JOHN A. OLSZEWSKI, JR.
County Executive

MAUREEN E. MURPHY
Chief Administrative Law Judge
ANDREW M. BELT
Administrative Law Judge
DEREK J. BAUMGARDNER
Administrative Law Judge

January 29, 2024

Matthew T. Kotroco, Esquire – mattkotroco@gmail.com
Kotroco & Associates, LLC
210 Allegheny Avenue, Suite 100
Towson, MD 21204

RE: **APPEAL TO BOARD OF APPEALS**
Petition for Special Hearing
Case No. 2023-0070- SPH
Property: 1326 Gooseneck Road

Dear Mr. Kotroco:

Please be advised that an appeal of the above-referenced case was filed in this Office on January 26, 2024. 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,

Maureen E. Murphy

MAUREEN E. MURPHY
Chief Administrative Law Judge
for Baltimore County

MEM:dlm
Attachment

c: - *continued to next page*

RECEIVED
JAN 29 2024
BALTIMORE COUNTY
BOARD OF APPEALS

c: Allen Roberston – arbq@hotmail.com
Code Enforcement - paienforce@baltimorecountymd.gov
People's Counsel - peoplescounsel@baltimorecountymd.gov
Joseph W. Hession – 1127 Cold Spring Road, Baltimore, MD 21220
Joseph Fuller – 3822 Chestnut Road, Middle River, MD 21220
James Rasinski – 3822 Chestnut Road, Middle River, MD 21220

JOHN A. OLSZEWSKI, JR.
County Executive

MAUREEN E. MURPHY
Chief Administrative Law Judge
ANDREW M. BELT
Administrative Law Judge
DEREK J. BAUMGARDNER
Administrative Law Judge

December 29, 2023

Timothy Kotroco, Esquire – tkotroco@gmail.com
Matthew T. Kotroco, Esquire – mattkotroco@gmail.com
305 Washington Avenue, Suite 502
Towson, MD 21204

RE: Petition for Special Hearing
Case No. 2023-0070-SPH
Property: 1326 Goose Neck Road

Dear Counsel:

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

Pursuant to Baltimore County Code § 32-3-401(a), "a person aggrieved or feeling aggrieved" by this Decision and Order 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,

Maureen E. Murphy

MAUREEN E. MURPHY
Chief Managing Administrative Law Judge
for Baltimore County

MEM:dlm
Enclosure
C: Allen Roberston – arbq@hotmail.com

IN RE: **PETITION FOR SPECIAL HEARING (1326 Gooseneck Road)**	*	BEFORE THE
15th Election District 5th Council District	*	OFFICE OF ADMINISTRATIVE
Cecile Myrick *Legal Owner*	*	HEARINGS FOR
	*	BALTIMORE COUNTY
Petitioner	*	**Case No: 2023-0070-SPH**

* * * * * * * *

OPINION AND ORDER

This Case comes before the Office of Administrative Hearings ("OAH") for consideration of Petition for Special Hearing filed by Cecile Myrick ("Petitioner") located at 1326 Goose Neck Road, Middle River. An Amended Petition for Special Hearing was filed pursuant to the Baltimore County Zoning Regulations ("BCZR"), §500.7: (1) to remove restriction #1 from the Board of Appeals Opinion and Order in Case No.: 93-221-A, prohibiting the Property from being associated with the commercial fishing and crabbing business at 1326 Gooseneck Road and to amend the approved site plan to substitute a 30' x 65' utility shed in lieu of the previously approved 24'x 36' utility; and (2) to limit the use of the utility shed and lot for storage purposes only, with no commercial activity taking place on the Property.

An In Person/Virtual Hearing was held at 105 West Chesapeake Avenue, Room 205, Towson, Maryland. The Petition was properly advertised and posted. The Petitioner, and her son James Myrick, both appeared virtually at the hearing in support of the Amended Petition along with David Billingsley, land use consultant with Central Drafting & Design, who also appeared virtually and prepared a site plan (the "Site Plan"). (Pet. Ex. 1A, 1B). Timothy Kotroco, Esquire and Matthew Kotroco, Esquire represented the Petitioner. Allen Robertson, President of Bowleys

Quarters Community Association, appeared in person and presented evidence in opposition. People's Counsel for Baltimore County submitted a letter dated November 7, 2023.

Zoning Advisory Committee ("ZAC") comments were received from the Department of Planning ("DOP"): the October 27, 2023 comment in which the DOP was opposed to the Petition for Special Hearing; and the November 1, 2023 comment in which the DOP recommended approval of the Amended Petition for Special Hearing. Department of Environmental Protection and Sustainability ("DEPS") also provided a ZAC comment requiring certain Chesapeake Bay Critical Area ("CBCA") requirements to be met prior to building permit being issued. Additionally, Development Plans Review ("DPR") commented that both a Landscape Plan and a Lighting Plan would be required to be filed if the requested relief was granted. DPR also provided comments on behalf of Department of Public Works and Transportation ("DPWT") which read as follows:

> A) The property is within the Tidal Special Flood Hazard Area Zone AE (BFE=8.5) per panel FIRM 2400100465F dated 9/26/08. Must comply with Flood Plain Ordinance, See County Bill 40-15 (the latest edition of the Baltimore County Code) and Bill 42-15, and Section 32-4-414 of Article 32. Title 4 of the Baltimore County Code, 2003, as amended. The LiMWA is not on the property.
>
> B) Size of proposed 65'x35' accessory structure exceeds minimum allowable size allowed in a tidal special hazard zone. DPWT requests that the petition be denied unless the accessory structure is reduced in size to meet size requirements.

FACTUAL AND PROCEDURAL BACKGROUND

This Case was filed as a result of a Code Enforcement Case (CC2214599) filed against the 1326 Gooseneck Rd. for alleged violations of Zoning Orders in Case Nos: 93-0221-A and 84-0147-XSPHA and specifically for:

> failure to remove all junk, trash and debris including trailers, sea/storage containers, contractors' equipment, boxes, tanks, metal, crab pots, tools, other miscellaneous items with instructions to clean up the Property to avoid a fine and hearing.

The Petition here has been filed for the property addressed as 1326 Gooseneck Rd., a waterfront property improved with a dwelling which is also owned by the Petitioner where she resides. However, the Site Plan lists the property known as 1327 Gooseneck Rd. which is the actual property at issue in this Case (the "Property"). As a result, the Code Enforcement case incorrectly lists 1326 Gooseneck Rd. as the location where the alleged violations occurred.

The Property is a 1.01 acre +/- parcel of land which sits on the non-waterfront, western side of Gooseneck Road (also known as Goose Harbor Road and Seneca Road) and is addressed as 1327 Gooseneck Rd. SDAT information lists the address as "Goose Harbor Rd." According to a Deed dated June 30, 1978, Petitioner, and her now deceased husband, James R. Myrick, purchased the Property. (Pet. Ex. 2). The Property is zoned Resource Conservation, Rural Residential (RC 5). The evidence revealed that Petitioner purchased the Property with the intention of using it for the storage of equipment and related commercial items associated with a crabbing business which they have owned and operated since 1971. The Petitioner's crabbing business, which is now operated by her son, James Myrick, (the "Myrick Crabbing Business") is located at 1326 Gooseneck Rd., a waterfront lot fronting on Seneca Creek, which is also zoned RC5. James Myrick resides at 1411 Chesapeake Ave. and is commercial waterman, as are his sister Cecilia, and his son. His mother, the Petitioner, has resided at or near 1326 Gooseneck Rd. for 60 years. For 30 years, Petitioner and her family owned and operated a restaurant known as "Crab Quarters" located on Eastern Avenue until they sold that restaurant.

In 1975, with the creation of the RC zones, Bill 98-75 authorized the use permit process to grandfather existing crabbing facilities. In 1978, after filing the required site plan (the "1978 Site Plan"), the Myrick family obtained a use permit to validate the Myrick Crabbing Business at 1326 Gooseneck Rd. (the "1978 Use Permit"). In 1983, with the passage of Bill 139-83, the County Council prohibited the extension, expansion or intensification of a crabbing business unless a Special Exception was granted. That same year, in order to secure a commercial permit (Permit #47752), and at the request of the County Building Engineer, the Myricks submitted a site plan of the Myrick Crabbing Business located at 1326 Gooseneck Rd. including "all of the improvements and the actual use of the property."

In Case No.: 84-147-XSPHA, Petitioner, and her husband James Myrick, filed a Petition for Special Exception to change the Myrick Crabbing Business to Class I status, as well as a Petition for Special Hearing to allow an expansion of the Myrick Crabbing Business to include not only 1326 Gooseneck Rd., but also the Property at issue in the instant case. The Petitions were actually precipitated as a result of a Code Enforcement case where the Petitioners had constructed a new garage without a building permit for use in the shell fishing business at 1326 Gooseneck Rd. In that Case, Petitioner sought to expand the use by amending the 1978 Site Plan to include both 1326 Gooseneck Rd. and the Property here. In that case, Bowley's Quarters Improvement Association was opposed to the requested relief and testified in opposition. The facts there confirmed that the Zoning Commissioner had approved the 1978 Use Permit to allow the Petitioner to continue the Myrick Crabbing Business at 1326 Gooseneck Rd. At that time, the evidence revealed that Petitioner had between 1,100-1,400 crab pots; that they manufactured, painted, and sold crab pots to public; that they advertised crab pots for sale; that they stored eel pots; and that

they stored various nets and other materials used in their business. The evidence there also confirmed that they purchased the Property at issue here for:

> the express purpose of partially cleaning the pots and storing their pots thereon. Mr. Myrick planned to remove all of the pots, and traps, nets, etc. from his primary property and use the new property for storage and additional parking,…

Petitioner argued that because the Property in the instant case was 'contiguous' to the property at 1326 Gooseneck Rd., it should be considered as 'merged' for zoning purposes. In that case, Petitioners asserted that storage and parking areas on the Property would be screened with fencing and/or shrubbery and there would be a 30-foot entrance into the Property from Goose Neck Rd.

In denying the requested relief, Zoning Commissioner Arnold Jablon did not agree that the Property and 1326 Gooseneck Rd. (which were two (2) separate lots of record) were contiguous because they were separated by a public road, or that the properties should be merged for zoning purposes. Importantly, Zoning Commissioner Jablon relied upon the BCZR definition of 'fishing and shell fishing facility' which was defined as a principal use situated on a lot on the shoreline of tidal waters. Because the Property in the instant Case is not waterfront, he found that it could not be used as part of the Myrick Crabbing Business, which business included the storage of crab pots and any other commercial items associated or related to the business. The Petitioners' contention there that they desired to clean up 1326 Gooseneck Rd. was not persuasive for ZC Jablon to grant any of the requested relief. As a result, all of the storage of pots, nets, and other material/equipment used in the business had to remain at 1326 Gooseneck Rd.

On appeal, the Board of Appeals came to the same conclusion and denied the requested relief to use the Property in the instant case for storage of crab pots or any other commercial use. In that *de novo* appeal, the evidence was that Mr. Myrick had already cleared the Property (erroneously identified by the Board as Lot 246), and had already been using it to store commercial

material and equipment beginning in 1979. Similar to Zoning Commissioner Jablon, the Board was not convinced by the Petitioners' argument there that the Property here and 1326 Gooseneck Rd. should be considered as 1 shoreline property based on the fact that their boundaries abut each other at the centerline of Gooseneck Rd. Notably, the Board found that at the time the 1978 Use Permit for the Myrick Crabbing Business was granted, the Myricks did not even own the Property at issue here.

On appeal, the Circuit Court for Baltimore County, noted that the Board's referral to the Property at issue as 'Lot 246' was erroneous. As to the merits, the Circuit Court affirmed the Board's decision that the Property at issue in this Case cannot be used for commercial activity, including storage of crab pots, material, etc. On Remand, the Board corrected its misidentification of the Property here as 'Lot 246.'

In Case No. 89-2-SPH, Petitioners filed a Petition for Special Hearing to amend the 1978 Site Plan which accompanied Permit CFC-13 to include 2 fuel tanks – 1 for residential heating use, and 1 for fueling Petitioners' commercial fishing vessels. Finding no evidence of any request for expansion of the existing shell fishing operation, Zoning Commissioner Robert Haines granted the Special Hearing request.

In Case No. 93-221-A, Petitioners again sought zoning relief to use the Property in the instant Case (which was identified there as 1327 Gooseneck Rd.) to permit a 24x36 ft. utility shed as an 'accessory structure' where no principal structure existed, and where no principal structure could be constructed due to Chesapeake Bay Critical Area ("CBCA") regulations. Petitioners there insisted that the shed would not be used for commercial purposes but was needed for storage. Finding that the proposed 'accessory structure' did not meet the BCZR definition of 'accessory structure' in that it was not located on a lot with a principal use or structure, Zoning Commissioner

Larry Schmidt denied the relief. Additionally, Zoning Commissioner Schmidt found that the Variance relief requested was akin to a 'use variance' which he did not have the authority to consider.

After a Motion for Reconsideration was filed, Zoning Commissioner Schmidt granted the relief to construct the 24x36 ft., utility shed after finding that it would serve the use of the Property which he found to be 'Open Space.' The requested relief was granted with the condition that the shed "would house lawn mowers and other equipment necessary to maintain the subject property." The Order further prohibited the use of the lot and utility shed for commercial activity as follows:

> The shed and lot cannot be used to support the commercial activity on the Myricks' lot across the street.

The proposed location and size of the utility shed was provided on a site plan attached to the Petition (the "1993 Site Plan").

On appeal, the Board of Appeals noted that the Petitioner needed to keep the grass on the Property at issue here mowed and to maintain it for recreational use. Significantly, the Board was aware that the Myricks had attempted to use the Property at issue here in conjunction with their commercial fishing and crabbing operation and that use had previously been denied:

> The Board will note that in the past, the Myricks have attempted to use this lot in conjunction with their commercial fishing and crabbing operation, but this use has been denied and the only use remaining on the lot is a recreational one. The Board is of the opinion that the variance to permit the utility shed should be granted. However, its use is to be restricted to the storage of lawn mowers, picnic tables, grills, etc., and is not to be used in any way as an accessory use to the commercial use across the street.

Specifically, the Order of the Board restricted the granting of the zoning relief which is now the subject of the instant Case as follows:

1. No use in any way associated with the commercial fishing and crabbing business will be permitted on this site.

Through the filing of the Petition here, Petitioner is now requesting that the undersigned remove the Board's restriction which they acknowledge prohibits the Property from being associated with the commercial fishing and crabbing business at 1326 Gooseneck Rd., and also to permit a larger utility shed of 30 x 65 ft. in lieu of the previously approved 24x 36 ft. shed. While Petitioner proposes a Condition in the Order to use the shed for storage purposes and not for commercial activity, the testimony of the Petitioner was that the larger utility shed was for crab pots, nets, equipment and other material used and/or associated with the Myrick Crabbing Business.

Admittedly, Petitioner never constructed the 24x36 ft. shed approved in 1993. The larger utility shed now being proposed is actually a canvas tent which Petitioner's son, James Myrick, has already purchased. The tent is proposed to be used to store and cover the crab pots and other related material/equipment used in the Myrick's Crabbing Business. While not considered a building, and not permanently attached to the land, David Billingsley testified that DEPS would not allow a tent permit to be issued due to environmental regulations. Mr. Billingsley also testified in regard to historical GIS aerial photographs dating to 1995. These aerial photographs show that, despite the prior Zoning Orders, this Property has several structures including at least one sea container and a storage shed(s). The aerial photographs also reveal that Petitioner has continued to store, repair, clean and/or paint crab pots, and to store commercial equipment; to park both tagged and untagged vehicles; to store at least 2 boats owned by James Myrick, both overgrown with vegetation; as well as other commercial items on the Property. Mr. Billingsley stated that the Property is 110 ft. wide by 400 ft. deep. Other than the front part which the Petitioner cleared of trees and vegetation years ago when the Myricks began using the Property for commercial storage,

the rear portion is wooded. All of the property surrounding the Property is owned by Baltimore County.

James Myrick testified that he was requested by the immediate neighbor at 1324 Gooseneck Rd., Steven E. Zelkoski, to move the crab pots, painting tank, nets and other commercial material and equipment from 1326 Gooseneck Rd. over to the Property in order that Mr. Zelkoski could sell 1324. Mr. Myrick testified that he filed the instant Petition to appease Mr. Zelkoski. However, the SDAT information shows that Mr. Zelkoski sold 1324 on December 30, 2022, prior to the issuance of the Code Enforcement Citation on March 15, 2023 (CC2214599).

Allan Robertson testified in opposition and provided street view photographs he took dated November 24, 2023 showing James Myrick working on an outboard motor, commercial vehicles and equipment on the Property as well as a contractor's equipment storage yard.

SPECIAL HEARING

A hearing to request special zoning relief is proper under BCZR, §500.7 as follows:

> The said Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals as hereinafter provided. The power given hereunder shall include the right of any interested person to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations.

"A request for special hearing is, in legal effect, a request for a declaratory judgment." *Antwerpen v. Baltimore County*, 163 Md. App. 194, 877 A.2d 1166, 1175 (2005). And, "the administrative practice in Baltimore County has been to determine whether the proposed Special Hearing would

be compatible with the community and generally consistent with the spirit and intent of the regulations." *Kiesling v. Long*, Unreported Opinion, No. 1485, Md. App. (Sept. Term 2016).

1. Petition requesting removal of a Board of Appeals Condition in an Order.

The first part of the Petition for Special Hearing requests that OAH remove the Board's restriction (#1) from the Board's Order in Case No.: 93-221-A. As noted in the procedural history, the Board's Order was not appealed and therefore it stands as the law of the case to restrict the Petitioners use of the Property to residential uses. As set forth in BCZR, §500.7, the jurisdiction of OAH is limited to issuing zoning orders "for the proper enforcement of all zoning regulations." The express wording in BCZR, §500.7 could not have been intended to include the power to remove or change a restriction put in place by the Board of Appeals. If that were correct, then any restriction which the Board makes as a condition of its Orders, after hearing a case de novo, could simply be altered by the filing of a Petition for Special Hearing. In my view, such a Petition to change a Board of Appeals' condition in an Order cannot be consistent with the enforcement of BCZR, and is beyond the authority of the OAH. As a result, for this reason, the Petition should be dismissed.

2. Res Judicata and Collateral Estoppel apply here.

In addition to the lack of jurisdiction of OAH to remove a restriction in a Board of Appeals' Order, I find that the zoning requests in this Petition, as filed by the same Petitioners, to use the same Property without any commercial use restrictions, was already ruled upon in Case No.: 84-147-XSPHA by the Circuit Court, and in Case No. 93-221-A by the Board of Appeals. In *Batson v. Shiflett*, 325 Md. 684, 705, 602 A.2d 1191 (Md. 1992), the Maryland Court of Appeals stated:

> Whether an administrative agency's declaration should be given preclusive effect hinges on three factors: (1) whether the [agency] was acting in a judicial capacity; (2) whether the issue presented to

> the [reviewing] court was actually litigated before the [agency]; and
> (3) whether its resolution was necessary to the [agency's] decision.

(internal quotation marks omitted.) In *Whittle v. Board of Zoning Appeals*, 211 Md. 36, 38, 125 A.2d 41 (1956), the Maryland Court of Appeals explained that if a "second suit is between the same parties and is upon the same cause of action, a judgment in the earlier case on the merits is an absolute bar, not only as to all matters which were litigated in the earlier case, but as to all matters which could have been litigated." There has been no change in circumstances to warrant revisiting the same issue, filed by the same parties, about the same Property, which has been denied multiple times by OAH, by the Board of Appeals and by the Circuit Court.

In addition, the doctrine of collateral estoppel also applies here for the same reasons. The factual findings made by OAH (previously the Zoning Commissioner), and by the Board of Appeals on *de novo* appeal in Case No.: 84-147-XSPHA by the Circuit Court, and in Case No. 93-221-A, are applicable to the instant Case under the doctrine of collateral estoppel. *Garrity v. Maryland State Bd. of Plumbing*, 447 Md. 359, 368 (2016). (See also *Colandrea v. Wilde Lake Community Ass'n, Inc*., 361 Md. 391 (2000); *Washington Suburban Sanitary Commission v. TKU Associates*, 281 Md. 1, 18-19 (1977)). Accordingly, under both doctrines, this Petition will be dismissed.

3. Petitioner's Commercial Use of the Property and Proposed Condition.

It is not lost that this Petition arises out of a Code Enforcement Case for alleged violations of the prohibited commercial use of the Property. The street view photographs provided by Bowleys Quarters Community Association, the historic aerial photographs provided by the Petitioner, along with the Code Enforcement photographs contained in the file, reveal the Petitioner's historic non-permitted, commercial use has been ongoing since 1979. I find, based on those photographs, and notwithstanding the previous Orders and restrictions in Case No.: 84-147-

XSPHA by the Circuit Court, and in Case No. 93-221-A by the Board of Appeals, that the Myrick family has continued to: store, clean and paint crab pots; to park commercial vehicles including construction equipment; and to store commercial equipment; and to otherwise conduct commercial activity associated with the Myrick Crabbing Business on the Property.

Given this prohibited commercial activity, the zoning relief requested here to, on the one hand, remove the commercial restriction that the Board of Appeals thought was important, and on the other hand, suggest a new condition that the proposed tent would only be used for storage of crab pots and not commercial activity, is circular. In other words, there can be no reasonable belief that Petitioners would not now use the tent only for the storage of lawn mowers to maintain the Property which was a previous condition ordered by Zoning Commissioner Schmidt. While this Case does not resolve the active Code Enforcement case, the Petitioner's commercial use of the Property as shown in the photographs, disqualifies their proposed condition that the larger tent will not be used for commercial activity. To be clear, in regard to crab pots, I find that the storage, cleaning, painting, selling or any related activity associated with crab pots, is commercial activity as such crab pots are integral to any crabbing business as are the nets, freezers, cleaning facilities, fuel tanks, boats, and other related equipment and materials without limiting the items and activities associated with the shell fishing business. With any case involving a shell fishing facility, one of the main items used and stored are the crab pots. Petitioner's admission that the tent will cover the crab pots is uncontroverted evidence that the Property will continue to be used for the prohibited commercial shell fishing operation. After all, Petitioners purchased the Property to store shell fishing equipment and materials, began to use it without the requisite approvals, unsuccessfully filed for zoning relief to approve their commercial use of the Property, and despite those facts and Orders, have continued to use it has they like, only to seek permission after another

Code Enforcement case has been filed. While the Myrick Crabbing Business is a valid use at 1326 Gooseneck Rd. pursuant to the 1978 Use Permit and 1978 Site Plan, the Property here can never be used as part of that business, for storage, parking or otherwise. As Zoning Commissioner Schmidt wrote when he approved the proposed 24x36 utility shed, the shed can only be used to "house lawn mowers and other equipment necessary to maintain the subject property." Zoning Commissioner Schmidt made clear that: "The shed and lot cannot be used to support the commercial activity on the Myricks' lot across the street." The relief requested in this Case is entirely to conduct and support the commercial activity on the Myricks' lot across the street. Accordingly, the Petition to permit a 30x65 ft. tent or structure or shed will be denied.

THEREFORE, IT IS ORDERED this **29th** day of **December, 2023** by this Administrative Law Judge that the Petition for Special Hearing from BCZR, §500.7: (1) to remove restriction #1 from the Board of Appeals Opinion and Order in Case No.: 93-221-A, prohibiting the Property from being associated with the commercial fishing and crabbing business at 1326 Gooseneck Road and to amend the approved site plan to substitute a 30' x 65' utility shed in lieu of the previously approved 24'x 36' utility; and (2) to limit the use of the utility shed and lot for storage purposes only, with no commercial activity taking place on the Property, be and they are each hereby, **DENIED**.

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

Maureen E. Murphy

MAUREEN E. MURPHY
Chief Managing Administrative Law Judge
for Baltimore County

MEM/dlm

TIMOTHY M. KOTROCO, Esq.
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410-299-2943
Tkotroco@gmail.com

November 20, 2023

The Honorable Maureen E. Murphy
Managing Administrative Law Judge for Baltimore County
105 West Chesapeake Avenue, Suite 103
Towson, Maryland 21204

Re: Cecile Myrick – Petitioner
1327 Gooseneck Road, Tax ID No. 1600001460
Zoning Case No.: 2023-070-SPH
Hearing Date: November 27, 2023
Reply to People's Counsel Letter

Dear Judge Murphy:

Please accept this letter as a response to the letter that was submitted from the office of People's Counsel dated November 7, 2023. The Special Hearing request filed in this case, which is now pending before the Office of Administrative Hearings, is a very simple request. The owner of the property, Cecile Myrick (Myrick) is requesting that the restriction imposed by the Baltimore County Board of Appeals in Case No. 93-221-A be removed and that the owner be allowed to store their fishing and crabbing equipment on this one-acre parcel of land. An additional request has been made to enlarge the dimensions of the storage shed.

Reason for the Request

The special hearing filed in this case requests that a restriction, which has existed on this property for the past 29 years, be removed. Why now? Why would a property owner file to remove a restriction that has been on their property for the past three decades?

One of the main reasons for filing this petition for special hearing came at the request of our immediate neighbors, most specifically the Myrick's next-door neighbor, Mr. Steven Zelkoski, who at the time resided at 1324 Gooseneck Road. (The Myricks own a home at 1326 Gooseneck Road, which is where their crabbing business is located).

A little over a year ago, Mr. Zelkoski informed the Myricks that he was going to list his home and property on the market for sale. He asked the Myricks if they would consider storing their crabbing equipment on their one-acre property located across the street, as the storage of their crab pots and equipment on their waterfront property might hamper the sale of his property. Mr. Zelkoski even offered to contribute $1,000 dollars toward the costs of moving the Myrick's equipment across the street.

The Myricks were not opposed to their neighbor's request, but informed Mr. Zelkoski that there was a restriction from a 29-year-old zoning case that prohibits their crabbing equipment from being stored on their one-acre lot. Mr. Myrick advised his neighbor that he would start the process of asking that the restriction be lifted, and the phone call was made to my office for assistance.

Historical Background

The Myrick family have been long standing members of the Bowley's Quarters community for over 62 years. They purchased their home at 1326 Gooseneck Road in March 1971. (See SDAT printout, attached as exhibit 1.) Their family's crabbing operation started shortly thereafter. The family also owned and operated a local seafood restaurant at 2909 Eastern Boulevard in Middle River, known as the "Crab Quarters". Their crabbing operation at 1326 Gooseneck Road supplied the crabs that were sold at their family's restaurant. The Myrick family operated that restaurant business for many decades. However, after many successful decades, the restaurant is now closed.

In August of 1978, the Myrick family purchased a one-acre vacant parcel of land located across the street from their residence and crabbing business at 1326 Gooseneck Road. This one-acre parcel is sometimes referred to as 1327 Gooseneck Road, but there is some uncertainty as to whether Baltimore County has officially designated it with that street address. The tax ID for that property is 1600001460. It is this one-acre parcel of land, and only this parcel of land, (not 1326 Gooseneck Road) that is the subject of the hearing before this Administrative Law Judge today.

The one-acre unimproved parcel of land is depicted on the site plan that was filed to accompany the petition for special hearing in this case. It is attached to this letter as exhibit 2A & 2B. (Exhibit 2B is simply the same site plan only highlighted to show the tree line to remain as well as the location of a proposed storage building)

Today's Case

At issue in the special hearing case is a restriction imposed by the Baltimore County Board of Appeals in their decision rendered in Case No. 93-221-A, which is the last and most recent decision relating to this property. The Board's Order is dated September 22, 1994, and it is attached hereto as Exhibit 3. The Board's decision is 3 pages in length.

In 1994, the Board approved the construction of a 24 x 36 accessory building on the subject property where no principal building exists. The Board found that the property was zoned RC 20; that no protestants appeared at the hearing before the Zoning Commissioner; that no protestants appeared at the reconsideration hearing before the Zoning Commissioner; that no protestants appeared at the hearing before the Board of Appeals; that a petition in favor of the variance was signed by all the residents on Gooseneck Road and that People's Counsel was

present at the hearing before the Board, presented no witnesses, but entered 10 exhibits into the record. (See page 1 and 2 of the Board's Order attached as exhibit 3)

While the Board approved all of Myrick's requests, a restriction was imposed preventing them from using the property in connection with the commercial fishing and crabbing business located at 1326 Gooseneck Road. That restriction has stood for the past 29 years, and the Myrick family never constructed the 24 x 36 storage shed on their property. Fast forward 29 years, when Myrick's next-door neighbor, Mr. Steven Zelkoski asked them to store their crab pots and gear on their one-acre property across the street, so that he could sell his home. It was mostly that request that brings us to today's special hearing petition.

The Myricks are asking that the restriction be lifted to allow them to move their crab pots and gear from the front yard of their waterfront property to the long-standing storage lot across the street. The size of the building has changed, but only because the Myricks purchased at an auction, a pre-manufactured tent-like building the dimensions of which are 30 x 65 feet. It is a tent that comes in a box and consists of metal frame arches and a canvas type covering. The box with the tent enclosed within it sits on the vacant lot today. That storage tent fits within the setbacks on the property. (See attached exhibit 4, a photograph of the tent in its shipping box)

This vacant one-acre lot, which is the subject of this case, has long been used as an open storage and parking lot as evidenced by and depicted within the attached aerial photographs, most of which are taken from Baltimore County's "My Neighborhood's" webpage. (See attached exhibit 5, aerial photographs dating from 1982 through 2020)

Like the last hearing on this property in 1994, many neighbors along Gooseneck Road have signed a petition supporting the Myrick family in this special hearing request to relocate their crab pots and crabbing gear onto the vacant lot across the street. (See attached exhibit 6, petition signed by neighbors)

Much of the property along the south side of Gooseneck Road has already been overtaken and used by the residents as some form of overflow storage for their own residential properties. Google street view photographs are attached showing the various uses that exist on the same side of Gooseneck Road as the Myrick's storage lot. (See attached exhibit 7, Google Street view photos along Gooseneck Road)

Lastly, attached to this letter as exhibit 8, are photographs of the Myrick's crabbing boat and pier as well as photos of the property located at 1326 Gooseneck Road, where the commercial crabbing business has legally operated for the past 50 years. These photos are particularly telling, as they depict the crabbing business when the season is over; when the crab pots and gear have been removed from the rivers and bay and are stored on dry land.

It makes perfect sense that the restriction should be lifted so that this crabbing equipment can be stored across the street on this one-acre parcel, out of the front yard of this waterfront home and out of the view of the neighbors along Gooseneck Road.

Lastly, I should address the decision from the 1984 case, (Case No. 84-147-XSPHA) where the Myricks applied to have this one-acre property approved as a commercial fishing and shell fishing operation, which request was denied 40 years ago.

In no way does the special hearing request filed in this case, in any way attempt to establish a commercial operation on this one-acre lot. No commercial activity will take place on this property. No expansion of the existing crabbing business will occur. The property will be used to store the very same crab pots and crabbing equipment that are currently being stored in the waterfront yard of 1326 Gooseneck Road and elsewhere on that property. In addition, the storage lot will continue to be used for storage lawfully allowed on the property. The intent of this request is to remove those items from 1326 Gooseneck Road and place them across the street on the open section of the one-acre lot. The wooded area on the property will remain as shown on the site plan.

It is our hope and request that the petition will be granted and that the ALJ will impose the necessary conditions and restrictions, to ensure that the storage lot will be used as outlined within this letter and that which is allowed by law. We believe that those same conditions and restrictions will address the issues raised by the Office of People's Counsel in their letter.

Approving this special hearing request, with appropriate conditions, will provide a great benefit to this community.

Respectfully Submitted,

Timothy M. Kotroco

Timothy Kotroco

cc: **VIA EMAIL TO**:
Peter Zimmerman, Office of People's Counsel
C. Pete Gutwald, PAI Director
Adam Whitlock, Chief of Enforcement
Phillip Mills, Zoning Inspector
Jeff Perlow, Zoning Supervisor
Stephen Lafferty, Planning Director
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November 7, 2023

SENT VIA EMAIL
Maureen E. Murphy, Managing Administrative Law Judge
The Jefferson Building
105 W. Chesapeake Avenue, Suite 103
Towson, Maryland 21204

RE: Cecile Myrick - Petitioner
1326 Goose Neck Road
Case No.: 2023-070-SPH
Hearing Date: November 27, 2023

Dear Judge Murphy,

"There are really some very unique features about this case, Watson."
Arthur Conan Doyle, Sherlock Holmes in The Adventure of the Norwood Builder (1903), Sherlock Holmes Mysteries, Signet Classic (1984)

This zoning petition for special hearing, as amended, is shaped as a request to remove the commercial fishing and crabbing business prohibition imposed by the County Board of Appeals (CBA) in 1993. In broader historical context, the petition effectively and implicitly asks for a special exception to expand a grandfathered Use Permit for a fishing and shellfishing facility. The Use Permit covers a very small R.C. 5 zone shoreline lot at 1326 Goose Neck Road. They want to expand to their much larger separate interior lot across the road.

There is a complicated history stretching back almost half a century. There are many problems with this petition. A threshold objection is that the petition is disqualified because fishing and shellfishing facilities, by Zoning Regulation definition, must be on a shoreline lot, and are so restricted. Another fundamental objection relates to the application of the *res judicata* doctrine.

* * *

Petitioner Cecile Myrick owns two separate lots platted on the 1927 Bowleys Quarter First Addition to Plat 2 and identified separately in SDAT Real Property Data.

They face each other across Goose Neck Road. 1326 Gooseneck Road is Lot 247 and borders Goose Harbor Inlet. It is 11,200 square feet in size, about a quarter of an acre. This inlet flows into Seneca Creek. 1327 Goose Neck Road appears to be an unnumbered lot on the other side, partially facing Lot 247. It is about an acre in size. We attach People's Counsel's Exhibits, beginning with the Petition, Amended Petition, ADC Map, My Neighborhood Zoning, Google Photos, and the respective SDAT Real Property Data for the separate 1326 and 1327 lots.[1]

There are 26 residential shoreline lots along Goose Neck Road. Across the road, these are evened numbered lots 1300 to 1352. In this setting, 1326 is right in the middle and appears to be the only nonconforming lot in use commercially.

Across the road, around 1327, there is adjacent property owned by Baltimore County. There are also situated dwellings to the southeast which front on Goose Harbor Road: 3900 and 3902.

I.

"It seems, from what I gather, to be one of those simple cases which are so extremely difficult."
Sherlock Holmes in The Boscombe Valley Mystery (1891).

On the surface, the gist of the petition is to remove the longstanding adjudicated prohibition on any commercial crabbing (fishing and shellfishing) use on the larger 1-acre unnumbered lot known as 1327. Petitioner thus wants to expand her crabbing operation to the much larger lot across Goose Neck Road. In this connection, Petitioner also wants to construct a 30' x 65' shed (1950 square feet) to replace a 24' x 36' shed (864 square feet).

The underlying but unstated request is to expand a grandfathered 1978 Use Permit on the 1326 shoreline lot and effectively obtain a special exception for the expanded facility spanning both lots. To understand this context necessitates a detailed discussion of the zoning history, including 1984 and 1993 litigation and decisions.

The zoning classification is R.C. 5 (Rural Residential). It appears to have been R.C. 5 since 1976.

In 1975, the County Council enacted legislation which established the Resource Conservation Zones. Bill 98-75. This created the R.C. 2, R.C. 3, R.C. 4, and R.C. 5 Zones. Among other things, there were defined "Commercial fishing, crabbing, and shellfishing operation" in BCZR Sec. 101. They were allocated to the special exception category in the R.C. 2, R.C. 3, and R.C. 5 Zones. The R.C. 5 Zone subsection is BCZR Sec. 1A04.2.B.7.

[1] The SDAT identifies the unnumbered 1-acre lot as Goose Harbor Road. The zoning cases name this subject lot as 1327 Goose Harbor Road. We refer to it as 1327 for simplification. We also attach as exhibits other documents referred to below in this letter, along with an exhibit list.

At the same time, the legislation authorized a use permit process to grandfather existing facilities at their existing level of intensity and scope.

In 1978, the Council enacted Bill 30-78, attached, to revise the law governing such facilities. There were included revised definitions of "Fishing and shellfishing facilities, shoreline, Class I or II. These definitions are as follows, now 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 retiling or wholesaling of the catches) and that is situated on a lot that is on the shoreline of tidal waters." Emphasis supplied.
>
> "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]"

The Council maintained the use as a special exception in the aforesaid R.C. Zones. There was also added a special exception for the D.R. Zones, again with a use permit process to allow and grandfather existing facilities subject to various criteria.

II.

> ***"****There is nothing more deceptive than an obvious fact."*
> Sherlock Holmes in The Boscombe Valley Mystery (1891).

James Myrick, Cecilia's husband, acquired 1326 Goose Neck Road Lot 247 in 1971. He began a crabbing business. He obtained a permit to grandfather the use in September, 1978. We asked the zoning office if a record of the 1978 use permit and site plan were available. However, the record could not be found. Sequentially, the County Council enacted Bill 139-83 to ratify use permits which had not satisfied the Bill 98-75 deadline. It is also attached. This covered the Myrick Use Permit.

Bill 139-83 reiterated the prohibition of any extension, expansion, or intensification of the operation grandfathered by use permit unless a special exception petition were granted. Section 3 stated,

> "Be it further enacted that nothing contained herein shall be construed to authorize the extension, expansion or intensification of any fishing, crabbing, and shellfishing

> operations, primary or secondary, or fishing and shellfishing facilities, shoreline, Class I and II, beyond that indicated in the plans accompanying the application for use permit unless and until the applicant shall have complied with all Zoning Regulations, including but not limited to the petitioning for a grant of a Special Exception for any extension or intensification of use, and that failure to comply with such Zoning Regulations shall subject to the applicant to all applicable penalties, including a civil penalty."

Separately, James Myrick acquired the subject 1327 unnumbered interior lot in 1978. This timing contributed to the subsequent Zoning Commissioner and CBA decisions that the two lots are separate and that the interior lot is not a shoreline lot. As a result, it does not qualify for a special exception under the BCZR Sec. 101.1 definition.

There followed a series of adjudicated cases. We attach a Case History Exhibit.

In 1983, the Buildings Engineer ordered James Myrick to submit an accurate site plan of the operation in order to secure a commercial permit. On appeal, Myrick volunteered to submit the plan. The County Board of Appeals thereby affirmed the Order. Case No. 83-10 (1983).

Then, in late 1983, James Myrick petitioned to extend the use across Goose Neck Road to 1327 by special exception. He also requested variances for a new building he had constructed. Case No. 84-147-XSPHA. This led to an intensely contested case. Zoning Commissioner Arnold Jablon denied the petition in a lengthy opinion.[2] He decided the petition failed to satisfy the familiar BCZR Sec. 502.1 special exception standards.

To satisfy the shoreline lot requirement, James Myrick alleged certain easements, right-of-way, and street location factors effectuated a merger of the two lots. ZC Jablon denied this claim as well.

1326 Goose Neck Road includes a 2-story residence. James Myrick said he used only about 3950 square feet, one-third of the lot, for the fishing operation. Myrick also said he had about 1400 crab pots, with 1200 kept in the water, 400 pulled at a time. Pages 2-5. Most of the crab pots were kept in the water. The grandfathered use was thus relatively condensed, as befit the relatively small lot. Myrick said the proposed expansion would enable more spacious storage of crab pots.

Meanwhile, James Myrick also had constructed a new building without a permit. This replaced a smaller building, a truck used as a cool box, and a lean-to. The new building was used for better storage of pots and other equipment, fabrication, and a cool box. The new building required several setback variances. Although Myrick claimed it occupied about the same area as what was replaced, ZC Jablon denied the variances as well.

---

[2] This 1984 opinion varies in the quality of legibility. But its essentials are discernible.

Notably, ZC Jablon observed the use had already intensified beyond that grandfathered in the 1978 use permit. But the case did not formally present an enforcement or termination issue.

Community residents divided on the issues. In support of the expansion, neighbor Dennis Fandl presented a favorable petition signed by 29 residents of Goose Neck Road.

On the other hand, several neighbors opposed the petition, as did Christopher, Lamartina, President of the Bowleys Quarters Improvement Association. Lamartina underlined that Goose Neck Road is a dead-end road. The commercial traffic already generated particularly excessive congestion and dangerous conditions. The Gresses, next door neighbors, identified odors from the painting work, noises from the cool box motor, fumes from the smokestack, and general loss of privacy and quiet enjoyment. ZC Jablon found the totality of evidence proved there were and would be particular adverse impacts on the neighborhood.

On *de novo* appeal, the CBA in 1984 again denied the petition after a three-day trial hearing. The CBA focused on the threshold point that the interior lot does not qualify as a requisite shoreline lot. The CBA wrote, on page 3,

> "The regulations clearly require that to obtain special exception for a Class I Fishing and Shellfishing facility, the property in question must be a shoreline property and one of the petitions before the Board seeks a special exception for a Class I Fishing and Shellfishing facility on this property. The Board can find no reason to classify these two parcels as shoreline property. Had both these properties been in active use as a crabbing operation at the time the application for use permit was filed and the required site plan as shown, there may have been justification for granting the use permit for both lots but such was not the case. At the time application for use permit was filed, Mr. Myrick did not even own Lot #247. Mr. Myrick presented as exhibits several properties divided in some manner, i.e. right of way, street or easement, etc. to buttress his claim that they are considered one property. The Board cannot, however, apply any of these standards to this situation. Mr. Myrick purchased one property in 1971, the second in 1978, from different owners indicating these have always been separate parcels. They are so designated for tax purposes. It is this Boar's opinion that Mr. Myrick owns two parcels, one a shoreline parcel and one not a shoreline parcel. Since one of the most primary requirements for the granting of a special exception for a Fishing and Crabbing facility is that the facility must be located on shoreline property, the request for the Special Exception will be denied."

The petition was thus disqualified and had to be denied as a matter of law.

The CBA went on to criticize the construction of the new building without a permit, but found it to be an improvement over the previous building and so should be permitted.

The CBA likewise recognized concerns about the expansion of the shoreline use beyond that permitted. Page 4. While that issue was not directly in play, the Board added,

> "While the areas of the site grandfathered through the use permit may not have increased, the intensification of the use on this site is surely suspect, and Mr. Myrick may be skating precariously close to losing his use permit altogether."

There was an appeal to the Circuit Court. In 1985, the Circuit Court affirmed the denial of the special exception, At the same time, the Court observed the CBA could not order building permit approval. This entailed a remand. In due course, the CBA approved variances for the new building. That is where the 1983-85 case ended.[3]

In 1988, James and Cecile Myrick filed a petition for special hearing to confirm that an amended site plan with two fuel tanks was legitimate under their 1978 Use Permit CPC-13. Over opposition, Zoning Commissioner Robert Haines approved the petition, subject to environmental conditions. Case No. 89-2-SPH.

A collateral silver lining of the 1988 decision is the attachment of the amended site plan prepared by property line surveyor Frank Lee. This plan sets the baseline or benchmark for the scope of the grandfathered use. Among other things, it shows the residence by the water. We cannot discern any area for substantial outside storage of crab pots. This should be kept in mind when the current petition is promoted as a safety valve to move their unsightly crab pots from the shoreline lot. When not in the water, these pots should be stored inside the building or offsite.

In 1993, the Myrick family subsequently asked for approval of a 24' x 36' accessory shed on 1327 Goose Neck Road. There was more litigation. The CBA eventually approved it, subject to the continuing restriction that there be no fishing and crabbing use. Case No. 93-221-A (1994). The CBA included in its Order,

> "No use associated with the commercial fishing and crabbing business shall be permitted on this site."

This condition logically followed from the earlier denial of the special exception to expand across the road. The Myricks necessarily accepted the restriction.

There is more. Just last year, the highly experienced veteran Inspector (129) issued a Correction Notice and Citation dated February 7, 2022 for multiple extreme zoning and code violations at 1326 Goose Neck Road. Case No. CC 2214599. The cited violations are:

> Violation of 1984 and 1993 Orders and Site Plans.
> Impermissible Contractor's Equipment Storage Yard
> Impermissible Open Dump and Junkyard

[3] The CBA 1984 decision refers to the unnumbered lot as Lot 246. However, the Bowleys Quarters Plat appears to identify Lot 246 as an adjacent waterfront lot.

Impermissible Class II Trucking Facility
Trash, debris, and uncovered garbage containers
Including but not limited to trailers, sea/storage containers, contractor's equipment, boxes, tanks, metal, crab pots, tools, other miscellaneous items

The Citation set a hearing date of March 15, 2023. The county docket shows a completed pre-hearing inspection on March 8, 2023. The case, however, is still pending. The Code Enforcement history -- Correction Notices, Citation, and Docket -- Exhibit is attached.[4]

In sum, there was a shellfishing operation grandfathered by 1978 use permit for 1326 Goose Neck Road; the subsequent request for expansion to 1327 was denied in 1984 and further prohibited in 1993. There have been recurring concerns, past and present, as to exceedance of the scope of use permit and violations of the Zoning Regulations.

III.

"Having gathered these facts, Watson, I smoked several pipes over them, trying to separate those which were crucial from others which were merely incidental."
Sherlock Holmes in The Adventure of the Crooked Man (1893)

Let us begin with threshold procedural observations. The petition, even as amended, is defective because the proposed removal of the commercial restriction encompasses once again a new special exception. The petition's superficial reference to the restriction in the 1993 decision disregards the contextual 1984 denial of the special exception. The amended petition does not resolve this problem.

It is also basic that the petition is still disqualified because the interior lot is not a shoreline lot. This is what the CBA correctly held in 1984. The Circuit Court affirmed. Short end of long story.

The amended petition purports to finesse the issues. They allege:

> "The use of the utility shed and lot will be for storage purposes only, with no commercial activity taking place on the property …" Emphasis in original.

In sum, this amended petition still disguises its effective request for a special exception to expand the scope of the 1978 Use Permit. It is a tactical exercise in decontextualization and distraction.

[4] On this record, the violations are undisputed and still unresolved. So far as we are aware, Respondent Cecile Myrick has not given a written denial or response to the Citation. Pray recall that the County may not process plans if the applicant has an interest in county property where there exists a violation of the zoning regulations. County Code Sec. 32-4-114(c).

Moreover, even apart from the interior lot disqualification, the magnified replacement shed is for the storage of crabs. This itself entails commercial activity. The conclusive telltale clue is the persistent request to remove the 1993 restrictive condition. It does not take the skill of Sherlock Holmes to deduce that the Myricks want to extend the shellfishing use across Goose Neck Road to the much larger rear lot.

Pray recall that in the 1984 case, James Myrick testified the operation occupied 3950 square feet, less than one-third of the lot and less than one-tenth of an acre. The present petition would inevitably enable and magnify the use exponentially to well over an acre.

The amended petition is fraught not only with credibility issues. The enforceability of a "noncommercial" limit for this large "shed" is beyond doubtful. The recent enforcement issues accentuate these concerns.

Notably, the current initial site plan was nothing more than the 1992 site plan filed in Case No. 93-221-SPH. There is just an additional handwritten notation of the case number of the present case. That site plan was entirely insufficient. Among other things, it does not show anything about the proposed use. Nor does it show anything about the existing crabbing use or the permit and plan approved in 1978. Nor does it show the uses on adjacent properties. The amended petition's site plan provides a bit more detail but still involves effective expansion of the shellfishing operation to the prohibited area.

IV.

"I have already looked into this matter and have come, as I think, within sight of my solution. If you could accompany me in that last step, you could be of considerable service to me."
Sherlock Holmes to Dr. Watson, The Adventure of the Crooked Man (1893).

This brings us to the basic legal issue of *res judicata*. This doctrine is familiar to the administrative law judges. Here, there has been no change in zoning classification. Nor is there any substantial change in circumstances which would warrant a different result.

We dealt successfully with this doctrine in Seminary Galleria v. Dulaney Valley Improvement Association 192 Md. App. 719 (2010). The Court delved into the path of the law in such cases as Whittle v. County Board of Appeals 211 Md. 36 (1956) and Woodlawn Area Citizens Association v. Board of County Comm'rs 241 Md. 187 (1966).

The established standard is that there must be a relevant and substantial changes in circumstances relating to the property and neighborhood. Otherwise, it would be arbitrary and capricious to depart from the prior decision. There is are no such changes here. The present petition is grounded in business convenience and preference.

To begin, the claim that the petition improves the situation by moving crab pot storage to the interior lot is the same as the proposal made by James Myrick in 1984. In

this context, there is another fundamental objection. The amended site plan attached to ZC Haines' 1988 decision does not show any area for substantial outdoor storage of crab pots. Correlatively, James Myrick's 1984 testimony does not describe or include such an area. There is thus no justification for any present outdoor mass of unsightly crab pots. Indeed, they amount to a common law nuisance.

So, it turns out the so-called or supposed promotional area benefit of moving unsightly crab pots across the road into a warehouse is based on the false premise that they are acceptable. This is pretextual and a gaslighting exercise.[5]

The landmark Whittle case deserves particular attention. It is also attached. This involved a request to grant a special exception for a funeral home on York Road despite a previous denial. The Court deemed it barred by *res judicata*.

There may in the current case be presented evidence of support from several area residents. Whittle discussed in depth and rejected the alleged change of decreased opposition from neighbors and some support. 211 Md. at 47-48. In this context, the Court reminded that zoning is not subject to a plebiscite, citing, *inter alia,* Benner v. Tribbitt 190 Md. 6 (1948) and Consolidated Gas, Electric, Light & Power v. Kahl 191 Md. 249 (1948)

To the extent Cecile Myrick suggests more support or decreased opposition, the Whittle opinion negates such a claim even if this were the case here. Anyway, James Myrick had presented strong support from 29 Goose Neck Road residents in 1984. So, there is no factual distinction either.

Whittle rejected another claim that added safeguarding conditions would suffice. 211 Md. at 48-49. These included restricting the depth of the property from the road available for the use, the provision of more shrubbery, and improved lighting at the entrance. But the Court concluded,

> "The additional conditions attached to the granting of the permit in the second case seem to amount to only slight distinctions."

The Court likewise ruled *res judicata* barred a repeat petition for rezoning relating to the marina in Alvey v. Hedin 243 Md. 334 (1966). Petitioners tried to finesse the situation there too. They went for a more modest change in the zone requested. They also argued for the impact of rezoning of an adjacent property, and the need for more boating and mooring facilities. The Court again rejected these as insubstantial. 243 Md. at 340-42. The Court followed this path as well in Chatham Corp. v. Beltram 243 Md. 138 (1966).

The same goes for Cecile Myrick's proposed cosmetic condition here to limit the shed use to storage. Any commercial use will inevitably expand and magnify traffic and all the adverse commercial impacts. Anyway, the proposed use in the 1984 case for the

[5] Patrick Hamilton, Angel Street (Gaslight) 1938

interior lot would have been for storage. It should also be kept in mind that past and present history bode poorly for the practical implementation and enforcement of any limits.

Whittle also underlined that a better presentation in the subsequent case does not serve as a justification. 211 Md. at 49-50. Any allegedly better facts and arguments could have been presented in the initial case. Having noted that, we do not see anything better in the current petition. Indeed, the unsightly outdoor storage of crab pots suggests the situation has worsened. Anyway, from every point of view, there was very thorough litigation of the special exception in the 1984 case, and as carried forward with the 1993 shed restriction. Both previous cases were litigated competently and fairly. Indeed, the current presentation is not better. It is much worse.

There also linger and persist serious concerns about the Myricks pushing the envelope to exceed and intensify the scope of the use grandfathered in 1978. The 2022 Correction Notice and Citation magnify these concerns.

It should also be kept in mind that the amended petition still disguises and omits the requisite petition for special exception. Anyway, even if it were filed in proper form, it would be disqualified and barred by *res judicata* for all the above reasons.

V.

"*There are some trees, Watson, which grow to a certain height, and then develop some unsightly eccentricity."* Sherlock Holmes in The Adventure of the Empty House (1903).

The Department of Planning's October 27, 2023 memorandum echoes some of our concerns. It reiterates that the use is not permitted by right in the R.C. 5 Zone, but rather limited by special exception. The gist of it is that the expansion does not align with the orderly purposes of the Zone.

The DOP incisively recognizes that the use is a nuisance, interfering with the enjoyment of surrounding residential properties,

> "The Department feels that removing the restriction on Case 1993-0221-A, thereby allowing the construction of a 30 ft by 65 ft accessory structure for storage related to the business, as revealed in the meeting with the Representative, does not align with any of the uses permitted by right, as outlined in Baltimore County Zoning Regulation § 1A04.2. It is important to note that while the Zoning Regulations allow for a somewhat similar use by Special Exception, such as "Fishing and shellfishing facilities, shoreline, Class I or II" (§ 1A04.2.B.7 BCZR), incorporating this structure into the crabbing business would not be permitted by right in an RC 5 zone.
>
> Another significant concern of the Department is the potential nuisance this may pose to the community if the restriction is lifted. The proposed use of this accessory structure has the potential to become a nuisance to neighboring properties due to the strong and unpleasant odors associated with crabbing/fishing. Handling bait and live or freshly caught

> crabs, which can emit odors, becomes particularly problematic if the bait spoils or if decaying organic matter accumulates. These odors have the potential to permeate nearby homes, thereby creating an unpleasant living environment for residents.
>
> In conclusion, the DOP does not support this request and defers all decision making to the Administrative Law Judge."

The DOP's concerns here are well taken.

* * *

On November 1, 2023, the DOP abruptly and precipitously retracted their opposition. The DOP deleted the concluding two paragraphs quoted above and replaced them with this cosmetic paragraph to ratify Petitioner's self-serving and slanted promotion:

> "After reviewing the amended relief request, the Department of Planning does not object to the request with the condition that the requested utility shed MUST be used for the proposed storage purpose only. Enforcing the use of the storage shed will reduce any clutter on the lot that currently exists and will reduce detrimental visual impacts that could possibly occur."

The substitution of this paragraph comes across as a *post hoc* visceral rationalization to favor the Petitioner. It is disconnected from the rest of their memorandum.

As for the purported reduction of clutter, James Myrick made the same argument in the 1983 case. It was rejected then, and confirmed by the 1993 restriction. There is nothing in the 1978 nonconforming Use Permit to provide for any substantial clutter on the 1326 shoreline lot. There is no excuse for it, and no basis to launch an expansion.

The DOP just adopts Petitioner's promotional styling of a storage limit. It is one thing for Petitioner to engage in a spin campaign to try to minimize the character and impact of the proposed expansion. It is another for the DOP to adopt it so capriciously. Their turnabout is devoid of reasoning.

As Sherlock Holmes would often remind Dr. Watson, it is necessary both to see and observe, with observation imperative for proper deductive reasoning. The DOP has not observed the zoning history, the shoreline lot prerequisite, and the *res judicata* problem.

The DOP's arbitrary change of mind disregards the law, history, and inevitable expansion of this commercial nuisance within the surrounding rural-residential area. As Holmes would say to Dr. Watson, they do not observe the relevant clues and factors.

Conclusion

"'You see, my dear Watson' --- he propped his test tube in the rack, and began to lecture with the air of a professor addressing his class --- 'it is not really difficult to construct a series of inferences, each dependent on its predecessor and each simple in itself'."

Sherlock Holmes in The Adventure of the Dancing Men (1903).

For all the above inferences and reasons, as a matter of law, the present Myrick petition must logically and simply be denied.

Sincerely,



Peter Max Zimmerman
People's Counsel for Baltimore County

cc: Allen Robertson, ARBQ@hotmail.com
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PETITION FOR ZONING HEARING(S)

To be filed with the Department of Permits, Approvals and Inspections
To the Office of Administrative Hearings for Baltimore County for the property located at:

Address 1326 Goose Neck Road, Middle River, MD 21220 Currently Zoned RC 5

Deed Reference 43637/0449 / 43637/0490 10 Digit Tax Account # 1519510661 1600001460

Owner(s) Printed Name(s) Cecile Myrick

(SELECT THE HEARING(S) BY MARKING X AT THE APPROPRIATE SELECTION(S) AND ADDING THE PETITION REQUEST)

The undersigned, who own and occupy the property situate in Baltimore County and which is described in the plan/plat attached hereto and made a part hereof, hereby petition for an:

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

See Attached

2. ____ **a Special Exception** under the Zoning Regulations of Baltimore County to use the herein described property for

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)**

Property is to be posted and advertised as prescribed by the zoning regulations.
I/ we agree to pay expenses of above petition(s), advertising, posting, etc. and further agree to be bound 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

Mailing Address City State

Zip Code Telephone # Email Address

Legal Owners (Petitioners):

Cecile Myrick /
Name #1 – Type or Print Name #2 – Type or Print

Cecile Myrick /
Signature #1 Signature # 2

1326 Goose Neck Road Middle River MD
Mailing Address City State

21220 / 443-463-7778 / smyrick6@gmail.com
Zip Code Telephone #'s (Cell and Home) Email Address

Attorney for Petitioner:

Timothy M Kotroco, Esq. Matthew T. Kotroco, Esq.
Name / Type or Print

Timothy Kotroco
Signature

305 Washington Ave, STE 502, Towson, MD
Mailing Address City State

21204 / 410-299-2943 / tkotroco@gmail.com
Zip Code Telephone # Email Address

Representative to be contacted:

Timothy M Kotroco, Esq. or Matthew T. Kotroco, Esq.
Name / Type or Print

Timothy Kotroco
Signature

305 Washington Ave, STE 502, Towson, MD
Mailing Address City State

21204 / 410-299-2943 / tkotroco@gmail.com
Zip Code Telephone # Email Address

Case Number 2023-0070-SPH Filing Date 4 / 3 / 2023 Do Not Schedule Dates ____ Reviewer MR

Revised 8/2022

TIMOTHY M. KOTROCO, Esq.
305 Washington Avenue, Suite 502
Towson, Maryland 21204
410-299-2943
Tkotroco@gmail.com

Amended Relief Requested:

Special Hearing:

1. To remove restriction #1 from the Board of Appeals opinion and order in Case No. 93-221-A prohibiting the property from being associated with the commercial fishing and crabbing business at 1326 Gooseneck Road and to amend the approved site plan to substitute a 30' x 65' utility shed in lieu of the previously approved 24' x 36' utility shed;

2. To limit the use of the utility shed and lot for **storage purposes only**, with no commercial activity taking place on the property, as will be explained at the hearing; and

3. For such other and further relief as this cause may require.

PC Exh. 2

Case # 2023-0070-SPH
Amended Relief

TIMOTHY M. KOTROCO, Esq.
305 Washington Avenue, Suite 502
Towson, Maryland 21204
410-299-2943
Tkotroco@gmail.com

Relief Requested:

To remove restriction #1 from the Board of Appeals opinion and order in Case No. 93-221-A prohibiting the property from being associated with the commercial fishing and crabbing business at 1326 Gooseneck Road and to amend the approved site plan to substitute a 30' x 60' utility shed in lieu of the previously approved 24' x 36' utility shed as shown on the previously approved site plan.

#2023-0070-SPH

228

BROYLES, HAYES AND ASSOCIATES, INC.

Engineers • Land Planners • Surveyors
1922 MIDDLEBOROUGH ROAD • BALTIMORE, MD 21221
PHONE (410) 574-2227 • FAX (410) 574-2284

DESCRIPTION FOR ZONING VARIANCE
FOR
1327 GOOSENECK ROAD

BEGINNING for the same at a point on the south west side of Gooseneck Road right-of-way, 30 feet wide, at a distance of 626.89 feet north west, of the northwest corner of Goose Harbor Road and Gooseneck Road, Thence running and binding on the aforesaid Gooseneck Road right-of-way;

1. North 52° 21' 00" West 110.00 feet, thence leaving said road and running the three following courses and distances viz.,

2. South 37° 39' 00" West 400.0 feet,

3. South 52° 21' 00" East 110.00 feet,

4. North 52° 21' 00" East 400.0 feet, to the place of beginning containing 1.01 acres more or less.

BEING all of that parcel as recorded in the land records of Baltimore County in Liber 5917, folio 584.

This description was prepared for the purposes of a zoning variance this does not constitute a boundary survey and should not be used as such.

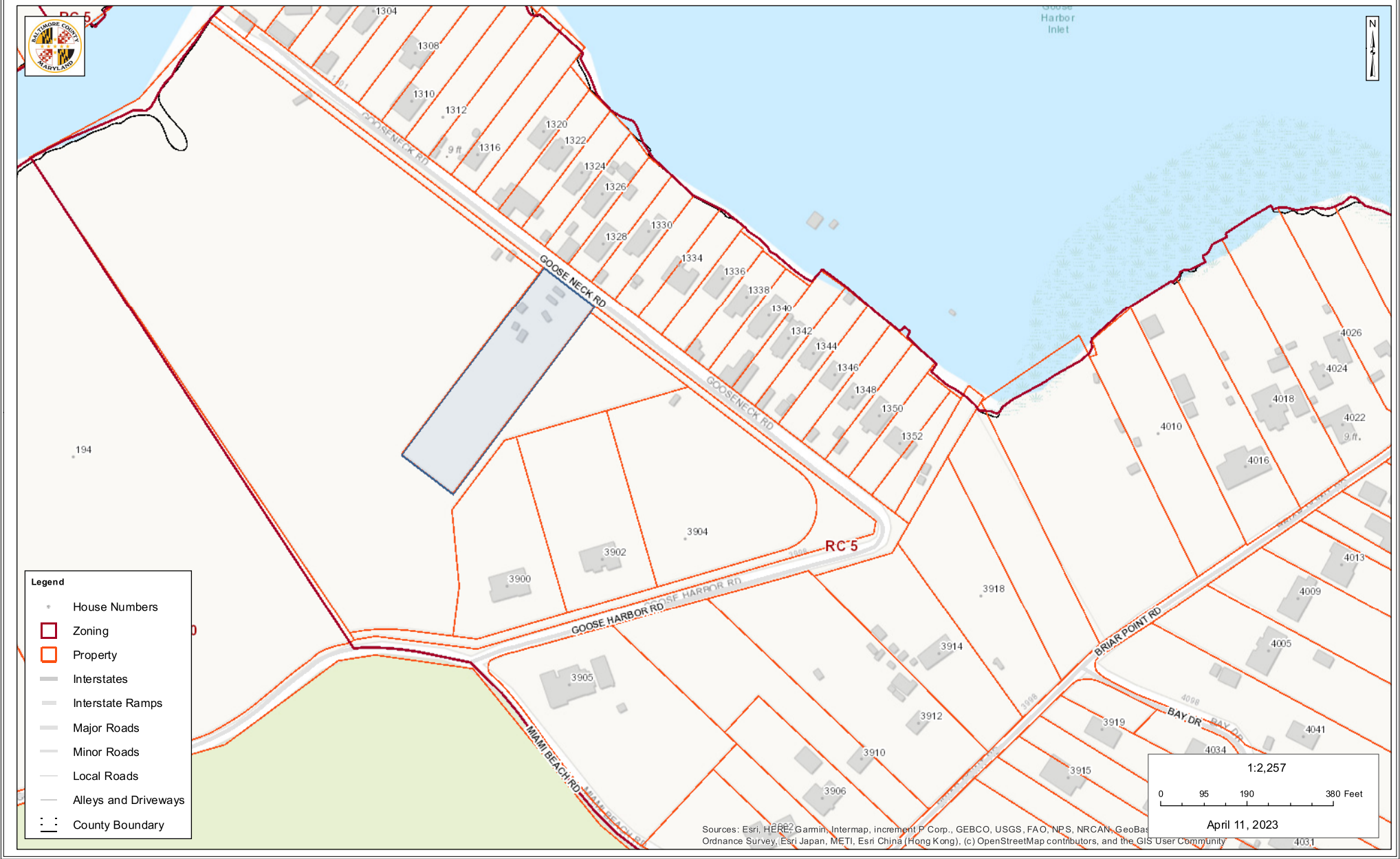


#2023-0070-SPH


MD-43
MD-150
Eastern Regional Park
Chase Elementary School
MIDDLE RIVER
Chesapeake Yachting Center
Tradewinds Marina
Brigadoon Marina Facility
Crystal Mall Paintings
Martin State Airport
Parkside Marina
CARROLL ISLAND
CARROLLWOOD
BOWLEYS QUARTERS
Seneca Elementary School
Hockaway Bch Volunteer Fire Company
Maryland Marina
Beacon Light Marina
Porter's Seneca Park Marina
Long Beach Marina
Bowleys Quarters Volunteer Fire Dpt
21220
STANSBURY ESTATES
WILSON POINT
Stansbury Creek
Frog Mortar Creek
Seneca Creek
BALTIMORE COUNTY
Goose Harbor Inlet
Goose Harbor Marina
Miami Beach Park
Galloway Creek Marina
Middle River
Norman Creek
Galloway Creek
21221
CAPE MAY BEACH
Hopgen Creek
Salt peter Creek

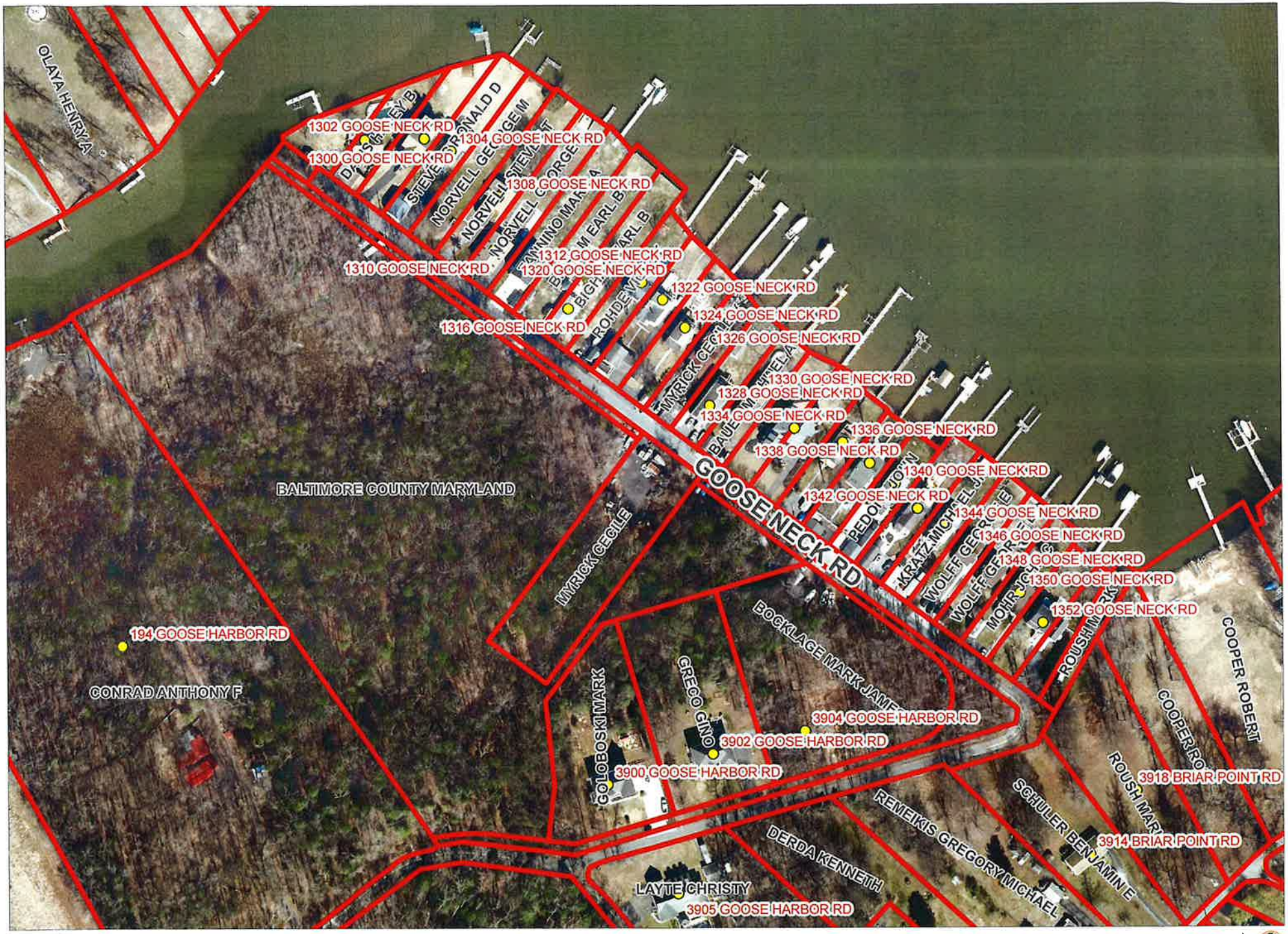
PC Exh 3

Baltimore County - My Neighborhood



Baltimore County Government, Harford County Government, VITA, Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA |

PC Exh. 4



1 Inch = 42 Feet

PC Exh. 5

Google Maps 1326 Goose Harbor Rd



Image capture: Jul 2016 © 2023 Google



PC Exh. 6

Google Maps 1326 Goose Harbor Rd



Image capture: Jul 2016 © 2023 Google



Google Maps 1326 Goose Neck Rd



Imagery ©2023 Maxar Technologies, Map data ©2023 50 ft



1326 Goose Neck Rd
Building

PC Exh. 7

Real Property Data Search ( )
Search Result for BALTIMORE COUNTY

View Map **View GroundRent Redemption** **View GroundRent Registration**

Special Tax Recapture: None

Account Identifier: **District -** 15 **Account Number -** 1519510661

Owner Information

Owner Name:	MYRICK CECILE V	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	1326 GOOSE NECK RD BALTIMORE MD 21220-4027	**Deed Reference:**	/43637/ 00449

Location & Structure Information

Premises Address:	1326 GOOSE NECK RD BALTIMORE 21220-4027 Waterfront	**Legal Description:**	684 S GOOSE HARBOR BOWLEYS QUARTERS

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:	2
0091	0023	0133	15030020.04	0000			247	2021	Plat Ref:	0009/ 0012

Town: None

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1942	1,821 SF		11,200 SF	34

Stories	Basement	Type	Exterior	Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
1 1/2	NO	STANDARD UNIT	BRICK/	3	1 full	1 Detached	

Value Information

	Base Value	Value	Phase-in Assessments	
		As of 01/01/2021	As of 07/01/2022	As of 07/01/2023
Land:	261,200	261,200		
Improvements	104,700	104,900		
Total:	365,900	366,100	366,033	366,100
Preferential Land:	0	0		

Transfer Information

Seller: MYRICK JAMES R	**Date:** 11/16/2020	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /43637/ 00449	**Deed2:**
Seller: SMITH HARRY E,SR	**Date:** 03/10/1971	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /05171/ 00705	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments:	**Class**	07/01/2022	07/01/2023
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Special Tax Recapture: None

Homestead Application Information

Homestead Application Status: Approved 02/17/2014

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application **Date:**

PC Exh. 8

Baltimore County

New Search (https://sdat.dat.maryland.gov/RealProperty)

District: 15 Account Number: 1519510661



The information shown on this map has been compiled from deed descriptions and plats and is not a property survey. The map should not be used for legal descriptions. Users noting errors are urged to notify the Maryland Department of Planning Mapping, 301 W. Preston Street, Baltimore MD 21201.

If a plat for a property is needed, contact the local Land Records office where the property is located. Plats are also available online through the Maryland State Archives at **www.plats.net (http://www.plats.net)**.

Property maps provided courtesy of the Maryland Department of Planning.

For more information on electronic mapping applications, visit the Maryland Department of Planning web site at **http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx (http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx)**.

Real Property Data Search ( )
Search Result for BALTIMORE COUNTY

View Map **View GroundRent Redemption** **View GroundRent Registration**

Special Tax Recapture: None

Account Identifier: **District -** 15 **Account Number -** 1600001460

Owner Information

Owner Name:	MYRICK CECILE	**Use:**	RESIDENTIAL
		Principal Residence:	NO
Mailing Address:	1326 GOOSE NECK RD BALTIMORE MD 21220-4027	**Deed Reference:**	/43637/ 00490

Location & Structure Information

Premises Address:	GOOSE HARBOR RD MIDDLE RIVER 21220-	**Legal Description:**	1.01 AC SWS GOOSE HARBOR RD 1200 N MIAMI BEACH RD

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0098	0006	0412	15030020.04	0000				2021	Plat Ref:

Town: None

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
			1.0100 AC	04

Stories	Basement	Type	Exterior	Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
			/				

Value Information

	Base Value	Value	Phase-in Assessments	
		As of 01/01/2021	As of 07/01/2022	As of 07/01/2023
Land:	65,000	65,000		
Improvements	0	0		
Total:	65,000	65,000	65,000	65,000
Preferential Land:	0	0		

Transfer Information

Seller: MYRICK JAMES R	**Date:** 11/16/2020	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /43637/ 00490	**Deed2:**
Seller: GRESS THEODORE F	**Date:** 08/02/1978	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /05917/ 00584	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments:	**Class**	07/01/2022	07/01/2023
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Special Tax Recapture: None

Homestead Application Information

Homestead Application Status: No Application

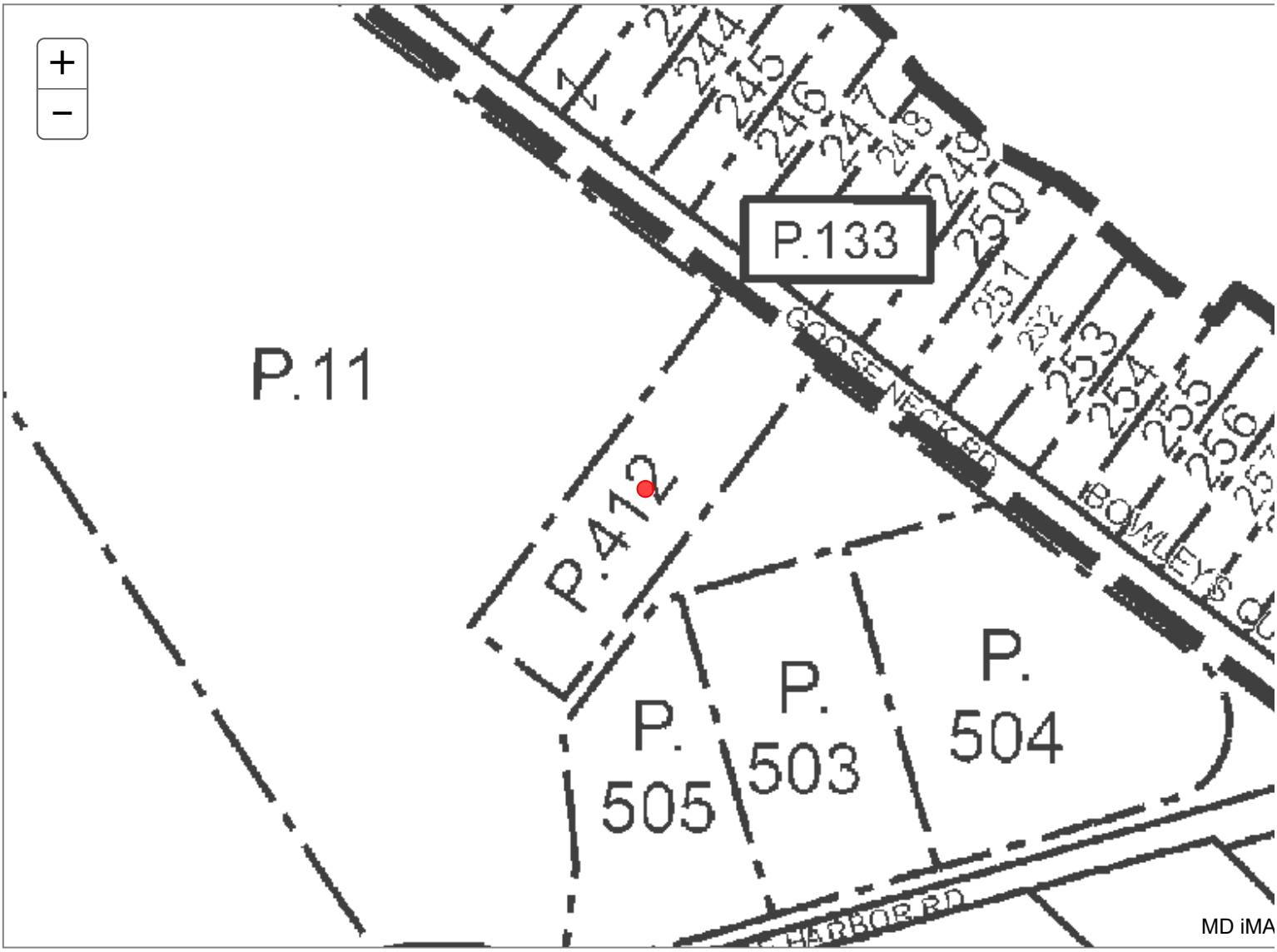
Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application **Date:**

Baltimore County

New Search (https://sdat.dat.maryland.gov/RealProperty)

District: 15 Account Number: 1600001460



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For more information on electronic mapping applications, visit the Maryland Department of Planning web site at **http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx (http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx)**.

PROFESSIONAL CERTIFICATION

STATE OF MARYLAND
GEOFFREY A. THEARD II
No. 15453
PROFESSIONAL ENGINEER

10/17/2023

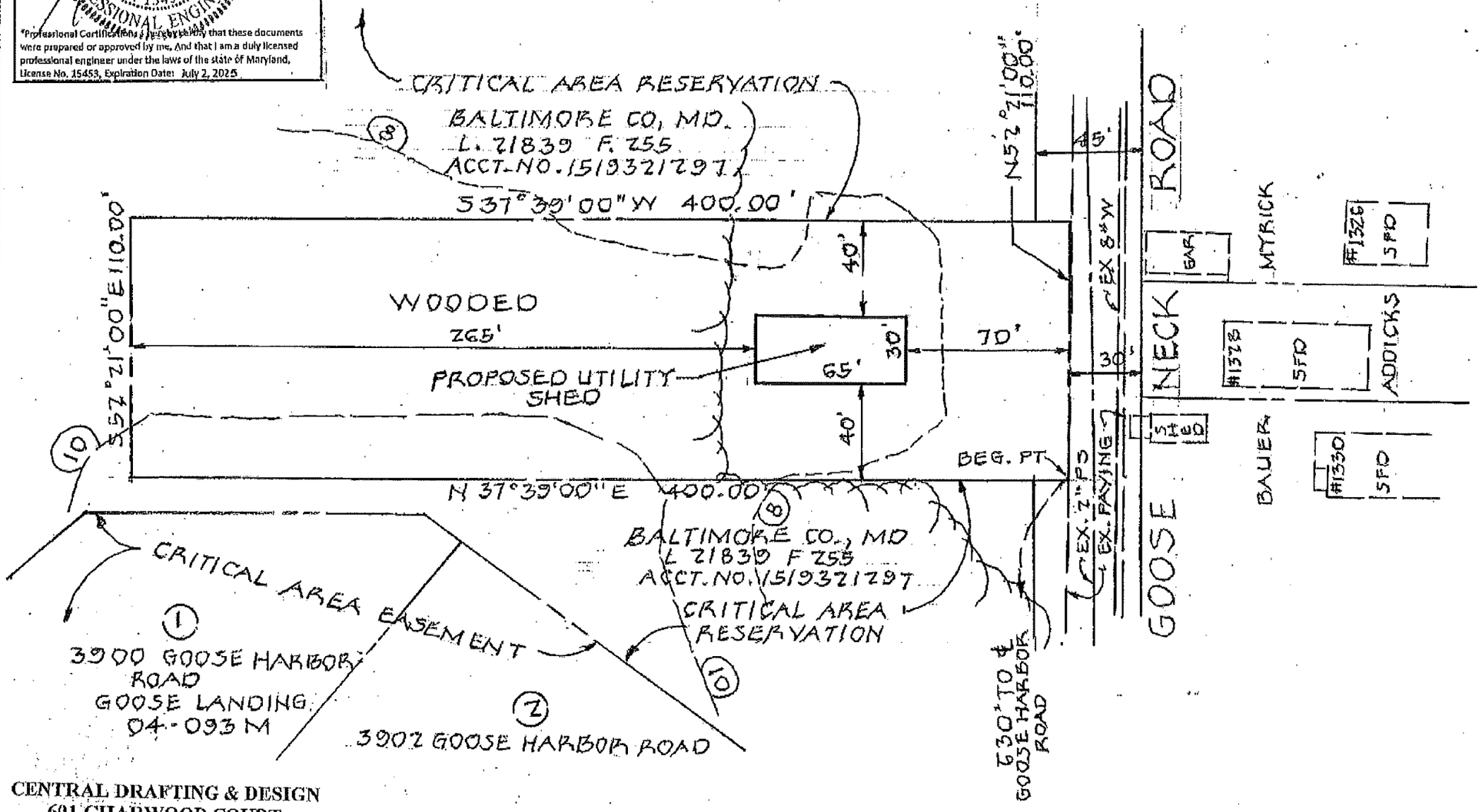
*Professional Certification. I hereby certify that these documents were prepared or approved by me, And that I am a duly licensed professional engineer under the laws of the state of Maryland, License No. 15453, Expiration Date: July 2, 2025

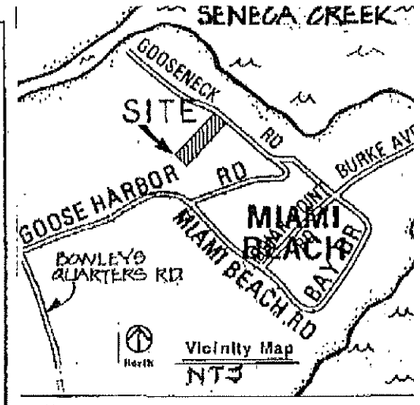
ZONING HEARING PLAN FOR VARIANCE ___ FOR SPECIAL HEARING X (MARK TYPE REQUESTED WITH X)

ADDRESS 1327 GOOSE NECK ROAD OWNER(S) NAME(S) CECILE MYRICK

SUBDIVISION NAME N/A LOT # N/A BLOCK # N/A SECTION # N/A

PLAT BOOK # N/A FOLIO # N/A 10 DIGIT TAX # 1600001460 DEED REF. # 43637, 490





ZONING MAP# 098C1

SITE ZONED RC5

ELECTION DISTRICT 15

COUNCIL DISTRICT 5

LOT AREA ACREAGE 1.01AC

OR SQUARE FEET ___

HISTORIC ? NO

IN CBCA ? YES

IN FLOOD PLAIN ? YES

UTILITIES ? MARK WITH X

WATER IS:

PUBLIC X PRIVATE ___

SEWER IS:

PUBLIC X PRIVATE ___

PRIOR HEARING ? YES

IF SO GIVE CASE NUMBER AND ORDER RESULT BELOW

1984-0147-XSPHA

1993-0221-A

2023-0070-SPH

VIOLATION CASE INFO:

CENTRAL DRAFTING & DESIGN
601 CHARWOOD COURT
EDGEWOOD, MD 21040
(410) 679-8719

PLAN DRAWN BY DWB DATE 10-14-23 SCALE: 1 INCH = 50' FEET

Revised Plan
Case # 2023-0070-SPH

Plat to accompany Petition for Zoning ☐ Variance ☑ Special Hearing

PROPERTY ADDRESS: 1327 GOOSENECK ROAD - BALTO. CO. MD. see pages 5 & 6 of the CHECKLIST for additional required information

Subdivision name: N/A

plat book# ~ ,folio# ~ ,lot# ~ ,section# ~ LIBER 5917 - FOLIO 582

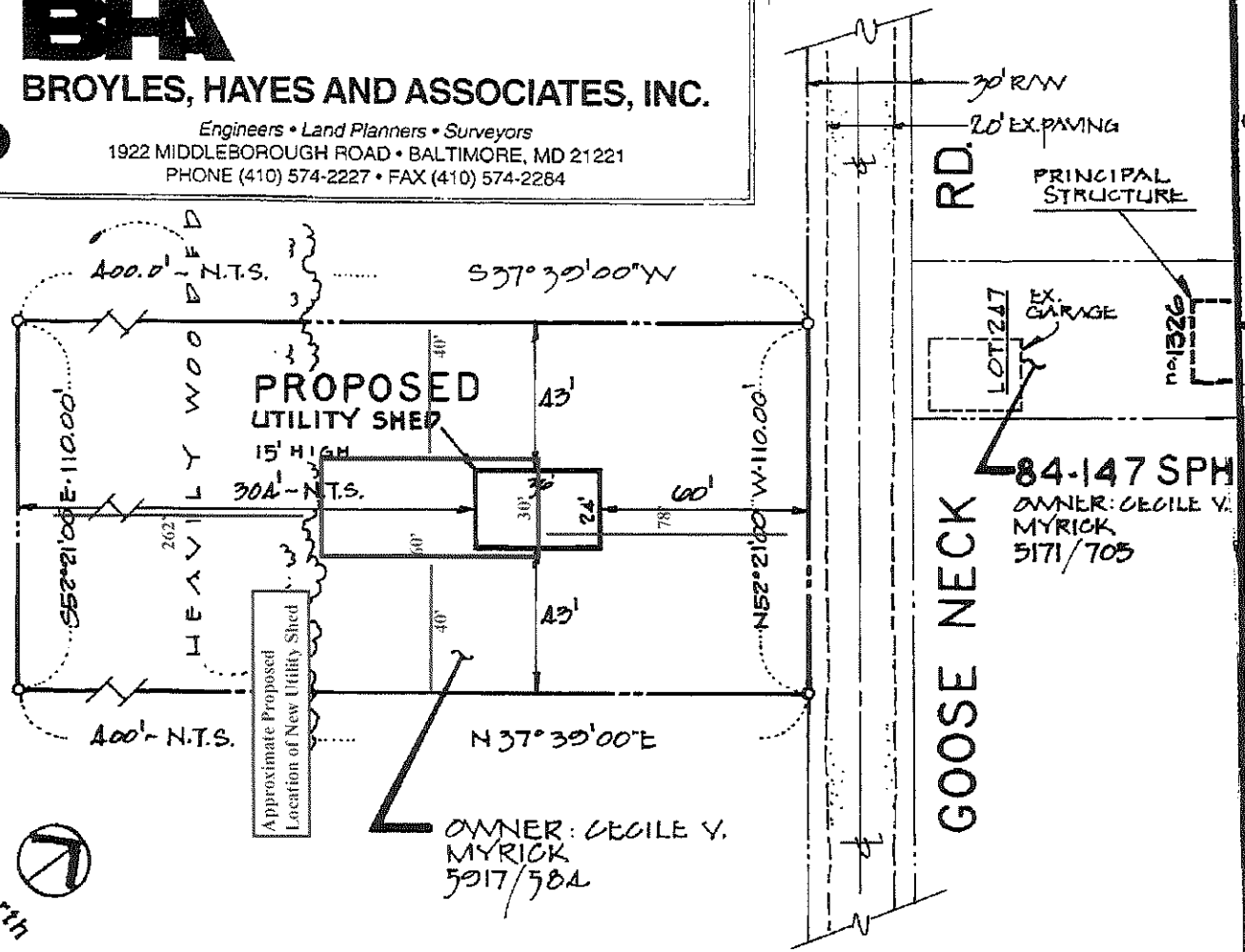
OWNER: CECILE V. MYRICK

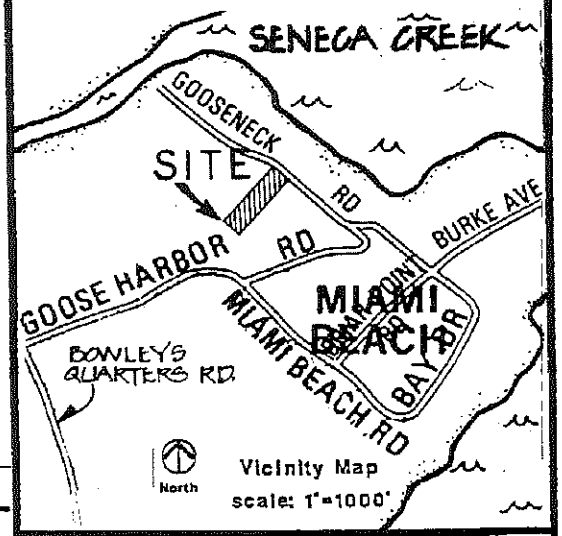
BROYLES, HAYES AND ASSOCIATES, INC.

Engineers • Land Planners • Surveyors

1922 MIDDLEBOROUGH ROAD • BALTIMORE, MD 21221

PHONE (410) 574-2227 • FAX (410) 574-2264





LOCATION INFORMATION

Councilmanic District: 5TH

Election District: 15TH

1"=200' scale map#: NE 2-L

Zoning: RC5

Lot size: 1.01 acreage / 44,000 square feet

	public	private
SEWER:	☐	◉
WATER:	◉	☐

	yes	no
Chesapeake Bay Critical Area:	◉	☐

Prior Zoning Hearings: 93-321-A / 84-0147-XSPHA

Zoning Office USE ONLY!

reviewed by:	ITEM #:	CASE#:
MJK		2023-0070-SPH

dat : DEC. 17, 1992

prepared by: BROYLES, HAYES & ASSO. Scale of Drawing: 1"=50'

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

No. 226695

Date: 10/20/2023

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
001	806	0000		6150				$ 100.00

Total: $ 100.00

Rec From: Timothy M. Kotroco

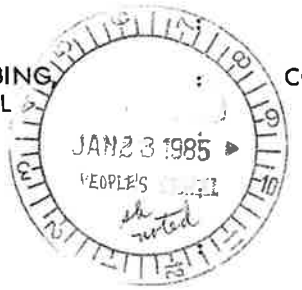
For: Revised Special Hearing Request
Zoning Case 2023-0070-SPH

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

CASHIER'S VALIDATION
MJK

Phyllis Friedman

IN THE MATTER OF
JAMES MYRICK, ET UX
RE: COMMERCIAL CRABBING,
SITE PLAN, COMMERCIAL
PERMIT APPLICATION
1326 Gooseneck Road
15th District



BEFORE

COUNTY BOARD OF APPEALS

OF

BALTIMORE COUNTY

No. CBA-83-108
(B-83-038-15)
Permit #47752

: :

OPINION

This case comes before this Board on appeal from an Order of the Assistant Buildings Engineer, dated March 9, 1983, requiring the Appellant to prepare an accurate site plan of the property showing all of the new improvements constructed on the property since 1978, said site plan to be accompanied by a commercial permit application for all the improvements accurately reflecting the actual use of the improvements and the actual use of the property.

At the opening of the hearing, David A. Rodgers, Esquire, Counsel for Appellant, made a Motion that this matter be dismissed with the understanding that his client will comply with Mr. Nolan's Order.

ORDER

For the reasons set forth in the aforegoing Opinion, it is this 9th day of August , 1983, by the County Board of Appeals, ORDERED that the Motion for Dismissal by the Appellant be GRANTED, with the full understanding that within fifteen (15) days from the date of this Order the Defendant will comply with Mr. Nolan's Order of March 9, 1983.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett

William T. Hackett, Chairman

William R. Evans

Patricia Phipps

Patricia Phipps

PETITION FOR SPECIAL EXCEPTION 84-147-XSPHA

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property for a fishing and shellfishing facility, shoreline, Class I in a R.C. 5 Zone

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

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

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



Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Legal Owner(s):

James R. Myrick
(Type or Print Name)

James R. Myrick
Signature

Cecile V. Myrick
(Type or Print Name)

Cecile V. Myrick
Signature

Attorney for Petitioner:

John B. Gontrum/Robert J. Romadka
(Type or Print Name)

John B. Gontrum
Signature

809 Eastern Boulevard
Address

Baltimore, Maryland 21221
City and State

Attorney's Telephone No.: 686-8274

1326 Goose Neck Road 335-4284
Address Phone No.

Baltimore, Maryland 21220
City and State

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

John B. Gontrum, Esquire
Name

809 Eastern Blvd. 686-8274
Address Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 31st day of October, 19 83, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 5th day of December, 19 83, at 10:00 o'clock A. M.

Zoning Commissioner of Baltimore County.

Z.C.O.—No. 1

(over)

PETITION FOR SPECIAL HEARING 84-147-XSPHA

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve ------

an amended site plan for fishing and shellfishing facility

to the one approved September 20, 1978, and to determine whether

two lots separated by a right-of-way roadway are contiguous.

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

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

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

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Legal Owner(s):

James R. Myrick
(Type or Print Name)

James R Myrick
Signature

Cecile V. Myrick
(Type or Print Name)

Cecile V. Myrick
Signature

Attorney for Petitioner:

John B. Gontrum/Robert J. Romadka
(Type or Print Name)

John B Gontrum
Signature

809 Eastern Boulevard
Address

Baltimore, Maryland 21221
City and State

Attorney's Telephone No.: 686-8274

1326 Goose Neck Road 335-4284
Address Phone No.

Baltimore, Maryland 21220
City and State

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

John B. Gontrum, Esquire
Name

809 Eastern Blvd. 686-8274
Address Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 31st day of October, 1983, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 5th day of December, 1983, at 10:00 o'clock A. M.

Zoning Commissioner of Baltimore County.

Z.C.O.—No. 1

(over)

PETITION FOR ZONING VARIANCE 84-147-XSPHA

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

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

Variance from Section 1A04.3B.3 (102.2) to permit minimum sideyard setbacks of 2.5 feet and 15 feet in lieu of required 50 feet; to permit a distance of 20 feet to centerline of street in lieu of required 75 feet and to permit a distance between buildings of 38 feet in lieu of required 100 feet; from Section 409.2(c) to allow parking, maneuvering areas and driveways to be paved with crusher run in lieu of the required macadam, concrete or tar and chip.

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

Improvements now exist on site pursuant to residential development, site plan on file, and would create undue hardship to remove with little benefit to neighborhood.

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

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

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



Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Legal Owner(s):

James R. Myrick
(Type or Print Name)

James R Myrick
Signature

Cecile V. Myrick
(Type or Print Name)

Cecile V. Myrick
Signature

Attorney for Petitioner:

John B. Gontrum/Robert J. Romadka
(Type or Print Name)

John B Gontrum
Signature

809 Eastern Boulevard
Address

Baltimore, Maryland 21221
City and State

Attorney's Telephone No.: 686-8274

1326 Goose Neck Road 335-4284
Address Phone No.

Baltimore, Maryland 21220
City and State

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

John B. Gontrum, Esquire
Name

809 Eastern Blvd. 686-8274
Address Phone No.

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Zoning Commissioner of Baltimore County.

(over)

IN RE:	PETITIONS SPECIAL EXCEPTION, SPECIAL HEARING, AND ZONING VARIANCES SW/S of Goose Neck Road, 626.89' NW of the centerline of Goose Harbor Road - 15th Election District	*	BEFORE THE
		*	ZONING COMMISSIONER
		*	OF BALTIMORE COUNTY
		*	Case No. 84-147-XSPHA
	James R. Myrick, et ux Petitioners	*	

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a special exception to allow expansion of their shellfishing business to a Class I status. They also request approval, by special hearing, to expand their business to property owned by them and located across a public road from their primary property. They request that the two properties be considered contiguous and therefore treated as one for zoning purposes. The Petitioners want to amend the original site plan, filed in 1978 and marked Petitioners' Exhibit 3, to include both lots and to show the "renovation" of an existing garage shown thereon. Other minor additions and/or deletions to that site plan are also requested. Additionally, the Petitioners seek variances to permit side yard setbacks of 2.5 feet, 15 feet, and 25 feet instead of the required 50 feet, a setback of 20 feet to the centerline of the street instead of the required 75 feet, a distance between buildings of 38 feet instead of the required 100 feet, and to allow the requested parking areas to be paved with crusher run material. These requests are more fully described on Petitioners' Exhibit 9.

The Petitioners appeared and were represented by Counsel. Testifying were James R. Myrick, Petitioner; Robert Eurice, President of the Baltimore County Watermen's Association; Daniel Beck, Vice President of that Association; Craig Rogers, a lineman on surveying crews; and Dennis Fandl, a neighbor. Numerous Protestants appeared. Mr. and Mrs. Theodore Gress and Steven Bauer were represented by Counsel

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and testified. Testifying in behalf of the Protestants were Richard E. Davis, Esquire, an expert in real estate law, and William Luette, a registered surveyor. Christopher LaMartina, President of Bowley's Quarters Improvement Association, testified in behalf of the many other Protestants.

Testimony indicated that the Petitioners, owners of Lot 247, as shown on Petitioners' Exhibit 1, have operated a shellfishing facility on that R.C.5 zoned property for many years. On or about 1975, the Baltimore County Council passed legislation allowing shellfishing businesses to operate in R.C.5 Zones only by special exception. The Council permitted those fishermen presently in operation to file for use permits to "grandfather" their businesses, thereby negating the necessity of seeking special exceptions for continuation. Each fisherman was required to submit a site plan to the Zoning Commissioner within a certain time frame so that the Zoning Commissioner could approve the continued operation of each shellfishing business in existence at the time the legislation was enacted. Each fisherman would be bound by the site plan as to the extent of his business and would be limited to the "same level of intensity" forevermore. Of course, nothing would prevent any fisherman so protected from requesting a special exception in order to expand, as is the primary purpose for the requests by the Petitioners herein.

The Petitioners filed a site plan, Petitioners' Exhibit 3, and it is self-explanatory. The Zoning Commissioner approved a use permit, Petitioners' Exhibit 2, and the Petitioners continued their business unabated. The total square feet utilized for the business on Lot 247 was 4,132, excluding the slough boxes which protruded into Seneca Creek. This represented only approximately 33% of the entire lot used for commercial enterprise. The use permit allowed approximately 50% of the total net area of the property to be utilized for the operation. In or about 1981, the Petitioners decided that the existing garage, the

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truck permanently parked to its side and used as a "cool box", and the lean-to attached to its rear and used as a storage area all needed to be replaced. Thereupon, the Petitioners began construction of a new garage in the same location as the old garage (the Protestants dispute the accuracy of this allegation) which afforded the Petitioners the opportunity to remove the truck and replace the lean-to with a more modern and aesthetically pleasing building which would include a place to work inside, a cool box, and a storage area. Unfortunately, the Petitioners decided to construct this building without a permit. The Petitioners have also changed the configuration of the slough boxes since the original site plan was submitted from 10' x 20' to 4' x 50'. The boat storage area, pool, and commercial use of the steam area shown on Petitioners' Exhibit 3 have been abandoned, although personal use of the steam area still exists. In effect, the Petitioners maintain that only 3,918 square feet of lot area is now being used, which is 250± square feet less than what was approved in 1978. The Petitioners state that in 1978 they had a total of 1,400 crab pots in use, one boat for crabbing, and one boat for backup and general fishing. James R. Myrick states that he keeps approximately 1,200 pots in the water and pulls up approximately one-third each day, returning those pots immediately to the water. There was some discrepancy or confusion in the testimony about the total number of pots now being used by the Petitioners. At one point, Mr. Myrick testified that he had about 1,400 pots total, including his reserve; at another point, he testified that he had about 1,400 pots plus 500 pots in reserve. During later testimony, he stated he had about 1,100 pots with another 150 pots on another location not pertinent to this case. It is presumed that in 1978 the Petitioners had a total of 1,400 pots and since has expanded that number to 1,400 or 1,900, although at the present time there is only 1,100. The Petitioners admitted to manufacturing and selling pots; however, they fabricate and manufacture the pots primarily for their own use. They also use and store eel pots,

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various nets, and other material used for their business. They have used the area under the sun porch attached to their residence for storage and own one other boat but it is out of the water and not used. In addition, the Petitioners clean and paint their pots on the property, which causes an odor disturbing to those in the immediate vicinity. Apparently, and it was uncontested, this maintenance does not cause any pollution to either soil or water.

The Petitioners bought the property across from Lot 247 from Mr. and Mrs. Theodore Gress in 1978 for the express purpose of partially clearing the site and storing their pots thereon. Mr. Myrick planned to remove all of the pots, eel traps, nets, etc., from his primary property and use the new property for storage and additional parking, as more fully described on Petitioners' Exhibit 3. The Petitioners argue that the new lot is actually contiguous to their original property and therefore should be considered as one for zoning purposes. Additionally, they feel that the fee simple ownership of the underlying roadbed to the centerline of the road would allow a Class I shellfishing operation by special exception. The Protestants vigorously opposed this premise and presented expert testimony to contradict the Petitioners' position.

Mr. Myrick testified that he has moved the fabrication of pots from the parking area shown on Petitioners' Exhibit 3 into the new garage. He also testified that if the special exception were granted, he would move the painting operation onto the new property and would transport the pots from the new property to the water via golf carts. No pots would be stored on Lot 247.

Before the new garage was constructed, the cool box (stationary trunk) actually transgressed the Gress' property line. The new garage is situated approximately 2 feet from their common property line, according to Petitioners' Exhibit 3. The Petitioners request a side yard setback of 2.5 feet from the garage to the Gress' property line, a side yard setback of 25 feet from the garage to the Bauers'

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BY Stella M. Davey clk

property line, a side yard setback of 15 feet from the proposed storage area on the new lot to each property line, a setback of 20 feet from the garage to the centerline of the road, a distance of 38 feet between the garage and the residence, and that crusher run material be allowed for the proposed parking area on the new lot.

The Petitioners claim that the new garage occupies the same area as the old garage, truck, and storage area and is not an expansion. If this is true, no variances should be required. A building moratorium presently exists in the Bowley's Quarters peninsula. The land across from the Myricks, the Gresses, and the Bauers cannot be developed, and the Petitioners argue that there would be no adverse impact if the special exception were granted. The property is wooded and only a portion is cleared for use. The Petitioners would screen the storage and parking areas with fencing and/or shrubbery, and there would be a 30-foot entrance onto the property from Goose Neck Road, as shown on Petitioners' Exhibit 9. All parties acknowledged that other garages exist as close or closer to the road as the Petitioners' garage. Mr. Myrick testified that 65 to 70% of his business is off site and the remainder is on site.

There was conflicting testimony provided by all witnesses, some of which was important. Specifically, whether there has been intensification and, if so, to what extent. The Petitioners maintained that there has not been, while the Protestants argue that there has been significant expansion. Robert Eurice testified that he became familiar with the Petitioners in 1978 and that they had approximately 1,000 to 1,200 pots at that time. It was his opinion that there has been no expansion, but based on his experience, a reserve of 500 pots is [illegible]. Mrs. Gress testified that in 1978 the Petitioners only had about 500 pots; however, up to 3,000 pots were on the property prior to moving to the new lot. Upon receiving a zoning violation notice, the Petitioners ceased the move. She agrees that the Petitioners now have about 1,000 pots.

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Craig Rogers testified that as a linesman he is primarily responsible for measurement and location of property lines and coordinates. He is neither a registered surveyor nor an architect. He testified that on or about September, 1982, he went to the subject properties at the request of the Petitioners and physically measured distances between the garage and the adjoining property. In fact, he did the field work for the site plan submitted as Petitioners' Exhibit 9. At one point, said plan had been prepared by a registered surveyor, but numerous revisions had been made and noted thereon. Mr. Rogers testified that he does not know who made the revisions and cannot verify their accuracy. He did not bring his field notes and testified only from memory. He admitted to adding the new storage and parking areas on the new lot to the site plan. The name of the company, Brandonwood Associates, of which Mr. Rogers is a partowner, appears on the site plan. Mr. Rogers does not know whether the original surveyor is aware of the changes. He measured the distance between the garage and the property lines without finding any property coordinates and based his measurements on the existing fences that separate each property from the Petitioners' property. He assumed that the fences accurately reflected the property lines. According to his memory, the distances reflected on the site plan are accurate; otherwise, he would have so noted the differences on the plan.

William Luette stated that he conducted a survey of the Petitioners' and Gress' property in September, 1983, Protestants' Exhibit 4. He concluded that there was 1.7 feet from the Gress' property line to the garage, 25± feet from the Bauers' property line to the garage, and 18.5 feet from the centerline of the road and 11 feet from the edge of the paving to the garage. There is, of course, a presumption that the garage did not move between September, 1982 and September, 1983—only the property line!

Dennis Fandl resides on Goose Neck Road and testified that he favored the Petitioners' requests. He presented a petition dated September 8, 1982,

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Petitioners' Exhibit 11, signed by 29 residents of Goose Neck Road, indicating support of the Petitioners. He was quite clear in his belief that all those living on Goose Neck Road, except for the Gresses and the Bauers, were in support. He further emphasized that the other Protestants appearing lived elsewhere and did not represent the opinions and feelings of those living on Goose Neck Road. Christopher LaMartina, in behalf of the improvement association, testified that it was a matter of concern to all who live in Bowley's Quarters and not just for those living on Goose Neck Road. He pointed out that Mr. Fandl is also a member of this association. Many of the Protestants did not testify but supported Mr. LaMartina's testimony.

It is clear that the requests made by the Petitioners have caused sharp lines to be drawn, both pro and con. Mr. LaMartina, in support of the Gresses and Steven Bauer, testified that the proposed expansion would cause serious disruption to the area because the already bad traffic conditions would be aggravated. There is only limited access onto the peninsula, and with the existence of Miami Beach, a public recreational area, the traffic flow would be even more adversely impacted if the special exception were granted. Goose Neck Road is a dead end and not an outlet for traffic. Also, granting the special exception would effectively allow development not otherwise permitted. Mrs. Gress testified that enjoyment of her property has been seriously limited as a result of the Petitioners' commercial shellfishing business. She and Mr. Gress complain that their health has been adversely effected, that they are exposed to heavy traffic and dangerous traffic conditions, their privacy has been invaded, and the quiet enjoyment of their waterfront property is limited. The Gresses complained of the odor emanating from the painting procedure done by the Petitioners, the noise of the cool box motor, and the expansion of the Petitioners' business over the past five years. Mrs. Gress also complained of the smokestack and the resulting fumes. Essentially, the Gresses

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oppose all the requests and want the garage removed. They feel it is too close to their property and the road, causing a dangerous situation for them because the garage obstructs their view of oncoming traffic. They feel strongly that the Petitioners have expanded their business and are willing to tolerate the use of Lot 247 only to the extent allowed by the use permit approved in 1978. They do not want the property across the road to be used at all. It is also noted that the Gresses dispute Mr. Myrick's assertion that he told them of the intended use of the new lot when he purchased it from them. The Gresses have lived on their property since 1954.

Mr. Bauer, who purchased his property in 1972, totally concurred with these views. He testified that if the special exception were granted, the Petitioners could only use the walkway between their home and his property to transport the pots between the two lots and that this would increase the activity intolerably inasmuch as the Petitioners' home is only six feet from the property line and his house is only 13 feet from that line. He insists the Petitioners have expanded their business greatly since 1978 and believes the new garage is located five feet closer to the road than the old garage.

Richard E. Davis testified that in his opinion the ownership of both sides of the roadway did not constitute contiguous ownership sufficient to allow the Petitioners to treat both parcels as one for the purpose of enjoying the benefits provided by Seneca Creek. Goose Neck Road is a public road notwithstanding the fact that it has never been deeded to Baltimore County. Title to the underlying roadbed is vested in the abutting property owners to the center of the roadway. It is his opinion that the public easement for a 30-foot right of way interrupts the complete ownership necessary to enjoy the riparian rights to Lot 247 and that the two lots cannot be treated as one.

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Testimony and evidence presented by witnesses for both sides raise serious questions of fact and law.

The Petitioners seek relief from Section 1A04.3.B.3. (102.2), pursuant to Section 307, of the Baltimore County Zoning Regulations (BCZR) to allow side yard setbacks of 2.5 feet from the new garage to the Gress' property line, 25 feet from the new garage to the Bauers' property line instead of the required 50 feet, and 15 feet from the storage area on the new lot to each property line; a setback of 20 feet from the new garage to the centerline of the road instead of the required 75 feet; and a distance of 38 feet between the garage and the residence (principal buildings) instead of the required 100 feet. They also seek relief from Section 409.2.(c), pursuant to Section 307, BCZR, to allow the proposed parking areas on the new lot to be paved with a crusher run surface instead of the required macadam, concrete, or tar and chip.

The Petitioners maintain that the variances should be granted inasmuch as it would create a practical difficulty and would serve no useful purpose to deny them, especially in light of the nature of the neighborhood. In fact, the crux of the Petitioners' case revolves around the new garage, and it is obvious that a decision as to its legitimacy must be made. It is also important to note the contentions raised by the Petitioners that the new garage only replaced the old garage and represented no effective change in size. The Petitioners maintain that the old garage must be considered to include the truck and shed attached to the building, and if so considered, the total size so represented equals that of the new building. Therefore, they argue that no variances are required inasmuch as the site plan approved in 1978 grandfathered those buildings shown thereon and that compliance with the setbacks need not be required. The alternative argument includes the claim that a practical difficulty exists, that the spirit and intent of the zoning regulations would be met, and that there would be no adverse

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impact on the health, safety, and general welfare of the community to satisfy the burden required to grant the variances. Both arguments are rejected for the reasons set forth below.

The Petitioners admit that they replaced the old garage with the new garage without obtaining a building permit. A building permit was required before the new garage could be built, but the Petitioners failed to recognize that fact.

The BCZR define a fishing and shellfishing facility as a principal use that consists of the buildings, equipment, or other facilities necessary to carry on the business and that is situated on a lot on the shoreline of tidal waters. A building is defined as a structure enclosed within exterior walls or firewalls for the shelter, support, or enclosure of persons, animals, or property of any kind.

This language is crystal clear. The original site plan describes a garage, cool box, and storage area as three distinct entities. They were not all enclosed by the same exterior walls, which would establish that they were indeed one building. No matter that the new building, constructed around the old building prior to the old building being razed, is equal in total square feet to the sum of the old garage, truck, and shed, it is a new building and a definite change from the site plan approved in 1978. Therefore, a building permit and variances, if necessary, were required. Failure to obtain a building permit or to question the need for one flaws the Petitioners' arguments. The Petitioners took it upon themselves to build a new structure in violation of the laws of Baltimore County. The fact that the cost of building the new garage, or the potential cost of moving it, is great is not a factor to be considered when such facts and circumstances exist.

> The hardship here relied on was entirely self-created and the Board properly refused to allow it to be used as a fulcrum to lift, by way of variance, the valid limitations imposed...Aside

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from the fact that the hardship shown...was self-inflicted, it was also shown to be of a purely financial nature...

Salisbury Board of Zoning Appeals v. Bonds, 240 Md. 547.

There is a strong presumption of the correctness of original zones and of comprehensive zoning. Howard County v. Dorsey, 438 A.2d 1339 (1982). There is a presumption of validity that must be accepted. Johnson & Wales College v. DiPiete, 448 A.2d 1271 (R.I., 1982). In interpreting the zoning regulations, the restrictive language contained must be strictly construed so as to allow the landowner the least restrictive use of his property. Lake Adventure, Inc. v. Zoning Hearing Bd. of Dingman Township, 440 A.2d 1284 (Pa. Cmwlth., 1982). When the language of a zoning regulation is clear and certain, there is nothing left for interpretation and the ordinance must be interpreted literally. Mongony v. Bevilacqua, 432 A.2d 661 (R.I., 1981).

A landowner can establish a right to a variance by showing that the effect of the regulations is to burden his property with an unreasonable hardship that is unique to his property. This can be accomplished by showing that the physical or topographical features of the property are such that the property cannot be used for a permitted purpose, or by showing that the property can be arranged for such use only at a prohibitive expense. Anderson v. Bd. of Appeals of Town of Chesapeake Beach, 22 Md. App. 28 (1974); Marlowe v. Zoning Hearing Bd. of Haverford Township, 415 A.2d 946 (Pa. Cmwlth., 1980).

The Court of Special Appeals has held that a variance relating to certain "area" restrictions, as distinguished from restrictions on the use of the property, must be judged under the "practical difficulty" test. Anderson, supra. See Bd. of Adjustment, Etc. v. Kwik-Check Realty, 389 A.2d 1289 (Del. Supr., 1978). As noted in Anderson, the factors to be considered under this test in determining whether a variance should be granted are:

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1. whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;

2. whether the grant would do substantial injustice to applicant as well as other property owners in district or whether a lesser relaxation than that applied for would give substantial relief;

3. whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson, supra.

If property cannot be adapted reasonably to use in conformity with zoning ordinance restrictions due to unique circumstances, any hardship may be relieved through the variance procedure. However, if the unusual circumstances which hinder reasonable use of the property in accordance with zoning restrictions have been caused or created by the property owner or his predecessor in title, hardship cannot be demonstrated since it is essentially self-created and not due solely to the manner of the operation of the ordinance upon the subject property.

Any petitioner who seeks a variance must exercise proper diligence in ascertaining zoning ordinance requirements to avoid a resultant hardship before he acquires the property. If such diligence is not exercised, the hardship must be regarded as self-created, and a variance can properly be refused. Wilson v. Mayor and Commissioners of Elkton, 35 Md. App. 417 (1977).

The Petitioners' problem here is a personal one and is not a problem inherent in the land itself or in the application of the zoning regulations to the land. Such personal problems are not generally appropriate subjects for relief by way of the variance procedure. See 3 Anderson, American Law of Zoning, Section 18.53 (2nd Edition, 1977).

The Petitioners certainly did not exercise the appropriate diligence that is required. Notwithstanding the testimony presented, there is insufficient evidence to permit a finding that the hardship or difficulties to be experienced if

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the requested variances were denied will be caused by the zoning restrictions from which relief is sought.

Therefore, the requested variances to allow side yard setbacks of 2.5 feet (or 1.7 feet) from the new garage to the Gress' property line and 25 feet from the new garage to the Bauers' property line are denied.

Inasmuch as the old garage and shed were demolished and the truck previously used as a cool box removed, the uses described on Petitioners' Exhibit 3 have been effectively abandoned. If the Petitioners were to move the new garage more equidistant to both side property lines and new variance requests submitted, it would be more appropriate to consider its legitimacy at that time. The closeness to the Gress' property line, failure to provide an adequate and accurate site plan (Petitioners' Exhibit 9), and blocking of on-coming traffic on the roadway from the Gress' view all mitigate against the location of the new garage.

The other requested variances emanating from the new garage, i.e., a setback of 20 feet from the new garage to the centerline of the road and a distance of 38 feet between the garage and the residence are moot and, therefore, denied for the same reasons set forth above. The garage must be removed from its present location.

The remaining variances to allow 15 feet from the storage area on the new lot to each property line and to allow the proposed parking areas on the new lot to be paved with a crusher run surface instead of the required macadam, concrete, or tar and chip are also denied for reasons more fully set forth below.

The Petitioners also seek a special hearing to amend the site plan approved in 1978 (Petitioners' Exhibit 3). Although unclear, it seems that part of this request is to allow a change from the old garage to the new garage. An amendment of that plan shall not be allowed and, therefore, denied for the reasons set forth below.

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Petitioners' Exhibit 3 was submitted for approval in 1978 to the then Zoning Commissioner as a result of legislation enacted by the Baltimore County Council on November 7, 1975. Bill No. 98-75, effective December 22, 1975, established commercial fishing and crabbing enterprises in R.C.2, 3, and 5 Zones. This legislation mandated that any such use existing on the date of enactment of the law could continue at the same level of intensity provided the user obtained a use permit from the Zoning Commissioner. The R.C Zones were not created until the adoption of the comprehensive zoning maps by the Council in October, 1976, effective November, 1976. In June, 1978, the Council passed Bill No. 30-78, effective June 22, 1978, which repealed Bill No. 98-75 and, in effect, deleted any reference to use permits and provided that fishing and shellfishing facilities in R.C.2, 3, and 5 Zones be allowed only by special exception. In the interim period, between 1976 and the passage of Bill No. 30-78, use permits were submitted for approval to the Zoning Commissioner and were subsequently approved after Bill No. 30-78 went into effect. Approval, however, was contingent upon a site plan being submitted and total compliance being attained by the user. Because of the confusion rendered by the late approvals, the Council passed Bill No. 139-83 validating the continuation of such shellfishing activities by those who submitted site plans in 1977 and which were approved in 1978. This legislation recognized the importance of those site plans by reemphasizing the language of Bill No. 98-75, to wit, limiting the continued use to that which existed at the time the use permit was approved. Any attempt to expand the use as defined by the site plan would require a special exception and would not be allowed by amending the site plan.

Not only have the Petitioners varied from the site plan (Petitioners' Exhibit 3) by removing the old garage, shed, and truck, they also have abandoned the steam area, except for personal use, and the area marked as boat storage,

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BY Linda M. Lamay et al
ADMINISTRATIVE ASSISTANT

removed the pool, and redesigned the slough areas from 10' x 20' to 4' x 50'. In addition, they have moved the fabrication of pots from the area so noted to the new garage. Although the Petitioners maintain that the actual use is approximately 250 square feet less than what was approved in 1978, it is obvious that there has been an intensification of use over the past five years.

The Protestants claim that the Petitioners had 500 pots in 1978; the Petitioners claim they had approximately 1,400 pots including the reserve pots. Mr. Eurice testified the Petitioners had approximately that number in 1978; however, by his own admission, Mr. Myrick testified that he now averages about 1,400 pots plus 500 in reserve. At another point in his testimony, Mr. Myrick testified he now had about 1,100 pots on the property. It must be presumed, therefore, that the 1,900 figure is an average and that the Petitioners regularly maintain that amount on the property. Mrs. Gress testified that she has counted as many as 3,000 pots on the property.

Mr. Myrick further testified that he operates the business eight hours a day, employing five or six additional people, and also is employed by Bethlehem Steel. Further, there was uncontradicted testimony that the Petitioners have manufactured pots in the new garage which were advertised and sold to the public (Petitioners' Exhibits 11 and 12). About 65 to 70% of these sales are off site. When questioned, Mr. Myrick testified that the room was needed to store not only crab pots, but also eel traps, pound nets, gill nets, anchors, floats, and other material necessary to carry on the shellfishing business. There is no doubt that he is right; however, after weighing all of the evidence and testimony presented, there is no doubt that the Petitioners have expanded and intensified their business in violation of Bill No. 98-75. Mr. Eurice acknowledged that 500 pots held in reserve was an unusually large number. He maintains about 1,200 to 1,400 pots in the water at any one time, but only has about 200 pots in

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BY Linda K. Janey clk

reserve. Why then is such a large number needed in reserve unless the Petitioners intend to expand. Has the activity expanded from a part-time use to a full-time business?

Intensity is defined by Websters New World Dictionary as "1 extreme degree of any thing, (2) great energy or vehemence of activity, and 3 degree or extent: relative strength, magnitude, vigor, etc. There is no question that the Petitioners have intensified their business since 1976, notwithstanding the lack of physical growth. Therefore, no amendment of the site plan to allow the storage area to be changed can be permitted.

The requested special hearing, special exception and variances were all predicated on Petitioners' Exhibit 3. The proposed amendments are reflected thereon. This site plan shows the seal of a registered surveyor, Louis A. Wilder. Directly under the seal appears the notation "Prepared by: Brandixwood Assoc., 100 W. Padonia Rd., Timonium, Md. 21093". Various personal notes indicate the changes proposed and made; there also have been four revisions. The Petitioners would like to have this site plan substituted for that approved in 1976 by having the amendments, the special exception, and the variances granted.

Petitioners' Exhibit 3 cannot be permitted to satisfy any item of proof necessary for approval of the aforementioned requests. It is inadequate. Mr. Rogers testified that he represents Brandixwood Associates, not Louis A. Wilder. Mr. Rogers is not a registered surveyor or an architect. He did not obtain Mr. Wilder's approval to amend or revise the site plan, that is, to draw the lines. In fact, Mr. Rogers cannot attest to or make the revisions on the site plan as to the measurements appearing thereon. At best, the inference is that Brandixwood prepared the site plan under the supervision of Mr. Wilder; at worst, the plan represents a fraud on the integrity of this administrative process. Mr.

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Rogers used the existing fence lines separating the lots to measure for the requested variances and assumed that they actually represented the separation of the lots. He did not perform a survey and could only testify to the dimensions of the buildings. He failed to bring his field notes with him and testified from memory as to the measurements made in September, 1982. It is obvious from Mr. Rogers' testimony that Mr. Wilder does not know of the changes to the site plan. Mr. Luette, a registered surveyor since 1939, testified that he surveyed the property and found the property line that Mr. Rogers could not find as well as different distances. Mr. Luette's testimony totally rebuts and negates the testimony of Mr. Rogers. Petitioners' Exhibit 9 cannot be given much credence or weight; therefore, any amendment to the 1978 site plan predicated on Petitioners' Exhibit 9 cannot be allowed.

Nonetheless, assuming that the amendment request is denied, the issue of allowing a special exception to expand the use, as permitted by Bill No. 30-78, still exists. If granted, it would in fact allow the increased intensity of use; however, it would not overcome the denial of the requested variances.

The Petitioners request that a special exception be granted pursuant to Sections 1A04.2.B.7. and 502.1, BCZR.

> The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore valid. The special exception use is a valid zoning mechanism that delegates...a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating the presumption. The duties given...are to judge whether...the use in the particular case is in harmony with the general purpose and intent of the plan.

See Schultz v. Pritts, 432 A.2d 1319 (1981).

The Petitioners have the burden of adducing testimony and evidence which would show that the proposed use, the expansion of the use to a Class I fishing and shellfishing facility, meets the prescribed standards and requirements set

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forth in Section 502.1. In fact, the evidence and testimony has shown that the proposed expansion would be detrimental to the neighborhood and would adversely effect the public interest. The facts and circumstances of the use proposed show that at the subject site there would be an adverse effect above and beyond that inherently associated with such a special exception use irrespective of its location within the zone. Schultz, supra. The Petitioners did not meet this burden.

Testimony and evidence presented at the hearing, the opinions or conclusions of the witnesses testifying, must be measured by the soundness of their underlying reasons or facts. Anderson v. Sawyer, 329 A.2d 716 (1974). The testimony provided by the Petitioners' witnesses was not substantial while the testimony provided by the Protestants' witnesses was convincing and strong. See Coppolino v. County Board of Appeals of Baltimore County, 328 A.2d 55 (1974). There is no doubt that the business described by the Petitioners has an inherent depressing and disturbing psychological effect which has adversely affected the adjacent residents the enjoyment of their homes. There was insufficient evidence presented by the Petitioners to rebut that conclusion.

For these reasons, the request for a special exception for a fishing and shellfishing facility, shoreline, Class I in a R.C.5 Zone is denied.

The Petitioners also request that the site plan approved in 1978 be amended to allow expansion of the original use to the lot across Goose Neck Road, i.e., to determine whether the two lots owned by the Petitioners and separated by a right-of-way roadway are contiguous. The import of this request is obvious. If contiguous, the same riparian rights enjoyed by the Petitioners' primary property would accrue to the adjacent lot.

This contention is attractive, but it cannot be allowed to shield the primary issue, i.e., whether the use described in the 1978 site plan can shift to

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BY Paula M. Lawlor
ASSISTANT

the lot across Goose Neck Road. The Petitioners seek to legitimize the transfer by requesting a special exception to expand and a special hearing to amend that 1978 site plan. Either, if allowed, would give the Petitioners relief. Assuming arguendo that the two lots are contiguous, this fact in and of itself does not satisfy the burden required of the Petitioners.

Bill No. 98-75 recognized the then existing shellfishing businesses by exempting them from extinction. The Petitioners were one of the benefactors. The site plans submitted to gain such exemption limited both the use and its location on a property. In the instant case, even if the two lots were considered as one, an amendment to the site plan would be required to allow the shift in location from Lot 247 to the other lot. The issue is this constrictive. Such an amendment will be denied for all of the same reasons which supported the denials of the variances and the amendment to the 1978 site plan. Any interpretation of the legislation affecting shellfishing in Baltimore County must lead to the conclusion that the Council intended that the existing uses, grand-fathered by that legislation, be limited in size and scope to that described on the site plans submitted in 1978 and that if there was to be any attempt to change the original use by location or intensification, a special exception would be the only relief.

Of course, in order for a special exception to be granted, the Petitioners must meet the burden established by Section 502.1. For the reasons explained previously, such burden has not been met. The Petitioners have not established that there would be no adverse effect on the health, safety, or general welfare of the locality, and the totality of the testimony presented by both sides concluded that there would be such an adverse effect. The prerequisites delineated by Section 502.1 are singular in importance, and the Petitioners did not present sufficient evidence to meet this burden.

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DATE January 16, 1992
BY Paula P. Lawrence

Notwithstanding the Petitioners' assumption that the two lots are contiguous, which thereby creates mutuality of benefits as presumed to be met by Bill Nos. 94-75 and 96-76, the special exception will be denied.

The proposed use will be detrimental to the health, safety, and general welfare of the locality; tend to create congestion in roads, streets, and alleys therein; be inconsistent with the purposes of the property's zoning classification; and be inconsistent with the spirit and intent of the B.C.Z.R.

However, after a review of the Memoranda submitted by both parties, it is concluded that both lots, although contiguous, do not enjoy mutuality. The court in Swartzmore Co. v. Keestan, 244 A.2d 141 (1968), in the Black's Law Dictionary to define "contiguous" as "in close proximity; near; on or in contact; neighboring; adjoining; near in a series; on the border; touching; bounded or traversed by." See Smart Style Ind. v. B. Dalton Bkseller, 336 F.Supp. 78 (Dist. of Md., 1971). In Swartzmore, two lots were zoned and superimposed districts over underlying zoned and written-on districts. The intention there were contiguous in order to permit a parking structure for them. The court found that the districts were indeed contiguous. The lots were not contiguity causing combination. The particular property, owned by the C.S.A. District did not become one with the property which it was located within a C.C.C. District. The case law involved zoned and districts, not whether two lots, originally independent and distinct within the districts, were considered as one.

In Snyder-Cooley Dale Corp. v. Berlin, 24 A.2d 143 (1942), the issue was transfer of density from one part of a subdivision to another part of the same subdivision separated by a roadway 80-feet wide. The court held that the lots to be contiguous and that density could be transferred from one lot to the other.

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DATE 1/9/81
BY Linda R. Lanzy-ecc

> The entire subdivision must be shown on the plat of the preliminary plan. The development of the entire subdivision may be accomplished on a piecemeal basis by the use of record plats which when all added together will comprise the entire subdivision as shown on the preliminary plan. Since the ordinance contemplates the transfer of excess area from one record plat to another record plat it would seem to matter little that a matching line might happen to be on one or the other side of one of the streets in the development.

Bruter-Cooley Jade Corp., supra, at p. 596.

In each of the cases cited by the Petitioners, the courts were required to interpret specific statutes, or a lease, which incorporated the word "contiguous" or "adjoining". This is not the case here. Intent of the statute or ordinance is the thread holding these cases together. The intent of Bill Nos. 98-75 and 30-78 is to limit fishing and shellfishing facilities to lots of record existing on the effective date of those laws. A "lot of record" is defined by the BCZR as "A parcel of land with boundaries as recorded...on the same date as the effective date of the zoning regulations which governs the use, subdivision, or other condition thereof." In 1978, and as presently existing, Lot 247 and the new lot were recorded separately and distinctly and were in fact two lots of record or "record lots", as that term is defined in the BCZR. There was a requisite dividing of the tract for the purpose of selling off lots of record individually.

The Council did not intend that a party could extend the benefits provided to lots situated on the shoreline of tidal waters to contiguous lots not on the water. The mere fact that the property is contiguous does not do what the Petitioners claim. The intent of the State Legislature in 1892, as codified, and of the Court of Appeals in Hunt v. Brown, 75 Md. 481, would be misconstrued if the Petitioners' argument was accepted. The existence of the road, which for all practical and legal purposes is a dedicated roadway, does not separate the contiguous nature of the two lots now held by single ownership. It also does not

ORDER RECEIVED FOR FILING
DATE January 6, 1982
BY Stella M. Sauerwein
ADMINISTRATIVE ASSISTANT

allow for reciprocal benefits of such ownership. An analogy would be to two separate lots of record, each zoned differently, singularly owned. Could the benefits of one such lot be utilized on the other simply because they were contiguous? The obvious answer to both is no. Although the lots are zoned alike, one is on the water and the other is not. Any rational reading of the statutes could lead in no other direction. "The meaning of the plainest words in a statute may be controlled by the context. A statute should be so construed that all its parts harmonize with each other and render them consistent with its general object and scope." Pitman v. Housing Authority, 25 A.2d 466, 469. There is nothing showing that at any time since 1975 were the two lots recorded among the Land Records of Baltimore County as one.

For the aforementioned reasons, the variances requested for side yard setbacks from the storage area to either side property line on the new lot will be denied. Additionally, the requested variance to allow the parking areas to be paved with crusher run material is moot due to the reasons set forth above and, as such, will be denied as well.

Pursuant to the advertisement, posting of the property, and public hearing held, and it appearing that by reason of the requirements of Sections 502.1 and 307 not having been met and the health, safety, and general welfare of the community being adversely affected, the special exception, special hearing, and variances should not be granted.

It is therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 16th day of January, 1984, that all of the relief prayed for by the Petitioners be and are hereby DENIED.

ORDER RECEIVED FOR FILING
DATE January 16, 1984
BY Baltimore County Zoning Commissioner

Zoning Commissioner of
Baltimore County

IN THE MATTER OF JAMES R. MYRICK, ET UX. FOR SPECIAL EXCEPTION FOR A FISHING FACILITY IN AN R.C. ZONE; FOR SPECIAL HEARING REGARDING AMENDED SITE PLAN; FOR VARIANCES TO PERMIT SETBACKS AND TO ALLOW PARKING AREAS TO BE PAVED WITH CRUSHER RUN IN LIEU OF MACADAM ON PROPERTY LOCATED ON THE SOUTHWEST SIDE OF GOOSE NECK RD., 626.89' NORTHWEST OF THE CENTER LINE OF GOOSE HARBOR RD. - 15th DISTRICT	:	BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY No. 84-147-XSPHA

O P I N I O N

This case comes before this Board on appeal from a decision of the Baltimore County Zoning Commissioner dated January 16, 1984, denying all the relief prayed for by the Petitioners. The Board will note that the hearing in this case consumed three full days of direct testimony, the introduction of over 50 exhibits, many of which are multiple exhibits, and produced much controversial testimony. In addition, there were lengthy memorandums submitted for the Board's consideration by Petitioners' attorney, Protestants' attorney and People's Counsel, plus a lengthy Findings of Fact and Conclusions of Law by the Baltimore County Zoning Commissioner. All of this has been carefully considered by this Board, but we will not attempt in this Opinion to detail or summarize these factors but will attempt to confine this Opinion to the specific issues before us. It will be noted, however, that the following persons testified during these three days of hearing.

Testifying for Petitioners

1. Captain Harry Phillips - Charter Boat Captain
2. James Myrick - Petitioner and property owner
3. Kenneth Hubbard - Commercial crabber
4. Patti Chatterton - Neighborhood resident
5. Dennis Fandl - Neighborhood resident
6. Anthony Reale - Area resident and customer

Testifying for Protestants

7. Mrs. Ruth Gress - Next door neighbor
8. Mr. Theodore Gress - Husband of Mrs. Gress
9. William O. Luette - Professional engineer and land surveyor
10. Richard Davis - Attorney and real estate broker

11. Amy Von Bauer - Next door neighbor

12. Steve Bauer - Husband of Mrs. Bauer

Testifying for People's Counsel

13. Shirley Hess - Secretary to People's Counsel

14. John Reisinger - Buildings Engineer, Baltimore County

15. David Filbert - Director, Baltimore County Air Pollution Control

16. Bernard Simon - Real estate appraiser and consultant

17. Christopher LaMartina - President, Bowleys Quarters Comm. Assn.

18. Thomas Fritsch - Neighborhood resident

19. James Hoswell - Baltimore County Planner

Rebuttal Witnesses

20. Dennis Fandl - Neighborhood resident

21. Kenneth Hubbard - Commercial crabber

22. James Myrick - Petitioner

There was presented uncontested testimony that Mr. Myrick purchased the property known as Lot #247 in March, 1971. He had, however, been familiar with this property for many years prior to this and it had been used during these years for crabbing purposes. In 1977, in compliance with Baltimore County legislation, he applied for a use permit and was granted same in October, 1978. This use permit required the submission of a site plan and this plan is part of the record as Petitioners' exhibit #3. It is noted that this legislation, Bill #98-75, provided for these use permits to grandfather the use of those operations in existence at the effective time of this legislation, all proper requirements being attained and further specifically noted that any such use existing at the time of enactment of this subsection may continue at the same level of intensity (emphasis added). In June, 1978, Mr. Myrick purchased the lot directly to the rear and across the road from his Lot #247. This parcel contains 1.0± acres and is known as Lot #246. After this purchase, he cleared a part of this lot and stored equipment on same from sometime in 1979 until sometime in 1982, when its commercial use was questioned and this usage discontinued. Mr. Myrick now pleads that since these two lots abutt on the centerline of Goose Neck Road, they should be found to be contiguous property and therefore the entire holdings be considered shoreline property.

The regulations clearly require that to obtain a Special Exception for a Class I Fishing and Shellfishing facility, the property in question must be a shoreline property and one of the petitions before the Board seeks a Special Exception for a Class I Fishing and Shellfishing facility on this property. The Board can find no logical reason to classify these two parcels as shoreline property. Had both these properties been in active use as a crabbing operation at the time the application for a use permit was filed and the required site plan so shown, there may have been justification for granting the use permit for both lots but such was not the case. At the time application for the use permit was filed, Mr. Myrick did not even own Lot #246. Mr. Myrick presented as exhibits, several properties divided in some manner, i.e., right-of-way, street or easement, etc., to buttress his claim that they are considered one property. The Board cannot, however, apply any of these standards to this situation. Mr. Myrick purchased one property in 1971 and the second in 1978, from different owners, indicating these have always been separate parcels. They are so designated for tax purposes. It is this Board's Opinion that Mr. Myrick owns two parcels, one a shoreline parcel and one not a shoreline parcel. Since one of the most primary requirements for the granting of a Special Exception for a Fishing and Crabbing facility is that the facility must be located on shoreline property, the request for the Special Exception will be denied and this denial moots the requests on this property for variances from side yard setbacks and the paving on this parcel with crusher run instead of the required paving.

The third petition presented this Board is a request to submit an amended site plan for Lot #247, the lot granted the use permit in 1978. There are several alterations to the original site plan that occasion this request, the principal one being the erection of a new building replacing the original building, a truck body being used as a "cool box" and a shed type porch area. Petitioners' position is that this new building encompasses only the approximate same area as that contained on the original site plan and therefore should be allowed. Mr. Myrick admits that no building permits were requested for this construction until it had been completed. Surely Mr. Myrick knew that permits for this work were required and if he did not, the contractor involved should have. This appears to be a flagrant violation of Baltimore County regulations. Baltimore County Buildings Engineer testified that no permit for new construction would have been granted because the elevation places it within the 100 year flood plain and no new construction is permitted therein.

This situation causes the Board grave concern. The easiest course is to order this illegally constructed building removed. However, if this course is followed, Mr. Myrick could replace this building with a shanty type building and an old truck body, as described on his plot plan. While this may be legally correct, it could also subject the neighbors and the area to an obvious eyesore. The new building is apparently well constructed and is attractive enough to be in keeping with the neighborhood, and to order its removal seems to serve no purpose whatsoever. The Board will therefore reluctantly order that a building permit for this existing building be issued and that an amended site plan be submitted accurately portraying its exact dimensions and its exact position on the lot, said site plan to accompany the existing use permit.

While the validity of the existing use permit is not an issue before this Board, the Board feels it would be remiss in not commenting on this in view of the lengthy testimony presented at this hearing regarding the alleged intensification of usage. Mr. Myrick testified he originally had some 12 - 1400 pots on this site. There was testimony that as many as 2000 pots have been observed on the site. Mr. Myrick testified he now has a splinter type crabbing operation in place on the Eastern Shore and trucks these crabs to the subject site for storage in the cool-box. Mr. Myrick testified that he is opening a retail crab sales at some other location but will use this site as part of his product supply. While the areas on site grandfathered through the use permit may not have increased, the intensification of use on this site is surely suspect and Mr. Myrick may be skating precariously close to losing his use permit altogether.

O R D E R

For the reasons set forth in the aforegoing Opinion, it is this 30th day of October, 1984, by the County Board of Appeals, ORDERED:

1. That the two lots, known as lots #246 and #247, be found to be separate parcels and not shoreline properties in total, but that lot #247 be found to be a shoreline property and lot #246 to be found not to be a shoreline property.

2. The Special Exception for a Class I Fishing and Shellfishing Facility on this site be DENIED and that the variances on lot #246 be declared moot and therefore ALSO DENIED.

3. That an amended site plan for lot #247 be prepared by a Registered Professional Engineer to accompany the existing use permit, this site plan to accurately portray the size and position of the new building on this site and accurately deliniate the setback dimensions from all pertinent points on this site to this building.

4. That the Buildings Engineer grant a building permit for this building as it now exists.

5. That the necessary variances as shown on the amended site plan prepared by a Registered Professional Engineer be GRANTED to allow the above building permit.

6. That no further building permits for expansion or alteration of this building be granted whatsoever.

Any appeal from this decision must be in accordance with Rules B-1 through B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman

William R. Evans
William R. Evans

Patricia Phipps
Patricia Phipps

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et al.

Appellants and Cross-Appellees

v.

JAMES R. MYRICK, et al.

Appellees and Cross-Appellants

IN THE

CIRCUIT COURT

FOR

BALTIMORE COUNTY

(ZONING FILE #84-147-XSPHA)

Case No. 84-CG-1503

MAY 29 1985

OPINION AND ORDER

The above captioned case comes before the Court on an Appeal by the People's Counsel for Baltimore County and on a Cross-Appeal by the property owner, James R. Myrick, concerning an application for Special Exception for a Fishing Facility in an R.C. zone and the necessary variances on property located on Goose Neck Road some 626 feet northwest of the center line of Goose Harbor Road in the 15th District of Baltimore County.

On May 17, 1985, counsel for the parties were heard, including counsel for Baltimore County. Voluminous testimony by the Board of Appeals having been reviewed, along with the exhibits, and Memorandums filed by counsel and Opinion of the County Board of Appeals, the Court finds:

1. That the Order of the Board dated the 30th day of October, 1984, contains an obvious misnomer citing Lot #246 when it should refer to a parcel of land owned by James R. Myrick that lies behind Lot #247.

FILED MAY 27 1985

2. That the Board has no authority to order the Baltimore County Buildings Engineer to grant a building permit that was illegally constructed on Lot #247, especially in light of the fact that the Office of Buildings Engineer was not even named a party. This part of the Order is illegal.

3. As to "the necessary variances", there is nothing to appeal from since the Board did not specify the nature of "the necessary variances".

4. Concerning these variances on Lot #247, the case is REMANDED so that the necessary Registered Professional Engineer site plan can be filed in order for a determination to be made by the Board.

5. As to the Appellees' Cross-Appeal concerning the Appellees' Special Exception for a Class I Fishing and Shellfish Facility, the Court cannot find that the Board was erroneous, arbitrary or capricious in the interpretation and finding of fact and the conclusion from these facts, nor in the application of the law to the facts; and in light of the entire record, it had competent material and substantial evidence that was legally sufficient to support its decision on this Petition for Special Exception and the variances on the parcel of land owned by the Appellee, James R. Myrick, that lies behind the Appellee's Lot #247.

Therefore, it is this 24th day of May, 1985,

ORDERED that the decision of the Board of Appeals for Baltimore County is AFFIRMED on the decision denying the Appellee's, James R. Myrick, Petition for a Special Exception for a Class I Fishing and Shellfish Facility; and the case is REMANDED in accordance with this Opinion.

Wm. R. Buchanan Sr.

William R. Buchanan, Sr.
Judge

IN THE MATTER OF
JAMES R. MYRICK, ET UX,
FOR SPECIAL EXCEPTION FOR
A FISHING FACILITY IN AN R.C.
ZONE; FOR SPECIAL HEARING
REGARDING AMENDED SITE PLAN;
FOR VARIANCES TO PERMIT SET-
BACKS AND TO ALLOW PARKING
AREAS TO BE PAVED WITH CRUSHER
RUN IN LIEU OF MACADAM
ON PROPERTY LOCATED ON THE
SOUTHWEST SIDE OF GOOSE NECK
RD., 626.89' NORTHWEST OF THE
CENTER LINE OF GOOSE HARBOR
RD. - 15th DISTRICT

ON REMAND
BEFORE THE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 84-147-XSPHA
(Court File #84-CG-1503)

O P I N I O N

This case comes before this Board on remand from the Circuit Court Ordered by Judge William R. Buchanan, Sr. This amended Order by the Baltimore County Board of Appeals is filed in accordance with the above noted Remand Order.

Item #1 on the Remand Order cites the Board for a misnomer in noting as Lot 246, the parcel of land owned by James R. Myrick, that lies behind Lot #247. Notes taken by the Board during the hearing indicate that this parcel was identified as Lot #246 by both Petitioners' counsel and Protestants' attorney, but it is evident that testimony before the Circuit Court prove these notes to be in error, so the Board will Order in this Amended Order that wherever the designation as Lot #246 is noted that it be amended to designate this parcel as a "parcel of land owned by James R. Myrick that lies behind Lot #247".

Item #2 on the Remand Order states that the Board's Order on page 4 ordering that a building permit for an existing building (garage and cool box) be issued is illegal. The Board in this Order will amend that portion of its Order on page 4 by striking the sentence that states, "The Board will therefore reluctantly order that a building permit for this existing building be issued", but leaving the portion of that sentence that requires an

amended site plan be submitted accurately portraying its exact dimensions and its exact position on the lot, said site plan to accompany the existing use permit.

Items 3 and 4 address the need for variances necessary to the building noted on the plat as Brick Garage and Cool Box. Petitioner has submitted a site plan by a Registered Professional Engineer as noted in Item #2. This site plan indicates a need for a side yard variance from 50' to 1.8', a variance from 75' to 17.5' from the center line of the street and a variance from 100' to 52' for the distance between the two buildings on this parcel. The need for these variances is discussed in detail on pages 3 and 4 of the Board's original Order. Section 307 of the Baltimore County Zoning Regulations gives the Board the authority to grant these variances where strict compliance would result in practical difficulty and unreasonable hardship. In this case, it would mean removal of the building which, admittedly, was constructed without proper permits. The denial of these variances and subsequent removal of this building would in the Board's opinion, cause substantial injury to the general welfare of the neighborhood when consideration is accorded to that which may legally be replaced on the parcel, should this building be removed. The Board is therefore of the opinion that the requested variances as shown on Petitioners' site plan be granted and will so Order. It is therefore ordered that the side yard variance from 50' to 1.8' be granted, the variance from 75' to 17.5' from the center line of the street be granted and the variance from 100' to 52' for the distance between the two buildings on this parcel be granted. Since the Special Exception for the use proposed on the parcel of land owned by James R. Myrick that lies behind Lot #247 is denied, the request for 15' side yard setbacks on that parcel is moot and need not be addressed.

James R. Myrick, et ux
Case No. 84-147-XSPHA

O R D E R

For the reasons set forth in the aforegoing Opinion, it is this 7th day of November, 1985, by the County Board of Appeals, ORDERED that:

1) Wherever the designation as Lot #246 is noted in the original Order that the designation Lot 246 be amended to designate this parcel as a parcel of land owned by James R. Myrick that lies behind Lot #247.

2) The Board will amend that portion of its Order on page 4 by striking the sentence that states, "the Board will therefore reluctantly order that a building permit for this existing building be issued", but leaving the remainder of that sentence.

3) Items 3 and 4 in the Remand Order address the need for variances. The Board will grant a side yard variance from 50' to 1.8', a variance from 75' to 17.5' from the center line of the street, and a variance from 100' to 52' for the distance between the two buildings. The request for the 15' side yard setbacks on that parcel lying behind Lot #247 are moot and therefore DENIED.

Any appeal from this decision must be in accordance with Rules B-1 thru B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman

William R. Evans
William R. Evans

Patricia Phipps
Patricia Phipps

IN RE: PETITION FOR SPECIAL HEARING * BEFORE THE
NES Gooseneck Road, 700' west
of Goose Harbor Road * ZONING COMMISSIONER
(1326 Goose Harbor Rd)
15th Election District * OF BALTIMORE COUNTY
5th Councilmanic District
* CASE # 89-2-SPH
James Myrick, et ux
Petitioners *

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests a Special Hearing to amend a site plan (to include fuel tanks) approved 9-20-78 which accompanied permit No. CFC-13, as more particularly described on Petitioner's Exhibits 1.

The Petitioners appeared and were represented by John B. Gontrum, Esquire. The Petitioners were supported by the testimony of Mrs. Cecile Myrick, Dennis Fandl and David Jorio. The Protestants, Ruth Gress and Theodore Gress appeared, were represented by Ralph K. Rothwell, Jr. and testimony was provided by Mrs. Ruth Gress.

The evidence and testimony clearly establishes that the parties are extreme adversaries and do not agree or cooperate on any issue or subject. The testimony of the Petitioner, clearly, establishes that the smaller 250 gallon oil tank, as noted on Petitioner's Exhibit 1 is in error because the tank is actually 275 gallons. This tank services the home with heating oil and has been in existence since the Petitioner purchased the property. The property in question is commonly referred to as 1326 Goose Harbor Road, Baltimore, Maryland 21220 The property is currently zoned R.C.5. and is subject to a zoning use permit for secondary commercial fishing, crabbing and shellfish operation. The property is located on Seneca Creek and is improved with

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3/24/88
By Madeline Rome

a residence garage and cool box structure.

The purpose for this hearing is to provide an amended site plan indicating the two fuel oil tanks, the first of which has been described above as a residential fuel oil tank. The second fuel oil tank, located at the water's edge is for the specific purpose of fueling the Petitioner's commercial fishing vessels and is 500 gallons in size. Cecile Myrick, testified that there is an ongoing fishing operation which has been in continuous uninterrupted operation since 1978. Mr. James Myrick has been vacant from the home due to domestic problems on various occasions. That the fishing operation has continued uninterrupted even during those periods of time. That the Petitioners' son, Terry A. Myrick, is actively engaged in the commercial fishing operation which is currently ongoing. That the 500 gallon fuel oil tank was placed at its location in the late 1960s or early 1970s.

There was a great deal of testimony and proffered testimony by Petitioner's attorney as to the necessity for commercial fuel oil tanks and the need to service commercial fishing boats. Likewise, there was a great deal of testimony concerning the unavailability of this type of fuel oil in the nearby harbors.

The Protestant, Mrs. Gress, testified that she is extremely opposed to the operation of a commercial fishing establishment next door to her property. She explained at great length how ugly and unsightly the Petitioner's project is and how the zoning regulations, by permitting such a use, work a direct hardship upon her. She also

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Date 8/24/88
By Meadows Board

testified to the ongoing expansion of the fishing operation and the fact that Mr. James Myrick is not living in the same household with Mrs. Myrick at 1326 Goose Harbor Road.

There was also a great deal of testimony by Mrs. Gress, that the Petitioners are mean and un-neighborly. That they have caused her and her husband a great deal of stress and inconvenience. Mrs. Gress also talked about her unhappiness with the Baltimore County Government and the lack of what she considers to be appropriate action and enforcement against Mr.and Mrs. Myrick. Mrs. Gress explained at great length her unhappiness with the Zoning Commissioner and the Zoning Commissioner's staff. She believes she is not receiving proper consideration by County employees.

The evidence, clearly, establishes that Mrs. Gress is very unhappy with almost everyone and she does not approve of the decisions made by the County Council when they enacted the Baltimore County Zoning Regulations (B.C.Z.R.) permitting commercial fishing, crabbing and shellfish operations in the D.R. zone. The Baltimore County Zoning Commissioner is not empowered to re-write the B.C.Z.R. and I will not attempt to second guess the Baltimore County Council on the issue of desirability.

The issue before the Zoning Commissioner would appear to be whether or not particular items, namely, fuel oil tanks, were appropriately included as part of the fishing and shellfishing operation at the time the use permit was issued, but were inadvertently not included on the site plan filed at that time and, furthermore, whether or not any additional requirements set forth in the B.C.Z.R. have been or will be complied with by this project.

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Date 4/24/92
By Mr. Brooks

This is not a hearing about residency requirements for Mr. Myrick or whether or not earlier site plans were produced in an inappropriate manner. The question before the Zoning Commissioner is as to the currently offered site plan which is marked Petitioner's Exhibit 1. There is no evidence this plan is not correct.

The Protestants claim the Petitioners are expanding or increasing the amount of site area devoted to this fishing and shellfishing use by amending this site plan. This is a very valid issue to be raised in this type of case. A quick review of the law, clearly, establishes that the Myricks may not expand this operation without the benefit of a Special Exception.

The Baltimore County Council has made this point very clear. In Bill No. 97-75, enacted by the Baltimore County Council on November 7, 1975, effective December 22, 1975, established commercial fishing, crabbing or shellfishing operations in R.C. 2, 3, and 5 zones. This legislation mandated that any such use existing on the date of enactment of the law could continue <u>at the same level of intensity</u> provided the user obtained a use permit from the Zoning Commissioner. The R.C. Zones were not created until the adoption of the comprehensive zoning maps by the Council in October, 1976, effective November, 1976. In June, 1978, the Council passed Bill No. -30-78, effective June 22, 1978, which repealed Bill No. 98-75 and, in effect, deleted any reference to use permits and provided that fishing and shellfishing facilities in R.C. 2, 3, and 5 Zones be allowed only by special exception. In the interim period, between 1976 and the passage of Bill No. 30-78, use permits were submitted for approval to the Zoning Commissioner and were subsequently approved after Bill No. 30-78

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Date 8/24/82
By J. Hoyt

went into effect. Approval, however, was contingent upon a site plan being submitted and total compliance being attained by the user. Because of the confusion rendered by the late approvals, the Council passed Bill No. 139-83 validating the continuation of such shellfishing activities by those who submitted site plans in 1977 and which were approved in 1978. This legislation recognized the importance of those site plans by reemphasizing the language of Bill No. 98-75, to wit, limiting the continued use to that which existed at the time the use permit was approved. Any attempt to expand the use as defined by the site plan would require a special exception and would not be allowed by amending the site plan.

The issue of an expanded use of the Myrick property was addressed by Zoning Commissioner, Arnold Jablon, in case No. 84-147XSPHA. The Zoning Commissioner found that an expansion may not take place by filing an amended site plan, but required a full Special Exception. He, therefore, denied the attempt to expand this site. I agree with the reasoning of that case and would likewise not permit an expansion without benefit of a Special Exception.

The facts before me in this matter are very different. There is no evidence of an expansion. The evidence is that the fuel oil tank for the house was installed when the house was built. The boat fuel oil tank was installed before 1975.

Even the Protestants must agree that a lot of improved land, called a site, cannot be expanded when the items, namely, fuel oil tanks, were unquestionably present prior to the effective date of the legislation. I refuse to find, as a matter of fact, that either one or

both of the fuel oil tanks were not present when the original use permit was issued on October 10, 1978.

The Protestants argue that no change in a site plan may take place after the use permit is issued. The Protestants cite Section 1B01.1.C.7A.d. of the B.C.Z.R. They claim that all amendments of a site plan is by nature an expansion and not permitted.

This argument is based on two incorrect foundations. First, as stated above, expansion is a factual determination and I find no expansion in this amended plan. Secondly, the Protestant has misapplied the facts of this case. The subject property is zoned R.C.5. Section 1B01.1.C.7A.d. does not apply to the R.C.5. zoned properties; this section only applies to D.R. zoned land. Section 1A04.2.B.7. applies to this case and does not contain the same restrictions as 1B01.1.C.7A.d. about new site plans.

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Date
By

The regulations do not prevent a holder of a valid commercial fishing, crabbing or shellfishing use permit from filing a revised or amended site plan. The question for the Zoning Commissioner is whether or not that new site plan increases the site area or changes the operation. In the case at bar, the amended plan does not expand, change or increase the operation.

No testimony was offered by the Petitioners to substantiate all of the requirements of the Chesapeake Bay Critical Area program and the Chesapeake Bay Critical Area protection laws, as set forth in the B.C.Z.R.

Specifically, the Petitioners presented no evidence that the fuel oil tanks would or would not result in water pollution or harm to the Chesapeake Bay. There was testimony by the Protestant that fuel oil

both of the fuel oil tanks were not present when the original use permit was issued on October 10, 1978.

The Protestants argue that no change in a site plan may take place after the use permit is issued. The Protestants cite Section 1B01.1.C.7A.d. of the B.C.Z.R. They claim that all amendments of a site plan is by nature an expansion and not permitted.

This argument is based on two incorrect foundations. First, as stated above, expansion is a factual determination and I find no expansion in this amended plan. Secondly, the Protestant has misapplied the facts of this case. The subject property is zoned R.C.5. Section 1B01.1.C.7A.d. does not apply to the R.C.5. zoned properties; this section only applies to D.R. zoned land. Section 1A04.2.B.7. applies to this case and does not contain the same restrictions as 1B01.1.C.7A.d. about new site plans.

ORDER RECEIVED FOR FILING
Date 5/2/95
By M. Lenhardt

The regulations do not prevent a holder of a valid commercial fishing, crabbing or shellfishing use permit from filing a revised or amended site plan. The question for the Zoning Commissioner is whether or not that new site plan increases the site area or changes the operation. In the case at bar, the amended plan does not expand, change or increase the operation.

No testimony was offered by the Petitioners to substantiate all of the requirements of the Chesapeake Bay Critical Area program and the Chesapeake Bay Critical Area protection laws, as set forth in the B.C.Z.R.

Specifically, the Petitioners presented no evidence that the fuel oil tanks would or would not result in water pollution or harm to the Chesapeake Bay. There was testimony by the Protestant that fuel oil

does spill into the water when the boat is filled. The recommendations of the Department of Environmental Protection and Resource Management are, clearly, just that recommendation. The Inter Office Correspondence of June 14, 1988 is a statement of law and a recommendation, pursuant to the requirements of the B.C.Z.R. However, an official recommendation dealing with only water runoff is not enough to establish that there is no adverse impact on water quality from pollutants from structures or conveyances, such as the fuel oil tanks.

The restrictions set forth below will correct any possible pollution problem. The Petitioner shall correct any actual pollution problem as directed by the Baltimore County Department of Environmental Protection and Resource Management.

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

ORDER RECEIVED FOR FILING
Date 8/24/88
By M. Howat

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 24th day of August, 1988, that the Petitioner for Special Hearing to amend a site plan (to include fuel tank) approved 9-20-78 which accompanied permit No. CFC-13, as more particularly described on Petitioner's Exhibits 1, be and is hereby GRANTED, subject to the following restrictions which are conditions precedent upon the Order:

1. The Petitioner shall install any and all equipment required by the Baltimore County Department of Environmental Protection and Resource Management to correct any water quality problems that may or may not result from the improper storage or handling of fuel oil at the water's edge.

2. The Petitioner shall obtain written certification from the Department of Environmental Protection and Resource Management that the operation of the 500 gallon fuel oil tank does

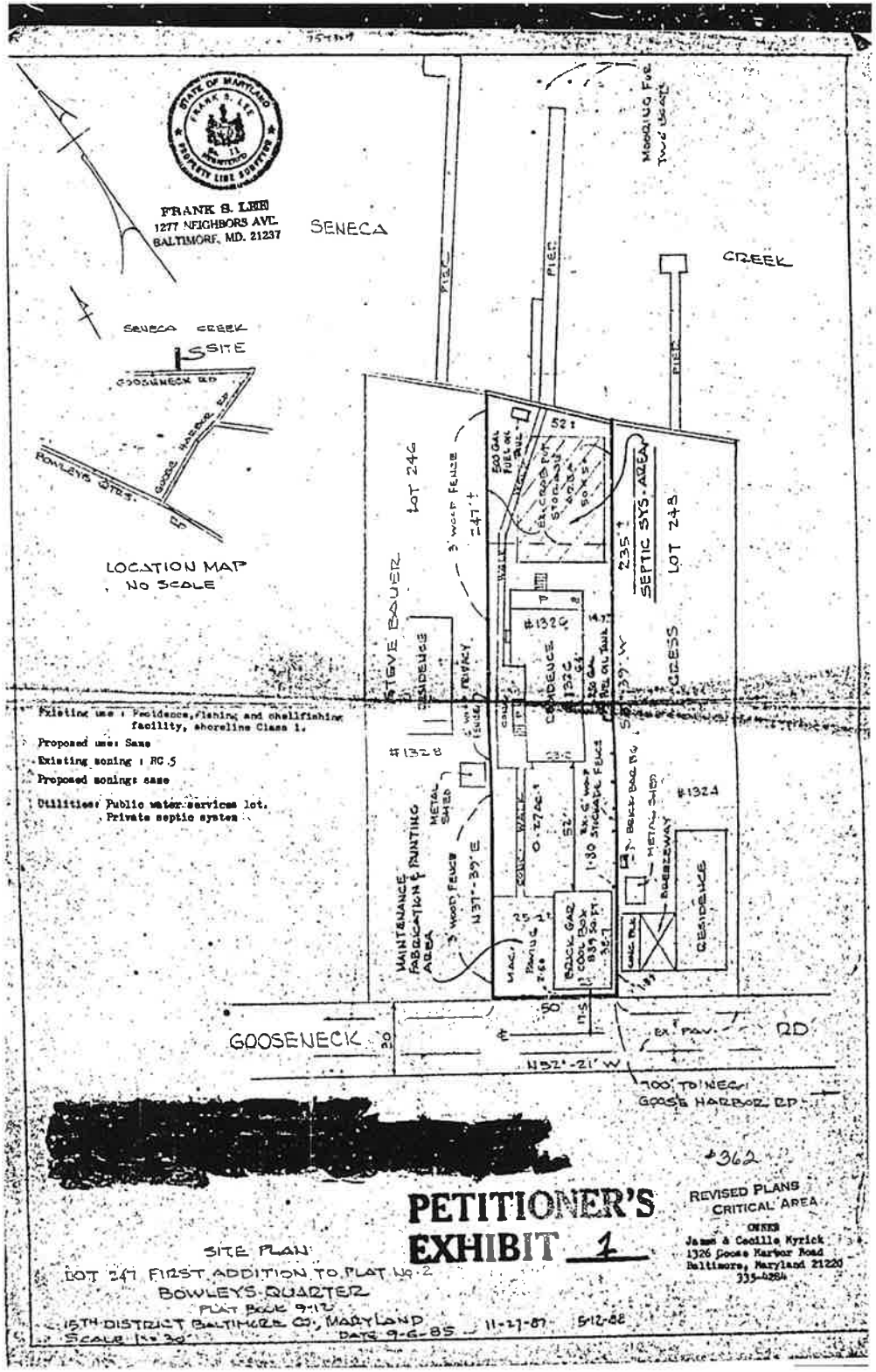
not violate the requirements of the Chesapeake Bay Critical Area Protection Laws and that the water quality is not adversely impacted by this oil tank or its operation. This certification shall be obtained on or before March 1, 1989 and an original copy of the certification shall be filed with the Zoning Commissioner when obtained by the Petitioner and made a permanent part of the Zoning Commissioner's file.

J. Robert Haines

J. ROBERT HAINES
Zoning Commissioner for
Baltimore County

JRH:mmn
cc: Peoples Counsel
John B. Gontrum, Esquire
Ralph K. Pothwell, Jr., Esquire
James and Cecile Myrick
Ruth and Theodore Gress
Chesapeake Bay Critical Area Commssion

ORDER RECEIVED FOR FILING
Date
By


FRANK S. LEE
1277 NEIGHBORS AVE.
BALTIMORE, MD. 21237
SENECA
CREEK
PIER
MOORING FOR TWO BOATS
SENECA CREEK
SITE
GOOSENECK RD
GOOSE HARBOR RD
BOWLEYS QUARTER
LOCATION MAP
NO SCALE
LOT 246
LOT 248
STEVE BAUER
RESIDENCE
#1320
#1322
#1324
CRESS
SEPTIC SYS. AREA
235 ±
247 ±
521
500 GAL FUEL OIL TANK
ENCLOSED PUT STORAGE SHED 8'x8'
50' ±
3' WOOD FENCE
3' WIRE FENCE
3' BRICK BAG RW
METAL SHED
BREEZEWAY
MAINTENANCE FABRICATION & PAINTING AREA
METAL SHED
3' WOOD FENCE
N37°-39'E
0.37 AC. ±
1.30 STOCKADE FENCE
BRICK GAR. & COOL BOX 839 SQ. FT.
RESIDENCE
GOOSENECK RD
EX. PAV.
N52°-21'W
700' TO NECK GOOSE HARBOR RD
Existing use : Residence, fishing and shellfishing facility, shoreline Class 1.
Proposed use: Same
Existing zoning : RC 5
Proposed zoning: same
Utilities: Public water services lot.
Private septic system
#362
REVISED PLANS
CRITICAL AREA
OWNER
James & Cecilia Kyrick
1326 Goose Harbor Road
Baltimore, Maryland 21220
335-4264
PETITIONER'S
EXHIBIT 1
SITE PLAN
LOT 247 FIRST ADDITION TO PLAT NO. 2
BOWLEYS QUARTER
PLAT BOOK 9-12
15TH DISTRICT BALTIMORE CO., MARYLAND
SCALE 1" = 30'
DATE 9-6-85 11-27-87 5-12-88

3/24/93

IN RE: PETITION FOR ZONING VARIANCE
SW/S Gooseneck Rd., 626.89 ft.
NW of Goose Harbor Road
1327 Gooseneck Road
15th Election District
5th Councilmanic District

James R. Myrick, et ux
Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 93-221-A
*

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Zoning Variance for that property known as 1327 Gooseneck Road in the Bowleys Quarters section of Baltimore County. The Petitioners/property owners herein request a variance from Sections 101 and 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow an accessory structure on a lot with no principal structure. The relief requested is more particularly shown on Petitioners' Exhibit No. 1, the plat to accompany the Petition for Zoning Variance.

The Petitioner/property owner, Cecile Myrick, appeared and testified. Also appearing in support of the Petition was Stephen K. Broyles, a professional engineer who prepared the site plan. There were no Protestants present.

The facts presented in support of the Petition are simple and not in dispute. The Petitioners own the subject property, known as 1327 Gooseneck Road. This unimproved lot is 1.01 acres in area and is a rectangularly shaped property. It is situated across Gooseneck Road from another parcel owned by the Petitioners, known as lot No. 247. Lot No. 247 is improved by a structure and a garage, and is the site of the Petitioners'

ORDER RECEIVED FOR FILING
Date 3/24/93
By

commercial shell fishing business.

The Petitioners seek permission to place a utility shed on the property. The shed will be 24 x 36 ft in dimension. Mrs. Myrick testified that the shed would not be used for commercial purposes but is needed for storage. In fact, the Petitioner was agreeable to a restriction within any order approving the Petition which would limit the nature of the use of the utility storage. Further, as Mr. Broyles noted, clearly the two properties are separate and distinct parcels. The record of this case indicates that they were acquired at different times by the Petitioners and are recorded among the Land Records of Baltimore County under two separate deeds.

It is first to be noted that there will be no adverse affect upon the surrounding locale if the proposed shed is permitted with appropriate restrictions. The absence of any Protestants supports this conclusion. The use of the subject property to support the shed appears to be a reasonable and appropriate use of this property. Also, as noted by Mr. Broyles, the Chesapeake Bay Critical Area Regulations limit additional development on lot 247. Thus, he argues that the shed must be placed on the subject lot. Mr. Broyles also stated that compliance with the critical area regulations constitutes a practical difficulty on the Petitioners which justifies the variance.

Although Mr. Broyles' conclusions and the above findings seemingly justify the granting of the variance, a resolution of the case is not that easy. First, a study of exactly what is being requested by the Petitioners is appropriate. The property owners seek relief to allow a utility shed on the property as an accessory structure. Section 101 of the B.C.Z.R. defines accessory structures and accessory buildings. In both

ORDER RECEIVED FOR FILING
Date 3/29/93
By Mr. Bovarde

definitions, an accessory building or structure is defined as an improvement located on the same lot as the principal use or structure served. Further, any accessory structure or building must serve a principal use and structure and must be subordinate and customarily incident to same. Thus, by definition, the proposed utility shed cannot be accessory. It is not located on the same lot as any other building. It is not subordinate and customarily incident to anything. This conclusion is inescapable.

Having made this determination, the next issue to be considered is whether this definition may be varianced. The Office of the Zoning Commissioner is established pursuant to Section 522 of the Charter of Baltimore County. The duties and authority of the Zoning Commissioner are set forth in Section 26-127 of the County Code. Therein, it is provided that the Zoning Commissioner may "Grant variances from area and height regulations, may interpret the zoning regulations and may make special exceptions . . .". (emphasis added). Further, in Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28, 322 A2d 220 (1974), the Court of Appeals noted the distinction between area variances and use variances. Within that decision, the Court established a different standard in ajudging a use variance than is to be applied in considering an area variance. Clearly, based on this distinction established by the Court of Special Appeals and the clear language of the Charter, the Zoning Commissioner is restricted to considering area, height, parking and similar variances only. The variance requested in the instant case is more akin to a use variance and thus cannot be considered by this office. Thus, a Petition for Variance is the improper vehicle for considering this issue.

In the alternative, the Petitioner could submit a Petition for Special Hearing for an interpretation of the regulations as they apply to

ORDER RECEIVED FOR FILING
Date 3/29/93
By J. Sorah

this factual scenario, pursuant to Section 500.7 of the B.C.Z.R. Although the issue could be properly raised in that context, the relief could still not be granted. As noted above, the definitions of accessory structure and accessory building in Section 101 of the B.C.Z.R. are clear and unambiguous. An accessory structure/building must be located on the same property as the principal use or structure. As this is not the case here, the conclusion is escapable that the proposed utility shed cannot be constructed as an accessory structure.

A review of the prior cases as they relate to the Petitioners' business is also instructive. As noted above, the Petitioners' lot across the road from the subject property is presently in use as a commercial shell fishing operation pursuant to the relief granted in case No. 84-147-XSPHA. That case wound its way through public hearings by the Zoning Commissioner, the Board of Appeals, and was eventually before the Baltimore County Circuit Court on appeal. Within its Order, the Court remanded in part and affirmed in part the Board's decision. The Court did affirm that portion of the Board's opinion as it related to the two lots. Specifically, the Board noted that "Mr. Myrick purchased one property in 1971 and the second in 1978, from different owners, indicating that these have always been separate parcels. They are so designated for tax purposes. It is the Board's opinion that Mr. Myrick owns two parcels, one a shoreline parcel and one not a shoreline parcel." Clearly, the law of this case is, therefore, that these lots are separate parcels with no common history from a use standpoint. In terms of ownership, they were not acquired together by the Petitioners, but separately.

This finding is significant due to the Zoning Commissioner's findings in case No. 88-206-SPH. In that matter, Zoning Commissioner, J. Robert

ORDER RECEIVED FOR FILING
Date 3/9/93
By

MICROFILMED

Haines, approved an accessory structure on a separate lot from where the principal structure was located. The Petitioners therein owned 2 lots which were adjoined by a common side yard property line. One lot was improved with their dwelling and the other was vacant. Commissioner Haines granted a variance permitting the construction of a swimming pool on the vacant lot. His approval was based upon the fact that the lots had been considered a single entity for many years and were immediately adjacent to one another. The factors which Commissioner Haines relied upon in approving the relief requested in that case are not present here.

In conclusion, I am persuaded that the construction of the utility shed proposed would not be dangerous or detrimental to the surrounding community. Nonetheless, it cannot be legally permitted, at least under the scenario which the Petitioner submits. The proposed shed is clearly not an accessory structure and the Petitioners' properties are two separate and distinct lots. Although to grant the relief in this case would cause no detriment to the property and surrounding parcels, there is no legal basis to approve the variance. To fabricate such a legal basis would be to establish an improper precedent. I am unwilling to do so. Thus, for the reasons set forth above, the relief requested must be denied.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 29th day of March, 1993 that the Petition for a Zoning Variance from Sections 101 and 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow an accessory structure on a lot with no princi-

ORDER RECEIVED FOR FILING
Date 3/29/93
By J. Grant

MICROFILMED

pal structure, in accordance with Petitioners' Exhibit No. 1., be and is hereby DENIED.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES/mmn

ORDER RECEIVED FOR FILING
Date 3/29/83
By

IN RE:	PETITION FOR ZONING VARIANCE SW/S Gooseneck Road, 626.89 ft. NW of Goose Harbor Road 1327 Gooseneck Road 15th Election District 5th Councilmanic District James R. Myrick, et ux Petitioners	*	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY Case No. 93-221-A

* * * * * * * * * * *

MEMORANDUM OPINION AND ORDER

This matter comes before the Zoning Commissioner on a Motion for Reconsideration from my decision dated March 29, 1993. The subject property involved is known as 1327 Gooseneck Road in the Bowleys Quarters section of Baltimore County. The property is owned by James R. Myrick and Cecile V. Myrick, his wife. The property is within close proximity to Seneca Creek.

This matter originally came before me as a Petition for Zoning Variance from Sections 101 and 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow an accessory structure on a lot with no principal structure. Specifically, the Petitioners desire to construct a 36 ft. x 24 ft. utility shed on the subject property. That property is presently unimproved, however, is located across the street from a site owned by the Petitioners which is improved and used as a commercial shell fish operation. The subject site is 1.01 acres in net area and is rectangularly shaped. It is zoned R.C.5.

Reference is hereby made to my prior Order of March 29, 1993. Therein I denied the Petition for Zoning Variance which was requested. In that opinion, I noted that there would be no adverse effect upon the surrounding locale if the variance was granted and the proposed shed was erected. The Petitioner, Mrs. Myrick, testified at the original hearing that the

ORDER RECEIVED FOR FILING
Date 5/26/93
By M. Rourke

MICROFILMED

As noted in the original Order, it is clear that the proposed lot is a separate lot from the Myricks holdings across Gooseneck Road. Therefore, any use on the subject property cannot be accessory to activity on the other lot. However, an inquiry must be made as to the nature of the present use on the subject site. As noted above, it is unimproved. There are no dwellings, businesses or other activity on the lot. In reviewing the definition of permissible uses in an R.C.5 zone, it is noted that "Open Space, Common" is a permitted use. Moreover, "Open Space, Common" is defined in part in Section 101 of the B.C.Z.R. as "Local open space, public parks, or other park-like open space reserved for public use and enjoyment, whether privately owned or owned by the county, state or federal government or other agencies." In my view, the subject site fits within this definition and I so find same as fact. Although privately owned, the open area encompassed by the subject lot is no doubt enjoyed by the public. It provides a scenic vista in an area which is otherwise developed with dwellings and commercial establishments related to the Chesapeake Bay and its tributaries. Although not officially designated as a park, the character of this lot comports closely with the open space definition. Moreover, as is well known, open space can be both casual and active. Active open space is considered those areas which are improved with benches, playgrounds, etc. Whereas, passive open space is merely an open area which provides visual relief from developed sites nearby. In this case, although unimproved, the site is clearly used as open space, and I so find as fact.

ORDER RECEIVED FOR FILING
Date 5/26/90
By

This being the case, permissible accessory structures to that use may be erected on the site. As noted in my previous opinion, accessory structures include those buildings which are customarily incident and subordi-

this factual scenario, pursuant to Section 500.7 of the B.C.Z.R. Although the issue could be properly raised in that context, the relief could still not be granted. As noted above, the definitions of accessory structure and accessory building in Section 101 of the B.C.Z.R. are clear and unambiguous. An accessory structure/building must be located on the same property as the principal use or structure. As this is not the case here, the conclusion is escapable that the proposed utility shed cannot be constructed as an accessory structure.

A review of the prior cases as they relate to the Petitioners' business is also instructive. As noted above, the Petitioners' lot across the road from the subject property is presently in use as a commercial shell fishing operation pursuant to the relief granted in case No. 84-147-XSPHA. That case wound its way through public hearings by the Zoning Commissioner, the Board of Appeals, and was eventually before the Baltimore County Circuit Court on appeal. Within its Order, the Court remanded in part and affirmed in part the Board's decision. The Court did affirm that portion of the Board's opinion as it related to the two lots. Specifically, the Board noted that "Mr. Myrick purchased one property in 1971 and the second in 1978, from different owners, indicating that these have always been separate parcels. They are so designated for tax purposes. It is the Board's opinion that Mr. Myrick owns two parcels, one a shoreline parcel and one not a shoreline parcel." Clearly, the law of this case is, therefore, that these lots are separate parcels with no common history from a use standpoint. In terms of ownership, they were not acquired together by the Petitioners, but separately.

This finding is significant due to the Zoning Commissioner's findings in case No. 88-206-SPH. In that matter, Zoning Commissioner, J. Robert

ORDER RECEIVED FOR FILING
Date 3/9/93
By

MICROFILMED

nate to the lot on which they are located and contribute to the comfort and convenience of the use of that property. In this case, Mrs. Myrick indicated that the proposed shed would house lawn mowers and other equipment necessary to maintain the subject property. Thus, the necessary storage of same is accessory to the use of this property as open space. Therefore, the subject shed can be constructed as a permitted accessory structure to the use of this property as open space. The shed and lot cannot be used to support the commercial activity on the Myricks' lot across the street.

For the aforegoing reasons, I shall grant the Motion for Reconsideration and approve the construction of the proposed shed on the site.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 26th day of May, 1994 that the Motion for Reconsideration filed herein be and is hereby GRANTED for the reasons set forth within this Memorandum Opinion.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES/mmn

ORDER RECEIVED FOR FILING
Date 5/26/94
By M. Smith

Plat to accompany Petition for Zoning ☐ Variance ☐ Special Hearing

PROPERTY ADDRESS: 1327 GOOSENECK ROAD ~ BALTO. CO. MD. see pages 5 & 6 of the CHECKLIST for additional required information

Subdivision name: N/A

plat book# ~ ,folio# ~ ,lot# ~ ,section# ~ LIBER 5917 ~ FOLIO 584

OWNER: CECILE V. MYRICK

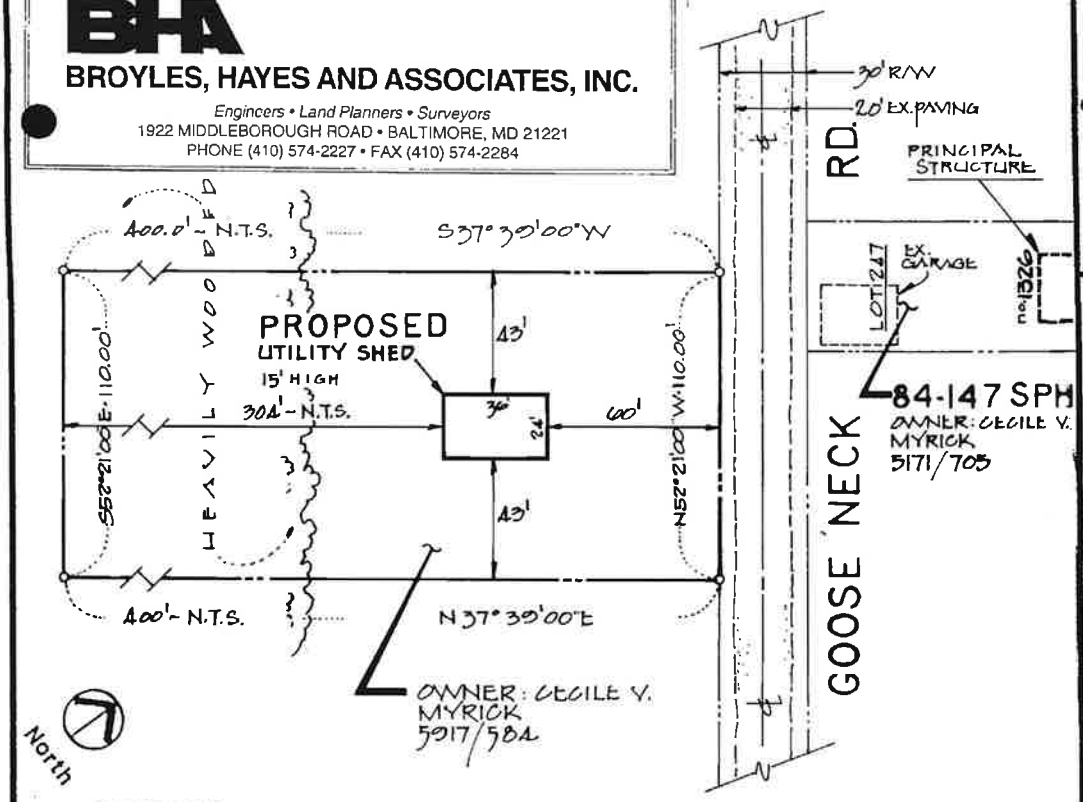
BHA

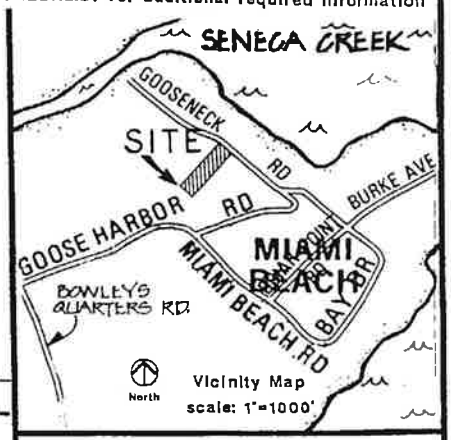
BROYLES, HAYES AND ASSOCIATES, INC.

Engineers • Land Planners • Surveyors

1922 MIDDLEBOROUGH ROAD • BALTIMORE, MD 21221

PHONE (410) 574-2227 • FAX (410) 574-2284





LOCATION INFORMATION

Councilmanic District: 5TH

Election District: 15TH

1"=200' scale map#: NE 2-L

Zoning: RC5

Lot size: 1.01 acreage / 44,000 square feet

	public	private
SEWER:	☐	☑
WATER:	☑	☐

	yes	no
Chesapeake Bay Critical Area:	☑	☐

Prior Zoning Hearings:

Zoning Office USE ONLY!

reviewed by: ITEM #: CASE#:

dat : DEC. 17, 1992

prepared by: BROYLES, HAYES & ASSO. Scale of Drawing: 1"=50'

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: James R. Myrick, et ux -Petitioners
Case No. 93-221-A

DATE : August 18, 1994 /at conclusion of hearing

BOARD /PANEL : William T. Hackett, Chairman (WTH)
Michael B. Sauer (MBS)
Robert O. Schuetz (ROS)

SECRETARY : Kathleen C. Weidenhammer
Administrative Assistant

Those present included John B. Gontrum, Esquire, Counsel for Petitioner; Peter Max Zimmerman, People's Counsel for Baltimore County; and Carole S. Demilio, Deputy People's Counsel.

PURPOSE --to deliberate issues and matter of petition for variance presented to the Board; testimony and evidence taken this date. Opinion and Order to be issued by Board setting forth written findings of fact.

Opening statement by Chairman Hackett.

MBS: Reviewed history of Petition for Variance through appeal to Board; variance to construct a 36' x 24' utility shed on property; file and record and testimony today reflect that People's Counsel did not participate in case below; no protestants in case below; People's Counsel did not participate in second hearing below; no protestants at that second hearing; no one in neighborhood has protested; rather petition filed / no opposition but rather in favor of request; reviewed testimony received and closing argument; uncontradicted testimony: (1) lot vacant; (2) won't perk; (3) cannot put building on it; (4) cannot get building permit; (5) 40 percent wooded and 60 percent open space and property requires maintenance. Reviewed current and past use.

Has reviewed file and evidence and R.C. 20 zone; has no problem finding as matter of fact that property in past has served rec use and meets requirement of open space. And for that reason has no problem granting relief requested and allowing structure requested; believes there should be condition placed on order of Board re no commercial use or for storage of items related to crabbing business.

Petition for Variance should be granted with restrictions.

Deliberation /James R. Myrick, et ux 93-221-A

ROS: Also has read the evidence provided to Board and in general concurs with MBS on assessment of property; historical use, existence of picnic tables, need for provision of some facility to store equipment, even the storage of picnic tables and other large items; discussed size of structure; has editorial comment -a utility shed is a shed and a garage is a garage. Even in petition it is indicated that requested structure is accessory storage building /garage for open lot. But it's not contained in other pieces of evidence; recognizes need for some facility; setback, open space, etc. is expanded and can be construed as more liberal in R.C. 20.

For those reasons, concurs with MBS to grant petition. However, wishes to express desire that order include restrictions on use not to include any materials, equipment, supplies, etc., to do with commercial use across street, as indicated and confirmed by OPZ /shed not be used for storage of such materials (People's Counsel Exhibit 2).

WTH: Basically concurs with other two Board members; sees this as piece of property owned by Baltimore County resident; pays taxes on property; is denied theoretically any use of property. reviewed uses and past history as did other Board members; basically believes that if proposed use impinges in any way on neighbor's use of his property, should be denied (i.e., air, noise, view, etc.); if for any reason an accessory structure does these things, should be denied. This one does not. Adjacent neighbors in both directions have indicated approval of it. No testimony that it's been used for anything other than grassy lot for cook-outs, etc. for friends and family; should permit shed and put reasonable restrictions on it so that it maintains passive recreational aspect.

Is troubled by size; does not believe it needs to be that big; but the fact that it's 24' x 36' and its adjacent to commercial operation, fears that there will be spillover from that operation. Order will specifically address this.

Closing comments by WTH: Board will grant variance as it's proposed; written Opinion and Order will be issued.

NOTE: Appellate period will run from date of written Order and not from today's date.

Respectfully submitted,

Kathleen C. Weidenhammer

Kathleen C. Weidenhammer
Administrative Assistant

9/23/94

IN THE MATTER OF THE APPLICATION OF JAMES R. MYRICK, ET UX FOR VARIANCE ON PROPERTY LOCATED ON THE SOUTHWEST SIDE OF GOOSE-NECK ROAD, 626.89 FT. NW OF GOOSE HARBOR ROAD (1327 GOOSENECK ROAD) 15TH ELECTION DISTRICT 5TH COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO: 93-221-A

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

O P I N I O N

This case comes before the Board on appeal from a decision of the Zoning Commissioner in which the petition for variance was ultimately approved. On March 29, 1994, the Zoning Commission r denied the petition for variance. Petitioner then filed a Motion for Reconsideration and this Motion for Reconsideration was granted and the hearing was held and the variance to permit the construction of the utility shed was approved. The case was heard this day in its entirety.

The matter before the Board concerns a petition for variance to permit a utility shed as an accessory structure on a lot that contains no principal structure. The file and the record in this case indicate that People's Counsel did not participat at the Zoning Commissioner's level nor were there any protestants. People's Counsel did not participate in the reconsideration hearing nor were there any protestants. In today's hearing there are no neighborhood protestants and, in fact, entered as Petitioner's Exhibit No. 4, is a petition in favor of the variance by all the residents on Gooseneck Road.

Testifying for the petitioner was Stephen R. Broyles, Land Surv yor and D velop r, who prepared the site plan on this lot and

described it and the surrounding areas in great detail. The site plan was entered as Petitioner's Exhibit No. 1.

Cecile Myrick, property owner and petitioner testified as to the condition of the lot and its general use. People's Counsel presented no witnesses, but entered 10 exhibits into the record.

By uncontradicted testimony, the Board is made aware that the lot is vacant; will not perk; no residential building permit can be obtained; it is 40% wooded and 60% open space grass, and that the property has picnic tables on it and has served recreational purposes by friends, neighbors, and family of the Petitioner. The Board will note that the Myricks own the lot across Gooseneck Road from this aite, but that no further building can be permitted on this lot. The lot is zoned R.C.20 which permits open space use of the property. The Petitioner pays taxes on this property and is denied theoretically any use of the property, except to keep it mowed and maintained as a recreational use. While there is no principal building on the property nor can any be erected, the proposed utility shed can be an accessory use to the only use afforded the property that of a recreational use. If for any reason, an accessory structure is a detriment to the neighborhood, creates noise, obstructs a view, or any other reason detrimentally, the variance should be denied. This proposed use does not. All the neighbors have indicated approval of it and there was no testimony that it has been used other than anything but a grassy lot for cook-outs, picnics, etc., for friends and family. The

Case N . 93-221-A James R. Myrick, et ux

Board will note that in the past, the Myricks have attempted to use this lot in conjunction with their commercial fishing and crabbing operation, but this use has been denied and the only use remaining on the lot is a recreational one. The Board is of the opinion that the variance to permit the utility shed should be granted. However, its use is to be restricted to the storage of lawn mowers, picnic tables, grills, etc., and is not to be used in any way as an accessory use to the commercial use across the street.

O R D E R

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

ORDERED that the petition for variance be and the same is hereby **GRANTED** with the following restriction:

1. No use in any way associated with the commercial fishing and crabbing business will be permitted on this site.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett

William T. Hackett, Chairman

Michael B. Sauer

Michael B. Sauer

Robert O. Schuetz

Robert O. Schuetz

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND

Legislative Session 1978, Legislative Day No. 10

BILL NO. 30-78

Mr. 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 the health, safety, morals and general welfare of its citizens; now therefore

SECTION 1. Be it ordained by the County Council of Baltimore County, Maryland, that the definitions of "commercial fishing, crabbing, and shellfishing operation" are hereby repealed and new definitions of "fishing AND SHELLFISHING facility, shoreline; fishing AND SHELLFISHING facility, shoreline, Class I; and fishing AND SHELLFISHING facility, shoreline, Class II" of Section 101 of the Baltimore County Zoning Regulations, are hereby enacted in lieu thereof, to read as follows:

PC Exh. 9

Sec. 101. 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.

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 2 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 SHELLFISHING facility other than a Class I shoreline fishing facility.

SECTION 2. Be it further ordained, that Subparagraph 1A01.2.C.6, 1A02.2.B.10, and 1A04.2.B.7 of the Baltimore County Zoning Regulations, are hereby repealed and re-enacted, with amendments, to read as follows:

1A01.2.C.6. [Commercial fishing, crabbing or shellfishing operation-primary or secondary, except that any such use existing at the time of date of enactment of this subsection may continue at the same level of intensity provided that within 365 days of the enactment date of this legislation, they shall file for a use permit as prescribed under Section 500.4 of the Zoning Regulations] Fishing AND SHELLFISHING facilities, shoreline, Class I or II

1A02.2.B.10. [Commercial fishing, crabbing and shellfishing operation, Primary or Secondary, except that any such use existing at the time of date of enactment of this subsection may continue at the same level of intensity provided that within 365 days of the enactment date of this legislation, they shall file for a use permit as prescribed under Section 500.4 of the Zoning Regulations] Fishing AND SHELLFISHING facilities, shoreline, Class I or II

1A04.2.B.7. [Commercial fishing, crabbing or shellfishing operation-Primary or Secondary, except that any such use existing at the time of date of enactment of this subsection may continue at the same level of intensity provided that within 365 days of the enactment date of this legislation, they shall file for

a use permit as prescribed under Section 500.4 of the Zoning Regulations]

Fishing AND SHELLFISHING facilities, shoreline, Class I or II

SECTION 3. Be it further ordained, that new subparagraph 7A is hereby added to paragraph 1B01.1.C of the Baltimore County Zoning Regulations, to read as follows:

7A. Fishing AND SHELLFISHING facilities, shoreline, Class I or 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:

a. that the owner (or his legally authorized representative) applies for the use permit within 6 months hereafter (see Subsection 500.4);

b. that with the application for the use permit is filed a site plan in accordance with the zoning Commissioner's Rules of Practice and Procedure;

c. that 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 set by the Zoning Commissioner and in accordance with a program of compliance submitted to him; and

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.

SECTION 4. And be it further ordained, that this ordinance shall take effect forty-five days after its enactment.

READ AND PASSED this 1st day of May 1978

By Order

Thomas Toporovich
Secretary

PRESENTED to the County Executive for his approval this 2nd day of May 1978

Thomas Toporovich
Secretary

APPROVED AND ENACTED:

5/8/78

County Executive

I HEREBY CERTIFY THAT BILL NO. 30-78 IS TRUE AND CORRECT AND TOOK EFFECT ON June 22, 1978.

Chairman, County Council

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND

Legislative Session 1983, Legislative Day No. 22

BILL NO. 139-83

Mr. 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.

SECTION 3. And be it further enacted, that nothing contained herein shall be construed to authorize the extension, expansion or intensification of any commercial fishing, crabbing and shellfishing operations, primary or secondary, or fishing and shellfishing facilities, shoreline, Class I and II, beyond that indicated in the plans accompanying the application for use permit unless and until the applicant shall have complied with all applicable Zoning Regulations, including but not limited to the petitioning for the grant of a Special Exception for any extension or intensification of use, and that failure to comply with such Zoning Regulations shall subject the applicant to all applicable penalties, including a civil penalty.

SECTION 4. And be it further enacted, that this Act shall take effect forty-five days after its enactment.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike-out~~ indicates matter stricken from bill.
Underlining indicates amendments to bill.

PC Exh. 10

READ AND PASSED this 7th day of November, 1983

BY ORDER

Thomas Toporovich
Secretary

PRESENTED to the County Executive for his approval this 8th day of November, 1983

Thomas Toporovich
Secretary

APPROVED AND ENACTED:

11/18/83

Donald P. Hutchinson
County Executive

I HEREBY CERTIFY THAT BILL NO. 139-83 IS TRUE AND CORRECT AND TOOK EFFECT ON January 2, 1984.

Barbara F. Bachur
Chairwoman, County Council

Phyllis Friedman

IN THE MATTER OF
JAMES MYRICK, ET UX
RE: COMMERCIAL CRABBING
SITE PLAN, COMMERCIAL
PERMIT APPLICATION
1326 Gooseneck Road
15th District

JAN 23 1985
PEOPLE'S

BEFORE

COUNTY BOARD OF APPEALS

OF

BALTIMORE COUNTY

No. CBA-83-108
(B-83-038-15)
Permit #47752

: :

OPINION

This case comes before this Board on appeal from an Order of the Assistant Buildings Engineer, dated March 9, 1983, requiring the Appellant to prepare an accurate site plan of the property showing all of the new improvements constructed on the property since 1978, said site plan to be accompanied by a commercial permit application for all the improvements accurately reflecting the actual use of the improvements and the actual use of the property.

At the opening of the hearing, David A. Rodgers, Esquire, Counsel for Appellant, made a Motion that this matter be dismissed with the understanding that his client will comply with Mr. Nolan's Order.

ORDER

For the reasons set forth in the aforegoing Opinion, it is this 9th day of August, 1983, by the County Board of Appeals, ORDERED that the Motion for Dismissal by the Appellant be GRANTED, with the full understanding that within fifteen (15) days from the date of this Order the Defendant will comply with Mr. Nolan's Order of March 9, 1983.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman

William R. Evans

Patricia Phipps
Patricia Phipps

PC Exh. 11

PETITION FOR SPECIAL EXCEPTION 84-147-XSPHA

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property for a fishing and shellfishing facility, shoreline, Class I in a R.C. 5 Zone

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

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

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

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State



Legal Owner(s):

James R. Myrick
(Type or Print Name)

James R. Myrick
Signature

Cecile V. Myrick
(Type or Print Name)

Cecile V. Myrick
Signature

Attorney for Petitioner:

John B. Gontrum/Robert J. Romadka
(Type or Print Name)

John B. Gontrum
Signature

809 Eastern Boulevard
Address

Baltimore, Maryland 21221
City and State

Attorney's Telephone No.: 686-8274

1326 Goose Neck Road 335-4284
Address Phone No.

Baltimore, Maryland 21220
City and State

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

John B. Gontrum, Esquire
Name

809 Eastern Blvd. 686-8274
Address Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 31st day of October, 19 83, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 5th day of December, 19 83, at 10:00 o'clock A. M.

Zoning Commissioner of Baltimore County.

Z.C.O.—No. 1

(over)

PETITION FOR SPECIAL HEARING 84-147-XSPHA

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve ____

an amended site plan for fishing and shellfishing facility

to the one approved September 20, 1978, and to determine whether

two lots separated by a right-of-way roadway are contiguous.

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

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

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

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Attorney for Petitioner:

John B. Gontrum/Robert J. Romadka
(Type or Print Name)

Signature

809 Eastern Boulevard
Address

Baltimore, Maryland 21221
City and State

Attorney's Telephone No.: 686-8274

Legal Owner(s):

James R. Myrick
(Type or Print Name)

James R Myrick
Signature

Cecile V. Myrick
(Type or Print Name)

Cecile V. Myrick
Signature

1326 Goose Neck Road 335-4284
Address Phone No.

Baltimore, Maryland 21220
City and State

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

John B. Gontrum, Esquire
Name

809 Eastern Blvd. 686-8274
Address Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 31st day of October, 1983, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 5th day of December, 1983, at 10:00 o'clock A. M.

Zoning Commissioner of Baltimore County.

Z.C.O.—No. 1

(over)

PETITION FOR ZONING VARIANCE 84-147-XSPHA

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

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

Variance from Section 1A04.3B.3 (102.2) to permit minimum sideyard setbacks of 2.5 feet and 15 feet in lieu of required 50 feet; to permit a distance of 20 feet to centerline of street in lieu of required 75 feet and to permit a distance between buildings of 38 feet in lieu of required 100 feet; from Section 409.2(c) to allow parking, maneuvering areas and driveways to be paved with crusher run in lieu of the required macadam, concrete or tar and chip.

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

Improvements now exist on site pursuant to residential development, site plan on file, and would create undue hardship to remove with little benefit to neighborhood.

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

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

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

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Legal Owner(s):

James R. Myrick
(Type or Print Name)

James R Myrick
Signature

Cecile V. Myrick
(Type or Print Name)

Cecile V. Myrick
Signature

Attorney for Petitioner:

John B. Gontrum/Robert J. Romadka
(Type or Print Name)

John B Gontrum
Signature

809 Eastern Boulevard
Address

Baltimore, Maryland 21221
City and State

Attorney's Telephone No.: 686-8274

1326 Goose Neck Road 335-4284
Address Phone No.

Baltimore, Maryland 21220
City and State

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

John B. Gontrum, Esquire
Name

809 Eastern Blvd. 686-8274
Address Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 31st day of October, 1983, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 5th day of December, 1983, at 10:00 o'clock A. M.

Zoning Commissioner of Baltimore County.

(over)

IN RE: PETITIONS SPECIAL EXCEPTION, SPECIAL HEARING, AND ZONING VARIANCES SW/S of Goose Neck Road, 620.83' NW of the centerline of Goose Harbor Road - 15th Election District

James R. Myrick, et ux
Petitioners

* BEFORE THE

* ZONING COMMISSIONER

* OF BALTIMORE COUNTY

* Case No. 84-147-XSPHA

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a special exception to allow expansion of their shellfishing business to a Class I status. They also request approval, by special hearing, to expand their business to property owned by them and located across a public road from their primary property. They request that the two properties be considered contiguous and therefore treated as one for zoning purposes. The Petitioners want to amend the original site plan, filed in 1978 and marked Petitioners' Exhibit 3, to include both lots and to show the "renovation" of an existing garage shown thereon. Other minor additions and/or deletions to that site plan are also requested. Additionally, the Petitioners seek variances to permit side yard setbacks of 2.5 feet, 15 feet, and 25 feet instead of the required 50 feet, a setback of 20 feet to the centerline of the street instead of the required 75 feet, a distance between buildings of 38 feet instead of the required 100 feet, and to allow the requested parking areas to be paved with crusher run material. These requests are more fully described on Petitioners' Exhibit 9.

The Petitioners appeared and were represented by Counsel. Testifying were James R. Myrick, Petitioner; Robert Eurice, President of the Baltimore County Watermen's Association; Daniel Beck, Vice President of that Association; Craig Rogers, a lineman on surveying crews; and Dennis Pandl, a neighbor. Numerous Protestants appeared. Mr. and Mrs. Theodore Gress and Steven Bauer were represented by Counsel

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BY
ADMINISTRATIVE ASSISTANT

and testified. Testifying in behalf of the Protestants were Richard E. Davis, Esquire, an expert in real estate law, and William Luette, a registered surveyor. Christopher LaMartina, President of Bowley's Quarters Improvement Association, testified in behalf of the many other Protestants.

Testimony indicated that the Petitioners, owners of Lot 247, as shown on Petitioners' Exhibit 1, have operated a shellfishing facility on that R.C.5 zoned property for many years. On or about 1975, the Baltimore County Council passed legislation allowing shellfishing businesses to operate in R.C.5 Zones only by special exception. The Council permitted those fishermen presently in operation to file for use permits to "grandfather" their businesses, thereby negating the necessity of seeking special exceptions for continuation. Each fisherman was required to submit a site plan to the Zoning Commissioner within a certain time frame so that the Zoning Commissioner could approve the continued operation of each shellfishing business in existence at the time the legislation was enacted. Each fisherman would be bound by the site plan as to the extent of his business and would be limited to the "same level of intensity" forevermore. Of course, nothing would prevent any fisherman so protected from requesting a special exception in order to expand, as is the primary purpose for the requests by the Petitioners herein.

The Petitioners filed a site plan, Petitioners' Exhibit 3, and it is self-explanatory. The Zoning Commissioner approved a use permit, Petitioners' Exhibit 2, and the Petitioners continued their business unabated. The total square feet utilized for the business on Lot 247 was 4,132, excluding the slough boxes which protruded into Seneca Creek. This represented only approximately 33% of the entire lot used for commercial enterprise. The use permit allowed approximately 50% of the total net area of the property to be utilized for the operation. In or about 1981, the Petitioners decided that the existing garage, the

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DATE January 19, 1982
BY Stella M. Lasney clk
ADMINISTRATIVE ASSISTANT

truck permanently parked to its side and used as a "cool box", and the lean-to attached to its rear and used as a storage area all needed to be replaced. Thereupon, the Petitioners began construction of a new garage in the same location as the old garage (the Protestants dispute the accuracy of this allegation) which afforded the Petitioners the opportunity to remove the truck and replace the lean-to with a more modern and aesthetically pleasing building which would include a place to work inside, a cool box, and a storage area. Unfortunately, the Petitioners decided to construct this building without a permit. The Petitioners have also changed the configuration of the slough boxes since the original site plan was submitted from 10' x 20' to 4' x 50'. The boat storage area, pool, and commercial use of the steam area shown on Petitioners' Exhibit 3 have been abandoned, although personal use of the steam area still exists. In effect, the Petitioners maintain that only 3,918 square feet of lot area is now being used, which is 250± square feet less than what was approved in 1978. The Petitioners state that in 1978 they had a total of 1,400 crab pots in use, one boat for crabbing, and one boat for backup and general fishing. James R. Myrick states that he keeps approximately 1,200 pots in the water and pulls up approximately one-third each day, returning those pots immediately to the water. There was some discrepancy or confusion in the testimony about the total number of pots now being used by the Petitioners. At one point, Mr. Myrick testified that he had about 1,400 pots total, including his reserve; at another point, he testified that he had about 1,400 pots plus 500 pots in reserve. During later testimony, he stated he had about 1,100 pots with another 150 pots on another location not pertinent to this case. It is presumed that in 1978 the Petitioners had a total of 1,400 pots and since has expanded that number to 1,900 or 1,900, although at the present time there is only 1,100. The Petitioners admitted to manufacturing and selling pots; however, they fabricate and manufacture the pots primarily for their own use. They also use and store eel pots,

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DATE January 6, 1984
BY Charlotte R. Fowler
ADMINISTRATIVE ASSISTANT

various nets, and other material used for their business. They have used the area under the sun porch attached to their residence for storage and one of the other boat but it is out of the water and not used. In addition, the Petitioners clean and paint their pots on the property, which causes an odor disturbing to those in the immediate vicinity. Apparently, and it was uncontested, this maintenance does not cause any pollution to either soil or water.

The Petitioners bought the property across from Lot 2-7 from Mr. and Mrs. Theodore Gress in 1979 for the express purpose of partially cleaning the pots and storing their pots thereon. Mr. Myrick planned to remove all of the pots, and traps, nets, etc., from his primary property and use the new property for storage and additional parking, as more fully described on Petitioners' Exhibit 3. The Petitioners argue that the new lot is actually contiguous to their original property and therefore should be considered as one for parking purposes. Additionally, they feel that the fee simple ownership of the underlying roadbed to the centerline of the road would allow a Class I shellfish operation by special exception. The Protestants vigorously opposed this premise and presented expert testimony to contradict the Petitioners' position.

Mr. Myrick testified that he has moved the fabrication of pots from the parking area shown on Petitioners' Exhibit 3 into the new garage. He also testified that if the special exception were granted, he would move the painting operation onto the new property and would transport the pots from the new property to the water via golf carts. No pots would be stored on Lot 2-7.

Before the new garage was constructed, the pool box (stationary trunk) actually transgressed the Gress' property line. The new garage is situated approximately 3 feet from their common property line, according to Petitioners' Exhibit 3. The Petitioners request a side yard setback of 2.5 feet from the garage to the Gress' property line, a side yard setback of 8' feet from the garage to the Brooks'

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DATE January 16, 1980
BY Linda K. Lamay etc

property line, a side yard setback of 15 feet from the proposed storage area on the new lot to each property line, a setback of 20 feet from the garage to the centerline of the road, a distance of 38 feet between the garage and the residence, and that crusher run material be allowed for the proposed parking area on the new lot.

The Petitioners claim that the new garage occupies the same area as the old garage, truck, and storage area and is not an expansion. If this is true, no variances should be required. A building moratorium presently exists in the Bowley's Quarters peninsula. The land across from the Myricks, the Gresses, and the Bauers cannot be developed, and the Petitioners argue that there would be no adverse impact if the special exception were granted. The property is wooded and only a portion is cleared for use. The Petitioners would screen the storage and parking areas with fencing and/or shrubbery, and there would be a 30-foot entrance onto the property from Goose Neck Road, as shown on Petitioners' Exhibit 9. All parties acknowledged that other garages exist as close or closer to the road as the Petitioners' garage. Mr. Myrick testified that 65 to 70% of his business is off site and the remainder is on site.

There was conflicting testimony provided by all witnesses, some of which was important. Specifically, whether there has been intensification and, if so, to what extent. The Petitioners maintained that there has not been, while the Protestants argue that there has been significant expansion. Robert Eurice testified that he became familiar with the Petitioners in 1978 and that they had approximately 1,000 to 1,200 pots at that time. It was his opinion that there has been no expansion, but based on his experience, a reserve of 500 pots is [illegible]. Mrs. Gress testified that in 1978 the Petitioners only had about 500 pots, however, up to 3,000 pots were on the property prior to moving to the new lot. Upon receiving a zoning violation notice, the Petitioners ceased the move. She agrees that the Petitioners now have about 1,000 pots.

ADMISSIBLE AS EVIDENCE
DATE January 6, 1984
BY Linda L. Lanzafame

Craig Rogers testified that as a linesman he is primarily responsible for measurement and location of property lines and coordinates. He is neither a registered surveyor nor an architect. He testified that on or about September, 1982, he went to the subject properties at the request of the Petitioners and physically measured distances between the garage and the adjoining property. In fact, he did the field work for the site plan submitted as Petitioners' Exhibit 9. At one point, said plan had been prepared by a registered surveyor, but numerous revisions had been made and noted thereon. Mr. Rogers testified that he does not know who made the revisions and cannot verify their accuracy. He did not bring his field notes and testified only from memory. He admitted to adding the new storage and parking areas on the new lot to the site plan. The name of the company, Brandonwood Associates, of which Mr. Rogers is a part-owner, appears on the site plan. Mr. Rogers does not know whether the original surveyor is aware of the changes. He measured the distance between the garage and the property lines without finding any property coordinates and based his measurements on the existing fences that separate each property from the Petitioners' property. He assumed that the fences accurately reflected the property lines. According to his memory, the distances reflected on the site plan are accurate; otherwise, he would have so noted the differences on the plan.

William Luette stated that he conducted a survey of the Petitioners' and Gress' property in September, 1983, Protestants' Exhibit 4. He concluded that there was 1.7 feet from the Gress' property line to the garage, 25± feet from the Bauers' property line to the garage, and 16.5 feet from the centerline of the road and 11 feet from the edge of the paving to the garage. There is, of course, a presumption that the garage did not move between September, 1982 and September, 1983—only the property line!

Dennis Fandl resides on Goose Neck Road and testified that he favored the Petitioners' requests. He presented a petition dated September 8, 1982,

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DATE January 26, 1984
BY Sandra M. Lovegrove
ADMINISTRATIVE ASSISTANT

Petitioners' Exhibit 11, signed by 29 residents of Goose Neck Road, indicating support of the Petitioners. He was quite clear in his belief that all those living on Goose Neck Road, except for the Gresses and the Bauers, were in support. He further emphasized that the other Protestants appearing lived elsewhere and did not represent the opinions and feelings of those living on Goose Neck Road. Christopher LaMartina, in behalf of the improvement association, testified that it was a matter of concern to all who live in Bowley's Quarters and not just for those living on Goose Neck Road. He pointed out that Mr. Fandl is also a member of this association. Many of the Protestants did not testify but supported Mr. LaMartina's testimony.

It is clear that the requests made by the Petitioners have caused sharp lines to be drawn, both pro and con. Mr. LaMartina, in support of the Gresses and Steven Bauer, testified that the proposed expansion would cause serious disruption to the area because the already bad traffic conditions would be aggravated. There is only limited access onto the peninsula, and with the existence of Miami Beach, a public recreational area, the traffic flow would be even more adversely impacted if the special exception were granted. Goose Neck Road is a dead end and not an outlet for traffic. Also, granting the special exception would effectively allow development not otherwise permitted. Mrs. Gress testified that enjoyment of her property has been seriously limited as a result of the Petitioners' commercial shellfishing business. She and Mr. Gress complain that their health has been adversely effected, that they are exposed to heavy traffic and dangerous traffic conditions, their privacy has been invaded, and the quiet enjoyment of their waterfront property is limited. The Gresses complained of the odor emanating from the painting procedure done by the Petitioners, the noise of the cool box motor, and the expansion of the Petitioners' business over the past five years. Mrs. Gress also complained of the smokestack and the resulting fumes. Essentially, the Gresses

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DATE January 16, 1992
BY Stella M. Lowery
ADMINISTRATIVE ASSISTANT

oppose all the requests and want the garage removed. They feel it is too close to their property and the road, causing a dangerous situation for them because the garage obstructs their view of oncoming traffic. They feel strongly that the Petitioners have expanded their business and are willing to tolerate the use of Lot 247 only to the extent allowed by the use permit approved in 1978. They do not want the property across the road to be used at all. It is also noted that the Gresses dispute Mr. Myrick's assertion that he told them of the intended use of the new lot when he purchased it from them. The Gresses have lived on their property since 1954.

Mr. Bauer, who purchased his property in 1972, totally concurred with these views. He testified that if the special exception were granted, the Petitioners could only use the walkway between their home and his property to transport the pots between the two lots and that this would increase the activity intolerably inasmuch as the Petitioners' home is only six feet from the property line and his house is only 13 feet from that line. He insists the Petitioners have expanded their business greatly since 1978 and believes the new garage is located five feet closer to the road than the old garage.

Richard E. Davis testified that in his opinion the ownership of title to either side of the roadway did not constitute contiguous ownership sufficient to allow the Petitioners to treat both parcels as one for the purpose of enjoying the benefits provided by Seneca Creek. Goose Neck Road is a public road notwithstanding the fact that it has never been deeded to Baltimore County. Title to the underlying roadbed is vested in the abutting property owners to the center of the roadway. It is his opinion that the public easement for a 30-foot right of way interrupts the complete ownership necessary to enjoy the riparian rights to Lot 247 and that the two lots cannot be treated as one.

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ADMINISTRATIVE ASSISTANT

Testimony and evidence presented by witnesses for both sides raise serious questions of fact and law.

The Petitioners seek relief from Section 1A04.3.B.3. (102.2), pursuant to Section 307, of the Baltimore County Zoning Regulations (BCZR) to allow side yard setbacks of 2.5 feet from the new garage to the Gress' property line, 25 feet from the new garage to the Bauers' property line instead of the required 50 feet, and 15 feet from the storage area on the new lot to each property line; a setback of 20 feet from the new garage to the centerline of the road instead of the required 75 feet; and a distance of 38 feet between the garage and the residence (principal buildings) instead of the required 100 feet. They also seek relief from Section 409.2.(c), pursuant to Section 307, BCZR, to allow the proposed parking areas on the new lot to be paved with a crusher run surface instead of the required macadam, concrete, or tar and chip.

The Petitioners maintain that the variances should be granted inasmuch as it would create a practical difficulty and would serve no useful purpose to deny them, especially in light of the nature of the neighborhood. In fact, the crux of the Petitioners' case revolves around the new garage, and it is obvious that a decision as to its legitimacy must be made. It is also important to note the contentions raised by the Petitioners that the new garage only replaced the old garage and represented no effective change in size. The Petitioners maintain that the old garage must be considered to include the truck and shed attached to the building, and if so considered, the total size so represented equals that of the new building. Therefore, they argue that no variances are required inasmuch as the site plan approved in 1975 grandfathered those buildings shown thereon and that compliance with the setbacks need not be required. The alternative argument includes the claim that a practical difficulty exists, that the spirit and intent of the zoning regulations would be met, and that there would be no adverse

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impact on the health, safety, and general welfare of the community to satisfy the burden required to grant the variances. Both arguments are rejected for the reasons set forth below.

The Petitioners admit that they replaced the old garage with the new garage without obtaining a building permit. A building permit was required before the new garage could be built, but the Petitioners failed to recognize that fact.

The BCZR define a fishing and shellfishing facility as a principal use that consists of the buildings, equipment, or other facilities necessary to carry on the business and that is situated on a lot on the shoreline of tidal waters. A building is defined as a structure enclosed within exterior walls or firewalls for the shelter, support, or enclosure of persons, animals, or property of any kind.

This language is crystal clear. The original site plan describes a garage, cool box, and storage area as three distinct entities. They were not all enclosed by the same exterior walls, which would establish that they were indeed one building. No matter that the new building, constructed around the old building prior to the old building being razed, is equal in total square feet to the sum of the old garage, truck, and shed, it is a new building and a definite change from the site plan approved in 1978. Therefore, a building permit and variances, if necessary, were required. Failure to obtain a building permit or question the need for one flaws the Petitioners' arguments. The Petitioners took it upon themselves to build a new structure in violation of the laws of Baltimore County. The fact that the cost of building the new garage, or the potential cost of moving it, is great is not a factor to be considered when such facts and circumstances exist.

> The hardship here relied on was entirely self-created and the Board properly refused to allow it to be used as a fulcrum to lift, by way of variance, the valid limitations imposed...Aside

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> from the fact that the hardship shown...was self-inflicted, it was also shown to be of a purely financial nature...

Salisbury Board of Zoning Appeals v. Bonds, 240 Md. 547.

There is a strong presumption of the correctness of original zones and of comprehensive zoning. Howard County v. Dorsey, 438 A.2d 1339 (1982). There is a presumption of validity that must be accepted. Johnson & Wales College v. DiPiete, 448 A.2d 1271 (R.I., 1982). In interpreting the zoning regulations, the restrictive language contained must be strictly construed so as to allow the landowner the least restrictive use of his property. Lake Adventure, Inc. v. Zoning Hearing Bd. of Dingman Township, 440 A.2d 1284 (Pa. Cmwlth., 1982). When the language of a zoning regulation is clear and certain, there is nothing left for interpretation and the ordinance must be interpreted literally. Mongony v. Bovilacqua, 432 A.2d 661 (R.I., 1981).

A landowner can establish a right to a variance by showing that the effect of the regulations is to burden his property with an unreasonable hardship that is unique to his property. This can be accomplished by showing that the physical or topographical features of the property are such that the property cannot be used for a permitted purpose, or by showing that the property can be arranged for such use only at a prohibitive expense. Anderson v. Bd. of Appeals of Town of Chesapeake Beach, 22 Md. App. 28 (1974); Marlowe v. Zoning Hearing Bd. of Haverford Township, 415 A.2d 946 (Pa. Cmwlth., 1980).

The Court of Special Appeals has held that a variance relating to certain "area" restrictions, as distinguished from restrictions on the use of the property, must be judged under the "practical difficulty" test. Anderson, supra. See Bd. of Adjustment, Etc. v. Kwik-Check Realty, 389 A.2d 1289 (Del. Supr., 1978). As noted in Anderson, the factors to be considered under this test in determining whether a variance should be granted are:

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1. whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;

2. whether the grant would do substantial injustice to applicant as well as other property owners in district or whether a lesser relaxation than that applied for would give substantial relief;

3. whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson, supra.

If property cannot be adapted reasonably to use in conformity with zoning ordinance restrictions due to unique circumstances, any hardship may be relieved through the variance procedure. However, if the unusual circumstances which hinder reasonable use of the property in accordance with zoning restrictions have been caused or created by the property owner or his predecessor in title, hardship cannot be demonstrated since it is essentially self-created and not due solely to the manner of the operation of the ordinance upon the subject property.

Any petitioner who seeks a variance must exercise proper diligence in obtaining zoning ordinance requirements to avoid a resultant hardship before he acquires the property. If such diligence is not exercised, the hardship must be regarded as self-created, and a variance can properly be refused. Wilson v. Mayor and Commissioners of Elkton, 35 Md. App. [illegible] (1977).

The Petitioners' problem here is a personal one and is not a problem [illegible] in the land itself or in the application of the zoning restrictions to the land. Such personal problems are not generally appropriate subjects for relief by way of the variance procedure. See 3 Anderson, American Law of Zoning, Section 19.63 (2nd Edition, 1977).

The Petitioners certainly did not exercise the appropriate diligence that is required. Notwithstanding the testimony presented, there is insufficient evidence to permit a finding that the hardship or difficulties to be experienced if

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By Stella M. Lavyeck

the requested variances were denied will be caused by the zoning restrictions from which relief is sought.

Therefore, the requested variances to allow side yard setbacks of 2.5 feet (or 1.7 feet) from the new garage to the Gress' property line and 25 feet from the new garage to the Bauers' property line are denied.

Inasmuch as the old garage and shed were demolished and the truck previously used as a cool box removed, the uses described on Petitioners' Exhibit 3 have been effectively abandoned. If the Petitioners were to move the new garage more equidistant to both side property lines and new variance requests submitted, it would be more appropriate to consider its legitimacy at that time. The closeness to the Gress' property line, failure to provide an adequate and accurate site plan (Petitioners' Exhibit 9), and blocking of on-coming traffic on the roadway from the Gress' view all mitigate against the location of the new garage.

The other requested variances emanating from the new garage, i.e., a setback of 20 feet from the new garage to the centerline of the road and a distance of 38 feet between the garage and the residence are moot and, therefore, denied for the same reasons set forth above. The garage must be removed from its present location.

The remaining variances to allow 15 feet from the storage area on the new lot to each property line and to allow the proposed parking areas on the new lot to be paved with a crusher run surface instead of the required macadam, concrete, or tar and chip are also denied for reasons more fully set forth below.

The Petitioners also seek a special hearing to amend the site plan approved in [illegible]78 (Petitioners' Exhibit 3). Although unclear, it seems that part of this request is to allow a change from the old garage to the new garage. An amendment of that plan shall not be allowed and, therefore, denied for the reasons set forth below.

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BY Arnold F. Kaufman

Petitioners' Exhibit 3 was submitted for approval in 1978 to the then Zoning Commissioner as a result of legislation enacted by the Baltimore County Council on November 7, 1975. Bill No. 98-75, effective December 22, 1975, established commercial fishing and crabbing enterprises in R.C.2, 3, and 5 Zones. This legislation mandated that any such use existing on the date of enactment of the law could continue at the same level of intensity provided the user obtained a use permit from the Zoning Commissioner. The R.C Zones were not created until the adoption of the comprehensive zoning maps by the Council in October, 1976, effective November, 1976. In June, 1978, the Council passed Bill No. 30-78, effective June 22, 1978, which repealed Bill No. 98-75 and, in effect, deleted any reference to use permits and provided that fishing and shellfishing facilities in R.C.2, 3, and 5 Zones be allowed only by special exception. In the interim period, between 1976 and the passage of Bill No. 30-78, use permits were submitted for approval to the Zoning Commissioner and were subsequently approved after Bill No. 30-78 went into effect. Approval, however, was contingent upon a site plan being submitted and total compliance being attained by the user. Because of the confusion rendered by the late approvals, the Council passed Bill No. 139-83 validating the continuation of such shellfishing activities by those who submitted site plans in 1977 and which were approved in 1978. This legislation recognized the importance of those site plans by reemphasizing the language of Bill No. 98-75, to wit, limiting the continued use to that which existed at the time the use permit was approved. Any attempt to expand the use as defined by the site plan would require a special exception and would not be allowed by amending the site plan.

Not only have the Petitioners varied from the site plan (Petitioners' Exhibit 3) by removing the old garage, shed, and truck, they also have abandoned the steam area, except for personal use, and the area marked as boat storage,

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ADMINISTRATIVE ASSISTANT

removed the pool, and redesigned the slough areas from 10' x 20' to 4' x 50'. In addition, they have moved the fabrication of pots from the area so noted to the new garage. Although the Petitioners maintain that the actual use is approximately 250 square feet less than what was approved in 1978, it is obvious that there has been an intensification of use over the past five years.

The Protestants claim that the Petitioners had 500 pots in 1978; the Petitioners claim they had approximately 1,400 pots including the reserve pots. Mr. Eurice testified the Petitioners had approximately that number in 1978; however, by his own admission, Mr. Myrick testified that he now averages about 1,400 pots plus 500 in reserve. At another point in his testimony, Mr. Myrick testified he now had about 1,100 pots on the property. It must be presumed, therefore, that the 1,900 figure is an average and that the Petitioners regularly maintain that amount on the property. Mrs. Gress testified that she has counted as many as 3,000 pots on the property.

Mr. Myrick further testified that he operates the business eight hours a day, employing five or six additional people, and also is employed by Bethlehem Steel. Further, there was uncontradicted testimony that the Petitioners have manufactured pots in the new garage which were advertised and sold to the public (Petitioners' Exhibits 11 and 12). About 65 to 70% of these sales are off site. When questioned, Mr. Myrick testified that the room was needed to store not only crab pots, but also eel traps, pound nets, gill nets, anchors, floats, and other material necessary to carry on the shellfishing business. There is no doubt that he is right; however, after weighing all of the evidence and testimony presented, there is no doubt that the Petitioners have expanded and intensified their business in violation of Bill No. 98-75. Mr. Eurice acknowledged that 500 pots held in reserve was an unusually large number. He maintains about 1,200 to 1,300 pots in the water at any one time, but only has about 200 pots in

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BY Paula K. Lowery clk

reserve. Why then is such a large number needed to operate since the Petitioners intend to expand. Has the activity expanded to a point where it is a full-time business?

Intensity is defined by Websters New World Dictionary as "extreme degree of any thing, a great degree or measure of activity, and a degree of content: relative strength, tension, vigor, etc. There is no question that the Petitioners have intensified their business since 1976, notwithstanding the lack of physical growth. Therefore, no amendment of the site plan to allow the acreage area to be changed can be permitted.

The requested special hearing, special exception and variances were predicated on Petitioners' Exhibit 2. The proposed amendments are noted thereon. This site plan shows the seal of a registered surveyor, Donald L. Wilden. Directly under the seal appears the notation "Prepared for: Brookwood Assoc., 102 W. Padonia Rd., Timonium, Md. 21093". Further personal errors indicate the changes proposed and made; there also have been a number of revisions. The Petitioners would like to have this site plan substituted for the one approved in 1976 by having the amendments, the special exception, and variances granted.

Petitioners' Exhibit 2 cannot be permitted to serve as the document necessary for approval of the aforementioned requests. It is inadequate. Mr. Rogers identified what he represents Brookwood Associates, and Donald L. Wilden. Mr. Rogers is not a registered surveyor or an engineer. He did not prepare Mr. Wilden's approval to amend or revise the site plan, that is, to show the changes. In fact, Mr. Rogers cannot attest to who made the revisions on the site plan or to the measurements appearing thereon. At best, the information in that Brookwood prepared the site plan under the supervision of Mr. Wilden; at worst, the plan represents a fraud on the integrity of this administrative process. Mr.

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BY Stella M. Lasney clk

Rogers used the existing fence lines separating the lots to measure for the requested variances and assumed that they actually represented the separation of the lots. He did not perform a survey and could only testify to the dimensions of the buildings. He failed to bring his field notes with him and testified from memory as to the measurements made in September, 1982. It is obvious from Mr. Rogers' testimony that Mr. Wilder does not know of the changes to the site plan. Mr. Luette, a registered surveyor since 1939, testified that he surveyed the property and found the property line that Mr. Rogers could not find as well as different distances. Mr. Luette's testimony totally rebuts and negates the testimony of Mr. Rogers. Petitioners' Exhibit 9 cannot be given much credence or weight; therefore, any amendment to the 1978 site plan predicated on Petitioners' Exhibit 9 cannot be allowed.

Nonetheless, assuming that the amendment request is denied, the issue of allowing a special exception to expand the use, as permitted by Bill No. 30-78, still exists. If granted, it would in fact allow the increased intensity of use; however, it would not overcome the denial of the requested variances.

The Petitioners request that a special exception be granted pursuant to Sections 1A04.2.B.7. and 502.1, BCZR.

> The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore valid. The special exception use is a valid zoning mechanism that delegates...a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating the presumption. The duties given...are to judge whether...the use in the particular case is in harmony with the general purpose and intent of the plan.

See Schultz v. Pritts, 432 A.2d 1319 (1981).

The Petitioners have the burden of adducing testimony and evidence which would show that the proposed use, the expansion of the use to a Class I fishing and shellfishing facility, meets the prescribed standards and requirements set

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forth in Section 502.1. In fact, the evidence and testimony has shown that the proposed expansion would be detrimental to the neighborhood and would adversely effect the public interest. The facts and circumstances of the use proposed show that at the subject site there would be an adverse effect above and beyond that inherently associated with such a special exception use irrespective of its location within the zone. Schultz, supra. The Petitioners did not meet this burden.

Testimony and evidence presented at the hearing, the opinions or conclusions of the witnesses testifying, must be measured by the soundness of their underlying reasons or facts. Anderson v. Sawyer, 329 A.2d 716 (1974). The testimony provided by the Petitioners' witnesses was not substantial while the testimony provided by the Protestants' witnesses was convincing and strong. See Coppolino v. County Board of Appeals of Baltimore County, 328 A.2d 55 (1974). There is no doubt that the business described by the Petitioners has an inherent depressing and disturbing psychological effect which has adversely affected the adjacent residents the enjoyment of their homes. There was insufficient evidence presented by the Petitioners to rebut that conclusion.

For these reasons, the request for a special exception for a fishing and shellfishing facility, shoreline, Class I in a R.C.5 Zone is denied.

The Petitioners also request that the site plan approved in 1978 be amended to allow expansion of the original use to the lot across Goose Neck Road, i.e., to determine whether the two lots owned by the Petitioners and separated by a right-of-way roadway are contiguous. The import of this request is obvious. If contiguous, the same riparian rights enjoyed by the Petitioners' primary property would accrue to the adjacent lot.

This contention is attractive, but it cannot be allowed to shield the primary issue, i.e., whether the use described in the 1978 site plan can shift to

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BY Paula R. Lawrence
ZONING ASSISTANT

the lot across Goose Neck Road. The Petitioners seek to legitimize the transfer by requesting a special exception to expand and a special hearing to amend that 1978 site plan. Either, if allowed, would give the Petitioners relief. Assuming arguendo that the two lots are contiguous, this fact in and of itself does not satisfy the burden required of the Petitioners.

Bill No. 98-75 recognized the then existing shellfishing businesses by exempting them from extinction. The Petitioners were one of the benefactors. The site plans submitted to gain such exemption limited both the use and its location on a property. In the instant case, even if the two lots were considered as one, an amendment to the site plan would be required to allow the shift in location from Lot 247 to the other lot. The issue is this constrictive. Such an amendment will be denied for all of the same reasons which supported the denials of the variances and the amendment to the 1978 site plan. Any interpretation of the legislation affecting shellfishing in Baltimore County must lead to the conclusion that the Council intended that the existing uses, grand-fathered by that legislation, be limited in size and scope to that described on the site plans submitted in 1978 and that if there was to be any attempt to change the original use by location or intensification, a special exception would be the only relief.

Of course, in order for a special exception to be granted, the Petitioners must meet the burden established by Section 502.1. For the reasons explained previously, such burden has not been met. The Petitioners have not established that there would be no adverse effect on the health, safety, or general welfare of the locality, and the totality of the testimony presented by both sides concluded that there would be such an adverse effect. The prerequisites delineated by Section 502.1 are singular in importance, and the Petitioners did not present sufficient evidence to meet this burden.

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Notwithstanding the Petitioners' assertion that the two [illegible] ous, which thereby created mutuality of [illegible] Bill Nos. 9-75 and 30-78, the special exception will [illegible]

The proposed use will be detrimental to the [illegible] welfare of the locality; tend to create a [illegible] therein; be inconsistent with the purposes of the property's zoning classification; and be inconsistent with the spirit and intent of the Code.

However, after a review of the Memoranda submitted [illegible] concluded that both lots, although contiguous, do not [illegible] The court in Quartermaine Co. v. Prentice, [illegible] Dictionary to define "contiguous" as "in close proximity; [illegible] contact; neighboring; adjoining; near in a series; [illegible] touching; bounded or bordered on." See Great Neck v. [illegible], 211 F.Supp. 73 (Dist. of Md., 1962). In Quartermaine, [illegible] superimposed districts were substantial enough [illegible] tention there were testimony in order to permit a [illegible] them. The court found that the districts were [illegible] not continuity causing congestion. The particular [illegible] R.D.D. District did not include any property [illegible] located within a R.D.D. District. Nor was the [illegible] not whether two lots, individually independent and distinct [illegible] were considered as one.

In Beaver-Gutley Data Proc. v. Perlis, [illegible] transfer of density from the part of a subdivision [illegible] subdivision separated by a roadway 84-feet wide. The court held that [illegible] to be contiguous and that density could be transferred [illegible] other.

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> The entire subdivision must be shown on the plat of the preliminary plan. The development of the entire subdivision may be accomplished on a piecemeal basis by the use of record plats which when all added together will comprise the entire subdivision as shown on the preliminary plan. Since the ordinance contemplates the transfer of excess area from one record plat to another record plat it would seem to matter little that a matching line might happen to be on one or the other side of one of the streets in the development.

Bowers-Cooley Jade Corp., supra, at p. 596.

In each of the cases cited by the Petitioners, the courts were required to interpret specific statutes, or a lease, which incorporated the word "contiguous" or "adjoining". This is not the case here. Intent of the statute or ordinance is the thread holding these cases together. The intent of Bill Nos. 98-75 and 99-75 is to limit fishing and shellfishing facilities to lots of record existing on the effective date of these laws. A "lot of record" is defined by the BCZR as "A parcel of land with boundaries as recorded...on the same date as the effective date of the zoning regulations which governs the use, subdivision, or other condition thereof." In 1978, and as presently existing, Lot 247 and the new lot were recorded separately and distinctly and were in fact two lots of record or "record lots", as that term is defined in the BCZR. There was a requisite dividing of the tract for the purpose of selling off lots of record individually.

The Council did not intend that a party could extend the benefits provided to lots situated on the shoreline of tidal waters to contiguous lots not on the water. The mere fact that the property is contiguous does not do what the Petitioners claim. The intent of the State Legislature in 1992, as codified, and of the Court of Appeals in Hurt v. Brown, 75 Md. 481, would be misconstrued if the Petitioners' argument was accepted. The existence of the road, which for all practical and legal purposes is a dedicated roadway, does not separate the contiguous nature of the two lots now held by single ownership. It also does not

UNDELIVERED January 6, 1994 DATE Sheila A. Kaszubski BY ADMINISTRATIVE ASSISTANT

allow for reciprocal benefits of such ownership. An analogy would be to two separate lots of record, each zoned differently, singularly owned. Could the benefits of one such lot be utilized on the other simply because they were contiguous? The obvious answer to both is no. Although the lots are zoned alike, one is on the water and the other is not. Any rational reading of the statutes could lead in no other direction. "The meaning of the plainest words in a statute may be controlled by the context. A statute should be so construed that all its parts harmonize with each other and render them consistent with its general object and scope." Pitman v. Housing Authority, 25 A.2d 466, 469. There is nothing showing that at any time since 1975 were the two lots recorded among the Land Records of Baltimore County as one.

For the aforementioned reasons, the variances requested for side yard setbacks from the storage area to either side property line on the new lot will be denied. Additionally, the requested variance to allow the parking areas to be paved with crusher run material is moot due to the reasons set forth above and, as such, will be denied as well.

Pursuant to the advertisement, posting of the property, and public hearing held, and it appearing that by reason of the requirements of Sections 502.1 and 307 not having been met and the health, safety, and general welfare of the community being adversely affected, the special exception, special hearing, and variances should not be granted.

It is therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 16th day of January, 1984, that all of the relief prayed for by the Petitioners be and are hereby DENIED.

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BY

Zoning Commissioner of
Baltimore County

IN THE MATTER OF JAMES R. MYRICK, ET AL FOR SPECIAL EXCEPTION FOR A FISHING FACILITY IN AN R.C. ZONE; FOR SPECIAL HEARING REGARDING AMENDED SITE PLAN; FOR VARIANCES TO PERMIT SETBACKS AND TO ALLOW PARKING AREAS TO BE PAVED WITH CRUSHER RUN IN LIEU OF MACADAM ON PROPERTY LOCATED ON THE SOUTHWEST SIDE OF GOOSE NECK RD., 626.89' NORTHWEST OF THE CENTER LINE OF GOOSE HARBOR RD. - 15th DISTRICT	:	BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY No. 84-147-XSPHA

O P I N I O N

This case comes before this Board on appeal from a decision of the Baltimore County Zoning Commissioner dated January 16, 1984, denying all the relief prayed for by the Petitioners. The Board will note that the hearing in this case consumed three full days of direct testimony, the introduction of over 50 exhibits, many of which are multiple exhibits, and produced much controversial testimony. In addition, there were lengthy memorandums submitted for the Board's consideration by Petitioners' attorney, Protestants' attorney and People's Counsel, plus a lengthy Findings of Fact and Conclusions of Law by the Baltimore County Zoning Commissioner. All of this has been carefully considered by this Board, but we will not attempt in this Opinion to detail or summarize these factors but will attempt to confine this Opinion to the specific issues before us. It will be noted, however, that the following persons testified during these three days of hearing.

Testifying for Petitioners

1. Captain Harry Phillips - Charter Boat Captain
2. James Myrick - Petitioner and property owner
3. Kenneth Hubbard - Commercial crabber
4. Patti Chatterton - Neighborhood resident
5. Dennis Fandl - Neighborhood resident
6. Anthony Reale - Area resident and customer

Testifying for Protestants

7. Mrs. Ruth Gress - Next door neighbor
8. Mr. Theodore Gress - Husband of Mrs. Gress
9. William O. Luette - Professional engineer and land surveyor
10. Richard Davis - Attorney and real estate broker

11. Amy Von Bauer - Next door neighbor

12. Steve Bauer - Husband of Mrs. Bauer

Testifying for People's Counsel

13. Shirley Hess - Secretary to People's Counsel

14. John Reisinger - Buildings Engineer, Baltimore County

15. David Filbert - Director, Baltimore County Air Pollution Control

16. Bernard Simon - Real estate appraiser and consultant

17. Christopher LaMartina - President, Bowleys Quarters Comm. Assn.

18. Thomas Fritsch - Neighborhood resident

19. James Hoswell - Baltimore County Planner

Rebuttal Witnesses

20. Dennis Fandl - Neighborhood resident

21. Kenneth Hubbard - Commercial crabber

22. James Myrick - Petitioner

There was presented uncontested testimony that Mr. Myrick purchased the property known as Lot #247 in March, 1971. He had, however, been familiar with this property for many years prior to this and it had been used during these years for crabbing purposes. In 1977, in compliance with Baltimore County legislation, he applied for a use permit and was granted same in October, 1978. This use permit required the submission of a site plan and this plan is part of the record as Petitioners' exhibit #3. It is noted that this legislation, Bill #98-75, provided for these use permits to grandfather the use of those operations in existence at the effective time of this legislation, all proper requirements being attained and further specifically noted that any such use existing at the time of enactment of this subsection may continue at the same level of intensity (emphasis added). In June, 1978, Mr. Myrick purchased the lot directly to the rear and across the road from his Lot #247. This parcel contains 1.0± acres and is known as Lot #246. After this purchase, he cleared a part of this lot and stored equipment on same from sometime in 1979 until sometime in 1982, when its commercial use was questioned and this usage discontinued. Mr. Myrick now pleads that since these two lots abutt on the centerline of Goose Neck Road, they should be found to be contiguous property and therefore the entire holdings be considered shoreline property.

The regulations clearly require that to obtain a Special Exception for a Class I Fishing and Shellfishing facility, the property in question must be a shoreline property and one of the petitions before the Board seeks a Special Exception for a Class I Fishing and Shellfishing facility on this property. The Board can find no logical reason to classify these two parcels as shoreline property. Had both these properties been in active use as a crabbing operation at the time the application for a use permit was filed and the required site plan so shown, there may have been justification for granting the use permit for both lots but such was not the case. At the time application for the use permit was filed, Mr. Myrick did not even own Lot #246. Mr. Myrick presented as exhibits, several properties divided in some manner, i.e., right-of-way, street or easement, etc., to buttress his claim that they are considered one property. The Board cannot, however, apply any of these standards to this situation. Mr. Myrick purchased one property in 1971 and the second in 1978, from different owners, indicating these have always been separate parcels. They are so designated for tax purposes. It is this Board's Opinion that Mr. Myrick owns two parcels, one a shoreline parcel and one not a shoreline parcel. Since one of the most primary requirements for the granting of a Special Exception for a Fishing and Crabbing facility is that the facility must be located on shoreline property, the request for the Special Exception will be denied and this denial moots the requests on this property for variances from side yard setbacks and the paving on this parcel with crusher run instead of the required paving.

The third petition presented this Board is a request to submit an amended site plan for Lot #247, the lot granted the use permit in 1978. There are several alterations to the original site plan that occasion this request, the principal one being the erection of a new building replacing the original building, a truck body being used as a "cool box" and a shed type porch area. Petitioners' position is that this new building encompasses only the approximate same area as that contained on the original site plan and therefore should be allowed. Mr. Myrick admits that no building permits were requested for this construction until it had been completed. Surely Mr. Myrick knew that permits for this work were required and if he did not, the contractor involved should have. This appears to be a flagrant violation of Baltimore County regulations. Baltimore County Buildings Engineer testified that no permit for new construction would have been granted because the elevation places it within the 100 year flood plain and no new construction is permitted therein.

This situation causes the Board grave concern. The easiest course is to order this illegally constructed building removed. However, if this course is followed, Mr. Myrick could replace this building with a shanty type building and an old truck body, as described on his plot plan. While this may be legally correct, it could also subject the neighbors and the area to an obvious eyesore. The new building is apparently well constructed and is attractive enough to be in keeping with the neighborhood, and to order its removal seems to serve no purpose whatsoever. The Board will therefore reluctantly order that a building permit for this existing building be issued and that an amended site plan be submitted accurately portraying its exact dimensions and its exact position on the lot, said site plan to accompany the existing use permit.

While the validity of the existing use permit is not an issue before this Board, the Board feels it would be remiss in not commenting on this in view of the lengthy testimony presented at this hearing regarding the alleged intensification of usage. Mr. Myrick testified he originally had some 12 - 1400 pots on this site. There was testimony that as many as 2000 pots have been observed on the site. Mr. Myrick testified he now has a splinter type crabbing operation in place on the Eastern Shore and trucks these crabs to the subject site for storage in the cool-box. Mr. Myrick testified that he is opening a retail crab sales at some other location but will use this site as part of his product supply. While the areas on site grandfathered through the use permit may not have increased, the intensification of use on this site is surely suspect and Mr. Myrick may be skating precariously close to losing his use permit altogether.

O R D E R

For the reasons set forth in the aforegoing Opinion, it is this 30th day of October, 1984, by the County Board of Appeals, ORDERED:

1. That the two lots, known as lots #246 and #247, be found to be separate parcels and not shoreline properties in total, but that lot #247 be found to be a shoreline property and lot #246 to be found not to be a shoreline property.

2. The Special Exception for a Class I Fishing and Shellfishing Facility on this site be DENIED and that the variances on lot #246 be declared moot and therefore ALSO DENIED.

3. That an amended site plan for lot #247 be prepared by a Registered Professional Engineer to accompany the existing use permit, this site plan to accurately portray the size and position of the new building on this site and accurately deliniate the setback dimensions from all pertinent points on this site to this building.

4. That the Buildings Engineer grant a building permit for this building as it now exists.

5. That the necessary variances as shown on the amended site plan prepared by a Registered Professional Engineer be GRANTED to allow the above building permit.

6. That no further building permits for expansion or alteration of this building be granted whatsoever.

Any appeal from this decision must be in accordance with Rules B-1 through B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman

William R. Evans
William R. Evans

Patricia Phipps
Patricia Phipps

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et al.

Appellants and Cross-Appellees

v.

JAMES R. MYRICK, et al.

Appellees and Cross-Appellants

IN THE

CIRCUIT COURT

FOR

BALTIMORE COUNTY

(ZONING FILE #84-147-XSPHA)

Case No. 84-CG-1503

MAY 29 1985

OPINION AND ORDER

The above captioned case comes before the Court on an Appeal by the People's Counsel for Baltimore County and on a Cross-Appeal by the property owner, James R. Myrick, concerning an application for Special Exception for a Fishing Facility in an R.C. zone and the necessary variances on property located on Goose Neck Road some 626 feet northwest of the center line of Goose Harbor Road in the 15th District of Baltimore County.

On May 17, 1985, counsel for the parties were heard, including counsel for Baltimore County. Voluminous testimony by the Board of Appeals having been reviewed, along with the exhibits, and Memorandums filed by counsel and Opinion of the County Board of Appeals, the Court finds:

1. That the Order of the Board dated the 30th day of October, 1984, contains an obvious misnomer citing Lot #246 when it should refer to a parcel of land owned by James R. Myrick that lies behind Lot #247.

FILED MAY 27 1985

2. That the Board has no authority to order the Baltimore County Buildings Engineer to grant a building permit that was illegally constructed on Lot #247, especially in light of the fact that the Office of Buildings Engineer was not even named a party. This part of the Order is illegal.

3. As to "the necessary variances", there is nothing to appeal from since the Board did not specify the nature of "the necessary variances".

4. Concerning these variances on Lot #247, the case is REMANDED so that the necessary Registered Professional Engineer site plan can be filed in order for a determination to be made by the Board.

5. As to the Appellees' Cross-Appeal concerning the Appellees' Special Exception for a Class I Fishing and Shellfish Facility, the Court cannot find that the Board was erroneous, arbitrary or capricious in the interpretation and finding of fact and the conclusion from these facts, nor in the application of the law to the facts; and in light of the entire record, it had competent material and substantial evidence that was legally sufficient to support its decision on this Petition for Special Exception and the variances on the parcel of land owned by the Appellee, James R. Myrick, that lies behind the Appellee's Lot #247.

Therefore, it is this 24th day of May, 1985,

ORDERED that the decision of the Board of Appeals for Baltimore County is AFFIRMED on the decision denying the Appellee's, James R. Myrick, Petition for a Special Exception for a Class I Fishing and Shellfish Facility; and the case is REMANDED in accordance with this Opinion.

Wm. R. Buchanan Sr.

William R. Buchanan, Sr.
Judge

IN THE MATTER OF
JAMES R. MYRICK, ET UX,
FOR SPECIAL EXCEPTION FOR
A FISHING FACILITY IN AN R.C.
ZONE; FOR SPECIAL HEARING
REGARDING AMENDED SITE PLAN;
FOR VARIANCES TO PERMIT SET-
BACKS AND TO ALLOW PARKING
AREAS TO BE PAVED WITH CRUSHER
RUN IN LIEU OF MACADAM
ON PROPERTY LOCATED ON THE
SOUTHWEST SIDE OF GOOSE NECK
RD., 626.89' NORTHWEST OF THE
CENTER LINE OF GOOSE HARBOR
RD. - 15th DISTRICT

ON REMAND
BEFORE THE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 84-147-XSPRA
(Court File #84-CG-1503)

O P I N I O N

This case comes before this Board on remand from the Circuit Court Ordered by Judge William R. Buchanan, Sr. This amended Order by the Baltimore County Board of Appeals is filed in accordance with the above noted Remand Order.

Item #1 on the Remand Order cites the Board for a misnomer in noting as Lot 246, the parcel of land owned by James R. Myrick, that lies behind Lot #247. Notes taken by the Board during the hearing indicate that this parcel was identified as Lot #246 by both Petitioners' counsel and Protestants' attorney, but it is evident that testimony before the Circuit Court prove these notes to be in error, so the Board will Order in this Amended Order that wherever the designation as Lot #246 is noted that it be amended to designate this parcel as a "parcel of land owned by James R. Myrick that lies behind Lot #247".

Item #2 on the Remand Order states that the Board's Order on page 4 ordering that a building permit for an existing building (garage and cool box) be issued is illegal. The Board in this Order will amend that portion of its Order on page 4 by striking the sentence that states, "The Board will therefore reluctantly order that a building permit for this existing building be issued", but leaving the portion of that sentence that requires an

amended site plan be submitted accurately portraying its exact dimensions and its exact position on the lot, said site plan to accompany the existing use permit.

Items 3 and 4 address the need for variances necessary to the building noted on the plat as Brick Garage and Cool Box. Petitioner has submitted a site plan by a Registered Professional Engineer as noted in Item #2. This site plan indicates a need for a side yard variance from 50' to 1.8', a variance from 75' to 17.5' from the center line of the street and a variance from 100' to 52' for the distance between the two buildings on this parcel. The need for these variances is discussed in detail on pages 3 and 4 of the Board's original Order. Section 307 of the Baltimore County Zoning Regulations gives the Board the authority to grant these variances where strict compliance would result in practical difficulty and unreasonable hardship. In this case, it would mean removal of the building which, admittedly, was constructed without proper permits. The denial of these variances and subsequent removal of this building would in the Board's opinion, cause substantial injury to the general welfare of the neighborhood when consideration is accorded to that which may legally be replaced on the parcel, should this building be removed. The Board is therefore of the opinion that the requested variances as shown on Petitioners' site plan be granted and will so Order. It is therefore ordered that the side yard variance from 50' to 1.8' be granted, the variance from 75' to 17.5' from the center line of the street be granted and the variance from 100' to 52' for the distance between the two buildings on this parcel be granted. Since the Special Exception for the use proposed on the parcel of land owned by James R. Myrick that lies behind Lot #247 is denied, the request for 15' side yard setbacks on that parcel is moot and need not be addressed.

James R. Myrick, et ux
Case No. 84-147-XSPHA

O R D E R

For the reasons set forth in the aforegoing Opinion, it is this 7th day of November, 1985, by the County Board of Appeals, ORDERED that:

1) Wherever the designation as Lot #246 is noted in the original Order that the designation Lot 246 be amended to designate this parcel as a parcel of land owned by James R. Myrick that lies behind Lot #247.

2) The Board will amend that portion of its Order on page 4 by striking the sentence that states, "the Board will therefore reluctantly order that a building permit for this existing building be issued", but leaving the remainder of that sentence.

3) Items 3 and 4 in the Remand Order address the need for variances. The Board will grant a side yard variance from 50' to 1.8', a variance from 75' to 17.5' from the center line of the street, and a variance from 100' to 52' for the distance between the two buildings. The request for the 15' side yard setbacks on that parcel lying behind Lot #247 are moot and therefore DENIED.

Any appeal from this decision must be in accordance with Rules B-1 thru B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman

William R. Evans
William R. Evans

Patricia Phipps
Patricia Phipps

IN RE: PETITION FOR SPECIAL HEARING
NES Gooseneck Road, 700' west
of Goose Harbor Road
(1326 Goose Harbor Rd)
15th Election District
5th Councilmanic District

James Myrick, et ux
Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* CASE # 89-2-SPH
*

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests a Special Hearing to amend a site plan (to include fuel tanks) approved 9-20-78 which accompanied permit No. CFC-13, as more particularly described on Petitioner's Exhibits 1.

The Petitioners appeared and were represented by John B. Gontrum, Esquire. The Petitioners were supported by the testimony of Mrs. Cecile Myrick, Dennis Fandl and David Jorio. The Protestants, Ruth Gress and Theodore Gress appeared, were represented by Ralph K. Rothwell, Jr. and testimony was provided by Mrs. Ruth Gress.

The evidence and testimony clearly establishes that the parties are extreme adversaries and do not agree or cooperate on any issue or subject. The testimony of the Petitioner, clearly, establishes that the smaller 250 gallon oil tank, as noted on Petitioner's Exhibit 1 is in error because the tank is actually 275 gallons. This tank services the home with heating oil and has been in existence since the Petitioner purchased the property. The property in question is commonly referred to as 1326 Goose Harbor Road, Baltimore, Maryland 21220 The property is currently zoned R.C.5. and is subject to a zoning use permit for secondary commercial fishing, crabbing and shellfish operation. The property is located on Seneca Creek and is improved with

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Date 2/24/89
By Melissa Myrick

a residence garage and cool box structure.

The purpose for this hearing is to provide an amended site plan indicating the two fuel oil tanks, the first of which has been described above as a residential fuel oil tank. The second fuel oil tank, located at the water's edge is for the specific purpose of fueling the Petitioner's commercial fishing vessels and is 500 gallons in size. Cecile Myrick, testified that there is an ongoing fishing operation which has been in continuous uninterrupted operation since 1978. Mr. James Myrick has been vacant from the home due to domestic problems on various occasions. That the fishing operation has continued uninterrupted even during those periods of time. That the Petitioners' son, Terry A. Myrick, is actively engaged in the commercial fishing operation which is currently ongoing. That the 500 gallon fuel oil tank was placed at its location in the late 1960s or early 1970s.

There was a great deal of testimony and proffered testimony by Petitioner's attorney as to the necessity for commercial fuel oil tanks and the need to service commercial fishing boats. Likewise, there was a great deal of testimony concerning the unavailability of this type of fuel oil in the nearby harbors.

The Protestant, Mrs. Gress, testified that she is extremely opposed to the operation of a commercial fishing establishment next door to her property. She explained at great length how ugly and unsightly the Petitioner's project is and how the zoning regulations, by permitting such a use, work a direct hardship upon her. She also

ORDER RECEIVED FOR FILING
Date 8/24/88
By Madeline Powell

testified to the ongoing expansion of the fishing operation and the fact that Mr. James Myrick is not living in the same household with Mrs. Myrick at 1326 Goose Harbor Road.

There was also a great deal of testimony by Mrs. Gress, that the Petitioners are mean and un-neighborly. That they have caused her and her husband a great deal of stress and inconvenience. Mrs. Gress also talked about her unhappiness with the Baltimore County Government and the lack of what she considers to be appropriate action and enforcement against Mr.and Mrs. Myrick. Mrs. Gress explained at great length her unhappiness with the Zoning Commissioner and the Zoning Commissioner's staff. She believes she is not receiving proper consideration by County employees.

The evidence, clearly, establishes that Mrs. Gress is very unhappy with almost everyone and she does not approve of the decisions made by the County Council when they enacted the Baltimore County Zoning Regulations (B.C.Z.R.) permitting commercial fishing, crabbing and shellfish operations in the D.R. zone. The Baltimore County Zoning Commissioner is not empowered to re-write the B.C.Z.R. and I will not attempt to second guess the Baltimore County Council on the issue of desirability.

The issue before the Zoning Commissioner would appear to be whether or not particular items, namely, fuel oil tanks, were appropriately included as part of the fishing and shellfishing operation at the time the use permit was issued, but were inadvertently not included on the site plan filed at that time and, furthermore, whether or not any additional requirements set forth in the B.C.Z.R. have been or will be complied with by this project.

ORDER RECEIVED FOR FILING
Date 9/24/92
By Mr. Brady

This is not a hearing about residency requirements for Mr. Myrick or whether or not earlier site plans were produced in an inappropriate manner. The question before the Zoning Commissioner is as to the currently offered site plan which is marked Petitioner's Exhibit 1. There is no evidence this plan is not correct.

The Protestants claim the Petitioners are expanding or increasing the amount of site area devoted to this fishing and shellfishing use by amending this site plan. This is a very valid issue to be raised in this type of case. A quick review of the law, clearly, establishes that the Myricks may not expand this operation without the benefit of a Special Exception.

The Baltimore County Council has made this point very clear. In Bill No. 97-75, enacted by the Baltimore County Council on November 7, 1975, effective December 22, 1975, established commercial fishing, crabbing or shellfishing operations in R.C. 2, 3, and 5 zones. This legislation mandated that any such use existing on the date of enactment of the law could continue at the same level of intensity provided the user obtained a use permit from the Zoning Commissioner. The R.C. Zones were not created until the adoption of the comprehensive zoning maps by the Council in October, 1976, effective November, 1976. In June, 1978, the Council passed Bill No. -30-78, effective June 22, 1978, which repealed Bill No. 98-75 and, in effect, deleted any reference to use permits and provided that fishing and shellfishing facilities in R.C. 2, 3, and 5 Zones be allowed only by special exception. In the interim period, between 1976 and the passage of Bill No. 30-78, use permits were submitted for approval to the Zoning Commissioner and were subsequently approved after Bill No. 30-78

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Date 8/24/78
By Mr. Nowak

went into effect. Approval, however, was contingent upon a site plan being submitted and total compliance being attained by the user. Because of the confusion rendered by the late approvals, the Council passed Bill No. 139-83 validating the continuation of such shellfishing activities by those who submitted site plans in 1977 and which were approved in 1978. This legislation recognized the importance of those site plans by reemphasizing the language of Bill No. 98-75, to wit, limiting the continued use to that which existed at the time the use permit was approved. Any attempt to expand the use as defined by the site plan would require a special exception and would not be allowed by amending the site plan.

The issue of an expanded use of the Myrick property was addressed by Zoning Commissioner, Arnold Jablon, in case No. 84-147XSPHA. The Zoning Commissioner found that an expansion may not take place by filing an amended site plan, but required a full Special Exception. He, therefore, denied the attempt to expand this site. I agree with the reasoning of that case and would likewise not permit an expansion without benefit of a Special Exception.

The facts before me in this matter are very different. There is no evidence of an expansion. The evidence is that the fuel oil tank for the house was installed when the house was built. The boat fuel oil tank was installed before 1975.

Even the Protestants must agree that a lot of improved land, called a site, cannot be expanded when the items, namely, fuel oil tanks, were unquestionably present prior to the effective date of the legislation. I refuse to find, as a matter of fact, that either one or

both of the fuel oil tanks were not present when the original use permit was issued on October 10, 1978.

The Protestants argue that no change in a site plan may take place after the use permit is issued. The Protestants cite Section 1B01.1.C.7A.d. of the B.C.Z.R. They claim that all amendments of a site plan is by nature an expansion and not permitted.

This argument is based on two incorrect foundations. First, as stated above, expansion is a factual determination and I find no expansion in this amended plan. Secondly, the Protestant has misapplied the facts of this case. The subject property is zoned R.C.5. Section 1B01.1.C.7A.d. does not apply to the R.C.5. zoned properties; this section only applies to D.R. zoned land. Section 1A04.2.B.7. applies to this case and does not contain the same restrictions as 1B01.1.C.7A.d. about new site plans.

ORDER RECEIVED FOR FILING
Date 9/2/92
By M. Mintz

The regulations do not prevent a holder of a valid commercial fishing, crabbing or shellfishing use permit from filing a revised or amended site plan. The question for the Zoning Commissioner is whether or not that new site plan increases the site area or changes the operation. In the case at bar, the amended plan does not expand, change or increase the operation.

No testimony was offered by the Petitioners to substantiate all of the requirements of the Chesapeake Bay Critical Area program and the Chesapeake Bay Critical Area protection laws, as set forth in the B.C.Z.R.

Specifically, the Petitioners presented no evidence that the fuel oil tanks would or would not result in water pollution or harm to the Chesapeake Bay. There was testimony by the Protestant that fuel oil

both of the fuel oil tanks were not present when the original use permit was issued on October 10, 1978.

The Protestants argue that no change in a site plan may take place after the use permit is issued. The Protestants cite Section 1B01.1.C.7A.d. of the B.C.Z.R. They claim that all amendments of a site plan is by nature an expansion and not permitted.

This argument is based on two incorrect foundations. First, as stated above, expansion is a factual determination and I find no expansion in this amended plan. Secondly, the Protestant has misapplied the facts of this case. The subject property is zoned R.C.5. Section 1B01.1.C.7A.d. does not apply to the R.C.5. zoned properties; this section only applies to D.R. zoned land. Section 1A04.2.B.7. applies to this case and does not contain the same restrictions as 1B01.1.C.7A.d. about new site plans.

The regulations do not prevent a holder of a valid commercial fishing, crabbing or shellfishing use permit from filing a revised or amended site plan. The question for the Zoning Commissioner is whether or not that new site plan increases the site area or changes the operation. In the case at bar, the amended plan does not expand, change or increase the operation.

No testimony was offered by the Petitioners to substantiate all of the requirements of the Chesapeake Bay Critical Area program and the Chesapeake Bay Critical Area protection laws, as set forth in the B.C.Z.R.

Specifically, the Petitioners presented no evidence that the fuel oil tanks would or would not result in water pollution or harm to the Chesapeake Bay. There was testimony by the Protestant that fuel oil

ORDER RECEIVED FOR FILING
Date 5/2/89
By M. Marks

does spill into the water when the boat is filled. The recommendations of the Department of Environmental Protection and Resource Management are, clearly, just that recommendation. The Inter Office Correspondence of June 14, 1988 is a statement of law and a recommendation, pursuant to the requirements of the B.C.Z.R. However, an official recommendation dealing with only water runoff is not enough to establish that there is no adverse impact on water quality from pollutants from structures or conveyances, such as the fuel oil tanks.

The restrictions set forth below will correct any possible pollution problem. The Petitioner shall correct any actual pollution problem as directed by the Baltimore County Department of Environmental Protection and Resource Management.

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

ORDER RECEIVED FOR FILING
Date 8/24/88
By M. Nowak

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 24th day of August, 1988, that the Petitioner for Special Hearing to amend a site plan (to include fuel tank) approved 9-20-78 which accompanied permit No. CFC-13, as more particularly described on Petitioner's Exhibits 1, be and is hereby GRANTED, subject to the following restrictions which are conditions precedent upon the Order:

1. The Petitioner shall install any and all equipment required by the Baltimore County Department of Environmental Protection and Resource Management to correct any water quality problems that may or may not result from the improper storage or handling of fuel oil at the water's edge.

2. The Petitioner shall obtain written certification from the Department of Environmental Protection and Resource Management that the operation of the 500 gallon fuel oil tank does

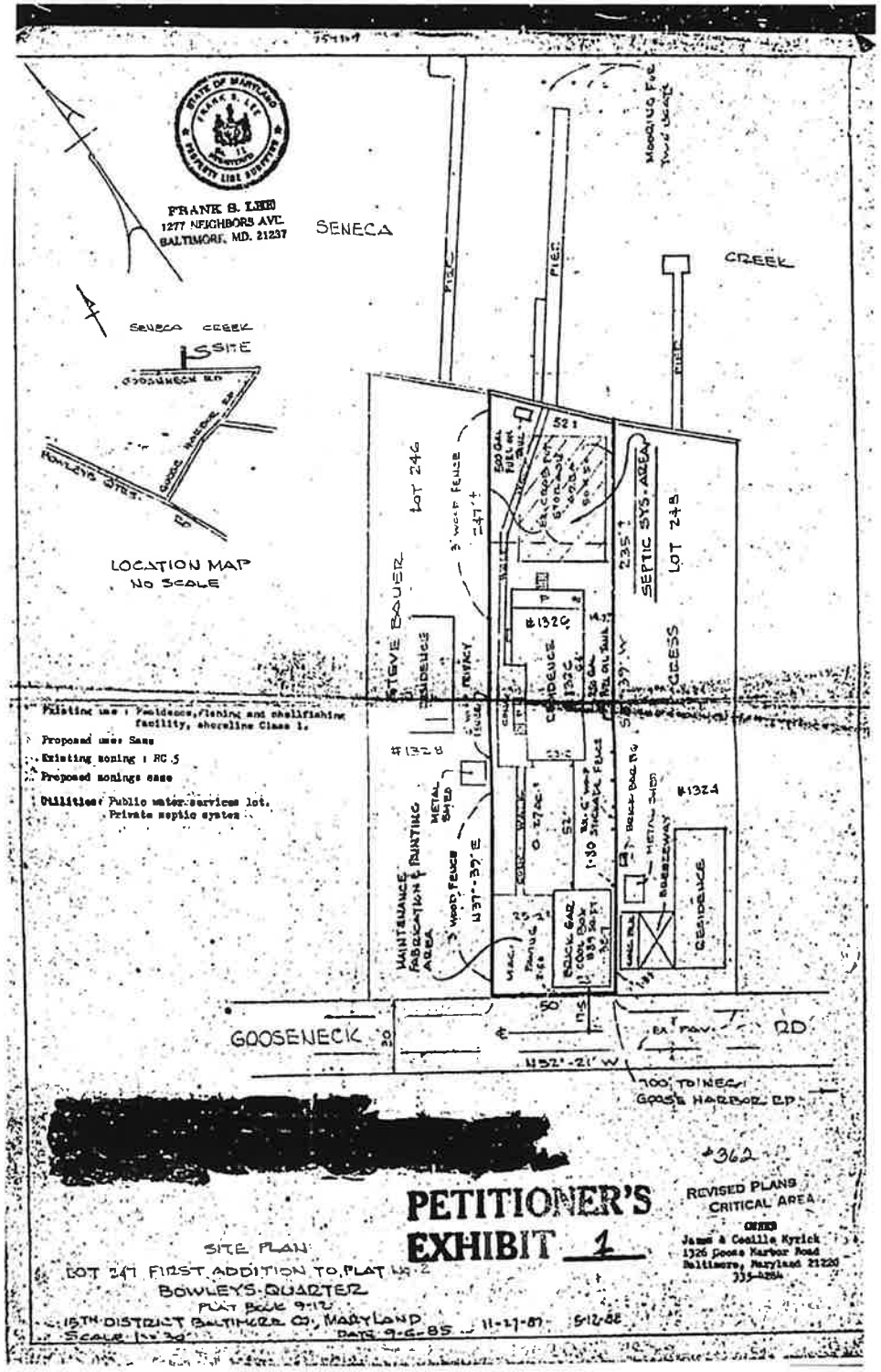
not violate the requirements of the Chesapeake Bay Critical Area Protection Laws and that the water quality is not adversely impacted by this oil tank or its operation. This certification shall be obtained on or before March 1, 1989 and an original copy of the certification shall be filed with the Zoning Commissioner when obtained by the Petitioner and made a permanent part of the Zoning Commissioner's file.

J. Robert Haines

J. ROBERT HAINES
Zoning Commissioner for
Baltimore County

JRH:mmn
cc: Peoples Counsel
John B. Gontrum, Esquire
Ralph K. Pothwell, Jr., Esquire
James and Cecile Myrick
Ruth and Theodore Gress
Chesapeake Bay Critical Area Commssion

ORDER RECEIVED FOR FILING
Date
By


FRANK S. LEE
1277 NEIGHBORS AVE.
BALTIMORE, MD. 21237
SENECA
CREEK
SENECA CREEK
SITE
GOOSENECK RD
GOOSE HARBOR RD
BOWLEYS QTRS.
LOCATION MAP
NO SCALE
LOT 246
LOT 248
STEVE BAUER
RESIDENCE
#1320
#1328
#1324
SEPTIC SYS. AREA
235'±
S 39° W
S 37°-39° E
MAINTENANCE FABRICATION & PAINTING AREA
METAL SHED
WOOD FENCE
CONC. WALK
BRICK BAR
COOL ROOM
BRICK BAR & GRILL
RESIDENCE
GOOSENECK RD
EX. PAV.
RD
N 52°-21' W
TO GOOSE HARBOR RD.
Existing use : Residence, fishing and shellfishing facility, shoreline Class 1.
Proposed use: Same
Existing zoning : RC 5
Proposed zoning: same
Utilities: Public water-services lot.
Private septic system
#362
REVISED PLANS
CRITICAL AREA
OWNER
James & Cecille Kyrick
1326 Goose Harbor Road
Baltimore, Maryland 21220
335-8284
PETITIONER'S
EXHIBIT 1
SITE PLAN
LOT 247 FIRST ADDITION TO PLAT NO. 2
BOWLEYS QUARTER
PLAT BOOK 9-12
15TH DISTRICT BALTIMORE CO., MARYLAND
SCALE 1" = 30'
DATE 9-6-85
11-27-87
5-12-88

3/24/93

IN RE: PETITION FOR ZONING VARIANCE
SW/S Gooseneck Rd., 626.89 ft.
NW of Goose Harbor Road
1327 Gooseneck Road
15th Election District
5th Councilmanic District

James R. Myrick, et ux
Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 93-221-A
*

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Zoning Variance for that property known as 1327 Gooseneck Road in the Bowleys Quarters section of Baltimore County. The Petitioners/property owners herein request a variance from Sections 101 and 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow an accessory structure on a lot with no principal structure. The relief requested is more particularly shown on Petitioners' Exhibit No. 1, the plat to accompany the Petition for Zoning Variance.

The Petitioner/property owner, Cecile Myrick, appeared and testified. Also appearing in support of the Petition was Stephen K. Broyles, a professional engineer who prepared the site plan. There were no Protestants present.

The facts presented in support of the Petition are simple and not in dispute. The Petitioners own the subject property, known as 1327 Gooseneck Road. This unimproved lot is 1.01 acres in area and is a rectangularly shaped property. It is situated across Gooseneck Road from another parcel owned by the Petitioners, known as lot No. 247. Lot No. 247 is improved by a structure and a garage, and is the site of the Petitioners'

ORDER RECEIVED FOR FILING
Date 3/24/93
By

commercial shell fishing business.

The Petitioners seek permission to place a utility shed on the property. The shed will be 24 x 36 ft in dimension. Mrs. Myrick testified that the shed would not be used for commercial purposes but is needed for storage. In fact, the Petitioner was agreeable to a restriction within any order approving the Petition which would limit the nature of the use of the utility storage. Further, as Mr. Broyles noted, clearly the two properties are separate and distinct parcels. The record of this case indicates that they were acquired at different times by the Petitioners and are recorded among the Land Records of Baltimore County under two separate deeds.

It is first to be noted that there will be no adverse affect upon the surrounding locale if the proposed shed is permitted with appropriate restrictions. The absence of any Protestants supports this conclusion. The use of the subject property to support the shed appears to be a reasonable and appropriate use of this property. Also, as noted by Mr. Broyles, the Chesapeake Bay Critical Area Regulations limit additional development on lot 247. Thus, he argues that the shed must be placed on the subject lot. Mr. Broyles also stated that compliance with the critical area regulations constitutes a practical difficulty on the Petitioners which justifies the variance.

Although Mr. Broyles' conclusions and the above findings seemingly justify the granting of the variance, a resolution of the case is not that easy. First, a study of exactly what is being requested by the Petitioners is appropriate. The property owners seek relief to allow a utility shed on the property as an accessory structure. Section 101 of the B.C.Z.R. defines accessory structures and accessory buildings. In both

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Date 3/29/93
By Mr. Morath

definitions, an accessory building or structure is defined as an improvement located on the same lot as the principal use or structure served. Further, any accessory structure or building must serve a principal use and structure and must be subordinate and customarily incident to same. Thus, by definition, the proposed utility shed cannot be accessory. It is not located on the same lot as any other building. It is not subordinate and customarily incident to anything. This conclusion is inescapable.

Having made this determination, the next issue to be considered is whether this definition may be varianced. The Office of the Zoning Commissioner is established pursuant to Section 522 of the Charter of Baltimore County. The duties and authority of the Zoning Commissioner are set forth in Section 26-127 of the County Code. Therein, it is provided that the Zoning Commissioner may "Grant variances from area and height regulations, may interpret the zoning regulations and may make special exceptions . . .". (emphasis added). Further, in Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28, 322 A2d 220 (1974), the Court of Appeals noted the distinction between area variances and use variances. Within that decision, the Court established a different standard in ajudging a use variance than is to be applied in considering an area variance. Clearly, based on this distinction established by the Court of Special Appeals and the clear language of the Charter, the Zoning Commissioner is restricted to considering area, height, parking and similar variances only. The variance requested in the instant case is more akin to a use variance and thus cannot be considered by this office. Thus, a Petition for Variance is the improper vehicle for considering this issue.

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Date 3/29/93
By M. Bonar

In the alternative, the Petitioner could submit a Petition for Special Hearing for an interpretation of the regulations as they apply to

this factual scenario, pursuant to Section 500.7 of the B.C.Z.R. Although the issue could be properly raised in that context, the relief could still not be granted. As noted above, the definitions of accessory structure and accessory building in Section 101 of the B.C.Z.R. are clear and unambiguous. An accessory structure/building must be located on the same property as the principal use or structure. As this is not the case here, the conclusion is escapable that the proposed utility shed cannot be constructed as an accessory structure.

A review of the prior cases as they relate to the Petitioners' business is also instructive. As noted above, the Petitioners' lot across the road from the subject property is presently in use as a commercial shell fishing operation pursuant to the relief granted in case No. 84-147-XSPHA. That case wound its way through public hearings by the Zoning Commissioner, the Board of Appeals, and was eventually before the Baltimore County Circuit Court on appeal. Within its Order, the Court remanded in part and affirmed in part the Board's decision. The Court did affirm that portion of the Board's opinion as it related to the two lots. Specifically, the Board noted that "Mr. Myrick purchased one property in 1971 and the second in 1978, from different owners, indicating that these have always been separate parcels. They are so designated for tax purposes. It is the Board's opinion that Mr. Myrick owns two parcels, one a shoreline parcel and one not a shoreline parcel." Clearly, the law of this case is, therefore, that these lots are separate parcels with no common history from a use standpoint. In terms of ownership, they were not acquired together by the Petitioners, but separately.

This finding is significant due to the Zoning Commissioner's findings in case No. 88-206-SPH. In that matter, Zoning Commissioner, J. Robert

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Date 3/29/93
By

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Haines, approved an accessory structure on a separate lot from where the principal structure was located. The Petitioners therein owned 2 lots which were adjoined by a common side yard property line. One lot was improved with their dwelling and the other was vacant. Commissioner Haines granted a variance permitting the construction of a swimming pool on the vacant lot. His approval was based upon the fact that the lots had been considered a single entity for many years and were immediately adjacent to one another. The factors which Commissioner Haines relied upon in approving the relief requested in that case are not present here.

In conclusion, I am persuaded that the construction of the utility shed proposed would not be dangerous or detrimental to the surrounding community. Nonetheless, it cannot be legally permitted, at least under the scenario which the Petitioner submits. The proposed shed is clearly not an accessory structure and the Petitioners' properties are two separate and distinct lots. Although to grant the relief in this case would cause no detriment to the property and surrounding parcels, there is no legal basis to approve the variance. To fabricate such a legal basis would be to establish an improper precedent. I am unwilling to do so. Thus, for the reasons set forth above, the relief requested must be denied.

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Date 3/29/93
By

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 29th day of March, 1993 that the Petition for a Zoning Variance from Sections 101 and 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow an accessory structure on a lot with no princi-

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pal structure, in accordance with Petitioners' Exhibit No. 1., be and is hereby DENIED.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES/mmn

ORDER RECEIVED FOR FILING
Date 3/29/93
By

IN RE: PETITION FOR ZONING VARIANCE * BEFORE THE
SW/S Gooseneck Road, 626.89 ft.
NW of Goose Harbor Road *
1327 Gooseneck Road
15th Election District * OF BALTIMORE COUNTY
5th Councilmanic District
* Case No. 93-221-A
James R. Myrick, et ux
Petitioners *

* * * * * * * * * * *

MEMORANDUM OPINION AND ORDER

This matter comes before the Zoning Commissioner on a Motion for Reconsideration from my decision dated March 29, 1993. The subject property involved is known as 1327 Gooseneck Road in the Bowleys Quarters section of Baltimore County. The property is owned by James R. Myrick and Cecile V. Myrick, his wife. The property is within close proximity to Seneca Creek.

This matter originally came before me as a Petition for Zoning Variance from Sections 101 and 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow an accessory structure on a lot with no principal structure. Specifically, the Petitioners desire to construct a 36 ft. x 24 ft. utility shed on the subject property. That property is presently unimproved, however, is located across the street from a site owned by the Petitioners which is improved and used as a commercial shell fish operation. The subject site is 1.01 acres in net area and is rectangularly shaped. It is zoned R.C.5.

Reference is hereby made to my prior Order of March 29, 1993. Therein I denied the Petition for Zoning Variance which was requested. In that opinion, I noted that there would be no adverse effect upon the surrounding locale if the variance was granted and the proposed shed was erected. The Petitioner, Mrs. Myrick, testified at the original hearing that the

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Date 5/26/93
By M. Bonn

MICROFILMED

As noted in the original Order, it is clear that the proposed lot is a separate lot from the Myricks holdings across Gooseneck Road. Therefore, any use on the subject property cannot be accessory to activity on the other lot. However, an inquiry must be made as to the nature of the present use on the subject site. As noted above, it is unimproved. There are no dwellings, businesses or other activity on the lot. In reviewing the definition of permissible uses in an R.C.5 zone, it is noted that "Open Space, Common" is a permitted use. Moreover, "Open Space, Common" is defined in part in Section 101 of the B.C.Z.R. as "Local open space, public parks, or other park-like open space reserved for public use and enjoyment, whether privately owned or owned by the county, state or federal government or other agencies." In my view, the subject site fits within this definition and I so find same as fact. Although privately owned, the open area encompassed by the subject lot is no doubt enjoyed by the public. It provides a scenic vista in an area which is otherwise developed with dwellings and commercial establishments related to the Chesapeake Bay and its tributaries. Although not officially designated as a park, the character of this lot comports closely with the open space definition. Moreover, as is well known, open space can be both casual and active. Active open space is considered those areas which are improved with benches, playgrounds, etc. Whereas, passive open space is merely an open area which provides visual relief from developed sites nearby. In this case, although unimproved, the site is clearly used as open space, and I so find as fact.

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Date 5/26/90
By

This being the case, permissible accessory structures to that use may be erected on the site. As noted in my previous opinion, accessory structures include those buildings which are customarily incident and subordi-

this factual scenario, pursuant to Section 500.7 of the B.C.Z.R. Although the issue could be properly raised in that context, the relief could still not be granted. As noted above, the definitions of accessory structure and accessory building in Section 101 of the B.C.Z.R. are clear and unambiguous. An accessory structure/building must be located on the same property as the principal use or structure. As this is not the case here, the conclusion is escapable that the proposed utility shed cannot be constructed as an accessory structure.

A review of the prior cases as they relate to the Petitioners' business is also instructive. As noted above, the Petitioners' lot across the road from the subject property is presently in use as a commercial shell fishing operation pursuant to the relief granted in case No. 84-147-XSPHA. That case wound its way through public hearings by the Zoning Commissioner, the Board of Appeals, and was eventually before the Baltimore County Circuit Court on appeal. Within its Order, the Court remanded in part and affirmed in part the Board's decision. The Court did affirm that portion of the Board's opinion as it related to the two lots. Specifically, the Board noted that "Mr. Myrick purchased one property in 1971 and the second in 1978, from different owners, indicating that these have always been separate parcels. They are so designated for tax purposes. It is the Board's opinion that Mr. Myrick owns two parcels, one a shoreline parcel and one not a shoreline parcel." Clearly, the law of this case is, therefore, that these lots are separate parcels with no common history from a use standpoint. In terms of ownership, they were not acquired together by the Petitioners, but separately.

This finding is significant due to the Zoning Commissioner's findings in case No. 88-206-SPH. In that matter, Zoning Commissioner, J. Robert

ORDER RECEIVED FOR FILING
Date 3/9/93
By

MICROFILMED

nate to the lot on which they are located and contribute to the comfort and convenience of the use of that property. In this case, Mrs. Myrick indicated that the proposed shed would house lawn mowers and other equipment necessary to maintain the subject property. Thus, the necessary storage of same is accessory to the use of this property as open space. Therefore, the subject shed can be constructed as a permitted accessory structure to the use of this property as open space. The shed and lot cannot be used to support the commercial activity on the Myricks' lot across the street.

For the aforegoing reasons, I shall grant the Motion for Reconsideration and approve the construction of the proposed shed on the site.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 26th day of May, 1994 that the Motion for Reconsideration filed herein be and is hereby GRANTED for the reasons set forth within this Memorandum Opinion.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES/mmn

ORDER RECEIVED FOR FILING
Date 5/26/94
By M. Smith

Plat to accompany Petition for Zoning ☐ Variance ☐ Special Hearing

PROPERTY ADDRESS: 1327 GOOSENECK ROAD ~ BALTO. CO. MD. see pages 5 & 6 of the CHECKLIST for additional required information

Subdivision name: N/A

plat book# ~ ,folio# ~ ,lot# ~ ,section# ~ LIBER 5917 ~ FOLIO 584

OWNER: CECILE V. MYRICK

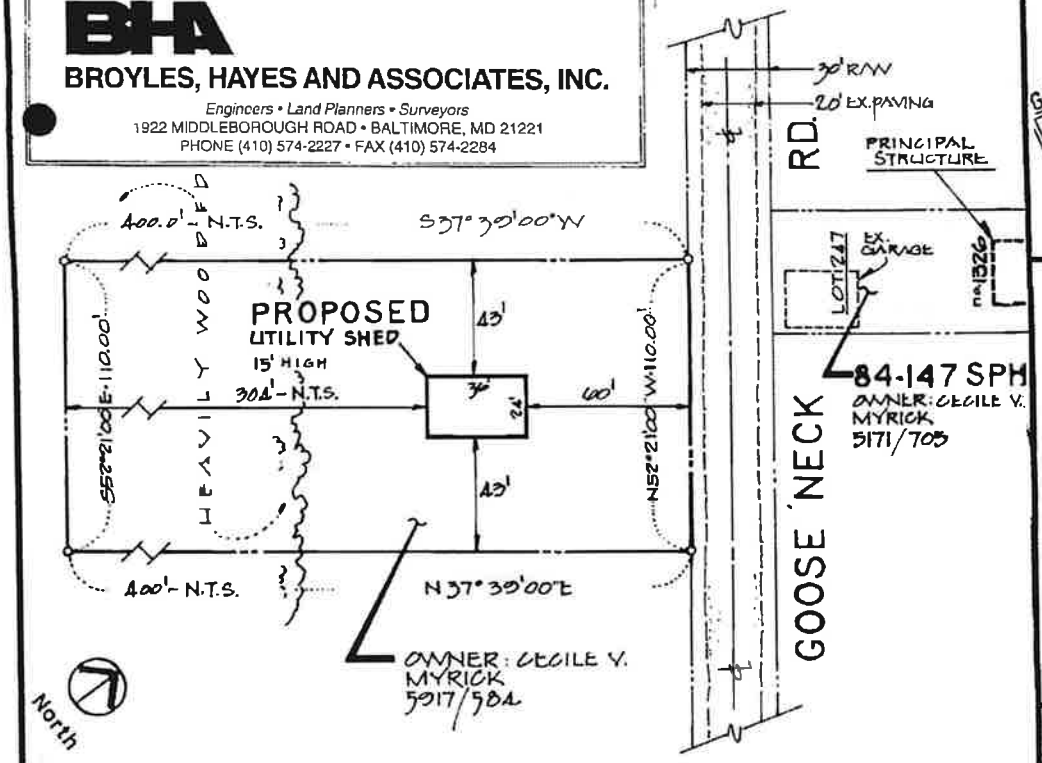
BHA

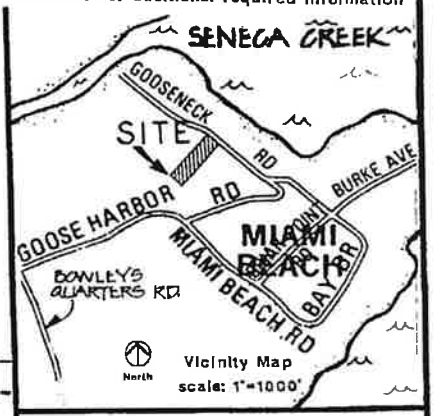
BROYLES, HAYES AND ASSOCIATES, INC.

Engineers • Land Planners • Surveyors

1922 MIDDLEBOROUGH ROAD • BALTIMORE, MD 21221

PHONE (410) 574-2227 • FAX (410) 574-2284





LOCATION INFORMATION

Councilmanic District: 5TH

Election District: 15TH

1"=200' scale map#: NE 2-L

Zoning: RC5

Lot size: 1.01 acreage / 44,000 square feet

	public	private
SEWER:	☐	☑
WATER:	☑	☐

	yes	no
Chesapeake Bay Critical Area:	☑	☐

Prior Zoning Hearings:

Zoning Office USE ONLY!

reviewed by: ITEM #: CASE#:

dat : DEC. 17, 1992

prepared by: BROYLES, HAYES & ASSO. Scale of Drawing: 1"=50'

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: James R. Myrick, et ux -Petitioners
Case No. 93-221-A

DATE : August 18, 1994 /at conclusion of hearing

BOARD /PANEL : William T. Hackett, Chairman (WTH)
Michael B. Sauer (MBS)
Robert O. Schuetz (ROS)

SECRETARY : Kathleen C. Weidenhammer
Administrative Assistant

Those present included John B. Gontrum, Esquire, Counsel for Petitioner; Peter Max Zimmerman, People's Counsel for Baltimore County; and Carole S. Demilio, Deputy People's Counsel.

PURPOSE --to deliberate issues and matter of petition for variance presented to the Board; testimony and evidence taken this date. Opinion and Order to be issued by Board setting forth written findings of fact.

Opening statement by Chairman Hackett.

MBS: Reviewed history of Petition for Variance through appeal to Board; variance to construct a 36' x 24' utility shed on property; file and record and testimony today reflect that People's Counsel did not participate in case below; no protestants in case below; People's Counsel did not participate in second hearing below; no protestants at that second hearing; no one in neighborhood has protested; rather petition filed / no opposition but rather in favor of request; reviewed testimony received and closing argument; uncontradicted testimony: (1) lot vacant; (2) won't perk; (3) cannot put building on it; (4) cannot get building permit; (5) 40 percent wooded and 60 percent open space and property requires maintenance. Reviewed current and past use.

Has reviewed file and evidence and R.C. 20 zone; has no problem finding as matter of fact that property in past has served rec use and meets requirement of open space. And for that reason has no problem granting relief requested and allowing structure requested; believes there should be condition placed on order of Board re no commercial use or for storage of items related to crabbing business.

Petition for Variance should be granted with restrictions.

Deliberation /James R. Myrick, et ux 93-221-A

ROS: Also has read the evidence provided to Board and in general concurs with MBS on assessment of property; historical use, existence of picnic tables, need for provision of some facility to store equipment, even the storage of picnic tables and other large items; discussed size of structure; has editorial comment -a utility shed is a shed and a garage is a garage. Even in petition it is indicated that requested structure is accessory storage building /garage for open lot. But it's not contained in other pieces of evidence; recognizes need for some facility; setback, open space, etc. is expanded and can be construed as more liberal in R.C. 20.

For those reasons, concurs with MBS to grant petition. However, wishes to express desire that order include restrictions on use not to include any materials, equipment, supplies, etc., to do with commercial use across street, as indicated and confirmed by OPZ /shed not be used for storage of such materials (People's Counsel Exhibit 2).

WTH: Basically concurs with other two Board members; sees this as piece of property owned by Baltimore County resident; pays taxes on property; is denied theoretically any use of property. reviewed uses and past history as did other Board members; basically believes that if proposed use impinges in any way on neighbor's use of his property, should be denied (i.e., air, noise, view, etc.); if for any reason an accessory structure does these things, should be denied. This one does not. Adjacent neighbors in both directions have indicated approval of it. No testimony that it's been used for anything other than grassy lot for cook-outs, etc. for friends and family; should permit shed and put reasonable restrictions on it so that it maintains passive recreational aspect.

Is troubled by size; does not believe it needs to be that big; but the fact that it's 24' x 36' and its adjacent to commercial operation, fears that there will be spillover from that operation. Order will specifically address this.

Closing comments by WTH: Board will grant variance as it's proposed; written Opinion and Order will be issued.

NOTE: Appellate period will run from date of written Order and not from today's date.

Respectfully submitted,

Kathleen C. Weidenhammer

Kathleen C. Weidenhammer
Administrative Assistant

9/22/94

IN THE MATTER OF THE APPLICATION OF JAMES R. MYRICK, ET UX FOR VARIANCE ON PROPERTY LOCATED ON THE SOUTHWEST SIDE OF GOOSE-NECK ROAD, 626.89 FT. NW OF GOOSE HARBOR ROAD (1327 GOOSENECK ROAD) 15TH ELECTION DISTRICT 5TH COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO: 93-221-A

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

O P I N I O N

This case comes before the Board on appeal from a decision of the Zoning Commissioner in which the petition for variance was ultimately approved. On March 29, 1994, the Zoning Commission r denied the petition for variance. Petitioner then filed a Motion for Reconsideration and this Motion for Reconsideration was granted and the hearing was held and the variance to permit the construction of the utility shed was approved. The case was heard this day in its entirety.

The matter before the Board concerns a petition for variance to permit a utility shed as an accessory structure on a lot that contains no principal structure. The file and the record in this case indicate that People's Counsel did not participat at the Zoning Commissioner's level nor were there any protestants. People's Counsel did not participate in the reconsideration hearing nor were there any protestants. In today's hearing there are no neighborhood protestants and, in fact, entered as Petitioner's Exhibit No. 4, is a petition in favor of the variance by all the residents on Gooseneck Road.

Testifying for the petitioner was Stephen R. Broyles, Land Surv yor and D velop r, who prepared the site plan on this lot and

described it and the surrounding areas in great detail. The site plan was entered as Petitioner's Exhibit No. 1.

Cecile Myrick, property owner and petitioner testified as to the condition of the lot and its general use. People's Counsel presented no witnesses, but entered 10 exhibits into the record.

By uncontradicted testimony, the Board is made aware that the lot is vacant; will not perk; no residential building permit can be obtained; it is 40% wooded and 60% open space grass, and that the property has picnic tables on it and has served recreational purposes by friends, neighbors, and family of the Petitioner. The Board will note that the Myricks own the lot across Gooseneck Road from this site, but that no further building can be permitted on this lot. The lot is zoned R.C.20 which permits open space use of the property. The Petitioner pays taxes on this property and is denied theoretically any use of the property, except to keep it mowed and maintained as a recreational use. While there is no principal building on the property nor can any be erected, the proposed utility shed can be an accessory use to the only use afforded the property that of a recreational use. If for any reason, an accessory structure is a detriment to the neighborhood, creates noise, obstructs a view, or any other reason detrimentally, the variance should be denied. This proposed use does not. All the neighbors have indicated approval of it and there was no testimony that it has been used other than anything but a grassy lot for cook-outs, picnics, etc., for friends and family. The

Case N . 93-221-A James R. Myrick, et ux

Board will note that in the past, the Myricks have attempted to use this lot in conjunction with their commercial fishing and crabbing operation, but this use has been denied and the only use remaining on the lot is a recreational one. The Board is of the opinion that the variance to permit the utility shed should be granted. However, its use is to be restricted to the storage of lawn mowers, picnic tables, grills, etc., and is not to be used in any way as an accessory use to the commercial use across the street.

O R D E R

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

ORDERED that the petition for variance be and the same is hereby **GRANTED** with the following restriction:

1. No use in any way associated with the commercial fishing and crabbing business will be permitted on this site.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman

Michael B. Sauer
Michael B. Sauer

Robert O. Schuetz
Robert O. Schuetz

Baltimore County
GOVERNMENT

Register for an Account Login

Home Animal Complaint License Residential Parking Permits Land Management Code Complaint
CZMP Online Payments Permits

Submit a Complaint Search Complaints

Record CC2214599:
Constituent Complaint
Record Status: Pre Hearing Insp Complete

Record Info

Processing Status

✔	Intake
	Due on **11/03/2022** Marked as **Inspection Scheduled** on **11/02/2022**
✔	Inspection Status
	Due on **11/22/2022** Marked as **Monitor** on **11/17/2022**
	*Due on **01/03/2023*** *Marked as **Correction Notice Mailed** on **12/02/2022***
	*Due on **01/03/2023*** *Marked as **Correction Notice Issued** on **12/02/2022***
	*Due on **01/03/2023*** *Marked as **Correction Notice Mailed** on **02/07/2023***
	*Due on **01/03/2023*** *Marked as **Correction Notice Issued** on **02/07/2023***
	*Due on **01/03/2023*** *Marked as **Citation Mailed** on **02/09/2023***
	*Due on **01/03/2023*** *Marked as **Citation Issued** on **02/09/2023***

	*Due on **01/03/2023*** *Marked as **Pre Hearing Insp Complete** on **03/08/2023***
	Hearing Status
	Due on **03/28/2023** Marked as **TBD** on **TBD**
	Court Status
	Closure

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Permits, Approvals, and Inspections
Code Inspections & Enforcement
County Office Building, Rm. 216
111 West Chesapeake Ave
Towson, Maryland 21204

www.baltimorecountymd.gov/Agencies/permits/

Code Enforcement 410-887-3351
Electrical Inspection 410-887-3960
Plumbing Inspection 410-887-3620
Building Inspection 410-887-3953

CODE ENFORCEMENT & INSPECTION CITATION

CASE NUMBER	PROP.TAX ID
CC2214599	15-19-510661

VIOLATION ADDRESS
1326 GOOSE NECK RD
MIDDLE RIVER, MD 21220

MYRICK CECILE V
1326 GOOSE NECK RD
BALTIMORE, MD 21220-4027

DID UNLAWFULLY VIOLATE THE FOLLOWING BALTIMORE COUNTY CODES AND/OR REGULATIONS:

County Codes/Regulations	Inspector's Comments
B.C.C. 13-4-201(b)(d): Store garbage in containers w/tight lids B.C.C. 13-7-310(a): Remove all trash & debris from property B.C.C. 13-7-312: Remove accumulations of debris, materials, etc B.C.Z.R 101; 102.1: Remove contractors equip. storage yard B.C.Z.R 1B01.1D: Remove open dump/ junk yard B.C.Z.R 410A: Non permitted class II Trucking Facility B.C.Z.R 500.9 BCZR; ZCPM; BCC: 32-3-102: Violation of commerical site plan and /or zoning order	In violation of zoning orders 1993-0221-A and 1984-0147-xspha. RC 5 zone. Failure to remove all junk, trash and debris. Including but not limited to trailers, sea / storage containers, contractors equipment, boxes, tanks, metal, crab pots, tools, other miscellaneous items. Current condition not I'm compliance with zoning order - clean up property to avoid fine and hearing.

Pursuant to Section 1-2-217, Baltimore County Code, civil penalty has been assessed, as a result of the violation(s) cited herein, in the amount indicated: **$10000**

This will be a virtual hearing. To attend your hearing, or get more information about the hearing process, please visit: www.baltimorecountymd.gov/codehearings

DATE: 03/15/2023 **TIME:** 09:00 **A.M.**

*****IF A VIOLATOR DOES NOT APPEAR AT THE CODE ENFORCEMENT HEARING, THE CITATION AND ANY CIVIL PENALTY ARE DEEMED A NON-APPEALABLE FINAL ORDER OF THE CODE OFFICIAL OR THE DIRECTOR.*****

I do solemnly declare and affirm, under the penalty of perjury, that the contents stated above are true and correct to the best of my knowledge, information, and belief.

Inspector Badge Number		Issued Date
129		**02/07/2022**

Permits, Approvals, and Inspections
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County Office Building, Rm. 216
111 West Chesapeake Ave
Towson, Maryland 21204
www.baltimorecountymd.gov/Agencies/permits/

Code Enforcement 410-887-3351
Electrical Inspection 410-887-3960
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CODE ENFORCEMENT CORRECTION NOTICE

CASE NUMBER	PROP.TAX ID
CC2214599	15-19-510661

VIOLATION ADDRESS
1326 GOOSE NECK RD
MIDDLE RIVER, MD 21220

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Failure to comply with this correction notice, may result in a $10,000.00 fine/penalty per day, per violation pursuant to BCC: 1-2-217; 32-3-602 and/or the County sending a contractor to correct the violation(s) at your expense. Call the inspector for more information and details.

COMPLIANCE DATE: 01/02/2023	INSPECTOR ID: 129
	ISSUED DATE: 02/07/2022

IMPORTANT INFORMATION TO THE PERSON'S CHARGED

1. It is important that you read this document carefully, as it charges you with the commission of a crime.
2. If you fail to correct the violations noted by the date dictated, a citation may be issued, and a trial scheduled at which you may be penalized by a fine, imprisonment, or both.
3. If the County is required to bring your property into compliance, all costs and fines shall become a lien and shall be collectible in the manner provided for collection of real estate taxes; or may be collected in the same manner as any civil money judgment or debt collected.
4. A lawyer can give important assistance to you:
   (a) on how to correct the violation(s) in order to avoid trial or
   (b) at trial, if you failed to correct the violation(s) noted. Assistance may be provided to determine whether there are any defenses to the charges against you or any circumstances helpful to you that should be brought to the trial. A lawyer can help you by developing and presenting information, which could effect how you correct the violation(s).
5. A conviction for each violation will subject you to potential fines of $200, $500, $1000 per day per violation, depending on the violation, or 90 days in jail, or both Baltimore County Code section 1-2-217 and 32-3-602.
6. It is your responsibility to obtain any required permit(s) to correct the cited violation(s). All repairs must be in accordance with applicable laws, Code of Baltimore County Regulations, and standards.
7. Upon correction of these violation(s), contact the inspector for re-inspection. If you have any questions contact the inspector promptly.

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Building Inspection 410-887-3953

CODE ENFORCEMENT CORRECTION NOTICE

CASE NUMBER	PROP.TAX ID
CC2214599	15-19-510661

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County Codes/Regulations	Inspector's Comments
B.C.C. 13-4-201(b)(d): Store garbage in containers w/tight lids B.C.C. 13-7-310(a): Remove all trash & debris from property B.C.C. 13-7-312: Remove accumulations of debris, materials, etc B.C.Z.R 101; 102.1: Remove contractors equip. storage yard B.C.Z.R 1B01.1D: Remove open dump/ junk yard B.C.Z.R 410A: Non permitted class II Trucking Facility	
B.C.Z.R 500.9 BCZR; ZCPM; BCC: 32-3-102: Violation of commerical site plan and /or zoning order	In violation of zoning orders 1993-0221-A and 1984-0147-xspha. RC 5 zone. Remove all junk, trash and debris. Including but not limited to trailers, sea / storage containers, contractors equipment, boxes, tanks, metal, crab pots, tools, other miscellaneous items. Current condition not I'm compliance with zoning order - clean up property to avoid fine and hearing.

Failure to comply with this correction notice, may result in a $200.00 fine/penalty per day, per violation pursuant to BCC: 1-2-217; 32-3-602 and/or the County sending a contractor to correct the violation(s) at your expense. Call the inspector for more information and details.

COMPLIANCE DATE: 01/02/2023	INSPECTOR ID: 129
	ISSUED DATE: 12/02/2022

IMPORTANT INFORMATION TO THE PERSON'S CHARGED

1. It is important that you read this document carefully, as it charges you with the commission of a crime.
2. If you fail to correct the violations noted by the date dictated, a citation may be issued, and a trial scheduled at which you may be penalized by a fine, imprisonment, or both.
3. If the County is required to bring your property into compliance, all costs and fines shall become a lien and shall be collectible in the manner provided for collection of real estate taxes; or may be collected in the same manner as any civil money judgment or debt collected.
4. A lawyer can give important assistance to you:
   (a) on how to correct the violation(s) in order to avoid trial or
   (b) at trial, if you failed to correct the violation(s) noted. Assistance may be provided to determine whether there are any defenses to the charges against you or any circumstances helpful to you that should be brought to the trial. A lawyer can help you by developing and presenting information, which could effect how you correct the violation(s).
5. A conviction for each violation will subject you to potential fines of $200, $500, $1000 per day per violation, depending on the violation, or 90 days in jail, or both Baltimore County Code section 1-2-217 and 32-3-602.
6. It is your responsibility to obtain any required permit(s) to correct the cited violation(s). All repairs must be in accordance with applicable laws, Code of Baltimore County Regulations, and standards.
7. Upon correction of these violation(s), contact the inspector for re-inspection. If you have any questions contact the inspector promptly.

KeyCite Yellow Flag - Negative Treatment
Distinguished by Forks of the Patuxent Improvement Association, Inc. v. National Waste Managers/Chesapeake Terrace, Md.App., October 25, 2016

211 Md. 36
Court of Appeals of Maryland.

James L. WHITTLE et al.
v.
BOARD OF ZONING APPEALS
OF BALTIMORE COUNTY,
and J. Liston Wiedefeld et al.

No. 210.
|
Aug. 20, 1956.

Synopsis

Certiorari proceeding to review decision of Board of Zoning Appeals granting special permit to use building in residential area for funeral home. The Circuit Court, Baltimore County, Lester L. Barrett, J., entered its order affirming board's order and protestants appealed. The Court of Appeals, Brune, C. J., held that where essentially same facts appeared in 1949 hearing on petition for special permit to use building for funeral home as appeared or could have been showin in hearing on present petition and where Circuit Court had entered judgment denying 1949 petition, petitioners were barred by res judicata.

Reversed and remanded with directions.

Attorneys and Law Firms

***38** ****42** Kenneth C. Proctor, Towson, for appellants.

George W. McManus, Jr., Baltimore and W. Albert Menchine, Towson (O'Conor & McManus, Baltimore, on the brief), for appellee.

Before BRUNE, C. J., and DELAPLAINE, COLLINS, HENDERSON and HAMMOND, JJ.

Opinion

BRUNE, Chief Judge.

This is an appeal from an order of the Circuit Court for Baltimore County affirming an order of the Board of Zoning Appeals of Baltimore County which had granted a special permit to the individual appellees (hereinafter usually referred to as 'the appellees') to use the building located at 7400 York Road as a funeral home. The Board of Zoning Appeals had reversed the Zoning Commissioner who had denied the request for a special permit.

The first and principal controversy is whether or not a prior adverse ruling by the Circuit Court for Baltimore County on an application for a special permit for a funeral home on the same premises is *res judicata* as to the present case.

The earlier petition was filed on November 23, 1949, by Lucretia G. Leonard, as owner, and the appellees, as contract purchasers, to obtain a special permit to use the same property as a funeral home. This petition was denied by the Zoning Commissioner, but was granted by the Board of Zoning Appeals ***39** which reversed the Zoning Commissioner on appeal by the petitioners. The only witnesses produced by the petitioners at the hearing before the Board were J. Liston Wiedefeld, one of the petitioners, and Charles D. DeLosier, who was the secretary of the Maryland State Funeral Association. Mr. Wiedefeld testified that the property in question had been used as a Medical Research Laboratory from 1934 to 1943 and that it had not been used as a residence during that time. He testified further that there was a great need for a funeral home in the neighborhood because of the great increase in the population of Baltimore County and the lack of increase in a proportionate number of funeral establishments. He also testified that at that time he owned a funeral home in Baltimore and did not intend to move it to the proposed new location but intended to operate two separate funeral establishments. Mr. DeLosier testified that there was a definite need for a funeral home in the neighborhood because of the large population. Eight witnesses testified in opposition to the petition to the effect that they had lived in a highly residential area with fine homes and that their homes either abutted on or were in close proximity to the property in dispute and that the issuance of the special permit would adversely ****43** affect the value and enjoyment of their homes and would increase the traffic along York Road. The Board of Zoning Appeals stated in its opinion reversing the Zoning Commissioner that it felt that the granting of the special permit for a funeral home 'will not create congestion and increase the traffic hazard, will not affect the health, safety or the general welfare of the people of the community, neither does the Board feel that the granting of this special permit will depreciate the value of adjacent property.' The Board attached as a condition to the granting of the permit

'the planting of additional shrubbery on the north side of the property.'

The neighboring property owners then filed a petition for a writ of certiorari in the Circuit Court for Baltimore County to review the decision and order of the Board of Zoning Appeals. Judge John B. Gontrum, in reversing the Board of Zoning Appeals, found that the petitioners had offered no testimony that would justify the granting of the permit and ***40** that the granting of the permit would have an adverse effect on the value of the real estate in the vicinity.

Thereafter, following a motion for reargument, Judge Gontrum adhered to his original decision and filed an opinion in which he reviewed the testimony before the Board of Zoning Appeals, and relied principally upon Heath v. Mayor and City Council of Baltimore, 187 Md. 296, at page 304, 49 A.2d 799, and Jack Lewis, Inc. v. Mayor & City Council of Baltimore, 164 Md. 146, 164 A. 220. He added to what Judge Offutt wrote in the Jack Lewis, Inc., case about the depressing effect of a funeral home in a residential area, some quotations on the subject of death from Bacon and Shakespeare and some comments of his own on the different manner in which death is regarded by different peoples of the in different places. In speaking of the attitude of many persons in this section of the country, he observed that 'The solace of religion and the consolations of philosophy are not sufficient to change the fundamentally pessimistic attitude of most persons toward death and the grave.' He also pointed out that the term, 'funeral home,' is a euphemism and that such an enterprise is commercial, not residential.

At the time of the decision of the first case by the Circuit Court for Baltimore County, there was no provision for a further appeal in a Baltimore County zoning case to the Court of Appeals, so that the decision of the Circuit Court was final.

The Wiedefeld's contract to purchase the property at 7400 York Road was conditioned upon the special permit for a funeral home being granted. In spite of the fact that the permit was denied, they proceeded to purchase the property. Thereafter, on April 27, 1954, the appellees, now the owners of the property, filed and second petition which gives rise to the present case for a special permit to use the same property for a funeral home. Upon denial of this petition by the Zoning Commissioner, they appealed to the Board of Zoning Appeals, which reversed the Commissioner and granted the special permit.

At the hearing before the Board, the appellees called twelve witnesses. Among them were the pastor of a church which adjoins the subject property on the south and which has over ***41** 200 members, and also several neighbors, all of whom said that they had no objection to a funeral home being on the property, and some of whom testified that they thought the establishment of a funeral home on the property would be beneficial to the neighborhood. There was also testimony that a funeral home would have no adverse effect on York Road traffic and parking because there would be sufficient off-street parking furnished on the ample grounds of the home itself. There was further testimony by real estate experts that a funeral home at this location would not decrease the value of residential property in the neighborhood. There was also testimony that it would ****44** cause no psychological ill-effects on the neighbors; and there was some testimony relating to commercial activity in the neighborhood which was claimed to have changed its basic characteristics. Finally there was testimony that the population of Baltimore County had increased tremendously since 1949, the date of the first application, and that there was now even a greater need for more funeral homes in the county.

Six witnesses testified on behalf of the appellants objecting to the issuance of the special permit. Their testimony was to the general effect (1) that there was no need for a funeral home in the area, (2) that the granting of the permit would make the place commercial and (3) that it would adversely affect the value of neighboring properties.

After the decision of the Board of Zoning Appeals, the protestants filed a petition for a writ of certiorari in the Circuit Court for Baltimore County to review its decision and Order. The appellees were granted leave to intervene as parties defendant. Judge Lester L. Barrett upheld the decision of the Board of Zoning Appeals, holding that the Board had acted in the exercise of its discretion in granting the special permit. In rejecting the contention that the previous decision by Judge Gontrum made the matter *res judicata*, he stated that 'there is reason to believe, from the record, that since the ruling of Judge Gontrum, at least one additional commercial usage, that of a filling station has been granted in the immediate location, and, in addition, Judge Gontrum based his ruling ***42** on an entirely different record than the one that is now before this Court.'

The appellants raise two questions:

1. Is the decision of the Circuit Court for Baltimore County in the first case *res judicata* in the second case?

2. Are the sections of the Zoning Regulations for Baltimore County which provide for the issuance of a special permit or

PC Exh. 13

exceptions for a funeral establishment in a residential zone invalid because they authorize unlawful 'spot zoning?'

We find it necessary to consider only the first of these questions.

The appellants contend that under the doctrine of *res judicata* and the decision of the Circuit Court in the 1949 case, the petition in the present case should have been denied. They rely particularly upon Mayor and City Council of Baltimore v. Linthicum, 170 Md. 245, 183 A. 531, and Bensel v. Mayor and City Council of Baltimore, 203 Md. 506, 101 A.2d 826, in support of this contention.

In Mayor and City Council of Baltimore v. Linthicum, the petitioner in January, 1933 and again in October, 1933, filed petitions to use a piece of property in a residential area as a post office sub-station. Both of these petitions were rejected because the proposed use would be a business use. The petitioner appealed to the Baltimore City Court from the denial of his second petition, and that Court affirmed the Board. No appeal from the City Court to this Court in such a case was then allowed. The owner then instituted mandamus proceedings, but such proceedings were held inappropriate and no appeal was taken. After the passage of Chapter 448 of the Acts of 1935, which allowed an appeal to this Court from orders of the Baltimore City Court in zoning cases, the owner filed a third petition for a special permit to use the same property as a post office sub-station. This was denied by the Board of Zoning Appeals, the case was appealed to the Baltimore City Court and on this occasion the City Court reversed the Board and held that the permit should have been granted. On appeal to this Court, the judgment of the Baltimore City Court was reversed, and the Court of Appeals held that the petitioners ***43** were bound by the first decision. The proposed use was still a business use and the first decision was *res judicata* of that question.

****45** In Bensel v. Mayor and City Council of Baltimore, 203 Md. 506, 101 A.2d 826, the appellant had filed an application, based upon an alleged non-conforming use, to continue using his place of residence as a place of business. It was held by the Baltimore City Court on appeal from the Board that there was not enough evidence to show a non-conforming use, and no appeal was taken from that judgment. Four years later the appellant filed an amended bill of complaint in the Circuit Court of Baltimore City alleging essentially the same facts as in the first case and asking for a declaratory decree declaring that he had a non-conforming use in the property. The Circuit Court held that the first case had adjudicated the question whether there was or was not a non-conforming use and was therefore conclusive of the rights of the parties, and this Court affirmed this holding. The fact that there was not a non-conforming use on a certain date was a fixed and stable fact and could not be changed by anything that happened thereafter.

The Linthicum and Bensel cases differ from the present case in that the facts which had been adjudicated in the first litigation were not, and could not be, affected by any change in facts or circumstances or conditions which might have occurred in the interim between the two suits. In the Linthicum case, a business use continued to be a business use; in the Bensel case, the existence or non-existence of a non-conforming use on a past date could not be affected by any subsequent event. (There had been no amendment of the law in either of those cases, nor is any amendment of the law involved in the instant case.)

The Linthicum and Bensel cases do not hold that the denial of a special permit which has once been sustained (or ordered) by a court of competent jurisdiction can never be reopened or reconsidered, and we do not understand the appellants' contention as going so far as to assert such a doctrine. They seem to concede that a change in circumstances might warrant reconsideration and a different result in an application for a special permit in such a case as the present, but they ***44** deny that a showing of any substantial change in facts or circumstances has been made. The correctness of this contention is the key to the case.

Before going further, we may take note of several points. First, the fact that the decision on the 1949 petition was that of a Circuit Court does not prevent the operation of the rule of *res judicata*. Mayor and City Council of Baltimore v. Linthicum, Bensel v. Mayor and City Council of Baltimore, both cited above. Second, the doctrine of *res judicata* has been held not to be applicable where the earlier decision was made not by a court of record, but by a board of zoning appeals, an administrative agency. Knox v. Mayor and City Council of Baltimore, 180 Md. 88, 23 A.2d 15. Third, provisions of a zoning ordinance such as the Baltimore County ordinance, under which, until after the lapse of a period of six months [now eighteen months in Baltimore County] a board of zoning appeals may not consider and act upon a new application for a special permit previously denied does not dispense with the rule of *res judicata*. Mayor and City Council of Baltimore v. Linthicum, supra. As was said in that case in speaking of a similar provision in the Baltimore City ordinance (170 Md. at page 249, 183 A. at page 533):

Whittle v. Board of Zoning Appeals of Baltimore County, 211 Md. 36 (1956)
125 A.2d 41, 71 A.L.R.2d 1353

'For the decision of this case we need not determine exactly what was within the contemplation of the clause in its reference to subsequent submission of substantially the sme application to the board of zoning appeals. We do not interpret it to dispense with the rule, so as to provide that after an owner has submitted to the courts on appeal the questions of the character and classification of his use, and the correctness of its exclusion, and has obtained a decision that it is a business use, rightly excluded from the particular ****46** neighborhood, he can continue asking every six months for judicial decisions on exactly the same questions. If that were the meaning, this court, under the act of 1935, as well as the trial court, would be required to examine and decide the case as often as the owner might wish to bring it up, allowing six months' intervals in his activities. The ***45** words seem to us to require no such interpretation, and we think it would be unreasonable to attribute that purpose to the Legislature.'

The general rule, where the question has arisen, seems to be that after the lapse of such time as may be specified by the ordinance, a zoning appeals board may consider and act upon a new application for a special permit previously denied, but that it may properly grant such a permit only if there has been a substantial change in conditions. See Bassett on Zoning (2nd Ed., 1940), pp. 119–120; Yokely on Zoning Law and Practice (1953 Ed.), § 128; 168 A.L.R. 124; St. Patrick's Church Corporation v. Daniels, 113 Conn. 132, 154 A. 343; Burr v. Rago, 120 Conn. 287, 180 A. 444; Rommell v. Walsh, 127 Conn. 272, 16 A.2d 483; Rutland Parkway, Inc. v. Murdock, 241 App.Div. 762, 270 N.Y.S. 971. This rule seems to rest not strictly on the doctrine of *res judicata*, but upon the proposition that it would be arbitrary for the board to arrive at opposite conclusions on substantially the same state of facts and the same law.

In the instant case we have, of course, a prior court determination and the question of *res judicata* is directly involved.

Many zoning questions do not rest upon immutable facts, St. Patrick's Church Corp. v. Daniels, supra, and the application of the rules of *res judicata* is not always so easy and so clear cut as in the Linthicum and Bensel cases. It is our view that where the facts are subject to changes which might reasonably lead to an opposite result from that arrived at in an earlier case, and if there have been substantial changes in facts and circumstances between the first case and the second, the doctrine of *res judicata* would not prevent the granting of the special permit sought by the appellees. They contend that such changes have occurred, and we shall now proceed to examine the alleged differences.

The changes in circumstances which the appellees rely upon may be summarized as follows: (1) increased commercialization of the area; (2) increased population of Baltimore County; (3) decreased opposition of neighbors and some support by them; (4) additional conditions attached to the granting of the permit.

***46** Only two changes in the immediate neighborhood are shown. One is the construction of a new stone church building to replace a wooden one on the property just south of the appellees' land. That involves no commercialization. The other is the addition of one filling station in an area already commercial and already containing two such stations. Its distance from the Wiedefeld property is not clearly shown, but it would seem to be about 400 feet to the south on the York Road.

There have been considerable commercial developments on the York Road both north and south of the appellees' property. The road itself is a heavily traveled north-south highway to the north of the City of Baltimore. La Paix Avenue runs west from the York Road a little to the north of the Wiedefeld land and a number of lots fronting on the south side of La Paix Avenue back on the Wiedefeld tract. Both to the west of No. 7400 York Road and along La Paix Avenue the area is residential. Apart from the new filling station, none of the new commercial developments along the York Road, so far as we are informed, have had any effect upon the residential character of the neighborhood where the protestants live. That one new filling station, some 400 feet to the south on a busy highway, at or near an intersection already having two filling stations does not, in our judgment, show any substantial ****47** change or increase in commercialization between 1949 and 1954.

Increased population of the county and an asserted need for a new funeral home in the Towson area to meet the needs of an increased population added no new element to the case. They were among the items relied upon by the appellees in their first effort to secure a special permit. In the second case, they offered testimony to show a further increase in population and hence a greater need for a new funeral home. Testimony on this phase of the case was more detailed in the second case than in the first, but the issue was the same and the testimony in the present case does not, in our estimation, show a materially different situation from that prevailing in 1949.

***47** With regard to the attitude of the neighbors, there was undoubtedly less opposition to the appellees' second application for a permit than to their first, and some neighbors supported the second application. The Board attached a good deal of weight to these facts. This Court had on several occasions expressed disapproval of zoning and kindred actions being based upon a 'plebiscite of neighbors.' Benner v. Tribbitt, 190 Md. 6, 57 A.2d 346, 353; Northwest Merchants Terminal, Inc., v. O'Rourke, 191 Md. 171, 60 A.2d 743; Kahl v. Consolidated Gas, Electric Light & Power Co., 191 Md. 249, 60 A.2d 754. The latter case and Board of County Com'rs of Anne Arundel Co. v. Snyder, 186 Md. 342, 46 A.2d 689, indicate that the wishes of residents of a neighborhood may be considered by the legislative body in enacting a restrictive regulation; but, as was said in the Kahl case [191 Md. 249, 60 A.2d 757], 'A restrictive act may not be passed or a permit refused merely because the community wants it.' These cases dealt with the imposition of restrictions, not their waiver, but the guiding principle would seem to be the same as to either—the benefit of the community at large. The opinion in the Kahl case shows this to be the basis for the rule, for in the sentence following the above quotation, the majority opinion states: 'But even if the community wants it, that does not invalidate the action of the authorities, if such action is beneficial to the community at large, and prevents the erection of structures inimical to the public health, welfare or safety.' 191 Md. at page 256, 60 A.2d at page 757. There does not seem to have been any difference between the majority and minority opinions on this point. Judge Henderson's dissenting opinion, in which Judge Delaplaine joined, states, at page 264 of 191 Md., at page 761 of 60 A.2d: 'It is quite true that zoning looks to the future, and has as one of its principal objects the preservation of property values in residential districts by prohibiting or restricting the establishment of new commercial or industrial enterprises in particular areas.'

The opinion of the neighbors is doubtless of some weight in appraising the probable effect upon land values in a community of a proposed change in the use of some of the land in the neighborhood; and it is true that Judge Gontrum attached ***48** some importance to the widespread neighborhood opposition to the appellees' first petition. However, the extent of the actual change shown in the attitude of neighbors does not seem impressive. Those most directly affected remain opposed to the appellees' petition. It is not shown how many of the members of the nearby church lived in the immediate vicinity—other than the minister—and it appears that a considerable part of the congregation lived at some little distance from the church and the proposed funeral home. One newcomer to the neighborhood who lived on the other side of the York Road favored the petition, another witness who resided 500 feet away, also on the other side of the York Road and in the neighborhood of the filling stations, favored it. Still another, a personal friend of Mr. Wiedefeld, who lived a block or so away, and who was doubtful whether he could see the Wiedefeld property from his home, but thought he might possibly be able to see it from the second floor, was ****48** favorable to the granting of the permit. He admitted that his feelings might be different if the funeral home was to be alongside of his home.

None of these witnesses, so far as we are informed, testified to any facts upon which his opinion was based which had not been presented, or available for presentation, in the first case.

In our view, such change in neighborhood sentiment as may be shown by the record, including any inference which may be drawn from the absence of organized neighborhood association opposition in the second case, does not show such a change in circumstances as to make the doctrine of *res judicata* inapplicable.

The additional conditions attached to the granting of the permit in the second case seem to amount to only slight distinctions.

Restricting the area covered by the permit to a depth of 400 feet west of the York Road made no substantial practical difference at least with regard to the immediate use of the property. That 400 foot depth included, as the Board stated, all of the area which the petitioners proposed ***49** to use for the funeral home according to a plat submitted to the Board. This plat also showed some plans with regard to shrubbery, parking areas and driveways, and was incorporated by reference in the Board's opinion and order. Its provisions with regard to the planting of shrubbery were somewhat more extensive than what was required by the Board's order in the first case. There were also some changes in proposed lighting and in the sign to be placed at the entrance, but they were of little moment.

In general, we think that the petitioners presented a more thorough and persuasive case on their second application than on their first. This was notably true of the evidence with regard to the probable effect of the establishment of a funeral home upon land values in the neighborhood, even though the trial Judge declined to accept the appraisers' views based upon comparable properties in another suburban area at their full face value, because they did not take sufficiently into account the general rise in land values.

But the application of the rule of *res judicata* does not depend upon whether or not the case was as comprehensively or persuasively presented at the first trial as at the second. As was stated in Sterling v. Local 438, etc., 207 Md. 132, 113 A.2d 389, 393, certiorari denied 350 U.S. 875, 76 S.Ct. 119, 100 LEd. 773, rehearing denied 350 U.S. 898, 76 S.Ct. 151, 100 L.Ed. 789, motions for leave to file petitions for rehearing denied 350 U.S. 943, 76 S.Ct. 298, 100 L.Ed. 823, 'If the second suit is between the same parties and is upon the same cause of action, a judgment in the earlier case on the merits is an absolute bar, not only as to all matters which were litigated in the earlier case, but as to all matters which could have been litigated.' The first rezoning case was litigated and all the information which could have been produced should have been produced and the second case cannot be decided on testimony whih might have been introduced in the first case.

Because essentially the same facts appeared in the second case as appeared or as could have been shown in the first case, the appellees are barred by *res judicata*, the their petition ***50** should have been denied. The order of the Circuit Court will accordingly be reversed and the case remanded.

Order reversed, with costs, and the case remanded to the Circuit Court for Baltimore County for the passage of an order in accordance with the opinion of this Court.

All Citations

211 Md. 36, 125 A.2d 41, 71 A.L.R.2d 1353

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125 A.2d 41, 71 A.L.R.2d 1353

EXHIBIT #1

Real Property Data Search ( )
Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Special Tax Recapture: None

Account Identifier: District - 15 Account Number - 1519510661

Owner Information

Owner Name:	MYRICK CECILE V	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	1326 GOOSE NECK RD BALTIMORE MD 21220-4027	**Deed Reference:**	/43637/ 00449

Location & Structure Information

Premises Address:	1326 GOOSE NECK RD BALTIMORE 21220-4027 Waterfront	**Legal Description:**	684 S GOOSE HARBOR BOWLEYS QUARTERS

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0091	0023	0133	15030020.04	0000		247		2024	2

Plat Ref: 0009/ 0012

Town: None

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1942	1,821 SF		11,200 SF	34

Stories	Basement	Type	Exterior	Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
1 1/2	NO	STANDARD UNIT	BRICK/	3	1 full	1 Detached	

Value Information

	Base Value	Value	Phase-in Assessments	
		As of 01/01/2021	As of 07/01/2023	As of 07/01/2024
Land:	261,200	261,200		
Improvements	104,900	104,900		
Total:	366,100	366,100	366,100	
Preferential Land:	0			

Transfer Information

Seller: MYRICK JAMES R	**Date:** 11/16/2020	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /43637/ 00449	**Deed2:**
Seller: SMITH HARRY E,SR	**Date:** 03/10/1971	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /05171/ 00705	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2023	07/01/2024
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00	0.00

Special Tax Recapture: None

Homestead Application Information

Homestead Application Status: Approved 02/17/2014

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application **Date:**

EXHIBIT #2A & 2B

PROFESSIONAL CERTIFICATION

STATE OF MARYLAND · GEOFFREY A. TIZZARD II · No. 15453 · PROFESSIONAL ENGINEER

10/17/2023

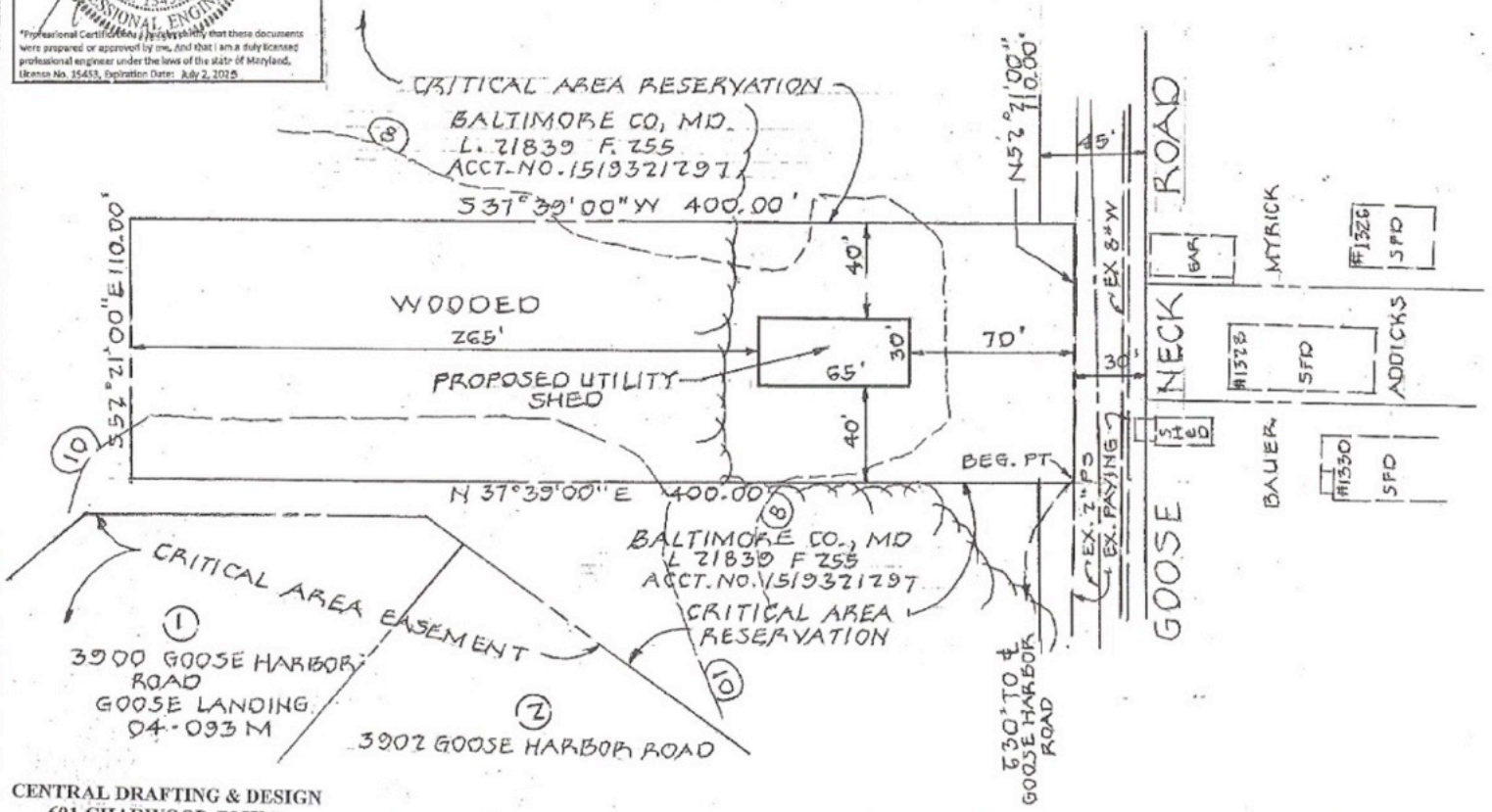
*Professional Certification. I hereby certify that these documents were prepared or approved by me, And that I am a duly licensed professional engineer under the laws of the state of Maryland, License No. 15453, Expiration Date: July 2, 2025

ZONING HEARING PLAN FOR VARIANCE ___ FOR SPECIAL HEARING X (MARK TYPE REQUESTED WITH X)

ADDRESS 1327 GOOSE NECK ROAD OWNER(S) NAME(S) CECILE MYRICK

SUBDIVISION NAME N/A LOT # N/A BLOCK # N/A SECTION # N/A

PLAT BOOK # N/A FOLIO # N/A 10 DIGIT TAX # 1600001460 DEED REF. # 43637 490



CENTRAL DRAFTING & DESIGN
601 CHARWOOD COURT
EDGEWOOD, MD 21040
(410) 679-8719

PLAN DRAWN BY DWB DATE 10-14-23 SCALE: 1 INCH = 50 FEET



ZONING MAP# 098C1

SITE ZONED RC5

ELECTION DISTRICT 15

COUNCIL DISTRICT 5

LOT AREA ACREAGE 1.01AC

OR SQUARE FEET ___

HISTORIC ? NO

IN CBCA ? YES

IN FLOOD PLAIN ? YES

UTILITIES ? MARK WITH X

WATER IS:

PUBLIC X PRIVATE ___

SEWER IS:

PUBLIC X PRIVATE ___

PRIOR HEARING ? YES

IF SO GIVE CASE NUMBER AND ORDER RESULT BELOW

1984-0147-XSPHA

1993-0221-A

2023-0070-SPH

VIOLATION CASE INFO:

PROFESSIONAL CERTIFICATION

STATE OF MARYLAND
GEOFFREY A. TIZARD II
No. 15453
PROFESSIONAL ENGINEER

10/17/2023

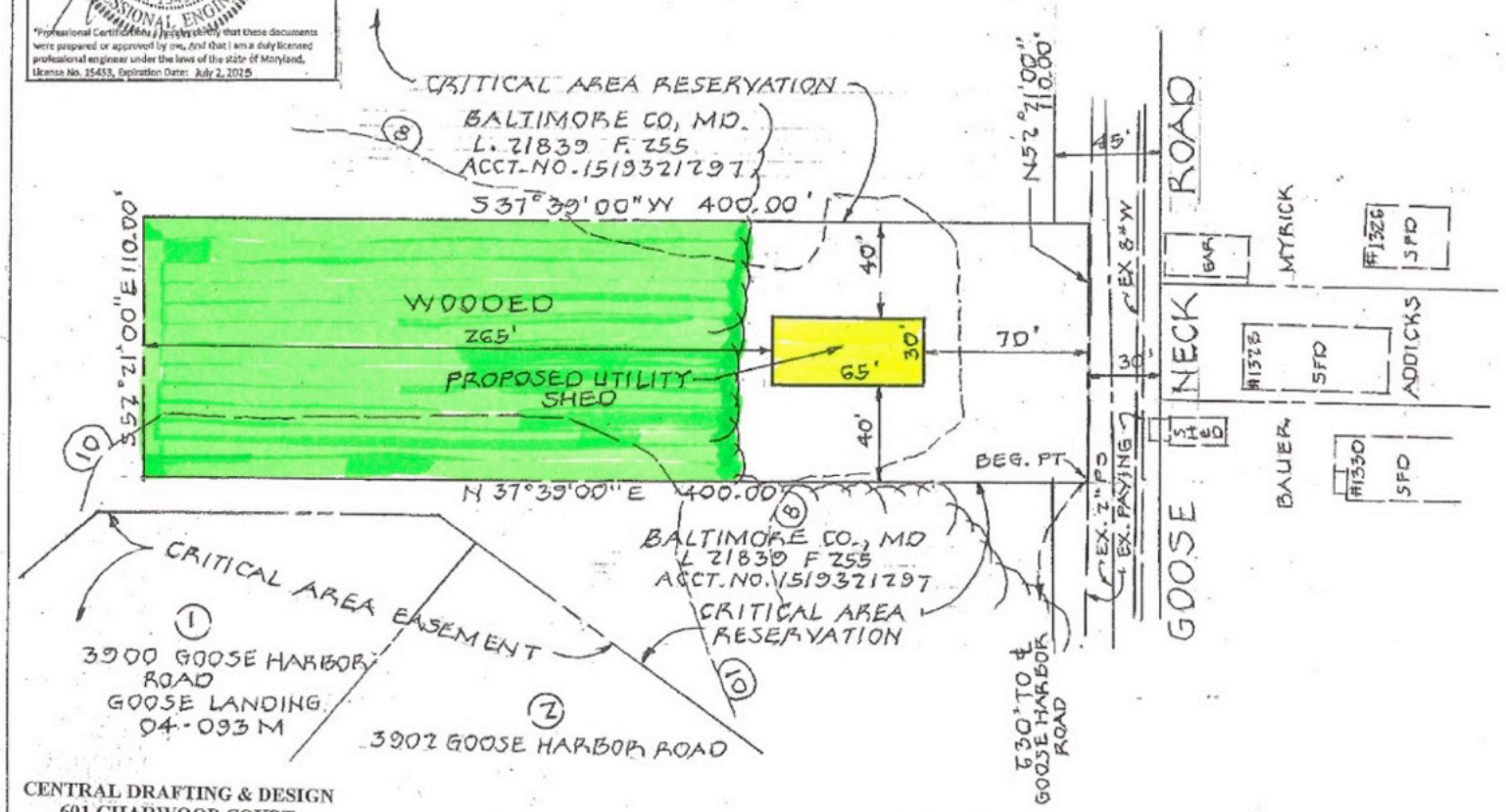
*Professional Certification. I hereby certify that these documents were prepared or approved by me, and that I am a duly licensed professional engineer under the laws of the state of Maryland, License No. 15453, Expiration Date: July 2, 2025

ZONING HEARING PLAN FOR VARIANCE ___ FOR SPECIAL HEARING X (MARK TYPE REQUESTED WITH X)

ADDRESS 1327 GOOSE NECK ROAD OWNER(S) NAME(S) CECILE MYRICK

SUBDIVISION NAME N/A LOT # N/A BLOCK # N/A SECTION # N/A

PLAT BOOK # N/A FOLIO # N/A 10 DIGIT TAX # 1600001460 DEED REF. # 43637 490





CENTRAL DRAFTING & DESIGN
601 CHARWOOD COURT
EDGEWOOD, MD 21040
(410) 679-8719

PLAN DRAWN BY: DWB DATE 10-14-23 SCALE: 1 INCH = 50 FEET

ZONING MAP# 098C1
SITE ZONED RC5
ELECTION DISTRICT 15
COUNCIL DISTRICT 5
LOT AREA ACREAGE 1.01AC
OR SQUARE FEET ___
HISTORIC ? NO
IN CBCA ? YES
IN FLOOD PLAIN ? YES
UTILITIES ? MARK WITH X
WATER IS:
PUBLIC X PRIVATE ___
SEWER IS:
PUBLIC X PRIVATE ___
PRIOR HEARING ? YES
IF SO GIVE CASE NUMBER AND ORDER RESULT BELOW
1984-0147-XSPHA
1993-0221-A
2023-0070-SPH

VIOLATION CASE INFO:

EXHIBIT #3

9/22/94

IN THE MATTER OF THE APPLICATION OF JAMES R. MYRICK, ET UX FOR VARIANCE ON PROPERTY LOCATED ON THE SOUTHWEST SIDE OF GOOSE-NECK ROAD, 626.89 FT. NW OF GOOSE HARBOR ROAD (1327 GOOSENECK ROAD) 15TH ELECTION DISTRICT 5TH COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO: 93-221-A

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

O P I N I O N

This case comes before the Board on appeal from a decision of the Zoning Commissioner in which the petition for variance was ultimately approved. On March 29, 1994, the Zoning Commission r denied the petition for variance. Petitioner then filed a Motion for Reconsideration and this Motion for Reconsideration was granted and the hearing was held and the variance to permit the construction of the utility shed was approved. The case was heard this day in its entirety.

The matter before the Board concerns a petition for variance to permit a utility shed as an accessory structure on a lot that contains no principal structure. The file and the record in this case indicate that People's Counsel did not participat at the Zoning Commissioner's level nor were there any protestants. People's Counsel did not participate in the reconsideration hearing nor were there any protestants. In today's hearing there are no neighborhood protestants and, in fact, entered as Petitioner's Exhibit No. 4, is a petition in favor of the variance by all the residents on Gooseneck Road.

Testifying for the petitioner was Stephen R. Broyles, Land Surv yor and D velop r, who prepared the site plan on this lot and

described it and the surrounding areas in great detail. The site plan was entered as Petitioner's Exhibit No. 1.

Cecile Myrick, property owner and petitioner testified as to the condition of the lot and its general use. People's Counsel presented no witnesses, but entered 10 exhibits into the record.

By uncontradicted testimony, the Board is made aware that the lot is vacant; will not perk; no residential building permit can be obtained; it is 40% wooded and 60% open space grass, and that the property has picnic tables on it and has served recreational purposes by friends, neighbors, and family of the Petitioner. The Board will note that the Myricks own the lot across Gooseneck Road from this site, but that no further building can be permitted on this lot. The lot is zoned R.C.20 which permits open space use of the property. The Petitioner pays taxes on this property and is denied theoretically any use of the property, except to keep it mowed and maintained as a recreational use. While there is no principal building on the property nor can any be erected, the proposed utility shed can be an accessory use to the only use afforded the property that of a recreational use. If for any reason, an accessory structure is a detriment to the neighborhood, creates noise, obstructs a view, or any other reason detrimentally, the variance should be denied. This proposed use does not. All the neighbors have indicated approval of it and there was no testimony that it has been used other than anything but a grassy lot for cook-outs, picnics, etc., for friends and family. The

Case N . 93-221-A James R. Myrick, et ux

Board will note that in the past, the Myricks have attempted to use this lot in conjunction with their commercial fishing and crabbing operation, but this use has been denied and the only use remaining on the lot is a recreational one. The Board is of the opinion that the variance to permit the utility shed should be granted. However, its use is to be restricted to the storage of lawn mowers, picnic tables, grills, etc., and is not to be used in any way as an accessory use to the commercial use across the street.

O R D E R

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

ORDERED that the petition for variance be and the same is hereby **GRANTED** with the following restriction:

1. No use in any way associated with the commercial fishing and crabbing business will be permitted on this site.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett

William T. Hackett, Chairman

Michael B. Sauer

Michael B. Sauer

Robert O. Schuetz

Robert O. Schuetz

Plat to accompany Petition for Zoning ☐ Variance ☐ Special Hearing

PROPERTY ADDRESS: 1327 GOOSENECK ROAD ~ BALTO. CO. MD. see pages 5 & 6 of the CHECKLIST for additional required information

Subdivision name: N/A

plat book# ~ ,folio# ~ ,lot# ~ ,section# ~ LIBER 5917 ~ FOLIO 584

OWNER: CECILE V. MYRICK

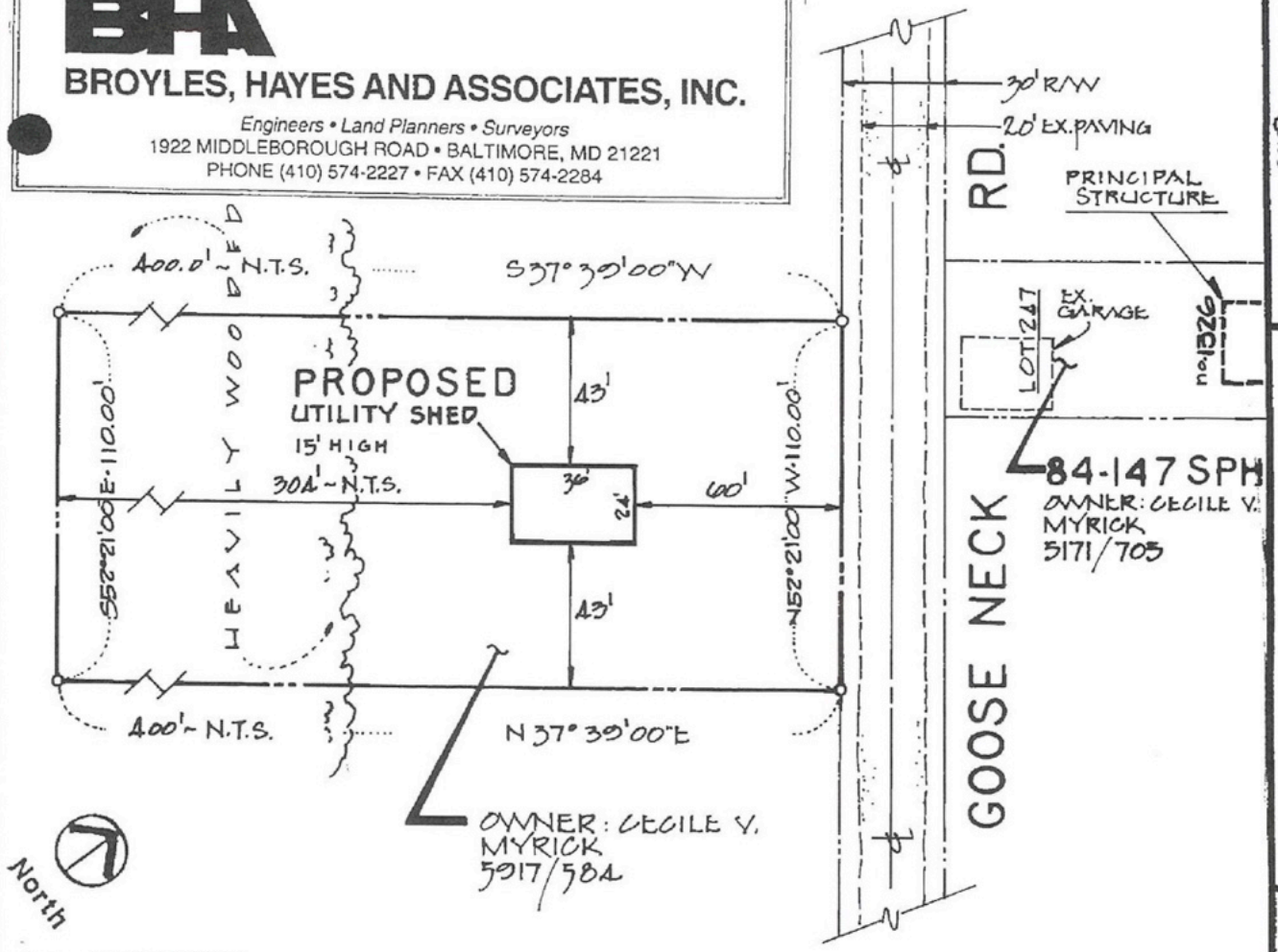
BHA

BROYLES, HAYES AND ASSOCIATES, INC.

Engineers • Land Planners • Surveyors

1922 MIDDLEBOROUGH ROAD • BALTIMORE, MD 21221

PHONE (410) 574-2227 • FAX (410) 574-2284





LOCATION INFORMATION

Councilmanic District: 5TH

Election District: 15TH

1"=200' scale map#: NE 2-L

Zoning: RC5

Lot size: 1.01 acreage / 44,000 square feet

	public	private
SEWER:	☐	●
WATER:	●	☐

	yes	no
Chesapeake Bay Critical Area:	●	☐

Prior Zoning Hearings:

Zoning Office USE ONLY!

reviewed by: ITEM #: CASE#:

dat : DEC. 17, 1992

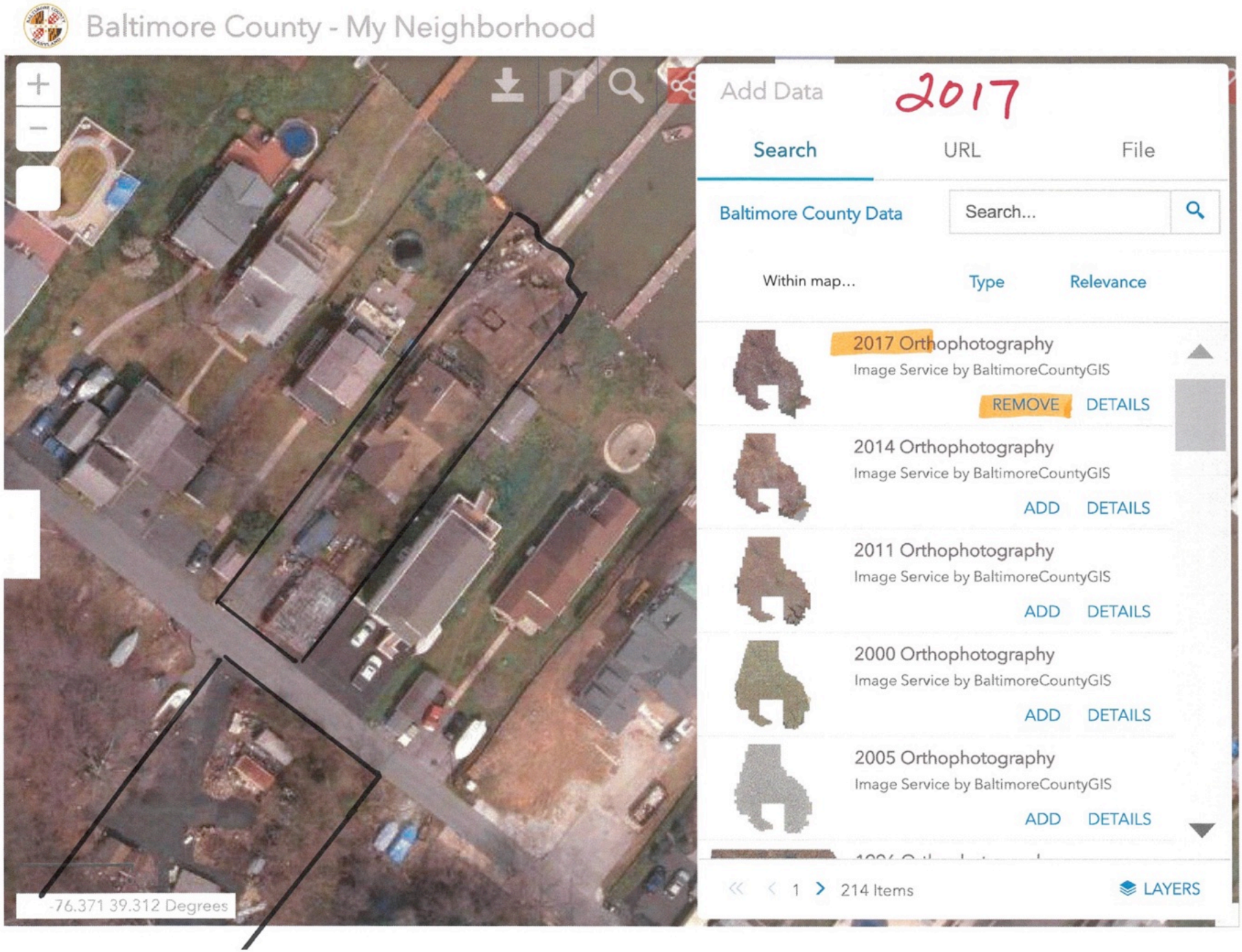
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EXHIBIT #4

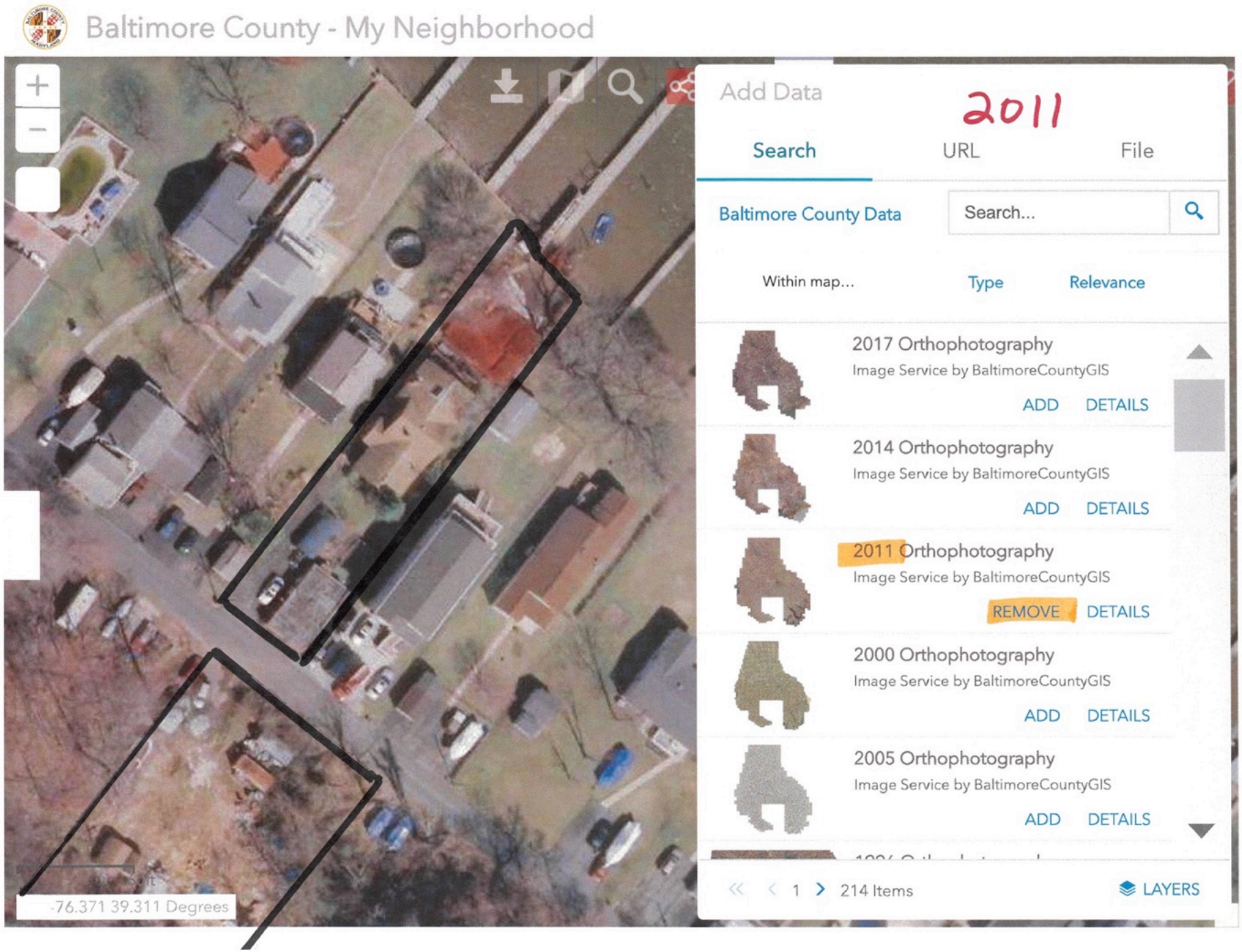

WARRANTY
2 YEARS
WARRANTY
We Have Been Manufacturing Our Products
Since 1995
GOLD MOUNTAIN
30'×65' ×15'
*Greater/Seam Strength/Abrasion Resistance/PE
*UV Proof, Leak Resistant, Fire Resistance
Parts and Service in USA & Canada
*11 Arches and 22 Anchor Plates
*door size : 11.5' X 11.5'
*mandoor size : 2.7' X 6.3'
Email: jeffz@cheryhilo.com
Tel: 516-493-9951
Fax: 516-493-9950
Site:service@cheryindustrial.com
61 Commercial Av,Garden City,NY 11530

EXHIBIT #5


Baltimore County - My Neighborhood
2020
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GOOSENECK RD
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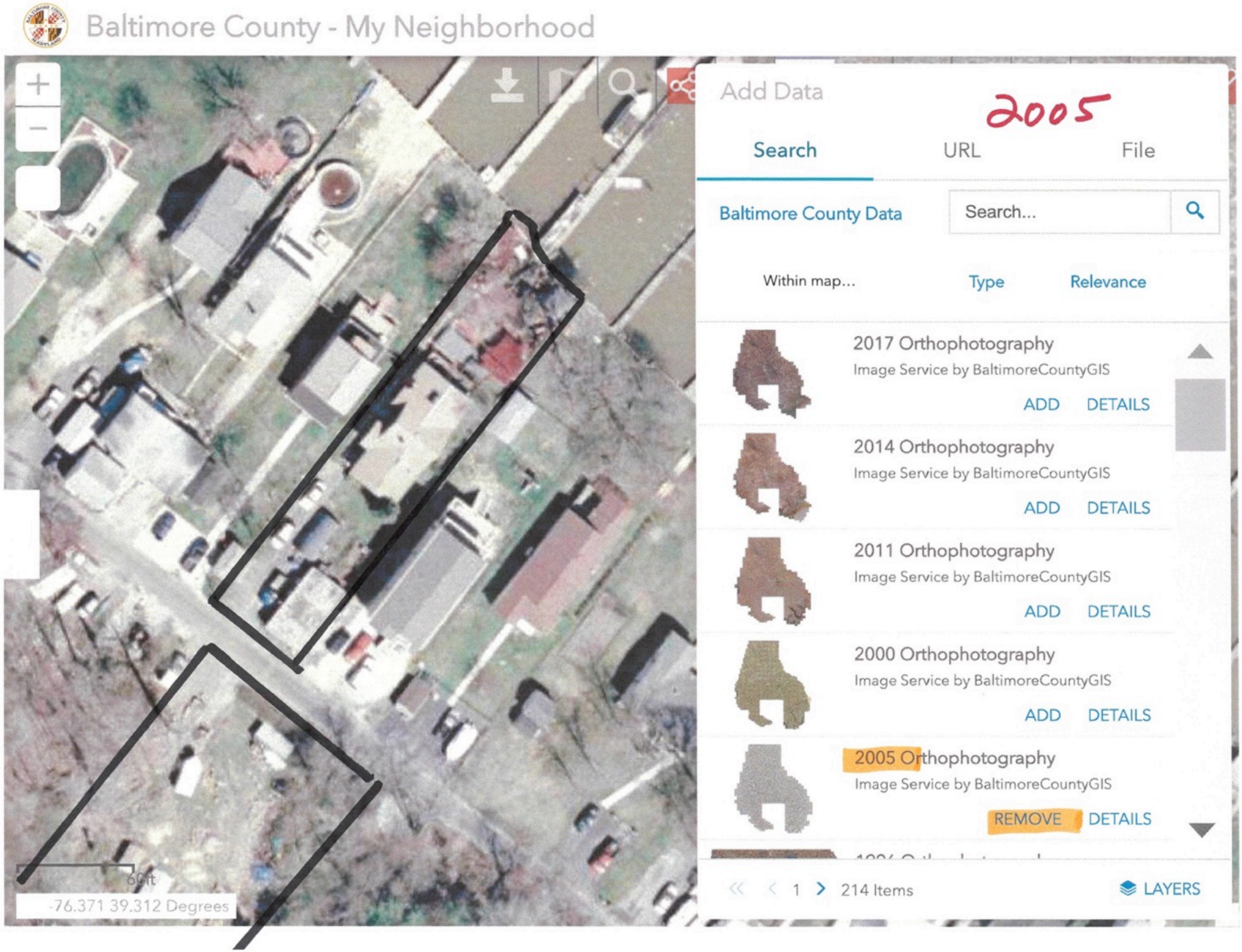

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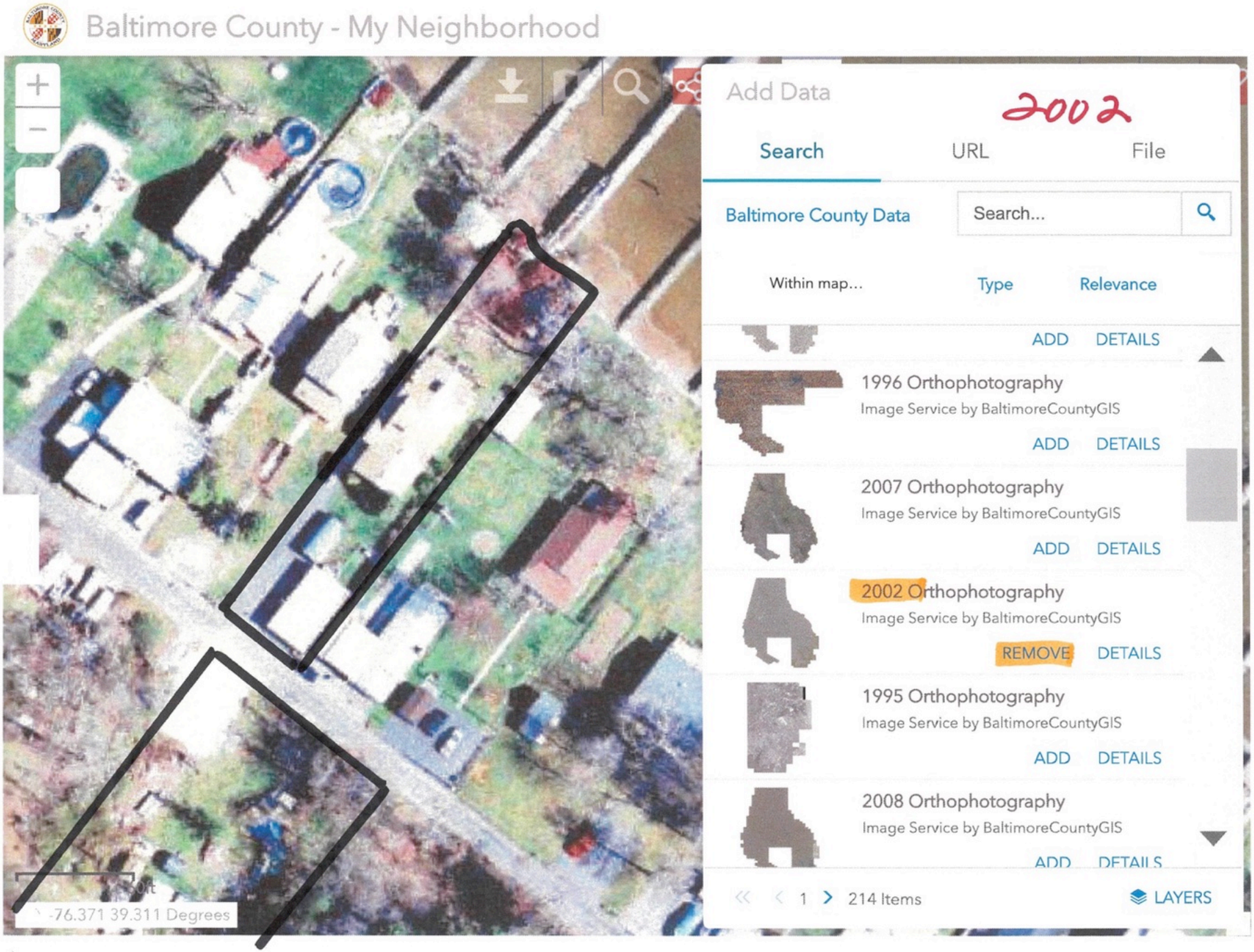

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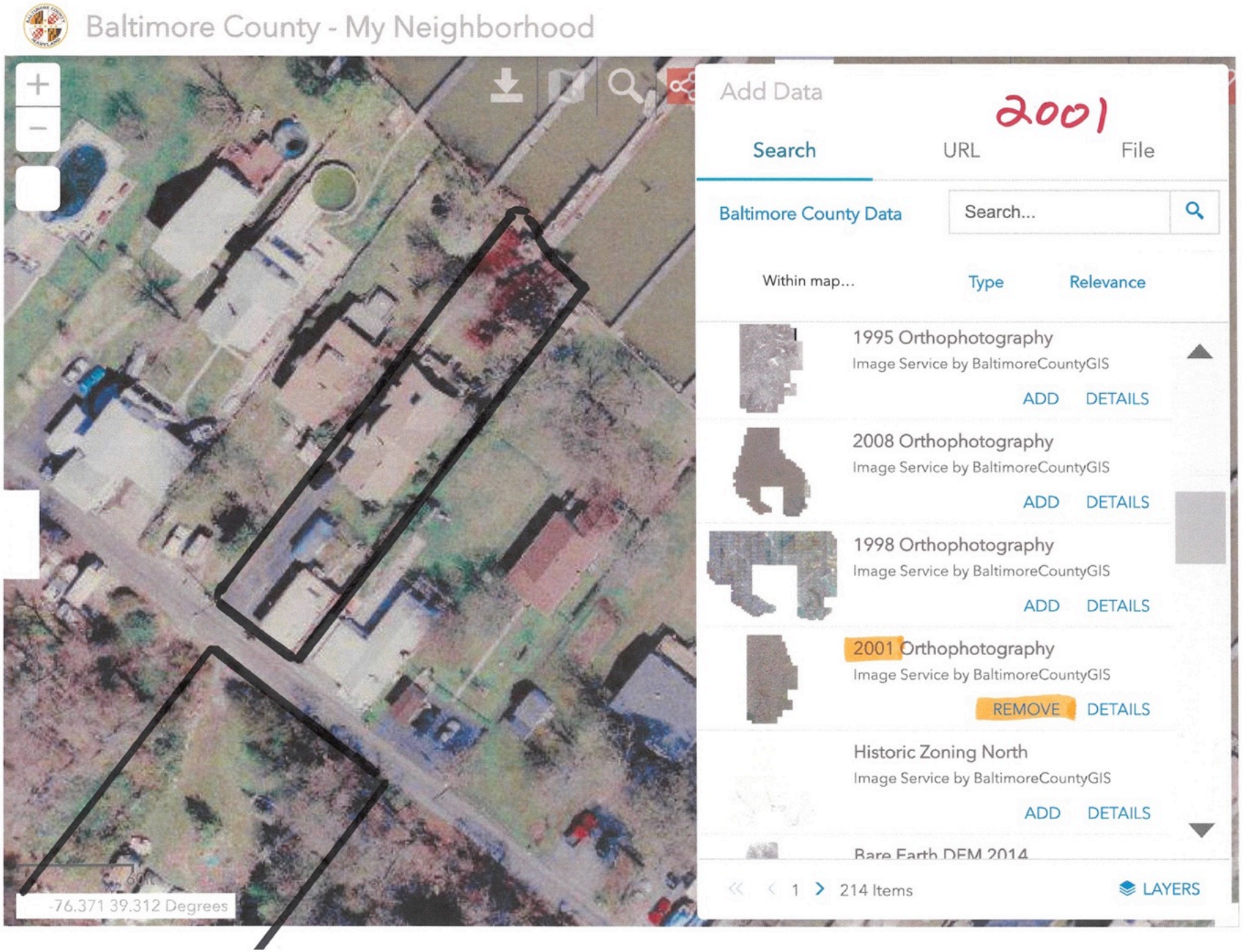

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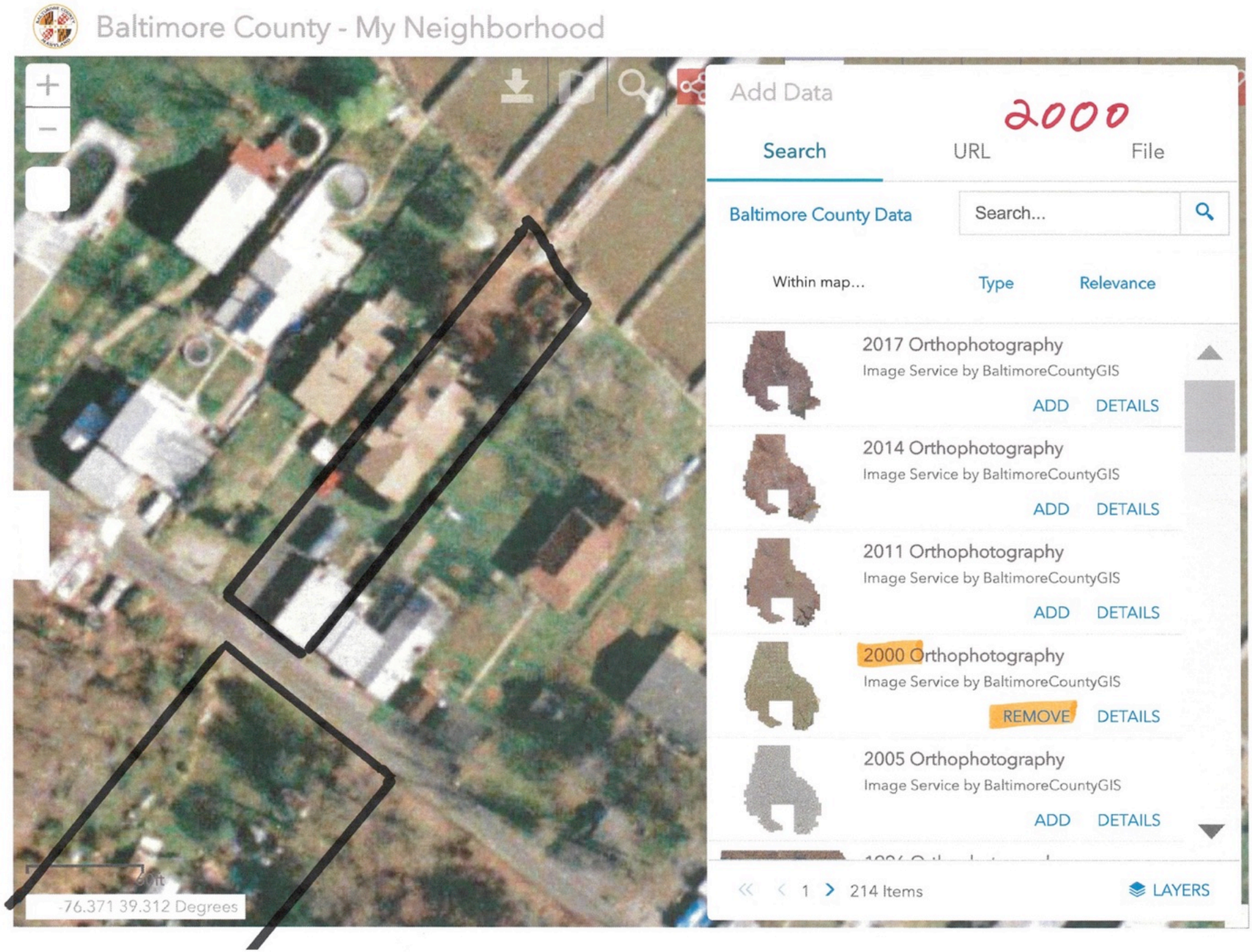

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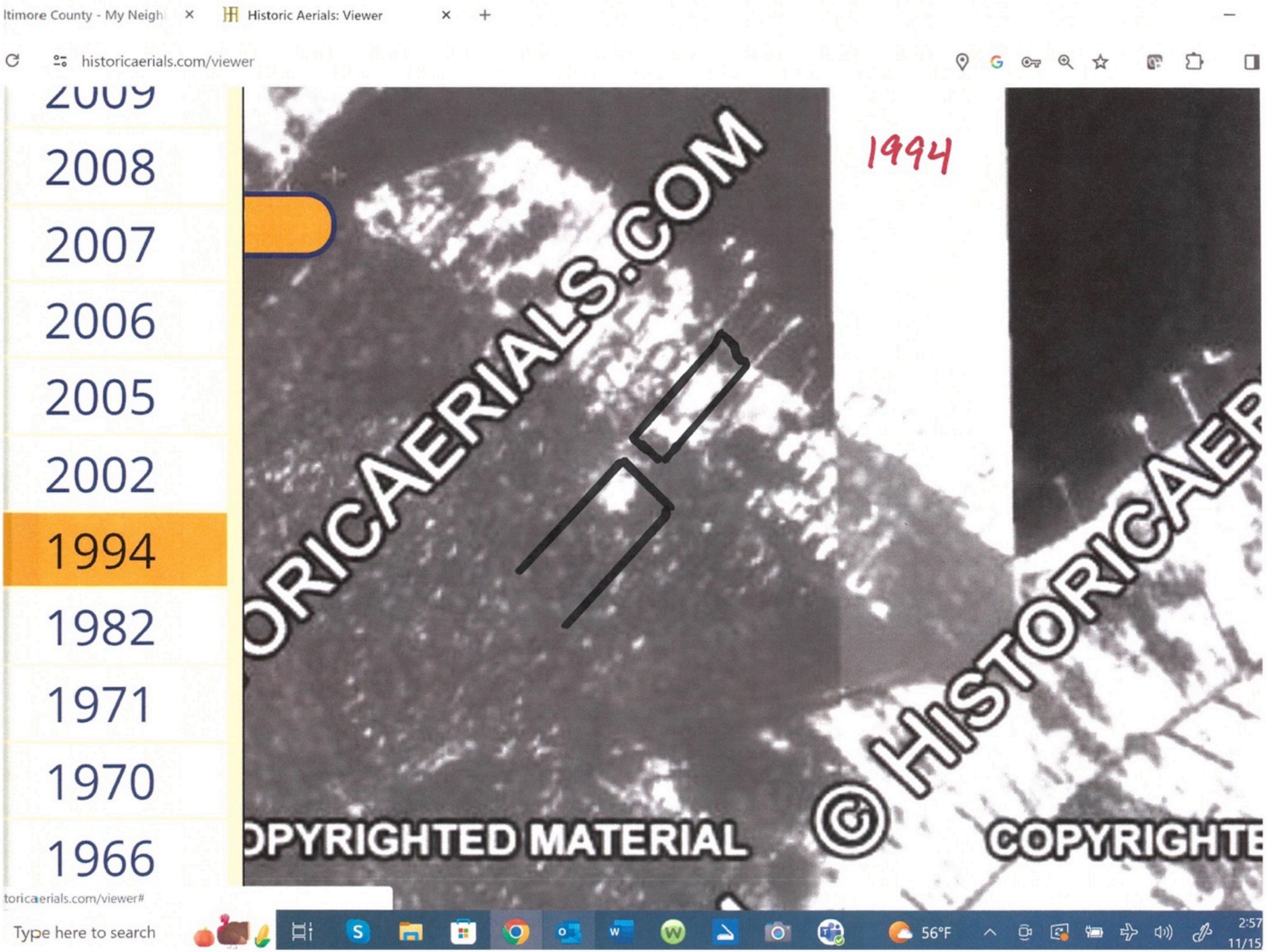

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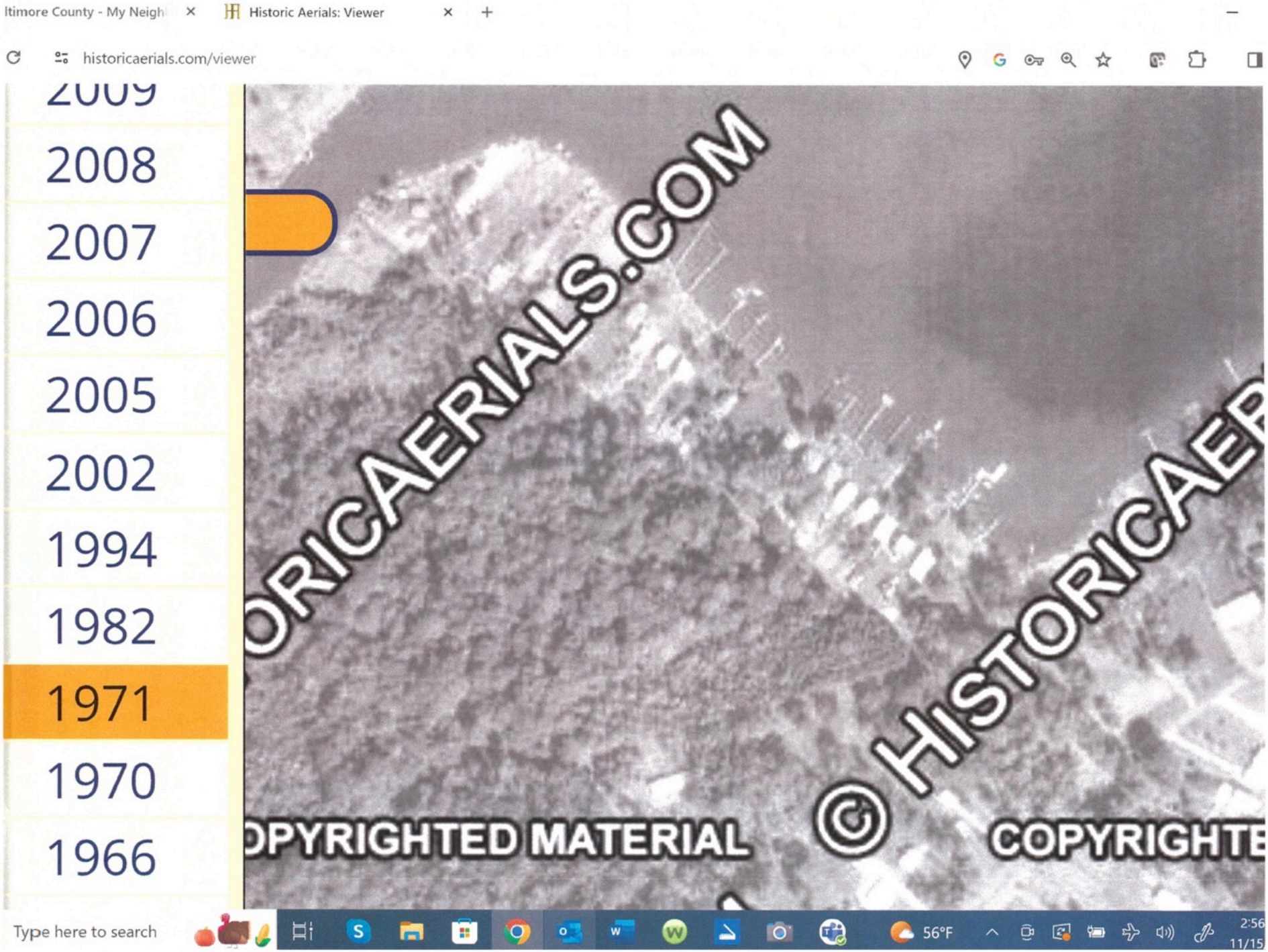

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EXHIBIT #6

TIMOTHY M. KOTOCO, Esq.

305 Washington Avenue, Suite 502

Towson, Maryland 21204

410-299-2943

TKotroco@gmail.com

I am familiar with the Myrick property located on Goose Neck Road, James Myrick, and his crabbing operation. I understand the property is the subject of an upcoming hearing and I am aware of Mr. Myrick's plan to move his crabbing equipment to his vacant lot across the street while continuing to use the property the residence occupies to operate the crabbing business.

Name	Signature	Address	Email
Beth Huesman		1352 Gooseneck Rd	
George Wolff		1345 " "	
Michael Kulakowski		1342 " " "	
Dawn Pedone	Dawn Pedone	1340 Gooseneck Rd	
George A. Adams		1338 Goose Neck Rd	
Paul Addicks		1328 Goose Neck Rd	
Butch Leilich		1324 Goose Neck Rd	
Michael Baker		1330 Goose Neck	
Richard Snellenberger		1334 Goose Neck Rd	
Chris Kratz		1344 Goose Neck	
Charlotte Oktavec	C. Oktavec	1322 Goose Neck	
Mark Zannino		1312 Goose Neck Rd	

Baltimore County - My Neighborhood

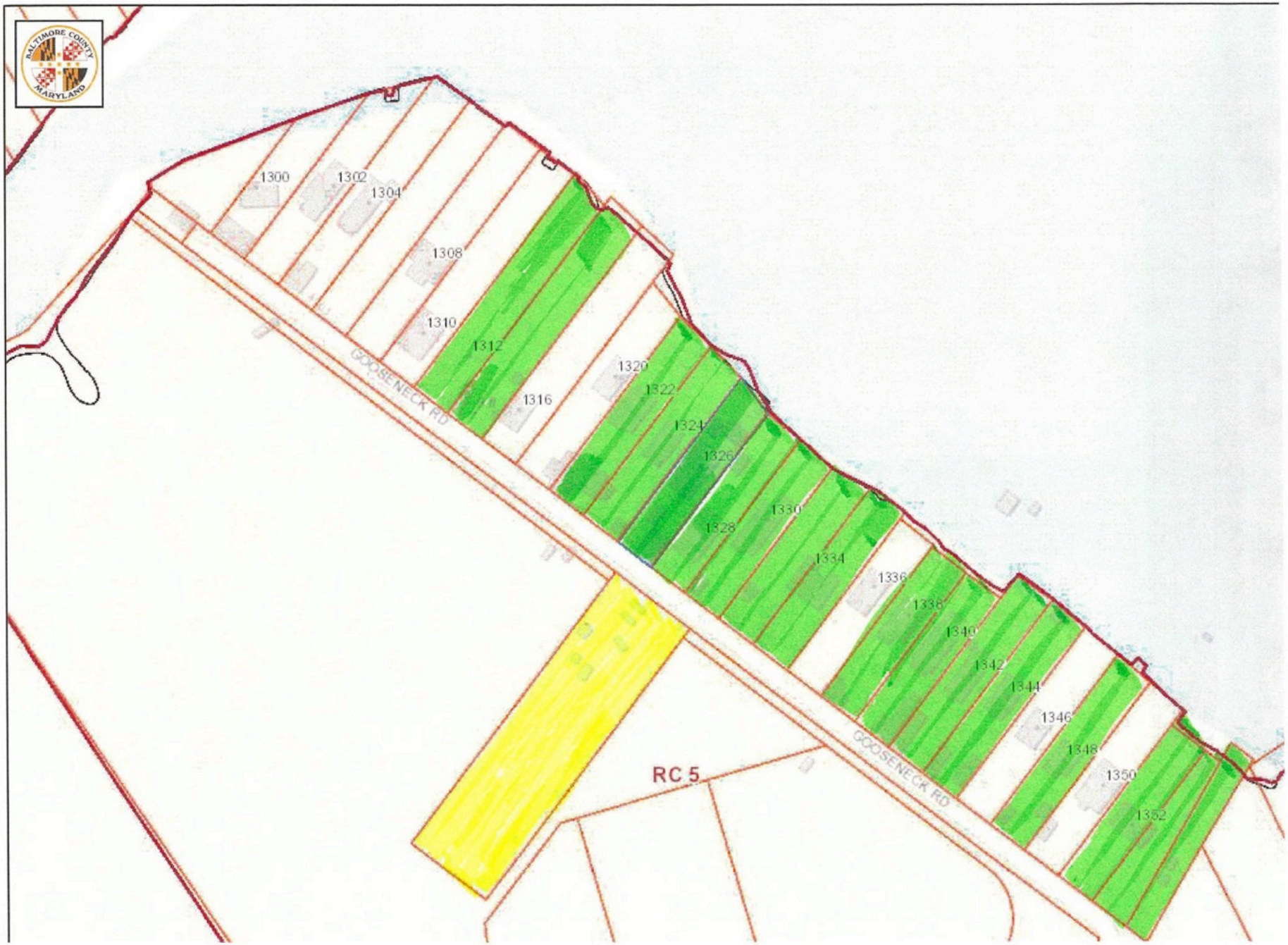
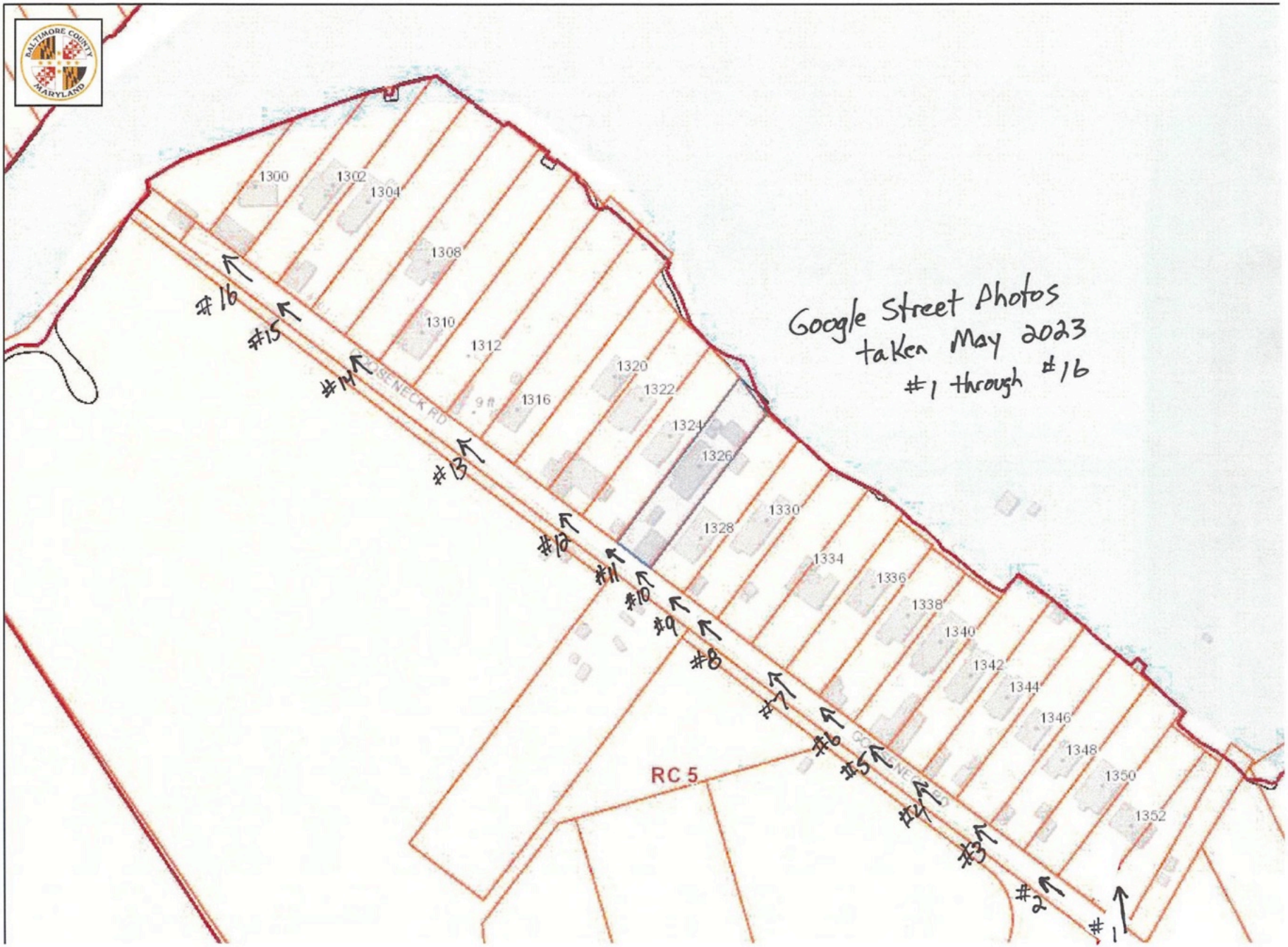
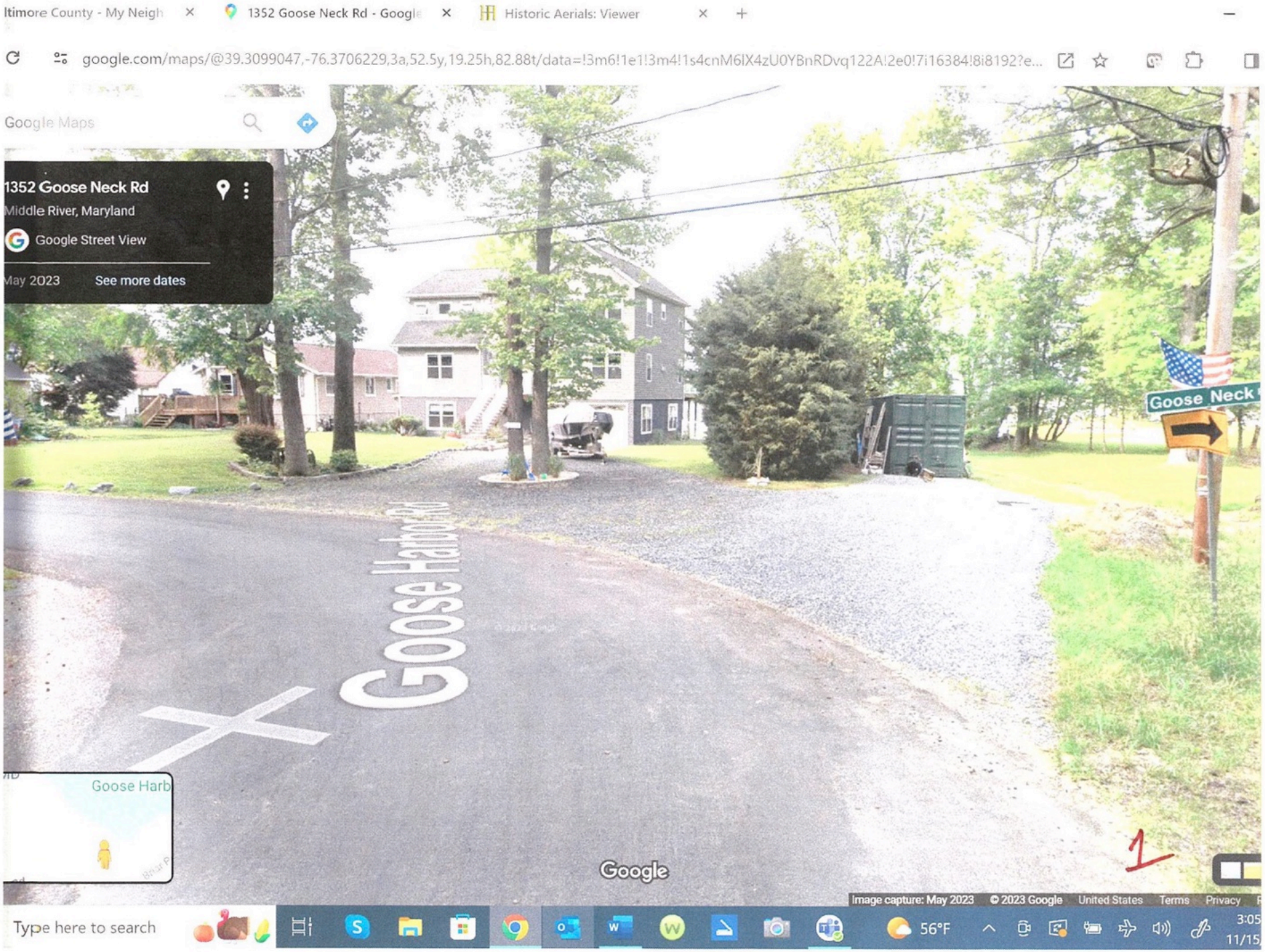
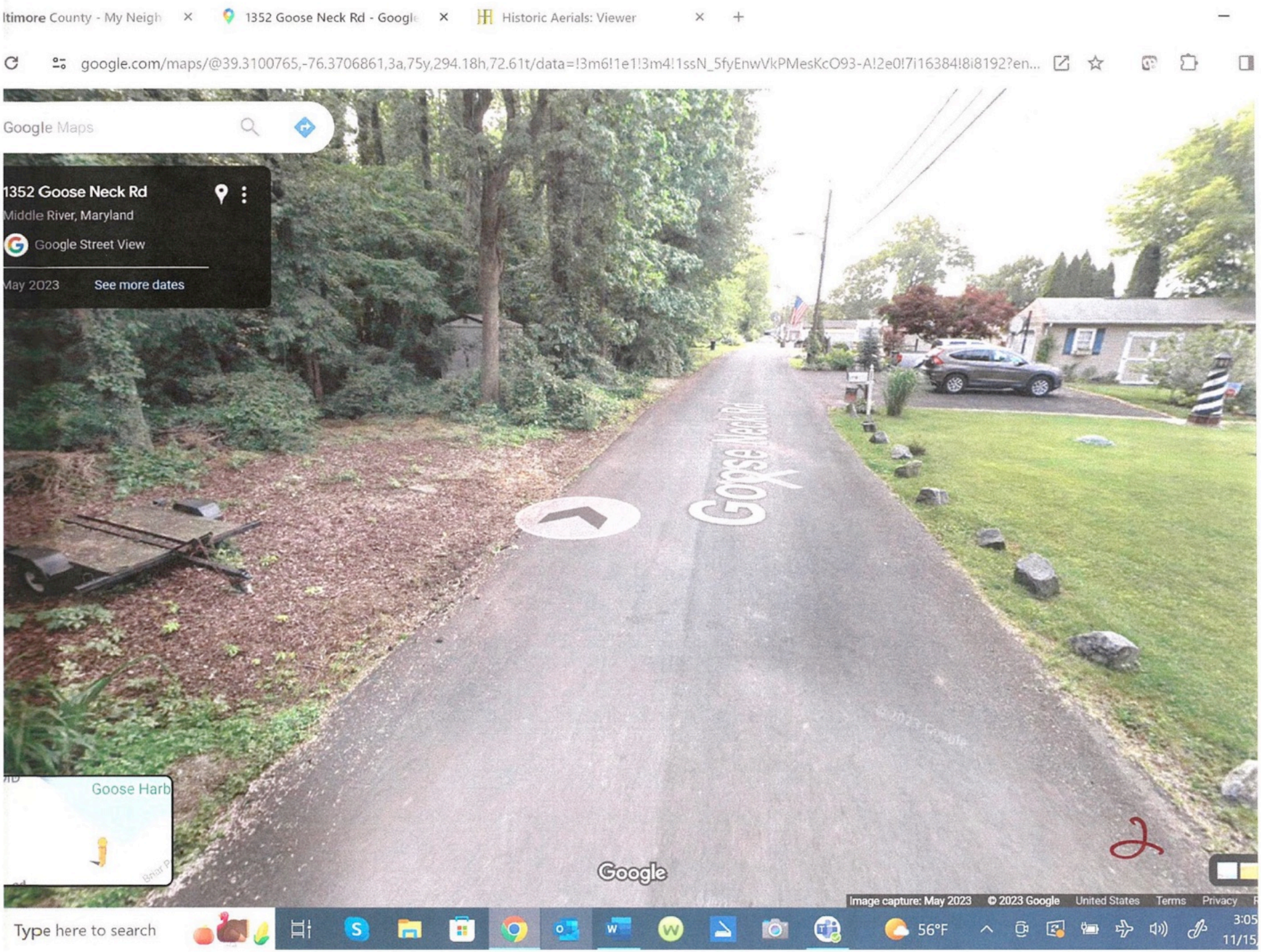


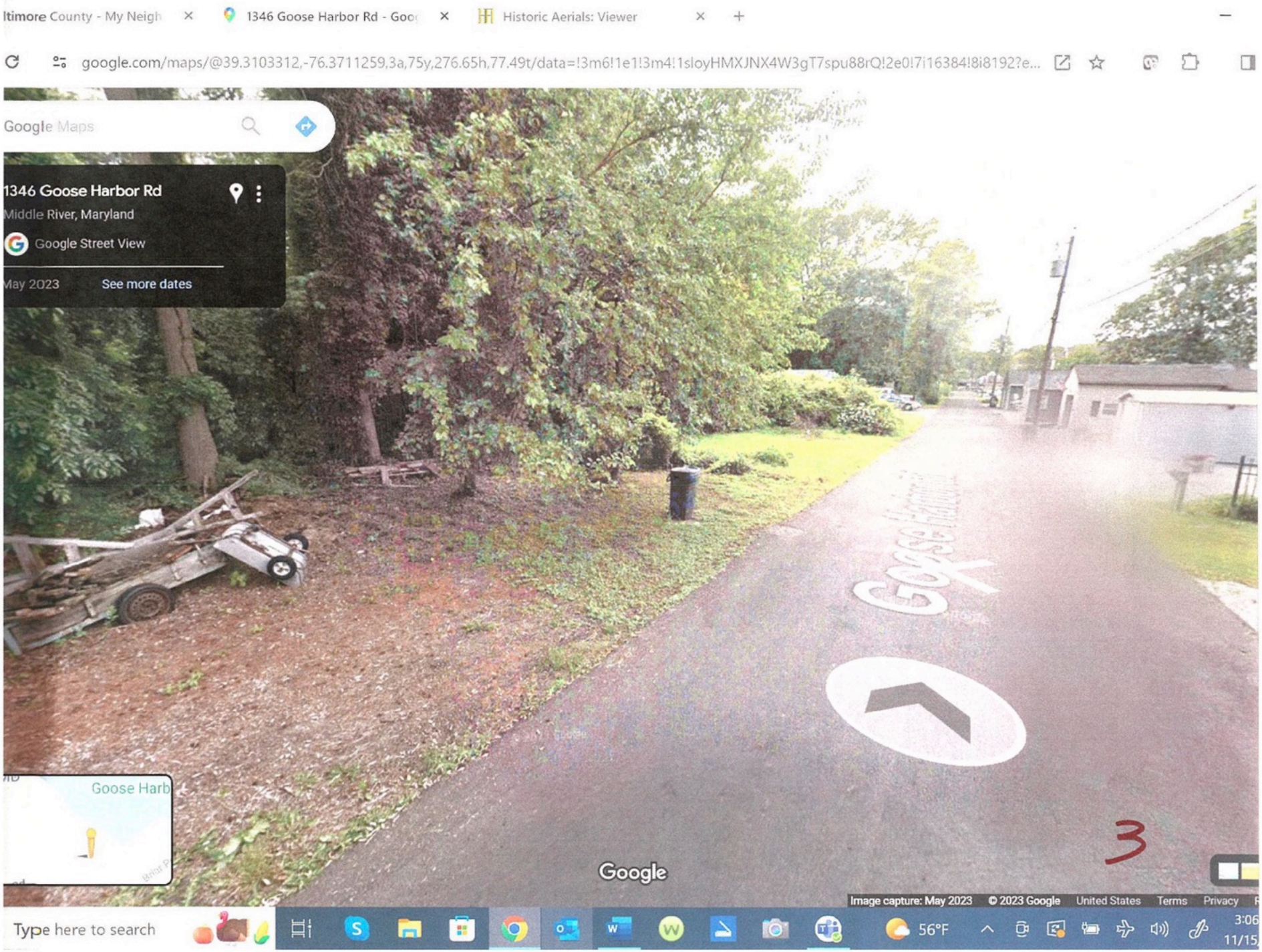
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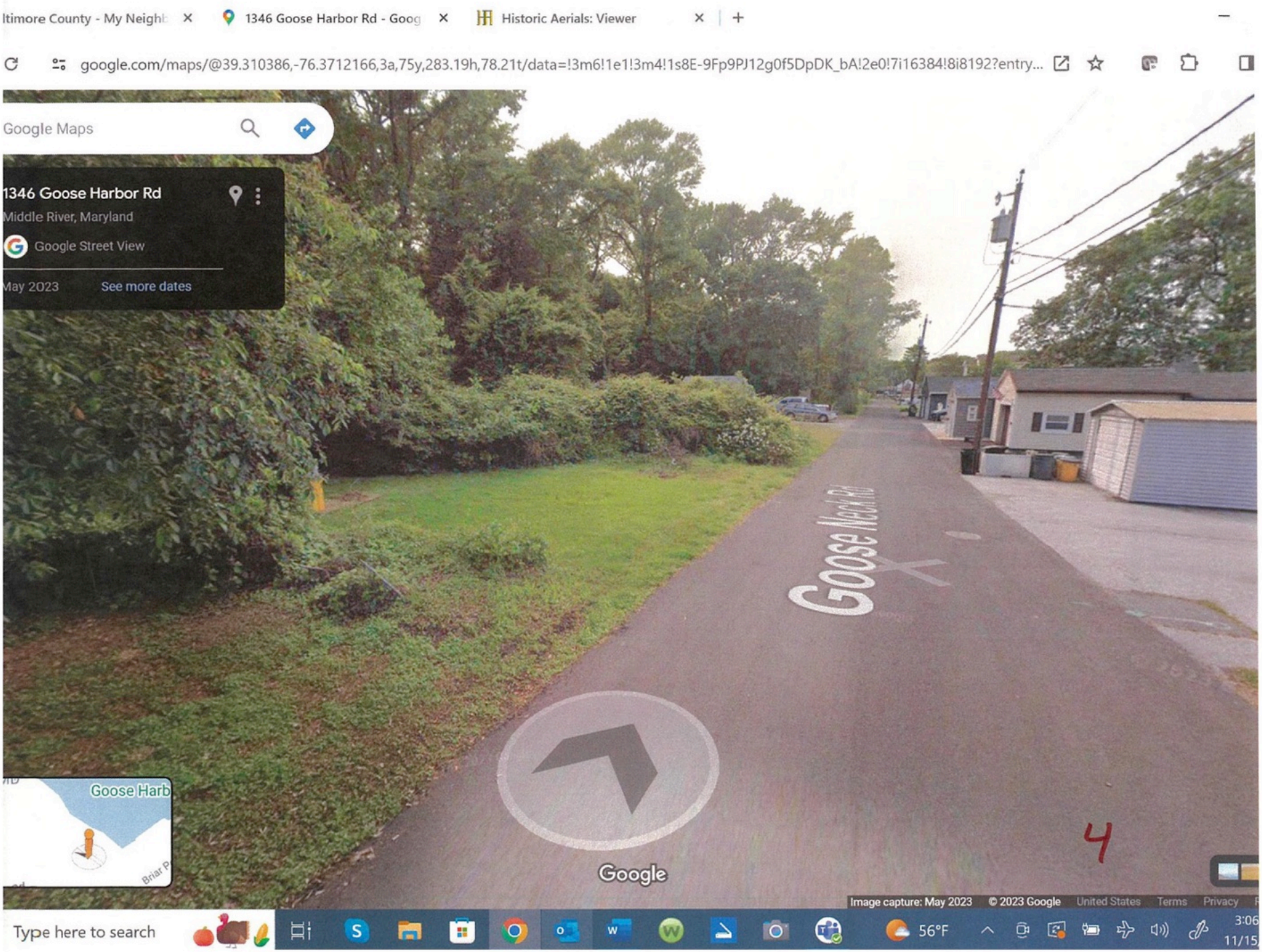
Baltimore County - My Neighborhood




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1352 Goose Neck Rd - Google
Historic Aerials: Viewer
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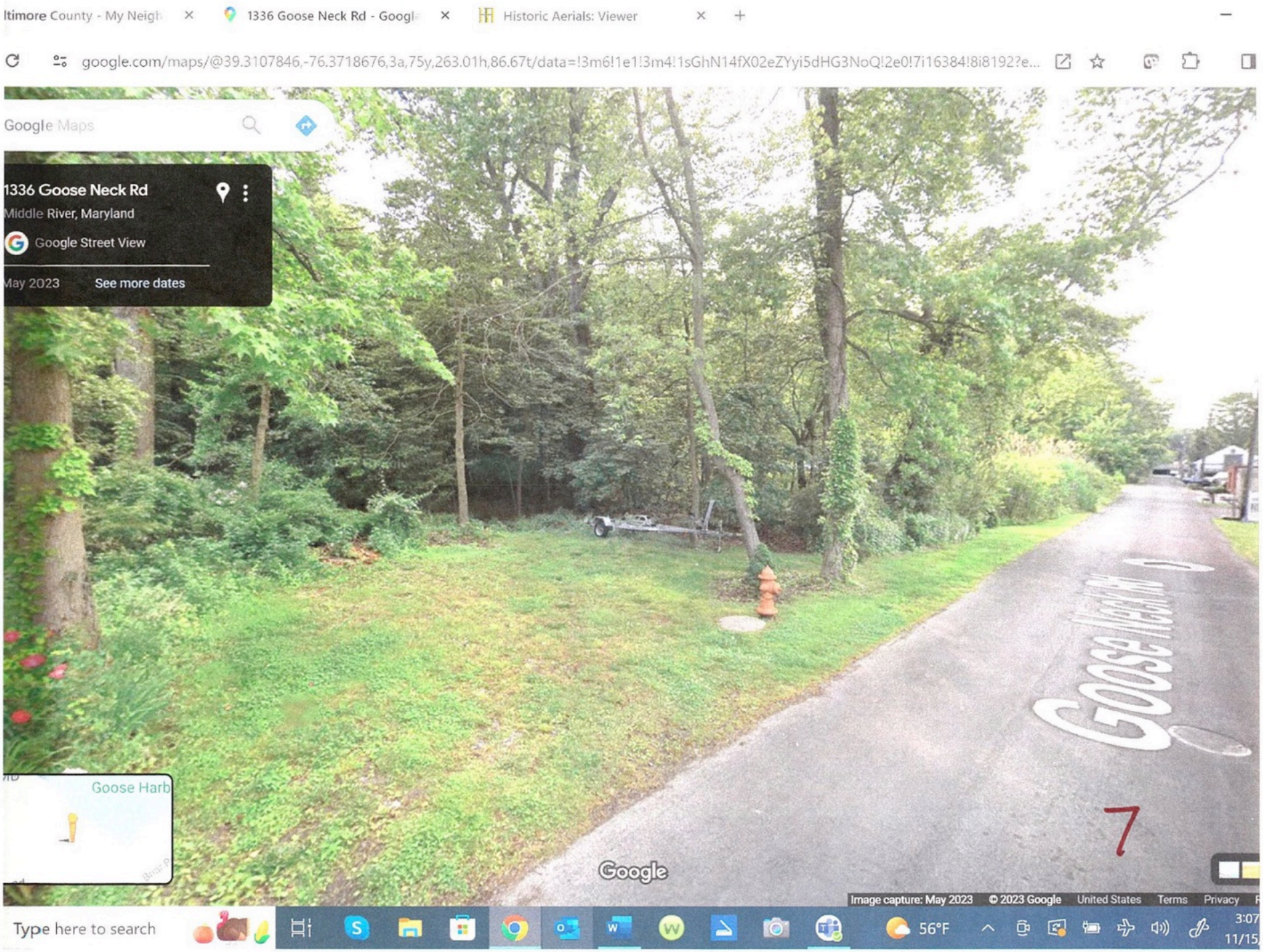

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Historic Aerials: Viewer
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Google Street View
May 2023
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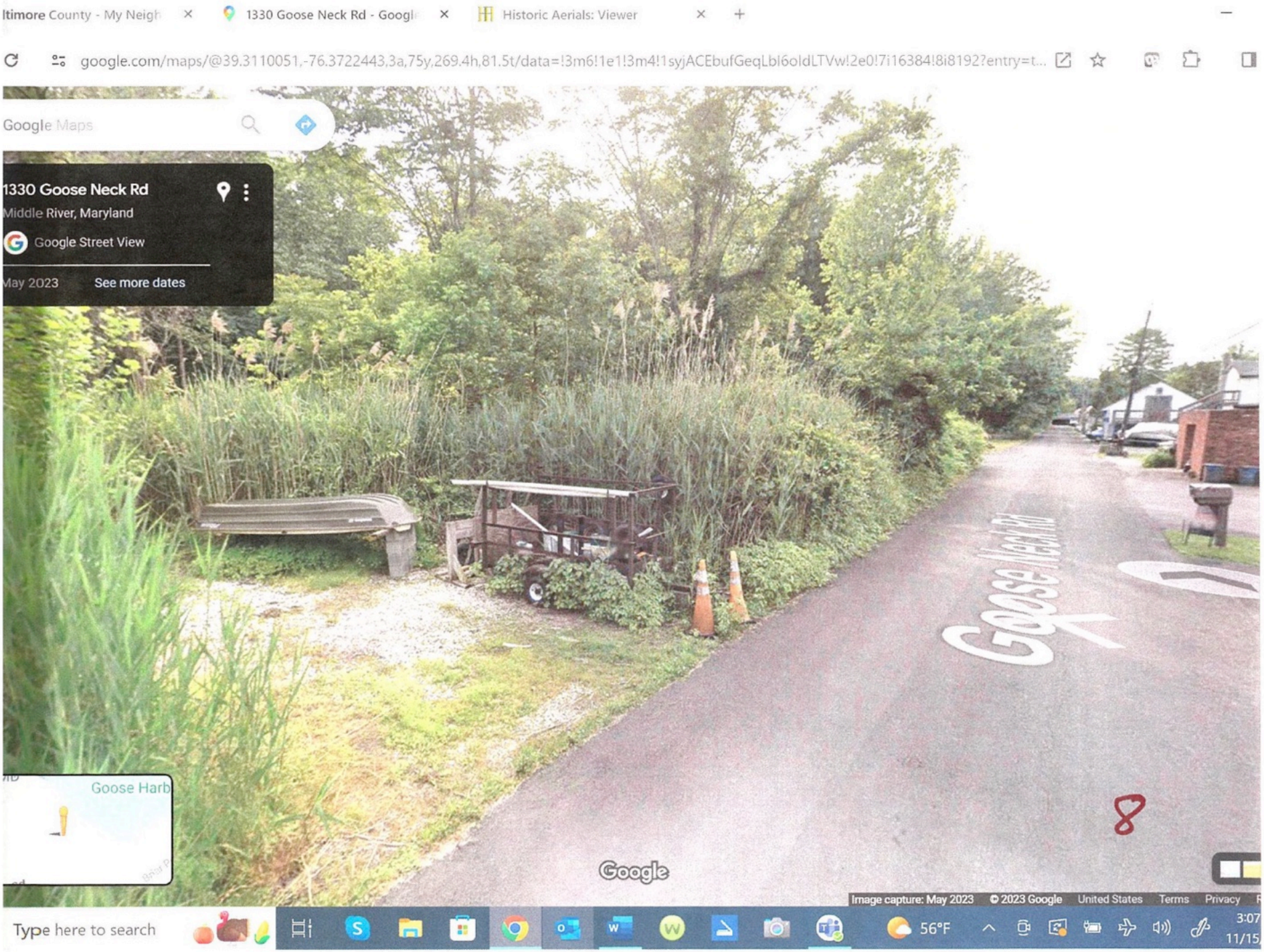

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Google Maps
1346 Goose Harbor Rd
Middle River, Maryland
Google Street View
May 2023
See more dates
Goose Harb
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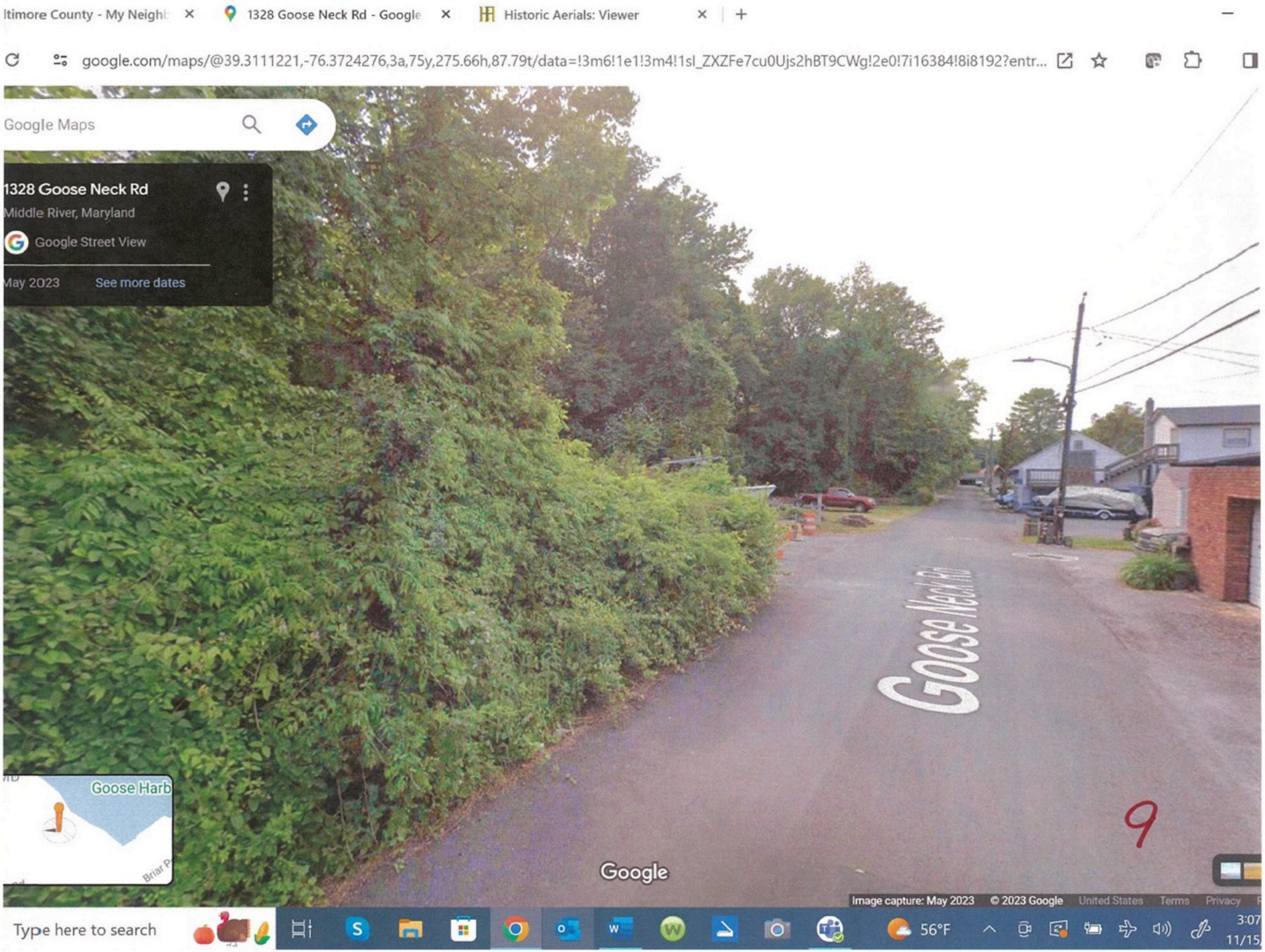

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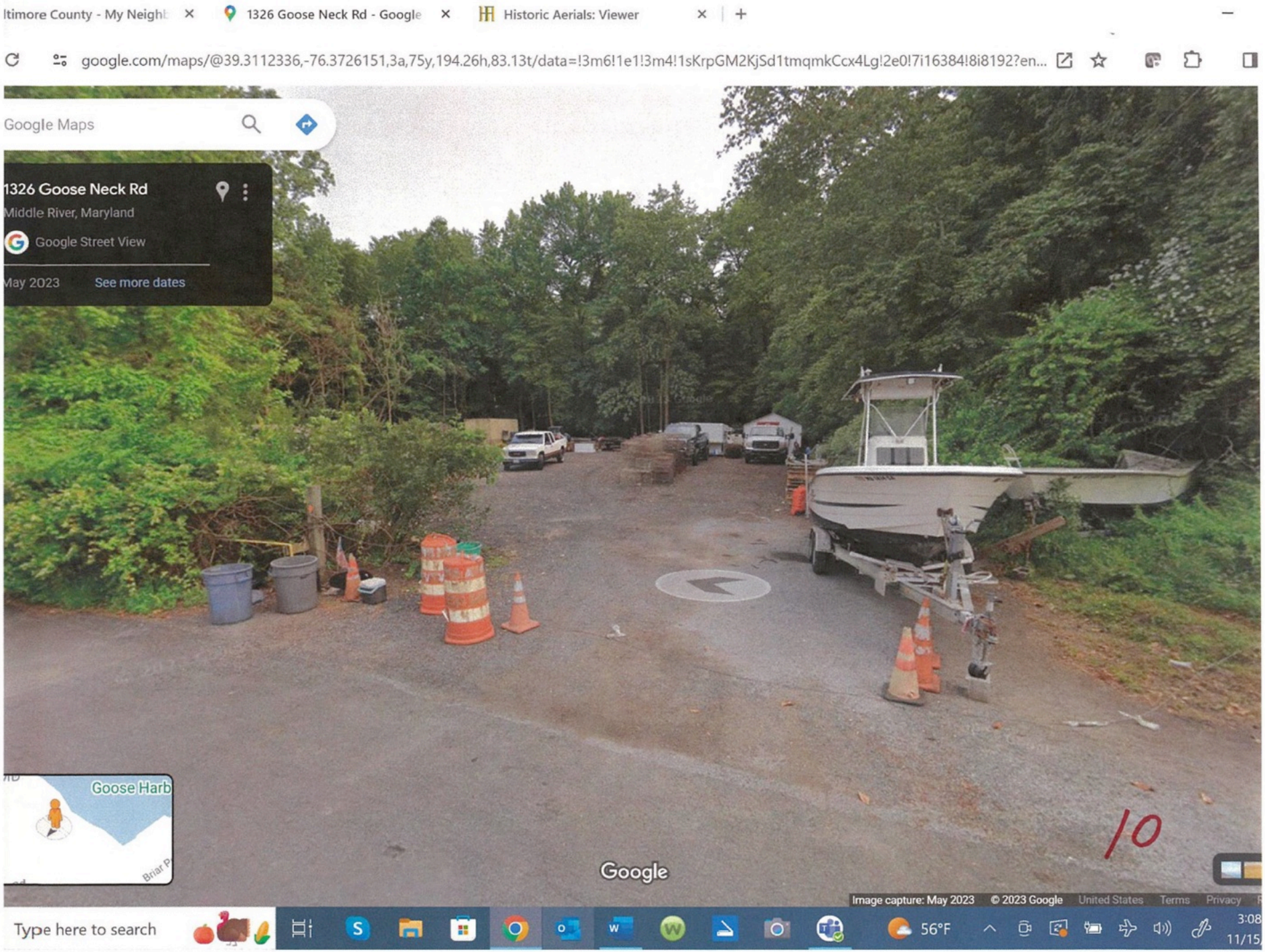

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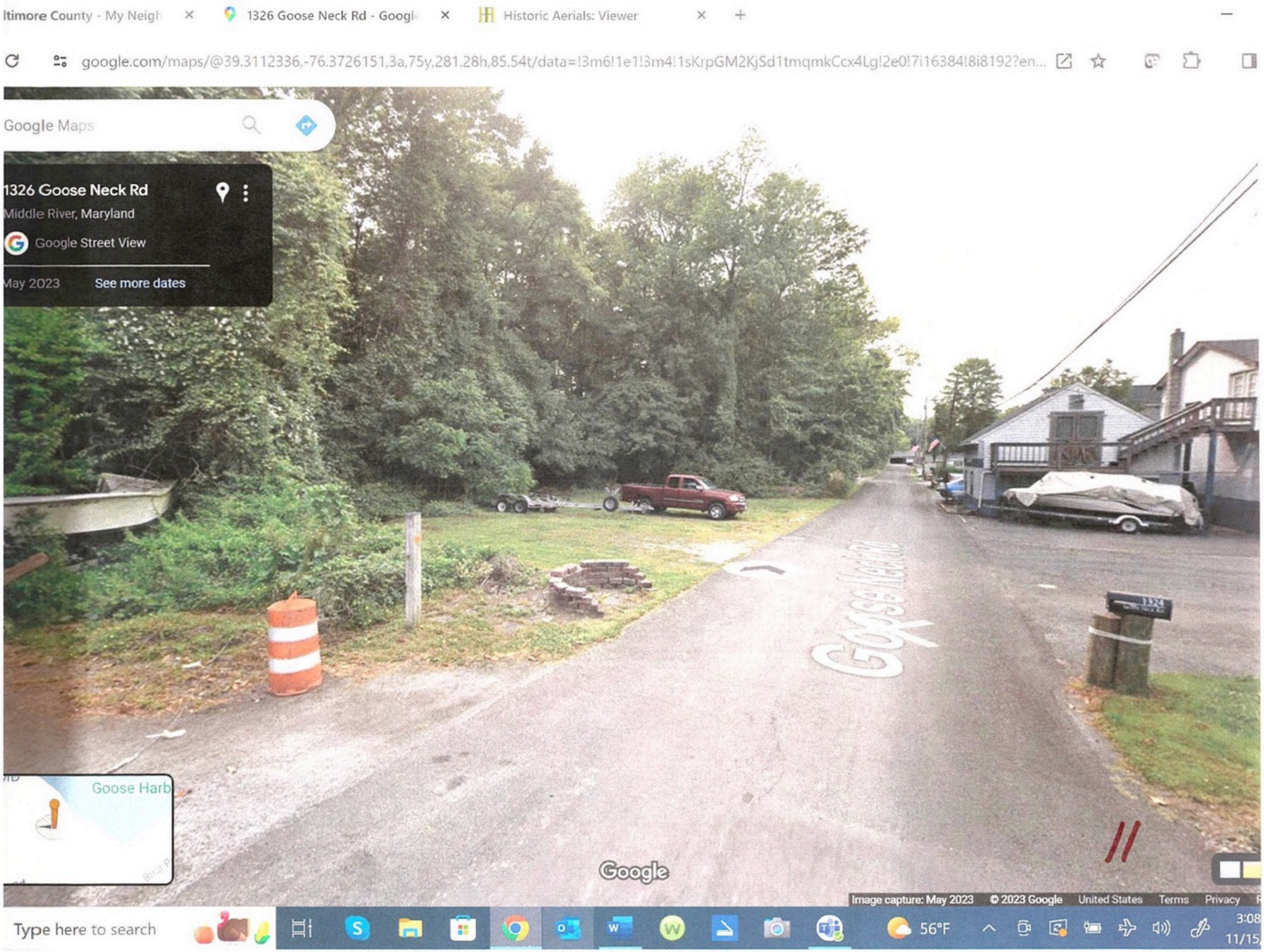

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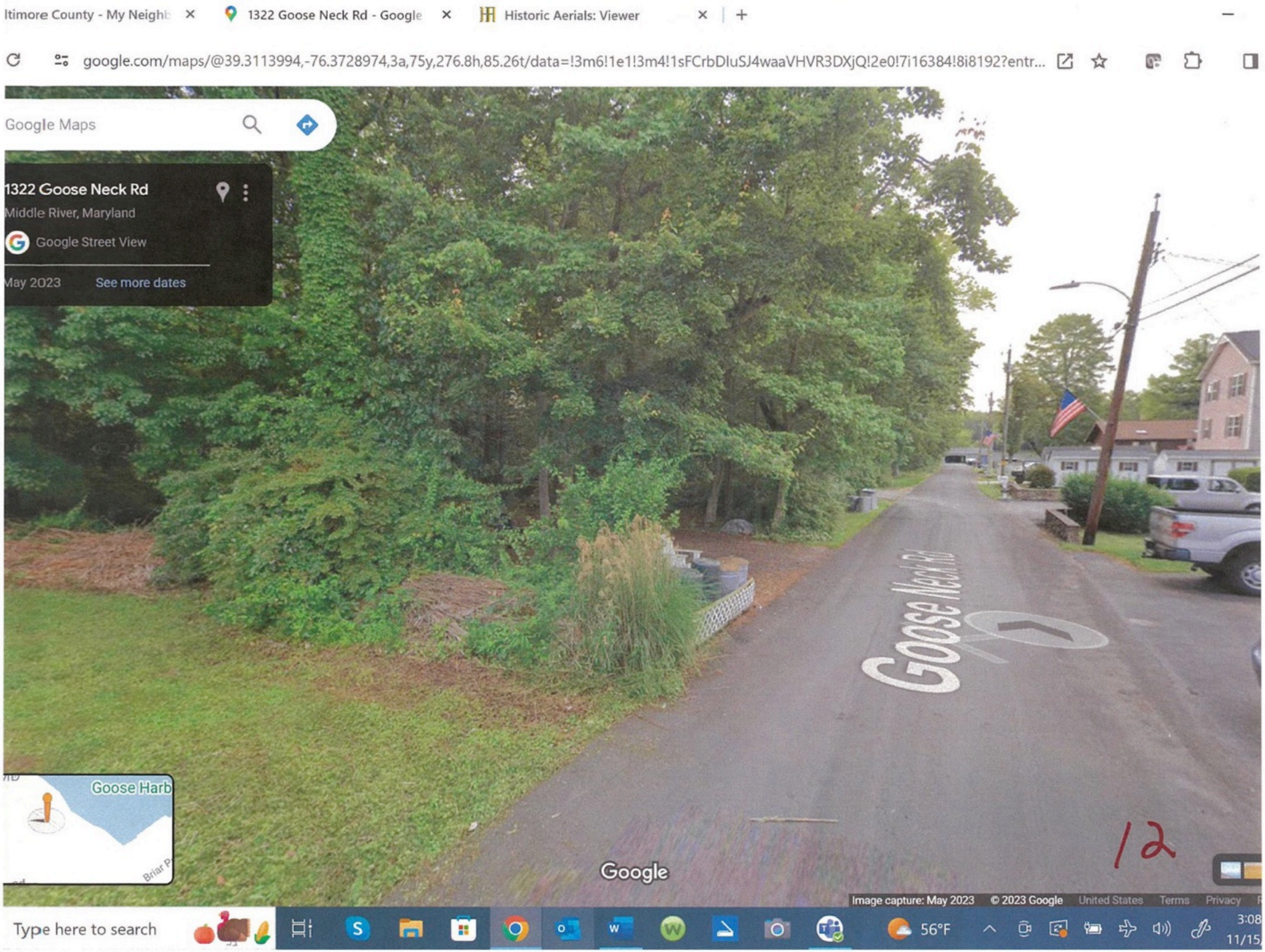

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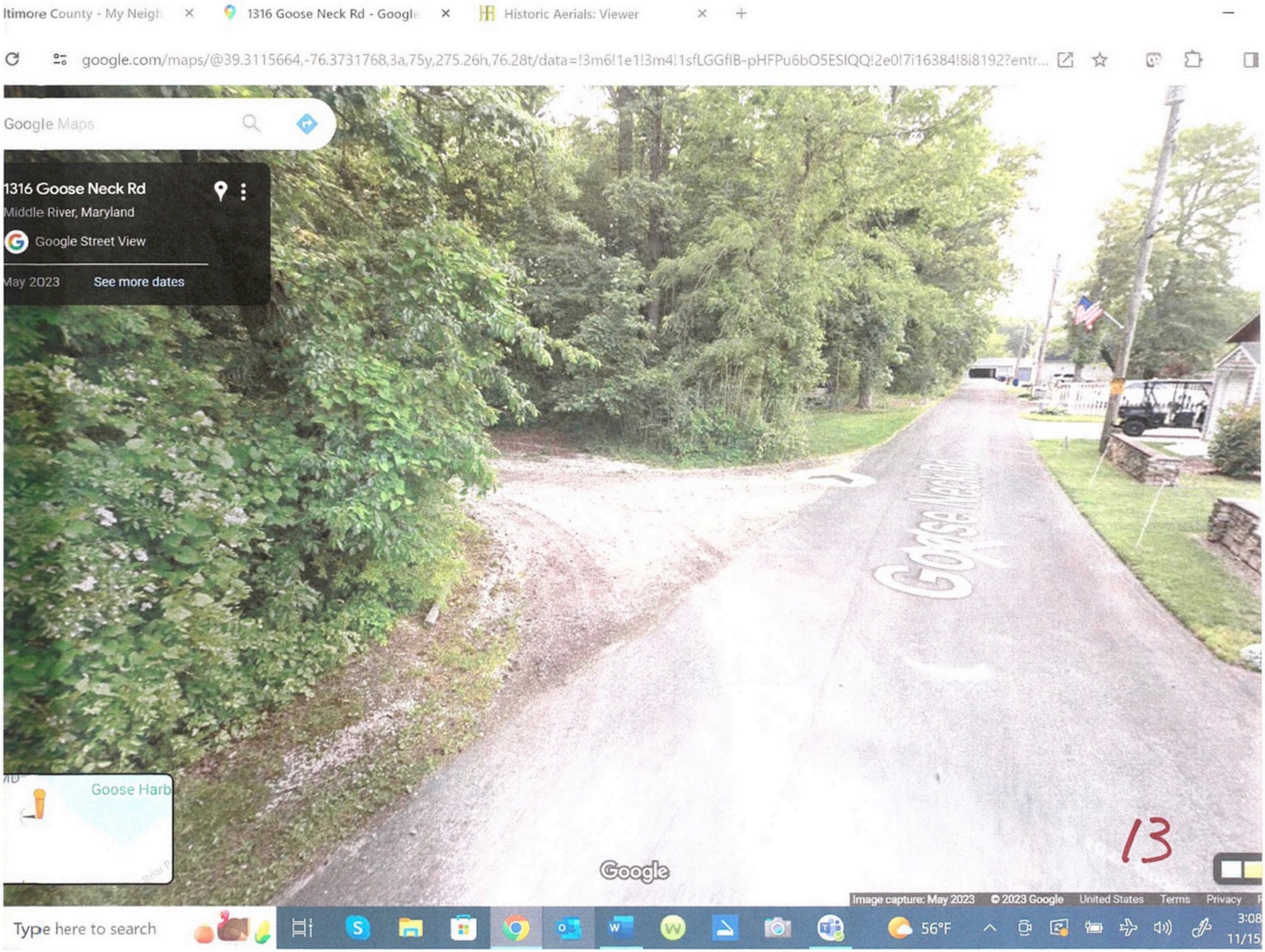

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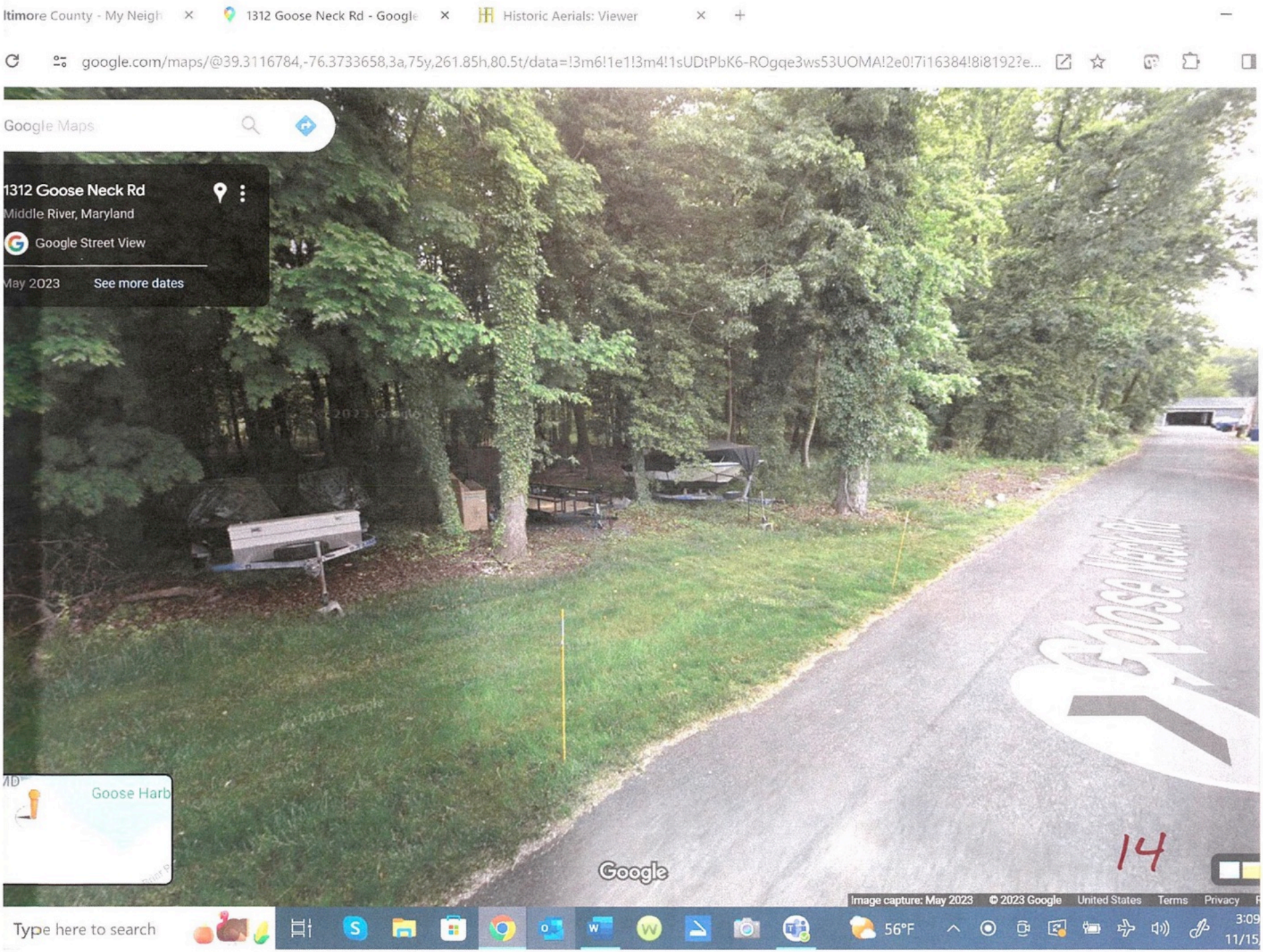

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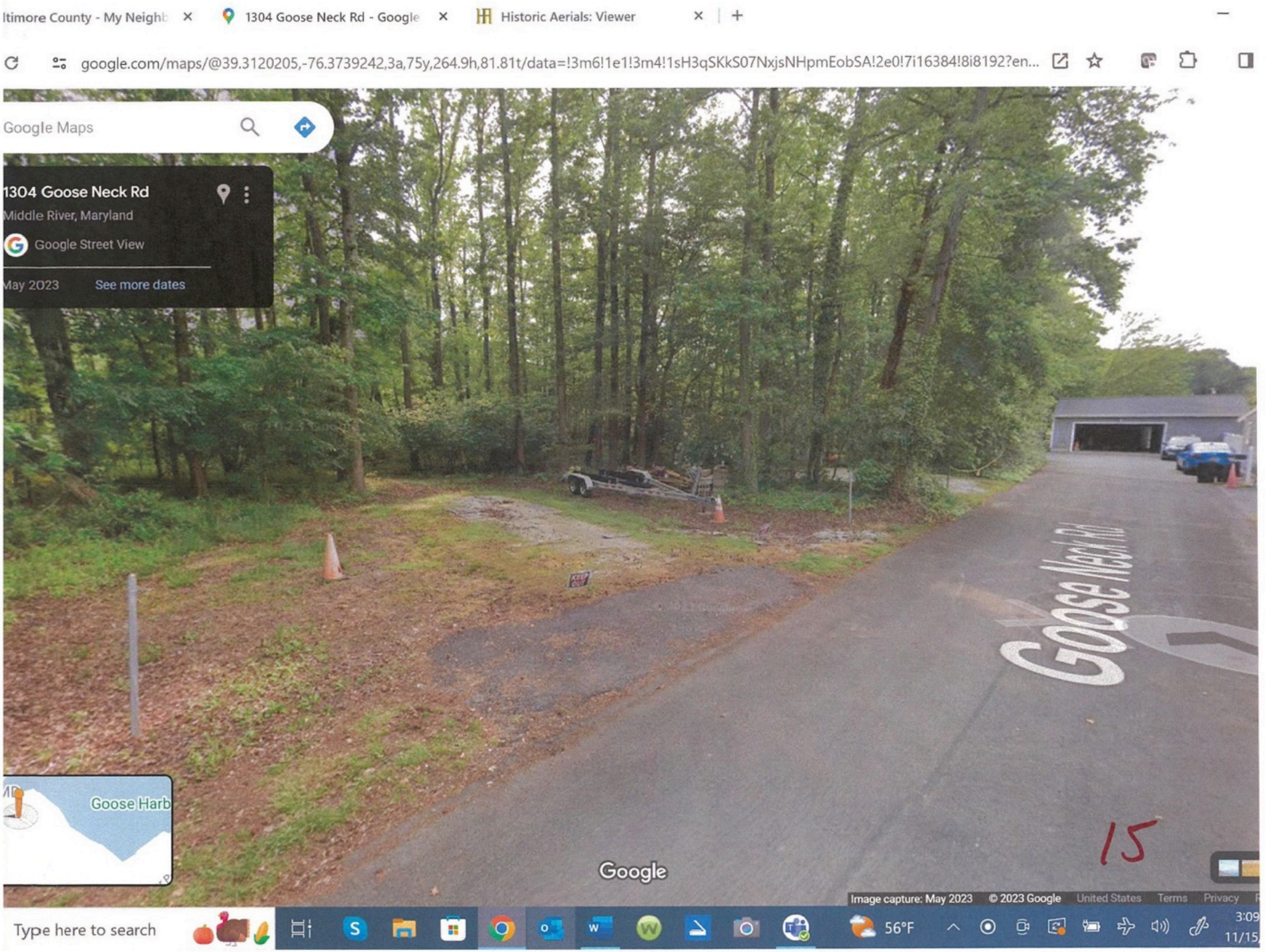

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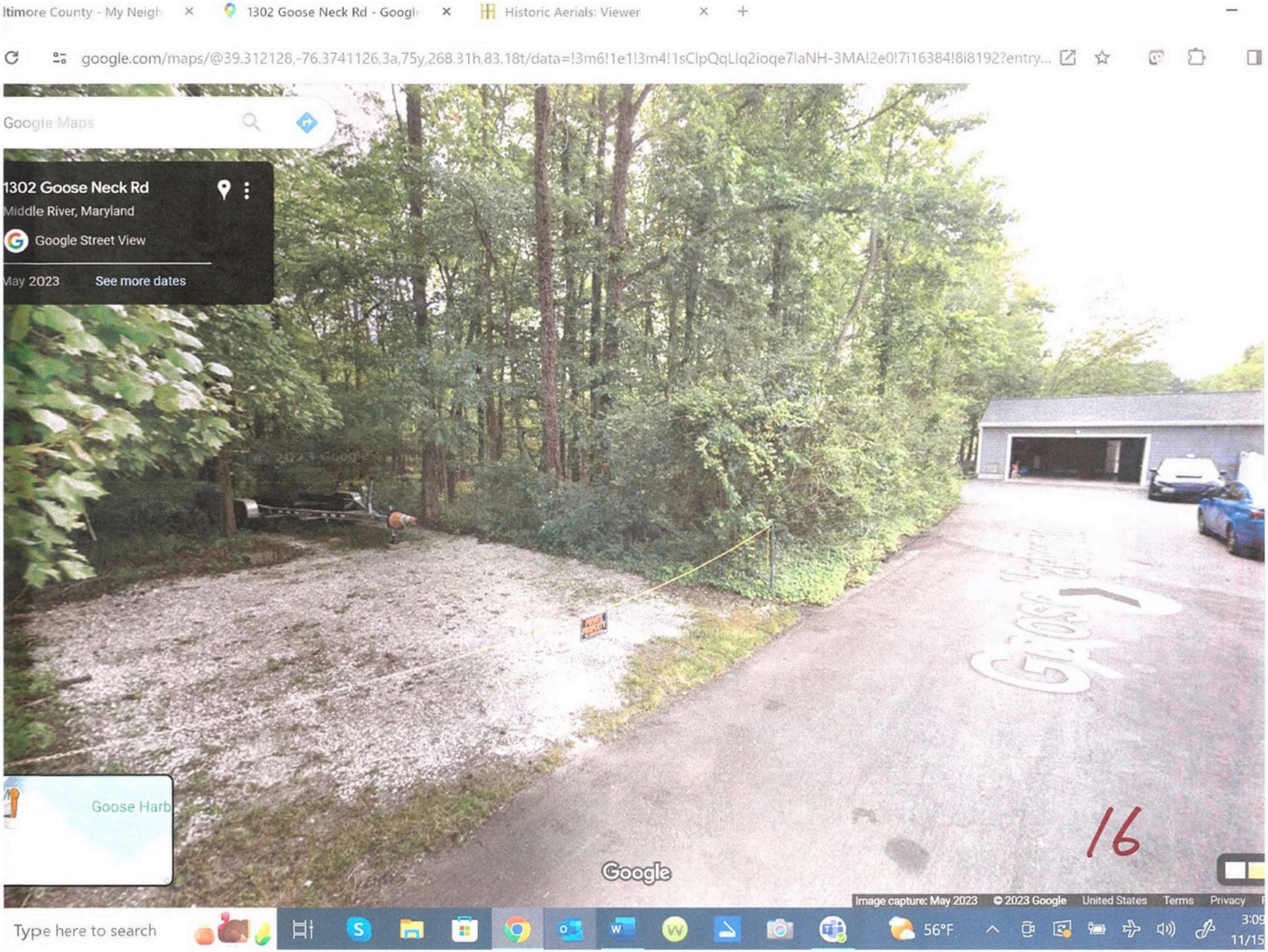
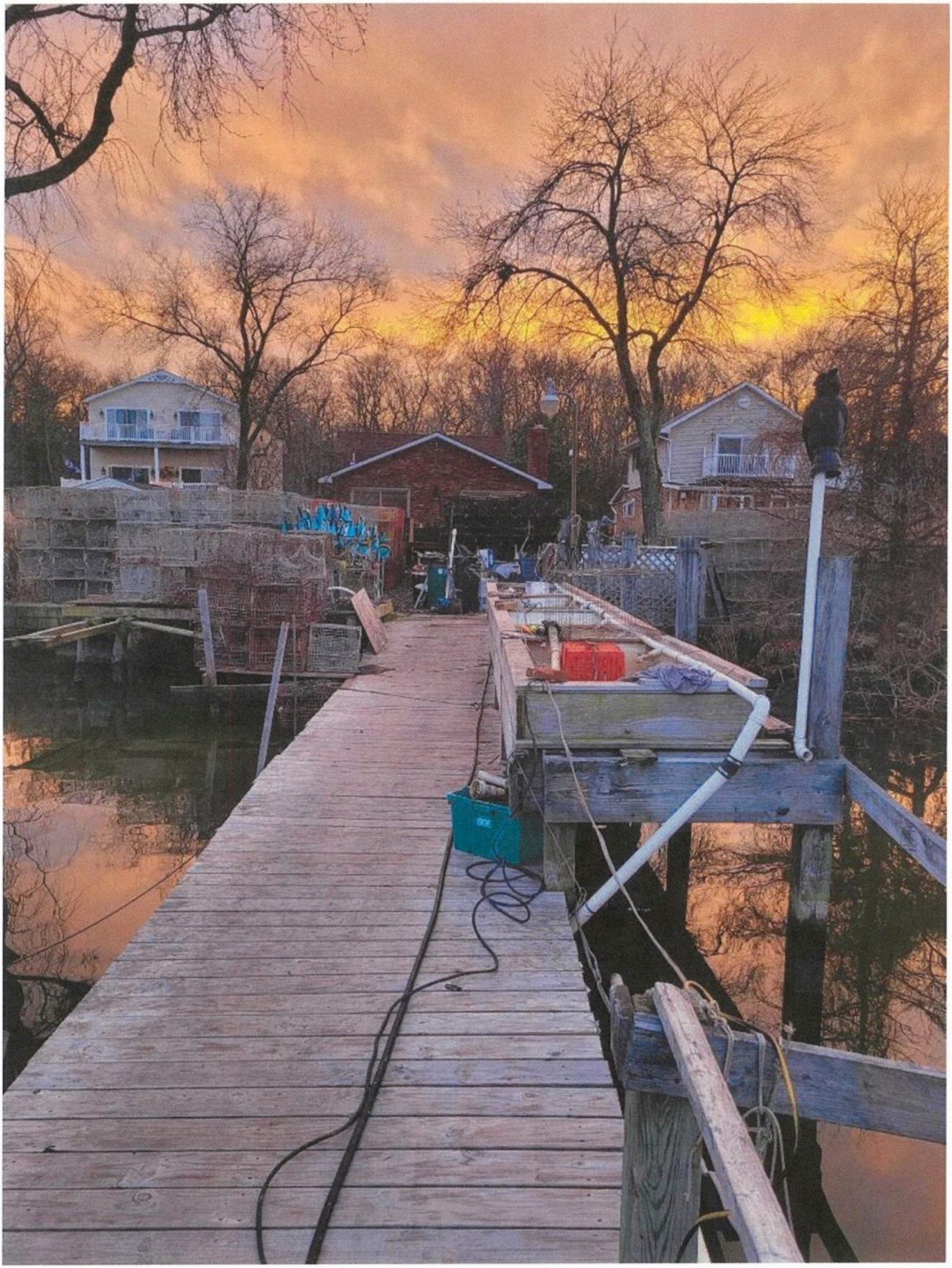

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EXHIBIT #8


Ciera Rose







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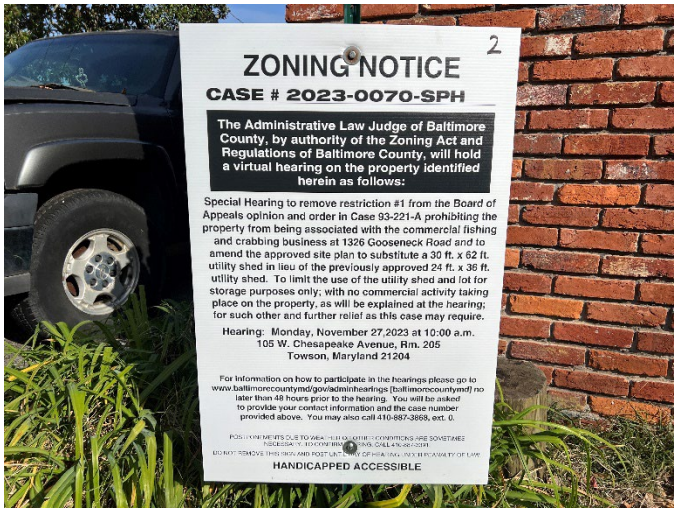
CASE NO. 2023-0070-SPH

PETITIONER/DEVELOPER

Matthew Kotroco Esq.

DATE OF HEARING/CLOSING

November 27, 2023



BALTIMORE COUNTY DEPARTMENT OF
PERMITS AND DEVELOPMENT MANAGEMENT
COUNTY OFFICE BUILDING ROOM 111
111 WEST CHESAPEAKE AVENUE
ATTENTION:

LADIES AND GENTLEMEN:

THIS LETTER IS TO CERTIFY UNDER PENALTIES OF PERJURY THAT THE NECESSARY SIGN(S) REQUIRED BY LAW WERE POSTED CONSPICUOUSLY ON THE PROPERTY LOCATED AT

1326 Goose Neck Road Sign 2

THE SIGN(S) POSTED ON November 6, 2023
(MONTH, DAY, YEAR)

SINCERLEY,

MARTIN OGLE

MARTIN OGLE
9912 MAIDBROOK RD.
PARKVILLE, MD 21234
443-629-3411

CERTIFICATE OF POSTING

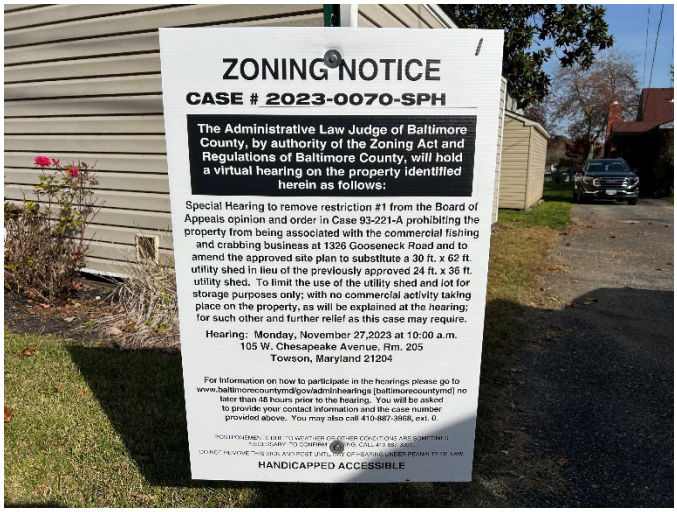
CASE NO. 2023-0070-SPH

PETITIONER/DEVELOPER

Matthew Kotroco Esq.

DATE OF HEARING/CLOSING

November 27, 2023



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PERMITS AND DEVELOPMENT MANAGEMENT
COUNTY OFFICE BUILDING ROOM 111
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ATTENTION:

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1326 Goose Neck Road Sign 1

THE SIGN(S) POSTED ON November 6, 2023
(MONTH, DAY, YEAR)

SINCERLEY,

MARTIN OGLE

MARTIN OGLE
9912 MAIDBROOK RD.
PARKVILLE, MD 21234
443-629-3411

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE MEMORANDUM

TO: C. Pete Gutwald **DATE:** 11/1/2023
Director, Department of Permits, Approvals and Inspections

FROM: Steve Lafferty
Director, Department of Planning

SUBJECT: **ZONING ADVISORY COMMITTEE COMMENTS (Revised)**
Case Number: 2023-0070-SPH

INFORMATION:
Property Address: 1326 Gooseneck Road
Petitioner: Cecile Myrick
Zoning: RC 5
Requested Action: Special Hearing

The Department of Planning has reviewed the amended petition for the following:

Special Hearing -

1. To remove restriction #1 from the Board of Appeal opinion and order in case No. 93-221 prohibiting the property from being associated with the commercial fishing and crabbing business at 1326 Gooseneck Road and to amend the approved site plan to substitute a 30' X 65' utility shed in lieu of the previously approved 24'X 36' utility shed shown on the previously approved plan.
2. To limit the use of the utility shed and lot for storage purposes only, with no commercial activity taking place on the property, as will be explained at the hearing; and
3. For such other and further relief as this may require

The subject property is located in the Bowleys Quarters area of Baltimore County. The property consists of an approximately 11,200 SF parcel zoned RC-5 and is improved with an existing 2 story residential dwelling and a small one-story accessory structure located directly along Gooseneck Road. The applicant also owns the vacant lot across Gooseneck Road, which is the lot subject to this request. Rural residential dwellings, forest conservation and Seneca Creek surround the property.

The R.C.5 zoning classification was established in response to concerns over wasteful and disorderly rural-residential development and inadequate lot sizes for on-lot sewer and water systems. These issues could result in undue financial hardships and negatively affect the safety and welfare of citizens. In identifying specific areas suitable for rural-residential development, the aim is to direct future growth towards these areas and prevent disorderly development patterns. The R.C.5 zoning classification serves to provide suitable areas for rural-residential development, minimize encroachments on natural resource areas, and provide a minimum lot size for proper on-lot sewer and water system functioning.

On March 29, 1993, the Zoning Commissioner denied Zoning Variance Case 93-221-A, which sought an exemption from Section 101 and 401.1 of BCZR. The purpose of this variance was to allow the construction of a 36 ft by 24 ft utility shed intended for use as an accessory structure. Subsequently, an appeal was made to the Board of Appeals, which ultimately granted approval. This approval, issued on

September 22, 1994, came with a specific restriction: "No use associated with the commercial fishing and crabbing business will be permitted on this site."

It is worth noting that the Baltimore County Code of Ordinance, specifically in § 33-2-101.C, classifies "aquatic animals," including crabs, as aquaculture. Even though the ordinance (§ 33-2-101. C.3) states that "Aquaculture" does not encompass related activities such as storage facilities, this storage is necessary since crab cages and other equipment on the water front creates an eyesore and potentially impedes the value of nearby properties.

After reviewing the amended relief request, the Department of Planning does not object to the request with the condition that the requested utility shed MUST be used for the proposed storage purpose only. Enforcing the use of the storage shed will reduce any clutter on the lot that currently exists and will reduce detrimental visual impacts that could possibly occur.

For further information concerning the matters stated herein, please contact Henry Ayakwah at 410-887-3482.

Prepared by:

Krystle Patchak

Division Chief:

Jenifer G. Nugent

SL/JGN/KP

c: Timothy M. Kotroko Esq., Representative
David Birkenthal, Community Planner
Jeff Perlow, Zoning Review
Kristen Lewis, Zoning Review
Office of Administrative Hearings
People's Counsel for Baltimore County

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE MEMORANDUM

TO: C. Pete Gutwald **DATE:** 10/27/2023
Director, Department of Permits, Approvals and Inspections

FROM: Steve Lafferty
Director, Department of Planning

SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS
Case Number: 2023-0070-SPH

INFORMATION:
Property Address: 1326 Gooseneck Road
Petitioner: Cecile Myrick
Zoning: RC 5
Requested Action: Special Hearing

The Department of Planning has reviewed the petition for the following:

Special Hearing –

1. To remove restriction #1 from the Board of Appeal opinion and order in case No. 93-221 prohibiting the property from being associated with the commercial fishing and crabbing business at 1326 Gooseneck Road and to amend the approved site plan to substitute a 30' X 65' utility shed in lieu of the previously approved 24'X 36' utility shed shown on the previously approved plan.

The subject property is located on the north side of Gooseneck Road in the Bowleys Quarters area of Baltimore County. The property consists of an approximately 11,200 SF parcel zoned RC-5 and is improved with an existing 2 story residential dwelling and a small one-story accessory structure located directly along Gooseneck Road. The applicant also owns the vacant lot across Gooseneck Road, which is the lot subject to this request. Rural residential dwellings, forest conservation and Seneca Creek surround the property.

On March 29, 1993, the Zoning Commissioner denied Zoning Variance Case 93-221-A, which sought an exemption from Section 101 and 401.1 of BCZR. The purpose of this variance was to allow the construction of a 36 ft by 24 ft utility shed intended for use as an accessory structure. Subsequently, an appeal was made to the Board of Appeals, which ultimately granted approval. This approval, issued on September 22, 1994, came with a specific restriction: "No use associated with the commercial fishing and crabbing business will be permitted on this site."

The R.C.5 zoning classification was established in response to concerns over wasteful and disorderly rural-residential development and inadequate lot sizes for on-lot sewer and water systems. These issues could result in undue financial hardships and negatively affect the safety and welfare of citizens. In identifying specific areas suitable for rural-residential development, the aim is to direct future growth towards these areas and prevent disorderly development patterns. The R.C.5 zoning classification serves

to provide suitable areas for rural-residential development, minimize encroachments on natural resource areas, and provide a minimum lot size for proper on-lot sewer and water system functioning.

During a meeting with the Representative, it was revealed that the proposed accessory structure is intended for the storage of crab pots, as these pots were scattered across the property when being stored. It is worth noting that the Baltimore County Code of Ordinance, specifically in § 33-2-101.C, classifies "aquatic animals," including crabs, as aquaculture. However, it is important to highlight that the ordinance (§ 33-2-101. C.3) clearly states that "Aquaculture" does not encompass related activities such as wholesale and retail sales, processing, and the use of product storage facilities, as specified under Title 2 – Chesapeake Bay Critical Area Protection.

The Department feels that removing the restriction on Case 1993-0221-A, thereby allowing the construction of a 30 ft by 65 ft accessory structure for storage related to the business, as revealed in the meeting with the Representative, does not align with any of the uses permitted by right, as outlined in Baltimore County Zoning Regulation § 1A04.2. It is important to note that while the Zoning Regulations allow for a somewhat similar use by Special Exception, such as "Fishing and shellfishing facilities, shoreline, Class I or II" (§ 1A04.2.B.7 BCZR), incorporating this structure into the crabbing business would not be permitted by right in an RC 5 zone.

Another significant concern of the Department is the potential nuisance this may pose to the community if the restriction is lifted. The proposed use of this accessory structure has the potential to become a nuisance to neighboring properties due to the strong and unpleasant odors associated with crabbing/fishing. Handling bait and live or freshly caught crabs, which can emit odors, becomes particularly problematic if the bait spoils or if decaying organic matter accumulates. These odors have the potential to permeate nearby homes, thereby creating an unpleasant living environment for residents.

In conclusion, the Department of Planning does not support this request and defers all decision making to the Administrative Law Judge.

For further information concerning the matters stated herein, please contact Henry Ayakwah at 410-887-3482.

Prepared by:

Krystle Patchak

Division Chief:

Jenifer G. Nugent

SL/JGN/KP

c: Timothy M. Kotroko Esq. - Representative
Joe Wiley, Community Planner
Jeff Perlow, Zoning Review
Kristen Lewis, Zoning Review
Office of Administrative Hearings
People's Counsel for Baltimore County

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

No. 226695

Date: 10/20/2023

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
001	806	0000		6150				$100.00

Total: $100.00

Rec From: Timothy M. Kotroco

For: Revised Special Hearing Request
Zoning Case 2023-0070-SPH

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

CASHIER'S VALIDATION
MJK

TIMOTHY M. KOTROCO, Esq.
305 Washington Avenue, Suite 502
Towson, Maryland 21204
410-299-2943
Tkotroco@gmail.com

Amended Relief Requested:

Special Hearing:

1. To remove restriction #1 from the Board of Appeals opinion and order in Case No. 93-221-A prohibiting the property from being associated with the commercial fishing and crabbing business at 1326 Gooseneck Road and to amend the approved site plan to substitute a 30' x 65' utility shed in lieu of the previously approved 24' x 36' utility shed;

2. To limit the use of the utility shed and lot for **storage purposes only**, with no commercial activity taking place on the property, as will be explained at the hearing; and

3. For such other and further relief as this cause may require.

Case # 2023-0070-SPH
Amended Relief

PROFESSIONAL CERTIFICATION

STATE OF MARYLAND
GEOFFREY A. THEARD II
No. 15453
PROFESSIONAL ENGINEER

10/17/2023

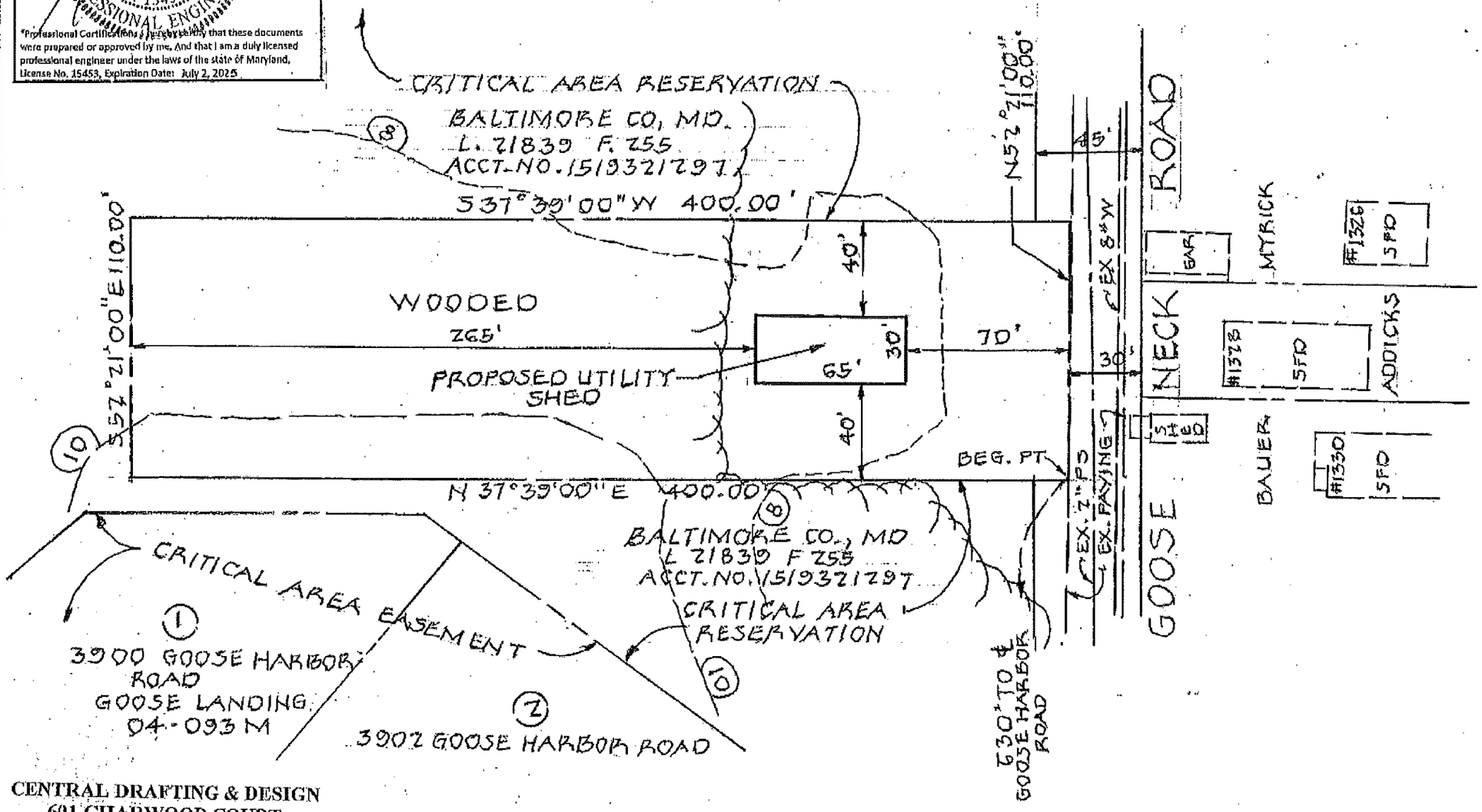
*Professional Certification. I hereby certify that these documents were prepared or approved by me, And that I am a duly licensed professional engineer under the laws of the state of Maryland, License No. 15453, Expiration Date: July 2, 2025

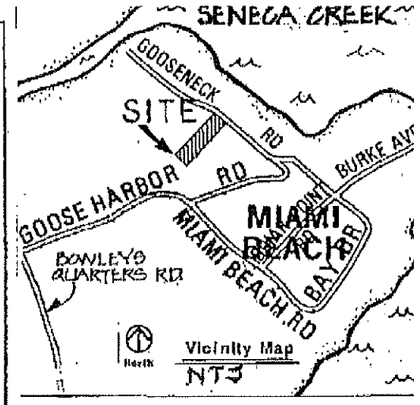
ZONING HEARING PLAN FOR VARIANCE ___ FOR SPECIAL HEARING X (MARK TYPE REQUESTED WITH X)

ADDRESS 1327 GOOSE NECK ROAD OWNER(S) NAME(S) CECILE MYRICK

SUBDIVISION NAME N/A LOT # N/A BLOCK # N/A SECTION # N/A

PLAT BOOK # N/A FOLIO # N/A 10 DIGIT TAX # 1600001460 DEED REF. # 43637, 490





ZONING MAP# 098C1

SITE ZONED RC5

ELECTION DISTRICT 15

COUNCIL DISTRICT 5

LOT AREA ACREAGE 1.01AC

OR SQUARE FEET ___

HISTORIC ? NO

IN CBCA ? YES

IN FLOOD PLAIN ? YES

UTILITIES ? MARK WITH X

WATER IS:

PUBLIC X PRIVATE ___

SEWER IS:

PUBLIC X PRIVATE ___

PRIOR HEARING ? YES

IF SO GIVE CASE NUMBER AND ORDER RESULT BELOW

1984-0147-XSPHA

1993-0221-A

2023-0070-SPH

VIOLATION CASE INFO:

CENTRAL DRAFTING & DESIGN
601 CHARWOOD COURT
EDGEWOOD, MD 21040
(410) 679-8719

PLAN DRAWN BY DWB DATE 10-14-23 SCALE: 1 INCH = 50' FEET

Revised Plan
Case # 2023-0070-SPH

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Peter Gutwald, Director
Department of Permits, Approvals

DATE: April 25, 2023

EFC for VKD

FROM: Vishnu Desai, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For April 17, 2023
Item No. 2023-0070-SPH

The Bureau of Development Plans Review has reviewed the subject zoning items and we have the following comments.

DPW&T Response:
The proposed 30' x 60' utility shed is located in a tidal Zone AE special hazard area per FEMA FIRM 2400100465F dated 9/26/08. The proposed utility shed is 1800 square feet. Baltimore County Building Code dated 2015 Part 124.3 (3) prohibits accessory structures greater than 900 square feet. The Administrative Variance must be denied unless the structure size is reduced.

* * * * *

VKD: cen
cc: file

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Peter Gutwald, Director
Department of Permits, Approvals

DATE: April 25, 2023

FROM: Vishnu Desai, Supervisor
Bureau of Development Plans Review

EFC for VKD

SUBJECT: Zoning Advisory Committee Meeting
For April 17, 2023
Item No. 2023-0076-A

The Bureau of Development Plans Review has reviewed the subject zoning items and we have the following comments.

Prior to building permit application, the petitioner shall contact the Office of DPW&T, to determine the Flood Protection Elevation so that the floor elevation can be set

* * * * *

VKD: cen
cc: file

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Peter Gutwald, Director
Department of Permits, Approvals

DATE: April 25, 2023

FROM: EFC for VKD
Vishnu Desai, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For April 17, 2023
Item No. 2023-0071-A, 0073-A, 0074-A, 0077-A & 0078-A

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

* * * * *

VKD: cen
cc: file

From: Kristen L Lewis

To: PAI Zoning Advisory Committee; Charles Nwokoro; D"Andrea Walker; Debra Wiley; Don Muddiman; Donna Mignon; Earl D Wrenn; Eugene Cauley; Henry Ayakwah; Jeffery Livingston; Jenifer G. Nugent; Jesse Krout; Joseph Griffiths; Lauren Buckler; Lisa Eicholtz; Lisa M Henson; Lloyd Moxley; Neighborhood Improvement; Matt F. Gawel; Mike Ruby; Myles Putty; Peter Max Zimmerman; Rebecca Wheatley; Stanley Jacobs; Steve Autry; Taylor Bensley; Terry Curtis; Thomas Bostwick; Thomas Hargis; Tracy Scheuing; Vishnubhai K Desai

Subject: RE: April 7, 2023 - April 17, 2023

Date: Tuesday, April 11, 2023 12:49:42 PM

Good afternoon,

Please note a correction for Case 2023-0070-SPH. The correct address 1326 Gooseneck Road and the Owners name is Cecile Myrick. Please note these corrections. Thank you.

Kristen Lewis-Coles

Legal Secretary

PAI – Zoning Review

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: Hon. Paul M. Mayhew; Managing Administrative Law Judge
Office of Administrative Hearings

FROM: Jeff Livingston, Department of Environmental Protection and Sustainability (EPS) - Development Coordination

DATE: April 20, 2023

SUBJECT: DEPS Comment for Zoning Item # 2023-0070-SPH
Address: 1326 Goose Neck Rd
Legal Owner: Cecile Myrick

Zoning Advisory Committee Meeting of April 17, 2023.

EPS has reviewed the 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 Resource Conservation Area (RCA) and is subject to Critical Area requirements. The applicant is seeking approval to remove restriction #1 from the Board of Appeals opinion and order in Case No. 93-221-A and to amend the approved site plan to substitute a 30'x 60' utility shed in lieu of the previously approved 24'x 36' utility shed as shown on the previously approved site plan. The proposed development must meet RCA requirements regarding lot coverage and 15% afforestation as well as Critical Area Buffer (CAB) requirements. If the proposed development can comply with the lot coverage, 15% afforestation, and CAB requirements, the relief requested can result in minimal adverse impacts to water quality.

2. Conserve fish, plant, and wildlife habitat.

   This is a non-waterfront lot. The front of the property is developed with accessory structures and paving. The majority of the property is forested.

According to the site plan, the proposed shed is located outside the existing forest. The forest on this property is considered Forest Interior Dwelling Bird habitat and no forest clearing is allowed on the property without approval from EPS. Based on an adjacent development plan, it appears there are non-tidal wetlands onsite. As a result, the proposed development must comply with CAB requirements. Meeting the lot coverage, 15% afforestation, and CAB requirements will aid in the conservation of fish, plant, and wildlife habitat in the watershed.

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.

   If the proposed development can be designed to meet the lot coverage, 15% afforestation, and CAB requirements, the relief requested will be consistent with established land-use policies.

Reviewer: Gris Batchelder

DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS
ZONING REVIEW OFFICE

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 legal owner/petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least twenty (20) days before the hearing.*

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the legal owner/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:

Case Number: 2023-0070-SPH

Property Address: 1326 Goose Neck Road
Middle River, MD
21220

Legal Owners (Petitioners): Cecile Myrick

Contract Purchaser/Lessee: N/A

PLEASE FORWARD ADVERTISING BILL TO:

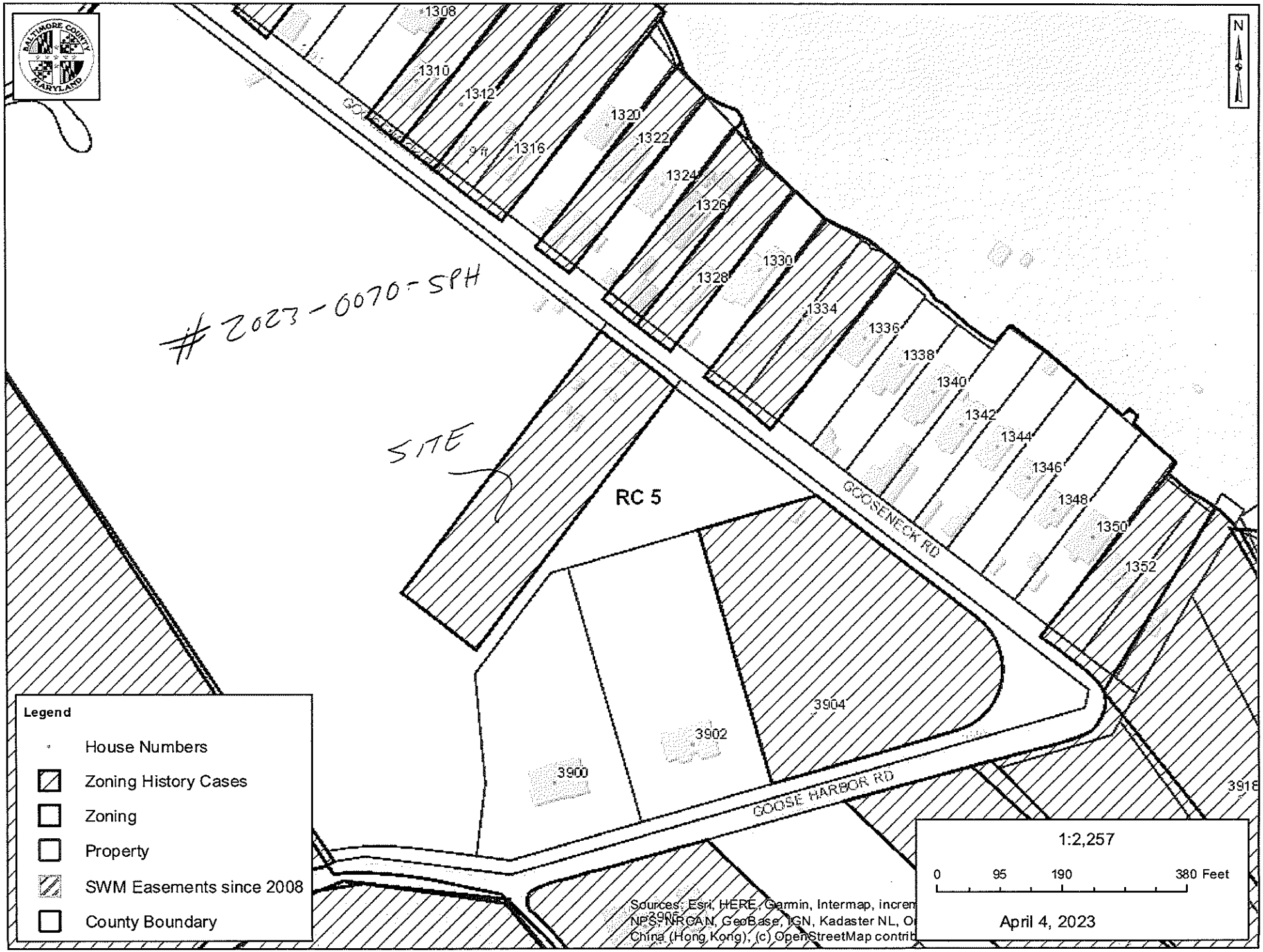
Name: Company/Firm (if applicable): Timothy M. Kotroco, Esquire

Address: 305 Washington Ave, Ste 502
Towson, MD 21204

Telephone Number: 410-299-2943

*Failure to advertise and/or post a sign on the property within the designated time will result in the Hearing request being delayed. The delayed Hearing Case will be cycled to the end of pending case files and rescheduled in the order that it is received. Also, a $250.00 rescheduling fee may be required after two failed advertisings and/or postings.

Baltimore County - My Neighborhood



Real Property Data Search ( )
Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Special Tax Recapture: None

Account Identifier: District - 15 Account Number - 1519510661

Owner Information

Owner Name:	MYRICK CECILE V	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	1326 GOOSE NECK RD BALTIMORE MD 21220-4027	**Deed Reference:**	/43637/ 00449

Location & Structure Information

Premises Address:	1326 GOOSE NECK RD BALTIMORE 21220-4027 Waterfront	**Legal Description:**	684 S GOOSE HARBOR BOWLEYS QUARTERS

Map	Grid	Parcel	Neighborhood	Subdivision	Section	Block	Lot	Assessment Year	Plat No:	
0091	0023	0133	15030020.04	0000			247	2021	Plat Ref:	0009/ 0012

Town: None

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1942	1,821 SF		11,200 SF	34

Stories	Basement	Type	Exterior	Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
1 1/2	NO	STANDARD UNIT	BRICK/	3	1 full	1 Detached	

Value Information

	Base Value	Value	Phase-in Assessments	
		As of 01/01/2021	As of 07/01/2022	As of 07/01/2023
Land:	261,200	261,200		
Improvements	104,700	104,900		
Total:	365,900	366,100	366,033	366,100
Preferential Land:	0	0		

Transfer Information

Seller: MYRICK JAMES R	**Date:** 11/16/2020	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /43637/ 00449	**Deed2:**
Seller: SMITH HARRY E,SR	**Date:** 03/10/1971	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /05171/ 00705	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2022	07/01/2023
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Special Tax Recapture: None

Homestead Application Information

Homestead Application Status: Approved 02/17/2014

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application **Date:**

#2023-0070-SPH

Real Property Data Search ( )
Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Special Tax Recapture: None

Account Identifier: District - 15 Account Number - 1600001460

Owner Information

Owner Name: MYRICK CECILE
Use: RESIDENTIAL
Principal Residence: NO
Mailing Address: 1326 GOOSE NECK RD
BALTIMORE MD 21220-4027
Deed Reference: /43637/ 00490

Location & Structure Information

Premises Address: GOOSE HARBOR RD
MIDDLE RIVER 21220-
Legal Description: 1.01 AC SWS
GOOSE HARBOR RD
1200 N MIAMI BEACH RD

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0098	0006	0412	15030020.04	0000				2021	Plat Ref:

Town: None

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
			1.0100 AC	04

Stories	Basement	Type	Exterior	Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
					/		

Value Information

	Base Value	Value As of 01/01/2021	Phase-in Assessments As of 07/01/2022	As of 07/01/2023
Land:	65,000	65,000		
Improvements	0	0		
Total:	65,000	65,000	65,000	65,000
Preferential Land:	0	0		

Transfer Information

Seller: MYRICK JAMES R	**Date:** 11/16/2020	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /43637/ 00490	**Deed2:**
Seller: GRESS THEODORE F	**Date:** 08/02/1978	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /05917/ 00584	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2022	07/01/2023
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Special Tax Recapture: None

Homestead Application Information

Homestead Application Status: No Application

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application **Date:**

2023-0070-SPH

9/22/94

IN THE MATTER OF THE APPLICATION OF JAMES R. MYRICK, ET UX FOR VARIANCE ON PROPERTY LOCATED ON THE SOUTHWEST SIDE OF GOOSE- NECK ROAD, 626.89 FT. NW OF GOOSE HARBOR ROAD (1327 GOOSENECK ROAD) 15TH ELECTION DISTRICT 5TH COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO: 93-221-A

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

O P I N I O N

This case comes before the Board on appeal from a decision of the Zoning Commissioner in which the petition for variance was ultimately approved. On March 29, 1994, the Zoning Commission r denied the petition for variance. Petitioner then filed a Motion for Reconsideration and this Motion for Reconsideration was granted and the hearing was held and the variance to permit the construction of the utility shed was approved. The case was heard this day in its entirety.

The matter before the Board concerns a petition for variance to permit a utility shed as an accessory structure on a lot that contains no principal structure. The file and the record in this case indicate that People's Counsel did not participat at the Zoning Commissioner's level nor were there any protestants. People's Counsel did not participate in the reconsideration hearing nor were there any protestants. In today's hearing there are no neighborhood protestants and, in fact, entered as Petitioner's Exhibit No. 4, is a petition in favor of the variance by all the residents on Gooseneck Road.

Testifying for the petitioner was Stephen R. Broyles, Land Surv yor and D velop r, who prepared the site plan on this lot and

2023-0070-SPH

described it and the surrounding areas in great detail. The site plan was entered as Petitioner's Exhibit No. 1.

Cecile Myrick, property owner and petitioner testified as to the condition of the lot and its general use. People's Counsel presented no witnesses, but entered 10 exhibits into the record.

By uncontradicted testimony, the Board is made aware that the lot is vacant; will not perk; no residential building permit can be obtained; it is 40% wooded and 60% open space grass, and that the property has picnic tables on it and has served recreational purposes by friends, neighbors, and family of the Petitioner. The Board will note that the Myricks own the lot across Gooseneck Road from this site, but that no further building can be permitted on this lot. The lot is zoned R.C.20 which permits open space use of the property. The Petitioner pays taxes on this property and is denied theoretically any use of the property, except to keep it mowed and maintained as a recreational use. While there is no principal building on the property nor can any be erected, the proposed utility shed can be an accessory use to the only use afforded the property that of a recreational use. If for any reason, an accessory structure is a detriment to the neighborhood, creates noise, obstructs a view, or any other reason detrimentally, the variance should be denied. This proposed use does not. All the neighbors have indicated approval of it and there was no testimony that it has been used other than anything but a grassy lot for cook-outs, picnics, etc., for friends and family. The

Case N . 93-221-A James R. Myrick, et ux

Board will note that in the past, the Myricks have attempted to use this lot in conjunction with their commercial fishing and crabbing operation, but this use has been denied and the only use remaining on the lot is a recreational one. The Board is of the opinion that the variance to permit the utility shed should be granted. However, its use is to be restricted to the storage of lawn mowers, picnic tables, grills, etc., and is not to be used in any way as an accessory use to the commercial use across the street.

O R D E R

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

ORDERED that the petition for variance be and the same is hereby **GRANTED** with the following restriction:

1. No use in any way associated with the commercial fishing and crabbing business will be permitted on this site.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman

Michael B. Sauer
Michael B. Sauer

Robert O. Schuetz
Robert O. Schuetz


WARRANTY
2 YEARS
WARRANTY
We Have Been
Manufacturing Our Products
Since 1995
30'×65' ×15'
*Greater Seam Strength Abrasion Resistance PE
*UV Proof, Leak Resistant, Fire Resistance
Parts and Service
in USA & Canada
*11 Arches and
22 Anchor Plates
*door size : 11.5' X 11.5'
*mandoor size : 2.7' X 6.3'
Email: jeffz@cheryhllo.com
Tel: 516-493-9951
Fax: 516-493-9980
61 Commercial Av,Garden City,NY 11530

2023-0070-SH

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

No. 222509

Date: 4/3/2023

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
001	806	0000		6150				$75
						Total:		$75.00

Rec From: Timothy M. Kotroco

For: Residential Special Hearing
1326 Goose Neck Road
Zoning Case 2023-0070-SPH

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

CASHIER'S VALIDATION

PETITION FOR ZONING HEARING(S)

To be filed with the Department of Permits, Approvals and Inspections
To the Office of Administrative Hearings for Baltimore County for the property located at:

Address 1326 Goose Neck Road, Middle River, MD 21220 **Currently Zoned** RC 5

Deed Reference 43637/0449 / 43637/0490 **10 Digit Tax Account #** 1519510661 1600001460

Owner(s) Printed Name(s) Cecile Myrick

(SELECT THE HEARING(S) BY MARKING X AT THE APPROPRIATE SELECTION(S) AND ADDING THE PETITION REQUEST)

The undersigned, who own and occupy the property situate in Baltimore County and which is described in the plan/plat attached hereto and made a part hereof, hereby petition for an:

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

See Attached

2. ____ **a Special Exception** under the Zoning Regulations of Baltimore County to use the herein described property for

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)**

Property is to be posted and advertised as prescribed by the zoning regulations.
I/ we agree to pay expenses of above petition(s), advertising, posting, etc. and further agree to be bound 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

Mailing Address City State

Zip Code Telephone # Email Address

Legal Owners (Petitioners):

Cecile Myrick /
Name #1 – Type or Print Name #2 – Type or Print

Cecile Myrick /
Signature #1 Signature # 2

1326 Goose Neck Road Middle River MD
Mailing Address City State

21220 / 443-463-7778 / smyrick6@gmail.com
Zip Code Telephone #'s (Cell and Home) Email Address

Attorney for Petitioner:

Timothy M Kotroco, Esq. Matthew T. Kotroco, Esq.
Name - Type or Print

Timothy Kotroco
Signature

305 Washington Ave, STE 502, Towson, MD
Mailing Address City State

21204 / 410-299-2943 / tkotroco@gmail.com
Zip Code Telephone # Email Address

Representative to be contacted:

Timothy M Kotroco, Esq. or Matthew T. Kotroco, Esq.
Name - Type or Print

Timothy Kotroco
Signature

305 Washington Ave, STE 502, Towson, MD
Mailing Address City State

21204 / 410-299-2943 / tkotroco@gmail.com
Zip Code Telephone # Email Address

Case Number 2023-0070-SPH **Filing Date** 4 / 3 / 2023 **Do Not Schedule Dates** ____ **Reviewer** MR

Revised 8/2022

TIMOTHY M. KOTROCO, Esq.
305 Washington Avenue, Suite 502
Towson, Maryland 21204
410-299-2943
Tkotroco@gmail.com

Relief Requested:

To remove restriction #1 from the Board of Appeals opinion and order in Case No. 93-221-A prohibiting the property from being associated with the commercial fishing and crabbing business at 1326 Gooseneck Road and to amend the approved site plan to substitute a 30' x 60' utility shed in lieu of the previously approved 24' x 36' utility shed as shown on the previously approved site plan.

#2023-0070-SPH

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BROYLES, HAYES AND ASSOCIATES, INC.

Engineers • Land Planners • Surveyors
1922 MIDDLEBOROUGH ROAD • BALTIMORE, MD 21221
PHONE (410) 574-2227 • FAX (410) 574-2284

DESCRIPTION FOR ZONING VARIANCE
FOR
1327 GOOSENECK ROAD

BEGINNING for the same at a point on the south west side of Gooseneck Road right-of-way, 30 feet wide, at a distance of 626.89 feet north west, of the northwest corner of Goose Harbor Road and Gooseneck Road, Thence running and binding on the aforesaid Gooseneck Road right-of-way;

1. North 52° 21' 00" West 110.00 feet, thence leaving said road and running the three following courses and distances viz.,

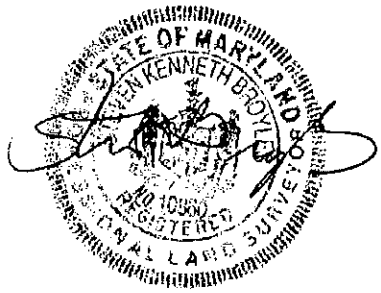
2. South 37° 39' 00" West 400.0 feet,

3. South 52° 21' 00" East 110.00 feet,

4. North 52° 21' 00" East 400.0 feet, to the place of beginning containing 1.01 acres more or less.

BEING all of that parcel as recorded in the land records of Baltimore County in Liber 5917, folio 584.

This description was prepared for the purposes of a zoning variance this does not constitute a boundary survey and should not be used as such.



#2023-0070-SPH

Plat to accompany Petition for Zoning ☐ Variance ☑ Special Hearing

PROPERTY ADDRESS: 1327 GOOSENECK ROAD - BALTO. CO. MD. see pages 5 & 6 of the CHECKLIST for additional required information

Subdivision name: N/A

plat book# ~ ,folio# ~ ,lot# ~ ,section# ~ LIBER 5917 - FOLIO 582

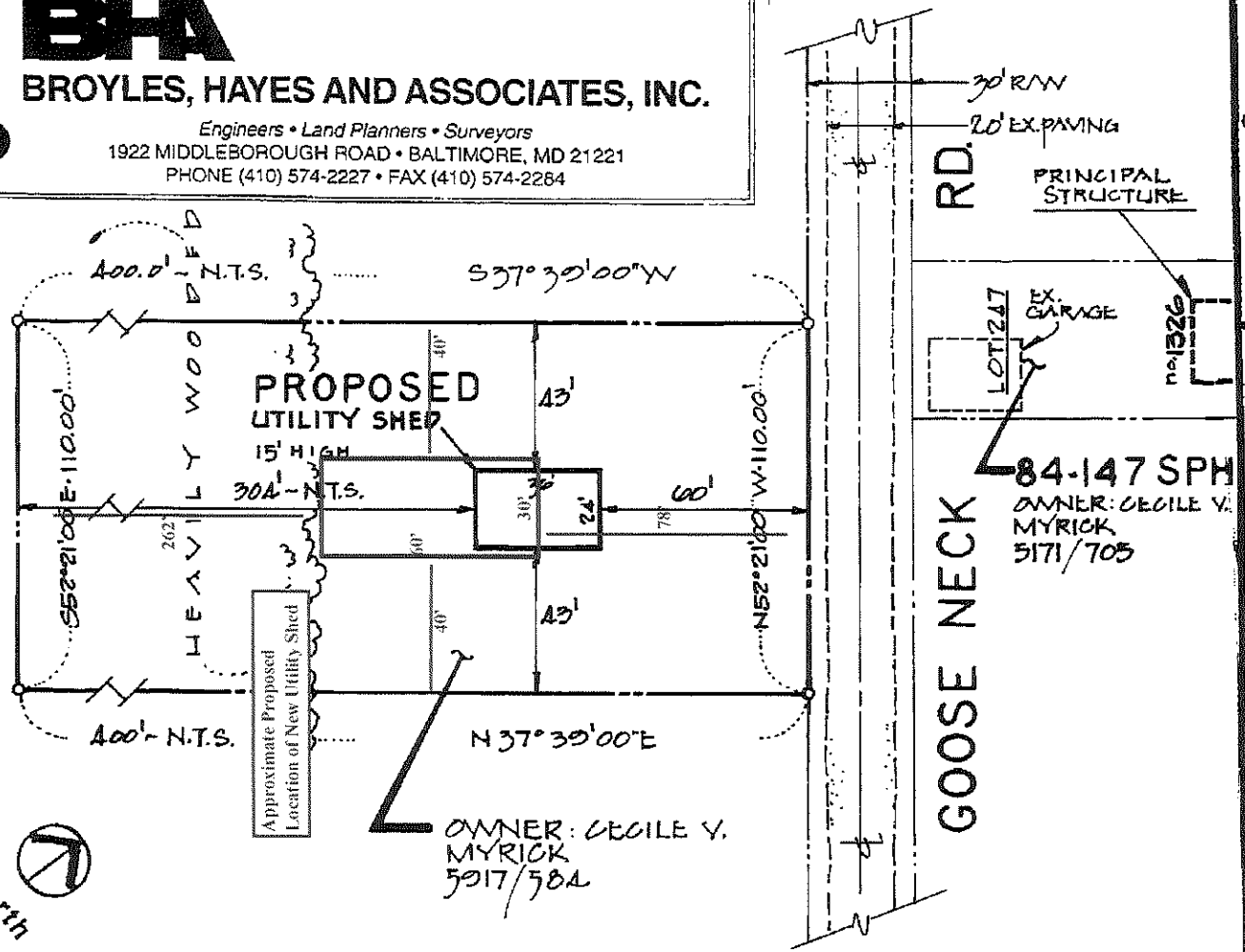
OWNER: CECILE V. MYRICK

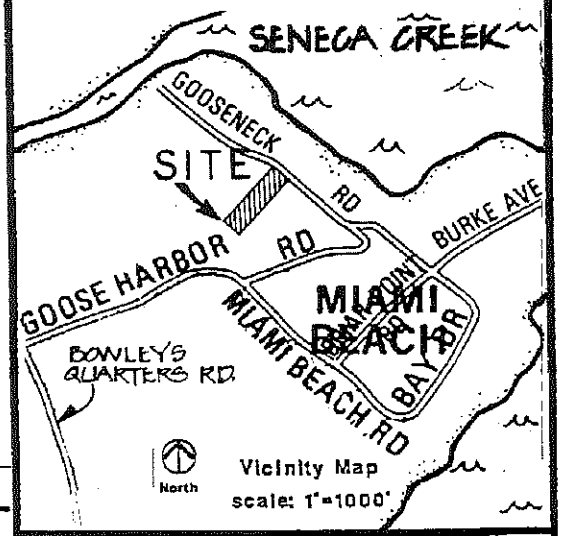
BROYLES, HAYES AND ASSOCIATES, INC.

Engineers • Land Planners • Surveyors

1922 MIDDLEBOROUGH ROAD • BALTIMORE, MD 21221

PHONE (410) 574-2227 • FAX (410) 574-2264





LOCATION INFORMATION

Councilmanic District: 5TH

Election District: 15TH

1"=200' scale map#: NE 2-L

Zoning: RC5

Lot size: 1.01 acreage / 44,000 square feet

	public	private
SEWER:	☐	◉
WATER:	◉	☐

	yes	no
Chesapeake Bay Critical Area:	◉	☐

Prior Zoning Hearings: 93-321-A / 84-0147-XSPHA

Zoning Office USE ONLY!

reviewed by:	ITEM #:	CASE#:
MJK		2023-0070-SPH

dat : DEC. 17, 1992

prepared by: BROYLES, HAYES & ASSO. Scale of Drawing: 1"=50'