12/15/11

07-144-SPH
CBA-06-044

CIRCUIT COURT FOR BALTIMORE COUNTY
Julie L. Ensor
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

County Board Of Appeals Of Baltimore County
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204

N O T I F I C A T I O N O F C O N T E M P L A T E D D I S M I S S A L

Case Number: 03-C-08-000949 AA

C I V I L

In The Matter Of Fifth Street L L C, Et Al

NOTIFICATION TO PARTIES OF CONTEMPLATED DISMISSAL

Pursuant to Maryland Rule 2-507 this proceeding will be "DISMISSED FOR LACK OF JURISDICTION OR PROSECUTION WITHOUT PREJUDICE," 30 days after service of this notice, unless prior to that time a written motion showing good cause to defer the entry of an order of dismissal is filed.

Costs will be assessed in accordance with Maryland Rules.

Julie L. Ensor
Julie L. Ensor
Clerk of the Circuit Court

Date Issued: 12/15/11

CC: Robert P Poleski
Michael J Poleski
J Carroll Holzer Esq
Rose Sapperstein

RECEIVED
DEC 19 2011
BALTIMORE COUNTY
BOARD OF APPEALS

FIFTH STREET, LLC
9025 CUCKOLD POINT ROAD
S/e corner of Cuckold Point Road & 5th Street
15th E; 7th C

07-144-SPH
See also CBA-06-044 and CBA-07-134

Re: Whether the use of the property at 9025 Cuckold Point Road, Millers Island 21219 is in violation of BCZR.

Is the use by Fifth Street, LLC, a restaurant, at 9025 Cuckold Point Road., which provides music during the day, is a "night club" as defined in the BCZR, Sec. 101, 102.1 and 230?

Sept. 28, 2006	Petition for Special Hearing.
May 30, 2007	Zoning Commissioner's Order determining that the playing of outdoor music must be discontinued.
June 11, 2007	Notice of Appeal filed by J. Carroll Holzer, Esq., appealing the May 30, 2007 decision by the Zoning Commissioner.
July 24, 2007	Notice of Appeal filed by J. Carroll Holzer, Esq., appealing the letter from the Zoning Commissioner to Thomas Minkin, Chair of the Board of Liquor License Commissioners under date of June 29, 2007.
August 17, 2007	Appeal received by Board.
January 15, 2008	Hearing held by Board of Appeals
March 13, 2008	Board convened for Public Deliberation
June 4, 2008	Majority Opinion issued determining that the playing of music by must be discontinued in case No.: 07-144-SPH; Affirming decision of Code Enforcement Hearing Officer in Case No.: CBA-06-044; and Affirming the decision of the Code Enforcement Hearing Officer in Case No.: CBA-07-134; with Dissenting opinion issued by L. Stahl.
July 18, 2008	Motion for Reconsideration filed by J. Carroll Holzer, Esq on behalf of Fifth Street, LLC.
July 23, 2008	Answer to Motion for Reconsideration filed by People's Counsel
August 12, 2008	Board convened for Public Deliberation on Motion for Reconsideration

September 12, 2008	Ruling on Motion for Reconsideration issued by Board
September 19, 2008	Petition for Judicial Review filed in the Circuit Court for Baltimore County by J. Carroll Holzer, Esq.
September 24, 2008	Board received copy of Petition for Judicial Review from Circuit Court for Baltimore County.
September 26, 2008	Certificate of Notice sent to all interested parties
September 26, 2008	Notification letter sent to all interested parties
September 26, 2008	Notification regarding Transcript sent to Counsel, Petitioners and Protestants.
10/31/08	Record of Proceedings filed in the Circuit Court for Baltimore County
5/14/09	Opinion and Order from Circuit Court issued AFFIRMING Board of Appeals.
6/4/09	Notice of Appeal to Court of Special Appeals.
7/9/10	Court of Special Appeals decision, issued Affirming the Circuit Court for Baltimore County
9/17/10	File retrieved from the Circuit Court for Baltimore County
9/24/10	File closed and returned to Zoning.

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
Interoffice Correspondence
Phone: 410-887-3180 Fax: 410-887-3182

To: File
Fifth Street, LLC, Lawrence Thanner – Legal Owner/Petitioner
Case No: 07-144-SPH, CBA-06-044, CBA-07-134

From: Sunny Cannington, Legal Secretary

Date: September 23, 2010

Case No: 07-144-SPH, CBA-06-044, and CBA-07-134 were set and heard together by the Board, due to the nature of the citations and related Petition for Special Hearing. The exhibits and Transcripts from this matter before the Board of Appeals are located in the file for Case No.: 07-144-SPH which is being returned to the Zoning Review Office for retention pursuant to the Board's retention schedule.

The Board issued their majority decision finding that the facility known as Dock of the Bay is indeed a "nightclub"; ordering that the Code Enforcement Hearing Officer's decision in Case No.: CBA-06-044 is affirmed; imposing a fine in the amount of $1,000.00 for operating a nightclub; ordering that the Code Enforcement Hearing Officer's decision in Case No.: CBA-07-134; and imposing a fine of $1,000.00 for erecting a temporary tent without a permit.

The Circuit Court for Baltimore County Affirmed the decision of the Board of Appeals.

The Court of Special Appeals of Maryland Affirmed the decision of the Circuit Court for Baltimore County.

5/14/09

CD #42

IN THE PETITION OF **FIFTH STREET, LLC** FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	*	IN THE
	*	CIRCUIT COURT
IN THE CASE OF **FIFTH STREET, LLC** LEGAL OWNERS/PETITIONERS FOR SPECIAL HEARING ON PROPERTY LOCATED ON THE S/E corner of Cuckold Point Road & Fifth Street (9025 Cuckold Point Road) 15th Election District, 7th Councilmanic District	*	FOR BALTIMORE COUNTY
Case Nos. 07-144-SPH, CBA-06-044, CBA-07-134 Before the County Board of Appeals	*	Case No.: 03-C-08-09996

RECEIVED BY
MAY 15 2009
People's Counsel for Baltimore County

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

FINAL ORDER

Upon judicial review of the record, of memoranda filed by the parties, and of oral argument by counsel in open hearing on May 6, 2009, and for reasons stated at the conclusion of the hearing, it is, this 14th day of May, 2009, **ORDERED by the Circuit Court for Baltimore County, that the Order of the Majority Opinion of the County Board of Appeals of Baltimore County dated June 4, 2008**, as finalized by the September 12, 2008 denial of petitioner Fifth Street, LLC's Motion for Reconsideration, **be and hereby is, AFFIRMED** in its entirety, as to the County Board of Appeals' *de novo* determination upon Fifth Street, LLC's petition for special hearing in Case 07-144-SPH and as to the County Board of Appeals' Orders affirming Code Enforcement Hearing Officer decisions in Case Nos. CBA-06-144 and CBA- 07-134.

RECEIVED
MAY 21 2009
BALTIMORE COUNTY
BOARD OF APPEALS

Lawrence R. Daniels

LAWRENCE R. DANIELS, JUDGE
Circuit Court for Baltimore County

APPROVED AS TO FORM:

J. Carroll Holzer

J. Carroll Holzer, Esquire, Atty for Petitioner

Francis X. Borgerding, Jr, Esquire, Attorney for Respondents

Peter Max Zimmerman

Peter Max Zimmerman, Esquire
People's Counsel for Baltimore County

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

N O T I C E O F R E C O R D

Case Number: 03-C-08-009996 AA
Administrative Agency : CBA 07-134
Administrative Agency : CBA 07-144 SPH
Administrative Agency : CBA06-06-044
C I V I L

In the Matter of Fifth Street L L C, et al

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 31st day of October, 2008.

Suzanne Mensh
Clerk of the Circuit Court, per

Date issued: 11/01/08

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
Jefferson Building, Suite 203
105 West Chesapeake Avenue
Towson, MD 21204

RECEIVED
NOV - 5 2008
BALTIMORE COUNTY
BOARD OF APPEALS

10/31/08

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY

*

PETITION OF:
FIFTH STREET, LLC, LAWRENCE THANNER *
LEGAL OWNER/PETITIONER AND
LAWRENCE THANNER, INDIVIDUALLY *

CIVIL ACTION
NO.: 03-C-08-009996

FOR JUDICIAL REVIEW OF THE OPINION OF *
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY *
JEFFERSON BUILDING – ROOM 203
105 W. CHESAPEAKE AVENUE *
TOWSON, MARYLAND 21204

*

IN THE MATTER OF:
FIFTH STREET, LLC, LAWRENCE THANNER *
– LEGAL OWNER
FOR SPECIAL HEARING ON PROPERTY *
LOCATED ON THE S/E CORNER OF
CUCOLD POINT ROAD AND FIFTH STREET *
(9025 CUCKOLD POINT ROAD)

*

15TH ELECTION DISTRICT
7TH COUNCILMANIC DISTRICT *

BOARD OF APPEALS CASE NO.S: *
CBA-06-044, CBA-07-134 AND 07-144-SPH

*

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

RECEIVED AND FILED
2008 OCT 31 PM 12:51
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

PROCEEDINGS BEFORE THE ZONING COMMISSIONER, DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT AND THE BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now comes the County Board of Appeals of Baltimore County and, in answer to the Petition for Judicial Review directed against it in this case, herewith transmits the record of proceedings had in the above-entitled matter, consisting of the original papers on file with the Zoning Commissioner, Department of Permits and Development Management, and the Board of Appeals of Baltimore County:

ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND ZONING COMMISSIONER OF BALTIMORE COUNTY

No. CBA-06-044 .

April 21, 2006	Letter of Complaint to Code Enforcement from Francis X. Borgerding, Esquire on behalf of Matt Ciarpella.
May 6, 2006	Code Enforcement Inspection of property; Violation noted, Citation issued.
May 12	Correction Notice Issued to cease nightclub activities by May 26, 2006
May 18	Citation issued to obtain a tent permit or remove the structure from the property before May 26, 2006
June 7	Citation issued for failure to cease nightclub activities.
June 28	Code Enforcement Hearing scheduled and postponed by request of J. Carroll Holzer, Esquire on behalf of Fifth Street, LLC and Lawrence Thanner.
July 24	Notice of Code Enforcement Hearing sent to Parties
August 14	Citation issued for failure to cease nightclub activities and failure to remove tent or obtain permit.
August 23	Hearing held by Code Enforcement Hearing Officer
August 25	Findings of Fact and Conclusion issued by Raymond S. Wisnom, JR. Code Enforcement Hearing Officer imposing a fine in the amount of $5,000.00 and Ordering that the tent be removed and that the outside speaker system, and cease live and/or recorded entertainment.
September 8	Notice of Appeal filed by J. Carroll Holzer, Esquire on behalf of Fifth Street, LLC, et al.
September 22	Appeal received by Board
October 24	Notice of Assignment sent to Parties
October 30	Request of J. Carroll Holzer, Esquire for Postponement of Hearing due to pending related case before the Zoning Commissioner.

November 15	Notice of Postponement sent indicating that case will be rescheduled upon the conclusion of Case No.: 07-144-SPH scheduled before the Zoning Commissioner for December 5, 2006.

No: 07-144-SPH

September 28, 2006	Petition for Special Hearing to address 1. Whether the use of the property at 9025 Cuckold Point Rd, Millers Island, MD 21219 is in violation of the BCZR. 2. Is the use by Fifth Street, LLC, a restaurant, at 9025 Cuckold Point Rd., which provides music during the day, is a "night club" as defined in the BCZR, Sec. 101, 102.1 and 230?
May 11, 2007	Memorandum filed by Francis X. Borgerding, Esquire on behalf of Protestants, Matthew and Nancy Jean Ciarpella.
May 15	Petitioner's Memorandum in Lieu of Oral Argument filed by J. Carroll Holzer, Esquire on behalf of Fifth Street, LLC and Lawrence Thanner, Petitioners.
May 30	Findings of Fact and Conclusion issued by Zoning Commissioner indicating that the use of the property is defined as a "night club" and that the playing of outdoor music either by way of an outside speaker system, live/or recorded entertainment, must be discontinued.
June 11	Notice of appeal filed by J. Carroll Holzer, Esquire on behalf of Petitioner.
July 24	Additional copy of Notice of Appeal received by Zoning Commissioner's Office.
August 17	Appeal received by Board
September 20	Sign Posting requested by Board

No. CBA-07-134

July 5, 2007	Citation issued for failure to comply with Zoning Commissioner's Order in Case No.: 07-144-SPH; failure to obtain permit for tent; and failure to obtain permit for electrical work on property zoned BL.
August 14	Hearing before Code Enforcement Hearing Officer.

August 16	Findings of Fact and Conclusion of Law issued by Raymond S. Wisnom, Jr., Code Enforcement Hearing Officer
August 30	Notice of Appeal filed by J. Carroll Holzer, Esquire on behalf of Fifth Street, LLC and Lawrence Thanner.
September 14	Appeal received by Board of Appeals
October 1	Notice of Assignment sent to parties
November 7	Motion for Continuance filed by J. Carroll Holzer, Esquire on behalf of Fifth Street, LLC and Lawrence Thanner, requesting continuance and consolidation.

Nos.: CBA-06-044, 07-144-SPH, and CBA-07-134

November 16	Notice of Assignment setting all three (3) cases together.
January 8	Pre-Hearing Memorandum of People's Counsel for Baltimore County filed by Peter M. Zimmerman and Carole S. Demilio.
January 15, 2008	Board convened for Hearing

Exhibits submitted at hearing before the Board of Appeals:

Petitioner's Exhibit No.
1 –Site Plan

Protestants' Exhibit No.
1 – Web site advertisement
2 – News paper advertisement
3 – International Building Code Regulations
4 – Violation Notice
5 – 5/24/06 Letter from L. Thanner
6 – Code Enforcement Citation
7 – Dundalk Eagle
8 – Photographs from Memorial Day Weekend
9 – Entertainment Schedule
10 – Code Enforcement Hearing Officer's Final Order
11 – Definition from BCZR Nightclub.
12 – Council Bill 1-05 adopting International Mechanical code
13 – Nightclub definition from "Webster's 3rd New Dictionary"
14 – Recent advertisement from Charles Wolinski
15 – Written Presentation by Wayne E. Waldmann, Jr.

January 15	Motion to Limit Testimony filed by J. Carroll Holzer, Esquire on behalf of Fifth Street, LLC and Lawrence Thanner
January 17	Notice of Public Deliberation sent to all parties
February 19	Petitioner's Memorandum in Lieu of Oral Argument submitted by J. Carroll Holzer, Esquire on behalf of Fifth Street, LLC and Lawrence Thanner
February 19	Memorandum of Baltimore County, Maryland filed by Nancy C. West, Assistant County Attorney
March 13	Board convened for Public Deliberation
June 4	Opinion and Order issued by Board determining that the facility is indeed a "nightclub" and ordering that the Code Enforcement Hearing Officer's decision in case No. CBA-06-044 is hereby Affirmed; imposing a fine in the amount of $1,000.00 for operating a nightclub in Baltimore County; and Affirming the Code Enforcement Hearing Officer's decision in Case No.: CBA-07-134 imposing a fine of $1,000.00 for erecting a temporary tent without a permit.
July 1	Motion for Reconsideration and Clarification and Appendix filed by J. Carroll Holzer, Esquire on behalf of Fifth Street, LLC and Lawrence Thanner.
July 7	Notice of Deliberation sent to Parties
July 18	Response to Motion for Reconsideration and Clarification filed by Francis X. Borgerding, Esquire on behalf of Protestants, Matthew and Nancy Jean Ciarpella.
July 23	People's Counsel for Baltimore County's Answer to Motion for Reconsideration and Clarification and Appendix filed by Peter M. Zimmerman and Carole S. Demilio
August 12	Board convened for Public Deliberation on Motion for Reconsideration.
September 12	Ruling on Motion for Reconsideration issued Denying Motion for Reconsideration.
September 19	Petition for Judicial Review filed in the Circuit Court for Baltimore County by J. Carroll Holzer, Esquire on behalf of Fifth Street, LLC and Lawrence Thanner.

September 24	Copy of Petition for Judicial Review received from the Circuit Court for Baltimore County by the Board of Appeals.
September 26	Certificate of Notice sent to interested parties.
October 31, 2008	Transcript of testimony filed.
October 31, 2008	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.

Sunny Cannington

Sunny Cannington, Legal Secretary
County Board of Appeals
The Jefferson Building, Suite 203
105 W. Chesapeake Ave.
Towson, Maryland 21204
410-887-3180

c: J. Carroll Holzer, Esquire
Francis X. Borgerding, Jr., Esquire
Fifth Street, LLC/Lawrence Thanner
Matthew and Nancy J. Ciarpella
Office of People's Counsel
Nancy C. West, Assistant County Attorney

9/12/08

IN THE MATTER OF THE APPLICATION OF FIFTH STREET, LLC; LAWRENCE THANNER - LEGAL OWNER /PETITIONER FOR SPECIAL HEARING ON PROPERTY LOCATED ON THE SE/ COR OF CUCKOLD POINT ROAD AND FIFTH STREET; 9025 CUCKOLD POINT ROAD 15TH ELECTION DISTRICT 7TH COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case No. 07-144-SPH
AND	*	and
IN THE MATTER OF FIFTH STREET, LLC - RESPONDENT 9025 CUCKOLD POINT ROAD 15TH ELECTION DISTRICT 7TH COUNCILMANIC DISTRICT RE: CIVIL CITATION # 06-3683 /DECISION OF CODE ENF. HEARING OFFICER	*	Case No. CBA-06-044
AND	*	and
IN THE MATTER OF FIFTH STREET, LLC - RESPONDENT 9025 CUCKOLD POINT ROAD 15TH ELECTION DISTRICT 7TH COUNCILMANIC DISTRICT RE: CIVIL CITATION # 06-3683-B /DECISION OF CODE ENF. HEARING OFFICER	*	Case No. CBA-07-134

* * * * * * *

RULING ON MOTION
FOR RECONSIDERATION AND CLARIFICATION

On June 4, 2008, the Board issued its decision in the above cases, finding that the Respondent was in violation of the Baltimore County Code (BCC) and levying a fine of $1,000.00 in lieu of the $3,500.00 that was levied by the Hearing Officer. A timely Motion for Reconsideration was filed by Counsel for the Respondent. The Motion raises five questions or issues.

Question 1 – How many of the criteria set forth in the Building Code can an establishment have before it is considered to be operating a nightclub?

Question 2 – Will the Board amend its Order to state that the Dock of the Bay Restaurant must discontinue its nightclub operations?

Question 3 – Should the Petitioners be held liable for not adhering to a law which no one except the Board of Appeals in a split decision could define?

Question 4 – How can the Petitioner be fined for erecting a tent without a permit when the Petitioner was never charged with that violation?

Question 5 – Was the testimony given by neighbors of Dock of the Bay proper testimony?

Decision

The Board held a public deliberation on the Motion on August 12, 2008. The Board finds that the issues raised in questions 1 and 2 request an advisory opinion, which the Board does not render.

With respect to question #3 concerning the $1,000.00 fine, the Board finds that the fine was appropriate and it will stand. The question of whether or not there was a split decision makes no difference with respect to the assessment of the $1,000.00 fine.

As to question #4, the Board finds that the Respondent was charged with failure to obtain a permit for the tent that it erected on the property. The Code Enforcement notice of May 20, 2006, states that the Respondent should obtain a tent permit or remove the structure. The notice of June 7, 2006, states a failure to obtain a permit for the tent. The notice of August 14, 2006, has an amendment, "Remove the tent or obtain permit." The Board finds that the Respondent had adequate notice that it was being charged with respect to failure to obtain a permit for the tent.

In regard to question #5, the Board considers that the testimony which it received from the neighbors was appropriate testimony and it will not grant any review with respect to that testimony. Should the Respondent feel that the testimony is improper, it may contest that in the Circuit Court for Baltimore County.

Therefore, the Board, having considered all of the questions raised by the Respondent, will deny the Motion for Reconsideration. The Board's Opinion and Order issued on June 4, 2008, remains this Board's final decision in this matter.

IT IS THEREFORE ORDERED THIS 12th day of September 2008 that the Motion for Reconsideration filed in this matter is **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*.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence S. Wescott, Panel Chairman

Wendell H. Grier

Lawrence M. Stahl

County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

September 12, 2008

J. Carroll Holzer, Esquire
508 Fairmount Avenue
Towson, MD 21286

RE: *In the Matter of: Fifth Street, LLC – Petitioner /Respondent*
Case No. 07-144-SPH; Case No. CBA-06-044 /CC 06-3683; and
Case No. CBA-07-134 /CC 06-3683 B

Dear Mr. Holzer:

Enclosed please find a copy of the Board's Ruling on Motion for Reconsideration issued this date.

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*, **with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Kathleen Bianco/sc

Kathleen C. Bianco
Administrator

Enclosure

c: Fifth Street, LLC /Lawrence Thanner
Mike Kondylas
Dorothea Reilly
Judith Kurek
Francis X. Borgerding, Jr., Esquire
Matthew J. and Nancy Jean Ciarpella
Wayne and Patricia Waldmann Sr.
Phil and Kay Sessa
Charlie Wolinski and Daryl Wolinski
Michael Poleski
David and Vena Sheck
Ken Schoyl and Tammy Novak
Lisa Hoerger, CBCAC
Doug W. Waldmann, et al
Louis Petrovia
Robert Haas
David Znamirowski
Robert Poleski
David McWilliams
Terri Poleski
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Jeffrey Radcliffe /Code Enforcement **[CC-06-3683/06-3683B]**
Raymond S. Wisnom, Jr. / Code Enf. Hearing Official
Mike Mohler, Enforcement /PDM
Nancy C. West, Asst. County Attorney
Timothy M. Kotroco, Director /PDM
John E. Beverungen, County Attorney

6/4/08

IN THE MATTER OF THE APPLICATION OF FIFTH STREET, LLC; LAWRENCE THANNER - LEGAL OWNER /PETITIONER FOR SPECIAL HEARING ON PROPERTY LOCATED ON THE SE/ COR OF CUCKOLD POINT ROAD AND FIFTH STREET; 9025 CUCKOLD POINT ROAD 15TH ELECTION DISTRICT 7TH COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case No. 07-144-SPH
AND	*	and
IN THE MATTER OF FIFTH STREET, LLC - RESPONDENT 9025 CUCKOLD POINT ROAD 15TH ELECTION DISTRICT 7TH COUNCILMANIC DISTRICT RE: CIVIL CITATION # 06-3683 /DECISION OF CODE ENF. HEARING OFFICER	*	Case No. CBA-06-044
AND	*	and
IN THE MATTER OF FIFTH STREET, LLC - RESPONDENT 9025 CUCKOLD POINT ROAD 15TH ELECTION DISTRICT 7TH COUNCILMANIC DISTRICT RE: CIVIL CITATION # 06-3683-B /DECISION OF CODE ENF. HEARING OFFICER	*	Case No. CBA-07-134

* * * * * * *

MAJORITY OPINION

These cases come to the Board on appeal from two decisions of the Code Enforcement Hearing Officer and a decision of the Zoning Commissioner. The two decisions of the Code Enforcement Hearing Officer found the Petitioner, Fifth Street, LLC, guilty of violations of the County Code and levied fines of $5,000.00 and $1,000.00. The appeal from the decision of the Zoning Commissioner found that the Dock of the Bay, operated by Fifth Street, LLC, was classified as a nightclub under the Baltimore County Zoning Regulations (BCZR) and was in violation of the BCZR for operating a nightclub within a Business Limited (B.L.) zone.

Since the cases basically involved an interpretation of the County zoning regulations and the same sets of circumstances, the Board consolidated the cases for hearing. A hearing on the merits was held on January 15, 2008. Testimony was taken in Case No. 07-144-SPH, and oral

argument was conducted in Cases No. CBA-06-044 and No. CBA-07-134. Petitioner, Fifth Street, LLC, and Lawrence Thanner, Legal Owner, was represented by J. Carroll Holzer, Esquire. Protestants, Matthew J. and Nancy Jean Ciarpella, Phil and Kay Sessa, Charlie and Darrell Wolinski, Michael and Robert Poleski, David and Vena Sheck, Ken Schoyl and Tammy Novak, Doug W. Waldmann, et al, Louis Petrovia, Robert Haas, David Znamirowski, David McWilliams, and Terri Poleski, were represented by Francis X. Borgerding, Jr., Esquire. Baltimore County was represented by Nancy C. West, Assistant County Attorney. The parties were given the opportunity to file briefs on February 19, 2008. A public deliberation was held on March 13, 2008.

Background

Fifth Street, LLC, and Lawrence J. Thanner, its Resident Agent, operates the Dock of the Bay restaurant offering dining facilities and services at its location at 9025 Cuckold Point Road, Millers Island, in Baltimore County, Maryland. On August 8, 2006, the Dock of the Bay was cited for a Code violation, with a proposed penalty of $5,000.00, for operating a nightclub in a B.L. zone. In addition, Fifth Street, LLC, was cited for erecting a tent on the premises without obtaining the required permit from the County. A hearing was held before the Code Enforcement Hearing Officer on August 23, 2006, and a decision was rendered on August 25, 2006, ordering the Respondent to remove the tent and finding that the property "is being used and operated as a restaurant with dancing and live entertainment allowing a building code violation to exist concurrently with the nightclub use and continued unabated despite receiving notice of violation on May 12, 2006. A restaurant with dancing and/or live or recorded entertainment is not a permitted use in a B.L. zone."

After that hearing, Fifth Street, LLC, filed a Petition for Special Hearing in Case No. 07-144-SPH. This Petition requested the Zoning Commissioner to interpret the zoning regulations for Baltimore County with respect to the operation of a nightclub.

The decision of the Zoning Commissioner finding that Fifth Street, LLC, and the Dock of the Bay was a restaurant providing music during the day and was a "nightclub" as defined in BCZR § 101, 102.1, and 230, was dated May 30, 2007. Subsequent to that date, Fifth Street, LLC, was again cited for violation of the *Baltimore County Code* (BCC) for failure to obtain a permit for a tent and also for violation of BCZR § 101, 102.1, 230, and 500.6 for failure to cease operation of a nightclub in a B.L. zone. A second hearing was held before the Code Enforcement Hearing Officer and, by decision dated August 16, 2007, the Code Enforcement Hearing Officer again found Dock of the Bay in violation of BCZR for operating a nightclub in a B.L. zone and erecting a tent without obtaining the required permit. The Hearing Officer imposed a $1,000.00 fine in that case.

Testimony and Evidence

Petitioner presented Lawrence J. Thanner, Managing Member of Fifth Street, LLC, as their principal witness. Mr. Thanner stated that the Dock of the Bay has been a restaurant since 1955 and, to his knowledge, always had music and on many occasions, providing live bands. Mr. Thanner opened the new Dock of the Bay restaurant in March of 2004 after refurbishing the building from the effects of Hurricane Isabel. Everything was completely refurbished and new equipment was installed in the restaurant.

Thanner stated that the restaurant has a 2,400 square foot rectangular bar at one end and has tables and chairs on the main floor to accommodate diners. He stated that the restaurant could seat about 150 to 160 patrons inside. In the summertime, he has an outside patio with an outside bar and tables with umbrellas and chairs for patrons to utilize. The restaurant has 14 boat

slips for transient boat customers. The restaurant also has a playground for children, with a wooden pirate ship to allow children to play on the playground. The restaurant opens every day at 11:00 a.m. and closes at 2:00 a.m. In the winter, the restaurant will close early when customers are gone. Thanner testified that the restaurant kitchen closes at 11:00 p.m., but that the bar will stay open until 2:00 a.m. He stated that the restaurant has a full commercial kitchen and provides a full menu of seafood, steaks, sandwiches, etc. He has licenses from the Baltimore County Health Department, which states that he is a restaurant, and a basic license from the State of Maryland, which also states that it is a restaurant.

The restaurant has ten television sets inside and two out on the patio. There is a house music system that plays radio and satellite radio inside and outside. There are outside speakers. The television sets are on all the time except when they have live entertainment.

Mr. Thanner stated that he does have live entertainment at the restaurant with a D.J. playing for karaoke participants and live bands on Friday and Saturday nights. On those occasions, the entertainment goes from 9:00 p.m. to 1:00 a.m. During the previous summer, he stated that he had live music on Saturday afternoon and Sunday afternoon from 4:00 p.m. to 8:00 p.m.

Mr. Thanner stated that he had stopped the music after 8:00 p.m. after the Liquor Board had told him to cease the music. He stated that he had full-scale bands in 2004 with no complaints, but in 2005, a Liquor Board inspector told him to "pipe down" and he still had the bands, but mostly duos or steel bands. He received complaints in May of 2006 from the outside music and wrote a letter to the County asking for clarification on May 14, 2006. This letter was sent to C. Raynor, inspector in the Baltimore County Department of Code Inspections and Enforcement. The letter listed a number of activities, which Mr. Thanner proposed to conduct at the Dock of the Bay and requested clarification as to how these items qualified as a nightclub

under the citation that he had received. This letter was presented as Petitioner's Exhibit #2 to the Board. Thanner stated that he received no response to his letter.

After he sent the letter, he contacted Attorney Carroll Holzer to file for a special hearing. Mr. Thanner stated that 70 percent of the sales at his restaurant were in food and 30 percent are beverages. He indicated that he does not charge for the live entertainment and is open until 2:00 a.m. when the live music is played. Mr. Thanner also stated that, when he has live entertainment, he does lower the lighting level in the restaurant. He stated that the live bands play quite loudly but that he has never been cited for having a noise level about 65 decibels at the property line. He also stated that he does not have any stage accessories for the bands except in the summertime when there is a small stage erected outside on the patio. His operating hours are 11:00 a.m. to 2:00 a.m., which he considered to be normal, but under State law, you cannot sell alcohol past 2:00 a.m. With respect to defined aisles for the tables and chairs, he stated that tables and chairs are set in certain ways to form aisles. He did admit that some time when the bands are playing inside people would move the tables and chairs and dance between the tables. He does have facilities for serving alcoholic beverages and, as previously stated, the restaurant will accommodate 150 to 160 patrons.

Mr. Thanner argued that his operation should not be considered a nightclub based upon the criteria set forth in the International Building Code which has been adopted by the County. It was Mr. Thanner's position that he could not survive in the wintertime without the live music because the restaurant would not pay for itself based solely on food and drinks served during normal times without the music being available.

Mr. James H. Thompson, Supervisor of Code Enforcement, was called by Protestants as a witness and testified that he has worked in Zoning for 31 years, 13 of which as Supervisor of Code Enforcement, and that his office cited Mr. Thanner for being a nightclub operating in a

B.L. zone. Mr. Thompson stated that his office operates on a complaint basis only. He stated that they had had no complaints about the restaurant property before Mr. Thanner took over the property. It was his testimony that his office only reviews a situation based upon a complaint and, if the operation being considered provides live entertainment in a B.L. zone, it would be considered a nightclub and would not be allowed to operate. This would include karaoke, a person playing a piano, and strolling minstrels.

The Protestants presented Matthew Ciarpella, who has resided on Sixth Street adjacent to the Dock of the Bay for 3 years. Mr. Ciarpella complained of hearing the music even though the band was inside and it was wintertime. He stated that Monday through Thursday there were no problems since no music was played, and that when the music was played, it was loud enough for him to hear in his house even though it was not played outside.

Kay Sessa also testified stating that she lived at Sixth Street, which is about 650 feet from the Dock of the Bay. She stated that she heard the karaoke being played and that, although the previous restaurant had live bands, they stopped playing in 1970. She stated that she has been bothered by the live bands of the Dock of the Bay since 2004.

Patricia Waldmann, Charles Wolinski, and Brad Metheny and Bonnie Metheny all testified that they were neighbors living approximately 100 to 250 feet from the Dock of the Bay and that the music played on Friday and Saturday nights was so loud that they could not enjoy a peaceful night's sleep. Wolinski testified that he had gone into the Dock of the Bay and had witnessed that the tables were moved when the bands were playing and that there were not always aisles for the tables.

Finally, George Abendschoen, the Administrator of the Baltimore County Liquor Board, testified that there had been a file opened by his office on the Dock of the Bay. Based upon complaints that were received by the Liquor Board concerning the music that was played, an

inspector, Dan Crockett, had gone to the Dock of the Bay to investigate the matter. There was no determination by the Liquor Board. The report by the inspector, Dan Crockett, was received for identification only but was not admitted as part of the evidence in this matter.

Cases No. CBA-06-044 and No. CBA-07-134

Subsequent to the evidence presented in the special hearing case, the parties argued with respect to the civil citations and the decisions of the Hearing Officer in the above matters. Mr. Holzer contended that, under § 500.6 and 7 of the BCZR, the Hearing Officer had no authority or jurisdiction to interpret the *Baltimore County Zoning Regulations* with respect to whether or not the Dock of the Bay fell under the definition of nightclub. He stated that that was restricted solely to the authority of the Zoning Commissioner. These cases should be determined on the basis of the decision that this Board makes with respect to finding as to whether or not the Dock of the Bay is a nightclub under the BCZR. Mr. Holzer argued that Mr. Thanner had, in good faith, sought clarification in the Baltimore County Department of Code Inspection and Enforcement and received no clarification from that office. He also stated that § 3103 of the *International Building Code*, which has been adopted by the County, applies to structures erected for less than 180 days. He stated that Counsel for the Protestants in his letter claims that, in addition to live music, the tent was up for over 8 months. If that is the case, he felt that his client was cited under the wrong citation. He stated that it was not clear what the fine of $5,000.00 covered and requested a reduction in the fine if the Board finds that the operation is a nightclub. There was no indication as to whether or not there was any evidence presented to the Code Enforcement Hearing Officer with respect to how long the tent was erected at the Dock of the Bay operation.

With respect to the second citation, Mr. Holzer indicated that the second charge should have been given the same file number, even though the first charge was on appeal to the Board.

He stated that the Code Enforcement Hearing Officer in Case No. CBA-07-134 found that the Zoning Commissioner had determined that the playing of outdoor music must be discontinued but did not address the playing of indoor music. The Code Enforcement Hearing Officer found the Dock of the Bay to be a nightclub and therefore in violation of the BCZR. Mr. Holzer wanted further clarification of the fine levied in the second hearing.

In addition, Mr. Holzer indicated that the Zoning Commissioner had received an inquiry from the Liquor Board with respect to his decision. Evidently, the Zoning Commissioner replied to the inquiry, stating that he had determined that the music being played inside and outside the building was prohibited. Mr. Holzer felt that he had to appeal this letter because it was his position that the Zoning Commissioner had not taken any position with respect to the inside music.

Counsel for the Protestants argued to affirm the decision of the Code Enforcement Hearing Officer. He argued that both decisions were affirmed by the decision of the Zoning Commissioner in which he found that the operation was a nightclub. There was no prejudice or reversible error committed and that the Hearing Officer should be affirmed on his findings with respect to the nightclub definition. With respect to the tent, he argued that the tent had been put up on two separate occasions and that the Hearing Officer was correct in finding a violation on both occasions.

Ms. West argued solely with respect to the jurisdictional aspect and it was her position that, under the Code, Article 3, § 6-101, the Hearing Officer had the authority to hear the two cases for finding and was correct in finding the violations.

Decision

There is no question that the Dock of the Bay restaurant is located in a B.L. zone. The B.L. zone uses permitted, as of right, include under § 230.4 a standard restaurant, tea room,

convenience store, and dairy barn. Section 101 of the BCZR defines a standard restaurant as "a facility or part of a facility used primarily for serving meals and beverages to persons seated at tables on the premises of the establishment."

The definition of "nightclub" is found in BCZR § 101, List of Definitions, and states:

> A tavern or other establishment which permits live or recorded entertainment with or without a dance floor, and which is categorized as a nightclub by the Building Code of Baltimore County.

Section 101 also defines a tavern as:

> An establishment which has a Baltimore County Class D liquor license. A tavern which meets the criteria of a nightclub, as defined in these regulations, shall be considered a nightclub.

A tavern and standard restaurant are allowed in a B.L. zone; a nightclub is not allowed.

The International Building Code, adopted in Bill No. 1-05 by the County Council, includes, in § 303.1:

> 303.1 Assembly Group A:
>
> Assembly Group A occupancy includes, among others, the use of a building or structure or a portion thereof, for the gathering together of persons for purposes such as civic, social, or religious functions, recreation, food or drink consumption, or awaiting transportation....

Following the major assembly group are the five sub-assembly groups. A-2 is the primary group with which we are concerned in this matter.

> A-2. Assembly uses intended for food and/or drink consumption, including but not limited to:
>
> banquet halls
> nightclubs
> restaurants
> taverns and bars

In a discussion of the various groups, the Code states:

> ...In the assembly group category, the potential for multiple fatalities and injuries from fire is comparatively high....Darkened spaces in theaters, nightclubs, and the like serve to increase hazards. In emergencies, the congestion caused by large numbers of people rushing to exits can cause panic conditions.

The characteristics for sub-assembly group A2 state:

> Group A-2 includes occupancies in which people congregate in high densities for social entertainment, such as drinking and dancing (e.g., nightclubs, dance halls, banquet halls, cabarets, etc.) and food and drink consumption (e.g., restaurants). The uniqueness of these occupancies is characterized by some or all of the following:
>
> - low light levels;
> - entertainment by a live band or recorded music generating above-normal sound levels;
> - no theatrical stage accessories;
> - later than average operating hours;
> - tables and seating arranged or positioned so as to create ill-defined aisles;
> - a specific area designated for dancing;
> - service facilities for alcoholic beverages and food; and
> - high occupant load density.

There follows an example which states:

> > Example: The Downtown Club, a popular local nightclub /dance hall, features a different band every weekend [See figure 303.1(5)]. It is equipped with a bar and basic kitchen facilities so that beverages and appetizers can be served. There is a platform for a band to perform on, a dance floor in front of the platform, and numerous cocktail tables and chairs. The tables and chairs are not fixed, resulting in a haphazard arrangement such that there are no distinct aisles. When the band performs, the houselights are dimmed and spotlights are keyed in on the performers. The club is equipped with a sound system that is used at loud levels. The club is open until 3:00 a.m. – the latest time the local jurisdiction will allow.
>
> From this descript of The Downtown Club, one can readily see that the appropriate classification is Group A-2. Sometimes, however, it is not this easy to determine the appropriate classification. In such cases, the building official must seek additional information regarding the function(s) of the building and each area within the building.

The Board recognizes that this decision could have far-reaching effects in the County. The definition of "nightclub" in the BCZR is certainly far from being crystal clear. As testified to by the Building Inspector, the inspection department operates solely on a complaint basis. Their criteria for finding a nightclub would be any restaurant, tavern or bar which provides live

entertainment. This could be anything from a piano player playing background music, a strolling minstrel, or a 12-piece orchestra.

In reviewing the characteristics for the group of facilities classified as A-2 in the Building Code, the Board finds as follows:

1. Low light levels.

Mr. Thanner testified that normally the restaurant is lit at what one would consider a normal level. However, when the band is playing, he did admit that the lights were turned down.

2. Entertainment by a live band or recorded music generating above-normal sound levels.

Mr. Thanner indicated that on Fridays, Saturdays, and Sundays, he has live entertainment, be it karaoke, a D.J., or a small band. In fact, this is a major part of his business and he feels that, without the music, the Dock of the Bay cannot survive during the winter months. The question of whether or not the band and the music is played above normal sound levels is one that would probably be determined by the persons listening to it. Certainly, the neighbors surrounding the Dock of the Bay feel that the sound level of the music is above normal, even during the winter months when music is played inside. There has been no indication that the restaurant has been declared to be in violation of noise levels under the Maryland Occupational Safety and Health Act. However, there is no question that the bands do play at sound levels which extend beyond the four walls of the restaurant.

3. No theatrical stage accessories.

Mr. Thanner testified that there are no theatrical stage accessories, particularly during the winter months. He did state that on weekends during the summer time there is a small stage for the bands that play outside until 8:00 p.m.

4. Later than average operating hours.

Mr. Thanner testified that normal operating hours of the restaurant are 11:00 a.m. to 2:00 p.m. He stated that during the winter the restaurant would close early if there were no patrons. He also indicated that his kitchen closes at 11:00 p.m.; however, the facility will stay open until 2:00 a.m., which is the normal closing hour required by the County for facilities serving liquor.

5. Tables and seating arranged or positioned so as to create ill-defined aisles.

Mr. Thanner again testified that the tables and chairs in the restaurant are generally fixed according to aisles for serving. However, he did state that when a band plays it is normal for individuals to move chairs and tables to allow for the band and also to allow people to dance in between the tables.

6. Specific area designated for dancing.

Mr. Thanner testified that there is no specific dance area. However, once again he did indicate that when the bands are playing people would move the tables and dance in the aisles among the tables.

7. Service facilities for alcoholic beverages and food.

There is no question that the Dock of the Bay serves alcohol and food. Mr. Thanner was quite emphatic that 70 percent of his business comes from the food operation and probably 28 to 30 percent from the alcoholic beverages.

8. High occupant load density.

There is no definition of what a high occupant load density is. Mr. Thanner testified that the restaurant would seat 150 to 160 individuals. On nights when there are bands playing, there appears to be a large crowd coming into the restaurant and one would probably find that it is filled to capacity.

The Board finds that the Dock of the Bay meets at least six of the criteria set forth in Group A-2. This would be criteria 1, 2, 3, 4, 7 and 8.

While our dissenting Member would find that there is no violation when the music is played inside the facility, he would find that it is a nightclub when music is played outside. The Majority finds that the music, whether played inside or outside, is a factor in finding that the facility is a nightclub under the definition set forth in the BCZR. The second criterion does not differentiate between inside and outside noise. The fact that the Dock of the Bay does not provide music Monday through Thursday is not controlling in the opinion of this Board. Playing loud music on Friday through Sunday that can be heard by the neighbors makes the operation a nightclub under the present definition of the BCZR.

The Board is not unmindful that the definition of a nightclub, under the BCZR, can certainly have a far-reaching effect in the restaurant industry. Restaurants that meet some or all of the A2 criteria, and are located in B.M. zones, might be considered "nightclubs" under the present criteria of the BCZR. It is not for the Board to change the definition but for the County Council to consider.

Cases No. CBA-06-044 and No. CBA-07-134

The Board has considered the arguments and evidence presented to the Board and the Code Enforcement Hearing Officer in the above matters.

The Board finds that the Code Enforcement Hearing Officer is authorized to interpret the definition of a nightclub under his duties to hold hearings and issue final orders under § 3-6-206 of the BCZR. In any event, the Zoning Commissioner had found the Dock of the Bay to be a nightclub prior to the holding of the second Code Enforcement hearing. Therefore, the Code Enforcement Hearing Officer could rely on that decision to uphold his findings.

The Board will affirm the decision of the Hearing Officer in both matters but will reduce the penalty to a $1,000.00 fine for operating as a nightclub in a B.L. zone and a $1,000.00 for failure to obtain a permit to erect a tent on a temporary basis at the Dock of the Bay restaurant.

ORDER

IT IS THEREFORE this 4th day of June, 2008, by the Board of Appeals for Baltimore County,

ORDERED that the Petition for Special Hearing pursuant to § 500.6 and 500.7 of the Baltimore County Zoning Regulations requesting a determination as to whether the use of the B.L. zoned property at 9025 Cuckold Point Road is in violation of the zoning regulations, and, specifically, as to whether the facility which provides music at this location is a "nightclub" as defined in the BCZR §§ 101, 102.1 and 230 is hereby answered in the affirmative and the playing of music by way of speaker system, live or recorded entertainment must be discontinued; and it is further

ORDERED that the decision of the Code Enforcement Hearing Officer in Case No. CBA-06-044 be and is hereby **AFFIRMED;** and further that the fine is reduced to $1,000.00 for operating a nightclub in a B.L. zone; and it is further

ORDERED that the decision of the Code Enforcement Hearing Officer in Case No. CBA-07-134 for operating a nightclub in a B.L. zone and for erecting a temporary tent without a permit be and is hereby **AFFIRMED**; and further that the fine of $1,000.00 for the erection of the tent is **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.*

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence S. Wescott, Panel Chairman

Wendell H. Grier

IN THE MATTER OF THE APPLICATION OF FIFTH STREET, LLC; LAWRENCE THANNER - LEGAL OWNER /PETITIONER FOR SPECIAL HEARING ON PROPERTY LOCATED ON THE SE/ COR OF CUCKOLD POINT ROAD AND FIFTH STREET; 9025 CUCKOLD POINT ROAD 15TH ELECTION DISTRICT 7TH COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case No. 07-144-SPH
AND	*	and
IN THE MATTER OF FIFTH STREET, LLC - RESPONDENT 9025 CUCKOLD POINT ROAD 15TH ELECTION DISTRICT 7TH COUNCILMANIC DISTRICT RE: CIVIL CITATION # 06-3683 /DECISION OF CODE ENF. HEARING OFFICER	*	Case No. CBA-06-044
AND	*	and
IN THE MATTER OF FIFTH STREET, LLC - RESPONDENT 9025 CUCKOLD POINT ROAD 15TH ELECTION DISTRICT 7TH COUNCILMANIC DISTRICT RE: CIVIL CITATION # 06-3683-B /DECISION OF CODE ENF. HEARING OFFICER	*	Case No. CBA-07-134

* * * * * * *

DISSENTING OPINION

I respectfully disagree with the opinion of the Majority.

In support thereof, I draw attention to the very arguments and content of the Majority Opinion. Based upon the testimony presented and summarized in the Majority Opinion, we are faced with a commercial enterprise described as follows:

- 150 to 160 seated patrons at tables and chairs with defined aisles
- a playground for children on the premises, including a wooden pirate ship
- operating hours of a commercial kitchen of 11 a.m. to 11 p.m. with a full menu of steaks, seafood, sandwiches, etc.

- Health Department and State of Maryland licenses as a restaurant
- 70% of total receipts related to food service, while only 30% is related to alcohol
- no cover charge or other entrance fee
- no stage accessories inside the premises

On its face, absent further imposed factors, the above would appear to be a common sense discussion of a restaurant.

In this particular care there is no question that there is live and musical entertainment provided on a limited basis at the location. There are TV sets in the premises, and there is karaoke and DJ music on two nights of the week. The definition of a restaurant in § 101 of the Baltimore County Zoning Regulations (BCZR) is a clear statement that "a facility or part of a facility used primarily for serving meals and beverages to persons seated at tables on the premises of the establishment." However, the definition of "nightclub" is exceedingly unclear and circuitous. It is quoted on page nine of the Majority Opinion and is based upon the essential definition of a "tavern" which permits music and is further "characterized" as a nightclub by the Building Code.

Unfortunately, this is a situation of law in which Baltimore County has seen fit to adopt a "one size fits all" International Building Code (IBC) as opposed to creating or evolving a Building Code that reflects the particular realities and common sense observations of this jurisdiction. Once again, the Majority has appropriately quoted the salient portions of the adopted International Building Code in an effort to determine whether the subject site is indeed a nightclub. Group A2 is the subgroup of the IBC which is applicable to this discussion. Group A2, while providing a general description of "uses intended for food and/or drink consumption,"

includes such disparate uses as banquet halls, nightclubs, restaurants, taverns, and bars. Common sense cannot but reach the inalterable observation that there are significant differences (or should, in reality, be) between these different uses, notwithstanding the fact that the authors of the "one size fits all" IBC determined to lump them together. In a discussion of the characteristics for the sub-assembly Group A2, the Majority, on page ten of its Opinion, quotes the Code as follows:

> ...Group A2 includes occupancies in which people congregate in high densities for social entertainment such as drinking and dancing (e.g., nightclubs, dancehalls, banquet halls, cabarets, etc.) and food and drink consumption (e.g., restaurants). **[Emphasis added.]**

Clearly, even the generalists who produced the IBC recognized that facilities utilized for purely social gathering were different than those used primarily for food and drink.

There follows a list of characteristics in which "some or all" would be relevant to a determination of the actual identity of a particular site use. This writer disagrees with the evaluation of the Majority as to these characteristics and would note those disagreements:

1. Low light levels – There is no question that the vast majority of the time the subject site lighting is at a normal level for a restaurant. That the lighting is sometimes reduced as part of its ambience should not negate the general lighting scheme on most occasions.
2. Entertainment by a live band or recorded music generating above-normal sound levels – There is no question that there is live or recorded music both inside and outside the subject business on occasion. There is absolutely no testimony that the owners have ever been cited for allowing music or live entertainment to generate above-normal sound levels either inside or outside the premises of the restaurant. The Majority properly notes that there is no

indication "that the restaurant has been found to be in violation of noise levels under the Maryland Occupation Safety and Health Act." There is anecdotal testimony of neighbors, many of whom came into the area after the activities at this location had continued for many years, that there were levels of music and other sound that adversely affected their enjoyment of their property. None testified to filing complaints with the police, nor was there any information developed that the restaurant had been cited for violation of noise statutes. With all due respect to the neighbors, their determination is subjective to the extreme; nor does the record reflect any action taken regarding the restaurant by governmental enforcement agencies akin to that which has occurred over many years to limit and modulate above-normal generated sound levels at house parties, college fraternity events, and other occasions when the police were summoned for above-normal noise levels. On such occasions, there are recognized decibel levels that are acceptable, the violation of which will result in governmental action immediately. No such evidence of governmental action regarding this restaurant exists here.

3. There are no theatrical stage accessories in the subject premises.
4. Later than average operating hours – There is no testimony of any sort that there are any but normal restaurant and bar hours for this location. The restaurant's commercial kitchen is open 12 hours a day. As noted, the restaurant provides 70 percent of the income at the location. Clearly these activities are the primary purposes of the establishment.

5. Tables and seating arranged or positioned so as to create ill-defined aisles – There is no testimony that there is a special setup of tables or chairs (other then that appropriate to a restaurant) for the purpose of providing entertainment. In fact, it is simply a habit of some patrons to move their chairs and seating arrangements to fit the moment. One might also be able to say that there would probably be any number of occasions when music is played and no one determines to move chairs or tables. There is simply no on-going structural plan by the owner of the establishment to do so.
6. Specific area designated for dancing – There is no specific area designated by the owner for dancing. That occasionally action by customers to do so unofficially does not officially create such an area. Therefore, the absence of that clearly defined plan should indicate just the opposite conclusion.
7. Service facility for alcoholic beverages and food – As noted above, the vast majority of the income derived at the location is as the result of food service to patrons, including families.
8. High-occupant load density – Once again, the "one size fits all" Code gives us no indication as to what "high" means. There is undisputed testimony that the restaurant seats 150 to 160 individuals and that on occasion that maximum is reached. The seating limitation is for restaurant use and is another indicator of Baltimore County's "real life" views of the nature of the business.

It is the opinion of this writer that the criteria applied in the IBC does not clearly indicate that this location in any significant way meets the definition and requirements under the law to be termed a "nightclub." In fact, as is characteristic of most generalized and non-specific

criteria, the IBC itself (as quoted by the Majority on page ten of the Opinion) states that "sometimes however it is not easy to determine the appropriate classification. In such cases, the building official must seek additional information regarding the function(s) of the building and each area within the building." It essentially tells us that the criteria is so broad and determinedly subjective discussion and conclusion that it should not be utilized in a vacuum. The actual facts of the use and description of the site being addressed must be utilized in order to reach any viable conclusion as to the sites' status under the law. These additional factors and inquiries do not appear to have been utilized by the enforcement authorities or the Zoning Commissioner in their respective determined by in this case.

Baltimore County (as well as most jurisdictions in Maryland) has a history of primarily restaurant and other food related establishments utilizing various music and entertainment accoutrements to enhance both the ambience and experience of the patrons. Whether those accoutrements are physical (such as a playground for children at this location) or television sets or music or piano player, a strolling minstrel, a singing waiter, or a roving "in character" presentation by staff, these activities do not render such an establishment a nightclub but rather a restaurant with some additional entertainment provided. The position of the majority however, would result in a finding of "Nightclub" for any restaurant establishment utilizing these activities. Such a result turns a blind eye to common sense.

This writer believes that the result reached by the Majority, with its admitted, far-reaching effects, is the classic "untended consequences" situation. I believe that the Code Enforcement authorities should at the least have utilized the instruction in the IBC language that other factors, such as those existing here, should have been utilized and therefore the decision by

the Majority, that this is a nightclub as opposed to a restaurant, is incorrect; and, moreover, does not reflect the actual reality of the situation.

As a final note, Mr. Thompson, of the Enforcement agency for the County, testified that their actions in this matter and as to other establishments under this section and scenario would be generated on a "complaint only" basis. While I will not dwell on the point, such selective enforcement appears to me to be contrary to the spirit and intent of any well-written regulation, is arbitrary and capricious, and possibly an "Equal Protection under the laws" violation. I believe that the appellate court should revisit this particular situation in order to confirm that the subject site in this case is indeed a restaurant and not a nightclub; and further, that the criteria for such determinations must include factors in addition to the bare generalities of the IBC. Additionally, I believe that the County Council should, as quickly as possible, revisit the issue and adjust the County Code sections as they relate to the use of entertainment in restaurants and negate now and avoid in the future a result such as this, which is not in the best interests of the citizens or economy of Baltimore County.

For all of the above, I dissent in the Opinion of the Majority.

Lawrence M. Stahl, Board Member

DATE: 6-04-2008

County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
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June 4, 2008

J. Carroll Holzer, Esquire
508 Fairmount Avenue
Towson, MD 21286

RE: *In the Matter of: Fifth Street, LLC – Petitioner /Respondent*
Case No. 07-144-SPH; Case No. CBA-06-044 /CC 06-3683; and
Case No. CBA-07-134 /CC 06-3683 B

Dear Mr. Holzer:

Enclosed please find a copy of the Majority Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matters. Also enclosed is a copy of the Dissenting Opinion of Mr. Stahl.

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*, **with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all subsequent Petitions for Judicial Review filed from this decision should be noted under the same civil action number as the first Petition.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Kathleen C. Bianco
Administrator

Enclosure

c: Fifth Street, LLC /Lawrence Thanner
Mike Kondylas
Dorothea Reilly
Judith Kurek
Francis X. Borgerding, Jr., Esquire
Matthew J. and Nancy Jean Ciarpella
Wayne and Patricia Waldmann Sr.
Phil and Kay Sessa
Charlie Wolinski and Daryl Wolinski
Michael Poleski
David and Vena Sheck
Ken Schoyl and Tammy Novak
Lisa Hoerger, CBCAC
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Jeffrey Radcliffe /Code Enforcement **[CC-06-3683/06-3683B]**
Raymond S. Wisnom, Jr. / Code Enf. Hearing Official
Mike Mohler, Enforcement /PDM
Doug W. Waldmann, et al
Louis Petrovia
Robert Haas
David Znamirowski
Robert Poleski
David McWilliams
Terri Poleski
Nancy C. West, Asst. County Attorney
Timothy M. Kotroco, Director /PDM
John E. Beverungen, County Attorney

2/19/08

IN THE MATTER OF:	*	BEFORE THE
SPECIAL HEARING TO DETERMINE USE OF PROPERTY LOCATED AT 9025 CUCKOLD POINT ROAD, MILLERS ISLAND, MARYLAND 21219	*	COUNTY BOARD OF APPEALS
	*	OF
	*	BALTIMORE COUNTY
Legal Owner: Fifth Street, LLC Lawrence J. Thanner, Jr.	*	Case No.: ~~CBA~~-07-144-SPH
15th Election District 7th Councilmanic District	*	Case No.: CBA 07-134 Civil Citation: August 16, 2007
and	*	Case No.: CBA-06-044 Civil Citation: September 8, 2006
Civil Citation Appeals	*	

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

PETITIONER'S MEMORANDUM IN LIEU OF ORAL ARGUMENT

Fifth Street, LLC; ***Lawrence J. Thanner, Jr.***, Petitioner, by ***J. Carroll Holzer, Esquire***, Holzer & Lee, hereby submits this Memorandum in Lieu of Oral Argument before the County Board of Appeals and says:

I.

STATEMENT OF THE CASE

Petitioner, ***Fifth Street, LLC, Lawrence J. Thanner, Jr.***, Resident Agent, was cited by Baltimore County Department of Permits and Development Management in Civil Citation No.: 06-3683 (Case No.: CBA-06-044) for operating a "night club" in a B.L. zone (hereinafter referred to as "B.L. zone") and for erecting a tent without a permit. Prior to the hearing on the

RECEIVED
FEB 19 2008
BALTIMORE COUNTY
BOARD OF APPEALS

LAW OFFICE
HOLZER AND LEE
THE 508 BUILDING
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Civil Citation, the Petitioner filed a Petition for Special Hearing (Case No.: CBA-07-144-SPH) requesting the Zoning Commissioner to interpret the Zoning Regulations for Baltimore County. Subsequent to the Zoning Commissioner's ruling against the Petitioner, Fifth Street, LLC, was again cited by Baltimore County Department of Permits and Development Management in Civil Citation No. 06-3683 (CBA-07-134) (same number as the first case subsequently amended to Case No.: 06-3683B) for operating a "night club" in a B.L. zone among other alleged violations. Fifth Street was only found in violation of operating a "night club" in a B.L. zone. The Fifth Street, LLC., Lawrence J. Thanner, Jr. and the operating entity of the restaurant known as Dock of the Bay Restaurant, Thanner Enterprises, LLC, have paid a combined total of Six Thousand Dollars ($6,000.00) in fines due to the rulings in the two (2) violation cases.

The purpose of the *de novo* hearing before the Board is to determine under the Petition for Special Hearing if the Dock of the Bay Restaurant located at 9025 Cuckold Point Road in Baltimore County Maryland is a **NIGHT CLUB** or a **RESTAURANT** as defined by the Baltimore County Zoning Regulations (hereinafter referred to as B.C.Z.R). The significance of the question is that a night club is not permitted in the B.L. zone which is the zoning of 9025 Cuckold Point Road. The B.L. zone permits the property to be used as a restaurant or a tavern. A copy of the uses permitted in the B.L. zone is attached for the convenience of the Board. And further, to determine if Dock of the Bay was in violation of §3103 of the I.B.C. in Case No.: 06-044 as the County has alleged.

The two (2) Civil Citation Appeals, Cases 06-044 and 07-134, flow from the finding that the subject site is a night club, if it is not, then the two (2) Civil Citations must be reversed.

II.

STATEMENT OF FACTS

This case was heard before the County Board of Appeals on January 15, 2008. The two (2) Civil Citation cases and the Special Hearing requested by the Petitioner were consolidated at that time. The Transcript reflects that Counsel for the Petitioner advised the Board that in the Petition for Special Hearing which was decided by the Zoning Commissioner on May 30, 2007, the Zoning Commissioner prohibited the playing of ***outdoor*** music, either live or recorded. From that Decision, the Petitioner appealed to this Board for a *de novo* hearing. The Zoning Commissioner then after the appeal was filed on June 29, 2007, authored a letter to the Liquor Board and advised the Liquor Board that the playing of live or recorded music, whether ***inside or outside*** is not permitted by the B.C.Z.R. This distinction made subsequent to his original Order by the Zoning Commissioner was then also appealed to this Board on July 24, 2007. In any event, both issues are before the Board during the course of the hearing held on January 15, 2008. (T. 19-20).

1. Petitioner's Case.

Lawrence Thanner, managing member of Fifth Street, LLC and owner of the property at 9025 Cuckold Point Road testified on direct examination that the subject site has been a bar and restaurant since 1955 and that they have always had music there to his knowledge. This testimony was uncontested. He testified that the previous owner played outside live music as well. (T. 21). Thanner then testified that he acquired the property in October 2003, after the

flooding by Isabel and that he rebuilt the damaged restaurant and opened in March 2004. (T. 22). He testified that the restaurant contained 2,400 sq. ft. with a rectangular bar at the one end with tables and chairs and aisles for the restaurant patrons. (T. 22). He testified that the Fire Department established the capacity at approximately one hundred sixty (160) people. He then described the outside of the restaurant as containing a patio with tables and chairs and an outside bar open only during the summer. (T. 23). He further testified that the restaurant is located on the Chesapeake Bay and that he has in addition to a parking area, a dock that contains fourteen (14) boat slips. He also testified that there is a playground for children. (A pirate ship). (T. 24). He testified that it is a family restaurant and that children can come to the property and play on the playground. He testified that the restaurant is open for lunch and dinner. They open at 11:00 a.m. and close at 2:00 a.m. the following day. Some nights he closes as early as 9:00 p.m. or 9:30 p.m. (T. 24-25).

He testified that the restaurant has a full commercial kitchen and a full menu. The menu consists of seafood, crabs, crab cakes, steamed crabs, shrimp, steak, hamburgers and tuna fish sandwiches for both lunch and dinner. (T. 25).

Thanner testified that he has all the licenses that are necessary to operate a restaurant – one from Baltimore County Health Department which states "that it is a Restaurant License;" and second a Business License from the State of Maryland which also states that he is a "Restaurant." (T. 26). Both licenses were submitted as Exhibits.

Thanner then candidly testified as to the type of activity that he conducts at the restaurant. He testified that he has ten (10) televisions inside and two (2) on the patio area outside. He has a house music system. They generally play the radio or satellite radio music playing inside and there are speakers outside that are attached to the system. (T. 27). He testified that the televisions and radio would be on all of the time except when he has "live entertainment."

Thanner then testified that he has live entertainment ***inside***. He has disc jockeys, karaoke and live bands and they generally run from 9:00 p.m. to 1:00 a.m. in winter and summer on Friday and Saturday night. (T. 28).

He then testified as to the live or recorded music ***outside*** on Saturday afternoons from 4:00 p.m. to 8:00 p.m. and Sunday afternoons from 4:00 p.m. to 8:00 p.m. prior to darkness. (T. 29). Thanner acknowledged that in the summers of 2004 and 2005, they had full bands but currently in 2007, he had a duo playing music and/or a steel band. (T. 31).

Thanner then explained that after he received a Code Enforcement Citation, he wrote to the County on May 24, 2006, asking for clarification as to what constituted a night club. (T. 31, Petitioner's Exhibit #2). When he received no response to the inquiry, he filed a Petition for Special Hearing. (T. 32).

Thanner then testified that in terms of the operation of the Dock of the Bay, seventy percent (70%) of the sales for the Dock of the Bay were related to food and the remaining thirty percent (30%) was beverage. (T. 33). He further testified that he does not charge for any live entertainment, that there is no cover charge or minimum. (T. 33).

Thanner then described the neighborhood surrounding the Dock of the Bay. He testified that to the East is the Chesapeake Bay, to the North is Bill's Boats Marina and the zoning there is B.M. To the West are lots owned by Bill's Boats that are B.M. On the South side there are residents, however the zoning for that property is B.M. adjacent to the Dock of the Bay. (T. 35-36). He testified that the existing homes, one of which was built on the B.M. zoning, was built in 2004 and 2005, subsequent to the Dock of the Bay's beginning operation.

Thanner then proceeded to testify as to his analysis of the B.C.Z.R. and whether or not the Dock of the Bay Restaurant was a night club. (T. 37-55).

The summary of Thanner's testimony was that in reviewing the B.C.Z.R., one is referred to the Baltimore County Building Code which has been subplanted by the I.B.C. Thanner's analysis of the I.B.C. followed as it relates to Group A-2. Thanner testified that A-2 lumps banquet halls, restaurants, night clubs, taverns and bars under that Group A. Thanner then went through each of the criteria defining Assembly Group A. He testified that the Dock of the Bay does not have low lighting (T. 40), that the music is not always above normal sound levels (T. 40), that he has never been cited for a violation of the noise level (T. 40), that the Dock of the Bay does not have theatrical stage accessories (T. 41) and that the Dock of the Bay does not have a stage (T. 41). Further, he testified that he does not stay open later than average operating hours, which is normal for restaurants, bars and taverns (T. 42). He testified that his tables do not create ill-defined aisles (T. 42), that the Dock of the Bay does not have a dance floor (T. 42). That the Dock of the Bay does not have high occupancy. Since the density was assigned by the Fire Department and it is not particularly high based upon the number of tables in place. (T. 43).

Thanner then testified that the I.B.C. is saying that live bands, recorded music are common to restaurants, banquet halls and do not necessarily define the characteristics of a night club. Thanner testified that the Dock of the Bay is a restaurant with live music which is different from a night club. (T. 44). As an example, a banquet hall is under Group A-2, but Martin's West has live music and dancing. The fact that Martin's can have bands does not change the fact that they are still a banquet hall. (T. 45). Thanner testified that he went to the Marko Club (a banquet hall) on Wilson Point Road and they had live music and dancing, but that did not change the character that the Marko Club is a banquet hall. (T. 45). Thanner then testified that even though he plays live recorded music, it does not change the fact that he is a restaurant serving food from 11:00 a.m. to 11:00 p.m. (T. 46).

Thanner then responded to a pre-hearing Memorandum of People's Counsel citing a Board Decision in Case No.: 96-60-XA, which discussed an "after hours" club versus a "night club." Thanner then concluded that the Board's Decision there stated that you are either a night club or an after hours club. Therefore, Thanner concluded that he is either a restaurant or a night club and that it cannot be both. (T. 50). He testified the Dock of the Bay is a restaurant.

Thanner then testified that in the over seven hundred (700) bars and restaurants in Baltimore County, those providing "live or recorded entertainment" having some sort of radio or television would make those facilities a night club. (T. 52).

Finally, Thanner testified that B.C.Z.R. in the B.L zone do recognize that music and/or dancing are permitted. A conservatory for music is specifically permitted as well as a dance studio.

Finally, Thanner testified that in the R.A.E. 2 zone, a restaurant with live music is permitted so that restaurants with live music and a night club are two different types of activity as recognized by the Zoning Regulations. (T. 54).

Thanner concluded by saying "from my standpoint, a restaurant with live music is different from a night club. There are not regulations, no guidelines as to where one steps over the line. I have music, live entertainment, seven percent (7%) of the time the restaurant is open, and I have food sales of seventy percent (70%) and therefore I am a restaurant, not a night club." (T. 55).

2. ***James Thompson.***

Mr. Thompson is the Supervisor of Code Enforcement for Baltimore County and was called as an adverse witness by the Petitioner to testify. (T. 70). Thompson testified that his department issues citations only when they receive a complaint. (T. 71). In his thirty (30) years of experience, he is not aware of a single case being filed against a business establishment for having recorded testimony, either inside or outside. (T. 73).

When asked whether or not he would issue a citation to a restaurant that has a television in it and plays a show like American Idol, which has music, he indicated that he would consult with the Director of his office. (T. 74-75). That if he was handed a list of restaurants in the B.L. zone that have a television that shows either American Idol or a Ravens football game before he cited them as a night club, he would speak to his Director. However, if live entertainment was there, we would go after them. (T. 75).

When questioned as to how his Department justifies distinguishing between bringing an action where somebody has a live band versus somebody has recorded music or television, his response was "well, again, what you are talking about is unique. Having never proceeded in that manner, I think it is wise we bounce it off the Director."

He was then questioned as to whether the Bel Loc Diner if it was in a B.L. zone has a juke box and with that information, does it make it a night club in your Department's opinion and he responded "No." (T. 76). He was then asked whether a very nice restaurant that has a strolling minstrel, a violin player or piano bar would be a night club and he responded "Yes," because it "talks about live entertainment." (T. 77).

He was then questioned about a tavern and bar in Dundalk called the Seahorse that plays karaoke and has live entertainment inside. He indicated that would be a night club. (T. 78). He acknowledged that the only thing that distinguishes that tavern and bar from the Dock of the Bay was that a Complaint was filed. (T. 79). Thompson was then questioned about the use of Assembly Group A-2. When questioned as to whether Martin's West, which is classified as a banquet hall and which is listed under Assembly Group A, if Martin's would have live music and dancing, would that automatically convert the banquet hall into a night club? (T. 80). Thompson then responded to the following question:

> **Question:** "Does the fact that a banquet hall plays music and there is dancing, does that change it from being a banquet hall to a night club?
>
> **Answer:** I would say not." (T. 82).

(Then why is a restaurant which plays live music suddenly changed to a night club?)

Thompson was then asked about the previously referred to Board case of 1998, which related to a Chaos, night club and/or after hours club. In that case the Board found, in the language of the opinion, that Chaos was either a night club or an after hours club and that it could not be both, then how can the Dock of the Bay restaurant be both a night club and a restaurant?

Thompson responded:

> **Answer:** "I can't say they give up their right as being a restaurant. I am not giving you a straight answer, I know that.
>
> **Question:** You are doing as well as I expected anyone in your position to do, because it does not make any sense." (T. 84).

Thompson then acknowledged that simply having music and/or dancing in a B.L. zone cannot be wrong because the County Council permitted a conservatory of music and/or a dance school in the B.L. zone. (T. 84-85).

Thompson was then asked as to whether there was a definition for a restaurant in the B.C.Z.R. and he acknowledged that there was a use called "the standard restaurant." Thompson then defined it as "a facility or part of a facility used primarily for serving meals and beverages to persons seated at tables on the premises of the establishment." (T. 87). Thompson was then reminded that Thanner had earlier testified that his restaurant is open from 11:00 a.m. to 11:00 p.m. and that he serves lunch and dinner and that seventy percent (70%) of his activities

relate to serving food and twenty-eight percent (28%) of his activities relates to beverages. (T. 88). Thompson was then asked if you accept that as a fact, would you accept the fact then that Thanner's Dock of the Bay is a restaurant under this definition? And Thompson's answer was "Yes." Thompson then acknowledged that Dock of the Bay fit the definition of a standard restaurant. (T. 88-89).

Finally, Thompson was asked if someone on the Fourth of July in any restaurant in a B.L. zone, got dressed up in an Uncle Sam's outfit and read the Declaration of Independence as live entertainment, would that make that restaurant or that tavern or that establishment under the Zoning Regulations a commercial establishment, would that make it a night club? Answer: I would tell you "I hope not." (T. 92-93).

3. ***Protestant's Case.***

The Petitioner made a Motion to Limit the Testimony of expected Protestants unless they testified as to the definition of an interpretation of a night club as requested under the Petition for Special Hearing, since the two (2) Civil Citation cases were to be reviewed by the Board of Appeals on the Record. That Motion to Limit Testimony was granted by the Board. (T. 120-121). The Protestants presented a number of individuals, all of whom to some extent, attempted to discuss matters related to the Civil Citations and the Zoning Violations. The Board's hearing was then concluded.

III.

ARGUMENT

To determine whether Dock of the Bay is a restaurant.

FACTS

The B.C.Z.R. defines a NIGHT CLUB as -- A tavern or other commercial establishment which provides live or recorded entertainment, with or without a dance floor, AND (emphasis added) which is categorized as a night club by the Building Code of Baltimore County. [Bill No.: 110-1993]. (Copy attached). Baltimore County no longer uses the Building Code of Baltimore County; it has been replaced by the International Building Code (hereinafter referred to as "I.B.C.").

The I.B.C. does not define night clubs. There is in the I.B.C., however, a category, A-2, which defines certain assembly groups. The I.B.C. does not define **NIGHT CLUB** anymore than it defines a banquet hall or a restaurant.

The 2003 International Building Code and the case cited by People's Counsel in its letter to the Board (copy attached), state the assembly uses in Group A-2 as well as the characteristics of Group A-2. The I.B.C. states the assembly uses in Group A-2 as well as the characteristics of Group A-2. The I.B.C. states that, Group A-2 is assembly uses intended for food and/or drink consumption including, but not limited to:

Banquet Halls

Night Clubs

Restaurants

Taverns and Bars

The uniqueness of these ***occupancies*** is characterized by some or all of the following:

1. Low Level Lighting.
2. Entertainment by a live band or recorded music generating above-normal sound levels.
3. No theatrical stage accessories.
4. Later than average operating hours.
5. Ill-defined aisles created by the positioning of tables.
6. A specific area for dancing.
7. Service facilities for alcoholic beverages and food.
8. High occupant load density.

QUESTION

Is a restaurant or tavern with the characteristics listed under Group A-2 a night club?

GROUP A-2

No, of course not. County zoning officials, have repeatedly claimed that the characteristics listed in the I.B.C. under Group A-2 are characteristics of a "night club." However, it is quite obvious that these characteristics are not the characteristics of a night club alone, but instead, are characteristics of the various uses listed under Group A-2. Therefore, a night club, a use listed in Group A-2 may have these characteristics. But so may a restaurant, a tavern and a banquet hall, since these are also approved uses under Group A-2. The I.B.C. recognizes and permits and expects restaurants, taverns and banquet halls to have the

characteristics listed under Group A-2. That is why a restaurant is included in Group A-2. Note that characteristic number 2 is, "Entertainment by a live band or recorded music generating above-normal sound levels." Since the characteristics listed under Group A-2 are not the characteristics of a night club alone, then a restaurant with live music is just that, a restaurant with live music. The Dock of the Bay Restaurant therefore is permitted to have live or recorded music as defined by the B.C.Z.R. and the incorporated I.B.C.

The fact that the Dock of the Bay is categorized as Group A-2 does not mean it is a "night club." It falls under Group A-2 because it is a restaurant. According to the I.B.C. the Dock of the Bay is permitted and expected to have some or all of the characteristics listed in Group A-2.

County officials contend that since Dock of the Bay has live entertainment, it is a night club. However, there is nothing written in the I.B.C. that would make it a "night club," anymore than a banquet facility with live music miraculously becomes a night club. No one would refer to Martin's West as a "night club." In conclusion, the analysis by the County zoning officials as to the significance of Group A-2 has been "shallow" and without clear analysis.

LIVE VERSUS RECORDED ENTERTAINMENT

Mr. James Thompson, from the Office of Baltimore County Code Enforcement, testified repeatedly before the Board that the only criteria used by the Baltimore County Office of Code Enforcement to determine if a commercial entity is a night is whether or not the entertainment is **LIVE**, which would include a live band, a disc jockey and/or karaoke.

Thompson indicated before the Board that "live entertainment" is the only criteria to determine if a business is a night club. He opined that no live music was permitted in the B.L. Zone. Thompson concluded that "there are no exceptions for live music in a B.L. Zone." Actually, the B.L. Zone permits as a matter of right a conservatory of music. Conservatories of music do not play records; they play "live" music. This is the position the County zoning office has taken and it is totally contrary to do what is written in the law. Actually, the B.C.Z.R.'s state "live or recorded entertainment." Therefore, if one uses the County's logic and applies the law as written, i.e., live or recorded entertainment, then the Bel Loc Diner would be considered a "**NIGHT CLUB**" since it serves food and has a juke box. Michael's Café' on York Rod has live bands many Fridays and Saturday nights. No one would possibly call thee commercial establishments "**NIGHT CLUBS**." Also, Denny's Restaurants and IHOP's have recorded music playing at their establishment. Yet common sense says they are not "night clubs." Furthermore, a restaurant with someone playing dinner music on a piano or violin would be, according to the County's interpretation, a "night club." No one would logically call thee types of operations with live music a night club.

The owner of the Seahorse Bar has disc jockeys and karaoke at his establishment, yet one would not believe that the owner would intentionally violate the County's zoning regulations. That establishment has not been cited for being a "night club." No one using common sense or the Group A-2 classification would classify the Seahorse Bar as a night club.

If the entertainment is recorded, then it still becomes a night club. Thus, every bar, tavern, restaurant and banquet facility which showed the Super Bowl on television has piped in music, or a juke box, using the County's logic would be a "night club." Obviously, this makes little sense. The showing of the Super Bowl on television does not make a commercial entity a "night club" any more than having a live band occasionally in a restaurant makes that restaurant a "night club."

RESTAURANT WITH LIVE MUSIC

The B.C.Z.R. lists as a use in the R.E.E. 2 Zones, a restaurant with live music. (Copy attached).

Is a restaurant with live music the same as a "night club?"

Absolutely not. The B.C.Z.R. specifically recognizes that night clubs and restaurants with live music are two different uses. In Zone R.A.E. 1, one of the permitted uses is standard restaurants with no dancing or live entertainment permitted. (Copy attached). And in R.A.E. 2 Zones one of the permitted uses is, standard restaurants, with dancing or live entertainment permitted. While the Dock of the Bay is not located in the R.A.E. 2 Zone, this, in and of itself, establishes that the B.C.Z.R. and the County Council recognize there is a difference between a "night club" and a restaurant with music. If there is no difference between a night club and a restaurant with music, then in the R.A.E. Zones the County Council would have simply stated that R.A.E. 1 Zone permits restaurants and the R.A.E. 2 Zone would have stated that "night clubs" are permitted. Under the B.C.Z.R. there is nothing to prohibit a standard restaurant from having live entertainment. As stated before, the I.B.C. grants permission and

expects a restaurant to have live entertainment. Thus, the Council obviously, desiring to not have live entertainment in the standard restaurant in the R.A.E. 1 Zone had to specifically exclude it. Then to make the distinction the R.A.E. Zone 2 was permitted to have live entertainment just like any standard restaurant.

STANDARD RESTAURANT

The standard restaurant is defined by the B.C.Z.R. as, "A facility or part of a facility used ***primarily*** for serving meals and beverages to persons seated at tables on the premises of the establishment." (Copy attached).

Is a standard restaurant permitted to have live or recorded entertainment?

Yes. The standard restaurant is defined by the B.C.Z.R. as, "A facility or part of a facility used ***primarily*** for serving meals and beverages to persons seated at tables on the premises of the establishment." The key word is primarily. This, of course, means that the facility can be used for other purposes. Since a restaurant with dancing or entertainment does not make it a night club according to the B.C.Z.R. and since it is a characteristic of a restaurant in the I.B.C., then the other purposes can very well be dancing and entertainment, which, of course, is what the Dock of the Bay does. Dancing and entertainment be it live or recorded is not prohibited in the definition of a standard restaurant. What is not prohibited is allowed. Therefore, entertainment and dancing are allowed in a standard restaurant.

Does the Dock of the Bay meet the definition of a standard restaurant? Yes. It's licensed as a restaurant by the State and County. Its primary purpose is to serve food and drink from 11:00 a.m. to 11:00 p.m. Seventy percent (70%) of its gross receipts are from serving food and twenty-eight percent (28%) from beverages. It has tables and chairs for dining and no stage or dance floor. Live entertainment is provided only seven percent (7%) of the time. It has a playground for children. It is not a night club.

ONE USE

Can a business be both a night club and a restaurant? No!

Wisnom in *Case No.: 06-044* clearly states on Page 3 that the "Dock of the Bay restaurant with dancing and/or live or recorded entertainment and ***THIS FACT IS UNCONTESTED***." (copy attached). Somehow Mr. Wisnom equated that to being a "night club." However, in *Case No.: 96-060-XA*, which involved determining whether a business was a "night club" or an "after hours" club, the Board of Appeals wrote on Page 19, "Obviously, if as the Petitioner contends, the Petitioner's present location is a night club, it cannot be, by definition, simultaneously considered as an "after-hours club." The same can be said here. The Dock of the Bay is either a restaurant or a "night club." It cannot be both.

Additionally, the Dock of the Bay's business license and food service license both list the Dock of the Bay as a restaurant. Therefore, County agencies and the State of Maryland recognize the Dock of the Bay as a restaurant. (Copy of licenses attached). The Dock of the Bay cannot be both a restaurant and a night club anymore than a banquet hall such as Martin's West suddenly becomes a night club if there is live entertainment and dancing. The theory that a facility can be two (2) uses at the same time would make shambles of the Zoning Regulations if this theory is adopted. The Board of Appeals got it right in Case No.: 96-060 XA.

LEGISLATIVE INTENT

The Zoning Commissioner in his Decision (copy attached) in Case No.: 07-144-SPH on Page 8 states that it is necessary for the Zoning Commissioner to determine the legislators intent.

In writing the zoning laws did the County Council intend to ban music in a B.L. Zone?

Of course not. When one looks at the B.C.Z.R. there are uses which are allowed as a matter of right in the B.L. Zone which have live music. A conservatory of music is allowed in a B.L. Zone. So by simply stating that the entertainment is provided by the Miller's Island Conservatory of Music would that in the eyes of the County make the Dock of the Bay's entertainment legal? Also, a dance school is allowed in the B.L. Zone. Therefore, by simply having the dancers register as students, does it become all of a sudden legal. It is quite obvious that it was never the intent of the legislators to ban music or dancing in a B.L. Zone.

Additionally, the Council stated in the law that defines a night club that the music is either live or recorded, meaning there is no difference between the two. Every bar, tavern and restaurant in Baltimore County has some form of live or recorded entertainment, even if it just background music playing on a house system. If the County is going to take the position that they have with the Dock of the Bay Restaurant, then the County must recognize the entertainment cannot be live or ***RECORDED***. This would, of course, include house systems, juke boxes and televisions. Every bar, tavern and restaurant in Baltimore County has some form of live or recorded entertainment. Therefore, every bar, every tavern and every restaurant located in a B.L. Zone is in violation of the law. This was obviously not the intent of the County Council.

All the Petitioner has ever asked for in this process is for equal treatment under the law. In accordance with the letter of the law or the spirit of the law, the Dock of the Bay having occasional live or recorded entertainment is not a night club anymore than is a tavern showing the Super Bowl on television.

COMMON SENSE FACTORS

Common sense tells us that a tavern with a television showing the Super Bowl or American Idol is not a "night club" regardless of the definition in the B.C.Z.R. The Dock of the Bay's food sales account for over seventy percent (70%) of its gross revenue. This would include fifty thousand (50,000) crab cakes in less than four (4) years. Additionally, entertainment is provided approximately seven percent (7%) of the time the Dock of the Bay is open. Furthermore, a children's playground is located immediately adjacent to the area where outside entertainment is provided during the summer. These factors are not typical of any "night club." These are all factors which must be considered when determining whether the Dock of the Bay Restaurant is a night club or a restaurant with live entertainment which is permitted in a B.L. Zone. Just as in the case with a tavern entertaining its customers by showing the Super Bowl does not make that tavern a night club," a legitimate standard restaurant occasionally entertaining its customers with live or recorded entertainment is not a "night club" either.

CASE #: 07-144-SPH

IN THE MATTER OF: FIFTH STREET, LLC; Lawrence Thanner – Legal Owner /Petitioner
9025 Cuckold Point Road 15th E; 7th C

SPH – To determine whether use of BL zoned property is in violation of BCZR; specifically, is restaurant, which provides music during day, a nightclub as defined in BCZR.

5/30/2007 – Z.C.'s Order in which requested zoning relief was **DENIED**.

[NOTE: Also included in this file is an appeal taken by Mr. Holzer from the 6/29/2007 letter from the Z.C. to Thomas Minkin, Chair of the Board of Liquor License Commissioners, interpreting the above 5/30/07 Order.]

10/30/07 – Notice of Assignment sent to the following this date; hearing assigned for Tuesday, January 15, 2008 at 10:00 a.m. **(Scheduled with related Case No. CBA-06-044 – code violation appeal)**

J. Carroll Holzer, Esquire
Fifth Street, LLC /Lawrence Thanner
Mike Kondylas
Dorothea Reilly
Judith Kurek
Francis X. Borgerding, Jr., Esquire
Matthew J. and Nancy Jean Ciarpella
Wayne and Patricia Waldmann Sr.
Phil and Kay Sessa
Charlie Wolinski and Daryl Wolinski
Michael Poleski
David and Vena Sheck
Ken Schoyl and Tammy Novak
Doug W. Waldmann, et al
Louis Petrovia
Robert Haas
David Znamirowski
Robert Poleski
David McWilliams
Terri Poleski
Lisa Hoerger, CBCAC
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Jeffrey Radcliffe /Code Enforcement **[CC-06-3683]**
Raymond S. Wisnom, Jr. / Code Enf. Hearing Official
Mike Mohler, Enforcement /PDM
Timothy M. Kotroco, Director /PDM
John E. Beverungen, County Attorney

11/16/07 – Amended Notice of Assignment sent this date; adding Case No. CBA-07-134 and adding additional date of Tuesday, January 29, 2008 at 10:00 a.m. /Day #2 (retaining Tuesday, January 15, 2008 at 10 a.m. as Day #1).

1/08/08 – Pre-Hearing Memorandum of People's Counsel for Baltimore County filed by People's Counsel. Copies provided.

1/15/08 – Board convened for hearing (Wescott, Stahl, Grier); completed hearing this date; additional date not needed. Memos due from parties 2/19/08; deliberation tentatively assigned for 3/13/08 at 9:00 am.; notice to be sent.

1/17/08- Notice of Deliberation sent to parties; assigned for Thursday, March 13, 2008 at 9:00 a.m.; fyi copy to 3-2-4. (Also deliberating CBA-06-044 and CBA-07-134.)

2/14/08 – Post-Hearing Memorandum of People's Counsel for Baltimore County filed.

CASE #: 07-144-SPH **IN THE MATTER OF: FIFTH STREET, LLC; Lawrence Thanner – Legal Owner /Petitioner**
9025 Cuckold Point Road 15th E; 7th C

NOTE: Also see Case No. CBA-07-134 and Case No. CBA-06-044 /Code Violations

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2/19/08 – Protestants' Memorandum filed by Francis X. Borgerding, Jr., Esquire, on behalf of Protestants.
-- Petitioner's Memorandum in Lieu of Oral Argument filed by J. Carroll Holzer, Esquire, on behalf of Fifth Street, LLC and Lawrence J. Thanner, Jr.
-- Memorandum of Baltimore County, MD, filed by Nancy C. West, Assistant County Attorney, adopting the Post-Hearing Memorandum filed by the People's Counsel for Baltimore County.
NOTE: Copies of memos to panel members on 2/21/08, with the exception of: copies of Ms. West's memo and Mr. Zimmerman's memo were sent to Mr. Grier via USPS this date.
-- Letter from Mr. Holzer with enclosure – Copy of transcript as referenced in Memorandum.

3/13/08 – Board convened for public deliberation (Wescott, Stahl, Grier). Majority opinion that (1) the facility is operating as a nightclub under the definition and current regs; and (2) the HO is affirmed on code violation /CBA-06-044; and also affirmed in Case No. CBA-07-134. L. Stahl concurs with the majority, but also dissents in that he does not agree that the facility operates as a nightclub when the music is played inside the restaurant. Written Majority Opinion and Order to be issued; concurring /dissenting decision to be authored by Mr. Stahl; 30-day appellate period to run from date of written Order and not from this date.

7/01/08 – Motion for Reconsideration and Clarification and Appendix filed by J. Carroll Holzer, Esquire, on behalf of Lawrence J. Thanner, Jr., and Fifth Street, LLC, Petitioners in this matter. Awaiting response to this Motion prior to forwarding to 3-2-4. Public deliberation to be scheduled.

7/03/08 – T/C from P. Zimmerman; will be on vacation during part of the month of July; intends to file a responses to Petitioner's Motion.

COPY OF MOTION CAN BE FOUND IN CBA-06-044 case file.

7/07/08 – Notice of Deliberation sent to parties; public deliberation on Motion for Reconsideration and Clarification only assigned for Tuesday, August 12, 2008, at 9:00 am. FYI copy to 3-2-4; copies of Motion and Response to be forwarded to panel prior to deliberation date.

7/18/08 – Response to Motion for Reconsideration and Clarification filed by Frank Borgerding, Jr., Esquire, on behalf of Matthew Ciarpella and Nancy Jean Ciarpella, Protestants.
-- Copies of Motion and Response to 3-2-4. **(MOTION AND RESPONSE CAN BE FOUND IN CBA-06-044.)**

7/23/04 – People's Counsel for Baltimore County's Answer to Motion for Reconsideration and Clarification and Appendix filed by the Office of People's Counsel. FYI copy to 3-2-4 this date.

8/12/08 – Board convened for public deliberation on Motion for Reconsideration (Wescott, Stahl, Grier). Unanimous decision – Motion is DENIED: Ruling on Motion to be issued by Board; appellate period to include Board's decision issued on 8/05/08 will run from date of issuance of written Ruling in this matter.

2/19/08 – Protestants' Memorandum filed by Francis X. Borgerding, Jr., Esquire, on behalf of Protestants.
-- Petitioner's Memorandum in Lieu of Oral Argument filed by J. Carroll Holzer, Esquire, on behalf of Fifth Street, LLC and Lawrence J. Thanner, Jr.
-- Memorandum of Baltimore County, MD, filed by Nancy C. West, Assistant County Attorney, adopting the Post-Hearing Memorandum filed by the People's Counsel for Baltimore County.

NOTE: Copies of memos to panel members on 2/21/08, with the exception of: copies of Ms. West's memo and Mr. Zimmerman's memo were sent to Mr. Grier via USPS this date.
-- Letter from Mr. Holzer with enclosure – Copy of transcript as referenced in Memorandum.

3/13/08 – Board convened for public deliberation (Wescott, Stahl, Grier). Majority opinion that (1) the facility is operating as a nightclub under the definition and current regs; and (2) the HO is affirmed on code violation /CBA-06-044; and also affirmed in Case No. CBA-07-134. L. Stahl concurs with the majority, but also dissents in that he does not agree that the facility operates as a nightclub when the music is played inside the restaurant. Written Majority Opinion and Order to be issued; concurring /dissenting decision to be authored by Mr. Stahl; 30-day appellate period to run from date of written Order and not from this date.

PROPOSED LEGISLATION

It is obvious to the County Administration that the current definition of night club is defective and unclear. As a result, the Administration has submitted a proposed draft amendment to the procedure. At the present time the "draft" is unavailable to Counsel.

The testimony of Jim Thompson before the Board cited in the ***FACTS*** above make it clear the definition of night club is confusing, unclear and inapplicable in this case. Thompson was placed in a position of attempting to justify an interpretation that could not be defended. (See T. 76-93).

IV.

Case No.: 06-044

The tent violation in the Civil Citation September 8, 2006.

The Petitioner was charged with violating §3103 of the 1.B.C. as alleged and was subsequently fined for so doing?

ARGUMENT

No. In the 1.B.C. under §3103 – Temporary Structures and Subsection 3103.1 – General, the Code clearly states, "The provisions of this Section shall apply to structures erected for a period ***of less than one hundred eighty (180) days***." Mr. Francis X. Borgerding, attorney for the Protestants, in a letter dated April 21, 2006, and sent to the Supervisor, Mr. James Thompson, of the Baltimore County Code Enforcement Section (copy attached) clearly states, "…. The Dock of the Bay Restaurant and Bar has constructed a forty by sixty-foot (40' x 60') reception tent

place outside the restaurant which ***has been on the property*** for ***approximately eight (8) months***." Obviously, the Dock of the Bay is not in violation of §3103 of the I.B.C. since that Section only applies to structures erected for less than six (6) months. Furthermore, Mr. Borgerding states that the Dock of the Bay is a restaurant.

V.

CONCLUSION

As to the tent, Fifth Street, LLC did not violate §3103 of the I.B.C. as was alleged by Code Enforcement and therefore should not be fined for having a tent.

As to the charge of being a "night club," this entire scenario is not about being a "night club." It is about the fact that the Protestant and others built their homes adjacent to a restaurant and bar and now feel their property values are threatened by that waterfront restaurant, Dock of the Bay. The Dock of the Bay location has always had music. It just never had the Protestant living next door. A restaurant with live music is different from a "night club" according to B.C.Z.R. A restaurant is permitted and expected to have live entertainment according to the I.B.C. For the reasons cited above, it is quite obvious that the Dock of the Bay Restaurant is a restaurant.

Finally, it is obvious if the Board finds in Case No.: 07-144-SPH that the Dock of the Bay is a restaurant, not a night club, then Case Nos.: 07-134 and 06-044 must be reversed.

Respectfully submitted,

J. CARROLL HOLZER, Esquire
Holzer & Lee
508 Fairmount Avenue
Towson, Maryland 21286
410-825-6961
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of February, 2008, a copy of the foregoing Petitioner's Memorandum in Lieu of Oral Argument was mailed first class, postage pre-paid to the following: Francis X. Borgerding, Jr., Esquire, Mercantile Building – Suite 600, 409 Washington Avenue, Towson, Maryland 21204, Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, Jefferson Building, 105 West Chesapeake Avenue, Room 204, Towson, Maryland 21204 and Nancy West, Esquire, Assistant County Solicitor, County Office of Law, Old Court House, 400 Washington Avenue, Towson, Maryland 21204.

J. CARROLL HOLZER, Esquire

C:\My Docs\Memos 2008\Thanner - Pet Memo in Lieu of Oral Argument - 2/19/08

2/19/08

RE:	PETITION FOR SPECIAL HEARING 9025 Cuckold Point Road; SE corner Cuckold Point Road & 5th Street 15th Election & 7th Councilmanic Districts Legal Owner(s): Fifth Street, LLC Contract Purchaser(s): Larry Thanner Petitioner(s)	*	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY 07-144-SPH

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

MEMORANDUM OF BALTIMORE COUNTY, MARYLAND

Baltimore County, Maryland, by its undersigned attorneys, hereby adopts the Post-Hearing Memorandum filed by the People's Counsel for Baltimore County in the above referenced matter.

As Mr. Zimmerman notes, *"[I]t is also remarkable that while technically superceded, the Zoning Commissioner decision concurs with the Hearing Officer's decision. So far, each of the two decisions has reached the same well-reasoned conclusion."* (P.C. Memo at p.7). And essentially that conclusion was that the Dock of the Bay's operation constitutes a hybrid use, namely, that it is a restaurant as well as a nightclub because it allows dancing and/or live or recorded entertainment. And a nightclub is not a permitted use in a BL zone. The decision of the Hearing Officer must be affirmed.

JOHN E. BEVERUNGEN
County Attorney

Nancy C. West
Assistant County Attorney
Baltimore County Office of Law
400 Washington Avenue, 2nd Flr.
Towson, MD 21204
Phone: 410-887-4420
Attorneys for Baltimore County, Maryland

RECEIVED
FEB 19 2008
BALTIMORE COUNTY
BOARD OF APPEALS

CERTIFICATE OF SERVICE

I HEREBY certify that on this 19th day of February 2008 a copy of this *Memorandum of Baltimore County, Maryland*, was sent first class mail to:

Peter Max Zimmerman
Office of People's Counsel
for Baltimore County
The Jefferson Building
105 W. Chesapeake Avenue, Suite 204
Towson, MD 21204

Frank X. Borgerding, Jr., Esq.
409 Washington Avenue, Suite 600
Towson, MD 21204

J. Carroll Holzer, Esq.
Holzer & Lee
508 Fairmount Avenue
Towson, MD 21286

Nancy C. West
Assistant County Attorney
Baltimore County Office of Law
400 Washington Avenue, 2nd Flr.
Towson, MD 21204
Phone: 410-887-4420
Attorney for Baltimore County, Maryland

1/15/08

IN THE MATTER OF: SPECIAL HEARING TO DETERMINE USE OF PROPERTY LOCATED AT 9025 CUCKOLD POINT ROAD, MILLERS ISLAND, MARYLAND 21219	*	BEFORE THE BALTIMORE COUNTY BOARD OF APPEALS	
Legal Owner: Fifth Street, LLC Larry Thanner	*	Case No.:	CBA 07-134
15th Election District 7th Councilmanic District	*	Civil Citation:	August 16, 2007
	*	Case No.:	CBA-07-144-SPH
	*	Case No.:	CBA-06-044
	*	Civil Citation:	September 8, 2006

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

MOTION TO LIMIT TESTIMONY

Fifth Street, LLC, ***Larry Thanner***, by his attorney, ***J. Carroll Holzer, Esquire,*** Holzer & Lee, hereby submits this Motion to Limit Testimony in the above-captioned three cases and says:

1. The Petitioner filed Case No.: 07-144-SPH, Petition for Special Hearing before the Zoning Commissioner to determine whether or not the use of the property at 9025 Cuckold Point Road (Dock of the Bay) was a night club as defined in the Baltimore County Zoning Regulations, §101, §102.1 and §230. Prior to the scheduling of a Hearing before the Zoning Commissioner, a Code violation citation was brought by the County in Civil Citation No.: 06-3683 and a final decision of the Code Enforcement Hearing Officer with civil penalties was determined on September 8, 2006.

LAW OFFICE
HOLZER AND LEE
THE 508 BUILDING
508 FAIRMOUNT AVENUE
TOWSON, MARYLAND
21286

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

2. Thereafter, a second Civil Citation was issued and subsequently given the identification of 06-3683B and a violation found on August 16, 2007, and given the Case No.: CBA-07-134.

3. Two (2) civil citation decisions, Case Nos.: CBA-07-134 and CBA-06-044 are appeals from the findings of the Hearing Officer in the civil citations and are not *de novo* hearings.

4. Case No.: 07-144-SPH is an appeal from the Zoning Commissioner's Decision of a Petition for a Special Hearing which is *de novo* before the Board.

5. The Petitioner herein files this Motion to limit the anticipated testimony of witnesses/Protestants who desire to testify as to Zoning Violations such as noise, etc. emanating from the Dock of the Bay. This testimony is not permitted under the County Code and the Rules of this Board in that the Zoning Violation cases are not heard *de novo* and therefore, that testimony concerning those complaints should not be permitted since those two (2) cases are based upon the record below at which time those witnesses and Protestants had the opportunity to testify and preserve their concerns.

6. The Petition for Special Hearing in Case No.: 07-144-SPH, which will be held *de novo* ask a very narrow and limited question as to whether the use of the property at 9025 Cuckold Point Road is a night club or a restaurant under the definitions of the Baltimore County Zoning Regulations. Protestants testimony should be limited solely to the issue raised in the Zoning Regulations as to the legal determination of the question, "What is a night club?"

WHEREFORE, Petitioners respectfully request this Board to limit the testimony to prevent repetitive, improper testimony related to Zoning Violations and other concerns of the Protestants which do not bear on the interpretation of the Baltimore County Zoning Regulation definition related to night club.

Respectfully submitted,

J. CARROLL HOLZER, Esquire
Holzer & Lee
508 Fairmount Avenue
Towson, Maryland 21286
410-825-6961
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of January, 2008, a copy of the foregoing Motion to Limit Testimony was mailed first class, postage pre-paid to the following: Francis X. Borgerding, Jr., Esquire, Mercantile Building – Suite 600, 409 Washington Avenue, Towson, Maryland 21204 and Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204.

J. CARROLL HOLZER, Esquire

C:\My Docs\Motions 2008\Thanner – Mot to Limit Testimony - 1/14/08

1/8/08

RE:	PETITION FOR SPECIAL HEARING 9025 Cuckold Point Road; SE corner Cuckold Point Road & 5th Street 15th Election & 7th Councilmanic Districts Legal Owner(s): Fifth Street, LLC Contract Purchaser(s): Larry Thanner Petitioner(s)	*	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY 07-144-SPH

* * * * * * * * * * *

RECEIVED
JAN 08 2008
BALTIMORE COUNTY
BOARD OF APPEALS

PRE-HEARING MEMORANDUM OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

Introduction

This BCZR § 500.7 special hearing requests a determination of zoning law. It involves the characterization of the Petitioner's Dock of the Bay business on property zoned Business-Local (B.L.) at 9025 Cuckold Point Road. Specifically, is the use a "restaurant," a permitted use under BCZR § 230.4, a tavern, permitted under BCZR § 230.9, or rather a "nightclub," a use not permitted by right or special exception in this zone? A nightclub is permitted in the Business-Major (B.M.) or Business-Roadside (B.R.) zones). We believe it is clearly a nightclub.

The Relevant Law

The definition of "nightclub" is in the BCZR § 101 list of definitions,

> "A tavern or other establishment which provides live or recorded entertainment, with or without a dance floor, and which is categorized as a nightclub by the Building Code of Baltimore County."

A "tavern," in turn, is defined as follows,

> "An establishment which has a Baltimore County Class D Liquor License. A tavern which meets the criteria of a nightclub, as defined in these regulations, shall be considered a nightclub."

The International Building Code, adopted in Bill 1-05, includes in § 303.1, Assembly Group, A, states, in pertinent part (ZC Prot.Exh. 3),

> **303.1 Assembly Group A** "Assembly Group A occupancy includes, among others, the use of a building or structure or a portion thereof, for the gathering together of persons for purposes such as civic, social, or religious functions, recreation, food or drink consumption or awaiting transportation. ....
>
> * * *
>
> **A-2** Assembly uses intended for food and/or drink consumption including but not limited to:

Banquet halls
Night clubs
Restaurants
Taverns and bars."

There follows a discussion, which begins with the observation that "in the assembly group category., the potential for multiple fatalities and injuries from fire is comparatively high." It is of particular interest to note the subsequent commentary,

> "Darkened spaces in theaters, nightclubs and the like serve to increase hazards. In sudden emergencies, the congestion caused by large numbers of people rushing to exits can cause panic conditions. For these and many other reasons, there is a relatively high degree of hazard to life safety in assembly facilities."

The commentary then introduces a description of the fundamental characteristics for the five specific assembly group classifications, with a note that facilities with occupancy loads of less than 50 are excepted. For Assembly Group A-2, there is this description,

> "**A-2:** Group A-2 includes occupancies in which people congregate in high densities for social entertainment, such as drinking and dancing (e.g., nightclubs, dance halls, banquet halls, cabarets, et.) and food and drink consumption (e.g., restaurants). The uniqueness of these occupancies is characterized by some or all of the following:
>
> - Low lighting levels;
> - Entertainment by live band or recorded music generating above-normal sound levels;
> - No theatrical stage accessories;
> - Later-than-average operating hours
> - Tables and seating arranged or positioned so as to create ill-defined aisles;
> - A specific area designated for dancing;
> - Service facilities for alcoholic beverages and food; and
> - High occupant load density
>
> The fire records are very clear in identifying that the characteristics listed above often cause a delayed awareness of a fire situation and confuse the appropriate response, resulting in an increased egress time and sometimes panic. Together, these factors may result in extensive life and property losses. These characteristics are only advisory in determining whether Group A-2 is the appropriate classification. Often there are additional characteristics that are unique to a project, which also must be taken into consideration when a classification is made."

The Dock of the Bay is a Nightclub Use

It is obvious and palpable that the Dock of the Bay Restaurant entertainment use, with live bands and disc jockeys, includes some, and probably all or close to all, of the above characteristics. While the appeal is *de novo*, the essential facts are clear.

Zoning Commissioner William Wiseman's May 30, 2006 opinion discusses the definition and related Building Code provisions at pages 6-7, and its application to the Dock of the Bay at pages 8-9. The relevant facts submitted by Dock of the Bay, outlined at Pages 4-5 and reflected in their advertisement (ZC Prot. Exh. 2), include live music, disc jockeys, and recorded music playing inside on weekends either from 9 P.M. to 1 A.M. or 9:30 P.M. to 1:30 A.M. and live music outside from May to September between 4:00 P.M. until 8 P.M. or 9 P.M. The promotional advertising says that, "On any given weekend in the summer, 300 people flood the restaurant today." The Memorial Day weekend photographs, albeit taken in the daytime, illustrate the scope of the use. ZC Prot. Exh. 8.

We agree with ZC Wiseman's analysis that the described use fits the BCZR § 101 definition of nightclub, and the Building Code § 303 Classification, including some or all of the characteristics under Category A-2. The facts salient to the description of the entertainment uses are clear and unambiguous. The use includes live and recorded entertainment and is well within the scope of the nightclub description in Assembly Group A-2. The CBA should reach the same conclusion that the operation is a nightclub.

Petitioner's Arguments

We have carefully considered the arguments presented by Peititoner to the Zoning Commissioner.:

1) Petitioner argued the coverage of Dock of the Bay as a nightclub use may implicate other county businesses. We do not know the identity or number of other businesses with similar operations on properties zoned B.L. Whatever the answer, it does not affect the legal conclusion here. The law, of course, must be applied consistently. The presence of potential other violations or nonconforming uses does not affect the present case. See Park Shopping Center v. Lexington Park Theatre Co. 216 Md. 271 (1958). In any event, given the purpose and characteristics of Assembly Group 2, it does not appear that the typical standard restaurant with normal day and evening hours would be a nightclub simply because of the availability or use of recorded music, especially if the music is at moderate sound levels.

2) Petitioner argued that the B.L. Zone allows other uses which involve music, such as dancing schools and conservatories for music and the arts. But these uses are quite different from a nightclub use. In every zoning classification, there may be permitted uses which have some element in common with a use which is not permitted, but still are different in other respects or as a whole.

3) Petitioner argued that the Webster's Third New International Dictionary definition of "nightclub" is,

> "a restaurant open at night, usu. serving liquor, having a floor show, and providing music

and space for dancing."

As ZC Wiseman pointed out, there is a BCZR § 101 definition, so there is no need to refer to the Webster's definition. In any event, it appears that the Dock of the Bay restaurant fits this broad definition as well, in that it is a restaurant open at night, and it shares some of the usual characteristics: liquor service and music, including live bands (which are kinds of floor shows).

The Club 101 Decision

We know of no CBA decision discussing the specific issue presented here. There is, however, a previous County Board of Appeals opinion involving a discussion of the definition of nightclub. In Rampart Partnership (Club 101), 8819 Orchard Tree Lane, No. 96-60-XA, decided August 28, 1998, the question presented was whether the use constituted a nightclub or an after-hours club. In a 34-page opinion, the CBA (members Stahl, Felling, Marks) concluded that it was an after-hours club. The opinion discussed the nightclub definition at pages 18-19, in terms similar to those expressed by ZC Wiseman here. There is no inconsistency between the Club 101 decision and ZC Wiseman's decision here.

The Enforcement Decision

The protestants have cited Hearing Officer Raymond Wisnom's decision in the Civil Citation Case, No. 06-3683, dated August 25th, 2006. He found that the use is a nightclub. Suffice it to say that his analysis is consistent with our independent analysis.

Conclusion

We hope that this letter will provide the CBA with a helpful introduction to this case and our position. We ask for the opportunity to file a post-hearing memorandum should it appear to be necessary and appropriate.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of January, 2008, a copy of the foregoing Pre-Hearing Memorandum of People's Counsel for Baltimore County was mailed to, Francis X. Borgerding, Jr, Esquire, 409 Washington Avenue, St 600, Towson, MD, 21204, and J. Carroll Holzer, Esquire, Holzer & Lee, 508 Fairmount Avenue, Towson, MD 21286, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, *Director*
Department of Permits and Development Management

August 14, 2007

J. Carroll Holzer, Esq.
508 Fairmount Avenue
Towson, MD 21204

Dear Mr. Holzer:

RE: Case: 07-144-SPH, 9025 Cuckold Point Road

Please be advised that an appeal of the above-referenced case was filed in this office on July 24, 2007 by J. Carroll Holzer. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you are the person or party taking the appeal, you should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

If you have any questions concerning this matter, please do not hesitate to call the Board at 410-887-3180.

Sincerely,

Timothy Kotroco

Timothy Kotroco
Director

TK:klm

c: William J. Wiseman III, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
CBCA 1804 West Street, Ste. 100, Annapolis 21401
See Attached Sheet

APPEAL

Petition for Special Hearing
9025 Cuckold Point Road
S/east corner of Cuckold Point Road and 5th Street
15th Election District – 7th Councilmanic District
Legal Owners: Fifth Street, LLC, Larry Thanner

Case No.: 07-144-SPH

✓ Petition for Special Hearing (September 28, 2006)

✓ Zoning Description of Property

✓ Notice of Zoning Hearing (October 3, 2006)

✓ Certification of Publication (The Jeffersonian – November 16, 2006)

✓ Certificate of Posting (November 16, 2006) by John J. Dill

✓ Entry of Appearance by People's Counsel (October 6, 2006)

✓ Petitioner(s) Sign-In Sheet – One Sheet

✓ Protestant(s) Sign-In Sheet - None

✓ Citizen(s) Sign-In Sheet – One Sheet

✓ Zoning Advisory Committee Comments

Petitioners' Exhibit
1. Site Plan

Protestants' Exhibits:
✓ See attached (1 thru 15)

Miscellaneous (Not Marked as Exhibit)
1. Violation Case Documents
2. Final Order of Code Enforcement Hearing
3. News Article (Examiner, March 31, 2007)
4. Letter from Bonnie Metheny dated April 9, 2007
5. Letter dated August 7, 2006 from Matthew Ciarpella
6. Return of Service dated November 21, 2006
7. Memorandum
8. Petitioner's Memorandum in Lieu of Oral Argument

✓ Zoning Commissioner's Order (May 30, 2007)

✓ Notice of Appeal received on July 24, 2007 by J. Carroll Holzer

emd 6/11/07

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner
Timothy Kotroco, Director of PDM
J. Carroll Holzer
CBCA
See Attached

date sent August 14, 2007, klm

RECEIVED
AUG 17 2007
BALTIMORE COUNTY
BOARD OF APPEALS

7/24/07

IN RE: PETITION FOR SPECIAL HEARING S/E corner Cuckold Point Road and 5th Street **(9025 Cuckold Point Road)** 15th Election District 7th Councilmanic District Fifth Street, LLC d/b/a Dock of the Bay *Petitioner*	*	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY Case No.: 07-144-SPH

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

NOTICE OF APPEAL

FIFTH STREET, LLC and Lawrence Thanner, individually, 9025 Cuckold Point Road, Baltimore, MD 21219, Appellants in the above captioned matter, by and through their attorney, J. Carroll Holzer and Holzer and Lee, feeling aggrieved by the decision of the Zoning Commissioner in Case No. 07-144-SPH, hereby note an appeal to the County Board of Appeals from the Decision of the Zoning Commissioner directed to Thomas Minkin, Chair of the Board of Liquor License Commissioners dated June 29, 2007 attached hereto, and incorporated herein as **Exhibit #1**.

Filed concurrently with this Notice of Appeal is Appellants' check made payable to Baltimore County to cover the costs of the appeal. Appellants were parties below and fully participated in the proceedings.

Respectfully submitted,

RECEIVED
JUL 24 2007
Per.....

J. CARROLL HOLZER, Esquire
Holzer & Lee
508 Fairmount Avenue
Towson, Maryland 21286
410-825-6961
Attorney for Appellants

LAW OFFICE
HOLZER AND LEE
THE 508 BUILDING
508 FAIRMOUNT AVENUE
TOWSON, MARYLAND
21286

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24th day of July, 2007, a copy of the foregoing Notice of Appeal was mailed first class, postage pre-paid to: Francis X. Borgerding, Esquire, 409 Washington Ave., Towson, MD 21204; County Board of Appeals, Basement Old Court House, 400 Washington Ave., Towson, MD 21204; and People's Counsel for Baltimore County, Basement, Old Courthouse, 400 Washington Ave., Towson, M, 21204.

J. CARROLL HOLZER, Esquire

C:\My Docs\Notices 2007\Thanner CBA Liquor Board 7-24-07

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

June 29, 2007

WILLIAM J. WISEMAN III
Zoning Commissioner

Thomas Minkin, Chairman
Board of Liquor License Commissioners
111 West Chesapeake Avenue
Towson, MD 21204

RE: **PETITION FOR SPECIAL HEARING**
S/E corner Cuckold Point Road and 5th Street
(9025 Cuckold Point Road)
15th Election District - 7th Council District
Fifth Street, LLC d/b/a Dock of the Bay - Petitioner
Case No. 07-144-SPH

Dear ~~Chairman Minkin~~ Tom:

In providing a response and an interpretation of the Order issued for the above, I would be remiss in not informing you of the following:

1. My Order was appealed to the Board of Appeals on June 11, 2007. The general rule is that an administrative agency is divested of jurisdiction when an appeal is noted with respect to the matter or issues under consideration. *Pressman v. State Acc. Fund,* 256 Md. 406 (1967). Indeed, the Court of Appeals expressly held that "an appeal from the Order of an administrative agency stays the power of the agency to proceed further until the issues or appeal have been resolved". *Id. @ 416.*

2. Fifth Street, LLC's petition asked ". . . is a restaurant which provides music ... during the day, a nightclub? You have asked "is any music to be allowed at the Dock of the Bay and if so under what conditions". I trust that you would agree with me that your question goes well beyond the scope of the initial inquiry.

With the above considerations in mind, it was apparent from the record before me that the Dock of the Bay provides live and recorded music. Further, it was established that the use of the property is categorized as a nightclub by the Building Code of Baltimore County. In short, it is clear that the Petitioner is conducting a nightclub as defined under Section 101 of the Baltimore County Zoning Regulations (B.C.Z.R.) and, that the Petitioner's playing of live or recorded music, whether done inside, outside, daytime or nighttime, is not permitted pursuant to Section 230 of B.C.Z.R.

I trust that I have answered your inquiry sufficiently. Please do not hesitate to give me a call should you require further clarification.

Very truly yours,

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:dlw

c: People's Counsel; Code Enforcement and Inspection, PDM; Case File

6/7/07

IN RE: PETITION FOR SPECIAL HEARING S/E corner Cuckold Point Road and 5th Street **(9025 Cuckold Point Road)**	*	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY
15th Election District 7th Councilmanic District Fifth Street, LLC d/b/a Dock of the Bay *Petitioner*	*	Case No.: 07-144-SPH

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

NOTICE OF APPEAL

FIFTH STREET, LLC and Lawrence Thanner, individually, 9025 Cuckold Point Road, Baltimore, MD 21219, Appellants in the above captioned matter, by and through their attorney, J. Carroll Holzer and Holzer and Lee, feeling aggrieved by the decision of the Zoning Commissioner in Case No. 07-144-SPH, hereby note an appeal to the County Board of Appeals from Findings of Fact and Conclusions of Law of the Zoning Commissioner of Baltimore County dated May 30, 2007 attached hereto, and incorporated herein as **Exhibit #1**.

Filed concurrently with this Notice of Appeal is Appellants' check made payable to Baltimore County to cover the costs of the appeal. Appellants were parties below and fully participated in the proceedings.

Respectfully submitted,

RECEIVED
JUN 11 2007
Per

J. CARROLL HOLZER, Esquire
Holzer & Lee
508 Fairmount Avenue
Towson, Maryland 21286
410-825-6961
Attorney for Appellants

LAW OFFICE
HOLZER AND LEE
THE 508 BUILDING
508 FAIRMOUNT AVENUE
TOWSON, MARYLAND
21286

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of June, 2007, a copy of the foregoing Notice of Appeal was mailed first class, postage pre-paid to: Francis X. Borgerding, Esquire, 409 Washington Ave., Towson, MD 21204; County Board of Appeals, Basement Old Court House, 400 Washington Ave., Towson, MD 21204; and People's Counsel for Baltimore County, Basement, Old Courthouse, 400 Washington Ave., Towson, M, 21204.

J. CARROLL HOLZER, Esquire

C:\My Docs\Notices 2007\Thanner CBA 6-7-07

IN RE: **PETITION FOR SPECIAL HEARING*** BEFORE THE
S/E corner Cuckold Point Road and
5th Street * ZONING COMMISSIONER
(9025 Cuckold Point Road)
* OF
15th Election District
7th Council District * BALTIMORE COUNTY

Fifth Street, LLC *
d/b/a Dock of the Bay
Petitioner * **Case No. 07-144-SPH**

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Hearing filed by the owner of the subject property, Fifth Street, LLC, by Lawrence J. Thanner, Jr., managing member, and through their attorney, J. Carroll Holzer, Esquire. In accordance with Section(s) 500.6 and 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), the Petitioner requests a determination as to whether the use of the B.L. zoned property at 9025 Cuckold Point Road is in violation of the zoning regulations and specifically, is the restaurant, which provides music at this location during the day, a "nightclub" as defined in B.C.Z.R. Sections 101, 102.1 and 230. The subject property and improvements are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the public hearing in support of the request were several of the past and present residents of Millers Island, namely Mike Kondylas, Dorothea M. Reilly, and Judith Kurek. As indicated above, the Petitioner and Lawrence Thanner were represented by J. Carroll Holzer, Esquire. This request generated significant public interest and numerous residents from the surrounding locale appeared, including Patricia A. and Wayne E. Waldmann, Sr., Wayne E. Waldmann, Jr., Tammy Lynn Waldmann, Doug W. Waldmann, Philip and Kay Sessa, Charlie and

Exh. #1

5/30/07

IN RE: **PETITION FOR SPECIAL HEARING***		BEFORE THE
S/E corner Cuckold Point Road and 5th Street	*	ZONING COMMISSIONER
(9025 Cuckold Point Road)	*	OF
15th Election District		
7th Council District	*	BALTIMORE COUNTY
Fifth Street, LLC	*	
d/b/a Dock of the Bay		
Petitioner	*	**Case No. 07-144-SPH**

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Hearing filed by the owner of the subject property, Fifth Street, LLC, by Lawrence J. Thanner, Jr., managing member, and through their attorney, J. Carroll Holzer, Esquire. In accordance with Section(s) 500.6 and 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), the Petitioner requests a determination as to whether the use of the B.L. zoned property at 9025 Cuckold Point Road is in violation of the zoning regulations and specifically, is the restaurant, which provides music at this location during the day, a "nightclub" as defined in B.C.Z.R. Sections 101, 102.1 and 230. The subject property and improvements are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the public hearing in support of the request were several of the past and present residents of Millers Island, namely Mike Kondylas, Dorothea M. Reilly, and Judith Kurek. As indicated above, the Petitioner and Lawrence Thanner were represented by J. Carroll Holzer, Esquire. This request generated significant public interest and numerous residents from the surrounding locale appeared, including Patricia A. and Wayne E. Waldmann, Sr., Wayne E. Waldmann, Jr., Tammy Lynn Waldmann, Doug W. Waldmann, Philip and Kay Sessa, Charlie and

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Daryl Wolinski, Robert Poleski, Terri Poleski, and Michael Poleski, Louis Pertrovia, David McWilliams, David and Vena Steck, Robert Haas, Ken Schoff, Tammy Novak, and David Znamirowski. Matthew J. Ciarpella and his wife, Nancy Jean Ciarpella, who live at 2716 Sixth Street, adjacent to the Dock of the Bay, were represented by Francis X. Borgerding, Jr. Esquire. Most of the Protestants voiced an overwhelming concern with the live bands and loud outdoor music being played in their backyards, parking overflow and traffic leaving the Dock of the Bay late at night. Also appearing were James H. Thompson, Supervisor, Bureau of Code Enforcement, and Chip Raynor, Code Enforcement Officer, within the Division of Code Inspections and Enforcement.

As a preliminary matter, Mr. Borgerding argued that the petition, as filed, should not be allowed as it is subject to the doctrine of judicial estoppel (*See Board of County Com'rs of Cecil County v. Racine* 24 Md. App. 435, 332 A.2d 306 [1975] and *Whittle v. Board of Zoning Appeals of Baltimore County*, 211 Md. 36, 125 A.2d 41 [1956]). He points out that the Baltimore County Code (B.C.C.) Section 3-6-201 et seq. sets up the mechanism and procedure to be followed for Code Enforcement hearings and those procedures were followed in the underlying Violation Case No. 06-3683. That case involved the same property, parties and nightclub issues. Allegations of a nightclub enterprise were made by neighbors, an investigation as authorized by the Department of Permits and Development Management was conducted, correction notices issued, a public hearing held and findings of fact made by the Code Enforcement Hearing Officer Raymond S. Wisnom, Jr. *See* Protestant's Exhibit 10. According to Mr. Borgerding, allowing the Petitioner, under these circumstances, a "second bite of the apple" would launch a new and undesirable precedent. Petitioner's remedy, he asserts, is an appeal to the Board of Appeals not a new hearing before the Zoning Commissioner. Mr. Holzer countered by pointing out that the Petitioner filed the instant petition prior to the issuance of the Code Enforcement Hearing Officer's Order, that he (Holzer) had

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requested a postponement of the enforcement proceedings until after a determination/interpretation of the regulations of the B.C.Z.R. was made. He points out that Mr. Wisnom is not designated by the County Charter to interpret zoning definitions and regulations. At the conclusion of hearing Counsels' arguments, Mr. Borgerding's Motion was denied.

At issue in the instant case is not whether a zoning violation exists, but a determination, through a clear analysis of the B.C.Z.R. and its definitional section as to what constitutes a nightclub. In this regard, Section 500.6 of the B.C.Z.R. vests the Zoning Commissioner with the authority to conduct hearings involving any violation or alleged violation/non-compliance with any zoning regulation. Additionally, that section allows the Zoning Commissioner to conduct a hearing to determine the proper interpretation of the B.C.Z.R. Similarly, Section 500.7 of the B.C.Z.R. allows the Zoning Commissioner to conduct such hearings and pass such Orders as shall be necessary for the proper enforcement of all zoning regulations.

As is often the case with cases presenting difficult legal issues, the facts are relatively simple and largely not in dispute. As noted above, Fifth Street, LLC purchased the property in October 2003 and due to Hurricane Isabel damage did not open until March 2004. The property is rectangularly shaped, 600' wide x 1,200' deep with frontage on the Chesapeake Bay. The property as shown on Petitioner's Exhibit 1 contains a gross area of 1.03 acres, more or less, zoned B.L. The land is improved with a large existing restaurant and tavern, pavilions, wood pier, as well as a parking lot and an overflow parking lot located on the north side of Cuckold Point Road. The subject site is on Millers Island situated between the Back River and the Chesapeake Bay, referred to as Swan Point. Lawrence Thanner described the Dock of the Bay's long history of commercial uses beginning in 1955 and indicated that since the subject property was established, there has always been music played. In the 1960's, it was owned by the Hicks family and known as the "Fisherman's

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Inn" and music was played inside and on a partially open patio. Later, after becoming the Dock of the Bay, the two brothers who then owned it built a pavilion and live band music was played outside. This testimony was corroborated by three long-time residents of the area – Mr. Kondylas, Ms. Reilly, and Ms. Kurek, who indicated most all of the waterfront restaurants on Millers Island played music which historically included Ramona's, Worchester's, The Islander Inn, White Swan and Rum Runners. Ramona's was the first to initiate live bands, Worchester's in the 1990's (later named as Rum Runners) played music on the pier. The Islander and White Swan provided disc jockey entertainment inside. The Dock of the Bay, however, is the only remaining waterfront establishment on the island today with a live band playing outdoors. Mr. Thanner describes the current operation as primarily a food service/restaurant business accounting for 70% of the revenues derived and the other 30% from the sale of alcoholic beverages. He delineates the entertainment provided as follows:

- 10 television sets inside and 2 television sets outside. These televisions, for the most part, are used for showing sporting events and shows such as MTV and American Idol, which contain music.

- The house music sound system has 8 speakers inside and 4 speakers outside. The system plays music continuously except when other forms of entertainment are being utilized. The system is used to play either satellite music or compact discs.

- On Friday and Saturday nights, after 9:00 PM, usually a disc jockey plays music or karaoke and occasionally a band plays inside until about 1:00 AM. Mr. Thanner says this is exactly what many bars and taverns do throughout the County, including two other bars located on Millers Island.

- On Saturday and Sunday afternoons, a band plays outside from 4:00 PM until 8:00 PM during daylight hours from the beginning of May through September. Again, Thanner indicates that's exactly what the River Watch and Wild Duck waterfront establishments do as well.

- The live music and entertainment enumerated above consists of approximately 7.5 percent of the total time that the restaurant is open for business.

Mr. Thanner, as managing member of the business, therefore, has requested a special hearing in order for a determination to be made whether such use occurring on the property is that of a nightclub or simply a restaurant where ancillary entertainment is provided. The reason for drawing this distinction is that a restaurant is a use permitted as a right on the property, whereas a true nightclub use is not permitted. Therefore, this distinction is very important to this particular business owner who submits that the definition of nightclub, as contained within the B.C.Z.R., is overly broad and encompasses almost every type of restaurant, diner, café and other similar type of commercial establishment.

The Protestants testified on the second day of the hearing, and as noted above explained the inconveniences they endure as a result of the loud music being played on the weekends and to a lesser extent during the weeknights. Mr. Ciarpella discussed the activities and the impact it had on his wife and three children. In September when his children are in school, the loud music which he testified goes into the night, and the people coming and going (leaving after 2:00 AM) is most disturbing. He described the sound level, even with the doors closed as *loud*. His family and other neighbors, Charlie Wolinski, Kay Sessa and Wayne Waldmann put up with this 40 days out of 365 a year, mostly Saturdays and Sundays in spite of numerous complaints. Messrs. Znamirowski (7 blocks away), Hass (1 mile away), Schoff (1 block away) and McWilliams (3-4 blocks away) each state they can hear the band music when played.

In rebuttal, Mr. Thanner testified that in the winter, music is played from 9:00 PM to 1:00 AM inside on Fridays and Saturdays, and in the summer, music is played from 9:00 PM to 1:00 AM

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inside and on Saturdays and Sundays, the music is played outside from 4:00 PM to 8:00 PM. He explained that as a result of complaints the County Liquor Board inspectors have measured the noise level at the property line which allows for 65 decibels until 10:00 PM and then 55 decibels to 11:00 PM with no music thereafter. He thinks he is doing much better and explains just how important it is for a waterfront restaurant business to provide music entertainment.

It has been stated that it is the responsibility of the Zoning Commissioner to determine the intent of the legislature when construing any regulation/statute. [*Marzullo v. Kahl* 36 Md. 158, 175 (2001)] Interpretation of the regulations is a daunting task and made even more difficult given the excellent arguments presented by counsel. There are a number of land uses defined in Section 101 of the B.C.Z.R. that are relevant to rendering a decision in this case. Initially, it is to be noted that "Restaurant, Standard" is defined in the B.C.Z.R. as "a facility or part of a facility used primarily for serving meals and beverages to persons seated at tables on the premises of the establishment. The term includes cafes, cafeterias, tea rooms and outdoor cafes. The term does not include a catering hall. A standard restaurant may offer a carry-out service, provided that such service is accessory to the principle restaurant operations. ..." Next a "Tavern" is "an establishment which has a Baltimore County Class D Liquor License. A tavern which meets the criteria of nightclub, as defined in these regulations, shall be considered a nightclub. The term "Nightclub" is defined in Section 101 of the B.C.Z.R. as "a tavern or other commercial establishment which provides live or recorded entertainment, with or without a dance floor, and which is categorized as a nightclub by the Building Code of Baltimore County".[1] Baltimore County Council Bill No. 1-05 adopted the International

[1] Although interpreted in the B.C.Z.R., the Petitioner urges this Commission to use Webster's Third New International Dictionary (Unabridged) definition of Nightclub, "a restaurant open at night usually serving liquor, having a floor show, and providing music and space for dancing." To apply the B.C.Z.R. definition literally, they submit, would open a *Pandora's Box* in that it encompasses both live or recorded entertainment. Recorded would include house systems and jukeboxes. In that situation, every restaurant and bar in a B.L. zoning classification providing some form of live or recorded entertainment would be classified as a "nightclub". This would include restaurants such as Denny's, International House of Pancakes (IHOP) and the Bel-Loc Diner.

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Building Code (I.B.C.) 2003 as the Building Code of Baltimore County. The I.B.C. provides in Section 303 Category A-2, A Certain Assembly Group. Group A-2 is Assembly uses intended for food and/or drink consumption, including but not limited to banquet halls, *nightclubs*, restaurants, taverns and bars. The characteristics of Group A-2 are categorized by some or all of the following: low lighting levels; entertainment by a live band or recorded music generating above-normal sound levels; no theatrical staged accessories; later-than-average operating hours; tables and seating arranged or positioned so as to create ill-defined aisles; a specific area designated for dancing; service facilities for alcoholic beverages and food; and high occupant load density. While the Protestants and Petitioner argue as to whether The Dock of the Bay includes all of the characteristics 1-8 or just some of the characteristics is of little consequence. The B.C.Z.R. definition of nightclub only states that it be "categorized as a nightclub" in the I.B.C. It falls within this Group A-2 for fire protection and crowd control due to the potential for multiple fatalities and injuries from fire or other sudden emergency.

In ascertaining the County Council's intent, I must look to the language in the regulation itself, giving that language *its ordinary and natural meaning* and avoiding a construction that is illogical, unreasonable or inconsistent with common sense. *Papillo v. Pockets, Inc.* 119 Md. App. 78, 83-84 (1997).

Mr. Wolinski and Mr. Waldmann, a neighbor next to the Fisherman's Inn and Dock of the Bay for some 43 years, emphasize emphatically that the law is the law and adherence to the regulations should be strictly enforced. *See* Protestants' Exhibits 14 and 15 for commentary on the live bands performing at 9025 Cuckold Point Road and the physical affects on the residents. Mr. Ciarpella's testimony corroborated by Code Enforcement Supervisor James H. Thompson makes it clear under Section 101 of the B.C.Z.R. that they believe the Petitioner is conducting a nightclub on

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By BW

the subject property and that this use is not a permitted use in the Business, Local Zone (B.C.Z.R. Section 230). In considering this unrefuted testimony, there is little to suggest that "provides live or recorded entertainment, with or without a dance floor" is ambiguous or means anything other than that learned from reading the plain language of the nightclub definition. This Commission's goal is to discern and implement legislative intent, and, to do that, I must begin with the plain meaning of the statutory language. If the intent is clear from that language, there is no need to search further. *Walker v. Dept. of Human Res.*, 379 Md. 407, 420 (2004). I find that that is the case here.

Mr. Holzer argues that Section 230 provides permitted uses in the B.L. zone that envision the playing of music by the County Council. *See* B.C.Z.R. Sections 230.7 providing for dancing schools and conservatories for music and the arts. His argument that I should avoid a construction that is inconsistent with common sense is fully addressed in Petitioner's written memorandum. He notes that the definition in Merriam-Webster's Dictionary of "nightclub" as a place of entertainment open *at night*, usually serving food and liquor and providing music and space for dancing and often having a floor show - would assist in separating out water oriented uses such as marinas and waterfront restaurants that are dependant on accessory entertainment in recreational areas of the County vis-à-vis other cafes and restaurants located next to residential uses.[2] However, this I cannot do. The General Provisions of B.C.Z.R. Section 101 Definitions are clear on this point and mandate that "any word or term not defined in this section shall have the ordinary accepted definition as set forth in the most recent addition of Webster's ... ". As noted above, the B.C.Z.R. defines a Night Club. Moreover, the definition of Tavern again, refers the reader back to "the criteria of a nightclub, as defined in these regulations" further neutering Petitioner's argument that Webster's Dictionary

[2] Mr. Thompson's testimony on cross-examination illustrated confusion on what constitutes a nightclub. He focused on the playing of *live* music in the B.L. zone but side stepped the hundreds of restaurants that play *recorded* music. Likewise, this Commission found it convenient to not open a "Pandora's Box" in Case No. 02-074-SPHA involving a "non conforming nightclub use" in the B.L. zone.

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By DLW

definition of nightclub be used.

This finding is of no comfort to the Petitioner and its managing member, Larry Thanner, since what they seek is to play live music during daylight hours as has been the custom in the area for many years. To Mr. Thanner and the many restaurant owners similarly situated, I can only offer a quote from Dickens Classic "Oliver Twist" and as uttered by one "Mr. Bumble" (which seems appropriate here) "If the law supposes that, ... [providing music during the day is a nightclub] ... then the law is an ass – an idiot". Mr. Bumble was referring, of course, to a legal fiction that had no basis in reality. No doubt many restaurant owners, as aptly pointed out by Mr. Holzer will believe that Mr. Bumble was right, however, I am obligated to apply the applicable law.

Based on counsel's arguments and evidence presented and examination of the words contained in the regulations and definitions, I find that the Petitioner's use of the property at 9025 Cuckold Point Road, Millers Island, to be in violation of the B.C.Z.R.; and further that Fifth Street, LLC's Dock of the Bay restaurant by providing music during the day is a "nightclub" as defined in the B.C.Z.R. Sections 101, 102.1 and 230.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for the reasons set forth above, it is my opinion that the Petitioner is conducting a nightclub on the subject property and, further, that Petitioner's use of the property is not permitted pursuant to Section 230 of the Baltimore County Zoning Regulations (B.C.Z.R.).

THEREFORE, IT IS ORDERED, by the Zoning Commissioner for Baltimore County, this 30th day of May, 2007, that the Petition for Special Hearing pursuant to Sections 500.6 and 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), requesting a determination as to whether the use of the B.L. zoned property at 9025 Cuckold Point Road is in violation of the zoning regulations and specifically, is the restaurant, which provides music at this location during the day, a

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"nightclub" use as defined in the B.C.Z.R. Sections 101, 102.1 and 230, is hereby answered in the affirmative and that the playing of outdoor music either by way of an outside speaker system, live/or recorded entertainment, must be discontinued.

Any appeal of this decision must be taken in accordance with Section 32-3-401 of the Baltimore County Code.

WILLIAM J. WISEMAN, III
Zoning Commissioner for
Baltimore County

WJW:dlw

ORDER RECEIVED FOR FILING
Date 5-30-07
By

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

WILLIAM J. WISEMAN III
Zoning Commissioner

May 29, 2007

J. Carroll Holzer, Esquire
J. Carroll Holzer, P.A.
508 Fairmount Avenue
Towson, MD 21286

RE: **PETITION FOR SPECIAL HEARING**
S/E corner Cuckold Point Road and 5th Street
(9025 Cuckold Point Road)
15th Election District - 7th Council District
Fifth Street, LLC d/b/a Dock of the Bay - Petitioner
Case No. 07-144-SPH

Dear Mr. Holzer:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Hearing has been determined to recognize the restaurant, which provides music during the day, as a "nightclub", in accordance with the attached Order.

In the event any party finds the decision rendered is 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 Department of Permits and Development Management office at 887-3391.

Very truly yours,

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:dlw

c: People's Counsel; Code Enforcement and Inspection, PDM; Case File ; Office of Planning
See Attachment - Addressees
Dennis Kennedy, P.E., Development Plans Review, DPDM; DEPRM
Chesapeake Bay Critical Area Commission, 1804 West Street, Suite 100,
Annapolis, Md. 21401

5/11/07

IN THE MATTER OF	*	BEFORE THE
FIFTH STREET LLC LAWRENCE J. THANNER, Petitioner Legal Owner 9025 Cuckold Point Road Southeast Corner Cuckold Point Road and 5th Street 15th Election District 7th Councilmanic District	*	ZONING COMMISSIONER FOR BALTIMORE COUNTY Case No.: 07-144SPH

RECEIVED MAY 11 2007 BY:

MEMORANDUM

Matthew and Nancy Jean Ciarpella, Protestants, by and through their attorney, Francis X. Borgerding, Jr., herein submit their Memorandum in opposition to the Petitioner's requested special hearing and says:

This matter appears before the Zoning Commissioner for Baltimore County upon Petitioner's requested special hearing under Section 500.7 and Section 500.6 of the Baltimore County Zoning Regulations (hereinafter "B.C.Z.R.") to determine "whether the property at 9025 Cuckold Point Road, Millers Island, 21219, is in violation of the B.C.Z.R. and is the use by Fifth Street LLC a restaurant, at 9025 Cuckold Point Road, which provides music during the day, is a nightclub as defined in the B.C.Z.R. Sections 101, 102.1 and 230."

When construing a statute, the court's preeminent goal is to discern legislative intent, and to do that, the court begins with the plain meaning of the statutory language. Williams. v. State, 385 Md. 867 A.2d 305 (2005).

The record before the Zoning Commissioner clearly establishes that the use of 9025 Cuckold Point Road, Millers Island 21219 includes offering music through live bands which has occurred for numerous years. The evidence before the Commissioner also clearly

establishes that the live bands have in the past and continue to play late into the night on Friday and Saturday nights. The testimony of numerous residents of the area who live in close proximity to the property clearly establish this fact, the Petitioner's advertising past and present also confirms this. See Protestant's Exhibits including Protestant's Exhibit #14. On the record, the Petitioner did not deny these facts.

Section 101 of the B.C.Z.R. defines a nightclub as "a tavern or other commercial establishment which provides live or recorded entertainment, with or without a dance floor, and which is characterized as a nightclub by the Building Code of Baltimore County".

The record establishes that the Petitioner's use of the property includes being a tavern or commercial establishment which provides live and recorded music with a "dance area". Further, the record establishes that the use of the Petitioner's property is categorized as a nightclub by the Building Code of Baltimore County.

Baltimore County Council Bill No. 1-05 entered as an exhibit as Protestant's Exhibit Number 12, adopts the ICC International Building Code 2003 as the Building Code of Baltimore County.

According to the Code Section 303, taverns, restaurants and nightclubs are considered in the same use group, group A-2. Group A-2 includes occupancies in which people congregate in high density, for social entertainment such as drinking and dancing. The A-2 group is characterized by some or all of the following no theatrical stage accessories other than a raised platform; low lighting levels; entertainment by a live band or recorded music generating above normal sound levels; later than average operating hours; tables and seating arranged or positioned so as to create ill-defined aisles; a specific area designated for dancing; service facilities primarily for alcoholic beverages with

limited food service; and high occupant load density. Protestants submit that Petitioner's use of 9025 Cuckold Point Road includes all of the characteristics 1-8 which lead to group use. Lawrence Thanner admitted in testimony that the Petitioner's use includes entertainment by live bands, no theatrical stage accessories, hours of operation until 2 a.m. in the morning, dancing area, service of alcoholic beverages and food, and that the bands attract large crowds.

The testimony of James H. Thompson, Supervisor of Code Enforcement for the Baltimore County Office of Permits and Developments Management, confirmed inspection of the property and a determination of the property to be a nightclub within the meaning of the B.C.Z.R. Further, Mr. Thompson's testimony confirmed that the live bands which play on the subject property are not permitted, pursuant to the property's B.L. zoning under Section 230 of the B.C.Z.R. by right or special exception. Mr. Thompson's testimony confirmed that his Department cited the Petitioner's use as a nightclub and further that Code Enforcement Hearing Officer, Raymond Wisnom, Jr., found that the use of the property to be a nightclub. The Code Enforcement Hearing Officer's decision was entered as Protestant's Exhibit Number 10 before the Zoning Commissioner.

Mr. Thompson confirmed that while the property's B.L. zoning does not allow live music whereas the more intense use business zones of B.M. or B.R. would permit live music.

At the hearing the Petitioners seem to be implying that if their use of their property is a restaurant that the use as such is somehow mutually exclusive to the property being used as a nightclub. This argument flies in the face of the plain wording of the definition of nightclub in Section 101 of the BCZR since a restaurant is a "tavern or other commercial

establishment".

In short, the record before the Zoning Commissioner makes clear that the Petitioner is conducting a nightclub on the subject property as defined under Section 101 of the B.C.Z.R. and, further, that Petitioner's use of the property is not permitted pursuant to Section 230 of the B.C.Z.R.

Accordingly, Protestants request the Hearing Officer deny the Petitioner's requested special hearing.

Respectfully submitted,

FRANCIS X. BORGERDING, JR.
409 Washington Avenue, Suite 600
Towson, Maryland 21204
410-296-6820

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 11 day of May, 2007, a copy of the foregoing was mailed, first-class postage prepaid, to:

J. Carroll Holzer, Esquire
508 Fairmount Avenue
Towson, Maryland 21286

FRANCIS X. BORGERDING, JR.

5/11/07

IN THE MATTER OF: SPECIAL HEARING TO DETERMINE USE OF THE PROPERTY LOCATED AT 9205 Cuckold Point Road Millers Island, Maryland 21219	*	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY
S/E Corner Cuckold Point Road & 5th Street	*	
15th Election District 7th Councilmanic District	*	Case No.: 07-144-SPH
Legal Owner: Fifth Street, LLC – Larry Thanner	*	

RECEIVED
MAY 15 2007
BY:

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

PETITIONER'S MEMORANDUM
IN LIEU OF ORAL ARGUMENT

Fifth Street, LLC; Lawrence Thanner, Petitioner, by ***J. Carroll Holzer, Esquire***, Holzer & Lee, hereby submits this Memorandum in Lieu of Oral Argument before the Zoning Commissioner of Baltimore County and says:

I.

STATEMENT OF THE CASE

Petitioner, ***Fifth Street, LLC, Lawrence Thanner***, Resident Agent, was cited by Baltimore County Department of Permits and Development Management in Civil Citation No.: 06-3683 for operating a "night club" in a B.L. Zone. Prior to the hearing on the Civil Citation, the Petitioner filed the instant Petition for Special Hearing requesting the Zoning Commissioner to interpret the Zoning Regulations for Baltimore County as to the following:

1. Whether the use of the property at 9025 Cuckold Point Road, Millers Island, Maryland 21219 is in violation of the Baltimore County Zoning Regulations; and

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HOLZER AND LEE
THE 508 BUILDING
508 FAIRMOUNT AVENUE
TOWSON, MARYLAND
21286

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FAX: (410) 825-4923

2. Is the use by Fifth Street, LLC a restaurant at 9025 Cuckold Point Road, which provides music during the day, is a night club as defined in the Baltimore County Zoning Regulations, §101, §102.1 and §230. The Petitioner requested that the hearing of the Code Enforcement Officer be stayed pending the Decision of the Zoning Commissioner. However, Raymond S. Wisnom, Jr., Code Enforcement Hearing Officer proceeded to a hearing and found on August 25, 2006 a violation that "a restaurant with dancing and/or live or recorded entertainment is not a permitted use in a B.L. Zone." The Petitioner, Fifth Street, LLC, filed an appeal to Baltimore County Board of Appeals where it is currently awaiting a hearing.

The instant case came before Zoning Commissioner Wiseman on December 5, 2006 and April 13, 2007.

By request of the Zoning Commissioner, this Memorandum is limited to the narrow issue of whether or not the Petitioner's restaurant entitled "Dock of the Bay" is a night club. The testimony of all of the witnesses and the basic facts underlying this case were duly noted by the Zoning Commissioner and will not be comprehensively repeated here.

II.

STATEMENT OF FACTS

The Petitioner, Lawrence Thanner, Jr. testified that he acquired the Dock of the Bay, a waterfront property which had for many years operated as a bar and restaurant on Millers Island which provided music at various times. Generally, there was testimony from three (3) long time neighborhood witnesses presented by the Petitioner that there has always been music both inside and outside at the Dock of the Bay location. They testified that live bands and music were also

played at other bars and restaurants located on the Island. Mr. Thanner testified that during the summer months he has live outdoor music and he acknowledged that there have been some complaints in regard to the noise which he has attempted to correct. He further testified that in the interior of the restaurant, there is no specific area for dancing, but that some people do. He testified that he has ten (10) televisions inside the restaurant which show primarily sporting events, but which can show musical performances such as American Idol. He testified the house music sound system has eight (8) speakers inside and four (4) speakers outside and the music system plays satellite music or CD's. He testified that a jukebox is being considered to play music in the evenings so that customers can select the music that they wish to hear. He testified that on Friday and Saturday nights after 9:00 p.m., a deejay plays music, karaoke or a band plays until about 1:00 a.m. He testified that other bars located on Millers Island – The New White Swan and The Islander play music as well. Finally, he testified on Saturday and Sunday afternoons in the summer beginning May through September, live music is generally played outside from 4:00 p.m. to 8:00 p.m.. He acknowledged that on one or two occasions, music was played after 8:00 p.m.

The Protestants generally testified on the second day of hearing as to inconveniences as a result of the music – loud music being played on the weekends and during the weeknights. These multiple Protestants, over Petitioner's objection, generally testified in what would have normally been the Zoning Enforcement hearing, which this hearing was not.

In rebuttal, Mr. Thanner testified that in the winter, music is played from 9:00 p.m. to 1:00 a.m. inside on Fridays and Saturdays, and in the summer, music is played from 9:00 p.m. to 1:00 a.m. inside and on Saturdays and Sundays, the music is played outside from 4:00 p.m. to

8:00 p.m. Thanner testified that he operates the restaurant and bar and that the Dock of the Bay food sales count for seventy percent (70%) of its gross revenue with thirty percent (30%) from beverages. Additionally, entertainment is provided only 7.5 percent of the time.

Mr. James Thompson, testified on behalf of the Protestants as the Supervisor of Code Enforcement for Baltimore County in utilizing the Decision of Raymond F. Wisnom, Code Enforcement Hearing Officer, Thompson opined that no live music was permitted in the B.L. Zone. Thompson concluded that "there were no exceptions for live music in a B.L. Zone." On cross-examination, he opined that televisions, radios, recorded deejay would be acceptable in the B.L. Zone, but questioned whether a stroll in violinist or piano player would be permitted since it was "live" music.

III.

QUESTION PRESENTED

1. **Is the Dock of the Bay, a restaurant and bar located at 9025 Cuckold Point Road, which plays music in a B.L. Zone, a night club as defined in the Baltimore County Zoning Regulations?**

Legal Argument

The Dock of the Bay, owned by Fifth Street, LLC is licensed, the State of Maryland as a restaurant and by Baltimore County as a "Food Service Facility." (See Exhibit A). The undisputed evidence is that seventy percent (70%) of its gross receipts are from food, thirty percent (30%) from alcoholic beverages, and, in fact, the live music which was the subject of the testimony before the Zoning Commissioner consisted of only 7.5 percent of the time that the restaurant is open. It is undisputed that the restaurant is in the B.L. Zone. Section 230, Business,

Local provides that the following uses are permitted... §230.4 ... standard restaurant ...; §230.7 ... dancing schools, conservatory for music ... It is clear then that contrary to the testimony of James Thompson, Supervisor of Zoning Enforcement for Baltimore County, that music is envisioned by the County Council in the B.L. Zone.

A NIGHT CLUB is defined in §101 as – "a tavern or other commercial establishment which provides live or recorded entertainment, with or without a dance floor, and which is categorized as a night club by the Building Code of Baltimore County."

The Building Code of Baltimore County adopts the International Building Code Commentary – Volume I, 2003, §303, Assembly Group A, and more specifically A-2. In the Building Code, Assembly Group A-2 defines assembly uses intended for food and/or drink consumption including, but not limited to: banquet halls, night clubs, restaurants, taverns and bars.

Further, Merriam-Webster Dictionary defines "NIGHT CLUB" as a "place of entertainment open ***at night***, usually serving food and liquor and providing music and space for dancing and often having a floor show."

Finally, while the subject site, the Dock of the Bay restaurant is not in an R.A.E. Zone, an analogy can be made in regard to the use of live music by studying the County Council's intent in regard to music as set forth in the R.A.E. Zones. As an example, one is permitted in the R.A.E. #1 Zone, to have a standard restaurant but with no dancing or live entertainment. However, in the R.A.E. #2 Zone, one can have a standard restaurant with dancing or entertainment permitted. This distinction will be addressed later.

The Commissioner will recall that the expert testimony of Jim Thompson was that the thing that makes a restaurant a night club is live music. Thompson testified that there are no exceptions to live music in the B.L. Zone. Simply put, his testimony was that "no live music was permitted." (Apparently, the Zoning Enforcement Officer ignores the Statute and definition which says "live or recorded" and therefore for all intent and purposes, overlooks potentially hundreds of violations around the County where recorded music is played in restaurants in B.L. Zones. Apparently, the Zoning Office does not wish to open a Pandora's Box). That the Baltimore County Zoning Enforcement Office only prosecutes violators playing live music under the theory that live music is not permitted in the B.L. Zone raises significant questions in regard to their adherence to the regulations.

The B.L., Zone contrary to the testimony of Mr. Thompson, while permitting the property to be used as a restaurant and tavern, ***does not*** preclude music in a B.L. Zone. For instance, under §230.7, a dancing school is permitted (which requires the playing of music) and further a conservatory for music is permitted, thus, dancing and music are obviously permitted within the B.L. Zone, and not precluded *per se*.

Turning to the International Building Code, it does not specifically categorize night club. It provides in Category A-2, a certain Assembly Group. In Group A-2, is Assembly Group A. Group A-2 is Assembly uses intended for food and/or drink consumption, including but not limited to banquet halls, night clubs, restaurants, taverns and bars. The characteristics of Group A-2 are as follows:

1. Low-level lighting.

2. Entertainment by a live band and/or recorded music generating above normal sound levels.

3. No theatrical stage accessories.

4. Later than average operating hours.

5. Ill-defined aisles created by positioning of tables.

6. A specific area for dancing.

7. Service facilities for alcoholic beverages and food.

8. High-occupancy, low-density.

While the Dock of the Bay may have some of these characteristics, it does not have all. It may not have low-level lighting at all times, entertainment by live bands or recorded music may not generate above normal sound levels; it has no theatrical stage accessories; it does not operate later than average; it does not have ill-defined aisles; it does not have a specific area for dancing and it does not have high-occupant load density, but in fact is limited by the Fire Department. In any event, the above listed characteristics are those of Group A-2. This means that a facility having these characteristics would then be classified in Assembly Group A-2. All facilities falling into this Group would have the same requirements for such things as fire rating of walls and the travel distance to exits, etc. These characteristics in no way define a night club. Thus, the fact that the Dock of the Bay is characterized as Group A-2, does not mean that it is a night club. It falls under Group A-2 for fire and crowd control because it is a restaurant according to the International Building Code. Night clubs and restaurants only have the same characteristics, but that does not make a restaurant a night club, or a banquet hall a night club.

Using only the definition in the Baltimore County Zoning Regulations for a night club, and depending on the zoning involved, a facility such as the Bel-Loc Diner could be construed as a night club since it serves food and has a juke box, or Michael's Café on York Road has live

bands on Fridays and Saturday evenings. The Bamboo House on Cranbrook Lane has live entertainment on Thursday, Friday and Saturday night. No one would call these commercial establishments night clubs. In addition, as questions posed to Mr. Thompson illustrates, a restaurant with someone playing dinner music on a piano, or a stolling violin, would be classified as a night club, yet no one would call these restaurants with live music a night club.

As previously discussed, Mr. Thompson testified on December 5, 2006, under direct examination, that a restaurant with live music was a night club in the B.L. Zone. However, under cross-examination, he had to admit that live music would not necessarily make it a night club. The question presented then becomes what factors would have to be applied in a specific situation that would make a restaurant a night club. Thompson's testimony specifically refuted the notion that live music automatically makes a business a night club.

The Baltimore County Zoning Regulations in the R.A.E. Zone specifically recognize that night clubs and restaurants with live music are two (2) different uses. Admittedly, the R.A.E. Zone is not applicable here and yet it provides illustration by analogy as to the fallacy of the Zoning Office interpretation of the Dock of the Bay as a night club. For instance, in Zone R.A.E. #1, one of the permitted uses is "standard restaurants with no dancing or live entertainment permitted." Yet in R.A.E. #2 Zones, one of the permitted uses is "standard restaurants with dancing or entertainment permitted." The Baltimore County Zoning Regulations through the County Council appeared to recognize there is a difference between a night club and a restaurant with dancing or entertainment.

There, the standard restaurant is defined by the Baltimore County Zoning Regulations as "a facility or part of a facility used ***primarily*** for serving meals and beverages to persons seated on the premises of the establishment." Here, the key word is "primarily." This, of course, means the facility can be used for other purposes. Since a restaurant with dancing or entertainment does not make it a night club according to the Baltimore County Zoning Regulations, then the other purposes could very well be dancing and entertainment which is what is provided at the Dock of the Bay. Dancing and entertainment, be it live or recorded, is not prohibited in the definition of a standard restaurant. The Petitioner submits then that what is not prohibited, is allowed. Therefore, entertainment and dancing are allowed in a standard restaurant even in a B.L. Zone.

As previously set forth, the Dock of the Bay is licensed by Baltimore County with a business license and a food service license which list the Dock of the Bay as a restaurant. Therefore, the County has recognized that the Dock of the Bay is a restaurant. (Exhibit A).

Mr. Thompson's testimony on cross-examination is further illustrative of the County's confusion on this issue. He was asked to give an example of one restaurant with live music or entertainment which was cited for being in violation of the Zoning Regulations as a night club. Mr. Thompson, although with many years experience could not name one instance where this has happened.

Finally, from another tact, the confusion of the County's position in this matter is illustrated by permitted uses in the B.L. Zone contained in the Zoning Regulations. As stated before, live music is allowed in a B.L. Zone. A conservatory of music is allowed in a B.L. Zone. The Petitioner could create a Conservatory of Music at the Dock of the Bay and have the band

participants designated as students of the Dock of the Bay Conservatory. Technically, that would be permitted under the B.L. Zone. Additionally, if a dance school is allowed in the B.L. Zone, anyone wishing to dance could register as students of the Dock of the Bay Dance Studio and therefore the live music and the dancing would be legal. Petitioner suggest that this is a ridiculous approach to the situation. However, it shows the absurdity of classifying the Dock of the Bay as a night club.

Finally, if the County is going to take the position that the definition of a night club literally, then the County must recognize that the entertainment can be live or recorded. Recorded would include house systems and juke boxes. If that is the case, then every restaurant and bar in Baltimore County, which has some form of live or recorded entertainment, would be classified as a night club which would not be permitted in a B.L. Zone. Of course, this would also include a restaurant such as Denny's and International House of Pancakes which plays recorded music in a B.L. Zone. The Petitioner would request equal and fair enforcement of this interpretation of the Zoning Regulations throughout Baltimore County. These outcomes would hardly appear to be within the spirit or the definition of a night club.

CONCLUSION

In conclusion, it appears that the Petitioner's restaurant, Dock of the Bay, is nothing more than that, a restaurant which is permitted in the B.L. Zone, which happens to play either recorded or live music, which does not fit the definition of a night club. To the casual observer, a night club is more accurately defined by Webster's Dictionary at which time the entertainment is provided by and often having a floor show. It also appears that a night club primarily envisions a

floorshow or other entertainment as its primary purpose as opposed to the Petitioner's Dock of the Bay which is primarily a restaurant serving food and is so identified by the licenses issued by the County.

WHEREFORE, the Petitioner respectfully requests that the Zoning Commissioner determine that the use of the Dock of the Bay consist of a restaurant and is not a night club.

Respectfully submitted,

J. CARROLL HOLZER, Esquire
Holzer & Lee
508 Fairmount Avenue
Towson, Maryland 21286
410-825-6961
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of May, 2007, a copy of the foregoing was mailed first class, postage pre-paid to the following: Francis X. Borgerding, Jr., Esquire, Mercantile Building, Suite 600, 409 Washington Avenue, Towson, Maryland 21204.

J. CARROLL HOLZER, Esquire

C:\My Docs\Memos 2007\Thanner – Memo in Lieu of Oral Argument – 5/10/07

8/25/06

Department of Perrmits and Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204
Baltimore County, Maryland

In the Matter of

Civil Citation No.06-3683

Fifth Street LLC
Lawrence J. Thanner, Resident Agent

9025 Cuckold Point Road

Respondent

FINDINGS OF FACT AND CONCLUSION OF LAW
FINAL ORDER OF THE CODE ENFORCEMENT HEARING OFFICER

This matter came before the Code Enforcement Hearing Officer for the Department of Permits and Development Management on August 23, 2006, for a hearing on a citation for violations under the Baltimore County Zoning Regulations (BCZR) section 102.1, 230; International Building Code (IBC) section 3103.1; for failure to cease operation of a nightclub in a BL zone; failure to obtain a permit for tent; failure to remove tent on property zoned BL known as 9025 Cuckold Point Road, 21219.

On August 8, 2006, pursuant to §3-6-205, Baltimore County Code, Jeffrey Radcliffe, Code Enforcement Officer, issued a code enforcement citation. The citation was legally served on the Respondent.

The citation proposed a civil penalty of $5,000.00 (five thousand dollars). A code enforcement hearing date was scheduled for August 23, 2006.

Lawrence J. Thanner, Resident Agent and owner of Fifth Street LLC appeared for the hearing and testified.

J. Carroll Holzer, Esquire appeared as Counsel for the Respondent.

Wayne Walkman, Jr. testified to music so loud one can hear it with the windows shut. He has complained to the Liquor Board, the Police Department and Zoning. He also complained about the lack of parking for the increase in activity.

Matthew Ciarpella complained of similar issues. The restaurant abuts residential properties and the music is as though it is in their back yard.

Testimony and evidence presented shows the property operating outside the main structure without required zoning approval. The activities include live music and/or music from the house sound system. According to a letter from Mr. Thanner to Inspector Clarence Raynor, the house system is connected to 4 speakers outside. The letter states that on Fridays and Saturdays, 4:00 p.m. to 8:00 p.m., a band plays outside. Mr. Thanner testified to the same at the hearing. Mr. Thanner questioned the term "Nightclub" stating that he does not operate at night. According to the International Building Code (IBC), taverns, restaurants and nightclubs are considered to be in the same use, Group A-2. Group A-2 includes occupancies in which people congregate in high densities for social entertainment such as drinking and dancing. Included in this group are nightclubs, dance halls, banquet halls, cabarets, etc. to include restaurants. The occupancies are characterized by some or all of the following:

1. Low lighting levels
2. Entertainment by a live band or recorded music generating above-normal sound levels.
3. No theatrical stage accessories.
4. Later than average operating hours.
5. Ill-defined aisles created by the positioning of tables.
6. A specific area for dancing.
7. Service facilities for alcoholic beverages and food.
8. High occupant load density.

The property according to testimony exhibits some of the listed characteristics. The use of the property has definitely expanded beyond the enclosed structure on the premises by the placement of a tent structure used for live music and drinking as advertised on County Exhibit #2. This ad also cites the use of a DJ on Fridays and Saturdays, beginning at 9:00 p.m. The web site for Dock of the Bay also advertises a DJ for Friday and Saturday nights from 9:00 p.m. to 1:00 a.m.

According to the definitions in the Baltimore County Zoning Regulations (BCZR) and the International Building Code (IBC), the premises meets the criteria required to be designated a nightclub. Furthermore, the placing of the tent without benefit of a permit constitutes a building code violation pursuant to the IBC section 3102.1, 3103.1, 3103.1.1; wherein temporary structures that cover an area in excess of 120 square feet intended to be used for the gathering of 10 or more persons shall not be erected, operated or maintained for any purpose without obtaining a building permit. The zoning regulations and the International Building Code are clear in their respective definitions and appear to coincide. There is no question that the property is being used and operated as a nightclub pursuant to the definitions of a nightclub whatever publication one wishes to use to decide the matter. Mr. Holzer contends the Zoning Commissioner will over rule the nightclub use, however the building code violation continues to loom upon the premises and its operators. In any case, Dock of the Bay is a restaurant with dancing and/or live or recorded entertainment and this fact is uncontested.

The case file contains a printout listing the live music schedule for August 8, 2006 through September 18, 2006. Some days the live entertainment is scheduled for 4:00 p.m. to 8:00 p.m. and some dates scheduled for 4:00 p.m. to 9:00 p.m. The printout states that 300 people have "flooded the restaurant on this day". The printout touts Friday night Karaoke and DJ 9:30 p.m. to 1:30 a.m., Saturday Outdoor Deck Party, live music 4:00 p.m. to 9:00 p.m. Dance the night away with DJ Bob, 9:00 p.m. to 1:00 a.m.

I find the property is being used and operated as a restaurant with dancing and live entertainment allowing a building code violation to exist concurrently with the nightclub use and continue unabated despite receiving notice of violation on May 12, 2006. A restaurant with dancing and/or live or recorded entertainment is not a permitted use in a BL zone.

IT IS ORDERED by the Code Enforcement Hearing Officer this 25th day of August 2006, that a civil penalty be imposed in the amount of $5,000.00 (five thousand dollars) payable on or before October 2, 2006.

IT IS FURTHER ORDERED for the Respondent to remove the tent, dismantle the outside speaker system and cease live and/or recorded entertainment immediately.

IT IS FURTHER ORDERED that failure to remove the illegal structure and cease nightclub activities will result in additional civil penalties at $200.00 (two hundred dollars) per day per violation.

IT IS FURTHER ORDERED that the inspector inspect the property to determine whether the violation has been corrected

Signed: _____
Raymond S. Wisnom, Jr.
Code Enforcement Hearing Officer

The violator is advised that pursuant to §3-6-301(a), Baltimore County Code, an appeal to the Baltimore County Board of Appeals may be taken within fifteen (15) days after the date of a final Order. §3-6-302(a)(b)(c)(d) requires the filing of a petition setting forth the grounds for appeal and a filing fee of $150. The appellant is urged to read the requirements for the appeal petition. Security in the amount of the civil penalty must be posted with the Director.

RSW/jaf

07-1441-A

(20070144) "A" needs to be scanned

(2)

TIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 443231

DATE 8/30/07 ACCOUNT G-001-2839

AMOUNT $ 1,000.00

RECEIVED FROM: LAWRENCE J. THANNER

FOR: CIVIL PENALTY 9025 CUCKOLD POINT RD.

#06-3683B

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT

Baltimore County, Maryland

CASHIER'S VALIDATION

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 443230

DATE 8/30/07 ACCOUNT R-001-006-3120

AMOUNT $ 150.00

RECEIVED FROM: J. CARROLL HOLZER, P.A.

FOR: APPEAL FEE

9025 CUCKOLD POINT RD # 06-368B

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT

8/30/2007 8/30/2007 15:03:49 4

ACCOUNT # 3120 RECEIPT # 443230

Receipt Tot $150.00

$150.00 CK $150.00

Baltimore County, Maryland

CASHIER'S VALIDATION

9035 CUCKOLD POINT RD

JASON SEIDELMAN

County Board of Appeals of Baltimore County

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

Hearing Room – Room 48

Old Courthouse, 400 Washington Avenue November 16, 2007

AMENDED NOTICE OF ASSIGNMENT
(ADDING CBA-07-134 AND ADDITIONAL DAY OF HEARING)

CASE #: 07-144-SPH

IN THE MATTER OF: FIFTH STREET, LLC; Lawrence Thanner – Legal Owner /Petitioner
9025 Cuckold Point Road 15th E; 7th C

5/30/2007 – Z.C.'s Order in which requested zoning relief was DENIED.
[NOTE: Also included in this file is an appeal taken by Mr. Holzer from the 6/29/2007 letter from the Z.C. to Thomas Minkin, Chair of the Board of Liq Lic Commissioners interpreting the above 5/30/07 Order.]

NOTE: TO BE HEARD WITH RELATED CASE NO. CBA-06-044 and CASE NO. CBA-07-134.

ASSIGNED FOR: TUESDAY, JANUARY 15, 2008 at 10:00 a.m. Day #1 &
TUESDAY, JANUARY 29, 2008 at 10:00 a.m. Day #2

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.

Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.
IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).
If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Kathleen C. Bianco, Administrator

c: Counsel for Appellants /Property Owners : J. Carroll Holzer, Esquire
Appellants / Current Owner : Fifth Street, LLC /Lawrence Thanner
Mike Kondylas
Dorothea Reilly
Judith-Kurek

Counsel for Protestants : Francis X. Borgerding, Jr., Esquire
Protestants : Matthew J. and Nancy Jean Ciarpella
Wayne and Patricia Waldmann Sr.
Phil and Kay Sessa
Charlie Wolinski and Daryl Wolinski
Michael Poleski
David and Vena Sheck
Ken Schoyl and Tammy Novak
Doug W. Waldmann, et al
Louis Petrovia
Robert Haas
David Znamirowski
Robert Poleski
David McWilliams
Terri Poleski

Lisa Hoerger, CBCAC
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Jeffrey Radcliffe /Code Enforcement **[CC-06-3683]**
Raymond S. Wisnom, Jr. / Code Enf. Hearing Official
Mike Mohler, Enforcement /PDM
Timothy M. Kotroco, Director /PDM
John E. Beverungen, County Attorney

Printed with Soybean Ink on Recycled Paper

County Board of Appeals of Baltimore County

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

Amended notice sent out 11-16-07 - assigned Dep 2 - 1/29/08. and CBA-07-134

Hearing Room – Room 48

Old Courthouse, 400 Washington Avenue October 30, 2007

NOTICE OF ASSIGNMENT

CASE #: 07-144-SPH

IN THE MATTER OF: FIFTH STREET, LLC; Lawrence Thanner – Legal Owner /Petitioner
9025 Cuckold Point Road 15th E; 7th C

5/30/2007 – Z.C.'s Order in which requested zoning relief was DENIED.
[NOTE: Also included in this file is an appeal taken by Mr. Holzer from the 6/29/2007 letter from the Z.C. to Thomas Minkin, Chair of the Board of Liquor License Commissioners interpreting the above 5/30/07 Order.]

NOTE: ASSIGNED TO BE HEARD WITH RELATED CASE NO. CBA-06-044

ASSIGNED FOR: TUESDAY, JANUARY 15, 2008 at 10:00 a.m.

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.

Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code. IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).
If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Kathleen C. Bianco, Administrator

c: Counsel for Appellants /Property Owners : J. Carroll Holzer, Esquire
Appellants / Current Owner : Fifth Street, LLC /Lawrence Thanner
Mike Kondylas
Dorothea Reilly
Judith Kurek

Counsel for Protestants : Francis X. Borgerding, Jr., Esquire
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David and Vena Sheck
Ken Schoyl and Tammy Novak
Doug W. Waldmann, et al
Louis Petrovia
Robert Haas
David Znamirowski
Robert Poleski
David McWilliams
Terri Poleski

Lisa Hoerger, CBCAC
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Jeffrey Radcliffe /Code Enforcement **[CC-06-3683]**
Raymond S. Wisnom, Jr. / Code Enf. Hearing Official
Mike Mohler, Enforcement /PDM
Timothy M. Kotroco, Director /PDM
John E. Beverungen, County Attorney

Printed with Soybean Ink on Recycled Paper

Requested: Sept. ~~20~~ 24, 2007

APPEAL SIGN POSTING REQUEST

CASE NO. 07-144-SPH

9025 Cuckold Point Road

S/E CORNER OF Cuckold Point Road & 5th Street

15TH ELECTION DISTRICT APPEALED: 7/24/2007

ATTACHMENT – (Plan to accompany Petition – Petitioner's Exhibit No. 1)

*****COMPLETE AND RETURN BELOW INFORMATION******

CERTIFICATE OF POSTING

TO: Baltimore County Board of Appeals
400 Washington Avenue, Room 49
Towson, MD 21204

Attention: Kathleen Bianco
Administrator

CASE NO.: 07-144-SPH

LEGAL OWNER: FIFTH STREET, LLC, LARRY THANNER, RESIDENT AGENT

This is to certify that the necessary appeal sign was posted conspicuously on the property located at:

9025 Cuckold Point Road
S/E CORNER OF Cuckold Point Road & 5th Street

The sign was posted on 1-4-2008, ~~2007~~.

By: _____
(Signature of Sign Poster)

JASON SEIDELMAN
(Print Name)

County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

July 7, 2008

NOTICE OF DELIBERATION -
PETITIONER'S MOTION FOR RECONSIDERATION AND CLARIFICATION

IN THE MATTER OF:

FIFTH STREET, LLC; Lawrence Thanner – Legal Owner /Petitioner
9025 Cuckold Point Road 15th E; 7th C
MOTION FOR RECONSIDERATION AND CLARIFICATION
Case No. 07-144-SPH; Case No. CBA-06-044; and Case No. 07-134

In response to the Motion for Reconsideration and Clarification filed in this matter by Mr. Holzer on behalf of Petitioner, the Board will convene on the following date/time to publicly deliberate and discuss the Motion, pursuant to Board Rule 10, with any further action by the Board to be taken after that public deliberation; and has been scheduled for

DATE AND TIME : **TUESDAY, AUGUST 12, 2008, at 9:00 a.m.**

LOCATION : **Hearing Room #2, Jefferson Building (Second Floor, next to Suite 203) 105 W. Chesapeake Avenue**

NOTE: ALL PUBLIC DELIBERATIONS ARE OPEN SESSIONS. A WRITTEN RULING WILL BE ISSUED BY THE BOARD AND A COPY SENT TO ALL PARTIES AT THE CONCLUSION OF FINAL DELIBERATION IN THIS MATTER.

Kathleen C. Bianco
Administrator

---

c : Counsel for Appellants /Property Owners : J. Carroll Holzer, Esquire
Appellants / Current Owner : Fifth Street, LLC /Lawrence Thanner
Mike Kondylas
Dorothea Reilly
Judith Kurek

Counsel for Protestants : Francis X. Borgerding, Jr., Esquire
Protestants : Matthew J. and Nancy Jean Ciarpella
Wayne and Patricia Waldmann Sr.
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Robert Haas
David Znamirowski
Robert Poleski
David McWilliams
Terri Poleski

Lisa Hoerger, CBCAC
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William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Jeffrey Radcliffe /Code Enforcement **[CC-06-3683]**
Raymond S. Wisnom, Jr. / Code Enf. Hearing Official
Mike Mohler, Enforcement /PDM
Timothy M. Kotroco, Director /PDM
John E. Beverungen, County Attorney

FYI: 3-2-4

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, MARYLAND 21285-6754

RECEIVED
DEC 09 2008
BALTIMORE COUNTY
BOARD OF APPEALS

County Board Of Appeals Of Baltimore County
Old Courthouse, Room 47
400 Washington Avenue
Towson MD 21204

Assignment Date: 07/10/08

Case Title: In The Matter Of Fifth Street L L C, Et Al
Case No: 03-C-08-000949 AA

The above case has been assigned to the EXPEDITED APPEAL TRACK. Should you have any questions concerning your track assignment, please contact: Joy M Keller 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..... 07/24/08
2. All Motions (excluding Motions in Limine) are due by..... 09/10/08
3. TRIAL DATE is..... 01/14/09
   Civil Non-Jury Trial; Start Time: 09:30AM; To Be Assigned; CORRECTED NOTICE 1/2 HOUR ADMINISTRATIVE APPEAL AGREED DATE (CASES C-08-949 & C-08-4410 ARE CONSOLIDATED PER COURT ORDER)

Honorable John Grason Turnbull II
Judge

Postponement Policy: No postponements of dates under this order will be approved except for undue hardship or emergency situations. All requests for postponement must be submitted in writing with a copy to all counsel/parties involved. All requests for postponement must be approved by the 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 information.)

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 Civil Assignment Office at (410)-887-2660 or use the Court's TDD line, (410) 887-3018, or the Voice/TDD M.D. Relay Service, (800) 735-2258.

Voluntary Dismissal: Per Md. Rule 2-506, after an answer or motion for summary judgment is filed, a plaintiff may dismiss an action without leave of court by filing a stipulation of dismissal signed by all parties who have appeared in the action. The stipulation shall be filed with the Clerk's Office. Also, unless otherwise provided by stipulation or order of court, the dismissing party is responsible for all costs of the action.

Court Costs: All court costs MUST be paid on the date of the settlement conference or trial.

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, MARYLAND 21285-6754

County Board Of Appeals Of Baltimore County
Jefferson Building, Suite
105 West Chesapeake Avenu
Towson MD 21204

Assignment Date: 12/23/08

Case Title: In the Matter of Fifth Street L L C, et al
Case No: 03-C-08-009996 AA

The above case has been assigned to the EXPEDITED APPEAL TRACK. Should you have any questions concerning your track assignment, please contact: Joy M Keller 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..... 01/07/09
2. All Motions (excluding Motions in Limine) are due by..... 02/27/09
3. TRIAL DATE is:..... 04/08/09
Civil Non-Jury Trial; Start Time: 09:30AM; To Be Assigned; 1/2 HOUR ADMINISTRATIVE APPEAL

Honorable John Grason Turnbull II
Judge

Postponement Policy: No postponements of dates under this order will be approved except for undue hardship or emergency situations. All requests for postponement must be submitted in writing with a copy to all counsel/parties involved. All requests for postponement must be approved by the 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 information.)

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 Civil Assignment Office at (410)-887-2660 or use the Court's TDD line, (410) 887-3018, or the Voice/TDD M.D. Relay Service, (800) 735-2258.

Voluntary Dismissal: Per Md. Rule 2-506, after an answer or motion for summary judgment is filed, a plaintiff may dismiss an action without leave of court by filing a stipulation of dismissal signed by all parties who have appeared in the action. The stipulation shall be filed with the Clerk's Office. Also, unless otherwise provided by stipulation or order of court, the dismissing party is responsible for all costs of the action.

Court Costs: All court costs MUST be paid on the date of the settlement conference or trial.

Camera Phones Prohibited: Pursuant to Md. Rule 16-109 b.3., cameras and recording equipment are strictly prohibited in courtrooms

RECEIVED
DEC 24 2008
BALTIMORE 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
Maryland Toll Free Number (800) 938-5802

RECEIVED
FEB 26 2009
BALTIMORE COUNTY
BOARD OF APPEALS

N O T I C E O F H E A R I N G / T R I A L

Case Number: 03-C-08-000949 AA
C I V I L

In The Matter Of Fifth Street L L C, Et Al

STATE OF MARYLAND, BALTIMORE COUNTY COUNTY, TO WIT:

TO: County Board Of Appeals Of Baltimore County
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204

You are hereby NOTIFIED TO APPEAR before a Judge of the:

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

Court date:
April 21, 2009
At: 09:30 AM
Civil Non-Jury Trial
2 HOURS ADMINISTRATIVE APPEAL AGREED DATE. CASE C-08-949 & C-08-4410 ARE CONSOLIDATED BY COURT ORDER.

PLEASE NOTE: All counsel are expected to confer with each other with regard to the assigned trial date and to advise the court and other parties of any pre-existing conflict promptly.

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 Civil Assignment Office at (410)-887-2660 or use the Court's TDD line, (410) 887-3081, or or the Voice/TDD M.D. Relay Service, (800) 735-2258.

Application for postponement must be made in writing with copies to all attorneys.

Please refer to Information Desk for Court Room Designation.

Camera Phones Prohibited: Pursuant to Md. Rule 16-109 b.3., **cameras and recording equipment are strictly prohibited** in courtrooms and adjacent hallways. This means that camera cell phones should not be brought with you on the day of your hearing to the Courthouse.

Assignment Clerk: Rushton Kathy
Assignment Office Phone: (410)-887-2660

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

RECEIVED
MAR 13 2009
BALTIMORE COUNTY
BOARD OF APPEALS

N O T I C E O F H E A R I N G / T R I A L

Case Number: 03-C-08-009996 AA
Administrative Agency : CBA 07-134
Administrative Agency : CBA 07-144 SPH
Administrative Agency : CBA06-06-044
C I V I L

In the Matter of Fifth Street L L C, et al

STATE OF MARYLAND, BALTIMORE COUNTY COUNTY, TO WIT:

TO: County Board Of Appeals Of Baltimore County
Jefferson Building, Suite 203
105 West Chesapeake Avenue
Towson, MD 21204

You are hereby NOTIFIED TO APPEAR before a Judge of the:

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

Court date:
April 23, 2009
At: 09:30 AM
Civil Non-Jury Trial
1/2 HOUR ADMINISTRATIVE APPEAL CORRECTED NOTICE OF AGREED DATE

PLEASE NOTE: All counsel are expected to confer with each other with regard to the assigned trial date and to advise the court and other parties of any pre-existing conflict promptly.

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 Civil Assignment Office at (410)-887-2660 or use the Court's TDD line, (410) 887-3081, or or the Voice/TDD M.D. Relay Service, (800) 735-2258.

Application for postponement must be made in writing with copies to all attorneys.

Please refer to Information Desk for Court Room Designation.

Camera Phones Prohibited: Pursuant to Md. Rule 16-109 b.3., **cameras and recording equipment are strictly prohibited** in courtrooms and adjacent hallways. This means that camera cell phones should not be brought with you on the day of your hearing to the Courthouse.

IN THE MATTER OF
9025 Cuckold Point Road
Southeast corner Cuckold Point Road and 5th St.
15th Election District
Legal Owner: Fifth Street LLC
Contract Purchaser: Larry Thanner

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. ~~CBA-06-037~~ 07-144-SPH
FXB, JV

* * * * * * * * *

AFFIDAVIT OF SERVICE

I, the undersigned, certify that on Dec. 17, 2007, I effected service of process by personally serving a Subpoena upon James Thompson at 409 Washington Ave., #600, Towson, MD 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.

Beverly J. Kaufman
(signature)
Name: Beverly J. Kaufman
Firm:

Address: 409 Washington Ave. #600
Towson, MD 21204

RECEIVED
DEC 17 2007
BALTIMORE COUNTY
BOARD OF APPEALS

IN RE: 9025 Cuckold Point Road Southeast corner Cuckold Point Road and 5th St. 15th Election District Legal Owner: Fifth Street LLC Contract Purchaser: Larry Thanner	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
	*	Case No.: ~~CBA-06-037~~ 07-144-SPH FXB/rr.

* * * * * *

SUBPOENA

TO: James Thompson, Supervisor, Code Inspections and Enforcement Division
Baltimore County Office of Permits & Development Management
County Office Building, Room 213
111 West Chesapeake Avenue
Towson, Maryland 21204

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

in Room 48, Basement, Old Courthouse, 400 Washington Avenue, Towson, MD 21204 on Tuesday, January 15, 2008 at 10:00 a.m. and Tuesday, January 29, 2008 at 10:00 a.m.

YOU ARE COMMANDED TO produce the following documents or objects (for general purpose as stated): the zoning citation file for civil citation numbers 06-3683 and 06-3683B, for the purpose of testifying in the above-captioned matter.

SUBPOENA REQUESTED BY:

Francis X. Borgerding, Jr.
(Name of Party/Attorney)

409 Washington Avenue, Suite 600
(Address/Telephone #)
Towson, Maryland 21204 410-296-6820

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

Lawrence B. Hagel
County Board of Appeals of
Baltimore County

RECEIVED
DEC 17 2007
BALTIMORE COUNTY
BOARD OF APPEALS

IN RE: 9025 Cuckold Point Road Southeast corner Cuckold Point Road and 5th St. 15th Election District Legal Owner: Fifth Street LLC Contract Purchaser: Larry Thanner	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case No.: CBA-06-037

* * * * * *

SUBPOENA

TO: James Thompson, Supervisor, Code Inspections and Enforcement Division
Baltimore County Office of Permits & Development Management
County Office Building, Room 213
111 West Chesapeake Avenue
Towson, Maryland 21204

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

in Room 48, Basement, Old Courthouse, 400 Washington Avenue, Towson, MD 21204 on Tuesday, January 15, 2008 at 10:00 a.m. and Tuesday, January 29, 2008 at 10:00 a.m.

YOU ARE COMMANDED TO produce the following documents or objects (for general purpose as stated): the zoning citation file for civil citation numbers 06-3683 and 06-3683B, for the purpose of testifying in the above-captioned matter.

SUBPOENA REQUESTED BY:

Francis X. Borgerding, Jr.
(Name of Party/Attorney)

409 Washington Avenue, Suite 600
(Address/Telephone #)
Towson, Maryland 21204 410-296-6820

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

Linda B. Thrasher
County Board of Appeals of
Baltimore County

RECEIVED
DEC 17 2007
BALTIMORE COUNTY
BOARD OF APPEALS

IN THE MATTER OF:	*	BEFORE THE
FIFTH STREET, LLC 9025 Cuckold Point Road Civil Citation # 06-3683 & Z.C. Denied zoning relief 15th Election District 7th Councilmanic District	* * * * *	COUNTY BOARD OF APPEALS BALTIMORE COUNTY Case No. CBA-06-044 & 07-144-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 Tuesday, January 15, 2008 at 10:00 a.m. at Room 48, located at Basement, Old Courthouse, 400 Washington Ave., Towson and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board. (See attached Notice of Hearing)

Witness: Jim Thompson
Address: PDM
County Office Bldg.
Towson, MD 21204

Name: J. Carroll Holzer
Firm: Holzer & Lee
Address: 508 Fairmount Ave. Towson, 21286 **410-825-6961**

The witness named above is hereby ordered to so appear before the County Board of Appeals and bring any and all files and documents referenced in above case. The Board requests the Sheriff to issue the summons set forth herein.

Kathleen C. Bianco
County Board of Appeals of
Baltimore County

Cost: $

Summoned: _____, 2007

Not Served: _____, 2007

Sheriff of Baltimore County

C:Subpoenas CBA Thanner Dock of the Bay 1-9-08

RECEIVED
JAN 09 2008
BALTIMORE COUNTY
BOARD OF APPEALS

RE:	PETITION FOR SPECIAL HEARING 9025 Cuckold Point Road; SE corner Cuckold Point Road & 5th Street 15th Election & 7th Councilmanic Districts Legal Owner(s): Fifth Street, LLC Contract Purchaser(s): Larry Thanner Petitioner(s)	*	BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY 07-144-SPH

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

ENTRY OF APPEARANCE

Please enter the appearance of People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent and all documentation filed in the case.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of October, 2006, a copy of the foregoing Entry of Appearance was mailed to, J. Carroll Holzer, Esquire, Holzer & Lee, 508 Fairmount Avenue, Towson, MD 21286, Attorney for Petitioner(s).

RECEIVED
OCT 06 2006
Per

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Department of Permits and Development Management

Code Inspections and Enforcement
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmenforce@co.ba.md.us
pdminspect@co.ba.md.us

Baltimore County

James T. Smith, Jr., County Executive
Timothy M. Kotroco, Director

July 24, 2006

Fifth Street LLC
9025 Cuckold Point Road
Baltimore MD 21219

Re: Case No.06-3683

To Whom It May Concern:

Please be advised that a Code Enforcement Hearing has been rescheduled for Wednesday, August 23, 2006 at 9:00 a.m. in Room 116 of the County Office Building, 111 West Chesapeake Avenue, Towson, Maryland 21204. This Hearing is based on a civil citation issued with respect to certain violations concerning the above property. It is important that you appear for the hearing and state your side of the case. If you have any questions, please call Code Enforcement Inspector, Jeffrey Radcliffe 410-887-3351.

Sincerely,

June A Fisher
Code Enforcement

C: Jeffrey Radcliffe: Code Enforcement Inspector
J. Carroll Holzer, Esquire
Francis X. Borgerding, Jr., Esquire

Printed on Recycled Paper

FRANCIS X. BORGERDING, JR.
Attorney at Law
MERCANTILE BUILDING - SUITE 600
409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 296-6820
FAX (410) 296-6884

12/5
9AM
07-144-SPH

RECEIVED
NOV 27 2006
ZONING COMMISSIONER

November 21, 2006

Clerk
Zoning Commissioner's Office
for Baltimore County
401 Bosley Avenue, Room 405
Towson, Maryland 21204

RE: 9025 Cuckold Point Road
Southeast corner Cuckold Point Road
and 5th St.
15th Election District
Legal Owner: Fifth Street LLC Contract
Purchaser: Larry Thanner

Dear Clerk:

Enclosed herewith for filing please find the Return of Service with regard to the above-captioned matter. Thank you.

Very truly yours,

Francis X. Borgerding Jr.

FRANCIS X. BORGERDING, JR.

FXBJr:bjk
Enclosure
cc: John E. Beverungen, Esquire

HOLZER & LEE

LAW OFFICES
J. CARROLL HOLZER, PA
J. HOWARD HOLZER
1907-1989
THOMAS J. LEE
OF COUNSEL

THE 508 BUILDING
508 FAIRMOUNT AVE.
TOWSON, MD 21286
(410) 825-6961
FAX: (410) 825-4923
E-MAIL: JCHOLZER@CAVTEL.NET
jcholzer@cavtel.net

February 19, 2008
#7531

Lawrence S. Wescott, Panel Chairman
Baltimore County Board of Appeals
Jefferson Building
105 West Chesapeake Avenue
Second Floor
Towson, Maryland 21204

RE: Case No.: 07-144-SPH

Dear Mr. Westcott:

I have submitted under separate cover a Memorandum in Lieu of Final Argument. In that document, I have referred to Transcript pages of the hearing on January 15, 2008. For the Board's convenience, I have enclosed a copy of said Transcript.

Very truly yours,

J. Carroll Holzer

JCH:mlg

Enclosure

RECEIVED
FEB 19 2008
BALTIMORE COUNTY
BOARD OF APPEALS

April 9, 2007

John Olszewski

Regarding the recent attached article in the Examiner newspaper I would like to express my complete dissatisfaction with the effort by our "elected" official/officials to relax or alter existing regulations concerning live music for bars and restaurants not currently zoned for these activities in Baltimore County.

I don't think that I would be too far off the mark saying that this issue primarily concerns the Dock of The Bay restaurant on Millers Island in Baltimore County.
The fact that this proposed legislation was to be voted on prior to a zoning change hearing scheduled for April 13th also adds suspicion to the motives of this action.

I would suggest that if we are going to alter legislation for certain people then let's not stop there. How about reducing the property taxes for the residents of Millers Island, by let's say 70%. Maybe the County should pay the difference in the proposed rate hikes in our electric bills. Car insurance? Gas prices? The list could go on and on.

If this sounds ridiculous to you then understand how this proposed change in this legislation allowing **specific** bars and restaurants in Baltimore County to become nightclubs sounds to the tax payers that live in such close proximity to these business's.

Sincerely,

Brad Metheny

Brad & Bonnie
410-477-4615

Dear Councilman Olszewski, 4-5-2007

I read an article in the Examiner newspaper that stated you and your fellow councilman are going to have a vote on live outdoor music in a BL zoning. If this is true it would seem to me and my fellow citizens that you are deliberately and quietly undermining our efforts as law abiding, tax paying citizens of Baltimore County. Why would you do this without giving proper and due notice of this legislation to the people this will affect? You are perfectly aware of the way we have handled our situation in our neighborhood, through the law, the way it should be handled. You know we have a zoning hearing on April 13th to finally define the zoning office ruling, so why are you slipping in this vote on April 9th, four days before our hearing. The law requires legislation of this kind to be published for two weeks prior in the Jeffersonian, so why has that not happened? When I checked the Baltimore County Legislative Agenda Schedule for up coming sessions this vote is not listed, is that because you think it is not that big of a deal and could be tentatively voted on? This is not the way politics in Baltimore County should be performed.

I am firmly against any exception to the zoning office ruling, I am not in agreement with changing the zoning laws, and I will make every effort to inform all citizens this may affect.

Sincerely,

Matthew Ciarpella
410-388-2036
2716 6th St.

P.S. I have not received a response for previous letters, but I would appreciate a response to this one. Maybe I have it all wrong.

"4" (20070114)

(3)

3-5

TODAY'S NEWSMAKERS

KEN ULMAN
Howard County Executive Ken Ulman will kick off Howard Transit's upgraded services at 11 a.m. Monday at the Mall in Columbia. The changes include service to new areas in the county; earlier and later service hours on some routes; and half-hour frequency on routes serving the mall, Howard County General Hospital, Howard Community College and several village centers.

Ulman

JAMES LUCENO
James Luceno, the best-selling author of three "Star Wars: The New Jedi Order" novels in the series and a George Lucas collaborator, will be speaking at the Towson Library 2 p.m. Sunday. Luceno, whose appearance is sponsored by the Friends of the Towson Library, will give attendees a tour of the "Star Wars Expanded Universe," and will bring vintage Star Wars posters and other paraphernalia. Among his best-selling books are "Labyrinth of Evil" and "Dark Lord."

JENNIFER WEBB
Jennifer Webb, a virtual middle school girl, will be the star at Computer Mania Day on May 5 at the University of Maryland, Baltimore County. "Jennifer Webb represents cutting-edge technology that can figuratively and literally talk to girls to get the message across that technology is fun," Claudia Morrell, director of UMBC's Center for Women and Information Technology, said in a news release. The technology-gender gap begins in the middle school years.

Push to close juvenile center could benefit Anne Arundel

By Matthew Santoni
Examiner Staff Writer

Anne Arundel could receive the lion's share of land if Washington's crumbling juvenile detention center in Laurel closes.

"There is no dispute that the Oak Hill facility is a disgrace and must come down," U.S. Sen. Ben Cardin said in a statement.

Cardin

He introduced a bill with U.S. Sen. Barbara Mikulski, both Maryland Democrats, to close the center, build a new juvenile detention center in Washington and split the 800 acres it sits on among Anne Arundel, Fort Meade and the National Park Service.

Anne Arundel would get all land east of the Baltimore-Washington Parkway and south of the Patuxent River.

Built in 1967, Oak Hill is a maximum-security facility for offenders 14 to 21 years old. The center's population has declined from 245 youths in February 2005 to about 60.

County Executive John Leopold said he wants the land to be developed as a West County Regional Park. He is meeting next week with D.C. Mayor Adrian Fenty to discuss the facility and its future.

If Anne Arundel chooses to develop more than 25 percent of the land, money from the development would go toward the new detention center's construction in Washington.

"The intent is to encourage the county to keep the majority of the land as open space," said Susan Sullam, a spokeswoman for Cardin's Baltimore office.

Another portion of the land would go to Fort Meade for the National Security Agency's expansion.

Nearby residents and Maryland legislators have fought for more than two decades to close Oak Hill, which has been burdened by management woes, escapes, drug use and abuse.

"It's the right time to do it," said Anne Arundel Council Member G. James Benoit, D-Laurel.

The Associated Press contributed to this story.

msantoni@baltimoreexaminer.com

ANNE ARUNDEL

Wang Shuhong, an instructor at Renmin University of China, talks about Chinese culture Friday at Meade Middle School in Anne Arundel County. - Arianna Steines/Baltimore Examiner

County officials want to offer Chinese language instruction in public schools

School board members are slated to vote on the course proposal on Wednesday

By Patrick Skinner
Special to The Examiner

Photos of China's Great Wall, pandas and terra-cotta soldiers enraptured students as they shared their impressions of the country with a delegation of educators from China.

The students at Meade Middle School in Anne Arundel were among several middle schools the delegation visited recently in an effort to work with the county in creating a Chinese language and culture curriculum.

"For us, it is looking at the global economy and how competitive it is, and our students need to be competitive," said Meade Middle School Principal Eddie Scott, referring to the interest in Chinese.

Anne Arundel Superintendent Kevin Maxwell wants to bring the Chinese language curriculum to middle schoolers this fall. The School Board is expected to vote on the proposal Wednesday.

The National Security Agency has identified Mandarin Chinese as a language lacking among employees. School and government officials said they hope the program could give young people a leg up on competition for jobs in the international market.

Anne Arundel's proposed Chinese curriculum would span six years, beginning with introduction to Chinese in the seventh grade and culminating in Advanced Placement or International Baccalaureate courses in the senior year of high school.

"We plan to have the program in all 19 middle schools, but it is based on whether we can field a class. We want to start the program with as many students as possible," said Patricia Orndorff, coordinator of World and Classical Languages.

Chinese language is offered in many school systems, including Baltimore City and Howard and Baltimore counties, Maryland State Department of Education spokesman Bill Reinhard said.

pskinner@baltimoreexaminer.com

Sid'Mara Smith, 11, right, smiles with her friend Ashley Johnson, 11, both of Severn, as they learn about pandas during a Chinese culture presentation Friday at Meade Middle School in Anne Arundel County. - Arianna Steines/Baltimore Examiner

Baltimore Co. Council may ease rules on live music

By Jaime Malarkey
Examiner Staff Writer

Baltimore County lawmakers are considering legislation to relax restrictions on live music at certain bars and restaurants — a move at least one community leader said could pollute neighborhoods with noise and traffic.

Several councilmen said some bars and restaurants are unfairly barred from providing live music, an offering currently reserved for licensed nightclubs. Three councilmen met with county officials to discuss changes and provisions, but cautioned they have no firm plans.

"Right now, if they have an outdoor deck, they are prohibited from having a guy with a guitar," said Councilman Vince Gardina, D-District 5. "We're looking at possible ways to get around that."

Dick Parsons, who chairs a group called the Community Conservation Advisory Group, e-mailed community activists Friday, urging them to contact council members before the bill could be formally proposed.

Citing an unnamed source, Parsons said he believes the council has prepared legislation and could vote on it as soon as April 9.

If not carefully worded, he said he worries a bill could transform any bar or restaurant into a nightclub by right.

"By including 'restaurant' you really open quite a wide swath there," Parsons said. "It's the noise, the ambiance, the crowd that's attracted, the parking, the whole bit."

Restaurants and bars who want to offer live music now must seek approval from the county's Board of Liquor License Commissioners, which supervises noise levels.

The board's administrator, George Abendschoen, said he doesn't receive many requests for live music.

The council is considering provisions including setting time limits determined by the proximity of homes, said Councilman John Olszewski Sr., D-District 7.

At least one council member, Democrat Kevin Kamenetz from the county's second district, said he would question blanket authorization.

"But there might be circumstances where [relaxed rules] wouldn't be unreasonable," he said.

jmalarkey@baltimoreexaminer.com

A defense attorney and a state
osecutor battled before Maryland's
ghest court last week over whether
detective's interrogation went too
when he told a suspect that the vic-
n and his family wanted only an
ology, not a trial.

To Juan P. Reyes, an assistant state
blic defender, the Anne Arundel
unty detective unlawfully induced
ioch Jermaine Hill into believing he
ould not be prosecuted if he wrote
apology, which turned out to be an
criminating account of his actions
ainst the child, identified in court
pers as Randolph P.

But to Brian S. Kleinbord, of the
orney general's office, detective
trick McLaughlin's actions were
lid, as he never promised Hill that
would be spared prosecution if he
ologized.

Court of Appeals judges
peared undecided over how much
bterfuge — if any — a police officer
n engage in to get a confession.

"At what point does a permissible
... cross the line into an improper
ducement?" Judge Joseph F. Murphy
asked the warring attorneys.

According to trial testimony,
cLaughlin told Hill that "what the
mily wants is an apology, and just
mething from you just saying that
u're sorry for this. They don't want
go through a long trial. They just
ant an apology from you."

The detective testified that he said
is to Hill, who was not in custody at
e time, to spur a confession. Hill's
al counsel had tried in vain to pre-
nt the letter of apology from being
tered into evidence.

The **Anne Arundel County**
ircuit Court jury, having seen his
ritten apology, convicted Hill in
nuary 2007 of sexual abuse of a
inor, second-degree sexual offense
d unnatural and perverted sexual

The **Court of Special Appeals** upheld the conviction in September, and Hill sought review by the high court.

During the Court of Appeals session, Judge Mary Ellen Barbera appeared torn as she wondered aloud whether the benefit of the doubt should go to the defendant or the state when an officer lies during questioning and elicits an incriminating statement.

"Why shouldn't the law be the benefit goes to the defendant?" Barbera asked. However, she also inquired whether "a reasonable person in the shoes" of a criminal suspect would believe that a mere apology would prevent a prosecution.

dant, such as freedom from prosecution.

Hill had an "objectively reasonable belief" that he would not be prosecuted if he apologized, Reyes said. "It's a very simple and very straightforward case."

But Judge Glenn T. Harrell Jr. said a detective's statement regarding prosecution, even if implied to elicit a confession, cannot be relied upon by a suspect. Neither a detective nor a victim can stop a prosecution, as the decision to prosecute belongs to the prosecutor, Harrell said.

"How does that [statement from the detective] implicate who is really driving the bus, who is the prosecutor?" Harrell said.

defendant would be to his benefit.

Rather, officers are barred from expressly promising a defendant that he would not be prosecuted, Kleinbord said.

"There was no promise" made to Hill, said Kleinbord, who heads the attorney general's criminal appeals division.

"The suspect inferred ... that this [apology] will make the case go away," Kleinbord added. "We have what amounts to a subjective expectation."

But Judge Sally D. Adkins was skeptical, saying the detective seems to have made an "implied promise" to Hill.

The case is *Hill v. Maryland*, No. 149, September Term 2009.

Lawyer defends Dock of the Bay's right to play music

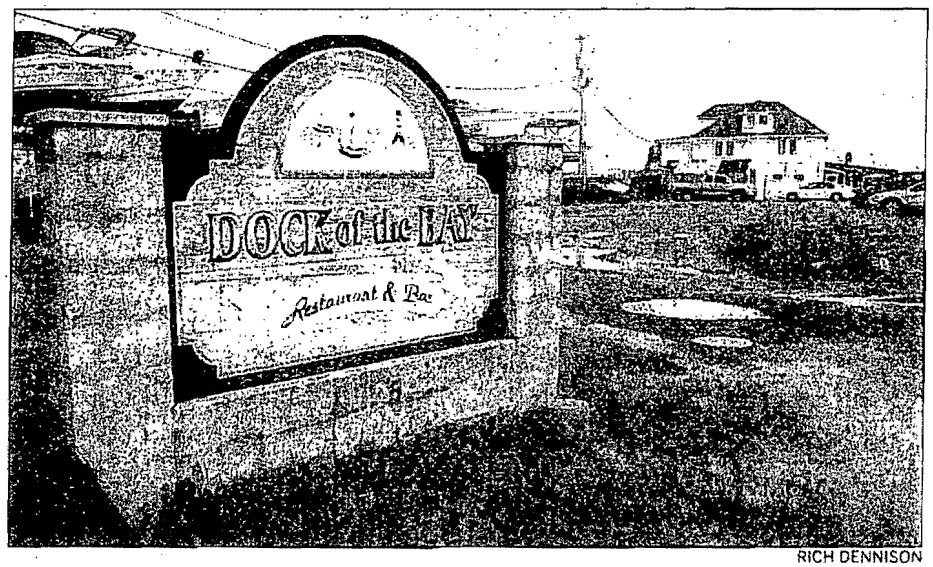
BY DANNY JACOBS
danny.jacobs@mddailyrecord.com

A Miller's Island restaurant should not have to face the music because of its live bands and karaoke, its lawyer told the **Court of Special Appeals** last week.

During oral arguments Tuesday, J. Carroll Holzer challenged a finding by Baltimore County officials that **Dock of the Bay** illegally morphs into a nightclub when music is played on weekend nights, pointing out that restaurants and nightclubs are grouped together by county zoning law.

"Does a banquet hall become a nightclub because all of the sudden it has occasional dancing and music? No," Holzer said last week.

Holzer also argued the county is selectively enforcing a zoning law that prohibits restaurants in small-scale commercial areas from having live or recorded entertainment.



RICH DENNISON

Dock of the Bay is litigating its second appeal on challenges to limit live music and karaoke at the restaurant.

"If they went after every place that has recorded music, almost every establishment in the county could be

See RESTAURANT 6B

Daily Record 6/14/10

agement system with real time data available around the clock and remotely, just like the federal filing system. Unlike PACER, however, the state system will not be mandatory. Lawyers will still be able to file paper documents at a courthouse, where a clerk will scan them into the electronic system. The idea, Clyburn said, is to make filing remotely a business decision, not a requirement, for each law firm, Clyburn said.

"We don't want to put any solo practitioner or small firm out of business," he said. "What I hope is that once you get a feel for it you will do it."

The advisory committee is proposing a $5 fee for each remote filing, a figure Clyburn said is on the "low end" compared to what other states charge.

"We are not interested in making money on this," he said.

Law firms could also contract with state-approved vendors that offer more "bells and whistles," Clyburn said, such as notification when documents are filed by opposing counsel. Such outside vendors might charge more per each filing, he added.

The switch to electronic case management means a visit to the courthouse will involve searching for cases on a computer, not in a file room. But paper will not be totally removed from the system.

"It's going to allow for production of paper when paper is needed," Clyburn said.

Under the advisory committee plan, paper copies of documents would be free to the parties involved but cost 50 cents per page for non-parties to print and download — the same cost now to make copies of documents in district and circuit courts.

The committee is meeting with bar associations across the state to get the details that still need to be worked out is a definition of electronic record (something Clyburn said might require a rule change), a definition of "filing" and setting a filing deadline.

The program's website, mdcourts.gov/mdec, will continue to update and expand its frequently asked questions page as it receives more input and solidifies plans. Training sessions will also be offered

hear from us," Clyburn said.

The Maryland Judiciary is also working with public safety agencies to ensure some uniformity among governmental bodies; defendants might be given a "common identifier" so that there is no confusion among police, prosecutors and jails as to a defendant's location.

Courtroom events, dispositions and decisions will be immediately

cult at first for judges. A warrant signed by a judge will be available to police right away, Clyburn said by way of example, eliminating any potentially fatal lag time.

"This is going to save lives," he said.

It will also give lawyers the "consistency and efficiency" they deserve, Clyburn said. "You can't put a dollar value on time."

Restaurant >> Neighbors call live music 'disturbing'

Continued from 3B

fined," said Holzer, of **Holzer & Lee** in Towson.

But a lawyer for neighbors whose complaints launched what has turned into a four-year legal battle noted that Dock of the Bay's music was played almost every weekend night in the summer well after midnight.

"This is not some innocuous dinnertime music," Francis X. Borgerding Jr. said. "This is live rock bands that are disturbing neighbors."

Dock of the Bay, which sits on Chesapeake Bay, offered live music or karaoke on weekend nights beginning in 2005. It has a liquor license, but Holzer said alcohol accounts for only 30 percent of its sales. Owner Lawrence J. Thanner has previously testified that the restaurant could not survive financially without the summer entertainment.

County officials began investigating and fining Dock of the Bay in August 2006 for violating its permit. The county zoning commissioner ruled one year later that Dock of the Bay operated "as a restaurant providing music during the day" and a nightclub in the evenings.

The **Board of Appeals** in 2008 lowered the restaurant's fine from $6,000 to $2,000 but still found the restaurant became a nightclub on summer nights and was not permitted to play music. The board, in a 2-1 decision, found Dock of the Bay exhibited six of eight characteristics of a nightclub under the county's building code, which is based on the International Building Code. But both the minority and majority opinions concluded the zoning law "is far from being crystal clear."

The enforcement against Dock of the Bay was questioned by a **Baltimore County Circuit Court** judge, who ultimately upheld the Board of Appeals' decision last year based on the facts in the case. It was also questioned last week by appellate Judge Patrick L. Woodward, who asked Holzer how the board determined that the noise from the restaurant exceeded a reasonable level.

"The board seemed to find it was above, but I don't know what that's based on," Woodward said.

"And that's my point, your honor," Holzer said. "There's no evidence to support the majority's decision."

Holzer added he had a list of 500 restaurants sharing Dock of the Bay's zoning that offer live or recorded music, including two down the street on Miller's Island that advertise karaoke.

"Were any complaints made about the restaurants?" asked Judge Deborah S. Eyler.

"I was prepared to make them," Holzer replied.

Peter Max Zimmerman, the people's counsel for Baltimore County, said determining a reasonable noise level is a judgment call, as are many administrative body decisions. But Zimmerman rejected Holzer's selective enforcement claim, arguing that businesses are given due process to challenge violations.

"Neighbors feel the sound level is above normal. Common sense tells you this case didn't arise because of some Muzak," Zimmerman said. "I never had any trouble from Day One looking at this as a nightclub."

The **Court of Appeals** held in a related decision last month that the **Baltimore County Board of Liquor License Commissioners** did not have the authority to ban Dock of the Bay from playing outdoor music.

The case is *Fifth Street LLC et al v. Matthew Ciarpella et al*, No. 810, September Term 2009.

With music, restaurant becomes nightclub

Dock of the Bay's live entertainment is zoning violation, court affirms

By Caryn Tamber
caryn.tamber@thedailyrecord.com

RICH DENNISON

Dock of the Bay has offered nighttime karaoke and live music since 2005. According to the Court of Special Appeals, its entertainment turns the restaurant into an illegal nightclub.

A Baltimore County restaurant is acting as a nightclub when it offers live music and karaoke on the weekend, the **Court of Special Appeals** has affirmed.

Last week's opinion affirms a **Baltimore County Circuit Court** decision finding **Dock of the Bay** in violation of county zoning code.

Dock of the Bay's lawyer, J. Carroll Holzer, said his client has three options: petitioning the **Court of Appeals** for *certiorari*; asking the **County Council** to change the zoning law; or filing complaints against the 400 or 500 other establishments Holzer estimates also qualify as impermissible nightclubs.

"If we decide to file zoning violations against any restaurant, tavern or bar that has live or recorded music, they could all be classified as nightclubs, just as he was classified," said Holzer, of **Holzer & Lee** in Towson. "It could create chaos in Baltimore County."

He said diners with tableside jukeboxes and fancy restaurants with strolling violinists, among other types of establishments, could be classified as clubs under the Court of Special Appeals' interpretation.

Francis X. Borgerding Jr., a Towson solo practitioner who represents Dock of the Bay neighbor Matthew Ciarpella, said there's a big difference between those places and a restaurant like Dock of the Bay, with "live rock bands going late into the night on Friday and Saturday."

"The Dock of the Bay has given their slant on what this decision means and has tried to basically argue that if you hold them as a nightclub you must hold a lot of other bars and restaurants," Borgerding said. "We just believe that the activities that take place on their property are clearly a nightclub, and that's what's been found all the way up."

Peter Max Zimmerman, people's counsel for Baltimore County, who supported Ciarpella, said the decision should help the county enforce its laws on nightclub zoning.

"It definitely gives one example of the type of situation which is a nightclub use," Zimmerman said. "That's the way the law works, by example, and every example sheds new light."

One win, one loss

The appellate decision is the latest round in a years-long battle over Dock of the Bay's entertainment offerings.

In a separate decision in May, the Court of Special Appeals held that the **Baltimore County Board of Liquor License Commissioners** exceeded its authority when it banned Dock of the Bay from playing outdoor music.

The Miller's Island restaurant began offering music and karaoke at night on the weekends in 2005. The next year, Baltimore County began fining Dock of the Bay for violating its Business Local zoning designation by operating as a nightclub in the evenings.

In 2007 and 2008, the zoning commissioner and the Board of Appeals, respectively, agreed with the nightclub designation. The board found that Dock of the Bay meets six of the eight criteria for nightclubs set out in commentary to the county building code, including loud music, late hours, low lighting and high density.

The circuit court affirmed.

In its opinion, the Court of Special Appeals upheld the Board of Appeals' consideration of the eight nightclub criteria and held that there was substantial evidence in the record to support its finding that six of the factors were met.

The court also dismissed Dock of the Bay's argument that it is impossible for a single establishment to have both a use that conforms to zoning regulations, restaurant, and one that does not conform, nightclub.

Writing for a unanimous three-judge panel, Judge Deborah S. Eyler also addressed Dock of the Bay's contention that Baltimore County's definition of a nightclub is "extremely broad."

"We agree with the Board majority that this is a matter for the Baltimore County Council to address if it is deemed necessary," she wrote.

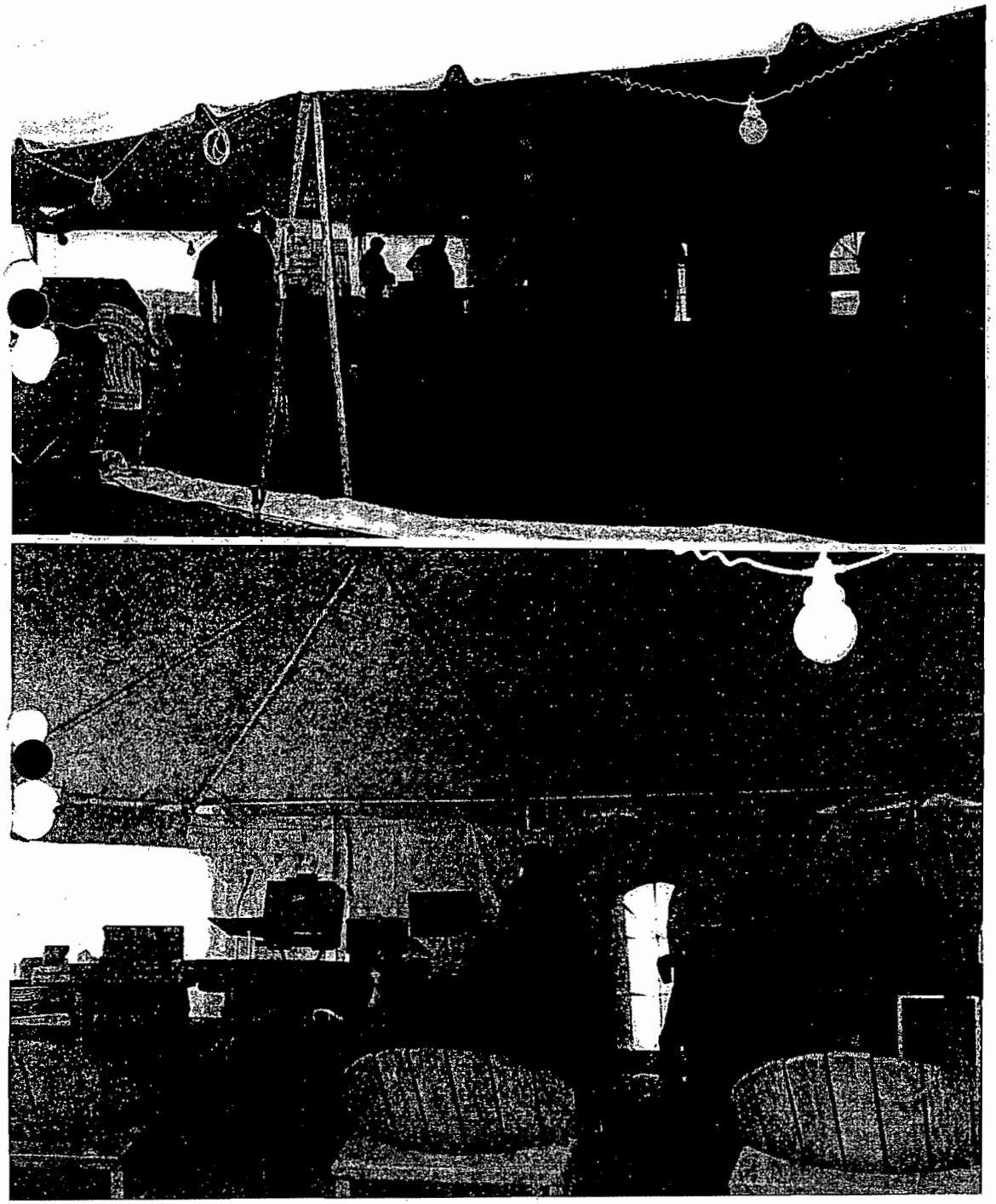
Other arguments made by Dock of the Bay were not preserved for review, the court held.

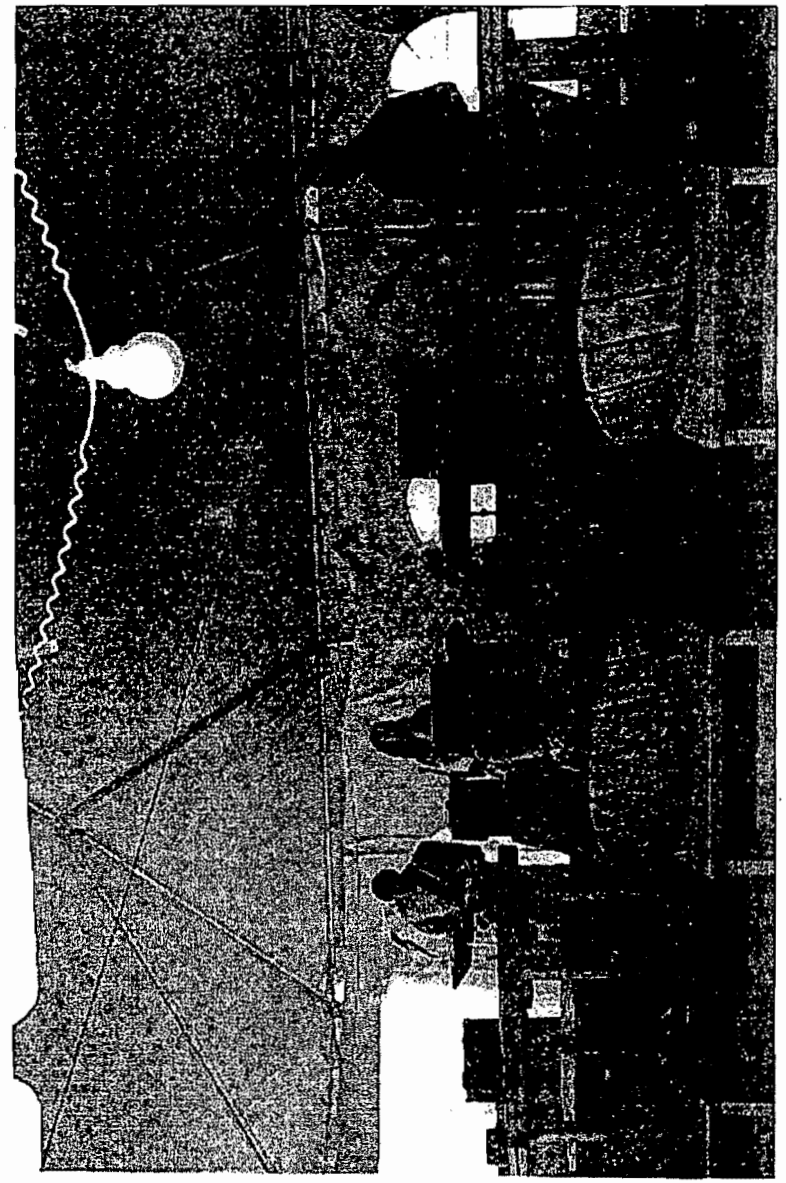
The unreported opinion is available as RecordFax #10-0709-12 (26 pages).

Daily Record 7/15/10

Report: Records, rights hearings end lease deadline

Cash. 1





C. Exh 3.

PHOTOGRAPHIC RECORD

Citation/Case No.: 06-3683

Date of Photographs: 8-13-06

I HEREBY CERTIFY that I took the 1 photographs set out above, and that these photographs fairly and accurately depict the condition of the property that is the subject of the above-referenced citation/case number on the date set out above.

(number of photos)

Enforcement Officer

11/14/06

Cexh 4

PHOTOGRAPHIC RECORD

Citation/Case No.: 06-3683

Date of Photographs: 8-13-06

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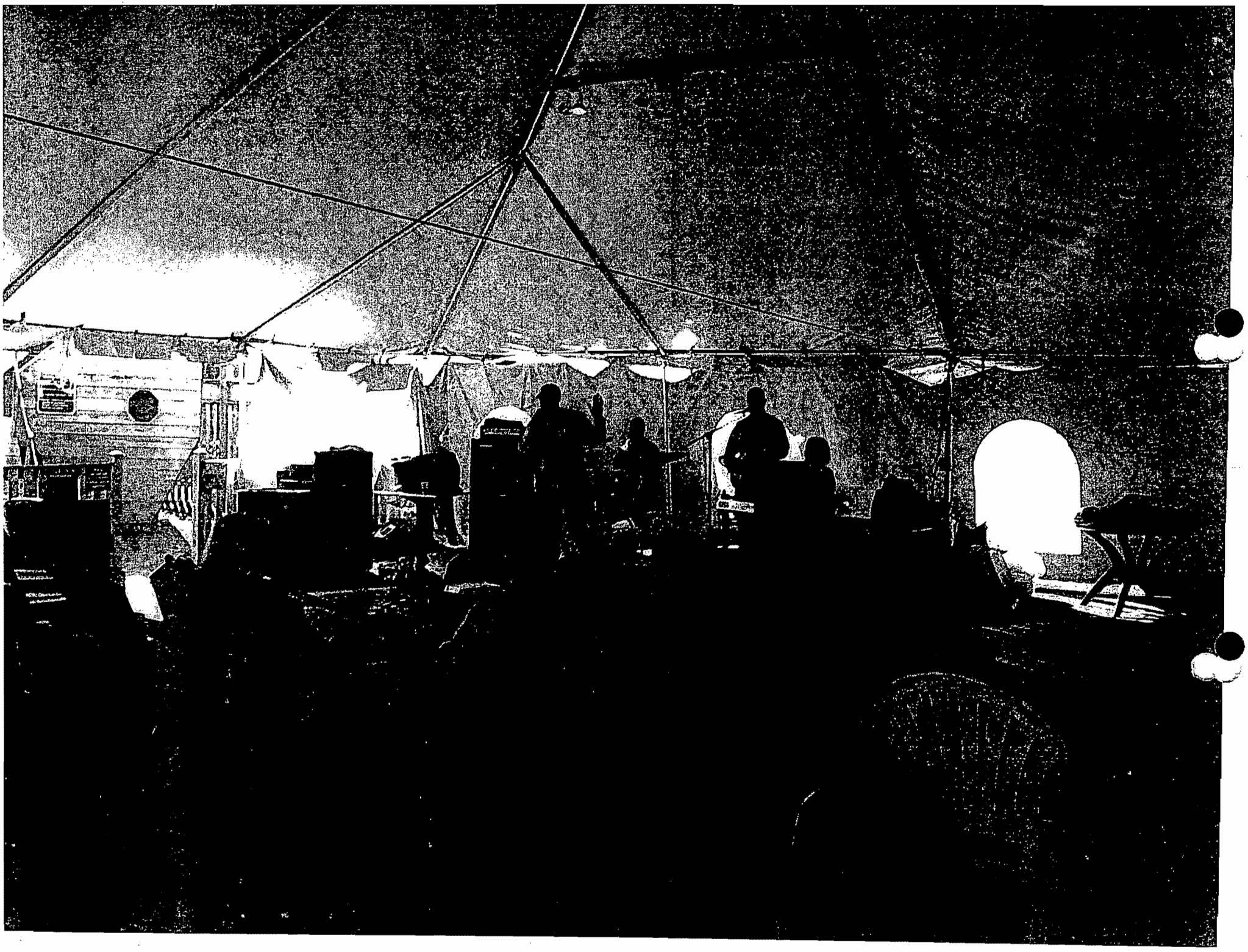
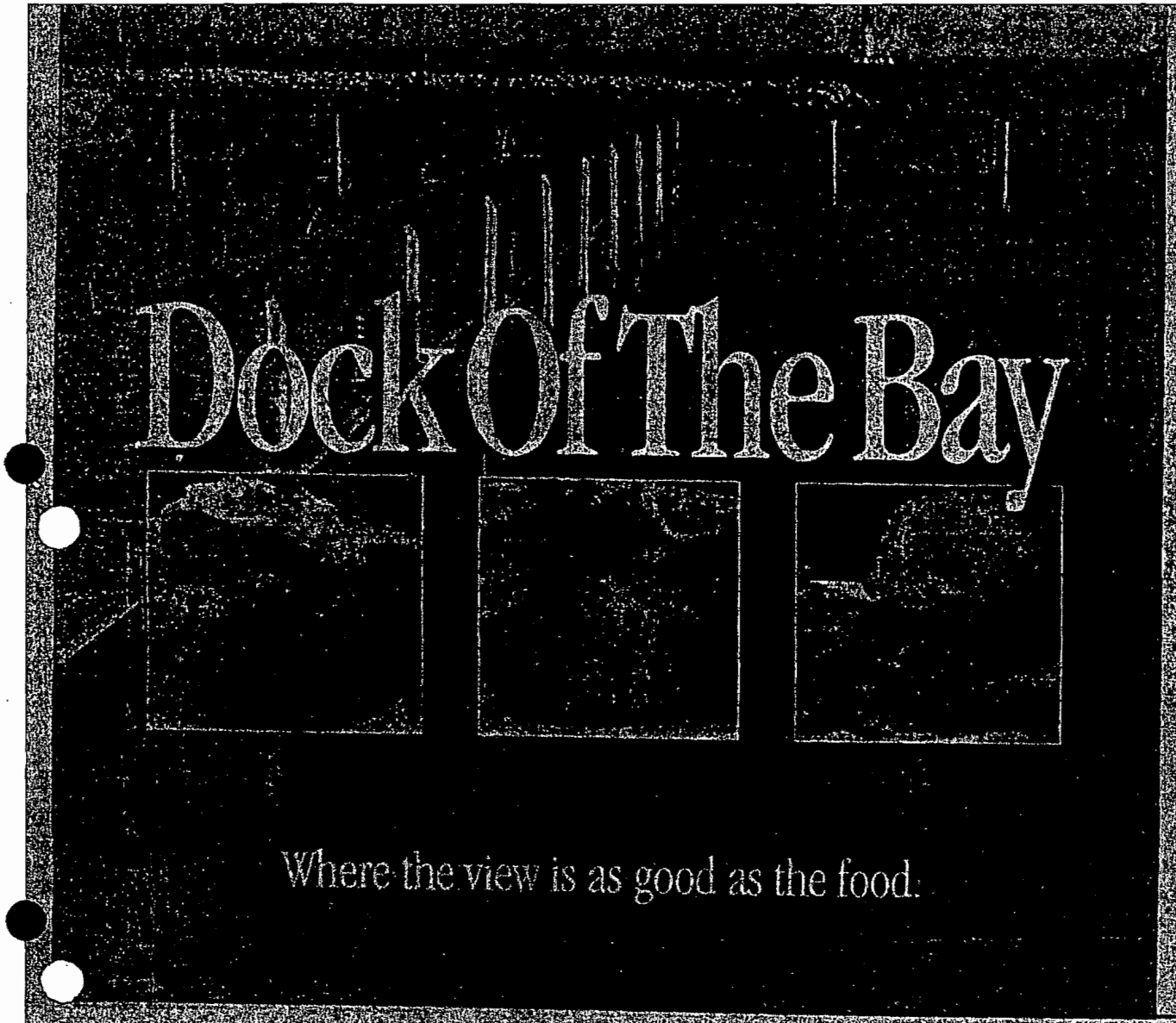
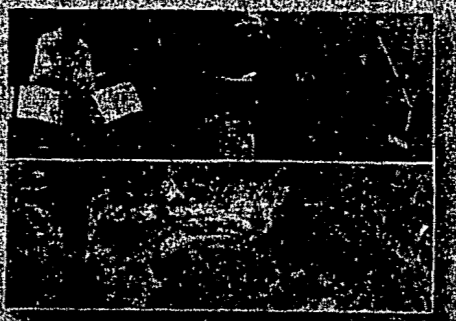




Live music on the deck every Saturday and Sunday from 4-8pm. Plus, DJ Friday and Saturday, starting at 9pm.

Sat. 7/29: NORTH POINT VILLAGE PEOPLE
Sun. 7/30: MIKE AND DAVE
Sat. 8/5: TO BE ANNOUNCED
Sun. 8/6: JACK SELWAY
Sat. 8/12: MIKE AND DAVE
Sun. 8/13: SAMO (Reggae)

Enjoy $1 crabs every Tuesday and Thursday, starting at 5pm.



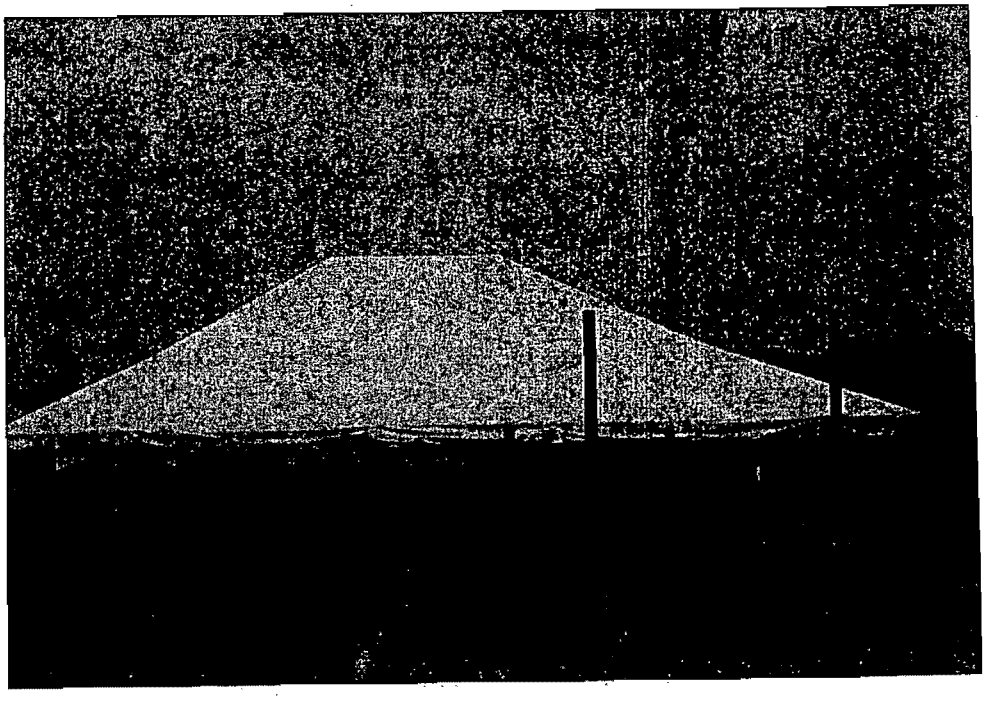
Dock of the Bay

Millers Island • 410-477-8100 • www.dockofthebay.net

PHOTOGRAPHIC RECORD

Citation/Case No 06-3683

Date of Photographs 9-5-06



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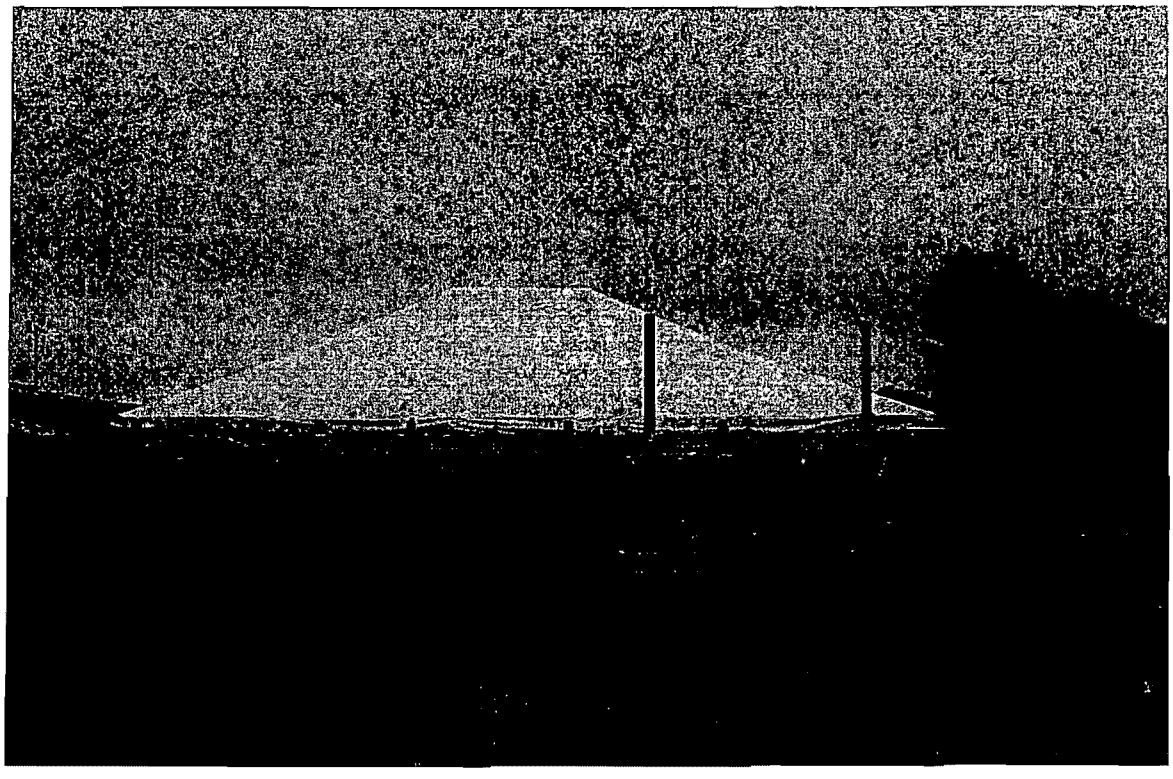

CS. # 06-3683

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BALTIMORE COUNTY
BOARD OF APPEALS

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 810

September Term, 2009

FIFTH STREET, LLC., ET AL.

v.

MATTHEW CIARPELLA, ET AL.

Eyler, Deborah S.,
Woodward,
Kehoe,

JJ.

Opinion by Eyler, Deborah S., J.

Filed: July 9, 2010

Fifth Street, LLC, and its managing member, Lawrence J. Thanner, Jr. (collectively "FSLLC"), the appellants, own the Dock of the Bay, a restaurant and bar located at 9025 Cuckold Point Road in Baltimore County.[1] They appeal from the judgment of the Circuit Court for Baltimore County affirming a decision of the Baltimore County Board of Appeals ("Board"), finding them in violation of the Baltimore County Zoning Code ("Zoning Code") for operating a nightclub in a B.L. (Business Local) zone. The appellees are People's Counsel for Baltimore County ("the County") and Matthew Ciarpella, who resides near the restaurant. The FSLLC presents four questions for our review, which we have consolidated and rephrased as follows:

I. Did the Board err in concluding that the Dock of the Bay operates as a nightclub, as defined in the Zoning Code?

II. Is the definition of a "night club" in the Zoning Code so arbitrary and confusing as to deprive the appellants of their due process rights?

III. Did the Code Enforcement Division hearing officer err in concluding that the appellants violated the Zoning Code by erecting a tent without a permit?[2]

---

[1]We will refer to the Dock of the Bay as a restaurant, as all parties seem to agree that it performs this function, but we do not intend this description to be in any way determinative of the central issue in this case.

[2]As framed by FSLLC, the question presented are:

1. In Special Hearing Case No.: CBA-07-144-SPH, the County Board of Appeals erred as a matter of law in determining that the Dock of the Bay restaurant was a night club under the Baltimore County Zoning Regulations definition.

2. In Zoning Violation Case No.: 06-044, the finding of violation was in error as a matter of law.

(continued...)

Section 230
Business, Local (B.L.) Zone
Use Regulations
[BCZR 1955]

The following uses only are permitted (see Section 230.12):

230.1 Uses permitted and as limited in the residential zone immediately adjoining, except that animal boarding place, Class A, is permitted only as a special exception and kennel is prohibited. **[Bill No. 85-1967]**

230.2 Convalescent home.

230.3 Tourist home, boarding or rooming houses.

230.4 Fast-food, drive-through-only restaurant, carry-out restaurant, fast-food restaurant, and standard restaurant, tearoom, convenience store and dairy barn, except that a special exception is required for a fast-food, drive-through-only restaurant or a fast-food restaurant that is located on property that is zoned BM-CT and is adjacent to the property line of any residentially used property in the Towson Commercial Revitalization District. **[Bill Nos. 40-1967; 110-1993; 86-1994; 27-2003]**

230.5 Bank, building and loan association.

230.6 Offices and office buildings.

230.7 Private colleges, dancing schools, conservatory for music and the arts, dormitories and fraternity and sorority houses. **[Resolution, November 21, 1956; Bill No. 47-1985]**

230.8 Business and trade schools.

230.9[2] Alcoholic beverage package store
Amusement devices, subject to the provisions of Section 422 **[Bill No. 29-1982]**
Antique shop
Arcade, subject to the provisions of Section 423.A **[Bill No. 29-1982]**
Automobile accessory shop
Automobile parking lot
Bakery, but goods baked on the premises must be sold only at retail on the premises
Barbershops and beauty shops **[Bill No. 9-1999]**
Billiard and pool rooms **[Bill Nos. 61-1967; 85-1967]**
Bowling alley **[Resolution, November 21, 1956; Bill Nos. 58-1957; 85-1967]**
Camera, photo-supply or film-processing shops or pickup stations (including "drive-by" facilities) **[Bill No. 43-1970]**
Candy store, but goods made on the premises must be sold only at retail on the premises
Clothing and accessory stores
Commercial film production, subject to Section 435 **[Bill No. 57-1990]**
Dairy products store

[2] **Editor's Note: Of the entries which follow, the ones without bracketed historical information were reenacted without substantive amendment by Bill No. 58-1957, and again by Bill No. 9-1999.**

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BOARD OF APPEALS

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Page from BCZR

MULTIFAMILY BUILDING — A structure containing three or more apartments. A multifamily building includes garden and other apartment buildings. **[Bill No. 2-1992][5]**

NEIGHBORHOOD CAR RENTAL AGENCY — The principal use of land for the rental of motor vehicles weighing 7,000 pounds (GVW) or less, including the parking of no more than 25 such vehicles on the premises. The term does not include a business that rents or leases motor vehicles as an accessory use, or rents or leases trailers, or trucks weighing over 7,000 pounds (GVW), or supplies limousines for hire, or that is a taxi cab service (See also "garage, service".) **[Bill No. 122-2005]**

NIGHTCLUB — A tavern or other commercial establishment which provides live or recorded entertainment, with or without a dance floor, and which is categorized as a nightclub by the Building Code of Baltimore County. **[Bill No. 110-1993]**

NONCONFORMING USE — A legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use. A specifically named use described by the adjective "nonconforming" is a nonconforming use. **[Bill No. 18-1976]**

NONINDUSTRIAL USE — Any use other than an industrial, quasi-industrial or industry-related use. **[Bill No. 178-1979]**

NUDITY — A state of dress in which a human buttock, anus, genitalia or female breast is completely bared. **[Bill No. 137-1990]**

NUDITY, PARTIAL — A state of dress in which clothing covers no more than the genitals, pubic region and areolae of the female breast, as well as portions of the body covered by supporting straps or devices. **[Bill No. 137-1990]**

NURSERY, HORTICULTURAL — An agricultural operation primarily engaged in the production and marketing of trees, shrubs and plants. The plant materials may be produced on the premises and may be purchased elsewhere at any stage of maturity for further production. Horticultural nurseries may engage in accessory uses such as storage of plant materials, sale of products necessary for the health of the nursery stock, and provision of limited landscape services. A nursery which sells plant materials grown exclusively on-site and which does not offer any of the accessory services permitted at horticultural nurseries shall be considered a farm. **[Bill No. 41-1992]**

NURSERY SCHOOL — A school or a level within a school providing educational instruction for children between two and four years old. **[Bill No. 47-1985]**

NURSING HOME (formerly "convalescent home") — A facility which provides board, shelter and nursing care to chronic or convalescent patients. This term also includes facilities which provide domiciliary care within a nursing home. **[Bill No. 37-1988]**

OFFICE — A building or portion of a building used for conducting the affairs of a business, profession, service, industry or government, including a medical office. The term "office" does not include a bank, a post office, a veterinarian's office or an establishment

[5] **Editor's Note: The former definition of "neighborhood" which followed this definition was repealed by Bill No. 3-1993.**

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Section 201, R.A.E.2 Zones: Residence, Apartment, Elevator [Bill Nos. 100-1970; 26-1988]

201.1 General provisions.

A. Statement of legislative policy. R.A.E.2 Zones provide for development of elevator-apartment buildings at relatively high density, in residential settings close to the major commercial and cultural centers of the county, where ample utilities and other public facilities are available.

B. Establishment of zones limited to town centers. Any R.A.E.2 Zone must be located within a town center, as defined in Section 101.

201.2 Use regulations in R.A.E.2 Zones.

A. Uses permitted. The following uses, only, are permitted:

1. Apartment buildings.

2. Offices: business, professional, governmental or institutional, in any apartment building of 25 or more dwelling units, with no accessory storage of merchandise (goods for sale), subject to the limitations of Subsection B.

Section 200, R.A.E.1 Zones: Residence, Apartment, Elevator [Bill No. 100-1970]

200.1 General provisions.

A. Statement of legislative policy. **R.A.E.1** Zones provide for development of elevator-apartment buildings at moderate density. These zones may be situated only near adequate community or town-center commercial facilities, particularly within convenient walking distance thereof. It is not intended that any **R.A.E.1** Zones shall be established in such proximity or relation to an interchange that undue congestion would occur as a result of development within the zone. The regulations are intended to encourage the best possible building designs and site planning.

B. Locational requirement. Any **R.A.E.1** Zone must be entirely located within 1,000 feet of a C.C.C. District or within a town center as defined in Section 101.

200.2 Use regulations in **R.A.E.1** Zones.

A. Uses permitted. The following uses, only, are permitted:

1. Apartment buildings.

2. Offices: business, professional, governmental or institutional, in any apartment building of 25 or more dwelling units, with no accessory storage of merchandise (goods for sale), subject to the limitations of Subsection B.

3. The following retail or service uses, in any apartment building of 50 or more dwelling units, subject to the limitations of Subsection B:

(1) Barbershops.

(2) Beauty shops.

(3) Catering establishments, in any apartment building of 150 or more dwelling units. EN

(4) Delicatessens.

(5) Drugstores.

(6) Florist shops.

RESTAURANT, FAST-FOOD, DRIVE-THROUGH ONLY -- A fast-food restaurant, as defined in Section 101, except that no customer seating is provided inside the restaurant. Food and beverages are ordered by motorists from a drive-through lane or from a walk-up window on the outside of the building or within a vestibule. Orders are primarily consumed off the premises, but restaurants may provide seating at tables outside the building on the premises. [Bill No. 110-1993]

RESTAURANT, STANDARD -- A facility or part of a facility used primarily for serving meals and beverages to persons seated at tables on the premises of the establishment. The term includes cafes, cafeterias, tearooms and outdoor cafes. The term does not include a catering hall. A standard restaurant may offer a carry-out service, provided that such service is accessory to the principal restaurant operations. A standard restaurant may include a Class 6 brewery as an accessory use. [Bill Nos. 110-1993; 185-1995]

RESTRICTED PARKING SPACE -- A parking space in any parking facility which is designated by the owner or operator of the parking facility as being reserved or restricted for the exclusive use of any person or class of persons at all times or during any designated time periods and is clearly identified by a sign, located on an immediately adjacent wall or post, or by painting on the immediately adjacent wall or on the pavement within the parking space. [Bill No. 26-1988]

RIDESHARING -- A form of transportation wherein shared rides are prearranged for people traveling at similar times from approximately the same origin to approximately the same destination. This term includes carpools, vanpools or similar arrangements where more than one person occupies a vehicle for the length of a trip. [Bill No. 26-1988]

RIDING STABLE -- A building where riding horses are boarded or kept for hire. EN

RUBBLE -- Building demolition debris, tree stumps and other land clearing debris, solidified road paving debris and other similar wastes authorized by the approving authority. Rubble does not include garbage, friable asbestos, refractory brick, liquid petroleum products, hazardous materials (as defined in § 7-101 of the Environment Article of the Annotated Code of Maryland) or free liquid. [Bill Nos. 97-1987; 137-2004]

RUBBLE LANDFILL -- Rubble landfill means a system of rubble disposal or land reclamation for public or private use for which a permit has been issued if required. [Bill No. 97-1987]

RURAL CLUSTER DEVELOPMENT -- A form of residential subdivision for use in an R.C.4 Zone in which the permitted density for an entire tract is located only on a designated portion of the tract in order to preserve significant natural, scenic or historic features. [Bill No. 113-1992]

SANITARY LANDFILL -- A planned and systematic method of disposal for garbage and other wastes whereby such waste material is placed so that it is thoroughly compacted and covered at the end of each day's operation with such depth and consisting of such types of materials as are acceptable to the Baltimore County Departments of Health and Public Works and the Maryland State Department of Health. When the fill is completed, a covering of such depth and consisting

3102.7 Engineering design. The structure shall be designed and constructed to sustain dead loads; loads due to tension or inflation; live loads including wind, snow or flood and seismic loads and in accordance with Chapter 16.

3102.8 Inflation systems. Air-supported and air-inflated structures shall be provided with primary and auxiliary inflation systems to meet the minimum requirements of Sections 3102.8.1 through 3102.8.3.

3102.8.1 Equipment requirements. This inflation system shall consist of one or more blowers and shall include provisions for automatic control to maintain the required inflation pressures. The system shall be so designed as to prevent overpressurization of the system.

3102.8.1.1 Auxiliary inflation system. In addition to the primary inflation system, in buildings exceeding 1,500 square feet (140 m^2) in area, an auxiliary inflation system shall be provided with sufficient capacity to maintain the inflation of the structure in case of primary system failure. The auxiliary inflation system shall operate automatically when there is a loss of internal pressure and when the primary blower system becomes inoperative.

3102.8.1.2 Blower equipment. Blower equipment shall meet the following requirements:

1. Blowers shall be powered by continuous-rated motors at the maximum power required for any flow condition as required by the structural design.
2. Blowers shall be provided with inlet screens, belt guards and other protective devices as required by the building official to provide protection from injury.
3. Blowers shall be housed within a weather-protecting structure.
4. Blowers shall be equipped with backdraft check dampers to minimize air loss when inoperative.
5. Blower inlets shall be located to provide protection from air contamination. The location of inlets shall be approved.

3102.8.2 Standby power. Wherever an auxiliary inflation system is required, an approved standby power-generating system shall be provided. The system shall be equipped with a suitable means for automatically starting the generator set upon failure of the normal electrical service and for automatic transfer and operation of all of the required electrical functions at full power within 60 seconds of such service failure. Standby power shall be capable of operating independently for a minimum of 4 hours.

3102.8.3 Support provisions. A system capable of supporting the membrane in the event of deflation shall be provided for in air-supported and air-inflated structures having an occupant load of more than 50 or where covering a swimming pool regardless of occupant load. The support system shall be capable of maintaining membrane structures used as a roof for Type I construction not less than 20 feet (6096 mm) above floor or seating areas. The support system shall be capable of maintaining other membranes at least 7 feet (2134 mm) above the floor, seating area or surface of the water.

SECTION 3103
TEMPORARY STRUCTURES

3103.1 General. The provisions of this section shall apply to structures erected for a period of less than 180 days. Tents and other membrane structures erected for a period of less than 180 days shall comply with the *International Fire Code*. Those erected for a longer period of time shall comply with applicable sections of this code.

Exception: Provisions of the *International Fire Code* shall apply to tents and membrane structures erected for a period of less than 180 days.

3103.1.1 Permit required. Temporary structures that cover an area in excess of 120 square feet (11.16 m^2), including connecting areas or spaces with a common means of egress or entrance which are used or intended to be used for the gathering together of 10 or more persons, shall not be erected, operated or maintained for any purpose without obtaining a permit from the building official.

3103.2 Construction documents. A permit application and construction documents shall be submitted for each installation of a temporary structure. The construction documents shall include a site plan indicating the location of the temporary structure and information delineating the means of egress and the occupant load.

3103.3 Location. Temporary structures shall be located in accordance with the requirements of Table 602 based on the fire-resistance rating of the exterior walls for the proposed type of construction.

3103.4 Means of egress. Temporary structures shall conform to the means of egress requirements of Chapter 10 and shall have a maximum exit access travel distance of 100 feet (30 480 mm).

SECTION 3104
PEDESTRIAN WALKWAYS AND TUNNELS

3104.1 General. This section shall apply to connections between buildings such as pedestrian walkways or tunnels, located at, above or below grade level, that are used as a means of travel by persons. The pedestrian walkway shall not contribute to the building area or the number of stories or height of connected buildings.

3104.2 Separate structures. Connected buildings shall be considered to be separate structures.

Exceptions:

1. Buildings on the same lot in accordance with Section 503.1.3.
2. For purposes of calculating the number of Type B units required by Chapter 11, structurally connected buildings and buildings with multiple wings shall be considered one structure.

3104.3 Construction. The pedestrian walkway shall be of noncombustible construction.

Exception: Combustible construction shall be permitted where connected buildings are of combustible construction.

IN THE MATTER OF THE APPLICATION OF RAMPART PARTNERSHIP (CLUB 101) FOR SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE WEST SIDE ORCHARD TREE LANE, 534.42' N OF C/L JOPPA ROAD (8819 ORCHARD TREE LANE) 9TH ELECTION DISTRICT 4TH COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 96-60-XA

* * * * * * * * *

O P I N I O N

This case comes to the Board of Appeals on an appeal by the Petitioner from a decision of the Zoning Commissioner in which Special Hearing, Special Exception, and Variance relief all were denied. A hearing originally set for October 7, 1997 had been postponed at Appellant's request and was reassigned for Thursday, November 20, 1997 at 10:00 a.m. On November 20, 1997, Edward C. Covahey, Jr., Esquire, and Roger Sullivan, Esquire, requested postponement due to Mr. Giorgilli's sudden illness that required emergency treatment at the Greater Baltimore Medical Center. The Board initially granted the postponement until 1:00 p.m., at which time Mr. Covahey produced a verified letter from an emergency room doctor at GMBC confirming Mr. Giorgilli's condition and that he was still under medical observation. The matter was therefore set for hearing for Friday, December 12, 1997 at 9:00 a.m.

On Friday, December 12, 1997, a public hearing was begun at 9:45 a.m. Mr. Covahey and Mr. Sullivan again appeared on behalf of the Petitioner. Ms. West represented Baltimore County, and Ms. Demilio represented the Office of People's Counsel for Baltimore County. Preliminarily, Mr. Covahey moved for sequestration. Ms. West and Ms. Demilio objected because (1) the hearing was open to the public; and (2) the rules of the Board do not cite any specific

"A" (20070144)

(4)

18.

1 of

10

Denied 1-15-08

Exhibits

PROTESTANTS EXHIBITS

✓ #1 - Dept of Fin Bny - Web site page - 11/15/08

✓ #2 - International Bldg. Code - 2003 Commentary Vol. 1

✓ #3 - § 233 BCZR

✓ #4 § 101 BCZR

✓ #5 B.O. Bell 1-05

✓ #6 06 3683 - Citation DPW

✓ #7 "06 3683B" ~~06 3683B~~ DPW Citation ~~Citation~~

SPECIAL ~~Specl.~~ #1 Mathony 1 Photo

#2 Mathony 2 Photo

Specl. #B Mathony #1 Zoning Map

Identification Only #8 Complaint - Bd of Liquor License Commissioners

#9 A-H Exhibits - Listing of Club Dates Code Violations

No Exhibit → Title 6 B.C. Code

No Exhibit → Title 6 Subtitle 1 - Definitions (Attic West)

DOCK OF THE BAY

Restaurant & Bar

Millers Island, Maryland

Welcome to the Dock of the Bay Web Site

Home

About Us

Directions & Docking Information

Specials & Events

Calendar

Pictures

Menu

Contact Us

WE HAVE KENO & RACETRAX

Friday & Saturday Nights

DJ & Karaoke & Live Bands
9pm to 1am

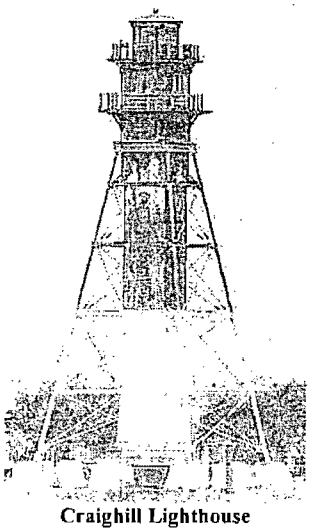
Check out our Events Calendar

CLICK HERE TO SEE ALL OF OUR NEW WEEKLY SPECIALS AND UPCOMING EVENTS FOR THE SUMMER!!!!!

Happy Hour!
2-6 Monday - Friday

$.50 Selected Domestic Drafts
$1.75 Selected Domestic Bottles
1/2 Price Selected Appetizers

Outside Pictures!



Craighill Lighthouse
Part of the Dock of the Bay's picturesque view

We Have The NFL Network

NFL Schedule

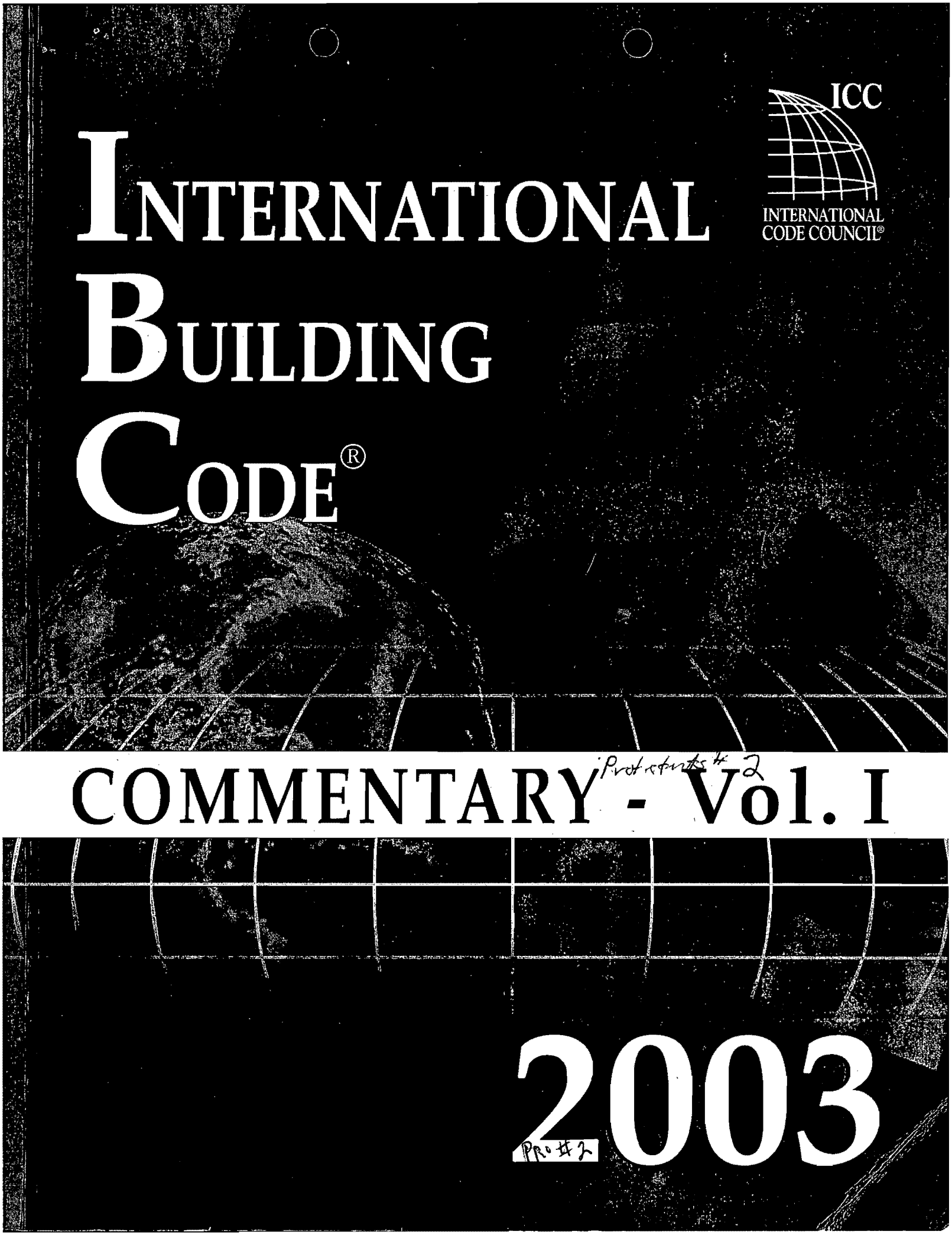
Stop in to see our new menu!

Gift Ideas:

New Long Sleeve Shirts and Sweatshirts are now available!

Gift cards are always available

PROT # 1 (1) 2


ICC
INTERNATIONAL CODE COUNCIL®
INTERNATIONAL BUILDING CODE®
COMMENTARY - Vol. I
2003

Section 233
Business, Major (B.M.) Zone Use Regulations
[BCZR 1955]

The following uses only are permitted (Section 233.3):

233.1. Uses permitted in B.L. Zone.

233.2[5] Animal boarding place, Class A **[Bill No. 85-1967[6]]**[7]
Boatyard **[Bill Nos. 64-1963; 85-1967]**
Bowling alleys
Carpentry, electrical, plumbing, heating, sheet metal, electroplating and painting shops
Catering hall **[Bill No. 110-1993]**
Clothes cleaning and dyeing where not more than two units with combined capacity of not more than 50 pounds are employed
Commercial beach, with provision of adequate parking area, and permitting dressing facilities, snack bar, picnic area and boat rental **[Bill Nos. 64-1963; 85-1967]**
Commercial recreation enterprises, including dance halls, skating rinks and others which, in the judgment of the Zoning Commissioner, are similar, but excluding merry-go-rounds and freak shows, shooting galleries and penny arcades
Community building, swimming pool or other structural or land use devoted to civic, social, recreational and educational activities **[Bill Nos. 64-1963; 85-1967; 26-1988]**
Funeral establishment **[Bill No. 43-1970]**
Garage, service
Golf course, country club or other outdoor recreation clubs; also quasi-public camp, including day camps, but no such uses shall be located on less than five acres, and no building, parking lot or out-of-water marine craft storage thereon shall be located within 60 feet of any residential property line **[Bill Nos. 64-1963; 85-1967]**
Hotel
Machinery sales store
Marina **[Bill Nos. 64-1963; 85-1967]**
New automobile sales facility and adjoining outdoor sales area, provided that dismantled or junked cars unfit for operation on the highways may not be stored outdoors. **[Bill No. 71-2001]**
Nightclub[8]

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5 **Editor's Note: All of the provisions of this subsection that are not followed by bracketed historical references were reenacted without substantive amendment by Bill No. 85-1967. The entries indicated in this section as originally having been added by Bill No. 64-1963 were, according to a literal reading of that bill, to have been added to "[Section]...232.2, title 'B.M. zone'...". However, Section 232.2 regulates side yards, not uses, and is part of the regulations of the B.L. zoning classification, not the B.M. classification.**

6 **Editor's Note: This bill also repealed "Animal hospital," which originally followed.**

7 **Editor's Note: "Billiard and pool rooms," which followed this item, was repealed by Bill No. 61-1967.**

8 **Editor's Note: "Pawnshop," which originally followed, was repealed by Bill No. 112-1995.**

Protestant # 3

LOT OF RECORD — A parcel of land with boundaries as recorded in the land records of Baltimore County on the same date as the effective date of the zoning regulation which governs the use, subdivision or other condition thereof. **[Bill No. 100-1970]**

LOT, THROUGH — A lot having its front and rear yards each abutting on a street.

MARINA — A modern boat basin, restricted to recreational marine craft of all types, with facilities for one or more of the following: berthing, launching and securing such craft, and permitting incidental minimum provision for refueling and emergency servicing, as well as the incidental sale of boats and also land (out-of-water) storage as provided in Section 417.7. **[Bill Nos. 64-1963; 149-1992]**

MEDICAL CLINIC — The term includes ambulatory care centers, diagnostic centers, birthing centers and dialysis satellite units. The term does not include ambulatory surgical facilities. **[Bill No. 37-1988]**

MEDICAL OFFICE — A place for the treatment of outpatients by one or more medical practitioners. This term does not include a veterinarian's office, medical clinic, ambulatory care center, diagnostic center, birthing center or dialysis satellite unit. The term does not include ambulatory surgical facilities. **[Bill No. 37-1988]**

MEDICAL PRACTITIONER — A physician, dentist, optometrist, chiropractor, podiatrist, psychologist, physical therapist, nurse, massage therapist or other similar health professional licensed or certified by the state. **[Bill Nos. 37-1988; 29-1998]**

MULTIFAMILY BUILDING — A structure containing three or more apartments. A multifamily building includes garden and other apartment buildings. **[Bill No. 2-1992]**[20]

NIGHTCLUB — A tavern or other commercial establishment which provides live or recorded entertainment, with or without a dance floor, and which is categorized as a nightclub by the Building Code of Baltimore County. **[Bill No. 110-1993]**

NONCONFORMING USE — A legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use. A specifically named use described by the adjective "nonconforming" is a nonconforming use. **[Bill No. 18-1976]**

NONINDUSTRIAL USE — Any use other than an industrial, quasi-industrial or industry-related use. **[Bill No. 178-1979]**

NUDITY — A state of dress in which a human buttock, anus, genitalia or female breast is completely bared. **[Bill No. 137-1990]**

NUDITY, PARTIAL — A state of dress in which clothing covers no more than the genitals, pubic region and areolae of the female breast, as well as portions of the body covered by supporting straps or devices. **[Bill No. 137-1990]**

NURSERY, HORTICULTURAL — An agricultural operation primarily engaged in the production and marketing of trees, shrubs and plants. The plant materials may be produced on the premises and may be purchased elsewhere at any stage of maturity for further

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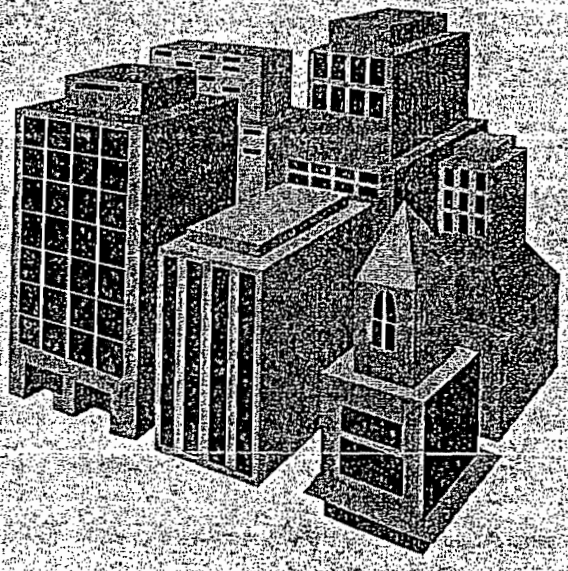
20 **Editor's Note: The former definition of "neighborhood" which followed this definition was repealed by Bill No. 3-1993.**

Protestants #4

This belongs to RSW

BALTIMORE COUNTY BUILDING CODE



Baltimore County Council Bill 1-05

Effective March 27, 2005

www.baltimorecountyonline.info

Post date 4/5

Department of Permits and Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204
Baltimore County, Maryland

In the Matter of

Civil Citation No.06-3683

Fifth Street LLC
Lawrence J. Thanner, Resident Agent

9025 Cuckold Point Road

Respondent

FINDINGS OF FACT AND CONCLUSION OF LAW
FINAL ORDER OF THE CODE ENFORCEMENT HEARING OFFICER

This matter came before the Code Enforcement Hearing Officer for the Department of Permits and Development Management on August 23, 2006, for a hearing on a citation for violations under the Baltimore County Zoning Regulations (BCZR) section 102.1, 230; International Building Code (IBC) section 3103.1; for failure to cease operation of a nightclub in a BL zone; failure to obtain a permit for tent; failure to remove tent on property zoned BL known as 9025 Cuckold Point Road, 21219.

On August 8, 2006, pursuant to §3-6-205, Baltimore County Code, Jeffrey Radcliffe, Code Enforcement Officer, issued a code enforcement citation. The citation was legally served on the Respondent.

The citation proposed a civil penalty of $5,000.00 (five thousand dollars). A code enforcement hearing date was scheduled for August 23, 2006.

Lawrence J. Thanner, Resident Agent and owner of Fifth Street LLC appeared for the hearing and testified.

J. Carroll Holzer, Esquire appeared as Counsel for the Respondent.

PROTESTANT'S
EXHIBIT NO. 16

Protestant's # 6

777

Department of Permits and Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204
Baltimore County, Maryland

In the Matter of

Civil Citation No. 06-3683B

Fifth Street LLC
Lawrence J. Thanner, Jr., R/A
2515 Boston Street Palce
Baltimore MD 21224

9025 Cuckold Point Road

Respondent

FINDINGS OF FACT AND CONCLUSION OF LAW
FINAL ORDER OF THE CODE ENFORCEMENT HEARING OFFICER

This matter came before the Code Enforcement Hearing Officer for the Department of Permits and Development Management on August 14, 2007, for a hearing on a citation for violations under the Baltimore County Zoning Regulations (BCZR) § 101, 102.1, 230; 500.6; failure to cease operation of a night club in a BL zone; failure to comply with Zoning Commissioner's Order case #07-144 SPH; Baltimore County Code (BCC) § 3103.1 (IBC); failure to obtain permit for tent; 35-2-301; failure to obtain permit for electrical work on property zoned BL known as 9025 Cuckold Point Road, 21219.

On July 5, 2007, pursuant to §3-6-205, Baltimore County Code, Code Enforcement Officer, issued a code enforcement citation. The citation was legally served on the Respondents.

The citation proposed a civil penalty of $30,800.00 (thirty thousand eight hundred dollars). A code enforcement hearing date was scheduled for August 14, 2007.

Lawrence J. Thanner, Jr., Respondent appeared for the Hearing and testified.
J. Carroll Holzer, Esquire appeared as Counsel for the Respondent.
Jeffrey Radcliffe, Code Enforcement Officer presented the case for Baltimore County.

Protestant's #7

Photo #1

Meth #2

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BL
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7 CD
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112B2
PDM Permits Hold Parcels/Lots/Developments (See Doug Swam)
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CHESAPEAKE BAY HYDROLOGY AREA
METHENY
Flood Zone AE
Flood Zone 0.2 PCT ANNUAL CHANCE FLOOD HAZARD
CHESAPEAKE BAY
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B. Metheny #1

2005-0046

per Board

BOARD OF LIQUOR LICENSE COMMISSIONERS
FOR BALTIMORE COUNTY

7/18/05

COMPLAINT FORM

NAME AND ADDRESS OF ESTABLISHMENT:

THANNER ENTERPRISES, INC.

t/a DOCK OF THE BAY

9025 CUCKOLD POINT ROAD

BALTIMORE, MD 21219

DATE OF COMPLAINT: 5/18/05

INSPECTOR: CROCKETT

CLASS: D(BWL)

A Special Investigation is requested on the above establishment for the following reason(s):

Playing very loud music on Sat.-Sun. between the hours of 4pm - 9pm.

SPECIAL INSTRUCTIONS:

* * * * * * * * * * *

Please indicate below your findings and recommendations in this matter:

See Attached

LIQUOR BOARD
JUL 7 2005
RECEIVED

7/6/05
DATE

Don Crockett
INSPECTOR

Protestant's #8

DOCK OF THE BA

Restaurant & Bar

Millers Island, Maryland

Entertainment Schedule

Date	Band	Time
Saturday 4/8	DJ BATMAN	9-1
Friday 4/14	DJ	9-1
Saturday 4/15	DJ	9-1
Friday 4/21	DJ	9-1
Saturday 4/22	DJ	9-1
Friday 4/28	North Point	9-1
Saturday 4/29	DJ	9-1
Saturday 5/6	The Epics	4-8
Sunday 5/7	Damon Dukes	4-8
Saturday 5/13	Phat City	4-8
Sunday 5/14	Steve Ports Band	4-8
Saturday 5/20	Blues Therapy	4-8
Sunday 5/21	Uptown East	4-8
Saturday 5/27	North Point	4-8
Sunday 5/28	Captain Quint	4-8
Saturday 6/3	The Epics	4-8
Sunday 6/4	Steve Ports Band	4-8
Saturday 6/10	Second Time Around	4-8
Sunday 6/11	Blind Buckwheat Gumbo	4-8
Saturday 6/17	Changing Horses	4-8
Sunday 6/18	Blues Therapy	4-8
Saturday 6/24		4-8
Sunday 6/25	Captain Quint	4-8

PROTESTANT'S # A

EXHIBIT NO. 9

AXCESS MAG 12 2004

Playin' On The Dock of the Bay

Great food & music, with a stunning view!

You think *you* have stress: Larry Thanner bought Dock of the Bay on Oct. 6, 2003 only to see Hurricane Isabelle flood it with six feet of water. It took him five months to rebuild, re-opening on March 11, 2004.

On any given weekend in the summer, 300 people flood the restaurant today. Motorists and boaters come for the view of the Bay (it overlooks the Craighill Lighthouse and Pleasure Island), the drinks and the food, particularly the steamed crabs. "We catch alot of our crabs right out of the bay," Thanner told AXCESS. "The crab you eat here tonight was swimming in the bay thi morning!".

Dock of The Bay
9025 Cuckold Pt. Rd
Sparrows Pt., MD 21219
410-477-8100

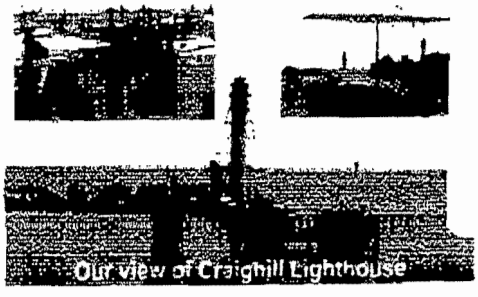
Monday – Friday Happy Hour 3–7 p.m.
$.50 Domestic Drafts * $1 Domestic Bottles
1/2 Price Appetizers (selected items)

Friday Nights Karaoke and DJ 9:30—1:30 a.m.

Saturday Outdoor Deck Party with Live Music from 4—9 p.m.
Dance the night away with DJ Bob 9 p.m. – 1 a.m.
Sunday Outdoor Deck Party with Live Music from 4—8 p.m.

Live Music Schedule

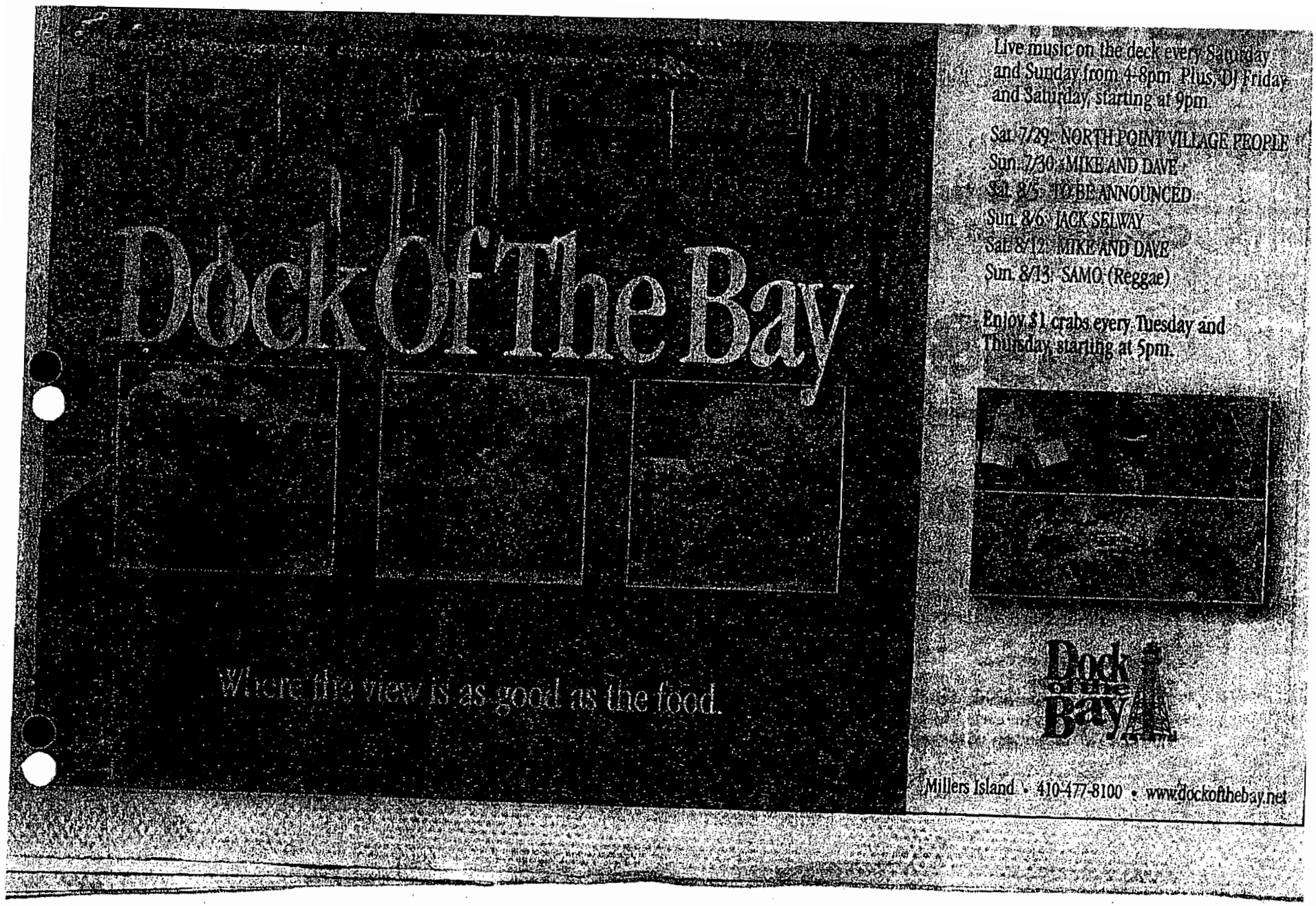
Saturday	8/6	*Changing Horses*	4-9
Sunday	8/7	*Dave Berry Trio*	4-8
Saturday	8/13	*BWI Music*	4-9
Sunday	8/14	*Mike White & Dave Mattheiss*	4-8
Saturday	8/20	*Blind Buckwheat Gumbo*	4-9
Sunday	8/21	*Captain Quint*	4-8
Saturday	8/27	*Strykers Posse (Reggae)*	4-9
Sunday	8/28	*Dave Berry Trio*	4-8
Saturday	9/3	*Changing Horses*	4-9
Sunday	9/4	*Captain Quint*	4-8
Saturday	9/10	*Strykers Posse (Reggae)*	4-9
Sunday	9/11	*Mike White & Dave Mattheiss*	4-8
Saturday	9/17	*Blind Buckwheat Gumbo*	4-9
Sunday	9/18	*Dave Berry Trio*	4-8



Our view of Craighill Lighthouse

PROTESTANT'S 2
EXHIBIT NO.

PROTESTANT 9-13



PROTESTANT'S

EXHIBIT NO. 7

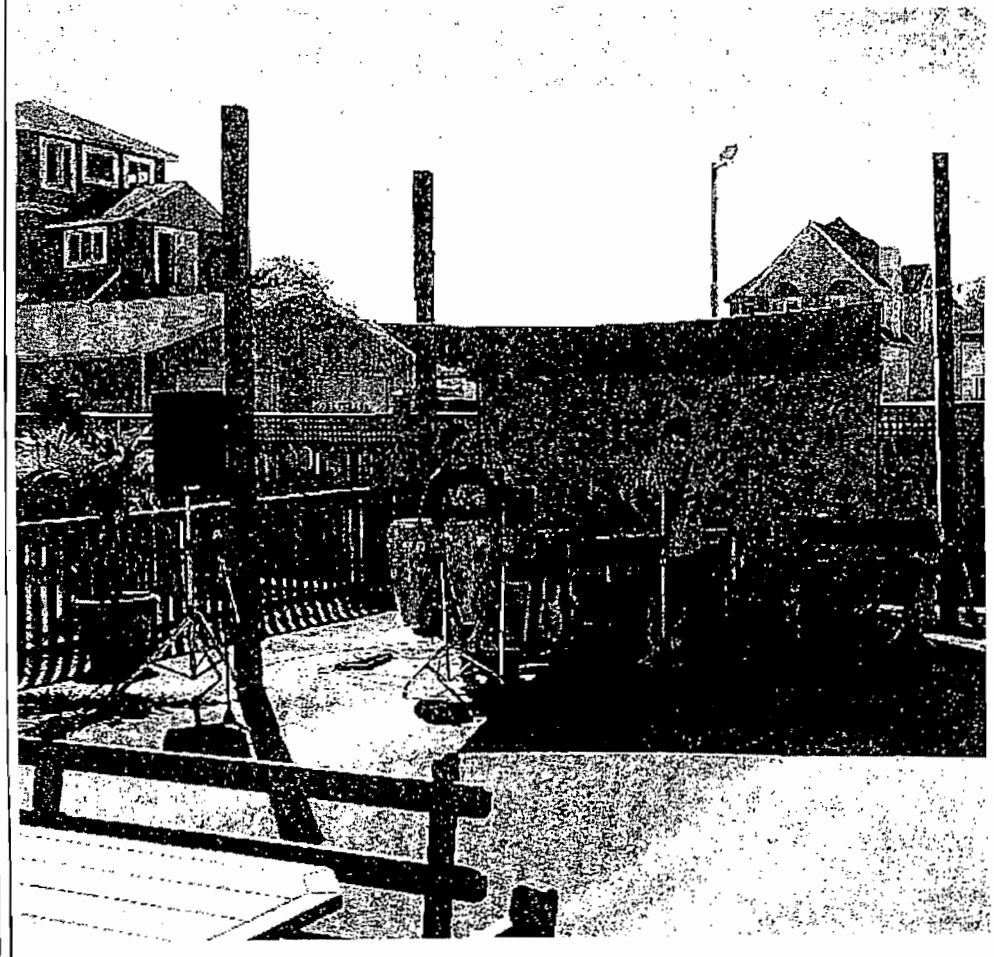
DOCK OF THE BA

Restaurant & Bar

Millers Island, Maryland

- Home
- About Us
- Directions
- Specials & Events
- Pictures
- Menu
- Contact Us

Memorial Weekend



PROTESTANT'S

EXHIBIT NO. 8

Protestant's 9D

DOCK OF THE 1

Restaurant & Bar

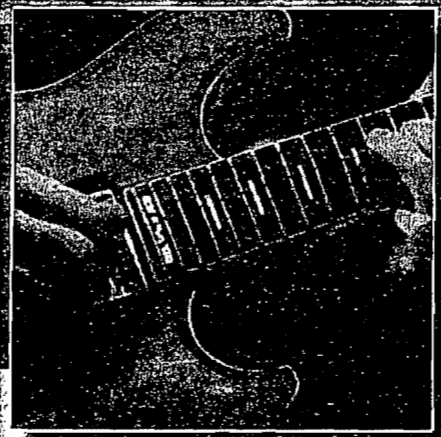
Millers Island, Maryland

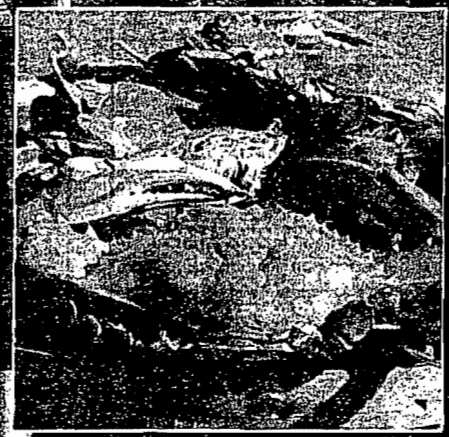
Entertainment Schedule

DATE	BAND/EVENT	Time	SPECI
Friday 3/23	100.7 The Bay Cry Later	5pm-7pm 9pm-1am	Join 100.7 B Live Giveaw & Footbal
Saturday 3/24	DJ	9pm-1am	
Sunday 3/25	NASCAR Sunday - Food City 500 Bristol	1:30pm	
Friday 3/30	DJ	9pm-1am	
Saturday 3/31	March Madness - Final Four Uptown East	9pm-1am	
Sunday 4/1	NASCAR Sunday - Goody's Cool Orange 500 Martinsville	1:30pm	
Monday 4/2	Orioles 1st Game 8:10pm @ Twins March Madness - Final Four		
Thursday 4/5	Karaoke/DJ	9pm-1am	2 for 1! All Bee
Friday 4/6	Meerkat Nation	9pm-1am	
Saturday 4/7	Against the Grain	9pm-1am	
Sunday 4/8	Easter	11am-9pm	Easter Entree Free Blood Mimosa with
Monday 4/9	Orioles Home Opener vs Detroit	3:05pm	
Thursday 4/12	Karaoke/DJ	9pm-1am	2 for 1! All Bee

Protestants 9E

Live - from the Dock





100.7 the bay
BALTIMORE'S CLASSIC ROCK STATION

Friday, 3/23/07, 5:00-7:00pm
join Chris Emry and 100.7 the Bay for a
LIVE broadcast from the Dock.
Give-aways and prizes including
concert tickets, football tickets and CD's.
Happy Hour extended 2-7pm

Cry Later

Friday, 3/23/07, at 9:00pm
After the Live broadcast
stick around for great LIVE music
by Cry Later.

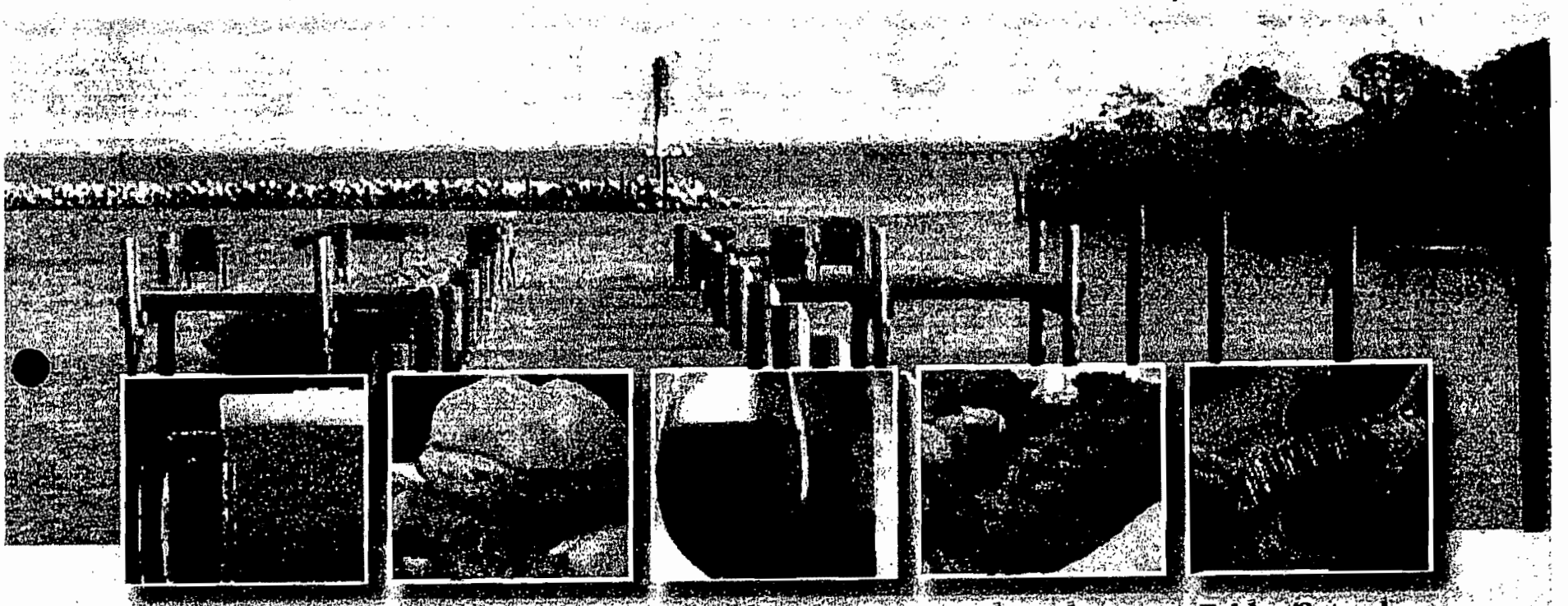
$1. Crabs Are Back

Yeah they're LIVE - steamed fresh,
and they're available every
Tuesday and Thursday after 6:00 pm.
While Supplies Last.

Dock of the Bay

9025 Cuckhold Point Road • Miller's Island • 410-477-8100 • www.dockofthebay.net

Proof 9 F



Monday
Happy hour.
All night long 2pm - close

Tuesday
Burger night
1/2 priced burgers.
$1 crabs starting at 6pm,
while supplies last

Wednesday
Wine night
1/2 priced bottles of wine
and $10 select entrees

Thursday
Steak night
16oz Porterhouse with 2
sides for $11.95
$1 crabs starting at 6pm,
while supplies last.
DJ and Karaoke with
2 for 1 Domestic beer
starting at 8pm.

Friday/Saturday
Live music all weekend
starting at 9pm.
4/6 - Meerkat Nation
4/7 - Against the Grain
4/13 - Dave DeMarco
4/14 - Timmie Metz
Check website for details.

Weekly Specials

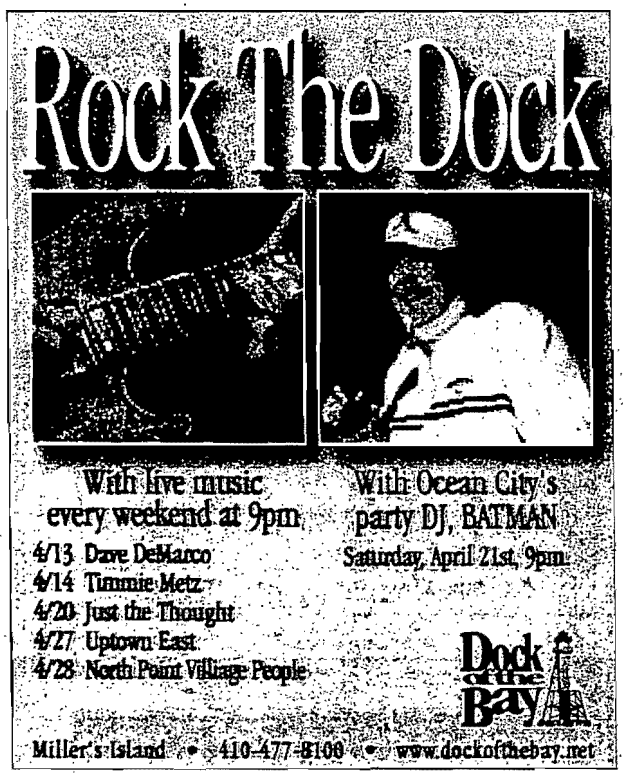
Happy Hour Tuesday - Friday from 2pm - 6pm

Millers Island • 410-477-8100 • www.dockofthebay.net

Dock of the Bay

Products 9 G

East County Times
April 12, 2007



PROTESTANT'S

EXHIBIT NO. 14

Protestant's 14

1/15/08

Fifth Street LLC
CBA-06-044
EXHIBITS

Received 1-15-08

* Petitioner's - Motion to Limit Testimony - (C. Holzer, Esq.)

Pet. Exhibit #1 - License Bureau Food Service Facility Permit (2007)

Pet. Exhibit #2 - L. H. 5/24/06 to BC Code Enforcement - from Fifth St. LLC

Pet. Exhibit #3 File from below

OVER FOR PROTESTANTS EXHIBITS (?)

IN THE MATTER OF: SPECIAL HEARING TO DETERMINE USE OF PROPERTY LOCATED AT 9025 CUCKOLD POINT ROAD, MILLERS ISLAND, MARYLAND 21219	*	BEFORE	
	*	THE	
	*	BALTIMORE COUNTY	
	*	BOARD OF APPEALS	
Legal Owner: Fifth Street, LLC Larry Thanner	*	Case No.:	CBA 07-134
15th Election District 7th Councilmanic District	*	Civil Citation:	August 16, 2007
	*	Case No.:	CBA-07-144-SPH
	*	Case No.:	CBA-06-044
	*	Civil Citation:	September 8, 2006

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

MOTION TO LIMIT TESTIMONY

Fifth Street, LLC, ***Larry Thanner***, by his attorney, ***J. Carroll Holzer, Esquire,*** Holzer & Lee, hereby submits this Motion to Limit Testimony in the above-captioned three cases and says:

1. The Petitioner filed Case No.: 07-144-SPH, Petition for Special Hearing before the Zoning Commissioner to determine whether or not the use of the property at 9025 Cuckold Point Road (Dock of the Bay) was a night club as defined in the Baltimore County Zoning Regulations, §101; §102.1 and §230. Prior to the scheduling of a Hearing before the Zoning Commissioner, a Code violation citation was brought by the County in Civil Citation No.: 06-3683 and a final decision of the Code Enforcement Hearing Officer with civil penalties was determined on September 8, 2006.

LAW OFFICE
HOLZER AND LEE
THE 508 BUILDING
508 FAIRMOUNT AVENUE
TOWSON, MARYLAND
21286

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

Food Service Facility Permit
Baltimore County Government
Department of Environmental Protection and Resource Management
Circuit County Building, 401 Bosley Avenue, Suite 416
Towson, Maryland 21204
410-887-4065

Permit Number: PT0002335 - PT0000727

Catering Id No.:

Record Information
OW0001253-FA0000721-PR0100711

Date Permit Issued: 03/30/2007

Permit Valid From Date: 04/01/2007

7001-Food-High Priority Facility

Annual Expiration Date: 03/31/2008 Type of Facility: Restaurant

Mailing Name and Address of Owner/Operator
Lawrence J. Thanner, Jr
9025 Cuckold Point Rd
Sparrows Point , MD 21219

Facility Name and Address
Dock of the Bay
9025 Cuckold Point Rd
Sparrows Point, MD 21219

Certified Food Manager? Yes

Approval Authority

This hereby certifies that the above Food Service Facility is granted permission to operate in Baltimore County in accordance with the laws and regulations of Baltimore County.

David A.C. Carroll, Director
Department of Environmental Protection and Resource Management

PERMIT IS NON-TRANSFERABLE AND
SHALL BE POSTED IN A CONSPICUOUS PLACE

State of Maryland
License

90 County

03224431
03872886
11433181

07

THANNER ENTERPRISES LLC
DOCK OF THE BAY
9025 CUCKOLD POINT RD
BALTIMORE MD 21219

CODE	UNIT	TYPE OF LICENSE	NO OF LIC	COST
99	025	CIGARETTE VENDING MACHINE	1	25.00
71	10	TRADER'S LICENSE	1	50.00
87	799	RESTAURANT	1	10.00
75	030	SPECIAL RETAIL CIGARETTE	1	30.00

DATE OF ISSUE MO DAY YR
04/09/2007

MONTHS PAID
12

ISSUING FEES	8.00	
TOTAL	123.00	AMOUNT PAID 123.00

THIS LICENSE MUST BE PUBLICLY DISPLAYED
AND EXPIRES ON APRIL 30, 2008

4316 LIQUOR

ISSUED BY: SUZANNE MENSH, CLERK OF CIRCUIT COURT
401 BOSLEY AVENUE
TOWSON, MARYLAND 21204-6754 (410)887-2607

DHS

App. Ex. #1
Petitioners

Exh A

FIFTH STREET, LLC

9025 Cuckold Point Road
Baltimore, Maryland 21219
(410) 477-8100
FAX (410) 477-9643

May 24, 2006

Mr. C. Raynor, Inspector
Baltimore County Department of Code Inspections and Enforcement
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: Correction Case # 06-3683

Dear Mr. Raynor:

I am in receipt of the Code Inspections and Enforcement Correction Notice issued on May 12, 2006 regarding Case # 06-3683. The order directs that all "night club activities" be ceased. I have searched the Baltimore County Zoning Regulations, the Baltimore County Building Code and the 2003 Edition of the ICC International Building Code. However, I have not been able to find a definition of "night club activities".

I assume that night club activities refer to certain forms of entertainment provided by the Dock of the Bay for its customers. The entertainment provided is as follows:

1. 10 televisions inside and 2 televisions outside. These televisions for the most part are used for showing sporting events; however, they have been used to show MTV and American Idol, both of which contain music.
2. The house music sound system has 8 speakers inside and 4 speakers outside. This system plays music continuously, except when other forms of entertainment are being utilized. The system is used to play either satellite music or CDs.
3. Installation of a juke box is being considered to play music in the evenings, so that customers can select the music they wish to hear.
4. On Friday and Saturday night after 9:00 PM usually a DJ plays music or karaoke and occasionally a band plays inside until about 1:00 AM. This is exactly what many bars and taverns do throughout the County, including the two other bars located on Miller's Island.
5. On Saturday and Sunday afternoons a band plays outside from 4:00 PM until 8:00 PM (during day light hours) from the beginning of May through September. This is exactly what the River Watch and Wild Duck (two other Baltimore County waterfront establishments) do.

Pet. Timers App Exh. 61 # 2

Drafted 1/15/08

EXHIBITS

CBA-06-044 & CBA-07-134

Petitioners #1 Tabs 6 - BCC Enforcement

County #1 - BCC - Defendants

TITLE 6. CODE ENFORCEMENT

Section

Subtitle 1. Definitions

3-6-101. Definitions

Subtitle 2. Enforcement

3-6-201. County authority in general
3-6-202. Equitable relief
3-6-203. Violation - Correction notice
3-6-204. Same - Same - Remedies for failure to comply
3-6-205. Same - Code enforcement - Citation
3-6-206. Code enforcement hearing
3-6-207. Contents of a final order

Subtitle 3. Appeal to the Board of Appeals

3-6-301. Date requirements
3-6-302. Procedure for filing
3-6-303. Hearing
3-6-304. Disposition

Subtitle 4. County Action

3-6-401. Failure to comply with a final order
3-6-402. Authority

SUBTITLE 1. DEFINITIONS

§ 3-6-101. DEFINITIONS.

(a) *In general.* In this title the following words have the meanings indicated.

Protestants Submission #1 In Code Enfor

ARTICLE 3. ADMINISTRATION / TITLE 6. CODE ENFORCEMENT / SUBTITLE 1. DEFINITIONS

SUBTITLE 1. DEFINITIONS

ARTICLE 3. ADMINISTRATION / TITLE 6. CODE ENFORCEMENT / SUBTITLE 1. DEFINITIONS / § 3-6-101. DEFINITIONS.

§ 3-6-101. DEFINITIONS.

(a) *In general.* In this title the following words have the meanings indicated.

(b) *Code.*

(1) "Code" means the:

(i) Building Code;

(ii) Electric Code;

(iii) Mechanical Code;

(iv) Permits and licenses law and regulations;

(v) Plumbing Code;

(vi) Livability Code;

(vii) Fire Code;

(viii) Zoning Regulations; and

(ix) Any other code, regulation, or standard administered by the Department of Permits and Development Management.

(2) "Code" does not include the County Code.

(c) *Code enforcement.* "Code enforcement" means the enforcement of a code or the County Code in accordance with this title.

(d) *Code Official.* "Code Official" means the Director of Permits and Development Management or the Director's designee.

(e) *County Code.* "County Code" means the Baltimore County Code as it is

County #1

IN THE MATTER OF:	* BEFORE THE
FIFTH STREET, LLC:	* BOARD OF APPEALS
Lawrence Thanner -	* OF
Legal Owner/Petitioner	* BALTIMORE COUNTY
9025 Cucold Point Road	* Case No. 07-144-SPH
15th Election District	* January 15, 2008
7th Councilmanic District	*
(To be heard with related	*
Case No. CBA-06-044 and	*
Case No. CBA-07-144)	*
Case No. CBA-07-134)	*

* * * * *

The above-entitled matter came on for hearing before the Baltimore County Board of Appeals at The Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, at 10 o'clock a.m., January 15, 2008.

ORIGINAL

Reported by:

CBCA FLOOD HISTORIC

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 9025 Cuckold Pt Rd. 21219

which is presently zoned BL

This Petition shall be filed with the Department of Permits and 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

and 500.6

(See Supplemental Sheet)

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Special Hearing, advertising, posting, etc. and further agree to and are to be bounded 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):

Fifth Street, LLC
Name - Type or Print

Larry Thanner
Signature

Larry Thanner
Name - Type or Print

Signature

9025 Cuckold Pt. Rd. 410-477-8100
Address Telephone No.

Baltimore MD 21219
City State Zip Code

Attorney For Petitioner:

J. Carroll Holzer
Name - Type or Print

Signature

J. Carroll Holzer, P.A.
508 Fairmount Ave.
Towson, MD 21286
410-825-6961
Telephone No.

City State Zip Code

Representative to be Contacted:

J. Carroll Holzer, P.A.
508 Fairmount Ave.
Towson, MD 21286
410-825-6961
Telephone No.

City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By LTM Date 9/28/06

Case No. 07-144-SPH

ORDER RECEIVED FOR FILING
Date 5-30-07
By DW

REV 9/15/98

QUESTIONS PRESENTED
FOR SPECIAL HEARING PETITION
9025 Cuckold Point Road, Fifth Street, LLC

1. Whether the use of the property at 9025 Cuckold Point Rd., Millers Island 21219 is in violation of the BCZR.

2. Is the use by Fifth Street, LLC, a restaurant, at 9025 Cuckold Point Rd., which provides music during the day, is a "night club" as defined in the BCZR, Sec. 101, 102.1 and 230?

#144

CENTURY ENGINEERING

10710 Gilroy Road
Hunt Valley, MD 21031

Zoning Description for
9025 Cuckold Point Road

Beginning at a point on the southeast side of Cuckold Point Road which is 30 feet wide, at the distance of fifteen feet southwest of the centerline of Fifth Street which is 30 feet wide. Being Lots 500 through 505 in the subdivision of Swan Point as recorded in Plat Book L.McL.M. # 9, Folio #5. Containing 1.031 acres of land, more or less. Also known as 9025 Cuckold Point Road and located in the 15th Election District and the 7th Councilmanic District.

STATE OF MARYLAND
BRYAN JASON HAYNIE
No. 21139
PROFESSIONAL LAND SURVEYOR

Wfile/login2/ld/ld06/descriptions/9025 Cuckold Point Road-08-17-06

#144

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing in Towson, Maryland on the property identified herein as follows:

Case: #07-144-SPH
9025 Cuckold Point Road
Southeast corner Cockold Point Road and 5th Street
15th Election District — 7th Councilmanic District
Legal Owner(s): Fifth Street, LLC; Larry Thanner

Special Hearing: Under Section 500.7 and Section 500.6 of the Zoning Regulations of Baltimore County, to determine whether the use of the property at 9025 Cuckold Point Road, Millers Island 21219 is in violation of the BCZR and is the use by Fifth Street, LLC, a restaurant, at 9025 Cuckold Point Road, which provides music during the day, is a "night club" as defined in the BCZR, Sections 101, 102.1 and 230.

Hearing: Tuesday, December 5, 2006 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204.

WILLIAM J. WISEMAN, III
Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-4386.
(2) For Information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

11/203 Nov. 16 116238

CERTIFICATE OF PUBLICATION

11/16/, 2006

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 11/16/, 2006.

- [X] The Jeffersonian
- [ ] Arbutus Times
- [ ] Catonsville Times
- [ ] Towson Times
- [ ] Owings Mills Times
- [ ] NE Booster/Reporter
- [ ] North County News

S. Wilkinson

LEGAL ADVERTISING

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 21707

DATE 9/19/06 ACCOUNT 1001 606 6150

AMOUNT $ 375 00

RECEIVED FROM: J CARROLL HOLZER PA

FOR: 07-144-SPH

9025 CUCKOLD PT RD

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

CASHIER'S VALIDATION

PAID RECEIPT

ACTION TYPE ITEM
9/25/2006 9/27/2006 11:36:16 2

Rept: 5 B29 ZONING VERIFICATION

CR No. 021707

Rcpt Tot $375.00

$375.00 CK $.00 CA

Baltimore County, Maryland

Gerhold, Cross & Etzel, Ltd.

Registered Professional Land Surveyors • Established 1906

Suite 100 • 320 East Towsontown Boulevard • Towson, Maryland 21286
Phone: (410) 823-4470 • Fax: (410) 823-4473 • www.gcelimited.com

CERTIFICATE OF POSTING

RE: CASE# 07-144-SPH
PETITIONER/DEVELOPER:
Fifth Street, LLC
DATE OF HEARING: Dec. 5, 2006

BALTIMORE COUNTY DEPARTMENT OF
PERMITS AND DEVELOPMENT MANAGEMENT
COUNTY OFFICE BUILDING, ROOM 111
111 WEST CHESAPEAKE AVE.
TOWSON, MARYLAND 21204

ATTENTION: KRISTEN MATTHEWS

LADIES AND GENTLEMEN:

THIS LETTER IS TO CERTIFY UNDER THE PENALTIES OF PERJURY THAT THE NECESSARY SIGN(S) REQUIRED BY LAW WERE POSTED CONSPICUOUSLY ON THE PROPERTY LOCATED AT

LOCATION:
9025 Cuckold Point Road

(see page 2 for full size photo)

POSTED ON: November 16, 2006

SIGNATURE OF SIGN POSTER

John J. Dill

GERHOLD, CROSS & ETZEL, LTD
SUITE 100
320EAST TOWSONTOWN BLVD
TOWSON, MARYLAND 21286
410-823-4470 PHONE
410-823-4473 FAX

ZONING NOTICE

CASE # :07-144-SPH

A PUBLIC HEARING WILL BE HELD BY
THE ZONING COMMISSIONER
IN TOWSON, MD.

PLACE: Room 407 County Courts Building
401 Bosley Avenue, Towson, MD

9 00 am Tuesday, December 5, 2006

Special Hearing:

Under Section 500 7 and Section 500.6 of the Zoning Regulations of Baltimore County, to determine whether the use of the property at 9025 Cuckold Point Road, Millers Island 21219 is in violation of the BCZR and is the use by Fifth Street, LLC, a restaurant, at 9025 Cuckold Point Road, which provides music during the day, is a "night club" as defined in the BCZR, sections 101, 102.1 and 230

HEARINGS ARE HANDICAPPED ACCESSIBLE

01 20 2000 23:11

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing in Towson, Maryland on the property identified herein as follows:

Case: #07-144-SPH
9025 Cuckold Point Road
Southeast corner Cuckold Point Road and 5th Street
15th Election District - 7th Councilmanic District
Legal Owner(s): Fifth Street, LLC; Larry Thanner

Special Hearing: Under Section 500.7 and Section 500.6 of the Zoning Regulations of Baltimore County, to determine whether the use of the property at 9025 Cuckold Point Road, Millers Island 21219 is in violation of the BCZR and is the use by Fifth Street, LLC, a restaurant, at 9025 Cuckold Point Road, which provides music during the day, is a "night club" as defined in the BCZR, Sections 101, 102.1 and 230.

Hearing: Friday, April 13, 2007 at 9:00 a.m. In Room 106, County Office Building, 111 West Chesapeake Avenue, Towson 21204

WILLIAM J. WISEMAN, III
Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-3868.
(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

JT/3/751 Mar. 27 129416

CERTIFICATE OF PUBLICATION

3/29/, 2007

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 3/27/, 2007.

- [X] The Jeffersonian
- [ ] Arbutus Times
- [ ] Catonsville Times
- [ ] Towson Times
- [ ] Owings Mills Times
- [ ] NE Booster/Reporter
- [ ] North County News

S. Wilkinson

LEGAL ADVERTISING

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

March 13, 2007
TIMOTHY M. KOTROCO, *Director*
Department of Permits and Development Management

NEW NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 07-144-SPH
9025 Cuckold Point Road
Southeast corner Cuckold Point Road and 5th Street.
15th Election District – 7th Councilmanic District
Legal Owner(s): Fifth Street, LLC; Larry Thanner

SPECIAL HEARING Under Section 500.7 and Section 500.6 of the Zoning Regulations of Baltimore County, to determine whether the use of the property at 9025 Cuckold Point Road, Millers Island 21219 is in violation of the BCZR and is the use by Fifth Street, LLC, a restaurant, at 9025 Cuckold Point Road, which provides music during the day, is a "night club" as defined in the BCZR, Sections 101, 102.1 and 230.

Hearing: Friday, April 13, 2007 at 9:00 a.m. in Room 106, County Office Building,
111 West Chesapeake Avenue, Towson 21204

Timothy Kotroco
Director

TK:klm

C: Larry Thanner 9025 Cuckold Point Road Baltimore 21219
J. Carroll Holzer, P.A. 508 Fairmount Avenue Towson 21286
Frank Borgerding 409 Washington Avenue Ste. 600 Towson 21204

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY WEDNESDAY, MARCH 28, 2007.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

March 13, 2007
TIMOTHY M. KOTROCO, *Director*
Department of Permits and Development Management

NEW NOTICE OF ZONING HEARING

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Timothy Kotroco
Director

TK:klm

C: Larry Thanner 9025 Cuckold Point Road Baltimore 21219
J. Carroll Holzer, P.A. 508 Fairmount Avenue Towson 21286
Frank Borgerding 409 Washington Avenue Ste. 600 Towson 21204

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(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

TO: PATUXENT PUBLISHING COMPANY
Tuesday, March 27, 2007 Issue - Jeffersonian

Please forward billing to:
J. Carroll Holzer, P.A. 410-825-6961
508 Fairmount Avenue
Towson, MD 21286

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 07-144-SPH
9025 Cuckold Point Road
Southeast corner Cuckold Point Road and 5th Street.
15th Election District – 7th Councilmanic District
Legal Owner(s): Fifth Street, LLC; Larry Thanner

SPECIAL HEARING Under Section 500.7 and Section 500.6 of the Zoning Regulations of Baltimore County, to determine whether the use of the property at 9025 Cuckold Point Road, Millers Island 21219 is in violation of the BCZR and is the use by Fifth Street, LLC, a restaurant, at 9025 Cuckold Point Road, which provides music during the day, is a "night club" as defined in the BCZR, Sections 101, 102.1 and 230.

Hearing: Friday, April 13, 2007 at 9:00 a.m. in Room 106, County Office Building,
111 West Chesapeake Avenue, Towson 21204

WILLIAM J. WISEMAN III
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

TO: PATUXENT PUBLISHING COMPANY
Thursday, November 16, 2006 Issue - Jeffersonian

Please forward billing to:
J. Carroll Holzer, P.A. 410-825-6961
508 Fairmount Avenue
Towson, MD 21286

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 07-144-SPH
9025 Cuckold Point Road
Southeast corner Cuckold Point Road and 5th Street.
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SPECIAL HEARING Under Section 500.7 and Section 500.6 of the Zoning Regulations of Baltimore County, to determine whether the use of the property at 9025 Cuckold Point Road, Millers Island 21219 is in violation of the BCZR and is the use by Fifth Street, LLC, a restaurant, at 9025 Cuckold Point Road, which provides music during the day, is a "night club" as defined in the BCZR, Sections 101, 102.1 and 230.

Hearing: Tuesday, December 5, 2006 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204.

WILLIAM J. WISEMAN III
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (BCZR) 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 (responsibility of the petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least fifteen (15) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements. The newspaper will bill the person listed below for the advertising. This advertising is due upon receipt and should be remitted directly to the newspaper.

OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

For Newspaper Advertising:

Item Number or Case Number: 07-144-SPH

Petitioner: LARRY THANNER

Address or Location: 9025 CUCKOLD PT. RD.

PLEASE FORWARD ADVERTISING BILL TO:

Name: J. CARROLL HOLZER

Address: 508 FAIRMOUNT AVE.
TOWSON MD 21286

Telephone Number: 410 825 ~~4923~~ 6961

Revised 7/11/05 - SCJ

First Class Mail

LAW OFFICES

HOLZER & LEE

508 FAIRMOUNT AVE.
TOWSON, MD 21286

HAND DELIVERED
Carl Richards
Department of Permits &
Development Management
County Office Building
Towson, MD 21204

First Class Mail

First Class Mail

First Class Mail

Made in USA

DuPont™ Tyvek®
Protect What's Inside.™

2 HDPE

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, *Director*
Department of Permits and Development Management

November 29, 2006

J. Carroll Holzer, P.A.
508 Fairmount Avenue
Towson, MD 21204

Dear Mr. Holzer:

RE: Case Number: 07-144-SPH, 9025 Cuckold Point Road

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on September 28, 2006.

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure 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. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR:amf

Enclosures

c: People's Counsel
Larry Thanner 9025 Cuckold Point Road Baltimore 21219

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits and
Development Management

DATE: October 11, 2006

FROM: Arnold F. 'Pat' Keller, III
Director, Office of Planning

SUBJECT: Zoning Advisory Petition(s): **Case(s) 7-144- Special Hearing**

The Office of Planning has reviewed the above referenced case(s) and has no comments to offer.

For further questions or additional information concerning the matters stated herein, please contact Amy Mantay in the Office of Planning at 410-887-3480.

Prepared By: Curtis A Murray

Division Chief: Lynn Lanham

CM/LL

W:\DEVREVIZAC\7-144.doc

Baltimore County
Fire Department

700 East Joppa Road
Towson, Maryland 21286-5500
410-887-4500

County Office Building, Room 111
4,20064, 2006, 2006
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

October 4, 2006

ATTENTION: Zoning Review Planners

Distribution Meeting Of: October 9, 2006

Item Number(s): 131 and 135 through 144

Pursuant to your request, the referenced plan(s) have been reviewed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

1. The Fire Marshal's Office has no comments at this time.

Lieutenant Roland P Bosley Jr.
Fire Marshal's Office
410-887-4881 (C)443-829-2946
MS-1102F

cc: File

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits & Development Management

DATE: October 4, 2006

FROM: Dennis A. Kennedy, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For October 9, 2006
Item Nos. 07-131, 135, 136, 137, 138, 139, 140, 141, 142, 143, and 144

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

DAK:CEN:clw
cc: File
ZAC-NO COMMENTS-10042006.doc

Robert L. Ehrlich, Jr., *Governor*
Michael S. Steele, *Lt. Governor*

State Highway Administration
Driven to Excel

Robert L. Flanagan, *Secretary*
Neil J. Pedersen, *Administrator*

MARYLAND DEPARTMENT OF TRANSPORTATION

Date: OCTOBER 10, 2006

Ms. Kristen Matthews
Baltimore County Office Of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No. 07-144-SPH
9025 CUCKOLD POINT RD
FIFTH STREET, LLC
SPECIAL EXCEPTION

Dear Ms. Matthews:

Thank you for the opportunity to review your referral request on the subject of the above captioned. We have determined that the subject property does not access a State roadway and is not affected by any State Highway Administration projects. Therefore, based upon available information this office has no objection to Baltimore County Zoning Advisory Committee approval of Item No. 07-144-SPH.

Should you have any questions regarding this matter, please contact Michael Bailey at 410-545-2803 or 1-800-876-4742 extension 5593. Also, you may E-mail him at (mbailey@sha.state.md.us).

Very truly yours,

Michael P. Bailey

FOR Steven D. Foster, Chief
Engineering Access Permits
Division

SDF/MB

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: Timothy M. Kotroco

FROM: Jeff Livingston, DEPRM - Development Coordination

DATE: 10/11/2006

SUBJECT: Zoning Item # 07-144-SPHA
Address 9025 Cuckold Point Road
Baltimore, MD 21219

Zoning Advisory Committee Meeting of October 2, 2006

____ The Department of Environmental Protection and Resource Management has no comments on the above-referenced zoning item.

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

____ Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).

____ Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

X Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 33-2-101 through 33-2-1004, and other Sections, of the Baltimore County Code).

Additional Comments:

This property is within the Limited Development Area (LDA) and Buffer Management Area (BMA) of the CBCA. Any proposed development must comply with the CBCA regulations.

Reviewer: Kevin Brittingham Date: 10/11/06

S:\Devcoord\1 ZAC-Zoning Petitions\ZAC 2007\ZAC 07-144-SPH.doc

April 4, 2007

Dear Councilman Ridgely

In regard to the recent articles in the Eagle news-

Paper Queen Anne's County Council may have fallen on Dire straits,

I am Strongly against raising taxpayers at certain

public beaches and restaurants in Queen Anne's County

particularly the Dock of the Bay on Kent Island.

Sincerely,

Brian Metheny

April 9, 2007

John Olszewski

Regarding the recent attached article in the Examiner newspaper I would like to express my complete dissatisfaction with the effort by our "elected" official/officials to relax or alter existing regulations concerning live music for bars and restaurants not currently zoned for these activities in Baltimore County.

I don't think that I would be too far off the mark saying that this issue primarily concerns the Dock of The Bay restaurant on Millers Island in Baltimore County.
The fact that this proposed legislation was to be voted on prior to a zoning change hearing scheduled for April 13th also adds suspicion to the motives of this action.

I would suggest that if we are going to alter legislation for certain people then let's not stop there. How about reducing the property taxes for the residents of Millers Island, by let's say 70%. Maybe the County should pay the difference in the proposed rate hikes in our electric bills. Car insurance? Gas prices? The list could go on and on.

If this sounds ridiculous to you then understand how this proposed change in this legislation allowing **specific** bars and restaurants in Baltimore County to become nightclubs sounds to the tax payers that live in such close proximity to these business's.

Sincerely.

Digital signature of:
Brad Metheny

Send to Printer << Back to Article

EXAMINER

Local

Baltimore County may let music play

Jaime Malarkey, The Examiner
Apr 2, 2007 1:14 PM (6 days ago)
Current rank: # 4,091 of 16,737

Read wiley Webster is intrigued

Baltimore County - Baltimore County lawmakers are considering legislation to relax restrictions on live music at certain bars and restaurants — a move at least one community leader said could pollute neighborhoods with noise and traffic.

Several councilmen said some bars and restaurants are unfairly barred from providing live music, an offering currently reserved for licensed nightclubs. Three councilmen met with county officials to discuss changes and provisions, but cautioned they have no firm plans.

"Right now, if they have an outdoor deck, they are prohibited from having a guy with a guitar," said Councilman Vince Gardina, D-District 5. "We're looking at possible ways to get around that."

Dick Parsons, who chairs a group called the Community Conservation Advisory Group, e-mailed community activists Friday, urging them to contact council members before the bill could be formally proposed.

Citing an unnamed source, Parsons said he believes the council has prepared legislation and could vote on it as soon as April 9.

If not carefully worded, he said he worries a bill could transform any bar or restaurant into a nightclub by right.

"By including 'restaurant' you really open quite a wide swath there," Parsons said. "It's the noise, the ambiance, the crowd that's attracted, the parking, the whole bit."

Restaurants and bars who want to offer live music now must seek approval from the county's Board of Liquor License Commissioners, which supervises noise levels.

The board's administrator, George Abendschoen, said he doesn't receive many requests for live music.

The council is considering provisions including setting time limits determined by the proximity of homes, said Councilman John Olszewski Sr., D-District 7.

At least one council member, Democrat Kevin Kamenetz from the county's second district, said he would question blanket authorization.

"But there might be circumstances where [relaxed rules] wouldn't be unreasonable," he said.

jmalarkey@baltimoreexaminer.com

Examiner

IN RE: 9025 Cuckold Point Road	*	BEFORE THE
Southeast corner Cuckold Point Road and 5th St.	*	ZONING COMMISSIONER
15th Election District		
Legal Owner: Fifth Street LLC	*	FOR
Contract Purchaser: Larry Thanner	*	BALTIMORE COUNTY
	*	Case No.: 07-144SPH

* * * * * *

RETURN OF SERVICE

I HEREBY CERTIFY that on this 20th day of November, 2006, I personally served a Subpoena (copy attached) unto James Thompson, Supervisor, at Code Inspections and Enforcement Division, Baltimore County Office of Permits & Development Management, County Office Building, Room 213, 111 West Chesapeake Avenue, Towson, Maryland 21204.

Beverly J. Kaufman
Legal Administrative Assistant
409 Washington Avenue, Suite 600
Towson, Maryland 21204

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 21st day of November, 2006, a copy of the aforegoing was mailed, first-class postage prepaid, to:

John E. Beverungen, Esquire, County Attorney
Baltimore County Office of Law
400 Washington Avenue, 2nd Floor
Towson, Maryland 21204

Beverly J. Kaufman

IN RE: 9025 Cuckold Point Road	*	BEFORE THE
Southeast corner Cuckold Point Road and 5th St.	*	ZONING COMMISSIONER
15th Election District		
Legal Owner: Fifth Street LLC	*	FOR
Contract Purchaser: Larry Thanner	*	BALTIMORE COUNTY
	*	Case No.: 07-144SPH

* * * * * *

SUBPOENA

TO: James Thompson, Supervisor
Code Inspections and Enforcement Division
Baltimore County Office of Permits & Development Management
County Office Building, Room 213
111 West Chesapeake Avenue
Towson, Maryland 21204

You are hereby summoned and commanded to be and appear personally before the Zoning Commissioner/Deputy Zoning Commissioner of Baltimore County on the 5th day of December, 2006, at 9:00 A.M., in Room 407 of the County Courts Building, 401 Bosley Avenue, Towson, Maryland 21204, and to bring with you the zoning citation file for civil action number 06-3683, for the purpose of testifying in the above-captioned matter at the request of Francis X. Borgerding, Jr.

FRANCIS X. BORGERDING, JR.

Mr. Sheriff/Private Process Server:

Please process in accordance with Zoning Commissioner's Rule 4(c).

Zoning Commissioner/
Deputy Zoning Commissioner
for Baltimore County

Issued: November 20, 2006

BW
4-13-07

To: Jim Smith
From: Matthew Ciarpella

8-7-06

07-144-SPH

Dear Mr. Smith,

I am a resident of Miller's Island and I live at 2716 6th st directly adjacent to Dock of the Bay restaurant. My neighbors and I are in concert on our stance against the "live music" which has disturbed the "peace and tranquility" of our homes every weekend for the last 2 yrs.

Fifth Street LLC, " Dock of the Bay" restaurant , Lawrence " Larry" Thanner, has remained in defiance of the Code Enforcement division since it was first issued a correction notice on 5-26-06, and again a follow-up citation on 6-7-06. The major violation being Live Outdoor Entertainment, "Bands", has in the past been an issue to our mostly residential neighborhood with Pelicans Bar and Grill on Hinton ave. and Rumrunners at the end of Cuckold Pt. both establishments have since closed. They tried to have outdoor music and were not permitted. Mr. Thanner must feel his BL zoning permits him to have bands in what is shared space with our back yards. So much so that he is trying to raise issue with other Baltimore County establishments (Riverwatch , which is completely surrounded by businesses, by 100yds or more) and hopes to invent some kind of exception. After dealing with this issue for more than 2 yrs, first through the Liquor Board and now with Zoning, I still have growing concern that , somehow , Mr. Thanner will find a way around the Law.

Given my concern, I would like to say that I am against any future proposal that would permit "exception" for Dock of the Bay to have live outdoor bands. His establishment is far to close to a dozen or more homes for that kind of entertainment. However, I am for the restaurant, the view, and improvement to the food. And let me state enthusiastically that I am for Mr. Thanners right to operate his restaurant, being partner in a restaurant myself.

Best Regards,

[redacted]

443 677 1130

PLEASE PRINT CLEARLY

CASE NAME
CASE NUMBER 07-144-SPH
DATE 12-5-06 ; 4-13-07

PETITIONER'S SIGN-IN SHEET

NAME Kondylas	ADDRESS	CITY, STATE, ZIP	E- MAIL
MIKE KONDYLAS	8909 KELLER FS BLVD	BALT. MD. 21219	
Dorothea M. Reilly	2809 3RD Street	Balto md 21219	
JUDITH KUREK	9106 HINTON AVE	BALTO MD 21219	
J. Carroll Holzer	508 Fairmount Ave	Towson 21286	
LAWRENCE THARNER	2136 RIVERVIEW Rd	Essex, MD 21221	
~~RAY SIESSA~~	~~2908 6TH ST.~~	~~BALT. MD 21219~~	
~~PHILIP SIESSA~~	2208 6TH ST	BALT. MD. 21219	PSCC@TRACTORS@COMCAST.NET

PLEASE PRINT CLEARLY

Matthew J. Ciarpella
Nancy Stoval etta

CASE NAME
CASE NUMBER 07-144-SPH
DATE 4-13-07 & 12-5-06

Francis X Borgerding

CITIZEN'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
Patricia Waldmann	9016 Cuckold Pt. Rd	Balto Md. 21219	
Wayne E. Waldmann Sr.	9016 Cuckold Point Rd.	Balto. Md. 21219	wayne9016@comcast.net
Philip J. Dessy + KAY	2708 6th St.	Balt Md. 21219	RSCCONTRACTORS@COMC. NET
Matt Ciapella	2716 6th St.	Balto Md 21219	mattciapella@comcast.net
Charlie Wolinski	9019 Cuckold Pt Rd	Balti MD 21219	
Robert Poleski	9033 cuckold Pt Rd	Balto MD 21219	
Louis Petrovich PETROVICH	8736 Miles Isl'd Rd	Balto MD 21219	loupetrovich@jhmi.edu
David McWilliams	2802 2nd St.	Balto MD 21219	
David Steck	2801 1st St	Balto. MD 21219	
Vera Steck	2801 1st St.	Balto MD. 21219.	
Robert Haas	2703 Bay Dr	Sparrow Point MD 21219	
MICHAEL POLESKI	9033 COCKOLD PT RD	BALTO MD 21219	
TERRI POLESKI	9010 HINTON AVE	Balto MD 21219	TERRIANNEPOLESKI@COMCAST.NET
KEN Scholl	9012 Cuckold Pt Rd 21219	BALT MD 21219	
TAMMY Novak	9012 Cuckold Pt. Rd.	Balto MD. 21219	Horizonroofing21@wmconnect.com
Daryl Wolinski	9019 Cuckold Pt. Rd.	Balto. MD 21219	dwolinski@bcps.org
Joan Waldmann TAMMY NOVAK Lynn Waldmann	9014 Cuckold Pt Rd	Balto. MD. 21219	
Doug W Waldmann	9014 CUCKOLD Pt Rd	Baltimore MD. 21219	
WAYNE E WALDMANN Jr.	9014 CUCKOLD PT RD	BALTIMD. 21219	
David Znamirowski	2705 Bay Dr	Balto MD 21219	dave.znamirowski@gmail.com

ZNAMIROWSKI

Case No.: 07-144 SPH 9025 COCKOLD PT RD.

Exhibit Sheet

	Petitioner/Developer	Protestant
No. 1	Site Plan	WEB site Advertisement
No. 2		News Paper Advertisement
No. 3		INTERNATIONAL BLDG CODE Regulat.
No. 4		Violation Notice
No. 5		5-24-06 Letter FROM THANNER
No. 6		Code Enforcement Citation
No. 7		Dundalk Eagle
No. 8		Photographs - Memorial day Weekend
No. 9		Entertainment Schedule
No. 10		Code Enforcent - FINAL ORDER
No. 11		Definition from BCZR Nightclub
No. 12		COUNCIL BILL 1-05 adopting - INTERNATIONAL MECHANICAL CODE

Case No.: 07-144-SPH 9025 Cockold Pt. Rd

Exhibit Sheet - Continued

	Petitioner/Developer	Protestant
No. 13		Night Club definition from "Webster's 3rd New Dictionary"
No. 14		Recent advertisement from CHARLES WOLINSKI
No. 15		Wayne E. Waldmann Jr. His written presentation
No. 16		
No. 17		
No. 18		
No. 19		
No. 20		
No. 21		
No. 22		
No. 23		
No. 24		

Monday
Happy hour
All night long 2pm - close

Tuesday
Burger night
1/2 priced burgers
$1 crabs starting at 6pm,
while supplies last

Wednesday
Wine night
1/2 priced bottles of wine
and $10 select entrees

Thursday
Steak night
16oz Porterhouse with 2
sides for $11
$1 crabs starting at 6pm,
while supplies last
DJ and Karaoke with
2 for 1 Domestic beer
starting at 8pm

Friday/Saturday
Live music all weekend
starting at 9pm.
4/6 - Meerkat Nation
4/7 - Against the Grain
4/13 - Dave DeMarco
4/14 - Timmie Metz
Check website for details

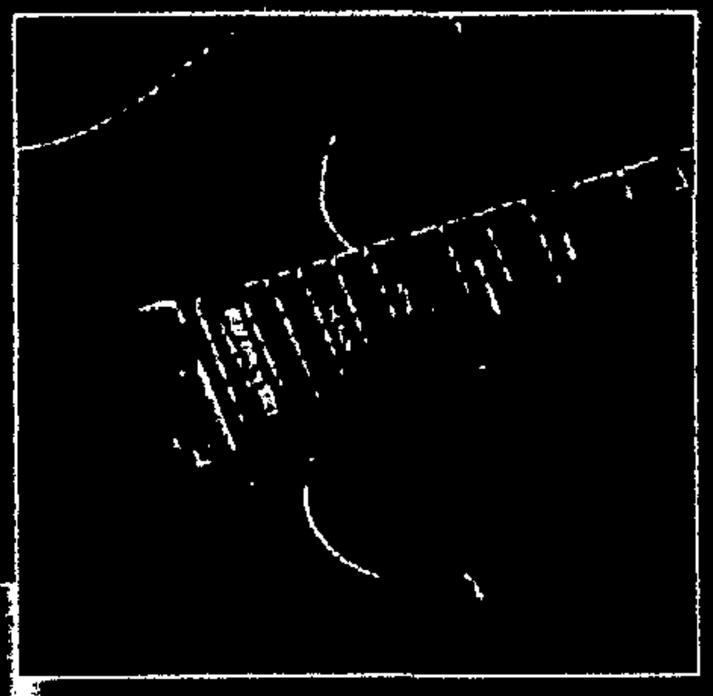
Weekly Specials

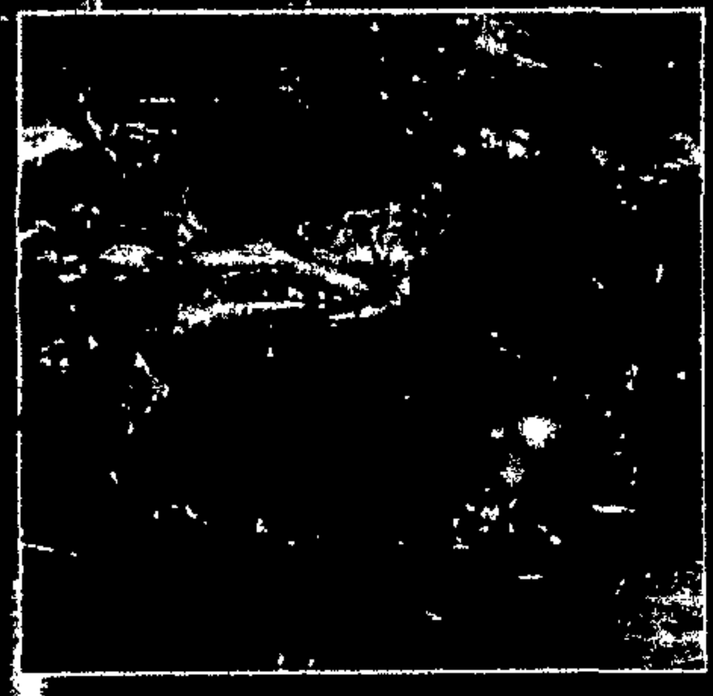
Happy Hour Tuesday - Friday from 2pm - 6pm.

Millers Island • 410-477-8100 • www.dockofthebay.net

Dock of the Bay

Live - from the Dock





100.7 the bay
BALTIMORE'S CLASSIC ROCK STATION

Friday, 3/23/07, 5:00-7:00pm
join Chris Emry and 100.7 the Bay for a
LIVE broadcast from the Dock.
Give-aways and prizes including
concert tickets, football tickets and CD's.
Happy Hour extended 2-7pm

Cry Later

Friday, 3/23/07, at 9:00pm
After the Live broadcast
stick around for great LIVE music
by Cry Later.

$1. Crabs Are Back

Yeah they're LIVE - steamed fresh,
and they're available every
Tuesday and Thursday after 6:00 pm.
While Supplies Last.

9025 Cuckhold Point Road • Miller's Island • 410-477-8100 • www.dockofthebay.net

Dock of the Bay

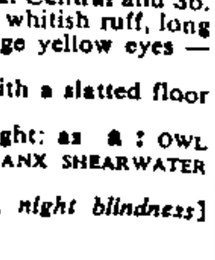
Webster's Third New International Dictionary

UNABRIDGED

PROTESTANT'S
EXHIBIT NO. 13

nigerois \-ˌwä(z)\ *cap* (*-ois*) [F, fr. *Niger*, country in western Africa + F *-ois* -ese] : a native or inhabitant of the Republic of

niger *n* [prob. fr. *Niger* river, West Africa, where it grows] : the seed of ramtil that yields a valuable oil
niger oil *n* [*niger seed*] : a drying oil obtained from the seed of ramtil and used in food, soap, and paints
nigger \'nig(ə)r\ *n* -s [ME *nigard, nigard, niggard*, prob. fr. *nig* niggard (of Scand origin) + *-art, -ard*; akin to MD *nigghaert* niggardly, stingy, *hnaggva, hnyggja* to humble, cut down; akin to OE *hnēaw* niggardly, stingy, OHG *hnīo* to crush, Gk *knyein* to scratch, *knoos, knous* grating of an axle, sound of footsteps, *knuos* itch, Latvian *knist* to itch and to L *ciner-, cinis* ashes — more at HINDER] : a person meanly close and covetous : MISER
nigger \"\ *adj* [ME *nigart*, adj. & *n.*] **1** : NIGGARDLY, MISERLY ⟨~ storekeepers who refused to pay . . . his modest honorarium —Ben Riker⟩ ⟨cold, unappreciative, ~ even modified praise —Arnold Bennett⟩ **2** : reflecting or displaying niggardliness : SCANTY ⟨the shop-window show is ~ and shabby —W.C.Brownell⟩
nigger *vb* -ED/-ING/-S *vi, obs* : to act niggardly ~ *vt, obs* : to give in a niggardly manner
nigger-ness \-dlənəs\ *n* -ES : the quality or state of being
nigger-ly \-lē, -lī\ *adj* [*nigger* + *-ly*] **1** : grudgingly parting with money or possessions or to grant favors ⟨~ not ~, these tramps, and he who had money did not share it —W.S.Maugham⟩ ⟨so ~ about entry into country —Bernard Pares⟩ **2** : provided in meanly scanty supply : SCANTY ⟨the country has been handicapped by ~ transport resources —V.H.Whitney⟩ **syn** see STINGY
nigger-ly \"\ *adv* [*nigger* + *-ly*] : in the manner of a niggard ⟨the people of our respective states . . . cannot afford to be ~ with their universities —L.M.Chamberlain⟩
nigger-ness *n* -ES [*nigger* + *-ness*] : NIGGARDLINESS
nigger \'nig(ə)r\ *n* -s *often attrib* [alter. of *neger* or *niger*] **1** *usu* taken to be offensive **b** : a member of any dark-skinned race (as an Indian, a Filipino, an Egyptian) of any very dark-skinned race — usu. taken to be offensive **2** : any of several dark-colored insect larvae (as of some ladybugs and of the cotton worm) **3** : COTTON SPINNER **4** : a steam-operated device for warping river steamboats over snags and shallows **5** : a toothed power-propelled lever arm used to position a carriage (as in a sawmill)
nigger \"\ *vt* -ED/-ING/-S : to divide (a log) by burning — usu. used with *off* ⟨~ed off into lengths —Conrad Richter⟩
nigger *n, Southwest* : either of two herbs: **a** : a thistle (*Cirsium biennatiflda*) with purple flowers **b** : a grass (*Stipa*) (*Stipa bellum*) with purplish blue — usu. used in pl.
nigger *n* : NEGRO BUG
nigger *n* : a small firework that shoots about on the
nigger *n* : BLACK-EYED SUSAN 1
nigger \"ˌ-\ *n* : CONEY 5a
niggergoose \"ˌ-ˌ-\ *n, pl* **niggergeese** : CORMORANT
nigger-head \"ˌ-ˌ-\ *n* **1** : a dark-colored mound or clump of vegetation (as a hummock of tundra or a tussock of sedge in a bog) found in far northern regions (as Alaska) **2** : strong black chewing tobacco : NEGROHEAD **3 a** : a dark-colored nodule or boulder **b** : a coral boulder thrown up and thrown to the surface by wind and wave action (on the Great Barrier reef) **4** : a large blackish smooth-shelled freshwater mussel (*Quadrula ebena*) used in button manufacture and sometimes producing valuable pearls **5 a** (1) : any of various plants of the genus *Rudbeckia* (2) : a ribgrass (*Agrostis lanceolata*) (3) : a wild peony (*Paeonia brownii*) of the western U.S. (4) : the common greenbrier (*Smilax rotundifolia*) of eastern No. America (5) : PURPLE CONEFLOWER **b** (1) : the spiny head of a saltwort (2) : NEGROHEAD **6 a** : a drum on a windlass **b** : BOLLARD **7** *Canad* **a** : a small wire nail driven into the furniture of a cylinder press to produce a black mark on the feed-board of the printed sheet as a guide for trimming and folding (1) : a mark made by a niggerhead (2) : a similar mark used as a collating mark
niggerhead cactus *n* : BISNAGA
nigger heaven *n, slang* : the highest balcony or row of seats in a theater
nigger in the woodpile : something (as a concealed motive or factor) contrary to appearances in a situation
nigger oil *n* : JERSEY PINE
nigger shooter \"ˌ-ˌ-\ *n* : SLINGSHOT
nigger-toe \"ˌ-ˌ\ *n* **1** *South* : any of various herbs (as of the genus *Gaillardia, Coreopsis*, and *Rudbeckia*) having flower heads with black or dark-colored disks **2** : BRAZIL NUT
nigger-weed \"ˌ-ˌ\ *n* : JOE-PYE WEED
nigger wool \"ˌ-ˌ\ *n* : a sedge (*Carex fflifolia*) of the western part of No. America that is used for mulch in erosion
niggery \'nig(ə)rē\ *adj* [*nigger* + *-y*] : characteristic of a
nigget *part of* NOG
niggle \'nig(ə)l\ *vb* **niggled; niggled; niggling** \-g(ə)liŋ\ [origin unknown] *vi* **1 a** : TRIFLE ⟨didn't ~ with . . . but printed the lecture title as it was received —*Amer. Guide Series: Ga.*⟩ **b** : to work meticulously; *esp* : to spend too much time on minor details **2** : to find fault constantly in a petty manner ⟨she haggles, she ~s, she wears out our lives —Virginia Woolf⟩ **3** : GNAW ⟨a tiny *niggling* noise —Ruth Park⟩ ⟨the question which had *niggled* at his brain —J.E.Macdonnell⟩ ~ *vt* : to give out in tiny portions ⟨it seems greedier to me to . . . ~ tiny bits —Florence Bullock⟩
niggler \-g(ə)lə(r)\ *n* -s : one that niggles ⟨the ~s . . . take pride in their discovery of a trifling error and go to great lengths to point it out —Philip Wylie⟩
niggli \'nigəlˌī\ *n* -s [Paul *Niggli* †1953 Swiss mineralogist] : a mineral $PtTe_3$(?) consisting of a telluride of platinum found in Griqualand East
niggling *adj* [fr. pres. part. of *niggle*] **1** : PETTY ⟨impatient with petty patterns and regular meters, which they find ~ and dull —Louise Bogan⟩ **2 a** : METICULOUS ⟨begin some work usually the preparation of a very careful drawing —*Amer. Guide Series: Ga.*⟩ **b** : overelaborate or feeble in execution ⟨the work trailed off in ~ strokes —*Atlantic*⟩ — **nig·gling·ly** \-g(ə)liŋlē\ *adv*
niggler \-g(ə)lə(r)\ *adj* -ER/-EST [*niggle* + *-y*] : NIGGLING
nigh *prep, adv, adj* -ER/-EST [ME *nigh, neigh, neih, neh*, adv. & prep., OE *nēah, nēh;* akin to OS *nāh*, adv. & adj., nigh, prep. & adv., OHG *nāh*, adv. & adj., nigh, prep., ON *ná-* (in composition) nigh, Goth *nehw, nehwa*, and perh. to Skt *naśati* he attains, reaches — more at NEAR] **1** : near in place, time, or relationship — often used as *unto, onto*, or *unto* ⟨served . . . for ~ on forty years —Bible⟩ ⟨my end draws ~; 'tis time that I were gone —Tennyson⟩ **2** : NEARLY, ALMOST ⟨the already ~ sacred records of childhood —Osbert Sitwell⟩
nigh *adj* -ER/-EST [ME *nigh, neigh, neih, neh*, fr. OE *nēah*] (adj. & adv.) **1** : CLOSE ⟨man in . . . friend, neighbor —Walt Whitman⟩ — *often used* poetically ⟨vow that my heart, when death is ~ —Sidney Lanier⟩ often used with a preposition ⟨some so silent, dark, so ~ death —Walt Whitman⟩ **2** *chiefly dial* : DIRECT, SHORT ⟨a ~ cut through the hill paths home —J.H. Wade⟩ : NEAR 3b **4** *chiefly dial* : STINGY
nigh *prep* [ME *nigh, neigh, neih, neh*, fr. OE *nēah, nēh, nēah, nēh*, adv.] : NEAR ⟨everyone wanted to be next ~ —Padraic Colum⟩
nigh *vb* -ED/-ING/-S [ME *nighen, neighen, neihen, neghen, neigh, neih*, adv.] *vt* : to draw or come near to : APPROACH ⟨trapped, noosed, ~*ing* his hour —A.E.Housman⟩ ~ *vi* : to draw near
nigh hand \"ˌ-\ *adv* [ME *nigh hand, neih hond*, fr. OE *nēh hond*, adv., nigh + *hand*] **1** : near at hand : close by ⟨*nigh hand* to where the new house was to be built —Baden⟩ **2** : NEARLY, ALMOST ⟨wasn't it enough for you to *nigh-hand* kill one o' my horses —Samuel Lover⟩
nigh·ly *adv* [ME *neli*, fr. OE *nēalice*, fr. *nēah*, adv. & adj., nigh + *-lice* -ly] : NEARLY, ALMOST
nigh·ness *n* -ES [ME, fr. *nigh* (adj.) + *-ness*] : the quality or state of being nigh
night \'nīt, *usu* -īd·+V\ *n* -s [ME *night, niht*, fr. OE *niht, næht, neaht;* akin to MD *nacht* night, OS & OHG *naht*, ON *nōtt, nātt*, Goth *nahts* night, OIr *in-nocht* tonight, W *nos* night, L *noct-, nox*, Gk *nykt-, nyx*, Skt *nakt, naktī*, Lith *naktis*, OSlav *nošt'*] **1** : the part of the solar day when the sun is beneath the horizon; *esp* : the time from dusk to dawn when no light of the sun is visible ⟨had an exhausting ~ alone in the woods⟩ ⟨extra pay for working at ~⟩ ⟨dine, drink, dance, or gamble by ~ —T.H.Fielding⟩ — compare DAY **2 a** : an evening or night taken as an occasion or point of time ⟨saw the opera on the opening ~⟩ ⟨saw the satellite on the third ~⟩ **b** (1) : an evening set aside for a particular purpose ⟨it was bingo ~ and everybody was at the movies —Theodora Keogh⟩ (2) : an evening program ⟨hold an amateur ~⟩ ⟨plan a ladies' ~ for the men's next club meeting⟩ **c** : the evening following a particular day ⟨Christmas ~⟩ ⟨their wedding ~⟩ ⟨election ~⟩ — compare EVE **3 a** : DARKNESS ⟨under cover of ~ swooped in among the cumbersome ships of the line —Frank Yerby⟩ **b** : a condition or period felt to resemble the darkness of night; *specif* : a period of dreary inactivity or affliction : mental or moral darkness ⟨the glories of Roman civilization were lost in a gloomy ~ of ignorance, superstition, and barbarism —R.A.Hall b.1911⟩ **c** : the beginning of darkness : NIGHTFALL ⟨rainbow at ~, sailors' delight⟩ ⟨waited until *it was* ~⟩ **4 a** : *the period* between sunset or the evening meal and bedtime ⟨went bowling every ~⟩ ⟨Thursday evening is their maid's ~ out⟩ **b** : the period between nightfall or 6 p.m. and midnight ⟨the ~ of May 1⟩ **c** : the period between bedtime and morning usu. spent in bed ⟨slept quietly all ~⟩ **d** : a time for sexual intercourse **e** : a period of gainful employment coming during or chiefly during the night ⟨began his ~ at eleven and got off at seven⟩ ⟨paid the lecturer $500 a ~⟩ **5** *archaic* : TONIGHT — used with *the* **6** : a night's rest ⟨the patient had a good ~⟩
night \"\ *vi* -ED/-ING/-S [ME *nighten, fr. night*, n.] : to remain during the night : to spend the night
night \"\ *adj* [*night*] **1** : of, relating to, or associated characteristically with the night ⟨~ poetry⟩ ⟨~ air⟩ **2** : intended for use at night ⟨a ~ lamp⟩ ⟨the ~ bell⟩ **3** : existing, occurring, or carried out during the night ⟨the ~ view of the city⟩ ⟨~ noises⟩ ⟨~ baseball⟩ **4 a** (1) : working at night ⟨a ~ nurse⟩ ⟨the ~ clerk⟩ (2) : of or relating to work done at night ⟨posted the ~ hours⟩ **b** : operating at night ⟨the ~ train⟩ **5** : active or effective at night ⟨a ~ fly⟩
night adder *n* : any of several nocturnal African vipers (genus *Causus*) with greatly enlarged venom glands extending along the neck
night and day *adv* [ME, fr. OE *nuht & dæg*] : CONTINUALLY
night ape *n* **1** : any of several small nocturnal Central and So. American monkeys of the genus *Aotes* with whitish ruff, long nonprehensile tail, short ears, and very large yellow eyes — called also *owl monkey* **2** : BUSH BABY
night ark *n, Brit* : a small chicken house with a slatted floor often measuring six by three feet
night bird *n* **1** : a bird associated with night: as **a** : OWL **b** : NIGHTINGALE **c** : MOORHEN **d** : MANX SHEARWATER **2** : NIGHTHAWK 2
night-blind \'ˌ-ˌ\ *adj* [back-formation fr. *night blindness*] : afflicted with night blindness
night blindness *n* : NYCTALOPIA
night-blooming cereus \'ˌ-ˌ--\ *n, pl* **night-blooming cereuses** : any of several night-blooming cacti: as **a** : a slender sprawling or climbing cactus (*Selenicereus grandiflorus*) that has ribbed stems and yellow spines and is often cultivated for its very large showy white strongly-scented flowers which are followed by yellow red-streaked fruits **b** : any of several cacti of the genera *Cereus* and *Hyalocereus* with flexuous climbing angled branches and large fragrant white flowers
night blue *n* : a dark grayish blue that is greener and paler than indigo
night bolt *n* **1** : the bolt of a night latch **2** : an auxiliary bolt on the inside of a door to prevent opening from the outside except by a key
nightcap \'ˌ-ˌ\ *n* [ME *night cappe*, fr. *night* + *cappe* cap] **1 a** : a cloth cap worn with nightclothes **b** *or* **nightcap wig** *archaic* : a close-fitting wig **2** : a cloud resting about the summit of a mountain or hill **3** : something usu. soporific (as hot cocoa or toddy) taken at bedtime **4** : the final race or contest of a day's sports; *esp* : the final game of a baseball doubleheader



nightcap 1a

nightcaps *n pl but sing or pl in constr* [pl. of *nightcap*] : WOOD ANEMONE a
night cart *n* : a cart for removing night soil
night chair *n* : CLOSESTOOL
nightchurr \'ˌ-ˌ\ *n* -s : the European goatsucker
nightclothes \'ˌ-ˌ\ *n pl* **1** : garments worn in bed ⟨left me in total darkness, to scramble into my ~ as I could —Jane W. Carlyle⟩ **2** *obs* : informal evening wear
night cloud *n* : STRATUS
nightclub \'ˌ-ˌ\ *n* : a restaurant open at night usu. serving liquor, having a floor show, and providing music and space for dancing
nightclub \"\ *vi* : to patronize nightclubs ⟨*nightclubbed* until the early hours . . . with a long-haired blond —*Associated Press*⟩ — **nightclubber** \"+ə(r)\ *n*
night court *n* : a criminal court in a large city that sits at night (as for summary disposition of criminal charges and the granting of bail)
night crawler *n* : EARTHWORM; *esp* : a large earthworm found on the surface of the soil usu. at night and used for fish bait
night crow *n* [ME *nihtcrowe, night crowe*, fr. *niht, night* night + *crowe* crow] : a bird that cries in the night; *esp* : NIGHT HERON
night dial *n* **1** : a dial showing time by the moon's shadow — called also *moondial* **2** : a clockface made luminous at night by a light from behind or by radioluminescent paint
nightdress \'ˌ-ˌ\ *n* **1** : NIGHTGOWN **2** : NIGHTCLOTHES
night-ed \'nīd·əd\ *adj* [fr. past part. of obs. *night* to become night, grow dark, benight, fr. ME *nighten* (also, to spend the night) — more at NIGHT (v.)] **1** : DARKENED, CLOUDED **2** : BENIGHTED
night editor *n* : an editor in charge of the final makeup of a morning paper
night effect *n* : a shifting of the apparent direction of arrival of radio waves received with a direction finder that is sometimes accompanied by other irregularities of wave behavior and is most commonly observed at night
night emerald *n* : chrysolite or olivine having by artificial light a color resembling emerald and being used as a gem
night-ery \'nīd-ərē\ *n* -ES : NIGHTCLUB
nightfall \'ˌ-ˌ\ *n* : the close of the day : DUSK
night fighter *n* : a fighter plane equipped with searchlights or radar and used at night as an interceptor
nightflit \'ˌ-ˌ\ *n* [prob. fr. *night* + *flit* (v.)] : WOODCOCK
night-flowering catchfly \'ˌ-ˌ--\ *n* : a European herb (*Silene noctiflora*) *naturalized in No. America* and having fragrant white or pink night-blooming flowers
nightfowl \'ˌ-ˌ\ *n* : NIGHT BIRD
nightgear \'ˌ-ˌ\ *n* : NIGHTCLOTHES 1
night glass *n* : a telescope having a low f-number to increase the light-gathering power for use at night
night glasses *n pl* : binoculars of similar design to the night glass
nightgown \'ˌ-ˌ\ *n* [ME *nightgoun*, fr. *night* + *goun* gown] **1** *archaic* : a loose gown suitable for wear on evenings at home : DRESSING GOWN ⟨found him . . . wrapped in a tartan ~ —Sir Walter Scott⟩ **2** : a garment resembling a dress or shirt designed for wear in bed ⟨she rose in her pale ~ —W.B. Yeats⟩ ⟨stockinet ~s are comfortable . . . for the baby —Benjamin Spock⟩
night green *n* [*so called because it retains its greenness at night even under a dim gaslight*] : a strong yellowish green that is paler than shamrock green and greener and less strong than Cyprus green
nighthawk \'ˌ-ˌ\ *n* **1 a** : any of several No. American goatsuckers of the genus *Chordeiles* related to the whippoorwill; *specif* : a goatsucker (*C. minor*) common in the eastern U.S. that is marbled black, brown, and ocherous with white on the wings, throat, and in the male also on the tail and that feeds on insects which it secures on the wing principally at twilight flying at a considerable height and often diving almost vertically **b** : the European nightjar **c** : any of several large petrels of the genera *Pterodroma* and *Prion/inus* inhabiting southern seas **d** *Austral* : MOREPORK 1 **2** : a person who habitually stays up or goes about late at night **3** : an independent taxicab operated chiefly at night **4** : a ranch hand *who works at night on the range; specif* : a hand who herds the saddle horses at night
night heron *n* : any of various nocturnal or crepuscular herons of *Nycticorax* and related genera found in most temperate and tropical regions; *esp* : a heron (*N. nycticorax*) that ranges from southern Europe to India and northern Africa — see BLACK-CROWNED NIGHT HERON, YELLOW-CROWNED NIGHT HERON
night hitch *n* [*night* + *hitch* (v.); fr. its use on night duty] : BUNKER SUIT
night horn *n* [prob. trans. of G *nachthorn*] : COR-DE-NUIT
night-ie *also* **nighty** \'nīd-ē\ *n, pl* **nighties** [*night*gown + *-ie* or *-y*] : NIGHTGOWN 2; *esp* : one for a woman or child
nighting *pres part of* NIGHT
night-in-gale \'nī|t°n,gāl, |d·ən,-, |tən,- *sometimes* |d·iŋ,g- *or* |d·ēŋ,g- *or* |t- *or* |tē-\ *n* -s [ME *nihtegale, nightingale*, fr. OE *nihtegale*, fr. *niht* night + *-gale* (fr. *galan* to sing); akin to OS *nahtigala* nightingale, MD *nachtegale*, OHG *nahtagala* — more at NIGHT, YELL] **1** : any of several Old World thrushes of the genus *Luscinia*: as **a** : a thrush (*L. megarhyncha*) common in Great Britain that is about six inches long and russet brown above with the rump and tail lighter and the under parts whitish and that is noted for the sweet song of the male often heard at night during the breeding season **b** : a similar but larger thrush (*L. luscinia*) of eastern Europe **2** : any of various birds that sing at night
night intruder *n* : an airplane equipped with navigation and radar equipment for flying into enemy territory at night
night intrusion *n* : the air tactic of interdicting enemy supply lines at night
nightjar \'ˌ-ˌ\ *n* [*night* + *jar* (pound); *fr. its harsh sound*] : a common grayish brown European nocturnal bird (*Caprimulgus europaeus*) that is speckled and barred with dark brown and buff and in the male has white markings on wing tips and outer tail feathers; *broadly* : GOATSUCKER — used esp. of Old World forms
night jasmine *n* **1** : HURSINGHAR **2** : a tropical shrub (*Cestrum nocturnum*) with tubular yellow flowers
night kaka *n* : KAKAPO
night key *n* : a key for operating a night latch
night latch *or* **night lock** *n* : a door lock having a spring bolt operated from the outside by a key and from the inside by a knob
night-less \'nītləs\ *adj* : having no night — **night-less-ness** *n* -ES
night letter *also* **night lettergram** *n* : a *telegram sent at night* at a reduced rate per word
night life *n* : the activity of pleasure-seekers at night (as in nightclubs)
night lifer *n* [*night life* + *-er*] : a person taking part in night life : NIGHTCLUBBER ⟨the *night lifers* . . . listen to the best Negro bands and pay feverish prices for liquor —Earl Brown⟩
night-light \'ˌ-ˌ\ *n* : a light kept burning at night
night line *n* : a fishline set overnight
nightlong \'ˌ-ˌ\ *adj* [*night* + *long*] : lasting the whole night ⟨a ~ festivity⟩
nightlong \"\ *adv* : through the whole night ⟨working ~ to save whom they could —*Newsweek*⟩
night-ly \'nītlē, -lī\ *adj* [ME *nightly, nihtlich*, fr. OE *nihtlic*, fr. *niht*, n., night + *-lic* -ly] **1** : of or relating to the night or every night ⟨peering *into the* ~ *murk* —*Springfield (Mass.) Union*⟩ **2** : happening, done, or used by night or every night ⟨giving five-minute ~ analyses of the news —*Current Biog.*⟩
nightly \"\ *adv* [ME, fr. *nightly*, adj.] : every night ⟨gathered ~ to listen to the band concerts⟩; *also* : at or by night
night-man \'nītmən, *in sense 2* -ˌman *or* -ˌmaa(ə)n\ *n, pl* **nightmen** **1** : a man who empties privies by night **2** *usu* **night man** : a man whose work is at night; *specif* : NIGHT WATCHMAN 1
night-mare \'nīt,ma(ə)(ə)r, -me|, |ə\ *n* [ME, fr. *night* + *mare* (spirit)] **1** : an evil spirit formerly thought to oppress people during sleep: as **a** : INCUBUS **b** : SUCCUBUS **c** : a hag sometimes believed to be accompanied by nine attendant spirits ⟨the ~, with her whole ninefold, seems to make it the scene of her gambols —Washington Irving⟩ **2** : a frightening dream *accompanied by a sense of oppression or suffocation* that usu. awakens the sleeper **3 a** : something producing a feeling of burden, agitation, anxiety, or terror : a source of trouble or worry ⟨the worst ~s were the bridges high above rushing torrents —Dillon Ripley⟩ ⟨the ~ of the surgeon dealing with battle wounds is infection —C.L.Boltz⟩ **b** : APPREHENSION, WORRY ⟨the life of a hotel man here is precarious and full of ~s —Sam Schneider⟩ **4** : an experience, situation, or work of imagination having the monstrous character of a nightmare ⟨their existence would be one living ~ of hideous watchfulness and dread —*Blue Bk.*⟩ ⟨signs that we dwellers in the modern ~ love one another —F.A.Swinnerton⟩ ⟨an enormous imitation palace . . . a ~ of pretentiousness —John Hersey⟩ **syn** see FANCY
nightmare \"\ *adj* **1** : of or relating to a nightmare ⟨a ~ *obsession in some current poetry*⟩ **2** : NIGHTMARISH ⟨began a ~ existence in an iron lung —*N.Y. Times Book. Rev.*⟩ ⟨years that seemed to pass with ~ speed —William DuBois⟩
night-mar-ish \-ma(a)rish, -mer-, -rēsh\ *adj* : resembling or suggestive of a nightmare ⟨had a ~ memory of certain doorknobs . . . horrible in color and in shape —Royal Cortissoz⟩ ⟨paints a ~ picture —Henry Hazlitt⟩ — **night-mar-ish-ly** *adv* — **night-mar-ish-ness** *n* -ES
night monkey *n* : NIGHT APE
night owl *n* : a person who keeps late hours at night : NIGHTHAWK
night parrot *n* **1** : KAKAPO **2** : a nearly extinct nocturnal terrestrial parrot (*Geopsittacus occidentalis*) of western Australia
night partridge *or* **night peck** *n* [*night partridge* fr. *night* + *partridge; night peck* fr. *night* + *peck* (v.)] : WOODCOCK
night piece *n* : a work (as a picture, composition, or writing) dealing with night
night rail *n* : a woman's loose robe or gown formerly worn as a nightgown or dressing gown
night raven *n* [ME, fr. OE *niht-hræfn*, fr. *niht* night + *hræfn* raven] : a bird that cries at night; *esp* : NIGHT HERON
night rider *n* : one that rides at night; *esp* : a member of a secret band who ride masked at night doing acts of violence for the purpose of punishing or terrorizing
night-riding \'ˌ-ˌ-\ *n* : activity of or resembling that of night riders
night-robe \'ˌ-ˌ\ *n* : NIGHTGOWN ⟨in her *night-robe* loose she lay reclined —Sir Walter Scott⟩
night rocket *n* : DAME'S VIOLET
nights \'nīts\ *adv* [ME *nightes*, fr. OE *nihtes*, adverbial gen. of *niht* night — more at NIGHT] : in the nighttime repeatedly ⟨he had written it ~ and over weekends —*Current Biog.*⟩ : on any night ⟨gets little sleep ~⟩
night-scented stock \'ˌ-ˌ--\ *n* : an annual or biennial stock (*Matthiola bicornis*) having very fragrant lilac or purplish flowers followed by forked elongated seed pods
night school *n* : school held in the evening; *specif* : a course offered (as by a university or high school) for people in working life and often stressing vocational training and recreational activities as well as general education — compare ADULT EDUCATION
nightshade \'ˌ-ˌ\ *n* [ME *nighteschede, nightschode*, fr. OE *nihtscada*, prob. fr. *niht* night + *sceadu* shade; akin to MD *nachtschade* nightshade, OHG *nahtscato* — more at SHADE] **1** : any plant of the genus *Solanum*: as **a** : BLACK NIGHTSHADE **b** : BITTERSWEET 2a **2** : BELLADONNA 1 **3** : HENBANE 1a

…\ˌnēzhir'wä, -ˌzher-\ *n, pl* **nigerois** \-wä(z)\ *cap* … *fr. Niger*, country in western Africa + F *-ois* …] : a native or inhabitant of the Republic of …

…[prob. fr. *Niger* river, West Africa, where it …] : the seed of ramtil that yields a valuable oil

…oil *n* [*niger seed*] : a drying oil obtained from the …ramtil and used in food, soap, and paints

…\ˈnig-(ə)rd\ *n* -s [ME *nigart, nigard, niggard*, prob. …*ig* niggard (of Scand origin) + *-art, -ard;* akin to …niggardly, stingy, *hnēggva, hnyggja* to humble, …akin to OE *hnēaw* niggardly, stingy, OHG …crush, Gk *knyein* to scratch, *knoos, knous* grating …axle, sound of footsteps, *knuos* itch, Latvian …to itch and to L *ciner-, cinis* ashes — more at …] : a person meanly close and covetous : MISER

…\ *adj* [ME *nigart*, adj. & n.] **1** : NIGGARDLY, …storekeepers who refused to pay . . . his modest …contrarium —Ben Riker) (cold, unappreciative, …even modified praise —Arnold Bennett) **2** : re…or displaying niggardliness : SCANTY (the shop… …is ~ and shabby —W.C.Brownell)

…ly/-ING/-s *vt, obs* : to act niggardly — *vt, obs* : to …rdly manner

…ness \-dlēnəs\ *n* -ES : the quality or state of being …

…\-lē, -lī\ *adj* [*niggard* + *-ly*] **1** : grudgingly …with money or possessions or to grant favors …not ~, these tramps, and he who had money did …to share it —W.S.Maugham) (so ~ about entry …country —Bernard Pares) **2** : provided in meanly …supply : SCANTY (the country has been handicapped …export resources —V.H.Whitney) **syn** see STINGY

…\ *adv* [*niggard* + *-ly*] : in the manner of a …people of our respective states . . . cannot afford …with their universities —L.M.Chamberlain)

…ness *n* -ES [*niggard* + *-ness*] : NIGGARDLINESS

…(r)\ *n* -s *often attrib* [alter. of *neger* or *niger*] …usu. taken to be offensive **b** : a member …Indian, a Filipino, an Egyptian) of any very dark… …usu. taken to be offensive **2** : any of several …insect larvae (as of some ladybugs and of the …) **3** : COTTON SPINNER **4** : a steam-operated …warping river steamboats over snags and shallows …toothed power-propelled lever arm used to position …log (as in a sawmill)

…\ *vt* -ED/-ING/-S : to divide (a log) by burning — …*off* (~*ed* off into lengths —Conrad Richter)

…*n, Southwest* : either of two herbs: **a** : a …*ula bipinnatifida*) with purple flowers **b** : a …grass (*Sisyrinchium bellum*) with purplish blue …used in pl.

… : NEGRO BUG

… : a small firework that shoots about on the …

… : BLACK-EYED SUSAN 1

…\ *n* : CONEY 5a

…\ *n, pl* **niggergeese** : CORMORANT

…\ *n* **1** : a dark-colored mound or clump of …(as a hummock of tundra or a tussock of sedge in a …bog) found in far northern regions (as Alaska) …black chewing tobacco : NEGROHEAD **3 a** : a …colored nodule or boulder **b** : a coral boulder …and thrown to the surface by wind and wave action …Great Barrier reef) **4** : a large blackish smooth… …freshwater mussel (*Quadrula ebena*) used in button …sometimes producing valuable pearls **5 a** (1) : any …(plants of the genus *Rudbeckia* (2) : a ribgrass …(*Lancolata*) (3) : a wild peony (*Paeonia brownii*) of …U.S. (4) : the common greenbrier (*Smilax rotundi…*) of No. America (5) : PURPLE CONEFLOWER …(1) : the spiny head of a saltwort (2) : NEGROHEAD …a drum on a windlass **b** : BOLLARD **7** *Canad* …*n* : a small wire nail driven into the furniture of a …printer's press to produce a black mark on the feed… …of the printed sheet as a guide for trimming and …(1) : a mark made by a niggerhead (2) : a similar …or collating mark

…*nus n* : BISNAGA

…*n, slang* : the highest balcony or row of seats …

…**woodpile** : something (as a concealed motive or …) contrary to appearances in a situation

…*n* : JERSEY PINE

…\ *n* : SLINGSHOT

…\ *n* **1** *South* : any of various herbs (as of the …*illardia, Coreopsis*, and *Rudbeckia*) having flower …black or dark-colored disks **2** : BRAZIL NUT

…\ *n* : JOE-PYE WEED

…\ *n* : a sedge (*Carex filifolia*) of the western …of No. America that is used for mulch in erosion …

…\ *adj* [*nigger* + *-y*] : characteristic of a …part of NIG

…\ *vb* **niggled; niggled; niggling** \-g(ə)liŋ\ [of…unknown] *vi* **1 a** : TRIFLE (didn't ~ with . . . …but printed the lecture title as it was received …**b** : to work meticulously; *esp* : to spend too …much on minor details **2** : to find fault constantly in a …CARP (she haggles, she ~*s*, she wears out our …—Virginia Woolf) **3** : GNAW (a tiny *niggling* noise …—Ruth Park) (the question which had *niggled* …his brain —J.E.Macdonnell) — *vt* : to give …in tiny portions (it seems greedier to me to . . . ~ …bits —Florence Bullock)

…(ə)l(ə)r\ *n* -S : one that niggles (the ~*s* . . . take …their discovery of a trifling error and go to …him to point it out —Philip Wylie)

…\ *n* -S [Paul *Niggli* †1953 Swiss mineralo…] : a mineral $PtTe_3$(?) consisting of a telluride of …found in Griqualand East

…(*r. pres. part. of niggle*] **1** : PETTY (impatient …patterns and regular meters, which they find ~ and …—Louise Bogan) **2 a** : METICULOUS (begin some …finally the preparation of a very careful drawing …**b** : overelaborate or feeble in execution (the …trailed off in ~ strokes —*Atlantic*) — **nig·gling·ly**

…(ə)liŋ\ *adj* -ER/-EST [*niggle* + *-y*] : NIGGLING …NOUN

…\ *adv* -ER/-EST [ME *nigh, neigh, neih, neh*, adv. & …*nēah, nēh;* akin to OS *nāh*, adv. & adj., nigh, …adv., OHG *nāh*, adv. & adj., nigh, prep., …*nā-* (in composition) nigh, Goth *nehw, nehwa*, …perh. to Skt *naśati* he attains, reaches — more

to *nigh-hand* kill one o' my horses —Samuel Lover)

nigh·ly *adv* [ME *nell*, fr. OE *nēalīce*, fr. *nēah*, adv. & adj., nigh + *-līce* -ly] : NEARLY, ALMOST

nigh·ness *n* -ES [ME, fr. *nigh* (adj.) + *-ness*] : the quality or state of being nigh

¹night \ˈnīt, *usu* -īd·+V\ *n* -S [ME *night, niht*, fr. OE *niht, næht, neaht;* akin to MD *nacht* night, OS & OHG *naht*, ON *nōtt, nātt*, Goth *nahts* night, OIr *in-nocht* tonight, W *nos* night, L *noct-, nox*, Gk *nykt-, nyx*, Skt *nakt, nakti*, Lith *naktis*, OSlav *noštĭ*] **1** : the part of the solar day when the sun is beneath the horizon; *esp* : the time from dusk to dawn when no light of the sun is visible (had an exhausting ~ alone in the woods) (extra pay for working at ~) (dine, drink, dance, or gamble by ~ —T.H.Fielding) — compare DAY **2 a** : an evening or night taken as an occasion or point of time (saw the opera on the opening ~) (saw the satellite on the third ~) **b** (1) : an evening set aside for a particular purpose (it was bingo ~ and everybody was at the movies —Theodora Keogh) (2) : an evening program (hold an amateur ~) (plan a ladies' ~ for the men's next club meeting) **c** : the evening following a particular day (Christmas ~) (their wedding ~) (election ~) — compare EVE **3 a** : DARKNESS (under cover of ~ swooped in among the cumbersome ships of the line —Frank Yerby) **b** : a condition or period felt to resemble the darkness of night; *specif* : a period of dreary inactivity or affliction : mental or moral darkness (the glories of Roman civilization were lost in a gloomy ~ of ignorance, superstition, and barbarism —R.A.Hall b.1911) **c** : the beginning of darkness : NIGHTFALL (rainbow at ~, sailors' delight) (waited until it was ~) **4 a** : the period between sunset or the evening meal and bedtime (went bowling every ~) (Thursday evening is their maid's ~ out) **b** : the period between nightfall or 6 p.m. and midnight (the ~ of May 1) **c** : the period between bedtime and morning usu. spent in bed (slept quietly all ~) **d** : a time for sexual intercourse **e** : a period of gainful employment coming during or chiefly during the night (began his ~ at eleven and got off at seven) (paid the lecturer $500 a ~) **5** *archaic* : TONIGHT — used with *the* **6** : a night's rest (the patient had a good ~)

²night \"\ *vi* -ED/-ING/-S [ME *nighten*, fr. *night*, n.] : to remain during the night : to spend the night

³night \"\ *adj* [*¹night*] **1** : of, relating to, or associated characteristically with the night (~ poetry) (~ air) **2** : intended for use at night (a ~ lamp) (the ~ bell) **3** : existing, occurring, or carried out during the night (the ~ view of the city) (~ noises) (~ baseball) **4 a** (1) : working at night (a ~ nurse) (the ~ clerk) (2) : of or relating to work done at night (posted the ~ hours) **b** : operating at night (the ~ train) **5** : active or effective at night (a ~ fly)

night adder *n* : any of several nocturnal African vipers (genus *Causus*) with greatly enlarged venom glands extending along the neck

night and day *adv* [ME, fr. OE *nuht & dæg*] : CONTINUALLY

night ape *n* **1** : any of several small nocturnal Central and So. American monkeys of the genus *Aotes* with whitish ruff, long nonprehensile tail, short ears, and very large yellow eyes — called also *owl monkey* **2** : BUSH BABY

night ark *n, Brit* : a small chicken house with a slatted floor often measuring six by three feet

night bird *n* **1** : a bird associated with night: as **a** : OWL **b** : NIGHTINGALE **c** : MOORHEN **d** : MANX SHEARWATER **2** : NIGHTHAWK 2

night-blind \ˈ-ˌ-\ *adj* [back-formation fr. *night blindness*] : afflicted with night blindness

night blindness *n* : NYCTALOPIA

night-blooming cereus \ˈ-ˌ--\ *n, pl* **night-blooming cereuses** : any of several night-blooming cacti: as **a** : a slender sprawling or climbing cactus (*Selenicereus grandiflorus*) that has ribbed stems and yellow spines and is often cultivated for its very large showy white strongly-scented flowers which are followed by yellow red-streaked fruits **b** : any of several cacti of the genera *Cereus* and *Hyalocereus* with flexuous climbing angled branches and large fragrant white flowers

night blue *n* : a dark grayish blue that is greener and paler than indigo

night bolt *n* **1** : the bolt of a night latch **2** : an auxiliary bolt on the inside of a door to prevent opening from the outside except by a key

nightcap \ˈ-ˌ-\ *n* [ME *night cappe*, fr. *¹night* + *cappe* cap] **1 a** : a cloth cap worn with nightclothes **b** *or* **nightcap wig** *archaic* : a close-fitting wig **2** : a cloud resting about the summit of a mountain *or* hill **3** : something usu. soporific (as hot cocoa or toddy) taken at bedtime **4** : the final race or contest of a day's sports; *esp* : the final game of a baseball doubleheader

nightcap 1a

nightcaps *n pl but sing or pl in constr* [pl. of *nightcap*] : WOOD ANEMONE a

night cart *n* : a cart for removing night soil

night chair *n* : CLOSESTOOL

nightchurr \ˈ-ˌ-\ *n* -S : the European goatsucker

nightclothes \ˈ-ˌ-\ *n pl* **1** : garments worn in bed (left me in total darkness, to scramble into my ~ as I could —Jane W. Carlyle) **2** *obs* : informal evening wear

night cloud *n* : STRATUS

¹nightclub \ˈ-ˌ-\ *n* : a restaurant open at night usu. serving liquor, having a floor show, and providing music and space for dancing

²nightclub \"\ *vi* : to patronize nightclubs (*nightclubbed* until the early hours . . . with a long-haired blond —*Associated Press*) — **nightclubber** \"+ə(r)\ *n*

night court *n* : a criminal court in a large city that sits at night (as for summary disposition of criminal charges and the granting of bail)

night crawler *n* : EARTHWORM; *esp* : a large earthworm found on the surface of the soil usu. at night and used for fish bait

night crow *n* [ME *nihtcrowe, night crowe*, fr. *niht, night* night + *crowe* crow] : a bird that cries in the night; *esp* : NIGHT HERON

night dial *n* **1** : a dial showing time by the moon's shadow — called also *moondial* **2** : a clockface made luminous at night by a light from behind or by radioluminescent paint

nightdress \ˈ-ˌ-\ *n* **1** : NIGHTGOWN **2** : NIGHTCLOTHES

night-ed \ˈnīd·əd\ *adj* [fr. past part. of obs. *night* to become night, grow dark, benight, fr. ME *nighten* (also, to spend the night) — more at NIGHT (v.)] **1** : DARKENED, CLOUDED **2** : BENIGHTED

night editor *n* : an editor in charge of the final makeup of a morning paper

night effect *n* : a shifting of the apparent direction of arrival of radio waves received with a direction finder that is sometimes accompanied by other irregularities of wave behavior and is most commonly observed at night

night emerald *n* : chrysolite or olivine having by artificial light paler than shamrock green and g… Cyprus green

nighthawk \ˈ-ˌ-\ *n* **1 a** : any of … suckers of the genus *Chordeiles* … will; *specif* : a goatsucker (*C. mi…* U.S. that is marbled black, brow… on the wings, throat, and in the ma… feeds on insects which it secures … twilight flying at a considerable he… vertically **b** : the European night… petrels of the genera *Pterodroma* … southern seas **d** *Austral* : MOREP… habitually stays up or goes about … pendent taxicab operated chiefly … who works at night on the range; *s…* saddle horses at night

night heron *n* : any of various noct… of *Nycticorax* and related genera f… tropical regions; *esp* : a heron (*N. …* southern Europe to India and no… CROWNED NIGHT HERON, YELLOW-C…

night hitch *n* [*¹night* + *hitch* (v.)] : BUNKER SUIT

night horn *n* [prob. trans. of G *na…*

night-ie *also* **nighty** \ˈnīd-ē\ *n, pl* … or *-y*] : NIGHTGOWN 2; *esp* : one f…

nighting *pres part of* NIGHT

night-in-gale \ˈnī|tᵊnˌgāl, |d-ən,-, …|d-ēŋˌg- *or* |tī- *or* |tē-\ *n* -S [ME *n…* *nihtegale*, fr. *niht* night + *-gale* (fr… *nahtigala* nightingale, MD *nachtega…* at NIGHT, YELL] **1** : any of several … genus *Luscinia*: as **a** : a thrush (*L…* Great Britain that is about six inc… above with the rump and tail li… whitish and that is noted for the s… heard at night during the breedin… larger thrush (*L. luscinia*) of eas… various birds that sing at night

night intruder *n* : an airplane equ… radar equipment for flying into en…

night intrusion *n* : the air tactic o… lines at night

nightjar \ˈ-ˌ-\ *n* [*¹night* + *jar* (p… : a common grayish brown Europ… *mulgus europaeus*) that is speckled … and buff and in the male has white … outer tail feathers; *broadly* : GOAT… World forms

night jasmine *n* **1** : HURSINGH… (*Cestrum nocturnum*) with tubular …

night kaka *n* : KAKAPO

night key *n* : a key for operating a …

night latch *or* **night lock** *n* : a doo… operated from the outside by a ke… knob

night-less \ˈnītləs\ *adj* : having n… *n* -ES

night letter *also* **night lettergram** … at a reduced rate per word

night life *n* : the activity of pleas… nightclubs)

night lifer *n* [*night life* + *-er*] : a … life : NIGHTCLUBBER (the *night lifers* … bands and pay feverish prices for …

night-light \ˈ-ˌ-\ *n* : a light kept …

night line *n* : a fishline set overnig…

¹nightlong \ˈ-ˌ-\ *adj* [*¹night* + *lon…* (a ~ festivity)

²nightlong \"\ *adv* : through the … save whom they could —*Newsweek*

¹night-ly \ˈnītlē, -li\ *adj* [ME *nightl…* *niht*, n., night + *-līc* -ly] **1** : of or r… night (peering into the ~ murk — … **2** : happening, done, or used by n… five-minute ~ analyses of the news…

²nightly \"\ *adv* [ME, fr. *nightly*, a… ~ to listen to the band concerts);

night-man \ˈnītmən, *in sense 2* … **nightmen** **1** : a man who emptie…

night man : a man whose work i… WATCHMAN 1

¹night-mare \ˈnīt,ma(ə)|(ə)r, -me… + *mare* (spirit)] **1** : an evil spirit f… people during sleep: as **a** : INCUBU… sometimes believed to be accompani… (the ~, with her whole ninefold, se… her gambols —Washington Irving) … accompanied by a sense of oppressi… awakens the sleeper **3 a** : someth… burden, agitation, anxiety, or terro… worry (the worst ~*s* were the bridg… rents —Dillon Ripley) (the ~ of th… tle wounds is infection —C.L.Bo… WORRY (the life of a hotel man her… ~*s* —Sam Schneider) **4** : an experi… imagination having the monstrous … (their existence would be one living … and dread —*Blue Bk.*) (signs that w… love one another —F.A.Swinnerton… palace . . . a ~ of pretentiousness … FANCY

²nightmare \"\ *adj* **1** : of or rela… obsession in some current poetry) … ~ existence in an iron lung —*N.Y.* … that seemed to pass with ~ speed —

night-mar·ish \-ma(ə)rish, -mer-, -… suggestive of a nightmare (had a ~ … knobs . . . horrible in color and in … (paints a ~ picture —Henry Hazl… *adv* — **night-mar·ish·ness** *n* -ES

night monkey *n* : NIGHT APE

night owl *n* : a person who keeps la… HAWK

night parrot *n* **1** : KAKAPO **2** : a ne… restrial parrot (*Geopsittacus occident…*

night partridge *or* **night peck** *n* [… + *partridge; night peck* fr. *¹night* + …

night piece *n* : a work (as a picture, … dealing with night

night rail *n* : a woman's loose robe or … nightgown or dressing gown

night raven *n* [ME, fr. OE *nihthræ…* raven] : a bird that cries at night; *e…*

night rider *n* : one that rides at nig… secret band who ride masked at night

DOCK OF THE BA

Restaurant & Bar

Millers Island, Maryland

Entertainment Schedule

Date	Band	Time
Saturday 4/8	DJ BATMAN	9-1
Friday 4/14	DJ	9-1
Saturday 4/15	DJ	9-1
Friday 4/21	DJ	9-1
Saturday 4/22	DJ	9-1
Friday 4/28	North Point	9-1
Saturday 4/29	DJ	9-1
Saturday 5/6	The Epics	4-8
Sunday 5/7	Damon Dukes	4-8
Saturday 5/13	Phat City	4-8
Sunday 5/14	Steve Ports Band	4-8
Saturday 5/20	Blues Therapy	4-8
Sunday 5/21	Uptown East	4-8
Saturday 5/27	North Point	4-8
Sunday 5/28	Captain Quint	4-8
Saturday 6/3	The Epics	4-8
Sunday 6/4	Steve Ports Band	4-8
Saturday 6/10	Second Time Around	4-8
Sunday 6/11	Blind Buckwheat Gumbo	4-8
Saturday 6/17	Changing Horses	4-8
Sunday 6/18	Blues Therapy	4-8
Saturday 6/24		4-8
Sunday 6/25	Captain Quint	4-8

PROTESTANT'S

EXHIBIT NO. 9

Saturday 7/1	Phat City	4-8
Sunday 7/2	Uptown East	4-8
Saturday 7/8	Blind Buckwheat Gumbo	4-8
Sunday 7/9		4-8
Saturday 7/15	Time Will Tell	4-8
Sunday 7/16	Captain Quint	4-8
Saturday 7/22	Damon Dukes	4-8
Sunday 7/23	Steve Ports Band	4-8
Saturday 7/29	Blind Buckwheat Gumbo	4-8
Sunday 7/30	Radio Clowns	4-8
Saturday 8/5		4-8
Sunday 8/6	Uptown East	4-8
Saturday 8/12		4-8
Sunday 8/13	Blind Buckwheat Gumbo	4-8
Saturday 8/19	North Point	4-8
Sunday 8/20	Captain Quint	4-8
Saturday 8/26	Crewe	4-8
Sunday 8/27	The Epics	4-8
Saturday 9/2		4-8
Sunday 9/3		4-8
Saturday 9/9	Changing Horses	4-8

4/13/07

Wayne E Valkenaar Jr

Date

I RECENTLY READ AN ARTICLE IN THE EAST COUNTY TIMES THAT WAS ENTITTLED LIVE NEXT DOOR TO A POPULAR RETARANT? EITHER ACCEPT IT OR MOVE THE ARTICLE SAID SOME OF THE NEW RESIDENTS WERE "POSE" WITH THE DOCK OF THE BAY BECAUSE OF THE NOISE. THE PAPER ASK THE QUESTION WHY WOULD ANYONE BUILD A HOUSE NEXT TO A RESTARANT & NOT EXPECT TO HERE LIVE MUSIC & PEOPLE YELLING IN THE PARKING LOT. WELL I HAVE A FEW ANSWERS "1" TYE. #1 THE ZONING LAWS #2 THE LIQUOR BOARD #3 HISTORY OR PAST PERFORMANCE. YOU SEE I'VE LIVED NEXT TO THE FISHERMANS INN NOW THE DOCK OF THE BAY FOR 43 YEARS & MY PARENTS FOR 65 YEARS & MY GRAND PARENTS BEFORE THAT. FISHERMAN'S INN & DOCK OF THE BAY WERE ALWAYS KNOWN AS A GOOD PLACE TO EAT & LOOK AT THE BAY WITH A PEACEFULL ATMOSPHERE. THE NEW HOMES THAT WERE BUILT NEXT TO THE BAR WERE ALREADY STARTED BEFORE MR. THANNER ACQUIRED THE D.O.T.B. ONE OF THE LONGTIME RESIDENTS TOLD ME THIS ANALOGY, ITS JUST LIKE THE LITTLE AIR PARK THAT FLYS LITTLE CESNA'S IN & OUT PEOPLE LIVED NEXT DOOR TO IT FOR YEARS. THEN ONE DAY WITH OUT ANYONE KNOWING ITS SOLD & THE NEW OWNERS START FLYING COMERCIAL JETS IN & OUT WITH OUT THE PROPER ZONING, PERMITS OR COMMUNITY INPUT.

THE HISTORY IS WHEN EVER THERE WAS A PROBLEM IN THE PAST WE CALLED THE PREVIOUS OWNERS & THE PROBLEM WAS RESOLVED. IN THE PAST WE HAVE NEVER CALLED THE LIQ BOARD OR ZONING FOR ANYTHING & THE POLICE MAYBE 3 TIMES NOW WERE ON 1ST NAME BASIS. THE E C T SHOULD HAVE READ THERE OWN MISSION STATEMENT & DONE SOME RESERCH BEFORE PRINTING AN UNTRUE ARTICLE THEY MAKE IT SOUND SO EASY IF YOU DON'T LIKE IT JUST MOVE WELL OUR HOUSE AT 90 YRS WAS BUILT BY MY GRANDFATHER IN 1930 & I PROMISED MY GRANDMOTHER IT WOULD STAY IN THE FAMILY. WE DID HOWEVER SELL A HOUSE AT THE CORNER OF 6TH ST. IT TOOK OVER A YEAR & A HALF & $50,000. BELOW MARKET VALUE TO SELL. THE REASON WAS BECAUSE WHEN SOMEONE CAME TO LOOK AT THE HOUSE ONE QUESTION WAS ALWAYS ASKED DO YOU HAVE ANY PROBLEMS WITH THE BARS

QuickNotes

PROTESTANT'S

EXHIBIT NO. 15

Date

THE ANSWER WAS THAT WE HAVE NO PROBLEMS WITH THE ISLANDER BUT WE DO WITH THE D.O.T.B. & WE WOULD INVITE THE PEOPLE TO SPEND THE WEEKEND TO SEE IF THIS WAS WHERE THEY WANTED TO LIVE. WE EVENTUALLY FOUND GREAT NEIGHBOR WHO WERE VERY FAMILIAR WITH MILLERS ISLAND & WERE OPTIMITIC THAT THE ZONING LANS WOULD BE UPHELD & THE SITUATION WOULD ONLY GET BETTER. AT ONE OF THE LIQOR BOARD HEARING I BELIEVE IT WAS THE HEARING WHERE THE BOARD WERE UNABLE TO REVIEW NONE OF THE 15 TO 20 POLICE REPORTS BECAUSE THEY WERE MISPLACED. A WOMAN WHO CLAIMED SHE LIVED 1 BLOCK AWAY FROM THE D.O.T.B. & HAD NO PROBLEM WITH THE NOISE. SHE ACTUALLY LIVED IN EDGMERE, BUT CARRIED A LARGE SIGN THAT READ GOOD FOR THE NEIGHBORHOOD. SHE ASKED ME WHY I HAD TO RUIN IT FOR EVERYONE ELSE WHY COULDN'T MY FAMILY JUST GO INSIDE & CLOSE THE DOORS & WINDOWS & TURN ON THE A/C.? I TOLD HER #1 EVEN ALL CLOSED UP I CAN STILL HERE THE MUSIC, CLAPPING, WHISTLING & YELLING, & #2 SHOULD MY FAMILY REALLY HAVE TO DO THIS.

MY QUESTION TO YOU IS WHEN IS AN ESTABLISHMENT DEEMED GOOD FOR THE NEIGHBORHOOD WHEN IT COSTS IT'S NEIGHBORS, TIME MONEY, GREATER ODDS OF OUR FAMILIES BEING HURT OR KILLED BY DRUNK DRIVER PARKING CONJESTION NOISE POLLUTION, LOSS OF SLEEP, SCARED CHILDREN, OUR CHILDRED HEARING PROVANITY IN THEIR OWN BACK YARD. HAVING TO CLEAN OUR HOMES & CARS FROM DUST & DIRT FROM THE PARKING LOT, NOT TO MENTION WHAT OUR KIDS ARE BREATHING, OUR CHILDREN BEING ABLE TO SEE ADULTS URINATING IN THE PARKING LOT & FIGHTING. DECLINE OF PROPERTY VALUES BUT MOST IMPORTANTLY OUR HEALTH. I HAVE NOTICED A CHANGE IN MY NEIGHBORS & MY FAMILY & MYSELF. STRESS IS A STRANGE ILLNESS THAT EFFECTS ALL PEOPLE DIFFERENTLY. LAST SEPT 10 A BEAUTIFULL SUNDAY EVENING, I WAS IN A HEATED DISCUSSION WITH ONE OF THE NEIGHBORS ABOUT THE NOISE OVER THE WEEKEND FROM THE D.O.T.B. WHEN I HAD A HEART ATTACK THAT ALMOST KILLED ME. SO AS YOU CAN SEE THIS ISSUE IS VERY IMPORTANT TO ALL OF US. IF THE D.O.T.B. IS ALOUD TO PLAY LIVE MUSIC WILL THE ISLANDER & THE WHITE SWAN ALSO BE ALOWED THANK YOU

QuickNotes

DIVISION OF CODE INSPECTIONS AND ENFORCEMENT

VIOLATION CASE DOCUMENTS

VIOLATION CASE: 06-3683

9025 Cuckold Point Road

ZONING CASE: 07-144-SPH
9025 CUCKOLD POINT ROAD

Case No.: 07-144 SPH 9025 COCKOLD FT RD

Exhibit Sheet

	Petitioner/Developer	Protestant
No. 1	SITE PLAN	WEB SITE Advertisement
No. 2		NEWS PAPER Advertisement
No. 3		INTERNATIONAL BLDG CODE Regulations
No. 4		VIOLATION NOTICE
No. 5		5-24-06 LETTER FROM THANNER
No. 6		Code Enforcement Citation
No. 7		Dundalk Eagle
No. 8		Photographs - Memorial day Weekend
No. 9		Entertainment Schedule
No. 10		Code Enforcement - FINAL ORDER
No. 11		Definition from BCZR Nightclub
No. 12		COUNCIL BILL 1-05 adopting - INTERNATIONAL MECHANICAL CODE

Case No.: 07-144-SPH 9025 Cockeysville Rd

Exhibit Sheet - Continued

	Petitioner/Developer	Protestant
No. 13		Night Club definition from "Webster's 2nd New Dictionary"
No. 14		Recent advertisement from Charles Wolinski
No. 15		Wayne E. Waldmann Jr. His written presentation
No. 16		
No. 17		
No. 18		
No. 19		
No. 20		
No. 21		
No. 22		
No. 23		
No. 24		

FIFTH STREET, LLC

9025 Cuckold Point Road
Baltimore, Maryland 21219
(410) 477-8100
FAX (410) 477-9643

May 24, 2006

Mr. C. Raynor, Inspector
Baltimore County Department of Code Inspections and Enforcement
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: Correction Case # 06-3683

Dear Mr. Raynor:

I am in receipt of the Code Inspections and Enforcement Correction Notice issued on May 12, 2006 regarding Case # 06-3683. The order directs that all "night club activities" be ceased. I have searched the Baltimore County Zoning Regulations, the Baltimore County Building Code and the 2003 Edition of the ICC International Building Code. However, I have not been able to find a definition of "night club activities".

I assume that night club activities refer to certain forms of entertainment provided by the Dock of the Bay for its customers. The entertainment provided is as follows:

1. 10 televisions inside and 2 televisions outside. These televisions for the most part are used for showing sporting events; however, they have been used to show MTV and American Idol, both of which contain music.
2. The house music sound system has 8 speakers inside and 4 speakers outside. This system plays music continuously, except when other forms of entertainment are being utilized. The system is used to play either satellite music or CDs.
3. Installation of a juke box is being considered to play music in the evenings, so that customers can select the music they wish to hear.
4. On Friday and Saturday night after 9:00 PM usually a DJ plays music or karaoke and occasionally a band plays inside until about 1:00 AM. This is exactly what many bars and taverns do throughout the County, including the two other bars located on Miller's Island.
5. On Saturday and Sunday afternoons a band plays outside from 4:00 PM until 8:00 PM (during day light hours) from the beginning of May through September. This is exactly what the River Watch and Wild Duck (two other Baltimore County waterfront establishments) do.

PROTESTANT'S

EXHIBIT NO. 5

I am sure you realize my dilemma; none of the above listed items are "night club activities". By return letter, I respectfully request that you let me know which of these activities are allegedly in violation of the zoning laws.

Thank you in advance for your time and attention to this matter. Should you have any questions or need clarification of any part of the information provided, please advise.

Sincerely,
FIFTH STREET, LLC

Lawrence J. Thanner, Jr.
Managing Member

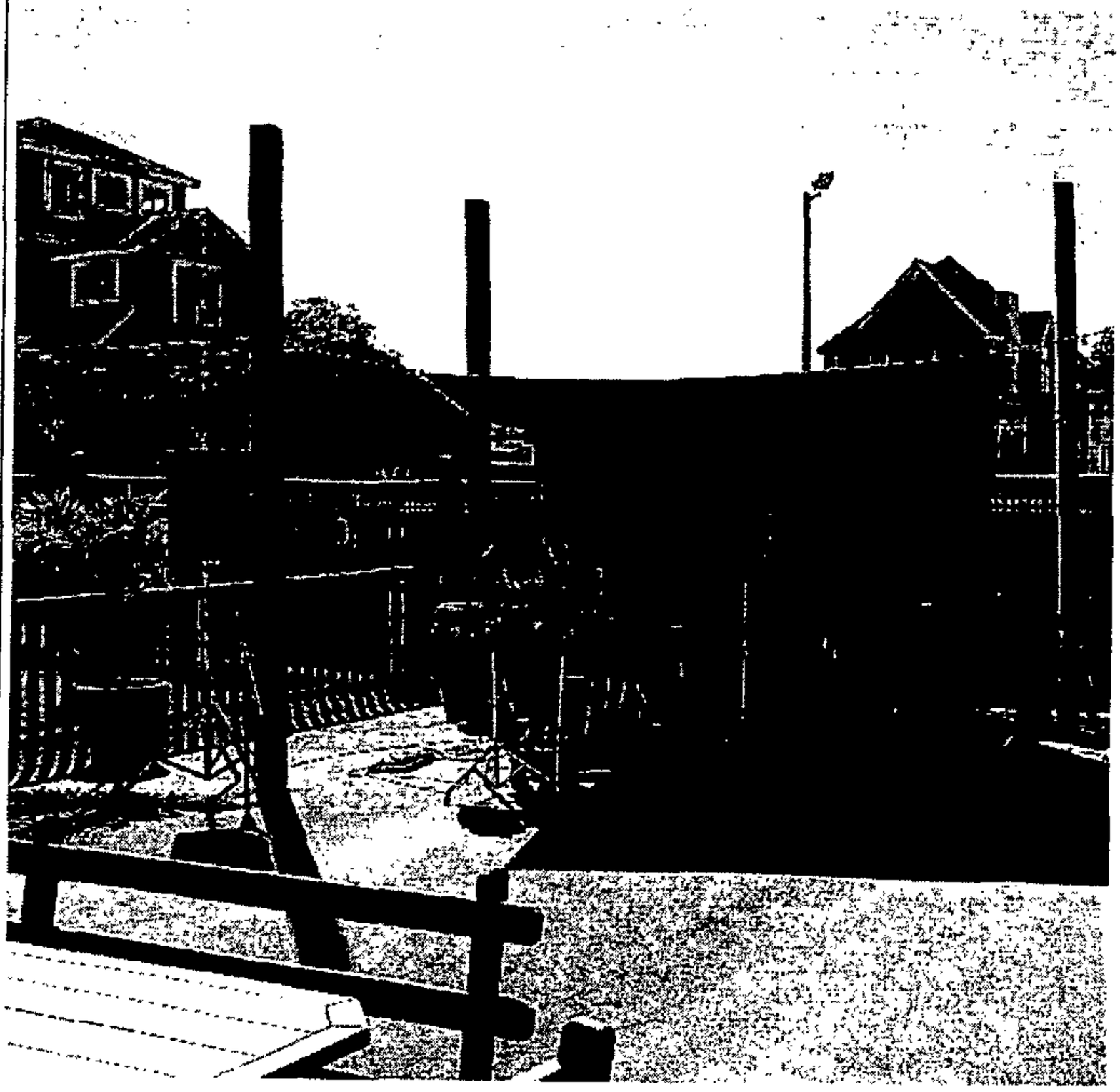
DOCK OF THE BA

Restaurant & Bar

Millers Island, Maryland

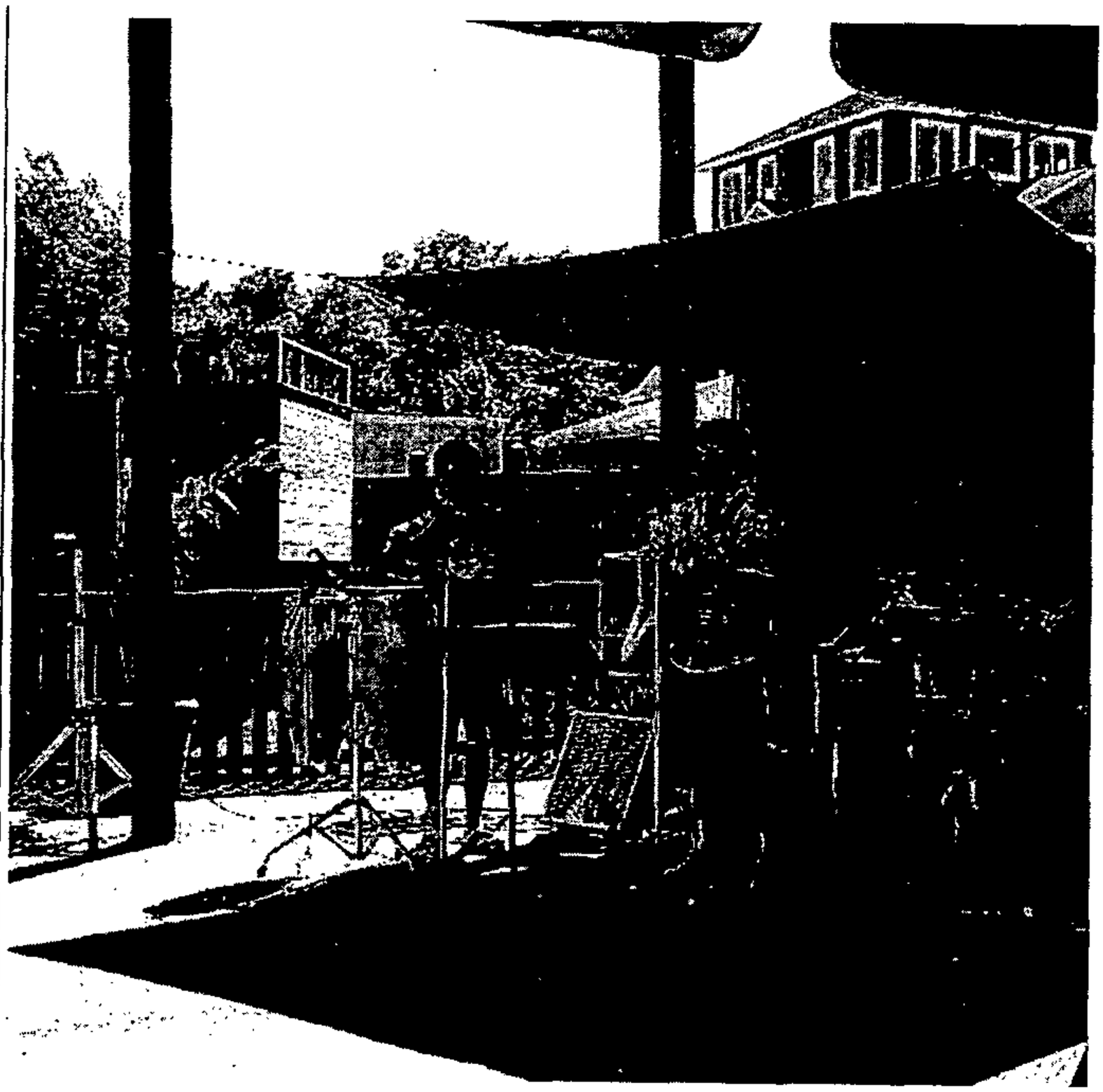
- Home
- About Us
- Directions
- Specials & Events
- Pictures
- Menu
- Contact Us

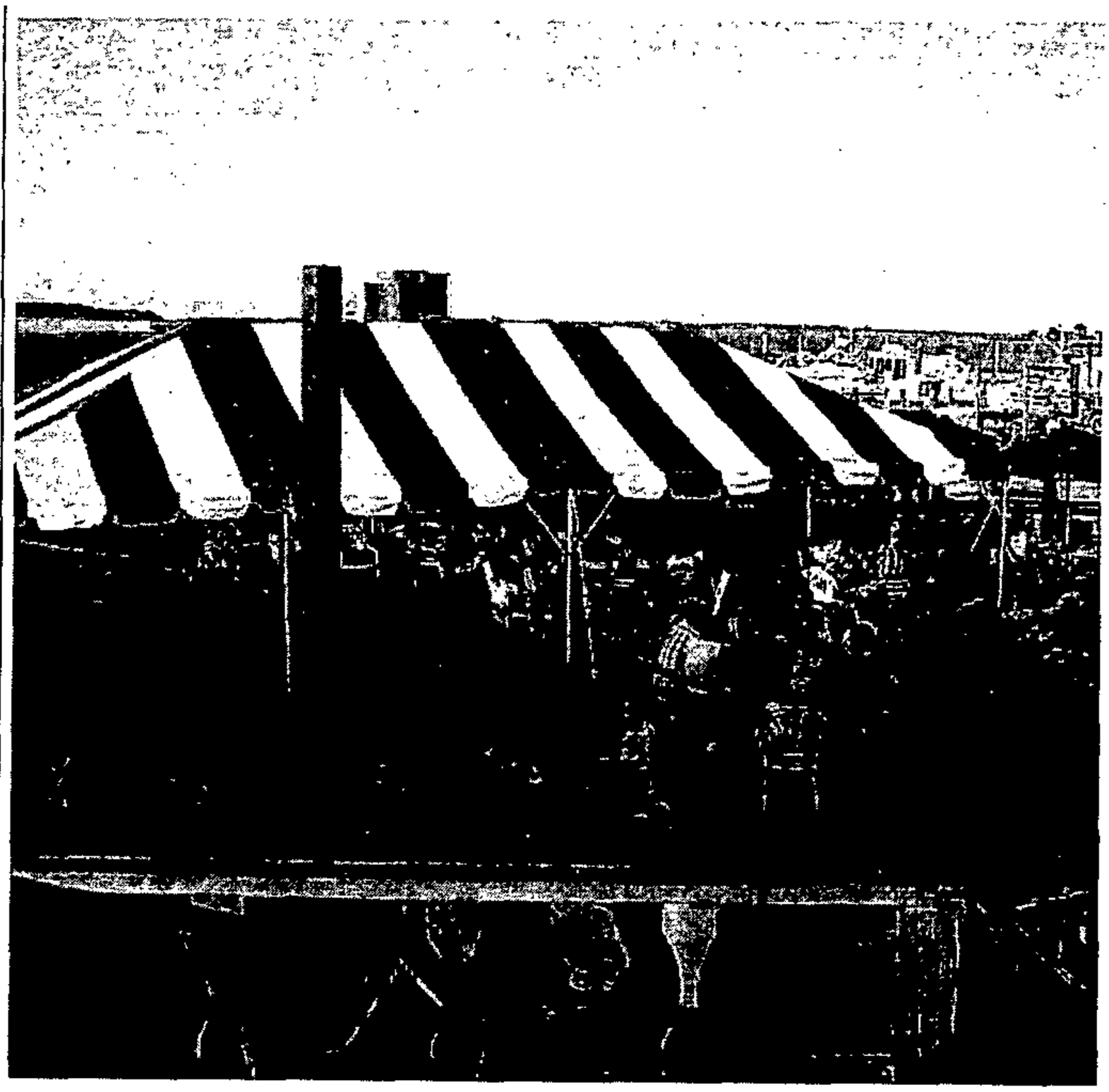
Memorial Weekend

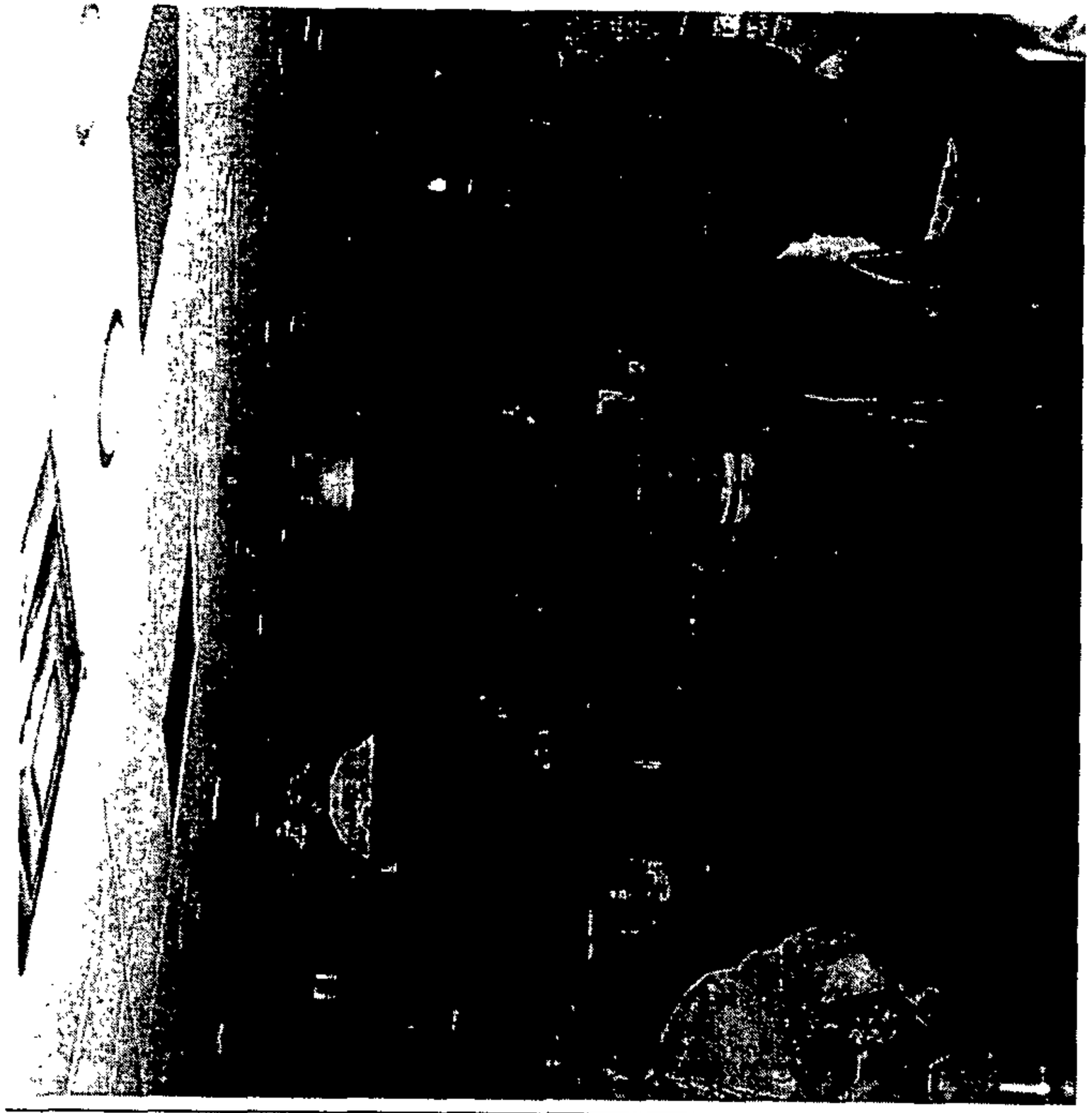


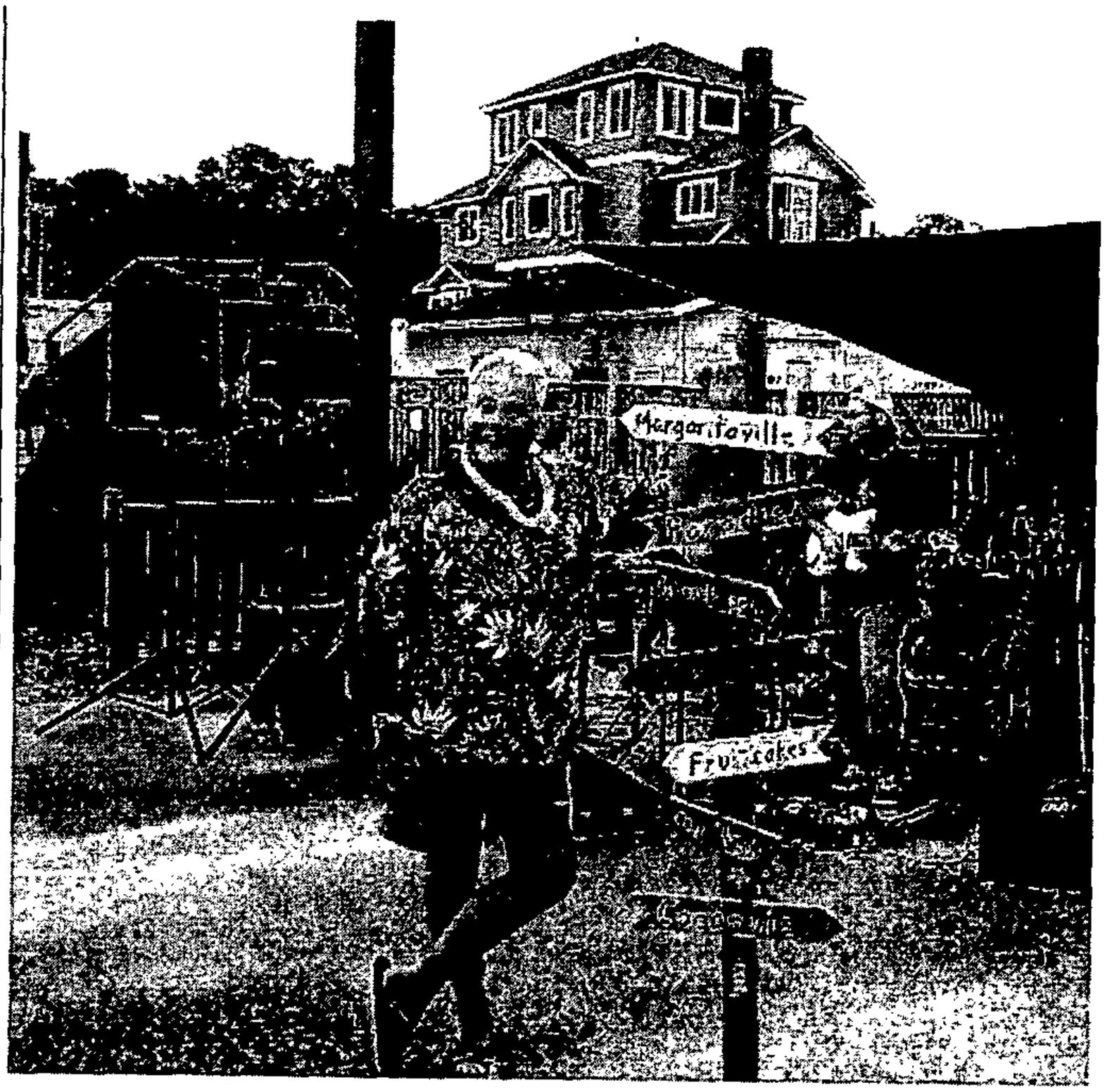
PROTESTANT'S

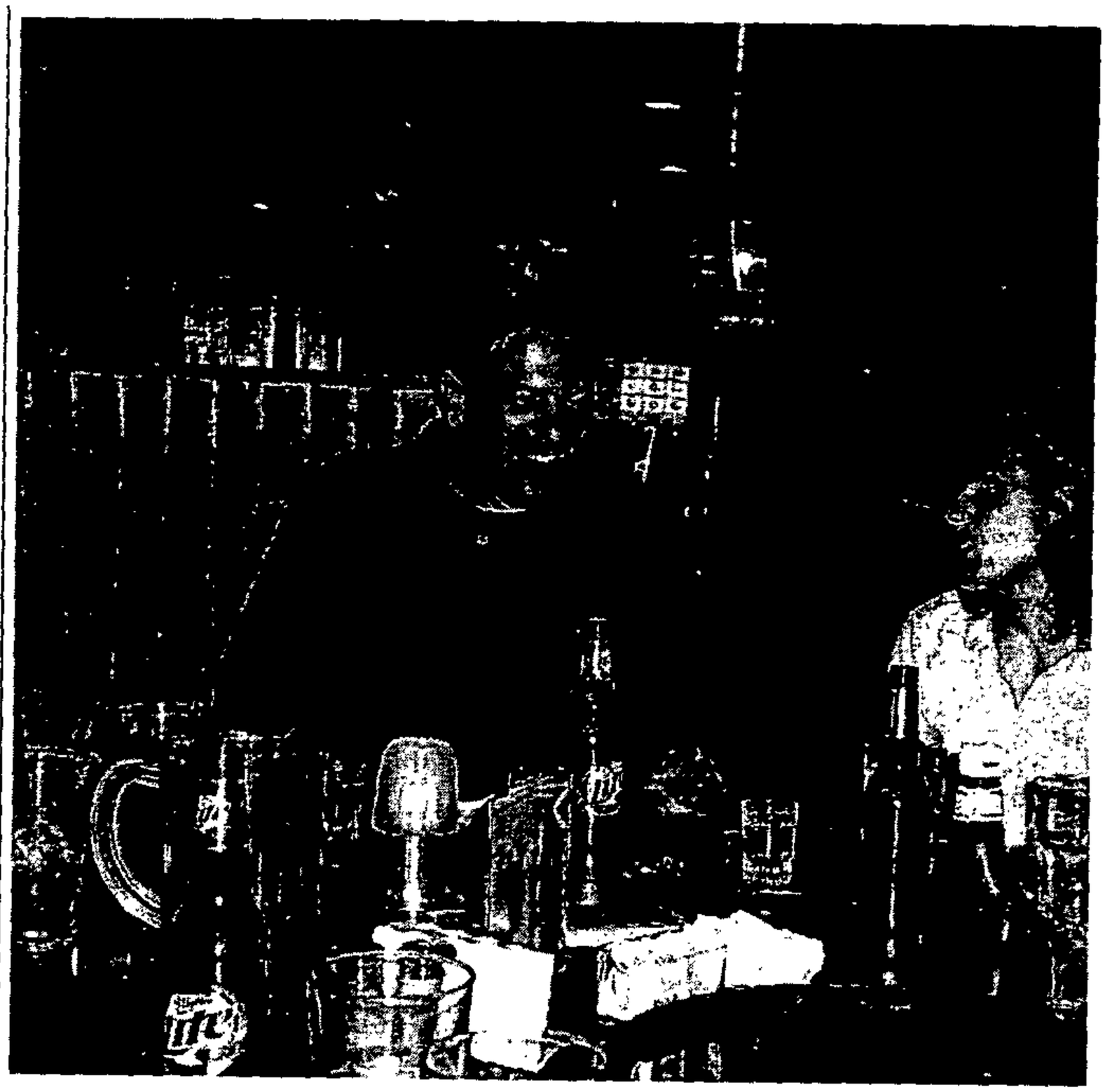
EXHIBIT NO. 8








Margaritaville
Fruitcakes



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Updated: June 6, 2004

APPEAL

Fifth Street LLC
Dock of the Bay
9025 Cuckold Point Road
15th Election District, 7th Councilmanic District
Lawrence J. Thanner, Appellant
Final Order of Civil Citation #06-3683B

COUNTY EXHIBITS

1. Dock of the Bay Entertainment Schedule
2. 2 photos taken June 24, 2007
3. 1 photo taken June 29, 2007
4. 2 photos taken July 1, 2007
5. 1 photo taken July 6, 2007
6. 2 photos taken July 7, 2007
7. 2 photos taken July 8, 2007
8. 4 photos taken July 12, 2007
9. 3 photos taken July 13, 2007
10. 2 photos taken July 14, 2007
11. 2 photos taken July 15, 2007
12. 1 photo taken July 19, 2007
13. 2 photos taken July 26, 2007
14. 1 photo taken July 27, 2007
15. 1 photo taken July 28, 2007
16. 2 photos taken August 2, 2007
17. 1 photo taken August 3, 2007
18. 1 photo taken August 4, 2007
19. 1 photo taken August 5, 2007
20. 1 photo taken August 9. 2007
21. 2 photos taken August 10, 2007
22. 1 photo taken August 11, 2007
23. 1 photo taken August 12, 2007.
24. Findings of Fact and Conclusion of Law, Final Order dated August 25, 2006
25. Decision by Wm. Wiseman, Zoning Commissioner re: Petition for Special Hearing, Case #07-144-SPH.
26. 2 Photos taken June 11, 2007
27. Automated Permit Tracking System dated June 11, 2007
28. 1 Photo taken June 12, 2007
29. 1 Photo taken June 13, 2007
30. 1 Photo taken June 15, 2007
31. 1 Photo taken July 6, 2007
32. Automated Permit Tracking System dated August 13, 2007
33. Findings of Fact and Conclusion of Law, Final Order dated August 16, 2007.

DOCK OF THE 1

Restaurant & Bar

Millers Island, Maryland

Entertainment Schedule

DATE	BAND/EVENT	Time	SPEC
Friday 3/23	100.7 The Bay Cry Later	5pm-7pm 9pm-1am	Join 100.7 B Live Giveaw & Footbal
Saturday 3/24	DJ	9pm-1am	
Sunday 3/25	NASCAR Sunday - Food City 500 Bristol	1:30pm	
Friday 3/30	DJ	9pm-1am	
Saturday 3/31	March Madness - Final Four Uptown East	 9pm-1am	
Sunday 4/1	NASCAR Sunday - Goody's Cool Orange 500 Martinsville	1:30pm	
Monday 4/2	Orioles 1st Game 8:10pm @ Twins March Madness - Final Four		
Thursday 4/5	Karaoke/DJ	9pm-1am	2 for 1! All Bee
Friday 4/6	Meerkat Nation	9pm-1am	
Saturday 4/7	Against the Grain	9pm-1am	
Sunday 4/8	Easter	11am-9pm	Easter Entree Free Blood Mimosa with
Monday 4/9	Orioles Home Opener vs Detroit	3:05pm	
Thursday 4/12	Karaoke/DJ	9pm-1am	2 for 1! All Bee

Friday 4/13	The Dave Demarco Band	9pm-1am	
Saturday 4/14	Timmie Metz	9pm-1am	
Sunday 4/15	NASCAR Sunday - Samsung 500 Texas	1:30pm	
Thursday 4/19	Karaoke/DJ	9pm-1am	2 for 1! All Bee
Friday 4/20	Just the Thought	9pm-1am	
Saturday 4/21	NASCAR - Subway Fresh Fit 500 Phoenix DJ	8pm 9pm-1am	
Thursday 4/26	Karaoke/DJ	9pm-1am	2 for 1! All Bee
Friday 4/27	Uptown East	9pm-1am	
Saturday 4/28	North Point Village People	9pm-1am	
Sunday 4/29	NASCAR Sunday - Aaron's 500 Talladega	1:30pm	
Friday 5/4	Beach Bums	9pm-1am	
Saturday 5/5	NASCAR - Crown Royal 400 Richmond Jack Selway	7pm 9pm-1am	Cinco de Ma & Mexican F All I
Friday 5/11	DJ	9pm-1am	
Saturday 5/12	NASCAR - Dodge Avenger 500 Darlington Captain Quint	7pm 9pm-1am	
Sunday 5/13		5pm	Mother's D Me
Friday 5/18	The Epics	9pm-1am	
Saturday 5/19	NASCAR - Nextel All-Star Challenge Lowe's Old School	7pm 9pm-1am	
Friday 5/25	Gary & The Groove	9pm-1am	Memorial Da Celebratio
Saturday 5/26	Uptown East	9pm-1am	Memorial D
	NASCAR Sunday - Coca-Cola 600		

Sunday 5/27	Lowe's	5pm	Memorial D
Monday 5/28			Memori
more to come.....			

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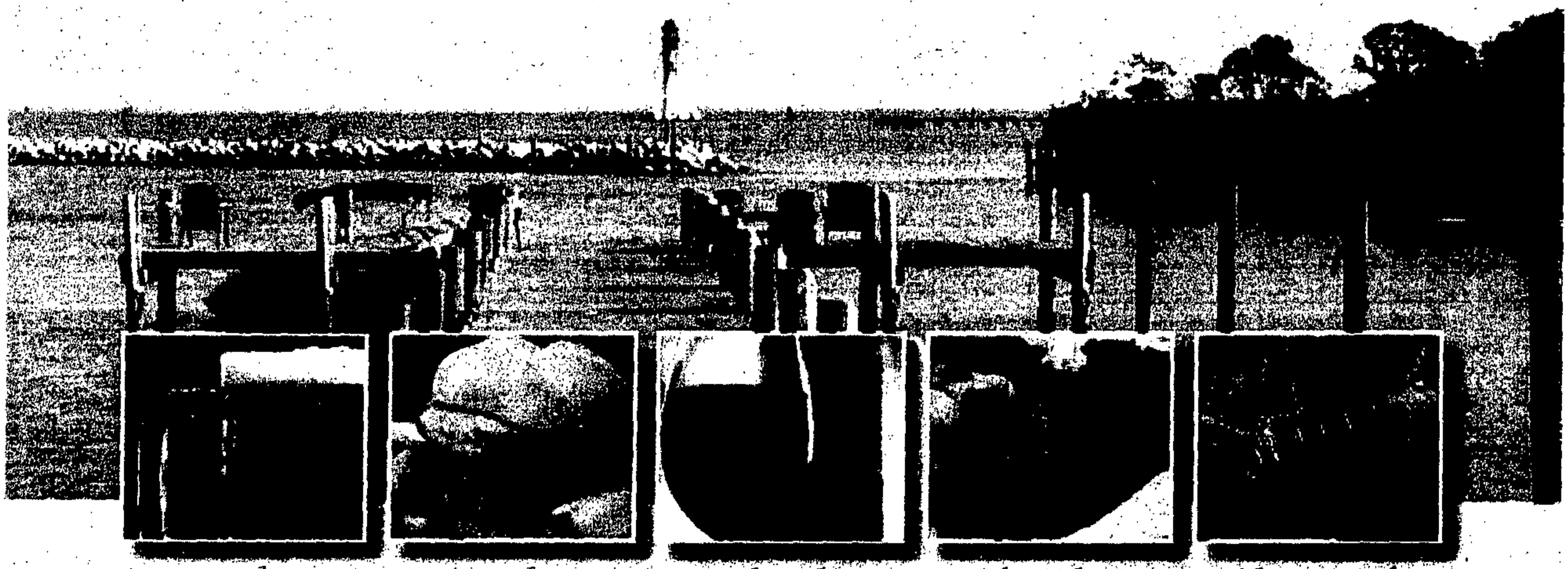
Updated: April 25, 2004



Monday
Happy hour.
All night long 2pm - close

Tuesday
Burger night
1/2 priced burgers.
$1 crabs starting at 6pm,
while supplies last

Wednesday
Wine night
1/2 priced bottles of wine
and $10 select entrees

Thursday
Steak night
16oz Porterhouse with 2
sides for $11.95.
$1 crabs starting at 6pm,
while supplies last.
DJ and Karaoke with
2 for 1 Domestic beer
starting at 8pm.

Friday/Saturday
Live music all weekend
starting at 9pm.
4/6 - Meerkat Nation
4/7 - Againt the Grain
4/13 - Dave DeMarco
4/14 - Timmie Metz
Check website for details.

Weekly Specials

Happy Hour Tuesday - Friday from 2pm - 6pm.

Millers Island • 410-477-8100 • www.dockofthebay.net

Dock of the Bay

Live - from the Dock

100.7 the bay
BALTIMORE'S CLASSIC ROCK STATION

Friday, 3/23/07, 5:00-7:00pm
join Chris Emry and 100.7 the Bay for a
LIVE broadcast from the Dock.
Give-aways and prizes including
concert tickets, football tickets and CD's.
Happy Hour extended 2-7pm

Cry Later

Friday, 3/23/07, at 9:00pm
After the Live broadcast
stick around for great LIVE music
by Cry Later.

$1. Crabs Are Back

Yeah they're LIVE - steamed fresh,
and they're available every
Tuesday and Thursday after 6:00 pm.
While Supplies Last.

Dock of the Bay

9025 Cuckhold Point Road • Miller's Island • 410-477-8100 • www.dockofthebay.net

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing in Towson, Maryland on the property identified herein as follows:

Case: #07-144-SPH
9025 Cuckold Point Road
Southeast corner Cuckold Point Road and 5th Street
15th Election District - 7th Councilmanic District
Legal Owner(s): Fifth Street, LLC; Larry Thanner

Special Hearing: Under Section 500.7 and Section 500.6 of the Zoning Regulations of Baltimore County, to determine whether the use of the property at 9025 Cuckold Point Road, Millers Island 21219 is in violation of the BCZR and is the use by Fifth Street, LLC, a restaurant, at 9025 Cuckold Point Road, which provides music during the day, is a "night club" as defined in the BCZR, Sections 101, 102.1 and 230.

- **Hearing: Friday, April 13, 2007 at 9:00 a.m. in Room 106, County Office Building, 111 West Chesapeake Avenue, Towson 21204**

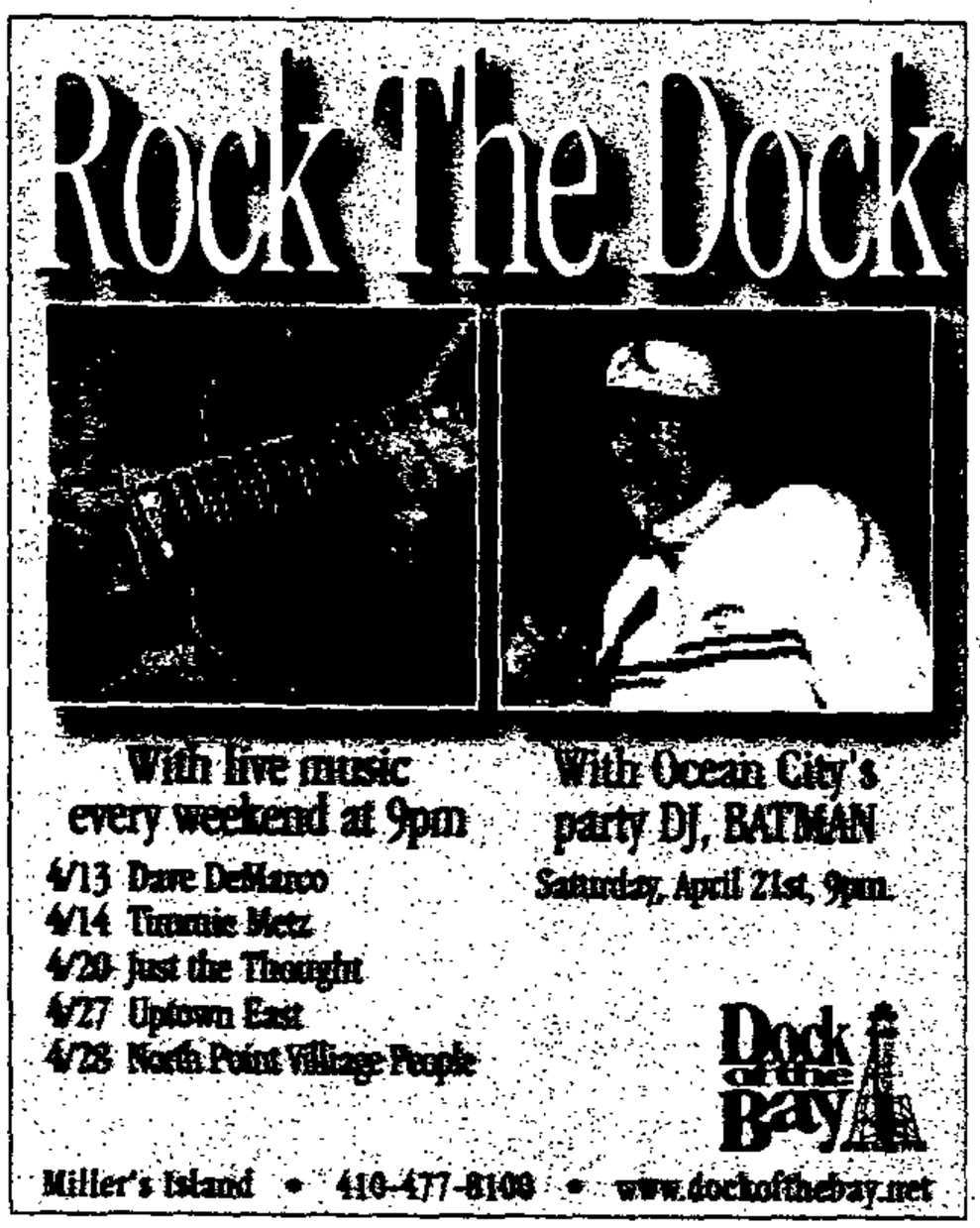
WILLIAM J. WISEMAN, III
Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-3868.

(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

JT/3/751 Mar. 27 129416

East County Times
April 12, 2007



PROTESTANT'S

EXHIBIT NO. 14

777

Department of Permits and Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204
Baltimore County, Maryland

In the Matter of

Civil Citation No. 06-3683B

Fifth Street LLC
Lawrence J. Thanner, Jr., R/A
2515 Boston Street Palce
Baltimore MD 21224

9025 Cuckold Point Road

Respondent

FINDINGS OF FACT AND CONCLUSION OF LAW
FINAL ORDER OF THE CODE ENFORCEMENT HEARING OFFICER

This matter came before the Code Enforcement Hearing Officer for the Department of Permits and Development Management on August 14, 2007, for a hearing on a citation for violations under the Baltimore County Zoning Regulations (BCZR) § 101, 102.1, 230; 500.6; failure to cease operation of a night club in a BL zone; failure to comply with Zoning Commissioner's Order case #07-144 SPH; Baltimore County Code (BCC) § 3103.1 (IBC); failure to obtain permit for tent; 35-2-301; failure to obtain permit for electrical work on property zoned BL known as 9025 Cuckold Point Road, 21219.

On July 5, 2007, pursuant to §3-6-205, Baltimore County Code, Code Enforcement Officer, issued a code enforcement citation. The citation was legally served on the Respondents.

The citation proposed a civil penalty of $30,800.00 (thirty thousand eight hundred dollars). A code enforcement hearing date was scheduled for August 14, 2007.

Lawrence J. Thanner, Jr., Respondent appeared for the Hearing and testified.
J. Carroll Holzer, Esquire appeared as Counsel for the Respondent.
Jeffrey Radcliffe, Code Enforcement Officer presented the case for Baltimore County.

Mr. Holzer objected to case number applied to instant citation due to prior case with same case number. For the purposes of clarification, the Hearing Officer applied the letter B to the case; which will now be known as Case #06-3683B. Code Enforcement's division policy is to maintain the same case number until the case is adjudicated. I must agree with Mr. Holzer, that in this instance, a new case file would have been appropriate but not cause to dismiss the case.

Baltimore County Code (BCC) § 35-2-301; failure to obtain electrical permit is dismissed for lack of evidence to show when and by whom the work was done.

Respondent was charged with failure to comply with the Zoning Commissioner's Order of May 30, 2007, wherein the Commissioner found "the playing of outdoor music either by way of an outside speaker system, live or recorded entertainment, must be discontinued. Inspector Radcliffe entered numerous photographic exhibits showing live and recorded music however only 2 exhibits show outside entertainment, June 24, 2007 and July 1, 2007. All other photographs show inside music entertainment. The Commissioner determined that the playing of outdoor music must be discontinued and did not address the playing of indoor music, etc.

Testimony established that although the tent was erected on 2 separate occasions for 3 days each, the tent was used but for 1 day each time. Mrs. Thanner testified that she called Permits and Development Management about getting a tent permit for 1 day and was told a permit was not required for 1-day tent placements. The previous case involved a similar tent structure. It was determined that a permit was required due to the expansion of the business to the outdoors without zoning review and approval. The expansion, resultant loud music, and large crowds prompted the complaints and enforcement action at that time. Businesses located adjacent to residences must control noise and other nuisances in consideration for traditional residential lifestyles. Music played indoors should not be heard beyond property lines of the business establishment.

During the Hearing, several persons expressed concern regarding public urination and other bothersome untoward behavior exhibited by Dock of the Bay patrons. The Police Department and/or the Liquor Board must address this type of complaint. The business operators must control their patrons so they do not pose a nuisance to the community.

Obviously, the Dock of the Bay is a wonderful place to dine. Somehow, the restaurant and the community must find a way to co-exist. Any expansion of the business, whether it be by erecting a tent, additions, adding tables and seating outside, etc., must be pursued from a position of compliance by making proper application to the Department of Permits and Development Management. Acting first then asking for forgiveness is not condoned.

I find the Respondent in violation of the Zoning Commissioner's Order on 2 occasions, June 24, 2007 and July 1, 2007. County exhibits #2 and #4 show outdoor live music being played, photographed and witnessed by Inspector Radcliffe.

I find the Respondent in violation of erecting a tent on 2 separate occasions without benefit of the required permit or zoning approval for a period of 3 days each as testified to by Inspector Radcliffe, Mr. Thanner, Mrs. Thanner and others.

IT IS ORDERED by the Code Enforcement Hearing Officer this 16th day of August 2007, that a civil penalty is imposed in the amount of $1,000.00 (one thousand dollars), payable and due 35 days from the date of this Order.

IT IS FURTHER ORDERED that a building permit or use permit is required prior to the erection of any tent or any other accessory structure on commercial zoned property known as 9025 Cuckold Point Road.

Signed: Raymond S. Wisnom

Raymond S. Wisnom, Jr.
Code Enforcement Hearing Officer

The violator is advised that pursuant to §3-6-301(a), Baltimore County Code, an appeal to the Baltimore County Board of Appeals may be taken within fifteen (15) days after the date of a final Order. §3-6-302(a)(b)(c)(d) requires the filing of a petition setting forth the grounds for appeal and a filing fee of $150. The appellant is urged to read the requirements for the appeal petition. Security in the amount of the civil penalty must be posted with the Director.

INTERNATIONAL BUILDING CODE®

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INTERNATIONAL CODE COUNCIL®

COMMENTARY - Vol. I

PROTESTANT'S
EXHIBIT NO. 3

2003

For instance, a church hall might be used as a day care center during weekdays and as a reception hall for weddings and other similar events at other times. In these cases, the code provisions for each occupancy must be complied with.

SECTION 303
ASSEMBLY GROUP A

303.1 Assembly Group A. Assembly Group A occupancy includes, among others, the use of a building or structure, or a portion thereof, for the gathering together of persons for purposes such as civic, social or religious functions, recreation, food or drink consumption or awaiting transportation. A room or space used for assembly purposes by less than 50 persons and accessory to another occupancy shall be included as a part of that occupancy. Assembly areas with less than 750 square feet (69.7 m^2) and which are accessory to another occupancy according to Section 302.2.1 are not assembly occupancies. Assembly occupancies which are accessory to Group E in accordance with Section 302.2 are not considered assembly occupancies. Religious educational rooms and religious auditoriums which are accessory to churches in accordance with Section 302.2 and which have occupant loads of less than 100 shall be classified as A-3.

Assembly occupancies shall include the following:

A-1 Assembly uses, usually with fixed seating, intended for the production and viewing of the performing arts or motion pictures including, but not limited to:

Motion picture theaters
Symphony and concert halls
Television and radio studios admitting an audience
Theaters

A-2 Assembly uses intended for food and/or drink consumption including, but not limited to:

Banquet halls
Night clubs
Restaurants
Taverns and bars

A-3 Assembly uses intended for worship, recreation or amusement and other assembly uses not classified elsewhere in Group A including, but not limited to:

Amusement arcades
Art galleries
Bowling alleys
Churches
Community halls
Courtrooms
Dance halls (not including food or drink consumption)
Exhibition halls
Funeral parlors
Gymnasiums (without spectator seating)
Indoor swimming pools (without spectator seating)
Indoor tennis courts (without spectator seating)
Lecture halls
Libraries
Museums
Waiting areas in transportation terminals
Pool and billiard parlors

A-4 Assembly uses intended for viewing of indoor sporting events and activities with spectator seating including, but not limited to:

Arenas
Skating rinks
Swimming pools
Tennis courts

A-5 Assembly uses intended for participation in or viewing outdoor activities including, but not limited to:

Amusement park structures
Bleachers
Grandstands
Stadiums

❖ Because of the arrangement and density of the occupant load associated with occupancies classified in the assembly group category, the potential for multiple fatalities and injuries from fire is comparatively high. For example, no other use listed in Section 302.1 contemplates occupant loads as dense as 5 square feet (0.46 m^2) per person (see Table 1004.1.2). Darkened spaces in theaters, nightclubs and the like serve to increase hazards. In sudden emergencies, the congestion caused by large numbers of people rushing to exits can cause panic conditions. For these and many other reasons, there is a relatively high degree of hazard to life safety in assembly facilities. The relative hazards of assembly occupancies are reflected in the height and area limitations of Table 503 imposed on buildings in the assembly group that are, in comparison, generally more restrictive than for buildings in other group classifications.

There are five specific assembly group classifications, Groups A-1 through A-5, described in this section. Where used in the code, the general term "Group A" is intended to include all five classifications.

The fundamental characteristics of all assembly occupancies are identified in this section. Structures that are designed or occupied for assembly purposes must be classified in one of the assembly group classifications. Exceptions to this rule are accessory use areas (see Section 302.2) and assembly rooms or spaces in nonassembly buildings meeting the following conditions:

- The occupant load of the assembly space is less than 50; and
- The purpose of the assembly space is accessory to the principal occupancy of the structure (i.e., the activities in the assembly space are subordinate and secondary to the primary occupancy).

The special exception given to assembly spaces in nonassembly buildings is a practical code consideration that permits a mixed occupancy condition to exist without requiring compliance with the provisions for mixed occupancies (see Section 302.3) or accessory use areas (see Section 302.2). All other code requirements applicable to assembly occupancies, however

still apply to the assembly area (e.g., the design occupant load, means of egress design, height, ventilation, floor live loads, etc.). This is because these requirements are most appropriately based on the occupancy of the space and not on the occupancy classification of the building.

Section 302.2.1 contains additional considerations regarding exceptions to the Occupancy Group A classification, including assembly areas less than 750 square feet (69.7 m^2) that are accessory to another use (regardless of the size of the main use), assembly areas accessory to a Group E occupancy and religious educational rooms and auditoriums that are accessory to a church. In each of these cases, these rooms are not considered separate occupancies.

Example: An office building, Group B, has a conference room used for staff meetings [see Figure 303.1(1)]. The occupancy of a conference room is classified as Group A-3. Because the floor area of the conference room exceeds 10 percent of the floor area in which it is located, the room does not qualify as an accessory use area; however, because the occupant load of the conference room is less than 50 and its function is clearly accessory to the business area, the provisions of Section 303.1 permit the room to be included in the main occupancy, Group B.

If the accessory use area described in the example above was a public coffee shop, it would not qualify for the exception to the requirements for accessory use areas because the purpose of a coffee shop is not functionally related to the business occupancy [see Figure 303.1(2)]. In such a case, the coffee shop must be classified as an A-3 occupancy and the building evaluated as a mixed occupancy.

A-1: Some of the characteristics of Group A-1 occupancies are large, concentrated occupant loads, low lighting levels, above-normal sound levels and a moderate fuel load.

Group A-1 is characterized by two basic types of activities. The first type is one in which the facility is occupied for the production and viewing of theatrical or operatic performances. Facilities of this type ordinarily have fixed seating; a permanent raised stage; a proscenium wall and curtain; fixed or portable scenery drops; lighting devices; dressing rooms; mechanical appliances or other theatrical accessories and equipment [see Figure 303.1(3)].

The second type is one in which the structure is primarily occupied for the viewing of motion pictures. Facilities of this type ordinarily have fixed seating, no stage, a viewing screen, motion picture projection booth(s) and equipment [see Figure 303.1(4)].

Group A-1 presents a significant potential life safety hazard because of the large occupant loads and the concentration of people within confined spaces. The means of egress is an important factor in the design of such facilities. Theaters for the performing arts that require stages are considered particularly hazardous because of the amount of combustibles such as curtains, drops, scenery, construction materials and other accessories normally associated with stage operation. As such, special protection requirements applicable to stages and platforms are provided in Section 410 (see commentary, Section 410).

A-2: Group A-2 includes occupancies in which people congregate in high densities for social entertainment, such as drinking and dancing (e.g., nightclubs, dance halls, banquet halls, cabarets, etc.) and food and drink consumption (e.g., restaurants). The uniqueness of these occupancies is characterized by some or all of the following:

- Low lighting levels;
- Entertainment by a live band or recorded music generating above-normal sound levels;
- No theatrical stage accessories;
- Later-than-average operating hours;

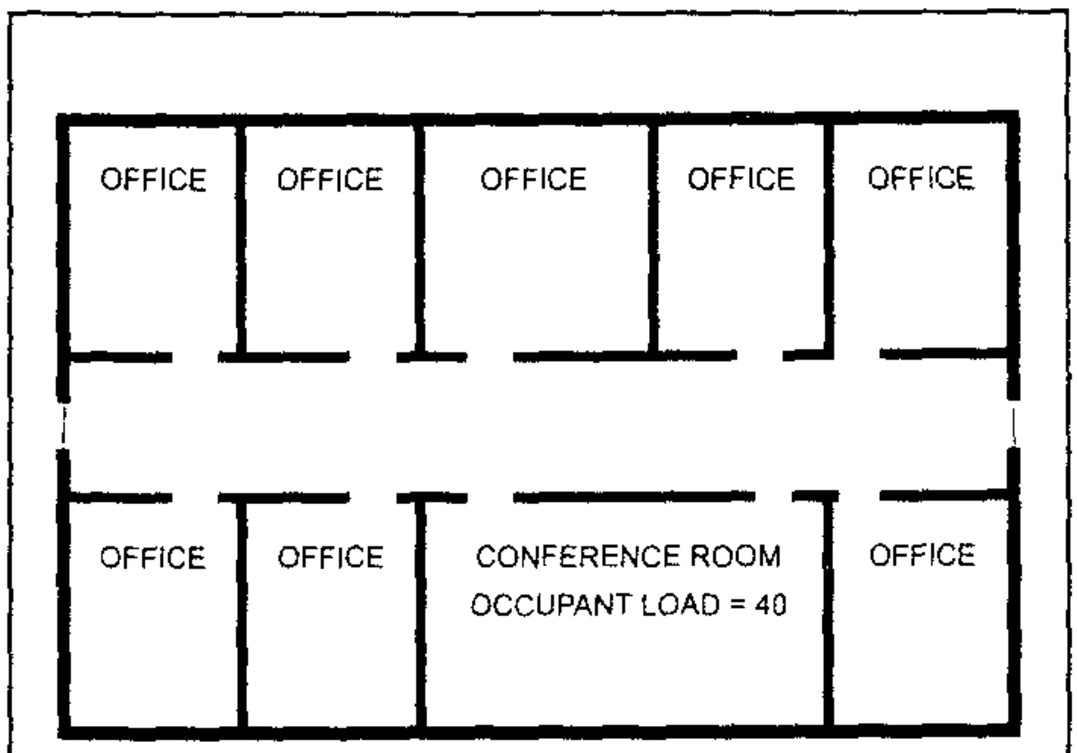

Figure 303.1(1)
ASSEMBLY GROUP EXCEPTION

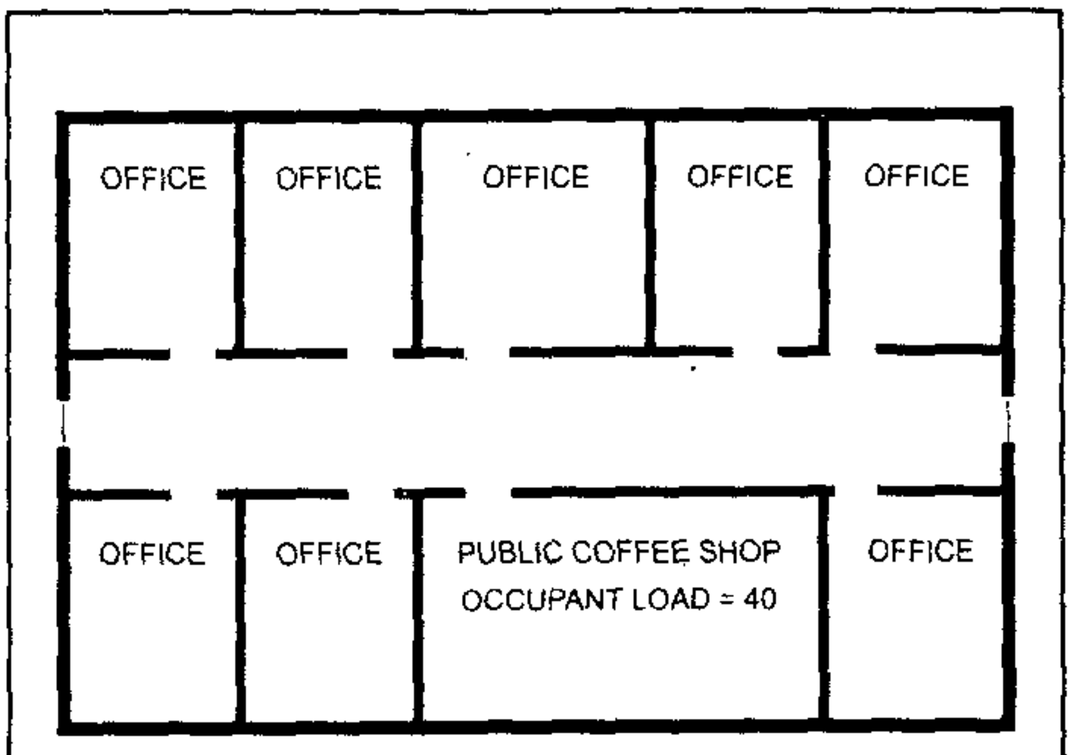

Figure 303.1(2)
MIXED OCCUPANCIES

- Tables and seating arranged or positioned so as to create ill-defined aisles;
- A specific area designated for dancing;
- Service facilities for alcoholic beverages and food; and
- High occupant load density.

The fire records are very clear in identifying that the characteristics listed above often cause a delayed awareness of a fire situation and confuse the appropriate response, resulting in an increased egress time and sometimes panic. Together, these factors may result in extensive life and property losses. These characteristics are only advisory in determining whether Group A-2 is the appropriate classification. Often there are additional characteristics that are unique to a project, which also must be taken into consideration when a classification is made.

Example: The Downtown Club, a popular local nightclub/dance hall, features a different band every weekend [see Figure 303.1(5)]. It is equipped with a bar and basic kitchen facilities so that beverages and appetizers can be served. There is a platform for a band to perform on, a dance floor in front of the platform and numerous cocktail tables and chairs. The tables and chairs are not fixed, resulting in a haphazard arrangement such that there are no distinct aisles. When the band performs, the house lights are dimmed and spotlights are keyed in on the performers. The club is equipped with a sound system that is used at loud levels. The club is open until 3:00 a.m.—the latest time the local jurisdiction will allow.

From this description of the Downtown Club, one can readily see that the appropriate classification is Group A-2. Sometimes, however, it is not this easy to determine the appropriate classification. In such cases, the building official must seek additional information regarding the function(s) of the building and each area within the building.

A-3: Structures in which people assemble for the purpose of social activities (such as entertainment, recreation and amusement) that are neither classified in Group A-1 or A-2 nor appropriately classified in Group A-4 or A-5 are to be classified in Group A-3. Exhibition halls, libraries, museums, gymnasiums, recreation centers, health clubs, fellowship halls, indoor shooting galleries, bowling centers, billiard halls and the like are among the facilities often classified in Group A-3. Also, since they most nearly resemble this occupancy classification, public and private spaces used for assembly are often classified in Group A-3. These include large courtrooms, meeting rooms and conference centers. Similarly, lecture halls, which are large lecture rooms located in colleges, universities or in schools for students up to 12th grade and that have an occupant load of 50 or more, are also classified in Group A-3. [Note

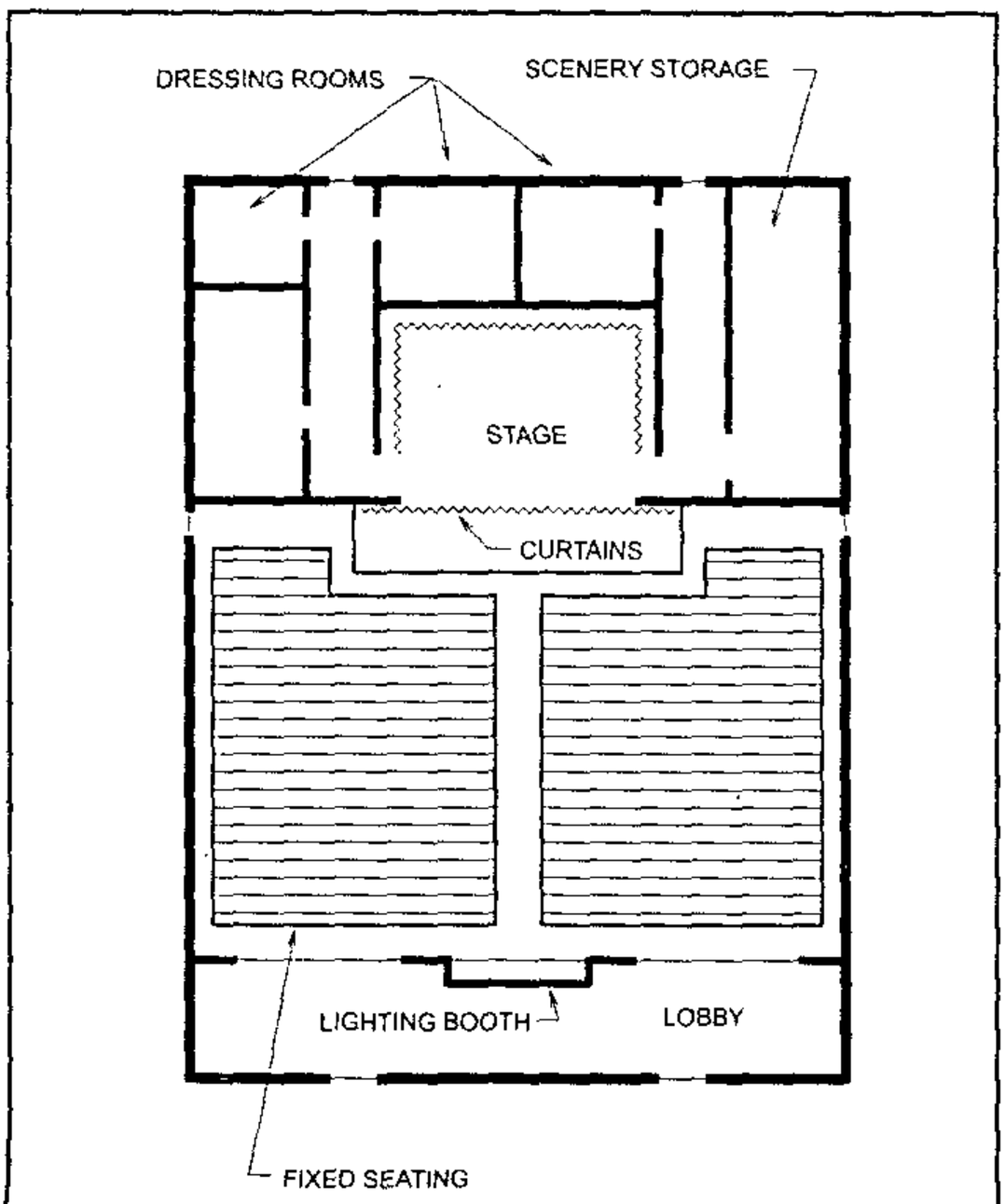

Figure 303.1(3)
GROUP A-1

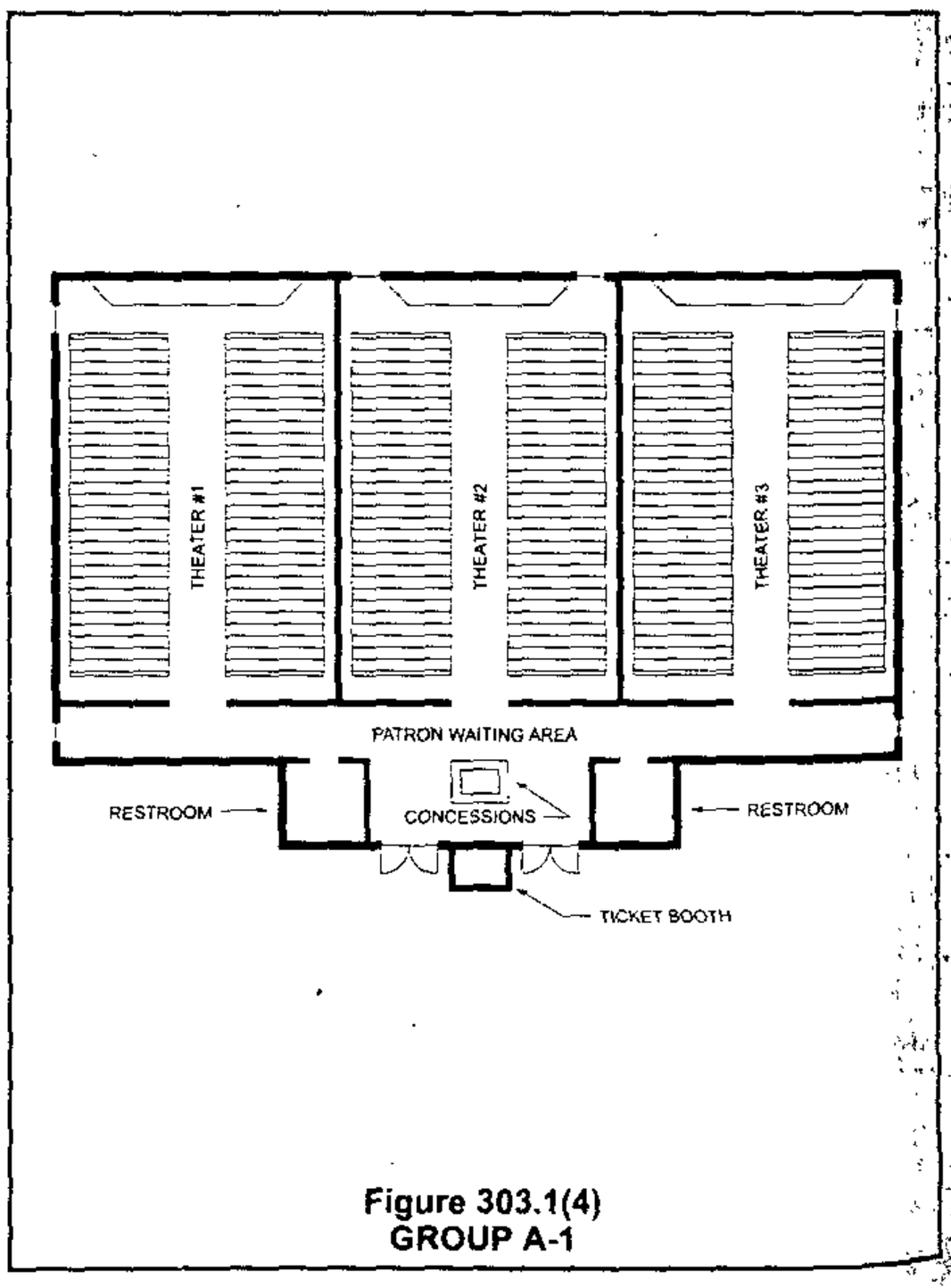

Figure 303.1(4)
GROUP A-1

Department of Permits and Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204
Baltimore County, Maryland

In the Matter of

Fifth Street LLC
Lawrence J. Thanner, Resident Agent

Respondent

Civil Citation No.06-3683

9025 Cuckold Point Road

FINDINGS OF FACT AND CONCLUSION OF LAW
FINAL ORDER OF THE CODE ENFORCEMENT HEARING OFFICER

This matter came before the Code Enforcement Hearing Officer for the Department of Permits and Development Management on August 23, 2006, for a hearing on a citation for violations under the Baltimore County Zoning Regulations (BCZR) section 102.1, 230; International Building Code (IBC) section 3103.1; for failure to cease operation of a nightclub in a BL zone; failure to obtain a permit for tent; failure to remove tent on property zoned BL known as 9025 Cuckold Point Road, 21219.

On August 8, 2006, pursuant to §3-6-205, Baltimore County Code, Jeffrey Radcliffe, Code Enforcement Officer, issued a code enforcement citation. The citation was legally served on the Respondent.

The citation proposed a civil penalty of $5,000.00 (five thousand dollars). A code enforcement hearing date was scheduled for August 23, 2006.

Lawrence J. Thanner, Resident Agent and owner of Fifth Street LLC appeared for the hearing and testified.

J. Carroll Holzer, Esquire appeared as Counsel for the Respondent.

PROTESTANT'S
EXHIBIT NO. 10

Wayne Walkman, Jr. testified to music so loud one can hear it with the windows shut. He has complained to the Liquor Board, the Police Department and Zoning. He also complained about the lack of parking for the increase in activity.

Matthew Ciarpella complained of similar issues. The restaurant abuts residential properties and the music is as though it is in their back yard.

Testimony and evidence presented shows the property operating outside the main structure without required zoning approval. The activities include live music and/or music from the house sound system. According to a letter from Mr. Thanner to Inspector Clarence Raynor, the house system is connected to 4 speakers outside. The letter states that on Fridays and Saturdays, 4:00 p.m. to 8:00 p.m., a band plays outside. Mr. Thanner testified to the same at the hearing. Mr. Thanner questioned the term "Nightclub" stating that he does not operate at night. According to the International Building Code (IBC), taverns, restaurants and nightclubs are considered to be in the same use, Group A-2. Group A-2 includes occupancies in which people congregate in high densities for social entertainment such as drinking and dancing. Included in this group are nightclubs, dance halls, banquet halls, cabarets, etc. to include restaurants. The occupancies are characterized by some or all of the following:

1. Low lighting levels
2. Entertainment by a live band or recorded music generating above-normal sound levels.
3. No theatrical stage accessories.
4. Later than average operating hours.
5. Ill-defined aisles created by the positioning of tables.
6. A specific area for dancing.
7. Service facilities for alcoholic beverages and food.
8. High occupant load density.

The property according to testimony exhibits some of the listed characteristics. The use of the property has definitely expanded beyond the enclosed structure on the premises by the placement of a tent structure used for live music and drinking as advertised on County Exhibit #2. This ad also cites the use of a DJ on Fridays and Saturdays, beginning at 9:00 p.m. The web site for Dock of the Bay also advertises a DJ for Friday and Saturday nights from 9:00 p.m. to 1:00 a.m.

According to the definitions in the Baltimore County Zoning Regulations (BCZR) and the International Building Code (IBC), the premises meets the criteria required to be designated a nightclub. Furthermore, the placing of the tent without benefit of a permit constitutes a building code violation pursuant to the IBC section 3102.1, 3103.1, 3103.1.1; wherein temporary structures that cover an area in excess of 120 square feet intended to be used for the gathering of 10 or more persons shall not be erected, operated or maintained for any purpose without obtaining a building permit. The zoning regulations and the International Building Code are clear in their respective definitions and appear to coincide. There is no question that the property is being used and operated as a nightclub pursuant to the definitions of a nightclub whatever publication one wishes to use to decide the matter. Mr. Holzer contends the Zoning Commissioner will over rule the nightclub use, however the building code violation continues to loom upon the premises and its operators. In any case, Dock of the Bay is a restaurant with dancing and/or live or recorded entertainment and this fact is uncontested.

The case file contains a printout listing the live music schedule for August 8, 2006 through September 18, 2006. Some days the live entertainment is scheduled for 4:00 p.m. to 8:00 p.m. and some dates scheduled for 4:00 p.m. to 9:00 p.m. The printout states that 300 people have "flooded the restaurant on this day". The printout touts Friday night Karaoke and DJ 9:30 p.m. to 1:30 a.m., Saturday Outdoor Deck Party, live music 4:00 p.m. to 9:00 p.m. Dance the night away with DJ Bob, 9:00 p.m. to 1:00 a.m.

I find the property is being used and operated as a restaurant with dancing and live entertainment allowing a building code violation to exist concurrently with the nightclub use and continue unabated despite receiving notice of violation on May 12, 2006. A restaurant with dancing and/or live or recorded entertainment is not a permitted use in a BL zone.

IT IS ORDERED by the Code Enforcement Hearing Officer this 25th day of August 2006, that a civil penalty be imposed in the amount of $5,000.00 (five thousand dollars) payable on or before October 2, 2006.

IT IS FURTHER ORDERED for the Respondent to remove the tent, dismantle the outside speaker system and cease live and/or recorded entertainment immediately.

IT IS FURTHER ORDERED that failure to remove the illegal structure and cease nightclub activities will result in additional civil penalties at $200.00 (two hundred dollars) per day per violation.

IT IS FURTHER ORDERED that the inspector inspect the property to determine whether the violation has been corrected

Signed: Raymond S. Wisnom, Jr.
Raymond S. Wisnom, Jr.
Code Enforcement Hearing Officer

The violator is advised that pursuant to §3-6-301(a), Baltimore County Code, an appeal to the Baltimore County Board of Appeals may be taken within fifteen (15) days after the date of a final Order. §3-6-302(a)(b)(c)(d) requires the filing of a petition setting forth the grounds for appeal and a filing fee of $150. The appellant is urged to read the requirements for the appeal petition. Security in the amount of the civil penalty must be posted with the Director.

RSW/jaf

Case
07-144-SPH

Charles & Daryl Wolinski
9019 Cuckold Point Road
Sparrows Point, Maryland 21219
410-477-0053

March 15 , 2008

William J. Wiseman III
Zoning Commissioner
401 Bosley Avenue, Ste 405
Towson, Maryland 21204

RECEIVED
MAR 18 2008
BY:.....

Dear Mr. Wiseman:

I am writing to you as a resident of Miller's Island in Sparrows Point who is extremely troubled by some recent news. As a resident of this wonderfully unique, family-oriented, close-knit community, I need your help. Last April, I wrote a letter to every member of the Baltimore County Council, as well as the County Executive, which began the same way.[1] I realize that this is quite a lengthy letter, but please bear with me and read it in its entirety, as it will shed light on what other residents of Baltimore County could possibly be up against.

My letter last April was triggered by an article in The Examiner[2], dated March 31 & April 1, which reported that the "Baltimore County Council may ease rules on live music". According to the article, "Several Councilman said some bars and restaurants are unfairly barred from providing live music, an offering currently reserved for licensed nightclubs". In my previous letter, I went on to describe the types of activities that occur from an establishment that is allowed to operate in such a manner in the midst of a peaceful, residential community. My husband and I live next to the Dock of the Bay and have had problems with the way in which the owner, Mr. Thanner, runs his establishment.

After countless conversations and a community meeting with Mr. Thanner, where he told us time and again that he would take care of the noise level and control the patrons in the parking lot but failed to do so, we, along with other residents, went to the county's Board of Liquor License Commissioners, which supervises noise levels, for help. At the second hearing that was held, we shared a video that I recorded to illuminate the severity of the problem. The liquor board was appalled, and Mr. Thanner apologized repeatedly and told me that he was embarrassed when he saw it. Yet, he still has not come to full compliance with the requirements and stipulations that the liquor board set for him. One such stipulation was that he had to provide clearly marked security (as in the form of shirts or jackets that said "Security") **every** night from 8pm until 2am. This was when the Board of Liquor License Commissioners renewed his license with restrictions in April 2006 [3]. It was again stated to Mr. Thanner by the same board at subsequent board hearings, the third of which was held in the summer of 2007.

Upon further investigations, it was discovered that the Dock of the Bay is zoned BL (Business Local) and is not allowed, by law, to provide music. It then turned into an interpretation of the law as to whether or not Mr. Thanner is running a "nightclub". The County first fined Mr. Thanner in August 2006 for live music and an illegal outdoor tent. On May 30, 2007, you found that the Dock of the Bay is, in fact, operating as a nightclub and ordered "the playing of outdoor music either by way of an outside speaker system, live/or recorded entertainment, must be discontinued."[4] Mr. Thanner continued to disregard this order and play live music into the summer of 2007. The Office of Permits and Development Management began sending Code Enforcement Inspectors to The Dock of the Bay periodically and witnessed Mr. Thanner's blatant disregard and disrespect for the authorities which govern his establishment and grant his licenses. Attached is a copy of a citation[5] that was presented to Mr. Thanner on July 5, 2007, wherein he was fined $30,800. This fine was substantially reduced when it came before the Code Enforcement Hearing Officer, Raymond Wisnom. In his Findings of Fact and Conclusion of Law, however, Mr. Wisnom commented that "The business operators must control their patrons so they do not pose a nuisance to the community."[6] He added that "Any expansion of the business, whether it be by erecting a tent, additions, adding tables and seating outside, etc, must be pursued from a position of compliance…Acting first then asking for forgiveness is not condoned." Again, Mr. Thanner was found in violation of the Zoning Commissioner's Order.

We have been trying for almost four years now to work with Mr. Thanner to find a common ground and live in peace and harmony with each other. He simply does not live up to his end, and we are very upset at the fact that the peace and tranquility of our neighborhood, which his establishment is in the midst of, is still being disturbed. Mr. Thanner has been found in violation time and again by the liquor and zoning boards, but has still been allowed to continually break the law. While he has been fined, he has appealed the fines and is hoping for a turnover of the decisions made by you and Mr. Wisnom, and a request was made by his attorney at an appeals hearing held on January 15, 2008 to have those fines refunded. Prior to that hearing, because of the controversy which lies behind the zoning regulations and definition of a "nightclub" in this case, People's Counsel for Baltimore County Mr. Peter Zimmerman filed a Pre-Hearing Memorandum to the Board of Appeals on January 8, 2008.[7] His findings are consistent with your and Mr. Wisnom's. After attending the appeals hearing and witnessing the attempt of Mr. Thanner's attorney to find loopholes and misinterpret the law, he wrote a most interesting Post-Hearing Memorandum as well.[8]

In the midst of the legal battle which has developed, articles began appearing in local newspapers. The first of which was an article in the Dundalk Eagle, the second of which stemmed from Mr. Thanner and his supporters. This article was published in The East County Times on March 8, 2007.[9] It is another illustration of the fact that Mr. Thanner has absolutely no respect for his neighboring community. The title itself reads, "Live Next Door to a Popular Restaurant? Either Accept It or Move." The article unfairly claims that we have all just recently built or "big homes" near the restaurant. This is an untruth that Mr. Thanner has repeatedly told the public, his patrons, and in court hearings,

as he has been attempting to rally support. It is infuriating because only two of us have recently moved here, and we bought our property and began building our houses at least two years before Mr. Thanner purchased The Dock of the Bay and transformed it into what it is today. While it has been a restaurant of different sorts since Mr. Hranicka opened up what was then the basement of his own house for local fisherman to come get a warm bite to eat in the 1950's, it has never disrupted the peacefulness and tranquility of our very unique and desired community.

Again, in August of 2007, The Baltimore Examiner published an article which reported that, "The dispute has some county lawmakers considering legislation to clarify what constitutes a nightclub."[10] Councilman Olszewski was quoted as saying, "It's not clearly defined. A lot of people want to hear this outdoor music but at the same time you want to be receptive to community concerns." I guarantee you that if these people who want to hear the outdoor music had to deal with the four years of disruption to their lives, not to mention the cost of legal counsel as we have, they would feel differently. That is why I am sending you this packet of information. I want you and all of the Councilman to realize the impact that changes in legislation could have countywide…even in their own back yards. We did meet with Councilman Olszewski at the end of August 2007 to discuss the legislation which he was drafting to present to the Council. At that meeting, the councilman seemed sympathetic and receptive to our concerns. He shared a draft of a proposed new definition of "nightclub" with us.[11] While we agreed that the current definition of "nightclub" may have flaws, he agreed that there is a need for very clear provisions which would ensure that business owners would maintain the peacefulness and tranquility of the neighborhoods which their establishments reside in. We requested several revisions be made to what Councilman Olszewski shared with us, and he promised to keep us informed before the matter was brought to the Council. In January 2008, we began hearing rumors from several different sources that a draft bill had been written with no restrictions and would be introduced in the near future by Councilman Kamenetz and Councilman Olszewski. Upon contacting Councilman Olszewski, he arranged a meeting with my husband and I to discuss the draft.[12] He was concerned, as we were, about the lack of restrictions in the draft, and asked us to meet with our community and write a memorandum describing additions that we would like to see added.[13]

In response to my letter last April, Councilman Vincent Gardina responded with a letter in which he acknowledged the impact that the noise emanating from our neighboring establishment would have on our quality of life.[14] He went on to say that "It is this type of situation that would not be accepted under any legislation changes that may be considered. Rather, establishments that are isolated from residential communities and have outside accessory decks could be allowed to have very quiet and minimal music. The possible concept could be restricted to intense business zones that do not border residential zones." I also received a call from Councilman Moxley's aide , Bryan Sheppard, within 3 days of sending out my letter, who stated that the Councilman would not be in favor of or support any legislation that would have a negative impact on communities such as we have had. Councilman Kevin Kamenetz responded with a letter dated April 10, 2007, where he said that he shared my concerns that there should not be

any "blanket" authority to grant live music.[15] While Councilmen Gardina's and Moxley's response made it very clear where they stand in support of their residential communities, Councilman Kamenetz's seemed rather vague to me. In fact, he suggested that I refer my comments directly to my councilman who may be in a better position to directly respond to my concerns. I wrote to every Councilman, as well as the County Executive, last April in an effort to raise awareness and gather support so that when the issue was presented, they would have some background knowledge and be able to look at it from a community resident's perspective. What bothered me most upon seeing the most recent draft is that what Councilman Kamenetz drafted is just what he said it should **not** be… absolute "blanket" authority with no restriction to protect the residential communities in which such restaurants/taverns are located in.

As the article in The Examiner pointed out last March, this is "a move at least one community leader said could pollute neighborhoods with noise and traffic". Dick Parsons, who chairs a group called the Community Conservation Advisory Group, said in the article that "a bill could transform any bar or restaurant into a nightclub by right." "'By including 'restaurant' you really open quiet a wide swath there,' Parsons said. 'It's the noise, the ambiance, the crowd that's attracted, the parking, the whole bit.'" Please understand that if the bill is presented and accepted as is, the same issues that we have been facing and continue to face, could turn up in every community, even yours. I urge you to consider the ramifications of such a vague and one-sided piece of legislation as in the draft bill. I'm sure you are aware of the implications that such a vague piece of legislation could have on cases such as ours. I am involving you to ask if there is anything you can do to help. I plead with you as a mother trying to raise her family in a peaceful, tranquil, safe community…do not support the bill unless there are very strict provisions in place.

One of my neighbors and myself have video-taped countless instances to illustrate some of the issues that have repeatedly arisen over the past three and a half years. We have combined a few of them onto one DVD, which you will find enclosed. Please take the time to view it, and as you do, pay close attention to the dates and times of the occurrences. It demonstrates the pattern of behaviors which occur as a direct result of the crowd that is attracted to the establishment when there is live music. You will also notice one segment in the early evening in May 2007 which demonstrates that on a nice spring or summer day, we must shut our doors and windows and turn our air conditioners on rather than leaving the windows open to catch a fresh air breeze. If we don't, we can't hear our own televisions over the noise coming from the outdoor music and cheering patrons. You can imagine the impact this has and will have on our rising energy bills. Take notice during this segment that Mr. Waldman, who lives across the street from the entrance to the parking lot of The Dock of The Bay, is actually standing inside of his house while recording. I am, again, sending this packet with a similar letter to every Councilman, the County Executive, and several community leaders in hopes of raising awareness of the need for restrictions that should be added to the draft bill to protect the peacefulness, tranquility, safety, health and quiet of the neighborhoods in which restaurants/taverns are located.

Thank you for your time and consideration. As you can see, I have put a great deal of time and effort into this awareness campaign, with the help of my community. Please contact me at home 410-477-0053 or on my cell phone 410-850-9431. I look forward to hearing from you.

Mrs. Daryl Wolinski

Mrs. Daryl Marie Wolinski
dwolinski@bcps.org
Lifelong resident of the Sparrows Point Community
Sparrows Point High School Teacher

Charles & Daryl Wolinski
9019 Cuckold Point Road
Sparrows Point, Maryland 21219
410-477-0053

April 5, 2007

Councilman John Oleszewski, Sr.
7701 Wise Avenue
North Point Government Center
Dundalk, Maryland 21222

Dear Councilman Oleszewski:

I am writing to you as a resident of Miller's Island in Sparrows Point who is extremely troubled by some recent news. As a resident of this wonderfully unique, family-oriented, close-knit community, I need your help.

Yesterday my husband and I read an article from last weekend's issue of The Examiner, dated March 31 & April 1, which reports that the "Baltimore County Council may ease rules on live music". According to the article, "Several councilman said some bars and restaurants are unfairly barred from providing live music, an offering currently reserved for licensed nightclubs". Furthermore, the article states that the council has prepared legislation and could vote on it as soon as April 9.

Why is this of concern to me? Because I see, on a daily basis, the activities that occur from an establishment that is allowed to operate in such a manner in the midst of a peaceful, residential community. My husband and I live next to the Dock of the Bay and have had problems with the way in which the owner, Mr. Thanner, runs his establishment. Among the problems are the noise level created by the outdoor music itself as well as from the crowd that it attracts. Parking is an issue, and, most disturbing to me, is the activity and noise that occurs in the parking lot that is created by such crowds. I am disgusted when I look out of my windows and see patrons urinating in the parking lot and when my children and I are awakened several times a night to find patrons continuing their party in the parking lot. This includes drinking, driving erratically, and driving away while they still have open alcoholic containers in their hands. After countless conversations with Mr. Thanner, where he always told us that he would take care of the noise level and control the parking lot, we, along with other residents, went to the county's Board of Liquor License Commissioners, which supervises noise levels, for help. At the second hearing that was held, we shared a video that I recorded to illuminate the severity of the problem. I would be happy to share that video with you. The liquor board was appalled, and Mr. Thanner apologized repeatedly and told me that he was embarrassed when he saw it. Yet, he still has not complied with the requirements and stipulations that the liquor board set for him. Upon further investigations, it was discovered that the Dock of the Bay is zoned BL (Business Local)

and is not allowed, by law, to provide music. We have been trying for almost three years to work with Mr. Thanner to find a common ground and live in peace and harmony with each other. He simply does not live up to his end, and we are very upset at the fact that the peace and tranquility of our neighborhood, which his establishment is in the midst of, is still being disturbed.

For nearly three years, Mr. Thanner has been warned time and again, but still been allowed to continually break the law. According to The Examiner, that law may be changed to allow such activity. Quoting from the article, " 'Right now, if they have an outdoor deck, they are prohibited from having a guy with a guitar,' said Councilman Vince Gardina, D-District 5. 'We're looking at possible ways to get around that'". As Mr. Gardina said himself, a few people are trying to "get around" abiding by the law by simply having that law changed to benefit themselves. I find this apprehensible and greatly disturbing. Can any citizen have a law changed to benefit him/herself? Of course not. So why should a few people who have some money in their pockets and influential acquaintances be allowed? This proposed change in law will benefit few. Further, the few that it will benefit do not represent the majority of the community. It seems to me that for a law to be changed, it would have to be for the good or benefit of the majority of the citizens in that community.

As the article in The Examiner pointed out, this is "a move at least one community leader said could pollute neighborhoods with noise and traffic". Dick Parsons, who chairs a group called the Community Conservation Advisory Group, said in the article that "a bill could transform any bar or restaurant into a nightclub by right." "'By including 'restaurant' you really open quiet a wide swath there,' Parsons said. 'It's the noise, the ambiance, the crowd that's attracted, the parking, the whole bit.'" Please understand that if these proposed changes take place, the same issues that I have been facing and continue to face, could turn up in every community, even yours.

I voted for you because we have several friends who know you well, and whom you have helped tremendously. They told us that you really stand up for the little man. I am a little woman. I urge you to consider the ramifications of such proposed changes. As a County Councilman, please think of your county residents…your voters…the people you work so hard to represent and protect. I plead with you as a mother trying to raise her children in a peaceful, tranquil, safe community…do not support these changes.

Thank you for your time and consideration. Please contact me at home 410-477-0053 or on my cell phone 410-850-9431.

Mrs. Daryl Marie Wolinski

TODAY'S NEWSMAKERS

ULMAN
ard County Executive Ken Ulman will kick off Howard Transit's upgraded services at 11 a.m. Monday at the Mall in Columbia. The changes include service to new areas in the county; earlier and later service hours on some routes; and half-hour frequency on routes serving the mall, Howard County General Hospital, Howard Community College and several village centers.

Ulman

JAMES LUCENO
James Luceno, the best-selling author of three "Star Wars: The New Jedi Order" novels in the series and a George Lucas collaborator, will be speaking at the Towson Library 2 p.m. Sunday. Luceno, whose appearance is sponsored by the Friends of the Towson Library, will give attendees a tour of the "Star Wars Expanded Universe," and will bring vintage Star Wars posters and other paraphernalia. Among his best-selling books are "Labyrinth of Evil" and "Dark Lord."

JENNIFER WEBB
Jennifer Webb, a virtual middle school girl, will be the star at Computer Mania Day on May 5 at the University of Maryland, Baltimore County. "Jennifer Webb represents cutting-edge technology that can figuratively and literally talk to girls to get the message across that technology is fun," Claudia Morrell, director of UMBC's Center for Women and Information Technology, said in a news release. The technology gender gap begins in the middle school years.

Push to close juvenile center could benefit Anne Arundel

By Matthew Santoni
Examiner Staff Writer

Anne Arundel could receive the lion's share of land if Washington's crumbling juvenile detention center in Laurel closes.

"There is no dispute that the Oak Hill facility is a disgrace and must come down," U.S. Sen. Ben Cardin said in a statement.

Cardin

He introduced a ll with U.S. Sen. bara Mikul-, both Maryland Democrats, to close the center, build a new juvenile detention center in Washington and split the 800 acres it sits on among Anne Arundel, Fort Meade and the National Park Service.

Anne Arundel would get all land east of the Baltimore-Washington Parkway and south of the Patuxent River.

Built in 1967, Oak Hill is a maximum-security facility for offenders 14 to 21 years old. The center's population has declined from 245 youths in February 2005 to about 60.

County Executive John Leopold said he wants the land to be developed as a West County Regional Park. He is meeting next week with D.C. Mayor Adrian Fenty to discuss the facility and its future.

If Anne Arundel chooses to develop more than 25 percent of the land, money from the development would go toward the new detention center's construction in Washington.

"The intent is to encourage the county to keep the majority of the land as open space," said Susan Sullum, a spokeswoman for Cardin's Baltimore office.

Another portion of the land would go to Fort Meade for the National Security Agency's expansion.

Nearby residents and Maryland legislators have fought for more than two decades to close Oak Hill, which been burdened by management es, escapes, drug use and abuse.

"It's the right time to do it," said Anne Arundel Council Member G. James Benoit, D-Laurel.

The Associated Press contributed to this story.

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ANNE ARUNDEL

Wong Shuhong, an instructor at Renmin University of China, talks about Chinese culture Friday at Meade Middle School in Anne Arundel County. - Arianne Starnes/Baltimore Examiner

County officials want to offer Chinese language instruction in public schools

School board members are slated to vote on the course proposal on Wednesday

By Patrick Skinner
Special to The Examiner

Photos of China's Great Wall, pandas and terra-cotta soldiers enraptured students as they shared their impressions of the country with a delegation of educators from China.

The students at Meade Middle School in Anne Arundel were among several middle schools the delegation visited recently in an effort to work with the county in creating a Chinese language and culture curriculum.

"For us, it is looking at the global economy and how competitive it is, and our students need to be competitive," said Meade Middle School Principal Eddie Scott, referring to the interest in Chinese.

Anne Arundel Superintendent Kevin Maxwell wants to bring the Chinese language curriculum to middle schoolers this fall. The School Board is expected to vote on the proposal Wednesday.

The National Security Agency has identified Mandarin Chinese as a language lacking among employees. School and government officials said they hope the program could give young people a leg up on competition for jobs in the international market.

Anne Arundel's proposed Chinese curriculum would span six years, beginning with Introduction to Chinese in the seventh grade and culminating in Advanced Placement or International Baccalaureate courses in the senior year of high school.

"We plan to have the program in all 19 middle schools, but it is based on whether we can field a class. We want to start the program with as many students as possibly," said Patricia Orndorff, coordinator of World and Classical Languages.

Chinese language is offered in many school systems, including Baltimore City and Howard and Baltimore counties, Maryland State Department of Education spokesman Bill Reinhard said.

pskinner@baltimoreexaminer.com

Shi'Mara Smith, 11, right, smiles with her friend Ashley Johnson, 11, both of Severn, as they learn about pandas during a Chinese culture presentation Friday at Meade Middle School in Anne Arundel County. - Arianne Starnes/Baltimore Examiner

Baltimore Co. Council may ease rules on live music

By Jaime Malarkey
Examiner Staff Writer

Baltimore County lawmakers are considering legislation to relax restrictions on live music at certain bars and restaurants — a move at least one community leader said could pollute neighborhoods with noise and traffic.

Several councilmen said some bars and restaurants are unfairly barred from providing live music, an offering currently reserved for licensed nightclubs. Three councilmen met with county officials to discuss changes and provisions, but cautioned they have no firm plans.

"Right now, if they have an outdoor deck, they are prohibited from having a guy with a guitar," said Councilman Vince Gardina, D-District 5. "We're looking at possible ways to get around that."

Dick Parsons, who chairs a group called the Community Conservation Advisory Group, e-mailed community activists Friday, urging them to contact council members before the bill could be formally proposed.

Citing an unnamed source, Parsons said he believes the council has prepared legislation and could vote on it as soon as April 9.

If not carefully worded, he said he worries a bill could transform any bar or restaurant into a nightclub by right.

"By including 'restaurant' you really open quite a wide swath there," Parsons said. "It's the noise, the ambiance, the crowd that's attracted, the parking, the whole bit."

Restaurants and bars who want to offer live music now must seek approval from the county's Board of Liquor License Commissioners, which supervises noise levels.

The board's administrator, George Abendschoen, said he doesn't receive many requests for live music.

The council is considering provisions including setting time limits determined by the proximity of homes, said Councilman John Olszewski Sr., D-District 7.

At least one council member, Democrat Kevin Kamenetz from the county's second district, said he would question blanket authorization.

"But there might be circumstances where [relaxed rules] wouldn't be unreasonable," he said.

jmalarkey@baltimoreexaminer.com

3

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

PHILIP R. LEYHE, JR.
Chairman
Board of Liquor License Commissioners

April 25, 2006

Bryan J. Thanner
Katherine B. Thanner
Lawrence J. Thanner, Jr.
THANNER ENTERPRISES, LLC
t/a Dock of the Bay
9025 Cuckold Point Road
Baltimore, MD 21219

RE: SHOWCAUSE -

With reference to the above, the Board of Liquor License Commissioners for Baltimore County is confirming their decision.

ALLEGED VIOLATION

ARTICLE 2B – Ann. Code of MD

Sec. 10-401 Causes
Sec. 10-403 Procedure
Sec. 10-301 General Procedure

RULES AND REGULATIONS OF THE BOARD OF LIQUOR LICENSE COMMISSIONERS FOR BALTIMORE COUNTY.

RULE 3 – NOISE AND MUSIC
RULE 18 – NEW APPLICATION, RENEWAL APPLICATIONS, TRANSFER APPLICATIONS AND FEES: PROTESTS

DECISION

License Renewed With Restrictions:

1. No Music after 11:00 p.m. for 1 month. (The Board will revisit)
2. Identified Security on parking lot 7 days a week
   from 8:00 p.m – 2:00 a.m.

Sincerely,

George Abendschoen
Administrator

GA:lek

cc: Liquor Board Chief Inspector
David Mister, Esq.
Insp. Brooks
Vice Dept.
License File
Day File
FINELETTER.DOC

IN RE: **PETITION FOR SPECIAL HEARING***		BEFORE THE
S/E corner Cuckold Point Road and 5th Street	*	ZONING COMMISSIONER
(9025 Cuckold Point Road)	*	OF
15th Election District		
7th Council District	*	BALTIMORE COUNTY
Fifth Street, LLC	*	
d/b/a Dock of the Bay		
Petitioner	*	**Case No. 07-144-SPH**

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Hearing filed by the owner of the subject property, Fifth Street, LLC, by Lawrence J. Thanner, Jr., managing member, and through their attorney, J. Carroll Holzer, Esquire. In accordance with Section(s) 500.6 and 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), the Petitioner requests a determination as to whether the use of the B.L. zoned property at 9025 Cuckold Point Road is in violation of the zoning regulations and specifically, is the restaurant, which provides music at this location during the day, a "nightclub" as defined in B.C.Z.R. Sections 101, 102.1 and 230. The subject property and improvements are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the public hearing in support of the request were several of the past and present residents of Millers Island, namely Mike Kondylas, Dorothea M. Reilly, and Judith Kurek. As indicated above, the Petitioner and Lawrence Thanner were represented by J. Carroll Holzer, Esquire. This request generated significant public interest and numerous residents from the surrounding locale appeared, including Patricia A. and Wayne E. Waldmann, Sr., Wayne E. Waldmann, Jr., Tammy Lynn Waldmann, Doug W. Waldmann, Philip and Kay Sessa, Charlie and

Daryl Wolinski, Robert Poleski, Terri Poleski, and Michael Poleski, Louis Pertrovia, David McWilliams, David and Vena Steck, Robert Haas, Ken Schoff, Tammy Novak, and David Znamirowski. Matthew J. Ciarpella and his wife, Nancy Jean Ciarpella, who live at 2716 Sixth Street, adjacent to the Dock of the Bay, were represented by Francis X. Borgerding, Jr. Esquire. Most of the Protestants voiced an overwhelming concern with the live bands and loud outdoor music being played in their backyards, parking overflow and traffic leaving the Dock of the Bay late at night. Also appearing were James H. Thompson, Supervisor, Bureau of Code Enforcement, and Chip Raynor, Code Enforcement Officer, within the Division of Code Inspections and Enforcement.

As a preliminary matter, Mr. Borgerding argued that the petition, as filed, should not be allowed as it is subject to the doctrine of judicial estoppel (*See Board of County Com'rs of Cecil County v. Racine* 24 Md. App. 435, 332 A.2d 306 [1975] and *Whittle v. Board of Zoning Appeals of Baltimore County*, 211 Md. 36, 125 A.2d 41 [1956]). He points out that the Baltimore County Code (B.C.C.) Section 3-6-201 et seq. sets up the mechanism and procedure to be followed for Code Enforcement hearings and those procedures were followed in the underlying Violation Case No. 06-3683. That case involved the same property, parties and nightclub issues. Allegations of a nightclub enterprise were made by neighbors, an investigation as authorized by the Department of Permits and Development Management was conducted, correction notices issued, a public hearing held and findings of fact made by the Code Enforcement Hearing Officer Raymond S. Wisnom, Jr. *See* Protestant's Exhibit 10. According to Mr. Borgerding, allowing the Petitioner, under these circumstances, a "second bite of the apple" would launch a new and undesirable precedent. Petitioner's remedy, he asserts, is an appeal to the Board of Appeals not a new hearing before the Zoning Commissioner. Mr. Holzer countered by pointing out that the Petitioner filed the instant petition prior to the issuance of the Code Enforcement Hearing Officer's Order, that he (Holzer) had

requested a postponement of the enforcement proceedings until after a determination/interpretation of the regulations of the B.C.Z.R. was made. He points out that Mr. Wisnom is not designated by the County Charter to interpret zoning definitions and regulations. At the conclusion of hearing Counsels' arguments, Mr. Borgerding's Motion was denied.

At issue in the instant case is not whether a zoning violation exists, but a determination, through a clear analysis of the B.C.Z.R. and its definitional section as to what constitutes a nightclub. In this regard, Section 500.6 of the B.C.Z.R. vests the Zoning Commissioner with the authority to conduct hearings involving any violation or alleged violation/non-compliance with any zoning regulation. Additionally, that section allows the Zoning Commissioner to conduct a hearing to determine the proper interpretation of the B.C.Z.R. Similarly, Section 500.7 of the B.C.Z.R. allows the Zoning Commissioner to conduct such hearings and pass such Orders as shall be necessary for the proper enforcement of all zoning regulations.

As is often the case with cases presenting difficult legal issues, the facts are relatively simple and largely not in dispute. As noted above, Fifth Street, LLC purchased the property in October 2003 and due to Hurricane Isabel damage did not open until March 2004. The property is rectangularly shaped, 600' wide x 1,200' deep with frontage on the Chesapeake Bay. The property as shown on Petitioner's Exhibit 1 contains a gross area of 1.03 acres, more or less, zoned B.L. The land is improved with a large existing restaurant and tavern, pavilions, wood pier, as well as a parking lot and an overflow parking lot located on the north side of Cuckold Point Road. The subject site is on Millers Island situated between the Back River and the Chesapeake Bay, referred to as Swan Point. Lawrence Thanner described the Dock of the Bay's long history of commercial uses beginning in 1955 and indicated that since the subject property was established, there has always been music played. In the 1960's, it was owned by the Hicks family and known as the "Fisherman's

Inn" and music was played inside and on a partially open patio. Later, after becoming the Dock of the Bay, the two brothers who then owned it built a pavilion and live band music was played outside. This testimony was corroborated by three long-time residents of the area – Mr. Kondylas, Ms. Reilly, and Ms. Kurek, who indicated most all of the waterfront restaurants on Millers Island played music which historically included Ramona's, Worchester's, The Islander Inn, White Swan and Rum Runners. Ramona's was the first to initiate live bands, Worchester's in the 1990's (later named as Rum Runners) played music on the pier. The Islander and White Swan provided disc jockey entertainment inside. The Dock of the Bay, however, is the only remaining waterfront establishment on the island today with a live band playing outdoors. Mr. Thanner describes the current operation as primarily a food service/restaurant business accounting for 70% of the revenues derived and the other 30% from the sale of alcoholic beverages. He delineates the entertainment provided as follows:

- 10 television sets inside and 2 television sets outside. These televisions, for the most part, are used for showing sporting events and shows such as MTV and American Idol, which contain music.

- The house music sound system has 8 speakers inside and 4 speakers outside. The system plays music continuously except when other forms of entertainment are being utilized. The system is used to play either satellite music or compact discs.

- On Friday and Saturday nights, after 9:00 PM, usually a disc jockey plays music or karaoke and occasionally a band plays inside until about 1:00 AM. Mr. Thanner says this is exactly what many bars and taverns do throughout the County, including two other bars located on Millers Island.

- On Saturday and Sunday afternoons, a band plays outside from 4:00 PM until 8:00 PM during daylight hours from the beginning of May through September. Again, Thanner indicates that's exactly what the River Watch and Wild Duck waterfront establishments do as well.

- The live music and entertainment enumerated above consists of approximately 7.5 percent of the total time that the restaurant is open for business.

Mr. Thanner, as managing member of the business, therefore, has requested a special hearing in order for a determination to be made whether such use occurring on the property is that of a nightclub or simply a restaurant where ancillary entertainment is provided. The reason for drawing this distinction is that a restaurant is a use permitted as a right on the property, whereas a true nightclub use is not permitted. Therefore, this distinction is very important to this particular business owner who submits that the definition of nightclub, as contained within the B.C.Z.R., is overly broad and encompasses almost every type of restaurant, diner, café and other similar type of commercial establishment.

The Protestants testified on the second day of the hearing, and as noted above explained the inconveniences they endure as a result of the loud music being played on the weekends and to a lesser extent during the weeknights. Mr. Ciarpella discussed the activities and the impact it had on his wife and three children. In September when his children are in school, the loud music which he testified goes into the night, and the people coming and going (leaving after 2:00 AM) is most disturbing. He described the sound level, even with the doors closed as *loud*. His family and other neighbors, Charlie Wolinski, Kay Sessa and Wayne Waldmann put up with this 40 days out of 365 a year, mostly Saturdays and Sundays in spite of numerous complaints. Messrs. Znamirowski (7 blocks away), Hass (1 mile away), Schoff (1 block away) and McWilliams (3-4 blocks away) each state they can hear the band music when played.

In rebuttal, Mr. Thanner testified that in the winter, music is played from 9:00 PM to 1:00 AM inside on Fridays and Saturdays, and in the summer, music is played from 9:00 PM to 1:00 AM

inside and on Saturdays and Sundays, the music is played outside from 4:00 PM to 8:00 PM. He explained that as a result of complaints the County Liquor Board inspectors have measured the noise level at the property line which allows for 65 decibels until 10:00 PM and then 55 decibels to 11:00 PM with no music thereafter. He thinks he is doing much better and explains just how important it is for a waterfront restaurant business to provide music entertainment.

It has been stated that it is the responsibility of the Zoning Commissioner to determine the intent of the legislature when construing any regulation/statute. [*Marzullo v. Kahl* 36 Md. 158, 175 (2001)] Interpretation of the regulations is a daunting task and made even more difficult given the excellent arguments presented by counsel. There are a number of land uses defined in Section 101 of the B.C.Z.R. that are relevant to rendering a decision in this case. Initially, it is to be noted that "Restaurant, Standard" is defined in the B.C.Z.R. as "a facility or part of a facility used primarily for serving meals and beverages to persons seated at tables on the premises of the establishment. The term includes cafes, cafeterias, tea rooms and outdoor cafes. The term does not include a catering hall. A standard restaurant may offer a carry-out service, provided that such service is accessory to the principle restaurant operations. ..." Next a "Tavern" is "an establishment which has a Baltimore County Class D Liquor License. A tavern which meets the criteria of nightclub, as defined in these regulations, shall be considered a nightclub. The term "Nightclub" is defined in Section 101 of the B.C.Z.R. as "a tavern or other commercial establishment which provides live or recorded entertainment, with or without a dance floor, and which is categorized as a nightclub by the Building Code of Baltimore County".[1] Baltimore County Council Bill No. 1-05 adopted the International

[1] Although interpreted in the B.C.Z.R., the Petitioner urges this Commission to use Webster's Third New International Dictionary (Unabridged) definition of Nightclub, "a restaurant open at night usually serving liquor, having a floor show, and providing music and space for dancing." To apply the B.C.Z.R. definition literally, they submit, would open a *Pandora's Box* in that it encompasses both live or recorded entertainment. Recorded would include house systems and jukeboxes. In that situation, every restaurant and bar in a B.L. zoning classification providing some form of live or recorded entertainment would be classified as a "nightclub". This would include restaurants such as Denny's, International House of Pancakes (IHOP) and the Bel-Loc Diner.

Building Code (I.B.C.) 2003 as the Building Code of Baltimore County. The I.B.C. provides in Section 303 Category A-2, A Certain Assembly Group. Group A-2 is Assembly uses intended for food and/or drink consumption, including but not limited to banquet halls, *nightclubs*, restaurants, taverns and bars. The characteristics of Group A-2 are categorized by some or all of the following: low lighting levels; entertainment by a live band or recorded music generating above-normal sound levels; no theatrical staged accessories; later-than-average operating hours; tables and seating arranged or positioned so as to create ill-defined aisles; a specific area designated for dancing; service facilities for alcoholic beverages and food; and high occupant load density. While the Protestants and Petitioner argue as to whether The Dock of the Bay includes all of the characteristics 1-8 or just some of the characteristics is of little consequence. The B.C.Z.R. definition of nightclub only states that it be "categorized as a nightclub" in the I.B.C. It falls within this Group A-2 for fire protection and crowd control due to the potential for multiple fatalities and injuries from fire or other sudden emergency.

In ascertaining the County Council's intent, I must look to the language in the regulation itself, giving that language *its ordinary and natural meaning* and avoiding a construction that is illogical, unreasonable or inconsistent with common sense. *Papillo v. Pockets, Inc.* 119 Md. App. 78, 83-84 (1997).

Mr. Wolinski and Mr. Waldmann, a neighbor next to the Fisherman's Inn and Dock of the Bay for some 43 years, emphasize emphatically that the law is the law and adherence to the regulations should be strictly enforced. *See* Protestants' Exhibits 14 and 15 for commentary on the live bands performing at 9025 Cuckold Point Road and the physical affects on the residents. Mr. Ciarpella's testimony corroborated by Code Enforcement Supervisor James H. Thompson makes it clear under Section 101 of the B.C.Z.R. that they believe the Petitioner is conducting a nightclub on

the subject property and that this use is not a permitted use in the Business, Local Zone (B.C.Z.R. Section 230). In considering this unrefuted testimony, there is little to suggest that "provides live or recorded entertainment, with or without a dance floor" is ambiguous or means anything other than that learned from reading the plain language of the nightclub definition. This Commission's goal is to discern and implement legislative intent, and, to do that, I must begin with the plain meaning of the statutory language. If the intent is clear from that language, there is no need to search further. *Walker v. Dept. of Human Res.*, 379 Md. 407, 420 (2004). I find that that is the case here.

Mr. Holzer argues that Section 230 provides permitted uses in the B.L. zone that envision the playing of music by the County Council. *See* B.C.Z.R. Sections 230.7 providing for dancing schools and conservatories for music and the arts. His argument that I should avoid a construction that is inconsistent with common sense is fully addressed in Petitioner's written memorandum. He notes that the definition in Merriam-Webster's Dictionary of "nightclub" as a place of entertainment open *at night*, usually serving food and liquor and providing music and space for dancing and often having a floor show - would assist in separating out water oriented uses such as marinas and waterfront restaurants that are dependant on accessory entertainment in recreational areas of the County vis-à-vis other cafes and restaurants located next to residential uses.[2] However, this I cannot do. The General Provisions of B.C.Z.R. Section 101 Definitions are clear on this point and mandate that "any word or term not defined in this section shall have the ordinary accepted definition as set forth in the most recent addition of Webster's ... ". As noted above, the B.C.Z.R. defines a Night Club. Moreover, the definition of Tavern again, refers the reader back to "the criteria of a nightclub, as defined in these regulations" further neutering Petitioner's argument that Webster's Dictionary

[2] Mr. Thompson's testimony on cross-examination illustrated confusion on what constitutes a nightclub. He focused on the playing of *live* music in the B.L. zone but side stepped the hundreds of restaurants that play *recorded* music. Likewise, this Commission found it convenient to not open a "Pandora's Box" in Case No. 02-074-SPHA involving a "non conforming nightclub use" in the B.L. zone.

definition of nightclub be used.

This finding is of no comfort to the Petitioner and its managing member, Larry Thanner, since what they seek is to play live music during daylight hours as has been the custom in the area for many years. To Mr. Thanner and the many restaurant owners similarly situated, I can only offer a quote from Dickens Classic "Oliver Twist" and as uttered by one "Mr. Bumble" (which seems appropriate here) "If the law supposes that, … [providing music during the day is a nightclub] … then the law is an ass – an idiot". Mr. Bumble was referring, of course, to a legal fiction that had no basis in reality. No doubt many restaurant owners, as aptly pointed out by Mr. Holzer will believe that Mr. Bumble was right, however, I am obligated to apply the applicable law.

Based on counsel's arguments and evidence presented and examination of the words contained in the regulations and definitions, I find that the Petitioner's use of the property at 9025 Cuckold Point Road, Millers Island, to be in violation of the B.C.Z.R.; and further that Fifth Street, LLC's Dock of the Bay restaurant by providing music during the day is a "nightclub" as defined in the B.C.Z.R. Sections 101, 102.1 and 230.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for the reasons set forth above, it is my opinion that the Petitioner is conducting a nightclub on the subject property and, further, that Petitioner's use of the property is not permitted pursuant to Section 230 of the Baltimore County Zoning Regulations (B.C.Z.R.).

THEREFORE, IT IS ORDERED, by the Zoning Commissioner for Baltimore County, this 30th day of May, 2007, that the Petition for Special Hearing pursuant to Sections 500.6 and 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), requesting a determination as to whether the use of the B.L. zoned property at 9025 Cuckold Point Road is in violation of the zoning regulations and specifically, is the restaurant, which provides music at this location during the day, a

"nightclub" use as defined in the B.C.Z.R. Sections 101, 102.1 and 230, is hereby answered in the affirmative and that the playing of outdoor music either by way of an outside speaker system, live/or recorded entertainment, must be discontinued.

Any appeal of this decision must be taken in accordance with Section 32-3-401 of the Baltimore County Code.

WILLIAM J. WISEMAN, III
Zoning Commissioner for
Baltimore County

WJW:dlw

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Permits and Development Management
Code Inspections and Enforcement
County Office Building, Rm. 213
111 West Chesapeake Ave.
Towson, Maryland 21204

Code Enforcement	410-887-3351
Building Inspection	410-887-3953
Electrical Inspection	410-887-3960
Plumbing Inspection	410-887-3620
Signs/ Fences	410-887-3896

CODE ENFORCEMENT & INSPECTIONS CITATION

CASE NUMBER	PROPERTY TAX ID	ZONE
06-3683	15-08-790109	B.L.

NAME(S): Fifth Street L.L.C

RESIDENT AGENT: LAWRENCE J. THANNER, JR.

2515 Boston Street Place Balto MD. 21224

MAILING ADDRESS: 9025 Cuckold Point Road

CITY: Baltimore STATE: MD. ZIP CODE: 21219

VIOLATION ADDRESS: " SAME AS ABOVE "

CITY: STATE: MARYLAND ZIP CODE:

VIOLATION DATES: 6-1-07 to 7-31-07

DID UNLAWFULLY VIOLATE THE FOLLOWING BALTIMORE COUNTY LAWS:

SECTIONS 101 "Night Club", 102.1, 230; 500.6 - IBC 2R

SECTION 3103.1 - IBC

SECTION 35-2-301 - BCC

OPERATION OF A NIGHTCLUB IN A B.L. (BUSINESS, LOCAL) ZONE

NON-COMPLIANCE WITH ZONING COMMISSIONER'S ORDER CASE NO. 07-144 SPH

ADDITION CONSTRUCTED WITHOUT A PERMIT

TENT ERECTED WITHOUT A PERMIT

FAILURE TO OBTAIN AN ELECTRICAL PERMIT

Pursuant to Section 1-2-217, Baltimore County Code, civil penalty has been assessed, as a result of the violation(s) cited herein, in the amount indicated:

$ 30,000

A quasi-judicial hearing has been pre-scheduled in room 116, 111 W. Chesapeake Ave, Towson, Maryland, 21204, for:

DATE: 7/31/07

TIME: 9:00 (A.M.) P.M.

I do solemnly declare and affirm, under the penalty of perjury, that the contents stated above are true and correct to the best of my knowledge, information, and belief.

Inspector Printed Name: Jeff Radcliffe

INSPECTOR SIGNATURE: Jeff Radcliffe Date: 7/5/07

PRINT NAME AGENCY

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Department of Permits and Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204
Baltimore County, Maryland

In the Matter of

Fifth Street LLC
Lawrence J. Thanner, Jr., R/A
2515 Boston Street Palce
Baltimore MD 21224

Respondent

Civil Citation No. 06-3683B

9025 Cuckold Point Road

FINDINGS OF FACT AND CONCLUSION OF LAW
FINAL ORDER OF THE CODE ENFORCEMENT HEARING OFFICER

This matter came before the Code Enforcement Hearing Officer for the Department of Permits and Development Management on August 14, 2007, for a hearing on a citation for violations under the Baltimore County Zoning Regulations (BCZR) § 101, 102.1, 230; 500.6; failure to cease operation of a night club in a BL zone; failure to comply with Zoning Commissioner's Order case #07-144 SPH; Baltimore County Code (BCC) § 3103.1 (IBC); failure to obtain permit for tent; 35-2-301; failure to obtain permit for electrical work on property zoned BL known as 9025 Cuckold Point Road, 21219.

On July 5, 2007, pursuant to §3-6-205, Baltimore County Code, Code Enforcement Officer, issued a code enforcement citation. The citation was legally served on the Respondents.

The citation proposed a civil penalty of $30,800.00 (thirty thousand eight hundred dollars). A code enforcement hearing date was scheduled for August 14, 2007.

Lawrence J. Thanner, Jr., Respondent appeared for the Hearing and testified.
J. Carroll Holzer, Esquire appeared as Counsel for the Respondent.
Jeffrey Radcliffe, Code Enforcement Officer presented the case for Baltimore County.

Mr. Holzer objected to case number applied to instant citation due to prior case with same case number. For the purposes of clarification, the Hearing Officer applied the letter B to the case; which will now be known as Case #06-3683B. Code Enforcement's division policy is to maintain the same case number until the case is adjudicated. I must agree with Mr. Holzer, that in this instance, a new case file would have been appropriate but not cause to dismiss the case.

Baltimore County Code (BCC) § 35-2-301; failure to obtain electrical permit is dismissed for lack of evidence to show when and by whom the work was done.

Respondent was charged with failure to comply with the Zoning Commissioner's Order of May 30, 2007, wherein the Commissioner found "the playing of outdoor music either by way of an outside speaker system, live or recorded entertainment, must be discontinued. Inspector Radcliffe entered numerous photographic exhibits showing live and recorded music however only 2 exhibits show outside entertainment, June 24, 2007 and July 1, 2007. All other photographs show inside music entertainment. The Commissioner determined that the playing of outdoor music must be discontinued and did not address the playing of indoor music, etc.

Testimony established that although the tent was erected on 2 separate occasions for 3 days each, the tent was used but for 1 day each time. Mrs. Thanner testified that she called Permits and Development Management about getting a tent permit for 1 day and was told a permit was not required for 1-day tent placements. The previous case involved a similar tent structure. It was determined that a permit was required due to the expansion of the business to the outdoors without zoning review and approval. The expansion, resultant loud music, and large crowds prompted the complaints and enforcement action at that time. Businesses located adjacent to residences must control noise and other nuisances in consideration for traditional residential lifestyles. Music played indoors should not be heard beyond property lines of the business establishment.

During the Hearing, several persons expressed concern regarding public urination and other bothersome untoward behavior exhibited by Dock of the Bay patrons. The Police Department and/or the Liquor Board must address this type of complaint. The business operators must control their patrons so they do not pose a nuisance to the community.

Obviously, the Dock of the Bay is a wonderful place to dine. Somehow, the restaurant and the community must find a way to co-exist. Any expansion of the business, whether it be by erecting a tent, additions, adding tables and seating outside, etc., must be pursued from a position of compliance by making proper application to the Department of Permits and Development Management. Acting first then asking for forgiveness is not condoned.

I find the Respondent in violation of the Zoning Commissioner's Order on 2 occasions, June 24, 2007 and July 1, 2007. County exhibits #2 and #4 show outdoor live music being played, photographed and witnessed by Inspector Radcliffe.

I find the Respondent in violation of erecting a tent on 2 separate occasions without benefit of the required permit or zoning approval for a period of 3 days each as testified to by Inspector Radcliffe, Mr. Thanner, Mrs. Thanner and others.

IT IS ORDERED by the Code Enforcement Hearing Officer this 16th day of August 2007, that a civil penalty is imposed in the amount of $1,000.00 (one thousand dollars), payable and due 35 days from the date of this Order.

IT IS FURTHER ORDERED that a building permit or use permit is required prior to the erection of any tent or any other accessory structure on commercial zoned property known as 9025 Cuckold Point Road.

Signed: Raymond S. Wisnom, Jr.
Raymond S. Wisnom, Jr.
Code Enforcement Hearing Officer

The violator is advised that pursuant to §3-6-301(a), Baltimore County Code, an appeal to the Baltimore County Board of Appeals may be taken within fifteen (15) days after the date of a final Order. §3-6-302(a)(b)(c)(d) requires the filing of a petition setting forth the grounds for appeal and a filing fee of $150. The appellant is urged to read the requirements for the appeal petition. Security in the amount of the civil penalty must be posted with the Director.

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RE: PETITION FOR SPECIAL HEARING * BEFORE THE COUNTY
9025 Cuckold Point Road; SE corner
Cuckold Point Road & 5th Street * BOARD OF APPEALS
15th Election & 7th Councilmanic Districts
Legal Owner(s): Fifth Street, LLC * FOR
Contract Purchaser(s): Larry Thanner
Petitioner(s) * BALTIMORE COUNTY

* 07-144-SPH

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

RECEIVED
JAN 08 2008
BALTIMORE COUNTY
BOARD OF APPEALS

PRE-HEARING MEMORANDUM OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

Introduction

This BCZR § 500.7 special hearing requests a determination of zoning law. It involves the characterization of the Petitioner's Dock of the Bay business on property zoned Business-Local (B.L.) at 9025 Cuckold Point Road. Specifically, is the use a "restaurant," a permitted use under BCZR § 230.4, a tavern, permitted under BCZR § 230.9, or rather a "nightclub," a use not permitted by right or special exception in this zone? A nightclub is permitted in the Business-Major (B.M.) or Business-Roadside (B.R.) zones). We believe it is clearly a nightclub.

The Relevant Law

The definition of "nightclub" is in the BCZR § 101 list of definitions,

> "A tavern or other establishment which provides live or recorded entertainment, with or without a dance floor, and which is categorized as a nightclub by the Building Code of Baltimore County."

A "tavern," in turn, is defined as follows,

> "An establishment which has a Baltimore County Class D Liquor License. A tavern which meets the criteria of a nightclub, as defined in these regulations, shall be considered a nightclub."

The International Building Code, adopted in Bill 1-05, includes in § 303.1, Assembly Group, A, states, in pertinent part (ZC Prot.Exh. 3),

> **303.1 Assembly Group A** "Assembly Group A occupancy includes, among others, the use of a building or structure or a portion thereof, for the gathering together of persons for purposes such as civic, social, or religious functions, recreation, food or drink consumption or awaiting transportation. ....
>
> * * *
>
> A-2 Assembly uses intended for food and/or drink consumption including but not limited to:

7

Banquet halls
Night clubs
Restaurants
Taverns and bars."

There follows a discussion, which begins with the observation that "in the assembly group category., the potential for multiple fatalities and injuries from fire is comparatively high." It is of particular interest to note the subsequent commentary,

> "Darkened spaces in theaters, nightclubs and the like serve to increase hazards. In sudden emergencies, the congestion caused by large numbers of people rushing to exits can cause panic conditions. For these and many other reasons, there is a relatively high degree of hazard to life safety in assembly facilities."

The commentary then introduces a description of the fundamental characteristics for the five specific assembly group classifications, with a note that facilities with occupancy loads of less than 50 are excepted. For Assembly Group A-2, there is this description,

> "**A-2:** Group A-2 includes occupancies in which people congregate in high densities for social entertainment, such as drinking and dancing (e.g., nightclubs, dance halls, banquet halls, cabarets, et.) and food and drink consumption (e.g., restaurants). The uniqueness of these occupancies is characterized by some or all of the following:
>
> - Low lighting levels;
> - Entertainment by live band or recorded music generating above-normal sound levels;
> - No theatrical stage accessories;
> - Later-than-average operating hours
> - Tables and seating arranged or positioned so as to create ill-defined aisles;
> - A specific area designated for dancing;
> - Service facilities for alcoholic beverages and food; and
> - High occupant load density
>
> The fire records are very clear in identifying that the characteristics listed above often cause a delayed awareness of a fire situation and confuse the appropriate response, resulting in an increased egress time and sometimes panic. Together, these factors may result in extensive life and property losses. These characteristics are only advisory in determining whether Group A-2 is the appropriate classification. Often there are additional characteristics that are unique to a project, which also must be taken into consideration when a classification is made."

The Dock of the Bay is a Nightclub Use

It is obvious and palpable that the Dock of the Bay Restaurant entertainment use, with live bands and disc jockeys, includes some, and probably all or close to all, of the above characteristics. While the appeal is *de novo*, the essential facts are clear.

Zoning Commissioner William Wiseman's May 30, 2006 opinion discusses the definition and related Building Code provisions at pages 6-7, and its application to the Dock of the Bay at pages 8-9. The relevant facts submitted by Dock of the Bay, outlined at Pages 4-5 and reflected in their advertisement (ZC Prot. Exh. 2), include live music, disc jockeys, and recorded music playing inside on weekends either from 9 P.M. to 1 A.M. or 9:30 P.M. to 1:30 A.M. and live music outside from May to September between 4:00 P.M. until 8 P.M. or 9 P.M. The promotional advertising says that, "On any given weekend in the summer, 300 people flood the restaurant today." The Memorial Day weekend photographs, albeit taken in the daytime, illustrate the scope of the use. ZC Prot. Exh. 8.

We agree with ZC Wiseman's analysis that the described use fits the BCZR § 101 definition of nightclub, and the Building Code § 303 Classification, including some or all of the characteristics under Category A-2. The facts salient to the description of the entertainment uses are clear and unambiguous. The use includes live and recorded entertainment and is well within the scope of the nightclub description in Assembly Group A-2. The CBA should reach the same conclusion that the operation is a nightclub.

Petitioner's Arguments

We have carefully considered the arguments presented by Peititoner to the Zoning Commissioner.:

1) Petitioner argued the coverage of Dock of the Bay as a nightclub use may implicate other county businesses. We do not know the identity or number of other businesses with similar operations on properties zoned B.L. Whatever the answer, it does not affect the legal conclusion here. The law, of course, must be applied consistently. The presence of potential other violations or nonconforming uses does not affect the present case. See Park Shopping Center v. Lexington Park Theatre Co. 216 Md. 271 (1958). In any event, given the purpose and characteristics of Assembly Group 2, it does not appear that the typical standard restaurant with normal day and evening hours would be a nightclub simply because of the availability or use of recorded music, especially if the music is at moderate sound levels.

2) Petitioner argued that the B.L. Zone allows other uses which involve music, such as dancing schools and conservatories for music and the arts. But these uses are quite different from a nightclub use. In every zoning classification, there may be permitted uses which have some element in common with a use which is not permitted, but still are different in other respects or as a whole.

3) Petitioner argued that the Webster's Third New International Dictionary definition of "nightclub" is,

> "a restaurant open at night, usu. serving liquor, having a floor show, and providing music

and space for dancing."

As ZC Wiseman pointed out, there is a BCZR § 101 definition, so there is no need to refer to the Webster's definition. In any event, it appears that the Dock of the Bay restaurant fits this broad definition as well, in that it is a restaurant open at night, and it shares some of the usual characteristics: liquor service and music, including live bands (which are kinds of floor shows).

The Club 101 Decision

We know of no CBA decision discussing the specific issue presented here. There is, however, a previous County Board of Appeals opinion involving a discussion of the definition of nightclub. In Rampart Partnership (Club 101), 8819 Orchard Tree Lane, No. 96-60-XA, decided August 28, 1998, the question presented was whether the use constituted a nightclub or an after-hours club. In a 34-page opinion, the CBA (members Stahl, Felling, Marks) concluded that it was an after-hours club. The opinion discussed the nightclub definition at pages 18-19, in terms similar to those expressed by ZC Wiseman here. There is no inconsistency between the Club 101 decision and ZC Wiseman's decision here.

The Enforcement Decision

The protestants have cited Hearing Officer Raymond Wisnom's decision in the Civil Citation Case, No. 06-3683, dated August 25th, 2006. He found that the use is a nightclub. Suffice it to say that his analysis is consistent with our independent analysis.

Conclusion

We hope that this letter will provide the CBA with a helpful introduction to this case and our position. We ask for the opportunity to file a post-hearing memorandum should it appear to be necessary and appropriate.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of January, 2008, a copy of the foregoing Pre-Hearing Memorandum of People's Counsel for Baltimore County was mailed to, Francis X. Borgerding, Jr, Esquire, 409 Washington Avenue, St 600, Towson, MD, 21204, and J. Carroll Holzer, Esquire, Holzer & Lee, 508 Fairmount Avenue, Towson, MD 21286, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

8

RE:	PETITION FOR SPECIAL HEARING 9025 Cuckold Point Road; SE corner Cuckold Point Road & 5th Street 15th Election & 7th Councilmanic Districts Legal Owner(s): Fifth Street, LLC Contract Purchaser(s): Larry Thanner Petitioner(s)	*	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY 07-144-SPH

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

POST-HEARING MEMORANDUM OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

Introduction; Recapitulation of the Essential Facts

This memorandum supplements the one submitted prior to the *de novo* hearing. The material facts produced at the hearing were pretty much as expected and described in our pre-hearing memo. As the County Board of Appeals could readily see, the case comes down to legal argument.

A brief recapitulation of the essential facts is nevertheless helpful. The Dock of the Bay offers dining facilities and services and, in addition, live bands and recorded entertainment on Thursday through Saturday nights from about 9PM to 2AM, as well as on Sunday afternoons/evenings. There are indoor facilities for the entertainment, and an outside deck for use weather permitting. When the music plays, an area is cleared for dancing. Tables are frequently moved about to accommodate the entertainment setting. The lighting is low. The music is typically rock music and by its nature is relatively loud. Neighbors can hear it at a distance. The entertainment attracts the assemblage of substantial crowds. Indeed, the Dock of the Bay is contesting this case fiercely because the entertainment use is important. It produces a significant and apparently critical share of business revenue. Unfortunately, it also has generated neighborhood controversy and the zoning issue presented to the CBA for decision.

8

The BCZR and BOCA Code Definitions and Criteria

To assist the CBA, we repeat here the relevant BCZR § 101 definitions and the incorporated BOCA building code criteria:

The definition of "nightclub" is in the BCZR § 101 list of definitions,

> "A tavern or other establishment which provides live or recorded entertainment, with or without a dance floor, and which is categorized as a nightclub by the Building Code of Baltimore County."

A "tavern," in turn, is defined as follows,

> "An establishment which has a Baltimore County Class D Liquor License. A tavern which meets the criteria of a nightclub, as defined in these regulations, shall be considered a nightclub."

The International Building Code, adopted in Bill 1-05, includes in § 303.1, Assembly Group, A, states, in pertinent part (ZC Prot.Exh. 3),

> **303.1 Assembly Group A** "Assembly Group A occupancy includes, among others, the use of a building or structure or a portion thereof, for the gathering together of persons for purposes such as civic, social, or religious functions, recreation, food or drink consumption or awaiting transportation. ….
>
> * * *
>
> **A-2** Assembly uses intended for food and/or drink consumption including but not limited to:
> Banquet halls
> Night clubs
> Restaurants
> Taverns and bars."

There follows a discussion, which begins with the observation that "in the assembly group category., the potential for multiple fatalities and injuries from fire is comparatively high." It is of particular interest to note the subsequent commentary,

> "Darkened spaces in theaters, nightclubs and the like serve to increase hazards. In sudden emergencies, the congestion caused by large numbers of people rushing to exits can cause panic conditions. For these and many other reasons, there is a relatively high degree of hazard to life safety in assembly facilities."

The commentary then introduces a description of the fundamental characteristics for the five specific assembly group classifications, with a note that facilities with occupancy loads of less than 50 are excepted. For Assembly Group A-2, there is this description,

"**A-2:** Group A-2 includes occupancies in which people congregate in high densities for social entertainment, such as drinking and dancing (e.g., nightclubs, dance halls, banquet halls, cabarets, et.) and food and drink consumption (e.g., restaurants). The uniqueness of these occupancies is characterized by some or all of the following:

- Low lighting levels;
- Entertainment by live band or recorded music generating above-normal sound levels;
- No theatrical stage accessories;
- Later-than-average operating hours
- Tables and seating arranged or positioned so as to create ill-defined aisles;
- A specific area designated for dancing;
- Service facilities for alcoholic beverages and food; and
- *High occupant load density*

The fire records are very clear in identifying that the characteristics listed above often cause a delayed awareness of a fire situation and confuse the appropriate response, resulting in an increased egress time and sometimes panic. Together, these factors may result in extensive life and property losses. These characteristics are only advisory in determining whether Group A-2 is the appropriate classification. Often there are additional characteristics that are unique to a project, which also must be taken into consideration when a classification is made."

The Dock of the Bay Clearly Operates a Significant Nightclub Use

Consistent with our earlier memorandum, the evidence shows beyond a reasonable doubt that the Dock of the Bay offers live or recorded entertainment at night and that it fits all the BOCA code criteria for an assembly use. To qualify under the BOCA, it has only to meet some of the criteria. Here, the use meets all of the criteria. To paraphrase the famous metaphor, it walks (dances) like a nightclub, quacks (sounds) like a nightclub, and attracts the late-night club crowd.

Because the use so clearly fits the nightclub definition, the Dock of the Bay has had to reach for irrational and emotional arguments. Upon close examination, the CBA must reject these arguments as a matter of law.

The Plural of Use is Uses; Combinations; Multiples; the Time Dimension

Dock of the Bay claims first that it is a restaurant, that the duration of the restaurant operation is greater than that of the entertainment, and that a use cannot be at the same time both a restaurant and a nightclub. In general, the argument is that a use must be assigned a single description and it is impossible to have a dual use or combination of uses. This argument is absurd. To illustrate, the owner of a farm in an Agricultural Zone might have a helipad on a

small part of the property from time to time. Lucas v. People's Counsel 147 Md. App. 209 (2002). The farmer might operate a kennel or a weekend restaurant on part of the property part of the time. That the farm use is more intense does not exclude recognition of other uses. The same can be said for residential zones. The fact that a property is used as a dwelling or a school does not give the owner *carte blanche* for other less time-intensive uses, such as a community building, a fishing facility, a cell tower or other uses allowed only by special exception.

We can give examples for every zoning classification. For the B.L. zone, one cannot tack on an impermissible business or industrial use merely by saying they accompany a more time-intensive permissible use. Indeed, a nightclub or any other use does not change in character with varying nights of operation. The Maryland Court of Appeals illustrated this point in the attached slip opinion copy of Trip v. Mayor & City Council 392 Md. 563 (2006). There, the Court held that a nonconforming nightclub/after-hours establishment use did not change in character merely because it went from two to five nights for adult entertainment. In other words, the variation in frequency of the use did not change its character. It was a nightclub/after-hours establishment, whether at two nights or five. Chief Judge Bell wrote, at 22-24,

> "In these cases, we have consistently held that merely increasing the frequency of a nonconforming use did not constitute an unlawful extension; rather, it was but an intensification of the use.
>
> * * *
>
> "In each of the cases, the frequency of the use of the subject property in the nonconforming manner was increased, often significantly so, without regard to the hours of operation. Their focus was, as it should be, on the actual use of the property, not the times when that occurs."

> "If the intermediate appellate court is correct, *Green* is no longer good law and our definition of "intensification" is misleading, if not largely meaningless. Indeed, the concept of intensification would have no meaning at all in the nightclub context, or in any other where there are discrete hours of operation, such as retail. In *Feldstein*, we distinguished an "intensification" of a nonconforming use from an "extension" of such use, noting that the former is "the more frequent present use of property for the same or a similar use than that for which it had been used less frequently theretofore." **246 Md. at 211, 227 A.2d at 734**. Increasing the number of nights on which adult entertainment is presented at Club Choices from two to five, for example, would fit within the definition of "intensification" - it would be a "more frequent present use of property for the same or a similar use than that for which it had been used less frequently theretofore." In fact, that was the rationale for *Green*; going from infrequent baseball games to their presentation [sic] for much of the year seems a similar, if not identical, scenario."

While the use there did not involve a daily restaurant use, the existence of a restaurant would not excuse the necessity to identify and evaluate the significant nightclub use, whether operating two nights a week, four nights, or more.

In sum, a property owner may have several uses on the same property. Each one of them must comply with the zoning law. It does not excuse a significant illegal use to say that there is a more time-intensive permissible use on the property.

Tactical Propaganda, Scary Speculation, and Misdirected Satire

Dock of the Bay next trots out a series of horrible/satirical implications. The speculation is that if it is called a nightclub, then all sorts of innocuous uses would necessarily be covered. The examples include the Belloc Diner, or an Uncle Sam character playing Yankee Doodle Dandy. The CBA should not be taken in by this speculation. It does not follow that the accurate description of the Dock of the Bay as a nightclub will have such consequences.

The key is to examine the Group A-2 Assembly criteria in context. It is necessary to take a balanced look at the commentary and criteria. It describes "… occupancies in which people congregate in high densities for social entertainment, such as drinking and dancing (e.g., nightclubs, dance halls, banquet halls, cabarets, etc.) and food and drink consumption (e.g., restaurants)." For a nightclub use, the most relevant criteria are low lighting levels, late hours, ill-defined aisles, dancing area, and high occupant load density. The Dock of the Bay involves high-density social entertainment use and fits the nightclub criteria. In contrast, the Belloc Diner is obviously a standard restaurant use. The introduction of an Uncle Sam character is just buffoonery.

The nightclub definition does cover other taverns with live bands, dancing and/or late entertainment. If anyone thinks that the B.L. Zone should be more permissible, then the place to go is to the legislature. The County Council may review the law. If it finds changes are necessary, then it can enact legislation. Some options for the B.L. Zone are to classify a nightclub as a permitted use by right or special exception, and to have setbacks from residential zones or uses.

In other words, even if the CBA has any sympathy for Dock of the Bay, the solution is not to create an exemption which has no basis in the law. The proper legal conclusion is to find that it is a nightclub. This will effectively transfer the issue to the legislative arena. Indeed, we understand that Dock of the Bay is currently making efforts in that direction.

The Relationship Between the Special Hearing Case and the Enforcement Case

Dock of the Bay has further confused the issue by asserting that the BCZR § 500.7 special hearing case trumps the decision of Hearing Officer Raymond Wisnom in the enforcement case. To support this argument, it is further asserted that the Hearing Officer has no authority to interpret the zoning law. Dock of the Bay has taken this position in order to avoid the impact of the statutory limited scope of review of the Hearing Officer decision.

It should be kept in mind that Baltimore County Charter § 603 provides that appeals to the County Board of Appeals are *de novo* unless the County Council provides otherwise by legislative act. In the present situation, the special hearing appeal is *de novo*, but the appeal of the enforcement decision is a limited record review. While the *de novo* special hearing appeal supersedes completely the Zoning Commissioner's decision, it does not preempt Hearing Officer Wisnom's separate decision.

It is a necessary part of the Hearing Officer's function to apply the zoning law and, in so doing, interpret the law. Pursuant to Baltimore County Code § 3-6-206(g), " … the Hearing Officer shall issue a final order with written findings." Clearly, where the interpretation of a law is in question, the Hearing Officer must make a finding with respect to the issue. To suggest that he is without authority to make such a finding would eviscerate the enforcement process. Moreover, there is no indication in the present order that Dock of the Bay took such an extreme position. Rather, the opinion shows that the question was presented as to the character of the use, and the Hearing Officer answered it.

Pursuant to Code § 3-6-304, the scope of CBA review is limited to the record. The listed grounds for appeal involve, in short, the Hearing Officer's authority or jurisdiction, irregularity of procedure, sufficiency of evidence, error of law, and arbitrariness and capriciousness. Here, Dock of the Bay has to show that the Hearing Officer has made a clear error of law. But there is no clear error. In any event, the record at the concurrent *de novo* special hearing trial leads to the same conclusion. This is a nightclub. No amount of legal gymnastics can get around it.

It should also be noted that the authority to address, implement, and interpret the zoning regulations is shared by a number of agencies in different settings and forums. Baltimore County Code § 32-3-102 provides,

> "The Director of Permits and Development Management shall interpret and enforce the Baltimore County Zoning Regulations to insure that uses or buildings, including structures, landscaping, roads and streets, conform to plans approved by the county."

The Hearing Officer's quasi-judicial authority in the enforcement process is a logical outgrowth of the Director's function in interpretation and enforcement, providing due process of law in enforcement proceedings. Separately, in development proceedings, the Hearing Officer, there the Zoning Commissioner, must interpret and implement the zoning law and development law under Code §§ 32-4-227 to 32-4-229 and 32-4-114. Of course, the CBA upon appeal must implement and interpret the zoning law.

In sum, while the BCZR § 500.7 special hearing process is important, attention and respect also should be paid to the Hearing Officer's decision in enforcement proceedings, which is entitled to deference unless legally erroneous, arbitrary and capricious. It is also remarkable that *while technically superseded*, the Zoning Commissioner decision concurs with the Hearing Officer's decision. So far, each of the two decisions has reached the same well-reasoned conclusion. The facts have not changed. The County Board of Appeals should and must come to the same legal conclusion.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of February, 2008, a copy of the foregoing Post-Hearing Memorandum of People's Counsel for Baltimore County was mailed to, Francis X. Borgerding, Jr, Esquire, 409 Washington Avenue, St 600, Towson, MD, 21204, Nancy C. West, Assistant County Attorney, 400 Washington Avenue, Towson, MD 21204 and J. Carroll Holzer, Esquire, Holzer & Lee, 508 Fairmount Avenue, Towson, MD 21286, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

IN OUR OPINION

Live Next Door to a Popular Restaurant? Either Accept It or Move

If one chooses to build a house next door to a restaurant and bar with outdoor dining, just what does that person expect? Here's what I would expect. I'd expect that I might hear music coming from the place once in a while, shouting in the parking lot late at night as customers make their way to their vehicles to go home, noise on a daily basis during the summer months when diners would be eating outside and lots of vehicle noise as cars come in and out of the parking lot. If I thought that it would bother me, I wouldn't build my house next door to a restaurant.

Which is really what the fuss is all about – a few of the neighbors who reside in homes near the Dock of the Bay Restaurant in Millers Island are angry that they live near a popular restaurant, so they're doing all they can to make it less popular or even close its doors. An article in last week's *Dundalk Eagle* described the troubles owner Larry Thanner is having with the neighbors, who claim Thanner is running "nightclub activities" at the restaurant. He's been slapped with fines, and a legal battle quickly ensued.

A restaurant, open seven days a week serving meals to its customers, that also happens to provide music two or three days a week in the evenings, doesn't fit the criteria of any nightclub I've ever visited. At a nightclub, one might expect to pay a cover charge to get in and hope to munch on some decent bar food but not sit down to a meal of steak and crab cakes.

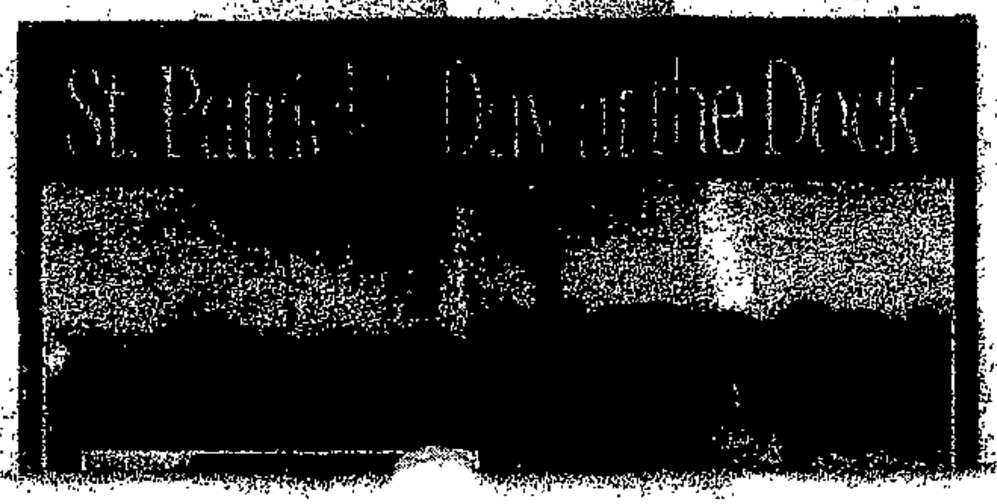
There are several restaurants in Baltimore County that provide live entertainment, karaoke or a DJ a few nights a week and the owners aren't fined for doing so. The *Eagle* article mentioned "nonconforming use," which means some establishments still offer live entertainment because it did so way back before any zoning ordinance was passed. Well, did you know that live entertainment was provided in the very location where Dock of the Bay now stands back in the 1930s and '40s? The place had entertainment before Thanner took it over, too. But guess what? Those big homes located near the restaurant weren't there then. They've just been constructed in the last couple of years. A few of these homes actually lie within the "business local" zone in which Dock of the Bay sits. Typical uses permitted in this zone include retail sales, restaurants, banks, offices, taverns and food stores.

And it's also curious to note that while the zoning for Dock of the Bay permits a restaurant (which is exactly what the establishment is) or a tavern, the lot right next to Dock of the Bay, where Bill's Boats is located, is zoned "business major" which permits a nightclub within that zone. Other uses for this zone include a hotel/motel, theatre, service garage and automobile sales.

Dock of the Bay is a fixture in the community, and Thanner has really turned it into a thriving business. It's a great place to enjoy a lunch or dinner out with the family, and it's also a great place to go to enjoy a few drinks with friends on a Saturday night. But Dock of the Bay is more than just a restaurant, it's a business that gives back to the community by supporting the local schools, providing jobs for local residents and creating memorable dining experiences for its patrons.

If living next door to a popular restaurant is a problem, the answer is not to try to hurt the business or get the restaurant shut down. Accept it or move.

What's Your Opinion? E-mail ectedit orial@comcast.net



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10

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Business

Restaurant fights 'nightclub' ruling

Aug 24, 2007 12:35 PM (5 days ago)
by Jaime Malarkey, The Examiner

Baltimore County (Map, News) - A Baltimore County restaurant owner said he plans to fight thousands of dollars in fines and a law he says unfairly classifies any eatery with a flutist, karaoke — or even a jukebox — as a nightclub.

County inspectors repeatedly have fined Larry Thanner, owner of the Dock of the Bay restaurant on Millers Island, for illegally operating as a nightclub after neighbors complained of live music wafting from the popular waterfront establishment until early morning hours. Thanner, whose property is zoned for a business but not a nightclub — defined by live or recorded music — paid the fines and agreed to temporarily halt live music outdoors.

He plans to take his fight to the county's appellate board.

"It's killing our business, it's really hurting," Thanner said. "But I feel like I'll get redemption."

The county first fined Thanner in August 2006 for live music and an illegal outdoor tent. Thanner paid the $5,000 fine, but requested a special hearing before the county's zoning commissioner, according to county records.

Zoning commissioner William Wiseman in May ordered Thanner to cease outdoor music immediately, but the restaurant owner was cited again for music and tent violations in June. Fines totaled $8,800.

That fine was reduced to $1,000 last week.

"We're fed up with him," said restaurant neighbor

Brad Metheny. "They stopped the live music outside but they still have live bands inside and the back door opens and closes all the time. It sounds like the band it out playing on the bulkhead until 1:30 in the morning."

The dispute has some county lawmakers considering legislation to clarify what constitutes a nightclub. Councilman John Olszewski Sr., a Democrat whose district includes Millers Island, said the issue is countywide.

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"It's not clearly defined," Olszewski said. "A lot of people want to hear this outdoor music but at the same time you want to be receptive to community concerns. You want to find a happy medium."

Other council members have expressed interest in limiting live music to certain hours of the day. Olszewski plans to meet with community residents next week.

jmalarkey@baltimoreexaminer.com

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Comments from Examiner Readers

3:38 PM MST on Mon., Aug. 27, 2007 re: "Restaurant fights nightclub ruling"

Examiner Reader said:
The Environmental Noise Act of 1974 of the State of Maryland declares as policy the limitation of noise to that level which will protect the health, general welfare, and property of the people of the State. It requires that the Department assume responsibility for the jurisdiction over the level of noise, and prepare regulations for the control of noise, including the establishment of standards for ambient noise levels and equipment performance with respect to noise, for adoption by the Secretary of the Environment. Enforcement of the regulation and Standards is the responsibility of the Department in all areas, using the facilities and services of local agencies within the areas to the greatest extent possible. The Department shall coordinate the programs of all State agencies relating to noise abatement, and each State agency prescribing sound level limits or regulation respecting noise shall obtain the endorsement of the Department in prescribing any limits or regulations.

Vote on this comment: I agree or I disagree

Report as inappropriate

11:39 AM MST on Mon., Aug. 27, 2007 re: "Restaurant fights nightclub ruling"

Examiner Reader said:
It should be noted that this matter elevated to this level only because Mr. Thanner refused to work directly with the residents of the community. Several residents went to Mr. Thanner and asked if the outdoor music could be turned down or stopped at a reasonable time in the evening. When Mr. Thanner refused to work with the community, the residents were forced to take action by filing a formal complaint in Baltimore county. Mr. Thanner purchased the restaurant after Hurricane Isabel. At that time, Mr. Thanner stated (on TV) that he took advantage of someone's misfortune by buying the restaurant after it was completely destroyed. He did in fact remodel and create a nice place to enjoy the Baltimore County waterfront. It's just very unfortunate that he has no respect for the community that has surrounded it many years prior. He also stated that if he has to stop the entertainment, he would file a formal complaint against every restaurant in Baltimore County that plays music.

1 agree | 0 disagree
Vote on this comment: I agree or I disagree

Report as inappropriate

12:17 AM MST on Sat., Aug. 25, 2007 re: "Restaurant fights nightclub ruling"

Examiner Reader said:
State Noise Law Enforcement was lost to budget cuts during the last administration. Who do you call to get the State Noise Laws enforced?

1 agree | 1 disagree
Vote on this comment: I agree or I disagree

11

Current Definition of Nightclub:

"A tavern or other commercial establishment which provides live or recorded entertainment, with or without a dance floor, and which is categorized as a nightclub by the Building Code of Baltimore County"

Proposed Definition of Nightclub:

"A tavern or other commercial establishment which provides live or recorded entertainment, with or without a dance floor.

Notwithstanding the above, the following subtle or minor live or recorded entertainment shall be permitted and shall not cause a tavern or other commercial establishment to be classified as a nightclub use, so long as the live or recorded entertainment does not violate any of the following provisions:

1. No sound or noise generated by said entertainment shall exceed 65 decibels during the day or 55 decibels after sunset, (which time shall be established by the official sunset table as published by the United States Naval Observatory) as measured on any part of the property line of the premises where such entertainment is provided;

2. For taverns or other commercial establishments that are located within 300 feet of an occupied residential dwelling, said distance being measured from the tavern or commercial establishment's property line to the nearest part of the structure of the dwelling, no entertainment shall be permitted on the exterior of a building on the property after sunset, (which time shall be established by the official sunset table as published by the United States Naval Observatory). This shall include entertainment provided on decks, within tents, under canopies, porches, or other similar areas of the tavern or commercial establishment's property. After sunset, all such entertainment shall occur within the enclosed confines of the tavern or commercial establishment;

3. If outside entertainment is provided by a tavern or other commercial establishment, then any and all amplification equipment shall be arranged so as to direct all sound away from surrounding properties, to the extent possible;

4. No live or recorded entertainment equipment may be placed within or upon any parking space, parking lot, sidewalk, travelway or other similar type common area of the property or premises; or

5. One half hour prior to the time that any live or recorded entertainment shall conclude, whether said entertainment is provided outside or inside of the premises, the owner or operator of the tavern or other commercial establishment shall cause an employee or employees to be stationed on the parking lot and if applicable, the pier area of the property, (Parking lot/pier attendant) whose responsibility it shall be to ensure and oversee the orderly departure of the patrons from the tavern or other commercial establishment. Said parking lot/pier attendant shall prevent excessive loitering, loud

Liquor Board has required this every evening from 8pm - closing 11

playing of car stereos, excessive arguments or verbal altercations, public consumption of alcohol, public urination, littering or other similar offensive and disruptive behavior.

It shall be the responsibility of the Liquor Board to investigate any complaints as to noncompliance with the above conditions and restrictions, regardless of whether the tavern or other commercial establishments possesses a Baltimore County liquor license. Said Liquor Board inspector shall provide testimony to the Code Enforcement Hearing Officer as to the results of his/her investigation. Upon a finding by the Code Enforcement Hearing Officer that a nightclub use exists, then the owner/operator of the tavern or commercial establishment shall be subject to all applicable monetary penalties associated with a nightclub use occurring within an inappropriate zoning classification. In addition thereto, and as additional sanctions or penalties, the Baltimore County Liquor Board may impose any sanction it may deem appropriate for the owner/operator's failure to operate their business in accordance with the zoning regulations applicable to the property.

12

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2007, Legislative Day No.

Bill No.

Councilmembers Kamenetz & Olszewski

By the County Council,

A BILL
ENTITLED

AN ACT concerning

Live Entertainment in Restaurants

FOR the purpose of requiring an annual permit for the provision of any live entertainment offered in a restaurant; defining terms; providing for conditions of a permit; providing for the adjudication of complaints and the suspension or revocation of a permit; providing for appeals; providing penalties; and generally relating to live entertainment in certain restaurants.

BY adding
Sections 21-19-101 to 21-19-105
Article 21 - Permits, Licenses, and Business Regulation
Title 19 - Live Entertainment in Restaurants
Baltimore County Code 2003

SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that Sections 21-19-101 to 21-19-105 be and they are hereby added to Article 21 - Permits, Licenses, and Business Regulation, Title 19 - Live Entertainment in Restaurants, of the Baltimore County Code 2003 to read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike-out~~ indicates matter stricken from bill.
Underlining indicates amendments to bill.

21-19-101. DEFINITIONS.

(A) IN GENERAL.

IN THIS TITLE, THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) LIVE ENTERTAINMENT.

"LIVE ENTERTAINMENT" MEANS THE PRODUCTION OF ANY MUSIC OR OTHER SOUND, VOCALLY OR MANUALLY PRODUCED FROM AN INSTRUMENT, INCLUDING THE USE OF AN ELECTRONIC PLAYBACK DEVICE BY AN ANNOUNCER OR DISC JOCKEY WHO, AT THE TIME, PROVIDES ANY FORM OF VOCAL ENTERTAINMENT, INCLUDING THE ANNOUNCING OF SONG TITLES OR ARTISTS' NAMES, FOR THE AMUSEMENT OF THE PATRONS OF A RESTAURANT, WITHOUT AN ADMISSION FEE.

(C) RESTAURANT.

"RESTAURANT" MEANS A FACILITY OR PART OF A FACILITY USED PRIMARILY FOR SERVING MEALS AND BEVERAGES TO PERSONS SEATED AT TABLES ON THE PREMISES OF THE ESTABLISHMENT. THE TERM INCLUDES CAFES, CAFETERIAS, TEAROOMS AND OUTDOOR CAFES. THE TERM DOES NOT INCLUDE A CATERING HALL, OR A FAST-FOOD OR CARRY-OUT RESTAURANT AS THOSE TERMS ARE DEFINED IN THE BALTIMORE COUNTY ZONING REGULATIONS.

21-19-102. PERMIT REQUIRED.

(A) THE OWNER OR MANAGER OF A RESTAURANT THAT PROVIDES LIVE ENTERTAINMENT SHALL OBTAIN AN ANNUAL PERMIT FROM THE DIRECTOR BEFORE OFFERING OR PROVIDING LIVE ENTERTAINMENT, INDOOR OR OUTDOOR, AT A RESTAURANT.

(B) THE APPLICANT FOR AN ANNUAL PERMIT SHALL:

(1) SUBMIT AN APPLICATION TO THE DIRECTOR ON THE FORM THAT THE DIRECTOR PROVIDES; AND

(2) PAY A FEE SET BY THE COUNTY ADMINISTRATIVE OFFICER.

(C) UNLESS A PERMIT HAS BEEN SUSPENDED OR REVOKED, A PERMIT ISSUED UNDER THIS TITLE IS RENEWABLE ANNUALLY UPON SUBMISSION OF AN APPLICATION AND THE PAYMENT OF ANY REQUIRED FEE.

21-19-103. CONDITIONS OF PERMIT.

(A) A PERMIT ISSUED UNDER THIS TITLE MAY AUTHORIZE A LIVE PERFORMANCE BY NOT MORE THAN TWO PERFORMERS OR ENTERTAINERS AT ANY TIME.

(B) THE DIRECTOR MAY IMPOSE ANY ADDITIONAL CONDITIONS OR RESTRICTIONS ON A PERMIT.

21-19-104. COMPLAINTS, SUSPENSION; REVOCATION; APPEAL.

(A) ON RECEIPT OF A COMPLAINT OF EXCESSIVE NOISE OR LACK OF CROWD CONTROL, THE DIRECTOR OR CODE OFFICIAL MAY SEEK ENFORCEMENT AND CORRECTION AS PROVIDED IN ARTICLE 3, TITLE 6 OF THE CODE.

(B) IF THE DIRECTOR DETERMINES THAT A RESTAURANT IS IN VIOLATION OF ANY PROVISION OF THE PERMIT OR ANY CONDITION OR RESTRICTION IMPOSED IN THE PERMIT, INCLUDING EXCESSIVE NOISE OR LACK OF CROWD CONTROL, OR ANY PROVISION OF THE COUNTY BUILDING CODE, FIRE CODE, ZONING REGULATIONS, OR ANY OTHER LAW, OR REGULATION ADOPTED BY THE COUNTY TO PROMOTE THE

GENERAL HEALTH, SAFETY, AND WELFARE OF ITS CITIZENS, THE DIRECTOR MAY SUSPEND OR REVOKE THE PERMIT.

(C) A PERSON AGGRIEVED BY A DECISION OF THE DIRECTOR MAY APPEAL THE DECISION TO THE COUNTY BOARD OF APPEALS WITHIN 30 DAYS AFTER RECEIPT OF THE DECISION.

21-19-105. PENALTIES.

A PERSON WHO VIOLATES ANY PROVISION OF THIS TITLE IS SUBJECT TO A CIVIL PENALTY OF $500 PER DAY FOR EACH DAY OF VIOLATION.

SECTION 2. AND BE IT FURTHER ENACTED that this Act shall take effect 45 days after its enactment.

TO: Members of the County Council of Baltimore County, Maryland

RE: Draft Bill concerning Live Entertainment in Restaurants

FROM: Charles and Daryl Wolinski, and other community members
9019 Cuckold Point Road
Sparrows Point, Maryland 21219
District 7

DATE: March 4, 2008

As per our meeting with Councilman Olszewski, wherein he shared a draft bill for the purpose of allowing live entertainment to be offered in a restaurant and asked for our input, as well as the input of other members of our community, I am writing to express some concerns and ideas.

We have been in contact with our Councilman for over a year with regards to problems that have surfaced in our very quiet community because of a restaurant owner who does not run his establishment responsibly, has continued to break the law, and has shown a complete lack of respect for us as neighbors and every department of Baltimore County which governs his licensing and establishment. Upon hearing last year that an effort was being made to change the law and allow such disruptive events and behaviors to occur in all of Baltimore County, we voiced our concerns and have met and spoken with Councilman Olszewski on numerous occasions. He contacted my husband and I in early February and arranged a meeting to discuss the draft. We shared some common concerns with the councilman, and at the conclusion of the meeting, he asked that we go over it with our community and write a memo to provide some input to strengthen the bill.

The draft which was shared with us is vague and one-sided in nature and designed only for the benefit of the restaurant/tavern owners. It offers little or no recourse to the surrounding community to enforce its rights to peace, tranquility, safety, health and quiet of the neighborhood. While we recognize that there are flaws in the current law, as it prohibits an establishment from playing a jukebox or providing Karaoke, we would like to see that whatever bill is proposed be fair to the establishments as well as the communities in which they are located. The Mission Statement of the Board of Liquor License Commissioners for Baltimore County states "All licensees shall operate their establishments in such a manner as to avoid disturbing the peace, tranquility, safety, health and quiet of the neighborhood." We believe that the proposed bill should have the same mission.

Referenced in the following pages of this memorandum, you will find our concerns with the current draft as well as our ideas for some additions. We, as constituents, appreciate your time and consideration in ensuring that the proposed bill will not be not one-sided, but fair to everyone and will not provide legal loop-holes for irresponsible and dishonest business owners which will allow them to disrupt the quality of life of the tax-paying citizen.

Mrs. Daryl Marie Wolinski

Before pointing out concerns with specific items in the bill, I would like to address an overall concern. Throughout it's entirety, the bill uses the language "MAY". For example, "The director MAY impose…The director or code official MAY seek enforcement and correction…The director MAY suspend or revoke the permit". The concern that we have with this word choice is that it leaves everything up to one person's discretion. In our conversations with Councilman Olszewski, as well as at a greater Dundalk community meeting held at Dundalk Community College where concerned citizens asked about the proposed bill, he said that he wanted the bill to, in essence, have some teeth to make sure that it would protect citizens as well as be fair to business owners. He spoke about what he would like to see as penalties if conditions or restrictions are not being met. In saying that the director MAY do any of these things, allows him/her to *not* do them as well. We would suggest the wording throughout the bill be changed to **SHALL or WILL** to avoid such legal loop-holes as mentioned in the introduction.

SECTION 21-19-101.DEFINITIONS
In this section of definitions, there is no reference to BL or BM zoning. There needs to be a reference so that establishments would still be required to abide by the restrictions of their zoning area.
(C)
Page 2, line 12

"'Restaurant' means a facility or part of a facility used primarily for serving meals and beverages to persons seated at tables…"
What is the definition of "primarily"? It seems as if common sense would play into this, but as we have found in our dealings with The Dock of the Bay and our 3 years of legal battles, this provides a loophole for interpreting the law. This could permit all bars and taverns that serve food to patrons seated at tables on the premises to be considered a *restaurant* and be eligible for a permit to have live entertainment. A more clear definition is required here.

SECTION 21-19-102. PERMIT REQUIRED
(A)
Page 2, line 19

"The owner or manager of a restaurant…shall obtain an annual permit…"
Our concern is that the manager could be changed continually and at whim to allow a restaurant that has been found in violation to re-apply under a different permit or name, allowing the entire process to begin anew.

Page 2, line 21

"Before offering or providing live entertainment, indoor ***or outdoor***…"
As discussed with Councilman Olszewski, we feel that the BM zoning regulations should oversee this. In BM zoning, one *is* permitted to offer live entertainment, but there is a restriction with respect to the proximity to residential property. One is not permitted to provide live entertainment within 1000 feet of any residence. There is a reason for this, and it goes back to not disturbing the peacefulness, tranquility, safety, health and quiet of a neighborhood. As discussed with our councilman, we

feel that an establishment which is located within 1000 feet of any property deemed residential or used as a residence should not be allowed to provide outdoor entertainment at all. BL zoning is more restrictive that BM, so it does not make sense to allow an establishment in a BL zone more privileges than one in a BM zone. Again, as previously stated, establishments should still be required to abide by the restrictions of their zoning area.

SECTION 21-19-103
(B)
Page 3, lines 11-12

"The director may impose any additional conditions or restrictions on a permit." We interpret this as meaning that the director supersedes the entire bill. He/she could add *or take away* any restrictions or conditions. This, again, leaves everything up to the discretion of one person, which could open the doors to favoritism and legal loop-holes. We would like to see this statement stricken from the bill in its entirety.

SECTION 21-19-104.
(A)
Page 3, line 14

"On receipt of a complaint of excessive noise or lack of crowd control…"
This is very vague and needs to have set levels. Referencing "other laws" is not clear. The Liquor Board regulations state that noise levels are not to exceed 65 decibels prior to 10:00 pm and 55 decibels after 10:00 pm. These levels are set by the State of Maryland. When we met with Councilman Olszewski last summer, he had been working on a draft of the bill and his draft at that time stated, "No sound or noise generated by said entertainment shall exceed 65 decibels during the day or 55 decibels after sunset…" The councilman included this then for a reason, and we believe it should be added in. The councilman also mentioned the location of the measurement of the noise level. Again, in light of the loop-holes that have been attempted to be used in our legal battle, we believe the following statement would be clear. "No sound or noise generated by said entertainment shall exceed 65 decibels prior to 10:00 pm and 55 decibels after 10:00 pm, as measured on **all** property lines of the premises where such entertainment is provided." Rule 3, concerning noise and music, on page 3 of the Rules and Regulations of the Board of Liquor License Commissioners for Baltimore County further states that "All holders of Alcoholic Beverage Licenses in Baltimore County shall cease the playing of mechanical music boxes, live music and sound-making devices at 11:00pm every day unless such licensed establishments are sufficiently enclosed or located in an area where the sound will not disturb the peace of nearby residents."

Page 3, lines 15-16

"…the director or code official may seek enforcement and correction as provided in Article 3, Title 6 of the code."
What code is this? What is Article 3, Title 6?

Is the determination of a violation the sole responsibility of the Director? How would you ensure that there is no favoritism?
We have concerns as to who would actually enforce violations. In our dealings, we have learned that Code Enforcement does not work weekends or nights. This makes it extremely difficult to seek enforcement and correction of violations at establishments operating such activities in the evenings and on weekends, as well as to respond to and investigate complaints. Furthermore, the "county building code, fire code, zoning regulations, or any other law, or regulation adopted by the county to promote the general health, safety, and welfare of its citizens" as mentioned on pages 3-4 of the bill under Section 21-19-104, point out the fact that when dealing with violations, you would often, as we have been, be dealing with multiple organizations.

(C)
Page 4, line 3
"A person aggrieved by a decision my appeal the decision…"
While everyone should have the right to appeal, entertainment should cease until the appeal is heard and a decision is made, *not* continue until the appeal decision.

SECTION 21-19-105
(A)
Page 4, line 8
"Civil penalty of $500 per day for each day…"
To some, fines mean very little or nothing at all. Penalties should be stiffer so they will be more of a deterrent. As suggested by Councilman Olszewski at our meeting in February, as well as at the large public gathering for the Greater Dundalk area at Dundalk Community College, we would like to see a progression of penalties such as:

1st offense - $500 fine
2nd offense – 30 day suspension of entertainment permit
3rd offense – revoke entertainment permit

If the permit has been revoked, it should be non-renewable at the site for a period of 2 years from the date of being revoked.

OTHER SUGGESTIONS/ADD-ONS

We would like the bill to say that there can be **NO** live bands at any location within 1000 feet of property deemed residential or used as a residence. This, again, deals with the BM, and by rights, BL zoning regulations. We feel that a DJ or Karaoke would be acceptable indoors, but must still follow noise laws.

There needs to be a requirement for security. When a restaurant provides entertainment, there should be clearly defined security on the parking lot and all accessible entry/exit areas, including pier areas, one hour prior to the time that any live or recorded entertainment shall begin until all patrons have left the premises "whose responsibility it shall be to ensure and oversee the orderly departure of the patrons from the tavern or other commercial establishment. Said

parking lot/pier attendant shall prevent excessive loitering, loud playing of car stereos, excessive arguments or verbal altercations, public consumption of alcohol, public urination, littering or other similar offensive and disruptive behavior". This was taken from the original draft that Councilman Olszewski shared with us last summer.

14

COUNTY COUNCIL OF BALTIMORE COUNTY
COURT HOUSE, TOWSON, MARYLAND 21204

VINCENT J. GARDINA
COUNCILMAN, FIFTH DISTRICT

COUNCIL OFFICE: 410-887-3384
FACSIMILE: 410-887-5791

April 11, 2007

Mr. and Mrs. David Wolinski
9019 Cuckold Point Road
Sparrows Point, Maryland 21219

Dear Mr. and Mrs. Wolinski:

Thank you for sharing your concerns regarding noise emanating from the Dock of the Bay near your residence. I can surely realize the impact that this would have on your quality of life. It is this type of situation that would not be accepted under any legislation changes that may be considered. Rather, establishments that are isolated from residential communities and have outside accessory decks could be allowed to have very quite and minimal music. The possible concept could be restricted to intense business zones that do not border residential zones. This idea is being discussed but will not move forward unless all issues of concern can be addressed.

Sincerely,

Vincent J. Gardina
Councilman, Fifth District

VJG:tmb
wolinski.wpd

15

COUNTY COUNCIL OF BALTIMORE COUNTY
COURT HOUSE, TOWSON, MARYLAND 21204

KEVIN KAMENETZ
COUNCILMAN, SECOND DISTRICT

COUNCIL OFFICE: 410-887-3196
FACSIMILE: 410-887-5791

April 10, 2007

Mrs. Daryl Wolinski
9019 Cuckold Point Road
Sparrows Point, Maryland 21219

Dear Mrs. Wolinski:

Thank you for your April 5, 2007 correspondence relating to concerns of allowing live music at restaurants.

First, there is no present bill before the Council. I am not clear as to why the article gave that impression. Second, I share your concerns that there should not be any "blanket" authority to grant live music.

I suggest that you refer your comments directly to your Councilman, Mr. Olszewski, who may be in a better position to directly respond to your concerns.

Very truly yours,

Kevin Kamenetz
Councilman, Second District

KK:tmb
Wolinski.wpd

15

16

Dock of the Bay cited for more violations

Fines for zoning, liquor violations total $31,800

by Steve Matrazzo

In the latest phase of an ongoing dispute between Dock of the Bay and neighboring Millers Island residents, the restaurant/bar again has been found in violation of both liquor board and zoning regulations, has been hit with fines totaling $31,800 and has been ordered to stop providing outdoor music.

After more than a year of complaints by residents, hearings, fines, orders and appeals, the Cuckold Point Road establishment was cited by a Baltimore County Department of Permit and Development Management code enforcement inspector last month for violation of a May 30 zoning commissioner's order that demanded that the restaurant stop operating as a nightclub.

Dock of the Bay operator Lawrence Thanner has resisted that definition and has said that only a few neighbors were the source of complaints to the county.

County zoning regulations prohibit the operation of a nightclub, defined as "a tavern or other commercial establishment which provides live or recorded entertainment," on property which, like the Cuckold Point Road location, is zoned BL, or "Business, Local."

In his May 30 ruling, zoning commissioner William J. Wiseman III ordered that "the playing of outdoor music ... must be discontinued."

Copies of county documents provided to *The Eagle* include a citation written on July 5 by code enforcement inspector Jeff Radcliffe listing alleged offenses by Dock of the Bay including "operation of a nightclub in a BL (Business, Local) zone, noncomplaince with the zoning comissioner's order, addition constructed without a permit [and] failure to obtain an electrical permit."

A later version of the citation, noting violations between June 11 and July 31, assessed a fine of $30,800.

In addition, the Board of Liquor License Commissioners held a "show cause" hearing on Aug. 6, at which Fifth Street LLC, the corporate owner of Dock of the Bay, was required to demonstrate why the restaurant's liquor license should not be suspended or revoked.

While Dock of the Bay's license was not affected, the hearing did result in a finding that Dock of the Bay had violated regulations regarding noise and music and had failed to co-

continued on page 21

Dock of the Bay cited for more violations

continued from page 20

operate fully with liquor board inspectors.

The board levied a $1,000 fine and and ordered that all playing of outdoor music be discontinued.

These fines are the latest chapter in a longstanding conflict between Dock of the Bay and several neighbors who have filed repeated complaints with both zoning and licensing authorities.

In an interview for a March 1 *Eagle* article, Millers Island resident Matt Ciarpella said that "the big issue is music" but that other problems, including traffic and parking on nearby residential streets and unruly behavior by intoxicated patrons, have arisen as well.

Explaining his decision to submit complaints to the two county agencies, Ciarpella said, "[Thanner] won't stop until he's forced to be stopped. He's got so many loopholes it's unbelieveable."

Thanner, in filings and testimony presented to the boards, has argued that his establishment and its musical activities do not meet the legal standard defining a nightclub.

He did not return phone calls seeking comment for this article.

"I feel like the county's harassing me for no reason at all," he said in an interview earlier this year. "Every definition I've looked at has a nightclub [offering entertainment] at night. We have ours [outside] during the afternoon."

Zoning commissioner Wiseman disagreed in his May ruling, however, writing that Thanner "is conducting a nightclub on the subject property and that [such] use of the property is not permitted."

Both fines are subject to appeal.

if his ads contradict this statement

16

Plan Sheet: *112B2*

Note:
The zoning depicted in this application incorporates the actions associated with County Council Bills 82-04, 83-04, 84-04, 85-04, 86-04, 87-04, 88-04, and 89-04 adopted by the County Council on August 31, 2004. The action associated with County Council Bill 130-04 adopted on December 6, 2004 is also depicted. In addition, County Board of Appeals actions from MC 05-01, MC 05-02, MC 05-03, and MC 05-04 on February 9, 2005 are represented in this application.

Legend

Zoning — Streams — Vegetation
Buildings — Roads — Rail Lines

Baltimore County
Office of Planning and Zoning
Official Zoning Map

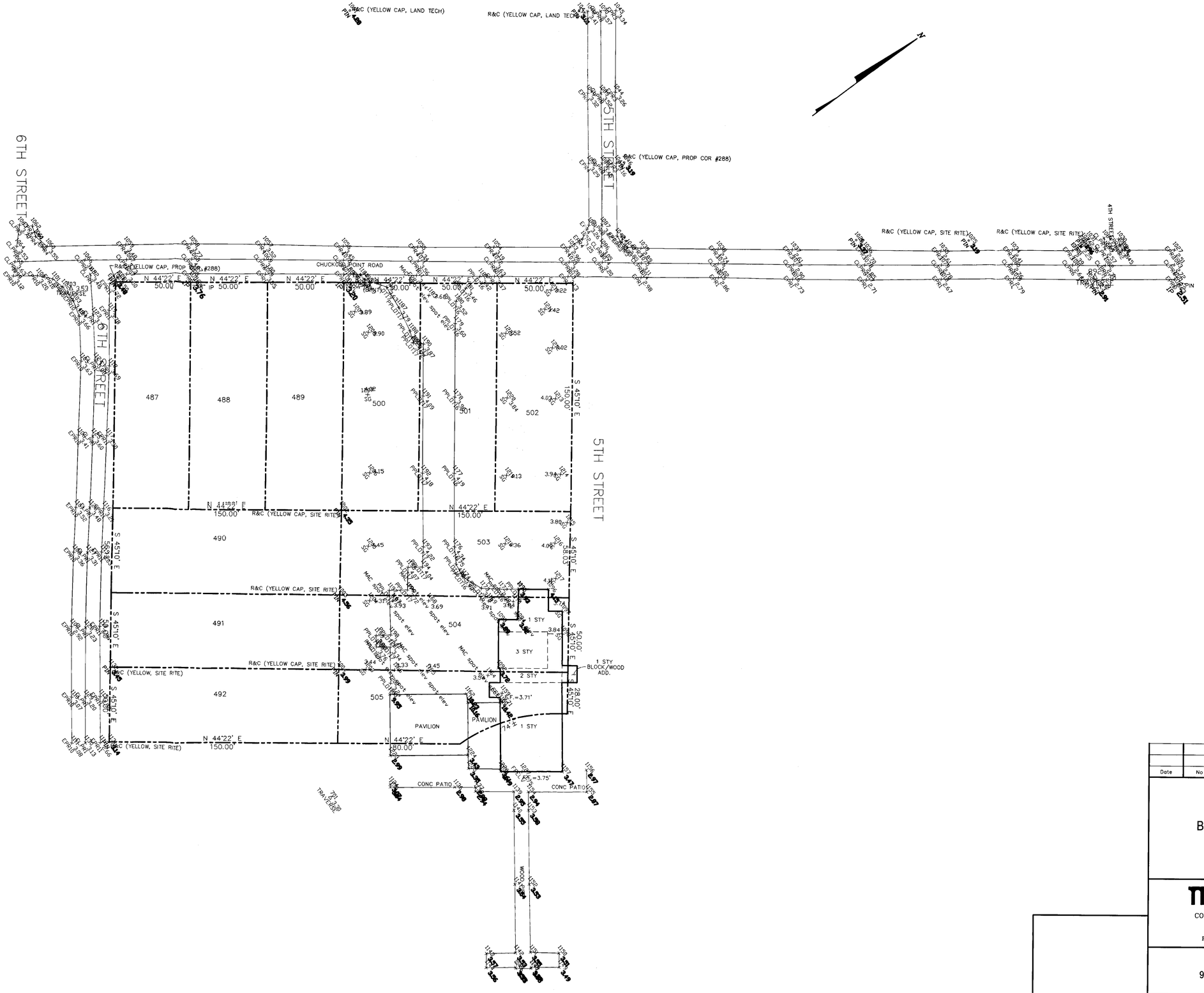
111C1	112A1	112B1	112C1	118A1
111C2	112A2	112B2		
111C3	112A3	112B3		

Scale
1" = 200'
0 100 200 400 Feet

1

Data Sources:
Planametric Data - Baltimore County
OIT/GIS Services Unit
1:2400, from 1995/96 photography
Zoning Baltimore County Office of Planning
1:2400, 2004

#144



Date	No	Revision Description

BOUNDARY AND TOPO

CENTURY ENGINEERING
CONSULTING ENGINEERS – PLANNERS
32 WEST ROAD
TOWSON, MD 21204
Phone: 410.823.8070 Fax: 410.823.2184

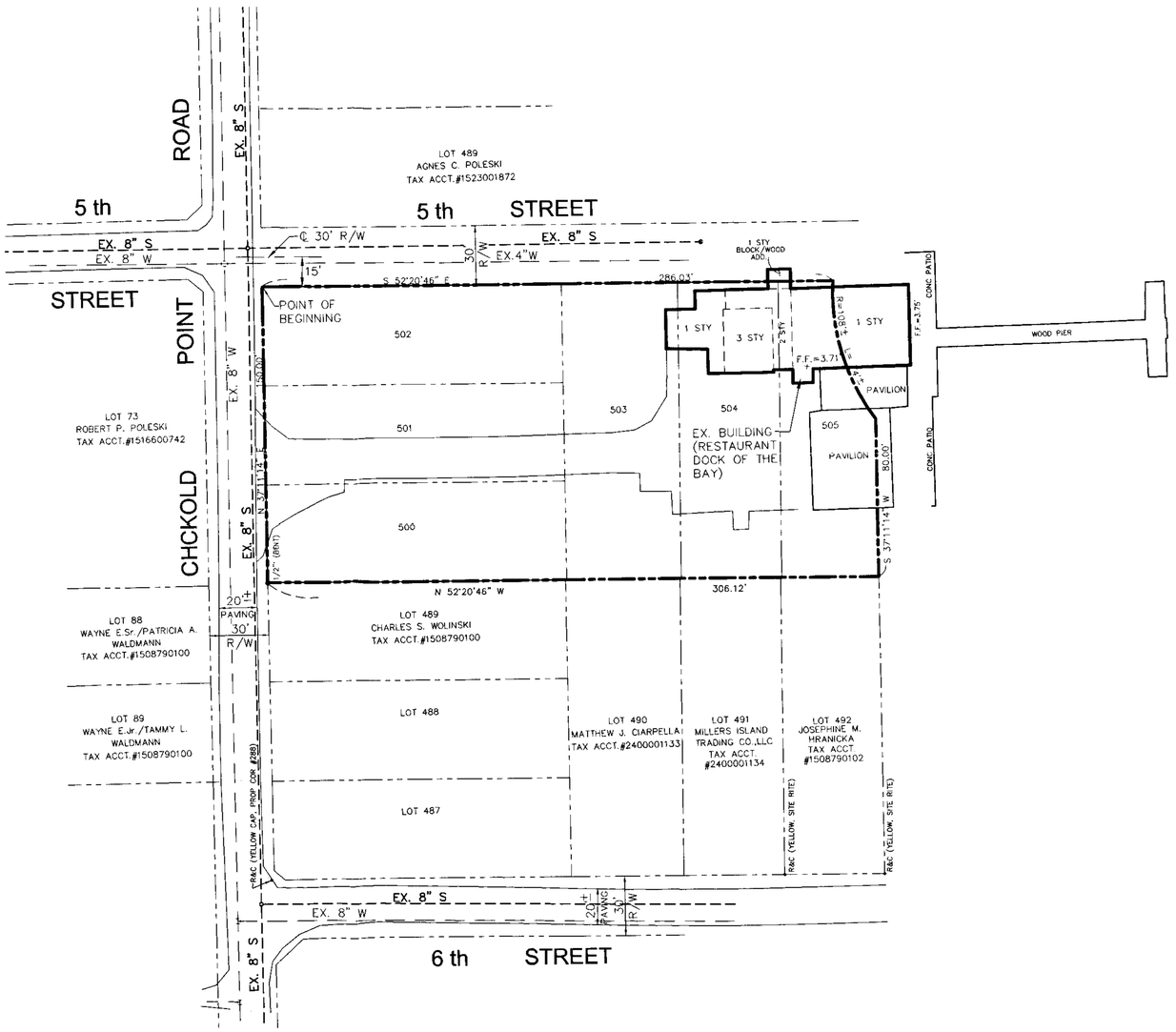
DOCK OF THE BAY
9025 CUCKOLD POINT ROAD

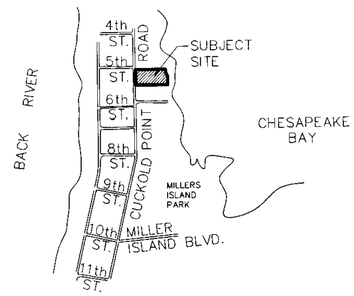
Des By	Scale 1"=30'	Proj No 25312.00
Drn By	Date	DRAWING NO
Chk By	Approved	1 OF 1

\DRAWING\LAND-DEV\2005\25312.00 DOCK OF THE BAY\DOBTOPO.dwg, Model, 8/9/2006 9:39:39 AM, cunningham, XES Synergix 8850.pc3

PLAT TO ACCOMPANY PETITION FOR ZONING ☐ VARIANCE ☒ SPECIAL HEARING

PROPERTY ADDRESS 9025 CUCKOLD POINT ROAD
SUBDIVISION NAME SWAN POINT
PLAT BOOK #9 FOLIO #5 LOTS 500-505
OWNER LARRY THANNER DATE _____





VININITY MAP
SCALE: 1"=1000'

LOCATION INFOMATION

ELECTION DISTRICT #15

COUNCILMANIC DISTRICT #7

1"=200' SCALE MAP "A" NE & NW

ZONING BL

LOT SIZE 1.03 ACREAGE 44,867 SQUARE FEET

	PUBLIC	PRIVATE
SEWER	☒	☐
WATER	☒	☐

	YES	NO
CHESAPEAKE BAY CRITICAL AREA	☒	☐
100 YEAR FLOOD PLAIN	☒	☐
HISTORIC PROPERTY/ BUILDING	☒	☐
PRIOR ZONING HEARING	☐	☒

ZONING OFFICE USE ONLY
REVIEWED BY ITEM# CASE#

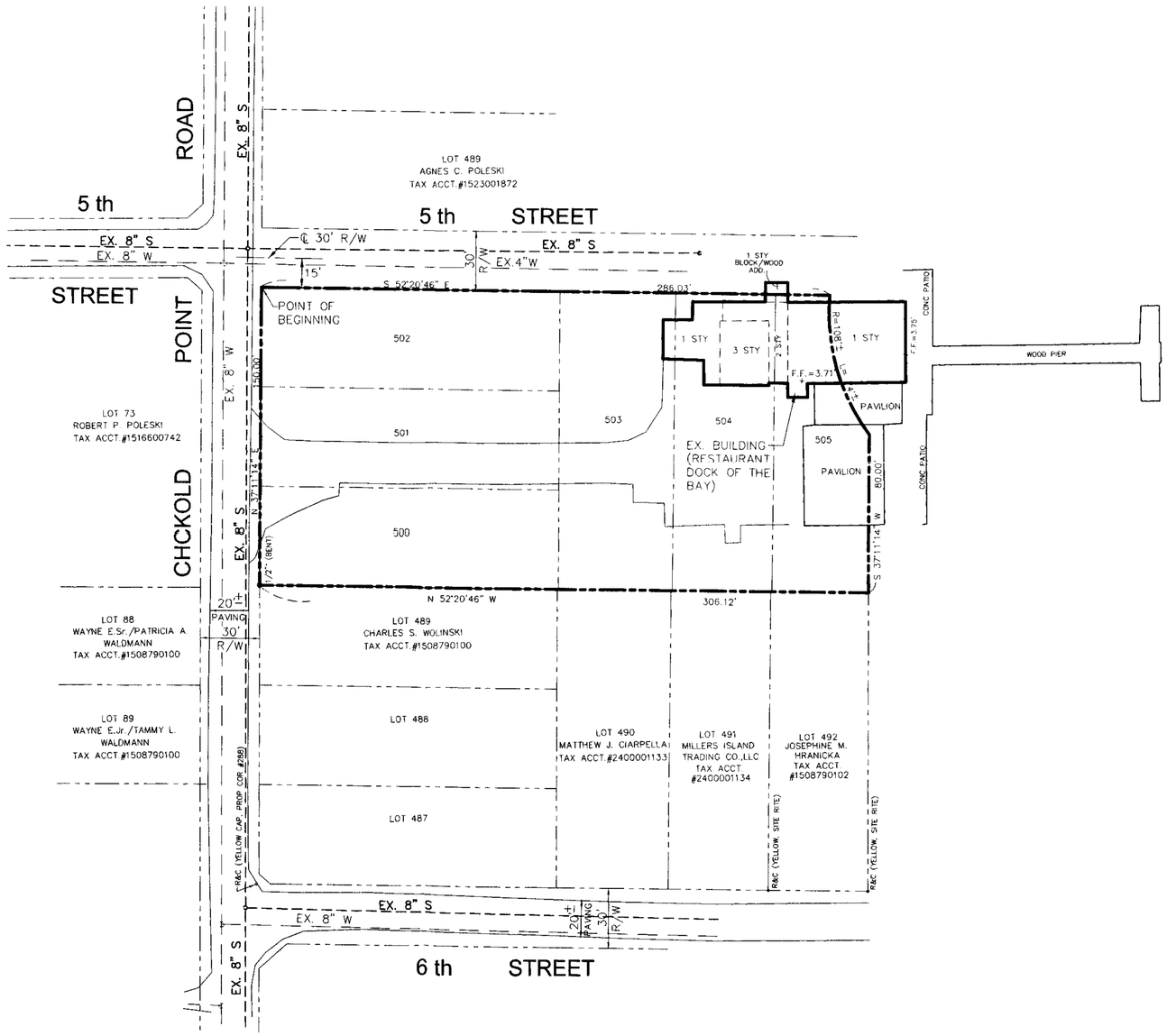
PREPARED BY CENTURY ENGINEERING

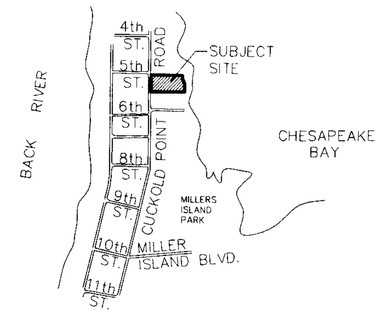
CENTURY ENGINEERING
CONSULTING ENGINEERS - PLANNERS
10710 GILROY ROAD
HUNT VALLEY, MD 21031
Phone: (410) 823-8070 Fax: (410) 823-2184

SCALE OF DRAWING: 1"=50'

PLAT TO ACCOMPANY PETITION FOR ZONING ☐ VARIANCE ☒ SPECIAL HEARING

PROPERTY ADDRESS 9025 CUCKOLD POINT ROAD
SUBDIVISION NAME SWAN POINT
PLAT BOOK #9 FOLIO #5 LOTS 500-505
OWNER LARRY THANNER DATE 9/20/06





VININITY MAP
SCALE: 1"=1000'

LOCATION INFORMATION

ELECTION DISTRICT #15

COUNCILMANIC DISTRICT #7

1"=200' SCALE MAP 112 B2

ZONING BL

LOT SIZE 1.03 ACREAGE 44,867 SQUARE FEET

	PUBLIC	PRIVATE
SEWER	☒	☐
WATER	☒	☐

	YES	NO
CHESAPEAKE BAY CRITICAL AREA	☒	☐
100 YEAR FLOOD PLAIN	☒	☐
HISTORIC PROPERTY/ BUILDING	☒	☐
PRIOR ZONING HEARING	☐	☒

ZONING OFFICE USE ONLY

REVIEWED BY	ITEM#	CASE#
LTM	144	

PREPARED BY CENTURY ENGINEERING

CENTURY ENGINEERING
CONSULTING ENGINEERS - PLANNERS
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HUNT VALLEY, MD 21031
Phone: (410) 823-8070 Fax: (410) 823-2184

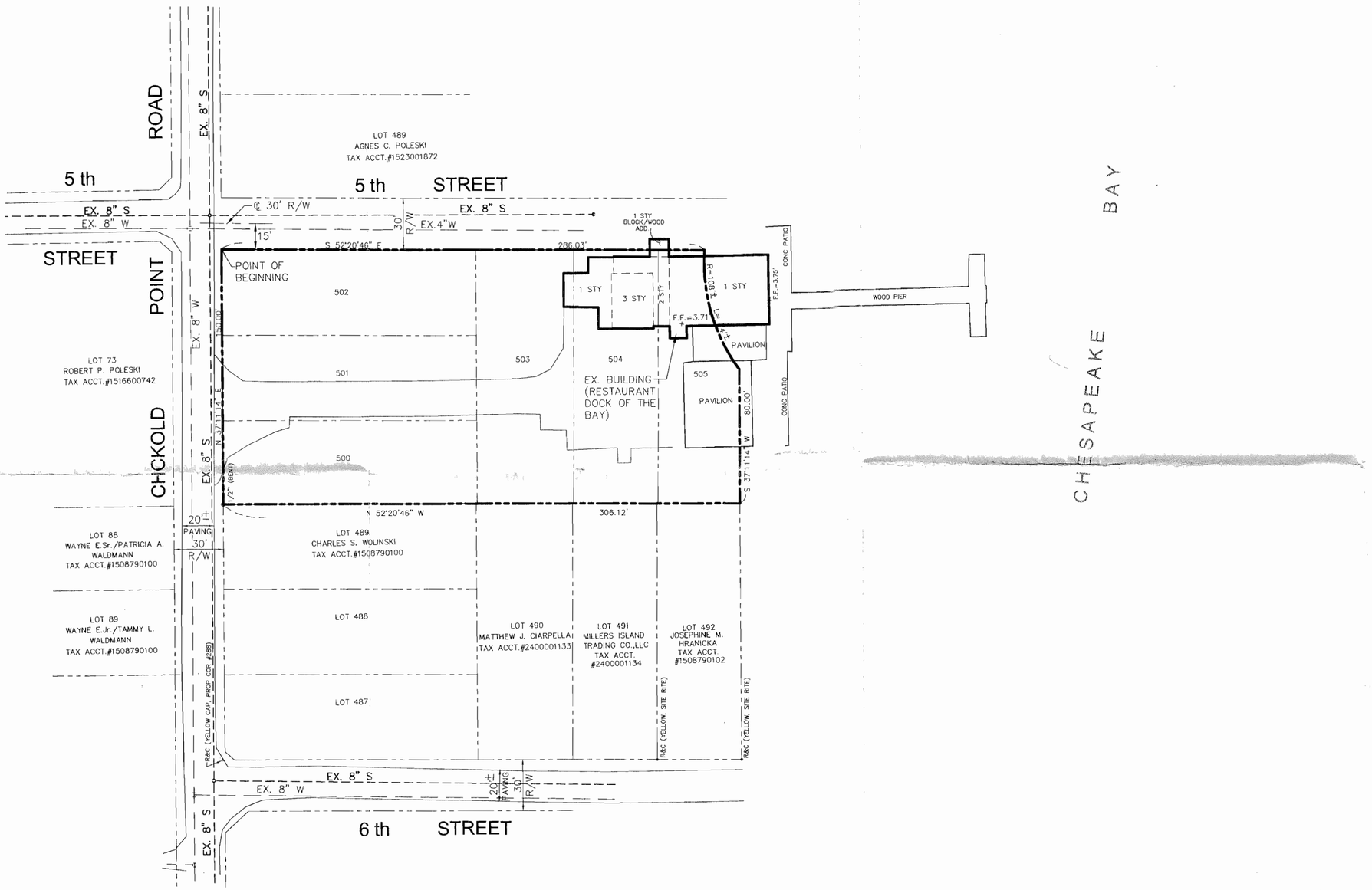
SCALE OF DRAWING: 1"=50'

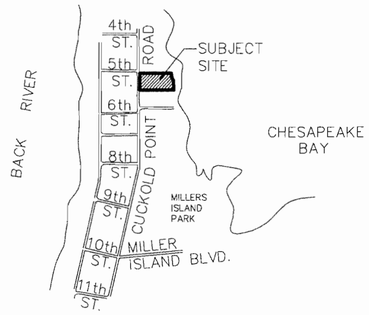
STATE OF MARYLAND JOHN ROBERT GRETZ No. 10881 REGISTERED PROFESSIONAL LAND SURVEYOR

CEI No. "153/2.00

PLAT TO ACCOMPANY PETITION FOR ZONING ☐ VARIANCE ☒ SPECIAL HEARING

PROPERTY ADDRESS 9025 CUCKOLD POINT ROAD
SUBDIVISION NAME SWAN POINT
PLAT BOOK #9 FOLIO #5 LOTS 500--505
OWNER LARRY THANNER DATE 9/20/06





VININITY MAP
SCALE: 1"=1000'

LOCATION INFORMATION

ELECTION DISTRICT #15

COUNCILMANIC DISTRICT #7

1"=200' SCALE MAP 112 B2

ZONING BL

LOT SIZE 1.03 ACREAGE 44,867 SQUARE FEET

	PUBLIC	PRIVATE
SEWER	☒	☐
WATER	☒	☐

	YES	NO
CHESAPEAKE BAY CRITICAL AREA	☒	☐
100 YEAR FLOOD PLAIN	☒	☐
HISTORIC PROPERTY/ BUILDING	☒	☐
PRIOR ZONING HEARING	☐	☒

PETITIONER'S
EXHIBIT NO. 1

STATE OF MARYLAND
JOHN ROBERT GREEN
No. 10881
REGISTERED
PROFESSIONAL LAND SURVEYOR

ZONING OFFICE USE ONLY

REVIEWED BY	ITEM#	CASE#
LTM	144	

PREPARED BY CENTURY ENGINEERING

CENTURY ENGINEERING
CONSULTING ENGINEERS – PLANNERS
10710 GILROY ROAD
HUNT VALLEY, MD 21031
Phone: (410) 823-8070 Fax: (410) 823-2184

SCALE OF DRAWING: 1"=50'

CRT via #253/2.22