

PETITION FOR ZONING VARIANCE TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situated in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 400.1 to allow an accessory structure in the front yard in lieu of the rear yard.

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

1. Size and shape of the property.
2. Other accessory structure in the area.
3. Structure partially completed.

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 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:
S. Eric Dillman
(Type or Print Name)
Signature
Address
City and State
Attorney's Telephone No.: 825-1630

Legal Owner(s):
James Elliott
(Type or Print Name)
Signature
(Type or Print Name)
Signature
Address
City and State
Name, address and phone number of legal owner, contractor, purchaser or representative to be contacted
S. Eric Dillman
Name
406 W. Pennsylvania Avenue #25-1630
Address Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 24th day of JANUARY, 1984, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be held before the Zoning Commissioner of Baltimore County in Room 104, County Office Building in Towson, Baltimore County, on the 23rd day of April, 1984, at 1:30 o'clock P.M.

Callahan
Zoning Commissioner of Baltimore County.

(over)

JAMES ELLIOTT - #84-275-A

FURTHER ORDERED that the partially completed structure be removed within ninety (90) days from the date of this Order and the property be returned to its original condition.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman

Diana K. Vincent
Diana K. Vincent

Keith S. Franz
Keith S. Franz

IN THE MATTER OF THE APPLICATION OF JAMES ELLIOTT FOR A VARIANCE FROM SECTION 400.1 OF THE BALTIMORE COUNTY ZONING REGULATIONS W/S OLD BATTLE GROVE RD. 1,840' SW OF NORTH POINT RD. (7610 Old Battle Grove Road) 15th DISTRICT

BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY NO. 84-275-A

OPINION

This case comes before the Board of Appeals on an appeal from a decision of the Zoning Commissioner denying the requested variance to allow an accessory structure in the front yard in lieu of the rear yard. The subject property is located on the west side of Old Battle Grove Road 1,840 feet southwest of North Point Boulevard (7610 Old Battle Grove Road), in the Fifteenth Election District of Baltimore County.

Testimony and evidence from Ms. Norma Eck, resident of the property, Mr. James Elliott, property owner, Mr. Harry Gorge, neighbor-protestant, and Mr. Otto Beverungen, neighbor-protestant, was received on October 24, 1984, and testimony from Mr. Vernon Umstot, real estate broker, was received on November 15, 1984.

Ms. Norma Eck, sister of the property owner and a twenty-one year resident of the subject site, first testified. Ms. Eck stated that she got an estimate from a Wes Head, contractor, filled out a permit application for the desired "gazebo" and construction began. When a complaint was registered regarding this construction, Mr. Head disappeared and has not been found since. No record of any permit for this construction can be found. Ms. Eck's testimony indicated that it was her opinion that the house faced the road and that the water side was the rear yard and, therefore, no variance was actually needed. She noted that the main access door or entrance is on the road side, the internal layout of the house is oriented toward the road and further stated that the door on the water side of the house was seldom used. Mr. James Elliott, property owner, testified in support of this contention that the road side was

JAMES ELLIOTT - #84-275-A

the front of the house and the rear of the house faced the water. He also testified that the proposed, and half completed, gazebo did not obstruct the neighbor's view.

Mr. Vernon Umstot, a real estate broker, testified for the Petitioner and noted his expertise and long familiarity with this area, and this particular site. It was his opinion that this property's front yard is toward the road and the rear yard is toward the water. He cited the layout of the house, with the living areas on the road side and the bedrooms on the water side. He also noted that mail delivery and service delivery are normally to the front of a property, and in this case these deliveries are to the road side. He also noted that most normal "cook-outs" and family entertainment is usually conducted in the rear yard and in this case this is the water side. This concluded Petitioner's case.

Protestants presented two witnesses, the adjoining neighbors on both sides, Mr. Harry Gorge and Mr. Otto Reverungen. Both of these witnesses testified that they consider the water side of their properties as the front, that the proposed and partially finished structure impeded their view and their enjoyment of their properties and they felt that it diminished their property value. In addition, Mr. Gorge feared the effect of storm water runoff from this structure onto his lot. Exhibits presented in this case consisted mainly of a large number of photos of the subject site and nearby properties, all of which are identified and are part of the case file.

Mr. James Hoswell, planner for Baltimore County, testified that it is the County's position that the water side of any property is the front side. He also noted that there is no porch on the water side of this house, which could be permitted.

The issue of which is the front yard and which is the rear yard of waterfront property comes before this Board every so often. This is usually brought up because some property owner feels his house is so oriented, his driveway is so located,

3) whether relief can be granted in such a manner that the spirit of the ordinance will be observed and public safety and welfare secured.

Code 200 of Board of Appeals of Town of Chesapeake Beach, 22 Md.App. 28 (1974)

The Appellant's position is that Section 400 of the Zoning Regulations does "unreasonably prevent the use of the property for a permitted purpose"; i.e., construction of a gazebo on the waterfront. However, this Court is in agreement with the reasoning of the Zoning Commissioner on this issue: "...if the unusual circumstances which hinder reasonable 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." In *Re Elliott*, before the Zoning Commissioner of Baltimore County, 84-75-A, p.5.

No "substantial injustice" is done to Appellant by enforcing the regulation, since it is applied to other homeowners with waterfront property. With regard to "public safety and welfare," the recently passed "Critical Area" legislation for protection of the Chesapeake Bay is applicable. The Appellant's property is within a "critical area", and any variance within this category must be reviewed in reference to potential impact on water quality. (Annotated Code of Maryland, Natural Resources Article, Sec.8-1801 (b) 2(a)). A potential adverse impact on water quality, by run off from the gazebo, could be envisioned from the proposed variance.

With regard to the "impossibility" of complying with the regulation, the Commissioner found that the Appellant could "...have his structure constructed to the side of the house..." Instead of on his waterfront; the Commissioner went on to state that the "...testimony was not convincing that the structure could be placed only in the front yard." In *Re Elliott*, supra, p.4.

The final issue to be considered is whether the waterfront of Appellant's property constitutes the "front" or the "rear" of the property. There is no ordinance which defines what is the "rear" of waterfront property. The Zoning Commissioner made his determination on the basis of the "use" of the house; his finding was that "...the testimony presented confirms that the front of the Petitioner's house faces the water." In *Re Elliott*, supra, p.4. In addition, in granting a variance to the regulation requiring accessory structures to be erected in the "rear", the Appellant conceded that the waterfront is

JAMES ELLIOTT - #84-275-A

his services provided, etc. Baltimore County is somewhat unique in that there are literally thousands of residential properties abutting waterfront. The chaos that could result from permitting each owner to design his waterfront holdings to suit his own immediate desires without regard to his neighbor's welfare or the welfare of the neighborhood is unthinkable. Waterfront property has a greater value than similar non-waterfront property only because the water is there. Waterfront property has higher tax assessment only because the water is there. Whatever protection the zoning laws can offer this added land value should be afforded. No matter how many variables may be involved; i.e., house layout, driveway services, etc., only one constant is there on all waterfront properties, the water itself. Therefore, the front yard of this waterfront house is the water abutting side of the lot.

Section 400.1 of the Baltimore County Zoning Regulations allows accessory structures only in the rear yard. The Petitioner's request for the variance comes only after the structure is partially completed. Surely the lack of any permit or any inspection process should have been noted by the Petitioner. The cost incurred so far and the cost to remove this illegal structure is not a factor to be considered when the hardship is self-created. For all these reasons, the Board is of the opinion that the variance requested should be denied and will so order.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 26th day of December, 1984, by the County Board of Appeals, ORDERED that the variance petitioned for, to permit an accessory structure in the front yard instead of the rear yard, be and the same is hereby DENIED, and it is

the front of his house. In a zoning appeal from the County Board of Appeals to the Circuit Court, the question on judicial review is whether or not such action is arbitrary and discriminatory or fairly debatable. *Trainer v. Linschag*, 269, Md. 657(1973); *Boyle v. Semble*, 23 Md. App. 43 (1975). This Court finds that there was substantial evidence to support the "decision of the Board, and that its decision was not 'fairly debatable'.

WHEREFORE, it is this 29 day of May, 1985,

ORDERED that the decision of the Board of Appeals of Baltimore County is hereby AFFIRMED.

Callahan
COLLEEN H. NORMES
JUDGE

Copy to: John W. Nowicki, Esq.
John B. Sontrum, Esq.
Phyllis Cole Friedman, Esq.

IN THE MATTER OF THE APPLICATION OF JAMES ELLIOTT FOR A VARIANCE

JAMES ELLIOTT, PLAINTIFF

vs.

COUNTY BOARD OF APPEALS

DEFINITION and ORDER

On May 22, 1985, a hearing was held before this Court on an appeal from the Decision of the County Board of Appeals denying Appellant's application for a variance from Section 400 of the Baltimore County Zoning Regulations.

Appellant raises three issues in his Petition:

- 1) The Board erred in failing to find that the property adjoining Bear Creek is the rear and the property adjoining the road is the front of the subject real estate.
- 2) The Board erred in failing to find unreasonable hardship on the fact of this case.
- 3) The Board erred in failing to recognize the property could not reasonably be adapted to conform with Section 400.1 of the Baltimore County Zoning Regulations because of the property's unique geographical features.

Under the Baltimore County Zoning Regulations, Sec. 307, variances are permitted "...only in cases where strict compliance with the zoning regulations... would result in practical difficulty or unreasonable hardship." The "practical difficulty" test consists of three factors to be considered in determining whether an area variance (such as the one sought in the present case) should be granted.

- 1) Whether strict compliance with requirement would unreasonably prevent the use of this 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;

FILED MAY 29 1985

CIVIL - GENERAL

MR. JAMES ELLIOTT
IN THE MATTER OF THE APPLICATION OF JAMES ELLIOTT
FOR A VARIANCE FROM SECTION 400
FROM THE BALTIMORE COUNTY ZONING REGULATIONS

John W. Nowicki
6916 North Point Rd. (19) 477-8400

ATTORNEYS

BOARD OF APPEALS OF BALTIMORE COUNTY
HARRY GORGE

Phyllis Cole Friedman
Peter Max Zimmerman
Room 223, Court House (04)
494-2188
Robert J. Romadka
John B. Gontrum
Romadka, Gontrum, Hennigan &
Poon
809 Eastern Bldg. (21)
686-8274

(1) Jan. 25, 1985 - Petitioner's Order for Appeal from the Order of the Board of Appeals of Baltimore County and Petition for Appeal fd.

(2) Jan. 29, 1985 - Certificate of Notice fd.

(3) Jan. 31, 1985 - App. of Phyllis Cole Friedman & Peter Max Zimmerman for the Appellee (People's Counsel for Baltimore County) & Peter Max Zimmerman to Petition on Appeal fd.

(4) Feb. 22, 1985 - Transcript of Record fd.

(5) Feb. 22, 1985 - Notice of Filing of Record fd.

(6) March 20, 1985 - Motant (Harry Gorge) Motion to Intervene and File Answers fd.

(7) Mar. 22, 1985 - Petitioner's Memorandum of Law fd.

(8) Apr. 12, 1985 - Order of Court that Harry Gorge be allowed to answer the Petition for Appeal and that the Motion for Intervention and/or Answer be recognized as an Answer to the Petition for Appeal fd. (AWB)

(9) April 22, 1985 - Appellee People's Counsel's Memorandum in opposition to appellant's Petition on appeal fd.

(10) May 6, 1986 - Petitioner's Memorandum fd.

(11) May 29, 1985 - Hon. Cullen M. Hornes, Hearing held, Judgment to be filed.

(12) May 29, 1985 - Order of Court that the Decision of the Board of Appeals of Baltimore County is hereby AFFIRMED (CHH)

COSTS

CV GEN 85296 \$
B LBY 5.00
CV CLX 70.00
CIVIL FD 75.00
834175 C001 R02 T10-42
01/25/85

RECEIVED
COUNTY BOARD OF APPEALS
MAY 31 1985
P 6 55

Largo Civic Association v. Prince George's County, 21 Md. App. 76, 318 A. 2d 934 (1974); Md. Ann. Code Art. 66B, §4.08.

Considering the evidence of this particular case, the matter of which is the front and which is the back of Mrs. Eck's waterfront property is not debatable and therefore the Board of Appeals decision was clearly erroneous. The errors were two fold. First of all, the Board of Appeals decision was clearly erroneous because it is contrary to case law and zoning regulations. Zoning regulations are clear as to the placement of accessory structures in the rear yards of residential areas, but silent as to the determination of which is the front and which is the rear yard of the property in question. Although Section 400.1 of the Baltimore County Zoning Regulations clearly states that "accessory buildings in residence zones... shall be located only in the rear yard," neither this section nor any other section of the Baltimore County Zoning Regulations articulates any rules regarding the determination which is the front and which is the back yard of property on the water.

In his own findings of fact and conclusions of law for the case at bar, the Zoning Commissioner admits that no zoning ordinance "dictates which is the front of the house on the water," but that "long standing policy and custom in Baltimore County has been that the front is determined by use, i.e., in which direction the houses front, the usual configuration in the neighborhood, and what the particular homeowner considers to be front." In Re Elliott, Before the Zoning Commissioner for Baltimore County, 80-275-A (1984); Burhardt vs. Baltimore County, Circuit Court for Baltimore County, Misc. 5981-76; In Re Ponce, Board of Appeals for Baltimore County, CBA-80-127 (1981).

In short, no zoning ordinance specifically dictates which is the front of the house on the water. Instead, front is determined by use which in turn is based on three factors. The first factor involves a consideration of the direction in which the house in question fronts. A review of the facts of the case at bar indicates that Mrs. Eck's house fronts on the road and that her back yard adjoins the water. In support

RE: PETITION FOR VARIANCE : BEFORE THE ZONING COMMISSIONER
W/1 Old Battle Grove Rd., :
1,840' SW of North Point Rd. : OF BALTIMORE COUNTY
(7610 Old Battle Grove Rd.), :
15th District :
JAMES ELLIOTT, Petitioner : Case No. 84-275-A

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notices should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

Phyllis Cole Friedman
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 4th day of April, 1986, a copy of the foregoing Entry of Appearance was mailed to S. Eric DiNenna, Esquire, 496 M. Pennsylvania Ave., Towson, MD 21204, Attorney for Petitioner.

Phyllis Cole Friedman
Phyllis Cole Friedman

IN THE MATTER OF THE APPLICATION OF JAMES ELLIOTT FOR A VARIANCE FROM SECTION 400.1 OF THE BALTIMORE COUNTY ZONING REGULATIONS W/1 OLD BATTLE GROVE ROAD, 1,840' SW OF NORTH POINT ROAD, (7610 Old Battle Grove Road) 15th DISTRICT
JAMES ELLIOTT, PLAINTIFF
Zoning File No. 84-275-A

MEMORANDUM OF LAW

Statement of the Case

In this action, the Petitioner requested a variance from Section 400.1 of the Baltimore County Zoning Regulations to allow an accessory structure to be built in the front yard in lieu of the rear yard. The Zoning Commissioner of Baltimore County denied the requested variance and an Appeal was taken to the County Board of Appeals for Baltimore County. On December 26, 1984, the County Board of Appeals denied the request for variance and this Appeal was then noted.

Questions Presented

1. Whether the Board of Appeals was clearly erroneous in arbitrarily finding that property adjoining the waterfront is automatically "front" yard?
2. Whether the Board of Appeals erred in failing to find unreasonable hardship on the facts of this case?
3. Whether compliance with Section 400.1 of the Baltimore County Zoning Regulation is impossible because of the property's unique geographical features?

Statement of Facts

The property which is the subject of this suit is located at 7610 Old Battle Grove Road in the 15th Election District of Baltimore County. The property is owned by the Petitioner, Mr. James Elliott, however the Petitioner's sister, Mrs. Norma J. Eck, and her family have resided on the property for twenty-one (21) years.

neighboring residences. He opined that all waterfront property faces the road since the United States Post Office will deliver only to the front door. (Transcript, page 7). Mr. Umstot further testified that the front of the subject property faced the road and the back yard faced the water. His opinion regarding the Eck property was based on the interior layout of the house with the living quarters towards the roadside; mail delivery and service delivery to the roadside of the property; and such back yard activities as outdoor entertaining and cook-outs taking place on the water side of this property. (Transcript, pages 7-10). In short, the evidence presented proves that the front of the subject property faces the road and the back faces the water.

In conclusion, the issue of whether Mrs. Eck's back yard adjoins the water is not fairly debatable and the Board of Appeals was clearly erroneous in arbitrarily finding that property adjoining the waterfront is automatically front yard. More specifically, Mrs. Eck's front yard faces the road and her back yard adjoins the water, thereby obviating the need for a variance in the instant case since the necessary structure was indeed constructed in the rear yard.

Argument II

THE BOARD OF APPEALS ERRED IN FAILING TO FIND UNREASONABLE HARDSHIP ON THE FACTS OF THIS CASE.

Even if the Court fails to find that the property adjoining Bear Creek is the rear yard and that Mrs. Eck is indeed required to obtain a variance in order to build an accessory structure on that portion of the property, the Board of Appeals nevertheless erred in failing to find unreasonable hardship on the facts of this case.

The variance requested in the instant case involves an "area variance", that is a variance from area, height, density, set back or side line restrictions. In order to justify the grant of an area variance, the "practical difficulty" test must be met. See McLean v. Bolely, 270 Md. 208, 310 A. 2d 783 (1973). The Court issued the following three part test for the grant of an area variance:

- 1.) Whether compliance with the strict letter of

Mrs. Eck's home is similar to the majority of the homes along Old Battle Grove Road in that her front portico faces the road and the property adjoining Bear Creek is used as the backyard. (See Petitioner's Exhibits 7A-7E). A multitude of accessory structures have been built on the waterfront property adjoining Bear Creek. For example, screened buildings, above ground pools, gazebos, unattached porches, boat houses and piers are commonplace along the waterfront. (See Petitioner's Exhibit 3).

Mrs. Eck has another thing in common with her neighbors. She too wanted to enjoy her waterfront property. Not being a boater, Mrs. Eck decided to have a screened gazebo built in order to shade her from the sun, protect her from the bugs and give her a view of the water. To that end, she consulted a carpenter, Mr. Wes Head, regarding estimated costs and the procedures involved. (See Transcript, page 8). Mr. Head advised Mrs. Eck that he would apply for the permit and wait so far as to inform Mrs. Eck that he was going to Towson for that permit. (Transcript, page 8). Following their conversation regarding the building permit, construction on her gazebo began. Shortly thereafter, construction was halted due to a neighbor's complaint and Mrs. Eck was forced to seek legal redress.

Argument I

THE ISSUE OF WHETHER MRS. ECK'S BACK YARD ADJOINS THE WATER IS NOT FAIRLY DEBATABLE AND THE BOARD OF APPEALS WAS CLEARLY ERRONEOUS IN ARBITRARILY FINDING THAT PROPERTY ADJOINING WATERFRONT IS AUTOMATICALLY FRONT YARD.

In Dorsey Enterprises, Inc. v. Shook, the Court articulated the rule that in the law of zoning, a court may not substitute its judgment for that of the zoning board and that the action of the Board is to be sustained if, on the evidence, the matter is fairly debatable. 219 Md. 16, 147 A. 2d 953 (1959). Thus, the "fairly debatable rule" is the standard by which a court reviews a zoning decision, however, this standard is similar, if not identical, to the "clearly erroneous rule."

the restrictions governing area, set back, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a 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 would 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." 270 Md. at 214-215, quoting 2 Matthews, The Law of Zoning and Planning, 45-28-29 (2d ed. 1972).

First of all, compliance with the restriction that accessory structures be built in the rear yard unreasonably prevents Mrs. Eck from using her waterfront property. Neither she nor her husband are boaters. Her only pleasures are gardening and sitting by the water watching the boats go by. It is not unreasonable to be permitted to enjoy her view, minimally protected from the bugs, bees, mosquitoes and the sun. Since her only view is of that portion of her property that the County considers her front yard, it is not unreasonable to grant the requested variance.

Furthermore, compliance with Section 400.1 is unnecessarily burdensome for the Ecks. She and her husband have spent considerable sums in the planning and building of their gazebo. They diligently attempted to meet all the County restrictions by hiring an expert carpenter who assured them that the necessary permits had been applied for and received. (Transcript, pages 9-9). They are not wealthy

people. To lose their investment and then to be forced to tear down the partially constructed structure themselves or to have to spend additional sums in order to have someone else remove the structure would be a tremendous physical, emotional, and financial burden.

The second showing required by the practical difficulty test involves whether the grant of a variance would do substantial justice to the applicant as well as to other property owners in the neighborhood. In the instant case, no injustice would occur if the requested variance is granted. One neighbor complained his view of the water is obscured, but the totality of the evidence presented and testimony given before the Board of Appeals strongly refutes that neighbor's contention. In actuality, the protesting neighbor's view is obscured by his own boathouse and pier and the trees on his own property. (Transcript, pages 73, 84, 90). The protestants' only other concern regards possible rainwater run off on to his property which will be remedied by the simple installation of a gutter along the roof of the gazebo upon completion of the structure. Since the complaining neighbors already have accessory structures on the water side of their property many other residents have boathouses, piers, above ground pools, gazebos, and other screened buildings along Bear Creek. It is not an injustice to grant this variance. In fact, a tremendous inequity has been perpetrated by the protestants whose concerns are unjustified and based on personal antagonism towards the Ecks, (Transcript, page 6), rather than substantial concerns about their view.

The final portion of the practical difficulties test involves whether relief can be granted without jeopardizing the spirit of the ordinance or public safety and welfare. The granting of this variance would not constitute any threat to public safety or welfare. The building of an accessory structure along the waterfront clearly presents no issue of public safety since emergency vehicles have ready access from the roadside of the property. Furthermore, there is no justification for denying this variance in terms of public aesthetics or the need for light and air. Aesthetic matters have been adequately

considered. The gazebo itself was never planned to be an opaque structure. In its finished form, it will be an attractive, screened in gazebo which will be fully landscaped and integrated into its surroundings. The Ecks planned to enjoy an unobstructed view of their waterfront while sitting within the gazebo and to afford their neighbors an unobstructed view through the gazebo.

In summary, the applicant meets all the requirements of the practical difficulty test, thereby justifying a grant of an area variance from section 400.1 of the Baltimore County Zoning Regulations to allow an accessory structure in the front yard in lieu of the rear yard of the incident property.

Argument III

THE BOARD OF APPEALS ERRED IN FAILING TO RECOGNIZE THAT COMPLIANCE WITH SECTION 400.1 IS IMPOSSIBLE BECAUSE OF THE PROPERTY'S UNIQUE GEOGRAPHICAL FEATURES.

Considering the unique geography of the subject property, conformity with section 400.1 of the Baltimore County Zoning Regulations is impossible. The very shape of this lot dictates placement of the gazebo on the water side of the property for a variety of reasons. First of all, the property narrows considerably towards the roadside of the property. The property is 53' wide at the water and only 34' wide at the road. (Transcript, page 11). Two sheds already exist on the roadside of the property. In addition, the water and sewage lines also run underground from the house to the road. (Transcript, page 20). Thus placement of the gazebo on the road side of the property would have been impossible.

Conclusion

The issues before the Baltimore County Board of Appeals were not fairly debatable. Considering the facts and testimony presented, the Board erred in the following ways:

- 1.) in finding that the front of all waterfront property faces the water;

- 2.) in failing to find that the rear yard of the subject property adjoins Bear Creek;
 - 3.) in failing to find unreasonable hardship;
 - 4.) in failing to recognize that the property's unique geographical features prevents compliance with Section 400.1.
- For the reasons noted herein, the Petitioner/Appellant respectfully requests that the decision of the Board of Appeals be reversed.

RESPECTFULLY SUBMITTED

JOHN W. NOWICKI
6916 North Point Road
Baltimore, Maryland 21219
477-8400

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of March, 1985 - a copy of the foregoing Memorandum of Law was mailed to Phyllis C. Friedman, People's Counsel for Baltimore County, Court House, Towson, Maryland 21204 and Baltimore County Board of Appeals, Room 200, Court House, Towson, Maryland 21204.

JOHN W. NOWICKI

IN THE MATTER OF
THE APPLICATION OF JAMES ELLIOTT
FOR A VARIANCE FROM SECTION 400
FROM THE BALTIMORE COUNTY ZONING
REGULATIONS

BEFORE THE
COUNTY BOARD OF APPEALS FOR
BALTIMORE COUNTY
No. 84275A
B-CG-296 Rev 6 Feb-28

ORDER FOR APPEAL

Mr. Clerk:
Please enter an Appeal on behalf of Mr. James Elliott, Petitioner, from the Order of the Board of Appeals of Baltimore County, in the above case on the 26th day of December, 1984.

JOHN W. NOWICKI
6916 North Point Road
Baltimore, Maryland 21219
477-8400

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of January, 1985, a copy of the foregoing Order for Appeal was mailed to Phyllis Cole Friedman, Esquire, People's Counsel for Baltimore County, Room 223, Court House, Towson, Maryland 21204 and Malcolm F. Spicer, Jr., Esquire, County Solicitors Office, Baltimore County Courthouse, 400 Washington Avenue, Towson, Maryland 21204.

JOHN W. NOWICKI

3 64 JAN 28 P 02 44
COUNTY BOARD OF APPEALS

JOHN W. NOWICKI
ATTORNEY AT LAW
EDGEMERE OFFICE
6916 NORTH POINT ROAD
BALTIMORE CO. MD 21219
477-8400
REL AIR MD 21014
477-0088

IN THE MATTER OF
THE APPLICATION OF JAMES ELLIOTT
FOR A VARIANCE FROM SECTION 400
FROM THE BALTIMORE COUNTY ZONING
REGULATIONS

BEFORE THE
COUNTY BOARD OF APPEALS FOR
BALTIMORE COUNTY
No. 84275A

PETITION FOR AN APPEAL

TO THE HONORABLE, THE JUDGE OF SAID COURT:

The Petition of James Elliott, Petitioner, by John W. Nowicki, his attorney, represents unto this Honorable Court the following:

1. That the Petitioner owns the subject property at 7610 Old Battle Grove Road, in the 15th Election District of Baltimore County.
2. That on the 26th day of December, 1984, the application of the Petitioner for a variance from Section 400.1 of the Baltimore County Zoning Regulations to allow an accessory structure in the front yard in lieu of the rear yard was denied by the County Board of Appeals.
3. That the County Board of Appeals committed the following errors in denying the requested variance:
 - a. The Board erred in failing to find that the property adjoining Bear Creek is the rear and the property adjoining the road is the front of the subject real estate.
 - b. The Board erred in failing to find unreasonable hardship on the facts of this case.
 - c. The Board erred in failing to recognize the property could not reasonably be adapted to conform with Section 400.1 of the Baltimore County Zoning Regulations because of the property's unique geographical features.

WHEREFORE, your Petitioner prays this Honorable Court to:

- a. Find that the land adjoining Bear Creek is the "rear" of the subject property, thereby eliminating the need for a variance in order to build an accessory structure.
- b. Reverse the Order of the County Board of Appeals denying the requested variance.

RE: PETITION FOR VARIANCE
W/S Old Battle Grove Rd.,
1,840' SW of North Point Rd.,
(7610 Old Battle Grove Rd.),
15th District

BEFORE THE ZONING COMMISSIONER
OF BALTIMORE COUNTY

JAMES ELLIOTT, Petitioner : Case No. 84-275-A

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notices should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

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 4th day of April, 1984, a copy of the foregoing Entry of Appearance was mailed to S. Eric DiNenna, Esquire, 406 W. Pennsylvania Ave., Towson, MD 21204, Attorney for Petitioner.

Phyllis Cole Friedman
Phyllis Cole Friedman

IN THE MATTER OF
THE APPLICATION OF
JAMES ELLIOTT
FOR A VARIANCE FROM
SEC. 400.1 OF THE BALTIMORE
COUNTY ZONING REGULATIONS
W/S OLD BATTLE GROVE RD.
1,840' SW OF NORTH POINT
BLVD.
(7610 Old Battle Grove Road)
15th DISTRICT

JAMES ELLIOTT, PLAINTIFF

Zoning File No. 84-275-A

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
CG Doc. No. 6
Folio No. 281
File No. 85-CG-296

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, Diana K. Vincent, and Keith S. Franz, 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

Case No. 84-275-A

January 26, 1984
Petition of James Elliott for a variance from Sec. 400.1 to allow an accessory structure in the front yard in lieu of the rear yard on property located on the west side of Old Battle Grove Rd., 1840' southwest of North Point Blvd., 15th District.

January 26
Order of Zoning Commissioner directing advertisement and posting of property - date of hearing set for April 23, 1984, at 1:30 p.m.

April 5
Certificate of Publication in newspaper - filed

April 8
Certificate of Posting of property - filed

April 9
Comments of Baltimore County Director of Planning - filed

April 9
Comments of Baltimore County Zoning Plans Advisory Committee - filed

April 23
At 1:30 p.m. hearing held on petition by Zoning Commissioner

May 3
Order of Zoning Commissioner DENYING the petition for variance to permit an accessory structure in the front yard instead of the required rear yard

James Elliott
Case No. 84-275-A

May 31, 1984
Order for Appeal to County Board of Appeals from Order of Zoning Commissioner by John W. Nowicki, Esq., on behalf of Petitioner

October 24
Hearing on appeal before County Board of Appeals

November 15
Continued hearing before the Board of Appeals

December 26
Order of the County Board of Appeals ordering that the variance petitioned for, to permit an accessory structure in the front yard instead of the rear yard, be and the same is DENIED, and FURTHER ORDERED that the partially completed structure be removed within ninety (90) days from the date of this Order and the property be returned to its original condition.

January 25, 1985
Order for Appeal filed in the Circuit Ct. for Baltimore County by John W. Nowicki, Esq., on behalf of Petitioner, James Elliott

January 25
Petition to accompany Order for Appeal filed in the Circuit Ct. for Baltimore County

January 29
Certificate of Notice sent to all interested parties

January 31
Answer to Petition on Appeal filed in Circuit Ct.

February 22
Transcript of testimony filed

Petitioner's Exhibit No. 1 - Sketch of a gazebo

" " " 2 - Plat drawn by Frank Lee, 11/17/83

" " " 3 - List of addresses purportedly depicting other structures.

" " " 4 - Picture of subj. property and adjacent properties

" " " 5 - Photo taken next to gazebo

" " " 6 - A & B - Photos of gazebo

" " " 7 - A to E - Photos

" " " 8 - Photo of Mr. Gorge's pier

Protestants' Exhibit A - Two photos taped together

" " " B - 1 & 2, Photos taken from Gorge pier

" " " C - 1, 2, 4, 5, 6, 7, 8; Photos

" " " D - Photo of Eck property

February 22, 1985
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 respectfully 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,

John Nowicki, Esq.
People's Counsel
John Gortum, Esq.
Barbara P. Piskerton

John Holmen, County Board of Appeals

Case No. 84-275-A
Item No. 177
Date: May 31, 1984
Sec. 400.1
Variance to allow an accessory structure in front yd. in lieu of rear yd.
Copy of Petition
Copy of Description of Property
Copy of Certificate of Posting (1 sign)
Copy of Certificates of Publication
Copy of Zoning Advisory Committee Comments
Copy of Comments from the Director of Planning
Planning Board Comments and Accompanying Map
Copy of Order to Enter Appearance
Copy of Order - Zoning/Planning Commission 5/3/84, DENIED.
Copy of Plat of Property
200' Scale Location Plan
1000' Scale Location Plan
Memorandum in Support of Petition
Letter(s) from Protestant(s)
Letter(s) from Petitioner(s)
Protestants' Exhibits to
Petitioners' Exhibits 1 to 5
Letter of Appeal, 5/31/84 by John W. Nowicki, Esq., Counsel for Petitioner's Tenants.
S. Eric DiNenna, Esquire
406 West Pennsylvania Avenue
Towson, Maryland 21204
James Elliott
302 E. Seminary Avenue
Lutherville, Maryland 21093
Harry Gorge, et ux
7608 Old Battle Grove Road
Baltimore, Maryland 21222
Otto Beverungen
7612 Old Battle Grove Road
Baltimore, Maryland 21222
John W. Nowicki, Esquire
6916 North Point Road
Baltimore, Maryland 21219
People's Counsel
Norman E. Gerber
James Howell
Arnold Jablon
Jean M. H. Jung
James E. Dyer
John B. Gontum, Esq.
809 Eastern Blvd., (21221)
Barbara P. Pinkerton
2243 Clove Terrace

MANDATE

Court of Special Appeals of Maryland

No. 871, September Term, 19 85
James Elliott
v.
Baltimore County Board of Appeals et al
March 18, 1986: Per Curiam filed. Judgment affirmed. Appellant to pay the costs.
April 17, 1986: mandate issued.

STATEMENT OF COSTS:

In Circuit Court: for Baltimore County
Two Appellees
Record
Stenographer's Costs \$40.00
\$70.00

In Court of Special Appeals:

Filing Record on Appeal \$50.00
Printing Brief for Appellant \$67.60
Reply Brief \$
Portion of Record Extract - Appellant \$
Printing Brief for Cross-Appellee \$

Brief for Appellee-----Gorge--\$100.80
Printing Brief for Appellee Baltimore County Bd. of Appeals--\$52.80
Portion of Record Extract - Appellee \$
Printing Brief for Cross-Appellant \$76.80
\$

STATE OF MARYLAND, et al:

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 seventeenth day of April A.D. 19 86

James R. Jordan
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.

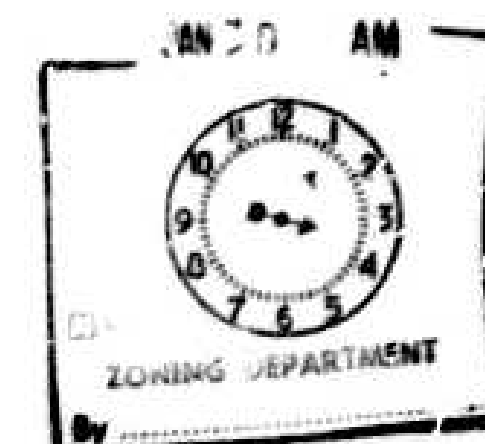
JAMES ELLIOTT
W/S Old Battle Grove Rd., 1940' SW of North Point Blvd. (7610 Old Battle Grove Rd.)
15th District
No. 84-275-A
Re: Variance to allow an accessory structure in front yard in lieu of rear yard. (Sec. 400.1.)

Jan. 24, 1984 Petition filed
Apr. 23 Hearing before Z.C.
May 3 Order of Z.C. DENYING the petition
May 31 Order for Appeal to C.B. of A. from Order of Z.C. by John Nowicki, Esq., on behalf of petitioner
Oct. 24 Hearing on appeal before the Board
Nov. 15 Continued hearing
Dec. 26 Order of the Board DENYING variance, and FURTHER ORDERED that the partially completed structure be removed within 90 days and returned to its original condition
Jan. 25, 1985 Order for Appeal filed in the Circuit Ct. for Baltimore County by John Nowicki, Esq., on behalf of petitioner
Jan. 29 Certificate of Notice sent to interested parties
Feb. 22 Transcript filed
Feb. 22, 1985 Record of proceedings filed in Circuit Court for Baltimore County
May 29 Board AFFIRMED - Judge Cullen H. Holmes
June 28 Order for Appeal filed in the Court of Special Appeals by Mr. Nowicki for Petitioner
7/2/85 - cc: A. Jablon
T. Hennegan
J. Howell
Case # 871
March 18, 1986 Board AFFIRMED by Court of Special Appeals
3/19/86 - cc: A. Jablon
Bettye DuBois
J. Howell
April 17 Mandate issued.

IN THE MATTER OF THE APPLICATION OF JAMES ELLIOTT FOR A VARIANCE FROM SEC. 400.1 OF THE BALTIMORE COUNTY ZONING REGULATIONS W/S OLD BATTLE GROVE RD. 1,940' SW OF NORTH POINT BLVD. (7610 Old Battle Grove Road) 15th DISTRICT
JAMES ELLIOTT, PLAINTIFF
Zoning File No. 84-275-A
IN THE CIRCUIT COURT FOR THE BALTIMORE COUNTY AT LAW
CC Doc. No. 6
Folio No. 281
File No. 85-CG-296

CERTIFICATE OF NOTICE

Mr. Clerk:
Pursuant to the provisions of Rule 5-2(d) of the Maryland Rules of Procedure, William T. Hackett, Diana K. Vincent, and Keith S. Franz, 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, James Elliott, 302 E. Seminary Ave., Lutherville, Md. 21093, Petitioner; John W. Nowicki, Esq., 6916 North Point Rd., Baltimore, Md. 21219, Counsel for Petitioner; Barbara P. Pinkerton, 2243 Clove Terrace, Baltimore, Md. 21209, Counsel for Petitioner; Harry Gorge, et ux, 7608 Old Battle Grove Rd., Baltimore, Md. 21222, Protestants; Otto Beverungen, 7612 Old Battle Grove Rd., Baltimore, Md. 21222, Protestants; John B. Gontum, Esq., 809 Eastern Blvd., Baltimore, Md. 21221, Counsel for Protestants (Gorge); and Phyllis C. Friedman, Court House, Towson, Md. 21204, People's Counsel for Baltimore County, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.



James Elliott
Case No. 84-275-A

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to James Elliott, 302 E. Seminary Ave., Lutherville, Md. 21093, Petitioner; John W. Nowicki, Esq., 6916 North Point Rd., Baltimore, Md. 21219, Counsel for Petitioner; Barbara P. Pinkerton, 2243 Clove Terrace, Baltimore, Md. 21209, Counsel for Petitioner; Harry Gorge, et ux, 7608 Old Battle Grove Rd., Baltimore, Md. 21222, Protestants; Otto Beverungen, 7612 Old Battle Grove Rd., Baltimore, Md. 21222, Protestants; John B. Gontum, Esq., 809 Eastern Blvd., Baltimore, Md. 21221, Counsel for Protestants (Gorge); and Phyllis C. Friedman, Court House, Towson, Md. 21204, People's Counsel for Baltimore County, on this 29th day of January, 1985.

James R. Jordan
Clerk of the Board of Appeals of Baltimore County

IN RE: PETITION ZONING VARIANCE
W/S of Old Battle Grove Road,
1,840' SW of North Point
Boulevard - 15th Election
District
James Elliott,
Petitioner
BEFORE THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 84-275-A

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests a variance to permit an accessory structure in the front yard instead of the required rear yard, as shown on Petitioner's Exhibit 1.

The Petitioner appeared and was represented by Counsel. Testifying for the Petitioner was Norma J. Eck, the Petitioner's sister who resides on the subject property with her family. Mr. and Mrs. Harry Gorge and Otto Beverungen, adjacent property owners and Protestants, also appeared and testified.

The subject property, zoned D.R.5.5, is on the waterfront, facing Bear Creek. Testimony indicated that the homes in this area, including the Petitioner's home, face Bear Creek with Old Battle Grove Road to their rear. Although there is no zoning ordinance which dictates which is the front of a home on the water, long-standing policy and custom in Baltimore County has been that the front is determined by use, i.e., in which direction the houses front, the usual configuration in the neighborhood, and what the particular home owner considers to be the front. Although none of these individually control, all must be considered. Burkhardt v. Baltimore County, Circuit Court for Baltimore County, Misc. 5981-76; In Re: Fence, Bd. of Appeals for Balto. Co., CBA-80-127 (1981). In the instant case, notwithstanding the Petitioner's reluctance to admit which is in fact the front, the totality of the testimony presented confirms that the front of the Petitioner's home faces the water.

exists in the neighborhood in that the homes in the immediate vicinity are uniformly set back from the water. They complain that the placement in the front yard would adversely effect the enjoyment of their property and would obstruct their view. The Protestants point out that this is a very old neighborhood and no other property in the immediate vicinity has an accessory structure in the front yard. The Gorge's property is adjacent to the south side of the Petitioner's property and the Beverungen's property is adjacent to the north side. There is an old marina with an above-ground swimming pool three properties removed from theirs, but due to the curvature of the water line, it cannot be seen. In fact, none of the accessory structures cited by the Petitioner can be seen from these homes.

Mr. Elliott testified that construction began without a permit in error and to remove what already has been constructed would be a hardship. The Protestants demand that it be removed.

The Petitioner seeks relief from Section 400.1, pursuant to Section 307, of the Baltimore County Zoning Regulations (BCZR).

The Petitioner maintains that the variance should be granted inasmuch as it would create a practical difficulty if it were denied and would serve no useful purpose, especially in light of the nature of the neighborhood. In fact, the crux of the Petitioner's case revolves around the existing illegal location of the new structure and the practical difficulty that would be created to have it removed.

However, this argument lacks merit and any practical difficulty emanating therefrom is immaterial. Failure to obtain a building permit or to question the need for one flaws the Petitioner's arguments. The Petitioner took it upon himself to build a new structure in violation of the laws of Baltimore County. The fact that the cost of building the structure or the potential cost of moving it

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

- whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
- 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;
- 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.

If property cannot be adapted reasonably 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 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 BCZR to the land. Such personal problems are not generally appropriate subjects for relief by way of

The subject property is 53 feet wide at the water, 34 feet wide at the road, and 317 feet deep. Two sheds exist in the rear: one is a garage with a carport connecting the garage with the other shed, as shown on Petitioner's Exhibit 1. The Petitioner, wishing to fully enjoy his unique property, began to construct a 15.6' x 15.7' screened-in building between the house and the water. Unfortunately, he did not have a permit. After being ordered to cease construction, Mr. Elliott filed the instant petition to legalize the building's location. The primary reason for constructing the new building at that location is to have a full view of the water while being protected from the weather. This cannot be accomplished if the building is located elsewhere.

Mrs. Eck testified that the building could not be placed in the rear due to the water and sewer lines which transgress the property from Old Battle Grove Road. The property is uniquely shaped and narrows considerably as it converges to the road. Between the house and the two sheds are trees which also prevent construction there. Mr. Elliott believes that he has the right to fully enjoy his property and that this new building would provide that enjoyment. He pointed out that numerous other property owners in the area have accessory structures between the water and their homes. See Petitioner's Exhibits 2A through 2J and 3. (These photographs are graphic examples of similar existing structures.) He also pointed out that in Case No. 81-37-A, an accessory structure was permitted in the front yard for a property to the south of the instant property.

Petitioner's Exhibit 1 shows that a setback of 22 feet exists from the south side of the Petitioner's house to the Gorge's property. Obviously, a variance would also be required, but the Protestants would not object to the accessory structure being located there. They do object strenuously to its present location as being in violation of the average front yard setback which

- 2 -

is great is not a factor to be considered when such facts and circumstances exist.

The hardship here relied on was entirely self-created and the Board properly refused to allow it to be used as a fulcrum to lift, by way of variance, the valid limitations imposed. Aside from the fact that the hardship shown was self-inflicted, it was also shown to be of a purely financial nature...

Salisbury Bd. of Zoning Appeals v. Bonds, 240 Md. 547.

There is a strong presumption of the correctness of original zones and of comprehensive zoning. Howard Co. v. Dorsey, 438 A.2d 1329 (1982). There is a presumption of validity that must be accepted. Johnson & Wales College v. DiPietro, 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. Monrovia v. Bevilacqua, 432 A.2d 661 (R.I., 1981).

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. of 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.

- 4 -

the variance procedure. See 3 Anderson, American Law of Zoning, Section 18.53 (2nd Edition, 1977).

The Petitioner certainly did not exercise the appropriate diligence that is required. Notwithstanding the testimony presented, there is insufficient evidence to permit a finding that the hardship or difficulties to be experienced if the requested variance were denied will be caused by the zoning restrictions from which relief is sought.

Even though there are other accessory structures on the waterfront properties in this area, Section 400.1 is clear and unambiguous, i.e., accessory structures must be in the rear. "We hold that the sole basis for denying the variance is that no substantial evidence of hardship was introduced. Without this prima facie showing issues of the effect on the community are not relevant." In Re: Eric R. Bragg, et al., Bd. of Appeals of Balto. Co., 83-245-A and 82-142-V (1984). The Protestants have a right to have the law enforced. The Petitioner could easily, and for the identical reasons, have his structure constructed to the side of the house with the consent of the Protestants. The Petitioner's sole reason for refusing to move the structure is that construction has already been started and the cost would be too burdensome. Such reasoning is not sufficient and whether there are other structures in front yards is immaterial.

An alternative does exist, notwithstanding the existing, illegal structure. The Petitioner can still make use of his property for the purpose intended. His enjoyment would in no way be diminished by the placement of the structure elsewhere, and testimony was not convincing that the structure could be placed only in the front yard.

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

- 6 -

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 30 day of May, 1984, that the Petition for Variance to permit an accessory structure in the front yard instead of the required rear yard be and is hereby DENIED.

[Signature]
Zoning Commissioner of
Baltimore County

- 7 -

JOHN W. NOWICKI
RICHARD V. LYNN
BARBARA F. PINKERTON

JOHN W. NOWICKI
ATTORNEY AT LAW
EDGEMERE OFFICE
6996 NORTH POINT ROAD
BALTIMORE CO. MD 21219
477-0400

REL AIR OFFICE
320 S. MAIN STREET
REL AIR MD 21014
879-0026

February 4, 1985

County Board of Appeals
Room 200
Court House
Towson, Maryland 21204

RE: Case No. 84-275-A
James Elliott
W/s Old Battle Grove Road,
1,840' SW of North Point Boulevard
(7610 Old Battle Grove Road)
15th District

Dear Sir/Madam:

Please find enclosed herein my check in the amount of \$23.00 for the cost of the certified documents in the above referenced case.

Thank you for your cooperation in this matter.

Sincerely,

[Signature]
John W. Nowicki

JWN/cw
Enclosure

RECEIVED
COUNTY BOARD OF APPEALS
FEB 5 A 0 01

494-3180

County Board of Appeals
Room 200, Court House
Towson, Maryland 21204
January 29, 1985

John B. Gontrum, Esq.
809 Eastern Blvd.
Baltimore, Md. 21221

Dear Mr. Gontrum:

Re: Case No. 84-275-A
James Elliott

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,

[Signature]
Jane Holmen, Secretary

Encl.
cc: Harry Gorge, et ux
Otto Beverungen
Phyllis C. Friedman
Norman E. Garber
James Howell
Arnold Jablon
Jean Jung
James E. Dyer
[Signature]

LAW FIRM
Romadka, Fortin, Hennegan & Foss
GERMAN 11 BUILDING
800 BAL. 1015VARD
TOWSON, MARYLAND 21204
TELEPHONE (410) 286-8874

ROBERT A. ROMADKA
JOHN B. FORTIN
JOHN D. HENNEGAN
CHARLES E. FOSS, III

September 26, 1984

County Board of Appeals
for Baltimore County
Room 200, Court House
Towson, Maryland 21204

RE: James Elliott
w/s Old Battle Grove Road
Case No. 84-275A

Gentlemen:

Please be advised that I have been retained to represent Mr. and Mrs. Harry Gorge. Protestants in the above captioned case. I would appreciate your setting this matter down for a hearing at your earliest convenience. I would estimate the time in this case to be approximately one half of a day.

Thank you for your attention in this matter.

Looking forward to hearing from you.

Very truly yours,
[Signature]
John B. Gontrum

JBG/mw

cc: Mr. and Mrs. Harry Gorge

RECEIVED
COUNTY BOARD OF APPEALS
FEB 10 1985

Letter 10/24 - 10 am Wed

RECEIVED
COUNTY BOARD OF APPEALS
FEB 24 A 0 34

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(410) 494-3180
September 16, 1985

Howard E. Friedman, Clerk
Court of Special Appeals of Maryland
Annapolis, MD 21401-1628

Re: PHC 8437
James Elliott v.
People's Counsel for
Baltimore County

Dear Mr. Friedman:

Please forward to this office a copy of the Opinion in the above entitled case when it is filed by the Court of Special Appeals. We would appreciate it if you could note our request in your file on this case. Thank you.

Very truly yours,

[Signature]
Edith T. Eisenhart, Asst. Secretary

UNREPORTED
IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 871

September Term, 1985

JAMES ELLIOT

v.

BOARD OF APPEALS OF
BALTIMORE COUNTY, ET AL.

Moylan
Meant
Adkins,
JJ.

Per Curiam

Filed: March 18, 1986

Appellant, James Elliot, owns a residentially-zoned lot in Baltimore County. The lot runs from Old Battle Grove Road to the waters of Bear Creek. On the lot is a house and in the house resides Elliot's sister, Norma Eck, and her husband. The Ecks decided to build a 16 foot square screened gazebo between their house and Bear Creek. A contractor, who falsely assured them that he had obtained permits for the job, began construction. Neighbors complained; the county authorities intervened and halted work on the partly-erected gazebo. Elliot applied for a variance. The zoning commissioner denied it. So did the Board of Appeals for Baltimore County. The Circuit Court for Baltimore County affirmed the board.

Elliot now seeks reversal. At the heart of his appeal is his contention that the area between the Eck dwelling and Bear Creek is the rear and not the front yard of the property. If that is so, as we shall shortly see, no variance for the gazebo was required. Appellee People's Counsel for Baltimore County insists that the area in question is the front yard as a matter of law. Appellee Harry Gorge (a neighbor of the Ecks), argues that the front yard/rear yard issue and other issues regarding the variance are fairly debatable factual

¹ Appellant's last name appears as "Elliot" throughout most of the record. In his brief, however, it is spelled "Elliot." We adopt that spelling in this opinion.

determinations and that because of this, the judgment below should be affirmed.

The front yard/rear yard issue is critical to the case because of the Baltimore County zoning regulations, § 400.1 of which provides, in pertinent part: "Accessory buildings in residence zones, other than farm buildings, ... shall be located only in the rear yard...." Thus, an accessory building, such as a gazebo, is permitted in the rear yard of a residentially-zoned lot, but not in the front yard. To erect such a building in the front yard, a variance must be obtained.

The threshold problem is that while the zoning regulations define both "Yard, Front" and "Yard, Rear" (§ 101), they do so in terms of "front lot line" and "rear lot line." Neither "front" nor "rear" is defined. Ordinarily, it would not be difficult to determine which is the "front" of an improved lot and which is the "rear," but it becomes less clear when the lot abuts on water.

When construction of the gazebo on the Elliot-Eck property was halted, the official theory was that the waterside of the lot was the front and the roadside portion the rear. As a consequence of this interpretation, Elliot applied for a variance for the gazebo. Before the zoning commissioner he contended that the waterside of the lot was in fact the rear and not the front. Evidence on both sides of that issue was introduced. The commissioner found as a fact that the front yard was the

portion of the lot abutting Bear Creek. On Elliot's appeal to the board of appeals, evidence on that issue was again introduced. The board, however, seems to have eschewed fact-finding in this regard. Noting that "[t]he issue of which is the front yard and which is the rear yard of waterfront property comes before this Board every so often," it manifested an understandable desire to establish a uniform rule, readily applicable to all cases. It construed the zoning regulations as providing that in the case of "waterfront" residential property, the front yard is the area between the residence and the water. It, like the commissioner, denied the variance.

The circuit court did not adopt the board's construction of the zoning regulations. Instead, it reviewed the fact-finding of the zoning commissioner, concluded that fact-finding was supportable as fairly debatable, and, therefore, affirmed the board. While we believe the court wisely avoided the *per se* rule of construction adopted by the board, its methodology was flawed. Its approach treated the case as if the board, acting as an appellate body, had reviewed the decision of the zoning commissioner. But the board hearing was *de novo*. Baltimore County Charter § 603. While the commissioner's decision and the record before him was evidence for the board to consider, Baltimore County Code, § 22-8, the board was not acting "in a true appellate capacity" to review the commissioner's decision. It was exercising original

jurisdiction. Lohrmann v. The Arundel Corp., 65 Md. App. 309, 311 (1985). Thus, it was conducting "an entirely new hearing at which all aspects of the case should be heard anew as if no decision [had] been previously rendered." Boehm v. Anne Arundel County, 54 Md. App. 497, 511, cert. denied, 297 Md. 168 (1983). The board was required to make its own findings and conclusions, based on the evidence before it, and it was those findings and conclusions that the court should have reviewed. Nevertheless, we believe the court reached the correct result. We explain.

We need not look either to fact-findings or to statutory construction to decide the front yard/rear yard issue. Elliot has done that for us. In his variance application he asserted that the gazebo was in the front yard. He elected to seek a variance, which was required only on the assumption that the front yard was involved. He did not, for example, seek a building permit on the ground that the gazebo was in the rear yard, and then appeal from the denial of the permit on the rear yard issue. See Baltimore County Charter § 602 (c) and Baltimore County Code § 5-6. He chose his theory of the case, the basis on which he sought relief. It was that he was entitled to a variance for a gazebo in his front yard. Having done so, he cannot now assert a different and wholly inconsistent theory. Accordingly, it was not error for the commissioner, the board, and the trial court to decide this case on the ground that the front yard was implicated.

For this reason, we need not address Gorge's alternative argument that on a factual basis the front yard question was fairly debatable, nor need we consider People's Counsel's contention that as a matter of law, the front yard of "waterfront" property is on the water side. As to the latter, we can understand the desire to have available a readily-applicable rule for all cases. But whether such a rule should be adopted, and what exceptions or limitations it should contain, is a matter particularly appropriate for determination by a legislative body, with its ability to gather and apply a wide range of information about the community and individual needs, problems, and objectives that are inevitably implicated when zoning regulations are formulated. What may seem appropriate for lots on Bear Creek may be less appropriate for land adjoining a small stream, a lake, or the Chesapeake Bay. Must a variance be sought for every boathouse, bathhouse, or other accessory building sought to be erected between a residence and some body of water? What is to be considered "waterfront" property? Does that category include a tract, one of whose boundaries is a meandering stream, or does it encompass only land abutting water that is navigable in fact? Should the rules that apply to a small lot on Bear Creek also apply to a 200 acre estate on the Bay? All those questions cry out for legislative policy decisions.

Although we could reflect further on the problems of the

per se rule desired by People's Counsel, it would serve no useful purpose to do so. We return to the case before us, having established that the gazebo was properly treated as being in the front yard of Elliot's lot, thereby necessitating a variance for its erection.

Under § 307 of the Baltimore County zoning regulations, an area variance (the parties agree that is what Elliot sought) may be granted only "in cases where strict compliance with the Zoning Regulations ... would result in practical difficulty or unreasonable hardship." Moreover, an applicant for a variance must also persuade the Zoning commissioner that the variance is "in strict harmony with the spirit and intent of said ... regulations" and that the relief will not cause "substantial injury to public health, safety, and general welfare." As the regulations make clear, an applicant must establish each of the three prerequisites in order to obtain a variance, if he fails as to any one, the variance must be denied.

The board of appeals in effect found that Elliot had failed to meet the "practical difficulty" test and that any hardship had been self-created. See Wilson v. Elkton, 35 Md. App. 417 (1977). There was evidence before it sufficient to make this finding at least fairly debatable. Given the narrow scope of review of decisions of administrative agencies, Germenko v. Board of Appeals, 257 Md. 706 (1970), the trial court did not err in affirming the board.

JUDGMENT AFFIRMED.
APPELLANT TO PAY THE COSTS.

Court of Special Appeals
of Maryland

Annapolis, Md. 21401-1698

(301) 268-3646 (DIRECT LINE)
(301) 261-2920 (WASHINGTON AREA)
TTY FOR LEAF
(301) 268-2808 (DIRECT LINE)
(301) 268-0450 (WASHINGTON AREA)

January 6, 1986

Re: James Elliot v. Baltimore County Board of Appeals et al,
No. 871, September Term, 1985

Dear Counsel:

Argument in the above-referenced case has been set for February 13, 1986, in Courtroom 1. Please report to this office no later than 9:00 a.m. on that date.

Very truly yours,

Howard E. Friedman
Clerk

HEF:bis

RECEIVED
JAN 15 1986
OFFICE OF LAW

RECEIVED
COUNTY BOARD OF APPEALS
JAN 15 1986



Annapolis, Md. 21401 1698

TTY FOR DEAF
(301) 269-2609 (DIRECT LINE)
(301) 565-2450 (WASHINGTON AREA)

ROBERT J. BOOZE
CHIEF DEPUTY

September 25, 1985

Howard E. Friedman,
Clerk

HEF/df

RECEIVED
COUNTY BOARD OF APPEALS
MAY SEP 26 AM 15

JAMES ELLIOTT	:	IN THE CIRCUIT COURT	
Appellant	:	FOR BALTIMORE COUNTY	
v.	:	AT 1:20	
COUNTY BOARD OF APPEALS,	:	Case No. 85CG296	6/28/
et al.,	:		
Appellees	:		

ANSWER TO PETITION ON APPEAL

WHEREFORE, Appellee prays that the Court affirm the decision of the County Board of Appeals of Baltimore County.

RECEIVED
COUNTY BOARD OF APPEALS
1965 JAN 31 A 11:07

Peter M. Zimmerman

Peter Max Zimmerman
Deputy People's Counsel
Room 223, Court House
Towson, MD 21204
494-2185

- 2 -

I HEREBY CERTIFY that on this 31st day of January, 1985,
a copy of the foregoing Answer to Petition on Appeal was mailed to John
W. Norzicki, Esquire, 6916 North Point Road, Baltimore, MD 21219; and
John B. Gornum, Esquire, 809 Eastern Boulevard, Baltimore, MD 21221.

Peter Max Zimmerman
Peter Max Zimmerman

County Board of Appeals of Baltimore County

Now 200 Court Houses

London, Maryland 21204

(201) 494-3102

January 29, 1985

Re: Case No. 84-275-A
James Elliott

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

Very truly yours,

Encls.
cc: James Elliott
Barbara P. Pinkerton

Jane Holmen
Jane Holmen, Secretary

January 29, 1985

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

IN THE MATTER OF THE	*	IN THE
APPLICATION OF JAMES ELLIOTT		
FOR A VARIANCE FROM SECTION	*	CIRCUIT COURT
4.1 OF THE BALTIMORE COUNTY		
ZONING REGULATION W/S OLD	*	FOR
BATTLE GROVE ROAD 1,840' SW		
OF NORTH POINT BLVD.	*	BALTIMORE COUNTY
(7610 Old Battle Grove Road)		
15th DISTRICT	*	AT LAW
JAMES ELLIOTT, PLAINTIFF	*	
		CG Doc. No. 6
Zoning File No. 84-275-A	*	Folio No. 281
		File No. 85-CG-290

APPELLEE PEOPLE'S COUNSEL'S
MEMORANDUM IN OPPOSITION TO
APPELLANT'S PETITION ON APPEAL

I. INTRODUCTION.

"Front yard" and "rear yard" are not defined in the Baltimore County Zoning Regulations, but in non-waterfront property there is no dispute that the road side is the front. Dispute, however, exists as to whether the side of the property closest to the road is the front or the rear.

This memorandum will first address the issue of the appropriate standard to be applied in determining the "front" of property adjacent to water; and then address the substantive issue of the denial of the requested variance.

- 2 -

II. THE DECISION OF THE BALTIMORE COUNTY BOARD OF APPEALS THAT IN THE CASE OF WATERFRONT PROPERTY, THE "FRONT" ALWAYS ABUTS THE WATER SHOULD BE UPHELD.

Although in Elliott the ZC decision is silent as to the testimony from which he concluded that "the totality of the testimony presented confirms that the front of the Petitioner's home faces the water", (emphasis supplied) it must be assumed that the facts were the same as those presented before the Board of Appeals to wit:

- 3 -

- (1) the door ordinarily used for entrance faces the road (Tr. p. 12.);
- (2) the family room is on the road side (Tr. p. 12.);
- (3) the room facing the water includes a bedroom (Tr. p. 12.);
- (4) there is a door on the waterside which exits to a stoop and a set of stairs, but is used infrequently (Tr. p. 12.);
- (5) the shed and garage are on the road side (Tr. p. 27.);
- (6) the mail is delivered from the road (Tr. p. 21.);
- (7) Photos were presented of accessory structures in area on the waterside (Tr. pp. 13-14.); and finally
- (8) both Petitioner (Tr. p. 13.) and their real estate agent (Tr. Vol. 2 p.7.) consider the road the front of their property.

In Dohne, however, the ZC reached the opposite conclusion "that the front of the Petitioner's home is to the road" (Exhibit 1 p. 3.) based on virtually identical facts - i.e.:

- (1) the entrance door faces the road (Exhibit 1, p. 1.);
- (2) the living room is on the road side;
- (3) the bedrooms are on the waterside;
- (4) there is a door on the waterside which exits to a deck and a set of stairs;
- (5) a carport and shed are on the road side;
- (6) the mail is delivered from the road;
- (7) photos were presented of accessory structures in the area on the waterside; and finally

(8) both Petitioner and their real estate agent consider the road the front of their property.

Although there may have been nuances and subtleties that led the ZC to reach opposite results in the two cases, no clear guidelines emerge that would provide adequate notice to persons whose property abuts water and who wish to build accessory structures on the water portion. In fact, it appears that no guidelines are possible when trying to assess each property on its own merits. Weighing the eight items, there are no clear variables. Most are predictable, such as the location of the garage, mail delivery and the opinion of Petitioners and their real estate agents. The rest, however, are not readily susceptible to an objective determination. If the use of a home by Petitioners is a crucial variable, then the stage will have been set to allow "each owner to design his waterfront holdings to suit his own immediate desires without regard to his neighbor's welfare or the welfare of the neighborhood. (Board Opinion p. 3.) On the other hand, if the use of homes in the "area" is to be considered, then even if area is described, it would require knowledge of the interior of each such neighbor's home, knowledge that is certainly entitled to privacy. Finally, if the presence of the other accessory structures is to be the critical factor, then the standard may well end up exacerbating the very problem zoning seeks to ameliorate.

Weighing all of the above, therefore, only an absolute standard, such as the Board has provided, avoids the due process criticism that the requirement is unconstitutionally vague.

Applying the Board's standard to both Elliott and Dohne, the need for a variance would have been clear prior to construction and alternative placement of the accessory structures could have been considered. As it was, both structures were undertaken prior to an Order of the ZC, with their petitions following a zoning violation complaint by their neighbors. No matter what the result, it must be conceded that in this posture someone must be dissatisfied.

B. The Standard Articulated by the Board of Appeals is in the Public Interest.

Although an absolute standard seems desirable, the question must inevitably be asked whether property on the water should be subject to different guidelines than non-waterfront property. In answer to this question, it must be noted that neither the ZC nor the Board have questioned the correctness of two different guidelines. In fact, this dichotomy has existed by long-standing policy and custom in Baltimore County (Dohne ZC Opinion p.2., Exhibit 2; Elliott ZC Opinion p. 1. Exhibit 2 Tr. p. 97.).

The basis for this dichotomy is well described by the Board when it states: "Baltimore County is somewhat unique in that there are literally thousands of residential properties abutting waterfront. The chaos that could result from permitting each owner to design his waterfront holdings to suit his own immediate desires without regard to his neighbor's welfare or the welfare of the neighborhood is unthinkable. Waterfront property greater value than similar non-waterfront property only because the water is there. Waterfront property has higher tax

assessment only because the water is there. Whatever protection the zoning laws can offer this added land value should be afforded." (Board Opinion p.3.)

People's Counsel concurs. "It is the position of People's Counsel that a waterfront view is a scarce resource that is in the public domain as opposed to private, and that there is a county-wide public interest in preserving this scarce resource wherever possible." (Tr. p. 5.) In addition, the passage of the critical bay area legislation last year adds fresh significance from a policy perspective to providing a framework where administrative review is assured.

For all the foregoing reasons, therefore, People's Counsel asks this court to uphold the standard articulated by the Board of Appeals that "the front yard of (a) waterfront house is the water abutting side of the lot." (Board of Appeals Opinion p. 3.).

III. THE DENIAL OF THE REQUESTED VARIANCE SHOULD BE UPHOLD.

A. The Facts.

The Petitioner, Mr. Elliott, began construction of a permanent screen house without obtaining a permit or inquiring as to the need for a variance. (Tr. pp. 31, 40, 41.) Before construction was complete, he was served an order by the County to cease work. (Tr. p. 10.) The structure remains unfinished.

The design of the structure consists of a partial wall of concrete blocks 16'x16' (Tr. p. 30.) and 32" high (Tr. p. 33.) with posts and screening above it. (Tr. p. 19.) It is located

approximately four feet from the edge of an embankment on his property that runs down to the water (Tr. p. 35.); thirty-six feet in front of their house (Tr. p. 35.); and three feet from their adjacent neighbor. (Tr. p. 29.) At the point where the structure was built, the Elliott's lot is between 46 and 53 feet wide (Tr. p. 29.)

One adjacent neighbor complains that it blocks his peripheral view of the water and will cause water run-off on his property. (Tr. pp. 63, 70.) The other adjacent neighbor is concerned that if the structure is permitted, it will set a dangerous precedent and detract from the waterfront. (Tr. p. 87.)

Although there was some testimony about sewer and water lines on the road side (Tr. p. 11.); and too narrow an area on the side of the house (Tr. p. 11.), on cross examination it was conceded no effort was made to locate the sewer and water lines (Tr. p. 31.); and there were 22 feet available on the side of the house (Tr. p. 30.).

Finally, it was conceded that the structure was nothing more than a screened-in porch, but no thought was given to building it directly off the house (Tr. p. 42.). In contrast, James Hoswell, a Planner with Baltimore County (Tr. p. 94.) stated that "the simplest approach to provide for a screened-in area to enjoy the outdoors would be a screened-in porch on the front of the existing structure, an attachment right to the building itself." (Tr. p. 100.)

B. Scope of Review.

Where the Board of Appeals has denied a variance, the

question on judicial review is whether or not such action is arbitrary and discriminatory or fairly debatable. Trainer v Lipchen, 369 Md. 667, 309 A.2d. 471 (1973); Boyce v Sembly, 25 Md. App. 43, 234 A.2d. 137 (1975). This "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) and requires the decision be upheld if it is based on substantial evidence. Finally, if the Board's action is viewed as administrative, to be upheld, the Board's Order must also be sustainable on its findings and for the reasons stated. United Steelworkers of America v Bethlehem Steel Corp., 472 A.2d. 62, 298 Md. 665 (1984).

C. The Denial of the Requested Variance Should be Upheld.

1. 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 BCZM). 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. 38 (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

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.

What Petitioners have shown is that they would like to be able to sit on the edge of the water in a screened-in structure that affords a good bit of privacy, and enjoy the view of the water. They have not demonstrated that it would be unduly burdensome not to do this three feet from the neighbor's lot line, or set back against their house (either side or front) which would minimize the obstruction of their neighbors' view.

Applying the legal standard therefore, the Board has found correctly that the only burden on Petitioner is the self-created hardship of having begun the structure without any permits.

CONCLUSION

For the reasons stated above, the Opinion of the County Board of Appeals that the water is the front of property abutting the

water; and denying the requested variance should be upheld.

Respectfully submitted

Phyllis Cole Friedman
Phyllis Cole Friedman
People's Counsel for Baltimore County

Peter Max Zimmerman
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 22nd day of April, 1985, a copy of the Appellee People's Counsel's Memorandum in Opposition to Appellant's Petition on Appeal was mailed by first class mail, postage prepaid, to John W. Nowicki, Esquire, 6916 North Point Road, Baltimore, Maryland - 21219; and a copy was served on the Administrative Secretary, County Board of Appeals, room 200, Court House, Towson, Maryland - 21204.

Phyllis Cole Friedman
Phyllis Cole Friedman

#3592A

JOHN W. NOWICKI

ATTORNEY AT LAW

EDGEMERE OFFICE

6506 NORTH POINT ROAD

BALTIMORE CO. MD. 21219

477-8400

ROSEDALE OFFICE

804 EDGEMERE AVENUE

BALTIMORE CO. MD. 21204

811-4000

811-4000

811-4000

May 31, 1984

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

RE: Petition Zoning Variance
W/S of Old Battle Grove Road,
1,840' SW of North Point
Boulevard - 15th Election
District
Petitioner, James Elliott
Case No. 84-275-A

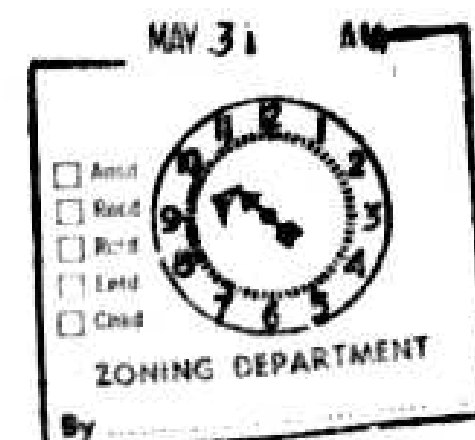
Dear Gentlemen:

Please enter a Notice of Appeal for the above referenced case in relation to the Order signed by the Zoning Commissioner of Baltimore County on May 3, 1984 where the Petition for Variance to Permit an Accessory Structure in the front yard instead of the required rear yard was denied. Please find enclosed a check for \$80.00 for this appeal. Thank you for your anticipated cooperation.

Sincerely,

John W. Nowicki
John W. Nowicki

JWN/cv



S. Eric DiNenna, P.A.
Attorney at Law

406 W. Pennsylvania Avenue
Towson, Maryland 21204

June 8, 1984

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

RE: Petition for Variance
W/S of Old Battle Grove Road, 1,840' SW
of North Point Blvd. (7610 Old Battle Grove Rd.)
James Elliott - Petitioner
Case No. 84-275-A

Dear Mr. Jablon:

I am in receipt of your letter to me of June 1, 1984 advising me of an Appeal with reference to the above-captioned matter.

This is to advise you I am no longer counsel for the Petitioner and it will not be necessary that I be notified of any hearing, etc.

Very truly yours,

S. Eric DiNenna
S. ERIC DINENNA

SED:ek

cc: County Board of Appeals
Phyllis Cole Friedman, Esquire
Mr. James Elliott

FRIEDMAN & FRIEDMAN

1200 FIRST NATIONAL BANK BUILDING

1 EAST REDWOOD STREET

BALTIMORE, MARYLAND 21202

301 539-0333

April 22, 1985

Circuit Court for
Baltimore County, At Law
Court House
Towson, Maryland - 21204

re: Application of James Elliott, etc.
CG Doc. #6
Folio #281
File #85-CG-296

Gentlemen:

Enclosed please find Appellee People's Counsel's Memorandum in Opposition to Appellant's Petition on Appeal which is to be filed in the above matter.

Very truly yours,

Phyllis Cole Friedman
Phyllis Cole Friedman

PCF/be

enc.

ccs: John W. Nowicki, Esq.
Admin. Secretary,
County Bd. of Appeals

RECEIVED
COUNTY BOARD OF APPEALS
MAY 23 A 0 37

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3333

ARNOLD JABLON
ZONING COMMISSIONER

June 1, 1984

S. Eric DiNenna, Esquire
406 West Pennsylvania Avenue
Towson, Maryland 21204

Re: Petition for Variance
W/S of Old Battle Grove Road, 1,840' SW
of North Point Blvd. (7610 Old Battle Grove Rd.)
James Elliott - Petitioner
Case No. 84-275-A

Dear Mr. DiNenna:

Please be advised that an appeal has been filed by John W. Nowicki, attorney for petitioner's tenants, 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
Arnold Jablon
Zoning Commissioner

AJ:a]

cc: Mr. & Mrs. Harry Gorge
7608 Old Battle Grove Road
Baltimore, Maryland 21222

Mr. Otto Beverungen
7612 Old Battle Grove Road
Baltimore, Maryland 21222

Phyllis Cole Friedman, Esquire
People's Counsel for Baltimore County

IN THE MATTER OF
THE APPLICATION OF JAMES ELLIOTT
FOR A VARIANCE
JAMES ELLIOTT, Plaintiff
vs.
COUNTY BOARD OF APPEALS
ZONING FILE #84-275-A

ORDER OF APPEAL

Mr. Clerk:

Please note an Order for Appeal on behalf of James Elliott, Plaintiff, in the above captioned matter in relation to the Opinion and Order signed on May 29, 1985, by the Honorable Cullen H. Norwes, Judge, and transmit the appropriate records to the Court of Special Appeals.

John W. Nowicki
JOHN W. NOWICKI
6916 North Point Road
Baltimore, Maryland 21219
477-8400
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of June, 1985,

a copy of the foregoing Order for Appeal was mailed to Phyllis Cole Friedman, Esquire, People's Counsel for Baltimore County, Court House, Towson, Maryland 21204 and John B. Contrum, Esquire, Rosedale, Contrum, Harman & Poon, 809 Eastern Boulevard, Baltimore, Maryland 21221, Attorney for Protestant.

John W. Nowicki
JOHN W. NOWICKI

RECEIVED
COUNTY BOARD OF APPEALS
MAY 31 1985

James Elliott

Vs.

Board of Appeals of Balto. Co.
People's Counsel for Balto. Co.

IN THE CIRCUIT COURT

FOR

BALTIMORE COUNTY

Docket # Folio 281

Case No. 85CG296

NOTICE OF FILING OF RECORD

John W. Nowicki
6916 North Point Rd. (19)

Phyllis Cole Friedman
Peter Max Zimmerman
Mail Stop 2206

June Holmen Mail Stop 2205

In accordance with Maryland Rule of Procedure 812, you are notified that the record in the above entitled case was filed on Feb. 22, 1985.

John W. Nowicki
John W. Nowicki
Clerk

RECEIVED
COUNTY BOARD OF APPEALS
MAY 25 P 11 15

Phone: 687-4922

FRANK S. LEE

Registered Land Surveyor

1277 NEIGHBORS AVE. - BALTIMORE, MD. 21237

November 17, 1983

No. 7610 Old Battle Grove Road
Lot 55, Plat of Battle Grove, 5/75
15th District Baltimore County, Maryland

Beginning for the same on the west side of Old Battle Grove Road at a distance of 1040 feet more or less measured westerly and southeasterly along Old Battle Grove Road from the southwest side of North Point Blvd. and being known and designated as Lot 55, as shown on the plat of Battle Grove, said plat being recorded among the land records of Baltimore County in Plat Book 5 folio 75.

Containing 0.31 acres of land more or less.



S. Eric DiNenna, Esquire
406 West Pennsylvania Avenue
Towson, Maryland 21204

May 3, 1984

IN RE: Petition Zoning Variance
W/S of Old Battle Grove Road,
1,840' SW of North Point Boule-
vard (7610 Old Battle Grove
Road) - 15th Election District
James Elliott, Petitioner
Case No. 84-275-A

Dear Mr. DiNenna:

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

Sincerely,

ARNOLD JABLON
Zoning Commissioner

AJ/ari

Attachments

cc: Mr. & Mrs. Harry Gorge
7608 Old Battle Grove Road
Baltimore, Maryland 21222

Mr. Otto Beverungen
7612 Old Battle Grove Road
Baltimore, Maryland 21222

People's Counsel

PETITION FOR VARIANCE

15th Election District

ZONING: Petition for Variance
LOCATION: West side Old Battle Grove Road, 1,840 ft. Southwest of North Point Boulevard (7610 Old Battle Grove Road)
DATE & TIME: Monday, April 23, 1984 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 allow an accessory structure in the front yard in lieu of the rear yard

Being the property of James Elliott, 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



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

ARNOLD JABLON
ZONING COMMISSIONER

April 16, 1984

S. Eric DiNenna, Esquire
406 W. Pennsylvania Avenue
Towson, Maryland 21204

Re: Petition for Variance
W/S Old Battle Grove Rd., 1,840' SW of
North Point Blvd. (7610 Old Battle Grove Rd.)
James Elliott - Petitioner
Case No. 84-275-A

Dear Mr. DiNenna:

This is to advise you that \$51.80 is due for advertising and posting of the above property.

This fee must be paid and our zoning sign and post returned on the day of the hearing before an Order is issued. Do not remove sign until day of hearing.

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,

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

No. 130252

DATE: 4/25/84 ACCOUNT: R-01-615-000

AMOUNT: \$51.80

RECEIVED FROM: James Elliott

FOR: advertising and posting Case No. 84-275-A

VALIDATION OR SIGNATURE OF CASHIER

ARNOLD JABLON
Zoning Commissioner

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY Towson, Maryland

District: 12 Date of Posting: 4/24/84
Posted for: Petition for Variance
Petitioner: James Elliott
Location of property: W/S Old Battle Grove Rd., 1,840' SW of North Point Blvd.
Location of Sign: Facing Old Battle Grove Rd. (H 7610 Old Battle Grove Rd.)
Remarks: None
Posted by: Norman E. Gerber Date of return: 4/24/84
Number of Signs: 1

CERTIFICATE OF PUBLICATION

OFFICE OF
Dandalk Eagle

38 N. Dundalk Ave.
Dundalk, Md. 21222

April 6, 1984 19

THIS IS TO CERTIFY, that the annexed advertisement of Arnold Jablon in the matter of P.O. #53696 Req. #L59247, was inserted in The Dundalk Eagle a weekly newspaper published in Baltimore County, Maryland, once a week for one week before the 6th day of April 1984; that is to say, the same was inserted in the issues of April 5, 1984

Kimbel Publication, Inc.
per Publisher.

By K.C. Oller

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 day of April, 1984.

Petitioner:
Petitioner's
Attorney:

Received by: [Signature]
Chairman, Zoning Plans
Advisory Committee

S. Eric DiNenna, Esquire
406 W. Pennsylvania Avenue
Towson, Maryland 21204

NOTICE OF HEARING

Re: Petition for Variance
W/S Old Battle Grove Rd., 1,840' SW of
North Point Blvd. (7610 Old Battle Grove Rd.)
James Elliott - Petitioner
Case No. 84-275-A

TIME: 1:30 P.M.

DATE: Monday, April 23, 1984

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. 124041

DATE: 4/25/84 ACCOUNT: R-01-615-000

AMOUNT: 35

RECEIVED FROM: [Signature]

FOR: Filing fee for Case No. 84-275-A

VALIDATION OR SIGNATURE OF CASHIER

CERTIFICATE OF PUBLICATION

TOWSON, MD. April 5, 1984

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md. of one time before the 23rd day of April, 1984, the last publication appearing on the 5th day of April, 1984.

THE JEFFERSONIAN
L. Frank Johnston
Manager

Cost of Advertisement, \$ 17.00

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

April 9, 1984

COUNTY OFFICE BLDG.
111 W. Chesapeake Ave.
Towson, Maryland 21204cc: 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 DevelopmentS. Eric DiNenna, Esquire
1406 W. Pennsylvania Avenue
Towson, Maryland 21204RE: Case No. 81-177-A (Item No. 177)
Petitioner - James Elliott
Variance Petition

Dear Mr. DiNenna:

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 "legalize" the location of the existing structure in the front yard, this hearing is required. A similar type hearing (Case No. 81-37-A) was granted for property to the south of the subject property.

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
NICHOLAS B. COMMODARI
Chairman
Zoning Plans Advisory Committee

NBC:mch

Enclosures

cc: Frank Lee
1277 Neighbors Avenue
Baltimore, Maryland 21237BALTIMORE COUNTY
DEPARTMENT OF PUBLIC WORKS
TOWSON, MARYLAND 21204HARRY J. PISTEL, P.E.
DIRECTOR

February 20, 1984

Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204Re: Item #177 (1982-1984)
Property Owner: James Elliott
W/S Old Battle Grove Rd. 1840' S/W North Point Blvd.
Acreage: 0.3. District: 15th

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.

General:

Old Battle Grove Road, an existing public road, is proposed to be further improved in the future as a 30-foot closed section roadway on a 50-foot right-of-way.

This office has no further comment in regard to the plan submitted for Zoning Advisory Committee review in connection with this item 177 (1982-1984).

Very truly yours,

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

RAM:EAM:PMK:iss

E-W Key Sheet
10 S. 26 & 27 Pgs. Sheets
SE 3 G Topo
194 Tax MapBALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
TOWSON, MARYLAND 21204
494-3271NORMAN E. GERBER
DIRECTORMr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204Re: Zoning Advisory Meeting of 1/24/84
Item #177
Property Owner: James Elliott
Location: Old Battle Grove Rd.

Dear Mr. Jablon:

The Division of Current Planning and Development has reviewed the subject petition and offers the following comments. The items checked below are applicable.

- () There are no site planning factors requiring comment.
- () A County Review Group Meeting is required.
- () A County Review Group Meeting was held and the minutes will be forwarded by the Bureau of Public Services.
- () This site is part of a larger tract; therefore it is defined as a subdivision. The plan must show the entire tract.
- () A record plat will be required and must be recorded prior to issuance of a building permit.
- () The access is not satisfactory.
- () The circulation on this site is not satisfactory.
- () The parking arrangement is not satisfactory.
- () Parking calculations must be shown on the plan.
- () This property contains soils which are defined as wetlands, and development on these soils is prohibited.
- () Construction in or alteration of the floodplain is prohibited under the provisions of Section 22-56 of the Development Regulations.
- () Development of this site may constitute a potential conflict with the Baltimore County Master Plan.
- () The amended Development Plan was approved by the Planning Board on 1/24/84.
- () Landscaping should be provided on this site and shown on the plan.
- () The property is located in a deficient service area as defined by Bill 178-79. No building permit may be issued until a Reserve Capacity Use Certificate has been issued. The deficient service is
- () The property is located in a traffic area controlled by a "D" level intersection as defined by Bill 178-79, and as conditions change traffic capacity may become more limited. The Basic Services Areas are re-evaluated annually by the County Council.
- () Additional comments:

Eugene A. Sobor
Eugene A. Sobor
Chief, Current Planning and Development

cc: James Hoswell

BALTIMORE COUNTY
DEPARTMENT OF TRAFFIC ENGINEERING
TOWSON, MARYLAND 21204
494-3550STEPHEN E. COLLINS
DIRECTOR

February 9, 1984

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

Item No. 176, 177, 178, 182, 183, 184, 187, 188, 189, & 190 ZAC-Meeting of Jan. 24, 1984
Property Owner:
Location:
Existing Zoning:
Proposed Zoning:

Acreage:
District:

Dear Mr. Jablon:

The Department of Traffic Engineering has no comments for item numbers 176, 177, 179, 182, 183, 184, 187, 188, 189, and 190.

Michael S. Flanagan
Michael S. Flanagan
Traffic Engineering Assoc. II

MSF/ccm

BALTIMORE COUNTY
FIRE DEPARTMENT
TOWSON, MARYLAND 21204 2586
494-4500PAUL H. REINCKE
CHIEF

February 14, 1984

Mr. William Hammond
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, Maryland 21204Attention: Nick Commodari, Chairman
Zoning Plans Advisory Committee

RE: Property Owner: James Elliott

Location: W/S O. Battle Grove Rd 1840' S/W North Point Blvd.

Item No.: 177 Zoning Agenda Meeting of January 24, 1984

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

- () 1. Fire hydrants for the referenced property are required and shall be located at intervals of _____ feet along an approved road, in accordance with Baltimore County Standards as published by the Department of Public Works.
- () 2. A second means of vehicle access is required for the site.
- () 3. The vehicle dead end condition shown at _____ EXCEEDS the maximum allowed by the Fire Department.
- () 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.
- () 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1976 Edition prior to occupancy.
- () 6. Site plans are approved, as drawn.
- (X) 7. The Fire Prevention Bureau has no comments at this time.

REVIEWER: *George M. Heyman*
Planning Group
Special Inspection Division

/mb

BALTIMORE COUNTY
DEPARTMENT OF PERMITS & LICENSES
TOWSON, MARYLAND 21204
494-3610TED ZALESKI, JR.
DIRECTOR

February 1, 1984

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

Dear Mr. Jablon:

Comments on Item # 177 Zoning Advisory Committee Meeting are as follows:

Property Owner: James Elliott
Location: W/S Old Battle Grove Road 1840' S/W North Point Blvd.
Existing Zoning: D.R. 5.5
Proposed Zoning: Variance to permit an accessory structure in the front yard in lieu of the required rear yard.

Acreage: 0.31
District: 15th.

The items checked below are applicable:

- (A) All structures shall conform to the Baltimore County Building Code 1981/Annex Bill 1-82 ~~and other applicable codes~~ and other applicable codes.
- (B) A building/ ~~other~~ permit shall be required before beginning construction.
- (C) Residential: Three sets of construction drawings are required to file a permit application. Architect/Engineer seal is/so not required. Non-reproduced seals and signatures are required on Plans and Technical Data.
- (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" for Commercial uses or 3'0" for One & Two Family use group, 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 1107 and Table 1102, also Section 503.2.
- (F) Requested variance appears to conflict 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 proper 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 - See Section 519.0 of Bill #1-82. Buildings subject to tidal inundation shall have their floors 1 foot above established flood tide or an approximate elevation of 10'0".

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 102 (Plans Review) at 111 W. Chesapeake Ave., Towson.

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

CDB:iss

BALTIMORE COUNTY PUBLIC SCHOOLS

Robert Y. Dubel, Superintendent

Towson, Maryland - 21204

Date: January 26, 1984

Mr. Arnold Jablon
Zoning Commissioner
Baltimore County Office Building
1111 West Chesapeake Avenue
Towson, Maryland 21204

Z.A.C. Meeting of: January 24, 1984

RE: Item No: 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, & 190.
Property Owner:
Location:
Present Zoning:
Proposed Zoning:

District:
No. Acres:

Dear Mr. Jablon:

The above items have no bearing on student population.

Very truly yours,

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

MNP/1h

Enclosures - 17



County Board of Appeals of Baltimore County

Room 200 Court House
Towson, Maryland 21204
(301) 494-3188

December 26, 1984

Re: Case No. 84-275-A
James ElliottJohn W. Nowicki, Esquire
6916 North Point Road
Baltimore, MD 21219

Dear Mr. Nowicki:

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 Y. Eisenhart
Edith Y. Eisenhart, Adm. Secretary

Enclosure

cc: Barbara P. Pinkerton
James Elliott
John B. Contrum, Esquire
Harry Gorge, et ux
Otto Beverungen
People's Counsel
Arnold Jablon
Jean M. St. Jung
James E. Dyer
Norman E. Gerber
James G. Hoswell

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

No. 130516

DATE May 11, 1984 ACCOUNT R-01-615-000

AMOUNT \$80.00

RECEIVED FROM John W. Nowicki, Esquire
FOR Appeal fee on Case #84-275-A (James Elliott)

⑆ 056*****800010 8016A

VALIDATION OR SIGNATURE OF CASHIER

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

No. 85178

DATE Feb 3, 1985 ACCOUNT 01-712

AMOUNT \$ 23.00

RECEIVED FROM John W. Nowicki, Esq., 6916 North Point Road (21219)
FOR Certified copies to Case No. 84-275-A, James Elliott,
(7610 Old Battle Grove Road)

⑆ 0059*****230010 8058F

VALIDATION OR SIGNATURE OF CASHIER

Form CA2

Jobi Adams - 494-3999
Civil Assignment Commissioner
Sentiment Court

Shirley Harris - 494-3999
Mistake Assignment Clerk
Medical Records

TO:

John W. Nowicki, Esq.

County Board of Appeals
of Baltimore County

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

CIRCUIT COURT FOR BALTIMORE COUNTY

ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Beale Avenue
P.O. Box 8754
Towson, Maryland, 21204-0754

February 28, 1985

Kathy Ruckman - 494-3999
Assignment - Jury - Motions
Shirley Ponnell
Assistant Clerk Typist

Irma Summers - 494-3999
Assignment - Non-Jury - Motions
Freddie Greve
Assistant Clerk Typist

RE: Non-Jury- 85-CG-296- Mr. James Elliott vs. Board of Appeals of Balto. Co. & People's Council

HEARING DATE: Wednesday, May 22, 1985, @ 9:30 a.m.
ON THE FOLLOWING: Appeal: 2 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 - 494-3197.

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.

RECEIVED
COUNTY BOARD OF APPEALS
MAY FEB 29 1985

