

<b>IN RE: PETITIONS FOR SPECIAL EXCEPTION</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
S side of Old Battle Grove Road; 1100'	*	OFFICE OF
S of the c/l of St. Patricia Lane		
15 <sup>th</sup> Election District	*	ADMINISTRATIVE HEARINGS
7 <sup>th</sup> Councilmanic District		
<b>(7303 Old Battle Grove Road)</b>	*	FOR
Frank M. and Geraldine Rynarzewski,	*	BALTIMORE COUNTY
and Frank M. Rynarzewski IV		
Petitioners	*	<b>Case No. 2012-0267-XA</b>

\* \* \* \* \*

**ORDER AND OPINION**

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Exception and Variance filed for property located at 7303 Old Battle Grove Road. The Petition was filed by Frank M. and Geraldine Rynarzewski and Frank M. Rynarzewski IV, the legal owners of the subject property. The Special Exception Petition seeks relief from §1B01.1.C.8 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) for a fishing and shellfishing facility, shoreline Class I. Petitioners are also requesting Variance relief from §§ 400.1, 417.3 and 417.4 of the B.C.Z.R. to permit an existing detached accessory structure (shed) to have a rear yard setback of 6 inches in lieu of the required 2.5 feet, and to permit an open area width of 0 feet from a divisional property line for an existing pier in lieu of the required 10 feet.

The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioners’ Exhibit 4.

Appearing at the hearing were Petitioners Frank M. and Geraldine Rynarzewski and Frank M. Rynarzewski IV and Michael S. Myers, Esquire attorney for the Petitioners. Many neighbors also attended the hearing to voice support for the Petitioners, and their names and addresses are contained on the sign-in-sheet with the case file. The file reveals that the Petition was properly

advertised and the site was properly posted as required by the B.C.Z.R., and the file does not contain any letters of opposition or protest.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Department of Environmental Protection and Sustainability dated May 18, 2012, which state:

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

1. This lot is located within a Limited Development Area (LDA) and Buffer Management Area (BMA) of the Chesapeake Bay Critical Area. The proposed use qualifies as water-dependent and therefore is permitted within the buffer. There are also proposed variances to the side yard setback and the divisional property line. Lot coverage is limited to 31.25% of the property. The CBCA lot coverage limits will minimize adverse impacts on water quality that result from development activities.
2. Any development resulting from the proposed use must comply with all applicable LDA and BMA requirements, including the 15% afforestation requirement and lot coverage requirements. If these requirements are met the zoning petition will conserve fish, wildlife, and plant habitat.
3. The proposed use is permitted under the State-mandated Critical Area regulations provided that development associated with the use is in compliance with all Critical Area requirements. Compliance with the Critical Area requirements can allow the subject development to be consistent with established land use policy 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.

Testimony and evidence offered at the hearing revealed that the subject property is zoned DR 5.5 and is located in the Dundalk area of Baltimore County. The property is owned by Frank and Geraldine Rynarzewski and their grandson, Frank M. Rynarzewski IV, pursuant to a deed, dated March 15, 2012. *See* Exhibit 1. The property is improved with an existing single family

dwelling, an accessory detached garage and two parking areas located adjacent to Old Battle Grove Road. Also shown on the site plan is an area for crab pot storage large enough to accommodate up to 300 crab pots. The property also contains a pier on which Petitioner Frank Rynarzewski IV stores his commercial fishing vessel, which is approximately 31' long. *See Exhibit 2.* There are also “slough trays” situated along the bulkhead of the property. *See Exhibit 4.* Frank Rynarzewski IV holds a commercial crabbing license issued by the State of Maryland permitting him to keep and maintain up to 300 crab pots in furtherance of his commercial business. *See Exhibit 2.*

#### SPECIAL EXCEPTION

As noted above, Petitioners seek special exception relief to operate a fishing and shellfishing facility on the subject property. Frank Rynarzewski IV became interested in crabbing at the age of 13, and became licensed by the State of Maryland after serving an apprentice/internship period. He is now 18 years old, and he resides at 7303 Battle Grove Road, which is the property on which the shellfish operation is conducted.

Such a shellfishing facility is permitted in the DR 5.5 zone by special exception. B.C.Z.R. § 1B01.1.C.8. Under Maryland law, special exception uses are presumptively valid and deemed compatible with the zoning classification. *See, People’s Counsel v. Loyola College*, 406 Md. 54 (2008). The B.C.Z.R. sets forth a series of factors for consideration in a special exception case, and the testimony in this matter leads me to believe that this operation will in no way be detrimental to the neighborhood or create any dangers to the public health, safety and welfare. B.C.Z.R. § 502.1. As such and given the absence of any negative County agency comments or testimony to the contrary, the special exception petition will be granted.

## VARIANCES

Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Trinity Assembly of God v. People's Counsel*, 407 Md. 53, 80 (2008).

Petitioners have met this test.

As seen on the site plan, the subject property is extremely long and narrow (204' x 50'), and this irregular shape creates certain constraints regarding the location of the existing shed. The property is also waterfront, and the shoreline has a very irregular shape which also creates the need for variance relief with respect to the existing pier and the adjoining boat slip.

As noted above, both of these are existing site conditions, and the Petitioners explained that the shed has been situated in its present location for approximately 12 years, while the pier was constructed at least 20 years ago. Thus, the variance relief will simply legitimize the existing structures, and Petitioners are not seeking to construct any additional improvements on the site.

The Petitioners' immediate neighbor, Irene DePazzo, testified that she enthusiastically supports the petitions, and she said that the shed (which is located 0.5 feet from her property line) and pier were not objectionable in any way. Petitioners submitted a petition on which 34 of their neighbors expressed similar support. *See* Exhibit 3. To deny relief in these circumstances would create an undue hardship for Petitioners, given they would need to relocate and/or reconstruct the shed and pier, which have been in place without incident for many years.

Pursuant to the advertisement, posting of the property, and public hearing on these petitions, and after considering the testimony and evidence offered, I find that Petitioners' Special Exception and Variance requests should be granted.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 12<sup>th</sup> day of June, 2012 that Petitioners' request for Special Exception relief under §1B01.1.C.8 of the Baltimore County Zoning Regulations ("B.C.Z.R.") for a fishing and shellfishing facility, shoreline Class I, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that Petitioner's requests for Variance relief from §§ 400.1, 417.3 and 417.4 of the B.C.Z.R. to permit an existing detached accessory structure (shed) to have a rear yard setback of 6 inches in lieu of the required 2.5 feet, and to permit an open area width of 0 feet from a divisional property line for an existing pier in lieu of the required 10 feet, be and are hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.

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

JEB/dlw

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Signed \_\_\_\_\_  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County