IN THE MATTER OF THE	*	BEFORE THE
THE APPLICATIONS OF		
THOMAS T. BOLLING, ET UX	*	COUNTY BOARD OF APPEALS
FOR A SPECIAL HEARING ON		
PROPERTY LOCATED ON THE NORTH	*	OF
SIDE GREEN BANK ROAD, 75' EAST		
OF C/L CHOPTANK ROAD	*	BALTIMORE COUNTY
(7202 GREEN BANK ROAD) AND		
PAUL D. KIEBLER, ET UX	*	CASE NO. 96-244-SPH AND
ON PROPERTY LOCATED 25' EAST		CASE NO. 96-245-SPH
OF C/L CHOPTANK ROAD	*	
(7200 GREEN BANK ROAD)		
15TH ELECTION DISTRICT	*	
5TH COUNCILMANIC DISTRICT		

* * * * * * * * *

O P I N I O N

This case comes as an appeal of the April 11, 1996 Order of the Zoning Commissioner in which Petitioners were granted *permission through special hearing to construct piers on their* respective properties in accordance with exhibits entered into the record. The case was heard in open hearing in a single day of testimony. Counsel for Petitioners was J. Carroll Holzer, Esquire, HOLZER & LEE; Counsel for Protestant was Lewis L. Fleury, Esquire. On a day subsequent to the evidentiary proceeding, this matter was deliberated in an open meeting in accordance with Article 10, Subtitle 5 of the Annotated Code of Maryland, as amended. In these cases, the Petitioners seek a finding that the divisional property lines between the Petitioners properties and adjoining neighbors' properties be defined in accordance with Baltimore County Zoning Regulations (BCZR), Section 417.3.B, thus necessitating a finding by this Board that the associated shore line is an irregular shore line.

This case has a somewhat checkered past. The Protestant in this case, Dorothea Fertitta, property owner generally to the west

of Mr. Kiebler, Petitioner, constructed a pier from her property in 1993. At the time of construction, neither Ms. Fertitta nor the contractor had filed for nor obtained a permit for said pier. A permit was ultimately obtained after construction was begun and the pier finished; the Baltimore County Zoning Office consequently cited Ms. Fertitta for non-compliance with setback requirements from divisional lines seaward from the property. Baltimore County prosecuted Ms. Fertitta in District Court for Baltimore County before the Honorable A. Gordon Boone, Judge; Ms. Fertitta prevailed, and the pier still stands today.

Protestants argue that no shore line is absolutely straight, and that review done by Baltimore County Planner John Lewis, who, for Ms. Fertitta, applied BCZR Section 417.3A, was correct in his analysis shown in evidence as Petitioners' Exhibit 17. Further, Protestants argue that, regardless of whether BCZR 417.3A or B is applicable, BCZR Section 417.3C must be applied because of the existence of the pier in front of the Fertitta property, as well as the Jordan property to the east of the other Petitioners. Protestants argue that by using BCZR Sections 417.3A and C for the Fertitta /Kiebler divisional line and the Bolling /Jordan divisional line both piers could be built to everyone's benefit.

Appearing for the Petitioners was Edward F. Deiaco-Lohr, a licensed surveyor, who testified concerning his survey of lot #28 through lot #34, and the associated exhibits brought by his survey efforts. Also appearing for Petitioners was James S. Patton, of Patton Consultants & Associates, an expert in civil engineering and

land planning. Mr. Patton, in addition to his opinions, provided some historic information relative to the Kiebler /Bolling attempts to construct their respective piers. He indicated that Petitioners filed for a permit, and, like all permits applied for through the Army Corps of Engineers, that the Corps indicated a requirement for authorization from Baltimore County before they could authorize construction of the pier in the waterway. Mr. Patton opined that BCZR 417.3B applies to the properties in question and that the Fertitta pier should have been constructed perpendicular to the shore line. On the basis of his opinion that the Fertitta pier is constructed illegally, Mr. Patton opined that Fertitta should have been required to file a Petition for Variance, since the Fertitta pier would rest in the "open water" area defined in BCZR Appendix "J" and as shown on Petitioners' Exhibit 16.

On cross-examination, Mr. Patton acknowledged that the shoreline between lots 28, 29 and 30 (the Jordan and the two Petitioners' lost) is a straight line, and that that may change from property to property, thereby affecting the determination of whether or not the shore line is to be considered straight or irregular.

Appearing for the Protestants was John Lewis, a Planner II with the Baltimore County Department of Permits & Development Management, Mr. E. F. Raphael, a licensed land surveyor and expert planner, as well as Ms. Fertitta.

Mr. Lewis testified that for the Fertitta pier he applied BCZR Section 417.3A. Further, he indicated that, in applying BCZR

Appendix "J" from the information which he had concerning the shore line, his opinion is that the shore is a straight shore line. Mr. Lewis was the drafter of Petitioners' Exhibit 17 and Protestant's Exhibit 1, which indicates areas on the river which could be utilized as buildable for the construction of the Kiebler and Bolling piers, as well as areas not buildable. Mr. Raphael opined that Mr. Lewis properly applied BCZR Section 417.3A and that Mr. Patton failed to apply Section 417.3C in his designs for the Petitioners. Ms. Fertitta testified that her slip would be obstructed by the proposed Kiebler pier, indicating that her 32-foot power boat requires that she be capable of pulling straight into the slip as she has constructed.

This Board finds that the Fertitta pier is a lawfully constructed, existing pier, having been adjudicated through the District Court for Baltimore County. Therefore, by finding that the Fertitta pier's existence has been decided, a 20-foot wide "open water" area as shown in BCZR Appendix "J" has been created de facto, thereby determining the divisional line to the end of the area used by the Protestants. The Board finds it interesting that the Petitioners do not necessarily seek relief from the owner of Lot 28 (the Jordans), as their mooring piles appear to lie within the open water area adjacent to the divisional line, as shown on Petitioners' Exhibit 17, despite the indication of a 20-foot open water area. This Board agrees with Mr. Lewis that this shore line is to be considered a straight shore line. We note with interest that BCZR Appendix "J" illustrates a shore line with an irregular

shape and a general direction which is not perpendicular to the property lines on Appendix "J", Diagram 1. Also, we note that within that diagram the 20-foot open water appears to be required to remain open only just beyond the piers shown in the illustration.

In finding that the Fertitta pier is a lawfully constructed pier and that the 20-foot open water requirement exists from the edge of that pier and its mooring piles, the Board finds that BCZR Section 417.3C must be applied regardless of whether Section 417.3A or B applies to new construction. In so doing, the Board notes with interest the language contained in Section 417.3C, specifically "...it will be the duty of the Office of Planning & Zoning [now Permits & Development Management] to specify the limits of construction to conform as closely as possible to the rules as set forth herein so as to cause the least interference with existing and/or possible future construction." (Emphasis added.) The Board finds the piers as proposed are in violation of Section 417.3C and that they may cause interference with both the existing pier on the Fertitta property and any possible future expansion of the Fertitta pier. This Board recognizes that the Petitioners are somewhat restricted in the area considered buildable by Baltimore County's Department of Permits & Development Management; however, it is that agency which is responsible for reviewing such matters and in specifying the limits of construction as indicated in Section 417.3C. In reviewing the Petitioners' exhibits, we find that the Petitioners have ample opportunity to comply with Section

417.3C in constructing piers of varying lengths as a matter of right. Therefore, the Petitions for Special Hearing for altering the divisional lines between the Fertitta and Kiebler property shall be denied.

O R D E R

IT IS THEREFORE this 14th day of January, 1997 by the County Board of Appeals of Baltimore County

ORDERED that the Petitions for Special Hearing filed in Case No. 96-244-SPH and Case No. 96-245-SPH be and the same are hereby **DENIED.**

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

Robert O. Schuetz

Robert O. Schuetz, Chairman

Lawrence M. Stahl

Harry E. Buchheister, Jr.

Harry E. Buchheister, Jr.

PETITION OF:	*	IN THE
THOMAS T. BOLLING, ET UX 7202 GREEN BANK RD. BALTIMORE, MARYLAND	*	CIRCUIT COURT
	*	FOR
and	*	BALTIMORE COUNTY
PAUL D. KIEBLER, ET UX 7200 GREEN BANK RD. BALTIMORE, MARYLAND	*	CASE NO. 03-C-97-00740
FOR JUDICIAL REVIEW OF FINAL DECISION OF THE BOARD OF APPEALS OF BALTIMORE COUNTY 400 WASHINGTON AVE. TOWSON, MARYLAND	*	
RE: CASE NO. 96-244-SPH and CASE NO. 96-245-SPH	*	

* * * * * * * * * * * *

ORDER

The Court having considered the Motion to Extend Time for Filing Rule 7-207 Memorandum, it is this 24th day of April, 1997

ORDERED that Petitioners file their Rule 7-207 Memorandum no later than May 19, 1997.

John Fader
Judge

True Copy Test
SUZANNE MENSH, Clerk
Per Glenda G. Hall
Assistant Clerk

ORDERS\A:\BOLLING.ORD

Other Side will not agree but will not object SL

FILED APR 29 1997

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

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

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY
*
PETITION OF THOMAS J. BOLLING, ET UX
7202 Green Bank Road *
Baltimore, Maryland 21220
and *
PAUL D. KIEBLER, ET UX
7200 Green Bank Road *
Baltimore, Maryland 21220
*

FOR JUDICIAL REVIEW OF THE DECISION OF * CIVIL
THE COUNTY BOARD OF APPEALS ACTION
OF BALTIMORE COUNTY * NO. 3-C-97-00740
Room 49, Old Courthouse,
400 Washington Avenue *
Towson, Maryland 21204
*
IN THE CASE OF: IN THE MATTER OF
THOMAS J. BOLLING, ET UX *
FOR A SPECIAL HEARING ON PROPERTY
LOCATED ON THE NORTH SIDE GREEN BANK *
ROAD, 75' EAST OF C/L CHOPTANK ROAD
(7202 GREEN BANK ROAD) *
CASE NO. 96-244-SPH AND
PAUL D. KIEBLER, ET UX *
ON PROPERTY LOCATED 25' EAST OF C/1
CHOPTANK ROAD *
(7200 GREEN BANK ROAD)
CASE NO. 96-245-SPH *
15TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT *

* * * * * * * * * * * * *

RESPONSE TO PETITION FOR JUDICIAL REVIEW

Dorothea Fertitta, 7134 Green Bank Road, Baltimore, Maryland 21220, by Lewis L. Fleury, her attorney, responding to the Petition for Review filed by the applicants in this proceeding, states her intent to participate in the action for judicial review and defend the opinion and order of the Board of Appeals

of Baltimore County.

Lewis L. Fleury
424 Woodbine Avenue
Towson, MD 21204
(410) 825-9200

Attorney for Respondent,
Dorothea Fertitta

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of February, 1997, a copy of the foregoing Response to Petition for Judicial Review was sent by first-class mail, postage prepaid, to J. Carroll Holzer, Esquire, and Holzer and Lee, 305 Washington, Avenue, Suite 502, Towson, Maryland 21204, Counsel for Petitioner, and to the County Board of Appeals of Baltimore County, Room 49, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204.

Lewis L. Fleury

fe970212.res

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 554

September Term, 1998

PAUL D. KIEBLER, et al.

v.

DOROTHEA FERTITTA

Moylan,
Harrell,
Kenney,

JJ.

Opinion by Harrell, J.

Filed: January 11, 1999

#03C9700740

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This appeal arises from a judgment of the Circuit Court for Baltimore County concluding that the citizen parties to this case settled the underlying dispute between them. As a result of this conclusion, the court did not reach the merits of the issues raised by Thomas T. & Elizabeth N. Bolling and Paul D. & Jean A. Kiebler (petitioners below/appellants here) in their petition for review and memorandum in support thereof challenging the 14 January 1997 decision of the County Board of Appeals of Baltimore County (the Board).

In the instant appeal, appellants advance six assertions of error, one on the part of the circuit court (its conclusion that a settlement agreement has been reached) and five on the part of the Board. In the event we were to find that the court erred with regard to finding that an enforceable oral settlement agreement existed between the citizen parties, appellants beseech us to consider on the merits their allegations of error on the Board's part, rather than remanding the matter to the circuit court so that the court could perform its designated function pursuant to the Baltimore County Charter, § 604, and Md. Rules 7-202 (a) and 7-209. For present purposes, we have reordered and slightly rephrased (non-substantively and making no effort to alter grammar or syntax) appellants' issues as follows:

> I. The circuit court erred on 22 January 1998 in finding that a settlement between the parties had occurred on 9 October 1997, and erred by failing to render an opinion as to the lawfulness of the Board's decision of 14 January 1997.
>
> II. The Board erred as a matter of law in its interpretation of § 417.3 of the Baltimore County Zoning Regulations (BCZR) finding that

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the shoreline of the subject property was straight, which finding resulted in the denial of appellants' Petitions for Special Hearing.

III. Assuming arguendo, that the question of the nature of the shoreline was a factual one, there was insufficient evidence before the Board to find that the shoreline was straight as opposed to irregular, which resulted in the Board's denial of the Petitions for Special Hearing.

IV. If the finding of the Board that the shoreline of the subject property is straight is correct, the evidence established that the adjacent properties to the appellants (Lots #28, 31, and 32, owned respectively by Mr. and Mrs. Jordon, Ms. Fertitta [appellee] and Mr. and Mrs. Georas), were, therefore, in violation of the BCZR, § 417.3, and as a result, the Board erred in denying the Petitions for Special Hearing.

V. The Board erred in failing to fulfill its responsibilities by denying the Petitions and failing to provide for a suitable location for appellants' proposed piers; such denial is illegal.

VI. The Board erred in considering a previous zoning enforcement case tried before Judge Gordon Boone of the District Court of Maryland for Baltimore County concerning the adjacent property of appellee, Dorothy M. Fertitta, in that it was a zoning enforcement hearing and did not adjudicate the issue in this case. Further, the Board relied on information not in evidence before them to deny appellants' Petitions for Special Hearing.

Because we shall affirm the judgment of the circuit court (Issue I), we shall not reach the merits of appellants' other allegations of error (Issues II-VI).[1]

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[1]Appellants apparently changed counsel after filing their initial brief and before filing a reply brief. To the extent the reply brief poses new or supplemental issues not raised in appellants' initial brief and which were not responsive properly to arguments made in appellee's brief, we do not consider such issues

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FACTS

The Bollings and the Kieblers, appellants, own Lots 29 and 30, respectively, in the Oliver Beach Subdivision in Baltimore County. Both lots are improved with single-family, detached homes. The Bollings' neighbors to the east are Mr. and Ms. Jordon, who reside in a home on Lot 28. Abutting the Kieblers' lot on its west is Lot 31, containing the home of Ms. Dorothy M. Fertitta, appellee. To the west of Ms. Fertitta's home is Lot 32, where Mr. and Ms. Georas reside. Vehicular access to Lots 28-32 is via Green Bank Road on which each lot has its southerly frontage. Each lot also has, along its northerly boundary, frontage on the Gunpowder River. Lots 32 (Georas), 31 (Fertitta), and 28 (Jordon) also have existing piers and pilings extending from their Lot frontage into the Gunpowder River. The Jordons' pier extends 185 feet into the river. The Georas' pier is 100 feet long. Ms. Fertitta's pier is 150 feet in length. The Kieblers and the Bollings have no piers. Desiring to change that condition, the Kieblers sought permission to construct a pier from the respective governmental authorities having jurisdiction over such matters (Army Corps of Engineers and Baltimore County, Maryland).

The Corps refused to issue a permit to the Kieblers unless the County's Zoning Office issued a written statement that the pier as proposed would be in compliance with the County's zoning laws. That requirement triggered the more recent contentious events that

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as before us. This does not mean, however, that we did not consider otherwise the reply brief.

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gave rise to the present case. It seems that in 1993, when Ms. Fertitta constructed her pier, a dispute arose, ostensibly between her and the County, as to the zoning legality of her pier. Ms. Fertitta and the builder of her pier neglected to apply for and obtain a permit from the County until after the pier was constructed. Although the County issued the permit, its Zoning Office, based on a complaint from the Kieblers, quixotically also issued a notice of zoning violation to Ms. Fertitta, alleging that her pier violated the setback from the legal divisional property lines between her lot and the Kieblers' lot, as extended into the river. See BCZR, §§ 417.3 and 417.4.[2]

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[2]417.3--For the purposes of defining boundaries within which waterfront construction may take place, divisional lines shall be established in accordance with the following rules:

A. With straight shorelines:

> If the shoreline is straight, the divisional lines are to be extended from the intersection of the property line and the shoreline into the water perpendicular to the shoreline, or where the property lines are parallel and it is practical to do so, the proper boundary line shall be extended in a straight line into the water.

B. With irregular shorelines:

> Where the shoreline is not straight, draw a baseline between the two corners of each lot at mean low water line. Then draw a line from the corner of each proprietor's property into the water at right angles with the baseline. If by reason of the curvature of the shore, the lines, when projected into the water, diverge from each other, the area excluded by both lines shall be equally divided between the shore, the lines, when projected into the water, converge with each other, the area included by both lines shall be equally divided between the two adjoining proprietors.

C. Conflict with existing construction:

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Unable to resolve less formally the alleged zoning violation, the County prosecuted the matter at a trial before the Hon. A. Gordon Boone of the District Court of Maryland for Baltimore County. After hearing testimony from dueling surveyors and Mr. Kiebler,[3] Judge Boone ruled in favor of Ms. Fertitta, finding apparently that "the Fertitta pier was not violative of the BCZR."[4] No further judicial review of Judge Boone's ruling apparently was sought.

This resolution of the zoning violation case presented a dilemma for appellants. Locating and sizing their proposed piers, while also obtaining the local zoning compliance statement required

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> Where proposed construction will conflict with existing facilities, it will be the duty of the office of planning and zoning to specify the limits of construction to conform as closely as possible to the rules as set forth herein so as to cause the least interference with existing and/or possible future construction. Notice of the proposed construction shall be given by the department of permits and licenses to adjoining property owners affected.

417.4--No construction beyond mean low tide, including mooring piles, will be permitted within ten feet of divisional lines as established. The effect of this requirement will be to maintain a 20-foot open access strip between the facilities of adjoining property owners.

[3]Appellants have lamented, apparently with some success before the County's Zoning Administrator, how the zoning violation matter was poorly litigated. Be that as it may, suffice it to say for present purposes, borrowing an axiom from the summer rules of golf, we must "play the ball where we find it."

[4]We glean the result of the proceedings before Judge Boone from the 11 July 1996 written Findings Of Fact And Conclusions Of Law by the Zoning Commissioner of Baltimore County regarding appellants' latter-filed Petitions For Special Hearing. The record of the zoning violation proceedings are not part of the record of the instant appeal.

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by the Corps of Engineers, was constrained and influenced by a number of factors, not the least of which were: (a) whether the methodology of BCZR § 417.2(A) or (B) was the correct method for defining the building envelope for setback and other zoning criteria for appellants' piers, as well as the existing piers of appellants' neighbors; and (b) regardless of the abstract answer to (a), above, if the existing piers of Ms. Fertitta, the Georases, and the Jordons were taken as givens, what adjustments might be required pursuant to BCZR § 417.3(C) in order to permit the appellants the same amenity (a pier) as was enjoyed by their neighbors.

Ostensibly in an effort to satisfy the requirement of the Corps of Engineers, the Kieblers and the Bollings filed with the Zoning Commissioner of Baltimore County (the Commissioner) Petitions For Special Hearing.[5] In their petitions, appellants proposed pier locations for themselves consonant with a determination of their divisional lines under BCZR § 417.3(B) (irregular shoreline), which they asked be declared the legally correct methodology for all of the affected lots, with existing piers or without. Appellants also asked the Zoning Commissioner to declare the existing piers extending from Ms. Fertitta's and the Georases' lots as not being in compliance with BCZR § 417.3(B).

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[5]The parties to the instant appeal have not favored us in their briefs or the joint record extract with the local ordinance basis for the filing and prosecution of the process described as a Petition For Special Hearing in a case such as this. We assume that some provision in the Baltimore County Charter or BCZR contemplates this process as appropriate to the task.

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Ms. Fertitta, Mr. Georas, and the County became parties to the proceeding before the Commissioner, contending that the existing piers were lawfully erected pursuant to BCZR § 417.3(A) (straight shorelines). Ms. Fertitta also asserted that the result of the prior zoning violation litigation operated to foreclose further consideration of the asserted illegality of the location of her pier.

After conducting an evidentiary hearing, the Commissioner, in written Findings Of Fact And Conclusions Of Law, dated 11 April 1996, granted partial relief to appellants, under BCZR § 417.3(C),[6] and approved appellants' proposed pier locations. In so doing, the Commissioner rejected the argument that BCZR § 417.3(A) was the proper methodology for ascertaining the divisional lines for the subject lots. Giving effect to Judge Boone's ruling, however, the Commissioner concluded he was precluded from finding Ms. Fertitta's pier to be in violation of the BCZR. He deemed appellants' pier locations as a reasonable compromise in a physically tight situation vis à vis the river frontages of appellants' lots and the existing piers.

Aggrieved by the Commissioner's decision,[7] Ms. Fertitta

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[6]The Commissioner incorrectly referred to BCZR § 417.4 in his written decision as the legal basis upon which he predicated relief. BCZR § 417.4 provides for ten feet separation between divisional lines "of adjoining properties and twenty feet open space access strip between pier facilities."

[7]Ms. Fertitta opined that, if the Kieblers' pier were constructed as approved by the Commissioner, her boat slip would be obstructed as the Kieblers' pier would preclude her 32 foot power boat from pulling straight into her slip as her pier was constructed.

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appealed to the Board. After conducting a *de novo* hearing, the Board issued on 14 January 1997 its written Opinion and Order denying appellants' Petitions For Special Hearing. The Board's decision, in effect, vacated the Commissioner's decision and remanded the matter to the County's Department of Permits and Management for a new determination of where appellants could erect their piers, without impinging on a 20 foot "open water area" to the east of Ms. Fertitta's "lawfully" constructed pier. In reaching this conclusion, the Board, although agreeing with the County's position that the provisions of BCZR § 417.3(A) (straight shoreline) should apply to the subject lots, recognized that the provisions of BCZR § 417.3(C) must be applied, under the circumstances, in order to effectuate appellants' ability to construct "piers of varying lengths as a matter of right."

Appellants timely filed a Petition for Judicial Review of the Board's decision in the circuit court. Ms. Fertitta participated as a party in the circuit court proceeding, although the County and the Board did not. After receiving the parties' legal memoranda, the court heard oral argument on the merits on 8 September 1997. At the conclusion of oral argument, the court inquired if counsel for the parties would like "a chance to sit down and see if you can't work it out" before the court ruled. Appellants' counsel welcomed such an opportunity. Appellee's counsel concurred. In order to enhance the settlement potential of the prospective negotiations, the court proposed to mediate the discussions and to include a representative of the County Zoning Office. It was

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agreed by all that these negotiations would occur on or before 15 October 1997 and, unless the discussions resulted in a settlement, the court would promptly thereafter decide the matter on the merits.

On 9 October 1997, the parties, their counsel, the judge, and Mr. John L. Lewis, Planner II, Permits and Development Management, Zoning Review Section of the County government, met in the judge's courtroom.[8] No direct record of what transpired that day was made. What we "know" about this event we learn from what transpired on the record in later proceedings.

On 10 December 1997, Ms. Fertitta filed with the court a Petition To Enforce Settlement Agreement. Essentially, she asserted that the citizen parties had reached a settlement on 9 October. Based on a hand-drawn sketch plan prepared by Mr. Lewis during the negotiations, the parties, it was alleged, agreed to reconfigure Ms. Fertitta's existing pier so as to flip by 180° the elbow of the slip at the pier's end, thus leaving 20 feet of open water area between the closest point of her pier and the previously proposed location of the Kieblers' pier. The costs for the reconstruction of Ms. Fertitta's pier would be shared equally by Ms. Fertitta, the Kieblers, and the Bollings.

The Petition To Enforce continued that the settlement had been repudiated by appellants' counsel in a letter <u>to the court</u> dated 2 December 1997. The 2 December letter complained about a proposed

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[8]It appears that Ms. Fertitta's surveyor, Mr. Raphel, also may have been in attendance.

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written agreement submitted by appellee's counsel to appellants' counsel, accompanied by a more refined drawing of the alleged reconstruction of Ms. Fertitta's pier and the proposed location of the piers of the Bollings and the Kieblers, prepared by appellee's surveyor, Mr. Raphel. Appellants' counsel, in the 2 December letter, cited as the reason for the unacceptability of appellee's proffered, written agreement that the accompanying drawing was "inconsistent with the agreement arrived at in [the] courtroom during our settlement negotiations." Appellants' counsel specifically asserted that the reconstructed Fertitta pier depicted on Mr. Raphel's drawing had "been enlarged from its existing size to larger dimensions on the `L' leg and piling have been relocated to encroach upon the twenty-foot open area between the Fertitta and Kiebler piers." Expressing his clients' exasperation with appellee's perceived attempt to "change . . . the spirit, if not the actual agreement, that was arrived at in [the] courtroom," appellants' counsel requested that the court decide the matter "in accordance with the existing law."

Appellee's Petition to Enforce, asserting that there was no material discrepancy between Mr. Lewis's sketch and Mr. Raphel's drawing, asked the court to direct appellants to perform the settlement agreement described in the Petition. The court directed that a hearing be held on 22 January 1998 in order to resolve the Petition To Enforce.

The first witness to testify was Ms. Fertitta. She asserted that the parties had reached an agreement when they were in court

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on 9 October 1997 engaging in off-the-record negotiations. She described the terms of the agreement as she, the Kieblers, and the Bollings would share equally the costs of moving the existing "L" of her pier and slip "to the other side." She identified Mr. Lewis's 9 October 1997, hand-drawn sketch of the physical reconstruction of her pier and slip as "the drawing" upon which the parties agreed.[9]

On cross-examination, Ms. Fertitta conceded that the alleged 9 October agreement was not expressed in a writing signed by all of the parties. Ms. Fertitta identified the only open matters following the 9 October agreement as being Mr. Kiebler obtaining cost estimates and Mr. Raphel drawing an appropriate plat for submission to the County in order to obtain formal approval of the reconstruction of her pier and slip.[10]

After establishing on redirect examination that the judge, at

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[9]Appellee's counsel also had her identify the proposed written agreement he subsequently prepared purportedly memorializing the alleged 9 October oral agreement and offered it into evidence (it is unclear from the record that the document appellee identified and that was offered into evidence included Mr. Raphel's drawing). The court, however, questioned counsel's purpose in offering the document, observing not only the "irrelevancy" of the proposed exhibit, but the wisdom of offering it when the contention was that an enforceable oral agreement existed prior to his drafting the proposed exhibit. At that point, appellee's counsel abandoned his effort to have the document received into evidence. Appellants made no comments or objections during this colloquy.

[10]The court interrupted appellants' counsel's pursuit of further questioning of Ms. Fertitta regarding Mr. Raphel's drawing, without the interjection of an objection by appellee's counsel. The court questioned the relevancy of any further questions regarding the drawing. Although appellants' counsel begged to differ with the court's view on that score, he nonetheless abandoned that line of questioning by acknowledging "I don't have to pursue it through this witness."

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the 9 October 1997 session, had sporadic involvement with the actual negotiations, and that appellee was ready to perform the oral agreement as she narrated its terms to be, appellee rested her case-in-chief.

Mr. Kiebler testified as appellants' initial witness. He took the position that he participated in the "talks"[11] in the courtroom on 9 October with a view that "nothing would be held against us [appellants] in a Court of law." This understanding was supported, he contended, by the facts that his counsel had not advised the appellants they would be bound by the discussions and there was no recordation of the deliberations held that day. Mr. Kiebler contended further that, although he had not agreed to Mr. Raphel subsequently preparing a plat, he "absolutely" understood he was to have the opportunity to review for his satisfaction whatever Mr. Raphel drafted. Based on his review of the Raphel plat, and the review of same by appellants' engineer, Mr. Patton, Mr. Kiebler stated there appeared to be "scaling errors" on it.[12] Direct examination of Mr. Kiebler concluded with confirmation that he had

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[11]Mr. Kiebler stated it was his understanding that the "talks" were not "negotiations." He nonetheless characterized the purpose of the "talks" as "to see if we could arrive at a settlement or an agreement."

[12]The court restricted further direct examination of Mr. Kiebler regarding Mr. Raphel's drawing. The court's basis for such restriction was that the purpose of the hearing was to determine whether an enforceable agreement had been reached by the parties on 9 October 1997, not whether any post-9 October activities sought to alter the terms reached on 9 October. The court stated "[i]f the parties entered into an agreement [on 9 October 1997], and this document [Mr. Raphel's plat] violates the agreement . . . . Mr. Kiebler has a right to come to Court and say . . . they [appellee and Mr. Raphel] are not doing it according to the agreement."

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directed his counsel to send the 2 December 1997 letter repudiating any agreement.

Cross-examination of Mr. Kiebler was brief, made so apparently by the trial judge interjecting himself into the process.[13] Before curtailment, appellee managed to elicit that Mr. Kiebler was present at the 9 October session and the following:

> Q. When we finished [on 9 October 1997] we collectively told [the judge] that we had arrived at an agreement, did we not?
>
> A. We did not arrive at an agreement.
>
> Q. I am asking you, didn't we tell [the judge] that we arrived at an agreement?
>
> A. No, we didn't. Everybody was not in agreement.

After proffering[14] that Ms. Bolling, were she to testify, would testify that "it was her understanding that there was no agreement until those documents were put together and reviewed," appellants rested. The court then called as its witness,[15] John L. Lewis, the County planner who was present at the 9 October meeting and who produced the hand-drawn sketch that was the graphic depiction of the reconstruction of the Fertitta pier alleged to have been agreed upon at the meeting. After establishing that Mr. Lewis had heard

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[13]After four questions and responses passed between appellee's counsel and Mr. Kiebler, the court stated "[t]hat's enough cross-examination . . . ."

[14]Appellants apparently intended to call Ms. Bolling as a witness, but, at the court's prompting, elected to proffer her testimony.

[15]Md. Rule 5-614 generally permits the court to call a court's witness. Appellants do not raise in this appeal any challenge to the court's conduct in this regard.

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"what was said back and forth" in the courtroom on 9 October, the court elicited the witness's understanding as to whether the parties had reached a meeting of the minds then. Mr. Lewis stated that "there was an agreement that would later be finalized by plats drawn by an engineer based upon the drawing that I had approved." He also indicated that the sketch he made on 9 October was reached only after "give and take" and "a couple of changes during the course" of the session. Finally, he observed that, "[w]hen both parties finally were happy that the drawing represented what they could live with they appeared to be satisfied and were willing to go forward with the drawing as a basis for any further permits . . . ."

Appellee's counsel, cross-examining Mr. Lewis, ascertained that the witness, in his governmental capacity, would approve a formal plan that was in accordance with his sketch drawing. He elicited also that the objective of turning the end of Ms. Fertitta's existing pier away from the Kieblers' proposed pier was "to maintain a twenty foot separation between any construction on either pier, inclusive of the mooring lines, in order to allow access to the shoreline."

Appellants' counsel's cross-examination of Mr. Lewis focused on whether his 9 October sketch and Mr. Raphel's later drawing were inconsistent[16] and whether a twenty foot setback could be achieved

---

[16]Although unable to say with precision, absent further examination on a backlit light table with the two drawings overlaid on each other, Mr. Lewis hazarded an estimate that the Raphel drawing depicted the flipped "L" at the end of the Fertitta pier as about five feet longer to the west and about four feet deeper to

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between the existing Jordon pier and the location of the proposed Bolling pier.[17] Even if the Raphel plan did not achieve the twenty foot setback objective as it depicted the existing and proposed piers were depicted, and was not approvable "as is" in strict conformity with the BCZR setback minimum (which the witness did not concede necessarily was the case), Mr. Lewis contended that he had the power where existing construction was implicated, under BCZR § 417.3(C), to approve a proposal that had lesser setbacks than the twenty foot normal minimum.[18]

---

the north and south than was depicted on Mr. Lewis's 9 October hand-drawn sketch. He also noted that one of the pilings of the Fertitta pier, as depicted on the Raphel plan, appeared to be within eighteen feet from "the sundering pile of the proposed Kiebler pier"

[17]Mr. Lewis estimated the distance between the Jordon pier and the location of the proposed Bolling pier as fourteen feet; however, he also pointed-out that it appeared that the Bolling pier location could be moved an additional ten feet towards the proposed Kiebler pier location, without impinging on the twenty foot setback between them, and thus avoid any encroachment on the setback from the Jordon pier.

[18]Whether Mr. Lewis's perceived authority under BCZR § 417.3(C) in this regard was the equivalent of an area variance, as that type of zoning action is defined in BCZR § 307.1 (See Friends of the Ridge v. Balt. Gas & Electric, 120 Md. App. 444, 475-76, cert. granted, 350 Md. 488 (1998)), goes unexplored substantively in the record or briefs of the instant appeal. Any consternation expressed by appellants in potentially having to obtain a true area variance if a twenty foot setback cannot be obtained between each of the relevant piers in this case may be groundless if, as Mr. Lewis claims, he can approve a non-conforming scenario with a mere flick of his wrist in signing-off on a plan. BCZR § 417.3 (c) suggests no formal "variance" proceeding is necessary when there are existing facilities, as the Office of Planning & Zoning then determines compliance as nearly as possible. By the same token, as Mr. Lewis testified, perhaps no "variance" by any name is needed if the location of the proposed Bolling pier is changed to obtain the requisite setback (as appears there is room to do) from the Jordon pier and still meet the same requirement as to the proposed Kiebler pier, and the Raphel plan is adjusted as to the Fertitta pier to

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The trial judge announced his decision from the bench.

> The Court finds the most persuasive witness to be Mr. Lewis. He has no ax[e] to grind in this matter one way or another. He testified that it was his belief that when the parties walked out of here that this matter was settled.
>
> Now, the Court disagrees with [appellants' counsel] to the extent that my understanding of the law is that parties can enter into a contract without having all of the specifics clearly spelled out and nailed down.
>
> And as a matter of fact, the law does provide for contracts in which the parties agree later on to negotiate certain aspects or elements of the agreement. Of course, there is always an implied requirement that the parties negotiate in good faith then the other party has the right to go to Court and let the Court decide what that element is.
>
> But it seems to me that my recollection of what happened that day is a lot different from Mr. Kiebler's. He said that the parties were just brought here to talk, and that's about an 180-degree about-face from my understanding of it.
>
> I brought the parties here and I said on the record [on 8 September 1997] that I brought the parties here to reach a settlement in this agreement because it looked — it appeared to me to be the kind of case that could be settled and should be settled.
>
> Now, the fact that the agreement isn't on the record, that there is no written memorialization of the contract, isn't really the issue in the case, because as I have already said, the law recognizes verbal contracts. And it would appear to me, based upon Mr. Lewis' testimony, that a verbal contract was in fact made.
>
> * * * * *
>
> Mr. Kiebler's testimony inferentially supports that fact. If there wasn't an

---

conform to Lewis's 9 October 1997 sketch. This is a matter best left to future events in any event.

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agreement, then why would he be entitled to have a plat submitted to him in the first place?

If the parties hadn't reached an agreement I suppose that that would have been one of the things they were talking about, which is, who was going to do the plat and who was going to be able to approve it.

The Court finds that we're probably here because for some reason Mrs. Fertitta decided to get a little bit of extra something that wasn't included in the settlement.

* * * * *

It would appear to me that the elements of this contract are that the parties are to have a drawing submitted to the Zoning Office in Baltimore County that comports with [Mr. Lewis's sketch]. Not bigger. Not smaller. But, what the parties talked about and drew on that date.

And that, if in fact the Department of Zoning approves that drawing, that the corrections are to be made to the Fertitta pier, and that the parties are to pay one-third each of the cost of making those corrections.

Now, again, if in fact either any of the parties feel that the other party isn't living up to the agreement, that certainly is a matter that can be brought before the Court,

To say, as [appellants' counsel] tried to produce to the Court, that the pier [in the Raphel drawing] is bigger than the one that they approved, obviously, that could be a breach of the agreement.

* * * * *

So the Court finds that there was an agreement, that the agreement is, is that a drawing is to be made that comports with [Mr. Lewis's sketch] and is as close as possible to [his sketch] and at the same time serving the purposes of the parties, which is to get an agreement to the Zoning Department which can be approved.

And then, if and when the Zoning Department approves that drawing — and I have to agree with [appellants' counsel] that it would have to be without a variance. I don't

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> think that there was any agreement between the parties that the Kieblers or the Bollings would have to apply for a variance.
>
> But if the agreement can be approved by the County without any further action by the Kieblers and the Bollings then the parties will have to carry out the remainder of the agreement, which is to move the tip of Ms. Fertitta's pier and split the cost of that — of that change.

After an interruption from Mr. Bolling questioning why appellants had to pay for any part of the reconstruction of the Fertitta pier, the judge continued:

> I have a memory of what happened that day [9 October 1997], too, and I remember both lawyers telling me, Judge, we settled it, and I don't remember hearing either of you standing up and saying no, Judge, we haven't settled it.
>
> You know oftentimes people have what we call buyer's remorse. They go out to buy a house or a car and they sign the contract and then they go home and say what did I do. I don't think it was a good idea for me to sign a contract to buy that — that house or that car.
>
> Well, the fact of the matter is, once a party enters into an agreement they are bound by the agreement. You can't come back later and say well, maybe it wasn't a good idea for me to enter into the agreement.
>
> I find as a matter of fact that the parties entered into an agreement, and as I just indicated to Mr. and Mrs. Bolling, when the lawyers told me that they were standing right there and they didn't pipe up and say no, Judge, there is no agreement. We don't agree to this.
>
> So I assume that — and I am finding for the record that that is the agreement.

Appellants noted this timely appeal from the court's judgment.

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DISCUSSION[19]

In their main brief to this Court, appellants argue two theories of error[20] with regard to the court's determination that

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[19]Appellants' arguments on appeal that we consider are that, on the record before it, the trial court erred as a matter of law and was clearly erroneous in concluding that all of the requisites of an enforceable oral contract were in place on 9 October 1997. Appellants did not brief or argue adequately, and we therefore do not consider, whether the trial judge exceeded his role as an impartial judge under the circumstances of this case. See Chertkof v. Weiskittel, 251 Md. 554, 550-51 (1967) ("[A] judge, seeking to aid in settlement must be careful not to indicate bias, prejudice or strong feelings, must be impartial and must not force his will upon or unduly press his views upon the parties."). Judges will not be presumed to have prejudged a case, however, simply because they have knowledge of previous happenings in the case obtained in the course of their official duties.

Moreover, contrary to appellants' bald assertions, the judge did not "order" or otherwise improperly coerce the parties to engage in the settlement negotiations on 9 October 1997. A fair reading of the relevant portions of the transcript of the 8 September 1997 proceeding belie appellants' assertions.

[20]In contrast, appellants' reply brief, devoted almost exclusively to the circuit court's finding of a settlement agreement, framed four theories of error, as follows:

> I. The circuit court was incorrect, as a matter of law, when it ruled at the hearing held on 22 January 1998, that a settlement agreement does not require the parties to resolve all of the issues.
>
> II. The circuit court's ruling that the parties had reached a full and final settlement agreement, as to all of the issues, was clearly erroneous.
>
> III. The evidence demonstrates that the negotiations on 9 October 1997, were conducted in anticipation that there would be a final written assent and did not rise to the level of a binding contract.
>
> IV. The circuit court was incorrect, as a matter of law, when it refused to admit into evidence the proposed contract that had been drafted and signed by appellee.

We conclude that Issues I-III, as framed in appellants' reply brief, are a rehash of their main brief, and are therefore properly

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an enforceable settlement agreement was reached by the parties on 9 October 1997:

> First, Appellants contend that there was no meeting of the minds and therefore no offer and acceptance of an agreement between the parties to resolve this conflict on 9 October 1997. Secondly, Appellants contend that, even had there been a settlement agreement, it is unenforceable by the circuit court's own acknowledgment that in this case the Appellee exceeded the agreement by way of enlarging the corrected pier; by the placing of pilings in areas not in conformance with the Baltimore County Zoning Regulations, and by requiring a variance to be applied for by the appellants - the trial court also recognizing that the need to apply for a variance was not part any alleged agreement arrived at on 9 October 1997.

Under the circumstances when the provisions of an oral contract are contested, it is for the trier of fact to ascertain the terms of the agreement. See Marr v. Langhoff, 322 Md. 657, 667 (1991); Eisenberg v. Air Conditioning, Inc., 225 Md. 324, 335 (1961). "When the existence of an oral contract is disputed, [ ] and, [ ] there is conflicting evidence as to its terms, it is for the finder of fact to determine if the contract existed and what were its terms." Son v. Margolius, Mallios, Davis, Rider & Tomar, 114 Md. App. 190, 214 (1997) (citation omitted), rev'd on other grounds, 349 Md. 441 (1998). In such cases, an evidentiary hearing usually is required. David v. Warwell, 86 Md. App. 306, 319-21 (1991); Pearlstein v. MD Deposit Ins. Fund, 78 Md. App. 8, 15-17

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before this Court. Issue IV of the reply brief, however, was not raised in appellants' initial brief and was not responsive to any argument asserted in appellee's brief. Therefore, we shall not consider Issue IV of the reply brief. See Federal Land Bank v. Esham, 43 Md. App. 446, 459 (1979).

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(1989).

In reviewing the trial court's judgment that an oral contract to settle the matter sub judice existed and what its terms were, we will not set aside its judgment unless its factual findings are clearly erroneous. Md. Rule 8-131(c); see also Reisterstown Plaza Assocs. v. General Nutrition Ctr., Inc., 89 Md. App. 232, 240 (1991). If there is any competent, material evidence to support the factual findings of the trial judge, those findings cannot be held to be clearly erroneous. Fantasy Valley v. Gaylord Fuel, 92 Md. App. 267, 275 (1992); Staley v. Staley, 25 Md. App. 99, 110 (1975). When factual findings are in dispute, we will give deference to the trial judge's decision, giving due regard to the opportunity of the court to assess the credibility of witnesses. Attorney Grievance Comm'n v. Williams, 335 Md. 458, 471 (1994).

Appellants claim that because there was no transcription made of the 9 October 1997 proceeding, or of the agreement allegedly reached at that proceeding, no meeting of the minds was reached at that time. We are not persuaded by this contention. While it may be the traditionally circumspect practice to put a litigation settlement agreement on the record under similar circumstances, the circuit court's judgment must rise or fall in the instant case based on the evidentiary hearing conducted on 22 January 1998. The absence of a transcript from 9 October 1997 merely necessitated the holding of that evidentiary hearing.

The significance attributed by appellants to appellee's counsel's preparation and transmittal to appellants' counsel of a

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written agreement, to which was appended Mr. Raphel's drawing, is exaggerated greatly. The creation of such a document, appellants insist, demonstrates that no party believed that an enforceable oral agreement was reached on 9 October. An obvious problem with this argument is that the purported draft agreement was not received in evidence. Only the attachment to that document, the Raphel drawing, was placed in evidence. Appellants did not offer the draft agreement as an exhibit, nor did they object to or remonstrate with the court concerning the court's disinclination to receive the agreement when its possible receipt as an exhibit was broached and then withdrawn by appellee. Therefore, appellants' appellate arguments, to the extent those arguments are dependent on the draft agreement, are not preserved, nor are they properly reviewable by us in the absence of the draft agreement in the record extract.[21]

To the extent that appellants' arguments revolve around the creation of the Raphel drawing, which was in evidence, we cannot

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[21]As noted earlier in this opinion, appellants' apparent quarrel was with the Raphel drawing, not the terms of the draft written agreement. No contention was advanced below that the draft agreement was other than a faithful memorialization of the terms of the 9 October oral agreement. The dispute that gave rise to appellants' attempted repudiation of the 9 October accord was appellee's alleged effort to improve upon her position by causing the Raphel plan to be prepared in a way that was assertedly inconsistent with certain aspects of the Lewis sketch.

In any event and under the facts found credible by him at the 22 January 1998 hearing, the trial judge would not have erred had he deemed the effort to create a post-agreement writing memorializing the oral agreement not to be an impediment to concluding that a binding oral agreement pre-existed the exercise in legal draftsmanship. See Lubore v. RPM Associates, Inc., 109 Md. App. 312, 323-24 (1996).

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say that the trial judge was clearly erroneous or abused his discretion in arriving at his assessment of its significance. The oral agreement found by the trial judge to exist on 9 October 1997 was in the nature of an executory accord. See Clark v. Elza, 286 Md. 208, 214 (1979). That the parties contemplated on 9 October the creation thereafter of a more precise and formal drawing carrying out the intent of the 9 October agreement, including the Lewis sketch, for submission to the local governmental authorities as the means for securing approval of the necessary permits to effect the settlement, was supported by the testimony of Ms. Fertitta and Mr. Lewis. Thus, the parties' required approval of that subsequent drawing as being true to the Lewis sketch, and the obtention of governmental approval based on such an approved plan, are analogous to a contract subject to conditions (See Chernick v. Chernick, 327 Md. 470, 479 (1992)). These outstanding matters do not serve necessarily as the basis to conclude that agreement on the essential terms of an enforceable oral contract did not exist on 9 October 1997. Indeed, as the judge pointed out, any actual and material discrepancies between the Raphel plan and the Lewis sketch would be resolved by the court, enforcing the intent of the Lewis sketch, in directing that another plan, faithful to the Lewis sketch, be prepared. Appellants may seek such enforcement yet. As we noted earlier, however, it is not clear at all on this record (based on Mr. Lewis's assessment of the two drawings) that the Raphel plan was inconsistent materially with the Lewis sketch or was unapprovable by the County (absence a "variance" of whatever

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type). Certainly, the court did not declare that any actual or material inconsistency did exist between the drawings. Moreover, appellants have not sought enforcement of the agreement, preferring instead to mount an attack on the existence of the agreement. The trial court clearly envisions a superintending role in the effectuation of the agreement.[22]

The testimony of Ms. Fertitta and Mr. Lewis, obviously found credible by the judge, and the Lewis sketch provided adequate evidentiary bases for the judge's findings and conclusions. The judge was not obligated to believe the testimony of Mr. Kiebler or the proffer of Ms. Bolling. Obviously, he did not believe either. We defer to his superior ability to make that assessment.

Although a fact finder may consider, in its effort to determine what the terms of a contested oral contract are, the parties' negotiations and statements made at the time of the making of the contract, as well as their conduct and declarations subsequently (Service Realty Co. v. Luntz, 210 Md. 228, 235 (1956); Son, 114 Md. App. at 213), the fact finder is not obligated to do

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[22]In their reply brief, appellants suggest an additional reason why there was no agreement reached on 9 October 1997. That the court did not enter a final judgment in the case, they claim, indicates that the matter was not fully resolved. For appellate review purposes, the collateral order doctrine exception to the finality rule enables appellants to even raise at this point their arguments as to the court's disposition of the Petition To Enforce Settlement Agreement. But for that exception, we would not entertain this appeal at all, assuming appellants' lack of finality argument has any foundation in the record. Regardless, we do not consider the court's acknowledgment of its role in superintending the effectuation of the settlement agreement as being also an implicit acknowledgment that it considered the agreement unenforceable.

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so, especially where it finds any such testimony uncredible. In the instant case, however, appellants maintained there was no oral contract reached on 9 October 1997. Appellants therefore did not focus on what the terms of any such agreement might have been.

Appellants, in their effort to demonstrate the absence of an enforceable agreement on 9 October, point to other unresolved matters, such as obtaining a cost estimate for the reconstruction of the Fertitta pier and determining if the Lewis sketch concept was approvable without a variance. We have considered and disposed of the variance matter earlier. As to the matter of cost, appellants argue that no reasonable person would agree to what Ms. Fertitta claimed were the terms of the contract without knowing what such an agreement would cost them. As pragmatically compelling an argument as this may be, the courts will not relieve a party of his or her bargain merely because it was an ill-conceived or bad bargain. See Vincent v. Palmer, 179 Md. 365, 372 (1941).

Appellants also perceive, as an additional critical omission from the terms of the 9 October 1997 agreement found by the court, that the location of the Bolling pier was left unresolved. Given Mr. Lewis's testimony regarding this aspect (see n. 18 supra), we see no reason why this detail cannot be handled through the governmental approval process, and the court's superintending function, if necessary.

As legal support for why the various loose ends identified by appellants render the 9 October 1997 accord, as found by the judge,

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unfinal and unenforceable, appellants offered David v. Warwell, 86 Md. App. 306 (1991) and Pearlstein v. MD Deposit Insurance Fund, 78 Md. App. 8 (1989). Without delving too deeply into factual distinctions between those cases and the instant case, we are satisfied that both of these cases are legally inapposite. Both Warwell and Pearlstein involved conveyances of an interest in real property, thus implicating the Statute of Frauds' normal requirement of a writing. Warwell, 86 Md. App. at 316; Pearlstein 78 Md. App. at 16. No such situation is presented in the instant case. Warwell, unlike the instant case, was decided primarily on the basis that the lower court summarily resolved the matter without the conduct of a required evidentiary hearing. Such is not the case here. We are persuaded that the matters that remained to be resolved following the 9 October 1997 agreement found in the instant case are more akin to the unresolved matters in Barranco v. Barranco, 91 Md. App. 415 (1992), which situation did not vitiate the court's finding of an enforceable oral agreement to settle pending litigation. Being of that view, we close this opinion by repeating with favor from Clark v. Elza:

> As long as the basic requirements to form a contract are present, there is no reason to treat such a settlement agreement differently than other contracts which are binding. This is consistent with the public policy dictating that courts should "look with favor upon the compromise or settlement of law suits in the interest of efficient and economical administration of justice and the lessening of friction and acrimony." Chertkof v. Harry C., Weiskittel Co., 251 Md. 544, 550, 248 A.2d 373 (1968), cert. denied, 394 U.S. 974, 89 S.Ct. 1467, 22 L.Ed.2d 754 (1969).

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286 Md. 208, 219 (1979).

JUDGMENT AFFIRMED;

COSTS TO BE DIVIDED EQUALLY AND PAID BY APPELLANTS.

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(410) 825-9200
FAX (410) 825-9201

1/20/99

SPEED MEMO

DATE: 1-18-98 ?

TO: Mr. John Lewis
Zoning Office

RE: Kiebler & Bolling
Cases 96-244-SPH & 96-245-SPH

Enclosed is the opinion of the Court of Special Appeals affirming the Circuit Court in the above matters.

RECEIVED
JAN 20 1999
PDM

Very truly yours,

Lewis L. Fleury

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IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF THOMAS T. BOLLING, ET UX
7202 Green Bank Road
Baltimore, Maryland 21220

and

PAUL D. KIEBLER, ET UX
7200 Green Bank Road
Baltimore, Maryland 21220

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

IN THE CASE OF: IN THE MATTER OF
THOMAS T. BOLLING, ET UX
FOR A SPECIAL HEARING ON PROPERTY
LOCATED ON THE NORTH SIDE GREEN BANK
ROAD, 75' EAST OF C/L CHOPTANK ROAD
(7202 GREEN BANK ROAD)
CASE NO. 96-244-SPH AND
PAUL D. KIEBLER, ET UX
ON PROPERTY LOCATED 25' EAST OF C/1
CHOPTANK ROAD
(7200 GREEN BANK ROAD)
CASE NO. 96-245-SPH
15TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT

CIVIL ACTION
NO. 3-C-97-00740

* * * * * * * * * * * *

NOTICE OF APPEAL

Petitioners, Thomas T. Bolling, et ux. and Paul D. Kiebler, et ux., by and through their attorney, J. Carroll Holzer, Holzer & Lee, hereby file an appeal to the Court of Special Appeals from the Decision of the Circuit Court finding that a Settlement had occurred in this Case, and the

LAW OFFICE
HOLZER AND LEE
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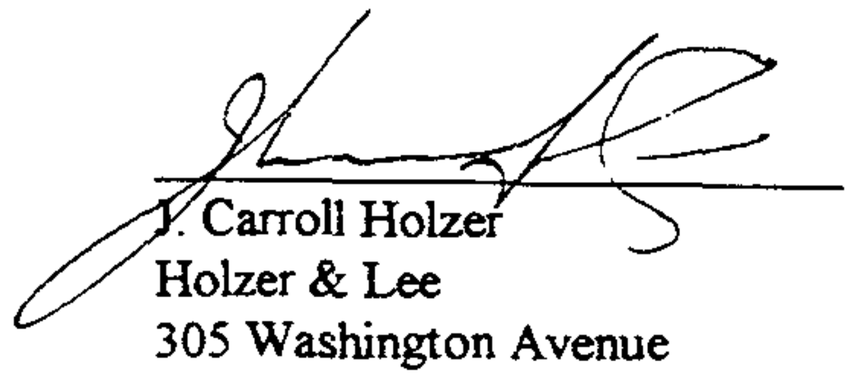
FAX (410) 825-4923

FILED FEB 19 1998

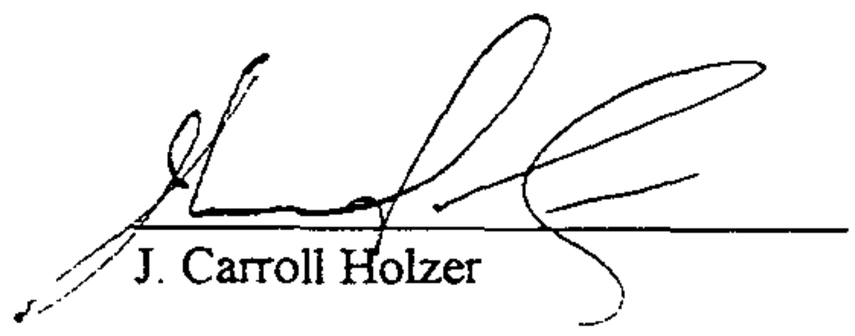
Court's refusal to issue an Opinion and Order on the merits of the Case, said Decision and Order in the Circuit Court having occurred on January 22, 1998.



J. Carroll Holzer
Holzer & Lee
305 Washington Avenue
Suite 502
Towson, Maryland 21204

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of February, 1998, a copy of the foregoing Notice of Appeal was mailed to Lewis Fleury, Esquire, 424 Woodbine Avenue, Towson, Maryland 21204, attorney for Dorothea M. Fertita.



J. Carroll Holzer

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IN THE CIRCUIT COURT FOR BALTIMORE COUNTY	*	
	*	
PETITION OF THOMAS T. BOLLING, ET UX	*	
and	*	CIVIL ACTION
PAUL D. KIEBLER, ET UX	*	3-C-97-00740
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	* *	

* * * * * * * * * * * * *

APPELLEE'S MEMORANDUM IN OPPOSITION

Appellee, Dorothea Fertita, by her attorney, Lewis L. Fleury, pursuant to Maryland Rule 7-202 respectfully submits this Memorandum In Opposition, and says:

STATEMENT OF THE CASE

Appellee adopts the Statement of the Case set out in Appellant's Memorandum.

ANSWERS TO QUESTIONS PRESENTED

1. The CBA was correct in its interpretation of Section 417.3 of the Baltimore County Zoning Regulations finding that the shore line of the subject property was straight, upon which finding it denied the Appellants' petitions.

2. The CBA's finding that the "shore line of the subject property was straight" was overwhelmingly supported by evidence, including the evidence of the Appellants' expert.

3. The CBA was correct in finding that Lots numbers 28, 31 and 32 were not in violation of the Baltimore County Zoning Regulations Section 417.3, and therefore was correct in denying the Petition for Special Hearing.

4. The CBA was correct in deferring to the authority of Office of Permits and Development Management (OPDM) of Baltimore County, as to the designation of the proper location of the proposed piers.

5. The CBA did not err in considering the previous zoning enforcement case tried before Judge A. Gordon Boone in the District Court of Maryland for Baltimore County, concerning the property of Fertita, Lot #31; and since the County Board gave the same consideration and application of Judge Boone's ruling as that given by the Zoning Commissioner in his Opinion, it acted in concert with the position taken by the Appellants as to this issue. Further, the hearing before Judge Boone and his ruling were properly in evidence before the CBA, they cannot now be heard to say "error".

STATEMENT OF FACTS

Responding to Appellants' Statement of Facts, Appellee says:

1. That the allegations in the first two paragraphs of Appellants' statements are argumentative opinions and improper as statements of fact.

2. The statements on pages 5, 6, 7 and 8 of Appellants' Statement of Facts are essentially true, except that Fertita did not construct her pier "without a permit from Baltimore County,"

but the contractor, who was responsible for obtaining the permit, installed only several pilings before receiving a Stop-Work Order from the County, upon the Kieblers' complaint. Fertita then obtained the permit and proceeded to construct the pier without further complaint from Kieblers, except for a contention by the Kieblers that her proposed boat slip on the East side of her pier would be too close to them, as a result of which Fertita moved her slip to the end of the pier.

3. The first paragraph on page 9 of Appellants' Statement of Facts, should be clarified by adding that while the Kieblers were not parties to the action described, their experts appeared in their behalf before the Judge.

4. Paragraph 2 on page 9 is a mere opinion.

5. Paragraph 3 on page 9 does not appear to be true since Mr. Lewis testified before the CBA, that at the trial before Judge Boone the engineers for both parties discussed in some detail how to define divisional lines where the there was an irregular shore.

6. The matters outlined on page 10 and in the first half of page 11 are essentially true, except that Kiebler's second building permit has now been suspended by the Office Of Permits And Department Management (OPDM) of Baltimore County.

7. Appellants' statement in the second half of page 11 that the CBA was "without any understanding of the issues clarified by the Zoning Commissioner," is obviously in error, since the CBA treated Judge Boone's opinion and finding with the same consideration and effect as did the Zoning Commissioner in his

opinion. And even though there was no "marked exhibit in evidence before the CBA of the District Court taped proceeding," that proceeding was validly before the CBA by virtue of the rules of the CBA, statements of Appellants' counsel and oral testimony.

LEGAL ARGUMENT

Scope of Review

The function of a Court in reviewing the action of a legislative or administrative body relating to zoning matters is restricted and narrow in scope. And the court will not substitute as judgment in a zoning case as to the wisdom or soundness of the action taken by the zoning authorities if the question decided by them was fairly debatable and their action is not shown to be arbitrary, capricious or illegal. Reese v. Mandel, 224 Md. 121. The action of a zoning board or officer with respect to the granting or denial of any exception, variance or permit will be presumed to be legal and correct, and the person appealing from the action has the burden of overcoming the presumption. Adler v. The City of Baltimore, 220 Md. 623, and Hoffman v. Mayor and City Council of Baltimore, 187 Md. 593.

Applicable Zoning Regulations

Appellee adopts the statement of regulations set out in Appellants' Memorandum.

LEGAL ARGUMENT

I. THE CBA WAS CORRECT IN ITS INTERPRETATION OF SECTION 417.3 OF THE BALTIMORE COUNTY ZONING REGULATIONS BY FINDING THAT THE SHORE LINE OF THE SUBJECT PROPERTY WAS STRAIGHT.

Appellants' statement of a primary premise that the CBA and this Court must interpret Section 417.3 as a matter of law in its application of the instant case is without merit in law or fact. Obviously the CBA was obliged to interpret the Section cited, but just as obviously any interpretatuion must be made in the light of the factual configuration of the shore line, property lines, existing structures and other facts bearing on a reasonable interpretation. Accordingly the CBA correctly received evidence from both parties including testimony of on site inspections by expert witnesses, plats and plans as to the factual configuration of the shore line under consideration in this case and expert opinion as to a reasonable and practical interpretation and application of BCZR Section 417.3 as it relates to that shore line and all other existing and proposed facts and uses.

See Appellants' witness Patton's testimony, "In my opinion, do we ever have a straight shore line? Probably not." (T-94, L-16, et seq.). If this were true there would be no need for Subsection A, for all shore lines would fall into Subsection B.

Also see the testimony of Mr. John Lewis of the OPDM of Baltimore County concerning his expert interpretation and application (T-100, L-9, et seq.). Also see the testimony of Mr. Eugene F. Raphel, registered land surveyor, describing the slight

variations in the bearings for Lots numbers 28 through 31 (T-122, L-14, et seq.) and his statement, "For all practical purposes, it's a straight line." (T-124, L-18).

Appellants' argue on pages 17 and 18 of their Memorandum that because "the property lines in this case, if projected into the water, would either diverge from each other or converge into each other if extended far enough into the Gunpowder River", that the CBA was, by law, bound to apply Section 417.3B, that of an irregular shore line.

In reply to this argument, Appellee submits that Section 417.3B is applicable only "if by reason of the curvature of the shore line (emphasis added), the lines, when projected into the water, diverge from each other, . . . or converge with each other . . . ." This Subsection clearly applies only to problems caused by shore lines that are "not straight" and it makes no mention of problems caused by property lines, whether not perpendicular to the shore line, or not parallel to each other.

Appellee submits that the County Council in promulgating Subsections A and B of this Section of the BCZR recognized that it is impossible to define procedures that would afford practical solutions to all shore-use issues arising from property lines. Accordingly, the Council promulgated paragraph A to deal with such issues as far as "it is practical to do so", leaving the resolution of all other problems caused by property lines to the creativity of the adjoining landowners who can adjust and realign their boundaries by bargain and compromise.

However, the Council further recognized that where the problems arise from "a shore line which is not straight," an act of nature, it should and did define a procedure for resolution, as set down in Subsection B of Section 417.3.

Upon further examination of the proposal of Mr. John Lewis of the OPDM of Baltimore County setting out the buildable areas for the Kiebler and Bolling lots (Petitioners' Exhibit #17 and offered as Protestants' Exhibit 1A at T-102, L-8), it is obvious that Mr. Lewis applied both aspects of 417.3A; that is extension of the West property line of the Fertita property from the shoreline and determination an Eastern divisional line for the Bolling property perpendicular to a straight shore line. This is most assuredly an application of that Subsection as far as it is "practical to do so", as required by the Subsection itself.

Indeed, piers of the same size and dimension as proposed by the Appellants in this proceeding, with a 15" x 35" boat slip at the end of each, can be constructed in the "buildable areas" shown on the "Lewis plan" Petitioners' Exhibit 17 before the CBA, offering each of the three landowners here involved, Fertita, Kieblers and Bollings, equal, reasonable and fair access to the Gunpowder River without "conflicting with existing facilities" and "conforming as closely as possible to the rules set forth herein (417.3C) <u>so as to cause the least interference with existing and/or possible future construction</u> (emphasis added)."

II. THERE WAS SUFFICIENT EVIDENCE BEFORE THE CBA TO FIND THAT THE SHORE LINE WAS STRAIGHT

Appellants contention that James Patton's testimony "establishes clearly the subject shore line is irregular," surely falls far short of their expectation. After two pages of discussion concerning the minor irregularities of the instant shore line, Mr. Patton testified that the "bulkhead line" (shore line) between Lots #28, 29 and 30 is a straight line (T-83 L-13 through 21 and T-84 L-1).

Later, when asked "how straight does a shore line have to be to be called a straight shore in your opinion?" he answered, "It is the relativity of individual properties one to the other, that makes the determination as to the convergence versus divergence relative to a straight line" (T-84, L-12 through 17).

And still later when asked, "What is the maximum variation that you would consider and still have a straight line?", he answered, "I can't state categorically X degress variation or X feet of variation . . ." (T-85, L-9).

And later: Question: "In your opinion, could we ever have a straight shore line?" Answer: "In my opinion, do we ever have a straight shore line? Probably not." Question: "So you would apply 417.B in all cases?" Answer: "I'm going to qualify that. Where we create straight shore lines through bulkheading and piers and so on, yes, we have straight shore lines that we deal with very often. But on the natural shore line, I haven't see a straight shore line in my life."

In addition to Mr. Patton's testimony, see the testimony of John Lewis of the OPDM of Baltimore County who, when asked, "What is the standard for reasonable application of 417.A in your department?" answered, "Well, basically, if I see a shore line that appears to be straight without large digressions, based on our appendices, or Appendix J, we apply 417.A. In this case, 417.A seemed appropriate" (T-100, L-15).

And later, when asked, "Now, I show you Petitioners' Exhibit 16 and ask you to look at the piers and shore line and the lots that are shown on that plat and ask you if you would not find 417.A (applicable) to all those lots?" Answer: "Well, looking the way it appears, for the sake of establishing the shore line, I'd put a straight edge across the property lines allowing for some minimal digressions as our Appendix drawing does, and I would say this is a straight shore line" (T-101, L-7 et seq.).

In addition to the above, Mr. Eugene F. Raphel, expert surveyor and land planner, testified as follows:

Answer: "The Kiebler lot, could be Lot 30, would have a bearing of 63.10, 41 East, then to go back into 28. It has a bearing of 65.05, 37 East."

Question: "So that's actually a two degree variance between--"

Answer: "For all practical purposes, it's a straight line."

Surely there was sufficient, if not overwhelming, evidence that the shore line in question was a straight shore line, as found by the County Board of Appeals.

III. THE CBA DID NOT ERR IN DETERMINING THE SHORE LINE OF THE SUBJECT PROPERTIES TO BE A STRAIGHT SHORE LINE AND APPLYING SECTION 417.3C

Appellants argue that 417.3A and Appendix J require construction of piers on a straight shore line to be perpendicular. This contention completely ignores Section 417.3A which explicitly states, "If the shore line is straight, the divisional lines are to be extended from the intersection of the property line and the shore line into the water perpendicular to the shore line <u>or where the property lines are parallel and it is practical to do so, the proper(ty) boundary lines shall be extended in a straight line into the water</u>."

Surely, the term "parallel" when here applied to property lines does not mean that the lines are <u>absolutely</u> parallel, meaning, i.e. that they would not intersect if extended <u>ad infinitum</u> in both directions, but rather that they are not at such angles to each other as will reasonably affect the use of the instant properties. In the matter <u>sub judice</u> the property lines of all properties involved are so nearly parallel that when extended, as proposed by Mr. Lewis, there is sufficient buildable area for the construction of piers of equal accommodation for all the properties.

On page 5 of its opinion, the County Board of Appeals stated, "The Board finds that BCZR Section 417.3C must be applied regardless of whether Section 417.A or B applies to new construction." In so doing, the Board notes with interest the language contained in Section 417.3C, specifically, ". . . It would

be the duty of the Office of Planning and Zoning (now Permits and Development Management) to specify the limits of construction to conform as closely as possible to the rules as set forth herein so as to cause the least interference with existing and/or possible future construction" (emphasis added). The Board then went on to find that the "Piers as proposed are in violation of Section 417.3C and that they may cause interference with both the existing pier on the Fertita property and any future expansion of the Fertita pier".

In the light of all of the evidence, the CBA properly applied Section 417.3C.

IV. THE CBA WAS CORRECT IN DEFERRING TO THE AUTHORITY OF OFFICE OF PERMITS AND DEVELOPMENT MANAGEMENT (OPDM) OF BALTIMORE COUNTY, AS TO THE DESIGNATION OF THE PROPER LOCATION OF THE PROPOSED PIERS.

When Appellee's counsel offered a reasonable plan for the construction of the proposed piers which would be in compliance with Section 417.3C Appellants' counsel objected and was sustained by the County Board of Appeals (T-128, L-1 et seq.). This objection was obviously to keep the Board from considering a "third plan", as argued by Appellants' counsel in his opening statement (T-27, L-1 through L-10).

Now Appellants apparently contend that the CBA should have offered to them its own plan for construction which would comply with BCZR Section 417.3C.

Appellants further state on page 22 that the Zoning Office "refused to issue the letter of approval necessary for Kiebler to obtain a Corps of Engineers' permit even though he had a valid and

lawful permit to build his pier from Baltimore County issued and approved by the Zoning Office. The Zoning Office, in refusing to issue the approval to Corps of Engineers, required Kiebler to petition for a Special Hearing . . . ." Appellee submits that Appellant Kiebler was not "required" to petition for a Special Hearing, but could have revised his plat to comply with the buildable areas set out on Mr. Lewis' plan, Petitioners' Exhibit #17, which did not violate 417.3C. However, Kiebler chose not to do so, as indicated by the Chairman of the CBA on page 2 of the Minutes of Deliberation of that body, "It's not a perfect world, but the County can be creative, and Mr. Lewis, the County Planner, did just that and provided Mr. Kiebler and Mr. Bolling with adequate space, helping them through the process, realizing there is adequate space for two piers. It was a matter of choice by Mr. Kiebler and Mr. Bolling to pursue something in the alternative."

Appellee submits that this Court should find that the CBA did not err in failing to provide a suitable plan for the construction of Appellants' piers. The matter should be returned to the CBA for appropriate action.

V. THE CBA DID NOT ERR IN CONSIDERING A PREVIOUS ZONING ENFORCEMENT CASE BEFORE JUDGE BOONE OR BY RELYING ON INFORMATION NOT IN EVIDENCE BEFORE IT.

The only reference to the District Court proceeding before Judge Boone in the CBA opinion is that "Ms. Fertita prevailed, and the pier still stands." This is certainly no indication that the CBA considered that case dispositive of the issues before it in any manner. The only reference to that proceeding in the Minutes of

the Deliberations of the CBA indicates that it took the same position as the Zoning Commissioner did on page 7 of his opinion, "Judge Boone, based on the evidence presented to him, held that the location of the Fertita pier was not violative of the BCZR . . . although Judge Boone's ruling precludes a finding on that issue, I do not conclude that it prohibits consideration of the Petitioners' other request for relief; namely, for an order defining the proper location of piers from the Kiebler and Bolling lots."

Appellants contend "first there is no evidence in the record before the CBA as to Judge Boone's decision other than the perfunctory statement of counsel for Appellants as to the fact that it occurred". They apparently failed to consider the Chairman's ruling that all items in the file from the Zoning Commissioner (presumably including the tape of the violation proceeding) are in evidence before the CBA (T-47, L-7, et seq.), and Appellants' counsel's agreement with such rule (T-97, L-13, et seq.).

Further, while Appellant's counsel may consider his reference to the Fertitta violation proceeding to be perfunctory, (i.e. done mechanically, careless, cursory or dull), Appellee submits that the page and a half description of that proceedign by Appellants' counsel in his opening statement before the CBA (T-15, L-10, et seq.), was more than sufficient to put all of his admissions as to the proceeding before Judge Boone in evidence.

The Court's attention is further called to the testimony of John Lewis, on cross-examination by <u>Appellants' counsel</u>, as follows (T-105, L-11, et seq.):

Question: "Was Judge Boone given any information about how to define the divisional line if there was an irregular shore?"

Answer: "The engineers from both parties discussed that in some detail. However, I had no inclusion into that testimony."

Further, the opinion of the Zoning Commissioner, a part of the record in this case includes, among other references to the case before Judge Boone, the Commissioner's description of that proceeding and findings after having "listened to the taped record of the violation case" (Commissioner's Opinion P-6, L-12).

CONCLUSION

All of the findings of fact by the Board of Appeals were based on properly admitted evidence which was overwhelming in its support for the findings, and certainly surpassed the "fairly debatable" threshold established by the Court Of Appeals Of Maryland. That the CBA properly applied BCZR Section 417.3, especially Subsection C thereof, which application was firmly supported by correctly admitted evidence before it.

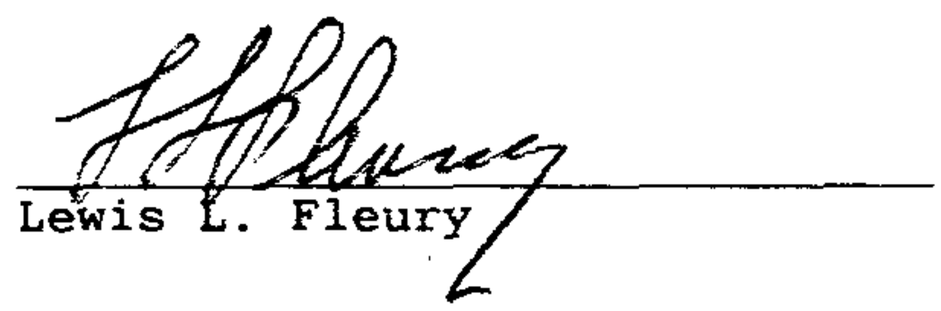
Appellee submits that the decision of the Baltimore County Board of Appeals cries out for affirmance by this Honorable Court.

Respectfully submitted,

Lewis L. Fleury
424 Woodbine Avenue
Towson, MD 21204
(410) 825-9200
Attorney for Dorothea Fertitta, Appellee

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of July, 1997, a copy of the above Appellee's Memorandum in Opposition was mailed postage prepaid to J. Carroll Holzer, Esquire, 305 Washington Avenue, Suite 502, Towson, Maryland 21204, Attorney for Appellants.



Lewis L. Fleury

fertitta.mio

LEWIS L. FLEURY
ATTORNEY AT LAW
424 WOODBINE AVENUE
TOWSON, MARYLAND 21204

(410) 825-9200

July 10, 1997

Suzanne Mensh, Clerk
Circuit Court For Baltimore
County Courts Building
Towson, MD 21204

Re: Petition of Thomas T. Bolling, et ux, et al.
Civil Action No. 3-C-97-00740

Ms. Clerk:

Please file the enclosed Appellee's Memorandum In Opposition in the above-styled matter and acknowledge receipt of the same on the enclosed copy of this letter. Return it to me in the enclosed self-addressed envelope.

Thank you very much for your cooperation.

Very truly yours,

Lewis L. Fleury

Enclosures

cc: J. Carroll Holzer, Esquire
Mrs. Dorothea Fertitta

bc: Baltimore County Board Of Appeals ✓ Thought you might be interested in this. — Lee
Mr. John Lewis

97 JUL 11 PM 1:58
RECEIVED
COUNTY BOARD OF APPEALS

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

Case Number: 03-C-97-000740

RECEIVED
COUNTY BOARD OF APPEALS
97 JUN -9 PM 1:51

TO: BOARD OF APPEALS OF BALTIMORE COUNTY
400 Washington Avenue
Towson, MD

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

IN RE:
PETITIONS OF THOMAS T. BOLLING, ET UX
AND
PAUL D. KEIBLER, ET UX

CIVIL ACTION NO:
NO. 3-C-97-00740

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

* * * * * * * * * * * * * *

MOTION AND CONSENT FOR EXTENDING TIME FOR FILING
RULE 7-207 MEMORANDUM IN OPPOSITION

Now comes Appellee, Dorothy L. Fertitta, by her attorney, Lewis L. Fleury, pursuant to Rule 1-204, and moves the Court to extend the time for filing Appellee's Memorandum In Opposition from June 5, 1997 to June 21, 1997 and for reason says:

1. On the day Appellee's counsel received Appellant's Memorandum in this matter, counsel was departing for a six-day visit with his daughter and grandchildren, and therefore lost a week of the time allowed for the preparation of the Memorandum In Opposition.

2. Upon Counsel's return form said visit he became ill with a respiratory infection from which he continues to be partially disabled.

3. This matter is assigned for trial on August 13, 1997, per the Scheduling Order of this Court, which date is more than 60 days

FILED JUN - 6 1997

after this Motion.

4. That because Appellee's counsel is a sole practioner, with other clients and matters to take care of, he will need additinal time to prepare the Appellee's Memorandum In Opposition in this matter.

5. Appellants' Counsel joins in this Motion to indicate his consent to the granting of the extension requested.

Lewis L. Fleury
Attorney for Appellee

J. Carroll Holzer
Attorney for Appellants

ORDER

The above Motion having been considered, it is this 5 day of June, 1997,

ORDRED that the Appellee file her Rule 7-207 Memorandum In Opposition no later than August 1, 1997.

Judge

True Copy Test
SUZANNE MENSH, Clerk
Per
Assistant Clerk

LEWIS L. FLEURY
ATTORNEY AT LAW
424 WOODBINE AVENUE
TOWSON, MARYLAND 21204

(410) 825-9200

February 19, 1997

Clerk of the Circuit Court
for Baltimore County
Courthouse
Towson, MD 21204

Re: Petition of Thomas T. Bolling, et ux and
Paul D. Kiebler, et ux
Civil Action No. 3-C-97-00740

Madam Clerk:

Please file the enclosed Response to Petition for Judicial Review in the above matter, and confirm said filing by returning the enclosed copy of same in the enclosed envelope. Thank you very much for your assistance.

Very truly yours,

Lewis L. Fleury

Enclosures

cc: J. Carroll Holzer, Esquire
Holzer and Lee
County Board of Appeals
Dorothea Fertitta

fe970212.res

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

Case Number: 03-C-97-000740

Chas - Lewis, its appeal - get file on from Melzer? - this came from atty 1/28/97

TO: BOARD OF APPEALS OF BALTIMORE COUNTY
400 Washington Avenue
Towson, MD

C91-770

PETITION OF:	*	IN THE
THOMAS T. BOLLING, ET UX 7202 GREEN BANK RD. BALTIMORE, MARYLAND and PAUL D. KIEBLER, ET UX 7200 GREEN BANK ROAD BALTIMORE, MARYLAND	* * * *	CIRCUIT COURT FOR BALTIMORE COUNTY CASE NO. 03-C-97-00740
FOR JUDICIAL REVIEW OF FINAL DECISION OF THE BOARD OF APPEALS OF BALTIMORE COUNTY 400 WASHINGTON AVE. TOWSON, MARYLAND	* * *	
RE: CASE NO. 96-244-SPH and CASE NO. 96-245-SPH	* *	

* * * \

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the 23rd Day of January, 1997, a copy of the foregoing **Petition for Judicial Review** was mailed postage prepaid to Lewis Fleury, Esquire, 424 Woodbine Ave., Towson, MD, 21204, and the County Board of Appeals, 400 Washington Ave., Old Courthouse, Towson, Maryland 21204.

J. Carroll Holzer

A:\ Petitions\Kiebler.Pet

County Board of Appeals of Baltimore County

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

January 14, 1997

Lewis L. Fleury, Esquire
424 Woodbine Avenue
Towson, MD 21204

RE: Case No. 94-244-SPH /Thomas T. Bolling, et ux
and Case No. 94-245-SPH /Paul D. Kiebler, et ux

Dear Mr. Fleury:

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

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,

Charlotte E. Radcliffe

Kathleen C. Bianco
Legal Administrator

encl.

cc: Ms. Dorothea Fertitta
J. Carroll Holzer, squire
Mr. and Mrs. Thomas T. Bolling
Mr. and Mrs. Paul D. Kiebler
Mr. Brent Shew
Mr. Steve Georas
Mr. James S. Patton
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

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on Recycled Paper

IN THE MATTER OF DOROTHEA FERTITTA -PROPERTY OWNER 7134 GREENBANK ROAD 15TH ELECTION DISTRICT 5TH COUNCILMANIC DISTRICT	* * *	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
RE: APPROVAL OF BUILDING PERMITS	* *	CASE NO. CBA-96-129

* * * * * * * * * * * * * * * * *

O P I N I O N

This case comes before this Board on appeal from the issuance of permits to raze an existing shed, and to construct a single-family dwelling on the property of Dorothea Fertitta at 7134 Greenbank Road in the 15th Election District.

The adjacent property owner, Paul D. Kiebler of 7200 Greenbank Road, appealed the issuance of Permit #B260240 for the dwelling requiring ten (10) foot variances on each side of the thirty-two (32) foot house placed on a fifth (50) foot lot. A second permit was issued specifying different dimensions, but still protested by Mr. Kiebler.

After the razing of the shed and the start of excavation for the new Fertitta dwelling, several days of heavy rainfall followed. The work had to be delayed; the foundation caved in and serious erosion extended into the Kiebler property (Appellant's Exhibit #2).

Rodney A. Larrick, of the Department of Environmental Protection & Resource Management (DEPRM), testified as to his familiarity with the complaint by Mr. Kiebler and his resultant notice to the Fertittas to stabilize and make corrective measures. Because of continuous rainfall, the corrections were delayed. The foundation and backfilling eventually was completed on August 19, 1996, and the correction notice was then released on September 6,

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1996.

Testimony indicates that County measures for correcting violations were completed satisfactorily and everything at the site is legal. There was unrebutted testimony by Mr. Larrick that the width of the footprint is well within the maximum permitted on the 50-foot lot. Assuming that the building is situated property, setback requirements will be met. All other issues regarding erosion have been satisfactorily tended to.

For all of the above reasons, the Board agrees that the permit is good and proper.

O R D E R

IT IS THEREFORE, this 14th day of January, 1997 by the County Board of Appeals of Baltimore County

ORDERED that the decision of the Buildings Engineer in the issuance of the subject permits to raze an existing shed and construct a single-family dwelling be and is hereby **AFFIRMED.**

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

Robert O. Schuetz, Chairman

Lawrence M. Stahl

Harry E. Buchheister, Jr.

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County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

January 14, 1997

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

RE: Case No. CBA-96-129
Dorothea Fertitta -Property Owner

Dear Mr. Holzer:

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

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,
Charlotte E. Radcliffe for
Kathleen C. Bianco
Legal Administrator

encl.

cc: Mr. & Mrs. Paul Kiebler
Lewis L. Fleury, Esquire
Dorothea Fertitta
Arnold Jablon, Director /PDM
John Reisinger, Bldg Engineer
Virginia W. Barnhart, County Attorney

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on Recycled Paper

IN RE: PETITION FOR SPECIAL HEARING N/S Green Bank Road, 75 ft. E of c/l Choptank Road 7202 Green Bank Road 15th Election District 5th Councilmanic District Thomas T. Bolling, et ux Petitioners	* * * * Case No. 96-244-SPH	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY

****

IN RE: PETITION FOR SPECIAL HEARING N/S Green Bank Road, 25 ft. E of c/l Choptank Road 7200 Green Bank Road 15th Election District 5th Councilmanic District Paul D. Kiebler, et ux Petitioners	* * * * Case No. 96-245-SPH	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

These matters come before the Zoning Commissioner as a consolidated hearing on Petitions for Special Hearing for adjacent properties. As to case No. 96-244-SPH, a Petition for Special Hearing was filed by Thomas T. Bolling and Elizabeth N. Bolling, owners of the property known as 7202 Green Bank Road in the Oliver Beach subdivision of eastern Baltimore County. As to case No. 96-245-SPH, a Petition for Special Hearing was filed by Paul D. Kiebler and Jean A. Kiebler, owners of the adjacent property known as 7200 Green Bank Road.

The requested relief in each Petition is identically worded. Essentially, the Petitioners in each case seek an Order from this Zoning Commissioner establishing the divisional property lines for the subject lots pursuant to the provisions of 417.3 of the Baltimore County Zoning Regulations (BCZR). This section provides the methodology to be employed to establish the extension of property lines from waterfront properties into the body of water to which those properties lie adjacent. The Petitioners seek relief to determine what actions might be required to construct piers

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By

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from the subject properties as shown on the plat to accompany the Petitions for Special Hearing, marked as Petitioners' Exhibit No. 1. Moreover, the Petitions for Special Hearing also seek a determination that the adjacent properties designated as lots Nos. 31 and 32 are not in compliance with the provisions of Section 417.3 of the BCZR and, as a result, have prejudiced the Petitioners' ability to construct the proposed piers.

Appearing at the combined public hearing held for these cases were the Petitioners, Thomas T. Bolling and Elizabeth Bolling; and Paul D. Kiebler and Jean A. Kiebler. Also present on their behalf was James S. Patton, the engineer who prepared the site plans and exhibits which were offered in support of the Petitions. The Petitioners were represented by J. Carroll Holzer, Esquire.

Appearing in opposition to the requests was Dorothy M. Fertitta, the owner of an adjoining property to the Kiebler lot known as lot No. 31 and Steve Georas, the owner of lot No. 32. Ms. Fertitta was represented by Louis Fleury, Esquire. Also appearing on behalf of Mrs. Fertitta was E.F. Raphel, a property line surveyor. Other interested neighbors who appeared in opposition to the request included Philip Parsons, Brent Shew and Lisa Beck.

In order to appreciate the complex issues presented by these cases, an understanding of the five adjacent lots involved in this matter is necessary. These parcels are shown on the site plan as lot Nos. 28 through 32 of the Oliver Beach subdivision plat. This is an older subdivision in eastern Baltimore County and the five lots at issue are all waterfront properties. To the north, the lots have frontage on the Gunpowder River and the southern property lines abut Green Bank Road. Running from east to west, the first lot is lot No. 28, owned by Mr. and Mrs. Jordan. Lot No. 28 is approximately 185 ft. in depth and is roughly rectangular in

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By M. Ziegler

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shape. It is zoned D.R.5.5. Interestingly, the side property lines of this lot are not parallel in that the width of the lot tapers towards the water. The parcel is approximately 50 ft. wide at the water whereas the dimension at the road is 70 ft. Mr. and Mrs. Jordan have constructed a pier of approximately 185 ft. in length extending into the water. The Jordans' pier was constructed to be perpendicular to their bulkhead line.

The next lot under discussion is that owned by the Petitioners in case No. 96-244-SPH, namely, Thomas T. and Elizabeth N. Bolling. Mr. and Mrs. Bolling's lot is zoned D.R.5.5 and is improved with a single family dwelling in which the Bollings reside. As is the case with the Jordan lot, the Bolling lot is tapered so as to provide a 70 ft. width at the roadside and 50 ft. at the bulkhead. Mr. and Mrs. Bolling wish to construct a pier from their property.

Next is the lot owned by the Petitioners, Paul D. and Jean A. Kiebler in case No. 96-245-SPH. This lot is also improved with a single family dwelling and is, likewise, zoned D.R.5.5. The Kiebler lot is more rectangular in shape than the Bolling and Jordan lots. Particularly, the Kiebler lot is both 50 ft. wide at the bulkhead and at the road. Mr. and Mrs. Kiebler also requested approval to construct a pier.

Moving westward, the next lot is lot No. 31 owned by Dorothy M. Feritta. Ms. Fertitta's lot is also 50 ft. wide at the water and at the road. Moreover, Ms. Fertitta constructed a pier of approximately 150 ft. in length in 1993. It is the location of this pier with which the Kieblers and Bollings take issue, claiming that same crosses the divisional property line extending into the water which separates the Kiebler and Fertitta property rights.

The fifth lot, lot No. 32, is owned by Mr. and Mrs. Georas. They have owned the property for approximately one year. The prior owner construct-

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Date 4/11/96
By M. Harris

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ed a pier of approximately 110 ft. several years ago. Mr. Georas' lot is also 50 ft. wide at the river and the road.

This case requires an interpretation of Section 417.3 of the BCZR and Appendix J of the regulations, which provides schematic representation to interpret Section 417.3. Essentially, that section provides the methodology to be employed to establish divisional property lines. These division of property lines define the extension of property lines from the water's edge into the water. For properties with straight shore lines (i.e., those where a 90 degree angle exists in the two corners of the lot measured by the shore line and side property lines) the placement of the divisional property lines is simple. The side yard property lines need only be extended into the water indefinitely. For an irregularly shaped shore line (i.e., those where the angles between the side property line and shore line are greater or less than 90 degrees) Section 417.3 and Appendix J provide the methodology to establish the divisional lines. In essence, these lines are established so as to provide all adjacent property owners with a fair and uniform access to the water.

The measurement of the divisional property lines in the subject case are difficult. For their part, the Petitioners claim that the properties at issue contain irregular frontage, whereas the Protestants and Baltimore County believe the shore lines to be roughly straight. Two factors are present which have complicated the issue. First, the Jordan and Bolling lots are tapered; i.e., the side property lines are not parallel to one another. As noted above, these two lots are both 70 ft. wide at the road and 50 ft. wide at the water. This tapering of the lots complicates the determination of the divisional property lines. Secondly, and as importantly, is the fact that none of the five lots at issue contain right angles in the corners of those lots which are measured at the water. As

ORDER RECEIVED FOR FILING
Date 4/1/96
By M. Zorn

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is clearly shown on all of the site plans, the bulkhead line, when measured with the side property lines, creates an angle of greater or less than 90 degrees.

In any event, the genesis of this matter actually occurred in approximately 1993 when Ms. Fertitta began constructing her pier. Testimony and evidence was offered regarding this construction and the dispute which arose between her and Mr. Kiebler. Suffice it to say, Ms. Fertitta believes that the construction and placement of her pier is proper. Although a permit was initially not obtained for the pier's construction by her, one was eventually issued by Baltimore County and the pier was completed thereafter. The Petitioners believe that the Fertitta pier was improperly located and prejudices their ability to construct piers from their property. Petitioners' Exhibit No. 1, the site plan prepared by Mr. Patton, geographically illustrates the divisional lines as alleged by the Petitioners.

Moreover, it was the construction and resultant legal proceedings involving the Fertitta pier which brought about a preliminary objection in the instant case to these Petitions. Specifically, Mr. Fleury, on behalf of Ms. Fertitta, objected to consideration of the Petitions in the subject cases claiming that the issues presented here had already been resolved in a previous case. Specifically, he noted that Baltimore County had previously prosecuted Ms. Fertitta in zoning violation case No. C-94-660 (court case No. SP-02499-94). In that matter, following the receipt of a complaint by Mr. and Mrs. Kiebler, the Baltimore County Office of Law filed a zoning citation against Ms. Fertitta, alleging that her pier failed to observe the required 10 ft. setback from the divisional property lines. In fact, the citation alleged that the pier actually crossed the divisional property line between the Fertitta and Kiebler properties. The matter

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Date 4/11/96
By M. Zorzan

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could not be settled amicably and the case proceeded through hearing in the District Court of Maryland before the Honorable A. Gordon Boone, Judge.

Mr. Fleury offered as exhibits the County's violation file in this case and also the taped record of the case in the District Court. He claimed that resolution of the violation case prohibited consideration of the issues presented in the subject Petitions based on the principals espoused in the doctrines of double jeopardy (criminal) and a res ajudicata (civil). Essentially, Mr. Fleury argued that the disposition of the Fertitta case prohibited consideration of the issues presented in the Petitions for Special Hearing.

I have listened to the taped record of violation case. It is of note that Mr. Kiebler, although a witness in that case, was not a party. The parties were clearly only Baltimore County and Ms. Fertitta. The case was prosecuted on behalf of Baltimore County by Lee Thompson, Esquire, from the Office of Law. Ms. Fertitta was defended by Mr. Fleury.

Testimony was offered, in that case, from a Mr. Kodis of Triangle Surveying, Inc., and Mr. Thomas, a registered property line surveyor, employed by that company. Testimony was also presented in the County's case through Mr. Kiebler. In defense, Mr. Fleury produced the testimony of Mr. Raphel.

The dominant theme of the testimony offered in that case were the competing property line surveys which were prepared by Mr. Raphel and Mr. Thomas. Unfortunately, other than Mr. Kiebler, it appeared that none of the witnesses in that case understood or appreciated the concept of divisional property lines as set forth in Section 417.3 of the BCZR. There was no testimony offered to Judge Boone as to that section of the BCZR and what it requires in terms of establishing divisional property lines.

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Date 4/11/96
By M. Gordon

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Rather, the parties spent a great amount of time offering conflicting and bickering testimony about the placement of the lot lines on the land. Both surveyors apparently believed that once these lines were established, they need only be extended straight into the water to determine the location of the divisional lines. Neither side attempted to enlighten Judge Boone as to the County law and the methodology to be employed when an irregular shore line existed.

In any event, as to Mr. Fleury's objection, I will, upon review of the file and tape, sustain it in part, and overrule it in part. As it relates to that portion of the Petition for Special Hearing which seeks a determination that the Fertitta pier is illegally constructed, the District Court's ruling is dispositive. Judge Boone, based on the evidence presented to him, held that the location of the Fertitta pier was not violative of the BCZR. In my judgment, I believe that I am bound by that ruling although it is unfortunate that the County did not attempt to offer evidence to the Court which would have offered an explanation of how divisional lines should be measured in cases such as these.

Although Judge Boone's ruling precludes a finding on that issue, I do not conclude that it prohibits consideration of the Petitioners' other request for relief; namely, for an Order defining the proper location of piers from the Kiebler and Bolling lots. That is, it is clear that the violation case considered the Fertitta pier only and Judge Boone's ruling cannot be binding on other properties which were not under consideration in that case. Thus, the Petition is properly before me, as it relates to the Kiebler and Bolling lots.

Returning to the testimony and evidence offered in the instant case, testimony was first received from Edward F. Deiaco-Lohr, a registered property line surveyor with Gerhold, Cross and Etzel. Mr. Deiaco-Lohr's

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Date 4/11/96
By M. Fleury

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survey was presented as Petitioners' Exhibit No. 2. The Petitioners submit that the survey presents an accurate representation of the property lines, a conclusion to which Mr. Raphel, on behalf of the Protestants, agreed. Thus, I find Mr. Deiaco-Lohr's survey to be accurate and a proper representation of the situation.

Also testifying on behalf of the Petitioners was James S. Patton, a professional engineer, who prepared many of the site plan exhibits. Mr. Patton presented a thorough examination of the issues and history of these regulations. In essence, he concluded that the subject properties feature an irregular shore line, not a straight shore line. Thus, he measures the divisional lines, following the standards set forth in Section 417.3 of the BCZR and Appendix J, in a manner as shown in Petitioners' Exhibit No. 1. He believes that both the Georas and Fertitta piers are improperly located. However, recognizing their existence and Judge Boone's conclusion, Mr. Patton suggests pier construction by Mr. and Mrs. Bolling and Mr. and Mrs. Kiebler in a manner as shown on Petitioners' Exhibit No. 1.

Testifying on behalf of the Protestants was Mr. Raphel. His rather simplistic approach is to identify the property lines on the land and merely extend the same straight into the water. He disagrees with Mr. Patton's conclusions.

Also testifying was John Lewis, from the Office of Permits and Development Management. Mr. Lewis testified that this was not an irregular shore line but a straight shore line and discussed the application of Section 417.3 and Appendix J.

With all due respect to Mr. Lewis and Mr. Raphel, it is my judgment that the shore lines created by these five properties are not straight and that determination of the divisional lines cannot be made by merely extending the property lines on land between the lots directly into the water.

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Date 4/11/96
By M. Gorr

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This is so, as observed above, due to the taper configuration of two of the lots (i.e., Jordan and Bolling) and the fact that all of the lots do not have 90 degree corners at the edge. Moreover, it is clear that one pier has been built off of another. After the Georas pier was originally constructed, Ms. Fertitta built her pier to run parallel thereto. The problem has arisen as when the Jordan pier was constructed. Same was built out perpendicular to that property. The result of this construction is that there is a distance, in the water, of only 95 ft. from the Jordan pier to the Fertitta pier. This is so, notwithstanding the fact that both piers are built in approximately the center of their respective properties, as measured from side yard to side yard built in perpendicular fashion from the lots; and that the Fertitta and Jordan piers are separated on land by, at least, 140 ft. As shown on the plats, the Kiebler and Bolling lots are 50 ft. wide and there appears to be at least 50 additional feet of distance from the existing piers at the bulkhead.

What has resulted is a difficult situation. The access to the water available to the Bollings and Kieblers is limited because of the prior construction. Counsel for the Petitioners made it clear that they do not seek any Order to remove these piers and I would decline to do so anyway. As noted above, Judge Boone's ruling is dispositive on the Fertitta pier and I do not believe that any of the parties should be unduly penalized. However, all must recognize the limited access is available and it must be shared appropriately.

In this regard, Section 417.4 of the BCZR is instructive. That section basically states that in the event of a conflict with existing construction, the rules of defining divisional lines shall be applied so as to cause the least interference with existing or possible future construction. In my judgment, Petitioners' Exhibit No. 16 presents the

ORDER RECEIVED FOR FILING
Date 4/14/96
By M. Nunz

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proper compromise. That exhibit, proposes the least interference with the existing construction and is a proper compromise. I cannot accept Mr. Raphel's simplistic approach of merely extending the property lines and constructing the proposed piers of the Bolling and Kiebler lots, as show on his plat (Protestants' Exhibit No. 4). That approach moves the problem eastward and would result in an unreasonably tight distance between the future Bolling pier and existing Jordan pier. All four of the affected property owners (Jordan, Kiebler, Bolling and Fertitta) must share the limited access accordingly and preserve a most reasonable and consistent distance between each of their piers and pilings. Thus, the Petitions for Special Hearing should be approved in part and denied in part and future pier construction shall be permitted only in accordance with Petitioners' Exhibit No. 16.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested should be granted in part and denied in part.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 11th day of April, 1996 that the Petitions for Special Hearing are granted in part and denied in part, as set forth hereinabove; and

IT IS FURTHER ORDERED that future construction of piers from the Petitioners' properties shall be in accordance with Petitioners' Exhibit No. 16; and

IT IS FURTHER ORDERED that nothing in these Finding of Facts and Conclusions of Law shall prejudice and/or restrict the property owners of lots 28, 31 and 32 (i.e., Jordan, Fertitta and Georas, respectively) from maintaining their piers as constructed, subject, however, to the following restriction:

1. The Petitioners are hereby made aware that proceeding at this time is at their own risk

ORDER RECEIVED FOR FILING
Date 4/11/96
By Jn. Jourdan

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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.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:mmn
att.

ORDER RECEIVED FOR FILING
Date 4/11/96
By M. Grant

MICROFILMED

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning

Suite 112 Courthouse
400 Washington Avenue
Towson, MD 21204

(410) 887-4386

April 10, 1996

J. Carroll Holzer, Esquire
Suite 302, 305 Washington Avenue
Towson, Maryland 21204

Lewis Fleury, Esquire
424 Woodbine Avenue
Towson, Maryland 21204

RE: Case Nos. 96-244-SPH and 96-245-SPH
Petitions for Special Hearing
Thomas T. Bolling, et ux, Petitioners
Paul D. Kiebler, et ux, Petitioners

Gentlemen:

Enclosed please find the decision rendered in the above captioned case. The Petitions for Special Hearing have been granted in part and denied in part, in accordance with the attached Order.

In the event any party finds the decision rendered unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Appeals Clerk at 887-3353.

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:mmn
encl.
c: Mr. and Mrs. Thomas T. Bolling, 7200 Green Bank Road, 21220
Mr. and Mrs. Paul D. Kiebler, 7202 Green Bank Road, 21220
c: Ms. Dorothea M. Fertitta, 7134 Green Bank Road, 21220
Mr. Brent Shew, 7219 Green Bank Road, 21220
Mr. Steve Georas, 7132 Green Bank Road, 21220
Mr. James S. Patton, Patton Consultants, Ltd., 305 W. Chesapeake Ave
Suite 305, Towson, Maryland 21204

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Printed with Soybean Ink

CRITICAL 244

Petition for Special Hearing

96-244-SPH

to the Zoning Commissioner of Baltimore County

for the property located at 7202 Green Bank Road

which is presently zoned DR 5.5

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 Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

The divisional lines established on the plat accompanying this Zoning Petition to be in compliance with the provisions of Section 417.3 and to determine such other actions which will be required to construct the piers as shown on the plat and determine such items which may be presented at the Hearing relative to this issue.

see attached.

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

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.

Legal Owner(s):

Thomas T. Bolling

Thomas T. Bolling

Elizabeth N. Bolling
(Type or Print Name)

Elizabeth N. Bolling
Signature

7202 Green Bank Road 335-4374
Address Phone No

Baltimore, Maryland 21220
City State Zipcode

Name, Address and phone number of representative to be contacted

James S. Patton, P.E.
Name

305 W. Chesapeake Avenue #118, Towson, MD. 21204 296-2140
Address Phone No

Contract Purchaser/Lessee:

(Type or Print Name)

Signature

Address

City State Zipcode

Attorney for Petitioner:

J. Carroll Holzer, Esq.
(Type or Print Name)

Signature

305 Washington Ave. #302
Address Phone No

Towson, MD. 21204 825-6961
City State Zipcode

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing the following dates _____ Next Two Months

ALL _____ OTHER _____

REVIEWED BY: _____ DATE _____

DROP-OFF
NO REVIEW
12/11/95
NCR

Zoning Administration & Development Management

MICROFILMED

96-244-SPH

ATTACHMENT TO PETITION FOR SPECIAL HEARING Thomas T. & Elizabeth N. Bolling

Further to determine that the adjacent properties designated as Lot #31 and #32 are not in compliance with the provisions of the Baltimore County Zoning Regulations contained in Sec. 417, and as a result have prejudiced Petitioner's ability to construct a pier as defined on the attached plat to accompany the instant Petition for Special Hearing.

MICROFILMED

244

96-244-SPH

ZONING DESCRIPTION
7202 GREEN BANK ROAD

Beginning at a point on the north side of Green Bank Road which is 30 feet wide at the distance of 75 feet east of the centerline of the nearest improved intersecting street Choptank Road which is 30 feet wide. Being Lot #29, Block -- Section #B in the subdivision of Oliver Beach as recorded in Baltimore County Plat Book #12, Folio #56, containing 12,060 S. F. Also known as 7202 Green Bank Road and located in the 15th Election District, 5th Councilmanic District.

STATE OF MARYLAND
JAMES STEPHEN PATTON
NO. 9493
REGISTERED
PROFESSIONAL ENGINEER

MICROFILMED

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY 96-244-SPH

Towson, Maryland

District 15th Date of Posting 12/29/95

Posted for: Special Hearing

Petitioner: Thomas & Elizabeth Bolling

Location of property: 7102 Green Bank Rd

Location of Signs: Facing roadway on property being 7102 Rd

Remarks:

Posted by W. Hetzly (Signature) Date of return: 1/5/96

Number of Signs: 1

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CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY

Towson, Maryland

96-744-SPH
96-745-SPH

District 15th

Date of Posting 5/27/96

Posted for: Appeal

Petitioner: Thomas Bolling, et ux + Paul Kiebler, et ux

Location of property: 7202 & 7200 Green Bank Rd.

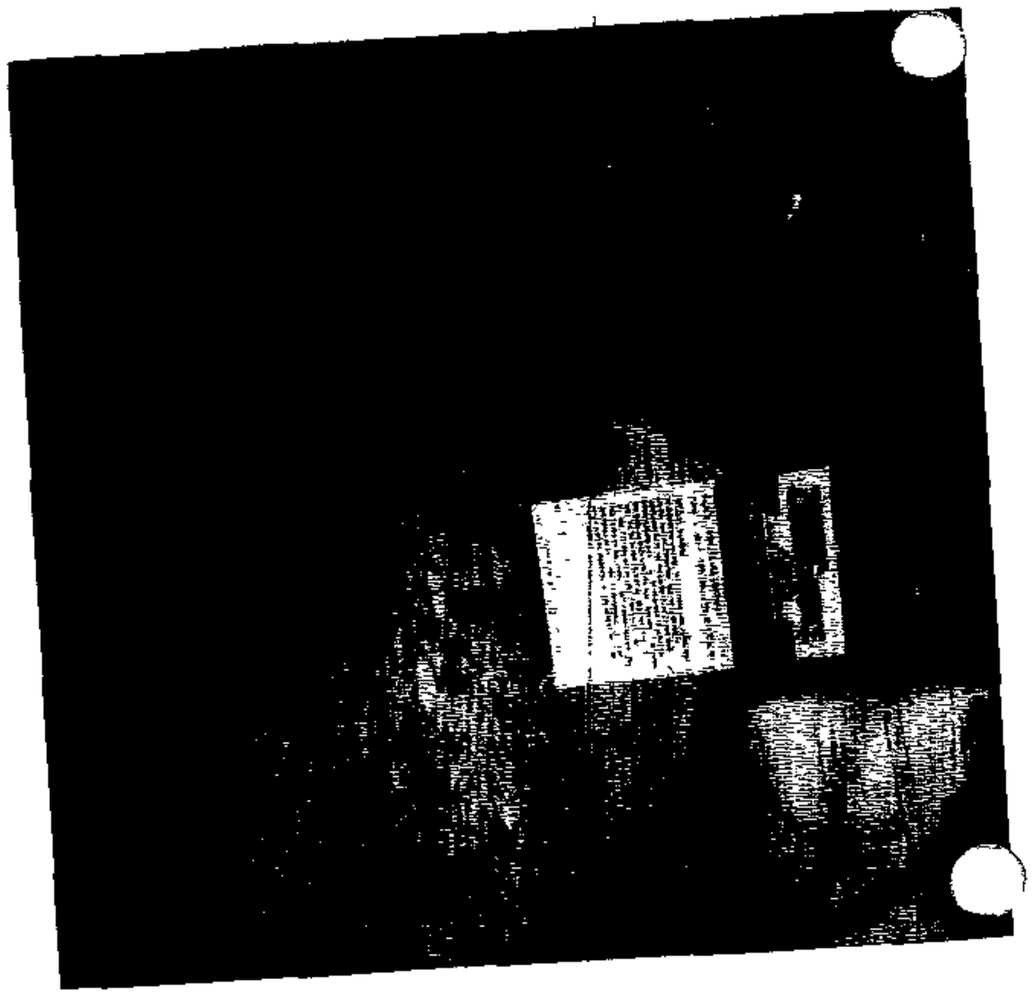
Location of Signs: Facing roadway on properties being zoned

Remarks:

Posted by M Hedg
Signature

Date of return: 5/31/96

Number of Signs: 2



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: #96-244-SPH
(Item 244)
7202 Green Bank Road
N/S Green Bank Road, 75' E of c/l Choptank Road
15th Election District
5th Councilmanic
Legal Owner(s):
Thomas T. Bolling and Elizabeth Bolling

Special Hearing: to determine whether the divisional lines established on the plat accompanying this Petition are in compliance with the provisions of Section 417.3 and such other actions which will be required to construct the piers as shown on the plat, further to determine that the adjacent properties designated as Lot #31 and #32 are not in compliance with the provisions of B.C.Z.R. contained in Section 417; and to determine such issues which may be presented at the Hearing relative to this issue.

Hearing: Tuesday, January 16, 1996 at 9:00 a.m. in Rm. 118, Old Courthouse.

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.

12/196 Dec. 28 c24198

CERTIFICATE OF PUBLICATION

TOWSON, MD., 12/29, 1995

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 12/98, 1995.

THE JEFFERSONIAN,

A. Henderson

LEGAL AD. - TOWSON

~~Publisher~~

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HOLZER & LEE

LAW OFFICES

J. CARROLL HOLZER, PA
THOMAS J LEE

J. HOWARD HOLZER
1907-1989

TOWSON OFFICE
305 WASHINGTON AVENUE
SUITE 502
TOWSON, MD 21204
(410) 825-6961
FAX: (410) 825-4923

CARROLL COUNTY OFFICE
1315 LIBERTY ROAD
ELDERSBURG, MD 21784
(410) 795-8556
FAX: (410) 795-5535

May 15, 1996

Mr. Arnold Jablon, Director
Permits and Development Management
County Office Building
Towson, MD 21204

Re: Appeal to CBA Permit No. B260238

Dear Mr. Jablon:

On behalf of my client, Paul Kiebler, 7200 Greenbank Road, Baltimore Maryland, 21220, this letter serves as a Notice of Appeal of the razing permit, number B260238, issued on or about May 1, 1996 for 7134 Greenbank Road. Attached is a check made payable to Baltimore County in the amount of $75 to cover the cost of the appeal.

If you have any questions, please call me at 825-6961.

Very truly yours,

J. Carroll Holzer

JCH:clg
cc: Paul Kiebler
County Board of Appeals (COURTESY COPY)

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

No.

DATE 12/11/95

DROP-OFF - NO REVIEW
ITEM #244

ACCOUNT 001-6150

96-244-SPH

AMOUNT $ 85.00 (WCR)

RECEIVED FROM: Thomas & Elizabeth Bolling

FOR: #030 - SPECIAL HEARING
#080 - SIGN POSTING
7202 Greenbank Road

MICROFILMED

03P71#0131MICHRC
BA C002:42PM12-11-95 $85.00

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

VALIDATION OR SIGNATURE OF CASHIER

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

No.

DATE

ACCOUNT R001 6150

AMOUNT $ 210.00

RECEIVED FROM:

FOR: 96-244-SPH and 96-245-

03P71#0131MICHRC
BA C002:05PM05/02/96 $210.00

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

VALIDATION OR SIGNATURE OF CASHIER

MICROFILMED

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

No. 011806

DATE 5/09/96 ACCOUNT R001-7120

AMOUNT $ 210.00

RECEIVED FROM: Dorothea M. Feldhaus

FOR: Appeal Fee 96-244 SPH + BC
96-245 SPH
Additional fee 05-09-96 to file.

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

VALIDATION OR SIGNATURE OF CASHIER

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

No. 019873

DATE 5/2/96 ACCOUNT R001-6150

AMOUNT $ 210.00

RECEIVED FROM: Louis Fleury

FOR: Appeal 96-244 SPH and 96-245

CHECK RECEIVED
05/02/96 $210.00

VALIDATION OR SIGNATURE OF CASHIER

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

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

No. 011834

DATE 5/20/96 ACCOUNT R001-7150

AMOUNT $ 75.00

RECEIVED FROM: J. Carroll Holzer PA

FOR: Appeal issuance of bldg. permit

01A00#0069MICHRC $75.00
BA C011:20AM05-20-96

B260238 - 7159 Oregon Ridge Road

VALIDATION OR SIGNATURE OF CASHIER

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

MICROFILMED

HOLZER & LEE

LAW OFFICES
J. CARROLL HOLZER, PA
THOMAS J. LEE

J. HOWARD HOLZER
1907-1989

TOWSON OFFICE
305 WASHINGTON AVENUE
SUITE 502
TOWSON, MD 21204
(410) 825-6961
FAX: (410) 825-4923

CARROLL COUNTY OFFICE
1315 LIBERTY ROAD
ELDERSBURG, MD 21784
(410) 795-8556
FAX: (410) 795-5535

June 7, 1996
#6896

Mr. Arnold Jablon, Director
Permits and Development Management
County Office Building
Towson, MD 21204

Re: Appeal to CBA Permit Number B272691
7134 Greenbank Road

Dear Mr. Jablon:

On behalf of my client, Paul Kiebler, of 7200 Greenbank Road, Baltimore, Maryland, 21220, by way of this letter I note an appeal to the CBA of the issuance of the above building permit approved on or about June 6, 1996. Attached is a check made payable to Baltimore County in the amount of $75 to cover the cost of the appeal.

If you have any questions, please call me at 825-6961.

Very truly yours,

J. Carroll Holzer

JCH:clg
cc: Paul Kiebler
County Board of Appeals

RECEIVED
JUN 12 1996
PDM

MICROFILMED

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

No. 011000

DATE 6/12/96 ACCOUNT R001 7120

AMOUNT $ 75.00

RECEIVED FROM: J. CARROLL HOLZER AA

FOR: 7134 GREENBANK RD

01A00#0084MICHRC $75.00

APPC AL PERMIT # B272691

VALIDATION OR SIGNATURE OF CASHIER

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

MICROFILMED

Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

Baltimore County zoning regulations require that notice be given to the general public/neighboring 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.: 244 Petitioner: THOMAS T. & ELIZABETH N. BOLLING

Location: 7202 GREEN BANK ROAD

PLEASE FORWARD ADVERTISING BILL TO:

NAME: THOMAS T. BOLLING

ADDRESS: 7202 GREEN BANK ROAD
BALTIMORE, MD. 21220

PHONE NUMBER: 335-4374

MICROFILMED

Printed with Soybean Ink
on Recycled Paper

TO: PUTUXENT PUBLISHING COMPANY
December 28, 1995 Issue - Jeffersonian

Please foward billing to:

J. Carroll Holzer, Esq.
305 Washington Avenue, #302
Towson, MD 21204
825-6961

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: 96-244-SPH (Item 244)
7202 Green Bank Road
N/S Green Bank Road, 75' E of c/l Choptank Road
15th Election District - 5th Councilmanic
Legal owner: Thomas T. Bolling and Elizabeth Bolling

Special Hearing to determine whether the divisional lines established on the plat accompanying this Petition are in compliance with the provisions of Section 417.3 and such other actions which will be required to construct the piers as shown on the plat; further to determine that the adjacent properties designated as Lot #31 and #32 are not in compliance with the provisions of B.C.Z.R. contained in Section 417; and to determine such items which may be presented at the Hearing relative to this issue.

HEARING: TUESDAY, JANUARY 16, 1996 at 9:00 a.m. in Room 118, Old Courthouse.

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(2) FOR INFORMATION CONCERING THE FILE AND/OR HEARING, PLEASE CALL 887-3391.

MICROFILMED

Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

December 19, 1995

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: 96-244-SPH (Item 244)
7202 Green Bank Road
N/S Green Bank Road, 75' E of c/l Choptank Road
15th Election District - 5th Councilmanic
Legal owner: Thomas T. Bolling and Elizabeth Bolling

Special Hearing to determine whether the divisional lines established on the plat accompanying this Petition are in compliance with the provisions of Section 417.3 and such other actions which will be required to construct the piers as shown on the plat; further to determine that the adjacent properties designated as Lot #31 and #32 are not in compliance with the provisions of B.C.Z.R. contained in Section 417; and to determine such items which may be presented at the Hearing relative to this issue.

HEARING: TUESDAY, JANUARY 16, 1996 at 9:00 a.m. in Room 118, Old Courthouse.

Arnold Jablon
Director

cc: J. Carroll Holzer, Esq.
Thomas and Elizabeth Bolling
James E. Patton, P.E.

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 CONCERING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.

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on Recycled Paper

96-135

HOLZER & LEE

LAW OFFICES

J. CARROLL HOLZER, PA
THOMAS J. LEE

J. HOWARD HOLZER
1907-1989

TOWSON OFFICE
305 WASHINGTON AVENUE
SUITE 502
TOWSON, MD 21204
(410) 825-6961
FAX: (410) 825-4923

CARROLL COUNTY OFFICE
1315 LIBERTY ROAD
ELDERSBURG, MD 21784
(410) 795-8556
FAX: (410) 795-5535

1/11/96
9
TO 63
OK

January 11, 1996

Mr. Arnold Jablon, Director
Department of Permits and Development Management
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Hand Delivered

Re.: Case # 96-244 SPH
Case # 96-245 SPH
Kiebler & Bolling for Special Hearing

Dear Mr. Jablon:

As counsel for the Petitioners in the above-captioned case, I would request a postponement of the hearing scheduled for Tuesday, January 16, 1995, at 9:00 a.m.

Because of the holidays and the weather this past week, I have not been able to meet with the client and my engineer to properly prepare this case. Jim Patton as well as Kiebler and Bolling have been unable to meet on this matter.

I would therefore request a postponement and a prompt rescheduling of this case.

Very truly yours,

J. Carroll Holzer

cc: Zoning Commissioner

C:\OFFICE\WPWIN\WPDOCS\LETTERS\JABLON4.LTR

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Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

March 7, 1996

NOTICE OF REASSIGNMENT

CASE NUMBER: 96-244-SPH (Item 244)
7202 Green Bank Road
N/S Green Bank Road, 75' E of c/l Choptank Road
15th Election District - 5th Councilmanic
Legal Owner: Thomas T. Bolling and Elizabeth Bolling

Special Hearing to determine whether the divisional lines established on the plat accompanying this Petition are in compliance with the provisions of Section 417.3 and such otber actions which will be required to construct the piers as shown on the plat; further to determine that the adjacent properties designated as Lot #31 and #32 are not in compliance with the provisions of B.C.Z.R. contained in Section 417; and to determine such items whicb may be presented at the hearing relative to this issue.

AND

CASE NUMBER: 96-245-SPH (Item 245)
7200 Green Bank Road
N/S Green Bank Road, 25' E of c/l Choptank Road
15th Election District - 5th Councilmanic
Legal Owner: Paul D. Kiebler and Jean A. Kiebler

Special Hearing to determine whether the divisional lines established on the plat accompanying this Petition are in compliance with the provisions of Section 417.3 and such other actions which will be required to construct the piers as shown on the plat; further to determine that the adjacent properties designated as Lot #31 and #32 are not in compliance with the provisions of B.C.Z.R. contained in Section 417; and to determine such items which may be presented at the hearing relative to this issue.

HEARING: WEDNESDAY, APRIL 3, 1996 at 9:00 a.m. in Room 106, County Office Building.

ARNOLD JABLON
DIRECTOR

cc: Thomas and Elizabeth Bolling
James E. Patton, P.E.
J. Carroll Holzer, Esq.
Mr. Fertitta
Paul and Jean Kiebler

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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 September 10, 1996

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), BOARD'S RULES OF PRACTICE & PROCEDURE, APPENDIX C, BALTIMORE COUNTY CODE.

CASE NO. CBA-96-129 DOROTHEA FERTITTA -Applicant
7134 Green Bank Road 15th Election District
Re: Issuance of Permit #B260238 /to raze existing shed; Suspension of Permit #B260240 /single family dwelling; Issuance of Permit #B272691 /single family dwelling.
NOTE: Appeals taken from issuance of permits.

96-244-SPH THOMAS T. BOLLING, ET UX -Petitioners
N/s Green Bank Road. 75' E of c/l Choptank Road
(7202 Green Bank Road)

96-245-SPH PAUL D. KIEBLER, ET UX -Petitioners
N/s Green Bank Road, 25' E of c/l Choptank Road
(7200 Green Bank Road) 15th E; 5th C

SPH -To establish divisional property lines for construction of piers
4/11/96 -Z.C.'s Order in which Petitions for Special Hearing were GRANTED in part and DENIED in part in Cases Nos. 96-244-SPH / 96-245-SPH.

ASSIGNED FOR: **THURSDAY, NOVEMBER 7, 1996 at 10:00 a.m.**

cc: J. Carroll Holzer, Esquire Counsel for Appellant /Kiebler
(Counsel for Petitioners /Kiebler, et ux, and Bolling, et ux)
Mr. & Mrs. Paul Kiebler Petitioners
Mr. & Mrs. Thomas T. Bolling Petitioners

Lewis L. Fleury, Esquire Counsel for Appellant /Fertitta
Dorothea Fertitta Appellant /Applicant

Brent Shaw
Steve Georas
James S. Patton /Patton Consultants, Ltd.
People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

Kathleen C. Bianco
Legal Administrator

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County Board of Appeals of Baltimore County

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

November 8, 1996

NOTICE OF DELIBERATION

Having concluded the hearing in this matter on November 7, 1996, the Board has scheduled the following date and time for deliberation in the matter of:

THOMAS T. BOLLING, ET UX /CASE NO. 96-244-SPH
AND PAUL D. KIEBLER, ET UX /CASE NO. 96-245-SPH

DATE AND TIME : Tuesday, December 3, 1996 at 9:30 a.m.

LOCATION : Room 48, Basement, Old Courthouse

---

cc: J. Carroll Holzer, Esquire Counsel for Appellant /Kiebler
(Counsel for Petitioners /Kiebler, et ux, and Bolling, et ux)
Mr. & Mrs. Paul Kiebler Petitioners
Mr. & Mrs. Thomas T. Bolling Petitioners

Lewis L. Fleury, Esquire Counsel for Appellant /Fertitta
Dorothea Fertitta Appellant /Applicant

Brent Shew
Steve Georas
James S. Patton /Patton Consultants, Ltd.
People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

Copies to: R.B.L.

Kathleen C. Bianco
Legal Administrator

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on Recycled Paper

Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

January 11, 1996

J. Carroll Holzer, Esquire
305 Washington Ave., #302
Towson, Maryland 21204

RE: Item No.: 244
Case No.: 96-244-SPH
Petitioner: T. T. Bolling

Dear Mr. Holzer:

The Zoning Advisory Committee (ZAC), which consists of representatives from Baltimore County approval agencies, has reviewed the plans submitted with the above referenced petition, which was accepted for processing by Permits and Development Management (PDM), Zoning Review, on December 11, 1995.

Any comments submitted thus far from the members of ZAC that offer or request information on your petition are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. Only those comments that are informative will be forwarded to you; those that are not informative will be placed in the permanent case file.

If you need further information or have any questions regarding these comments, please do not hesitate to contact the commenting agency or Joyce Watson in the zoning office (887-3391).

Sincerely,

W. Carl Richards, Jr.
Zoning Supervisor

WCR/jw
Attachment(s)

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Joyce

Baltimore County Government
Fire Department

700 East Joppa Road
Towson, MD 21286-5500

Office of the Fire Marshal
(410) 887-4880

DATE: 12/29/95

Arnold Jablon
Director
Zoning Administration and
Development Management
Baltimore County Office Building
Towson, MD 21204
MAIL STOP-1105

RE: Property Owner: SEE BELOW

LOCATION: DISTRIBUTION MEETING OF DEC. 26, 1995.

Item No.: SEE BELOW Zoning Agenda:

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.

8. The Fire Marshal's Office has no comments at this time, IN REFERENCE TO THE FOLLOWING ITEM NUMBERS: 243, 244, 245, 246, 247, 248 AND 249.

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REVIEWER: LT. ROBERT P. SAUERWALD
Fire Marshal Office, PHONE 887-4881, MS-1102F

RECEIVED
JAN - 4 1996

cc: File

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B A L T I M O R E C O U N T Y , M A R Y L A N D

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Permits and Development
Management

DATE: January 5, 1996

FROM: Pat Keller, Director
Office of Planning

SUBJECT: Petitions from Zoning Advisory Committee

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

Item 243, 244, 245, 246, 247, 249 and 250

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

Prepared by: Jeffrey W. Long

Division Chief: Carl L. Kess

PK/JL

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ITEM243/PZONE/ZAC1

BALTIMORE COUNTY, MARYLAND
I N T E R O F F I C E C O R R E S P O N D E N C E

TO: Arnold Jablon, Director DATE: Dec. 29, 1995
Zoning Administration and Development Management

FROM: Robert W. Bowling, P.E., Chief
Development Plans Review

RE: Zoning Advisory Committee Meeting
for January 2, 1996
Items 243, 244, 245, 246, 247, 248 and 249

The Development Plans Review Division has reviewed the subject zoning items and we have no comments.

RWB:sw

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Maryland Department of Transportation
State Highway Administration

David L. Winstead
Secretary
Hal Kassoff
Administrator

12-22-95

Ms. Joyce Watson
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No. 244 (WCR)

Dear Ms. Watson:

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 affected by any State Highway Administration projects.

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

Thank you for the opportunity to review this item.

Very truly yours,

Bob Small

for Ronald Burns, Chief
Engineering Access Permits
Division

BS/es

MICROFILMED

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

1/5/96
8

RE: PETITION FOR SPECIAL HEARING 7202 Green Bank Road, N/S Green Bank Rd, 75' E of c/l Choptank Road, 15th Election District - 5th Councilmanic	*	BEFORE THE ZONING COMMISSIONER
	*	OF BALTIMORE COUNTY
Thomas and Elizabeth Bolling Petitioners	*	CASE NO. 96-244-SPH

* * * * * * * * * * * * *

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 4th day of January, 1996, a copy of the foregoing Entry of Appearance was mailed to J. Carroll Holzer, Esquire, 305 Washington Avenue, Suite 502, Towson, MD 21286, attorney for Petitioner.

Peter Max Zimmerman
PETER MAX ZIMMERMAN

RECEIVED
JAN - 5 1996
PDM

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Baltimore County
Department of Permits and
Development Management

Permits and Licenses
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
(410) 887-3900
Fax: (410) 887-2824

May 13, 1996

J. Carroll Holzer, Esquire
Suite 302
305 Washington Avenue
Towson, MD 21204

RE: Petition for Special Hearing
N/S Green Bank Road, 75 ft. E
of c/l Choptank Road
7202 Green Bank Road
15th E.D. and 5th C.D.
Thomas T. Bolling, et ux,
Petitioners
Case No. 96-244-SPH

Dear Mr. Holzer:

Please be advised that an appeal for the above-referenced case was filed in this office on May 2, 1996 by Lewis L. Fleury, Esquire on behalf of Dorothea Fertitta. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals, "Board".

If you have any questions concerning this matter, please do not hesitate to contact the Board at 887-3180.

Sincerely,

ARNOLD JABLON
Director
Department of Permits and
Development Management

AJ:nmn

c: Mr. and Mrs. Thomas T. Bolling
Mr. and Mrs. Paul D. Kiebler
Mr. Brent Shew
Mr. Steve Georas
Mr. James S. Patton
People's Counsel

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on Recycled Paper

IN RE:	PETITION FOR SPECIAL HEARING N/S Green Bank Road, 75 ft. E. of c/l Choptank Road 7202 Green Bank Road Thomas T. Bolling, et ux, Petitioners	* * 	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY NO. 96-244-SPH

****

IN RE;	PETITION FOR SPECIAL HEARING N/S Green Bank Road, 25 ft. E. of c/l Choptank Road 7200 Green Bank Road Paul D. Kiebler, et ux, Petitioners	* * 	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY NO. 96-245- SPH

* * * * * * * * * * * *

NOTICE OF APPEAL

On behalf of Dorothea Fertitta, aggrieved owner of 7134 Green Bank Road, Baltimore, Maryland 21220, please enter an appeal to the County Board Of Appeals from the Order of the Zoning Commissioner entered in the above matters on April 11, 1996, for which a check for $210.00 is enclosed.

Lewis L. Fleury
424 Woodbine Avenue
Towson, Maryland 21204
825-9200
Attorney For Appellant

cc: County Board Of Appeals
J. Carroll Holzer, Esq.

RECEIVED
MAY 2 1996
PDM

APPEAL

Petition for Special Hearing
N/S Green Bank Road, 25 ft. E
of c/l Choptank Road
15th Election District
5th Councilmanic District
Paul D. Kiebler, et ux - Petitioners
Case No. 96-245-SPH

✓ Petition for Special Hearing

✓ Description of Property

✓ Certificate of Posting

✓ Entry of Appearance of People's Counsel

✓ Zoning Plans Advisory Committee Comments

✓ Petitioner(s) and Citizen(s) Sign-In Sheets

✓ Petitioner's Exhibits: Shared Exhibits with Case No. 96-244-SPH

✓ One Miscellaneous Letter to the Zoning Commissioner from Steve Georas, M.D., and Lisa A. Beck, M.D., dated April 7, 1996

✓ Zoning Commissioner's Order dated April 11, 1996 (Granted in Part and Denied in Part)

✓ Notice of Appeal received on May 2, 1996 from Lewis L. Fleury, Esquire, on behalf of Dorothea Fertitta

c✱ Lewis L. Fleury, 424 Woodbine Avenue, Towson, MD 21204
J. Carroll Holzer, Esquire, Suite 302, 305 Washington Avenue, Towson, MD 21204
Mr. and Mrs. Thomas T. Bolling, 7200 Green Bank Road, 21220
Mr. and Mrs. Paul D. Kiebler, 7202 Green Bank Road, 21220
Mr. Brent Shew, 7219 Green Bank Road, 21220
Mr. Steve Georas, 7132 Green Bank Road, 21220
Mr. James S. Patton, Patton Consultants, Ltd., 305 W. Chesapeake Avenue, Suite 305, Towson, MD 21204
People's Counsel of Baltimore County, M.S. 2010
Ms. Dorothea Fertitta, 7134 Green Bank Rd., Balto., Md. 21220
Request Notification: Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director of PDM

✓E

APPEAL

Petition for Special Hearing
N/S Green Bank Road, 75 ft. E
of c/l Choptank Road
7202 Green Bank Road
15th Election District
5th Councilmanic District
Thomas T. Bolling, et ux - Petitioners
Case No. 96-244-SPH

Petition for Special Hearing

Description of Property

Certificate of Posting

Entry of Appearance of People's Counsel

Zoning Plans Advisory Committee Comments

Petitioner(s) and Citizen(s) Sign-In Sheets

Petitioner's Exhibits: 1 - Plat to Accompany Petitions for Special Hearing
2 - Location of Improvements Plan to Accompany Petitions for Special Hearing
3 - Building Permit No. B241234 and Subsequent Permit Information
4 - Building Permit No. B241233 and Subsequent Permit Information
5 - Building Permit No. B164858 and Subsequent Permit Information
6 - Letters to Dorothea M. Fertitta from Linda A. Morrison dated October 26, 1993 and July 12, 1993
7 - Letter to Dorothea M. Fertitta from Linda A. Morrison dated June 27, 1995
8 - Letter to the Honorable Benjamin L. Cardin from Randall R. Inouye, P.E., dated November 22, 1994
9 - Location of Improvements Plan to Accompany Petitions for Special Hearing
10 - Floodplain Alteration Application dated August 20, 1995
11 - Letter to James S. Patton, P.E., from Regulatory Services Coordination Staff dated August 29, 1995
12 - Tidal Wetlands License dated September 15, 1995
13 - Letter to Patton Consultants, Limited from Linda A. Morrison dated October 24, 1995
14 - Letter to Arnold Jablon from Paul Kiebler dated October 4, 1995
15 - Speed Letter back to Mr. Paul Kiebler from Arnold Jablon dated October 19, 1995
16 - Plan to Accompany Pier Permits for Kiebler Residence
17 - Site Plan to Accompany Petitions for Special Hearing

Protestant's Exhibits: 1 - Nothing Marked as Exhibit No. 1 in the Files
2 - Nothing Market as Exhibit No. 2 in the Files
3 - Fax Transmittal from Paul Sneeringer to Steve Georas dated April 1, 1996
4 - Site Plan for Oliver Beach Section "B" to Accompany Petition for Special Hearing
5 - Plat of Oliver Beach Section A and B to Accompany Petition for Special Hearing
6 - Site Plan to Accompany Petition for Special Hearing
7 - Appendix J to Accompany Petition for Special Hearing

Zoning Commissioner's Order dated April 11, 1996 (Granted in Part and Denied in Part)

Notice of Appeal received on May 2, 1996 from Lewis L. Fleury, Esquire, on behalf of Dorothea Fertitta

c: Lewis L. Fleury, 424 Woodbine Avenue, Towson, MD 21204
J. Carroll Holzer, Esquire, Suite 302, 305 Washington Avenue, Towson, MD 21204
Mr. and Mrs. Thomas T. Bolling, 7200 Green Bank Road, 21220
Mr. and Mrs. Paul D. Kiebler, 7202 Green Bank Road, 21220
Mr. Brent Shew, 7219 Green Bank Road, 21220
Mr. Steve Georas, 7132 Green Bank Road, 21220
Mr. James S. Patton, Patton Consultants, Ltd., 305 W. Chesapeake Avenue, Suite 305, Towson, MD 21204
People's Counsel of Baltimore County, M.S. 2010

Request Notification: Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director of PDM

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NOTE - SEE OTHER CHECKLIST FOR ORIGINAL PERMIT INFO & ORIGINAL APPEALS

Appeal

Building Permit Application No. B272691
7134 Greenbank Road
15th Election District

CBA-96-129

Application for Building Permit No. B272691

Site Plan to Accompany Building Permit Application

Letter of Appeal received on June 12, 1996, from J. Carroll Holzer, Esquire, on behalf of Paul Kiebler

c: *J. Carroll Holzer, Esquire, 305 Washington Avenue, Suite 502, Towson, MD 21204
Ms. Dorothea Fertitta, 7134 Greenbank Road, Baltimore, MD 21220
Mr. Paul Kiebler, 7200 Greenbank Road, Baltimore, MD 21220
Request Notification: Arnold Jablon, Director of PDM

/E

11/07/96 -RE CBA-96-129 Fertitta

Hearing concluded this date; CBA deliberated immediately at conclusion of same; affirmed issuance of permits by PDM; found for Property Owner in this matter. Written Order to be issued; appellate period to run from date of written Order.
At conclusion of this case, proceeded to 96-244-SPH and 96-245-SPH, adjacent properties; same litigants. To be deliberated some time in Dec 1996; Order in zoning matter and PDM matter to be written at same time (R.L.B.)

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APPEAL

Building Permit Application No. B260238
7134 Greenbank Road
15th Election District

Application for Building Permit No. B260238

Application for Building Permit No. B260240

Site Plan to Accompany Building Permit Applications

Request to Rescind Permit No. B260240 from Regulo Tanguilig to John R. Reisinger, dated May 21, 1996

Letter of Appeal received on May 15, 1996, from J. Carroll Holzer, Esquire, on behalf of Paul Kiebler

Miscellaneous Cash Receipt No. 011834

Building Permit No. B260240 Suspension Letter to Dorothea Fertitta from John R. Reisinger, dated May 21, 1996

c:* J. Carroll Holzer, Esquire, 305 Washington Avenue, Suite 502, Towson, MD 21204
Ms. Dorothea Fertitta, 7134 Greenbank Road, Baltimore, MD 21220
Mr. Paul Kiebler, 7200 Greenbank Rd, Balto. Md. 21220

Request Notification: Arnold Jablon, Director of PDM
John R. Reisinger
Regulo Tanguilig

✓E

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CBA-96-129

ORIGINAL
CHECKLIST

9/10/96 -Notice of Assignment sent to following for hearing scheduled for Thursday, November 7, 1996 at 10:00 a.m.:
(CBA-96-129 /Fertitta
96-244-SPH /Bolling, et ux
96-245-SPH /Kiebler, et ux)

J. Carroll Holzer, Esquire
Mr. & Mrs. Paul Kiebler
Mr. & Mrs. Thomas T. Bolling
Lewis L. Fleury, Esquire
Dorothea Fertitta
Brent Shaw
Steve Georas
James S. Patton /Patton Consultants, Ltd.
People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

11/07/96 -Fertitta case concluded; deliberated immediately at conclusion of same; found that permits were legally issued; affirmed issuance of permits by PDM. Written Order to be issued; appellate period to run from date of written Order. (R.L.B.)

- Regarding 96-244-SPH and 96-245-SPH /Board concluded hearing in these matters; to schedule deliberation some time in December 1996. (R.L.B.)

11/08/96 -Notice of Deliberation sent to parties; public deliberation scheduled for Tuesday, December 3, 1996 at 9:30 a.m. Copy to R.L.B.

12/03/96 -Matter deliberated as scheduled; unanimous decision of CBA that Petitions for Special Hearing are DENIED; written Opinion and Order to be issued; appellate period to run from date of written Order.

9/10/96 -Notice of Assignment sent to following for hearing scheduled for Thursday, November 7, 1996 at 10:00 a.m.:

J. Carroll Holzer, Esquire
Mr. & Mrs. Paul Kiebler
Mr. & Mrs. Thomas T. Bolling
Lewis L. Fleury, Esquire
Dorothea Fertitta
Brent Shaw
Steve Georas
James S. Patton /Patton Consultants, Ltd.
People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

11/07/96 -Hearing concluded on this matter; CBA deliberated immediately following conclusion of case; found that permit was legally issued; affirmed issuance of permits. Order to be issued; appellate period to run from date of that written Order. (R.L.B.)

(NOTE: At conclusion of deliberation in this matter, panel members proceeded to hear Cases No. 96-244-SPH and No. 96-245-SPH dealing with adjoining properties and involving the same litigants. That matter was also concluded this date; public deliberation in the special hearing matters to be scheduled for some time in December 1996.)

MICROFILMED

9/10/96 -Notice of Assignment sent to following for hearing scheduled for Thursday, November 7, 1996 at 10:00 a.m.:
(CBA-96-129 /Fertitta
96-244-SPH /Bolling, et ux
96-245-SPH /Kiebler, et ux)

J. Carroll Holzer, Esquire
Mr. & Mrs. Paul Kiebler
Mr. & Mrs. Thomas T. Bolling
Lewis L. Fleury, Esquire
Dorothea Fertitta
Brent Shaw
Steve Georas
James S. Patton /Patton Consultants, Ltd.
People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

11/07/96 -Fertitta case concluded; deliberated immediately at conclusion of same; found that permits were legally issued; affirmed issuance of permits by PDM. Written Order to be issued; appellate period to run from date of written Order. (R.L.B.)

- Regarding 96-244-SPH and 96-245-SPH /Board concluded hearing in these matters; to schedule deliberation some time in December 1996. (R.L.B.)

11/08/96 -Notice of Deliberation sent to parties; public deliberation scheduled for Tuesday, December 3, 1996 at 9:30 a.m. Copy to R.L.B.

12/03/96 -Matter deliberated as scheduled; unanimous decision of CBA that Petitions for Special Hearing are DENIED; written Opinion and Order to be issued; appellate period to run from date of written Order.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Attn.: John R. Reisinger
Permits & Development Management

DATE: November 18, 1997

FROM: Charlotte E. Radcliffe
County Board of Appeals

SUBJECT: Closed File -CBA-96-129
DOROTHEA FERTITTA
(Building Permit No. B260240)

As no further appeals have been taken regarding the subject case, we are herby closing the file and returning same to you herewith.

Attachment (Case File No. CBA-96-129)

MICROFILMED

BALTIMORE COUNTY, MARYLAND
Inter-Office Memorandum

DATE: May 13, 1996

TO: John R. Reisinger
County Buildings Engineer

FROM: Regulo Tanguilig
Planner I

SUBJECT: Permit #B-260240
7134 Greenbank Road
15th Election District

Please rescind this office's approval of the above referenced building permit. It has come to our attention that, based on incorrect information supplied by the applicant, the width of the proposed building cannot meet the side yard setback requirement for D.R.-5.5

Our approval will not be reinstated until such time a public hearing is granted.

RT:scj

MICROFILMED

BALTIMORE COUNTY, MARYLAND
Inter-Office Memorandum

DATE: July 14, 1999

TO: Doug Swam
Supervisor, Permits Services

FROM: John L. Lewis
Planner II
Zoning Review, PDM

SUBJECT: Waterfront Construction
7200, 7202 & 7206 Greenbank Road

Due to court decisions, please refer any applicants for piers, boat lifts, pilings, etc. at the above locations to myself for a formal zoning review before allowing filing of permit applications.

JLL:scj

MICROFILMED

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
Interoffice Correspondence

DATE: April 1, 2002

TO: Arnold Jablon, Director
Permits & Development Management
Attn.: David Duvall

FROM: Theresa R. Shelton
Board of Appeals

SUBJECT: **Paul Kiebler and Thomas Bolling**
Case No.: 96-245-SPH and 96-244-SPH
Circuit Court Case No.: 03-C-97-000740

Judge Daniels of the Circuit Court issued an Order on 2/19/98 enforcing the settlement agreement. The case was then appealed to the Court of Special Appeals. The Court of Special Appeals issued a Mandate on 2/99 affirming the judgment. No further appeals have been taken in this matter. The Board of Appeals is closing and returning the file that is attached herewith.

Attachment: SUBJECT FILE ATTACHED

IN THE MATTER OF	*	BEFORE
THOMAS T. BOLLING, ET UX and	*	COUNTY BOARD OF APPEALS
PAUL D. KIEBLER, ET UX,	*	OF
PETITIONERS, ETC.	*	BALTIMORE COUNTY
RE: 7134 GREENBANK ROAD	*	CASES NOS. 96-244-SPH and 96-245-SPH
	*	

* * * * * * * * *

AFFIDAVIT OF SERVICE

I, the undersigned, certify that on Oct 16, 1996, I effected service of process by personally serving a Subpoena upon EUGENE F RAPHEL at 205 COURTLAND AVENUE TOWSON, MARYLAND 21204, to appear before the County Board of Appeals of Baltimore County.

I further certify that I am over the age of 18 and am not a party to this action.

I solemnly affirm under penalty of perjury that the contents of this Affidavit are true and correct to my knowledge.

(signature)

Name: LEWIS L. FLEURY

Firm:

Address: 424 WOODBINE AVENUE
TOWSON, MARYLAND 21204

IN THE MATTERS OF THOMAS T.BOLLING, ET UX and PAUL D. KIEBLER, ET UX, PETITIONERS, ETC. (RE 7134 GREENBANK ROAD)	*	BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NOS. 96-244-SPH and 96-245-SPH

* * * * * * * * *

SUBPOENA

STATE OF MARYLAND, BALTIMORE COUNTY TO WIT:

TO: (Name, Address, County) EUGENE F RAPHEL
265 COURTLAND AVENUE
TOWSON, MARYLAND 21204

YOU ARE HEREBY COMMANDED TO: ( ) Personally appear; ( ) Produce documents and/or objects only; (XX) Personally appear and produce documents or objects;

in Room 48, Basement, Old Courthouse, 400 Washington Avenue, Towson, MD 21204 on THURSDAY the 7th day of NOVEMBER, 1996, at 10:00 a.m./~~p.m.~~

YOU ARE COMMANDED TO produce the following documents or objects:

ALL FILES IN YOUR CUSTODY AND CONTROL CONCERNING THE ABOVE CITED PROPERTY.

Subpoena requested by:

LEWIS L. FLEURY, ATTORNEY FOR OWNER, 424 WOODBINE AVE. TOWSON, MD 21204
(Name of Party or Attorney, Address and Phone Number) 825-9200

The witness named above is hereby ordered to so appear before the County Board of Appeals. The Board requests the Sheriff to issue the summons set forth herein.

Charlotte E. Radcliffe
County Board of Appeals of
Baltimore County

IN THE MATTER OF	*	BEFORE THE ZONING
Petitions for Special	*	COMMISSIONER OF
Hearing, T & E. Bolling and	*	BALTIMORE COUNTY
Paul and Jean Kiebler	*	CASE NO. 96-244-SPH and 96-245-SPH

* * * * * * * * * * * * *

SUBPOENA

Please process in accordance with Zoning Commission Rule IV (c).

TO: Mitch Kellman
Permits and Development Management
County Office Bldg.

YOU ARE HEREBY COMMANDED TO: ( ) Personally appear; ( ) Produce documents and or objects only; (X) Personally appear and produce documents or objects;

at Room 106, County Office Bldg.
(Place where attendance is required)

on Wednesday the 3rd day of April, 19 96, at 9:00 a.m./~~p.m.~~

YOU ARE COMMANDED TO produce the following documents or objects: Any documents, file, correspondence, plats, site plans, etc. that relate to the above Petitions for Special Hearing.

J. Carroll Holzer, P.A., 305 Washington Ave. #502, Towson 825-6961
(Name of Party or Attorney, Address and Phone Number requesting subpoena)

Date 3/21/96

Zoning Commissioner

SHERIFF'S RETURN

( )-Served and copy delivered on date indicated below.
( )-Unserved, by reason of _____
Date: _____ Fee:$ _____

SHERIFF

MICROFILMED

IN THE MATTER OF	*	BEFORE THE
Dorothea Fertitta	*	COUNTY BOARD OF APPEALS
7134 Green Bank Rd.	*	BALTIMORE COUNTY
	*	CASE NO. CBA-96-129, 96-244-SPH & 96-245-SPH

* * * * * * * * * * * * *

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Thursday November 7, 1996 at 10:00 a.m. at Room 48, located at Basement, Old Courthouse, 400 Washington Ave. and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Witness: Glenn Berry
Address: Buildings Inspection
County Office Bldg.

Witness: Please bring all files, notes, correspondence, letters, etc. in connection with above cases.

Name: J. Carroll Holzer
Firm: Holzer & Lee
Address: 305 Washington Ave. #502
Towson, MD 21204
825-6961

The witness named above is hereby ordered to so appear before the County Board of Appeals. The Board requests the Sheriff to issue the summons set forth herein.

/S/
County Board of Appeals of
Baltimore County

Cost: $_____

Summoned: _____, 19____

Not served: _____, 19____

Sheriff of Baltimore County

MICROFILMED

IN THE MATTER OF * BEFORE THE

Dorothea Fertitta * COUNTY BOARD OF APPEALS

7134 Green Bank Rd. * BALTIMORE COUNTY

* CASE NO. CBA-96-129, 96-244-SPH & 96-245-SPH

* * * * * * * * * * * * *

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Thursday November 7, 1996 at 10:00 a.m. at Room 48, located at Basement, Old Courthouse, 400 Washington Ave. and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Witness: Earl Ecker
Address: Buildings Inspection
County Office Bldg.

Witness: Please bring all files, notes, letters, correspondence, notices, etc. in connection with above cases.

Name: J. Carroll Holzer
Firm: Holzer & Lee
Address: 305 Washington Ave. #502
Towson, MD 21204
825-6961

The witness named above is hereby ordered to so appear before the County Board of Appeals. The Board requests the Sheriff to issue the summons set forth herein.

/S/
County Board of Appeals of
Baltimore County

Cost: $_____

Summoned: _____, 19____

Not served: _____, 19____

Sheriff of Baltimore County

MICROFILMED

IN THE MATTER OF	*	BEFORE THE
Dorothea Fertitta	*	COUNTY BOARD OF APPEALS
7134 Green Bank Rd.	*	BALTIMORE COUNTY
	*	CASE NO. CBA-96-129, 96-244-SPH & 96-245-SPH

* * * * * * * * * * * * *

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Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Thursday November 7, 1996 at 10:00 a.m. at Room 48, located at Basement, Old Courthouse, 400 Washington Ave. and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Witness: Rodney Larrick
Address: Buildings Inspection
County Office Bldg.

Witness: Please bring all files, notes, letters, correspondence, notices, etc. in connection with above cases.

Name: J. Carroll Holzer
Firm: Holzer & Lee
Address: 305 Washington Ave. #502
Towson, MD 21204
825-6961

The witness named above is hereby ordered to so appear before the County Board of Appeals. The Board requests the Sheriff to issue the summons set forth herein.

/S/
County Board of Appeals of
Baltimore County

Cost: $_____

Summoned: _____, 19____

Not served: _____, 19____

Sheriff of Baltimore County

MICROFILMED

IN THE MATTER OF	*	BEFORE THE
Dorothea Fertitta	*	COUNTY BOARD OF APPEALS
7134 Green Bank Rd.	*	BALTIMORE COUNTY
	*	CASE NO. CBA-96-129, 96-244-SPH & 96-245-SPH

* * * * * * * * * * * * *

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Thursday November 7, 1996 at 10:00 a.m. at Room 48, located at Basement, Old Courthouse, 400 Washington Ave. and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Witness: Roy List
Address: DEPRM
County Courts Bldg.

Witness: Please bring all files, notes, correspondence, letters, etc. in connection with above cases.

Name: J. Carroll Holzer
Firm: Holzer & Lee
Address: 305 Washington Ave. #502
Towson, MD 21204
825-6961

The witness named above is hereby ordered to so appear before the County Board of Appeals. The Board requests the Sheriff to issue the summons set forth herein.

/s/
County Board of Appeals of
Baltimore County

Cost: $_____

Summoned: _____, 19____

Not served: _____, 19____

Sheriff of Baltimore County

MICROFILMED

IN THE MATTER OF	*	BEFORE THE
Dorothea Fertitta	*	COUNTY BOARD OF APPEALS
7134 Green Bank Rd.	*	BALTIMORE COUNTY
	*	CASE NO. CBA-96-129, 96-244-SPH & 96-245-SPH

* * * * * * * * * * * * *

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Thursday November 7, 1996 at 10:00 a.m. at Room 48, located at Basement, Old Courthouse, 400 Washington Ave. and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Witness: Scott Porter
Address: DEPRM
County Courts Bldg

To Witness: Please bring all files, notes, correspondence, etc. in connection with above cases.

Name: J. Carroll Holzer
Firm: Holzer & Lee
Address: 305 Washington Ave. #502
Towson, MD 21204
825-6961

The witness named above is hereby ordered to so appear before the County Board of Appeals. The Board requests the Sheriff to issue the summons set forth herein.

/S/
County Board of Appeals of Baltimore County

Cost: $_____

Summoned: _____, 19____

Not served: _____, 19____

Sheriff of Baltimore County

MICROFILMED

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: DOROTHEA FERTITTA -Applicant
Case No. CBA-96-129

DATE : November 7, 1996 /at conclusion of hearing

BOARD /PANEL : Robert O. Schuetz, Chairman (ROS)
Lawrence M. Stahl (LMS)
Harry E. Buchheister, Jr. (HEB)

SECRETARY : Kathleen C. Bianco
Legal Administrator

Those present included Lewis L. Fleury, Esquire, Counsel for Property Owner, and J. Carroll Holzer, Esquire, Counsel for Appellant.

PURPOSE --to deliberate matter before the Board in Case No. CBA-96-129 /Property of Dorothea Fertitta, and evidence received this date.

ROS: Thank you for your indulgence, ladies and gentlemen. The difference between this part of the proceeding and before is that this part of the proceeding is not on the record. Maryland State law requires us to hold an open meeting. We hold open meetings and, in the deliberation process, we openly deliberate before you. It is not included as part of the record. Minutes are taken of the deliberation; essentially serves to indicate compliance with the open meetings law.

The matter here this morning, Case No. CBA-96-129, is the issuance of a building permit. I would say that I agree with Mr. Holzer that we have certain problems with the permit on its face, but I also believe that the issue really boils down to nothing more than a typo on the part of the employee taking the information at the time the application was brought.

It was the unrebutted testimony of the inspector that the width at footprint is well within the maximum 38 feet; no testimony as to zoning. Testimony of that same employee indicates that there is a setback that is met, assuming the building has been situated properly.

All other issues brought regarding the erosion which was resulting from the construction -- the excavation and construction work of the foundation -- all of that has been attended to -- I see no reason why this case even had to go to trial. As far as I'm concerned, everything that was brought is moot, and therefore, although we are not in a position to move on our own behalf and dismiss the appeal, I would find in

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favor of the Appellee in this particular part of the case -- that the permit is good and proper, and that construction may continue.

LMS: Other than asking -- and I get the feeling we will get into it later with the second case -- other than asking that my normal comments regarding the open meeting process be appended, I have no further comment.

HEB: I concur with the Chairman, but...you really were victim of an act of God, I guess.

ROS: That concludes the matter. The Board will issue a written Opinion and Order subsequent to these proceedings. Petition for Judicial Review will be brought from that date and not from today.

****

Respectfully submitted,

Kathleen C. Bianco

Kathleen C. Bianco
Legal Administrator

MICROFILMED

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF:	JOSEPHINE J. MASSAR -Applicant Case No. CBA-96-138	
DATE :	November 14, 1995 /At conclusion of hearing	
BOARD /PANEL :	Robert O. Schuetz, Chairman Harry E. Buchheister, Jr. Margaret Worrall	(ROS) (HEB) (MW)
SECRETARY :	Kathleen C. Bianco Legal Administrator	

Those present included Josephine J. Massar, Appellant; and Nancy C. West, Assistant County Attorney.

PURPOSE --to deliberate matter of appeal taken from denial of permit for Reserved Handicapped Parking Space by the Division of Traffic Engineering.

ROS: Ms. Massar, mostly for your benefit, I would like to point out that this part of the proceeding is not going on the record. The actual trial has taken place. The open meetings law of Maryland requires that the Board consider such matters in open deliberation. In order to satisfy compliance with that, minutes are taken of what is taking place this afternoon. While not part of the record, they are included in the file.

I'm going to first of all state that I understand you have a difficult situation, Ms. Massar, but to make it short, you have nonetheless an accessible area to the rear of your property. You do have some small mitigating circumstances in contending with the utility pole, due to your large car, and so forth. Nevertheless, you are able to navigate that area, and get the car in and out, and, frankly, if the permit were to be issued, it would be to the detriment of your neighbors.

There's a lack of parking in row house communities generally; while it may be difficult for you to get in and out with that car, you are able to do it, and if granted, it would be detrimental to your neighbors.

There's a simple standard that there be mitigating a circumstance that is unusual and which meets the County's policy, to override the general policy of not permitting another pad on site in order to obtain the permit, and, unfortunately, you have not met that burden of proof.

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Therefore, I would deny the request for the parking permit, although I understand it makes it difficult for you. And it somewhat pains me to make this decision; nonetheless I must find, under the law, that conditions do not warrant granting the permit.

MW: I also agree with Mr. Schuetz. And I've become very cognizant of these difficulties, having been on crutches with a broken hip for 8 weeks. It's difficult to drive and get yourself in your car and to carry things, and so forth. I'm aware of it, but the law is written in a certain way, and it's up to us to uphold that law.

I would agree that it should be denied.

HEB: I wish you had some alternative way of having access to your drive. It seems that this fence situation, this is one of the factors that impedes your access to your driveway. I'm looking at the photograph of the neighbors across the street without a fence. They do not have that burden of swinging the car and turning several times to gain access to the driveway. But it's sort of a choice -- you talked about privacy and what the fence does for you, but at the same time, it's denying access to the driveway. I think the investigation by the County in applying the law in this matter is correct. I would have to deny the permit also.

ROS: Very good. Then we are unanimous. Ms. Massar, what will come pursuant to this afternoon's proceeding is a written Opinion and Order. If you seek to appeal the opinion of the Board, you would accomplish that through a Petition for Judicial Review to the Circuit Court for Baltimore County, pursuant to the written Opinion and Order to be issued at a future date, and not necessarily from today's date.

Ms. West, maybe you could give her some assistance regarding time constraints. That will conclude the matter for today.

Respectfully submitted,

Kathleen C. Bianco
Legal Administrator

MICROFILMED

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF:	Thomas T. Bolling, et ux /Case No. 96-244-SPH and Paul D. Kiebler, et ux /Case No. 96-245-SPH	
DATE :	December 3, 1996 @ 9:45 a.m.	
BOARD /PANEL :	Robert O. Schuetz Harry E. Buchheister, Jr. Lawrence M. Stahl	(ROS) (HEB) (LMS)
SECRETARY :	Kathleen C. Bianco Legal Administrator	

Included among those present at the deliberation were Sterling Leese for J. Carroll Holzer, Esquire, on behalf of Petitioners; and Lewis L. Fleury, Esquire, on behalf of Appellant. People's Counsel for Baltimore County did not participate in these proceedings.

PURPOSE --to deliberate issues and matter of petitions as presented to the Board; testimony and evidence received at hearing on November 7, 1996. Written Opinion and Order to be issued by the Board.

ROS: Good morning, ladies and gentlemen. We are here this morning to deliberate Case No. 96-244-SPH and Case No. 96-245-SPH concerning the future construction of piers in front of the Kiebler and Bolling properties. I will remind everyone of what I said at the conclusion of the hearing, that this portion of the proceeding is not part of the record. Minutes are taken to signify compliance with the open meetings law. That is the extent of it. Those notes only serve as compliance and are not part of the record.

I guess I will go first. I usually do. It's a rather unusual situation, and I think it was a case which was well argued by counsel on both sides. But I think that the facts as they were presented for both sides were not as equally well presented.

I think that what we have before us is what has been already adjudicated in the District Court relative to the Fertitta property, and what the Board is going to be required to do in determining whether we have a straight shore line or a converging shore line. I think there was some testimony which went a little far afield in indicating whether the shore line was straight or converging. I think these properties are

very, very similar. And a straight shore line does not mean, in my mind, perfectly straight.

Having reviewed the Code and the zoning regulations, as well as Appendix J to the zoning regulations relative to shore lines and property lines seaward from the given properties, I've come to the conclusion that (a) this is a straight shore line. It's my belief, also, that this Fertitta case relative to the permit and whether or not the issue of whether it's a straight shore line or not really is not the issue here. What we have is a lawfully constructed pier in front of the Fertitta property, and a lawfully constructed pier in front of the Jordan property. The Fertitta pier, I might add, is one which I view as actually being less intrusive than the Jordan pier -- a pier having numerous mooring pilings on the western edge. In both situations, the pilings and pier create a de facto channel, and that de facto channel does not converge. But when one lays a scale across what has been accepted by both sides as professionally prepared field notes and surveys, we have a 40' wide opening and what I will call choke point. In the space that leaves a 20 foot channel and 10 foot wide space on either side for a pier -- both of which are supposed to be 6 feet wide. Geometry indicates that because of the width at both sides at the bulkhead, there is more than adequate room for both to be able to construct a pier of any length without impacting on the Fertitta pier and property.

For my colleagues, this is part of what I did -- a little bit of sketching on my own using information from both sides to indicate in my mind that I was coming to a reasonable conclusion. Paragraph C of 417 allows the County to be reasonable in getting a little bit creative. Everyone realizes that the world is not a perfectly straight line. For purposes of interpretation of the section, I believe this is a straight line. It's not a perfect world, but the County can be creative and Mr. Lewis, the County planner, did just that and provided Mr. Kiebler and Mr. Bolling with adequate space, helping them through the process, realizing there is adequate space for two piers. It was a matter of choice by Mr. Kiebler and Mr. Bolling to pursue something in the alternative.

Therefore, having found that the Fertitta and Jordan piers were lawfully constructed and that it is a straight shore line, it's my belief that the special hearings in pursuit of the piers as proposed by the Kieblers and the Bollings should be denied.

HEB: I'm not a registered architect like our Chairman, but I can relate to the situation from a personal property that I am a

part of, and this problem of converging shore line and piers extending out and a certain length of the pier -- and this was a serious problem for us not long ago.

I think that Mr. Patton who, as we heard from his credentials, has had a long experience in dealing with waterfront properties and such issues as we are talking about today. He had a workable plan that should basically retain in place the Fertitta pier, while providing for the future piers of Mr. Kiebler and Mr. Bolling.

There are two proposals in the Patton plan which I do not completely understand -- there was some testimony about the issue of wind direction and its effect on boats moored at a particular pier due to the Fertitta or Kiebler pier, and also the possible effects of winds in docking a large boat. Coming into the pier at a reduced speed, heavy wind can be a ticklish situation. But actually, I do not see where it made much difference in this configuration as Mr. Patton outlined, and as Mr. Schuetz has outlined. There should be access to the piers except for perhaps a piling or two that might have to be relocated. But looking at the shore line and the extension of the piers from that shore line, there should be enough open water that would not impede the access by any of the owners to a mooring location, if they were willing to make certain concessions.

I think Mrs. Fertitta visualizes an almost direct approach into her slip which might be stretching a point, because as you and I know, in many marinas you do not have that pleasure. In this case there appears to be, on Mr. Patton's drawing, open water to the west of her pier and comfortable access to the pier, perhaps not as she has been doing. I think, and I have seen what Mr. Schuetz - the revisions he has drawn - and it looks like there really are two options beyond what Mr. Patton has recommended, and I think those two options are more appropriate to this issue than Mr. Patton's plan. In one suggestion by Mr. Schuetz, both Bolling and Kiebler piers could be reduced even to 100 or 150 feet in length. The question is, in my mind, why 250 feet? Mr. Patton testified that the length was necessary to provide easy access from the open water to the Kiebler pier, and cause no conflict, no difficulties in navigating into the Kiebler pier. I think that the plans that have been -- the alternate plans, I will call them -- that have been thought through by our Chairman would be -- I have not talked with him; I'm speaking about just glancing at a plan -- but I think that both water access for Kiebler and Fertitta would be very adequate and the same to be true for a future Bolling plan -- Mr. Kiebler and Mr.

Bolling -- Mr. Bolling would have the same access.

I'm sort of thinking in the dark here because I'm not sure of the depth of the water. On the Magothy, we have good depth 20 feet from the shore line.

LMS: What are you talking about -- the depth of water?

HEB: From the pier -- for sale boats, it's important.

ROS: We have no testimony on that.

HEB: So, seeing the situation here where, first of all, both Mr. Bolling and Mr. Kiebler have no interest as stated in seeing the Fertitta pier removed -- work out a possible solution, and as was brought out, Judge Boone ruled it a closed issue as far as the pier's legality. It's a legal pier. So people can accomplish something satisfactory to all parties.

For that reason, I think that there is an alternative to the plan of Mr. Patton, and that that particular plan, with just modifications; but as it is, it should be denied.

LMS: Before I begin and for the record's sake, I also like to let it be known before I get to the facts my feeling relative to this process. Whereas you are an architect by training, I'm the only attorney on the panel, and as to this entire process, I've always had concern and placed it on the record -- I believe the open deliberation process is not always in the best interests of any of the litigants. I believe that sometimes it makes it more difficult; requires more on the part of each Board member to do without those Board members who may not come in with basic knowledge of a particular fact or circumstance or particular portion of life. This being a tremendous example of that from my point of view. I understand what the law means; and understand the arguments in favor; but I wonder if my brethren on the Circuit Court, the Court of Special Appeals and the Court of Appeals would want to place themselves under the same restrictions they place us under. I think they would not. There have been some cracks in the door, I think that it is a good thing; recognizes a good idea. I hope to see the door widening more so that ultimately this Board can sit around a table and ask as many stupid questions they possibly can ask of one another.

To the case in point, having said that, I've never been on a boat. I don't think I've been to a home or community on the water. I grew up in the middle of New York City. This has been an exercise in self-education for me. I, too, have looked

over our Chairman's shoulder as he put this together, and unfortunately could and for no explanation, but having heard his presentation, and Harry's explanation of his feelings, I've been able to crystallize my own thoughts.

I've decided not to be concerned as much with the issues indicative to boating people. We have a code, we have criteria regarding shore lines; we have a District Court that, after an evidentiary hearing, has come to some conclusions. I've seen what an architect thinks; heard the personal concerns and viewpoints of someone with a knowledge of boating -- and find myself coming to a reasonably simple conclusion -- the purpose of the special hearing request is to allow us to digress and do something different. We have a fact on the ground in terms shaped in some degree on what Judge Boone ordered in District Court. You take the facts and the law and apply the facts to the law, and come to a conclusion. Much in the same way, I see this as, and maybe I guessed right, I see it as issues of access, issue of property owners living next to each other -- to do things they purchased the property for -- they own boats, get them in and out, and enjoy the property.

Given that, it seems to me that both of your comments are well put. There are acceptable, legitimate, appropriate things that can be in the context of what we now have. Whether Plan A, Plan B or Mr. Patton's with adjustments or the two Rob has played with, it seems to me that there are solutions within the context of what we already have, and those solutions can take into account, with the expertise of those who do these things -- you are an architect but never heard that you are experienced on piers and docks -- general sense of shape. You have a general sense of what it takes to get boats in. Depending on how good you are and the kind of boat -- you can do a lot of things. Ability to function with facts -- i.e., lines and piers as they exist. All boating considerations aside, if we try to do everything that each party wants, we then would grant the special hearing -- it seems to me that there simply is no need to do that. You need to do a special hearing when what you have does not appropriately allow you to function -- to do those things you need to do to enjoy the property within the confines of the law. From that point of view, I don't believe that the special hearing is necessary to accomplish those goals, and I would find that the special hearing is not necessary, and would join you in denying it.

ROS: I wanted to clear up a couple of things -- although there is nothing on Mr. Patton's plan relative to depth of the water, I am assuming that the depth lines running parallel to the

shore indicate the depth at low tide -- assuming that is the reason we have the length of the pier as proposed. Having done that, when I was reviewing my existing conditions drawing to determine how much space there really is, I was trying to be mindful of the depth of water needs for all.

In reviewing this, that choke point, beyond that choke point, whatever the County's Code enforcement officials have determined is going to be appropriate provides tremendous amount of latitude for you and your designers to provide for both a pier on your and the Bolling property, whatever length you can afford to build for the use and enjoyment of the water.

I'm trying to help you through this. I hope you appreciate that. The bottom line is that we are going to deny the special hearing petitions as they were brought. I'm going to see to it, no matter who ultimately writes or revises the Opinion, to adequately describe in the language of the opinion where that choke point occurs, what we view as open for construction of piers, to assist whatever County authorities there are.

I think a good first step is to go back and look at what Mr. Lewis had shown to you earlier and the language of the Opinion.

That concludes the matter. A written Opinion and Order will be issued. Any Petition for Judicial Review will be filed from the date of the written Order and not necessarily today's date.

Thank you very kindly.

****

Respectfully submitted,

Kathleen C. Bianco
Legal Administrator

Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us

July 28, 1999

Lewis L. Fleury, Esq.
424 Woodbine Avenue
Towson, MD 21204-4211

Dear Mr. Fleury:

RE: 7200, 7202 and 7206 Greenbank Road; 96-244-SPH, 96-245-SPH
15th Election District

I am in receipt of correspondence from you which indicates that due to a Circuit Court decision, this office is directly responsible to decide waterfront construction locations for proposed piers, etc. at the above location and the immediate vicinity. There was a drawing for construction made by myself to which both parties agreed (as determined by the Court of Special Appeals) and therefore I must insist that this drawing be the plan for future construction for both the Fertitta and Kiebler properties.

However, should both parties agree to a plan revision and sign a plan and statement of agreement on the revisions, I will review the plan in light of the Baltimore County Zoning Regulations (BCZR) and if in compliance, I will approve the revisions.

Due to the complicated issues involving these properties, no other changes other than as stated above will be considered or approved by this office. All future permits for waterfront construction on these properties must refer to the zoning cases and the decisions rendered as well be accompanied by a copy of this letter and a plan which has been previously approved by myself.

I trust that the information set forth in this letter is sufficiently detailed and responsive to the request. If you need further information or have any questions, please do not hesitate to contact me at 410-887-3391.

Sincerely,

John L. Lewis
Planner II
Zoning Review

JLL:ggs

c: Zoning case files: 96-244-SPH, 96-245-SPH
Mr. Paul Kiebler, 7206 Greenbank Rd., Baltimore MD 21220
Mr. Thomas Bolling, 7202 Greenbank Rd., Baltimore MD 21220
Mr. Doug Swam, Supervisor Permit Services

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on Recycled Paper

Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

December 28, 1995

J. Carroll Holzer, Esquire
305 Washington Avenue
Suite 302
Towson, MD 21204

RE: Preliminary Petition Review (Item #244)
Legal Owner: Thomas & Elizabeth Bolling
7202 Green Bank Road
15th Election District

Dear Mr. Holzer:

At the request of the attorney/petitioner, the above referenced petition was accepted for filing without a final filing review by the staff. The plan was accepted with the understanding that all zoning issues/filing requirements would be addressed. A subsequent review by the staff has revealed no unaddressed zoning issues and/or incomplete information. As with all petitions/plans filed in this office, it is the final responsibility of the petitioner to make a proper application, address any zoning conflicts and, if necessary, to file revised petition materials. All revisions (including those required by the hearing officer) must be accompanied by a check made out to Baltimore County, Maryland for the $100.00 revision fee.

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

Very truly yours,

Mitchell J. Kellman
Planner II
Zoning Review

MJK:scj

Enclosure (receipt)

c: Zoning Commissioner

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on Recycled Paper

Baltimore County
Department of Permits and
Development Management

Director's Office
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
(410) 887-3353
Fax: (410) 887-5708

May 21, 1996

Ms. Dorothea Fertitta
7134 Greenbank Rd
Baltimore, Md 21220

Re: Permit B260240

Dear Ms. Fertitta:

Based on information received from our Zoning section, Permit B260240 is hereby suspended. All work being done under this permit must stop until such time as the zoning concerns are addressed and the permit can be reinstated.

For further information, please contact Regulo Tanguilig at 887-3911.

Sincerely,

John R. Reisinger, P.E.
Building Engineer

c. Building Inspection
R. Tanguilig

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Baltimore County
Department of Permits and
Development Management

Permits and Licenses
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
(410) 887-3900
Fax: (410) 887-2824

June 13, 1996

Ms. Dorothea Fertitta
7134 Greenbank Road
Baltimore, MD 21220

RE: Building Permit
No. B272691
7134 Greenbank Road
15th Election District

Dear Ms. Fertitta:

Please be advised that an appeal of the above-referenced case was filed in this office on June 12, 1996 by J. Carroll Holzer, Esquire, on behalf of Paul Kiebler. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals.

If you have any questions concerning this matter, please do not hesitate to call 887-3180.

Sincerely,

Arnold Jablon/nmn

ARNOLD JABLON
Director

AJ:nmn

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Baltimore County
Department of Permits and
Development Management

Permits and Licenses
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
(410) 887-3900
Fax: (410) 887-2824

May 20, 1996

Ms. Dorothea Fertitta
7134 Greenbank Road
Baltimore, MD 21220

Re: Building Permit
No. B260238
7134 Greenbank Road
15th Election District

Dear Ms. Fertitta:

Please be advised that an appeal of the above-referenced building permit was filed in this office on May 15, 1996 by J. Carroll Holzer, Esquire, on behalf of Paul Kiebler. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals.

If you have any questions concerning this matter, please do not hesitate to call 887-3180.

Sincerely,

Arnold Jablon /nmn

ARNOLD JABLON
Director

AJ:nmn

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on Recycled Paper

HOLZER & LEE

LAW OFFICES

J. CARROLL HOLZER, PA
THOMAS J. LEE

J. HOWARD HOLZER
1907-1989

TOWSON OFFICE
305 WASHINGTON AVENUE
SUITE 502
TOWSON, MD 21204
(410) 825-6961
FAX: (410) 825-4923

CARROLL COUNTY OFFICE
1315 LIBERTY ROAD
ELDERSBURG, MD 21784
(410) 795-8556
FAX: (410) 795-5535

May 2, 1996

Ms. Kathy Bianco
Administrative Assistant
Baltimore County Board of Appeals
Basement, Old Courthouse
Towson, Maryland 21204

Re.: *Kiebler/Bolling file*
Case Nos. 96-244-SPH and 96-245-SPH

Dear Ms. ~~Bianco~~ Kathy:

I am advised by Lou Fleury today that he will file an appeal in the above captioned case. He indicated that he will be away on vacation for a month. I would request that this case be set in the last two weeks of June because it relates to my clients' construction of a pier, which they have a right to construct, on the Gunpowder River, and they have been endeavoring to get this pier located for more than two summers now. I would expect that this case would take approximately three to four hours to try in that it took one half day before the Zoning Commissioner. The only witnesses involved are the two engineers and the property owners. Thank you very much for putting this case in as promptly as possible.

Very truly yours,

J. Carroll Holzer

Per JCH - discussion on scheduling - expedited necessary - Board's schedule at this point in time - no early dates in June.
KCB

cc: *Lou Fleury*
Paul Kiebler

C:\OFFICE\WPWIN\WPDOCS\LETTERS\BIANCO.LTR

LEWIS L. FLEURY
ATTORNEY AT LAW
424 WOODBINE AVENUE
TOWSON, MARYLAND 21204

(410) 825-8200

June 17, 1999

Mr. and Mrs. Paul D. Kiebler
7200 Greenbank Road
Baltimore, MD 21220

and

Mr. and Mrs. Thomas Bolling
7202 Greenbank Road
Baltimore, MD 21220

Re: IN THE MATTERS OF THOMAS BOLLING AND
PAUL KIEBLER FOR SPECIAL HEARING
CASES NOS. 96-244-SPH AND 96-245-SPH

Dear Mr. and Mrs. Kiebler and Mr. and Mrs. Bolling:

I have been requested by my client to advise you that she is ready and willing to proceed with the reconfiguration of her pier pursuant to the agreement as set out in Judge Daniels' opinion; and further that she is eager to install her boat lift, and therefore anxious to complete the agreement, including the payment therefor as soon as possible.

Enclosed herewith is a copy of my letter of this date to Mr. Arnold Jablon, Director of the Department of Permits And Development Management for Baltimore County, with the plan referred to therein, all of which is self explanatory.

I offer this plan as a much less expensive alternative to reconfiguring the Fertitta pier with the "L" parallel to the shoreline, as shown on Mr. Lewis's drawing (Exhibit 1 in the Court hearing), which would require a complete redesign and reconstruction of the end of the pier, rather than a simple flip of the "L" as indicated on the enclosed plan.

However, if you do not wish to approve the enclosed alternate plan, Ms. Fertitta is willing to perform her part of the agreement pursuant to the prior plan prepared by Mr. Raphel, with the square footage of the redesigned "L" on her pier adjusted to equal its present footage, as originally conceived.

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In either case, I hereby ask that within 15 days of this letter you advise Mr. John Lewis in the Office of Zoning and me of your decision to proceed with either the enclosed alternate plan or the prior Raphel plan with the above proposed adjustment. And contact me so that we can arrange for the preparation of any necessary revised plan and a manner of payment of your two-thirds of the cost of relocation of the Fertitta pier that will be acceptable to all parties involved.

Also be advised that in the event you should fail to request the approval of the enclosed plan or contact me within the above 15 days time regarding your intention to cooperate in the design and completion of a workable plan, my client will proceed to install the boat lift on the existing pilings; and will seek from you the full cost of moving the lift, if that should become necessary.

Please give this matter your earliest attention and let me know of your intentions. I look forward to hearing from you. Thank you for your cooperation.

Yours respectfully,

Lewis L. Fleury

cc: Hon. Lawrence R. Daniels (Court File # C97740)
Byron L. Warnken, Esq.
Mr. John Lewis
Ms. Dorothea Fertitta

fertitta.ja2

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Phone: (410) 825-9200
Fax: (410) 825-9201

LEW FAX NO-INFO
6/24
CALLED LEW 7/2
SUGGESTED MTG
BTW BOTH PARTIES
+ MYSELF. LEFT
MSG.
LEW'S TAPE SAID
HE'LL RETURN 7/14

MUST BE TO
ORIG UNLESS
BOTH COME IN
+ SIGN PLAN
AGREEING
TO CHANGES,
DO
LTR.
TO
BOTH
CALLED LEW 7/14

Lewis L. Fleury
Attorney at Law
424 Woodbine Avenue
Towson, Maryland 21204-4211

June 17, 1999

Mr. Arnold Jablon, Director

Office of Permits and Development Management
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: IN THE MATTERS OF THOMAS BOLLING AND
PAUL KIEBLER FOR SPECIAL HEARING
CASES NOS. 96-244-SPH AND 96-245-SPH

Dear Mr. Jablon:

I write this letter as counsel for Mrs. Dorothea Fertitta, protestant, Appellee in the Circuit Court For Baltimore County and at the Court Of Special Appeals, for the purpose of bringing the files and knowledge of the Office of Zoning up to date as to the occurrences in the above matter since my letter to you of September 10, 1997, as follows:

1. As indicated in the above paragraph, the Applicants appealed from order of the Board Of Appeals finding the plan approved by the Zoning Commissioner to be "in violation of Section 417.3C (of the BCZR) and that they may cause interference with both the existing pier on the Fertitta property and any possible expansion of the Fertitta pier", and recognizing " that the Petitioners are somewhat restricted in the area considered buildable by Baltimore County's Department of Permits and Development Management, however, it is that agency which is responsible for reviewing such matters and specifying the limits of construction as indicated in Section 417.3C."

2. While the matter was pending before Judge Daniels in the Circuit Court, the parties came to an agreement to settle the matter, the terms of which are set out in Judge Daniels opinion, copy of applicable pages enclosed, as follows: a. "... that the parties are to have a drawing submitted to the Zoning Office in Baltimore County that comports with exhibit 01, (Drawing by John Lewis for alterations of Fertitta pier, copy enclosed). And that, if in fact the Department of Zoning approves that drawing, that the corrections are to be made to the Fertitta pier and that the parties are to pay one-third each of the cost of making those corrections"

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Court Of Special Appeals by the Petitioners, and was affirmed.

4. Accordingly, this matter remains in the jurisdiction of the Circuit Court For Baltimore County for that Court's "superintending function", as indicated on page 25 of the Appellate opinion (copy of that page enclosed).

Enclosed herewith is a copy of a proposed plan for the relocation of the "L" of the Fertitta pier in the least expensive manner and the location of the piers on the Kiebler and Bolling properties, which Mr. John Lewis of the Zoning Department has reviewed and indicated that he would approve, if requested by the Petitioners.

In view of the present status of this case, I request that this letter and the enclosed plan be place in the Zoning Department file and that your staff be directed to flag the instant file, so that Mrs. Dorothea Fertitta and I be given timely notification of any application for building permit or other action taken in this matter by the owners of the Kiebler or Bolling properties.

Thank you very much for the cooperation and assistance of yourself and your staff in this very important matter.

Very truly yours,

Lewis L. Fleury

LLF/me

cc: Han. Lawrence R. Daniels (Court File # C97740)
Byron L. Warnken, Esq.
Mr. John Lewis
Mr. and Mrs. Paul D. Kiebler
Mr. and Mrs. Thomas T. Bolling
Ms. Dorothea Fertitta

misc\fertitta.jal

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Phone: (410) 825-9200
Fax: (410) 825-9201

Lewis L. Fleury
Attorney at Law
424 Woodbine Avenue
Towson, Maryland 21204-4211

To. JLL
6/29/99
ua
DSK 6/30

June 24, 1999

Mr. John Lewis
Zoning Office of Baltimore County
County Office Building
Towson, Maryland 21204

Re: In The Matters Of Thomas Bolling and Paul D. Kiebler
Case Nos.: 96-244-SPH and 96-245-SPH

Dear Mr. Lewis:

Pursuant to your request in our telephone conversation of yesterday, enclosed herewith are copies of pages 1, 34, 35 and 36 of the transcript of the hearing before Judge Daniels in the above matter, which contain his oral opinion finding an agreement between the as contained therein.

Also enclosed are copies of pages 23, 24 and 25 of the opinion of the Court Of Special Appeals, which contain that Court's direction as to the performance of the agreement.

The enclosed copy of my letter of this date to Judge Daniels, is explanatory as to the way I believe we should proceed in this matter.

Thank you for your continued cooperation.

Very truly yours,

L. L. Fleury

Lewis L. Fleury

cc: The Honorable Lawrence R. Daniels
Byron L. Warnken, Esq.
Ms. Dorothea Fertitta

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LEWIS L. FLEURY
ATTORNEY AT LAW
424 WOODBINE AVENUE
TOWSON, MARYLAND 21204

(410) 825-9200

June 24, 1999

The Honorable Lawrence R. Daniels
Judge of The Circuit Court For
Baltimore County
County Courts Building
Towson, Maryland 21204

Re: In Re Petition of Thomas Bolling, et ux.

Dear Judge Daniels:

In response to Mr. Warnken's request for a hearing or a chambers conference in the above matter, be advised that I have this date spoken with Mr. Lewis, who has advised me that his only reference to an order from the court when speaking with Mr. Warnken was that he wished to see the opinion of the Court as to the terms of the settlement, so that he would not act contrary thereto.

Accordingly, enclosed is a copy of my letter of this date to Mr. Lewis which is self explanatory.

I do not agree with Mr. Warnken, "that your Honor's supervision is necessary", at this time. I suggest to you, and to Mr. Warnken by copy of this letter to him, that he and I confer concerning resolution of the "remaining issues", and if we cannot agree on reasonable solutions, we then seek the assistance of Mr. Lewis in a conference with him, and hold the supervision of your Honor as a last resort.

Please advise us of your intentions in this matter.

Respectfully,

Lewis L. Fleury

cc: Byron L. Warnken, Esq.
Ms. Dorothea Fertitta
Mr. John Lewis

fertitta.da2

MICROFILMED

Phone: (410) 825-9200
Fax: (410) 825-9201

Lewis L. Fleury
Attorney at Law
424 Woodbine Avenue
Towson, Maryland 21204-4211

To: JLL-?
4/28/00

April 27, 2000

15TH E.D.

Mr. and Mrs. Paul D. Kiebler
7200 Greenbank Road
Baltimore, MD 21220

and

Mr. and Mrs. Thomas Bolling
7202 Greenbank Road
Baltimore, MD 21220

Re: IN THE MATTERS OF THOMAS BOLLING AND
PAUL KIEBLER FOR SPECIAL HEARING
CASES NOS. 96-244-SPH AND 96-245-SPH

Dear Mr. and Mrs. Kiebler and Mr. and Mrs. Bolling:

Another boating season is upon us, and I still have no reply to my letters of June 17, or October 20, 1999.

This is a final effort to avoid the added expense to you of moving my clients boat lift when you proceed with construction of your proposed piers. In the event you should fail to request the approval one of the plans submitted with the above-mentioned letters, or contact me within 10 days from the date of this letter regarding your intention to cooperate in the design and construction of your piers pursuant to an approved plan, my client will proceed to install her boat lift on the existing pilings; and will seek from you the full cost of moving the lift, if that should become necessary.

Please give this matter your earliest consideration and let me know of your intentions. I look forward to hearing from you. Thank you for your cooperation.

Yours respectfully,

Lewis L. Fleury

cc: Hon. Lawrence R. Daniels (Court File # C97740)
Byron L. Warnken, Esq.
Mr. John Lewis
Ms. Dorothea Fertitta

fertlift.ltr

COPY

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APR 28 2000
DEVELOPMENT MANAGEMENT

Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us

May 12, 2000

Lewis L. Fleury, Esquire
424 Woodbine Avenue
Towson, Maryland 21204-4211

Dear Mr. Fleury:

RE: Zoning Verification, 7200, 7202 and 7206 Greenbank Rd., 96-244-SPH, 96-245-SPH, 15th Election District

This is a zoning response to your letter of April 27, 2000 to Mr. and Mrs. Kiebler at 7200 Greenbank Road and Mr. and Mrs. Bolling at 7202 Greenbank Road.

Please be aware that any permits for waterfront construction on the Kiebler or Fertilla lots must be reviewed by myself well in advance of any hoped for permit approvals. I also refer you to my last correspondence from 1999 which stipulates compliance with an already approved site plan. You can contact me at 410-887-3391 should you have any questions.

Sincerely,

John L. Lewis
Planner II
Zoning Review

JLL:kew

cc: Honorable Lawrence R. Daniels (Court File #97740)
Baltimore County Circuit Court

Mr. and Mrs. Paul D. Kiebler, 7200 Greenbank Rd.
Baltimore, Maryland 21220

Mr. and Mrs. Thomas Bolling. 7202 Greenbank Rd.
Baltimore, Maryland 21220

96-244-SPH
96-245-SPH

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plans proposed the installation of a piling in the entrance to the Fertitta boat slip located at the end of her pier.

After the Request was filed Mr. Lewis prepared a plan, Petitioners' Exhibit 17, copy enclosed, on which the buildable and non-buildable areas are delineated. The Appellee argued that the proposed piers could be constructed in the buildable area without interference with the use of the Fertitta pier, but the Zoning Commissioner entered an Order approving the construction of the piers as set out on Petitioners' Exhibit 16. On appeal, the order of the Zoning Commissioner was reversed by the County Board Of Appeals, and the Special Hearing was denied, leaving the approval of the proposed piers to the Zoning Office.

The Petitioners appealed the decision of the Board Of Appeals, contending that this case, " reads like an epic novel of incompetence and buck passing on the part of the Zoning Office and the Board Of Appeals for Baltimore County". And after a hearing before Judge Lawrence Daniels, he held the matter sub-curia and instructed counsel to arrange for a conference in his chambers with a representative from the Zoning Office before October 15, 1997, in order to explore the approval of a plan under Section 417.3 of the Zoning Regulations, which will resolve the pending litigation.

I have spoken with Mr. Lewis in reference to the proposed meeting, and he has suggested that I write to you concerning your designation of the appropriate representative from the Zoning Office in this matter.

Accordingly, please give this matter your consideration, and advise counsel whom we should contact in the Zoning Office concerning the arrangement of the conference, as instructed by Judge Daniels.

Thank you very much for your cooperation and assistance.

Very truly yours,

ry

Speed Letter

In the interest of speed and economy, we are replying to your letter with marginal notes. If you need more information, do not hesitate to call or write. Thank you for your interest.

l Holzer, Esq.
Lewis

September 17, 1997

Dear Mr. Fluery:

Mr. Jablon has forwarded this letter to me for response and to identify myself as the representative of the Zoning Review Bureau in this matter.

Please contact me concerning the proposed meeting date and time at 410-887-3391.

Very truly yours,

John L. Lewis
Planner II, Zoning Review

JLL:rye

c: zoning cases 96-244-SPH
96-245-SPH

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ACTION ID:199368031
NAME:Freund,Mildred,A1
Freund,Mildred,PC
PROJECT NAME:FREUND, MILDRED H/DECKING
WATERWAY:Gunpowder River
APPROVED WORK:
FIRST LINE OF DESCRIPTION:
COUNTY & STATE:Baltimore,MD
STATUS & START DATE:PER,08/09/1993,08/12/1993
NHC,08/12/1993,08/12/1993
PER,08/12/1993,08/24/1993
FTE,08/24/1993,<NULL>
PROJECT MANAGER:HIEBER
KEYWORDS:,,
INSPECTION SCHEDULED & PERFORMED:
INSPECTOR:

7132 GREENBANK ROAD

NO DA AUTHORIZATION

ACTION ID:199300771
NAME:Freund,Mildred,V1
PROJECT NAME:FREUND, MILDRED H./DECKING
WATERWAY:Gunpowder River
APPROVED WORK:
FIRST LINE OF DESCRIPTION:
COUNTY & STATE:Baltimore,MD
STATUS & START DATE:PVC,06/11/1993,07/15/1993
PVL,07/15/1993,12/14/1993
PEN,12/14/1993,<NULL>
PROJECT MANAGER:MUES
KEYWORDS:,,
INSPECTION SCHEDULED & PERFORMED:
INSPECTOR:

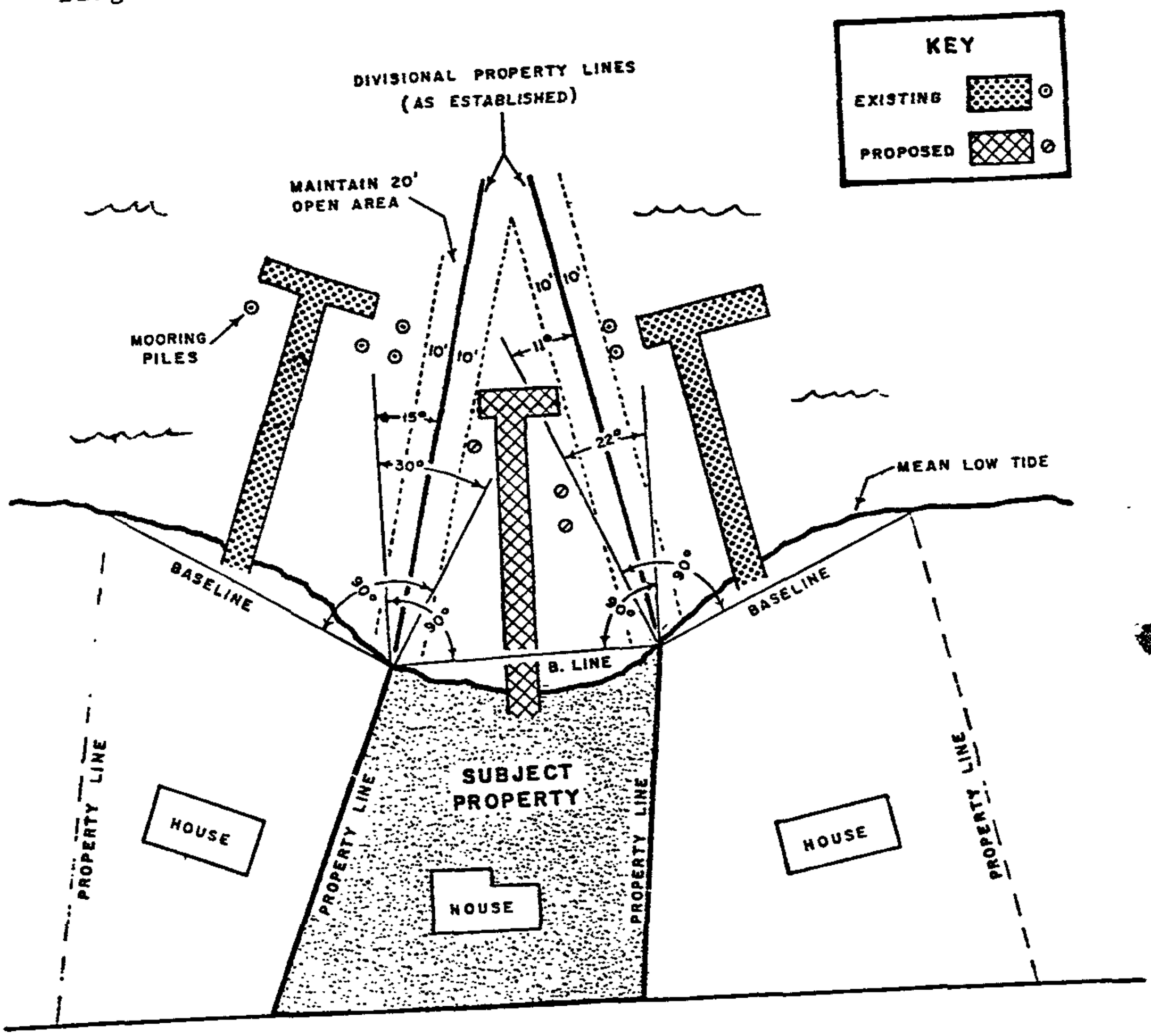
ACTION ID:198701618
NAME:FREUND,MILTON,A1
,,C1
,,AG
PROJECT NAME:FREUND
WATERWAY:GUNPOWDER RIVER
APPROVED WORK:PILE
PILE
FIRST LINE OF DESCRIPTION:
COUNTY & STATE:Baltimore,MD
STATUS & START DATE:PPG,06/03/1987,08/17/1987
PGP,08/17/1987,<NULL>
PROJECT MANAGER:SULG
KEYWORDS:PIER,PILES,
INSPECTION SCHEDULED & PERFORMED:
INSPECTOR:

7132 GREENBANK ROAD

MAXIUM CHANNELWARD EXTENT
106 feet

APR 01 '96 06:33PM U.S. ARMY CORPS

Diagram #3


KEY
EXISTING
PROPOSED
DIVISIONAL PROPERTY LINES
(AS ESTABLISHED)
MAINTAIN 20'
OPEN AREA
MOORING
PILES
10'
10'
10'
10'
11°
15°
30°
22°
MEAN LOW TIDE
BASELINE
BASELINE
90°
90°
90°
90°
B. LINE
SUBJECT
PROPERTY
PROPERTY LINE
PROPERTY LINE
PROPERTY LINE
PROPERTY LINE
HOUSE
HOUSE
HOUSE

ax Transmittal

NO. OF PAGES: 1 DATE: 1 APR 96

BALTIMORE DISTRICT

FROM: PAUL SNEERINGER
Regulatory Branch
Operations Division
Baltimore District
PHONE NO. (410) 962-6029
FAX NO.: (410) 962-6001

TO: STEVE GEORAS
CO NAME:
DEPT.:
FAX NO.: (410) 550-7612

omments:

MR GEORAS

A DEPARTMENT OF THE ARMY GENERAL PERMIT #2 FOR (FREUND, MILTON/PIER) 87-1618 WAS ISSUED ON AUGUST 17, 1996. I HAVE BEEN UNABLE TO FIND AN ARCHIVED COPY OF THIS PERMIT. THIS IS NOT UNUSUAL WE DISPOSED PERMITS WHICH ARE FIVE YEARS OLD IN ORDER FOR OUR GENERAL PERMIT TO HAVE COME INTO EFFECT MR FREUND WOULD HAVE HAD TO GOTTEN A BALTIMORE COUNTY PERMIT. HOWEVER, BASED UPON THE EXISTING COMPUTER FILE, I HAVENT LOCATED A BALT CO PERMIT NUMBER

Paul Sneeringer
Proof No 3

DRIVEN BY A VISION

APPLICATION FOR BUILDING PERMIT

PERMIT #: B260238 CONTROL #: RA DIST: 15 PREC: 08

LOCATION: 7134 GREENBANK RD
SUBDIVISION: OLIVER BEACH
TAX ASSESSMENT #: 1513401430

OWNERS INFORMATION
NAME: FERTITTA,DOROTHEA
ADDR: 7134 GREENBANK RD BALTO,MD 21220

APPLICANT INFORMATION
NAME: DOROTHEA FERTITTA
COMPANY:
ADDR1: 7134 GREENBANK RD
ADDR2: BALTO,MD 21220
PHONE #: 335-0177 LICENSE #:

NOTES
KRA/JB

TRACT: BLOCK:
PLANS: CONST 0 PLOT 0 R PLAT 0 DATA 0 ELEC NO PLUM NO
TENANT:
CONTR: OWNER
ENGNR:
SELLR:
WORK: RAZE EX SFD.TO BE TORN DOWN & HAULED TO AN APPROVED SANITARY LANDFILL IN ACCORDANCE WITH APPLICABLE COUNTY SITE REGULATIONS.SEWER TO BE CAPPED.PERMIT EXPIRES 90 DAYS FROM COMPLETION OF NEW SFD.20'X53'=1060SF.REFER TO B260240 FOR NEW SFD. SEE P263817 CAP OFF

PROPOSED USE: VACANT
EXISTING USE: SFD

BLDG. CODE: BOCA CODE
RESIDENTIAL CATEGORY: DETACHED OWNERSHIP: PRIVATELY OWNED
ESTIMATED COST OF MATERIAL AND LABOR: 6,500.00

TYPE OF IMPRV: WRECKING
USE: ONE FAMILY
FOUNDATION: SLAB BASEMENT: NONE
SEWAGE: PUBLIC EXIST WATER: PUBLIC EXIST
CONSTRUCTION: FUEL:
CENTRAL AIR:

SINGLE FAMILY UNITS
TOTAL 1 FAMILY BEDROOMS
MULTI FAMILY UNITS
EFFICIENCY (NO SEPARATE BEDROOMS): NO. OF 1 BEDROOM
NO. OF 2 BEDROOMS: NO. OF 3 BEDROOMS OR MORE:
TOTAL NO. OF BEDROOMS: TOTAL NO. OF APARTMENTS

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PERMIT #: B260238

DIMENSIONS - INSTALL FIXTURES

	BUILDING SIZE	
GARBAGE DISP:	FLOOR:	1060
POWDER ROOMS:	WIDTH:	20'
BATHROOMS:	DEPTH:	53'
KITCHENS:	HEIGHT:	
	STORIES:	2

LOT NOS: 31
CORNER LOT: N

LOT SIZE AND SETBACKS
SIZE: 9200SF
FRONT STREET:
SIDE STREET:
FRONT SETB: NC
SIDE SETB: NC
SIDE STR SETB:
REAR SETB: NC

ZONING INFORMATION

DISTRICT:	BLOCK:	
PETITION:	SECTION:	
DATE:	LIBER:	001
MAP:	FOLIO:	056
	CLASS:	34

ASSESSMENTS
LAND: 0089200.00
IMPROVEMENTS: 0028650.00
TOTAL ASS.:

PLANNING INFORMATION
MASTER PLAN AREA: SUBSEWERSHED: CRITICAL AREA:

DATE APPLIED: 02/09/96 INSPECTOR INITIALS: 15R
FEE: $10.00 PAID: $10.00 RECEIPT #: A288719
PAID BY: APPL

(I HAVE CAREFULLY READ THIS APPLICATION AND KNOW THE SAME IS CORRECT AND TRUE. AND THAT IN DOING THIS WORK ALL PROVISIONS OF THE BALTIMORE COUNTY CODE AND APPROPRIATE STATE REGULATIONS WILL BE COMPLIED WITH WHETHER HEREIN SPECIFIED OR NOT AND WILL REQUEST ALL REQUIRED INSPECTIONS)

COMPANY OR OWNER DATE

ADDRESS

AGENT __
OWNER __

SIGNATURE OF APPLICANT PHONE

PANEL BP1003M

TIME 08:37:48 AUTOMATED PERMIT TRACKING SYSTEM LAST UPDATE 02/09/96
DATE 05/21/96 GENERAL PERMIT APPLICATION DATA PLS 14:53:23

PERMIT #: B260238 PROPERTY ADDRESS
RECEIPT # A208719 7134 GREENBANK RD
CONTROL #: RA SUBDIV: OLIVER BEACH
AREF #: B260230 TAX ACCOUNT #: 1513401430 DISTRICT/PRECINCT 15 09

OWNERS INFORMATION (LAST, FIRST)

FEE: 10.00 NAME: FERTITTA,DOROTHEA
PAID 10.00 ADDR: 7134 GREENBANK RD BALTO,MD 21220
PAID BY APPL

DATES APPLICANT INFORMATION

APPLIED 02/09/96 NAME: DOROTHEA FERTITTA
ISSUED: 05/01/96 COMPANY:
OCCPNCY ADDR1: 7134 GREENBANK RD
ADDR2: BALTO,MD 21220
INSPECTOR: 15R PHONE #: 335-0177 LICENSE #:
NOTES KRA/JB

PASSWORD :

ENTER - PERMIT DETAIL PF3 - INSPECTIONS PF7 - DELETE PF9 - SAVE
PF2 - APPROVALS PF4 - ISSUE PERMIT PF8 - NEXT PERMIT PF10 - INQRY

PANEL BP101BM

TIME: 11:36:22 AUTOMATED PERMIT TRACKING SYSTEM LAST UPDATE 05/01/96
DATE: 05/22/96 APPROVALS DETAIL SCREEN PLR 13:04:15

PERMIT #: B260238 CONTROL #: RA

AGENCY	DATE	CODE	COMMENTS
ENVRMNT	04/12/96	01	ANE/EASTERN-3/19 RC////AQ/JI/4/1/94
PERMITS	05/01/96	01	DAS FOR CAP OFF

01 THRU 09 INDICATES AN "APPROVAL" ** 10 THRU 99 INDICATES A "DISAPPROVAL"

ENTER - GENERAL PERMIT PF4 - ISSUE PERMIT
PF3 - INSPECTIONS PF8 - GENERAL SCREEN W/NEXT PERMIT CLEAR - MENU

APPLICATION FOR BUILDING PERMIT

PERMIT #: B260240 CONTROL #: NRFP DIST: 15 PREC: 08

LOCATION: 7134 GREENBANK RD
SUBDIVISION: OLIVER BEACH
TAX ASSESSMENT #: 1513401430

OWNERS INFORMATION
NAME: FERTITTA,DOROTHEA
ADDR: 7134 GREENBANK RD BALTO,MD 21220

APPLICANT INFORMATION
NAME: DOROTHEA FERTITTA
COMPANY:
ADDR1: 7134 GREENBANK RD
ADDR2: BALTO,MD 21220
PHONE #: 335-0177 LICENSE #:

NOTES
KRA/JB

TRACT: BLOCK:
PLANS: CONST 2 PLOT 7 R PLAT 0 DATA 0 ELEC YES PLUM YES
TENANT:
CONTR: OWNER
ENGNR:
SELLR:
WORK. CONST SFD W/FIREPLACE(NO OUTSIDE PROJ),OPEN
WOOD DECK ON FRONT & 3 BDRMS.32'X42'X29'=3385SF
REFER TO B260238 FOR RAZING.
FLOOD ZONE"B".EX GROUND ELEV=14'.BASEMENT ELEV=
6.5'.

PROPOSED USE: SFD
EXISTING USE: SFD TO BE RAZED(SEE B260238)

BLDG. CODE: 1 AND 2 FAM. CODE
RESIDENTIAL CATEGORY: DETACHED OWNERSHIP: PRIVATELY OWNED
ESTIMATED COST OF MATERIAL AND LABOR: 85,000.00

TYPE OF IMPRV: NEW BUILDING CONSTRUCTION
USE: ONE FAMILY
FOUNDATION: BLOCK BASEMENT: FULL
SEWAGE: PUBLIC EXIST WATER: PUBLIC EXIST
CONSTRUCTION: WOOD FRAME FUEL: OIL
CENTRAL AIR: YES

SINGLE FAMILY UNITS
TOTAL 1 FAMILY BEDROOMS 3
MULTI FAMILY UNITS
EFFICIENCY (NO SEPARATE BEDROOMS): NO. OF 1 BEDROOM:
NO. OF 2 BEDROOMS: NO. OF 3 BEDROOMS OR MORE:
TOTAL NO. OF BEDROOMS. TOTAL NO. OF APARTMENTS:

MICROFILMED

PERMIT #: B260240

DIMENSIONS - INSTALL FIXTURES

		BUILDING SIZE	
GARBAGE DISP:	Y	FLOOR:	3385
POWDER ROOMS:	1	WIDTH:	32'
BATHROOMS:	1	DEPTH:	42'
KITCHENS:	1	HEIGHT:	29'
		STORIES:	2+BSMT

LOT NOS: 31
CORNER LOT: N

LOT SIZE AND SETBACKS
SIZE: 9200SF
FRONT STREET:
SIDE STREET:
FRONT SETB: 74'
SIDE SETB: 11.5'/10'
SIDE STR SETB:
REAR SETB: 27'

ZONING INFORMATION

DISTRICT:		BLOCK:	
PETITION:		SECTION:	
DATE:		LIBER:	001
MAP:		FOLIO:	056
		CLASS:	34

ASSESSMENTS
LAND: 0089200.00
IMPROVEMENTS: 0028650.00
TOTAL ASS.:

PLANNING INFORMATION
MASTER PLAN AREA: SUBSEWERSHED: CRITICAL AREA:

DATE APPLIED: 02/09/96 INSPECTOR INITIALS: 15F
FEE: $168.00 PAID: $168.00 RECEIPT #: A288719
PAID BY: APPL

(I HAVE CAREFULLY READ THIS APPLICATION AND KNOW THE SAME IS CORRECT AND TRUE. AND THAT IN DOING THIS WORK ALL PROVISIONS OF THE BALTIMORE COUNTY CODE AND APPROPRIATE STATE REGULATIONS WILL BE COMPLIED WITH WHETHER HEREIN SPECIFIED OR NOT AND WILL REQUEST ALL REQUIRED INSPECTIONS)

COMPANY OR OWNER DATE

ADDRESS

AGENT __
OWNER __

SIGNATURE OF APPLICANT PHONE

TIME: 09:34:23 AUTOMATED PERMIT TRACKING SYSTEM LAST UPDATE 05/07/96
DATE: 05/21/96 GENERAL PERMIT APPLICATION DATA PLS 14:03.12

PERMIT #: B260240 PROPERTY ADDRESS
RECEIPT #: A288719 7134 GREENBANK RD
CONTROL #: NRFP SUBDIV OLIVER BEACH
XREF #: B260240 TAX ACCOUNT #: 1513401430 DISTRICT/PRECINCT 15 08

OWNERS INFORMATION (LAST, FIRST)

FEE: 168.00 NAME: FERTITTA,DOROTHEA
PAID: 168.00 ADDR: 7134 GREENBANK RD BALTO,MD 21220
PAID BY: APPL

DATES APPLICANT INFORMATION

APPLIED: 02/09/96 NAME: DOROTHEA FERTITTA
ISSUED: 02/29/96 COMPANY:
OCCPNCY: ADDR1: 7134 GREENBANK RD
ADDR2: BALTO,MD 21220
INSPECTOR: 15F PHONE # 535-0177 LICENSE #:
NOTES: KRA/JB

PASSWORD :

ENTER - PERMIT DETAIL PF3 - INSPECTIONS PF7 - DELETE PF9 - SAVE
PF2 - APPROVALS PF4 - ISSUE PERMIT PF8 - NEXT PERMIT PF10 - INQRY
PANEL BP191

TIME 09:34:40 AUTOMATED PERMIT TRACKING SYSTEM LAST UPDATE 02/29/96
DATE 05/21/96 APPROVALS DETAIL SCREEN PLM 14 40 30

PERMIT #: B260240 CONTROL #: NRFP

AGENCY	DATE	CODE	COMMENTS
BLD PLAN	02/15/96	01	ALR-ABOVE 100 YR FP ELEV SO NO FP RESTRICTIONS
SEDI CTL	02/27/96	01	ANE/SP
ZONING	02/09/96	01	RT/JR
PUB SERV	02/09/96	01	RT/JB
ENVRMNT	02/21/96	01	ANE/CBCA-2/215BA
PERMITS	02/29/96	01	DS/RSD

01 THRU 09 INDICATES AN "APPROVAL" ** 10 THRU 99 INDICATES A "DISAPPROVAL"

ENTER - GENERAL PERMIT PF4 - ISSUE PERMIT
PF3 - INSPECTIONS PF8 - GENERATE NEW W/NEXT PERMIT CLEAR - BLK

ERMIT #: 260240
ECEIPT #: 11 288713
ONTROL #: NREP
EF #:

E: 163. 75.
AID: 163.75
AID BY: Appl
NSPECTOR:

HAVE CAREFULLY READ THIS APPLICATION AND KNOW THE SAME IS CORRECT AND TRUE, AND THAT IN DOING THIS WORK ALL PROVISIONS OF THE BALTIMORE COUNTY CODE AND APPROPRIATE STATE REGULATIONS WILL BE COMPLIED WITH WHETHER HEREIN SPECIFIED OR NOT AND WILL REQUEST ALL REQUIRED INSPECTIONS.

BUILDING 1 or 2 FAM.
CODE CODE ✓
BOCA CODE

TYPE OF IMPROVEMENT
✓ NEW BLDG CONST
___ ADDITION
___ ALTERATION
___ REPAIR
___ WRECKING
___ MOVING
___ OTHER

TYPE OF USE

RESIDENTIAL
✓ ONE FAMILY
___ TWO FAMILY
___ THREE AND FOUR FAMILY
___ FIVE OR MORE FAMILY (ENTER NO UNITS)
___ SWIMMING POOL
___ GARAGE
___ OTHER

TYPE FOUNDATION
___ SLAB
✓ BLOCK
___ CONCRETE

BASEMENT
1. ✓ FULL
2. ___ PARTIAL
3. ___ NONE

PROPERTY ADDRESS 7134 Greenbank Rd. 21220
SUITE/SPACE/FLOOR
SUBDIV: OLIVER BEACH.
TAX ACCOUNT #: 15-13-401430
OWNER'S INFORMATION (LAST FIRST)
NAME: DOROTHEA M. FERTITTA
ADDR: 7134 Greenbank Rd. Balto, MD. 21220.

HISTORIC DISTRICT/BLDG.
___ YES ✓ NO
___ DO NOT KNOW

DISTRICT/PRECINCT
15 8

DOES THIS BLDG. HAVE SPRINKLERS
YES ___ NO ✓

APPLICANT INFORMATION
NAME: DOROTHEA M. Fertitta
COMPANY:
STREET 7134 Greenbank Rd.
CITY,ST,ZIP BALTO. MD. 21220
PHONE #: 335-4497, 866-3375 MHIC LICENSE #:
APPLICANT SIGNATURE: Dorothea Fertitta TRACT: BLOCK:
PLANS: CONST 2 PLOT 2 PLAT — DATA — EL 1 PL 1
TENANT
*CONTR: DOROTHEA M. FERTITTA (Owner)
ENGNR:
SELLR:

DESCRIBE PROPOSED WORK:
PANEL #445 ~~Construct 1½ Sty. Frame Dwelling w/ Attached Garage~~
ZONE "B" Construct SFD w/ Fireplace (No Projection), Open
TAX MAP = NE8N Wood Deck on Front, 3-Bdrms.
EX. GRD. ELEV = 14' NON-RESIDENTIAL 32'x42'x29' = 3,385 ☐
BASEMENT = 6.5

08. ___ AMUSEMENT, RECREATION, PLACE OF ASSEMBLY
09. ___ CHURCH, OTHER RELIGIOUS BUILDING
10. ___ FENCE (LENGTH ___ HEIGHT ___)
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
SPECIFY TYPE
21. ___ TANK, TOWER
22. ___ TRANSIENT HOTEL, MOTEL (NO. UNITS ___)
23. ___ OTHER

Refer To B 260238 For Razing

TYPE OF CONSTRUCTION
___ MASONRY
✓ WOOD FRAME
___ STRUCTURE STEEL
___ REINF. CONCRETE

TYPE OF HEATING FUEL
1. ✓ GAS 3. ___ ELECTRICITY
2. ✓ OIL 4. ___ COAL

TYPE OF SEWAGE DISPOSAL
1. ✓ PUBLIC SEWER ✓ EXISTS ___ PROPOSED
2. ___ PRIVATE SYSTEM
___ SEPTIC ___ EXISTS ___ PROPOSED
___ PRIVY ___ EXISTS ___ PROPOSED

TYPE OF WATER SUPPLY
1. ✓ PUBLIC SYSTEM ✓ EXISTS ___ PROPOSED
2. ___ PRIVATE SYSTEM ___ EXISTS ___ PROPOSED

CENTRAL AIR: 1. ✓ 2. ___
ESTIMATED COST: $ 85,000
MATERIALS AND LABOR
PROPOSED USE: SFD
EXISTING USE: SFD To Be Razed B 260238

OWNERSHIP
1. ✓ PRIVATELY OWNED 2. ___ PUBLICLY OWNED 3. ___ SALE 4. ___ RENTAL

RESIDENTIAL CATEGORY: 1. ✓ DETACHED 2. ___ SEMI-DET. 3. ___ GROUP 4. ___ TOWNHSE 5. ___ MIDRISE
EFF: ___ #1BED: ___ #2BED: ___ #3BED: ___ TOT BED: ___ TOT APTS/CONDOS: ___ 6. ___ HIRISE
FAMILY BEDROOMS 3
GARBAGE DISPOSAL 1. (Y) 2. N BATHROOMS 2 CLASS 34
POWDER ROOMS 1 KITCHENS 1 LIBER 12 FOLIO 056 Sect-B

BUILDING SIZE 3385 ☐
FLOOR ~~2079~~ ☐
WIDTH ~~2754~~ 32
DEPTH 42'
HEIGHT ~~30'~~ 29
STORIES ~~1½~~ 2-story
LOT #'S 31
CORNER LOT
1. ___ Y 2. ✓ N

LOT SIZE AND SETBACKS 9200 ☐
SIZE 50 Wide
FRONT STREET
SIDE STREET
FRONT SETBK 74
SIDE SETBK 14.5/10
SIDE STR SETBK
REAR SETBK 29
ZONING DR5.5

APPROVAL SIGNATURES		DATE
BLD INSP		
BLD PLAN	120 OK to File Gfuco	2/9/96
FIRE		
SEDI CTL	416NC	
ZONING	111 [illegible]	3/5/96
PUB SERV	111 [illegible]	2/5/96
ENVRMNT	416NC	
PERMITS		

MAKE CHECKS PAYABLE TO BALTIMORE COUNTY MARYLAND -- NO PERMIT FEES REFUNDED

Need Setbacks On Site Plans

APPLICATION FOR BUILDING PERMIT

PERMIT #: B272691 CONTROL #: NR DIST: 15 PREC: 08

LOCATION: 7134 GREENBANK RD
SUBDIVISION: OLIVER BEACH
TAX ASSESSMENT #: 1513401430

OWNERS INFORMATION
NAME: FERTITTA, DOROTHEA M.
ADDR: 7134 GREENBANK RD., 21220

APPLICANT INFORMATION
NAME: DOROTHEA FERTITTA
COMPANY:
ADDR1: 7134 GREENBANK RD
ADDR2: BALTO., MD. 21220
PHONE #: 335-0177 LICENSE #:

NOTES
KRA/JB

TRACT: BLOCK:
PLANS: CONST 2 PLOT 7 R PLAT 0 DATA 0 ELEC YES PLUM YES
TENANT:
CONTR: OWNER
ENGNR:
SELLR:
WORK: CONST SFD W/FIREPLACE-NO OUTSIDE PROJ.,OPEN WOOD DECK ON FRONT & 3 BDRMS. 31'4"X42'X29'= 3367SF THIS PERMIT CANCELS B260240-CHGE IN CONST. & SITE PLANS. PERMIT EXPIRES 2/29/97. OPEN PROJECTION NOT TO EXCEED 4'X10'.

PROPOSED USE: SFD
EXISTING USE: SFD TO BE RAZED(SEE B260238)

BLDG. CODE: 1 AND 2 FAM. CODE
RESIDENTIAL CATEGORY: DETACHED OWNERSHIP: PRIVATELY OWNED
ESTIMATED COST OF MATERIAL AND LABOR: 85,000.00

TYPE OF IMPRV: NEW BUILDING CONSTRUCTION
USE: ONE FAMILY
FOUNDATION: BLOCK BASEMENT: FULL
SEWAGE: PUBLIC EXIST WATER: PUBLIC EXIST
CONSTRUCTION: WOOD FRAME FUEL: OIL
CENTRAL AIR: YES

SINGLE FAMILY UNITS
TOTAL 1 FAMILY BEDROOMS 3
MULTI FAMILY UNITS
EFFICIENCY (NO SEPARATE BEDROOMS): NO. OF 1 BEDROOM:
NO. OF 2 BEDROOMS: NO. OF 3 BEDROOMS OR MORE:
TOTAL NO. OF BEDROOMS: TOTAL NO. OF APARTMENTS:

MICROFILMED

PERMIT #: B272691

DIMENSIONS - INSTALL FIXTURES

		BUILDING SIZE	
GARBAGE DISP:	Y	FLOOR:	3367
POWDER ROOMS:	1	WIDTH:	31'
BATHROOMS:	1	DEPTH:	42'
KITCHENS:	1	HEIGHT:	29'
		STORIES:	2+BSMT

LOT NOS: 31
CORNER LOT: N

LOT SIZE AND SETBACKS
SIZE: 0050.00 X 0000.00
FRONT STREET:
SIDE STREET:
FRONT SETB: 83'
SIDE SETB: 10.5/11.5
SIDE STR SETB:
REAR SETB: 29'

ZONING INFORMATION
DISTRICT:
PETITION:
DATE:
MAP:
BLOCK:
SECTION:
LIBER: 001
FOLIO: 056
CLASS: 34

ASSESSMENTS
LAND: 0089200.00
IMPROVEMENTS: 0028650.00
TOTAL ASS.:

PLANNING INFORMATION
MASTER PLAN AREA: SUBSEWERSHED: CRITICAL AREA:

DATE APPLIED: 06/04/96 INSPECTOR INITIALS: 15R
FEE: $49.00 PAID: $49.00 RECEIPT #: A302205
PAID BY: APPL

(I HAVE CAREFULLY READ THIS APPLICATION AND KNOW THE SAME IS CORRECT AND TRUE. AND THAT IN DOING THIS WORK ALL PROVISIONS OF THE BALTIMORE COUNTY CODE AND APPROPRIATE STATE REGULATIONS WILL BE COMPLIED WITH WHETHER HEREIN SPECIFIED OR NOT AND WILL REQUEST ALL REQUIRED INSPECTIONS)

COMPANY OR OWNER DATE

ADDRESS

AGENT __
OWNER __

SIGNATURE OF APPLICANT PHONE

PANEL BM101SH

TIME: 10.05 47 AUTOMATED PERMIT TRACKING SYSTEM LAST UPDATE 06/12/96
DATE: 06/12/96 APPROVALS DETAIL SCREEN SCH 14 10:35

PERMIT #: B2/[illegible]

AGENCY	DATE	CODE	COMMENTS
BLD PLAN	06/05/96	01	ALR
SEDL LTL	06/12/96	12	SP/INSTALL 3C
ZONING	06/12/96	01	RT/REVISED SITE PLAN
PUB SERV	06/13/96	01	RT
ENVRMNT	06/12/96	01	TT/CBCA @ 12 SA
PERMITS	06/07/96		HOLD FOR PICK UP

01 THRU 09 INDICATES AN "APPROVAL" ** 10 THRU 99 INDICATES A "DISAPPROVAL"

ENTER - NEXT APPROVAL PF4 - ISSUE PERMIT

CLEAR - MENU

COPY

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY, MARYLAND

IN RE: PETITION OF THOMAS BOLLING, et ux.

CASE NO.
3C97-00740

/ January 22nd, 1998

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE LAWRENCE R. DANIELS, JUDGE

APPEARANCES:

ON BEHALF OF THE APPELLEE:

LEWIS FLEURY, ESQUIRE

ON BEHALF OF THE APPELLANT:

J. CARROLL HOLZER, ESQUIRE

REPORTED BY:
DEBORAH K. LAMBERT,
Official Court Reporter
Baltimore County Circuit Court
401 Bosley Ave., Room M-08
Towson, Maryland 21204
(410) 887-2635

MICROFILMED

E.7

PATTON

PATTON CONSULTANTS, LTD.
305 West Chesapeake Avenue. Suite 118
Towson, Maryland 21204
(410) 296-2140
Fax (410) 296-0419

TRANSMITTAL

Date: 4/17/96	Proj. No..95010
RE: Kiebler Pier	

TO Zoning Comm. Office

ATTN Larry Schmidt

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.
1	———	Exhibit #16 (As borrowed from your office 4/16/96)	
2	4/17/96	" " For your use per JSP	
2	4/17/96	Location of Improvements-for your use per JSP (GC&E)	
2	4/17/96	Plan to Accompany Pier Permits-for your use per JSP	

THIS TRANSMITTAL IS
☐ For your approval
☒ For your use
☐ At your request
☐ For review and comment
☐ _____
☐ Your documents returned after loan to us
☐ Approved as submitted
☐ Approved with exceptions noted
☐ Returned for corrections
☐ _____

FURTHER ACTION REQUIRED
☐ Resubmit ____ copies for approval ☐ Submit ____ copies for distribution ☐ Return ____ corrected prints
☐ _____

REMARKS. _____

COPY TO Paul Kiebler

SIGNED

James S. Patton, P.E.

If enclosures are not as noted, please notify us at once

MICROFILMED

5C79-95

PATTON

PATTON CONSULTANTS, LTD.
305 West Chesapeake Avenue, Suite 118
Towson, Maryland 21204
(410) 296-2140
Fax (410) 296-0419

12-1-95

TRANSMITTAL

Date: 11/30/95	Proj. No.: 95010
RE: Bolling Dock	
Spec. Hearing	

244

TO: BALTIMORE COUNTY
TOWSON, MD. 21204

ATTN: ZONING COMMISSIONER

TRANSMITTED VIA
☐ Fax No. ( )
☐ Messenger
☒ Hand Carried

MJK Reviewed
No Violations

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		Petitions for Spec. Hearing	
12		Plats	
3		Property Descriptions	
1		200' Scale Zoning Map	
1		Check #3770 - $85.00	

THIS TRANSMITTAL IS
☒ For your approval
☐ For your use
☐ At your request
☐ For review and comment
☐
☐ Your documents returned after loan to us
☐ Approved as submitted
☐ Approved with exceptions noted
☐ Returned for corrections
☐

FURTHER ACTION REQUIRED
☐ Resubmit ____ copies for approval ☐ Submit ____ copies for distribution ☐ Return ____ corrected prints
☐

REMARKS: Called Holzer on 12/4 & 12/7. Need to know if violations — Sterling called on 12/8 — will get back to me — Jim Patton came in on 12/11 - No VIOL.

RECEIVED
DEC - 1 1995
PDM

COPY TO Bolling
Carroll Holzer, Esq.

SIGNED:
James S. Patton, P.E.

If enclosures are not as noted, please notify us at once

MICROFILMED

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
PAUL D. KIEBLER	7200 GREENBANK RD. 21220
JEAN A. KIEBLER	7200 GREENBANK RD. 21220
THOMAS T. BOLLING	7202 GREENBANK RD. 21220
ELIZABETH N. BOLLING	7202 GREENBANK RD. 21220

Printed with Soybean Ink
on Recycled Paper

MICROFILMED

PLEASE PRINT CLEARLY

CITIZEN SIGN-IN SHEET

NAME	ADDRESS
DOROTHEA M FERTITTA	7134 GREENBANK RD
E F PARKER	205 Cumberland Av. Toronto
PHILIP PARSONS	7134 GREENBANK Rd.
Brent Skew	7219 Greenbank Rd.
Jim BECK	7137 GREENBANK Rd.
STEVE GEORAS	7132 Greenbank Rd

MICROFILMED

NOTE: L.O.D. = LIMIT OF DISTURBANCE
AREA = 2550 SF ±

GREENBANK ROAD

OPTANK ROAD

25' BLDG. SETBK. LINE

N37° 50' 17" E 151.60'

FENCE LINE

100' MIN. BLDG. SETBACK

LOT No 31

S 67° 11' 00" E 50.00'

Existing Bulkhead

GUNPOWDER

Est. Pier

SILT FENCE

Setback to house = 93'

FENCE LINE 161.40'

S 37° 18' 00" W

PROPOSED DWLG.
F.F. ELEV. 15.50

N55° 16' 28" W 71.34' 58.00'

Existing Stone Drive

Setback = 79'

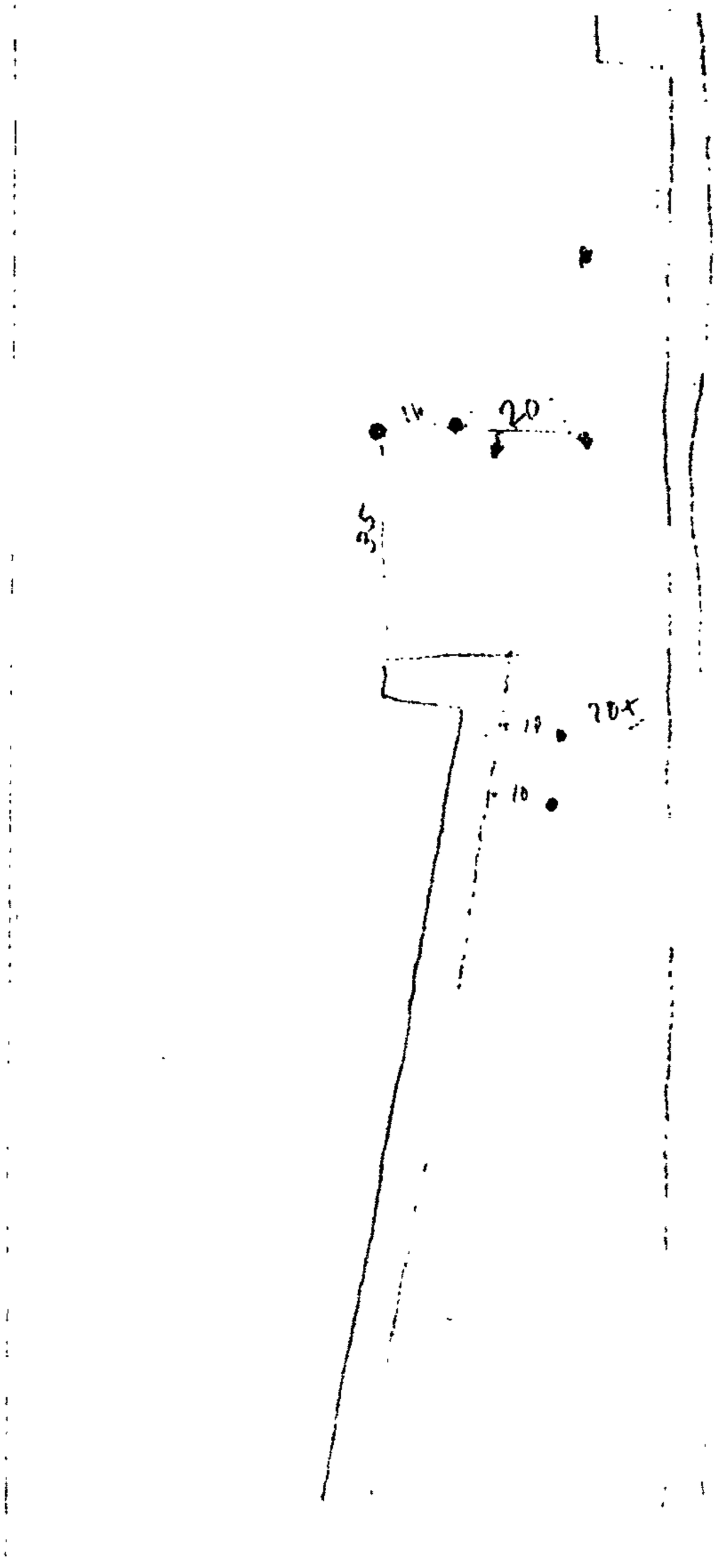
DECK

DEED REFERENCE S.M. 0205/699
TAX ACCOUNT No 1513401430

PARED BY:
PHEL & ASSOCIATES, INC.
COURTLAND AVE.
N, MARYLAND 21204

PLAT TO ACCOMPANY BUILDING PERMIT APPL
#7134 GREENBANK ROAD AKA LOT 31, OLIVER BEA
15TH ELECTION DISTRICT · BALTIMORE COUNTY, MAR
SCALE 1" = 20'
DATE: JANUAR

MICROFILMED



MICROFILMED

99-1651
PDN

Plat to accompany Petition for Zoning ☐ Variance ☒ Special Hearing

PROPERTY ADDRESS: 7202 GREEN BANK ROAD

see pages 5 & 6 of the CHECKLIST for additional required information

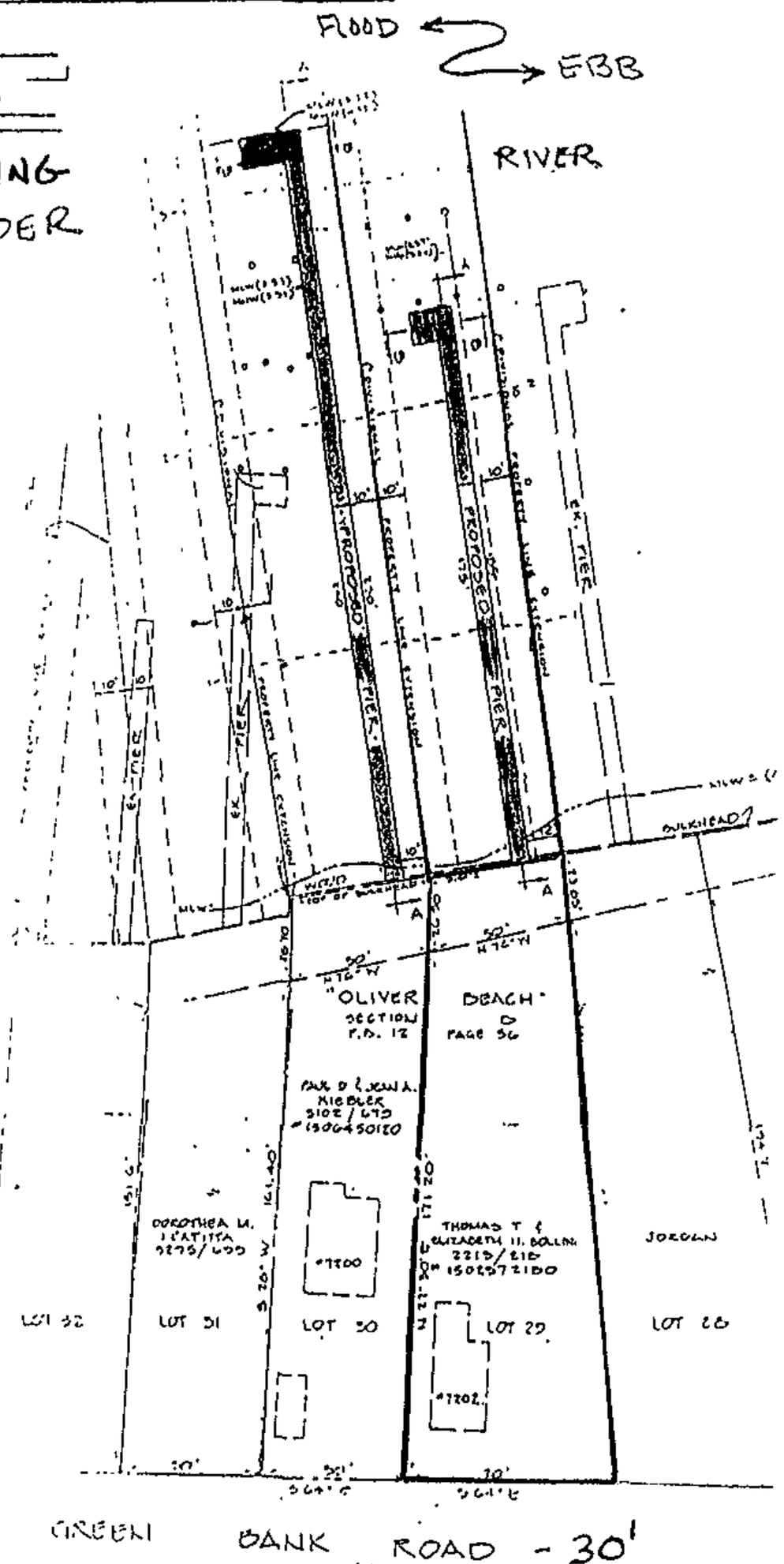
Subdivision name: OLIVER BEACH

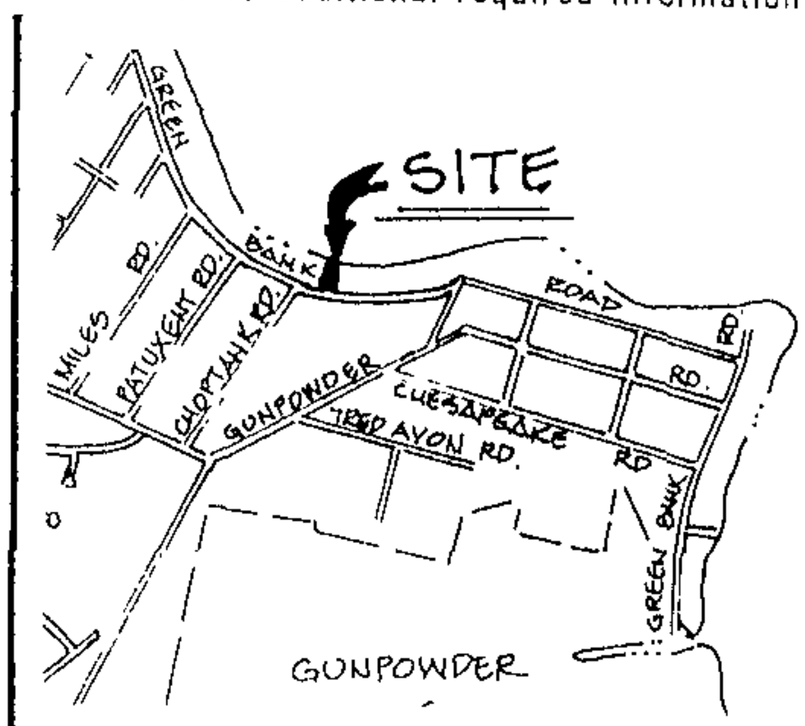
plat book# 12 ,folio# 56 ,lot# ____ ,section# B

OWNER: THOMAS & ELIZABETH BOLLING

GUNPOWDER

96-244-SPH





LOCATION INFORMATION

Election District: 15Th

Councilmanic District: 5Th

1"=200' scale map#: N.E. 8-M

Zoning: D.R.-5.5

Lot size: 0.277± acreage 12,060± square feet

	public	private
SEWER:	☒	☐
WATER:	☒	☐

	yes	no
Chesapeake Bay Critical Area:	☒	☐

Prior Zoning Hearings: NONE OF RECORD.

NOTE: THIS PLAT IS A REDUCTION OF A PLAT FILED WITH BUILDING PERMIT APPLICATION #B-241233

BEARINGS SHOWN HEREON ARE BASED ON BEARING ON GREEN BANK ROAD FOUND ON PLAT ENTITLED "PROPERTY SURVEY LOT 30, OLIVER BEACH, SECTION D" DONE BY TRIANGLE SURVEYS, INC ON 9/19/2[illegible]

STATE OF MARYLAND
JAMES STEPHEN PATTON
NO. 9493
REGISTERED PROFESSIONAL ENGINEER

North

date: 11/30/95

prepared by: PATTON CONSULTANTS, LTD

Scale of Drawing: 1"= 100'±

Zoning Office USE ONLY!

reviewed by: ITEM #: 244 CASE#:

MICROFILMED

244

GUNPOWDER RIVER

FLOOD

EBB

LOT 29

96-244-SPH

PATUXENT RD

ROAD

E 75,000

E 75,000

75'

GREEN BANK ROAD

GASSINGER

93-247-A

PRIVATE ROAD

RD

ROAD

D.R.5.5

CHOPTANK

ROAD

GUNPOWDER

SCALE	LOCATION	SHEET
1" = 200'±	HAREWOOD	N.E.
DATE OF PHOTOGRAPHY JANUARY 1986		8-M

DATE

DRAWN: | CHECKED: | JOB# | SCALE: | SHT.

PATTON

Patton Consultants Ltd., Engineering & Site Planning
305 West Chesapeake Avenue, Suite 118
Towson, Maryland 21204
410-296-2140 Fax:410-296-0419

7202 GREEN BANK ROAD

MICROFILMED

Case C. Sch #1

F 01

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF PERMITS AND
DEVELOPMENT MANAGEMENT

JOB LOCATION 7134 Greenbank
Dorothea M Fertitta

DISTRICT 15 PCT

PERMIT NO. B272691

BLDG. INSP. 887-3953
PLMB. INSP. 887-1620
ELEC. INSP. 887-3960
ENFORCEMENT 887-3351

CORRECTION NOTICE

AN INSPECTION ON THIS DAY HAS DETERMINED THE PRESENCE OF THE FOLLOWING CONDITION(S) TO BE IN VIOLATION OF THE BALTIMORE COUNTY CODE.

CODE B04A SECTION 119 - 120

Correct dangerous condition pertaining to excavation of foundation 1E Caving in
Only work to be performed at this time is to correct said conditions
Complete sediment control measures per applicle codes

No other work to be started until above conditions have been corrected

THESE CONDITIONS MUST BE CORRECTED NOT LATER THAN: 7/23/96

INSPECTOR Rodney Lanich DATE 7/16/96

7/29

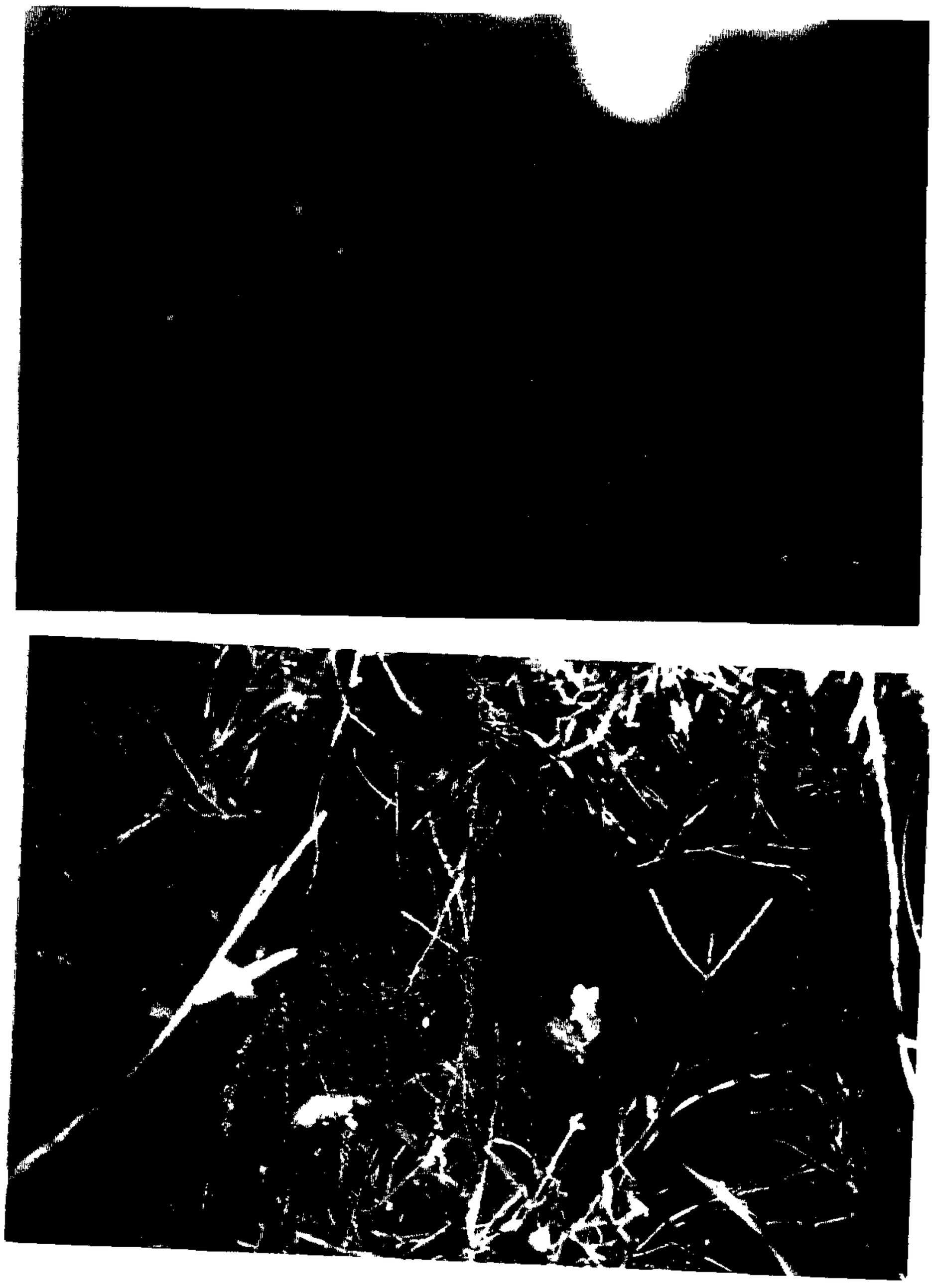
ALL CORRECTIONS COMPLETE AND APPROVED:

8-5
8-19

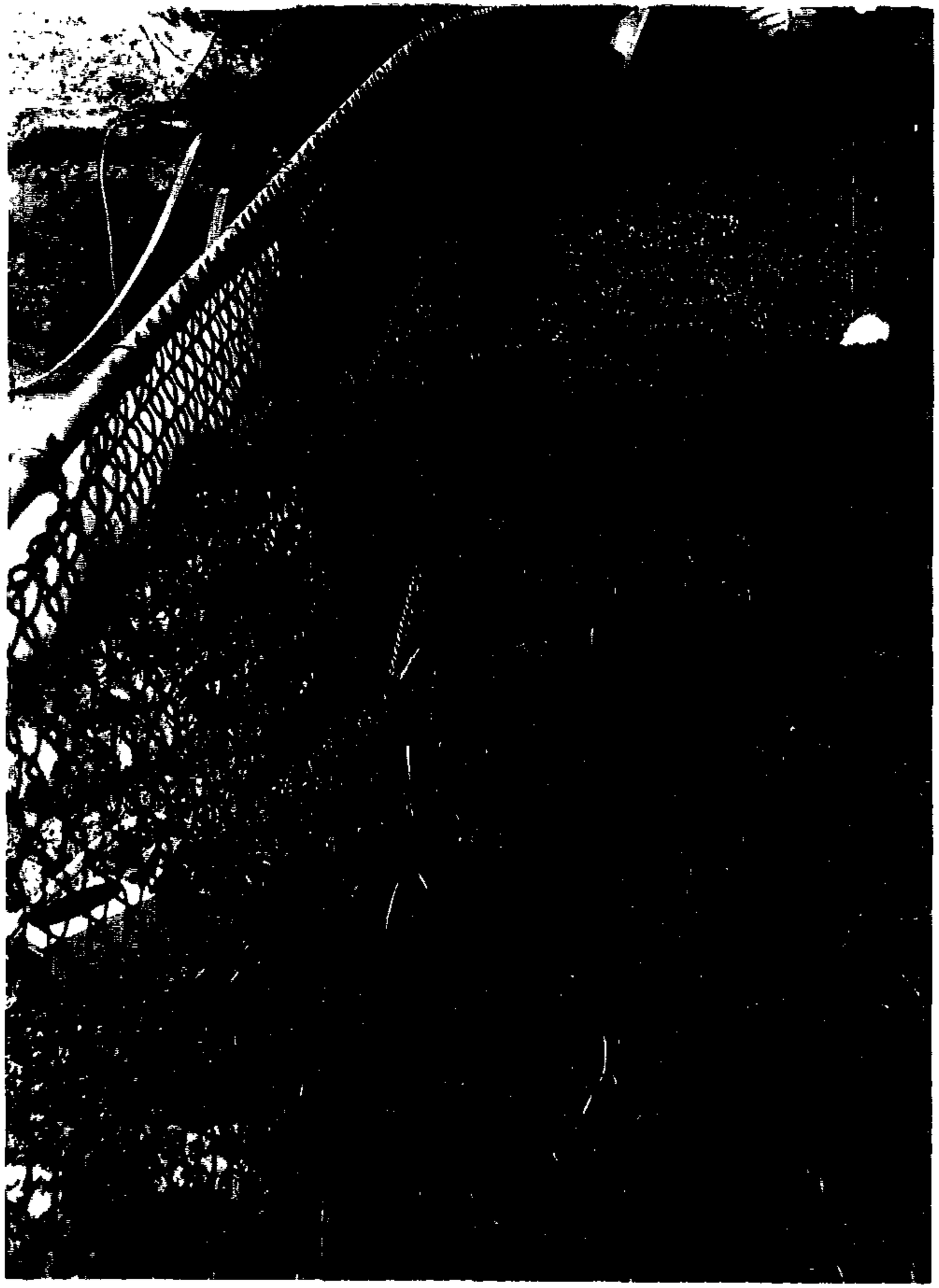
INSPECTOR DATE

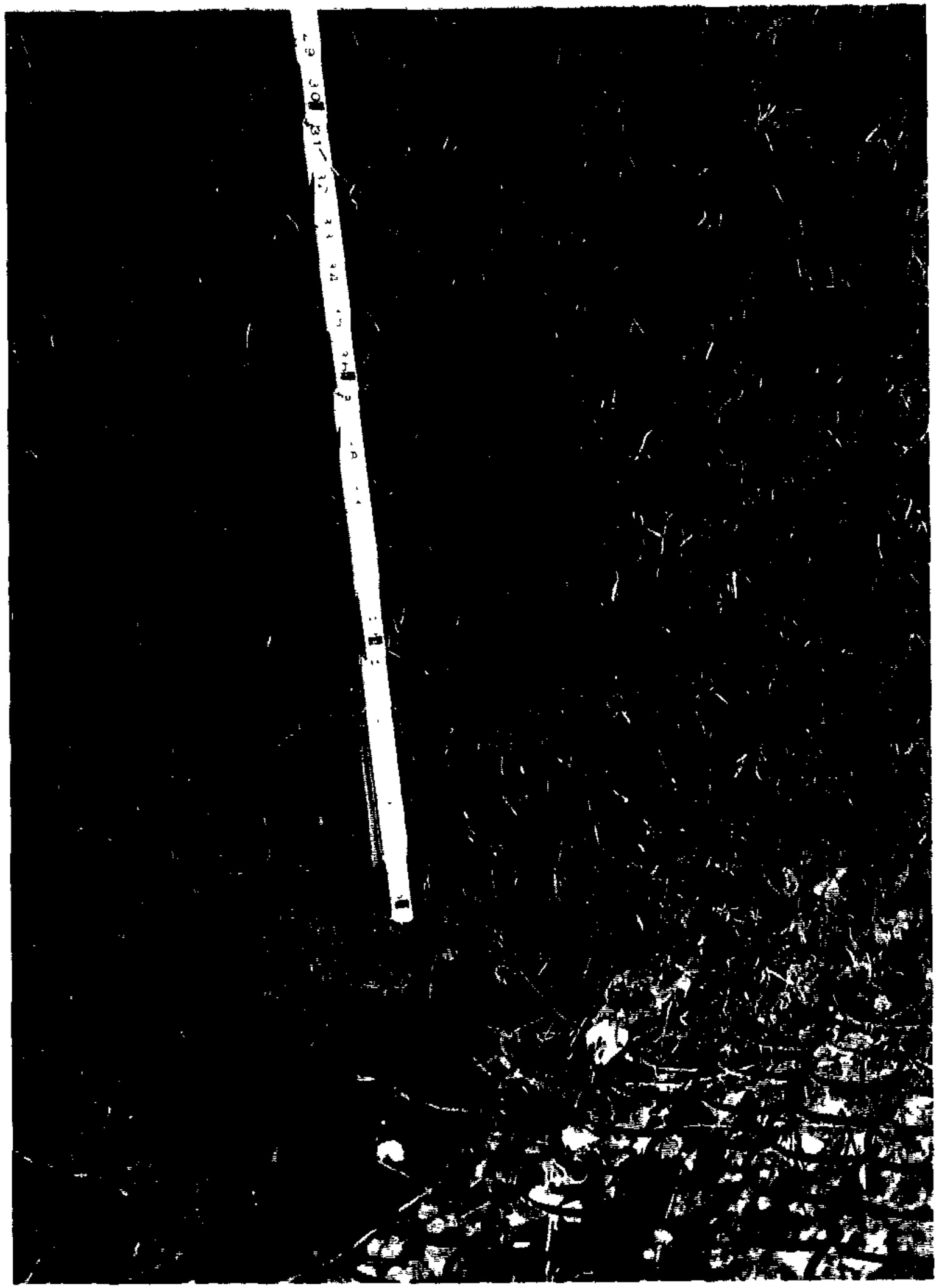
REV 04/96

MICROFILMED



[redacted]





Appellant's Exh #2A-2F

MICROFILMED

APPENDIX J

THESE DIAGRAMS ARE TO BE USED AS A GUIDE IN DETERMINING DIVISIONAL PROPERTY LINES ON WATERFRONT CONSTRUCTION (Section 417)

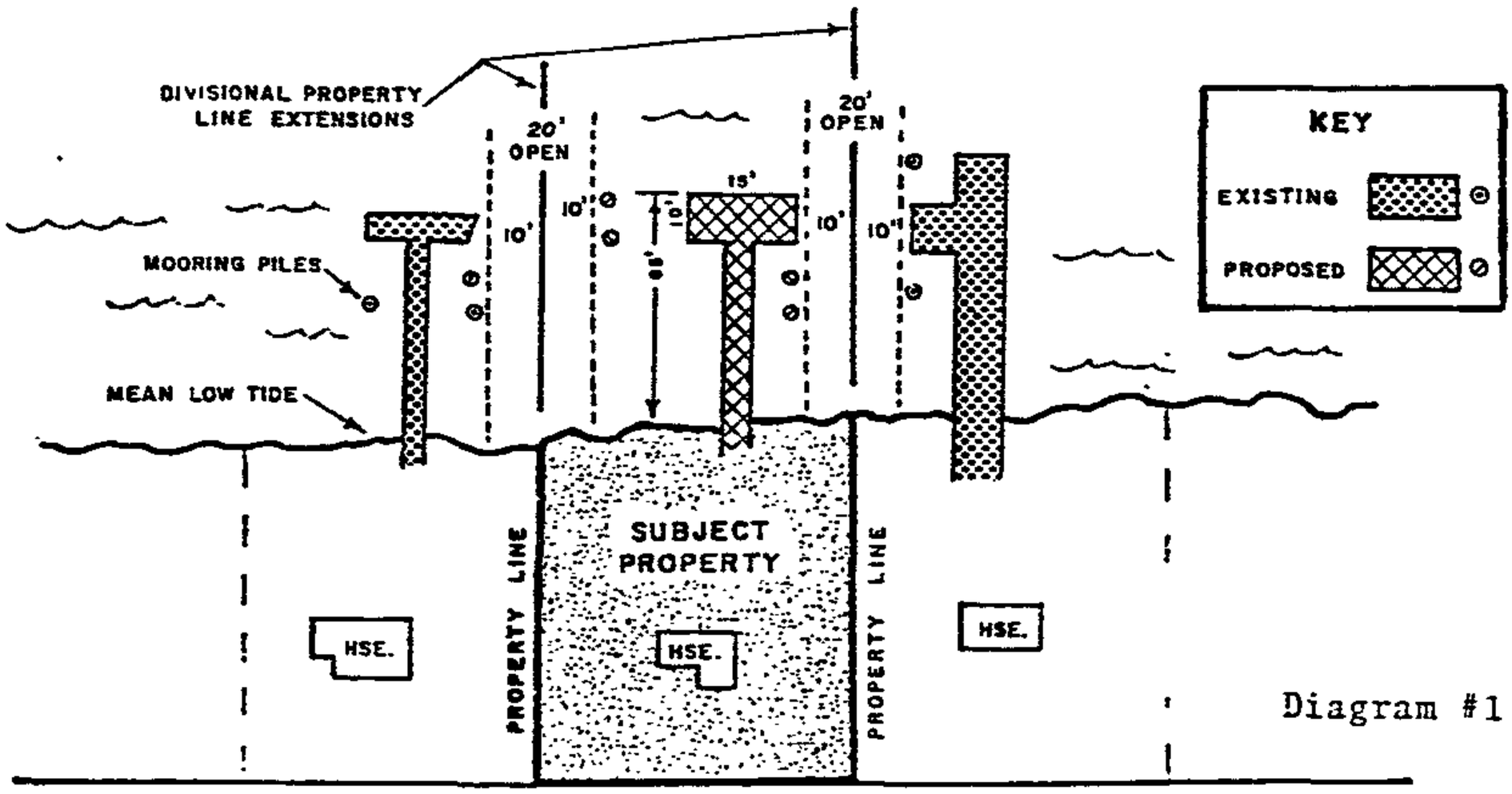


Diagram #1

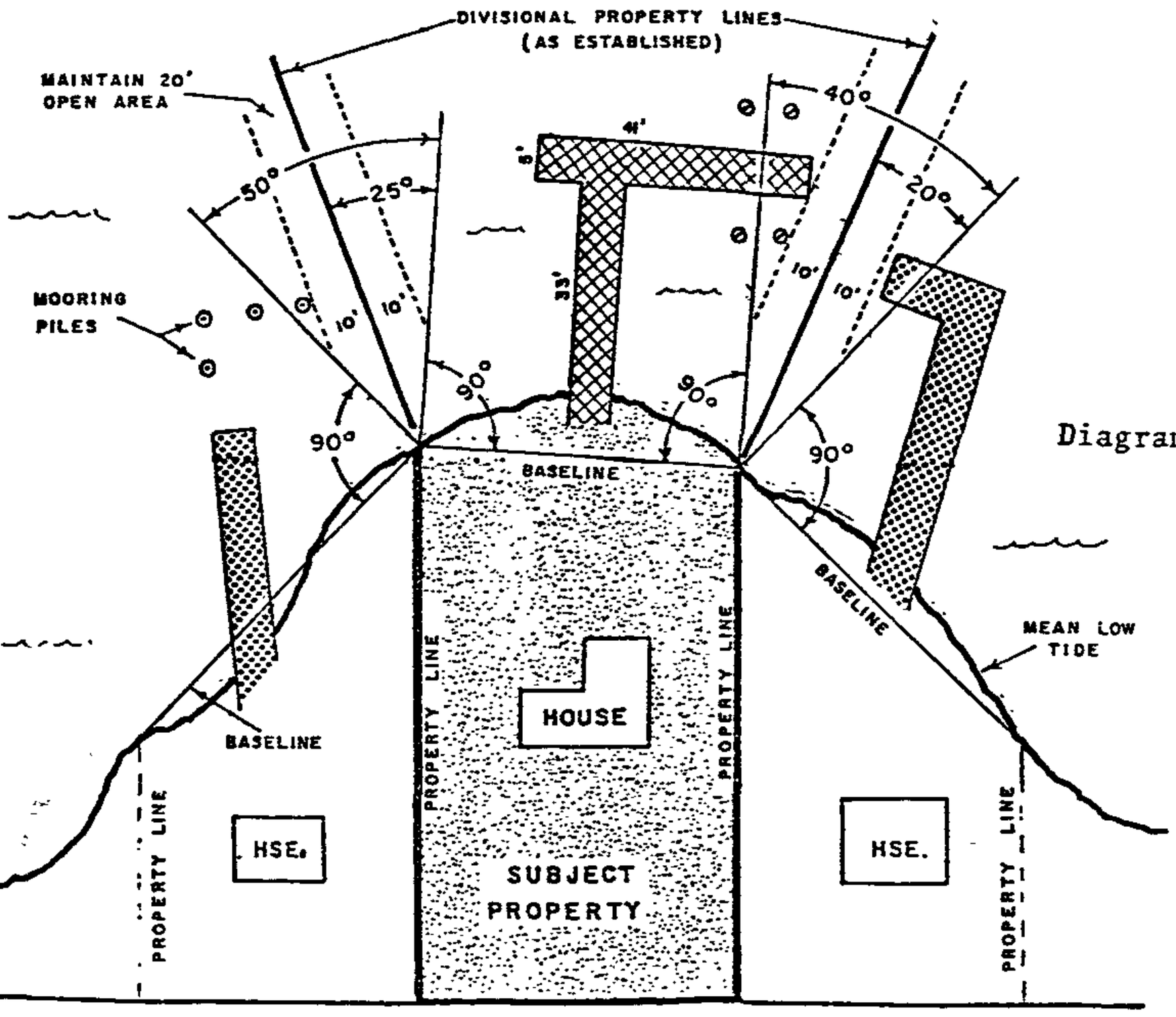
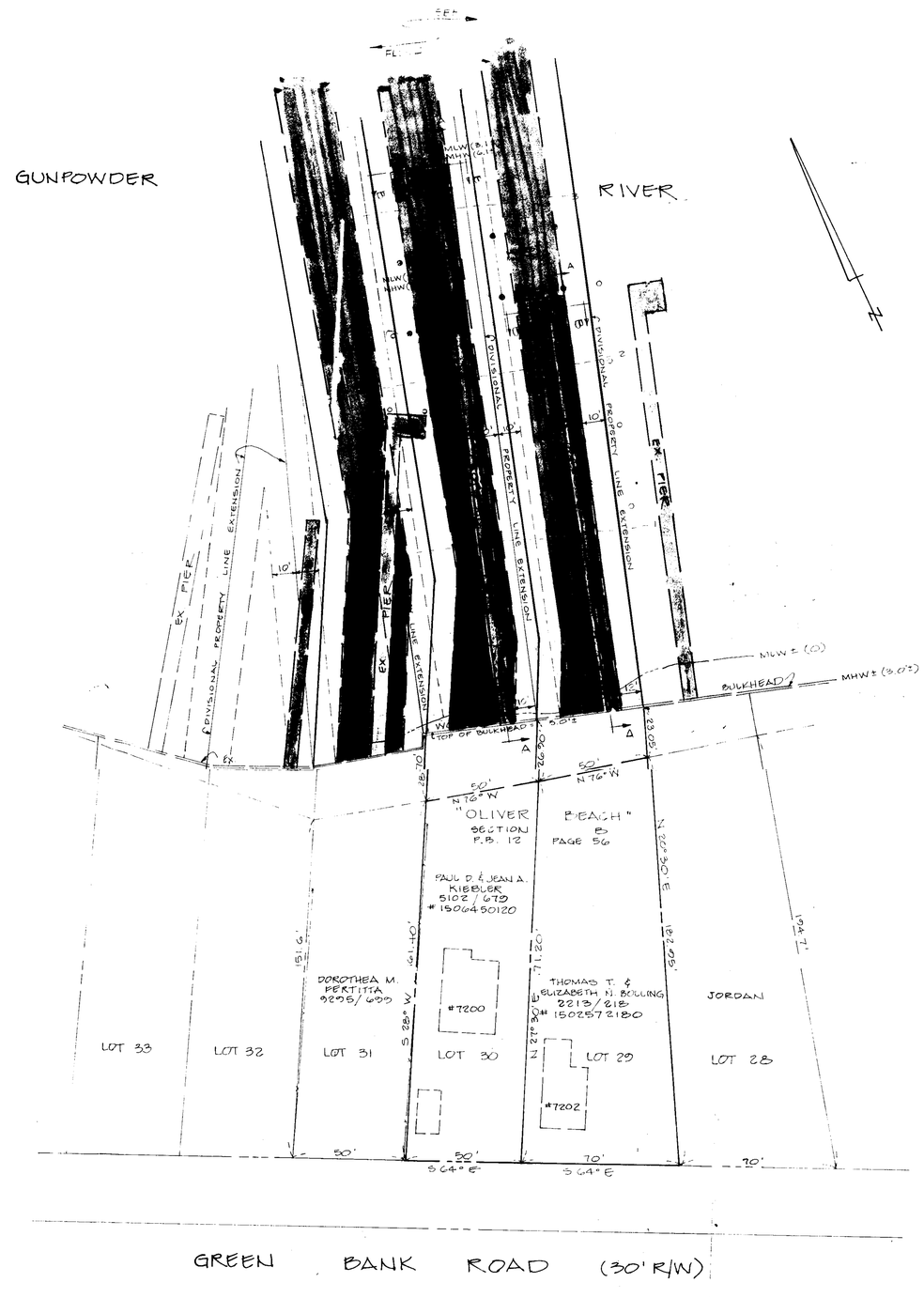
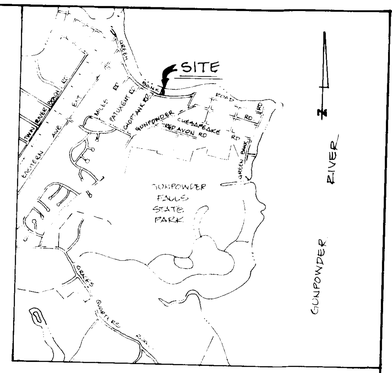


Diagram #2

Tract - #7



NOTES: BEARINGS SHOWN HEREON ARE BASED ON BEARING ON GREEN BANK ROAD FOUND ON PLAT ENTITLED "PROPERTY SURVEY LOT 30, OLIVER BEACH, SECTION B" DONE BY TRIANGLE SURVEYS, INC. ON 9/15/93.



LOCATION PLAN
SCALE: 1" = 2000'

GENERAL NOTES

1. PROPERTY ZONED: DR 5.5
2. ELECTION DISTRICT 15 ; COUNCILMANIC DISTRICT 15
3. ZONING MAP: E-4
4. LOT SIZE: 9,550 S.F.± (LOT 30), 12,060 S.F.± (LOT 29)
5. PRIOR ZONING HEARINGS: NONE
6. PARKING DATA:
   PARKING REQUIRED: 2 PER DWELLING
   PARKING PROVIDED: 2 PER DWELLING
   TYPICAL SPACE: 8.5' x 18'
   PAVING TYPE: GRAVEL AND PAVERS
7. DEED REFERENCE: 5102/679 (LOT 30), 2213/218 (LOT 29)
8. FLOOR AREA RATIO CALCULATION: NOT REQUIRED
9. AMENITY OPEN SPACE: NOT REQUIRED

APPROVALS

Pet. Exh. #16

PC Ltd.
Patton Consultants, Ltd.
305 W. CHESAPEAKE AVE., SUITE 305
TOWSON, MARYLAND 21204
(301) 296-2140 Fax: (301) 296-0419
SITE PLANNERS • ENGINEERS
LAND DEVELOPMENT CONSULTANTS

PLAN TO ACCOMPANY PIER PERMITS FOR

KIEBLER RESIDENCE

7200 GREEN BANK ROAD

BOLLING RESIDENCE

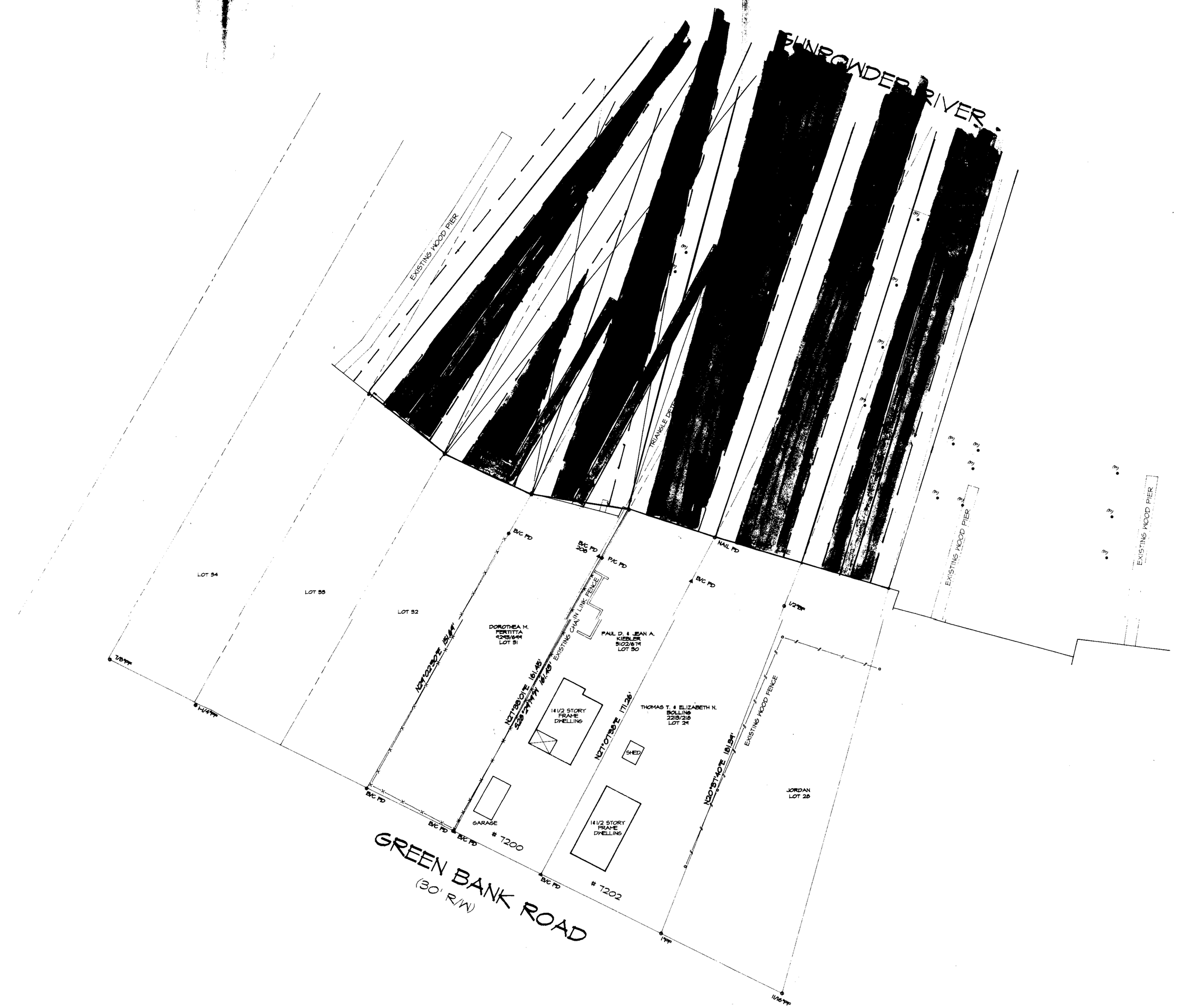
7202 GREEN BANK ROAD

BALTIMORE COUNTY MARYLAND

SCALE 1" = 30'
PROJ. NO. 95010
NORTH
SHEET NO. 1 OF 1

ELECTION DIST. 15	CENSUS TRACT 4518.01	COUNCILMANIC 15
DRAWN REC	CHECKED JSP	DATE JULY, 1995

PETITIONER'S EXHIBIT # 16



MERIDIAN BASED ON BEARINGS SHOWN ON A PLAT ENTITLED "OLIVER BEACH" SECTION 'B' PLAT BOOK C.W.B., JR. 12 PAGE 56

SECTION 'B'
"OLIVER BEACH"
PLAT BOOK C.W.B.,Jr. 12 page 56

LEGEND

(P) PILINGS

▲ TRIANGLE SURVEYS PROPERTY MARKER #27

⬟ RAPHEL PROPERTY MARKER #2246

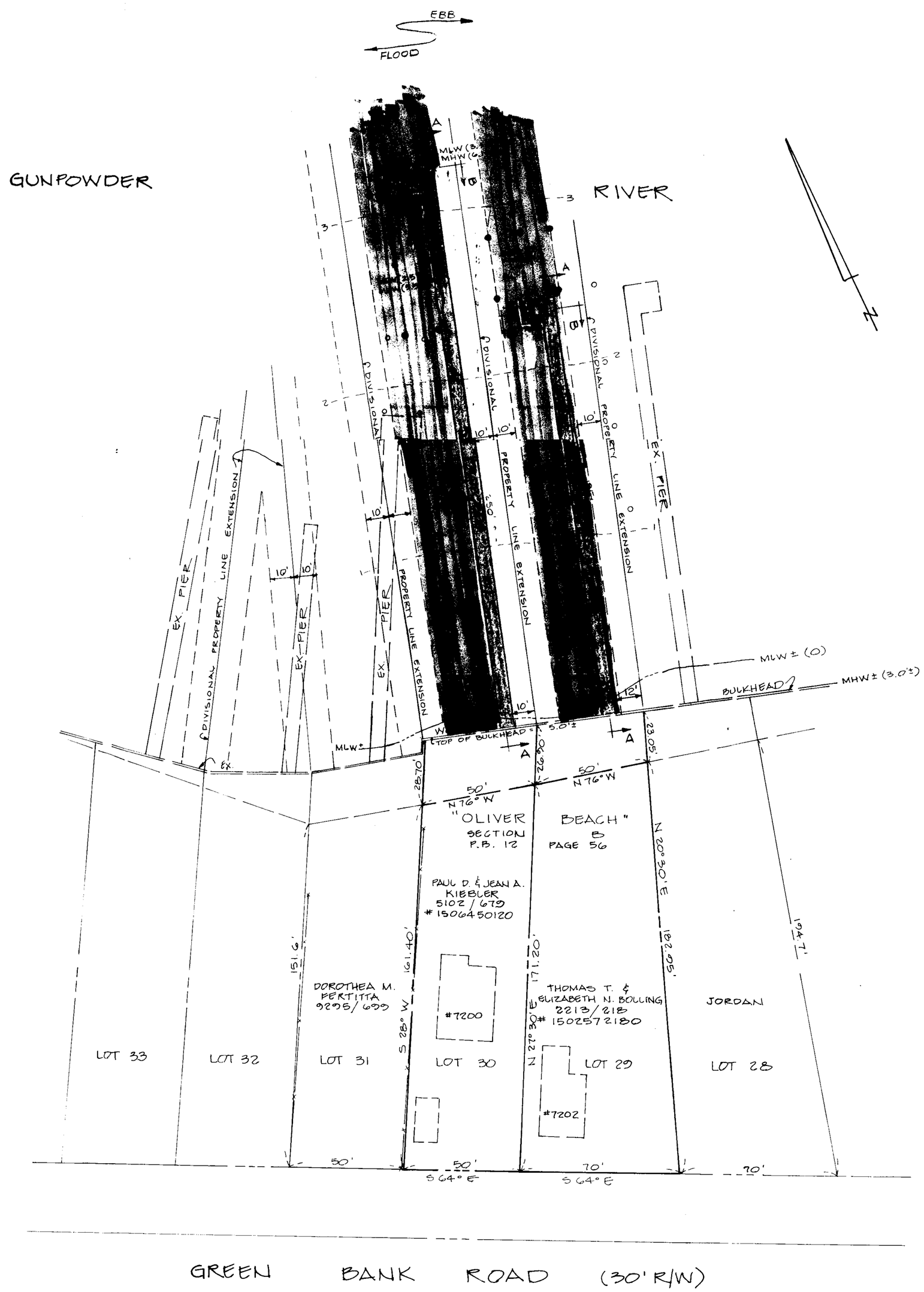
○ PIPE FOUND (CONSIDERED TO BE A PROPERTY MARKER)

LOCATION OF IMPROVEMENTS
OF THE
KIEBLER RESIDENCE
7200 GREEN BANK ROAD
AND THE
BOLLING RESIDENCE
7202 GREEN BANK ROAD

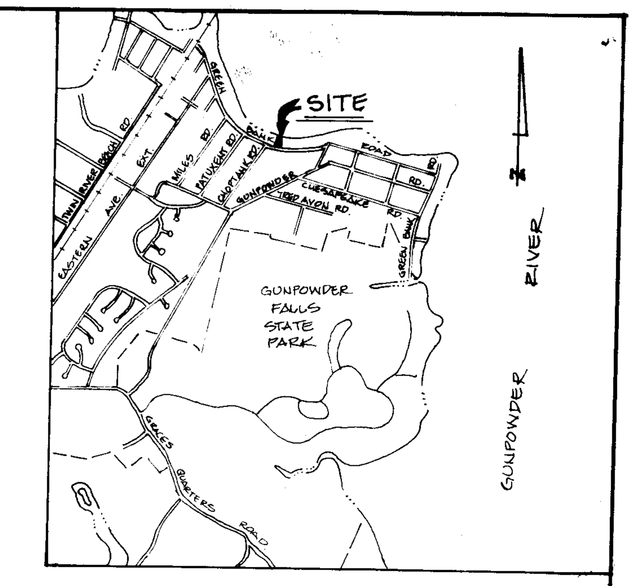
15th ELECTION DISTRICT
BALTIMORE COUNTY, MARYLAND
SCALE: 1"=30' DATE: MARCH 27, 1996

GERHOLD, CROSS & ETZEL, LTD
REGISTERED PROFESSIONAL LAND SURVEYORS
Suite 100
320 East Towsontown Boulevard
Towson, Maryland 21286
(410) 823-4470

PETITIONER'S EXHIBIT # 9



NOTES: BEARINGS SHOWN HEREON ARE BASED ON BEARINGS ON GREEN BANK ROAD FOUND ON PLAT ENTITLED "PROPERTY SURVEY LOT 30, OLIVER BEACH, SECTION B" DONE BY TRIANGLE SURVEYORS, INC. ON 9/15/93.



LOCATION PLAN
SCALE: 1" = 2000'

GENERAL NOTES

1. PROPERTY ZONED: DR. 5.5
2. ELECTION DISTRICT: 15 ; COUNCILMANIC DISTRICT: 15
3. ZONING MAP: E-4
4. LOT SIZE: 9,550 S.F. ± (LOT 30); 12,060 S.F. ± (LOT 29)
5. PRIOR ZONING HEARINGS: NONE
6. PARKING DATA:
   PARKING REQUIRED: 2 PER RESIDENCE
   PARKING PROVIDED: 2 PER RESIDENCE
   TYPICAL SPACE: 8.5' x 18'
   PAVING TYPE: DURABLE AND DUSTLESS
7. DEED REFERENCE: 5102/679 (LOT 30); 2213/218 (LOT 29)
8. FLOOR AREA RATIO CALCULATION: NOT REQUIRED
9. AMENITY OPEN SPACE: NOT REQUIRED

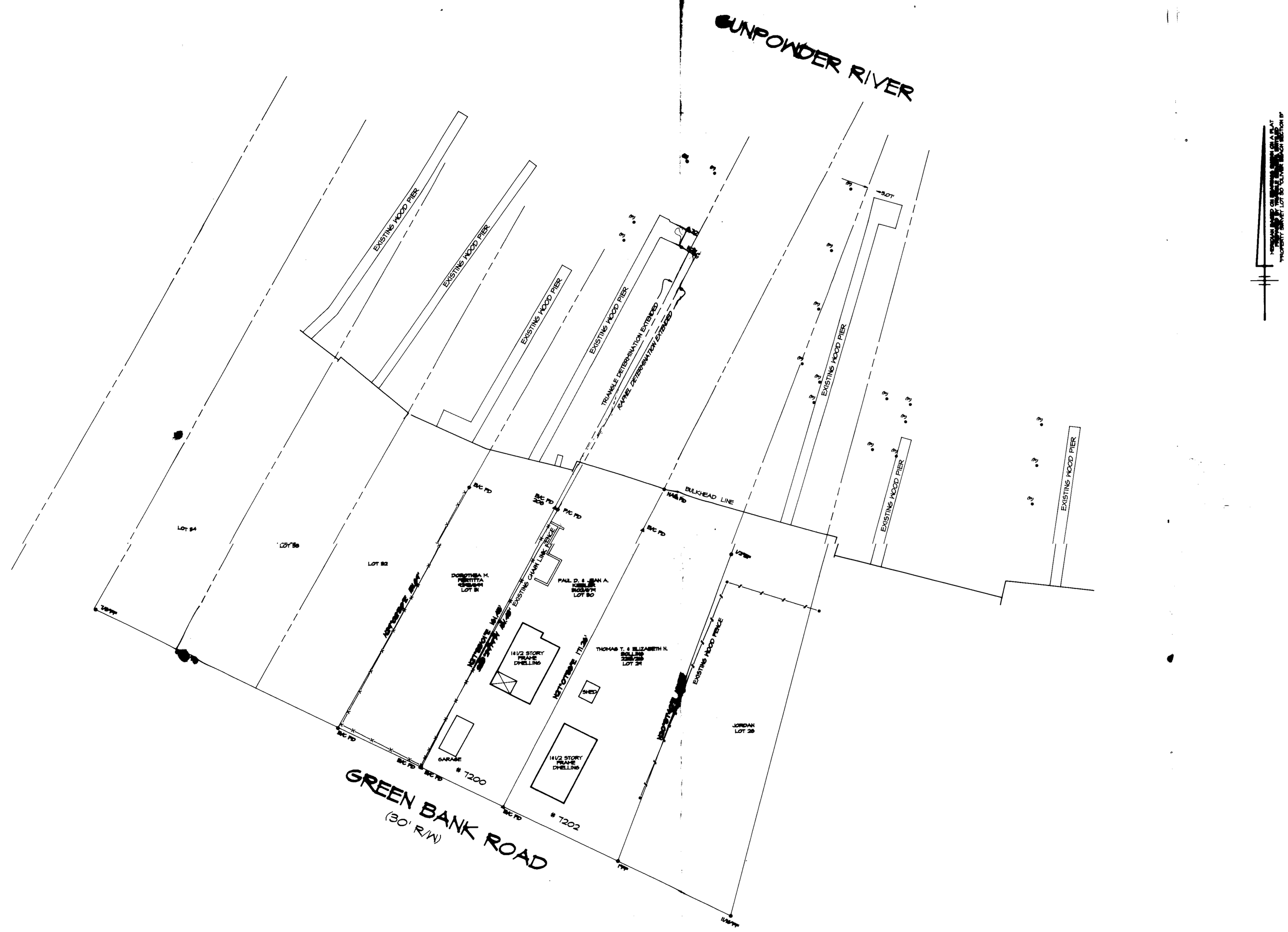
Pet Exh #1

APPROVALS

PC Ltd.
Patton Consultants, Ltd.
305 W. CHESAPEAKE AVE., SUITE 305
TOWSON, MARYLAND 21204
(301) 296-2140 Fax: (301) 296-0419
SITE PLANNERS • ENGINEERS
LAND DEVELOPMENT CONSULTANTS

PLAT ~~PLAN~~ TO ACCOMPANY PIER PERMITS SPECIAL HEARING
FOR
KIEBLER RESIDENCE
7200 GREEN BANK ROAD
BOLLING RESIDENCE
7202 GREEN BANK ROAD

SCALE 1" = 30'
PROJ. NO. 95010
NORTH



SECTION 'B'
"OLIVER BEACH"
PLAT BOOK C.W.B.,Jr. 12 page 56

LEGEND

(P) PILINGS

▲ TRIANGLE SURVEYS PROPERTY MARKER #27

⬟ RAPHEL PROPERTY MARKER #2246

○ PIPE FOUND (CONSIDERED TO BE A PROPERTY MARKER)

LOCATION OF IMPROVEMENTS
OF THE
KIEBLER RESIDENCE
7200 GREEN BANK ROAD
AND THE
BOLLING RESIDENCE
7202 GREEN BANK ROAD

15th ELECTION DISTRICT
BALTIMORE COUNTY, MARYLAND
SCALE: 1"=30' DATE: MARCH 27, 1996

GERHOLD, CROSS & ETZEL, LTD
REGISTERED PROFESSIONAL LAND SURVEYORS
Suite 100
320 East Towsontown Boulevard
Towson, Maryland 21286
(410) 823-4470

PETITIONER'S EXHIBIT NO. 2

Pet. No 2

IN THE MATTER OF THE THE APPLICATIONS OF THOMAS T. BOLLING, ET UX FOR A SPECIAL HEARING ON PROPERTY LOCATED ON THE NORTH SIDE GREEN BANK ROAD, 75' EAST OF C/L CHOPTANK ROAD (7202 GREEN BANK ROAD) AND PAUL D. KIEBLER, ET UX ON PROPERTY LOCATED 25' EAST OF C/L CHOPTANK ROAD (7200 GREEN BANK ROAD) 15TH ELECTION DISTRICT 5TH COUNCILMANIC DISTRICT	* * * * * * * * * *	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 96-244-SPH AND CASE NO. 96-245-SPH

* * * * * * * * *

O P I N I O N

This case comes as an appeal of the April 11, 1996 Order of the Zoning Commissioner in which Petitioners were granted permission through special hearing to construct piers on their respective properties in accordance with exhibits entered into the record. The case was heard in open hearing in a single day of testimony. Counsel for Petitioners was J. Carroll Holzer, Esquire, HOLZER & LEE; Counsel for Protestant was Lewis L. Fleury, Esquire. On a day subsequent to the evidentiary proceeding, this matter was deliberated in an open meeting in accordance with Article 10, Subtitle 5 of the Annotated Code of Maryland, as amended. In these cases, the Petitioners seek a finding that the divisional property lines between the Petitioners properties and adjoining neighbors' properties be defined in accordance with Baltimore County Zoning Regulations (BCZR), Section 417.3.B, thus necessitating a finding by this Board that the associated shore line is an irregular shore line.

This case has a somewhat checkered past. The Protestant in this case, Dorothea Fertitta, property owner generally to the west

of Mr. Kiebler, Petitioner, constructed a pier from her property in 1993. At the time of construction, neither Ms. Fertitta nor the contractor had filed for nor obtained a permit for said pier. A permit was ultimately obtained after construction was begun and the pier finished; the Baltimore County Zoning Office consequently cited Ms. Fertitta for non-compliance with setback requirements from divisional lines seaward from the property. Baltimore County prosecuted Ms. Fertitta in District Court for Baltimore County before the Honorable A. Gordon Boone, Judge; Ms. Fertitta prevailed, and the pier still stands today.

Protestants argue that no shore line is absolutely straight, and that review done by Baltimore County Planner John Lewis, who, for Ms. Fertitta, applied BCZR Section 417.3A, was correct in his analysis shown in evidence as Petitioners' Exhibit 17. Further, Protestants argue that, regardless of whether BCZR 417.3A or B is applicable, BCZR Section 417.3C must be applied because of the existence of the pier in front of the Fertitta property, as well as the Jordan property to the east of the other Petitioners. Protestants argue that by using BCZR Sections 417.3A and C for the Fertitta /Kiebler divisional line and the Bolling /Jordan divisional line both piers could be built to everyone's benefit.

Appearing for the Petitioners was Edward F. Deiaco-Lohr, a licensed surveyor, who testified concerning his survey of lot #28 through lot #34, and the associated exhibits brought by his survey efforts. Also appearing for Petitioners was James S. Patton, of Patton Consultants & Associates, an expert in civil engineering and

land planning. Mr. Patton, in addition to his opinions, provided some historic information relative to the Kiebler /Bolling attempts to construct their respective piers. He indicated that Petitioners filed for a permit, and, like all permits applied for through the Army Corps of Engineers, that the Corps indicated a requirement for authorization from Baltimore County before they could authorize construction of the pier in the waterway. Mr. Patton opined that BCZR 417.3B applies to the properties in question and that the Fertitta pier should have been constructed perpendicular to the shore line. On the basis of his opinion that the Fertitta pier is constructed illegally, Mr. Patton opined that Fertitta should have been required to file a Petition for Variance, since the Fertitta pier would rest in the "open water" area defined in BCZR Appendix "J" and as shown on Petitioners' Exhibit 16.

On cross-examination, Mr. Patton acknowledged that the shoreline between lots 28, 29 and 30 (the Jordan and the two Petitioners' lost) is a straight line, and that that may change from property to property, thereby affecting the determination of whether or not the shore line is to be considered straight or irregular.

Appearing for the Protestants was John Lewis, a Planner II with the Baltimore County Department of Permits & Development Management, Mr. E. F. Raphael, a licensed land surveyor and expert planner, as well as Ms. Fertitta.

Mr. Lewis testified that for the Fertitta pier he applied BCZR Section 417.3A. Further, he indicated that, in applying BCZR

Appendix "J" from the information which he had concerning the shore line, his opinion is that the shore is a straight shore line. Mr. Lewis was the drafter of Petitioners' Exhibit 17 and Protestant's Exhibit 1, which indicates areas on the river which could be utilized as buildable for the construction of the Kiebler and Bolling piers, as well as areas not buildable. Mr. Raphael opined that Mr. Lewis properly applied BCZR Section 417.3A and that Mr. Patton failed to apply Section 417.3C in his designs for the Petitioners. Ms. Fertitta testified that her slip would be obstructed by the proposed Kiebler pier, indicating that her 32-foot power boat requires that she be capable of pulling straight into the slip as she has constructed.

This Board finds that the Fertitta pier is a lawfully constructed, existing pier, having been adjudicated through the District Court for Baltimore County. Therefore, by finding that the Fertitta pier's existence has been decided, a 20-foot wide "open water" area as shown in BCZR Appendix "J" has been created de facto, thereby determining the divisional line to the end of the area used by the Protestants. The Board finds it interesting that the Petitioners do not necessarily seek relief from the owner of Lot 28 (the Jordans), as their mooring piles appear to lie within the open water area adjacent to the divisional line, as shown on Petitioners' Exhibit 17, despite the indication of a 20-foot open water area. This Board agrees with Mr. Lewis that this shore line is to be considered a straight shore line. We note with interest that BCZR Appendix "J" illustrates a shore line with an irregular

shape and a general direction which is not perpendicular to the property lines on Appendix "J", Diagram 1. Also, we note that within that diagram the 20-foot open water appears to be required to remain open only just beyond the piers shown in the illustration.

In finding that the Fertitta pier is a lawfully constructed pier and that the 20-foot open water requirement exists from the edge of that pier and its mooring piles, the Board finds that BCZR Section 417.3C must be applied regardless of whether Section 417.3A or B applies to new construction. In so doing, the Board notes with interest the language contained in Section 417.3C, specifically "...it will be the duty of the Office of Planning & Zoning [now Permits & Development Management] to specify the limits of construction to conform as closely as possible to the rules as set forth herein so as to cause the least interference with existing and/or possible future construction." (Emphasis added.) The Board finds the piers as proposed are in violation of Section 417.3C and that they may cause interference with both the existing pier on the Fertitta property and any possible future expansion of the Fertitta pier. This Board recognizes that the Petitioners are somewhat restricted in the area considered buildable by Baltimore County's Department of Permits & Development Management; however, it is that agency which is responsible for reviewing such matters and in specifying the limits of construction as indicated in Section 417.3C. In reviewing the Petitioners' exhibits, we find that the Petitioners have ample opportunity to comply with Section

417.3C in constructing piers of varying lengths as a matter of right. Therefore, the Petitions for Special Hearing for altering the divisional lines between the Fertitta and Kiebler property shall be denied.

O R D E R

IT IS THEREFORE this 14th day of January, 1997 by the County Board of Appeals of Baltimore County

ORDERED that the Petitions for Special Hearing filed in Case No. 96-244-SPH and Case No. 96-245-SPH be and the same are hereby **DENIED.**

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

Robert O. Schuetz

Robert O. Schuetz, Chairman

Lawrence M. Stahl

Harry E. Buchheister, Jr.

Harry E. Buchheister, Jr.

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 554

September Term, 1998

PAUL D. KIEBLER, et al.

v.

DOROTHEA FERTITTA

Moylan,
Harrell,
Kenney,

JJ.

Opinion by Harrell, J.

Filed: January 11, 1999

#03C9700740

MICROFILMED

This appeal arises from a judgment of the Circuit Court for Baltimore County concluding that the citizen parties to this case settled the underlying dispute between them. As a result of this conclusion, the court did not reach the merits of the issues raised by Thomas T. & Elizabeth N. Bolling and Paul D. & Jean A. Kiebler (petitioners below/appellants here) in their petition for review and memorandum in support thereof challenging the 14 January 1997 decision of the County Board of Appeals of Baltimore County (the Board).

In the instant appeal, appellants advance six assertions of error, one on the part of the circuit court (its conclusion that a settlement agreement has been reached) and five on the part of the Board. In the event we were to find that the court erred with regard to finding that an enforceable oral settlement agreement existed between the citizen parties, appellants beseech us to consider on the merits their allegations of error on the Board's part, rather than remanding the matter to the circuit court so that the court could perform its designated function pursuant to the Baltimore County Charter, § 604, and Md. Rules 7-202 (a) and 7-209. For present purposes, we have reordered and slightly rephrased (non-substantively and making no effort to alter grammar or syntax) appellants' issues as follows:

> I. The circuit court erred on 22 January 1998 in finding that a settlement between the parties had occurred on 9 October 1997, and erred by failing to render an opinion as to the lawfulness of the Board's decision of 14 January 1997.
>
> II. The Board erred as a matter of law in its interpretation of § 417.3 of the Baltimore County Zoning Regulations (BCZR) finding that

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the shoreline of the subject property was straight, which finding resulted in the denial of appellants' Petitions for Special Hearing.

III. Assuming arguendo, that the question of the nature of the shoreline was a factual one, there was insufficient evidence before the Board to find that the shoreline was straight as opposed to irregular, which resulted in the Board's denial of the Petitions for Special Hearing.

IV. If the finding of the Board that the shoreline of the subject property is straight is correct, the evidence established that the adjacent properties to the appellants (Lots #28, 31, and 32, owned respectively by Mr. and Mrs. Jordon, Ms. Fertitta [appellee] and Mr. and Mrs. Georas), were, therefore, in violation of the BCZR, § 417.3, and as a result, the Board erred in denying the Petitions for Special Hearing.

V. The Board erred in failing to fulfill its responsibilities by denying the Petitions and failing to provide for a suitable location for appellants' proposed piers; such denial is illegal.

VI. The Board erred in considering a previous zoning enforcement case tried before Judge Gordon Boone of the District Court of Maryland for Baltimore County concerning the adjacent property of appellee, Dorothy M. Fertitta, in that it was a zoning enforcement hearing and did not adjudicate the issue in this case. Further, the Board relied on information not in evidence before them to deny appellants' Petitions for Special Hearing.

Because we shall affirm the judgment of the circuit court (Issue I), we shall not reach the merits of appellants' other allegations of error (Issues II-VI).[1]

---

[1]Appellants apparently changed counsel after filing their initial brief and before filing a reply brief. To the extent the reply brief poses new or supplemental issues not raised in appellants' initial brief and which were not responsive properly to arguments made in appellee's brief, we do not consider such issues

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FACTS

The Bollings and the Kieblers, appellants, own Lots 29 and 30, respectively, in the Oliver Beach Subdivision in Baltimore County. Both lots are improved with single-family, detached homes. The Bollings' neighbors to the east are Mr. and Ms. Jordon, who reside in a home on Lot 28. Abutting the Kieblers' lot on its west is Lot 31, containing the home of Ms. Dorothy M. Fertitta, appellee. To the west of Ms. Fertitta's home is Lot 32, where Mr. and Ms. Georas reside. Vehicular access to Lots 28-32 is via Green Bank Road on which each lot has its southerly frontage. Each lot also has, along its northerly boundary, frontage on the Gunpowder River. Lots 32 (Georas), 31 (Fertitta), and 28 (Jordon) also have existing piers and pilings extending from their Lot frontage into the Gunpowder River. The Jordons' pier extends 185 feet into the river. The Georas' pier is 100 feet long. Ms. Fertitta's pier is 150 feet in length. The Kieblers and the Bollings have no piers. Desiring to change that condition, the Kieblers sought permission to construct a pier from the respective governmental authorities having jurisdiction over such matters (Army Corps of Engineers and Baltimore County, Maryland).

The Corps refused to issue a permit to the Kieblers unless the County's Zoning Office issued a written statement that the pier as proposed would be in compliance with the County's zoning laws. That requirement triggered the more recent contentious events that

---

as before us. This does not mean, however, that we did not consider otherwise the reply brief.

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gave rise to the present case. It seems that in 1993, when Ms. Fertitta constructed her pier, a dispute arose, ostensibly between her and the County, as to the zoning legality of her pier. Ms. Fertitta and the builder of her pier neglected to apply for and obtain a permit from the County until after the pier was constructed. Although the County issued the permit, its Zoning Office, based on a complaint from the Kieblers, quixotically also issued a notice of zoning violation to Ms. Fertitta, alleging that her pier violated the setback from the legal divisional property lines between her lot and the Kieblers' lot, as extended into the river. See BCZR, §§ 417.3 and 417.4.[2]

---

[2]417.3--For the purposes of defining boundaries within which waterfront construction may take place, divisional lines shall be established in accordance with the following rules:

A. With straight shorelines:

> If the shoreline is straight, the divisional lines are to be extended from the intersection of the property line and the shoreline into the water perpendicular to the shoreline, or where the property lines are parallel and it is practical to do so, the proper boundary line shall be extended in a straight line into the water.

B. With irregular shorelines:

> Where the shoreline is not straight, draw a baseline between the two corners of each lot at mean low water line. Then draw a line from the corner of each proprietor's property into the water at right angles with the baseline. If by reason of the curvature of the shore, the lines, when projected into the water, diverge from each other, the area excluded by both lines shall be equally divided between the shore, the lines, when projected into the water, converge with each other, the area included by both lines shall be equally divided between the two adjoining proprietors.

C. Conflict with existing construction:

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Unable to resolve less formally the alleged zoning violation, the County prosecuted the matter at a trial before the Hon. A. Gordon Boone of the District Court of Maryland for Baltimore County. After hearing testimony from dueling surveyors and Mr. Kiebler,[3] Judge Boone ruled in favor of Ms. Fertitta, finding apparently that "the Fertitta pier was not violative of the BCZR."[4] No further judicial review of Judge Boone's ruling apparently was sought.

This resolution of the zoning violation case presented a dilemma for appellants. Locating and sizing their proposed piers, while also obtaining the local zoning compliance statement required

---

> Where proposed construction will conflict with existing facilities, it will be the duty of the office of planning and zoning to specify the limits of construction to conform as closely as possible to the rules as set forth herein so as to cause the least interference with existing and/or possible future construction. Notice of the proposed construction shall be given by the department of permits and licenses to adjoining property owners affected.

417.4--No construction beyond mean low tide, including mooring piles, will be permitted within ten feet of divisional lines as established. The effect of this requirement will be to maintain a 20-foot open access strip between the facilities of adjoining property owners.

[3]Appellants have lamented, apparently with some success before the County's Zoning Administrator, how the zoning violation matter was poorly litigated. Be that as it may, suffice it to say for present purposes, borrowing an axiom from the summer rules of golf, we must "play the ball where we find it."

[4]We glean the result of the proceedings before Judge Boone from the 11 July 1996 written Findings Of Fact And Conclusions Of Law by the Zoning Commissioner of Baltimore County regarding appellants' latter-filed Petitions For Special Hearing. The record of the zoning violation proceedings are not part of the record of the instant appeal.

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by the Corps of Engineers, was constrained and influenced by a number of factors, not the least of which were: (a) whether the methodology of BCZR § 417.2(A) or (B) was the correct method for defining the building envelope for setback and other zoning criteria for appellants' piers, as well as the existing piers of appellants' neighbors; and (b) regardless of the abstract answer to (a), above, if the existing piers of Ms. Fertitta, the Georases, and the Jordons were taken as givens, what adjustments might be required pursuant to BCZR § 417.3(C) in order to permit the appellants the same amenity (a pier) as was enjoyed by their neighbors.

Ostensibly in an effort to satisfy the requirement of the Corps of Engineers, the Kieblers and the Bollings filed with the Zoning Commissioner of Baltimore County (the Commissioner) Petitions For Special Hearing.[5] In their petitions, appellants proposed pier locations for themselves consonant with a determination of their divisional lines under BCZR § 417.3(B) (irregular shoreline), which they asked be declared the legally correct methodology for all of the affected lots, with existing piers or without. Appellants also asked the Zoning Commissioner to declare the existing piers extending from Ms. Fertitta's and the Georases' lots as not being in compliance with BCZR § 417.3(B).

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[5]The parties to the instant appeal have not favored us in their briefs or the joint record extract with the local ordinance basis for the filing and prosecution of the process described as a Petition For Special Hearing in a case such as this. We assume that some provision in the Baltimore County Charter or BCZR contemplates this process as appropriate to the task.

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Ms. Fertitta, Mr. Georas, and the County became parties to the proceeding before the Commissioner, contending that the existing piers were lawfully erected pursuant to BCZR § 417.3(A) (straight shorelines). Ms. Fertitta also asserted that the result of the prior zoning violation litigation operated to foreclose further consideration of the asserted illegality of the location of her pier.

After conducting an evidentiary hearing, the Commissioner, in written Findings Of Fact And Conclusions Of Law, dated 11 April 1996, granted partial relief to appellants, under BCZR § 417.3(C),[6] and approved appellants' proposed pier locations. In so doing, the Commissioner rejected the argument that BCZR § 417.3(A) was the proper methodology for ascertaining the divisional lines for the subject lots. Giving effect to Judge Boone's ruling, however, the Commissioner concluded he was precluded from finding Ms. Fertitta's pier to be in violation of the BCZR. He deemed appellants' pier locations as a reasonable compromise in a physically tight situation vis à vis the river frontages of appellants' lots and the existing piers.

Aggrieved by the Commissioner's decision,[7] Ms. Fertitta

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[6]The Commissioner incorrectly referred to BCZR § 417.4 in his written decision as the legal basis upon which he predicated relief. BCZR § 417.4 provides for ten feet separation between divisional lines "of adjoining properties and twenty feet open space access strip between pier facilities."

[7]Ms. Fertitta opined that, if the Kieblers' pier were constructed as approved by the Commissioner, her boat slip would be obstructed as the Kieblers' pier would preclude her 32 foot power boat from pulling straight into her slip as her pier was constructed.

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appealed to the Board. After conducting a *de novo* hearing, the Board issued on 14 January 1997 its written Opinion and Order denying appellants' Petitions For Special Hearing. The Board's decision, in effect, vacated the Commissioner's decision and remanded the matter to the County's Department of Permits and Management for a new determination of where appellants could erect their piers, without impinging on a 20 foot "open water area" to the east of Ms. Fertitta's "lawfully" constructed pier. In reaching this conclusion, the Board, although agreeing with the County's position that the provisions of BCZR § 417.3(A) (straight shoreline) should apply to the subject lots, recognized that the provisions of BCZR § 417.3(C) must be applied, under the circumstances, in order to effectuate appellants' ability to construct "piers of varying lengths as a matter of right."

Appellants timely filed a Petition for Judicial Review of the Board's decision in the circuit court. Ms. Fertitta participated as a party in the circuit court proceeding, although the County and the Board did not. After receiving the parties' legal memoranda, the court heard oral argument on the merits on 8 September 1997. At the conclusion of oral argument, the court inquired if counsel for the parties would like "a chance to sit down and see if you can't work it out" before the court ruled. Appellants' counsel welcomed such an opportunity. Appellee's counsel concurred. In order to enhance the settlement potential of the prospective negotiations, the court proposed to mediate the discussions and to include a representative of the County Zoning Office. It was

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agreed by all that these negotiations would occur on or before 15 October 1997 and, unless the discussions resulted in a settlement, the court would promptly thereafter decide the matter on the merits.

On 9 October 1997, the parties, their counsel, the judge, and Mr. John L. Lewis, Planner II, Permits and Development Management, Zoning Review Section of the County government, met in the judge's courtroom.[8] No direct record of what transpired that day was made. What we "know" about this event we learn from what transpired on the record in later proceedings.

On 10 December 1997, Ms. Fertitta filed with the court a Petition To Enforce Settlement Agreement. Essentially, she asserted that the citizen parties had reached a settlement on 9 October. Based on a hand-drawn sketch plan prepared by Mr. Lewis during the negotiations, the parties, it was alleged, agreed to reconfigure Ms. Fertitta's existing pier so as to flip by 180° the elbow of the slip at the pier's end, thus leaving 20 feet of open water area between the closest point of her pier and the previously proposed location of the Kieblers' pier. The costs for the reconstruction of Ms. Fertitta's pier would be shared equally by Ms. Fertitta, the Kieblers, and the Bollings.

The Petition To Enforce continued that the settlement had been repudiated by appellants' counsel in a letter <u>to the court</u> dated 2 December 1997. The 2 December letter complained about a proposed

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[8]It appears that Ms. Fertitta's surveyor, Mr. Raphel, also may have been in attendance.

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written agreement submitted by appellee's counsel to appellants' counsel, accompanied by a more refined drawing of the alleged reconstruction of Ms. Fertitta's pier and the proposed location of the piers of the Bollings and the Kieblers, prepared by appellee's surveyor, Mr. Raphel. Appellants' counsel, in the 2 December letter, cited as the reason for the unacceptability of appellee's proffered, written agreement that the accompanying drawing was "inconsistent with the agreement arrived at in [the] courtroom during our settlement negotiations." Appellants' counsel specifically asserted that the reconstructed Fertitta pier depicted on Mr. Raphel's drawing had "been enlarged from its existing size to larger dimensions on the `L' leg and piling have been relocated to encroach upon the twenty-foot open area between the Fertitta and Kiebler piers." Expressing his clients' exasperation with appellee's perceived attempt to "change . . . the spirit, if not the actual agreement, that was arrived at in [the] courtroom," appellants' counsel requested that the court decide the matter "in accordance with the existing law."

Appellee's Petition to Enforce, asserting that there was no material discrepancy between Mr. Lewis's sketch and Mr. Raphel's drawing, asked the court to direct appellants to perform the settlement agreement described in the Petition. The court directed that a hearing be held on 22 January 1998 in order to resolve the Petition To Enforce.

The first witness to testify was Ms. Fertitta. She asserted that the parties had reached an agreement when they were in court

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on 9 October 1997 engaging in off-the-record negotiations. She described the terms of the agreement as she, the Kieblers, and the Bollings would share equally the costs of moving the existing "L" of her pier and slip "to the other side." She identified Mr. Lewis's 9 October 1997, hand-drawn sketch of the physical reconstruction of her pier and slip as "the drawing" upon which the parties agreed.[9]

On cross-examination, Ms. Fertitta conceded that the alleged 9 October agreement was not expressed in a writing signed by all of the parties. Ms. Fertitta identified the only open matters following the 9 October agreement as being Mr. Kiebler obtaining cost estimates and Mr. Raphel drawing an appropriate plat for submission to the County in order to obtain formal approval of the reconstruction of her pier and slip.[10]

After establishing on redirect examination that the judge, at

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[9]Appellee's counsel also had her identify the proposed written agreement he subsequently prepared purportedly memorializing the alleged 9 October oral agreement and offered it into evidence (it is unclear from the record that the document appellee identified and that was offered into evidence included Mr. Raphel's drawing). The court, however, questioned counsel's purpose in offering the document, observing not only the "irrelevancy" of the proposed exhibit, but the wisdom of offering it when the contention was that an enforceable oral agreement existed prior to his drafting the proposed exhibit. At that point, appellee's counsel abandoned his effort to have the document received into evidence. Appellants made no comments or objections during this colloquy.

[10]The court interrupted appellants' counsel's pursuit of further questioning of Ms. Fertitta regarding Mr. Raphel's drawing, without the interjection of an objection by appellee's counsel. The court questioned the relevancy of any further questions regarding the drawing. Although appellants' counsel begged to differ with the court's view on that score, he nonetheless abandoned that line of questioning by acknowledging "I don't have to pursue it through this witness."

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the 9 October 1997 session, had sporadic involvement with the actual negotiations, and that appellee was ready to perform the oral agreement as she narrated its terms to be, appellee rested her case-in-chief.

Mr. Kiebler testified as appellants' initial witness. He took the position that he participated in the "talks"[11] in the courtroom on 9 October with a view that "nothing would be held against us [appellants] in a Court of law." This understanding was supported, he contended, by the facts that his counsel had not advised the appellants they would be bound by the discussions and there was no recordation of the deliberations held that day. Mr. Kiebler contended further that, although he had not agreed to Mr. Raphel subsequently preparing a plat, he "absolutely" understood he was to have the opportunity to review for his satisfaction whatever Mr. Raphel drafted. Based on his review of the Raphel plat, and the review of same by appellants' engineer, Mr. Patton, Mr. Kiebler stated there appeared to be "scaling errors" on it.[12] Direct examination of Mr. Kiebler concluded with confirmation that he had

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[11]Mr. Kiebler stated it was his understanding that the "talks" were not "negotiations." He nonetheless characterized the purpose of the "talks" as "to see if we could arrive at a settlement or an agreement."

[12]The court restricted further direct examination of Mr. Kiebler regarding Mr. Raphel's drawing. The court's basis for such restriction was that the purpose of the hearing was to determine whether an enforceable agreement had been reached by the parties on 9 October 1997, not whether any post-9 October activities sought to alter the terms reached on 9 October. The court stated "[i]f the parties entered into an agreement [on 9 October 1997], and this document [Mr. Raphel's plat] violates the agreement . . . . Mr. Kiebler has a right to come to Court and say . . . they [appellee and Mr. Raphel] are not doing it according to the agreement."

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directed his counsel to send the 2 December 1997 letter repudiating any agreement.

Cross-examination of Mr. Kiebler was brief, made so apparently by the trial judge interjecting himself into the process.[13] Before curtailment, appellee managed to elicit that Mr. Kiebler was present at the 9 October session and the following:

> Q. When we finished [on 9 October 1997] we collectively told [the judge] that we had arrived at an agreement, did we not?
>
> A. We did not arrive at an agreement.
>
> Q. I am asking you, didn't we tell [the judge] that we arrived at an agreement?
>
> A. No, we didn't. Everybody was not in agreement.

After proffering[14] that Ms. Bolling, were she to testify, would testify that "it was her understanding that there was no agreement until those documents were put together and reviewed," appellants rested. The court then called as its witness,[15] John L. Lewis, the County planner who was present at the 9 October meeting and who produced the hand-drawn sketch that was the graphic depiction of the reconstruction of the Fertitta pier alleged to have been agreed upon at the meeting. After establishing that Mr. Lewis had heard

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[13]After four questions and responses passed between appellee's counsel and Mr. Kiebler, the court stated "[t]hat's enough cross-examination . . . ."

[14]Appellants apparently intended to call Ms. Bolling as a witness, but, at the court's prompting, elected to proffer her testimony.

[15]Md. Rule 5-614 generally permits the court to call a court's witness. Appellants do not raise in this appeal any challenge to the court's conduct in this regard.

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"what was said back and forth" in the courtroom on 9 October, the court elicited the witness's understanding as to whether the parties had reached a meeting of the minds then. Mr. Lewis stated that "there was an agreement that would later be finalized by plats drawn by an engineer based upon the drawing that I had approved." He also indicated that the sketch he made on 9 October was reached only after "give and take" and "a couple of changes during the course" of the session. Finally, he observed that, "[w]hen both parties finally were happy that the drawing represented what they could live with they appeared to be satisfied and were willing to go forward with the drawing as a basis for any further permits . . . ."

Appellee's counsel, cross-examining Mr. Lewis, ascertained that the witness, in his governmental capacity, would approve a formal plan that was in accordance with his sketch drawing. He elicited also that the objective of turning the end of Ms. Fertitta's existing pier away from the Kieblers' proposed pier was "to maintain a twenty foot separation between any construction on either pier, inclusive of the mooring lines, in order to allow access to the shoreline."

Appellants' counsel's cross-examination of Mr. Lewis focused on whether his 9 October sketch and Mr. Raphel's later drawing were inconsistent[16] and whether a twenty foot setback could be achieved

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[16]Although unable to say with precision, absent further examination on a backlit light table with the two drawings overlaid on each other, Mr. Lewis hazarded an estimate that the Raphel drawing depicted the flipped "L" at the end of the Fertitta pier as about five feet longer to the west and about four feet deeper to

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between the existing Jordon pier and the location of the proposed Bolling pier.[17] Even if the Raphel plan did not achieve the twenty foot setback objective as it depicted the existing and proposed piers were depicted, and was not approvable "as is" in strict conformity with the BCZR setback minimum (which the witness did not concede necessarily was the case), Mr. Lewis contended that he had the power where existing construction was implicated, under BCZR § 417.3(C), to approve a proposal that had lesser setbacks than the twenty foot normal minimum.[18]

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the north and south than was depicted on Mr. Lewis's 9 October hand-drawn sketch. He also noted that one of the pilings of the Fertitta pier, as depicted on the Raphel plan, appeared to be within eighteen feet from "the sundering pile of the proposed Kiebler pier"

[17]Mr. Lewis estimated the distance between the Jordon pier and the location of the proposed Bolling pier as fourteen feet; however, he also pointed-out that it appeared that the Bolling pier location could be moved an additional ten feet towards the proposed Kiebler pier location, without impinging on the twenty foot setback between them, and thus avoid any encroachment on the setback from the Jordon pier.

[18]Whether Mr. Lewis's perceived authority under BCZR § 417.3(C) in this regard was the equivalent of an area variance, as that type of zoning action is defined in BCZR § 307.1 (See Friends of the Ridge v. Balt. Gas & Electric, 120 Md. App. 444, 475-76, cert. granted, 350 Md. 488 (1998)), goes unexplored substantively in the record or briefs of the instant appeal. Any consternation expressed by appellants in potentially having to obtain a true area variance if a twenty foot setback cannot be obtained between each of the relevant piers in this case may be groundless if, as Mr. Lewis claims, he can approve a non-conforming scenario with a mere flick of his wrist in signing-off on a plan. BCZR § 417.3 (c) suggests no formal "variance" proceeding is necessary when there are existing facilities, as the Office of Planning & Zoning then determines compliance as nearly as possible. By the same token, as Mr. Lewis testified, perhaps no "variance" by any name is needed if the location of the proposed Bolling pier is changed to obtain the requisite setback (as appears there is room to do) from the Jordon pier and still meet the same requirement as to the proposed Kiebler pier, and the Raphel plan is adjusted as to the Fertitta pier to

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The trial judge announced his decision from the bench.

> The Court finds the most persuasive witness to be Mr. Lewis. He has no ax[e] to grind in this matter one way or another. He testified that it was his belief that when the parties walked out of here that this matter was settled.
>
> Now, the Court disagrees with [appellants' counsel] to the extent that my understanding of the law is that parties can enter into a contract without having all of the specifics clearly spelled out and nailed down.
>
> And as a matter of fact, the law does provide for contracts in which the parties agree later on to negotiate certain aspects or elements of the agreement. Of course, there is always an implied requirement that the parties negotiate in good faith then the other party has the right to go to Court and let the Court decide what that element is.
>
> But it seems to me that my recollection of what happened that day is a lot different from Mr. Kiebler's. He said that the parties were just brought here to talk, and that's about an 180-degree about-face from my understanding of it.
>
> I brought the parties here and I said on the record [on 8 September 1997] that I brought the parties here to reach a settlement in this agreement because it looked — it appeared to me to be the kind of case that could be settled and should be settled.
>
> Now, the fact that the agreement isn't on the record, that there is no written memorialization of the contract, isn't really the issue in the case, because as I have already said, the law recognizes verbal contracts. And it would appear to me, based upon Mr. Lewis' testimony, that a verbal contract was in fact made.
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> * * * * *
>
> Mr. Kiebler's testimony inferentially supports that fact. If there wasn't an

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conform to Lewis's 9 October 1997 sketch. This is a matter best left to future events in any event.

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agreement, then why would he be entitled to have a plat submitted to him in the first place?

If the parties hadn't reached an agreement I suppose that that would have been one of the things they were talking about, which is, who was going to do the plat and who was going to be able to approve it.

The Court finds that we're probably here because for some reason Mrs. Fertitta decided to get a little bit of extra something that wasn't included in the settlement.

* * * * *

It would appear to me that the elements of this contract are that the parties are to have a drawing submitted to the Zoning Office in Baltimore County that comports with [Mr. Lewis's sketch]. Not bigger. Not smaller. But, what the parties talked about and drew on that date.

And that, if in fact the Department of Zoning approves that drawing, that the corrections are to be made to the Fertitta pier, and that the parties are to pay one-third each of the cost of making those corrections.

Now, again, if in fact either any of the parties feel that the other party isn't living up to the agreement, that certainly is a matter that can be brought before the Court,

To say, as [appellants' counsel] tried to produce to the Court, that the pier [in the Raphel drawing] is bigger than the one that they approved, obviously, that could be a breach of the agreement.

* * * * *

So the Court finds that there was an agreement, that the agreement is, is that a drawing is to be made that comports with [Mr. Lewis's sketch] and is as close as possible to [his sketch] and at the same time serving the purposes of the parties, which is to get an agreement to the Zoning Department which can be approved.

And then, if and when the Zoning Department approves that drawing — and I have to agree with [appellants' counsel] that it would have to be without a variance. I don't

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> think that there was any agreement between the parties that the Kieblers or the Bollings would have to apply for a variance.
>
> But if the agreement can be approved by the County without any further action by the Kieblers and the Bollings then the parties will have to carry out the remainder of the agreement, which is to move the tip of Ms. Fertitta's pier and split the cost of that — of that change.

After an interruption from Mr. Bolling questioning why appellants had to pay for any part of the reconstruction of the Fertitta pier, the judge continued:

> I have a memory of what happened that day [9 October 1997], too, and I remember both lawyers telling me, Judge, we settled it, and I don't remember hearing either of you standing up and saying no, Judge, we haven't settled it.
>
> You know oftentimes people have what we call buyer's remorse. They go out to buy a house or a car and they sign the contract and then they go home and say what did I do. I don't think it was a good idea for me to sign a contract to buy that — that house or that car.
>
> Well, the fact of the matter is, once a party enters into an agreement they are bound by the agreement. You can't come back later and say well, maybe it wasn't a good idea for me to enter into the agreement.
>
> I find as a matter of fact that the parties entered into an agreement, and as I just indicated to Mr. and Mrs. Bolling, when the lawyers told me that they were standing right there and they didn't pipe up and say no, Judge, there is no agreement. We don't agree to this.
>
> So I assume that — and I am finding for the record that that is the agreement.

Appellants noted this timely appeal from the court's judgment.

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DISCUSSION[19]

In their main brief to this Court, appellants argue two theories of error[20] with regard to the court's determination that

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[19]Appellants' arguments on appeal that we consider are that, on the record before it, the trial court erred as a matter of law and was clearly erroneous in concluding that all of the requisites of an enforceable oral contract were in place on 9 October 1997. Appellants did not brief or argue adequately, and we therefore do not consider, whether the trial judge exceeded his role as an impartial judge under the circumstances of this case. See Chertkof v. Weiskittel, 251 Md. 554, 550-51 (1967) ("[A] judge, seeking to aid in settlement must be careful not to indicate bias, prejudice or strong feelings, must be impartial and must not force his will upon or unduly press his views upon the parties."). Judges will not be presumed to have prejudged a case, however, simply because they have knowledge of previous happenings in the case obtained in the course of their official duties.

Moreover, contrary to appellants' bald assertions, the judge did not "order" or otherwise improperly coerce the parties to engage in the settlement negotiations on 9 October 1997. A fair reading of the relevant portions of the transcript of the 8 September 1997 proceeding belie appellants' assertions.

[20]In contrast, appellants' reply brief, devoted almost exclusively to the circuit court's finding of a settlement agreement, framed four theories of error, as follows:

> I. The circuit court was incorrect, as a matter of law, when it ruled at the hearing held on 22 January 1998, that a settlement agreement does not require the parties to resolve all of the issues.
>
> II. The circuit court's ruling that the parties had reached a full and final settlement agreement, as to all of the issues, was clearly erroneous.
>
> III. The evidence demonstrates that the negotiations on 9 October 1997, were conducted in anticipation that there would be a final written assent and did not rise to the level of a binding contract.
>
> IV. The circuit court was incorrect, as a matter of law, when it refused to admit into evidence the proposed contract that had been drafted and signed by appellee.

We conclude that Issues I-III, as framed in appellants' reply brief, are a rehash of their main brief, and are therefore properly

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an enforceable settlement agreement was reached by the parties on 9 October 1997:

> First, Appellants contend that there was no meeting of the minds and therefore no offer and acceptance of an agreement between the parties to resolve this conflict on 9 October 1997. Secondly, Appellants contend that, even had there been a settlement agreement, it is unenforceable by the circuit court's own acknowledgment that in this case the Appellee exceeded the agreement by way of enlarging the corrected pier; by the placing of pilings in areas not in conformance with the Baltimore County Zoning Regulations, and by requiring a variance to be applied for by the appellants - the trial court also recognizing that the need to apply for a variance was not part any alleged agreement arrived at on 9 October 1997.

Under the circumstances when the provisions of an oral contract are contested, it is for the trier of fact to ascertain the terms of the agreement. See Marr v. Langhoff, 322 Md. 657, 667 (1991); Eisenberg v. Air Conditioning, Inc., 225 Md. 324, 335 (1961). "When the existence of an oral contract is disputed, [ ] and, [ ] there is conflicting evidence as to its terms, it is for the finder of fact to determine if the contract existed and what were its terms." Son v. Margolius, Mallios, Davis, Rider & Tomar, 114 Md. App. 190, 214 (1997) (citation omitted), rev'd on other grounds, 349 Md. 441 (1998). In such cases, an evidentiary hearing usually is required. David v. Warwell, 86 Md. App. 306, 319-21 (1991); Pearlstein v. MD Deposit Ins. Fund, 78 Md. App. 8, 15-17

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before this Court. Issue IV of the reply brief, however, was not raised in appellants' initial brief and was not responsive to any argument asserted in appellee's brief. Therefore, we shall not consider Issue IV of the reply brief. See Federal Land Bank v. Esham, 43 Md. App. 446, 459 (1979).

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(1989).

In reviewing the trial court's judgment that an oral contract to settle the matter sub judice existed and what its terms were, we will not set aside its judgment unless its factual findings are clearly erroneous. Md. Rule 8-131(c); see also Reisterstown Plaza Assocs. v. General Nutrition Ctr., Inc., 89 Md. App. 232, 240 (1991). If there is any competent, material evidence to support the factual findings of the trial judge, those findings cannot be held to be clearly erroneous. Fantasy Valley v. Gaylord Fuel, 92 Md. App. 267, 275 (1992); Staley v. Staley, 25 Md. App. 99, 110 (1975). When factual findings are in dispute, we will give deference to the trial judge's decision, giving due regard to the opportunity of the court to assess the credibility of witnesses. Attorney Grievance Comm'n v. Williams, 335 Md. 458, 471 (1994).

Appellants claim that because there was no transcription made of the 9 October 1997 proceeding, or of the agreement allegedly reached at that proceeding, no meeting of the minds was reached at that time. We are not persuaded by this contention. While it may be the traditionally circumspect practice to put a litigation settlement agreement on the record under similar circumstances, the circuit court's judgment must rise or fall in the instant case based on the evidentiary hearing conducted on 22 January 1998. The absence of a transcript from 9 October 1997 merely necessitated the holding of that evidentiary hearing.

The significance attributed by appellants to appellee's counsel's preparation and transmittal to appellants' counsel of a

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written agreement, to which was appended Mr. Raphel's drawing, is exaggerated greatly. The creation of such a document, appellants insist, demonstrates that no party believed that an enforceable oral agreement was reached on 9 October. An obvious problem with this argument is that the purported draft agreement was not received in evidence. Only the attachment to that document, the Raphel drawing, was placed in evidence. Appellants did not offer the draft agreement as an exhibit, nor did they object to or remonstrate with the court concerning the court's disinclination to receive the agreement when its possible receipt as an exhibit was broached and then withdrawn by appellee. Therefore, appellants' appellate arguments, to the extent those arguments are dependent on the draft agreement, are not preserved, nor are they properly reviewable by us in the absence of the draft agreement in the record extract.[21]

To the extent that appellants' arguments revolve around the creation of the Raphel drawing, which was in evidence, we cannot

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[21]As noted earlier in this opinion, appellants' apparent quarrel was with the Raphel drawing, not the terms of the draft written agreement. No contention was advanced below that the draft agreement was other than a faithful memorialization of the terms of the 9 October oral agreement. The dispute that gave rise to appellants' attempted repudiation of the 9 October accord was appellee's alleged effort to improve upon her position by causing the Raphel plan to be prepared in a way that was assertedly inconsistent with certain aspects of the Lewis sketch.

In any event and under the facts found credible by him at the 22 January 1998 hearing, the trial judge would not have erred had he deemed the effort to create a post-agreement writing memorializing the oral agreement not to be an impediment to concluding that a binding oral agreement pre-existed the exercise in legal draftsmanship. See Lubore v. RPM Associates, Inc., 109 Md. App. 312, 323-24 (1996).

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say that the trial judge was clearly erroneous or abused his discretion in arriving at his assessment of its significance. The oral agreement found by the trial judge to exist on 9 October 1997 was in the nature of an executory accord. See Clark v. Elza, 286 Md. 208, 214 (1979). That the parties contemplated on 9 October the creation thereafter of a more precise and formal drawing carrying out the intent of the 9 October agreement, including the Lewis sketch, for submission to the local governmental authorities as the means for securing approval of the necessary permits to effect the settlement, was supported by the testimony of Ms. Fertitta and Mr. Lewis. Thus, the parties' required approval of that subsequent drawing as being true to the Lewis sketch, and the obtention of governmental approval based on such an approved plan, are analogous to a contract subject to conditions (See Chernick v. Chernick, 327 Md. 470, 479 (1992)). These outstanding matters do not serve necessarily as the basis to conclude that agreement on the essential terms of an enforceable oral contract did not exist on 9 October 1997. Indeed, as the judge pointed out, any actual and material discrepancies between the Raphel plan and the Lewis sketch would be resolved by the court, enforcing the intent of the Lewis sketch, in directing that another plan, faithful to the Lewis sketch, be prepared. Appellants may seek such enforcement yet. As we noted earlier, however, it is not clear at all on this record (based on Mr. Lewis's assessment of the two drawings) that the Raphel plan was inconsistent materially with the Lewis sketch or was unapprovable by the County (absence a "variance" of whatever

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type). Certainly, the court did not declare that any actual or material inconsistency did exist between the drawings. Moreover, appellants have not sought enforcement of the agreement, preferring instead to mount an attack on the existence of the agreement. The trial court clearly envisions a superintending role in the effectuation of the agreement.[22]

The testimony of Ms. Fertitta and Mr. Lewis, obviously found credible by the judge, and the Lewis sketch provided adequate evidentiary bases for the judge's findings and conclusions. The judge was not obligated to believe the testimony of Mr. Kiebler or the proffer of Ms. Bolling. Obviously, he did not believe either. We defer to his superior ability to make that assessment.

Although a fact finder may consider, in its effort to determine what the terms of a contested oral contract are, the parties' negotiations and statements made at the time of the making of the contract, as well as their conduct and declarations subsequently (Service Realty Co. v. Luntz, 210 Md. 228, 235 (1956); Son, 114 Md. App. at 213), the fact finder is not obligated to do

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[22]In their reply brief, appellants suggest an additional reason why there was no agreement reached on 9 October 1997. That the court did not enter a final judgment in the case, they claim, indicates that the matter was not fully resolved. For appellate review purposes, the collateral order doctrine exception to the finality rule enables appellants to even raise at this point their arguments as to the court's disposition of the Petition To Enforce Settlement Agreement. But for that exception, we would not entertain this appeal at all, assuming appellants' lack of finality argument has any foundation in the record. Regardless, we do not consider the court's acknowledgment of its role in superintending the effectuation of the settlement agreement as being also an implicit acknowledgment that it considered the agreement unenforceable.

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so, especially where it finds any such testimony uncredible. In the instant case, however, appellants maintained there was no oral contract reached on 9 October 1997. Appellants therefore did not focus on what the terms of any such agreement might have been.

Appellants, in their effort to demonstrate the absence of an enforceable agreement on 9 October, point to other unresolved matters, such as obtaining a cost estimate for the reconstruction of the Fertitta pier and determining if the Lewis sketch concept was approvable without a variance. We have considered and disposed of the variance matter earlier. As to the matter of cost, appellants argue that no reasonable person would agree to what Ms. Fertitta claimed were the terms of the contract without knowing what such an agreement would cost them. As pragmatically compelling an argument as this may be, the courts will not relieve a party of his or her bargain merely because it was an ill-conceived or bad bargain. See Vincent v. Palmer, 179 Md. 365, 372 (1941).

Appellants also perceive, as an additional critical omission from the terms of the 9 October 1997 agreement found by the court, that the location of the Bolling pier was left unresolved. Given Mr. Lewis's testimony regarding this aspect (see n. 18 supra), we see no reason why this detail cannot be handled through the governmental approval process, and the court's superintending function, if necessary.

As legal support for why the various loose ends identified by appellants render the 9 October 1997 accord, as found by the judge,

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unfinal and unenforceable, appellants offered David v. Warwell, 86 Md. App. 306 (1991) and Pearlstein v. MD Deposit Insurance Fund, 78 Md. App. 8 (1989). Without delving too deeply into factual distinctions between those cases and the instant case, we are satisfied that both of these cases are legally inapposite. Both Warwell and Pearlstein involved conveyances of an interest in real property, thus implicating the Statute of Frauds' normal requirement of a writing. Warwell, 86 Md. App. at 316; Pearlstein 78 Md. App. at 16. No such situation is presented in the instant case. Warwell, unlike the instant case, was decided primarily on the basis that the lower court summarily resolved the matter without the conduct of a required evidentiary hearing. Such is not the case here. We are persuaded that the matters that remained to be resolved following the 9 October 1997 agreement found in the instant case are more akin to the unresolved matters in Barranco v. Barranco, 91 Md. App. 415 (1992), which situation did not vitiate the court's finding of an enforceable oral agreement to settle pending litigation. Being of that view, we close this opinion by repeating with favor from Clark v. Elza:

> As long as the basic requirements to form a contract are present, there is no reason to treat such a settlement agreement differently than other contracts which are binding. This is consistent with the public policy dictating that courts should "look with favor upon the compromise or settlement of law suits in the interest of efficient and economical administration of justice and the lessening of friction and acrimony." Chertkof v. Harry C., Weiskittel Co., 251 Md. 544, 550, 248 A.2d 373 (1968), cert. denied, 394 U.S. 974, 89 S.Ct. 1467, 22 L.Ed.2d 754 (1969).

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286 Md. 208, 219 (1979).

JUDGMENT AFFIRMED;

COSTS TO BE DIVIDED EQUALLY AND PAID BY APPELLANTS.

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LEWIS L. FLEURY
ATTORNEY AT LAW
424 WOODBINE AVENUE
TOWSON, MARYLAND 21204

(410) 825-9200
FAX (410) 825-9201

1/20/99

SPEED MEMO

DATE: 1-18-98

TO: Mr. John Lewis
Zoning Office

RE: Kiebler & Bolling
Cases 96-244-SPH & 96-245-SPH

Enclosed is the opinion of the Court of Special Appeals affirming the Circuit Court in the above matters

RECEIVED
JAN 20 1999
PDM

Very truly yours,

Lewis

Lewis L. Fleury

MICROFILMED

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF THOMAS T. BOLLING, ET UX
7202 Green Bank Road
Baltimore, Maryland 21220

and

PAUL D. KIEBLER, ET UX
7200 Green Bank Road
Baltimore, Maryland 21220

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

IN THE CASE OF: IN THE MATTER OF
THOMAS T. BOLLING, ET UX
FOR A SPECIAL HEARING ON PROPERTY
LOCATED ON THE NORTH SIDE GREEN BANK
ROAD, 75' EAST OF C/L CHOPTANK ROAD
(7202 GREEN BANK ROAD)
CASE NO. 96-244-SPH AND
PAUL D. KIEBLER, ET UX
ON PROPERTY LOCATED 25' EAST OF C/1
CHOPTANK ROAD
(7200 GREEN BANK ROAD)
CASE NO. 96-245-SPH
15TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT

CIVIL ACTION
NO. 3-C-97-00740

* * * * * * * * * * * *

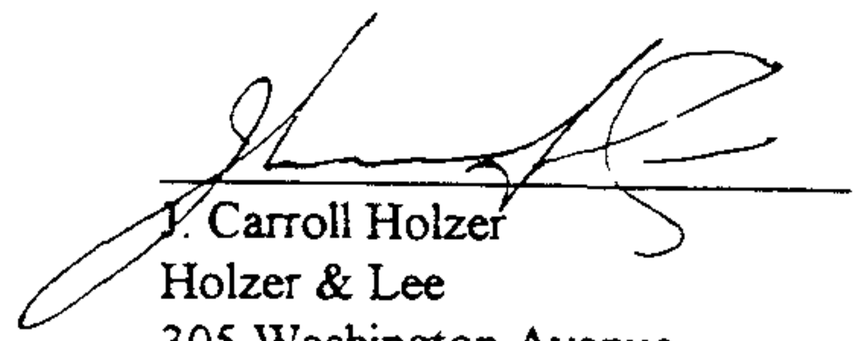
NOTICE OF APPEAL

Petitioners, Thomas T. Bolling, et ux. and Paul D. Kiebler, et ux., by and through their attorney, J. Carroll Holzer, Holzer & Lee, hereby file an appeal to the Court of Special Appeals from the Decision of the Circuit Court finding that a Settlement had occurred in this Case, and the

LAW OFFICE
HOLZER AND LEE
WASHINGTON AVENUE
SUITE 502
TOWSON MARYLAND
21204
(410) 825 6961
FAX (410) 825 4923

FILED FEB 19 1998

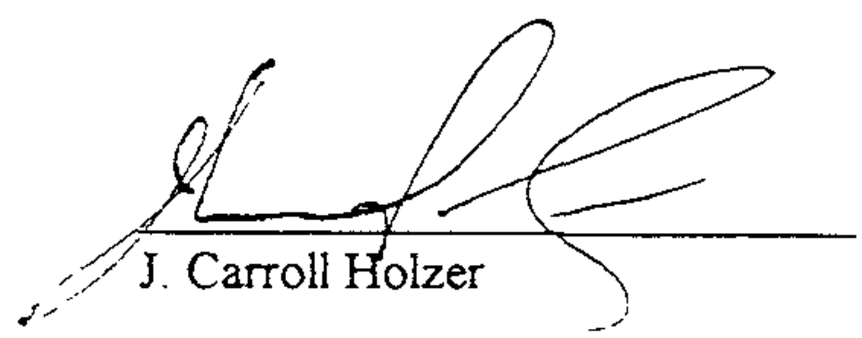
Court's refusal to issue an Opinion and Order on the merits of the Case, said Decision and Order in the Circuit Court having occurred on January 22, 1998.



J. Carroll Holzer
Holzer & Lee
305 Washington Avenue
Suite 502
Towson, Maryland 21204

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of February, 1998, a copy of the foregoing Notice of Appeal was mailed to Lewis Fleury, Esquire, 424 Woodbine Avenue, Towson, Maryland 21204, attorney for Dorothea M. Fertita.



J. Carroll Holzer

a:notices\kiebler.2app

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY	*	
PETITION OF THOMAS T. BOLLING, ET UX	*	
and	*	
PAUL D. KIEBLER, ET UX	*	CIVIL ACTION 3-C-97-00740
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	* *	

* * * * * * * * * * * * *

APPELLEE'S MEMORANDUM IN OPPOSITION

Appellee, Dorothea Fertita, by her attorney, Lewis L. Fleury, pursuant to Maryland Rule 7-202 respectfully submits this Memorandum In Opposition, and says:

STATEMENT OF THE CASE

Appellee adopts the Statement of the Case set out in Appellant's Memorandum.

ANSWERS TO QUESTIONS PRESENTED

1. The CBA was correct in its interpretation of Section 417.3 of the Baltimore County Zoning Regulations finding that the shore line of the subject property was straight, upon which finding it denied the Appellants' petitions.

2. The CBA's finding that the "shore line of the subject property was straight" was overwhelmingly supported by evidence, including the evidence of the Appellants' expert.

3. The CBA was correct in finding that Lots numbers 28, 31 and 32 were not in violation of the Baltimore County Zoning Regulations Section 417.3, and therefore was correct in denying the Petition for Special Hearing.

4. The CBA was correct in deferring to the authority of Office of Permits and Development Management (OPDM) of Baltimore County, as to the designation of the proper location of the proposed piers.

5. The CBA did not err in considering the previous zoning enforcement case tried before Judge A. Gordon Boone in the District Court of Maryland for Baltimore County, concerning the property of Fertita, Lot #31; and since the County Board gave the same consideration and application of Judge Boone's ruling as that given by the Zoning Commissioner in his Opinion, it acted in concert with the position taken by the Appellants as to this issue. Further, the hearing before Judge Boone and his ruling were properly in evidence before the CBA, they cannot now be heard to say "error".

STATEMENT OF FACTS

Responding to Appellants' Statement of Facts, Appellee says:

1. That the allegations in the first two paragraphs of Appellants' statements are argumentative opinions and improper as statements of fact.

2. The statements on pages 5, 6, 7 and 8 of Appellants' Statement of Facts are essentially true, except that Fertita did not construct her pier "without a permit from Baltimore County,"

but the contractor, who was responsible for obtaining the permit, installed only several pilings before receiving a Stop-Work Order from the County, upon the Kieblers' complaint. Fertita then obtained the permit and proceeded to construct the pier without further complaint from Kieblers, except for a contention by the Kieblers that her proposed boat slip on the East side of her pier would be too close to them, as a result of which Fertita moved her slip to the end of the pier.

3. The first paragraph on page 9 of Appellants' Statement of Facts, should be clarified by adding that while the Kieblers were not parties to the action described, their experts appeared in their behalf before the Judge.

4. Paragraph 2 on page 9 is a mere opinion.

5. Paragraph 3 on page 9 does not appear to be true since Mr. Lewis testified before the CBA, that at the trial before Judge Boone the engineers for both parties discussed in some detail how to define divisional lines where the there was an irregular shore.

6. The matters outlined on page 10 and in the first half of page 11 are essentially true, except that Kiebler's second building permit has now been suspended by the Office Of Permits And Department Management (OPDM) of Baltimore County.

7. Appellants' statement in the second half of page 11 that the CBA was "without any understanding of the issues clarified by the Zoning Commissioner," is obviously in error, since the CBA treated Judge Boone's opinion and finding with the same consideration and effect as did the Zoning Commissioner in his

opinion. And even though there was no "marked exhibit in evidence before the CBA of the District Court taped proceeding," that proceeding was validly before the CBA by virtue of the rules of the CBA, statements of Appellants' counsel and oral testimony.

LEGAL ARGUMENT

Scope of Review

The function of a Court in reviewing the action of a legislative or administrative body relating to zoning matters is restricted and narrow in scope. And the court will not substitute as judgment in a zoning case as to the wisdom or soundness of the action taken by the zoning authorities if the question decided by them was fairly debatable and their action is not shown to be arbitrary, capricious or illegal. Reese v. Mandel, 224 Md. 121. The action of a zoning board or officer with respect to the granting or denial of any exception, variance or permit will be presumed to be legal and correct, and the person appealing from the action has the burden of overcoming the presumption. Adler v. The City of Baltimore, 220 Md. 623, and Hoffman v. Mayor and City Council of Baltimore, 187 Md. 593.

Applicable Zoning Regulations

Appellee adopts the statement of regulations set out in Appellants' Memorandum.

LEGAL ARGUMENT

I. THE CBA WAS CORRECT IN ITS INTERPRETATION OF SECTION 417.3 OF THE BALTIMORE COUNTY ZONING REGULATIONS BY FINDING THAT THE SHORE LINE OF THE SUBJECT PROPERTY WAS STRAIGHT.

Appellants' statement of a primary premise that the CBA and this Court must interpret Section 417.3 as a matter of law in its application of the instant case is without merit in law or fact. Obviously the CBA was obliged to interpret the Section cited, but just as obviously any interpretatuion must be made in the light of the factual configuration of the shore line, property lines, existing structures and other facts bearing on a reasonable interpretation. Accordingly the CBA correctly received evidence from both parties including testimony of on site inspections by expert witnesses, plats and plans as to the factual configuration of the shore line under consideration in this case and expert opinion as to a reasonable and practical interpretation and application of BCZR Section 417.3 as it relates to that shore line and all other existing and proposed facts and uses.

See Appellants' witness Patton's testimony, "In my opinion, do we ever have a straight shore line? Probably not." (T-94, L-16, et seq.). If this were true there would be no need for Subsection A, for all shore lines would fall into Subsection B.

Also see the testimony of Mr. John Lewis of the OPDM of Baltimore County concerning his expert interpretation and application (T-100, L-9, et seq.). Also see the testimony of Mr. Eugene F. Raphel, registered land surveyor, describing the slight

variations in the bearings for Lots numbers 28 through 31 (T-122, L-14, et seq.) and his statement, "For all practical purposes, it's a straight line." (T-124, L-18).

Appellants' argue on pages 17 and 18 of their Memorandum that because "the property lines in this case, if projected into the water, would either diverge from each other or converge into each other if extended far enough into the Gunpowder River", that the CBA was, by law, bound to apply Section 417.3B, that of an irregular shore line.

In reply to this argument, Appellee submits that Section 417.3B is applicable only "if by reason of the curvature of the shore line (emphasis added), the lines, when projected into the water, diverge from each other, . . . or converge with each other . . . ." This Subsection clearly applies only to problems caused by shore lines that are "not straight" and it makes no mention of problems caused by property lines, whether not perpendicular to the shore line, or not parallel to each other.

Appellee submits that the County Council in promulgating Subsections A and B of this Section of the BCZR recognized that it is impossible to define procedures that would afford practical solutions to all shore-use issues arising from property lines. Accordingly, the Council promulgated paragraph A to deal with such issues as far as "it is practical to do so", leaving the resolution of all other problems caused by property lines to the creativity of the adjoining landowners who can adjust and realign their boundaries by bargain and compromise.

However, the Council further recognized that where the problems arise from "a shore line which is not straight," an act of nature, it should and did define a procedure for resolution, as set down in Subsection B of Section 417.3.

Upon further examination of the proposal of Mr. John Lewis of the OPDM of Baltimore County setting out the buildable areas for the Kiebler and Bolling lots (Petitioners' Exhibit #17 and offered as Protestants' Exhibit 1A at T-102, L-8), it is obvious that Mr. Lewis applied both aspects of 417.3A; that is extension of the West property line of the Fertita property from the shoreline and determination an Eastern divisional line for the Bolling property perpendicular to a straight shore line. This is most assuredly an application of that Subsection as far as it is "practical to do so", as required by the Subsection itself.

Indeed, piers of the same size and dimension as proposed by the Appellants in this proceeding, with a 15" x 35" boat slip at the end of each, can be constructed in the "buildable areas" shown on the "Lewis plan" Petitioners' Exhibit 17 before the CBA, offering each of the three landowners here involved, Fertita, Kieblers and Bollings, equal, reasonable and fair access to the Gunpowder River without "conflicting with existing facilities" and "conforming as closely as possible to the rules set forth herein (417.3C) <u>so as to cause the least interference with existing and/or possible future construction</u> (emphasis added)."

II. THERE WAS SUFFICIENT EVIDENCE BEFORE THE CBA TO FIND THAT THE SHORE LINE WAS STRAIGHT

Appellants contention that James Patton's testimony "establishes clearly the subject shore line is irregular," surely falls far short of their expectation. After two pages of discussion concerning the minor irregularities of the instant shore line, Mr. Patton testified that the "bulkhead line" (shore line) between Lots #28, 29 and 30 is a straight line (T-83 L-13 through 21 and T-84 L-1).

Later, when asked "how straight does a shore line have to be to be called a straight shore in your opinion?" he answered, "It is the relativity of individual properties one to the other, that makes the determination as to the convergence versus divergence relative to a straight line" (T-84, L-12 through 17).

And still later when asked, "What is the maximum variation that you would consider and still have a straight line?", he answered, "I can't state categorically X degress variation or X feet of variation . . ." (T-85, L-9).

And later: Question: "In your opinion, could we ever have a straight shore line?" Answer: "In my opinion, do we ever have a straight shore line? Probably not." Question: "So you would apply 417.B in all cases?" Answer: "I'm going to qualify that. Where we create straight shore lines through bulkheading and piers and so on, yes, we have straight shore lines that we deal with very often. But on the natural shore line, I haven't see a straight shore line in my life."

In addition to Mr. Patton's testimony, see the testimony of John Lewis of the OPDM of Baltimore County who, when asked, "What is the standard for reasonable application of 417.A in your department?" answered, "Well, basically, if I see a shore line that appears to be straight without large digressions, based on our appendices, or Appendix J, we apply 417.A. In this case, 417.A seemed appropriate" (T-100, L-15).

And later, when asked, "Now, I show you Petitioners' Exhibit 16 and ask you to look at the piers and shore line and the lots that are shown on that plat and ask you if you would not find 417.A (applicable) to all those lots?" Answer: "Well, looking the way it appears, for the sake of establishing the shore line, I'd put a straight edge across the property lines allowing for some minimal digressions as our Appendix drawing does, and I would say this is a straight shore line" (T-101, L-7 et seq.).

In addition to the above, Mr. Eugene F. Raphel, expert surveyor and land planner, testified as follows:

Answer: "The Kiebler lot, could be Lot 30, would have a bearing of 63.10, 41 East, then to go back into 28. It has a bearing of 65.05, 37 East."

Question: "So that's actually a two degree variance between--"

Answer: "For all practical purposes, it's a straight line."

Surely there was sufficient, if not overwhelming, evidence that the shore line in question was a straight shore line, as found by the County Board of Appeals.

III. THE CBA DID NOT ERR IN DETERMINING THE SHORE LINE OF THE SUBJECT PROPERTIES TO BE A STRAIGHT SHORE LINE AND APPLYING SECTION 417.3C

Appellants argue that 417.3A and Appendix J require construction of piers on a straight shore line to be perpendicular. This contention completely ignores Section 417.3A which explicitly states, "If the shore line is straight, the divisional lines are to be extended from the intersection of the property line and the shore line into the water perpendicular to the shore line <u>or where the property lines are parallel and it is practical to do so, the proper(ty) boundary lines shall be extended in a straight line into the water</u>."

Surely, the term "parallel" when here applied to property lines does not mean that the lines are <u>absolutely</u> parallel, meaning, i.e. that they would not intersect if extended <u>ad infinitum</u> in both directions, but rather that they are not at such angles to each other as will reasonably affect the use of the instant properties. In the matter <u>sub judice</u> the property lines of all properties involved are so nearly parallel that when extended, as proposed by Mr. Lewis, there is sufficient buildable area for the construction of piers of equal accommodation for all the properties.

On page 5 of its opinion, the County Board of Appeals stated, "The Board finds that BCZR Section 417.3C must be applied regardless of whether Section 417.A or B applies to new construction." In so doing, the Board notes with interest the language contained in Section 417.3C, specifically, ". . . It would

be the duty of the Office of Planning and Zoning (now Permits and Development Management) to specify the limits of construction to conform as closely as possible to the rules as set forth herein so as to cause the least interference with existing and/or possible future construction" (emphasis added). The Board then went on to find that the "Piers as proposed are in violation of Section 417.3C and that they may cause interference with both the existing pier on the Fertita property and any future expansion of the Fertita pier".

In the light of all of the evidence, the CBA properly applied Section 417.3C.

IV. THE CBA WAS CORRECT IN DEFERRING TO THE AUTHORITY OF OFFICE OF PERMITS AND DEVELOPMENT MANAGEMENT (OPDM) OF BALTIMORE COUNTY, AS TO THE DESIGNATION OF THE PROPER LOCATION OF THE PROPOSED PIERS.

When Appellee's counsel offered a reasonable plan for the construction of the proposed piers which would be in compliance with Section 417.3C Appellants' counsel objected and was sustained by the County Board of Appeals (T-128, L-1 et seq.). This objection was obviously to keep the Board from considering a "third plan", as argued by Appellants' counsel in his opening statement (T-27, L-1 through L-10).

Now Appellants apparently contend that the CBA should have offered to them its own plan for construction which would comply with BCZR Section 417.3C.

Appellants further state on page 22 that the Zoning Office "refused to issue the letter of approval necessary for Kiebler to obtain a Corps of Engineers' permit even though he had a valid and

lawful permit to build his pier from Baltimore County issued and approved by the Zoning Office. The Zoning Office, in refusing to issue the approval to Corps of Engineers, required Kiebler to petition for a Special Hearing . . . ." Appellee submits that Appellant Kiebler was not "required" to petition for a Special Hearing, but could have revised his plat to comply with the buildable areas set out on Mr. Lewis' plan, Petitioners' Exhibit #17, which did not violate 417.3C. However, Kiebler chose not to do so, as indicated by the Chairman of the CBA on page 2 of the Minutes of Deliberation of that body, "It's not a perfect world, but the County can be creative, and Mr. Lewis, the County Planner, did just that and provided Mr. Kiebler and Mr. Bolling with adequate space, helping them through the process, realizing there is adequate space for two piers. It was a matter of choice by Mr. Kiebler and Mr. Bolling to pursue something in the alternative."

Appellee submits that this Court should find that the CBA did not err in failing to provide a suitable plan for the construction of Appellants' piers. The matter should be returned to the CBA for appropriate action.

V. THE CBA DID NOT ERR IN CONSIDERING A PREVIOUS ZONING ENFORCEMENT CASE BEFORE JUDGE BOONE OR BY RELYING ON INFORMATION NOT IN EVIDENCE BEFORE IT.

The only reference to the District Court proceeding before Judge Boone in the CBA opinion is that "Ms. Fertita prevailed, and the pier still stands." This is certainly no indication that the CBA considered that case dispositive of the issues before it in any manner. The only reference to that proceeding in the Minutes of

the Deliberations of the CBA indicates that it took the same position as the Zoning Commissioner did on page 7 of his opinion, "Judge Boone, based on the evidence presented to him, held that the location of the Fertita pier was not violative of the BCZR . . . although Judge Boone's ruling precludes a finding on that issue, I do not conclude that it prohibits consideration of the Petitioners' other request for relief; namely, for an order defining the proper location of piers from the Kiebler and Bolling lots."

Appellants contend "first there is no evidence in the record before the CBA as to Judge Boone's decision other than the perfunctory statement of counsel for Appellants as to the fact that it occurred". They apparently failed to consider the Chairman's ruling that all items in the file from the Zoning Commissioner (presumably including the tape of the violation proceeding) are in evidence before the CBA (T-47, L-7, et seq.), and Appellants' counsel's agreement with such rule (T-97, L-13, et seq.).

Further, while Appellant's counsel may consider his reference to the Fertitta violation proceeding to be perfunctory, (i.e. done mechanically, careless, cursory or dull), Appellee submits that the page and a half description of that proceedign by Appellants' counsel in his opening statement before the CBA (T-15, L-10, et seq.), was more than sufficient to put all of his admissions as to the proceeding before Judge Boone in evidence.

The Court's attention is further called to the testimony of John Lewis, on cross-examination by Appellants' counsel, as follows (T-105, L-11, et seq.):

Question: "Was Judge Boone given any information about how to define the divisional line if there was an irregular shore?"

Answer: "The engineers from both parties discussed that in some detail. However, I had no inclusion into that testimony."

Further, the opinion of the Zoning Commissioner, a part of the record in this case includes, among other references to the case before Judge Boone, the Commissioner's description of that proceeding and findings after having "listened to the taped record of the violation case" (Commissioner's Opinion P-6, L-12).

CONCLUSION

All of the findings of fact by the Board of Appeals were based on properly admitted evidence which was overwhelming in its support for the findings, and certainly surpassed the "fairly debatable" threshold established by the Court Of Appeals Of Maryland. That the CBA properly applied BCZR Section 417.3, especially Subsection C thereof, which application was firmly supported by correctly admitted evidence before it.

Appellee submits that the decision of the Baltimore County Board of Appeals cries out for affirmance by this Honorable Court.

Respectfully submitted,

Lewis L. Fleury
424 Woodbine Avenue
Towson, MD 21204
(410) 825-9200
Attorney for Dorothea Fertitta, Appellee

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of July, 1997, a copy of the above Appellee's Memorandum in Opposition was mailed postage prepaid to J. Carroll Holzer, Esquire, 305 Washington Avenue, Suite 502, Towson, Maryland 21204, Attorney for Appellants.

Lewis L. Fleury

fertitta.mio

LEWIS L. FLEURY
ATTORNEY AT LAW
424 WOODBINE AVENUE
TOWSON, MARYLAND 21204

(410) 825-9200

July 10, 1997

Suzanne Mensh, Clerk
Circuit Court For Baltimore
County Courts Building
Towson, MD 21204

Re: Petition of Thomas T. Bolling, et ux, et al.
Civil Action No. 3-C-97-00740

Ms. Clerk:

Please file the enclosed Appellee's Memorandum In Opposition in the above-styled matter and acknowledge receipt of the same on the enclosed copy of this letter. Return it to me in the enclosed self-addressed envelope.

Thank you very much for your cooperation.

Very truly yours,

Lewis L. Fleury

Enclosures

cc: J. Carroll Holzer, Esquire
Mrs. Dorothea Fertitta

bc: Baltimore County Board Of Appeals ✓ Thought you might be interested in this. — Lew
Mr. John Lewis

97 JUL 11 PM 1:58
RECEIVED
COUNTY BOARD OF APPEALS

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

Case Number: 03-C-97-000740

RECEIVED
COUNTY BOARD OF APPEALS
97 JUN -9 PM 1:51

TO: BOARD OF APPEALS OF BALTIMORE COUNTY
400 Washington Avenue
Towson, MD

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

IN RE:
PETITIONS OF THOMAS T. BOLLING, ET UX
AND
PAUL D. KEIBLER, ET UX

CIVIL ACTION NO:
NO. 3-C-97-00740

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

* * * * * * * * * * * * * *

MOTION AND CONSENT FOR EXTENDING TIME FOR FILING
RULE 7-207 MEMORANDUM IN OPPOSITION

Now comes Appellee, Dorothy L. Fertitta, by her attorney, Lewis L. Fleury, pursuant to Rule 1-204, and moves the Court to extend the time for filing Appellee's Memorandum In Opposition from June 5, 1997 to June 21, 1997 and for reason says:

1. On the day Appellee's counsel received Appellant's Memorandum in this matter, counsel was departing for a six-day visit with his daughter and grandchildren, and therefore lost a week of the time allowed for the preparation of the Memorandum In Opposition.

2. Upon Counsel's return form said visit he became ill with a respiratory infection from which he continues to be partially disabled.

3. This matter is assigned for trial on August 13, 1997, per the Scheduling Order of this Court, which date is more than 60 days

FILED JUN - 6 1997

after this Motion.

4. That because Appellee's counsel is a sole practioner, with other clients and matters to take care of, he will need additinal time to prepare the Appellee's Memorandum In Opposition in this matter.

5. Appellants' Counsel joins in this Motion to indicate his consent to the granting of the extension requested.

Lewis L. Fleury
Attorney for Appellee

J. Carroll Holzer
Attorney for Appellants

ORDER

The above Motion having been considered, it is this 5 day of June, 1997,

ORDRED that the Appellee file her Rule 7-207 Memorandum In Opposition no later than August 1, 1997.

Judge

True Copy Test
SUZANNE MENSH, Clerk
Per
Assistant Clerk

PETITION OF:	*	IN THE
THOMAS T. BOLLING, ET UX 7202 GREEN BANK RD. BALTIMORE, MARYLAND	*	CIRCUIT COURT
	*	FOR
and	*	BALTIMORE COUNTY
PAUL D. KIEBLER, ET UX 7200 GREEN BANK RD. BALTIMORE, MARYLAND	*	CASE NO. 03-C-97-00740
FOR JUDICIAL REVIEW OF FINAL DECISION OF THE BOARD OF APPEALS OF BALTIMORE COUNTY 400 WASHINGTON AVE. TOWSON, MARYLAND	*	
RE: CASE NO. 96-244-SPH and CASE NO. 96-245-SPH	*	

* * * * * * * * * * * *

ORDER

The Court having considered the Motion to Extend Time for Filing Rule 7-207 Memorandum, it is this 24th day of April, 1997

ORDERED that Petitioners file their Rule 7-207 Memorandum no later than May 19, 1997.

John Fader
Judge

True Copy Test
SUZANNE MENSH, Clerk
Per Glenda G. Hall
Assistant Clerk

ORDERS\A:\BOLLING ORD

Other Side will not agree but will not object SL

FILED APR 29 1997

LAW OFFICE
HOLZER AND LEE
WASHINGTON AVENUE
SUITE 502
OWSON MARYLAND
21204

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

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY
*
PETITION OF THOMAS J. BOLLING, ET UX
7202 Green Bank Road *
Baltimore, Maryland 21220
and *
PAUL D. KIEBLER, ET UX
7200 Green Bank Road *
Baltimore, Maryland 21220
*

FOR JUDICIAL REVIEW OF THE DECISION OF * CIVIL
THE COUNTY BOARD OF APPEALS ACTION
OF BALTIMORE COUNTY * NO. 3-C-97-00740
Room 49, Old Courthouse,
400 Washington Avenue *
Towson, Maryland 21204
*
IN THE CASE OF: IN THE MATTER OF
THOMAS J. BOLLING, ET UX *
FOR A SPECIAL HEARING ON PROPERTY
LOCATED ON THE NORTH SIDE GREEN BANK *
ROAD, 75' EAST OF C/L CHOPTANK ROAD
(7202 GREEN BANK ROAD) *
CASE NO. 96-244-SPH AND
PAUL D. KIEBLER, ET UX *
ON PROPERTY LOCATED 25' EAST OF C/1
CHOPTANK ROAD *
(7200 GREEN BANK ROAD)
CASE NO. 96-245-SPH *
15TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT *

* * * * * * * * * * * * *

RESPONSE TO PETITION FOR JUDICIAL REVIEW

Dorothea Fertitta, 7134 Green Bank Road, Baltimore, Maryland 21220, by Lewis L. Fleury, her attorney, responding to the Petition for Review filed by the applicants in this proceeding, states her intent to participate in the action for judicial review and defend the opinion and order of the Board of Appeals

of Baltimore County.

Lewis L. Fleury
424 Woodbine Avenue
Towson, MD 21204
(410) 825-9200

Attorney for Respondent,
Dorothea Fertitta

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of February, 1997, a copy of the foregoing Response to Petition for Judicial Review was sent by first-class mail, postage prepaid, to J. Carroll Holzer, Esquire, and Holzer and Lee, 305 Washington, Avenue, Suite 502, Towson, Maryland 21204, Counsel for Petitioner, and to the County Board of Appeals of Baltimore County, Room 49, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204.

Lewis L. Fleury

fe970212.res

LEWIS L. FLEURY
ATTORNEY AT LAW
424 WOODBINE AVENUE
TOWSON, MARYLAND 21204

(410) 825-9200

February 19, 1997

Clerk of the Circuit Court
for Baltimore County
Courthouse
Towson, MD 21204

Re: Petition of Thomas T. Bolling, et ux and
Paul D. Kiebler, et ux
Civil Action No. 3-C-97-00740

Madam Clerk:

Please file the enclosed Response to Petition for Judicial Review in the above matter, and confirm said filing by returning the enclosed copy of same in the enclosed envelope. Thank you very much for your assistance.

Very truly yours,

Lewis L. Fleury

Enclosures

cc: J. Carroll Holzer, Esquire
Holzer and Lee
County Board of Appeals
Dorothea Fertitta

fe970212.res

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

Case Number: 03-C-97-000740

Order - Leave to appeal in forma pauperis granted
Mr. Grimm
cct 1/23/97

TO: BOARD OF APPEALS OF BALTIMORE COUNTY
400 Washington Avenue
Towson, MD

C97-770

PETITION OF:	*	IN THE
THOMAS T. BOLLING, ET UX 7202 GREEN BANK RD. BALTIMORE, MARYLAND and PAUL D. KIEBLER, ET UX 7200 GREEN BANK ROAD BALTIMORE, MARYLAND	* * * *	CIRCUIT COURT FOR BALTIMORE COUNTY CASE NO. 03-C-97-00744
FOR JUDICIAL REVIEW OF FINAL DECISION OF THE BOARD OF APPEALS OF BALTIMORE COUNTY 400 WASHINGTON AVE. TOWSON, MARYLAND	* * *	
RE: CASE NO. 96-244-SPH and CASE NO. 96-245-SPH	* *	

* * * \

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the 23rd Day of January, 1997, a copy of the foregoing **Petition for Judicial Review** was mailed postage prepaid to Lewis Fleury, Esquire, 424 Woodbine Ave., Towson, MD, 21204, and the County Board of Appeals, 400 Washington Ave., Old Courthouse, Towson, Maryland 21204.

J. Carroll Holzer

A:\ Petitions\Kiebler.Pet

County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

January 14, 1997

Lewis L. Fleury, Esquire
424 Woodbine Avenue
Towson, MD 21204

RE: Case No. ~~94~~ 96-244-SPH /Thomas T. Bolling, et ux
and Case No. ~~94~~ 96-245-SPH /Paul D. Kiebler, et ux

Dear Mr. Fleury:

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

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,

Charlotte E. Radcliffe
Kathleen C. Bianco
Legal Administrator

encl.

cc: Ms. Dorothea Fertitta
J. Carroll Holzer, squire
Mr. and Mrs. Thomas T. Bolling
Mr. and Mrs. Paul D. Kiebler
Mr. Brent Shew
Mr. Steve Georas
Mr. James S. Patton
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

Printed with Soybean Ink
on Recycled Paper

IN THE MATTER OF * BEFORE THE
DOROTHEA FERTITTA -PROPERTY OWNER
7134 GREENBANK ROAD * COUNTY BOARD OF APPEALS
15TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT * OF BALTIMORE COUNTY

RE: APPROVAL OF BUILDING PERMITS *
CASE NO. CBA-96-129
*

* * * * * * * * * * * * * * * * *

O P I N I O N

This case comes before this Board on appeal from the issuance of permits to raze an existing shed, and to construct a single-family dwelling on the property of Dorothea Fertitta at 7134 Greenbank Road in the 15th Election District.

The adjacent property owner, Paul D. Kiebler of 7200 Greenbank Road, appealed the issuance of Permit #B260240 for the dwelling requiring ten (10) foot variances on each side of the thirty-two (32) foot house placed on a fifth (50) foot lot. A second permit was issued specifying different dimensions, but still protested by Mr. Kiebler.

After the razing of the shed and the start of excavation for the new Fertitta dwelling, several days of heavy rainfall followed. The work had to be delayed; the foundation caved in and serious erosion extended into the Kiebler property (Appellant's Exhibit #2).

Rodney A. Larrick, of the Department of Environmental Protection & Resource Management (DEPRM), testified as to his familiarity with the complaint by Mr. Kiebler and his resultant notice to the Fertittas to stabilize and make corrective measures. Because of continuous rainfall, the corrections were delayed. The foundation and backfilling eventually was completed on August 19, 1996, and the correction notice was then released on September 6,

MICROFILMED

1996.

Testimony indicates that County measures for correcting violations were completed satisfactorily and everything at the site is legal. There was unrebutted testimony by Mr. Larrick that the width of the footprint is well within the maximum permitted on the 50-foot lot. Assuming that the building is situated property, setback requirements will be met. All other issues regarding erosion have been satisfactorily tended to.

For all of the above reasons, the Board agrees that the permit is good and proper.

O R D E R

IT IS THEREFORE, this 14th day of January, 1997 by the County Board of Appeals of Baltimore County

ORDERED that the decision of the Buildings Engineer in the issuance of the subject permits to raze an existing shed and construct a single-family dwelling be and is hereby **AFFIRMED.**

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

Robert O. Schuetz, Chairman

Lawrence M. Stahl

Harry E. Buchheister, Jr.

MICROFILMED

County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

January 14, 1997

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

RE: Case No. CBA-96-129
Dorothea Fertitta -Property Owner

Dear Mr. Holzer:

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

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,
Charlotte E. Radcliffe for
Kathleen C. Bianco
Legal Administrator

encl.

cc: Mr. & Mrs. Paul Kiebler
Lewis L. Fleury, Esquire
Dorothea Fertitta
Arnold Jablon, Director /PDM
John Reisinger, Bldg Engineer
Virginia W. Barnhart, County Attorney

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on Recycled Paper

IN RE: PETITION FOR SPECIAL HEARING N/S Green Bank Road, 75 ft. E of c/l Choptank Road 7202 Green Bank Road 15th Election District 5th Councilmanic District Thomas T. Bolling, et ux Petitioners	* * * * *	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY Case No. 96-244-SPH

****

IN RE: PETITION FOR SPECIAL HEARING N/S Green Bank Road, 25 ft. E of c/l Choptank Road 7200 Green Bank Road 15th Election District 5th Councilmanic District Paul D. Kiebler, et ux Petitioners	* * * * *	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY Case No. 96-245-SPH

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

These matters come before the Zoning Commissioner as a consolidated hearing on Petitions for Special Hearing for adjacent properties. As to case No. 96-244-SPH, a Petition for Special Hearing was filed by Thomas T. Bolling and Elizabeth N. Bolling, owners of the property known as 7202 Green Bank Road in the Oliver Beach subdivision of eastern Baltimore County. As to case No. 96-245-SPH, a Petition for Special Hearing was filed by Paul D. Kiebler and Jean A. Kiebler, owners of the adjacent property known as 7200 Green Bank Road.

The requested relief in each Petition is identically worded. Essentially, the Petitioners in each case seek an Order from this Zoning Commissioner establishing the divisional property lines for the subject lots pursuant to the provisions of 417.3 of the Baltimore County Zoning Regulations (BCZR). This section provides the methodology to be employed to establish the extension of property lines from waterfront properties into the body of water to which those properties lie adjacent. The Petitioners seek relief to determine what actions might be required to construct piers

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Date 11/12/96
By

from the subject properties as shown on the plat to accompany the Petitions for Special Hearing, marked as Petitioners' Exhibit No. 1. Moreover, the Petitions for Special Hearing also seek a determination that the adjacent properties designated as lots Nos. 31 and 32 are not in compliance with the provisions of Section 417.3 of the BCZR and, as a result, have prejudiced the Petitioners' ability to construct the proposed piers.

Appearing at the combined public hearing held for these cases were the Petitioners, Thomas T. Bolling and Elizabeth Bolling; and Paul D. Kiebler and Jean A. Kiebler. Also present on their behalf was James S. Patton, the engineer who prepared the site plans and exhibits which were offered in support of the Petitions. The Petitioners were represented by J. Carroll Holzer, Esquire.

Appearing in opposition to the requests was Dorothy M. Fertitta, the owner of an adjoining property to the Kiebler lot known as lot No. 31 and Steve Georas, the owner of lot No. 32. Ms. Fertitta was represented by Louis Fleury, Esquire. Also appearing on behalf of Mrs. Fertitta was E.F. Raphel, a property line surveyor. Other interested neighbors who appeared in opposition to the request included Philip Parsons, Brent Shew and Lisa Beck.

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In order to appreciate the complex issues presented by these cases, an understanding of the five adjacent lots involved in this matter is necessary. These parcels are shown on the site plan as lot Nos. 28 through 32 of the Oliver Beach subdivision plat. This is an older subdivision in eastern Baltimore County and the five lots at issue are all waterfront properties. To the north, the lots have frontage on the Gunpowder River and the southern property lines abut Green Bank Road. Running from east to west, the first lot is lot No. 28, owned by Mr. and Mrs. Jordan. Lot No. 28 is approximately 185 ft. in depth and is roughly rectangular in

shape. It is zoned D.R.5.5. Interestingly, the side property lines of this lot are not parallel in that the width of the lot tapers towards the water. The parcel is approximately 50 ft. wide at the water whereas the dimension at the road is 70 ft. Mr. and Mrs. Jordan have constructed a pier of approximately 185 ft. in length extending into the water. The Jordans' pier was constructed to be perpendicular to their bulkhead line.

The next lot under discussion is that owned by the Petitioners in case No. 96-244-SPH, namely, Thomas T. and Elizabeth N. Bolling. Mr. and Mrs. Bolling's lot is zoned D.R.5.5 and is improved with a single family dwelling in which the Bollings reside. As is the case with the Jordan lot, the Bolling lot is tapered so as to provide a 70 ft. width at the roadside and 50 ft. at the bulkhead. Mr. and Mrs. Bolling wish to construct a pier from their property.

Next is the lot owned by the Petitioners, Paul D. and Jean A. Kiebler in case No. 96-245-SPH. This lot is also improved with a single family dwelling and is, likewise, zoned D.R.5.5. The Kiebler lot is more rectangular in shape than the Bolling and Jordan lots. Particularly, the Kiebler lot is both 50 ft. wide at the bulkhead and at the road. Mr. and Mrs. Kiebler also requested approval to construct a pier.

Moving westward, the next lot is lot No. 31 owned by Dorothy M. Feritta. Ms. Fertitta's lot is also 50 ft. wide at the water and at the road. Moreover, Ms. Fertitta constructed a pier of approximately 150 ft. in length in 1993. It is the location of this pier with which the Kieblers and Bollings take issue, claiming that same crosses the divisional property line extending into the water which separates the Kiebler and Fertitta property rights.

The fifth lot, lot No. 32, is owned by Mr. and Mrs. Georas. They have owned the property for approximately one year. The prior owner construct-

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By

ed a pier of approximately 110 ft. several years ago. Mr. Georas' lot is also 50 ft. wide at the river and the road.

This case requires an interpretation of Section 417.3 of the BCZR and Appendix J of the regulations, which provides schematic representation to interpret Section 417.3. Essentially, that section provides the methodology to be employed to establish divisional property lines. These division of property lines define the extension of property lines from the water's edge into the water. For properties with straight shore lines (i.e., those where a 90 degree angle exists in the two corners of the lot measured by the shore line and side property lines) the placement of the divisional property lines is simple. The side yard property lines need only be extended into the water indefinitely. For an irregularly shaped shore line (i.e., those where the angles between the side property line and shore line are greater or less than 90 degrees) Section 417.3 and Appendix J provide the methodology to establish the divisional lines. In essence, these lines are established so as to provide all adjacent property owners with a fair and uniform access to the water.

The measurement of the divisional property lines in the subject case are difficult. For their part, the Petitioners claim that the properties at issue contain irregular frontage, whereas the Protestants and Baltimore County believe the shore lines to be roughly straight. Two factors are present which have complicated the issue. First, the Jordan and Boiling lots are tapered; i.e., the side property lines are not parallel to one another. As noted above, these two lots are both 70 ft. wide at the road and 50 ft. wide at the water. This tapering of the lots complicates the determination of the divisional property lines. Secondly, and as importantly, is the fact that none of the five lots at issue contain right angles in the corners of those lots which are measured at the water. As

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is clearly shown on all of the site plans, the bulkhead line, when measured with the side property lines, creates an angle of greater or less than 90 degrees.

In any event, the genesis of this matter actually occurred in approximately 1993 when Ms. Fertitta began constructing her pier. Testimony and evidence was offered regarding this construction and the dispute which arose between her and Mr. Kiebler. Suffice it to say, Ms. Fertitta believes that the construction and placement of her pier is proper. Although a permit was initially not obtained for the pier's construction by her, one was eventually issued by Baltimore County and the pier was completed thereafter. The Petitioners believe that the Fertitta pier was improperly located and prejudices their ability to construct piers from their property. Petitioners' Exhibit No. 1, the site plan prepared by Mr. Patton, geographically illustrates the divisional lines as alleged by the Petitioners.

Moreover, it was the construction and resultant legal proceedings involving the Fertitta pier which brought about a preliminary objection in the instant case to these Petitions. Specifically, Mr. Fleury, on behalf of Ms. Fertitta, objected to consideration of the Petitions in the subject cases claiming that the issues presented here had already been resolved in a previous case. Specifically, he noted that Baltimore County had previously prosecuted Ms. Fertitta in zoning violation case No. C-94-660 (court case No. SP-02499-94). In that matter, following the receipt of a complaint by Mr. and Mrs. Kiebler, the Baltimore County Office of Law filed a zoning citation against Ms. Fertitta, alleging that her pier failed to observe the required 10 ft. setback from the divisional property lines. In fact, the citation alleged that the pier actually crossed the divisional property line between the Fertitta and Kiebler properties. The matter

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By

could not be settled amicably and the case proceeded through hearing in the District Court of Maryland before the Honorable A. Gordon Boone, Judge.

Mr. Fleury offered as exhibits the County's violation file in this case and also the taped record of the case in the District Court. He claimed that resolution of the violation case prohibited consideration of the issues presented in the subject Petitions based on the principals espoused in the doctrines of double jeopardy (criminal) and a res ajudicata (civil). Essentially, Mr. Fleury argued that the disposition of the Fertitta case prohibited consideration of the issues presented in the Petitions for Special Hearing.

I have listened to the taped record of violation case. It is of note that Mr. Kiebler, although a witness in that case, was not a party. The parties were clearly only Baltimore County and Ms. Fertitta. The case was prosecuted on behalf of Baltimore County by Lee Thompson, Esquire, from the Office of Law. Ms. Fertitta was defended by Mr. Fleury.

Testimony was offered, in that case, from a Mr. Kodis of Triangle Surveying, Inc., and Mr. Thomas, a registered property line surveyor, employed by that company. Testimony was also presented in the County's case through Mr. Kiebler. In defense, Mr. Fleury produced the testimony of Mr. Raphel.

The dominant theme of the testimony offered in that case were the competing property line surveys which were prepared by Mr. Raphel and Mr. Thomas. Unfortunately, other than Mr. Kiebler, it appeared that none of the witnesses in that case understood or appreciated the concept of divisional property lines as set forth in Section 417.3 of the BCZR. There was no testimony offered to Judge Boone as to that section of the BCZR and what it requires in terms of establishing divisional property lines.

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Date 4/11/96
By Zi. Zeik

Rather, the parties spent a great amount of time offering conflicting and bickering testimony about the placement of the lot lines on the land. Both surveyors apparently believed that once these lines were established, they need only be extended straight into the water to determine the location of the divisional lines. Neither side attempted to enlighten Judge Boone as to the County law and the methodology to be employed when an irregular shore line existed.

In any event, as to Mr. Fleury's objection, I will, upon review of the file and tape, sustain it in part, and overrule it in part. As it relates to that portion of the Petition for Special Hearing which seeks a determination that the Fertitta pier is illegally constructed, the District Court's ruling is dispositive. Judge Boone, based on the evidence presented to him, held that the location of the Fertitta pier was not violative of the BCZR. In my judgment, I believe that I am bound by that ruling although it is unfortunate that the County did not attempt to offer evidence to the Court which would have offered an explanation of how divisional lines should be measured in cases such as these.

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By

Although Judge Boone's ruling precludes a finding on that issue, I do not conclude that it prohibits consideration of the Petitioners' other request for relief; namely, for an Order defining the proper location of piers from the Kiebler and Bolling lots. That is, it is clear that the violation case considered the Fertitta pier only and Judge Boone's ruling cannot be binding on other properties which were not under consideration in that case. Thus, the Petition is properly before me, as it relates to the Kiebler and Bolling lots.

Returning to the testimony and evidence offered in the instant case, testimony was first received from Edward F. Deiaco-Lohr, a registered property line surveyor with Gerhold, Cross and Etzel. Mr. Deiaco-Lohr's

survey was presented as Petitioners' Exhibit No. 2. The Petitioners submit that the survey presents an accurate representation of the property lines, a conclusion to which Mr. Raphel, on behalf of the Protestants, agreed. Thus, I find Mr. Deiaco-Lohr's survey to be accurate and a proper representation of the situation.

Also testifying on behalf of the Petitioners was James S. Patton, a professional engineer, who prepared many of the site plan exhibits. Mr. Patton presented a thorough examination of the issues and history of these regulations. In essence, he concluded that the subject properties feature an irregular shore line, not a straight shore line. Thus, he measures the divisional lines, following the standards set forth in Section 417.3 of the BCZR and Appendix J, in a manner as shown in Petitioners' Exhibit No. 1. He believes that both the Georas and Fertitta piers are improperly located. However, recognizing their existence and Judge Boone's conclusion, Mr. Patton suggests pier construction by Mr. and Mrs. Bolling and Mr. and Mrs. Kiebler in a manner as shown on Petitioners' Exhibit No. 1.

Testifying on behalf of the Protestants was Mr. Raphel. His rather simplistic approach is to identify the property lines on the land and merely extend the same straight into the water. He disagrees with Mr. Patton's conclusions.

Also testifying was John Lewis, from the Office of Permits and Development Management. Mr. Lewis testified that this was not an irregular shore line but a straight shore line and discussed the application of Section 417.3 and Appendix J.

With all due respect to Mr. Lewis and Mr. Raphel, it is my judgment that the shore lines created by these five properties are not straight and that determination of the divisional lines cannot be made by merely extending the property lines on land between the lots directly into the water.

ORDER RECEIVED FOR FILING
Date 7/11/96
By

This is so, as observed above, due to the taper configuration of two of the lots (i.e., Jordan and Bolling) and the fact that all of the lots do not have 90 degree corners at the edge. Moreover, it is clear that one pier has been built off of another. After the Georas pier was originally constructed, Ms. Fertitta built her pier to run parallel thereto. The problem has arisen as when the Jordan pier was constructed. Same was built out perpendicular to that property. The result of this construction is that there is a distance, in the water, of only 95 ft. from the Jordan pier to the Fertitta pier. This is so, notwithstanding the fact that both piers are built in approximately the center of their respective properties, as measured from side yard to side yard built in perpendicular fashion from the lots; and that the Fertitta and Jordan piers are separated on land by, at least, 140 ft. As shown on the plats, the Kiebler and Bolling lots are 50 ft. wide and there appears to be at least 50 additional feet of distance from the existing piers at the bulkhead.

What has resulted is a difficult situation. The access to the water available to the Bollings and Kieblers is limited because of the prior construction. Counsel for the Petitioners made it clear that they do not seek any Order to remove these piers and I would decline to do so anyway. As noted above, Judge Boone's ruling is dispositive on the Fertitta pier and I do not believe that any of the parties should be unduly penalized. However, all must recognize the limited access is available and [illegible] be shared appropriately.

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Date 4/11/96
By Mr. Mr.

In this regard, Section 417.4 of the BCZR is instructive. That section basically states that in the event of a conflict with existing construction, the rules of defining divisional lines shall be applied so as to cause the least interference with existing or possible future construction. In my judgment, Petitioners' Exhibit No. 16 presents the

proper compromise. That exhibit, proposes the least interference with the existing construction and is a proper compromise. I cannot accept Mr. Raphel's simplistic approach of merely extending the property lines and constructing the proposed piers of the Bolling and Kiebler lots, as show on his plat (Protestants' Exhibit No. 4). That approach moves the problem eastward and would result in an unreasonably tight distance between the future Bolling pier and existing Jordan pier. All four of the affected property owners (Jordan, Kiebler, Bolling and Fertitta) must share the limited access accordingly and preserve a most reasonable and consistent distance between each of their piers and pilings. Thus, the Petitions for Special Hearing should be approved in part and denied in part and future pier construction shall be permitted only in accordance with Petitioners' Exhibit No. 16.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested should be granted in part and denied in part.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 11th day of April, 1996 that the Petitions for Special Hearing are granted in part and denied in part, as set forth hereinabove; and

IT IS FURTHER ORDERED that future construction of piers from the Petitioners' properties shall be in accordance with Petitioners' Exhibit No. 16; and

IT IS FURTHER ORDERED that nothing in these Finding of Facts and Conclusions of Law shall prejudice and/or restrict the property owners of lots 28, 31 and 32 (i.e., Jordan, Fertitta and Georas, respectively) from maintaining their piers as constructed, subject, however, to the following restriction:

> 1. The Petitioners are hereby made aware that proceeding at this time is at their own risk

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Date 4/11/96
By

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.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:mmn
att.

ORDER RECEIVED FOR FILING
Date 4/11/96
By

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning

Suite 112 Courthouse
400 Washington Avenue
Towson, MD 21204

(410) 887-4386

April 10, 1996

J. Carroll Holzer, Esquire
Suite 302, 305 Washington Avenue
Towson, Maryland 21204

Lewis Fleury, Esquire
424 Woodbine Avenue
Towson, Maryland 21204

RE: Case Nos. 96-244-SPH and 96-245-SPH
Petitions for Special Hearing
Thomas T. Bolling, et ux, Petitioners
Paul D. Kiebler, et ux, Petitioners

Gentlemen:

Enclosed please find the decision rendered in the above captioned case. The Petitions for Special Hearing have been granted in part and denied in part, in accordance with the attached Order.

In the event any party finds the decision rendered unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Appeals Clerk at 887-3353.

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:mmn
encl.
c: Mr. and Mrs. Thomas T. Bolling, 7200 Green Bank Road, 21220
Mr. and Mrs. Paul D. Kiebler, 7202 Green Bank Road, 21220
c: Ms. Dorothea M. Fertitta, 7134 Green Bank Road, 21220
Mr. Brent Shew, 7219 Green Bank Road, 21220
Mr. Steve Georas, 7132 Green Bank Road, 21220
Mr. James S. Patton, Patton Consultants, Ltd., 305 W. Chesapeake Ave
Suite 305, Towson, Maryland 21204

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CRITICAL 245

Petition for Special Hearing

96-245-SPH

to the Zoning Commissioner of Baltimore County

for the property located at 7200 Green Bank Road

which is presently zoned DR 5.5

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 Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

The divisional lines established on the plat accompanying this Zoning Petition to be in compliance with the provisions of Section 417.3 and to determine such other actions which will be required to construct the piers as shown on the plat and determine such items which may be presented at the Hearing relative to this issue.
see attached.

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

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

Legal Owner(s):

Paul D. Kiebler
(Type or Print Name)

Paul D. Kiebler
Signature

Jean A. Kiebler
(Type or Print Name)

Jean A. Kiebler
Signature

7200 Green Bank Road 335-5058
Address Phone No

Baltimore, Maryland 21220
City State Zipcode

Attorney for Petitioner

J. Carroll Holzer, Esq.
(Type or Print Name)

Signature

305 Washington Avenue, Suite 302
Address Phone No.

Towson, MD. 21204 825-6961
City State Zipcode

Name, Address and phone number of representative to be contacted

James S. Patton, P.E.
Name

305 W. Chesapeake Ave. #118 296-2140
Address Phone No

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

unavailable for Hearing

the following dates _____ Next Two Months

ALL _____ OTHER _____

REVIEWED BY: _____ DATE _____

DROP-OFF
NO REVIEW
12/11/95
ACR

Zoning Administration & Development Management

MICROFILMED

96-245-SPH

ATTACHMENT TO PETITION FOR SPECIAL HEARING Paul D. & Jean A. Kiebler

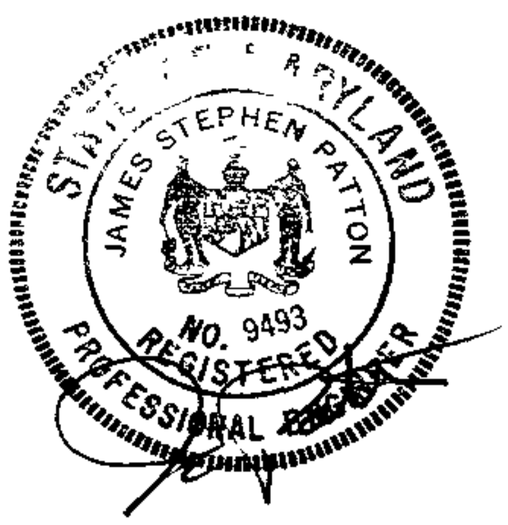
Further to determine that the adjacent properties designated as Lot #31 and #32 are not in compliance with the provisions of the Baltimore County Zoning Regulations contained in Sec. 417, and as a result have prejudiced Petitioner's ability to construct a pier as defined on the attached plat to accompany the instant Petition for Special Hearing.

245

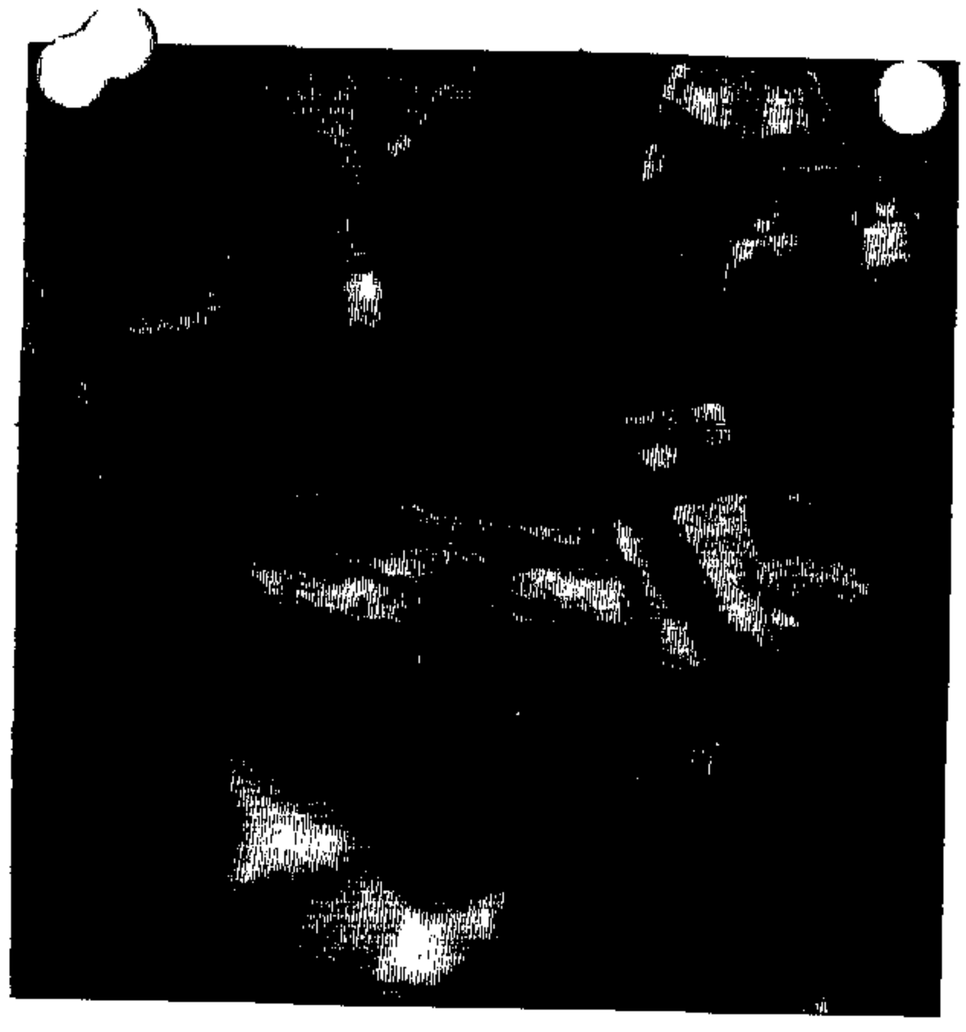
ZONING DESCRIPTION
7200 GREEN BANK ROAD

96-245-SPH

Beginning at a point on the north side of Green Bank Road which is 30 feet wide at the distance of 25 feet east of the centerline of the nearest improved intersecting street Choptank Road which is 30 feet wide. Being Lot #30, Block --, Section #B in the subdivision of Oliver Beach as recorded in Baltimore County Plat Book 12, Folio #56, containing 9,550 square feet. Also know as 7200 Green Bank Road and located in the 15th Election District, 5th Councilmanic District.



MICROFILMED



MICROFILMED

96-245-SPH

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY

Towson, Maryland

District 15th Date of Posting 12/29/95

Posted for: Special Hearing

Petitioner: Paul & Leon Miebler

Location of property: 7200 Green Bank Rd.

Location of Signs: Facing roadway on property being zoned

Remarks:

Posted by [signature] Date of return: 1/5/96

Signature

Number of Signs: 1

MICROFILMED

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

96-244-S
96-245-S

District 15th

Date of Posting 5/27/96

Posted for: Appeal

Petitioner: Thomas Bolling et ux & Paul Kiebler et ux

Location of property: 7202 & 7200 Green Bank Rd.

Location of Signs: Facing roadway on property being zoned

Remarks:

Posted by M Feely
Signature

Date of return: 5/31/96

Number of Signs: 2

Case No. 96-244-SPH & 96-245-SPH

96-244-SPH - Thomas T. Bolling, et ux - Petitioners
N/s Green Bank Road, 75' E of c/l
Choptank Road (7202 Green Bank Road)

96-245-SPH - Paul D. Kiebler, et ux - Petitioners
N/s Green Bank Road, 25' E of c/l
Choptank Road (7200 Green Bank Road)

15th Election District

Appealed: 5/2/96

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: #96-245-SPH
(Item 245)
7200 Green Bank Road
N/S Green Bank Road, 25' E of c/l Choptank Road
15th Election District
5th Councilmanic
Legal Owner(s):
Paul D. Kiebler and Jean A. Kiebler

Special Hearing: to determine whether the divisional lines established on the plat accompanying this Petition are in compliance with the provisions of Section 417.3 and such other actions which will be required to construct the piers as shown on the plat; further to determine that the adjacent properties designated as Lot #31 and #32 are not in compliance with the provisions of B.C.Z.R. contained in Section 417; and to determine such items which may be presented at the Hearing relative to this issue.

Hearing: Tuesday, January 16, 1996 at 9:00 a.m. in Rm. 118, Old Courthouse.

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.

12/19 Dec. c24203

CERTIFICATE OF PUBLICATION

TOWSON, MD., 12/29, 1995

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 12/28, 1995.

THE JEFFERSONIAN,

A. Henrikson
LEGAL AD. - TOWSON
Publisher

MICROFILMED

Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

Baltimore County zoning regulations require that notice be given to the general public/neighboring 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.: 245 Petitioner: PAUL & JEAN KIEBLER

Location: 7200 GREENBANK ROAD

PLEASE FORWARD ADVERTISING BILL TO:

NAME: PAUL KIEBLER

ADDRESS: 7200 GREEN BANK ROAD
BALTIMORE, MD. 21220

PHONE NUMBER: 335-5058

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on Recycled Paper

IN RE:	PETITION FOR SPECIAL HEARING N/S Green Bank Road, 75 ft. E. of c/l Choptank Road 7202 Green Bank Road Thomas T. Bolling, et ux, Petitioners	* * 	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY NO. 96-244-SPH

****

IN RE;	PETITION FOR SPECIAL HEARING N/S Green Bank Road, 25 ft. E. of c/l Choptank Road 7200 Green Bank Road Paul D. Kiebler, et ux, Petitioners	* * 	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY NO. 96-245- SPH

* * * * * * * * * * * *

NOTICE OF APPEAL

On behalf of Dorothea Fertitta, aggrieved owner of 7134 Green Bank Road, Baltimore, Maryland 21220, please enter an appeal to the County Board Of Appeals from the Order of the Zoning Commissioner entered in the above matters on April 11, 1996, for which a check for $210.00 is enclosed.

Lewis L. Fleury
424 Woodbine Avenue
Towson, Maryland 21204
825-9200
Attorney For Appellant

cc: County Board Of Appeals
J. Carroll Holzer, Esq.

RECEIVED
MAY 2 1996
PDM

MICROFILMED

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

NO. [illegible]

DATE 5/09/96 ACCOUNT R001-7120

AMOUNT $ 210.00

RECEIVED FROM: Dorothea M. Fertitta

FOR: Appeal fee 96-244 SPH + BC
96-245 SPH

MICROFILMED

03A71#0201MICHRC $210.00
BA C002:39PM05-09-96

Admitted for 100 [illegible] to file

VALIDATION OR SIGNATURE OF CASHIER

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

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

No. 012414

DROP-OFF — NO REVIEW
ITEM #245

DATE 12/11/95 ACCOUNT 001-6150

96-245-SPH

AMOUNT $ 85.00 (WCR)

RECEIVED FROM: Paul Kiebler

FOR: #030 - SPECIAL HEARING
#080 - SIGN POSTING
7200 Green Bank Road

03A91#0180MICHRC $85.00
BA C002:42PM12-11-95

VALIDATION OR SIGNATURE OF CASHIER

MICROFILMED

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

HOLZER & LEE

LAW OFFICES
J. CARROLL HOLZER, PA
THOMAS J. LEE

J. HOWARD HOLZER
1907-1989

TOWSON OFFICE
305 WASHINGTON AVENUE
SUITE 502
TOWSON, MD 21204
(410) 825-6961
FAX: (410) 825-4923

CARROLL COUNTY OFFICE
1315 LIBERTY ROAD
ELDERSBURG, MD 21784
(410) 795-8556
FAX: (410) 795-5535

June 7, 1996
#6896

Mr. Arnold Jablon, Director
Permits and Development Management
County Office Building
Towson, MD 21204

Re: Appeal to CBA Permit Number B272691
7134 Greenbank Road

Dear Mr. Jablon:

On behalf of my client, Paul Kiebler, of 7200 Greenbank Road, Baltimore, Maryland, 21220, by way of this letter I note an appeal to the CBA of the issuance of the above building permit approved on or about June 6, 1996. Attached is a check made payable to Baltimore County in the amount of $75 to cover the cost of the appeal.

If you have any questions, please call me at 825-6961.

Very truly yours,

J. Carroll Holzer

JCH:clg
cc: Paul Kiebler
County Board of Appeals

RECEIVED
2
PDM

MICROFILMED

96-2884

HOLZER & LEE

LAW OFFICES
J. CARROLL HOLZER, PA
THOMAS J. LEE

J. HOWARD HOLZER
1907-1989

TOWSON OFFICE
305 WASHINGTON AVENUE
SUITE 502
TOWSON, MD 21204
(410) 825-6961
FAX. (410) 825-4923

CARROLL COUNTY OFFICE
1315 LIBERTY ROAD
ELDERSBURG, MD 21784
(410) 795-8556
FAX. (410) 795-5535

5/16/96
TO SL

May 15, 1996

Mr. Arnold Jablon, Director
Permits and Development Management
County Office Building
Towson, MD 21204

Re: Appeal to CBA Permit No. B260238

Dear Mr. Jablon:

On behalf of my client, Paul Kiebler, 7200 Greenbank Road, Baltimore Maryland, 21220, this letter serves as a Notice of Appeal of the razing permit, number B260238, issued on or about May 1, 1996 for 7134 Greenbank Road. Attached is a check made payable to Baltimore County in the amount of $75 to cover the cost of the appeal.

If you have any questions, please call me at 825-6961.

Very truly yours,

J. Carroll Holzer

JCH:clg
cc: Paul Kiebler
County Board of Appeals

MAY 5 1996

MICROFILMED

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

No. D 1 B 865

DATE 5/09/76 ACCOUNT R001-7120

AMOUNT $ 20.00

RECEIVED FROM: Dorothy M. Feldman

FOR: Appeal fee - 6-244 SPHR DC

Validation or signature of cashier

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

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

No. D 1 B 873

DATE 5/12/76 ACCOUNT R001-6150

AMOUNT $ 210.00

RECEIVED FROM: [illegible]

FOR: Petition for Special Hearing

210.00

5/12/76

Validation or signature of cashier

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

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

No. 011800

DATE 6/12/96 ACCOUNT R001 7120

AMOUNT $ 75.00

RECEIVED FROM: J. CARROLL HOLZER PA

FOR: 1134 GREENBANK RD

01A00#0084MICHRC $75.00
APPEAL PERMIT B272691

VALIDATION OR SIGNATURE OF CASHIER

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

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

No. 011834

DATE 5/20/96 ACCOUNT R001-712

AMOUNT $ 75.00

RECEIVED FROM: J. Carroll Holzer PA

FOR: Appeal issuance of bldg. permit

01A00#0069MICHRC $75.00
B260238 BA C011:20AM05-20-96 1134 GREENBANK ROAD

VALIDATION OR SIGNATURE OF CASHIER

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

MICROFILMED

TO: PUTUXENT PUBLISHING COMPANY
December 28, 1995 Issue - Jeffersonian

Please foward billing to:

J. Carroll Holzer, Esq.
305 W. Chesapeake Avenue #302
Towson, MD 21204
825-6961

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: 96-245-SPH (Item 245)
7200 Green Bank Road
N/S Green Bank Road, 25' E of c/l of Choptank Road
15th Election District - 5th Councilmanic
Legal Owner(s): Paul D. Kiebler and Jean A. Kiebler

Special Hearing to determine whether the divisional lines established on the plat accompanying this Petition are in compliance with the provisions of Section 417.3 and such other actions which will be required to construct the piers as shown on the plat; further to determine that the adjacent properties designated as Lot #31 and #32 are not in compliance with the provisions of B.C.Z.R. contained in Section 417; and to determine such items which may be presented at the Hearing relative to this issue.

HEARING: TUESDAY, JANUARY 16, 1996 at 9:00 a.m. in Room 118, Old Courthouse.

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(2) FOR INFORMATION CONCERING THE FILE AND/OR HEARING, PLEASE CALL 887-3391.

MICROFILMED

Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

December 19, 1995

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: 96-245-SPH (Item 245)
7200 Green Bank Road
N/S Green Bank Road, 25' E of c/l of Choptank Road
15th Election District - 5th Councilmanic
Legal Owner(s): Paul D. Kiebler and Jean A. Kiebler

Special Hearing to determine whether the divisional lines established on the plat accompanying this Petition are in compliance with the provisions of Section 417.3 and such other actions which will be required to construct the piers as shown on the plat; further to determine that the adjacent properties designated as Lot #31 and #32 are not in compliance with the provisions of B.C.Z.R. contained in Section 417; and to determine such items which may be presented at the Hearing relative to this issue.

HEARING: TUESDAY, JANUARY 16, 1996 at 9:00 a.m. in Room 118, Old Courthouse.

Arnold Jablon
Director

cc: J. Carroll Holzer, Esq.
Paul and Jean Kiebler
James S. Patton, P.E.

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 CONCERING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.

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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 September 10, 1996

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), BOARD'S RULES OF PRACTICE & PROCEDURE, APPENDIX C, BALTIMORE COUNTY CODE.

CASE NO. CBA-96-129 DOROTHEA FERTITTA -Applicant
7134 Green Bank Road 15th Election District
Re: Issuance of Permit #B260238 /to raze existing shed; Suspension of Permit #B260240 /single family dwelling; Issuance of Permit #B272691 /single family dwelling.
NOTE: Appeals taken from issuance of permits.

96-244-SPH THOMAS T. BOLLING, ET UX -Petitioners
N/s Green Bank Road. 75' E of c/l Choptank Road
(7202 Green Bank Road)

96-245-SPH PAUL D. KIEBLER, ET UX -Petitioners
N/s Green Bank Road, 25' E of c/l Choptank Road
(7200 Green Bank Road) 15th E; 5th C

SPH -To establish divisional property lines for construction of piers
4/11/96 -Z.C.'s Order in which Petitions for Special Hearing were GRANTED in part and DENIED in part in Cases Nos. 96-244-SPH / 96-245-SPH.

ASSIGNED FOR: **THURSDAY, NOVEMBER 7, 1996 at 10:00 a.m.**

cc: J. Carroll Holzer, Esquire Counsel for Appellant /Kiebler
(Counsel for Petitioners /Kiebler, et ux, and Bolling, et ux)
Mr. & Mrs. Paul Kiebler Petitioners
Mr. & Mrs. Thomas T. Bolling Petitioners

Lewis L. Fleury, Esquire Counsel for Appellant /Fertitta
Dorothea Fertitta Appellant /Applicant

Brent Shaw
Steve Georas
James S. Patton /Patton Consultants, Ltd.
People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

MICROFILMED

Kathleen C. Bianco
Legal Administrator

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County Board of Appeals of Baltimore County

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

November 8, 1996

NOTICE OF DELIBERATION

Having concluded the hearing in this matter on November 7, 1996, the Board has scheduled the following date and time for deliberation in the matter of:

THOMAS T. BOLLING, ET UX /CASE NO. 96-244-SPH
AND PAUL D. KIEBLER, ET UX /CASE NO. 96-245-SPH

DATE AND TIME : Tuesday, December 3, 1996 at 9:30 a.m.

LOCATION : Room 48, Basement, Old Courthouse

---

cc: J. Carroll Holzer, Esquire Counsel for Appellant /Kiebler
(Counsel for Petitioners /Kiebler, et ux, and Bolling, et ux)
Mr. & Mrs. Paul Kiebler Petitioners
Mr. & Mrs. Thomas T. Bolling Petitioners

Lewis L. Fleury, Esquire Counsel for Appellant /Fertitta
Dorothea Fertitta Appellant /Applicant

Brent Shew
Steve Georas
James S. Patton /Patton Consultants, Ltd.
People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

Copies to: R.B.L.

Kathleen C. Bianco
Legal Administrator

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Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

January 11, 1996

J. Carroll Holzer, Esquire
305 Washington Avenue, Suite 302
Towson, MD 21204

RE: Item No.: 245
Case No.: 96-245-SPH
Petitioner: P. D. Kiebler

Dear Mr. Holzer:

The Zoning Advisory Committee (ZAC), which consists of representatives from Baltimore County approval agencies, has reviewed the plans submitted with the above referenced petition, which was accepted for processing by Permits and Development Management (PDM), Zoning Review, on December 11, 1995.

Any comments submitted thus far from the members of ZAC that offer or request information on your petition are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. Only those comments that are informative will be forwarded to you; those that are not informative will be placed in the permanent case file.

If you need further information or have any questions regarding these comments, please do not hesitate to contact the commenting agency or Joyce Watson in the zoning office (887-3391).

Sincerely,

W. Carl Richards, Jr.
Zoning Supervisor

WCR/jw
Attachment(s)

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on Recycled Paper

Joyce

Baltimore County Government
Fire Department

700 East Joppa Road
Towson, MD 21286-5500

Office of the Fire Marshal
(410) 887-4880

DATE: 12/29/95

Arnold Jablon
Director
Zoning Administration and
Development Management
Baltimore County Office Building
Towson, MD 21204
MAIL STOP-1105

RE: Property Owner: SEE BELOW

LOCATION: DISTRIBUTION MEETING OF DEC. 26, 1995.

Item No.: SEE BELOW Zoning Agenda:

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.

8. The Fire Marshal's Office has no comments at this time, IN REFERENCE TO THE FOLLOWING ITEM NUMBERS: 243, 244, 245, 246, 247, 248 AND 249.

MICROFILMED

RECEIVED
JAN - 4 1996

REVIEWER: LT. ROBERT P. SAUERWALD
Fire Marshal Office, PHONE 887-4881, MS-1102F

cc: File

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on Recycled Paper

B A L T I M O R E C O U N T Y , M A R Y L A N D

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Permits and Development
Management

DATE: January 5, 1996

FROM: Pat Keller, Director
Office of Planning

SUBJECT: Petitions from Zoning Advisory Committee

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

Item 243, 244, 245, 246, 247, 249 and 250

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

Prepared by: Jeffrey W. Long

Division Chief: Carl L. Kerns

PK/JL

MICROFILMED

ITEM243/PZONE/ZAC1

BALTIMORE COUNTY, MARYLAND
I N T E R O F F I C E C O R R E S P O N D E N C E

TO: Arnold Jablon, Director DATE: Dec. 29, 1995
Zoning Administration and Development Management

FROM: Robert W. Bowling, P.E., Chief
Development Plans Review

RE: Zoning Advisory Committee Meeting
for January 2, 1996
Items 243, 244, 245, 246, 247, 248 and 249

The Development Plans Review Division has reviewed the subject zoning items and we have no comments.

RWB:sw

MICROFILMED

Maryland Department of Transportation
State Highway Administration

David L. Winstead
Secretary
Hal Kassoff
Administrator

12-22-95

Ms. Joyce Watson
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No. 245 (WCR)

Dear Ms. Watson:

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 affected by any State Highway Administration projects.

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

Thank you for the opportunity to review this item.

Very truly yours,

Bob Small

for Ronald Burns, Chief
Engineering Access Permits
Division

BS/es

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

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
Interoffice Correspondence

DATE: April 1, 2002

TO: Arnold Jablon, Director
Permits & Development Management
Attn.: David Duvall

FROM: Theresa R. Shelton
Board of Appeals

SUBJECT: **Paul Kiebler and Thomas Bolling**
Case No.: 96-245-SPH and 96-244-SPH
Circuit Court Case No.: 03-C-97-000740

Judge Daniels of the Circuit Court issued an Order on 2/19/98 enforcing the settlement agreement. The case was then appealed to the Court of Special Appeals. The Court of Special Appeals issued a Mandate on 2/99 affirming the judgment. No further appeals have been taken in this matter. The Board of Appeals is closing and returning the file that is attached herewith.

Attachment: SUBJECT FILE ATTACHED

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Attn.: John R. Reisinger
Permits & Development Management

DATE: November 18, 1997

FROM: Charlotte E. Radcliffe
County Board of Appeals

SUBJECT: Closed File -CBA-96-129
DOROTHEA FERTITTA
(Building Permit No. B260240)

As no further appeals have been taken regarding the subject case, we are herby closing the file and returning same to you herewith.

Attachment (Case File No. CBA-96-129)

MICROFILMED

BALTIMORE COUNTY, MARYLAND
Inter-Office Memorandum

DATE: July 14, 1999

TO: Doug Swam
Supervisor, Permits Services

FROM: John L. Lewis
Planner II
Zoning Review, PDM

SUBJECT: Waterfront Construction
7200, 7202 & 7206 Greenbank Road

Due to court decisions, please refer any applicants for piers, boat lifts, pilings, etc. at the above locations to myself for a formal zoning review before allowing filing of permit applications.

JLL:scj

MICROFILMED

BALTIMORE COUNTY, MARYLAND
Inter-Office Memorandum

DATE: May 13, 1996

TO: John R. Reisinger
County Buildings Engineer

FROM: Regulo Tanguilig
Planner I

SUBJECT: Permit #B-260240
7134 Greenbank Road
15th Election District

Please rescind this office's approval of the above referenced building permit. It has come to our attention that, based on incorrect information supplied by the applicant, the width of the proposed building cannot meet the side yard setback requirement for D.R.-5.5

Our approval will not be reinstated until such time a public hearing is granted.

RT:scj

MICROFILMED

RE: PETITION FOR SPECIAL HEARING 7200 Green Bank Road, N/S Green Bank Rd, 25' E of c/l of Choptank Road, 15th Election District - 5th Councilmanic	*	BEFORE THE ZONING COMMISSIONER
	*	OF BALTIMORE COUNTY
Paul and Jean Kiebler Petitioners	*	CASE NO. 96-245-SPH

* * * * * * * * * * * * *

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 4th day of January, 1996, a copy of the foregoing Entry of Appearance was mailed to J. Carroll Holzer, Esquire, 305 Washington Avenue, Suite 502, Towson, MD 21286, attorney for Petitioner.

Peter Max Zimmerman

PETER MAX ZIMMERMAN

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Baltimore County
Department of Permits and
Development Management

Permits and Licenses
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
(410) 887-3900
Fax: (410) 887-2824

June 13, 1996

Ms. Dorothea Fertitta
7134 Greenbank Road
Baltimore, MD 21220

RE: Building Permit
No. B272691
7134 Greenbank Road
15th Election District

Dear Ms. Fertitta:

Please be advised that an appeal of the above-referenced case was filed in this office on June 12, 1996 by J. Carroll Holzer, Esquire, on behalf of Paul Kiebler. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals.

If you have any questions concerning this matter, please do not hesitate to call 887-3180.

Sincerely,

Arnold Jablon/nmn

ARNOLD JABLON
Director

AJ:nmn

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Baltimore County
Department of Permits and
Development Management

Permits and Licenses
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
(410) 887-3900
Fax: (410) 887-2824

May 13, 1996

J. Carroll Holzer, Esquire
Suite 302
305 Washington Avenue
Towson, MD 21204

RE: Petition for Special Hearing
N/S Green Bank Road, 25 ft. E
of c/l Choptank Road
7200 Green Bank Road
15th E.D. and 5th C.D.
Paul D Kiebler, et ux - Petitioners
Case No. 96-245-SPH

Dear Mr. Holzer:

Please be advised that an appeal for the above-referenced case was filed in this office on May 2, 1996 by *Lewis L. Fleury, Esquire on behalf of Dorothea Fertitta*. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals, "Board".

If you have any questions concerning this matter, please do not hesitate to contact the Board at 887-3180.

Sincerely,

ARNOLD JABLON
Director
Department of Permits and
Development Management

AJ:nmn

c: Mr. and Mrs. Thomas T. Bolling
Mr. and Mrs. Paul D. Kiebler
Mr. Brent Shew
Mr. Steve Georas
Mr. James S. Patton
People's Counsel

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APPEAL

Petition for Special Hearing
N/S Green Bank Road, 25 ft. E
of c/l Choptank Road
15th Election District
5th Councilmanic District
Paul D. Kiebler, et ux - Petitioners
Case No. 96-245-SPH

Petition for Special Hearing

Description of Property

Certificate of Posting

Entry of Appearance of People's Counsel

Zoning Plans Advisory Committee Comments

Petitioner(s) and Citizen(s) Sign-In Sheets

Petitioner's Exhibits: Shared Exhibits with Case No. 96-244-SPH

One Miscellaneous Letter to the Zoning Commissioner from Steve Georas, M.D., and Lisa A. Beck, M.D., dated April 7, 1996

Zoning Commissioner's Order dated April 11, 1996 (Granted in Part and Denied in Part)

Notice of Appeal received on May 2, 1996 from Lewis L. Fleury, Esquire, on behalf of Dorothea Fertitta

c: Lewis L. Fleury, 424 Woodbine Avenue, Towson, MD 21204
J. Carroll Holzer, Esquire, Suite 302, 305 Washington Avenue, Towson, MD 21204
Mr. and Mrs. Thomas T. Bolling, 7200 Green Bank Road, 21220
Mr. and Mrs. Paul D. Kiebler, 7202 Green Bank Road, 21220
Mr. Brent Shew, 7219 Green Bank Road, 21220
Mr. Steve Georas, 7132 Green Bank Road, 21220
Mr. James S. Patton, Patton Consultants, Ltd., 305 W. Chesapeake Avenue, Suite 305, Towson, MD 21204
People's Counsel of Baltimore County, M.S. 2010

Request Notification: Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director of PDM

MICROFILMED

NOTE - SEE OTHER CHECKLIST FOR ORIGINAL PERMIT INFO & ORIGINAL APPEALS

Appeal

Building Permit Application No. B272691
7134 Greenbank Road
15th Election District

CBA-96-129

Application for Building Permit No. B272691

Site Plan to Accompany Building Permit Application

Letter of Appeal received on June 12, 1996, from J. Carroll Holzer, Esquire, on behalf of Paul Kiebler

c: *J. Carroll Holzer, Esquire, 305 Washington Avenue, Suite 502, Towson, MD 21204
Ms. Dorothea Fertitta, 7134 Greenbank Road, Baltimore, MD 21220
Mr. Paul Kiebler, 7200 Greenbank Road, Baltimore, MD 21220
Request Notification: Arnold Jablon, Director of PDM

/E

11/07/96 -RE CBA-96-129 Fertitta

Hearing concluded this date; CBA deliberated immediately at conclusion of same; affirmed issuance of permits by PDM; found for Property Owner in this matter. Written Order to be issued; appellate period to run from date of written Order.
At conclusion of this case, proceeded to 96-244-SPH and 96-245-SPH, adjacent properties; same litigants. To be deliberated some time in Dec 1996; Order in zoning matter and PDM matter to be written at same time (R.L.B.)

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APPEAL

Building Permit Application No. B260238
7134 Greenbank Road - 15th Election District

CBA-96-129

Application for Building Permit No. B260238 (NEED DA

Application for Building Permit No. B260240 (W/ DATA SHEET - APPROVED)

Site Plan to Accompany Building Permit Applications

Request to Rescind Permit No. B260240 from Regulo Tanguilig to John R. Reisinger, dated May 21, 1996

Letter of Appeal received on May 15, 1996, from J. Carroll Holzer, Esquire, on behalf of Paul Kiebler

Miscellaneous Cash Receipt No. 011834

Letter of Appeal Notification to Dorothea Fertitta, dated May 20, 1996

Building Permit No. B260240 Suspension Letter to Dorothea Fertitta from John R. Reisinger, dated May 21, 1996

c: J. Carroll Holzer, Esquire, 305 Washington Avenue, Suite 502, Towson, MD 21204
Ms. Dorothea Fertitta, 7134 Greenbank Road, Baltimore, MD 21220

Request Notification: Arnold Jablon, Director of PDM
John R. Reisinger
Regulo Tanguilig

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IN RE:	PETITION FOR SPECIAL HEARING N/S Green Bank Road, 75 ft. E. of c/l Choptank Road 7202 Green Bank Road Thomas T. Bolling, et ux, Petitioners	* *	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY NO. 96-244-SPH

****

IN RE;	PETITION FOR SPECIAL HEARING N/S Green Bank Road, 25 ft. E. of c/l Choptank Road 7200 Green Bank Road Paul D. Kiebler, et ux, Petitioners	* *	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY NO. 96-245- SPH

* * * * * * * * * * * *

NOTICE OF APPEAL

On behalf of Dorothea Fertitta, aggrieved owner of 7134 Green Bank Road, Baltimore, Maryland 21220, please enter an appeal to the County Board Of Appeals from the Order of the Zoning Commissioner entered in the above matters on April 11, 1996, for which a check for $210.00 is enclosed.

Lewis L. Fleury
424 Woodbine Avenue
Towson, Maryland 21204
825-9200
Attorney For Appellant

cc: County Board Of Appeals
J. Carroll Holzer, Esq.

RECEIVED
MAY 2
PDM
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plans proposed the installation of a piling in the entrance to the Fertitta boat slip located at the end of her pier.

After the Request was filed Mr. Lewis prepared a plan, Petitioners' Exhibit 17, copy enclosed, on which the buildable and non-buildable areas are delineated. The Appellee argued that the proposed piers could be constructed in the buildable area without interference with the use of the Fertitta pier, but the Zoning Commissioner entered an Order approving the construction of the piers as set out on Petitioners' Exhibit 16. On appeal, the order of the Zoning Commissioner was reversed by the County Board Of Appeals, and the Special Hearing was denied, leaving the approval of the proposed piers to the Zoning Office.

The Petitioners appealed the decision of the Board Of Appeals, contending that this case, " reads like an epic novel of incompetence and buck passing on the part of the Zoning Office and the Board Of Appeals for Baltimore County". And after a hearing before Judge Lawrence Daniels, he held the matter sub-curia and instructed counsel to arrange for a conference in his chambers with a representative from the Zoning Office before October 15, 1997, in order to explore the approval of a plan under Section 417.3 of the Zoning Regulations, which will resolve the pending litigation.

I have spoken with Mr. Lewis in reference to the proposed meeting, and he has suggested that I write to you concerning your designation of the appropriate representative from the Zoning Office in this matter.

Accordingly, please give this matter your consideration, and advise counsel whom we should contact in the Zoning Office concerning the arrangement of the conference, as instructed by Judge Daniels.

Thank you very much for your cooperation and assistance.

Very truly yours,

ry

Speed Letter

In the interest of speed and economy, we are replying to your letter with marginal notes.
If you need more information, do not hesitate to call or write.
Thank you for your interest.

l Holzer, Esq.
Lewis

September 17, 1997

Dear Mr. Fluery:

Mr. Jablon has forwarded this letter to me for response and to identify myself as the representative of the Zoning Review Bureau in this matter.

Please contact me concerning the proposed meeting date and time at 410-887-3391.

Very truly yours,

John L. Lewis
Planner II, Zoning Review

JLL:rye

c: zoning cases 96-244-SPH
96-245-SPH

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File

IN RE: PETITION FOR
Special Hearing

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 96-245-SPH

* * * * * * * * * * *

SUBPOENA

TO:
John Lewis
Department of Planning & Zoning
111 Chesapeake Ave
Towson, MD 21204

You are hereby summoned and commanded to be and appear personally before the Zoning Commissioner/Deputy Zoning Commissioner of Baltimore County in Room 106 County Office Building

and to bring the zoning office file in the above captioned matter at 9:00 a.m.

on the 3rd day of April 1996, regarding the above captioned case, for the purpose of testifying at the request of Dorothy Fertitta.

Mr. Sheriff/Private Process Server:

Please process in accordance with Zoning Commissioner's Rule IV(c).

Zoning Commissioner/Deputy
Zoning Commissioner
for Baltimore County

Issued: 3/21/96

MICROFILMED

IN THE MATTER OF	*	BEFORE THE
Dorothea Fertitta	*	COUNTY BOARD OF APPEALS
7134 Green Bank Rd.	*	BALTIMORE COUNTY
	*	CASE NO. CBA-96-129, 96-244-SPH & 96-245-SPH

* * * * * * * * * * * * *

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Thursday November 7, 1996 at 10:00 a.m. at Room 48, located at Basement, Old Courthouse, 400 Washington Ave. and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Witness: Glenn Berry
Address: Buildings Inspection
County Office Bldg.

Witness: Please bring all files, notes, correspondence, letters, etc. in connection with above cases.

Name: J. Carroll Holzer
Firm: Holzer & Lee
Address: 305 Washington Ave. #502
Towson, MD 21204
825-6961

The witness named above is hereby ordered to so appear before the County Board of Appeals. The Board requests the Sheriff to issue the summons set forth herein.

/S/
County Board of Appeals of
Baltimore County

Cost: $_____

Summoned: _____, 19____

Not served: _____, 19____

Sheriff of Baltimore County

MICROFILMED

IN THE MATTER OF * BEFORE THE

Dorothea Fertitta * COUNTY BOARD OF APPEALS

7134 Green Bank Rd. * BALTIMORE COUNTY

* CASE NO. CBA-96-129, 96-244-SPH & 96-245-SPH

* * * * * * * * * * * * *

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Thursday November 7, 1996 at 10:00 a.m. at Room 48, located at Basement, Old Courthouse, 400 Washington Ave. and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Witness: Earl Ecker
Address: Buildings Inspection
County Office Bldg.

Witness: Please bring all files, notes, letters, correspondence, notices, etc. in connection with above cases.

Name: J. Carroll Holzer
Firm: Holzer & Lee
Address: 305 Washington Ave. #502
Towson, MD 21204
825-6961

The witness named above is hereby ordered to so appear before the County Board of Appeals. The Board requests the Sheriff to issue the summons set forth herein.

/s/
County Board of Appeals of
Baltimore County

Cost: $_____

Summoned: _____, 19____

Not served: _____, 19____

Sheriff of Baltimore County

MICROFILMED

IN THE MATTER OF	*	BEFORE THE
Dorothea Fertitta	*	COUNTY BOARD OF APPEALS
7134 Green Bank Rd.	*	BALTIMORE COUNTY
	*	CASE NO. CBA-96-129, 96-244-SPH & 96-245-SPH

* * * * * * * * * * * * *

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Thursday November 7, 1996 at 10:00 a.m. at Room 48, located at Basement, Old Courthouse, 400 Washington Ave. and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Witness: Rodney Larrick
Address: Buildings Inspection
County Office Bldg.

Witness: Please bring all files, notes, letters, correspondence, notices, etc. in connection with above cases.

Name: J. Carroll Holzer
Firm: Holzer & Lee
Address: 305 Washington Ave. #502
Towson, MD 21204
825-6961

The witness named above is hereby ordered to so appear before the County Board of Appeals. The Board requests the Sheriff to issue the summons set forth herein.

/s/
County Board of Appeals of
Baltimore County

Cost: $_____

Summoned: _____, 19____

Not served: _____, 19____

Sheriff of Baltimore County

MICROFILMED

IN THE MATTER OF	*	BEFORE THE
Dorothea Fertitta	*	COUNTY BOARD OF APPEALS
7134 Green Bank Rd.	*	BALTIMORE COUNTY
	*	CASE NO. CBA-96-129, 96-244-SPH & 96-245-SPH

* * * * * * * * * * * * *

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Thursday November 7, 1996 at 10:00 a.m. at Room 48, located at Basement, Old Courthouse, 400 Washington Ave. and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Witness: Roy List
Address: DEPRM
County Courts Bldg.

Witness: Please bring all files, notes, correspondence, letters, etc. in connection with above cases.

Name: J. Carroll Holzer
Firm: Holzer & Lee
Address: 305 Washington Ave. #502
Towson, MD 21204
825-6961

The witness named above is hereby ordered to so appear before the County Board of Appeals. The Board requests the Sheriff to issue the summons set forth herein.

/S/
County Board of Appeals of
Baltimore County

Cost: $_____

Summoned: _____, 19____

Not served: _____, 19____

Sheriff of Baltimore County

MICROFILMED

IN THE MATTER OF	*	BEFORE THE
Dorothea Fertitta	*	COUNTY BOARD OF APPEALS
7134 Green Bank Rd.	*	BALTIMORE COUNTY
	*	CASE NO. CBA-96-129, 96-244-SPH & 96-245-SPH

* * * * * * * * * * * * *

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Thursday November 7, 1996 at 10:00 a.m. at Room 48, located at Basement, Old Courthouse, 400 Washington Ave. and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Witness: Scott Porter
Address: DEPRM
County Courts Bldg

To Witness: Please bring all files, notes, correspondence, etc. in connection with above cases.

Name: J. Carroll Holzer
Firm: Holzer & Lee
Address: 305 Washington Ave. #502
Towson, MD 21204
825-6961

The witness named above is hereby ordered to so appear before the County Board of Appeals. The Board requests the Sheriff to issue the summons set forth herein.

/S/
County Board of Appeals of
Baltimore County

Cost: $_____

Summoned: _____, 19____

Not served: _____, 19____

Sheriff of Baltimore County

MICROFILMED

IN THE MATTERS OF	*	BEFORE
THOMAS T. BOLLING, ET UX and	*	COUNTY BOARD OF APPEALS
PAUL D. KIEBLER, ET UX,	*	OF
PETITIONERS, ETC. (RE 7134 GREENBANK ROAD)	*	BALTIMORE COUNTY
	*	CASE NOS. 96-244-SPH and 96-245-SPH

* * * * * * * * *

S U B P O E N A

STATE OF MARYLAND, BALTIMORE COUNTY TO WIT:

TO: (Name, Address, County) EUGENE F RAPHEL
265 COURTLAND AVENUE
TOWSON, MARYLAND 21204

YOU ARE HEREBY COMMANDED TO: ( ) **Personally appear;** ( ) **Produce documents and/or objects only;** (XX) **Personally appear and produce documents or objects;**

in Room 48, Basement, Old Courthouse, 400 Washington Avenue, Towson, MD 21204 on THURSDAY **the** 7th **day of** NOVEMBER, **199**6, **at** 10:00 **a.m.**

YOU ARE COMMANDED TO produce the following documents or objects:

ALL FILES IN YOUR CUSTODY AND CONTROL CONCERNING THE ABOVE CITED PROPERTY.

Subpoena requested by:

LEWIS L. FLEURY, ATTORNEY FOR OWNER, 424 WOODBINE AVE. TOWSON, MD 21204
(Name of Party or Attorney, Address and Phone Number) 825-9200

The witness named above is hereby ordered to so appear before the County Board of Appeals. The Board requests the Sheriff to issue the summons set forth herein.

Charlotte E. Radcliffe
County Board of Appeals of Baltimore County

IN THE MATTERSOF	*	BEFORE
THOMAS T. BOLLING, ET UX and	*	COUNTY BOARD OF APPEALS
PAUL D. KIEBLER, ET UX,	*	OF
PETITIONERS, ETC.	*	BALTIMORE COUNTY
RE: 7134GREENBANK ROAD	*	CASES NOS. 96-244-SPH and 96-245-SPH
	*	

* * * * * * * * * * * *

AFFIDAVIT OF SERVICE

I, the undersigned, certify that on Oct. 16, 1996, I effected service of process by personally serving a Subpoena upon EUGENE F RAPHEL at 205 COURTLAND AVENUE TOWSON, MARYLAND 21204, to appear before the County Board of Appeals of Baltimore County.

I further certify that I am over the age of 18 and am not a party to this action.

I solemnly affirm under penalty of perjury that the contents of this Affidavit are true and correct to my knowledge.

(signature)

Name: LEWIS L. FLEURY

Firm:

Address: 424 WOODBINE AVENUE
TOWSON, MARYLAND 21204

Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

December 28, 1995

J. Carroll Holzer, Esquire
305 Washington Avenue
Suite 302
Towson, MD 21204

RE: Preliminary Petition Review (Item #245)
Legal Owner: Paul D. & Jean A. Kiebler
7200 Green Bank Road
15th Election District

Dear Mr. Holzer:

At the request of the attorney/petitioner, the above referenced petition was accepted for filing without a final filing review by the staff. The plan was accepted with the understanding that all zoning issues/filing requirements would be addressed. A subsequent review by the staff has revealed no unaddressed zoning issues and/or incomplete information. As with all petitions/plans filed in this office, it is the final responsibility of the petitioner to make a proper application, address any zoning conflicts and, if necessary, to file revised petition materials. All revisions (including those required by the hearing officer) must be accompanied by a check made out to Baltimore County, Maryland for the $100.00 revision fee.

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

Very truly yours,

Mitchell J. Kellman
Planner II
Zoning Review

MJK:scj

Enclosure (receipt)

c: Zoning Commissioner

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BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Attn.: John R. Reisinger
Permits & Development Management

DATE: November 18, 1997

FROM: Charlotte E. Radcliffe
County Board of Appeals

SUBJECT: Closed File -CBA-96-129
DOROTHEA FERTITTA
(Building Permit No. B260240)

As no further appeals have been taken regarding the subject case, we are herby closing the file and returning same to you herewith.

Attachment (Case File No. CBA-96-129)

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Baltimore County
Department of Permits and
Development Management

Director's Office
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
(410) 887-3353
Fax: (410) 887-5708

May 21, 1996

Ms. Dorothea Fertitta
7134 Greenbank Rd
Baltimore, Md 21220

Re: Permit B260240

Dear Ms. Fertitta:

Based on information received from our Zoning section, Permit B260240 is hereby suspended. All work being done under this permit must stop until such time as the zoning concerns are addressed and the permit can be reinstated.

For further information, please contact Regulo Tanguilig at 887-3911.

Sincerely,

John R. Reisinger, P.E.
Building Engineer

c. Building Inspection
R. Tanguilig

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Baltimore County
Department of Permits and
Development Management

Permits and Licenses
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
(410) 887-3900
Fax: (410) 887-2824

May 20, 1996

Ms. Dorothea Fertitta
7134 Greenbank Road
Baltimore, MD 21220

Re: Building Permit
No. B260238
7134 Greenbank Road
15th Election District

Dear Ms. Fertitta:

Please be advised that an appeal of the above-referenced building permit was filed in this office on May 15, 1996 by J. Carroll Holzer, Esquire, on behalf of Paul Kiebler. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals.

If you have any questions concerning this matter, please do not hesitate to call 887-3180.

Sincerely,

Arnold Jablon /nmn

ARNOLD JABLON
Director

AJ:nmn

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Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us

May 12, 2000

Lewis L. Fleury, Esquire
424 Woodbine Avenue
Towson, Maryland 21204-4211

Dear Mr. Fleury.

RE: Zoning Verification, 7200, 7202 and 7206 Greenbank Rd., 96-244-SPH, 96-245-SPH, 15th Election District

This is a zoning response to your letter of April 27, 2000 to Mr. and Mrs. Kiebler at 7200 Greenbank Road and Mr. and Mrs. Bolling at 7202 Greenbank Road.

Please be aware that any permits for waterfront construction on the Kiebler or Fertilla lots must be reviewed by myself well in advance of any hoped for permit approvals. I also refer you to my last correspondence from 1999 which stipulates compliance with an already approved site plan. You can contact me at 410-887-3391 should you have any questions.

Sincerely,

John L. Lewis
Planner II
Zoning Review

JLL:kew

cc: Honorable Lawrence R. Daniels (Court File #97740)
Baltimore County Circuit Court

Mr. and Mrs. Paul D. Kiebler, 7200 Greenbank Rd.
Baltimore, Maryland 21220

Mr. and Mrs. Thomas Bolling. 7202 Greenbank Rd.
Baltimore, Maryland 21220

96-244-SPH
96-245-SPH

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Come visit the County's Website at www.co.ba.md.us

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Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us

July 28, 1999

Lewis L. Fleury, Esq.
424 Woodbine Avenue
Towson, MD 21204-4211

Dear Mr. Fleury:

RE: 7200, 7202 and 7206 Greenbank Road; 96-244-SPH, 96-245-SPH
15th Election District

I am in receipt of correspondence from you which indicates that due to a Circuit Court decision, this office is directly responsible to decide waterfront construction locations for proposed piers, etc. at the above location and the immediate vicinity. There was a drawing for construction made by myself to which both parties agreed (as determined by the Court of Special Appeals) and therefore I must insist that this drawing be the plan for future construction for both the Fertitta and Kiebler properties.

However, should both parties agree to a plan revision and sign a plan and statement of agreement on the revisions, I will review the plan in light of the Baltimore County Zoning Regulations (BCZR) and if in compliance, I will approve the revisions.

Due to the complicated issues involving these properties, no other changes other than as stated above will be considered or approved by this office. All future permits for waterfront construction on these properties must refer to the zoning cases and the decisions rendered as well be accompanied by a copy of this letter and a plan which has been previously approved by myself.

I trust that the information set forth in this letter is sufficiently detailed and responsive to the request. If you need further information or have any questions, please do not hesitate to contact me at 410-887-3391.

Sincerely,

John L. Lewis
Planner II
Zoning Review

JLL:ggs

c: Zoning case files: 96-244-SPH, 96-245-SPH
Mr. Paul Kiebler, 7206 Greenbank Rd., Baltimore MD 21220
Mr. Thomas Bolling, 7202 Greenbank Rd., Baltimore MD 21220
Mr. Doug Swam, Supervisor Permit Services

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Phone: (410) 825-9200
Fax: (410) 825-9201

Lewis L. Fleury
Attorney at Law
424 Woodbine Avenue
Towson, Maryland 21204-4211

To: JLL-?
4/28/00

April 27, 2000

15TH E.D.

Mr. and Mrs. Paul D. Kiebler
7200 Greenbank Road
Baltimore, MD 21220

and

Mr. and Mrs. Thomas Bolling
7202 Greenbank Road
Baltimore, MD 21220

Re: IN THE MATTERS OF THOMAS BOLLING AND
PAUL KIEBLER FOR SPECIAL HEARING
CASES NOS. 96-244-SPH AND 96-245-SPH

Dear Mr. and Mrs. Kiebler and Mr. and Mrs. Bolling:

Another boating season is upon us, and I still have no reply to my letters of June 17, or October 20, 1999.

This is a final effort to avoid the added expense to you of moving my clients boat lift when you proceed with construction of your proposed piers. In the event you should fail to request the approval one of the plans submitted with the above-mentioned letters, or contact me within 10 days from the date of this letter regarding your intention to cooperate in the design and construction of your piers pursuant to an approved plan, my client will proceed to install her boat lift on the existing pilings; and will seek from you the full cost of moving the lift, if that should become necessary.

Please give this matter your earliest consideration and let me know of your intentions. I look forward to hearing from you. Thank you for your cooperation.

Yours respectfully,

Lewis L. Fleury

cc: Hon. Lawrence R. Daniels (Court File # C97740)
Byron L. Warnken, Esq.
Mr. John Lewis
Ms. Dorothea Fertitta

fertlift.ltr

COPY

MICROFILMED

LEWIS L. FLEURY
ATTORNEY AT LAW
424 WOODBINE AVENUE
TOWSON, MARYLAND 21204

(410) 825-9200

Dear Mr. Fleury
pending
and note
request
L.K.

May2, 1996

County Board Of Appeals
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Thomas T. Bolling, et ux,
Case No.: 96-244-SPH and

Paul D. Kiebler, et ux,
Case No.: 96-245-SPH

Mr. Chairman:

Please do not set the above appeals for hearing prior to July 1, 1996, for the reason that I will be out of the office until June 15, 1996, and will need preparation time after my return.

Thank you for your consideration.

Lewis L. Fleury

cc: J. Carroll Holzer, Esq.

To schedule
after 7/01/96.
(Schedule hearing
thru that
time
write out
in normal
course.
K.L.

LEWIS L. FLEURY
ATTORNEY AT LAW
424 WOODBINE AVENUE
TOWSON, MARYLAND 21204

(410) 825-8200

June 17, 1999

Mr. and Mrs. Paul D. Kiebler
7200 Greenbank Road
Baltimore, MD 21220

and

Mr. and Mrs. Thomas Bolling
7202 Greenbank Road
Baltimore, MD 21220

Re: IN THE MATTERS OF THOMAS BOLLING AND
PAUL KIEBLER FOR SPECIAL HEARING
CASES NOS. 96-244-SPH AND 96-245-SPH

Dear Mr. and Mrs. Kiebler and Mr. and Mrs. Bolling:

I have been requested by my client to advise you that she is ready and willing to proceed with the reconfiguration of her pier pursuant to the agreement as set out in Judge Daniels' opinion; and further that she is eager to install her boat lift, and therefore anxious to complete the agreement, including the payment therefor as soon as possible.

Enclosed herewith is a copy of my letter of this date to Mr. Arnold Jablon, Director of the Department of Permits And Development Management for Baltimore County, with the plan referred to therein, all of which is self explanatory.

I offer this plan as a much less expensive alternative to reconfiguring the Fertitta pier with the "L" parallel to the shoreline, as shown on Mr. Lewis's drawing (Exhibit 1 in the Court hearing), which would require a complete redesign and reconstruction of the end of the pier, rather than a simple flip of the "L" as indicated on the enclosed plan.

However, if you do not wish to approve the enclosed alternate plan, Ms. Fertitta is willing to perform her part of the agreement pursuant to the prior plan prepared by Mr. Raphel, with the square footage of the redesigned "L" on her pier adjusted to equal its present footage, as originally conceived.

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In either case, I hereby ask that within 15 days of this letter you advise Mr. John Lewis in the Office of Zoning and me of your decision to proceed with either the enclosed alternate plan or the prior Raphel plan with the above proposed adjustment. And contact me so that we can arrange for the preparation of any necessary revised plan and a manner of payment of your two-thirds of the cost of relocation of the Fertitta pier that will be acceptable to all parties involved.

Also be advised that in the event you should fail to request the approval of the enclosed plan or contact me within the above 15 days time regarding your intention to cooperate in the design and completion of a workable plan, my client will proceed to install the boat lift on the existing pilings; and will seek from you the full cost of moving the lift, if that should become necessary.

Please give this matter your earliest attention and let me know of your intentions. I look forward to hearing from you. Thank you for your cooperation.

Yours respectfully,

Lewis L. Fleury

cc: Hon. Lawrence R. Daniels (Court File # C97740)
Byron L. Warnken, Esq.
Mr. John Lewis
Ms. Dorothea Fertitta

fertitta.ja2

MICROFILMED

Phone: (410) 825-9200
Fax: (410) 825-9201

LEW FAX/RA-INFO
CALLED LEW 7/2
SUGGESTED MTG
BTW BOTH PARTIES
+ MYSELF. LEFT
MSG.
LEW'S THERE SAID
HE'LL RETURN 7/1

MUST BE TO
ORIG UNLESS
BOTH COME IN
+ SIGN PLAN
AGREEING
TO CHANGES,
DO
LTR.
TO
BOTH
CALLED LEW 7/1

Lewis L. Fleury
Attorney at Law
424 Woodbine Avenue
Towson, Maryland 21204-4211

June 17, 1999

Mr. Arnold Jablon, Director

Office of Permits and Development Management
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: IN THE MATTERS OF THOMAS BOLLING AND
PAUL KIEBLER FOR SPECIAL HEARING
CASES NOS. 96-244-SPH AND 96-245-SPH

Dear Mr. Jablon:

I write this letter as counsel for Mrs. Dorothea Fertitta, protestant, Appellee in the Circuit Court For Baltimore County and at the Court Of Special Appeals, for the purpose of bringing the files and knowledge of the Office of Zoning up to date as to the occurrences in the above matter since my letter to you of September 10, 1997, as follows:

1. As indicated in the above paragraph, the Applicants appealed from order of the Board Of Appeals finding the plan approved by the Zoning Commissioner to be "in violation of Section 417.3C (of the BCZR) and that they may cause interference with both the existing pier on the Fertitta property and any possible expansion of the Fertitta pier", and recognizing " that the Petitioners are somewhat restricted in the area considered buildable by Baltimore County's Department of Permits and Development Management, however, it is that agency which is responsible for reviewing such matters and specifying the limits of construction as indicated in Section 417.3C."

2. While the matter was pending before Judge Daniels in the Circuit Court, the parties came to an agreement to settle the matter, the terms of which are set out in Judge Daniels opinion, copy of applicable pages enclosed, as follows: a. "... that the parties are to have a drawing submitted to the Zoning Office in Baltimore County that comports with exhibit 01, (Drawing by John Lewis for alterations of Fertitta pier, copy enclosed). And that, if in fact the Department of Zoning approves that drawing, that the corrections are to be made to the Fertitta pier and that the parties are to pay one-third each of the cost of making those corrections"

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Court Of Special Appeals by the Petitioners, and was affirmed.

4. Accordingly, this matter remains in the jurisdiction of the Circuit Court For Baltimore County for that Court's "superintending function", as indicated on page 25 of the Appellate opinion (copy of that page enclosed).

Enclosed herewith is a copy of a proposed plan for the relocation of the "L" of the Fertitta pier in the least expensive manner and the location of the piers on the Kiebler and Bolling properties, which Mr. John Lewis of the Zoning Department has reviewed and indicated that he would approve, if requested by the Petitioners.

In view of the present status of this case, I request that this letter and the enclosed plan be place in the Zoning Department file and that your staff be directed to flag the instant file, so that Mrs. Dorothea Fertitta and I be given timely notification of any application for building permit or other action taken in this matter by the owners of the Kiebler or Bolling properties.

Thank you very much for the cooperation and assistance of yourself and your staff in this very important matter.

Very truly yours,

Lewis L. Fleury

LLF/me

cc: Han. Lawrence R. Daniels (Court File # C97740)
Byron L. Warnken, Esq.
Mr. John Lewis
Mr. and Mrs. Paul D. Kiebler
Mr. and Mrs. Thomas T. Bolling
Ms. Dorothea Fertitta

misc\fertitta.jal

MICROFILMED

Phone: (410) 825-9200
Fax: (410) 825-9201

Lewis L. Fleury
Attorney at Law
424 Woodbine Avenue
Towson, Maryland 21204-4211

To. JLL
6/29/99
LLF

June 24, 1999

Mr. John Lewis
Zoning Office of Baltimore County
County Office Building
Towson, Maryland 21204

Re: In The Matters Of Thomas Bolling and Paul D. Kiebler
Case Nos.: 96-244-SPH and 96-245-SPH

Dear Mr. Lewis:

Pursuant to your request in our telephone conversation of yesterday, enclosed herewith are copies of pages 1, 34, 35 and 36 of the transcript of the hearing before Judge Daniels in the above matter, which contain his oral opinion finding an agreement between the as contained therein.

Also enclosed are copies of pages 23, 24 and 25 of the opinion of the Court Of Special Appeals, which contain that Court's direction as to the performance of the agreement.

The enclosed copy of my letter of this date to Judge Daniels, is explanatory as to the way I believe we should proceed in this matter.

Thank you for your continued cooperation.

Very truly yours,

L. L. Fleury

Lewis L. Fleury

cc: The Honorable Lawrence R. Daniels
Byron L. Warnken, Esq.
Ms. Dorothea Fertitta

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COPY

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY, MARYLAND

IN RE: PETITION OF THOMAS BOLLING, et ux.

CASE NO.
3C97-00740

/ January 22nd, 1998

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE LAWRENCE R. DANIELS, JUDGE

APPEARANCES:

ON BEHALF OF THE APPELLEE:

LEWIS FLEURY, ESQUIRE

ON BEHALF OF THE APPELLANT:

J. CARROLL HOLZER, ESQUIRE

REPORTED BY:
DEBORAH K. LAMBERT,
Official Court Reporter
Baltimore County Circuit Court
401 Bosley Ave., Room M-08
Towson, Maryland 21204
(410) 887-2635

MICROFILMED

E.7

LEWIS L. FLEURY
ATTORNEY AT LAW
424 WOODBINE AVENUE
TOWSON, MARYLAND 21204

(410) 825-9200

June 24, 1999

The Honorable Lawrence R. Daniels
Judge of The Circuit Court For
Baltimore County
County Courts Building
Towson, Maryland 21204

Re: In Re Petition of Thomas Bolling, et ux.

Dear Judge Daniels:

In response to Mr. Warnken's request for a hearing or a chambers conference in the above matter, be advised that I have this date spoken with Mr. Lewis, who has advised me that his only reference to an order from the court when speaking with Mr. Warnken was that he wished to see the opinion of the Court as to the terms of the settlement, so that he would not act contrary thereto.

Accordingly, enclosed is a copy of my letter of this date to Mr. Lewis which is self explanatory.

I do not agree with Mr. Warnken, "that your Honor's supervision is necessary", at this time. I suggest to you, and to Mr. Warnken by copy of this letter to him, that he and I confer concerning resolution of the "remaining issues", and if we cannot agree on reasonable solutions, we then seek the assistance of Mr. Lewis in a conference with him, and hold the supervision of your Honor as a last resort.

Please advise us of your intentions in this matter.

Respectfully,

Lewis L. Fleury

cc: Byron L. Warnken, Esq.
Ms. Dorothea Fertitta
Mr. John Lewis

fertitta.da2

MICROFILMED

Dr. Lisa A. Beck
Dr. Steve N. Georas
7132 Greenbank Road
Baltimore MD, 21220

RECEIVED
APR 12 1996
ZONING COMMISSIONER

Mr. Lawrence Schmidt
Zoning Commissioner
Baltimore County
400 Washington Ave.
Towson, MD 21204
Fax: 887-3468

Re: Case #96-245-SPH

April 7, 1996

Dear Mr. Schmidt,

We are writing in reference to the above case which you heard on April 3, 1996. As the property owners of lot #32 (adjacent to the Ferttita lot), we strongly object to the zoning plan described by Mr. Patton. As we stated during the hearing, it is not our intent to deny anyone's right to build a pier as long as this is done in a fair and equitable way. However, the seaward extension of property lines proposed by Mr. Patton (and approved by Baltimore County in the plan for the Kiebler pier) does *not* allow equal water access for all of the adjacent properties. Specifically, under these plans our lot will be allocated a narrow and tapering navigational channel that will significantly inhibit our ability to extend our pier. Given the shallow water depth in this area, constructing a longer pier allows for docking larger boats and is a real possibility for us in the future. Despite his attempts to answer our questions during the hearing, we still do not understand the basis for Mr. Patton's worksheets. As research scientists at Johns Hopkins University, it is not clear to us how what ought to be parallel lines end up converging on our property. Since the Gunpowder River is not private property, it is imperative that any zoning rules and regulations issued in this case ensure equal water access for current and future waterfront homeowners.

We appreciate your impartial attention to this matter.

Sincerely,

Steve Georas

Steve N. Georas, M.D.

Lisa A. Beck, M.D.

MICROFILMED

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

06/08/99

Case Number: 03-C-97-000740 AE
Date Filed: 01/23/1997
Status: Open/Active
Reference Number: 96-244/45-SPH
Judge Assigned: To Be Assigned,

In The Matter Of: Thomas T Bolling , Et Al

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
Reference Number	96-244/45-SPH

INVOLVED PARTIES

Type	Num	Name(Last,First,Mid,Title)	Entered
PET	001	Bolling, Thomas T 7202 Green Bank Road Baltimore, MD	01/23/97
		Attorney: 0012186 Holzer, J Carroll Holzer And Lee The 508 Building 508 Fairmount Avenue Towson, MD 21286-5448 (410)825-6961	01/23/97
PET	002	Kiebler, Paul D 7200 Green Bank Road Baltimore, MD	01/23/97
		Attorney: 0012186 Holzer, J Carroll Holzer And Lee	01/23/97

The 508 Building
508 Fairmount Avenue
Towson, MD 21286-5448
(410)825-6961

Type	Num	Name(Last,First,Mid,Title)	Entered
ITP	001	Board Of Appeals Of Baltimore County 400 Washington Avenue Towson, MD	01/23/97
ITP	002	Fertitta, Dorothea 7134 Green Bank Road Baltimore, MD 21220	02/24/97
	Attorney:		
		0012002 Fleury, Lewis L 424 Woodbine Avenue Towson, MD 21204 (410)825-9200	02/24/97

CALENDAR EVENTS

Date	Time	Dur	Cer	Evnt	Lvl	Jdg	Day	Of	Rslt	By	ResultDt	Jdg	T	Notice	Rec
08/13/97	09.30A	01H	yes	CIVI		TBA	01	/01	POS	C	08/13/97	LRD	P		

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal RSN
TBA To Be Assigned,	J	01/23/97	

DOCUMENT TRACKING

Num/Seq	Description	Filed	Received	Party	Routed	Ruling/ Closed	Closed	User ID	Entered
0001000	Petition for Judicial Review filed by PET 001/002	01/23/97	01/23/97	TBA 000				DR DR	01/23/97
0001001	Answer	02/24/97		TBA ITP002				DA DA	02/24/97
0002000	* Proceedings Before the Zoning Commissioner and the Board of Appeals of Baltimore County, fd. (INCORRECT ENTRY)	04/01/97	03/28/97	TBA ITP001				PS DFF	04/01/97
0003000	Motion to Extend Time	04/29/97		JFF 000		Granted	04/29/97	PH PH	04/29/97

Num/Seq	Description	Filed	Received		Party	Routed	Ruling/ Closed	Closed	User ID	Entered
0004000	Transcript of Record from Adm Agency	05/01/97	03/28/97	TBA	000				DFF DFF	05/01/97
0005000	Notice - Recpt of Record of Proceedings (Copies Sent).	05/01/97	03/28/97	TBA	000				DFF DFF	05/01/97
0006000	Notice of Appeal Sent	05/01/97	05/01/97	TBA	ITP001	05/01/97		05/01/97	DFF DFF	05/01/97
0007000	Notice of Appeal Sent	05/01/97	05/01/97	TBA	ITP002	05/01/97		05/01/97	DFF DFF	05/01/97
0008000	Notice of Appeal Sent	05/01/97	05/01/97	TBA	PET001	05/01/97		05/01/97	DFF DFF	05/01/97
0009000	Notice of Appeal Sent	05/01/97	05/01/97	TBA	PET002	05/01/97		05/01/97	DFF DFF	05/01/97
0010000	Scheduling Order	05/05/97	05/05/97	TBA	000	05/05/97		05/05/97	JD JD	05/05/97
0011000	Memorandum Of Law Filed by PET001-Bolling, Thomas T, PET002-Kiebler, Paul D	05/21/97	05/19/97	TBA	PET001			05/21/97	CB CB	05/21/97
0012000	Motion and Consent Order Extending Time for Filing Memorandum	06/06/97		JGT	000		Granted	06/06/97	LG LG	06/06/97
0013000	Appelle's Memorandum in Opposition	07/15/97	07/14/97	TBA	ITP002				CB CB	07/15/97
0014000	*Petition to Enforce Settlement Agreement	12/10/97	12/10/97	TBA	ITP002				CB CB	12/10/97
0015000	Open Court Proceeding Hon. Lawrence R Daniels Appellee's petition to enforce settlement Agreement (pp #14,000) Granted.	01/22/98		LRD	000				KV PH	01/22/98
0016000	Pre Trial Hearing Letter Issued	02/19/98	02/19/98	TBA	000	02/19/98		02/19/98	AJ AJ	02/19/98
0017000	Appeal Order to COSA (9/154)** Filed by PET001-Bolling, Thomas T, PET002-Kiebler, Paul D	02/19/98		TBA	PET001				PH PH	02/19/98
0018000	Pre Trial Hearing Letter Issued	02/19/98	02/19/98	TBA	000	02/19/98		02/19/98	AJ AJ	02/19/98
0019000	Supplemental Petition to Enforce Settlement Agreement, fd w/exhibits	02/23/98	02/19/98	TBA	ITP002				DR DR	02/23/98
0020000	Order from the Court of Special Appeals to proceed without a prehearing conference	04/20/98	04/17/98	TBA	000				CB CB	04/20/98
0021000	Original Record sent to COSA OF MARYLAND BY CERTIFIED MAIL WITH 1 TRANSCRIPT AND EXHIBITS FROM BOX 492.	06/10/98		TBA	000				CC CC	06/10/98
0022000	Mandate from the COSA affirming judgment	02/26/99		TBA	000				PH PH	02/26/99

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
1YRT	One Year Tickle (Jud	OPEN	01/23/98	365	no	no	DAAA	D	000	000
1ANS	1st Answer Tickle	OPEN	02/24/97	0	no	no	DANS	D	001	001
SLTR	Set List For Trial	DONE	02/24/97	0	yes	yes	1ANS	T	001	001
SLMR	Set List For Motions	CANCEL	05/21/97	22	no	no	MEXT	D	000	000
SLMR	Set List For Motions	CANCEL	06/28/97	22	no	no	MMOR	D	000	000
SLTR	Set List For Trial	CANCEL	08/14/97	0	yes	no	CIVI	S	000	000

EXHIBITS

Line #	Marked	Code	Description	SpH	Sloc	NoticeDt	Disp Dt	Dis By
Offered By. ITP 001 Board Of Appeals Of Baltimore								
000		B	BOX 492 ZOANING RE	B				

DIFFERENTIATED CASE MANAGEMENT

TRACKS AND MILESTONES

Track . R1 Description: EXPEDITED APPEAL TRACK Custom: Yes
Assign Date: 05/05/97 Order Date · 05/05/97
Start Date : 05/05/97 Remove Date.

Milestone	Scheduled	Target	Actual	Status
Motions to Dismiss under MD Rule 2-322(		05/20/97		OPEN
All Motions (excluding Motions in Limine		07/04/97		OPEN
TRIAL DATE is		08/03/97		OPEN

Attorney. 0012002 Fleury, Lewis L
424 Woodbine Avenue
Towson, MD 21204
(410)825-9200

CALENDAR EVENTS

Date	Time	Dur	Cer	Evnt	Jdg	L Day	Of	Rslt	By	ResultDt	Jdg	T	Notice	Rec
08/13/97	09:30A	001	yes	CIVI	TBA		01	/01	POS	C	08/13/97	LRD	P	

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal RSN
TBA To Be Assigned.	J	01/23/97	

DOCUMENT TRACKING

Num/Seq	Description	Filed	Received		Party	Routed	Ruling/ Closed	Closed	User ID	
001000	Petition for Judicial Review filed by PET 001/002	01/23/97	01/23/97	TBA	000				DR	DR
001001	Answer	02/24/97		TBA	ITP002				DA	DA
002000	* Proceedings Before the Zoning Commissioner and the Board of Appeals of Baltimore County. fd. (INCORRECT ENTRY)	04/01/97	03/28/97	TBA	ITP001				PS	DFF
003000	Motion to Extend Time	04/29/97		JFF	000		Granted	04/29/97	PH	PH
004000	Transcript of Record from Adm Agency	05/01/97	03/28/97	TBA	000				DFF	DFF
005000	Notice - Recpt of Record of Proceedings (Copies Sent)	05/01/97	03/28/97	TBA	000				DFF	DFF
006000	Notice of Appeal Sent	05/01/97	05/01/97	TBA	ITP001	05/01/97		05/01/97	DFF	DFF
007000	Notice of Appeal Sent	05/01/97	05/01/97	TBA	ITP002	05/01/97		05/01/97	DFF	DFF
008000	Notice of Appeal Sent	05/01/97	05/01/97	TBA	PET001	05/01/97		05/01/97	DFF	DFF
009000	Notice of Appeal Sent	05/01/97	05/01/97	TBA	PET002	05/01/97		05/01/97	DFF	DFF
010000	Scheduling Order	05/05/97	05/05/97	TBA	000	05/05/97		05/05/97	JD	JD

E. 4

Num/Seq	Description	Filed	Received		Party	Routed	Ruling/ Closed	Closed	User ID	
011000	Memorandum Of Law Filed by PET001-Bolling. Thomas T. PET002-Kiebler. Paul D	05/21/97	05/19/97	TBA	PET001			05/21/97	CB	CB
012000	Motion and Consent Order Extending Time for Filing Memorandum	06/06/97		JGT	000		Granted	06/06/97	LG	LG
013000	Appelle's Memorandum in Opposition	07/15/97	07/14/97	TBA	ITP002				CB	CB
014000	*Petition to Enforce Settlement Agreement	12/10/97	12/10/97	TBA	ITP002				CB	CB
015000	Open Court Proceeding Hon. Lawrence R Daniels. Appellee s petition to enforce settlement Agreement (pp #14,000) Granted.	01/22/98		LRD	000				KV	PH
016000	Pre Trial Hearing Letter Issued	02/19/98	02/19/98	TBA	000	02/19/98		02/19/98	AJ	AJ
017000	Appeal Order to COSA (9/154)** Filed by PET001-Bolling. Thomas T. PET002-Kiebler. Paul D	02/19/98		TBA	PET001				PH	PH
018000	Pre Trial Hearing Letter Issued	02/19/98	02/19/98	TBA	000	02/19/98		02/19/98	AJ	AJ
019000	Supplemental Petition to Enforce Settlement Agreement fd w/exhibits	02/23/98	02/19/98	TBA	ITP002				DR	DR
020000	Order from the Court of Special Appeals to proceed without a prehearing conference	04/20/98	04/17/98	TBA	000				CB	CB
021000	Original Record sent to COSA OF MARYLAND BY CERTIFIED MAIL WITH 1 TRANSCRIPT AND EXHIBITS FROM BOX 492.	06/10/98		TBA	000				CC	CC

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type
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SLMR	Set List For Motions	CANCEL	05/21/97	22	no	no	MEXT	D
SLMR	Set List For Motions	CANCEL	06/28/97	22	no	no	MMOR	D

E.5

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type
SLTR	Set List For Trial	CANCEL	08/14/97	0	yes	no	CIVI	S

EXHIBITS

Line #	Marked	Code	Description	SpH	Sloc	NoticeDt	Disp Dt	Dis By
Offered By. ITP 001 Board Of Appeals Of Baltimore								
000		B	BOX 492 ZOANING RE		B			

DIFFERENTIATED CASE MANAGEMENT
TRACKS AND MILESTONES

Track : R1 Description. EXPEDITED APPEAL TRACK Custom: Yes
Assign Date· 05/05/97 Order Date : 05/05/97
Start Date . 05/05/97 Remove Date.

Milestone	Scheduled	Target	Actual	Status
Motions to Dismiss under MD. Rule 2-322(		05/20/97		OPEN
All Motions (excluding Motions in Limine		07/04/97		OPEN
TRIAL DATE is		08/03/97		OPEN

E. 6

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

Case Number: 03-C-97-000740

TO: BOARD OF APPEALS OF BALTIMORE COUNTY
400 Washington Avenue
Towson, MD

THOMAS T. BOLLING, ET UX 96-244-SPH
PAUL D. KIEBLER, ET UX 96-245-SPH
NOTE: SEE 96-244-SPH CBA FOLDER FOR DOCUMENTS POST CBA ORDER

3-C-97-00740

No. 96-244-SPH

December 11, 1995	Petition for Special Hearing filed by J. Carroll Holzer, Esquire on behalf of Thomas T. and Elizabeth N. Bolling, property owners, to approve the divisional lines established on the plat, and to determine such other actions required to construct the piers.

Case No. 96-245-SPH

December 11, 1995	Petition for Special Hearing filed by J. Carroll Holzer, Esquire on behalf of Paul D. and Jean A. Kiebler, property owners, to approve the divisional lines established on the plat, and to determine such other actions required to construct the piers.
April 11, 1996	Order of the Zoning Commissioner in which Petitions for Special Hearing were GRANTED in part and DENIED in part.
May 2	Notice of Appeal filed by Lewis L. Fleury, Esquire, on behalf of Dorothea Fertitta.
November 7	Hearing before the Board of Appeals.
December 3	Deliberation conducted by the Board.
January 14, 1997	Opinion and Order of the Board in which the Petitions for Special Hearing were DENIED.
January 23	Petition for Judicial Review filed in the Circuit Court for Baltimore County by J. Carroll Holzer, Esquire, on behalf of Thomas T. Bolling, et ux and Paul D. Kiebler, et ux.
January 28	Copy of Petition for Judicial Review received by the Board of Appeals from the Circuit Court for Baltimore County.
January 28	Certificate of Notice sent to interested parties.
March 28	Transcript of testimony filed and Record of Proceedings filed in the Circuit Court for Baltimore County.
January 22, 1998	Open Court Proceedings wherein Appellee's petition to enforce settlement agreement was GRANTED. (docket noted of this only - no written opinion issued).
February 19	Notice of Appeal filed in the CSA by J. Carroll Holzer, Esquire on behalf of Bolling and Kiebler.

9/10/96 -Notice of Assignment sent to following for hearing sc
Thursday, November 7, 1996 at 10:00 a.m.:

J. Carroll Holzer, Esquire
Mr. & Mrs. Paul Kiebler
Mr. & Mrs. Thomas T. Bolling
Lewis L. Fleury, Esquire
Dorothea Fertitta
Brent Shaw
Steve Georas
James S. Patton /Patton Consultants, Ltd.
People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

11/07/96 -Hearing concluded on this matter; CBA deliberated immediately following conclusion of case; found that permit was legally issued; affirmed issuance of permits. Order to be issued; appellate period to run from date of that written Order. (R.L.B.)

(NOTE: At conclusion of deliberation in this matter, panel members proceeded to hear Cases No. 96-244-SPH and No. 96-245-SPH dealing with adjoining properties and involving the same litigants. That matter was also concluded this date; public deliberation in the special hearing matters to be scheduled for some time in December 1996.)

MICROFILMF

NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULING ORDER

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 BOSLEY AVENUE
P.O. BOX 6754
TOWSON, MD 21285-6754

Board Of Appeals Of Baltimore County
400 Washington Avenue
Towson MD

Assignment Date: 05/05/97

Case Title: In The Matter Of: Thomas T Bolling , Et Al
Case No: 03-C-97-000740 AE

The above case has been assigned to the EXPEDITED APPEAL TRACK. Should you have any questions concerning your track assignment, please contact: Richard P. Abbott at (410) 887-3233.

You must notify this Coordinator within 15 days of the receipt of this Order as to any conflicts with the following dates:

SCHEDULING ORDER

1. Motions to Dismiss under MD. Rule 2-322(b) are due by..... 05/20/97
2. All Motions (excluding Motions in Limine) are due by..... 07/04/97
3. TRIAL DATE is..... 08/13/97
   Civil Non-Jury Trial; Start Time. 09:30AM; To Be Assigned. APPEAL 1 HOUR

Honorable John Grason Turnbull II
County Administrative Judge

Postponement Policy: No postponements of dates under this order will be approved except for undue hardship or emergency situations All requests for postponements must be submitted in writing with a copy to all counsel/parties involved. All requests for postponements of cases filed after October 1, 1994 must be approved by the Administrative Judge

Settlement Conference (Room 507): All counsel and their clients MUST attend the settlement conference in person. All insurance representatives MUST attend this conference in person as well Failure to attend may result in sanctions by the Court. Settlement hearing dates may be continued by Settlement Judges as long as trial dates are not affected (Call [410] 887-2920 for more

Special Assistance Needs: If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation 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) 887-3018, or the Voice/TDD M D. Relay Service, (800) 735-2258.

Court Costs: All court costs MUST be paid on the date of the settlement conference or trial

cc: Lewis L Fleury
cc: J Carroll Holzer Esq
Issue Date 05/05/97

97 MAY -7 PM 6:31
RECEIVED
COUNTY BOARD OF APPEALS

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

N O T I C E O F R E C O R D

Case Number: 03-C-97-000740
Old Case number:
C I V I L

In The Matter Of: Thomas T Bolling , Et Al

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 28th day of March, 1997.

Suzanne Mensh
Clerk of the Circuit Court, per D.F.

Date issued: 05/01/97

TO: BOARD OF APPEALS OF BALTIMORE COUNTY
400 Washington Avenue
Towson, MD 21204

97 MAY -2 PM 3:22
RECEIVED
COUNTY BOARD OF APPEALS

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY
*
PETITION OF THOMAS T. BOLLING, ET UX
7202 Green Bank Road *
Baltimore, Maryland 21220
and *
PAUL D. KIEBLER, ET UX
7200 Green Bank Road *
Baltimore, Maryland 21220
*

FOR JUDICIAL REVIEW OF THE DECISION OF * CIVIL
THE COUNTY BOARD OF APPEALS ACTION
OF BALTIMORE COUNTY * No. 3-C-97-00740
Room 49, Old Courthouse, 400 Washing-
ton Avenue, Towson, MD 21204 *

IN THE CASE OF: IN THE MATTER OF *
THOMAS T. BOLLING, ET UX
FOR A SPECIAL HEARING ON PROPERTY *
LOCATED ON THE NORTH SIDE GREEN BANK
ROAD, 75' EAST OF C/L CHOPTANK ROAD *
(7202 GREEN BANK ROAD)
CASE NO. 96-244-SPH AND
PAUL D. KIEBLER, ET UX *
ON PROPERTY LOCATED 25' EAST OF C/1
CHOPTANK ROAD *
(7200 GREEN BANK ROAD)
CASE NO. 96-245-SPH *
15TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT *

RECEIVED AND FILED
97 JAN 28 PM 2: 15
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

* * * * * * * * * * * * *

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, Robert O. Schuetz, Lawrence M. Stahl, and Harry E. Buchheister, Jr., constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely, J. Carroll Holzer, Esquire and HOLZER AND LEE, 305 Washington Avenue, Suite 502, Towson, Maryland 21204, Counsel for Petitioners; Thomas T. Bolling, et ux, 7202 Green Bank Road, Baltimore, Maryland 21220 and Paul D. Kiebler, et ux, 7200 Green Bank Road, Baltimore, Maryland 21220, Petitioners; Dorothea Fertitta, 7134 Green Bank Road, Baltimore, Maryland 21220; Lewis L. Fleury, Esquire, 424 Woodbine Avenue, Towson, Maryland 21204, Counsel for Ms. Fertitta; and Peter Max Zimmerman,

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, 400 Washington Avenue, Room 47, Towson, Maryland 21204; a copy of which Notice is attached hereto and prayed that it may be made a part hereof.

Charlotte E. Radcliffe

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

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to J. Carroll Holzer, Esquire and HOLZER AND LEE, 305 Washington Avenue, Suite 502, Towson, Maryland 21204, Counsel for Petitioners; Thomas T. Bolling, et ux, 7202 Green Bank Road, Baltimore, Maryland 21220 and Paul D. Kiebler, et ux, 7200 Green Bank Road, Baltimore, Maryland 21220, Petitioners; Dorothea Fertitta, 7134 Green Bank Road, Baltimore, Maryland 21220; Lewis L. Fleury, Esquire, 424 Woodbine Avenue, Towson, Maryland 21204, Counsel for Ms. Fertitta; and Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, 400 Washington Avenue, Room 47, Towson, Maryland 21204, this 28th day of January, 1997.

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

County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

January 28, 1997

Lewis L. Fleury, Esquire
424 Woodbine Avenue
Towson, Maryland 21204

RE: Civil Action No. 3-C-97-00740
THOMAS T. BOLLING, ET UX
AND PAUL D. KIEBLER, ET UX

Dear Mr. Fleury:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that a Petition for Judicial Review was filed on January 23, 1997, in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to Rule 7-202(d)(2)(B).

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, must be filed under Civil Action No. 3-C-97-00740.

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

c: Ms. Dorothea Fertitta
Mr. Brent Shew
Mr. Steve Georas
Mr. James S. Patton
People's Counsel for Baltimore County
Lawrence E. Schmidt /Zoning Commissioner
Arnold Jablon /PDM
Virginia W. Barnhart, County Attorney

Printed with Soybean Ink
on Recycled Paper

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY
*
PETITION OF THOMAS T. BOLLING, ET UX
7202 Green Bank Road *
Baltimore, Maryland 21220
and *
PAUL D. KIEBLER, ET UX
7200 Green Bank Road *
Baltimore, Maryland 21220
*

FOR JUDICIAL REVIEW OF THE DECISION OF * CIVIL
THE COUNTY BOARD OF APPEALS ACTION
OF BALTIMORE COUNTY * No. 3-C-97-00740
Room 49, Old Courthouse, 400 Washing-
ton Avenue, Towson, MD 21204 *

IN THE CASE OF: IN THE MATTER OF *
THOMAS T. BOLLING, ET UX
FOR A SPECIAL HEARING ON PROPERTY *
LOCATED ON THE NORTH SIDE GREEN BANK
ROAD, 75' EAST OF C/L CHOPTANK ROAD *
(7202 GREEN BANK ROAD)
CASE NO. 96-244-SPH AND *
PAUL D. KIEBLER, ET UX
ON PROPERTY LOCATED 25' EAST OF C/l *
CHOPTANK ROAD
(7200 GREEN BANK ROAD) *
CASE NO. 96-245-SPH
15TH ELECTION DISTRICT *
5TH COUNCILMANIC DISTRICT
*
* * * * * * * * * * * * *

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

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

RECEIVED AND FILED

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

No. 96-244-SPH

December 11, 1995	Petition for Special Hearing filed by J. Carroll Holzer, Esquire on behalf of Thomas T. and Elizabeth N. Bolling, property owners, to approve the divisional lines established on the plat, and to determine such other actions required to construct the piers.
	Publication in newspapers.
December 29	Certificate of Posting of property.
January 11, 1996	ZAC Comments.

Case No. 96-245-SPH

December 11, 1995	Petition for Special Hearing filed by J. Carroll Holzer, Esquire on behalf of Paul D. and Jean A. Kiebler, property owners, to approve the divisional lines established on the plat, and to determine such other actions required to construct the piers.
	Publication in newspapers
December 29	Certificate of Posting of property.
January 11, 1996	ZAC Comments.

Case Nos. 96-244-SPH and 96-245-SPH

	Hearing held on Petition by the Zoning Commissioner.
April 11, 1996	Order of the Zoning Commissioner in which Petitions for Special Hearing was GRANTED in part and DENIED in part.
May 2	Notice of Appeal filed by Lewis L. Fleury, Esquire, on behalf of Dorothea Fertitta.
November 7	Hearing before the Board of Appeals.
December 3	Deliberation conducted by the Board.
January 14, 1997	Opinion and Order of the Board in which the Petitions for Special Hearing were DENIED.
January 23	Petition for Judicial Review filed in the Circuit Court for Baltimore County by J. Carroll Holzer, Esquire, on behalf of Thomas T. Bolling, et ux and Paul D. Kiebler, et ux.

January 28, 1997	Copy of Petition for Judicial Review received by the Board of Appeals from the Circuit Court for Baltimore County.
January 28	Certificate of Notice sent to interested parties.
March 28	Transcript of testimony filed.

Petitioner's Exhibits No. 1-Petition Plat of piers filed with Z.C.
2-Mylar Survey of properties from Lots 28-32
3-Permit issued by County to Kiebler 8/1/95
4-Permit issued by County to Bolling 8/1/95
5-Permit issued to Fertitta for Pier 5/95
6-Letter from Corps. of Engineers to Fertitta 10/26/95
7-Letter from Corps. to Fertitta 6/27/95
8-Letter from Corps. to Cong. Cardin 11/22/94
9-Platted divisional lines for Piers in blue
10-Application for Kiebler pier 8/20/95
11-Letter to J. Patton from State of Md. 8/29/95
12-Md. Dept. of Environment- (R. Ayella) 9/15/95
13-Letter from L. Morrison (Corps) to Kiebler 10/21/95
14-Letter from Kiebler to A. Jablon 10/4/95
15-Letter from M. Kellman to Jablon 10/5/95
16-Proposed Plat of Pier Divisional Lines
17-Proposed adjustment of Fertitta pier
18-Permit requested by Kiebler 7/11/96
19-Md Dept. of Environment (Tidal Wetlands) 6/4/96
20-Corp. Permit to Kieblers based on Exh. 16
21A-(**for I.D.**) -Corp. letter to S. Georas
21B-(**for I.D.**) -Corp. letter to Kilchenstein
21C-(**for I.D.**) -Corp. letter to M. Rennie
21D-(**for I.D.**) -Corp. letter to L. Fleury
22 -Record Plat of Alvin Beach 1/16/40
23 -Sec. 417.3J

Protestant's Exhibit #1 -Field Work Sheet & Plat of Oliver Beach
#2 -Pier configuration by Raphael & Assoc.

March 28, 1997 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,

Kathleen C. Bianco

~~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
Thomas T. Bolling, et ux
Paul D. Kiebler, et ux
Lewis L. Fleury, Esquire
Dorothea Fertitta
People's Counsel for Baltimore County
Virginia W. Barnhart, County Attorney

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: JOSEPHINE J. MASSAR -Applicant
Case No. CBA-96-138

DATE : November 14, 1995 /At conclusion of hearing

BOARD /PANEL : Robert O. Schuetz, Chairman (ROS)
Harry E. Buchheister, Jr. (HEB)
Margaret Worrall (MW)

SECRETARY : Kathleen C. Bianco
Legal Administrator

Those present included Josephine J. Massar, Appellant; and Nancy C. West, Assistant County Attorney.

PURPOSE --to deliberate matter of appeal taken from denial of permit for Reserved Handicapped Parking Space by the Division of Traffic Engineering.

ROS: Ms. Massar, mostly for your benefit, I would like to point out that this part of the proceeding is not going on the record. The actual trial has taken place. The open meetings law of Maryland requires that the Board consider such matters in open deliberation. In order to satisfy compliance with that, minutes are taken of what is taking place this afternoon. While not part of the record, they are included in the file.

I'm going to first of all state that I understand you have a difficult situation, Ms. Massar, but to make it short, you have nonetheless an accessible area to the rear of your property. You do have some small mitigating circumstances in contending with the utility pole, due to your large car, and so forth. Nevertheless, you are able to navigate that area, and get the car in and out, and, frankly, if the permit were to be issued, it would be to the detriment of your neighbors.

There's a lack of parking in row house communities generally; while it may be difficult for you to get in and out with that car, you are able to do it, and if granted, it would be detrimental to your neighbors.

There's a simple standard that there be mitigating a circumstance that is unusual and which meets the County's policy, to override the general policy of not permitting another pad on site in order to obtain the permit, and, unfortunately, you have not met that burden of proof.

MICROFILMED

Therefore, I would deny the request for the parking permit, although I understand it makes it difficult for you. And it somewhat pains me to make this decision; nonetheless I must find, under the law, that conditions do not warrant granting the permit.

MW: I also agree with Mr. Schuetz. And I've become very cognizant of these difficulties, having been on crutches with a broken hip for 8 weeks. It's difficult to drive and get yourself in your car and to carry things, and so forth. I'm aware of it, but the law is written in a certain way, and it's up to us to uphold that law.

I would agree that it should be denied.

HEB: I wish you had some alternative way of having access to your drive. It seems that this fence situation, this is one of the factors that impedes your access to your driveway. I'm looking at the photograph of the neighbors across the street without a fence. They do not have that burden of swinging the car and turning several times to gain access to the driveway. But it's sort of a choice -- you talked about privacy and what the fence does for you, but at the same time, it's denying access to the driveway. I think the investigation by the County in applying the law in this matter is correct. I would have to deny the permit also.

ROS: Very good. Then we are unanimous. Ms. Massar, what will come pursuant to this afternoon's proceeding is a written Opinion and Order. If you seek to appeal the opinion of the Board, you would accomplish that through a Petition for Judicial Review to the Circuit Court for Baltimore County, pursuant to the written Opinion and Order to be issued at a future date, and not necessarily from today's date.

Ms. West, maybe you could give her some assistance regarding time constraints. That will conclude the matter for today.

Respectfully submitted,

Kathleen C. Bianco
Legal Administrator

MICROFILMED

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: DOROTHEA FERTITTA -Applicant
Case No. CBA-96-129

DATE : November 7, 1996 /at conclusion of hearing

BOARD /PANEL : Robert O. Schuetz, Chairman (ROS)
Lawrence M. Stahl (LMS)
Harry E. Buchheister, Jr. (HEB)

SECRETARY : Kathleen C. Bianco
Legal Administrator

Those present included Lewis L. Fleury, Esquire, Counsel for Property Owner, and J. Carroll Holzer, Esquire, Counsel for Appellant.

PURPOSE --to deliberate matter before the Board in Case No. CBA-96-129 /Property of Dorothea Fertitta, and evidence received this date.

ROS: Thank you for your indulgence, ladies and gentlemen. The difference between this part of the proceeding and before is that this part of the proceeding is not on the record. Maryland State law requires us to hold an open meeting. We hold open meetings and, in the deliberation process, we openly deliberate before you. It is not included as part of the record. Minutes are taken of the deliberation; essentially serves to indicate compliance with the open meetings law.

The matter here this morning, Case No. CBA-96-129, is the issuance of a building permit. I would say that I agree with Mr. Holzer that we have certain problems with the permit on its face, but I also believe that the issue really boils down to nothing more than a typo on the part of the employee taking the information at the time the application was brought.

It was the unrebutted testimony of the inspector that the width at footprint is well within the maximum 38 feet; no testimony as to zoning. Testimony of that same employee indicates that there is a setback that is met, assuming the building has been situated properly.

All other issues brought regarding the erosion which was resulting from the construction -- the excavation and construction work of the foundation -- all of that has been attended to -- I see no reason why this case even had to go to trial. As far as I'm concerned, everything that was brought is moot, and therefore, although we are not in a position to move on our own behalf and dismiss the appeal, I would find in

MICROFILMED

favor of the Appellee in this particular part of the case -- that the permit is good and proper, and that construction may continue.

LMS: Other than asking -- and I get the feeling we will get into it later with the second case -- other than asking that my normal comments regarding the open meeting process be appended, I have no further comment.

HEB: I concur with the Chairman, but...you really were victim of an act of God, I guess.

ROS: That concludes the matter. The Board will issue a written Opinion and Order subsequent to these proceedings. Petition for Judicial Review will be brought from that date and not from today.

****

Respectfully submitted,

Kathleen C. Bianco

Kathleen C. Bianco
Legal Administrator

MICROFILMED

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF:	Thomas T. Bolling, et ux /Case No. 96-244-SPH and Paul D. Kiebler, et ux /Case No. 96-245-SPH	
DATE :	December 3, 1996 @ 9:45 a.m.	
BOARD /PANEL :	Robert O. Schuetz Harry E. Buchheister, Jr. Lawrence M. Stahl	(ROS) (HEB) (LMS)
SECRETARY :	Kathleen C. Bianco Legal Administrator	

Included among those present at the deliberation were Sterling Leese for J. Carroll Holzer, Esquire, on behalf of Petitioners; and Lewis L. Fleury, Esquire, on behalf of Appellant. People's Counsel for Baltimore County did not participate in these proceedings.

PURPOSE --to deliberate issues and matter of petitions as presented to the Board; testimony and evidence received at hearing on November 7, 1996. Written Opinion and Order to be issued by the Board.

ROS: Good morning, ladies and gentlemen. We are here this morning to deliberate Case No. 96-244-SPH and Case No. 96-245-SPH concerning the future construction of piers in front of the Kiebler and Bolling properties. I will remind everyone of what I said at the conclusion of the hearing, that this portion of the proceeding is not part of the record. Minutes are taken to signify compliance with the open meetings law. That is the extent of it. Those notes only serve as compliance and are not part of the record.

I guess I will go first. I usually do. It's a rather unusual situation, and I think it was a case which was well argued by counsel on both sides. But I think that the facts as they were presented for both sides were not as equally well presented.

I think that what we have before us is what has been already adjudicated in the District Court relative to the Fertitta property, and what the Board is going to be required to do in determining whether we have a straight shore line or a converging shore line. I think there was some testimony which went a little far afield in indicating whether the shore line was straight or converging. I think these properties are

very, very similar. And a straight shore line does not mean, in my mind, perfectly straight.

Having reviewed the Code and the zoning regulations, as well as Appendix J to the zoning regulations relative to shore lines and property lines seaward from the given properties, I've come to the conclusion that (a) this is a straight shore line. It's my belief, also, that this Fertitta case relative to the permit and whether or not the issue of whether it's a straight shore line or not really is not the issue here. What we have is a lawfully constructed pier in front of the Fertitta property, and a lawfully constructed pier in front of the Jordan property. The Fertitta pier, I might add, is one which I view as actually being less intrusive than the Jordan pier -- a pier having numerous mooring pilings on the western edge. In both situations, the pilings and pier create a de facto channel, and that de facto channel does not converge. But when one lays a scale across what has been accepted by both sides as professionally prepared field notes and surveys, we have a 40' wide opening and what I will call choke point. In the space that leaves a 20 foot channel and 10 foot wide space on either side for a pier -- both of which are supposed to be 6 feet wide. Geometry indicates that because of the width at both sides at the bulkhead, there is more than adequate room for both to be able to construct a pier of any length without impacting on the Fertitta pier and property.

For my colleagues, this is part of what I did -- a little bit of sketching on my own using information from both sides to indicate in my mind that I was coming to a reasonable conclusion. Paragraph C of 417 allows the County to be reasonable in getting a little bit creative. Everyone realizes that the world is not a perfectly straight line. For purposes of interpretation of the section, I believe this is a straight line. It's not a perfect world, but the County can be creative and Mr. Lewis, the County planner, did just that and provided Mr. Kiebler and Mr. Bolling with adequate space, helping them through the process, realizing there is adequate space for two piers. It was a matter of choice by Mr. Kiebler and Mr. Bolling to pursue something in the alternative.

Therefore, having found that the Fertitta and Jordan piers were lawfully constructed and that it is a straight shore line, it's my belief that the special hearings in pursuit of the piers as proposed by the Kieblers and the Bollings should be denied.

HEB: I'm not a registered architect like our Chairman, but I can relate to the situation from a personal property that I am a

part of, and this problem of converging shore line and piers extending out and a certain length of the pier -- and this was a serious problem for us not long ago.

I think that Mr. Patton who, as we heard from his credentials, has had a long experience in dealing with waterfront properties and such issues as we are talking about today. He had a workable plan that should basically retain in place the Fertitta pier, while providing for the future piers of Mr. Kiebler and Mr. Bolling.

There are two proposals in the Patton plan which I do not completely understand -- there was some testimony about the issue of wind direction and its effect on boats moored at a particular pier due to the Fertitta or Kiebler pier, and also the possible effects of winds in docking a large boat. Coming into the pier at a reduced speed, heavy wind can be a ticklish situation. But actually, I do not see where it made much difference in this configuration as Mr. Patton outlined, and as Mr. Schuetz has outlined. There should be access to the piers except for perhaps a piling or two that might have to be relocated. But looking at the shore line and the extension of the piers from that shore line, there should be enough open water that would not impede the access by any of the owners to a mooring location, if they were willing to make certain concessions.

I think Mrs. Fertitta visualizes an almost direct approach into her slip which might be stretching a point, because as you and I know, in many marinas you do not have that pleasure. In this case there appears to be, on Mr. Patton's drawing, open water to the west of her pier and comfortable access to the pier, perhaps not as she has been doing. I think, and I have seen what Mr. Schuetz - the revisions he has drawn - and it looks like there really are two options beyond what Mr. Patton has recommended, and I think those two options are more appropriate to this issue than Mr. Patton's plan. In one suggestion by Mr. Schuetz, both Bolling and Kiebler piers could be reduced even to 100 or 150 feet in length. The question is, in my mind, why 250 feet? Mr. Patton testified that the length was necessary to provide easy access from the open water to the Kiebler pier, and cause no conflict, no difficulties in navigating into the Kiebler pier. I think that the plans that have been -- the alternate plans, I will call them -- that have been thought through by our Chairman would be -- I have not talked with him; I'm speaking about just glancing at a plan -- but I think that both water access for Kiebler and Fertitta would be very adequate and the same to be true for a future Bolling plan -- Mr. Kiebler and Mr.

Bolling -- Mr. Bolling would have the same access.

I'm sort of thinking in the dark here because I'm not sure of the depth of the water. On the Magothy, we have good depth 20 feet from the shore line.

LMS: What are you talking about -- the depth of water?

HEB: From the pier -- for sale boats, it's important.

ROS: We have no testimony on that.

HEB: So, seeing the situation here where, first of all, both Mr. Bolling and Mr. Kiebler have no interest as stated in seeing the Fertitta pier removed -- work out a possible solution, and as was brought out, Judge Boone ruled it a closed issue as far as the pier's legality. It's a legal pier. So people can accomplish something satisfactory to all parties.

For that reason, I think that there is an alternative to the plan of Mr. Patton, and that that particular plan, with just modifications; but as it is, it should be denied.

LMS: Before I begin and for the record's sake, I also like to let it be known before I get to the facts my feeling relative to this process. Whereas you are an architect by training, I'm the only attorney on the panel, and as to this entire process, I've always had concern and placed it on the record -- I believe the open deliberation process is not always in the best interests of any of the litigants. I believe that sometimes it makes it more difficult; requires more on the part of each Board member to do without those Board members who may not come in with basic knowledge of a particular fact or circumstance or particular portion of life. This being a tremendous example of that from my point of view. I understand what the law means; and understand the arguments in favor; but I wonder if my brethren on the Circuit Court, the Court of Special Appeals and the Court of Appeals would want to place themselves under the same restrictions they place us under. I think they would not. There have been some cracks in the door, I think that it is a good thing; recognizes a good idea. I hope to see the door widening more so that ultimately this Board can sit around a table and ask as many stupid questions they possibly can ask of one another.

To the case in point, having said that, I've never been on a boat. I don't think I've been to a home or community on the water. I grew up in the middle of New York City. This has been an exercise in self-education for me. I, too, have looked

over our Chairman's shoulder as he put this together, and unfortunately could and for no explanation, but having heard his presentation, and Harry's explanation of his feelings, I've been able to crystallize my own thoughts.

I've decided not to be concerned as much with the issues indicative to boating people. We have a code, we have criteria regarding shore lines; we have a District Court that, after an evidentiary hearing, has come to some conclusions. I've seen what an architect thinks; heard the personal concerns and viewpoints of someone with a knowledge of boating -- and find myself coming to a reasonably simple conclusion -- the purpose of the special hearing request is to allow us to digress and do something different. We have a fact on the ground in terms shaped in some degree on what Judge Boone ordered in District Court. You take the facts and the law and apply the facts to the law, and come to a conclusion. Much in the same way, I see this as, and maybe I guessed right, I see it as issues of access, issue of property owners living next to each other -- to do things they purchased the property for -- they own boats, get them in and out, and enjoy the property.

Given that, it seems to me that both of your comments are well put. There are acceptable, legitimate, appropriate things that can be in the context of what we now have. Whether Plan A, Plan B or Mr. Patton's with adjustments or the two Rob has played with, it seems to me that there are solutions within the context of what we already have, and those solutions can take into account, with the expertise of those who do these things -- you are an architect but never heard that you are experienced on piers and docks -- general sense of shape. You have a general sense of what it takes to get boats in. Depending on how good you are and the kind of boat -- you can do a lot of things. Ability to function with facts -- i.e., lines and piers as they exist. All boating considerations aside, if we try to do everything that each party wants, we then would grant the special hearing -- it seems to me that there simply is no need to do that. You need to do a special hearing when what you have does not appropriately allow you to function -- to do those things you need to do to enjoy the property within the confines of the law. From that point of view, I don't believe that the special hearing is necessary to accomplish those goals, and I would find that the special hearing is not necessary, and would join you in denying it.

ROS: I wanted to clear up a couple of things -- although there is nothing on Mr. Patton's plan relative to depth of the water, I am assuming that the depth lines running parallel to the

shore indicate the depth at low tide -- assuming that is the reason we have the length of the pier as proposed. Having done that, when I was reviewing my existing conditions drawing to determine how much space there really is, I was trying to be mindful of the depth of water needs for all.

In reviewing this, that choke point, beyond that choke point, whatever the County's Code enforcement officials have determined is going to be appropriate provides tremendous amount of latitude for you and your designers to provide for both a pier on your and the Bolling property, whatever length you can afford to build for the use and enjoyment of the water.

I'm trying to help you through this. I hope you appreciate that. The bottom line is that we are going to deny the special hearing petitions as they were brought. I'm going to see to it, no matter who ultimately writes or revises the Opinion, to adequately describe in the language of the opinion where that choke point occurs, what we view as open for construction of piers, to assist whatever County authorities there are.

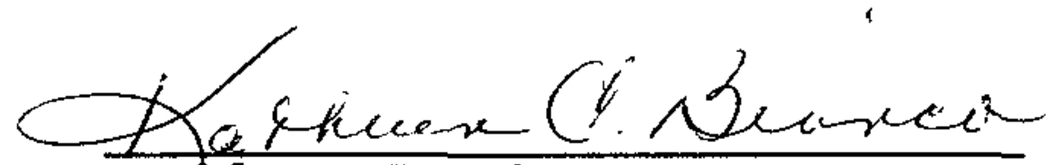
I think a good first step is to go back and look at what Mr. Lewis had shown to you earlier and the language of the Opinion.

That concludes the matter. A written Opinion and Order will be issued. Any Petition for Judicial Review will be filed from the date of the written Order and not necessarily today's date.

Thank you very kindly.

****

Respectfully submitted,



Kathleen C. Bianco
Legal Administrator

5680-95
WCR

PATTON

12/1/95

TRANSMITTAL

PATTON CONSULTANTS, LTD.
305 West Chesapeake Avenue, Suite 118
Towson, Maryland 21204
(410) 296-2140
Fax (410) 296-0419

Date: 11/30/95	Proj. No.: 95010
RE Kiebler Dock Spec. Hearing	

245

TO BALTIMORE COUNTY
TOWSON, MD. 21204

ATTN ZONING COMMISSIONER

MJK REVIEWED
NO VIOLATIONS

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		Petitions for Spec. Hearing	
12		Plats	
3		Property Descriptions	
1		200' Scale Zoning Map	
1		Check #1704 - $85.00	

THIS TRANSMITTAL IS
☒ For your approval ☐ _____ ☐ Approved with exceptions noted
☐ For your use ☐ Your documents returned after loan to us ☐ Returned for corrections
☐ At your request ☐ Approved as submitted ☐ _____
☐ For review and comment

FURTHER ACTION REQUIRED
☐ Resubmit ____ copies for approval ☐ Submit ____ copies for distribution ☐ Return ____ corrected prints
☐ _____

REMARKS
Called to Kiebler re violations on 12/4 + 12/7
Need to Sterling called on 12/8 - will get back to me
Qin Patton came in 12/11 - No violations

RECEIVED
DEC - 1 1995
PDM

COPY TO KIEBLER
CARROLL HOLZER, ESQ.

SIGNED
James S. Patton, P.E.

If enclosures are not as noted, please notify us at once

MICROFILMED

APPLICATION FOR BUILDING PERMIT

PERMIT #: B260238 CONTROL #: RA DIST: 15 PREC: 08

LOCATION: 7134 GREENBANK RD
SUBDIVISION: OLIVER BEACH
TAX ASSESSMENT #: 1513401430

OWNERS INFORMATION
NAME: FERTITTA,DOROTHEA
ADDR: 7134 GREENBANK RD BALTO,MD 21220

APPLICANT INFORMATION
NAME: DOROTHEA FERTITTA
COMPANY:
ADDR1: 7134 GREENBANK RD
ADDR2: BALTO,MD 21220
PHONE #: 335-0177 LICENSE #:

NOTES
KRA/JB

TRACT: BLOCK:
PLANS: CONST 0 PLOT 0 R PLAT 0 DATA 0 ELEC NO PLUM NO
TENANT:
CONTR: OWNER
ENGNR:
SELLR:
WORK: RAZE EX SFD.TO BE TORN DOWN & HAULED TO AN APPROVED SANITARY LANDFILL IN ACCORDANCE WITH APPLICABLE COUNTY SITE REGULATIONS.SEWER TO BE CAPPED.PERMIT EXPIRES 90 DAYS FROM COMPLETION OF NEW SFD.20'X53'=1060SF.REFER TO B260240 FOR NEW SFD. SEE P263817 CAP OFF

PROPOSED USE: VACANT
EXISTING USE: SFD

BLDG. CODE: BOCA CODE
RESIDENTIAL CATEGORY: DETACHED OWNERSHIP: PRIVATELY OWNED
ESTIMATED COST OF MATERIAL AND LABOR: 6,500.00

TYPE OF IMPRV: WRECKING
USE: ONE FAMILY
FOUNDATION: SLAB BASEMENT: NONE
SEWAGE: PUBLIC EXIST WATER: PUBLIC EXIST
CONSTRUCTION: FUEL:
CENTRAL AIR:

SINGLE FAMILY UNITS
TOTAL 1 FAMILY BEDROOMS
MULTI FAMILY UNITS
EFFICIENCY (NO SEPARATE BEDROOMS): NO. OF 1 BEDROOM:
NO. OF 2 BEDROOMS: NO. OF 3 BEDROOMS OR MORE:
TOTAL NO. OF BEDROOMS: TOTAL NO. OF APARTMENTS:

MICROFILMED

APPLICATI ' FOR BUILDING PERMIT

PERMIT #: B260240 CONTROL #: NRFP DIST: 15 PREC: 08

LOCATION: 7134 GREENBANK RD
SUBDIVISION: OLIVER BEACH
TAX ASSESSMENT #: 1513401430

OWNERS INFORMATION
NAME: FERTITTA,DOROTHEA
ADDR: 7134 GREENBANK RD BALTO,MD 21220

APPLICANT INFORMATION
NAME: DOROTHEA FERTITTA
COMPANY:
ADDR1: 7134 GREENBANK RD
ADDR2: BALTO,MD 21220
PHONE #: 335-0177 LICENSE #:

NOTES
KRA/JB

TRACT: BLOCK:
PLANS: CONST 2 PLOT 7 R PLAT 0 DATA 0 ELEC YES PLUM YES
TENANT:
CONTR: OWNER
ENGNR:
SELLR:
WORK. CONST SFD W/FIREPLACE(NO OUTSIDE PROJ),OPEN
WOOD DECK ON FRONT & 3 BDRMS.32'X42'X29'=3385SF
REFER TO B260238 FOR RAZING.
FLOOD ZONE"B".EX GROUND ELEV=14'.BASEMENT ELEV=
6.5'.

PROPOSED USE: SFD
EXISTING USE: SFD TO BE RAZED(SEE B260238)

BLDG. CODE: 1 AND 2 FAM. CODE
RESIDENTIAL CATEGORY: DETACHED OWNERSHIP: PRIVATELY OWNED
ESTIMATED COST OF MATERIAL AND LABOR: 85,000.00

TYPE OF IMPRV: NEW BUILDING CONSTRUCTION
USE: ONE FAMILY
FOUNDATION: BLOCK BASEMENT: FULL
SEWAGE: PUBLIC EXIST WATER: PUBLIC EXIST
CONSTRUCTION: WOOD FRAME FUEL: OIL
CENTRAL AIR: YES

SINGLE FAMILY UNITS
TOTAL 1 FAMILY BEDROOMS 3
MULTI FAMILY UNITS
EFFICIENCY (NO SEPARATE BEDROOMS): NO. OF 1 BEDROOM:
NO. OF 2 BEDROOMS: NO. OF 3 BEDROOMS OR MORE:
TOTAL NO. OF BEDROOMS: TOTAL NO. OF APARTMENTS:

MICROFILMED

APPLICATION FOR BUILDING PERMIT

PERMIT #: B272691 CONTROL #: NR DIST: 15 PREC: 08

LOCATION: 7134 GREENBANK RD
SUBDIVISION: OLIVER BEACH
TAX ASSESSMENT #: 1513401430

OWNERS INFORMATION
NAME: FERTITTA, DOROTHEA M.
ADDR: 7134 GREENBANK RD., 21220

APPLICANT INFORMATION
NAME: DOROTHEA FERTITTA
COMPANY:
ADDR1: 7134 GREENBANK RD
ADDR2: BALTO., MD. 21220
PHONE #: 335-0177 LICENSE #:

NOTES
KRA/JB

TRACT: BLOCK:
PLANS: CONST 2 PLOT 7 R PLAT 0 DATA 0 ELEC YES PLUM YES
TENANT:
CONTR: OWNER
ENGNR:
SELLR:
WORK: CONST SFD W/FIREPLACE-NO OUTSIDE PROJ.,OPEN WOOD DECK ON FRONT & 3 BDRMS. 31'4"X42'X29'= 3367SF THIS PERMIT CANCELS B260240-CHGE IN CONST. & SITE PLANS. PERMIT EXPIRES 2/29/97. OPEN PROJECTION NOT TO EXCEED 4'X10'.

PROPOSED USE: SFD
EXISTING USE: SFD TO BE RAZED(SEE B260238)

BLDG. CODE: 1 AND 2 FAM. CODE
RESIDENTIAL CATEGORY: DETACHED OWNERSHIP: PRIVATELY OWNED
ESTIMATED COST OF MATERIAL AND LABOR: 85,000.00

TYPE OF IMPRV: NEW BUILDING CONSTRUCTION
USE: ONE FAMILY
FOUNDATION: BLOCK BASEMENT: FULL
SEWAGE: PUBLIC EXIST WATER: PUBLIC EXIST
CONSTRUCTION: WOOD FRAME FUEL: OIL
CENTRAL AIR: YES

SINGLE FAMILY UNITS
TOTAL 1 FAMILY BEDROOMS 3
MULTI FAMILY UNITS
EFFICIENCY (NO SEPARATE BEDROOMS): NO. OF 1 BEDROOM:
NO. OF 2 BEDROOMS: NO. OF 3 BEDROOMS OR MORE:
TOTAL NO. OF BEDROOMS: TOTAL NO. OF APARTMENTS:

MICROFILMED

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
PAUL D. KIEBLER	7200 GREENBANK RD. 21220
JEAN A. KIEBLER	7200 GREENBANK RD. 21220
THOMAS T. BOLLING	7202 GREENBANK RD. 21220
ELIZABETH N. BOLLING	7202 GREENBANK RD. 21220

Printed with Soybean Ink
on Recycled Paper

PLEASE PRINT CLEARLY

CITIZEN SIGN-IN SHEET

NAME	ADDRESS
DOROTHEA M FERTITTA	7134 GREEN BANK RD
E F PARSEL	205 Cumberland Ave. Tow.
PHILIP PARSONS	7134 GREENBANK Rd
Brent Shew	7219 Greenbank Rd.
LISA BECK	7137 GREENBANK RD.
STEVE GEORAS	7132 Greenbank Rd

Plat to accompany Petition for Zoning ☐ Variance ☒ Special Hearing

PROPERTY ADDRESS: 7200 GREEN BANK ROAD

see pages 5 & 6 of the CHECKLIST for additional required information

Subdivision name: OLIVER BEACH

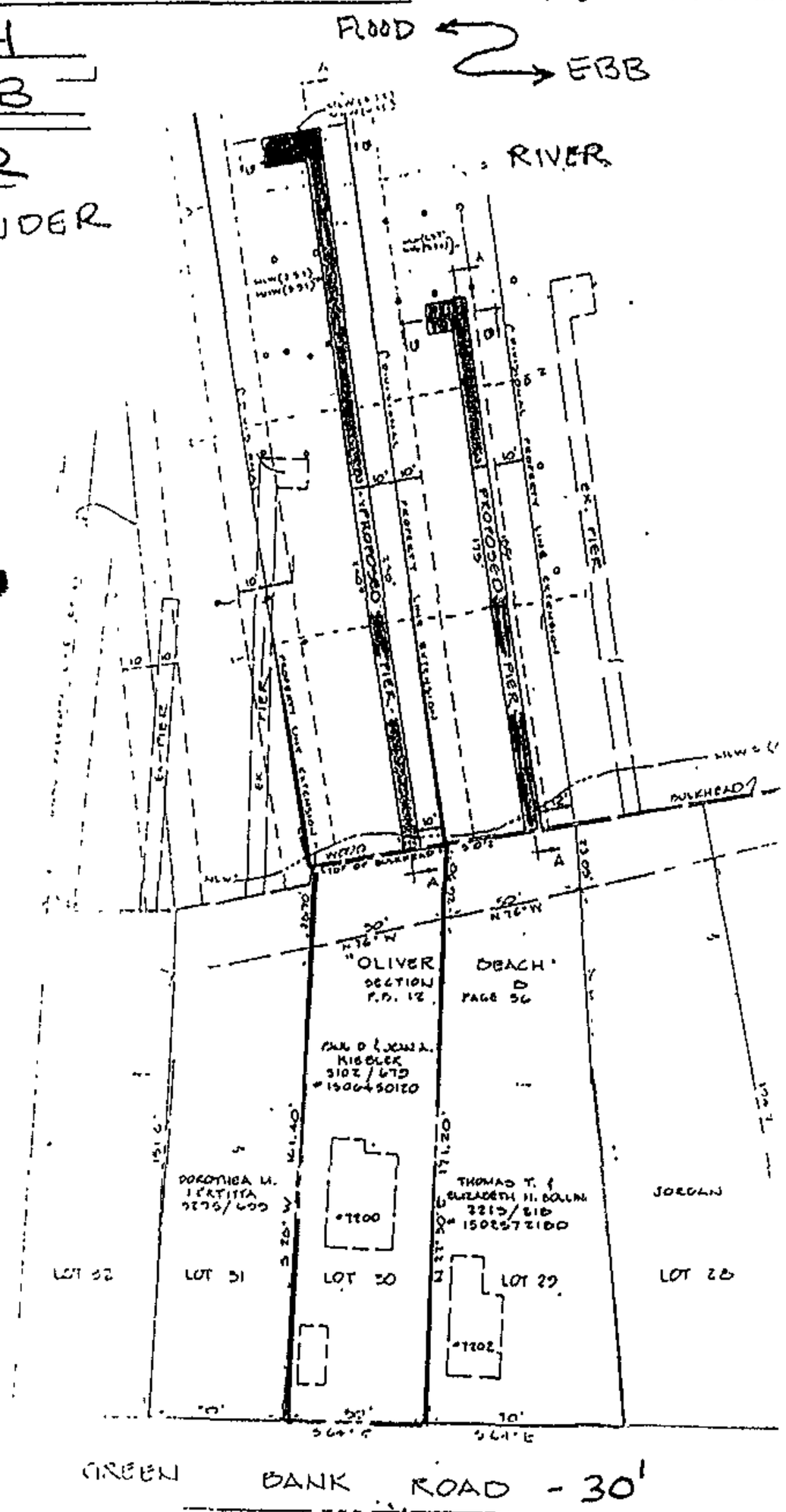
plat book# 12, folio# 56, lot# ____, section# B

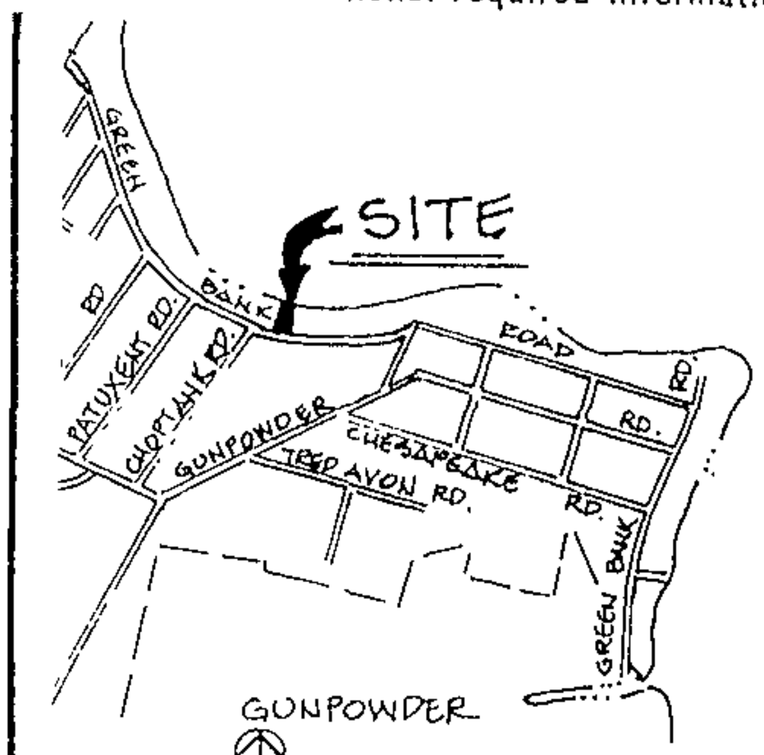
OWNER: PAUL & JEAN KIEBLER

96-245-SPH

NOTE: THIS PLAT IS A REDUCTION OF A PLAT FILED WITH BUILDING PERMIT APPLICATION #B241234.

BEARINGS SHOWN HEREON ARE BASED ON BEARING ON GREEN BANK ROAD FOUND ON PLAT ENTITLED "PROPERTY SURVEY LOT 30, OLIVER BEACH, SECTION D" DONE BY TRIANGLE SURVEYS, INC ON 9/19/93.





LOCATION INFORMATION

Election District: 15Th

Councilmanic District: 5Th

1"=200 scale map#: N.E. 8-M

Zoning: D.R.-5.5

Lot size: 0.219± acreage 9,550± square feet

	public	private
SEWER:	☒	☐
WATER:	☒	☐

	yes	no
Chesapeake Bay Critical Area:	☒	☐

Prior Zoning Hearings: NONE OF RECORD.

Zoning Office USE ONLY!

reviewed by: ITEM #: CASE#:

245

North

date: 11/30/95

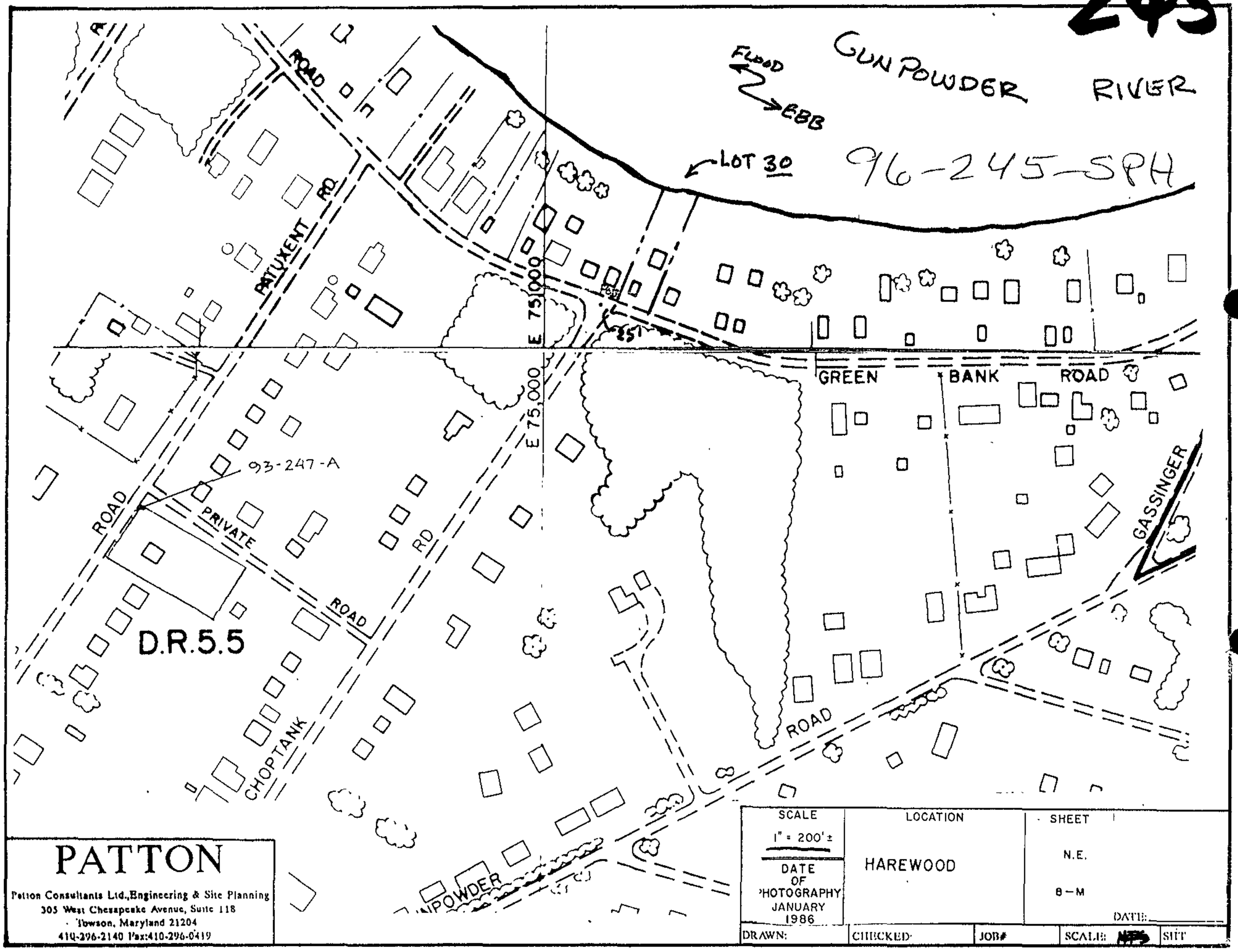
prepared by: PATUXENT ENGINEERS CONSULTANTS, LTD

Scale of Drawing: 1"= 100'±

JAMES STEPHEN PATTON NO. 9493 REGISTERED PROFESSIONAL ENGINEER STATE OF MARYLAND

MICROFILMED

245



7200 GREEN BANK ROAD

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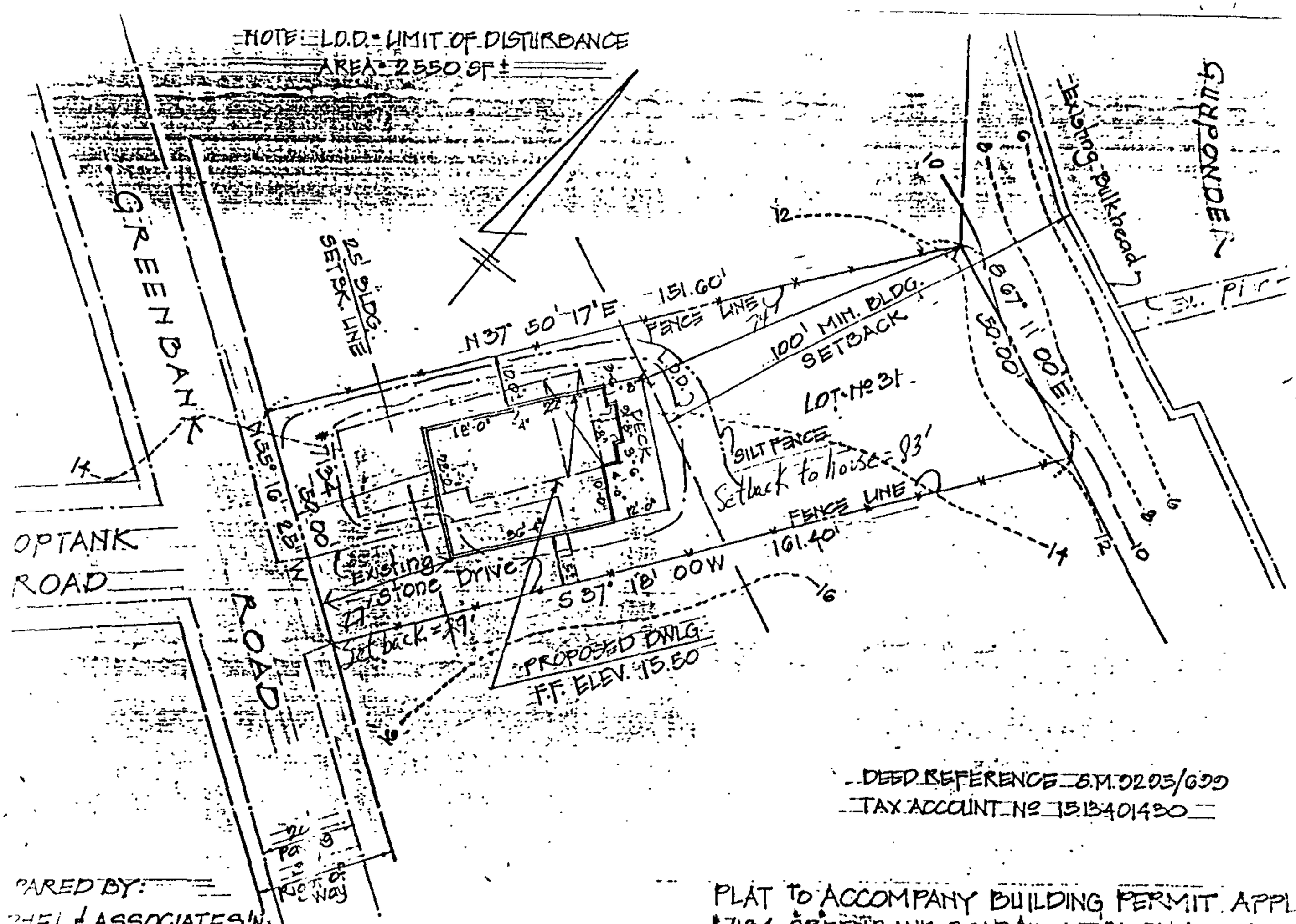

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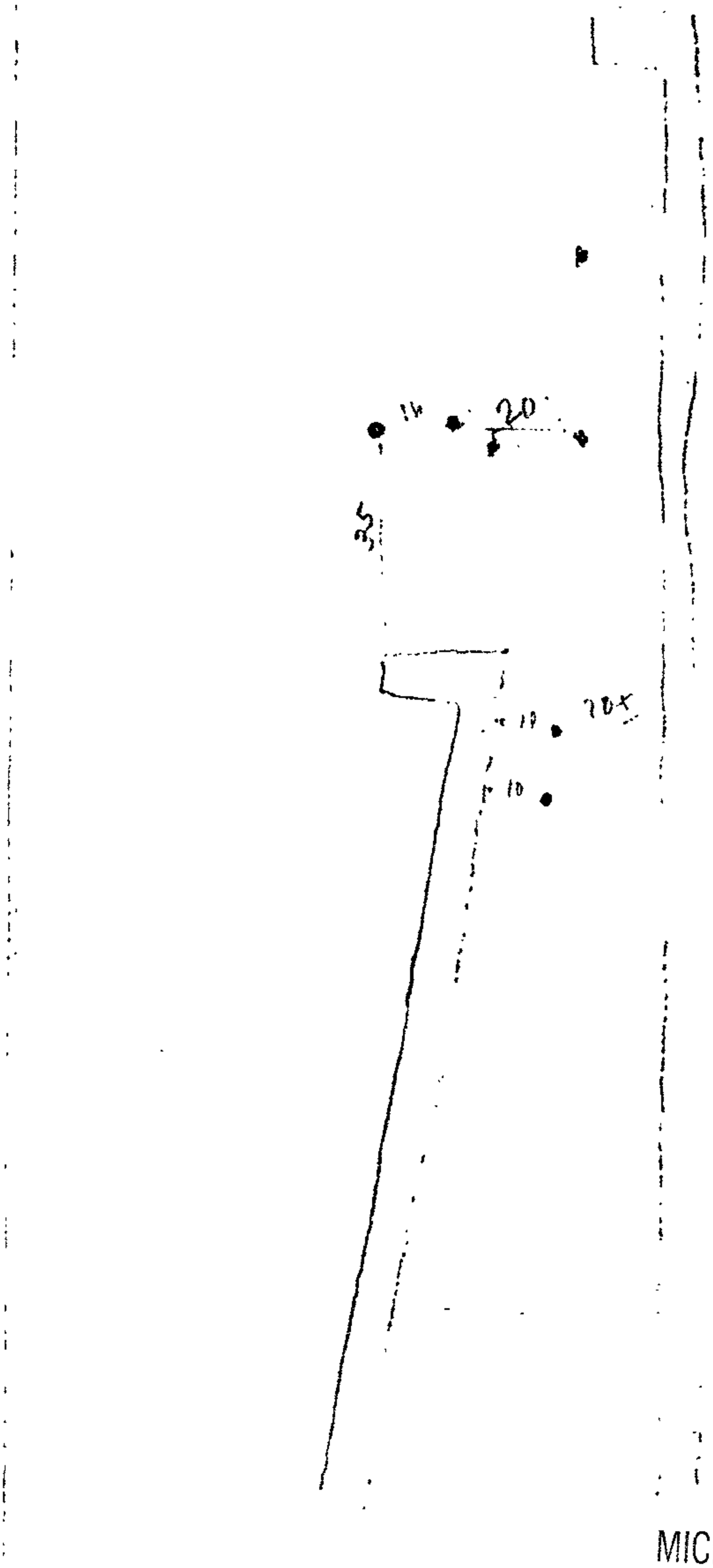

MICROFILMED

99-1651
21
PDT

F 01

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF PERMITS AND
DEVELOPMENT MANAGEMENT

JOB LOCATION 7134 Greenbank
Dorothea M Fertitta

DISTRICT 15 PCT

PERMIT NO. B272691

BLDG. INSP. 887-3953
PLMB. INSP. 887-3920
ELEC. INSP. 887-3960
ENFORCEMENT 887-3351

CORRECTION NOTICE

AN INSPECTION ON THIS DAY HAS DETERMINED THE PRESENCE OF THE FOLLOWING CONDITION(S) TO BE IN VIOLATION OF THE BALTIMORE COUNTY CODE.

CODE BOCA SECTION 119 - 120

Correct dangerous condition pertaining to excavation of foundation IE Caving in
Only work to be preformed at this time is to correct said conditions
Complete sediment control measures per applicle codes

No other work to be started until above conditions have been corrected

THESE CONDITIONS MUST BE CORRECTED NOT LATER THAN: 7/23/96

INSPECTOR Rodney Lassiter DATE 7/16/96

7/29

8-5
8-19

ALL CORRECTIONS COMPLETE AND APPROVED:

INSPECTOR _____ DATE _____

REV 04/96

MICROFILMED