

PETITION FOR ZONING VARIANCE FROM AREA AND HEIGHT REGULATIONS 3374

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY

RECEIVED FOR FILING

ORBER

I, or we, Morton H. and Suellen Poland legal owners of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, on for a Variance from Section 400.1 to permit on occessory structure (tennis court) to be located in the lide 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

see attached description

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	iance advertising, posting, etc., upon filing of this by the zoning regulations and restrictions of
TANK TO THE PARTY OF THE PARTY	Queter Boland
Contract purchaser	Juller Polard Legal Owner
druks	Address 3600 Anton Forms Rd.
#	Pikesville, Maryland 21208
> Petitioner's Attorney	Protestant's Attorney
dress	

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

197 3, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughguid Baltimphe County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 108, County Office Building in Towson, Baltimore

9th day of April ..., 1973..., at 13:15.o'clock :15A

Zoning Commissioner of Baltimore County.

419/23

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 wall's 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 vel non 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 subdivision 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.

Appeal from the Circuit Court for Beltimore County

Filed: March 22, 1975

August 15, 1975: Order of Dismissal filed by

Leonard Farbman et al.

august 15, 1975: Appeal dismissed

STATEMENT OF COSTS:

In Circuit Court:

25.00

In Court of Special Appeals

Filing Record on Appeal
Printing Brief for Appellant
Reply Brief
Portion of Record Extract — Appellant
Appearance Fee — Appellant

STATE OF MARYLAND, Set:

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 fitteenth August A. D. 1775

Clerk of the Court of Special Appeals of Maryland.

Costs shown on this Mandate are 'a be settled between counsel and NOT THROUGH THIS OFFICE FUED AUG 1 0 1975 11

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 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 Ex-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 applicalle 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.

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LEONARD FARBMAN ET AL.

DISPOSITION OF APPEAL IN COURT OF SPECIAL APPEALS:

V August 15, 1975: Appeal dismissed.

TRANSCRIPT

RETURNED TO Clerk, Circuit Court for Baltimore County

Towson, Maryland 21204 Date August 15, 1975

RY First Class Mail

Julius A. Romano, Clerk

REMARKS:

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.

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 Baltimore County E/S of Anton Parms Road FOR BALTIMORE COUNTY

opposite Dorland Driva 3rd District

Sue Eilen Poland,

MISC. NO. 5432 Morton H. Poland and

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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 Belt way 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 Depart ment 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,

DESCRIPTION OF PROPERTY OWNED BY MORTON H. AND SUELLEN POLAND

Beginning for the same at a point on the easternmost side of the Anton Forms Road, where It is intersected by the division line between Lats 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 Forms 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 legging Anton Forms 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

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REFORE COUNTY BOARD OF APPEALS

> BALTIMORE COUNTY No. 73-237-A

Morton H. Poland, et ux Petitioners

OPINION

This is an appeal by the Protestants from an Order of the Deputy Zoning er dated July 20, 1973 wherein the variance from Section 400.1 - tennis court petitioned for was granted, subject to several restrictic is.

The property in question is located in the Third Election District of Baltimore County, on the west and south sides of Anton Farms Road on a bend (erroneously indicated as "east side" in the file), which would make the Petitioner's property roughly a "nie slice" containing approximately two and one-half acres of around

The granting of the requested variance can only be done in accorda with Section 307 of the Rollimore County Zoning Regulations, which state that a petition

* ** 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 homony with the spirit and intent of said *** area *** regulations ***.*

Upon the testimony adduced before this Board it was indicated that the Petitioners desired to have the variance in order that they could place the proposed tennis court where they desired. However, it was also indicated that they could place the aforesaid tennis court in the rear portion of the lot without any variances but would have to run it in a different direction than they wished. The Board does not feel that this amounts to nither practical difficulty or unnecessary hardship. Furthermore, it was indicated that had the Petitioners designed the tennis court at the time that they installed the swimming pool, the tennis court could have been placed in the rear yard running in the direction that they ussired merely by relocating the position of the swimming pool. This, of course,

screen planting would be constructed around the perimeter of the court adjucent to Anton Farms Road.

The Anton Farms Improvement & ssociation, including several surrounding residents, were present in protest to the requested Variance. However, after considerable testimory and discussion with regard to the proposed Variance, it was agreed that the Order would be held sub curia pending further discussion between the Petitioners and the Improvement Association. Hopefully, this would result in an agreement between the parties as to the location and improvements.

The Deputy Zoning Commissioner was informed by letter dated June 14, 197., that the Anton Farms Improvement Association held a meeting on June 10, 1973, and approved the plans for the location of the tennis court as presented at the hearing on May 21, 1973, with certain restrictions. The restrictions were as follows:

- 1. There would be no lights crected around the tennis
- 2. No wooden practice board would be erected.
- 3. A berm with proper planting would be erected on the south and west sides of the court and would be maintained at all times in the future.
- 4. These restrictions would become a covenant to the deed to the property so that any inture owner would be required to maintain the property into

Subsequent to the letter of approval from the Anton Farms t Association, two (2) letters were received on June 20, and June 21, 1973, from two (2) members of the Improvement Association who voted against the approval. These residents reside in dwellings located directly opposite : site, and objected to the tennis court on the basis that it was aesthetically dissatisfying and no matter how camouflaged, would be an objectional sight. They also thought that the hardship in placing the tennis court in the side or front yard was debatable

In view of the testimony, an on site inspection of the property. including the adjoining area, and approval or general approval of the

Morton H. Pulend, et ux = #73-237-A

would be impractical at this time but the Petitioners, by their own actions, have created this situation and the resulting circumstances do not amount to unnecessary hardship or practical difficulty. Certainly the granting of this petition would not be in the strict ny of the area regulations as applied to this neighborhood, known as Anton Farm, which is comprised of homes in the one hundred twenty-five thousand to four hundred thousand dollar range, all of which are constructed on large well landscaped and well

As further evidence of this, there was testimony that there are deed retions to prohibit any accessory use being placed in the front yard, but although there is some difference of opinion as to whether the proposal is to be located in the side yard or the front yard, or perhaps in both of these yards, the Board feels that it is not necessary to make that distinction in this case, but that perhaps would be more pertinent if litigation were brought to enforce the deed restrictions

The language of the Court of Appeals in Carney v. City of Baltimore, 201 Md. 130 (1952), which stated that an exception to side yard requirements (variance), unless there were practical difficulties or necessary hardships, which as stated in that opinions

> * *** 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 a possible, and a liberal construction allowing 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

The Board feels in the instant case that the cranting of the variance peritioned for would merely be for the convenience of the Petitioner and would not be in strics harmony with the surrounding neighborhood, even though the proposal, we feel, would be extremely well done and at great cost to the Petirioner

For the reasons cited above, the variance petitioned for will be denied.

Improvement Association as to the proposed location of the tennis court, it is the opinion of the Deputy Zoning Commissioner, that the Petitioners do have a hardship with regard to the site and improvements. The dwelling as persently situated on the site, approximately one hundred and forty (140) feet back from Anton Farms Road and diagonally across the lot, is in keeping with the location and placement of other dwellings in the area. However, this situation places the buildable or usable rear yard area in the narrowest or apex portion of the site and, as such, does place a hardship on the Petitioners insofar as normal utilization of the rear yard is concerned. Most other lots containing 2.4 acres and not located on a ninety (90) degree angle, would have little, if any, problems in placing both a swimming pool and a tennis court in the rear yard area. The Petitioners' plans for screening of the tennis court are impressive

and should alleviate detrimental effects on the community

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Therefore, IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County, this 20 day of July, 1973, that the herein requested Variance to permit an accessory structure (tennis court) to be located in the front and or side yard should be and the s' a is bereby GRANTED, subject to the restrictions previously stated above and setforth by the Anton Farms Improvement Association and or strict compliance with an architectural site plan indicating the location and type of screening Said plan is to be approved by the president of the Anton Farms Improvenent Association and the Office of Planning and Zoning, and is to be marked Exhibit "A" and made a permanent part of this record

Morton H. Poland, et ux - \$73-237-A

ORDER

For the reasons set furth in the aforegoing Opinion, the Board reverse the Order of the Deputy Zoning Commissioner dated July 20, 1973, and ORDERS, this 31st day of October, 1974, that the variance petitioned for be and the same is hereby

Any appeal from this decision must be in accordance with Chapter 1100, subtitle B of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS

OF BALTIMORE COUNTY

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FOR MECEIVED E/S of Anton Farms Road opposite Cortland Drive -3rd District Morton H. Poland, et ux -Petitioners NO. 73-237-A (Item No. 158):

RE: PETITION FOR VARIANCE

COMMISSIONER OF

BEFORE THE

DEPUTY ZONING

BALTIMORE COUNTY

111 111 111 This Petition represents a request for a Variance from Section 400. I that would permit an accessory structure (tennis court) to be located in the front and or the side yard instead of the required rear yard.

The property in question is situated on the west and south sides of Anton Farms Road at a point where said road makes a ninety (90) degree turn, and is more specifically located opposite Cortland Drive. The site contains 2.4 acres and is improved with a dwelling, a driveway with a parking area for approximately four (4) cars, and a swimming pool located to the rear of the dwelling. The dwelling is setback between one hundred and twenty-five (125) feet and one hundred and forty (140) feet from Anton Farms Road and is situated diagonally across the lot, so as to place the majority of the lot in either the front yard and or side yard category, with the rear area being triangular in shape. The swimming pool and the accompanying terracing and shrubbery usurp much of the buildable rear ard in which accessory structures are required to be located. The problem is further complicated by the fact that the septic system is also ated partly in this rear yard area

The Petitioners further explained that the proposed location of the tennis court was the only available area and was the most logical. He indicated that he had gone to a great deal of expense to screen the court from off site view. Architectural plans were submitted indicating that the court would be sunken below ground level and a berm with evergreen

-TOWSON, MD. 21204 February 28, 1975

LAW OFFICES WEINBERG AND GREEN

Mr. Waiter A. Reiter, Jr. Chairman of the Board of Appeals County Office Building Towson, MD 21264

Mr. W. Giles Parker Member of the County Board of Appeals County Office Building Towson, MD 21204

Mr. Robert L. Gilland Member of the County Board of Appeals County Office Building Towson, MD 21204

Petition for Variance File No. 73-237-A

Gentlemen:

This office represents Morton H. Poland, the Petitioner in the above entitled proceedings. At the hearing before the Board on the appeal from the Order of the Deputy Soning Commissioner granting the variance requested, Kr. Reiter speaking for the Board stated that the Board would make an on- ite inspection of the property. (Transcript, pages 29 and 29)

In order to clarify the record on appeal, would you please advise whether the Board did have the opportunity to make the on-site inspection, and if so, the date thereof.

Champie Clade Col

104/cs

c.c. Wilbert H. Shrota, Esquire Abraham L. Adler, Esquire Thomas E. Webb, Esquire

17/38m PAR 3

ABRAHAM L. ADLER ONE NORTH CHARLES CHARLES AND FAYETTE STREET BALTIMORE, MARYLA May 3, 1974

THOMAS E WERR

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

> RE: Case Number 73-277-A MORTON H. POLANE, ST UX

Gentlemen.

Please enter my appearance as counsel for the Protestants in this matter.

very truly yours.

ALA:1m

Reid 5.3.74

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BEFORE THE COUNTY BOARD OF APPEALS

FOR BALTIMORE COUNTY

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 vard

As was testified to at the hearing before this Board or May 7, 1974, and as supported by Exhibits introduced at said hearing, the property in question is located on the west and scuth sides of Anton Farms Road, opposite, in part, to Courtland 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 teams 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 this 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, app. ximately 5 feet high, i also planned at the south erd of the Court. The proposed site for the court complex borders Anton Farms Road, and if granted would be the only auxilary 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.

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. Pridence 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 difficulary 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

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 Farbman, one of the Protestants whose property is directly opposite Petitioner's 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.

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) rdinate 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. building, as defined above, shall be considered an accessory structure

It would seem evident that the construction of a tennis court, as contemplated by Petitoners, 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 Councy 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. *** Furthern 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

Morris Silberman, one of the Protestants, whose home also lies posite 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 no 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-

contention that unless the court were placed in an exact northsouth direction, sunlight would, at certain times of the day, interfere with the individual who is serving the tennis balls. Petition ers contend that this is sufficient demonstration (of a practical dif ficulty 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 renown championship sites, e.g., Wimbledon, Forest Hills and Hilton Head have courts built in

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It is clear from Exhibits and oral testimony that Petitoners seek a side and front yard variance. Mr. Samuel Gorn, an experc witness of behalf of Protestants restified that if granted, the existence of the proposed court would be the only such auxillary 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 neighborbood, 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

an architect, agreed that the court could be placed on the norteast corner of Petitioner's 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 'nom an overall neighborhood view, such was not the case. Of cowse, the law requires that a area variance $\underline{\mathtt{not}}$ 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 Petitoners es 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 touremaining "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.

tions as far as possible, and a liberal construction allowing exceptions for reasons that are not substantial and urgent would have the tende...cy to cause discrimination eventually destroy the usefulness of the ordinance

The Court further said at page 137 that:

" The expression "practical difficulties unnecessary hardships' means difficulties or hardships which are peculiar to the situation of the applicant for the permit and arenot 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 un necessary injustice to the applicant. Exceptions on the ground of 'practical diffi-culties 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 prop Easter V. City of Baltimore, 195 Md. 395, 73 A 2d 491; Heffernan v. Zoning Board of Review, 50 R.I. 26, 114 A. 674; Potts v. Board or Adjustment of Princeton, 133 N.J. L. 230, 43 A. 2d 495, "

McLean v Soley, 270 Md. 208 (1973), cited by Petitioners in their Memorandum does not, as Petitioner's counsel avers, control the instant situation in its similarity of facts. To the contrary Mc. 1 v. Soley involves a dispute as to whether or not trees should be cut down. Testimony before the Board by an engineer and an aborist 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

that in Carney "no berefit 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

- "1) Whether compliance with the strict let-ter 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
- "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 disapplied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
- "3) Whother reilef 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 propercy owners.

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

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,

Attorne a for Protestants

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

276 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

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. Solev, supra, the Court pointed out that it had noted in its prior decisions, Zengerle v. Bd. of

tests or rule are more strictly applied in "use variance" cases

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 year ward

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.

Co. Comm'rs., 262 Md. 1, 21, and in Loyola Loan Ass'n. v.

Buschman, 227 Md. 243, 249, that the practical difficulty

than in cases of "area variance".

natural screening and beauty", p. 210. In that case, the

Maryland Court of Appeals set forth at p. 214-215 cortain

RE: PETITION FOR VARIANCE From Section 400.1 for Tennis Court Morton H. Poland, et ux Petitionars NO. 73237-A

BEFORE THE

COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY

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 prog rty 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 requestod 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 tack 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 Farm; 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 arms would result in practical dif: iculty 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 rairly debatable matter. However, the testimony is uncontradicted that the construction . 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

-3-

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 yerd 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 uncontradicated 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.

with the spirit and intent of the regulations.

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,

Hand delle sand Park 9,974

FRANK, BERNSTEIN, CONAWAY & GOLDMAN

ELI FRANK ----

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

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

On behalf of Leonard Farbman and Paula Farbman, his wife, the owners of the property known as 3693 Anton Farms Road, Morris Silberman and Pearl Silberman, his wife, the owners of the property known as 3601 Anton Farms Road, I van Stern and Gale Stein owners of the property known as 3605 Anton Farms Road, is wife, the owners of the property known as 3605 Anton Farms Road, please note on 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.

WHS/gbh

AIS 17 '73 AM -T

Sincerely yours.

Willbert H. Sirota

July 20, 1973

Mr. and Mrs. Mort.a H. Foland 3600 Antes Forms Read Pikesville, Marvined 21208

Polition for Variance E/S of Anton Farms Road opposite Cortland Drive - 3rž District Morton H. Poland, et us - Politioners NO, 73-237-A (Bum No, 188)

Mr. and Mrs. Poland

I have this date passed my Order in the above captioned matter in

AMES E. DVER

Mr. Albert Hendler, Pr

Mrs. Loosard Farbme 3603 Auton Farms Rose ore. Marriand 2120s

3601 Anten Farms Res Baltimore, Marvised 21208 BARMORE COUNTY, MARY OND

INTER-OFFICE CORRESPONDENCE

TO S. Eric DiNenna, Zoning Commissioner Date_ April 6, 1973 FROM Norman E. Gerber, Chief

Land Use Master Plans
SUBJECT_Peiison_f12;327_A_East_side of Anton Farms Road opposite Cortland Drive.
Peiitlon for an Accessory Structure.
Petitioner- Morton H. and Suellen Poland

3rd District

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

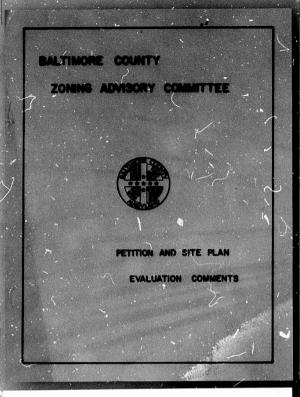
The Office of Planning and Zoning will offer no comment on this petition



Moter Hours on

August 16, 1973

COUNSEL OUR



BALTIMORE COUNTY ZONING ADVISORY COMMITTEE

April 2, 1973

COUNTY OFFICE BLDG III W. Chrisapeake Ave. Towner, Maryland 21700 TORN I. DILLON, 18

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

Chairman MEMBERS

DEPARTMENT OF ATT ROADS COM

BUREAU OF AL AL DA DA DA DA BERNESIE THE OWNER WAS AND ADDRESS.

OF TAXABLE DEPARTMENT PURE OF EDUCATION

RE: Veriance Petition Item 158 Morton H, and Suellen Polend - Petitioners

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

These comments are not intended to indicate the appropriate-ness of the zoning action requested, but to assure that all parties are made awere of plans or problems with regard to the development plans that may have a bearing on this case. The Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the appropriateness of the requested zoning.

of the requested zoning.

The subject property is located on the northwest side of Anton Farma Boad, approximately SOO foot west of Stevenson Read, in the Jrd District of Baltimore County. The subject property is currently improved with an easting atome and frame chelling, and substantial alteration work is also being done on this property. The politioner is requesting a Prisance to the side yard. There appears to be no serious objection to the location of this tennis court insofer as this Committee is concerned, as the rear aromety alongs to the back and the waisting senic system would her the location of the pool further and the side yates with the subject of the pool further and the side yates with the pool further and the side of the pool further and the pool further and

This petition is accepted for filing on the date of the enclosed filing certificate. Notice of the hearing date and time,

Hr. Horton H. Poland Item 158 April 2, 1973

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

JJDJr.:JD

(Enclosure)

cc: Mark Beck Associates, Inc. 762 Fairmount Avenue (21204)

Balttmore County, Margland Bepartment Of Bubite Borks

COUNTY OFFICE BUILDING

Bureau of Engineering ELLSWORTH N. DIVER P. E. CHIE

March 27, 1973

Mr. S. Eric Dinenns Zoning Commissioner County Office Building Towson, Maryland 2120h

Item #158 (1972-1973) Property Owner: Morton and Suellen Polance 3600 Anton Farms Road Power Anton Farms Hoad Present Zoning: D.R. Tariance from Section 1:00.1 to permit an scoessory structure (tennis court) to be located in the side yard rather than required rear yard District: Jrd No. Acres: 2.5 acres: 2.5

Dear Mr. Di Nenna.

Baltimore County utilities and highway improvements are not involved. Public water supply and samitary sewrage are not available to serve this property which is utilizing private onsite facilities.

Very truly yours,

SLISWORTH N. DIVER, P.E. Chief, Bureau of Engineering

END: EAM: FWR: 88

O-NW Key Sheet 38 NW 21 Position Sheet NW 10 E Topo 68 Tax Map

-BALTIMORE COUNTY, MARYLAND DEPARTMENT OF HEALTH-

JEFFERSON BUILDING

March 14, 1973

DONALS J. ROOP, M.D., M.P.H.

Mr. S. Eric DiNenna, Zoning Commissioner Office of Planning and Zoning County Office Building Towson, Maryland 2120

Dear Mr. DiNenna:

Comments on Item 158, Zoning Advisory Committee Mueting March 6, 1973, are as follows:

Froperty Owner: Norton and Suellen Poland Location: 3000 Anton Farms Road Proposed Coning: Variance from Section 400.1 to permit an accessory structure (tennis court) to be located in the side yard rather than required rear yard. District: 3

Private water well and private septic system appear to functioning satisfactorily at time of inspection.

Very truly yours. Thomas H. Devlin, Director BUREAU OF ENVIRONMENTAL SERVICES

HVR:mn&

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

Director

Residence for Annual Justice and Building Suite 301
Towners, Md. 21204
494-3211

. ERIC DINENNA Zoolog Countsplans County Office Building 111 W. Choopsake Av Toware, Md. 21204 494-3351

Mr. S. Eric DiNenna, Zoning Commissioner Mr. S. Eric DiNenna, Zoning Co Zoning Advisory Committee Office of Planning and Zoning Baltimore County Office Building Towson, Maryland 21204

Comments on Item #158, Zoning Advisory Committee Meeting, March 6, 1973,

Property Owner: Morton and Suellen Poland Location: 3600 Anton Farms Road Present Zoning: D.R.1 sed Zoning: Variance from Section 400.1 to permit an accessory structure (tennis courr) to be located in the side yard rather than required rear yard.

March 14, 1973

No. Acres: 2.5 acres

The site plan should be revised to indicate the existing evergreen trees adjacent to Anton Farms Road and near the location of the proposed tennis court. The existing driveway whould be indicated on the revised site plan and the driveway as shown should be labeted as proposed. If there is to be any lighting it must be shown on the site plan.

> John P. Weinkley John L. Wimbley Planner I Project Planning Division

BOARD OF EDUCATION OF BALTIMORE COUNTY

TOWSON, MARYLAND - 21204

Date: March 7, 1973

Mr. S. Eric DiNenna Zoning Commissioner County Office Building

Re: Item 158 Property Owner: Location: Present Zoning: Proposed Zoning:

Z.A.G. Meeting of: March 6, 1973 Morton and Suellen Poland 3600 Anton Farms Road

Variance from Section 400.1 to permit an accessory structure (tennis court) to be located in the side yard rather than required rear yard.

District

Dear Mr. DiNerna

No effect on student population

WNP/ml

Very truly yours, W. Mick Fetrouch Field Representative

MES ROOF OF L BERKEY

MARCUS M HOTSARIS ADSERT N. M. GOWAN

HE WIT AND " WILERED

BALTIMORE COUNTY, MARYLAND JEFFERSON BUILDING TOWSON, MARYLAND 21204



DEPARTMENT OF TRAFFIC ENGINEERING

EUGENE J. CLIFFORD, P.E.

April 11, 1973

Mr. 5. Eric DiNenna Zoning Commissioner County Office Building Towson, Haryland 21204

Re: Itom 158 - ZAC - Harch 6, 1973
Property Owner: Worton 5 Suellen Poland
3600 Anton Farms Road
Variance from Section 400,1 to permit an accessory
structure (tennis court) to be located in the side
yard rather than required rear yard, - District 3

No traffic problems are anticipated by the requested variance for an accessory structure in a side yard,

Very truly yours.

Michael Flanger Michael S. Flarigan Traffic Engineer Associate

MiF nc

Oceaning IMES RANDALLSTOWN, MD. 21133 March 26 - 19 73 THIS IS TO CERTIFY, that the annexed advertisement of S. Eric Dinenna Zoning Commissioner of Bultimore County was inserted in THE COMMUNITY TIMES, a weekly newspape; published in Baltimore County, Maryland, once a week for one week before the 26 tay of Earth 1973, that is to say, the same was inserted in the issue/ of Harola 22, 1973. STROMBERG PUBLICATIONS, Inc. By Ruth Morgan and continuing 75 acres more or feeding the property of Morton II. and Smillen Poland, as shown on polar plan filed with the Zoning Department. Hearing Date, Monday, April 8, 1973 at 11 15 A.M. Public hearing; Rosen 10s, County Office Building, 111. 74. Cresspokek Avenue, Toronola, S. ENIC DINENNA ZOSING COMINSIONER OF

CERTIFICATE OF PUBLICATION

the___22nd___day of____ Hersh_____

Cost of Advertisement,

1516x 73-237-1 CERTIFICATE OF POSTING DEPARTMENT OF BALTIMORS COUNTY

Date of Posting . ASREN 24-199-Posted for: . L'AD AUCL Petitioner: Haktow H. Palako Location of property: Els of ANDEN FARMS Rd DEP. Committed Deven Location of Signa: 3 600 ANTON FARMS ROAD Proted by Marles 11: 1164

1-5,6N 73-237 A

CERTIFICATE OF PUSTING

NG DEPARTMENT OF BALTIMORE COUNTY

Date of Posting 4 6 5 5 31,1973 Petitioner: MORTON H. POLAND OF UX Location of property: E/S OF ANTON FARMS FORE CPPOSITE CORTLAND DRIVE. Location of Signa: E/S OF ANTON FARMS BOAD OPPOSITE DORING DRIVE

Remarks: STREET SIGN MARKED DORLHUND, NOT CORTHARD Posted by Ilinias L. Balance Date of return Sept. 7/9-3

MORE COUNTY OFFICE OF PLANNING AND ZONING County Office Building 111 W. Chesepeake Avenue Towson, Maryland 21204

Your Petition has been received and accepted for filing

Petitioner's Attorney

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

BALTIMORE COUNTY, MARYLAND OFFICE OF FINANCE REVENUE DIVISION MISCELLANEOUS CASH RECEIPY DATE March 19, 1973 3600 Anton Farme Rd. Baltimore, Rd. 71200 Petition for Variance 25.0 CHSE

DATE August 20, 1973 ACCOUNT 01-562 Cost of Filing an Appeal and Posting of Property on Case Cost of Filing an Appeal and Puring of Property on Case No. 73-237-A E/S of Anton Farms Road opposite Cortland Drive - 3rd District
Morton H. Poland, et ux - Petitioners
4 0.00 mc

RALTIMORE COUNTY, MARYLAND OFFICE OF FINANCE REVENUE DIVISION MISCELLANEOUS CASH RECEIPT

BALTIMORE COUNTY, MARYLAND OFFICE OF FINANCE REVENUE DIVISION MISCELLANEOUS CASH RECEIPT DATE 1/21/75 ___ ACCOUNT __ 01.712 AMOUNT \$19.00

Com \$73-237-A -Towson, Md. 21204 Morton H. Poland, et ux

181848 AL 19.00 (180

BALTIMORE COUNTY, MARYLAND DATE 2/26/75 ACCOUNT 01.712 ---Copies of documents from zoning file #73-237-A -Morton H. Poland, et ux W. Lee Harrison, Esq. 401 Washington Avenue Towson, Md. 21204 PALTIMORE COLOTY, MARYLAND OFFICE OF FINANCE - REVENUE DIVISION MISCELLANEOUS CASH RECEIPT June 12, 1973 ACCOUNT 01-662 AMOUNT_ \$53.75 DISTRIBUTION Adverticing and posting of property-473-237-A

