

73-237A PETITION FOR ZONING VARIANCE FROM AREA AND HEIGHT REGULATIONS

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, Morton H. and Suelien Poland, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 400.1 to permit an accessory structure (tennis court) to be located in the side yard rather than the required rear yard.

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

There is not enough room for the tennis court to be located with respect to its proper N - S axis in the rear yard.

see attached description

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

Contract purchaser: Morton H. Poland Legal Owner
Address: 3600 Anton Farms Rd.
Pikesville, Maryland 21208
434 6323
Petitioner's Attorney: _____
Protestant's Attorney: _____

ORDERED By The Zoning Commissioner of Baltimore County, this 20th day

of February 1973, 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 held before the Zoning Commissioner of Baltimore County in Room 108, County Office Building in Towson, Baltimore County, on the 9th day of April, 1973, at 11:15 o'clock

Philip L. Shuler
Zoning Commissioner of Baltimore County.

(over)

whereupon the Polands filed a timely appeal to this court.

All of the parties and the Zoning Commissioner and County Board of Appeals treated the case as an application for a Variance from the provisions of Section 400.1. The pertinent language of this section is as follows:

"Accessory buildings in resident zones, other than farm buildings, shall be located only in the rear yard * * *"

Section 101 of the regulations defines a building as

"a structure enclosed within exterior walls, or fire walls, for the shelter, support or enclosure of persons, animals or property of any kind."

This language is crystal clear. Section 400.1 does not control accessory uses that do not involve buildings. A tennis court is not a building and, despite similar interpretations to the contrary, this court is prepared to so rule when a case is presented that requires such a decision.

In this particular case Section 400.1 is not applicable. Examination of the exhibits establish that the Poland property is part of the sub-division known as Garrison Farms, the sub-division plat being approved in 1951. Zoning Regulation, Section 103.1 provides that the currently existing regulations do not apply to sub-divisions approved prior to March 30, 1955, and that such sub-divisions are subject to the regulations that were in effect at the time the sub-division was submitted to the County Planning Board. Consequently the failure of Section 400.1 to control accessory uses as distinguished from accessory buildings is of no help to the Polands, for their property is subject to the zoning regulations of September 1, 1948. The Poland's property

MANDATE

Court of Special Appeals of Maryland

No. 277, September Term, 1975

Morton H. Poland et ux.

v.

Leonard Farberman et al.

Appeal from the Circuit Court for Baltimore County

Filed: March 22, 1975

August 15, 1975: Order of Dismissal filed by counsel for appellants.

August 15, 1975: Appeal dismissed.

STATEMENT OF COSTS:

In Circuit Court:

Record 25.00
Stenographer's Costs ----

In Court of Special Appeals:

Filing Record on Appeal 20.00
Printing Brief for Appellant N
Reply Brief O
Portion of Record Extract - Appellant N
Appearance Fee - Appellant E

Printing Brief for Appellee N
Portion of Record Extract - Appellee O
Appearance Fee - Appellee N

STATE OF MARYLAND, Sa:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Special Appeals.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Special Appeals, this fifteenth day of August A. D. 1975

Clerk of the Court of Special Appeals of Maryland.

Costs shown on this Mandate are to be settled between counsel and NOT THROUGH THIS OFFICE

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FILED AUG 19 1975

was then zoned "A, Residential", and those regulations permitted accessory uses only when located in the rear yard. Accordingly, the Polands can only locate a tennis court in the side yard if they, in some manner, are relieved from the necessity of complying with applicable zoning laws or regulations. Inevitably, the question arises as to what relief the Polands may seek. In this case they petitioned for a Variance and their case was so treated. The cases make it clear that there is a distinction between a "use variance" and an "area variance". Section 307 of the Zoning Regulations provides for Variances from area and height regulations, and specifically denies the power to grant any other type of Variance. The Regulations as now drawn pertain to area and height, and not to the use to which property may be put. Lovola Loan Association v. Buschman, 227 Md. 243; McLean v. Soley, 270 Md. 208, 215, and Zengerle v. Board of County Commissioners, 262 Md. 1. Since the right of the Polands is restricted by the control of Accessory Uses under the old regulations applicable to the Poland property, it necessarily follows that if they desire to use their side yard for a tennis court they must petition for a Special Exception. Requiring them to proceed by way of a Special Exception rather than by a Variance, the latter being beyond the power of the zoning authorities, is not academic, for the criteria applicable to Special Exception cases is far different from the criteria applicable to Variance cases.

The Zoning Board denied the Variance, considering the

Court of Special Appeals of Maryland

No. 277, SEPTEMBER TERM, 1975

MORTON H. POLAND ET UX.

VS.

LEONARD FARBERMAN ET AL.

DISPOSITION OF APPEAL IN COURT OF SPECIAL APPEALS:

✓ August 15, 1975: Appeal dismissed.

TRANSCRIPT

RETURNED TO Clerk, Circuit Court for Baltimore County
Towson, Maryland 21204 Date August 15, 1975

BY First Class Mail

Julius A. Romano
Julius A. Romano, Clerk

REMARKS:

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matter on the merits. It reached the right result, but the Variance should have been denied for lack of power to grant the same. Accordingly, the action of the County Board of Appeals is AFFIRMED, without prejudice to the Poland's right to apply to the Zoning Commissioner for a Special Exception.

John E. Kane, Jr.
JOHN E. KANE, JR.
JUDGE

April 1, 1975

CASE NO. 73-237-A

RE: PETITION FOR VARIANCE IN THE CIRCUIT COURT
from Section 400.1 of the
Zoning Regulations for : FOR BALTIMORE COUNTY
Baltimore County :
E/S of Anton Farms Road :
opposite Dorland Drive : MISC. NO. 5432
3rd District :
Morton H. Poland and :
Sue Ellen Poland, :
Petitioners :

MEMORANDUM OPINION

Mr and Mrs. Morton Poland are the owners of a large and expensive house located on a tract of approximately two and one-half acres on the east side of Anton Farms Road, which runs off of Stevenson Road north of the Baltimore County Beltway in the Third Election District of Baltimore County. The Polands desire to construct a tennis court on the side of their property, and they applied to the County Buildings Department for the necessary permit for the construction of the court surface and necessary back-stop fences. They were advised that they would have to obtain a Variance Permit from the County Zoning authorities before they could put their tennis court in the side yard. They applied to the Zoning Commissioner who, after a hearing, granted the requested Variance, subject to certain restrictions agreed to by the applicants and the neighborhood improvement association. Several residents living nearby filed an appeal to the County Board of Appeals and, after a full hearing, the Board reversed the Zoning Commissioner and denied the permit by Opinion and Order dated October 31, 1974.

Rec'd 4-11-75
10-30 AM

DESCRIPTION OF PROPERTY OWNED BY MORTON H. AND SUELEEN POLAND

Beginning for the same at a point on the easternmost side of the Anton Farms Road, where it is intersected by the division line between Lots Nos. 20 and 21, as shown on a Plat of Garrison Farms, said Plat recorded among the Land Records of Baltimore County in Plat Book G.L.B. 17, Folios 38, 39 and 40 and running thence to said place of beginning and binding on the east side of Anton Farms Road south 4 degrees, 30 minutes, 20 seconds east 212.5 feet and by a curve to the left with a radius of 227.78 feet southeasterly 333.82 feet and south 88 degrees, 20 minutes, 30 seconds east 73 feet; thence leaving Anton Farms Road and running north 1 degree, 31 minutes, 30 seconds east 391.512 feet; thence north 84 degrees, 16 minutes, 14 seconds west 322.61 feet to the place of beginning. Being a part of Lot No. 20 as shown on Plat of Garrison Farms, Inc., as above referred to and continuing 2.5 acres more or less.

RE: PETITION FOR VARIANCE * BEFORE THE
From Section 400.1 * COUNTY BOARD OF APPEALS
for Tennis Court *
Morton H. Pe'and, et ux *
Petitioners * FOR BALTIMORE COUNTY
No. 7237-A *

MEMORANDUM OF PROTESTANTS

Petitioners have requested a Variance from Section 400.1 of the Baltimore County Zoning Regulations to permit the construction of a tennis court in their front and/or side yard instead of the required rear yard.

As was testified to at the hearing before this Board on May 7, 1974, and as supported by Exhibits introduced at said hearing, the property in question is located on the west and south sides of Anton Farms Road, opposite, in part, to Courtland Drive. The site contains 2.4 acres and is improved by a dwelling, a driveway and small parking area, and a swimming pool and rear patio. The swimming pool and patio are recent improvements, having been in the process of planning and/or construction when plans were formulated for the proposed tennis court. As may be seen by reference to Exhibits introduced at the hearing before the Board, the proposed tennis court is to be built, in part, below existing grade, and, in part, approximately 5 feet above grade at the northwest corner of the court. In addition, a fence will be placed completely around the court, which at some places will be up to 15 feet above existing grades. A concrete practice board, approximately 5 feet high, is also planned at the south end of the court. The proposed site for the court complex borders Anton Farms Road, and if granted would be the only auxiliary use or structure to border that road. The neighborhood does have two other properties with tennis courts, but both are behind the respective houses and are not visible from the road.

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It is apparent, at least to Protestants, that if some hardship or practical difficulty exists, it was self-created by Petitioners. Furthermore, hardship or difficulty is relative and one must consider the economic circumstances of the individuals affected. Evidence shows that Petitioners had just completed an approximate 5,600 square foot addition to their home, as well as the installation of a swimming pool. Certainly, the cost involved in making changes to a septic tank is relatively insignificant when considered to the overall plan and should not create such a practical difficulty as to merit the granting of a variance. Protestants do not think that the Petitioner can seriously allege that the price of moving a septic tank will cause him any "difficulty" at all, especially when compared to the detriment that would be caused his neighbors, financial, aesthetic and otherwise.

Furthermore, testimony of immediate neighbors clearly discloses the detriment to be suffered by them. Mrs. Sandra L. Sirota, one of the Protestants, whose property lies adjacent to and immediately to the north of Petitioners' property testified that she would view, from the front of her home, a 10-15 foot high fence (i.e., a 10 foot fence, built up 5 feet above existing ground level) with virtually no screening. Furthermore, Petitioners' lot is already about 4-5 feet above Mrs. Sirota's front driveway, so overall there would be the effect of a 20 foot "wall" immediately adjacent to and facing Mrs. Sirota's front driveway. Leonard Farberman, one of the Protestants whose property is directly opposite Petitioners' proposed tennis court, testified that when driving from the front of his home down his driveway to the street, he would be faced with a 10 foot wall, consisting of a berm and fence.

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Petitioners' request for a variance is to permit the construction of said tennis court complex in the front and/or side of their lot.

Section 101 of the Baltimore County Zoning Regulations, as amended by Bill No. 100 (all further reference herein to said Regulations shall be to said Regulations as amended by Bill 100) defines an "accessory use or structure" as:

"A use of structure which - (a) is customarily incident and subordinate to and serves a principal use or structure; (b) is subordinate in area, extent, or purpose to the principal use or structure; (c) is located on the same lot as the principal use or structure served; and (d) contributes to the comfort, convenience, or necessity of occupants, business or industry in the principal use or structure served. An accessory building, as defined above, shall be considered an accessory structure."

It would seem evident that the construction of a tennis court, as contemplated by Petitioners, clearly falls within the scope of Section 400.1, requiring that such uses shall only be permitted in a rear yard, except, of course if an area variance is granted under Section 307 of the Baltimore County Zoning Regulations.

Section 307 provides that the County Board of Appeals shall have the power to grant variances from area regulations only in cases:

"*** where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. *** Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said *** area *** regulations ***."

At the hearing before this Board, Petitioners' evidence as to such difficulties or hardships was primarily related to the

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Morris Silberman, one of the Protestants, whose home also lies opposite Petitioners' home, also testified that he would also be viewing from his home the 10 foot high fence of Petitioners. And again, Mr. Gorn, as an expert witness on behalf of Protestants, testified that the construction of the tennis court as proposed would introduce an unattractive element to the Anton Farms Road enclave and would have a deleterious effect on adjoining property values.

In the opinion of these writers, the applicable law in this area does not permit the granting of the requested variance on the facts, as standing in this case.

In Carney v. City of Baltimore, 201 Md 130 (1952), the Court of Appeals was faced with the situation where the petitioners requested a permit to construct an addition to their home in order to provide a first floor bedroom and bath, on account of a physical condition of one of the petitioners who had difficulty walking up stairs. A next door neighbor objected to the application on the grounds that said construction would adversely effect the light to his dining room. The Court of Appeals upheld the denial of the grant of special exception. In so holding, the Court stated that although the Board of Municipal and Zoning Appeals may grant such exceptions where "there are practical difficulties or necessary hardships", it would not overturn the Board's decision that the reason presented by Petitioners was not sufficient for making an exception to the side yard requirement. The Court of Appeals went on to say, at page 137, that the need to justify such an exception (the rules for which are the same as the granting of a variance in Baltimore County):

"***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 excep-

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contention that unless the court were placed in an exact north-south direction, sunlight would, at certain times of the day, interfere with the individual who is serving the tennis balls. Petitioners contend that this is sufficient demonstration (of a practical difficulty or hardship) as to require the grant of a variance. As testified to by Protestants' expert witnesses at the Hearing, tennis courts in some of the most renowned championship sites, e.g., Wimbledon, Forest Hills and Hilton Head have courts built in east-west directions.

It is clear from Exhibits and oral testimony that Petitioners seek a side and front yard variance. Mr. Samuel Gorn, an expert witness of behalf of Protestants testified that if granted, the existence of the proposed court would be the only such auxiliary use or structure in a front yard on Anton Farms Road. In addition, Mr. Gorn testified that, in his opinion, the proposed site was a front yard, not a side yard, inasmuch as the site would border Anton Farms Road and therefore would be considered "front yard". It would certainly wreck havoc to the otherwise unpretentious nature of the neighborhood and would create noxious noise levels for adjoining neighbors. Mr. Gorn also testified to the effect that the construction of such a court would disturb the relatively undisturbed, clean, line-of-sight when riding through the neighborhood, and further related that in his expert opinion (which was uncontradicted) that the construction of such a tennis court would have a deleterious effect on property values of adjoining neighbors as well as neighbors who reside across from the site.

It was further uncontradicted by testimony of Protestants' engineer, Mr. Howard Kolscher of Hudkins Associates, Inc., that the proposed court could be located in the rear lot, albeit perhaps, with a little more expense. (In fact, Mark Beck, Petitioners' witness,

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tions 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."

The Court further said at page 137 that:

"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 necessary to carry out the spirit of the ordinance and which are of such a degree of 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. Paster v. City of Baltimore, 195 Md. 395, 73 A.2d 491; Hefferman v. Zoning Board of Review, 50 R.I. 26, 114 A. 674; Potts v. Board of Adjustment of Princeton, 133 N.J. L. 230, 43 A. 2d 850."

McLean v. Suley, 270 Md. 208 (1973), cited by Petitioners in their Memorandum does not, as Petitioners' counsel avers, control the instant situation in its similarity of facts. To the contrary McLean v. Suley involves a dispute as to whether or not trees should be cut down. Testimony before the Board by an engineer and an arborist clearly show that if a side yard variance were to be granted, fewer trees would have to be removed. This Board determined that a denial of the variance would have a detrimental effect on the welfare of the community (270 Md 208, 211), and granted the variance. The Circuit Court for Baltimore County and the Court of Appeals affirmed.

The Court of Appeals went to great lengths to distinguish the facts in the McLean case from the Carney case, in agreeing

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an architect, agreed that the court could be placed on the northeast corner of Petitioners' lot.) Furthermore, although Mr. Beck testified that, in his opinion, the proposed location of the tennis court was most advisable, from the aesthetic point of view of Petitioners, Mr. Kolscher and Mr. Gorn both contradicted this testimony, pointing out that from an overall neighborhood view, such was not the case. Of course, the law requires that a area variance not be granted, unless the petitioner can show substantial justice to himself and to other property owners in the district. Anderson v. Board of Appeals, Town of Chesapeake Beach, 322 A.2d 220, 226 (1974). Petitioners, in their Memorandum, seem to suggest that they know better what would be most beneficial to their neighbors than do the neighbors themselves. That the area residents disagree with the Petitioners as to their welfare, and what "substantial justice" would be for them, was made obvious by the testimony at hearing. Petitioners make reference, in their Memorandum, to a prior agreement between the Anton Farms Improvement Association and themselves. That agreement was reached at a meeting of representatives from seven of thirty-five neighborhood residences. One of the seven was the Protestants. The agreement was by a vote of 5-2; one of the five again being the Protestants. More importantly, none of the four remaining "for" votes were by residences immediately affected by the proposed variance.

As to the Petitioners' claim of the additional expense which would be incurred in moving their septic tank system (1) there was no evidence introduced as to the extent of such a modification, (2) or the additional cost of same, (3) or if the tennis court were installed concurrently with the swimming pool, whether such a move would have been an inconvenient as now may be the case.

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that in Carney "no benefit to any other persons was established". Clearly, in the McLean case, there was substantial evidence as to the adverse effect on the area if the variance were not granted. The Court of Appeals went on to say that the evidence in the case was fairly debatable on the issue of "practical difficulty". It then went on, at pages 215-215, to cite 2 Rathkopf, "The Law of Zoning and Planning" (3d Ed. 1972) 45-28, 29 which sets forth the following criteria for determining whether "practical difficulty" has been established.

"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." (Emphasis supplied.)

In the McLean case, the Court felt that these criteria clearly were met. In the case at issue, we think that the criteria clearly are not met. First, there is no testimony to the effect that compliance with the side yard regulations would be "unnecessarily burdensome", and second, there is no testimony that the grant would be more consistent with justice to other property owners. To the contrary, only detriment is shown to the other property owners.

Loyola Loan Ass'n v. Burchman, 227 Md. 243 (1961), also cited by Petitioners in support of their case, is merely an ear-

case which spells out the same conclusions of law as are seen in McLean and agrees with the findings in Canary. We see nothing in that case which would require or even permit the granting of the variance requested by Petitioners.

We feel that the evidence before this Board clearly shows that a "practical difficulty" such as has been required by this Board in the past and by the Court of Appeals of Maryland, is not present in the instant case.

In summary, the facts show that the construction of a tennis court is a luxury in and of itself; the proposed tennis court can be placed in the rear of the lot; there are no similar accessory uses or structures in any other front yard on Anton Farms Road; the proposed location of the tennis court would create an unsightly appearance and would reduce land values in the neighborhood. The hardship or difficulty, if insignificant. No benefit is shown to others; to the contrary, detriment is clearly established.

Respectfully submitted,

Wilbert H. Sirota
Wilbert H. Sirota

Abraham L. Adler
Abraham L. Adler

Attorneys for Protestants

I HEREBY CERTIFY, that on this 10th day of October, 1974, a copy of the foregoing Memorandum of Protestants was mailed to W. Lee Harrison, Esquire, 306 W. Joppa Road, Towson, Maryland 21204, Attorney for Petitioners.

Abraham L. Adler
Abraham L. Adler

RE: PETITION FOR VARIANCE * BEFORE THE
From Section 400.1 * COUNTY BOARD OF APPEALS
for Tennis Court *
Morton H. Poland, et ux *
Petitioners * FOR BALTIMORE COUNTY
NO. 73237-A

MEMORANDUM OF PETITIONERS

While there is serious question in the mind of the writer as to whether or not a tennis court constructed below existing ground level falls within the definition of "accessory use or structure" there appears to be little use in arguing this point because the Petitioners have invoked the administrative procedures established in Section 307 of the Baltimore County Zoning Regulations. This Petition requests a variance from Section 400.1 of the Baltimore County Zoning Regulations to permit a tennis court to be located in the side yard rather than in the rear yard where it is permitted as a matter of right.

There are a number of physical factors concerning the subject property and the existing improvements thereon which have a direct and important bearing on the question of whether or not practical difficulty or unreasonable hardship results to the Petitioners if the requested variance is denied, and whether the requested relief can be granted in such a fashion that the spirit of the ordinance will be observed and public safety and welfare secured. The property in question is a 2.4 acre parcel of land, located in the third election district of Baltimore County, which is presently improved by a large, expensive dwelling, a parking area for four automobiles, and a large swimming pool and terrace which is located in the rear yard of the property. The lot is more or less triangular in shape, with the front thereof being located on a curve in Anton Farms Road at its intersection with Courtland Drive. The septic system which consists of a septic tank and two

dry wells (connected by the necessary underground pipes) is presently located in the rear yard, and if the Petitioners constructed a tennis court in the rear yard, where it is permitted as a matter of right, it would be necessary to fill the dry wells and the septic tank and to construct a new septic system at a different location. This was confirmed by a letter, dated June 12, 1973, from the Petitioners to Mr. Albert Hendler, President of the Anton Farms Improvement Association, and the comments of the Zoning Advisory Committee, dated April 2, 1973, which also points out that the proposed area is the only level area on the lot convenient to this type of use.

A Hearing was held before the Deputy Zoning Commissioner of Baltimore County and his Order was held sub curia pending further negotiations between the Petitioners and the Improvement Association. An agreement did result whereby the plans for the location of the tennis court as proposed at the hearing were approved with certain restrictions which are set forth in the Order of the Deputy Zoning Commissioner, dated July 20, 1973. These restrictions unquestionably resulted from the Petitioners' letter of June 12, 1973 to Mr. Hendler and Mr. Hendler's letter of June 14, 1973 to the Deputy Zoning Commissioner, copies of both of which letters are a part of the Zoning Commissioner's file in this case. Thereafter, an Appeal was taken to this Board by several members of the Association who did not agree with the decision and the agreement between the Petitioners and the Improvement Association.

At the hearing before this Board, there was testimony that the construction of the tennis court in the rear yard area would result in practical difficulty to the Petitioners because the remaining rear yard area would only permit construction of the Court in an east-west direction, thereby creating a condition

where the sun would be in the eyes of one or the other of the users if used only during the daytime as contemplated by the Parties. While it is recognized that there was a dispute in the evidence as to whether or not this constituted a practical difficulty or hardship upon the Petitioners, there can be little question that this is a fairly debatable matter. However, the testimony is uncontradicted that the construction of the tennis court in the rear yard area would necessitate relocation of the septic system, creating expenses to the property owners which cannot be justified unless it could be shown that there would be some injury to the public health, safety, and general welfare and that the proposed variance was not in strict harmony with the spirit and intent of the regulations.

The evidence and applicable law in this case clearly demonstrates to the contrary and graphically illustrates that the spirit of the ordinance will be best observed when the public safety and welfare are secured by the granting of the variance. The Petitioners have an absolute right to construct the proposed tennis court in the rear yard area facing in an east-west direction, and to erect lights thereon for use at night. Obviously, if daytime playing conditions on an east-west court are intolerable or even unpleasant, lights would be the obvious solution. This would not appear to be in the best interests of a fine residential neighborhood, and in fact, the requested variance unquestionably promotes the residential welfare of the neighborhood. In addition, the testimony is uncontradicted that the Petitioners have gone to a great expense by providing substantial planting and the use of green plastic fences and green posts to insure that no detriment will befall neighboring property owners.

The law in a case of this nature is very clear and the point involved herein is very similar to that in McLean v. Soley.

270 Md. 208, wherein the sole issue was whether or not a set back variance should be granted for a building for the sole purpose of retaining "the present trees and natural growth, terrain, and topography which provides excellent drainage and natural screening and beauty", p. 210. In that case, the Maryland Court of Appeals set forth at p. 214-215 certain criteria to be followed and found that the criteria was met by the evidence, in that, construction of the building in strict compliance with the side yard, would result in the destruction of the trees. In McLean v. Soley, supra, the Court pointed out that it had noted in its prior decisions, Zengerle v. Bd. of Co. Comm'rs., 262 Md. 1, 21, and in Lovola Loan Ass'n. v. Bushman, 227 Md. 243, 249, that the practical difficulty tests or rule are more strictly applied in "use variance" cases than in cases of "area variance".

In conclusion, it is respectfully submitted that the evidence in this case is uncontradicted and clearly demonstrates that the Petitioners will sustain a practical difficulty (even a hardship) if this variance is not granted by virtue of the fact that the construction of the tennis court in the rear yard area will necessitate the filling of the existing septic tank and dry wells and the construction of a completely new septic system at unnecessary and unwarranted expense. Moreover, it would appear that the general welfare of the entire neighborhood would be promoted by the construction as proposed, five feet below the existing ground and without lights for night use.

Respectfully submitted,
W. Lee Harrison
W. Lee Harrison

LAW OFFICES
FRANK, BERNSTEIN, CONAWAY & GOLDMAN
1300 MERCANTILE BANK & TRUST BUILDING
211 - NS PLAZA
BALTIMORE, MARYLAND 21201
CABLE ADDRESS: FRANKS
FAX: 312-3945
August 16, 1973

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

Re: Petition for Variance
R/S of Anton Farms Road
(3600 Anton Farms Road)
opposite Cortland Drive
3rd District
Morton H. Poland, et ux -
Petitioners
No. 73-237-A (Item No. 158)

Dear Mr. DiNenna:

On behalf of Leonard Farberman and Paula Farberman, his wife, the owners of the property known as 3603 Anton Farms Road, Morris Silberman and Pearl Silberman, his wife, the owners of the property known as 3601 Anton Farms Road, Ivan Stern and Gail Stern, his wife, the owners of the property known as 3605 Anton Farms Road, and Sandra L. Sirota, the owner of the property known as 3606 Anton Farms Road, please note an appeal to the County Board of Appeals from the Decision and Order dated July 20, 1973, granting the above requested variance.

I enclose herewith a check in the amount of \$40.00 to cover the costs of said Appeal.

Sincerely yours,

Wilbert H. Sirota
Wilbert H. Sirota

NHS/gbh
Enc.



BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: S. Eric DiNenna, Zoning Commissioner Date: April 6, 1973

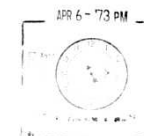
FROM: Norman E. Gerber, Chief

Land Use Master Plans
SUBJECT: Petition 773-237-A East side of Anton Farms Road opposite Cortland Drive.
Petition for an Accessory Structure.
Petitioner- Morton H. and Suelien Poland

3rd District

HEARING: Monday, April 9, 1973 (11:15 A.M.)

The Office of Planning and Zoning will offer no comment on this petition at this time.



July 20, 1973

Mr. and Mrs. Morton H. Poland
3600 Anton Farms Road
Pikesville, Maryland 21208

RE: Petition for Variance
R/S of Anton Farms Road
opposite Cortland Drive - 3rd District
Morton H. Poland, et ux - Petitioners
NO. 73-237-A (Item No. 158)

Dear Mr. and Mrs. Poland:

I have this date passed my Order in the above captioned matter in accordance with the attached.

Very truly yours,

James E. Oyer
JAMES E. OYER
Deputy Zoning Commissioner

JED:hbb

Attachment

cc: Mr. Albert Hendler, President
Anton Farms Association
Anton Farms Road
Baltimore, Maryland 21208

Mrs. Leonard Farberman
3603 Anton Farms Road
Baltimore, Maryland 21208

Mr. Morris Silberman
3601 Anton Farms Road
Baltimore, Maryland 21208

ORIGINAL.

OFFICE OF
THE COMMUNITY TIMES

RANDALLSTOWN, MD. 21133 March 26 - 1973

THIS IS TO CERTIFY, that the annexed advertisement of
S. Eric Dineena
Zoning Commissioner of Baltimore County

was inserted in THE COMMUNITY TIMES, a weekly newspaper published
in Baltimore County, Maryland, once a week for one week
before the 26 day of March 1973 that is to say, the same
was inserted in the issue of March 22, 1973.

STROMBERG PUBLICATIONS, Inc.

By Ruth Morgan

CERTIFICATE OF PUBLICATION

TOWSON, MD. March 22 1973

THIS IS TO CERTIFY, that the annexed advertisement was
published in THE JEFFERSONIAN, a weekly newspaper printed
and published in Towson, Baltimore County, Md. on
of one time before the 21st
day of April 1973. The said publication
appearing on the 22nd day of March
1973.

THE JEFFERSONIAN
H. Frank Stauder
Manager

Cost of Advertisement, \$

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 3rd Date of Posting APRIL 24, 1973

Posted for: APPEAL

Petitioner: Morton H. Poland

Location of property: E/S of Antons Farms Rd. opp. Cortland Drive

Location of Sign: 3600 Antons Farms Road

Remarks: STREET SIGN MARKED DOUBLED, NOT CORTLAND

Posted by: Thomas L. Poland Date of return: APRIL 2 - 1973

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 3rd Date of Posting APRIL 30, 1973

Posted for: APPEAL

Petitioner: MORTON H. POLAND, ET UX

Location of property: E/S of ANTON FARMS ROAD opposite
CORTLAND DRIVE

Location of Sign: E/S of ANTON FARMS ROAD opposite
WILSON DRIVE

Remarks: STREET SIGN MARKED DOUBLED, NOT CORTLAND

Posted by: Thomas L. Poland Date of return: SEPT. 2, 1973

Mr. Morton H. Poland
3600 Antons Farms Road
Pineville, Maryland 21204

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 21st day of March 1973.

By S. Eric Dineena
Zoning Commissioner

Petitioner: Morton H. and Station Poland

Petitioner's Attorney: W. Lee Harrison, Esq.
401 Washington Avenue
Towson, Md. 21204

Reviewed by: Chairman
Zoning Advisory Committee

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

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

Your Petition has been received* this 20th day of
Feb 1973.

By S. Eric Dineena
Zoning Commissioner

Petitioner: Poland Submitted by: Harrison

Petitioner's Attorney: W. Lee Harrison Reviewed by: Chairman
Zoning Advisory Committee

* This is not to be interpreted as acceptance of the Petition for assignment of a hearing date.

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 8203

DATE March 19, 1973 ACCOUNT 01-662

AMOUNT \$25.00

DISTRIBUTION
WHITE - CASHIER
PINK - AGENCY
YELLOW - CUSTOMER

Morton Poland
3600 Antons Farms Rd.
Baltimore, Md. 21204
Petition for Zoning - #73-237-A

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 11171

DATE August 20, 1973 ACCOUNT 01-662

AMOUNT \$40.00

DISTRIBUTION
WHITE - CASHIER
PINK - AGENCY
YELLOW - CUSTOMER

Wilbert H. Sirote, Esquire
Cost of Filing an Appeal and Posting of Property on Case
No. 73-237-A
E/S of Antons Farms Road opposite Cortland Drive - 3rd
District
Morton H. Poland, et ux - Petitioners

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 15314

DATE 1/21/75 ACCOUNT 01.712

AMOUNT \$19.00

DISTRIBUTION
WHITE - CASHIER
PINK - AGENCY
YELLOW - CUSTOMER

W. Lee Harrison, Esq.
401 Washington Avenue
Towson, Md. 21204

Certified documents -
Case #73-237-A -
Morton H. Poland, et ux

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 15315

DATE 2/26/75 ACCOUNT 01.712

AMOUNT \$4.50

DISTRIBUTION
WHITE - CASHIER
PINK - AGENCY
YELLOW - CUSTOMER

Copies of documents from zoning file #73-237-A -
Morton H. Poland, et ux

W. Lee Harrison, Esq.
401 Washington Avenue
Towson, Md. 21204

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

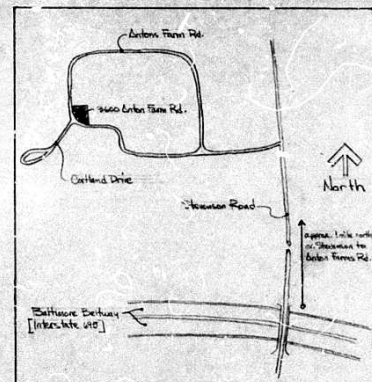
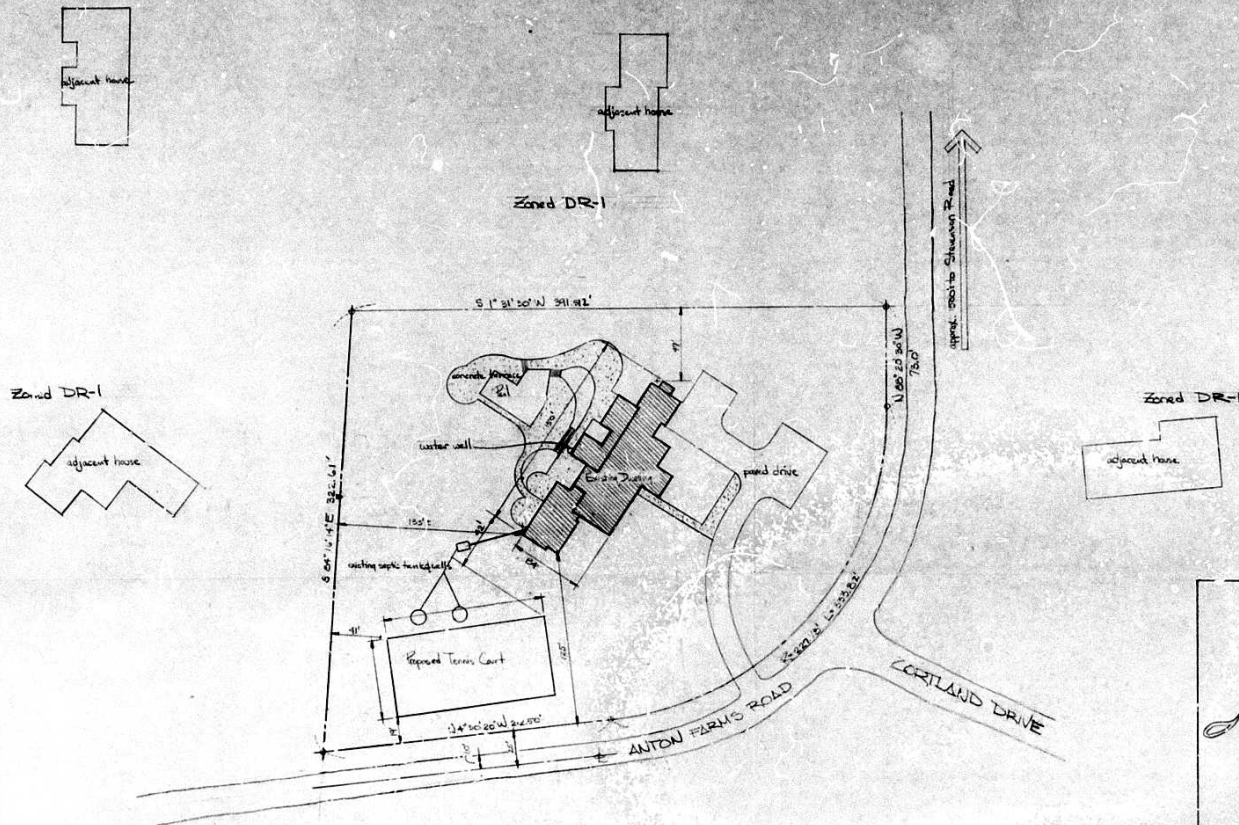
No. 10823

DATE June 12, 1973 ACCOUNT 01-662

AMOUNT \$53.75

DISTRIBUTION
WHITE - CASHIER
PINK - AGENCY
YELLOW - CUSTOMER

Morton Poland
3600 Antons Farms Rd.
Baltimore, Md. 21204
Advertising and posting of property - #73-237-A



Plot Plan for
 North Farm Residence
 1600 Antons Farm Rd.
 Stearns, Maryland
 scale 1" = 50' 0"
 2nd edition 1987
 24 acres
 Zoned DR-1, plot 17, folio 30

Note: Plot boundaries, i.e.
 1600 Antons Farm Rd.
 Stearns, Maryland 21224

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