

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
S side of Old Battle Grove Road, 1,056		
feet SE of Saint Patricia Lane	*	OFFICE OF
15 th Election District		
7 th Councilmanic District	*	ADMINISTRATIVE HEARINGS
(7303 Old Battle Grove Road)	*	FOR BALTIMORE COUNTY
Frank and Geraldine Rynarzewski	*	CASE NO. 2012-0100-SPHX
<i>Petitioners</i>		

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for consideration of a Petition for Special Exception¹ filed by Frank and Geraldine Rynarzewski, the legal property owners. Petitioners request Special Exception relief to use said property for a fishing and shell fishing facility pursuant to Baltimore County Zoning Regulations (“B.C.Z.R.”) Section 1B01.1(C)(8). The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the requisite public hearing in support of the requests were Frank and Geraldine Rynarzewski, Frank Rynarzewski III, Frank Rynarzewski IV, Irene DePazzo, Louis and Theresa Kellner, and Michael S. Myers, Esquire attorney for the Petitioners. Also attending as Protestants were Richard Young, Lee Carrion and Earl Westerfeld.

It should be noted that this matter came before me as a result of a complaint registered with the Code Enforcement Division of the Department of Permits, Approvals and Inspections². A Code Inspections and Enforcement Citation was issued to Petitioner September 21, 2011, for failure to cease all business operations. Hence, Petitioner filed the instant special exception request.

¹ The subject case file number was assigned the “SPHX” designation which is for combination Special Hearing and Special Exception Petitions. The “SPHX” designation was assigned by an intake officer in the Zoning Review Office. However, Petitioners are seeking only Special Exception relief which should only have the case designation “X.”

² Case No: CO-0101445

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 (DEPS) dated November 2, 2011. DEPS 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, they 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 (CBCA). The proposed use qualifies as water-dependent and therefore is permitted within the buffer. 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 LDA and BMA requirements, including the 15% afforestation requirement and CBCA lot coverage requirements, prior to building permit approval. Therefore the subject zoning petition will conserve fish, wildlife, and plant habitat.
3. Any development associated with the use will be required to meet all LDA and BMA requirements and therefore will 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.

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. 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 where three boats are stored, one of which is a 32' crabbing vessel which is used to conduct the crabbing business on this property. There are also slough tanks situated along the bulkhead of the property.

A site plan was submitted into evidence as Petitioners' Exhibit 1 which depicts the improvements on the subject property. The plan was hand drawn by the Petitioners themselves.

However, it should be noted that the zoning planner who assisted the Applicants in filing this Petition, Mr. John Lewis, indicated in the file that the site plan was defective in that the Applicants failed to have the plan prepared by a professional engineer or property line surveyor. The Applicants signed an acknowledgement indicating that they are proceeding at their own risk with a site plan that was drawn by themselves and not under a professional's seal.

The testimony and evidence presented at the hearing demonstrated that the grandson of the owners of the property, 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. It should be noted that Frank Rynarzewski IV, the holder of this crabbing license, is not an owner of the property at 7303 Old Battle Grove Road, which is the subject of this Special Exception Petition. In addition, Frank Rynarzewski IV is not a party or applicant on the Petition for Special Exception filed in this case.

As stated previously, the filing of the Petition in this case was as a result of a Code violation case filed by Baltimore County Code Enforcement against the operator of Grumpy's Crabs. That Code violation case, civil citation no. 94901, came on for a hearing before Administrative Law Judge John Beverungen on September 21, 2011. Judge Beverungen's decision is attached to this Order as Exhibit 1. While Judge Beverungen dismissed the citation in that case in that it was filed for the wrong property address, he went on further to warn the operator of Grumpy's Crabs, Mr. Frank Rynarzewski IV, that the "County zoning regulations require, among other things, that the business be located on a lot which is also occupied by the primary residence of its operator, who must possess the requisite licensure set forth in the Natural Resources Article of the Annotated Code of Maryland. Based on the testimony in the above matter, it is unclear whether the

Respondent could satisfy this requirement although that determination will be made in a different proceeding.” (See page 2 of Judge Beverungen’s Order attached hereto).

The testimony and evidence offered at the hearing before me showed that the commercial crabbing license is issued in the name of Frank Rynarzewski IV. The property which is the subject of this special exception for a fishing and shell fishing facility is owned by Frank and Geraldine Rynarzewski, the license holder’s grandparents. The Baltimore County zoning law requires that the holder of the crabbing license also maintain a primary residence on the property whereupon the business is being operated. Frank Rynarzewski IV does not own the property located at 7303 Old Battle Grove Road, nor is he a named applicant on the Petition for Special Exception filed herein. Judge Beverungen, in his Order issued in September, 2011 warned the operator of Grumpy’s Crabs about this defect; however, the Rynarzewskis have done little to remedy this problem. As the Petitioners have failed to satisfy this specific requirement to allow a fishing and shell fishing facility to be located on the property at 7303 Old Battle Grove Road, the Petitioners’ special exception request must be denied.

Pursuant to the advertisement, posting of the property, and public hearing on these petitions held, and after considering the testimony and evidence offered, I find that Petitioners’ Special Exception request should be denied.

THEREFORE, IT IS ORDERED this 4th day of January, 2012 by this Administrative Law Judge, that Petitioners’ request for Special Exception relief to use said property for a fishing and shell fishing facility pursuant to Baltimore County Zoning Regulations (“B.C.Z.R.”) Section 1B01.1(C)(8), be and is hereby DENIED.

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

Signed _____
TIMOTHY M. KOTROCO
Administrative Law Judge
for Baltimore County

TMK/pz

NOTE: Administrative Law Judge John E. Beverungen's decision in the Code Enforcement Civil Citation Case No. 94901 is attached hereto.