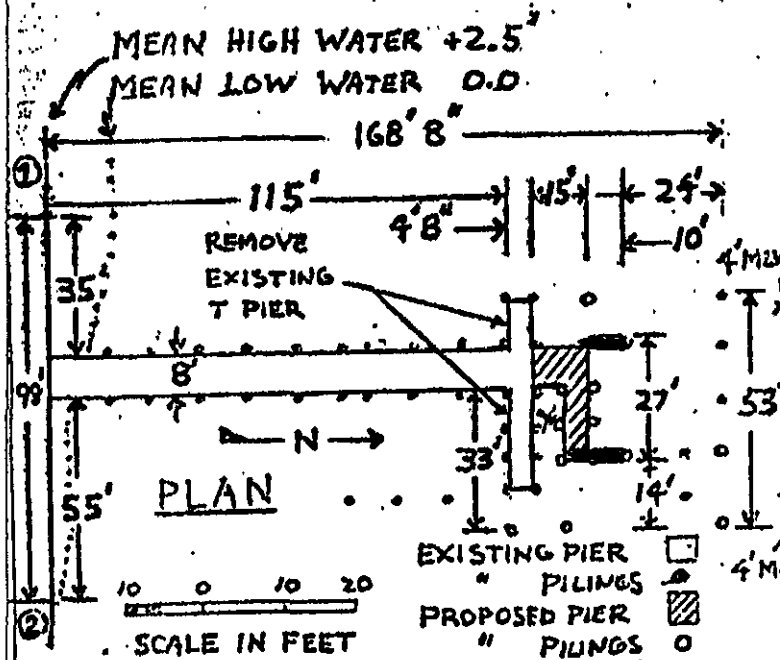
Ref No 2A



TYPICAL SECTION



VICINITY MAP



PLAN

CEDAR CREEK

SCALE IN MILES
FROM CHART 12279 BALTO. HARBOR

CHANNEL: NO CHANNEL,
DEPTH IS A CONSTANT
4 FT AT (MLW) FROM OUTER
PILINGS TO A DISTANCE OF
150 FT. FROM FAR SHORE

NOTE:
PIER CONFIGURATION TO BE CHANGED, BUT
THE DISTANCE FROM THE SHORE LINE TO THE OUTER
MOST MOORING PILINGS WILL NOT CHANGE

PROPOSED PIER

PURPOSE PRIVATE DOCKING FACILITIES
DATUM MEAN LOW WATER NATIONAL OCEAN SURVEY
ADJACENT PROPERTY OWNERS:
① JOHN F. CLARK
② FRANK KREAMER

IN CEDAR CREEK
NEAR ESSEX
BALTIMORE COUNTY MARYLAND
APPLICATIONS BY WILLIAM H WILSON
SHEET 1 OF 1 DATE 2/1/80

MICROFILMED

THIS DECLARATION made this 26 day of March, 1992, by William Wilson, hereinafter referred to as "Declarant."

WHEREAS, the Declarant desires to determine a non-conforming zoning use for the Property described in Exhibit "A" which is located within the boundaries of Baltimore County, Maryland as a residence with boatyard/marina slips; and

WHEREAS, prior to zoning the Property as a non-conforming use for the commercial slips, the Declarant desires to provide assurances to the Holly Neck Improvement Association that Declarant will not expand the number of boat slips currently existing on the property, or expand on shore improvements thereon.

NOW, THEREFORE, in consideration for the Holly Neck Improvement Association's agreement not to oppose the non-conforming use zoning determination, the Declarant hereby declares that the Property (described and shown on Exhibit "A" attached hereto as a part hereof) shall be held sold and conveyed subject to the following restrictions, covenants, agreements and conditions which shall run with the Property and be binding on all parties having any right, title or interest in the Property or any part thereof and their heirs, successors and assigns, and which shall inure to the benefit of each owner of the Property or part thereof.

1. The Property contains 17 boat slips. The boat slips shall not be increased in number.

2. The Property shall not be improved on shore with any additional commercial buildings or structures, but the Declarant

shall have the right to apply for and to construct improvements to and for the residence on the premises.

3. The Holly Neck Improvement Association shall have the right to enforce, by any proceeding, at law or in equity, all restrictions, conditions and covenants hereafter imposed by the provisions of this Declaration. Failure by the Association to enforce any covenant or restriction contained herein shall in no event be deemed a waiver of the right to do so at any time thereafter.

4. The invalidation of any one of these covenants or restrictions, conditions or agreements by a judgment or court order shall in no way effect any other provision which shall remain in full force and effect.

5. The provisions of this Declaration shall run with and bind the land unless terminated by the Association. This Declaration may be amended by an instrument signed by the Association.

IN WITNESS WHEREOF, the Declarant has executed this Declaration as of the 26 day of March, 1992.


WILLIAM WILSON

STATE OF MARYLAND, BALTIMORE COUNTY, TO WIT:

I HEREBY CERTIFY that on this 26 day of March, 1992, before me, a Notary Public of the State aforesaid, personally

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

WITNESS my hand and Notarial Seal.

Carol A. Lopa
NOTARY PUBLIC

My Commission Expires: March 1, 1995

Phil Lopa
Pres. Holly Neck Improv. Assn.
President,
Holly Neck Improvement Association

County Board of Appeals
COUNTY OFFICE BUILDING
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204

Petitioner
NO 4

January 6, 1975

Robert J. Romadka, Esq.
809 Eastern Boulevard
Baltimore, Md. 21221

Re: Paul Geschwendt
File No. 74-9-V

Dear Mr. Romadka:

Enclosed herewith is a copy of the Opinion
and Order passed today by the County Board of Appeals in the above
entitled case.

Very truly yours,

Muriel E. Buddemeier
Muriel E. Buddemeier

Encl.

cc: John J. Bishop, Jr., Esq.
Mr. John F. Greifzu
John Hennegan, Esq.
Harry C. Davison, Esq.
Mr. S. E. DiNenna
Mr. W. D. Fromm
Mr. J. B. Byrnes, III
✓ Mr. & Mrs. Francis H. Kreamer

MICROFILMED

Paul Geschwendt
Defendant

ALTIMORE COUNTY

No. 74-9-V (ZV-73-30)

: : : : :
OPINION

This case comes before the Board of Appeals on an appeal by the Defendant from an Order of the Zoning Commissioner dated November 9, 1973, wherein a violation was found to exist at the subject property known as 133 Silver Lane, in the 15th Election District of Baltimore County.

The subject property is located on Silver Lane, in the 15th Election District of Baltimore County and has frontage on a portion of Sue Creek. The violations complained of include: one, junk and debris located on the subject property; two, illegal use of a building located on the subject property as a community building (a boat club); three, operation of a marina; and four, operation of a marine railway.

Testimony in this case from Mr. Dillon, Chief of Zoning Enforcement, as well as from a complaining neighbor, as well as other neighbors and a somewhat tacit admission from the Defendant himself, that the complaint of junk and debris was well founded and did, in fact, exist at the time of the Zoning Commissioner's Order in this case. It is the Board's impression that this condition still exists to some degree, although there has been testimony that substantial efforts are being made to correct this situation at the present time.

Similarly, the Board finds that the building on the Defendant's property was being used illegally as a community building, and specifically as a club house for meetings and other affairs of an organization known as Key Yacht Club. Testimony further indicated that said use of the subject property has terminated and the Key Yacht Club has relocated and no longer uses the subject property for meetings or other purposes since April of 1974.

As regards the use of the subject property as a marina and/or boatyard, the overwhelming evidence in this matter is that no such use exists in this case.

been so made since shortly after the Defendant purchased this property in 1937, and has been used continuously in that respect ever since. Testimony indicated that the pier, bulkhead and marine railway were constructed prior to 1940, and have been used consistently ever since that time, with perhaps maintenance or improvements thereafter.

Several of the Defendant's neighbors testified in his behalf, stating that they have known him and the property since the late 1930s, and since that time ~~he has~~ ~~docked approximately the same number of boats at his pier, as well as maintaining a~~ ~~marine railway with various improvements or modernizations up until the present time.~~

There was no testimony that there was any ~~commercial operation maintained at this location,~~ but rather that this was for the convenience of Mr. Geschwendt, his family and his friends, and that ~~no charges~~ were made for either docking of boats or the use of the railway. ~~Only~~ repairs made were made ~~by the owners of the respective boats.~~ Mr. Geschwendt stating that the only repairs made by himself personally were to his own boats.

Consequently the Board finds that the Defendant was in violation at the time of the Order of the Zoning Commissioner of a violation of the Baltimore County Zoning Regulations, i.e. Section 502.1 and Section 101. The Board further finds that the use of the marine railway and the docking of approximately six boats at the Defendant's pier is a legal nonconforming use, having been so used since prior to the adoption of the Baltimore County Zoning maps.

ORDER

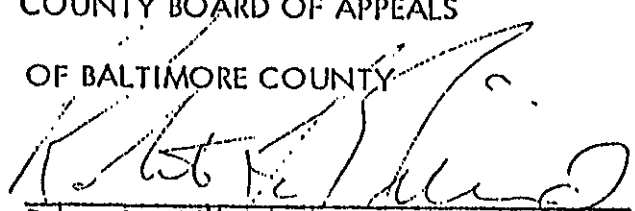
For the reasons set forth in the foregoing Opinion, it is this 6th day of January, , 1975, by the County Board of Appeals ORDERED, that a violation exists on the subject property, and that the junk and debris be removed from the subject property within thirty (30) days from the date of this Order; and it is

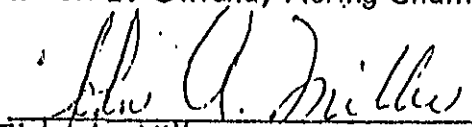
FURTHER ORDERED, that the marina railway and the docks for approximately six boats at the Defendant's pier is a legal nonconforming use.

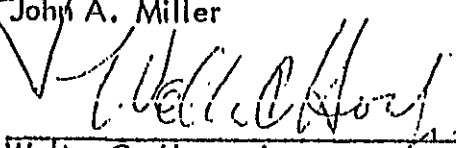
An inspection of the subject property is to be made by the Zoning Enforcement Division of the Baltimore County Zoning Office after thirty (30) days to assure compliance with this Order.

Any appeal from this decision must be in accordance with Chapter 1100, subtitle B of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY


Robert L. Gilland, Acting Chairman


John A. Miller


Walter C. Horn, Jr.

Robert E. Jones. Jr.

14824 THORNTON MILL ROAD
SPARKS, MD 21152

September 10, 1994

Larry Schmidt, Esquire
Zoning Commissioner
Court House
400 Washington Ave.
Towson, MD 21204

Ref No 45

Re: Case #95-46XA
Mr. William Wilson

Dear Mr. Schmidt:

We are sorry that we are unable to attend today's hearing concerning the above referenced case, but we do want you to know of our position.

We are the next door neighbors to the Wilson's. Our property is located at 2124 Poplar Road, and we are perhaps the ones most affected by the operations at 2122 Poplar Road. As background, we are relatively new to the area, having purchased the property just last August, 1993. My wife and I looked for most of last summer for a suitable waterfront site. There are many such sites on the market, but none as quiet and picturesque as the one we purchased on Poplar Road. The Wilson's are model neighbors, concerned with the looks of their property and the peace and tranquility we all desire. We can not vouch for what their property looked like in the past, and we are sure someone will present photographs of the area. As you will see, not all the properties in the area look as neat and well manicured as the Wilson's property does. Many of the home sites we looked at were in a noisy neighborhood or had a lot of traffic. Neither of these problems exist at the Wilson's. The existence of up to 17 boats at his location does not present a detriment to us or to our property. In fact, since we are near the head of "Sue Creek", the little boat traffic he has helps keep the channel open and enhances the value of our property and our neighbors as far as navigability goes in an otherwise shallow creek.

In summary, we see the Wilson's as model neighbor's with a love of the water and a concern over maintaining a peaceful coexistence with their neighbors and the environment. Neither my wife nor I have any objection to the Wilson's continued operation and the mooring of up to 17 watercraft.

Very truly yours,

Robert E. Jones, Jr.
Robert E. Jones, Jr.

Barbara A. Jones
Barbara A. Jones

MICROFILMED

Dear Mr. Zoning Commissioner of Baltimore County;

Let
No 4/6

I am aware that Bill Wilson at 2120 Poplar Road, Baltimore Maryland 21221 is seeking a special exception, to permit the 17 slips on his property to remain as they currently exist.

I have no objection to Mr. Wilson being granted a special exception for his property.

Name: James & Susan Stone
Address: 2220 SILVER LN
BALTO. MD 21221

Signature: James Stone
Susan Stone

MICROFILMED

let
No 47

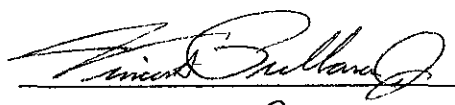
Dear Mr. Zoning Commissioner of Baltimore County;

I am aware that Bill Wilson at 2120 Poplar Road, Baltimore Maryland 21221 is seeking a special exception, to permit the 17 slips on his property to remain as they currently exist.

I have no objection to Mr. Wilson being granted a special exception for his property.

Name: Mr. & Mrs. Vincent Pullara, Jr.

Address: 2202 Poplar Rd.
Baltimore, Md. 21221

Signature: 
Betty L. Pullara

MICROFILMED

Net No 48

Dear Mr. Zoning Commissioner of Baltimore County;

I am aware that Bill Wilson at 2120 Poplar Road, Baltimore Maryland 21221 is seeking a special exception, to permit the 17 slips on his property to remain as they currently exist.

I have no objection to Mr. Wilson being granted a special exception for his property.

Name: CARROLL HUFFNERS
Address: 2126 POPLAR RD (21

Signature: Carroll Huffniss

MICROFILMED

AFFIDAVIT

My name is CARROLL W. HUFFINES SR., and I
reside at 2126 POPLAR RD. BALTO. MD. 21221.
I have lived in and been familiar with the Cedar Beach area since
prior to 1945. I am familiar with the property known as 2120
Poplar Road, which was formerly known as 133 Silver Lane, Baltimore
County, Maryland. The pier, with slips for rent, has existed
continuously and without interruption on this sight since prior to
1945.

Ret
No 49

I solemnly declare and affirm, under penalties of perjury,
that the foregoing facts are true and correct to the best of my
knowledge, information and belief.

Carroll W. Huffines Sr
Affiant's Signature

CARROLL W. HUFFINES SR.
Print Affiant's Name

STATE OF MARYLAND, BALTIMORE COUNTY, TO WIT:

I HEREBY CERTIFY that on this 30 day of April,
1992, before me, a Notary Public of the State aforesaid, personally
appeared CARROLL W HUFFINES SR., known to me
(or satisfactorily proven) to be the person whose name is
subscribed to the within instrument, who signed the same in my

MICROFILMED

presence, and acknowledged that (he/she) executed the same for the purposes therein contained.

WITNESS my hand and Notarial Seal.

Karen R Smetana
NOTARY PUBLIC

My Commission Expires: NOV 1, 1994

**Kaiser
Associates**

PUBLIC RELATIONS/PUBLIC AFFAIRS

Ref No 50

September 8, 1994

Zoning Commissioner, Baltimore County
c/o Bill Wilson
2120 Poplar Road
Baltimore, MD 21221

Dear Commissioner:

Although business commitments prevent me from attending Monday's hearing, I feel compelled to write and share my experience as a boat owner on Sue Creek.

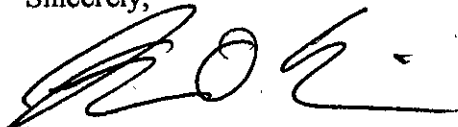
I have kept my boat at Bill Wilson's for three years. During that time, I have kept careful log records which show that I used the boat nineteen times in 1992, fifteen times in 1993, and ten times so far this year. Never on those forty-four occasions have I experienced any problems with parking, congestion on the creek, or with neighbors' complaints.

In fact, I am usually the only one taking my boat out in Mr. Wilson's slips. On rare occasions one or perhaps two boats maximum (never more in my experience) are out of their slips.

In all of my trips, I have never talked with or heard complaints from Mr. Wilson's neighbors on the creek, nor have I observed any of them encountering problems using their property, docks, water access, or Poplar Road. In fact, I specifically chose Mr. Wilson's location because of the quiet serenity, attractive and well kept property he maintains, and the idyllic setting in which my young children enjoy feeding the numerous ducks who thrive on this part of the creek.

I trust that you will find this information useful for Monday's hearing. Should you have any questions or desire additional information, I would be happy to oblige, and can be reached at 467-7800. Thank you in advance for your careful consideration of this letter.

Sincerely,



Stephen D. Kaiser
President
(Captain of Emily)

Meadow Mill at Woodberry
3600 Clipper Mill Road
Baltimore, Maryland 21211

410 467 7800
FAX 410 467 7802

MICROFILMED

AFFIDAVIT

Net No 51

My name is Francis H. Kreamer, and I
reside at 2222 SILVER LANE.

I have lived in and been familiar with the Cedar Beach area since prior to 1945. I am familiar with the property known as 2120 Poplar Road, which was formerly known as 133 Silver Lane, Baltimore County, Maryland. The pier, with slips for rent, has existed continuously and without interruption on this sight since prior to 1945.

I solemnly declare and affirm, under penalties of perjury, that the foregoing facts are true and correct to the best of my knowledge, information and belief.

F. H. Kreamer
Affiant's Signature

FRANCIS H. KREAMER
Print Affiant's Name

STATE OF MARYLAND, BALTIMORE COUNTY, TO WIT:

I HEREBY CERTIFY that on this 12 day of May,
1992, before me, a Notary Public of the State aforesaid, personally
appeared Francis H. Kreamer, known to me
(or satisfactorily proven) to be the person whose name is
subscribed to the within instrument, who signed the same in my

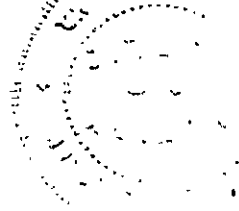
MICROFILMED

presence, and acknowledged that (he/she) executed the same for the purposes therein contained.

WITNESS my hand and Notarial Seal.

Delores A. Burr
NOTARY PUBLIC

My Commission Expires: 8-7-95



BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

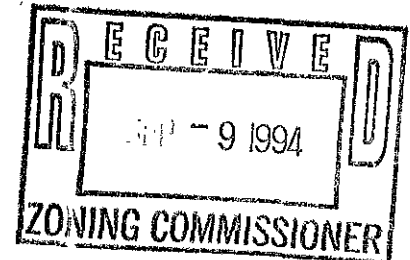
Ret 54

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

DATE: September 8, 1994

FROM: J. James Dieter

SUBJECT: Petition for Zoning Variance - Item 38
Wilson Property
Chesapeake Bay Critical Area Findings



SITE LOCATION

The subject property is located at 2120 Poplar Road. The site is within the Chesapeake Bay Critical Area and is classified as a Limited Development Area (LDA).

APPLICANT'S NAME Mr. William Wilson

APPLICANT PROPOSAL

The applicant has requested a special exception from the Baltimore County Zoning Regulations to permit, "a 17 slip marina. In the alternative, grant a special exception for the marina, approximately six (6) boats and marine railway as granted by the Board of Appeals Case No. 74-9-V as a legal non-conforming use; and for a marina of eleven (11) slips. The total number of slips thus being seventeen (17)."

The applicant has also requested a variance from the Baltimore County Zoning Regulations, "to provide for mooring within ten feet of divisional lines based on pre-existing bulkheads and piers rather than straight or irregular shorelines."

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>.

MICROFILMED

REGULATIONS AND FINDINGS

- 1a. Regulation: "Grandfathering - after program approval, local jurisdictions shall permit the continuation, but not necessarily the intensification or expansion, of any use in existence on the date of program approval, unless the use has been abandoned for more than one year or is otherwise restricted by existing local ordinances. If any existing use does not conform with the provisions of a local program, its intensification or expansion may be permitted only in accordance with the variance procedures outlined in COMAR 14.15.11" <COMAR 14.15.02.07.A>.
- 1b. Regulation: "In addition to section 417 in the county zoning regulations, all new or expanded water-dependent facilities are subject to the following procedures and standards, as specified more fully in the county water-dependent facilities manual:
- (1) Scope. A water-dependent facility includes those structures or works associated with industrial, maritime, recreational, educations, or fisheries activities that require location at or near the shoreline. An activity is water dependent if it cannot exist outside the buffer and is dependent on the water by the intrinsic nature of its operation.
 - (2) Buffer. All siting, development, redevelopment, and expansion of water-dependent facilities within the buffer must strictly conform to the criteria set forth in the county water-dependent facilities manual:" <Baltimore County Code Section 26-454>.

Finding: This property appears to be currently operating a marina use without the proper zoning in place. Documentation, available at the Department of Environmental Protection and Resource Management (DEPRM), indicates that on the date of the Critical Area Program approval this property had, at the most, nine in-water boat slips. Some pilings and pier extensions are new, since the date of program approval. The Baltimore County permit tracking system does not show permits for these structures since 1992.

The current zoning petition is requesting 17 boat slips. This is considered expansion and intensification. This would not be grandfathered and would require a water-dependent facility plan for review and approval. In addition two of these slips are located in water that only has a depth of approximately 2.5 feet and approximately five slips are located in water that has a depth less than 4 feet. This is inadequate for most boats and would result in

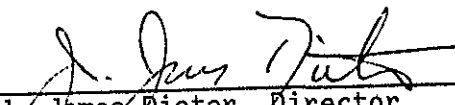
Mr. Arnold E. Jablon
September 8, 1994
Page 3

the disruption of the bottom sediments. Shallow water areas are considered habitat for submerged aquatic vegetation (SAV), which are currently established in nearby areas of Sue Creek. These are habitat protection areas because they are important for water quality and the survival of aquatic life.

The proposed alternative petition, which includes the marine railway, is not grandfathered under the Critical Area program. This use has been abandoned for more than one year and would therefore be considered an expansion. A water-dependent facilities plan would also be required for this petition.

CONCLUSION

If the zoning commissioner's order allows more than 9 in-water boat slips, then an approved water-dependent facilities plan should also be required as a condition of the special exception approval. If there are any questions, please contact Ms. Nancy Pentz at 887-3980.



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

JJD/NSSP/tmm

c: Mr. William Wilson
Mr. James Patton
Mr. Carroll Holzer

WILSON2/DEPRM/WQBCA

9/12

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Larry Schmidt
Zoning Commissioner

FROM: Jack Dillon *JLD*
Community Planning Division

SUBJECT: Wilson Property
95-46-XA

DATE: September 2, 1994

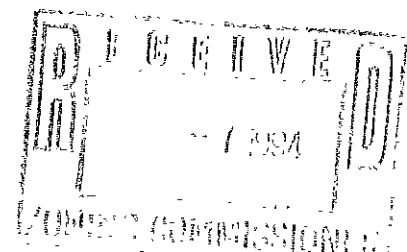
Pat 55

In 1973 I was the Chief of the Zoning Enforcement Division in the Office of Planning and Zoning. In that capacity I was involved with a zoning violation case on property then owned by Mr. Paul Geschwendt at 133 Silver Lane. This case arose as a result of a complaint by a neighbor. Mr. Geschwendt was found to be in violation by both the Zoning Commissioner and the Board of Appeals (case no. 74-9V [ZV73-30]). I testified in both hearings and was able to recall most of the circumstances of this case. I was asked by Mr. Patton if I could verify that the property now being considered under case 95-46-XA is the same property that I inspected in 1973. On Thursday, August 25, 1994, I visited the property now owned by Mr. Wilson at 2120 Poplar Road and was able to verify that despite the difference in address it is the same property I inspected in 1973. The property today is maintained in a clean and orderly fashion and has been improved with an attractive "A" frame home, the marine railway is no longer evident and the "junk and debris" is long gone. It also appears that the pier and bulkhead have been upgraded.

I trust this information is helpful, although I am at a loss as to how to explain the difference in the address.

JD
JDWP/PZONE/TXTJJD

c: Carroll Holtzer
James Patton



MICROFILMED

9/12

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Zoning Administration &
Development Management

95-46

FROM: Pat Keller, Director
Office of Planning and Zoning

1st 56

DATE: August 23, 1994

SUBJECT: 2120 Poplar Road

INFORMATION:

Item Number: 38
Petitioner: William H. Wilson
Property Size: _____
Zoning: R.C. 5
Requested Action: _____
Hearing Date: / /

SUMMARY OF RECOMMENDATIONS:

Staff does not oppose the subject request provided that the applicant is able to satisfy all Department of Environmental Protection and Resource Management requirements.

Prepared by: Jeffrey W. Long
Division Chief: Dennis West for Gary Kerns
PK/JL:lw

MICROFILMED

Baltimore County Government
Fire Department



700 East Joppa Road Suite 901
Towson, MD 21286-5500

(410) 887-4500

DATE: 08/11/94

Arnold Jablon
Director
Zoning Administration and
Development Management
Baltimore County Office Building
Towson, MD 21204
MAIL STOP-1105

RE: Property Owner: WILLIAM H. WILSON & LAURA STERN WILSON

LOCATION: N/S POPLAR RD., 820' E OF CENTERLINE LOURDES RD.
(2120 POPLAR RD.)

*Pet
58*

Item No.: 38

Zoning Agenda: SPECIAL EXCEPTION

Gentlemen:

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

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

RECEIVED

AUG 11 1994

ZADM

REVIEWER: LT. ROBERT P. SAUERWALD
Fire Marshal Office, PHONE 887-4881, MS-1102F

cc: File

MICROFILMED





**Maryland Department of Transportation
State Highway Administration**

O. James Lighthizer
Secretary
Hal Kassoff
Administrator

8-12-94

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

Re: Baltimore County
Item No.: **+38 (JRF)**

Dear Ms. Winiarski:

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 project.

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

David Ramsey, Acting Chief
Engineering Access Permits
Division

BS/

PR/SJ

My telephone number is _____

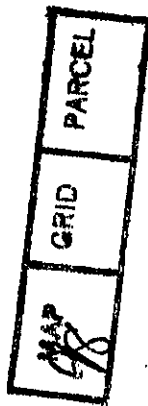
Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202

MICROFILMED

PCExh | 12
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MD. DEPT. OF ASSESS. & TAX.



MARYLAND DEPARTMENT OF ASSESSMENTS AND TAXATION
 REAL PROPERTY SYSTEM
 BALTIMORE COUNTY

04/25/95

PRIMARY SCREEN

DISTRICT: 15 ACCT NO: 1507150722

SUBDIST:

OWNER NAME / MAILING ADDRESS

WILSON WILLIAM H

WILSON LAURA

2120 POPLAR RD

BALTIMORE

MD 21221

DEED REF 1) /10352/ 710

2)

PLAT REF 1) 7/ 186

EXEMPT STATUS/CLASS

0 000

PRINCIPAL

RESIDENCE

YES

PREMISE ADDRESS

2120 POPLAR RD

TOWN GEO ADVAL TAX LAND COUNTY

CODE CODE CODE CLASS USE USE

000 82 000 R 34

LEGAL DESCRIPTION

2120 POPLAR RD NS

CEDAR BEACH

TRANSFERRED FROM: WILSON WILLIAM H

MAP GRID PARCEL SUB-DIV PLAT SECT BLOCK LOT
 98 20 279 83

02/18/94

PRESS: <F1> VALUES SCRIN <F2> RETURN TO LIST SCRIN <F3> SELECT NEXT PROPERTY

MARYLAND DEPARTMENT OF ASSESSMENTS AND TAXATION
 REAL PROPERTY SYSTEM
 BALTIMORE COUNTY

04/25/95

VALUES SCREEN

DISTRICT: 15 ACCT NO: 1507150722

SUBDIST:

OWNER NAME: WILSON WILLIAM H

TOWN CODE: 000

	BASE VALUE	CURRENT VALUE AS OF 01/01/94	PHASE-IN VALUE AS OF 07/01/95	PHASE-IN ASSESSMENTS AS OF 07/01/94	ASSESSMENTS AS OF 07/01/95
LAND :	83,420	90,990			
IMPT :	88,510	104,530			
TOTAL :	171,930	195,520	187,656	71,910	75,060

PREF LAND: 0 0 0 0 0

PRIMARY STRUCTURE DATA

YEAR BUILT ENCLOSED AREA
 1977 1,623 SF

PARTIAL EXEMPT ASSESSMENTS

	CODE	07/01/94	07/01/95
COUNTY	000	0	0
STATE	000	0	0
MUNICIPAL	000	0	0

LAND AREA: 9,996.000 SF

PRESS: <F1> PRIMARY SCRIN <F2> RETURN TO LIST SCRIN <F3> SELECT NEXT PROPERTY

MARYLAND DEPARTMENT OF ASSESSMENTS AND TAXATION
REAL PROPERTY SYSTEM
BALTIMORE COUNTY

04/25/95

PRIMARY SCREEN

DISTRICT: 15 ACCT NO: 1507150721

SUBDIST:

OWNER NAME / MAILING ADDRESS

WILSON WILLIAM H

WILSON LAURA

2120 POPLAR RD

BALTIMORE

MD 21221

DEED REF 1) /10352/ 710

2)

PLAT REF 1) 7/ 186

EXEMPT STATUS/CLASS

0 000

PRINCIPAL

RESIDENCE

NO

PREMISE ADDRESS

POPLAR RD

TOWN GEO ADVAL TAX LAND COUNTY

CODE CODE CODE CLASS USE USE

000 82 000 R 34

LEGAL DESCRIPTION

MAP GRID PARCEL SUB-DIV PLAT SECT BLOCK LOT
98 20 279 82

CEDAR BEACH

TRANSFERRED FROM: WILSON WILLIAM H

02/18/94

PRESS: <F1> VALUES SCRIN <F2> RETURN TO LIST SCRIN <F3> SELECT NEXT PROPERTY

MARYLAND DEPARTMENT OF ASSESSMENTS AND TAXATION
REAL PROPERTY SYSTEM
BALTIMORE COUNTY

04/25/95

VALUES SCREEN

DISTRICT: 15 ACCT NO: 1507150721

SUBDIST:

OWNER NAME: WILSON WILLIAM H

TOWN CODE: 000

BASE VALUE

CURRENT VALUE

AS OF

PHASE-IN VALUE

AS OF

PHASE-IN ASSESSMENTS

AS OF

AS OF

01/01/94

07/01/95

07/01/94

07/01/95

LAND : 5,040

5,040

IMPT : 0

0

TOTAL : 5,040

5,040

5,040

2,010

2,010

PREF LAND: 0

0

0

0

0

PRIMARY STRUCTURE DATA

PARTIAL EXEMPT ASSESSMENTS

YEAR BUILT ENCLOSED AREA

CODE

07/01/94

07/01/95

0000

COUNTY 000

0

0

STATE 000

0

0

LAND AREA: 10,094.000 SF

MUNICIPAL 000

0

0

PRESS: <F1> PRIMARY SCRIN <F2> RETURN TO LIST SCRIN <F3> SELECT NEXT PROPERTY

12-C

RE: ALLEGED ZONING VIOLATION	:	BEFORE:
on property located at	:	
133 Silver Lane	:	COUNTY BOARD OF APPEALS
15th District	:	
	:	OF
Paul Geschwendt	:	
Defendant	:	BALTIMORE COUNTY
	:	No. 74-9-V (ZV-73-30)

: : : : :

OPINION

This case comes before the Board of Appeals on an appeal by the Defendant from an Order of the Zoning Commissioner dated November 9, 1973, wherein a violation was found to exist at the subject property known as 133 Silver Lane, in the 15th Election District of Baltimore County.

The subject property is located on Silver Lane, in the 15th Election District of Baltimore County and has frontage on a portion of Sue Creek. The violations complained of include: one, junk and debris located on the subject property; two, illegal use of a building located on the subject property as a community building (a boat club); three, operation of a marina; and four, operation of a marine railway.

Testimony in this case from Mr. Dillon, Chief of Zoning Enforcement, as well as from a complaining neighbor, as well as other neighbors and a somewhat tacit admission from the Defendant himself, that the complaint of junk and debris was well founded and did, in fact, exist at the time of the Zoning Commissioner's Order in this case. It is the Board's impression that this condition still exists to some degree, although there has been testimony that substantial efforts are being made to correct this situation at the present time.

Similarly, the Board finds that the building on the Defendant's property was being used illegally as a community building, and specifically as a club house for meetings and other affairs of an organization known as Key Yacht Club. Testimony further indicated that said use of the subject property has terminated and the Key Yacht Club has relocated and not used the subject property for meetings or other purposes since April of 1974.

As regards the use of the subject property as a marina and/or boatyard, the overwhelming evidence in this matter is that any use being made in this connection has

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PC Ex 13

been so made since shortly after the Defendant purchased this property in 1937, and has been used continuously in that respect ever since. Testimony indicated that the pier, bulkhead and marine railway were constructed prior to 1940, and have been used consistently ever since that time, with perhaps maintenance or improvements thereafter.

Several of the Defendant's neighbors testified in his behalf, stating that they have known him and the property since the late 1930s, and since that time he has docked approximately the same number of boats at his pier, as well as maintaining a marine railway with various improvements or modernizations up until the present time. There was no testimony that there was any commercial operation maintained at this location, but rather that this was for the convenience of Mr. Geschwendt, his family and his friends, and that no charges were made for either docking of boats or the use of the railway. Any repairs made were made by the owners of the respective boats, Mr. Geschwendt stating that the only repairs made by himself personally were to his own boats.

Consequently the Board finds that the Defendant was in violation at the time of the Order of the Zoning Commissioner of a violation of the Baltimore County Zoning Regulations, i.e. Section 502.1 and Section 101. The Board further finds that the use of the marine railway and the docking of approximately six boats at the Defendant's pier is a legal nonconforming use, having been so used since prior to the adoption of the Baltimore County Zoning maps.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 6th day of January, , 1975, by the County Board of Appeals ORDERED, that a violation exists on the subject property, and that the junk and debris be removed from the subject property within thirty (30) days from the date of this Order; and it is

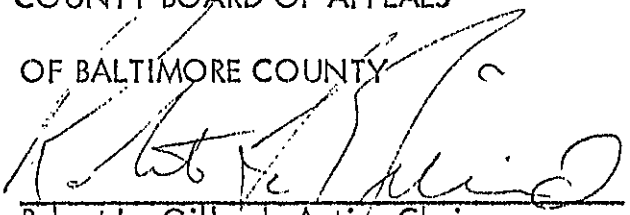
FURTHER ORDERED, that the use of the building located on the Defendant's property as a community building, or a meeting house for a yacht club shall cease immediately; and it is

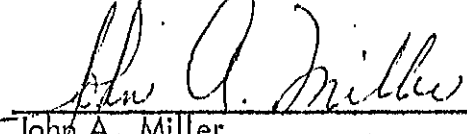
FURTHER ORDERED, that the marina railway and the docks for approximately six boats at the Defendant's pier is a legal nonconforming use.

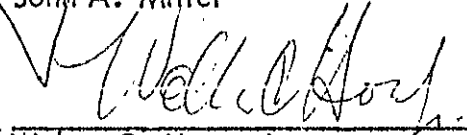
An inspection of the subject property is to be made by the Zoning Enforcement Division of the Baltimore County Zoning Office after thirty (30) days to assure compliance with this Order.

Any appeal from this decision must be in accordance with Chapter 1100, subtitle B of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

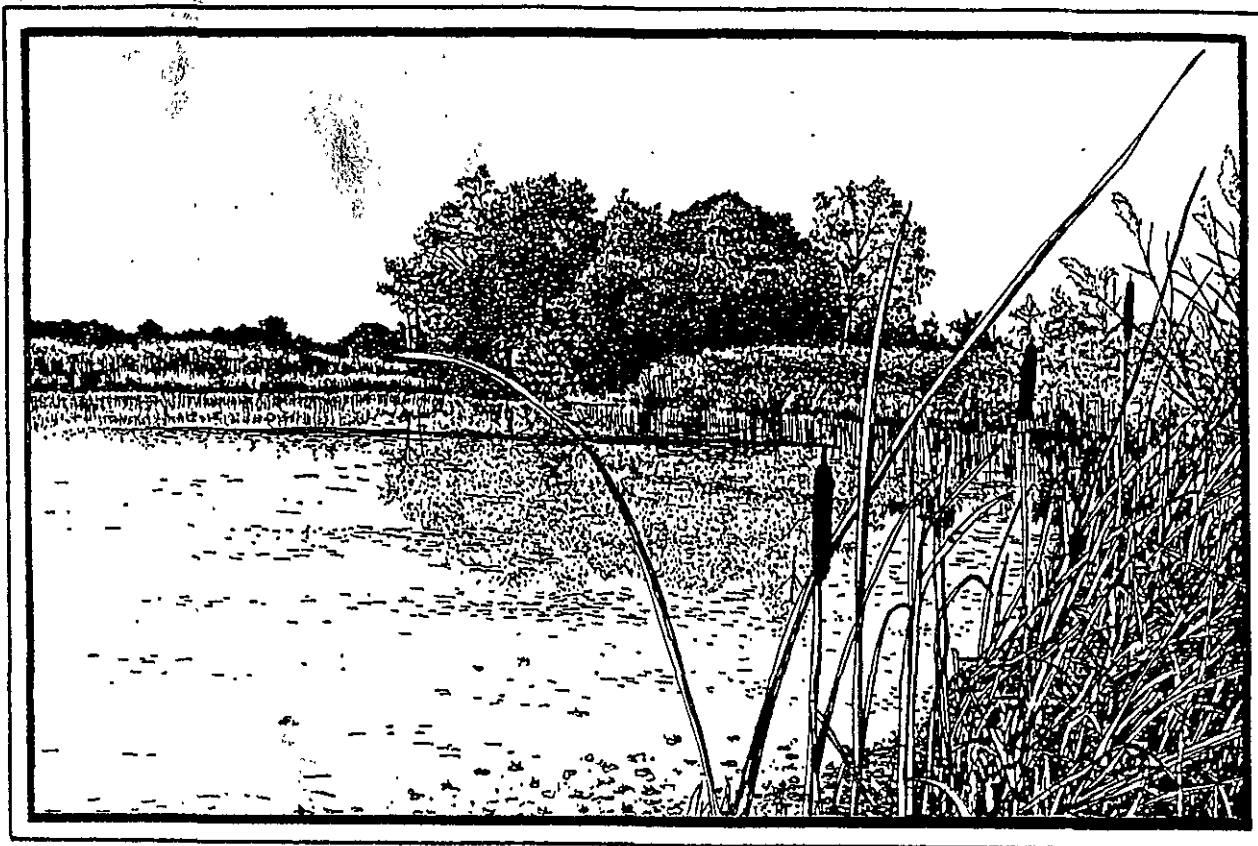

Robert L. Gilland, Acting Chairman


John A. Miller


Walter C. Horn, Jr.

8/10/11

Let's chwendt



● Baltimore County ● Focus on Community ●

LOWER BACK RIVER NECK COMMUNITY ACTION PLAN

As Adopted By The Baltimore County Council on October 18, 1993

MICROFILMED

PC Exh 14

COUNTY COUNCIL OF BALTIMORE COUNTY

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COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
LEGISLATIVE SESSION 1993, LEGISLATIVE DAY NO. 18

RESOLUTION NO. 79-93

MR. VINCENT J. GARDINA, COUNCILMAN

BY THE COUNTY COUNCIL, OCTOBER 4, 1993

A RESOLUTION to adopt the Lower Back River Neck Community Action Plan as part of the Baltimore County Master Plan 1989-2000.

WHEREAS, the Baltimore County Council adopted the Baltimore County Master Plan 1989-2000 on February 5, 1990; and

WHEREAS, the Master Plan advocates strong actions for conserving and enhancing the County's established communities, including the preparation of detailed local plans for certain designated areas; and

WHEREAS, a committee composed of County staff, residents and interested community persons in the Lower Back River Neck Peninsula area prepared the Lower Back River Neck Community Action Plan; and

WHEREAS, the Plan thoroughly documents existing conditions and issues on the Lower Back River Neck peninsula, which is a logical unit for planning within Baltimore County, and proposes reasonable actions for protecting and improving both the community and the environment, in accord with the principles adopted in the Master Plan; and

WHEREAS, by Resolution adopted July 15, 1993, the Baltimore County Planning Board adopted the Lower Back River Neck Community Action Plan, with amendments, to constitute a part of and an amendment to the Master Plan; and

WHEREAS, the County Council held a public hearing on the recommended Lower Back River Neck Community Action Plan on September 7, 1993.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that the Lower Back River Neck Community Action Plan, a copy of which is attached hereto and made a part hereof, be and it is hereby adopted and incorporated into the Baltimore County Master Plan 1989-2000 to be a guide for the development of the lower Back River Neck area, subject to such further modifications as deemed advisable by the County Council.

E07993/RES93

Baltimore County Government
Planning Board



401 Bosley Avenue
Towson, MD 21204

(410) 887-3211
Fax (410) 887-5862

RESOLUTION
Adopting and Recommending
the
LOWER BACK RIVER NECK COMMUNITY ACTION PLAN

WHEREAS the Baltimore County Master Plan 1989-2000 advocates strong actions for conserving and enhancing the County's established communities, including the preparation of detailed local plans for certain designated areas; and

WHEREAS the Master Plan also specifies that plans prepared by citizens' associations should be evaluated for possible adoption by the Planning Board and County Council; and

WHEREAS a committee of residents and interested community persons in the Lower Back River Neck Peninsula area, with assistance by County staff, has prepared a Lower Back River Neck Community Action Plan; and

WHEREAS the draft Plan thoroughly documents existing conditions and issues on the Lower Back River Neck peninsula, which is a logical unit for planning within Baltimore County, and proposes reasonable actions for protecting and improving both the community and the environment, in accord with the principles adopted in the Master Plan; and

WHEREAS the Committee also made concerted efforts throughout the period of the Plan's preparation to assure full opportunity for participation by residents and business persons who might be affected by the Plan;

WHEREAS the draft of the Community Plan, as submitted on July 16, 1992, was discussed in Committee meetings on November 19, 1992, and July 1, 1993, and was the subject of a public hearing by the Planning Board on September 10, 1992;

NOW, THEREFORE, BE IT RESOLVED, pursuant to Section 26-81 of the Baltimore County Code, 1988, that the Baltimore County Planning Board hereby adopts the Lower Back River Neck Community Action Plan, June 1993, including the report and recommendations for amending the Plan submitted on June 17, 1993, to constitute a part of and an amendment to the Baltimore County Master Plan 1989-2000; and

BE IT FURTHER RESOLVED that the Lower Back River Neck Action Plan shall be transmitted to the Baltimore County Council for adoption in accordance with Section 523(a) of the Baltimore County Charter.

DULY ADOPTED by vote of the
Planning Board this 15th day of
July 1993

A handwritten signature in dark ink, reading "Dave Fields".

P. David Fields
Secretary to the Planning Board



AMENDMENTS TO
LOWER BACK RIVER NECK
COMMUNITY ACTION PLAN

As adopted by the
Baltimore County Planning Board
July 15, 1993

LOWER BACK RIVER NECK COMMUNITY ACTION PLAN

The following listing of amendments is respectfully submitted for consideration to the Baltimore County Planning Board.

P. 3

Exchange placement of page 3 with page 4 in the text.

P. 3

Replace map with detailed map of the peninsula outlining the study area. (See attached map).

P. 4 - II. Introduction

Revise paragraph 2 to read as follows:

The Lower Back River Neck Peninsula is located in the southeastern area of Baltimore County. For the purposes of the study, the area is bounded by Norman Creek to the north, Middle River to the east, and Back River to the south and west. The majority of the Lower Back River Neck is almost entirely covered with mature forests and substantial acreages of non-tidal wetlands. The ecological significance of the area leads to its designation as a habitat protection area under the County's Chesapeake Bay Critical Area Program. Rocky Point Park, one of the County's larger parks, occupies approximately 600 acres on the bay front and includes a golf course, bathing beach, a recreational boating launch ramp and is the site of the historic Ballestone Mansion.

P. 5 - Outside Influences Having a Direct Impact on the Community:

Delete fourth item.

"Disproportionate share of low income-low quality and rental housing on upper part of peninsula."

Delete paragraph #1.

Revise paragraph #2 to read as follows:

Development pressure has been experienced on the lower peninsula by the extension of MD 702 to Turkey Point Road.

Paragraph #3, revise to read as follows:

Delete the phrase "The Back River Waste Water Treatment Plant."

Revise paragraph to begin with phrase "Poorly sighted and bootleg marinas...."

P. 7 - IV. Development

Recommendation for Action

Delete item #3 and #5.

Revise item #2 to read as follows:

The vacant or underdeveloped land on the peninsula, from Pottery Farm Road southward, should be carefully examined prior to the 1996 Comprehensive Zoning Map Process. The existing zoning should be looked at in relation to the present build-out, surrounding land uses and zoning and the need to relate future land use to the environmentally protective tenets as set forth through this plan.

Delete first sentence of item #4, revise to read as follows:

Any new development must be consistent with existing housing types and density, with strict enforcement of county, state, critical areas and federal environmental goals, including all wetlands, forest and water quality regulations. Additionally, this development should only occur as infill to existing built areas. When development occurs it should raise water quality standards, maximize storm water management, sediment control and filtration.

Add new item #5 as follows:

The quality and condition of existing and proposed housing is a community concern. All housing units should be subject to compliance with a livability code.

All other items remain the same.

P. 8 - V. Water Quality

Recommendations:

Add new paragraph between paragraph four and five to read as follows:

Retrofitting existing stormdrain systems should be a priority of the County in decreasing the amount of untreated runoff from existing homes, and commercial and agricultural property that enters the waterways.

P. 9 - VI. Sue Creek

Recommendations for Sue Creek

Revise entire section to read as follows:

#1 A total restoration program for the entirety of Sue Creek must be formulated by December, 1994 with immediate implementation to follow. All agencies responsible or who can provide expertise in drafting this plan including U. S. Army Corp of Engineers, U. S. Department of Interior, U. S. Fish and Wildlife Service, Maryland Department of Environment, Maryland Department of Natural Resources, Baltimore County Office of Planning and Zoning, Department of Environmental Protection and Resource Management, and all other appropriate agencies. This restoration program should be adopted as an amendment to the Lower Back River Neck Plan.

#2 This all encompassing program's central purpose should be focused on the return of historic fish, wildlife, SAV's, and water quality levels. The plan should include the opening of the causeway at Baltimore Yacht Club, dredging program, no wake zones, speed limits, wetlands restoration, reforestation, aforestation, erosion control, SAV plantings, etc. All new development must be consistent with the Sue Creek Restoration Plan. Permitting agencies must use as primary criteria the water quality, public safety, health and welfare.

#3 Elimination of all illegal "bootleg" marinas.

#4 All efforts shall be made to remove illegal boat storage racks from marinas along the Sue Creek waterway.

#5 The communities relish the opportunity and responsibility and will serve to the utmost with all agencies to achieve these goals for the protection of our natural resources, for our children and generations to come; all the people of Baltimore County and the State of Maryland.

P. 10

Insert photograph of aerial photo of Baltimore Yacht Club causeway behind plat in the text.

P. 12 - VII. Back River - Water Quality

(Actions) Recommendations

Revise #3 to read as follows:

Pursue an impact study of removing contaminated sediments from the river bottom. However, it is not recommended that Back River be dredged at this time.

Delete #7.

Revise #10 to read as follows:

Investigate and identify the segments of the Back River that are useable for water contact recreational activities, especially below Todd Point.

P. 13 - VIII. Issue: Back River Waste Water Treatment Plant

Revise section to read as follows:

The Back River Waster Water Treatment Plant has experienced recent problems (i.e. washouts in spring of 1989; sludge disposal in summer 1989) which have affected the water quality of the River and produced nuisances which have affected the quality of life for community residents.

The plant has undergone significant changes in design and operation since the approval of the 201 Facilities Plan in 1984. These improvements represent the expenditure of approximately 300 million dollars (\$250 million - Federal and State Grants) since the late 1970's. Another 200 million dollars is earmarked for projects to be completed by 1997. With the dissolution of the Construction Grants Program of the Clean Water Act, a larger share of the monies will have to come from local government. Some examples of construction projects include:

- SS Nitrogen Reactors and Clarifiers - completion estimate 1994
- Additional digester capacity - completion estimate 1992
- Odor Control project - completion estimate 1992

Recent improvements in the treatment plant performance will have a direct and dramatic impact on water quality. These improvements include a Chlorination/Dechlorination Facility which kills pathogenic bacteria and then removes chlorine from the discharge. Finally, the new Filtration Facility will reduce suspended solids and phosphorus loadings into Back River.

The plant nitrifies its discharge to Back River during warm summer months to prevent oxygen depletion. The major improvements noted will benefit local water quality, and additional improvements will be examined and supported.

The completion of the listed projects to bring the plant into an advanced treatment mode will represent a significant financial commitment by Baltimore City and Baltimore County. The State Revolving Loan Fund replaced the Construction Grant program in the fall of this year. This means that the improvements for water quality benefits will represent the largest solely, locally funded projects ever attempted. The possibility of private developer funding assistance to improve the plant would not appear feasible. All of the time, money, and effort which will be expended does not have an effect on plant capacity. The improvements are designed to upgrade the effluent, not to add to the 180 mgd rating design of the plant.

Sludge disposal continues to be a major concern that affects plant operation and community relationships. It is imperative that all options or alternatives be vigorously pursued to insure that problems reminiscent of the summer of 1989 not recur. The heat drying process which is proposed as a privatization project must be reviewed objectively. Contracts for land application must be advanced. New technologies and regional cooperation for disposal options must be fostered.

It must be remembered that the various components of plant operation are controlled through a regulatory mechanism. The plant is currently under several Consent Orders with the Maryland Department of the Environment. In addition to these orders, the National Pollutant Elimination System (NPDES) permit stipulates various parameters for effluent discharge to the River.

P. 14 - VIII. Back River Waste Water Treatment Plant

(Actions) Recommendations

Revise #2, 3, and 4 to read as follows:

2. Access the existing structure for communication among communities, citizen groups and plant operators.
3. Continue investigation of new technologies for sludge disposal and monitor its progress.
4. Support the development of new markets for compost and sludge applications.

P. 16 - X. Marinas/Boat Yards & Yacht Clubs

Revise the paragraph to read as follows:

The business marina legislation recently put into place, which regulates marinas and boat yards, greatly aids in the harmonious operations of such uses with surrounding communities. However, there still exists concern about the operation of "bootleg" marinas on insufficiently zoned land, or the extension of marina-oriented uses beyond the original zone line of the property.

Recommendations for Marinas/Boat Yards, Yacht Clubs

Revise listing of recommendations to read as follows:

1. Enforce zoning, Critical Areas regulations and other legislation to protect existing communities and the environment, the spirit of these regulations and policies being of equal or greater significance than the letter of the law.
2. Boat slips at private piers should be limited to 3 or 4 slips per property.
3. As existing marinas expand, or new marinas develop, strict adherence to the marina zoning (BMM & BMB) should occur. No marinas should begin operation on any land until the proper zoning governing that use is in place.
4. Carrying capacities for boat traffic on the entirety of Middle River should be investigated and encouraged with emphasis on safety and environmental impact.
5. Marine related businesses, DEPRM and the community should alert boaters of legal and moral obligations to dispose of litter and waste properly. Implement plans for awareness and enforcement.

P. 17 - XI. Sewerage

Revise paragraph 1 to read as follows:

Sewering of the lower peninsula should be restricted to serve existing communities and the effort to restore the Chesapeake Bay, and should not serve as a spur for residential or commercial facilities.

Delete third paragraph.

XII. Private Wells - Retitle Water Supply

Delete last sentence of first paragraph.

Recommendations:

Revise the paragraph to read as follows:

DEPRM has recently completed a sanitary survey of wells in the area. Results of this survey are available to communities. The County should initiate the extension of public water to replace failing or contaminated private wells.

P. 18 - XIII. Traffic/Safety

Revise the paragraph to read as follows:

The extension of MD 702 to Turkey Point Road was needed to alleviate congestion and allow for future planned growth. Its extension past Turkey Point Road was only to allow for a proper transition back into the existing Back River Neck Road and is not to be a justification for development on the Lower Peninsula. Widening of roads south of Pottery Farm Road would encourage higher speeds and may increase development pressure. Roadside litter is a consistent problem and detracts from the scenic beauty of the area as well as being a hazard to wildlife.

Recommendations:

Revise item #2 to read as follows:

The termination of MD 702 at the merge with Back River Neck Road is a safety concern. Baltimore County will work with the State Highway Administration to investigate possible improvements to modify the severe dip in the roadway and to slow traffic at the merge area. The use of grooved pavement or rumble strips should be considered to warn traffic of the termination of MD 702 and the merge into the 2-lane Back River Neck Road.

Revise item #3 to read as follows:

"No thru street," "Dead end road," and safety signs for biking should be posted wherever appropriate. The community will furnish a list of locations.

Revise item #4 to read as follows:

The intersection of Holly Neck Road and Back River Neck Road needs to be redesigned to eliminate the existing skewed intersection and improve the safety of the intersection. A landscaped traffic island or median in the vicinity of the present location should be considered to channel the traffic flow to create a more perpendicular intersection.

Revise item #6 to read as follows:

Hard shoulders or a safe pathway for pedestrians and bicyclists should be provided on the west side of Back River Neck Road from Hyde Park Road to Cherry Garden Road. The community should be involved in the design of this pathway.

P. 19 - XIV. Signs

Recommendations

Revise item #5 to read as follows:

"No dumping" signs should be posted throughout the area. Educational programs about dumping of refuse should be continued as a cooperative effort between the county and the community.

P. 23 and 24 - XVII. Back River Elementary School

Revise section to read as follows:

The Back River Elementary School site is an extremely vital and very important part of the Back River Community. It created a great deal of concern among residents when the school was closed in 1983 due to declining enrollment, and the community is just as concerned over its fate and future.

Currently listed under the inventory of the Baltimore County Dept. of Recreation and Parks, the site (grounds) is used for passive recreation: i.e., ball diamonds, sandlot playground, outdoor basketball, horseshoe pits, etc. The building currently has a small percentage of area set aside for recreation (gymnastics and golden age programs) while the remaining area is used as a warehouse for the storage of voting machines.

The community is well aware of the fact that Baltimore County will be switching to a new type of voting procedure in the future, and that the need for warehouse space will greatly diminish. When this fact becomes a reality, the community recommends the following course of action.

Recommendations:

The grounds shall continue to remain for passive recreational use. All facilities shall be kept in good repair by the Dept. of Recreation & Parks. No new buildings should be constructed on the grounds except for the Head Start program facility.

The flagpole located in front of the building, which was donated to the community by the Ebersberger Family almost 50 years ago, shall be reconditioned and serve as the official flagpole for the school building, the ambulance station, and for Pottery Farm Park. A plaque commemorating its gift to the community shall be installed in the future.

The former school building should be considered for the following educational and recreational purposes.

School Annex. Many elementary schools in Baltimore County, including some in the Essex-Middle River area, are substantially overcrowded. Serious consideration should be given to reopening the former Back River Elementary School. If it is not feasible to reopen the entire school, a portion of this facility could be renovated for use as an annex for Middleborough, Sandalwood, and Mars Estates Elementary Schools.

Nature Center. Open to the public, and for all ages, for the study of the flora and fauna indigenous to the Back River peninsula. It would offer a wide variety of services such as in-house studies, field trips, etc.

Historic Learning Center. Offering exciting educational programs concerning the proud history of the peninsula. It would highlight such areas as Ballestone Manor, the Somogyi Farm, Danby, Whisk, and/or Mercer Porters Hall, duck hunting lodges, Bauernschmidt Manor, Back River Methodist Church, name origins on the peninsula, etc.

Community Center. Offering well-appointed, accessible meeting space for various community groups.

Recreation Offices and Uses. Office space should be reserved for the Back River Recreation Council, with space provided as needed for various programs such as Little League Baseball, etc.

P. 26 - XIX. Pottery Farm Park

Revise paragraph #3 to read as follows:

As Pottery Farm Park is an extremely sensitive environmental area, every effort should be made to balance preserve areas and passively active areas. Because of its sensitivity, all intrusion and recreation into the area should be well planned.

Add the following to Recommendations (see also P. 27):

11. Cap all open wells, so as to make the site safe. This is imperative prior to any interested party using the site for projects (scouts, local high school, etc.).
12. The problem of inadequate parking for the park must be explored, with reasonable solutions proposed to the county and the community. Existing parking lots such as the Chesapeake High School facility should be of prime consideration.

P. 28 - XXI. General Recommendations

Revise item #5 to read as follows:

Residences on Back River Neck Road near Barrison Point Road (1825 and 1827 Back River Neck Road) that experience flooding should be examined by appropriate county agencies, community members and the property owners. This examination should result in the reasons for the flooding and appropriate strategies to lessen or ameliorate this condition.

Add item #7 to read as follows:

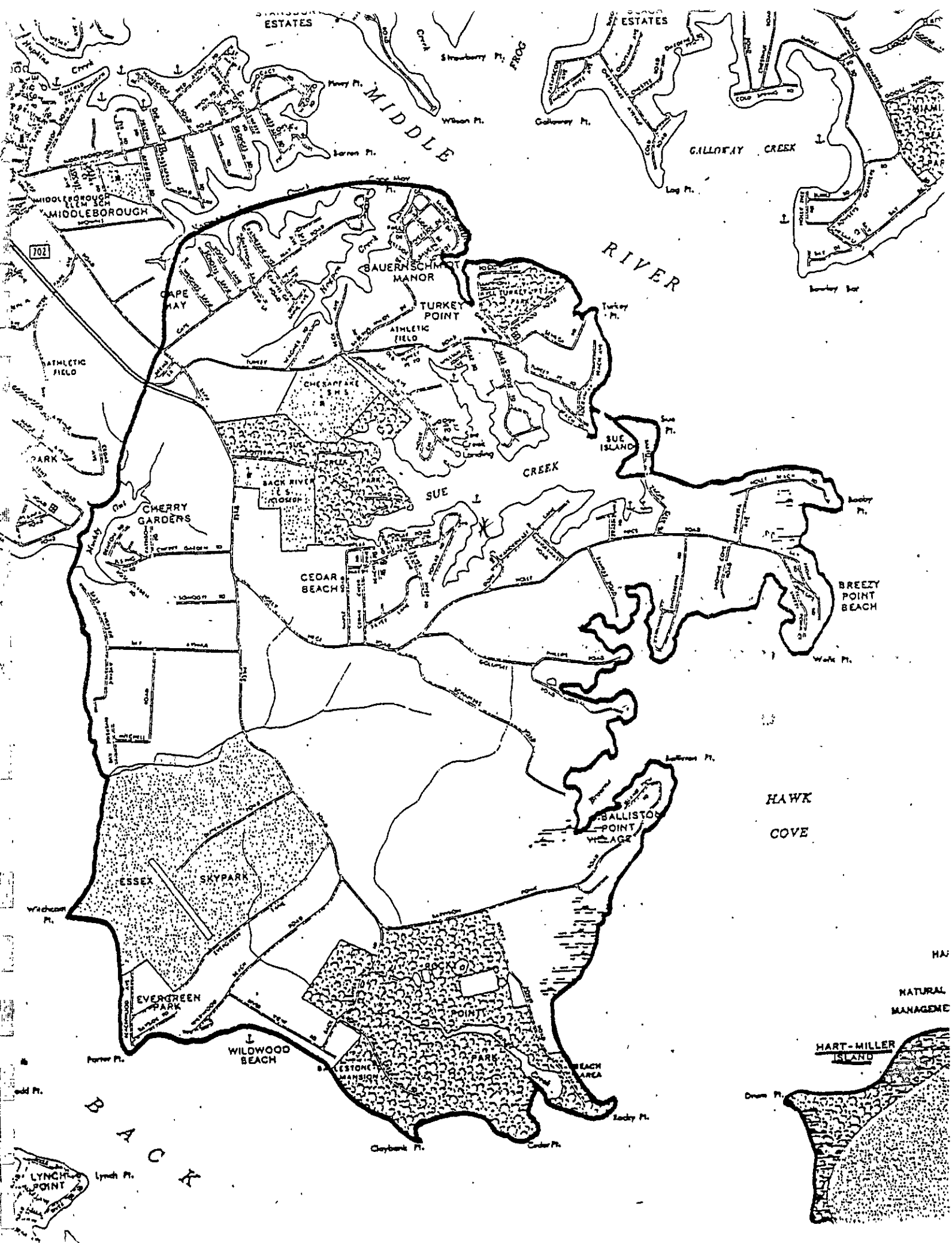
The study of the future of Hart-Miller Island should be implemented, examining its use as a recreational park site, not only for the State of Maryland, but for the region.

Any study of the future use of Hart-Miller Island must involve the community, Baltimore County and the State of Maryland and must consider the impact on, and relationship with, the Lower Back River Neck Peninsula.

Technical Appendices

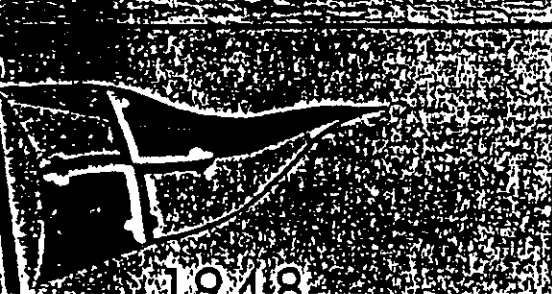
The following text and materials should be considered technical appendices to the plan:

1. Listings of all bird species contained in the plan (Addendum - page 1, 2, 3).
2. Middle River - An Assessment of Options for Halting the Decline and Restoring Former Quality; prepared by Richard D. Klein. (See revisions of report dated March 15, 1993.)
3. Correspondence from Maryland State Department of Natural Resources to R. Christopher concerning R. Klein report dated May 12, 1992.



Baltimore Yacht Club

TENTH ANNIVERSARY



LORD BALTIMORE
Regatta Issue

LOWER BACK RIVER NECK

COMMUNITY ACTION PLAN

Prepared by the:

Lower Back River Neck
Community Advisory Committee

Summer 1992

LOWER BACK RIVER NECK COMMUNITY ACTION PLAN

Community Advisory Committee:

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Regina Beasman
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Steve Broyles
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Al Cody
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Jim Mitchell
George Neukam
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Dennis Peterson
Leroy Sennett
Mel Topa

Affiliations:

Balto. Yacht Club
Boy Scouts of America
Chamber of Commerce
Marine Trades Assoc.
Cherry Garden Commun.
Cedar Beach Commun.
Holly Neck Commun.
Wildwood Beach Commun.
Balto. County Waterman's
Assoc.

Small Business Owners
Sun Marine
Architects & Engineers
Barrison Pt. Imp. Assoc.
Evergreen Park Commun.
Holly Neck Imp. Assoc.
Engleberth Commun.
Back River Neck Peninsula
Community Assoc.

Other Participants

Danny Beck
Elizabeth Brabeck
Emily Granese

John Madden
Jack Miller
Charles Wrightson

Planning Board Subcommittee

Bob Christopher
Carl Maynard
Steve Broyles

A special thanks is extended to Mary Emerick of Councilman Gardina's Office for assistance on the plan.

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- XXI. General Issues

ATTACHED ADDENDUMS

* BIRDS OF BACK RIVER NECK, HART-MILLER ISLAND, BLACK MARSH

** FORESTS AND WILDLIFE

*** B.R.N.P.C.A. CONSULTANTS REPORT AND ACTION PLAN
FOR MIDDLE RIVER/SUE CREEK (Richard Klein)

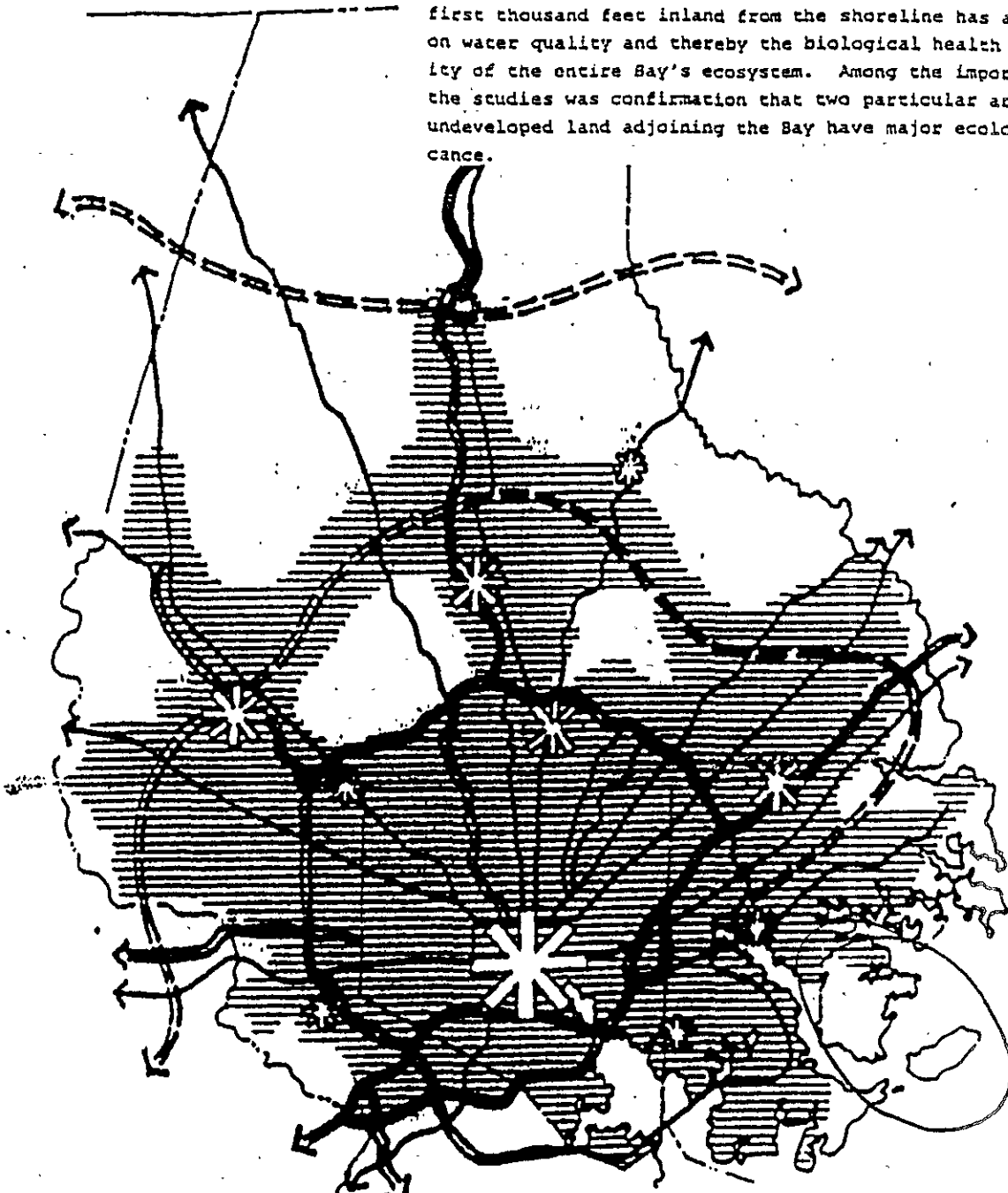
C.E.D.A.

ISSUE: The Future of Lower Back River Neck

I..

The central portion of the Back River peninsula, generally below Holly Neck Road, consists of a 1000-acre block of virtually uninterrupted mature forestland with pervasive nontidal wetlands. Such a large area is uncommon and unique in Baltimore County not just for its size but also as the habitat for several avian species in need of protection. Its environmental significance is so high the County relied upon its importance to justify extending the Critical Area program's protective Resource Conservation classification further inland beyond the minimum distance required by the State law.

The Chesapeake Bay Critical Area program was established by the State with the premise that the use of land within at least the first thousand feet inland from the shoreline has a major effect on water quality and thereby the biological health and productivity of the entire Bay's ecosystem. Among the important results of the studies was confirmation that two particular areas of mostly undeveloped land adjoining the Bay have major ecological significance.



The Master Plan reaffirms the County's commitment to the principles and purposes of the Critical Area program. Any changes from this policy should be made with the utmost care, especially in regard to the lower portion of Back River Peninsula and to the Black Marsh Natural Heritage Area.

INTRODUCTION

Pursuant to the 1989-2000 Baltimore County Master Plan the Department of Environmental Protection and Resource Management was designated to prepare a long range plan for the Lower Back River Neck Peninsula. In order to accomplish this objective a citizens' advisory committee was formed representing various community organizations, businesses and private land owners. During the initial meeting a list of issues was developed which were to be addressed in the plan. It was quite evident that there were several areas of concern which included water quality in Middle River and Back River, marina development, recreational development, public sewerage extension, development and population growth and the possibility of providing the remainder of the peninsula with public water.

The Lower Back River Neck Peninsula is located in the southeastern area of Baltimore County. It is bounded on the northeast by Middle River, on the southwest by Back River and the eastern most portion is bounded by the Chesapeake Bay. The majority of the Lower Back River Neck is almost entirely covered with mature forests and substantial acreages of non-tidal wetlands. The ecological significance of the area leads to its designation as a habitat protection area under the County's Chesapeake Bay Critical Area Program. Rocky Point Park, one of the County's larger parks, occupies approximately 600 acres on the bay front and includes a golf course, bathing beach, a recreational boating launch ramp and is the site of the historic Ballstone Mansion.

The topography is relatively flat with poorly defined drainage patterns. The geology of the area consists of alternate layers of silt, clay and unconsolidated sand and gravel. Most of the soils are hydric and are inundated with water during most of the year which accounts for the sparse development on the peninsula. Most of the residences are currently served by private sewage disposal systems. A number of these private systems are either overflowing directly into the surrounding water, discharging indirectly into non-defined storm water ditches or discharging indirectly into the ground water.

Essex Sky Park, located on the west side of the peninsula near Back River, is one of the two remaining privately owned airports in the County. There remains on the peninsula two large privately owned tracts of land. These two tracts have been a source of concern to the community because of the potential for development.

Located directly due east of Lower Back River Neck is Hart Miller Island Dredge Disposal Site. Besides providing a disposal site for dredge material from Baltimore Harbor and the main shipping channel of the upper Chesapeake Bay the site affords a major recreational beach and boating area on the leeward side. It also provides an area for improved recreational fishing.

OUTSIDE INFLUENCES HAVING A DIRECT IMPACT ON THE COMMUNITY ARE:

- Eastern Avenue and upper Back River Neck Road corridors.
- High density zoning and development on upper part of peninsula.
- Pressure from Route 702
- Disproportionate share of Low income-Low quality and rental housing on upper part of peninsula.
- Severely stressed waterways, particularly Sue Creek.
- Back River Waste Water Treatment Plant
- Recreational and commercial water use.
- Lack of storm water management and water quality control in developed areas on upper part of peninsula.
- Severe damage to environmentally sensitive areas by ATV's
- Water and air pollution from nearby industries.
- Hart-Miller Island Disposal Site.

The Eastern Avenue and Back River Neck Rd. corridors with their high density zoning and development along with strip shopping centers and a grossly disproportionate share of low income-low quality housing, by sheer number; if allowed to continue southward will make it difficult to preserve the extremely sensitive ecosystem that is the lower Back River Neck Peninsula.

Pressure has been put on the lower peninsula by the extension of Rte. 702 to Turkey Point and has added additional development pressure.

The Back River Waste Water Treatment plant, poorly sited and bootleg marine facilities, over trafficked boating, lack of storm water management and sediment control on the upper peninsula and other areas, air pollution from nearby factories and the incredible damage done by ATV's all have combined to place Sue Creek and many parts of Middle River in a very precarious situation.

Hart-Miller disposal site has done an excellent job for the most part but should continue to be closely monitored.

~~Unless the recommendations of the community plan are~~ followed it is likely that this very vital critical area of the Chesapeake Bay will be lost.

III. GOALS AND OBJECTIVES

1. To protect and preserve as much of this very sensitive and strategic area in recognition of its overwhelming importance to the effort to save the Chesapeake Bay.
2. To preserve and protect the rural character of the area.
3. To preserve the large, circular riparian wet forest; its interior and adjacent ecosystems and the surrounding creeks, rivers and the Chesapeake Bay.

III. GOALS AND OBJECTIVES

4. To assure quality of life and the retention of moral, social values and traditions of the communities.
5. To protect the area defined as the Chesapeake Bay Critical Areas as well as the concepts, regulations and policies of the Chesapeake Bay Critical Areas legislation.
6. To protect, conserve and perpetuate habitat and wildlife for future generations.

IV.

ISSUE

DEVELOPMENT

Lower Back River Neck is composed of very delicate, complex and interdependent ecosystems composed of numerous tidal and non-tidal wetlands, flood plains, tributary streams and is largely forested with water standing in these forested areas for inordinate lengths of time and is on the Atlantic Flyway.

Much of the area is as it was 100 years ago and except for scattered shoreline communities is relatively undeveloped.

The fact that the peninsula is bowl shaped with much of its lowest points being in the interior affords great protection against runoff to the Chesapeake Bay. Because of this and the numerous species of wildlife supported by these ecosystems (particularly forest interior dwelling birds, eagles, hawks, owls, colonial nesting birds and migratory waterfowl and warblers) following Comar 14.15.10 the resource conservation area was extended inland to include the entire interior of the area.

RECOMMENDATION FOR ACTION

U R D L LINE SHOULD NOT BE MOVED SOUTHWARD.

All DR zones should be downshifted to RC 5 from Pottery Farm southward.

Retain all RC zones, from Turkey Point Rd. southward.

No increase in zoning density in study area. Any new development must be consistent with existing housing types with strict enforcement of county, state, critical areas and federal environmental goals including all wetlands, forest and water quality regulations and should only occur as infill to existing built areas.

So as to provide proper transition to RC 20 areas from Pottery Farm southward all DR 5 areas from Browns Rd. southward should be down-zoned. Any development must raise water quality standards and maximize storm water management, sediment control and filtration.

Hiking, horseback and non-motorized bike trails should be created throughout the entire lower peninsula so that its wildlife and beauty can be shared by all.

Farm preservation programs and easements should be used to preserve as much farmland as possible using state, county and private programs.

Establishment of Project/Stewardship Forest should be a high priority. Joint County/State with oversight by Forestry Board and community.

ISSUE

DEVELOPMENT-RECOMMENDATION FOR ACTION

Development of an aqua-culture center, fish hatcheries and nurseries should be a priority by State/County partnership.

The large circular, wet forest of the interior lower peninsula must remain unbroken. Human encroachment alone will have severe impact and fragmentation will greatly reduce the numbers of species by the proliferation of urban, and border dwelling birds and domesticated animals such as dogs and cats.

V.

ISSUE:

WATER QUALITY:

Water quality continues to decline rapidly on Sue Creek and Middle River and in turn has had an adverse impact on upper Chesapeake Bay. Nearly all SAV's (submerged aquatic vegetation) have been lost in creeks along Middle River.

Alarming declines in fin fish, shell fish, waterfowl and other species continue to demise at a rate that is consistent with the escalating decline of SAV and water quality. Some areas within the creeks are unfit for swimming or other contacts or are in other ways unhealthy.

RECOMMENDATIONS:

Severe penalties for filling of wetlands and waterways and recognition that the person responsible for filling the wetlands has no claim on this filled area and is held by the public.

Major effort to restore SAV's should be made a very high priority.

County, state and U.S. Corps of Engineers must exercise their responsibility under public trust doctrine to ensure healthy, useful waterways that are filled with fishes and other aquatic life that has historically existed for the benefit of all citizens.

Creeks, rivers and other waterways should not be used as storm water and run-off management for development.

Complete study should be made of Middle River and Back River with results to be released to communities along the watershed. Ongoing monitoring and action plans for corrective action should be instituted quickly.

Reclaim the streams that enter the headwaters of Back River to increase flow. (County has program-needs implementing)

VI.
ISSUES

SUE CREEK

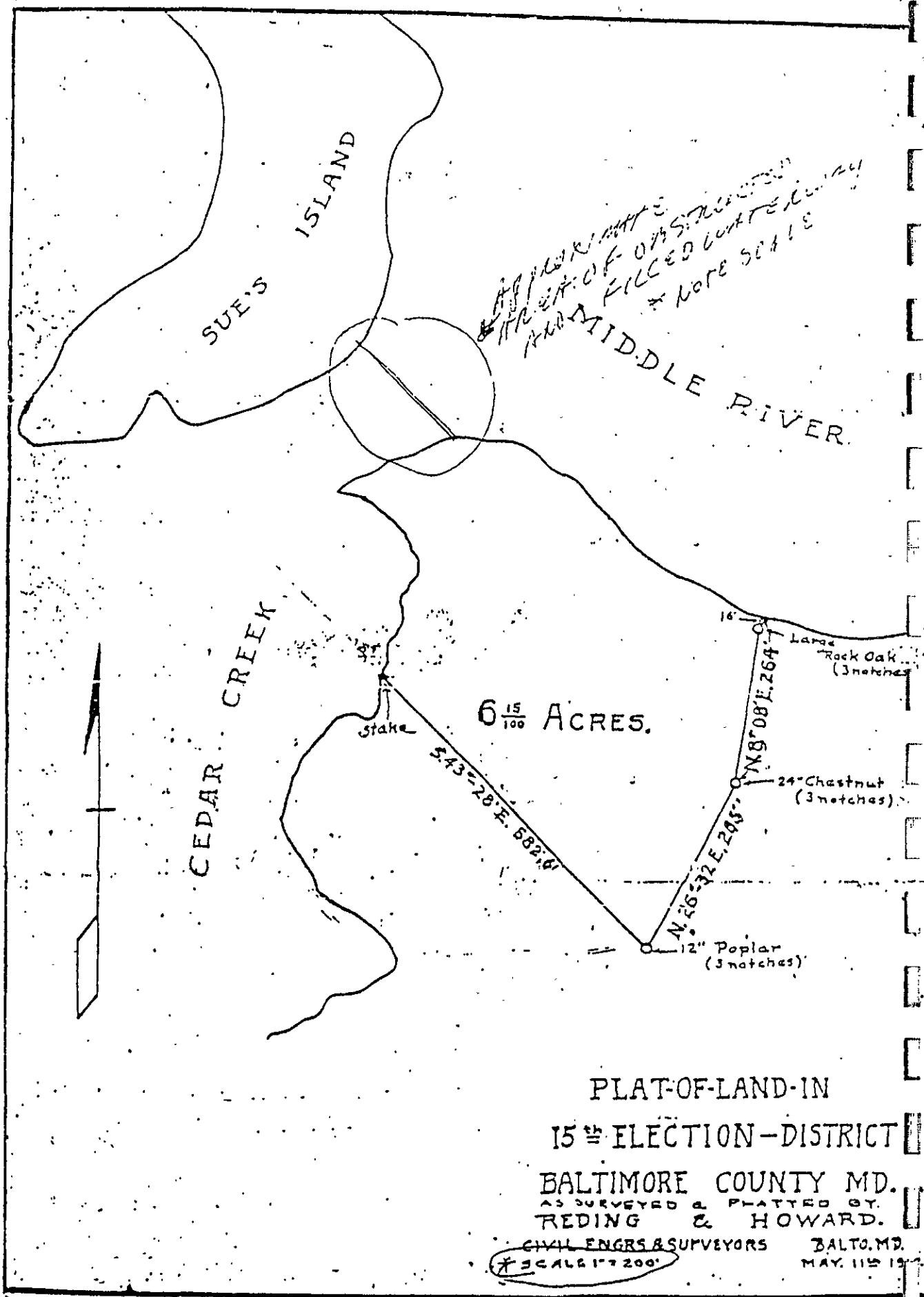
Although nearly all of Middle River is deeply stressed, Sue Creek is particularly in a rapid rate of decline. This was once a fisherman's paradise and supported great numbers of bass, pickerel, yellow perch, blue gills, shiners, crappies, rockfish and other species with lush beds of grasses blanketing the entire creek except for a narrow channel strip that managed to be kept open by boat traffic. Aside from the channel it was with great effort one could even row through it. Today the creek is nearly devoid of the grasses, waterfowl in large numbers can no longer be supported and clam and fish species either no longer are there or are in greatly diminished number. The creek suffers all the stresses of the rest of Middle River but is especially distressed by its very poor flushing ability-a large portion of this being attributed to the filling of 200 feet of its opening between the mainland and Sue Island.

RECOMMENDATIONS FOR SUE CREEK

1. Temporary moratorium should be imposed on all new commercial, water related, marine oriented and multi unit development.
2. Causeway/roadway at Baltimore Yacht Club should be reopened with great expedience so that Sue Creek can regain its historic flow and proper flushing.
- 3. Elimination of all bootleg marinas.
4. Monitoring programs of the water quality in Sue Creek should be initiated by Federal, State and local agencies and action plan formulated with all information to be shared by communities.
5. No wake zone on entirety of Sue Creek.
6. SAV restoration program a high priority.
7. No highrise boat storage racks on Sue Creek with illegal ones to be removed. Since they are a means of creating additional slips and (in fact) serve only to over proliferate a creek that cannot support even current numbers. (Exception: Racks that are built and used only for removal and storage of boats that are normally wet slipped in off season.)

*SEE COMAR 14.15 03 (04) #B 1, 2, 3

**SEE COMAR 14.15.03-03 A 1 & 3



Issue: Back River - Water Quality

Back River is an estuary of the Chesapeake Bay as evidenced by its being subject to tidal influence and the presence of a salinity gradient which reportedly diminishes significantly near Stansbury Point. From the Eastern Avenue Bridge to its confluence with the Chesapeake Bay, it approximates nine (9) miles in length. The River is very shallow at the headwaters (2-3 feet dependent upon tide and wind direction) and is deepest at the mouth (approximately 20 feet). The width varies from one quarter ($\frac{1}{4}$) of a mile in the upper reaches to nearly one and one half ($1\frac{1}{2}$) miles near the Bay. The flow in the River is very sluggish with approximately 20% of the freshwater flow coming from its major tributaries, Herring Run and Northeast Creek (fed by Stemmers Run), while the remaining freshwater flow, approximately 80%, is attributed to the discharge from the Back River Waste Water Treatment Plant. At the present time the Waste Water Treatment Plan is treating approximately 180 million gallons per day (mgd) of sewage with the resultant effluent split of 100 mgd. and 80 mgd. directed toward Bethlehem Steel and Back River respectively. The total drainage area of the River is approximately 70 square miles.

Problems in and on the River are not just recent. The pressures of development and unrestricted land use activities as well as the point source effects of the treatment plant have caused the gradual decline of the River. Massive algal blooms and fish kills, sewage plant washouts, years of failing sewage disposal system effects, are only a few of the pollutant loadings (both bacteriological and chemical) which have influenced the waters. It is imperative that an integrated approach involving multi-media influences be utilized when looking at solutions to historic problems. This leads also to a regional perspective for control of atmospheric pollutants and discharges to the conveyance system.

An inventory of problems which affect bacteriological background, oxygen depletion, and nutrient loadings include treatment plant discharges, stormwater runoff, failing sewage disposal systems, marina operations, industrial discharges, sewage pumping station overflows, and the existing sediments on the River bottom. These are all problems which affected the water quality of Back River for years. Solutions cannot be expected to miraculously produce overnight benefits. The goals of restoring the resource for boating, swimming, fishing and aesthetic appreciation of scenic vistas will require significant commitment from residents and government.

Back River - Water Quality

Actions

1. Vigorously support and monitor the scheduled improvements to the Back River Waste Water Treatment Plant.
2. Develop regional cooperation on stormwater pollution control and retrofiting. Unless the upstream contributions of sediments and pollutants can be controlled, the County efforts will be severely compromised.
3. Pursue an impact study of removing contaminated sediments from the River bottom. The application of waterway dredging for the main channel should be resolved.
4. Accelerate water quality monitoring efforts through improvement in frequency of surveys, sampling, and manipulation of data.
5. Correct failing sewage disposal systems through the proposed central collection system extensions.
6. Accelerate a program for structural and non-structural shoreline enforcements to address erosion and dilapidated structures.
7. Build a volunteer network in conjunction with the Essex Community College Upper Bay Estuarine Studies Center.
8. Provide community educational programs to individual residents so that homeowner activities detrimental to the River could be changed.
9. Provide pump-out facilities for marinas.
10. Investigate requirements to reopen certain segments of the River for water contact recreational activities.

VIII.

Issue: Back River Waste Water Treatment Plant

The Back River Waste Water Treatment Plant has experienced recent problems (i.e. washouts in spring of 1989; sludge disposal in summer 1989) which have affected the water quality of the River and produced nuisances which have affected the quality of life for community residents.

The plant has undergone significant changes in design and operation since the approval of the 201 Facilities Plan in 1984. An update of the plant improvements and the current plant process are provided in Attachment 1. These improvements represent the expenditure of approximately 300 million dollars (\$250 million - Federal and State Grants) since the late 1970's. Another 200 million dollars is earmarked for projects to be completed by 1997. With the dissolution of the Construction Grants Program of the Clean Water Act, a larger share of the monies will have to come from local government. Some examples of construction projects include:

- SS Nitrogen Reactors and Clarifiers - completion estimate 1994
- Additional digester capacity - completion estimate 1992
- Odor Control project - completion estimate 1992

The completion of the projects to bring the plant into an advanced treatment mode will represent a significant financial commitment by Baltimore City and Baltimore County. The State Revolving Loan Fund replaced the Construction Grant program in the fall of this year. This means that the improvements for water quality benefits will represent the largest solely, locally funded projects ever attempted. The possibility of private developer funding assistance to improve the plant would not appear feasible. All of the time, money, and effort which will be expended does not have an effect on plant capacity. The improvements are designed to upgrade the effluent, not to add to the 180 mgd rating design of the plant.

Sludge disposal continues to be a major concern that affects plant operation and community relationships. It is imperative that all options or alternatives be vigorously pursued to insure that problems reminiscent of summer 1989 not recur. The heat drying process which is proposed as a privatization project must be reviewed objectively. Contracts for land application must be advanced. New technologies and regional cooperation for disposal options must be fostered.

It must be remembered that the various components of plant operation are controlled through a regulatory mechanism. The plant is currently under several Consent Orders with the Maryland Department of the Environment. In addition to these orders, the National Pollutant Elimination System (NPDES) permit stipulates various parameters for effluent discharge to the River.

VIII.

Back River Waste Water Treatment Plant

Actions

1. Look for supplemental financing methods to insure completion of all phases of plant upgrades.
2. Develop a structure and organization for communication between local politicians, citizen groups, and plant operators.
3. Investigate new technologies for sludge disposal and monitor progress.
4. Develop new markets for compost and sludge applications.
5. Develop homeowner educational programs to show the potential effect of their actions on the plant.
6. Develop homeowner hazardous waste disposal sites to keep these materials out of the system.

Issue: Development Potential and
Chesapeake Bay Critical Area Legislation

The lower Back River Neck Area is within the Chesapeake Bay Critical Area. The majority of the area is classified as Resource Conservation Area and the Zoning is RC-20. The remaining portion of the Area is classified as Limited Development Area. The Zoning is a combination of DR5.5, RC5 commercial and manufacturing classifications.

Geographic Setting

The coastal areas of Baltimore County are located primarily in the southeast portion of the County bordering the Chesapeake Bay. These areas are characterized as relatively flat with a poorly defined drainage pattern. Most elevations are less than 30 feet with extensive areas under ten feet. The soils are generally poorly drained. The geology of the areas consists of unconsolidated sands and gravels. The lower Back River Neck is part of the coastal area.

The lower Back River Neck shoreline, which is irregular in shape, consists of 19.6 miles. It is bordered at numerous locations by low-lying tidal marshes.

The lower Back River Neck itself consists of 1624 acres of woodland, 122 acres of tidal marsh, and 560 acres of open land. Much of the woodland covers hydric and other wet soil areas that severely limit the area of developable land.

A particular characteristic of the lower Back River Neck is unique. That is, areas of poorly drained, low elevations are located in interior portions while generally higher elevations are located adjacent or just inland from the shoreland. This characteristic also poses real difficulties with respect to ideal or efficient development patterns.

Existing Development

The residential settlement pattern is mostly aptly described in terms of the old and the new. Most of the newer dwelling units are located off Eastern Avenue and adjacent portions of Back River Neck Road. In contrast, the majority of the homes situated on waterfronts were originally built, many years ago, as summer residences. Due to the fact that these homes were built without adequate plumbing or water, privies were often used as toilet facilities. At the time these homes were constructed, health regulations were very minimal.

A proposed central sewer system is being programmed for the existing communities of Lower Back River Neck Area. A series of force mains and individual grinder pumps utilizing a proposed 4" line offer little growth potential.

X.

MARINAS/BOAT YARDS & YACHT CLUBS

Currently many marinas/boat yards and yacht clubs operate under "non-conforming use" or "special exception". This is a great hardship to them in that they must constantly seek variances through costly processes. Moreover, it is of great hardship to the community in that it compels them to attend numerous hearings, hire attorneys and lose time from work in an effort which is futile.

RECOMMENDATIONS FOR MARINAS/BOAT YARDS/YACHT CLUBS

1. Marina zoning needs to be clear and exact on the permitted use and setbacks so that communities and marina owners can co-exist and not continually be at odds. Non-conforming and or special exception usage of land for marinas/boat yards and yacht clubs should be limited to existing property line meets and bounds.
2. Rack storage should not be permitted along stressed waterways or in areas where they overwhelm neighbors, homeowners or scenic vistas.
3. Enforce zoning, Critical Areas regulations and other legislation to protect existing communities and the environment. The spirit of these regulations and policies being of equal or greater significance than the letter of the law.
- 4. Boat slips at private piers should be limited to 3 or 4 slips per property.
5. New marinas/boat yards or yacht clubs should not be sited on severely stressed waterways.
6. Carrying capacities for boat traffic on entirety of Middle River should be established with emphasis on safety and environmental impact.
7. Marine related businesses, DEPRM and community should alert boaters of legal and moral obligations to dispose of litter and waste properly. Implement plans for awareness and enforcement.
8. Establishment of a new marina/boat yard or yacht club shall be restricted to a contiguous parcel limited to property lines meets and bounds of initial approval of zoning.

XI.

PUBLIC HEALTH/TRAFFIC/SAFETY

ISSUES:

SEWERAGE

Sewering of lower peninsula by grinder pump systems should be restricted as stated by County to serve existing communities and the effort to restore the Chesapeake Bay and should not serve as a spur for residential or commercial facilities.

Great care should be taken in running pipelines and building pumping stations to minimize impact to wetlands, trees, fauna and areas of special concern to communities.

The sewerage of the lower peninsula will not cure non-point pollution. Retrofitting existing storm drain systems should be a priority of the county in decreasing the amount of runoff from existing homes, commercial and agricultural property.

RECOMMENDATIONS:

The county should be sensitive to fragile areas of the peninsula and should whenever possible install the sewer pipes in the existing road beds.

The County should implement retrofitting programs for existing storm drains.

XII.

ISSUE:

PRIVATE WELLS:

Many wells on the lower peninsula seem to run lower than they have in the past and there is some concern that some may have become unhealthy through development of the upper part of the peninsula effecting groundwater, failing septic systems, or illegal dumping of toxic pollutants by private property owners. Also the effect of well waters (due to various types of mineral deposits) on grinder pump systems should be considered.

RECOMMENDATIONS:

DEPRM should assess the health needs of the community by conducting a survey of all private wells to determine their conditions. If contaminated wells are found to be a problem the County should initiate the installation of public water.

TRAFFIC/SAFETY

The extension of Rte. 702 past Turkey Point Rd. was said by the county to be needed to alleviate traffic congestion and should not be a tool for development of the Lower Peninsula. Route 702 and its' poor design have fostered many traffic accidents along its extension. Widening of roads below termination would encourage excessive speed and development pressure. Roadside litter is a consistent problem and detracts from the scenic beauty of the area and is a hazard to wildlife.

RECOMMENDATIONS:

No bridge or road to Hart-Miller Island from the study area (water taxi to Hart-Miller Island should be future consideration)

Merging of Route 702 and Back River Neck Road is extremely dangerous. A flashing amber light, reduced speed or other safety measures are needed. Also the severe dip at the merger point needs correction. Numerous accidents have occurred there.

No thru street and Dead end road signs should be posted.

Flashing light or other safety device needed at Holly Neck and Back River Neck Roads.

No widening of roads from Pottery Farm southward.

Need hard shoulders from Hyde Park to Cherry Garden Rd. on Back River Neck Rd. Pedestrians, school children and bicyclists are compelled to be on roadway.

No further extension of Route 702

Better road maintenance and flood (cleaning of ditches) control.

XIV. SIGNS:

Large unattractive signs and the proliferation of realty company signs along Rt. 702 are very unattractive and are in violation.

RECOMMENDATIONS:

Need several more "Critical Areas" signs to be posted on Holly Neck and Back River Neck and Barrison Point Roads.

All signs below Turkey Point Road that are not public service, non-profit should be rustic as befits a rural, natural area. Public service signs to be removed as soon as events are over.

Rustic, environmentally sensitive directional signs at intersections should be permitted.

SIGNS:

RECOMMENDATIONS: (Continued)

Removal of signs not in compliance with county regs.

No Dumping signs should be posted throughout area/
Citizen Patrol signs.

Enforcement of removal all commercial signs along Route 702
in compliance with Federal road standards.

XV.

ESSEX SKYPARK

ESSEX SKYPARK is a privately owned air strip for small aircraft which has been operating for a number of years and has been of little hindrance and concern to the community. The community at large has no objection to its continuing to be operated as a skypark and could consider some growth in number of small craft operating there provided that the actual track of the skypark is not enlarged.

The size and shape of the skypark facility should be restricted to its' present expanse so that the R 20 habitat protection areas surrounding it are not disturbed or removed.

A NATURE SHOWCASE AND TREASURE

Rarely can three so uniquely diverse ecosystems be found in such close proximity as exists in Lower Back River Neck, Hart-Miller Island and The Black Marsh. The lowland wet forests of Lower Back River Neck are home and breeding grounds for warblers, woodpeckers, many songbirds, birds of prey, many other forest interior dwelling species as well as migratory water fowl and many rare species. Hart-Miller Island continues to enjoy the return of many species of sea birds such as cormorants, brown pelicans, herons, gulls and terns. It also supports huge concentrations of migratory ducks and geese. The Black Marsh with its salt marsh habitat and adjacent forests support a number of rare species including songbirds and the endangered black rail.

It is commonplace to see the bald eagle soaring overhead and hunting at all three locations.

The retention of these areas in their most natural state would provide people throughout the country the opportunity to see the many diversities and beauties of nature and to provide areas of study and education that are of national significance.

Proper preservation of these areas would insure the perpetuation of numerous species for future generations.

RECOMMENDATIONS:

Joint Federal, state, county and private effort to procure and set aside as much of the three areas as possible.

Thorough study of entire area by U.S. Fish & Wildlife Service, E.P.A., Md. D.N.R. and Baltimore County DEPRM to create action plan for stabilization and proliferation of wildlife species and numbers through enhancement projects.

Roads in all areas to be limited access.

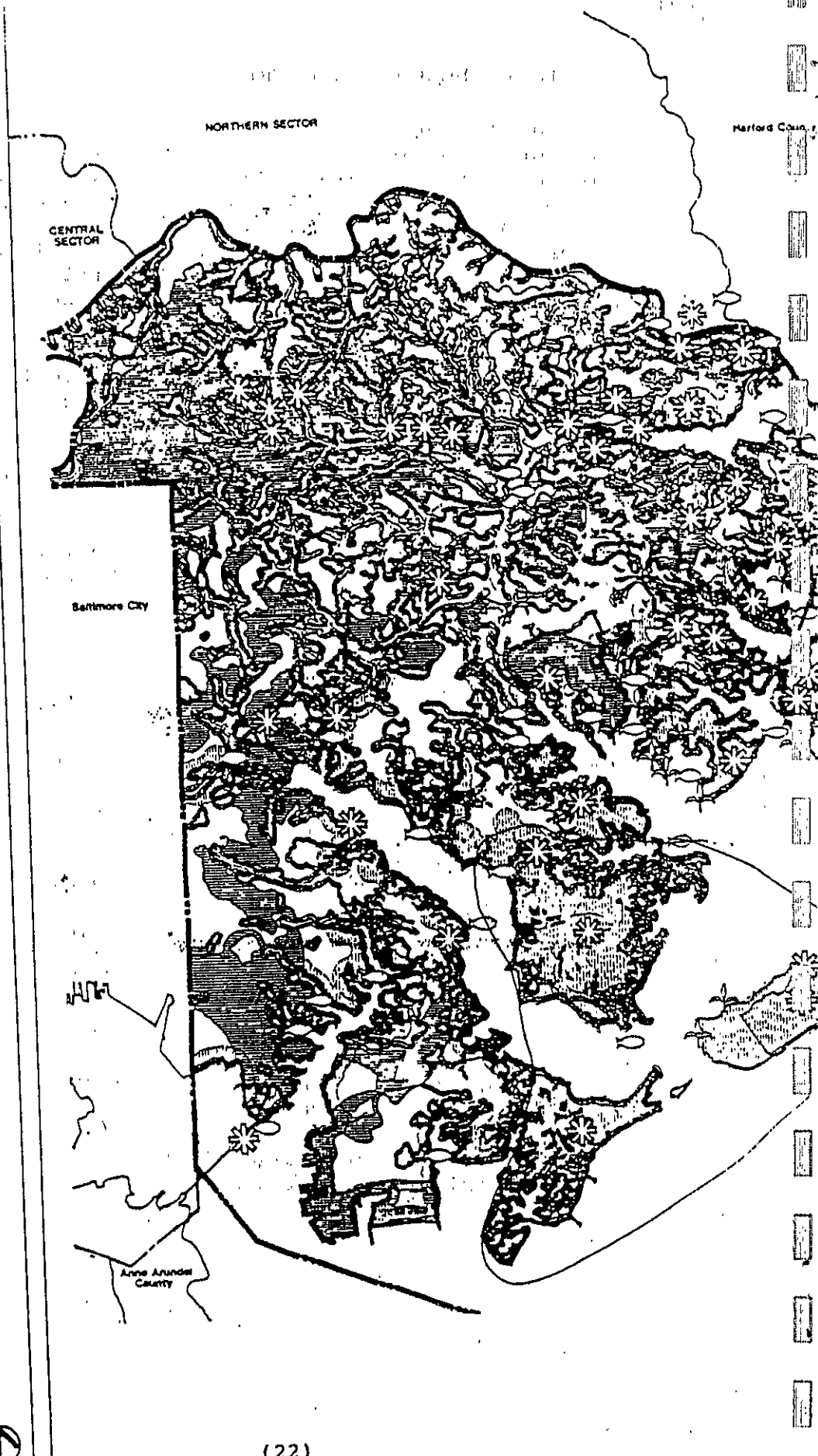
Parking to be kept out of environmentally sensitive areas.

Boardwalks, hiking and non-motorized biking trails incorporated for access.

Access from one area to other should not be bridges or roads (water taxi could be consideration).

POLICY PLAN

-  SECTOR BOUNDARY
-  STREAM, FLOODPLAIN & WETLAND SOILS
-  10% MAX. FOREST BUFFER & STEEP SLOPE/ERODIBLE SOIL PROTECTION AREA
-  HIGH GROUND WATER POLLUTION POTENTIAL
-  CHESAPEAKE BAY CRITICAL AREA
-  APPROXIMATE LOCATION OF KNOWN RARE SPECIES
-  HIGH PRIORITY RARE SPECIES LOCALITY
-  HABITAT PROTECTION AREA
-  ANADROMOUS FISH SPAWNING GROUNDS
-  SUBMERGED AQUATIC VEGETATION



FOR CONSIDERATION OF INSERTION
INTO
BACK RIVER MINI MASTER PLAN

The Back River Elementary School site is an extremely vital and very important part of the Back River Neck Community. It created a great deal of concern among residents when the school was closed in the 1980's, and the community is just as concerned over its fate and future.

Currently listed under the inventory of the Baltimore County Dept. of Recreation & Parks, the site (grounds) is used for passive recreation ie. ball diamonds, sandlot playground, outdoor basketball etc. The building currently has a small percentage of area set aside for recreation (gymnastics & golden age) while the remaining area is used as a warehouse for the storage of voting machines.

The community is well aware of the fact that Baltimore County will be switching to a new type of voting procedure in the very near future, and that the need for warehouse space will greatly diminish. When this fact becomes a reality, the community recommends the following course of action:

- 1.) The grounds shall continue to remain for passive recreational use with the possible addition of some horse shoe pits. All equipment shall be kept in good repair by the Dept. of Rec. & Parks. No new buildings shall be constructed on the grounds.
- 2.) The Flagpole located in front of the building, which was donated to the community by the Ebersberger Family almost 50 years ago, shall be reconditioned and serve as the official Flagpole for the School Bldg., the Ambulance Station, and Pottery Farm Park. A plaque commemorating its gift to the community shall be installed in the future.

3.) The old School Bldg. shall be reserved for the following uses:

- A.) A Nature Center, open to the public, and for all ages. For the study of the Flora and Fauna indigunous to the Back River peninsula. Offering a wide variety of services, such as in house studies, field trips, etc.
- B.) An Historic Learning Center. To offer exciting educational programs concerning the proud history of the peninsula. Highlighting such areas as Ballestone ~~Mansion~~ ^{Mansion}, the Somogyi Farm, Duck Hunting Lodges, name origins, etc.
- C.) A Community Center. Offering meeting space for various community groups, complete with audio-visual aides, light refreshment areas, and a relaxed atmosphere.
- D.) Classroom Annex's. With the continual overcrowding of Baltimore County Schools, especially in the Essex-Middle River area. And with the re-opening of some School facilities previously closed, serious consideration should be given to refurbishing classroom space to be used as annex's for Middleborough, Sandlewood, or Mars Estates Elementary Schools.

XVIII.

ISSUE:

MUDDY GUT:

The Muddy Gut area was afforded special classification as a habitat protection area in the critical areas state and local program.

The forested area of Pottery Farm is separated by Muddy Gut protection area only by Rt. 702/Back River Neck Rd otherwise the corridor is unbroken, and in fact should be considered as one contiguous forest system.

Because of the wealth of wildlife and special habitat the Muddy Gut area should not become a park as such. Rather it is more suited to becoming a natural heritage area. There remains some old growth timber, seasonal ponds, a huge stand of yellow water iris and is laced with natural swales and wetlands and many species of special concern or in need of protection (including rare Whorled Pagonia and other orchid species are found in number. Human disturbance and encroachment should be minimized in this area.

RECOMMENDATIONS:

Include Muddy Gut in the state Natural Heritage Program.

Shoreline enhancement, marsh plantings and SAV programs should be a high priority. State, county and communities could work jointly on projects.

Habitat creation and enhancement should be maximized with joint Federal, state, county agencies and community projects.

POTTERY FARM PARK:

Pottery Farm Park is an extremely environmentally sensitive area with nearly all of its 105 acres being mixed deciduous forest and laced with swales, natural drainage areas, alluvial and other non-tidal and tidal wetlands and is surrounded on three sides by Sue Creek with much of the land sloped toward the watershed.

The forest and wetlands system contributes to water quality and affords great protection to Sue Creek and consequently the Upper Chesapeake Bay. Of equal importance is its abutment to the Muddy Gut Wildlife Habitat Protection Area, its connection to the over 1600 acres of forest on the lower peninsula which affords huge wildlife corridors and is bordered by Chesapeake High School. An overwhelming number of species abound especially, owls, hawks, warblers, woodpeckers and other forest interior dwelling birds.

Because of its extreme sensitivity all intrusion and recreation into the area should be passive. ALL TERRAIN VEHICLES are doing enormous damage to the park, destroying sensitive areas, disrupting wildlife and go out of their way to intimidate hikers and horsemen. They are a clear endangerment to the park and public safety.

In saving the park from the threat of 600 townhouses it was mutually agreed by the Trust for Public Land, the community, Baltimore County and the state of Maryland that the most important rationale was environmental protection. Every effort should be made to preserve it in its natural state as is possible.

RECOMMENDATIONS:

1. Establish a nature center with field trips and nature study programs. Although one of the most important areas of the Upper Bay there is no established program for natural study in the Back River Neck or Essex Area. This could be a joint effort by the county, community and conservation groups.
2. Scouting facilities at Pottery Farm should be developed to support several troops at one time. This development should include a shelter and educational facilities. Nearly all of these projects as well as nature trails can be accomplished by the scouts with help from the community and guidance from Recreation and Parks and DEPRM.
3. Boating and Marine facilities should be limited to canoes, rowboats, kayaks, pedalboats, etc.
4. Coordination between Baltimore County Recreation and Parks and Chesapeake High School for a science study area for all area schools. Community can provide additional help.
5. Input from Baltimore Birding Club, MOS, etc. for establishing areas for birdwatching.
6. Hiking, biking and nature trails throughout Pottery Farm.
7. Passive recreation only at Pottery Farm.

XIX PUBLIC AREAS:

POTTERY FARM PARK

RECOMMENDATIONS: (CONTINUED)

8. Severe penalty and/or confiscation of ATV for park encroachment.
9. Custodian or watchman and other means of security should be provided.
10. Study of area as possible archaeological/historical site.

XX, ROCKY POINT PARK AND GOLF COURSE:

Rocky Point Park/Golf Course is in the lower extremity of the heavily forested lower Back River Neck and is bordered by Long Creek, Hawk Cove and the Chesapeake Bay. The park is one of the most popular county facilities. Owing to its narrowness, terrain and environmentally sensitive it is prohibitive of intense recreational use and is used primarily for swimming, hiking, birdwatching, fishing, and boating.

Boating has become more intense and fishing has declined over recent years.

Boating has become increasingly popular and ramps at Rocky Point Park are very heavily used. Hundreds of boats are launched on a given weekend. On numerous occasions parking lots and ramps waterways at the Park have been used for demonstrations, and sales areas for boats.

Users of the Park (swimmers, picnickers, fishermen etc. must pay to enter the park, yet boaters (many of whom come from beyond the borders of Baltimore County) pay nothing to enter or use the launch facilities. Hikers, fishermen, bathers and the like take up not nearly so much space and do not nearly so impact the park and the watershed as do boats.

Rocky Point Golf Course is one of the most highly used courses in the county and affords golfers a chance to enjoy the game, the beautiful forests of Lower Back River Neck, historic Ballestone Manor and the Chesapeake Bay.

Due to severe storms, natural attrition, and other causes, many trees have been lost on the golf course and should be replaced for aesthetics and the protection of the watersheds. Severe erosion problems along the bayside, along Back River, and Long Creek need to be checked.

RECOMMENDATIONS:

1. A user fee for boaters should be imposed. The rate should be the same as the rate charged per person for those using the bathing beach and recreational fishing area.

XX. PUBLIC AREAS:

ROCKY POINT PARK AND GOLF COURSE:

RECOMMENDATIONS: (continued)

2. Discourage the use of parking lots, ramps and access roads as places for commercial boat sales and demonstrations.
3. Baltimore County Department of Recreation and Parks should acquire Porters Beach. For the extension of beach and not for boat ramps, piers, marinas or slips.
4. A large flag pole should be erected on the park property and the appropriate flags flown.
5. Severe erosion problems at the park and the golf course should be addressed.
6. Golf course has lost large percentage of its trees. Trees should be replaced.
7. Long Creek needs buffering in golf course area.
8. Program to re-establish SAV (submerged aquatic vegetation) in Hawk Cove and Long Creek.
9. Find other means of protection so that unattractive fence can be removed from around Ballestone Manor.

XXI. GENERAL RECOMMENDATIONS:

1. Creation and retention of horse, hiking, and non-motorized biking trails throughout the peninsula.
2. Curbside recycling program should be created for the study area.
3. Roadside trimming and trimming along power lines should be done with environmental sensitivity and constraint.
4. Phragmites control program is needed throughout the peninsula.
5. Residences on Back River Neck Rd. near Barrison Pt. Rd. (Mr. Grape and Mr. Genco) suffer severe flooding County should immediately begin flood control measures to correct problem.
6. Large tract dump sites on Golupski Rd. and opposite and east of Evergreen on Back River Neck Rd. should be investigated thoroughly and corrective action taken.

BIRDS OF LOWER BACK RIVER NECK

COMMON LOON, PIED BILL GREBE, DBL. CRESTED CORMORANT, GREAT BLUE HERON, GREAT EGRET, BLACK CROWNED HERON, TUNDRA SWAN, BRANT, CANADA GOOSE, WOOD DUCK, BLACK DUCK, MALLARD DUCK, PINTAIL DUCK, CANVASBACK DUCK, RUDDY DUCK, REDHEAD DUCK, SCAUP, BUFFLEHEAD, MERGANSER, BLACK VULTURE, TURKEY VULTURE, OSPREY, BALD EAGLE, NORTHERN HARRIER, SHARP SHINNED HAWK, COOPERS HAWK, RED SHOULDERED HAWK, BROAD WINGED HAWK, RED TAIL HAWK, AMERICAN KESTREL, MERLIN, PERIGRINE FALCON, RING NECKED PHEASANT, BOB WHITE QUAIL, KILLDEER, GREATER YELLOW LEGS, SPOTTED SANDPIPER, AMERICAN WOODCOCK, LAUGHING GULL, BONAPARTES GULL, RING BILLED GULL, HERRING GULL, GREATER BLACK BACKED GULL, CASPIAN TERN, COMMON TERN, LEAST TERN, ROCK DOVE, MOURNING DOVE, COMMON NIGHT HAWK, CHUCKWILL'S WIDOW, WHIP POOR WILL, CHIMNEY SWIFT, RUBY THROATED HUMMINGBIRD, BELTED KINGFISHER, RED HEADED WOODPECKER, RED BELLIED WOODPECKER, YELLOW BELLIED SAPSUCKER, DOWNY WOODPECKER, HAIRY WOODPECKER, NORTHERN FLICKER, PILEATED WOODPECKER, OLIVE-SIDED FLY CATCHER, EASTERN WOOD PEE-WEE, ACADIAN FLY-CATCHER, ALDER FLYCATCHER, LEAST FLYCATCHER, EASTERN PHOEBE, GREAT CRESTED FLYCATCHER, EASTERN KINGBIRD, PURPLE MARTIN, TREE SWALLOW, ROUGH-WINGED SWALLOW, BANK SWALLOW, SWAMP SPARROW, WHITE THROATED SPARROW, LARK SPARROW, WHITE CROWNED SPARROW, DARK EYED JUNCO, BOB-O-LINK, RED WINGED BLACKBID, EASTERN MEADOWLARK, COMMON GRACKLE, COWBIRD, ORCHARD ORIOLE, NORTHERN ORIOLE, PURPLE FINCH, HOUSE FINCH, PINE SISKIN, AMERICAN GOLDFINCH, EVENING GROSBEAK, HOUSE SPARROW, BLUE JAY, AMERICAN CROW, FISH CROW, CAROLINA CHICKADEE, TUFTED TITMOUSE, RED BREASTED NUTHATCH, WHITE BREASTED NUTHATCH, BROWN CREEPER, CAROLINA, WREN, HOUSE WREN, MARSH WREN, GOLDEN CROWNED KINGLET, RUBY CROWNED KINGLET, BLUE GRAY GNATCATCHER, EASTERN BLUEBIRD, VEERY, HERMIT THRUSH, WOOD THRUSH, ROBIN, GRAY CATBIRD, NORTHERN MOCKINGBIRD, BROWN THRASHER, CEDAR WAXWING, OVENBIRD, NORTHERN WATERTHRUSH, LOUISIANA WATERTHRUSH, KENTUCKY WARBLER, COMMON YELLOWTHROAT, HOODED WARBLER, YELLOW BREASTED CHAT, SCARLET TANAGER, CARDINAL, ROSE BREASTED GROSBEAK, CAPE MAY WARBLER, YELLOW RUMPED WARBLER, PINE WARBLER, PRAIRIE WARBLER, BLACK, & WHITE WARBLER, EASTERN SCREECH OWL, BARRED OWL, INDIGO BUNTING, RUFOUS SIDED TOWHEE, REDPOLL, BLUE GROSBEAK, AMERICAN TREE SPARROW, CHIPPING SPARROW, FIELD SPARROW, SAVANNAH SPARROW, GRASSHOPPER SPARROW, FOX SPARROW, SONG SPARROW, EUROPEAN STARLING, RED-EYED VIREO, PHILADELPHIA VIREO, WHITE EYED VIREO, BLUE WINGED WARBLER, TENNESSEE WARBLER, NORTH PARULA WARBLER, YELLOW WARBLER, CHESTNUT SIDED WARBLER, MAGNOLIA WARBLER, BLACKBURNIAN WARBLER, YELLOW THROAT WARBLER, PALM WARBLER, CERULEAN WARBLER, AMERICAN REDSTART, PROTHONITARY WARBLER, GREAT HORNED OWL, LONG EARED OWL

SOURCE: EARL PALMER, BOB RINGLER
(MOS) MD. ORNITHOLOGICAL SOCIETY

Red-throated Loon, Common Loon, Pied-billed Grebe, Horned Grebe, Red-necked Grebe, Eared Grebe, American White Pelican, Great Cormorant, Double-crested Cormorant, Least Bittern, Great Blue Heron, Great Egret, Snowy Egret, Little Blue Heron, Tricolored Heron, Cattle Egret, Green-backed Heron, Black-crowned Night-Heron, Glossy Ibis, Tundra Swan, Mute Swan, Snow Goose, Brant, Canada Goose, Wood Duck, Green-winged Teal, American Black Duck, Mallard, Northern Pintail, Blue-winged Teal, Northern Shoveler, Gadwall, American Wigeon, Canvasback, Redhead, Ring-necked Duck, Greater Scaup, Lesser Scaup, Oldsquaw, Black Scaup, White-winged Scaup, Common Goldeneye, Bufflehead, Hooded Merganser, Common Merganser, Red-breasted Merganser, Ruddy Duck, Black Vulture, Turkey Vulture, Osprey, Bald Eagle, Northern Hammer, Sharp-shinned Hawk, Cooper's Hawk, Red-shouldered Hawk, Red-tailed Hawk, Golden Eagle, American Kestrel, Merlin, Peregrine Falcon, King Rail, Virginia Rail, Sora, Common Moorhen, American Coot, Black-bellied Plover, Lesser Golden-Plover, Semipalmated Plover, Piping Plover, Killdeer, American Oystercatcher, Black-necked Stilt, American Avocet, Greater Yellowlegs, Lesser Yellowlegs, Solitary Sandpiper, Willet, Spotted Sandpiper, Upland Sandpiper, Whimoret, Hudsonian Godwit, Marbled Godwit, Ruddy Turnstone, Red Knot, Sanderling, Semipalmated Sandpiper, Western Sandpiper, Least Sandpiper, White-rumped Sandpiper, Baird's Sandpiper, Pectoral Sandpiper, Purple Sandpiper, Dunlin, Curlew Sandpiper, Stilt Sandpiper, Buff-breasted Sandpiper, Ruff, Short-billed Dowitcher, Long-billed Dowitcher, Common Snipe, American Woodcock, Wilson's Phalarope, Red-necked Phalarope, Red Phalarope, Laughing Gull, Franklin's Gull, Little Gull, Bonaparte's Gull, Ring-billed Gull, California Gull, Herring Gull, Thayer's Gull, Lesser Black-backed Gull, Glaucous Gull, Great Black-backed Gull, Black-legged Kittiwake, Gull-billed Tern, Caspian Tern, Royal Tern, Sandwich Tern, Common Tern, Forster's Tern, Least Tern, Black Tern, Black Skimmer, Monk Parakeet, Rock Dove, Mourning Dove, Black-billed Cuckoo, Yellow-billed Cuckoo, Great Horned Owl, Snowy Owl, Short-eared Owl, Common Nighthawk, Chimney Swift, Ruby-throated Hummingbird, Belted Kingfisher, Red-bellied Woodpecker, Downy Woodpecker, Northern Flicker.

Eastern Wood-Pewee, Acadian Flycatcher, Least Flycatcher, Eastern Phoebe, Great Crested Flycatcher, Eastern Kingbird, Horned Lark, Purple Martin, Tree Swallow, Northern Rough-winged Swallow, Bank Swallow, Cliff Swallow, Barn Swallow, Blue Jay, American Crow, Fish Crow, Carolina Chickadee, Tufted Titmouse, Red-breasted Nuthatch, Brown Creeper, Carolina Wren, House Wren, Winter Wren, Marsh Wren, Golden-crowned Kinglet, Ruby-crowned Kinglet, Blue-gray Gnatcatcher, Eastern Bluebird, Veery, Swainson's Thrush, Hermit Thrush, Wood Thrush, American Robin, Gray Catbird, Northern Mockingbird, Brown Thrasher, American Pipit, Cedar Waxwing, European Starling, White-eyed Vireo, Red-eyed Vireo, Tennessee Warbler, Orange-crowned Warbler, Northern Parula, Yellow Warbler, Chestnut-sided Warbler, Magnolia Warbler, Cape May Warbler, Black-throated Blue Warbler, Yellow-rumped Warbler, Black-throated Green Warbler, Blackburnian Warbler, Prairie Warbler, Palm Warbler, Bay-breasted Warbler, Blackpoll Warbler, Black-and-white Warbler, American Redstart, Ovenbird, Northern Waterthrush, Kentucky Warbler, Common Yellowthroat, Canada Warbler, Yellow-breasted Chat, Scarlet Tanager, Northern Cardinal, Rose-breasted Grosbeak, Indigo Bunting, Rufous-sided Towhee, American Tree Sparrow, Chipping Sparrow, Field Sparrow, Vesper Sparrow, Savannah Sparrow, Sharp-tailed Sparrow, Seaside Sparrow, Fox Sparrow, Song Sparrow, Swamp Sparrow, White-throated Sparrow, White-crowned Sparrow, Dark-eyed Junco, Lapland Longspur, Snow Bunting, Bobolink, Red-winged Blackbird, Eastern Meadowlark, Rusty Blackbird, Common Grackle, Brown-headed Cowbird, Northern Oriole, House Finch, Pine Siskin, American Goldfinch, House Sparrow.

TOTAL 235 SPECIES

Sequence and nomenclature according to 6th AOU Check-list as supplemented through 1991.

This list is compiled from the personal records of members of the Maryland Ornithological Society during the period 1977-1991 and includes sightings on Hart, Miller and Pleasure Islands, birds in the new enclosures, on the dikes or in close proximity to the islands and dikes. About 33 of these birds nest there, the remainder are migrants or winter visitors. About 45 of these birds have been found only once there.

Prepared by Robert F. Ringler

BLACK MARSH AREA

Breeding Bird Survey Confirmed

Mallard
Wood Duck
Black Duck
Red-Tailed Hawk
American Kestrel
King Rail
Black Rail
Common Gallinule
Killdeer
Rock Dove
Mourning Dove
Great Horned Owl
Willow Flycatcher
Ruby-t Hummingbird
Downy Woodpecker
Northern Flicker
Eastern Kingbird
Purple Martin
Barn Swallow
Blue Jay
American Crow
Fish Crow
Carolina Wren
Marsh Wren
Blue-grey Gnatcatcher
American Robin
Gray catbird
Mockingbird
Brown Thrasher
Starling
Red-eyed Vireo
Yellow Warbler
Common Yellowthroat
Northern Cardinal
Blue Grosbeak
Indigo Bunting
Chipping Sparrow
Song Sparrow
Red-Winged Blackbird
Common Grackle
Brown-headed Cowbird
House Finch
House Sparrow

Probable

Green Heron
Bobwhite
Virginia Rail
American Woodcock
Yellow-billed Cuckoo
Barn Owl
Eastern Screech Owl
Chuck-will's-widow
Whip-poor-will
Chimney Swift
Red-bellied Woodpecker
Hairy Woodpecker
Great Crested Flycatcher
Tufted Titmouse
House Wren
Wood Thrush
White-eyed Vireo
N. Parula Warbler
Yellow Breasted Chat
Pine Warbler
La Waterthrush
Scarlet Tanager
Orchard Oriole
Rufous-sided Towhee
Grasshopper Sparrow
Swamp Sparrow
Eastern Meadowlark
American Goldfinch

Possible

Least Bittern
Red-shouldered Hawk
Ring-necked Pheasant
Eastern Wood Pewee
Acadian Flycatcher
Eastern Phoebe
White-breasted Nuthatch
Cedar Waxwing
Hooded Warbler
Field Sparrow
Northern Oriole

Source: MD & D.C. Breeding Bird Atlas Project

GOALS

1. Protect water and air quality
2. Improve wildlife habitat.
3. Manage and enhance forest land.
4. Enhance scenic rural character of the area.

STRATEGY

1. Preserve as much standing forest as possible/reforest other areas. Adopt a plan to guide voluntary actions of private land owners, including developers, in directions that improve the environmental quality with the passing of time.
2. Build the plan around a local concept for implementing the Maryland Forest Conservation Act of 1991, which achieves the four Goals.
3. Keep the plan at the concept level identifying types of problems to be remedied and opportunities for building on our environmental strengths. Do not plan for any specific actions on any specific properties, leave that to the initiative of individual property owners.
4. The plan should identify resources available to help property owners in implementing this plan. Also, having an officially approved plan will be useful to community and conservation groups in drawing financial support from foundations and government agencies to assist land owners.

FOREST AND WILDLIFE

1. These are major environmental assets of our community which account for much of our "rural charm". This plan calls for protecting and improving the forest cover and creating a high quality habitat for birds, animals and fish.
2. Vegetate all stream sides and shorelines as buffers to provide shade, promote infiltration, and stabilize against erosion. Sediment and water overheated by summer sun are dangerous to fish and other aquatic life. By selecting desirable habitat species, these improvements in vegetated stream and shoreline buffers will enhance forest and habitat quality providing corridors for wildlife movement. The buffers should be widened into forest corridors wherever possible. The soils map shows that much land in the vicinity is poorly suited for development due to severe drainage limitations, wetlands and floodplain.

FORESTS AND WILDLIFE (continued)

3. This land has high value for habitat and forest cover and may support productive forest providing multiple benefits to its owner.
4. Vegetated corridors must be maintained and enhanced to provide escape and nesting cover.
5. Similarly, islands of woods need to be connected to the forest network by vegetated corridors to reduce excessive predation and competition by border dwelling species.
6. Lower Back River Neck is the key forested-wetlands link to the shorebird habitat of Hart-Miller Island and the forest bordered salt marsh habitat at Black Marsh.
7. Forests from Muddy Gut-Pottery Farm southward through Rocky Point must be retained and contiguous.
8. Diversity of species
 - A. Identify species once abundant in our area which have declined and deserve replanting.
 - B. Encourage species diversity by planting a species mix appropriate to localities and soil types.
9. A living plan.
 - A. Proper management of these forests would improve forest health, productivity, and groundwater infiltration capacity however a goodly number of old growth and adequate standing deadwood should be maintained.
 - B. The forest cover can be managed by its owner, however habitat maintenance should be part of the plan.
 - C. Meadows are an important part of the forest cover plan. There is an important natural progression of meadows which is defeated by grazing or mowing, however some maintenance is needed to control pest plants. Where desirable, new meadows suitable for wildlife habitat may be created.
 - D. Owners of all properties in the plan area which are of at least one acre are encouraged to seek advice on afforestation design, sources of assistance and financial incentives at 665-5820 which provides a clearing house and referral service to County and State advisors.

SUMMARY OF RECOMMENDED ACTIONS:

1. First priorities for forestry plans should be based on water quality and habitat for forest-interior dwelling birds, waterfowl and colonial nesting species.

THE HOLLY NECK IMPROVEMENT ASSOCIATION

RESOLVED: That the position of the HOLLY NECK
IMPROVEMENT Association as adopted by the (Board
of ~~Directors~~ ^{GENERAL MEMBERSHIP} (~~Zoning Committee~~) on the zoning matter known as:
APPLICATION FOR A SPECIAL EXCEPTION AND VARIANCE
ON THE PROPERTY LOCATED AT 2120 POPAR RD.
21221

Is that:

WE ARE OPPOSED TO THE GRANTING
OF THE SPECIAL EXCEPTION AND VARIANCE

AS WITNESS OUR HANDS AND SEAL THIS 10 day of
SEPT., 19 94.

ATTEST:

HOLLY NECK IMPROVEMENT Association

Janet Paluszak
Secretary

Mary E. Yunkan
President

MICROFILMED

PC EXH 15
A

AFFIDAVIT

STATE OF MARYLAND
BALTIMORE COUNTY, SS:

WAYNE BERK

TO WIT:

I hereby swear upon penalty of perjury that I am currently a
duly elected member of the (~~Board of Directors~~) (Zoning Committee)
of the HOLLY NECK IMPROVEMENT ASSOC. Association.

ATTEST:

THE HOLLY NECK IMPROVEMENT Association

Janet Salasik
Secretary

Mary E. Henkan
President

DATE: 9-10-94

15 B

THE HOLLY NECK IMPROVEMENT ASSOC. INC. ASSOCIATION

RESOLVED: That at the SPECIAL meeting of the
HOLLY NECK IMPROVEMENT ASSOC. INC Association held on
SEPT. 10, 19 94, it was decided by the
Association that responsibility for review and action on all zoning
matters for the period 9-12-94 be
placed in the (~~Board of Directors~~) (Zoning Committee) consisting of
the following members:

WAYNE BERK

AS WITNESS OUR HANDS AND SEAL THIS 10 day of
SEPT., 19 94.

ATTEST:

THE HOLLY NECK IMPROVEMENT Association

Janet Galesnik
Secretary

Mary E. Neufeld
President

15C

DATE: 5/2/95PEOPLE'S COUNSEL'S SIGN IN SHEETCASE: WILSON 95-46-XA

The Office of People's Counsel was created by County Charter to participate in zoning matters on behalf of the public interest. While it does not actually represent community groups or protestants, it will assist in the presentation of their concerns if they do not have their own attorney. If you wish to be assisted by People's Counsel, please sign below.

Check if you wish to testify.	Name/Address Phone No.	(Community Group You Represent?) Basis of Your Concerns
✓	^{2200 Poplar Rd} Donna Berk 574-6794	
✓	1546 DENTON ROAD 21221 CARL MAYNARD 682-9813	B.R.N.P.C.A
✓	^{2102 Poplar Rd.} DAVID A. KILLEN 391-9324	
✓	^{2200 Poplar Rd.} WAYNE BERK 574-6794	Holly Neck Imp. Assoc.
	Bob Christopher 687-4011	BRNPCA Inc
	^{1801 Cape May Rd} Mrs. J. Bartrop	
✓	Richard J. Brader	2016 Poplar Rd 21221
	Charles A. Wier	838 Sue Grove
	John M. Hession	2411 BEACH AVE.
	Marilyn Anne Wier	838 Sue Grove Rd. 21221
	⁶⁸⁷⁻²⁹⁴⁴ Mary J. Hession	2411 Beach Ave - 21221
	Jean Kiebler	7200 Greenbank Rd.
	Paul D. Kiebler	7200 Greenbank Rd.
	Patricia S. Roberts	1026 Maple Road
	J. E. Roberts	1026 Maple Road

MICROFILMED

(PC Encl 16)

PC 18

HOLLY NECK IMPROVEMENT ASSOC.



September 6, 1994

Mr. Arnold Jablon
Director of Zoning
111 W. Chesapeake Avenue
Room 106
Towson, MD 21204

Not No!

Dear Mr. Jablon,

In reference to: Case Number 95-46-XA (Item 38)
2120 Poplar Road
Petitioner(s): William H. Wilson and Laura Stern Wilson

The members of the Holly Neck Improvement Association have voted to oppose Mr. Wilson's illegal boatyard. The members of the Holly Neck Improvement Association voted on June 17, 1991 not to support any residential property to be used as a public marina. Then on August 15, 1994 the Association voted to oppose the illegal marina once again.

Mr. Wilson is in noncompliance with the board of appeals decision of January 6, 1975 in Case Number 74-9-V regarding the mooring of more than six boats.

Please be aware that Poplar Road is a narrow dead end street. There is inadequate parking for these seventeen slips. The requirements is nine spaces. Mr. Wilson shows on his plat that there is nine spaces, however Mr. Wilson and Mrs. Wilson own three cars.

On this narrow street many children play and ride bikes upon which Mr. Wilson's added traffic makes it hazardous to this residential area.

At this time Sue Creek is already stressed due to the numerous boat traffic. Mr. Wilson is impacting his neighbors and our waterways with his seventeen slips.

Please respond at this time to our plea as members of the Association and Community to keep our zoning residential with no special exceptions.

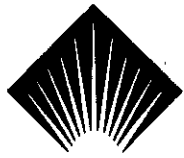
Any contact needed can be made to:

Liz Neukam
391-2174
President of the Holly Neck Improvement Assoc.

Secretary
Janet Palasik

MICROFILMED

Janet Palasik



Maryland

Small Business Development Center
N E T W O R K

AJ-65
1414 Key Highway, Suite 310
Baltimore, Maryland 21230
(410) 234-0505 4271-94

Central Region

August 23, 1994

Richard B. Palmer, Ph.D.
Executive Director

Arnold Jablon
Director of Zoning
111 W. Chesapeake Avenue
Room 109
Towson, MD 21204

Re: Case 95-46-XA
SA

Dear Mr. Jablon:

This is to vehemently protest your issuing a license to Bill Wilson on Poplar Rd. for any boats much less 17 boats.

He has been a menace to Poplar Rd. since he moved in: He has killed much of the wild life in the area. Ducks that were plentiful are being killed because of the increase human population (boat renters and guests) frequenting his money making empire of boat rental slips.

The crabs that we caught in front of our house are dead or moved away to calmer waters.

The beautiful plant life that frequented the area has succumbed to ugly plants that can survive in oil and gasoline spilled from his crew in front of his house.

No longer can we sit on our porch in serenity either summer or winter and enjoy the quiet and the view. There is no longer any quiet. People are coming and going to and from his property.

We cannot see the water anymore. All of his boat have barricaded us in and we can only see the water under out pier.

He has inhibited us from boating ourselves. We must go through a maze of boats to reach the creek.

BECAUSE OF THE ABOVE REASONS, PLEASE DO NOT ISSUE BILL WILSON A PERMIT FOR A MONEY MAKING BUSINESS AT THE EXPENSE OF ALL THE RESIDENTS WHO WANT TO ENJOY THE PROPERTIES THEY OWN FOR THEIR OWN PLEASURE AND DO NOT INTEND TO OBTAIN EXTRA DOLLARS THROUGH A MONEY MAKING BUSINESS. MR. WILSON'S MOTIVE IS ONLY A SELFISH ONE SINCE HIS BUSINESS WILL NOT EVEN EMPLOYEE ANYONE.

Sincerely,

Ellin Dize
Director of Business Development

RECEIVED

AUG 25 1994

ZADM



Q C
part 6A

WE THE UNDERSIGNED, OPPOSE ANY VARIANCE OR SPECIAL EXCEPTION TO THIS PROPERTY. WE WOULD LIKE TO SEE IT STAY RESIDENTIAL. ANY CHANGES TO THIS ZONING WOULD HAVE ADVERSE EFFECTS TO OUR COMMUNITY. IT WOULD MAKE MORE TRAFFIC ON THIS NARROW ROAD, CREATING AN UNSAFE ENVIRONMENT FOR THE CHILDREN. IT WOULD CREATE MORE TRAFFIC ON OUR WATERWAY. SUE CREEK IS ALREADY OVERCROWDED. IT BLOCKS THE VIEW OF THE WATER. IT SHOULD BE RETURNED TO ITS ORIGINAL STATE.

NAME	ADDRESS	PHONE#
1. Sheila Stark	2110 Poplar Rd.	574-3057
2. JOHN BIEGIEL	2024 Poplar Rd.	
3. VERONICA H. SHRADER	2016 Poplar Rd	682-6681
4. Thelma Nowak	2012 Poplar Rd	686-2795
5. Raymond Avery	2006 Poplar Rd.	686-9335
6. Raymond E. Avery	2006 Poplar Rd.	686-9335
7. Karen Kulczynski	2206 Silver Lane	391-3287
8. Muriel C. Sample	2210 Silver La.	687-9423
9. Hazel & Charles Murray	1004 Lourdes Rd	391-9365
10. Edward Mamolito	1003 Pine Rd	574-5226
11. Jeannett Mauch	1926 Poplar R	
12. Tina Weber	1920 Poplar Rd	686 8604
13. William Besnucha	1912 Poplar Rd	687-8309
14. James E. Roberts	1026 Maple Rd.	391-5709
15. Patricia S. Roberts	1026 Maple Rd	391-5709
16. James E. Roberts	1026 Maple Rd	391-5709
17. Cynthia Beldi	1028 MAPLE Rd.	682-6033
18. Janet Palasik	1128 Maple Rd	
19. Diana L. Schettler	1132 Maple Rd.	686-2954
20. Mary Gast	1107 Maple Rd.	687 7533
21. Heriberto M. Marin	1031 MAPLE RD.	574-5447
22. Daniel D. Cartt	Maple Rd.	
23. Regina Brown	poplar Rd	574-3517
24. Marshall	2202 Silver LA	574-1874
25. CJ Arizual	2121 Silver Lane	687-4063

WILLIAM WILSON AND LAURA STERN WILSON
2120 POPLAR ROAD

Prot
5B

WE THE UNDERSIGNED, OPPOSE ANY VARIANCE OR SPECIAL EXCEPTION TO THIS PROPERTY. WE WOULD LIKE TO SEE IT STAY RESIDENTIAL. ANY CHANGES TO THIS ZONING WOULD HAVE ADVERSE EFFECTS TO OUR COMMUNITY. IT WOULD MAKE MORE TRAFFIC ON THIS NARROW ROAD. CREATING AN UNSAFE ENVIRONMENT FOR THE CHILDREN. IT WOULD CREATE MORE TRAFFIC ON OUR WATERWAY. SUE CREEK IS ALREADY OVERCROWDED. IT BLOCKS THE VIEW OF THE WATER. IT SHOULD BE RETURNED TO ITS ORIGINAL STATE.

	NAME	ADDRESS	PHONE#
1.	Diane M Klein	2102 Poplar Rd	391-9324
2.	Daniel A. Klein	2102 POPLAR RD	391-9324
3.	Bernard E. Gerson	2102 Poplar Rd.	391-9324
4.	Robert G. Schmidt	2105 Silver Lane	687-3603
5.	Joseph P. Schmidt	2100 Poplar Rd	391-3709
6.	Joel White	2100 POPLAR RD	391-3709
7.	Susan Smith	2100 Poplar Rd	391-3709
8.	Annette Schmidt	2105 Silver Lane	687-3603
9.	Mr & Mrs Wayne Scanlon	2104 Poplar Rd	687-0559
10.	Michael Moerschel	2110 Poplar Rd	574-3057
11.	Mark Fiege	2110 POPLAR RD	682-5109
12.	Mark Gulezynski	2206 Silver Lane	391-3287
13.	Harry A. Sample	2210 SILVER LANE	687-9423
14.	Joe Kannebutter	2020 Poplar Rd	687-8010
15.	Wayne Benk	2200 Poplar Rd	574-6794
16.			
17.			
18.			
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21.			
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#2

not
SC

WE THE UNDERSIGNED, OPPOSE ANY VARIANCE OR SPECIAL EXCEPTION TO THIS PROPERTY. WE WOULD LIKE TO SEE IT STAY RESIDENTIAL. ANY CHANGES TO THIS ZONING WOULD HAVE ADVERSE EFFECTS TO OUR COMMUNITY. IT WOULD MAKE MORE TRAFFIC ON THIS NARROW ROAD, CREATING AN UNSAFE ENVIRONMENT FOR THE CHILDREN. IT WOULD CREATE MORE TRAFFIC ON OUR WATERWAY. SUE CREEK IS ALREADY OVERCROWDED. IT BLOCKS THE VIEW OF THE WATER. IT SHOULD BE RETURNED TO ITS ORIGINAL STATE.

NAME

ADDRESS

PHONE#

1. James E. Keller 2307 Silver Lane 687-4644
2. Liz Neukam 2208 Poplar Rd 391-2174
3. Keith Roberts 1910 Marsh Rd 687-6794
4. Rodney Lutz 2114 Poplar Rd 442-1566
5. Al Gha 2310 Silver Lane 687-0771
6. Louis Mueller 2206 Poplar 886-2280
7. Marie Brown 2210 Poplar 686-4051
8. El Cahn 2214 POPLAR RD 574-4842
9. Jean Dyerdt 2106 Marsh Rd 674-8942
10. David Schwan 2110 Marsh Rd 780-3685
11. John V Bassett Jr 2100 Marsh Rd 686-9231
12. Jean M. M... 1020 Cedar CK 574-100X
13. Wayne Margaret Harlow 1023 Cedar Creek Rd 687-4080
14. William J. Brady Jr 1032 Cedar Creek Rd 682-4460
15. Thomas B. Clark 2212 Poplar Rd 686-1035
16. Lisa M. Helton 2212 Poplar Rd 686-1035

17.

18.

19.

20.

21.

22.

23.

24.

25.

Bauernschmidt Manor
IMPROVEMENT ASSOCIATION, INC.

Page 6

September 9, 1994

Arnold Jablon, Director
Zoning Administration and
Development Management
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: 2120 Poplar Road
Case No. 95-46-XA

Dear Mr. Jablon:

On behalf of the Bauernschmidt Manor Improvement Association, we would request the County adhere to the existing Residential Pier law which limits the number of boats allowed on residentially-zoned property by not granting a variance in the above matter.

Thank you for your time and consideration in this regard.

Very truly yours,

Bonnie M. Smith

Bonnie M. Smith
BMIA, President

BMS:pm

Julia R. Dize
2114 Poplar Road
Essex, MD 21221

8/30/94
8
TO 68

7327-94
Proter

August 23, 1994

Mr. Arnold Jablon
Director of Zoning
111 W. Chesapeake Ave.
Room #109
Towson, MD 21204

Re: Case # 95-46-XA

Dear Mr. Jablon,

I would like to protest the zoning of a marina next door to my property.

The increase traffic could not be handled by our one lane road. The community would be disrupted and already is by the increased traffic.

I have trouble docking my boat because Mr. Wilson has his pier extended so far with so may boats I can not gain access to the west side of my pier.

I can no longer look out onto the water toward the bay because my view is obstructed by boats.

In considering all the facts I feel the maria would be a detriment to the area.

Thank you .

Julia Dize
Julia Dize

RECEIVED
AUG 30 1994

ZADM

TURKEY POINT IMPROVEMENT ASSOCIATION, INC.
858 Sue Groave Road, Baltimore, Maryland 21221
TURKEY POINT — MIDDLE RIVER
BALTIMORE COUNTY, MARYLAND
21221

Post 7

September 9, 1994

TO WHOM IT MAY CONCERN:

This letter refers to Case No. 95-46 XA (Item 38), an application for a Special Exception for Marina, 17 slips, at 2120 Poplar Road, Baltimore, Maryland 21221.

This is to advise that the members of the Turkey Point Improvement Association, recommended NON APPROVAL of subject application on the grounds that the area, in which this Marina would be operating is already saturated with boat traffic.

There are already hundreds of boat slips in this area.

Water pollution is already rampant in this area and wildlife is already threatened due to boat traffic.

Yours truly,

Norbert J. Anderson

Norbert J. Anderson
President
The Turkey Point Improvement Ass.

NJA:sa

Rockaway Beach Improvement Assn., Inc.

**721 Rockaway Beach Ave.
Essex, MD 21221
(410) 686-1358**

not 8

TO WHOM IT MAY CONCERN:

Re: Case 95-46 XA (item 38), applicationn for Special
Exception for Marina at 2120 Poplar Rd., Essex, MD 21221

Rockaway Beach Improvement Association joins with other civic groups in the community in vehemently opposing the legalization of what has operated as an illegal "bootleg" marina for many years. Rewarding the owner with such an exception to Baltimore County Code would be a blatant disregard to the law as well as the citizens of the area.

Sue Creek is already dying because of the proliferation of boats, not only in the water but stacked four levels high on racks at Anderson Brothers and other boating centers. Those of us who have lived here a lifetime are dedicated to restoring Sue Creek to its former vibrance and preserving the fish, fowl and wildlife that inhabit the area.

Sincerely,

Jackie Nickel

Jackie Nickel, President

BALTIMORE COUNTY, MARYLAND

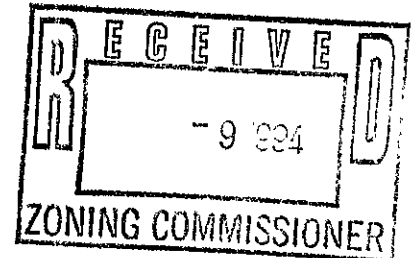
INTER-OFFICE CORRESPONDENCE

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

DATE: September 8, 1994

FROM: J. James Dieter

SUBJECT: Petition for Zoning Variance - Item 38
Wilson Property
Chesapeake Bay Critical Area Findings



SITE LOCATION

The subject property is located at 2120 Poplar Road. The site is within the Chesapeake Bay Critical Area and is classified as a Limited Development Area (LDA).

APPLICANT'S NAME Mr. William Wilson

APPLICANT PROPOSAL

The applicant has requested a special exception from the Baltimore County Zoning Regulations to permit, "a 17 slip marina. In the alternative, grant a special exception for the marina, approximately six (6) boats and marine railway as granted by the Board of Appeals Case No. 74-9-V as a legal non-conforming use; and for a marina of eleven (11) slips. The total number of slips thus being seventeen (17)."

The applicant has also requested a variance from the Baltimore County Zoning Regulations, "to provide for mooring within ten feet of divisional lines based on pre-existing bulkheads and piers rather than straight or irregular shorelines."

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>.

MICROFILMED

REGULATIONS AND FINDINGS

- 1a. Regulation: "Grandfathering - after program approval, local jurisdictions shall permit the continuation, but not necessarily the intensification or expansion, of any use in existence on the date of program approval, unless the use has been abandoned for more than one year or is otherwise restricted by existing local ordinances. If any existing use does not conform with the provisions of a local program, its intensification or expansion may be permitted only in accordance with the variance procedures outlined in COMAR 14.15.11" <COMAR 14.15.02.07.A>.
- 1b. Regulation: "In addition to section 417 in the county zoning regulations, all new or expanded water-dependent facilities are subject to the following procedures and standards, as specified more fully in the county water-dependent facilities manual:
- (1) Scope. A water-dependent facility includes those structures or works associated with industrial, maritime, recreational, educations, or fisheries activities that require location at or near the shoreline. An activity is water dependent if it cannot exist outside the buffer and is dependent on the water by the intrinsic nature of its operation.
 - (2) Buffer. All siting, development, redevelopment, and expansion of water-dependent facilities within the buffer must strictly conform to the criteria set forth in the county water-dependent facilities manual:" <Baltimore County Code Section 26-454>.

Finding: This property appears to be currently operating a marina use without the proper zoning in place. Documentation, available at the Department of Environmental Protection and Resource Management (DEPRM), indicates that on the date of the Critical Area Program approval this property had, at the most, nine in-water boat slips. Some pilings and pier extensions are new, since the date of program approval. The Baltimore County permit tracking system does not show permits for these structures since 1992.

The current zoning petition is requesting 17 boat slips. This is considered expansion and intensification. This would not be grandfathered and would require a water-dependent facility plan for review and approval. In addition two of these slips are located in water that only has a depth of approximately 2.5 feet and approximately five slips are located in water that has a depth less than 4 feet. This is inadequate for most boats and would result in

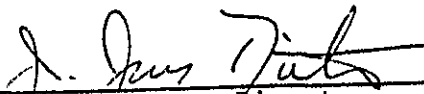
Mr. Arnold E. Jablon
September 8, 1994
Page 3

the disruption of the bottom sediments. Shallow water areas are considered habitat for submerged aquatic vegetation (SAV), which are currently established in nearby areas of Sue Creek. These are habitat protection areas because they are important for water quality and the survival of aquatic life.

The proposed alternative petition, which includes the marine railway, is not grandfathered under the Critical Area program. This use has been abandoned for more than one year and would therefore be considered an expansion. A water-dependent facilities plan would also be required for this petition.

CONCLUSION

If the zoning commissioner's order allows more than 9 in-water boat slips, then an approved water-dependent facilities plan should also be required as a condition of the special exception approval. If there are any questions, please contact Ms. Nancy Pentz at 887-3980.



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

JJD/NSSP/tmm

c: Mr. William Wilson
Mr. James Patton
Mr. Carroll Holzer

WILSON2/DEPRM/WQCBCA

9/12

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Larry Schmidt
Zoning Commissioner

FROM: Jack Dillon *JD*
Community Planning Division

SUBJECT: Wilson Property
95-46-XA

DATE: September 2, 1994

*Rec'd 55
Pet Sch CBA #4*

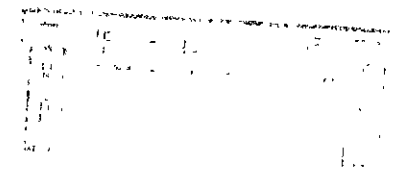
In 1973 I was the Chief of the Zoning Enforcement Division in the Office of Planning and Zoning. In that capacity I was involved with a zoning violation case on property then owned by Mr. Paul Geschwendt at 133 Silver Lane. This case arose as a result of a complaint by a neighbor. Mr. Geschwendt was found to be in violation by both the Zoning Commissioner and the Board of Appeals (case no. 74-9V [ZV73-30]). I testified in both hearings and was able to recall most of the circumstances of this case. I was asked by Mr. Patton if I could verify that the property now being considered under case 95-46-XA is the same property that I inspected in 1973. On Thursday, August 25, 1994, I visited the property now owned by Mr. Wilson at 2120 Poplar Road and was able to verify that despite the difference in address it is the same property I inspected in 1973. The property today is maintained in a clean and orderly fashion and has been improved with an attractive "A" frame home, the marine railway is no longer evident and the "junk and debris" is long gone. It also appears that the pier and bulkhead have been upgraded.

I trust this information is helpful, although I am at a loss as to how to explain the difference in the address.

JD

JDWP/PZONE/TXTJJD

c: Carroll Holtzer
James Patton



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9/12

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

95-46

Pat 56
Pet CBA Exh. # 5

TO: Arnold Jablon, Director
Zoning Administration &
Development Management

FROM: Pat Keller, Director
Office of Planning and Zoning

DATE: August 23, 1994

SUBJECT: 2120 Poplar Road

INFORMATION:

Item Number:

38

Petitioner:

William H. Wilson

Property Size:

Zoning:

R.C. 5

Requested Action:

Hearing Date:

/ /

SUMMARY OF RECOMMENDATIONS:

Staff does not oppose the subject request provided that the applicant is able to satisfy all Department of Environmental Protection and Resource Management requirements.

Prepared by:

Jeffrey W. Long

Division Chief:

Dennis West for Gary Kerns

PK/JL:lw

MICROFILMED

1 May 1995

Int. Enk #8

Henry E. Hutton IV
Dawn M. Pisarski
2114 Poplar Road
Essex, MD 21221

William Wilson
2122 Poplar Road
Essex, MD 21221

As previously discussed I have no reservations with regard to your responsible active use of the ten (10) to twelve (12) slips at the pier located on your property and riparian right-of-way. This includes your sailboat docked on the extreme north-western side of your pier adjacent to but not infringing upon my riparian right-of-way.

As you know I have removed my eastern most outboard mooring pile (placed by the previous property owner) that was within your riparian right-of-way.

I know you have expended a great deal of time and effort (and money) to conform to the letter and spirit of Federal, State and County laws, as well as the desires of the community.

Congratulations on obtaining the required Federal and State permits and I wish you the best of luck at your Baltimore County hearing.

Your Neighbors,

Henry E. Hutton IV
Henry E. Hutton IV

Dawn M. Pisarski
Dawn M. Pisarski

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Pet No 2
CBA Pet Exh 9 A+

NOTE: A SEPARATE PERMIT IS REQUIRED FOR ALL ELECTRICAL & PLUMBING WORK WHICH MUST BE DONE BY AN ELECTRICIAN OR PLUMBER LICENSED IN BALTIMORE COUNTY.

CONSTR PLANS	PLOT PLANS	RECORD PLAT	PLANS WAIVED	LETTER OF INTENT	DATA	APP	SUPERVISION WAIVER
5	5						
TAX ACCOUNT NUMBER 15-07-150721							

APPLICATION FOR PERMIT
BALTIMORE COUNTY MARYLAND
OFFICE OF THE BUILDING ENGINEER
TOWSON, MARYLAND 21204

CENSUS		ELEC		PLUMBING	
TRACT	BLOCK	YES	NO	YES	NO
				X	

BY **MP JOSEPH M. NOLAN**

DATE ISSUED **2/5/30**

BUILDING PERMIT NO 23750	DISTRICT	PRECINCT
CONTROL NO WF	15	9

BUILDING ADDRESS	133 SILVER LANE								
OWNER'S NAME	WILLIAM H. WILSON								
MAILING ADDRESS	1011 DOWNAWOOD DR., 21085								
IDENTIFICATION	NAME	ADDRESS	CITY	STATE	ZIP	PHONE NO	LICENSE		
TENANT									
BUILDING CONTRACTOR									
ENGINEER OR ARCHITECT									
IF UNDER CONTRACT OF SALES GIVE SELLER'S NAME AND ADDRESS	GESCHIVENDT								
TRANSFER DESCRIPTION	N/S POPLAR ROAD								

THIS PERMIT
EXPIRES ONE
YEAR FROM DATE
OF ISSUE

A. TYPE OF IMPROVEMENT

1. ☒ NEW BUILDING CONSTRUCTION
2. ☐ ADDITION
3. ☐ ALTERATION
4. ☐ REPAIR
5. ☐ WRECKING (ENTER NO. UNITS DEDUCTED _____)
6. ☐ MOVING
7. ☐ OTHER _____

DESCRIBE PROPOSED WORK

**CHANGE THE EXISTING PIER CONFIGURATION
CEDAR CREEK OFF OF SUE CREEK OFF OF
MIDDLE RIVER. NO CHANNEL-DEPTH IS A
CONSTANT 4' AT NEW FRM. OUTER PILINGS
TO A DISTANCE OF 150' FRM. FAR SHORE.**

RESIDENTIAL

- 01 ☐ ONE FAMILY
- 02 ☐ TWO FAMILY
- 03 ☐ THREE AND FOUR FAMILY
- 04 ☐ FIVE OR MORE FAMILY (ENTER NO. UNITS _____)
- 05 ☐ SWIMMING POOL
- 06 ☐ GARAGE
- 07 ☒ OTHER **PIER**

C. TYPE OF USE

NON-RESIDENTIAL

08. ☐ AMUSEMENT, RECREATION, PLACE OF ASSEMBLY
09. ☐ CHURCH, OTHER RELIGIOUS BUILDING
10. ☐ FENCE (LENGTH _____ FEET _____)
11. ☐ INDUSTRIAL, STORAGE BUILDING
12. ☐ PARKING GARAGE
13. ☐ SERVICE STATION, REPAIR GARAGE
14. ☐ HOSPITAL, INSTITUTIONAL, NURSING HOME
15. ☐ OFFICE, BANK, PROFESSIONAL
16. ☐ PUBLIC UTILITY
17. ☐ SCHOOL, COLLEGE, OTHER EDUCATIONAL
18. ☐ SIGN
19. ☐ STORE ☐ MERCANTILE ☐ RESTAURANT
SPECIFY TYPE: _____
20. ☐ SWIMMING POOL (MD. HEALTH DEPT. APPR. REQ.)
21. ☐ TANK, TOWER
22. ☐ TRANSIENT HOTEL, MOTEL (NO. UNITS _____)
23. ☐ OTHER _____

TYPE FOUNDATION	
☐ BRICK	☐ BLOCK
☐ CONCRETE	☐ BASEMENT
☐ FULL	☐ PARTIAL
☐ NONE	

B. OWNERSHIP

1. ☒ PRIVATELY OWNED
2. ☐ PUBLICLY OWNED

ESTIMATED COST OF
MATERIAL & LABOR

1,000

CHECK APPROPRIATE CATEGORIES FOR RESIDENTIAL ONLY

DETACHED	SEMI-DETACHED	GARAGE	TOWN HOUSE	MID RISE	HIGH RISE
1	2	3	4	5	6

RENT	SALE
1	2

24 PROPOSED USE(S) **SAME**

EXISTING USE(S) **S. F. RES. AND PIER**

DO NOT BE POSTED

SEE OTHER SIDE FOR INSPECTIONS

MICROFILMED

NOTE: SEPARATE PERMIT REQUIRED FOR ALL ELECTRICAL AND PLUMBING WORK

Inspections shall be called for at 10:00 A.M. & 2:30 P.M. with one day's notice. Occupancy inspections, which require at least 3 days. Plumbing and electrical inspections must be called for by registered licensed personnel. For inspections call: BLDG. 494-3953, PLUMBING 494-3620, ELECTRICAL 494-3960, FIRE DEPT. 825-7310 Ext. 216. The following inspections are required for construction indicated:

1. Footing inspection: shall be called for as soon as the trenches are completed and before pouring concrete.
2. Foundation inspection: shall be called for when the foundation has been waterproofed and before backfilling with earth.
3. Slab inspection: shall be called for when all reinforcing, piping, wiring, weepholes, drain tile, etc., are in place or completed and inspected by Plumbing/Electrical inspection and before pouring concrete.
4. Framing inspection: shall be called for when all structural members are in place, electric and plumbing roughed in and inspected, chimney and duct work installed and before covering with lath, insulation or drywall.
5. Occupancy or Final inspection: shall be called for after all other County Agencies concerned have approved but before the structure is used or occupied.

New Buildings: 5 Inspections Required
Footing - Foundation - Slab - Framing - Occupancy

Alterations: 2 Inspections Required
Framing - Occupancy or Final

Towers: 2 Inspections Required
Footing - Final

Factory Built Fireplace and Stores: 2 Inspections Required
Framing - Final

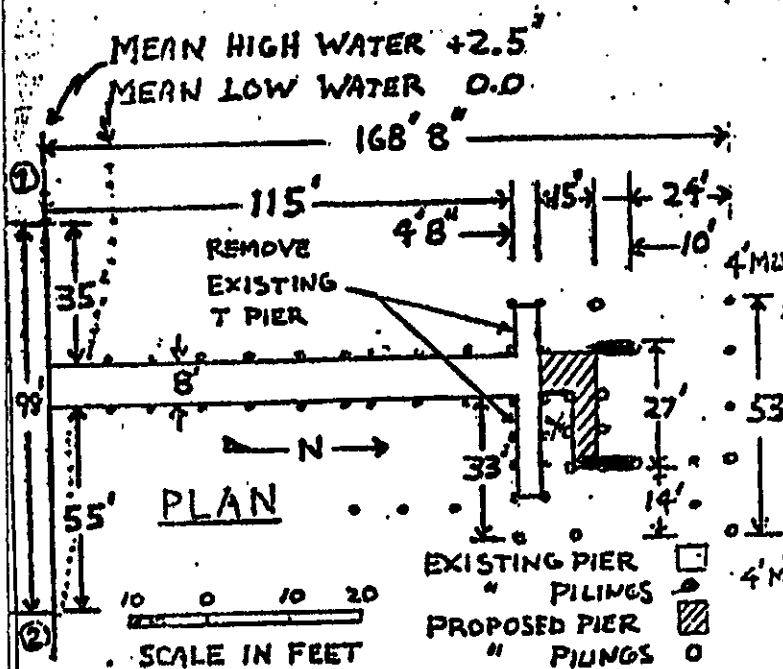
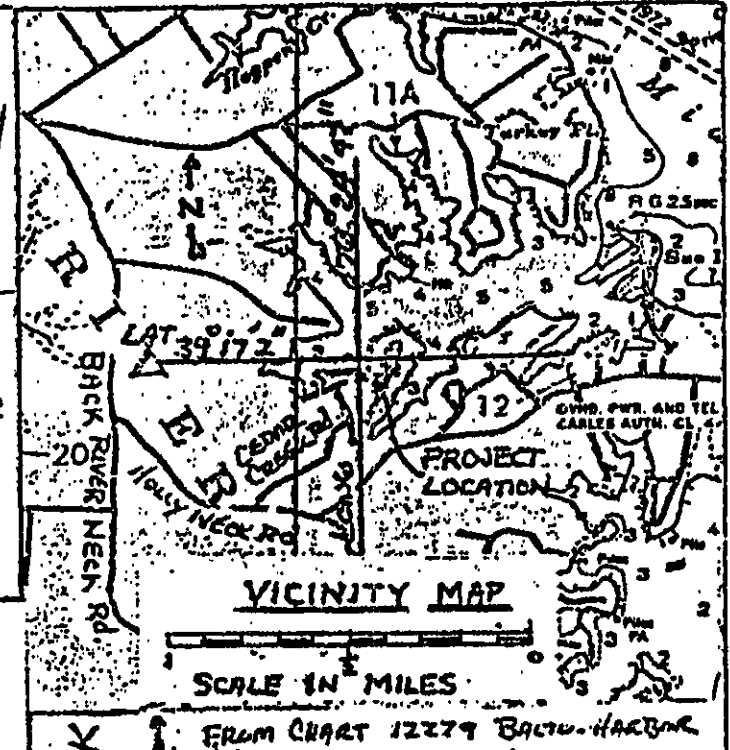
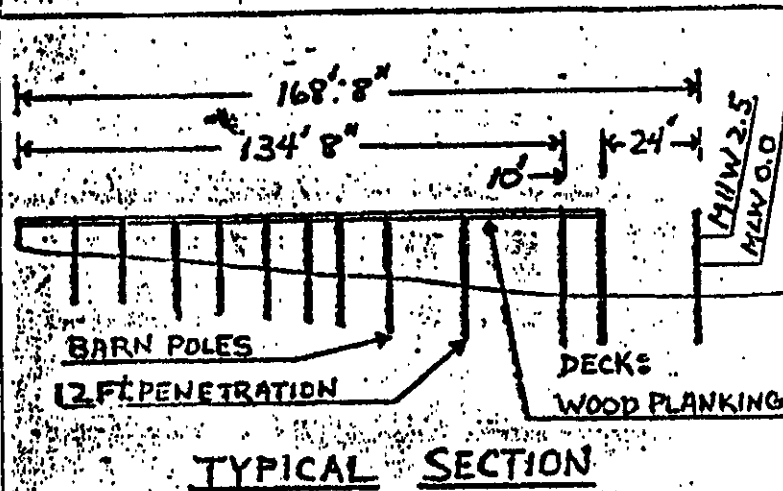
Masonry Fireplace: 4 Inspections Required
Footing - Throat inspection shall be called for when the throat of the unit is complete but prior to the erection of the chimney.
Framing - Final

Tanks: 3 Inspections Required
Hydrostatic (Fire Dept.) - Piping (Bldg. Insp.) - Final

Swimming Pools: 4 Inspections Required
Steel in place and bonded - Concrete poured - Fence erected - Final

Fencing, Siding, Razing, Grading and Temporaries- 1 Inspection Required
Final - (when all work completed per permit)

Pet No 2 A
CBA Pet Exh 9B



CHANNEL: NO CHANNEL, DEPTH IS A CONSTANT 4 FT AT (MLW) FROM OUTER PILINGS TO A DISTANCE OF 150 FT. FROM FAR SHORE.

NOTE: PIER CONFIGURATION TO BE CHANGED BUT THE DISTANCE FROM THE SHORE LINE TO THE OUTER MOST MOORING PILINGS WILL NOT CHANGE

PROPOSED PIER

PURPOSE PRIVATE DOCKING FACILITIES

DATUM MEAN LOW WATER NATIONAL OCEAN SURVEY

ADJACENT PROPERTY OWNERS:

① JOHN F. CLARK

② FRANK KREAMER

IN CEDAR CREEK

NEAR ESSEX

BALTIMORE COUNTY MARYLAND

APPLICATIONS BY WILLIAM H. WILSON

SHEET 1 OF 1

DATE 2/1/80

*Pitilones No 3
Pet CBA # 10*

THIS DECLARATION made this 26 day of March, 1992, by William Wilson, hereinafter referred to as "Declarant."

WHEREAS, the Declarant desires to determine a non-conforming zoning use for the Property described in Exhibit "A" which is located within the boundaries of Baltimore County, Maryland as a residence with boatyard/marina slips; and

WHEREAS, prior to zoning the Property as a non-conforming use for the commercial slips, the Declarant desires to provide assurances to the Holly Neck Improvement Association that Declarant will not expand the number of boat slips currently existing on the property, or expand on shore improvements thereon.

NOW, THEREFORE, in consideration for the Holly Neck Improvement Association's agreement not to oppose the non-conforming use zoning determination, the Declarant hereby declares that the Property (described and shown on Exhibit "A" attached hereto as a part hereof) shall be held sold and conveyed subject to the following restrictions, covenants, agreements and conditions which shall run with the Property and be binding on all parties having any right, title or interest in the Property or any part thereof and their heirs, successors and assigns, and which shall inure to the benefit of each owner of the Property or part thereof.

1. The Property contains 17 boat slips. The boat slips shall not be increased in number.

2. The Property shall not be improved on shore with any additional commercial buildings or structures, but the Declarant

shall have the right to apply for and to construct improvements to and for the residence on the premises.

3. The Holly Neck Improvement Association shall have the right to enforce, by any proceeding, at law or in equity, all restrictions, conditions and covenants hereafter imposed by the provisions of this Declaration. Failure by the Association to enforce any covenant or restriction contained herein shall in no event be deemed a waiver of the right to do so at any time thereafter.

4. The invalidation of any one of these covenants or restrictions, conditions or agreements by a judgment or court order shall in no way effect any other provision which shall remain in full force and effect.

5. The provisions of this Declaration shall run with and bind the land unless terminated by the Association. This Declaration may be amended by an instrument signed by the Association.

IN WITNESS WHEREOF, the Declarant has executed this Declaration as of the 26 day of March, 1992.


WILLIAM WILSON

STATE OF MARYLAND, BALTIMORE COUNTY, TO WIT:

I HEREBY CERTIFY that on this 26 day of March, 1992, before me, a Notary Public of the State aforesaid, personally

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

WITNESS my hand and Notarial Seal.

Carol A. Popa
NOTARY PUBLIC

My Commission Expires: March 1, 1995

Phil Popa
Pres. Holly Neck Improv. Assoc.
President,
Holly Neck Improvement Association



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
BALTIMORE DISTRICT, U.S. ARMY CORPS OF ENGINEERS
P.O. BOX 1715
BALTIMORE, MD 21203-1715

CBA Pct. # 11

Operations Division

APR 07 1995

Subject: CENAB-OP-RE(WILSON, WILLIAM) 94-1047-4

Mr. William Wilson
2120 Poplar Road
Baltimore, Maryland 21221

Dear Mr. Wilson:

This refers to a cease and desist letter from this office dated September 20, 1994, concerning unauthorized structures that have been built in Sue Creek, at your property, in Baltimore County, Maryland.

During your meeting with Ms. Sandra Mues it was determined that the following work is necessary to bring this project into compliance with Federal regulations:

1. Remove the four pilings, as highlighted, on the enclosed plan.
2. Remove the portion of catwalk and its piling along the west side of slip 4, leaving 18 feet of catwalk, as noted on the enclosed plan.
3. Remove one catwalk and pile along the south side of slip 10.
4. Relocate the four pilings at slips 6, 7, 8, and 9, approximately 6 feet towards pier which brings them inline with the existing piles, for boatlift, as noted on the plan.
5. Relocate slip 12, southern pile, to maintain a 25 foot slip.
6. This work must be completed by July 1, 1995.

Your cooperation in performing the restoration will be considered in the final determination of action on this matter. You are requested to indicate your acceptance of the restoration plan and conditions by signing and dating the statement below

MICROFILMED

and returning it to us in the enclosed postage paid envelope within 15 calendar days of the date of this letter. An additional copy of this letter is also enclosed for retention in your records. If we do not receive your response within this time, we will assume you do not intend to perform the restorative work and we will proceed to resolve the violation through alternate enforcement procedures.

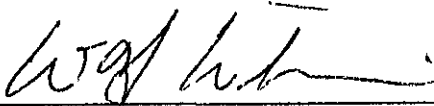
If you have any questions concerning this matter, please call Ms. Mues at (410)962-5698.

Sincerely,

Thaddeus J. Rugiel
Chief, Enforcement Section

Enclosures

I have read and understand the conditions of the restoration plan in this letter. I agree to perform this work as specified.



SIGNATURE

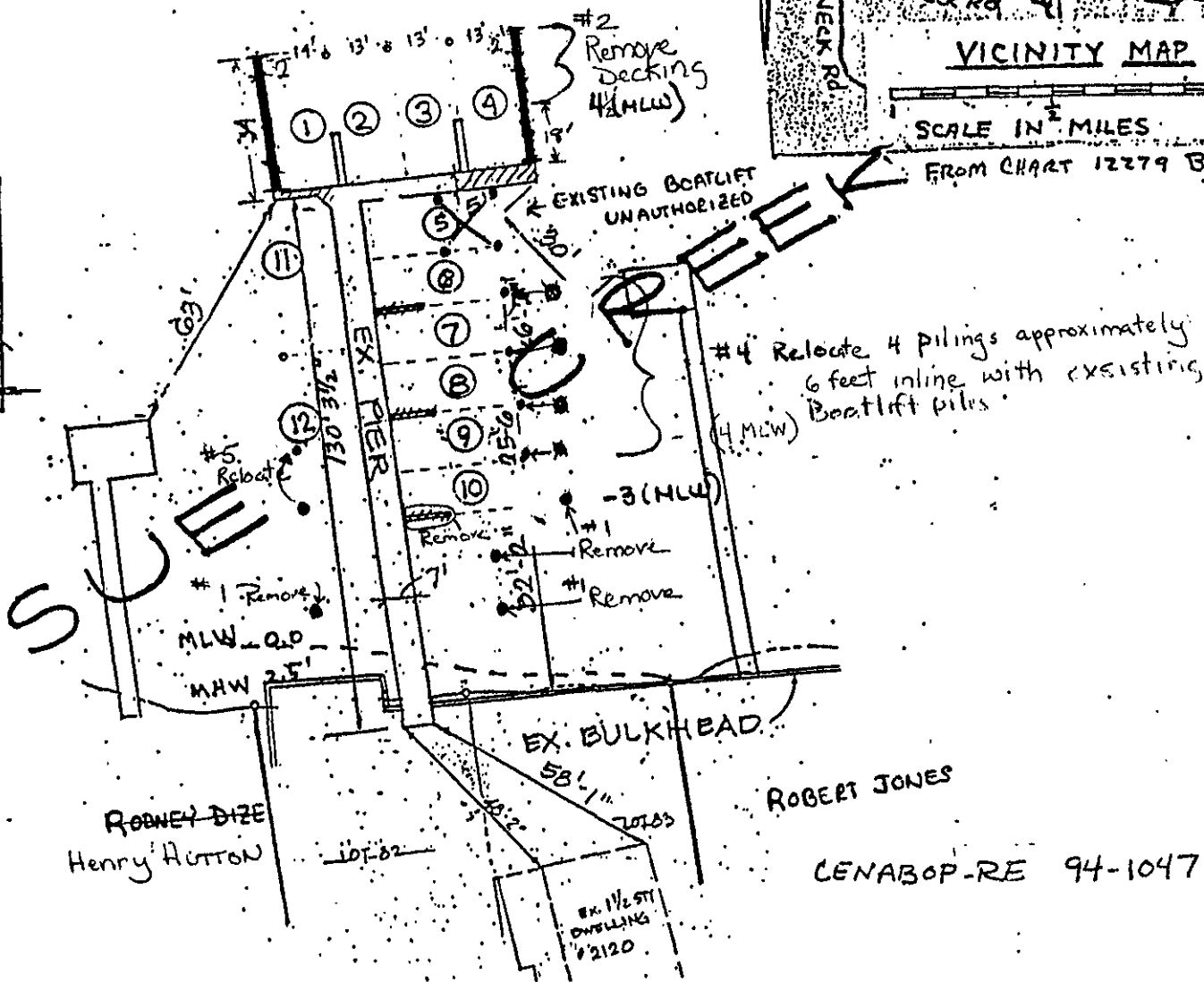
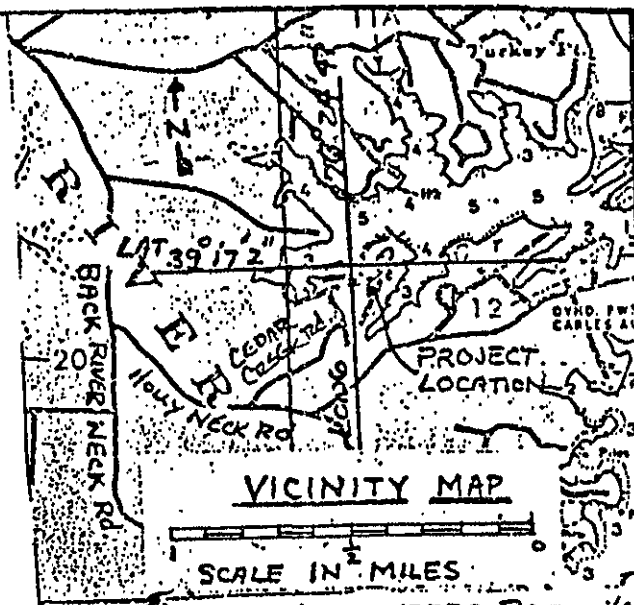
4/13/95
DATE

Copy Furnished:

Environmental Protection Agency - Jeff Lapp
Fish and Wildlife Service - Annapolis
Water Resources Administration - Enforcement
Maryland DNR - Tidal Wetlands (Reynolds)
Maryland Department of Environment
Baltimore County DEPRM - Roy List
CENAB-OP-RW

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

FLOOD
EBB



PC Ltd.
Patton Consultants, Ltd.
 305 W. CHESAPEAKE AVE., SUITE 110
 TOWSON, MARYLAND 21204
 (301) 296-2140 FAX: (301) 296-0419
 SITE PLANNERS • ENGINEERS
 LAND DEVELOPMENT CONSULTANTS

PILE RELOCATION - EXISTING PIER
 (17 SLIPS TOTAL)

DATE: DEC 94
 DRAWN: CHECKED: JOHN
 SCALE: 1"=40' SHEET 1/2

Pat. Encl #13

RESUME

JAMES S. PATTON, P.E., PRESIDENT, PATTON CONSULTANTS LTD.

Mr. Patton has over twenty-five (25) years experience in site engineering, site development services, and land planning for a wide variety of public and private clients. His experience in the private sector has been in residential, commercial, and industrial site development. His public works experience is very broad, as he served as an officer in the U. S. Navy Civil Engineer Corps and as City Engineer for Washington, PA. In addition, he has provided site engineering and planning services to many local school boards, hospitals, colleges, and institutions in their development and construction programs.

He has been responsible for projects ranging in size and scope from a few thousand square feet to areas of more than a thousand acres. These projects have included storm water management, water distribution, sanitary sewer, streets, roads, parking areas, grading, wetlands and critical areas, and erosion control. His background includes new development, expansion, restoration, renewal and revitalization.

Site Plan approvals and obtaining permits for site development is a major focus. The ability to overview the various elements of site development such as zoning, environmental concerns, and utilities has been and is an important function performed by Mr. Patton in obtaining approvals and expediting the development of a site or project

EDUCATION

SWARTHMORE COLLEGE,
UNIVERSITY OF PENNSYLVANIA

Bachelor of Science, Civil Engineering
Master of City Planning

LICENSES/CERTIFICATIONS

PROFESSIONAL ENGINEER

Pennsylvania, West Virginia (inactive),
and Maryland

EXPERT WITNESS

Baltimore County Circuit Court District,
Board of Appeals and Zoning Commissioner;
Anne Arundel County Zoning Commission; City
of Baltimore Zoning Commissioner.

COMPREHENSIVE PLANNER

New York, Pennsylvania, West Virginia,
and Delaware

MICROFILMED

PROFESSIONAL EXPERIENCE

PRINCIPAL/PRESIDENT (1990 - Present)
PATTON CONSULTANTS, LTD.

Site evaluation and feasibility, land development, consulting, project management, zoning issues, expert testimony, and governmental approvals and permitting.

CHIEF OF CIVIL ENGINEERING (1988 - 1990)
LPJ, INC.

Began the civil engineering department and provided directions to projects as subconsultant primarily to the architectural community.

VICE-PRESIDENT, CIVIL ENGINEERING (1987 - 1988)
MARSHALL-CRAFT ASSOCIATES, INC.

Principal in charge of the site planning and engineering for this major architectural firm. Projects included industrial elderly housing, publishing, public utilities, and residential sub-division.

VICE-PRESIDENT (1986 - 1987)
DAFT - McCUNE - WALKER

Project management, permitting and processing site development projects through governmental agencies for this major land development consulting, land surveying, and civil engineering firm.

CHIEF OF SITE DEVELOPMENT (1984 - 1986)
D. S. THALER AND ASSOCIATES, INC.

Site evaluation and land development project management for this Baltimore County engineer.

PRINCIPAL (1982 - 1983)
JAMES S. PATTON ASSOCIATES, INC.

Historic restoration, financial institution feasibility studies, site plans, and site engineering for clients and personal projects in the City of Baltimore, Harford, Howard, Frederick, Howard and Anne Arundel Counties.

JAMES S. PATTON, P.E.
PAGE 3

PRINCIPAL/PRESIDENT
WASHINGTON CENTER FOR DESIGN, LTD.

(1971 - 1982)

As Principal of this organization, he was responsible for marketing and providing planning, site engineering and land development consulting services to a clientele of multi-national and local corporations, financial institutions, developers, and thirteen (13) southwestern Pennsylvania municipalities.

DIRECTOR, PITTSBURGH OFFICE
KENDREE AND SHEPARD
PLANNING CONSULTANTS, INC.

(1968 - 1971)

Directed comprehensive planning program, the preparation of urban renewal plans, and consulted on zoning and land development for cities in West Virginia, Pennsylvania, New York, and Delaware

OFFICER (Ensign-Lieutenant)
U. S. NAVY CIVIL ENGINEER CORPS

(1965 - 1968)

Served as Manpower Planning Officer for Public Works and Facilities Engineering at the Navy Department, Washington, D.C. and as Assistant Resident Officer in Charge of Construction, U.S. Naval Base, Guantanamo Bay during a period when construction volume exceeded \$44,000,000.

PROJECTS AND CLIENTS - PARTIAL LIST

<u>RESIDENTIAL:</u>	Sunset Knoll	-	Sunset Knoll Associates
	Silver Spring Station	-	The Strutt Group
	Walnut Ridge	-	Walnut Ridge, Inc.
	McDonogh Township	-	Greenabaum Partnership
	Watermark Condominium	-	General American
	Clay Brooke	-	Fairwinds Development, LLC
	Gailliard Residence	-	Gibson Island, MD.
	Fowler Residence	-	Gibson Island, MD.

<u>COMMERCIAL:</u>	McDonald's	-	Washington, Pa.
	Elby's Big Boy	-	Mt. Lebanon, Pa.
	Kentucky Fried Chicken	-	Belair Rd.
	Sambo's	-	Washington, Pa.
	Dairy Queen	-	Baltimore County
	Maryland National Bank		
	Foster Brothers Hardware	-	Hereford
	Coastal Crane Service		
	Super "8" Motel	-	Steck Property

Pasadena Dental Center	
Pennwood Property, Inc.	
W.C. Pinkard & Co.	
Westinghouse Corporation	
Greystone Golf Course	
Union National Bank of	
Pittsburgh	- Four (4) sites
Pittsburgh National Bank	- Three (3) sites
Dulaney Center	- Towson
Hechinger	- Security Plaza
Suburban Sales & Rental	

INDUSTRIAL:

G. Heilman Brewery	
Port East Transfer	
Point Breeze Maritime Center	- Creaney & Smith
North Point Industrial Center	- Creaney & Smith
Benson Industrial Center	- Meisel & Cohen
Westinghouse	- W. C. Pinkard
Prime Technology	
Browning-Ferris Industries	
William H. Knott, Inc.	
Tate Andale	
Grief Brothers	

GOVERNMENTAL: Jamestown, NY
& Washington, PA

INSTITUTIONAL

Wilmington, Del	- Urban Renewal Plans
Pittsburgh, PA	- Consulting City Engineer
	- Various Plans & Construction Plans
	- Midtown Urban Renewal
	- Various Street/Circulation Studies
Mt. Lebanon, PA	- CBD Beautification and Circulation Plans
	- Storm Water Management
Harford County School District	
Baltimore County Economic Dev.	- On-Call Site Engineer for Revitalization Commission
General Services Administration	- Fish & Wildlife Service
Mount St. Marys College	- Annapolis Field Office
	- Campus Maintenance Facility

JAMES S. PATTON, P.E.
PAGE 5

McDonough School	-	Entrance, Parking and Walkways
Washington &	-	Campus Plan
Jefferson College		
Un of Pittsburgh	-	Campus Plan
Bradford Campus		
Gibson Island	-	On-Site Sanitary
Corp & Yacht	-	Sewage Disposal
Squadron		
Hood College	-	Athletic Complex
Anne Arundel Co	-	Meade Middle School
School District		

AFFIDAVIT

Ret No 51
CBA Ret. Ech #12

My name is Francis H. Kreamer, and I
reside at 2222 SILVER LANE.

I have lived in and been familiar with the Cedar Beach area since prior to 1945. I am familiar with the property known as 2120 Poplar Road, which was formerly known as 133 Silver Lane, Baltimore County, Maryland. The pier, with slips for rent, has existed continuously and without interruption on this sight since prior to 1945.

I solemnly declare and affirm, under penalties of perjury, that the foregoing facts are true and correct to the best of my knowledge, information and belief.

F. H. Kreamer
Affiant's Signature

FRANCIS H. KREAMER
Print Affiant's Name

STATE OF MARYLAND, BALTIMORE COUNTY, TO WIT:

I HEREBY CERTIFY that on this 12 day of May,
1992, before me, a Notary Public of the State aforesaid, personally
appeared Francis H. Kreamer, known to me
(or satisfactorily proven) to be the person whose name is
subscribed to the within instrument, who signed the same in my

MICROFILMED

presence, and acknowledged that (he/she) executed the same for the purposes therein contained.

WITNESS my hand and Notarial Seal.

Delores A. Burman
NOTARY PUBLIC

My Commission Expires: 8-7-90



Dear Mr. Zoning Commissioner of Baltimore County;

Ret
No 46
PA Ret Exh # 14

I am aware that Bill Wilson at 2120 Poplar Road, Baltimore Maryland 21221 is seeking a special exception, to permit the 17 slips on his property to remain as they currently exist.

I have no objection to Mr. Wilson being granted a special exception for his property.

Name: James & Susan Stone
Address: 2220 SILVER LN
BALTO. MD 21221

Signature: James M Stone
Susan Stone

MICROFILMED

Dear Mr. Zoning Commissioner of Baltimore County;

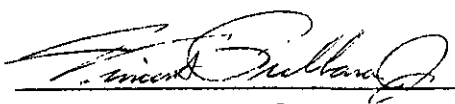
let
No 47
CBA Pet Encl 15

I am aware that Bill Wilson at 2120 Poplar Road, Baltimore Maryland 21221 is seeking a special exception, to permit the 17 slips on his property to remain as they currently exist.

I have no objection to Mr. Wilson being granted a special exception for his property.

Name: Mr. + Mrs Vincent Pullam, Jr.

Address: 2202 Poplar Rd.
Baltimore, Md. 21221

Signature: 
Betty L. Pullam

MICROFILMED

Dear Mr. Zoning Commissioner of Baltimore County;

Ref No 48
IBA Ref. Ex 16

I am aware that Bill Wilson at 2120 Poplar Road, Baltimore Maryland 21221 is seeking a special exception, to permit the 17 slips on his property to remain as they currently exist.

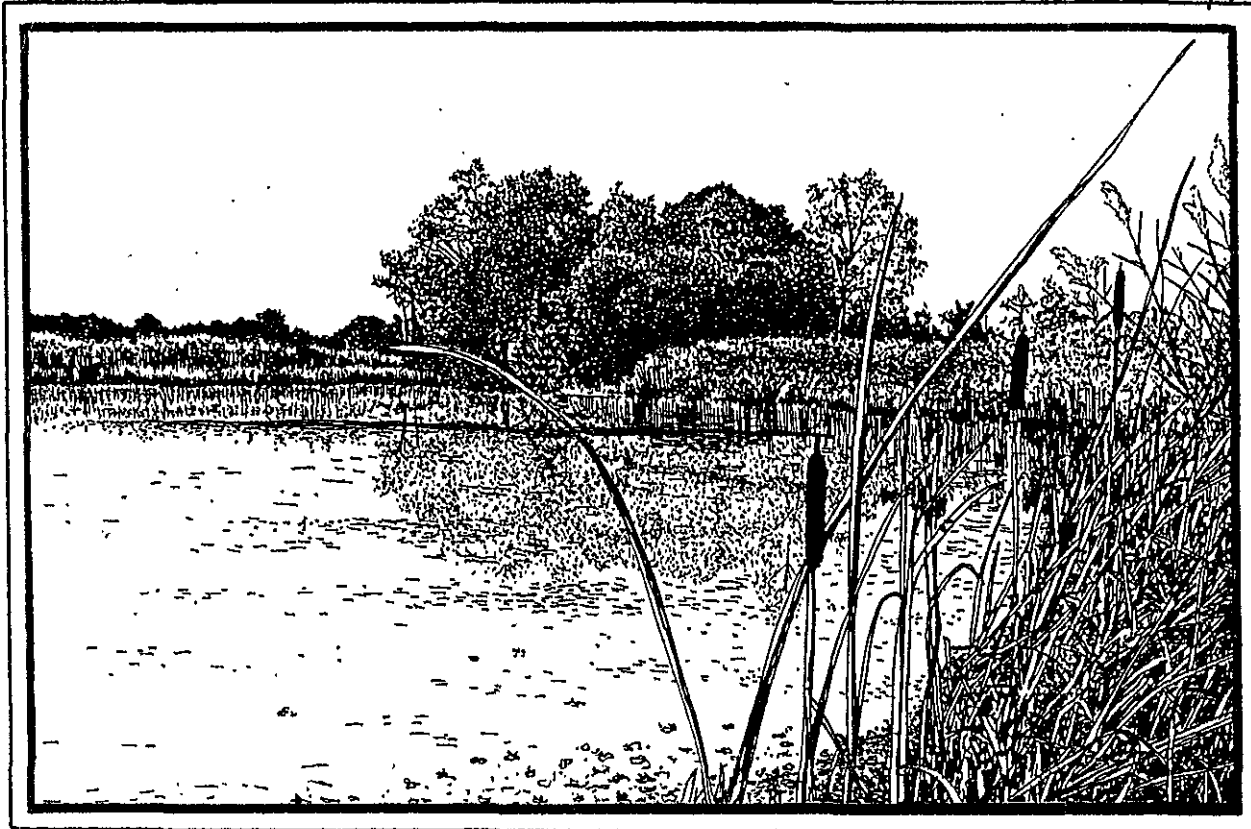
I have no objection to Mr. Wilson being granted a special exception for his property.

Name: CARROLL HUFFINER
Address: 2126 POPLAR RD (21

Signature: Carroll Huffinier

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7/1/94



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• Baltimore County • Focus on Community •

LOWER BACK RIVER NECK COMMUNITY ACTION PLAN

As Adopted By The Baltimore County Council on October 18, 1993

MICROFILMED

COUNTY COUNCIL OF BALTIMORE COUNTY

BERCHIE L. MANLEY
First District

MELVIN G. MINTZ
Second District

CHARLES A. RUPPERSBERGER, III
Third District

DOUGLAS B. RILEY
Fourth District

VINCE GARDINA
Fifth District

WILLIAM A. HOWARD, IV
Sixth District

DONALD C. MASON
Seventh District

BALTIMORE COUNTY PLANNING BOARD

HAROLD GIBBS REID
Chairman

ELIZABETH L. HEALEY
Vice Chairman

WILLIAM J. BAUMAN
I. WILLIAM CHASE
ALFRED E. CLASING, JR.
DOUG CROKER
PHILIP EDWARDS
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FLO GILES
ROBERT L. HANNON
BILL KESSLER
STEPHEN W. LAFFERTY
JOHN A. MICKLOS
KEN OLIVER

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
LEGISLATIVE SESSION 1993, LEGISLATIVE DAY NO. 18
RESOLUTION NO. 79-93

MR. VINCENT J. GARDINA, COUNCILMAN

BY THE COUNTY COUNCIL, OCTOBER 4, 1993

A RESOLUTION to adopt the Lower Back River Neck Community Action Plan as part of the Baltimore County Master Plan 1989-2000.

WHEREAS, the Baltimore County Council adopted the Baltimore County Master Plan 1989-2000 on February 5, 1990; and

WHEREAS, the Master Plan advocates strong actions for conserving and enhancing the County's established communities, including the preparation of detailed local plans for certain designated areas; and

WHEREAS, a committee composed of County staff, residents and interested community persons in the Lower Back River Neck Peninsula area prepared the Lower Back River Neck Community Action Plan; and

WHEREAS, the Plan thoroughly documents existing conditions and issues on the Lower Back River Neck peninsula, which is a logical unit for planning within Baltimore County, and proposes reasonable actions for protecting and improving both the community and the environment, in accord with the principles adopted in the Master Plan; and

WHEREAS, by Resolution adopted July 15, 1993, the Baltimore County Planning Board adopted the Lower Back River Neck Community Action Plan, with amendments, to constitute a part of and an amendment to the Master Plan; and

WHEREAS, the County Council held a public hearing on the recommended Lower Back River Neck Community Action Plan on September 7, 1993.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that the Lower Back River Neck Community Action Plan, a copy of which is attached hereto and made a part hereof, be and it is hereby adopted and incorporated into the Baltimore County Master Plan 1989-2000 to be a guide for the development of the lower Back River Neck area, subject to such further modifications as deemed advisable by the County Council.

R07993/RES93

Baltimore County Government
Planning Board



401 Bosley Avenue
Towson, MD 21204

(410) 887-3211
Fax (410) 887-5862

RESOLUTION
Adopting and Recommending
the
LOWER BACK RIVER NECK COMMUNITY ACTION PLAN

WHEREAS the Baltimore County Master Plan 1989-2000 advocates strong actions for conserving and enhancing the County's established communities, including the preparation of detailed local plans for certain designated areas; and

WHEREAS the Master Plan also specifies that plans prepared by citizens' associations should be evaluated for possible adoption by the Planning Board and County Council; and

WHEREAS a committee of residents and interested community persons in the Lower Back River Neck Peninsula area, with assistance by County staff, has prepared a Lower Back River Neck Community Action Plan; and

WHEREAS the draft Plan thoroughly documents existing conditions and issues on the Lower Back River Neck peninsula, which is a logical unit for planning within Baltimore County, and proposes reasonable actions for protecting and improving both the community and the environment, in accord with the principles adopted in the Master Plan; and

WHEREAS the Committee also made concerted efforts throughout the period of the Plan's preparation to assure full opportunity for participation by residents and business persons who might be affected by the Plan;

WHEREAS the draft of the Community Plan, as submitted on July 16, 1992, was discussed in Committee meetings on November 19, 1992, and July 1, 1993, and was the subject of a public hearing by the Planning Board on September 10, 1992;

NOW, THEREFORE, BE IT RESOLVED, pursuant to Section 26-81 of the Baltimore County Code, 1988, that the Baltimore County Planning Board hereby adopts the Lower Back River Neck Community Action Plan, June 1993, including the report and recommendations for amending the Plan submitted on June 17, 1993, to constitute a part of and an amendment to the Baltimore County Master Plan 1989-2000; and

BE IT FURTHER RESOLVED that the Lower Back River Neck Action Plan shall be transmitted to the Baltimore County Council for adoption in accordance with Section 523(a) of the Baltimore County Charter.

DULY ADOPTED by vote of the
Planning Board this 15th day of
July 1993

A handwritten signature in cursive script that reads "Dave Fields".

P. David Fields
Secretary to the Planning Board

AMENDMENTS TO
LOWER BACK RIVER NECK
COMMUNITY ACTION PLAN

As adopted by the
Baltimore County Planning Board
July 15, 1993

LOWER BACK RIVER NECK COMMUNITY ACTION PLAN

The following listing of amendments is respectfully submitted for consideration to the Baltimore County Planning Board.

P. 3

Exchange placement of page 3 with page 4 in the text.

P. 3

Replace map with detailed map of the peninsula outlining the study area. (See attached map).

P. 4 - II. Introduction

Revise paragraph 2 to read as follows:

The Lower Back River Neck Peninsula is located in the southeastern area of Baltimore County. For the purposes of the study, the area is bounded by Norman Creek to the north, Middle River to the east, and Back River to the south and west. The majority of the Lower Back River Neck is almost entirely covered with mature forests and substantial acreages of non-tidal wetlands. The ecological significance of the area leads to its designation as a habitat protection area under the County's Chesapeake Bay Critical Area Program. Rocky Point Park, one of the County's larger parks, occupies approximately 600 acres on the bay front and includes a golf course, bathing beach, a recreational boating launch ramp and is the site of the historic Ballestone Mansion.

P. 5 - Outside Influences Having a Direct Impact on the Community:

Delete fourth item.

"Disproportionate share of low income-low quality and rental housing on upper part of peninsula."

Delete paragraph #1.

Revise paragraph #2 to read as follows:

Development pressure has been experienced on the lower peninsula by the extension of MD 702 to Turkey Point Road.

Paragraph #3, revise to read as follows:

Delete the phrase "The Back River Waste Water Treatment Plant."

Revise paragraph to begin with phrase "Poorly sighted and bootleg marinas...."

P. 7 - IV. Development

Recommendation for Action

Delete item #3 and #5.

Revise item #2 to read as follows:

The vacant or underdeveloped land on the peninsula, from Pottery Farm Road southward, should be carefully examined prior to the 1996 Comprehensive Zoning Map Process. The existing zoning should be looked at in relation to the present build-out, surrounding land uses and zoning and the need to relate future land use to the environmentally protective tenets as set forth through this plan.

Delete first sentence of item #4, revise to read as follows:

Any new development must be consistent with existing housing types and density, with strict enforcement of county, state, critical areas and federal environmental goals, including all wetlands, forest and water quality regulations. Additionally, this development should only occur as infill to existing built areas. When development occurs it should raise water quality standards, maximize storm water management, sediment control and filtration.

Add new item #5 as follows:

The quality and condition of existing and proposed housing is a community concern. All housing units should be subject to compliance with a livability code.

All other items remain the same.

P. 8 - V. Water Quality

Recommendations:

Add new paragraph between paragraph four and five to read as follows:

Retrofitting existing stormdrain systems should be a priority of the County in decreasing the amount of untreated runoff from existing homes, and commercial and agricultural property that enters the waterways.

P. 9 - VI. Sue Creek

Recommendations for Sue Creek

Revise entire section to read as follows:

#1 A total restoration program for the entirety of Sue Creek must be formulated by December, 1994 with immediate implementation to follow. All agencies responsible or who can provide expertise in drafting this plan including U. S. Army Corp of Engineers, U. S. Department of Interior, U. S. Fish and Wildlife Service, Maryland Department of Environment, Maryland Department of Natural Resources, Baltimore County Office of Planning and Zoning, Department of Environmental Protection and Resource Management, and all other appropriate agencies. This restoration program should be adopted as an amendment to the Lower Back River Neck Plan.

#2 This all encompassing program's central purpose should be focused on the return of historic fish, wildlife, SAV's, and water quality levels. The plan should include the opening of the causeway at Baltimore Yacht Club, dredging program, no wake zones, speed limits, wetlands restoration, reforestation, aforestation, erosion control, SAV plantings, etc. All new development must be consistent with the Sue Creek Restoration Plan. Permitting agencies must use as primary criteria the water quality, public safety, health and welfare.

#3 Elimination of all illegal "bootleg" marinas.

#4 All efforts shall be made to remove illegal boat storage racks from marinas along the Sue Creek waterway.

#5 The communities relish the opportunity and responsibility and will serve to the utmost with all agencies to achieve these goals for the protection of our natural resources, for our children and generations to come, all the people of Baltimore County and the State of Maryland.

P. 10

Insert photograph of aerial photo of Baltimore Yacht Club causeway behind plat in the text.

P. 12 - VII. Back River - Water Quality

(Actions) Recommendations

Revise #3 to read as follows:

Pursue an impact study of removing contaminated sediments from the river bottom. However, it is not recommended that Back River be dredged at this time.

Delete #7.

Revise #10 to read as follows:

Investigate and identify the segments of the Back River that are useable for water contact recreational activities, especially below Todd Point.

P. 13 - VIII. Issue: Back River Waste Water Treatment Plant

Revise section to read as follows:

The Back River Waster Water Treatment Plant has experienced recent problems (i.e. washouts in spring of 1989; sludge disposal in summer 1989) which have affected the water quality of the River and produced nuisances which have affected the quality of life for community residents.

The plant has undergone significant changes in design and operation since the approval of the 201 Facilities Plan in 1984. These improvements represent the expenditure of approximately 300 million dollars (\$250 million - Federal and State Grants) since the late 1970's. Another 200 million dollars is earmarked for projects to be completed by 1997. With the dissolution of the Construction Grants Program of the Clean Water Act, a larger share of the monies will have to come from local government. Some examples of construction projects include:

- SS Nitrogen Reactors and Clarifiers - completion estimate 1994
- Additional digester capacity - completion estimate 1992
- Odor Control project - completion estimate 1992

Recent improvements in the treatment plant performance will have a direct and dramatic impact on water quality. These improvements include a Chlorination/Dechlorination Facility which kills pathogenic bacteria and then removes chlorine from the discharge. Finally, the new Filtration Facility will reduce suspended solids and phosphorus loadings into Back River.

The plant nitrifies its discharge to Back River during warm summer months to prevent oxygen depletion. The major improvements noted will benefit local water quality, and additional improvements will be examined and supported.

The completion of the listed projects to bring the plant into an advanced treatment mode will represent a significant financial commitment by Baltimore City and Baltimore County. The State Revolving Loan Fund replaced the Construction Grant program in the fall of this year. This means that the improvements for water quality benefits will represent the largest solely, locally funded projects ever attempted. The possibility of private developer funding assistance to improve the plant would not appear feasible. All of the time, money, and effort which will be expended does not have an effect on plant capacity. The improvements are designed to upgrade the effluent, not to add to the 180 mgd rating design of the plant.

Sludge disposal continues to be a major concern that affects plant operation and community relationships. It is imperative that all options or alternatives be vigorously pursued to insure that problems reminiscent of the summer of 1989 not recur. The heat drying process which is proposed as a privatization project must be reviewed objectively. Contracts for land application must be advanced. New technologies and regional cooperation for disposal options must be fostered.

It must be remembered that the various components of plant operation are controlled through a regulatory mechanism. The plant is currently under several Consent Orders with the Maryland Department of the Environment. In addition to these orders, the National Pollutant Elimination System (NPDES) permit stipulates various parameters for effluent discharge to the River.

P. 14 - VIII. Back River Waste Water Treatment Plant

(Actions) Recommendations

Revise #2, 3, and 4 to read as follows:

2. Access the existing structure for communication among communities, citizen groups and plant operators.
3. Continue investigation of new technologies for sludge disposal and monitor its progress.
4. Support the development of new markets for compost and sludge applications.

P. 16 - X. Marinas/Boat Yards & Yacht Clubs

Revise the paragraph to read as follows:

The business marina legislation recently put into place, which regulates marinas and boat yards, greatly aids in the harmonious operations of such uses with surrounding communities. However, there still exists concern about the operation of "bootleg" marinas on insufficiently zoned land, or the extension of marina-oriented uses beyond the original zone line of the property.

Recommendations for Marinas/Boat Yards, Yacht Clubs

Revise listing of recommendations to read as follows:

1. Enforce zoning, Critical Areas regulations and other legislation to protect existing communities and the environment, the spirit of these regulations and policies being of equal or greater significance than the letter of the law.
2. Boat slips at private piers should be limited to 3 or 4 slips per property.
3. As existing marinas expand, or new marinas develop, strict adherence to the marina zoning (BMM & BMB) should occur. No marinas should begin operation on any land until the proper zoning governing that use is in place.
4. Carrying capacities for boat traffic on the entirety of Middle River should be investigated and encouraged with emphasis on safety and environmental impact.
5. Marine related businesses, DEPRM and the community should alert boaters of legal and moral obligations to dispose of litter and waste properly. Implement plans for awareness and enforcement.

P. 17 - XI. Sewerage

Revise paragraph 1 to read as follows:

Sewering of the lower peninsula should be restricted to serve existing communities and the effort to restore the Chesapeake Bay, and should not serve as a spur for residential or commercial facilities.

Delete third paragraph.

XII. Private Wells - Retitle Water Supply

Delete last sentence of first paragraph.

Recommendations:

Revise the paragraph to read as follows:

DEPRM has recently completed a sanitary survey of wells in the area. Results of this survey are available to communities. The County should initiate the extension of public water to replace failing or contaminated private wells.

P. 18 - XIII. Traffic/Safety

Revise the paragraph to read as follows:

The extension of MD 702 to Turkey Point Road was needed to alleviate congestion and allow for future planned growth. Its extension past Turkey Point Road was only to allow for a proper transition back into the existing Back River Neck Road and is not to be a justification for development on the Lower Peninsula. Widening of roads south of Pottery Farm Road would encourage higher speeds and may increase development pressure. Roadside litter is a consistent problem and detracts from the scenic beauty of the area as well as being a hazard to wildlife.

Recommendations:

Revise item #2 to read as follows:

The termination of MD 702 at the merge with Back River Neck Road is a safety concern. Baltimore County will work with the State Highway Administration to investigate possible improvements to modify the severe dip in the roadway and to slow traffic at the merge area. The use of grooved pavement or rumble strips should be considered to warn traffic of the termination of MD 702 and the merge into the 2-lane Back River Neck Road.

Revise item #3 to read as follows:

"No thru street," "Dead end road," and safety signs for biking should be posted wherever appropriate. The community will furnish a list of locations.

Revise item #4 to read as follows:

The intersection of Holly Neck Road and Back River Neck Road needs to be redesigned to eliminate the existing skewed intersection and improve the safety of the intersection. A landscaped traffic island or median in the vicinity of the present location should be considered to channel the traffic flow to create a more perpendicular intersection.

Revise item #6 to read as follows:

Hard shoulders or a safe pathway for pedestrians and bicyclists should be provided on the west side of Back River Neck Road from Hyde Park Road to Cherry Garden Road. The community should be involved in the design of this pathway.

P. 19 - XIV. Signs

Recommendations

Revise item #5 to read as follows:

"No dumping" signs should be posted throughout the area. Educational programs about dumping of refuse should be continued as a cooperative effort between the county and the community.

P. 23 and 24 - XVII. Back River Elementary School

Revise section to read as follows:

The Back River Elementary School site is an extremely vital and very important part of the Back River Community. It created a great deal of concern among residents when the school was closed in 1983 due to declining enrollment, and the community is just as concerned over its fate and future.

Currently listed under the inventory of the Baltimore County Dept. of Recreation and Parks, the site (grounds) is used for passive recreation: i.e., ball diamonds, sandlot playground, outdoor basketball, horseshoe pits, etc. The building currently has a small percentage of area set aside for recreation (gymnastics and golden age programs) while the remaining area is used as a warehouse for the storage of voting machines.

The community is well aware of the fact that Baltimore County will be switching to a new type of voting procedure in the future, and that the need for warehouse space will greatly diminish. When this fact becomes a reality, the community recommends the following course of action.

Recommendations:

The grounds shall continue to remain for passive recreational use. All facilities shall be kept in good repair by the Dept. of Recreation & Parks. No new buildings should be constructed on the grounds except for the Head Start program facility.

The flagpole located in front of the building, which was donated to the community by the Ebersberger Family almost 50 years ago, shall be reconditioned and serve as the official flagpole for the school building, the ambulance station, and for Pottery Farm Park. A plaque commemorating its gift to the community shall be installed in the future.

The former school building should be considered for the following educational and recreational purposes.

School Annex. Many elementary schools in Baltimore County, including some in the Essex-Middle River area, are substantially overcrowded. Serious consideration should be given to reopening the former Back River Elementary School. If it is not feasible to reopen the entire school, a portion of this facility could be renovated for use as an annex for Middleborough, Sandalwood, and Mars Estates Elementary Schools.

Nature Center. Open to the public, and for all ages, for the study of the flora and fauna indigenous to the Back River peninsula. It would offer a wide variety of services such as in-house studies, field trips, etc.

Historic Learning Center. Offering exciting educational programs concerning the proud history of the peninsula. It would highlight such areas as Ballestone Manor, the Somogyi Farm, Danby, Whisk, and/or Mercer Porters Hall, duck hunting lodges, Bauernschmidt Manor, Back River Methodist Church, name origins on the peninsula, etc.

Community Center. Offering well-appointed, accessible meeting space for various community groups.

Recreation Offices and Uses. Office space should be reserved for the Back River Recreation Council, with space provided as needed for various programs such as Little League Baseball, etc.

P. 26 - XIX. Pottery Farm Park

Revise paragraph #3 to read as follows:

As Pottery Farm Park is an extremely sensitive environmental area, every effort should be made to balance preserve areas and passively active areas. Because of its sensitivity, all intrusion and recreation into the area should be well planned.

Add the following to Recommendations (see also P. 27):

11. Cap all open wells, so as to make the site safe. This is imperative prior to any interested party using the site for projects (scouts, local high school, etc.).
12. The problem of inadequate parking for the park must be explored, with reasonable solutions proposed to the county and the community. Existing parking lots such as the Chesapeake High School facility should be of prime consideration.

P. 28 - XXI. General Recommendations

Revise item #5 to read as follows:

Residences on Back River Neck Road near Barrison Point Road (1825 and 1827 Back River Neck Road) that experience flooding should be examined by appropriate county agencies, community members and the property owners. This examination should result in the reasons for the flooding and appropriate strategies to lessen or ameliorate this condition.

Add item #7 to read as follows:

The study of the future of Hart-Miller Island should be implemented, examining its use as a recreational park site, not only for the State of Maryland, but for the region.

Any study of the future use of Hart-Miller Island must involve the community, Baltimore County and the State of Maryland and must consider the impact on, and relationship with, the Lower Back River Neck Peninsula.

Technical Appendices

The following text and materials should be considered technical appendices to the plan:

1. Listings of all bird species contained in the plan (Addendum - page 1, 2, 3).
2. Middle River - An Assessment of Options for Halting the Decline and Restoring Former Quality; prepared by Richard D. Klein. (See revisions of report dated March 15, 1993.)
3. Correspondence from Maryland State Department of Natural Resources to R. Christopher concerning R. Klein report dated May 12, 1992.

1 IN THE MATTER OF: * BEFORE THE
2 THE APPLICATION OF WILLIAM * COUNTY BOARD OF APPEALS
3 H. WILSON, ET UX., For A * OF BALTIMORE COUNTY
4 Special Exception and Variance * Case No. 95-46-XA
5 On The North Side of Poplar * May 2, 1995
6 Road, 820 Ft. E of C/L *
7 Lourdes Road (2120 Poplar Road *
8 15 Election District *
9 5th Councilmanci District *

10 * * * * *

11 The above-entitled matter came on for hearing
12 before the Baltimore County Board of Appeals at the Old
13 Courthouse, 400 Washington Avenue, Towson, Maryland 21204
14 at 10 o'clock a.m., May 2, 1995.

15 * * * * *

16
17
18 ORIGINAL

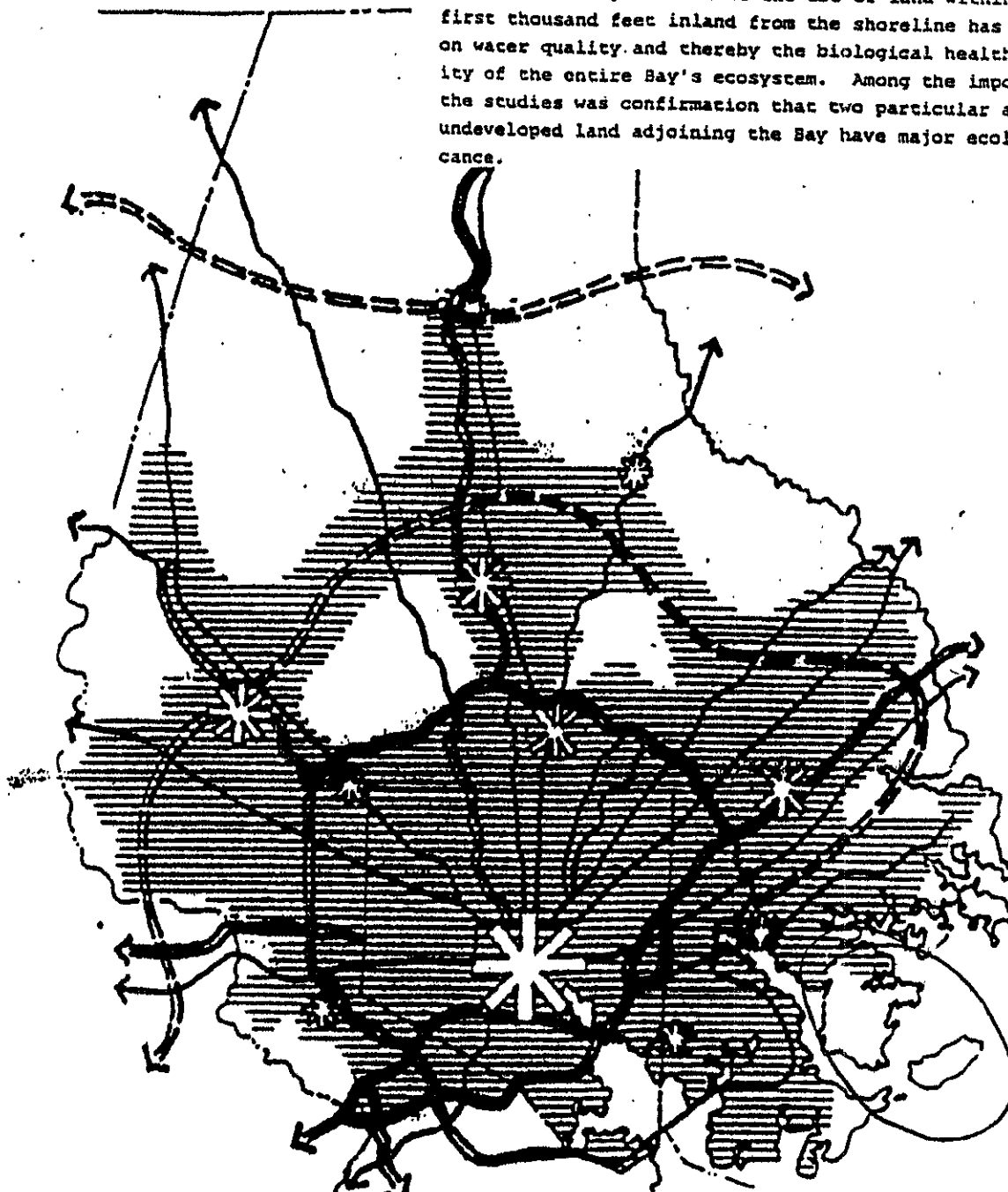
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20 Reported by:

21 C.E. Peatt

RECEIVED
20 MAY 1995

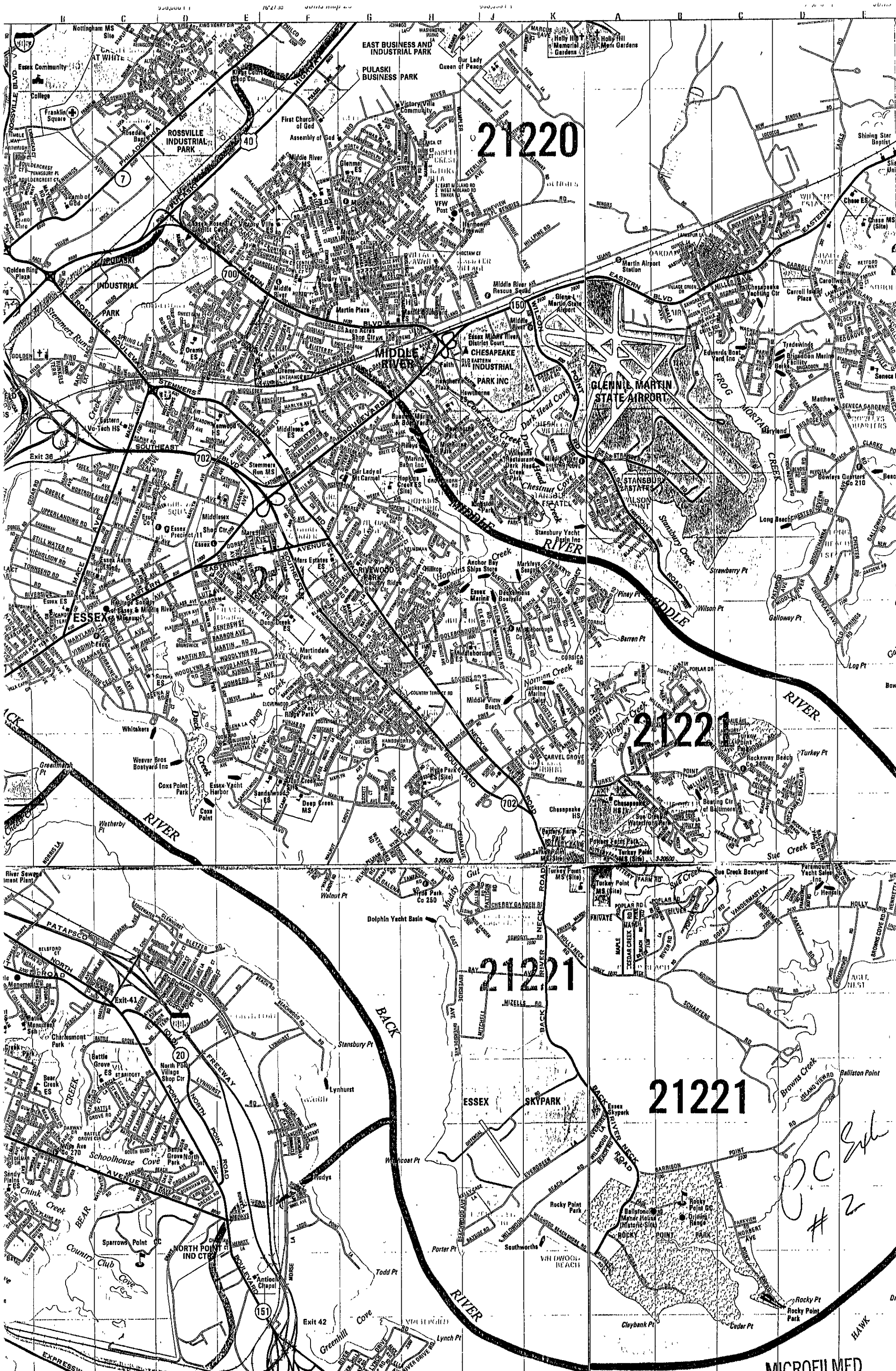
cance is so high the County relied upon its importance to justify extending the Critical Area program's protective Resource Conservation classification further inland beyond the minimum distance required by the State law.

The Chesapeake Bay Critical Area program was established by the State with the premise that the use of land within at least the first thousand feet inland from the shoreline has a major effect on water quality and thereby the biological health and productivity of the entire Bay's ecosystem. Among the important results of the studies was confirmation that two particular areas of mostly undeveloped land adjoining the Bay have major ecological significance.



The Master Plan reaffirms the County's commitment to the principles and purposes of the Critical Area program. Any changes from this policy should be made with the utmost care, especially in regard to the lower portion of Back River Peninsula and to the Black Marsh Natural Heritage Area.

MICROFILMED



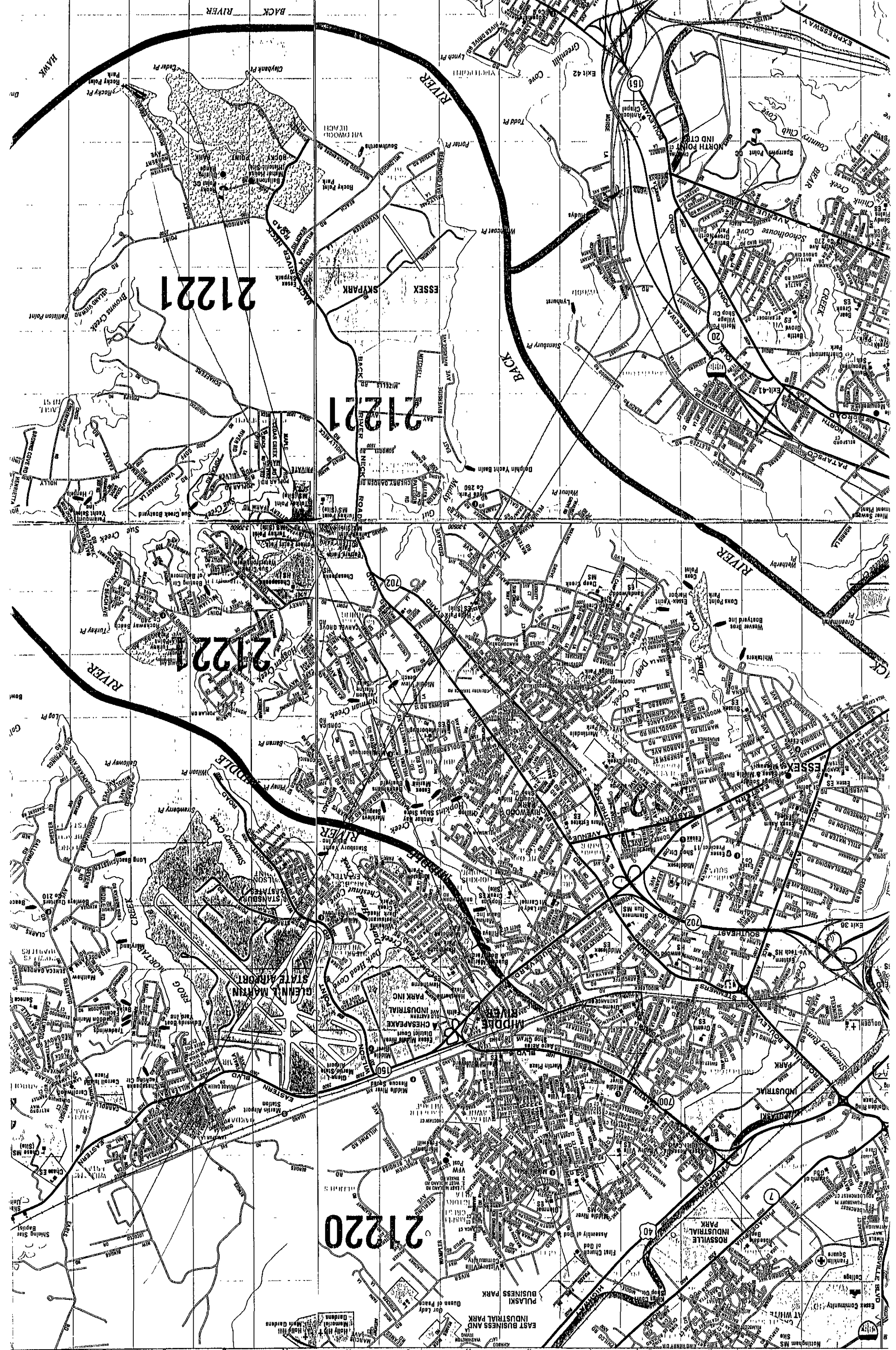
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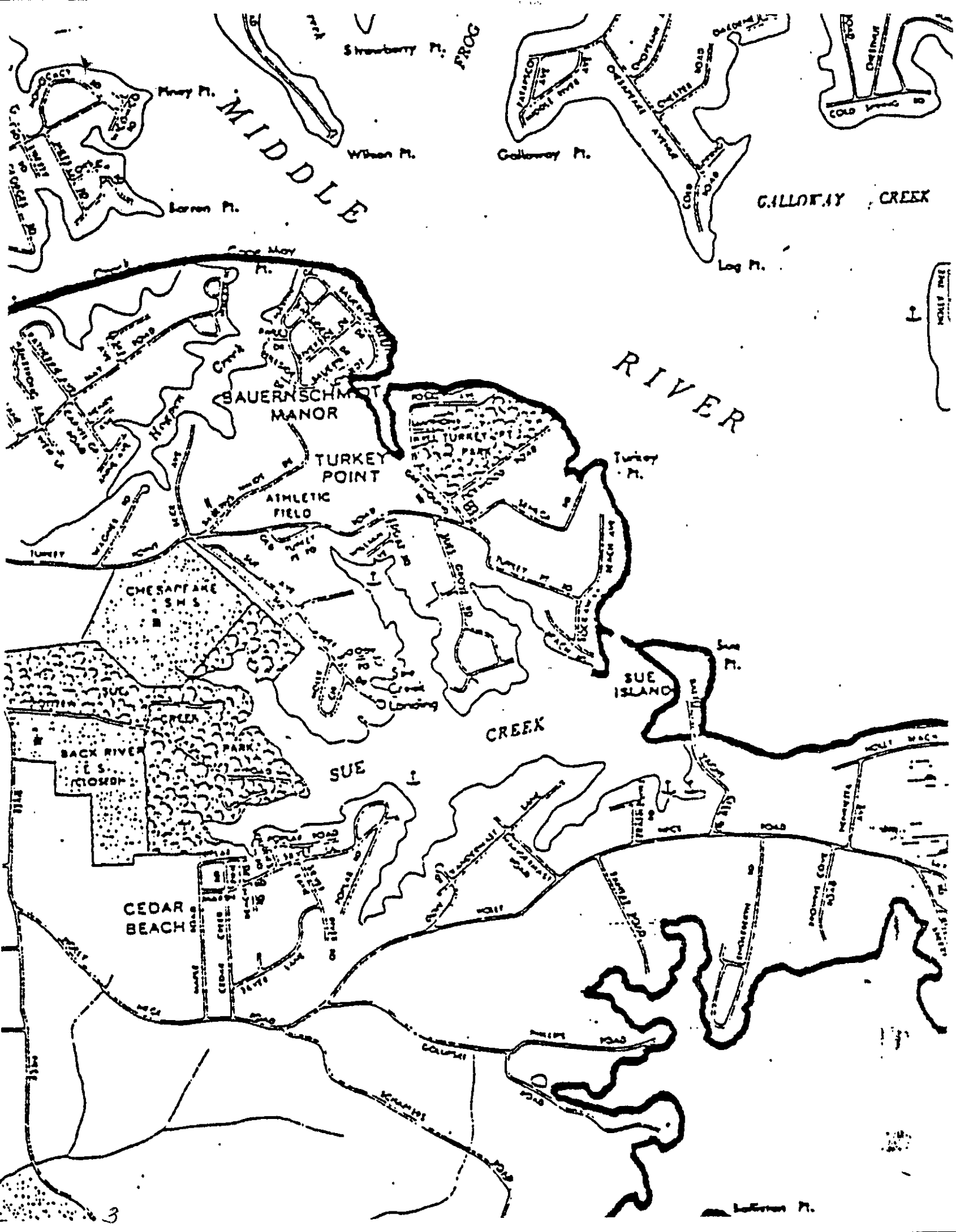
21221

PC
#2









Strawberry Pt. FROG

Henry Pt.

MIDDLE

Wilson Pt.

Galloway Pt.

GALLOWAY CREEK

Karen Pt.

Log Pt.

BAUERNSCHMIDT MANOR

TURKEY POINT

ATHLETIC FIELD

CHESAPEAKE SHS

SUE ISLAND

SUE CREEK

SUE

CEDAR BEACH

Log Pt.



~~last SA~~

Case # 95-46-XA 2000/09/01/02
Sept '94
Boys
G.C. End # 3A

Book 813

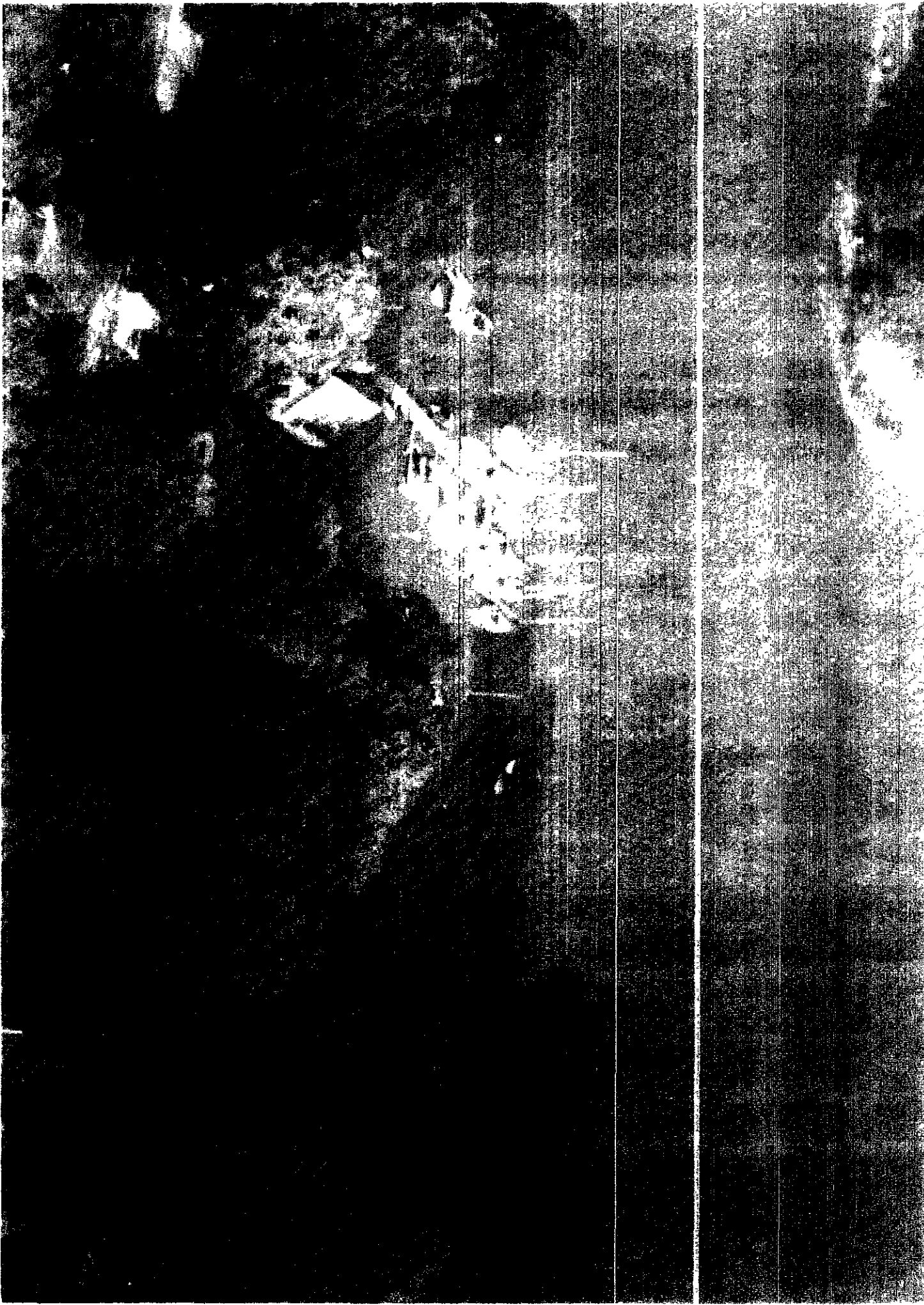


Case # 95-46-X4 2120 Apple Rd.

MICROFILMED

38

3/2

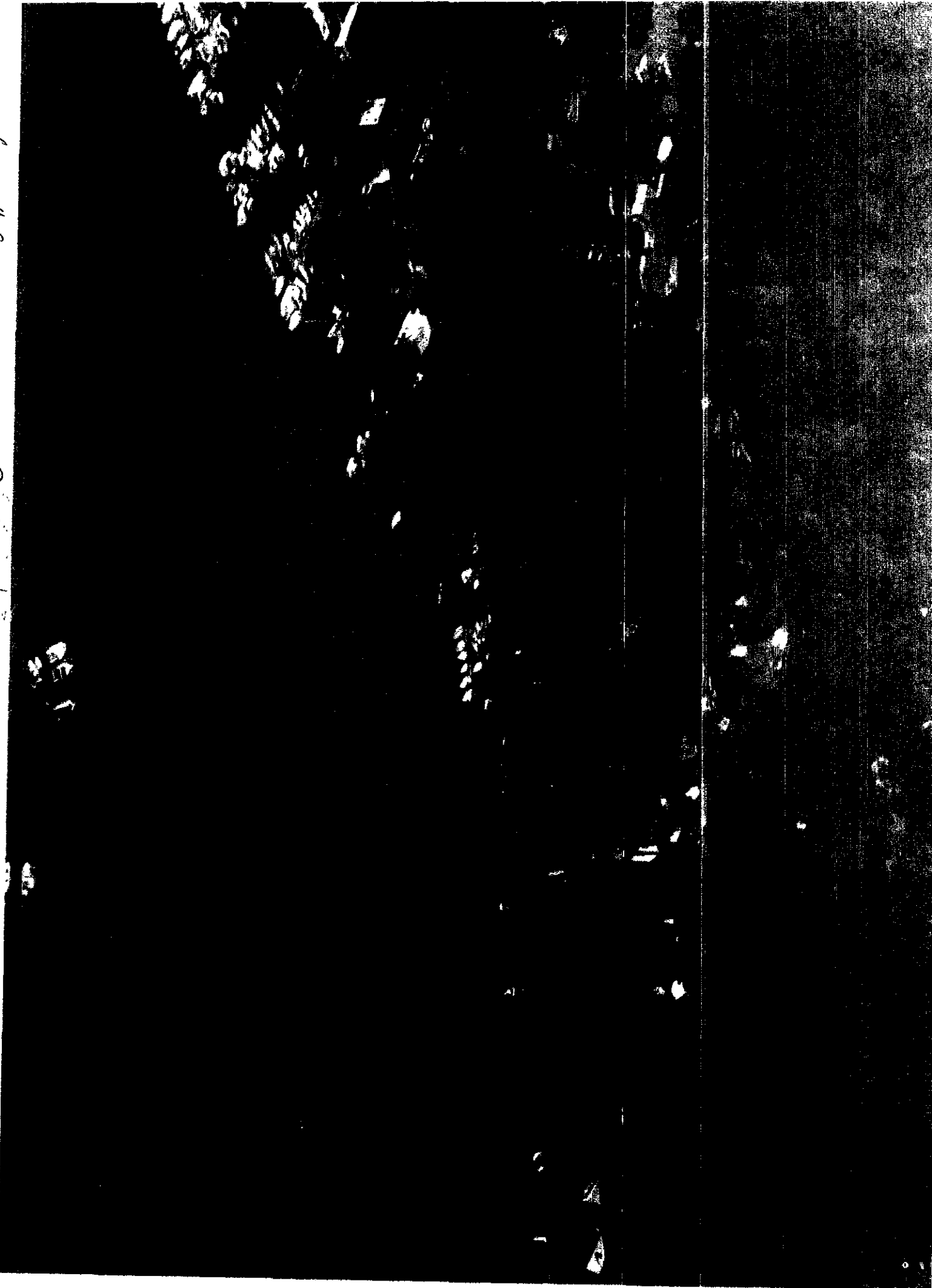


Case # 95-46-XA 2120 Appleton Rd

MICROFILMED

3C

Case # 95-46-XA 2120 Highland Rd



48

Case # 95-46-XA 2/20 Replaced

MICROFILMED

33

Case# 95-46-XA (Item 38) 2/20 Reproduced

MICROFILMED

95-46-XA

Lat 6D

PC
11D



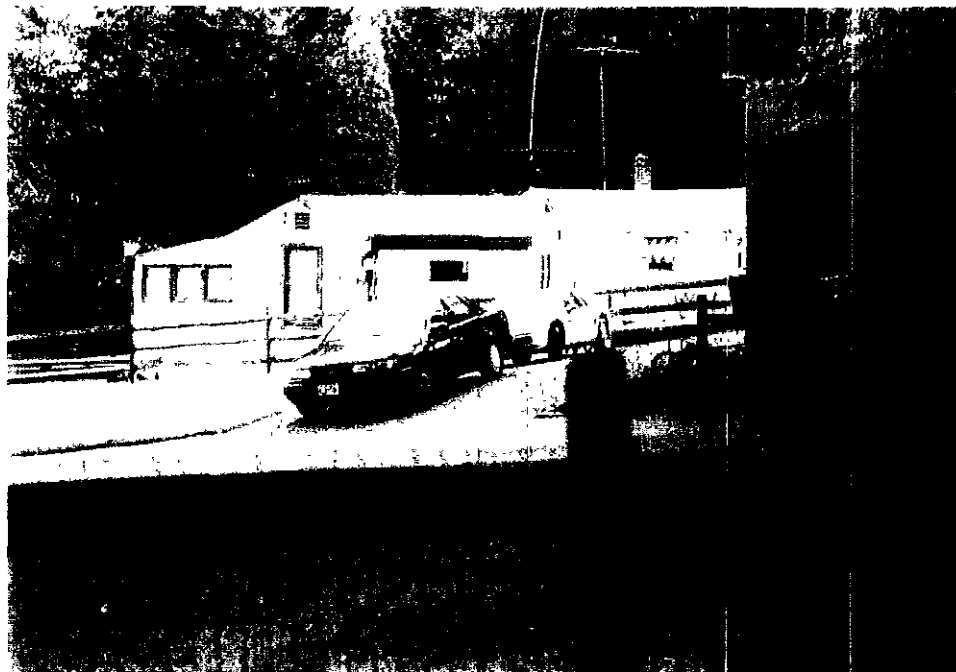
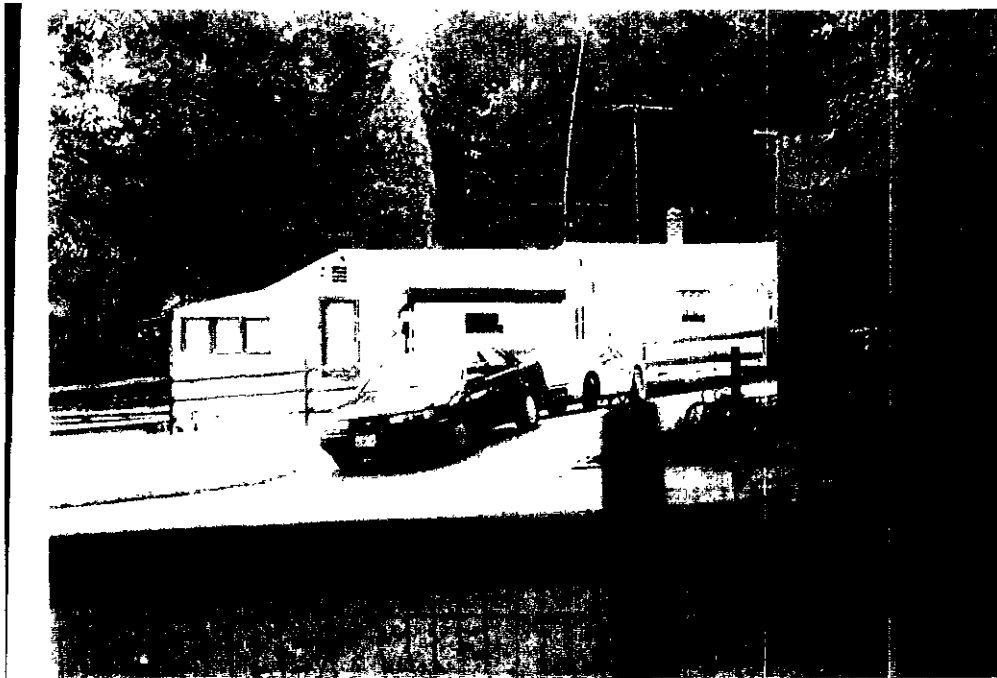
Case # 95-46-XA
2120 Poplar Rd.

parking at road

NOT FILMED

Page

PC 11E



Case # 95-46-XA

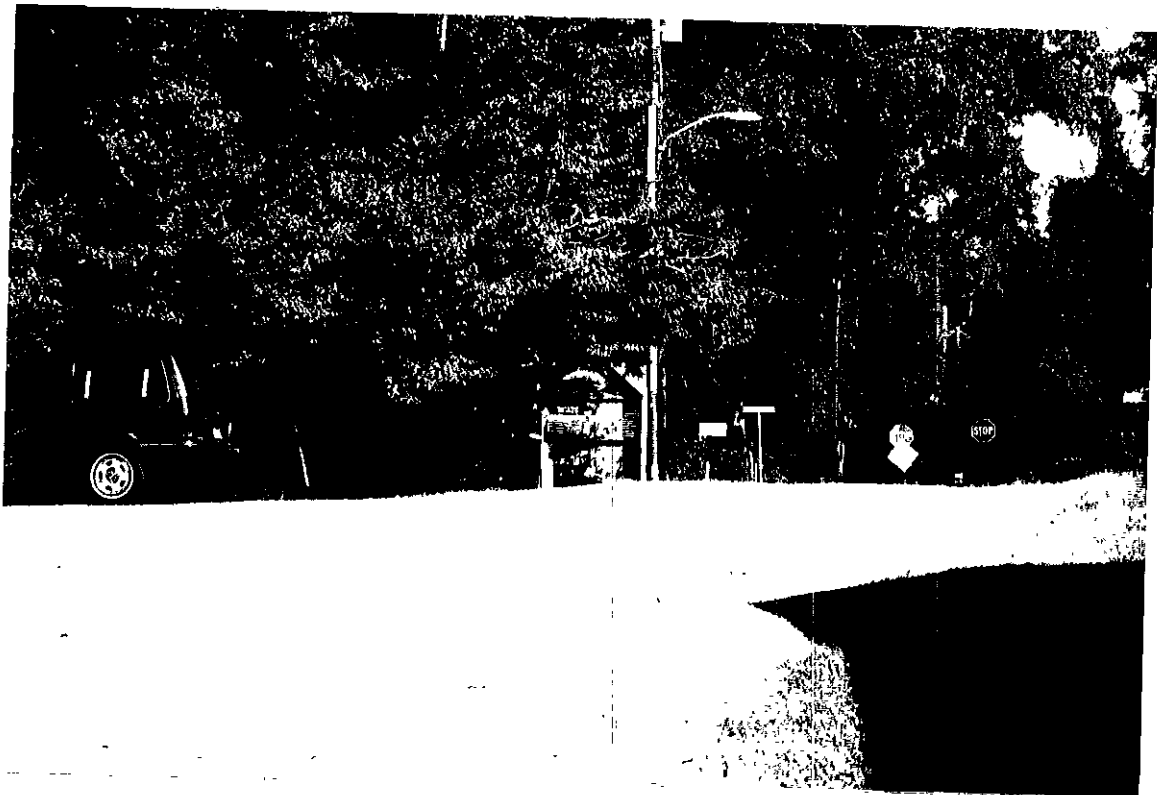
2120 Poplar Rd

parking in yard

MICROFILMED

Phot 6C

PC
11C



Case # 95-46-XA
2120 Poplar Rd.

TRAILOR ON
STREET PARKING

MICROFILMED

Plot 6B
PC
11B



Case # 95-46 XA
2120 Poplar Rd.

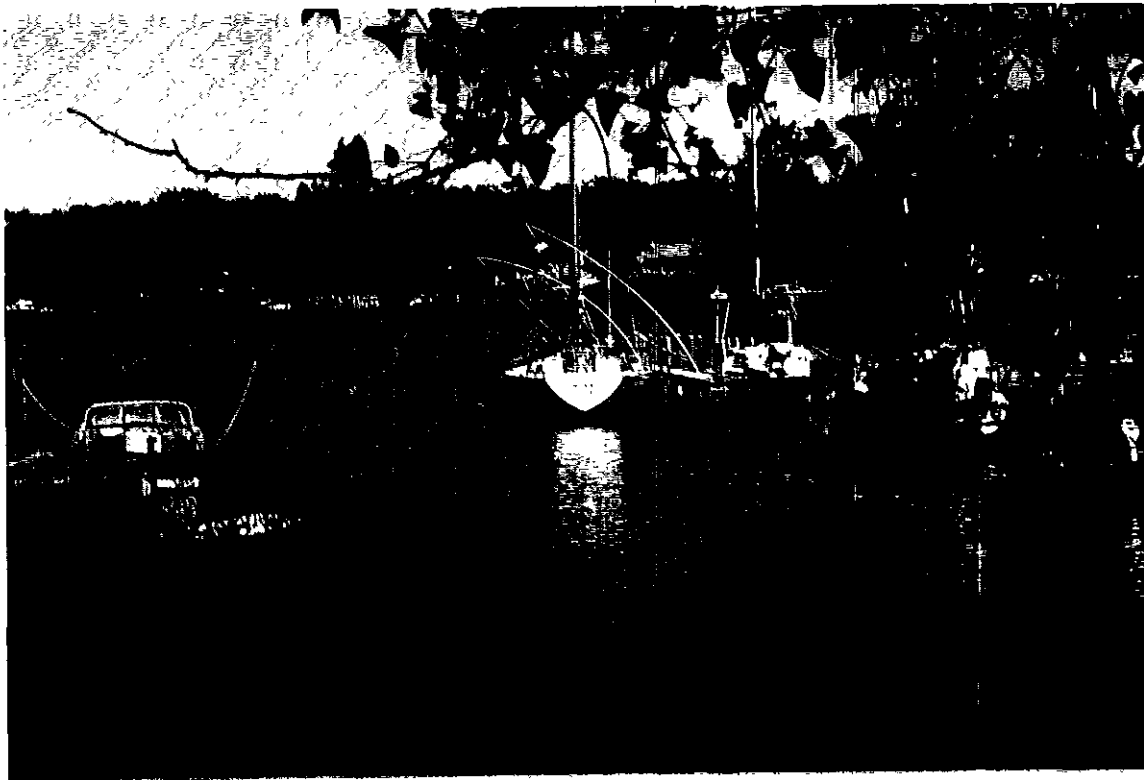
MICROFILM

Foot 6A PC Enh
11A



Case # 95-46-XA
2120 Poplar Rd.

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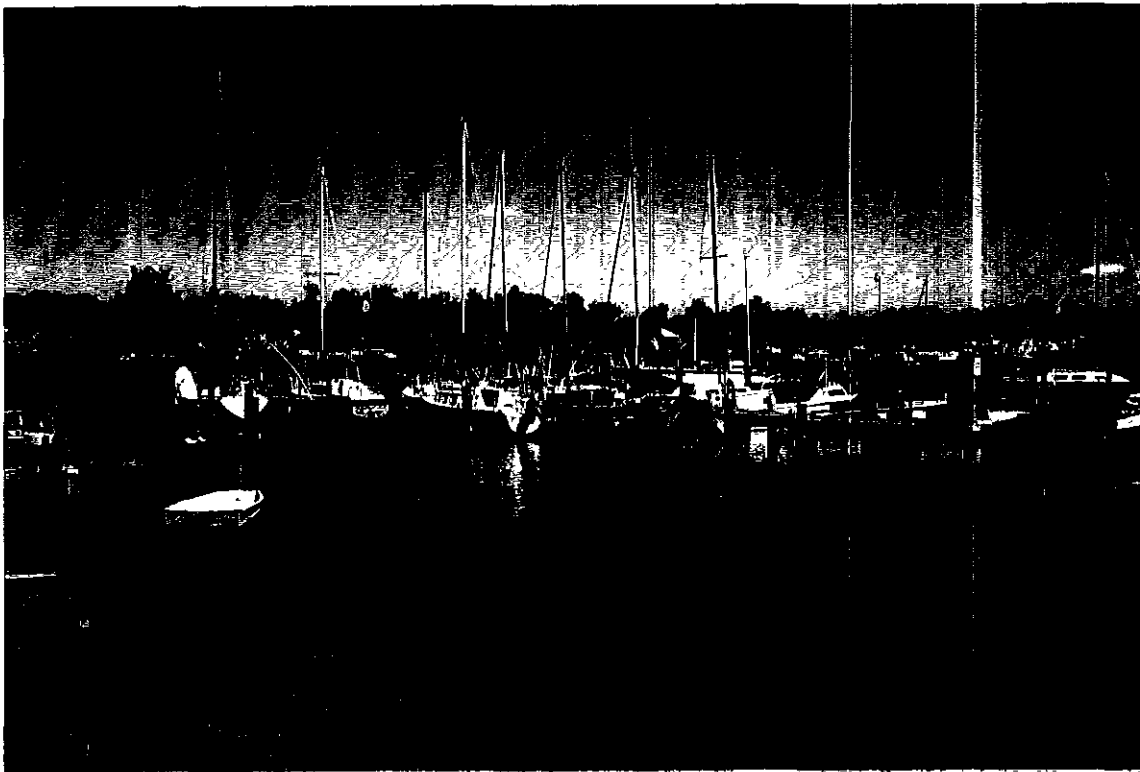


PC 7C

Case # 95-46-XA
2120 Poplar Rd.

MICROFILMED

Post 7C



PC 7B

Part
9B

Case #95.46-XA
2120 Poplar Rd.

pictures TAKEN
from DIZE
PROPERTY



Case #95-46-XA
2120 Poplar Rd

MICROFILMED

~~File #9-A~~
PC Exp 7A

1/28/73



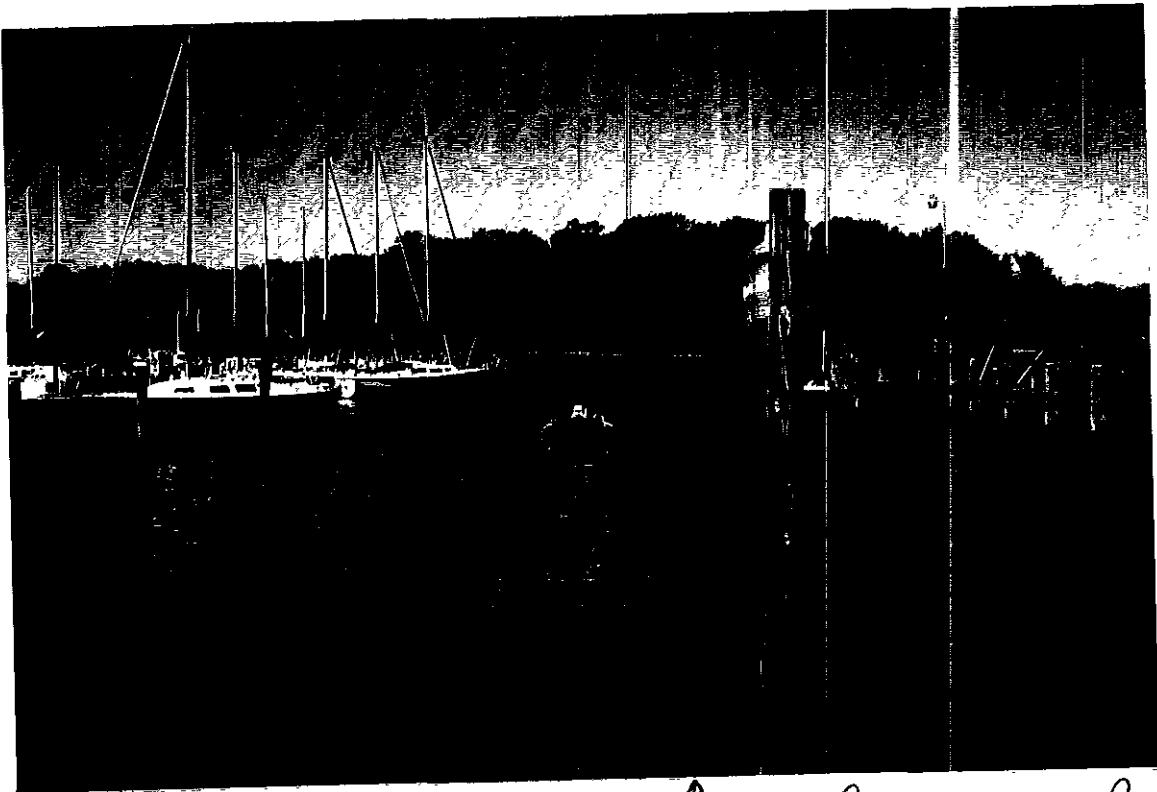
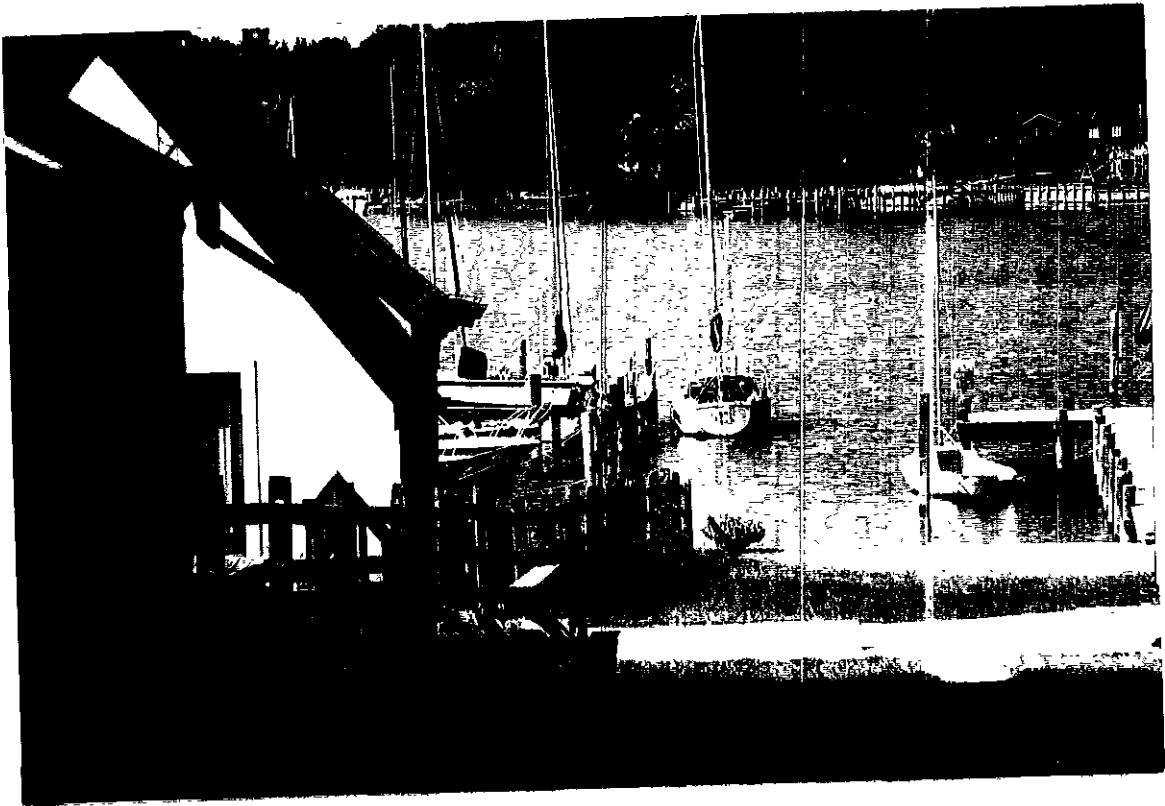
This sign say slips for rent
and his phone #.

Case #95-46-XA
2120 Poplar Rd

MICROFILMED

PC Encl 6B

~~607A~~

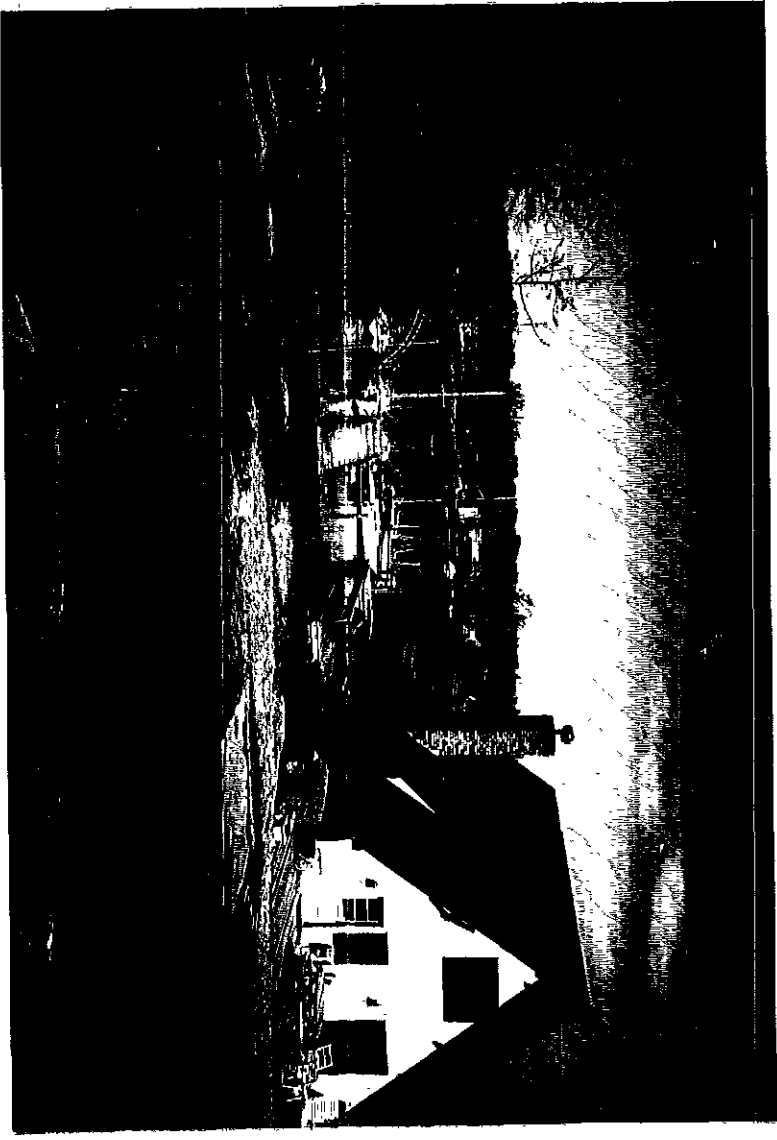


↑ view from 3200 Poplar Rd.

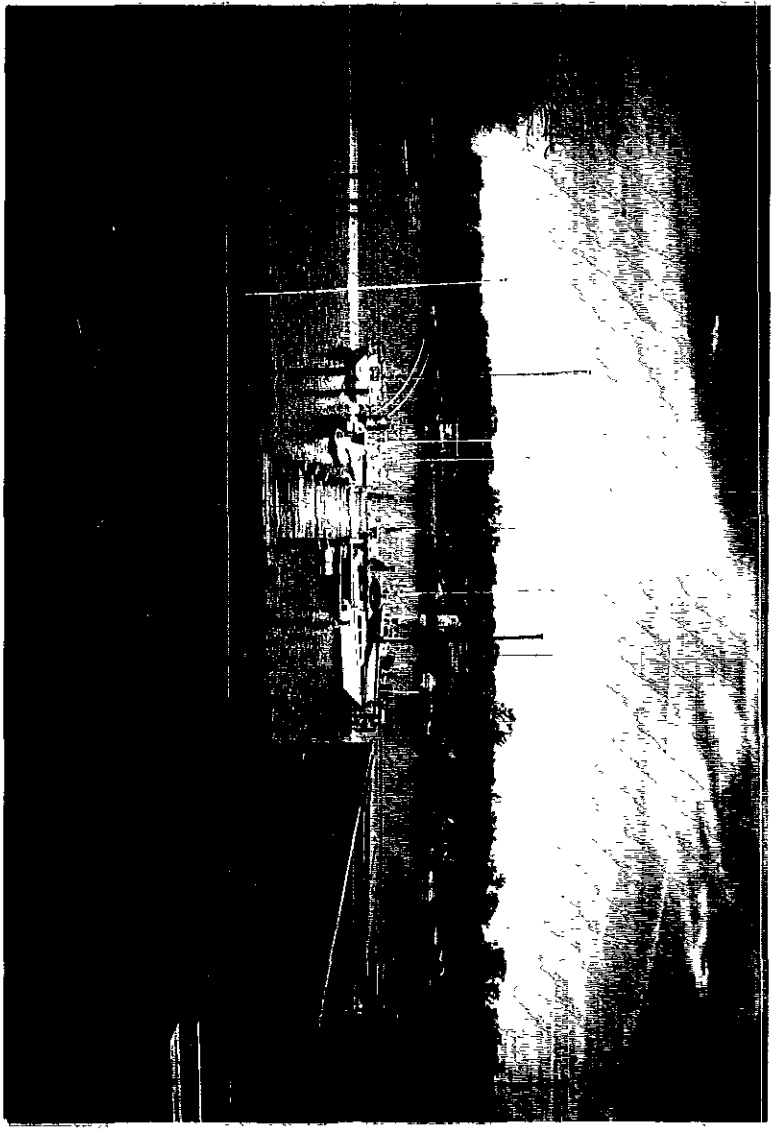
Case #95. 46. 1A
2120 Poplar Rd

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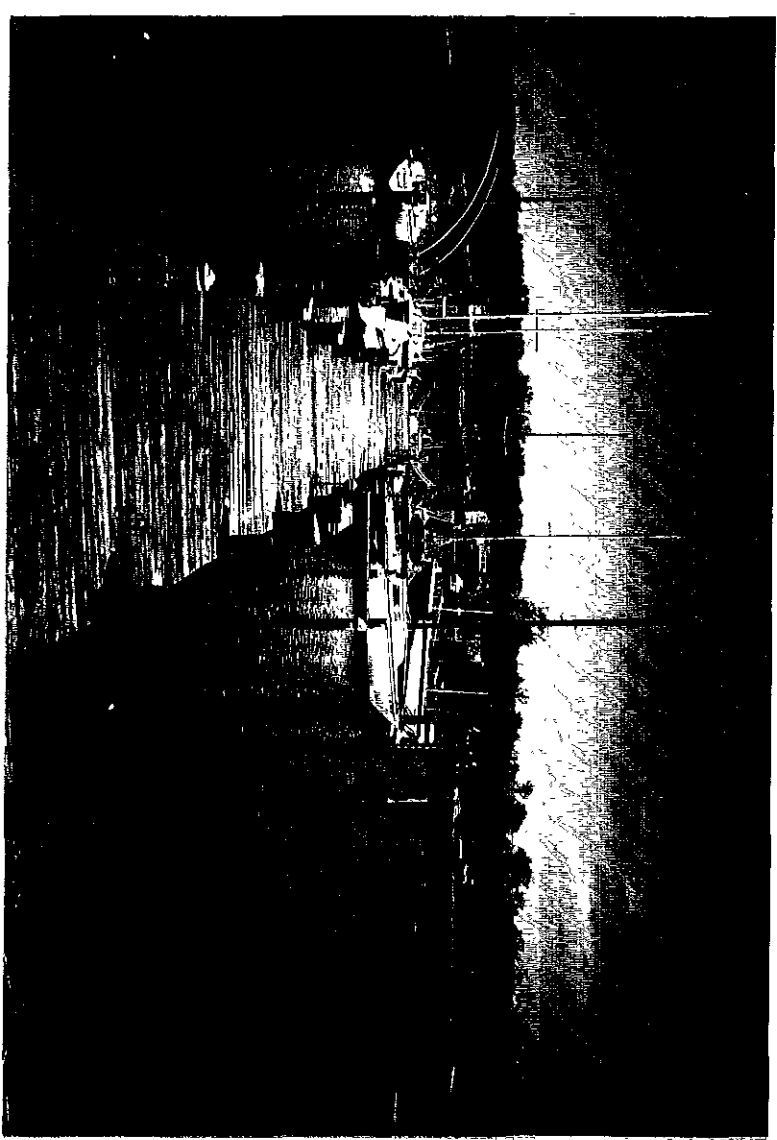
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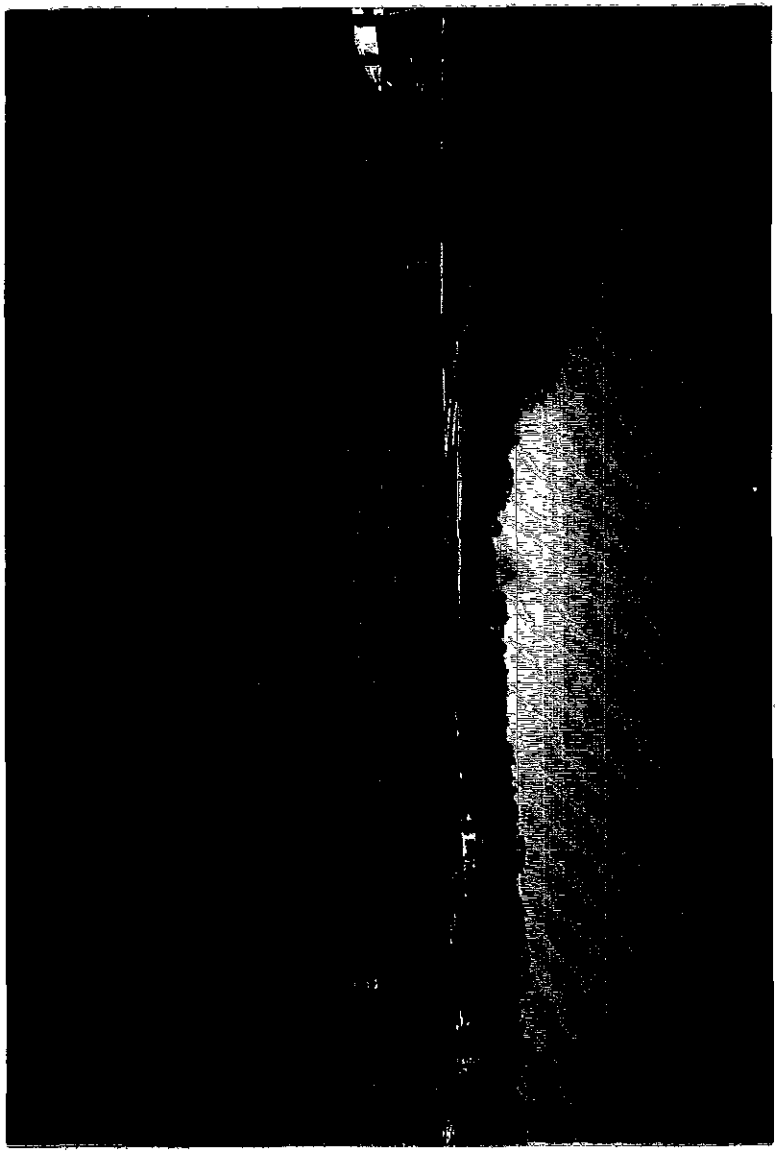
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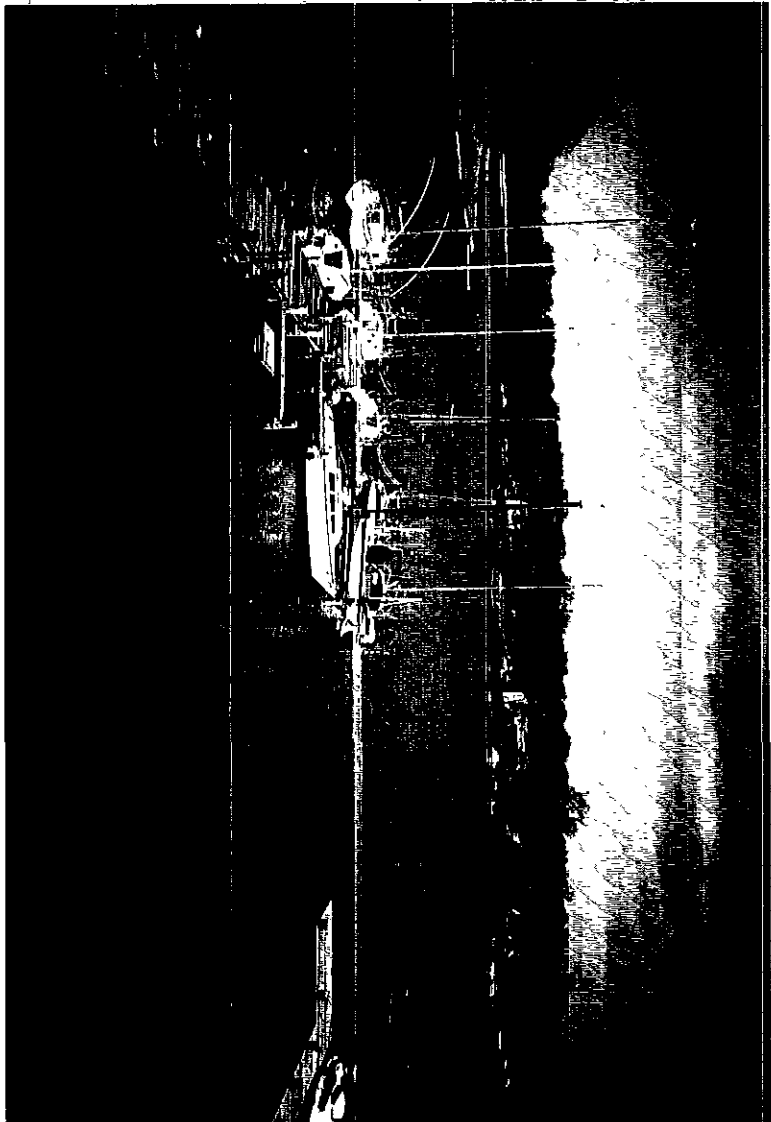
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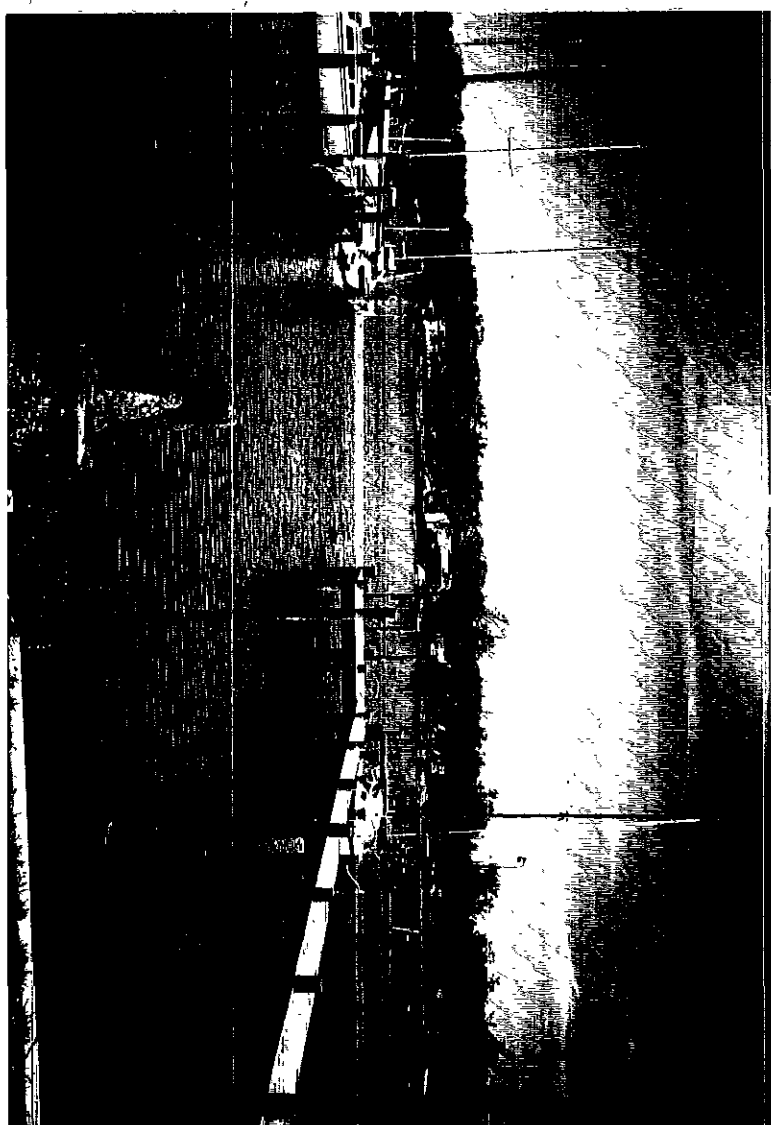
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7D



7E



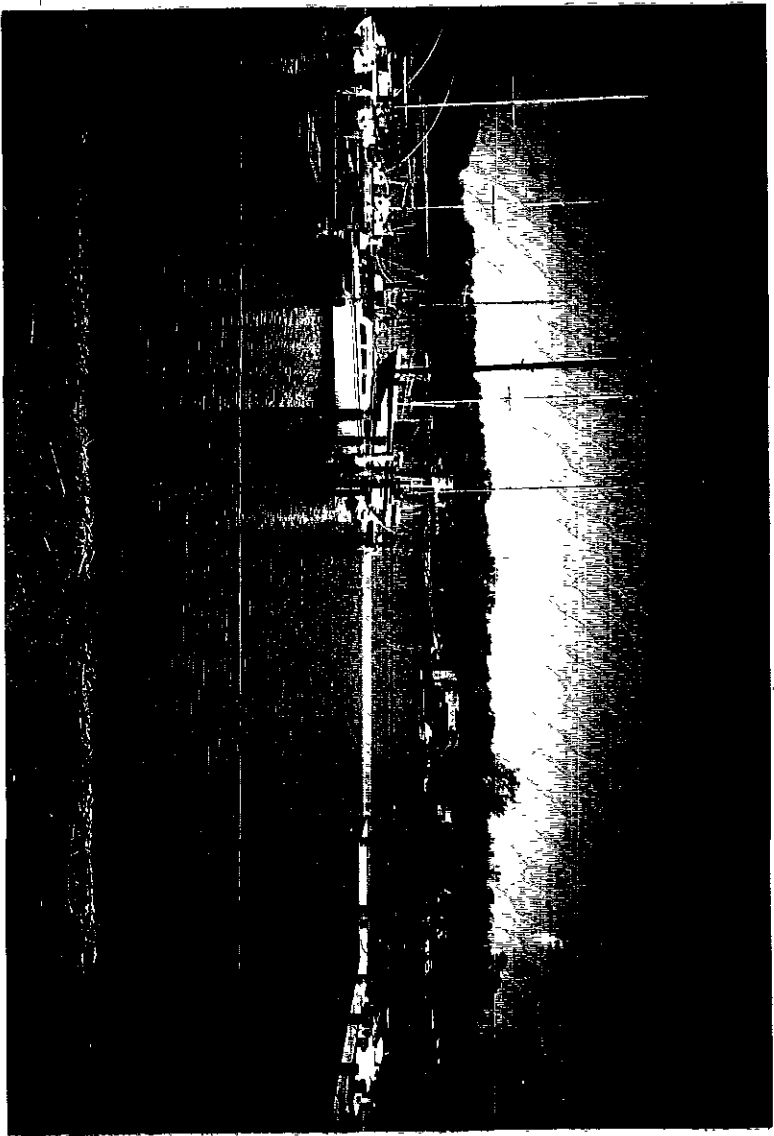
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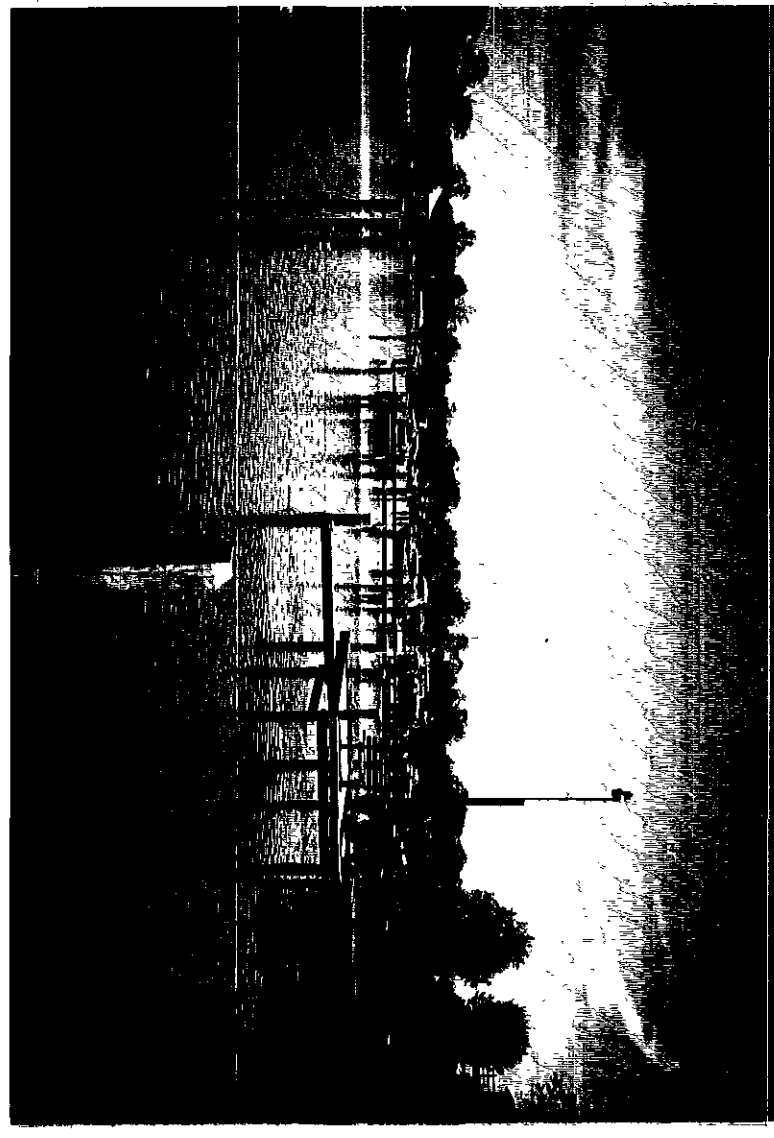
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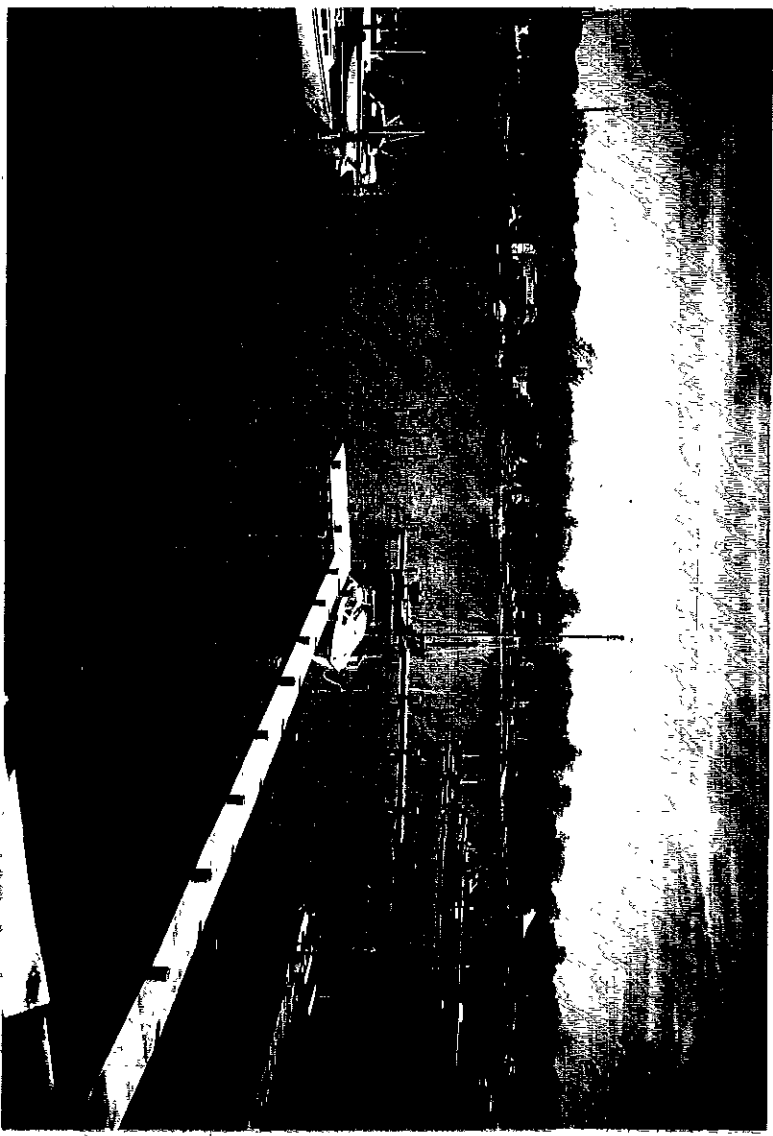
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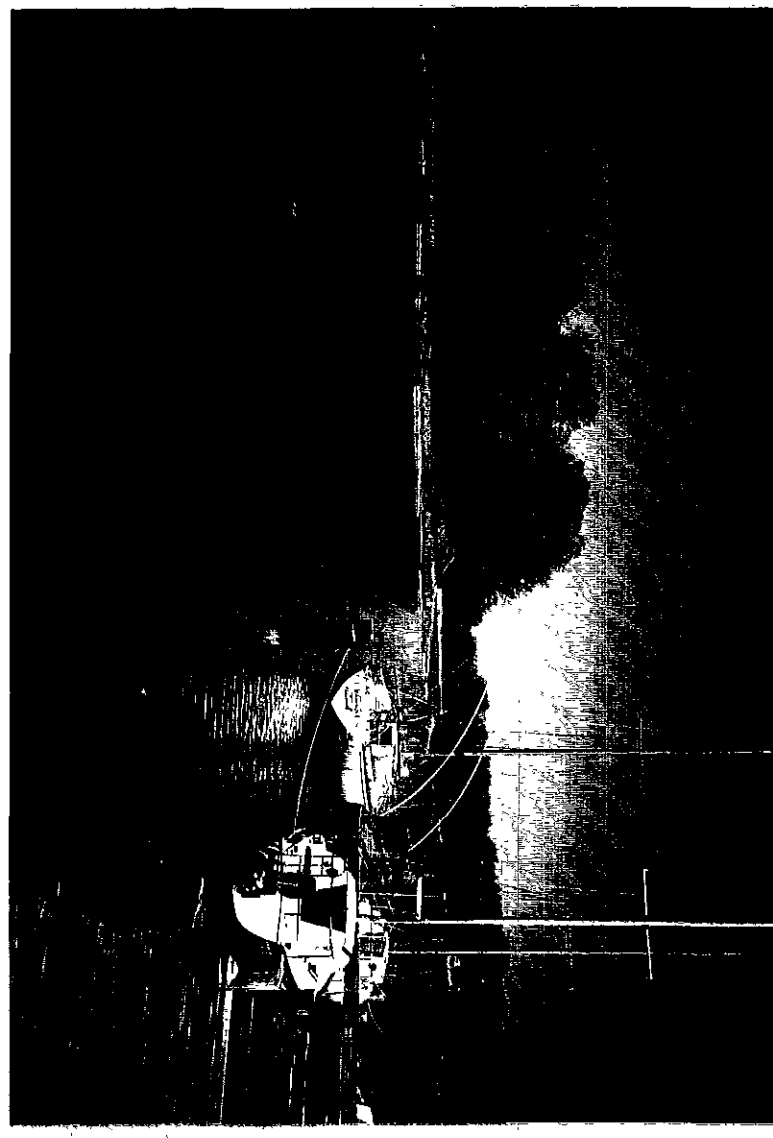
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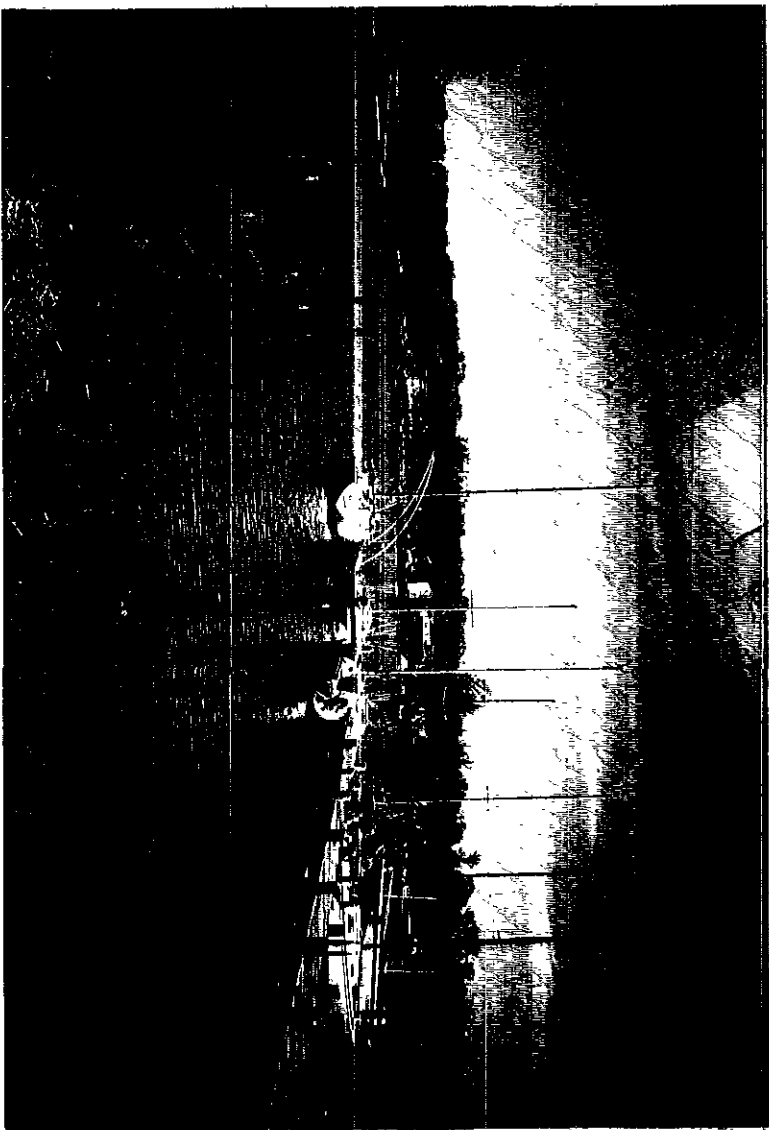
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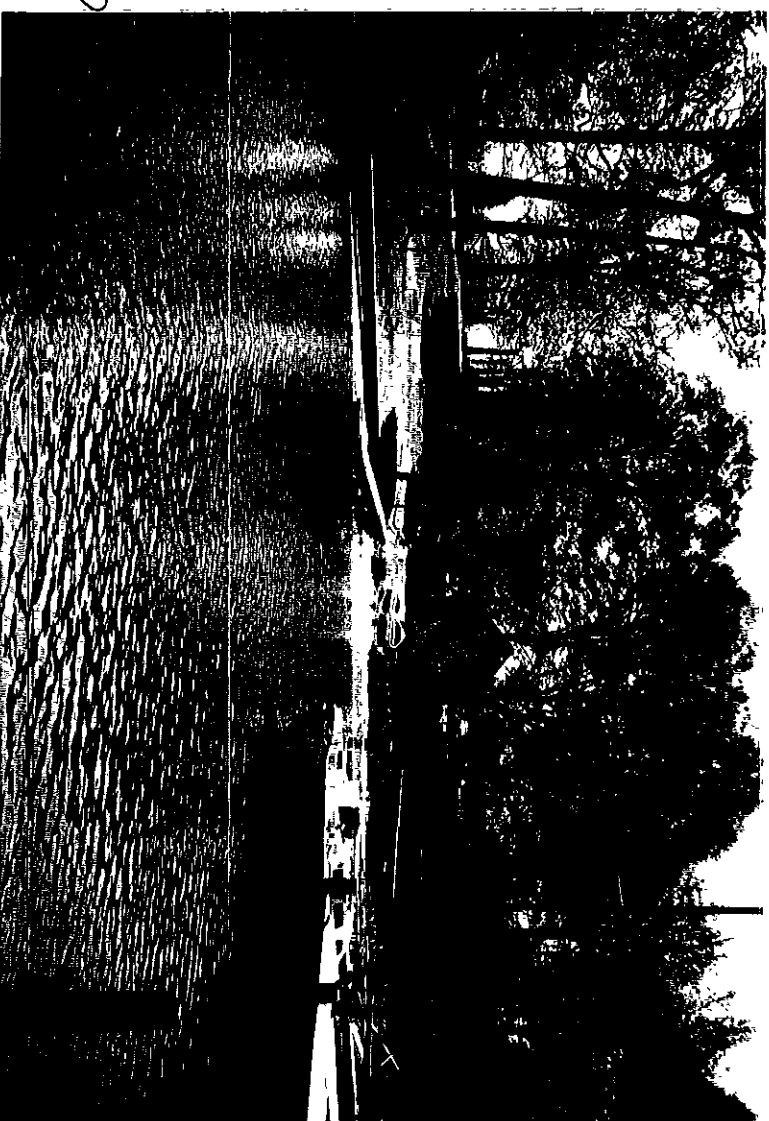
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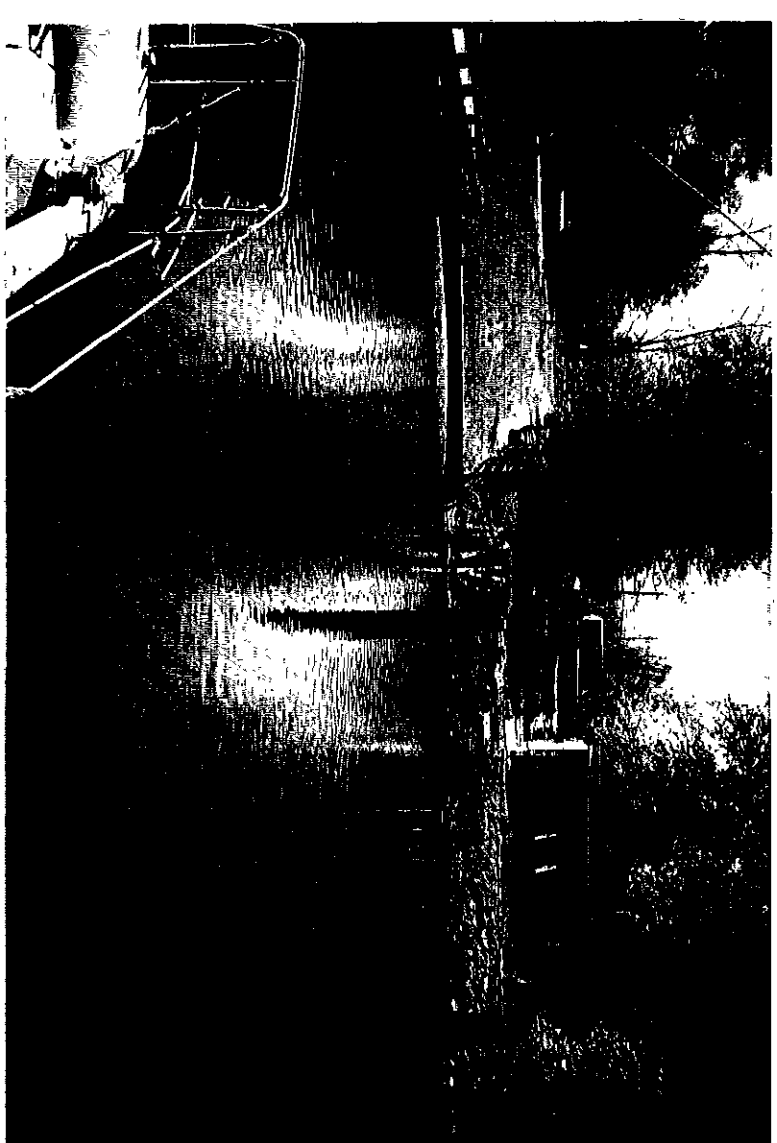
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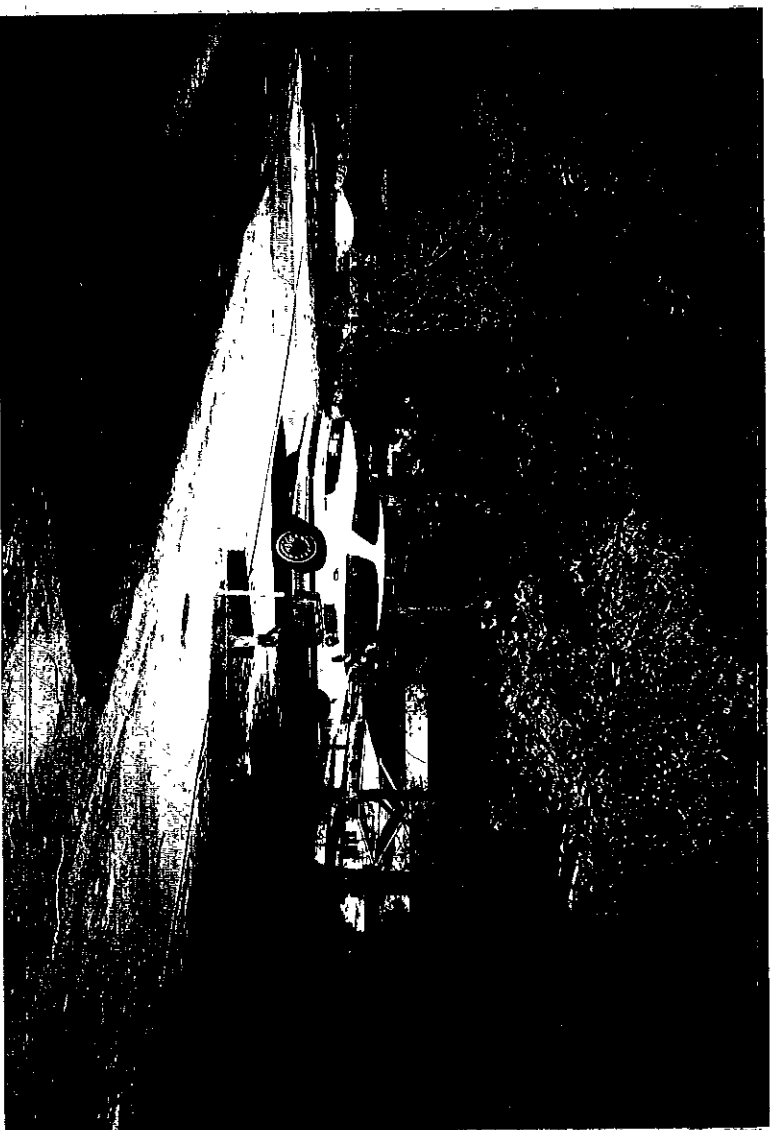
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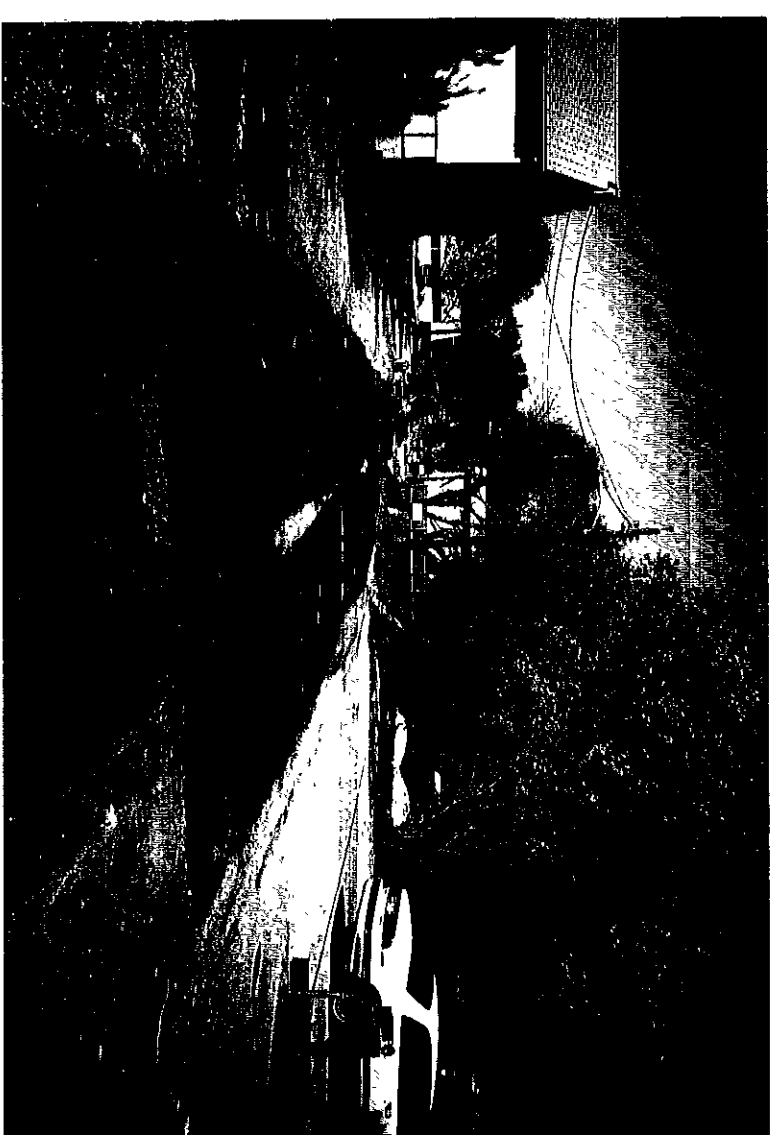
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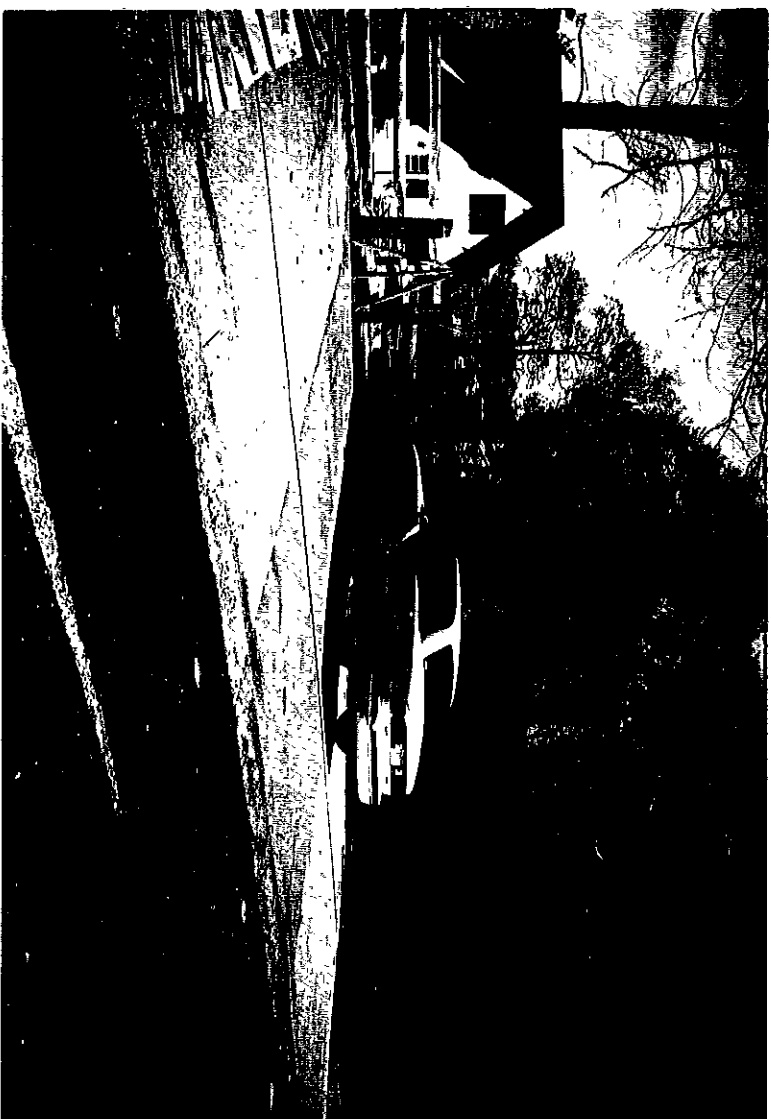
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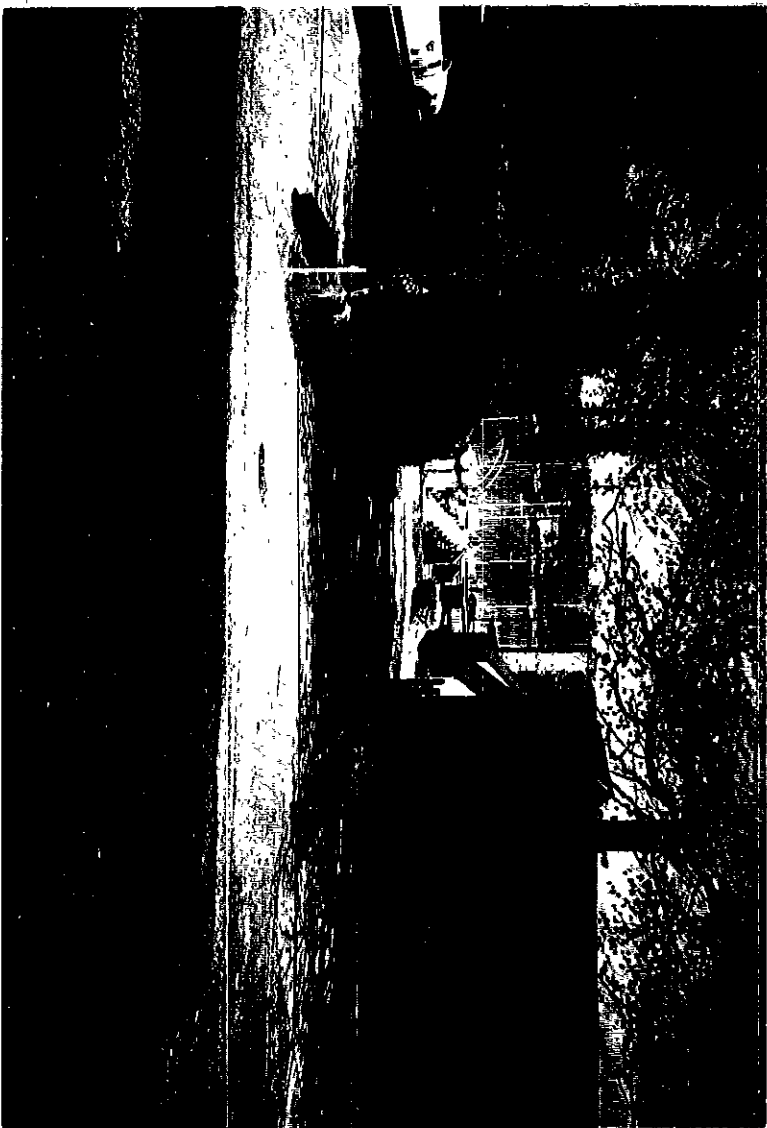
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7R



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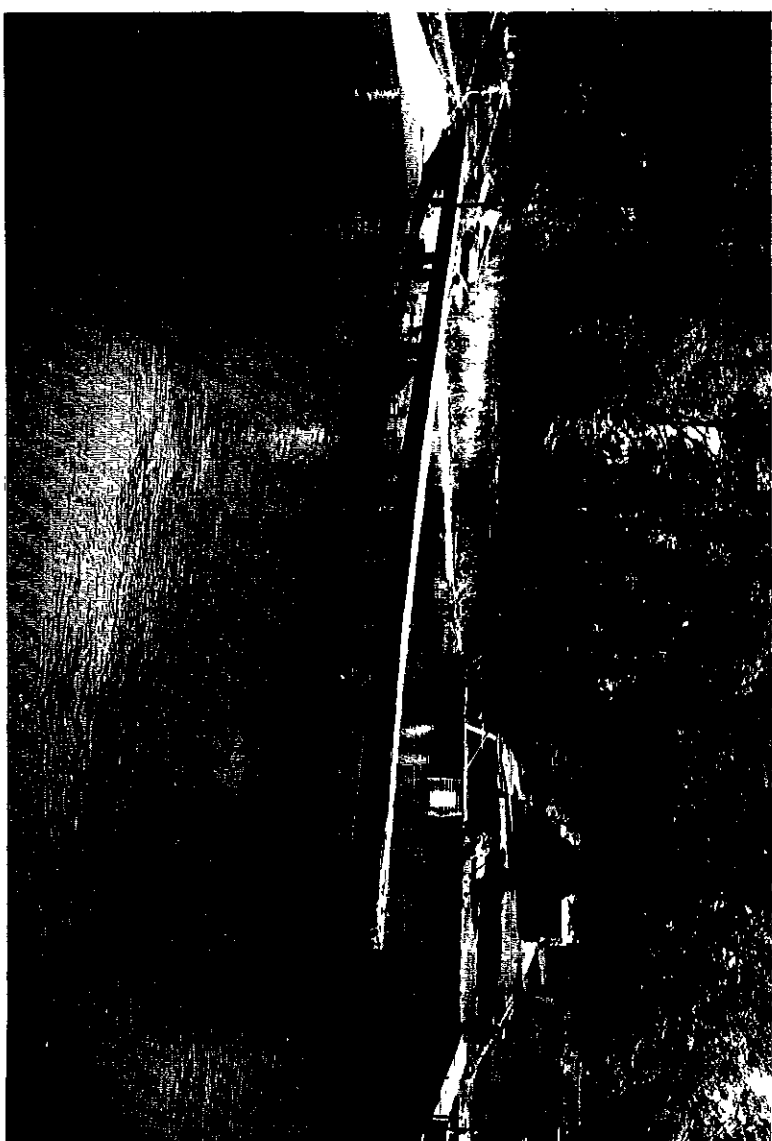
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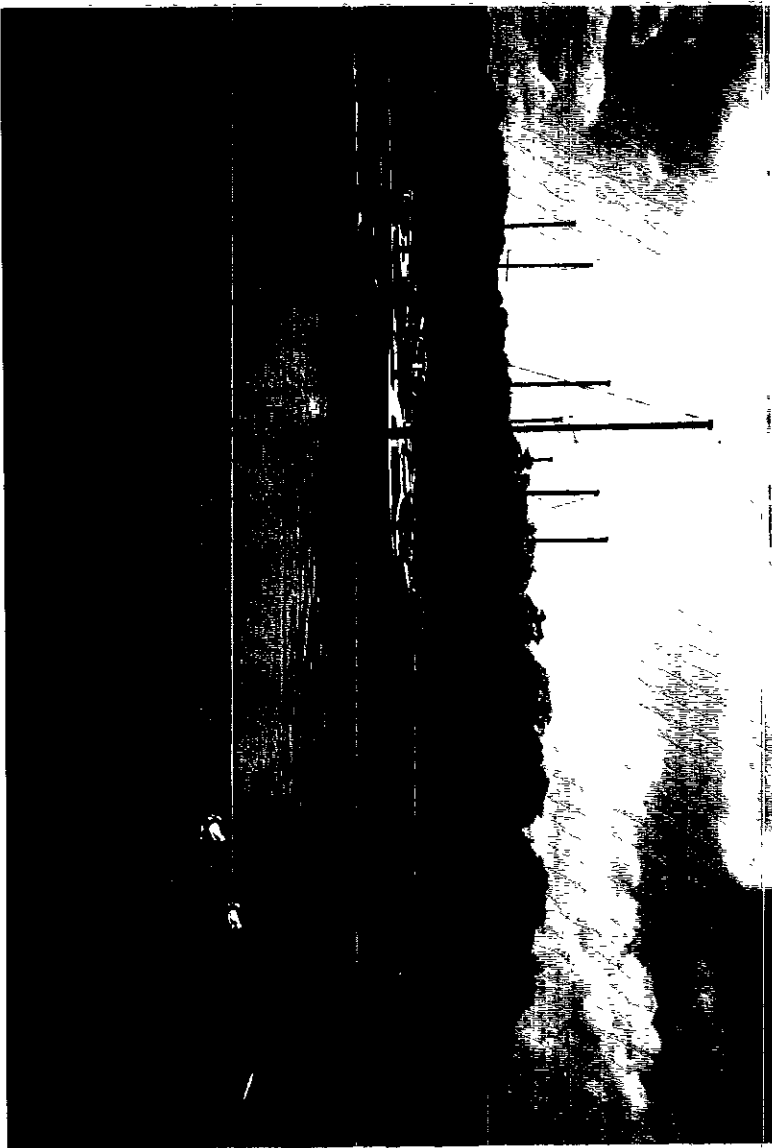
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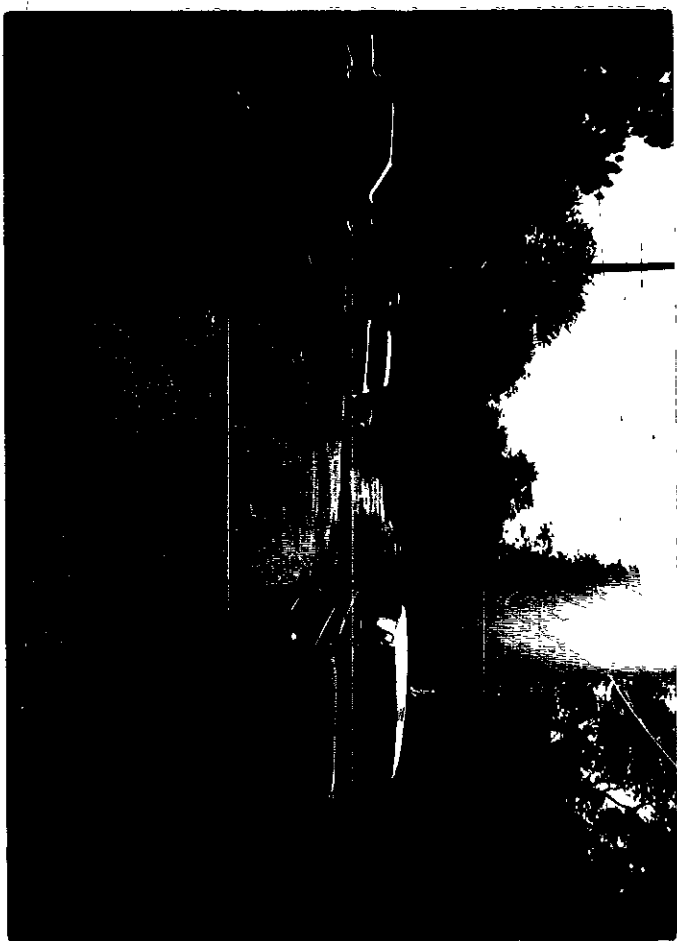
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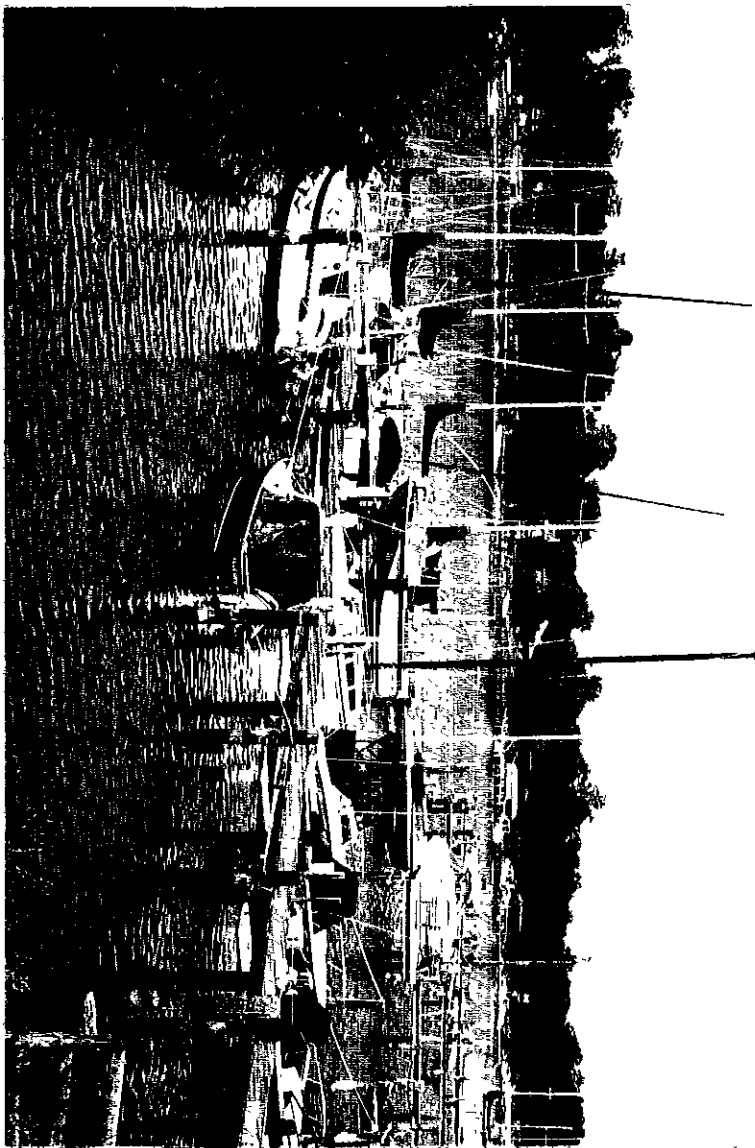
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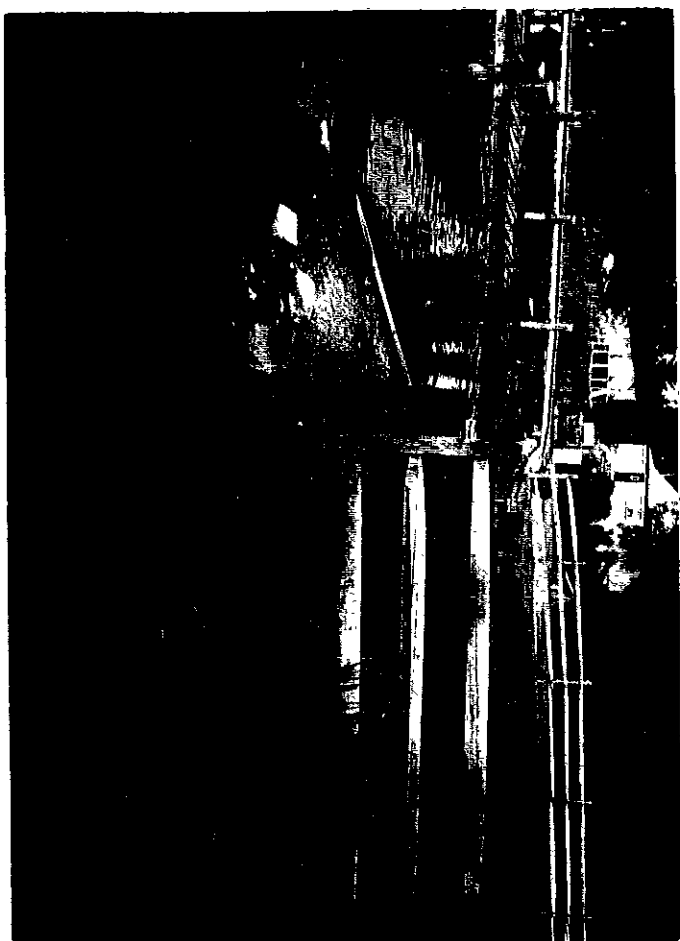
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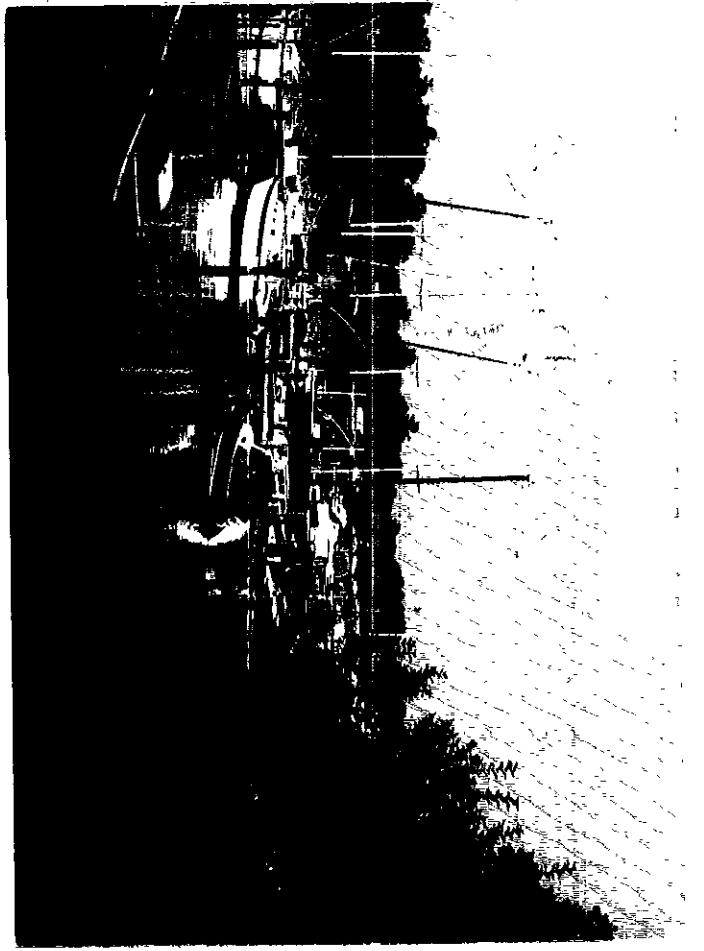
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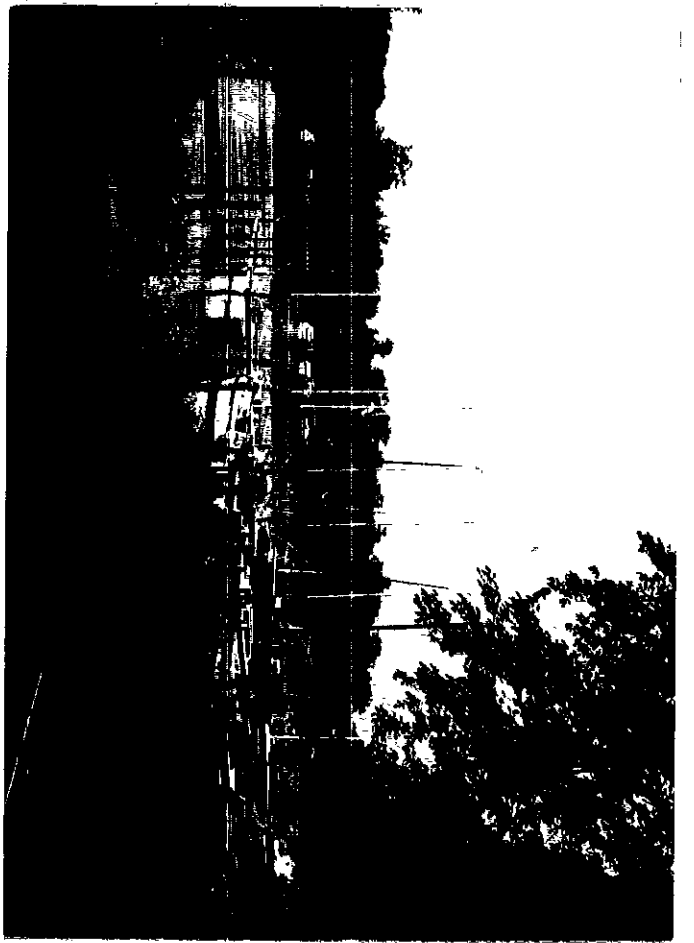
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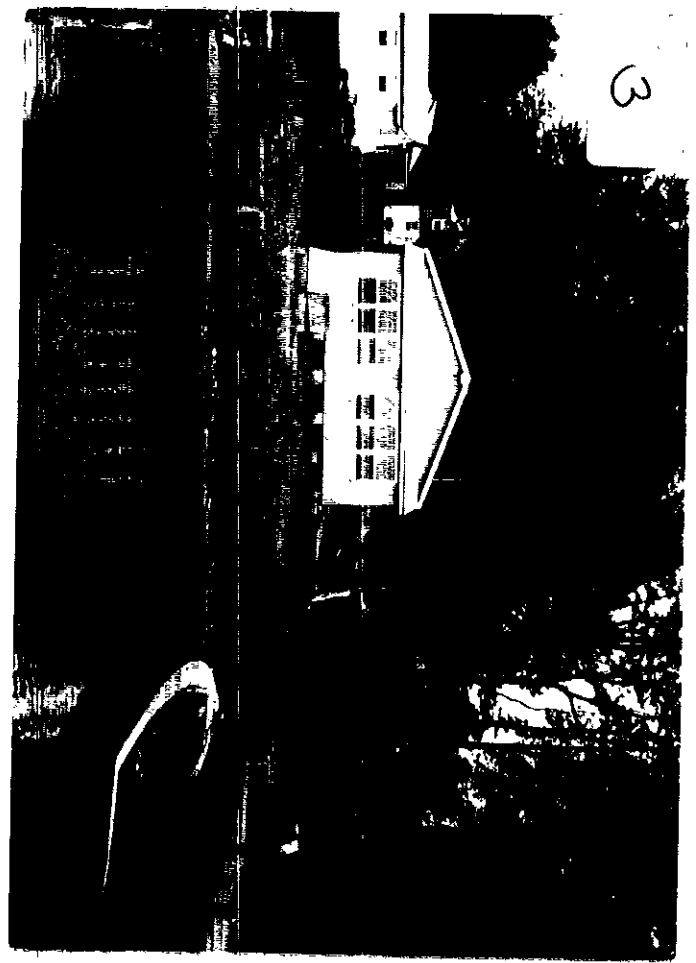
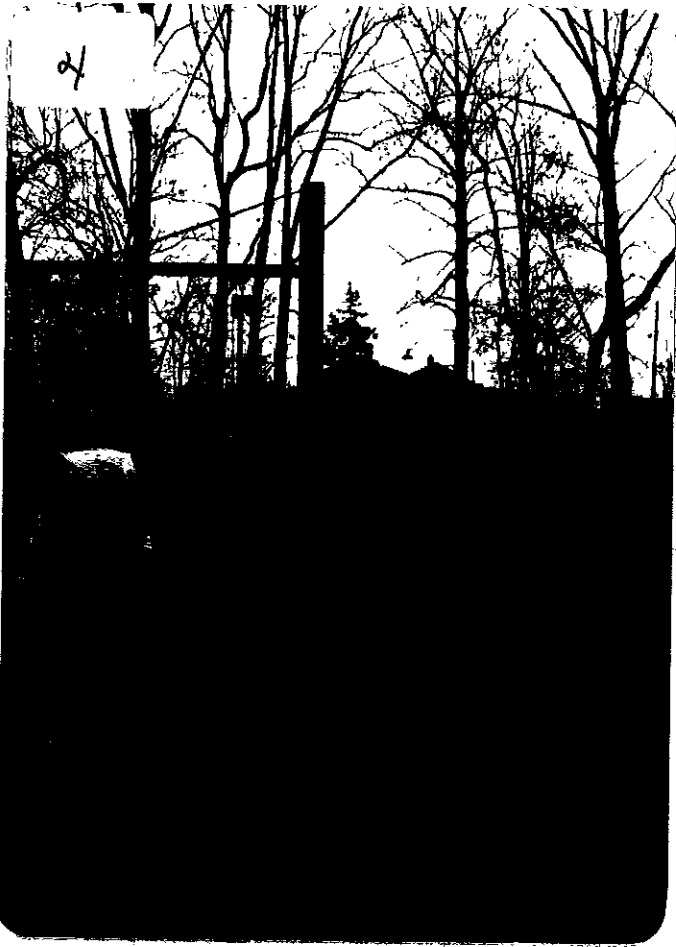
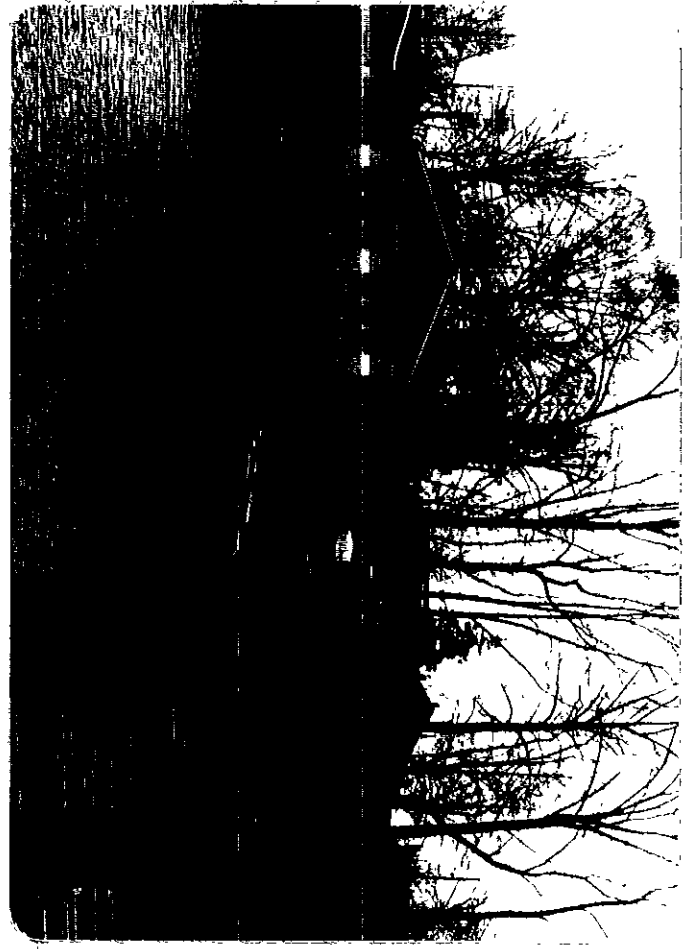
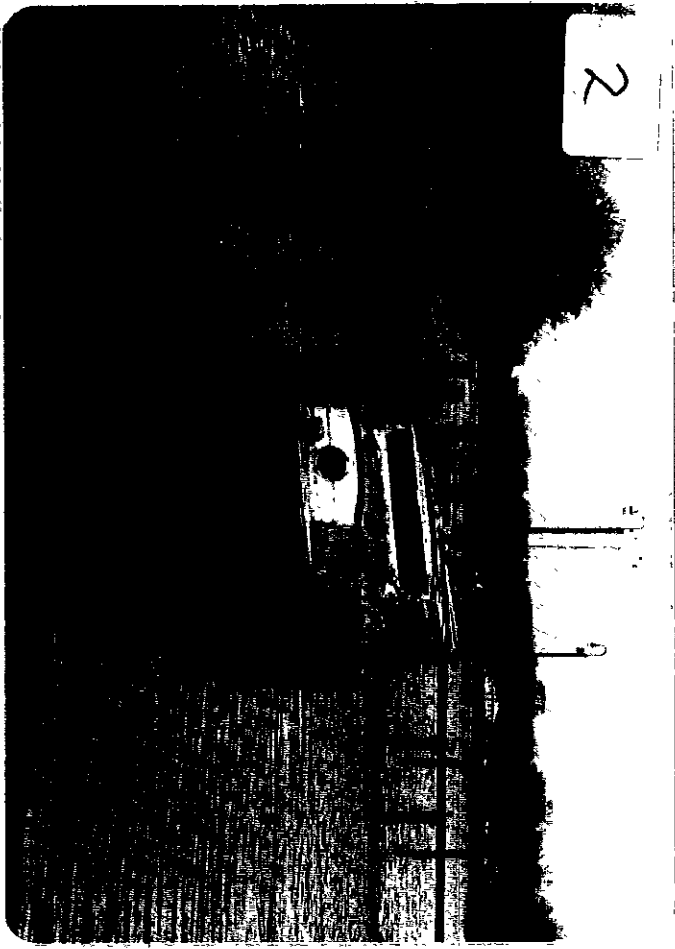
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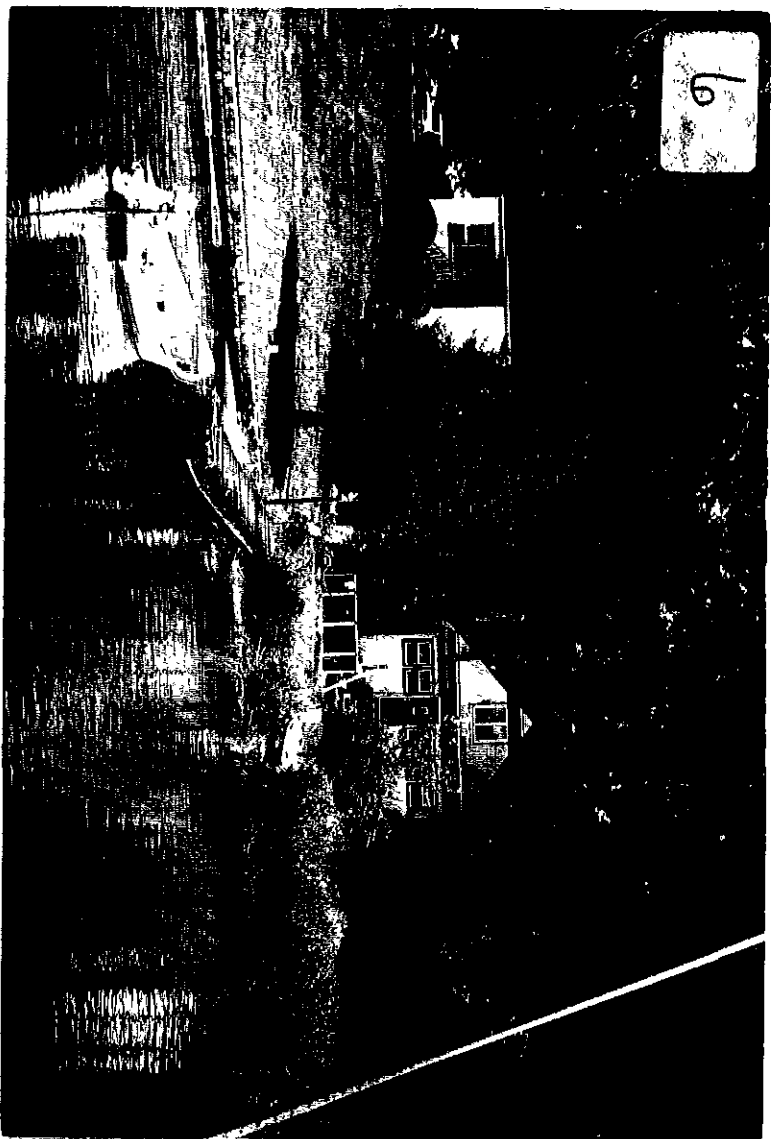
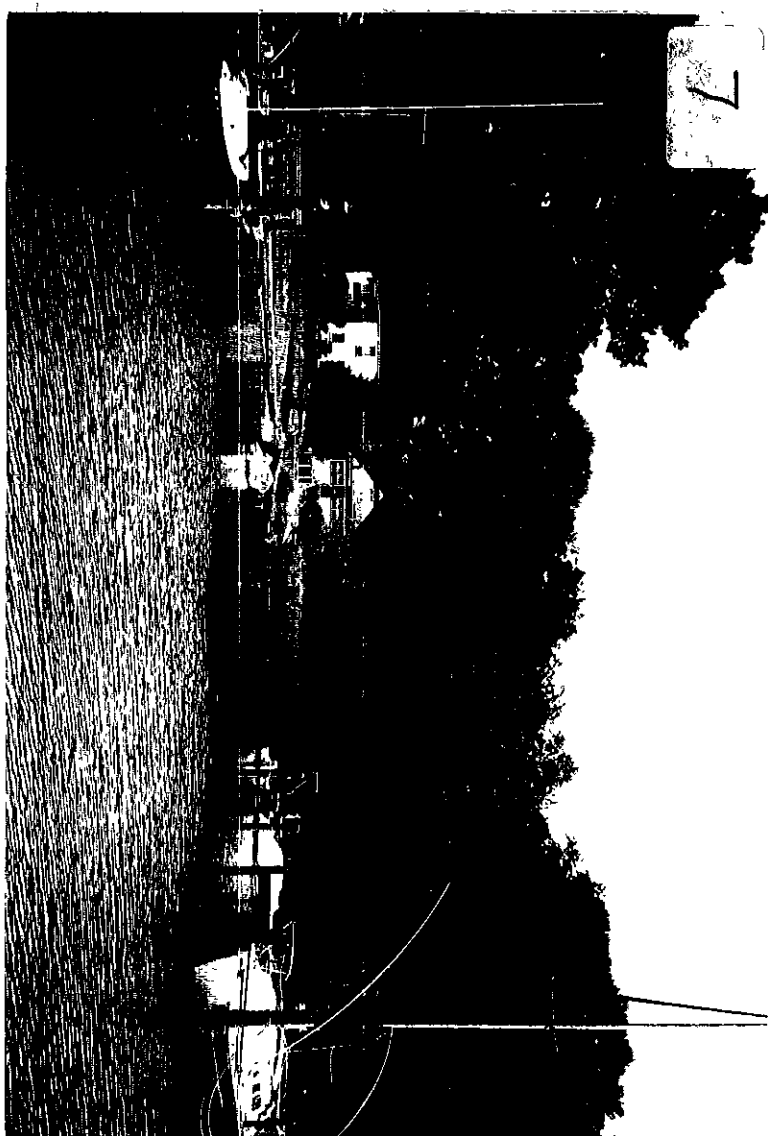


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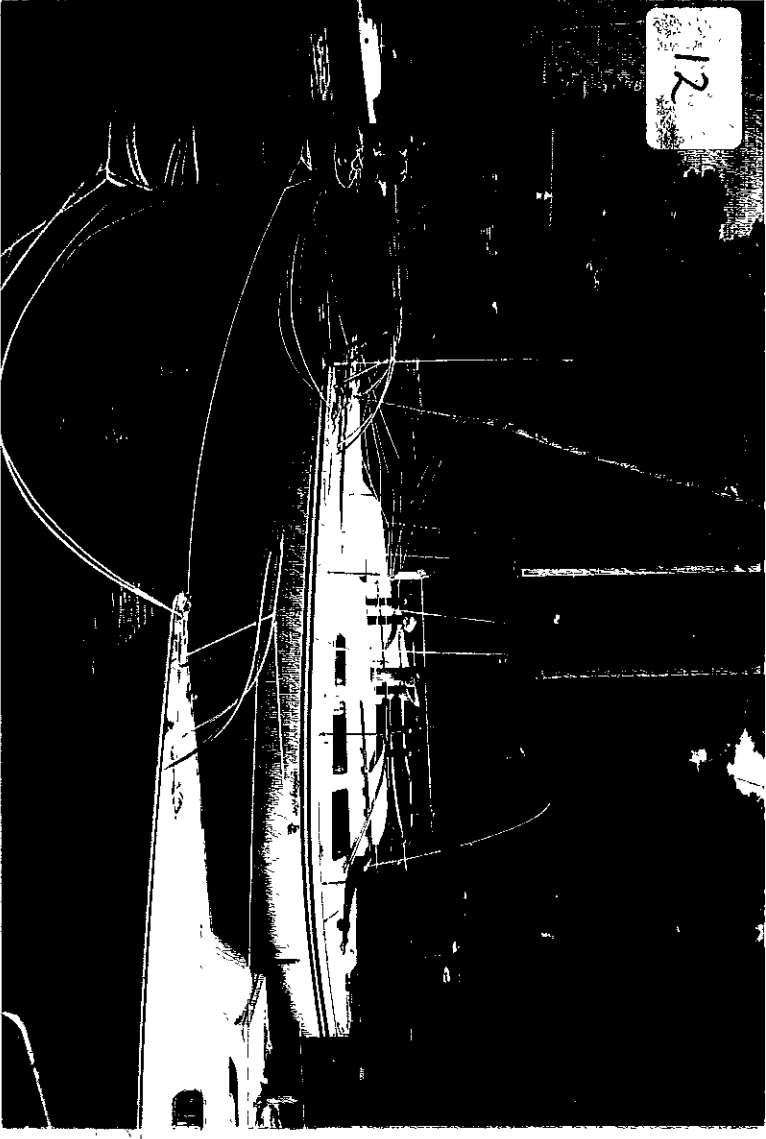
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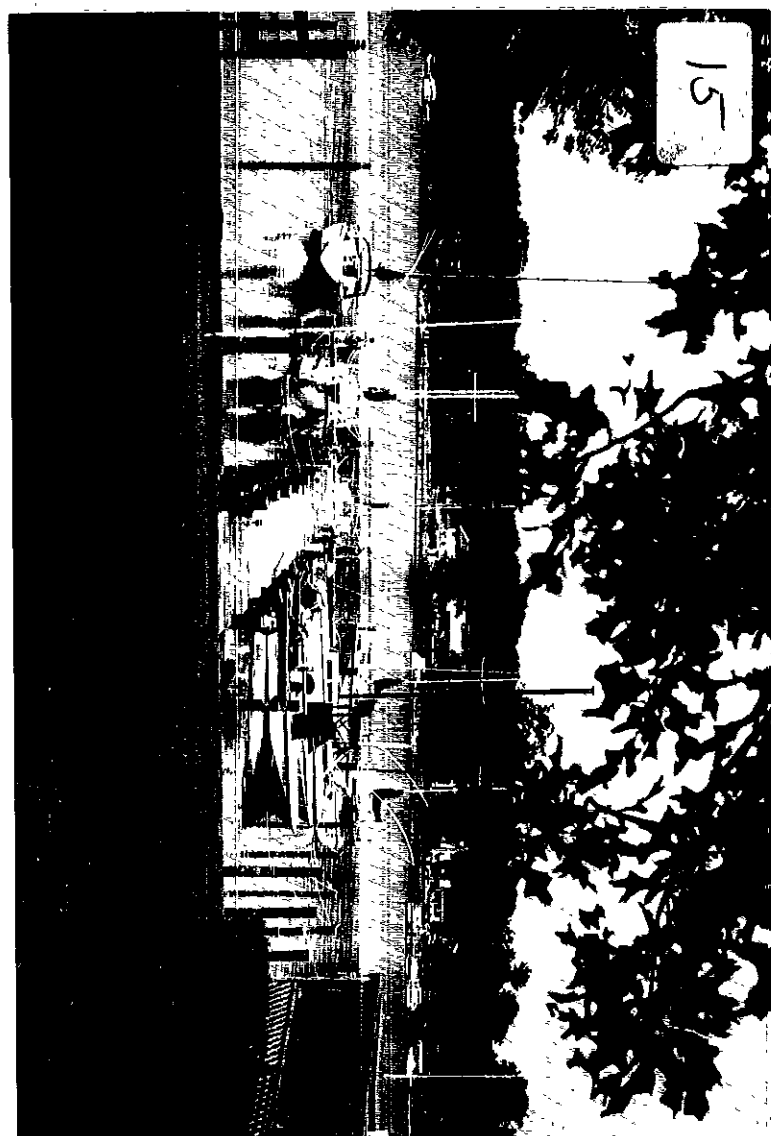
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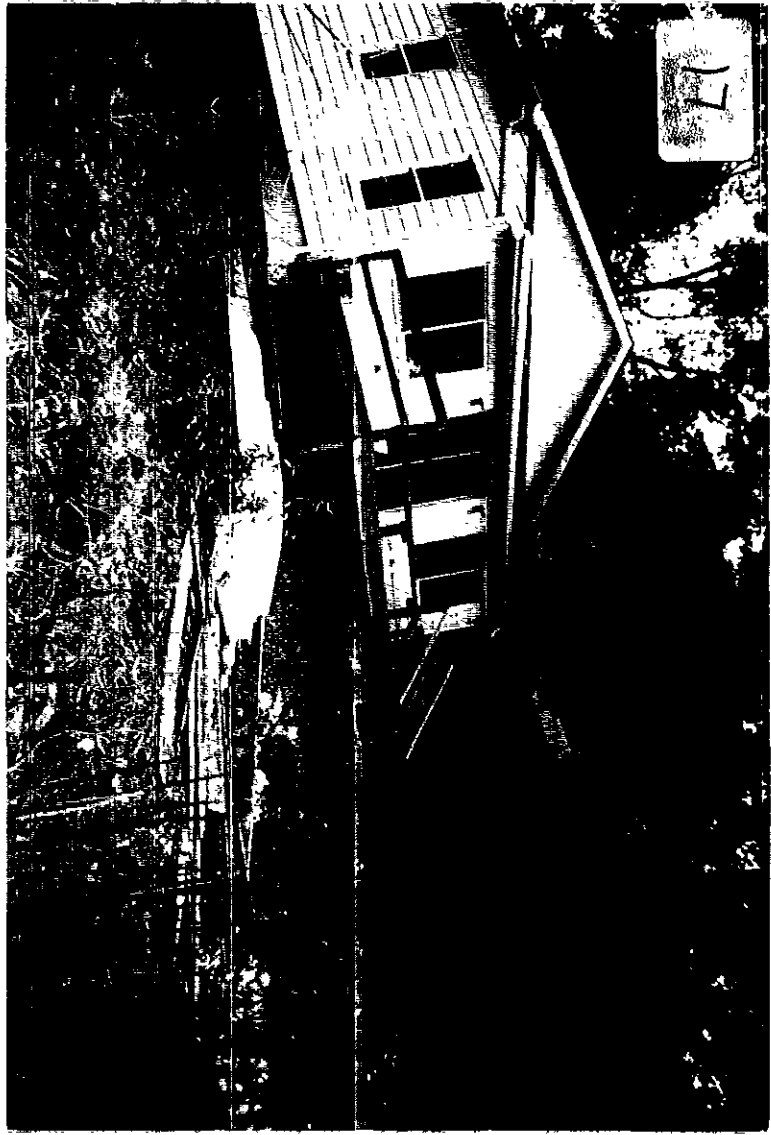
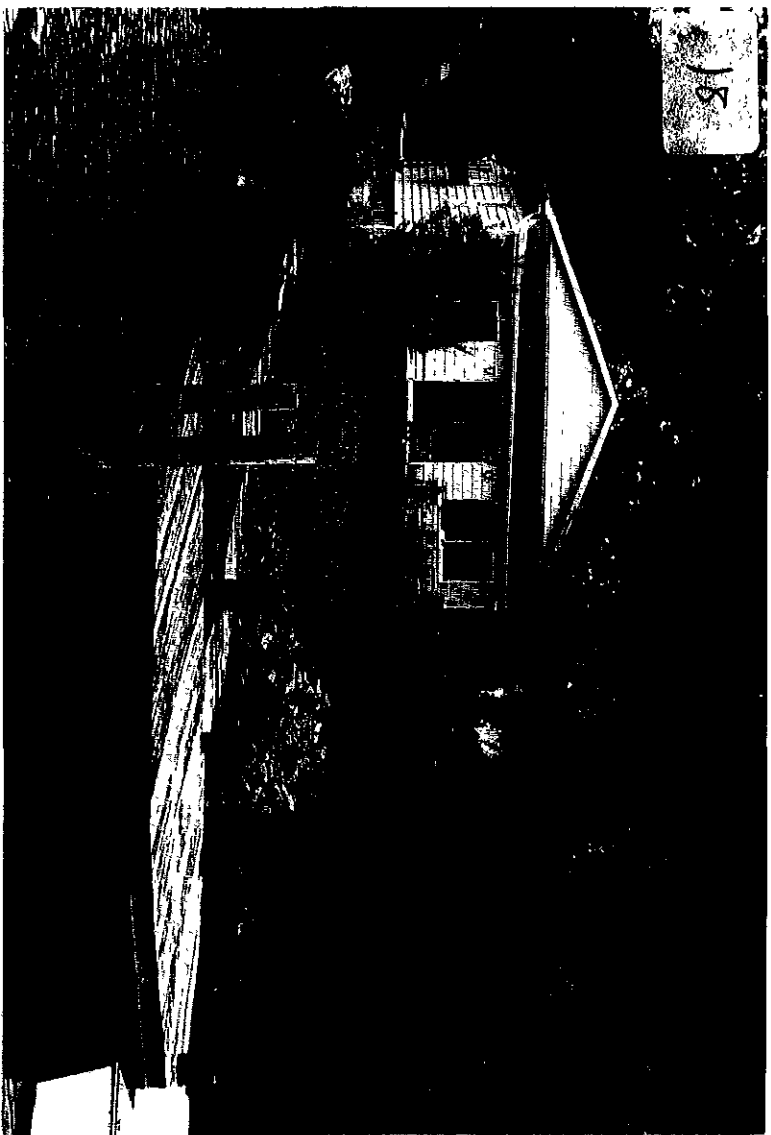


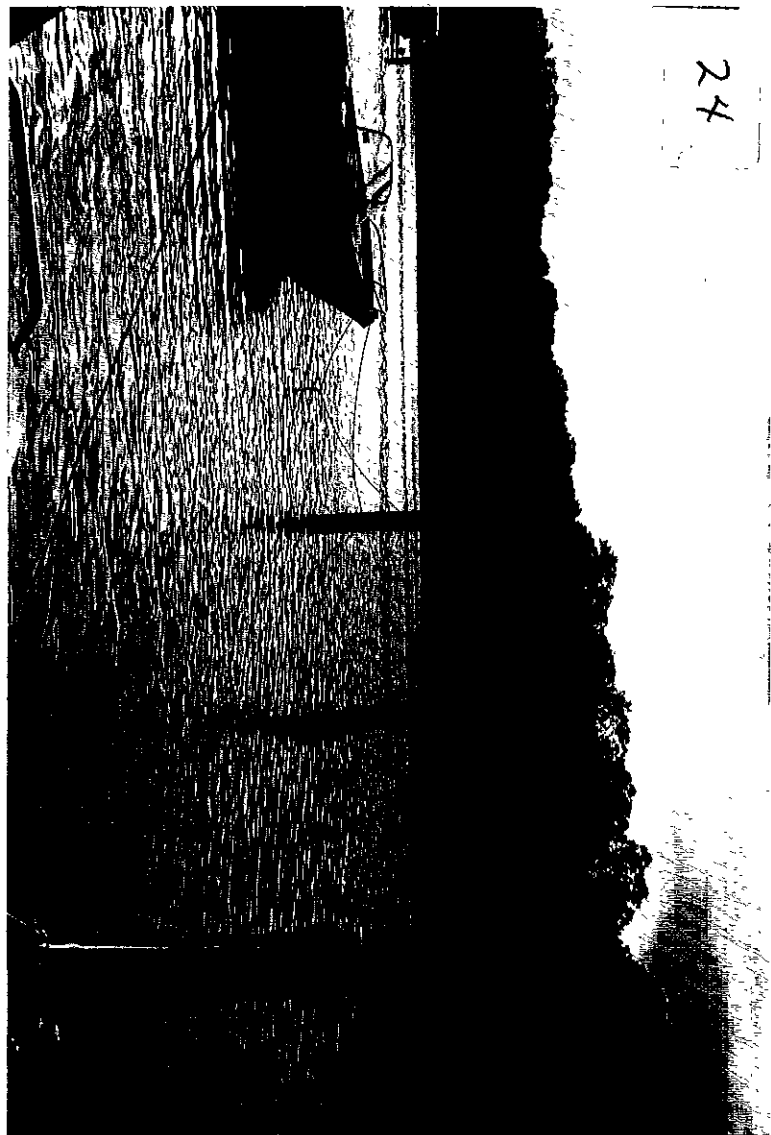
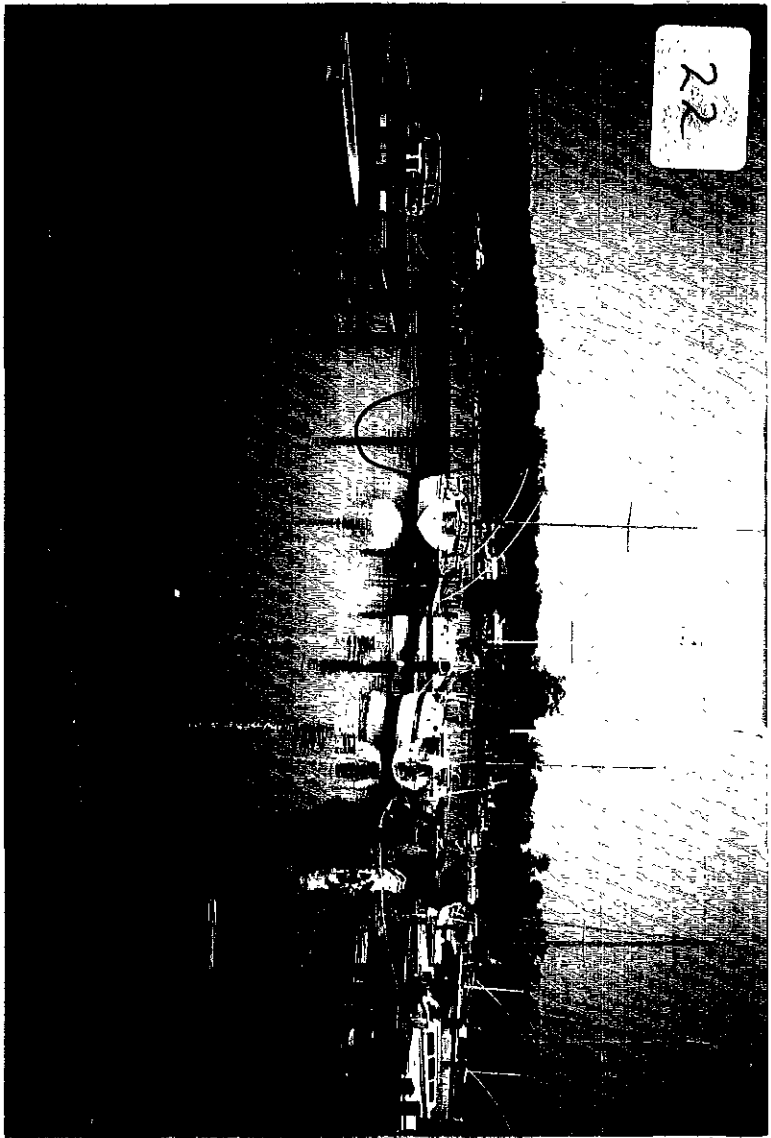
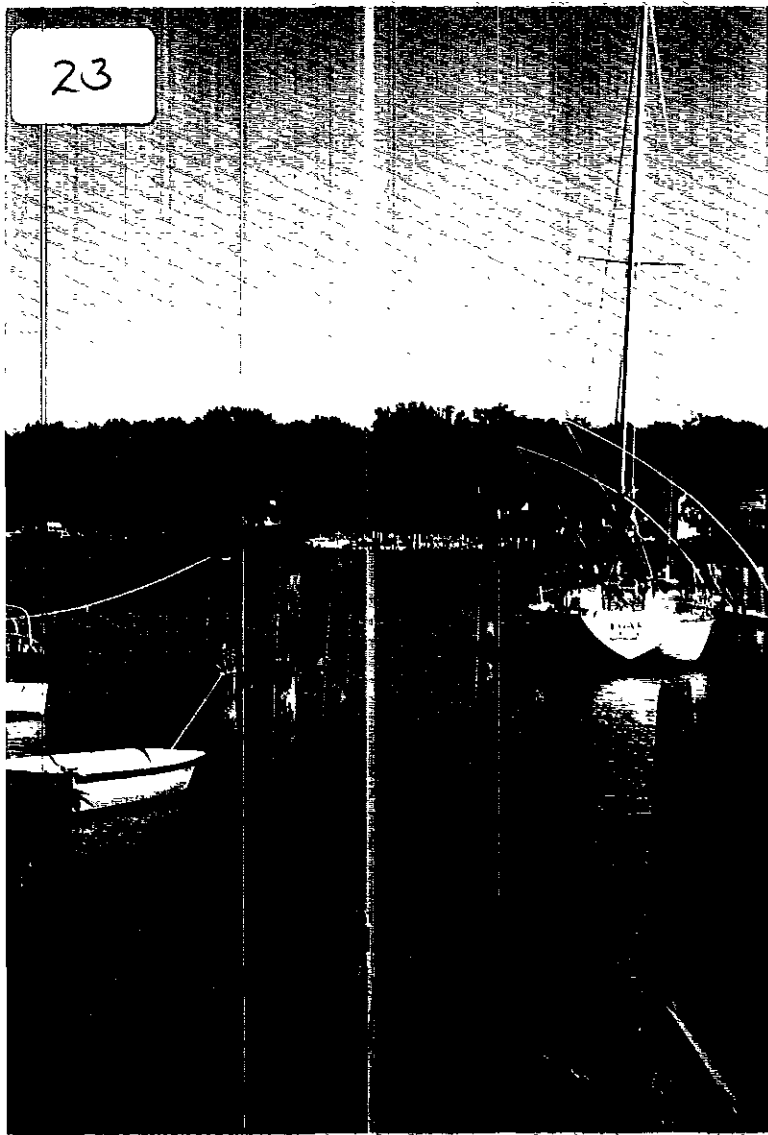
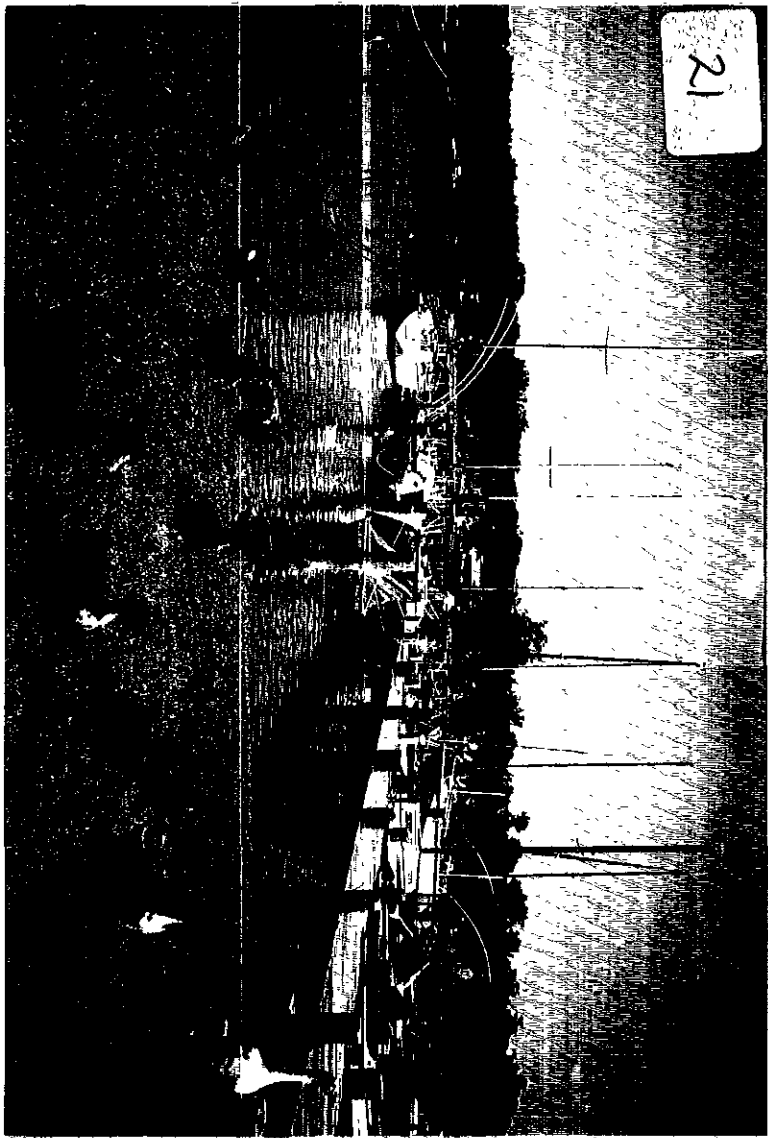
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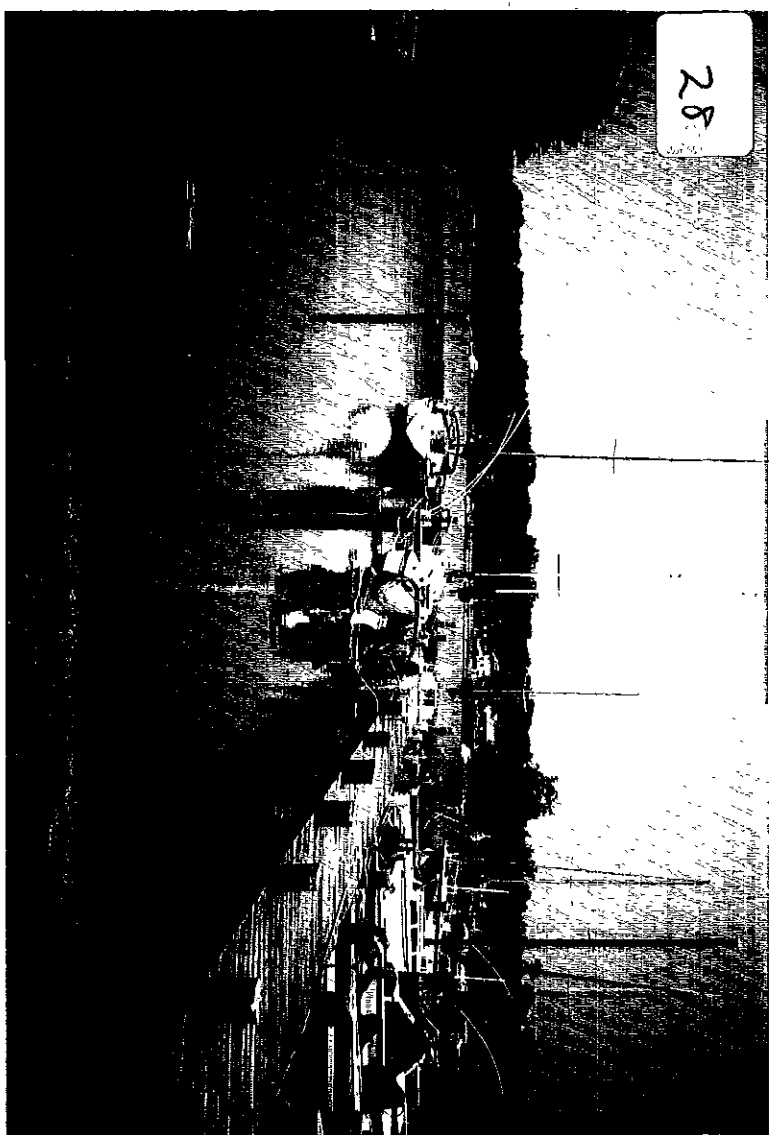
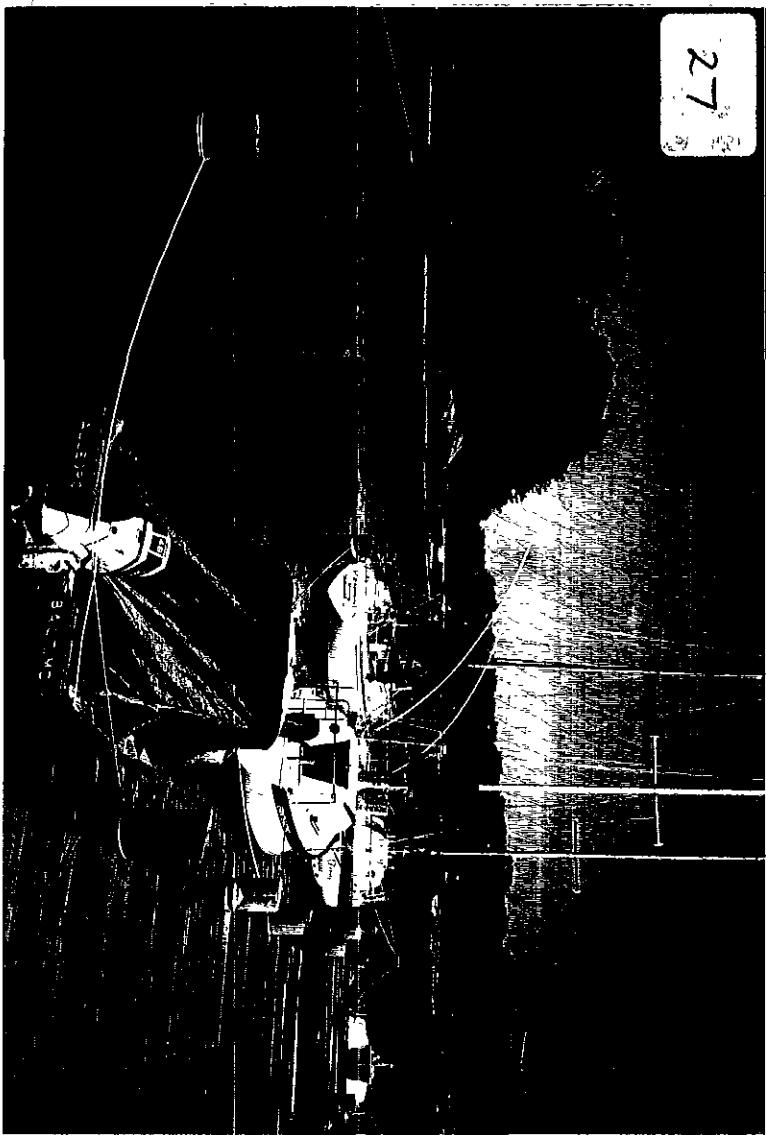
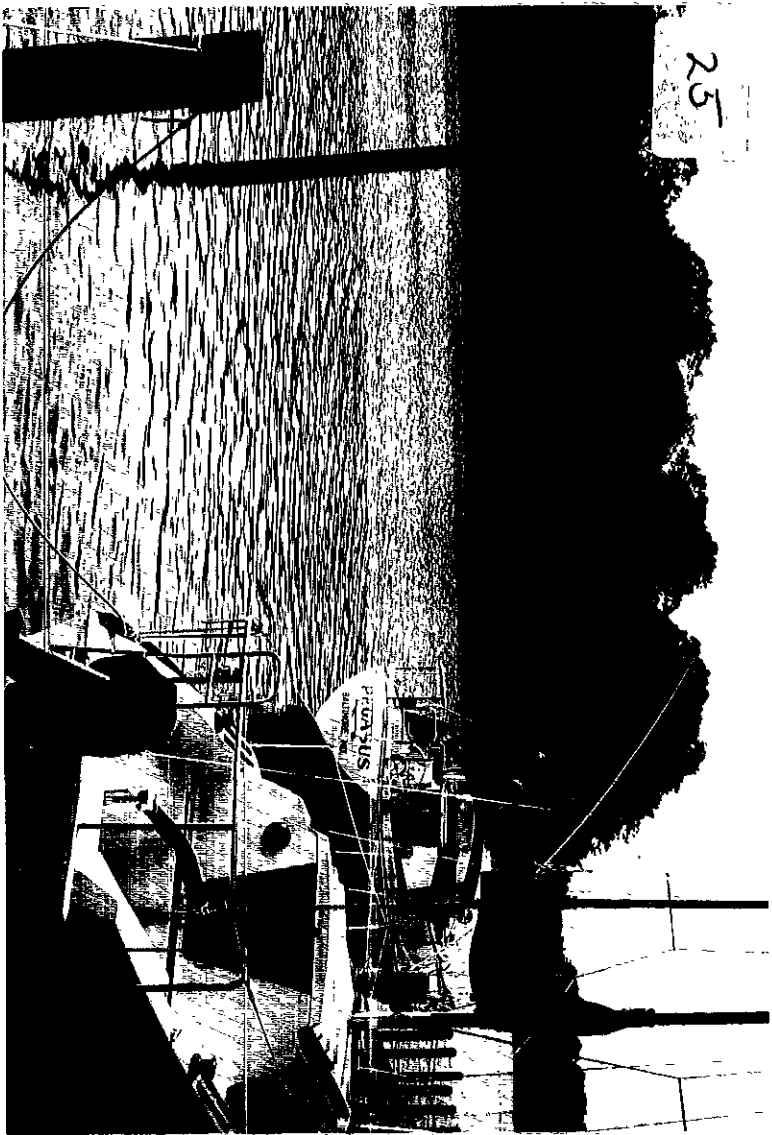


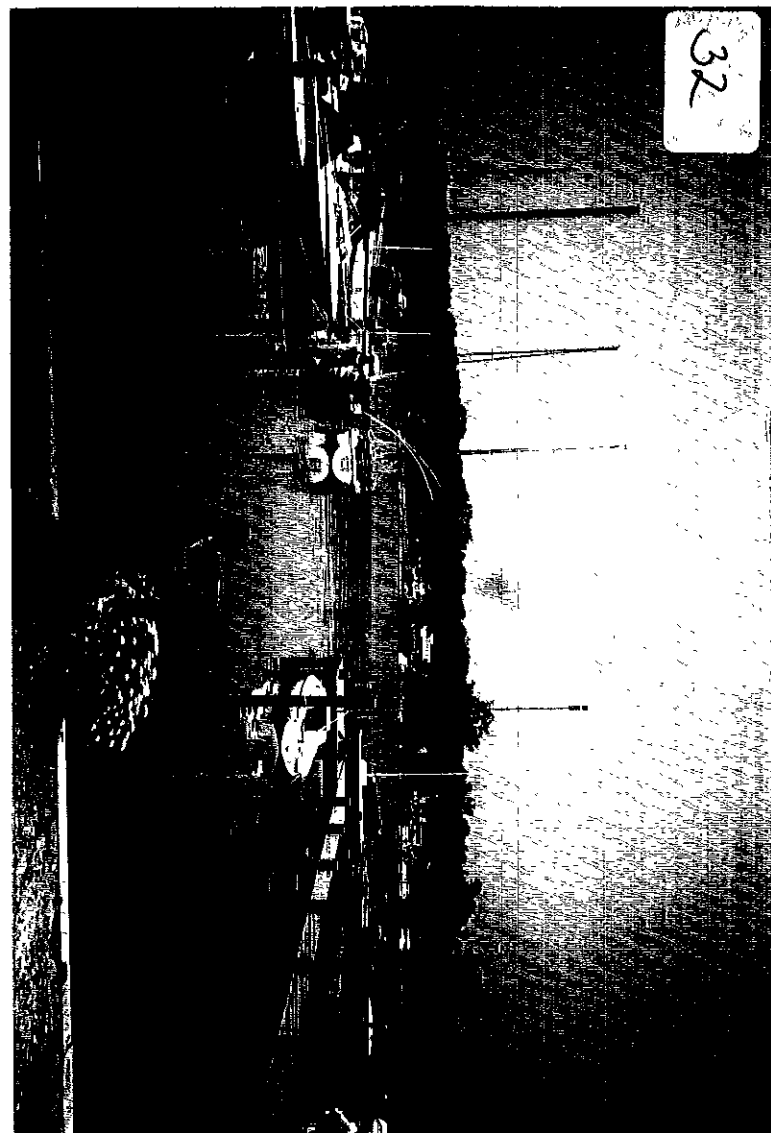
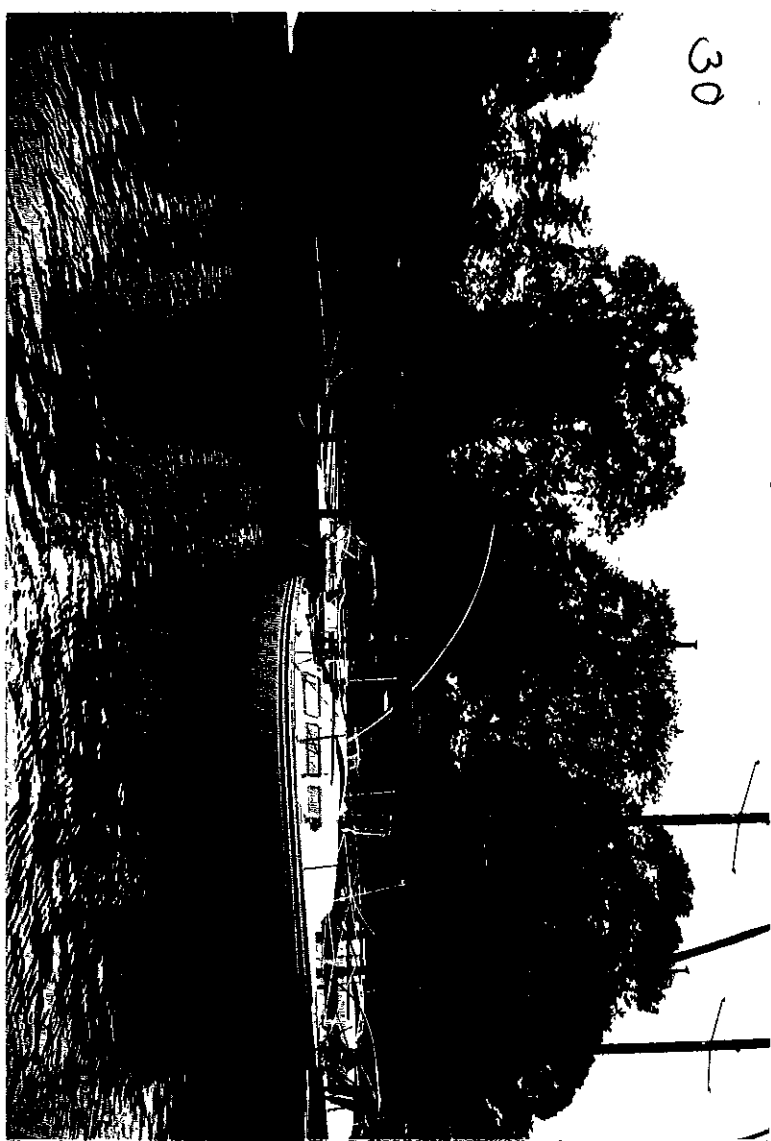
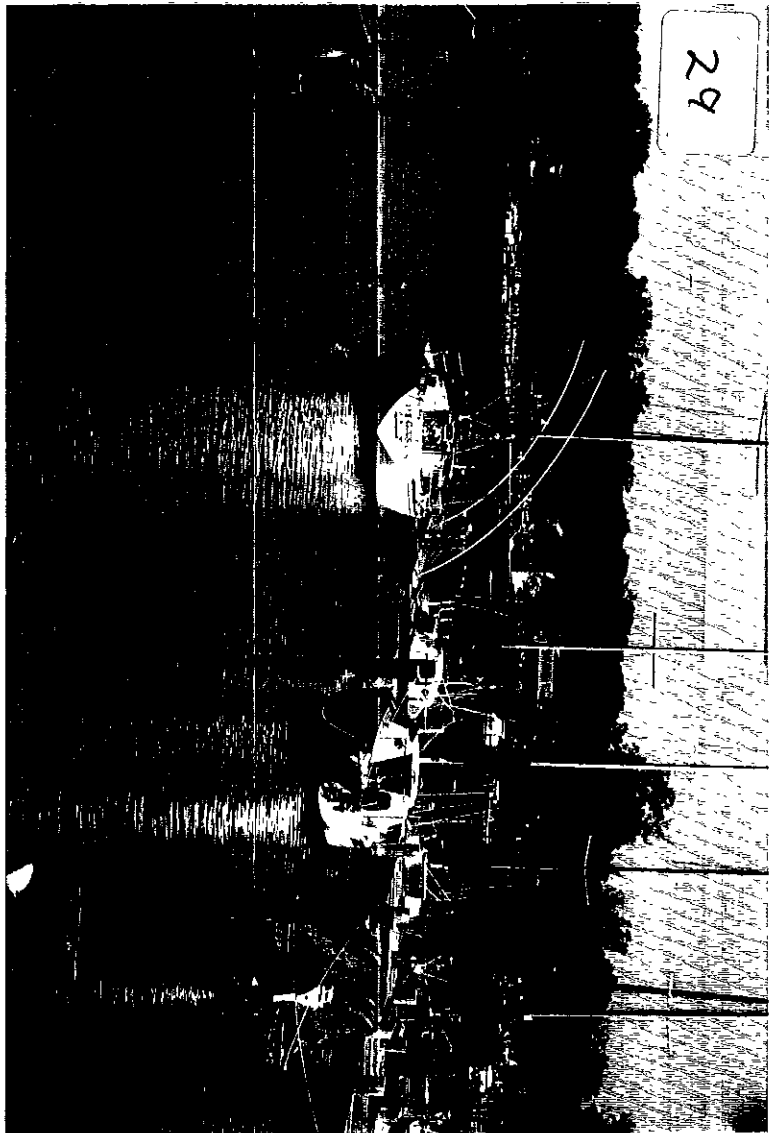
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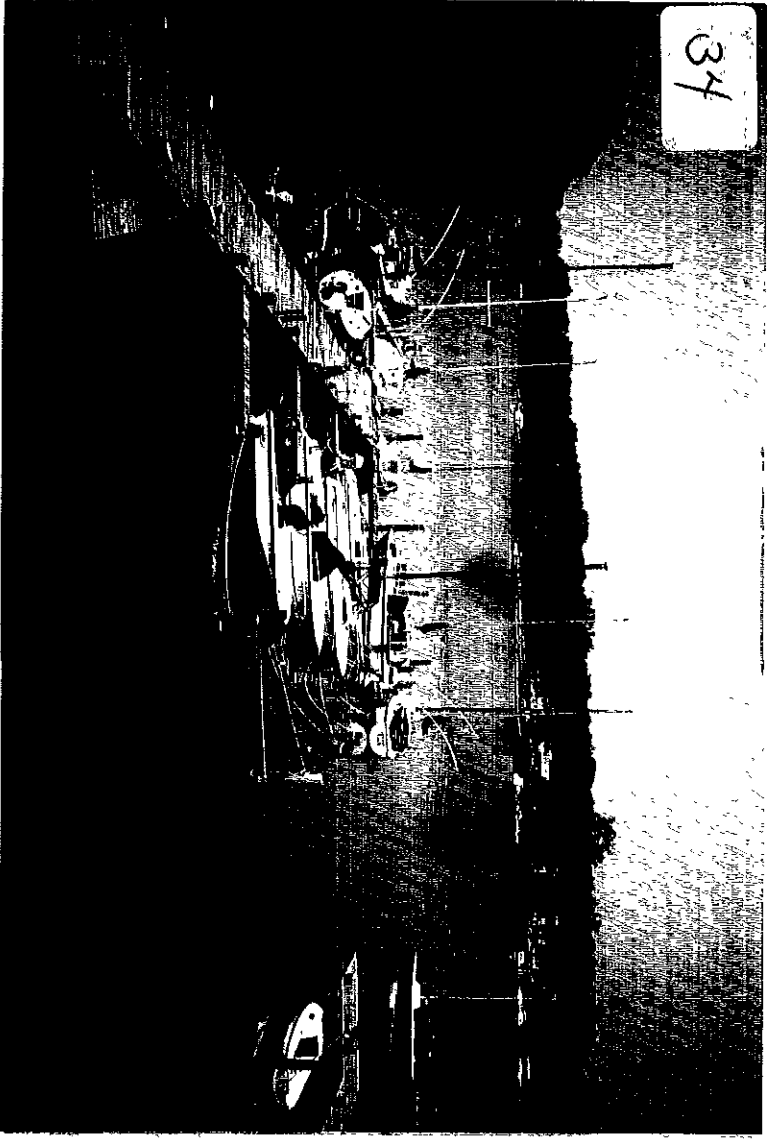
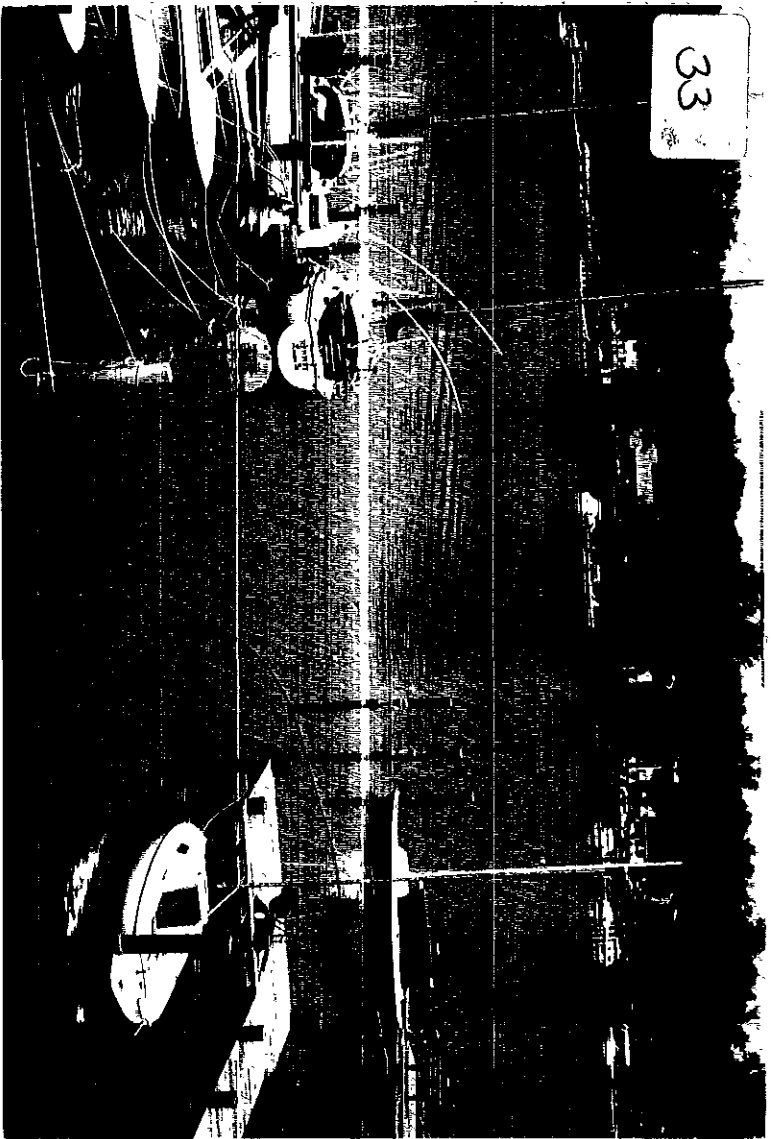


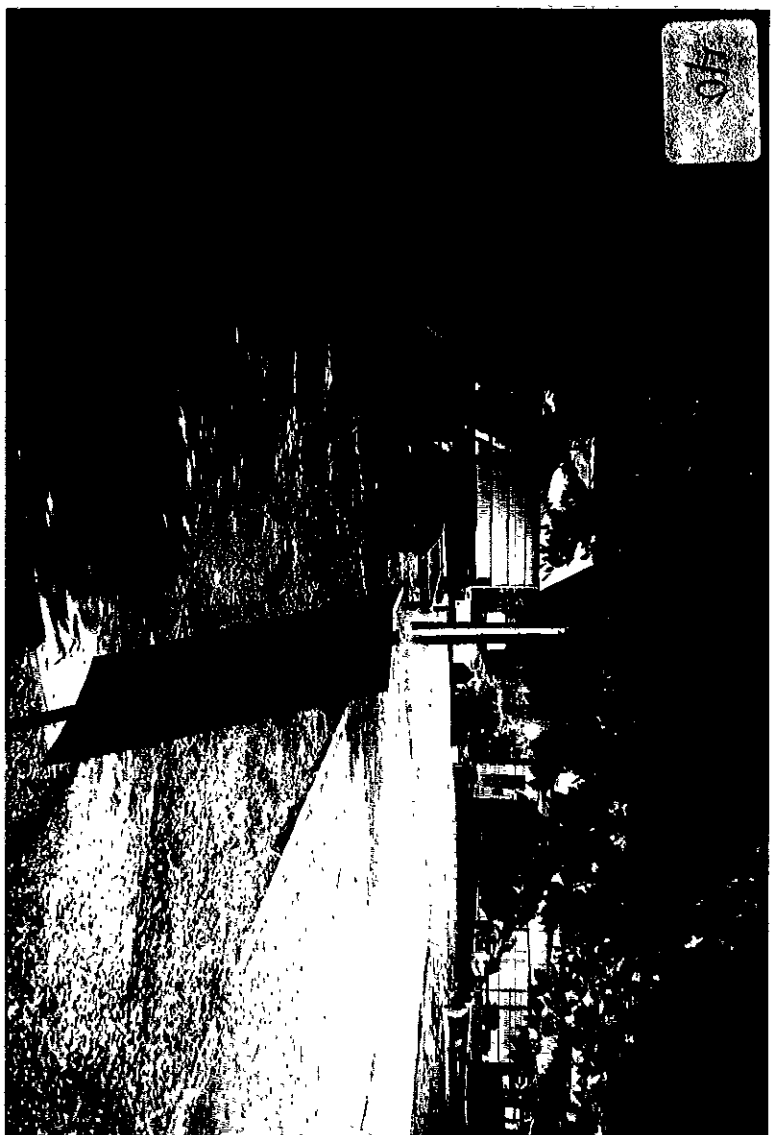
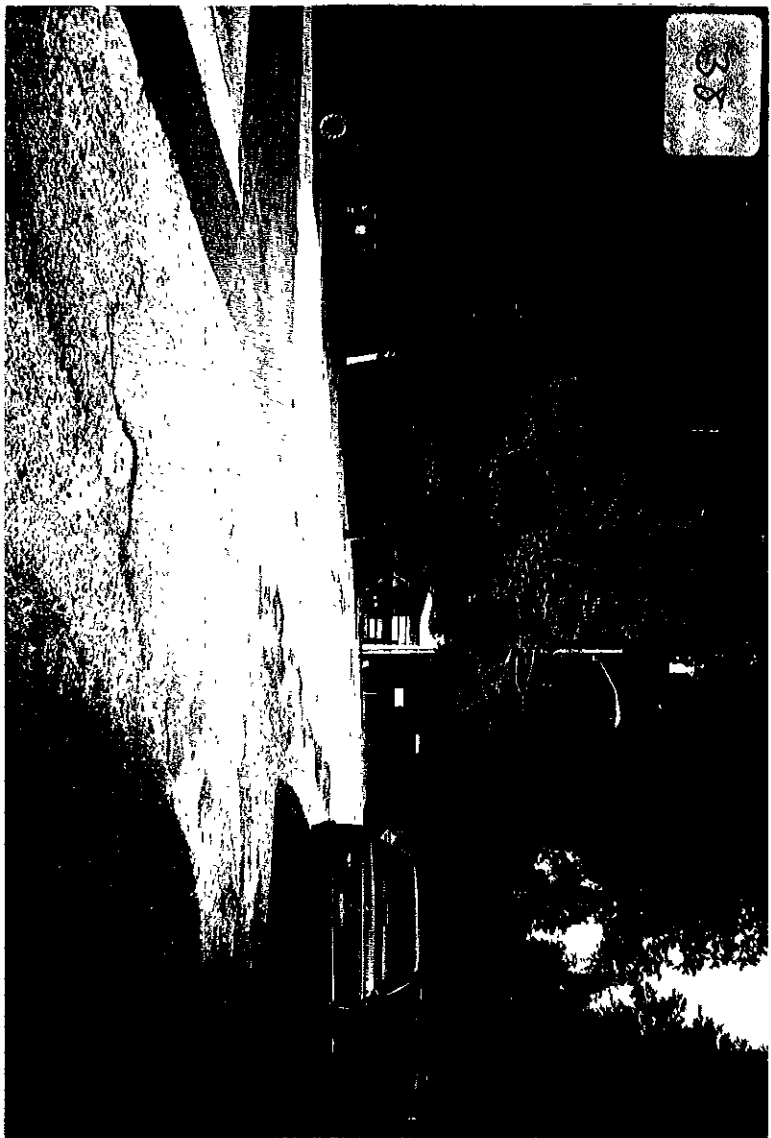


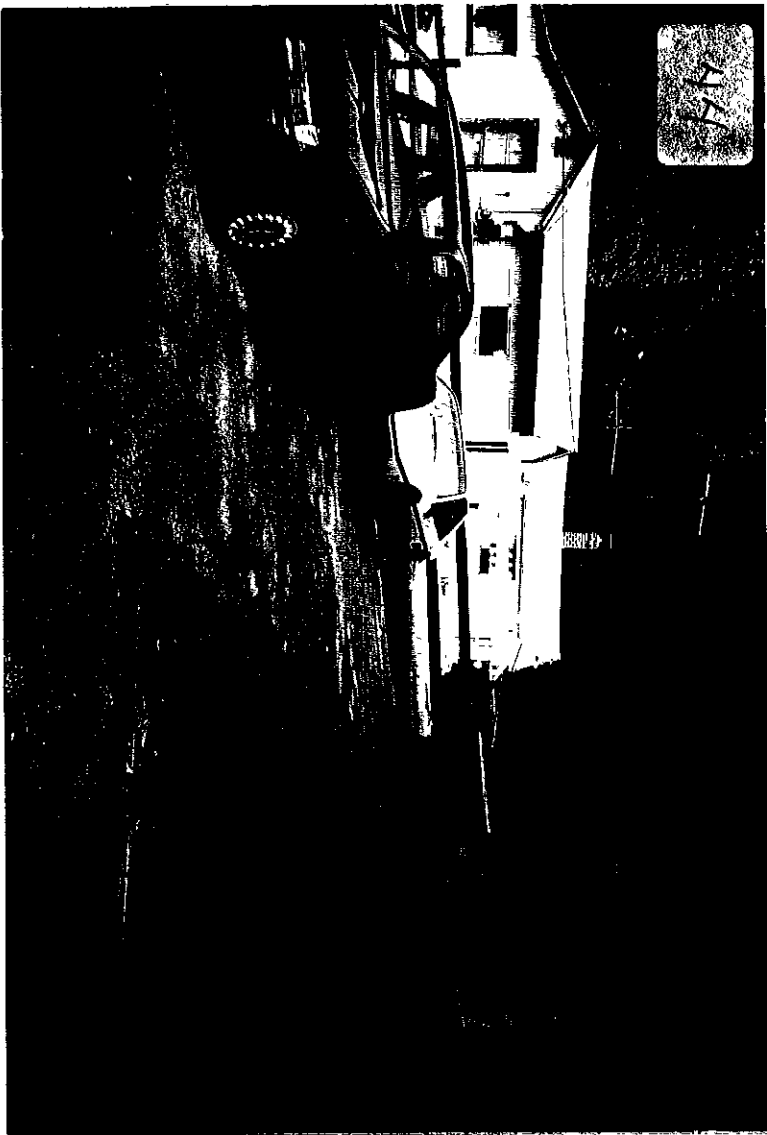
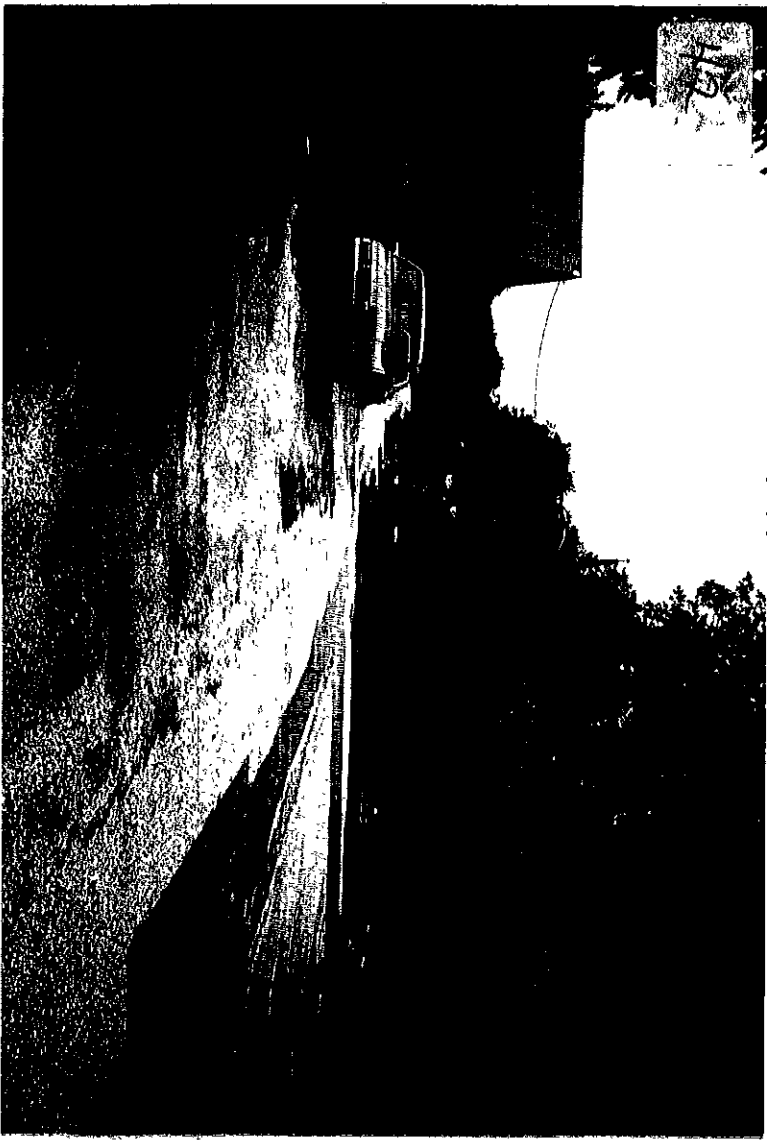
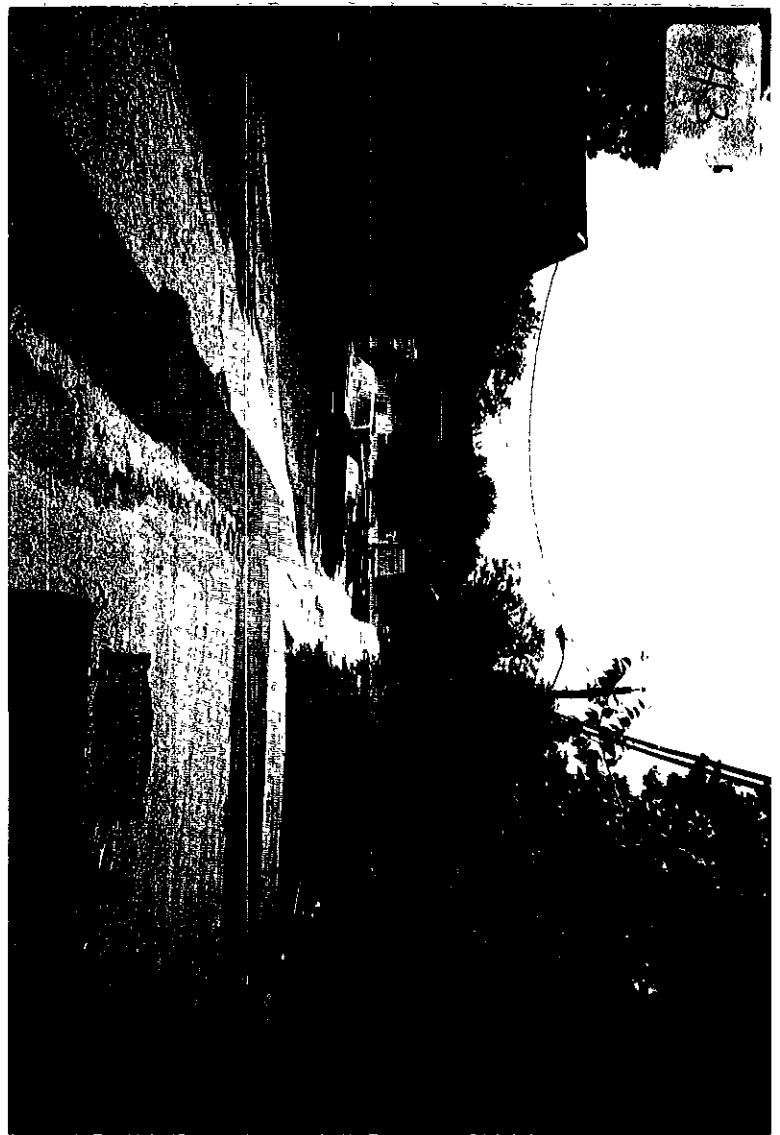


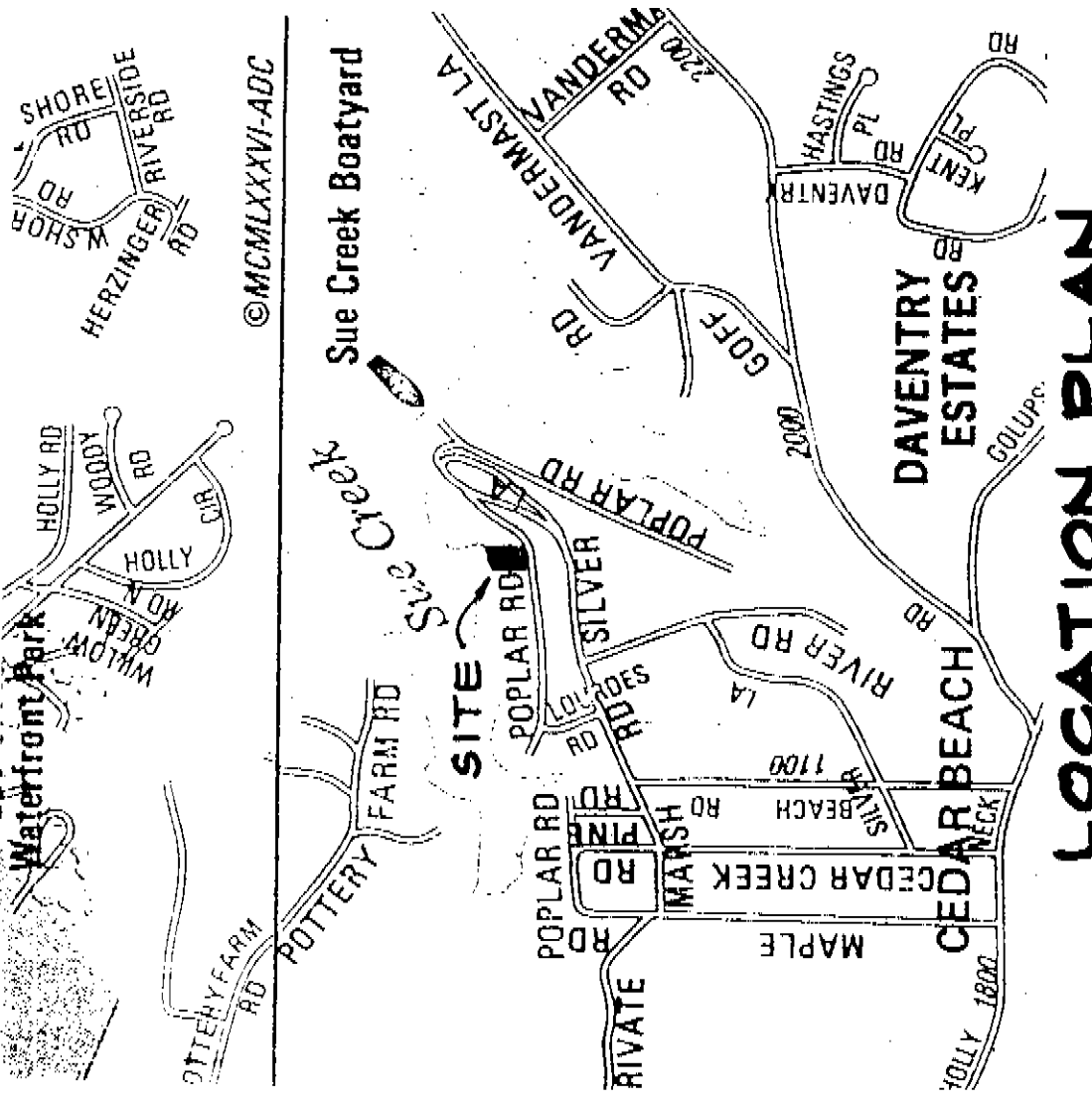












- Scale 1"=100'
- GENERAL NOTES:
1. PROPERTY ZONED RC-5
 2. ELECTION DISTRICT 5
 3. ZONING MAP OF 2-1
 4. LOT SIZE - 0.42 ACRES OR 36,887 S.F.
 5. PRIOR ZONING HEARINGS:
CASE 92-115-A, NITHAM 4/27/92
CASE 74-5-A, BOARD OF APPEALS LIMIT TO APPROXIMATELY 6 SLIPS
 6. PARKING DATA:
DECK YARD - 12 SLIPS
10 SPACES PER 2 SLIPS - 6 SPACES
PARKING REQUIRED - 6 SPACES
PARKING SPACES - 6 SPACES
PAVING TYPE - INTERLOCKING CONCRETE SURFACE
PAVING REFERENCE - 13352/0714
 7. FLOOR AREA RATIO CALCULATION - NOT REQUIRED
 8. ANXIETY OPEN SPACE - NOT REQUIRED
 9. PUBLIC WATER, PRIVATE SEWER
 10. SPECIAL EXCEPTION FOR A MARINA OF 12 SLIPS (SEE PETITION FOR SPECIAL EXCEPTION)

APPROVALS

This plan is being submitted for the hearing of the Board of Appeals

P Ltd.
Patton Consultants, Ltd.
305 W. CHESAPEAKE AVE. SUITE 405
TOWSON, MARYLAND 21204
(410) 296-2119 FAX (410) 296-0419
SHE PLANNERS • ENGINEERS
LAND DEVELOPMENT CONSULTANTS

SCALE 1"=20'

PROJ. NO. 94019

SHEET NO. NORTH

PLAT TO ACCOMPANY PETITION FOR SPECIAL EXCEPTION AND SPECIAL EXCEPTION WILSON PROPERTY

REVISED

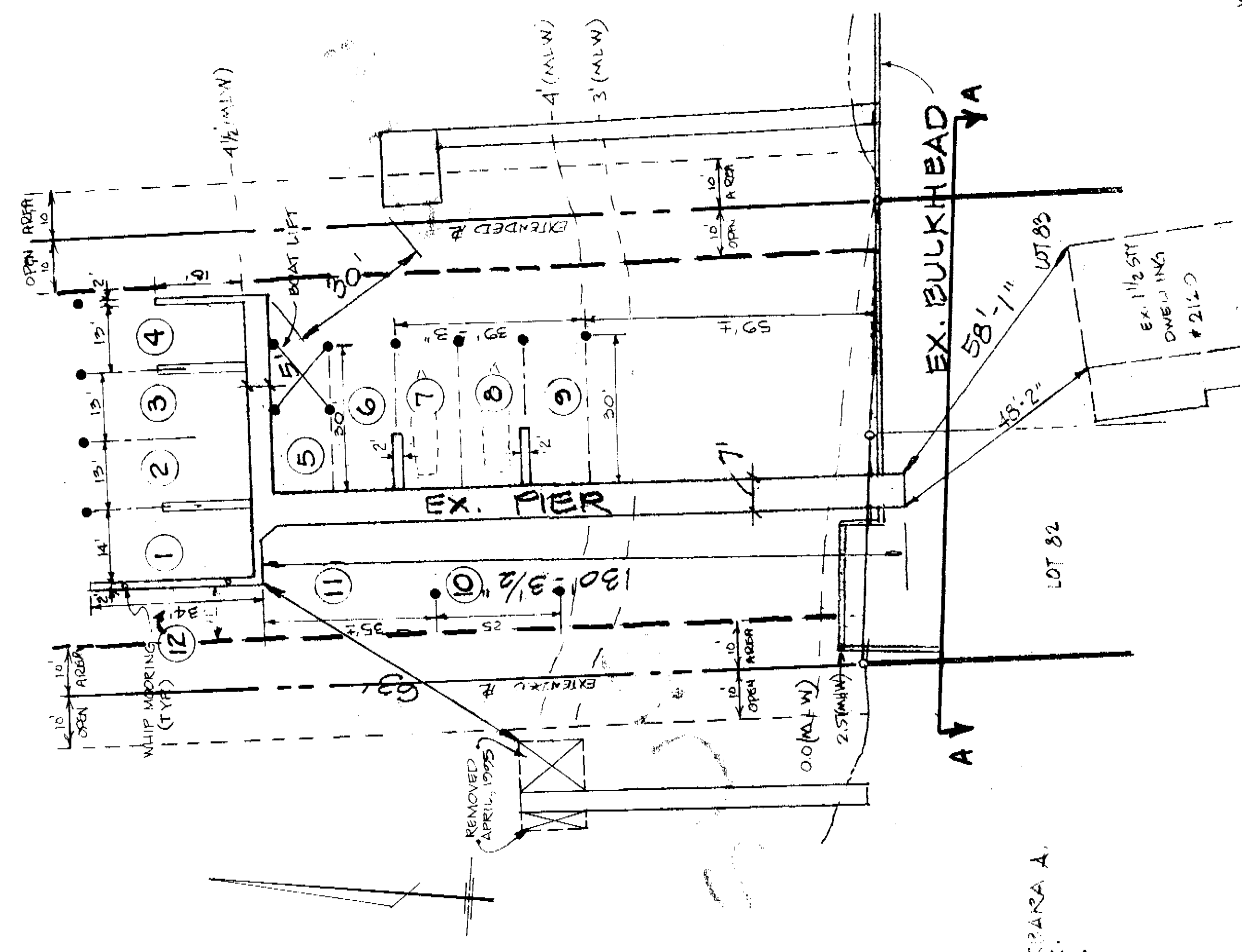
Pat 84#1

BAITMORE COUNTY, MD

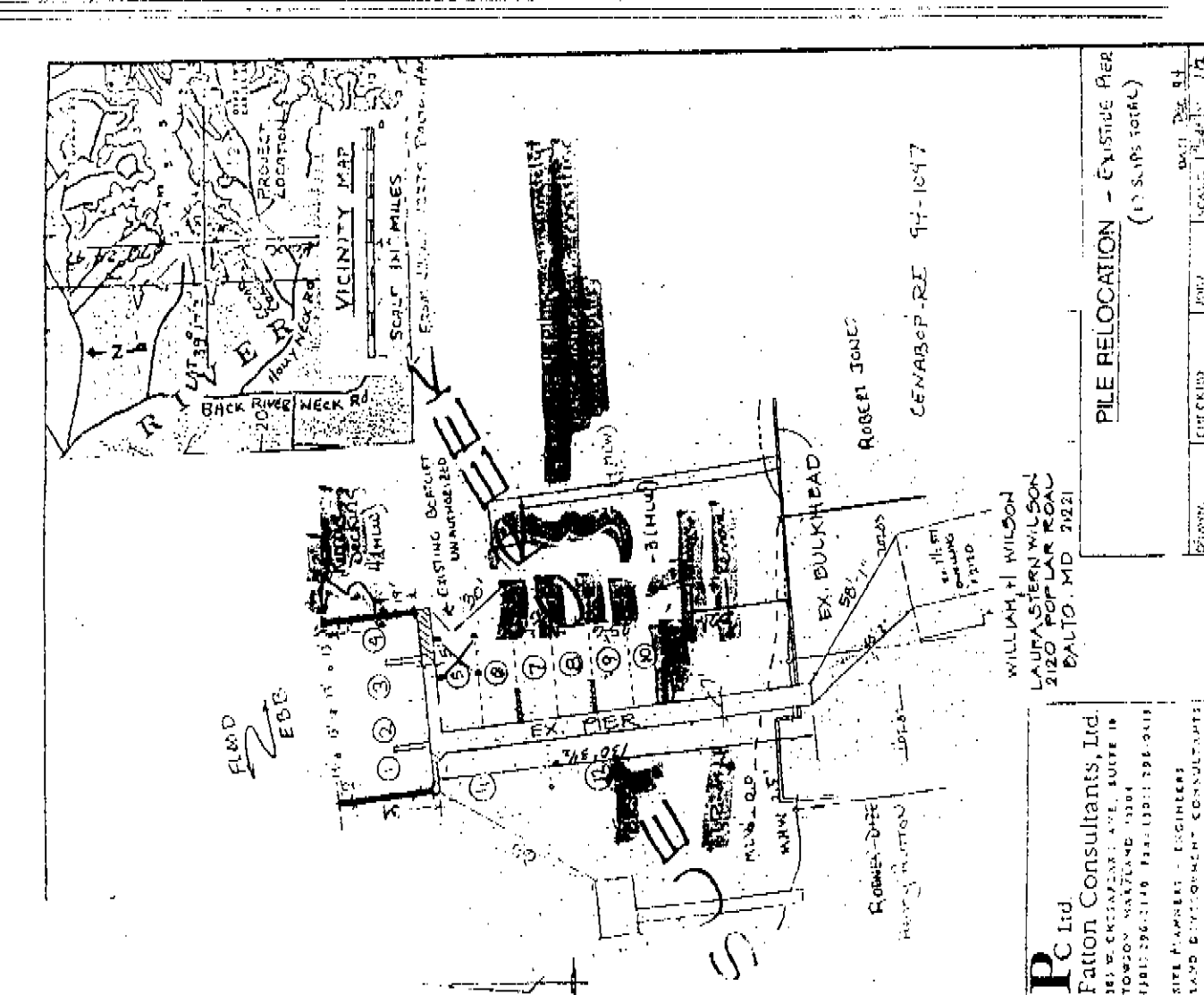
ELECTION DIST. 5 CENSUS TRACT 5

DRAWN JDC CHECKED JSP DATE

1 OF 1



OWNER
WILLIAM H. WILSON
AND
LAURA STEVEN WILSON
3100 POPULAR ROAD
BALTIMORE, MD. 21204



and returning it to us in the enclosed postage paid envelope within 15 calendar days of the date of this notice. Attention is drawn to the fact that if we do not receive your response within this time period, we will proceed to process the petition through alternate enforcement procedures.

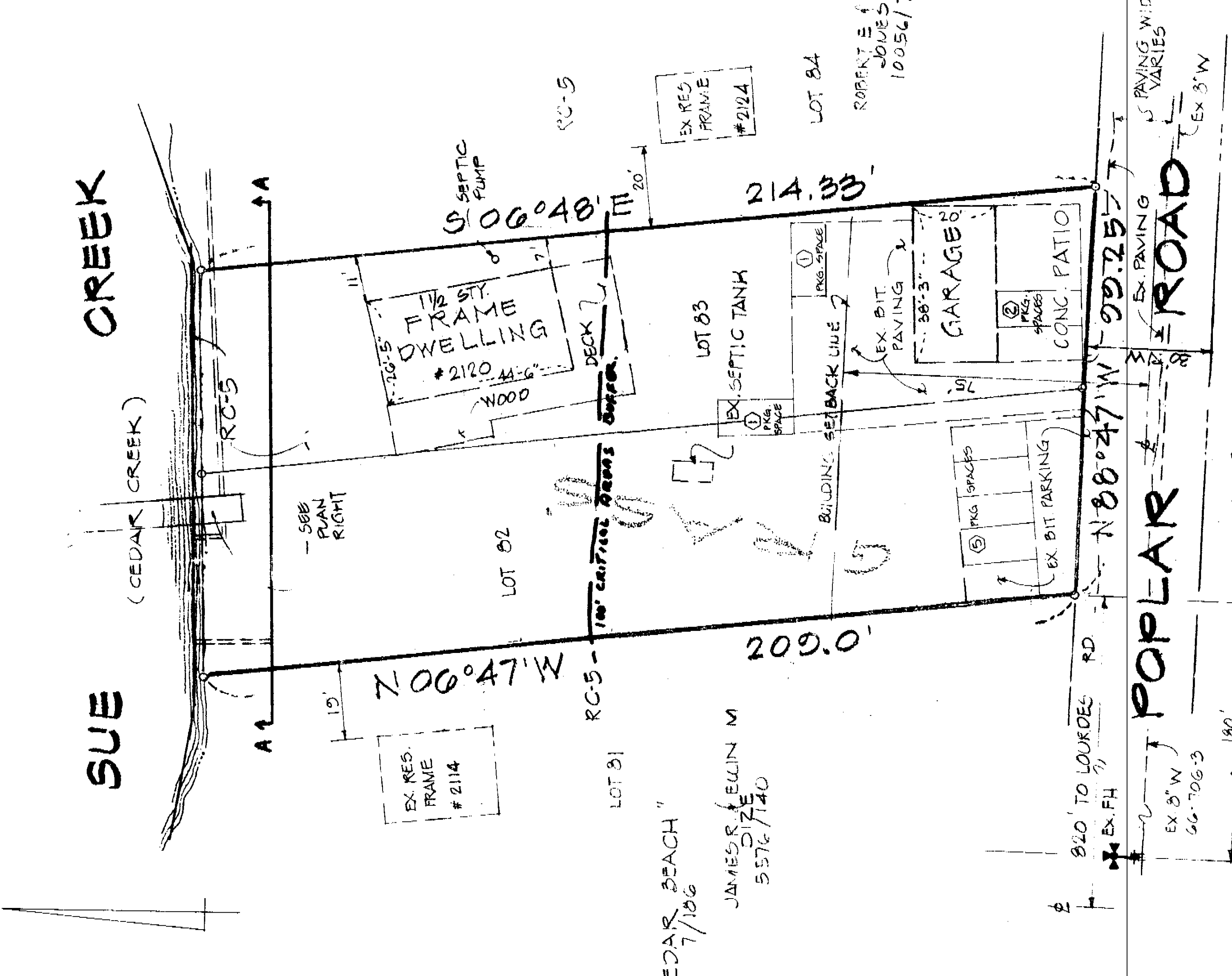
If you have any questions concerning this matter, please call Mr. Wilson at (410) 296-2119.

Sincerely,
Thaddeus J. Reginald
Chief, Enforcement Section

I have read and understand the contents of the restoration plan in this matter. I agree to participate in this work as specified.

W. H. Wilson
Signature

Copy furnished:
Environmental Protection Agency - Jeff Lapp
Baltimore County Department of Planning
Baltimore County Department of Public Works
Baltimore County Department of Public Safety
Baltimore County Department of Public Health
Baltimore County Department of Public Works
Baltimore County Department of Public Safety
Baltimore County Department of Public Health



DEPARTMENT OF THE ARMY
BALTIMORE DISTRICT
BALTIMORE, MD 21204-1775

Operations Division

Subject: CENAS-OP-RE/WILSON, WILLIAM 94-1047-4

Mr. William Wilson
2100 Poplar Road
Baltimore, MD 21204

Dear Mr. Wilson:

Reference is made to a letter and design letter from this office dated 10/10/94, and a letter from your office dated 10/10/94, regarding the proposed restoration of the existing piers, for boat lift, as noted on the plan, County, Maryland.

Following a meeting with Mr. Wilson, it was determined that the following work is necessary to bring this project into compliance with Federal regulations:

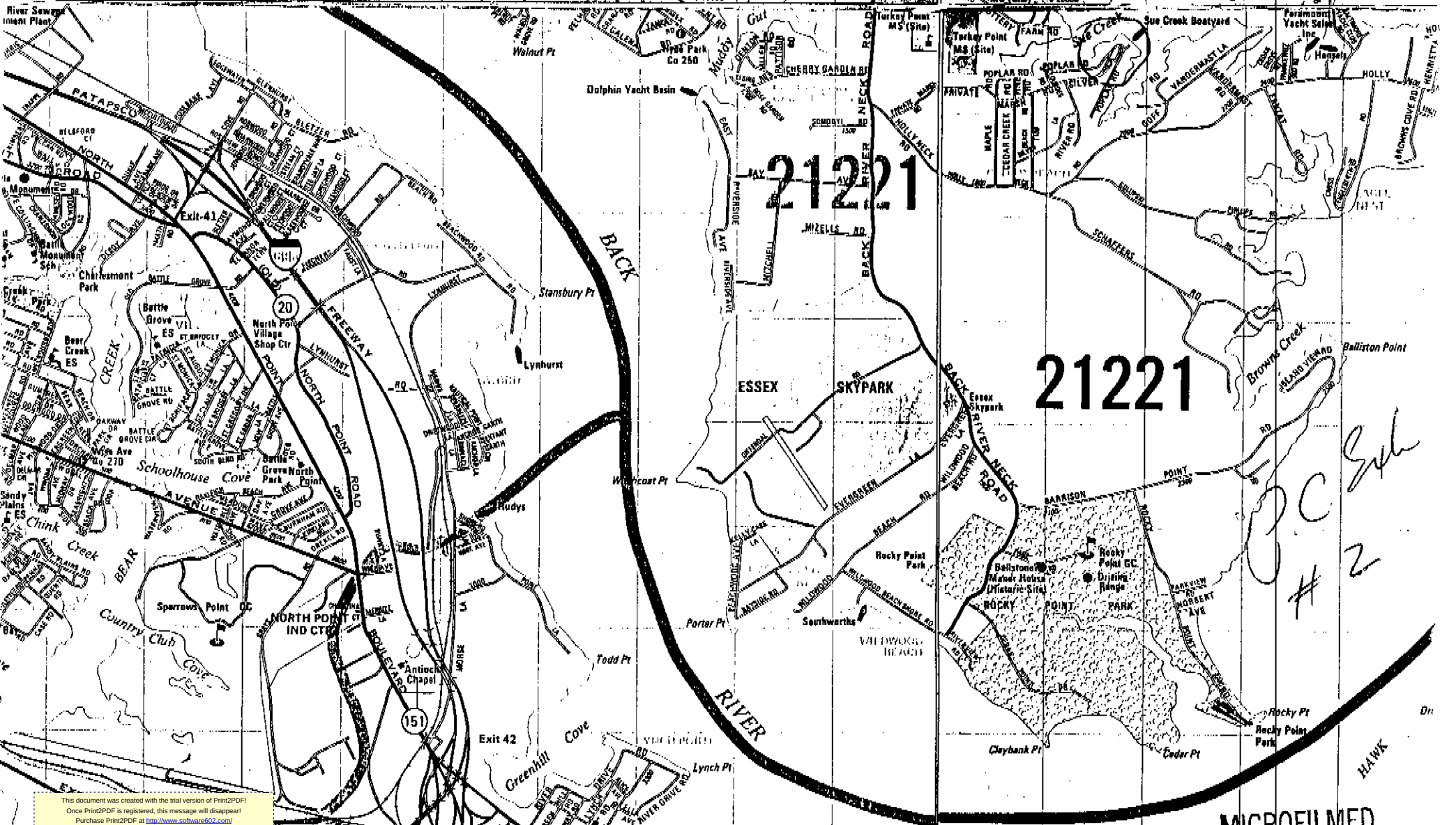
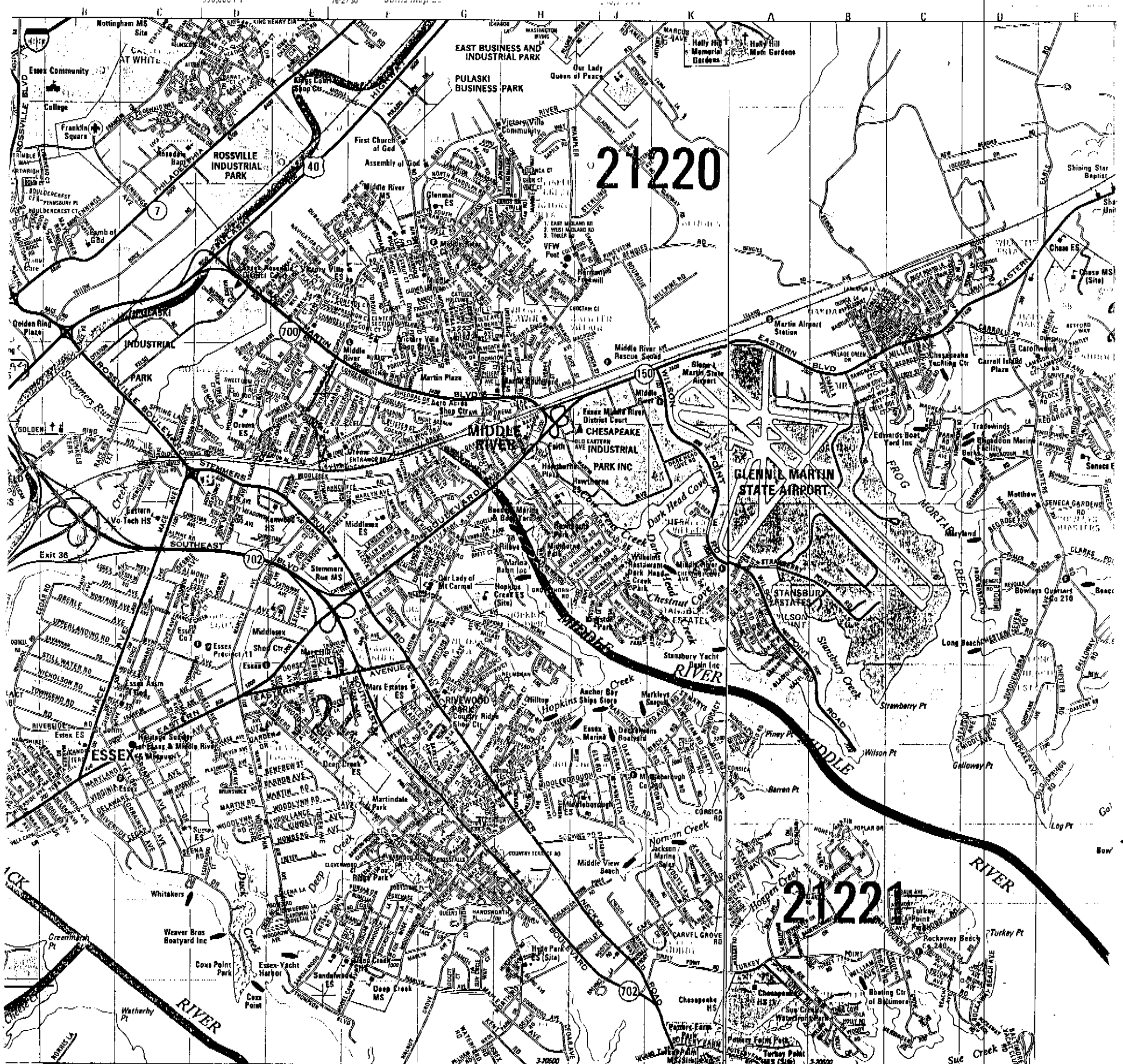
1. Remove the four piers, as highlighted, on the enclosed plan.
2. Remove the portion of canopy and its piling along the west side of slip 12, leaving a foot of canopy, as noted on the enclosed plan.
3. Remove one catwalk and pile along the south side of slip 12.
4. Relocate the four piers at slips 6, 7, 8, and 9, as noted on the enclosed plan, to the south side of slip 12, with the existing piers, for boat lift, as noted on the plan.
5. Relocate slip 12, southern pier, to maintain a 23 foot slip.
6. This work must be completed by July 1, 1995.

Your cooperation in performing the restoration will be considered in the final determination of action on this matter. The enclosed plan shows the proposed restoration work, and the conditions of signing and dating the statement below.

Sincerely,
Thaddeus J. Reginald
Chief, Enforcement Section

W. H. Wilson
Signature

Copy furnished:
Environmental Protection Agency - Jeff Lapp
Baltimore County Department of Planning
Baltimore County Department of Public Works
Baltimore County Department of Public Safety
Baltimore County Department of Public Health
Baltimore County Department of Public Works
Baltimore County Department of Public Safety
Baltimore County Department of Public Health



21220

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Sub
PC
#2

MICROFILMED



PREPARED BY AIR PHOTOGRAPHICS, INC.
MARTINSBURG, W. V. 25401

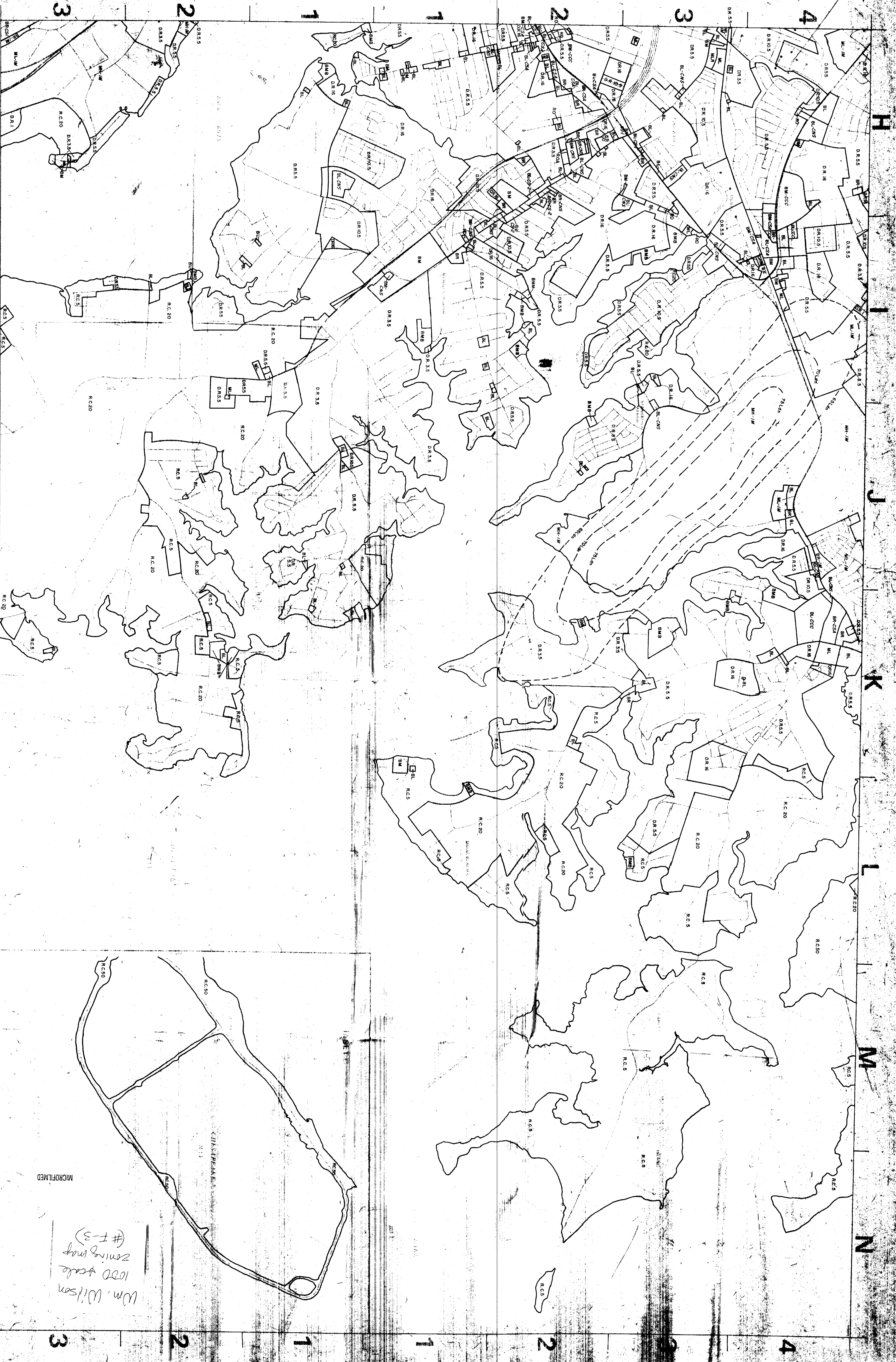
BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
PHOTOGRAPHIC MAP

UNSCALED
1:2500

PC 1/2
PC 1/4

SCALE
1" = 200' ±
DATE
OF
PHOTOGRAPHY
JANUARY
1966

LOCATION
HOLLY NECK
SHEET
S.E.
2



Baltimore County, Maryland

A1	A2
B1	B2
C1	C2
D1	D2
E1	E2
F1	F2

Revisions

1. 10/1/78

2. 10/1/78

3. 10/1/78

Scale 1"=1000'

0 1000 2000 3000 4000

North

▲

SHEET

F-3

Wm. Wilson

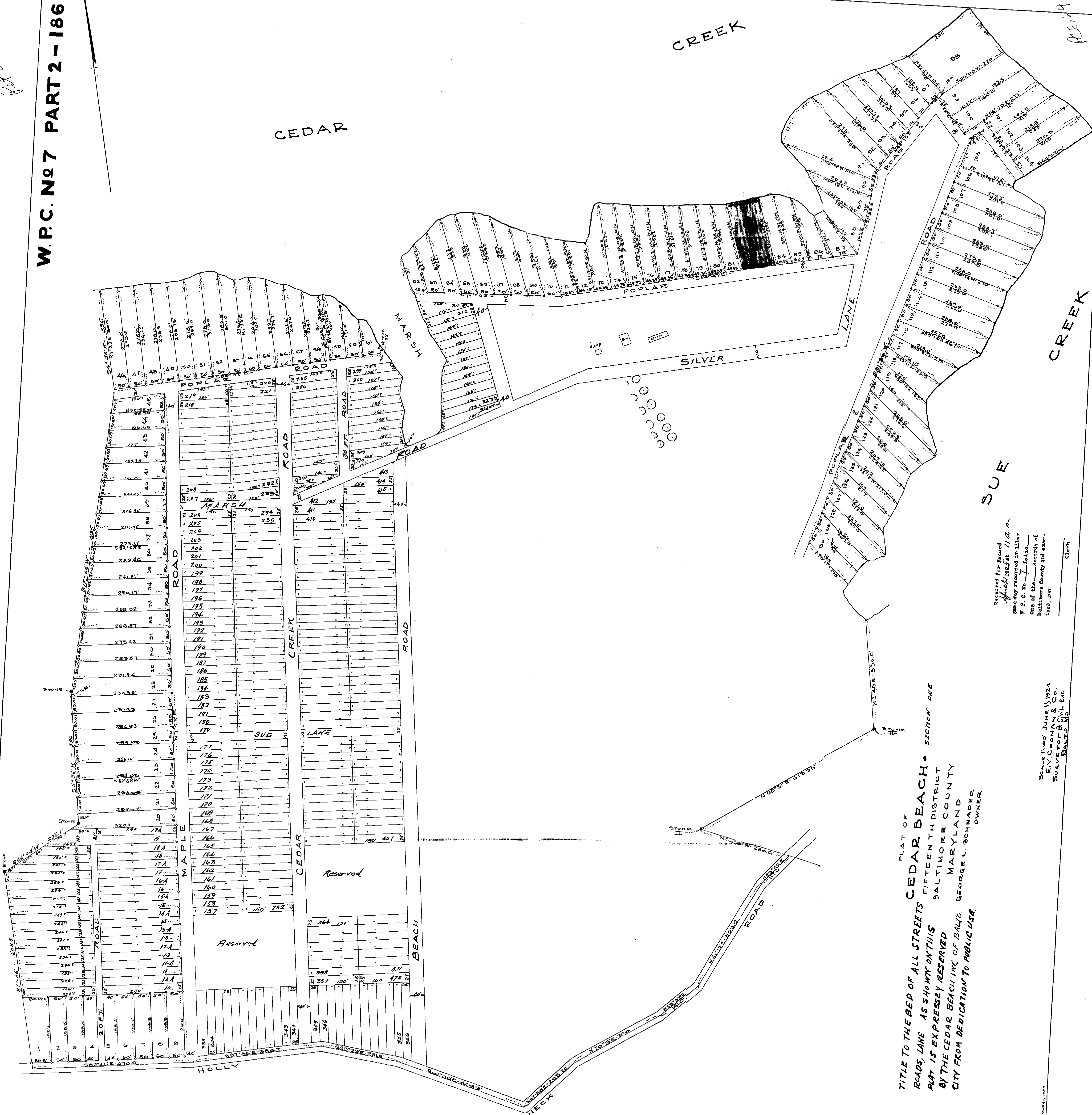
1000 scale

(#F-3)

MICROFILMED

Ref 5654

W.P.C. No 7 PART 2 - 186



SUE

Received for Record
April 1925 at 11 a.m.
same day recorded in Liber
W. P. C. No. 7 folio
One of the Records of
Baltimore County and exam-
ined, per

Clerk

PLAT OF
TITLE TO THE BED OF ALL STREETS
ROADS, LANE AS SHOWN ON THIS
PART IS EXPRESSLY RESERVED
BY THE CEDAR BEACH INC. OF BALTO.
CITY FROM DEDICATION TO PUBLIC USE.

Scale 1:100 June 11, 1924
E. V. COONAN & CO.
SURVEYORS & CIVIL ENG.
BALTO. MD.

ORIGINAL - JANUARY, 1925