

4/1/86  
 2) To Board of Appeals, District of Columbia  
 3) Board of Appeals - Reopening of Case  
 SB

MAP 2A  
 E. D.   
 DATE   
 200   
 1000   
 DP

9-7-85  
 7-12-85  
 7-12-85

57-106-SPH  
 1330 Burke Rd.  
 Baltimore, Md.  
 11/23/85

**PETITION FOR SPECIAL HEARING**  
 TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 506.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve placement of a 10'x10' shed on what is for this property the rear yard or waterside based on house placement and location of main entrance, and the fact that inconsistencies in the neighborhood also allow other residents to have their shed waterside.

Property is to be posted and advertised as prescribed by Zoning Regulations.  
 I, or we, agree to pay expenses of the above Special Hearing advertising, posting, etc., upon filing of this Petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.  
 I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser: None  
 Legal Owner(s): Carol Dohme and Donna Alford  
 Signature: Carol Dohme, Donna Alford  
 Address: Hoen Young  
 City and State: Baltimore, Maryland  
 Attorney for Petitioner: None  
 Address: 1330 Burke Road, Baltimore, Maryland 21220  
 Attorney's Telephone No.: 335-4565

ORDERED By The Zoning Commissioner of Baltimore County, this 28th day of August, 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 had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 22nd day of October, 1984, at 10:15 o'clock A.M.

Zoning Commissioner of Baltimore County.  
 MICROFILMED

Case No. 85-106-SPH  
 Item No. 43  
 Date: November 30, 1984  
 W/S of Burke Road, 860' S of the intersection of Burke Road (1330 Burke Road) 15th Election District Carol Dohme, et al - Petitioners

- 1. Copy of Petition
- 2. Copy of Description of Property
- 3. Copy of Certificate of Posting (1 sign)
- 4. Copy of Certificates of Publication
- 5. Copy of Zoning Advisory Committee Comments
- 6. Copy of Comments from the Director of Planning
- 7. Planning Board Comments and Accompanying Map
- 8. Copy of Order to Enter Appearance
- 9. Copy of Order - Zoning/Planning Commissioner
- 10. Copy of F.at of Property
- 11. 200' Scale Location Plan
- 12. 1000' Scale Location Plan
- 13. Memorandum in Support of Petition
- 14. Letter(s) from Protestant(s)
- 15. Letter(s) from Petitioner(s)
- 16. Protestants' Exhibits 1 to 14
- 17. Petitioners' Exhibits 1 to 9
- 18. Letter of Appeal (2)

Ms. Carol Dohme, Ms. Donna Alford, Hoen Young Petitioner  
 Mr. and Mrs. Anthony Lombardi Protestants  
 Phyllis C. Friedman, Esquire People's Counsel  
 Norman E. Gerber Request Notification  
 James Hoswell  
 Arnold Jablon  
 Jean M. H. Jung  
 James E. Dyer  
 Mr. Chris Lamartina, President Bayleys Quarters Improvement Association, Inc. 1124 Bayleys Quarters Road Baltimore, Maryland 21220

RECEIVED  
 MICROFILMED

**CIRCUIT COURT FOR BALTIMORE COUNTY**  
**CIVIL GENERAL**

DOCKET 14 PAGE 224 CASE NO. 85CG2764 CATEGORY APPEAL

CAROL DOHME  
 ATTORNEYS  
 Turnbull, Min & Farmer, John Grason, Turnbull, II, 706 Washington Ave., (A) 428-0700  
 John W Nowicki 6916 North Point Road (19) 477-8400  
 Phyllis Cole Friedman Peter Max Zimmerman Room 223, Court House (04) 494-2168

COSTS  
 (1) August 30, 1985 Plaintiff's Appeal from decision of Baltimore County Board of Appeals fd.  
 (2) Sept 4, 1985 - Certificate of Notice fd.  
 (3) Sept. 9, 1985 - Pltiff's Petition to Accompany Order for Appeal and Request for hearing fd.  
 (4) Sept. 13, 1985 - App. of Phyllis Cole Friedman, Peter Max Zimmerman as attorneys' for the Def't, People's Counsel for Baltimore County & same day Answer to Accompany Order for Appeal fd.  
 (5) Oct 7, 1985- Plaintiff's petition for extension of time for transmittal of record fd.  
 (6) Oct. 28, 1985 Order of Court extending time for transmittal/to Nov. 28, 1985 fd. (JER)  
 (7) Nov 27, 1985 - Transcript of Record fd.  
 (8) Nov 27, 1985 - Notice of Filing of Record fd. Copy sent.  
 (9) Dec. 27, 1985 - Pltiff's Memorandum fd.  
 (10) Jan. 24, 1986 - Def't's (People's Counsel for Baltimore County) Memorandum fd.  
 (11) March 10, 1986- Notice to strike the app. of John Grason Turnbull II and enter the appearance of John W Nowicki as attorney for the plaintiff fd.  
 April 16, 1986. Hon. Leonard S. Jacobson. Hearing had. Opinion to be fd.  
 (12) June 6, 1986- Opinion of the Court that the board is hereby REVERSED (LSJ)

DOCKET 14 PAGE 224 CASE NO. 85 CG- 2764

CAROL DOHME, ET AL # 85-106-SPH

Aug. 28, 1984 Petition filed  
 Nov. 20 ZC GRANTED petition  
 " 30 Appealed by People's Counsel  
 Dec. 10 Appealed by Mr. and Mrs. Anthony Lombardi and Chris Lamartina, President, Bayleys Quarters Improvement Assn.  
 " 12 Motion to Dismiss appeal filed by County Attorney for Z.C.  
 Jan. 9, 1985 P.C. Motion to Strike Appearance of Z.C.  
 Mar. 7 Hearing by Board on Motions ONLY  
 " 18 Board GRANTED P.C. Motion to Strike and DENIED Z.C. Motion to Dismiss  
 July 11 Hearing by Board  
 Aug. 1 Board ORDERED - that shed is determined to be located in the front yard of Petitioner's property and therefore petition for SPH is DENIED  
 " 30 Order for Appeal filed in the Circuit Court by John Grason Turnbull, II, Esq. Counsel for Petitioner  
 Sept. 4 C. of N. sent  
 Oct. 28 Order of Court extending filing time to 11/23/85  
 Nov. 27 Record of proceedings filed in the Circuit Court

June 5, 1986 Circuit Court (Judge L. S. Jacobson) REVERSED the Board 6/10/86 - cc: A. Jablon B. Dubois J. Howell

IN RE: PETITION SPECIAL HEARING W/S of Burke Road, 860' of the intersection of Burke Road - 15th District CAROL DOHME, et al., Petitioners

BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY Case No. 85-106-SPH

LIST OF EXHIBITS

Mailwest Limited Partnership [Board of Appeals Case No. 8-88-SPH (November 20, 1980)] . . . . . 1

1948 Zoning Regulations and Restrictions for Baltimore County, 501.6, Item 6 in the Section Entitled "BOARD OF ZONING APPEALS." . . . . 2

Reporter's Notes to Case Rule Charter, pgs. 121-123 . . . . 3

In the second place, cases in Baltimore County have a tendency to recycle. When the Zoning Commissioner appears as a party to defend a position he must consequentially be on the side of either a petitioner or a protestant. Having once taken a side, there is no way he can regain his virgin objectivity if the case is remanded or if a similar problem surfaces again.

Finally, even if represented by counsel, it is simply undignified for a quasi-judicial decision-maker to appear outside of his office to advocate his decision before a board of appeals. Instead of being dispassionate, he becomes argumentative and diminishes the image and importance of his office.

**CONCLUSION**

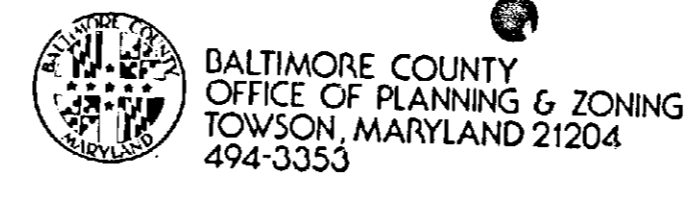
For the above stated reasons, People's counsel moves that the appearance of the zoning commissioner be stricken and his Motion to dismiss be denied.

Respectfully submitted,  
*Phyllis Cole Friedman*  
Phyllis Cole Friedman  
People's Counsel for Baltimore County  
*Peter Max Zimmerman*  
Peter Max Zimmerman, Deputy  
People's Counsel for Baltimore County  
Room 223, Court House  
Towson, Maryland - 21204  
(301) 494-2188

I HEREBY CERTIFY that a copy of the foregoing Motion to Strike Appearance of Zoning Commissioner and accompanying Memorandum has been mailed to Ms. Carol Dohme, 1330 Burke Road, Baltimore, Maryland - 21220, Petitioner Mr. and Mrs. Anthony J. Lombardi, 1328 Burke Road, Baltimore, Maryland - 21220, Protestants and Arnold Jablon, Room 109, 111 W. Chesapeake Avenue, Towson, Maryland, Zoning Commissioner, Malcolm F. Spicer, Jr., Court House, Towson, Maryland - 21204, County Attorney and Douglas T. Saches, Court House, Towson, Maryland - 21204, Assistant County Attorney, on this 9th day of January, 1985.

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

#2725A



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

ARNOLD JABLON  
ZONING COMMISSIONER

December 11, 1984

Ms. Carol Dohme,  
Ms. Donna Alford and  
Mrs. Hoen Young  
1330 Burke Road  
Baltimore, Maryland 21220

RE: Petition for Special Hearing  
W/S Burke Rd., 860' S of the  
intersection of Burke Road  
(1330 Burke Road)  
Carol Dohme, et al - Petitioners  
Case No. 85-106-SPH

Dear Ms. Dohme, Ms. Alford and Mrs. Young:

Please be advised that an appeal has been filed by Mr. and Mrs. Anthony J. Lombardi, Protestants, from the decision rendered by the Zoning Commissioner of Baltimore County in the above referenced matter.

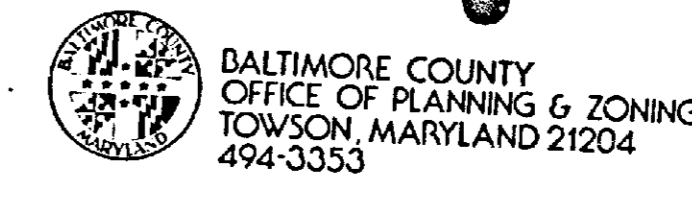
You will be notified of the date and time of the appeal hearing when it is scheduled by the County Board of Appeals.

Very truly yours,

*Arnold Jablon*  
ARNOLD JABLON  
Zoning Commissioner

AJ:eoh

cc: Phyllis C. Friedman  
People's Counsel



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

ARNOLD JABLON  
ZONING COMMISSIONER

December 5, 1984

Ms. Carol Dohme  
Ms. Donna Alford  
Mrs. Hoen Young  
1330 Burke Road  
Baltimore, Maryland 21220

RE: Petition for Special Hearing  
W/S Burke Rd., 860' S of the  
intersection of Burke Road  
(1330 Burke Road)  
Carol Dohme, et al - Petitioners  
Case No. 85-106-SPH

Dear Ms. Dohme, Ms. Alford and Mrs. Young:

Please be advised that an appeal has been filed by Phyllis C. Friedman, Esquire, People's Counsel, 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:eoh

cc: Mr. and Mrs. Anthony Lombardi  
1328 Burke Road  
Baltimore, Maryland 21220

IN RE: PETITION FOR SPECIAL HEARING  
W/S Burke Rd., 860' S of the  
intersection of Burke Road  
(1330 Burke Road)  
15th Election District

Carol Dohme, et al  
Petitioners

- \* BEFORE THE  
\* BOARD OF APPEALS  
\* OF BALTIMORE COUNTY  
\* Case No. 85-106-SPH

\*\*\*\*\*  
Entry of Appearance

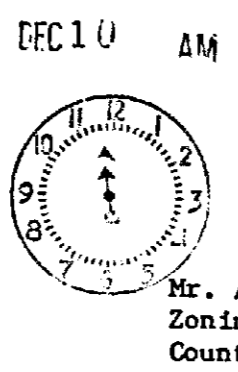
Please enter my appearance as a party in the above captioned matter, pursuant to Section 501.6, B.C.Z.R., and I hereby request that any and all notices be forwarded to my office, including but not limited to hearing dates and/or preliminary or final Orders.

*Arnold Jablon*  
Arnold Jablon  
Zoning Commissioner of Baltimore County  
Room 109 - 111 West Chesapeake Avenue  
Towson, Maryland 21204  
494-3353

**Certificate of Mailing**

IT IS HEREBY CERTIFIED that on this 5th day of December 1984, copies of the foregoing Entry of Appearance were mailed, postage prepaid, by first class delivery to the County Attorney of Baltimore County, People's Counsel for Baltimore County, Petitioner(s) and/or Protestants in the above captioned matter.

*Arnold Jablon*  
Arnold Jablon



1328 Burke Road  
Baltimore, Maryland 21220  
December 7, 1984

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

Dear Mr. Jablon:

We wish to appeal your decision dated November 20, 1984 in Case No. 85-106-SPH which was made as a result of the Special Hearing concerning the property at 1330 Burke Road, Baltimore, Maryland 21220. Enclosed is a check in the amount of \$80.00 to cover filing fees and posting expenses.

Mr. Chris Lamartina, President of the Bowleys Quarters Improvement Association, Inc., has agreed to join with my husband and me in this appeal as a representative of the community. Please include him in any notifications regarding this matter. The Association's address is 1124 Bowleys Quarters Road, Baltimore, Maryland 21220.

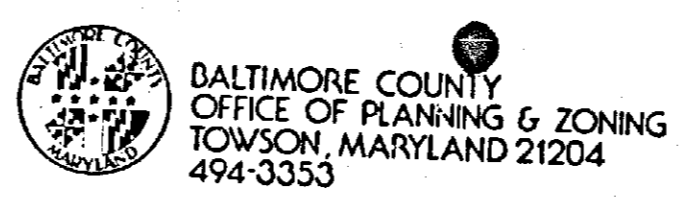
Sincerely yours,

*Anthony J. Lombardi*  
(Mrs.) Anthony J. Lombardi

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

Chris Lamartina, President  
Bowleys Quarters Improvement Association, Inc.

BALTIMORE COUNTY, MARYLAND  
OFFICE OF FINANCE - REVENUE DIVISION  
MISCELLANEOUS CASH RECEIPT  
No. 003127  
DATE: Dec. 11, 1984 ACCOUNT: K-CI-615-100  
AMOUNT: \$80.00  
RECEIVED FROM: Mr. & Mrs. Anthony J. Lombardi  
FOR: Entry of Appearance of Case #85-106-SPH  
VALIDATION OR SIGNATURE OF CARRIER



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

ARNOLD JABLON  
ZONING COMMISSIONER

October 16, 1984

Ms. Donna Alford  
1330 Burke Road  
Baltimore, Maryland 21220

RE: Petition for Special Hearing  
W/S Burke Road, 860' S of  
intersection of Burke Rd (1330 Burke Road)  
Carol Dohme, et al - Petitioners  
Case No. 85-106-SPH

Dear Ms. Alford:

This is to advise you that \$55.46 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. Ariene January, Zoning Office, Room 113, County Office Building, Towson, Maryland 21204, before the hearing.

Sincerely,

*Arnold Jablon*  
ARNOLD JABLON  
Zoning Commissioner

BALTIMORE COUNTY, MARYLAND  
OFFICE OF FINANCE - REVENUE DIVISION  
MISCELLANEOUS CASH RECEIPT  
No. 134375  
DATE: Oct. 20, 1984 ACCOUNT: K-CI-215-000  
AMOUNT: \$55.46  
RECEIVED FROM: Carol R. Dohme  
FOR: Advertising & Posting Case #85-106-SPH  
VALIDATION OR SIGNATURE OF CARRIER

Ms. Donna Alford  
1330 Burke Road  
Baltimore, Maryland 21220

**NOTICE OF HEARING**  
RE: Petition for Special Hearing  
W/S of Burke Road, 860' S of the  
intersection of Burke Road  
(1330 Burke Road)  
Carol Dohme, et al - Petitioners  
Case No. 85-106-SPH (Item #43)

TIME: 10:15 A.M.  
DATE: Monday, October 22, 1984  
PLACE: Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland

AJ:eoh

BALTIMORE COUNTY, MARYLAND  
OFFICE OF FINANCE - REVENUE DIVISION  
MISCELLANEOUS CASH RECEIPT  
No. 133208  
DATE: 10-25-84 ACCOUNT: R-01-615-000  
AMOUNT: 35.00  
RECEIVED FROM: City Fee for Case #85-106-SPH  
FOR: City Fee for Case #85-106-SPH  
VALIDATION OR SIGNATURE OF CARRIER

Aug. 21, 1984

**PETITIONER'S EXHIBIT 7**

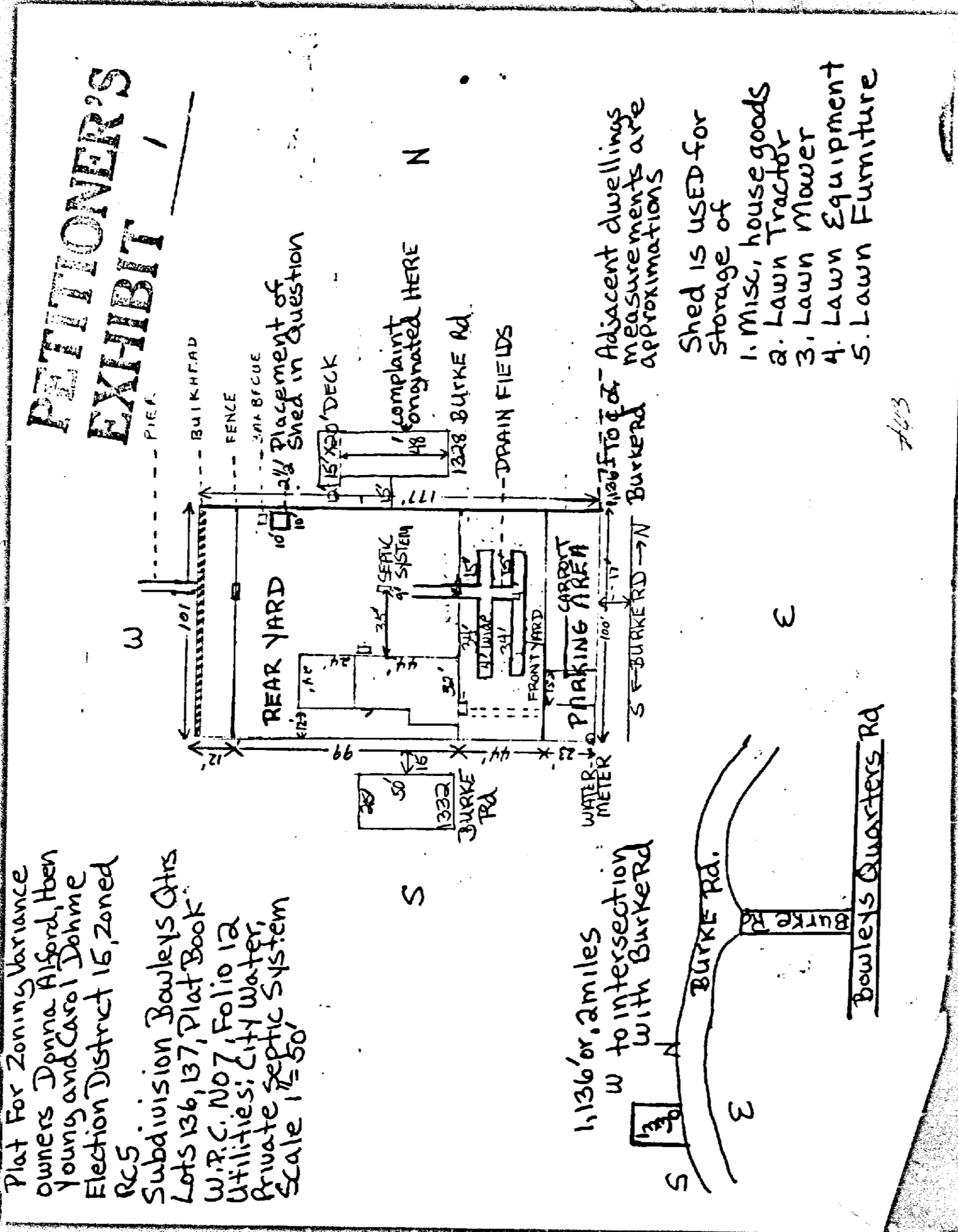
To Whom it May Concern:

My name is Edward B. Lewis, and I live at 1331 Burke Rd.

The car part in question has been on the premises of 1330 Burke Rd. since I had my house built in 1966.

Thank you

Edward B. Lewis  
1331 Burke Rd.  
Baltimore, Md. 21220



**Baltimore County, Maryland**  
PEOPLE'S COUNSEL  
RM. 223, COURT HOUSE  
TOWSON, MARYLAND 21204  
494-2188

2/5/85  
To: Mr. J. L. ...

PHYLIS COLE FRIEDMAN  
People's Counsel

PETER MAX ZIMMERMAN  
Deputy People's Counsel

February 5, 1985

The Honorable William T. Hackett, Chairman  
County Board of Appeals  
Room 200, Court House  
Towson, Maryland 21204

RE: Carol Dohme, et al., Petitioners  
Zoning Case No. 85-106-SPH

Dear Chairman Hackett:

There are presently pending before the Board the following motions in the above-referenced matter:

1. Motion to Dismiss filed by Zoning Commissioner.
2. Motion to Strike Appearance filed by People's Counsel.

1. Memorandum in Support of People's Counsel's Motion to Strike Appearance of Zoning Commissioner and Opposition to the Zoning Commissioner's Motion to Dismiss.

These do not directly concern either the Petitioners or the Protestants. So that we might have comity instead of comedy, People's Counsel respectfully requests the Board to hear these motions prior to the day set for the hearing of this matter on the merits or, in the alternative, hear the motions only on the date presently set for the hearing.

Very truly yours,  
Phyllis Cole Friedman  
Phyllis Cole Friedman  
People's Counsel for Baltimore County

cc: Ms. Carol Dohme  
Mr. and Mrs. Anthony J. Lombardi  
Arnold Jablon  
Malcolm F. Spicer, Jr., Esquire  
Douglas T. Saches, Esquire

PCF:sh

fcb 6 AM  
ZONING DEPARTMENT

October 17, 1984

We, the undersigned residents of Burke Road, are opposed to the granting of a zoning variance permitting placement of a storage shed on the waterfront of the property at 1330 Burke Road. The building line along the waterfront on Burke Road has been long-established and granting of a variance will set a precedent which could lead to the proliferation of such structures, obstructing our view and cluttering the waterfront. In the recent past, the building code has not allowed several residents to extend building additions and alterations beyond the existing building line and, at present, there are no structures beyond the long-established building line.

NAME (PRINT)	ADDRESS	SIGNATURE
John Bongiorno	1312 Burke Rd.	[Signature]
Maurice E. ...	1326 Burke Rd.	[Signature]
Pat ...	1322 Burke Rd.	[Signature]
John E. Butler	1322 Burke Rd.	[Signature]
Mrs. J. ...	1334 Burke Rd.	[Signature]
Dorothy E. ...	1344 Burke Rd.	[Signature]
John ...	1316 Burke Rd.	[Signature]
Charles ...	1300 Burke Rd.	[Signature]
Charles E. ...	1300 Burke Rd.	[Signature]
Sharon ...	1318 Burke Rd.	[Signature]
Del ...	1312 Burke Rd.	[Signature]
Mary ...	1304 Burke Rd.	[Signature]
Shirley ...	1304 Burke Rd.	[Signature]

**PROTESTANTS EXHIBIT 1**

**PETITIONER'S EXHIBIT**

3/1/85  
To: Mr. J. L. ...

**BALTIMORE COUNTY, MARYLAND**  
INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Zoning Commissioner  
Date: February 27, 1985

FROM: Office of Law

SUBJECT: Case #85-106-SPH Carol Dohme, et al

Please let me have your thoughts as soon as possible regarding the Motion to Strike your appearance in this case.

I need to file an Answer and Memorandum in the near future.

Douglas T. Saches  
Assistant County Attorney

DTS/bj

MAR 1 AM  
ZONING DEPARTMENT

IN RE: PETITION SPECIAL HEARING \* BEFORE THE  
W/S of Burke Road, 860' \* BOARD OF APPEALS  
of the intersection of \* OF BALTIMORE COUNTY  
Burke Road (1330 Burke \*  
Road) - 15th Election \*  
District \* Case No. 85-106-SPH - D O H M E

PEOPLE'S COUNSEL'S MOTION TO STRIKE APPEARANCE OF ZONING COMMISSIONER

People's Counsel moves to strike the appearance of the Zoning Commissioner on the grounds that:

1. The Zoning Commissioner lacks the prerequisite legislative authority to intervene as a party before the Board of Appeals on appeal from his decision;
2. The hearing before the Board is de novo and the opinion of the zoning commissioner is not relevant;
3. As a matter of public policy, a quasi-judicial official should not appear as a party in defense of his decision before an appellate board.

And for the reasons more fully set forth in the attached Memorandum in Support of this Motion.

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

Peter Max Zimmerman  
Peter Max Zimmerman, Deputy People's Counsel for Baltimore County

Room 223, Court House  
Towson, Maryland - 21204  
(301) 494-2188

#2725A

**BALTIMORE COUNTY, MARYLAND**  
INTER-OFFICE CORRESPONDENCE

MR. ARNOLD JABLON  
TO: Zoning Commissioner  
Date: October 15, 1984

FROM: PAUL J. SOLOMON, Head  
Environmental Planning Section, OP2

SUBJECT: Zoning Petition, Carol Dohme, et al  
#85-106-SPH

This petition is consistent with the requirements of the Chesapeake Bay Critical Area requirements.

Paul J. Solomon  
PAUL J. SOLOMON, Head  
Environmental Planning Section

PJS:vh

CY: Norman E. Gerber, Director  
Office of Planning and Zoning

Robert W. Marriott, Jr.  
Deputy Director of Planning

Andrea Van Arsdale  
Coastal Zone Planner, OPZ

James G. Hoswell, Planner  
Office of the Director

Colin K. Thacker  
Dept. of Health

**BALTIMORE COUNTY, MARYLAND**  
INTER-OFFICE CORRESPONDENCE

Arnold Jablon  
TO: Zoning Commissioner  
Date: October 16, 1984

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

SUBJECT: Zoning Petition Nos. 85-105-A, 85-106-SPH, 85-107-A, 85-108-A, 85-109-A, 85-110-A, 85-111-A, 85-112-A, 85-113-A, 85-114-A, 85-115-A, 85-116-A, 85-117-A, 85-118-A, 85-119-A, 85-120-A, and 85-121-A

There are no comprehensive planning factors requiring comment on these petitions.

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

NEG/JGH/sf

**BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE**

October 15, 1984

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

Mrs Donna Alford  
1330 Burke Road  
Baltimore, Maryland 21220

RE: Case No. 85-106-SFH (Item No. 43)  
Petitioner - Donna Alford, et al  
Special Hearing Petition

Dear Mrs Alford:

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.

It has been brought to my attention that the subject properties are not combined under one map and bounds description. If this is the case and regardless whether your petition is granted or not, the above situation must be rectified.

As you are aware, the location of the existing shed has precipitated a complaint (C-85-10) with this office. A decision on said complaint is being held in abeyance until this special hearing has been adjudicated.

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

MEC:mb  
Enclosures

**BALTIMORE COUNTY DEPARTMENT OF PUBLIC WORKS TOWSON, MARYLAND 21204**

HARRY J. PISTEL, P. E.  
DIRECTOR

September 28, 1984

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

Re: Item #43 (1984-1985)  
Property Owner: Carol Dohme, et al  
W/S Burke Rd. 1136' S. from centerline  
Burke Rd.  
Acres: 100 x 177  
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 Comments:**

Baltimore County highway and utility improvements are not directly involved.

Burke 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 property is in a "Critical Area." There will be no adverse impact to the critical area.

Very truly yours,  
Charles E. Burrows, P.E., Asst. Chief  
Bureau of Public Services

GSB:EAM:FR:rss  
2-SW Key Sheet  
5 NE 45 Pos. Sheet  
NE 2 L Topo  
98 Tax Map

**BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING TOWSON, MARYLAND 21204 494-2211**

NORMAN E. GERDER  
DIRECTOR

10-4-84

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

Re: Zoning Advisory Meeting of 8-28-84  
Item # 43  
Property Owner: Carol Dohme, et al  
Location: 1136 Burke Rd.  
S of Burke 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.

- (X) There are no site planning factors requiring comment.
- (X) A County Review Group Meeting is required.
- (X) 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.
- (X) A record plat will be required and must be recorded prior to issuance of a building permit.
- (X) The access is not satisfactory.
- (X) The circulation on this site is not satisfactory.
- (X) The parking arrangement is not satisfactory.
- (X) Parking calculations must be shown on the plan.
- (X) This property contains soils which are defined as wetlands, and development on these soils is prohibited.
- (X) Construction in or alteration of the floodplain is prohibited under the provisions of Section 22-98 of the Development Regulations.
- (X) Development of this site may constitute a potential conflict with the Baltimore County Master Plan.
- (X) The amended Development Plan was approved by the Planning Board on [unclear].
- (X) Landscaping should be provided on this site and shown on the plan.
- (X) 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 [unclear].
- (X) 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.
- (X) Additional comments:
  - This property is located in the Chesapeake Bay Critical Area. Additional comment on environmental evaluation will be provided by the Planning Division.

Eugene A. Boer  
Chief, Current Planning and Development

10/22  
85-106-SFH

**BALTIMORE COUNTY DEPARTMENT OF TRAFFIC ENGINEERING TOWSON, MARYLAND 21204 494-3550**

STEPHEN E. COLLINS  
DIRECTOR

August 27, 1984

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

Item No. 43 (43) 45, and 46 ZAC Meeting of August 28, 1984  
Property Owner:  
Location:  
Existing Zoning:  
Proposed Zoning:

Acres:  
District:

Dear Mr. Jablon:

The Department of Traffic Engineering has no comments for item number 41, 42, 43, 45, and 46.

Richard S. Flanagan  
Traffic Engineering Assoc. II

MSP/ocm

10/22  
85-106-SFH

**BALTIMORE COUNTY FIRE DEPARTMENT TOWSON, MARYLAND 21204-2566 494-4500**

PAUL H. REINCKE  
CHIEF

September 10, 1984

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

Attention: Nick Commodari, Chairman  
Zoning Plans Advisory Committee

RE: Property Owner: Carol Dohme, et al  
Location: W/S Burke Road 1136' S. from c/l Burke Road  
Item No.: 43 Zoning Agenda: Meeting of 8/28/84

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.

Noted and Approved: George M. McGehee  
Fire Prevention Bureau

REVIEWER: [unclear] Special Inspection Division

**BALTIMORE COUNTY DEPARTMENT OF PERMITS & LICENSES TOWSON, MARYLAND 21204 494-3610**

RED ZALEM, JR.  
DIRECTOR

August 31, 1984

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

Dear Mr. Jablon:

Comments on Item # 43 Zoning Advisory Committee Meeting are as follows:

Property Owner: Carol Dohme, et al  
Location: W/S Burke Road 1136' S. from c/l Burke Road  
Existing Zoning: R.C. 5 (CRITICAL AREA)  
Proposed Zoning: Special hearing to approve replacement of 10 x 10 shed, etc.

Acres: 100 x 177  
District: 15th.

The items checked below are applicable:

- (X) All structures shall conform to the Baltimore County Building Code 1981/Council Bill 1-82 and other applicable codes.
- ( ) A building/ permit shall be required before beginning construction.
- ( ) Residential: Three sets of construction drawings are required to file a permit application. Architect/Engineer seal is/are not required. Non-reproduced seals and signatures are required on Plans and Technical data.
- ( ) Commercial: Three sets of construction drawings with a Maryland Registered Architect or Engineer shall be required to file a permit application.
- ( ) An exterior wall erected within 6'0" for Commercial uses or 3'0" for One & Two Family use groups on 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 101, Line 2, Section 101f and Table 101g, also Section 503.2.
- ( ) Requested variance appears to conflict with the Baltimore County Building Code, Section/s [unclear].
- ( ) A change of occupancy shall be applied for, along with an alteration permit application, and three required sets of drawings including how the structure will meet the Code requirements for the proposed change. Drawings may require a professional seal.
- ( ) Before this office can comment on the above structure, please have the owner, thru the services of a Registered in Maryland Architect or Engineer certify to this office, that the structure for which a proposed change in use is proposed can comply with the height/area requirements of Table 505 and the required construction classification of Table 101.
- (X) Comments - Section 519.1 could be applicable to this property. See Bill 1-82.

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

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

**SPECIAL NOTE FOR CONSTRUCTION IN TIDAL OR RIVERINE AREAS**

BILL 1-82 BALTIMORE COUNTY BUILDING CODE 1981  
EFFECTIVE MARCH 25, 1982

SECTION 519 A section added to read as follows:

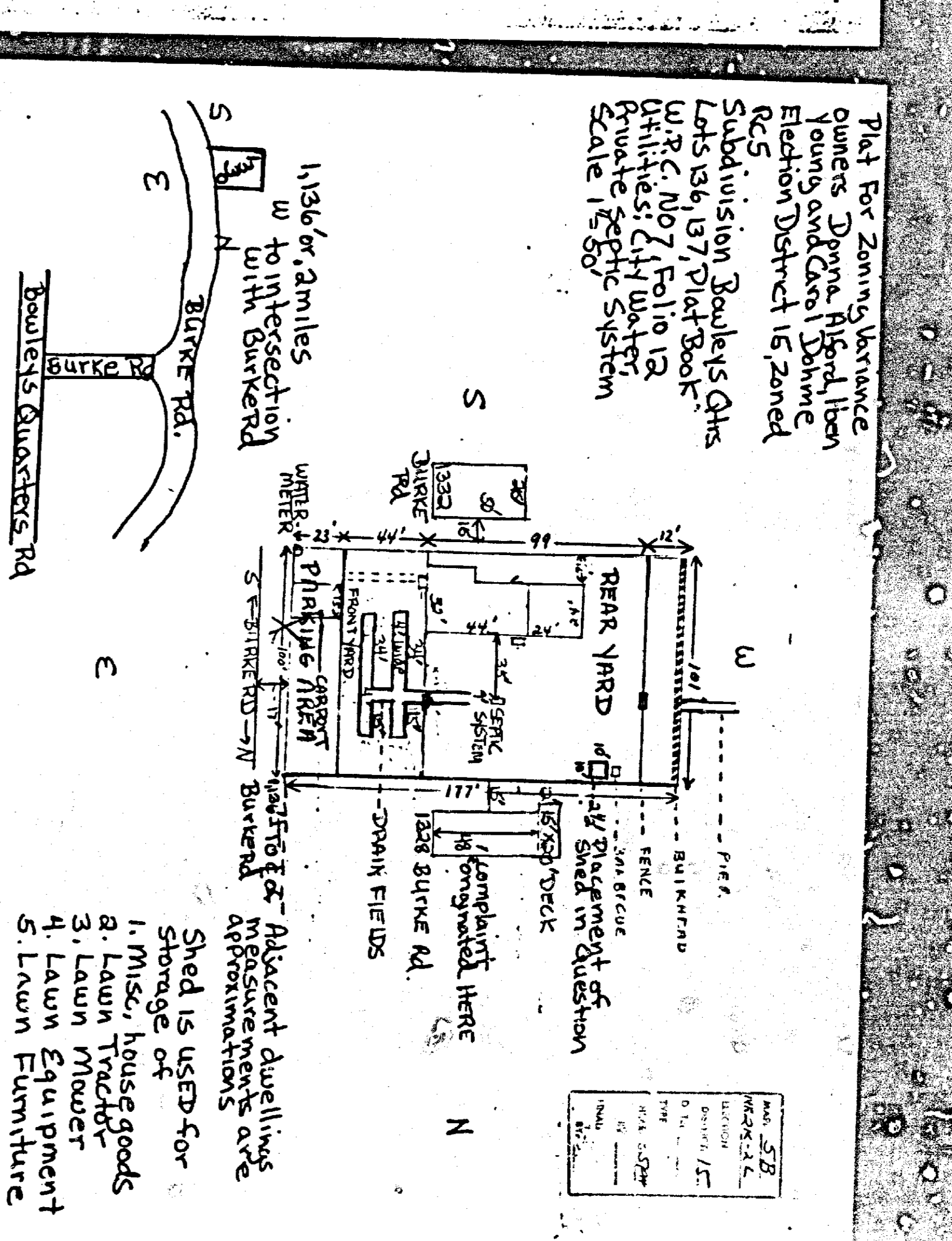
SECTION 519.0 CONSTRUCTION IN AREAS SUBJECT HAZARD TO FLOODING

519.1 AREAS SUBJECT TO INUNDATION BY TIDEWATERS:

- Whenever building or additions are constructed in areas subject to inundation by tides, the building's lowest floor (including basement) shall be not lower than one (1) foot above the 100 year flood elevation, as established by the U.S. Army Corps of Engineers or the Federal Flood Insurance study, whichever is more restrictive. These buildings or additions shall be designed and adequately anchored to prevent flotation, collapse, or lateral movement of the structure with materials resistant to flood damage.
- Crawl space under buildings constructed in the Tidal Plain, as determined by the U.S. Army Corps of Engineers or the Federal Flood Insurance study, whichever is the more restrictive, shall be constructed so that water will pass through without resulting debris causing damage to the improvements of any property.
- New or replacement utility systems, including but not limited to water supply, sanitary sewers, electric, gas and oil, must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and require onsite waste disposal systems to be located so as to avoid impairment of them or contamination from them during flooding.

519.2 RIVERINE AREAS SUBJECT TO INUNDATION BY SURFACE WATERS WITHIN THE 100 YEAR FLOOD PLAIN.

- No structures or additions shall be constructed within the 100 year flood plain of any watercourse. The 100 year flood plain shall be based upon the Federal Flood Insurance study or the Department of Public Works, whichever is the more restrictive; this determination shall include planned future development of the watershed area.
- Reconstruction of residential dwelling units shall be governed by Sections 106.0 or 123.0 as applicable, except that rebuilding of residential dwelling units damaged in excess of 50 percent of physical value shall also be governed by the provisions of Subsection 519.1 of this section.
- Reconstruction of other than residential buildings or structures in the riverine areas shall be made to conform to 519.1 when damage exceeds 50 percent of physical value.



85-106-SPH

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  
28th day of August, 1984.

*Arnold Jablon*  
ARNOLD JABLON  
Zoning Commissioner

Petitioner Donna Alford, et al  
Petitioner's Attorney

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

85-106-SPH

CERTIFICATE OF PUBLICATION

TOWSON, MD., October 4, 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., appearing on  
October 4, 1984.

THE JEFFERSONIAN,

*J.P. Venetaki*  
Publisher

Cost of Advertising 24.00

PETITION FOR SPECIAL HEARING

16th Election District  
LOCATION: West side of  
Burke Road, 800 feet South  
of the intersection of Burke  
Road (1330 Burke Road)  
DATE & TIME: Monday, Oc-  
tober 22, 1984 at 10:15 a.m.  
PUBLIC HEARING: Room  
106, County Office Building,  
111 W. Chesapeake Avenue,  
Towson, Maryland

The Zoning Commissioner of  
Baltimore County, by authority  
of the Zoning Act and Regu-  
lations of Baltimore County,  
will hold a public hearing:  
\* Petition for Special Hearing  
under Section 500.7 of the Bal-  
timore County Zoning Regula-  
tions, to determine whether or  
not the Zoning Commissioner  
and/or Deputy Zoning Com-  
missioner should approve  
placement of a 10 foot by 18  
foot shed on what is for this  
property the rear yard or  
waterside based on house  
placement and location of main  
entrance and the fact that in-  
consistencies in the neigh-  
borhood also allow other resi-  
dents to have their sheds  
waterside.

Being the property of Carol  
Dohme, et al as shown on the  
plat filed with the Zoning  
Office.

In the event that this Peti-  
tion is granted, a building  
permit may be issued within  
the thirty (30) day appeal pe-  
riod. The Zoning Commission-  
er will, however, entertain any  
request for a stay of the issu-  
ance 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  
Oct. 4,

Petition for  
Special Hearing

16th Election District  
LOCATION: West side of Burke  
Road, 800 feet South of the inter-  
section of Burke Road (1330 Burke Road).  
DATE AND TIME: Monday, Octo-  
ber 22, 1984 at 10:15 a.m.  
PUBLIC HEARING: Room 106,  
County Office Building, 111 West  
Chesapeake Avenue, Towson,  
Maryland.

The Zoning Commissioner of Bal-  
timore County, by authority of the Zon-  
ing Act and Regulations of Baltimore  
County, will hold a public hearing:  
Petition for Special Hearing under  
Section 500.7 of the Baltimore County  
Zoning Regulations, to determine  
whether or not the Zoning Commis-  
sioner and/or Deputy Zoning Commis-  
sioner should approve placement of a  
10 foot by 18 foot shed on what is for  
this property the rear yard or water-  
side based on house placement and lo-  
cation of main entrance and the fact  
that inconsistencies in the neigh-  
borhood also allow other residents to have  
their sheds waterside.

Being the property of Carol Dohme,  
et al as shown on the plat filed with the  
Zoning Office.

In the event that this Petition is  
granted, a building permit may be is-  
sued within the thirty (30) day appeal  
period. The Zoning Commissioner  
will, however, entertain any request  
for a stay of the issuance of said per-  
mit 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

The Times

Middle River, Md., Oct 4 19 84

This is to Certify, That the annexed

*Peter*  
Reg Po # 59138

was inserted in The Times, a newspaper printed  
and published in Baltimore County, once in each  
of one successive  
weeks before the 4th day of

Oct, 19 84  
*John D. Wolfe*  
Publisher.

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY

Towson, Maryland

District 15th

Date of Posting 10-5-84

Posted for: Special Hearing - placement of a 10' x 18' shed on waterside property

Petitioner: Donna Alford, Helen Young & Carol Dohme

Location of property: #1330 Burke Rd.

Location of Signs: In front yard of above location

Remarks:

Posted by *John H. Sullivan*  
Signature

Date of return:

Number of Signs: 1

EXHIBIT 2

ZONING REGULATIONS AND RESTRICTIONS FOR BALTIMORE COUNTY

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ADOPTED BY THE COUNTY COMMISSIONERS OF BALTIMORE COUNTY, Enabling Acts of the General Assembly of Maryland:

Session of 1941, Chapter 247
Session of 1943, Chapter 877
Session of 1945, Chapter 502
Session of 1947, Chapter 915

CHRISTIAN H. KAHL, President

JOHN R. HAUT

BREMEN A. TRAIL, County Commissioners of Baltimore County

Codified Sept. 1, 1948 by

CHAS. H. DOING, Zoning Commissioner of Baltimore County.

ZONING REGULATIONS AND RESTRICTIONS FOR BALTIMORE COUNTY

ORDERS AND RESOLUTIONS OF THE COUNTY COMMISSIONERS OF BALTIMORE COUNTY ADOPTING ZONING REGULATIONS AND RESTRICTIONS AND AMENDMENTS THERETO TO DATE.

The County Commissioners of Baltimore County having received from the Zoning Commissioner of Baltimore County his Final Report (as authorized by the aforesaid Act of 1941) recommending the adoption of certain zoning regulations and restrictions with respect to the erection, construction, reconstruction, alteration, repair and use of buildings, structures and land within the confines of Baltimore County, and having given fifteen days' notice in a newspaper of general circulation throughout Baltimore County of the place and time of hearings upon Final Reports and said public hearings having been held before the County Commissioners of Baltimore County, pursuant to said notices, and further continued hearings having been thereafter held thereon, and after thorough consideration, investigation and study, the following zoning regulations and restrictions and amendments were adopted:

9. He shall have the power to prescribe rules and regulations for the conduct of hearings before him, to issue summonses for and compel the appearance of witnesses, to administer oaths and to preserve order.

10. He shall have the power to require the production of plats of developments or sub-divisions of land, or of any land in connection with which application for building or use permits or petitions for special permits or reclassification or temporary use shall be made, such plats to show the location of streets or roads and of buildings or other structures proposed to be erected, repaired, altered or added to. All such plats shall be drawn to scale and shall clearly indicate the proposed location, size, front, side and rear setbacks from property lines and elevation plans of proposed buildings or other structures, and such details shall conform in all respects with Zoning regulations. No such plats or plans, showing the opening or laying out of roads or streets, shall be approved by the Zoning Commissioner unless such plats or plans shall have been previously approved by the Highways Department of Baltimore County and the Baltimore County Metropolitan District.

11. Any person or persons, jointly or severally, or any taxpayer or any official, department, board or bureau of Baltimore County, feeling aggrieved by any decision of the Zoning Commissioner shall have the right to appeal therefrom to the Board of Zoning Appeals. Notice of such appeal shall be filed, in writing, with the Zoning Commissioner within ten days from the date of any final Order appealed from. Such appeals shall be heard and disposed of by the Board of Zoning Appeals as hereinafter provided.

12. Upon such appeal, the Zoning Commissioner shall present to the Board of Zoning Appeals all pertinent papers in connection therewith. Notice of such appeal, and the date of hearing or continuance thereof, shall be given to the attorneys for the respective parties, if any, or to such person, or persons, as may be designated at the original hearing to receive such notice.

13. No new petition for reclassification, or special permit or temporary use, shall be entertained by the Zoning Commissioner in any case which has been considered and acted upon by him until the expiration of six months from the date of his final Order thereon. Where an appeal is taken from any decision of the Zoning Commissioner to the Board of Zoning Appeals, the Zoning Commissioner shall not entertain any new petitions for reclassification, or special permit, until the expiration of six (6) months from the date of the final Order of said Board of Zoning Appeals.

14. He shall keep accurate records of all proceedings pending before him and before the Board of Zoning Appeals and such records shall be open to public inspection in his office. He shall keep an accurate account of all money received by the Zoning Department and shall turn the same over to the Chief Clerk and Auditor of the County Commissioners.

BOARD OF ZONING APPEALS:

1. A Board of Zoning Appeals is hereby established as provided for under the 1941 Zoning Act, said Board shall organize and elect a Chairman. Their successors in office shall likewise elect a Chairman, whose term as Chairman shall continue during the term of office of said Board. In case of a vacancy in the office of Chairman, the Board, upon the appointment of a successor, shall elect a new Chairman who shall continue in office for the balance of the term of such Board.

2. Two members of the Board of Zoning Appeals shall constitute a quorum. All decisions of the Board shall be concurred in by at least two members thereof.

3. Meetings of the Board shall be held from time to time upon the call of the Zoning Commissioner. All hearings before the Board shall be open to the public. The Board shall prescribe rules and regulations for the conduct of hearings before it.

4. The Board shall have the right to employ such technical, expert and other assistance as in its judgment may be necessary to aid them in the proper investigation and determination of any questions pending before it. It shall have the right and power to summon and compel the attendance of witnesses before it and to administer oaths. It shall keep minutes of its proceedings and shall maintain, in the office of the Zoning Department, a public record of all proceedings before it.

5. It shall cause a stenographic record to be made of all testimony presented at hearings before it and shall have said record transcribed whenever called upon to do so as hereinafter set forth. Upon an appeal from said Board or upon any Order or Writ of the Circuit Court for Baltimore County, the Board shall submit to the Court the original or certified copies of all papers in connection with such proceeding as may have been filed with it together with a transcript of the testimony taken before the said Board, but only after payment of the reasonable cost thereof shall have been received by the Zoning Commissioner, from the party entering such appeal.

6. Appeals from the Zoning Commissioner shall be heard by the Board of Zoning Appeals de novo. At such hearing, all parties, including the Zoning Commissioner, shall have the right to be represented by counsel, to produce witnesses and to file and submit all proper oral or written evidence.

7. The decision and order of the Board of Zoning Appeals may affirm or reverse in whole, or in part, any decision or order of the Zoning Commissioner, or may modify the Order appealed from and direct the issuance of a permit for such modified use as it may deem proper, subject, however, to zoning regulations and restrictions.

CHARGES AND FEES:

The charges and fees for procedures, before Zoning Commissioner to be paid by petitioner and before the Board of Zoning Appeals by the appellant, shall be as follows:

Table with 2 columns: Description of fee and Amount. (a) Petition for Reclassification \$18.00-20.00, (b) Petition for Special Permit 18.00, (c) Petition for Exception to Zoning Regulations 18.00, (d) Petition for Special Hearing 15.00, (e) Petition for Temporary Use Permit 8.00, (f) Appeal to Board of Zoning Appeals 22.00.

The above charges include cost of advertising and posting of property. However, if more than one sign is required \$3.00 additional for each additional sign will be required and if the advertisement is excessively long there will be an additional charge.

CHRISTIAN H. KAHL, President
BREMEN A. TRAIL
JOHN R. HAUT
County Commissioners of Baltimore County.

EXHIBIT 3

Revised BALTIMORE COUNTY CHARTER 1963 with Reporters Notes and Index

DALE ANDERSON, County Executive
WILLIAM E. FORNSOFF, Administrative Officer

Members of the County Council

Table listing members of the County Council by district: Samuel J. Danton (First), Milton H. Miller (Second), G. Walter Tyler, Jr. (Third), George W. H. Pierson (Fourth), Harry J. Bartenfelder (Fifth), Francis C. Barrett (Sixth), Wallace A. Williams (Seventh).

R. BRUCE ALDERMAN, County Solicitor

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Preface

This publication constitutes a compilation of the Baltimore County Charter with all revisions or amendments incorporated therein which were enacted by the County Council prior to January 1, 1963. Also included in this volume are the original Reporter's Notes to the Proposed Home Rule Charter of Baltimore County and the Report of the Charter Revision Committee of Baltimore County (1962).

Pursuant to Section 1202 of the Charter, all amendments incorporated herein were referred to referendum and adopted by the registered voters of Baltimore County.

This volume was edited and indexed by R. Bruce Alderman, County Solicitor, Philip F. Bennett and G. Warren Mix, Assistant County Solicitors, and published by King Brothers, Inc., 208 N. Calvert Street, Baltimore, Maryland 21202, by Order of the County Council.

THE CHARTER

Editor's note—Except for change and similar editorial changes, this CHARTER is the County election held November 1962.

Article I. Name and Officers
101. Body corporate and politic.
102. Exercise of powers.
103. Name and boundaries.

Article II. The Charter
201. Composition, mode of election
202. Qualification.
203. Term of office; qualifying time
204. Compensation.
205. Vacancies.
206. Councilmanic districts.
207. Revision of councilmanic districts
208. Sessions of the county council.

Article III. The Legislative Power
301. Composition.
302. Officers.
303. Action by council.
304. Enumerated powers not to be exercised.
305. Limitation on exercise of county powers.
306. Legislative powers of county departments.
307. The Metropolitan District.
308. Legislative procedure.
309. The referendum.
310. Noninterference with executive powers.
311. County auditor.
312. Biennial audit.

Article IV. The Executive Power
401. Composition.
402. County executive.
403. County administrative officer.
404. Removal of appointive officers.
405. Change in compensation of administrative officer.
406. Temporary appointments.

Article V. The Administrative Power
501. General supervision; restrictions on departments.
502. Composition; restrictions on departments.
503. Offices.
504. Departments.
505. Term and compensation of officers and employees.
506. Staff and clerical personnel.

REORGANIZATION OF DEPARTMENTS UNDER STATE LAW  
Sec. 541. Furthering legislation  
The purpose of this section is to grant an express power to the County Council to reorganize the affairs of any of the departments under State law to the extent that authority therefor may hereafter be granted by the public general laws of this State.

Article VI. County Board of Appeals and Appeal Tax Court  
Sec. 601. County board of appeals; appointments; terms; compensation  
The legal authority for the creation of a County Board of Appeals is contained in Article 25A, Section 5(V) of the State Code, as amended by the Acts of 1953, Chapter 199. This statute expressly authorizes the chartered county to enact local laws providing for the establishment of a County Board of Appeals "whose members shall be appointed by the county council". The chartered county may also provide for the number, qualifications, terms and compensation of the members of the board, for the adoption by the board of rules and practice governing its proceedings, and for appeals from its decisions in the manner prescribed by State law.

During the consideration of the tentative draft of the Charter, some criticism was voiced as to the provisions of Section 601, whereunder the members of the Board of Appeals are to be appointed by the County Council, and not by the County Executive. Although the Charter Board recognized some merit in this criticism, the question seems foreclosed by the express provisions of Article 25A, Section 5(V) of the State Code above quoted. Moreover, the Charter Board also recognized some valid conceptual reasons for making the County Board of Appeals an arm of the legislative branch. Its primary function will undoubtedly be the hearing of appeals in zoning cases, a function long recognized as quasi-legislative in character.

Section 601 of the Charter provides that each member of the County Board of Appeals shall serve for overlapping terms of one year. Under existing law, the members of the Board of Zoning Appeals serve continuously. See Baltimore County Code, Title 23, Section 366(e).

The compensation of the members of the County Board of Appeals is fixed in Section 601 at the figure of \$3,800 per year, this being the same compensation now paid to members of the

Board of Zoning Appeals. Under Section 606, however, the County Council is given the power to raise this compensation and thereafter to decrease it, provided that the figure of \$3,800 per year shall be taken as a minimum. In this connection, the Charter Board recognized the difficulty of a fair compensation for newly created offices before practical experience has demonstrated what figure would present fair and just compensation. The establishment of a minimum figure with power in the County Council to increase it at a later date is the same practice which was followed in Article IV in relation to the salaries of the County Executive and County Administrative Officer. (See: Notes to Sections 402(a), 403(a), and 405, supra.)

Sec. 602. Powers and functions of county board of appeals  
The purpose of this section is to outline the various appeals to be heard by the newly created board. Subsections (a), (b) and (c) refer specifically to appeals from orders now heard by other administrative agencies; subsection (d) is a "catch-all" provision designed to transfer to the County Board of Appeals the right to hear and decide appeals from all other administrative and adjudicatory orders as may now or hereafter be provided by law.

(a) Appeals from Orders Relating to Zoning. Express authority for the transfer of this function from the Board of Zoning Appeals to the County Board of Appeals is derived by the language of Article 25A, Section 5(V). This statute authorizes the County Board of Appeals to hear and decide questions relating to "an application for a zoning variation or exception or amendment of a zoning ordinance map". See: *Montgomery Co. v. Merlands Club*, 202 Md. 270, 96 A. 2d 261 (1952), a zoning case heard on appeal from the decision of the Board of Zoning Appeals in that county.

The last two sentences of Section 602(a) are designed to cause the transfer of all duties and functions of the old Board of Zoning Appeals to the new County Board of Appeals, and to establish the manner in which further appeals may be taken from its decisions to the courts.

(b) Appeals from Orders Relating to Licenses. Sections 210 and 211 of Title 17 of the Baltimore County Code create a Board of License Appeals composed of the Building Engineer, the Zoning Commissioner and the County Health Officer. Their primary functions seem limited to the hearing of appeals dealing with walkabouts, amusements, carnivals, moving pictures, and other licenses covered by the subtitle "Motion Picture and Other Public Exhibitions". The Charter Board was led to believe that although it has been duly constituted by legislative act of the General Assembly, its duties, if any, are extremely limited. To the extent, however, that appeals may hereafter be taken from such administrative orders, the Charter Board deemed it desirable to abolish this additional appellate agency and to transfer all its functions to the new County Board of Appeals.

(c) Appeals from Orders Relating to Building. Under Title 23, Section 283 of the Baltimore County Code, the County Commissioners are given power to hear appeals from orders relating to building permits issued by the Buildings Engineer. Although such permits will, under the Charter, be issued by the Department of Permits and Licenses, the Charter Board felt it essential to preserve the right of appeal now guaranteed by public local law.

(d) Appeals from Executive, Administrative and Adjudicatory Orders. As hereinabove indicated, this subsection is a "catch-all" designed particularly to include within the jurisdiction of the County Board of Appeals all matters now or hereafter covered by Article 25A, Section 5(V) of the Code. In addition to zoning matters, this section of the Code refers to the following case to be heard by the County Board of Appeals:

... the issuance, removal, denial, revocation, suspension, annulment, or modification of any license, permit, approval, exemption, waiver, certificate, registration, or other form of permission or of any adjudicatory order; and the assessment of any special benefit tax \* \* \*

Sec. 603. Rules of practice and procedure  
Express authority for the establishment of special rules of practice and procedure for the County Board of Appeals is contained in Article 25A, Section 5(V)(2) of the State Code. Subsection (4) of Article 25A, Section 5(V) requires that the County Board of Appeals shall hear cases "on petition by any interested person and after notice and opportunity for hearing and on the basis of the record before the board." This provision of controlling law forms the basis for the requirement in Section 603 that decisions by the County Board of Appeals shall be made after notice and "hearing *de novo* upon the issues before said Board". The last sentence of Section 603 is intended to preserve the public character of all actions and proceedings before the County Board of Appeals, and especially to require that complete public records of the Board's proceedings and a suitable index be maintained.

Under Section 606, however, the power to raise this compensation is given to the County Council, and thereafter to decrease it, provided that the figure of \$3,800 per year shall be taken as a minimum. In this connection, the Charter Board recognized the difficulty of a fair compensation for newly created offices before practical experience has demonstrated what figure would present fair and just compensation. The establishment of a minimum figure with power in the County Council to increase it at a later date is the same practice which was followed in Article IV in relation to the salaries of the County Executive and County Administrative Officer. (See: Notes to Sections 402(a), 403(a), and 405, supra.)

Sec. 602. Powers and functions of county board of appeals  
The purpose of this section is to outline the various appeals to be heard by the newly created board. Subsections (a), (b) and (c) refer specifically to appeals from orders now heard by other administrative agencies; subsection (d) is a "catch-all" provision designed particularly to transfer to the County Board of Appeals the right to hear and decide appeals from all other administrative and adjudicatory orders as may now or hereafter be provided by law.

(a) Appeals from Orders Relating to Zoning. Express authority for the transfer of this function from the Board of Zoning Appeals to the County Board of Appeals is derived by the language of Article 25A, Section 5(V). This statute authorizes the County Board of Appeals to hear and decide questions relating to "an application for a zoning variation or exception or amendment of a zoning ordinance map". See: *Montgomery Co. v. Merlands Club*, 202 Md. 270, 96 A. 2d 261 (1952), a zoning case heard on appeal from the decision of the Board of Zoning Appeals in that county.

The last two sentences of Section 602(a) are designed to cause the transfer of all duties and functions of the old Board of Zoning Appeals to the new County Board of Appeals, and to establish the manner in which further appeals may be taken from its decisions to the courts.

(b) Appeals from Orders Relating to Licenses. Sections 210 and 211 of Title 17 of the Baltimore County Code create a Board of License Appeals composed of the Building Engineer, the Zoning Commissioner and the County Health Officer. Their primary functions seem limited to the hearing of appeals dealing with walkabouts, amusements, carnivals, moving pictures, and other licenses covered by the subtitle "Motion Picture and Other Public Exhibitions". The Charter Board was led to believe that although it has been duly constituted by legislative act of the General Assembly, its duties, if any, are extremely limited. To the extent, however, that appeals may hereafter be taken from such administrative orders, the Charter Board deemed it desirable to abolish this additional appellate agency and to transfer all its functions to the new County Board of Appeals.

(c) Appeals from Orders Relating to Building. Under Title 23, Section 283 of the Baltimore County Code, the County Commissioners are given power to hear appeals from orders relating to building permits issued by the Buildings Engineer. Although such permits will, under the Charter, be issued by the Department of Permits and Licenses, the Charter Board felt it essential to preserve the right of appeal now guaranteed by public local law.

(d) Appeals from Executive, Administrative and Adjudicatory Orders. As hereinabove indicated, this subsection is a "catch-all" designed particularly to include within the jurisdiction of the County Board of Appeals all matters now or hereafter covered by Article 25A, Section 5(V) of the Code. In addition to zoning matters, this section of the Code refers to the following case to be heard by the County Board of Appeals:

... the issuance, removal, denial, revocation, suspension, annulment, or modification of any license, permit, approval, exemption, waiver, certificate, registration, or other form of permission or of any adjudicatory order; and the assessment of any special benefit tax \* \* \*

Sec. 603. Rules of practice and procedure  
Express authority for the establishment of special rules of practice and procedure for the County Board of Appeals is contained in Article 25A, Section 5(V)(2) of the State Code. Subsection (4) of Article 25A, Section 5(V) requires that the County Board of Appeals shall hear cases "on petition by any interested person and after notice and opportunity for hearing and on the basis of the record before the board." This provision of controlling law forms the basis for the requirement in Section 603 that decisions by the County Board of Appeals shall be made after notice and "hearing *de novo* upon the issues before said Board". The last sentence of Section 603 is intended to preserve the public character of all actions and proceedings before the County Board of Appeals, and especially to require that complete public records of the Board's proceedings and a suitable index be maintained.

IN THE MATTER OF THE APPLICATION OF CAROL DORME, ET AL FOR A SPECIAL HEARING FOR PLACEMENT OF A SHED ON THE WATERSIDE PORTION OF PROPERTY W/S OF BURKE ROAD 860' S. OF INT. OF BURKE ROAD (1330 BURKE ROAD) 15th DISTRICT

BEFORE THE COUNTY BOARD OF APPEALS

OF BALTIMORE COUNTY

NO. 85-106-SPH

ZONING DEPARTMENT

OPINION

This Board has, through the years, been faced with numerous occasions to interpret what constitutes the front yard and rear yard of various waterfront property. In such cases we have determined, on a case by case basis, which constitutes the front and which the rear depending upon the use that is made of each parcel. In determining such use the Board has considered the configuration of the house, the configuration of the lot, the placement of rooms within the interior of the residence, the location of garages and other out buildings, where mail is delivered, where trash is collected, the use of adjoining and neighborhood lots with respect to their orientation to the water and the subjective beliefs of the petitioners and protestants who seek a determination one way or the other. On the whole we find this exercise to be rather arbitrary and inconsistent. By the nature of such decisions we are required to apply a standard that would have conflicting impact on a waterfront neighborhood. Such a consequence should not exist. The Board thus takes this opportunity to state a preference for a more uniform interpretation of §400.1 of the Baltimore County Zoning Regulations relative to the determination of front yard

CAROL DORME - #85-106-SPH

and rear yard for waterfront residential properties. In order to limit the disparity in treatment of such cases, it shall be the Board's opinion that the waterfront of all waterfront residential properties is presumed to be the front yard of such property. Such a presumption, of course, can be overcome by clear and convincing evidence to the contrary or where appropriate a variance to permit construction of structures on the waterfront may be in order where such construction would enhance the use of the property and to deny such a variance would result in practical difficulty or unreasonable hardship.

The waterways of Baltimore County are a vital natural resource. The properties which front such waterways are unique in their character in that their proximity to the water enhances the uses to which the property can be made. In cases of this nature the Board has universally heard that waterfront property solely by virtue of its proximity to the water is of greater value, often substantially greater value, than adjoining property that does not abut the water. It is the fact that property lies next to the water that makes buyers willing to purchase such properties at greater expense.

We believe the integrity of the waterfront must be maintained for those whose property is located on the water and for those who make use of the water. We believe that to permit the construction of accessory buildings in residential waterfront property on the waterfront side of residences detracts from the scenic beauty of such areas as viewed by the land and by the water.

CAROL DORME - #85-106-SPH

We, therefore, hold that the waterside portion of waterfront residential properties is presumed to be the front of such properties unless a clear indication to the contrary exists.

We believe that the configuration of a residence, the configuration of lots, the location of various accessory structures and the self-serving opinions of various parties before this Board is of little consequence to the reasons or basis for such a policy. By this opinion we seek to state that simply by virtue of the location of property next to the water, it presumptively makes the orientation of any residence on such a property toward the water.

In the matter before us, the Petitioners have placed a ten foot by ten foot shed on the waterside of their property. They did so in the belief that it met the Baltimore County Zoning Regulations which require the placement of such structures in the rear yards of residential properties. The Zoning Commissioner agreed based upon his application of the facts as presented to him to the long held standard applied in such cases.

Upon the testimony and exhibits provided to this Board during the hearing of this matter we are of the opinion that this property is oriented toward the water and thus the front yard of this property is that portion between the front line of the residence and the water line of the property. As such we find that the shed which has been constructed on this property is in the front yard and must be removed. Unfortunately Petitioners did not request

CAROL DORME - #85-106-SPH

a variance in this matter. The special hearing before this Board was specifically to determine what is the front yard and what is the rear yard of this property. We believe that the testimony presented before the Board at hearing may have been sufficient to warrant a variance to allow the shed to be located in the side yard, but as this matter was not an issue before this Board, no such decision can be reached at this time.

Under the circumstances the Board determines that the petition for special hearing should be denied.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 1st day of August, 1985, by the County Board of Appeals, ORDERED that the shed is determined to be located in the front yard of the Petitioner's property and as such the petition for special hearing is DENIED.

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

Keith S. Franz  
Keith S. Franz

Diana K. Vincent  
Diana K. Vincent

CAROL DORME, et al

Plaintiffs/ Appellants

Vs.

BALTIMORE COUNTY BOARD OF APPEALS

Defendant/ Appellee

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

CASE NO. 85 CG 2764

Docket 14

Page 224

OPINION OF THE COURT

In this appeal from a decision of the Baltimore County Board of Appeals, Appellants contend that the Board erred in its interpretation of Section 400.1 of the Baltimore County Zoning Regulations. This Court agrees and will reverse the Board's decision. The regulation in question provides in pertinent part that accessory buildings in residential zones shall be located only in the rear yard. Appellants are the owners of waterfront property and erected a shed on that portion of their property between the dwelling and the waterfront. People's Counsel contends that it considers that portion of Appellants' property a "front yard" and argue that the portion of the property which faces the street is the "rear yard" of waterfront property.

On a petition filed by the owners of the property, the Zoning Commissioner, after conducting a hearing, found that in the absence of specific regulation, the question of which is the rear of the property should be determined by such factors as the direction which the house faces, the configuration of the houses

FILED JUN 6 1986

in the neighborhood, what the particular owner considers to be the front and, generally, the use of the house.

Based upon his finding of facts, the Commissioner determined essentially, that the waterfront portion was the rear.

A de novo appeal to the Board of Appeals resulted in a reversal of the Commissioner's determination, oddly enough, not on the facts, but for an entirely separate reason. Despite overwhelming and virtually uncontradicted evidence that the front of the property in question faced Burke Road and the rear faced the water, the Board chose, in their words, "to state a preference for a more uniform interpretation of §400.1 of the Baltimore County Zoning Regulations relative to the determination of front yard and rear yard for waterfront residential properties." The Board, holding that the traditional factual standards for determining front versus rear were "of little consequence", proceeded to create a presumption that the waterside portion of waterfront property is the front of such property unless a clear indication to the contrary exists, and that such a presumption can only be overcome by "clear and convincing" evidence to the contrary.

The well established and narrow standards under which this Court must review the decisions of the Board, namely, whether the Board's findings of fact were fairly debatable is barely applicable here. The Board made no specific findings of fact except to state that they were of the opinion that the property "was oriented toward the water", a finding which this Court holds unsupported by substantial evidence.

Moreover, this Court concludes that the Board's "findings" were reached so as to be consistent with the presumptions that it created. Those "presumptions" are nothing more than an attempt by the Board to legislate by administrative fiat, a power not conferred upon it by any state or local statute. The problem is compounded by the Board's attempt to set a burden of proof required to overcome its administratively created presumption that exceeds the traditionally accepted preponderance of the evidence standard.

Finding that the Board's decision is unsupported by the evidence and that the Board was in error with regard to the exercise of its statutory powers, the Board is hereby, REVERSED.

*Leonard S. Jackson*  
LEONARD S. JACKSON, JUDGE  
Date signed June 5, 1986

COPIES SENT TO:

John W. Nowicki, Esquire  
Phyllis Cole Friedman, Esquire

IN RE: PETITION SPECIAL HEARING  
W/S of Burke Road, 860' S of  
the Intersection of Burke  
Road (1330 Burke Road) -  
15th Election District  
Carol Dohme, et al,  
Petitioners

BEFORE THE  
ZONING COMMISSIONER  
OF BALTIMORE COUNTY  
Case No. 85-106-SPH

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request an interpretation by the Zoning Commissioner as to what constitutes the front and rear yards of their waterfront property.

The Petitioners appeared and testified. Mr. and Mrs. Anthony Lombardi, adjacent property owners, also appeared and testified as Protestants.

The Petitioners had constructed a 10' x 10' shed on the water side, as more fully shown on Petitioners' Exhibit 1. A complaint was then filed by Mr. and Mrs. Lombardi, who claimed that the shed was placed in the Petitioners' front yard in violation of Section 400.1, Baltimore County Zoning Regulations (BCZR). The subject issue shall determine for present and future reference what is in fact the front and rear of this property.

Testimony indicated that the subject property, zoned R.C.5, is located on Burke Road in Bowley's Quarters on the water. The Petitioners purchased the property, improved with a home, in June, 1983. Because of a need for additional storage space, the Petitioners contacted the Zoning Office and requested the appropriate law regarding accessory structures in rear yards and then proceeded to construct their shed. They believed then, and are convinced now, that the rear yard of their home faces the water and the front faces Burke Road. They testified that at the time of purchase, the real estate agent considered the front on Burke Road and the rear on the water, and they had absolutely no reason to consider it any other way. In fact, the "front" door, which leads to the foyer and

ORDER RECEIVED FOR FILING  
DATE June 5, 1986  
BY Leonard S. Jackson  
ADMINISTRATIVE ASSISTANT

living room area, is on Burke Road. The only other exit is located on the side of the home. On the water side, a deck above a porch with no ingress or egress except a door from the bedroom to the deck existed prior to their purchase. They have since built steps from the deck to the ground. In the "rear" of the home are the bedrooms which face the water; in the "front" are a carport and parking area. The Petitioners presented several photographs of their property as well as other properties in the area showing various structures, including a pool and shed, on the water side of the homes in support of their contention.

The Protestants contradicted their neighbors and argued that the properties in the area, including their home, front the water, not Burke Road. They also presented photographs showing garages on the road side of various properties in support of their contention. They complained particularly that the Petitioners' shed is located in such a way as to block their view of the water. They are willing to compromise with the Petitioners if they would move the shed toward Burke Road about 20 feet or so to relieve the problem.

It is of interest to note that the neighbor on the opposite side of the Lombardis has a shed on the water side although the Protestants and their neighbors consider the water side as the front. They have not complained, however, the Petitioners seek relief pursuant to Section 500.7, Baltimore County Zoning Regulations (BCZR).

Although there is conflicting testimony as to what constitutes the front and rear yard and there is no zoning ordinance to determine such, long-standing police and custom in Baltimore County has been that the front is determined by use, i.e., in which direction the houses face, 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, Misc. 5981-76; In the Matter of Fence, Board of

ORDER RECEIVED FOR FILING  
DATE June 5, 1986  
BY Leonard S. Jackson  
ADMINISTRATIVE ASSISTANT

Appeals for Baltimore County, CBA 80-127 (1981); In the Matter of James Elliott, Zoning Commissioner, Case No. 84-275-A.

In this instance, the Petitioners and Protestants were directed to effect a compromise, but it is now obvious that the Petitioners refuse to discuss or reach a mutually convenient solution to this problem which is a sad situation in its very nature.

"...everything has by nature as much right as it has power to exist and operate." Therefore, "in a natural state there is nothing which can be called just or unjust, but only in a civil state."

Thrasymachus, in Plato's Dialogue in Republic.

As unfortunate as it has become, I am bound to find in the Petitioners' favor. In fact and indeed, the front of the Petitioners' home is to Burke Road and the rear is to the water.

After due consideration of the testimony, evidence, and legal arguments presented, it is determined that the Petitioners are entitled to have their accessory structure remain in its present location.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief prayed for to have the water side of the Petitioners' home declared the rear and to approve the location of the accessory structure as being in the rear yard should be approved. Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 5th day of November, 1984, that the location of the shed in the rear yard of the Petitioners' home is approved and, as such, the Petition for Special Hearing is hereby GRANTED from and after the date of this Order.

*Carol Dohme*  
Zoning Commissioner of  
Baltimore County

AJ/srl

cc: Ms. Carol Dohme

Mr. & Mrs. Anthony Lombardi  
People's Counsel

ORDER RECEIVED FOR FILING  
DATE December 29, 1984  
BY Carol Dohme  
ADMINISTRATIVE ASSISTANT

IN THE MATTER OF THE APPLICATION OF  
CAROL DOHME, ET AL  
FOR SPECIAL HEARING  
ON PLACEMENT OF A SHED  
W/S OF BURKE ROAD 860'  
S. OF INTERSECTION OF  
BURKE ROAD  
(1330 BURKE ROAD)  
15th DISTRICT

BEFORE  
COUNTY BOARD OF APPEALS  
OF  
BALTIMORE COUNTY  
NO. 85-106-SPH

OPINION  
ON MOTIONS ONLY

The above captioned matter comes before this Board on the Zoning Commissioner's Motion to Dismiss and People's Counsel's Motion to Strike Appearance of the Zoning Commissioner.

On March 7, 1985, this Board received oral argument referencing both the aforementioned Motions. Initially this Board, in deciding these Motions, anticipated a lengthy and effusive Opinion. However, upon reflection, this Board is convinced that although it is incumbent upon us to address the salient issues presented we should not, through this Opinion, dignify what this Board considers to be a frivolous and unfortunate battle between two separate and distinct officials of Baltimore County. As a result of these Motions the essence, the substance and the merits of the ultimate issues to be decided have been delayed. This Board views such delay as unfair to the real parties in interest, to wit: the Petitioners and the Protestants, neither of which were parties to the respective Motions.

CAROL DOHME - #85-106-SPH

2.

We shall first consider People's Counsel's Motion to Strike Appearance of the Zoning Commissioner. The Zoning Commissioner cites as authority for his appearance in this matter §501.6 of the Baltimore County Zoning Regulations (BCZR) which reads in part:

"Appeals from the Zoning Commissioner shall be heard by the Board of Zoning Appeals de novo. At such hearing all parties, including the Zoning Commissioner shall have the right to be represented by counsel, . . . ." [Emphasis added]

We shall dispense with that argument initially. Section 501.6 was enacted prior to Charter government being initiated in Baltimore County. With the enactment of Charter government, the County Board of Appeals was established, organized and authorized to promulgate, subject to County Council approval, rules of procedure. Such rules of procedure were established and approved by the County Council in 1965. Rule 6 - Appearances and practice before the board of appeals - makes no mention of the Zoning Commissioner as a party or otherwise. Although the Zoning Commissioner may, with some credence, argue that by custom and practice the Board of Appeals has continued to recognize and use, for procedural guidance, §501.1 through §501.7 of the BCZR, this Board is constrained to note unequivocally, that if, in fact, this Board, in previous cases, has used said sections as a guide the Board could not, under any circumstances consider those sections as the controlling law if they are in conflict with the rules of practice and procedure authorized by §603 of the Charter. Indeed, §1111 of the Charter removes any doubt when it states, in part:



"The public local laws of Baltimore County and all rules, regulations, resolutions and ordinances of the county commissioners in force at the time of the effective date of this Charter are hereby repealed to the extent that they are inconsistent with the provisions of this Charter, but not further. . . ."

Therefore, we are persuaded that this Board, in promulgating its own rules and procedures, intentionally, not by omission, removed any reference to the Zoning Commissioner as a party or otherwise. The Zoning Commissioner, pursuant to §501.6 BCZR, does not have the right to intervene as a party in an appeal before the County Board of Appeals, if for no other reason than §501.6 is no longer the law in Baltimore County.

The Zoning Commissioner argues further that he enjoys the right to intervene as a party pursuant to §22-32 of the Baltimore County Code which states, in part:

"Any person or persons, jointly or severally, or any taxpayer, or any official, office, department, board or bureau of the county, feeling aggrieved by any decision of the zoning commissioner shall have the right to appeal therefrom to the county board of appeals. . . ."

Interestingly, the County Attorney representing the Zoning Commissioner in this proceeding concedes that the Zoning Commissioner enjoys no right of appeal to the County Board of Appeals. In the interest of expediency, we shall not further address that aspect of the argument as same is well supported by T & R Joint Venture v. Office of Planning and Zoning of Anne Arundel County, et al 47 Md. App. 395 (1980) and Howard County, Maryland v. Nicholas Mangione, 47 Md.

App. 350 (1980).

The question then becomes convoluted. If the Zoning Commissioner has no right to appeal, can he file a Motion to Dismiss an appeal? Does the Zoning Commissioner have standing to do so? We think not.

Section 22-32 (Code) is, by its nature, broad in its scope. It leaves the door wide open for the right to appeal by many and varied persons, officials, taxpayers, departments, offices, boards and bureaus. Nevertheless, there is one common thread, a fabric which connects the rights of these individuals, departments, etc. to effect an appeal, to wit: the language ". . . feeling aggrieved by any decision of the zoning commissioner . . .".

We are perplexed, how can the Zoning Commissioner be aggrieved by his own decision? Webster's defines aggrieved as "Distressed; having a grievance; adversely affected in respect of legal rights". None of the definitions recited apply to this case. Therefore, simple logic dictates that if the Zoning Commissioner cannot appeal to the County Board of Appeals, he cannot intervene for the purpose of preventing an appeal to the County Board of Appeals. Obviously, in both instances the purpose of such actions would be to espouse the correctness of his own decision.

We agree with People's Counsel that to permit the intervention of the Zoning Commissioner as a party to this proceeding would violate the public trust in our system of justice. The Zoning Commissioner sits as a quasi-judicial decision

maker. He is impartial and his decisions reflect that impartiality. To permit the Zoning Commissioner to appear before this Board in defense of his decision would taint, distort and forever prejudice the integrity of this Board and the office of the Zoning Commissioner. The Zoning Commissioner is now and must always be objective and impartial. Once the Zoning Commissioner attempts to advocate the merits of his own decision he loses, to quote People's Counsel, "his virgin objectivity".

For the foregoing reasons, this Board shall strike the appearance of the Zoning Commissioner of Baltimore County from these proceedings.

Having thus granted People's Counsel's Motion to Strike Appearance of the Zoning Commissioner, the Zoning Commissioner's Motion to Dismiss appeal becomes moot. However, in order to ensure future guidance to the Zoning Commissioner, People's Counsel and the parties, we shall briefly address the issue.

At the outset, this Board adopts the County Board of Appeals Opinion and Order in -- RE: Petition for Special Hearing for a Bank in an M.L.R. zone, 9th District, Kenilwest Limited Partnership, No. 80-88-SPH, decided on November 20, 1980.

People's Counsel's powers and duties are enumerated in §24.1(b)(3) of the Baltimore County Charter which reads, in part:

"A. He shall appear as a party before the zoning commissioner of Baltimore County, his deputy, the county board of appeals, and the courts on behalf of the interests of the public in general, to defend the comprehensive zoning maps as adopted by the

county council, and in any matter or proceeding now pending or hereafter brought involving zoning reclassification and/or variance from or special exception under the Baltimore County Zoning Regulations, as now or hereafter in force and effect, in which he may deem the public interest to be involved. He shall have in such appearance, all the rights of counsel for a party in interest, including but not limited to the right to present his case, to cross examine, to object to be heard, and to file and prosecute an appeal in his capacity as people's counsel from any order or act of the zoning commissioner of Baltimore County or his deputy, or of the county board of appeals to the courts as an aggrieved party pursuant to the provisions of Section 604 of this Charter to promote and protect the health, safety and general welfare of the community." [Emphasis added in original Order]

The Zoning Commissioner argues that inasmuch as the issue before this Board does not involve a zoning reclassification, variance or a special exception, People's Counsel has no right to appeal. Were the issue that simple this Board would agree. However, the issue is not that simple.

In the subject case, the initial purpose of the special hearing before the Zoning Commissioner was to determine that which constitutes the front and rear yards for an improvement that abuts water. The issue was important because an accessory structure was placed in the yard nearest the water. Since the Zoning Commissioner decided that the structure had been placed in the rear yard no variance was required. Had the Zoning Commissioner decided that the structure had been placed in the front yard, the property owner would then be required to petition for a variance. Indeed, it would have been more expedient to petition for the variance at the same time as the petition for a special hearing was filed.

In any event, as in 1980, this Board continues to be persuaded by the language of §24.1 BCZR wherein it is stated". . . in any matter or proceeding now pending or hereafter brought involving. . ." [Emphasis added] We adopt and incorporate by reference in this Opinion the law cited and comments made in the Kenilwest Opinion. Webster's defines involve as "to require as in necessary accompaniment" among many variations of the word.

In the case at bar, in this Board's view, a necessary accompaniment to the front yard - back yard scenario and a collateral issue is the necessity or non-necessity of a variance. We agree that the powers and duties of the office of People's Counsel should be strictly construed, and as in Kenilwest there must be a "necessary accompaniment" to the three specifically enumerated powers. We find such necessary accompaniment in the case at bar.

It appears that in posting and advertising this matter the office of the Zoning Commissioner chose to call this matter an issue involving a determination of a front yard or back yard. Much care appears to have been used to avoid any mention of the term variance. In the final analysis, however, the issue before the Zoning Commissioner was directly connected to the question of a "variance". Consequently, pursuant to the powers and duties granted unto the People's Counsel, the issue before us does or could involve a variance and, therefore, People's Counsel enjoys the right to appeal.

The Board does note, however, for future reference, that each case shall be decided on its own merit and the statute enumerating the powers and duties of People's Counsel shall be strictly construed. We do not believe, therefore, that it was ever intended that People's Counsel enjoys "carte blanche" authority to intervene in any case People's Counsel deems in the public interest.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 18th day of March, 1985, by the County Board of Appeals, ORDERED that People's Counsel's Motion to Strike Appearance of the Zoning Commissioner be and the same is hereby GRANTED; and it is

FURTHER ORDERED that the Zoning Commissioner's Motion to Dismiss be and the same is hereby DENIED.

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, Chairman

William R. Evans

Keith S. Franz

Stamp: 7:44 PM, Special Hearing, Case # 85-106SPH. Address: Ms Donna L. Alford, Mrs. Carol R. Dohme, et al, 1390 Burke Road, Baltimore, Maryland 21220, November 5, 1984. Text: Dear Mr. Jablon: After giving the proposed suggestion of compromise considerable thought, the following are the major points that keep us from negotiating a compromise: 1. We believe we have adhered to Zoning Law 400.1 in the placement of our shed. 2. We have been able to prove beyond any doubt the location of our front entrance via the photographs. 3. Our photographs have shown many inconsistencies in the immediate neighborhood of the placements of accessory structures. 4. There is no zoning law that states that we are responsible for preserving another landowners view. 5. The moving of the shed would cause additional problems and expenses that we shouldn't have to bear in that we haven't violated the zoning law. 6. We don't feel that moving the shed is a compromise because we are the only ones giving up something. 7. We feel that the Lombardi's complaint is a retaliatory response rather than an attempt at compromise. The shed was placed on its present site with much thought and consideration given to aesthetics, convenience to our work area, utilization of existing garden space, safety of it's contents and compliance with zoning laws. After the hearing, we considered moving the shed, to the extent of drawing up a proposal for the Lombardi's to consider ( see enclosed proposal). However, we decided not to submit it to them because we believe that it would cause us many more additional problems and we aren't in violation of the law.

Plus, even if the Lombardi's agreed to our proposal, who would enforce it or would it leave us more vulnerable to legal entanglements? We don't believe it was ever the Lombardi's intent to compromise. If it had been why weren't we approached during the two weeks we worked to prepare the site or even after it was delivered why did they sit back and watch us load it up and then report it to the county? It is our belief that this whole unjustified procedure has been one of retaliation. It was through our inquiries to the county about the pier that the Lombardi's are erecting that it was discovered that they had not applied for a permit. Before our inquiries to the county, we had questioned Mrs. Lombardi and the foreman Joing the work about the length and position of their pier in relation to our pier. We questioned them on FOUR separate occasions trying to get an answer and all we got were vague answers. We then felt we had to bring the county into the situation to protect our water rights. The county came into the situation and stopped work on their pier (early June) because the Lombardi's had failed to secure a permit. We had a neighborly relationship with the Lombardi's up until the county stopped work on their pier. This then we believe is the issue for the Lombardi's.

The special hearing cost us approximately \$250.00 (fees, cost of photography, lost time from work) in addition to considerable emotional stress. It was our expectation that the purpose of the hearing was to decide, based on zoning law 400.1 and the evidence presented at the hearing, whether we were in violation of the law. Instead it has caused us more stress and more work. We felt that we were being manipulated through coercion to make concessions to the Lombardi's as if we were guilty of some injustice. We are asking for a ruling to be made based upon the Zoning Law 400.1 and evidence presented at the hearing.

Since, sly, Carol R. Dohme, Donna Young, Donna L. Alford

October 22, 1984  
To: Mr. & Mrs. A. Lombardi  
1328 Burke Road  
Baltimore, Maryland 21220  
D. Alford, C. Dohme & H. Young  
1330 Burke Road  
Baltimore, Maryland 21220

Re: Special Hearing  
Case # 85-106SPH  
cc: Arnold Jablon

Proposed Compromise Agreement

We will agree to compromise and allow the shed to be moved to the extreme far end of the existing garden, closest to Burke Road. However, the following conditions must be met by you:

1. Give us a check for \$103.46 to cover the cost of today's hearing and film processing.
2. Pay for the cost of moving the shed to the new location. The shed must be moved by Jim Griffiths 879-2459.
3. Pay for 4 12' long 8"x8" or 7"x9" pressure treated wood railroad ties.
4. One and three quarter yards of small pebbles for area 11.5 feet by 11.5 feet and four inches deep for drainage to be paid by the Lombardi's.
5. Pay for delivery of materials.
6. Pay for labor for site preparation.
7. Pay for labor for moving shed's contents out and contents back in as they are currently placed.
8. Assume financial liability for the repair or replacement of anything damaged inside the shed, the shed itself, or any damage to our property as a result of moving the shed.
9. Be responsible for making sure the shed is level.
10. That you pay all contractors, suppliers and laborers directly.
11. That you give us one week's notice of date and times for site preparation, removal of the shed and replacing of its contents. The contents must be removed and replaced on the same day.
12. That this agreement becomes null and void if the Zoning Commissioner of Baltimore County finds the front of this property to be waterside rather than street side.

If you agree with these terms both of you sign, date and notarize this agreement and return it to us by October 31, 1984. We look as we are sure you do to a resolution to this problem we can all live with.

Residents 1330 Burke Road Residents 1328 Burke Road

Date

PROPERTY DESCRIPTION

Beginning at a point 860' feet south of the intersection of Burke Road, on the West side of Burke Road, as recorded in the Land Records of Baltimore County in Plat Book W.P.C. No. 7 Folio 12, Plat 1 of Bowleys Quarters, Lots 136 and 137. Otherwise known as 1330 Burke Road, in the 15th Election District.

Mr. Arnold Jablon, Zoning Commissioner  
Department of Planning and Zoning  
County Office Building  
111 W. Chesapeake Avenue  
Towson, Maryland 21204

RE: Zoning Variance  
1330 Burke Road

Dear Mr. Jablon:

My husband and I approached Ms. Dohme and Ms. Alford immediately following the October 22nd hearing concerning the location of a storage shed at 1330 Burke Road. At that time I said, "Whenever you want to get together to talk about a compromise, just let us know." Ms. Dohme acknowledged my statement slightly, while Ms. Alford refused to even look at us.

After waiting several days hoping that they would think the compromise over that we made at the hearing to relocate the shed to a more suitable location and would agree to the compromise. We approached Ms. Dohme and Ms. Alford on Thursday, November 1, asking if they had a minute to discuss the matter. They refused to discuss it at all, stating that "Our position does not allow for compromise." I reminded them that you had directed all of us to "talk to each other and reach a compromise." They angrily replied that "There is nothing to talk about and we are writing a letter to the Commissioner and that is our position."

In addition to the compromise we offered at the hearing to drop our objections if the shed was moved to a more suitable location, we were prepared to offer our help in physically preparing the new location (approximately 26 ft. to the east of its present location), i.e., relocating three railroad ties, shoveling stone for the bed, and helping move the contents of the shed. This would leave them only with the moving of the shed itself. Needless to say, I was unable to even offer this further compromise since they refused to discuss the matter.

We wish to have the record show that we have done all we could to reach a compromise. However, we have been totally rebuffed.

Therefore, please be advised that we continue to protest the existence of this shed on the property at 1330 Burke Road in its present location on the waterside of the existing building line.

Sincerely,

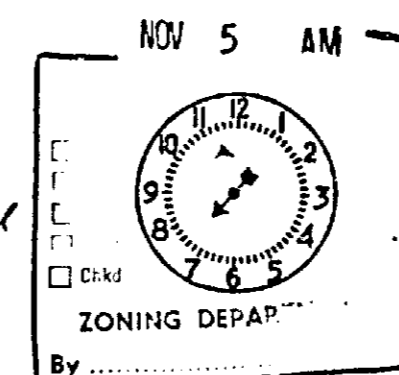
*Anna Lombardi*  
(Mrs.) Anthony J. Lombardi, Jr.

1328 Burke Road  
Baltimore, Maryland 21220  
November 2, 1984

CAROL DORNE, et al

RE: Zoning Variance  
1330 Burke Road

85-106-SPH



RE: PETITION FOR SPECIAL HEARING : BEFORE THE ZONING COMMISSIONER  
W/S of Burke Rd., 860' S of : OF BALTIMORE COUNTY  
the Intersection of Burke Rd. :  
(1330 Burke Rd.), 15th Dist.

CAROL DORNE, et al,  
Petitioners  
85-106-SPH

NOTICE OF APPEAL

Please note an appeal from your decision in the above-captioned matter, under date of November 20, 1984, to the County Board of Appeals and forward all papers in connection therewith to the Board for hearing.

*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, MD 21204

I HEREBY CERTIFY that on this 4th day of November, 1984, a copy of the foregoing Notice of Appeal was mailed to Carol Dorne, Donna Alford, and Hoen Young, 1330 Burke Road, Baltimore, MD 21220, Petitioners; and Mr. and Mrs. Anthony Lombardi, 1328 Burke Road, Baltimore, MD 21220, Protestants.

*Phyllis Cole Friedman*  
Phyllis Cole Friedman

PETITION FOR SPECIAL HEARING

15th Election District

LOCATION: West side of Burke Road, 860 feet South of the intersection of Burke Road (1330 Burke Road)

DATE AND TIME: Monday, October 22, 1984 at 10:15 a.m.

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

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

Petition for Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve placement of a 10 foot by 10 foot shed on what is for this property the rear yard or waterside based on house placement and location of main entrance and the fact that inconsistencies in the neighborhood also allow other residents to have their sheds waterside.

Being the property of Carol Dorne, et al as shown on the plat filed with the Zoning Office.

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

BY ORDER OF  
ARNOLD JABLON  
ZONING COMMISSIONER  
OF BALTIMORE COUNTY

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Being the property of Carol Dorne, et al as shown on the plat filed with the Zoning Office.

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

BY ORDER OF  
ARNOLD JABLON  
ZONING COMMISSIONER  
OF BALTIMORE COUNTY

IN THE MATTER OF THE APPLICATION OF CAROL DORNE, ET AL FOR A SPECIAL HEARING FOR PLACEMENT OF A SHED ON THE WATERSIDE PORTION OF PROPERTY W/S OF BURKE ROAD 860' S. OF INT. OF BURKE ROAD (1330 BURKE ROAD) 15TH DISTRICT  
CASE #85-106-SPH  
CAROL DORNE, PLAINTIFF

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW C. G. DOCKET NO. 14 FOLIO NO. 224 FILE NO. 85-CG-2764

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, William T. Hackett, Keith S. Franz and Diana K. Vincent, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, John Grason Turnbull, II, Esquire, 706 Washington Avenue, Towson, MD 21204, Attorney for the Plaintiff, and Carol Dorne, Donna Alford, Hoen Young, 1330 Burke Road, Baltimore, MD 21220, Petitioners, and Mr. and Mrs. Anthony Lombardi, 1328 Burke Road, Baltimore, MD 21220, Protestants, and Chris Lamartina, President, Bowley's Quarters Improvement Association, 1124 Bowley's Quarters Road, Baltimore, MD 21220, and Douglas Sachse, Esquire, Assistant County Attorney, Office of Law, Courthouse, Towson, MD 21204, Attorney for Baltimore County, and Phyllis Cole Friedman, People's Counsel for Baltimore County, Room 223 Courthouse, Towson, MD 21204, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

*Edith T. Eisenhart*  
Edith T. Eisenhart, Adm. Secretary  
County Board of Appeals of Baltimore County  
Room 200 Courthouse, Towson, MD 21204  
494-3180

CAROL DORNE - #CBA-85-106-SPH 2.

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to John Grason Turnbull, II, Esquire, 706 Washington Avenue, Towson, MD 21204, Attorney for the Plaintiff, and Carol Dorne, Donna Alford and Hoen Young, 1330 Burke Road, Baltimore, MD 21220. Petitioners, and Mr. and Mrs. Anthony Lombardi, 1328 Burke Road, Baltimore, MD 21220, Protestants, and Chris Lamartina, President, Bowley's Quarters Improvement Association, 1124 Bowley's Quarters Road, Baltimore, MD 21220, and Douglas Sachse, Esquire, Assistant County Attorney, Office of Law, Courthouse, Towson, MD 21204, Attorney for Baltimore County, and Phyllis Cole Friedman, People's Counsel for Baltimore County, Room 223 Courthouse, Towson, MD 21204, on this 4th day of September, 1985.

*Edith T. Eisenhart*  
Edith T. Eisenhart, Adm. Secretary  
County Board of Appeals of Baltimore County

cc: Zoning  
Planning - J. Roswell

IN RE: PETITION SPECIAL HEARING \* BEFORE THE  
W/S OF BURKE ROAD, 860' \* BOARD OF APPEALS  
OF THE INTERSECTION OF \*  
BURKE ROAD (1330 BURKE \*  
ROAD) - 15th Election \* OF BALTIMORE COUNTY  
DISTRICT \* Case No. 85-106-SPH

PEOPLE'S COUNSEL'S MOTION TO  
STRIKE APPEARANCE OF ZONING COMMISSIONER

People's Counsel moves to strike the appearance of the Zoning Commissioner on the grounds that:

1. The Zoning Commissioner lacks the prerequisite legislative authority to intervene as a party before the Board of Appeals on appeal from his decision;

2. The hearing before the Board is de novo and the opinion of the Zoning Commissioner is not relevant;

3. As a matter of public policy, a quasi-judicial official should not appear as a party in defense of his decision before an appellate board.

And for the reasons more fully set forth in the attached Memorandum in Support of this Motion.

*Phyllis Cole Fitchman*  
Phyllis Cole Fitchman, People's  
Counsel for Baltimore County  
*Peter Max Zimmerman*  
Peter Max Zimmerman, Deputy  
People's Counsel for Baltimore  
County

Room 223, Court House  
Towson, Maryland - 21204  
(301) 494-2188

42725A

IN RE: PETITION SPECIAL HEARING \* BEFORE THE  
W/S OF BURKE ROAD, 860' \* BOARD OF APPEALS  
OF THE INTERSECTION OF \*  
BURKE ROAD (1330 BURKE \*  
ROAD) - 15th Election \* OF BALTIMORE COUNTY  
DISTRICT \* Case No. 85-106-SPH

MEMORANDUM IN SUPPORT OF PEOPLES COUNSEL'S  
MOTION TO STRIKE APPEARANCE OF ZONING COMMISSIONER  
AND OPPOSITION TO THE ZONING COMMISSIONER'S  
MOTION TO DISMISS

People's Counsel submits this memorandum in opposition to the Zoning Commissioner's Motion to Dismiss and in support of People's Counsel's Motion to Strike Appearance of Zoning Commissioner.

I. INTRODUCTION

This case arose when the Petitioners, without counsel, requested permission for a shed on the waterfront. Upon advice from the Zoning Office, they filed a petition for a Special Hearing to determine whether a variance was required for an accessory use in the front yard. While prudence might have dictated that they simultaneously file a petition for a Variance, they did not, also apparently on the advice of the Zoning Office.

The Zoning Commissioner heard testimony in a formal hearing, and on November 20, 1984 issued his opinion. People's Counsel appealed to this Board on November 30, and Mr. and Mrs. Anthony J. Lombardi and the Bowleys Quarters Improvement Association, Protestants, appealed on December 7.

On December 5, the Zoning Commissioner filed a paper with this Board, on his own behalf, bearing the caption of this case and

titled "Entry of Appearance." The ostensible purpose of this paper was to attempt to intervene as a party. Shortly thereafter, the County Attorney, on behalf of the Zoning Commissioner, filed a Motion to Dismiss the Appeal of the People's Counsel. The basis of this motion was that the powers and duties of the People's Counsel do not permit involvement in this matter because it was couched as a Special Hearing and not one of the enumerated categories in Section 524.1 of the Baltimore County Charter, from which People's Counsel derives its authority.

People's Counsel opposes the intervention by the Zoning Commissioner, and his Motion to Dismiss. Both actions not only offend rationality but also are without legal authority. The contention of the Zoning Commissioner that a Special Hearing to determine whether a variance is required, is not within the authority of People's Counsel, ignores the clear holding of the Court of Special Appeals in Hofmeister v Frank Realty Company, 35 Md. App. 691, 378 A.2d. 273 (1976) (The people's Counsel...is charged with representing the public interest...in any matter involving the Baltimore County Zoning Regulations, id. at 693); and the clear decision of this Board to the contrary in Penilwest Limited Partnership, [Board of Appeals Case No. 80-88-SPH (November 20, 1980) Attached as Exhibit 1.]

The above cited cases form the basis of People's Counsel's opposition to the Zoning Commissioner's Motion to Dismiss and will not be discussed further. The grounds for People's Counsel's Motion to Strike the Appearance of the Zoning Commissioner are more fully set forth below.

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II. THE ZONING COMMISSIONER LACKS THE PREREQUISITE LEGISLATIVE AUTHORITY TO INTERVENE AS A PARTY BEFORE THE BOARD OF APPEALS ON AN APPEAL FROM HIS DECISION.

The duties and responsibilities of the Zoning Commissioner are limited to those established by the County Council (Baltimore County Charter §524), and he has no other powers. See Zoning Appeals Board v McKinney, 174 Md. 551, 199 A. 540 (1938). Thus, unless the right to be a party before the Board of Appeals is specifically granted to him, the Zoning Commissioner simply cannot intervene on appeal.

An examination of the applicable sections of the Baltimore County Code (BCC) reveals no such grant. Also, Section 500 of the Baltimore County Zoning Regulations ("Zoning Regulations") which describes additional duties and rights of the Zoning Commissioner contains no such grant. Only in Section 501 of the Zoning Regulations, entitled "Board of Zoning Appeals", is there any reference to the Zoning Commissioner as a party before any appeals board. Specifically, Sub-section 501.6 ("501.6") provides that at a hearing before the Board of Zoning Appeals all parties, including the Zoning Commissioner shall have the right to be represented by counsel.

1/ The duties the Council has prescribed in the Baltimore County Code are for the Zoning Commissioner to: (1) provide for special exceptions and variances upon petition, notice and hearing, subject to appeal to the Board of Appeals (BCC 1978 §22-26); (2) pursue injunctive proceedings for zoning violations (BCC 1978 §22-36; §22-36.1); and (3) maintain certain files and records (BCC 1978 §22-27; 29; 30)

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A. Rule 501.6 Does Not Apply to the Present Board of Appeals.

If there were still a "Board of Zoning Appeals", and if the Zoning Commissioner somehow became a party before this Board, he might have the right to be represented by counsel, but 501.6 refers to the defunct Board of Zoning Appeals not the present "Board of Appeals".

The right to be represented by counsel before the Board of Appeals is found in current Rule 6 of the Rules of Practice and Procedures of the County Board of Appeals (Appendix C, BCC). While very similar to 501.6, Rule 6 does not mention the Zoning Commissioner. Thus, at the least, Rule 6 of the Board of Appeals supercedes Section 501.6. (See the footnotes to Section 501.)

This alone should dispose of any theory that the republication of 501.6 gives the Zoning Commissioner the authority to intervene before the Board of Appeals. Certainly no prior Zoning Commissioner since the creation of the Board of Appeals has even attempted such intervention. In addition, however, the history of sub-section 501.6 proves that it is not only inapplicable but also without any present legal force or effect.

B. Sub-section 501.6 Is No Longer of Any Legal Force or Effect.

In the 1948 Zoning Regulations and Restrictions for Baltimore County, 501.6 appeared as item 6 in the section entitled "BOARD OF ZONING APPEALS." (Attached as Exhibit 2.) This section, in language remarkably similar to Section 501 of the current Zoning

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Regulations, dealt with the establishment and procedures of the Board of Zoning Appeals and was merely one of several rules of procedure. The County Commissioners adopted these regulations upon the recommendation of the Zoning Commissioner.

When Baltimore County adopted charter government in 1956, the Board of Zoning Appeals was eliminated and a Board of Appeals, with significantly greater powers and functions was created by the Charter. The Charter also required the new Board of Appeals to adopt its own rules of procedure subject to the approval of the county Council. (Charter §602; 603.) (See Reporter's notes to Home Rule charter, pgs. 121-123. Exhibit 3.)

Although it was 1966 before the County Council, in accordance with the Charter mandate, approved the first Rules of Practice and Procedure adopted by the Board of Appeals (Bill 65-108 Exhibit 4.), no formal action was ever taken to adopt the old rules of procedure of the defunct Board of Zoning Appeals. Thus, while the Board of Appeals may have looked to Sections 501.1 through 501.7 for procedural guidance from 1956 to 1966, the fact is that these Sections were never of any legal force or effect after the adoption of the Charter.

The inaction of the Board and the Council caused sub-sections 501.1 through 501.7 to lose their legal force and effect after the adoption of the Charter, but the Charter effectively repealed sub-sections 501.1 through 501.7. These regulations had originally been recommended by the Zoning Commissioner for the Board of Zoning Appeals. As such, they were inconsistent with the Charter provision creating the Board of Appeals and requiring it

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to adopt its own rules of procedure. Thus, Section 1111 of the Charter, which repealed any inconsistent regulation, explicitly repealed sub-sections 501.1 through 501.7 of the Zoning Regulations.

In summary, whether sub-section 501.6 is viewed as being repealed by the adoption of the Charter or by the inaction of the Council and the Board of Appeals, the fact is that in addition to being inapplicable, it is no longer of any legal force or effect.

C. Sub-section 501.6 Was Merely a Rule of Procedure and Not Authority to Make the Zoning Commissioner a Party on Appeal from His Decision.

Even assuming arguendo, that Section 501.6 were presently effective, it would remain nothing but a rule of procedure entitling the parties, including the Zoning Commissioner, to be represented by counsel. It would not be a grant of authority to the Zoning Commissioner to be a party, because a Board of Appeals rule can not confer standing without another basis.

In order to have standing there must be some legitimate interest to defend. In this case, the Zoning Commissioner has none. He has merely exercised a quasi-judicial function and can have no interest, personal or official, other than to decide the matter according to law and the proved fact. Board of Zoning Appeals v McKinney, 174 Md. 551, 199 A. 540, 543, 117 A.L.R. 207.

III. THE HEARING BEFORE THE BOARD OF APPEALS IS DE NOVO AND THE OPINION OF THE ZONING COMMISSIONER IS NOT RELEVANT.

Section 603 of the Baltimore County Charter requires that decisions by the Board be "de novo" based on the record made before the Board. While the Opinion of the Zoning Commissioner is

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in the file transmitted to the Board of Appeals, (Section 22-27 Baltimore County Code), the Code specifically omits the Opinion as evidence to be considered by the Board. (Section 22-28.) This is, of course, consistent with the responsibility of the Board to reach an independent decision "de novo."

With these legislative guidelines, it is inconceivable how the Zoning Commissioner can assert that his oral opinion can be couched as that of "a party" and considered by the Board, when his written opinion can not.

IV. AS A MATTER OF PUBLIC POLICY, THE ZONING COMMISSIONER SHOULD NOT APPEAR AS A PARTY IN DEFENSE OF HIS DECISION BEFORE THE BOARD OF APPEALS.

The Zoning Commissioner should be a hearing officer who is an unbiased "professional more interested in the merits of the case than in emotion, citizen or special-interest pressure, or political consequences". Schneiderman, Abrams and Delaney, Handling the Land Use Case, Section 3.4.4. "The Hearing Examiner," p. 191. (Little, Brown and Company, Boston). It is simply not in the public interest for the decision-maker to argue for his decision at the next higher hearing level. In the first place, the stance of unbiased objectivity which is crucial to a quasi-judicial decision-maker is totally inconsistent with the stance of an advocate who champions a position - even that of the rightness of his decision. The Zoning Commissioner cannot be both judge and advocate. If he is permitted to switch these roles, even in different forums, it must inevitably compromise his objectivity as a quasi-judicial decision-maker.

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