

# PETITION FOR ZONING VARIANCE FROM AREA AND HEIGHT REGULATIONS

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

Geraldine B. Highto, his wife,  
DOR we, Martin M. Highto, and legal owners 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 400.1 to permit a swimming pool on a corner lot not in the 1/3 of lot farthest removed from both streets.

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

- 1) Hardship since pool cost more than \$2,000 and petitioners cannot afford loss thereof by removal from lot.
- 2) Practical Difficulty in that pool cannot be removed without great cost to petitioners and damage to a major portion of the lot.

The existence of the swimming pool at its present location is not detrimental to the health or welfare of the neighborhood. Removal from its present location could cause the petitioners a loss of more than \$2,000.00 since there is no market for the sale of the pool.

See attached description

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

Address: 353 Equitable Building  
Baltimore, Maryland 21202  
837-2988

ORDERED By The Zoning Commissioner of Baltimore County, this 16th day of September, 1969, 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 27th day of October, 1969, at 10:00 o'clock A.M.

Zoning Commissioner of Baltimore County

Martin M. Highto - #70-82-A and #8-69-249-3

## ORDER

For the reasons set forth in the foregoing Opinion, it is this 18th day

of June, 1970, by the County Board of Appeals, ORDERED that the Order of the Deputy Zoning Commissioner, dated December 5, 1969, is hereby affirmed and the variance petitioned for, be and the same is hereby GRANTED, and it is

FURTHER ORDERED that the refusal of the Buildings Engineer to issue a

building permit is hereby reversed, and that the building permit shall be issued.

Any appeal from this decision must be in accordance with Chapter 1100,

subtitle B of Maryland Rules of Procedure, 1961 edition.

COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY

William S. Baldwin, Chairman

W. Giles Parker

John A. Slawik

RE: PETITION FOR VARIANCE  
from Section 400.1 of the  
Baltimore County Zoning  
Regulations, and a  
BUILDING PERMIT for a  
swimming pool and fence  
NE corner Milford Mill Road  
and Glenrock Road,  
3rd District  
Martin M. Highto,  
Petitioner

BEFORE

COUNTY BOARD OF APPEALS

OF

BALTIMORE COUNTY

No. 70-82-A  
and  
No. 8-69-249-3

## OPINION

This opinion actually covers two cases that were consolidated on appeal before the Board. Case No. 70-82-A is a petition for a variance from Section 400.1 of the Zoning Regulations to permit an aboveground swimming pool in a location on a corner lot, in the one-third of the lot farthest removed from both streets. The variance was granted by the Deputy Zoning Commissioner, and an appeal was taken to the Board from his Order.

Case No. 8-69-249-3 involves an appeal from the refusal of the Buildings Engineer to waive the 10 foot setback required for swimming pools of 100 square feet area or more under Section 409.10 of the Baltimore County Building Code. The pool was constructed on or about May 1st, 1969; is 16 feet by 31 feet, for a total square foot area of 496 square feet, and is situated 6 feet from the west property line, 8 feet from the north (rear) property line, and 13 feet from the east property line. No building permit was applied for prior to the beginning of construction.

Mr. Highto, the property owner, testified that he contracted with National Home Products for the construction of the pool, and that it was his impression that any permits needed would be obtained by the National Home Products. After the pool had been completed, a complaint was made to Baltimore County by a next door neighbor, a Mr. Morton Morris, and as a result of the complaint John J. France, a building inspector for Baltimore County, visited the property and issued a Stop Work Notice. The owners, through their attorney, subsequently applied for a building permit for the pool, which was denied by Mr. Charles B. Wheeler, Buildings Engineer for Baltimore County, because it did not comply with Section 409.10g(2), and an appeal from this action was taken by the

Martin M. Highto - #70-82-A and #8-69-249-3

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properly owner.

Mr. Highto, the property owner, testified that he had contracted with National Home Products for the construction of the pool on April 9, 1969; that work began approximately two weeks later, and that the pool was completed on May 1, 1969. He testified that the cost of the pool was \$2,000, plus \$300 for a fence erected around it as required by the Regulations, plus \$115 for necessary electrical work, and \$120 for a survey of his property, plus legal fees. He stated that he had been unable to get any satisfaction from National Home Products, the contractor, and that suit has been entered against them by his attorney. He further testified that he had contacted another pool company, and had obtained an estimate of \$700 to move the swimming pool so as to comply with the County setback requirements (Petitioner's Exhibit D).

Section 409.10g(2) reads in part as follows:

"Setbacks from adjacent property lines shall be not less than 10 feet for swimming pools 100 square feet or more in area and not less than the maximum depth of the pool for those less than 100 square feet."

Another provision of the same section provides:

"The above requirements may be waived by the Buildings Engineer in such instances where the size of the premises indicate no hazard to the public on adjacent premises."

Mr. Wheeler, the Buildings Engineer, testified that he had visited the property in May of 1969, and that while he could not see any hazard resulting from the pool being six feet from the property line instead of the ten feet required by the Building Code, it had been his policy for a number of years as Buildings Engineer not to waive the ten foot setback requirement where there was an objection by any persons who might be affected by the waiving of the provision. On cross-examination, he stated that he would have waived the ten foot setback requirement if there had been no objection from Mr. Morris.

The Board can understand that Mr. Wheeler may have had good practical reasons for the establishment of this policy. However, under all recognized principles of administrative law and considering the language of Section 409.10, the Board finds that the

Martin M. Highto - #70-82-A and #8-69-249-3

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Buildings Engineer is required to make a decision as to whether or not he will waive a setback based upon the actual existing facts. To deny building permits for the sole reason that a neighbor objects is an arbitrary act, and not based on the exercise of sound discretion which the statute requires. The validity of these principles is certainly confirmed by the facts in this particular case where the Buildings Engineer himself testified that he would have waived the setback requirement if there had been no objection raised by the neighbor.

The only protestants to appear as witnesses were Mr. and Mrs. Morton

Morris. Their principal objection seems to involve the effect on their property of a fence which Mr. Highto has erected, and which is not itself a violation, but on the other hand is required by the Code, and this fence would still be in its present position even if the swimming pool were moved back by four feet. The Board cannot possibly conceive that the swimming pool would be any less objectionable at a distance of ten feet from the property line than it presently is at a distance of six feet from the property line, and that to require Mr. Highto to move the pool at great expense to him would be unfair, arbitrary, and of no particular benefit to anyone. Furthermore, evidence in the case indicated that Mr. Morris had agreed at one time to settle this matter, but his demands were considered to be excessive by Mr. Highto.

Under the facts of this case, the Board feels impelled to affirm the Order of the Deputy Zoning Commissioner granting the variance requested, and to reverse the denial of the permit by the Buildings Engineer.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. Edward D. Hordesty, Deputy Zoning Commissioner  
FROM: Mr. George E. Gavett, Director of Planning  
Date: October 17, 1969

SUBJECT: Petition #70-82-A. Variance to permit a swimming pool on a corner lot not in the 1/3 of the lot farthest removed from both streets. Northeast corner of Milford Mill and Glenrock Roads. Martin M. Highto, Petitioner.

3.d District

HEARING: Monday, October 27, 1969 (10:00 A.M.)

The Planning staff will offer no comment on the subject petition.

GEG:ben

JOSEPH J. O'MALLEY, JR.  
Attorney at Law  
5712 POPE STREET  
BALTIMORE, MARYLAND 21205  
Phone 789-3022



December 29, 1969

Honorable Edward D. Hordesty  
Deputy Zoning Commissioner of  
Baltimore County  
111 W. Chesapeake Avenue  
Towson, Maryland 21204

Re: Petition for Variance.  
Martin M. Highto and Geraldine  
B. Highto, Petitioners-No. 70-82-A

Dear Mr. Commissioner:

Please note an Appeal in the above captioned case, on behalf of the Protestants, Mr. & Mrs. Mortimer Morris.

Thank you.

Very truly yours,  
Joseph J. O'Malley, Jr.  
Joseph J. O'Malley, Jr.

cc: Paul Alpert, Esquire  
351 Equitable Building  
Baltimore, Maryland 21202

Description of No. 622 Milford Mill Road from Deed dated December 27, 1951 between Ralph W. Weiss and Evelyn M. Weiss, his wife, and Martin M. Highto and Geraldine B. Highto, his wife, and recorded among the Land Records of Baltimore County in Liber 2621, page 491.

BEGINNING for the same at a point on the north side of Milford Mill Road where it is intersected by the east side of Glenrock Road, as shown on Plat of Subbrook Park Lot No. 12, Block N, as described in Liber P.P.C. No. 603, folio 44, and recorded among the Land Records of Baltimore County; running thence from said place of beginning along the north side of Milford Mill Road, as shown on Plat of Subbrook Park, north eighty-nine degrees twenty-five minutes east fifty feet, thence along the dividing line between Lot No. 12, and Mo. 13, Block N, as shown on said plat, north no degrees thirty-five minutes west one hundred and fifty feet; thence, by a line parallel to Milford Mill Road, south eighty-nine degrees twenty-five minutes west fifty feet to the east side of Glenrock Road, thence, binding on the east side of Glenrock Road, south no degrees thirty-five minutes east one hundred and fifty feet to the place of beginning. The improvements thereon being known as No. 622 Milford Mill Road.

NOV 22 1971





**PETITION FOR VARIANCE  
3rd DISTRICT**

**ZONING:** Petition for Variance for a Swimming Pool on a corner lot.  
**LOCATION:** Northeast corner of Milford Mill Road and Glenrock Road.  
**DATE & TIME:** Monday, October 27, 1969 at 10:00 A.M.  
**PUBLIC HEARING:** Room 108, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland.

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

Petition for Variance from the Zoning Regulations of Baltimore County to permit a swimming pool on a corner lot not in the 1/3 of lot furthest removed from both streets.

The Zoning Regulation to be excepted as follows:

**Election 600.1 Accessory Buildings—**On corner lots they shall be located only in the third of the lot furthest removed from any street and shall occupy not more than 50% of such third.

All that parcel of land in the Third District of Baltimore County.

**RECOMMENDING** for the same at a point on the north side of Milford Mill Road where it is intersected by the east side of Glenrock Road, as shown on Plat of Sudbrook Park Lot No. 12, Block N, as described in Liber W.P.C. No. 603, folio 44, and recorded among the Land Records of Baltimore County; running thence from said place of beginning along the north side of Milford Mill Road, as shown on Plat of Sudbrook Park, north eighty-nine degrees twenty-five minutes east fifty feet, thence along the dividing line between Lot No. 12, and No. 13, Block N, as shown on said plat, north 90 degrees a thirty-five minutes west one hundred and fifty feet; thence, by a line parallel to Milford Mill Road, south eighty-nine degrees twenty-five minutes west fifty feet to the east side of Glenrock Road, thence, binding on the east side of Glenrock Road, south 90 degrees thirty-five minutes east one hundred and fifty feet to the place of beginning. The improvements thereon being known as No. 622 Milford Mill Road.

Being the property of Martin M. Hight and Geraldine B. Hight as shown on plat plan filed with the Zoning Department.

Hearing Date: Monday, October 27, 1969 at 10:00 A.M.

Public Hearing: Room 108, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland.

By order of  
**JOHN G. ROSE**  
Zoning Commissioner of Baltimore County.

Oct. 11.

# **CERTIFICATE OF PUBLICATION**

TOWSON, MD., October 2, 1969.

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., once in each of one time successive weeks before the 27th day of October, 1969, the first publication appearing on the 9th day of October 1969.

**THE JEFFERSONIAN,**

*L. Frank Strupler*  
Manager.

Cost of Advertisement, \$-----

TELEPHONE  
823.3000  
EXT. 387

## **INVOICE** **BALTIMORE COUNTY, MARYLAND** **OFFICE OF FINANCE**

Division of Collection and Receipts  
COURT HOUSE  
TOWSON, MARYLAND 21204

**No. 67033**

DATE Oct. 27, 1969

BILLED BY:

TO: **Martin M. Hight**  
**622 Milford Mill Road**  
**Baltimore, Md. 21208**

**Zoning Dept. of Baltimore County**

| DEPOSIT TO ACCOUNT NO. <b>01-622</b> |                                                 | RETURN THIS PORTION WITH YOUR REMITTANCE                        | TOTAL AMOUNT   |
|--------------------------------------|-------------------------------------------------|-----------------------------------------------------------------|----------------|
| QUANTITY                             |                                                 | DETACH ALONG PERFORATION AND KEEP THIS PORTION FOR YOUR RECORDS | <b>\$51.50</b> |
| 1                                    | Advertising and posting of property<br>170-82-A |                                                                 | <b>\$1.50</b>  |
| 4                                    |                                                 |                                                                 |                |

**IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND**  
**MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON, MARYLAND 21204**

GLENROCK (50') FACE OF CONC. CURB 24' PAVING ROAD

COE OF FENCE 1.25'  
SOUTH OF PROJECTED

Rpe N 83° 26 E 50.00

COR. OF FENCE  
O.E. SOUTH AND WEST  
OF H.

Pipe - 6 FT Redwood Fence

6 FT. ENDWOOD FENCE  
3.75 ON STREET

Pool Bottom on  
Natural Gravel  
Height 40'

2 ELEVATED  
DECK

2

Plot of Martin Hight  
and wife Lot.

BEING LOT NO. 512  
BLOCK N, SUDBROOK PARK  
BALTIMORE COUNTY, MD.

Known As.

622 MILFORD MILL RD.

EDWIN J. KIRBY #A4400.  
1711 E. 32ND STREET  
BALTIMORE, MD. 21218

Scale 1" = 20' Date 8-27-69



MILFORD MILL ROAD

