

File

LAW OFFICES
HOWARD AND STONE

PROFESSIONAL BUILDING
6905 DUNMANWAY

DUNDALK, MARYLAND 21222

CHARLTON T. HOWARD
NORMAN R. STONE, JR.
BERNARD F. MURPHY

TELEPHONES
(301) 284-7865
(301) 288-5250

March 31, 1975

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

RE: Case No. 73-279-A
Henry J. Knott; for Variances from Sec. 1B01.2C4
E/S Lodge Farm Rd. bet. Bay Front Rd. & Sparrows
Point Boulevard
15th District

Dear Sir:

I have received notice that the above captioned matter has been assigned for hearing on Tuesday, April 8, 1975 at ten o'clock a.m.

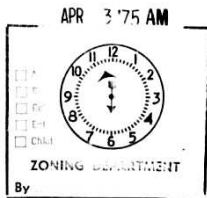
In accordance with Rule 527b of the Maryland Rules of Procedure, please continue the above captioned case until ten (10) days after the current ninety (90) day Legislative Session. (The Session ends April 8, 1975)

Thank you for your cooperation in this matter.

Very truly yours,

Norman R. Stone, Jr.

NRS,JR:slh
cc: Thomas N. Biddison, Jr., Esquire
C. Edward Jones, Esquire
Mr. S.E. DiSenna
J. Carroll Holzer, Esquire



*Appeal filed from City's Engineer's Office
Docketed on this file for info. only
73-279A*

County Board of Appeals
COUNTY OFFICE BUILDING
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204

August 26, 1975

Mr. S. E. DiNenna
Zoning Commissioner
County Office Building
Towson, Md. 21204

Re: Henry J. Knott
Bldg. Per. # 63255 and 63256

Dear Mr. DiNenna:

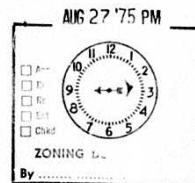
Notice is hereby given in accordance with the Rules of Procedure of the Court of Appeals of Maryland that an appeal has been taken to the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

M. E. Buddemeier
Muriel E. Buddemeier

Encl.



RE: PETITION FOR DENIAL OF BUILDING PERMITS E/S of Lodge Farm Road between Bay Front Road and Sparrows Point Boulevard 15th District	:	IN THE
	:	CIRCUIT COURT
	:	FOR
	:	BALTIMORE COUNTY
Henry J. Knott Petitioner - Appellant	:	AT LAW
	:	Misc. Docket No. 10
Bldg. Permit No. 63255 and No. 63256	:	Folio No. 99
	:	File No. 5696

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, Walter A. Reiter, Jr., W. Giles Parker and Robert L. Gilland, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, Thomas N. Biddison, Jr., Esq., 1100 One Charles Center, Baltimore, Maryland, 21201, attorney for the Defendant; J. Carroll Holzer, Esq., Office of Law, County Office Building, Towson, Maryland, 21204, County Solicitor; Mr. John Seyffert, Department of Permits and Licenses, County Office Building, Towson, Maryland, 21204, Director; Mr. C. Elmer Hoppert, Department of Permits and Licenses, County Office Building, Towson, Maryland, 21204, Buildings Engineer; and Mr. J. Berger, Department of Permits and Licenses, County Office Building, Towson, Maryland, 21204, Inspector, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

Muriel E. Buddemeier
County Board of Appeals of Baltimore County
County Office Building, Towson, Md. 21204
Telephone - 494-3180

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Thomas N. Biddison, Jr., Esq., 1100 One Charles Center, Baltimore,

Henry J. Knott - Bldg. Per. Nos. 63255 and 63256

2.

Maryland, 21201, attorney for the Defendant; J. Carroll Holzer, Esq., Office of Law, County Office Building, Towson, Maryland, 21204, County Solicitor; Mr. John Seyffert, Department of Permits and Licenses, County Office Building, Towson, Maryland, 21204, Director; Mr. C. Elmer Hoppert, Department of Permits and Licenses, County Office Building, Towson, Maryland, 21204, Buildings Engineer; and Mr. J. Berger, Department of Permits and Licenses, County Office Building, Towson, Maryland, 21204, Inspector, on this 24th day of August, 1974.

Muriel E. Buddemeier
County Board of Appeals of Baltimore County

73-279-A PETITION FOR ZONING VARIANCE FROM AREA AND HEIGHT REGULATIONS

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, Henry J. Knott, legal owner of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 1801.2C.4. to permit lot widths of 40'.

46.4', 47.5', 47.54', 50', 50.04', 50.18', 51.52', and 53.6' instead of the

required 55' and to permit setbacks from the centerline of streets of less than the required 50' for those lots specifically listed and indicated on the submitted plans of the Lodge Forest Subdivision.

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

see attached description

Existing area has been developed with lot widths of less than the required 55 feet and for this Petitioner to develop the remaining lots under the current Regulations, would cause undue hardship.

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

I, or 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

HENRY J. KNOTT

Legal Owner

Address: 2 West University Parkway

Baltimore, Maryland 21219

Petitioner's Attorney

Protestant's Attorney

ORDERED BY The Zoning Commissioner of Baltimore County, this 27th day

March 1974, that the subject matter of this petition be advertised, as

required by the Zoning Law of Baltimore County, in two newspapers of general circulation through

out Baltimore County, that property be posted, and that the public hearing be had before the Zoning

Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore

County, on the 11th day of May, 1974, at 10:00 o'clock

Eric DiNenna

Zoning Commissioner of Baltimore County

(over)

RE: PETITION FOR DENIAL OF
BUILDING PERMITS
E/S of Lodge Farm Road
between Bay Front Road and
Sparrows Point Boulevard
15th District
Henry J. Knott
Petitioner
BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
Building Permit Nos. 63255 & 63256

OPINION

This case purports to be an appeal from a denial of building permits for two lots located in an area known as Lodge Forest Subdivision, in the 15th District of Baltimore County.

In preamble let us say that there is another case pending before this Board involving the same property, i.e. No. 73-279-A, which is an appeal from the denial of an application filed by one Henry J. Knott (legal owner) for variances with reference to lot widths and setbacks in the Lodge Forest Subdivision. This petition was filed on March 27, 1973, and was denied by an Order of the Zoning Commissioner dated March 15, 1974, from which Order the appeal to this Board was taken on March 26, 1974. This case has been set for hearing on numerous occasions and postponed at the request of the Petitioner, and hence is still an open case on the Board's docket.

In the meantime, the Petitioner (or whoever is now the legal owner) apparently changed his tactics, if not his strategy, and filed two applications for building permits concerning two lots in the same development, which applications listed the owner as John H. Riehl, III, building contractor or Severn River Construction Company and contract seller's names as "Mango Investors, Inc." and "Dundee Village Partnership". These applications for building permits were filed in normal form, correctly filled out under date of August 26, 1974, and so far as any evidence before this Board is concerned, have never been granted nor denied by the Buildings Engineer of Baltimore County.

Article 5, Section 6 of the Baltimore County Code sets forth the duties and requirements of the Buildings Engineer with respect to permits for construction, and requires, among other things -

Henry J. Knott

2.

"Whenever the buildings engineer shall deny, revoke, suspend, annul, or modify any permit, he shall certify his reasons therefor in writing to the applicant. Within fifteen days, if not longer, the applicant shall be entitled to petition the county board of appeals for review of the action of the buildings engineer. Such petition, a copy of which shall be served on the county solicitor, shall set forth in clear and concise terms the grounds for the appeal. The buildings engineer shall promptly certify and file with the board of appeals a complete transcript of the record in the case, upon payment of all costs for preparation of same by the appellants."

None of the above provisions have been complied with in this case, and

the appellant before the Board filed an order and petition for appeal "from the action of the Zoning Commissioner in denying building permits no. 63255 and 63256", apparently basing such appeal on a letter from the Zoning Commissioner, S. Eric DiNenna, to Mr. Henry J. Knott under date of January 10, 1975. The Board can find no provision in the Code, and we are advised by the County Solicitor that no appeal to this Board lies from any letter written in the ordinary course of business by the Zoning Commissioner, with respect to building permits, as either the issuance or denial of such permits is the duty of the Buildings Engineer and not the Zoning Commissioner.

It further appears that the petition was filed by "Henry J. Knott, Petitioner" whose name does not appear as either owner, building contractor or seller on the two building permit applications involved. The appeal to this Board was therefore improvidently taken and will be dismissed.

As stated above, the case with reference to the variances requested is still pending before the Board, and we will endeavor to set an early date for a hearing in this case.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 27th day of July, 1975, by the County Board of Appeals ORDERED, that the above entitled

Henry J. Knott

3.

case is hereby DISMISSED.

Any appeal from this decision must be in accordance with Rules B-1 to B-12 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Walter A. Reiter, Jr., Chairman

W. Giles Parker

Robert L. Gilland

LAW OFFICES
HOWARD AND STONE

PROFESSIONAL BUILDING
6005 DUNMANWAY
DUNDALK, MARYLAND 21222

CHARLTON E. HOWARD
HOWARD & STONE, JR.
BLANCK F. MURPHY

TELEPHONE
197-1100 (MD)
1900 2886 (MD)

March 31, 1975

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

RE: Case No. 73-279-A
Henry J. Knott; for Variances from Sec. 1801.2C4
E/S Lodge Farm Rd. bet. Bay Front Rd. & Sparrows
Point Boulevard
15th District

Dear Sir:

I have received notice that the above captioned matter has been assigned for hearing on Tuesday, April 8, 1975 at ten o'clock a.m.

In accordance with Rule 527b of the Maryland Rules of Procedure, please continue the above captioned case until ten (10) days after the current ninety (90) day Legislative Session. (The Session ends April 8, 1975)

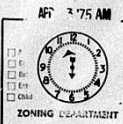
Thank you for your cooperation in this matter.

Very truly yours,

Norman R. Stone, Jr.

NRS:Jr:ash
cc: Thomas N. Biddison, Jr., Esquire
C. Edward Jones, Esquire
Mr. S.E. DiNenna
J. Carroll Holzer, Esquire

MICROFILMED



March 18, 1974

Mr. Henry J. Knott
2 West University Parkway
Baltimore, Maryland 21218

RE: Petition for Variances
E/S of Lodge Farm Road,
between Bay Front Road and
Sparrows Point Boulevard -
15th District
Henry J. Knott - Petitioner
NC. 73-279-A (Item No. 150)

Dear Mr. Knott:

I have this date passed my Order in the above captioned matter. Copy of said Order is attached.

Very truly yours,

S. ERIC DI NENNA
Zoning Commissioner

SED/ew

Attachments

cc: Thomas N. Biddison, Jr., Esquire

Suite 1100

One Charles Center

Baltimore, Maryland 21201

Norman R. Stone, Jr., Esquire

6905 Dunmanway

Baltimore, Maryland 21222

DESCRIPTION FOR VARIANCE

Being located on the East side of Lodge Farm Road, between Bay Front Road and Sparrows Point Boulevard and being those 270 lots specifically listed and indicated on the accompanying plans as being part of the plot of Lodge Forest Subdivision recorded amongst the Land Records of Baltimore County in Plat Book Mc.L.M.10, folio 76-77

LAW OFFICES
GALLAGHER, ENVELOUS & JONES

1100 ONE CHARLES CENTER
BALTIMORE, MD. 21201

TELEPHONE (301) 727-7702

January 30, 1974

Mr. Eric DiNenna
Zoning Commissioner
Office of Planning
Jefferson Building
Towson, Maryland 21204

Re: Lodge Forest

Dear Mr. DiNenna,

You have pending before you an application for multiple variances in the captioned subdivision. A hearing on the application was convened before you several months ago, but was continued by agreement of counsel.

Please be advised that the applicant intends to offer no additional evidence in this matter at this time, and this letter is to request that you decide the case on the evidence which has heretofore been presented.

Very truly yours,

Thomas N. Biddison, Jr.
Thomas N. Biddison, Jr.

TNBjr/sw
cc: Mr. Francis Knott



Pursuant to the advertisement, posting of property, and public hearing on the above petition and it appearing that by reason of the following finding of facts

the above Variance should be had; and it further appearing that by reason of

a Variance should be granted.

IT IS ORDERED by the Zoning Commissioner of Baltimore County this

day of 1974, that the herein Petition for a Variance should be and the same is granted, from and after the date of this order.

Zoning Commissioner of Baltimore County

Pursuant to the advertisement, posting of property and public hearing on the above Petition and it appearing that by reason of failure to show practical difficulty or unreasonable hardship,

the above Variance should NOT BE GRANTED.

IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 15th day of March, 1974, that the above Variance be and the same is hereby DENIED.

Zoning Commissioner of Baltimore County

Petition for Variances
E/S of Lodge Farm Road,
between Bay Front Road and
Sparrows Point Boulevard -
15th District
Henry J. Knott,
Petitioner

Baltimore County
Zoning Commission
Case No. 73-279-A

ORDER FOR APPEAL

Mr. Commissioner,

Please enter an appeal on behalf of Petitioner, Henry J. Knott, to the County Board of Appeals from the March 15, 1974 Order of S. Eric DiNenna, Zoning Commissioner, denying requested variances.

Thomas N. Biddison, Jr.
Thomas N. Biddison, Jr.

GALLAGHER, EVELIUS & JONES
1100 ONE CHARLES CENTER
BALTIMORE, MARYLAND 21201
727-7702



LAW OFFICES
GALLAGHER, EVELIUS & JONES
ONE CHARLES CENTER
BALTIMORE, MD 21201

LAW OFFICES

GALLAGHER, EVELIUS & JONES
1100 ONE CHARLES CENTER
BALTIMORE, MD 21201
TELEPHONE (301) 727-7702

February 8, 1978

County Board of Appeals
Room 219, Court House
Towson, Maryland 21204

Re: Case No. 73-279-A - Appeal from Denial of
Zoning Petition by Henry J. Knott for Vari-
ances from Section 1801.2C.4, E/S Lodge
Farm Road between Bay Front Road and Spar-
rows Point Blvd.

Dear Sirs:

Please dismiss the captioned appeal.

Very truly yours,

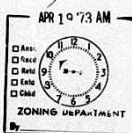
Thomas N. Biddison, Jr.
Thomas N. Biddison, Jr.
Attorney for Petitioner-
Appellant

TNB:JRM
1326-19-1

cc: C. Edward Jones, Esq.
Norman R. Stone, Jr., Esq.
John W. Hession, III, Esq.
Mr. Henry J. Knott, Sr.

73-279-A

7718 North Creek Rd
Baltimore 21219, Md.
April 18, 1973



Dear Mr. DiNenna,

My residence in Lodge Forest
are surrounded over the proposed housing
development that Mr. Knott is planning
for this area. We recognize the need for
more housing but would like to know
the type of houses and what other
plans he has for our community.
I would appreciate it very much
if you would send us any information
that you might have for this development
and please advise us as to the
possibility of any zoning changes. We
have not seen any zoning notices but
we understand that Mr. Knott has applied
for variances on the lots (lot 150 & 151) on
North Creek Rd.

Sincerely,
Henry J. Knott
Variance Petitioner, lot 150 (Mrs) Henry J. Knott

RE: APPEAL FROM DENIAL
OF BUILDING PERMITS
#63255 and #63256



ON REMAND TO THE
COUNTY BOARD OF APPEALS
FROM THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY

Petitioner-Appellants
E/S Lodge Farm Road between
Bay Front Road and
Sparrows Point Boulevard
15th District

AT LAW
Misc. Docket No. 10
Folio No. 99
File No. 5696

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule 8-2(d) of the Maryland Rules of Procedure, Walter A. Reiter, Jr., W. Giles Parker and Robert L. Gilland, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, Thomas N. Biddison, Jr., Esquire, Gallagher, Evelius & Jones, 1100 One Charles Center, Baltimore, Maryland 21201, attorney for the Petitioners, and Peter M. Zimmerman, Assistant County Solicitor, Office of Law, County Office Building, Towson, Maryland 21204, attorney for Baltimore County, and Mrs. Virginia Tolbert, 7741 North Point Creek Road, Baltimore, Maryland 21219, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

Edith T. Eisenhower
Edith T. Eisenhower, Administrative Secretary
County Board of Appeals of Baltimore County
Room 219, Court House
Towson, Maryland 21204
494-3180

I hereby certify that a copy of the foregoing Certificate of Notice has been mailed to Thomas N. Biddison, Jr., Esquire, Gallagher, Evelius & Jones, 1100 One Charles Center, Baltimore, Maryland 21201, Attorney for the Petitioners, and Peter M. Zimmerman, Assistant County Solicitor, Office of Law, County Office Building, Towson, Maryland 21204, Attorney for Baltimore County, and Mrs. Virginia Tolbert, 7741 North Point Creek Road, Baltimore, Maryland 21219, on this 19th day of March, 1976.

Edith T. Eisenhower
Edith T. Eisenhower, Administrative Secretary
County Board of Appeals of Baltimore County

RE: PETITION FOR VARIANCES
from Section 1801.2C.4 of
the Baltimore County
Zoning Regulations
E/S of Lodge Farm Road, between
Bay Front Road and
Sparrows Point Boulevard
15th District
Henry J. Knott, Petitioner

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 73-279-A

ORDER OF DISMISSAL

Petition of Henry J. Knott for variance from Section 1801.2C.4 of the Baltimore County Zoning Regulations on property located on the east side of Lodge Farm Road, between Bay Front Road and Sparrows Point Boulevard, in the Fifteenth Election District of Baltimore County.

WHEREAS, the Board of Appeals is in receipt of a letter of dismissal of appeal, filed February 10, 1978 (a copy of which is attached hereto and made a part hereof), from the attorney representing the Petitioner-Appellant in the above entitled matter.

WHEREAS, the said attorney for the said Petitioner-Appellant requests that the appeal filed on behalf of said Petitioner be dismissed and withdrawn as of February 10, 1978.

IT IS HEREBY ORDERED, this 16th day of February, 1978, that said appeal be and the same is DISMISSED.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Robert L. Gilland, Vice Chairman

William T. Hackett
William T. Hackett

John A. Miller
John A. Miller

1 APPEAL FROM DENIAL OF
2 BUILDING PERMITS-#63255 & #63256
3 MANDO HOMES, INC., Owner
4 DUNDEE VILLAGE PARTNERSHIP,
5 Contract Purchaser
6 SEVERN RIVER CONSTRUCTION CO.,
7 Applicant
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existing detached houses owned by single fam. and Appellants
contended at the Board of Appeals that they should be allowed
to erect dwelling units on lots with 50 foot width rather than
the newly mandated 55 foot width, and that if they were forced
to build with a 55 foot width requirement, they would lose the
use of 41 lots. The question here is clearly one of statutory inter-
pretation. The pertinent zoning regulations are found in
Section 1802.3 entitled Special Regulations for Certain Existing
Developments or Subdivisions and for Small Lots or Tracts in
D. R. Zones. (Bill No. 100, 1970.) The appropriate sections
read as follows:
"A. In D. R. zones, contrary provisions of this article
notwithstanding, the provisions of or pursuant to
this subsection shall apply to the use, occupancy,
and development of, the alteration or expansion of
structures upon, and administrative procedures with
respect to: (Bill No. 100, 1970.)
1. Any lot which is in a recorded residential sub-
division approved by the Baltimore County Planning
Board or Baltimore County Planning Commission and
which has been used, occupied, or improved in
accordance with the approved subdivision plan;
(Bill No. 100, 1970.)
2. Any land in a subdivision tract which was laid

out in accordance with the regulations of residence zoning classifications now rescinded, for which a subdivision plan tentatively approved by the Planning Board remains in effect, and which has not been used, occupied, or improved in accordance with such plan; (Bill No. 100, 1970.)

3. Any lot, or tract of lots in single ownership, which is not in an existing development or subdivision as described in Subparagraph 1 or 2 and which is too small in gross area to accommodate six dwelling or density units in accordance with the maximum permitted density in the D. R. zone in which such tract is located; or 3 (Bill No. 100, 1970.)

4. Any lot, or tract of lots in single ownership, which is not in an existing development or subdivision as described in Subparagraph 1 or 2 and which is less than one-half acre in area, regardless of the number of dwelling or density units that would be permitted at the maximum permitted density in the zone in which it is located.⁴ (Bill No. 100, 1970.)

5. Any lot, or tract of lots in single ownership which is in a duly recorded subdivision plat not approved by the Baltimore County Planning Board

or Planning Commission. (Bill No. 100, 1970.)"

The two lots in question are adjoined by land owned by the Appellants on either side of sufficient size on which to erect homes, albeit with the probability of losing lots due to the width requirement. Furthermore the lots are each less than one-half acre in size and each is too small to accommodate six dwelling or density units under the existing zoning.

As our Court of Appeals has stated on many occasions, courts will not substitute their judgment for that of the administrative authority acting within its powers if the issue involved is fairly debatable and if the action of the administrative authority is not arbitrary and capricious and which would result in a denial of due process of law as prohibited by Article 23 of the Declaration of Rights of the Maryland Constitution, American Oil Co. v. Board of Appeals, 270 Md. 301, at page 310 (1973). It is also important to note the language stated in Shapiro v. Montgomery County Council, 269 Md. 380 (1973), which quoted with approval the case of Eber v. Stone, 253 Md. 533 (1969):

"We have made it quite clear that if the issue before the administrative body is 'fairly debatable'... the courts will not substitute their judgment for that of the administrative body..."

"This rule will be adhered to even if we were of the opinion that the administrative body came to a

conclusion we probably would not have reached on the evidence."

In the case at bar it appears to this court that the action of the Board of Appeals was neither arbitrary nor capricious and the record amply supports the Board's decision.

Furthermore even if the usual arbitrary and capricious standard be not applied, this court is constrained to affirm because of the interpretation this court places upon the statute in question.

James E. Dyer, Deputy Zoning Commissioner of Baltimore County, testified on behalf of the Appellee and was described by the Board "as probably the foremost authority... on our regulations". Mr. Dyer's testimony included an interpretation of the zoning regulations. While the ultimate decision concerning the intention of the zoning regulations was the Board's (and now this Court's), the court feels that the Board was correct in permitting such interpretive testimony, as well as prior testimony by Mr. George Pryor, Mr. James Byrnes and Mr. Donald Johnson as an aid in ascertaining the true intention of the zoning regulations, Amalgamated Casualty Ins. Co. v. Helms, 239 Md. 529 (1964).

Furthermore the court agrees with Mr. Dyer's interpretation. He testified that "A.3, A.4 and A.5 category lots overlap from time to time". This testimony when read in conjunction with the wording of the regulations clearly puts the

lots in question within the purview of the chart printed in 1802.3.C.1, in which the minimum lot width for D.R. 5.5 is 55 feet. An analysis of the Baltimore County Zoning Regulations, Section 1802.3.A - 1-5, indicates that in a D.R. zone, contrary provisions of this article notwithstanding, the provisions of the subsection shall apply to the development of any lot, or tract of lots in single ownership which is in a duly recorded subdivision plat which has not been approved by the Planning Board.

At oral argument in this case, counsel for both sides placed great weight on the theory that these lots fell into the A.3 and A.4 category as well as the importance of Sections 304 and 504 of the Baltimore County Zoning Regulations.

Obviously, these sections of the regulations were meant, inter alia, to bring the lot width of recorded subdivision plats into the modern era. As Professor Williams states in American Land Planning Law, Volume II, at page 145 ff, one of the more difficult problems in zoning involves the question of whether a developer can build on an existing residential lot which was of legal size when subdivided but which has become noncomplying because of the adoption of requirements for a larger lot size or lot width. Professor Williams leans to the view that if the redesignation is reasonable it should be upheld. The court agrees and finds that the lot width adopted by Baltimore County of 55 feet is reasonable, desirable

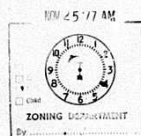
and necessary for the construction of single dwelling residences in the 1970's. The owner of the lots has no vested rights simply by virtue of a recorded subdivision plat of 1929 vintage, and will not be substantially deprived of his right to erect dwellings in accordance with the zoning regulations. All he will suffer is some loss of anticipated profits. This, of course, while never desirable from the developers viewpoint, it is not sufficient justification to circumvent the zoning regulations in this enlightened era.

Thus in the court's view, the lots in question are covered under the provisions of A.5 of 1802.3. The savings clause of Section 304 does not offer succor to the appellants because of their ownership of sufficient adjoining land to comply with the statute. Furthermore the fact that there have been no regulations issued pursuant to 504 seems to be of no importance here. In the view the court takes of the matter the broad language of 1802.3 overrides the other sections of the statute.

Therefore the decision of the Board of Appeals is hereby **AFFIRMED** this day of January, 1977.

William E. Brannan, Judge

Dictated in chambers
January 6, 1977



UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 120

September Term, 1977

MARDO HOMES, INC., ET AL.

v.

BALTIMORE COUNTY, MARYLAND

Davidson,
Melvin,
Wilner,
JJ.

PER CURIAM

Filed: November 22, 1977

In this appeal we are called upon to decide whether the Circuit Court for Baltimore County (Brannan, J.) was correct in affirming a decision of the Baltimore County Board of Appeals, denying building permits for two lots owned by appellant, Mardo Homes, Inc. Our conclusion in this regard is dependent upon our construction of Article 18, Section 1802.3 of the Baltimore County Zoning Regulations, and our determination as to whether appellant's lots are lots as described in subparagraphs A.3, A.4, and/or A.5 of that regulation. If the lots are A.3 and A.4 (as well as A.5) lots, then they are subject to certain minimum width requirements which they admittedly do not meet. If they are exclusively A.5 lots, then they are not subject to these requirements, and the denial of the permits can only be regarded as arbitrary and capricious.

The facts underlying this controversy are not in dispute, and may be quoted from Judge Brannan's opinion:

"This case involves a timely appeal from the March 5th 1976 order of the Baltimore County Board of Appeals, which affirmed denial of two building permits by the Department of Permits and Licenses of Baltimore County.

"The Appellants had applied for building permits No. 63255 and 63256 for construction of homes on two lots. Each lot measures 50 feet in width by 135 feet in depth. The zoning on the property is D.R. 5.5, and the lots in question are among 284 lots owned by the Appellants in a subdivision, the subdivision plat of which was recorded in March, 1929, some 16 years prior to the advent of zoning in Baltimore County. There was no approval of this subdivision plat by the Baltimore County Planning Board since the Planning Board was not in existence at that time.

"Interspersed throughout and among the lots which the Appellants own and intend to develop are approximately 10 existing detached houses owned by single families. Appellants contended at the Board of Appeals that they should be allowed to erect dwelling units on lots with 50 foot widths

rather than the newly mandated 55 foot width, and that if they were forced to build with a 55 foot width requirement, they would lose the use of 41 lots."

As Judge Brannan noted further on in his opinion, the question here is clearly one of statutory construction.

The regulation to be construed provides as follows:

"1802.3 -- Special Regulations for Certain Existing Developments or Subdivisions and for Small Lots or Tracts in D.R. Zones.

A. In D.R. zones, contrary provisions of this article notwithstanding, the provisions of or pursuant to this subsection shall apply to the use, occupancy, and development of, the alteration or expansion of structures upon, and administrative procedures with respect to:

1. Any lot which is in a recorded residential subdivision approved by the Baltimore County Planning Board or Baltimore County Planning Commission and which has been used, occupied, or improved in accordance with the approved subdivision plan;
2. Any land in a subdivision tract which was laid out in accordance with the regulations of residence zoning classifications now rescinded, for which a subdivision plan tentatively approved by the Planning Board remains in effect, and which has not been used, occupied, or improved in accordance with such plan;

The construction or interpretation of a statute is a question of law, not of fact. On this issue we are not, therefore, governed by the fairly debatable standard. Kessab v. Burkhardt, 34 Md. App. 699, 704, 368 A. 2d 1064 (1977).

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: See Distribution Date: March 29, 1976

FROM: Office of Law

SUBJECT: Baltimore County v. Henry J. Knott

Attached please find a copy of the Opinion and Order showing that we were successful in the above-entitled case.

Peter Max Zimmerman
Peter Max Zimmerman
Assistant County Solicitor

PMZ:af

Distribution:

J. Seyfert
E. DiNenna
A. Fleischmann
W. Fromm
M. McCoy
L. Murphy, Esquire



BALTIMORE COUNTY

ZONING ADVISORY COMMITTEE



PETITION AND SITE PLAN

EVALUATION COMMENTS

Mr. Henry J. Knott
2 West University Parkway
Baltimore, Md. 21218

Item 159

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

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

Your Petition has been received and accepted for filing
this 27th day of March 1973

S. Eric DiNenna
S. ERIC DINENNA
Zoning Commissioner

Petitioner Henry J. Knott

Petitioner's Attorney
cc: Wayne S. Schaefer, Jr.
15 Old Padonia Road, Cockeysville, Md. 21032

Reviewed by *John J. Dillon, Jr.*
Chairman
Zoning Advisory Committee

RE: APPEAL FROM DENIAL OF BUILDING PERMITS
Nos. 63255 and 63256
Mardo Homes, Inc., Owner
Dundee Village Partnership
Contract Purchaser
Severn River Construction Company:
Applicant
Petitioner - Appellants

ON REMAND FROM THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW

Misc. Docket No. 10
Folio No. 99
File No. 5696

This case involves an appeal from the denial of application for two building permits, as evidenced by a letter of December 17, 1975 from John J. France, of the Department of Permits and Licenses of Baltimore County, addressed to Mr. Henry J. Knott, reading as follows:

"The above referenced applications have been disapproved by the zoning department, therefore I have no alternative but to cancel same.

"Your construction plans will be held in this office for 30 days. Please pick them up at your convenience.

"I am enclosing a copy of the zoning department's disapproval and if you have any further questions, please contact Mr. Eric DiNenna, 494-3331."

The Zoning Department's disapproval was evidenced by the letter from

Mr. S. Eric DiNenna, Zoning Commissioner, cited above, which reads as follows:

"This office has reviewed the above referenced building permit applications. This is to advise you that Section 504 of the Baltimore County Zoning Regulations states that a one-family dwelling, having an area or width of the building line less than that required by the height and area regulations, may be erected, provided that, among other requirements, the owner of the lot does not own sufficient adjoining land to conform substantially to the width and area requirements."

"The existing zoning of the subject properties requires a lot width of 55 feet for each building lot. In view of the fact that the present owner does own sufficient adjoining land to comply with the required lot width, this office must disapprove the subject building permits."

Since it is and has been for many years the approved practice of the Department of Permits and Licenses to refuse to issue building permits without the approval of (Zoning) Planning, the Board can find nothing arbitrary or capricious by the refusal of

Bldg. Per. Nos. 63255 and 63256 - 2 -

The Department of Permits and Licenses to issue this building permit.

This brings us to the question of whether or not the Zoning Commissioner was arbitrary and/or capricious in advising the Department of Permits and Licenses as quoted above. Mr. DiNenna's opinion was predicated upon Section 504 of the Baltimore County Zoning Regulations, apparently on the theory that the owner of the lots owns sufficient adjoining land to conform substantially to the width and area requirements.

It has been argued by the Appellant extensively and with considerable force that this provision has been modified by Bill 100 (1970), now codified at Section 1802.3. He pointed out, in his argument and memorandum, that under that Section, paragraph A5, his client's property is not restricted by any standards of development adopted by the Planning Board, and reference to that section C.1. and 2. indicates that standards were adopted for roads classified as 1802.3A.3 or A.4, but that no standards have been adopted by the said paragraph C with regards to property described in 1802.3 (A5). Apparently through neglect or inadvertence the Planning Staff and/or the Planning Board failed to include A.5 lots in the minimum requirements, as they were authorized to do under Section 504 of the Baltimore County Zoning Regulations (also Bill 100, 1970). The Appellant may have well been right in his argument as a technical matter, and the Board finds that the Planning Board has certainly been remiss or otherwise in error, for whatever reason, in not adopting other provisions pursuant to the authority of Section 504. (Perhaps because of some doubts of the Planning Board's proper legal or constitutional authority under Section 504). We feel this is a matter which should be determined, in any event, by another forum, but under the present circumstances we can find no reason to determine either as fact or law that the Department of Permits and Licenses acted in an arbitrary or capricious manner in refusing to grant the building permits requested. The decision of that Department, as expressed in their letter of December 17, 1975, will, therefore, be affirmed.

Bldg. Per. Nos. 63255 and 63256 - 3 -

ORDER

For the reasons set forth in the foregoing Opinion, it is this 5th day of March, 1976, by the County Board of Appeals ORDERED, that the decision of the Department of Permits and Licenses of Baltimore County denying the building permits as expressed in their letter of December 17, 1975, be and the same is hereby AFFIRMED.

Any appeal from this decision must be in accordance with Rules B-1 to B-12 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS

OF BALTIMORE COUNTY

Walter A. Belter, Jr.
Walter A. Belter, Jr., Chairman
W. Giles Parker
W. Giles Parker
Robert L. Gilliam
Robert L. Gilliam

BALTIMORE COUNTY ZONING ADVISORY COMMITTEE

April 9, 1973

COUNTY OFFICE BLDG.
111 W. CHESAPEAKE AVE.
TOWSON, MARYLAND 21204

JOHN J. DILLON, JR.
Chairman

MEMBERS

BUREAU OF
ENGINEERING
DEPARTMENT OF
TRAFFIC ENGINEERING
STATE ROAD COMMISSION
BUREAU OF
FIRE PREVENTION
HEALTH DEPARTMENT
PROJECT PLANNING
BUILDING DEPARTMENT
BUILDING EDUCATION
JOINTLY ADMINISTRATION
INSTRUMENT
DEVELOPMENT

Mr. Henry J. Knott
2 West University Parkway
Baltimore, Maryland 21218

RE: Variance Petition
Item 159
Henry J. Knott - Petitioner

Dear Mr. Knott:

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

These comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of all facts and 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 Commission with recommendations as to the appropriateness of the requested zoning.

The subject property is located on the east side of Lodge Farm Road between Bay Front Road and Sparrows Point Road, in the 15th District of Baltimore County. This property, which is zoned DR 5.5 and is known as Lodge Forest, consists of several hundred lots in the subdivision. The original subdivision was created several years before zoning was established in Baltimore County, and as a result there are many undersized lots in comparison to minimum lot sizes today. The petitioners accumulated 23% of these individual lots and is now requesting variances ranging from minimums of 40 feet in width to 53-1/2 feet in width instead of the required 55 feet.

The Committee's first impression was for the petitioner to apply for a resubdivision of the properties and comply with today's standards. This would negate the necessity of miss variances. The petitioner, however, would lose a certain number of these potential housing lots, and he is therefore requesting this Variance.

Since water and sewer are available and serving most of the area and most of the roads are constructed, and the petitioner has elected not to consider resubdivision, this Committee has

Mr. Henry J. Knott
Item 159
April 9, 1973

no further comments.

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

Very truly yours,
John J. Dillon, Jr.
JOHN J. DILLON, JR.,
Chairman,
Zoning Advisory Committee

JJJ:JD

(Enclosure)

cc: Hunan & Schlaefman, Inc.,
15 Old Padonia Road
Cockeysville, Maryland 21032

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

March 27, 1973

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

Re: Item #150 (1972-1973)
Property Owner: Henry J. Knott
F/S of Lodge Farm Rd., between Bay Front Rd. and Sparrows Point Blvd.
Present Zoning: D.R. 5.5
Proposed Zoning: Variance from Section 1801.2C.4 to permit lot widths of 40', 46.4', 47.5', 47.54', 50', 50.04', 50.18', 51.52' and 53.6' instead of required 55' and to permit setbacks from the centerline of 17'w streets of less than required 50' for those lots specifically listed and indicated on the submitted plans of the Lodge Forest Subdivision
District 15th

Dear Mr. DiNenna:

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

General:

The 28th lots, which are the subject of this Petition for Variances, comprise the greater number of the recorded lots remaining unimproved and just slightly less than 50% of all of the recorded lots, improved and unimproved combined, within the periphery indicated on the submitted plan.

Development of the properties should be referred to the Joint Subdivision Planning Committee and will require execution of Public Works Agreements for highway and utility improvements required.

Highways:

The roads indicated on the submitted plat are as shown on the recorded plats of the subdivisions involved, generally with 40-foot rights-of-way. Some of the roads will be required to be terminated with cul-de-sacs or tee turnarounds in accordance with Baltimore County Standards.

Lodge Farm Road, Lodge Forest Road, Bay Front Road and Sparrows Point Boulevard are proposed to be improved in the future as minimum 40-foot closed-type roadway cross-sections on 50-foot rights-of-way. All other roads indicated on the submitted plat are proposed to be improved in the future as 30-foot closed-type roadway cross-sections on minimum 40-foot rights-of-way.

Item #150 (1972-1973)
Property Owner: Henry J. Knott
Page 2
March 27, 1973

Highways: (Cont'd)

Highway improvements, including highway right-of-way widening, together with fill-in areas for sight distance at the road intersection and any necessary reversible easements for slopes will be required in connection with the development/improvement of these lots. Therefore, the plan should be revised accordingly.

Sediment Control:

Development of this property through stripping, grading and stabilization could result in a sediment pollution problem, damaging private and public holdings downstream of the property. A grading permit is, therefore, necessary for all grading, including the stripping of top soil.

Storm Drains:

Provisions for accommodating storm water or drainage have not been indicated on the submitted plan.

The Petitioner must provide necessary drainage facilities (temporary or permanent) to prevent creating any nuisance or damage to adjacent properties, especially by the concentration of surface waters. Corrective of any problem which may result, due to improper grading or improper installation of drainage facilities, would be the full responsibility of the Petitioner.

Storm drain improvements will be required in connection with the development of these lots.

The property to be developed is located adjacent to the water front. The Petitioner is advised that the proper sections of the Baltimore County Building Code must be followed whereby elevation limitations are placed on first floor levels of residential and commercial development and other special construction features are required.

Water and Sanitary Sewer:

Public water supply and sanitary sewerage are either available or can be made available to serve these lots.

Construction of public water main and sanitary sewerage extensions will be required in connection with the development of these lots.

Twelve (12) construction drawings have been prepared for the construction of 8-inch sanitary sewerage to serve the existing homes within the subject area per Job Order 1-2-339 as a proposed WID project. These plans are drawings #60-091 thru 0927, 70-0046, 70-0047 and 70-0531, File 1. Further information in this regard may be obtained from the Baltimore County Bureau of Engineering.

Although many of the subject lots will be sewered by this project, additional sanitary sewerage will be required to serve the subject area in its entirety.

Item #150 (1972-1973)
Property Owner: Henry J. Knott
Page 3
March 27, 1973

Water and Sanitary Sewer: (Cont'd)

Construction of additional fire hydrant protection also will be required throughout the subject area.

Very truly yours,

Ellsworth N. Dives
ELLSWORTH N. DIVES, P.E.
Chief, Bureau of Engineering

END:RAM:PMR:iss

cc: George A. McFar
John J. Trenner
John F. Loos, Jr.
Dorwin E. Grise
Samuel A. Bellestri

A-NE Key Sheet
25 thru 29 SE 32, 33 & 34 Position Sheets
SE 7 & 8 H & I Topo Sheets
111 Tax Map

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF HEALTH



JEFFERSON BUILDING
TOWSON, MARYLAND 21204

February 23, 1973

CORRALD J. ROOP, M.D., M.P.H.
DEPUTY STATE AND COUNTY HEALTH OFFICER

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

Dear Mr. DiNenna:

Comments on Item 150, Zoning Advisory Committee Meeting
February 20, 1973, are as follows:

Property Owner: Henry J. Knott
Location: E/S of Lodge Farm Road, between Bay Front Road & Sparrows Point Boulevard
Present Zoning: D.R. 5.5
Proposed Zoning: Variance from Section 1801.2C.4 to permit lot widths of 40', 46.4', 47.5', 47.54', 50', 50.04', 50.18', 51.52' and 53.6' instead of req. 55' and to permit setbacks from the centerline of the streets of less than required 50' for those lots specifically listed and indicated on the submitted plans of the Lodge Forest Subdivision.
District: 15
No. Acres:

Metropolitan water and sewer must be extended to serve this project.

Very truly yours,

Thomas H. Davlin
Thomas H. Davlin, Director
BUREAU OF ENVIRONMENTAL SERVICES

HVB:mn

BALTIMORE COUNTY, MARYLAND
JEFFERSON BUILDING TOWSON, MARYLAND 21204

DEPARTMENT OF TRAFFIC ENGINEERING
EUGENE C. CLIFFORD, P.E. Wm. T. NELSON
DIRECTOR DEPUTY TRAFFIC ENGINEER

April 10, 1973

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

Re: Item 150 - ZAC - February 17, 1973
Property Owner: Henry J. Knott
Lodge Farm Road lot, Bay Front Rd. & Sparrows Point Blvd.
Var. from Sect. 1801.2C.4 to permit lot widths and to permit setbacks - District 15

Dear Mr. DiNenna:

Should this area be developed as proposed, the entire area should be studied for needed road improvements.

Very truly yours,

Michael S. Flanigan
Michael S. Flanigan
Traffic Engineer Associate

MSE:mc

BOARD OF EDUCATION
OF BALTIMORE COUNTY

TOWSON, MARYLAND - 21204

Date: April 24, 1973

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

Re: Item 150

S.A.C. Meeting of: Tuesday February 20, 1973

Property Owner: Henry J. Knott
Location: E/S of Lodge Farm Road, between Bay Front Road and Sparrows Point Blvd.
Present Zoning: D.R. 5.5
Proposed Zoning: Variances and setbacks

District: 15
No. Acres:

Dear Mr. DiNenna:

SEE ATTACHED SHEET

WMP/al

Very truly yours,

W. Nick Petrovich
Field Representative

COMMENTS

School Situation:

School	Sept. 20, 1972 Enrollment	Capacity	Over/Under
Cheapeake Terrace El.	292	370	-77
General Stricker Jr. Hl.	1616	1435	+181
Sparrows Point Sr. Hl.	1446	1745	-299

Projections:

School	Sept. 19 73	Sept. 19 74	Sept. 19 75	Sept. 19 76	Sept. 19 77
Cheapeake Terr. El.	281	273	271	258	255
Gen'l. Stricker Jr. Hl.	1545	1620	1635	1360	1230
Sparrows Point Sr. Hl.	1430	1380	1340	1280	1230

Budgeted Construction:

School	Status	Capacity	Estimated To Open
Cheapeake Terr. El. Add'n	Need Const. Funds	305	FY 75

Programmed Construction: (Subject to availability of funds)

School	Capacity	Year Programmed	Estimated To Open
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Possible Student Yield:

	Elementary	Junior High	Senior High
Present Zoning: D.R. 5.5	97	57	23
Proposed Zoning: Same	97	57	28

Comments concerning effect on school housing matters:

No change that would effect student population.

M. EMILE PARKS, President
EUGENE C. CLIFFORD, P.E.
MRS. ROBERT L. GERNET

MARCUS M. ROTENBERG
JOSEPH N. MIDDYAN
ALVIN LORICK
JOSHUA R. WHEELER

T. BAYARD WILLIAMS, JR.
RICHARD W. TRACY, V.M.D.
MRS. RICHARD K. BUEHLER



SCALE: 1" = 2000'

TYPICAL LOT LAYOUT:-

Exist. Lot Numbers

TOTAL "A" "B" :

PAGE 17

END:-

Proposed Dwellings

Existing Dwellings

Existing grade contours, 1954

NOTES:-

Existing zoning: D.R. 5.5
Record plot references: M^oL.M. 10/76.77

Total lots owned: 287 (not including landing areas)
Total lots prepared for development: 284 (lots com-

For 'List of Variances' see table along left margin this sheet.

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AT TO ACCORDANCE WITH THE

THE JOURNAL OF THE
SOCIETY OF AMERICAN
ENTOMOLOGISTS

ON DISTRICT BALTIMORE COUNTY MARYLAND
 LODGE FOREST SUBDIVISION

RENDON, J. M. 1974

HENRY J. LIND
UNIVERSITY PARK, BALTIMORE MARYLAND 21218

HUMAN & SOCIAL SCIENCES

WILLIAM & SCHLAFMAN, INC.
LANDSCAPE ARCHITECTS - LAND PLANNERS

RONIA ROAD, COCKEYSVILLE, MARYLAND 21030 [666-9060]

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NO. 2871.4
FILE 25.135
JANUARY 26, 1973

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