IN THE MATTER OF THE APPLICATION OF STONE-SNYDER GENERAL PARTNERSHIP FOR VARIANCE FROM SECTION 1802.3.C.1 AND SECTION 302 OF THE BALTIMORE COUNTY ZONING REGULATIONS S/S ILLINOIS AVE. 297' E. c/l ANNAPOLIS RD. & N/S VIRGINIA AVE. 213' E. c/l ANNAPOLIS RD. 13th DISTRICT

Phyllis Cole Friedman, People's Counsel - Appellant

Zoning File No. 84-74-A

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW

Misc. Doc. No. 16
Folio No. 176
File No. 84-M-121

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 LeRoy B. Spurrier, 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

No. 84-74-A

July 5, 1983	Petition of Stone-Snyder General Partnership for variance from Sec. 1 802.3.C.1 and 302 to permit lot widths of 44.69' and 50.00', in lieu of the required 55.00'.
July 5, 1983	Order of Zoning Commissioner directing advertisement and posting of property - date of hearing set for Sept. 15, 1983, at 1:30 p.m.
August 25, 1983	Certificate of publication in newspaper - filed
August 26, 1983	Certificate of posting of property - filed
August 22, 1983	Comments of Baltimore County Director of Planning - filed
September 2, 1983	Comments of Baltimore County Zoning Plans Advisory Committee - filed

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Stone-Snyder General Partnership
Case No. 84-74-A

2.

September 15, 1983	At 1:30 p.m. hearing held on petition by Zoning Commissioner
September 20, 1983	Order of Zoning Commissioner DENYING variances
October 6, 1983	Order of Appeal to County Board of Appeals from Order of Zoning Commissioner
February 15, 1984	Hearing on appeal before County Board of Appeals
February 29, 1984	Order of County Board of Appeals GRANTING variances
March 27, 1984	Order for Appeal filed in the Circuit Ct. for Baltimore County by People's Counsel for Baltimore County
March 27, 1984	Petition to accompany Order for Appeal filed in the Circuit Ct. for Baltimore County
March 27, 1984	Certificate of Notice sent to all interested parties
June 5, 1984	Transcript of testimony filed
	Petitioner's Exhibit No. 1 - ...t prepared by Land Design Associates, 5/27/83
	" " " 2 - Preliminary plan, Dec. 1983
	" " " 3 - Page 68, Regulation Development Standards
	" " " 4 - Original Plat, Balto. Highlands, dated 1908.
June 5, 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 Holmen
County Board of Appeals of Baltimore County

cc: Christopher Hill, Esq.
Phyllis C. Friedman

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IN THE COURT OF SPECIAL APPEALS

Stone-Snyder General Partnership
v.
Peoples Counsel f.. Balt. Co.

PRE-DOCKET
No. 797 , September Term, 1985

ORDER OF DISMISSAL
(Failure to File Record)

(1) In accordance with Maryland Rule 1219, the Clerk of the Circuit Court for Baltimore County has advised that on July 12, 1985 appellant filed an appeal to this Court in the above-entitled matter.

(2) Pursuant to Maryland Rule 1025 a.1. & 2. the record in this appeal was due to be filed on or before November 25, 1985, and the records of this Court indicate that, as of this date said record has not been filed.

WHEREFORE, pursuant to Maryland Rule 1035 b.4., it is by the Court of Special Appeals, this 9th day of January, 1986, upon its own motion, ORDERED, that the captioned appeal be, and it is hereby, dismissed for failure to file the record as required by Maryland Rule 1025.

CHIEF JUDGE

JUDGE

JUDGE

afk

MICROFILMED

FEB 20 AM

MANDATE

Court of Special Appeals of Maryland

Pre-docket No 797 , September Term, 1985

Stone-Snyder General Partnership v. Peoples Counsel for Baltimore County	January 9, 1986: Order of Court, sua sponte, dismissing the appeal. Maryland Rule 1035 b. 4. February 10, 1986: Mandate issued.

STATEMENT OF COSTS:

In Circuit Court: Baltimore County
No. 84-M-121
Record
Stenographer's Costs

In Court of Special Appeals:

Filing Record on Appeal . . . . . .
Printing Brief for Appellant . . . . . .
Reply Brief . . . . . .
Portion of Record Extract — Appellant . . . . . .
Printing Brief for Cross-Appellee . . . . . .

Printing Brief for Appellee . . . . . .
Portion of Record Extract — Appellee . . . . . .
Printing Brief for Cross-Appellant . . . . . .

COUNTY BOARD OF APPEALS RECEIVED 1986 FEB 13 P 12 24

STATE OF MARYLAND, Sct:

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

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Special Appeals, this tenth *day of* February *A.D. 19* 86

Clerk of the Court of Special Appeals of Maryland

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

MICROFILMED

Court of Special Appeals of Maryland

HOWARD E. FRIEDMAN
CLERK

Annapolis, Md. 21401-1698
(301) 269-3646 (DIRECT LINE)
(301) 261-2920 (WASHINGTON AREA)
TTY FOR DEAF
(301) 269-2609 (DIRECT LINE)
(301) 565-0450 (WASHINGTON AREA)

ROBERT J. BOOZE
CHIEF DEPUTY

January 10, 1986

Christopher H. Hill, Esquire
200 Hospital Drive, Suite 113
Glen Burnie, MD 21061

Phyliss Cole Friedman, Esquire
Courthouse, Rm 223
Towson, MD 21204

Re: Stone-Snyder General Partnership v. Peoples Counsel for Baltimore County
Pre-docket No. 797, September Term, 1985
(No. 84-M-121, in the Circuit Court for Baltimore Co.)

Dear Counsel:

Enclosed find a copy of an Order of this Court dated January 9, 1986, dismissing the captioned appeal for the reasons outlined therein. The mandate of this Court will be issued pursuant to Maryland Rule 1076b.

Very truly yours,

Howard E. Friedman
Clerk

HEF:afk

Enclosure

cc: Elmer H. Kahline, Jr., Clerk
Circuit Court for Baltimore County
County Board of Appeals of Baltimore County

COUNTY BOARD OF APPEALS RECEIVED 1986 JAN 16 P 12 14

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2/10/86
Mandate Issued

2/18/86
2/19/86

From the desk of
EDITH T. EISENHART

To Bettye - Zoning Office

Please include the attached Mandate in zoning file #84-74-A, Stone-Snyder, which file was closed and returned to your office on 2/10/86. Thank you.

Edith

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7/12/85

IN THE MATTER OF THE APPLICATION OF STONE-SNYDER GENERAL PARTNERSHIP FOR VARIANCE FROM Sec. 1802.3C.1 and Sec. 302 OF THE BALTIMORE COUNTY ZONING REGULATIONS S/S ILLINOIS AVE. 297' E. c/l ANNAPOLIS ROAD, and N/S VIRGINIA AVE. 213' E.E. c/l ANNAPOLIS RD. 13th District

Zoning Case No. 84-74-A

* IN THE
* CIRCUIT COURT
* OF MARYLAND
* FOR BALTIMORE COUNTY
* Misc. Docket No. 16
* Folio No. 176
* File No. 84-M-121

NOTICE OF APPEAL

NOW COMES STONE-SNYDER GENERAL PARTNERSHIP and requests that this Court grant leave to appeal to the Court of Special Appeals the Honorable Judge James Sfekas' Decision of June 17, 1985 refusing to reconsider his reversal of the Baltimore County Board of Appeals grant of a variance.

Christopher H. Hill
200 Hospital Drive, Suite 113
Glen Burnie, Maryland 21061
Telephone: (301) 768-6733

CERTIFICATE OF SERVICE

I HEREBY CERTIFY under penalty of perjury that on this 9th day of July, 1985, a copy of the foregoing Notice of Appeal was mailed by first class mail, postage prepaid, addressed as follows:

Ms. Phyllis Cole Friedman
People's Counsel of Baltimore County
Room 223 Courthouse
Towson, Maryland 21204

Christopher H. Hill

COUNTY BOARD OF APPEALS RECEIVED 1985 JUL 29 P 3 55

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- 2 -

I HEREBY CERTIFY that on this 7th day of February, 1985, a copy of the foregoing People's Counsel's Opposition to Motion for Reconsideration or Modification was mailed to Christopher H. Hill, Esquire, Empire Medical Building, 200 Hospital Drive, Suite 113, Glen Burnie, MD 21061.

Phyllis Cole Friedman

MICROFILMED

MAY 29 1987

1984 0074A

IN THE MATTER OF
THE APPLICATION OF STONE-SNYDER GENERAL
PARTNERSHIP
FOR VARIANCE

Zoning Case No. 84-74-A

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* Case No. 84-M-121

* *

MEMORANDUM OPINION

Petitioner, Stone-Snyder General Partnership (Stone-Snyder) has asked this Court to reconsider its reversal of a grant of variance by the County Board of Appeals. The Court denies such motion for the following reasons:

1. The Maryland Courts have held that the "practical difficulty" and "undue hardship" tests tend to overlap and that in many instances there is no practical difference between the two. Loyola Loan Ass'n. v. Buschman, 227 Md. 243, 251 (1961). Further, even if the "practical difficulty" test alone were applicable, Petitioner has failed to satisfy this test.

Petitioner has failed to show that he would suffer any hardship or difficulty other than loss of building lots or delay due to denial of this variance. The mere fact that the variance would make this development more profitable is not sufficient to grant the variance. Easter v. City of Baltimore, 195 Md. 395 (1950); City of Baltimore v. Borinsky, 239 Md. 611 (1965).

Petitioner's contention that grading and storm drain problems require a single developer rather than piecemeal development

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is unpersuasive because the denial of the variance leading to piecemeal development is mere speculation. Even if the "practical difficulty" test were applied, Petitioner has failed to show why it is "unreasonable" [Anderson v. Board of Appeals, 22 Md. App. 28 (1974)], to deny him the variance. Stone-Snyder cites the cases of McLean v. Soley, 270 Md. 208 (1973) and Loyola Loan Ass'n. v. Buschman, supra, to support its "practical difficulty" contention. Those cases are distinguishable from the case at bar.

McLean involved land which would have been developed even if the variance were not granted. Without the variance, however, the land would have been developed by cutting down trees and causing drainage problems. McLean, supra at 214. In the case at bar, the contention that denial of the variance would lead to development of 11 separate lots and resulting drainage problems is mere speculation, as was stated previously.

Loyola involved the granting of a variance due to a subterranean water condition, Loyola, supra at 350, which prevented building on the entire lot. Because the land made it difficult to build out, a variance to build up was granted. There is no physical land condition in the case at bar which would allow for a variance. Petitioner's "practical difficulty" was the result of the ordinance itself, not a result of an outside physical problem.

Therefore, Petitioner has failed to satisfy a "practical difficulty" test under McLean or Loyola.

2. The argument that "practical difficulty" does not trigger the self-imposed hardship rule is irrelevant because,

whether the test is practical difficulty or hardship, Petitioner has failed to satisfy it, as was previously discussed.

3. Zoning does regulate use and not ownership. Feinberg v. Southland Corporation, 268 Md. 141, 152 (1973). However, Petitioner was not prevented from building solely on the basis of ownership.

The Courts have held that area and frontage are properly regulated through zoning. Queen Anne's County v. Miles, 246 Md. 355 (1967); R. B. Construction Co. v. Jackson, 152 Md. 671 (1927). Petitioner is not restricted from building because of ownership, but because it cannot meet the area requirements. Section 304 of the Baltimore County Zoning Regulations states:

> "A one-family dwelling may be erected on a lot having an area or width at the building line less than that required by the height and area regulations, provided...
> C. That the owner of the lot does not own sufficient adjoining land to conform substantially to the width and area requirements."

In this case, Stone-Snyder does own sufficient adjoining land because it owns all 11 adjoining lots. Therefore, it can conform to the width and area requirements. If Stone-Snyder had owned several lots but none of them were adjoining, they may fit within the variance ordinance and properly avoid the 55' requirement. However, that is not the case.

The statute governs area requirements and, as was discussed supra, these are properly regulated under zoning ordinances. The Court's decision was based on these area requirements and not on ownership, so the fact that ownership may be affected is inconsequential.

4. There has been no violation of the Equal Protection Clause of the Fourteenth Amendment of the Constitution. Petitioner's basis for saying that the Court's decision was a violation of Equal Protection is that the ordinance was interpreted in an arbitrary and capricious way. Stone-Snyder said the decision was arbitrary and capricious because no purpose was served by distinguishing between singly-owned lots and Stone-Snyder's situation. (See Petitioner's Memorandum filed on May 22, 1985, p. 8).

As was discussed, there was a purpose served by distinguishing between the two: The Court was attempting to follow area requirements that were dictated by the ordinance. The mere fact that an ordinance results in two entities being treated differently does not mean that there is a violation of Equal Protection. Dupont Circle Citizen's Association v. District of Columbia Zoning Comm., 355 A. 2d 550, at 559-560 (D. C. Ct. of Appeals); cert. den. 97 S. t. 316, 429 U.S. 966, 50 L. Ed. 2d 334 (1976) (Fact that not all land owners possessed enough property to develop under a zoning ordinance did not mean the ordinance created invidious discrimination based on wealth, in violation of Equal Protection and Due Process Clauses of the Constitution). Therefore, the constitutional argument is not persuasive.

Accordingly, Petitioner's Motion to Reconsider Denial of Variance is denied. Costs to be paid by Petitioner, Stone-Snyder.

James S. Sfekas

JUDGE JAMES S. SFEKAS

Dated: June 17, 1985

Copies to:
Phyllis Cole Friedman
Christopher H. Hill
Court File

Cir. Ct. Jd.
1984-0074-A

IN THE MATTER OF THE APPLICATION OF STONE-SNYDER GENERAL PARTNERSHIP FOR VARIANCE FROM s1B02.3.C.1 & s302 OF THE BALTIMORE COUNTY ZONING REGULATIONS S/S ILLINOIS AVENUE 297' E. c/l ANNAPOLIS ROAD & N/S VIRGINIA AVENUE 213' E. c/l ANNAPOLIS ROAD 13th DISTRICT Zoning Case No. 84-74-A COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY APPEAL Case No. 84-M-121

* *

MEMORANDUM OPINION AND ORDER

The People's Counsel of Baltimore County has appealed the decision of the County Board of Appeals granting a zoning variance to the Petitioner, Stone-Snyder General Partnership (Stone-Snyder).

Stone-Snyder owns 11 building sites created on a plat prior to 1952. The lots were originally divided into 25' recorded lots. Under current zoning regulations, the minimum width of the lots in that zone (DR 5.5) is 55 ft. BCZR Sec. 1B02.3.C.1. Stone-Snyder requested the Zoning Commissioner to grant a variance to permit them to combine two lots into one lot to create ten 50 foot lots and one 44.69 foot lot under BCZR 302. On September 20, 1983, the Zoning Commissioner denied the variance. Stone-Snyder appealed that decision and on February 29, 1984, the County Board of Appeals reversed the Zoning Commissioner and granted the variance.

Section 307 of the Baltimore County Zoning Regulations provides for variances. This appeal presents a petition for an area variance which requires proof of practical difficulty. Anderson v. Bd. of Appeals, 22 Md. App. 28 (1974).

The Court of Special Appeals set out the criteria for proving practical difficulty in Anderson, p. 39:

> "'1) Whether compliance with the strict letter of the restrictions governing...frontage... 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.'" (Citations omitted).

Both sides presented expert testimony. People's Counsel presented an expert planner who discussed the two options open to the Petitioner that do not require a variance. Those options are combining three lots to form one 75' lot or resubdividing the property into 55' lots.

The Petitioner argued that an individual owner could build on a 50' lot if the owner did not have sufficient adjoining land under §304 of the Baltimore County Zoning Regulations. Considerable testimony was given as to the problems that would be created on the parcel in controlling

sediment, storm water and utilities if the Petitioner would sell the lots to individuals to circumvent the need for the variance.

The basis for the Board's opinion was that "The Board believes that to deny the Petitioner its requested variance would serve no purpose when the desired result could be achieved through legal gymnastics that could not deny Petitioner its goal." County Board of Appeals Finding dated March 28, 1984, p. 2. They then stated that re-subdividing or making 75' lots was a substantial hardship.

The record was devoid of any testimony to indicate that the Petitioner would suffer any hardship other than loss of building lots or delay. The mere fact that the variance would make this development more profitable is not sufficient to grant the variance. Easter v. City of Balt., 195 Md. 395 (1949). "The need sufficient to justify an exception must be substantial and urgent and not merely for the convenience of the applicant, inasmuch as the aim of the ordinance is to prevent exceptions as far as possible." Carney v. City of Baltimore, 201 Md. 130, 137 (1952).

The Court in reviewing actions of the zoning authority is faced with a limited scope of review. If the evidence is sufficient to make the decision fairly debatable, then the Court cannot substitute its judgment for that of the Board. Montgomery Co. v. Nat. Cap. Realty Corporation, 267 Md. 364 (1972); Ginn v. Farley, 43 Md. App. 229 (1979).

The Board had no testimony before it to determine practical difficulty under applicable standards. The fact that the Zoning Regulations provide an exception for an individual owner faced with a land shortage and no other options which the Petitioner could attempt to use to circumvent the ordinance, is clearly no basis on which to decide a variance. The Board's decision is clearly erroneous and not fairly debatable.

It is hereby ORDERED that the decision of the Board of Appeals is reversed. The variance is denied. Costs to be paid by Appellee.

James S. Sfekas
JUDGE JAMES S. SFEKAS

Dated: January 10, 1985

Copies to:
Board of Appeals
Phyllis Cole Friedman, Esquire
Christopher H. Hill, Esquire
Court File

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STONE-SNYDER GENERAL PARTNERSHIP #84-74-A

S/s Illinois Ave., 297' E of the C/L of Annapolis Rd. (parcel 1); N/s of Virginia Ave., 213' E of c/l of Annapolis Rd. (parcel 2) — 13th. District

July 5, 1983	Petition filed
Sept. 15, "	Hearing held by Zoning Commissioner
Sept. 20, "	Order of Z.C. DENYING variances
Oct. 6, "	Order for Appeal TO C.B. of A.
Feb. 15, 1984	Hearing before the Board
Feb. 29, "	Order of the Board GRANTING variances
March 27, 1984	Order for Appeal filed in the Cir. Ct. by (84-M-121) People's Counsel
March 27, "	Certificate of Notice sent out
June 5, 1984	Record of Proceedings filed in the Circuit Court
Jan. 10, 1985	Board REVERSED - Judge James S. Sfekas 1/14/85 - cc: Eileen Hennegan, Arnold Jablon, J. G. Hoswell
Jan. 30, 1985	Motion for Reconsideration or Modification filed in the Circuit Court by Christopher H. Hill, Esq., counsel for Petitioners
Feb 7	People's Counsel's Opposition to Motion for Reconsideration or Modification filed
June 17	Order of Judge James S. Sfekas DENYING Motion to Reconsider denial of variance 6/19/85 - cc: Eileen Hennegan, Arnold Jablon, J. G. Hoswell
July 9	Order for Appeal filed in the Court of Special Appeals by Christopher N. Hill, Esq., for Petitioners 7/29/85 - cc: Eileen Hennegan, Arnold Jablon, J. G. Hoswell
Jan. 9, 1986	Order of the Court of Special Appeals, upon its own mot. n, dismissing case for failure to file the record as required by Maryland Rule 1025 1/20/86 - CC: Sue Zack, Arnold Jablon, J. G. Hoswell

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IN THE MATTER OF THE APPLICATION OF STONE-SNYDER GENERAL PARTNERSHIP FOR VARIANCE FROM §1B02.3.C.1 &§302 OF THE BALTIMORE COUNTY ZONING REGULATIONS Zoning Case No. 84-74-A : IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW

Misc. Docket No. ___
Folio No. ___
File No. ___

: : : : : : :

PETITION ON APPEAL

The People's Counsel for Baltimore County, Protestant below and Appellant herein, having heretofore filed a Notice of Appeal from the Opinion and Order of the County Board of Appeals of Baltimore County, under date of February 29, 1984, in compliance with Maryland Rule B-2(e), files this Petition on Appeal setting forth the grounds upon which this Appeal is taken, viz:

That the County Board of Appeals had no legally sufficient evidence upon which to base its conclusion that the requested variance was warranted by unnecessary hardship or practical difficulty, or that its grant is in the public interest and consistent with the intent of the Baltimore County Zoning Regulations, and therefore their Order passed herein is illegal, arbitrary, and capricious.

WHEREFORE, Appellant prays that the Order of the County Board of Appeals under date of February 29, 1984 be reversed, and the Order of the Zoning Commissioner of Baltimore County be affirmed.

Phyllis Cole Friedman
People's Counsel for Baltimore County

Peter Max Zimmerman
Deputy People's Counsel
Room 223, Court House
Towson, Maryland 21204
494-2188

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IN THE MATTER OF THE APPLICATION OF STONE-SNYDER GENERAL PARTNERSHIP FOR VARIANCE FROM §1B02.3.C.1 and §302 OF THE BALTIMORE COUNTY ZONING REGULATIONS S/S ILLINOIS AVE. 297' E. c/l ANNAPOLIS RD. & N/S VIRGINIA AVE. 213' E. c/l ANNAPOLIS RD. 13th DISTRICT : BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY NO. 84-74-A

: : : : : :

Form CA3

CIRCUIT COURT FOR BALTIMORE COUNTY

John Adams — 494-2660
Civil Assignment Commissioner
Settlement Court

Marie Harris — 494-2662
Assignment Clerk
Motion Records

ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Bosley Avenue
P.O. Box 6754
Towson, Maryland 21204-0754

Kathy Rushton — 494-2660
Assignment — Jury — Motions
Marcia Lamm — Motions
Assistant Clerk Typist

Irene Summers — 494-2661
Assignment — Non-Jury — Motions
Freddie Grove
Assistant Clerk Typist

February 21, 1985.

TO: Phyllis Cole Friedman, Esq.
Peter Max Zimmerman, Esq.

Christopher H.Hill, Esq.

The Honorable James S. Sfekas,

County Board of Appeals of Balto. Co.

RE: NON JURY - 84 M 121 - PEOPLE'S COUNSEL FOR B.C., STONE SNYDER GENERAL PT AL VS COUNTY BOARD OF APPEALS

HEARING DATE: Thursday,March 28, 1985, @ 9:30 a.m.

ON THE FOLLOWING: MOTIONS: 1 hour

UPON RECEIPT OF THIS NOTICE: Counsel shall contact each other immediately to conform calendars. Claim of not receiving notice will not constitute reason for postponement.

POSTPONEMENTS: If the above date is not agreeable to any counsel, a request for a postponement MUST BE MADE IN WRITING to the Assignment Office AS SOON AS POSSIBLE, with a copy to all counsel involved. POSTPONEMENTS WITHIN 15 DAYS OF TRIAL must be made to the attention of the Director of Central Assignments — Joyce Grimm — 494-2697.

SETTLEMENT CONFERENCES: All counsel must secure the attendance of all parties necessary to effect a binding settlement, including clients and insurance representatives. THERE WILL BE NO EXCEPTIONS PER ORDER OF JUDGE FRANK E. CICONE. Please direct all inquiries to the attention of John Adams.

SETTLEMENTS: If a settlement is reached prior to the hearing date, the Assignment Office must be notified immediately. All settlements must be put on the record if no order of satisfaction is filed prior to trial.

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

March 27, 1984

Phyllis Cole Friedman
People's Counsel
Court House
Towson, Md. 21204

Re: Case No. '-74-A
Stone-Snyder General Partnership

Dear Mrs. Friedman:

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 Holmen, Secretary

Encls.

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494-3180 84-74-A

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

March 27, 1984

MAR 28
ZONING

Christopher H. Hill, Esq.
836 Ritchie Hwy., Suite 22
Severna Park, Maryland 21146

Case No. 84-74-A
Stone-Snyder General Partnership

Dear Mr. Hill:

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: Stone-Snyder General Partnership
N. Gerber
J. Hoswell
A. Jablon
J. Jung
J. Dyer

MICROFILMED

E. Hennegan

6/17/85

IN THE MATTER OF THE APPLICATION OF STONE-SNYDER GENERAL PARTNERSHIP FOR VARIANCE
Zoning Case No. 84-74-A
COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* Case No. 84-M-121

* *

MEMORANDUM OPINION

Petitioner, Stone-Snyder General Partnership (Stone-Snyder) has asked this Court to reconsider its reversal of a grant of variance by the County Board of Appeals. The Court denies such motion for the following reasons:

1. The Maryland Courts have held that the "practical difficulty" and "undue hardship" tests tend to overlap and that in many instances there is no practical difference between the two. Loyola Loan Ass'n. v. Buschman, 227 Md. 243, 251 (1961). Further, even if the "practical difficulty" test alone were applicable, Petitioner has failed to satisfy this test.

Petitioner has failed to show that he would suffer any hardship or difficulty other than loss of building lots or delay due to denial of this variance. The mere fact that the variance would make this development more profitable is not sufficient to grant the variance. Easter v. City of Baltimore, 195 Md. 395 (1950); City of Baltimore v. Borinsky, 239 Md. 611 (1965).

Petitioner's contention that grading and storm drain problems require a single developer rather than piecemeal development

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is unpersuasive because the denial of the variance leading to piecemeal development is mere speculation. Even if the "practical difficulty" test were applied, Petitioner has failed to show why it is "unreasonable" [Anderson v. Board of Appeals, 22 Md. App. 28 (1974)], to deny him the variance. Stone-Snyder cites the cases of McLean v. Soley, 270 Md. 208 (1973) and Loyola Loan Ass'n. v. Buschman, supra, to support its "practical difficulty" contention. Those cases are distinguishable from the case at bar.

McLean involved land which would have been developed even if the variance were not granted. Without the variance, however, the land would have been developed by cutting down trees and causing drainage problems. McLean, supra at 214. In the case at bar, the contention that denial of the variance would lead to development of 11 separate lots and resulting drainage problems is mere speculation, as was stated previously.

Loyola involved the granting of a variance due to a subterranean water condition, Loyola, supra at 350, which prevented building on the entire lot. Because the land made it difficult to build out, a variance to build up was granted. There is no physical land condition in the case at bar which would allow for a variance. Petitioner's "practical difficulty" was the result of the ordinance itself, not a result of an outside physical problem.

Therefore, Petitioner has failed to satisfy a "practical difficulty" test under McLean or Loyola.

2. The argument that "practical difficulty" does not trigger the self-imposed hardship rule is irrelevant because,

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whether the test is practical difficulty or hardship, Petitioner has failed to satisfy it, as was previously discussed.

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The Courts have held that area and frontage are properly regulated through zoning. Queen Anne's County v. Miles, 246 Md. 355 (1967); R. B. Construction Co. v. Jackson, 152 Md. 671 (1927). Petitioner is not restricted from building because of ownership, but because it cannot meet the area requirements. Section 304 of the Baltimore County Zoning Regulations states:

> "A one-family dwelling may be erected on a lot having an area or width at the building line less than that required by the height and area regulations, provided..
> C. That the owner of the lot does not own sufficient adjoining land to conform substantially to the width and area requirements."

In this case, Stone-Snyder does own sufficient adjoining land because it owns all 11 adjoining lots. Therefore, it can conform to the width and area requirements. If Stone-Snyder had owned several lots but none of them were adjoining, they may fit within the variance ordinance and properly avoid the 55' requirement. However, that is not the case.

The statute governs area requirements and, as was discussed supra, these are properly regulated under zoning ordinances. The Court's decision was based on these area requirements and not on ownership, so the fact that ownership may be affected is inconsequential.

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4. There has been no violation of the Equal Protection Clause of the Fourteenth Amendment of the Constitution. Petitioner's basis for saying that the Court's decision was a violation of Equal Protection is that the ordinance was interpreted in an arbitrary and capricious way. Stone-Snyder said the decision was arbitrary and capricious because no purpose was served by distinguishing between singly-owned lots and Stone-Snyder's situation. (See Petitioner's Memorandum filed on May 22, 1985, p. 8).

As was discussed, there was a purpose served by distinguishing between the two: The Court was attempting to follow area requirements that were dictated by the ordinance. The mere fact that an ordinance results in two entities being treated differently does not mean that there is a violation of Equal Protection. Dupont Circle Citizen's Association v. District of Columbia Zoning Comm., 355 A. 2d 550, at 559-560 (D. C. Ct. of Appeals); cert. den. 97 S. t. 316, 429 U.S. 966, 50 L. Ed. 2d 334 (1976) (Fact that not all land owners possessed enough property to develop under a zoning ordinance did not mean the ordinance created invidious discrimination based on wealth, in violation of Equal Protection and Due Process Clauses of the Constitution). Therefore, the constitutional argument is not persuasive.

Accordingly, Petitioner's Motion to Reconsider Denial of Variance is denied. Costs to be paid by Petitioner, Stone-Snyder.

JUDGE JAMES S. SFEKAS

Dated: June 17, 1985

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2/7/85

STONE-SNYDER GENERAL PARTNERSHIP, : IN THE CIRCUIT COURT
: FOR BALTIMORE COUNTY
Appellant : AT LAW
v. : Case No. 84-M-121
COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY, et al., :
Appellees : : : : : : :

PEOPLE'S COUNSEL'S OPPOSITION TO MOTION FOR RECONSIDERATION OR MODIFICATION

People's Counsel opposes Petitioner, Stone-Snyder General Partnership's Motion for Reconsideration on the grounds that this Court was correct in finding that the Board of Appeals' decision in this matter is clearly erroneous and not fairly debatable.

In support of this opposition, People's Counsel relies upon the Memorandum Opinion and Order of the Court and on People's Counsel's Memorandum in Support of its Petition on Appeal which are incorporated herein by reference and which address the points raised by Petitioner.

Respectfully submitted,

Phyllis Cole Friedman
People's Counsel for Baltimore County

Peter Max Zimmerman
Deputy People's Counsel
Rm. 223, Court House
Towson, MD 21204
494-2188

MICROFILMED

STONE-SNYDER GENERAL PARTNERSHIP,	:	IN THE CIRCUIT COURT
Appellant	:	FOR BALTIMORE COUNTY
	:	AT LAW
v.	:	Case No. 84-M-121
COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY, et al.,	:	
Appellees	:	

: : : : : : :

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In support of this opposition, People's Counsel relies upon the Memorandum Opinion and Order of the Court and on People's Counsel's Memorandum in Support of its Petition on Appeal which are incorporated herein by reference and which address the points raised by Petitioner.

Respectfully submitted,

Phyllis Cole Friedman
People's Counsel for Baltimore County

Peter Max Zimmerman
Deputy People's Counsel
Rm. 223, Court House
Towson, MD 21204
494-2188

I HEREBY CERTIFY that on this 7th day of February, 1985, a copy of the foregoing People's Counsel's Opposition to Motion for Reconsideration or Modification was mailed to Christopher H. Hill, Esquire, Empire Medical Building, 200 Hospital Driw Suite 113, Glen Burnie, MD 21061.

Phyllis Cole Friedman

E. Hennegan

IN THE MATTER OF THE APPLICATION OF STONE-SNYDER GENERAL PARTNERSHIP FOR VARIANCE	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
Zoning Case No. 84-74-A	*	
COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	*	Case No. 84-M-121

* *

MEMORANDUM OPINION

Petitioner, Stone-Snyder General Partnership (Stone-Snyder) has asked this Court to reconsider its reversal of a grant of variance by the County Board of Appeals. The Court denies such motion for the following reasons:

1. The Maryland Courts have held that the "practical difficulty" and "undue hardship" tests tend to overlap and that in many instances there is no practical difference between the two. Loyola Loan Ass'n. v. Buschman, 227 Md. 243, 251 (1961). Further, even if the "practical difficulty" test alone were applicable, Petitioner has failed to satisfy this test.

Petitioner has failed to show that he would suffer any hardship or difficulty other than loss of building lots or delay due to denial of this variance. The mere fact that the variance would make this development more profitable is not sufficient to grant the variance. Easter v. City of Baltimore, 195 Md. 395 (1950); City of Baltimore v. Borinsky, 239 Md. 611 (1965).

Petitioner's contention that grading and storm drain problems require a single developer rather than piecemeal development

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is unpersuasive because the denial of the variance leading to piecemeal development is mere speculation. Even if the "practical difficulty" test were applied, Petitioner has failed to show why it is "unreasonable" [Anderson v. Board of Appeals, 22 Md. App. 28 (1974)], to deny him the variance. Stone-Snyder cites the cases of McLean v. Soley, 270 Md. 208 (1973) and Loyola Loan Ass'n. v. Buschman, supra, to support its "practical difficulty" contention. Those cases are distinguishable from the case at bar.

McLean involved land which would have been developed even if the variance were not granted. Without the variance, however, the land would have been developed by cutting down trees and causing drainage problems. McLean, supra at 214. In the case at bar, the contention that denial of the variance would lead to development of 11 separate lots and resulting drainage problems is mere speculation, as was stated previously.

Loyola involved the granting of a variance due to a subterranean water condition, Loyola, supra at 350, which prevented building on the entire lot. Because the land made it difficult to build out, a variance to build up was granted. There is no physical land condition in the case at bar which would allow for a variance. Petitioner's "practical difficulty" was the result of the ordinance itself, not a result of an outside physical problem.

Therefore, Petitioner has failed to satisfy a "practical difficulty" test under McLean or Loyola.

2. The argument that "practical difficulty" does not trigger the self-imposed hardship rule is irrelevant because,

whether the test is practical difficulty or hardship, Petitioner has failed to satisfy it, as was previously discussed.

3. Zoning does regulate use and not ownership. Feinberg v. Southland Corporation, 268 Md. 141, 152 (1973). However, Petitioner was not prevented from building solely on the basis of ownership.

The Courts have held that area and frontage are properly regulated through zoning. Queen Anne's County v. Miles, 246 Md. 355 (1967); R. B. Construction Co. v. Jackson, 152 Md. 671 (1927). Petitioner is not restricted from building because of ownership, but because it cannot meet the area requirements. Section 304 of the Baltimore County Zoning Regulations states:

> "A one-family dwelling may be erected on a lot having an area or width at the building line less than that required by the height and area regulations, provided...
> C. That the owner of the lot does not own sufficient adjoining land to conform substantially to the width and area requirements."

In this case, Stone-Snyder does own sufficient adjoining land because it owns all 11 adjoining lots. Therefore, it can conform to the width and area requirements. If Stone-Snyder had owned several lots but none of them were adjoining, they may fit within the variance ordinance and properly avoid the 55' requirement. However, that is not the case.

The statute governs area requirements and, as was discussed supra, these are properly regulated under zoning ordinances. The Court's decision was based on these area requirements and not on ownership, so the fact that ownership may be affected is inconsequential.

4. There has been no violation of the Equal Protection Clause of the Fourteenth Amendment of the Constitution. Petitioner's basis for saying that the Court's decision was a violation of Equal Protection is that the ordinance was interpreted in an arbitrary and capricious way. Stone-Snyder said the decision was arbitrary and capricious because no purpose was served by distinguishing between singly-owned lots and Stone-Snyder's situation. (See Petitioner's Memorandum filed on May 22, 1985, p. 8).

As was discussed, there was a purpose served by distinguishing between the two: The Court was attempting to follow area requirements that were dictated by the ordinance. The mere fact that an ordinance results in two entities being treated differently does not mean that there is a violation of Equal Protection. Dupont Circle Citizen's Association v. District of Columbia Zoning Comm., 355 A. 2d 550, at 559-560 (D. C. Ct. of Appeals); cert. den. 97 S. t. 316, 429 U.S. 966, 50 L. Ed. 2d 334 (1976) (Fact that not all land owners possessed enough property to develop under a zoning ordinance did not mean the ordinance created invidious discrimination based on wealth, in violation of Equal Protection and Due Process Clauses of the Constitution). Therefore, the constitutional argument is not persuasive.

Accordingly, Petitioner's Motion to Reconsider Denial of Variance is denied. Costs to be paid by Petitioner, Stone-Snyder.

Dated: June 17, 1985

JUDGE JAMES S. SFEKAS

IN THE MATTER OF THE APPLICATION OF STONE-SNYDER GENERAL PARTNERSHIP FOR VARIANCE FROM	*	IN THE CIRCUIT COURT
§1B02.3.C.1 & §302 OF THE BALTIMORE COUNTY ZONING REGULATIONS S/S ILLINOIS AVENUE 297' E. c/l ANNAPOLIS ROAD & N/S VIRGINIA AVENUE 213' E. c/l ANNAPOLIS ROAD 13th DISTRICT	*	FOR BALTIMORE COUNTY
Zoning Case No. 84-74-A	*	APPEAL
COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	*	Case No. 84-M-121

* *

MEMORANDUM OPINION AND ORDER

The People's Counsel of Baltimore County has appealed the decision of the County Board of Appeals granting a zoning variance to the Petitioner, Stone-Snyder General Partnership (Stone-Snyder).

Stone-Snyder owns 11 building sites created on a plat prior to 1952. The lots were originally divided into 25' recorded lots. Under current zoning regulations, the minimum width of the lots in that zone (DR 5.5) is 55 ft. BCZR Sec. 1B02.3.C.1. Stone-Snyder requested the Zoning Commissioner to grant a variance to permit them to combine two lots into one lot to create ten 50 foot lots and one 44.69 foot lot under BCZR 302. On September 20, 1983, the Zoning Commissioner denied the variance. Stone-Snyder appealed that decision and on February 29, 1984, the County Board of Appeals reversed the Zoning Commissioner and granted the variance.

Section 307 of the Baltimore County Zoning Regulations provides for variances. This appeal presents a petition for an area variance which requires proof of practical difficulty. Anderson v. Bd. of Appeals, 22 Md. App. 28 (1974).

The Court of Special Appeals set out the criteria for proving practical difficulty in Anderson, p. 39:

> "'1) Whether compliance with the strict letter of the restrictions governing...frontage... 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.'" (Citations omitted).

Both sides presented expert testimony. People's Counsel presented an expert planner who discussed the two options open to the Petitioner that do not require a variance. Those options are combining three lots to form one 75' lot or resubdividing the property into 55' lots.

The Petitioner argued that an individual owner could build on a 50' lot if the owner did not have sufficient adjoining land under §304 of the Baltimore County Zoning Regulations. Considerable testimony was given as to the problems that would be created on the parcel in controlling

JUN 19 1985

sediment, storm water and utilities if the Petitioner would sell the lots to individuals to circumvent the need for the variance.

The basis for the Board's opinion was that "The Board believes that to deny the Petitioner its requested variance would serve no purpose when the desired result could be achieved through legal gymnastics that could not deny Petitioner its goal." County Board of Appeals Finding dated March 28, 1984, p. 2. They then stated that re-subdividing or making 75' lots was a substantial hardship.

The record was devoid of any testimony to indicate that the Petitioner would suffer any hardship other than loss of building lots or delay. The mere fact that the variance would make this development more profitable is not sufficient to grant the variance. Easter v. City of Balt., 195 Md. 395 (1949). "The need sufficient to justify an exception must be substantial and urgent and not merely for the convenience of the applicant, inasmuch as the aim of the ordinance is to prevent exceptions as far as possible." Carney v. City of Baltimore, 201 Md. 130, 137 (1952).

The Court in reviewing actions of the zoning authority is faced with a limited scope of review. If the evidence is sufficient to make the decision fairly debatable, then the Court cannot substitute its judgment for that of the Board. Montgomery Co. v. Nat. Cap. Realty Corporation, 267 Md. 364 (1972); Ginn v. Farley, 43 Md. App. 229 (1979).

The Board had no testimony before it to determine practical difficulty under applicable standards. The fact that the Zoning Regulations provide an exception for an individual owner faced with a land shortage and no other options which the Petitioner could attempt to use to circumvent the ordinance, is clearly no basis on which to decide a variance. The Board's decision is clearly erroneous and not fairly debatable.

It is hereby ORDERED that the decision of the Board of Appeals is reversed. The variance is denied. Costs to be paid by Appellee.

James S. Sfekas
JUDGE JAMES S. SFEKAS

Dated: January 10, 1985

Copies to:
Board of Appeals
Phyllis Cole Friedman, Esquire
Christopher H. Hill, Esquire
Court File

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CASE NO. 16/176/84-M-121 ATTW

Stone-Snyder General Partnership vs. People's Counsel

RECEIVED FROM THE COUNTY BOARD OF APPEALS CERTIFIED DOCUMENTS, EXHIBITS, AND BOARD'S ANSWER FILED IN THE ABOVE ENTITLED CASE, AND TRANSCRIPT.

Katie Nichols
Clerk's Office

Date: June 5, 1984

CIRCUIT COURT FOR BALTIMORE COUNTY
LAW

DOCKET 16 PAGE 176 CASE NO. 84-M-121 CATEGORY APPEAL

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

IN THE MATTER OF
THE APPLICATION OF STONE-SNYDER GENERAL PARTNERSHIP
FOR VARIANCE FROM

s1B02.3.C.1 & s302
OF THE BALTIMORE COUNTY ZONING REGULATION
S/S ILLINOIS AVE. 297'
E. c/l ANNAPOLIS RD. &
N/S VIRGINIA AVE. 213'
E. c/l ANNAPOLIS RD.
13th District

Zoning Case No. 84-74-A

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

ATTORNEYS

Phyllis Cole Friedman
Peter Max Zimmerman
Rm. 223, Courthouse (04)
494-2188

Christopher H. Hill
200 Hospital Dr., Ste. 113
Glen Burnie, MD 21061 768-6733

CENTRAL ASSIGNMENT

6-18-85 - a.a. to Bd/Appellate

(1) March 27, 1984 - Appellant's Order for Appeal from the Opinion and Order of the County Board of Appeals and Petition fd.

(2) March 27, 1984 - Certificate of Notice fd.

(3) April 10, 1984 - Appellant's Petition for Extension of time to file Transcript of Proceedings and Order of Court Granting Extension until June 25, 1984 fd. (AOH)

(4) April 27, 1984 - App. of Chrispther H. Hill for the Appellee, (The Stone Snyder General Partnership) & same day Answer to Petition on Appeal fd.

*(5) June 5, 1984 - Transcript of Record fd.

*(6) June 5, 1984 - Notice of Filing of Record fd.

(7) June 29, 1984 - Appellant People's Counsel's Memorandum in Support of its Petition on Appeal & Exhibits fd.

(8) Aug. 6, 1984 - Correspondence fd.
(9) Aug. 6, 1984 - Appellee (Stone-Snyder General Partnership) Memorandum in Opposition of Petition on Appeal fd.

December 12, 1984 Hon. James S. Sfekas. Hearing had. Decision held sub-curia. Opinion to be filed.

(11) Jan. 11, 1985 - Memorandum Opinion and Order of Court that the decision of the Board of Appeals is Reversed.. The variance is denied. Costs to be paid by Appellee fd. (JSS)

(12) Feb. 1, 1985 - Petitioner's Motion for Reconsideration or Modification, Request for Hearing fd.
(13) Feb. 7, 1985 - People's Counsel's Opposition to Motion for Reconsideration fd.

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CASE NO.

May 14, 1985 Hon. James S. Sfekas. Hearing had. Decision of the Court held sub curia.

(14) May 22, 1985 Appellant's Memorandum in Support of Motion to Reconsider Denial of Variance fd. (The Stone-Snyder General Partnership)

(15) June 18, 1985 Memorandum & Order of Court that Petitioner's Motion to Reconsider Denial of Variance is Denied. Costs to be paid by Petitioner, Stone-Snyder fd. (JSS)

IN THE MATTER OF
THE APPLICATION OF
STONE-SNYDER GENERAL
PARTNERSHIP FOR VARIANCE
FROM Sec. 1B02.3C.1 and
Sec. 302 OF THE BALTIMORE
COUNTY ZONING REGULATIONS
S/S ILLINOIS AVE. 297' E. c/l
ANNAPOLIS ROAD, and N/S
VIRGINIA AVE. 213' E.E. c/l
ANNAPOLIS RD. 13th District

Zoning Case No. 84-74-A

* IN THE
* CIRCUIT COURT
* OF MARYLAND
* FOR BALTIMORE COUNTY
* Misc. Docket No. 16
* Folio No. 176
* File No. 84-M-121

NOTICE OF APPEAL

NOW COMES STONE-SNYDER GENERAL PARTNERSHIP and requests that this Court grant leave to appeal to the Court of Special Appeals the Honorable Judge James Sfekas' Decision of June 17, 1985 refusing to reconsider his reversal of the Baltimore County Board of Appeals grant of a variance.

Christopher H. Hill
200 Hospital Drive, Suite 113
Glen Burnie, Maryland 21061
Telephone: (301) 768-6733

CERTIFICATE OF SERVICE

I HEREBY CERTIFY under penalty of perjury that on this 9th day of July, 1985, a copy of the foregoing Notice of Appeal was mailed by first class mail, postage prepaid, addressed as follows:

Ms. Phyllis Cole Friedman
People's Counsel of Baltimore County
Room 223 Courthouse
Towson, Maryland 21204

Christopher H. Hill

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Christopher Hann-Hill

IN THE MATTER OF
THE APPLICATION OF
STONE-SNYDER GENERAL
PARTNERSHIP
FOR VARIANCE FROM
Sec. 1B02.3.C.1 & Sec. 302
OF THE BALTIMORE COUNTY
ZONING REGULATIONS
S/S ILLINOIS AVE. 297'
E. c/l ANNAPOLIS ROAD &
N/S VIRGINIA AVE. 213'
E. E. c/l ANNAPOLIS RD.
13th District

Zoning Case No. 84-74-A

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* AT LAW
* Misc. Docket No. 16
Folio No. 176
* File No. 84-M-121

APPELANT PEOPLE'S COUNSEL'S MEMORANDUM IN SUPPORT OF ITS PETITION ON APPEAL

I. INTRODUCTION

This is an appeal by the People's Counsel of Baltimore County from the February 29, 1984 Opinion and Order passed by the County Board of Appeals granting the Stone-Snyder General Partnership ("Stone-Snyder") a variance to permit lot widths of 50 feet and 44.69 feet in lieu of the required 55 feet. This requested variance had been previously denied by the Zoning Commissioner of Baltimore County. People's counsel has petitioned this court to reverse the County Board of Appeals and affirm the Order of the Zoning Commissioner on the grounds that the Board of Appeals did not have legally sufficient evidence to grant the requested variance.

II. FACTS

Stone-Snyder is the owner of two parcels of land, purchased in 1982, in the subdivision known as Baltimore Highlands. This subdivision was originally recorded in 1908 (Tr.

p.22, Petitioner's Exhibit No. 4.), and was not approved by the Baltimore County Planning Board or Planning Commission. The parcels are zoned D.R. 5.5 and consist of recorded 25 foot lots (Tr. p 21.). Under the applicable Baltimore County Zoning Regulations ("BCZR") these lots must have a minimum width of 55 feet (see BCZR 1B02.3 attached hereto as Exhibit 1) unless a variance is granted.

Based upon the testimony of James Hoswell of the County Planning Department there are two ways the subject property could be developed so as not to require a variance. Either three of the 25 foot recorded lots could be combined into 75 foot lots or the plat could be resubdivided to meet the 55 foot width plat requirement. (Tr. p.34.) Six lots in this subdivision have been combined into 75 foot lots and no lot in this subdivision is as narrow as 44.69 feet. (Tr.pp 27,28 and petitioner's Exhibits No. 1 and 2.) As far as the resubdivision is concerned, this would involve the same standard subdivision processing that every developer of a proposed subdivision must comply with. (Tr. p. 35) It would take a few months and would treat the plat so as to meet modern day requirements. (Tr. p.35)

Stone-Snyder prefers to develop the subject property by combining only two lots to create ten (10) 50 foot lots and one 44.69 foot lot. The testimony is that if they have to combine three 25 foot lots they will lose five building sites (Tr. p.12) and if, alternatively, they have to resubdivide they will lose two building sites. (Tr. p.21.) Other than losing subdivision lots,

no other testimony was presented to show any adverse effect as a result of complying with the Baltimore County Zoning Regulations.

There was testimony that it would be better if all the sites were graded and developed at one time (Tr. p.24) but there was no testimony that this could not be done were the lots 55 feet or 75 feet wide, rather than the requested fifty (50) feet. Richard Parrish, an expert offered by Stone-Snyder testified that the building sites could be graded and sold as individual lots and that this was the common practice. (Tr. p.30.) He also testified that the grading plan would not be substantially different if the lots were 55 or 75 feet wide. (Tr. pp. 30, 31.)

III. THE APPLICABLE LAW

A. The Legal Requirement for a Variance

Zoning regulations permit a variance from area regulations where strict compliance would result in "practical difficulty" or "unreasonable hardship". (Sec. 307 BCZR). While unreasonable hardship can be demonstrated by showing that the physical or topographical features of the property are such that the property cannot be used for a permitted purpose, or by showing that the property can be arranged for such use only at a prohibitive expense Anderson v. Bd. of Appeals of Town of Chesapeake Beach, 22 Md. App. 28 (1974); Marlow v. Zoning Hearing Bd. Haverford Township, 415 A.2d 946 (Pa. Cmwlth., 1980), the Court of Appeals has held that a variance relating to certain "area" restrictions, as distinguished from restrictions on the use of the property, may be judged under the less stringent "practical

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difficulty" test. Anderson, supra. See Bd. of Adjustment, Etc., v. Kwik-Check Realty, 389 A.2d 1289 (Del. Supr., 1978). As noted in Anderson, the factors to be considered under this test in determining whether a variance should be granted are:

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,

Anderson, supra.

Mere evidence that the zoned use is less financially rewarding than the proposed use is insufficient to justify a variance. Pyzdrowski v. Pittsburgh Bd. of Adjustment, 263 A.2d 426 (Pa., 1970).

In addition to the possibility of a variance, the Baltimore County Zoning Regulations provide an exception for undersized single-family lots recorded prior to 1955 where the owner of the lot does not own sufficient adjoining land to conform substantially to the width and area requirements. (See Sec. 304

BCZR emphasis supplied. 1/).

B. Scope of Review

The standard for review has recently been summarized by the Court of Special Appeals as follows:

> Maryland law dictates that where a legislative body or board of county officials has granted a rezoning of property, the question on judicial review is whether or not such action is arbitrary and discriminatory or fairly debatable. Trainer v. Lipchin, 269 Md. 667, 309 A.2d 471 (1973); Boyce v. Sembly, 25 Md. App. 43, 334 A.2d 137, (1975).
>
> ..It is not the function, duty or right of of a court to zone or rezone, but only to determine whether the legislative body has properly applied the governing law to the facts. If there is room for reasonable debate as to whether the facts justify the municipal legislature in deciding the need for its enactment, it must be upheld. It is only when there is no room for reasonable debate, or a record barren of supporting facts, that the Court can declare the legislative action arbitrary, capricious, discriminatory or an unequal application of the law. Wakefield v. Kraft, 202 Md. 136, 142, 96 A.2d 27, 28-29 (1953) (Citations omitted).
>
> A decision of the zoning board based upon substantial evidence will be deemed "fairly debatable" and a court will not then substitute its judgment for that of

1/ This section reads as follows:
Section 304 - USE OF UNDERSIZED SINGLE-FAMILY LOTS (B.C.Z.R., 1955.)

A one-family dwelling may be erected on a lot having an area or width at the building line less than that required by the height and area regulations, provided: (B.C.Z.R., 1955.)

a. That such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to adoption of these Regulations; and (B.C.Z.R., 1955.)

b. That all other requirements of the height and area regulations are complied with; and (B.C.Z.R., 1955.)

c. That the owner of the lot does not own sufficient adjoining land to conform substantially to the width and area requirements. (B.C.Z.R., 1955.)

> the zoning board. The "fairly debatable" test is analogous to the "clearly erroneous" standard applied under Maryland Rules of Procedure 886 and 1086. Sedney v. Lloyd, 44 Md. App. 633, 410 A.2d 616 (1980). Recently, Judge Rodowsky, writing for the Court of Appeals in United Steelworkers of America AFL-CIO, Local 2610 v. Bethlehem Steel Corp., No. 23 (decided March 9, 1984) elaborated on this standard for administrative review.
>
> Judicial review of administrative action differs from appellate review of a trial court judgment. In the latter context, the appellate court will search the record for evidence to support the judgment, and will sustain the judgment for a reason plainly appearing on the record whether or not the reason was expressly relied upon by the trial court. However, in judicial review of agency action the court may not uphold the agency order unless it is sustainable on the agency's findings and for the reasons stated by the agency. Id. at 14-15. (Citations omitted).

Grabill v. People's Counsel, Court of Special Appeals No. 801 September 1983 unreported. (Attached as Exhibit 2.)

Thus, unless there is substantial evidence to support the Board of Appeal's decision and this evidence formed the basis for the Board's decision, the decision may not be upheld.

ARGUMENT

The Board has concluded that "through legal gymnastics" the petitioner (Stone-Snyder) could have achieved its goal and thus to deny Stone-Snyder its variance would serve no purpose. The basis of this conclusion is that if Stone-Snyder were to deed

the sites to sufficient numbers of different owners, Section 304 of the Zoning Regulations would permit an automatic exception to the fifty-five foot minimum lot widths without a need for a variance.

This reasoning ignores the limited purpose of the Section 304 exception, the actual facts before the Board, and further seeks to create a basis for granting a variance which is not legally permissible. Section 304 is an exception designed for lot owners who do not own sufficient adjoining land to conform substantially to the width and area requirements. Precise, unambiguous language to this effect is contained within the body of the regulation itself in sub-section "c", which, as Mr. Hoswell testified, is critical. (Tr. p. 38.) It is beyond dispute that Stone-Snyder owns sufficient adjoining land to conform to the width requirements. Thus, this section by its terms does not apply to the instant case. The theoretical possibility that it could apply were Stone-Snyder to sell off the lots ignores the reality of the present case and the fact that in such an event Stone-Snyder would not be the petitioner and no variance would be necessary. It certainly does not form a legal basis for the grant of a variance to a property owner.

As an additional or alternate ground for its decision to grant the variance the Board has concluded that:

> "..the petitioner would sustain substantial hardship by being required to resubdivide the property or develop it in lots of 75 feet in width."

No evidentiary basis is given for this conclusion, however, and based on the testimony there is none.

Later the Board states, again additionally or alternatively, that they believe that the piecemeal sale of lots could pose particularly unreasonable hardship and practical difficulty relative to the provision of controls for sediment drainage and utilities, and believe that the uniform development of this property is in the best interest of the public. While this might be true, there is not a scintilla of evidence that absent a variance to permit fifty foot lots there would be a piecemeal sale of lots or piecemeal development. To the contrary, the record demonstrates clearly that Stone-Snyder could develop these parcels without a variance by either combining them into seventy five foot lots or resubdividing the parcels into 55 foot lots. No evidence was presented that either method is not economically viable, or that either method would cause problems with controls for sediment drainage and utilities. Furthermore, Stone-Snyder's own expert conceded that even if there would be a sale of individual lots, grading by the developer prior to their sale is the common practice. Thus there is no evidence of unreasonable hardship or practical difficulty.

CONCLUSION

The decision of the Board of Appeals is based not on substantial evidence but on conjecture that is contradicted by the record and should be reversed and the order of the Zoning Commissioner affirmed.

Respectfully submitted

Phyllis Cole Friedman

Phyllis Cole Friedman
People's Counsel for Baltimore County

Peter Max Zimmerman
Deputy People's Counsel
Room 223, Court House
Towson, Maryland 21204
494-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of June, 1984, a copy of Appellant People's Counsel's Memorandum In Support of Its Petition on Appeal was mailed by first class mail postage prepaid to Christopher H. Hill, Esquire, 836 Ritchie Highway, Suite 22, Severna Park, MD 21146; and a copy was served on the Administrative Secretary, County Board of Appeals, Room 200, Court House, Towson, MD 21204.

Phyllis Cole Friedman

Phyllis Cole Friedman

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1802.2 (DR)

1802.2—Regulations, Standards, and Controls for Density, Bulk, Open Space, and Parking. [Bill No. 100, 1970.]

A. Dwellings. The maximum gross residential densities and height of dwellings, the minimum percent of gross site area which must be in local open space tracts, except as otherwise provided in Section 22-53, Baltimore County Code, 1968, as amended,[3] and the minimum number of offstreet parking spaces required with respect to residential development in D.R. zones shall be as prescribed in the table below; provided, however, that higher or additional standards for the provision of other amenity open space, standards and methods for the inclusion and equitable apportionment of public amenity open space within the calculations of gross areas of tracts abutting the open space, and standards providing for greater heights of buildings in appropriate circumstances, all as more particularly set forth in Section 504, shall control when adopted pursuant to the authority of said section.

Zoning Classification	Maximum Gross Residential Density, in Dwelling or Density Units per Acre	Maximum Height of Buildings, in Feet	* Minimum Per Cent of Gross Site Area as Local Open Space Tracts	Minimum Number of Offstreet Parking Spaces per Dwelling or Density Unit, Except as Housing for the Elderly	Minimum Number of Offstreet Parking Spaces per Dwelling or Density Unit for Housing for the Elderly
D.R. 1	1.0 dwelling units per acre	50	55	2.0 per dwelling unit	1.5 per dwelling unit
D.R. 2	2.0 " " "	50	50	2.0 " " "	1.5 " " "
D.R. 3.5	3.5 " " "	50	45	2.0 " " "	1.5 " " "
D.R. 5.5	5.5 " " "	50	40	1.75 " " "	1.5 " " "
D.R. 10.5	10.5 " " "	50	40	1.75 " " "	1.5 " " "
D.R. 16	16.0 density	60	35	1.35 " density [DELETED BY BILL NO. 60-81]	1.15 " density [DELETED BY BILL NO. 60-81]
				but not less than 1.0 per dwelling unit	

*Land within 25 feet of a window or other opening in a residential structure in a D.R. zone is not considered local open space.

[Bill Nos. 100, 1970; 5-79; 80-81]

B. Other Principal Uses. Density, bulk, open space, and parking regulations, standards, or controls for principal uses other than dwellings within zones of different classification shall be governed by provisions adopted pursuant to the authority of Section 504. [Bill No. 100, 1970.]

[C. In a D.R. 16 zone . . . included by Bill No. 100, 1970, and deleted by Bill No. 124-81]

1802.3—Special Regulations for Certain Existing Developments or Subdivisions and for Small Lots or Tracts in D.R. Zones. [Bill No. 100, 1970.]

A. In D.R. zones, contrary provisions of this article notwithstanding, the provisions of or pursuant to this subsection shall apply to the use, occupancy,

3. Section 22-58 of the Baltimore County Code, 1978, as amended per Bill No. 5-79

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and development of, the alteration or expansion of structures upon, and administrative procedures with respect to: [Bill No. 100, 1970.]

1. Any lot which is in a recorded residential subdivision approved by the Baltimore County Planning Board or Baltimore County Planning Commission and which has been used, occupied, or improved in accordance with the approved subdivision plan; [Bill No. 100, 1970.]

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

3. Any lot, or tract of lots in single ownership, which is not in an existing development or subdivision as described in Subparagraph 1 or 2 and which is too small in gross area to accommodate six dwelling or density units in accordance with the maximum permitted density in the D.R. zone in which such tract is located; or [4] [Bill No. 100, 1970.]

4. Any lot, or tract of lots in single ownership, which is not in an existing development or subdivision as described in Subparagraph 1 or 2 and which is less than one-half acre in area, regardless of the number of dwelling or density units that would be permitted at the maximum permitted density in the zone in which it is located.[5] [Bill No. 100, 1970.]

5. Any lot, or tract of lots in single ownership which is in a duly recorded subdivision plat not approved by the Baltimore County Planning Board or Planning Commission. [Bill No. 100, 1970.]

B. Standards Applicable to Existing Developments Etc. The minimum standards for net lot area, lot width, front-yard depth, single-side-yard width, sum of widths of both side yards, rear-yard depth, and height with respect to each use in a development described in Subparagraph A.1, above, shall be as prescribed by the zoning regulations applicable to such use at the time the plan was approved by the Planning Board or Commission; however, the same or similar standards may be codified and comparable bulk (height or area) standards for different permitted uses may be established and codified under Section 504, and these standards shall thereupon control in such existing developments. Development of any subdivision described in Subparagraph A.2 shall be in accordance with the tentatively approved subdivision plan therefor. Standards for development of lots or tracts described in Subparagraphs A.3, A.4 or A.5 shall be as set forth in Paragraph C, below. [Bill No. 100, 1970.]

4. *Thus (with conjunction) in Bill No. 100, 1970.*
5. *Thus (period; without conjunction) in Bill No. 100, 1970.*

C. Development Standards for Small Lots or Tracts. [Bill No. 100, 1970.]

1. Any dwelling hereafter constructed on a lot or tract described in Subparagraph A.3 or A.4 shall comply with the requirements of the following table:

Zoning Classification	Minimum Net Lot Area per Dwelling Unit	Minimum [6] Lot Widths, in Feet	Minimum Front-Yard Depth, in Feet	Minimum Width of Individual Side Yard, in Feet	Minimum Sum of Side-Yard Widths, in Feet	Minimum Rear-Yard Depth, in Feet
D.R. 1	40,000 square feet	150	50	20	50	50
D.R. 2	20,000 square feet	100	40	15	40	40
D.R. 3.5	10,000 square feet	70	30	10	25	30
D.R. 5.5	6,000 square feet	55	25	10	—	30
D.R. 10.5	3,000 square feet	20	10	10	—	30
D.R. 16	2,500 square feet	20	10	25	—	30

[Bill No. 100, 1970.]

2. Other standards for development of small lots or tracts as so described shall be as set forth in provisions adopted pursuant to the authority of Section 504. [Bill No. 100, 1970.]

D. An amendment to any part of a development plan involving only property subject to the provisions of this subsection shall not be subject to the provisions of Paragraph D [7] of Subsection 1B01.3. [Bill No. 100, 1970.]

6. *Thus (plural) in Bill No. 100, 1970.*
7. *Although the provision referred to was Paragraph D as set forth in the Planning Board's final report recommending the legislation on which Bill No. 100, 1970 was based, when drafted into law the subject matter of the provision was transferred to Subparagraph 7 of Paragraph A.*

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND
No. 801
September Term, 1983

ZONING FILE #R-82-80

TRUMAN GRABILL

v.

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY

Garrity
Bloom
Bell

JJ.

PER CURIAM

Filed: April 26, 1984

The Baltimore County Board of Appeals (Board) granted Truman Grabill's (Grabill) Petition for Zoning Reclassification for his 13.7 tract of farmland in Baltimore County from D.R.5.5. (Density Residential, Maximum 5.5 Units Per Acre) to D.R. 16 (Density Residential, Maximum 16 Units Per Acre). The Board in granting the Petition found that the Baltimore County Council had erred in its designation of the subject property as D.R. 5.5 on the 1980 Comprehensive Zoning Map. The Circuit Court for Baltimore County reversed, holding that the Board had erroneously substituted its judgment for that of the County Council.

On appeal, Grabill asks us to hold that (I) the trial court erred in substituting its judgment for that of the Board where the evidence before the Board presented a fairly debatable issue that the County Council committed error when it zoned the subject tract D.R. 5.5 instead of D.R. 16; and (II) that the D.R. 5.5 zoning determination by the County Council amounted to an unconstitutional confiscation because the property could not reasonably be developed in that classification. We decline to so hold and affirm the judgment below.

FACTS

The case at bar is not a stranger to the judicial process. There have been two reviews of this matter before

the Circuit Court for Baltimore County and two appeals to this Court.

Pursuant to the 1976 Comprehensive Zoning Map process, Grabill's property was zoned D.R. 5.5. Grabill petitioned the Baltimore County Board of Appeals to reclassify his tract to D.R. 16. The Board granted his request November 16, 1979, and the Circuit Court for Baltimore County affirmed July 11, 1979. The People's Counsel for Baltimore County (People's Counsel) appealed that decision to this Court. That appeal was dismissed November 19, 1980 as moot because in the interim, the Baltimore County Council considered Grabill's property as a specific issue during the 1980 Comprehensive Zoning Map process and reclassified it back to its original designation of D.R.5.5 after a visit to the site. Grabill again petitioned the Board for reclassification to D.R.16 instead of D.R.5.5. The Board again reclassified and this time the court reversed. It is this second petition with which we are concerned here.

The property itself is a 13.7 acre tract, with a dwelling and farm building, originally cultivated as farmland. It lies in the area east of Rolling Road and north of Dogwood Road in Western Baltimore County, located in the northwestern portion of a 100 acre quadrant zoned D.R.5.5.

There is some dispute as to the character of the surrounding area. Grabill describes the site as bounded on the north and east by the 280 acre Security Industrial Park with industries including Baltimore Gas & Electric Company, the F.B.I., Barre International Corporation, C & P Telephone Company, Eastman Kodak, MCEEA and offices at the Rutherford Plaza Office Center. People's Counsel maintains that the neighborhood generally to the north of the site contains a mix of townhouses, apartments, and single family homes on land zoned residential, as well as a portion of the Security Industrial Park.

The property is bounded on the south, according to Grabill, by the Security Square Mall, a major regional shopping center and two national motel chains, another 55 acre industrial office park and an extensive apartment complex, Quail Meadows. People's Counsel described the southern perimeter of the property as largely vacant land zoned D.R.5.5, with the exception of an elementary school and a church on the north side of Dogwood Road, a new subdivision of 12 single family homes, called Hanna Woods, and an approved tentative subdivision plan and public works agreement for the "Walling Ford" development comprising 226.6 units located at the northeast

corner of Rolling and Dogwood Roads. People's Counsel asserts contrary to Grabill that Security Square Mall, the two national motel chains, the industrial office park and the Quail Meadows Apartment complex are not close to the subject property, each located approximately one mile from the tract in question.

Both Grabill and People's Counsel agree that to the west of the quadrant, separated by Rolling Road is a substantial area of apartment complexes including the Kingswood Common Apartments, zoned D.R.16.

The basic issue before the County Board of Appeals under the Petition for Reclassification was whether there was error in the 1980 Comprehensive Zoning Map in designating the subject tract D.R.5.5.

The hearing before the Board took two full days to complete. For purposes of this appeal, the testimony and evidence before the Board can be summarized as follows:

Grabill produced testimony through expert witness Paul Lee, who had prepared a development cost estimate for public improvements for the theoretical maximum number of units allowed under the D.R.5.5 classification. He projected the cost to be $9,100, assuming the need to provide a sewer connection. Lee believed that this figure coupled with building costs rendered the land infeasible for low density residential development. He added that his estimate might be lower than the true costs if the subject site was plagued with underground rock as suspected.

He also related to the Board that in his opinion, D.R. 5.5 was an improper zone for the tract because it was bounded on one side by an industrial zone and on another by high density residential.

Grabill himself appeared and recited to the Board his reasons for seeking reclassification, claiming that the property was no longer suitable for single family residence or farming. He valued his property at $540,000..

Frederick P. Klaus, a real estate expert who had been involved with development in the vicinity of the site, testified that in his opinion, error occurred when the County Council failed to learn the extent to which the Board considered the site previously. He stated that the development cost at D.R.5.5, whether the $9,100 figure suggested by Paul Lee or the $7,000 figure offered by the Board itself, was too prohibitive for D.R.5.5 residential use. He estimated that normal per unit development cost was $3,500.

Witness Virginia Appleby, a neighbor, appeared in support of the petition. She had just sold her property zoned D.R.5.5.

People's Counsel first witness was engineer and consultant J. Carroll Hagan. Mr. Hagan reviewed Paul Lee's estimates and found them reasonable, noting that

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public service development costs per unit for residential development in Baltimore County averaged $8,000.

Hagan's testimony was corroborated by Robert Morton of the Baltimore County Public Works Department, who introduced figures of recent public works agreements for subdivisions in Western Baltimore County.

Michael Flanagan, Assistant Traffic Engineer, presented evidence on the possible impact on the existing road system in the area should reclassification be granted.

Finally, County Planner James Hoswell established that based on his review of the site and its environs, the 1980 Comprehensive Map history, and the mix of uses in the neighborhood, D.R.5.5 zoning was proper for the subject site. He testified that while good planning theory favored high density residential zones as a buffer between low density residential zones and commercial or industrial zones, textbook models could rarely be achieved. Hoswell also expressed concern that reclassification might trigger a domino effect resulting in additional rezoning petitions in the area. Referring to the Council's consideration of the site, the witness' review of the Planning Board and Council's logs rebutted petitioner's contention that the County Council, as a matter of policy, adheres to prior Board of Appeals reclassification decisions, and

presented some evidence that the Council had before it information of the previous Board of Appeals action and circuit court action.

In addition, People's Counsel introduced into evidence an October 7, 1980 letter of Councilman James Smith indicating that the planning staff and Planning Board recommended D.R.5.5 zoning, that the Council saw the property, agreed with the recommendation and that the Council "retired" the issue of Grabill's rezoning because it had received no further information on the issue.

The County Board of Appeals granted the Petition for Reclassification. The Board specifically found there was no issue of confiscation as the property could be developed within its present zoning. After noting that the case law supported both Grabill's position and that of the People's Counsel, the Board concluded that:

> As a last resort the Board will refer to the motto displayed in our courtroom, 'Reason is the Life of the Law,' and in the subject case 'Reason' dictates that some transitional use should be provided between land being used as an industrial park and land zoned for what is normally considered single family residential use on single lots.

The Board ruled that the D.R.5.5 zoning on the subject parcel was in error and ordered its reclassification to the requested D.R.16 zoning.

The Circuit Court for Baltimore County reversed the Board's decision. The trial court found that the Board had substituted its judgment of good planning for that of the County Council by finding error when the Council adopted the 1980 zoning map with Grabill's D.R. 5.5 designation. The court held that there was no evidence in the record to support a finding that the County Council's action amounted to a mistake that would warrant correction by reclassification:

> Just because there is a dispute with the Council's conclusion does not constitute a showing of original mistake.

THE LAW

I. Whether the trial court erred in substituting its judgment for that of the Board where the issue before the Board was fairly debatable.

A. Cyclical Zoning

This second round of litigation was instituted because Truman Grabill, as a property owner, contested the 1980 Comprehensive Zoning Map promulgated by the Baltimore County Council. The Baltimore County Code, Section 22-21(2) et seq. requires the Council to adopt a county-wide zoning map every fourth year. In Coppolino v. County Board of Appeals of Baltimore Co., 23 Md. App. 356, 328 A.2d 55 (1974), this Court affirmed the presumption

in favor of this cyclical zoning system. Judge Davidson speaking for this Court held at page 370:

> the system will enhance the stability and permanence of zoning classifications by assuring that the majority of zoning classifications are determined in accordance with a carefully integrated plan of development, based upon a full understanding of the present and future needs of a broad area, rather than a piecemeal review of a limited scope.

In this case, the subject property was considered as a specific issue in the 1980 map process. The County Council classified the property as D.R.5.5 in 1976 and reaffirmed that classification in 1980. It was within the Council's discretion to decide that the low density residential designation should remain the same as it was in 1976. Daihl v. County Board of Appeals of Baltimore County, 258 Md. 157, 265 A.2d 227 (1970).

Maryland courts have repeatedly recognized that there is a strong presumption of correctness accorded to legislative comprehensive zoning and rezoning. Howard County v. Dorsey, 292 Md. 351, 355, 438 A.2d 1339 (1982). To sustain a reclassification, there must be strong evidence of mistake in the comprehensive zoning or evidence of substantial change in the character of the neigborhood. Anne

Arundel County v. Maryland National Bank, 32 Md. App. 437, 361 A.2d 134 (1976); Balt. Cty. Code §2-58.1(j). The burden of demonstrating change or mistake is always upon the applicant, Agneslane v. Lucas, 247 Md. 612, 233 A.2d 757 (1967), and that burden is an onerous one. Cabin John Ltd. v. Montgomery County, 259 Md. 661, 271 A.2d 174 (1970). The applicant must present strong and convincing evidence to overcome the strong presumption of correctness attached to comprehensive zoning. Stratakis v. Beauchamp, 268 Md. 643, 304 A.2d 244 (1973).

B. Scope of Review

Maryland law dictates that where a legislative body or board of county officials has granted a rezoning of property, the question on judicial review is whether or not such action is arbitrary and discriminatory or fairly debatable. Trainer v. Lipchin, 269 Md. 667, 309 A.2d 471 (1973); Boyce v. Sembly, 25 Md. App. 43, 334 A.2d 137, (1975).

> ... It is not the function, duty or right of a court to zone or rezone, but only to determine whether the legislative body has properly applied the governing law to the facts. If there is room for reasonable debate as to whether the facts justify the municipal legislature in deciding the need for its enactment, it must be upheld. It is only when there is no room for reasonable debate, or a record barren of supporting facts, that the Court can declare the legisla-

> tive action arbitrary, capricious, discriminatory or an unequal application of the law. Wakefield v. Kraft, 202 Md. 136, 142, 96 A.2d 27, 28-29 (1953) (Citations omitted).

A decision of the zoning board based upon substantial evidence will be deemed "fairly debatable" and a court will not then substitute its judgment for that of the zoning board. The "fairly debatable" test is analogous to the "clearly erroneous" standard applied under Maryland Rules of Procedure 886 and 1086. Sedney v. Lloyd, 44 Md. App. 633, 410 A.2d 615 (1980).

Recently, Judge Rodowsky, writing for the Court of Appeals in United Steelworkers of America AFL-CIO, Local 2610 v. Bethlehem Steel Corp., No. 23 (decided March 9, 1984) elaborated on this standard for administrative review.

> Judicial review of administrative action differs from appellate review of a trial court judgment. In the latter context, the appellate court will search the record for evidence to support the judgment, and will sustain the judgment for a reason plainly appearing on the record whether or not the reason was expressly relied upon by the trial court. However, in judicial review of agency action the court may not uphold the agency order unless it is sustainable on the agency's findings and for the reasons stated by the agency. Id. at 14-15. (Citations omitted).

The issue before this Court is therefore whether the trial court was clearly erroneous in reversing the Board's ruling based on the express reasons stated therein.

C. Mistake

Grabill asserts that the finding of mistake in the 1980 Comprehensize Zoning Map by the appeals board is supported by substantial evidence rendering the conclusion fairly debatable.

In Boyce v. Sembly, supra, the Court comprehensively set forth the concept of mistake in zoning law and judicial review of it:

> It is presumed ... that at the time of the adoption of the map the Council had before it and did, in fact, consider all of the relevant facts and circumstances then existing. Thus, in order to establish error based upon a failure to take existing facts or events reasonably forseeable of fruition into account, it is necessary not only to show the facts that existed at the time of the comprehensive zoning but also which, if any, of those facts were not actually considered by the Council ... Thus, unless there is probative evidence to show that there were then existing facts which the Council, in fact, failed to take into account, or subsequently occurring events which the Council could not have taken into account, the presumption of validity accorded to comprehensive zoning is not overcome and the question of error is not fairly debatable. ... (Emphasis supplied). 25 Md. App. at 51-52.

In the case at bar, Grabill asserts he surpassed his evidentiary burden by demonstrating: (i) specific physical facts not readily discernible at the time of the comprehensive zoning - these facts include the presence of underground rock, the high cost of extending the sewer line to the premises and the high public development costs rendering the property unsuitable for D.R.5.5 development; (ii) the existence of facts not taken into account by the County Council - Grabill maintains that based on the letter of Councilman Smith and the Planning Staff and Planning Board Recommendation, the Council did not consider the viability of the transition or buffer theory in zone planning, sewer, water or storm drain information, the availability of public works and services and development cost information before classifying the property D.R.5.5, and (iii) the existence of facts occurring subsequent to the comprehensive zoning - namely, that the Council was, on July 15, 1980, when it rendered its decision, unaware of the circuit court affirmance of the 1976 reclassification to D.R.16 by the prior Board, citing the March 20, 1980 date as the last entry in the Planning Board log book submitted to the County Council.

Were we to search the record for substantial evidence to sustain Grabill's theories, we might conclude that the evidence was sufficient to overcome the presump-

JUN 16 1988

tion of correctness accorded to comprehensive zoning. There was unrebutted testimony by Paul Lee of the presence of underground rock, although such testimony cannot be given much weight. The opinion or conclusion of an expert or lay witness is not evidence strong or substantial enough to show error in a comprehensive rezoning unless the reasons given by the witness as the basis for his opinion, or other supporting facts relied upon by him, are themselves substantial and strong enough to do so. Stratakis v. Beauchamp, 268 Md. at 655, 304 A.2d at 250. Compare Bonnie View Country Club v. Glass, 242 Md. 46, 217 A.2d 647 (1966)(Expert Engineer testified as to existence of underground mine shafts after conducting several surveys and performing excavation on subject site).

In addition, there was testimony that development costs at D.R.5.5 were prohibitive inter alia because projects across the street from the Grabill property were selling for substantially less than those proposed for the subject site under the D.R.5.5 classification.

Grabill also offered testimony that the Council may not have carefully considered relevant information which existed at the time of the comprehensive zoning. However, in order to establish the Council's failure, there must be evidence to show that such information was not, in fact, or could not have been taken into account

so that the Council's action was premised on a misapprehension. Coppolino, 23 Md. App. at 372, 328 A.2d at 63.

Finally, Grabill offered testimony that the Council may have been unaware of the circuit court action on the 1976 rezoning petition when it retired the issue. This would not amount to substantial evidence for the sole reason that the 1976 reclassification is immaterial to the new 1980 classification by the County Council.

Thus, were we to review the evidence, we might find the record could have shown mistake. However, we are constrained on appeal to limit our review to the conclusions stated by the Board in its decision. The Board found that Grabill overcame the burden of presumption, proving the County Council had committed error. However, the Board reasoned so not because the property had underground rock or could not be developed at D.R.5.5 because of high cost, or because the Council was unaware of existing facts or because an unconstitutional confiscation had occurred (See Issue II, infra), but because the Board simply disagreed with the policy and judgment of the County Council. That is not their function, nor is it the function of the lower court or this Court to perform the legislative function the Baltimore County Code commits to the Baltimore County Council. The trial court did not err in reversing the Board of Appeals' ruling.

II. Whether the D.R.5.5 zoning determination amounted to an unconstitutional confiscation.

As a separate issue, Grabill alleges that it was confiscatory to zone the subject tract D.R.5.5 because the property cannot reasonably be developed in that classification.

The general rule in Maryland is that to find an unconstitutional taking, the owner must affirmatively demonstrate that the legislative or administrative determination deprives him of all reasonable use of his property and that it cannot be used for any of the permitted uses in the existing zone. Stratakis v. Beauchamp, 268 Md. at 643, 304 A.2d at 244 (1973). It is not enough for the property owner to show that the zoning action results in substantial loss or hardship. Mayor and City Council of Baltimore v. Borinsky, 239 Md. 611, 622, 212 A.2d 508, 514 (1965).

In the case before us, the Board found that there was no confiscation, noting that the property could be developed under its present zone designation. The circuit court affirmed this determination. Even if the record could have supported a finding of confiscation, the Board did not so find. Our scope of review is limited to what the Board did find. We hold that the trial court did not err in reversing the Board's ruling based on the reasons therein expressed.

Under all the circumstances in this case, the presumption of validity accorded to the Council's comprehensive zoning decision was not overcome. Accordingly, we shall affirm the judgment of the circuit court.

JUDGMENT AFFIRMED.

COSTS TO BE PAID BY APPELLANT.

FEB 20 AM

ZONING DEPARTMENT

MANDATE

Court of Special Appeals of Maryland

Pre-docket No. 797, September Term, 1985

Stone-Snyder General Partnership v.	January 9, 1986: Order of Court, sua sponte, dismissing the appeal. Maryland Rule 1035 b. 4.
Peoples Counsel for Baltimore County	February 10, 1986: Mandate issued.

STATEMENT OF COSTS:

In Circuit Court: Baltimore County
No. 84-M-121

Record
Stenographer's Costs

In Court of Special Appeals:

Filing Record on Appeal . . . . . .
Printing Brief for Appellant . . . . . .
Reply Brief . . . . . .
Portion of Record Extract — Appellant . . . . . .
Printing Brief for Cross-Appellee . . . . . .

Printing Brief for Appellee . . . . . .
Portion of Record Extract — Appellee . . . . . .
Printing Brief for Cross-Appellant . . . . . .

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COUNTY BOARD OF APPEALS
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STATE OF MARYLAND, Set:

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

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Special Appeals, this tenth *day of* February *A.D. 19* 86

Clerk of the Court of Special Appeals of Maryland

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

JUN 18 '86

Court of Special Appeals
of Maryland

HOWARD E. FRIEDMAN
CLERK

Annapolis, Md. 21401-1698
(301) 269-3646 (DIRECT LINE)
(301) 261-2920 (WASHINGTON AREA)
TTY FOR DEAF
(301) 269-2609 (DIRECT LINE)
(301) 565-0450 (WASHINGTON AREA)

ROBERT J. BOOZE
CHIEF DEPUTY

January 10, 1986

Christopher H. Hill, Esquire
200 Hospital Drive, Suite 113
Glen Burnie, MD 21061

Phyliss Cole Friedman, Esquire
Courthouse, Rm 223
Towson, MD 21204

Re: Stone-Snycer General Partnership v. Peoples Counsel for Baltimore County
Pre-docket No. 797, September Term, 1985
(No. 84-M-121, in the Circuit Court for Baltimore Co.)

Dear Counsel:

Enclosed find a copy of an Order of this Court dated January 9, 1986, dismissing the captioned appeal for the reasons outlined therein. The mandate of this Court will be issued pursuant to Maryland Rule 1076 b.

Very truly yours,

Howard E. Friedman
Clerk

HEF:afk

Enclosure

cc: Elmer H. Kahline, Jr., Clerk
Circuit Court for Baltimore County
County Board of Appeals of Baltimore County

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IN THE COURT OF SPECIAL APPEALS

Stone-Snyder General Partnership
v.
Peoples Counsel for Balt. Co.

PRE-DOCKET
No. 797, September Term, 1985

ORDER OF DISMISSAL
(Failure to File Record)

(1) In accordance with Maryland Rule 1219, the Clerk of the Circuit Court for Baltimore County has advised that on July 12, 1985 appellant filed an appeal to this Court in the above-entitled matter.

(2) Pursuant to Maryland Rule 1025 a.1. & 2. the record in this appeal was due to be filed on or before November 25, 1985, and the records of this Court indicate that, as of this date said record has not been filed.

WHEREFORE, pursuant to Maryland Rule 1035 b.4., it is by the Court of Special Appeals, this 9th day of January, 1985, upon its own motion,

ORDERED, that the captioned appeal be, and it is hereby, dismissed for failure to file the record as required by Maryland Rule 1025.

CHIEF JUDGE

JUDGE

JUDGE

afk

86-163 BO 2/18/86
From the desk of 2/19/86

EDITH T. EISENHART

To Bettye - Zoning Office

Please include the attached Mandate in zoning file #84-74-A, Stone-Snyder, which file was closed and returned to your office on 2/10/86. Thank you.

Edith

WHEREFORE, Appellee prays that the Order of the County Board of Appeals under date of February 29, 1983 be affirmed.

Christopher H. Hill
Attorney for Appellee
200 Hospital Drive, Suite 113
Glen Burnie, Maryland 21061
Telephone: (301) 768-6733

CERTIFICATE OF SERVICE

I hereby certify under penalties of perjury that on this 25th day of April, 1984, a copy of the foregoing Answer to Petition on Appeal was forwarded by first class mail, postage prepaid, addressed to the Administrative Secretary, County Board of Appeals, Room 200, Court House, Towson, MD 21204 and to Phyllis Cole Friedman, People's Counsel for Baltimore County, Room 223, Court House, Towson, Maryland 21204.

Christopher H. Hill

COUNTY BOARD OF APPEALS
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People's Counsel for Balto. Co.

In the matter of Stone-Snyder General Partnership

Vs.

Co. Bd. of Appeals of Balto. Co.

IN THE CIRCUIT COURT

FOR

BALTIMORE COUNTY

Docket 16 Folio 176

Case No. 84M121

NOTICE OF FILING OF RECORD

TO: Phyllis Cole Friedman
Rm. 223 Courthouse
Towson, Md. 21204

Christopher H. Hill
200 Hospital Dr. Ste. 113
Glen Burnie, Md. 21061

June Holmen
Co. Bd. of Appeals of Balto. Co.

In accordance with Maryland Rule of Procedure B12, you are notified that the record in the above entitled case was filed on June 5, 1984.

Edward A. Kalbens Jr.
Clerk

COUNTY BOARD OF APPEALS
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FILED JUN 5 1984

6 55

Law offices of:
Christopher Harris Hill
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Glen Burnie, Maryland 21061
(301) 768-6733

Christopher Harris Hill
Robert John Fuoco
Jeffrey Wayne Thompson

September 21, 1984

Circuit Court for Baltimore County
Assignment Office
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, Maryland 21204-0754

Attention: Director of Central Assignments
Joyce Grimm

Re: 84 M 121 - Stone Snyder General Partnership, et al
vs. County Board of Appeals

Gentlemen:

I am in receipt of notice of hearing date for Tuesday, November 27, 1984. At the present time I am scheduled for trial in another case on that date and accordingly, request that this hearing be continued.

Your cooperation is appreciated.

Very truly yours,

CHRISTOPHER HARRIS HILL

CHH/gv

cc: Ms. Phyllis Cole Friedman
Peter Zimmerman, Esquire
County Board of Appeals, Baltimore County

COUNTY BOARD OF APPEALS
RECEIVED
MON SEP 24 A 8 31

IN THE MATTER OF THE APPLICATION OF STONE-SNYDER GENERAL PARTNERSHIP FOR VARIANCE FROM §1802.3.C.1 & §302 OF THE BALTIMORE COUNTY ZONING REGULATIONS S/S ILLINOIS AVE. 297' E. c/1 ANNAPOLIS ROAD & N/S VIRGINIA AVE. 213' E. E. c/1 ANNAPOLIS RD. 13th District	•	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY APPEAL
Zoning Case No. 84-74-A	•	Case No. 84-M-121
COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	•	

MOTION FOR RECONSIDERATION OR MODIFICATION

NOW COMES the Petitioner, STONE-SNYDER GENERAL PARTNERSHIP, by and through its Attorneys, Christopher H. Hill and Robert J. Fuoco, who, pursuant to Maryland Rule 2-533, 2-534 and 2-535, respectfully requests that this Court reconsider and/or modify its Order of January 10, 1985, and in support thereof states the following:

1. PRACTICAL DIFFICULTY WAS SHOWN

This Honorable Court stated in its opinion and order of January 10, 1985, that "The Board had no testimony before it to determine practical difficulty under applicable standards". (Order - Page 4). This holding fails to take into consideration the evidence presented before the County Board of Appeals on February 15, 1984 to-wit:

(a) That because of the steep grades and topography of the subject property, the only way to uniformly grade the property would be to develop all of the property at one time. (Transcript - Page 15 and 29)

(b) That an existing storm drain presently runs through the property. The storm drain needs to be removed and/or relocated. In addition, a Storm Water Management Plan needs to be developed and implemented on the subject site. These objectives can only be met if all the property is developed at one time. (Transcript - Pages 23-24, 29)

(c) Because of the nature and topography of the land, severe erosion and sediment control problems will arise during construction unless a uniform sediment control plan is developed and implemented during the grading and construction phase of the development of the property. This erosion and sediment control plan cannot be implemented if the property is developed on a "piecemeal basis". (Transcript - Pages 23-24)

Since the parcel can only be developed as a single uniform site if the variance is granted, evidence was sufficient for the Board of Appeals to determine that practical difficulty under applicable standards existed. Given this evidence, the Board's decision was not arbitrary or capricious and was based on credible evidence.

2. INJURY OTHER THAN ECONOMIC LOSS

In addition, in its Opinion, this Court stated, "The record was devoid of any testimony to indicate that the Petitioner would suffer any hardship other than a loss of building lots or delay." (Order - Page 3) This Court held that the loss of building lots and delay are economic losses, insufficient to support a variance.

In the case at Bar, the Petitioner does not need to prove that it will suffer a "hardship" as stated in this Court's Opinion, but only that it will suffer a practical difficulty. Anderson v Board of Appeals, 22 Md App 28 (1974). This Court's ruling does, in fact, work a practical difficulty on the Petitioner. Each lot standing alone in the subdivision is legal. Because, as a result of this Court's ruling at least four proposed lots will be lost, this Court's ruling works a practical difficulty as to each lot lost because that lot can no longer be used.

Further, the practical difficulty that will be suffered by the developer, Stone-Snyder General Partnership, is within the purview of the standard set out in McLean v Soley, 270 Md 208 (1973) and Loyola Loan Association v Buschman, 227 Md 243 (1976). Those cases clearly stated that economic and/or aesthetic concerns may be considered in determining whether or not to grant a variance in an area variance case.

3. STATUTORY CONSTRUCTION SUPPORTS BOARD OF APPEALS

a. Section 304 of the Baltimore County Zoning Regulations provides that a dwelling can be constructed on a lot without sufficient width, provided that all other area and setback requirements are complied with. Because of this regulation, if no two adjoining lots were owned by the same person, a building permit would be issued for each lot in the proposed subdivision. Simply because Stone-Snyder General Partnership owns all of the lots, they are being penalized because they applied for all the permits at one time. Section 304 specifically contemplates that if the land is otherwise legal and buildable, a permit then should issue. The Statute was not meant to apply to only single lots, because in the instant case, no other land is available without losing any other building lot.

b. That the Board of Appeals for Baltimore County held that because of the unique topography and inherent problems of the subject property, and that also because the granting of the variance would be in the best interest of the public health, safety and general welfare, that the variance should be granted and the building permit should issue for all eleven lots. (Opinion of County Board of Appeals at Page two - February 29, 1984).

c. Since there was sufficient evidence for the County Board of Appeals to support its finding and since the issue was "fairly debatable and hence not arbitrary, illegal and capricious" Cason v Board of County Commissioners, 261 Md 699 (1971),

this Court should not substitute its judgment for that of the County Board of Appeals and, thus, the Order of the County Board of Appeals should be upheld.

WHEREFORE, Petitioner, STONE-SNYDER GENERAL PARTNERSHIP prays that this Honorable Court:

1. Reconsider and modify its opinion of January 10, 1985, and affirm the decision of the County Board of Appeals or, in the alternative,

2. Pursuant to the Maryland Annotated Code, Article 66b, Section 4.08b, and Maryland Rule 2-533, grant a new hearing on the issue and hear expert testimony from each side on the relevant issues, and

3. Award such other and further relief as the nature of this case may be require.

/s/
Christopher H. Hill
Attorney for Petitioner
200 Hospital Drive, Suite 113
Glen Burnie, Maryland 21061
Telephone: (301) 768-6733

/s/
Robert J. Fuoco

CERTIFICATE OF SERVICE

I HEREBY CERTIFY under penalty of perjury that on this 30 day of January, 1985, a copy of the foregoing Motion for Reconsideration or Modification was mailed by first class mail, postage prepaid, addressed as follows: Phyllis Cole Friedman, People's Counsel for Baltimore County, Room 223, Court House, Towson, Maryland 21204.

/s/
Christopher H. Hill

JUN 16 1985

1/30/85

IN THE MATTER OF THE APPLICATION OF STONE-SNYDER GENERAL PARTNERSHIP FOR VARIANCE FROM §1802.3.C.1 & §302 OF THE BALTIMORE COUNTY ZONING REGULATIONS S/S ILLINOIS AVE. 297' E. c/l ANNAPOLIS ROAD & N/S VIRGINIA AVE. 213' E. E. c/l ANNAPOLIS RD. 13th District

Zoning Case No. 84-74-A

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

* IN THE CIRCUIT COURT FOR BALTIMORE COUNTY APPEAL

Case No. 84-M-121

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Christopher Harris Hill

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3. Award such other and further relief as the nature of this case may be require.

/s/
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Attorney for Petitioner
200 Hospital Drive, Suite 113
Glen Burnie, Maryland 21061
Telephone: (301) 768-6733

/s/
Robert J. Fuoco

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/s/
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1/10/85

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Zoning Case No. 84-74-A

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

* IN THE CIRCUIT COURT FOR BALTIMORE COUNTY APPEAL

Case No. 84-M-121

* *

MEMORANDUM OPINION AND ORDER

The People's Counsel of Baltimore County has appealed the decision of the County Board of Appeals granting a zoning variance to the Petitioner, Stone-Snyder General Partnership (Stone-Snyder).

Stone-Snyder owns 11 building sites created on a plat prior to 1952. The lots were originally divided into 25' recorded lots. Under current zoning regulations, the minimum width of the lots in that zone (DR 5.5) is 55 ft. BCZR Sec. 1802.3.C.1. Stone-Snyder requested the Zoning Commissioner to grant a variance to permit them to combine two lots into one lot to create ten 50 foot lots and one 44.69 foot lot under BCZR 302. On September 20, 1983, the Zoning Commissioner denied the variance. Stone-Snyder appealed that decision and on February 29, 1984, the County Board of Appeals reversed the Zoning Commissioner and granted the variance.

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Section 307 of the Baltimore County Zoning Regulations provides for variances. This appeal presents a petition for an area variance which requires proof of practical difficulty. Anderson v. Bd. of Appeals, 22 Md. App. 28 (1974).

The Court of Special Appeals set out the criteria for proving practical difficulty in Anderson, p. 39:

> "'1) Whether compliance with the strict letter of the restrictions governing...frontage... 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.'" (Citations omitted).

Both sides presented expert testimony. People's Counsel presented an expert planner who discussed the two options open to the Petitioner that do not require a variance. Those options are combining three lots to form one 75' lot or resubdividing the property into 55' lots.

The Petitioner argued that an individual owner could build on a 50' lot if the owner did not have sufficient adjoining land under §304 of the Baltimore County Zoning Regulations. Considerable testimony was given as to the problems that would be created on the parcel in controlling

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sediment, storm water and utilities if the Petitioner would sell the lots to individuals to circumvent the need for the variance.

The basis for the Board's opinion was that "The Board believes that to deny the Petitioner its requested variance would serve no purpose when the desired result could be achieved through legal gymnastics that could not deny Petitioner its goal." County Board of Appeals Finding dated March 28, 1984, p. 2. They then stated that resubdividing or making 75' lots was a substantial hardship.

The record was devoid of any testimony to indicate that the Petitioner would suffer any hardship other than loss of building lots or delay. The mere fact that the variance would make this development more profitable is not sufficient to grant the variance. Easter v. City of Balt., 195 Md. 395 (1949). "The need sufficient to justify an exception must be substantial and urgent and not merely for the convenience of the applicant, inasmuch as the aim of the ordinance is to prevent exceptions as far as possible." Carney v. City of Baltimore, 201 Md. 130, 137 (1952).

The Court in reviewing actions of the zoning authority is faced with a limited scope of review. If the evidence is sufficient to make the decision fairly debatable, then the Court cannot substitute its judgment for that of the Board. Montgomery Co. v. Nat. Cap. Realty Corporation, 267 Md. 364 (1972); Ginn v. Parley, 43 Md. App. 229 (1979).

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The Board had no testimony before it to determine practical difficulty under applicable standards. The fact that the Zoning Regulations provide an exception for an individual owner faced with a land shortage and no other options which the Petitioner could attempt to use to circumvent the ordinance, is clearly no basis on which to decide a variance. The Board's decision is clearly erroneous and not fairly debatable.

It is hereby ORDERED that the decision of the Board of Appeals is reversed. The variance is denied. Costs to be paid by Appellee.

James S. Sfekas
JUDGE JAMES S. SFEKAS

Dated: January 10, 1985

Copies to:
Board of Appeals
Phyllis Cole Friedman, Esquire
Christopher H. Hill, Esquire
Court File

COUNTY BOARD OF APPEALS
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Form CA2

CIRCUIT COURT FOR BALTIMORE COUNTY
ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Bosley Avenue
P.O. Box 6754
Towson, Maryland, 21204-0754
October 1, 1984.

Joki Adams — 494-2660
Chief Assignment Commissioner
Settlement Court

Maria Harris — 494-2662
Masters Assignment Clerk
Medical Records

Kathy Rushton — 494-2660
Assignment — Jury — Motions
Maria Ferrelli
Assistant Clerk Typist

Irene Summers — 494-2661
Assignment — Non-Jury — Motions
Freddie Grove
Assistant Clerk Typist

TO:

Phyllis Cole Friedman, Esq.
Peter Max Zimmerman, Esq.

Christopher H. Hill, Esq.

County Board of Appeals of Balto Co.

RECEIVED
COUNTY BOARD OF APPEALS
'84 OCT -2 P 3 21

RE: NOW JUST - 84 M 121 - STONE SNYDER GENERAL PTNR., ET AL VS COUNTY BOARD OF APPEALS

HEARING DATE: Wednesday, December 12, 1984, @ 9:30 a.m.

ON THE FOLLOWING: Appeal: 2 hours
Note: Corrected notice.

UPON RECEIPT OF THIS NOTICE: Counsel shall contact each other immediately to conform calendars. Claim of not receiving notice will not constitute reason for postponement.

POSTPONEMENTS: If the above date is not agreeable to any counsel, a request for a postponement MUST BE MADE IN WRITING to the Assignment Office AS SOON AS POSSIBLE, with a copy to all counsel involved. POSTPONEMENTS WITHIN 15 DAYS OF TRIAL must be made to the attention of the Director of Central Assignments — Joyce Grimm — 494-3497.

SETTLEMENT CONFERENCES: All counsel must secure the attendance of all parties necessary to effect a binding settlement, including clients and insurance representatives. THERE WILL BE NO EXCEPTIONS PER ORDER OF JUDGE FRANK E. CICONE. Please direct all inquiries to the attention of Joki Adams.

SETTLEMENTS: If a settlement is reached prior to the hearing date, the Assignment Office must be notified immediately. All settlements must be put on the record if no order of satisfaction is filed prior to trial.

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Law offices of:
Christopher Harris Hill
Empire Medical Building
200 Hospital Drive, Suite 113
Glen Burnie, Maryland 21061
(301) 766-6733

Christopher Harris Hill
Robert John Fusco
Jeffrey Wayne Thompson

September 21, 1984

Circuit Court for Baltimore County
Assignment Office
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, Maryland 21204-0754

Attention: Director of Central Assignments
Joyce Grimm

Re: 84 M 121 - Stone Snyder General Partnership, et al
vs. County Board of Appeals

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CHH/gv

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Peter Zimmerman, Esquire
County Board of Appeals, Baltimore County

COUNTY BOARD OF APPEALS
RECEIVED
'84 SEP 24 A 10 28

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Form CA2

CIRCUIT COURT FOR BALTIMORE COUNTY
ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Bosley Avenue
P.O. Box 6754
Towson, Maryland, 21204-0754
September 19, 1984.

Joki Adams — 494-2660
Chief Assignment Commissioner
Settlement Court

Maria Harris — 494-2662
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Assignment — Jury — Motions
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TO:

Phyllis Cole Friedman, Esq.
Peter Max Zimmerman, Esq.

Christopher H. Hill, Esq.

County Board of Appeals of Balto Co.

RECEIVED
COUNTY BOARD OF APPEALS
'84 SEP 24 A 10 28

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6/29/84

IN THE MATTER OF THE APPLICATION OF STONE-SNYDER GENERAL PARTNERSHIP FOR VARIANCE FROM Sec. 1B02.3.C.1 & Sec. 302 OF THE BALTIMORE COUNTY ZONING REGULATIONS S/S ILLINOIS AVE. 297' E. c/l ANNAPOLIS ROAD & N/S VIRGINIA AVE. 213' E. E. c/l ANNAPOLIS RD. 13th District
Zoning Case No. 84-74-A

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* AT LAW
* Misc. Docket No. 16
Folio No. 176
* File No. 84-M-121

APPELANT PEOPLE'S COUNSEL'S
MEMORANDUM IN SUPPORT OF ITS
PETITION ON APPEAL

I. INTRODUCTION

This is an appeal by the People's Counsel of Baltimore County from the February 29, 1984 Opinion and Order passed by the County Board of Appeals granting the Stone-Snyder General Partnership ("Stone-Snyder") a variance to permit lot widths of 50 feet and 44.69 feet in lieu of the required 55 feet. This requested variance had been previously denied by the Zoning Commissioner of Baltimore County. People's counsel has petitioned this court to reverse the County Board of Appeals and affirm the Order of the Zoning Commissioner on the grounds that the Board of Appeals did not have legally sufficient evidence to grant the requested variance.

II. FACTS

Stone-Snyder is the owner of two parcels of land, purchased in 1982, in the subdivision known as Baltimore Highlands. This subdivision was originally recorded in 1908 (Tr.

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p.22, Petitioner's Exhibit No. 4.), and was not approved by the Baltimore County Planning Board or Planning Commission. The parcels are zoned D.R. 5.5 and consist of recorded 25 foot lots (Tr. p 21.). Under the applicable Baltimore County Zoning Regulations ("BCZR") these lots must have a minimum width of 55 feet (see BCZR 1B02.3 attached hereto as Exhibit 1) unless a variance is granted.

Based upon the testimony of James Hoswell of the County Planning Department there are two ways the subject property could be developed so as not to require a variance. Either three of the 25 foot recorded lots could be combined into 75 foot lots or the plat could be resubdivided to meet the 55 foot width plat requirement. (Tr. p.34.) Six lots in this subdivision have been combined into 75 foot lots and no lot in this subdivision is as narrow as 44.69 feet. (Tr.pp 27,28 and petitioner's Exhibits No. 1 and 2.) As far as the resubdivision is concerned, this would involve the same standard subdivision processing that every developer of a proposed subdivision must comply with. (Tr. p. 35) It would take a few months and would treat the plat so as to meet modern day requirements. (Tr. p.35)

Stone-Snyder prefers to develop the subject property by combining only two lots to create ten (10) 50 foot lots and one 44.69 foot lot. The testimony is that if they have to combine three 25 foot lots they will lose five building sites (Tr. p.12) and if, alternatively, they have to resubdivide they will lose two building sites. (Tr. p.21.) Other than losing subdivision lots,

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no other testimony was presented to show any adverse effect as a result of complying with the Baltimore County Zoning Regulations.

There was testimony that it would be better if all the sites were graded and developed at one time (Tr. p.24) but there was no testimony that this could not be done were the lots 55 feet or 75 feet wide, rather than the requested fifty (50) feet. Richard Parrish, an expert offered by Stone-Snyder testified that the building sites could be graded and sold as individual lots and that this was the common practice. (Tr. p.30.) He also testified that the grading plan would not be substantially different if the lots were 55 or 75 feet wide. (Tr. pp. 30, 31.)

III. THE APPLICABLE LAW

A. The Legal Requirement for a Variance

Zoning regulations permit a variance from area regulations where strict compliance would result in "practical difficulty" or "unreasonable hardship". (Sec. 307 BCZR). While unreasonable hardship can be demonstrated by showing that the physical or topographical features of the property are such that the property cannot be used for a permitted purpose, or by showing that the property can be arranged for such use only at a prohibitive expense Anderson v. Bd. of Appeals of Town of Chesapeake Beach, 22 Md. App. 28 (1974); Marlow v. Zoning Hearing Bd Haverford Township, 415 A.2d 946 (Pa. Cmwlth., 1980), the Court of Appeals has held that a variance relating to certain "area" restrictions, as distinguished from restrictions on the use of the property, may be judged under the less stringent "practical

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difficulty" test. Anderson, supra. See Bd. of Adjustment, Etc., v. Kwik-Check Realty, 389 A.2d 1289 (Del. Supr., 1978). As noted in Anderson, the factors to be considered under this test in determining whether a variance should be granted are:

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,

Anderson, supra.

Mere evidence that the zoned use is less financially rewarding than the proposed use is insufficient to justify a variance. Pyzdrowski v. Pittsburgh Bd. of Adjustment, 263 A.2d 426 (Pa., 1970).

In addition to the possibility of a variance, the Baltimore County Zoning Regulations provide an exception for undersized single-family lots recorded prior to 1955 where the owner of the lot does not own sufficient adjoining land to conform substantially to the width and area requirements. (See Sec. 304

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BCZR emphasis supplied. 1/).

B. Scope of Review

The standard for review has recently been summarized by the Court of Special Appeals as follows:

> Maryland law dictates that where a legislative body or board of county officials has granted a rezoning of property, the question on judicial review is whether or not such action is arbitrary and discriminatory or fairly debatable. Trainer v. Lipchin, 269 Md. 667, 309 A.2d 471 (1973); Boyce v. Sembly, 25 Md. App. 43, 334 A.2d 137, (1975).
>
> ...It is not the function, duty or right of of a court to zone or rezone, but only to determine whether the legislative body has properly applied the governing law to the facts. If there is room for reasonable debate as to whether the facts justify the municipal legislature in deciding the need for its enactment, it must be upheld. It is only when there is no room for reasonable debate, or a record barren of supporting facts, that the Court can declare the legislative action arbitrary, capricious, discriminatory or an unequal application of the law. Wakefield v. Kraft, 202 Md. 136, 142, 96 A.2d 27, 28-29 (1953) (Citations omitted).
>
> A decision of the zoning board based upon substantial evidence will be deemed "fairly debatable" and a court will not then substitute its judgment for that of

1/ This section reads as follows:
Section 304 - USE OF UNDERSIZED SINGLE-FAMILY LOTS (B.C.Z.R., 1955.)

A one-family dwelling may be erected on a lot having an area or width at the building line less than that required by the height and area regulations, provided: (B.C.Z.R., 1955.)

a. That such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to adoption of these Regulations; and (B.C.Z.R., 1955.)

b. That all other requirements of the height and area regulations are complied with; and (B.C.Z.R., 1955.)

c. That the owner of the lot does not own sufficient adjoining land to conform substantially to the width and area requirements. (B.C.Z.R., 1955.)

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> the zoning board. The "fairly debatable" test is analogous to the "clearly erroneous" standard applied under Maryland Rules of Procedure 886 and 1086. Sedney v. Lloyd, 44 Md. App. 633, 410 A.2d 616 (1980). Recently, Judge Rodowsky, writing for the Court of Appeals in United Steelworkers of America AFL-CIO, Local 2610 v. Bethlehem Steel Corp., No. 23 (decided March 9, 1984) elaborated on this standard for administrative review.
>
> > Judicial review of administrative action differs from appellate review of a trial court judgment. In the latter context, the appellate court will search the record for evidence to support the judgment, and will sustain the judgment for a result plainly appearing on the record whether or not the reason was expressly relied upon by the trial court. However, in judicial review of agency action the court may not uphold the agency order unless it is sustainable on the agency's findings and for the reasons stated by the agency. Id. at 14-15. (Citations omitted).

Grabill v. People's Counsel, Court of Special Appeals No. 801 September 1983 unreported. (Attached as Exhibit 2.)

Thus, unless there is substantial evidence to support the Board of Appeal's decision and this evidence formed the basis for the Board's decision, the decision may not be upheld.

ARGUMENT

The Board has concluded that "through legal gymnastics" the petitioner (Stone-Snyder) could have achieved its goal and thus to deny Stone-Snyder its variance would serve no purpose. The basis of this conclusion is that if Stone-Snyder were to deed

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the sites to sufficient numbers of different owners, Section 304 of the Zoning Regulations would permit an automatic exception to the fifty-five foot minimum lot widths without a need for a variance.

This reasoning ignores the limited purpose of the Section 304 exception, the actual facts before the Board, and further seeks to create a basis for granting a variance which is not legally permissible. Section 304 is an exception designed for lot owners who do not own sufficient adjoining land to conform substantially to the width and area requirements. Precise, unambiguous language to this effect is contained within the body of the regulation itself in sub-section "c", which, as Mr. Hoswell testified, is critical. (Tr. p. 38.) It is beyond dispute that Stone-Snyder owns sufficient adjoining land to conform to the width requirements. Thus, this section by its terms does not apply to the instant case. The theoretical possibility that it could apply were Stone-Snyder to sell off the lots ignores the reality of the present case and the fact that in such an event Stone-Snyder would not be the petitioner and no variance would be necessary. It certainly does not form a legal basis for the grant of a variance to a property owner.

As an additional or alternate ground for its decision to grant the variance the Board has concluded that:

> "..the petitioner would sustain substantial hardship by being required to resubdivide the property or develop it in lots of 75 feet in width."

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1B02.2—Regulations, Standards, and Controls for Density, Bulk, Open Space, and Parking. [Bill No. 100, 1970.]

A. Dwellings. The maximum gross residential densities and height of dwellings, the minimum percent of gross site area which must be in local open space tracts, except as otherwise provided in Section 22-53, Baltimore County Code, 1968, as amended,[3] and the minimum number of offstreet parking spaces required with respect to residential development in D.R. zones shall be as prescribed in the table below; provided, however, that higher or additional standards for the provision of other amenity open space, standards and methods for the inclusion and equitable apportionment of public amenity open space within the calculations of gross areas of tracts abutting the open space, and standards providing for greater heights of buildings in appropriate circumstances, all as more particularly set forth in Section 504, shall control when adopted pursuant to the authority of said section.

Zoning Classification	Maximum Gross Residential Density, in Dwelling or Density Units per Acre	Maximum Height of Buildings, in Feet	* Minimum Per Cent of Gross Site Area as Local Open Space Tracts	Minimum Number of Offstreet Parking Spaces per Dwelling or Density Unit, Except for Housing for the Elderly	Minimum Number of Offstreet Parking Spaces per Dwelling or Density Unit for Housing for the Elderly
D.R. 1	1 dwelling units/acre	50	35	2.0 per dwelling unit	1 per dwelling unit
D.R. 2	2.0 " "	50	40	2.0 " "	1 " "
D.R. 3.5	3.5 " "	50	45	2.0 " "	1 " "
D.R. 5.5	5.5 " "	50	50	2.0 " "	1 " "
D.R. 10.5	10.5 " "	50	12	1.75 " "	1 " "
D.R. 16	16.0 density	60	15	1.33 " density but not less than 1.0 per dwelling unit	1.0 " density [DELETED BY BILL NO. 80-81]

*Land within 25 feet of a window or other opening in a residential structure in a D.R. zone is not considered local open space.

[Bill Nos. 100, 1970; S-79; 80-81]

B. Other Principal Uses. Density, bulk, open space, and parking regulations, standards, or controls for principal uses other than dwellings within zones of different classification shall be governed by provisions adopted pursuant to the authority of Section 504. [Bill No. 100, 1970.]

C. In a D.R. 16 zone . . . included by Bill No. 100, 1970, and deleted by Bill No. 121-81]

1B02.3—Special Regulations for Certain Existing Developments or Subdivisions and for Small Lots or Tracts in D.R. Zones. [Bill No. 100, 1970.]

A. In D.R. zones, contrary provisions of this article notwithstanding, the provisions of or pursuant to this subsection shall apply to the use, occupancy,

3. Section 22-58 of the Baltimore County Code, 1978, as amended per Bill No. S-79

and development of, the alteration or expansion of structures upon, and administrative procedures with respect to: [Bill No. 100, 1970.]

1. Any lot which is in a recorded residential subdivision approved by the Baltimore County Planning Board or Baltimore County Planning Commission and which has been used, occupied, or improved in accordance with the approved subdivision plan; [Bill No. 100, 1970.]

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

3. Any lot, or tract of lots in single ownership, which is not in an existing development or subdivision as described in Subparagraph 1 or 2 and which is too small in gross area to accommodate six dwelling or density units in accordance with the maximum permitted density in the D.R. zone in which such tract is located; or[4] [Bill No. 100, 1970.]

4. Any lot, or tract of lots in single ownership, which is not in an existing development or subdivision as described in Subparagraph 1 or 2 and which is less than one-half acre in area, regardless of the number of dwelling or density units that would be permitted at the maximum permitted density in the zone in which it is located.[5] [Bill No. 100, 1970.]

5. Any lot, or tract of lots in single ownership which is in a duly recorded subdivision plat not approved by the Baltimore County Planning Board or Planning Commission. [Bill No. 100, 1970.]

B. Standards Applicable to Existing Developments Etc. The minimum standards for net lot area, lot width, front-yard depth, single-side-yard width, sum of widths of both side yards, rear-yard depth, and height with respect to each use in a development described in Subparagraph A.1, above, shall be as prescribed by the zoning regulations applicable to such use at the time the plan was approved by the Planning Board or Commission; however, the same or similar standards may be codified and comparable bulk (height or area) standards for different permitted uses may be established and codified under Section 504, and these standards shall thereupan control in such existing developments. Development of any subdivision described in Subparagraph A.2 shall be in accordance with the tentatively approved subdivision plan therefor. Standards for development of lots or tracts described in Subparagraphs A.3, A.4 or A.5 shall be as set forth in Paragraph C, below. [Bill No. 100, 1970.]

4. *Thus (with conjunction) in Bill No. 100, 1970.*
5. *Thus (period; without conjunction) in Bill No. 100, 1970.*

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C. Development Standards for Small Lots or Tracts. [Bill No. 100, 1970.]

1. Any dwelling hereafter constructed on a lot or tract described in Subparagraph A.3 or A.4 shall comply with the requirements of the following table:

Zoning Classification	Minimum Net Lot Area per Dwelling Unit	Minimum Lot Width, in Feet	Minimum Front-Yard Depth, in Feet	Minimum Width of Individual Side Yard, in Feet	Minimum Sum of Side-Yard Widths, in Feet	Minimum Rear-Yard Depth, in Feet
D.R. 1	40,000 square feet	150	50	20	50	50
D.R. 2	20,000 square feet	100	40	15	40	40
D.R. 3.5	10,000 square feet	70	30	10	25	30
D.R. 5.5	6,000 square feet	55	25	10	—	30
D.R. 10.5	3,000 square feet	20	10	10	—	30
D.R. 16	2,500 square feet	20	10	25	—	30

[Bill No. 100, 1970.]

2. Other standards for development of small lots or tracts as so described shall be as set forth in provisions adopted pursuant to the authority of Section 504. [Bill No. 100, 1970.]

D. An amendment to any part of a development plan involving only property subject to the provisions of this subsection shall not be subject to the provisions of Paragraph D[7] of Subsection 1B01.3. [Bill No. 100, 1970.]

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6. *Thus (plural) in Bill No. 100, 1970.*
7. *Although the provision referred to was Paragraph D as set forth in the Planning Board's final report recommending the legislation on which Bill No. 100, 1970 was based, when drafted into law the subject matter of the provision was transferred to Subparagraph 7 of Paragraph A.*

No evidentiary basis is given for this conclusion, however, and based on the testimony there is none.

Later the Board states, again additionally or alternatively, that they believe that the piecemeal sale of lots could pose particularly unreasonable hardship and practical difficulty relative to the provision of controls for sediment drainage and utilities, and believe that the uniform development of this property is in the best interest of the public. While this might be true, there is not a scintilla of evidence that absent a variance to permit fifty foot lots there would be a piecemeal sale of lots or piecemeal development. To the contrary, the record demonstrates clearly that Stone-Snyder could develop these parcels without a variance by either combining them into seventy five foot lots or resubdividing the parcels into 55 foot lots. No evidence was presented that either method is not economically viable, or that either method would cause problems with controls for sediment drainage and utilities. Furthermore, Stone-Snyder's own expert conceded that even if there would be a sale of individual lots, grading by the developer prior to their sale is the common practice. Thus there is no evidence of unreasonable hardship or practical difficulty.

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CONCLUSION

The decision of the Board of Appeals is based not on substantial evidence but on conjecture that is contradicted by the record and should be reversed and the order of the Zoning Commissioner affirmed.

Respectfully submitted

Phyllis Cole Friedman

Phyllis Cole Friedman
People's Counsel for Baltimore County

Peter Max Zimmerman
Deputy People's Counsel
Room 223, Court House
Towson, Maryland 21204
494-2188

MICROFILMED

MAY 27 1987

DATE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of June, 1984, a copy of Appellant People's Counsel's Memorandum In Support of Its Petition on Appeal was mailed by first class mail postage prepaid to Christopher H. Hill, Esquire, 836 Ritchie Highway, Suite 22, Severna Park, MD 21146; and a copy was served on the Administrative Secretary, County Board of Appeals, Room 200, Court House, Towson, MD 21204.

Phyllis Cole Friedman

Phyllis Cole Friedman

RECEIVED COUNTY BOARD OF APPEALS
1984 JUN 19 P 2:20

- 10 -

Form CA2

CIRCUIT COURT FOR BALTIMORE COUNTY
ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Bosley Avenue
P.O. Box 6754
Towson, Maryland 21204-0754

Joel Adams — 494-2660
Civil Assignment Commissioner
Settlement Court

Maria Harris — 494-2662
Master Assignment Clerk
Medical Records

Kathy Rushton — 494-2660
Assignment — Jury — Motions
Marcia Fennell
Assistant Clerk Typist

Irene Summers — 494-2661
Assgn. ent — Non-Jury — Motions
Freddie Grove
Assistant Clerk Typist

RECEIVED
COUNTY BOARD OF APPEALS
1984 JUN 19 A 8:15

June 18, 1984.

Phyllis Cole Friedman, Esq.
Peter Max Zimmerman, Esq.

Christopher H.Hill, Esq.

County Board of Appeals of Balto. Co.

RE: NON JURY - 84 M 121 - STONE SNYDER GENERAL PTNR. VS COUNTY BOARD OF APPEALS OF BALTO CO.

HEARING DATE: Tuesday, September 18, 1984, @ 9:30 a.m.

ON THE FOLLOWING: Appeal: 2 hours

UPON RECEIPT OF THIS NOTICE: Counsel shall contact each other immediately to confirm calendars. Claim of not receiving notice will not constitute reason for postponement.

POSTPONEMENTS: If the above date is not agreeable to any counsel, a request for a postponement MUST BE MADE IN WRITING to the Assignment Office AS SOON AS POSSIBLE, with a copy to all counsel involved. POSTPONEMENTS WITHIN 15 DAYS OF TRIAL must be made to the attention of the Director of Central Assignments — Joyce Grimm — 494-3497.

SETTLEMENT CONFERENCES: All counsel must secure the attendance of all parties necessary to effect a binding settlement, including clients and insurance representatives. THERE WILL BE NO EXCEPTIONS PER ORDER OF JUDGE FRANK E. CICONE. Please direct all inquiries to the attention of John Adams.

SETTLEMENTS: If a settlement is reached prior to the hearing date, the Assignment Office must be notified immediately. All settlements must be put on the record if no order of satisfaction is filed prior to trial.

84-M-121
6/18/84

MICROFILMED

People's Counsel for Balto. Co.

In the matter of Stone-Snyder General Partnership

Vs.

Co. Bd. of Appeals of Balto. Co.

IN THE CIRCUIT COURT

FOR

BALTIMORE COUNTY

Docket 16 Folio 176

Case No. 84M121

NOTICE OF FILING OF RECORD

TO: Phyllis Cole Friedman
Rm. 223 Courthouse
Towson, Md. 21204

Christopher H. Hill
200 Hospital Dr. Ste. 113
Glen Burnie, Md. 21061

June Holmen
Co. Bd. of Appeals of Balto. Co.

In accordance with Maryland Rule of Procedure B12, you are notified that the record in the above entitled case was filed on June 5, 1984.

Edward A. Kahline Jr.
Clerk

RECEIVED
COUNTY BOARD OF APPEALS
1984 JUN -6 P 2:55

FILED JUN 5 1984

MICROFILMED

CASE NO. 16/176/84-M-121 AT LAW

Stone-Snyder General Partnership vs. People's Counsel

RECEIVED FROM THE COUNTY BOARD OF APPEALS CERTIFIED DOCUMENTS, EXHIBITS, AND BOARD'S ANSWER FILED IN THE ABOVE ENTITLED CASE, AND TRANSCRIPT.

Katie Nichols
Clerk's Office

Date: June 5, 1984

MICROFILMED

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

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

000

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

September 2, 1983

Christopher H. Hill, Esquire
836 Ritchie Highway, Suite 22
Severna Park, Maryland 21146

RE: Item No. 8 - Case No. 84-74-A
Petitioner - Stone-Snyder General Partnership
Variance Petition

Dear Mr. Hill:

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 client's proposal to construct dwellings on a number of lots 50 feet wide and one lot having a width of 44.69 feet, all in lieu of the required 55 feet, this variance hearing is required.

The petition forms that were submitted have not been signed by you. This should be done prior to the scheduled hearing. In addition, you or your client should contact Mr. Harry Grace, Office of Current Planning at 494-3335, in order to request verification that these are buildable lots if the variance is granted.

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 remaining 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, Chm

NICHOLAS B. COMMODARI, Chairman
Zoning Plans Advisory Committee

NBC:bsc
Enclosures
cc: Land Design Associates
416 E. Joppa Road 21204

MICROFILMED

BALTIMORE COUNTY
DEPARTMENT OF PERMITS & LICENSES
TOWSON, MARYLAND 21204
494-3900

TED ZALESKI, JR.
DIRECTOR

July 28, 1983

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

Dear Mr. Hammond:

Comments on Item # 8 Zoning Advisory Committee Meeting July 5, 1983 are as follows:

Property Owner: Stone-Snyder General Partnership
Location: Parcel I-S/S Illinois Ave. 297' E. From centerline Annapolis Rd. Parcel II-N.S. Virginia Ave. 213' E. from centerline Annapolis Rd.
Existing Zoning: D.R. 5.5
Proposed Zoning: Variance to permit lot widths of 44.69' & 50' in lieu of the required 55'.
Acres: Parcel I-0.717 Parcel II- 0.882
District: 13

The items checked below are applicable:

A. All structure shall conform to the Baltimore County Building Code 1981/ Council Bill 1-82 [illegible] and other applicable Codes.

B. A building/and other miscellaneous permits shall be required before beginning construction.

C. Residential: Three sets of construction drawings are required to file a permit application. Architect/Engineer seal is/is not required.

D. Commercial: Three sets of construction drawings with a Maryland Registered Architect or Engineer shall be required to file a permit application.

E. An exterior wall erected within 6'0 of an adjacent lot line shall be of one hour fire resistive construction, no openings permitted within 3'-0 of lot lines. A firewall is required if construction is on the lot line, See Table 401, line 2, Section 1407 and Table 1402.

F. Requested variance conflicts with the Baltimore County Building Code, Section/s _____.

G. A change of occupancy shall be applied for, along with an alteration permit application, and three required sets of drawings indicating how the structure will meet the Code requirements for the proposed change. Drawings may require a professional seal.

H. Before this office can comment on the above structure, please have the owner, thru the services of a Registered in Maryland Architect or Engineer certify to this office, that, the structure for which a proposed change in use is proposed can comply with the height/area requirements of Table 505 and the required construction classification of Table 401.

I. Comments:

NOTE: These comments reflect only on the information provided by the drawings submitted to the office of Planning and Zoning and are not intended to be construed as the full extent of any permit. If desired, additional information may be obtained by visiting Room #122 (Plans Review) at 111 West Chesapeake Ave., 21204.

Very truly yours,

Charles E. Burnham, Chief
Plans Review

CEBrrj

FORM 01-82

MICROFILMED

BALTIMORE COUNTY
DEPARTMENT OF PUBLIC WORKS
TOWSON, MARYLAND 21204

HARRY J. PISTEL P.E.
DIRECTOR

August 8, 1983

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

Re: Item #8 (1983-1984)
Property Owner: Stone-Snyder General Partnership
Parcel I - S/S Illinois Avenue 297' E. from centerline Annapolis Road
Parcel II - N/S Virginia Avenue 213' E. from centerline Annapolis Road
Acres: Parcel I - 0.717
Parcel II - 0.882
District: 13th

Dear Mr. Jablon:

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.

Highways:

Illinois and Virginia Avenues, existing public roads, are proposed to be further improved in the future as 30-foot closed section roadways on 50-foot rights-of-way.

Sediment Control:

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

Storm Drains:

In accordance with the drainage policy, the Petitioner is responsible for the total actual cost of drainage facilities required to carry the storm water run-off through the property to be developed to a suitable outfall.

For the existing Baltimore County drainage system, see Drawings #68-1179, #77-1009 and #79-0457, File 4. Further information may be obtained from the Baltimore County Bureau of Engineering, Storm Drain Design and Approval Section.

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Item #8 (1983-1984)
Property Owner: Stone-Snyder General Partnership
Page 2
August 8, 1983

Storm Drains:

The Petition/Developer 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/Developer.

Water and Sanitary Sewer:

Public water supply and sanitary sewerage exist in Illinois and Virginia Avenues.

Very truly yours,

Robert A. Morton, P.E.
ROBERT A. MORTON, P.E., Chief
Bureau of Public Services

RAM:EAM:FWR:ss

C-NE Key Sheet
23 SW 5 Pos. Sheet
SW 6 B Topo
109 Tax Map

MICROFILMED

September 15, 1983	At 1:30 p.m. hearing held on petition by Zoning Commissioner
September 20, 1983	Order of Zoning Commissioner DENYING variances
October 6, 1983	Order of Appeal to County Boerd of Appeals from Order of Zoning Commissioner
February 15, 1984	Hearing on appeal before County Board of Appeals
February 29, 1984	Order of County Board of Appeals GRANTING variances
March 27, 1984	Order for Appeal filed in the Circuit Ct. for Baltimore County by People's Counsel for Baltimore County
March 27, 1984	Petition to accompany Order for Appeal filed in the Circuit Ct. for Baltimore County
March 27, 1984	Certificate of Notice sent to all interested parties
June 5, 1984	Transcript of testimony filed
	Petitioner's Exhibit No. 1 - Plat prepared by Land Design Associates, 5/27/83
	" " " 2 - Preliminary plan, Dec. 1983
	" " " 3 - Page 68, Regulation Development Standards
	" " " 4 - Original Plat, Balto. Highlands, dated 1908.
June 5, 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 proc ·ding, but your respondents will produce any and all such rules and regulations whenever directed to do so by this Court.

Respectfully submitted,

June Holmen
County Board of Appeals of Baltimore County

cc: Christopher Hill, Esq.
Phyllis C. Friedman

494-3180 84-679

3/28/84 TO A1 please file

County Board of Appeals
Room 219, Court House
Towson, Maryland 21204
March 27, 1984

MAR 28 Ass't Bd Bd Bd Bd ZONING By

Christopher H. Hill, Esq.
836 Ritchie Hwy., Suite 22
Severna Park, Maryland 21146

Case No. 84-74-A
Stone-Snyder General Partnership

Dear Mr. Hill:

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: Stone-Snyder General Partnership
N. Gerber
J. Hoswell
A. Jablon
J. Jung
J. Dyer

IN THE MATTER OF THE APPLICATION OF STONE-SNYDER GENERAL PARTNERSHIP FOR VARIANCE FROM Section 1802.3.C.1 and Section 302 of the BALTIMORE COUNTY ZONING REGULATIONS S/S ILLINOIS AVE. 297' E. c/l ANNAPOLIS RD. & N/S VIRGINIA AVE. 213' E. c/l ANNAPOLIS RD. 13th DISTRICT : IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW

Phyllis Cole Friedman, People's Counsel - Appellant : Misc. Doc. No. 16 Folio No. 176 File No. 84-M-121

Zoning File No. 84-74-A :

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 LeRoy B. Spurrier, 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, Stone-Snyder General Partnership, 836 Ritchie Highway, Suite 24, Severna Park, Maryland 21146, Petitioners; Christopher H. Hill, Esq., 836 Ritchie Highway, Suite 22, Severna Park, Maryland 21146, Counsel for Petitioners, and Phyllis Cole Friedman, Court House, Towson, Maryland 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
County Board of Appeals of Baltimore County
Rm. 200, Court House, Towson, Md. 21204
494-3180

I HEREBY CERTIFY that a copy of the aforegoing Certificate of Notice has been mailed to Stone-Snyder General Partnership, 836 Ritchie Highway, Suite 24, Severna Park, Maryland 21146, Petitioners; Christopher H. Hill, Esq., 836 Ritchie Highway, Suite 22, Severna Park, Maryland 21146, Counsel for Petitioners; and Phyllis Cole Friedman, Court House, Towson, Md. 21204, People's Counsel for Baltimore County, on this 27th day of March, 1984.

June Holmen
County Board of Appeals of Baltimore County

IN THE MATTER OF THE APPLICATION OF STONE-SNYDER GENERAL PARTNERSHIP FOR VARIANCE FROM Section 1802.3.C.1 and Section 302 of the BALTIMORE COUNTY ZONING REGULATIONS S/S ILLINOIS AVE., 297' E of Centerline ANNAPOLIS RD. & N/S VIRGINIA AVE., 213' E of Centerline ANNAPOLIS RD. 13th District : IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW

Phyllis Cole Friedman, People's Counsel - Appellant : Misc. No. 84-M-121

Zoning File No. 84-74-A :

PETITION FOR EXTENSION OF TIME TO FILE TRANSCRIPT OF PROCEEDINGS

People's Counsel for Baltimore County, Appellant herein and Protestant below, petitions this Court, pursuant to Maryland Rule B7(b), for an extension of time within which to file the transcript of proceedings before the Baltimore County Board of Appeals and in support of this Petition states:

That Carol A. Beresh, Court Reporter for the County Board of Appeals at the time of the hearing before said Board in the above-entitled case, has informed this office that due to a backlog of cases, she will be unable to prepare the transcript prior to the filing deadline of April 26, 1984, and will require an additional sixty days to do so.

WHEREFORE, Appellant respectfully requests this Honorable Court to extend the time for filing the transcript of proceedings until June 25, 1984.

Phyllis Cole Friedman
People's Counsel for Baltimore County

Peter Max Zimmerman
Deputy People's Counsel
Room 223, Court House
Towson, Maryland 21204
494-2188

RECEIVED COUNTY BOARD OF APPEALS 1984 APR -9 A 9:45

I HEREBY CERTIFY that on this 9th day of April, 1984, a copy of the foregoing Petition for Extension of Time to File Transcript of Proceedings was mailed to Christopher H. Hill, Esquire, 836 Ritchie Highway, Suite 22, Severna Park, MD 21146; and a copy was served on the Administrative Secretary, County Board of Appeals, Room 200, Court House, Towson, MD 21204.

Peter Max Zimmerman

IN THE MATTER OF THE APPLICATION OF STONE-SNYDER GENERAL PARTNERSHIP FOR VARIANCE FROM Section 1802.3.C.1 and Section 302 of the BALTIMORE COUNTY ZONING REGULATIONS S/S ILLINOIS AVE., 297' E of Centerline ANNAPOLIS RD. & N/S VIRGINIA AVE., 213' E of Centerline ANNAPOLIS RD. 13th District : IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW

Phyllis Cole Friedman, People's Counsel - Appellant : Misc. No. 84-M-121

Zoning File No. 84-74-A :

ORDER

Upon the foregoing Petition for Extension of Time to File Transcript of Proceedings, it is hereby ORDERED this 10th day of April, 1984, that the time for filing in Court the transcript of proceedings before the Board of Appeals is hereby extended until June 25, 1984.

A. Owen Hennegan
JUDGE

True Copy Test
ELMER H. KAHLENE, JR., Clerk
Per Gloria Beste
Deputy Clerk

RECEIVED COUNTY BOARD OF APPEALS 1984 APR 11 P 2 16

IN THE MATTER OF THE APPLICATION OF STONE-SNYDER GENERAL PARTNERSHIP FOR VARIANCE FROM §1802.3.C.1 & §302 OF THE BALTIMORE COUNTY ZONING REGULATIONS S/S ILLINOIS AVE. 297' E. c/l ANNAPOLIS ROAD & N/S VIRGINIA AVE. 213' E. c/l ANNAPOLIS RD. 13th District : IN THE CIRCUIT COURT OF MARYLAND FOR BALTIMORE COUNTY AT LAW Misc. Docket No. 16 Folio No. 176 File No. 84-M-121

Zoning Case No. 84-74-A

ANSWER TO PETITION ON APPEAL

THE STONE-SNYDER GENERAL PARTNERSHIP, Appellee herein, by Christopher H. Hill and the law offices of Christopher Harris Hill, its attorneys, answer Appellant's Petition on Appeal and state:

1. That the County Board of Appeals had legally sufficient evidence upon which to base its conclusion that the requested variance was warranted by unnecessary hardship or practical difficulty.

2. That the County Board of Appeals had legally sufficient evidence upon which to base its conclusion that its grant of the requested variance is in the public interest and consistent with the intent of the Baltimore County Zoning Regulations.

3. Appellee denies that the Order of the County Board of Appeals is in any way illegal, arbitrary or capricious.

4. Appellee denies all of the allegations of the People's Counsel. The variance was granted to allow the owner of eleven (11) building sites created on a pre-1952 plat to be treated identically with the owner of a single building site. Any other result would work a hardship, not be in the public interest and would achieve an arbitrary and capricious result.

Christopher Harris Hill

JUN 1 P 1:36

3/27/84

IN THE MATTER OF THE APPLICATION OF STONE-SNYDER GENERAL PARTNERSHIP FOR VARIANCE FROM Section 1B02.3.C.1 and Section 302 of the BALTIMORE COUNTY ZONING REGULATIONS S/S ILLINOIS AVE. 297' E. c/l ANNAPOLIS RD. & N/S VIRGINIA AVE. 213' E. c/l ANNAPOLIS RD. 13th DISTRICT

Phyllis Cole Friedman, People's Counsel - Appellant

Zoning File No. 84-74-A

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW

Misc. Doc. No. 16
Folio No. 176
File No. 84-M-121

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 LeRoy B. Spurrier, 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, Stone-Snyder General Partnership, 836 Ritchie Highway, Suite 24, Severna Park, Maryland 21146, Petitioners; Christopher H. Hill, Esq., 836 Ritchie Highway, Suite 22, Severna Park, Maryland 21146, Counsel for Petitioners, and Phyllis Cole Friedman, Court House, Towson, Maryland 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
County Board of Appeals of Baltimore County
Rm. 200, Court House, Towson, Md. 21204
494-3180

MICROFILMED

Stone-Snyder General Partnership
Case No. 84-74-A

2.

I HEREBY CERTIFY that a copy of the aforegoing Certificate of Notice has been mailed to Stone-Snyder General Partnership, 836 Ritchie Highway, Suite 24, Severna Park, Maryland 21146, Petitioners; Christopher H. Hill, Esq., 836 Ritchie Highway, Suite 22, Severna Park, Maryland 21146, Counsel for Petitioners; and Phyllis Cole Friedman, Court House, Towson, Md. 21204, People's Counsel for Baltimore County, on this 27th day of March, 1984.

June Holmen
County Board of Appeals of Baltimore County

MICROFILMED

4/9/84

IN THE MATTER OF THE APPLICATION OF STONE-SNYDER GENERAL PARTNERSHIP FOR VARIANCE FROM Section 1B02.3.C.1 and Section 302 of the BALTIMORE COUNTY ZONING REGULATIONS S/S ILLINOIS AVE., 297' E of Centerline ANNAPOLIS RD. & N/S VIRGINIA AVE., 213' E of Centerline ANNAPOLIS RD. 13th District

Phyllis Cole Friedman, People's Counsel - Appellant

Zoning File No. 84-74-A

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW

Misc. No. 84-M-121

PETITION FOR EXTENSION OF TIME TO FILE TRANSCRIPT OF PROCEEDINGS

People's Counsel for Baltimore County, Appellant herein and Protestant below, petitions this Court, pursuant to Maryland Rule B7(b), for an extension of time within which to file the transcript of proceedings before the Baltimore County Board of Appeals and in support of this Petition states:

That Carol A. Beresh, Court Reporter for the County Board of Appeals at the time of the hearing before said Board in the above-entitled case, has informed this office that due to a backlog of cases, she will be unable to prepare the transcript prior to the filing deadline of April 26, 1984, and will require an additional sixty days to do so.

WHEREFORE, Appellant respectfully requests this Honorable Court to extend the time for filing the transcript of proceedings until June 25, 1984.

Phyllis Cole Friedman
People's Counsel for Baltimore County

Peter Max Zimmerman
Deputy People's Counsel
Room 223, Court House
Towson, Maryland 21204
494-2188

RECEIVED
COUNTY BOARD OF APPEALS
1984 APR -9 A 9:45

MICROFILMED

- 2 -

I HEREBY CERTIFY that on this 9th day of April, 1984, a copy of the foregoing Petition for Extension of Time to File Transcript of Proceedings was mailed to Christopher H. Hill, Esquire, 836 Ricchie Highway, Suite 22, Severna Park, Md. 21146; and a copy was served on the Administrative Secretary, County Board of Appeals, Room 200, Court House, Towson, MD 21204.

Peter Max Zimmerman

MICROFILMED

4/27/84

IN THE MATTER OF THE APPLICATION OF STONE-SNYDER GENERAL PARTNERSHIP FOR VARIANCE FROM §1B02.3.C.1 & §302 OF THE BALTIMORE COUNTY ZONING REGULATIONS S/S ILLINOIS AVE. 297' E. c/l ANNAPOLIS ROAD & N/S VIRGINIA AVE. 213' E. c/l ANNPOLIS RD. 13th District

Zoning Case No. 84-74-A

IN THE CIRCUIT COURT OF MARYLAND FOR BALTIMORE COUNTY AT LAW

Misc. Docket No. 16
Folio No. 176
File No. 84-M-121

ANSWER TO PETITION ON APPEAL

THE STONE-SNYDER GENERAL PARTNERSHIP, Appellee herein, by Christopher H. Hill and the law offices of Christopher Harris Hill, its attorneys, answer Appellant's Petition on Appeal and state:

1. That the County Board of Appeals had legally sufficient evidence upon which to base its conclusion that the requested variance was warranted by unnecessary hardship or practical difficulty.

2. That the County Board of Appeals had legally sufficient evidence upon which to base its conclusion that its grant of the requested variance is in the public interest and consistent with the intent of the Baltimore County Zoning Regulations.

3. Appellee denies that the Order of the County Board of Appeals is in any way illegal, arbitrary or capricious.

4. Appellee denies all of the allegations of the People's Counsel. The variance was granted to allow the owner of eleven (11) building sites created on a pre-1952 plat to be treated identically with the owner of a single building site. Any other result would work a hardship, not be in the public interest and would achieve an arbitrary and capricious result.

Law Offices
Christopher Harris Hill

MICROFILMED

WHEREFORE, Appellee prays that the Order of the County Board of Appeals under date of February 29, 1983 be affirmed.

Christopher H. Hill
Attorney for Appellee
200 Hospital Drive, Suite 113
Glen Burnie, Maryland 21061
Telephone: (301) 768-6733

CERTIFICATE OF SERVICE

I hereby certify under penalties of perjury that on this 25th day of April, 1984, a copy of the foregoing Answer to Petition on Appeal was forwarded by first class mail, postage prepaid, addressed to the Administrative Secretary, County Board of Appeals, Room 200, Court House, Towson, MD 21204 and to Phyllis Cole Friedman, People's Counsel for Baltimore County, Room 223, Court House, Towson, Maryland 21204.

Christopher H. Hill

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COUNTY BOARD OF APPEALS
1984 APR 27 P 2:28

MICROFILMED

- 2 -

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COUNTY BOARD OF APPEALS
1984 APR 11 P 2:16

MICROFILMED

84-74-A
4/1/85

RECEIVED
COUNTY BOARD OF APPEALS
1985 APR -3 A 10:

CIRCUIT COURT FOR BALTIMORE COUNTY
ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Bosley Avenue
P.O. Box 6754
Towson, Maryland, 21204-0754
April, 1, 1985.

Pam Cob

John Adams — 494-2660
Civil Assignment Commissioner
Settlement Court

Marie Harris — 494-2662
Masters Assignment Clerk
Medical Records

Kathy Rushton — 494-2660
Assignment — Jury — Motions

Marcia Fennell
Assistant Clerk Typist

Irene Summers — 494-2661
Assignment — Non-Jury — Motions

Freddie Greene
Assistant Clerk Typist

TO: Phyllis Cole Friedman, Esq.
Peter Max Zimmerman, Esq.

Christopher H. Hill, Esq.

The Honorable James S. Sfekas
County Board of Appeals of Balto County

RE: WEM JUST - 84 M 121 - STONE SNYDER GENERAL PARTNERSHIP FOR VARIANCE FROM SECTION 1B02.3.C.1 AND SECTION 302 OF THE BALTIMORE COUNTY ZONING REGULATIONS S/S ILLINOIS AVE., 297' E OF CENTERLINE ANNAPOLIS RD. & N/S VIRGINIA AVE., 213' E OF CENTERLINE ANNAPOLIS RD. 13th DISTRICT

HEARING DATE: Tuesday, May 14, 1985, @ 9:30 a.m.

ON THE FOLLOWING: Motions: 1 hour

UPON RECEIPT OF THIS NOTICE: Counsel shall contact each other immediately to conform calendars. Claim of not receiving notice will not constitute reason for postponement.

POSTPONEMENTS: If the above date is not agreeable to any counsel, a request for a postponement MUST BE MADE IN WRITING to the Assignment Office AS SOON AS POSSIBLE, with a copy to all counsel involved. POSTPONEMENTS WITHIN 15 DAYS OF TRIAL must be made to the attention of Joni Adams.

SETTLEMENT CONFERENCES: All counsel must, between the attendance of all parties necessary to effect a binding settlement, including clients and insurance representatives. THERE WILL BE NO EXCEPTIONS PER ORDER OF JUDGE FRANK E. CICONE. Please direct all inquiries to the attention of Joni Adams.

SETTLEMENTS: If a settlement is reached prior to the hearing date, the Assignment Office must be notified immediately. All settlements must be put on the record if no order of satisfaction is filed prior to trial.

MICROFILMED

MAY 29 1985

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

ARNOLD JABLON
ZONING COMMISSIONER

September 20, 1983

Christopher H. Hill, Esquire
836 Ritchie Highway, Suite 22
Severna Park, Maryland 21146

IN RE: Petition Zoning Variances
S/S of Illinois Avenue, 297' E of the centerline of Annapolis Road (Parcel 1) and the N/S of Virginia Avenue, 213' E of the centerline of Annapolis Road (Parcel 2) - 13th Election District
Stone-Snyder General Partnership, Petitioner
Case No. 84-74-A

Dear Mr. Hill:

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

Sincerely,

ARNOLD JABLON
Zoning Commissioner

Ad/srl

Attachments

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

MICROFILMED

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland 84-74-A

District 13th Date of Posting 11-8-83
Posted for: Appeal
Petitioner: Stone-Snyder Partnership
Location of property: S/S of Illinois Ave. 297'E of the C/L of Annapolis Rd parcel (1) N/S of Virginia Ave. 213' E of the C/L of Annapolis Rd (parcel 2)
Location of Signs: S/S of Illinois Appox. 425 E of Annapolis Road and on N/S of Virginia Ave. Appox 325' E of Annapolis Road
Remarks:
Posted by [signature] Date of return: 11-4-83
Signature
Number of Signs: 2

MICROFILMED

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

ARNOLD JABLON
ZONING COMMISSIONER

October 27, 1983

John W. Hessian, III, Esquire
People's Counsel
Room 223 Courthouse
Towson, Maryland 21204

Re: Petition for Variances
S/S Illinois Ave., 297' E of the c/l of Annapolis Rd. (Parcel 1); N/S of Virginia Ave., 213' E of the c/l of Annapolis Rd. (Parcel 2)
Stone-Snyder General Partnership - Petitioners
Case No. 84-74-A

Dear Mr. Hessian:

Pleased be advised that an appeal has been filed by Christopher H. Hill, attorney 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,

Arnold Jablon
Zoning Commissioner

AJ:aj

MICROFILMED

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

February 29, 1984

Christopher H. Hill, Esquire
836 Ritchie Highway, Suite 22
Severna Park, Maryland 21146

Re: Case No. 84-74-A
Stone-Snyder General Partnership

Dear Mr. Hill:

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 T. Eisenhart, Adm. Secretary

Encl.

cc: Stone-Snyder General Partnership
Phyllis C. Friedman
N. E. Gerber
J. G. Hoswell
A. Jablon
Jean M. H. Jung
J. E. Dyer

MICROFILMED

494-3180

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

November 17, 1983

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #108

CASE NO. 84-74-A — STONE-SNYDER GENERAL PARTNERSHIP

S/s Illinois Ave., 297' E of c/l of Annapolis Rd. (porcel 1); N/s Virginia Ave., 213' E of c/l of Annapolis Rd. (parcel 2)

13th District

Var.-from Sec. 1802.3.C.1 and 302 to permit lot widths of 44.69' and 50.00', in lieu of the required 55.00'.

9/20/83 - Z.C.'s Order - DENIED

ASSIGNED FOR: WEDNESDAY, FEBRUARY 15, 1984, at 10 a.m.

cc: Christopher H. Hill, Esq. Counsel for Petitioners
Stone-Snyder Gen. Partnership Petitioners
J. W. Hessian, Esq. People's Counsel
N. Gerber
J. Hoswell
A. Jablon
J. Jung
J. Dyer

June Holmen, Secy.

MICROFILMED

494-3180

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

March 27, 1984

Christopher H. Hill, Esq.
836 Ritchie Hwy., Suite 22
Severna Park, Maryland 21146

Case No. 84-74-A
Stone-Snyder General Partnership

Dear Mr. Hill:

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: Stone-Snyder General Partnership
N. Gerber
J. Hoswell
A. Jablon
J. Jung
J. Dyer

MICROFILMED

84-74-A — 13th District

S/s Illinois Ave., 297' E of c/l of Annapolis Rd. (parcel 1); N/s Virginia Ave., 213' E of c/l of Annapolis Rd. (parcel 2)

Stone-Snyder General Partnership

2 SIGNS

MICROFILMED

3/27/84

IN THE MATTER OF THE APPLICATION OF STONE-SNYDER GENERAL PARTNERSHIP FOR VARIANCE FROM §1802.3.C.1 & §302 OF THE BALTIMORE COUNTY ZONING REGULATIONS S/S ILLINOIS AVE. 297' E. c/l ANNAPOLIS RD. & N/S VIRGINIA AVE. 213' E. c/l ANNAPOLIS RD. 13th District
Zoning Case No. 84-74-A

: IN THE CIRCUIT COURT
: FOR BALTIMORE COUNTY
: AT LAW
: Misc. Docket No. 16
: Folio No. 176
: File No. 84-M-121

NOTICE OF APPEAL

Please note an appeal to the Circuit Court for Baltimore County from the Opinion and Order of the County Board of Appeals of Baltimore County, under date of February 29, 1984, in the above-entitled case.

Phyllis Cole Friedman
People's Counsel for Baltimore County

Peter M. Zimmerman
Deputy People's Counsel
Rm. 223, Court House
Towson, MD 21204
494-2188

I HEREBY CERTIFY that on this 27th day of March, 1984, a copy of the foregoing Notice of Appeal was delivered to the Administrative Secretary, County Board of Appeals, Rm. 200, Court House, Towson, MD 21204; and a copy mailed to Christopher H. Hill, Esquire, 836 Ritchie Highway, Suite 22, Severna Park, MD 21146.

Phyllis Cole Friedman

RECEIVED
COUNTY BOARD OF APPEALS
MAR 27 4 01

Received: Edith T. Eisenhart
Edith T. Eisenhart Date
Administrative Secretary,
Board of Appeals of Baltimore County

MICROFILMED

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

Zoning Item # 8
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 potability 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.

( ) No health hazards are anticipated.

(X) Others A Reserve Capacity Use Certificate may be required before a building permit can be issued. A Hydrogeological Study and an Environmental Effects Report may be required.

Ian J. Forrest, Director
BUREAU OF ENVIRONMENTAL SERVICES

SS 20 1080 (2)

BALTIMORE COUNTY
DEPARTMENT OF PERMITS & LICENSES
TOWSON, MARYLAND 21204
494-3900

TED ZALESKI, JR.
DIRECTOR

July 28, 1983

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

Dear Mr. Hammond

Comments on Item # 8 Zoning Advisory Committee Meeting July 5, 1983 are as follows:

Property Owner: Stone-Snyder General Partnership
Location: Parcel I-S.S Illinois Ave. 297' E. from centerline Annapolis Rd.
Existing Zoning: D.R. 5.5 Parcel II-N.S. Virginia Ave. 213' E. from centerline Annapolis Rd.
Proposed Zoning: Variance to permit lot widths of 44.69' & 50' in lieu of the required 55'.
Acres: Parcel I-0.717 Parcel II- 0.882
District: 13

The items checked below are applicable:

(A.) All structure shall conform to the Baltimore County Building Code 1981/ Council Bill 1-82 [illegible] and other applicable Codes.

(B.) A building/and other miscellaneous permits shall be required before beginning construction.

(C.) Residential: Three sets of construction drawings are required to file a permit application. Architect/Engineer seal is/is not required.

D. Commercial: Three sets of construction drawings with a Maryland Registered Architect or Engineer shall be required to file a permit application.

E. An exterior wall erected within 6'0 an adjacent lot line shall be of one hour fire resistive construction, no openings permitted within 3'-0 of lot lines. A firewall is required if construction is on the lot line, See Table 401, line 2, Section 1407 and Table 1402.

F. Requested variance conflicts with the Baltimore County Building Code, Section/s _____.

G. A change of occupancy shall be applied for, along with an alteration permit application, and three required sets of drawings indicating how the structure will meet the Code requirements for the proposed change. Drawings may require a professional seal.

H. Before this office can comment on the above structure, please have the owner, thru the services of a Registered in Maryland Architect or Engineer certify to this office, that, the structure for which a proposed change in use is proposed can comply with the height/area requirements of Table 505 and the required construction classification of Table 401.

I. Comments:

NOTE: These comments reflect only on the information provided by the drawings submitted to the office of Planning and Zoning and are not intended to be construed as the full extent of any permit.
If desired, additional information may be obtained by visiting Room #122 (Plans Review) at 111 West Chesapeake Ave., 21204

Very truly yours,
Charles E. Burnham
Charles E. Burnham, Chief
Plans Review

CEB:rrj

FORM 01-82

BALTIMORE COUNTY PUBLIC SCHOOLS

Robert Y. Dubel, Superintendent

Towson, Maryland — 21204

Date: July 5, 1983

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

Z.A.C. Meeting of: July 5, 1983

RE: Item No: 275, 276, 1, 2, 3, 4, 5, 6, 7, (8), 9, 10, 11
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, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO Arnold Jablon, Zoning Commissioner Date August 22, 1983

FROM Norman E. Gerber, Director, Office of Planning and Zoning

SUBJECT Stone-Snyder General Partnership, 84-74-A

This office does not support the requested variances. There appears to be 75 foot wide lots as well as 50 foot wide lots in the immediate area. Furthermore, the petitioner owns sufficient acreage to provide for the minimum lot width.

Norman E. Gerber per J.G. Hoswell
Norman E. Gerber
Director of Planning and Zoning

NEG:JGH:cav

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

February 29, 1984

Christopher H. Hill, Esquire
836 Ritchie Highway, Suite 22
Severna Park, Maryland 21146

Re: Case No. 84-74-A
Stone-Snyder General Partnership

Dear Mr. Hill:

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 T. Eisenhart
Edith T.Eisenhart, Adm. Secretary

Encl.

cc: Stone-Snyder General Partnership
Phyllis C. Friedman
N. E. Gerber
J. G. Hoswell
A. Jablon
Jean M. H. Jung
J. E. Dyer

IN THE MATTER OF THE APPLICATION OF STONE-SNYDER GENERAL PARTNERSHIP FOR VARIANCE FROM §1B02.3.C.1 and §302 OF THE BALTIMORE COUNTY ZONING REGULATIONS S/S ILLINOIS AVE. 297' E. c/l ANNAPOLIS RD. & N/S VIRGINIA AVE. 213' E. c/l ANNAPOLIS RD. 13th DISTRICT	:	BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY NO. 84-74-A

OPINION

This matter comes before the Board for a requested variance to permit lot widths of 50 feet on 10 lots in lieu of the required 55 feet, and 44.69 feet on one lot in lieu of the required 55 feet. The Zoning Commissioner denied this request and Petitioner appealed. The subject property is located on the south side of Illinois Avenue 297 feet east of the centerline of Annapolis Road (Parcel 1), and on the north side of Virginia Avenue 213 feet east of the centerline of Annapolis Road (Parcel 2), in the Thirteenth Election District of Baltimore County.

Testimony presented by Craig Overton on behalf of the Petitioner, and Richard Parrish, an expert in land development, indicated that the subject property was subdivided pursuant to a recorded plat in 1908. At that time the property was divided into 25 foot lots. The present zoning regulations require a minimum lot width of 55 feet for the construction of single family dwellings. Petitioner proposes to combine two 25 foot lots per proposed dwelling to provide a 50 foot lot width for each site. Testimony established that all setback requirements and other height and area regulations would be complied with if the proposed variance were granted.

People's Counsel presented James Hoswell, an expert planner with Baltimore County, who indicated that the subject property could be developed either by combining three lots to provide a 75 foot lot width or by resubdividing the subject property by providing 55 foot width lots. In either case, the property could be developed in accordance with Baltimore County Zoning Regulations.

Petitioner argues that under §304 of the Baltimore County Zoning Regulations an individual owner of a 50 foot width lot within the subdivision would be permitted to construct a dwelling as long as the height, area and setback requirements were met, and as long as the owner did not have sufficient adjoining land to conform with the width requirements.

The Board is persuaded that under such circumstances the County would have no option but to grant a building permit. In fact, it could be possible for the developer to have so deeded or in the future deed the property to sufficient different owners so as to comply with all requirements of §304. Under those circumstances, the requested variance would not be necessary.

The Board believes that to deny the Petitioner its requested variance would serve no purpose when the desired result could be achieved through legal gymnastics that could not deny Petitioner its goal. We are not saying that any set of circumstances that would have the effect of frustrating a legal standard would be permissible. Such circumstances alone are not acceptable. In this case, however, the Petitioner would sustain substantial hardship by being required to resubdivide the property or develop it in lots of 75 feet in width. The Board further believes that piecemeal sale of lots for later development could pose particularly unreasonable hardship and practical difficulty relative to the provision of controls for sediment, drainage and utilities. The topography of the parcels mandates that the grading necessary to control storm water and sediment, as required by Baltimore County, must be done as an entirety on the parcels and could not be accomplished on a lot by lot basis. The Board, therefore, believes that uniform development of this property is in the best interest of public health, safety and general welfare. The Board will also note in this Opinion that these particular lots were recorded amongst the land records of Baltimore County in 1908 and for seventy-six years no development thereon has occurred. This indicates some inherent obvious problems with these lots that seem to be correctable through the requested variances. For all the above reasons, the Board is of the opinion that in this somewhat unique case the requested variances should be granted and will so order.

ORDER

For the reasons set forth in the aforegoing Opinion, it is this 29th day of February, 1984, by the County Board of Appeals, ORDERED that the variance from §1B02.3.C.1 and §302 of the Baltimore County Zoning Regulations to permit widths of 50 feet in lieu of the required 55 feet on 10 lots, and to permit a lot width of 44.69 feet in lieu of the required 55 feet on one lot, in accordance with the site plan introduced in this matter as Petitioner's Exhibit #1, petitioned for, be and the

JUN 16 1986

STONE-SNYDER GENERAL PARTNERSHIP - #84-74-A 3.

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, Chairman

Keith S. Franz

LeRoy B. Spurrier

494-3180

County Board of Appeals
Room 219, Court House
Towson, Maryland 21204
March 27, 1984

Christopher H. Hill, Esq.
836 Ritchie Hwy., Suite 22
Severna Park, Maryland 21146

Case No. 84-74-A
Stone-Snyder General Partnership

Dear Mr. Hill:

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: Stone-Snyder General Partnership
N. Gerber
J. Hoswell
A. Jablon
J. Jung
J. Dyer
file

IN THE MATTER OF : IN THE CIRCUIT COURT
THE APPLICATION OF :
STONE-SNYDER GENERAL PARTNERSHIP : FOR BALTIMORE COUNTY
FOR VARIANCE FROM : AT LAW
§1802.3.C.1 & §302 :
OF THE BALTIMORE COUNTY ZONING REGULATIONS : Misc. Docket No. 16
S/S ILLINOIS AVE. 297' E. c/l ANNAPOLIS RD. & : Folio No. 176
N/S VIRGINIA AVE. 213' E. c/l ANNAPOLIS RD. : File No. 84-M-121
13th District :

Zoning Case No. 84-74-A :

: : : : : : :

NOTICE OF APPEAL

Please note an appeal to the Circuit Court for Baltimore County from the Opinion and Order of the County Board of Appeals of Baltimore County, under date of February 29, 1984, in the above-entitled case.

Phyllis Cole Friedman
People's Counsel for Baltimore County

Peter Max Zimmerman
Deputy People's Counsel
Rm. 223, Court House
Towson, MD 21204
494-2188

I HEREBY CERTIFY that on this 27th day of March, 1984, a copy of the foregoing Notice of Appeal was delivered to the Administrative Secretary, County Board of Appeals, Rm. 200, Court House, Towson, MD 21204; and a copy mailed to Christopher H. Hill, Esquire, 836 Ritchie Highway, Suite 22, Severna Park, MD 21146.

Phyllis Cole Friedman

Received: Edith T. Eisenhart
Edith T. Eisenhart Date
Administrative Secretary,
Board of Appeals of Baltimore County

RECEIVED
COUNTY BOARD OF APPEALS
MAR 21 9 01 A

494-3180

County Board of Appeals
Room 219, Court House
Towson, Maryland 21204
March 27, 1984

Phyllis Cole Friedman
People's Counsel
Court House
Towson, Md. 21204

Re: Case No. 84-74-A
Stone-Snyder General Partnership

Dear Mrs. Friedman:

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 Holmen, Secretary

Encls.
file

IN THE MATTER OF : IN THE CIRCUIT COURT
THE APPLICATION OF :
STONE-SNYDER GENERAL PARTNERSHIP : FOR BALTIMORE COUNTY
FOR VARIANCE FROM : AT LAW
§1802.3.C.1 & §302 :
OF THE BALTIMORE COUNTY ZONING REGULATIONS : Misc. Docket No. ___
S/S ILLINOIS AVE. 297' E. c/l ANNAPOLIS RD. & : Folio No. ___
N/S VIRGINIA AVE. 213' E. E. c/l ANNAPOLIS RD. : File No. ___
13th District :

Zoning Case No. 84-74-A :

: : : : : : :

PETITION ON APPEAL

The People's Counsel for Baltimore County, Protestant below and Appellant herein, having heretofore filed a Notice of Appeal from the Opinion and Order of the County Board of Appeals of Baltimore County, under date of February 29, 1984, in compliance with Maryland Rule B-2(e), files this Petition on Appeal setting forth the grounds upon which this Appeal is taken, viz:

That the County Board of Appeals had no legally sufficient evidence upon which to base its conclusion that the requested variance was warranted by unnecessary hardship or practical difficulty, or that its grant is in the public interest and consistent with the intent of the Baltimore County Zoning Regulations, and therefore their Order passed herein is illegal, arbitrary, and capricious.

WHEREFORE, Appellant prays that the Order of the County Board of Appeals under date of February 29, 1984 be reversed, and the Order of the Zoning Commissioner of Baltimore County be affirmed.

Phyllis Cole Friedman
People's Counsel for Baltimore County

Peter Max Zimmerman
Deputy People's Counsel
Room 223, Court House
Towson, Maryland 21204
494-2188

RECEIVED
COUNTY BOARD OF APPEALS
MAR 21 A 9 01

494-3180

County Board of Appeals
Room 219, Court House
Towson, Maryland 21204
November 17, 1983

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #108

CASE NO. 84-74-A — STONE-SNYDER GENERAL PARTNERSHIP

S/s Illinois Ave., 297' E of c/l of Annapolis Rd.(parcel 1); N/s Virginia Ave., 213' E of c/l of Annapolis Rd.(parcel 2)

13th District

Var.-from Sec. 1802.3.C.1 and 302 to permit lot widths of 44.69' and 50.00', in lieu of the required 55.00'.

9/20/83 - Z.C.'s Order - DENIED

ASSIGNED FOR: WEDNESDAY, FEBRUARY 15, 1984, at 10 a.m.

cc: Christopher H. Hill, Esq. — Counsel for Petitioners
Stone-Snyder Gen. Partnership — Petitioners
J. W. Hessian, Esq. — People's Counsel
N. Gerber
J. Hoswell
A. Jablon
J. Jung
J. Dyer

June Holmen, Secy.

- 2 -

I HEREBY CERTIFY that on this 27th day of March, 1984, a copy of the foregoing Petition on Appeal was delivered to the Administrative Secretary, County Board of Appeals, Rm. 200, Court House, Towson, MD 21204; and a copy mailed to Christopher H. Hill, Esquire, 836 Ritchie Highway, Suite 22, Severna Park, MD 21146.

Phyllis Cole Friedman

Received: Edith T. Eisenhart
Edith T. Eisenhart Date
Administrative Secretary,
Board of Appeals of Baltimore County

IN THE MATTER OF THE APPLICATION OF STONE-SNYDER GENERAL PARTNERSHIP FOR VARIANCE FROM SECTION 1802.3.C.1 AND SECTION 302 OF THE BALTIMORE COUNTY ZONING REGULATIONS S/S ILLINOIS AVE. 297' E. c/l ANNAPOLIS RD. & N/S VIRGINIA AVE. 213' E. c/l ANNAPOLIS RD. 13th DISTRICT : IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW
Misc. Doc. No. 16
Folio No. 176
File No. 84-M-121

Phyllis Cole Friedman, People's Counsel - Appellant

Zoning File No. 84-74-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 LeRoy B. Spurrier, 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

No. 84-74-A

July 5, 1983	Petition of Stone-Snyder General Partnership for variance from Sec. 1 1802.3.C.1 and 302 to permit lot widths of 44.69' and 50.00', in lieu of the required 55.00'.
July 5, 1983	Order of Zoning Commissioner directing advertisement and posting of property - date of hearing set for Sept. 15, 1983, at 1:30 p.m.
August 25, 1983	Certificate of publication in newspaper - filed
August 26, 1983	Certificate of posting of property - filed
August 22, 1983	Comments of Baltimore County Director of Planning - filed
September 2, 1983	Comments of Baltimore County Zoning Plans Advisory Committee - filed

JUN 16 1988

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

MICROFILMED

IN RE: PETITION ZONING VARIANCES
S/S of Illinois Avenue, 297' E of the centerline of Annapolis Road (Parcel 1) and the N/S of Virginia Avenue, 213' E of the centerline of Annapolis Road (Parcel 2) - 13th Election District
Stone-Snyder General Partnership, Petitioner

BEFORE THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 84-74-A

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests variances to permit lot widths of 44.09 feet for one lot and 50 feet for ten lots in lieu of the required 55 feet. The purpose of its request is to enable the Petitioner to develop the property and construct 11 homes on the lots as more fully described in Petitioner's Exhibit 1.

Mr. Craig Overton, the representative of the Petitioner, and Mr. Ron Wagner, a consultant engineer, appeared and testified on behalf of the Petitioner. The Petitioner was also represented by counsel, Christopher H. Hill, Esquire. There were no Protestants.

Testimony indicated, and was uncontested, that the subject property had been subdivided, and the plat recorded in 1903, as shown on Petitioner's Exhibit 1. The Petitioner purchased the property in 1982.

The property was divided into 25-foot lots and the Petitioner wants to combine lots and build single-family dwellings, each lot, save one, with 50-foot widths. Petitioner's Exhibit 1 shows that there are some existing dwellings in the neighborhood that are on 50-foot lots, while some others are on 75-foot lots. Testimony indicated that 50-foot lot widths were predominate in the neighborhood, with 75-foot lot widths in the minority. The homes the Petitioner would build would be 24 feet wide and 38 feet deep, and, according to testimony, would conform to the physical charcteristics of the homes already existing in the neighborhood.

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ORDER RECEIVED FOR FILING
DATE September 20, 1983
BY Arnold Jablon, Administrative Assistant

The Petitioner argues that it would be impractical and an undue hardship to either resubdivide to meet the 55-foot standard or to combine three lots and have 75-foot lots. The former would require submission to County procedures for resubdivision, which could take approximately one year, and include approval of the County Review Group (CRG). It also would cause the Petitioner to be placed at the bottom of the allocation list for water and sewer services, a list which presently exists. The Petitioner in addition expresses concern whether there will be a moratorium on such services at that time and thereby make its plans moot and financially disasterous. The Petitioner could expand the lots with 75-foot widths, but to do so would reduce the total number of available building sites to nine from the expected 11, and would leave two 25-foot lots empty, either for open space or combined with other lots to make two oversized lots of 100 feet, which would be totally out of character with the existing neighborhood. Also, if the lots were larger, the homes projected to be built would appear out of place on such lots (24-foot-width homes on 75-foot lots would be aesthetically uncomplimentary).

The Petitioner, by its witness, also stated that if held to either the 55-foot-width requirement or 75-foot-width requirement it would suffer financial hardship and would reconsider its intent to build. Mr. Overton testified that if held to 55-foot widths, the Petitioner would probably not build.

Mr. Overton also testified that in his opinion the area would not allow for larger residences on lots in terms of cost of building and cost of land verses the potential selling price for each finished home. His analysis indicated a cost ineffectiveness if other than a 50-foot width was allowed. Mr. Wagner concurred that the present proposed plan was marketable in that area, but if forced to change, any change would not be.

The Petitioner seeks relief from Sections 1B02.3C.1. and 302, pursuant to Section 307, of the Baltimore County Zoning Regulations (BCZR).

ORDER RECEIVED FOR FILING
DATE September 20, 1983
BY Arnold Jablon, Administrative Assistant

After due consideration of the testimony and evidence presented, it appears that there would be practical difficulty or unreasonable hardship resulting to the Petitioner if the instant variances were not to be granted.

There is a strong presumption of the correctness of original zones and of comprehensive zoning. Howard County v. Dorsey, 438 A.2d 1339 (1982). There is a presumption of validity that must be accepted. Johnson & Wales College v. DiPiete, 448 A.2d 1271 (R.I., 1982). In interpreting the zoning regulations, the restrictive language contained must be strictly construed so as to allow the landowner the least restrictive use of his property. Lake Adventure, Inc. v. Zoning Hearing Bd. of Dingman Township, 440 A.2d 1284 (Pa. Cmwlth., 1982). When the language of a zoning regulation is clear and certain, there is nothing left for interpretation and the ordinance must be interpreted literally. Mongony v. Bevilacqua, 432 A.2d 661 (R.I., 1981).

Therefore, Section 1B02.3C.1. must be enforced as it is clear and certain as to its meaning and intent. The zoning regulations, however, permit a variance, pursuant to certain conditions as delineated in Section 307. To permit a variance to the "area" requirements of Section 1B02.3C.1., the variance must be judged under the "practical difficulties" or "unreasonable hardship" test, i.e., by looking to such factors as the nature of the zone in which the property lies, the character of the immediate vicinity and the uses contained therein; whether, if the restriction upon the petitioner's property was removed, such removal would seriously affect such neighboring property and uses; whether, if the restriction is not removed, the restriction would create practical difficulty or unreasonable hardship for owner in relation to his efforts to make normal improvements in the character of that use of the property which is a permitted use under the use provisions of the regulation.

A landowner can establish a right to a variance by showing that the effect of the regulations is to burden his property with an unreasonable hardship that is unique

to his property. This can be accomplished by showing that the physical or topographical features of the property are such that the property cannot be used for a permitted purpose, or by showing that the property can be arranged for such use only at a prohibitive expense. Anderson v. Bd. of Appeals of Town of Chesapeake Beach, 22 Md. App. 28 (1974); Marlowe v. Zoning Hearing Bd. Haverford Township, 415 A.2d 946 (Pa. Cmwlth., 1980).

The Court of Special Appeals has held that a variance relating to certain "area" restrictions, as distinguished from restrictions on the use of the property, must be judged under the "practical difficulty" test. Anderson, supra. See Bd. of Adjustment, Etc. v. Kwik-Check Realty, 389 A.2d 1289 (Del. Supr., 1978). As noted in Anderson, the factors to be considered under this test in determining whether a variance should be granted are:

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,

Anderson, supra.

Notwithstanding the testimony presented, there is insufficient evidence to permit a finding that the hardship or difficulties experienced or will be experienced by the Petitioner was caused, will be caused, or created, will be created, by the zoning restriction from which it seeks relief by the instant zoning application. Therefore, the variances requested must be denied.

A property reasonably cannot be adapted to use in conformity with zoning ordinance restrictions due to unique circumstances, any hardship may be relieved through the variance procedure. However, if the unusual circumstances which hinder reasonable

ORDER RECEIVED FOR FILING
DATE September 20, 1983
BY Arnold Jablon, Administrative Assistant

use of the property in accordance with zoning restrictions have been caused or created by the property owner or his predecessor in title, hardship cannot be demonstrated since it is essentially self-created and not due solely to the manner of the operation of the ordinance upon the subject property.

Any petitioner who seeks a variance must exercise proper diligence in ascertaining zoning ordinance requirements to avoid a resultant hardship before he acquires the property. If such diligence is not exercised, the hardship must be regarded as self-created, and a variance can properly be refused. Wilson v. Mayor and Commissioners of Elkton, 35 Md. App. 417 (1977).

The Petitioner's problem here is a personal one and is not a problem inherent in the land itself or in the application of the zoning regulations to the land. Such personal problems are not generally appropriate subjects for relief by way of the variance procedure. See 3 Anderson, American Law of Zoning, Section 18.53 (2nd Edition, 1977).

The Petitioner can expand his projected development scheme by allowing 75-foot widths without the necessity of submitting a new plat plan to County review or can submit a new plan calling for 55-foot widths, at its option. The loss of potential profit or the loss of water and sewage availability is presented without any foundation other than by mere conjecture. Although the Petitioner has shown the uses of adjacent and surrounding land similar to the requested use, it has failed to show that without the variances requested, the property would be rendered practically valueless. Personal opinion that a 24-foot-wide home on a 75-foot-wide lot would not be marketable in that neighborhood, or a wider house on that 75-foot wide lot equally as difficult to sell, does not carry the Petitioner's burden of proof. See Harwell Mfg. Co. v. Zoning Bd. of Adjustment, 452 A.2d 605 (Pa. Cmwlth., 1982). Mere evidence that the zoned use is less financially rewarding than the proposed use is insufficient to justify a variance. Pyzdrowski v. Pittsburgh Bd. of Adjustment, 263 A.2d 426 (Pa., 1970).

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BY Arnold Jablon, Administrative Assistant

"Administrative relief is not warranted where the owner of contiguous substandard lots can solve his own problem by combining them to meet the minimum requirements of the zoning regulations. In such a case, his development plans may have to be revised, and he may not be able to extract the maximum profit from his tract, but he has not been denied reasonable use of his land."

3 Anderson, supra, Section 18.54, at 291. See Sibley v. Inhabitants of Town of Wells, 462 A.2d 27 (Me., 1983).

The Petitioner purchased the property with actual or constructive knowledge of the zoning restrictions, and it may not be granted a variance on the grounds that strict compliance would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome. 3 Anderson, supra, Section 18.42. Testimony shows that neither is the case here.

Alternatives do exist and the Petitioner can still make use of its property for the Petitioner's intended purpose. It purchased the property in 1982, and with knowledge of the zoning restrictions, whether actual or constructive, the Petitioner could have, at that time, considered a revision of the subdivision plat to conform with the 55-foot width requirement. If it had, there would now be no need for a variance. If the Petitioner at that time had no concrete plans or ideas as to use of the property, it cannot now argue that a delay (the submission of a redevelopment plan to County review) warrants a variance or the widening of the lots to 75 feet. Neither prevent the Petitioner from using its property for the projected use it intends.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and for the reasons above given, the variances requested should not be granted.

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 17th day of September, 1983, that the Petition for Variances to permit lot

MICROFILMED

ORDER RECEIVED FOR FILING
DATE September 20, 1983
BY Arnold Jablon, Administrative Assistant

widths of 44.09 feet for one lot and 50 feet for ten lots in lieu of the required 55 feet be and is hereby DENIED, from and after the date of this Order.

Zoning Commissioner of
Baltimore County

MAY 29 1987

STONE-SNYDER GENERAL PARTNERSHIP #84-74-A

S/s Illinois Ave., 297' E of the C/L of Annapolis Rd. (parcel 1); N/s of Virginia Ave., 213' E of c/l of Annapolis Rd. (parcel 2) — 13th District

July 5, 1983	Petition filed
Sept. 15, "	Hearing held by Zoning Commissioner
Sept. 20, "	Order of Z.C. DENYING variances
Oct. 6, "	Order for Appeal TO C.B. of A.
Feb. 15, 1984	Hearing before the Board
Feb. 29, "	Order of the Board GRANTING variances
March 27, 1984	Order for Appeal filed in the Cir. Ct. by (S-H-121) People's Counsel
March 27, "	Certificate of Notice sent out
June 5, 1984	Record of Proceedings filed in the Circuit Court
Jan. 10, 1985	Board REVERSED - Judge James S. Sfekas 1/14/85 - cc: Eileen Hennegan, Arnold Jablon, J. G. Hoswell
Jan. 30, 1985	Motion for Reconsideration or Modification filed in the Circuit Court by Christopher H. Hill, Esq., counsel for Petitioners
Feb 7	People's Counsel's Opposition to Motion for Reconsideration or Modification filed
June 17	Order of Judge James S. Sfekas DENYING Motion to Reconsider denial of variance 6/19/85 - cc: Eileen Hennegan, Arnold Jablon, J. G. Hoswell
July 9	Order for Appeal filed in the Court of Special Appeals by Christopher N. Hill, Esq., for Petitioners 7/29/85 - cc: Eileen Hennegan, Arnold Jablon, J. G. Hoswell
Jan. 9, 1986	Order of the Court of Special Appeals, upon its own motion, dismissing case for failure to file the record as required by Maryland Rule 1025 1/20/86 - CC: Sue Zack, Arnold Jablon, J. G. Hoswell

PETITION FOR VARIANCE

13th Election District

ZONING: Petition for Variance

LOCATION: Parcel 1 - South side of Illinois Avenue, 297 ft. East of the centerline of Annapolis Road; Parcel 2 - North side of Virginia Avenue, 213 ft. East of the centerline of Annapolis Road

DATE & TIME: Thursday, September 15, 1983 at 1:30 P.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 lot widths of 44.69 ft. and 50 ft. in lieu of the required 55 ft.

The Zoning Regulation to be excepted as follows:
Sections 1B02.3C.1 and 302 - lot widths in D.R. 5.5 zone and in a B.L. zone adjacent to a D.R. 5.5 zone

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

Being the property of Stone-Snyder General Partnership, as shown on plat plan filed with the Zoning Department.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be received in writing by the date of the hearing set above or made at the hearing.

BY ORDER OF
ARNOLD JABLON
ZONING COMMISSIONER
OF BALTIMORE COUNTY

W. DUVALL & ASSOCIATES

Engineers / Land Planning Consultants

ZONING DESCRIPTION
PARCEL I

Beginning for the same at a point, said point being along the southern right-of-way line of Illinois Avenue (50'wide) 297 feet easterly along the centerline of Illinois Avenue from the centerline intersection of Illinois Avenue with Annapolis Road; thence leaving said point and running along the southern right-of-way line of Illinois Avenue South 71°56'25" East 250.00'; thence leaving said right-of-way line and running the three following courses and distances; (1) South 18°03'35" West, 125.00 feet; (2) North 71°56'25" West 250.00'; (3) North 18°03'35" East 125.00'; to the point of beginning. Containing 0.717 acres more or less.

Being known as Lots 15 thru 24 Block D, as recorded in the land records of Baltimore County, Maryland, Plat Book 2 folio 379, entitled Plat of Baltimore Highlands.

STATE OF MARYLAND — RICHARD CARLTON DUVALL — 7900 — REGISTERED PROFESSIONAL ENGINEER

5203 Walther Avenue / Baltimore, Maryland 21214 / (301) 444-5590

W. DUVALL & ASSOCIATES

Engineers / Land Planning Consultants

ZONING DESCRIPTION
PARCEL II

Beginning for the same at a point, said point being along the northern right-of-way line of Virginia Avenue (50' wide) 213' easterly along the centerline of Virginia Avenue from the centerline intersection of Virginia Avenue with Annapolis Road; thence leaving said point of beginning and running the six following courses and distances; (1) North 18°03'35" East 96.03'; (2) North 71°56'25" East 55.31'; (3) North 18°03'35" East 28.97' (4) South 71°56'25" East 350.00'; (5) South 18°03'35" West, 125.00'; (6) North 71°56'25" West 294.69'; to said point of beginning. Containing 0.882 acres more or less.

Being known as Lots 149 thru 159, Block D and part of Lots 160 thru 162 Block D as recorded in the land records of Baltimore County, Maryland, Plat Book 2 folio 379 entitled Plat of Baltimore Highlands.

STATE OF MARYLAND — RICHARD CARLTON DUVALL — 7900 — REGISTERED PROFESSIONAL ENGINEER

5203 Walther Avenue / Baltimore, Maryland 21214 / (301) 444-5590

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

ARNOLD JABLON
ZONING COMMISSIONER

September 20, 1983

Christopher H. Hill, Esquire
836 Ritchie Highway, Suite 22
Severna Park, Maryland 21146

IN RE: Petition Zoning Variances
S/S of Illinois Avenue, 297' E of the centerline of Annapolis Road (Parcel 1) and the N/S of Virginia Avenue, 213' E of the centerline of Annapolis Road (Parcel 2) - 13th Election District
Stone-Snyder General Partnership, Petitioner
Case No. 84-74-A

Dear Mr. Hill:

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

Sincerely,

ARNOLD JABLON
Zoning Commissioner

AJ/srl

Attachments

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

ORDER RECEIVED FOR FILING
DATE Sept 20, 1983
BY Linda K. Stone

IN RE: PETITION ZONING VARIANCES
S/S of Illinois Avenue, 297' E of the centerline of Annapolis Road (Parcel 1) and the N/S of Virginia Avenue, 213' E of the centerline of Annapolis Road (Parcel 2) - 13th Election District
Stone-Snyder General Partnership, Petitioner

BEFORE THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 84-74-A

* * * * * * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests variances to permit lot widths of 44.09 feet for one lot and 50 feet for ten lots in lieu of the required 55 feet. The purpose of its request is to enable the Petitioner to develop the property and construct 11 homes on the lots as more fully described in Petitioner's Exhibit 1.

Mr. Craig Overton, the representative of the Petitioner, and Mr. Ron Wagner, a consultant engineer, appeared and testified on behalf of the Petitioner. The Petitioner was also represented by counsel, Christopher H. Hill, Esquire. There were no Protestants.

Testimony indicated, and was uncontested, that the subject property had been subdivided, and the plat recorded in 1903, as shown on Petitioner's Exhibit 1. The Petitioner purchased the property in 1982.

The property was divided into 25-foot lots and the Petitioner wants to combine lots and build single-family dwellings, each lot, save one, with 50-foot widths. Petitioner's Exhibit 1 shows that there are some existing dwellings in the neighborhood that are on 50-foot lots, while some others are on 75-foot lots. Testimony indicated that 50-foot lot widths were preominate in the neighborhood, with 75-foot lot widths in the minority. The homes the Petitioner would build would be 24 feet wide and 38 feet deep, and, according to testimony, would conform to the physical charcteristics of the homes already existing in the neighborhood.

ORDER RECEIVED FOR FILING
DATE Sept 20, 1983
BY Linda K. Stone

The Petitioner argues that it would be impractical and an undue hardship to either resubdivide to meet the 55-foot standard or to combine three lots and have 75-foot lots. The former would require submission to County procedures for resubdivision, which could take approximately one year, and include approval of the County Review Group (CRG). It also would cause the Petitioner to be placed at the bottom of the allocation list for water and sewer services, a list which presently exists. The Petitioner in addition expresses concern whether there will be a moratorium on such services at that time and thereby make its plans moot and financially disasterous. The Petitioner could expand the lots with 75-foot widths, but to do so would reduce the total number of available building sites to nine from the expected 11, and would leave two 25-foot lots empty, either for open space or combined with other lots to make two oversized lots of 100 feet, which would be totally out of character with the existing neighborhood. Also, if the lots were larger, the homes projected to be built would appear out of place on such lots (24-foot-width homes on 75-foot lots would be aesthetically uncomplimentary).

The Petitioner, by its witness, also stated that if held to either the 55-foot-width requirement or 75-foot-width requirement it would suffer financial hardship and would reconsider its intent to build. Mr. Overton testified that if held to 55-foot widths, the Petitioner would probably not build.

Mr. Overton also testified that in his opinion the area would not allow for larger residences on lots in terms of cost of building and cost of land verses the potential selling price for each finished home. His analysis indicated a cost ineffectiveness if other than a 50-foot width was allowed. Mr. Wagner concurred that the present proposed plan was marketable in that area, but if forced to change, any change would not be.

The Petitioner seeks relief from Sections 1B02.3C.1. and 302, pursuant to Section 307, of the Baltimore County Zoning Regulations (BCZR).

ORDER RECEIVED FOR FILING
DATE Sept 20, 1983
BY Linda K. Stone

After due consideration of the testimony and evidence presented, it appears that there would be practical difficulty or unreasonable hardship resulting to the Petitioner if the instant variances were not to be granted.

There is a strong presumption of the correctness of original zones and of comprehensive zoning. Howard County v. Dorsey, 438 A.2d 1339 (1982). There is a presumption of validity that must be accepted. Johnson & Wales College v. DiPiete, 448 A.2d 1271 (R.I., 1982). In interpreting the zoning regulations, the restrictive language contained must be strictly construed so as to allow the landowner the least restrictive use of his property. Lake Adventure, Inc. v. Zoning Hearing Bd. of Dingman Township, 440 A.2d 1284 (Pa. Cmwlth., 1982). When the language of a zoning regulation is clear and certain, there is nothing left for interpretation and the ordinance must be interpreted literally. Mongony v. Bevilacqua, 432 A.2d 661 (R.I., 1981).

Therefore, Section 1B02.3C.1. must be enforced as it is clear and certain as to its meaning and intent. The zoning regulations, however, permit a variance, pursuant to certain conditions as delineated in Section 307. To permit a variance to the "area" requirements of Section 1B02.3C.1., the variance must be judged under the "practical difficulties" or "unreasonable hardship" test, i.e., by looking to such factors as the nature of the zone in which the property lies, the character of the immediate vicinity and the uses contained therein; whether, if the restriction upon the petitioner's property was removed, such removal would seriously affect such neighboring property and uses; whether, if the restriction is not removed, the restriction would create practical difficulty or unreasonable hardship for the owner in relation to his efforts to make normal improvements in the character of that use of the property which is a permitted use under the use provisions of the regulation.

A landowner can establish a right to a variance by showing that the effect of the regulations is to burden his property with an unreasonable hardship that is unique

JUN 16 1988

to his property. This can be accomplished by showing that the physical or topographical features of the property are such that the property cannot be used for a permitted purpose, or by showing that the property can be arranged for such use only at a prohibitive expense. Anderson v. Bd. of Appeals of Town of Chesapeake Beach, 22 Md. App. 28 (1974); Marlowe v. Zoning Hearing Bd. Haverford Township, 415 A.2d 946 (Pa. Cmwlth., 1980).

The Court of Special Appeals has held that a variance relating to certain "area" restrictions, as distinguished from restrictions on the use of the property, must be judged under the "practical difficulty" test. Anderson, supra. See Bd. of Adjustment, Etc. v. Kwik-Check Realty, 389 A.2d 1289 (Del. Supr., 1978). As noted in Anderson, the factors to be considered under this test in determining whether a variance should be granted are:

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,

Anderson, supra.

Notwithstanding the testimony presented, there is insufficient evidence to permit a finding that the hardship or difficulties experienced or will be experienced by the Petitioner was caused, will be caused, or created, will be created, by the zoning restriction from which it seeks relief by the instant zoning application. Therefore, the variances requested must be denied.

If property reasonably cannot be adapted to use in conformity with zoning ordinance restrictions due to unique circumstances, any hardship may be relieved through the variance procedure. However, if the unusual circumstances which hinder reasonable

ORDER RECEIVED FOR FILING
DATE Sept 29, 1983
BY Stella A. Cooney clerk
ADMINISTRATIVE ASSISTANT

use of the property in accordance with zoning restrictions have been caused or created by the property owner or his predecessor in title, hardship cannot be demonstrated since it is essentially self-created and not due solely to the manner of the operation of the ordinance u, the subject property.

Any petitioner who seeks a variance must exercise proper diligence in ascertaining zoning ordinance requirements to avoid a resultant hardship before he acquires the property. If such diligence is not exercised, the hardship must be regarded as self-created, and a variance can properly be refused. Wilson v. Mayor and Commissioners of Elkton, 35 Md. App. 417 (1977).

The Petitioner's problem here is a personal one and is not a problem inherent in the land itself or in the application of the zoning regulations to the land. Such personal problems are not generally appropriate subjects for relief by way of the variance procedure. See 3 Anderson, American Law of Zoning, Section 18.53 (2nd Edition, 1977).

The Petitioner can expand his projected development scheme by allowing 75-foot widths without the necessity of submitting a new plat plan to County review or can submit a new plan calling for 55-foot widths, at its option. The loss of potential profit or the loss of water and sewage availability is presented without any foundation other than by mere conjecture. Although the Petitioner has shown the uses of adjacent and surrounding land similar to the requested use, it has failed to show that without the variances requested, the property would be rendered practically valueless. Personal opinion that a 24-foot-wide home on a 75-foot-wide lot would not be marketable in that neighborhood, or a wider house on that 75-foot wide lot equally as difficult to sell, does not carry the Petitioner's burden of proof. See Howell Mfg. Co. v. Zoning Bd. of Adjustment, 452 A.2d 605 (Pa. Cmwlth., 1982). Mere evidence that the zoned use is less financially rewarding than the proposed use is insufficient to justify a variance. Pyzdrowski v. Pittsburgh Bd. of Adjustment, 263 A.2d 426 (Pa., 1970).

ORDER RECEIVED FOR FILING
DATE Sept 29, 1983
BY Stella A. Cooney clerk
ADMINISTRATIVE ASSISTANT

> "Administrative relief is not warranted where the owner of contiguous substandard lots can solve his own problem by combining them to meet the minimum requirements of the zoning regulations. In such a case, his development plans may have to be revised, and he may not be able to extract the maximum profit from his tract, but he has not been denied reasonable use of his land."

3 Anderson, supra, Section 18.54, at 291. See Sibley v. Inhabitants of Town of Wells, 462 A.2d 27 (Me., 1983).

The Petitioner purchased the property with actual or constructive knowledge of the zoning restrictions, and it may not be granted a variance on the grounds that strict compliance would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome. 3 Anderson, supra, Section 18.42. Testimony shows that neither is the case here.

Alternatives do exist and the Petitioner can still make use of its property for the Petitioner's intended purpose. It purchased the property in 1982, and with knowledge of the zoning restrictions, whether actual or constructive, the Petitioner could have, at that time, considered a revision of the subdivision plat to conform with the 55-foot width requirement. If it had, there would now be no need for a variance. If the Petitioner at that time had no concrete plans or ideas as to use of the property, it cannot now argue that a delay (the submission of a redevelopment plan to County review) warrants a variance or the widening of the lots to 75 feet. Neither prevent the Petitioner from using its property for the projected use it intends.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons above given, the variances requested should not be granted.

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 29th day of September, 1983, that the Petition for Variances to permit lot

ORDER RECEIVED FOR FILING
DATE Sept 29, 1983
BY Stella A. Cooney clerk
ADMINISTRATIVE ASSISTANT

widths of 44.09 feet for one lot and 50 feet for ten lots in lieu of the required 55 feet be and is hereby DENIED, from and after the date of this Order.

Zoning Commissioner of
Baltimore County

ORDER RECEIVED FOR FILING
DATE Sept 29, 1983
BY Stella A. Cooney clerk
ADMINISTRATIVE ASSISTANT

#84-74-A
13th District
S/s Illinois Ave., 297' E of c/l of Annapolis Rd. (parcel 1); N/s Virginia Ave., 213' E of c/l of Annapolis Rd. (parcel 2)
Stone-Snyder General Partnership
2 SIGNS

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland 84-74-A

District 13th Date of Posting 11-8-83
Posted for: Appeal
Petitioner: Stone - Snyder Partnership
Location of property: S/S of Illinois Ave. 297' E of the C/L of Annapolis Rd parcel 1) N/S of Virginia Ave. 213' E of the C/L of Annapolis Rd Parcel 2
Location of Signs: S/S of Illinois Appx. 425 E of Annapolis Road and Appx N/S of Virginia Ave Appx 325' E of Annapolis Road
Remarks:
Posted by [signature] Signature Date of return: 11-14-83
Number of Signs: 2

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

ARNOLD JABLON
ZONING COMMISSIONER

September 8, 1983

Christopher H. Hill, Esquire
836 Ritchie Highway
Suite 22
Severna Park, Maryland 21146

Re: Petition for Variance
Parcel 1 - S/S Illinois Ave., 297' E of c/l of Annapolis Rd.; Parcel 2 - N/S of Virginia Ave. 213' E of c/l of Annapolis Rd.
Stone-Snyder General Partnership - Petitioners
Case No. 84-74-A

Dear Mr. Hill:

This is to advise you that $86.95 is due for advertising and posting of the above property. This fee must be paid before an Order is issued.

Please make the check payable to Baltimore County, Maryland, and remit to Mrs. Arlene January, Zoning Office, Room 113, County Office Building, Towson, Maryland 21204, before the hearing.

Sincerely,

ARNOLD JABLON
Zoning Commissioner

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

No. 121518

DATE 9/14/83 ACCOUNT R-01-615-000
AMOUNT $86.95
RECEIVED FROM Christopher Hill, Esquire
FOR Advertising & Posting Case #84-74-A (Stone-Snyder General Partnership)

B 033******8695D 8142A

VALIDATION OR SIGNATURE OF CASHIER

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

ARNOLD JABLON
ZONING COMMISSIONER

October 27, 1983

John W. Hessian, III, Esquire
People's Counsel
Room 223 Courthouse
Towson, Maryland 21204

Re: Petition for Variances
S/S Illinois Ave., 297' E of the c/l of Annapolis Rd. (Parcel 1); N/S of Virginia Ave., 213' E of c/l of Annapolis Rd. (Parcel 2)
Stone-Snyder General Partnership - Petitioners
Case No. 84-74-A

Dear Mr. Hessian:

Pleased be advised that an appeal has been filed by Christopher H. Hill, attorney 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,

Arnold Jablon
Zoning Commissioner

AJ:aj

Christopher Harris Hill

Law offices of:
Christopher Harris Hill
Severna Park Business Center
836 Ritchie Hwy., Suite 22
Severna Park, Maryland 21146
(301) 544-3904

October 5, 1983

Mr. Arnold Jablon
Zoning Commissioner
111 West Chesapeake Avenue
Towson, Maryland 21204

Dear Mr. Jablon:

This letter is to notify you that I wish to appeal the decision rendered in Case No. 84-74-A regarding a variance for that land lying in the 13th Election District, S/S of Illinois Avenue, 297' E of the centerline of Annapolis Road (Parcel 1), and the N/S of Virginia Avenue, 213' E of the centerline of Annapolis Road (Parcel 2). The hearing was for the purpose of obtaining a variance from the zoned requirement that all the lots in the area must have a width of 55 feet.

Enclosed is a check for $80.00, which includes the $75.00 filing fee and the $5.00 cost of posting. Please advise me as to any other procedural steps with which I must comply.

Thank you for your attention and cooperation.

Very truly yours,

Christopher H. Hill

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

No. 122900

DATE 10/14/83 ACCOUNT R-01-615-000
AMOUNT $85.00
RECEIVED FROM Christopher Hill, Esquire
FOR Appeal fee on Case No. 84-74-A (Stone-Snyder General Partnership)

B 147******8500D 8172A

VALIDATION OR SIGNATURE OF CASHIER

OCT 6 AM
ZONING DEPARTMENT

JUN 16 1988

PETITION FOR ZONING VARIANCE 84-74-A

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 1 B02 3.C.1/ To Permit Lot Widths of 44.69' and 50.00", in lieu of the required 55.00'

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

1. "Many" existing dwellings in this immediate area are situated on 50 ft. lots (These dwelling offer less side yard width than what is proposed. 24' wide, 13 ft. sideyards.
2. Pruchase price, due to high land dev. cost would not allow reduction in density. Cost per unit out of market on this size house.
3. Nothing is gained by larger lots (5 ft.) because lower density makes for a larger dwelling reducting sideyard space, etc.,etc.
4. All legally required sideyard setbacks can be met within the 50' lot size.

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

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

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 State

Legal Owner(s):

STONE-SNYDER GENERAL PARTNERSHIP
(Type or Print Name)

Signature

(Type or Print Name)

Signature

CHARLES SNYDER GENERAL PARTNERSHIP

Attorney for Petitioner:

Christopher H. Hill 541-3707
(Type or Print Name)

Signature

836 Ritchie Hgwy. Suite 22
Address

Severna Park, Md. 21146
City and State

Attorney's Telephone No.:

836 Ritchie Highway Suite 24
Address Phone No.

Severna Park, Md. 21146
City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

Name

Address Phone No.

MAP
ELECTION
DISTRICT
D. TU.
TYPE
PLAT
BY
FINAL
BY

ORDERED By The Zoning Commissioner of Baltimore County, this 5th day of July, 19 83, 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 106, County Office Building in Towson, Baltimore County, on the 15th day of September, 19 83, at 1:30 o'clock A. M.

Thurs. 9-15-83
1:30 P.M.

Zoning Commissioner of Baltimore County.

(over)

ORDER RECEIVED FOR FILING
DATE 7/5/83
BY Arnold Jablon

84-74-A
Stone-Snyder General Partnership
Parcel 1 - S/S Illinois Ave., 297' E of c/l of Annapolis Rd.; Parcel 2 - N/S of Virginia Ave., 213' E of c/l of Annapolis Road, 13th Dist.

RE: PETITION FOR VARIANCE
Parcel 1 - S/S of Illinois Ave., 297' E of the Centerline of Annapolis Rd.; Parcel 2 - N/S of Virginia Ave., 213' E of the Centerline of Annapolis Rd., 13th District

STONE-SNYDER GENERAL PARTNERSHIP, Petitioner

: BEFORE THE ZONING COMMISSIONER
: OF BALTIMORE COUNTY
: Case No. 84-74-A

ORDER TO ENTER APPEARANCE

Mr. Commissioner:

Pursuant to the authority contained in Section 524.1 of the Baltimore County Charter, I hereby enter my appearance in this proceeding. You are requested to notify me of any hearing date or dates which may be now or hereafter designated therefor, and of the passage of any preliminary or final Order in connection therewith.

Peter Max Zimmerman
Deputy People's Counsel

John W. Hessian, III
People's Counsel for Baltimore County
Rm. 223, Court House
Towson, Maryland 21204
494-2138

I HEREBY CERTIFY that on this 23rd day of August, 1983, a copy of the foregoing Order was mailed to Christopher H. Hill, Esquire, 836 Ritchie Highway, Suite 22, Severna Park, MD 21146, Attorney for Petitioner.

John W. Hessian, III

Christopher H. Hill, Esquire
836 Ritchie Highway, Suite 22
Severna Park, Md. 21146

Land Design Associates
416 E. Joppa Road
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 5th day of July, 1983.

ARNOLD JABLON
Zoning Commissioner

Petitioner Stone-Snyder General Partnership
Petitioner's Attorney Christopher H. Hill, Esq.

Received by: Nicholas B. Commodari
Chairman, Zoning Plans Advisory Committee

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

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

000

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

September 2, 1983

Christopher H. Hill, Esquire
836 Ritchie Highway, Suite 22
Severna Park, Maryland 21146

RE: Item No. 8 - Case No. 84-74-A
Petitioner - Stone-Snyder General Partnership
Variance Petition

Dear Mr. Hill:

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 client's proposal to construct dwellings on a number of lots 50 feet wide and one lot having a width of 44.69 feet, all in lieu of the required 55 feet, this variance hearing is required.

The petition forms that were submitted have not been signed by you. This should be done prior to the scheduled hearing. In addition, you or your client should contact Mr. Harry Grace, Office of Current Planning at 494-3335, in order to request verification that these are buildable lots if the variance is granted.

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 remaining 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, Chairman
Zoning Plans Advisory Committee

NBC:bsc
Enclosures
cc: Land Design Associates
416 E. Joppa Road 21204

BALTIMORE COUNTY
DEPARTMENT OF PUBLIC WORKS
TOWSON, MARYLAND 21204

HARRY J. PISTEL, P. E.
DIRECTOR

August 8, 1983

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

Re: Item #8 (1983-1984)
Property Owner: Stone-Snyder General Partnership
Parcel I - S/S Illinois Avenue 297' E. from centerline Annapolis Road
Parcel II - N/S Virginia Avenue 213' E. from centerline Annapolis Road
Acres: Parcel I - 0.717
Parcel II - 0.882
District: 13th

Dear Mr. Jablon:

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.

Highways:

Illinois and Virginia Avenues, existing public roads, are proposed to be further improved in the future as 30-foot closed section roadways on 50-foot rights-of-way.

Sediment Control:

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

Storm Drains:

In accordance with the drainage policy, the Petitioner is responsible for the total actual cost of drainage facilities required to carry the storm water run-off through the property to be developed to a suitable outfall.

For the existing Baltimore County drainage system, see Drawings #68-1179, #77-1009 and #79-0457, File 4. Further information may be obtained from the Baltimore County Bureau of Engineering, Storm Drain Design and Approval Section.

Item #8 (1983-1984)
Property Owner: Stone-Snyder General Partnership
Page 2
August 8, 1983

Storm Drains:

The Petition/Developer 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/Developer.

Water and Sanitary Sewer:

Public water supply and sanitary sewerage exist in Illinois and Virginia Avenues.

Very truly yours,

ROBERT A. MANLEY, P.E., Chief
Bureau of Public Services

RAM:EAM:FWR:ss

C-NE Key Sheet
23 SW 5 Pos. Sheet
SW 6 B Topo
109 Tax Map

BALTIMORE COUNTY
DEPARTMENT OF TRAFFIC ENGINEERING
TOWSON, MARYLAND 21204
494-3550

STEPHEN E. COLLINS
DIRECTOR

August 2, 1983

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

Item No. 275, 276, 1, 4, 5, 6, 7, (8), 9, 10, and 11. ZAC-Meeting of July 5, 198
Property Owner:
Location:
Existing Zoning:
Proposed Zoning:

Acres:
District:

Dear Mr. Hammond:

The Department of Traffic Engineering has no comments for item numbers 275, 276, 1, 4, 5, 6, 7, 8, 9, 10, and 11.

Michael S. Flanigan
Traffic Engineer Assoc. II

MSF/ccm

July 28, 1983
Date

BALTIMORE COUNTY DEPARTMENT OF HEALTH

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

Zoning Item # 8, Zoning Advisory Committee Meeting of July 5, 1983
Property Owner: Stone-Snyder General Partnership
Location: S/S Illinois and N/S Virginia Avenues District 13
Water Supply public Sewage Disposal public

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.

SS 20 1082 (1)

JUN 16 '86

PETITION FOR ZONING VARIANCE 84-74-A

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 1 B02 3.C.1/ To Permit Lot Widths of 44.69' and 50.00", in lieu of the required 55.00'

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

1. "Many" existing dwellings in this immediate area are situated on 50 ft. lots (These dwelling offer less side yard width than what is proposed. 24' wide, 13 ft. sideyards.
2. Pruchase price, due to high land dev. cost would not allow reduction in density. Cost per unit out of market on this size house.
3. Nothing is gained by larger lots (5 ft.) because lower density makes for a larger dwelling reducting sideyard space, etc.,etc.
4. All legally required sideyard setbacks can be met within the 50' lot size.

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

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

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

Attorney for Petitioner: Christopher H. Hill (Type or Print Name) _____ Signature 836 Ritchie Hgwy. Suite 22 Address Severna Park, Md. 21146 City and State

Attorney's Telephone No.: 544-3907

Legal Owner(s): STONE-SNYDER GENERAL PARTNERSHIP (Type or Print Name) _____ Signature _____ (Type or Print Name) _____ Signature CHARLES SNYDER GENERAL PARTNERSHIP

836 Ritchie Highway Suite 24 Address Phone No. Severna Park, Md. 21146 City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

Name _____ Address _____ Phone No.

MAP: _____ ELECTION DISTRICT: _____ 13 TH TYPE: _____ HEARING: _____ BY: _____ FINAL: _____ BY: _____

ORDERED By The Zoning Commissioner of Baltimore County, this 5th day of July, 19 83, 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 106, County Office Building in Towson, Baltimore County, on the 15th day of September, 19 83, at 1:30 o'clock A. M.

Thurs. 9-15-83 1:30 P.M.

Zoning Commissioner of Baltimore County.

(over)

ORDER RECEIVED FOR FILING
Date 7/5/83
By Arnold F. Jablon

Stone-Snyder General Partnership
Parcel 1 - S/S Ill. Ave., 297' E of c/l of Annapolis Rd.; Parcel 2 - N/S of Virginia Ave., 213' E of c/l of Annapolis Rd.
13th Election District
Case No. 84-74-A

MICROFILMED

RE: PETITION FOR VARIANCE
Parcel 1 - S/S of Illinois Ave., 297' E of the Centerline of Annapolis Rd.; Parcel 2 - N/S of Virginia Ave., 213' E of the Centerline of Annapolis Rd., 13th District

STONE-SNYDER GENERAL PARTNERSHIP, Petitioner

: BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY

: Case No. 84-74-A

ORDER TO ENTER APPEARANCE

Mr. Commissioner:

Pursuant to the authority contained in Section 524.1 of the Baltimore County Charter, I hereby enter my appearance in this proceeding. You are requested to notify me of any hearing date or dates which may be now or hereafter designated therefor, and of the passage of any preliminary or final Order in connection therewith.

Peter Max Zimmerman
Deputy People's Counsel

John W. Hessian, III
People's Counsel for Baltimore County
Rm. 223, Court House
Towson, Maryland 21204
494-2138

I HEREBY CERTIFY that on this 23rd day of August, 1983, a copy of the foregoing Order was mailed to Christopher H. Hill, Esquire, 836 Ritchie Highway, Suite 22, Severna Park, MD 21146, Attorney for Petitioner.

John W. Hessian, III

MICROFILMED

W. DUVALL & ASSOCIATES

Engineers / Land Planning Consultants

ZONING DESCRIPTION
PARCEL I

Beginning for the same at a point, said point being along the southern right-of-way line of Illinois Avenue (50'wide) 297 feet easterly along the centerline of Illinois Avenue from the centerline intersection of Illinois Avenue with Annapolis Road; thence leaving said point and running along the southern right-of-way line of Illinois Avenue South 71°56'25" East 250.00'; thence leaving said right-of-way line and running the three following courses and distances; (1) South 18°03'35" West, 125.00 feet; (2) North 71°56'25" West 250.00'; (3) North 18°03'35" East 125.00'; to the point of beginning. Containing 0.717 acres more or less.

Being known as Lots 15 thru 24 Block D, as recorded in the land records of Baltimore County, Maryland, Plat Book 2 folio 379, entitled Plat of Baltimore Highlands.

STATE OF MARYLAND — CHARLES LAWRENCE GOUGH — No. 12900 — REGISTERED PROFESSIONAL ENGINEER

MICROFILMED

5203 Walther Avenue / Baltimore, Maryland 21214 / (301) 444-5590

W. DUVALL & ASSOCIATES

Engineers / Land Planning Consultants

ZONING DESCRIPTION
PARCEL II

Beginning for the same at a point, said point being along the northern right-of-way line of Virginia Avenue (50' wide) 213' easterly along the centerline of Virginia Avenue from the centerline intersection of Virginia Avenue with Annapolis Road; thence leaving said point of beginning and running the six following courses and distances; (1) North 18°03'35" East 96.03'; (2) North 71°56'25" East 55.31'; (3) North 18°03'35" East 28.97' (4) South 71°56'25" East 350.00'; (5) South 18°03'35" West, 125.00'; (6) North 71°56'25" West 294.69'; to said point of beginning. Containing 0.882 acres more or less.

Being known as Lots 149 thru 159, Block D and part of Lots 160 thru 162 Block D as recorded in the land records of Baltimore County, Maryland, Plat Book 2 folio 379 entitled Plat of Baltimore Highlands.

STATE OF MARYLAND — CHARLES LAWRENCE GOUGH — No. 12900 — REGISTERED PROFESSIONAL ENGINEER

MICROFILMED

5203 Walther Avenue / Baltimore, Maryland 21214 / (301) 444-5590

PETITION FOR VARIANCE

13th Election District

ZONING: Petition for Variance

LOCATION: Parcel 1 - South side of Illinois Avenue, 297 ft. East of the centerline of Annapolis Road; Parcel 2 - North side of Virginia Avenue, 213 ft. East of the centerline of Annapolis Road

DATE & TIME: Thursday, September 15, 1983 at 1:30 P.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 lot widths of 44.69 ft. and 50 ft. in lieu of the required 55 ft.

The Zoning Regulation to be excepted as follows:
Sections 1B02.3C.1 and 302 - lot widths in D.R. 5.5 zone and in a B.L. zone adjacent to a D.R. 5.5 zone

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

Being the property of Stone-Snyder General Partnership, as shown on plat plan filed with the Zoning Department.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be received in writing by the date of the hearing set above or made at the hearing.

BY ORDER OF
ARNOLD JABLON
ZONING COMMISSIONER
OF BALTIMORE COUNTY

MICROFILMED

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

ARNOLD JABLON
ZONING COMMISSIONER

September 8, 1983

Christopher H. Hill, Esquire
836 Ritchie Highway
Suite 22
Severna Park, Maryland 21146

Re: Petition for Variance
Parcel 1 - S/S Illinois Ave., 297' E of c/l of Annapolis Rd.; Parcel 2 - N/S of Virginia Ave. 213' E of c/l of Annapolis Rd.
Stone-Snyder General Partnership - Petitioners
Case No. 84-74-A

Dear Mr. Hill:

This is to advise you that $86.95 is due for advertising and posting of the above property. This fee must be paid before an Order is issued.

Please make the check payable to Baltimore County, Maryland, and remit to Mrs. Arlene January, Zoning Office, Room 113, County Office Building, Towson, Maryland 21204, before the hearing.

Sincerely,

ARNOLD JABLON
Zoning Commissioner

BALTIMORE COUNTY, MARYLAND — No. 121518
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

DATE 9/14/83 ACCOUNT R-01-615-000
AMOUNT $86.95
RECEIVED FROM Christopher Hill, Esquire
FOR Advertising & Posting Case #84-74-A (Stone-Snyder General Partnership)

B 033******8695ID 8142A

VALIDATION OR SIGNATURE OF CASHIER

MICROFILMED MICROFILMED

August 17, 1983

Christopher H. Hill, Esquire
836 Ritchie Highway, Suite 22
Severna Park, Maryland 21146

NOTICE OF HEARING

Re: Petition for Variance
Parcel 1 - S/S Illinois Ave., 297' E of the c/l of Annapolis Rd.; Parcel 2 - N/S of Virginia Ave., 213' E of the c/l of Annapolis Rd.
Stone-Snyder General Partnership - Petitioner
Case No. 84-74-A

TIME: 1:30 P.M.

DATE: Thursday, September 15, 1983

PLACE: Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland

BALTIMORE COUNTY, MARYLAND — No. 117690
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

DATE 6/24/83 ACCOUNT R-01-615-000
AMOUNT $ 35.00
RECEIVED FROM Carolyn Hanson
FOR filing fee for Item #9 Stone Snyder

B 078******3500ID 8242A

VALIDATION OR SIGNATURE OF CASHIER

Commissioner
Fe County

MICROFILMED MICROFILMED

10/6/83

Law offices of:
Christopher Harris Hill
Severna Park Business Center
836 Ritchie Hwy., Suite 22
Severna Park, Maryland 21146
(301) 544-3904

Christopher Harris Hill

October 5, 1983

Mr. Arnold Jablon
Zoning Commissioner
111 West Chesapeake Avenue
Towson, Maryland 21204

Dear Mr. Jablon:

This letter is to notify you that I wish to appeal the decision rendered in Case No. 84-74-A regarding a variance for that land lying in the 13th Election District, 5/S of Illinois Avenue, 297' E of the centerline of Annapolis Road (Parcel 1), and the N/S of Virginia Avenue, 213' E of the centerline of Annapolis Road (Parcel 2). The hearing was for the purpose of obtaining a variance from the zoned requirement that all the lots in the area must have a width of 55 feet.

Enclosed is a check for $80.00, which includes the $75.00 filing fee and the $5.00 cost of posting. Please advise me as to any other procedural steps with which I must comply.

Thank you for your attention and cooperation.

Very truly yours,

Christopher H. Hill

BALTIMORE COUNTY, MARYLAND — No. 122900
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

DATE 10/14/83 ACCOUNT R-01-615-000
AMOUNT $85.00
RECEIVED FROM Christopher Hill, Esquire
FOR Appeal fee on Case No. 84-74-A (Stone-Snyder General Partnership)

B 127******8500ID 8172A

VALIDATION OR SIGNATURE OF CASHIER

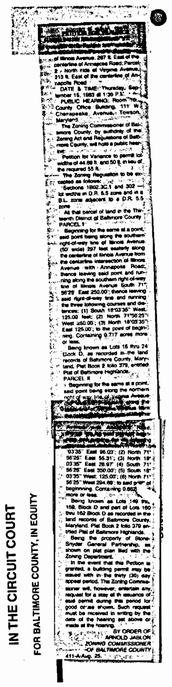
OCT 6 AM
ZONING DEPARTMENT

MICROFILMED

MICROFILMED 29

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY, IN EQUITY

CERTIFICATE OF PUBLICATION OF



Office of
PATUXENT
Publishing Corp.
10750 Little Patuxent Pkwy.
Columbia, MD 21044

August 25 19 83

THIS IS TO CERTIFY, that the annexed advertisement of

Petition for varience 47331

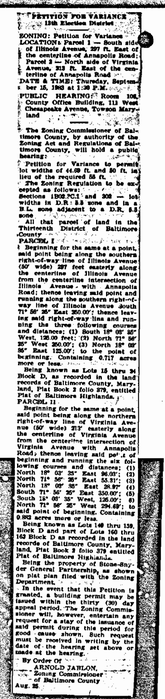
was inserted in the following:

☐ Catonsville Times
☒ Arbutus Times

weekly newspapers published in Baltimore County, Maryland once a week for one successive weeks before the 27 day of August 19 83, that is to say, the same was inserted in the issues of

August 25, 1983

PATUXENT PUBLISHING CORP.
By



84-74-A

CERTIFICATE OF PUBLICATION

TOWSON, MD., August 25, 19 83

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., ~~successively~~ one time ~~successive weeks~~ before the 15th day of September, 19 83, the first publication appearing on the 25th day of August 19 83.

THE JEFFERSONIAN,
B. Frank Shrader
Manager.

Cost of Advertisement, $ 34.25

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland 84-74-A

District 13th Date of Posting August 26 1983
Posted for: Variance
Petitioner: Stone - Snyder General Partnership
Location of property: S/S Illinois Ave. 297' E of the C/L of Annapolis Rd., Parcel 2 N/S of Virginia Ave. 213' E of the C/L of Annapolis Road
Location of Signs: Facing S/S of Illinois Ave. approx. 25' E of the C/L of Annapolis Road, Facing South side of Virginia Ave. approx. 225' E of the C/L of Annapolis Road
Remarks:
Posted by S. J. Pinto Date of return Sept 2, 1983
Signature
Number of Signs: 2

August 17, 1983

Christopher H. Hill, Esquire
836 Ritchie Highway, Suite 22
Severna Park, Maryland 21146

NOTICE OF HEARING

Re: Petition for Variance
Parcel 1 - S/S Illinois Ave., 297' E of the c/l of Annapolis Rd.; Parcel 2 - N/S of Virginia Ave., 213' E of the c/l of Annapolis Rd.
Stone-Snyder General Partnership - Petitioner
Case No. 84-74-A

TIME: 1:30 P.M.

DATE: Thursday, September 15, 1983

PLACE: Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland

Zoning Commissioner
of Baltimore County

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

No. 117690

DATE 6/24/83 ACCOUNT R-01-615-000
AMOUNT $ 35.00
RECEIVED Carolyn Haggon
FOR: filing fee for Item #8
Lou Snyder

B 078******3500R 8242A

VALIDATION OR SIGNATURE OF CASHIER

RECEIVED
COUNTY BOARD OF APPEALS
1985 APR -3 AM 10:

CIRCUIT COURT FOR BALTIMORE COUNTY
ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Bosley Avenue
P.O. Box 6754
Towson, Maryland, 21204-0754
April 1, 1985.

TO: Phyllis Cole Friedman, Esq.
Peter Max Zimmerman, Esq.

Christopher H. Hill, Esq.

The Honorable James S. Sfekas

County Board of Appeals of Balto County

RE: NON JURY - 84 M 121 - STONE SNYDER GENERAL PTNR. ET AL VS COUNTY BOARD OF APPEALS

HEARING DATE: Tuesday, May 14, 1985, @ 9:30 a.m.
ON THE FOLLOWING: Motions: 1 hour

UPON RECEIPT OF THIS NOTICE: Counsel shall contact each other immediately to conform calendars. Claim of not receiving notice will not constitute reason for postponement.

POSTPONEMENTS: If the above date is not agreeable to any counsel, a request for a postponement MUST BE MADE IN WRITING to the Assignment Office AS SOON AS POSSIBLE, with a copy to all counsel involved. POSTPONEMENTS WITHIN 15 DAYS OF TRIAL must be made to the attention of the Director of Central Assignments - Joyce Grimm - 494-3497.

SETTLEMENT CONFERENCES: All counsel must secure the attendance of all parties necessary to effect a binding settlement, including clients and insurance representatives. THERE WILL BE NO EXCEPTIONS PER ORDER OF JUDGE FRANK E. CICONE. Please direct all inquiries to the attention of Jobi Adams.

SETTLEMENTS: If a settlement is reached prior to the hearing date, the Assignment Office must be notified immediately. All settlements must be put on the record if no order of satisfaction is filed prior to trial.

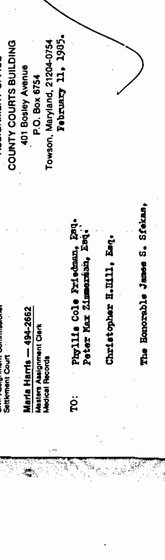
Kathy Rushton — 494-2660
Assignment — Jury — Motions
Marcia Fennell
Assistant Clerk Typist

Irene Summers — 494-2661
Assignment — Non-Jury — Motions
Freddie Grove
Assistant Clerk Typist

Joyce Grimm — 494-2660
Director of Central Assignments
Settlement Court

Maria Harris — 494-2662
Masters Assignment Clerk
Medical Records

Penn Cal



CIRCUIT COURT FOR BALTIMORE COUNTY
ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Bosley Avenue
P.O. Box 6754
Towson, Maryland, 21204-0754

John Adams — 494-2660
Chief Assignment Commissioner
Settlement Court

Maria Harris — 494-2662
Masters Assignment Clerk
Medical Records

Kathy Rushton — 494-2660
Assignment — Jury — Motions
Marcia Fennell
Assistant Clerk Typist

Irene Summers — 494-2661
Assignment — Non-Jury — Motions
Freddie Grove
Assistant Clerk Typist

RECEIVED
COUNTY BOARD OF APPEALS
1984 JUN 14 A 8:15

TO: Phyllis Cole Friedman, Esq.
Peter Max Zimmerman, Esq.

Christopher H.Hill, Esq.

County Board of Appeals of Balto Co.

RE: NON JURY - 84 M 121 - STONE SNYDER GENERAL PTNR. ET AL VS COUNTY BOARD OF APPEALS

HEARING DATE: Tuesday, September 18, 1984, @ 9:30 a.m.
ON THE FOLLOWING: Appeal: 2 hours

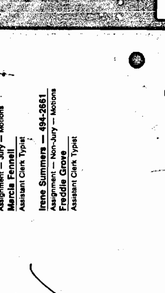
UPON RECEIPT OF THIS NOTICE: Counsel shall contact each other immediately to conform calendars. Claim of not receiving notice will not constitute reason for postponement.

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SETTLEMENT CONFERENCES: All counsel must secure the attendance of all parties necessary to effect a binding settlement, including clients and insurance representatives. THERE WILL BE NO EXCEPTIONS PER ORDER OF JUDGE FRANK E. CICONE. Please direct all inquiries to the attention of Jobi Adams.

SETTLEMENTS: If a settlement is reached prior to the hearing date, the Assignment Office must be notified immediately. All settlements must be put on the record if no order of satisfaction is filed prior to trial.

Penn Cal



CIRCUIT COURT FOR BALTIMORE COUNTY
ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Bosley Avenue
P.O. Box 6754
Towson, Maryland, 21204-0754
~~January 11, 1985.~~
February 11, 1985.

TO: Phyllis Cole Friedman, Esq.
Peter Max Zimmerman, Esq.

Christopher H.Hill, Esq.

The Honorable James S. Sfekas,

County Board of Appeals of Balto. Co.

RE: NON JURY - 84 M 121 - STONE SNYDER GENERAL PTNR. ET AL VS COUNTY BOARD OF APPEALS

HEARING DATE: Thursday, March 28, 1985, @ 9:30 a.m.
ON THE FOLLOWING: MOTIONS: 1 hour

UPON RECEIPT OF THIS NOTICE: Counsel shall contact each other immediately to conform calendars. Claim of not receiving notice will not constitute reason for postponement.

POSTPONEMENTS: If the above date is not agreeable to any counsel, a request for a postponement MUST BE MADE IN WRITING to the Assignment Office AS SOON AS POSSIBLE, with a copy to all counsel involved. POSTPONEMENTS WITHIN 15 DAYS OF TRIAL must be made to the attention of the Director of Central Assignments - Joyce Grimm - 494-3497.

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Kathy Rushton — 494-2660
Assignment — Jury — Motions
Marcia Fennell
Assistant Clerk Typist

Irene Summers — 494-2661
Assignment — Non-Jury — Motions
Freddie Grove
Assistant Clerk Typist

RECEIVED
COUNTY BOARD OF APPEALS
1985 FEB 20 AM 10 05

Penn Cal

CIRCUIT COURT FOR BALTIMORE COUNTY
ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Bosley Avenue
P.O. Box 6754
Towson, Maryland, 21204-0754
October 1, 1984.

TO: Phyllis Cole Friedman, Esq.
Peter Max Zimmerman, Esq.

Christopher H. Hill, Esq.

County Board of Appeals of Balto Co.

RE: NON JURY - 84 M 121 - STONE SNYDER GENERAL PTNR. ET AL VS COUNTY BOARD OF APPEALS

HEARING DATE: Wednesday, December 12, 1984, @ 9:30 a.m.
ON THE FOLLOWING: Appeal: 2 hours
Notes: Corrected notice.

UPON RECEIPT OF THIS NOTICE: Counsel shall contact each other immediately to conform calendars. Claim of not receiving notice will not constitute reason for postponement.

POSTPONEMENTS: If the above date is not agreeable to any counsel, a request for a postponement MUST BE MADE IN WRITING to the Assignment Office AS SOON AS POSSIBLE, with a copy to all counsel involved. POSTPONEMENTS WITHIN 15 DAYS OF TRIAL must be made to the attention of the Director of Central Assignments - Joyce Grimm - 494-3497.

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Kathy Rushton — 494-2660
Assignment — Jury — Motions
Marcia Fennell
Assistant Clerk Typist

Irene Summers — 494-2661
Assignment — Non-Jury — Motions
Freddie Grove
Assistant Clerk Typist

RECEIVED
COUNTY BOARD OF APPEALS
1984 OCT -2 P 3:21

Penn Cal

CIRCUIT COURT FOR BALTIMORE COUNTY
ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Bosley Avenue
P.O. Box 6754
Towson, Maryland, 21204-0754
September 19, 1984.

TO: Phyllis Cole Friedman, Esq.
Peter Max Zimmerman, Esq.

Christopher H. Hill, Esq.

County Board of Appeals of Balto Co.

RE: NON JURY - 84 M 121 - STONE SNYDER GENERAL PTNR. ET AL VS COUNTY BOARD OF APPEALS

HEARING DATE: Tuesday, November 27, 1984, @ 9:30 a.m.
ON THE FOLLOWING: Appeal: 2 hours
Notes: Corrected notice.

UPON RECEIPT OF THIS NOTICE: Counsel shall contact each other immediately to conform calendars. Claim of not receiving notice will not constitute reason for postponement.

POSTPONEMENTS: If the above date is not agreeable to any counsel, a request for a postponement MUST BE MADE IN WRITING to the Assignment Office AS SOON AS POSSIBLE, with a copy to all counsel involved. POSTPONEMENTS WITHIN 15 DAYS OF TRIAL must be made to the attention of the Director of Central Assignments - Joyce Grimm - 494-3497.

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Kathy Rushton — 494-2660
Assignment — Jury — Motions
Marcia Fennell
Assistant Clerk Typist

Irene Summers — 494-2661
Assignment — Non-Jury — Motions
Freddie Grove
Assistant Clerk Typist

RECEIVED
COUNTY BOARD OF APPEALS
1984 SEP 24 A 8:28

JUN 18 1998

BALTIMORE COUNTY
DEPARTMENT OF TRAFFIC ENGINEERING
TOWSON, MARYLAND 21204
494-3550

STEPHEN E. COLLINS
DIRECTOR

August 2, 1983

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

Item No. 275, 276, 1, 4, 5, 6, 7, (8), 9, 10, and 11. ZAC-Meeting of July 5, 198
Property Owner:
Location:
Existing Zoning:
Proposed Zoning:

Acres:
District:

Dear Mr. Hammond:

The Department of Traffic Engineering has no comments for item numbers 275, 276, 1, 4, 5, 6, 7, 8, 9, 10, and 11.

Michael S. Flanigan
Traffic Engineer Assoc. II

MSF/ccm

MICROFILMED

July 28, 1983
Date

BALTIMORE COUNTY DEPARTMENT OF HEALTH

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

Zoning Item # 8, Zoning Advisory Committee Meeting of July 5, 1983
Property Owner: Stone-Snyder General Partnership
Location: S/S Illinois and W/S Virginia Avenues District 13
Water Supply public Sewage Disposal public

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.

SS 20 1082 (1)

MICROFILMED

Zoning Item # 8
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 potability 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.

( ) No health hazards are anticipated.

(X) Others A Reserve Capacity Use Certificate may be required before a building permit can be issued. A Hydrogeological Study and an Environmental Effects Report may be required.

MICROFILMED

Ian J. Forrest, Director
BUREAU OF ENVIRONMENTAL SERVICES

SS 20 1080 (2)

BALTIMORE COUNTY PUBLIC SCHOOLS

Robert Y. Dubel, Superintendent

Towson, Maryland — 21204

Date: July 5, 1983

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

Z.A.C. Meeting of: July 5, 1983

RE: Item No: 275, 276, 1, 2, 3, 4, 5, 6, 7, (8) 9, 10, 11
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

MICROFILMED

84-74-A

PETITION FOR VARIANCE
12th Election District

ZONING: Petition for Variance
LOCATION: Parcel 1 — South side of Illinois Avenue, 297 ft. East of the centerline of Annapolis Road; Parcel 2 — North side of Virginia Avenue, 302 ft. East of the centerline of Annapolis Road
DATE & TIME: Thursday, September 15, 1983 at 2:30 P.M.
PUBLIC HEARING: Room 106, County Office Building, 111 West 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 lot widths of 44.89 ft. and 50 ft. in lieu of the required 55 ft.

The Zoning Regulation to be examined are follows: Section 1B2B2C2 and 400 — lot widths in D.R.1 3.5 zone and in a B.L. zone adjacent to a D.R. 3.5 zone.

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

PARCEL 1:
Beginning for the same at a point, said point being along the southern right-of-way line of Illinois Avenue (50' wide) 297 feet easterly along the centerline of Illinois Avenue from the centerline intersection of Illinois Avenue with Annapolis Road; thence leaving said point and running along the southern right-of-way line of Illinois Avenue South 71° 59' 25" East 250.00'; thence leaving the said right-of-way line of Illinois Avenue and running the three following courses and distances: (1) South 18° 00' 35" West, 128.00 feet; (2) North 71° 59' 25" West 350.00'; (3) North 18° 00' 35" East 128.00'; to the point of beginning. Containing 0.717 acres more or less.

Being known as Lots 12 thru 16 Block D, as recorded in the land records of Baltimore County, Maryland in Plat Book 3 folio 279, entitled Plat, Second Annex Highlands.

PARCEL 2:
Beginning for the same at a point, said point being along the northern right-of-way line of Virginia Avenue (50' wide) 302' easterly along the centerline of Virginia Avenue from the centerline intersection of Virginia Avenue with Annapolis Road; thence leaving said point or beginning and running the six following courses of 3 distances: (1) North 71° 59' 25" East 86.00'; (2) North 18° 00' 35" East 128.00'; (3) North 71° 59' 25" East 28.97'; (4) South 17° 47' 30" East 128.00'; (5) South 18° 00' 35" West, 127.07'; (6) North 71° 59' 25" West 164.00' to the said point of beginning. Containing 0.382 acres more or less.

Being known as Lots 140 thru 146, Block D and part of Lots 139 thru 147 Block 'B' as recorded in the land records of Baltimore County, Maryland in Plat Book 3 folio 279 entitled Plat of Baltimore Highlands.

Being the property of Stone-Snyder General Partnership, as shown on plat plan filed with the Zoning Office.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be received in writing by the date of the hearing set above or presented at the hearing.

BY ORDER OF
ARNOLD JABLON
ZONING COMMISSIONER
OF BALTIMORE COUNTY

CERTIFICATE OF PUBLICATION

TOWSON, MD., August 25, 1983

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., ~~once in each~~ of one time ~~successive weeks~~ before the 15th day of September, 1983, the first publication appearing on the 25th day of August 1983.

THE JEFFERSONIAN
S. Frank Streaker
Manager.

Cost of Advertisement, $ 36.75

Certified

Office of
PATUXENT
Publishing Corp.
10750 Little Patuxent Pkwy.
Columbia, MD 21044

August 25 1983

THIS IS TO CERTIFY, that the annexed advertisement of

Petition for variance 47331

was inserted in the following:

☐ Catonsville Times
☒ Arbutus Times

weekly newspapers published in Baltimore County, Maryland once a week for one successive weeks before the 27 day of August 1983, that is to say, the same was inserted in the issues of

August 25, 1983

PATUXENT PUBLISHING CORP.
By

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY, IN EQUITY

CERTIFICATE OF PUBLICATION OF

MICROFILMED

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Zoning Commissioner — Date: August 22, 1983

FROM: Norman E. Gerber, Director, Office of Planning and Zoning

SUBJECT: Stone-Snyder General Partnership, C4-74-A

This office does not support the requested variances. There appears to be 75 foot wide lots as well as 50 foot wide lots in the immediate area. Furthermore, the petitioner owns sufficient acreage to provide for the minimum lot width.

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

NEG:JGH:cav

MICROFILMED

MICROFILMED

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

84-74-A

District 12th — Date of Posting August 26 1983
Posted for: Variance
Petitioner: Stone-Snyder General Partnership
Location of property: S/S Illinois Ave. 297' E of the C/L of Annapolis Rd., Parcel 2: N/S of Virginia Ave. 302' E of the C/L of Annapolis Rd.
Location of Signs: 1 sign S/S of Illinois Ave. approx. 150' E of the C/L of Annapolis Rd. 1 sign northside of Virginia Ave. approx. 325' East of Annapolis Rd.
Remarks:
Posted by A. Jo Ritter (Signature) — Date of return Sept 2, 1983
Number of Signs: 2

Christopher H. Hill, Esquire
836 Ritchie Highway, Suite 22
Severna Park, Md. 21146

Land Design Associates
416 E. Joppa Road
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 5th day of July, 1983.

Arnold Jablon
Zoning Commissioner

Petitioner Stone-Snyder General Partnership by: Nicholas B. Commodari
Petitioner's Attorney Christopher H. Hill, Esq.
Nicholas B. Commodari
Chairman, Zoning Plans Advisory Committee

MICROFILMED

MAY 29 1987

ILLINOIS AVENUE

MH 10137

6" WATER

POINT OF BEGINNING PARCEL I

4" GAS

8" SEWER

S71°56'25"E 280.00'

50.00 50.00

EX. DWELLING

EX. DWELLING

EXISTING ZONING B.C.

N15°03'35"E 125.00' B.C.

10 9 8 7 6 5

15 16 17 18 19 20 21 22 23 24

PARCEL I
EXISTING ZONING DR 5.5
STONE - SNYDER GENERAL PARTNERSHIP

S15°03'35"W 125.00'

10' ALLEY

N71°56'25"W 280.00'

S71°56'25"E 350.00'

Ex. 20' BCMP

PARCEL II
EXISTING ZONING DR 5.5
STONE - SNYDER GENERAL PARTNERSHIP

N15°03'35"E 28.97'

N71°56'25"W 55.51'

7189 SF

DR 5.5

B.C.

162 161 160 159 158 157 156 155 154 153 152 151 150 149

125.00'

S15°03'35"W

EX. PARKING LOT

10' ALLEY CLOSED

EX. STORE

96.03'

24' 24' 24' 24' 24' 24' 24' 24' 24'

35' 35' 35' 35' 35' 35' 35' 35' 35'

10' 15' 15' 15' 15' 15' 15' 15' 15'

25' 25' 25' 25' 25' 25' 25' 25' 25'

44.69' 50.00' 50.00'

EXISTING DWELLING

EXISTING DWELLING

50' 50' 50'

N71°56'25"W 294.69'

534'

213±

EX. PAVING

1" WATER

2" GAS

CUP. B.I. GUTTER

8" SEWER

50'

EX. DWELLING

POINT OF BEGINNING PARCEL II

EX. DWELLING

EX. DWELLING

ANNAPOLIS ROAD

12" WATER

CUP. B.I. GUTTER

7250 W

23,250 S

BRIAN ROAD

23,250 S

VICINITY MAP
Scale: 1"=500'

ANNAPOLIS RD. ILLINOIS AVE. VIRGINIA AVE. OHIO AVE. BALTO. ST.

PLAN SHOWING

BALTIMORE HIGHLANDS

VARIANCE FOR LOT WIDTHS FROM 55 FEET WIDE TO 50 AND 44.69 FEET IN WIDTH

BALTO. CO., MD.
SCALE: 1"=30'

ELECT. DISTRICT 13
5/27/83

OWNER:
STONE - SNYDER GENERAL PARTNERSHIP
830 RITCHIE HWY. SUITE 2E
SEVERNA PARK, MD. 21146

PREPARED BY:
LAND DESIGN ASSOCIATES
416 E. JOPPA ROAD
TOWSON, MD. 21204 321-0112

ILLINOIS AVENUE

MH 10157

6" WATER

POINT OF BEGINNING PARCEL I

4" GAS

6" SEWER

S71°56'25"E 250.00'

50.00 50.00

EXISTING ZONING B.C.

PARCEL I
EXISTING ZONING DR 5.5
STONE - SNYDER GENERAL PARTNERSHIP

N18°03'35"E 125.00' B.C.

S18°03'35"W 125.00'

EX. DWELLING EX. DWELLING

10' ALLEY

N71°56'25"W 250.00'
S71°56'25"E 250.00'

Ex. 36" BLCMP

PARCEL II
EXISTING ZONING DR 5.5
STONE - SNYDER GENERAL PARTNERSHIP

N18°03'35"E 28.97'

7,187 SF

N71°56'25"W 55.51'

10' ALLEY

EX. PARKING LOT

EX. STORE

96.05'

44.69

50.00'

N71°56'25"W 294.69'

S18°03'35"W 125.00'

EXISTING DWELLING EXISTING DWELLING

ANNAPOLIS ROAD

12" WATER

CURB & GUTTER

50'

213±

CURB & GUTTER

EX. PAVING

6" WATER

2" GAS

8" SEWER

50'

VIRGINIA AVENUE

EX. DWELLING

POINT OF BEGINNING PARCEL II

EX. DWELLING EX. DWELLING

BRIAN ROAD

7250W 23,250S

VICINITY MAP
Scale: 1" = 500'

ANNAPOLIS RD. ILLINOIS AVE. VIRGINIA AVE. OHIO AVE. BALTO. ST.

PLAN SHOWING

BALTIMORE HIGHLANDS

VARIANCE FOR LOT WIDTHS FROM 39 FEET WIDE TO 50 AND 44.69 FEET IN WIDTH

BALTO. CO., MD.
SCALE: 1" = 30'

ELECT. DISTRICT 13
3/27/83

84-74-A

MICROFILMED

OWNER:
STONE - SNYDER GENERAL PARTNERSHIP
836 RITCHIE HWY SUITE 2E
SEVERNA PARK, MD. 21146

PREPARED BY:
LAND DESIGN ASSOCIATES
416 E. JOPPA ROAD
TOWSON, MD. 21204 · 321-0112