

83-259-A PETITION FOR ZONING VARIANCE TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situated in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 400.1 to permit an accessory structure (train track) to be located in the front and side yards in lieu of 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)

Applicants desire to construct a small private railroad operated by gasoline engine with narrow tracks in a rough circle around applicants' residence. This will be very occasionally operated as a hobby and for the entertainment of children guests of the applicants.

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 to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

I/We do solemnly declare and affirm under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser: (Type or Print Name) Signature Address City and State
Legal Owner(s): (Type or Print Name) Signature Address City and State
Attorney for Petitioner: William S. Wilson, Jr., Esquire (Type or Print Name) Signature Address City and State
Attorney's Telephone No.: 828-7090

ORDERED By The Zoning Commissioner of Baltimore County, this 29th day of March, 1983, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 108, County Office Building in Towson, Baltimore County, on the 24th day of May, 1983, at 10:00 o'clock A.M.

(over)

William S. Wilson, Jr., Esquire
405 Bosley Bldg.
210 Allegheny Ave
Towson, Md. 21204

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

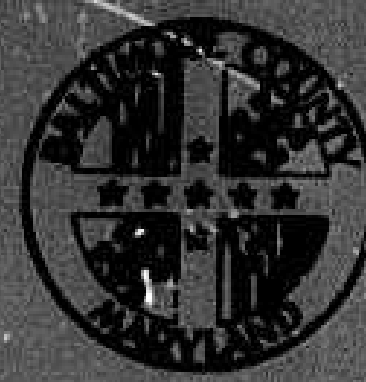
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Your Petition has been received and accepted for filing this 29th day of March, 1983

William E. Hammond
Zoning Commissioner

Petitioner Joseph Prosser, et ux
Petitioner's Attorney William S. Wilson, Jr., Esquire
Nicholas B. Commodari
Chairman, Zoning Plans Advisory Committee

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE



PETITION AND SITE PLAN EVALUATION COMMENTS

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: William E. Hammond
Zoning Commissioner
FROM: Norman E. Gerber
Director of Planning and Zoning
SUBJECT: Zoning Petition No. 83-259-A
Joseph Prosser, et ux

Date: May 9, 1983

There are no comprehensive planning factors requiring comment on this petition.

Norman E. Gerber
Norman E. Gerber
Director of Planning and Zoning

NEG:JGH:slc

cc: Arlene January
Shirley Hess

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

May 17, 1983

COUNTY OFFICE BLDG.
111 W. Chesapeake Ave.
Towson, Maryland 21204

Chairman
MEMBERS
Bureau of Engineering
Department of Traffic Engineering
State Roads Commission
Bureau of Fire Prevention
Health Department
Project Planning
Building Department
Board of Education
Zoning Administration
Industrial Development

William S. Wilson, Esquire
405 Bosley Bldg.
210 Allegheny Avenue
Towson, Maryland 21204

RE: Item No. 185 - Case No. 83-259-A
Petitioner - Joseph Prosser, et ux
Variance Petition

Dear Mr. Wilson:

Enclosed please find addendum comments for the above referenced case.

Very truly yours,

Nicholas B. Commodari
NICHOLAS B. COMMODARI
Chairman
Zoning Plans Advisory Committee

NBC:bsc
Enclosure

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

May 13, 1983

COUNTY OFFICE BLDG.
111 W. Chesapeake Ave.
Towson, Maryland 21204

Chairman
MEMBERS
Bureau of Engineering
Department of Traffic Engineering
State Roads Commission
Bureau of Fire Prevention
Health Department
Project Planning
Building Department
Board of Education
Zoning Administration
Industrial Development

William S. Wilson, Esquire
405 Bosley Bldg.
210 Allegheny Avenue
Towson, Maryland 21204

RE: Item No. 185 - Case No. 83-259-A
Petitioner - Joseph Prosser, et ux
Variance Petition

Dear Mr. Wilson:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware 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 suitability of the requested zoning.

In view of your clients' proposal to construct a train track completely surrounding the existing dwelling on this property, this variance hearing is required.

At the time of field inspection, grading for the proposed use was already completed. This use is the subject of an active zoning complaint (C-83-531). At the present time, no action is being taken pending the outcome of this hearing.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,

Nicholas B. Commodari
NICHOLAS B. COMMODARI, Chairman
Zoning Plans Advisory Committee

NBC:bsc
Enclosures

Zoning Item # 185
Page 2

- () Any existing underground storage tanks containing gasoline, waste oil, solvents, etc., must have the contents removed by a licensed hauler and either be removed from the property or properly backfilled.
- () Soil percolation tests have been conducted. The results are valid until Revised plans must be submitted prior to approval of the percolation tests.
- () Prior to occupancy approval, the reliability of the water supply must be verified by collection of bacteriological and chemical water samples.
- () In accordance with Section 13-117 of the Baltimore County Code, the water well yield test shall be valid until is not acceptable and must be retested. This must be accomplished prior to conveyance of property or approval of Building Permit Applications.
- () All roads and parking areas should be surfaced with a dustless, bonding material.
- (X) No health hazards are anticipated.
- (X) Others 1) The dwelling is served by a drilled well and septic system, both of which appear to be functioning properly. 2) The proposed train track will not interfere with the location of the well or septic system.

Ian J. Forrest, Director
BUREAU OF ENVIRONMENTAL SERVICES

BALTIMORE COUNTY DEPARTMENT OF HEALTH

Zoning Commissioner
Office of Planning and Zoning
County Office Building
Towson, Maryland 21204

Zoning Item # 185, Zoning Advisory Committee Meeting of March 29, 1983
Property Owner: Joseph & Elizabeth Prosser
Location: S/S Meadowcliff Road District 11
Water Supply Private Sewage Disposal Private

COMMENTS ARE AS FOLLOWS:

- () Prior to approval of a Building Permit for construction, renovation and/or installation of equipment for any existing or proposed food service facility, complete plans and specifications must be submitted to the Plans Review Section, Environmental Support Services, for final review and approval.
- () Prior to new installation/s of fuel burning equipment, the owner should contact the Division of Air Pollution Control, 494-3775, to obtain requirements for such installation/s before work begins.
- () A permit to construct from the Division of Air Pollution Control is required for such items as spray paint processes, underground gasoline storage tank/s (5,000 gallons or more) and any other equipment or process which exhausts into the atmosphere.
- () A permit to construct from the Division of Air Pollution Control is required for any charbroiler operation which has a total cooking surface area of five (5) square feet or more.
- () Prior to approval of a Building Permit Application for renovations to existing or construction of new health care facilities, complete plans and specifications of the building, food service area and type of equipment to be used for the food service operation must be submitted to the Plans Review and Approval Section, Division of Engineering and Maintenance, State Department of Health and Mental Hygiene for review and approval.
- () Prior to any new construction or substantial alteration of public swimming pool, wading pool, bathhouse, saunas, whirlpools, hot tubs, water and sewerage facilities or other appurtenances pertaining to health and safety; two (2) copies of plans and specifications must be submitted to the Baltimore County Department of Health for review and approval. For more complete information, contact the Recreational Hygiene Section, Division of Environmental Support Services.
- () Prior to approval for a nursery school, owner or applicant must comply with all Baltimore County regulations. For more complete information, contact the Division of Maternal and Child Health.
- () If lubrication work and oil changes are performed at this location, the method providing for the elimination of waste oil must be in accordance with Water Resources Administration requirements.

Pursuant to the advertisement, posting of property, and public hearing on the Petition and it appearing that strict compliance with the Baltimore County Zoning Regulations would/would not result in practical difficulty and unreasonable hardship upon the Petitioner(s) and the granting of the variance(s) requested will/will not adversely affect the health, safety, and general welfare of the community, the variance(s) should/should not be granted.

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this _____ day of _____, 19____, that the herein Petition for Variance(s) to permit



BALTIMORE COUNTY
DEPARTMENT OF PUBLIC WORKS
TOWSON, MARYLAND 21204

HARRY J. PISTEL, P.E.
DIRECTOR

May 5, 1983

Mr. William E. Hammond
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Item #185 (1982-1983)
Property Owner: Joseph & Elizabeth Prosser
S/S Meadowcliff Rd. 1505.84' E. of Glen Echo Rd.
Acres: 202.83/401.89 X 531.52/567.43
District: 11th

Dear Mr. Hammond:

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:

Baltimore County highway and utility improvements are not directly involved.

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

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

This office has no further comment in regard to the plan submitted for Zoning Advisory Committee review in connection with this Item 185 (1982-1983).

Very truly yours,

Robert A. Norton
ROBERT A. NORTON, P.E., Chief
Bureau of Public Services

RAM:EAM:FMR:cs

R-NE Key Sheet
57 NE 17 & 18 Pos. Sheets
NE 15 E Topo
53 Tax Map

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Mr. Nicholas Commodari
TO: Planning & Zoning Date: April 1, 1983
FROM: Building Plans Review
Zoning Advisory Committee
SUBJECT: Meeting of March 29, 1983

Item #182	Standard Comments
Item #184	Standard Comments
Item #185	No Comments
Item #186	See Comments
Item #187	Standard Comments
Item #188	Standard Comments
Item #189	Standard Comments
Item #190	Standard Comments
Item #191	See Comments
Item #192	See Comments
Item #193	No Comments - No Drawings
Item #194	See Comments
Item #195	See Comments
Item #196	See Comments
Item #197	Standard Comments

Charles E. Burnham

Charles E. Burnham
Plans Review Chief

431

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE, REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 119416
DATE 7/13/83 ACCOUNT R-01-615-000
AMOUNT \$80.00
RECEIVED FROM Whiteford, Taylor, Preston, Trimble & Johnston
APPROVAL FOR CASE #83-259-A
(Joseph Prosser, et ux)
8 082*****804010 3182A
VALIDATION OR SIGNATURE OF CASHIER

BALTIMORE COUNTY PUBLIC SCHOOLS

Robert Y. Dubel, Superintendent

Towson, Maryland - 21204

Date: March 25, 1983

Mr. William E. Hammond
Zoning Commissioner
Baltimore County Office Building
1111 West Chesapeake Avenue
Towson, Maryland 21204

Z.A.C. Meeting of: March 29, 1983

RE: Item No: 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197
Property Owner:
Location:
Present Zoning:
Proposed Zoning:

District:
No. Acres:

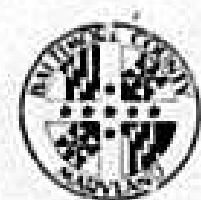
Dear Mr. Hammond:

All of the above have no bearing on student population.

Very truly yours,

Wm. Nick Petrovich
Wm. Nick Petrovich, Assistant
Department of Planning

WNP/bp



BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

WILLIAM E. HAMMOND
ZONING COMMISSIONER

June 22, 1983

William S. Wilson, Jr., Esquire
403 Bosley Building
210 Allegheny Avenue
Towson, Maryland 21204

RE: Petition for Variance
S/S of Meadow Cliff Road, 1,505.84' E
of Glen Echo Road - 11th Election
District
Joseph Prosser, et ux - Petitioners
NO. 83-259-A (Item No. 185)

Dear Mr. Wilson:

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

Very truly yours,

William E. Hammond
WILLIAM E. HAMMOND
Zoning Commissioner

WEH/srl

Attachments

cc: Mr. Raymond G. Hohman, Jr.
4410 Meadowcliff Road
Glen Arm, Maryland 21057

Mrs. Ann Grue
4406 Meadowcliff Road
Glen Arm, Maryland 21057

John W. Hessian, III, Esquire
People's Counsel

LAW OFFICES

WHITEFORD, TAYLOR, PRESTON, TRIMBLE & JOHNSTON

3000 FIRST MARYLAND BUILDING
25 SOUTH CHARLES STREET
BALTIMORE, MARYLAND 21201
301 752-0987
TOWSON OFFICE
205 LAFAYETTE BUILDING
40 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
301 425-8512

Please reply to: Towson

July 13, 1983

Arnold Jablon, Esquire
Zoning Commissioner of Baltimore County
County Office Building
Towson, Maryland 21204

Re: PETITION FOR VARIANCE
S/S of Meadow Cliff Road,
1,505.84' E of Glen Echo Road
11th Election District
Joseph Prosser, et ux - Petitioners
No. 83-259-A (Item No. 185)

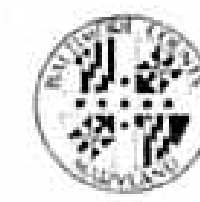
Dear Mr. Commissioner:

On behalf of Joseph Prosser and Elizabeth H. Prosser, petitioners in the above captioned case, please enter an appeal to the Board of Appeals for Baltimore County from an adverse decision, in connection with the requested variance, rendered by the former Zoning Commissioner on June 23, 1983.

Please notify all necessary parties and forward all necessary papers to the Board of Appeals.

Enclosed is a check in the amount of \$80.00 payable to Baltimore County, Maryland to cover the cost of appeal.

William S. Wilson, Jr.
William S. Wilson, Jr.
Ernest C. Trimble
Attorneys for Petitioner/Appellants



BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

WILLIAM E. HAMMOND
ZONING COMMISSIONER

July 20, 1983

Mr. Raymond G. Hohman, Jr.
4410 Meadowcliff Road
Glen Arm, Maryland 21057

Re: Petition for Variance
S/S of Meadow Cliff Road, 1,505.84' E
of Glen Echo Road
Joseph Prosser, et ux - Petitioners
Case No. 83-259-A

Dear Mr. Hohman:

Please be advised that an appeal has been filed by William S. Wilson, Jr. and Ernest C. Trimble, attorneys for the petitioners, from the decision rendered by the Zoning Commissioner of Baltimore County, in the above referenced matter.

You will be notified of the date and time of the appeal hearing when it is scheduled by the County Board of Appeals.

Very truly yours,

William E. Hammond
William E. Hammond
Zoning Commissioner

WEH:aj

cc: Mrs. Anna Grue
4406 Meadowcliff Road
Glen Arm, Maryland 21057

John W. Hessian, III, Esquire
People's Counsel

LAW OFFICES
MILES & STOCKBRIDGE
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

TELEPHONE 504-8000
CABLE MILESSTOCK
TELEX 87-24

November 26, 1984

Clerk
Circuit Court for Baltimore County
County Courts Building
P. O. Box 6754
Towson, MD 21204-0754

Re: In The Matter Of The Application Of
Joseph Prosser, et ux. For Variance
Case No. 84-H-156/111716

Dear Mr. Clerk:

Please file the enclosed Withdrawal of Appearance in the above-referenced action.

Very truly yours,

Virginia W. Bernhart

WVB/kg

cc: William S. Wilson, Jr., Esquire
Ernest C. Trimble, Esquire
Peter Max Zirnman, Esquire
Phyllis Friedman, Esquire
Edith Eisenhart
John Anderson
Arnold Jablon
Raymond G. Hohman, Jr.
Mr. and Mrs. Karl Braungart
Mr. and Mrs. Rowland Rushworth
Mr. and Mrs. Stephen Stauffer

IN THE MATTER OF
THE APPLICATION OF
JOSEPH PROSSER, ET UX.
FOR VARIANCE FROM
\$400.1 OF THE
BALTIMORE COUNTY
ZONING REGULATIONS
S/S MEADOWCLIFF ROAD
1505.84' E. GLEN ECHO ROAD
11TH DISTRICT - No. 83-259-A
(ITEM 185)

WITHDRAWAL OF APPEARANCE

Mr. Clerk:
Please strike the appearances of Virginia W. Barnhart
and K. Donald Proctor as counsel for the Appellants in the
above-captioned matter.

K. Donald Proctor (by photo)
K. Donald Proctor
MILES & STOCKBRIDGE
401 Washington Avenue
Towson, Maryland 21204
(301) 821-6565

Virginia W. Barnhart
Virginia W. Barnhart
MILES & STOCKBRIDGE
401 Washington Avenue
Towson, Maryland 21204
(301) 821-6565

Attorneys for Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17th day of November, 1984, a
copy of the foregoing Withdrawal of Appearance was mailed,
postage prepaid, to William S. Wilson, Jr., Esquire, 405 Bosley
Building, 210 Allegheny Avenue, Towson, Maryland 21204, Ernest
C. Trimble, Esquire, 200 Lafayette Building, 40 West Chesapeake
Avenue, Towson, Maryland 21204, Peter Max Zimmerman, Esquire,
Deputy People's Counsel for Baltimore County, Room 223, Court
House, Towson, Maryland 21204, Phyllis Friedman, Esquire, Court
House, Towson, Maryland 21204, Elith Eisenhart, County Board of
Appeals of Baltimore County, Room 200, Court House, Towson,
Maryland 21204, John Anderson, Manor Hill Farm, Glen Arm,
Maryland 21057, and Arnold Jablon, Zoning Commissioner of
Baltimore County, 111 W. Chesapeake Avenue, Room 113, Towson,
Maryland 21204.

Virginia W. Barnhart
Virginia W. Barnhart

-2-

WHITEFORD, TAYLOR, PRESTON, TRIMBLE & JOHNSTON

2000 FIRST MARYLAND BUILDING
25 SOUTH CHARLES STREET
BALTIMORE, MARYLAND 21201
301 752-6957

TOWSON OFFICE
200 LAFAYETTE BUILDING
40 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
301 752-6957

Please reply to: Towson

July 13, 1983

Arnold Jablon, Esquire
Zoning Commissioner of Baltimore County
County Office Building
Towson, Maryland 21204

Re: PETITION FOR VARIANCE
S/S of Meadow Cliff Road,
1,505.84' E of Glen Echo Road
11th Election District
Joseph Prosser, et ux - Petitioners
No. 83-259-A (Item No. 185)

Dear Mr. Commissioner:

On behalf of Joseph Prosser and Elizabeth H.
Prosser, Petitioners in the above captioned case,
please enter an appeal to the Board of Appeals for
Baltimore County from an adverse decision, in connection
with the requested variance, rendered by the former
Zoning Commissioner on June 23, 1983.

Please notify all necessary parties and
forward all necessary papers to the Board of Appeals.

Enclosed is a check in the amount of \$80.00
payable to Baltimore County, Maryland to cover the
cost of appeal.

William S. Wilson, Jr.
William S. Wilson, Jr.
Ernest C. Trimble
Attorneys for Petitioner/Appellants

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

February 3, 1983

COUNTY OFFICE BLDG.
211 W. Chesapeake Ave.
Towson, Maryland 21204

cc: Nicholas B. Commodari
Chairman

MEMBERS
Bureau of Engineering
Department of
Traffic Engineering
State Roads Commission
Bureau of Fire Prevention
Health Department
Project Planning
Building Department
Board of Education
Zoning Administration
Industrial Development

Mr. S. Watson
Griffith Bros Company, Inc.
6705 Mt. Vista Road
Kingsville, Maryland 21087

RE: Building Permit 51466-GR
4407 Meadowcliff Road
11th Election District

Dear Mr. Watson:

The above referenced building permit cannot be
approved by this office until a variance is applied
for and granted. This will require a public hearing
and will take approximately 3-4 months for processing.
If the final order is appealed it could take an
indefinite period of time.

If you would like any additional information,
please feel free to contact me at 494-3391.

Very truly yours,

Nicholas B. Commodari
NICHOLAS B. COMMODARI
Chairman
Zoning Plans Advisory Committee

NBC:bsc

cc: Mr. Joseph Prosser
4407 Meadowcliff Road
Glen Arm, Maryland 21057

Permit File
Zoning File

VIOLATION ASSIGNMENT SHEET

CASE NO. C - 83-531

ELECTION DISTRICT 11

LOCATION Meadowcliff Rd. & Manor Rd.

ALLEGED VIOLATION Accessory Structure

SEND ACKNOWLEDGEMENT () PICK-UP () POLICE ()

ASSIGN TO:

() G. C. FREUND () J. M. RORKE
() D. MURPHY () J. J. SULLIVAN, JR.
() H. E. PHIPPS () J. H. THOMPSON
() ()

REFER TO:

() BUILDINGS ENGINEER () HEALTH DEPARTMENT
() FIRE DEPARTMENT () DOG LICENSES
() POLICE DEPARTMENT () OTHER

COMMENTS:

RGH Associates, Inc.
Suite 901
401 Washington Avenue
Towson, Maryland 21204

4410 Meadowcliff Rd.
592-8116

Raymond G. Hohman, Jr.
(301) 296-0000

Health Care
Consulting & Management

ZONING VIOLATION INSPECTION RECORD

Date: 1/4/83	Inspector:	No. C-
Zoning: RC-5	Location: MEADOWCLIFF RD	
District: 11	Int./Landmark: MANOR RD	GLEN ARM, MD
Source: In-Person ☐	Structure: Apartment ☐	
Letter ☐	Dwelling ☒	
Pick-Up ☐	Other ☐	
() Complainant: SALLY DUGAN	Mrs. Anna Give	Phone: 321-7293
Address: 8000 RIDER AVE	4406 Meadowcliff Rd	296-3471
Towson, Md 21204	Glen Arm, Md 21057	592-2600
() Attorney: Raymond G. Hohman, Jr.		Phone:
Address: 4410 Meadowcliff Rd		592-8116 (H)
() Occupant: Glen Arm, MD 21057		292-1488 (W)
Address:		
() Owner: JOSEPH PROSSER		Phone:
Address:		
() Attorney:		Phone:
Address:		
DETAILS OF COMPLAINT: ACCESSORY STRUCTURE (TRAIN AND TRACKS)		
BEING CONSTRUCTED IN FRONT SIDE AND REAR YARDS		

INSPECTOR'S REPORT

INITIAL INSPECTION	Day: Tues	Date: 1-11-83	Time: 2:01 PM
Probable Violation: Yes ☐ No ☐	Section(s):		
Non-Conforming Use Claimed: Yes ☐ No ☐	Year:		
Send Day Card - Correction:	No. Photos: 5		
RE-INSPECTION	Day:	Date:	Time:
Close Case ()			No. Photos:
Set for Hearing ()			
RE-INSPECTION	Day:	Date:	Time:
			No. Photos:
RE-INSPECTION	Day:	Date:	Time:
			No. Photos:
SUMMONS ()			Inspector

ZONING VIOLATION INSPECTION RECORD

Date: 1-4-83	Inspector: Sullivan	No. C-83-531
Zoning: RC-5	Location: 4407 MEADOWCLIFF RD	
District: 11	Int./Landmark:	
Source: In-Person ☐	Structure: Apartment ☐	
Letter ☐	Dwelling ☐	
Pick-Up ☐	Other ☐	
() Complainant: Sally Dugan	Mrs. Anna Give	Phone: 321-7293
Address: 8000 RIDER AVE	4406 Meadowcliff Rd	296-3471
Towson, Md 21204	Glen Arm, MD 21057	592-2600
() Attorney: Raymond G. Hohman, Jr.		Phone:
Address: 4410 Meadowcliff Rd		592-8116 (H)
() Occupant: Glen Arm, MD 21057		292-1488 (W)
Address:		
() Owner: Joseph L. Prosser		Phone:
Address: Elizabeth H. Prosser		
4407 Meadowcliff Rd		
() Attorney: Glen Arm, MD 21057		Phone:
Address:		
DETAILS OF COMPLAINT: Accessory structure (train & tracks) being		
constructed in front side & rear yards		

INSPECTOR'S REPORT

INITIAL INSPECTION	Day: Tues	Date: 1-11-83	Time: 2:01 PM
Probable Violation: Yes ☐ No ☐	Section(s):		
Non-Conforming Use Claimed: Yes ☐ No ☐	Year:		
Send Day Card - Correction:	No. Photos: 2		
RE-INSPECTION	Day:	Date:	Time:
Close Case ()			No. Photos:
Set for Hearing ()			
RE-INSPECTION	Day:	Date:	Time:
			No. Photos:
RE-INSPECTION	Day:	Date:	Time:
			No. Photos:
SUMMONS ()			Inspector

MEMO

C-83-601
4407 Meadowcliff Rd

Currently, only ditch & dark covered
stone in a circle on prop. street (see photos)
NO Tracks, Train observed to date
exp. NO real violation

Today per PT, don't close case but
put case in for periodic pop-ups
inspections to monitor future
activities, re by tracks!

4/14
This Petitioner for a Variance Hearing
item #185 No has we are date
assigned yet!

RE: PETITION FOR VARIANCE :
S/S of Meadow Cliff Road, 1,505.84' :
E of Glen Echo Road - 11th Election :
District :
Joseph Prosser, et ux - Petitioners :
NO. 83-259-A (Item No. 185) :
BALTIMORE COUNTY

The petitioners herein seek a variance to permit an accessory structure (train track) to be located in the front and side yards in lieu of the required rear yard. The subject site is located on the south side of Meadowcliff Road, east of Glen Echo Road, contains 9-3/4 acres, more or less; and is zoned R.C.5 (Resource Conservation-rural-residential).

Joseph Prosser, one of the petitioners, testified that he purchased a miniature train for \$28,000 and proposes to construct a roadbed for ties and a track to encircle his residence (Petitioners' Exhibits 1 through 8 - photographs, Petitioners' Exhibit 9 - track layout, and Petitioners' Exhibit 10 - site plan). He stated that to locate the track in the rear yard would create an additional expense because of the many trees and undergrowth that would have to be removed. He also testified that he planned to hook only two cars to the train and to use it strictly for the enjoyment of his grandchildren and other children in the area on special days, i.e., birthdays and holidays, which probably would be no more than six times a year.

Area residents testified that they opposed the request because their homes would overlook an amusement park atmosphere rather than a residential one (Protestants' Exhibits A through D - photographs), thereby depreciating their property values; however, they did acknowledge that they would have no objection if the track was confined to the rear yard. Additionally, Raymond G. Hohman, Jr., objected because he felt that neither a track or train constituted an accessory building under Section 400.1 of the Baltimore County Zoning Regulations.

Section 1A04.2A.11.g. discloses that:

"Swimming pools, tennis courts, garages, utility sheds or other accessory structures or uses (subject to the height and area provisions for buildings as set forth in Section 400) (emphasis added) are permitted as accessory uses or structures in an R.C.5 Zone. Section 101 defines an accessory use or structure as:

"A use or structure which (a) is customarily incident and subordinate to and serves a principal use or structure; (b) is subordinate in area, extent, or purpose to the principal use or structure; (c) is located on

the same lot as the principal use or structure served; and (d) contribute to the comfort, convenience, or necessity of occupants, business, or industry in the principal use or structure served. An accessory building, as defined above, shall be considered an accessory structure. A trailer may be an accessory use or structure if hereinafter so specified. An ancillary use shall be considered as an accessory use; however, a use of such a nature or extent as to be permitted as a 'use in combination' (with a service station) shall be considered a principal use."

After reviewing both Section 400.1 and the definition of an accessory building, it is obvious that a distinction between accessory use/structure and accessory building was intended. As a result, the petitioners could argue that the limitations imposed upon accessory buildings in Section 400.1 are not applicable to an accessory use or structure and that the track would be permitted as of right in the same way that swimming pools and tennis courts are permitted, i.e., without location limitations. Assuming arguendo the argument has merit, the limitations referred to in Section 1A04.2A.11.g., i.e., subject to the height and area provisions for buildings as set forth in Section 400, clearly indicate otherwise. In the instant matter, the height limitation is not pertinent, but area limitations do pose a problem to the argument that an accessory use is permitted as of right since all the limitations specified in Section 400.1 deal specifically with location as such relates to the area of a specific site.

Section 307 empowers the Zoning Commissioner to grant variances from height and area regulations when strict compliance would result in practical difficulty or unreasonable hardship, but only if in strict harmony with the spirit and intent of the regulations and then only in such a manner as to grant relief without substantial injury to the public health, safety, and general welfare.

Additionally, the Court of Special Appeals in Anderson v. Board of Appeals, Town of Chesapeake Beach, 22 Md App. 28, stated:

"To prove undue hardship for a use variance the following three criteria must be met:

- (1) Applicant must be unable to secure a reasonable return or make any reasonable use of his property (mere financial hardship or opportunity for greater profit is not enough).
- (2) The difficulties or hardship is peculiar to the subject property in contrast with other properties in the zoning district.
- (3) Hardship was not the result of applicant's own actions.

To prove practical difficulty for an area variance the following criteria must be met:

- 2 -

- (1) Whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome.
- (2) Whether the grant would do substantial injustice to applicant as well as other property owners in district or whether a lesser relaxation than that applied for would give substantial relief.
- (3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured."

Since the petitioners did not prove undue hardship or practical difficulty, the requested variance should not be granted; therefore,

IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 22nd day of June, 1983, that the Petition for Variance to permit an accessory structure (train track) to be located in the front and side yards in lieu of the required rear yard is hereby DENIED.

William E. Hammond
Zoning Commissioner of
Baltimore County

February 3, 1984

The Honorable Clarence D. Long
200 Post Office Building
Chesapeake and Washington Avenues
Towson, Maryland 21204

RE: Case No. 83-259-A
Joseph Prosser, et ux

Dear Congressman Long:

I am in receipt of your letter dated January 31, 1984, concerning the problem addressed by Mrs. Anna Grue. I am replying promptly because you and Mrs. Grue should be advised that the decision of the County Board of Appeals of Baltimore County, issued January 12, 1984, is a final and binding quasi-judicial order. It can only be made by appeal to the Circuit Court of Baltimore County, which shall review the decision pursuant to standards established by legislation and the Court of Appeals of Maryland. Ordinarily, an appeal of a decision by the Board must be made within thirty days of the decision. It would be advisable for Mrs. Grue to retain counsel regarding this matter.

Sincerely,

Arnold Jablon
Arnold Jablon
Zoning Commissioner

AJ/srl

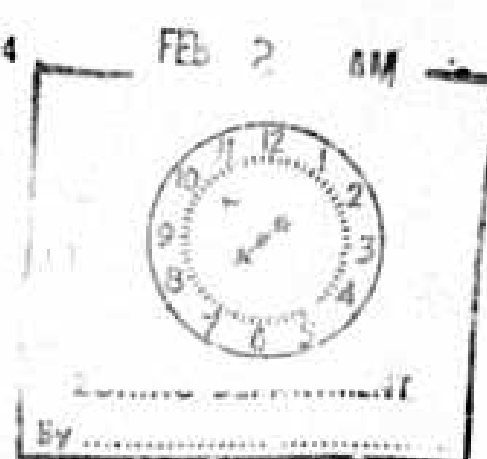
cc: Mrs. Anna Grue
4406 Meadowcliff Road
Glen Arm, Maryland 21057

CLARENCE D. LONG
200 POST OFFICE BUILDING
WASHINGTON, D.C. 20515
(202) 224-3001

Congress of the United States
House of Representatives
Washington, D.C. 20515

PLEASE
REPLY
TO:

January 31, 1984



Mr. Arnold Jablon
Zoning Commissioner
Baltimore County
County Office Building
Towson, Maryland 21204

Dear Mr. Jablon:

I am writing on behalf of Mrs. Anna Grue, 4406 Meadowcliff Road, Glen Arm, Maryland 21057.

Mrs. Grue has been in touch with me concerning the variance that was issued to Mr. Joseph Prosser from the Baltimore County Board of Appeals. In the enclosed correspondence, Mrs. Grue states that she is opposed to the requested variance because it will depreciate the property values in the neighborhood. Mrs. Grue is requesting that this matter be brought to your attention for review.

I should appreciate any information or assistance you can provide for Mrs. Grue in this matter.

Sincerely,

CLARENCE D. LONG

CDL/gk
Enclosure

cc: Mrs. A. Grue

PETITION FOR VARIANCE

11th Election District

ZONING: Petition for Variance

LOCATION: South side of Meadow Cliff Road, 1,505.84 ft. East of Glen Echo Road

DATE & TIME: Tuesday, May 24, 1983 at 10:00 A.M.

PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

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

Petition for Variance to permit an accessory structure (train track) to be located in the front and side yards in lieu of the required rear yard

The Zoning Regulation to be excepted as follows:
Section 400.1 - location of accessory structure

All that parcel of land in the Eleventh District of Baltimore County

Being the property of Joseph Prosser, et ux, as shown on plat plan filed with the Zoning Department.

Hearing Date: Tuesday, May 24, 1983 at 10:00 A.M.
Public Hearing: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

BY ORDER OF
WILLIAM E. HAMMOND
ZONING COMMISSIONER
OF BALTIMORE COUNTY

January 26, 1984

Dear Congressman Long:

I hope there is some way that you can help me with my problem. I live at 4406 Meadowcliff Rd. in Glenarm.

My neighbor, Mr. Joseph Prosser, who lives at 4407 Meadowcliff Road, which is directly across the street from me, has been granted a variance to install an amusement park size train and track on his property. This is being permitted not only in the rear of his home but also across the front lawn and driveway. I am so upset about this that I don't know where to turn. I just can't imagine that the Zoning Board could actually approve something like this in a residential area. I sincerely feel that if this is allowed, the property value of not only my home but the other homes on this street would greatly be reduced. It is going to be an eyesore in a neighborhood of \$150,000.00 (One hundred and fifty thousand dollars) plus homes.

I am enclosing copies of the first hearing which denied Mr. Prosser's request for a variance. He then appealed this decision and the Board of Appeals granted the variance. I am also enclosing a copy of that opinion. The latter states that this is a small gauge train track and miniature train - during the first hearing Mr. Prosser stated that each car was capable of carrying 50 to 100 children. I don't consider that a miniature train. I would have no objection whatsoever if this train were confined to the rear of Mr. Prosser's property but certainly not on the front lawn. I also feel that this would bring a lot of traffic into the neighborhood in the way of sightseers.

I understand that when completed, there would be several hundred railroad ties on the front lawn to accommodate the track. This was also brought out during the first hearing. Can you just imagine what this will look like? This is a residential area not an amusement park. Please help in any way possible. Thank you.

Sincerely,

Mrs. Anna Grue
4406 Meadowcliff Rd.
Glenarm, Md. 21057
Phone: 592-2600

ZONING ENFORCEMENT SECTION

TELEPHONE: 494-3351

CORRECTION NOTICE FOR ALLEGED ZONING VIOLATION

CASE NUMBER C - 83-531 ELECTION DISTRICT: 11
LOCATION: 4407 MEADOWCLIFF ROAD

DEAR Joseph L. Prosser:
Elizabeth H. Prosser
PLEASE BE ADVISED THAT AN INSPECTION OF THE ABOVE REFERENCED LOCATION

REVEALED:

☐ THERE WAS NO VIOLATION OBSERVED AND THE CASE WILL BE CLOSED.

☐ THERE IS AN APPARENT VIOLATION AND THE FOLLOWING CORRECTION IS

REQUIRED: The proposed use of the premises for a private railroad and its related tracks, in conjunction with your dwelling, is not permitted under the current zoning classification R.C.-5 (Resource Conservation - rural residential). This activity is not a customarily incidental accessory to a residential dwelling. Future development for the above stated use will result in a violation hearing.

COMPLIANCE MUST BE ATTAINED BY: Immediately

☐ COMPLIANCE HAS NOT BEEN ATTAINED AND THE MATTER WILL BE SCHEDULED FOR A VIOLATION HEARING.

☐ COMPLIANCE HAS BEEN ATTAINED AND THE CASE WILL BE CLOSED.

INSPECTOR: Sullivan DATE: 1-24-83
ON AND AFTER JUNE 14, 1982, THE EFFECTIVE DATE OF BILL NO. 43-82 THE ZONING COMMISSIONER, OR HIS DEPUTY, MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN \$100.00 PER DAY FOR EACH VIOLATION FOUND TO EXIST AS THE RESULT OF A VIOLATION HEARING.



County Board of Appeals of Baltimore County

Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

January 12, 1984

William S. Wilson, Jr., Esquire
Ernest C. Trimble Esquire
200 Lafayette Building
40 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Case No. 83-259-A
Joseph Prosser, et ux

Gentlemen:

Enclosed herewith is a copy of the Opinion and Order passed today by the County Board of Appeals in the above entitled case.

Very truly yours,

Edith P. Eisenhart
Edith T. Eisenhart,
Adm. Secretary

Encl.

cc: Joseph Prosser, et ux
Mr. Raymond G. Hohman, Jr.
Mrs. Anna Grue
John J. Anderson
Peter M. Zimmerman, Esquire
N. E. Gerber
J. G. Hoswell
A. Jablon
J. Jung
J. E. Dyer

9/19/83 - Following were notified of hearing set for Thursday, Dec. 15, '83 at 10 a.m.:

W. Wilson and Ernest Trimble
Jos. Prosser, et ux
Raymond Hohman
Anna Grue
J. Eisenhart
N. E. Gerber
J. Hoswell
A. Jablon
J. Jung
J. Dyer
J. Anderson

From the desk of
John Anderson

RECEIVED 8/18/83

MR. EISENHART
RE OUR TELEPHONE CONVERSATION OF
TODAY, WILL YOU BE KIND ENOUGH TO
SEND NOTICE OF THE ZONING APPEAL
HEARING CASE #83-259-A (PROSSER)
TO:

MR. JOHN J. ANDERSON
MINOR HILL FARM
GLENHART, MARYLAND

2/15/83

THANK YOU FOR YOUR KINDNESS!
IN THIS MATTER.
Rec'd 8-10-83
2 PM

IN THE MATTER OF THE APPLICATION OF JOSEPH PROSSER, ET UX FOR VARIANCE FROM §400.1 OF THE BALTIMORE COUNTY ZONING REGULATIONS S/S MEADOW CLIFF ROAD 1505.84' E. GLEN ECHO RD. 11th DISTRICT

OPINION

This matter comes before the Board from a denial of a variance to permit a small gauge train track to be located in the front and side yards of the Petitioner's property. The subject property is located on the south side of Meadow Cliff Road east of Glen Echo Road, in the Eleventh Election District of Baltimore County.

Testimony before the Board from the Petitioner indicated that he has been the owner of the subject property for twenty-five years, and that he recently purchased a miniature train for his private noncommercial use over the subject property. The variance requested is from §400.1 of the Baltimore County Zoning Regulations which requires accessory buildings to be located only in the rear yard.

Prior to the hearing, counsel for the Petitioner made a Motion to Dismiss alleging, amongst other arguments, that §400.1 refers only to accessory buildings and not the use anticipated in this instance. The meaning of §400.1 is rather clear in its limitations on accessory buildings. However, §1A04.2A indicates that accessory uses or structures of a nature indicated in that section may be permitted. In particular, §1A04.2A.11.g permits certain accessory structures or uses subject to restrictive provisions set forth in §400. Clearly, the Council intended that both accessory buildings and uses permissible as incidental uses to property could be permitted under certain circumstances limited, however, by the restrictions of §400. Petitioner's argument, if accepted, would place no restrictions whatsoever on uses considered accessory whether they met the standards of §1A04.2A.11 or not. Such a reading could never have been anticipated by the County Council, therefore, the Board denied the Petitioner's Motion to Dismiss.

For other reasons, however, the Board will permit the requested

JOSEPH PROSSER - #83-259-A

variance to enable the Petitioner to construct and use his miniature train in the front and side yards, as well as the rear yard, with certain restrictions.

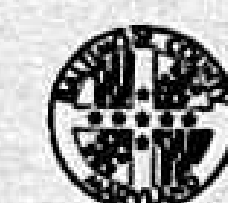
Testimony by Petitioner indicated that restricting the use of the train to the rear yard would pose unreasonable hardship and practical difficulty due to a very steep incline in the property just to the rear of his house. Such a topographical condition would make loading and negotiating this area extremely difficult. Only by permitting sufficient space to allow for an appropriate approach to this area and sufficient engineering to negotiate this part of the parcel could safe use of the train be obtained. Petitioner further testified that in permitting such a variance as requested the relief granted would not substantially injure the public health, safety or general welfare.

Protestants testified that the use requested was unreasonable and aesthetically unpleasant. They stated that use of this train in the front yard could be dangerous due to its attractive nuisance nature. They also argued that it would depreciate the property values in the neighborhood.

The Board recognizes that the Petitioner would require no approval for a variance if he were able to construct the track only in the rear portion of his property. We believe that the arguments by the Protestants that the existence of the train will create dangerous conditions and devalue the neighborhood would exist regardless of whether the train was in the back yard alone or a permitted use in the front yard. The aesthetic problems that were suggested by the Protestants are not, in the opinion of the Board, so strong as to overcome the difficulty that not providing the Petitioner such a use would create. Nevertheless, the Board is of the opinion that certain restrictions on the use of this train will be appropriate and will so order

ORDER

For the reasons set forth in the foregoing Opinion, it is this 12th day of January, 1984, by the County Board of Appeals, ORDERED that the variance petitioned for, be and the same is hereby GRANTED, subject to the following restrictions:



County Board of Appeals of Baltimore County

Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

January 12, 1984

William S. Wilson, Jr., Esquire
Ernest C. Trimble Esquire
200 Lafayette Building
40 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Case No. 83-259-A
Joseph Prosser, et ux

Gentlemen:

Enclosed herewith is a copy of the Opinion and Order passed today by the County Board of Appeals in the above entitled case.

Very truly yours,

Edith P. Eisenhart
Edith T. Eisenhart,
Adm. Secretary

Encl.

cc: Joseph Prosser, et ux
Mr. Raymond G. Hohman, Jr.
Mrs. Anna Grue
John J. Anderson
Peter M. Zimmerman, Esquire
N. E. Gerber
J. G. Hoswell
A. Jablon
J. Jung
J. E. Dyer

JOSEPH PROSSER - #83-259-A

- Storage and repair of the train is to take place only in the rear of the property.
- No platform or other permanent structure will be permitted for the purpose of loading or unloading in the front of the property.
- The whistle or horn can only be used in the rear of the property, and only one blast of a reasonably short duration is permitted for each trip around the circumference of the track.
- Operation of the train shall be restricted to between sunrise and sunset.
- Operation of the train will be permitted only by individuals twenty-one (21) years of age or older.
- This variance is effective only so long as the train is used continually. The abandonment of this permitted use for a period of more than one year will void this variance.

Any appeal from this decision must be in accordance with Rules 8-1 thru 8-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman
Keith S. Franz
Keith S. Franz
Diana K. Vincent
Diana K. Vincent

IN THE MATTER OF THE APPLICATION OF JOSEPH PROSSER, ET UX FOR VARIANCE FROM §400.1 OF THE BALTIMORE COUNTY ZONING REGULATIONS S/S MEADOW CLIFF ROAD 1505.84' E. GLEN ECHO RD. 11th DISTRICT

OPINION

This matter comes before the Board from a denial of a variance to permit a small gauge train track to be located in the front and side yards of the Petitioner's property. The subject property is located on the south side of Meadow Cliff Road east of Glen Echo Road, in the Eleventh Election District of Baltimore County.

Testimony before the Board from the Petitioner indicated that he has been the owner of the subject property for twenty-five years, and that he recently purchased a miniature train for his private noncommercial use over the subject property. The variance requested is from §400.1 of the Baltimore County Zoning Regulations which requires accessory buildings to be located only in the rear yard.

Prior to the hearing, counsel for the Petitioner made a Motion to Dismiss alleging, amongst other arguments, that §400.1 refers only to accessory buildings and not the use anticipated in this instance. The meaning of §400.1 is rather clear in its limitations on accessory buildings. However, §1A04.2A indicates that accessory uses or structures of a nature indicated in that section may be permitted. In particular, §1A04.2A.11.g permits certain accessory structures or uses subject to restrictive provisions set forth in §400. Clearly, the Council intended that both accessory buildings and uses permissible as incidental uses to property could be permitted under certain circumstances limited, however, by the restrictions of §400. Petitioner's argument, if accepted, would place no restrictions whatsoever on uses considered accessory whether they met the standards of §1A04.2A.11 or not. Such a reading could never have been anticipated by the County Council, therefore, the Board denied the Petitioner's Motion to Dismiss.

For other reasons, however, the Board will permit the requested

variance to enable the Petitioner to construct and use his miniature train in the front and side yards, as well as the rear yard, with certain restrictions.

Testimony by Petitioner indicated that restricting the use of the train to the rear yard would pose unreasonable hardship and practical difficulty due to a very steep incline in the property just to the rear of his house. Such a topographical condition would make loading and negotiating this area extremely difficult. Only by permitting sufficient space to allow for an appropriate approach to this area and sufficient engineering to negotiate this part of the parcel could safe use of the train be obtained. Petitioner further testified that in permitting such a variance as requested the relief granted would not substantially injure the public health, safety or general welfare.

Protestants testified that the use requested was unreasonable and aesthetically unpleasant. They stated that use of this train in the front yard could be dangerous due to its attractive nuisance nature. They also argued that it would depreciate the property values in the neighborhood.

The Board recognizes that the Petitioner would require no approval for a variance if he were able to construct the track only in the rear portion of his property. We believe that the arguments by the Protestants that the existence of the train will create dangerous conditions and devalue the neighborhood would exist regardless of whether the train was in the back yard alone or a permitted use in the front yard. The aesthetic problems that were suggested by the Protestants are not, in the opinion of the Board, so strong as to overcome the difficulty that not providing the Petitioner such a use would create. Nevertheless, the Board is of the opinion that certain restrictions on the use of this train will be appropriate and will so order.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 12th day of January, 1984, by the County Board of Appeals, ORDERED that the variance petitioned for, be and the same is hereby GRANTED, subject to the following restrictions:

1. Storage and repair of the train is to take place only in the rear of the property.
2. No platform or other permanent structure will be permitted for the purpose of loading or unloading in the front of the property.
3. The whistle or horn can only be used in the rear of the property, and only one blast of a reasonably short duration is permitted for each trip around the circumference of the track.
4. Operation of the train shall be restricted to between sunrise and sunset.
5. Operation of the train will be permitted only by individuals twenty-one (21) years of age or older.
6. This variance is effective only so long as the train is used continually. The abandonment of this permitted use for a period of more than one year will void this variance.

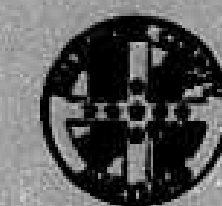
Any appeal from this decision must be in accordance with Rules B-1 thru B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman

Keith S. Franz
Keith S. Franz

Diana K. Vincent
Diana K. Vincent



County Board of Appeals of Baltimore County

Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

January 17, 1984

William S. Wilson, Jr., Esquire
Ernest C. Trimble, Esquire
200 Lafayette Building
40 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Case No. 83-259-A
Joseph Prosser, et ux

Gentlemen:

Enclosed herewith is a copy of the corrected first sheet of the Opinion and Order passed by the Board of Appeals on January 12, 1984. Please attached this page and discard the previous first page sent to you.

Very truly yours,

Edith T. Eisenhart
Edith T. Eisenhart, Adm. Secretary

Encl.

cc: Joseph Prosser, et ux
Mr. Raymond G. Hohman, Jr.
Mrs. Anna Grue
John J. Anderson
Peter M. Zimmerman, Esquire
H. E. Garber
J. G. Howell
A. Jablon
J. Jung
J. E. Dyer
A. January



County Board of Appeals of Baltimore County

Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

February 8, 1984

William S. Wilson, Jr., Esq.
Ernest C. Trimble, Esq.
200 Lafayette Bldg.
40 W. Chesapeake Ave.
Towson, Md. 21204

Re: Case No. 83-259-A
Joseph Prosser, et ux

Gentlemen:

Enclosed herewith is a copy of the Amended Opinion and Amended Order passed today by the County Board of Appeals in the above entitled case.

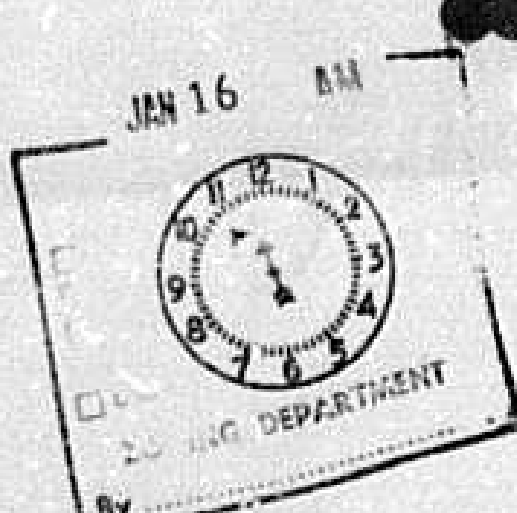
Very truly yours,

June Holmen
June Holmen, Secretary

Encl.

cc: Joseph Prosser, et ux
Raymond Hohman, Jr.
Mrs. Anna Grue
People's Counsel
John J. Anderson
N. Garber
J. Howell
J. Dyer
A. Jablon
A. January

8-1-84
found to
be found!



9469 Seven Courts Drive
Baltimore, MD 21206
January 13, 1984

Balto Co. Dept of Zoning
Attn: Zoning Commissioner
111 W. Chesapeake Avenue
Room 113
Towson, MD 21204

RE: Case #83-259-A

JOSEPH PROSSER, et ux

Dear Sir:

I was unable to personally attend the hearing of the above referenced case on December 14, 1983, but I wanted to address you in writing, in hopes that my opinion might influence your decision.

I have recently contracted to purchase the house located at 4406 Meadowcliff Road, Glenarm, Maryland 21078, from its present owner, Mrs. Anna Grue, who testified at the hearing on December 15. I therefore am extremely interested in the outcome of this zoning hearing.

The central issue in this case is whether or not Mr. Joseph Prosser, who resides at 4407 Meadowcliff Road, should be permitted to construct and operate a carnival-style railroad on and around his property. Summarized below are the reasons why I feel the Zoning Board should reject Mr. Prosser's proposal:

1. According to my admittedly limited understanding of zoning regulations, I do not believe that a carnival-style railroad, such as the one Mr. Prosser proposes to operate, falls within any of the categories of permanent structures permitted on residential properties such as swimming pools, tennis courts, garages, etc. I therefore question if Mr. Prosser's proposal is even lawful.
2. Meadowcliff Road is an approximately one-mile-long residential road with about 15 homes on it situated on lots averaging at least several acres in size. Most of the homes on Meadowcliff Road are of the size, design, and construction that I believe most people would subjectively describe as upscale. Collectively, they comprise a beautiful, rural neighborhood. A carnival-style railroad traversing Mr. Prosser's property, including the front of his lot near Meadowcliff Road itself, most surely would detract from the neighborhood's appearance and could drive down property values as well. In particular, my property-to-be at 4406 Meadowcliff is directly across the street from Mr. Prosser's. Looking down my front lawn provides a panoramic view of Mr. Prosser's house, property, and would-be railroad, the track for which is already in place across his front lawn.

Rec'd 1/17/84
2:00 PM

Balto Co Dept. of Zoning
January 13, 1984
Page Two

3. My final concern is one of safety. I have two sons, ages six and eight years. Although my children have good instincts, it is not impossible to imagine that natural curiosity might lure them to inspect a carnival-style train located directly across the street from their own home. This could create a potentially very dangerous situation.

For the reasons I have enumerated, I sincerely feel that Mr. Prosser's proposal structure is completely and absolutely inappropriate. Therefore, I respectfully request that the Zoning Board deny permission for him to construct and operate a carnival-style railroad on his property at 4407 Meadowcliff Road.

Since I am intensely interested in the outcome of this matter, may I please be notified of your decision.

Sincerely,

Stephen W. Stauffer

Stephen W. Stauffer

1/17/84 Sent cc Order

IN THE MATTER OF : BEFORE
THE APPLICATION OF : COUNTY BOARD OF APPEALS
JOSEPH PROSSER, ET UX :
FOR VARIANCE FROM : OF
SEC. 400.1 OF THE BALTIMORE :
COUNTY ZONING REGULATIONS : BALTIMORE COUNTY
5/5 MEADOW CLIFF RD. :
1505.84' E. GLEN ECHO RD. :
11th DISTRICT : No. 83-259-A

AMENDED OPINION

This matter was heard by the Board on December 15, 1983, upon a request for a variance from Section 400.1 of the Baltimore County Zoning Regulations to permit an accessory structure, in this case a train track, to be located in the front and side yards of the subject property, in addition to the placement of such track in the rear yard, which is permitted in this case as a matter of right.

Testimony before the Board indicated that the Petitioners intend to construct a small gauge train track wholly within their property boundaries. There is no question that such construction in the rear yard alone would require no such variance. Upon the testimony by the Petitioner the Board believes that restricting the track to the rear yard would pose unreasonable hardship and practical difficulty due to a very steep incline in the property just to the rear of the house. Such a topographical condition would make loading and negotiating this area extremely difficult. Protestants testified that the anticipated use was unreasonable and aesthetically unpleasant.

Upon review of the testimony and the Petition for Zoning Variance filed by Petitioners in this matter, the Board is now of the belief that any questions about the anticipated use of the train is not appropriate for determination at this time. Such issues simply are not ripe. That which was requested by Petitioner is merely a variance to permit construction of the train track & though testimony as to the use of such track was admitted, no determination regarding such use of the train itself is appropriate at this time.

The Board, nevertheless, believes that restricting the track to the rear yard would pose unreasonable hardship and practical difficulty to the Petitioner and that permitting the construction of the track itself will not substantially injure the public health, safety, or general welfare. We therefore will hold that a variance to permit construction

Joseph Prosser, et ux
Case No. 83-259-A

of the train track as an accessory structure in the front and side yards of the subject property will be permitted.

AMENDED ORDER

For the reasons set forth in the foregoing Opinion, it is this 8th day of February, 1984, by the County Board of Appeals, ORDERED that the variance petitioned for to permit a train track as an accessory structure to be located in the front and side yards be and the same is hereby GRANTED.

Any appeal from this decision must be in accordance with Rules B-1 thru B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman

Keith S. Franz
Keith S. Franz

Diana K. Vincent
Diana K. Vincent

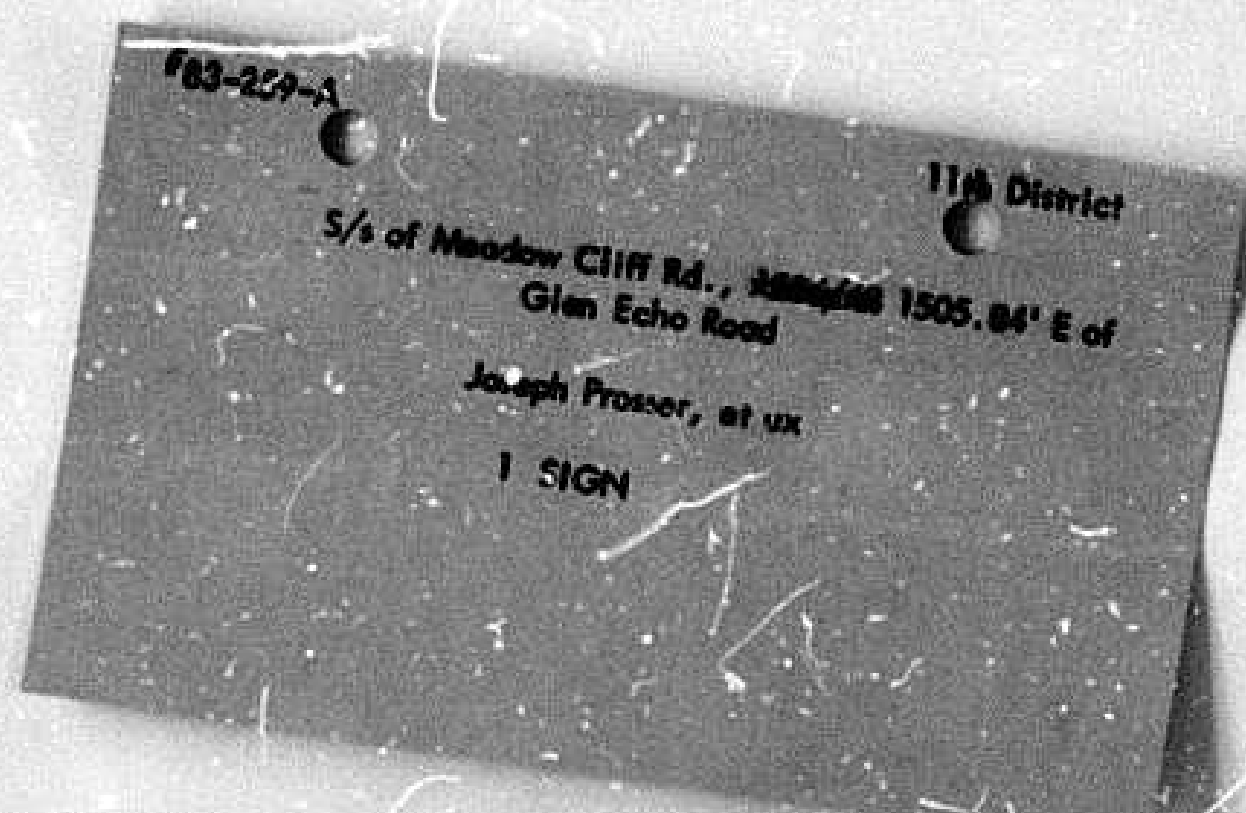
February 14, 1984

BILLED TO: K. Donald Proctor, Esq.
Virginia W. Barnhart
Miles & Stockbridge
401 Washington Ave.
Towson, Md. 21204

Cost of documents in Case No. 83-259-A \$22.00
Joseph Prosser, et ux
S/S Meadowcliff Rd.
1505.84' E. Glen Echo Rd.
11th District

MAKE CHECKS PAYABLE TO: Baltimore County, Maryland

REMIT TO: County Board of Appeals
Rm. 200, Court House,
Towson, Md. 21204



BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCIAL REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

DATE 2/21/84 ACCOUNT 01.712
AMOUNT \$22.00

RECEIVED FROM Virginia W. Barnhart, Miles & Stockbridge, 401 Washington Ave., Towson, Md. 21204
FOR Case No. 83-259-A, Joseph Prosser, et ux, certified documents

B 8592*****2200a 821SF
VALIDATION OR SIGNATURE OF CASHIER

494-3180

County Board of Appeals
Room 219, Court House
Towson, Maryland 21204
February 14, 1984

K. Donald Proctor, Esq.
Virginia W. Barnhart
Miles & Stockbridge
401 Washington Ave.
Towson, Md. 21204

Re: Case No. 83-259-A
Joseph Prosser, et ux

Dear Mr. Proctor and Miss Barnhart:

In accordance with Rule B-7 (a) of the Rules of Procedure of the Court of Appeals of Maryland, the County Board of Appeals is required to submit the record of proceedings of the zoning appeal which you have taken to the Circuit Court for Baltimore County in the above matter within thirty days.

The cost of the transcript of the record must be paid by you. Certified copies of any other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court not later than thirty days from the date of any petition you might file in court, in accordance with Rule B-7 (a).

Enclosed is a copy of the Certificate of Notice; also invoice covering the cost of certified copies of necessary documents.

Very truly yours,

June Holman
June Holman, Secretary

Encls.
cc: Raymond G. Hohman, Jr.
Mrs. Anna Grue
Stephen W. Stauffer

IN THE MATTER OF
THE APPLICATION OF
JOSEPH PROSSER, ET UX.
FOR VARIANCE FROM
\$400.1 OF THE
BALTIMORE COUNTY
ZONING REGULATIONS
S/S MEADOWCLIFF ROAD
1505.84' E. GLEN ECHO ROAD
11TH DISTRICT - No. 83-259-A
(ITEM 135)

ORDER FOR APPEAL

Mr. Clerk:

Please enter an appeal on behalf of Raymond G. Hohman, Jr., Anna D. Grue, Steven W. Stauffer and Patricia L. Stauffer from the Order of the Baltimore County Board of Zoning Appeals, entered on January 12, 1984, and the Amended Order of the Board of Appeals, entered on February 8, 1984 granting the above-referenced variance.

K. Donald Proctor
MILES & STOCKBRIDGE
401 Washington Avenue
Towson, Maryland 21204
(301) 821-6565

Virginia W. Barnhart
MILES & STOCKBRIDGE
401 Washington Avenue
Towson, Maryland 21204
(301) 821-6565

Attorneys for Appellants

IN THE MATTER OF
THE APPLICATION OF
JOSEPH PROSSER, ET UX.
FOR VARIANCE FROM
SEC. 400.1 OF THE BALTIMORE
COUNTY ZONING REGULATIONS
S/S MEADOWCLIFF ROAD
1505.84' E. GLEN ECHO RD.
11th DISTRICT

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW

RAYMOND G. HOHMAN, JR., ET AL,
PROTESTANTS-APPELLANTS

Misc. Doc. No. 16
Folio No. 111
File No. 84-M-56

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, William T. Hackett, Keith S. Franz and Diana K. Vincent, 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, William S. Wilson, Jr., Esq. and Ernest C. Trimble, Esq., 200 Lafayette Bldg., 40 W. Chesapeake Ave., Towson, Md. 21204, Counsel for Petitioners; Joseph Prosser, et ux, 4407 Meadow Cliff Rd., Glen Arm, Md. 21057, Petitioners; K. Donald Proctor, Esq. and Virginia W. Barnhart, Miles & Stockbridge, 401 Washington Ave., Towson, Md. 21204, Counsel for Protestants-Appellants; Raymond G. Hohman, Jr., 4410 Meadowcliff Rd., Glen Arm, Md. 21057, Protestant-Appellant; Mrs. Anna Grue, 4406 Meadowcliff Rd., Glen Arm, Md. 21057, Protestant-Appellant; Stephen Stauffer, et ux, 9469 Seven Courts Drive, Baltimore, Md. 21236, Protestants-Appellants; John Anderson, Manor Hill Farm, Glen Arm, Md. 21057; and Phyllis Friedman, Court House, Towson, Md. 21204, People's Counsel for Baltimore County, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

June Holman
June Holman
County Board of Appeals of Baltimore County
Rm. 200, Court House, Towson, Md. 21204
Phone 494-3180

I HEREBY CERTIFY that on the 10th day of February, 1984, a copy of the foregoing Order of Appeal was hand-delivered to Mrs. Edith T. Eisenhart, Administrative Secretary, County Board of Appeals of Baltimore County, Court House, Towson, Maryland 21204, in compliance with Maryland Rule of Procedure B2(c).

Virginia W. Barnhart
Virginia W. Barnhart

I, EDITH T. EISENHART, hereby acknowledge receipt of the foregoing Order of Appeal in the above-captioned matter this 10th day of February, 1984.

Edith T. Eisenhart
Edith T. Eisenhart

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of February, 1984, a copy of the foregoing Order for Appeal was mailed, postage prepaid, to William S. Wilson, Jr., Esquire and Ernest C. Trimble, Esquire, 405 Bosley Building, 210 Allegheny Avenue, Towson, Maryland 21204, Peter Max Zimmerman, Esquire, Deputy People's Counsel for Baltimore County, Room 223, Court House, Towson, Maryland 21204, and William E. Hammond, Zoning Commissioner of Baltimore County, 111 W. Chesapeake Avenue, Room 113, Towson, Maryland 21204.

Virginia W. Barnhart
Virginia W. Barnhart

Joseph Prosser, et ux
Case No. 83-259-A

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to William S. Wilson, Jr., Esq. and Ernest C. Trimble, Esq., 200 Lafayette Bldg., 40 W. Chesapeake Ave., Towson, Md. 21204, Counsel for Petitioners; Joseph Prosser, et ux, 4407 Meadow Cliff Rd., Glen Arm, Md. 21057, Petitioners; K. Donald Proctor, Esq. and Virginia W. Barnhart, Miles & Stockbridge, 401 Washington Ave., Towson, Md. 21204, Counsel for Protestants-Appellants; Raymond G. Hohman, Jr., 4410 Meadowcliff Rd., Glen Arm, Md. 21057, Protestant-Appellant; Mrs. Anna Grue, 4406 Meadowcliff Rd., Glen Arm, Md. 21057, Protestant-Appellant; Stephen Stauffer, et ux, 9469 Seven Courts Drive, Baltimore, Md. 21236, Protestants-Appellants; John Anderson, Manor Hill Farm, Glen Arm, Md. 21057; and Phyllis Friedman, Court House, Towson, Md. 21204, People's Counsel for Baltimore County, on this 14th day of February, 1984.

June Holman
June Holman
County Board of Appeals of Baltimore County

494-3180

County Board of Appeals
Room 219, Court House
Towson, Maryland 21204
February 14, 1984

William S. Wilson, Jr., Esq.
Ernest C. Trimble, Esq.
200 Lafayette Bldg.
40 W. Chesapeake Ave.
Towson, Md. 21204

Gentlemen: Re: Case No. 83-259-A
Joseph Prosser, et ux

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,

June Holman
June Holman, Secretary

Encl.
cc: Joseph Prosser, et ux
Phyllis Friedman
John J. Anderson
N. E. Gerber
J. Kraswell
A. Jablon
J. E. Dyer

IN THE MATTER OF
THE APPLICATION OF
JOSEPH PROSSER, ET UX.
FOR VARIANCE FROM
\$400.1 OF THE
BALTIMORE COUNTY
ZONING REGULATIONS
S/S MEADOWCLIFF ROAD
1505.84' E. GLEN ECHO ROAD
11TH DISTRICT - No. 83-259-A
(ITEM 135)

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW

Case No. 83-M-56/111/16

PETITION FOR APPEAL

Appellants, Raymond G. Hohman, Jr., Anna D. Grue, Stephen W. Stauffer and Patricia L. Stauffer, by their attorneys, K. Donald Proctor and Virginia W. Barnhart, submit the following Petition, pursuant to Maryland Rule B2(e), setting forth the following actions appealed from, the errors committed by the Board of Appeals of Baltimore County, and the relief sought herein.

1. This proceeding is an appeal from the Order of the Board of Appeals of Baltimore County (hereinafter "Board"), entered on January 12, 1984, and amended on February 8, 1984, granting the above-referenced variance. Said variance authorized the Applicant, Joseph Prosser, to install a train track in the side, front and rear yards of the property known as 4407 Meadow Cliff Road, Glen Arm, Maryland, for the purpose of operating a gasoline powered private railroad throughout the Applicant's property. The subject property is zoned R.C.5.

2. The proposed railroad is approximately 40' as large as a regular train, and consists of a steam locomotive and four passenger cars. The locomotive is approximately 15 feet in length and is driven by a four cylinder gasoline engine. The total length of the subject train is approximately 100 feet.

Rec'd 2-22-84
10:30 am

3. Following a hearing on the matter, the Zoning Commissioner of Baltimore County, by Order dated June 22, 1983, denied the Applicant's request. The Applicant then instituted a timely appeal to the Board.

4. The Board reversed the decision of the Zoning Commissioner, on January 12, 1984, granting the Applicant's variance and placing certain restrictions on his use of the train.

5. The Board amended its original Order, on February 8, 1984, limiting its previous decision to a discussion of the railroad track and striking all references to the use of the Applicant's train.

6. The Appellant, Raymond G. Hohman, a protestant before the Zoning Commissioner, objected to the subject variance, contending that the proposed track and train (1) constituted neither an accessory structure nor use under Section 400.1 of the Baltimore County Zoning Regulations, and (2) would result in depreciation of neighborhood property values. Mr. Hohman's residence is located at 4410 Meadow Cliff Road, and as such is adjacent to and within sight distance of the Applicant's property.

7. The Appellant, Anna D. Grue, likewise objected to the subject variance, protesting before both the Zoning Commissioner and the Board. Mrs. Grue's residence is located at 4406 Meadow Cliff Road, directly across from and within sight distance of the subject lot.

8. On September 6, 1983, Appellants, Stephen W. Stauffer and Patricia L. Stauffer, entered into a contract with Appellant, Anna D. Grue for the purchase of her home and property. (A copy of this contract is attached hereto). Mr. Stauffer, while unable to attend the Board hearing, raised objections to the variance by a letter dated January 13, 1984,

-2-

and received by the Board on January 16, 1984, well prior to the issuance of its Amended Order. In his letter, Mr. Stauffer questioned, among other issues, the attractive nuisance of the Applicant's train. The Stauffers have two children, ages six and eight.

9. Each of the Appellants thus constitute aggrieved parties for the purposes of this appeal.

10. In rendering its Order of January 12, 1984, and Amended Order of February 8, 1984, the Board of Appeals committed the following errors:

a. The Board implicitly concluded that the Applicant's railroad and train track were "accessory" in nature. There was, however, no legally sufficient evidence that the track and train were "customarily incident" and "subordinate to" the Applicant's principle use or structure;

b. Moreover, there was no legally sufficient evidence that the subject track was or would be subordinate in area or extent. In fact, the proposed plan submitted by the Applicant as Exhibit 9, clearly indicates that the subject track will encompass a far greater area of land than the Applicant's home;

c. Further, there was no legally sufficient evidence that restricting the track to the Applicant's rear yard would pose undue hardship or unreasonably prevent the Applicant from using his property for the intended purpose. Indeed, the Applicant, acknowledged in his testimony before the Board, that other "reasonable" alternatives were available if the variance was not allowed;

d. Further, despite the Board's findings to the contrary, there was no legally sufficient evidence that the dangerous conditions and devaluation of property values created

-3-

by the Applicant's railroad, would exist regardless of its location;

e. Further, the Board's classification of the proposed track and train under Section 1A04.2(A) of the Baltimore County Zoning Regulations is erroneous. Such uses and structures are permitted in R.C.5 zones only by special exception under Section 1A04.2(B)(13);

f. Alternatively, the Board failed to impose any reasonable limitations upon the subject variance despite the Applicant's concession during hearing that he would provide appropriate landscaping to conceal the subject track.

11. Finally, the Board's granting of the subject variance for accessory use and structure was clearly an abuse of reasonable discretion, and thus arbitrary and capricious as a matter of law.

WHEREFORE, the Appellants petition this Court to reverse the Order of the Board of Appeals of Baltimore County, entered on January 12, 1984, and amended on February 8, 1984;

AND, for such other and further relief as the nature of the Appellants' cause may require.

K. Donald Proctor
MILES & STOCKBRIDGE
401 Washington Avenue
Towson, Maryland 21204
(301) 821-6565

Virginia W. Barnhart
MILES & STOCKBRIDGE
401 Washington Avenue
Towson, Maryland 21204
(301) 821-6565

-4-

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of February, 1984, a copy of the foregoing Petition on Appeal was mailed, postage prepaid, to William S. Wilson, Jr., Esquire, Bosley Building, 210 Allegheny Avenue, Suite 405, Towson, Maryland 21204, Ernest C. Trimble, Esquire, 200 Lafayette Building, 40 West Chesapeake Avenue, Towson, Maryland 21204, Joseph Prosser, et ux, 4407 Meadow Cliff Road, Glen Arm, Maryland 21057, John Anderson, Manor Hill Farm, Glen Arm, Maryland 21057, Phyllis Friedman, Court House, Towson, Maryland 21204, and Edith Eisenhart, County Board of Appeals of Baltimore County, Room 200, Court House, Towson, Maryland 21204.

Virginia W. Barnhart

BALTIMORE COUNTY, MARYLAND
OFFICE OF THE REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 85139

DATE: FEB 8, 1984 ACCOUNT: 01-712

AMOUNT: \$9.00

RECEIVED FROM: Anna D. Grue, 401 Washington Ave., Towson, Md.
FOR: Copies for file No. 83-259-A, Joseph Prosser, (1185)

83-259-A-3088F

VALIDATION OR SIGNATURE OF CARRIER

IN THE MATTER OF
THE APPLICATION OF
JOSEPH PROSSER, ET UX
FOR VARIANCE FROM
SEC. 400.1 OF THE BALTIMORE
COUNTY ZONING REGULATIONS
S/S MEADOW CLIFF RD.
1505.84' E. GLEN ECHO RD.
11TH DISTRICT

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW

RAYMOND G. HOHMAN, JR., ET AL,
PROTESTANTS-APPELLANTS

Misc. Doc. No. 16

Folio No. 111

File No. 83-M-56

ZONING FILE NO. 83-259-A

CERTIFIED COPIES OF PROCEEDINGS BEFORE THE
ZONING COMMISSIONER AND THE BOARD OF
APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come William T. Hackett, Keith S. Franz and Diana K. Vincent, constituting the County Board of Appeals of Baltimore County, and in answer to the Order for Appeal directed against them in this case, herewith return the record of proceedings had in the above entitled matter, consisting of the following certified copies or original papers on file in the office of the Zoning Department of Baltimore County:

ZONING ENTRIES FROM DOCKET OF ZONING COMMISSIONER OF
BALTIMORE COUNTY

March 29, 1983 Petition of Joseph Prosser, et ux, for a zoning variance from Section 400.1 to permit an accessory structure (train track) to be located in the front and side yards in lieu of the required rear yard.

May 5, 1983 Certificate of Publication in newspaper - filed

May 6, 1983 Certificate of Posting of property - filed

May 9, 1983 Comments of Baltimore County Director of Planning - filed

May 13, 1983 Comments of Baltimore County Zoning Plans Advisory Committee - filed

May 24, 1983 At 10:00 A.M. hearing held on petition by Zoning Commissioner

Joseph Prosser, et ux
Case No. 83-259-A

June 22, 1983 Order of Zoning Commissioner that the Petition for Variance to permit an accessory structure (train track) to be located in the front and side yards in lieu of the required rear yard is DENIED

July 13, 1983 Order for Appeal to C.B. of A. from William S. Wilson, Jr. and Ernest C. Trimble, Counsel for Petitioners

December 15, 1983 Hearing on appeal before County Board of Appeals

January 12, 1984 Order of County Board of Appeals ordering that the variance petitioned for be GRANTED with restrictions

January 17, 1984 Copy of corrected first sheet of Opinion and Order passed by Board of Appeals on Jan. 12, 1984.

February 8, 1984 Amended Order of the Board of Appeals ordering that the variance petitioned for to permit a train track as an accessory structure to be located in the front and side yards be and the same is GRANTED

February 10, 1984 Order for Appeal filed in the Circuit Ct. for Baltimore County by K. Donald Proctor, Esq. and Virginia W. Barnhart, on behalf of Protestants-Appellants

February 14, 1984 Certificate of Notice sent to all interested parties

February 22, 1984 Petition to accompany Order for Appeal filed in Circuit Ct. for Baltimore County

February 23, 1984 Transcript of testimony - filed

Joint Exhibit No. 1 - File (including plats and photos)

People's Counsel's Exhibit No. 1 - Series of Photos, 1A thru 1H, (no 1F)

February 23, 1984 Record of proceedings filed in the Circuit Ct. for Baltimore County

Record of proceedings pursuant to which said Order was entered and said Board acted are permanent records of the Zoning Department of Baltimore County, and your respondents respectively suggest that it would be inconvenient and inappropriate to file the same in this proceeding, but your respondents will produce any and all such rules and regulations whenever directed to do so by this Court.

Respectfully submitted,

June Holman
County Board of Appeals of Baltimore County

cc: Wm. S. Wilson, Jr., Esq. and
Ernest Trimble, Esq.
K. Donald Proctor, Esq. and
Virginia Barnhart
Phyllis Friedman

IN THE MATTER OF
THE APPLICATION OF
JOSEPH PROSSER, ET UX
FOR VARIANCE FROM
SEC. 400.1 OF THE
BALTIMORE COUNTY
ZONING REGULATIONS
S/S MEADOWCLIFF ROAD
1505.84' E. GLEN ECHO ROAD
11TH DISTRICT - No. 83-259-A
(ITEM 185)

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW

Case No. 84-M-56/111/16

AMENDED PETITION ON APPEAL

Appellants, Raymond G. Hohman, Jr., Mary J. Hohman, Anna D. Grue, Stephen W. Stauffer, Patricia L. Stauffer, Karl S. Braungart, Gretchen A. Braungart, Rowland M. Rushworth and Virginia B. Rushworth, by their attorneys, K. Donald Proctor and Virginia W. Barnhart, submit the following Amended Petition, pursuant to Maryland Rules B2(e) and B8, setting forth the following actions appealed from, the errors committed by the Board of Appeals of Baltimore County, and the relief sought herein.

1. This proceeding is an appeal from the Order of the Board of Appeals of Baltimore County (hereinafter "Board"), entered on January 12, 1984, and amended on February 8, 1984, granting the above-referenced variance. Said variance authorizes the Applicant, Joseph Prosser, to install a train track in the side, front and rear yards of the property known as 4407 Meadowcliff Road, Glen Arm, Maryland, for the purpose of operating a gasoline powered private railroad throughout the Applicant's property. The subject property is zoned R.C.5.

2. The proposed railroad is approximately 40% as large as a regular train, and consists of a steam locomotive and four passenger cars. The locomotive is approximately 15 feet in length and is driven by a four cylinder gasoline engine. The total length of the subject train has been estimated at approximately 100 feet.

AUG 1 1984

objections to the variance by a letter dated January 13, 1984, and received by the Board on January 16, 1984, well prior to the issuance of its Amended Order. In his letter, Mr. Stauffer questioned, among other issues, the attractive nuisance of the Applicant's train. The Stauffers have two children, ages six and eight.

9. The Appellant, Rowland M. Rushworth, attended the hearing before the Zoning Commissioner, raising his concern that the proposed variance would result in the depreciation of neighborhood property values and subject the neighborhood to unreasonable noise. The Appellant, Virginia B. Rushworth, is his wife. The Rushworth's residence is located at 4310 Meadowcliff Road, and as such lies within both sight and sound distance of the Prossers' lot.

10. The Appellant, Karl S. Braungart, likewise opposed the subject variance, and raised certain objections before the Board of Appeals. The Appellant, Gretchen A. Braungart, is his wife. The Braungarts have recently purchased and settled upon a parcel of realty located at 4510 Meadowcliff Road, on which they intend to construct a home. Like the Stauffers, the Braungarts have two small children and are concerned about the safety of the subject track and train.

11. Each of the Appellants thus constitute aggrieved parties for the purposes of this appeal.

12. In rendering its Order of January 12, 1984, and Amended Order of February 8, 1984, the Board of Appeals committed the following errors:

a. The Board implicitly concluded that the Applicant's railroad and train track were "accessory" in nature. There was, however, no legally sufficient evidence that the track and train were "customarily incident" and "subordinate to" the Applicant's principle use or structure;

b. Moreover, there was no legally sufficient evidence that the subject track was or would be subordinate in area or extent. In fact, the proposed plan submitted by the Applicant as Exhibit 9, clearly indicates that the subject track will encompass a far greater area of land than the Applicant's home;

c. Further, there was no legally sufficient evidence that restricting the track to the Applicant's rear yard would pose undue hardship or unreasonably prevent the Applicant from using his property for the intended purpose. Indeed, the Applicant, acknowledged in his testimony before the Board, that other "reasonable" alternatives were available if the variance was not allowed;

d. Further, despite the Board's findings to the contrary, there was no legally sufficient evidence that the dangerous conditions and devaluation of property values created by the Applicant's railroad, would exist regardless of its location;

e. Further, the Board's classification of the proposed track and train under Section 1A04.2(A) of the Baltimore County Zoning Regulations is erroneous. Such uses and structures are permitted in R.C.5 zones only by special exception under Section 1A04.2(B)(13);

f. Alternatively, the Board failed to impose any reasonable limitations upon the subject variance despite the Applicant's concession during hearing that he would provide appropriate landscaping to conceal the subject track and limit the use of his train.

13. Finally, the Board's granting of the subject variance for accessory use and structure was clearly an abuse of reasonable discretion, and thus arbitrary and capricious as a matter of law.

WHEREFORE, the Appellants petition this Court to reverse the Order of the Board of Appeals of Baltimore County, entered on January 12, 1984, and amended on February 8, 1984;

AND, for such other and further relief as the nature of the Appellants' cause may require.

K. Donald Proctor
MILES & STOCKBRIDGE
401 Washington Avenue
Towson, Maryland 21204
(301) 821-6565

Virginia W. Barnhart
MILES & STOCKBRIDGE
401 Washington Avenue
Towson, Maryland 21204
(301) 821-6565

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the day of March, 1984, a copy of the foregoing Amended Petition on Appeal was mailed, postage prepaid, to William S. Wilson, Jr., Esquire, Bosley Building, 210 Allegheny Avenue, Suite 405, Towson, Maryland 21204, Ernest C. Trimble, Esquire, 200 Lafayette Building, 40 West Chesapeake Avenue, Towson, Maryland 21204, Joseph Prosser, et ux, 4407 Meadowcliff Road, Glen Arm, Maryland 21057, John Anderson, Manor Hill Farm, Glen Arm, Maryland 21057, Peter Zimmerman, Esquire and Phyllis Friedman, Esquire, Court House, Towson, Maryland 21204, and Edith Eisenhart, County Board of Appeals of Baltimore County, Room 200, Court House, Towson, Maryland 21204.

Virginia W. Barnhart
Virginia W. Barnhart

In the matter of Joseph Prosser

Raymond G. Hohman, Jr. et al

IN THE CIRCUIT COURT

FOR

Baltimore County Bd. of Zoning

BALTIMORE COUNTY

Docket #6 Folio 111

Case No. 84-31-56

NOTICE OF FILING OF RECORD

Virginia W. Barnhart - K. Donald Proctor
Miles & Stockbridge
401 Washington Ave.
Towson, MD. 21204

June Holmen
Co. Bd. of Appeals of Balto. Co.
Mail Stop 2205

In accordance with Maryland Rule of Procedure B12, you are notified that the record in the above entitled case was filed on Feb. 23, 1984.

Elmer H. Rablone
Clerk

FILED FEB 23 1984

IN THE MATTER OF
THE APPLICATION OF
JOSEPH PROSSER, ET UX.
FOR VARIANCE FROM
§400.1 OF THE
BALTIMORE COUNTY
ZONING REGULATIONS
S/S MEADOWCLIFF ROAD
1505.84' E. GLEN ECHO ROAD
11TH DISTRICT - No. 83-259-A
(ITEM 185)

AMENDED ORDER FOR APPEAL

Mr. Clerk:
Please note an appeal on behalf of Raymond G. Hohman, Jr., Mary S. Hohman, Anna D. Grue, Steven W. Stauffer, Patricia L. Stauffer, Karl S. Braungart, Gretchen A. Braungart, Rowland M. Rushworth and Virginia B. Rushworth, from the Order of the Board of Zoning Appeals of Baltimore County, entered on January 12, 1984, and the Amended Order of the Board of Appeals, entered on February 8, 1984, granting the above-referenced variance.

K. Donald Proctor
MILES & STOCKBRIDGE
401 Washington Avenue
Towson, Maryland 21204
(301) 821-6565

Virginia W. Barnhart
MILES & STOCKBRIDGE
401 Washington Avenue
Towson, Maryland 21204
(301) 821-6565

Attorneys for Appellants

I HEREBY CERTIFY that on the day of March, 1984, a copy of the foregoing Amended Order of Appeal was hand-delivered to Mrs. Edith T. Eisenhart, Administrative Secretary,

County Board of Appeals of Baltimore County, Court House, Towson, Maryland 21204, in compliance with Maryland Rule of Procedure B2(c).

Virginia W. Barnhart

I, EDITH T. EISENHART, hereby acknowledge receipt of the foregoing Amended Order of Appeal in the above-captioned matter, this day of March, 1984.

Edith T. Eisenhart

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the day of March, 1984, a copy of the foregoing Amended Order for Appeal was mailed, postage prepaid, to William S. Wilson, Jr., Esquire 405 Bosley Building, 210 Allegheny Avenue, Towson, Maryland 21204, Ernest C. Trimble, Esquire, 200 Lafayette Building, 40 West Chesapeake Avenue, Towson, Maryland 21204, Peter Max Zimmerman, Esquire, and Phyllis Friedman, Esquire, Room 223, Court House, Towson, Maryland 21204, John Anderson, Manor Hill Farm, Glen Arm, Maryland 21057, and Joseph Prosser, et ux., 4407 Meadowcliff Road, Glen Arm, Maryland 21057.

Virginia W. Barnhart

494-3180

County Board of Appeals

Room 219, Court House
Towson, Maryland 21204

March 6, 1984

William S. Wilson, Jr., Esq.
Ernest C. Trimble, Esq.
200 Lafayette Bldg.
40 W. Chesapeake Ave.
Towson, Md. 21204

Re: Case No. 83-259-A
Joseph Prosser, et ux

Gentlemen:

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,

June Holmen, Secretary

Encl.
cc: Joseph Prosser, et ux
Phyllis Friedman
John J. Anderson
N. Geisler
J. Howell
A. Jablon
J. Dyer

494-3180

County Board of Appeals

Room 219, Court House
Towson, Maryland 21204

March 6, 1984

K. Donald Proctor, Esq.
Virginia W. Barnhart
Miles & Stockbridge
401 Washington Ave.
Towson, Md. 21204

Re: Case No. 83-259-A
Joseph Prosser, et ux

Dear Mr. Proctor and Miss Barnhart:

In accordance with Rule 8-7 (a) of the Rules of Procedure of the Court of Appeals of Maryland, the County Board of Appeals is required to submit the record of proceedings of the zoning appeal which you have taken to the Circuit Court for Baltimore County in the above matter within thirty days.

The cost of the transcript of the record be paid by you. Certified copies of any other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court not later than thirty days from the date of any petition you might file in court, in accordance with Rule 8-7 (a).

Enclosed is a copy of the Certificate of Notice; also invoice covering the cost of certified copies of necessary documents.

Very truly yours,

June Holmen, Secretary

Encls.
cc: Raymond G. Hohman, Jr.
Mrs. Anna Grue
Stephen W. Stauffer, et ux

IN THE MATTER OF
THE APPLICATION OF
JOSEPH PROSSER, ET UX
FOR VARIANCE FROM
SEC. 400.1 OF THE BALTIMORE
COUNTY ZONING REGULATIONS
S/S MEADOW CLIFF ROAD
1505.84' E. GLEN ECHO RD.
11th DISTRICT

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW

RAYMOND G. HOHMAN, JR., ET AL,
PROTESTANTS-APPELLANTS

Misc. Doc. No. 16
Folio No. 111
File No. 83-M-56

ZONING FILE NO. 83-259-A

CERTIFICATE OF NOTICE ON AMENDED ORDER FOR APPEAL

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, William T. Hackett, Keith S. Franz and Diana K. Vincent, 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, William S. Wilson, Jr., Esq. and Ernest C. Trimble, Esq., 200 Lafayette Bldg., 40 W. Chesapeake Ave., Towson, Md. 21204, Counsel for Petitioners; Joseph Prosser, et ux, 4407 Meadow Cliff Rd., Glen Arm, Md. 21057, Petitioners; K. Donald Proctor, Esq. and Virginia W. Bamhart, Miles & Stockbridge, 401 Washington Ave., Towson, Md. 21204, Counsel for Protestants-Appellants; Raymond G. Hohman, Jr., 4410 Meadowcliff Rd., Glen Arm, Md. 21057, Protestant-Appellant; Mrs. Anna Grue, 4406 Meadowcliff Rd., Glen Arm, Md. 21057, Protestant-Appellant; Stephen Stauffer, et ux, 9469 Seven Courts Drive, Baltimore, Md. 21236, Protestants-Appellants; John Anderson, Manor Hill Farm, Glen Arm, Md. 21057; and Phyllis Friedman, Court House, Towson, Md. 21204, People's Counsel for Baltimore County, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

June Holmen
June Holmen
County Board of Appeals of Baltimore County
Rm. 200, Court House, Towson, Md. 21204
494-3180

Joseph Prosser, et ux
Case No. 83-259-A

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice on Amended Order for Appeal has been mailed to William S. Wilson, Jr., Esq. and Ernest C. Trimble, Esq., 200 Lafayette Bldg., 40 W. Chesapeake Ave., Towson, Md. 21204, Counsel for Petitioners; Joseph Prosser, et ux, 4407 Meadow Cliff Road, Glen Arm, Md. 21057, Petitioners; K. Donald Proctor, Esq. and Virginia W. Bamhart, Miles & Stockbridge, 401 Washington Ave., Towson, Md. 21204, Counsel for Protestants-Appellants; Raymond G. Hohman, Jr., 4410 Meadowcliff Rd., Glen Arm, Md. 21057, Protestant-Appellant; Mrs. Anna Grue, 4406 Meadowcliff Rd., Glen Arm, Md. 21057, Protestant-Appellant; Stephen Stauffer, et ux, 9469 Seven Courts Drive, Baltimore, Md. 21236, Protestants-Appellants; John Anderson, Manor Hill Farm, Glen Arm, Md. 21057; and Phyllis Friedman, Court House, Towson, Md. 21204, People's Counsel for Baltimore County on this 6th day of March, 1984.

June Holmen
June Holmen
County Board of Appeals of Baltimore County

IN THE MATTER OF
THE APPLICATION OF
JOSEPH PROSSER, ET UX
FOR VARIANCE FROM
SEC. 400.1 OF THE BALTIMORE
COUNTY ZONING REGULATIONS
S/S MEADOW CLIFF RD.
1505.84' E. GLEN ECHO RD.
11th DISTRICT

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW

RAYMOND G. HOHMAN, JR., ET AL,
PROTESTANTS-APPELLANTS

Misc. Doc. No. 16
Folio No. 111
File No. 83-M-56

ZONING FILE NO. 83-259-A

AMENDED ANSWER OF PROCEEDINGS BEFORE THE
ZONING COMMISSIONER AND THE BOARD OF
APPEALS OF BALTIMORE COUNTY

Amended Entries of Page 2 Follow:

February 23, 1984 Record of proceedings filed in the Circuit Court for Baltimore County

March 2, 1984 Amended Order for Appeal filed in the Circuit Ct. for Baltimore County by K. Donald Proctor, Esq. and Virginia W. Bamhart, on behalf of Protestants-Appellants

March 2, 1984 Amended Petition on Appeal filed in the Circuit Ct. for Baltimore County by K. Donald Proctor, Esq. and Virginia W. Bamhart, on behalf of Protestants-Appellants

March 6, 1984 Amended Record of Proceedings filed in the Circuit Ct. for Baltimore County

Record of proceedings pursuant to which said Order was entered and said Board acted are permanent records of the Zoning Department of Baltimore County, and your respondents respectively suggest that it would be inconvenient and inappropriate to file the same in this proceeding, but your respondents will produce any and all such rules and regulations whenever directed to do so by this Court.

Respectfully submitted,

June Holmen
June Holmen
County Board of Appeals of Baltimore County

IN THE MATTER OF
THE APPLICATION OF
JOSEPH PROSSER, ET UX
FOR VARIANCE FROM
SEC. 400.1 OF THE BALTIMORE
COUNTY ZONING REGULATIONS
S/S MEADOW CLIFF RD.
1505.84' E. GLEN ECHO RD.
11th DISTRICT

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW

RAYMOND G. HOHMAN, JR., ET AL,
PROTESTANTS-APPELLANTS

Misc. Doc. No. 16
Folio No. 111
File No. 83-M-56

ZONING FILE NO. 83-259-A

AMENDED ANSWER OF PROCEEDINGS BEFORE THE ZONING
COMMISSIONER AND THE BOARD OF APPEALS OF BALTIMORE
COUNTY FOR THE PURPOSE OF INCLUDING MOTION TO DISMISS

December 15, 1983 Motion to Dismiss by Ernest C. Trimble, Esq. and William S. Wilson, Jr., Esq., attorneys for Petitioners

March 16, 1984 Amended Record of Proceedings filed in the Circuit Ct. for Baltimore County

Record of proceedings pursuant to which said Order was entered and said Board acted are permanent records of the Zoning Department of Baltimore County, and your respondents respectively suggest that it would be inconvenient and inappropriate to file the same in this proceeding, but your respondents will produce any and all such rules and regulations whenever directed to do so by this Court.

Respectfully submitted,

June Holmen
June Holmen
County Board of Appeals of Baltimore County

cc: Wm. S. Wilson, Jr., Esq. and
Ernest C. Trimble, Esq.
K. Donald Proctor, Esq. and
Virginia Bamhart
People's Counsel

RE: PETITION FOR VARIANCE
S/S of Meadow Cliff Road,
1,505.84' E of Glen Echo
Road - 11th Election District
Joseph Prosser, et ux - Petitioner
NO. 83-259-A (Item No. 185)

BEFORE THE
BOARD OF APPEALS
FOR
BALTIMORE COUNTY

MOTION TO DISMISS

Joseph Prosser, et ux, by Ernest C. Trimble and William S. Wilson, Jr., their attorneys, respectfully move that the Order of the Zoning Commissioner be reversed, and the subject case "Dismissed", on the ground that the case is not properly one to be presented to the Zoning Commissioner and/or the Board of Appeals because the Zoning Regulations in the instant case do not require a variance from any provision of said regulations, and for reasons, say:

1. The only "accessory structure" covered by the Zoning Regulations and applicable in the instant case is the building which houses the miniature engine and cars. This "accessory structure" is located in the rear yard behind the Petitioners' home and is therefore not in violation of the Zoning Regulations, and requires no "variance".

2. The Zoning Commissioner was clearly erroneous in requiring the Petitioners to obtain a Variance for the train tracks to be located in the front and side yards of their property. The Zoning Commissioner concluded that the area limitations contained in Section 400.1 of the Zoning Regulations were applicable to the train tracks to be located in the front and side yards. It is submitted that it is impossible to equate the Petitioners' railroad tracks to a "building" as delineated and specified in Section 400. Throughout Section 400 (including the heading which refers

*Ref 10:15:23
10:03 am*

to "Accessory Buildings; and not "Uses") the words employed are "(A)ccessory buildings" - "farm buildings" - "private garages" - "structure" - "such a building". Section 400 does not, and cannot, apply to an "accessory use".

3. The miniature train encompasses both an "accessory structure" and an "accessory use" as defined in Section 101 of the Zoning Regulations. The shed which houses the engine and cars is the "accessory structure" and the operation of the miniature train constitutes the "accessory use".

Section 1 A 04.2A 11 provides for "Accessory uses or structures, including, but not limited to, the following:"

(where follows 7 certain specified structures and/or uses).

The Petitioners' hobby and interest in trains is an accessory use to the enjoyment of the principal use of their property as their home. This accessory use is permitted as of right by Section 1 A 04.2A 11 because permitted "accessory uses" are not LIMITED to the 7 listed uses in that section.

4. Even if one were to follow the convoluted reasoning of the Zoning Commissioner in this case, and liken the miniature train to the specific uses listed in Section 1 A 04.2A 11 g, the Petitioners are not required to seek a variance, because the only "building" involved is the train shed, and it is properly situate in the rear yard.

5. As previously emphasized, ALL "Accessory uses or structures" are specifically permitted by Section 1 A 04.2A 11, whether or not the proposed use or structure is included in the 7 itemized structures and uses. As a result, the words "or other accessory structures or uses" following the words "utility sheds" in Subsection 7 can only be applicable to "accessory

structures or uses" which are similar to or a necessarily concomitant to those structures or uses already listed in Subsection "g". For example, a skating rink could be equated to a "swimming pool" albeit the water is frozen - a squash court or a paddle ball court could be equated to a "tennis court" albeit smaller - any building housing a vehicle could be equated to a "garage" - any structure in which any things or items could be stored or housed, e.g. a shelter for animals, could be equated to a "utility shed" albeit some other name could be applied to the structure. It is submitted that the miniature train use does not fall within the purview of Subsection "g". Assuming arguendo that it did, the "garage" or "utility shed" which houses the engine and train is the only possible "building" or "structure" which could be subject to the provisions of Section 400. As previously stated that building is properly located in the rear yard as required by Section 400, and no "variance" is required.

WHEREFORE, Petitioners pray that the decision of the Zoning Commissioner be reversed and the case "Dismissed" by the Board of Appeals on the ground that no variance is required in the instant case.

Ernest C. Trimble
Ernest C. Trimble

William S. Wilson, Jr.
William S. Wilson, Jr.
Attorneys for Petitioners

IN THE MATTER OF
THE APPLICATION OF
JOSEPH PROSSER, ET UX
FOR VARIANCE FROM
SEC. 400.1 OF THE
BALTIMORE COUNTY
ZONING REGULATIONS
S/S MEADOWCLIFF ROAD
1505.84' E. GLEN ECHO ROAD
11th DISTRICT - No. 83-259-A
(ITEM 185)

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW

Case No. 84-M-56/116/111

ANSWER TO AMENDED PETITION ON APPEAL

Joseph Prosser, et ux, Applicants below and Appellees herein, by Ernest C. Trimble and William S. Wilson, Jr., their attorneys, answer the Amended Petition on Appeal heretofore filed by Appellants, viz:

1. That the Appellees deny the allegation that the variance authorizes them to install a train track in the rear yard, and to the contrary, the Board acknowledged that such track in the rear yard is permitted as a matter of right. They admit the remainder of the allegations in the first paragraph.

2. They deny that the proposed railroad is approximately 40% as large as a regular train, and aver that the testimony was that the "gauge" is two feet, which is forty per cent as large as a regular train. They admit the remainder of the allegations in said paragraph.

3. That they neither admit nor deny the allegations contained in paragraphs 3 through 11, and demand strict proof thereof.

4. That they deny the allegations made and contained in paragraphs 12a. through 12f.

5. That they deny the allegations made and contained in paragraph 13.

6. That the decision of the Board herein was proper and justified by the evidence before it and that the decision of

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the Board should, therefore, be sustained as being properly and legally made.

Ernest C. Trimble

William S. Wilson, Jr.
Attorneys for Appellees

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 23rd day of March, 1984, a copy of the foregoing Answer to Amended Petition on Appeal was mailed, postage prepaid, to Edith Eisenhart, Administrative Secretary of the Board of Appeals, Room 200, County Office Building, Towson, Maryland 21204, and to K. Donald Proctor, Esquire and Virginia W. Barnhart, Esquire, Miles & Stockbridge, 401 Washington Avenue, Towson, Maryland 21204, Attorneys for Appellants.

Ernest C. Trimble

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IN THE MATTER OF
THE APPLICATION OF
JOSEPH PROSSER, ET UX.
FOR VARIANCE FROM
SECTION 400.1 OF THE
BALTIMORE COUNTY
ZONING REGULATIONS
575 MEADOWCLIFF ROAD
1505.84' E. GLEN ECHO ROAD
11TH DISTRICT - No. 83-259-A
(ITEM 185)

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW

Case No. 84-M-56/111/16

APPELLANTS' MEMORANDUM

Appellants, Raymond G. Hohman, Jr., Mary J. Hohman, Anna D. Grue, Stephen W. Stauffer, Patricia L. Stauffer, Karl S. Braungart, Gretchen A. Braungart, Rowland A. Rushworth and Virginia B. Rushworth, by their attorneys, K. Donald Proctor and Virginia W. Barnhart, submit the following Memorandum in support of their Amended Petition on Appeal, pursuant to Maryland Rule B 12.

STATEMENT OF THE CASE

This appeal arises from a Petition filed by Joseph and Elizabeth Prosser (hereinafter "Applicants"), on March 29, 1983, seeking a variance from Section 400.1 of the Baltimore County Zoning Regulations (hereinafter "B.C.Z.R.") for the construction of a "small" private railroad in their front, side and rear yards.¹ The Applicants' property is located at 4407 Meadowcliff Road, Glen Arm, Maryland (T. 21).

Following a hearing on the matter, the Baltimore County Zoning Commissioner denied the Petition, on the grounds that the Applicants had failed to demonstrate sufficient hardship and/or practical difficulty to sustain such a variance. The

¹Section 400.1 requires that all accessory structures "shall be located only in the rear yard and shall occupy not more than 40% thereof." B.C.Z.R. §400.1.

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Applicants, thereafter, filed a timely appeal to the Baltimore County Board of Appeals (hereinafter the "Board").

On January 12, 1984, the Board reversed the Commissioner's decision, granting the subject variance and imposing certain restrictions upon the Applicants' use of their train. At the urging of People's Counsel, the Board, on February 8, 1984, amended its original Order, striking all reference to the use of the Applicants' train and removing the aforesaid restrictions.

The Appellants, opponents of the variance, filed a timely appeal to this Court, on February 10, 1984, and thereafter amended their Order for Appeal and supporting Petition, on March 2, 1984. In so doing, the Appellants have raised objections to a number of the Board's findings, and requested the reversal of the Board's original and Amended Orders.

STATEMENT OF FACTS

The Applicants' property is approximately ten (10) acres in size and currently zoned R.C.5 (T. 25). Their railroad plan is essentially twofold. First, if allowed, they will complete the installation of a series of railroad ties in their side, front and rear yards (T. 25-27, 40-41). The area involved in this stage of their project involves some three to four acres of land (T. 39).

Once the ties are laid, the Applicants will then operate their train to determine the grading requirements for the implementation of their remaining plans. When determined, the Applicants will expand their railroad throughout the remaining six or seven acres of their property, as depicted in Petitioner's Exhibits No. 9 and 10 (T. 25-27, 40-41).

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The subject train, described by the Applicants as a "small" amusement park train, has a gauge of two feet, approximately 40% as large as a regular train, and consists of a steam locomotive and four passenger cars. The locomotive is gasoline powered and approximately fifteen (15) feet in length. The passenger cars are canopy covered and can be pulled at a rate of 15 to 20 miles per hour. The total length of the train is approximately 100 feet (T. 24-25, 48).

The Appellants, current and/or future neighbors of the Applicants, have raised objections to the variance at one or both of the preliminary stages to this proceeding. Their homes and lots are all located within sight and sound distance of the subject lot. Meadowcliff Road is a residential community made up of single family homes, valued between \$150,000 and \$200,000, and housing a growing number of school and preschool age children (T. 55-57, 64-67).

DISCUSSION OF AUTHORITY

Sections 22-26 and 22-32 of the Baltimore County Code (1978) provide that the County Zoning Commissioner and Board of Appeals

may grant variances from area and height regulations and may make special exceptions to the zoning regulations in harmony with their general purpose and intent; provided that the issuance of all such special exceptions and variances shall be subject to appropriate principles, standards, rules, conditions and safeguards set forth in the zoning regulations.

The pertinent regulations for property zoned R.C.5 are found in Section 1A04.2A of the B.C.Z.R. This section, titled "Uses Permitted as of Right", authorizes eleven (11) categories of uses and structures. The eleventh category, "Accessory Uses or Structures", provides for the installation and construction

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of seven sub-categories, including a catch-all provision for certain "accessory" structures and uses defined in Section 101. Inasmuch as these provisions specify a series of permissible structures and uses, those not expressly permitted or "accessory" in nature, are prohibited. See, e.g., Samsa v. Heck, 13 Ohio App.2d 94, 234 N.E.2d 312, 314 (1967).

Accessory structures and uses are defined under Section 101 as:

A use or structure which--(a) is customarily incident and subordinate to and serves a principal use or structure;
(b) is subordinate in area, extent, or purpose to the principal use or structure;
(c) is located on the same lot as the principal use or structure served; and
(d) contributes to the comfort, convenience, or necessity of occupants, business, or industry in the principal use or structure served (emphasis added).

Only those uses and structures which are considered "accessory" will be subjected to the height and area restrictions from which the Applicants seek a variance. As indicated, non-qualifying uses and structures are prohibited, regardless of their location.

The Applicants, however, have failed to satisfy at least two of the aforesaid requirements and have, in fact, offered testimony which demonstrates their inability to do so. The exhibits offered by the Applicants illustrate the broad scope of their proposed "railroad" and demonstrate that both stages of their project involve areas of land far greater than that encompassed by their principal use. As such, their proposal can hardly be considered "subordinate in area or extent", or by definition "accessory". The Board's conclusions to the contrary are thus completely unfounded.

Moreover, the record is devoid of evidence legally sufficient to establish that the Applicants' proposal is

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"customarily incidental and subordinate to" their primary use. To demonstrate that a structure or use is "customarily incidental", one must establish that it is "so necessary or commonly to be expected that it cannot be supposed the ordinance was intended to prevent it." See, Borough of Northvale v. Blundo, 85 N.J. Super. 56, 203 A.2d 721, 723 (1964); Pratt v. Bldg. Inspector of Gloucester, 330 Mass. 344, 113 N.E.2d 816, 317 (1953); City of Sheridan v. Kern, 34 Colo. App. 228, 524 P.2d 1390, 1392 (1974).

In applying this definition, the courts have generally defined the terms "customarily" and "incidental" independently. The term "incidental" requires that the proposed use bear a reasonable relationship to the principal structure, in such a manner as to be considered subordinately dependent thereto. See, Lawrence v. Zoning Board of Appeals of North Branford, 158 Conn. 509, 264 A.2d 552, 554 (1969); Samsa, 234 N.E.2d at 317 (1967). Thus, it is generally agreed that the relative size of the principal and proposed use will likewise be considered in evaluating its incidental nature. Williams, American Land and Planning Law, §74.15, at 416 (1975).

The term "customarily", on the other hand, requires more than a concomitant and reasonable relationship to the principal structure. To satisfy this requirement, the proponent must demonstrate that the proposed use has commonly, habitually and by long practice been established in association with the primary use. See, Lawrence, 264 A.2d at 554. Accord, Presnell v. Leslie, 3 N.Y.2d 384, 144 N.E.2d 381, 383 (1951).

In addressing this requirement, courts have cautioned that actual incidents of similar uses and structures must be evaluated with reference to their geographical differences, and

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should never be considered in the absence of evidence establishing their comparable and distinguishing characteristics. See, e.g., Presnell, 144 N.E.2d at 383; Samsa, 234 N.E.2d at 317; Lawrence, 264 A.2d at 554-55. Where, as here, the proponents have offered only bald assertions of the existence of comparable structures, there is a complete absence of sufficient evidence to justify a finding that their proposal is "customary".

In addition, protection of the residential character and economic quality of the subject community must be considered in determining the customary nature of a proposed use or structure. Williams, §74.17 and 74.19; 101 A.C.J.S. Zoning & Land Planning, §150, at 468. Where the proposed use conflicts with the subject quality of the neighborhood and the use of the adjacent lots, and is opposed by a number of local residents, it will generally be denied. See, e.g., Presnell, 144 N.E.2d at 382, 383-84; Lawrence, 264 A.2d at 554; Northvale, 203 A.2d at 723.

Here, the Applicants offer no evidence of a similar, or even analogous, use or structure on any of the nearby lots. Rather, the record indicates that Meadowcliff Road is a high quality community with a number of large single family dwellings. While the Applicants suggest that their neighbors favor the subject railroad, it is only the Appellants' objections that are recorded in the transcript.

Many of these objections stem from the fact that the Applicant's "amusement park train" will create an "amusement park" atmosphere in their community. Such aesthetic concerns have long been established as valid considerations in the resolution of zoning matters, and were improperly ignored by

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the Board in determining the "custom" of the locality. See, e.g., Presnell, 144 N.E.2d at 384; Daihi v. County Board of Appeals, 258 Md. 157, 167, 265 A.2d 227 (1970).

Courts have consistently agreed that the objectives of a comprehensive zoning plan can be seriously jeopardized "if 'accessory use' is so broadly construed as to allow incompatible uses to invade a district." See, Lawrence, 264 A.2d at 554. While the hobbies of a landowner are often considered "accessory", the conduct and scale of a hobby can carry it well beyond customary and permissible limits. See, Presnell, 144 N.E.2d at 383.

Thus, in Pratt v. Bldg. Inspector of Gloucester, the Supreme Judicial Court of Massachusetts denied the approval of a two-horse stable and corral on residential property, on the grounds that the stabling of horses was not accessory to the principal use. Noting that a local ordinance must be construed "with regard to the obvious intent of maintaining the character of a neighborhood as appropriate for one family detached houses," the court rejected the proposed use, largely as a result of aesthetic objections raised by nearby landowners. 113 N.E.2d at 818. Accord, Lawrence v. Zoning Board of North Branford, (reversing an order permitting a residential landowner to maintain goats and chickens for his own private use).

Similarly, in Samsa v. Heck, the Ohio Court of Appeals reversed a decision allowing the construction of a private air strip in a neighborhood of large single family homes. Acknowledging the principle that restrictions on the use of residential property carry with them the right to certain "accessory" uses, the Court nonetheless rejected the proposal on the grounds that the landowner's testimony failed to establish the existence of similar uses in comparable localities. 434 N.E.2d at 315-17.

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Finally, in Presnell v. Leslie, the New York Court of Appeals upheld the denial of a permit for the construction of a radio tower on residential premises. In so doing, the court emphasized that

the scale of [a hobby]...may well carry it beyond what is customary or permissible. Thus one who builds a stable in which to keep show horses has not constructed an accessory building....

In the present case, there was no sufficient showing that it was customary to have towers of the kind the petitioner desired to erect.... While we are informed that there are 146,000 licensed amateur radio operators in the United States, we are not told the number using antennae of the kind the petitioner seeks to erect, nor where amateur operators having such towers reside. In the absence of such evidence, it cannot be said, as a matter of law, that the erection of [such a] tower in a residential area...is a customarily incidental use...or one which might commonly be expected by neighboring property owners.

144 N.E.2d at 383.

Such cases are noteworthy by analogy to the case at bar. Like the uses and structures proposed in these cases, the subject railroad, while a hobby, is of broad scale and has drawn objections from several nearby landowners. In addition, while the Applicants suggest that similar uses exist in comparable localities, their assertions are completely unsubstantiated. These factors, coupled with the quality of the subject community and the relative size of the Applicant's proposed and primary use, clearly illustrate the error of the Board's conclusion. The Board's finding that the railroad was "accessory" must thus be reversed and the Applicants' construction of their railroad prohibited.

Assuming arguendo that the Board's finding of "accessory use" is upheld, its decision must nonetheless be reversed. Section 1A04.2A(11)(g) of the B.C.Z.R. provides that accessory

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action clearly illustrates the Board's failure to appreciate and acknowledge the burdens imposed upon the residents of Meadowcliff Road and, at the very least, requires the reversal and reconsideration of the Board's decision.

Finally, the Appellants contend that the classification of the subject railroad under Section 1A04.2(A) of the B.C.Z.R. is erroneous. Such uses and structures are permitted in R.C.5 zones only upon the granting of a special exception for railroads under Section 1A04.2(B)(13).

WHEREFORE, the Appellants respectfully request that the Orders of the Board of Appeals be reversed and the proposed use and structure of the Applicants be prohibited.

K. Donald Proctor (by u/s)
K. Donald Proctor
MILES & STOCKBRIDGE
401 Washington Avenue
Towson, Maryland 21204
(301) 821-6565

Virginia W. Barnhart
Virginia W. Barnhart
MILES & STOCKBRIDGE
401 Washington Avenue
Towson, Maryland 21204
(301) 821-6565

Attorneys for Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23rd day of March, 1984, a copy of the foregoing Appellants' Memorandum was mailed, postage prepaid, to William S. Wilson, Jr., Esquire and Ernest C. Trimble, Esquire, 405 Bosley Building, 210 Allegheny Avenue, Towson, Maryland 21204, Peter Max Zimmerman, Esquire, Deputy People's Counsel for Baltimore County, Room 223, Court House,

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structures and uses must comply with the height and area provisions for buildings, as set forth in Section 400. Section 400.1 requires that all accessory structures and uses "shall be located only in the rear yard and shall occupy not more than 40% thereof." While the Board is authorized to grant a variance from these restrictions, its power is restricted to cases "where strict compliance...would result in practical difficulty or unreasonable hardship" and where relief can be granted "without substantial injury to the public health, safety and general welfare." B.C.Z.R. §307.

In cases involving the application of area restrictions, an applicant must demonstrate "practical difficulty" to establish the need for a variance. To satisfy this standard, the following criteria must be met:

- 1) That compliance with the strict letter of the restrictions would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome;
- 2) That the granting of the variance would do substantial justice to the applicant as well as to other property owners in the district or that a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners; and
- 3) That relief can be granted in such fashion that the spirit of the ordinance will be observed and the public safety and welfare served.

See, Anderson v. Board of Appeals, 22 Md. App. 28, 39, 322 A.2d 220 (1974); Loyola Loan Ass'n. v. Buschman, 227 Md. 243, 248-50, 176 A.2d 355 (1961); Zengerle v. Bd. of County Comm'rs, 262 Md. 1, 21, 276 A.2d 646, 656 (1971); McLean v. Soley, 270 Md. 208, 213-14, 310 A.2d 783 (1973).

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Towson, Maryland 21204, Phyllis Friedman, Esquire, Court House, Towson, Maryland 21204, Edit Eisenhart, County Board of Appeals of Baltimore County, Room 200, Court House, Towson, Maryland 21204, John Anderson, Manor Hill Farm, Glen Arm, Maryland 21057, and Arnold Jablon, Zoning Commissioner of Baltimore County, 111 W. Chesapeake Avenue, Room 113, Towson, Maryland 21204.

Virginia W. Barnhart
Virginia W. Barnhart

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The record established by the Applicants, however, fails to satisfy this criteria. To begin with, Mr. Prosser conceded during cross-examination that the subject track could be laid in a rough circle in his rear and rear-side yards, largely hidden from his neighbors view (T. 49). The sole objection to this alternative was that the passengers of the train would be forced to board in the woods of the Applicants' rear yard--a problem which even Mr. Prosser doubted was "insurmountable" (T. 49). As such, the record fails to establish the requisite burden necessary to sustain a variance of the kind permitted herein.

In addition, the proposed railroad plan submitted by the Applicants demonstrates their intention to utilize an expansive portion of their rear yard in completing the second stage of their project. In fact, the record indicates that their plans include the construction of numerous bridges, tunnels and railroad loops throughout the rear portion of their property (T. 45-46). While the record is devoid of evidence pertaining to the percentage of land involved in this venture, the exhibits submitted by the Applicants suggest that such plans may well involve more than the allowable 40% of their rear yard. (See, Petitioner's Exhibit Nos. 9 and 10). The failure of the Board to acknowledge this possibility and to make inquiry into the same is clearly indicative of their failure to adequately evaluate the issues presented by this action.

Moreover, the evidence presented by the Applicants fails to address or ameliorate the Appellants' concerns for the safety of their children and the welfare of their neighborhood. While the Applicants suggest that the subject railroad presents no danger, its appealing nature and mechanical components cannot not be overlooked. Surely such factors will spark the

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EASTON, MARYLAND 21828
346 HUNTERFORD COURT
ROCKVILLE, MARYLAND 20854
1705 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20006

March 23, 1984

Clerk
Circuit Court for Baltimore County
Court House
Towson, Maryland 21204

Re: In The Matter Of The Application
of Joseph Prosser, et ux. For
Variance
Case No. 84-M-56

Dear Mr. Clerk:

Enclosed please find the Appellants' Memorandum for filing in the above-referenced matter.

Many thanks for your continued assistance.

Very truly yours,

Virginia W. Barnhart
Virginia W. Barnhart

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cc: All Counsel of Record

curiosity of those too young to appreciate their danger. The Board's decision to disregard these concerns and adopt the Applicants' suggestion that such dangers would exist regardless of the train's location, clearly indicates their failure to adequately evaluate and address the burden upon the Meadowcliff community.

Moreover, both the Hearing Transcript and the Board's opinions are devoid of any recognition of the Appellants' concerns regarding the possible devaluation of their property values. To suggest that the proposed use would not affect the marketability of nearby lots is sheer folly. Protestants' Exhibit A, submitted at the hearing before the Zoning Commissioner, and incorporated in the record of the Board of Appeals (T. 38), is a letter prepared by Sam Nucci, Sales Manager of Magill, Yerman & Company, Realtors, a division of Better Homes and Gardens Realty, expressing his concern and opinion that the construction and operation of the subject railroad could only lower the value of homes in the Meadowcliff Road area. Similar concerns were voiced by the Appellants to this action. It is well settled that such opinions can and should be considered in the resolution of property disputes. See, e.g., M.A. Realty Co. v. SRC, 247 Md. 522, 525, 233 A.2d 793 (1967); Smith v. Potomac Elec. Power Co., 236 Md. 51, 60, 202 A.2d 604 (1964). Hence, the Board's failure to address these concerns was erroneous.

Further, the scope of the Board's variance is completely unfounded. Not only did the Board fail to adopt the more reasonable and "less relaxed" alternative acknowledged by the Applicant during cross-examination, but likewise failed to incorporate certain landscaping directives recommended by the Applicants as a way to conceal the subject track (T. 33). Such

-11-

IN THE MATTER OF
THE APPLICATION OF
JOSEPH PROSSER, ET UX
FOR VARIANCE FROM
§400.0 OF THE
BALTIMORE COUNTY
ZONING REGULATIONS
S/S MEADOWCLIFF ROAD
1505.84" E. GLEN CHOW ROAD
11th DISTRICT - NO. 83-259-A
(ITEM 185)

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
Case No. 84-M-56/16/11

APPELLEES' MEMORANDUM

Joseph Prosser, et ux, Applicants below and Appellees herein, by Ernest C. Trimble and William S. Wilson, Jr., their attorneys, submit the following Answering Memorandum in the above-captioned case, pursuant to Maryland Rule B 12.

STATEMENT OF THE CASE

Appellees filed a Petition for Zoning Variance with the Zoning Commissioner of Baltimore County to construct a small private railroad, operated by gasoline engine, with narrow tracks, around their residence.

The Zoning Commissioner denied the Variance request and a timely Appeal was filed to the Board of Appeals.

Following a Hearing the Board of Appeals on January 12, 1984, Ordered that the Variance be granted subject to restrictions. Prior to the Hearing the Appellees filed a Motion to Dismiss asserting that the train and its tracks were a permitted use pursuant to Section 1 A04.2A 11 and other pertinent provisions of the Baltimore County Zoning Regulations. In its written opinion the Board denied the Motion to Dismiss.

Subsequently, on February 8, 1984 the Board filed an Amended Opinion which inter alia, concluded that questions about the anticipated use of the train were not appropriate for determination "at this time". The Board reaffirmed its granting of the variance of the train track as an accessory structure in the front and side yards.

Peter Max Zimmerman, Deputy Peoples' Counsel who represented the present Appellants at the Hearing before the Board, by a letter

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dated January 19, 1984 addressed to Raymond G. Hohman, Jr., one of the Appellants, advised that his office did not intend to file an appeal and they (the protestants) had thirty days from the date of the decision to file an appeal.

Thereafter, by its present counsel, Appellants filed a timely Order of Appeal and Petition and Amended Petition in support of the Appeal. On or about March 23, 1984 an Appellants' Memorandum was filed, prompting the filing of this answering memorandum.

STATEMENT OF FACTS

Joseph Prosser, one of the Appellees, is an engineer by education and occupation. (T 22). Since he was a youngster his hobby has been trains. He had extensive experience with trains in the Army and travelled by train exclusively while travelling for a living in the years after the war (T 22 and 23). He has an extensive collection of train lore (T 23). After looking for a train to buy for approximately 10 years, he finally found one in Rhode Island, paid \$28,000.00 for the train and spent \$3,000.00 to ship it to his home in Baltimore (T 24). To date he has spent approximately \$35,000.00. (T 25).

The engine looks like a steam locomotive, but is driven by a four-cylinder gasoline engine with a muffler. The engine is approximately 15 feet long and has four cars with seats and a canvas canopy (T 24, 25). It is as quiet as an automobile. (T 24).

While a regular train has a track with a 4 foot 8 1/2 inch gauge, Mr. Prosser testified that the gauge of his train is 2 feet, which is forty percent as large as a regular train (T 24) - Note: actually the gauge is 42.5 percent as large as a regular train, and the engine by volume approximately 3 percent as large as a regular train - not 40 percent as large as a regular train as erroneously stated by Appellants in paragraph 2 of their Amended Petition on Appeal and paragraph 3 of their Memorandum.

The Appellees' property contains 9.1 acres (T 39). Inasmuch as we are concerned about a front and side yard variance, the area to the front of a line drawn through the rear of Appellees' house contains 1.5 acres (T 32). The area from the rear of

Appellees' house to the rear lot line is 7.6 acres. Therefore, 16.5 percent of his total property is situated to the front and 83.5 percent to the rear. The track ties and ballast will occupy 2500 square feet in the front, or 0.057 of an acre which is 3.8 percent of the 1.5 acres in the front. The track, ties and ballast in the rear will occupy 20,000 square feet, or .46 of an acre which is 6.1 percent of the 7.6 acres situated in the rear.

The engine and cars will be housed in a shed to the rear of Appellees' house. Immediately to the rear of this shed, running for the entire width of their property, is an escarpment or cliff with a drop of approximately 20 feet (T 42). There is a 70 foot difference in elevation in the back property from the low point to the high point. (T 39). The only way the Appellees can get the train into the woods (the back part of the property) is to start the track around the side of the house and approach the cliff at an angle and use the width of the property to get the train from the front level to the lower level. (T 42-43). Once in the back it would be necessary to again make use of the entire width of the property to get the train from the lower level to the upper level where the train shed is located and thence around the house and into the shed (T 43-44). Also, the Appellee explained that if it were not possible for him to bring the train up to the upper level, anyone wishing to ride on the train would have to go back into the woods to get on the train which would cause a problem. (T 49). The Appellee testified that his goal is to have a scenic railroad in the back and most of the trackage will be in the back. (T 40). In any event, with approximately 500 feet of track in the front, a train travelling at 10 m.p.h. would travel 14 feet per second, and, therefore, it would only take the train 34 seconds to traverse the trip around the front of the house. The total length of the train with all four cars attached would be 100 feet long. The Appellee stated that only 2 of the cars have been overhauled and this is all he anticipated using (T 38). The person operating the engine has an unrestricted view since he sits on top of what would be the tender of a steam locomotive and looks

over the top of the whole engine (T 36). Every wheel on the engine and every wheel in every car has hydraulic brakes on them, air-padded hydraulic brakes. (T 70) The engine has a throttle which can be instantaneously reversed because of a hydrostatic transmission. (T 71). Also the brake is on an air switch with a safety device to warn about air pressure (T 71). The Appellee testified that the train was very sophisticated from a safety standpoint (T 70).

Except for the witness, Anna Grue, who lives directly across the street from the appellees, and testified she had sold her house, and Raymond Hohman, who lives at 4410 Meadow Cliff Road, there is no testimony that any of the Appellants properties are within sight or sound of the subject property as stated in Appellants' Memorandum. In fact, Karl Braungart, one of the Appellants, testified that he had just purchased a property on the new road extension of Meadow Cliff Road approximately 5 houses from the Appellees.

The Board of Appeals in its Opinion and Amended Opinion, agreed that the placement of the track in the rear yard is permitted as a matter of right.

ARGUMENT

Section 307 of the Baltimore County Zoning Regulations authorizes the Board to grant variances from area and height regulations *** where strict compliance with the *** Regulations *** would result in practical difficulty or unreasonable hardship. It then provides: "However, any such variance shall be granted only if in strict harmony with the spirit and intent of said regulations, and only in such manner as to grant relief without substantial injury to the public health, safety, and general welfare."

Perforce, in the instant case, we are concerned with an "area variance" and not a "use variance". As a result, we are concerned here with the "practical difficulty" test, and not the "unreasonable hardship" test required in a "use variance" case. The distinction between the two tests is concisely stated on

pages 38-39 of Anderson v Board of Appeals, 22 Md. App. 28 - copy attached for the Court's convenience.

Having heard all the testimony, and examined all of the exhibits, the Board granted the requested variance because it believed that restricting the track to the rear yard would pose unreasonable hardship and practical difficulty due to the very steep incline in the property just to the rear of the house. It concluded that the track would not substantially injure the public health, safety or general welfare.

It is submitted that the Board had at least sufficient evidence before it to make the question of "practical difficulty" a debatable one; and under the established law in Maryland, its order should, therefore, be affirmed. *Loan Ass'n. v. Buschman*, 227 Md. 243, at page 250.

The evidence presented to the Board which would permit them to reach the conclusion they did - and grant the requested variance - has been fully set forth in the Statement of Facts. However, to highlight those facts in relation to the test, the following summary is submitted, viz:

TEST 1.

(a) Railroad and trains are the Appellee's only hobby.

(b) Without any reason to believe that he could have a problem with the Zoning Regulations the Appellee has already spent \$35,000 on the train and equipment.

(c) Because of the escarpment, compliance with the strict letter of the area regulations would unreasonably prevent the Appellee from using his property for a permitted purpose because he would not be able to get his train to the 7.6 acres in the back of his house.

(d) There is no level place in the woods to house the train.

(e) Passengers would have difficulty getting to the train if the Appellees were required to keep it in the woods.

TEST 2.

(a) A grant of the variance will do substantial justice to the Appellee because it will permit him to use the train in pursuance of his hobby, and for the pleasure of his family, while he spends the next few years constructing the tracks in the rear of his property.

(b) A grant of the variance will permit the Appellee to test the capabilities of his engine so that he will be relieved of trial and error, and great expense, in designing the grades and curves in the rear of his property.

(c) No lesser relaxation than that applied for will give substantial relief to the Appellee because he needs the loop around the front of his house in order to get the train to the rear of his property, and to make the ascent from the rear to the front of his property, and hence around the house back into the shed which houses the train.

(d) This minimal use of the front of his property would be consistent with justice to other property owners because the Appellee has an absolute right to use the train in the rear of his house, in any event.

TEST 3.

(a) Most, if not all, property owners in the area have large tractors, with carts, leaf catchers, etc. operating for many hours per week on their property. The train, of minimal increase in size, would operate on Appellees' property only for occasional, short periods of time.

(b) The train would make less noise than a garden tractor.

(c) The train can be stopped as quickly, if not quicker, than a garden tractor - and it has no sharp dangerous blades for mowing grass.

(d) Whereas a garden tractor goes back and forth in the front of a house for long periods of time, the train will only be visible for a matter of seconds in front of the house.

(e) The periodic sightings of the train should be less objectionable than the constant parking of a mobile home, or house trailer or a boat and trailer in a driveway which is prevalent throughout Baltimore County. The Board agreed that there was no prohibition to having a recreational vehicle parked in a yard. (T 17)

(f) Appellee will not permit the tracks in front of his house to be unsightly. Appellees have lived in their substantial home for 25 years and desire to keep it attractive.

(g) The Community consists primarily of large acreage lots, eg. the Appellees 9.1 acres; one of the Appellants', Anna Grue 3 1/2 acres; next door to the Appellees about 6 acres; next door to them 4 or 5 acres (T 56). Therefore, except for the Appellants Grue and Hohman, it is highly unlikely that any of the neighbors will be able to see or hear the train from their properties.

As the Honorable Judge Levine stated in the course of his opinion for the Court of Appeals in the case of *McLean v Soley*, 270 Md. 208 at page 214 "We think it clear that the evidence in this case was fairly debatable on the issue of 'practical difficulty'. After quoting the 'practical difficulty' test as stated in *Rathkopf, The Law of Zoning and Planning*, Judge Levine continued "(G)iven the unique facts of this case, we think those criteria are met by this evidence". He then summarized the evidence.

The above quotes from *McLean v Soley* can be stated with equal force in the instant case and the summary of the evidence requires the sustaining of the Board.

Less there be any doubt in the Courts mind that the decision of the Board should be sustained, it would be well to set forth in full, the conclusions of the *McLean v Soley* court (at pages 215, 216), viz:

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

Stone, 253 Md. 533, 542, 253 A.2d 372 (1969):

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

This statement is applicable here.

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

It is respectfully submitted that any and all other matters raised and argued by Appellants in their Petition for Appeal and Memorandum, except the variance, are not before this Court on appeal. *County Fed. S. & L. v Equitable S. & L.*, 261 Md. 246, 254 (1970).

Maryland Rule 2e requires every appellant, in appealing the decision of an administrative agency, to file a petition setting forth "the action appealed from, the error committed by the agency in taking such action, and the relief sought." The Petition required, is in support of the Order for Appeal which sets forth the action of the Board from which the appeal is taken.

In the instant case the Order for Appeal reads as follows, viz:

"Mr. Clerk:

Please enter an appeal on behalf of Raymond G. Hohman, Jr., Anna D. Grue, Steven W. Stauffer and Patricia L. Stauffer from the Order of the Baltimore County Board of Zoning Appeals, entered on January 12, 1984, and the Amended Order of the Board of Appeals, entered on February 8, 1984 granting the above-referenced variance."

As a result, the scope of the subject appeal has been delimited by the appellants to the Board's Order and Amended Order "granting the above-referenced VARIANCE". In their Order for appeal the Appellants have raised no other issue.

In its original order dated January 12, 1984, and in its amended order dated February 8, 1984, the Board made it clear

that in its opinion the placement of the track in the rear yard would be permitted as of right. No appeal was taken from this part of the opinion and order. The appeal was limited to the "granting of the variance."

In the case of *Dahl v County Board of Appeals*, 258 Md. 157 (1970), one Baylus sought reclassification of two separate parcels which were in close proximity to each other. The Zoning Commissioner granted one application, and denied the other. Baylus did not appeal the denial of the one parcel, but the protestants filed an Appeal to the Board of Appeals from that part of the order granting the reclassification of the other parcel. The appeal was worded as follows, viz:

"Please note an Appeal from the portions of said Order granting the requested rezoning and variances to the Board of Appeals of Baltimore County on behalf of Earl S. Jones, et al., residents and protestants." (Emphasis supplied)."

The Zoning Regulations provided that "Appeals from the Zoning Commissioner shall be heard by the County Board of Appeals de novo ***". The Board, at the hearing before it, heard testimony as to the zoning of both parcels of land, and ultimately ordered that both parcels should be reclassified. The Board's decision was upheld by the Circuit Court. The Dahl Court, at page 163, concluded that the scope of a *de novo* hearing is restricted to the specific issue or issues resolved by the Commissioner from which an appeal is taken.

Therefore, the Dahl court reversed the granting of the reclassification from which no appeal had been taken.

The appeal now before this court has an even stronger posture than the situation before the Dahl court. There, the appeal before the Board was being heard "de novo" - not on the record as is the case here.

As a result, in the instant case, in addition to the fact that the Order for Appeal specifically recited that it was from the "granting of the variance", the appeal is restricted to the parameters of the record made before the Board. Although the Protestants were represented by counsel in the hearing before the

Board, at no time were any of the questions now attempted to be raised by the Appellants presented to the Board for their consideration. In short, no question other than the variance requested was raised or argued before the Board. As a consequence no question, other than the variance, can be raised for the first time in this appeal on the record.

It would be well to note serious prejudice to the Appellees if the Court should rule otherwise and permit argument on all of the other issues now raised by Appellants.

The appellees had received an adverse ruling from the Board on their Motion to Dismiss. The Appellees being satisfied with the limiting of any appeal to the granting of this variance, chose not to appeal the question of whether or not their Motion to Dismiss should have been granted. They would now be estopped from presenting and arguing this question in the present appeal.

WHEREFORE, the Appellees respectfully request that the amended order of the Board of Appeals granting the requested variance be sustained.

Ernest C. Trimble

William S. Wilson, Jr.

Attorneys for Appellees

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the day of April, 1984, a copy of the foregoing Memorandum was mailed, postage prepaid to K. Donald Proctor and Virginia W. Barnhart, Miles and Stockbridge, 401 Washington Avenue, Towson, Maryland 21204, attorneys for Appellants, Phyllis Friedman, Peoples' Counsel, Court House, Towson, Maryland 21204, and Edith Eisenhart, County Board of Appeals of Baltimore County, Room 200, Court House Towson, Maryland 21204.

Ernest C. Trimble

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BOWTIE, MARYLAND 21030
1701 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20006

April 24, 1984

Clerk
Circuit Court for Baltimore County
Court House
Towson, Maryland 21204

Re: In The Matter of The Application
of Joseph Prosser, et ux. For
Variance
Case No. 84-M-56/111/16

Dear Mr. Clerk:

Please file the enclosed Reply Memorandum and Affidavits
in the above-referenced action.

Many thanks for your anticipated cooperation.

Very truly yours,

Virginia W. Barnhart

VWB/ksm

cc: All Counsel of Record

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IN THE MATTER OF
THE APPLICATION OF
JOSEPH PROSSER, ET UX.
FOR VARIANCE FROM
SECTION 400.1 OF THE
BALTIMORE COUNTY
ZONING REGULATIONS
S/S MEADOWCLIFF ROAD
1505.84' E. GLEN ECHO ROAD
11TH DISTRICT - No. 83-259-A
(ITEM 185)

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
Case No. 84-M-56/111/16

APPELLANTS' REPLY MEMORANDUM

Appellants, Raymond G. Hohman, Jr., Mary J. Hohman, Anna D. Grue, Steven W. Stauffer, Patricia L. Stauffer, Karl S. Braungart, Gretchen A. Braungart, Rowland M. Rushworth and Virginia B. Rushworth, by their attorneys, K. Donald Proctor and Virginia W. Barnhart, submit the following Reply Memorandum in support of their Amended Petition on Appeal, pursuant to Maryland Rule B 12.

INTRODUCTORY STATEMENT

This appeal arises from a Petition filed by Joseph and Elizabeth Prosser (hereinafter "Appellees"), on March 29, 1983, seeking a variance from Section 400.1 of the Baltimore County Zoning Regulations for the construction of a "small" private railroad in their front, side and rear yards. The Appellees' property is located at 4407 Meadowcliff Road, Glen Arm, Maryland (T. 21).

During a hearing before the Zoning Commissioner, Appellants, Raymond G. Hohman, Jr., Anna D. Grue and Rowland B. Rushworth objected to the construction and operation of the subject railroad. Mr. Hohman specifically objected to the Appellees' proposal on the grounds that neither the proposed

Section 400.1 requires that all accessory structures shall be located only in the rear yard and shall occupy not more than 40% thereof." B.C.Z.R. 5400.1.

Appellants, Anna D. Grue and Karl S. Braungart offered further objections to the proposed railroad during examination by People's Counsel.⁵

On January 12, 1984, the Board granted the subject variance and imposed certain restrictions upon the Appellees' use of their train. At the urging of People's Counsel, the Board amended its original order, on February 8, 1984, striking all references to the use of the Appellees' train and removing the aforesaid restrictions.

The Appellants filed a timely appeal to this Court, on February 10, 1984, and thereafter amended their Order for Appeal and supporting Petition on March 2, 1984. The Appellants' Memorandum in support of their Petition was filed on March 23, 1984, and the Appellees filed a timely response on April 9, 1984. The following Memorandum is offered in response thereto.

DISCUSSION OF AUTHORITY

The Appellees suggest that the Appellants are not sufficiently aggrieved to institute this appeal. Such a suggestion is completely unfounded. To begin with, each Appellant (or their respective spouses) objected to the proposed railroad at either, or both, of the aforesaid hearings, or by letter to the Board.⁶ Inasmuch as the Board incorporated the record and

⁵Appellant, Raymond G. Hohman, Jr., arrived at the hearing shortly before its closing and was introduced to the Board. On the recommendation of Mr. Zimmerman, however, Mr. Hohman did not testify, but Mr. Zimmerman attempted to summarize what his objections would have been had he taken the stand (T. 75-76).

⁶Appellant Stephen W. Stauffer, purchaser of the home of Anna D. Grue, raised several objections to the proposed railroad by letter dated January 13, 1984, and received by the Board well prior to the entry of its Amended Order, on February 8, 1984.

opinion of the Zoning Commissioner, reflecting the Appellants' objections, the Appellees' challenge to their standing cannot seriously be considered. Moreover, at no stage prior to this appeal, did the Appellees ever question the Appellants' standing as protestants. The Appellants thus suggest that the Appellees are precluded from raising such a challenge herein.

In the event, however, that this Court determines further proof of the Appellants' aggrieved status is necessary, the Appellants offer the Affidavits filed herewith (or to be filed in the future), to demonstrate the proximity and effect of the proposed railroad on their properties, pursuant to Maryland Rule B 10. See, e.g., Town of Somerset v. Montgomery County Bd. of Appeals, 245 Md. 52, 225 A.2d 294 (1966). To demonstrate standing on appeal, an appellant must establish that he was both a "party" to the proceedings below, and aggrieved by the decision appealed from. See, e.g., Shore Acres Improvement Assn. v. Anne Arundel County, 251 Md. 310, 313-17, 247 A.2d 402 (1968); Wier v. Whitney Land Co., 257 Md. 600, 610-11, 263 A.2d 833 (1970); Brynarcki v. Montgomery County Bd. of Appeals, 247 Md. 137, 143-44, 270 A.2d 289 (1967).

Each of the Appellants has clearly satisfied these requirements. To constitute a party, one need not have testified before an administrative agency, so long as the record shows he was a party to the proceedings in fact. See, DuBay v. Crane, 240 Md. 180, 184, 213 A.2d 487 (1965). Generally speaking, an appellant need only establish that his objections were known to the administrative agency, by testimony, letter or otherwise. Id.

With the exception of the Stauffers, each of the Appellants testified in opposition to the proposed railroad before either, or both, the Board and/or Commissioner. The Stauffers,

however, privies to the property interest of Appellant, Anna D. Grue, raised their opposition to the proposed railroad, by letter dated January 13, 1984, and received by the Board well prior to the entry of its Amended Order. The Maryland courts have long since agreed that such letters satisfy the first requirement of standing. See, e.g., Hertelendy v. Montgomery County Bd. of Appeals, 245 Md. 554, 567-68, 226 A.2d 672 (1967).

In addition, each of the Appellants have demonstrated a sufficient adverse effect upon their personal or property rights, to establish their aggrieved status. Despite the Appellees' suggestion to the contrary, each of the Appellants, including the Braungarts, own interests in property within sight and sound distance of the subject lot. Indeed, the Appellees overlook the fact that their lot lies well below the level of their neighbors', and thus can and will be seen from the Appellants' present and prospective homes. The Appellants' concerns regarding safety, nuisance and devaluation of their properties must thus be acknowledged in determining their right to appeal. See, e.g., Chatham Corp. v. Beltram, 252 Md. 578, 583-84, 251 A.2d 1 (1969); Leroux v. Baltimore, 248 Md. 106, 109-10, 234 A.2d 747 (1967).

The Appellees also suggest that the only issue presented by this appeal is that of variance. As such, they offer little or no response to the remaining issues raised in the Appellants' Petitions. Rather, the Appellees contend that the "accessory" nature of their proposed railroad must be assumed herein, inasmuch as it was neither raised nor questioned before the Board. Such a suggestion is completely unfounded.

The application of the term "accessory" to the proposed railroad has been questioned by the Appellants since the

track or train were "accessory" in nature. (See, Order of the Zoning Commissioner of Baltimore County, Case No. 83-259-A, dated June 22, 1983).² While the Zoning Commissioner rendered no specific ruling in response to this objection, he nonetheless disallowed the subject variance on the grounds that the Appellees had failed to demonstrate sufficient undue hardship or practical difficulty to sustain such a variance. The Appellees thereafter filed a timely appeal to the Baltimore County Board of Appeals.

At a hearing before the Board, the Appellees moved to dismiss their appeal on the grounds that: (1) the only "accessory structure" covered by the Zoning Regulations was the building which houses the engine and cars in the rear yard, and thus required no variance; and (2) that the operation of the proposed train, and incidental installation of the subject track, constituted an "accessory use", permitted as of right (T. 3-21).

Following argument³, the Board denied the Appellees' Motion, and thereafter accepted testimony on the proposed variance. At the request of counsel, the Board expressly adopted, as a part of the record, the complete file of the Zoning Commissioner, thereby incorporating the objections of the Appellants, as noted in the Commissioner's Opinion.⁴

²An actual transcript of the Appellants' testimony is unavailable. The recording of the hearing proved inaudible.

³The Motion was opposed by Peter Max Zimmerman, Assistant People's Counsel for Baltimore County (T. 3-21). Mr. Zimmerman, however, attended the hearing as representative for the County, and was not, as the Appellees suggest, counsel to the Protestants.

⁴Neither party offered any objection to the introduction of the Zoning Commissioner's file and it was entered before the Board as Joint Exhibit No. 1 (T. 37-38).

institution of this action. Indeed, this very issue was raised before the Zoning Commissioner, by the Appellant, Raymond G. Hohman, Jr., and noted in the Commissioner's Opinion. Inasmuch as the parties agreed to incorporate the Commissioner's file as a portion of the Board's record, the Appellees' challenge to the scope of the Appellants' Petition must fail. In fact, it was the Appellees themselves who debated the definition of "accessory" during argument, as the basis for their Motion to Dismiss (T. 3-21).

Nonetheless, the Appellees suggest that the language of the Appellants' Order for Appeal in some way limits the issues herein. The Appellants strongly disagree. Despite the Appellees' attempt to confuse the same, the Appellants' Order of Appeal requested that an appeal be entered on their behalf

...from the Order of the Baltimore County Board of Zoning Appeals, entered on January 12, 1984, and the Amended Order of the Board of Appeals, entered on February 8, 1984 granting the above-referenced variance.

The fact that the Appellants referred to the Board's granting of a variance in no way limits the scope of their appeal. Indeed, the very caption adopted by the Board and Zoning Commissioner, and reiterated above, contains reference to the question of variance. To suggest that a virtually identical reference in the Appellants' Order of Appeal now limits the issues that may be properly considered is ludicrous. Such a suggestion is merely an attempt to avoid the substance of the Appellants' contentions and to construe the Rules of Procedure in a manner never intended.

To begin with, the Appellants remind this Court, that the Appellees have filed an Answer to each and every paragraph of the Appellants' Petition, and have thus precluded their right

to challenge the scope of the same. In addition, Maryland Rule B 2 provides that an appellant

shall join with his order for appeal, or shall file with the clerk of the court, within ten days after filing the order, a petition setting forth the action appealed from, the error committed by the agency in taking such action, and the relief sought... (emphasis added).

It is thus the Petition, and not the Appellants' Order for Appeal, which delineates "the action appealed from [and] the error committed."

To suggest that the Court of Appeals' decision in Dahl v. County Board of Appeals, 258 Md. 157, 265 A.2d 227 (1970), in some way modifies the clear intent of this statute is simply incorrect. In Dahl, the language of the Appellant's Order for Appeal specifically limited the scope of an appeal to the reclassification of one parcel of land, despite the fact that the Appellants' original application had involved a second parcel as well. Such a specific limitation is clearly lacking in the Appellants' Order for Appeal. The Appellants entered an appeal from the original and Amended Orders of the Board. Any suggestion that their acknowledgement that such orders effected a variance in some way limits their Petition, where the Appellees have answered each and every paragraph therein, cannot seriously be considered.

Furthermore, the Appellants remind this Court that both their Amended Order of Appeal and Amended Petition were filed well within the thirty-day period for entry of an appeal from the Board's Amended Order. The Appellants thus outlined to both the Court and the Appellees prior to the expiration of the thirty-day period, the following actions and findings of the Board from which they appeal:

-7-

- (1) The Board's finding that the Appellee's railroad and train track were "accessory" in nature, without legally sufficient evidence to demonstrate that they were "customarily incident" and "subordinate to" the principle use or structure;
- (2) The Board's finding that the Appellee's railroad and train track were "accessory" in nature, without legally sufficient evidence to demonstrate that the subject track was or would be subordinate in area or extent to the principle use or structure;
- (3) The Board's granting of the subject variance without legally sufficient evidence to demonstrate that restricting the track to the Appellees' rear yard would pose undue hardship or unreasonably prevent the Appellees from using their property for the intended purpose;
- (4) The Board's granting of the subject variance without legally sufficient evidence to demonstrate that the dangerous conditions and devaluation of property values created by the Appellees' railroad would exist regardless of its location;
- (5) The Board's classification of the proposed track and train under Section 1A04.2(A) of the B.C.Z.R.;
- (6) The Board's failure to impose reasonable limitations upon the subject variance; and
- (7) The Board's abuse of reasonable discretion and arbitrary and capricious action in granting the subject variance.

The Appellants' suggestion that they are in some way prejudiced by the allegedly "broad" scope of these issues, when they have already responded to each and every one, is ludicrous.

In addition, the Appellees' assertion that the Appellants' failure to file a Cross-Appeal from the decision of the Zoning Commissioner in some way limits this appeal is similarly unfounded. While the application of the term "accessory" to the proposed railroad was raised before the Zoning Commissioner, his opinion contained no specific or appealable ruling thereon. To the extent that this Court finds otherwise, the Appellants remind the Court that they were unrepresented by counsel prior to instituting this appeal, and that the Appellees themselves raised the question of "accessory structures

-8-

and uses" before the Board in their Motion to Dismiss and failed to object to the introduction of the Commissioner's file, in which the objections of the Appellants were noted. As such, the Appellants contend that the scope of their appeal is delineated by their original and Amended Petitions, and not limited to the question of variance.

While the Appellees have chosen to ignore the remaining issues in the Appellants' Petition, they do, however, suggest that the proposed railroad is subordinate in area to their principle use. Yet, while they have expended much effort to outline the amount and percentage of square footage their track ties and ballast will allegedly occupy, the Appellees overlook the very purpose of the applicable regulations which define the term "accessory". As noted in the Appellants' initial Memorandum, "accessory structures and uses" are defined under Section 101 as:

A use or structure which--(a) is customarily incident and subordinate to and serves a principal use or structure; (b) is subordinate in area, extent, or purpose to the principal use or structure; (c) is located on the same lot as the principal use or structure served; and (d) contributes to the comfort, convenience, or necessity of occupants, business, or industry in the principal use or structure served (emphasis added).

Clearly such a definition contemplates the construction and maintenance of only those structures and uses, which are minor in significance to a principal use. The Appellants thus insist that the area encompassed by the proposed railroad cannot be measured, in applying the aforesaid definition, by reference to the square footage actually covered by the track and ballast, but must be evaluated with reference to the winding and involved nature of the track, and the overall layout of the proposal. When viewed realistically, it is obvious that the

-9-

Appellees' railroad will encompass a far more extensive area of their lot than their "primary" structure.

Finally, the Appellants continue to dispute the Board's finding of undue hardship or practical difficulty. Despite the Appellees' attempts to persuade this Court otherwise, Appellee Joseph Prosser, conceded during his testimony that the subject track could be laid in a rough circle in his rear and rear-side yards, largely hidden from his neighbors' view (T. 49). The sole objection to this alternative was that his passengers would be forced to board the train in the woods behind his home--a problem which even Mr. Prosser admitted was not insurmountable (T. 49). As such, the record before the Board clearly fails to establish the requisite burden necessary to sustain a variance of the scope and kind permitted herein.

Assuming arguendo that this Court chooses to uphold the Board's decision, the Appellants again insist that the Board's Order be amended to require the Appellees, as suggested in their Memorandum, to conceal the subject track through the use of appropriate shrubbery and landscaping.

WHEREFORE, the Appellants respectfully request that the aforesaid Orders of the County Board of Appeals be reversed and the Appellees construction of their proposed railroad be prohibited, on the basis of the foregoing reasoning and the reasoning set forth in the Appellants' Memorandum.

K. Donald Proctor
MILES & STOCKBRIDGE
401 Washington Avenue
Towson, Maryland 21204
(301) 821-6565

Virginia W. Barnhart
MILES & STOCKBRIDGE
401 Washington Avenue
Towson, Maryland 21204
(301) 821-6565

Attorneys for Appellants

-10-

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of April, 1984, a copy of the foregoing Appellants' Reply Memorandum was mailed, postage prepaid, to William S. Wilson, Jr., Esquire, 405 Bosley Building, 210 Allegheny Avenue, Towson, Maryland 21204, Ernest C. Trimble, Esquire, 200 Lafayette Building, 40 West Chesapeake Avenue, Towson, Maryland 21204, Peter Max Zimmerman, Esquire, Deputy People's Counsel for Baltimore County, Room 223, Court House, Towson, Maryland 21204, Phyllis Friedman, Esquire, Court House, Towson, Maryland 21204, Edith Eisenhart, County Board of Appeals of Baltimore County, Room 200, Court House, Towson, Maryland 21204, John Anderson, Manor Hill Farm, Glen Arm, Maryland 21057, and Arnold Jablon, Zoning Commissioner of Baltimore County, 111 W. Chesapeake Avenue, Room 113, Towson, Maryland 21204.

Virginia W. Barnhart
Virginia W. Barnhart

-11-

IN THE MATTER OF
THE APPLICATION OF
JOSEPH PROSSER, ET UX.
FOR VARIANCE FROM
§400.1 OF THE
BALTIMORE COUNTY
ZONING REGULATIONS
S/S MEADOWCLIFF ROAD
1505.84' E. GLEN ECHO ROAD
11TH DISTRICT - No. 83-259-A
(ITEM 185)

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
Case No. 84-M-56/111/16

AFFIDAVIT OF PATRICIA L. STAUFFER

STATE OF MARYLAND)
(TO WIT
COUNTY OF BALTIMORE)

I, PATRICIA L. STAUFFER, being duly sworn, depose and say:

1. I am over eighteen (18) years of age and competent to testify to and have personal knowledge of the matters set forth herein.
2. I am a current owner of the property known as 4406 Meadowcliff Road, Glen Arm, Maryland, titled in both mine and my husband's names, as tenants by the entireties.
3. Said property is located on a hill, directly across Meadowcliff Road from the property known as 4407 Meadowcliff Road, owned by the Appellees, Joseph and Elizabeth Prosser.
4. As such, our property is within sight and sound distance of the Appellees' lot and proposed railroad.
5. I object to the proposed railroad on the grounds that it is a safety hazard, a nuisance, a threat to local property values, and not customarily incidental to a neighborhood such as ours.

I DO SOLEMNLY DECLARE AND AFFIRM under penalty of perjury that the contents of the foregoing Affidavit are true and correct.

Patricia L. Stauffer
Patricia L. Stauffer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of April, 1984, a copy of the foregoing Affidavit was mailed, postage prepaid, to William S. Wilson, Jr., Esquire and Ernest C. Trimble, Esquire, 405 Bosley Building, 210 Allegheny Avenue, Towson, Maryland 21204, Peter Max Zimmerman, Esquire, Deputy People's Counsel for Baltimore County, Room 223, Court House, Towson, Maryland 21204, Phyllis Friedman, Esquire, Court House, Towson, Maryland 21204, Edith Eisenhart, County Board of Appeals of Baltimore County, Room 200, Court House, Towson, Maryland 21204, John Anderson, Manor Hill Farm, Glen Arm, Maryland 21057, and Arnold Jablon, Zoning Commissioner of Baltimore County, 111 W. Chesapeake Avenue, Room 113, Towson, Maryland 21204.

Virginia W. Barnhart
Virginia W. Barnhart

-12-

IN THE MATTER OF
THE APPLICATION OF
JOSEPH PROSSER, ET UX.
FOR VARIANCE FROM
§400.1 OF THE
BALTIMORE COUNTY
ZONING REGULATIONS
S/S MEADOWCLIFF ROAD
1505.84' E. GLEN ECHO ROAD
11TH DISTRICT - No. 83-259-A
(ITEM 185)

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW

Case No. 84-M-56/111/16

AFFIDAVIT OF STEVEN W. STAUFFER

STATE OF MARYLAND)
(TO WIT
COUNTY OF BALTIMORE)

I, STEVEN W. STAUFFER, being duly sworn, depose and say:

1. I am over eighteen (18) years of age and competent to testify to and have personal knowledge of the matters set forth herein.
2. I am a current owner of the property known as 4406 Meadowcliff Road, Glen Arm, Maryland, titled in both mine and my wife's names, as tenants by the entireties.
3. Said property is located on a hill, directly across Meadowcliff Road from the property known as 4407 Meadowcliff Road, owned by the Appellees, Joseph and Elizabeth Prosser.
4. As such, our property is within sight and sound distance of the Appellees' lot and proposed railroad.
5. I object to the proposed railroad on the grounds that it is a safety hazard, a nuisance, a threat to local property values, and is not customarily incidental to any neighborhood such as ours.

I DO SOLEMNLY DECLARE AND AFFIRM under penalty of perjury that the contents of the foregoing Affidavit are true and correct.

Stephen W. Stauffer
Steven W. Stauffer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of April, 1984, a copy of the foregoing Affidavit was mailed, postage prepaid, to William S. Wilson, Jr., Esquire and Ernest C. Trimble, Esquire, 405 Bosley Building, 210 Allegheny Avenue, Towson, Maryland 21204, Peter Max Zimmerman, Esquire, Deputy People's Counsel for Baltimore County, Room 223, Court House, Towson, Maryland 21204, Phyllis Friedman, Esquire, Court House, Towson, Maryland 21204, Edith Eisenhart, County Board of Appeals of Baltimore County, Room 200, Court House, Towson, Maryland 21204, John Anderson, Manor Hill Farm, Glen Arm, Maryland 21057, and Arnold Jablon, Zoning Commissioner of Baltimore County, 111 W. Chesapeake Avenue, Room 113, Towson, Maryland 21204.

Virginia W. Barnhart
Virginia W. Barnhart

IN THE MATTER OF
THE APPLICATION OF
JOSEPH PROSSER, ET UX.
FOR VARIANCE FROM
§400.1 OF THE
BALTIMORE COUNTY
ZONING REGULATIONS
S/S MEADOWCLIFF ROAD
1505.84' E. GLEN ECHO ROAD
11TH DISTRICT - No. 83-259-A
(ITEM 185)

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW

Case No. 84-M-56/111/16

AFFIDAVIT OF VIRGINIA B. RUSHWORTH

STATE OF MARYLAND)
(TO WIT
COUNTY OF BALTIMORE)

I, VIRGINIA B. RUSHWORTH, being duly sworn, depose and say:

1. I am over eighteen (18) years of age and competent to testify to and have personal knowledge of the matters set forth herein.
2. I am a current owner of the property known as 4310 Meadowcliff Road, Glen Arm, Maryland, titled in both mine and my husband's names, as tenants by the entireties.
3. Said property is located on a hill, across Meadowcliff Road and two homes west of the property known as 4407 Meadowcliff Road, owned by the Appellees, Joseph and Elizabeth Prosser.
4. As such, our property is within partial sight and sound distance of the Appellees' lot and proposed railroad.
5. I object to the proposed railroad on the grounds that it constitutes a safety hazard, a nuisance, a threat to local property values, and is not customarily incidental to a neighborhood such as ours.

I DO SOLEMNLY DECLARE AND AFFIRM under penalty of perjury that the contents of the foregoing Affidavit are true and correct.

Virginia B. Rushworth
Virginia B. Rushworth

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of April, 1984, a copy of the foregoing Affidavit was mailed, postage prepaid, to William S. Wilson, Jr., Esquire and Ernest C. Trimble, Esquire, 405 Bosley Building, 210 Allegheny Avenue, Towson, Maryland 21204, Peter Max Zimmerman, Esquire, Deputy People's Counsel for Baltimore County, Room 223, Court House, Towson, Maryland 21204, Phyllis Friedman, Esquire, Court House, Towson, Maryland 21204, Edith Eisenhart, County Board of Appeals of Baltimore County, Room 200, Court House, Towson, Maryland 21204, John Anderson, Manor Hill Farm, Glen Arm, Maryland 21057, and Arnold Jablon, Zoning Commissioner of Baltimore County, 111 W. Chesapeake Avenue, Room 113, Towson, Maryland 21204.

Virginia W. Barnhart
Virginia W. Barnhart

IN THE MATTER OF
THE APPLICATION OF
JOSEPH PROSSER, ET UX.
FOR VARIANCE FROM
§400.1 OF THE
BALTIMORE COUNTY
ZONING REGULATIONS
S/S MEADOWCLIFF ROAD
1505.84' E. GLEN ECHO ROAD
11TH DISTRICT - No. 83-259-A
(ITEM 185)

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW

Case No. 84-M-56/111/26

AFFIDAVIT OF ROWLAND M. RUSHWORTH

STATE OF MARYLAND)
(TO WIT
COUNTY OF BALTIMORE)

I, ROWLAND M. RUSHWORTH, being duly sworn, depose and say:

1. I am over eighteen (18) years of age and competent to testify to and have personal knowledge of the matters set forth herein.
2. I am a current owner of the property known as 4310 Meadowcliff Road, Glen Arm, Maryland, titled in both mine and my wife's names, as tenants by the entireties.
3. Said property is located on a hill, across Meadowcliff Road and two homes west of the property known as 4407 Meadowcliff Road, owned by the Appellees, Joseph and Elizabeth Prosser.
4. As such, our property is within partial sight and sound distance of the Appellees' lot and proposed railroad.
5. I object to the proposed railroad on the grounds that it constitutes a safety hazard, a nuisance, a threat to local property values, and is not customarily incidental to a neighborhood such as ours.

I DO SOLEMNLY DECLARE AND AFFIRM under penalty of perjury that the contents of the foregoing Affidavit are true and correct.

Gretchen A. Braungart
Gretchen A. Braungart

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of April, 1984, a copy of the foregoing Affidavit was mailed, postage prepaid, to William S. Wilson, Jr., Esquire and Ernest C. Trimble, Esquire, 405 Bosley Building, 210 Allegheny Avenue, Towson, Maryland 21204, Peter Max Zimmerman, Esquire, Deputy People's Counsel for Baltimore County, Room 223, Court House, Towson, Maryland 21204, Phyllis Friedman, Esquire, Court House, Towson, Maryland 21204, Edith Eisenhart, County Board of Appeals of Baltimore County, Room 200, Court House, Towson, Maryland 21204, John Anderson, Manor Hill Farm, Glen Arm, Maryland 21057, and Arnold Jablon, Zoning Commissioner of Baltimore County, 111 W. Chesapeake Avenue, Room 113, Towson, Maryland 21204.

Virginia W. Barnhart
Virginia W. Barnhart

I DO SOLEMNLY DECLARE AND AFFIRM under penalty of perjury that the contents of the foregoing Affidavit are true and correct.

Rowland M. Rushworth
Rowland M. Rushworth

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of April, 1984, a copy of the foregoing Affidavit was mailed, postage prepaid, to William S. Wilson, Jr., Esquire and Ernest C. Trimble, Esquire, 405 Bosley Building, 210 Allegheny Avenue, Towson, Maryland 21204, Peter Max Zimmerman, Esquire, Deputy People's Counsel for Baltimore County, Room 223, Court House, Towson, Maryland 21204, Phyllis Friedman, Esquire, Court House, Towson, Maryland 21204, Edith Eisenhart, County Board of Appeals of Baltimore County, Room 200, Court House, Towson, Maryland 21204, John Anderson, Manor Hill Farm, Glen Arm, Maryland 21057, and Arnold Jablon, Zoning Commissioner of Baltimore County, 111 W. Chesapeake Avenue, Room 113, Towson, Maryland 21204.

Virginia W. Barnhart
Virginia W. Barnhart

LAW OFFICES
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100 NORTH WEST STREET
JACKSON, MARYLAND 21093

1000 HUNTERFORD COURT
ROCKVILLE, MARYLAND 20850

1700 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20006

May 2, 1984

Clerk
Circuit Court for Baltimore County
Court House
Towson, Maryland 21204

RE: In the Matter of the
Application of Joseph
Prosser, et ux. for Variance
Case No. 84-M-56/111/16

Dear Mr. Clerk:

Please file the enclosed Affidavits as attachments
to the Appellants' Reply Memorandum filed on April 24, 1984.

Many thanks for your continued assistance.

Very truly yours,

Virginia W. Barnhart

WB:ld

cc: All counsel of record

RECEIVED
COUNTY BOARD OF APPEALS
MAY 4 11:04

IN THE MATTER OF
THE APPLICATION OF
JOSEPH PROSSER, ET UX.
FOR VARIANCE FROM
§400.1 OF THE
BALTIMORE COUNTY
ZONING REGULATIONS
S/S MEADOWCLIFF ROAD
1505.84' E. GLEN ECHO ROAD
11TH DISTRICT - No. 83-259-A
(ITEM 185)

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW

Case No. 84-M-56/111/16

AFFIDAVIT OF GRETCHEN A. BRAUNGART

STATE OF MARYLAND)
(TO WIT
COUNTY OF BALTIMORE)

I, GRETCHEN A. BRAUNGART, being duly sworn, depose and say:

1. I am over eighteen (18) years of age and competent to testify to and have personal knowledge of the matters set forth herein.
2. I am a current owner of the property known as 4510 Meadowcliff Road, Glen Arm, Maryland, titled in both mine and my husband's names, as tenants by the entireties.
3. Said property is located on a hill, across Meadowcliff Road, and five lots east of the property known as 4407 Meadowcliff Road, owned by the Appellees, Joseph and Elizabeth Prosser.
4. As such, our future home will be within partial sight and sound distance of the Appellees' lot and proposed railroad.
5. I object to the proposed railroad on the grounds that it is a safety hazard, a nuisance, a threat to property values, and is not customarily incidental to a neighborhood such as ours.

RECEIVED
COUNTY BOARD OF APPEALS
MAY 4 11:04

RAYMOND G. HOHMAN, JR.
ANNA D. GRUB
STEVEN W. STAUFFER
PATRICIA L. STAUFFER

ATTORNEYS

Virginia W. Barnhart
K. Donald Proctor
Miles & Stockbridge
401 Washington Ave. (04)
821-6565

Ernest C. Trimble
William S. Wilson, Jr.

IN THE MATTER OF THE APPLICATION OF
JOSEPH PROSSER, ET UX. FOR VARIANCE
FROM §400.1 OF THE BALTIMORE COUNTY
ZONING REGULATIONS S/S MEADOWCLIFF
ROAD 1505.84' E. GLEN ECHO ROAD
11TH DISTRICT - NO. 83-259-A
(ITEM 185)

BALTIMORE COUNTY BOARD OF ZONING

RECEIVED
COUNTY BOARD OF APPEALS
NOV 21 11 17

8-20-84 Opinion Sent

COSTS

MSC # 8456 #
1-CLRK 60.00
3-LEAD 5.00
CHECK T/C 65.00
#16113 C001 M2 T12M2
02/10/84

- Feb. 10, 1984
(1) Plaintiff's Order for Appeal from the decision of Baltimore County Board of Zoning fd.
(2) Feb. 14, 1984 - Certificate of Notice fd.
(3) Feb. 21, 1984 - Plaintiff's Petition for Appeal fd.
(4) Feb. 23, 1984 - Transcript of Record fd.
(5) Feb. 23, 1984 - Notice of Filing of Record fd.
(6) Mar. 3, 1984 - Appellants Amended Order for Appeal fd.
(7) Mar. 5, 1984 - Appellants Amended Petition for Appeal fd.
(8) March 6, 1984 - Certificate of Notice on Amended Order for Appeal fd.
(9) March 6, 1984 - Amended Answer of Proceedings before the Zoning Commissioner & the Board of Appeals of Baltimore County fd.
(10) March 16, 1984 - Amended answer of Proceedings before the zoning commissioner and the board of appeals of Baltimore County for the purpose of including Motion to dismiss fd.
(11) March 20, 1984 - App. of Ernest C. Trimble & William S. Wilson, Jr. as attorneys for the Appellees & same day Answer to Amended Petition on Appeal fd.
(12) March 23, 1984 - Appellants' Memorandum fd.
(13) April 9, 1984 - Appellees' Memorandum & Exhibit fd.
(14) April 14, 1984 - Appellants' Reply Memorandum & Affidavits fd.
(15) May 4, 1984 - Affidavits of GRETCHEN A. BRAUNGART, KARL S. BRAUNGART, MARY J. HOHMAN, RAYMOND G. HOHMAN, JR. fd.

CASE NO. 84 M 156 August 8, 1984 Hon. James S. Sfekas. Hearing had.
Decision held sub-curia. Opinion to be filed.

- (16) Aug. 10, 1984 - Stipulation Regarding Aggrieved Status of Appellants. fd.
(17) Aug. 20, 1984 - Opinion of Court fd. (JSS)

IN THE MATTER OF THE APPLICATION OF
JOSEPH PROSSER, ET UX. FOR VARIANCE
FROM §400.1 OF THE BALTIMORE COUNTY
ZONING REGULATIONS S/S MEADOWCLIFF ROAD
1505.84' E. GLEN ECHO ROAD
11TH DISTRICT - NO. 83-259-A
(ITEM 185)

RAYMOND G. HOHMAN, JR.
ANNA D. GRUB
STEVEN W. STAUFFER
PATRICIA L. STAUFFER

BALTIMORE COUNTY BOARD OF ZONING

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
LAW NO. 84-M-56

OPINION

This appeal arises from a Petition filed on March 29, 1983, by Joseph and Elizabeth Prosser (Applicants) seeking a variance from §400.1 of the Baltimore County Zoning Regulations to extend the construction of track for a "small" amusement-type railroad into their front and side yard. A hearing on the matter was held before the Baltimore County Zoning Commissioner who denied the Petition on the grounds that the Applicants failed to demonstrate sufficient hardship and/or practical difficulty to sustain such a variance. Thereafter, the Applicants filed a timely appeal to the Baltimore County Board of Appeals (Board). On January 12, 1984, the Board reversed the Commissioner's decision, granting the subject variance. After having imposed certain restrictions upon the Applicants' use of their train, the Board amended its original order finding that the use of the Applicants train was not ripe for review. Since the original order has been superceded by the amended order, the amended order is the only one the Court may consider. The protestants to the variance filed a timely appeal to the Court from the Board's decision.

The issue that was decided by the Zoning Commissioner, and subsequently reversed by the board, is whether or not there was undue hardship or practical

difficulty sufficient to warrant the variance permitting the extension of track across the side and front of the property under Section 307, Baltimore County Zoning Regulations. The hobby railroad falls under 1A04.2(g) which is a use permitted as of right. This use is subject to provisions of Section 400.1 which provides for restriction to the rear yard to a total of not more than 40% of the property. Because the Applicants sought to swing a loop of track around the front to work out logistical problems in the overall layout, a variance was required.

The protestants, who did not appeal the Zoning Commissioner's decision, have alleged several points of error beyond the determination of granting the variance under §307. They take issue with the Zoning Commissioner's conclusions that the track and train were accessory in nature, that this is customarily incident and subordinate to the principle use, that the train came under the wrong classification. The Court is limited, however, to the consideration of the issue of undue hardship. Under §501.6 which pertains to appeals to the Board, an appeal shall be heard de novo. The Court of Appeals has determined that

... the meaning of the scope of a de novo hearing as used in relation to an appeal heard by the County Board of Appeals, from a decision of the Zoning Commissioner, is that it is restricted to the specific issue or issues resolved by the Commissioner from which an appeal has been taken.
Bahl v. County Bd. of Appeals, 258 Md. 157, 163 (1970).

The issue before the Board is the issue concerning that which the moving party feels aggrieved. Id. p. 164. The issue on appeal to the Board, therefore, was the Applicants' disagreement with the Zoning Commissioner's finding that there was insufficient hardship or difficulty to grant the variance. The other points have not been preserved for review.

Protestants have raised the issue that the evidence was insufficient to sustain a finding of undue hardship and that the Board did not consider

dangerous conditions and devaluation of property. They further argue that the Board did not impose reasonable limitations on the use of the train. A review of the record indicates that the Applicant presented testimony addressing the three criteria established for determining practical difficulty:

- 1) Whether compliance with the strict letter of the restrictions governing area, set backs, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
- 2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
- 3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.
McLean v. Soley, 270 Md. 208, 214 (1973).

This Court is bound by its scope of review as to whether the evidence was sufficient to make the issue fairly debatable. Id. The Applicant testified regarding difficulty in determining the capability of the engine in handling steep grades and curves in the rear yard. There was testimony regarding the working of the train and the projected use. He testified to the landscaping that would keep the property attractive. As it often happens, this is a close case. Although this Court may have reached a different conclusion, the Court cannot substitute its judgment for that of the Board. Id. at 215. The Board considered the evidence on hardship and property devaluation. The evidence presented was sufficient to make the issue fairly debatable and to support the finding of the Board.

The Court does, however, have difficulty with the Board's determination that the variance is merely to the construction of the track and not to the

use of the train and thus the failure to impose use restrictions. The Court finds that the construction of the track and the use of the train are inseparable. To require subsequent proceedings when all facts and concerns are before the Board is administratively inefficient in time and expense. The Court will remand this case to the Board solely on the issue of ripeness and directs the Board to consider appropriate restrictions on the use of the front track. It is noted that the restrictions imposed in the original opinion may be suitable to the situation.

Dated: August 17, 1984
Copies sent to:
K. Donald Proctor, Esq.
Ernest C. Trimble, Esq.
Baltimore County Zoning Board

James S. Sfekas
James S. Sfekas, Judge

LAW OFFICES
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TOWSON, MARYLAND 21204
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CABLE MILESTOCK
TELEX 67-80

10 LIGHT STREET
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BARTON, MARYLAND 21034
240 RIVERSIDE COURT
ROCKVILLE, MARYLAND 20850
1701 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20006

November 26, 1984

Clerk
Circuit Court for Baltimore County
County Courts Building
P. O. Box 6754
Towson, MD 21204-C754

Re: In The Matter Of The Application Of
Joseph Prosser, et ux. For Variance
Case No. 84-M-156/111/16

Dear Mr. Clerk:

Please file the enclosed Withdrawal of Appearance in the above-referenced action.

Very truly yours,

Virginia W. Barnhart

VWB/xsg

cc: William S. Wilson, Jr., Esquire
Ernest C. Trimble, Esquire
Peter Max Zimmerman, Esquire
Phyllis Friedman, Esquire
Edith Eisenhart
John Anderson
Arnold Jablon
Raymond G. Hohman, Jr.
Mr. and Mrs. Karl Braungart
Mr. and Mrs. Rowland Rushworth
Mr. and Mrs. Stephen Stauffer

IN THE MATTER OF
THE APPLICATION OF
JOSEPH PROSSER, ET UX.
FOR VARIANCE FROM
§400.1 OF THE
BALTIMORE COUNTY
ZONING REGULATIONS
S/S MEADOWCLIFF ROAD
1505.84' E. GLEN ECHO ROAD
11TH DISTRICT - NO. 83-259-A
(ITEM 185)

WITHDRAWAL OF APPEARANCE

Mr. Clerk:

Please strike the appearances of Virginia W. Barnhart and K. Donald Proctor as counsel for the Appellants in the above-captioned matter.

K. Donald Proctor (By: VWB)
K. Donald Proctor
MILES & STOCKBRIDGE
401 Washington Avenue
Towson, Maryland 21204
(301) 821-6565

Virginia W. Barnhart
Virginia W. Barnhart
MILES & STOCKBRIDGE
401 Washington Avenue
Towson, Maryland 21204
(301) 821-6565
Attorneys for Appellants

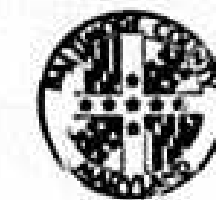
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COUNTY BOARD OF APPEALS
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of November, 1984, a copy of the foregoing Withdrawal of Appearance was mailed, postage prepaid, to William S. Wilson, Jr., Esquire, 405 Bosley Building, 210 Allegheny Avenue, Towson, Maryland 21204, Ernest C. Trimble, Esquire, 200 Lafayette Building, 40 West Chesapeake Avenue, Towson, Maryland 21204, Peter Max Zimmerman, Esquire, Deputy People's Counsel for Baltimore County, Room 223, Court House, Towson, Maryland 21204, Phyllis Friedman, Esquire, Court House, Towson, Maryland 21204, Edith Eisenhart, County Board of Appeals of Baltimore County, Room 200, Court House, Towson, Maryland 21204, John Anderson, Manor Hill Farm, Glen Arm, Maryland 21057, and Arnold Jablon, Zoning Commissioner of Baltimore County, 111 W. Chesapeake Avenue, Room 113, Towson, Maryland 21204.

Virginia W. Barnhart
Virginia W. Barnhart

-2-



County Board of Appeals of Baltimore County

Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

January 16, 1985

William S. Wilson, Jr., Esquire
Ernest C. Trimble, Esquire
200 Lafayette Building
40 W. Chesapeake Avenue
Towson, MD 21204

Re: Case No. 33-259-A
Joseph Prosser, et ux

Dear Messrs. Wilson and Trimble:

Enclosed herewith is a copy of the Amended Opinion and Order passed today by the County Board of Appeals in the above entitled case.

Very truly yours,

Edith Eisenhart
Edith Eisenhart, Adm. Secretary

Enclosures

cc: Joseph Prosser
Mr. Raymond G. Hohman, Jr.
Mrs. Anna Grue
John J. Anderson
Rowland M. Rushworth
Stephen Stauffer
Phyllis Cole Friedman
Norman E. Gerber
James G. Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Judge James S. Sfkas

IN THE MATTER OF THE APPLICATION OF JOSEPH PROSSER, ET UX FOR VARIANCE FROM \$400.1 OF THE BALTIMORE COUNTY ZONING REGULATIONS S/S MEADOW CLIFF ROAD 1505.84' E. GLEN ECHO ROAD 11th DISTRICT

ON REMAND FROM THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW NO. 83-259-A COURT FILE 16/111/84-M-156

AMENDED OPINION and ORDER

This matter comes before the Board of Appeals following the August 17, 1984, Opinion of James S. Sfkas, Judge, Circuit Court for Baltimore County, wherein Judge Sfkas remanded this matter for the Board to consider appropriate restrictions on the use of the track located in the front yard of the subject property. Judge Sfkas believes that our distinction between the use of the train and the construction of the track was not appropriate. He requires, in addition to our grant of permission for construction of the track, that we impose use restrictions on the operation of the train, which we shall do below.

ORDER

For the reasons set forth above, it is this day 16th day of January, 1985, by the County Board of Appeals, ORDERED that the Order of the Board granting the variance petitioned for, be and the same is AFFIRMED and said variance is hereby GRANTED, subject to the following restrictions:

JOSEPH PROSSER, ET UX - #83-259-A - 16/111/84-M-156

2.

- Storage and repair of the train is to take place only in the rear of the property.
- No platform or other permanent structure will be permitted for the purpose of loading or unloading in the front of the property.
- The whistle or horn can only be used in the rear of the property, and only one blast of a reasonably short duration is permitted for each trip around the circumference of the track.
- Operation of the train shall be restricted to between sunrise and sunset.
- Operation of the train will be permitted only by individuals twenty-one (21) years of age or older.
- This variance is effective only so long as the train is used continually. The abandonment of this permitted use for a period of more than one year will void this variance.
- In the front yard, all areas of fill which have caused the track to be exposed shall be screened by bushes or shrubbery placed in such a manner that the planting will ultimately result in a hedge effect. For safety, the planting must be of a type which will not grow to a height which will obstruct a clear view of the train.

Any appeal from this decision must be in accordance with Rules

8-1 through 8-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman
Keith S. Franz
Keith S. Franz
Diana K. Vincent
Diana K. Vincent

JOSEPH PROSSER, ET UX No. 83-259-A
S/S of Meadow Cliff Rd., 1505.84'
E of Glen Echo Rd. 11th District

Variance-Train track to be located in front and side yards.

March 29, 1983	Petition filed
May 24, 1983	Hearing held on petition
June 22, 1983	Z.C.'s Order - DENIED
July 13, 1983	Order for Appeal to C.B. of A.
Dec. 15, 1983	Hearing on appeal before Bd. of Appeals
Jan. 12, 1984	Order of the Board ordering that the variance be GRANTED w/restrictions
Feb. 8, 1984	Amended Order of the Board ordering that the variance to permit a train track as an accessory structure to be located in the front and side yards be GRANTED
Feb. 10, 1984	Order for Appeal filed in the Cir. Ct. by Donald Proctor, Esq. and Virginia Barnhart, on behalf of Protestants-Appellants - <i>PROTESTANT'S EXHIBIT A</i> (FILE # B3-M-56)
Feb. 23, 1984	Record of proceedings filed in the Circuit Ct. for Baltimore County
March 2, 1984	Amended Order for Appeal and Petition on Appeal filed in Cir. Ct. for Balto. Cty.
March 6, 1984	Certificate of Notice on Amended Order for Appeal
March 6, 1984	Amended Answer of Proceedings filed in the Cir. Ct. for Baltimore City.
March 16, 1984	Amended Answer of Proceedings filed in Cir. Ct. for Balto. Cty. for purpose of including Motion to Dismiss
August 17, 1984	Order of Judge James S. Sfkas, REMANDING case to the Board "solely on the issue of ripeness and directs the Board to consider appropriate restrictions on the use of the front track." 8/22/84 - cc: A. Jablon, A. January, J. Hoswell
Jan. 16, 1985	Board's Amended Order GRANTING variance with RESTRICTIONS

May 24, 1983

Mr. William E. Hammond
Zoning Commission
111 W. Chesapeake Avenue
Towson, Maryland 21204

RE: Mr. & Mrs. Joseph Prosser
Train

To Whom It May Concern:

Magill Yerman & Company, Realtors, Better Homes and Gardens is the listing broker for the property known as 4406 Meadowcliff Road. The listing agent, Mr. Louis A. Grue (related to Principal) has been in contact with me concerning the installation of an amusement park type train on the front of Mr. & Mrs. Prosser's property. Mrs. Grue, the owner and Mr. Grue, the agent are both concerned as to what effect a move of this nature would have on the value of her home as well as that of other neighbors on Meadowcliff Road.

It is in my opinion that a train on Mr. & Mrs. Prosser's property, or for that matter on any property that is zoned residential can only lower the value of said property. Not only will the homes in the area be devalued, but it could also create other problems such as noise pollution, safety for small children and animals and detract from the aesthetic beauty of the area. This carnival type atmosphere should not be permitted to exist in an area of residential zoning with restricted covenants.

Respectfully yours,

Sam Nucci
Sam Nucci
Sales Manager

dc

PROTESTANT'S
EXHIBIT A

LOCH RAVEN 8508 Loch Raven Boulevard, Towson, MD 21204 Telephone (301) 295-1300
PERRY HILL 8817 Perry Hill Road, Baltimore, MD 21204 Telephone (301) 296-9696
PRESHVILLE 9611 Preshville Lane, Baltimore, MD 21204 Telephone (301) 433-4300
HOLAND PARK 800 W. Cold Spring Lane, Baltimore, MD 21204 Telephone (301) 433-4300
DEVELOPMENT OFFICE 807 Southland Lane, Baltimore, MD 21202 Telephone (301) 244-0900

REGISTRATION DEPARTMENT CALL TOLL FREE 1-800-638-4258 (Towson, Maryland 21204)

