

PETITION FOR SPECIAL EXCEPTION

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 Exception under the Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property for an animal boarding place and a veterinarian's office.

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

I, or we, agree to pay expenses of above Special Exception 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: R. O. BUCK REALTY CO., INC.
Same as Owner
(Type or Print Name)
Signature
Address
City and State

Attorney for Petitioner:
Dorothy Beaman
(Type or Print Name)
Signature
Address
City and State
Name, address and phone number of legal owner, contract purchaser or representative to be contacted
Towson, MD 21204
City and State
Attorney's Telephone No. 824-1010

ORDERED By The Zoning Commissioner of Baltimore County, this 18th day of February, 1985, 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 18th day of March, 1985, at 11:15 o'clock.

Bel John
Zoning Commissioner of Baltimore County.

(over)

IN RE: PETITION SPECIAL EXCEPTION
N/S of Monkmton Road, 800' E of Carroll Rd. - 10th Election District
R.O. Buck Realty Co., Inc.,
Petitioner

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests a special exception for an animal boarding place and a veterinarian, as more particularly described on Petitioner's Exhibit 1.

The Petitioner, by its Secretary-Treasurer, Michael A. Buck, appeared and testified and was represented by Counsel. Drs. John F. Fowble and Michael W. Radebaugh, veterinarians, appeared as Protestants and were represented by Counsel.

Testimony indicated that the subject property, consisting of 58 acres and zoned R.C.2, was previously a horse farm but was not operating as one at the time of the Petitioner's purchase. The Petitioner proposes to renovate a 62' x 50' "turn-out shed" into an equine veterinary clinic consisting of laboratory, x-ray, and surgical facilities. It is hoped, if not expected, that one surgical procedure per day can be performed. The clinic will be leased to a qualified veterinarian who can provide these services to other veterinarians. In addition, it is hoped that the clinic will be able to afford area veterinarians quick and efficient blood testing, other lab work, and x-ray analysis. The Petitioner and its expert witness, Dr. William Solomon, a veterinarian specializing in horses, believe that there are only two comparable clinics in Baltimore County, and that there is a definite need for another. The proposed animal boarding place would be ancillary to the veterinarian. Between 40 to 50 horses,

RE: PETITION FOR SPECIAL EXCEPTION : BEFORE THE ZONING COMMISSIONER
N/S Monkmton Rd., 800' E of Carroll Rd., 10th District : OF BALTIMORE COUNTY
R. O. BUCK REALTY CO., INC., : Case No. 85-252-X
Petitioner

ENTRY OF APPEARANCE

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

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

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

I HEREBY CERTIFY that on this 5th day of March, 1985, a copy of the foregoing Entry of Appearance was mailed to Dorothy Beaman, Attorney for Petitioner, 405 W. Pennsylvania Ave., Towson, MD 21204; and McKee & Associates, Inc., 1717 York Rd., Towson, MD 21204, which requested notification.

Peter Max Zimmerman
Peter Max Zimmerman

kept primarily for breeding purposes, would be permanently boarded at any one time on the farm.

James McKee, a registered land surveyor testifying on behalf of the Petitioner, stated that, in his opinion, if the existing access road were relocated to a point on Monkmton Road opposite Carroll Road and the Department of Health is satisfied with the septic system, he believes the conditions precedent in Section 502.1 will be satisfied. Wes Guckert, a traffic engineer, testified that he has studied the existing roadways and taken traffic counts on both Carroll Road and Monkmton Road and has concluded, based on an expected traffic flow of about 20 to 22 trips to and from the farm, even if compacted into one hour at peak time, that the roads could handle the increase. His conclusion was that the level of service could be maintained if the access road were relocated.

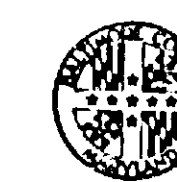
No Protestants testified in opposition.

The Petitioner seeks relief from Section 1A01.2C.2, pursuant to Section 502.1, Baltimore County Zoning Regulations (BCZR).

It is clear that the BCZR permit a veterinarian and an animal boarding place in a R.C.2 Zone by special exception. It is equally clear that the proposed uses would not be detrimental to the primary agricultural uses in the vicinity. The issue to be decided, therefore, is whether the conditions precedent in Section 502.1 will be satisfied.

After reviewing all of the testimony and evidence presented, it appears that the special exception should be granted with certain restrictions, as more fully described below.

There is, of course, a strong presumption of the correctness of the original zoning and of comprehensive zoning. Howard County v. Dorsey, 438 A.2d 1339 (1982). There is a presumption of validity that must be accepted. Johnson & Wales College v. DiPietro, 448 A.2d 1271 (R.I., 1982). The Baltimore County



County Board of Appeals of Baltimore County
Room 200 Court House (Hearing Room #218)
Towson, Maryland 21204
(301) 494-3180
June 18, 1985

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #59-79

CASE NO. 85-252-X R. O. BUCK REALTY CO., INC.
N/S Monkmton Rd., 800' E of Carroll Rd.
10th District
SE-Animal boarding place & veterinarian
(Under Sec. 1A01.2C.2, BCZR)
3/25/85 - Z.C.'s Order - GRANTED w/restrictions

ASSIGNED FOR: TUESDAY, AUGUST 27, 1985, at 10 a.m.

cc: Dorothy Beaman, Esq. Attorney for Petitioner
R. O. Buck Realty Co. Petitioner
William E. Hammond, Esq. Attorney for Protestants
Francis N. Iglehart, Esq. Protestants
John F. Fowble, V.M.D. Protestants
Phyllis C. Friedman People's Counsel
Norman Gerber
James Hoswell
Arnold Jablon
Jean Jung
James Dyr

June Holmen, Secretary

CIRCUIT COURT FOR BALTIMORE COUNTY CIVIL GENERAL

DOCKET 17 PAGE 122 CASE NO. 85-CG-3619 CATEGORY APPEAL

ATTORNEYS

IN THE MATTER OF THE APPLICATION OF R. O. BUCK REALTY CO., INC. FOR SPECIAL EXCEPTIONS FOR AN ANIMAL BOARDING PLACE AND A VETERINARIAN N/S OF MONKTON ROAD 800' E. OF CARROLL ROAD 10th DISTRICT

William E. Hammond
103 Main St.
Reisterstown, Md. 21136
833-1322
Hooper, Kiefer & Cornell
Dorothy M. Beaman
343 N. Charles St. (01-4361)
727-4700

DR. JOHN F. FOWBLE, Protestants

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

- Nov 13, 1985 - Protestants' Order for Appeal from the Order of the County Board of Appeals of Baltimore County fd.
- Nov. 15, 1985 - Certificate of Notice fd.
- Dec 4, 1985 - App. of Dorothy M. Beaman of Hooper, Kiefer & Cornell as attys' for (R.O. Buck Realty Co., Inc) and Same Day Motion to Dismiss
- Dec. 11, 1985 - Protestants/Appellants' (Fowble) Petition fd.
- Dec. 12, 1985 - Protestants/Appellants' Petition for Extension of Time for Transmittal of Record & Order of Court that the time for transmitting the record in the above entitled matter be and the same is hereby extended to January 13, 1985. (ACH)
- Dec. 18, 1985 - Protestants' Answer to Motion to Dismiss & Statement of Points & Authorities fd.
- Dec. 18, 1985 - Protestants' Request for Hearing on Answer to Motion to Dismiss fd.
- Dec. 27, 1985 - Pltff's (R.O. Buck Realty Co., Inc.) Motion to Strike Petition, Statement of Points & Authorities & Request for Hearing fd.
- Jan 6, 1986 - Transcript of record fd.
- Jan 6, 1986 - Notice of filing of record copys sent.
- Feb. 5, 1986 - Appellants Memorandum fd.
- Feb. 28, 1986 - Pltff's Motion to Extend Time for filing its Memorandum and Order of Court Granting Same fd. (RML)

OVER

DOCKET 17 PAGE 129 CASE NO. 85 CG-3619

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 18th day of March, 1985, that the Petition for Special Exception for a veterinarian and an animal boarding place be and the same is hereby GRANTED, from and after the date of this Order, subject, however, to the following restrictions which are conditions precedent to the relief herein granted:

- This special exception must be utilized within two years from the date of this Order, pursuant to Section 502.3, BCZR, and no extension shall be permitted.
- The veterinarian and animal boarding place shall be exclusively for horses. No more than 50 horses may be boarded at any one time, excluding those horses on-site for treatment at the veterinarian.
- The hours of operation shall be by appointment only.
- Only one identification sign for the animal boarding place may be posted on the property.
- The access road shall be relocated to a point directly opposite Carroll Road.
- Compliance with the comments submitted by the Baltimore County Zoning Plans Advisory Committee (ZPAC), which are adopted in their entirety and made a part of this Order.
- No more than 350 surgical procedures per year shall be permitted.
- The Petitioner shall appropriately test the air for the presence of any airborne bacilli that would result in possible infection of other horses, either on-site or on adjacent properties, and shall take corrective action when necessary.
- There may be no more than eight employees, including those residing on the site, subject to future modification by amending this Order pursuant to Section 500.7, BCZR.
- The building designated as "garage" may be converted to an office for the veterinarian and animal boarding place.
- A revised site plan shall be submitted to the Zoning Commissioner for approval, with a copy forwarded to counsel of record. The appeal period shall be tolled until the Zoning Commissioner approves the revised site plan.

The Trial Court is vested with far less discretion in applying Rule 85 than Ohio suggests. The rule plainly states that the Trial Court, in the absence of cause to the contrary "shall" dismiss the appeal for non-compliance with Md. Rule 82.e. The use of the word "shall" indicates that very little elasticity is allowed. Nevertheless, Ohio asks us to read the rule as discretionary rather than as a command. The appellate courts of this state have consistently refused to construe the rule in such a fashion.

Ohio Casualty Insurance Co. v. Insurance Commissioner, 39 Md. App. 547, 387 A.2d 622 at 627 (1978).

See also, Volk v. Pugatch, 262 Md 80, 277 A.2d 17 (1971); Salisbury Board of Zoning Appeals v. Bounds, 240 Md 547, 214 A.2d 310 (1965); Mack v. Bradley Club, Inc. 242 Md 394, 219 A.2d 12 (1966); Border v. Grooms 267 Md 100, 297 A.2d 81 (1972).

Dorothy M. Beaman
Dorothy M. Beaman, Attorney for
R. O. BUCK REALTY CO., INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 3rd day of December, 1985, a copy of the foregoing Statement of Grounds and Authorities was mailed, postage prepaid, to William A. Harwood, Esquire, 107 Main Street, Hagerstown, Maryland, 21740, Attorney for Protestant, Dr. John F. Powole, Phyllis Cole Friedman, Room 223 Court House, Towson, Maryland, 21204, People's Counsel for Baltimore County, Francis H. Iglehart, 307 West Allegheny Avenue, Towson, Maryland, 21204, Protestant, and County Board of Appeals of Baltimore County, Room 200, Court House, Towson, Maryland, 21204.

Dorothy M. Beaman
Dorothy M. Beaman,
Attorney for
R. O. BUCK REALTY CO., INC.

- 2 -

Dorothy Beaman, Esquire
405 West Pennsylvania Avenue
Towson, Maryland 21204

NOTICE OF HEARING

RE: Petition for Special Exception
N/S Monkton Rd., 800' E of Carroll Rd.
R. O. B & Realty Co., Inc. - Petitioner
Case No. 1-252-X

TIME: 11:15 a.m.

DATE: Monday, March 18, 1985

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

cc: McKee & Associates, Inc.
1717 York Road
Lutherville, Maryland 21093

Nicholas B. Commodari
Zoning Commissioner
of Baltimore County

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

No. 003143

DATE 1-9-85 ACCOUNT R-O-B & R-15-000

AMOUNT \$100.00

RECEIVED 1-9-85

FOR: 106, Court House, 189, 307 West Allegheny

VALIDATION OR SIGNATURE OF CASHIER

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

March 8, 1985

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

o/o
Nicholas B. Commodari
Chairman

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

Dorothy M. Beaman, Esquire
405 West Pennsylvania Avenue
Towson, Maryland 21204

RE: Item No. 189 - Case No. 85-252-X
Petitioner - R.O. Buck Realty Co., Inc.
Special Exception Petition

Dear Ms. Beaman:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. The Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

In view of your client's proposal to convert the existing building, located to the rear of the dwelling, to an animal boarding place and veterinarian, this hearing is required.

As indicated in my conversation with Mr. James McKee, the driveway and proposed parking area will be paved with tar and chip or macadam and should be so noted on the site plan.

For further information, concerning the comments from the Department of Permits and Licenses, you may contact Mr. Charles Burnham at 494-5987.

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

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

NBC:bsc
Enclosures
cc: McKee Associates, Inc.
1717 York Rd.
Lutherville, Md. 21093



BALTIMORE COUNTY
DEPARTMENT OF PUBLIC WORKS
TOWSON, MARYLAND 21204

HARRY J. PISTEL, P.E.
DIRECTOR

February 12, 1985

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

Re: Item #189 (1984-1985)
Property Owner: R. O. Buck Realty Co., Inc.
N/S of Monkton Rd. opp. Carroll Rd.
Acres: 58.49
District: 10th

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:

Baltimore County highway and utility improvements are not directly involved.

Monkton Road is proposed to be further improved in the future on a 70-foot right-of-way.

Future drainage and utility easements will be required within this property.

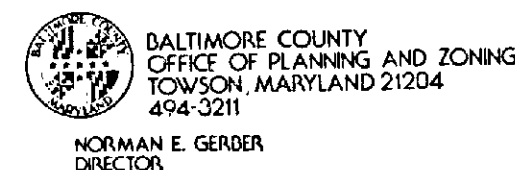
Development of this property through stripping, grading and stabilization could result in a sediment pollution problem, damaging private and public holdings downstream of the property. A grading permit is, therefore, necessary for all grading, including the stripping of top soil.

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

Very truly yours,
James A. Markle, P.E.
JAMES A. MARKLE, P.E., Chief
Bureau of Public Services

JAM:EAM:FWR:ss

EE-NW & 11-SW Key Sheet
99 - 100 NE 5 & 6 Pos. Sheets
NE 25 & 26 B Topo 29 Tax Map



BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
TOWSON, MARYLAND 21204
494-5211
NORMAN E. GENDER
DIRECTOR

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

Re: Zoning Advisory Meeting of 1/9/85
Item # 189
Property Owner: R.O. Buck Realty Co., Inc.
Location: N/S Monkton Rd.
opposite Carroll 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.
- () A County Review Group Meeting is required.
- () A County Review Group Meeting was held and the minutes will be forwarded by the Bureau of Public Services.
- () This site is part of a larger tract; therefore it is defined as a subdivision. The plan must show the entire tract.
- () A record plat will be required and must be recorded prior to issuance of a building permit.
- () The access is not satisfactory.
- () The circulation on this site is not satisfactory.
- () The parking arrangement is not satisfactory.
- () Parking calculations must be shown on the plan.
- () This property contains soils which are defined as wetlands, and development on these soils is prohibited.
- () Construction in or alteration of the floodplain is prohibited under the provisions of Section 22-98 of the Development Regulations.
- () Development of this site may constitute a potential conflict with the Baltimore County Master Plan.
- () The amended Development Plan was approved by the Planning Board on _____.
- () Landscaping: Must comply with Baltimore County Landscape Manual.
- () The property is located in a deficient service area as defined by 8111 178-79. No building permit may be issued until a Reserve Capacity Use Certificate has been issued. The deficient service is _____.
- () The property is located in a traffic area controlled by a "D" level intersection as defined by 8111 178-79, and as conditions change traffic capacity may become more limited. The Basic Services Areas are re-evaluated annually by the County Council.
- () Additional comments: _____

cc: James Hoswell

Eugene A. Bober
Chief, Current Planning and Development

BALTIMORE COUNTY DEPARTMENT OF HEALTH

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

Zoning Item # 189, Zoning Advisory Committee Meeting of Jan 9, 85

Property Owner: R.O. Buck Realty Co., Inc.

Location: N/S of Monkton Road District 10

Water Supply: Well Sewage Disposal: septic system

COMMENTS ARE AS FOLLOWS:

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

SS 20 1082 (1)

Zoning Item # 189 Zoning Advisory Committee Meeting of Jan 9, 85
Page 2

- () Prior to razing of existing structure/s, petitioner must contact the Division of Water Quality and Waste Management at 494-3768, regarding removal and/or disposal of potentially hazardous materials and solid wastes.
- () Any abandoned underground storage tanks containing gasoline, waste oil, solvents, etc., must have the contents removed by a licensed hauler and either be removed from the property or properly backfilled. Prior to removal or abandonment, owner must contact the Division of Water Quality and Waste Management at 494-3768.
- (X) Soil percolation tests (have been ~~last~~ conducted).
The results are valid until _____
Soil percolation test results have expired. Petitioner should contact the Division of Environmental Support Services to determine whether additional tests are required.
- () Where water wells are to be used as a source of water supply, a well meeting the minimum Baltimore County Standards must be drilled.
- () In accordance with Section 13-117 of the Baltimore County Code, the water well yield test shall be valid until _____
is not acceptable and must be retested. This must be accomplished prior to conveyance of property and approval of Building Permit Applications.
- () Prior to occupancy approval, the potability of the water supply must be verified by collection of bacteriological and chemical water samples.
- () If submission of plans to the County Review Group is required, a Hydrogeological Study and an Environmental Effects Report must be submitted.
- (X) Others: Prior to applying for a Building Permit for the proposed facility, petitioner should contact this office regarding the minimum requirements for well usage and sewage disposal systems at this site.
Petitioner should also contact the Animal Control office at 592-6111 regarding the proposed facility.

Ian J. Forrest
Ian J. Forrest, Director
BUREAU OF ENVIRONMENTAL SERVICES

SS 20 1283 (2) B



BALTIMORE COUNTY
FIRE DEPARTMENT
TOWSON, MARYLAND 21204-2586
494-4500

PAUL H. REINCKE
CHIEF

January 23, 1985

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: R. O. Buck Realty Co., Inc.

Location: N/S of Monkton Rd opp. Carroll Road

Item No.: 189 Zoning Agenda: 1/9/85

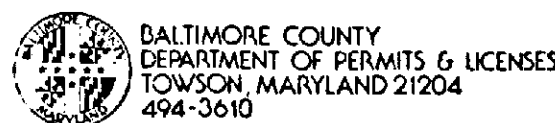
Gentlemen:

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.
- (X) 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.
- () 7. The Fire Prevention Bureau has no comments, at this time.

REVIEWER: *Carl David Kelly* Noted and Approved: *Harold M. Trankow*
Planning Group Fire Prevention Bureau
Special Inspection Division

/mb



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

January 17, 1985

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

Dear Mr. Jablon:

Comments on Item # 189 Zoning Advisory Committee Meeting are as follows:

Property Owner: R.O. Buck Realty Co., Inc.
Location: N/S of Monkton Road opposite Carroll Road
Existing Zoning: R.O. 2
Proposed Zoning: Special Exception for an animal boarding place and vete. 'arium

Acres: 58.49
District: 10th.

The items checked below are applicable:

A. All structures shall conform to the Baltimore County Building Code 1981/Council Bill 4-82 State of Maryland Code for the Handicapped and Aged; and other applicable Codes.

B. A building/ & other / permit shall be required before beginning construction.

C. Residential: Three sets of construction drawings are required to file a permit application. Architect/Engineer seal is not required. Non-reproduced seals and signatures are required on Plans and Technical Data.

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

E. An exterior wall erected within 6'0" for Commercial uses or 3'0" for One & Two Family use group of an adjacent lot line shall be of one hour fire resistive construction, no openings permitted within 3'0" of lot lines. A fire wall is required if construction is on the lot line, see Table 401, line 2, Section 1107 and Table 1102, also Section 503.2.

F. Requested variance appears to conflict with the Baltimore County Building Code, Section/s

G. A change of occupancy shall be applied for, along with an alteration permit application, and three required sets of drawings indicating how the structure will meet the Code requirements for the proposed change. Drawings may require a professional seal. - Change of use shall be from R-3 Residential (Farm) use to "B" Business Use, or mixed uses "R-3 and B".

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

I. Comments

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

Very truly yours,

Charles E. Burnham, Chief
Plans Review

CED:ee

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Arnold Jablon
TO: Zoning Commissioner
Norman E. Gerber, Director
FROM: Office of Planning and Zoning
No. 85-252-X
SUBJECT: R.O. Buck Realty Co., Inc.

Date: March 11, 1985

On the basis of the available information, this office is not opposed to the granting of the subject request.

NEG/JGH/sf

Norman E. Gerber, Director
Office of Planning and Zoning

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Arnold Jablon
TO: Zoning Commissioner
C. Richard Moore
FROM: Deputy Director of Traffic Engineering
SUBJECT: Westfield Special Exception

Date: June 4, 1985

At the request of James McKee, the engineer for the Westfield Special Exception, a field inspection was conducted to look at the proposed relocation of the existing driveway approximately 300ft. to the east opposite the driveway for 2519 Monkton Road.

This location was recommended to James McKee by John W. Guckert of The Traffic Group, and it was found to be acceptable to this department.

If you have any further questions, please contact this office.

C. Richard Moore
Deputy Director of
Traffic Engineering

CRM/GMJ/ccm

cc: James McKee
McKee & Association, Inc.
1717 York Road
Lutherville, MD. 21093

IGLEHART & McLAUGHLIN
ATTORNEYS AT LAW
307 W. ALLEGHENY AVENUE
P. O. BOX 6850
TOWSON, MARYLAND 21204

March 21, 1985

Mr. Arnold Jablon, Zoning Commissioner
of Baltimore County
County Office Building
111 W. Chesapeake Ave.
Towson MD 21204

Re: R. O. Buck Realty Co.
85-252-X, S.E.
Monkton and Carroll Roads

Dear Mr. Jablon:

It is my understanding that you heard testimony on the above application for Special Exception for a veterinary hospital this past Monday, March 18, 1985. I was made aware of the hearing over the preceding weekend but was unable to attend the hearing because of the late notice which prevented rearranging my schedule. The sign advertising the hearing must have been blown or knocked over for some period of time prior to the eighteenth as I do not recall seeing it.

I have given the above preliminary comments to explain my absence as a protestant. My wife and I own a farm property with a small but consistent horse population immediately adjacent to the subject site on the South side of Monkton Road. I am also a general partner in Corbett Farm, a horse breeding and boarding establishment adjacent to our property and approximately 1,000 yards from the subject property where as many as 120 mares are brought in for breeding, a great many foals are born and raised there through the weanling and yearling stages.

Although not having attended the hearing I do not have the benefit of the restrictions if any, proposed by the applicant with respect to the type of horses which might be cared for on the premises, but I am greatly concerned as to the danger of airborne bacilli resulting in possible infection of other horses in which we either have an ownership interest or for which my partners and I have a management responsibility.

Yours very truly,

Francis N. Iglehart

FNI:dmf
CC: John B. Merryman



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

ARNOLD JABLON
ZONING COMMISSIONER

JEAN M. H. JUNG
DEPUTY ZONING COMMISSIONER

May 9, 1985

Dorothy Beaman, Esquire
405 W. Pennsylvania Avenue
Towson, Maryland 21204

RE: PETITION FOR SPECIAL EXCEPTION
N/S of Monkton Road,
800' E of Carroll Road
10th Election District
R. O. Buck Realty Co., Inc. -
Petitioner
Case No. 85-252-X (Item No. 189)

Dear Ms. Beaman:

Please be advised that an appeal has been filed by the Protestant, John F. Fowble, from the decision rendered by the Zoning Commissioner of Baltimore County in the above referenced matter.

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

Very truly yours,

Arnold Jablon
Zoning Commissioner

AJ:bg

cc: William E. Hammond, Esquire
107 Main Street
Reisterstown, Maryland 21136

John F. Fowble, V.M.D.
2907 Stockton Road
P. O. Box 155
Phoenix, Maryland 21131

Francis N. Iglehart, Esquire
307 W. Allegheny Avenue
P. O. Box 6850
Towson, Maryland 21204

People's Counsel

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

No. 005395

DATE: 4-17-85 ACCOUNT: 8-11-415-000

AMOUNT: \$ 105.00 (cash)

RECEIVED FROM: John F. Fowble, V.M.D.

FOR: R.O. Buck Realty Co., Inc.

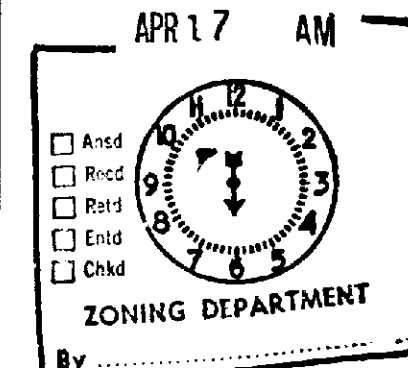
VALIDATION OR SIGNATURE OF CASHIER

NOTICE OF APPEAL

Mr. Commissioner:

On behalf of Dr. John F. Fowble, a Protestant in the above entitled matter, please note an appeal to the decision of the Zoning Commissioner and forward the case to the Baltimore County Board of Appeals.

John F. Fowble, V.M.D.
2907 Stockton Road
P.O. Box 155
Phoenix, MD 21131



RICHARD W. KIEFER
F. DUNCAN CORNELL
DEAN W. C. HESCOY, P.A.
IRA K. HIMMEL
WILLIAM L. CLARK
COURTNEY M. BEAMAN
GEORGE L. RUTHERFORD, III

LAW OFFICES
HOOPER, KIEFER & CORNELL
343 NORTH CHARLES STREET
BALTIMORE, MARYLAND 21201-4381
(301) 727-4700

TOWSON OFFICE
405 W. PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4892
823-3000

OF COUNSEL
PHILIP HELLER SACHS
THOMAS E. ROSSER
ARTHUR J. HOOPER
(800) 451-7811

June 11, 1985

Mr. William T. Hackett
Baltimore County Board of Appeals
Room 200, Old Court House
Towson, MD, 21204

Re: Appeal from Petition For Special Exceptions
N/S of Monkton Road
800' E. of Carroll Road
R. O. Buck Realty Co., Inc., Petitioner
Case No. 85-252-X (Item No. 189);
Our File No. 16703.8400

Dear Mr. Hackett:

The above-referenced Appeal is from the granting of Special Exceptions to my client, R. O. Buck Realty Co., Inc., for the addition of an equine veterinarian on the property which is and will continue to be used as a horse farm.

The delay caused by this Appeal is creating a hardship for my client. Accordingly, we would appreciate your setting our case in for a hearing at the earliest possible time.

Thank you for your consideration.

Sincerely,

Dorothy M. Beaman

DMB/jcb
cc: Mr. Michael A. Buck

RECEIVED
COUNTY BOARD OF APPEALS
15 JUN 12 P 12 42 E

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

Date of Posting: 6/10/85
Post for: [Signature]
Petitioner: [Signature]
Location of property: [Signature]
Location of Sign: [Signature]
Remarks: [Signature]
Posted by: [Signature]
Number of Signers: [Signature]

Please keep us posted -
i.e. send us a notice
when R.O. Buck Realty Co.
Petition for Special Exception
case # 85-252-X
is filed with you.
RECEIVED
COUNTY BOARD OF APPEALS
TOWSON, MD. 21204
771-4601

6/18/85 - Following were notified of hearing set for Tues. Aug. 27, 1985, at 10 a.m.:

Dorothy Beaman
R. O. Buck Realty Co.
Wm. E. Hammond
Francis Iglehart
John F. Fowble
Phyllis Friedman
N. Gerber
J. Hoswell
A. Jablon
Jean Jung
J. Dyer

RECEIVED
COUNTY BOARD OF APPEALS
JAN 14 1986
11:28 P.M.

CIRCUIT COURT FOR BALTIMORE COUNTY
ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Bayley Avenue
P.O. Box 6754
Towson, Maryland 21204-0754
January 21, 1986.

TO: Mr. E. Hammond, Esq.
Dorothy M. Beaman, Esq.
County Board of Appeals of Baltimore Co.
Thomas J. Bollinger, Esq.

RE: NON JURY - 8503 3619 - IN THE MATTER OF R.O. BUCK REALTY CO., INC. VS COUNTY BOARD OF APPEALS

HEARING DATE: Thursday, April 10, 1986, @ 9:30 a.m.

ON THE FOLLOWING: Appeals 1 1/2 to 2 hours

UPON RECEIPT OF THIS NOTICE: Counsel shall contact each other immediately to confirm calendars. Claim of not receiving notice will not constitute a bar to the hearing.

POSTPONEMENTS: If the above date is not agreeable to any counsel, a request for a postponement MUST BE MADE IN WRITING to the Assignment Office AS SOON AS POSSIBLE, with a copy to all counsel involved.

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

RECEIVED
COUNTY BOARD OF APPEALS
JAN 14 1986
2:18 P.M.

CIRCUIT COURT FOR BALTIMORE COUNTY
ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Bayley Avenue
P.O. Box 6754
Towson, Maryland 21204-0754
January 6, 1986.

TO: Mr. E. Hammond, Esq.
Dorothy M. Beaman, Esq.
County Board of Appeals
Thomas J. Bollinger, Esq.

RE: NON JURY - 8503 3619 - R.O. BUCK REALTY CO., INC. VS COUNTY BOARD OF APPEALS

HEARING DATE: Monday, March 24, 1986, @ 1:30 p.m.

ON THE FOLLOWING: ALL OPEN MOTIONS IN THIS CASE.
IF YOU DESIRE TO SUBMIT, PLEASE CONTACT CIVIL ASSIGNMENT.

UPON RECEIPT OF THIS NOTICE: Counsel shall contact each other immediately to confirm calendars. Claim of not receiving notice will not constitute a bar to the hearing.

POSTPONEMENTS: If the above date is not agreeable to any counsel, a request for a postponement MUST BE MADE IN WRITING to the Civil Assignment Office AS SOON AS POSSIBLE, with a copy to all counsel involved.

SETTLEMENTS: If a settlement is reached prior to the hearing date, the Assignment Office must be notified immediately.

494-3180

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

November 15, 1985

Dorothy Beaman, Esq.
405 W. Pennsylvania Avenue
Towson, Md. 21204

Dear Ms. Beaman:

Re: Case No. 85-252-X
R. O. Buck Realty Co., Inc.

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

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

June Holmen
June Holmen, Secretary

Encl.
cc: R. O. Buck Realty Co., Inc.
Francis N. Iglehart, Esq.
Phyllis C. Friedman
Norman Gerber
James Hoswell
Arnold Jablon
Jean Jung
James Dyer

IN THE MATTER OF THE APPLICATION OF R.O. BUCK REALTY CO., INC. FOR SPECIAL EXCEPTION FOR AN ANIMAL BOARDING PLACE AND A VETERINARIAN N/S OF MONKTON ROAD 800' E. OF CARROLL ROAD 10th DISTRICT

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
NO. 85-252-X

ORDER FOR APPEAL BY PROTESTANT

MR. CLERK:

Please enter an appeal to the Circuit Court for Baltimore County on behalf of Dr. John F. Fowble, Protestant in the above entitled matter, from the Order of the County Board of Appeals of Baltimore County, passed in the above case on October 15, 1985.

John F. Fowble
John F. Fowble, Protestant

William E. Hammond
William E. Hammond, Attorney for Protestant, Dr. John F. Fowble
107 Main Street
Reisterstown, Maryland 21136
833-1322

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, That on this 13th day of November, 1985, a copy of the foregoing Order For Appeal By Protestant was mailed, postage pre-paid, to Dorothy M. Beaman, Esquire, Hooper, Kiefer and Cornell, 405 West Pennsylvania Avenue, Towson, Maryland, 21204, Attorney for R.O. Buck Realty, Co., Inc., Petitioner, Phyllis Cole Friedman, Room 223, Court House, Towson, Maryland, People's Counsel for Baltimore County and Francis N. Iglehart, 307 West Allegheny Avenue, Towson, Maryland 21204, Protestant.

William E. Hammond
William E. Hammond, Attorney for Protestant

IN THE MATTER OF THE APPLICATION OF R. O. BUCK REALTY CO., INC. FOR SPECIAL EXCEPTION FOR AN ANIMAL BOARDING PLACE AND A VETERINARIAN N/S OF MONKTON ROAD, 800' E. OF CARROLL ROAD 10th DISTRICT

JOHN F. FOWBLE, V.M.D., PROTESTANT-APPELLANT

CASE NO. 85-252-X

CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW

CG Doc. No. 17
Folio No. 129
File No. 85-CG-3619

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, William T. Hackett, Lawrence E. Schmidt, 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, Dorothy Beaman, Esq., 405 W. Pennsylvania Ave., Towson, Md. 21204, Counsel for Petitioner; R. O. Buck Realty Co., Inc., 10534 York Rd., Cockeysville, Md. 21030, Petitioner; William E. Hammond, Esq., 107 Main St., Reisterstown, Md. 21136, Counsel for Protestant, John F. Fowble; John F. Fowble, V.M.D., 2307 Stockton Rd., P. O. Box 155, Phoenix, Md. 21131, Protestant; Francis N. Iglehart, Esq., 307 W. Allegheny Ave., P. O. Box 6350, Towson, Md. 21204, Protestant; and Phyllis C. Friedman, Court House, Towson, Md. 21204, People's Counsel for Baltimore County, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

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

R. O. Buck Realty Co., Inc.
Case No. 85-252-X

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Dorothy Beaman, Esq., 405 W. Pennsylvania Ave., Towson, Md. 21204, Counsel for Petitioner; R. O. Buck Realty Co., Inc., 10534 York Rd., Cockeysville, Md. 21030, Petitioner; William E. Hammond, Esq., 107 Main St., Reisterstown, Md. 21136, Counsel for Protestant, John F. Fowble; John F. Fowble, V.M.D., 2307 Stockton Rd., P. O. Box 155, Phoenix, Md. 21131, Protestant; Francis N. Iglehart, Esq., 307 W. Allegheny Ave., P. O. Box 6350, Towson, Md. 21204, Protestant; and Phyllis C. Friedman, Court House, Towson, Md. 21204, People's Counsel for Baltimore County, on this 15th day of November, 1985.

June Holmen
June Holmen
County Board of Appeals of Baltimore County



County Board of Appeals of Baltimore County

Room 200 Court House
Towson, Maryland 21204
(301) 494-3130

November 15, 1985

William E. Hammond, Esq.
107 Main Street
Reisterstown, Md. 21136

Dear Mr. Hammond:

Re: Case No. 85-252-X
R. O. Buck Realty Co., Inc.

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

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

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

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

Very truly yours,

John F. Fowble
John F. Fowble, Secretary

Encls.
cc: Dr. John F. Fowble

November 15, 1985

BILLED TO: William E. Hammond, Esq.
107 Main St.
Reisterstown, Md. 21136

Cost of certified documents in Case No. 85-252-X \$ 25.00
R. O. Buck Realty Co., Inc.
N/S Monkton Rd., 800' E of Carroll Rd.
10th District

MAKE CHECKS PAYABLE TO: Baltimore County, Maryland

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

EXHIBIT 1
DEPOSITIONS HEARINGS ARBITRATIONS
SOCIAL SECURITY NO.
210-06-4030



BERNARD DANKER
ASSOCIATES
14401 OLD YORK ROAD
PHOENIX, MARYLAND 21131

December 3, 1985

William E. Hammond, Esq.
107 Main St.
Reisterstown, Md. 21136

Dear Mr. Hammond:

In re your appeal of the County Board of Appeals of Baltimore County, Case #85-252-X, due to the tremendous backlog of transcription work that needs to be accomplished by this office, it appears that the thirty days mandated by law to deliver your transcript to the Circuit Court for Baltimore County will be impossible to meet; therefore, would you please request the Court for an additional thirty days for this purpose.

Very truly yours,

Bernard Danker
Bernard Danker

TELEPHONES
BUS. 888-8877
HOME 888-0766
COURT 494-2635

LAW OFFICES
HOOPER, KIEFER & CORNELL
343 NORTH CHARLES STREET
BALTIMORE, MARYLAND 21201-4361
(301) 727-4700

TOWSON OFFICE
408 W. PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4886
823-3010
OF COUNSEL
PHILIP WELLES BACHUS
ARTHUR U. HOOPER
(1986-1978)
ALSO ADMITTED N.Y. BAR

December 3, 1985

Clerk
Circuit Court for Baltimore County
County Courts Building
401 Bosley Avenue
P.O. Box 8734
Towson, MD, 21204-0734

Re: In The Matter Of The Application
Of R. O. Buck Realty Co., Inc.
For Special Exception For An Animal
Boarding Place And A Veterinarian
[sic] N/S Of Monkton Road 800'
E. Of Carroll Road 10th District;
Case No. 85-CG-3619, UCR File No. 16703.84

Dear Sir:

I enclose herewith a Motion To Dismiss and Order thereon, as well as a statement of grounds and authorities. I ask that you present same to the appropriate Judge for his determination.

Additional copies of the Motion are enclosed and I ask that you be served "True Last Copy" in the event the original is signed by the Judge.

A copy of the enclosed documents have been this day sent to all interested parties.

Very truly yours,

Dorothy M. Bowman
Dorothy M. Bowman

RECEIVED
COUNTY BOARD OF APPEALS
NOV 20 1985

DMS/jcb
Enclosures

Clerk of the Circuit Court
for Baltimore County
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

Re: Case No. 85-CG-3619
Appeal from Board of Appeals
R.O. Buck Realty Co., Inc., Appellee
John F. Fowble, V.M.D., Appellant

Dear Sir:

With regard to the above captioned, enclosed herewith please find Answer to Motion To Dismiss which I would appreciate your filing in the above case.

Please set this matter on the docket for the next Motions Day.
Thank you in advance for your kind attention to this matter.

Very truly yours,

William E. Hammond
William E. Hammond

RECEIVED
COUNTY BOARD OF APPEALS
NOV 20 1985

IN THE MATTER OF
THE APPLICATION OF
R.O. BUCK REALTY CO., INC.
FOR SPECIAL EXCEPTION FOR
AN ANIMAL BOARDING PLACE
AND A VETERINARIAN
N/S OF MONKTON ROAD, 800'
E. CARROLL ROAD
10th DISTRICT
Applicant/Appellee

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
CASE NO. 85-CG-3619
CG Docket No. 17, folio 129

JOHN F. FOWBLE, V.M.D.
Protestant/Appellant
Case No. 85-252-X

ANSWER TO MOTION TO DISMISS

NOW COMES John F. Fowble, V.M.D., by his attorney, William E. Hammond, and in Answer to the Motion to Dismiss filed herein in behalf of R.O. Buck Realty Co., Inc., Applicant/Appellee, and by way of showing cause to the contrary says:

1. That Protestant/Appellant filed an Order to Appeal on Wednesday, November 13, 1985 by personally delivering same to the Office of the Board of Appeals and was sent by a representative thereof to the Office of the Clerk of the Circuit Court for Baltimore County for the filing thereof.
2. That a Certificate of Notice was filed by the Board of Appeals in the Circuit Court for Baltimore County on November 15, 1985, copies of which were sent to every party to the proceedings as therein set forth.
3. That Protestant/Appellant was advised to forward a check to Bernard Danker for the transcription of the record and said check was so mailed on November 14, 1985, and shortly thereafter a check was also mailed to the Board of Appeals, payable to Baltimore County, Maryland, in compliance with its invoice for certified documents in Case No. 85-252-X.
4. That on November 18, 1985 attorney for Protestant/Appellant was advised his Mother had been admitted to the Washington County Hospital as the result of congestive heart failure and said attorney remained in Hagerstown, Maryland until he was advised by the attending physician that his Mother had improved to such extent that he could return to his home on Thursday evening, November 21, 1985.

5. Therefore, by reason of the aforementioned attorney being absent from his office, the emotional circumstances causing his absence and the attendant problems created thereby requiring immediate attention, the Petition referred to in Maryland Rule 8-2.2 was not filed as set forth, but Protestant/Appellant submits that the aforementioned circumstances are such as to constitute the showing of cause to the contrary as provided for in Maryland Rule 8-2.2 and that the filing of the Petition thereafter did not and does not constitute delay in the matter, and that the sanction provided for is harsh and does not balance the purpose and importance of the requirement against the circumstances of its violation in this instance.

WHEREFORE, your Protestant/Appellant, John F. Fowble, V.M.D., prays this Honorable Court to DENY the Motion to Dismiss as filed herein.

William E. Hammond
Attorney for John F. Fowble, V.M.D.
Protestant/Appellant
107 Main Street
Reisterstown, Maryland 21136
833-1372

RECEIVED
COUNTY BOARD OF APPEALS
NOV 20 1985

STATEMENT OF POINTS AND AUTHORITIES:
Maryland Annotated Code, Rule 85.

I HEREBY CERTIFY, That on this 17th day of December, 1985, a copy of the foregoing Answer to Motion to Dismiss was mailed, postage prepaid, to Dorothy M. Bowman, Attorney for R.O. Buck Realty Co., Inc., Hooper, Kiefer & Cornell, 343 North Charles Street, Baltimore, Maryland 21201-4361, Phyllis Cole Friedman, People's Counsel for Baltimore County, Court House, Room 223, Towson, Maryland 21204, and County Board of Appeals of Baltimore County, Court House, Room 200, Towson, Maryland 21204.

William E. Hammond
Attorney for Protestant/Appellant

IN THE MATTER OF
THE APPLICATION OF
R. O. BUCK REALTY CO., INC.
FOR SPECIAL EXCEPTION FOR
AN ANIMAL BOARDING PLACE
AND A VETERINARIAN
N/S OF MONKTON ROAD 800'
E. OF CARROLL ROAD
10TH DISTRICT
Applicant/Appellee

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
CG Docket No. 17
Folio No. 129
Case No. 85-CG-3619
Case No. 85-252-X

ORDER TO EXTEND TIME
FOR FILING OF
APPLICANT'S MEMORANDUM

Upon the foregoing Motion of R. O. BUCK REALTY CO., INC., To Extend Time For Filing its Memorandum, and the pleadings, good cause appearing therefor, it is this day of

1985.
ORDERED, that R. O. BUCK REALTY CO., INC., be and hereby is, granted an extension of time to file its Memorandum until the 26th day of March, 1986, if its Motion to Dismiss should be denied; and, it is further
ORDERED, that R. O. BUCK REALTY CO., INC., shall file its Answer on or before the 28th day of March, 1986, if its Motion to Dismiss is denied; and, it is further
ORDERED, that the Protestant, JOHN F. FOWBLE, shall file until the day of April, 1986, to file his Reply if he so desires.

Judge, Circuit Court
for Baltimore County

IN THE MATTER OF THE APPLICATION OF R. O. BUCK REALTY CO., INC. FOR SPECIAL EXCEPTION FOR AN ANIMAL BOARDING PLACE AND A VETERINARIUM 21/2 M/S OF MONKTON ROAD 800 E. OF CARROLL ROAD 10TH DISTRICT. APPLICANT/Appellee JOHN F. FOWBLE, V.M.D., Protestant/Appellant. IN THE CIRCUIT COURT FOR BALTIMORE COUNTY CG Docket No. 17 Folio No. 129 Case No. 85-CG-3619

APPELLER'S MEMORANDUM OF LAW

STATEMENT OF THE CASE

R. O. BUCK REALTY CO., INC. petitioned for Special Exception for a Veterinarian and Animal Boarding Place to be operated on its fifty-eight (58) acre horse farm. After proper posting and notice given, a hearing was conducted on March 18, 1985, by the Zoning Commissioner, Dr. Fowble and his counsel were present, with counsel for Dr. Fowble cross-examining Petitioner's witnesses, but the Protestant did not present any testimony. The Zoning Commissioner's Order dated March 25, 1985, granted a Special Exception with some restrictions. The Zoning Commissioner's Order was appealed to the Baltimore County Board of Appeals by Dr. Fowble on a timely basis, a *de novo* hearing was held on August 27, 1985, and the Board granted the Special Exception with certain restrictions by Order dated October 13, 1985. An appeal to this Honorable Court was noted on November 13, 1985.

HOOPER, KIEFER & CORNELL
BALTIMORE, MD. 21201

QUESTIONS PRESENTED

I. Does Appellant, JOHN F. FOWBLE, V.M.D., have standing as a "person aggrieved" to appeal the decision of the County Board of Appeals of Baltimore County?
II. Was the action of the County Board of Appeals in granting the Special Exception in compliance with the law and based upon substantial evidence?

STATEMENT OF FACTS

R. O. BUCK REALTY CO., INC., Appellee, purchased fifty-eight (58) acres of land located on Monkton Road in the heart of Baltimore County's beautiful horse country with the intention of continuing its previous use as a horse farm, but also of adding a Veterinarian for the purpose of providing a modern, well-appointed facility where horses could have surgical procedures performed safely. Since a Veterinarian is defined only as a building which can house animals overnight, and since some of the horses would be ambulatory after a surgical procedure, but not ready to be released, it was necessary to apply for a special exception for both a Veterinarian and an Animal Boarding Place.

This horse country is zoned RC-2 (Agriculture). The preferred use of such land is for agricultural operations and one of the uses permitted as of right is horse farms. Both veterinarians and animal boarding places are permitted by Special Exception provided that the use would not be detrimental

HOOPER, KIEFER & CORNELL
BALTIMORE, MD. 21201

- 2 -

to the primary agricultural uses in the vicinity and that such use would support the primary agricultural use and would not itself be situated on land more appropriately used for primary agricultural uses.

ARGUMENT

I. Appellant, JOHN F. FOWBLE, V.M.D., does not have standing as a "person aggrieved" to appeal the decision of the County Board of Appeals of Baltimore County.

Appellee contends that JOHN F. FOWBLE, V.M.D., is not a "person aggrieved" by the decision of the County Board of Appeals (hereinafter called "Board"). Appeals from the Board are controlled by Article VI, Section 604 of the Charter of Baltimore County which provides:

Within thirty days after any decision by the county board of appeals is rendered, any party to the proceeding who is aggrieved thereby may appeal such decision to the circuit court of Baltimore County, which shall have power to affirm the decision of the board, or, if such decision is not in accordance with law, to modify or reverse such decision, with or without remanding the case for rehearing, as justice may require....The review proceedings provided by this section shall be exclusive.

Id. (emphasis supplied).

Judge Barnes, speaking for the Court of Appeals in *Brynarski v. Montgomery County Board of Appeals*, 247 Md. 137, 230 A.2d 249 (1967) observed that the word "aggrieved" has never been legislatively defined, and then proceeded to discuss the meaning of the term as it has developed in the case law. He said:

HOOPER, KIEFER & CORNELL
BALTIMORE, MD. 21201

- 3 -

Generally speaking, the decisions indicate that a person aggrieved by the decision of a board of zoning appeals is one whose personal or property rights are adversely affected by the decision of the board. The decision must not only affect a matter in which the protestant has a specific interest or property right but his interest therein must be such that he is personally and specially affected in a way different from that suffered by the public generally. *DuBay v. Crans*, 240 Md. 180, 185, 313 A.2d 487 (1965).

247 Md. at 144. Judge Barnes goes on to say that "[a]n adjoining, confronting or nearby property owner is deemed, *prima facie*, to be specially damaged and, therefore, a person aggrieved." 247 Md. at 145. "A person whose property is far removed from the subject property ordinarily will not be considered a person aggrieved." 247 Md. at 145. Since Dr. Fowble did not testify that he had a property interest, but only a personal interest (T-128, 129), it is not necessary to determine whether two and one-half miles is nearby or far removed. In any event, there was absolutely no testimony that the proposed exception would damage or diminish the value of his property.

For Dr. Fowble to be an aggrieved person, he must allege and prove by competent evidence that his personal rights are specially and adversely affected by the Board's action. We submit that he has failed to prove any "special" damages over and above any possible damages that may be suffered by the general public.

The Appellant is a veterinarian who lives in Phoenix, Maryland, which, by his testimony (T-118) is "approximately two

HOOPER, KIEFER & CORNELL
BALTIMORE, MD. 21201

and a half miles as a bird flies from the subject property to the southwest." He is employed as a veterinarian at the Corbett Farm which is eight-tenths of a mile from the subject property (T-139). During the breeding season (April, May and June), he spends a substantial amount of time at the Corbett Farm practicing his veterinary medicine (T-119, 119A). When asked by his attorney the nature of his concern with respect to the proposed Special Exception, he stated, "A potential for infectious or contagious diseases being brought into the area that wouldn't ordinarily be brought into the particular area" (T-119A). Dr. Fowble further testified that he did not have horses on his own property. When questioned by Appellee's counsel as to his personal or property interest in the Special Exception, he stated, "I think I have a personal interest in that there is the potential of my developing illness from an animal that I would see that would be sick and I treat horses on Mr. Buck's farm" (T-128, 129). However, Dr. Fowble later admitted that the incidence of infectious disease was less on the horse farm of Dr. Pedersen, who operates a veterinarian within the confines of his horse farm, than the incidence of infectious disease at the Christmas Farm, which does not house a veterinarian (T-130).

Dr. Fowble's fear of developing an illness as a direct result of the operation of this veterinarian is highly

HOOPER, KIEFER & CORNELL
BALTIMORE, MD. 21201

speculative. As a veterinarian, he testified that contagious or infectious diseases are transmitted from animal to animal or from animal to people by fomites (air-borne particles) which travel only ten to twelve feet in the air (T-123, 124) and can be spread by people picking up the particles on their shoes when walking through manure. It apparently is his contention that he, personally, would be put at risk, although he is not concerned enough about contracting infectious diseases from horses to shower and change clothes after a day's work at the Corbett Farm (T-128). Dr. Solomon, Appellee's expert witness, testified that while transmission of disease from horses to humans is possible, the incidence of such is extremely rare. Appellant could not testify as to any such incidence in Maryland or produce any statistical data which would prove that such fear was founded on fact.

Why, then, does Dr. Fowble take this position? Perhaps he is fearful that the Veterinarian will compete with his veterinarian business at Corbett Farm, less than one (1) mile away. However, Judge Barnes, in *Brynarski*, *supra*, cited the case of *Kreatchman v. Ramsburg*, 224 Md. 209, 167 A.2d 343 (1961), for the proposition that "[a] person whose sole reason for objecting to the board's action is to prevent competition with his established business is not a person aggrieved." 247 Md. at 145.

Furthermore, Appellant's Petition is totally silent as to

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his standing to appeal. In the case of *Pattison v. Corby*, 226 Md. 97, 172 A.2d 490, (1960), the Court of Appeals said:

But the status of the protestants in those cases was not exactly the same as that of the protestants in this case where the pleadings purport to be an appeal, pursuant to Maryland Rule 1101 c, from an administrative agency to a court of law under the provisions of subsection 72-83 (of the Montgomery County Code). Nevertheless, the situation is such the same in that the petitioner is entitled to attack the validity of the decision of the council (without alleging special damage) if by his petition he clearly indicates that he has standing to appeal by showing that his property interests are such as are or will be adversely affected by the granting of the rezoning.

226 Md. at 102. With no allegation whatsoever as to standing, the Petition must fail.

Finally, the Court of Appeals, in *Loughborough Development Corporation v. Rivermass Corporation*, et al., 213 Md. 239, 131 A.2d 461 (1957), citing the lower court's opinion, said:

However, it is apparent that any possible damage it (the appellant corporation) may suffer is highly speculative and it could as well be argued that the change in zoning might be beneficial rather than detrimental.

213 Md. at 242 (emphasis supplied).

In its Opinion, the Board concluded that the instant Special Exception could well be beneficial to the community.

Appellee submits that Dr. Fowble has not established by probative testimony his standing as an aggrieved party and that his Petition should be dismissed.

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- 7 -

II. The Board's action in granting the Special Exception complies with the law and the record shows substantial evidence to sustain its finding.

Appellant, in his Memorandum, alleges that the uses set forth in Section 1A01.2.C.2 of the Baltimore County Zoning Regulation (hereinafter call "The Regulation") cannot be uses in combination and insists that they are alternative uses because of the use of the disjunctive particle "or" as in veterinarians' office or veterinarian." (P.2)

In fact, the word "or" is defined in Section 101 of the Regulation as:

Or: The word "or" shall mean "and/or" unless modified by use of the word "either" or unless the context clearly indicates another meaning.

Citation omitted. Thus, since the word "either" is not present in 1A01.2.C.2, that Section is interpreted by definition to read:

2. Animal boarding places (regardless of class), kennels, veterinarians' offices, and/or veterinarians (see section 421).

Clearly then, an animal boarding place and a veterinarian are proper uses in combination.

Appellee next argues that all principal uses (i.e. animal boarding place and veterinarian) are subject to the area, use and setback requirements, as to each such use and demands reversal of the Board's Order based upon these requirements. As we have shown above, the uses covered by the Special Exception

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are appropriate combination uses. The definition of Animal Boarding Place excludes a farm. Farms are defined as:

Farms: 3 acres or more of land, and any improvements thereon, used primarily for commercial agriculture, including, but not limited to: crop, dairy, stock and poultry farming; horse breeding, training and stabling; and commercial greenhousing, flower farms and nurseries, whether wholesale or retail, excluding a limited acreage wholesale flower farm.

(Emphasis supplied).

In The Regulation, a Veterinarian is defined as "Any building or portion thereof which is used, intended to be used, or arranged primarily for treatment of animals by a veterinarian, where overnight care is allowed, and where all areas for treatment or housing of animals are odor-proofed and sound-proofed." A veterinarian then is just a building, but what about horses who are ambulatory after a surgical procedure, not ready to be released by the veterinarian? Such horses would be "boarded" on the horse farm, thus requiring a special exception for an animal boarding place. The regulation further provides that the veterinarian be located in an area with at least two acres. The Regulation does not mandate that the two-acre site be for the exclusive use of the veterinarian; it could properly be used for boarding the horses after their surgical procedures.

Finally, Appellant argues that Appellee might operate its Veterinarian in some manner that would violate state statutes or health department regulations. Michael J. Buck, Secretary of

Appellee, testified numerous times on this very point (T-15, 16, 18, 19, 25, 26, 35, 38, and 39). If, in the future, there is any indication that it is not being operated in accordance with the law, the rules and regulations of the State Department of Health will ensure continued compliance. However, there can be no question that it is Appellee's intention to operate the veterinarian in compliance with all laws, ordinances, guidelines, regulations, and/or rules of the various State, County and local authorities. Having said that, Appellee must point out that the issue of compliance with other laws is irrelevant in determining whether or not a Special Exception shall be granted.

The Board listened carefully to the testimony, weighed the credibility of the witnesses and made its decision. It has long been established in Maryland that the Board's decision shall not be disturbed by the courts where the Board has complied with the legal requirements of notice and hearing, and the record shows substantial evidence to sustain the finding. See, Finney v. Hall, 241 Md. 224, 216 A.2d 530 (1966); Courcier v. Board of Zoning Appeals, 204 Md. 397, 104 A.2d 568 (1954), Rohde v. County Board, 234 Md. 259, 199 A.2d 216 (1964).

There has been no allegation of non-compliance with the legal requirements of notice and hearing, so the only questions to be determined by the Board were 1) that the use would not be detrimental to the primary agricultural use in its vicinity, and would support the primary agricultural use in its vicinity and

would not itself be situated on land more appropriately used for primary agricultural uses; and 2) the provisions of the Regulations contained in Section 502.1.

The Board, in its carefully drawn opinion, considered these questions and concluded that the uses would not be detrimental to the primary agricultural uses and that the hospital and laboratory satisfy Section 502.1 of the Regulation, and said further, "the general proximity of this use, which by law must be carefully monitored, could actually be a benefit to neighboring or nearby horse farms should any emergency arise."

CONCLUSION

The standard for granting a special exception was established in the case of Schultz v. Pritts, 291 Md. 1, 432 A.2d 1310 (1981). Judge Davidson said:

We now hold that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects, above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.

291 Md. at 22-23 (citations omitted).

It is apparent that all testimony in opposition to the Special Exception reflected only potential adverse effects inherently associated with a veterinarian, regardless of where

such veterinarian may be located within the R-3 zone. Accordingly, this Court should affirm the Board's Order.

Respectfully submitted,

Dorothy M. Beaman

Hooper, Kiefer & Cornell

By

CERTIFICATION OF MAILING

I HEREBY CERTIFY, that on this 27th day of March, 1985, a copy of the foregoing Memorandum of Law of R. O. Buck Realty Co., Inc. was mailed first class, postage prepaid, to William E. Hammond, Esquire, 107 Main Street, Reisterstown, MD, 21136, Attorney for Protestant/Appellant, Dr. John F. Fowble; Phyllis Cole Friedman, Room 223, Court House, Towson, MD, 21204, People's Counsel for Baltimore County; and County Board of Appeals of Baltimore County, Room 200, Court House, Towson, MD, 21204.

Dorothy M. Beaman

Attorney for
R. O. BUCK REALTY CO., INC.

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IN THE MATTER
OF THE APPLICATION OF
R. O. BUCK REALTY CO., INC.
FOR SPECIAL EXCEPTION FOR
AN ANIMAL BOARDING PLACE
AND A VETERINARIAN [SIC]
N/S OF MONKTON ROAD 800'
E. OF CARROLL ROAD
10TH DISTRICT

IN THE

CIRCUIT COURT

FOR

BALTIMORE COUNTY

CG Docket No.: 17

Folio No.: 129

Case No.: 85-CG-3619

MOTION TO DISMISS

Comes now R. O. BUCK REALTY CO., INC., by its attorneys, Dorothy M. Beaman and Hooper, Kiefer & Cornell, and moves this Honorable Court to dismiss this Appeal from the Order of the County Board of Appeals and for reason therefor says:

1. An Order by the County Board of Appeals granting a special exception to R. O. BUCK REALTY CO. INC. was entered on October 15, 1985.

2. A Protestant, DR. JOHN F. FOWBLE, filed a timely Order to Appeal on November 13, 1985, which was properly served on the County Board of Appeals which then notified all parties of the Appeal and filed the required Certificate of Notice.

3. The Protestant, DR. JOHN F. FOWBLE, has not filed a Petition in accordance with Maryland Rule B.2.e., which requires that said Petition be filed within ten (10) days after filing the Order of Appeal; said Petition was required to be filed no later than November 25, 1985.

4. Maryland Rule B.5., provides that if an appellant fails to file his petition within the time limits prescribed by Rule B.2.e., the court shall dismiss the appeal unless cause to the contrary be shown.

WHEREFORE, R. O. BUCK REALTY CO., INC. prays this Honorable Court pass an Order dismissing this Appeal.

Dorothy M. Beaman

Hooper, Kiefer & Cornell

By
405 W. Pennsylvania Avenue
Towson, MD, 21204
(301) 823-3010
Attorney for
R. O. BUCK REALTY CO., INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 27th day of December, 1985, a copy of the foregoing Motion to Dismiss was mailed, postage prepaid, to William E. Hammond, Esquire, 107 Main Street, Reisterstown, Maryland, 21136, Attorney for Protestant, Dr. John F. Fowble, Phyllis Cole Friedman, Room 223, Court House, Towson, Maryland, People's Counsel for Baltimore County, Francis M. Iglehart, 307 West Allegheny Avenue, Towson, Maryland, 21204, Protestant, and County Board of Appeals of Baltimore County, Room 200, Court House, Towson, Maryland, 21204.

Dorothy M. Beaman
Attorney for
R. O. BUCK REALTY CO., INC.

LAW OFFICES

HOOPER, KIEFER & CORNELL
343 NORTH CHARLES STREET
BALTIMORE, MARYLAND 21201-4381
(301) 782-4700

December 17, 1985
Clerk
Circuit Court for Baltimore County
County Court Building
401 Bayley Avenue
P.O. Box 6754
Towson, MD, 21204-0754

Re: In The Matter Of The Application
Of R. O. BUCK REALTY CO., INC.
For Special Exception For An Animal
Boarding Place And A Veterinarian
[sic] N/S Of Monkton Road 800' E.
Of Carroll Road 10th District;
Case No. 85-CG-3619;
Our File No. 16703.64

Dear Sir:

I enclose herewith a Motion to Strike
and Order thereon, along with our Request for
Hearing.

Very truly yours,

Dorothy M. Beaman

DMB/jcb
Enclosures

IN THE MATTER
OF THE APPLICATION OF
R. O. BUCK REALTY CO., INC.
FOR SPECIAL EXCEPTION FOR
AN ANIMAL BOARDING PLACE
AND A VETERINARIAN [SIC]
N/S OF MONKTON ROAD 800'
E. OF CARROLL ROAD
10TH DISTRICT

IN THE

CIRCUIT COURT

FOR

BALTIMORE COUNTY

CG Docket No.: 17

Folio No.: 129

Case No.: 85-CG-3619

MOTION TO STRIKE PETITION

Comes now R. O. BUCK REALTY CO., INC. (Buck), by its attorneys, Dorothy M. Beaman and Hooper, Kiefer & Cornell, and moves this Honorable Court, pursuant to Md. Rules of Procedure 2-322(e) and B.2.e., to strike the Petition filed by John F. Fowble, V.M.D., Appellant, and, for reason therefor, says:

1. An Order for Appeal was filed by the Appellant from the Order of the Board of Appeals for Baltimore County to the Circuit Court of that County on November 13, 1985.

2. Under Maryland Rule of Procedure B.2.e., the Appellant was obligated to file his Petition in support of the aforesaid Order for Appeal within ten (10) days thereafter.

3. From the Certificate of Service attached to Appellant's Petition, it appears that the said Petition was filed no earlier than December 11, 1985, some twenty-eight (28) days after Appellant's Order for Appeal was filed.

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& CORNELL
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& CORNELL
BALTIMORE, MD. 21201

HOOPER, KIEFER
& CORNELL
BALTIMORE, MD. 21201

4. Buck has filed, on or about December 3, 1985, a Motion To Dismiss the Appeal based on Appellant's failure to file his Petition, which Motion is, at present, undecided by this Honorable Court.

WHEREFORE, R.O. BUCK REALTY CO., INC. requests that this Honorable Court:

- Strike the Petition filed by Appellant;
- Dismiss the Appeal filed by Appellant; and
- Grant R.O. BUCK REALTY CO., INC., such other and further relief as its cause may require.

Dorothy M. Beaman

Hooper, Kiefer & Cornell

By

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IN THE MATTER OF THE APPLICATION OF R. O. BUCK REALTY CO., INC. FOR SPECIAL EXCEPTION FOR AN ANIMAL BOARDING PLACE AND A VETERINARIAN [SIC] N/S OF MONKTON ROAD 800' E. OF CARROLL ROAD 10TH DISTRICT

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

CG Docket No.: 17

Folio No.: 129

Case No.: 85-CG-3619

STATEMENT OF GROUNDS & AUTHORITIES

Md. Rule of Procedure B.2.e "The appellant shall join with his order for appeal, or shall file with the clerk of the court, within ten days after filing the order, a petition...." (Emphasis supplied).

Md. Rule of Procedure 2-322(e) "On motion made by a party... the court... may order any pleading that is late or otherwise not in compliance with these rules stricken in its entirety."

Buck would further refer the Court to the Statement of Grounds and Authorities filed with its Motion to Dismiss.

Dorothy M. Beaman

Hooper, Kiefer & Cornell

By

REQUEST FOR HEARING

R. O. BUCK REALTY CO., INC. requests that a hearing be held on its Motion To Strike and suggests that such a hearing be consolidated with a hearing on its previously filed Motion To Dismiss.

Dorothy M. Beaman

Hooper, Kiefer & Cornell

By

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of December, 1985, a copy of the foregoing Motion To Strike Petition and the accompanying Statement of Grounds & Authorities was mailed, postage, prepaid, to William E. Hammond, Esquire 107 Main Street, Reisterstown, Maryland, 21136, Attorney for Protestant, Dr. John F. Fowble, Phyllis Cole Friedman, Room 223, Court House, Towson, Maryland, People's Counsel for Baltimore County, Francis N. Iglehart, 307 West Allegheny Avenue, Towson, Maryland, 21204, Protestant, and County Board of Appeals of Baltimore County, Room 200, Court House, Towson, Maryland, 21204.

Dorothy M. Beaman
Attorney for
R. O. BUCK REALTY CO., INC.

IN THE MATTER OF THE APPLICATION OF R. O. BUCK REALTY CO., INC. FOR SPECIAL EXCEPTION FOR AN ANIMAL BOARDING PLACE AND A VETERINARIAN [SIC] N/S OF MONKTON ROAD 800' E. OF CARROLL ROAD 10TH DISTRICT

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

CG Docket No.: 17

Folio No.: 129

Case No.: 85-CG-3619

ORDER

Upon the foregoing Motion To Strike of R. O. BUCK REALTY CO., INC., the authorities having been considered, counsel having been heard, and good cause appearing therefor, it is, this day of , 1986

ORDERED, by the Circuit Court for Baltimore County that the Petition of Appellant, John F. Fowble, be, and the same is, hereby stricken.

JUDGE

IN THE MATTER OF THE APPLICATION OF R.O. BUCK REALTY CO., INC. FOR SPECIAL EXCEPTION FOR AN ANIMAL BOARDING PLACE AND A VETERINARIAN N/S OF MONKTON ROAD, 800' E. OF CARROLL ROAD 10TH DISTRICT

Applicant/Appellee

JOHN F. FOWBLE, V.M.D.

Protestant/Appellant

Case No. 85-252-X

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

CASE NO. 85-CG-3619

CG Docket No. 17, folio 129

MEMORANDUM

The above entitled matter came before the Zoning Commissioner who granted a special exception for an animal boarding place and a veterinarian, with restrictions as therein contained. (emphasis added) This Order was appealed to the County Board of Appeals of Baltimore County by John F. Fowble, V.M.D. after having appeared before the Zoning Commissioner as a Protestant. Having so appeared, it is clear that he was a party to the proceedings and had standing to appeal the Zoning Commissioner's Order to this Honorable Court. In Largo Civic Association, et al v. Prince George's County, Maryland, 21 Md. App. 76, 318 A2d 834 at page 838, the Court of Special Appeals said:

...We find nothing in Brynaraki v. Montgomery County, 247 Md. 137, 230 A2d 289 (1967) holding that a person must testify before the administrative agency in order to be a 'party to the proceeding before the' agency. Indeed, there is no requirement that he do so provided the record shows he was in fact a party."

As to whether or not the Protestant/Appellant is a "person aggrieved by decision", is a matter to be determined by the trier of the facts from the testimony elicited.

Applicant/Appellee, by its petition for special exception, seeks to use its 58 acres of R.C.2 (Resource-Conservation) zoned land for an animal boarding place and a veterinarian under Baltimore County Zoning Regulation Section 1A01.2C.2.

A review of the aforementioned regulation, entitled "Uses permitted by Special Exception", discloses its content to be as follows:

"The following uses, only, may be permitted by special exception in any R.C.2 zone, provided that in each case the hearing authority empowered to hear the petition finds the use would not be detrimental to the primary agricultural uses in its vicinity;..."

"2. Animal boarding places (regardless of class), kennels, veterinarians' offices, or veterinarians (See Section 421) (Bill No. 178-79)."

While the County Board of Appeals of Baltimore County, in its consideration of all the testimony, determined that the special exception requested complied with all requirements necessary for its grant, your Protestant/Appellant disagrees, in particular, with its conclusions as the grant applies to the requested veterinarian, i.e. "hospital and laboratory use" as referred to in its Order of October 15, 1985.

First, it is the Protestant/Appellant's position that those uses set forth in Section 1A01.2C.2 are not uses in combination nor are they so comparable as to be the same or similar uses; instead they are alternative uses as is clearly indicated by the use of the disjunctive particle "or", as in veterinarians' office or veterinarians. (emphasis added) To conclude otherwise would be to allow all of the uses on one tract of ground as principal uses in combination which are not provided for in any of the

Resource-Conservation (R.C.) zones or Density Residential (D.R.) zone -- both of which are residential in character, but which are provided for in zones designated as Business, Local (B.L.) and Business, Major (B.M.). The term "Principal" being defined in the Zoning Regulations, Section 101 as "A main use of land, as distinguished from an accessory use."

Assuming arguendo the uses specified in Section 1A01.2C.2 are not principal uses in combination, but instead one is accessory to the other, the question then raised in this matter is as to which is the principal use and which is accessory thereto.

"Accessory use or structure" is defined in Section 101 as follows:

"A use or structure which (a) is customarily incident and subordinate to and serves a principal use or structure; (b) is subordinate in area, extent, or purpose to the principal use or structure; (c) is located on the same lot as the principal use or structure served; and (d) contributes to the comfort, convenience, or necessity of occupants, business, or industry in the principal use or structure served. An accessory building, as defined above, shall be considered an accessory structure. A trailer may be an accessory use or structure if hereinafter so specified. An ancillary use shall be considered as an accessory use; however, a use of such a nature or extent as to be permitted as a "use in combination" (with a service station) shall be considered a principal use."

The testimony of the registered land surveyor for Petitioner/Appellee, James W. McKee, was to the effect that the principal use was the horse farm because it is going to continually operate as a horse farm. In the same area of his testimony Mr. McKee said that "From time to time you are going to get an animal in there for surgical procedure so I guess that could also be a principal use or accessory use. I wouldn't know how to

define that." (T 57) It must be presumed that the testimony was predicated upon information given him by the Applicant/Appellee during his conversations for the preparation of the plat.

Mr. Michael Anthony Buck, Secretary-Treasurer of the Applicant/Appellee corporation, testified the property was to be utilized as a breeding operation, to condition young thoroughbreds prior to their career as race horses and to build an equine surgical facility on the premises. (T 11) When asked as to how many horses he anticipated having on the farm, Mr. Buck indicated that the facility could handle about 50 horses, on the average, comfortably. (T 12) He also indicated that he would anticipate a maximum of three hundred fifty (350) surgical procedures a year (T 15), but had no idea as to the number of laboratory tests or x-ray procedures that would take place during the same period of time. (T 25)

From the above testimony the Protestant/Appellant submits that the proposed and requested uses are all principal uses and as such are controlled by area, use and setback requirements, as to each such use, as are set forth in the Zoning Regulations. The applicable sections are as follows:

Section 101 - Definitions

"Animal Boarding Place: Any building, other structure or land, or any portion thereof, which is used, intended to be used, or arranged for the boarding, breeding or other care of animals for profit, but excluding a farm, kennel, pet shop, veterinarian's office or veterinarian. (emphasis added)

Veterinarian: A person licensed to engage in the practice of veterinary medicine.

Veterinarian's Office: An office which is maintained by a veterinarian for the treatment of animals, and in which no animal is kept overnight. (emphasis added)

Veterinarian: Any building or portion thereof which is used, intended to be used, or arranged primarily for treatment of

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animals by a veterinarian, where overnight care is allowed, and where all areas used for treatment or housing of animals are odor-proofed and sound proofed.

Section 102.1 - No land shall be used or occupied and no building or structure shall be erected, altered, located, or used except in conformity with these regulations and this shall include any extension of a lawful nonconforming use. (emphasis added)

Section 102.2 - No yard space or minimum area required for a building or use shall be considered as any part of the yard space or minimum area for another building or use. (emphasis added)

Section 421 - Animal Boarding Place, Kennel, Pet Shop, Veterinarian's Office, Veterinarian

Section 421.1 - Where an animal boarding place or kennel is allowed in a residential zone, either as a Special Exception or as a permitted use, no part of any such use shall be located within 200 feet of the nearest property line. (emphasis added)

Section 421.3 - Where a veterinarian's office or a veterinarian is allowed in a residential zone as a Special Exception, it shall be located only on a lot having an area of two acres or more, and no part of any such use shall be located within 100 feet of the nearest property line." (emphasis added)

Applying the above sections to Applicant/Appellee's Exhibit 2, designated as Flat d.m by McKee Assoc. dated 11/27/84, it is obvious that there is non-compliance with these sections for the following reasons:

1. Section 421.1 requires that no part of the animal boarding place be located within 200 feet of the nearest property line whereas the plat is showing a newly constructed building, marked "Ex. Barn", on the west side of the circular driveway, is to be used as a part of the boarding facility, i.e. a turn-out shed (T 70) and is only 175 feet from the nearest property line.

5.

2. Section 421.2 indicates that where a veterinarian's office or a veterinarian is allowed it shall be located only on a lot having an area of two (2) acres or more; however, since the plat does not indicate the area to be devoted to either of such uses, it must be concluded that it does not conform with the requirement.

3. Section 102.2 states that no minimum area required for a use shall be considered as any part of the minimum area for another use and so the failure to indicate the area required for the veterinarian and/or veterinarian's office creates non-compliance.

4. Since non-compliance is clearly evident on the plat, either by reason of the information shown thereon or by reason of its absence, neither the proposed uses or the plat are, or will be, in compliance with the requirements set forth in Section 102.1.

In addition, while the Petitioner/Appellee did not request variances from height and/or area regulations, and in particular from Section 421.1, as is provided for in Section 307, your Protest/Appellant submits that the 200 foot requirement set forth in Section 421.1 is a use restriction and therefore not subject to being variances as was decided by Circuit Court for Baltimore County Judge Walter R. Hille in his Order in the case of Walter Ross Ramage, et ux, Petitioners and William C. Klapaska, et ux and John W. Henshaw, III, People's Counsel for Baltimore County, Protest/ Appellant, File No. 6363, Misc. Docket 10, folio 433.

While the technical inadequacies of the Applicant/Appellee's case and the failure to comply with the requirements of the Zoning Regulations are a basis for this appeal, it is of even greater concern to the Protest/ Appellant that the County Board of Appeals' decision ignores the Maryland law when it opines that the hospital and laboratory use "by law must be carefully monitored". The basis for this pronouncement by the Board appears to be predicated upon the testimony of Mr. Michael A. Buck (T16

and 17) and upon Petitioner's Exhibit 1 introduced into the record through him and characterized as being the guidelines for the operation of a veterinarian established by the State Board of Veterinary Medical Examiners.

A review of Petitioner's Exhibit 1, a part of which concerns the Maryland Department of Agriculture Regulations Relating to Minimum Sanitary Standards for Veterinary Facilities in Maryland, discloses Section 13.22.03 to read as follows:

"These regulations shall apply to and govern conditions in and about all facilities operated in the State of Maryland by any licensed veterinarian in connection with the practice of veterinary medicine." (emphasis added)

It is abundantly clear from this prefacing statement that the regulations following do not apply to an animal care facility operated in the State of Maryland by one not licensed as a veterinarian. This being true the dangers involved in this obvious lack of overall control could be devastating to the animal population as well as to humans if some control is not exercised at the local level. It is this lack of understanding on the part of the Zoning Commissioner and the County Board of Appeals that mandated the appeals of their respective Orders. To do otherwise would be an abandonment of the Protest/ Appellant's belief in attempting to control disease rather than rely on his or others ability to cure.

Mr. Michael A. Buck testified regarding ownership of the proposed facility that "we will own the building and the equipment within it", (T26) and that he did not plan to have any other veterinarian, other than those using the facility when they so desired, on the premises to be responsible for the direct supervision and control of any of the aspects of the hospital operation. (T27 and 28)

In this respect, the Annotated Code of Maryland, Agriculture, Title 2, Section 2-313, entitled "Prohibited Acts" states:

"A person may not:

7.

(4) Own, maintain, conduct, operate, or manage a veterinary office, veterinary dental office, veterinary hospital, or a dog, cat, or animal hospital, unless (i) he is a licensed veterinarian, or (ii) the office or hospital is under the direct supervision and control of a licensed and registered veterinarian and a licensed or registered veterinarian is employed in the office or hospital." (emphasis added)

Section 2-301 of the same article defines "direct supervision" as meaning "that a veterinarian licensed and registered in the State is in the immediate vicinity where veterinary medicine is being performed and is actively engaged in the supervision of the practice of veterinary medicine."

In conclusion, there is nothing in the testimony offered by the Applicant/Appellee to give assurance to anyone that compliance with the above requirements would be forthcoming. At best Mr. Michael A. Buck was evasive, but was prompted from time to time to indicate he was going to "adhere to any guidelines or rules that they put forth to us" (T16) and yet, with full knowledge of the requirements set forth above, he was unable to testify as to how he proposed to specifically to adhere.

Therefore, for the reasons set forth herein, the Protest/ Appellant respectfully requests this Honorable Court to reverse the Order of the County Board of Appeals in this matter.

William E. Hammond
Attorney for Protest/ Appellant
107 Main Street
Reisterstown, Maryland 21136
833-1322

I HEREBY CERTIFY, That on this 5th day of February, 1986, a copy of the aforementioned Memorandum was mailed, postage prepaid, to Dorothy M. Beaman, Attorney for R.O. Buck Realty Co., Inc., Hooper, Kiefer & Cornell, 343 North Charles Street, Baltimore, Maryland 21201-4361, Phyllis Cole

8.

Friedman, Room 223, Court House, Towson, Maryland 21204, People's Counsel for Baltimore County, and County Board of Appeals of Baltimore County, Room 200, Court House, Towson, Maryland 21204.

William E. Hammond
Attorney for Protest/ Appellant

IN THE MATTER OF THE APPLICATION OF R. O. BUCK REALTY CO., INC. FOR SPECIAL EXCEPTION FOR AN ANIMAL BOARDING PLACE AND A VETERINARIUM N/S OF MONTGOMERY ROAD 800' E. OF CARROLL ROAD 10TH DISTRICT, Applicant/Appellee
JOHN F. FOWBLE, V.M.D., Protest/ Appellant
Case No. 85-252-X

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY CG Docket No.: 17 Folio No.: 129 Case No.: 85-CG-3619

ANSWER TO PETITION

R. O. BUCK REALTY CO., INC., by Dorothy M. Beaman and Hooper, Kiefer & Cornell, its attorneys, in answer to the Petition of JOHN F. FOWBLE, V.M.D., Protest/ Appellant, respectfully says:

1. That it admits the allegations of Paragraph 1.
2. That it denies the allegations of Paragraph 2.
3. That the Petition of Protest/ Appellant does not contain any allegation concerning Protest/ Appellant's standing to appeal the Order of the County Board of Appeals of Baltimore County.
4. That Applicant/Appellee denies that Protest/ Appellant has alleged or proved any special damage as to give him standing in this case as an aggrieved person.

HOOPER, KIEFER & CORNELL
BALTIMORE, MD. 21201

WHEREFORE, having fully answered, Applicant/Appellee prays the Petition be dismissed with costs to Protest/ Appellant.

Dorothy M. Beaman
Hooper, Kiefer & Cornell
By
343 North Charles Street
Baltimore, MD, 21201
(301) 727-4700
Attorneys for Applicant/Appellant

CERTIFICATION OF MAILING

I HEREBY CERTIFY, that on this 27th day of March, 1986, a copy of the foregoing Answer to Petition was mailed first class, postage prepaid, to William E. Hammond, Esquire, 107 Main Street, Reisterstown, MD, 21136, Attorney for Protest/ Appellant, Dr. John F. Fowble; Phyllis Cole Friedman, Room 223, Court House, Towson, MD, 21204, People's Counsel for Baltimore County; and County Board of Appeals of Baltimore County, Room 200, Court House, Towson, MD, 21204.

Dorothy M. Beaman
Attorney for R. O. BUCK REALTY CO., INC.

- 2 -

IN THE MATTER OF THE APPLICATION OF R. O. BUCK REALTY CO., INC. FOR SPECIAL EXCEPTION FOR AN ANIMAL BOARDING PLACE AND A VETERINARIUM N/S OF MONTGOMERY ROAD 800' E. OF CARROLL ROAD 10TH DISTRICT, Applicant/Appellee
JOHN F. FOWBLE, V.M.D., Protest/ Appellant
Case No. 85-252-X

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY CG Docket No.: 17 Folio No.: 129 Case No.: 85-CG-3619

MOTION OF R. O. BUCK REALTY CO., INC. TO EXTEND TIME FOR FILING ITS MEMORANDUM

Comes now R. O. BUCK REALTY CO., INC., by its attorneys, Dorothy M. Beaman and Hooper, Kiefer & Cornell, and moves this Honorable Court for an extension of time for filing its Memorandum as required under Maryland Rule B12 and for cause therefor, says:

1. On November 13, 1985, Dr. John F. Fowble, the Protest/ Appellant, filed a timely Order for Appeal from the decision of the County Board of Appeals.
2. Protest/ Appellant did not file a timely Petition in support of the said Order as required by Maryland Rule B2.e.
3. Applicant, R. O. BUCK REALTY CO., INC., therefor filed a Motion to Dismiss the Appeal on or about the third day of December, 1985, which Motion is presently set for hearing on the 24th day of March, 1986.
4. Protest/ Appellant then filed his Petition on or about the 11th day of December, 1985.

HOOPER, KIEFER & CORNELL
BALTIMORE, MD. 21201

JAN 28 1986

5. Applicant then filed a Motion to Strike the Petition on or about the 17th day of December, 1985, which Motion will also be heard on the 24th day of March, 1986.

6. The merits of the Appeal are to be heard on the 9th day of April, 1986, some sixteen (16) days thereafter.

7. The record in this case was filed on January 6, 1986, in accordance with Maryland Rule B12.

8. Pursuant to Maryland Rule B12, Protestant filed his Memorandum on the 5th day of February, 1986.

9. Applicant's Memorandum would, in the normal course of events, therefore, be due on the 9th day of March, 1986.

10. It is submitted that it would be unfair and unjust to require the Applicant to undergo the time and expense of preparation of its Memorandum when there is a strong possibility that Protestant's Appeal will be dismissed.

11. Applicant submits that, if its Motion to Dismiss is denied, it is prepared to file its Answer and Memorandum by the 26th day of March, 1986, which will allow the Protestant fourteen (14) days to file his Reply if he so desires.

Wherefore, the Applicant respectfully requests that this Honorable Court

A. Pass an Order extending the time to file its Memorandum to the 26th day of March, 1986, if Applicant's Motion To Dismiss is denied; and

HOOPER, KIEFER
& CORNELL
BALTIMORE, MD. 21201

- 2 -

B. Grant the Applicant such other and further relief as its cause may require.

Respectfully submitted,

/s/
Dorothy M. Beaman
Hooper, Kiefer & Cornell
By _____

STATEMENT OF GROUNDS AND AUTHORITIES

Maryland Rule of Procedure B5

Maryland Rule of Procedure B12

The Applicant would further refer the Court to the Statements of Grounds and Authorities previously filed with its Motion To Dismiss and its Motion To Strike.

/s/
Dorothy M. Beaman
Hooper, Kiefer & Cornell
By _____

CERTIFICATION OF MAILING

I HEREBY CERTIFY that on this 27th day of February, 1986, a copy of the foregoing Motion of R. O. Buck Realty Co., Inc. To Extend Time For Filing its Memorandum and the accompanying

HOOPER, KIEFER
& CORNELL
BALTIMORE, MD. 21201

- 3 -

Statement of Grounds And Authorities was mailed first class, postage prepaid, to William E. Hammond, Esquire, 107 Main Street, Reisterstown, MD, 21136, Attorney for Protestant/Appellant, Dr. John F. Fowble; Phyllis Cole Friedman, Room 223, Court House, Towson, MD, 21204, People's Counsel for Baltimore County; and County Board of Appeals of Baltimore County, Room 200, Court House, Towson, MD, 21204.

/s/
Dorothy M. Beaman
Attorney for
R. O. BUCK REALTY CO., INC.

RECEIVED
COUNTY BOARD OF APPEALS
MAR 28 A 9 48

HOOPER, KIEFER
& CORNELL
BALTIMORE, MD. 21201

- 4 -

IN THE MATTER OF THE APPLICATION OF R. O. BUCK REALTY CO., INC. FOR SPECIAL EXCEPTION FOR AN ANIMAL BOARDING PLACE AND A VETERINARIAN 1/2 OF MONKTON ROAD 800' E. OF CARROLL ROAD 10TH DISTRICT, Applicant/Appellee

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY CG Docket No.: 17 Folio No.: 129 Case No.: 85-CG-3619

Case No. 85-252-X

CERTIFICATION OF NOTICE

I, DOROTHY M. BEAMAN, counsel for R. O. BUCK REALTY CO., INC., the Applicant/Appellee herein, do hereby certify pursuant to Maryland Rule 1-351 that I gave oral notice by telephone on February 27, 1986, to William E. Hammond, Esquire, counsel for Dr. John F. Fowble, Protestant/Appellant, that I would be presenting a Motion of R. O. Buck Realty Co., Inc. To Extend Time For Filing its Memorandum and an Order thereon to the Circuit Court for Baltimore County at approximately 11:00 a.m. on February 28, 1986, in the County Courts building located on Bosley Avenue in Towson, Maryland. Mr. Hammond indicated that he would not attend and that he did not oppose the said Motion.

Date: 2/27/86

/s/
Dorothy M. Beaman

RECEIVED
COUNTY BOARD OF APPEALS
MAR 28 A 9 48

HOOPER, KIEFER
& CORNELL
BALTIMORE, MD. 21201

IN THE MATTER OF THE APPLICATION OF R.O. BUCK REALTY CO., INC. FOR SPECIAL EXCEPTION FOR AN ANIMAL BOARDING PLACE AND A VETERINARIAN 1/2 OF MONKTON ROAD, 800' E. OF CARROLL ROAD 10TH DISTRICT, Applicant/Appellee

JOHN F. FOWBLE, V.M.D., Protestant/Appellant

Case No. 85-252-X

PETITION FOR EXTENSION OF TIME FOR TRANSMITTAL OF RECORD

NOW COMES John F. Fowble, V.M.D., by his attorney, William E. Hammond, and respectfully represents unto your Honor as follows:

1. That an Appeal was filed from the Order of the Board of Appeals for Baltimore County to the Circuit Court for Baltimore County on November 13, 1985, although a Motion to Dismiss has been filed by the Applicant/Appellee.

2. That thereafter the attorney for the Petitioner herein did order the transcript therefor and a check requested by Bernard Danker was forwarded therefor.

3. That attached hereto and prayed to be made a part hereof and marked as Exhibit 1 is a letter dated December 3, 1985 from the said Bernard Danker indicating that "due to the tremendous backlog of transcription work that needs to be accomplished by this office" he required an extension to complete said transcript.

WHEREFORE, it is respectfully requested that this Honorable Court extend the time within which the transcript shall be prepared and forwarded to the Circuit Court for a period of an additional thirty (30) days measured from the date of expiration of the original thirty (30) day period as provided for in Rule B7(a) of the Rules of Procedure of the Court of Appeals of Maryland.

RECEIVED
COUNTY BOARD OF APPEALS
MAR 13 A 10 06 C

/s/
William E. Hammond
Attorney for John F. Fowble, V.M.D., Protestant/Appellant
105 Main Street
Reisterstown, Maryland 21136
833-1522

I HEREBY CERTIFY, That on this 17th day of December, 1985, a copy of the foregoing Petition For Extension of Time For Transmittal of Record was mailed, postage prepaid, to Dorothy M. Beaman, Attorney for R.O. Buck Co., Inc., Hooper, Kiefer & Cornell, 343 North Charles Street, Baltimore, Maryland 21201-4361, Phyllis Cole Friedman, Room 223, Court House, Towson, Maryland 21204, People's Counsel for Baltimore County, and County Board of Appeals of Baltimore County, Room 200, Court House, Towson, Maryland 21204.

/s/
William E. Hammond
Attorney for Protestant/Appellant

IN THE MATTER OF THE APPLICATION OF R.O. BUCK REALTY CO., INC. FOR SPECIAL EXCEPTION FOR AN ANIMAL BOARDING PLACE AND A VETERINARIAN 1/2 OF MONKTON ROAD, 800' E. OF CARROLL ROAD 10TH DISTRICT, Applicant/Appellee

JOHN F. FOWBLE, V.M.D., Protestant/Appellant

Case No. 85-252-X

ORDER

UPON the foregoing Petition For Extension Of Time For Transmittal Of Record, It is this day of 1986, ORDERED, by the Circuit Court for Baltimore County, that the time for transmitting the record in the above entitled matter be and the same is hereby extended to January 13, 1986.

JUDGE

DEPOSITIONS HEARINGS ARBITRATIONS



EXHIBIT 1
SOCIAL SECURITY NO.
230-08-4030

BERNARD DANKER
ASSOCIATES

14401 OLD YORK ROAD
PHOENIX, MARYLAND 21131

December 3, 1985

William E. Hammond, Esq.
107 Main St.
Reisterstown, Md. 21136

Dear Mr. Hammond:

In re your appeal of the County Board of Appeals of Baltimore County, Case #85-252-X, due to the tremendous backlog of transcription work that needs to be accomplished by this office, it appears that the thirty days mandated by law to deliver your transcript to the Circuit Court for Baltimore County will be impossible to meet; therefore, would you please request the Court for an additional thirty days for this purpose.

Very truly yours,

Bernard Danker
Bernard Danker

TELEPHONES
BUS. 666-2677
HOME 666-0766
COUNT 494-2635

JAN 28 1986

IN THE MATTER OF
THE APPLICATION OF
R.O. BUCK REALTY CO., INC.
FOR SPECIAL EXCEPTION FOR
AN ANIMAL BOARDING PLACE
AND A VETERINARIAN
N/S OF MONKTON ROAD, 800'
E. OF CARROLL ROAD
10th DISTRICT
Applicant/Appellee
JOHN F. FOWBLE, V.M.D.
Protestant/Appellant
Case No. 85-252-X

PETITION

NOW COMES John F. Fowble, V.M.D., Protestant/Appellant, by his attorney, William E. Hammond, pursuant to Rule B2.e of the Rules of Procedure of the Court of Appeals of Maryland and files this Petition regarding the October 15, 1985 Opinion and Order of the County Board of Appeals of Baltimore County and says:

1. That by the aforementioned Order of the Board a Special Exception for an animal boarding place and veterinarian was granted, subject to the restrictions as therein contained.

2. That the Protestant/Appellant submits that the foregoing Order is erroneous in that the decision is in conflict with the Maryland law, Baltimore County law and the Baltimore County Zoning Regulations regarding the grant of a special exception(s) for the uses therein set forth and its decision is not supported by its findings of fact and is, therefore, arbitrary, illegal and capricious and beyond its authority.

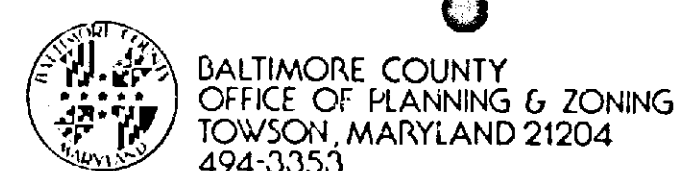
WHEREFORE, Your Protestant/Appellant petitions this Honorable Court to reverse the October 15, 1985 Order of the County Board of Appeals.

John F. Fowble

William E. Hammond
Attorney for John F. Fowble, V.M.D.
Protestant/Appellant
107 Main Street
Reisterstown, Maryland 21136
833-1322

I HEREBY CERTIFY, That on this 17th day of December, 1985, a copy of the foregoing Petition was mailed, postage prepaid, to Dorothy M. Beaman, Attorney for R.O. Buck Realty Co., Inc., Hooper, Kiefer & Cornell, 343 North Charles Street, Baltimore, Maryland 21201-4361, Phyllis Cole Friedman, Room 225, Court House, Towson, Maryland 21204, People's Counsel for Baltimore County, and County Board of Appeals of Baltimore County, Room 200, Court House, Towson, Maryland 21204.

William E. Hammond
Attorney for Protestant/Appellant



ARNOLD JABLON
ZONING COMMISSIONER

March 13, 1985

Dorothy Beaman, Esquire
405 W. Pennsylvania Avenue
Towson, Maryland 21204

RE: Petition for Special Exception
N/S Monkon Rd. 800' E of Carroll Rd.
R. O. Buck Realty Co., Inc. - Petitioner
Case No. 85-252-X

Dear Ms. Beaman:

This is to advise you that \$46.85 is due for advertising and posting of the above property.

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

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

Sincerely,

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE, REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 005331

DATE 3/14/85 ACCOUNT 85-252-X
AMOUNT \$46.85

RECEIVED FROM
FOR

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FOR

MCKEE & ASSOCIATES, INC.
Engineering - Surveying - Real Estate Development

1717 YORK RD. LUTHERVILLE, MARYLAND 21093
Telephone: (301) 252-5820
February 6, 1985

DESCRIPTION OF
WESTFIELD PROPERTY

Beginning for the same at a point situated on the North side of Monkon Road, said point being 800' East of the intersection of Monkon Road and Carroll Road said point also being the end of the 8th line as described in deed dated January 16, 1978 and recorded among the Land Records of Baltimore County in Liber 5848, Folio 237; thence running reversely and binding on the 8th, 7th, 6th, and part of the 5th lines of the above mentioned deed the following four courses and distances: North 87° 45' 04" West 616.95 feet, North 67° 35' 04" West 400.00 feet North 57° 26' 04" West 227.00 feet, North 45° 21' 04" West 209.31 feet to a point; said point being the Southerly most point as shown on plat of Patchwork Farms and recorded among the Land Records of Baltimore County in Liber 42, Folio 118; thence leaving said North side of Monkon Road and said 5th line and running North 44° 38' 56" East 34.06 feet; thence running with and binding on the Easterly most right-of-way line of Hillside Lane being 50 feet wide as shown on above mentioned plat the following three courses and distances: North 04° 41' 18" East 27.20 feet; thence with a curve to the left having a radius of 250.00 feet, an arc length of 250.44 feet and being subtended by a chord of North 20° 51' 56" East 240.10 feet to a point; thence with a curve to the right having a radius of 175 feet an arc length of 177.46 feet and being subtended by a chord of North 21° 13' 00" East 169.95 feet to a point intersecting the Easterly most right-of-way line of Patchwork Court as shown on above mentioned plat; thence leaving said Easterly

most right-of-way line and running with and binding on the Southeasterly most lines of Lots 1 thru 5 as shown on above mentioned plat: South 39° 44' 00" East 35.00 feet to a point; North 88° 53' 28" East 208.38 feet, North 18° 28' 31" East 199.47 feet, North 34° 05' 00" East 649.00 feet, North 02° 00' 00" East 295.00 feet to a point intersecting the 2nd line of the above mentioned deed; thence running reversely with and binding on the 2nd, 1st, 13th, 12th, 11th, 10th, and 9th lines of the above mentioned deed the following seven courses and distances, North 83° 31' 46" East 434.58 feet; North 21° 03' 56" East 709.19 feet, South 69° 25' 04" East 569.70 feet; South 08° 43' 56" West 340.41 feet, South 31° 34' 56" West 586.83 feet, South 12° 22' 04" East 181.00 feet South 16° 45' 56" West 1437.30 feet to the point of beginning.

Containing 58.4 acres of land, more or less.

Being the same parcel of land as described in deed dated April 25, 1979 from Richard A. Moore to Reveley A. Moore and William E. Berndt Trustees and recorded among the Land Records of Baltimore County in Liber 6414, Folio 324.



PETITION FOR SPECIAL EXCEPTION

10th Election District

LOCATION: North side Monkon Road, 800 ft. East of Carroll Road

DATE AND TIME: Monday, March 18, 1985 at 11:15 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 Exception for an animal boarding place and a veterinarian

Being the property of R.O. Buck Realty Co., Inc. 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



County Board of Appeals of Baltimore County

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

October 15, 1985

John F. Fowble, V.M.D.
2907 Stockton Road
P. O. Box 155
Phoenix, MD 21131

Re: Case No. 85-252-X
R. O. Buck Realty Co., Inc.

Dear Dr. Fowble:

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

Very truly yours,

Edith T. Eisenhart, Adm. Secretary

Enclosure

cc: William E. Hammond, Esquire
Francis N. Iglehart, Esquire
Dorothy Beaman, Esquire
R. O. Buck Realty Co., Inc.
Phyllis C. Friedman
Norman E. Gerber
James G. Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 10th Date of Posting 3/1/85
Posted for Special Exception
Petitioner R.O. Buck Realty Co., Inc.
Location of property N/S Monkon Rd. 800' E of Carroll Rd.
Location of Signs E. side of drive way leading to parking building
Remarks 5th Floor Monkon Rd. Approx. 15' from road intersection with Hillside Lane
Posted by Edith T. Eisenhart Date of return 3/9/85
Number of Signs 1

85-252-X

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 6th day of February, 1985.

ARNOLD JABLON
Zoning Commissioner

Petitioner R.O. Buck Realty Co., Inc. Received by
Petitioner's Attorney Dorothy M. Beaman, Esquire

Nicholas B. Commodari
Chairman, Zoning Plans
Advisory Committee

JAN 20 1985

85-252-X
CERTIFICATE OF PUBLICATION

TOWSON, MD., February 28, 1985

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 February 28, 1985.

THE JEFFERSONIAN,

18 Kentz

Publisher

\$18.00

PETITION FOR SPECIAL EXCEPTION
 10th Election District

LOCATION: North side Monks Road, 800 ft. East of Carroll Road.
 DATE AND TIME: Monday, March 18, 1985 at 11:15 A.M.
 PUBLIC HEARING: Room 108, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland.

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the Petition for Special Exception for an animal boarding place and a veterinarian.
 Being the property of R. O. Buck Realty Co., Inc. as shown on the map 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
 Feb. 28

CERTIFICATE OF PUBLICATION

Towson, Md. 4/3 1985

THIS IS TO CERTIFY, that the annexed advertisement was published in the TOWSON TIMES, a weekly newspaper distributed in Towson, Baltimore County, Md., once a week for 7 consecutive weeks, the first publication appearing on the 27th day of Feb. 1985.

The TOWSON TIMES
M. Campbell

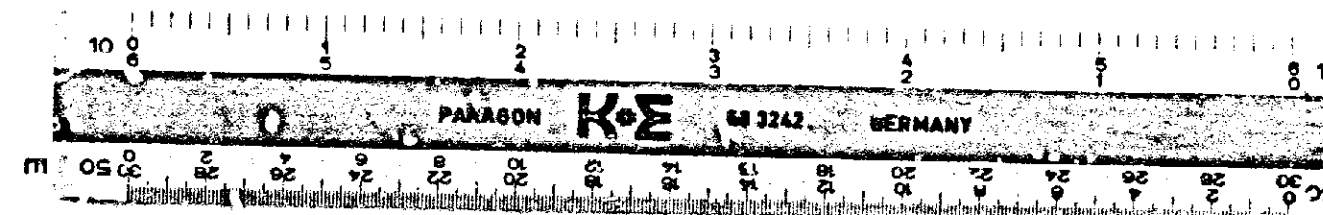
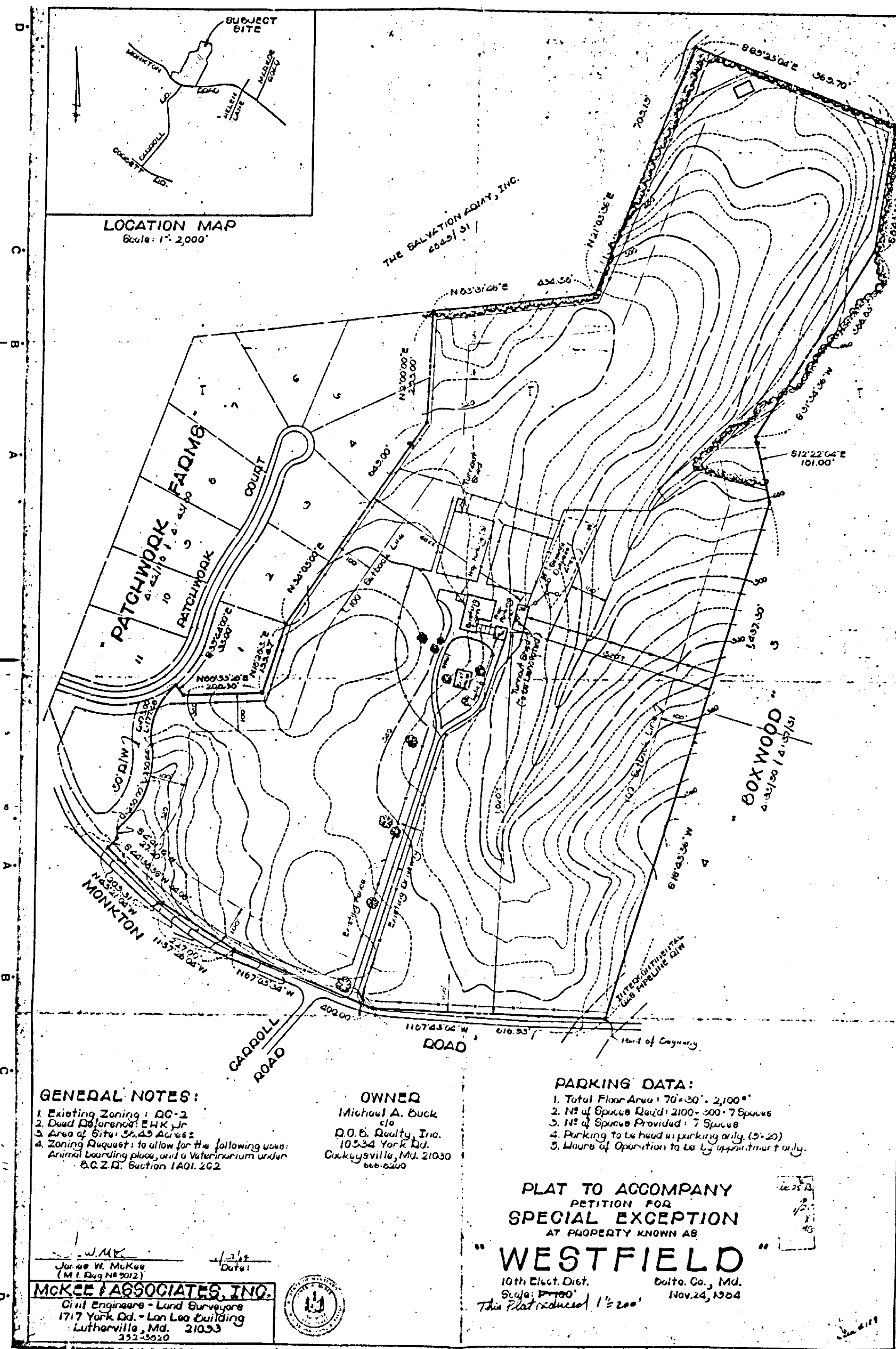
Cost of Advertisement: \$23.85

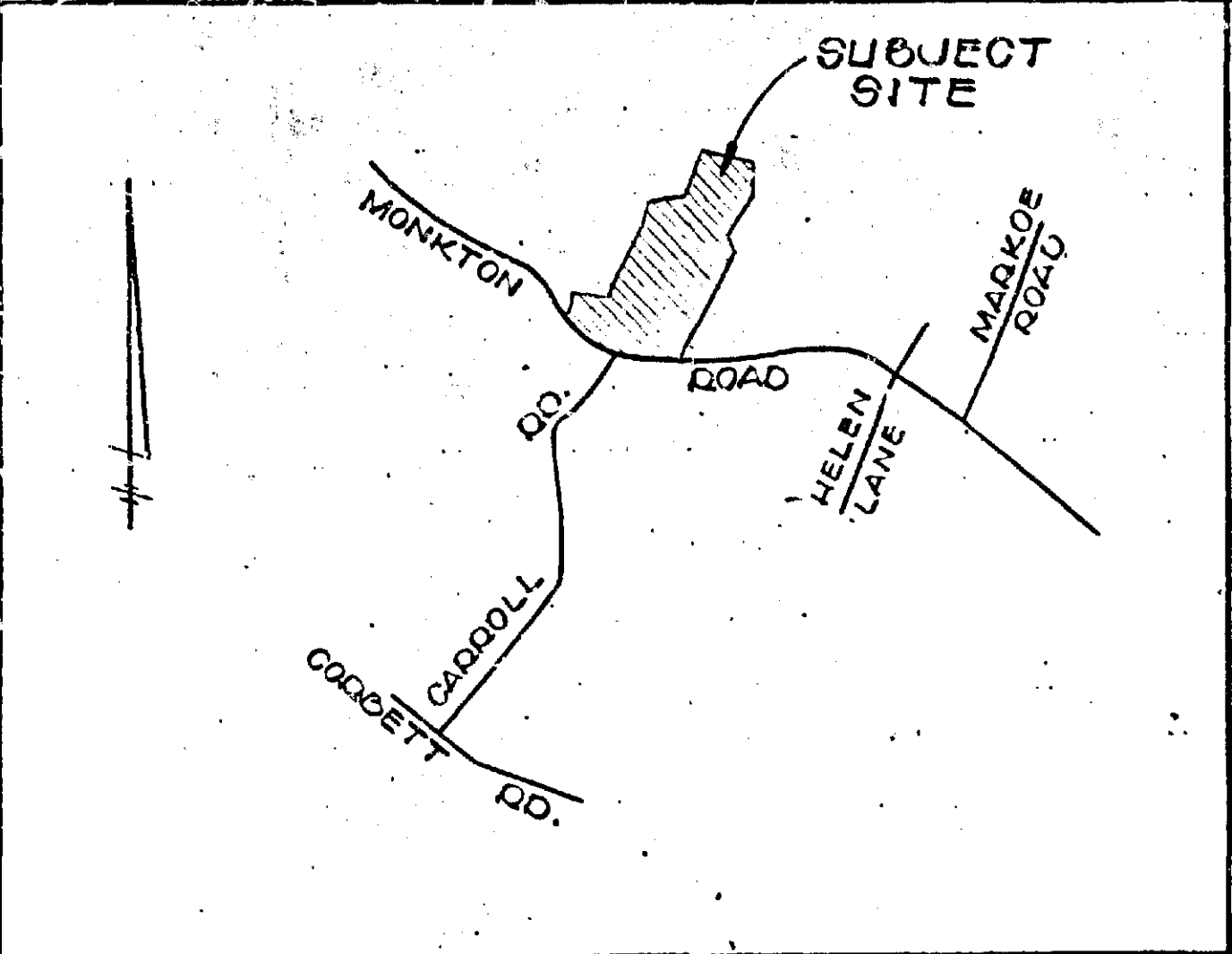
PETITION FOR SPECIAL EXCEPTION
 10th Election District

LOCATION: North side Monks Road, 800 ft. East of Carroll Road.
 DATE AND TIME: Monday, March 18, 1985 at 11:15 A.M.
 PUBLIC HEARING: Room 108, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland.

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the Petition for Special Exception for an animal boarding place and a veterinarian.
 Being the property of R. O. Buck Realty Co., Inc. as shown on the map 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.

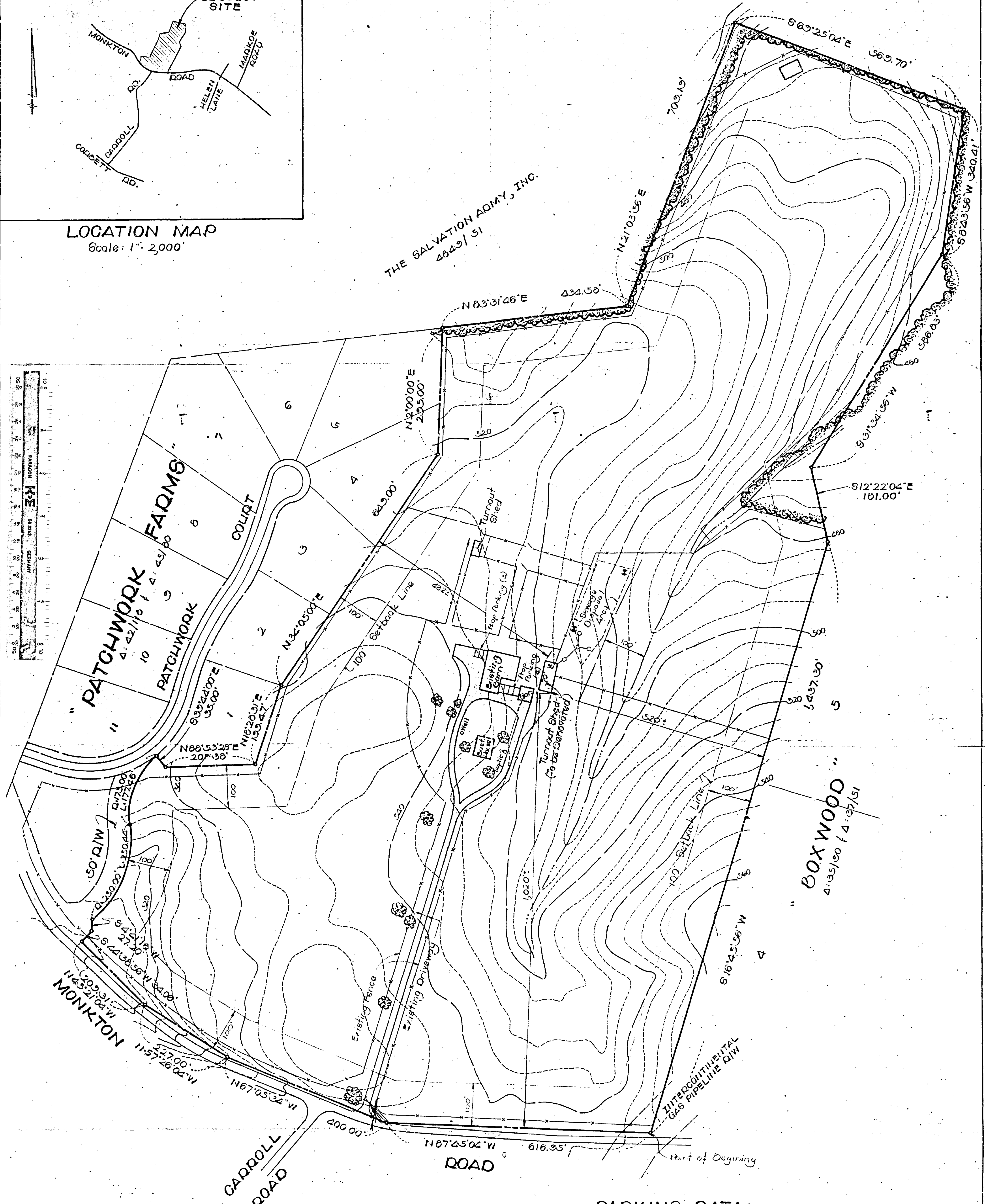
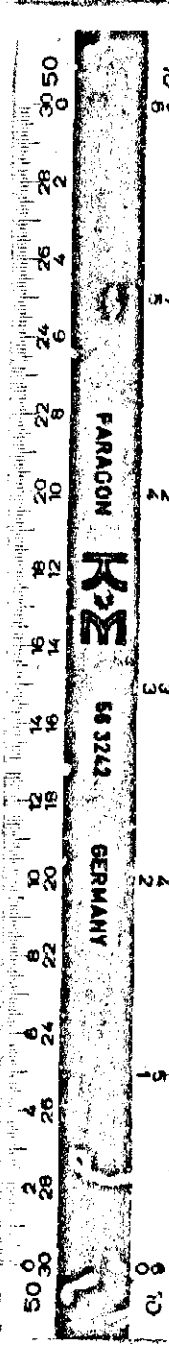
BY ORDER OF
 ARNOLD JABLON
 Zoning Commissioner
 of Baltimore County
 200417558





LOCATION MAP
Scale: 1" = 2,000'

THE SALVATION ARMY, INC.
4049/51



GENERAL NOTES:

1. Existing Zoning: RC-2
2. Deed Reference: E.H.K., Jr.
3. Area of Site: 58.49 Acres±
4. Zoning Request: to allow for the following uses:
Animal boarding place, and a Veterinarian under
B.C.Z.R. Section 1A01.202

OWNER

Michael A. Buck
c/o
R.O.B. Realty, Inc.
10534 York Rd.
Cockeysville, Md. 21030
666-8200

PARKING DATA:

1. Total Floor Area: 70' x 30' = 2,100 sq'
2. No. of Spaces Req'd: 2100 ÷ 300 = 7 Spaces
3. No. of Spaces Provided: 7 Spaces
4. Parking to be head in parking only. (9' x 20')
5. Hours of Operation to be by appointment only.

**PLAT TO ACCOMPANY
PETITION FOR
SPECIAL EXCEPTION
AT PROPERTY KNOWN AS**

"WESTFIELD"

10th Elect. Dist.
Scale: 1" = 100'

Balto. Co., Md.
Nov. 24, 1984

J. W. McKee
James W. McKee
(Md. Reg. No. 2012)
McKEE & ASSOCIATES, INC.
Civil Engineers - Land Surveyors
1717 York Rd. - Lan Lea Building
Lutherville, Md. 21093
252-5020



11/21/84
X
4B

11/21/84

12. After the site plan is approved, the Petitioner may apply for its building permit and be granted same; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the applicable appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.

[Signature]
Zoning Commissioner of
Baltimore County

AJ/srl

cc: Dorothy Beaman, Esquire

William E. Hammond, Esquire

Francis N. Iglehart, Esquire

People's Counsel

ORDER RECEIVED FOR FILING

DATE *March 24, 1986*
BY *[Signature]*
ADMINISTRATIVE ASSISTANT

- 5 -

CASE NO. _____

March 24, 1986 Hon. Edward A. DeWaters, Jr. Hearing had. Ruling held Sub Curia.

March 24, 1986 Hon. Edward A. DeWaters, Jr. Hearing had. Defendant's Motion to Dismiss Denied. Good Cause must be shown. Counsel was preoccupied with his mother's illness and distraught over same for a good time thereafter, thus causing untimely filing. (SEND NOTICES)

(13) March 31, 1986- R.O. Buck Realty Co Inc. answer to petition fd.

(14) March 31, 1986- Appellees' memorandum of law fd

May 26, 1986 - Hon. James S. Sfekas, Hearing had. Ruling held Sub-Curia. Counsel to be advised by memorandum within ten days.

(15) June 12, 1986 - Memorandum Opinion and Order of Court that Judgment and restrictions of the County Bd. of Appeals is Affirmed. Costs to be paid by Appellant fd. (JSS)

RECEIVED
COUNTY BOARD OF APPEALS
MAY JUN 16 A 10 52 E

IN THE MATTER OF : IN THE
THE APPLICATION OF : CIRCUIT COURT
R. O. BUCK REALTY CO., INC. :
FOR SPECIAL EXCEPTION FOR :
AN ANIMAL BOARDING PLACE :
AND A VETERINARIUM :
N/S OF MONKTON ROAD, 800' : BALTIMORE COUNTY
E. OF CARROLL ROAD :
10th DISTRICT : AT LAW

JOHN F. FOWBLE, V.M.D., : CG Doc. No. 17
PROTESTANT-APPELLANT : Folio No. 129
CASE NO. 85-252-X : File No. 85-CG-3619

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

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

ZONING ENTRIES FROM DOCKET OF ZONING COMMISSIONER OF BALTIMORE COUNTY

Case No. 85-252-X

February 6, 1985 Petition of R. O. Buck Realty Co., Inc., for special exception for an animal boarding place and a veterinary under BCZR Section 1A01.2C.2, 10th District

February 6 Order of Zoning Commissioner directing advertisement and posting of property - date of hearing set for March 18, 1985, at 11:15 a.m.

February 27 Certificate of Publication in newspaper - filed

March 1 Certificate of Posting of property - filed

March 8 Comments of Baltimore County Zoning Plans Advisory Committee - filed

R. O. Buck Realty Co., Inc.
Case No. 85-252-X

March 11, 1985 Comments of Baltimore County Director of Planning - filed

March 18 At 11:15 a.m. hearing held on petition by Zoning Commissioner

March 25 Order of Zoning Commissioner GRANTING the special exception, subject to restrictions.

April 17 Order for Appeal to County Board of Appeals from Order of Zoning Commissioner by John F. Fowble, V.M.D., Protestant-Appellant.

August 27 Hearing on appeal before County Board of Appeals

October 15 Order of County Board of Appeals ordering that the special exception for an animal boarding place and veterinary petitioned for, be GRANTED, subject to restrictions.

November 13 Order for Appeal filed in the Circuit Court for Baltimore County by William E. Hammond, Esq., on behalf of Protestant

November 15 Certificate of Notice sent to all interested parties

December 11 Petition to accompany Order for Appeal filed in the Circuit Court for Balto. County

January 6, 1986 Transcript of testimony filed
Exhibit - Zoning Commissioner's file and exhibits.
Petitioner's Exhibit No. 1 - State Dept. of Agriculture publication of 8 sheets detailing standards for veterinarian, licensing regulations.

" " " 2 - Plat drawn by McKee Assoc., dated 11/27/84.

" " " 3 - Letter to A. Jablon from C. Richard Moore dated 6/4/85, approving driveway as located on revised plat.

" " " 4 - Letter to County Board of Appeals from Mrs. R. E. Young regarding Case No. 85-252-X.

January 6, 1986 Record of proceedings filed in the Circuit Court for Baltimore County.

R. O. Buck Realty Co., Inc.
Case No. 85-252-X

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

Respectfully submitted,

[Signature]
John Holmen
County Board of Appeals of Baltimore County

IN THE MATTER OF : BEFORE
OF THE APPLICATION OF : COUNTY BOARD OF APPEALS
R. O. BUCK REALTY CO., INC. :
FOR SPECIAL EXCEPTION FOR :
AN ANIMAL BOARDING PLACE : OF
AND A VETERINARIUM :
N/S OF MONKTON ROAD 800' : BALTIMORE COUNTY
E. OF CARROLL ROAD :
10th DISTRICT : NO. 85-252-X

OPINION

This case comes before this Board on appeal from a decision of the Baltimore County Zoning Commissioner granting the requested special exception for an animal boarding place and a veterinary. The case was heard on August 27, 1985, in its entirety.

At the onset of this hearing, Petitioner's attorney objected to the allowance of any Protestants' testimony since no Protestants appeared or testified before the Zoning Commissioner. Since all hearings before this Board are "de novo" and since this level of the administrative process is the only level at which a record of the issues is produced, the objection was overruled.

Petitioner's first witness was Michael Buck, Secretary-Treasurer of Buck Realty, the present owner of the property. He testified that Buck Realty purchased this parcel in November of 1984, that it contains some 56± acres and had been used as a horse farm. Mr. Buck stated that their plans are to renovate an existing building, which is approximately 50 feet by 62 feet, into a hospital and laboratory for the treatment of horses only.

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This horse hospital and laboratory is to be operated by veterinarians and must comply with all existing regulations which apply to this use. He also stated that they intend to use this property as a boarding and breeding operation with up to 50 horses on this farm at any one time, and he also testified that he hoped for a maximum of 350 surgical procedures to be performed in the medical aspect of this operation.

James W. McKee, a registered land surveyor, testified that he prepared the plat which accompanies this requested special exception and further testified as to its content.

Wesley Guckert, traffic engineer, testified that there would be no traffic impact on local roads from the proposed operation.

Dr. William Solomon, a licensed veterinarian, who owns and operates his own horse breeding farm and clinic and is consultant to Buck Realty in this proposal, testified as to the fact that this operation would create no health hazard to horses other than that which normally exists. He also testified that situated as this proposal would be in an area of so-called "horse country," a need for a facility of this type exists. This witness concluded Petitioner's case. The Board will note that Mr. Buck, Mr. McKee and Dr. Solomon were later recalled for further testimony, all of which is part of the record.

Francis N. Iglehart testified in opposition to the granting of this special exception. Mr. Iglehart's property is directly south of the subject

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property, abuts the subject site and he objects to the proposed use being next-door to his property. He testified that he lost two mares last year to encephalitis. Mr. Iglehart also testified that Corbett Farms, consisting of about 200 acres, also abuts his property and that Corbett Farms is a breeding operation with some 6 stallions and 35± mares now on site, with horse population sometimes reaching sixty. He also testified as to other horse farms in this area and noted that the stream known as Carroll Branch waters his entire farm.

Dr. John F. Fowble, a veterinarian, also testified in opposition to the granting of this special exception. He stated that his practice is limited to horses and that he also operates on horses. Dr. Fowble further stated that he visits Corbett Farms every day in April, May and June between 9 a.m. and 6 p.m., and fears the potential for disease being introduced into this area by the proposed use. He also testified that from January 1 through July 31, 1985, he has treated 256 horses on Corbett Farms. He stated that he does not oppose the use as a breeding farm but does oppose the intermingling use as proposed. This basically concluded Protestants case.

After careful consideration of all the testimony presented to the Board it is the Board's opinion that the special exception requested complies with all the requirements necessary for its granting. Section 1A01.2C of the Baltimore County Zoning Regulations (BCZR) states that the use requested may

be permitted by special exception, provided that it would not be detrimental to the primary agricultural uses in the vicinity. The property's use as a horse breeding and boarding farm situated amidst other horse farms cannot be considered detrimental. Only the hospital and laboratory use are not agricultural but are permitted if the use can satisfy §502.1, BCZR. The Board finds this to be true. The general proximity of this use, which by law must be carefully monitored, could actually be a benefit to neighboring or nearby horse farms should any emergency arise. For all the above reasons, the Board is of the opinion that the special exception should be granted and will so order with restrictions.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 15th day of October, 1985, by the County Board of Appeals, ORDERED that the special exception for an animal boarding place and veterinarian petitioned for, be and the same is hereby GRANTED, subject to the following restrictions:

This special exception must be utilized within two years from the date of this Order, pursuant to §502.3, BCZR, and no extension shall be permitted.

2. The veterinarian and animal boarding place shall be exclusively for horses. No more than 50 horses may be boarded at any one time, excluding those horses on-site for treatment at the veterinarian.
3. The hours of operation shall be by appointment only.
4. Only one identification sign for the animal boarding place may be posted on the property.

5. The access road shall be located as shown on Petitioner's plat, latest revision, dated June 13, 1985.
6. There may be no more than eight employees, including those residing on the site, subject to future modification by amending this Order pursuant to §500.7, BCZR.
7. The building designated as "garage" may be converted to an office for the veterinarian and animal boarding place.

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

Lawrence C. Schmidt
Lawrence C. Schmidt

Diana K. Vincent
Diana K. Vincent

#85-252-X

IN THE MATTER OF THE APPLICATION OF R. O. BUCK REALTY CO., INC.
DR. JOHN F. FOWBLE, Protestant
COUNTY BOARD OF APPEALS

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
Case NO. 85-CG-3619

MEMORANDUM OPINION

This is an appeal from an order of the County Board of Appeals of Baltimore County affirming the Zoning Commissioner's order of March 25, 1985, granting the Appellee's request for Special Exception for an animal boarding place and veterinarian.

R. O. Buck Realty Co., Inc., Appellee, acquired a fifty-eight (58) acre tract of land on Monkton Road located in Baltimore County's horse country with the intention of adding a veterinarian, while continuing its present use as a horse farm. The veterinarian would provide a modern facility where horses could have surgical procedures performed safely. The Baltimore County Zoning Regulation defines a veterinarian as a building that can house animals overnight. Because some horses may not be ambulatory after surgery, Buck Realty was required to apply for a Special Exception for a veterinarian and an animal boarding place.

This tract of land is located in an area zoned RC-2 (Agricultural). The preferred use is for agricultural operations, horse farms are permitted as of right. A Special Exception is required to permit veterinarians and animal boarding places, provided that the use would not be detrimental to the primary agricultural use in the vicinity.

The issues on appeal for this Court to consider are:

1. Whether the Appellant, John F. Fowble, has standing as a "person aggrieved" to appeal the decision of the County Board of Appeals of Baltimore County, and
2. Whether the decisions of the County Board of Appeals granting the Special Exception is in accord with the applicable Zoning Regulations in Baltimore County.

The Court of Special Appeals has held that a reviewing court can only reverse a zoning decision of the Board if it finds the decision to have been "clearly erroneous." Largo Civic Ass'n. v. Prince George's County, 21 Md. App. 76, 88 (1974). Even in cases where a reviewing court finds the decision of the Board to be fairly debatable, the Court may not substitute its judgment for that of the Board. Renz v. Bowfield Holding Co., 223 Md. 34, 43 (1960) (The Court must affirm where the matter was debatable). Neither the decision of the Zoning Commissioner nor the Board of Appeals is clearly erroneous, nor debatable, and is affirmed accordingly.

I. Appellant's Standing to Appeal

For a person to have standing to appeal a decision of the Board of Appeals, two conditions precedent must be met: (1) the person appealing must have been a party to the proceeding before the Board, and (2) he must be aggrieved by the Board's decision. Bryniarski v. Montgomery County, 247 Md. 137, 143 (1967). The Court of Appeals indicated that "a person aggrieved by the decision of the board of zoning appeals is one whose personal or property rights are adversely affected by the decision

of the board." Id. at 144. The Appellant must have a specific interest or property right and that interest must be specially affected in a different way than the interest suffered by the public generally. The Court further stated that "[a]n adjoining, confronting or nearby property owner is deemed, prima facie, to be specially damaged and, therefore, a person aggrieved." Id. at 145. Property that is far removed from the subject property will not normally render a person aggrieved. See, Wilkinson v. Atkinson, 242 Md. 231 (1966).

It is not disputed that Dr. Fowble was a party to the hearing before the Board, however, this Court does not find him to be a "person aggrieved." Dr. Fowble claims no property interest, although he does assert a personal interest. He expressed concern and fear of the spread of illness from the operation of the proposed veterinarian. (T. 123, 124). Sufficient evidence has not been shown that the proposed exception would result in any interest being adversely affected. The Appellant's property is two and one-half miles (T. 115) from subject property, clearly not adjoining, and Dr. Fowble has failed to prove by competent evidence that any of his interests have or will be specially and adversely affected by the granting of the special exception. See, Bryniarski, 247 Md. at 145 (where a person whose property is far removed will be considered a "person aggrieved" if he meets the burden of alleging and proving by competent evidence).

Thus, this Court holds that the Appellant does not have proper standing to appeal this order from the County Board of Appeals.

Even though the Court has determined the Appellant lacks standing to bring this appeal, the Court will discuss the appeal taken on its merits.

II. Special Exception

The Appellant contends that the Board misinterpreted the meaning of the word "or" in Section 1A01.2.C.2 of the Baltimore County Zoning Regulations (Regulation) (Bill No. 178-79). He claims the uses set forth in that section are alternative, and not uses in combination as ruled by the Board. Dr. Fowble argues "the disjunctive particle 'or', as in veterinarians or veterinarians" supports the theory that each is an alternative use; to conclude otherwise would allow principal uses in combination, which is not provided in any county zoning code.

This interpretation of the language in Section 1A01.2.C.2 is clearly inconsistent with the definition of the word "or" in Section 101 of the Regulation. The Regulation defines "[t]he word 'or' shall mean 'and/or' unless modified by the use of the word 'either', or unless the context clearly indicates another meaning." Baltimore County Zoning Regulation 101:9. Therefore, the appropriate interpretation of Section 1A01.2.C.2 is veterinarians' office and/or veterinarians, neither should be interpreted as a principal use excluding the other.

Accordingly, from the evidence presented, this Court concludes there is more than enough land for the granting of the Appellee's requested special exception to permit a veterinarian and animal boarding place on the farm. The Appellant's contention that each would require its own 2 acre plot is not a reasonable interpretation of the County Zoning Regulation.

The Court of Appeals established the standard for granting a special exception in Schultz v. Pritts, 291 Md. 1 (1981), the court held that:

[T]he appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at that particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. 291 Md. at 22-23.

The effects of allowing the proposed special exception clearly would not have any adverse effects above and beyond those inherent with such a special exception. On August 27, 1985, the County Board of Appeals ruled that to allow a special exception for use as a "horse breeding and boarding farm situated amidst other horse farms cannot be considered detrimental," and that such use may actually benefit nearby horse farms if an emergency should arise. (Opinion p. 4). Therefore, this Court does not find the Board's decision to allow Buck Realty's request for special exception for an animal boarding place and a veterinarian to be erroneous and must affirm.

Accordingly, judgment and restrictions of the County Board of Appeals is affirmed. Costs to be paid by Appellant.

Judge James S. SFBKAS

Dated: June 12, 1986
Copies to:
County Board of Appeals
William E. Hammond, Esquire
Dorothy W. Beaman, Esquire
Court File

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COUNTY BOARD OF APPEALS
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IN THE MATTER OF THE APPLICATION OF R. O. BUCK REALTY CO., INC. FOR SPECIAL EXCEPTION FOR AN ANIMAL BOARDING PLACE AND A VETERINARIAN [sic] N/3 OF MONKTON ROAD 100' 2. OF CARROLL ROAD 10TH DISTRICT

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
CG Docket No.: 17
Folio No.: 129
Case No.: 85-CG-3619

STATEMENT OF GROUNDS AND AUTHORITIES

The Maryland Rules of Procedure govern the mechanics of appeals from administrative decisions, and, particularly, the filing of the petition:

The appellant shall join with his order for appeal, or shall file with the clerk of the court, within ten days after filing the order, a petition setting forth the action appealed from, the error committed by the agency in taking such action, and the relief sought, and shall serve a copy thereof on the agency.

Maryland Rule of Procedure 85. The "B Rules" also govern the sanction for failure to comply with that requirement:

If the appellant shall fail to file his order for appeal within the time prescribed by Rule 84 (time for filing) or any order issued pursuant thereto, or shall fail to file his petition within the time prescribed by section 8 of Rule 82 (how appeal taken), the court shall dismiss the appeal unless cause to the contrary be shown.

Maryland Rule of Procedure 85.

The appellate courts of this state have indicated that the sanction of dismissal under Rule 85. is mandatory, not discretionary, in the absence of "good cause":

HOOPER, KIEFER
& CORNELL
BALTIMORE, MD 21201