

9/11/15

IN THE MATTER OF
JAMES DIMICK, JR. and ROBERT G. DIMICK
- LEGAL OWNERS/PETITIONERS
FOR SPECIAL EXCEPTION FOR THE
property located on the S/s of Chester Road, 750'
w of c/l Susquehanna Avenue (826 Chester Road)
15th Election District; 6th Councilmanic District

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 14-123-X

* * * * *

RULING ON PETITIONER'S MOTION FOR RECONSIDERATION

This matter comes before the Board on a Motion for Reconsideration requested by Lawrence E. Schmidt, Esquire and Smith, Gildea & Schmidt, LLC, on behalf of the Petitioners, James Dimick, Jr. and Robert Dimick. Protestants Opposition to Reconsideration was filed by J. Carroll Holzer, Esquire on behalf of Glenn Dowell and People's Counsel for Baltimore County's Answer to Motion for Reconsideration was filed by Peter M. Zimmerman, Esquire. A public deliberation was held for this Motion on September 1, 2015.

It is important to note, Richard A. Wisner was a member of the panel at the hearing and deliberation of the merits of this matter. He was not reappointed and his term expired effective May 1, 2015. Upon filing of the Motion for Reconsideration by Petitioners, Counsel agreed to proceed without appointing a third Board member to replace Mr. Wisner.

In their decision dated April 30, 2015, the Board granted the Special Exception request for a fishing and shell fishing facility, shoreline, Class II as provided in BCZR §1B01.1.C.8 with the following conditions:

1. The Dimick brothers crabbing operation shall be permitted to operate during crabbing season ("crabbing season") from sunrise to sunset from April 1 – December 15 each year as directed by the DNR.

2. During crabbing season, the Dimick brothers shall be permitted to store crab pots up to 25% of the Property without restriction on the location within the Property but such pots may not be stacked more than 2 pots in height.
3. During off-season (December 16 – March 31), the Dimick brothers shall store all crab pots off the Property.
4. The cleaning, repair, power washing and painting of crab pots shall occur between the hours of 9:00-5:00 only, Monday through Friday.
5. No signage shall be posted on the Property.
6. The Dimick brothers shall be permitted to keep at the Property no more than two (2) commercial fishing boats (with a maximum length of 45 feet each) at any time. This limitation does not apply to jet skis or other non-commercial watercraft.
7. There shall be no retail sales of any crab/fish from the Property.
8. All fuel and bait deliveries shall be between the hours of 9:00 – 5:00 only, Monday – Friday.

The Petitioners' Motion for Reconsideration requests the reconsideration of two of the conditions imposed by the Board in their decision dated April 30, 2015, specifically conditions 2 and 4.

Condition 2

In their Motion, the Petitioners requests "...a modest amendment to this restricting, allowing the pots to be stacked a maximum of three pots high..." The Petitioners argue that in other cases regarding water front property, the Board has ruled that one does not have a legal right to a view across one's neighbor's property. The Petitioners argue that the only time their pots are not in the water is when they are being cleaned, and maintained.

The Board recalls the extensive testimony taken pitting the neighbors' right to water view against the Petitioner's right to make a living. The Board compromised and provided condition 2. The Board concludes that the Motion for Reconsideration regarding Condition 2, does not point to any fraud, mistake or irregularity in the conduct of the hearing in this case, nor does the Board find there is any indication of the existence of new law or evidence not available to the Petitioner at the time of the hearing. Therefore, the request to amend condition 2 is denied.

Condition 4

Petitioners argue that "[t]he life of a waterman is not dictated by the clock...Simply stated, running a crabbing operation is not a 9:00 to 5:00 job." The Petitioners "...accept the 9:00 a.m. starting time limitation. But the 5:00 time limit is arbitrary and there is no rationale for it..." The Petitioners request that the 5:00 end-time limit should coincide with sunset. Additionally, the Petitioner requests that the Board remove the "...blanket restriction on pot maintenance [on] weekends..."

The Board concludes that an error was made in their original decision in that the deliberation notes from August 19, 2014 confirm that there was no end-time limit to the cleaning, repair, power washing and painting of the crab pots. In deliberating on the Motion for Reconsideration, the Board specifically recalls that the cleaning, repair, power washing and painting of crab pots should have coincided with sunset. The Board recounted the evidence at the hearing by the Dimicks that the crabbing season is defined by DNR and the Dimick crabbing operation includes not only the catching of crabs, but also the cleaning, repair, power washing and painting of crab pots. The evidence showed that a crabbing operation is not dictated by a 9:00 to 5:00 clock but by sunlight hours particularly during the summer when the days are longer. Accordingly, while the Board intended to have a limit on the start time of 9:00 am, the end time

for catching crabs and for cleaning, repair, power washing and painting of crab pots should have been sunset and not 5:00 p.m. This we find was an error by the Board in drafting the Opinion.

Therefore, the Board is granting the Motion for Reconsideration with regard to Condition 4. Condition 4 is hereby amended to allow the cleaning, repair, power washing, and painting of crab pots between the hours of 9:00 a.m. to sunset, Monday through Friday.

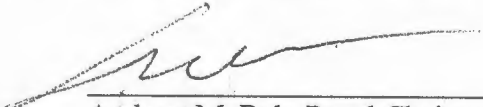
IT IS THEREFORE THIS 11th day of September 2015 by the Board of Appeals for Baltimore County

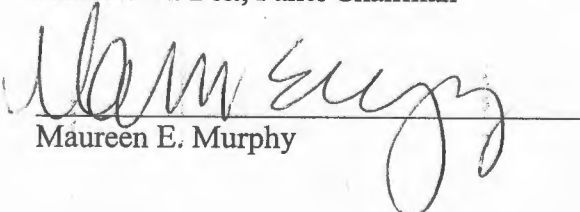
ORDERED, that the Petitioners' Motion for Reconsideration of Condition 2 of the April 30, 2015 Opinion and Order of the Board of Appeals for Baltimore County, be and the same is hereby **DENIED**; and it is further

ORDERED, that the Petitioners' Motion for Reconsideration of Condition 4 of the April 30, 2015 Opinion and Order of the Board of Appeals for Baltimore County, be and the same is **GRANTED in part**. Condition 4 is hereby amended to allow the cleaning, repair, power washing, and painting of crab pots to occur between 9:00 a.m. and sunset, Monday through Friday.

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*.

**BOARD OF APPEALS
OF BALTIMORE COUNTY**


Andrew M. Belt, Panel Chairman


Maureen E. Murphy



Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
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TOWSON, MARYLAND, 21204
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September 11, 2015

Lawrence E. Schmidt, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204

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

RE: *In the Matter of: James Dimick, Jr. and Robert G. Dimick – Legal Owners*
Case No.: 14-123-X

Dear Counsel:

Enclosed please find a copy of the Ruling on Petitioner's Motion for Reconsideration issued this date by the Board of Appeals of Baltimore County in the above subject matter.

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

Krysundra "Sunny" Cannington
Administrator

KLC/tam
Enclosure
Duplicate Original Cover Letter

c: James Dimick, Jr.
Robert G. Dimick
Bernadette Moskunus/SiteRite, Inc.
Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Chip Raynor/PAI
Arnold Jablon, Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law

Glenn Dowell
Allen Robertson
Tom Jenkins
Thomas Lehner
John Slough

6/30/14

RE: PETITION FOR SPECIAL EXCEPTION * BEFORE THE COUNTY
826 Chester Road; S/S Chester Road, 750'
W c/line of Susquehanna Avenue * BOARD OF APPEALS
15th Election & 6th Councilmanic Districts *
Legal Owner(s): James & Robert Dimick * FOR
Petitioner(s) * BALTIMORE COUNTY
* 2014-123-X

* * * * *

**PEOPLE’S COUNSEL FOR BALTIMORE COUNTY’S
POST-HEARING MEMORANDUM
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Legal Owner(s): James & Robert Dimick	*	FOR
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	*	BALTIMORE COUNTY
	*	2014-123-X

* * * * *

**PEOPLE'S COUNSEL FOR BALTIMORE COUNTY'S
POST-HEARING MEMORANDUM**

In the wake of the County Board of Appeals (CBA) April 24 and June 10, 2014 *de novo* trial hearings, People's Counsel submits this memorandum. Having filed a pre-hearing memorandum, our purpose here is to update and supplement concisely the issues previewed there. The trial unfolded much as we anticipated.

Questions Presented

1. Has the 1979 Class I (principal residence) facility permit approved for James and Helen Dimick at 826 Chester Road both changed in use to Class II (residence not required) and expanded significantly beyond the limited configuration defined in the 1979 site plan incorporated in the approval?
2. Does the current use satisfy special exception standards?
3. If the answer to question 2 is no, is it practical and realistic to frame conditions which might satisfy the special exception standards?
4. Is there a public interest in this case?
5. Is the present petition anyway defective and subject to dismissal because the site plan is inaccurate and insufficient?

I. The 1979 Permit Plainly Is No Longer Viable

The first main issue addresses the viability of the 1979 Class I fishing and shellfishing facility permit issued to James and Helen Dimick. This grandfathered the then existing use incidental to their primary residence in a residential zone (then D.R. 5.5, now 3.5). The permit allowed the use of just 25% of the property. The approved site plan

reflected a very limited operation, consonant with the residential use. There is no doubt that, as years have gone by, the elder Dimicks' children, James, Jr. and Robert, took over the operation, expanded it, and moved to new residences.

The permit is no longer valid. It has terminated. Nor is it even possible to return to the 1979 status, even if such were permissible.

We reviewed the legislative history in our pre-hearing memorandum. At the trial hearing, we submitted the relevant legislation as exhibits. Bills 30-78 and 139-83. The legislation introduced a new special exception standard. To be fair to existing uses, the law set up a permit and site plan procedure to grandfather such uses. The grandfather allowance did not, however, authorize any expansion or intensification of such uses.

In our pre-hearing memorandum, we observed that the use had expanded significantly. The evidence more than demonstrated this to be true. There came a time when James and Helen Dimick no longer made 826 Chester Road their residence. James Dimick, Jr. and Robert Dimick, their children established their own businesses on the property. These businesses, in combination, have grown way beyond the limits defined in the 1979 permit. Most significantly, when the crab pots are out of the water, they occupy the entire waterfront yard from side boundary to side boundary. They are stacked four high, with a narrow walkway in the middle. This is a reflection of the general change and expansion from the earlier single business. The business uses of the property have naturally increased as the crabbing operations have increased. On this ground alone, the 1979 permit is no longer viable.

In our pre-hearing memorandum, we described the enforcement proceeding background. ALJ Lawrence Stahl's November 25, 2013 opinion and order properly recognized the perspicuous expansion and found the use to be in violation. James, Jr. and Robert immediately filed the current zoning application to try to legitimize the use.

We also questioned in our pre-hearing memorandum whether the site is still a primary residence, as required by the 1979 Class I permit. At the hearing, it became clear that James, Jr. and Robert had moved away and established separate residences with their respective families, James, Jr. at 1117 Susquehanna Avenue and Robert at 4 Windward

Way. The SDAT printouts show these separate addresses. So do the four State DNR commercial licenses (James, Jr., Denise, Robert, Robert, Jr.), which also reflect the business expansion. The change from primary residential to exclusive commercial use is another reason why the 1979 permit is no longer viable.

In his November 25, 2013 opinion, ALJ Stahl also stated his impression, in *obiter dicta*, that 826 Chester Road is or might still be a primary residence. This impression turns out to be false and, at best, due to a misunderstanding. As James Dimick, Jr. had to admit at the CBA hearing, he and his brother had moved away in the 1990s, so that the residential use was abandoned.

It makes sense that as the business expanded in a major way, the property would no longer be enjoyable or comfortable as a primary residence. So, these changes go together. The 1979 permit is history. It does not apply to or allow the current use. The permit is no longer valid.

II. The Current Proposed Use Does Not Satisfy Special Exception Standards

a The Nub of the Problem: the Historic Expansion and Metamorphosis

The problem centers on the major expansion of the commercial use on this small 0.29 acre waterfront lot, 12, 485 square feet in area. The most obvious offensive element is the massive and visually obstructive crab pot occupation of the waterfront side of the property, especially in the offseason and to some extent during the season.

The business also involves pressure washing and spray painting of pots, causing noise and odors, respectively. There are truck operations involving not only crabs, but also fuel and bait deliveries. With four licenses in operation, it is a big business relative to the size and location of the property. The more concentrated fuel deliveries and operations also pose a higher fire danger than posed by the ordinary residence.

Not surprisingly, James, Jr. and Robert discontinued use of the property as a primary residence many years ago. It is no longer suitable. Unfortunately, this incongruity extends to the adverse impact on the neighboring residences.

Most neighbors prefer not to be involved in zoning disputes. It is only when uses become offensive that neighbors complain. Here, the initial complaint came from Mark

Green of 824 Chester Road. The Greens have since sold their property. According to Glen Dowell of 828 Chester Road, there is reason to believe that the crabbing operation diminished their selling price significantly. In any event, Mr. Dowell believes, and it is a reasonable belief, that the enjoyment and value of his property suffers adversely.

There has been more than ample evidence presented in aerial and other photography as to the size, scale, and obtrusiveness of the commercial operation and the obvious impact on the neighboring properties. The testimony from Gene Raynor, the zoning inspector, corroborates Glenn Dowell's description of the particularly intense nature of this use on such a small lot.

The Dimicks have made much of the nearby Long Beach marina. But the marina is a permitted use. As shown on the My Neighborhood zoning map, P.C. Exh. 6, the marina property is zoned B.M.B. (Business-Maritime, Boatyard). It may be relatively nearby, but not close enough to have a material impact on the issues here. It does not erase or excuse the crabbing facility's impact on immediately adjacent residential waterfront properties.

b. Special Exception Standards

The CBA is very familiar with special exception standards under BCZR Sec. 502.1. The particular standards most apt here are, paraphrased in brief:

502.1.A, detriment to public health, safety or general welfare of the locality involved;

502.1.B, tendency to create congestion in roads, streets, and alleys;

502.1.C, creation of a potential hazard from fire, panic, or other danger;

502.1.D, tendency to overcrowd the land;

502.1.f, interference with adequate light and air;

502.1 G, inconsistency with the purpose of the zoning classification or the spirit and intent of the laws.

The ultimate question is whether the use causes a particular adverse impact on properties in the neighborhood and is excessive in any of the above categories. We shall repeat here what we said in the pre-hearing memorandum.

“While Petitioners naturally emphasize the judicial language that there is a presumption in favor of special exception uses, they must also deal with the language which places the burden of them to prove that their proposal at their chosen location will not cause a particular adverse impact in the neighborhood. The Court of Appeals has elucidated the standard in such cases as Schultz v. Pritts 291 Md. 1 (1981); Board of County Comm’rs v. Holbrook 314 Md. 210 (1988); People’s Counsel v. Loyola College 406 Md. 54 (2008); and Montgomery County v. Butler 417 Md. 271 (2010). The Court of Special Appeals has provided helpful analysis in People’s Counsel v. Mangione 85 Md. App. 738 (1991); Lucas. v. People’s Counsel 147 Md. App. 209 (2002); and Mills v. Godlove 200 Md. App. 211 (1911).

While special exception standards derive from legislation, and need not be the same everywhere, as explained in Butler, Baltimore County BCZR Sec. 502.1 follows the traditional framework, as shown in Loyola and Mangione.

It is essential to evaluate the character of the proposed use, as well its size and scale. To illustrate, a proposal may be excessive for any number of reasons and impacts. See Mangione case, n. 5, reinstatement of this zoning board’s denial of special exception for a convalescent facility because of the magnitude of visual, traffic, and environmental impacts. This includes consideration of the visual impact on adjoining property owners and the likely effect on property values. See Holbrook, *supra*, sustaining the zoning board’s denial of special exception for mobile home because of impact on adjacent residence.”

c. Words of Caution on Presumptions

Serendipitously, the brilliant Judge Charles Moylan just delivered a very interesting reported opinion in a case called Cooper v. Singleton No. 849, Septemer Term, 2013 (June 26, 2014, available on the Maryland Courts). The case involve a six-car collision, and questions relating to negligence. To decide the case, the Court had to deal with the matter of presumptions. Judge Moylan introduced his opinion with this trenchant message, slip opinion pages 1-3, attached:

“Harvard Law School Professor Edmund M. Morgan, one of the legendary titans of the law of presumption, said of the subject as early as 1937;

Every writer of sufficient intelligence to appreciate the difficulties of the subject-matter has approached the topic of presumption with a sense of hopelessness and has left it with a feeling of despair.”

The first of the early titans was James Bradley Thayer, who even before the turn of the 20th century, had observed,

[T]he numberless propositions figuring in our cases under the name of presumptions, are quite too heterogeneous and incomparable to kind, and quite too loosely conceived of and expressed, to be used or reasoned about without much circumspection.

Dean Charles McCormick, another of the early Olympians, added to the diagnosis:

One ventures the assertion that ‘presumption’ is the slipperiest member of the family of legal terms, except its first cousin, ‘burden of proof.’

Judge Moylan’ words of caution are apt here. Petitioners in special exception cases naturally focus on and isolate the “presumption” in favor of special exceptions included in Schultz v. Pritts and its progeny. Zoning boards sometimes pick this language up, in isolation, and translate this into a more or less boilerplate special exception approval. But, in doing so, they ignore the context and the rest of the more comprehensive scope of the inquiry, which requires an objective analysis of the particular adverse impact on the neighborhood.

d. The Special Exception Standards as Applied Here

While every case is different, we believe that Mangione and Holbrook best illustrate the type of problems presented at the CBA trial hearing relating to size, scale, and impact on property values. The excessive impact of the operations cuts across all of the BCZR Sec. 502.1 subsections identified above. For the CBA’s convenience, we attach a Westlaw copy of Judge Harry Cole’s Holbrook opinion. The key points are at Westlaw pages 5-7, 314 Md. at 216-20.

In our pre-hearing memorandum, we also cited the October 29, 2013 County Board of Appeals decision in Lucy Ware, 4512 Old Court Road, Case No. 13-147-SPHA,

involving the analogous conversion of a dwelling to church use in a way incompatible with the neighborhood. We can now report that on June 16, 2014, Circuit Judge Sharon Bailey affirmed the CBA ruling with a brief oral opinion. In the Matter of Lucy Ware, Case No. 03-C-13-012865.

The nub of the present situation is that the several businesses have outgrown this small residential lot. The overcrowding, the obstruction of light and air, the traffic, the increased fire hazard, the noise and odors, and the inconsistency of the business size and scale with the residential zone all come together to form a cumulative particular adverse impact on the public safety, health, or welfare of the locality.

It should also be underlined that Petitioners failed to produce any real substantive evidence to satisfy the special exception standards. To the extent that they produced any expert evidence, it was of the conclusory variety, which the appellate courts have consistently found insufficient. People's Counsel v. Beachwood I LP 107 Md. App. 627, 650 (1995), cert. denied 342 Md. 472 (1996).

III. It is Impractical and Unrealistic to Frame Conditions which Purportedly Might Satisfy Special Exception Standards

In our pre-hearing memorandum, we raised the question whether the CBA grant the petition, deny it, or grant it with conditions. We pointed out that the CBA does have authority to order a conditional approval. Halle Companies v. Crofton Civic Ass'n 339 Md. 131 (1995). Nevertheless, upon consideration of the totality of circumstances, we do not believe that a conditional grant is the appropriate disposition here.

If the Dimicks proposed to place their operations on a vacant .29 acre residential waterfront lot such as this, as a new business, then it would be easier to see and to find that such a large-scale business would be inappropriate in this location. In contrast, here, because there was a past business use, even though at a residence and at a much lower scale, the CBA may be tempted to look for a middle ground, to search for conditions to allow the crabbing business to continue in a way seemingly more compatible with the adjacent residences. The CBA should resist this temptation.

Based on the evidence, a compromise solution is not a solution. It is unrealistic. The businesses have transmuted into principal business uses and have simply outgrown the site. The train, so to speak, is out of the station. There is no going back to a more limited operation for the four licensees. It is unreasonable to expect that there could or would be the ability to comply with conditions in any effective way.

In Village of Euclid v. Ambler Realty Co. 272 U.S. 365. 387-88 (1926), the Supreme Court described, as a clue to zoning law, that the right thing may be in the wrong place and become a nuisance. This has come to pass here. The location here may have been suitable for a modest crabbing use incidental to a primary residence. It is not suitable for multiple principal crabbing businesses.

Under the circumstances, it is not a solution to limit the height of crab pots or to set them back from the water. Nor does it make sense to shift crab pots to the street side, as this would just transfer the visual impact to the road. The crab pots still are massive. Anyway, as noted, it is unreasonable to expect that there could or would be compliance.

Also as noted, the mass of crab pots is not the only problem. There are the impacts from pressure washing, spray painting, and truck and fuel operations.

Another problem with any attempt to frame conditions is that they will generate perplexing interpretations and arguments. To illustrate, the 25% limit set in the 1979 permit and suggested by the Planning Department in its December 18, 2013 correspondence is vague, unworkable and unenforceable. The same goes for the retail sales prohibition. Even ostensibly clear restrictions on crab pot height and location would be very difficult to enforce. The same goes for any limits on pressure washing, spray painting, and truck operations.

Again, perhaps most important, the growth and magnitude of the crab businesses are such that it is not reasonably foreseeable that petitioners could or would comply. There would then be a round of intractable, aggravating, and likely unsatisfactory enforcement proceedings. Zoning cases tend to become complicated even when issues are cut and dry, as with the obvious violations of the 1979 Class I permit limits.

Even here, with a major deviation and violation of the original permit allowance, it is taking a major effort to achieve a remedy. Despite the attractions of a search for alternative dispute resolution, via approval with conditions, that would be a recipe for more problems and more aggravation.

Petitioners should find a property suitable to the size and scale of their commercial use. They may then restore 826 Chester Road property for primary residential use. It is a valuable property as such.

It is not unusual for businesses to seek and find different locations when they expand to the point that an existing location does not provide enough room. From this point of view, relocation should not be viewed as a hardship. To be sure, the CBA could provide a reasonable time for the relocation.

Again, there is a tendency to be reluctant to say no to petitioners in special exception cases. But the petitioners here have caused the problems by expanding so far qualitatively and quantitatively from the 1979 residential crabbing allowance. The time has come to just say no to this location.

IV. There is a Public Interest in this Case

We cannot recall any CBA decisions on the merits of a special exception for a fishing and shellfishing facility, shoreline, class II. This case will serve as an important precedent to frame the contours of what is acceptable, or not, for such facilities on small residential lots. It will be especially applicable, of course, to any expansions or intensifications at the locations where permits were issued to grandfather uses existing before the passage of Bill 30-78.

Accordingly, the CBA should keep in mind that its decision will affect not only this situation on Chester Road, but also provide a road map for future cases.

V. The Site Plan Is Insufficient

All too often, zoning petitioners file site plans which are just plain inadequate. One look at the site plan and then at the photography reveals that the site plan does not come close to a genuine description of the crabbing business use. During cross-

examination of Ms. Moskunas, this became even more evident. In the end, she essentially admitted that the site plan did not provide sufficient accurate information.

We encapsulate here our observations in the pre-hearing memorandum.

A site plan must accompany a zoning petition. It is particularly important in special exception cases to view the precise nature, dimensions, and elements of the proposed use. Where, as here, the proposed use involves an existing use, it is even more crucial to have an accurate and complete site plan.

The site plan here does not match the use shown in by the County's GIS 2011 aerial photography, especially relating to the crabbing operation. There is no description of boats. There is no description of parking spaces. There is no description of truck types and of delivery, loading, and unloading areas. There is no description of height of buildings, sheds, crab pots or anything else. There is no landscaping or screening. Even the skeletal 1979 permit plan displays more essential information than this site plan.

A special exception application must include an accurate and complete site plan. It is particularly important to provide a satisfactory plan for waterfront uses because they involve commercial operations in residential zones and raise so many potential issues. Here, there is the additional complication of a lengthy history."

Absent an adequate site plan, the petition should be dismissed.

Conclusion

For the above reasons, the County Board of Appeals should deny this petition.

Peter Max Zimmerman

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO

Deputy People's Counsel

Jefferson Building, Room 204

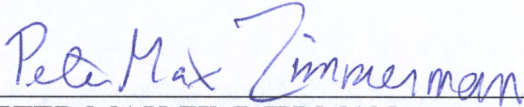
105 West Chesapeake Avenue

Towson, MD 21204

(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of June, 2014, a copy of the foregoing People's Counsel for Baltimore County's Post Hearing Memorandum was mailed to Lawrence Schmidt, Esquire, Smith, Gildea & Schmidt, 600 Washington Avenue, Suite 200, Towson, Maryland 21204, Attorney for Petitioner(s).and J. Carroll Holzer, 508 Fairmount Avenue, Towson, Maryland 21286, attorney for Appellant Glenn Dowell.


PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

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PETER MAX ZIMMERMAN
People's Counsel

RECEIVED
JUN 30 2014

BALTIMORE COUNTY
BOARD OF APPEALS

CAROLE S. DEMILIO
Deputy People's Counsel

June 30, 2014

Hand-Delivered & Digitally Delivered
Krysundra "Sunny" Cannington, Administrator
County Board of Appeals of Baltimore County
The Jefferson Building
105 West Chesapeake Avenue, Suite 203
Towson, MD 21204

Re: James & George Dimick, Petitioners
826 Chester Road
Case No.: 2014-123-X

Dear Ms. Cannington:

Enclosed please find People's Counsel for Baltimore County's Post-Hearing Memorandum along with three copies for filing with your office. We are separately e-mailing a digital copy.

Thank you for your consideration.

Respectfully submitted,

A handwritten signature in blue ink that reads "Peter Max Zimmerman". The signature is fluid and cursive.

Peter Max Zimmerman
People's Counsel for Baltimore County

PMZ /rmw
Enclosures

cc: J. Carroll Holzer, Esquire
Lawrence Schmidt, Esquire

6/30/14

RECEIVED

JUN 30 2014

BALTIMORE COUNTY
BOARD OF APPEALS

PETITION FOR SPECIAL EXCEPTION
826 Chester Road

15th Election District
6th Councilmanic District

Legal Owners:
JAMES and ROBERT DIMICK

Petitioners

* BEFORE THE
* COUNTY
* BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
*
* Case No.: 2014-123-X

* * * * *

PROTESTANTS' MEMORANDUM

Protestants, *Glenn Dowell*, 828 Chester Road, *Thomas Lehner*,
1004 Susquehanna Avenue, Baltimore, Maryland 21220, *Allen Robertson*,
1608 Holly Tree Road, Middle River, Maryland 21220, through *J. Carroll Holzer*,
Esquire, Holzer & Lee, hereby submit this Memorandum in lieu of Final Argument and
state the following:

Overview

This case was presented over two (2) days to the County Board of Appeals –
April 24, 2014 as Day #1 and June 10, 2014 as Day #2. Prior to the April Hearing, the
People's Counsel submitted a Pre-Hearing Memorandum which covered many of the
legal issues related to the "1979 Permit" question and the legislative history leading up to
the present issue before the Board. People's Counsel's Memorandum established that the
current proposal does not accord with the 1979 Permit and the clear evidence before the
Board is that the Petitioners have long exceeded and intensified their permitted activity
on the site beyond what was permitted in 1979. People's Counsel further raised
res judicata issues and effectively participated before the Board. Protestants adopt
People's Counsels' Pre-Hearing Memorandum as well as his Post-Hearing Memorandum.

STATEMENT OF FACTS

Admissions against interest were made by the Dimicks and Bernadette Moskunas. Relevant facts were admitted by the Petitioners. It is clear from the Petitioners own testimony that they have exceeded the 1979 limitations on their crabbing operations. They no longer live on the site. (Neither one of the brothers reside on site). The Dimicks live in other neighborhoods not being affected by the kinds of activities that are taking place on their property adjacent to Mr. Glenn Dowell, who lives next door. It is also clear that because of the scarcity of crabs in the bay and the river, they have increased their licenses from two (2) to four (4) for the family, which equates to two thousand four hundred (2,400) crab pots permitted by the four (4) licenses. They admitted that as many as one thousand two hundred (1,200) crab pots have been stored on the subject site. They further admit that the entire property is used for this commercial venture in the residential zone. Activities include fuel trucks delivering diesel fuel to the site three (3) times a week, bait trucks visiting the site three (3) times a week, and other crabbers visiting the site multiple times.

The Site Rite Surveying witness, Bernadette Moskunas, was not an engineer, not a surveyor, has taken no courses in land use, nor any continuing education in land use and could not discuss Maryland Court of Appeals cases. She was cross-examined by People's Counsel and made a number of admissions as to her preparation of the Site Plan. It is clear that the 1979 Site Plan that was submitted provided more detail for the subject site than the current one submitted to this Board. Further, she failed to give supportable reasons for the meeting of the 502.1 criteria for granting a Special Exception.

People's Counsel called Mr. Chip Raynor, from the Code Enforcement Office who visited the site on Monday, April 12, 2014 and took photos which were submitted into evidence. Those photos depicted stacks of crab pots, four (4) pots high which totally blocked the view of Protestant, Glenn Dowell toward the river. He also described the

painting area, the fuel storage area, the dock area with two (2) crab boats belonging to the brothers and the power washing area. In effect, his testimony established the entire lot is being utilized for a commercial crabbing operation and not as an operation incidental to a residence.

Protestants Case

The Protestants presented three (3) witnesses, Glenn Dowell, Thomas Lehner and Allen Robertson.

Glenn Dowell testified that he resides immediately adjacent to the subject site and has many concerns about the activities of the Petitioners operating their crabbing operation next door to him. He testified that things have changed for the worse from when the Dimicks actually lived on the property next door to them. From a review of the Site Plan and the photographs taken by Mr. Chip Raynor, it is clear that the Dimick house and the Dowell house fronts are parallel to each other which means that any activities which take place in the waterfront yard affect Mr. Dowell's view of the river. Dowell testified that he has lived there many years and that the current activities and proposed activities clearly exceed what was permitted in 1979. In the 1979 Plan, there was no storage of crab pots on the waterfront lawn, but only in the side yard. It is clear from a comparison of the 1979 Permit with the current Site Plan and Exhibits provided by the Code Enforcement Officer, that the commercial activity on the site has vastly increased one hundred fold from that permitted in 1979. Mr. Dowell testified that he has tried to be a good neighbor, but that the Petitioners do not have to put up with the type of commercial activity at their new homes, the kind of activity he must put up with every day from his neighbor, the Dimicks.

He testified that since the Dimicks no longer live on the site, the home on the property has declined in its condition and is bringing down adjoining property values. He strongly objected to the crab pots blocking his view of the water. He testified that at times they have had an odor when they are painted and that their walk-in boxes have an

odor. He testified the maintenance of the crab pots goes on all summer between pressure washing most of the day and painting the crab pots in the evening. He has concerns for what contaminants are being brought in from the bay and pressure washed out into the water in front of his home. He has concerns about the fuel storage operation on the property. He testified that permitting this commercial activity on a residential lot is a bad precedent for other properties on the waterfront to be used in the same manner. Thus, he strongly opposes granting of the Special Exception. He testified that noise from the hours of pressure washing and activity on the site are not consistent with the residential lot and residential use.

Thomas Lehner who lives around the corner from the property but whose waterfront home is across the cove from the Dimicks, objected to the commercial activity of cleaning the pots and painting. He was concerned that the increase of two (2) to four (4) licenses would continue as the crabs get more scarce and the need for more crab pots grows. He testified that the house is in disrepair on the site. He objected to the winter storage of the number of crab pots which keeps growing every year and he objected to a commercial business in a residential zone.

Allen Robertson testified as an individual who lives on the waterfront in the area that he is concerned about the precedent that this case sets for other waterfront properties in the neighborhood. The lack of compliance with the 1979 Permit and the obvious disregard for any conditions placed on the property, caused him to request that the Special Exception be denied as opposed to simply having conditions placed on an approval of the Special Exception.

REQUESTED RELIEF

The Protestants submit that this Special Exception should be denied. In the words of Mr. Dowell, they are trying "to stuff twenty (20) pounds in a five (5) pound sack." A colloquial way of saying that the commercial use of this site has totally outweighed the residential property. Residential neighbors should not have to live next to such a

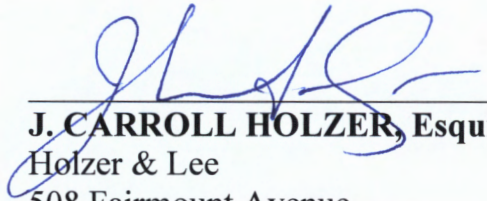
widespread and intense commercial use. It is completely apparent from the photographs, the testimony, the documents submitted before this Board, that this commercial operation has far exceeded what was originally permitted and more importantly, has seriously impacted and affected the adjacent property owners. (Mr. Dowell and Mr. Lehner).

One might suggest to the Board that conditions could be applied to this property to limit the storage of crab pots on the waterfront lawn. It is Protestants position that whatever conditions are attached by this Board, may well be abused and not complied with by the Petitioners. One has to only look at the experience from the 1979 Permit limitations to today's operation. There is no consideration by the Petitioners given to the adjacent property owners and particularly their next door neighbor, Dowell.

It is well-known by this Board that simply because a condition is imposed, it does not prevent violations occurring (such as in this case) and that the burden of enforcing the conditions falls upon the Protestant adjacent property owners. Thus, it is the Protestants position that conditions will be ignored and unenforced and that the burden will be placed on the adjacent property owners by approval of the Special Exception with conditions.

The Board should DENY this Special Exception.

Respectfully submitted,



J. CARROLL HOLZER, Esquire

Holzer & Lee

508 Fairmount Avenue

Towson, Maryland 21286

410-825-6961

Attorney for Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of June, 2014, a copy of the foregoing Protestant's Memorandum was mailed first class, postage pre-paid to the following: Lawrence E. Schmidt, Esquire, Smith, Gildea & Schmidt, LLC, 600 Washington Avenue, Suite 200, Towson, Maryland 21204 and Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, Jefferson Building, 105 West Chesapeake Avenue, Room 204, Towson, Maryland 21204.



J. CARROLL HOLZER, Esquire

6/30/14

RE: PETITION FOR SPECIAL EXCEPTION
826 Chester Road; S/S Chester Road, 750'
W c/line of Susquehanna Avenue
15th Election & 6th Councilman Districts
Legal Owner(s): James & Robert Dimick
Petitioner(s)

* BEFORE THE COUNTY
* BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
* CASE NO.: 2014-0123-X

RECEIVED
JUN 30 2014

BALTIMORE COUNTY
BOARD OF APPEALS

* * * * *

PETITIONERS' POST HEARING MEMORANDUM IN LIEU OF CLOSING
ARGUMENT

James Dimick, Jr. and Robert G. Dimick, Petitioners, through Lawrence E. Schmidt and Smith, Gildea & Schmidt, LLC, their attorneys, submit this Post-Hearing Memorandum in Lieu of Closing Argument and respectfully state:

I. BACKGROUND

This matter comes to the Board as a Petition for Special Exception to permit a "Fishing and Shellfishing Facility, Shoreline, Class II," as provided in Baltimore County Zoning Regulations ("BCZR") § 1B01.C.8, for the property known as 826 Chester Road, in the Long Beach Estates community of Eastern Baltimore County. The Petition is filed by James Dimick, Jr. and Robert G. Dimick, property owners. The Dimicks are brothers and work as waterman from the subject property.

Testimony and evidence established that the subject property is a waterfront lot, approximately 0.286 acres in area (12,485 square feet), zoned DR 3.5. The property is adjacent to Frog Mortar Creek and abuts Chester Road. The property is improved with a two-story frame dwelling-style building known as 826 Chester Road. In addition to the building, there is a 16 foot by 20 foot one-story shed located in that portion of the yard adjacent to Chester Road. Next to the shed is an 8 foot by 14 foot walk-in freezer. The rest of the property is unimproved, but

for a loose stone/gravel parking area in the yard adjacent to Chester Road and a similarly composed existing dirt and loose stone storage area in the yard area on the water side. In addition to these improvements, the property also features an existing concrete bulkhead at the water, which leads to a pier extending into Frog Mortar Creek.

The use of this property by the Dimick family over the years is significant to the consideration of the Petition. The brothers' parents, James Dimick, Sr. and Helen Dimick, originally acquired the property on May 6, 1958. After their acquisition of the property, Mr. and Mrs. Dimick, Sr. resided there and raised their family on the property, including James Jr. and Robert. As the brothers grew into adulthood, they began their work careers as commercial crabbers from the property. At the time, Baltimore County did not have any zoning regulations in place which regulated properties on which fishing and shellfishing facilities operated. The first such regulations were adopted through Bill No. 98-75, in 1975. That Bill added a definition of such facilities to the zoning regulations and provided regulation thereof. At the time, fishing and shellfishing operations were classified into two categories, either "primary" or "secondary".

The regulation of this activity was next addressed by the Baltimore County Council via the enactment of Bill No. 30-78 on May 1, 1978. At that time, such facilities were redesignated as "fishing and shellfishing facilities, shoreline, Class I" and "fishing and shellfishing facilities, shoreline, Class II." Bill 30-78 recognized the long history of such facilities on water front property in Baltimore County and provided a process through which existing fishing and shellfishing facilities could be grandfathered from the zoning regulations which would govern proposed new facilities. This process required the property owner to submit an application for a use permit to legitimize existing facilities. The written application included a site plan which would be evaluated by the Zoning Commissioner. After evaluation of an application, the

Commissioner could grant a use permit to legitimize existing facilities. Proposed facilities would be permitted through special exception only.¹

The senior Mr. and Mrs. Dimick, in accordance with this legislation, submitted an application for a use permit with the County zoning authorities on October 30, 1978. No public hearing was required or held. Upon review, then Zoning Commissioner Eric DiNenna approved the application and issued a use permit on March 2, 1979. The permit granted approval of a "Class I *commercial* fishing and shellfishing facility." (emphasis added) It is to be emphasized that the Dimicks' request (as well as Commissioner DiNenna's approval) was for a commercial operation, and was designated as such. Thus, the Protestants and People's Counsel's claim that the use has somehow morphed from a residential business into a commercial operation is belied by the fact that it was designated as a commercial operation when first approved in March 1979.

In any event, the brothers Dimick have continued their crabbing operation at the property under the authority of the use permit for over 35 years. The senior Mr. Dimick passed away in the early 1990's and his wife some years later. The brothers Dimick continued the operation from the property, and periodically the site was occupied as a residence, mostly by Robert Dimick. The dwelling became briefly uninhabitable in the winter of 2013-2014 due to frozen water pipes but the plumbing has since been repaired and the structure is now habitable. Although both brothers have married and own homes elsewhere, they would occasionally sleep at the site due to the long hours of the business or based upon other personal circumstances. The building continues to function as a dwelling and has not been converted into an office or other commercial/non-residential use. It has not been altered and appears (internally and externally) as

¹ On January 2, 1984, the Council adopted Bill 139-83, which extended the deadline for existing facilities to make application to be grandfathered.

it always has. In fact, Mr. James Dimick testified that he does the paperwork associated with his business from his family home on Susquehanna Avenue.

The Dimicks' 1979 approval was for a Class I facility. That use is defined in the BCZR as, "a shoreline fishing and shellfishing facility that can accommodate a fishing business entailing the use of not more than two commercial fishing boats, and that is situated on a lot also occupied by the primary residence of its operator, who is a person required to have a license by the provisions of Title 4 of the Natural Resources Article of the Annotated Code of Maryland. For the purposes of these regulations, a 'commercial fishing boat' does not include a boat more than 45 feet long." During the many years of crabbing operation, the property has been used in a manner consistent with this definition.

In the fall of 2013, an adjacent neighbor at 824 Chester Road (Mark Green) listed his house for sale at an exorbitant price. When the property did not immediately sell, he believed (wrongly) that the house did not sell due to the existence of the Dimicks' crabbing operation. He then registered a complaint with Baltimore County Bureau of Code Enforcement. Following investigation by Code Enforcement Inspector David Gaine, a Code Enforcement and Inspections Citation was issued to the Dimicks. The citation questioned whether the Dimicks facility was being operated lawfully and in accordance with the permit. The citation then came for hearing before Administrative Law Judge Lawrence M. Stahl on November 20, 2013.

Judge Stahl identified two issues in addressing the citation. The first was whether the property continued to serve as the primary residence of the licensed waterman, as required under the Class I definition.² Based upon the testimony and evidence, Judge Stahl concluded that this requirement was met, as at that time Robert Dimick periodically lived on the property and his

² The definition requires that the residence be the *primary* residence of the watermen, not the *exclusive* residence.

occupancy met the requirement. Secondly, Judge Stahl noted that the original approval by Zoning Commissioner DiNenna identified that approximately 25% of the total net area of the property would be utilized in the operation. The conflicting testimony offered at the Code Enforcement hearing regarding the extent of the use of the property resulted in Judge Stahl ordering the County Inspector to inspect the property to, "definitively measure and ascertain the permitted 25% of the site which could be utilized for crabbing activities." Judge Stahl also ordered that the property be brought into compliance with this percentage requirement by November 27, 2013, or a civil penalty of \$2,500 would be imposed. As was testified at the hearing before the Board, Inspector Gaine subsequently visited the site, took measurements and was satisfied that no further action need be taken. He was satisfied that the property was in compliance. Thus, the Dimicks' crabbing operation (pursuant to the unappealed Opinion and Order by Judge Stahl) is legitimately operating on the property at the present time. The 1979 use permit remains viable, and as confirmed by Inspector Gaine, the Petitioners are in compliance with its terms and conditions.

Notwithstanding the existing approvals, the Dimicks have filed the instant Petition for Special Exception. Although they may continue to operate under the parameters of the previously issued use permit, they have filed the instant Petition to eliminate the requirement that someone reside on the property and also to clarify the conditions under which the operation may exist. Following a hearing and subsequent approval by Administrative Law Judge John Beverungen, the matter was appealed and is now before the Board for consideration.

II. ISSUES AND ARGUMENTS

People's Counsel filed a Pre-Hearing Memorandum with the Board in connection with this case. This memorandum identified a number of issues. Additionally, during the hearing,

other issues were raised by People's Counsel and/or the Protestants through their presentation of evidence and cross-examination of Petitioners' witnesses. The following issues have been identified and are addressed herein.

Issue 1. The viability of the 1979 Use Permit.

As set forth hereinabove, the Dimicks are currently operating under the use permit issued by Commissioner DiNenna in 1979. The Dimicks acknowledge that the permit issued in 1979 permits a Class I facility only. They are now requesting Special Exception approval for a Class II facility. Notwithstanding their request, they have not abandoned or discontinued the right to operate a Class I facility under the existing use permit. If the Board were to deny their Petition for Special Exception, the use would continue, albeit under the parameters of the Class I 1979 permit. Obviously, the Dimicks would be subject to the definitional requirements of a Class I facility, and also the conditions of the use permit that was issued. People's Counsel's assertion that the existing use permit has somehow been forfeited and is of no current validity has no basis under law and is simply erroneous. There is no provision of law that states the existing permit is forfeited if another application (petition) is filed. There is no sunset provision under law as to the approval and no other statute or regulation which has caused the use permit to lapse/expire. People's Counsel memorandum both pre-trial and post hearing, baldly asserts that the 1979 use permit is no longer valid. They cite no authority for this statement because there is none.

Moreover, the Dimicks are not in violation of the permit issued and the approval granted thereby. Judge Stahl's opinion speaks for itself. He determined that at the time of the hearing on that case (November 2013), that the property was used as the primary residence of Robert Dimick, one the licensees and owners of the property. He made no determination that the Dimicks' use exceeded the limitations as shown on the site plan. As his opinion clearly states,

he sent Inspector Gaine to the site to affirmatively take measurements and determine the area of the operation. Mr. Dimick testified to the Board, without contradiction, that Inspector Gaine returned to the site, took measurements, and concluded that the property was operating within the 1979 limitations. Thus, the case was concluded and closed and no fine was collected nor sanction imposed.

The Dimicks acknowledged that there were times when the storage of crab pots in the open yard area exceeded 25% of the square footage of the open area and that the business was not always conducted in accordance with the precise limits of the site plan. But this "gotcha" assertion by the Protestants'/People's Counsel misses the point. The instant case is not a zoning violation matter. The case does not require an analysis of whether the Dimicks have operated their facility in strict adherence to the site plan every day since 1979. The instant request is for a special exception to approve a Class II facility. If denied, then the Dimicks will operate as a Class I. Although it would be a hardship for the Dimicks to comply with the strict terms of the use permit approval, they will do so. This is their livelihood.

Much of the evidence offered by People's Counsel and the Protestants is irrelevant or simply silly. Their assertion that the entire property is being used because bushels of crabs are transported by hand truck from the pier to pick up trucks on Chester Road is so ridiculous that it merits no response. Admittedly, on some dates the Dimicks have used more than 25% of the property to store crab pots. However, having been reminded of the limits of the use permit, they have remedied it as required by Judge Stahl and confirmed by Inspector Gaine. More importantly, the mere fact of a technical violation has nothing to do with the issue in this case and if the special exception for a Class II facility should be approved.

In sum, the use permit remains valid. The Petitioners recognize the limitations of the use permit and they are now compliant. The Protestants' focus on the alleged prior violations, Judge Stahl's prior violation case, is misleading and irrelevant.

Issue 2. The Site Plan filed with the instant Petition for Special Exception.

Both Protestants' counsel and People's Counsel claim that the site plan submitted in this case (Petitioner's Ex. No. 8) prepared by Site Right Surveying (Bernadette Moskunas) is insufficient. This argument is also without merit. People's Counsel and the Protestants confuse the *burden of proof* required to obtain special exception approval with *technical requirements* of the Baltimore County zoning office in filing a zoning petition. Surely, in order for the Special Exception to be granted, the Dimicks must offer testimony and evidence persuasive to convince the Board that the requested Class II fishing and shellfishing facility can be operated without detrimental impact to the health, safety and general welfare of the surrounding locale and in accordance with the requirements of BCZR § 502.1. It is the **body of evidence** to be presented which must be persuasive to this conclusion. The site plan is but a part of Petitioners' evidence.

Baltimore County requires that a site plan be submitted in every zoning case. The requirements of the site plan are set forth in a Checklist, which Baltimore County publishes and distributes to applicants for zoning approval. (The checklist is attached hereto as Appendix A.) The checklist specifies the information that must be on a site plan. It includes, for example, the names of the property owner, the property's zoning classification, a north arrow, etc. As Bernadette Moskunas testified, she prepared and filed the site plan and zoning petition in this case. It was reviewed by the County technician in the Zoning Office who accepted the site plan/application, assigned a case number, and ultimately scheduled this matter for a hearing

before the Administrative Law Judge. The site plan is compliant with the requirements of the checklist. Thus, the Protestants' claim that the site plan is deficient must be dismissed.

The additional information requested by People's Counsel and the Protestants, relates to those factors which must be addressed through the introduction of evidence in this case. There is no requirement that, for example, the hours of operation be listed on the site plan. But those were described, in detail, by Mr. Dimick and through other testimony and evidence offered by the Petitioners in this case. As set forth below, the body of evidence submitted in this case easily supports the approval of the requested special exception.

Issue 3. The Requested Special Exception for a Fishing and Shellfishing Facility, Shoreline, Class II.

What this case is and should be about is the ultimate question under the special exception test codified in BCZR § 502.1. Namely, should the Dimicks proposed Fishing and Shellfishing Facility, Shoreline, Class II be approved? Unlike the vast majority of cases which come before the Administrative Law Judge and the Board of Appeals seeking special exception approval, this case is unique. Most special exception cases are prospective in nature and require the Board to look into the future to determine what will happen if the relief is granted. In this case, it is uncontradicted that the Dimicks propose to operate the facility exactly as it has been operated for the past 40 years. The only difference in the operation will be that no one will live at the site, as opposed to the previous residence. Moreover, this Board can, through the imposition of conditions, clarify the scope of the use. Mr. Dimick testified that the activity has been consistent over the years and Mr. Dowell concurred that the level of activity is generally the same.³

³ The fact that it is acknowledged that the crabbing activity has remained the same came somewhat as a surprise to Petitioners' counsel and (apparently) the panel hearing this case. When Mr. Dimick testified that the activity was the same, his testimony was observed with the suggestion that it would probably be

The testimony and evidence described in detail a typical day during both crab season and out of season. During the season, the Dimicks arrive early, and spend less than one hour at the site before boarding their boat and sailing to the Chesapeake Bay to crab. They return eight hours later during midafternoon, unload and deliver their catch, clean up the property and leave. They may return to tend to soft crabs which are kept in boxes on the pier. This procedure is followed six of the seven days of the week. This repetition of activity occurs daily during the crab season which begins in April and ends in November.

As was also noted, there is little crab pot storage during the season. During the season, the pots are kept in the water. Periodically, pots are brought to the property to repair, maintain and clean them. Thus, there may be minimal storage of crab pots on the property during the season. There was evidence offered explaining how fuel delivery is handled, the distribution of the catch, and the other aspects of the operation. None of these aspects of the business are apparently objectionable.⁴

During the off season, there is little activity at the property. However, it is during this time when the pots are kept on the property. The pots are approximately 20 inches tall and the testimony was that they are stored four high. Additionally, although at one time most of the front (water side) yard was used for storage, the Dimicks have secured another site to store some of their pots so as to comply with the 25% ground cover limitation.

Like any crabbing operation, there are a number of aspects of the business which might impact neighboring properties. However, it appears that it is only the visual effect of the crab pot storage that is at issue. Mr. Dowell acknowledged that there were no problems with traffic, the

contradicted by Mr. Dowell. But, as Mr. Dowell later candidly testified, the activity hasn't really changed; he has simply gotten tired of it.

⁴ The testimony and evidence presented was clear that the biggest impact upon the residences in the neighbor is caused by the adjacent marina. It produces traffic, noise and activity that dwarfs the Dimicks operation.

distribution of the catch, the maintenance of the property, etc. His primary concern is over the visual impact associated with crab pot storage and the occasional noise and odor during the power wash cleaning of the pots. The only other concern expressed was by another neighbor who indicated that the water in the cove periodically gets a reddish tint. He speculated that this came during the cleaning of the pots but could not be sure. In any event, Mr. Dimick testified that the paint used and cleaning process were all monitored by the Department of Natural Resources ("DNR"). The Dimicks operation has never been cited by DNR and is strictly regulated. There is no evidence that the operation (as existing and proposed) is/would be detrimental to the locale from an environmental standpoint.

The opponents contention that the property is being over utilized based on the Dimick family's number of licenses also misses the point. The licenses relate to the number of pots allowed in the water. The licenses regulate the operation in the Chesapeake Bay, not at 826 Chester Road.

As has been often stated, a special exception use is part of the comprehensive zoning scheme and shares the presumption that it is in the interest of the general welfare and thus valid. Schultz v. Pritts 291 Md. 1 (1981). Thus, a special exception may only be denied upon the finding that the impacts normally associated with the special exception use are particularly egregious at the specific location under consideration. Mossburg v. Montgomery Co. 107 Md. App. 1 (1995). Applying the special exception test to this case, it is clear that the impacts associated with the Dimicks crabbing operation are no worse or acute here then they would be elsewhere in the zone. Every fishing and shellfishing facility has crab pot and equipment storage, is by its nature waterfront, etc. The Dimicks operation is actually cleaner and produces less impact than what might otherwise be expected. People's Counsel's comments about legal

presumptions notwithstanding, the proposed special exception for a Class II facility easily passes muster under the applicable legal test.

Issue 4. The Imposition of Conditions.

Pursuant to BCZR § 502.2, in granting a special exception, the Board of Appeals, "shall impose such conditions, restrictions or regulations as may be deemed necessary or advisable for the protection of surrounding or neighboring properties." In this case, the Administrative Law Judge imposed certain conditions. Mr. Dimick testified at the hearing that those conditions were acceptable, but for those related to the hours of operation. As he indicated, the business is governed by the light of the day, as opposed to the hours of the clock. He requested that the Administrative Law Judge revise that condition, but the request was never considered because of the appeal. He also testified as to the Zoning Advisory Committee comment from the Office of Planning and the proposed recommendations therein.

Based on the testimony and evidence offered, the Dimicks would agree to the following conditions and do not object to their addition with the Board's order:

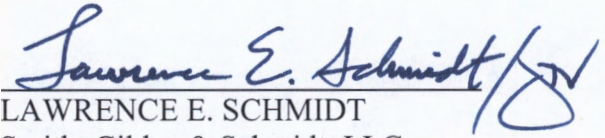
1. No signage shall be posted on the property.
2. The Petitioners shall be permitted to keep at the site no more than two (2) commercial fishing boats (with a maximum length of 45 feet each) at any time. This limitation does not apply to jet skis or other pleasure (not working/commercial) water craft.
3. There shall be no retail sales of crabs/fish on the premises.
4. All fuel deliveries to the site shall be between the hours of 9:00 a.m. and 5:00 p.m., Monday – Friday.
5. The cleaning, repair and painting of crab pots shall occur between the hours of 8:00 a.m. to sunset.

6. Crab pots may only be stored in that yard area of the property between the dwelling and the bulkhead. There shall be no storage in the yard area between the dwelling and Chester Road nor in the side yard (between the house and side property lines on either side). During the winter (off season) storage season crab pots may only be stored to a height of 2 pots high.
7. The Petitioners must comply with the ZAC comment of Department of Environmental Protection, dated January 4, 2014.

III. CONCLUSION

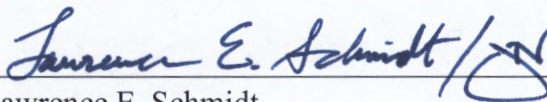
The Dimick brothers are preserving a way of life which should be protected and is unique to the Chesapeake Bay and Baltimore County. Rather than prohibiting it, the activity should be encouraged. The Dimicks have been crabbing from this property for in excess of 35 years. The operation is largely unchanged. The overwhelming weight of testimony offered is that the operation is not detrimental to the health, safety and general welfare of the community and this special exception should be approved. The Board can impose appropriate conditions, as in its judgment are necessary, to minimize the impact of the use on the community.

Respectfully submitted,


LAWRENCE E. SCHMIDT
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Suite 200
Towson, Maryland 21204
(410) 821-0070
Attorney for the Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 30th day of June, 2014, a copy of the foregoing Memorandum was mailed, postage pre-paid, to J. Carroll Holzer, 508 Fairmount Avenue, Towson, MD 21204; and to Peter Max Zimmerman, Esquire of People's Counsel for Baltimore County, The Jefferson Building, 105 W. Chesapeake Avenue, Room 204, Towson, Maryland 21204.


Lawrence E. Schmidt

SMITH, GILDEA & SCHMIDT_{LLC}

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June 30, 2014

Via Hand Delivery

Krysundra Cannington
Administrator
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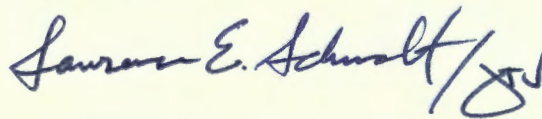
Re: 826 Chester Road
Case No. 14-0123-X

Dear Sunny,

Enclosed please find an original and three (3) copies of Petitioners' Post Hearing Memorandum in Lieu of Closing Argument for filing in the above referenced matter.

Thank you for your consideration.

Very truly yours,



Lawrence E. Schmidt, Esquire

LES/amf
Enclosure

cc: J. Carroll Holzer, Esquire
Peter Max Zimmerman, People's Counsel
James Dimick, Jr.
Robert G. Dimick

RECEIVED

JUN 30 2014

BALTIMORE COUNTY
BOARD OF APPEALS

6/30/14

PETITION FOR SPECIAL EXCEPTION

826 Chester Road

13th Election District

6th Councilmanic District

Legal Owners:

JAMES and ROBERT DIMICK

Petitioners

* BEFORE THE

* COUNTY

* BOARD OF APPEALS

* FOR

* BALTIMORE COUNTY

*

* Case No: 2014-123-X

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JUL 01 2014

BALTIMORE COUNTY
BOARD OF APPEALS

Comments on the Appeal of the Petition for Special Exception for 826 Chester Rd.

The Baltimore County Council had attempted to place limitations on the use of residential property in the late 1970s while allowing for the "grandfathering" of the existing shellfish operations in existence at that time. The government had the foresight to see the future value of residential waterfront property and the conflicts that could occur by expansion of commercial operations on and around those residential properties.

It seems that the Dimick's have ignored the spirit of the law throughout the years and have not complied with the plan that was granted to them allowing the continued crabbing operation under the restriction of storing the crab pots in the side yard to avoid impacting the enjoyment of the waterfront amenities by the neighbors and their guests. The argument that since they have been operating in this manner for about 20 years, entitles them to continue in perpetuity is not a legal basis for continuance or a justification for a Special Exception. (This is as ludicrous as a driver that speeds at 50 mph for 20 years on a road limited to

30mph, then when he is caught speeding, he utilizes his driving history of violating the law as to why he should not have to pay for a ticket or drive 30 mph in accordance with the law.) They have been violating the law and should now be required to comply; their history of violation cannot be utilized as a justification for continued violation or for the granting of a special exception from the law.

The crabbing licenses seem to limit the crab pots that can economically be used in an operation. By holding licenses under different names it gives the impression that an individual is only allowed one license, however they are circumventing the limitations by utilizing four licenses at the one site. This creates a concentration of businesses on one property that should be dispersed over four properties in order to minimize the impact on neighboring residential homes and the reduction of their property value.

Independent of the number of licenses utilized on the property, the use of a residential property for business purposes require that the County Code and State Laws be applied. In this case the minimum buffer zone of 100 feet as required by COMAR 27.03.01.01 and the Impervious Surface restrictions imposed by section 33-4-104 need to be included in the constraints for any special exception.

The requirement of the 100 foot buffer zone is defined by COMAR 27.03.01.01B(2)(b)(i) which states the buffer includes an area of: "(i) At least 100 feet, even if that area was previously disturbed by human activity:" If the house already exists in this zone it should be grandfathered because it existed prior to the regulations and was included in their original plan submitted when the regulations became effective. The crab pots have been moved and then placed back each year and were not permitted there based upon the plan originally submitted by the Dimicks and therefore have no rights to be placed there. The numbers of crab pots have increased to an approximately 2,400 based on Jimmy Dimick's testimony that he handles about 1,200 and that his brother, Bobby Dimick has about the same size operation. The crab pots in use have grown from under 1,000 to create the problems being experienced by the neighbors today.

The Impervious Surface is required to be limited to 25% of the property because the site is less than one half acre in size and is zoned as residential use. Many of

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of June, 2014, a copy of the foregoing Comments on the Appeal was mailed first class, postage pre-paid to the following:

J Carroll Holzer, Esquire, Holzer & Lee, 508 Fairmont Avenue, Towson MD 21204

Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, Jefferson building, 105 West Chesapeake Avenue, Room 204, Towson, MD 21204 and

Lawrence E Schmidt, Esquire, Smith Gildea, & Schmidt, LLC, 600 Washington Avenue, Suite 200, Towson, MD 21204.

Allen Robertson

Allen Robertson

6/11/15

RE: PETITION FOR SPECIAL EXCEPTION*
826 Chester Road; S/S Chester Road, 750'
W c/line of Susquehanna Avenue *

15th Election District *
6th Councilmanic District *

Petitioner(s) *

BEFORE THE

BOARD OF APPEALS

FOR

BALTIMORE COUNTY

Case No.: 2014-123-X

* * * * *

PROTESTANTS OPPOSITION TO RECONSIDERATION

Protestant, **Glenn Dowell's** Response to the Request of James and Robert Dimick in the Motion for Reconsideration to Amend the terms of the conditions imposed by the County Board of Appeals, by his attorney, **J. Carroll Holzer, Esquire**, Holzer & Lee and says:

1. That one of the major objections of the Dimick's next door neighbor Glenn Dowell was the height of the stacked crab pots, and also which exceeded the twenty-five percent (25%) use of the property by the crabbing operation. The Board will recall that the crab pots were stacked four (4) pots in height of which blocked the view of the river for Mr. Dowell. Dowell strongly objected to the activities of the Dimick's in stacking and storing the crab pots in their front yard. He was thus satisfied when the Board limited the stack to the height of two (2) crab pots.

2. The Dimick's had turned the residential property into a commercial operation which caused additional traffic, noise, activities, late in the evening and early in the morning, because the Dimick's did not live on the subject property. The record will reflect that the Dimick's lived in homes elsewhere in the area.

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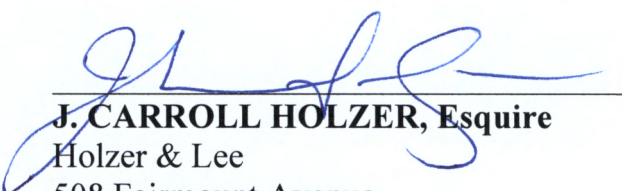
BALTIMORE COUNTY
BOARD OF APPEALS

3. The hours of operation were matters that Mr. Dowell testified that caused significant problems in the residential neighborhood due to power washing and painting. As a result, Mr. Dowell found the Board's Decision with limiting conditions appropriate and in response to his testimony before the Board and by other Protestants. The Board further imposed the storage of crab pots on other locations during the winter months which to some degree was not complied with by the Petitioners.

As a result, Protestants respectfully request this Board of Appeals to **DENY** Dimick's Motion for Reconsideration.

The Office of the People's Counsel for Baltimore County has filed its own Answer to the Motion for Reconsideration which sets forth a history and a background of the Board's right to impose such conditions in conjunction with granting a Special Exception. Glenn Dowell adopts the People's Counsel's Answer.

Respectfully submitted,



J. CARROLL HOLZER, Esquire

Holzer & Lee

508 Fairmount Avenue

Towson, Maryland 21286

410-825-6961

Attorney for Protestants

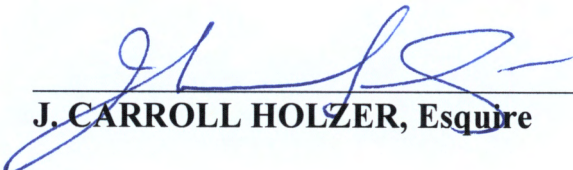
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of June, 2015, a copy of the foregoing Protestant Opposition to Reconsideration was mailed first class, postage pre-paid to the following:

Peter Max Zimmerman, Esquire
People's Counsel for
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Jefferson Building
105 West Chesapeake Avenue
Room 204
Towson, Maryland 21204

Lawrence E. Schmidt, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue
Suite 200
Towson, Maryland 21204

Mr. Glenn Dowell
828 Chester Road
Baltimore, Maryland 21220



J. CARROLL HOLZER, Esquire

6/9/10

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JUN 09 2015

BALTIMORE COUNTY
BOARD OF APPEALS

RE: PETITION FOR SPECIAL EXCEPTION * BEFORE THE COUNTY
826 Chester Road; S/S Chester Road, 750' *
W c/line of Susquehanna Avenue * BOARD OF APPEALS
15th Election & 6th Councilmanic Districts *
Legal Owner(s): James & Robert Dimick * FOR
Petitioner(s) *
* BALTIMORE COUNTY
*
* 2014-123-X

* * * * *

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY'S
ANSWER TO MOTION FOR RECONSIDERATION

People's Counsel answers Petitioners James and Robert Dimick's (the Dimicks') Motion for Reconsideration, and states:

I. There is no fraud, mistake, or irregularity

1. County Board of Appeals Rule 11 controls the "Revisory power of the board."

"Within thirty (30) days after the entry of an order, the board shall have revisory power and control over the order in the event of fraud, mistake or irregularity."

As we shall explain, there is no fraud, mistake, or irregularity in the Board's April 30, 2015 opinion and order. More than that, the Board's order is legally sufficient and sustainable on this record.

2. The CBA rules employ the language used in Maryland Rule 2-535(b). In this context, the Court of Appeals has defined "fraud, mistake, and irregularity" in many cases. This phrase is narrowly defined. Platt v. Platt 302 Md. 9, 13 (1984); Andressen v. Andressen 317 Md. 380, 389 (1989); Autobahn Motors, Inc. v. Baltimore 321 Md. 558, 562 (1991); Early v. Early 338 Md. 639, 651-53 (1995); Home Indemnity Co. v. Killian 92 Md. App. 205, 215-18 (1992).

3. The term "fraud" refers to "extrinsic or collateral fraud," such as preventing a party from exhibiting fully his case, keeping him away from court, a false promise of compromise, an attorney practicing deception to undermine his own client's case. Schwartz v. Merchant's Mortgage Co. 272 Md. 305, 308-09 (1974); Hamilos v. Hamilos 297 Md. 99, 105-06 (1983). There is no fraud alleged in the Dimicks' motion.

4. The term “mistake” here refers to a jurisdictional error, i.e., where the court has no power to enter a judgment.” Hughes v. Beltway Homes 276 Md. 382, 386-87 (1975); Tandra S. v. Tyrone W. 336 Md. 303, 317 (1994); Hamilos, supra, 297 Md. at 307. Plainly, there is no challenge here to CBA jurisdiction.

5. The term “irregularity” means “the doing or not doing of that, in the conduct of a suit at law, which conformable to the practice of the court, ought or ought not to be done.” Weitz v. MacKenzie 273 Md. 621, 631 (1973); Maryland Lumber Co. v. Savoy Construction Co. 298 Md. 98, 100-01 (1979); Autobahn, supra, 321 Md. at 562; Tandra S., supra, 336 Md. at 318. “This usually means irregularity of process or procedure” There is no irregularity alleged here.

6. The Dimicks’ motion is thus legally insufficient because it merely alleges that the CBA erred in the application of the law.

II. Anyway, the County Board of Appeals Decision Is Sustainable on the Merits

7. The Dimicks challenge two of the conditions in the CBA special exception decision, to wit, relating to the stack height limitation for crab pots and the hours of operation during the active crabbing season.

8. A special exception is in essence a “conditional use.” Schultz v. Pritts 291 Md. 1, 20-21 (1981). Logically, upon review of a special exception, a zoning board has broad authority to place conditions on the use. Halle Companies v. Crofton Civic Association 339 Md. 131, (1995). Judge Karwacki explained in Halle, 339 Md. at 146,

“Although we have never clearly defined the scope the *de novo* powers of a county board of appeals in zoning cases, we have made it clear that a board of appeals can, and should in many cases, impose conditions when a special exception or variance to protect the public welfare ... ‘It has long been held and is firmly established that it is not only proper but desirable to attach to the grant of a special exception conditions which do not violate or go beyond the law and are appropriate and reasonable.’” (Citations omitted)

9. Moreover, Baltimore County Zoning Regulation (BCZR) Sec. 502.2 states,

“In granting any special exception, the Zoning Commissioner or the Board of Appeals, upon appeal, shall impose such conditions, restrictions or regulations as may be deemed necessary or advisable for the protection of surrounding and neighboring properties”

10. It is traditionally an essential element of comprehensive zoning regulations to set area and height limits. Village of Euclid v. Ambler Realty Co. 272 U.S. 365 (1926). The Baltimore County Code zoning enabling legislation begins with the direction in Sec. 32-3-101(a) to control,

“The height, number of stories, and size of buildings and other structures.”

11. The CBA condition limiting the height and visual impact of the crab pots on immediate neighbor Glenn Dowell’s enjoyment of his property is not only well within the scope of zoning law, but also classically relevant to special exception review. In People’s Counsel v. Mangione 85 Md. App. 738, 746-47, n. 6, Judge Cathell wrote,

“The size and scope of the project are thus relevant considerations. To contend otherwise, as appellee does, is to engage in specious and sophistic reasoning.”

To sustain this CBA’s denial of a special exception, the Court of Special Appeals found relevant the disproportionate height and visual impact on adjacent properties of the proposed convalescent home, which “... would sit on the prominent or dominant terrain above the neighborhood [and] block out light from the west ...” 85 Md. App. at 752.

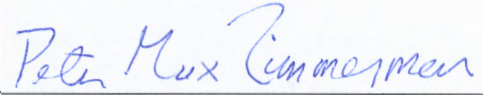
12. In Board of County Comm’rs v. Holbrook 314 Md. 210, 212-13, 219-20 (1986), the Court of Appeals sustained the denial of a special exception for a mobile home based on its visual impact and detriment to property value on neighboring single-family residence less than 150 feet away.

13. The evidence showed palpably that the Dimicks’ stacking of crab pots --- three high on top of one another on their waterfront frontage, side boundary line to boundary line --- disproportionately and massively obstructed the neighboring waterfront properties’ visual quality and value. It was well within the CBA’s discretionary judgment to limit the stack height. Indeed, the CBA could have imposed a stricter limit, but rather made a moderate compromise.

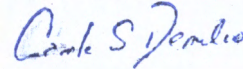
13. The CBA condition limiting hours of operation is also a classic public welfare condition. It is imposed frequently as a reasonable accommodation in special exception cases. The CBA here reviewed the evidence and exercised its discretion to make a reasonable judgment. There is no just cause to reconsider or change course.

Conclusion

For all of the above reasons, there is no basis to grant the Dimicks' motion for reconsideration. There is, moreover, no doubt or worry about the sustainability of the CBA decision upon any judicial review.



PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



CAROLE S. DEMILIO
Deputy People's Counsel
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Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of June, 2015, a copy of the foregoing People's Counsel for Baltimore County's Answer to Motion to Reconsideration was mailed to Lawrence Schmidt, Esquire, Smith, Gildea & Schmidt, 600 Washington Avenue, Suite 200, Towson, Maryland 21204, Attorney for Petitioner(s) and J. Carroll Holzer, 508 Fairmount Avenue, Towson, Maryland 21286, attorney for Appellant Glenn Dowell.



PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

6/1/15

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BALTIMORE COUNTY
BOARD OF APPEALS

RE: PETITION FOR SPECIAL EXCEPTION * BEFORE THE COUNTY
826 Chester Road; S/S Chester Road, 750' *
W c/line of Susquehanna Avenue * BOARD OF APPEALS
15th Election & 6th Councilman Districts *
Legal Owner(s): James & Robert Dimick * FOR
Petitioner(s) * BALTIMORE COUNTY
* CASE NO.: 2014-0123-X

* * * * *

PETITIONERS' MOTION FOR RECONSIDERATON

James Dimick, Jr. and Robert G. Dimick, Petitioners, through Lawrence E. Schmidt and Smith, Gildea & Schmidt, LLC, their attorneys, pursuant to Baltimore County Zoning Regulations Appendix H, Board of Appeals' Rules of Practice and Procedure, Rule 10 submit this Motion for Reconsideration and respectfully state:

I. BACKGROUND

This Motion is limited in scope and the request made herein impacts but a portion of the Board's order. By Opinion and Order issued by the Board on April 30, 2015, the Board granted a Petition for Special Exception approving a Fishing and Shell fishing Facility, Shoreline, Class II unto the Petitioners, James Dimick, Jr. and Robert G. Dimick for the subject property located at 826 Chester Road in eastern Baltimore County. As a condition thereto, the Board imposed eight numbered restrictions as contained within its' order.

The Petitioners do not challenge the grant of the special exception, nor many of the conditions imposed by the Board. Indeed, within their Post Hearing Memorandum filed after the conclusion of the public hearing held for this case, the Petitioners set forth a number of conditions that were acceptable to them and which they agreed could be incorporated into the order. However, there are two conditions imposed that the Petitioners believe are inappropriate

and have no reasonable nexus to the impact of the special exception. Indeed, the imposition of the conditions may cause greater impact on adjacent properties than if no such condition was imposed. The following is offered in support of this request.

CONDITION NUMBER 2:

Within this condition, the Board required that the Dimick brothers could not stack crab pots "more than two pots in height" during the crabbing season. As noted by the Board, each pot is approximately 20 inches in height. This limitation was apparently imposed as the immediate next door neighbor, Glenn Dowell objected to the storage of pots and the blocking of his view.

As is well settled and has been stated by the Board in other water front property cases, there is no legal right to a view. This is particularly so across a neighbor's property. More importantly, this restriction potentially causes greater impact on the neighbors. As was testified at the hearing, the crab pots are "in the water" during the crabbing season except as they are removed, cleaned and maintained. Part of the maintenance of the pots involves their repainting. Currently, the Dimicks maintain a paint tank near the waterfront. The pots (currently stacked four and five high) can be painted in mass, utilizing this configuration. However, if the pots are spread out across the property, the painting operation will correspondingly be spread out, causing the vapors, noise and other effects thereof not to be confined to the area of the site immediately adjacent to the water, but across the entire site. Thus, the Petitioners request a modest amendment to this restricting, allowing the pots to be stacked a maximum of **three** pots high, thereby confining the maintenance operation to a smaller area of the yard and further removed from the neighbor's property. If determined appropriate by the Board, the Petitioners are also agreeable to installing landscaping, fencing or other buffering to screen the operation.

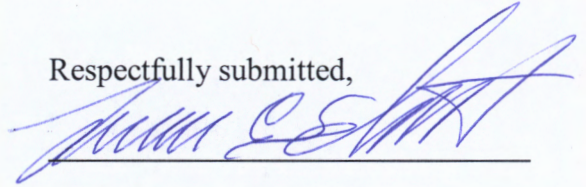
CONDITION NUMBER 4:

The life of a waterman is not dictated by the clock. It is dependent on the dictates of man (the length of the season and the catch limitations prescribed by the Department of Natural Resources) and the whims of nature (weather, the bounty of the harvest, etc.). The limitation prescribed in Condition Number 4 establishes hours of operation limitations for the maintenance of the crab pots. Specifically, the limitation allows the activity from Monday-Friday only, from 9:00 a.m. to 5:00 p.m. Painting and other certain activities cannot be done when it rains. The Dimick brothers are limited as to when they can be on the water. Simply stated, running a crabbing operation is not a 9:00 to 5:00 job.

The Dimick brothers appreciate and respect the concerns of their neighbors. They do not want to intrude on them inappropriately. But a condition related to the cycle of day length makes far more practical sense than a condition related to the hours on a clock. The Dimicks agree that they will not do the maintenance activities on the pots in the early morning. The neighbors are entitled to peace and quiet in the early morning. They accept the 9:00 a.m. starting time limitation. But the 5:00 time limit is arbitrary and there is no rationale for it. The Dimicks believe that the limitation should coincide with sunset. They will cease the day's activities when the sun goes down. Similarly, the blanket restriction on pot maintenance weekends has no rationale basis. Most people maintain their properties (lawn cutting, painting, etc.) on weekends. A reasonable limitation on the hours might be warranted, but a blanket restriction is not.

Wherefore, the Petitioners request that the Board revise its order as requested herein. The Petitioners likewise agree that the Board may reconvene its hearing (if it deems necessary and appropriate) to entertain factual testimony regarding the issues (and only the issues) presented herein.

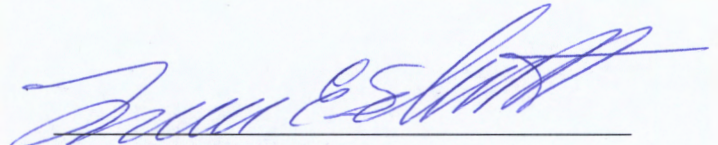
Respectfully submitted,



LAWRENCE E. SCHMIDT
Smith, Gildea & Schmidt, LLC
600 Washington Avenue
Suite 200
Towson, Maryland 21204
(410) 821-0070
Attorney for the Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 1st day of June, 2015, a copy of the foregoing Motion for Reconsideration was mailed, postage pre-paid, to J. Carroll Holzer, 508 Fairmount Avenue, Towson, MD 21204; and to Peter Max Zimmerman, Esquire of People's Counsel for Baltimore County, The Jefferson Building, 105 W. Chesapeake Avenue, Room 204, Towson, Maryland 21204.



Lawrence E. Schmidt

4/30/15

IN THE MATTER OF
JAMES DIMICK, JR. and ROBERT G. DIMICK
- LEGAL OWNERS/PETITIONERS
FOR SPECIAL EXCEPTION FOR THE
Property located on the S/s of Chester Road, 750'
W of c/l Susquehanna Avenue (826 Chester Road)
15th Election District; 6th Councilmanic District

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 14-123-X

* * * * *

OPINION

This matter comes before the Board on appeal of the decision of the Administrative Law Judge ("ALJ") in which a Petition for Special Exception was granted with conditions. The Petition for Special Exception sought relief pursuant to §1B01.1.C.8 of the Baltimore County Zoning Regulations (BCZR), for a fishing and shell fishing facility, shoreline, Class II as provided in the BCZR, if the ALJ did not determine that the plan updating the use permit for a commercial fishing, crabbing and shellfish operation dated March 2, 1979 rendered this request moot.

The Board convened for hearings on April 24, 2014 and June 10, 2014. Legal Owners and Petitioners, James Dimick, Jr. and Robert George Dimick (the "Dimick brothers"), were represented by Lawrence E. Schmidt, Esquire. Peter Max Zimmerman appeared on behalf of People's Counsel of Baltimore County. Protestant and Appellant, Glenn Dowell, was represented by J. Carroll Holzer, Esquire. Memoranda in lieu of closing arguments were submitted to this Board on June 30, 2014. Allen Robertson, attended the hearing and opposed the petition. He did not file an appeal to the Board, however, he did file a post-hearing memorandum. A public deliberation was held on August 19, 2014.

Factual Background

The subject property is waterfront property located at 826 Chester Road on Frog Mortar Creek in the Middle River area of Baltimore County (the "Property"). It is 0.286+/- acres and is zoned DR3.5. The Property was purchased by James Dimick, Sr. and his wife, Helen, in 1958

where they resided with their 2 children, James Jr. and Robert (the "Dimick brothers"). It is rectangular in shape, is approximately 0.286 acres, and is zoned DR 3.5.

In 1979, because they resided at the Property, Mr. and Mrs. Dimick were granted a Class I use permit to operate a "commercial fishing, crabbing and shellfish operation". (Pet. 3). Since the 1970s, the Dimick brothers, along with their parents, lived and operated their crabbing business out of the Property. After Mr. and Mrs. Dimick passed away, the Dimick brothers continued the operation. While neither of them currently reside at the Property, they wish to continue the business from the Property and are therefore seeking a Class II license.

The requested relief in this case came about as a result of a code enforcement action filed against the Dimick brothers by the former owner of 824 Chester Road, Mark Green, when he was selling his house ("Mr. Green"). (*In the Matter of James Dimick, Robert George Dimick, Civil Citation No. 136762*). Mr. Green has since sold 824 Chester Road to Thomas Jenkins.

Evidence

James Dimick, Jr., 1117 Susquehanna Avenue, testified that he is a commercial waterman and that he lived his parents and brother, Robert, at the Property. Together, the Dimick family operated a crabbing business. James, Jr. testified that he and Robert, each have their own set of customers who purchase crabs. The Dimick brothers both store the crab pots used between the house and the water. Located on their pier are sluffing tanks as well as an area where the crab pots are power washed and spray painted red. (Pet. 1A – 1L).

An aerial photograph revealed that all of the structures on the Property have remained the same for the past 25 years. (Pet. Ex. 2). The Dimick brothers are not requesting to improve or enlarge any structures on the Property. In addition to the house, there is an 8' by 14' refrigerator/freezer and a shed containing a pressure washing machine, a lawn mower and yard

equipment. The freezer and shed are located on the Property near Chester Road. Fuel tanks are stored on the west side of the Property,

James Dimick explained that the crabbing season opens April 1 and closes December 15 each year. The crabbing business is regulated by the Maryland Department of Natural Resources ("DNR") which state agency is charged with issuing crabbing licenses. The Dimick brothers do not catch fish or oysters. Since the late 1970s, the daily schedule has not changed and typically runs for 9 hours beginning an hour before sunrise in order to prepare the bait needed for the day. Because the crabbing business depends upon seasonal changes and weather related events, crab harvesting does not operate on a 9:00-5:00 schedule. DNR does restrict crabbing to 6 days per week.

Each of them return to the Property around 2:30 each day to load the crabs onto trucks or to store them in their refrigerator/freezer. Neither of the Dimick brothers sells the crabs retail from the Property. Each of them sells the crabs to wholesalers, crab houses or restaurants. The remainder of the work day involves checking the soft shell crabs and maintaining the boats. The work day usually ends by 7:00 p.m.

James Dimick employs 2 workers who crab with him. Robert Dimick also has 2 workers. Some or all of the 6 people park their vehicles on the Property during the work day. There are 2 boats docked at the Property, one 40' and one 35' fiberglass boat bought by each of them in or around 1990. Each of the Dimick brothers have a crabbing license. In addition, a license was granted to James Jr.'s wife and to Robert Dimick's son. (Pet. Ex. 4A-4D). In total, these 4 licenses allow them to use 2400 crab pots. (Pet. Ex. 4). A "good catch" is 4 to 5 bushels a day.

Other activity at the Property includes delivery by a bait truck which unloads bait into the freezer 2 times per week. In addition, a fuel truck delivers diesel fuel for the boats 3 times per

week. There are no signs on the Property to identify that any business operates there. The power washing and painting of crab pots takes place on the pier. There are no flood lights on the Property.

During the off-season, James Dimick testified that 1200 crab pots are stored on the Property between the house and the water which includes the pots that Robert uses. Each pot is 20 inches tall. The pots, which are painted red, have been stacked 4-5 pots high. (Pet. Ex. 1C, 1D, 1E). Given the size and amount of crab pots, this is the source of contention for the Protestant neighbors. A drawing of the initial crabbing operation which was filed with the use permit application in 1978 which was drawn by James Dimick, Jr. represented to the County that the crab pots would be stored in a 4' x 33' area on the west side of the house. (Pet. Ex. 3). On cross examination, James Dimick acknowledged that the use permit limited the crabbing operation to 25% of the Property.

Also testifying on the Dimicks' behalf was Bernadette Moskunas, Vice President and owner of Site Rite Surveying, who was accepted as an expert in Baltimore County zoning issues. While Ms. Moskunas is neither an engineer nor surveyor, her office prepared the site plan for the proposed crabbing operation and her brother Michael Moskunas, a registered surveyor, sealed the plan. She testified that the proposed crabbing operation meets all of the Special Exception factors set forth in BCZR 502.1 and highlighted that this business has been operating for 35 years without issue or interruption. On cross examination, Ms. Moskunas admitted that the Class II license would permit the Dimick brothers to use the entire Property in the business, rather than 25%.

John Slough, 832 Chester Road, also testified on behalf of the Dimick brothers. A 69 year old resident, he has lived at that house his entire life. Between 1992 -2000, Mr. Slough was similarly licensed to operate a crabbing business out of his house. Mr. Slough has known the Dimick family for over 30 years. He testified that the crab pots are stored on the Property in the off-season. He also said he does not have any objection to the continued operation of the Dimick

business. It was his opinion that the crab pots storage on the Property was not unsightly but rather “part of the heritage” of the waterfront activity.

Testifying in opposition to the requested relief was Chip Raynor, a Code Enforcement Inspector with Baltimore County. While he was not testifying on behalf of the County, he was requested to visit the Property by the Protestant, Glenn Dowell. In his employment with Baltimore County, Mr. Raynor was previously assigned to crabbing operations in the Middle River area.

Mr. Raynor visited the Property on April 12, 2014 and took photographs of the stored crab pots. (PC. Ex. 7A-7C). The photographs revealed red crab pots stored 4 high and the entire 50' width of the property, consuming more than ½ of the front yard (water side). He also observed a non-commercial boat on a trailer as well as 2 jet skis. In his opinion, this operation was too large for the Property as compared to other crabbing operations he has seen in the area. On cross examination, he admitted that there was no height restriction on the storage of crab pots.

Glenn Dowell, 828 Chester Road, the Protestant, has lived next to the Property since 1987. When he purchased his home, the Dimick crabbing business was in operation. However, he testified that the business was much smaller and crab pots and other business activities were much less. He recalls that the Dimick brothers did power washing and painting of the crab pots in 1987. He was very friendly with the Mr. and Mrs. James Dimick and had no objection at the time to the crabbing operation.

He made clear that the Dimick house has been vacant for the past 12-15 years and the number of crab pots stored on the property in the off-season has grown to the extent that he is being deprived of the use and enjoyment of his house and water view. He added that his view to the left of his property is not obstructed.

Mr. Dowell also complained about the noise and use of the pressure washing machine all day during crabbing season. He objects to painting the pots and allowing the paint to drip into the

bay which causes contaminants to pollute the water. He does not like the manner of, and times for, delivery of fuel to the Property, noting that fuel is delivered 2-4 times per week by a tanker that runs a hose to the fuel tanks by the pier. Finally, he objects to the number of vehicles coming to the Property including the bait truck which delivers in the afternoon and evening.

On cross examination, Mr. Dowell acknowledged that when he purchased his property, Mr. Slough was also operating a crabbing business and these businesses were on either side of his house. He further admitted that crab pots have been stored in the Dimick front (waterside) yard since 1987 and that fuel and bait trucks have made deliveries to the Property since that time. He has never filed a complaint with the County nor did he ever ask the Dimick brothers to move the pots.

There is a row of 4 to 5 trees on the right hand water side between the 2 properties which also blocks his view of the water. Erecting a fence would defeat the purpose of the having waterfront property. Mr. Dowell would agree to have the pots stored in the back yard (street side). He also would consent to power washing so long as that activity occurred after 8:00 a.m and before 6:00 p.m.

Thomas Lehner, 1004 Susquehanna Avenue has lived in his home for 22 years. His home is located on the waterfront and to the east of Mr. Dowell's property. He testified that he has observed red color in the water after the Dimick brothers paint their crab pots which, he believes, is polluting the water. Since he has lived there he has observed an increase in the number of crab pots being stored on the Property.

Given that the Property is located in a residential area, Mr. Lehner also indicated that he objects to the power washing which he testified occurs during the evenings and weekends. He described the vacant house as "uninhabitable" and "deteriorating." He pointed out that the house has mold growth and rodent infestation.

On cross examination, Mr. Lehner admitted that he does not have any photographs of the red paint in the water. He also acknowledged that he has never filed a complaint with the County.

Alan Robertson, 1608 Holly Tree Road, Essex, MD 21220 also testified against the requested relief for the same reasons provided by Mr. Dowell and Mr. Lehner, only adding what he believed were violations of applicable laws and regulations involving development of waterfront property.

Decision

The Dimick brothers are requesting relief for a special exception under BCZR 1B01.1C.8 to approve the use of the Property for a Class II Fishing and Shell fishing Facility, Shoreline. The term is defined in BCZR 101.1 as follows:

FISHING AND SHELLFISHING FACILITY, SHORELINE

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

FISHING AND SHELLFISHING FACILITY, SHORELINE, CLASS I

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

FISHING AND SHELLFISHING FACILITY, SHORELINE, CLASS II

A shoreline fishing and shell fishing facility other than a Class I shoreline fishing facility.

The special exception test is codified in BCZR, 502.1 which reads as follows:

§502.1 Conditions determining granting of special exception.

Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

- A. Be detrimental to the health, safety or general welfare of the locality involved;
- B. Tend to create congestion in roads, streets or alleys therein;
- C. Create a potential hazard from fire, panic or other danger;
- D. Tend to overcrowd land and cause undue concentration of population;
- E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
- F. Interfere with adequate light and air;
- G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;
- H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor
- I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone.

The Court of Appeals in *People's Counsel for Baltimore County v. Loyola*, 406 Md. 54, 62 (2008) affirmed the holding in *Schultz v. Pritts*, 291 Md. 1, 22-23 (1981) in analyzing each of the 502.1 factors in a special exception case and stated

We now hold that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.

The Court in *Loyola* explained that the adverse effects are inherent in all conditional or special exception uses. As applied here, a fishing and shell fishing facility is presumed proper as a special exception use unless the Protestants can show that the use produces effects that are more adverse at this Property than at other locations within the DR 3.5 zone. Thus, the adverse effects inherent in a crabbing operation include: storage of pots; number of people coming and going at the Property; noise; fuel or bait deliveries; power washing, repairing, painting of crab pots and/or smell.

The complaints by Mr. Dowell, Robertson and Lehner were exactly the adverse effects inherent with such a facility. The County Council already determined, when the list of special exception uses was enacted in BCZR 1B01.1C.8, that these type of facilities, with their inherent adverse effects, can exist alongside residences. When Mr. Dowell purchased his home, he did so with full knowledge that the Dimick brothers' crabbing business operated on the west side of his property and that the Slough crabbing business operated on the east side of his property. Similarly, Mr. Lehner testified that the Dimick crabbing operation has existed since he has lived there. Because of this, the Board is mindful that the requested relief is not for a new crabbing business to be inserted into a residential neighborhood where one did not previously exist.

The uncontradicted expert opinion in this case was that each of the 9 special exception factors was met and that there would be no detriment to the health, safety or welfare of the locality. There was no evidence presented to rebut the presumption that the inherent effects of this use are greater at this Property at other properties within the DR 3.5 zone. A site plan was provided showing the operation as proposed. There are no improvements or variances requested to continue the crabbing business.

The testimony was that the Dimick family holds a Class I permit which was granted in 1979. The requested relief for a Class II permit does not require that the Dimicks reside at the

Property nor is there a restriction on the amount of property that can be used in the business. If the Class II permit is denied, the Dimick brothers indicated that one of them would reside in the home so that they can continue their life-long occupations under the Class I permit.

At the same time, when Mr. Dowell purchased his property in 1987, he testified that the Dimick business was a smaller operation and therefore was not offensive. Mr. Dowell admitted that the same type of activities were taking place but the business was less intense. In particular, 2400 crab pots were not stored on the waterfront and were not stacked 4 to 5 pots high. There was little dispute that the Dimick operation has expanded beyond the 25% restriction initially granted with the Class I approval.

The photographs and testimony were compelling that the business consumes the entire property (which it would be entitled to do if it had Class II approval). But, the storage and stacking of red crab pots one on top of the other on the water's edge is unsightly and will continue to cause problems for the locality. In addition, some aspects of the business could be curtailed so as to ensure that property owners can peacefully co-exist along the waterfront. The Board found encouraging and refreshing Mr. Dowell's comments that if conditions were imposed on the Dimick crabbing business that the Dimick brothers would comply, describing them as "honest and not spiteful."

Accordingly, based on the evidence presented, the Board finds that a Class II fishing/shell fishing facility is appropriate at the Property. However, the Board deems it necessary pursuant to BCZR 502.2, to impose the following conditions on this use, at this location:

1. The Dimick brothers crabbing operation shall be permitted to operate during crabbing season ("crabbing season") from sunrise to sunset from April 1 – December 15 each year as directed by the DNR.

2. During crabbing season, the Dimick brothers shall be permitted to store crab pots up to 25% of the Property without restriction on the location within the Property but such pots may not be stacked more than 2 pots in height.

3. During off-season (December 16 – March 31), the Dimick brothers shall store all crab pots off the Property.

4. The cleaning, repair, power washing and painting of crab pots shall occur between the hours of 9:00-5:00 only, Monday through Friday.

5. No signage shall be posted on the Property.

6. The Dimick brothers shall be permitted to keep at the Property no more than two (2) commercial fishing boats (with a maximum length of 45 feet each) at any time. This limitation does not apply to jet skis or other non-commercial watercraft.

7. There shall be no retail sales of any crab/fish from the Property.

8. All fuel and bait deliveries shall be between the hours of 9:00 – 5:00 only, Monday – Friday.

ORDER

THEREFORE, IT IS THIS 30th day of April, 2015 by the Board of Appeals of Baltimore County

ORDERED that the Petition for Special Exception to allow the use of the subject property for a fishing and shell fishing facility, shoreline, Class II as provided in §1B01.1.C.8 of the Baltimore County Zoning Regulations, be and the same is hereby **GRANTED** with the following conditions:

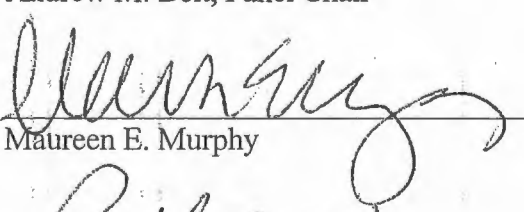
1. The Dimick brothers crabbing operation shall be permitted to operate during crabbing season (“crabbing season”) from sunrise to sunset from April 1 – December 15 each year as directed by the DNR.

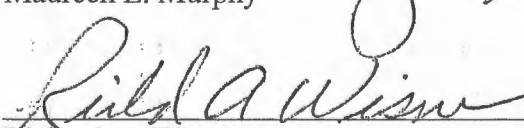
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3. During off-season (December 16 – March 31), the Dimick brothers shall store all crab pots off the Property.
4. The cleaning, repair, power washing and painting of crab pots shall occur between the hours of 9:00-5:00 only, Monday through Friday.
5. No signage shall be posted on the Property.
6. The Dimick brothers shall be permitted to keep at the Property no more than two (2) commercial fishing boats (with a maximum length of 45 feet each) at any time. This limitation does not apply to jet skis or other non-commercial watercraft.
7. There shall be no retail sales of any crab/fish from the Property.
8. All fuel and bait deliveries shall be between the hours of 9:00 – 5:00 only, Monday – Friday.

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*.

**BOARD OF APPEALS
OF BALTIMORE COUNTY**


Andrew M. Belt, Panel Chair


Maureen E. Murphy


Richard A. Wisner



Board of Appeals of Baltimore County

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April 30, 2015

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Smith, Gildea & Schmidt, LLC
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Towson, Maryland 21204

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

RE: *In the Matter of: James Dimick, Jr. and Robert G. Dimick – Legal Owners*
Case No.: 14-123-X

Dear Counsel:

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

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

Krysundra "Sunny" Cannington
Administrator

KLC/tam
Enclosure
Duplicate Original Cover Letter

c: James Dimick, Jr.
Robert G. Dimick
Bernadette Moskunas/SiteRite, Inc.
Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Chip Raynor/PAI
Arnold Jablon, Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law

Glenn Dowell
Allen Robertson
Tom Jenkins
Thomas Lehner
John Slough

4/22/14

RE: PETITION FOR SPECIAL EXCEPTION
826 Chester Road; S/S Chester Road, 750'
W c/line of Susquehanna Avenue
15th Election & 6th Councilmanic Districts
Legal Owner(s): James & Robert Dimick
Petitioner(s)

BEFORE THE COUNTY

BOARD OF APPEALS

FOR

BALTIMORE COUNTY

2014-123-X

RECEIVED
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BALTIMORE COUNTY
BOARD OF APPEALS

* * * * *

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

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APPENDIX

1. Letter to Hon. S. Eric DiNenna from Robert Romadka, Esquire dated October 30, 1978; Application for Zoning Use Permit, and Zoning Commissioner S. Eric DiNenna's Order dated March 2, 1979, approving Class I Facility, subject to site plan;

3. Comment of the Office of Planning dated December 28, 2013 on the current zoning petition;

4. County Board of Appeals Opinion in the matter of Andrew & Stephanie Mattes, Case No. 2011-051-SPH dated June 7, 2012; and

5. County Board of Appeals Opinion in the matter of Reverend Lucy Ware, Case No. 13-147-SPHA dated October 9, 2013.

RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE COUNTY
826 Chester Road; S/S Chester Road, 750'		
W c/line of Susquehanna Avenue	*	BOARD OF APPEALS
15 th Election & 6 th Councilmanic Districts		
Legal Owner(s): James & Robert Dimick	*	FOR
Petitioner(s)		
	*	BALTIMORE COUNTY
	*	2014-123-X

* * * * *

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

Background

This zoning case comes to the County Board of Appeals upon Glenn Dowell's appeal Administrative Law Judge John Beverungen's January 16, 2014 order granting a special exception. The factual and legal issues are fairly unusual and complicated. It appears helpful, therefore, to provide the CBA with an introductory memorandum.

Petitioners James and Robert Dimick ("the Dimicks") operate a commercial crabbing business on a small waterfront lot at 826 Chester Road on Frog Mortar Creek in the Bowleys Quarters area. Frog Mortar Creek is a tributary of Middle River, leading to the Chesapeake Bay. The zone is D.R. (Density-Residential) 3.5. The lot is 12,458 square feet in size, about .29 acre. There is a house on the lot. According to SDAT records, it was built in 1939.

The proceedings began when the neighbor to the side opposite from Dowell filed a complaint with the County Department of Permits, Approvals, and Inspections enforcement division. After inspection, the Zoning Inspector issued a citation for illegal conversion of a home into a crabbing business.

In the D.R. 3.5 Zone, such a business must obtain a special exception or satisfy the conditions of a 1970s vintage permit which operated to grandfather certain then existing facilities so long as they did not expand or intensify. The Dimicks did not have a special exception, but claimed legitimacy under a 1979 permit.

Managing Administrative Law Judge Lawrence Stahl convened the enforcement hearing on November 20, 2013. He issued his opinion and order on November 25, 2013.

As stated in ALJ Stahl's attached opinion, the complainant did not appear, apparently having sold his property. But Glenn Dowell did appear. He is the neighbor to the east, to the opposite of the complainant. He was concerned about the placement of crab pots blocking his view of the water. The Inspector also appeared.

Upon review of the Dimicks' assertion of legitimacy based on their permit, ALJ Stahl found that the current operation exceeded the permit site plan's 25% lot coverage limit for crabbing activities. ALJ Stahl entered an order which imposed a fine of \$2,500.00, required the Dimicks to allow an inspector onsite to measure the extent of crabbing activities, and placed a lien on the property.

So far as we can tell, the Dimicks did not appeal ALJ Stahl's Order.

Rather, on November 20, 2013, the same day as the hearing before ALJ Stahl, the Dimicks filed the present zoning petition. They request approval of a special exception for a fishing and shellfishing facility, shoreline, Class II under BCZR Sec. 1B01.1.C.8. This special exception provision is unusual because it adds a specific grandfather clause. BCZR Sec. 1B01.1.C.8 states,

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

- a. The owner (or his legally authorized representative) applies for the use permit within six months hereafter (Section 500.4);
- b. With the application for the use permit is filed a site plan in accordance with the Zoning Commissioner's rules of practice and procedure;^[5]
- c. Any fencing, screening or other change in the site or limitations on the manner of selling the catch necessary to make the facility more compatible with its surroundings that is required by the Zoning Commissioner is completed within the time limits for partial and full compliance with a program of compliance submitted to him; and
- d. No increase in the amount of floor or site area or in the number of boats devoted to the use nor any other change in the site plan is made. [Bill No. 30-1978]"

There are definitions of two classes of shoreline fishing and shellfishing business facilities in BCZR Sec. 101.1:

“FISHING AND SHELLFISHING FACILITY, SHORELINE - A principal use that consists of the buildings, equipment or other facilities necessary to accommodate the onshore activities of a fishing and shellfishing business (including retailing or wholesaling of the catches) and that is situated on a lot on the shoreline of tidal waters. [Bill No. 30-1978]

FISHING AND SHELLFISHING FACILITY, SHORELINE, CLASS I - A shoreline fishing and shellfishing facility that can accommodate a fishing business no larger than that entailing the use of not more than two commercial fishing boats and that is situated on a lot also occupied by the primary residence of its operator, who is a person required to have a license by any of the provisions of Title 4 of the Natural Resources Article of the Annotated Code of Maryland. For the purposes of these regulations, a "commercial fishing boat" does not include a boat more than 45 feet long. [Bill No. 30-1978]

FISHING AND SHELLFISHING FACILITY, SHORELINE, CLASS II - A shoreline fishing and shellfishing facility other than a Class I shoreline fishing facility. [Bill No. 30-1978]”

A class I facility is limited to no more than two commercial fishing boats and must be on a lot occupied by the primary residence of the operator. A class II facility is subject to the BCZR Sec. 502.1 special exception standards.

The zoning petition adds the qualification “... if the Administrative Law Judge does not determine that the plan updating the use permit for commercial fishing, crabbing and shellfish operation dated March 2, 1979 renders this case moot.” This brings into play the aforesaid grandfather provision along with the pertinent bills enacted in the 1970s. We shall discuss these in more detail below..

The petition went to hearing before ALJ John Beverungen. He issued his opinion and order on January 16, 2014. Based on photos in the file, he found that the Dimicks had exceeded the 25% utilization limit in their 1979 permit and, moreover, that the conditions on the ground contradict the site plan. But he granted the special exception, subject to conditions: no signage allowed; a maximum of two commercial boats (maximum length 45 feet) at any one time; no retail sales allowed; property to be kept neat, clean, and free of junk, trash, or debris; fuel deliveries limited to Mondays to Fridays between 9:00 AM

and 5:00 PM; cleaning, painting and repair of crab traps subject to the same time limits; and compliance with the DEPS January 9, 2014 comment.

Glenn Dowell then filed this appeal. As usual in zoning cases, the CBA reviews the case *de novo* under Baltimore County Charter Sec. 603. See Pollard's Towing v. Berman's Body Frame & Mechanical 137 Md.App. 277, 289 (2002).

Questions Presented

1. Does the Dimicks' current crabbing operation fit within the 1979 permit and so have the benefit of "grandfather-type" protection?
2. Does ALJ Stahl's Order have preclusive or *res judicata* effect on this issue, as it has been finally decided in the violation case?
3. Does the current crabbing operation satisfy special exception standards and if so, with what conditions?
4. Is the site plan incomplete, inaccurate and/or legally inadequate and insufficient?

I. The "1979 Permit" Question

a. The Legislative History and the 1979 Permit

In 1975, the County Council enacted Bill 98, a major piece of legislation. Bill 98-75, as it was named, enacted the original Resource Conservation Zones. This legislation also defined "Commercial fishing, crabbing and shellfishing operation," both "primary" and "secondary," and allocated them as special exceptions in the new R.C.2 (Agricultural), R.C. 3 (Deferred of Planning and Development), and R.C. 5 (Rural-Residential) Zones. The special exception provisions provided, however, that existing operations could "continue at the same level of intensity" provided that within 365 days they file for a use permit within 365 days of the day of enactment (November 7, 1975).

Just three years later, the Council enacted Bill 30-78, which focused exclusively on fishing and shellfishing operations. County Executive Theodore Venetoulis signed it on May 8, 1978. This legislation replaced the 1975 definition with the definitions currently still in place for "Fishing and shellfishing facility, shoreline," both "Class I" and "Class II." Crucially here, Bill 30-78 added a special exception for the Density

Residential Zones, BCZR 1B01.1.C.7A. This provision allowed for continuation of existing facilities which filed for a use permit within six months and added more detail. To qualify for continuation, a property owner had also to file a site plan in accordance with the Zoning Commissioner's Rules of Practice and Procedure. Also crucial for the present case, BCZR Sec. 1B01.1.C.7A.d stated,

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

On October 30, 1978, the Dimicks' attorney, Robert Romaka filed the attached application for a permit, showing the property then zoned as D.R. 5.5, describing items utilized and stored on the premises, and stating,

"Approximately a limit of 25 percent of the total net area of the property will be used in the operation."

"Said use is more specifically detailed on the attached scale drawing."

It is also crucial that the undersigned approval signed by Zoning Commissioner Eric DiNenna provided in handwriting,

"Approved as a class 1 Commercial Fishing and Shellfishing Facility."

The accompanying site plan does not appear to be to scale, but shows a house, implicitly occupied by the Dimicks as a "Class I Facility;" a pier; two fishing boats, a 15' workboat and 13' rowboat; a shed with refrigeration; and limited areas for crab boxes, gill net boxes, and crab pot storage.

Subsequent Bill 139-83 ratified any permits issues before January 1, 1979 (even some late permits). In this legislation, Section 3 reinforced the prohibition against intensification of the use. It stated that nothing in this ratification ordinance "... shall be construed to authorize the extension, expansion, or intensification of any commercial fishing, crabbing, and shellfishing operations" Any such change in use would be subject to the special exception requirements.

b. The Current Proposal Does Not Accord with the 1979 Permit

The Dimicks proposal is for a Class II Facility. So, right away, there is no authorization under the 1979 Class I Permit. Plainly, there are limits to any Class I facility, which do not control a Class II facility. They cannot be equated.

Furthermore, it is plain that the Dimicks have expanded way beyond the 25% land area authorized under the 1979 permit. The aerial photography is conclusive, showing the virtually the entire property in use for the crabbing operation.

There is also a question whether the site is still the Dimicks' primary residence, as required under their Class I 1979 Permit. Anyway, the other conflicts are sufficient to negate the continuation or survival of grandfathering protection.

c. In any event, ALJ Stahl's Decision Effectively Precludes the Permit/Grandfathering Claim Based on the *Res Judicata* Doctrine

The County Board of Appeals has had many cases in recent years involving the legal doctrine called *res judicata*, or "the matter has been adjudicated." The doctrine applies to administrative decisions. Batson v. Shifflett 325 Md. 684 (1992); Powell v. Breslin 430 Md. 52 (2013); Fertitta v. Brown 252 Md. 594 (1969); Seminary Galleria v. Dulaney Valley Improvement Ass'n 192 Md. App. 719 (2010). The appellate courts have applied *res judicata* to zoning cases for over half a century. Whittle v. County Board of Appeals 211 Md. 36 (1956); Woodlawn Are Citizens v. Board of Appeals 241 Md. 1887 (1965); Chatham Corp. Beltram 243 Md. 138 (1966); Alvey v. Hedin 243 Md. 334 (1966). Our Seminary Galleria case includes an excellent discussion of the history and the principles.

The main thing is whether a party's claim has been adjudicated adversely and finally in a proceeding where the party has had an opportunity to present any and all arguments. The party is then barred from re-litigating the claim, even under a new format or a new theory.

Here, also a public zoning proceeding, ALJ Stahl resolved the precise claim now presented in this zoning petition. He determined that the Dimicks exceeded the limits of their 1979 Permit. There was no appeal, so he ALJ's decision is final.

The procedural context resembles Anne Arundel County Ethics Comm's v. Dvorak 189 Md. App. 46 (2009). The Ethics Commission petitioned for injunctive relief to bar the former county attorney and former administrative officer from participating in development impact fee litigation against the county because of their conflict of interest. The former county officers defended on the basis that laches (unfair delay) barred the Commission's action.

But the Commission had determined the same issue adversely to them in a prior complaint proceeding. The Commission had ordered them to cease participation in the litigation against the county. They did not appeal the Commission's Order, so it became final. Therefore, the Court of Special Appeals held that they were barred from re-litigating the issue.

It is also worthwhile to have in mind the Board's attached decision in Andrew and Stephanie Mattes, Legal Owners, 2534 Island View Road, Case No. 11-051-SPH, June 7, 2012, involving another crabbing operation. There, the owners of the property and crabbing operation successfully argued *res judicata* against petitioners who were neighboring property owners, even though Zoning Commissioner William Wiseman in the earlier case had advised these same petitioners to file a new petition rather than appeal his original decision in favor of the property owner.

In sum, the permit issue is a dead issue. It should not confuse or distract the County Board of Appeals from the pertinent question of whether the Dimicks deserve approval of a special exception.

II. The Special Exception Question

a. The Legislative Context, Standards, and Case Law

While Petitioners naturally emphasize the judicial language that there is a presumption in favor of special exception uses, they must also deal with the language which places the burden of them to prove that their proposal at their chosen location will not cause a particular adverse impact in the neighborhood. The Court of Appeals has elucidated the standard in such cases as Schultz v. Pritts 291 Md. 1 (1981); Board of County Comm'rs v. Holbrook 314 Md. 210 (1988); People's Counsel v. Loyola College

406 Md. 54 (2008); and Montgomery County v. Butler 417 Md. 271 (2010). The Court of Special Appeals has provided helpful analysis in People's Counsel v. Mangione 85 Md. App. 738 (1991); Lucas v. People's Counsel 147 Md. App. 209 (2002); and Mills v. Godlove 200 Md. App. 211 (1911).

While special exception standards derive from legislation, and need not be the same everywhere, as explained in Butler, Baltimore County BCZR Sec. 502.1 follows the traditional framework, as shown in Loyola and Mangione.

It is essential to evaluate the character of the proposed use, as well its size and scale. To illustrate, a proposal may be excessive for any number of reasons and impacts. See Mangione case, n. 5, reinstatement of this zoning board's denial of special exception for a convalescent facility because of the magnitude of visual, traffic, and environmental impacts. This includes consideration of the visual impact on adjoining property owners and the likely effect on property values. See Holbrook, *supra*, sustaining the zoning board's denial of special exception for mobile home because of impact on adjacent residence

The Board may also find a clue to the thought process in its decision in Lucy Ware, 4508 Old Court Road, No. 2013-147-SPHA, October 29, 2013, attached. While not a special exception case, it came in for an "exception" for a new church in the Residential Transition Area. The CBA found the conversion of the residence to church use was not compatible with the character and general welfare of the surrounding residential premises. While not identical with a special exception issue, an incompatible use likely will result in some particular adverse impact on the neighborhood.

b. The Present Controversy

It is apparent that the Dimicks' expanded use led to the recent complaint, concerns, enforcement proceeding, and now this petition. There is a serious question presented as to the magnitude of the operation and its impact on adjacent properties.

The CBA may grant a petition, deny a petition, or grant it with conditions. There is often a tendency to look for an intermediate resolution and grant a special exception with conditions. Whether this is appropriate and realistic here remains to be seen.

Zoning boards do have authority to grant special exceptions with conditions. See Halle Companies v. Crofton Civic Ass'n 339 Md. 131 (1995). Here, potential conditions could involve an area limitation for the use; a height limitation for crab pots and other items; a limit on number of boats; a prohibition of onsite sales;; limits on cleaning, repairing, and painting; a limit on truck operations; a limit on hours of operation generally; limits on signage; and landscaping and lighting controls.

There comes a point where a site appears to require so many limits that it is logical to conclude the site is too small for the use and is unsuitable. The CBA may also consider whether, under all the circumstances, it is plausible to conclude practically that the property owners are in position to operate under appropriate conditions and parameters. The ultimate question may be whether the business has outgrown this site and should be relocated to a property large enough to accommodate it without undue harm to neighboring properties.

We note that the Planning Department's December 18, 2013 correspondence recommended cleanup; a limitation to 25% of the site for "shellfish fishing related operations;" landscaping and screening; a limitation to 2 boats at any one time, no large than 45 feet in length; and a prohibition on sales. With the exception of the 25% limit, these were among the conditions in ALJ Beverungen's order.

This case is important not only for its immediate impact on the parties and area, but also because it will serve as a precedent for other existing or future operations on small waterfront lots. We trust that the Board will give it the most careful consideration.

c. The Site Plan

It is basic that a site plan must accompany a zoning petition. It is particularly important in special exception cases to view the precise nature, dimensions, and elements of the proposed use. Where, as here, the proposed use involves an existing use, it is even more crucial to have an accurate and complete site plan.

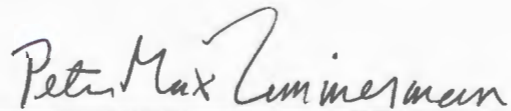
Unfortunately, the site plan does not appear to match the use shown in by the County's standard GIS 2011 aerial photography, especially relating to the area of the crabbing operation. Moreover, there is no description of boats. There is no description of

parking spaces. There is no description of truck types and of delivery, loading, and unloading areas. There is no description of height of buildings, sheds, crab pots or anything else. There is no landscaping or screening. Even the skeletal 1979 permit plan displays more essential information than this site plan.

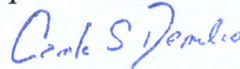
A special exception application must include an accurate and complete site plan. It is particularly important to provide a satisfactory plan for waterfront uses because they involve commercial operations in residential zones and raise so many potential issues. Here, there is the additional complication of a lengthy history.

Conclusion

We trust this memorandum provides the Board and the parties with a helpful preview. There is no merit to the Dimicks' attempt to fit their current use and proposal within the four corners of the 1979 permit. The focus should be on the proposed special exception, for which we have provided a preliminary survey of the anticipated issues.



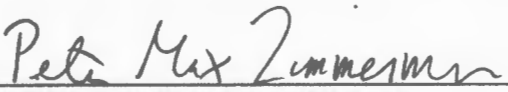
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



CAROLE S. DEMILIO
Deputy People's Counsel
Jefferson Building, Room 204
105 West Chesapeake Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22th day of April, 2014, a copy of the foregoing People's Counsel for Baltimore County's Pre-Hearing Memorandum was mailed to Lawrence Schmidt, Esquire, Smith, Gildea & Schmidt, 600 Washington Avenue, Suite 200, Towson, Maryland 21204, Attorney for Petitioner(s).and J. Carroll Holzer, 508 Fairmount Avenue, Towson, Maryland 21286, attorney for Appellant Glenn Dowell.



PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

ASSOCIATES
IRVIN, N. CAPLAN
CHARLES E. FODS, III
ALFRED M. WALPERT

★
ROBERT J. ROMADKA
ATTORNEY AT LAW
809 EASTERN BOULEVARD
(GERMANIA FEDERAL BUILDING)
ESSEX, MARYLAND 21221

pd
8250.00
check #240
11-5-78

October 30, 1978

MURDOCK 6-8274

Hon. S. Eric DiNenna
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Ref No 4

Re: Application for Zoning Use Permit
James and Helen Dimick
S/S Chester Road

Dear Mr. DiNenna:

Please find enclosed herewith Application for Zoning Use Permit and site plan on behalf of Mr. and Mrs. James Dimick, owners of property located on Chester Road.

The use for which this permit is requested is for commercial fishing, crabbing and shellfish operation. This application is being submitted in accordance with Baltimore County Council Bill No. 30-78 and Section 500.4 of the Zoning Regulations of Baltimore County.

After you have had an opportunity to review the enclosed application and site plan, I would appreciate your forwarding to me your appropriate Order for approval of the use of my clients' property in accordance with said application.

If you need any additional information, please do not hesitate to advise.

Awaiting your further reply in this matter,

Very truly yours,


Robert J. Romadka

RJR/dsl
Enc.
cc: Mr. and Mrs. James Dimick

APPLICATION FOR ZONING
USE PERMIT

This Use Permit is requested in accordance with Section 500.4 and B.Co. Bill 30-78 of the Baltimore County Zoning Regulations.

The property in question is situated in the 15th Election District of Baltimore County, and is more specifically located on the south side of Chester Road, 2/10 mi. of 1664 Susquehanna Road. The total net area is 9,000 sq. feet.

This property is zoned DR 5.5.

The use for which this permit is requested is commercial fishing, crabbing and shellfish operation.

The following items will be utilized in the operation and/or will be stored on the premises: dwelling, storage of crab pots, live boxes, gill nets, eel pots, storage of two boats, in water and on land, buying and retail selling of fish and crabs, loading and unloading

Approximately 25% percent of the total net area of the property will be utilized in the operation.

Said use is more specifically detailed on the attached scale drawing.

Address _____

Lessee

Mrs. Helen M. Dimick
Helen M. Dimick Legal Owner

Address Box 169, Chester Road,
Rt. 15, Baltimore, Md.
21220

IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 2nd day of March, 1979, that the herein described property should be and the same is hereby Approved as a class 1 Commercial fishing and shellfishing facility

*True Tr.
for original*

✓
Signed A. Di N
Zoning Commissioner of
Baltimore County

FROG MORTOR CREEK

Plans approved

By E. C. F.

Date 4-9-79

Jim Jr. Has original

10 mi.

CHESTER RD.

2 1/2 mi.

180'

←24'→

←17'→

#1

52'

←32'→

←28'→

#4

46'

33'

←50'→

←23'→

#6

#8

10'

#8

#6

N
4

FROG MORTOR CREEK

SUSANNA R.

#1 DRIVE WAY

#2 SHED-REFR. AND FRE

FOR STORAGE OF FISH AND

CRABS FOR BAIT AND RET

SALE OF AND STORAGE OF BASK

#3 BATH HOUSE 5 1/2' X

#4 HOUSE

#5 CRAB-POT STORAGE 4' X 3'

#6 15' WORKBOAT AND

12' ROW BOAT

#7 (4) GILL NET BOXES 5'

#8 (6) LIVE CRAB BOXES 4' X

#9 PIER 4' X 55' TEE 10'

JAMES DIMICK
BOX 169 RT-15
CHESTER RD
BALTIMORE, M

Office of Administrative Hearings for Baltimore County
105 West Chesapeake Avenue Suite 103
Towson, Maryland 21204

In the Matter of

Civil Citation No. 136762

James Dimick
Robert George Dimick

826 Chester Road

Respondent

FINDINGS OF FACT AND CONCLUSIONS OF LAW
FINAL ORDER OF THE ADMINISTRATIVE LAW JUDGE

This matter came before the Administrative Law Judge on November 20, 2013 for a Hearing on a citation for violations under the Baltimore County Zoning Regulations (BCZR) section 206, 402: Illegal conversion of a home into a crabbing business; Illegal conversion and violation with Judges Order to have this as a primary residence with 25% crabbing on residential property.

On September 9, 2013, pursuant to BCC § 3-6-205, Inspector David Gaine issued a Code Enforcement & Inspections Citation. The citation was sent to the Respondent by 1st class mail to the last known address listed in the Maryland State Tax Assessment files.

The citation proposed a civil penalty of \$10,000.00 (Ten thousand dollars).

The following persons appeared for the Hearing and testified: Lawrence E. Schmidt, Esquire representing Robert and James Dimick, Respondents, and Glenn Dowell, Neighbor and David Gaine, Baltimore County Code Enforcement Officer.

Evidence was presented that upon the complaint of a neighbor, an inspection of the subject property was carried out on 9/9/13. The Inspector testified that he went to the front door and knocked, but received no response. He also viewed the property and estimated that he believed more than 25% of the site was being used to store crab pots and related crabbing gear. He issued, mailed and posted the Citation herein. Photographs taken by the Inspector were entered into evidence. The Inspector pointed out that the applicable regulations allowed the crabbing activity at a primary residence, but only to the extent of 25% of the area of the site in question. The Inspector did relate that after the Citation was issued, he received a fax of the Respondent's driver's license, issued before the Citation, showing that the subject property was his residence address.

Glen Dowell, another neighbor, testified that he has been the neighbor to the site for some 27 years and has always had good relations with the Respondents. He was concerned about the placement of the crab pots blocking his view of the water and noted that the original complainant (the neighbor on the other side of the subject site) had already sold his property. It should be noted that the Complainant was not present at the hearing.

Counsel for the Respondent entered the fax of the Respondent's driver's license into evidence, as well as the Assessment Notice for the property issued by the Maryland Department of Assessments and Taxation, which noted that the property was owned by the Respondent and listed it as the Respondent's primary residence. He also proffered (and the Respondent confirmed and adopted under oath) that it was his client's belief that no more than 25% of the subject site was being utilized for crabbing activities.

The Respondent has established that the property is the primary residence, and the County has failed to meet its burden on that point. However, the Inspector's testimony, based on his experience is clearly that the footage utilized for crabbing purposes is in excess of the 25% permitted.

Therefore, having heard the testimony and evidence presented at the Hearing:

IT IS ORDERED by the Administrative Law Judge that a civil penalty be imposed in the amount of \$2,500.00 (Two thousand five hundred dollars).

IT IS FURTHER ORDERED that the \$2,500.00 civil penalty be suspended in full.

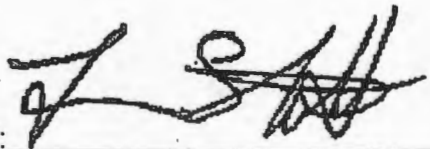
IT IS FURTHER ORDERED that the Respondents will, without any further delay, allow the County Inspector in this matter to enter upon the subject premises to definitively measure and ascertain the permitted 25% of the site which could be utilized for crabbing activities.

IT IS FURTHER ORDERED that the remaining \$2,500.00 civil penalty will be imposed if the subject property is not brought into compliance by November 27, 2013.

IT IS FURTHER ORDERED that if the subject property is brought into compliance pursuant to this Order, the remaining \$2,500.00 civil penalty will be imposed if there is a subsequent finding against the Respondent for the same violation.

IT IS FURTHER ORDERED that if not paid within thirty days of billing, the civil penalty AND any expenses incurred by Baltimore County, as authorized above, shall be imposed and placed as a lien upon the property.

ORDERED this 25 day of November 2013

Signed: 

Lawrence M. Stahl
Managing Administrative Law Judge

NOTICE: Pursuant to §3-6-301(a) of the Baltimore County Code, the Respondent or Baltimore County may appeal this order to the Baltimore County Board of Appeals within fifteen (15) days from the date of this order; any such appeal requires the filing of a petition setting forth the grounds for appeal, payment of a filing fee of \$225.00 and the posting of security in the amount of the penalty assessed.

LMS/sma

12/23/13
TO [initials]

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE



TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: December 18, 2013

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: 826 Chester Road

INFORMATION:

Item Number: 14-123

Petitioner: James Dimick, Jr.

Zoning: DR 3.5

Requested Action: Special Exception

SUMMARY OF RECOMMENDATIONS:

The Department of Planning has reviewed the petitioner's request and accompanying site plan. The Department of Planning does not oppose the petitioner's special exception request. Before final approval is granted the Department of Planning requests that the following conditions be met:

1. The subject property shall be properly cleaned up and organized neatly. This condition shall be maintained throughout operations. The actual shell fishing related operations shall be limited to 25% of the subject property (as outlined on the plan accompanying the subject petition).
2. No signage (existing or proposed) of any type shall be placed on the property or dwelling, other than that which is required for public safety.
3. The site shall be adequately landscaped to provide vegetative screening of shell fishing operations from adjacent neighbors. Utilize screening that is no greater than 6' at maturity to avoid obstruction of the neighbors' view of the shoreline
4. There shall be no more than 2 boats at any one time at the site. Boats can be no larger than 45' in length.
5. There shall be no retail sales on the premises.

For further information concerning the matters stated here in, please contact Matt Diana or Dennis Wertz at 410-887-3480.

Prepared By:

Division Chief:
AVA/LL:cjm

IN THE MATTER OF
ANDREW AND STEPHANIE MATTES
- LEGAL OWNERS OF THE PROPERTY
Located on the NW/S of Island View Road, 208'
NW of c/line of Barrison Point Road
(2534 Island View Road)
15th Election District, 6th Councilmanic District

Theresa Guckert, David Donovan, and
James Brown - Petitioners

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No.: 11-051-SPH
* * * * *

OPINION

This matter is before the Board on a Motion to Dismiss filed by Lawrence E. Schmidt, Esquire and Smith, Gildea and Schmidt, LLC. Counsel for Andrew J. Mattes and Stephanie Mattes. It arises from a Petition for Special Hearing filed by Theresa Guckert, David Donovan, and James Brown (Petitioners) who were represented by Douglas N. Silber, Esquire. Deputy People's Counsel, Carole Demilio, also appeared before the Board. The hearing on the Motion to Dismiss was held on May 8, 2012. Briefs had been filed prior to the May 8th, 2012 hearing. A public deliberation was held on May 24, 2012.

Background

Petitioners filed a Petition for Special Hearing in case number 2010-0220-SPH requesting the Zoning Commissioner to "invalidate a fishing and shell fishing facility for nonconforming use or otherwise. Other reasons to be presented at the hearing." After a full hearing, Zoning Commissioner William J. Wiseman issued his Memorandum and Order dated April 19, 2010. In the order he denied the Petition and confirmed the validity of the existing use permit issued in 1978 for the property in question. Petitioners timely filed a Motion for Partial Reconsideration, seeking a finding that the fishing, shell fishing, and crabbing operation at the subject site was operating at an intensity that was above that which was permitted in the 1978 use permit. That Motion was denied by Commissioner Wiseman in a ruling dated June 1, 2010. In that ruling,

Andrew & Stephanie Mattes - Legal Owners
Theresa Guckert, David Donovan, and James Brown - Petitioners
Case No: 11-051-SPH

2

Wiseman "instructed" Petitioners that he believed they could raise the issue of intensification by way of a new and separate Petition for Special Hearing. The Petitioners did not file an appeal to Commissioner Wiseman's Ruling of April 19, 2010 nor his denial of the subsequent Motion for Partial Reconsideration. Petitioners then filed the present case, asking Commissioner Wiseman to determine whether the scope and intensification of the fishing, shell fishing and crabbing business permitted by the use permit had been intensified. Respondents then filed a Motion to Dismiss the new Petition for Special Hearing arguing that the new Petition was barred by res judicata.

A hearing was held and by his order of December 20, 2010, Commissioner Wiseman denied the Motion and further found that his ruling constituted a "final order" thereby making it amenable to the filing of an immediate appeal to the Baltimore County Board of Appeals (the Board). The Board heard argument on the validity of the Motion to Dismiss and issued an Opinion and Remand Order dated August 2, 2011 finding that the appeal of the denial of the Motion to Dismiss was premature until the case was fully completed and all testimony heard. It returned the case to the Zoning Commissioner for further hearing and adjudication on the matter.¹ After conducting a full hearing, Administrative Law Judge, Lawrence M. Stahl, indicated he would hold his decision on the Motion to Dismiss sub curia until he heard the entire case.

Judge Stahl issued his decision on January 3, 2012. He denied the Motion to Dismiss on the basis of res judicata then ruled against the Petitioners on the merits of the case, with respect to the intensification issue.

1. In the meantime, the Office of Administrative Hearings of Baltimore County replaced and absorbed the hearing responsibilities of the Office of the Zoning Commissioner of Baltimore County by act of the County Council effective January 16, 2011.

IN THE MATTER OF
REVEREND LUCY WARE, Legal Owner/Petitioner
4512 Old Court Road
Baltimore, MD 21208
2nd Election District, 2nd Councilmanic District

RE: Petition for Special Hearing and Variance

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 13-147-SPHA

* * * * *

OPINION

This case comes to the Board on appeal of the final decision of the Administrative Law Judge ("ALJ") denying the Petition for Special Hearing seeking relief from §500.7 of the Baltimore County Zoning Regulations ("BCZR") to: (1) allow a new church for religious worship on the subject property; (2) allow a residential transition area ("RTA") buffer of 0' in lieu of the required 50'; and (3) allow a RTA setback of 0' in lieu of the required 75' from a track boundary to a parking lot or structure. The ALJ also denied a Petition for Variance filed pursuant to BCZR §§409.4, 409.8A2 and §409.8A6 to: (1) allow 4 parking spaces that do not have direct access to an aisle; (2) allow a gravel surface of the parking area in lieu of a durable and dustless surface; and (3) allow no striping of the parking area.

A public hearing was held before this Board on June 18, 2013. The Petitioner was represented by Edward J. Gilliss, Esquire. The Protestants, Barbara Roberson, Jimmie Roberson, Ruthanne Otto, Tom Otto, Barry Powell, Sylvia Powell, Gayle Emerson, Lillian Nolley, Helen Aiken, Linda Miller, Tim Lang, Peggy Lang, Wade Young, II, Dale L. Watkins, Rathea Mims, Al Michel, Evelyn Michel, R. Eddie Daniels, Muriel Lyles, Clyde D. Lyles and Ella Green (the "Protestants") were represented by J. Carroll Holzer, Esquire. A public deliberation was held on July 30, 2013.

Factual Background

On August 31, 2012, the Petitioner, Reverend Lucy Ware (the "Petitioner") purchased a single family home located at 4512 Old Court Road, Pikesville, MD (Pet. Ex. 1) (the "Property") for the purpose of operating a church called "Jesus Christ is the Answer Ministries" (the "Church"). The Petitioner has a degree in construction engineering and was ordained as a minister in 2005. The Church began in 1996, followed by the formation of a 501(c)(3) corporation in 1997.

The Property is located in middle of a residential block on Old Court Road between Scotts Level Road and Streamwood Drive (Pet. Ex. 5). The zoning is D.R. 3.5 (Pet. Ex. 4). The single family home is a 1 story rancher style home (Pet. Exs. 6 and 7) built in 1951 which sits on 1.2 acres (Pet. Ex. 2). Prior to the Petitioner's purchase, the Property had always been used as a residence. The Petitioner testified that she has made numerous improvements to the home including the installation of a new roof, adding a new deck, planting 45 Leyland Cypress trees around the property (Pet. Ex. 19), putting new gravel on the driveway and filling sink holes that existed in the yard.

The Petitioner testified extensively at the hearing about the mission of the Church. From her testimony, the Board learned that it is a non-denominational Christian-based Church which has approximately 30 members. It was formed to assist several groups of people namely: young people who are in trouble with the law; families with children who are disadvantaged; the homeless; and the sick.

In November of 2012, the Petitioner held church services at the property. Before that, the Petitioner hosted a cookout and prayer service in October, which was attended by approximately 40 guests. At both the October and November events, cars were parked on the grass. As a result

2/11/14

IN RE: PETITIONS FOR SPECIAL
EXCEPTION
(826 Chester Road)

15th Election District
6th Council District

Legal Owners: *James Dimick, Jr. &*
Robert George Dimick
Petitioners

* * * * *

* BEFORE THE
* BALTIMORE COUNTY OFFICE
* OF ADMINISTRATIVE HEARINGS
* Case No.: 2014-0123-X

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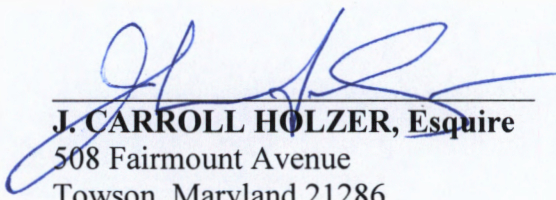
OFFICE OF ADMINISTRATIVE HEARINGS

NOTICE OF APPEAL

Glenn Dowell, 828 Chester Road, Baltimore, MD 21220, Appellant, by his attorney,
J. Carroll Holzer, Esquire, feeling aggrieved by the Order and Opinion of the Administrative
Law Judge in the above referenced matter, hereby file this appeal to the County Board of
Appeals from the Administrative Law Judge's Opinion & Order dated January 16, 2014 (See
attached Order and Opinion).

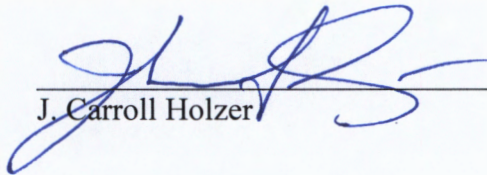
Filed concurrently with this Notice of Appeal is a check made payable to Baltimore
County to cover costs. Appellant was a party below and fully participated in the proceedings.

Respectfully submitted,


J. CARROLL HOLZER, Esquire
508 Fairmount Avenue
Towson, Maryland 21286
410-825-6961
Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on the 11th day of Feb, 2014 that a copy of the Notice of Appeal was mailed first class, postage prepaid, to: Lawrence Schmidt, Esquire, Smith, Gildea & Schmidt, LLC, Suite 200, 600 Washington Ave., Towson, MD 21204; County Board of Appeals, 105 West Chesapeake Avenue, Suite 203, Towson, MD 21204; and People's Counsel for Baltimore County, 105 West Chesapeake, Ave., Room 204, Towson, MD 21204.


J. Carroll Holzer

1/16/14
IN RE: PETITION FOR SPECIAL EXCEPTION *

(826 Chester Road)

15th Election District *

6th Councilman District

James Dimick, Jr. & Robert George Dimick *

Legal Owners

Petitioners *

BEFORE THE

OFFICE OF

ADMINISTRATIVE HEARINGS

FOR BALTIMORE COUNTY

Case No. 2014-0123-X

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Special Exception filed for property located at 826 Chester Road. The Petition was filed by Lawrence E. Schmidt, Esquire, on behalf of the legal owners of the subject property, James Dimick, Jr. and Robert George Dimick. The Special Exception Petition seeks relief pursuant to §1B01.1.C.8 of the Baltimore County Zoning Regulations (B.C.Z.R.), for a fishing and shellfishing facility, shoreline, Class II as provided in B.C.Z.R. §B01.1.C.8 if the Administrative Law Judge does not determine that the plan updating the use permit for a commercial fishing, crabbing and shellfish operation dated March 2, 1979 renders this request moot. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the hearing was James and Robert Dimick and Bernadette Moskunas with Site Rite Surveying, Inc. the firm that prepared the site plan. Lawrence E. Schmidt, Esquire of Smith, Gildea & Schmidt, LLC attended and represented the Petitioners. The file reveals that the Petition was advertised and posted as required by the B.C.Z.R. The next door neighbor (Glenn Dowell) and Allen Robertson, a Bowley's Quarters resident, attended the hearing and opposed the

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petition. Mr. Robertson also submitted a post hearing memorandum, which is included in the case file.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Substantive comments were submitted by the Department of Planning (DOP) and Department of Environmental Protection and Sustainability (DEPS). The DOP requested that certain conditions be imposed upon any Order granting relief, and the DEPS noted Petitioners must comply with Critical Area regulations.

Testimony and evidence offered at the hearing revealed that the subject property is 0.286 ± acres and is zoned DR 3.5. The Petitioners' parents--now deceased-- purchased the property in 1958, and in 1979 (Petitioners Exhibit No. 4) they were granted a use permit to operate a "commercial fishing, crabbing and shellfish operation." The property was the subject of a recent code enforcement case (Citation No. 136762), and the Petitioners seek zoning relief to clarify their rights concerning the scope of the shellfish operation.

As a preliminary matter, Petitioners contend special exception relief is required only if the ALJ determines that the current operation is not "grandfathered" under the 1979 use permit. While the law provides few details concerning the validity and duration of such permits, I do not believe the current operation as described is within the scope of the approval granted by former Zoning Commissioner DiNenna. That Order noted "approximately 25%" of the property would be used for the shellfish operation. Based upon the photos in the file, I believe that Petitioners are devoting more than 25% of the property to this use. In addition, the site plan accompanying the permit indicates that the crab pots are to be stored in a 4' x 33' area on the west side of the home. As shown in the photos, the crab pots are not stored in this area. Thus, I believe that a special

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exception is required in order to lawfully conduct the operation as currently described and depicted.

Prior to addressing that issue, I would note that the parties spent a great deal of time bickering over whether the subject property was the primary residence of the Petitioner(s). This is irrelevant; it is only the Class I shellfishing facility that imposes such a residency requirement, not the Class II facility for which Petitioners seek approval.

Also, the BCZR does not restrict to 25% the area of the site which may be used for the shellfishing operation. The BCZR defines a "shellfishing facility" as a "**principal use** that consists of the buildings, equipment or other facilities necessary to accommodate the onshore activities of a fishing and shellfishing business (including retailing or wholesaling of the catches)....." BCZR § 101.1 (emphasis added). Under the regulations, a "principal use" is a "main use of land, as distinguished from an accessory use." *Id.* As such, the shellfishing operation is permitted—assuming the special exception is granted—to be the "main" use of this lot, which I believe is in fact the case. I will therefore not include in the order which follows the 25% area restriction suggested by the DOP, which would be more appropriate in a case where the use in question was accessory. The regulations also permit retail sales from the premises, although I do not believe that would be appropriate in this setting, and a prohibition on such sales will be included in the Order.

Special Exception Law in Maryland

In AT&T Wireless Services v. Mayor and City Council of Baltimore, 123 Md. App. 681 (1998), the court ruled that the test in evaluating a special exception or conditional use is not whether a special exception is compatible with permitted uses in a zone or whether a conditional use will have adverse effects. Adverse effects are inherent in all conditional or special exception

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By sen

uses. The standard is whether the adverse effects of the use at the particular location proposed would be greater than the adverse effects ordinarily associated with that use elsewhere within the same zone.

A use permitted by special exception (here, a shellfishing operation) is presumed under the law to be in the public interest, and to defeat such a petition, the Protestants must establish that the inherent adverse effects associated with the use would be greater at the proposed location than at other similar zones throughout the County. People's Counsel for Baltimore County v. Loyola College in Md., 406 Md. 54 (2008). Stated more eloquently, the court in Schultz stated the applicable test in this fashion:

We now hold that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.

Schultz v. Pritts, 291 Md. 1, 22-23 (1981).

Thus, a special exception use is presumed to be proper at the location, unless an opponent can show that the inherent adverse effects would be greater at the subject site than at other locations in the DR 3.5 zone. Here, Messrs. Dowell & Robertson indicated the operation was unsightly, noisy, created odors and had the potential to decrease their property values. Though it may sound illogical, these are the types of inherent adverse effects that the legislature was presumed to have anticipated when it allowed by special exception fishing and shellfishing operations in residential zones. In other words, most uses for which a special exception is required

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Date 1/16/14

By Sen

are regarded as "potentially troublesome because of noise, traffic, congestion...." Montgomery County v. Butler, 417 Md. 271, 297 (2010). Indeed, in the few cases heard by the undersigned, neighbors articulated exactly these same concerns in opposing such shellfishing operations. As such, I do not believe the Protestants successfully rebutted the presumption created by Maryland law. Even so, I will impose certain conditions in the order granting relief to reduce—to the extent possible—the potential for conflicts with neighboring owners.

Pursuant to the advertisement, posting of the property, and public hearing on this petition, and after considering the testimony and evidence offered, I find that Petitioners' Special Exception request should be granted, subject to the conditions noted below.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 16th day of January, 2014, that the Petition for Special Exception relief under §1B01.1.C.8 of the Baltimore County Zoning Regulations (B.C.Z.R.), for a fishing and shellfishing facility, shoreline, Class II, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. No signage shall be posted on the premises.
3. The Petitioners shall be permitted to keep at the site no more than two (2) commercial fishing boats (with a maximum length of 45') at any one time. This limitation does not apply to jet skis or other "pleasure" boats.
4. There shall be no retail sales on the premises.
5. The subject property shall be kept neat and clean at all times, and shall be kept free of junk, trash or debris.

ORDER RECEIVED FOR FILING

Date

1/16/14

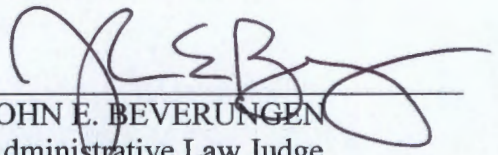
By

SEN

6. The Petitioners shall be permitted to have fuel(s) delivered to the premises Monday through Friday between the hours of 9:00 am – 5:00 pm only.
7. The Petitioners shall be permitted to clean, paint and/or repair the crab traps stored on site Monday through Friday between the hours of 9:00 am – 5:00 pm only.
8. The Petitioners must comply with the ZAC comment of DEPS, dated January 9, 2014.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

JEB/sln



JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

ORDER RECEIVED FOR FILING

Date

1/16/14

By

Sen

KEVIN KAMENETZ
County Executive



LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

January 16, 2014

Lawrence E. Schmidt, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue
Suite 200
Towson, Maryland 21204

RE: Petition for Special Exception
Case No.: 2014-0123-X
Property: 826 Chester Road

Dear Mr. Schmidt:

Enclosed please find a copy of the decision rendered in the above-captioned matter.

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 Office of Administrative Hearings at 410-887-3868.

Sincerely,


JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln
Enclosure

c: Bernadette Moskunas, 200 E. Joppa Road, Room 101, Towson, Maryland 21286
Allen Robertson, 1608 Holly Tree Road, Middle River, Maryland 21220
Glenn Dowell, 828 Chester Road, Baltimore, Maryland 21220
Tom Jeakins, 829 Chester Road, Baltimore, Maryland 21220

SMITH, GILDEA & SCHMIDT LLC

MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
MICHAEL G. DEHAVEN
RAY M. SHEPARD
JASON T. VETTORI

LAUREN M. DODRILL
CHARLES B. MAREK, III
NATALIE MAYO
ELYANA TARLOW
of counsel:
DAVID T. LAMPTON

December 17, 2013

Via First Class Mail

Peter Max Zimmerman, Esquire
People's Counsel for Baltimore County
The Jefferson Building 105 West Chesapeake Avenue, Room 204
Towson, MD 21204

Re: Dimick – 826 Chester Road
Case No. 2014-0123-X

Dear Mr. Zimmerman,

This is to follow up our telephone conversation regarding the above matter. I represent James Dimick, Jr. and Robert Dimick, owners of the subject property. The property was previously owned by their parents, James Dimick, Sr. and Helen Dimick.

The property has been used for many years as a fishing and shellfishing facility. Upon the deaths of James Dimick, Sr. and Helen Dimick, the operation has been conducted by James Jr. and Robert. In 1975, the County Council first addressed the zoning issues related to these operations in Baltimore County. Bill 98-75 provided that such operations would be permitted by special exception in certain zones and also provided a process by which existing operations would be grandfathered by use permit. A subsequent bill, Bill 139-83, further clarified this process.

Pursuant thereto, Mr. and Mrs. Dimick Sr. applied for a use permit on or about October 30, 1978 through Robert J. Romadka, Esquire, their counsel. A copy of Mr. Romadka's cover letter and the application (including Commissioner DiNenna's order) and a hand drawn site plan is attached. The order grants approval of the operation. The operation has continuously been in use since that time.

Several months ago, a complaint was filed with Baltimore County about the operation. The initial complaint was withdrawn when proof of the issued use permit was provided to the Code Enforcement Bureau. However, a second citation was issued regarding two issues; namely, whether the property was still used residentially and the area coverage of the operation on the lot. The matter proceeded to a hearing before Administrative Law Judge Stahl and his order is attached. Please note that he found that the property is used residentially but was unable to determine the extent of the lot coverage. He imposed a fine contingent upon an inspection of the property by David Gaine, Code Enforcement Inspector. Inspector

Peter Max Zimmerman, Esquire
December 17, 2013
Page 2

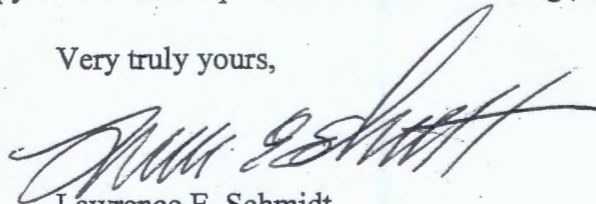
Gaine has been to the property (according to my clients) but he has not advised as to his measurements and findings.

In any event, my office has filed a Petition for Special Exception for the site. The purpose of the special exception is to clarify the extent of the previously issued use permit and also to request special exception relief for a Class II fishing and shellfishing facility. As you are aware, a Class II facility does not contain the restrictions which are included in the Class I definition. It is our intent to request that the Commissioner clearly define the scope of the operation so that there are no questions in the future.

I have recently been advised that the matter has been scheduled for hearing on January 10, 2014.

If requested, I will send you a copy of the ALJ's opinion and order following that hearing.

Very truly yours,



Lawrence E. Schmidt

LES/amf
Enclosures

cc: David Gaine, Inspector
Zoning Office (Attn: Gary)
James Dimick, Jr.
Robert Dimick

From: People's Counsel
To: Richards, Carl
Date: 12/6/2013 9:47 AM
Subject: James & Robert Dimick Case No. 2014-123-X

Mr. Richards,

Our office received the most recent agenda yesterday, and the above-referenced case mentions a 1979 use permit for a commercial fishing, crabbing and shellfishing operation. Our office would like a copy of the permit along with the site plan filed in connection with the 1979 permit. Would you please send these documents to us at mailstop 4204? If I need to contact someone else, please point me in the right direction.

Thank you in advance.

Rebecca M. Wheatley
Legal Secretary
Office of the People's Counsel for Baltimore County
410-887-2188 Phone
410-823-4236 Fax

12/11/13 G.A.
Contact - Larry Schmidt
Copy of use permit will be
given to people counsel
& a copy will be put in the
folder.



CBCK

PETITION FOR ZONING HEARING(S)

FLOOD

To be filed with the Department of Permits, Approvals and Inspections

To the Office of Administrative Law of Baltimore County for the property located at:

Address 826 Chester Road which is presently zoned DR 3.5

Deed References: 29021/00050 10 Digit Tax Account # 1504350490

Property Owner(s) Printed Name(s) James Dimick Jr. and Robert George Dimick

(SELECT THE HEARING(S) BY MARKING ☒ AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

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

1. ☐ a **Special Hearing** under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

2. ☒ a **Special Exception** under the Zoning Regulations of Baltimore County to use the herein described property for
Please see the attached.

3. ☐ a **Variance** from Section(s)

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons:
(Indicate below your hardship or practical difficulty or indicate below "TO BE PRESENTED AT HEARING". If you need additional space, you may add an attachment to this petition)

TO BE PRESENTED AT HEARING

Property is to be posted and advertised as prescribed by the zoning regulations.

I, or we, agree to pay expenses of above petition(s), 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.

Legal Owner(s) Affirmation: I / we do so 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 / these Petition(s).

Contract Purchaser/Lessee:

Name- Type or Print

Signature

Date

Mailing Address

City

State

BY

Zip Code

Telephone #

Email Address

Legal Owners (Petitioners):

James Dimick, Jr.

Robert George Dimick

Name #1 - Type or Print

Name #2 - Type or Print

Signature #1

Signature #2

826 Chester Road

Baltimore

MD

Mailing Address

City

State

21220

Zip Code

Telephone #

Email Address

Attorney for Petitioner:

Lawrence E. Schmidt, Smith, Gildea & Schmidt, LLC

Name- Type or Print

Signature

600 Washington Avenue, Suite 200

Towson

MD

Mailing Address

City

State

21204

(410) 821-0070

lschmidt@sgs-law.com

Zip Code

Telephone #

Email Address

Representative to be contacted:

Lawrence E. Schmidt, Smith, Gildea & Schmidt, LLC

Name- Type or Print

Signature

600 Washington Avenue, Suite 200

Towson

MD

Mailing Address

City

State

21204

(410) 821-0070

lschmidt@sgs-law.com

Zip Code

Telephone #

Email Address

CASE NUMBER 2014-0123-X

Filing Date 11/20/13

Do Not Schedule Dates:

Reviewer G H

Attachment to Petition for Zoning Relief

826 Chester Road

6th Councilmanic District

Special Exception to use the herein described property for:

1. A fishing and shellfishing facility, shoreline, Class II as provided in BCZR § 1B01.1.C.8 if the Administrative Law Judge does not determine that the plan updating the use permit for a commercial fishing, crabbing and shellfish operation dated March 2, 1979 renders this request moot; and
2. For such other and further relief as may be deemed necessary by the Administrative Law Judge for Baltimore County.

ZONING PROPERTY DESCRIPTION FOR #826 CHESTER ROAD

Beginning at a point on the south side of Chester Road which is 30 feet wide at the distance of 750 feet west of the centerline of Susquehanna Avenue which is 40 feet wide.

Being Lot No. 8 Section "C" in the subdivision of "Long Beach Estates" as recorded in the Baltimore County Plat Book No. 3, folio 178, containing 12,485 square feet. Located in the 15th Election District and 6th Council District.

Michael V. Moskunas
Professional Land Surveyor
Reg. No. 21175

Site Rite Surveying, Inc.
200 E. Joppa Road
Shell Building, Room 101
TOWSON, MD 21286
(410) 828-9060



DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS

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: 2014-0123-X

Petitioner: DIMICK

Address or Location: 826 Chester Road

PLEASE FORWARD ADVERTISING BILL TO:

Name: JASON T. VETTORI

Address: SMITH, GILDEA & SCHMIDT, LLC

600 WASHINGTON AVE., STE. 200

TOWSON, MD 21204

Telephone Number: (410) 821-0070

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

No.

94801

Date:

2/11/14

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Obj	Dept Obj	BS Acct	Amount
001	806	0000		6150				385.00

Total:

385.00

Rec
From:

J. Carroll Holzer, Esq

For:

2014-0123-X

826 Chester Rd

CK # 3547

DISTRIBUTION

WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

GOLD - ACCOUNTING

PLEASE PRESS HARD!!!!

PAID RECEIPT

RECEIVED BY: [Signature]

DATE: 2/11/2014

AMOUNT: \$385.00

RECEIVED BY: [Signature]

DATE: 2/11/2014

AMOUNT: \$385.00

RECEIVED BY: [Signature]

DATE: 2/11/2014

AMOUNT: \$385.00

RECEIVED BY: [Signature]

DATE: 2/11/2014

AMOUNT: \$385.00

RECEIVED BY: [Signature]

DATE: 2/11/2014

AMOUNT: \$385.00

RECEIVED BY: [Signature]

DATE: 2/11/2014

AMOUNT: \$385.00

RECEIVED BY: [Signature]

DATE: 2/11/2014

AMOUNT: \$385.00

RECEIVED BY: [Signature]

DATE: 2/11/2014

AMOUNT: \$385.00

RECEIVED BY: [Signature]

DATE: 2/11/2014

AMOUNT: \$385.00

RECEIVED BY: [Signature]

DATE: 2/11/2014

AMOUNT: \$385.00

RECEIVED BY: [Signature]

DATE: 2/11/2014

AMOUNT: \$385.00

RECEIVED BY: [Signature]

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

No. 105032

Date: 11/20/13

PAID RECEIPT

22/201 11/20/13 10:45:00
RECEIPT # 00000000000000000000
5 500.00
Receipt 100 1-11-13
\$500.00 1.00 CA
Baltimore 1-11-13

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
001	806	0000		0150				500

Total: 500.00

Rec From: Smith, Gilman, & Schmidt, LLC
For: Special 16 Exception
2014-0123-X
826 Chester Rd

CASHIER'S
VALIDATION

DISTRIBUTION

WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING
PLEASE PRESS HARD!!!!



THE BALTIMORE SUN MEDIA GROUP

Baltimore, Maryland 21278-0001

December 19, 2013

THIS IS TO CERTIFY, that the annexed advertisement was published in the following newspaper published in Baltimore County, Maryland, ONE TIME, said publication appearing on December 19, 2013

☐ The Jeffersonian

THE BALTIMORE SUN MEDIA GROUP

By: Susan Wilkinson

Susan Wilkinson

NOTICE OF ZONING HEARING

The Administrative Law Judges 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: #2014-0123-X

826 Chester Road

S/s Chester Road, 750 ft. w/of centerline of Susquehanna Avenue

15th Election District - 6th Councilmanic District

Legal Owner(s): James Dimick, Jr., & Robert George Dimick

Special Exception for a fishing and shellfishing facility, shoreline, Class II as provided in BCZR section 1B01.1.C.8 if the Administrative Law Judge does not determine that the plan updating the use permit for a commercial fishing, crabbing and shellfish operation dated March 2, 1979 renders this request moot; and for such other and further relief as may be deemed necessary by the Administrative Law Judge for Baltimore County

Hearing: Friday, January 10, 2014 at 1:30 p.m. in Room 205, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204.

ARNOLD JABLON, DIRECTOR OF PERMITS, APPROVALS AND INSPECTIONS FOR BALTIMORE COUNTY

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Administrative Hearings Office at (410) 887-3868.

(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

12/26/13 December 19

962581

CERTIFICATE OF POSTING

2014-0123-X

RE: Case No.:

Petitioner/Developer:

James Dimick Jr & Robert Dimick

January 10, 2014

Date of Hearing/Closing: _____

**Baltimore County Department of
Permits, Approvals and Inspections
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, Maryland 21204**

Attn: Kristen Lewis:

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:

826 Chester Rd

December 21, 2013

The sign(s) were posted on

(Month, Day, Year)

Sincerely,

December 21, 2013

(Signature of Sign Poster)

(Date)

SSG Robert Black

(Print Name)

1508 Leslie Road

(Address)

Dundalk, Maryland 21222

(City, State, Zip Code)

(410) 282-7940

(Telephone Number)



TO: PATUXENT PUBLISHING COMPANY
Thursday, December 19, 2013 Issue - Jeffersonian

Please forward billing to:

Jason Vettori
Smith, Gildea & Schmidt, LLC
600 Washington Ave., Ste. 200
Towson, MD 21204

410-821-0070

NOTICE OF ZONING HEARING

The Administrative Law Judge 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: 2014-0123-X

826 Chester Road

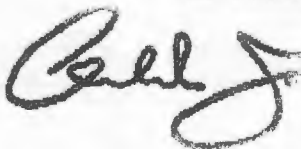
S/s Chester Road, 750 ft. w/of centerline of Susquehanna Avenue

15th Election District – 6th Councilmanic District

Legal Owners: James Dimick, Jr., & Robert George Dimick

Special Exception for a fishing and shellfishing facility, shoreline, Class II as provided in BCZR section 1B01.1.C.8 if the Administrative Law Judge does not determine that the plan updating the use permit for a commercial fishing, crabbing and shellfish operation dated March 2, 1979 renders this request moot; and for such other and further relief as may be deemed necessary by the Administrative Law Judge for Baltimore County.

Hearing: Friday, January 10, 2014 at 1:30 p.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204



Arnold Jablon
Director of Permits, Approvals and Inspections for Baltimore County

- NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.
- (2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.



KEVIN KAMENETZ
County Executive

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections

December 12, 2013

NOTICE OF ZONING HEARING

The Administrative Law Judges 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: 2014-0123-X

826 Chester Road

S/s Chester Road, 750 ft. w/of centerline of Susquehanna Avenue

15th Election District – 6th Councilmanic District

Legal Owners: James Dimick, Jr., & Robert George Dimick

Special Exception for a fishing and shellfishing facility, shoreline, Class II as provided in BCZR section 1B01.1.C.8 if the Administrative Law Judge does not determine that the plan updating the use permit for a commercial fishing, crabbing and shellfish operation dated March 2, 1979 renders this request moot; and for such other and further relief as may be deemed necessary by the Administrative Law Judge for Baltimore County.

Hearing: Friday, January 10, 2014 at 1:30 p.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204

A handwritten signature in black ink, appearing to read "Arnold Jablon".

Arnold Jablon
Director

AJ:kl

C: Lawrence Schmidt, 600 Washington Ave., Ste. 200, Towson 21204
James Dimick, Jr. & Robert Dimick, 826 Chester Road, Baltimore 21220

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY SATURDAY, DECEMBER 21, 2013**
- (2) **HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.**
- (3) **FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.**



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

March 13, 2014

NOTICE OF ASSIGNMENT

IN THE MATTER OF:

14-123-X

James Dimick, Jr. and Robert G. Dimick
826 Chester Road
S/s of Chester Rd 750' w of c/l Susquehanna Ave
15th Election District; 6th Councilmanic District

Re: Petition for Special Exception to use the subject property as a fishing and shellfishing facility, shoreline, Class II as provided in BCZR §1B01.1.C.8 if the Administrative Law Judge does not determine that the plan updating the use permit for a commercial fishing, crabbing, and shellfish operation dated March 2, 1979 renders this request moot.

1/16/14

Opinion and Order issued by the Administrative Law Judge wherein the requested relief was GRANTED WITH CONDITIONS.

ASSIGNED FOR: THURSDAY, APRIL 24, 2014, AT 10:00 A.M.

LOCATION:

Hearing Room #2, Second Floor, Suite 206
Jefferson Building, 105 W. Chesapeake Avenue, Towson

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.

For further information, including our inclement weather policy, please visit our website:
www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington
Administrator

c: Counsel for Petitioner/Legal Owner
Petitioner/Legal Owner

: Lawrence E. Schmidt, Esquire
: James Dimick, Jr. and Robert G. Dimick

Counsel for Protester/Appellant
Protestant/Appellant

: J. Carroll Holzer, Esquire
: Glenn Dowell

Bernadette Moskunas, Site Rite Surveying, Inc.
Allen Robertson
Tom Jenkins
Office of People's Counsel
Arnold Jablon, Director/PAI
Nancy West, Assistant County Attorney

Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Michael Field, County Attorney, Office of Law



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

April 28, 2014

NOTICE OF ASSIGNMENT

IN THE MATTER OF:

14-123-X

James Dimick, Jr. and Robert G. Dimick
826 Chester Road
S/s of Chester Rd 750' w of c/l Susquehanna Ave
15th Election District; 6th Councilmanic District

Re: Petition for Special Exception to use the subject property as a fishing and shellfishing facility, shoreline, Class II as provided in BCZR §1B01.1.C.8 if the Administrative Law Judge does not determine that the plan updating the use permit for a commercial fishing, crabbing, and shellfish operation dated March 2, 1979 renders this request moot.

1/16/14 Opinion and Order issued by the Administrative Law Judge wherein the requested relief was GRANTED WITH CONDITIONS.

ASSIGNED FOR: TUESDAY, June 10, 2014, AT 10:00 A.M., Day 2

LOCATION:

Hearing Room #2, Second Floor, Suite 206
Jefferson Building, 105 W. Chesapeake Avenue, Towson

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.

For further information, including our inclement weather policy, please visit our website:
www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington
Administrator

c: Counsel for Petitioner/Legal Owner
Petitioner/Legal Owner

: Lawrence E. Schmidt, Esquire
: James Dimick, Jr. and Robert G. Dimick

Counsel for Protestant/Appellant
Protestant/Appellant

: J. Carroll Holzer, Esquire
: Glenn Dowell

Bernadette Moskunas, Site Rite Surveying, Inc.
Allen Robertson
Tom Jenkins
Office of People's Counsel
Arnold Jablon, Director/PAI
Nancy West, Assistant County Attorney

Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Michael Field, County Attorney, Office of Law



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

June 13, 2014

NOTICE OF DELIBERATION

IN THE MATTER OF: James Dimick, Jr. and Robert G. Dimick
826 Chester Road
14-123-X S/s of Chester Rd 750' w of c/l Susquehanna Ave
15th Election District; 6th Councilmanic District

Re: Petition for Special Exception to use the subject property as a fishing and shellfishing facility, shoreline, Class II as provided in BCZR §1B01.1.C.8 if the Administrative Law Judge does not determine that the plan updating the use permit for a commercial fishing, crabbing, and shellfish operation dated March 2, 1979 renders this request moot.

1/16/14 Opinion and Order issued by the Administrative Law Judge wherein the requested relief was GRANTED WITH CONDITIONS.

This matter having been heard on April 24, 2014 and June 10, 2014, a public deliberation has been scheduled for the following:

DATE AND TIME: TUESDAY, AUGUST 19, 2014 at 9:30 a.m.

LOCATION: Jefferson Building - Second Floor
Hearing Room #2 - Suite 206
105 W. Chesapeake Avenue

**NOTE: Closing briefs are due on Monday, June 30, 2014 by 3:00 p.m.
(Original and three [3] copies)**

NOTE: ALL PUBLIC DELIBERATIONS ARE OPEN SESSIONS; HOWEVER, ATTENDANCE IS NOT REQUIRED. A WRITTEN OPINION /ORDER WILL BE ISSUED BY THE BOARD AND A COPY SENT TO ALL PARTIES.

For further information, including our inclement weather policy, please visit our website www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington
Administrator

c: See attached distribution list

Distribution List
Deliberation Notice
June 13, 2014
Page 2

c:	Counsel for Petitioner/Legal Owner	: Lawrence E. Schmidt, Esquire
	Petitioner/Legal Owner	: James Dimick, Jr. and Robert G. Dimick
	Counsel for Protestant/Appellant	: J. Carroll Holzer, Esquire
	Protestant/Appellant	: Glenn Dowell

Bernadette Moskunas, Site Rite Surveying, Inc.
Allen Robertson
Tom Jenkins
Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Arnold Jablon, Director/PAI
Andrea Van Arsdale, Director/Department of Planning
Nancy West, Assistant County Attorney
Michael Field, County Attorney, Office of Law



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 28, 2015

NOTICE OF DELIBERATION ON MOTION FOR RECONSIDERATION

IN THE MATTER OF: James Dimick, Jr. and Robert G. Dimick
826 Chester Road
14-123-X S/s of Chester Rd 750' w of c/l Susquehanna Ave
15th Election District; 6th Councilmanic District

A public deliberation on Petitioner's Motion for Reconsideration and responses thereto, has been scheduled for the following:

DATE AND TIME: TUESDAY, SEPTEMBER 1, 2015 at 9:00 a.m.

LOCATION: Jefferson Building - Second Floor
Hearing Room #2 - Suite 206
105 W. Chesapeake Avenue

NOTE: ALL PUBLIC DELIBERATIONS ARE OPEN SESSIONS; HOWEVER, ATTENDANCE IS NOT REQUIRED. A WRITTEN OPINION /ORDER WILL BE ISSUED BY THE BOARD AND A COPY SENT TO ALL PARTIES.

For further information, including our inclement weather policy, please visit our website www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington
Administrator

c: Counsel for Petitioner/Legal Owner
Petitioner/Legal Owner

: Lawrence E. Schmidt, Esquire
: James Dimick, Jr. and Robert G. Dimick

Counsel for Protestant/Appellant
Protestant/Appellant

: J. Carroll Holzer, Esquire
: Glenn Dowell

Bernadette Moskunus, Site Rite Surveying, Inc.
Tom Jenkins
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Michael Field, County Attorney, Office of Law

Allen Robertson
Office of People's Counsel
Arnold Jablon, Director/PAI
Nancy West, Assistant County Attorney



KEVIN KAMENETZ
County Executive

ARNOLD JABLON
*Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections*

January 8, 2014

James Dimick, Jr
Robert George Dimick
826 Chester Road
Baltimore MD 21220

RE: Case Number: 2014-0123 X, Address: 826 Chester Road

Dear Messrs. Dimick:

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits, Approvals, and Inspection (PAI) on November 20, 2013. This letter is not an approval, but only a **NOTIFICATION**.

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,

A handwritten signature in black ink, reading "W. Carl Richards, Jr.", is written over the typed name.

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR: jaf

Enclosures

c: People's Counsel
Lawrence E. Schmidt, Esquire, 600 Washington Avenue, Suite 200, Towson MD 21204

Martin O'Malley, Governor
Anthony G. Brown, Lt. Governor



James T. Smith, Jr., Secretary
Melinda B. Peters, Administrator

Date: 11/27/13

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

RE: Baltimore County
Item No. 2014-0123-X
Spectral Exception
James Dimick, Sr. and
Robert George Dimick
826 Chester Road.

Dear Ms. Lewis:

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. 2014-0123-X

Should you have any questions regarding this matter, please contact Richard Zeller at 410-545-5598 or 1-800-876-4742 extension 5598. Also, you may E-mail him at (rzeller@sha.state.md.us).

Sincerely,

Steven D. Foster, Chief/
Development Manager
Access Management Division

SDF/raz

My telephone number/toll-free number is _____
Maryland Relay Service for Impaired Hearing or Speech 1.800.735.2258 Statewide Toll Free

Street Address: 707 North Calvert Street • Baltimore, Maryland 21202 • Phone 410.545.0300 • www.roads.maryland.gov

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits, Approvals
And Inspections

DATE: November 29, 2013

FROM: Dennis A. Kennedy^{DAK}, Supervisor
Bureau of Development Plans
Review

SUBJECT: Zoning Advisory Committee Meeting
For December 2, 2013
Item No. 2014- 0120, 0121, 0122, 0123, 0124 and 0125

The Bureau of Development Plans Review has reviewed the subject-zoning items, and we have no comments.

DAK:CEN
Cc: file

G:\DevPlanRev\ZAC -No Comments\ZAC12022013 -.doc

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: December 18, 2013

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: 826 Chester Road

INFORMATION:

Item Number: 14-123

Petitioner: James Dimick, Jr.

Zoning: DR 3.5

Requested Action: Special Exception

RECEIVED

DEC 20 2013

OFFICE OF ADMINISTRATIVE HEARINGS

SUMMARY OF RECOMMENDATIONS:

The Department of Planning has reviewed the petitioner's request and accompanying site plan. The Department of Planning does not oppose the petitioner's special exception request. Before final approval is granted the Department of Planning requests that the following conditions be met:

1. The subject property shall be properly cleaned up and organized neatly. This condition shall be maintained throughout operations. The actual shell fishing related operations shall be limited to 25% of the subject property (as outlined on the plan accompanying the subject petition).
2. No signage (existing or proposed) of any type shall be placed on the property or dwelling, other than that which is required for public safety.
3. The site shall be adequately landscaped to provide vegetative screening of shell fishing operations from adjacent neighbors. Utilize screening that is no greater than 6' at maturity to avoid obstruction of the neighbors' view of the shoreline
4. There shall be no more than 2 boats at any one time at the site. Boats can be no larger than 45' in length.
5. There shall be no retail sales on the premises.

For further information concerning the matters stated here in, please contact Matt Diana or Dennis Wertz at 410-887-3480.

Prepared By:

Division Chief:
AVA/LL:cjm

12/23/13
TO WV



BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: December 18, 2013

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: 826 Chester Road

INFORMATION:

Item Number: 14-123

Petitioner: James Dimick, Jr.

Zoning: DR 3.5

Requested Action: Special Exception

SUMMARY OF RECOMMENDATIONS:

The Department of Planning has reviewed the petitioner's request and accompanying site plan. The Department of Planning does not oppose the petitioner's special exception request. Before final approval is granted the Department of Planning requests that the following conditions be met:

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5. There shall be no retail sales on the premises.

For further information concerning the matters stated here in, please contact Matt Diana or Dennis Wertz at 410-887-3480.

Prepared By:

Division Chief:
AVA/LL:cjm

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



TO: Hon. Lawrence M. Stahl; Managing Administrative Law Judge
Office of Administrative Hearings

FROM: David Lykens, Department of Environmental Protection and Sustainability
(DEPS) - Development Coordination

DATE: January 9, 2014

SUBJECT: DEPS Comment for Zoning Item # 2014-0123-X
Address 826 Chester Road
(Dimick & Dimick Property)

Zoning Advisory Committee Meeting of November 25, 2013.

EPS has reviewed the subject zoning petition for compliance with the goals of the State-mandated Critical Area Law listed in the Baltimore County Zoning Regulations, Section 500.14. Based upon this review, we offer the following comments:

1. Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands;

The subject property is located within a Limited Development Area (LDA) and a Buffer Management Area (BMA) and is subject to Critical Area requirements. No new development activities are proposed; the applicant is proposing to allow the continuation of a existing commercial fishing, crabbing, and shellfishing operation. The lot is waterfront and is developed with a single family dwelling, driveway, shed with freezer, and a pier. The yard between the house and water is used for storage of commercial fishing/crabbing equipment. As no new development activity is proposed, and the use appears to have been in place since 1979, the relief requested by the applicant will result in minimal adverse impacts to water quality.

2. Conserve fish, plant, and wildlife habitat;

This property is waterfront. Commercial fishing, crabbing and shellfish operations are permitted in the Critical Area. No new development activity on site is proposed which will help conserve fish, plant, and wildlife habitat in the Chesapeake Bay.

3. Be consistent with established land use policies for development in the Chesapeake Bay Critical Area, which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement and activities of persons in that area can create adverse environmental impacts;

Based on the information provided, the relief requested will be consistent with established land-use policies.

Reviewer: *Regina Esslinger – Environmental Impact Review (EIR)*

RE: PETITION FOR SPECIAL EXCEPTION * BEFORE THE OFFICE
 826 Chester Road; S/S Chester Road, 750' *
 W c/line of Susquehanna Avenue * OF ADMINSTRATIVE
 15th Election & 6th Councilmanic Districts *
 Legal Owner(s): James & Robert Dimick * HEARINGS FOR
 Petitioner(s) * BALTIMORE COUNTY
 * 2014-123-X

* * * * *

ENTRY OF APPEARANCE

Pursuant to Baltimore County Charter § 524.1, please enter the appearance of People's Counsel for Baltimore County as an interested party 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.

RECEIVED

DEC 06 2013

Peter Max Zimmerman

PETER MAX ZIMMERMAN
 People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO
 Deputy People's Counsel
 Jefferson Building, Room 204
 105 West Chesapeake Avenue
 Towson, MD 21204
 (410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of December, 2013, a copy of the foregoing Entry of Appearance was mailed to Lawrence Schmidt, Esquire, Smith, Gildea & Schmidt, 600 Washington Avenue, Suite 200, Towson, Maryland 21204, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
 People's Counsel for Baltimore County

KEVIN KAMENETZ
County Executive



LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

February 25, 2014

Lawrence E. Schmidt, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue
Suite 200
Towson, Maryland 21204



RE: **APPEAL TO BOARD OF APPEALS**
Case No. 2014-0123-X
Location: 826 Chester Road

Dear Mr. Schmidt:

Please be advised that an appeal of the above-referenced case was filed in this Office on February 11, 2014. 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 contact the Board at 410-887-3180.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Stahl".

LAWRENCE M. STAHL
Managing Administrative Law Judge
for Baltimore County

LMS:sln

c: Baltimore County Board of Appeals
People's Counsel for Baltimore County
J. Carroll Holzer, Esquire, 508 Fairmount Avenue, Towson, Maryland 21286
Bernadette Moskunus, 200 E. Joppa Road, Room 101, Towson, Maryland 21286
Allen Robertson, 1608 Holly Tree Road, Middle River, Maryland 21220
Glenn Dowell, 828 Chester Road, Baltimore, Maryland 21220
Tom Jeakins, 829 Chester Road, Baltimore, Maryland 21220

Office of Administrative Hearings
105 West Chesapeake Avenue, Suite 103 | Towson, Maryland 21204 | Phone 410-887-3868 | Fax 410-887-3468
www.baltimorecountymd.gov

APPEAL

Petition for Special Exception
(826 Chester Road)
15th Election District – 6th Councilmanic District
Legal Owners: James Dimick, Jr. & Robert George Dimick
Case No. 2014-0123-X

- ✓ Petition for Special Exception (November 20, 2013)
- ✓ Zoning Description of Property
- ✓ Notice of Zoning Hearing (December 12, 2013)
- ✓ Certificate of Publication (December 19, 2013)
- ✓ Certificate of Posting (December 21, 2013) by SSG Robert Black
- ✓ Entry of Appearance by People's Counsel (December 6, 2013)
- ✓ Petitioner(s) Sign-in Sheet – 1 page
- ✓ Citizen(s) Sign-in Sheet – 1 page
- ✓ Zoning Advisory Committee Comments
- ✓ Petitioner(s) Exhibits -
 - ✓ 1 Plan
 - ✓ 2A & 2B Aerial photos
 - ✓ 3A-3D Color photos of site
 - ✓ 4. Cover letter and use permit (10-30-78)
- ✓ Protestants' Exhibits -
 - ✓ 1. Color photos
- ✓ Miscellaneous (Not Marked as Exhibits) – Motion for Reconsideration filed by Lawrence Schmidt on dated 2/11/2014, E-mail dated 2/19/2014, Copy of Commercial License and E-mails from Allen Robertson dated 1/10/2014 and 1/13/2014.
- ✓ Administrative Law Judge Order and Letter (GRANTED with Conditions – January 16, 2014)
- ✓ Managing Administrative Law Judge Findings of Fact and Conclusion of Law (Violation Case #136762) dated November 25, 2013.
- ✓ Notice of Appeal – February 11, 2014 by J. Carroll Holzer

APPEAL

**Petition for Special Exception
(826 Chester Road)
15th Election District – 6th Councilmanic District
Legal Owners: James Dimick, Jr. & Robert George Dimick
Case No. 2014-0123-X**

Petition for Special Exception (November 20, 2013)

Zoning Description of Property

Notice of Zoning Hearing (December 12, 2013)

Certificate of Publication (December 19, 2013)

Certificate of Posting (December 21, 2013) by SSG Robert Black

Entry of Appearance by People's Counsel (December 6, 2013)

Petitioner(s) Sign-in Sheet – 1 page

Citizen(s) Sign-in Sheet – 1 page

Zoning Advisory Committee Comments

Petitioner(s) Exhibits -

- 1 Plan
- 2A & 2B Aerial photos
- 3A-3D Color photos of site
- 4. Cover letter and use permit (10-30-78)

Protestants' Exhibits –

- 1. Color photos

Miscellaneous (Not Marked as Exhibits) – Motion for Reconsideration filed by Lawrence Schmidt on dated 2/11/2014, E-mail dated 2/19/2014, Copy of Commercial License and E-mails from Allen Robertson dated 1/10/2014 and 1/13/2014.

Administrative Law Judge Order and Letter (GRANTED with Conditions – January 16, 2014)

Managing Administrative Law Judge Findings of Fact and Conclusion of Law (Violation Case #136762) dated November 25, 2013.

Notice of Appeal – February 11, 2014 by J. Carroll Holzer

Address List

Legal Owner/Petitioner:

Lawrence E. Schmidt, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Ste 200
Towson, MD 21204

James Dimick, Jr.
Robert G. Dimick
826 Chester Road
Baltimore, MD 21220

Bernadette Moskunas
SiteRite, Inc.
200 E. Joppa Rd, Rm 101
Towson, MD 21286

Protestant/Appellant

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

Glenn Dowell
828 Chester Road
Baltimore, MD 21220

Interested Persons

Allen Roberston
1608 Holly Tree Road
Baltimore, MD 21220

Tom Jenkins
824 Chester Road
Baltimore, MD 21220

Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Director/PAI
Nancy West, Assistant County Attorney
Michael Field, County Attorney, Office of Law

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: James and George Dimick

14-123-X

DATE: August 19, 2014

BOARD/PANEL: Andrew M. Belt, Panel Chairman
Maureen E. Murphy
Richard A. Wisner

RECORDED BY: Tammy McDiarmid, Legal Secretary

PURPOSE: To deliberate the following:

Petition for Special Exception to allow the use of the subject property for a fishing and shell fishing facility, shoreline, Class II as provided in the BCZR if the ALJ does not determine that the plan updating the use permit for a commercial fishing, crabbing, and shellfish operation dated March 2, 1979 render this request moot.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

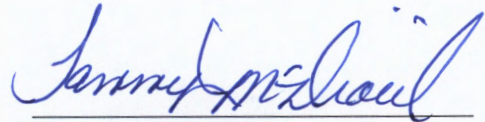
STANDING

- The Board reviewed the history of this matter. The use was originally grandfathered as a Class I fishing and shellfishing facility as the property was used as a principal residence. The Board found that since no one lives in the home on the property, only a Class II facility permit is at issue. The Board discussed that this is not a code enforcement case, but a special exception case. The use is allowed as a special exception, but the neighbors' enjoyment and value of their property need to be considered.
- The Board discussed that there was opposition to the request from a neighbor. The concerns involve the increased intensity of the shellfishing operation, the storage of crab pots, the cleaning and painting of crab pots, the deliveries for fuel and bait to the property, the potential adverse effect to the value of the neighboring properties, the obstruction of water views by the storage of red crab pots during season and off-season, and environmental concerns.
- The Petitioner argued that the storage of crab pots 4 high on the property is no more obstructive to the water views than a fence or tree would be. The Petitioner currently stores some of their crab pots off-site, during the off season. During the season most of the crab pots are in the water, but need to be removed and brought to the subject property to be power washed and painted. The Petitioners stated that the shellfishing operation is watched closely by environmental regulators.
- The Board discussed that the shellfishing use on the property has increased over the years. Traffic in the area is a result of a Marina which is located close by, not the shellfishing operation. There is fuel delivery approximately 3 times per week, as well as bait delivery. There is also crab pick-up at the end of each day. There are no signs or retail sales on the property. It is difficult to set specific hours of operation on the shellfishing facility due to the nature of the business, but generally it is from sun up to sun down. Fuel and bait deliveries generally occur during normal business hours of 9:00 a.m. to 5:00 p.m. Parking on the subject property currently is not a problem.
- The Board determined that the fishing and shell fishing facility, shoreline, Class II, permit will be granted, and they would impose conditions in their Opinion.

FINAL DECISION: After a thorough review of the facts, testimony, and law in the matter, the Board unanimously agreed to GRANT the requested relief with conditions.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place on the above date regarding this matter. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order to be issued by the Board.

Respectfully Submitted,



Tammy McDiarmid

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: James and George Dimick

14-123-X

DATE: September 1, 2015

BOARD/PANEL: Andrew M. Belt, Panel Chairman
Maureen E. Murphy

RECORDED BY: Tammy McDiarmid, Legal Secretary

PURPOSE: To deliberate the following:

Petitioner's Motion for Reconsideration to Condition No. 2 which relates to the storage of crab pots on the property, and Condition No. 4 which relates to the hours of operation regarding maintenance of crab pots.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

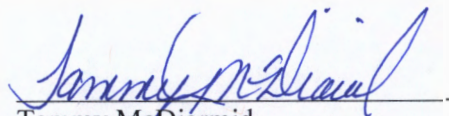
STANDING

- The Board noted that Richard Wisner was a member of the panel which heard all of the original testimony in this case, but was not reappointed to the Board.
- The Board discussed the Petitioner's Motion for Reconsideration as it relates to the storage of crab pots. The Board noted that extensive testimony was taken on this matter including neighbors' right to water view, and the Petitioner's right to make a living. The Board took all testimony into consideration and tried to come to a solution that all parties can live with. They believe they made the correct decision. Accordingly, the request to amend Condition No. 2 is denied.
- The Board discussed Condition No. 4 which relates to the hours of operation for maintenance to the crab pots. The Board believes that an error was made in their original decision. The Board will grant the Motion for Reconsideration to Condition No. 4 and will allow the cleaning, repair, power washing and painting of crab pots to occur between the hours of 9:00 a.m. to sundown, Monday thru Friday.

FINAL DECISION: After a thorough review of the facts, testimony, and law in the matter, the Board unanimously agreed to DENY the request to amend Condition No. 2, and GRANT the request to amend Condition No. 4 to allow the cleaning, repair, power washing and painting of crab pots to occur between the hours of 9:00 a.m. to sundown, Monday thru Friday.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place on the above date regarding this matter. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order to be issued by the Board.

Respectfully Submitted,



Tammy McDiarmid

Office of Administrative Hearings for Baltimore County
105 West Chesapeake Avenue Suite 103
Towson, Maryland 21204

In the Matter of

Civil Citation No. 136762

James Dimick
Robert George Dimick

826 Chester Road

Respondent

FINDINGS OF FACT AND CONCLUSIONS OF LAW
FINAL ORDER OF THE ADMINISTRATIVE LAW JUDGE

This matter came before the Administrative Law Judge on November 20, 2013 for a Hearing on a citation for violations under the Baltimore County Zoning Regulations (BCZR) section 206, 402: Illegal conversion of a home into a crabbing business; Illegal conversion and violation with Judges Order to have this as a primary residence with 25% crabbing on residential property.

On September 9, 2013, pursuant to BCC § 3-6-205, Inspector David Gaine issued a Code Enforcement & Inspections Citation. The citation was sent to the Respondent by 1st class mail to the last known address listed in the Maryland State Tax Assessment files.

The citation proposed a civil penalty of \$10,000.00 (Ten thousand dollars).

The following persons appeared for the Hearing and testified: Lawrence E. Schmidt, Esquire representing Robert and James Dimick, Respondents, and Glenn Dowell, Neighbor and David Gaine, Baltimore County Code Enforcement Officer.

Evidence was presented that upon the complaint of a neighbor, an inspection of the subject property was carried out on 9/9/13. The Inspector testified that he went to the front door and knocked, but received no response. He also viewed the property and estimated that he believed more than 25% of the site was being used to store crab pots and related crabbing gear. He issued, mailed and posted the Citation herein. Photographs taken by the Inspector were entered into evidence. The Inspector pointed out that the applicable regulations allowed the crabbing activity at a primary residence, but only to the extent of 25% of the area of the site in question. The Inspector did relate that after the Citation was issued, he received a fax of the Respondent's driver's license, issued before the Citation, showing that the subject property was his residence address.

Glen Dowell, another neighbor, testified that he has been the neighbor to the site for some 27 years and has always had good relations with the Respondents. He was concerned about the placement of the crab pots blocking his view of the water and noted that the original complainant (the neighbor on the other side of the subject site) had already sold his property. It should be noted that the Complainant was not present at the hearing.

Counsel for the Respondent entered the fax of the Respondent's driver's license into evidence, as well as the Assessment Notice for the property issued by the Maryland Department of Assessments and Taxation, which noted that the property was owned by the Respondent and listed it as the Respondent's primary residence. He also proffered (and the Respondent confirmed and adopted under oath) that it was his client's belief that no more than 25% of the subject site was being utilized for crabbing activities.

The Respondent has established that the property is the primary residence, and the County has failed to meet its burden on that point. However, the Inspector's testimony, based on his experience is clearly that the footage utilized for crabbing purposes is in excess of the 25% permitted.

Therefore, having heard the testimony and evidence presented at the Hearing:

IT IS ORDERED by the Administrative Law Judge that a civil penalty be imposed in the amount of \$2,500.00 (Two thousand five hundred dollars).

IT IS FURTHER ORDERED that the \$2,500.00 civil penalty be suspended in full.

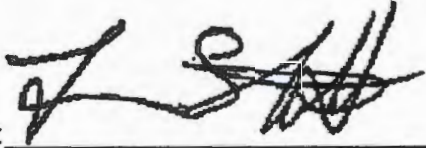
IT IS FURTHER ORDERED that the Respondents will, without any further delay, allow the County Inspector in this matter to enter upon the subject premises to definitively measure and ascertain the permitted 25% of the site which could be utilized for crabbing activities.

IT IS FURTHER ORDERED that the remaining \$2,500.00 civil penalty will be imposed if the subject property is not brought into compliance by November 27, 2013.

IT IS FURTHER ORDERED that if the subject property is brought into compliance pursuant to this Order, the remaining \$2,500.00 civil penalty will be imposed if there is a subsequent finding against the Respondent for the same violation.

IT IS FURTHER ORDERED that if not paid within thirty days of billing, the civil penalty AND any expenses incurred by Baltimore County, as authorized above, shall be imposed and placed as a lien upon the property.

ORDERED this ___25___ day of November 2013

Signed: 

Lawrence M. Stahl
Managing Administrative Law Judge

NOTICE: Pursuant to §3-6-301(a) of the Baltimore County Code, the Respondent or Baltimore County may appeal this order to the Baltimore County Board of Appeals within fifteen (15) days from the date of this order; any such appeal requires the filing of a petition setting forth the grounds for appeal, payment of a filing fee of \$225.00 and the posting of security in the amount of the penalty assessed.



Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson, Maryland 21204

410-887-2188
Fax: 410-823-4236

RECEIVED
JUN 18 2015

BALTIMORE COUNTY
BOARD OF APPEALS

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

June 18, 2015

Krysundra "Sunny" Cannington, Administrator
Board of Appeals of Baltimore County
105 West Chesapeake Avenue, Suite 203
Towson, Maryland 21204

Re: James & Robert Dimick
Case No.: 2014-123-X

Dear Ms. Cannington,

Thank you for your letter dated June 18, 2015. Our office has no objection to the disposition of Petitioners' Motion for Reconsideration by the two remaining Board panel members, Andrew Belt and Maureen Murphy. We are willing and able to sign a stipulation to that effect. Under the circumstances, we hope that the Board will be in a position to deliberate and decide this matter without the necessity of appointing a new third panel member.

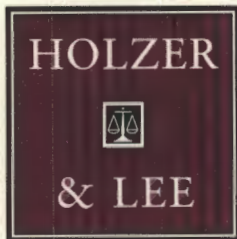
Thank you for your consideration.

Sincerely

A handwritten signature in blue ink that reads "Peter Max Zimmerman". The signature is fluid and cursive, with the first name "Peter" and last name "Zimmerman" clearly legible.

Peter Max Zimmerman
People's Counsel for Baltimore County

cc: J. Carroll Holzer, Esquire
Lawrence E. Schmidt, Esquire



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

~~XXXXXXXXXXXX~~

E-Mail: jcholzer38@gmail.com

March 19, 2015
#8094

RECEIVED
MAR 25 2015

BALTIMORE COUNTY
BOARD OF APPEALS

Mr. Andrew M. Belt
Panel Chairman
Baltimore County Board of Appeals
Jefferson Building
105 West Chesapeake Avenue
Towson, Maryland 21204

RE: *James and George Dimick*
Case No: 2014-123-X

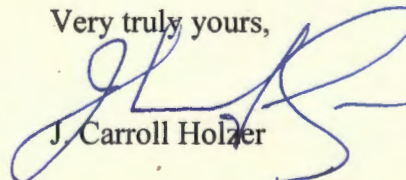
Dear Chairman Belt:

In the above-captioned case, Minutes of Deliberation were held on August 19, 2014. In reviewing the Minutes of Deliberation, the Board agreed to grant the requested relief with conditions. Those conditions were not articulated in the Minutes of Deliberation. However on August 28, 2014, I wrote the Board a letter setting forth what I believe were some of the conditions that were imposed on the Applicants.

Among those conditions were the Applicants were limited to use of twenty-five percent (25%) of their property for their operation, that the crab pots could only be stacked two (2) high and in the winter months, all crab pots were to be removed from the site. Those conditions were satisfactory to my client. It is now March 20, 2015 and the Board has indicated to me that the Final Opinion has not been issued by the Board. I would respectfully request that the conditions be clearly articulated in the Board's Decision when it is rendered.

Thank you for your attention to this matter.

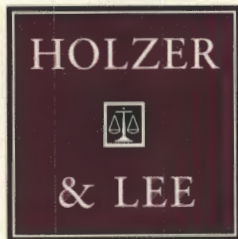
Very truly yours,



J. Carroll Holzer

JCH:mlg

cc: Peter Max Zimmerman, Esquire
Lawrence E. Schmidt, Esquire
Mr. Glenn Dowell
Ms. Maureen E. Murphy
Mr. Richard A. Wisner



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

August 28, 2014
#8094

RECEIVED
SEP 02 2014

BALTIMORE COUNTY
BOARD OF APPEALS

Mr. Andrew M. Belt
Panel Chairman
Baltimore County Board of Appeals
Jefferson Building
105 West Chesapeake Avenue
Towson, Maryland 21204

RE: *James and George Dimick*
Case No: 2014-123-X

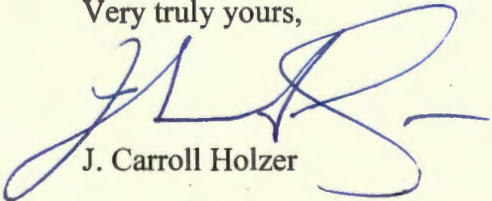
Dear Chairman Belt:

I received the Minutes of Deliberation of the Board in the above-captioned matter. The Minutes reflect that the final decision of the Board was to grant the requested relief with conditions, the Minutes do not reflect those conditions. While I was not at the Deliberation, I understand that some of the conditions were that the Applicants were limited to use of twenty-five percent (25%) of their property for their operation, that the crab pots could only be stacked two (2) high and in the winter months all crab pots were to be removed from the site. There may have been other conditions but those conditions were satisfactory to my client.

I trust that the Board when it renders its final decision will clearly articulate the conditions that were discussed at the Deliberations so that if any further issues arise as to your approval, that the final decision will be clear.

Thank you for your attention to this matter.

Very truly yours,



J. Carroll Holzer

JCH:mlg

cc: Lawrence E. Schmidt, Esquire
Peter Max Zimmerman, Esquire

SMITH, GILDEA & SCHMIDT LLC

MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
MICHAEL G. DEHAVEN
RAY M. SHEPARD
JASON T. VETTORI
DAVID W. TERRY*

*LICENSED IN MO, IL, AR ONLY

CHRISTOPHER W. COREY
LAUREN M. DODRILL
CHARLES B. MAREK, III
NATALIE MAYO
ELYANA TARLOW

of counsel:

DAVID T. LAMPTON

February 11, 2014

Via Hand Delivery

The Honorable John E. Beverungen
The Office of Administrative Hearings
Jefferson Building, Suite 103
105 W. Chesapeake Avenue
Towson, MD 21204

RECEIVED

FEB 11 2014

OFFICE OF ADMINISTRATIVE HEARINGS

**Re: Dimick - 826 Chester Road
Case Number 2014-0123-X**

Dear Judge Beverungen:

Please accept this correspondence as a Motion for Reconsideration pursuant to Rule K of the Rules of Practice and Procedure Before the Zoning Commissioner/Hearing Officer of Baltimore County (Appendix G, Baltimore County Zoning Regulations) on behalf of the legal owners of the subject property, James Dimick, Jr. and Robert George Dimick. This Motion is narrow and confined to a single issue as described hereinafter.

I draw your attention to Restriction No. 7 in your order. That restriction states; "The Petitioners shall be permitted to clean, paint and/or repair the crab traps stored on site Monday through Friday between the hours of 9:00 am - 5:00 pm only."

The purpose of this Motion is a request that you modify your order to indicate that "The Petitioners shall be permitted to clean, paint and/or repair the crab traps stored on site **during the crabbing season** Monday through **Saturday** between the hours of **8:00 a.m. - sunset.**"

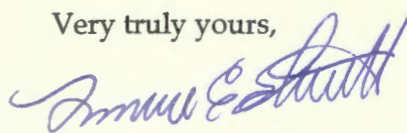
As watermen, my clients are regulated insofar as their activity by State law and the terms and conditions of their license. In addition to the establishment of the duration of the crabbing season, this includes a limitation on the number of days per week that they can crab (limited to six) and the number of hours per day that they can crab (eight, beginning after sunrise). The crabbing season typically begins in April and ends in November. During the non-season (winter) the pots are stored on the property (as shown in the photos presented at the hearing) and there is little activity on site. During the season, Petitioner's crab six days per week (not on Mondays). On Mondays, they are either at the property doing routine maintenance or have taken the day off. On days that they are crabbing, they arrive at the site in the early morning and are on the water at sunrise. When daylight begins, they commence the crabbing operation, which continues for eight hours maximum. Petitioner's return from the water around 2:30 - 3:00 p.m. and they immediately unload and deliver the live shellfish caught that day. Given the fresh nature and required immediate delivery of the catch, my clients leave the property upon docking to deliver the shellfish to their

customers. This routine is consistent with restriction four (4), which prohibits retail sales from the property. They return to the property at around 4:30 p.m. to begin cleaning the pots and property and make ready for the next day's sail. As the property is not lighted, they have all activity completed and usually leave the property before sundown. In view of this schedule (which is typical for the waterman in the area) it is unrealistic for Petitioner's to finish cleaning, painting and/or repairing the crab pots and equipment by the 5:00 p.m. deadline imposed in the restriction. Might I respectfully suggest, particularly in view of restriction number five (5) that requires that the property be kept clean and neat, that the activity coincide with the daylight hours. My clients are willing to not have any cleaning, repairing and/or painting activity prior to 8:00 a.m. and no later than sundown, whenever that occurs during the particular day of the year. Such a change would more appropriately coincide with the long standing and historic use of the property and the typical activity of Maryland's waterman. If additional information is required regarding the details of the operation to support this request, please do not hesitate to contact me.

I have endeavored to quantify the nature of the operation for the purpose of providing you with information regarding their routine. With that said, they have always endeavored to be good neighbors. For example, several years ago, they were requested by a neighbor not to have any activity on a particular Saturday because the neighbor was hosting a wedding reception in his yard. They willingly did not crab that day and even opened up their property for overflow parking. My point is that the good neighbor informal policy that they have always followed will most likely work better than the imposition of a strict regimen. However, if you or the neighbors believe that a set schedule is more appropriate, we would only request that it recognize the nature of a waterman's life and that restriction number 7 be amended as indicated above.

Thank you in advance for your attention to this matter.

Very truly yours,



Lawrence E. Schmidt

LES/amf

cc: James Dimick, Jr.
Robert George Dimick
Allen Robertson, 1608 Holly Tree Road, Middle River, MD 21220
Glenn Dowell, 828 Chester Road, Baltimore, MD 21220
Tom Jenkins, 829 Chester Road, Baltimore, MD 21220

SMITH, GILDEA & SCHMIDT LLC

MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
MICHAEL G. DEHAVEN
JASON T. VETTORI
DAVID W. TERRY*

*Admitted in MD, MO, IL, AR

LAUREN DODRILL BENJAMIN
CHRISTOPHER W. COREY
MARIELA C. D'ALESSIO**
NATALIE MAYO
ELYANA TARLOW

of counsel:

JAMES T. SMITH, JR.
EUGENE A. ARBAUGH, JR.
DAVID T. LAMPTON

**Admitted in MD, FL, PA

June 30, 2015

Via First Class Mail

Krysundra Cannington
Administrator
Board of Appeals of Baltimore County
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204

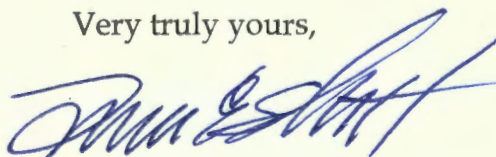
Re: 826 Chester Road
Case No. 14-0123-X

Dear Sunny,

I write by way of follow up to your June 18, 2015 letter. I have discussed this matter with my clients and they have agreed to stipulate to continuing this case with the two remaining Board members.

Thank you.

Very truly yours,



Lawrence E. Schmidt

LES/amf

cc: J. Carroll Holzer, Esquire
Peter Max Zimmerman, People's Counsel
James Dimick, Jr.
Robert G. Dimick

RECEIVED
JUL 06 2015

BALTIMORE COUNTY
BOARD OF APPEALS

John Beverungen - Re: Dimick (Case No. 2014-123-X)

From: John Beverungen
To: J Carroll Holzer; Lawrence Schmidt
Date: 2/19/2014 2:24 PM
Subject: Re: Dimick (Case No. 2014-123-X)
CC: Alyssa Fiore; Debra Wiley; Sherry Nuffer

Counsel,

This email will confirm that the Petitioners' motion for reconsideration is withdrawn, and the case file will be forwarded to the Board of Appeals, pursuant to Mr. Holzer's notice of appeal. A copy of Mr. Schmidt's email, and this response, will be included in the case file.

John Beverungen
ALJ

>>> Lawrence Schmidt <lschmidt@sgs-law.com> 2/19/2014 10:57 AM >>>

>

Judge Beverungen: On February 11, 2014, I filed a Motion for Reconsideration in the above matter; seeking clarification of one of the restrictions in your order. I have received, by mail, a copy of a notice from Carroll Holzer entering his appearance and appealing your decision to the Board of Appeals. The appeal is also dated February 11, 2014 and was received by me on Monday, February 17, 2014. In view of this appeal, I assume that jurisdiction regarding this matter has thus vested at the Board and that my Motion is moot and will not be ruled upon. If that assumption is correct, please withdraw my Motion and confirm that the file will henceforth be forwarded to the Board. Thank you for your consideration and advice.
Regards.

Larry Schmidt

Lawrence E. Schmidt
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
(410) 821-0070
(410) 821-0071 - fax
lschmidt@sgs-law.com

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John Beverungen

From: John Beverungen

FISHING AND SHELLFISHING FACILITY, SHORELINE

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

[Bill No. 30-1978]

FISHING AND SHELLFISHING FACILITY, SHORELINE, CLASS I

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

[Bill No. 30-1978]

FISHING AND SHELLFISHING FACILITY, SHORELINE, CLASS II

A shoreline fishing and shellfishing facility other than a Class I shoreline fishing facility.

[Bill No. 30-1978]

John Beverungen

From: John Beverungen

8.

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

a.

The owner (or his legally authorized representative) applies for the use permit within six months hereafter (Section 500.4);

b.

With the application for the use permit is filed a site plan in accordance with the Zoning Commissioner's rules of practice and procedure;[5]

[5]:

Editor's Note: See Appendix G of this edition.

c.

Any fencing, screening or other change in the site or limitations on the manner of selling the catch necessary to make the facility more compatible with its surroundings that is required by the Zoning Commissioner is completed within the time limits for partial and full compliance with a program of compliance submitted to him; and

d.

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

[Bill No. 30-1978]

John Beverungen

From: John Beverungen

[5]

Editor's Note: The following definitions, which originally followed this definition, were repealed as indicated: "commercial fishing, crabbing and shellfishing operation" was repealed by Bill No. 98-1975; "primary and secondary..." was repealed by Bill No. 30-1978 (see "fishing and shellfishing facility" below); and "commercial motorway, Class I" and "commercial motorway, Class II" were repealed by Bill No. 172-1993.

?

Sherry Nuffer - Jeff,

From: Sherry Nuffer
To: Livingston, Jeffrey
Date: 1/9/2014 2:18 PM
Subject: Jeff,

Jeff,

I just received the files for scheduled hearings on Friday January 10, 2014. Case No.: 2014-0123-X is in CBCA and there is no DEPS ZAC comment. Please advise.

Thank you,

Sherry

Sherry Nuffer
Legal Assistant
Office of Administrative Hearings
105 W. Chesapeake Avenue
Room 103
Towson, Maryland 21204
410-887-3868
Fax: 410-877-3468

John Beverungen - FW: Post Hearing memo

From: Allen Robertson <arbq@hotmail.com>
To: "Jbeverungen@baltimorecountymd.gov" <jbeverungen@baltimorecountymd.gov>
Date: 1/10/2014 9:02 PM
Subject: FW: Post Hearing memo

Corrected email address.

From: arbq@hotmail.com
To: jbeverungen@baltimorecountymd.com
CC: mollydowell@comcast.net
Subject: Post Hearing memo
Date: Fri, 10 Jan 2014 20:59:56 -0500

Honorable John Beverungen,

I appreciate the opportunity to express concerns about issues in our Bowleys Quarters Community. I am documenting some of my points from the Hearing today regarding 826 Chester Road in the post Hearing memo because of my past experience with Larry Schmidt who has successfully confused issues.

Issue 1: Multiple crabbing licenses create the utilization for more crab traps than an individual license.

Point 1: The Dimicks have four licenses for a reason. Even though Denise Dimick does not personally participate in the operations, the two brothers get to place more traps in the water, therefore they catch more crabs resulting in more traps at the site than one license would support. Their existing grandfathering from the 70's was for one license and they have not received approval to increase their operation.

Point 2: Although they could theoretically purchase an unlimited number of crab traps with one license, the active crab traps (licenses restrict the number of in water traps) create the economic support for the actual number of traps and equipment used in an operation. (More licenses mean more traps.)

Point 3: The additional licenses result in more traps stored in off seasons.

Point 4: The operation has grown beyond the level that should be allowed in a residential area which has resulted in creating unnecessary problems for neighbors.

Issue 2: Mr. Schmidt stated that crab traps are only on the land during winter months when people are not outside.

Point 1: He is wrong in that throughout the crabbing season, many traps are cycled onto the shorefront for cleaning, repair and painting as disclosed by their later testimony.

Point 2: Crabbing in the upper bay does not start usually until the end of May so that the spring season (when people are outside) has traps on shore, more than just winter months as stated.

Point 3: Views of the water and sunsets are also enjoyed from inside of homes inclusive of winter months and the massive front yard storage detrimentally impacts the view.

Issue 3: Requiring families to reside at the residential property generally provides a better atmosphere and environment because the properties tend to be better maintained.

Point 1: If their family lives at the site, they would have a vested interest in their view and yard which their children would be playing. They would be more sensitive to the noise and smells that would disturb their sleep and overall quality of life.

Point 2: There must be a reason why their wives and children prefer to live on inland properties in Bowleys Quarters rather than enjoy the benefits of living on the waterfront. They are subjecting their neighbors to an environment that they won't inflict on their own family.

Point 3: There was a concern that additional licenses could place additional traps and equipment at the location if the residential component is not required. This was explained away due to their claims of the difficulty of getting additional licenses. Please take into consideration that several other watermen operate from their homes and by eliminating the ownership residential requirement in granting a special exception, would allow them to move their existing business from their homes to this site.

Issue 4: The Dimicks cannot be expected to comply with restrictions if granted a special exception based upon past behavior and a new special exception is not appropriate for this site.

Point 1: Their attorney was attempting to avoid the identification of their residential use of the property with *res juda cata*. They lied about the house being their primary residence at the earlier hearing and because it wasn't appealed by the County they got away with their lie to minimize the fine. They haven't lived there for years which was a requirement of their existing exception. (They're currently not in compliance at the time you are considering the issue regardless of what was sited as being true last year)

Point 2: They did not restrict themselves to use of 25% of the lot, and were given 30 days by ALJ Stahl to bring the lot into compliance. They removed many of the traps to avoid a fine which had nothing to do with the location of the shoreline or use of the house as indicated by Mr. Schmidt. If all the traps are at the site and stored as they propose, the area that they would use will exceed 25 % of the area limitation clause.

Point 3: By their own admission, they do not store crab traps in compliance with the plan that was approved. Their own pictures proved the location of the crab traps which detrimentally impact the enjoyment of the Dowell's property, which could be avoided by complying with the approved plan. Their claim that the location next to the house, as required by the plan, would be problematic to the other neighbor indicates that they at least recognize there is a problem but they are unwilling to fix it.

Point 4: The Dimicks claim they cannot operate a successful business if the crab traps are not allowed in the waterfront part of the yard. Several other crabbers in Bowleys Quarters store and maintain their crab traps on RC 20 property either across the street from their respective homes or they lease nearby farm property. This greatly limits the use of waterfront yards at the other locations. The granting of a special exception for their request would be over and above the inherent characteristics for Bowleys Quarters crab and fishing operations.

Conclusion: The request for a special exception would subject the neighbors to daily experiences that they are not willing to impose on their own families. They are unwilling to move the offending eyesore away from the Dowell's property. Although Mr. Jennings has only been living there one month (during winter), he and his wife have already discussed landscaping or a barrier fence to hide the objectionable items from his property. Mr. Schmidt felt that they would not landscape the

property to block the view of the Dowell's, however the pictures clearly show that the storage of traps accomplishes the same blockage as landscaping or fencing with even less esthetic appeal. The Dowells do not want any blockage of their westerly waterfront view which reduces their quality of life and ultimately the value of their property.

For these reasons and that the granting of this request is over and above the inherent characteristics of the business, the community position is that the request should be denied and the components of the original and existing special exception approval be enforced to resolve the ongoing problems at this site on Chester Road.

Allen Robertson
President, Bowleys Quarters Community Association

John Beverungen - RE: Dimmick Zoning case

From: Allen Robertson <arbq@hotmail.com>
To: Lawrence Schmidt <lschmidt@sgs-law.com>
Date: 1/13/2014 5:21 PM
Subject: RE: Dimmick Zoning case
CC: Carroll Holzer <jcholzer@cavtel.net>, "jbeverungen@baltimorecountymd.gov..."

Mr. Schmidt,

I do not have a problem with Judge Beverungen sharing my email with you because I believed that if it was appropriate, that is what I would have expected him to do. In the past, I have wanted to contact the opposing council but I have been told it was inappropriate to do so without going through council. In this case we do not have council yet. I did not want lead you to believe any further than you already suggested, that I am acting as an attorney because I am not doing that.

You are free to resent my comments just as I am free to resent the way you cloud issues and use legal maneuvers to avoid the truth from being presented. One example of this in the past was before Judge Jan Alexander, at one point when you finished speaking, the Judge stated to you that he didn't know why the community was opposing more trees. Your response was to shrug your shoulders and tell him you didn't understand it either. The truth is that the community do not oppose the additional trees but we oppose the monstrosity of a building that is being placed in an area that laws require a critical area easement. I believe that as smart and experienced as you are, you knew that, but you fed the misunderstanding. (Would it have been more ethical to have corrected Judge Alexander and would that correction have really hurt your case?). Now you presented information to lead one to believe that there are no crab traps on the property other than a few winter months, which is not true. You wanted the judge to believe that the crabber lived at the residence in question, which the neighbors know is not true. I'll concede that they may go there every day but I will not concede that it is really their primary residence. I feel you also know the truth about this, but you wanted to cleverly restrict the question to your client as to if the living situation has changed since the determination was made. This told me that you knew your client didn't live there then, just as they don't live there now, but because the county did not see fit to follow up on the issue of residence, your client got away with a deception to avoid a fine. Please do not interpret this as an accusation against your client because I'm just expressing my opinion of how you work and I'm using these examples to explain how I arrived at my opinion. I'm not even implying that you did anything illegal, however to be accusing me of being slanderous, unethical or improper, needs to be responded to with the basis why I have this opinion of you and why I only sent the email to ALJ Beverungen. Your comment "I suppose I should not be surprised" seems like an insult with a demeaning tone, but now that you are aware of the logic, you may want to reconsider.

As for your assertion that I am the self appointed zoning authority for Bowleys Quarters, I have been elected as the president of the community association and I was asked to do research and provide documentation on our condo case to save the community money.(I am not self appointed) On this zoning issue, Mr. Green and Mr. Dowell came to me, I didn't go to them. Because of our extended action regarding the PUD, I have learned a lot about zoning and the code as you have acknowledged in

your email. I try to apply that knowledge for the benefit of the community, but not in a deceptive manner. My intention in my email was to clarify my position to ALJ Beverungen because I felt you clouded the issues which if you think about it, it is actually an acknowledgement of your skills. My distain for how these things work may have seemed to be directed at you, however you just happened to be the attorney who is representing the people making Bowleys Quarters either less family friendly, or less rural.

To give you the benefit of the doubt, perhaps I should be more offended by the law that allows these things to occur instead of your personal behavior. If you wish to change my opinion, then change your approach to cases and to me. Not all attorneys that I have interacted with use your tactics, but there is no arguing that you are successful. I would be very impressed if you worked to eliminate those laws that either prevent or avoid the truth from being presented but I realize you have no need to impress me because I am not, and probably will never be your client.

I am copying Mr. Holzer since I have mentioned our other case and copying ALJ Beverungen because I referenced him and so that they are aware of our communication.

Allen Robertson
President, Bowleys Quarters Community Association

From: Ischmidt@sgs-law.com
To: arbq@hotmail.com
Date: Mon, 13 Jan 2014 13:54:16 -0500
Subject: Dimmick Zoning case

Mr. Robertson: Judge Beverungen was kind enough to include me on his email response to you I am deciding whether I should file a response to him to also be included in his file or just leave this alone.

I resent your email and the comments therein. First of all, although you are not an attorney, you certainly know better than to file something with the hearing officer and not copy the other side. As the self appointed zoning authority for Bowley's Quarters, you have been engaged in numerous zoning cases over the years and you "know the drill". Whenever one side submits something for consideration to the judge, the requirement is that the other side is informed and provide a copy. You email something (especially a memorandum) to the hearing officer/Board of Appeals/judge, you email it to the opposing side. It is why I provided you with copies of documents that I was handing to Judge Beverungen at the hearing. For you to submit a "post hearing memo" and not have the courtesy or decency to copy me is unethical and improper. I suppose I should not be surprised.

Your comment about my confusing the issues is slanderous. As the Dimmick's attorney, I am required to represent them within the ethical constraints of the law. That is precisely what I did and do in all of my cases. I argued the merits of their case. I often professionally disagree

with Carroll Holzer and other lawyers who I frequently oppose. But I personally and professionally respect them and we conduct ourselves as gentlemen and deal with each other professionally and appropriately. We can argue about the merits of any particular matter and do so with honesty and integrity. It is a lesson that you should learn.

Larry Schmidt

Lawrence E. Schmidt
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
(410) 821-0070
(410) 821-0071 - fax
lschmidt@sgs-law.com

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Krysundra Cannington

From: Carroll Holzer <jcholzer38@gmail.com>
Sent: Monday, June 22, 2015 1:28 PM
To: Krysundra Cannington
Subject: Dimick motion for reconsideration

Sunny

I do not object to the two remaining Board members addressing the motion for reconsideration in the Dimick case. I received in the mail today from People's Counsel a letter indicating that his office also does not oppose the two remaining Board members addressing the motion.

--

Very truly yours,

J. Carroll Holzer



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

June 18, 2015

Lawrence E. Schmidt, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204

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

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

RE: *In the Matter of: James Dimick, Jr. and Robert G. Dimick – Legal Owners*
Case No.: 14-123-X

Dear Counsel:

We are in receipt of Petitioner's Motion for Reconsideration, as well as People's Counsel's Answer to Motion, and Protestants' Opposition to Reconsideration.

As you are aware, one of the original panel members in the above referenced matter was not reappointed. The Board has asked if you would stipulate to continuing this matter with only the two remaining Board members. If not, please be advised, we will need to allow enough time for another Board member to familiarize him/herself with the record.

Please let me know as soon as possible.

Thank you,

A handwritten signature in cursive script that reads "Sunny Cannington".

Krysundra "Sunny" Cannington
Administrator

Multiple Original

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

Phone: 410-887-3180

Fax: 410-887-3182

To: Andy
Maureen
Rick

From: Sunny

Date: July 1, 2014

Re: James and Robert Dimick
14-123-X

Enclosed please find the Closing Memoranda from Counsel in the above referenced matter. The public deliberation is scheduled in this matter for Tuesday, August 19, 2014 at 9:30 a.m.

Should you have any questions or problems, please contact me.

Real Property Data Search (w1)

Search Result for BALTIMORE COUNTY

View Map	View GroundRent Redemption	View GroundRent Registr
Account Identifier:	District - 15 Account Number - 1504350490	
Owner Information		
Owner Name:	DIMICK JAMES JR DIMICK ROBERT GEORGE	Use: RESIDENTIAL
Mailing Address:	826 CHESTER RD BALTIMORE MD 21220-4322	Principal Residence: NO
		Deed Reference: 1) /29021/ 00050 2)
Location & Structure Information		
Premises Address:	826 CHESTER RD BALTIMORE 21220-0000 Waterfront	Legal Description: 836 CHESTER LONG BEACH
Map: 0098	Grid: 0004	Parcel: 0203
Sub District:	Subdivision: 0000	Section:
Block:	Lot: 8	Assessment Year: 2012
Plat No:	Plat Ref:	Town: NONE
Special Tax Areas:	Ad Valorem:	Tax Class:
Primary Structure Built 1939	Above Grade Enclosed Area 1,485 SF	Finished Basement Area 12,485 SF
Stories 2.000000	Basement NO	Type STANDARD UNIT
Exterior SIDING	Full/Half Bath 1 full	Garage
Last Major Ren		
Value Information		
	Base Value	Value
		As of 01/01/2012
Land:	210,100	262,100
Improvements	101,200	56,000
Total:	311,300	318,100
Preferential Land:	0	0
		Phase-in Assessments
		As of 07/01/2013
		As of 07/01/2014
		315,833
		318,100
Transfer Information		
Seller: DIMICK JAMES,JR/ROBERT GEORGE	Date: 12/29/2009	Price:
Type: NON-ARMS LENGTH OTHER	Deed1: /29021/ 00050	Deed2:
Seller: DIMICK JAMES	Date: 09/18/1992	Price:
Type: NON-ARMS LENGTH OTHER	Deed1: /09370/ 00466	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:
Exemption Information		
Partial Exempt Assessments:	Class	07/01/2013
County:	000	0.00
State:	000	0.00
Municipal:	000	0.00 0.00
Tax Exempt:	Special Tax Recapture:	
Exempt Class:	NONE	
Homestead Application Information		
Homestead Application Status: No Application		



CASE NAME Dimitri
CASE NUMBER 2019-123-X
DATE 1/10/14

[illegible]

CASE NAME Dimick
CASE NUMBER 2014-123-X
DATE -10-14

NAME _____

CITY, STATE, ZIP

E - MAIL

[illegible]

People's Counsel Sign-In Sheet

Case Name: _____

Case No.: 2014-123-X

Date: 4/24/14

The Office of People's Counsel was created by the County Charter to participate in zoning matters on behalf of the public interest. While it does not actually represent community groups or protestants, it will assist in the presentation of their concerns, whether they have their own attorney or not. If you wish to be assisted by People's Counsel, please sign below.

[illegible]

Case No: 14-123-XCase Name: James / RobinParty: Petitioner

Exhibit List

Date: 4/24/14

Exhibit No:	Description:
✓ 1A	Photo Dimick House from Chester Rd
✓ 1B	" " " " " " " "
✓ 1C	Photo toward water w/ crab pots
✓ 1D	Photo of Crab Pots (Red) toward water
✓ 1E	Photo of Shed / Freezer
✓ 1F	Photo of Fence / Dowell house
✓ 1G	Photo Glenn Dowell house / motor home
✓ 1H	Tom Jenkins House Photo
✓ 1I	Photo Tom Jenkins from water w/ crab pots
✓ 1J	Photo Pier / tanks soft + shells
✓ 1K	Entrance to ^{Long Beach} Marina Photo
✓ 1L	Photo Chester Rd toward LB Marina
	Aerial Photo B. County 4/23/14
	Application Dimick
	1979

FILED BY KCDATE: 4/28/14

Order

hood Photo

4/22/2014

James / Robert Dimick

IMG_0098.JPG

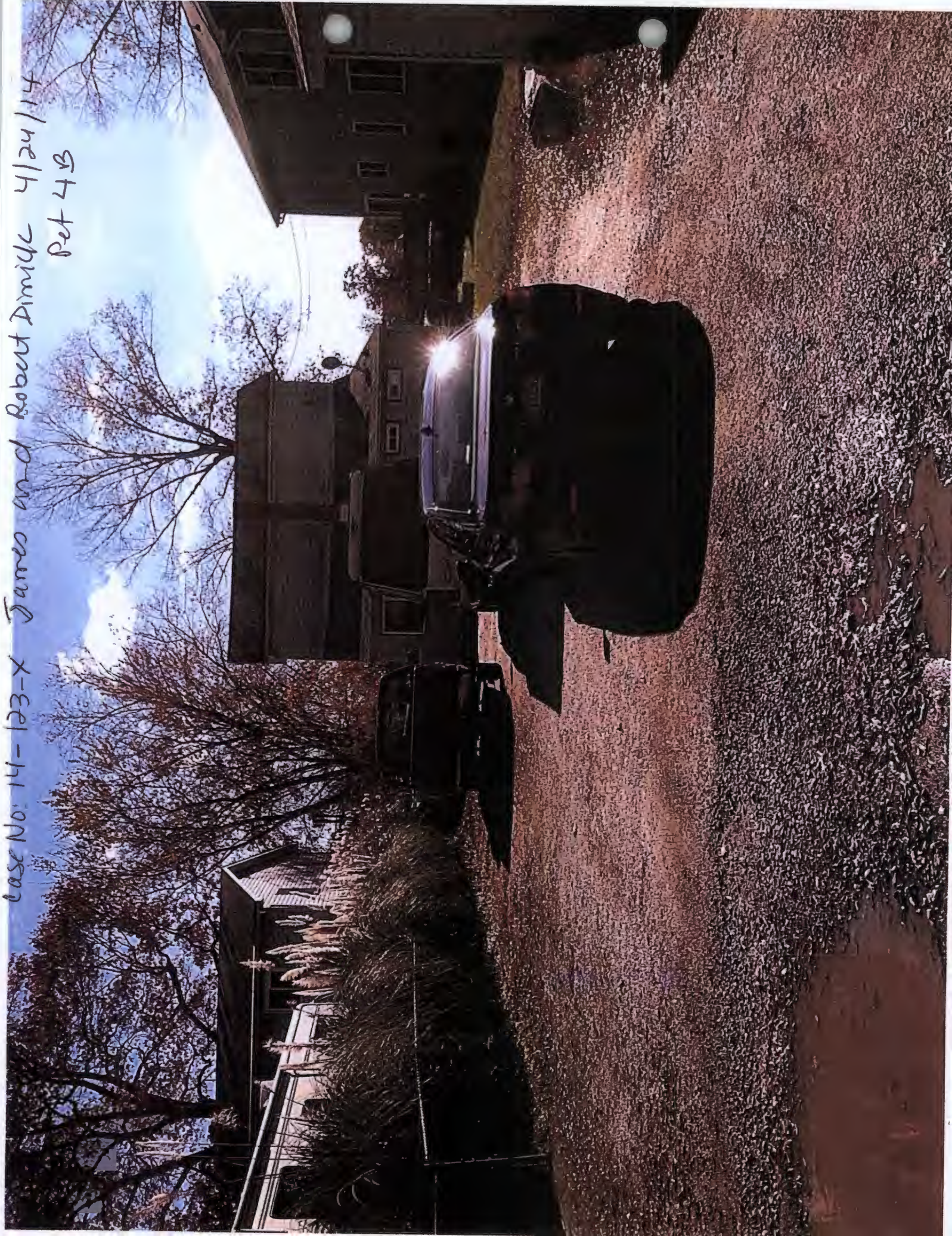
Case No 14-123-X

1/24/14

Pct: 1A



Case No: 14-123-X James and Robert Dimick 4/24/14
Pet 4B





Case NO: 14-123-X 4/24/14
James / Robert Dimick Pat 10 1/1



Case 14-173-X 4/24/14 gameo/Robert Dimich
Pet - Ex 1D



Case No: 14-123-X 4/24/14
<https://drive.google.com/v#folders/OBxEIORFmFW3vTTg4Z09fS1E0ZFU>

Jamies/Robert Dimic
Pet Ex 1F



Case No: 14-123-X

Jame / Robert Dimial

4/24/14

Pet Ex: 1F





Case No: 14-123-X James/Robert Dimidc 4/24/14
Ret Ex: 1H
<https://drive.google.com/#folders/0BxEIORFmFW3vTTg4Z09fS1E0ZFU>



Case No: 14-123-X

Jarnez / Robert Dimick

4/24/14

<https://drive.google.com/v/folders/0BxEIORFmFW3vTTg4Z09fS1E0ZFU>

Pet Ex: 1 I



Case No: 14-123-X James + Robert Dimick
4/24/14 Pet Ex IJ



Case No. 14-123-X James/Robert Dimick 4/24/14
<https://drive.google.com/folders/0BxEIORFmFW3vTTg4Z09fS1E0ZFU> Pet Ex: 1K



Case No: 14-123-X James / Robert Dimick Pet # 12
4/24/14
<https://drive.google.com/#folders/0BxEIORFmFW3vTTg4Z09fS1E0ZFU>

James/Robert 4/24/14
Dimick

Ret Ex: #3

Case No. 14-123-X

ROBERT J. ROMADKA
ATTORNEY AT LAW
809 EASTERN BOULEVARD
(GERMANIA FEDERAL BUILDING)
ESSEX, MARYLAND 21221

pd
8250.00
check #240
11-5-78

#3

ASSOCIATES
IRVIN N. CAPLAN
CHARLES E. FODS, III
ALFRED M. WALPERT

October 30, 1978

MURDOCK 6-8274

Hon. S. Eric DiNenna
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Application for Zoning Use Permit
James and Helen Dimick
S/S Chester Road

Dear Mr. DiNenna:

Please find enclosed herewith Application for Zoning Use Permit and site plan on behalf of Mr. and Mrs. James Dimick, owners of property located on Chester Road.

The use for which this permit is requested is for commercial fishing, crabbing and shellfish operation. This application is being submitted in accordance with Baltimore County Council Bill No. 30-78 and Section 500.4 of the Zoning Regulations of Baltimore County.

After you have had an opportunity to review the enclosed application and site plan, I would appreciate your forwarding to me your appropriate Order for approval of the use of my clients' property in accordance with said application.

If you need any additional information, please do not hesitate to advise.

Awaiting your further reply in this matter,

Very truly yours,

Robert J. Romadka

RJR/dsl

Enc.

cc: Mr. and Mrs. James Dimick

APPLICATION FOR ZONING

This Use Permit is requested in accordance with Section 500.4 and B.Co. Bill 30-78 of the Baltimore County Zoning Regulations.

The property in question is situated in the 15th Election District of Baltimore County, and is more specifically located on the south side of Chester Road, 2/10 mi. of ~~the~~ Susquehanna ~~of Road~~. The total net area is 9,000 sq. feet.

This property is zoned DR 5.5

The use for which this permit is requested is commercial fishing,
crabbing and shellfish operation

The following items will be utilized in the operation and/or will be stored on the premises: dwelling, storage of crab pots, live boxes, gill nets, eel pots,, storage of two boats, in water and on land, buying and retail selling of fish and crabs, loading and unloading

Approximately 25% percent of the total net area of the property will be utilized in the operation.

Said use is more specifically detailed on the attached scale drawing.

Address _____ Lessee _____

Ms. Helen M. Dimick
Helen M. Dimick Legal Owner
Address Box 169, Chester Road,
Rt. 15, Baltimore, Md.
21220

IT IS ORDERED by the Zoning Commissioner of Baltimore County,
this 2nd day of March, 1979, that the herein described
property should be and the same is hereby Approved as a class 1 Commercial
Fishing and Shellfishing Facility

Juni Tr.
Has original

✓ Signed A. Di'N
Zoning Commissioner of
Baltimore County

SCALE 50' = 1"

FROG MORTOR CREEK

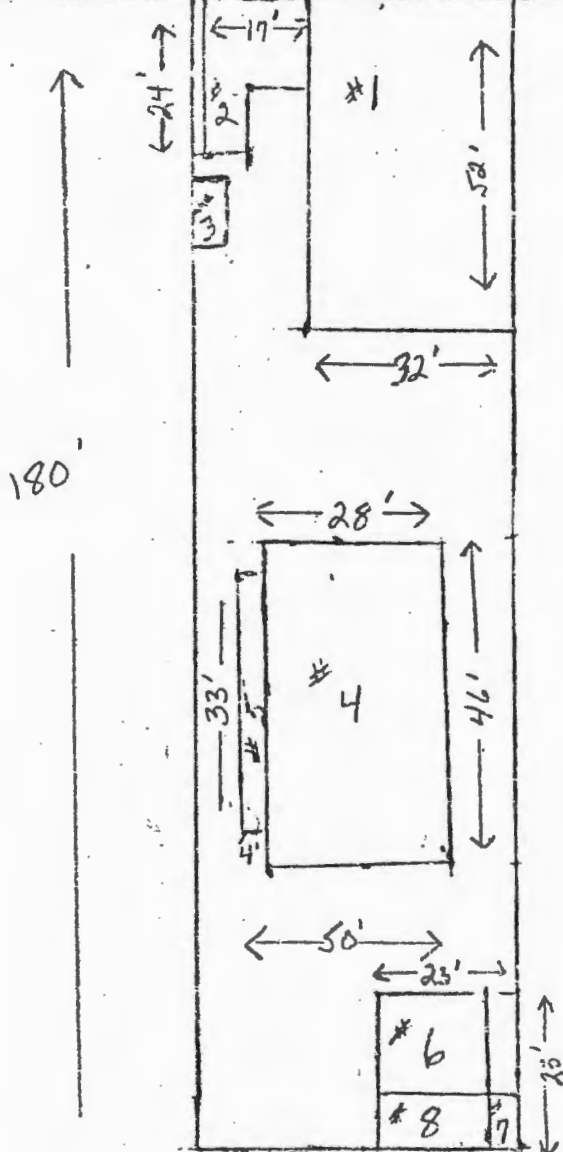
Plans approved

By E. C. 7.

Date 4-9-79

Jim Jr. Has original

10 mi. CHESTER RD. 2 1/2 mi.



SUSQUEHANNA RD

#1 DRIVE WAY

#2 SHED-REFR. AND FREEZER

FOR STORAGE OF FISH AND

CRABS FOR BAIT AND RETAIL

SALE OF AND STORAGE OF BASKETS

#3 BATH HOUSE 5 1/2' x 33'

#4 HOUSE

#5 CRAB-POT STORAGE 4' x 3'

#6 15' WORKBOAT AND

12' ROWBOAT

#7 (4) GILL NET BOXES 5' x 4'

#8 (6) LIVE CRAB BOXES 4' x 4'

#9 PIER 4' x 55' TEE 10'

N
4

FROG MORTOR CREEK

JAMES DIMICK
BOX 169 RT 15
CHESTER RD
BALTIMORE, M

4/24/14 Case No: 14-123-X
James J Robert Dimick Ret 4A

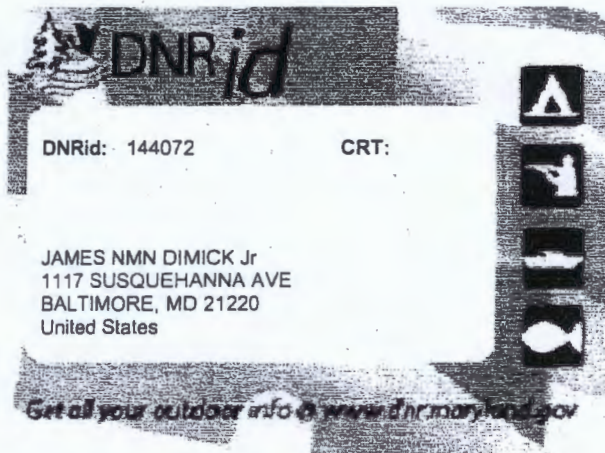


Mission Statement

The Department of Natural Resources leads Maryland in securing a sustainable future for our environment, society, and economy by preserving, protecting, restoring, and enhancing the State's natural resources.

Mail To:

JAMES NMN DIMICK Jr
1117 SUSQUEHANNA AVE
BALTIMORE, MD 21220



Thank you for purchasing a Commercial License from the Maryland Department of Natural Resources.

This is your new DNRid Card. Cut out and carry it with you to identify yourself for quick and easy future purchases in Compass

Visit Compass Online, where you can reprint a license, review your purchase history, receive important news & updates, and purchase other licensing & registration products.

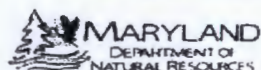
<https://compass.dnr.maryland.gov/dnrcompassportal>

By signing the below license, I understand that this commercial license does not itself permit me to hunt and/or fish on private property or the water of Maryland; and it I do so without the permission of the owner, I may be subjected to a fine. I certify, under penalty of perjury, that I am the person identified below and have provided correct representation of my personal information.

cut along the dotted line

cut along the dotted line

You are required to carry your Commercial License and produce it when asked by law enforcement



Commercial License

DNRid: 144072

JAMES NMN DIMICK Jr

DL: D520367000482

DOB: 06.24.1959

Gender: M

CRT:

HT: 5'9"

WT: 225

Eyes: Brown

1117 SUSQUEHANNA AVE
BALTIMORE, MD 21220

USCG CAPTAIN'S LICENSE: Vessel: None on record

None on Record

Authorized Individual:

Expires: None

None

Issued By:

tauvil

Printed On:

08.21.2013

Licensee Signature

Authorizations

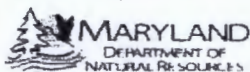
Total Value: \$1,175.00

LC0002D132540133	08.21.2013	LC0002D132540133	08.21.2013
Harvester Registration	\$215.00	Crabbing Day Off - Monday	
Valid: 9/1/2013 - 8/31/2014		Valid: 9/1/2013 - 8/31/2014	
LC0002D132540133	08.21.2013	LC0002D132540133	08.21.2013
Seafood Marketing Surcharge - Non-Dealer	\$20.00	Unlimited Tidal Fish (TFL) License	\$300.00
Valid: 9/1/2012 - 8/31/2013		Valid: 9/1/2013 - 8/31/2014	
LC0002D132540133	08.21.2013	LC0002D132540133	08.21.2013
Crab Harvester - up to 900 pots (CB9) Add-on	\$150.00	Striped Bass Authorization (Add-on to TFL)	\$150.00
Valid: 9/1/2013 - 8/31/2014		Valid: 1/1/2014 - 12/31/2014	
C000221204123	08.13.2012	C000221204123	08.13.2012
Crabbing Day Off - Monday - LEGACY		Unlimited Tidal Fish (TFL) License	\$300.00
Valid: 9/1/2012 - 8/30/2013		Valid: 9/1/2012 - 8/30/2013	
C000221204123	08.13.2012		
Crab Harvester - up to 900 pots (CB9) Add-on	\$40.00		
Valid: 9/1/2012 - 8/30/2013			

Commercial Catch Reports must be sent to DNR by the 10th day of each month.

4/24/14 Case No. 14-123-2 Pet 413

James/Robert Dimick



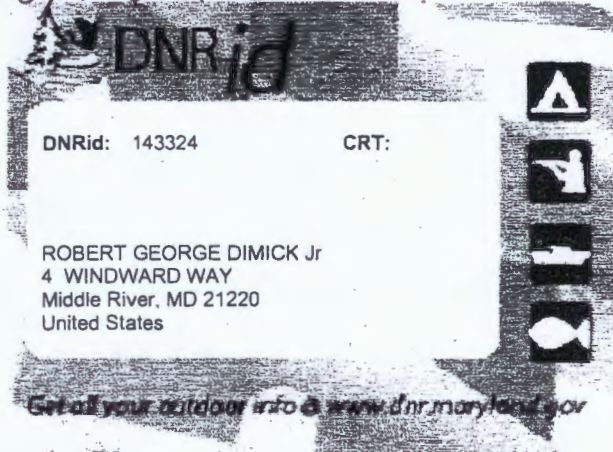
Mission Statement

The Department of Natural Resources leads Maryland in securing a sustainable future for our environment, society, and economy by preserving, protecting, restoring, and enhancing the State's natural resources.

Mail To:

ROBERT GEORGE DIMICK Jr

4 WINDWARD WAY
Middle River, MD 21220



Get all your outdoor info @ www.dnr.maryland.gov

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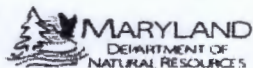
<https://compass.dnr.maryland.gov/dnrcompassportal>

By signing the below license, I understand that this commercial license does not itself permit me to hunt and/or fish on private property or the water of Maryland; and if I do so without the permission of the owner, I may be subjected to a fine. I certify, under penalty of perjury, that I am the person identified below and have provided correct representation of my personal information.

cut along the dotted line

cut along the dotted line

You are required to carry your Commercial License and produce it when asked by law enforcement



Commercial License

DNRid: 143324

ROBERT GEORGE DIMICK Jr

DL: D520745275990

DOB: 12.28.1985 Gender: M CRT:
HT: 5' 11" WT: 145 Eyes:

4 WINDWARD WAY
Middle River, MD 21220

USCG CAPTAIN's LICENSE: Vessel: None on record
None on Record Authorized Individual:
Expires: None None

Issued By:

pmthrower

Printed On:

Licensee Signature

08.19.2013

Authorizations

Total Value: \$535.00

C0002D132536218	08.19.2013	LC0002D132510312	08.05.2013
Seafood/Charter Marketing Surcharge - Non-Dealer		Seafood Marketing Surcharge - Non-Dealer	\$20.00
Valid: 9/1/2013 - 8/31/2014		Valid: 9/1/2012 - 8/31/2013	
LC0002D132510312	08.05.2013	LC0002D132510312	08.05.2013
Harvester Registration	\$215.00	Crab Harvester - up to 300 pots (CB3) License	\$150.00
Valid: 9/1/2013 - 8/31/2014		Valid: 9/1/2013 - 8/31/2014	
C000491201259	08.01.2012	C000491201259	08.01.2012
Crabbing Day Off - Monday - LEGACY		Crab Harvester - up to 300 pots (CB3) License	\$150.00
Valid: 9/1/2012 - 8/30/2013		Valid: 9/1/2012 - 8/30/2013	

Commercial Catch Reports must be sent to DNR by the 10th day of each month.

4/24/14



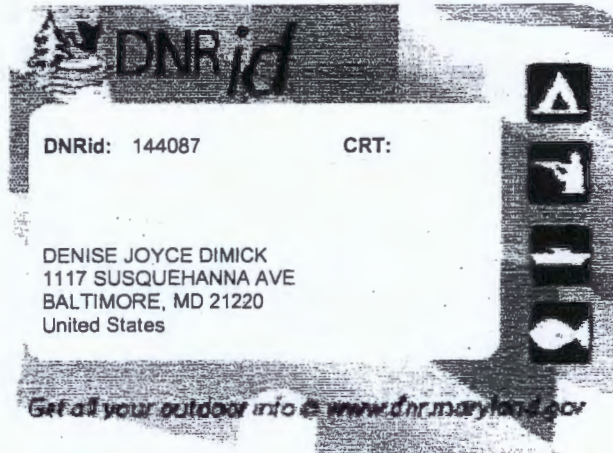
Mission Statement

The Department of Natural Resources leads Maryland in securing a sustainable future for our environment, society, and economy by preserving, protecting, restoring, and enhancing the State's natural resources.

Mail To:

DENISE JOYCE DIMICK

1117 SUSQUEHANNA AVE
BALTIMORE, MD 21220



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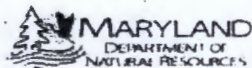
By signing the below license, I understand that this commercial license does not itself permit me to hunt and/or fish on private property or the water of Maryland; and if I do so without the permission of the owner, I may be subjected to a fine. I certify, under penalty of perjury, that I am the person identified below and have provided correct representation of my personal information.

<https://compass.dnr.maryland.gov/dnrcompassportal>

cut along the dotted line

cut along the dotted line

You are required to carry your Commercial License and produce it when asked by law enforcement



Commercial License

DNRid: 144087

DENISE JOYCE DIMICK

DL: D520139447883

DOB: 11.18.1961 Gender: F CRT:
HT: WT: Eyes:

1117 SUSQUEHANNA AVE
BALTIMORE, MD 21220

USCG CAPTAIN'S LICENSE: Vessel: None on record
None on Record Authorized Individual:
Expires: None None

Issued By:

tauvil

Printed On:

08.21.2013

Denise Joyce Dimick
Licensee Signature

Authorizations

Total Value: \$985.00

LC0002D132540159	08.21.2013	LC0002D132540159	08.21.2013
Harvester Registration	\$215.00	Crabbing Day Off - Sunday	
Valid: 9/1/2013 - 8/31/2014		Valid: 9/1/2013 - 8/31/2014	
LC0002D132540159	08.21.2013	LC0002D132540159	08.21.2013
Seafood Marketing	\$20.00	Striped Bass	\$150.00
Surcharge - Non-Dealer		Authorization (Add-on to TFL)	
Valid: 9/1/2012 - 8/31/2013		Valid: 1/1/2014 - 12/31/2014	
LC0002D132540159	08.21.2013	C000221204124	08.13.2012
Unlimited Tidal Fish (TFL)	\$300.00	Crabbing Day Off - Sunday	
License		- LEGACY	
Valid: 9/1/2013 - 8/31/2014		Valid: 9/1/2012 - 8/30/2013	
C000221204124	08.13.2012		
Unlimited Tidal Fish (TFL)	\$300.00		
License			
Valid: 9/1/2012 - 8/30/2013			

Commercial Catch Reports must be sent to DNR by the 10th day of each month.

CASE 14-123-X
4/29/14

James / Robert
Dimick

Pet 4D



Mission Statement

The Department of Natural Resources leads Maryland in securing a sustainable future for our environment, society, and economy by preserving, protecting, restoring, and enhancing the State's natural resources.

Mail To:

ROBERT GEORGE DIMICK Sr

4 WINDWARD WAY
Middle River, MD 21220



DNRid: 305166

CRT: Pre

ROBERT GEORGE DIMICK Sr
4 WINDWARD WAY
Middle River, MD 21220
United States

Get all your outdoor info @ www.dnr.maryland.gov



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<https://compass.dnr.maryland.gov/dnrcompassportal>

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cut along the dotted line

cut along the dotted line

You are required to carry your Commercial License and produce it when asked by law enforcement



R

Commercial License

Commercial Id
6198

DNRid: 305166

ROBERT GEORGE DIMICK Sr

DL: D520745275851

DOB: 11.05.1960 Gender: M CRT: Pre
HT: WT: Eyes:

4 WINDWARD WAY
Middle River, MD 21220

USCG CAPTAIN's LICENSE: Vessel: None on record
None on Record Authorized Individual:
Expires: None None

Issued By:

cadams

Printed On:

Licensee Signature

08.19.2013

Authorizations

Total Value: \$1,025.00

C0002D132535554	08.19.2013	LC0002D132510363	08.05.2013
Seafood/Charter Marketing Surcharge - Non-Dealer		Crabbing Day Off - Monday	
Valid: 9/1/2013 - 8/31/2014		Valid: 9/1/2013 - 8/31/2014	
LC0002D132510363	08.05.2013	LC0002D132510363	08.05.2013
Seafood Marketing Surcharge - Non-Dealer	\$20.00	Harvester Registration	\$215.00
Valid: 9/1/2012 - 8/31/2013		Valid: 9/1/2013 - 8/31/2014	
LC0002D132510363	08.05.2013	LC0002D132510363	08.05.2013
Crab Harvester - up to 900 pots (CB9) Add-on	\$150.00	Unlimited Tidal Fish (TFL) License	\$300.00
Valid: 9/1/2013 - 8/31/2014		Valid: 9/1/2013 - 8/31/2014	
C000491201258	08.01.2012	C000491201258	08.01.2012
Crabbing Day Off - Monday - LEGACY		Unlimited Tidal Fish (TFL) License	\$300.00
Valid: 9/1/2012 - 8/30/2013		Valid: 9/1/2012 - 8/30/2013	
C000491201258	08.01.2012		
Crab Harvester - up to 900 pots (CB9) Add-on	\$40.00		
Valid: 9/1/2012 - 8/30/2013			

Commercial Catch Reports must be sent to DNR by the 10th day of each month.

Case No: 14-123-X

James / Robert Dimick

Ref No 5

4/24/14

Office of Administrative Hearings for Baltimore County
105 West Chesapeake Avenue Suite 103
Towson, Maryland 21204

In the Matter of

Civil Citation No. 136762

James Dimick
Robert George Dimick

826 Chester Road

Respondent

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
FINAL ORDER OF THE ADMINISTRATIVE LAW JUDGE**

This matter came before the Administrative Law Judge on November 20, 2013 for a Hearing on a citation for violations under the Baltimore County Zoning Regulations (BCZR) section 206, 402: Illegal conversion of a home into a crabbing business; Illegal conversion and violation with Judges Order to have this as a primary residence with 25% crabbing on residential property.

On September 9, 2013, pursuant to BCC § 3-6-205, Inspector David Gaine issued a Code Enforcement & Inspections Citation. The citation was sent to the Respondent by 1st class mail to the last known address listed in the Maryland State Tax Assessment files.

The citation proposed a civil penalty of \$10,000.00 (Ten thousand dollars).

The following persons appeared for the Hearing and testified: Lawrence E. Schmidt, Esquire representing Robert and James Dimick, Respondents, and Glenn Dowell, Neighbor and David Gaine, Baltimore County Code Enforcement Officer.

Evidence was presented that upon the complaint of a neighbor, an inspection of the subject property was carried out on 9/9/13. The Inspector testified that he went to the front door and knocked, but received no response. He also viewed the property and estimated that he believed more than 25% of the site was being used to store crab pots and related crabbing gear. He issued, mailed and posted the Citation herein. Photographs taken by the Inspector were entered into evidence. The Inspector pointed out that the applicable regulations allowed the crabbing activity at a primary residence, but only to the extent of 25% of the area of the site in question. The Inspector did relate that after the Citation was issued, he received a fax of the Respondent's driver's license, issued before the Citation, showing that the subject property was his residence address.

12/23/13
TO WWRBALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: December 18, 2013

Pet.
#6

FROM: Andrea Van Arsdale
Director, Department of Planning

Case No: 14-123-X

James / Robert Dimick

4/24/14.

SUBJECT: 826 Chester Road

INFORMATION:

Item Number: 14-123

Petitioner: James Dimick, Jr.

Zoning: DR 3.5

Requested Action: Special Exception

SUMMARY OF RECOMMENDATIONS:

The Department of Planning has reviewed the petitioner's request and accompanying site plan. The Department of Planning does not oppose the petitioner's special exception request. Before final approval is granted the Department of Planning requests that the following conditions be met:

1. The subject property shall be properly cleaned up and organized neatly. This condition shall be maintained throughout operations. The actual shell fishing related operations shall be limited to 25% of the subject property (as outlined on the plan accompanying the subject petition).
2. No signage (existing or proposed) of any type shall be placed on the property or dwelling, other than that which is required for public safety.
3. The site shall be adequately landscaped to provide vegetative screening of shell fishing operations from adjacent neighbors. Utilize screening that is no greater than 6' at maturity to avoid obstruction of the neighbors' view of the shoreline
4. There shall be no more than 2 boats at any one time at the site. Boats can be no larger than 45' in length.
5. There shall be no retail sales on the premises.

For further information concerning the matters stated here in, please contact Matt Diana or Dennis Wertz at 410-887-3480.

Prepared By:

Division Chief:
AVA/LL:cjm

Pet Ex: 10
Case No: 14-123-X
04/22/2014 James/ Robert
Dimick
4/24/14

To whom it may concern:

Today, 22 April 2014, I was informed of an upcoming court hearing as regards Jim Dimick's storing crab pots on his property at 826 Chester Road. These crab pots are stacked neatly in the winter and in no way are any concern to me. There are no crab pots on this property during the summer months.

I have lived, as a close neighbor, at 842 Chester Road for the last 10 years. I, as well as any complainant purchased our properties well after Mr. Dimick had the necessary permits to operate his crab business out of 826 Chester Road. In my opinion, this complaint is a frivolous waste of the courts time, and unnecessarily threatens or complicates Jim's ability to make a living. These crab pots are necessary to a waterman's way of life and livelihood. This is a culture that has existed on bodies of water for many years.

I, as well as any complainants, elected to purchase property on a body of water where Jim Dimick's business had existed for several years. To me, that means we were aware of the existing business prior to our purchase, so we unconditionally accepted our property and all legal existing conditions on neighboring properties at the time of our purchase.

Respectfully,



David Thompson

842 Chester Road

Middle River, MD 21220

6/10/2014

826 Chester Rd - Google Maps

826 Chester Rd, Middle River, MD 21220

Explore this area



Divide.

Red No 11

Case No. 14-173-X.
1/12/14

Robert.

Exhibit List

Party: Protestants Date: _____

[illegible]

14-123-X, ||
Case NO.
Dimi d/c

Prot Ex: 4.
6/10/14

FROM PAGE ONE

FRIDAY, MAY 2, 2014 | NEWS | THE BALTIMORE SUN 11

Crab population drop raises concern

CRABS, From page 1

the densities of male and female crabs found slumbering on the bay bottom were among the lowest in 25 years of sampling, data show.

Lynn W. Fegley, deputy fisheries director for the Maryland Department of Natural Resources, said officials believe crabs are down because of prolonged frigid weather and possibly other environmental factors, such as other fish feeding on them. Low water temperatures killed off about 28 percent of the adult crabs in Maryland, one of the biggest winter kills seen since the survey began in 1990.

But Fegley said the decline in spawning-age female crabs has officials particularly concerned, because their number has dipped to 69 million, a million below the minimum that experts believe is needed to sustain the overall population.

In an attempt to protect more spawning-age females and improve the odds of a big rebound in the overall population, both Maryland and Virginia are eyeing measures aimed at reducing the commercial harvest by 10 percent.

John M.R. Bull, Virginia's marine resource commissioner, said his agency intends to act soon to protect egg-bearing females, calling the survey results "disappointing but not disastrous."

"This is showing us that we have still a lot of work ahead of us to do here," he said.

Fegley said Maryland officials expect to impose limits later in the summer to shield females who have mated so they can get down the bay to spawn. The state will consult with watermen on what to do, she said, whether lowering daily catch limits, closing the season early, or some other conservation measure.

Robert T. Brown Sr., president of the Maryland Watermen's Association, called the news "discouraging" particularly since the survey found that fishing pressure last



KARL MERTON FERRON/BALTIMORE SUN PHOTO

Kyle McIntosh carries a dozen crabs from the steam room at L.P. Steamers in Locust Point. As the crab population falls, such a delicacy will likely be more expensive this summer.

The crab survey saw a dramatic rebound in the crab population after the states both clamped down on the harvest during the last crisis in 2008. But the number fell sharply after 2012, for reasons that are still disputed. Virginia's Bull suggested that a huge influx in the lower bay two years ago of red drum, a fish more common in coastal waters, has gobbled up many of the baby crabs. But Maryland scientists, at least, say they're not convinced that was a major factor in the slump.

William Goldsborough, senior fisheries

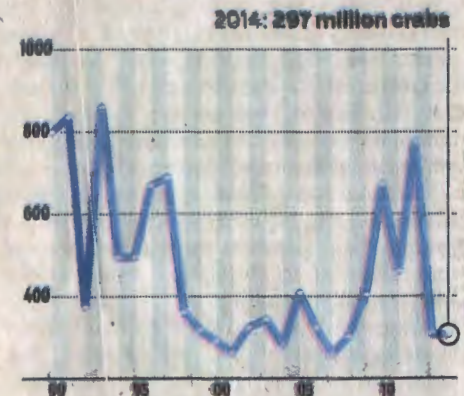
with the University of Maryland Center for Environmental Science, cautioned against thinking that tighter catch limits are all that's needed to ensure the long-term future of the bay's iconic crustacean. He said the survey results leave him stumped about why crabs are down.

"Long-term sustainability needs harder choices," Miller said, "whether that's habitat improvement, water-quality improvement, the whole Chesapeake Bay restoration. ... Whatever it is, it's clear the simple tool of fisheries management is not produc-



Bay crab population drop

The total estimated number of crabs living in the bay for each year of the survey is listed below.



SOURCE: Maryland Department of Natural Resources

BALTIMORE SUN GRAPHIC

rants and retailers that serve Maryland seafood.

"Prices are up 40 percent from this time last year," said Tim Mitchell, general manager of Canton Dockside, a seafood restaurant and crab house in Canton. "It's pretty incredible how high the prices have



My Neighborhood Map

Created By
Baltimore County
My Neighborhood



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Printed 1/10/2014



My Neighborhood Map

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Baltimore County
My Neighborhood



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ASSOCIATES
IRVIN N. CAPLAN
CHARLES E. FODS, III
ALFRED M. WALPERT

★
ROBERT J. ROMADKA
ATTORNEY AT LAW
809 EASTERN BOULEVARD
(GERMANIA FEDERAL BUILDING)
ESSEX, MARYLAND 21221

pd
\$250.00
check #240
11-5-78

October 30, 1978

MURDOCK 6-B274

Hon. S. Eric DiNenna
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Ref No 4

Re: Application for Zoning Use Permit
James and Helen Dimick
S/S Chester Road

Dear Mr. DiNenna:

Please find enclosed herewith Application for Zoning Use Permit and site plan on behalf of Mr. and Mrs. James Dimick, owners of property located on Chester Road.

The use for which this permit is requested is for commercial fishing, crabbing and shellfish operation. This application is being submitted in accordance with Baltimore County Council Bill No. 30-78 and Section 500.4 of the Zoning Regulations of Baltimore County.

After you have had an opportunity to review the enclosed application and site plan, I would appreciate your forwarding to me your appropriate Order for approval of the use of my clients' property in accordance with said application.

If you need any additional information, please do not hesitate to advise.

Awaiting your further reply in this matter,

Very truly yours,


Robert J. Romadka

RJR/dsl
Enc.
cc: Mr. and Mrs. James Dimick

APPLICATION FOR ZONING USE PERMIT

This Use Permit is requested in accordance with Section 500.4 and B.Co. Bill 30-78 of the Baltimore County Zoning Regulations.

The property in question is situated in the 15th Election District of Baltimore County, and is more specifically located on the south side of Chester Road, 2/10 mi. of ~~1000~~ 1000 Susquehanna ~~of~~ Road. The total net area is 9,000 sq. feet.

This property is zoned DR 5.5.

The use for which this permit is requested is commercial fishing,
crabbing and shellfish operation

The following items will be utilized in the operation and/or will be stored on the premises: dwelling, storage of crab pots, live boxes, gill nets, eel pots,, storage of two boats, in water and on land, buying and retail selling of fish and crabs, loading and unloading of catches and gear

Approximately 25% percent of the total net area of the property will be utilized in the operation.

Said use is more specifically detailed on the attached scale drawing.

Address

Lessee

Helen M. Dimick

Legal Owner

Address Box 169, Chester Road,
Rt. 15, Baltimore, Md.
21220

IT IS ORDERED by the Zoning Commissioner of Baltimore County,
this 2nd day of march, 1979, that the herein described

property should be and the same is hereby Approved as a class 1 Commercial

Fishing and Shellfishing facilities

Juni Tr.
Hos original

Zoning Commissioner of
Baltimore County

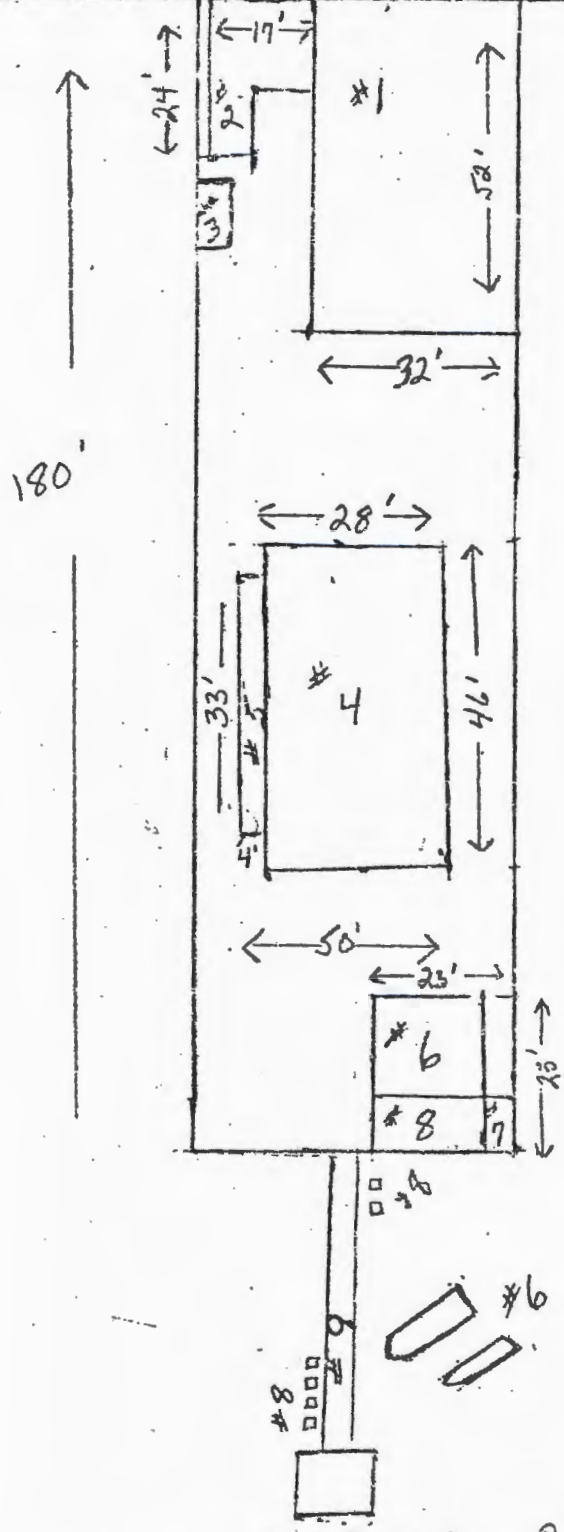
FROG MORTOR CREEK.

Plans approved
By E. C. F.
Date 4-9-79
Jim Jr. Has originated

SCALE

1/10 mi.
CHESTER RD.
2 1/10 mi.

SUSSEX RD



- #1 DRIVE WAY
- #2 SHED-REFR. AND FREEZER
FOR STORAGE OF FISH AND
CRABS FOR BAIT AND RETAIL
SALE OF AND STORAGE OF BASKETS
- #3 BATH HOUSE 5' x 11'
- #4 HOUSE
- #5 CRAB-POT STORAGE 4' x 3'
- #6 15' WORKBOAT AND
12' ROWBOAT
- #7 (4) GILL NET BOXES 5' x 11'
- #8 (6) LIVE CRAB BOXES 4' x 11'
- #9 PIER 4' x 55' TEE 10' x 11'

N
4

FROG MORTOR CREEK

JAMES DIMICK
BOX 169 RT-15
CHESTER RD
BALTIMORE, MD







Case No.:

2014-0123-X

Exhibit Sheet

Petitioner/Developer

Protestants

SLO
1-16-14

No. 1	Plan	Color photos
No. 2	2A 2B - Aerial photos	
No. 3	3A-3D Color photos of site	
No. 4	Cover letter (10-30-78) and use permit	
No. 5		
No. 6		
No. 7		
No. 8		
No. 9		
No. 10		
No. 11		
No. 12		

Case No: 14-123-X Case Name: James/Robert Dimick
Exhibit List

Party: Peoples Counsel Date: 4/24/14

Exhibit No:	Description:
✓ 1	GIS Aerial Photo - 2011
✓ 2	GIS Road Map- Chester Rd.
✓ 3	SDAT Dimick Susquehanna Pro
✓ 4	SDAT 824 Chester Rd.
✓ 5	SDAT 4 Windward Way
✓ 6	My Neighborhood
✓ 7A	Photo Dimick House from water
✓ 7B	Photo Dimick Pier w/equipment
✓ 7C	Photo Red. Crab P
6/12/14 KC ✓ 8A	Photo 1117 Susquehanna Ave.
✓ 8B	Aerial Photo 1117 Susquehanna Ave.
✓ 9A	Photo 4 Windward Way
✓ 9B	Aerial Photo 4 Windward Way
✓ 10.	Bill 30-78
VERIFIED BY <u>KC</u> DATE: <u>4/28/14</u>	

Case No: 14-123-X Case Name: Dimick

Exhibit List

Party: People's Counsel Date: 6/10/14

[illegible]



James/Robert Dimick

Real Property Data Search (w4)

[Search Help](#)Your feed back is important to us. [Please take our short survey.](#)

4/24/14

Search Result for BALTIMORE COUNTY

View Map	View GroundRent Redemption	View GroundRent Registration
Account Identifier:	District - 15 Account Number - 1506452540	
Owner Information		
Owner Name:	DIMICK JAMES JR DIMICK DENISE	Use: RESIDENTIAL Principal Residence: YES
Mailing Address:	1117 SUSQUEHANNA AVE BALTIMORE MD 21220-4339	Deed Reference: 1) /10199/ 00040 2)
Location & Structure Information		
Premises Address:	1117 SUSQUEHANNA AVE 0-0000	Legal Description: 1117 SUSQUEHANNA AVE ES LONG BEACH ESTATES
Map: 0098	Grid: 0004	Parcel: 0203
Sub District:	Subdivision: 0000	Section:
Block: 93	Lot: 2012	Assessment Year:
Plat No:		Plat Ref: 0003/ 0178
Town:		NONE
Ad Valorem:		
Tax Class:		
Primary Structure Built	Above Grade Enclosed Area	Finished Basement Area
1967	1,396 SF	1000 SF
Property Land Area	County Use	
30,000 SF	04	
Stories	Basement	Type
1.000000	YES	SPLIT FOYER
Exterior	Full/Half Bath	Garage
SIDING	1 full/ 1 half	
Value Information		
Base Value	Value	Phase-in Assessments
	As of	As of
	01/01/2012	07/01/2013
Land:	126,500	
Improvements	177,000	
Total:	303,500	249,400
Preferential Land:	0	249,400
		0
Transfer Information		
Seller: FOUCH EUGNE A	Date: 12/08/1993	Price: \$170,000
Type: ARMS LENGTH IMPROVED	Deed1: /10199/ 00040	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:
Exemption Information		
Partial Exempt Assessments:	Class	07/01/2013
County:	000	0.00
State:	000	0.00
Municipal:	000	0.00 0.00
Tax Exempt:	Special Tax Recapture:	0.00 0.00
Exempt Class:	NONE	
Homestead Application Information		
Homestead Application Status: Approved 01/27/2009		

James/Robert Dimick
PE Ex 4

Real Property Data Search (w4)

Case No: 14-123-X.

[Search Help](#)Your feed back is important to us. [Please take our short survey.](#)

4/24/14

Search Result for BALTIMORE COUNTY

View Map	View GroundRent Redemption	View GroundRent Registration
Account Identifier:	District - 15 Account Number - 1504350490	
Owner Information		
Owner Name:	DIMICK JAMES JR DIMICK ROBERT GEORGE	Use: RESIDENTIAL Principal Residence: NO
Mailing Address:	826 CHESTER RD BALTIMORE MD 21220-4322	Deed Reference: 1) /29021/ 00050 2)
Location & Structure Information		
Premises Address:	826 CHESTER RD BALTIMORE 21220-0000 Waterfront	Legal Description: 836 CHESTER RD LONG BEACH ESTATES
Map: 0098	Grid: 0004	Parcel: 0203
Sub District:	Subdivision: 0000	Section:
Block:	Lot: 8	Assessment Year: 2012
Plat No:	Plat Ref: 0004/ 0131	
Special Tax Areas:	Town:	Ad Valorem: NONE
Tax Class:		
Primary Structure Built 1939	Above Grade Enclosed Area 1,485 SF	Finished Basement Area 12,485 SF
Property Land Area 34	County Use	
Stories 2.000000	Basement NO	Type STANDARD UNIT
Exterior SIDING	Full/Half Bath 1 full	Garage
Last Major Renovation		
Value Information		
Base Value	Value	Phase-in Assessments
	As of 01/01/2012	As of 07/01/2013
		As of 07/01/2014
Land: 210,100	262,100	
Improvements: 101,200	56,000	
Total: 311,300	318,100	315,833
Preferential Land: 0		318,100
		0
Transfer Information		
Seller: DIMICK JAMES, JR/ROBERT GEORGE	Date: 12/29/2009	Price: \$0
Type: NON-ARMS LENGTH OTHER	Deed1: /29021/ 00050	Deed2:
Seller: DIMICK JAMES	Date: 09/18/1992	Price: \$0
Type: NON-ARMS LENGTH OTHER	Deed1: /09370/ 00466	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:
Exemption Information		
Partial Exempt Assessments:	Class	07/01/2013 07/01/2014
County: 000		0.00
State: 000		0.00
Municipal: 000		0.00 0.00
Tax Exempt:	Special Tax Recapture:	
Exempt Class:	NONE	
Homestead Application Information		
Homestead Application Status: No Application		

LIBER 9370 PAGE 66

DEED -- FEE SIMPLE -- INDIVIDUAL GRANTOR -- LONG FORM

NO CONSIDERATION
NO TITLE SEARCH

This Deed, MADE THIS day of August

in the year one thousand nine hundred and ninety-two

by and between

HELEN M. DIMICK, Widow

of the first part, and

of Baltimore County, State of Maryland

JAMES DIMICK, JR., ROBERT GEORGE DIMICK and VINCENT LEROY DIMICK

of the second part.

WITNESSETH, That in consideration of the sum of zero dollars and other good and valuable considerations, the receipt of which is hereby acknowledged,

the said

HELEN M. DIMICK, Widow

do es grant and convey to the said JAMES DIMICK, JR., ROBERT GEORGE DIMICK and VINCENT LEROY DIMICK as tenants in common, their heirs,

personal representatives ~~and assigns~~ and assigns, in fee simple, all

that lot of ground situate in Baltimore County, State of Maryland and described as follows, that is to say:

BEING KNOWN AND DESIGNATED as Lot Number Eight (8), having a frontage of 50 feet on Chester Road and through to Frog Mortor Creek as shown on Plat of Long Beach Estate which Plat is duly recorded among the Land Records of Baltimore County in Liber J.W.S. No. 3 folio 178.

BEING the same lot of ground which by Deed dated May 6, 1958, and recorded among the Land Records of Baltimore County in Liber G.L.B. No. 3343 folio 548 was granted and conveyed by JULIUS H. CLAGUE, unto JAMES DIMICK and HELEN M. DIMICK, his wife, the said JAMES DIMICK having departed this life July 26, 1992, thereby vesting all rights, title and interest unto HELEN M. DIMICK, the said Grantor herein.

At the request of HELEN M. DIMICK no title search was requested or made and this deed was based solely on the information furnished by her.

AGRICULTURAL TRANSFER TAX
NOT APPLICABLE

SIGNATURE

JR 9-14-92

RECEIVED FOR TRANSFER
State Department of
Assessments & Taxation
for Baltimore County

JR 9-14-92

TRANSFER TAX
Director of
BALTIMORE COUNTY, MARYLAND
Per J. J. J.
Date 9-11-92

PEX: 5

4/24/14

James) Robert Dimick

Real Property Data Search (w4)

[Search Help](#)

Case No: 14-123-X

Your feed back is important to us. [Please take our short survey.](#)

Search Result for BALTIMORE COUNTY

View Map	View GroundRent Redemption	View GroundRent Registration
Account Identifier:	District - 15 Account Number - 2200015281	
Owner Information		
Owner Name:	DIMICK ROBERT G SR	Use: RESIDENTIAL
	DIMICK DIANE J	Principal Residence: YES
Mailing Address:	4 WINDWARD WAY	Deed Reference: 1) /11700/ 00014
	BALTIMORE MD 21220-7507	2)
Location & Structure Information		
Premises Address:	4 WINDWARD WAY	Legal Description: .22 AC
	0-0000	4 WINDWARD WAY NS
		SENECA HARBOR
Map: 0091	Grid: 0016	Parcel: 0259
Sub District:	Subdivision: 0000	Section:
		Block: B
		Lot: 2
		Assessment Year: 2012
		Plat No: 1
		Plat Ref: 0064/ 0128
Special Tax Areas:		
Town: NONE		
Ad Valorem:		
Tax Class:		
Primary Structure Built 1996	Above Grade Enclosed Area 1,940 SF	Finished Basement Area 9,583 SF
Property Land Area 04	County Use	
Stories 2.000000	Basement YES	Type STANDARD UNIT
Exterior SIDING	Full/Half Bath 2 full/ 1 half	Garage 1 Attached
Last Major Renovation		
Value Information		
Base Value	Value	Phase-in Assessments
	As of	As of
	01/01/2012	07/01/2013
		As of
		07/01/2014
Land: 104,300	104,300	
Improvements 158,300	141,200	
Total: 262,600	245,500	245,500
Preferential Land: 0		0
Transfer Information		
Seller: SENECA HARBOR LIMITED PARTNERSHIP	Date: 07/16/1996	Price: \$161,700
Type: ARMS LENGTH IMPROVED	Deed1: /11700/ 00014	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:
Exemption Information		
Partial Exempt Assessments:	Class	07/01/2013
County: 000		0.00
State: 000		0.00
Municipal: 000		0.00/0.00
Tax Exempt:	Special Tax Recapture:	
Exempt Class:	NONE	
Homestead Application Information		
Homestead Application Status: Approved 06/02/2011		



James / Robert
Dimick
My Neighborhood Map
4/24/14
PC Ex: 6

Case NO: N-123-X

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My Neighborhood



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Printed 4/24/2014

Case 14-123-X
4/24/14

PC 7A

James / Robert
Dimick



PC 7C





Case 14-123-X.
PC Ex: 8A
6/10/14



2.13 Feet



Case No: 14-123-X

My Neighborhood Map

PC Ex. 8B

6/10/14

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My Neighborhood



Drivick.

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Printed 5/1/2014



PC Ex 9A
6/10/14
11123 - Y



6/10/14
My Neighborhood Map
PC EX: 9B

Dimiul

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My Neighborhood



Case 14-123-X.

Printed 5/1/2014

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PC Ex: 10

6/10/14

Dimick

Case No 14-123X.

County Council of Baltimore County Maryland

Legislative Session 1978, Legislative Day No. 10

BILL NO. 30-78

Mr. John W. O'Rourke, Councilman

By the County Council, April 3, 1978

A BILL

ENTITLED

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

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

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

DC Ex: 11

6/10/14

Dimick

CASE 14-173-X

County Council of Baltimore County Maryland

Legislative Session 1983, Legislative Day No. 22

BILL NO. 139-83

Mr. Norman W. Lauenstein, Councilman

By the County Council, October 17, 1983

A BILL ENTITLED

AN ACT concerning

Fishing, Crabbing and Shellfishing Operations

FOR the purpose of ratifying and approving certain use permits issued under the authority of Bill No. 98-75 regarding fishing, crabbing and shellfishing operations; ratifying all actions taken by certain officials in the approval of such permits; and requiring compliance with all applicable Zoning Regulations with respect to any extension of such operations.

SECTION 1. *Be it enacted by the County Council of Baltimore County, Maryland,* that all use permits issued or approved by the Zoning Commissioner or Deputy Zoning Commissioner prior to January 1, 1979, and allowing the continuation of existing commercial fishing, crabbing and shellfishing operations primary or secondary (now known as fishing and shellfishing facilities, shoreline Class I and Class II) be and they are hereby ratified, reinstated and approved.

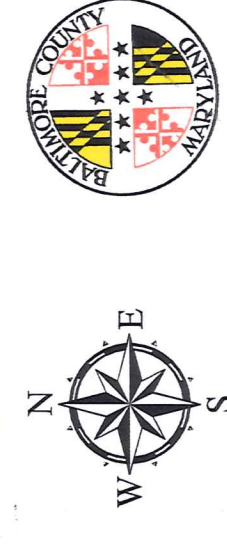
SECTION 2. *And be it further enacted,* that all actions taken by the Zoning Commissioner or Deputy Zoning Commissioner in issuing or approving said use permits under the authority, or purported authority, of Council Bill No. 98-75, are hereby ratified, reinstated and approved.



The Property information on this Plot was compiled from existing deed information. This information is not to be considered authoritative. The Survey information was not field checked and certified by a licensed land surveyor.

Prepared by Geographic Information Services
Baltimore County Office of Information Technology
Business Applications
Date: January 30, 2014
2011 State Inventory

1 inch = 25 feet



Case No:
14-23-X
PC Ex. 1
James Robert Dimick
4/24/14



Environmental Map

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Baltimore County
My Neighborhood



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Rev 10/27



Pct. No.
#9

293 Feet



My Neighborhood Map

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My Neighborhood



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SURVEYED AND PLATTED BY
REDING & HOWARD
CIVIL & LANDSCAPE ENGINEERS
BALTIMORE, MD.

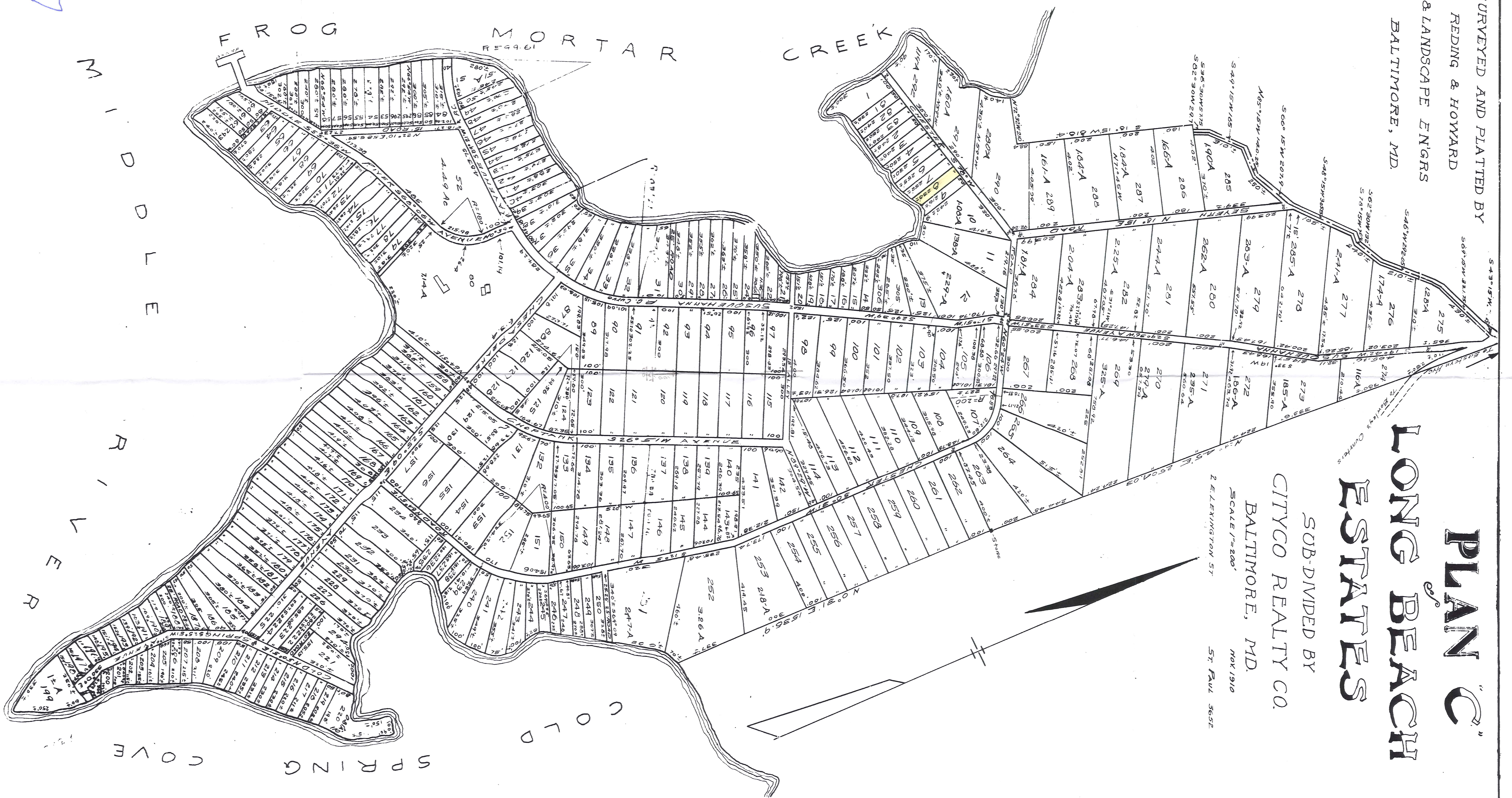
PLAN "C"

LONG BEACH ESTATES

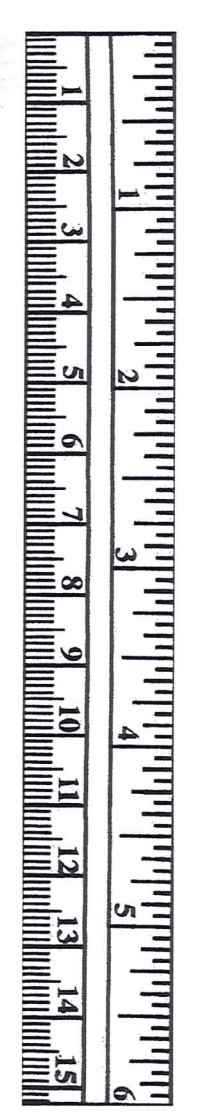
SUB-DIVIDED BY
CITYCO REALTY CO.
BALTIMORE, MD.

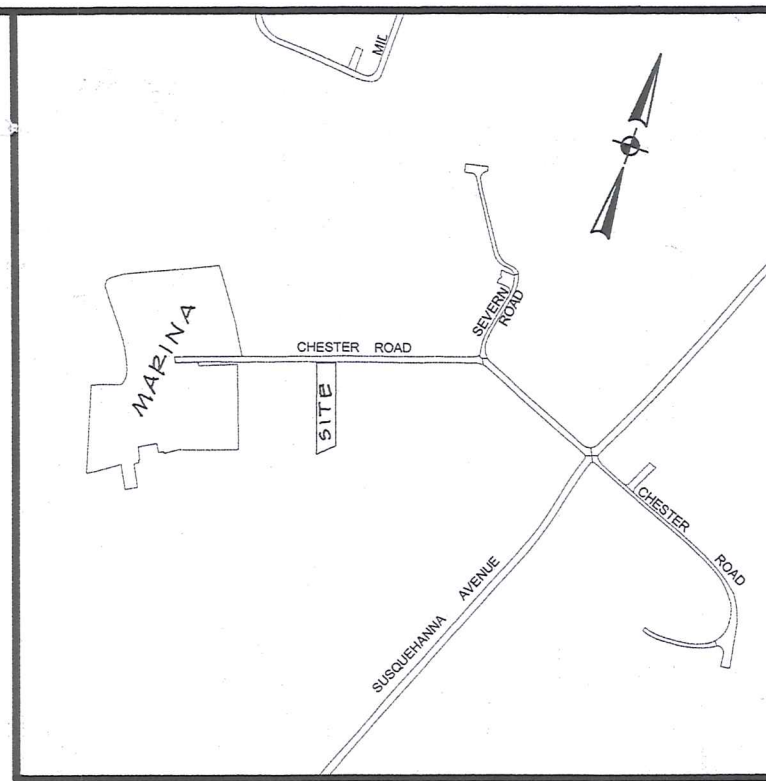
SCALE 1"=200'
NOV 1910
ST. PAUL 3652

Filed Aug 7th 1914
Test: Wm F Cole
Clerk



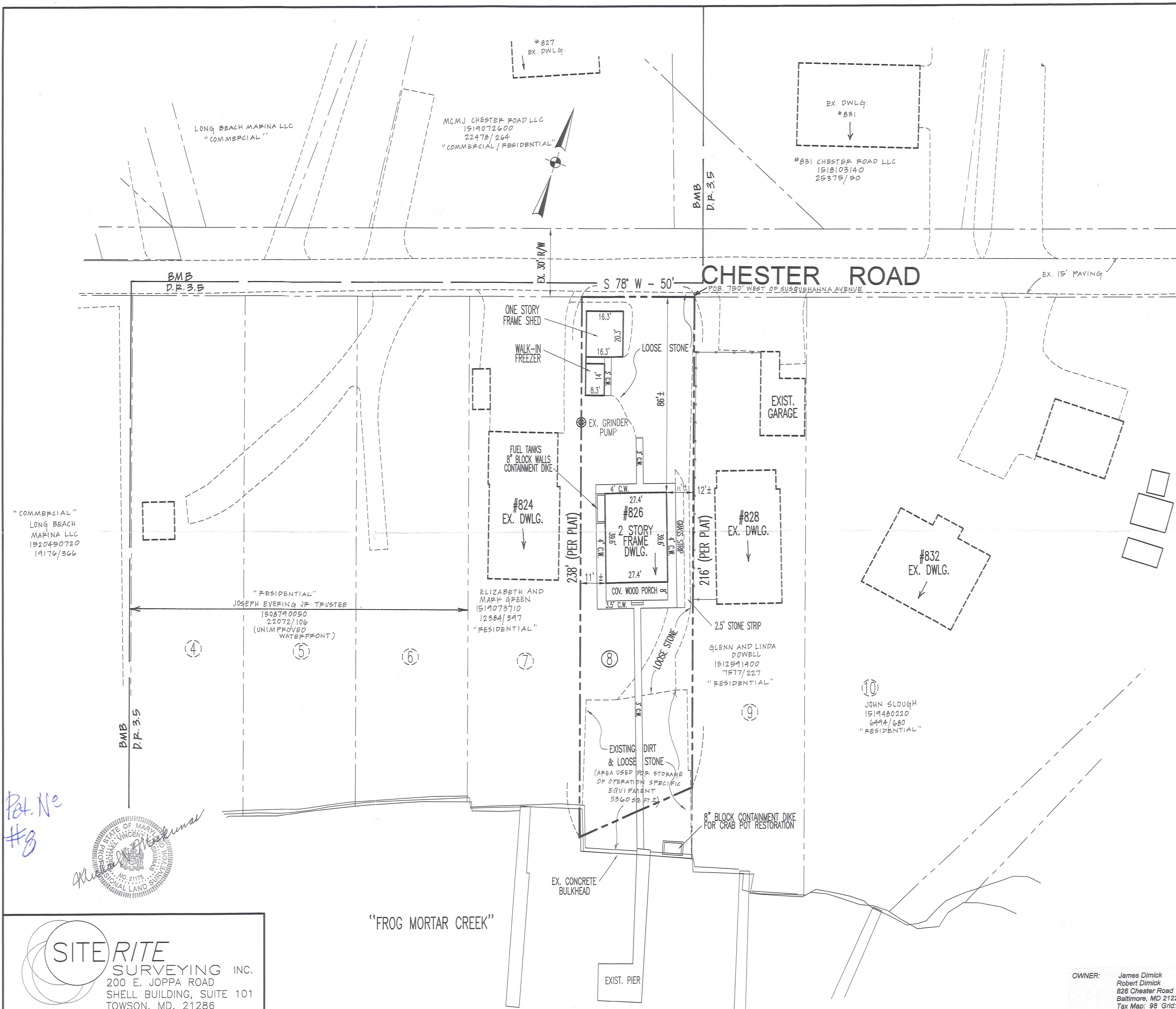
Pl. #
Exhibit #7





- General Notes:
1. Existing zoning: D.R. 3.5 (09183)
 2. Lot Area: 12,485 Sq. Ft./0.286 Acres +/-
 3. Existing Use: Commercial Fishing and Shellfishing Facility as approved by use permit dated March 2, 1979
 4. Proposed Use: Class II Fishing and Shellfishing Facility
 5. A Use Permit approving a Class I Commercial Fishing and Shellfishing Facility was approved by the Zoning Commissioner on March 2, 1979
 6. This property is located within the Chesapeake Bay Critical Area (LDA)
 7. This property is not located within an Historic District
 8. This property is located within the 100 Year Flood Plain Area
 9. There are no existing or proposed signs for this property.
 10. This property is serviced by public water and sewer
 11. This property is not in any failed Basic Service Map Area: water, sewer and transportation
 12. There is an existing Citation for this property (Case No. 13672-see also related Citation 0122164)
 13. This property is located within the Martin State Airport Restriction Area and the Bowleys Quarters-Back River Neck Area
 14. The existing dwelling was built 1939 per SDAT data
 15. This property has been held intact by the Dimick Family since 1958
 16. The existing lot coverage is 5148 Sq. Ft., 41 % of overall lot area
 17. The following items will be utilized in the operation and/or will be stored on the premises: dwelling, storage of crab pots, live boxes, nets, eel pots, boat storage in water and on land, buying and retail selling of fish and crabs, loading and unloading of catches and gear.

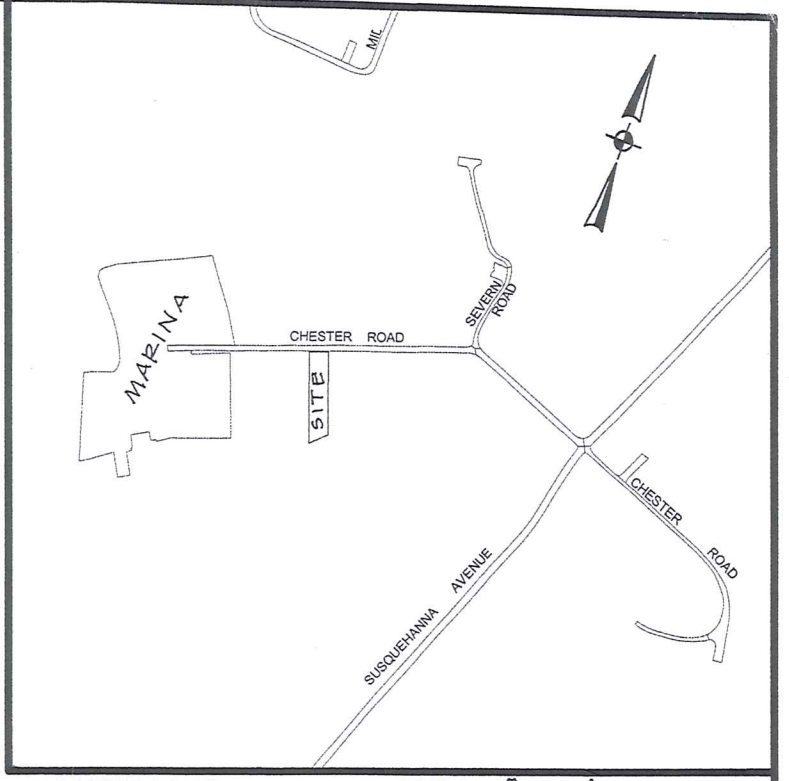
- Requested Zoning Relief:
- Special Exception to use the herein described property for:
1. A fishing and shellfishing facility, shoreline, Class II as provided in BCZR Section 1801.1.C.8 if the Administrative Law Judge does not determine that the plan updating the use permit for a commercial fishing, crabbing and shellfish operation dated March 2, 1979 renders this request moot; and
 2. For such other and further relief as may be deemed necessary by the Administrative Law Judge for Baltimore County.



SITERITE
SURVEYING INC.
200 E. JOPPA ROAD
SHELL BUILDING, SUITE 101
TOWSON, MD. 21286
PHONE: 410-828-9060
FAX: 410-828-9066

OWNER: James Dimick
Robert Dimick
826 Chester Road
Baltimore, MD 21220
Tax Map: 98 Grid: 4 Parcel: 203
Tax Acct. No. 1504350490
Deed Ref.: 29021/50

PLAN TO ACCOMPANY A SPECIAL HEARING
AND SPECIAL EXCEPTION
"DIMICK PROPERTY"
#826 CHESTER ROAD
TAX MAP: 98 GRID: 4 PARCEL: 203
TAX ACCT. NO. 1504350490
DEED REF.: 29021/50
LOT-8 PLAN "C"
"LONG BEACH ESTATES" 3/178
15TH ELECTION DISTRICT
BALTIMORE COUNTY, MARYLAND
NOVEMBER 14, 2013
SCALE: 1"=20' #10241



- General Notes:
1. Existing zoning: D.R. 3.5 (09183)
 2. Lot Area: 12,485 Sq. Ft./0.286 Acres +/-
 3. Existing Use: Commercial Fishing and Shellfishing Facility as approved by use permit dated March 2, 1979
 4. Proposed Use: Class II Fishing and Shellfishing Facility
 5. A Use Permit approving a Class I Commercial Fishing and Shellfishing Facility was approved by the Zoning Commissioner on March 2, 1979
 6. This property is located within the Chesapeake Bay Critical Area (LDA)
 7. This property is not located within an Historic District
 8. This property is located within the 100 Year Flood Plain Area
 9. There are no existing or proposed signs for this property.
 10. This property is serviced by public water and sewer
 11. This property is not in any failed Basic Service Map Area: water, sewer and transportation
 12. There is an existing Citation for this property (Case No. 13672-see also related Citation 0122164)
 13. This property is located within the Martin State Airport Restriction Area and the Bowleys Quarters-Back River Neck Area
 14. The existing dwelling was built 1939 per SDAT data
 15. This property has been held intact by the Dimick Family since 1958
 16. The existing lot coverage is 5148 Sq. Ft., 41 % of overall lot area
 17. The following items will be utilized in the operation and/or will be stored on the premises: dwelling, storage of crab pots, live boxes, nets, eel pots, boat storage in water and on land, buying and retail selling of fish and crabs, loading and unloading of catches and gear.

- Requested Zoning Relief:
- Special Exception to use the herein described property for:
1. A fishing and shellfishing facility, shoreline, Class II as provided in BC2R Section 1801.1.C.8 if the Administrative Law Judge does not determine that the plan updating the use permit for a commercial fishing, crabbing and shellfish operation dated March 2, 1979 renders this request moot; and
 2. For such other and further relief as may be deemed necessary by the Administrative Law Judge for Baltimore County.

PLAN TO ACCOMPANY A SPECIAL HEARING
AND SPECIAL EXCEPTION
"DIMICK PROPERTY"

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"FROG MORTAR CREEK"

SITERITE
SURVEYING INC.
200 E. JOPPA ROAD
SHELL BUILDING, SUITE 101
TOWSON, MD. 21286
PHONE: 410-828-9060
FAX: 410-828-9066



"COMMERCIAL"
LONG BEACH
MARINA LLC
1520450720
19176/366

"RESIDENTIAL"
JOSEPH EVERING JR TRUSTEE
1508790050
22072/106
(UNIMPROVED
WATERFRONT)

ELIZABETH AND
MARIE GREEN
1519073710
12384/397
"RESIDENTIAL"

GLENN AND LINDA
DOWELL
1512591400
1577/227
"RESIDENTIAL"

JOHN SLOUGH
1519480220
6494/680
"RESIDENTIAL"

LONG BEACH MARINA LLC
"COMMERCIAL"

MCMJ CHESTER ROAD LLC
1519072600
22478/264
"COMMERCIAL/RESIDENTIAL"

EX. DWLG.
#831
#831 CHESTER ROAD LLC
1518103140
25375/50

BMB
D.R. 3.5

BMB
D.R. 3.5

BMB
D.R. 3.5

CHESTER ROAD

S 78° W - 50'

POB. 750' WEST OF SUSQUEHANNA AVENUE

ONE STORY
FRAME SHED
WALK-IN
FREEZER

FUEL TANKS
8" BLOCK WALLS
CONTAINMENT DIKE

#824
EX. DWLG.

#826
2 STORY
FRAME
DWLG.

#828
EX. DWLG.

#832
EX. DWLG.

EXISTING DIRT
& LOOSE
STONE
(AREA USED FOR STORAGE
OF OPERATION SPECIFIC
EQUIPMENT
3360 SQ. FT.)

8" BLOCK CONTAINMENT DIKE
FOR CRAB POT RESTORATION

EX. CONCRETE
BULKHEAD

EXIST. PIER

EXIST.
GARAGE

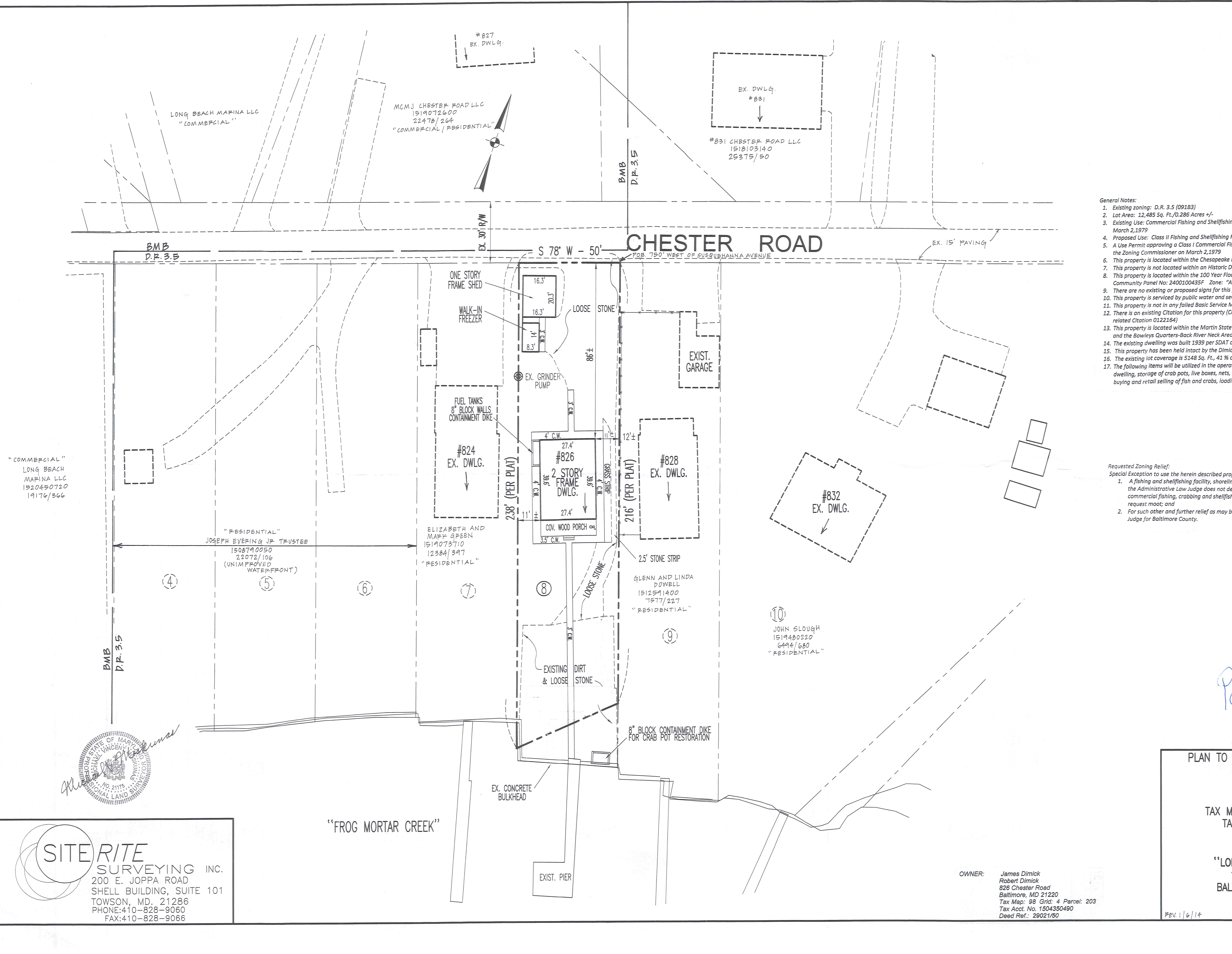
LOOSE STONE

LOOSE STONE

2.5' STONE STRIP

EX. 30' R/W

EX. 15' PAVING



Requested Zoning Relief:
Special Exception to use the herein described property for:

1. A fishing and shellfishing facility, shoreline, Class II as provided in BC2Z Section 1B01.1.C.8 if the Administrative Law Judge does not determine that the plan updating the use permit for a commercial fishing, crabbing and shellfish operation dated March 2,1979 renders this request moot; and
2. For such other and further relief as may be deemed necessary by the Administrative Law Judge for Baltimore County.

Pet. No 1

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SPECIAL EXCEPTION
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SITE*RITE*
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