

PETITION FOR ZONING VARIANCE FROM AREA AND HEIGHT REGULATIONS

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, George and Nellie Frank, legal owner, 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 1801.2C2a, to permit dwelling-unit windows within a subdivision facing a property line which is part of the tract boundary and not a street line prior to development to have a setback of ten feet (10') from the boundary instead of the required thirty-five feet (35') from the boundary and Section 1802.3C1 to permit a rear-yard setback of five feet (5') instead of the required thirty feet (30').

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

To provide proper parking and driveway circulation and to retain the present trees and natural growth, terrain, and topography which provides excellent drainage and natural screening and beauty.

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.

Joseph L. Soley, Contract purchaser
Address: 5014 York Road (21204)
W. Lee Harrison, Signature
Petitioner's Attorney
Address: _____
George Frank, Legal Owner
Address: 5 Aigburth Road (21204)
Protestant's Attorney
Address: _____

ORDERED By The Zoning Commissioner of Baltimore County, this _____ day

of _____ 1971, that the subject matter of this petition be advertised as required by the Zoning Law of Baltimore County, in two newspapers of general circulation through Baltimore County, that property be posted, and that the public hearing be held before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the _____ day of _____, 1971, at 10:00 o'clock

_____ Zoning Commissioner of Baltimore County.

(over)

RE: PETITION FOR SPECIAL EXCEPTION
for Offices and Office Building and
VARIANCES from Sections 1801.2C2a,
1802.2C and 1802.2A of the
Zoning Regulations
NE corner of York and Aigburth Roads
9th District
Joseph L. Soley, Petitioner
PETITION FOR VARIANCES from
Sections 1801.2C2a and 1802.3C1
of the Zoning Regulations
N/S Aigburth Road 324'
E. of York Road
9th District
George and Nellie Frank, Petitioners

BEFORE

COUNTY BOARD OF APPEALS

OF

BALTIMORE COUNTY

No. 72-40-XA
and
No. 71-283-A

OPINION

This hearing included appeals from two decisions of the Zoning Commissioner which granted several variances and a special exception for offices. The subject property is in the Ninth Election District of Baltimore County, on the north side of Aigburth Road approximately 324 feet east of the York Road. This parcel is immediately behind the existing Cardiff Hall East Apartments and is adjoined on its east side by the property of William H. McLean, Jr., 9 Aigburth Road, the sole protestant in the case. The subject property was formerly owned by George and Nellie Frank and has been recently purchased by Joseph L. Soley, the owner of the existing Cardiff Hall East Apartments. The subject tract and the McLean property are zoned D.R. 16. Mr. Soley proposes to erect garden type apartments and a small office building, approximately 32 feet by 11 feet, as set out on Petitioner's Exhibit #4. In order to complete the project as proposed the petitioner, in case #71-283-A, seeks variances from Sections 1801.2C2a and 1802.3C1, and in case #72-40-XA, variances from Sections 1801.282, 1802.2C and 1802.2A, and a special exception for offices. In addition to Petitioner's Exhibit #4, other plans and also comments explaining these requests may be examined in detail in the respective zoning files, #71-283-A and #72-40-XA, which have been accepted into evidence as Petitioner's Exhibits #1 and #2.

The Board heard testimony from the petitioner, Mr. Soley; a registered professional engineer, James W. Spamer, and an expert landscape consultant, William B. Acker. Each of these three presented various elements of the petitioner's case, which included evidence and testimony indicating satisfaction of the provisions of Section 502.1 which are required for the granting of a special exception, and also elements of practical difficulty and/or unreasonable hardship which are necessary if the variances are to be granted.

Original Order in Case #72-40-XA

Frank-Soley, #72-40-XA and #71-283-A

The sole protestant in this case was William H. McLean, Jr., and he was the only witness offered by the protestant's attorney. Mr. McLean was opposed only to the one variance concerning the side yard window setback, which he alleged would interfere with his light, air and privacy. The protestant resides at the adjoining property, which is a parcel approximately 110 feet by 290 feet, zoned D.R. 16. Mr. McLean had only this one objection and was not opposed to the other variances nor the requested special exception for offices.

From the testimony and evidence presented, this Board is satisfied that the special exception for the small office area will not violate any of the provisions of Section 502.1. As to the requested variances, the Board was particularly impressed with the testimony of Mr. Acker, the landscape consultant. Considering this, along with the testimony of the engineer and Mr. Soley, the Board is satisfied that the petitioner would suffer a practical difficulty and unreasonable hardship if the requested variances were not granted. Therefore, the Board shall affirm exactly the Orders of the Zoning Commissioner in each case and grant the special exception for offices as requested, and the variances as granted and as limited by the Zoning Commissioner's Orders.

ORDER

For the reasons set forth in the foregoing Opinion, the Board affirms the Orders of the Zoning Commissioner; therefore, it is this 11th day of July, 1972, by the County Board of Appeals, ORDERED that the special exception for an Office Building and Offices petitioned for, be and the same is hereby GRANTED, subject to the approval of the site plan by the State Highway Administration, the Bureau of Public Services and the Office of Planning and Zoning; and

The Board finds that strict compliance with the Baltimore County Zoning Regulations would result in practical difficulty and unreasonable hardship upon the petitioner, and

FURTHER ORDERS that the variances petitioned for, be and the same are hereby GRANTED as follows:

- To permit a building 425 feet long in lieu of the required 300 feet;
- To permit a building within 50 feet of a D.R. 10.5 zone instead of the required 75 feet;
- To permit 15 percent open space spread over the overall area in lieu of the required one site;

Frank-Soley, #72-40-XA and #71-283-A

To permit dwelling unit windows within a subdivision facing a property line which is part of the tract boundary and not a street line prior to development to have a setback of 20 feet from the boundary instead of the requested 10 feet, in lieu of the required 35 feet;
To permit a rear yard setback of 15 feet instead of the requested 30 feet, in lieu of the required 30 feet.

subject to the approval of the site plan by the Bureau of Public Services and the Office of Planning and Zoning.

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

Walter A. Reiter, Jr., Acting Chairman

John A. Miller

William H. Gaffney

THIS AGREEMENT OF SALE, made this 14th day of May,

nineteen Hundred and seventy-one, between GEORGE A. FRANK, Jr., and NELLIE FRANK, his wife, Seller, and JOSEPH L. SOLEY, Buyer

WITNESS that the said Seller does hereby bargain and sell unto the said Buyer, and the latter does hereby purchase from the former the following described property, with all the rights and appurtenances thereto appertaining and belonging, situate and lying in the 9th Election District of Baltimore County, State of Maryland, and known as No. 5 Aigburth Road.

For a metes and bounds description. See Schedule A attached hereto and made a part hereof.

at and for the price of One Hundred And Thirteen Thousand Dollars (\$113,000.00) of which Seventy-Five Hundred Dollars (\$7,500.00) have been paid prior to the signing hereof, and the balance to be paid as follows:

Cash, in the amount of One Hundred And Five Thousand, Five Hundred Dollars (\$105,500.00) on the date of closing, which shall be on or before September 30, 1971.

Seller desires to retain certain shrubbery and household furnishings (which may or may not be attached to the realty), and therefore Buyer agrees that Seller may, before settlement, remove the following items:

- 2 Plate glass mirrors, one in living room and one in dining room
- Tiffany chandelier in dining room
- Wall to wall carpeting
- 2 Refrigerators
- Washing Machine and Dryer
- 10 Small azalea bushes

Buyer further agrees that Seller may have his choice to lease, on Buyer's standard lease form, any two bedroom apartment on the middle level facing York Road, in the Cardiff Hall East Apartments, York and Aigburth Roads, Baltimore, Maryland 21204, available from and after August 1, 1971, at Twenty Dollars (\$20.00) less per month than the then going rate for such apartment, for a period of five years from said date. Buyer shall notify Seller promptly of the availability of any such apartment, and Seller shall exercise his right within 10 days after such notification. This covenant shall survive the execution of the deed conveying the within property from Seller to Buyer.

AND upon payment as above provided of the unpaid purchase money, a deed for the property shall be executed at the Buyer's expense by the Seller, which shall convey the property by a good and merchantable title to the Buyer, free of liens and encumbrances, and restrictions, covenants and easements of record, but subject to all applicable laws, ordinances and regulations, and to all restrictions and easements which may be observed by an inspection of the property. Seller knows of no restrictions, covenants or easements affecting the within described property, other than the normal utility easements which may be observed by an inspection of the property. Seller cannot guarantee that the within property has the right to use the alley binding on the North side thereof.

Water rent, taxes (including Metropolitan District charges for sewer and water, if any) and all other public charges on an annual basis against the premises, completed or commenced on or prior to the date hereof or subsequent thereto, shall be apportioned as of date of settlement and thereafter assumed and paid by the Buyer, whether assessments

have been levied or not by the date of settlement, at which time possession shall be given; and the parties hereto hereby bind themselves, their heirs and personal representatives for the faithful performance of this Agreement.

It is also understood and agreed that the Seller shall immediately have all of the insurance policies on the property so endorsed as to protect all parties hereto, as their interests may appear, and continue said insurance in force during the life of this Contract.

It is further understood and agreed that no real estate sales commissions are due by the Seller as a result of this Agreement of Sale.

This Contract contains the final and entire Agreement between the parties hereto, and neither they nor their Agents shall be bound by any terms, conditions or representations not herein written; time being of the essence of this Agreement. Cost of all documentary stamps and of transfer, recording, conveying and other similar taxes when applicable and where required by law, shall be shared equally by the parties hereto.

WITNESS the hands and seals of the parties hereto the day and year first above written.

Witness
Soley

Witness
Seller

Mr. and Mrs. Frank may rent #5 Aigburth commencing October 1, 1971, at \$200.00 per month, for a period until Mr. Soley gives (cont'd)

Witness
Signature

60 days notice to vacate, notwithstanding, Mr. & Mrs. Frank will be notified of any available apartment in accordance with agreement above.

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Pursuant to the advertisement, posting of property, and public hearing on the above petition and it appearing that by reason of the following finding of facts that strict compliance with the Baltimore County Zoning Regulations would result in practical difficulty and unreasonable hardship upon the Petitioners and the Variance requested would grant relief without substantial injury to the public health, safety and general welfare of the locality involved.

the above Variance should be had; such further appearing that the

to permit dwelling unit windows within a subdivision facing a property line which is part of the tract boundary and not a street line prior to development to have a setback of twenty (20) feet from the boundary instead of the requested ten (10) feet; in lieu of the required thirty-five (35) feet; and to permit a Variance a rear yard setback of fifteen (15) feet instead of the required thirty (30) feet; subject to the approval of the site plan by the Bureau of Public Services and the Office of Planning and Zoning.

IT IS ORDERED by the Zoning Commissioner of Baltimore County this 14th day of July, 1971, that the herein Petition for a Variance should be and the

same is granted from and after the date of this order, to permit dwelling unit windows within a subdivision facing a property line which is part of the tract boundary and not a street line prior to development to have a setback of twenty (20) feet from the boundary instead of the requested ten (10) feet; in lieu of the required thirty-five (35) feet; and to permit a Variance a rear yard setback of fifteen (15) feet instead of the required thirty (30) feet; subject to the approval of the site plan by the Bureau of Public Services and the Office of Planning and Zoning.

the above Variance should NOT BE GRANTED.

IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 14th day of July, 1971, that the above Variance be and the same is hereby DENIED.

Zoning Commissioner of Baltimore County

PETITION FOR VARIANCE : BEFORE THE
EX PARTE : ZONING COMMISSIONER
JOSEPH SOLEY : OF BALTIMORE COUNTY

MEMORANDUM OF FACTS AND LAW IN OPPOSITION TO PETITION FOR VARIANCE

The Petition for Variance filed by Joseph Soley seeks a variation from the requirements of Zoning Regulations 1 B01.2C2a and 1 B07.3C1 to enable construction of an apartment building within five and ten feet of the existing property line. The Towson Manor Association and the Burkleigh Square Community Association, Inc., representing a joint membership of 230 persons living in the area surrounding the property in question, oppose the granting of this variance for the following reasons:

1. The property owners in a DR Zone have a right to rely on the enforcement of the zoning regulations.
2. The granting of this variance would in no way benefit the community and would be in violation of the general zoning plan.
3. The granting of this variance would detract from the aesthetics, liability and property values of the surrounding area.
4. The proposed construction would place windows within thirty-five (35) feet of an existing residence.

5. The proposed construction would aggravate an existing problem with the flow of surface water onto adjoining land.
6. The requested variance is solely for the convenience and benefit of the petitioner and in no way benefits the community.
7. The Petitioner has purchased this land with the intention of obtaining a variance and cannot now claim that the Ordinance creates a hardship.

LAW

The Maryland Court of Appeals has stated: "[The Board of Appeals is] not to authorize a granting for the mere convenience to the owner but to require a showing of urgent necessity, hardship peculiar to the particular property, and a burden upon the owner not justified by the public health, safety and welfare." Mayor and City Council v. Polakoff, 233 Md 1. The burden of proof is on the applicant, and it must be shown that the hardship affects particular premises and is not common to other property in the neighborhood. Gleason v. Towson Improvement Ass'n, 197 Md 46. The criterion for determining unnecessary hardship is whether the applicable zoning restrictions when applied to the property in the setting of its environment is so unreasonable as to constitute an arbitrary and capricious interference with the basic right of

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private ownership. Park Shopping v. Lexington Park 216 Md 271. It is axiomatic that the individual right to use privately owned property is subordinate to the paramount right of the public whenever such use tends to affect injuriously the health, comfort, safety and general welfare of all persons in a community, provided, however, that such zonal restriction is itself lawful and not such as to permanently deprive the property owner of all reasonable use of his property. Marino vs. City of Baltimore, 215 Md 206; Grant vs. Mayor and City Council of Baltimore, 212 Md 311.

Unnecessary hardship exists where, in the absence of a variance, no feasible use can be made of the land. Stierro vs. Mayor and City Council, 235 Md 1. Where a person purchases property with the intention to apply to the Board of Appeals for a variance from the restriction imposed by the Ordinance, he cannot contend that such restrictions cause him such a peculiar hardship that entitles him to the special privileges which he seeks. Gleason, supra. The mere fact that a variance would make the property more profitable is not sufficient grounds to justify a relaxation of setback requirements. Paehl vs. County Board of Appeals, 258 and 157.

The Zoning Commissioners and Board of Appeals have the power to grant a variance from height and area regulations only in cases where strict compliance with the Zoning Regulations

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would result in practical difficulty or unreasonable hardships. Such variance shall be granted only if in strict harmony with the spirit and intent of the regulations, and only in such manner as to grant relief without substantial injury to public health, safety, and general welfare. Where the evidence is such as to lead a reasonable man to the belief that the granting of this variance may well affect the aesthetic ambience of the residentially zoned properties which lie in the immediate area, and where the variance would be in disharmony with the spirit and intent of the regulations, the variance should not be granted. Paehl, supra; Marino vs. City of Baltimore 215 Md 206. The detriment to the applicant must be weighed against the benefit to the community in maintaining the general plan. Easter vs. Mayor and City Council, 195 Md 395.

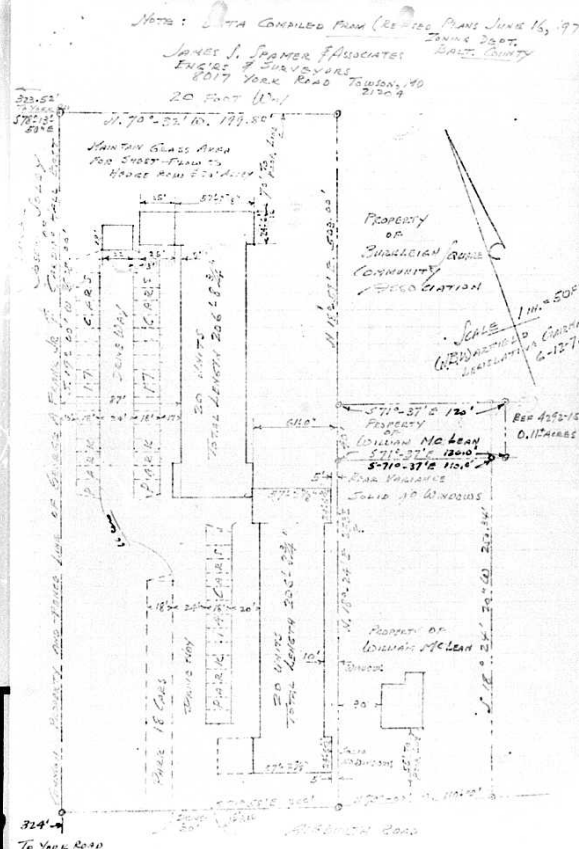
ARGUMENT

An examination of the plat filed in support of this petition (a copy of which is attached to the memorandum) clearly shows that the proposed construction is for the convenience and benefit of the Petitioner and is detrimental to the interests of the surrounding property owners. The petition states that the variance is requested for reasons of facilitating an improved parking arrangement, and to preserve the existing tree line. These "reasons" in no way justify a claim of unnecessary hardship under the Maryland case law, and the

Zoning Commissioners are therefore powerless to grant such a variance from the requirements of the Ordinance.

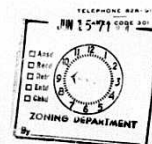
Respectfully submitted,

Edgar H. Gans
Attorney for Towson Manor Association and Burkleigh Square Community Association, Inc.



LAW OFFICE
RICHARD F. CADIGAN
22 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND
21204

June 14, 1971



S. Eric DiNenna, Esq.
Deputy Zoning Commissioner
Office of Planning and Zoning
County Office Building
Towson, Maryland 21204

Re: Hearing on Variance
June 13, 1971
Location: N/S Aigburth, 524' E. of York Road
Petitioner: Joseph Soley

Dear Mr. DiNenna:

Please enter my appearance on behalf of Mr. and Mrs. William H. McLean, Jr. of 9 Aigburth Road; they are protestants to the petitioned variance with hearing scheduled June 22, 1971.

I had sought a postponement of the hearing for the reason that Mr. and Mrs. McLean will be out of the country the week of June 18-25; Mr. McLean has professional obligations at a C.P.A. convention that had been scheduled last year. Since I am apparently not able to secure an agreed-upon postponement, I do request a continuance for that portion of the hearing reserved to protest the variance by Mr. and Mrs. McLean.

Very truly yours,

Richard F. Cadigan

(cc)ips

cc: W. Lee Harrison, Esq.

DEC 6 1973

PETITION FOR SPECIAL EXCEPTION
for Offices and Office Building and
VARIANCES from Sections 1801.2B7,
1802.2C and 1802.2A of the
Zoning Regulations
at corner of York and Aigburth Roads
9th District
Joseph L. Soley, Petitioner

PETITION FOR VARIANCES from
Sections 1801.2C2a and 1802.2C1
of the Zoning Regulations
N/S Aigburth Road 324'
S. of York Road
9th District
George and Nellie Frank, Petitioners

William H. McLean, Jr.
(Protestant)

OPINION AND ORDER

Joseph L. Soley, contract purchaser, hereinafter referred to as "Petitioner," along with George and Nellie Frank, originally filed for special exception for offices and office building and variances from Sections 1801.2B7, 1802.2C and 1802.2A of the Baltimore County Zoning Regulations as to the property located at the northeast corner of York and Aigburth Roads, and for variances from Sections 1801.2C2a and 1802.2C1 of the Baltimore County Zoning Regulations as to the property located on the north side of Aigburth Road three hundred twenty-four (324) feet east of York Road, said properties being located in the Ninth Election District of Baltimore County. Protestant, William H. McLean, Jr., is the adjoining land owner to above described land, owned by Petitioner, and shall hereinafter be referred to as "Protestant." There is a proposal to construct apartments and office buildings upon Petitioner's land while Protestant's

land is used for residential purposes.

After a hearing in front of the Zoning Commissioner, an Order was passed on July 16, 1971, granting the special exception and several variances for offices. An appeal was taken by the Protestant to the County Board of Appeals and after a hearing it was ordered on July 11, 1972, by the County Board of Appeals that the special exception for an office building and offices be granted. It was also ordered that the following variances be granted:

- To permit a building 425 feet long in lieu of the required 300 feet;
- To permit a building within 50 feet of a D.M. 10.5 zone instead of the required 75 feet;
- To permit 15 percent open space spread over the overall area in lieu of the required one site;
- To permit dwelling unit windows within a subdivision facing a property line which is part of the tract boundary and not a street line prior to development to have a setback of 20 feet from the boundary instead of the requested 10 feet, in lieu of the required 35 feet;
- To permit a rear yard setback of 15 feet instead of the requested 5 feet, in lieu of the required 30 feet.

The Protestant then perfected an appeal to this Court from the Order of the County Board of Appeals granting the variance of Section 1801.2C2a, dealing with the allowance of the 20 feet setback from the boundary line of the adjoining land instead of the required 35 feet. A hearing was held in this Court on December 15, 1972, where argument was presented by counsel. A letter of memorandum dated December 28, 1972, was filed with this Court by Richard F. Cadigan, attorney for Protestant, in support of the

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regulations. The ability and power of a Board of Zoning Appeals to grant such variances is implicit in Frankel v. City of Baltimore, 223 Md. 97, 162 A. 2d 447.

Consideration and approval is given by the Court in Lovola Loan Association, supra, to the allowance of an area variance on a lesser showing than undue hardship. This lesser requirement is further approved in the Baltimore County Zoning Regulations, Section 307, where it is stated:

"The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations ~~whenever~~ only in cases where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship."

Thus, a petitioner for an area variance need only show that strict compliance with the Regulations would result in practical difficulty or unreasonable hardship, not undue hardship, which is a decision to be made by the Zoning Commissioner, or the Board on appeal, from the evidence.

This Court must look at all the facts and circumstances of a zoning appeal in light of the principles set forth in Haidemann v. Board of County Commissioners of Howard County, 253 Md. 298 (1969), where the Court, concerning the scope of review, said:

"We have often repeated the principles here applicable: courts have no power to reason and may not substitute their judgment for that of the expertise of the zoning authority. Kirkman v. Montgomery County Council, 251 Md. 273, 247 A. 2d 255 (1968); Boyle v. Hospital for Consumptives, 246 Md. 197, 227 A. 2d 746 (1967); Board of County Commissioners for Prince George's County v. Pass, 242 Md.

315, 218 A. 2d 223 (1966). It has long been settled that the zoning authority's determination is correct if there were such legally sufficient evidence as would make the question fairly debatable. Redi-Mix Concrete Corp. v. Smith, 251 Md. 1, 245 A. 2d 720 (1968); Mavor and City Council of Greenbelt v. Bd. of County Comm'rs for Prince George's County, 247 Md. 670, 224 A. 2d 140 (1967); Ameslane, Inc. v. Lucas, 247 Md. 612, 233 A. 2d 757 (1967). Further, the one who attacks the determination made by the authority must show that it was arbitrary, unreasonable or capricious. Kirkman v. Montgomery County Council, supra; Ameslane, Inc. v. Lucas, supra; Boyle v. Hospital for Consumptives, supra; Mavor & City Council of Balto. v. Sanero, 230 Md. 291, 196 A. 2d 984 (1962). The appellant's proof falls short of establishing that the Board abused the discretion vested in it by law."

The Protestant contends that the Order of the Board of Appeals was granted without authority, its basis being the preservation of trees and not on undue hardship. No argument is put forth, as grounds for reversal, that the actions of the Board were arbitrary, unreasonable or capricious. Examination of the Opinion and Order of the Board, and transcript of the proceedings before the Board, reveal that their determination was based on testimony from the Petitioner, Mr. Soley; a registered professional engineer, James W. Spamer; an expert landscape consultant, William H. Anecker; and Mr. McLean, Protestant. The first three presented evidence and testimony indicating elements of practical difficulty and/or unreasonable hardship, the requirements necessary for the granting of an area variance, not undue hardship. From reading the transcript of the record and all of the testimony that was given, it is

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Protestant's position.

The Court has heard all of the testimony, has read the transcript of the record, has read all memoranda, and is now in a position to make a ruling in this matter.

The Protestant contends that the sole reason for the allowance of the variance in this case is the preservation of trees in the proposed apartment and office area, and that such a determination is not the proper basis for a variance from a zoning regulation. In support of this contention the Protestant states that there must be a showing of urgent necessity or hardship to allow a variance. Kennery v. Mayor and City Council of Baltimore, 247 Md. 601 (1967); Mayor and City Council of Baltimore v. Polakoff, 233 Md. 1 (1963). The Court, in the Kennery case, at Page 606, in dictum stated:

"To grant a variance, the Board must find from the evidence more than that the building allowed would be suitable or desirable or could do no harm or would be convenient for or profitable to its owner. The Board must find there was proof of 'urgent necessity, hardship peculiar to the particular property, and a burden upon the owner not justified by the public health, safety and welfare.'"

The Court further stated that the Board must give specific reasons based on the evidence before the board as to whether the requirements have been met, not a mere statement that they find them to exist. Polakoff, supra, dealt with the refusal of the Board to grant an exception for the allowance of a high density use of land. The Petitioner, Mr. Polakoff, failed to meet the burden of showing of urgent necessity, hardship peculiar to the property, and a burden

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apparent to this Court that the issue being decided by the Board of Appeals and the question they had to answer was "fairly debatable." This Court does not have the authority to substitute its judgment for that of the zoning authority but can merely review the record to determine whether or not the issue was, as quoted before, "fairly debatable."

The Protestant, as Appellant, has the burden of proving to this Court that the actions of the Board were arbitrary, unreasonable or capricious. Having reviewed all of the evidence and argument, this Court has found no evidence or contention by the Appellant of the Board acting in an arbitrary, unreasonable or capricious manner, thus his proof falls short of establishing that the Board abused the discretion vested in it by law.

The Appellant having failed to establish proof that the Board's actions concerning the fairly debatable issue as to the granted variance were arbitrary, unreasonable or capricious in its decision, this Court has no alternative but to affirm the decision of the Baltimore County Board of Appeals, and to deny the appeal filed by the Protestant.

January 19, 1973

H. KEMP MacDANIEL
JUDGE

Copy to:
W. Lee Harrison, Esq.
Richard F. Cadigan, Esq.
County Board of Appeals
Frederick W. Invernizzi, Adm. Office of the Courts
Eugene Creed, Administrator

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upon the owner not justified by the public health, safety and welfare. Mr. Polakoff only showed that the granting of the exception would do no harm and be a profitable convenience to him. Involved was a requested special area exception to the Baltimore City Zoning Ordinance to permit thirty-two families in a four story and penthouse luxury elevator apartment where the size of the lot under the Baltimore zoning ordinance would only support the housing of eighteen families. These cases, involving dictum as to the granting of variances and a special exception, do not deal directly with the issue of the granting of an area variance.

This Court believes that the more controlling case is Lovola Loan Association v. Buschman, et al, 227 Md. 243 (1961). There the Court recognized both a practical distinction between use variance and area, height or setback variances as set forth in several New York decisions Otto v. Stalchilber, 282 N.Y. 71, 24 N.E. 2d 851, and Application of Bronxville v. Francis, 1 A.D. 2d 736, 150 N.Y.S. 2d 906, aff'd 153 N.Y.S. 2d 220, 1 N.Y. 2d 839. Notice of the New York distinction was taken to emphasize the fact that variances going to such matters as area, height or setbacks, are much less drastic than those affecting the use of property. No determination was made as to whether this distinction was an accurate reflection of Maryland law, but this was deemed unnecessary due to the separation of area from use variances in P. 81, Section 307 of the Baltimore County Zoning Regulations, which deal specifically and only with variances from area and height

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FILED
NILES BARTON & WILMER
200 N. HOWARD STREET
BALTIMORE, MARYLAND 21201
JUN 15 1971

S. Eric DiKenna, Esq.
Deputy Zoning Commission
Office of Planning and Zoning
County Office Building
Towson, Maryland 21204

Re: Hearing on Variance
June 23, 1971
Location: N/S Aigburth, 324' E. of
York Road
Petitioners: Joseph Soley

Dear Mr. DiKenna:

Please enter my appearance on behalf of the Towson Manor Association and the Burkleigh Square Neighborhood Association who desire to be protestants in the above captioned petition for Variance scheduled for hearing on June 23, 1971.

Very truly yours,
Eugene Creed
Eugene H. Creed

ENG:mr.

cc:
W. Lee Harrison, Esq.
Richard F. Cadigan, Esq.

IN THE COURT OF APPEALS OF MARYLAND

No. 23

September Term, 1973

WILLIAM H. McLEAN, JR.

v.

JOSEPH L. SOLEY

Murphy, C.J.
L. Roes
McWilliams
Singley
Smith
Digges
Levine,
JJ.

Opinion by Levine, J.

Filed: November 7, 1973

This appeal is from an order of the Circuit Court for Baltimore County which affirmed a decision of the County Board of Appeals of Baltimore County (the Board) granting a variance from the side yard window setback requirement contained in the county zoning regulations. Appellee, Joseph L. Soley (Soley), had applied for the variance in connection with his proposed apartment house-office building project, and appellant, William H. McLean, Jr. (McLean), who lives in a house adjacent to the Soley property, was the only protestant.

The property in question is located on the north side of Aigburth Road approximately 3/4 mile east of York Road. Immediately to its west is a development previously built by Soley known as Cardiff Hall East Apartments, which also combines apartment units and office space. The McLean property, including his residence, is situated immediately to the east and fronts on Aigburth Road. The subject property, consisting of 2.43 acres, is rectangularly-shaped with the south end also fronting on Aigburth Road. The rear end of the parcel backs up on an alley which separates it from a development of detached homes called "Burleigh Square."

Soley proposes to erect two rectangularly-shaped buildings, each to contain 20 dwelling units, positioned upon the parcel in a north-south direction. In other words, the south end of one building would front on Aigburth Road and the north end of the second would back up on the alley.

The adjacent parcel to the west, previously developed by Soley, consists of 4.44 acres and is improved by 60 units. Since the property

We think the facts in Carney, *supra*, upon which McLean places his principal reliance, are distinguishable from those at bar. There, a homeowner sought a variance from a sideyard requirement for the purpose of building a bedroom and bath on the ground floor of his house due to his wife's physical condition. The adjacent property owner objected because the variance would have deprived him of light in his dining room. This Court upheld the board of Appeals' decision denying the requested variance. There, we said:

"... The need sufficient to justify an exception must be substantial and urgent and not merely for the convenience of the applicant, inasmuch as the aim of the ordinance is to prevent exceptions as far as possible, and a liberal construction allowing exceptions for reasons that are not substantial and urgent would have the tendency to cause discrimination and eventually destroy the usefulness of the ordinance. (citation omitted)."

"The expression 'practical difficulties or unnecessary hardships' means difficulties or hardships which are peculiar to the situation of the applicant for the permit and are not necessary to carry out the spirit of the ordinance and which are of such a degree or severity that their existence amounts to a substantial and unnecessary injustice to the applicant. Exceptions on the ground of 'practical difficulties or unnecessary hardships' should not be made except where the burden of the general rule upon the individual property would not, because of its unique situation and the singular circumstances, serve the essential legislative policy, and so would constitute an entirely unnecessary and unwarranted invasion of the basic right of private property. (citations omitted)." 201 Md. at 137.

We think the cases are distinguishable in that there the Board of Appeals determined that the variance was based on convenience rather than practical difficulty; and, furthermore, no benefit to any other persons was established.

In our view, this case is controlled by Loyola Loan Ass'n v. Buschman, *supra*. There, the applicant sought a variance from the height limitations for a proposed office building. Two additional

is in the D.R. 16 classification, as is the McLean property, it permits 16 dwelling units to the acre; and by treating the two parcels as one unit for density purposes, as Soley was permitted to do, it could properly accommodate 110 units.

Although Soley was required to seek relief from the strict requirements of the Baltimore County Zoning Regulations in several respects, only one is of concern in this appeal. Section 1B01.2C2a of the zoning regulations provides:

"a. Where any dwelling unit window within a subdivision faces a property line which is not a street line prior to the time of development but, otherwise, which forms any part of the tract boundary, the window shall not be closer than 35 feet to the boundary."

When Soley initially filed his petition for a variance, he asked for a reduction in the above-described requirement from 35 to 10 feet for the southernmost (front) building in relation to McLean's property line. His principal reason for this request was - and remains - the retention of "the present trees and natural growth, terrain, and topography which provides excellent drainage and natural screening and beauty." In a word, therefore, this dispute is over trees. McLean in his testimony describes the issue poetically: "It is a question of a tree or me; I think I am more important than the tree."

After this petition was presented to the Zoning Commissioner of Baltimore County, he ordered that it be granted, but modified Soley's application by reducing the setback requirement from 35 feet to 20 feet instead of the requested 10 feet. That decision was affirmed by the Board which rejected McLean's contention that the

floors were required because the side setback and parking space requirements made it necessary to build the structure in that manner. The standard for granting a variance then, as it is now, was whether strict compliance with the regulations would result in "practical difficulty or unreasonable hardship"; and that it should be granted only if in strict harmony with the spirit and intent of the zoning regulations; and only in such manner as to grant relief without substantial injury to the public health, safety and general welfare.

There we noted that the requirements "practical difficulty or unreasonable hardship" are in the disjunctive. Thus we said:

"The terms of § 307 are applicable only to variances as to height and area. We see no occasion to construe that section otherwise than as it reads - in the disjunctive - 'practical difficulty or unreasonable hardship,' and we see no reason to construe 'practical difficulty' here as the equivalent of a taking in the constitutional sense. In our estimation, the Board had at least sufficient evidence before it to make the question of practical difficulty a debatable one; and under the authorities above referred to, its order should, therefore, have been affirmed. ... This, we think, presents at least a case of 'practical difficulty' within the meaning of § 307 of the Regulations. To ignore it and to restrict Loyola to a balancing of uneconomic size where, as here, the Board's findings that there is no injury to the public health, safety and general welfare and that the proposed variance is in strict harmony with the spirit and intent of the Regulations should be upheld, would, we think, place too narrow a construction upon § 307, and would itself impose an unreasonable hardship on the applicant. ..." 227 Md. at 250-51.

We think it clear that the evidence in this case was fairly debatable on the issue of "practical difficulty." In 2 Rathkopf, The Law of Zoning and Planning, (3d ed. 1972) 45-28, 29, the following criteria for determining whether "practical difficulty" has been established are set forth:

variance "would interfere with his light, air and privacy," and determined that Soley "would suffer a practical difficulty and unreasonable hardship if the requested variances were not granted."

In addition to his own testimony, at the Board hearing Soley also presented two expert witnesses, an engineer and an arborist. Soley's testimony established that he is dedicated to preserving as many existing trees as he can in his building projects, including the one proposed here. This objective influenced the development of the first apartment complex, and it has been fully occupied during its entire six-year existence. He explained - and this was supported by the two experts - that if he chose to destroy the existing trees, he could build 110 units without requiring the contested variance.

Soley also described the meticulous care which he, the engineer and the arborist have taken on the first project in "pinpointing" the existing trees and in designing the projects "around" them. For example, the parking areas were built with "notches" and "cutouts" wherever trees were located, all at substantial expense to Soley. It was also established that the loss of a number of attractive trees running along the western boundary of the subject property would result if the buildings were constructed without the variance.

In short, Soley's case is that the preservation of these and other trees situated about the parcel depends upon the variance from the 35-foot requirement; and there was considerable evidence to show the natural beauty of these trees and their importance to the ecology. On the other hand, the loss of existing trees, if the variance is granted, would be relatively minor. Thus, it is

"1) Whether compliance with the strict letter of the restrictions governing area, set backs, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

"2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district; or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

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

Given the unique facts of this case, we think these criteria are met by this evidence: That the construction of the buildings in strict compliance with the sideyard requirements would result in the destruction of the trees; that the preservation of trees in the construction of the first section had contributed to full occupancy for its entire six years; that the benefits of retaining the trees would accrue to the general public; that greater density would result from strict compliance; and that there was only meager evidence to support the contention that a detriment would befall the neighboring property owner.

It is also contended by McLean that Soley is precluded from asserting "practical difficulty" because he was charged with knowledge of the sideyard requirements when he purchased this property. We see no merit in this argument. We noted in Zengerle v. Bd. of Co. Commrs, 262 Md. 1, 2, 276 A.2d 646 (1971), citing Loyola, *supra*, that this "rule" is more strictly applied in "use variance" cases than in cases of "area variances," such as the one at bar. In other words, it has less significance where we are concerned with "practical

difficulty" than it does in the event of "hardship" which usually characterizes the "use variance" cases.

Concededly, this is a close case, but it is nevertheless sufficient to support the findings of the Board. Under similar circumstances, we said in Sembly v. County Bd. of Appeals, 269 Md. 177, 304 A.2d 814 (1973), quoting with approval from Eger v. Stone, 253 Md. 533, 542, 253 A.2d 372 (1969):

"This rule [if the issue is "fairly debatable," we will not substitute our judgment for that of the administrative body] will be adhered to even if we were of the opinion that the administrative body came to a conclusion we probably would not have reached on the evidence. In the instant case, but for the rule, we might well have reached the conclusion [that the Board of Appeals erred], but in enforcing the rule we are obliged to say that reasonable persons could have reached a different conclusion on the evidence so that the issue was fairly debatable, and hence, the decision of the Board must be sustained." 269 Md. at 184.

This statement is applicable here.

In sum, we think the circuit court applied the correct test and therefore reached the only permissible result in this case.

JUDGMENT AFFIRMED;

APPELLANT TO PAY COSTS.

BALTIMORE COUNTY ZONING ADVISORY COMMITTEE

May 27, 1971

W. Lee Harrison, Esq.
326 W. Joppa Road
Towson, Maryland 21204

RE: Type of Housing Variance
Location: N/S Aigburth, 324' E. of York Road
Petitioner: Joseph Soley
Committee Meeting of May 4, 1971
9th District
Item 157

Dear Sir:

The Zoning Advisory Committee has reviewed the plans submitted with the above referenced petition and has made an on site field inspection of the property. The following comments are a result of this review and inspection.

The subject property is presently improved with a very large dwelling, with the property to the east (improved with the Cordell Hill Apts. The property to the west is improved with dwellings; however, the property is presently zoned DR 16. The property to the north is improved with group homes zoned DR 10.5. The property to the south is improved with dwellings, very large in character, zoned DR 16. Aigburth Road and York Road in this location are improved with concrete curb and gutter and are concerned.

BUREAU OF ENGINEERING:

The following comments are furnished in regard to the plan submitted to this office for review by the Zoning Advisory Committee in connection with the subject item.

General:

A preliminary plan for "Cordell Hill - York Road Addition" was reviewed by this office and formal comments, dated October 21, 1968, were forwarded to the Bureau of Public Services. That office furnished the Petitioner and his engineer, with written comments, dated November 20, 1968. A copy of those comments is attached for your consideration.

W. Lee Harrison, Esq.
Item 157
Page 2
May 27, 1971

Those comments remain valid and applicable to the plan submitted with the subject Item 157 except for amending the 5' widening strip requirement across the frontage of both the existing and proposed apartment site to a 5' widening strip across the frontage of this proposed apartment site. The Petitioner's engineer is advised to consult with the Chief of the Street, Road and Bridge Design Group in regard to additional widening required across the frontage of the existing site.

All references to Water and Sanitary Sewer areas and respective Area Connection Charges are rescinded, as Water and Sanitary Sewer System Connection Charges now apply.

FIRE PREVENTION BUREAU:

Fire hydrants for proposed site are required and shall be in accordance with Baltimore County Standards.

The owner shall be required to comply with all applicable requirements of the 101 Life Safety Code, 1967 edition, and the Fire Prevention Code when construction plans are submitted for approval.

BOARD OF EDUCATION:

No bearing on student population.

DEPARTMENT OF TRAFFIC ENGINEERING:

The subject variance should have no effect on traffic.

ZONING ADMINISTRATION DIVISION:

Revised plans must be submitted showing widening for Aigburth Road.

This petition is presented for filing on the date of the enclosed filing certificate. Notice of the hearing date and time, which will be held not less than 30, nor more than 90 days after the date on the filing certificate, will be forwarded to you in the near future.

Very truly yours,

OLIVER L. MYERS, Chairman

OLM:JD
Enc.

BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF TRAFFIC ENGINEERING
JEFFERSON BUILDING
TOWSON, MARYLAND 21204
INTER-OFFICE CORRESPONDENCE

TO: Edward D. Hardesty
Attn: Oliver L. Myers
FROM: C. Richard Moore

Date: May 6, 1971

SUBJECT: Item 157 - ZAC - May 4, 1971
Property Owner: Joseph Soley
Aigburth E. of York Road
Variance from 1801.2C2a - setback from tract boundary 1802.3C1 - rear yard

The subject variance should have no effect on traffic.

C. Richard Moore
Assistant Traffic Engineer

COM:mr

BALTIMORE COUNTY BOARD OF EDUCATION

ZONING ADVISORY COMMITTEE MEETING
OF MAY 4, 1971

Petitioner: Soley
Location:
District: 9
Present Zoning: DR 16
Proposed Zoning: VAC
No. of Acres: 2.72

Comments: NO BEARING ON STUDENT POP

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. Oliver Myers
FROM: Ian J. Forrest
SUBJECT: Item 157 - Zoning Advisory Committee Meeting, May 4, 1971

157. Property Owner: Joseph Soley
Location: N/S Aigburth, 324' E of York Road
Present Zoning: DR 16
Proposed Zoning: Variance from 1801.2C2a - setback from tract boundary; 1802.3C1 - rear yard
District: 9
No. acres: 2.72

Public water and sewer are available to the site.

Air Pollution Comments: The building or buildings on this site may be subject to registration and compliance with the Maryland State Health Air Pollution Control Regulations. Additional information may be obtained from the Division of Air Pollution, Baltimore County Department of Health.

Chief
Water and Sewer Section
BUREAU OF ENVIRONMENTAL HEALTH

13F/cu



LAW OFFICES
RICHARD F. CADIGAN
22 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204

AUGUST 11, 1971



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

Re: Petition for Variances
N/S of Aigburth Road, 324' E of York Road - 9th District
George Frank - Petitioner
No. 71-203-A (Item No. 157)

NOTICE OF APPEAL

Dear Mr. Commissioner:

Please note an appeal to the County Board of Appeals from the Order of the Zoning Commissioner dated July 16, 1971 in the above captioned matter granting a partial variance.

The aggrieved persons are Mr. and Mrs. William H. McLean, Jr. whose address is 9 Aigburth Road, Towson, Maryland 21204. This appeal is filed within 30 days from the date of the final order and is accompanied by a check in the amount of \$40.00, being \$35.00 costs for the appeal plus \$5.00 for the cost of posting.

Very truly yours,

Richard F. Cadigan

Enclosure
cc: W. Lee Harrison, Esq.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Edward Hardesty Date: May 11, 1971
 FROM: Oliver L. Myers
 SUBJECT: Item 157 (1970-1971)
 Property Owner: Joseph Soley
 Location: N/S Algburth, 324' E. of York Road
 Present Zoning: R-16
 Proposed Zoning: Variance from R-16/202a - setback from tract boundary; 1302.301 - rear yard
 District: 9
 No. Acres: 2.72

The following comments are furnished in regard to the plat submitted to this office for review by the Zoning Advisory Committee in connection with the subject item.

General:

A preliminary plan for "Cardiff Hall - York Road Addition" was reviewed by this Office and formal comments, dated October 21, 1968, were forwarded to the Bureau of Public Services. That Office furnished the Petitioner and his engineer, with written comments, dated November 20, 1968. A copy of those comments is attached for your consideration.

Those comments remain valid and applicable to the plan submitted with the subject Item 157 except for amending the 5' widening strip requirement across the frontage of both the existing and proposed apartment sites to a 5' widening strip across the frontage of this proposed apartment site. The Petitioner's engineer is advised to consult with the Chief of the Street, Road and Bridge Design Group in regard to additional widening required across the frontage of the existing site.

All references to Water and Sanitary Sewer areas and respective Area Connection Charges are recalled, as Water and Sanitary Sewer System Connection Charges now apply.

James P. Oliver
 JAMES P. OLIVER, P.E.
 Chief, Bureau of Engineering

SIDE-SHIFTING

*P - N.W. E. of Sheet
 35 NE 3 Position Sheet
 NS Y A Topo
 70 Tax

Attachment

cc: John J. Trenner

Baltimore County Department Of Public Works
COUNTY OFFICE BUILDING
TOWSON, MARYLAND 21204

Bureau of Public Services
 GEORGE A. HARRISON, P.E.
 Chief

November 20, 1968

Holliston Park Corporation
 500 York Road
 Towson, Maryland 21204

Re: Conn. Pct. Plan
 Cardiff Hall Apts. (Contd.)
 N/S Algburth Rd., 324' E.
 of York Rd. District 9

Conclusion:

The preliminary plan for the proposed apartments has been reviewed and the comments are as follows:

OFFICE OF PUBLIC SERVICES:

1. The plan must be revised to include the existing and proposed development as one development by showing the total density calculations.
2. If there are to be any offices in the new section, a special exception will be required.
3. The use of the building at #9 Algburth Road must be indicated on the site plan.

BUREAU OF ENGINEERING-Drainage Comments:

Access to this site shall be from Algburth Road, an existing road maintained by Baltimore County, which shall ultimately be improved with a 40-foot combination curb and gutter and paved parking construction on a 60 foot right-of-way. This construction shall be widened to 84' at York Road to permit an additional approach lane. The Developer shall be responsible for the preparation of a right-of-way plat for, and the conveyance of, at no cost to the County, a 5' widening strip across the frontage of both the existing and proposed apartment sites. In consideration for the granting of the proposed widening, Baltimore County will make the future curb and gutter and paving improvements under the Capital Improvement Program. The Developer will also be responsible for the required entrances and sidewalks.

The entrance locations are subject to approval by the Traffic Division.

Entrances shall be a minimum of 20 feet and a maximum of 30 feet wide, shall have 5-foot minimum radius curb returns, shall be located a minimum of 25 feet from any property line, and shall be constructed in accordance with Baltimore County Standards for 7-inch concrete entrances.

Prior to removal of any existing curb for entrances, the Developer shall obtain a permit from the Bureau of Public Services, Attention Mr. G.E. Brown, 329-2500, Ext. 251.

Cardiff Hall Apts. (Contd.)
 Page 2

Highway Comments: (Contd.)

It shall be the responsibility of the Developer's engineer to clarify all rights-of-way within the property and to indicate such action that may be necessary to abandon, widen or extend said rights-of-way. The Developer shall be responsible for the submission of all necessary plats and for all costs of acquisition and/or abandonment of these rights-of-way.

The alleyway adjacent to this site is not to be used as an access to this site.

Sidewalks are required. The sidewalks shall be 4 feet wide and installed to conform with Baltimore County Standards, which places the back edge of the sidewalk two feet off the property line.

Storm Drain Comments:

In the previous section of this development problems evolved from the onsite drainage outfalling into the existing alley.

In the development of this section, every effort should be made to carry the maximum possible drainage out to Algburth Road. A grading plan must be provided by the Developer's engineer for review by Baltimore County prior to issuance of a building permit. The review of this study will be the basis for determining the adequacy of the surrounding area to absorb the additional run-off created by this development. Should the resulting run-off be greater than that which is normally permitted on the surface, an enclosed storm drainage system will be required to a suitable outfall.

The Developer's engineer shall indicate on the grading plan methods to be used to prevent undue soils erosion onto adjacent properties during the construction period. It is recommended that the existing vegetation be maintained along the northern portion of the tract to be utilized as a buffer area between the construction area and the existing dwellings.

In accordance with the drainage policy for this type development, the Developer is responsible for the total actual cost of drainage facilities required to carry the storm water run-off through the property to be developed to a suitable outfall. The Developer's cost responsibilities include the acquiring of easements and rights-of-way - both inside and outside the property - including the design in fee to the County of the right-of-way, preparation of all construction, right-of-way and easement drawings, including engineering and surveys and payment of all actual construction costs including the County overhead both within and outside the development, are also the responsibilities of the Developer.

Construction drawings are required for off-site drainage facilities and any onsite facilities serving off-site areas. The plans are to be designed in accordance with Baltimore County Standards and Specifications, and the drawings submitted for review and approval by the Baltimore County Bureau of Engineering. Construction is to be accomplished under a County contract and inspection.

Onsite drainage facilities serving only areas within the site do not require construction under a County contract. Such facilities are considered private. Therefore, construction and maintenance shall be the Developer's responsibility. However, a drainage area map, scale 1"=200', including all facilities and drainage areas involved, shall be shown on the required construction plans.

Cardiff Hall Apts. Add.
 Page 3

Storm Drain Comments: (Contd.)

The Developer must provide necessary drainage facilities (temporary or otherwise) to prevent creating any nuisances or damages to adjacent properties, especially by the concentration of surface waters. Correction of any problem which results, due to improper grading or other drainage facilities, would be the full responsibility of the Developer.

The Developer is to be responsible for the cost of temporary structures and measures required in the event of sectional development.

Water Comments:

Public water is available to serve this property. There is an existing 10-inch main in Algburth Road, as shown on Drawing 47-501.

Permission to obtain a metered connection from the existing 10-inch water main in Algburth Road may be obtained from the Department of Permits and Licenses.

The Developer is entirely responsible for the construction, and the cost of the construction and maintenance of his onsite water service system.

The Developer is responsible for the cost of capping any existing water main connection not used to serve the proposed structures and credit will be given for one equivalent housing unit for any existing connection that is abandoned.

This property is located in the Towson Fourth Zone of Water Service and Area II-W, subject to a Water Area Connection Charge of \$120.00 per equivalent dwelling unit.

The total Water Area Connection Charge is determined, and payable, upon application for the Plumbing Permit. This charge is in addition to the normal front foot assessment and permit charges.

Sanitary Sewer Comments:

Public sanitary sewerage is available to serve this property. There is existing 8-inch sanitary sewerage in Algburth Road.

Permission to connect to the existing public sanitary sewer may be obtained from the Department of Permits and Licenses.

The Developer is entirely responsible for the construction, and the cost of the construction and maintenance, of all additional sewerage required to serve the proposed structures. Such additional sewerage is to be constructed onsite, that is, not within any public easement, right-of-way or easement, except for connection to public sanitary sewerage located thereon. All private and/or onsite sewerage must conform with the Baltimore County Plumbing Code and/or the Joint Interim Policy of the Baltimore County Department of Public Works and the Baltimore County Planning Board, as applicable.

The Developer is responsible for the cost of plugging any existing house connection not used to serve the proposed structures. Credit will be given for one equivalent housing unit for any existing connection that is abandoned.

Cardiff Hall Apts. Add.
 Page 4

Sanitary Sewer Comments: (Contd.)

No approval is granted to include any food waste grinder among the sanitary fixtures. This is subject to further review, upon application for permission to the Department of Permits and Licenses.

This property is located in Area II-S, subject to a Sanitary Sewer Area Connection Charge of \$120.00 per equivalent dwelling unit.

The total public Sanitary Sewer Area Connection Charge is determined, and payable, upon application for the Plumbing Permit. This charge is in addition to the normal front foot assessment and permit charges.

A Public Works Agreement must be executed by the owner prior to the issuance of any Building Permits.

BUREAU OF TRAFFIC ENGINEERING COMMENTS:

Based on highway drawing C-510-A the slight distance at the proposed entrance will be inadequate. The best location for an entrance appears to be about 550 ft. from the east curb line of York Road.

The plan should also provide for access and traffic circulation between this site and the area to the east, which is also zoned for apartments. This is necessary because of the restrictions which will be placed on entrance locations further east.

The steady increase in traffic on Algburth Road over the past years makes it necessary to consider widening of the road with particular emphasis to be placed on the intersection with York Road. This office has received several requests for a signal at this location. However, signalization will not solve this traffic problem unless a widening of the road to include two approach lanes onto York Road can be accomplished prior to or in conjunction with the signalization.

We strongly recommend widening of the right-of-way to 60 ft. in accordance with County Policy. A normal roadway width of 40 ft. should be acceptable. However, near the intersection with York Road, this width should be increased to 44 ft. to permit two full approach lanes. Also, the curb returns at the intersection should be improved to 30 ft. radii.

The attached sketches show the proposal as it will affect the north side of the road as well as future widening along the south side of Algburth Road.

It should be pointed out that both schemes will permit two approach lanes onto York Road.

FIRE HYDRANT COMMENTS:

Private Drives to Parking Area shall be 30 ft. clear width. Fire hydrants shall be located each 200 ft. along Algburth Road starting from existing fire hydrant at York Road and Algburth Road for a total of two (2) new fire hydrants. This will also add additional protection for existing hydrants.

Very truly yours,
 GEORGE A. HARRISON, P.E.
 Chief, Bureau of Public Services

Attachments:

cc: James S. Spomer & Assoc.
 6017 York Rd. (2)

McDonough, Gross, PWA File, Prel. File

LAW OFFICE
 RICHARD F. CADIGAN
 WEST PENNSYLVANIA AVENUE
 TOWSON, MARYLAND
 21204

TELEPHONE 329-2100
 AREA CODE 301

September 30, 1971

Mr. John Slowik
 County Board of Appeals
 County Office Building
 Towson, Maryland 21204

Re: Petition for Variance N/S Algburth Road East of York Road, 9th District, George Frank & Nellie Frank, Petitioners - No. 71-293-A

Dear Mr. Slowik:

I want the file to reflect the vigorous objection of my clients, Mr. and Mrs. William H. McLean, Jr., to the postponement abruptly fostered upon us September 30, 1971 for the appeal that was scheduled by Mrs. Maribel E. Buddemeier and sent out by the County Board of Appeals September 1, 1971.

W. Lee Harrison, Esq. had also received a Notice of Assignment for the hearing September 30 and presumably must have been aware of his prior commitment in one of the Court of Baltimore City for a condemnation case. According to Rule 2, subsection (c) of County Council Bill #108 postponements will not normally be granted within 15 days of the scheduled hearing date. I realize that Mr. Harrison had an argument regarding a pending decision of the Zoning Commissioner (which argument, as you know, we regarded as specious), but there is no excuse for opposing counsel not to at least notify his opposite number of the desired delay. My client is a professional man with time and client obligations at least as important as those of Mr. Harrison and his expert witnesses, and the courtesy of a request for delay is expected by this office to the same extent that it is given by this office.

We will await your re-w Notice of Assignment and, if any

Page Two
 September 30, 1971

postponement is required, our office will act by requesting the same within 15 days of the scheduled hearing date as required by law.

Very truly yours,

Richard F. Cadigan
 Richard F. Cadigan

RFC:ps

cc: W. Lee Harrison, Esq.

PETITION MAPPING PROGRESS SHEET

FUNCTION	What Done		Original		Duplicate		Working		GIS Sheet	
	date	by	date	by	date	by	date	by	date	by
Descriptions checked and outline plotted on map										
Petition number added to outline										
Denied										
Granted by										
ZC, BA, CC, CA										
Reviewed by										
Previous case:										

Revised Plans:

is in outline or description Yes

Map # C-3 No

Ben 10/1/71
 10-2-101

COURT OF APPEALS
IMPORTANT NOTICE

Appellee's Brief due to be filed June 4, 1973
If no brief is to be filed on or before this date, counsel will
please notify this office.
The assignment of this Court will be published in The Daily
Record and counsel will be notified of the date this case is assigned
for argument.

JAMES H. NOARIS, JR.
Clerk

FILED MAY 2 1973
IN THE
Court of Appeals of Maryland

SEPTEMBER TERM 1972
NO. 23

OFFICE OF LAW

WILLIAM H. McLEAN, JR.,
Appellant

JOSEPH L. SOLEY, et al.,
Appellee

APPEAL FROM THE CIRCUIT COURT
FOR BALTIMORE COUNTY
(H. KIMM MacDANIEL, Judge)

APPELLANT'S BRIEF

RICHARD F. CADIGAN,
Attorney for Appellant

The Paul M. Harrod Company, Baltimore, Maryland 21204

IN THE
Court of Appeals of Maryland

SEPTEMBER TERM 1972
NO. 23

OFFICE OF LAW

WILLIAM H. McLEAN, JR.,
Appellant

JOSEPH L. SOLEY, et al.,
Appellee

APPEAL FROM THE CIRCUIT COURT
FOR BALTIMORE COUNTY
(H. KIMM MacDANIEL)

JOINT RECORD EXTRACT

W. LEE HARRISON
R. BRUCE ALDERMAN,
Attorneys for Appellee

The Paul M. Harrod Company, Baltimore, Maryland 21204

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 9th Date of Posting June 3, 71
Posted for Missing Mail June 23, 1971
Petitioner George Frank
Location of property N/S. of Cleghorn Rd. 3241 E. of York Rd.
Location of Sign 1 Sign South on York of E. Cleghorn Rd.
Remarks: None
Posted by Miss H. Nuss Date of return 6-11-71
Signature

Lee Harrison, Esq.
306 W. Joppa Road
Towson, Maryland 21204

Item 157

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Your Petition has been received and accepted for filing this

th day of May, 1970

Edward D. Hardisty
EDWARD D. HARDISTY
Zoning Commissioner

Petitioner George Frank

Petitioner's Attorney W. Lee Harrison, Esq.

Reviewed by Chairman of the
Advisory Committee

THE TOWSON TIMES

TOWSON, MD. 21204 JUNE 7 - 1971

THIS IS TO CERTIFY, that the annexed advertise ment of
Edward D. Hardisty
Zoning Commissioner of Baltimore County
was inserted in THE TOWSON TIMES, a weekly newspaper published
in Baltimore County, Maryland, once a week for one week
before the 7th day of June 1971, that is to say, the same
was inserted in the issue of June 3, 1971.

STROMBERG PUBLICATIONS, INC.

By Beth Morgan

PETITION FOR A VARIANCE
ON SUBJECT

FORWARD: Petition for Variance for
Detaching Court House Windows within a
subdivision facing a property line.
Petition for Variance for Rear
Yard.

LOCATION: North side of York Road,
1211 York Road, Towson, Maryland
DATE & TIME: Wednesday, June 23,
1971, 10:00 A.M.
PUBLIC HEARING: None (See Note)
PUBLIC NOTICE: None (See Note)

The Zoning Commissioner of Baltimore County, by authority of the
Zoning Act and Regulations of Baltimore County, will hold a public
hearing on the following petition for a variance from the
Zoning Regulations of Baltimore County to permit detaching
court house windows within a subdivision facing a property line
and a rear yard within a subdivision.

The petition is for a variance from the Zoning Regulations of Baltimore County to permit detaching court house windows within a subdivision facing a property line and a rear yard within a subdivision.

The petition is for a variance from the Zoning Regulations of Baltimore County to permit detaching court house windows within a subdivision facing a property line and a rear yard within a subdivision.

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The petition is for a variance from the Zoning Regulations of Baltimore County to permit detaching court house windows within a subdivision facing a property line and a rear yard within a subdivision.

CERTIFICATE OF PUBLICATION

TOWSON, MD. June 2, 1971

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 each
week for one week before the 7th day of June, 1971, the first publication
day of June 1971, the first publication
appearing on the 3rd day of June, 1971.

THE JEFFERSONIAN
L. Leach, Jr., Manager

Cost of Advertisement, \$

TELEPHONE
484-2413

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE

No. 81263

DATE June 1, 1971

To: Maryland Commercial Contractors, Inc.
800 York Road
Towson, Md. 21204

Zoning Dept. of Baltimore County

DEBIT TO ACCOUNT NO. 01-622 TOTAL AMOUNT \$25.00
QUANTITY DETACH ALONG PERFORATION AND KEEP THIS PORTION FOR YOUR RECORDS COST

Petition for Variance for George Frank #71283-A 25.00

4

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND
MAIL TO OFFICE OF FINANCE, REVENUE DIVISION
COURTHOUSE, TOWSON, MARYLAND 21204

TELEPHONE
484-2413

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE

No. 84933

DATE 8/16/71

To: Richard F. Cadigan, Esq.
Loyola Federal Building
Towson, Maryland 21204

Zoning Office,
119 County Office Bldg.,
Towson, Md. 21204

DEBIT TO ACCOUNT NO. 01-642 TOTAL AMOUNT \$40.00
QUANTITY DETACH ALONG PERFORATION AND KEEP THIS PORTION FOR YOUR RECORDS COST

Cost of appeal - property of George Frank - Algharth & York Roads K.S. 71-283-A 35.00
I sign 5.00 \$40.00

4

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND
MAIL TO OFFICE OF FINANCE, REVENUE DIVISION
COURTHOUSE, TOWSON, MARYLAND 21204

TELEPHONE
484-2413

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE

No. 81263

DATE June 30, 1971

To: Maryland Commercial Contractors, Inc.
800 York Road
Towson, Md. 21204

Zoning Dept. of Baltimore County

DEBIT TO ACCOUNT NO. 01-622 TOTAL AMOUNT \$68.00
QUANTITY DETACH ALONG PERFORATION AND KEEP THIS PORTION FOR YOUR RECORDS COST

Advertising and posting of property #71-283-A 68.00

4

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND
MAIL TO OFFICE OF FINANCE, REVENUE DIVISION
COURTHOUSE, TOWSON, MARYLAND 21204



TRYING TO FIND MR. McLEAN'S HOUSE FROM THE
FRANK PROPERTY

FRONT

REAR



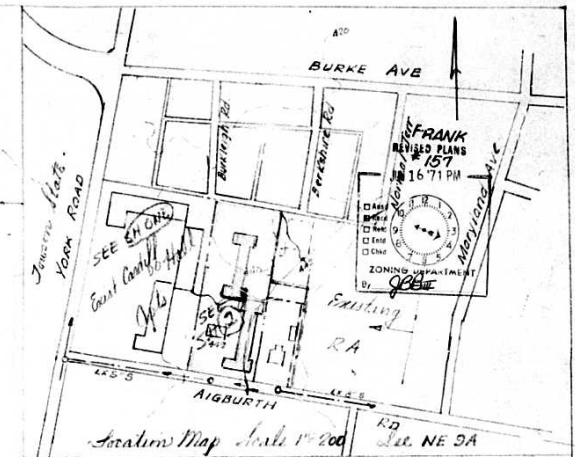
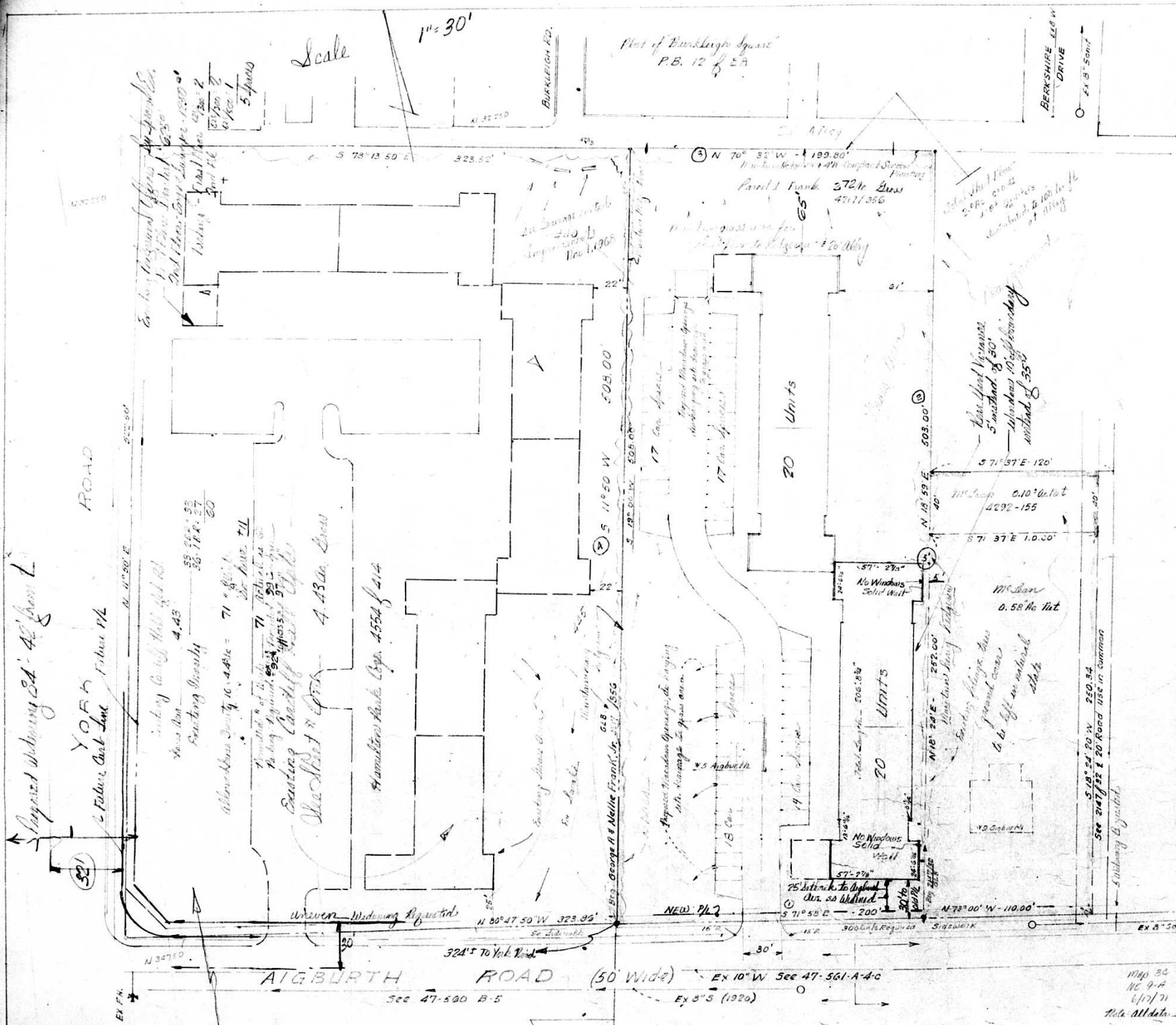
FROM McLEAN'S HOUSE TOWARDS FRANK PROPERTY
BOTH SHOWING 60' TULIP and 50' MAPLES.

FRONT

REAR



LOOKING NORTH AT McLEAN'S SIDE WINDOW FACING
GIANT TREES AND FRANK PROPERTY



See N. Map NW 35.36 NE 3
 P.W.D. Data:
 Access to Aigburth Rd.
 Sanitary sewer available
 Water available.
 No P.W.D. required. Conforms to 6 comments.
 Proposed building's drainage central (Nov. 20, 1955)
 That submitted for preliminary planning &
 revision created Jan. 25, 1966

Preliminary Plan
Cardiff Hall, York Rd. Aigburth
 In Joseph J. Dwyer, #500 York Rd. Town of Md. 21204
 3rd Dist. - 4th Precinct
 Path to Maryland
 April 12, 1971
 Updated June 15, 71 See Item 158 ZAC Comments

Sheet 2 Zoning Data Existing = Use Section 10
 Dens. Area = 2.72^{ac}
 Proposed = 40 units total
 $22 \times 24 \times 18 = 9504$
 $9504 \div 232 = 41$
 Density: dens 10^{2.72} = 43 units allowed
 Permitted No. of Units = 43
 Required No. of Parking Spaces = 66
 Dens. shown: 40 units - 66 spaces = 1.53² ratio
Sheet 1 + Sheet 2
 Combined Density Calculations: 34 + 24 = 58
 Total Dens. Area: 58^{2.72} = 158.4^{ac}
 Units allowed: 7.15^{ac} = 114 units
 Units used (per 100%) = 100 units
 Total: 100 units
 Dens 0.63 per 100 units (per 100%) = 63 units
 or 7.15^{ac} Dens
 Allowed 114 units
 Applied to Sheet 1
 Office Buildings

Map 30
 NC 9-A
 (1/1/71)
 Note: All data shown from field plots & data available.
 JAMES S. SPAMER & ASSOCIATES
 ENGINEERS & SURVEYORS
 2017 YORK ROAD
 TOWSON, MD. 21204

See Sheet No 1

This is Sheet 2