#88-142-A AFFIRMED CBA

J. R. Haines
File

THEODORE E. McCADDEN, SR. and MICHAEL BLACK	:	IN THE
	:	CIRCUIT COURT
Appellants	:	OF
Vs.	:	BALTIMORE COUNTY
BOARD OF APPEALS	:	
Appellee	:	CASE NO. 88 CG 2545

6

ch noted

: :

OPINION AND ORDER

This case is before this Court on the appeal of Theodore E. McCadden, Sr. and Michael Black, Appellants, from the decision of the Board of Appeals for Baltimore County. That decision, rendered May 19, 1988, reversed the decision of the Deputy Zoning Commissioner and denied the Appellants' request for a five foot area variance.

The Appellant, McCadden, owned lots numbered 112, 113 and 114 on Oakleigh Beach Road, Baltimore County. McCadden sold lot 113, which had been improved with a residential structure. He now seeks a variance pursuant to B.C.Z.R. Section 307 (1955) so that he may build on the remaining lots 112 and 114.

In appeals of this nature, the reviewing court's standard of review is limited. The decision of the Board of Appeals should be affirmed it there is evidence sufficient to make the Board's findings "fairly debatable". Loyola Loan Ass'n v. Buschman, 227 Md. 243, 246-47 (1961). The Board's decision will be affirmed even if reasonable minds would have reached a different conclusion on the evidence, or even if the reviewing court would have reached a different result on the evidence. McLean v. Soley, 270 Md. 208, 215-16 (1973).

After considering all of the evidence contained in the record, as well as the arguments of counsel, this Court agrees with the Board of Appeals that the variance should not be granted. The Court finds the evidence fairly debatable, and therefore, will affirm the decision of the Board of Appeals.

WHEREFORE, it is this 24th day of October, 1989 by the Circuit Court for Baltimore County,

ORDERED that the decision of the Board of Appeals rendered May 19, 1988 in the above referenced appeal is hereby AFFIRMED.

Leonard S. Jacobson

LEONARD S. JACOBSON, JUDGE

COPIES SENT TO:

John B. Gontrum, Esquire
Phyllis Cole Friedman, Esquire
Michael J. Gilbert, Esquire

#88-142-A AFFIRMED CBA

Docket Clerk
~~Clerk~~

THEODORE E. McCADDEN, SR.	:	IN THE
and		
MICHAEL BLACK	:	CIRCUIT COURT
Appellants	:	OF
Vs.	:	BALTIMORE COUNTY
BOARD OF APPEALS	:	
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OPINION AND ORDER

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Docket Clerk
~~Clerk~~

THEODORE E. McCADDEN, SR. and MICHAEL BLACK	:	IN THE
	:	CIRCUIT COURT
Appellants	:	OF
Vs.	:	BALTIMORE COUNTY
BOARD OF APPEALS	:	
Appellee		CASE NO. 88 CG 2545

: :

OPINION AND ORDER

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After considering all of the evidence contained in the record, as well as the arguments of counsel, this Court agrees with the Board of Appeals that the variance should not be granted. The Court finds the evidence fairly debatable, and therefore, will affirm the decision of the Board of Appeals.

WHEREFORE, it is this 24th day of October, 1989 by the Circuit Court for Baltimore County,

ORDERED that the decision of the Board of Appeals rendered May 19, 1988 in the above referenced appeal is hereby AFFIRMED.

Leonard S. Jacobson
LEONARD S. JACOBSON, JUDGE

COPIES SENT TO:

John B. Gontrum, Esquire
Phyllis Cole Friedman, Esquire
Michael J. Gilbert, Esquire

THEODORE E. McCADDEN, SR. and MICHAEL BLACK	:	IN THE
Appellants	:	CIRCUIT COURT
Vs.	:	OF
BOARD OF APPEALS	:	BALTIMORE COUNTY
Appellee	:	CASE NO. 88 CG 2545

: :

OPINION AND ORDER

This case is before this Court on the appeal of Theodore E. McCadden, Sr. and Michael Black, Appellants, from the decision of the Board of Appeals for Baltimore County. That decision, rendered May 19, 1988, reversed the decision of the Deputy Zoning Commissioner and denied the Appellants' request for a five foot area variance.

The Appellant, McCadden, owned lots numbered 112, 113 and 114 on Oakleigh Beach Road, Baltimore County. McCadden sold lot 113, which had been improved with a residential structure. He now seeks a variance pursuant to B.C.Z.R. Section 307 (1955) so that he may build on the remaining lots 112 and 114.

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After considering all of the evidence contained in the record, as well as the arguments of counsel, this Court agrees with the Board of Appeals that the variance should not be granted. The Court finds the evidence fairly debatable, and therefore, will affirm the decision of the Board of Appeals.

WHEREFORE, it is this 24th day of October, 1989 by the Circuit Court for Baltimore County,

ORDERED that the decision of the Board of Appeals rendered May 19, 1988 in the above referenced appeal is hereby AFFIRMED.

Lionel S. Jacobson
LEONARD S. JACOBSON, JUDGE

COPIES SENT TO:

John B. Gontrum, Esquire
Phyllis Cole Friedman, Esquire
Michael J. Gilbert, Esquire

IN THE MATTER OF THE APPLICATION OF THEODORE E. McCADDEN, SR., ET AL FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE SOUTH SIDE OF OAKLEIGH BEACH ROAD, 615' EAST OF THE CENTERLINE OF PIN OAK AVENUE (933 OAKLEIGH BEACH ROAD) 15th ELECTION DISTRICT 7th COUNCILMANIC DISTRICT	:	BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 88-142-A

: :

OPINION

This matter comes before the Board as an appeal from the decision of the Deputy Zoning Commissioner dated December 15, 1987 which granted the Petitioner's variance allowing building on lot widths of 50 feet in lieu of the required 55 feet. The Petitioner, Theodore E. McCadden, Sr., appeared and was not represented by counsel. He testified that he had originally purchased lots identified on the plat as #112, #113 and #114. An existing dwelling house occupies lot #113, which the Petitioner has rehabilitated and resold. He seeks a variance in order to build on lots #112 and #114. In support of his petition, Mr. McCadden testified as to the existing layout of the neighborhood which was developed in the late 1940's. As the plat of the community indicates, all of the lots were originally sold as 50-foot wide parcels, as is the case in numerous areas of the County. Many of the single lots were developed with residences; however, sprinkled throughout the community are double- and triple-lot homes. Mr. McCadden testified that he would endure practical difficulty or undue hardship if unable to build on these single lots, as they would then be unusable.

In opposition to the petition, the Board received testimony from Sandra Pool, a spokesperson on behalf of other community residents. Ms. Pool set forth numerous concerns in opposition to the petition. Foremost among these were safety, traffic, drainage, and overcrowding considerations. Ms. Pool produced numerous photographs and exhibits in support of her position.

She believes that additional development within this already cramped area would cause an exacerbation of the aforementioned problems.

Also testifying was Steven Chapman, the present owner of the rehabilitated house on lot #113. Mr. Chapman was particularly concerned about development on lot #112. His concerns as to development on that lot were related to the peculiar position of his house on lot #113. Specifically, his house sits within 5 feet of the property line between lots #112 and #113, and development of that adjoining lot would result in a near rowhouse configuration.

After considering all of the evidence and testimony presented, we are persuaded that the variance should not be granted. In our view, the Petitioner has not met his burden of practical difficulty or unreasonable hardship as set forth in McLean v. Soley, 270 Md 208, 310 A2d 783 (1973). Financial and economic considerations are insufficient to support such a finding and cannot be considered by this Board. Other than that economic issue, the Petitioner did not present any evidence which justified the granting of the variance. Additionally, as was clear from the testimony of the Protestants, further development in this already crowded community is undesirable. We therefore find no compelling reason to grant the variance from the required 55-foot mandate and will so order.

ORDER

It is therefore this 19th day of May, 1988 by the County

Board of Appeals of Baltimore County ORDERED that the variance be and is hereby DENIED.

Any appeal from this decision must be made 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

Harry E. Buchheister, Jr.
Harry E. Buchheister, Jr.

Lawrence E. Schmidt
Lawrence E. Schmidt

IN RE: PETITION FOR ZONING VARIANCE S/S Oakleigh Beach Road, 615' E of c/l of Pin Oak Avenue (933 Oakleigh Beach Road) 15th Election District 7th Councilmanic District Theodore E. McCadden, Sr., et al - Petitioners	:	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY Case No. 88-142-A

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a variance to permit lot widths of 50 feet in lieu of the required 55 feet for Lots 112 thru 114, as more particularly described on Petitioner's Exhibit 1.

The Petitioners, Theodore McCadden, Sr., appeared and testified on behalf of himself and Michael Black. Numerous homeowners appeared as Protestants and appointed Ms. Sandy Pool as their spokesperson.

The subject property, zoned D.R. 5.5, is part of the Oakleigh Beach subdivision located on Oakleigh Beach Avenue near Wise Avenue. The Petitioner submitted as Petitioner's Exhibit 2 a copy of the Plat for Oakleigh Beach filed and recorded in the Land Records of Baltimore County on August 24, 1939. Testimony indicated that the Petitioners purchased the property approximately one year ago and that the property consists of three lots, Lots 112, 113 and 114. Each lot is 50 feet wide and 150 feet deep. Two of the three lots are vacant and undeveloped. The center lot is improved with an existing single-family residence, as shown on Petitioner's Exhibit 1. The Petitioners are requesting the variance to permit the development of the two unimproved lots. Mr. McCadden testified that he intends to build a house, approximately 28' x 28' and will not need any variances from front, side and rear yard setback requirements. He further testified that he had been advised that he could subdivide the three lots in a manner that would permit the construction of two additional dwellings. However, he indicated that the layout of the houses would not be in conformance with the

ORDER RECEIVED FOR FILING
Date 11/15/89
By Kathy Schlossman

neighborhood and would result in at least the front of one dwelling facing the back yards of its neighbors. The Petitioner testified that most of the homes in the development were built on 50-foot wide lots.

The Protestants indicated they are opposed to the granting of the variance. Ms. Pool introduced as Protestant's Exhibit 1 a Petition signed by numerous individuals which indicated they are "...NOT IN FAVOR OF THE ZONING OF OAKLEIGH BEACH ROAD." The Protestants indicated they feel the neighborhood is already noisy and overcrowded. Ms. Pool testified she owns the adjoining Lot 111. Many of the Protestants have lived in the neighborhood for many years and also live on lots that are 50 feet wide. The Protestants indicated they are concerned that if the variance is granted in this case, other property owners who currently own more than one lot will be requesting the same.

The Petitioners have requested a variance from Section 1B02.3C.1 pursuant to Section 307 of the Baltimore County Zoning Regulations (B.C.Z.R).

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. McLean v. Soley, 270 Md. 208 (1973).

To permit a variance from the area requirements in Section 1B02.3C.1, the variance must be judged under the "practical difficulties" or "unreasonable hardship" test. The following factors are examined: the nature of the zone in which the property lies; the character of the immediate vicinity and the uses contained therein; whether, if the restriction upon the property was removed would such removal seriously affect such neighboring properties and uses; and whether if the restriction is not removed, the restriction would create practical difficulty or unreasonable hardship for the owner in relation to his/her efforts to make normal improvements in the character of the use of the property which is permitted under the use provisions of the regulation.

ORDER RECEIVED FOR FILING
Date 11/15/89
By Kathy Schlossman

Due to the conflicting testimony of both the Petitioners and the Protestants regarding the number of homes in the neighborhood on 50-foot wide lots, the Deputy Zoning Commissioner visited the subject property and surrounding neighborhood. The community is an old one where many non-conforming lots exist. In the immediate vicinity, Lots 112 and 114 are the only vacant lots. The Petitioner has asked for the minimum variance necessary that will afford the relief requested. The Petitioners have approximately the same amount of land available on which to build as the majority of the neighboring property owners.

It is clear from the testimony that if the variance was granted, such use as proposed would not be contrary to the spirit of the BCZR and would not result in substantial detriment to the public good.

After due consideration of the testimony and evidence presented, it is clear that a practical difficulty or unreasonable hardship would result if the variance was not granted. It has been established that the requirement from which the Petitioner seeks relief would unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the variance requested will not be detrimental to the public health, safety, and general welfare.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, in the opinion of the Deputy Zoning Commissioner, the Petition for Zoning Variance should be granted.

Therefore, IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County this, 15th day of December, 1987, that lot widths of 50 feet in lieu of the required 55 feet for Lots 112 thru 114, in accordance with Petitioner's Exhibit 1, be approved, and as such, the Petition for Zoning Variance is hereby GRANTED, subject, however, to the following restrictions:

1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, the Petitioners are hereby made aware that proceeding at this

ORDER RECEIVED FOR FILING
Date 11/15/89
By Kathy Schlossman

THEODORE E. McCADDEN, SR. and MICHAEL BLACK	:	IN THE
	:	CIRCUIT COURT
Appellants	:	OF
Vs.	:	BALTIMORE COUNTY
BOARD OF APPEALS	:	
Appellee	:	CASE NO. 88 CG 2545

: : : :

time in at their own risk until such time as the applicable appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.

2) The granting of the variance requested for Lots 112 and 114 is conditioned upon the Petitioners or any future property owners complying with all other B.C.Z.R., including but not limited to, side, rear and front yard setbacks without seeking additional variances.

Ann M. Nastarowicz
ANN M. NASTAROWICZ
Deputy Zoning Commissioner
of Baltimore County

AMN:bjs

ORDER RECEIVED FOR FILING
Date 11/6/87
By Kathy Schlenker

-4-

December 15, 1987

Mr. Theodore E. McCadden, Sr.
Mr. Michael Black
8144 Dundalk Avenue
Baltimore, Maryland 21222

RE: Petition for Zoning Variance
S/S Oakleigh Beach Road, 615' E of the c/l of Pin Oak Avenue
(933 Oakleigh Beach Road)
15th Election District; 7th Councilmanic District
Case No. 88-142-A

Dear Messrs. McCadden and Black:

Enclosed please find the decision rendered in the above-referenced case. Your Petition for Zoning Variance has been granted, subject to the restriction noted in the attached Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal to the County Board of Appeals. For further information on filing an appeal, please contact this office.

Very truly yours,

ANN M. NASTAROWICZ
Deputy Zoning Commissioner
of Baltimore County

AMN:bjs

Enclosures

cc: Ms. Sandy Pool
931 Oakleigh Beach Road
Baltimore, Maryland 21222

People's Counsel

File

525

88-142-A

PETITION FOR ZONING VARIANCE

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 1B02.3.C.1 to permit lot widths of 50 feet in lieu of the required 55 feet for lots 112-114.

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

	88-2941
	40
B.O.	15 E
DATE	7-7-88
200	1E
1000	1E
SP	

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

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

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

Contract Purchaser:
(Type or Print Name)
Signature
Address
City and State

Legal Owner(s):
Theodore E. McCadden, Sr.
(Type or Print Name)
T. McCadden, Sr.
Signature
x Michael Black
(Type or Print Name)
Michael Black
Signature

Attorney for Petitioner:
(Type or Print Name)
Signature
Address
City and State
Attorney's Telephone No.:

8144 Dundalk Ave. 285-2435
Address Phone No.
Balto. Md. 21222
City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted
Theodore McCadden
Name
8144 Dundalk Ave. 285-2435
Address Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 21st day of September, 1987, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be held before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 27th day of October, 1987 at 9:00 o'clock A.M.

J. Robert Haines
Zoning Commissioner of Baltimore County.

ESTIMATED LENGTH OF HEARING -1/2HR.
AVAILABLE FOR HEARING
MON./TUES./WED. - NEXT TWO MONTHS (over)
ALL
REVIEWED BY: RLM DATE 6/12/87

ORDER RECEIVED FOR FILING
Date 11/6/87
By Kathy Schlenker

ZONING DESCRIPTION

Beginning on the south side of Oakleigh Beach Road 30 feet wide, at the distance of 615 feet east of the centerline of Pin Oak Avenue. Being lots 112-114, in the subdivision of Oakleigh Beach. Book No. 17 Folio 46. Also known as 933 Oakleigh Beach Road in the 15th election district.

THEODORE E. McCADDEN, SR. 8144 Dundalk Avenue Baltimore, Maryland 21222	•	BEFORE THE
	•	CIRCUIT COURT
and	•	FOR
MICHAEL BLACK 2212 Park Drive Baltimore, Maryland 21221	•	BALTIMORE COUNTY
vs.	•	Appeal from an Order before the County Board of Appeals for Baltimore County
SANDRA POOL 931 Oakleigh Beach Road Baltimore, Maryland 21222	•	Case No. 88-142-A
and	•	
MARY PHIPPS 931 Oakleigh Beach Road Baltimore, Maryland 21222	•	
IN THE MATTER OF THE APPLICATION OF THEODORE E. McCADDEN, SR., ET AL FOR A ZONING VARIANCE ON SOUTH SIDE OF OAKLEIGH BEACH ROAD, 615' EAST OF THE CENTERLINE OF PIN OAK AVENUE (933 OAKLEIGH BEACH ROAD) 15th ELECTION DISTRICT 7th COUNCILMANIC DISTRICT	•	

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

PETITION IN SUPPORT OF ORDER OF APPEAL

The Petition of Theodore E. McCadden, Sr. and Michael Black, hereinafter called the Petitioners, by their attorneys, John B. Gontrum, Jean K. Tullius and ROMADKA, GONTRUM & HENNEGAN in support of their Appeal from an Order of the County Board of Appeals for Baltimore County, hereinafter

LAW FIRM
ROMADKA, GONTRUM & HENNEGAN
ESSEX, MARYLAND

1

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called the Board, to petition this Court in a case titled as set forth, being case No. 88-142-A, and state further:

1. That on December 15, 1987, the Deputy Zoning Commissioner ordered that the Petition for Zoning Variance in the above captioned matter be granted;

2. That on May 19, 1988, the Board of Baltimore County reversed this Order and denied the Zoning Variance;

3. That the Petitioner contends that the findings, conclusions of law and Order of the Board are arbitrary, capricious, unreasonable and erroneous because:

A. The conclusions of Law were unsupported by competent, material and substantial evidence;

B. The Board acted arbitrarily and capriciously in imposing the aforesaid Order;

C. The Board erroneously applied an incorrect interpretation of law to the facts before it.

WHEREFORE, the Petitioner respectfully requests this Honorable Court to:

1. Stay the Board's Order during the pendency of this Appeal, hearing and final adjudication;

2. Reverse and vacate the Board's Order; and

LAW FIRM
ROMADKA, GONTRUM & HENNEGAN
ESSEX, MARYLAND

2

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3. Grant unto the Petitioner such other and further relief as the nature of this case may require.

John B. Gontrum

Jean K. Tullius
ROMADKA, GONTRUM & HENNEGAN
406 Eastern Boulevard
Baltimore, Maryland 21221
(301) 686-8274

Pursuant to Rule B-2, a copy of this Petition in Support of Order of Appeal served on Baltimore County Board of Appeals on this _____ day of _____, 1988.

Jean K. Tullius

Rec'd 6-7-88 9:40 CBA 9130

LAW FIRM
ROMADKA, GONTRUM & HENNEGAN
ESSEX, MARYLAND

3

THEODORE E. McCADDEN, SR. 8144 Dundalk Avenue Baltimore, Maryland 21222	•	BEFORE THE
	•	CIRCUIT COURT
and	•	FOR
MICHAEL BLACK 2212 Park Drive Baltimore, Maryland 21221	•	BALTIMORE COUNTY
vs.	•	Appeal from an Order before the County Board of Appeals for Baltimore County
SANDRA POOL 931 Oakleigh Beach Road Baltimore, Maryland 21222	•	Case No. 88CG2545
and	•	
MARY PHIPPS 931 Oakleigh Beach Road Baltimore, Maryland 21222	•	
IN THE MATTER OF THE APPLICATION OF THEODORE E. McCADDEN, SR., ET AL FOR A ZONING VARIANCE ON SOUTH SIDE OF OAKLEIGH BEACH ROAD, 615' EAST OF THE CENTERLINE OF PIN OAK AVENUE (933 OAKLEIGH BEACH ROAD) 15th ELECTION DISTRICT 7th COUNCILMANIC DISTRICT	•	

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

OCT 24 1989

APPELLANT'S RESPONSE MEMORANDUM

Appellee's Memorandum ignores the context in which this case arises. There were three (3) separate lots for sale in the Oakleigh Beach subdivision. There were separate tax bills on the lots. One of the lots was improved by a dwelling. It was a fifty (50) foot wide lot uniform in its width. The other two (2) lots were also uniformally fifty (50) feet wide.

LAW FIRM
ROMADKA, GONTRUM & HENNEGAN
ESSEX, MARYLAND

1

time is at their own risk until such time as the applicable appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.

2) The granting of the variance requested for Lots 112 and 114 is conditioned upon the Petitioners or any future property owners complying with all other B.C.Z.R., including but not limited to, side, rear and front yard setbacks without seeking additional variances.

Ann M Nastarowicz
ANN M. NASTAROWICZ
Deputy Zoning Commissioner
of Baltimore County

AMN:bjs

ORDER RECEIVED FOR FILING
Date 11/15/87
By Betty Attaway

December 15, 1987

Mr. Theodore E. McCadden, Sr.
Mr. Michael Black
8144 Dundalk Avenue
Baltimore, Maryland 21222

RE: Petition for Zoning Variance
S/S Oakleigh Beach Road, 615' E of the c/l of Pin Oak Avenue
(933 Oakleigh Beach Road)
15th Election District; 7th Councilmanic District
Case No. 88-142-A

Dear Messrs. McCadden and Black:

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In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal to the County Board of Appeals. For further information on filing an appeal, please contact this office.

Very truly yours,

ANN M. NASTAROWICZ
Deputy Zoning Commissioner
of Baltimore County

AMN:bjs
Enclosures

cc: Ms. Sandy Pool
931 Oakleigh Beach Road
Baltimore, Maryland 21222

People's Counsel

File

PETITION FOR ZONING VARIANCE

525

88-142-A

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 1B02.3.C.1 to permit lot widths of 50 feet in lieu of the required 55 feet for lots 112-114.

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

	CEIVED
	4A
E.D.	15th
DATE	7-11-90
200	AF
1000	AF
DP	

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

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

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

Contract Purchaser:
(Type or Print Name)
Signature
Address
City and State

Legal Owner(s):
Theodore E. McCadden Sr.
(Type or Print Name)
T. E. McCadden Sr.
Signature
x Michael Black
(Type or Print Name)
x Michael Black
Signature

Attorney for Petitioner:
(Type or Print Name)
Signature
Address
City and State

8144 Dundalk Ave 285-2435
Address Phone No.
Balto Md 21222
City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted
Theodore McCadden
Name
8144 Dundalk Ave 285-2435
Address Phone No.

Attorney's Telephone No.:

ORDERED By The Zoning Commissioner of Baltimore County, this 21st day of September, 1987, 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 27th day of October, 1987, at 9:00 o'clock A. M.

J. Robert Haines
Zoning Commissioner of Baltimore County.

ORDER RECEIVED FOR FILING
Date 11/15/87
By Betty Attaway

ESTIMATED LENGTH OF HEARING -1/2HR. +1HR.
AVAILABLE FOR HEARING
MON./TUES./WED. - NEXT TWO MONTHS (over)
ALL ✓ OTHER
REVIEWED BY: RLM DATE 6/12/87

ZONING DESCRIPTION

Beginning on the south side of Oakleigh Beach Road 50 feet wide, at the distance of 615 feet east of the centerline of Pin Oak Avenue. Being lots 112-114 in the subdivision of Oakleigh Beach, Book No. 12, Folio 46. Also known as 933 Oakleigh Beach Road in the 15th election district.

For Kaiser - R.C. Dismissed

THEODORE E. McCADDEN, SR. 8144 Dundalk Avenue Baltimore, Maryland 21222	*	BEFORE THE
and	*	CIRCUIT COURT
MICHAEL BLACK 2212 Park Drive Baltimore, Maryland 21221	*	FOR BALTIMORE COUNTY Appeal from an Order before the County Board of Appeals for Baltimore County
vs.	*	
SANDRA POOL 931 Oakleigh Beach Road Baltimore, Maryland 21222	*	Case No. 88-142-A
and	*	
MARY PHIPPS 931 Oakleigh Beach Road Baltimore, Maryland 21222	*	
IN THE MATTER OF THE APPLICATION OF THEODORE E. McCADDEN, SR., ET AL FOR A ZONING VARIANCE ON SOUTH SIDE OF OAKLEIGH BEACH ROAD, 615' EAST OF THE CENTERLINE OF PIN OAK AVENUE (933 OAKLEIGH BEACH ROAD) 15th ELECTION DISTRICT 7th COUNCILMANIC DISTRICT	*	

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PETITION IN SUPPORT
OF ORDER OF APPEAL

The Petition of Theodore E. McCadden, Sr. and Michael Black, hereinafter called the Petitioners, by their attorneys, John B. Gontrum, Jean K. Tullius and ROMADKA, GONTRUM & HENNEGAN in support of their Appeal from an Order of the County Board of Appeals for Baltimore County, hereinafter

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ESSEX, MARYLAND

called the Board, to petition this Court in a case titled as set forth, being case No. 88-142-A, and state further:

1. That on December 15, 1987, the Deputy Zoning Commissioner ordered that the Petition for Zoning Variance in the above captioned matter be granted;

2. That on May 19, 1988, the Board of Baltimore County reversed this Order and denied the Zoning Variance;

3. That the Petitioner contends that the findings, conclusions of law and Order of the Board are arbitrary, capricious, unreasonable and erroneous because:

A. The conclusions of Law were unsupported by competent, material and substantial evidence;

B. The Board acted arbitrarily and capriciously in imposing the aforesaid Order;

C. The Board erroneously applied an incorrect interpretation of law to the facts before it.

WHEREFORE, the Petitioner respectfully requests this Honorable Court to:

1. Stay the Board's Order during the pendency of this Appeal, hearing and final adjudication;

2. Reverse and vacate the Board's Order; and

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ESSEX, MARYLAND

3. Grant unto the Petitioner such other and further relief as the nature of this case may require.

John B. Gontrum

Jean K. Tullius
ROMADKA, GONTRUM & HENNEGAN
809 Eastern Boulevard
Baltimore, Maryland 21221
(301) 686-8274

Pursuant to Rule B-2, a copy of this Petition in Support of Order of Appeal served on Baltimore County Board of Appeals on this _____ day of _____, 1988.

Jean K. Tullius

Rec'd 6-7-88 J.A. C.B.A. 8:30

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ROMADKA, GONTRUM & HENNEGAN
ESSEX, MARYLAND

For Kaiser - R.C. Dismissed

THEODORE E. McCADDEN, SR. 8144 Dundalk Avenue Baltimore, Maryland 21222	*	BEFORE THE
and	*	CIRCUIT COURT
MICHAEL BLACK 2212 Park Drive Baltimore, Maryland 21221	*	FOR BALTIMORE COUNTY Appeal from an Order before the County Board of Appeals for Baltimore County
vs.	*	
SANDRA POOL 931 Oakleigh Beach Road Baltimore, Maryland 21222	*	Case No. 88CG2545
and	*	
MARY PHIPPS 931 Oakleigh Beach Road Baltimore, Maryland 21222	*	
IN THE MATTER OF THE APPLICATION OF THEODORE E. McCADDEN, SR., ET AL FOR A ZONING VARIANCE ON SOUTH SIDE OF OAKLEIGH BEACH ROAD, 615' EAST OF THE CENTERLINE OF PIN OAK AVENUE (933 OAKLEIGH BEACH ROAD) 15th ELECTION DISTRICT 7th COUNCILMANIC DISTRICT	*	

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OCT 24 1989

APPELLANT'S RESPONSE MEMORANDUM

Appellee's Memorandum ignores the context in which this case arises. There were three (3) separate lots for sale in the Oakleigh Beach subdivision. There were separate tax bills on the lots. One of the lots was improved by a dwelling. It was a fifty (50) foot wide lot uniform in its width. The other two (2) lots were also uniformally fifty (50) feet wide.

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ESSEX, MARYLAND

There was no indication that these lots could not be improved, especially since the vast majority of houses in the Oakleigh subdivision is built on fifty (50) foot wide lots.

The presence of three (3) separately defined lots for so many years is an important factor in applying the test of Anderson v. Board of Appeals, Town of Chesapeake Beach, 22 Md. App. 28, 322 A.2d 220 (1974), for it goes both to the substantial injustice test to Appellants as well as to the effect on the balance of the community. One of these lots could have been purchased by John Doe, another by Jane Short, and the third by Phil Rowe. Would it be substantial justice to allow only the one buying the improved lot to have a home and deny the right to the others?

If Appellees argument and that of the Board are taken to their logical conclusions, then no variance would ever be permitted as land use in itself has financial implications, and the moment one asks for a variance he or she is seeking to improve a situation or relieve a bad one and that has financial consequences. Obviously, the law does not allow so onerous a burden. It is not a self imposed hardship to seek a building permit on a building lot.

If the three (3) part test of Anderson is applied to the facts in this case, it can not be denied that a permitted purpose of these lots in a subdivision zoned residentially is to improve them with single family dwelling that do not otherwise require variances. Strict compliance with the fifty

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(50) foot wide lot requirement unreasonably prevents use of the lots, especially when the proposed improvements would bring these dwellings no closer to neighboring properties than is otherwise allowed by law. If the Board's conclusion is left intact, then there is no use of these lots as the center lot has been legally sold as an improved fifty (50) foot wide lot.

Secondly, there is nothing short of granting the variance requested and that would render substantial justice to Appellants. There is no land which can be used to add to these lots without creating an undersigned lot. Is it unjust for the neighbors to have a house built next to them which complies with setback and area requirements? Any one would like to have open land adjacent to them and not have to pay taxes on it and would prefer it to another house, but preference of neighboring property owners, like zoning by plebiscite is not a legal test of whether there is injury to public safety and welfare, if the relief is given. Obviously, given the prevailing character of the neighborhood and the clear intent and language of Section 304 of the Baltimore County Zoning Regulation, the second test of Anderson has been met. See Maryland Zoning Divisions, Section 11.3.

Despite Appellee's citation, this is not a case of a change in zoning classification or a "use variance". Neither the Deputy Zoning Commissioner nor the Board so categorized it. Standards applied to zoning changes are completely different. We are not asking to put a business in a

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ESSEX, MARYLAND

residential zone nor to increase density as that concept is understood from that allowed by the zoning classification. We have enough square footage in each lot to meet the minimum requirements of the existing zoning.

This is not a case of nonconforming use as that is defined in the zoning regulations. What we do have is an old plat, vested under the zoning and development regulations which contains lots now undersized by today's current regulations. Clearly, if any of the existing houses on a fifty (50) foot wide lot burned to the ground, they could be rebuilt. If a nonconforming use existed, such as a business in a residential area, it could not be rebuilt if totally destroyed.

All current development regulations would apply if the variances were granted, and development proceeded. Appellants would have to conform to all of the current development regulations pertaining to storm water management, parking, health code, building code, entrances, grading, etc., whether the lots were fifty (50) feet wide or a hundred (100) feet wide. Because of the more stringent regulations with respect to building which now exist, and which did not exist years ago when this subdivision first was created, new homes are more sound, better built and have less impact than the existing homes. The simple answer is, however, that these factors, like the generalized concerns over health problems in the neighborhood or traffic problems are not answered by this kind

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of zoning question, but rather by development regulations. No evidence as of any negative impact of this variance on adjacent properties has been given.

We would urge this Court to adopt the reasoning of the Deputy Zoning Commissioner and her application of the three (3) part test of Anderson to this case, and reverse the Order of the Board of Appeals.

Respectfully submitted,

John B. Gontrum
ROMADKA, GONTRUM & HENNEGAN
809 Eastern Boulevard
Baltimore, Maryland 21221

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 21 day of October, 1988, a copy of the foregoing was mailed, postage prepaid to Michael Gilbert, 1121 Merritt Boulevard, Baltimore, Maryland 21221 and People's Counsel, Phyllis Freidman, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland 21204.

John B. Gontrum

LAW FIRM
ROMADKA, GONTRUM & HENNEGAN
ESSEX, MARYLAND

THEODORE E. McCADDEN, SR. and MICHAEL BLACK	*	IN THE
vs.	*	CIRCUIT COURT
SANDRA POOL and MARY PHIPPS	*	FOR BALTIMORE COUNTY
IN THE MATTER OF THE APPLICATION OF THEODORE E. McCADDEN, SR., ET AL. FOR A ZONING VARIANCE, ETC.	*	Case No. 88CV2545

* * * \

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If the three (3) part test of Anderson is applied to the facts in this case, it can not be denied that a permitted purpose of these lots in a subdivision zoned residentially is to improve them with single family dwelling that do not otherwise require variances. Strict compliance with the fifty

(50) foot wide lot requirement unreasonably prevents use of the lots, especially when the proposed improvements would bring these dwellings no closer to neighboring properties then is otherwise allowed by law. If the Board's conclusion is left intact, then there is no use of these lots as the center lot has been legally sold as an improved fifty (50) foot wide lot.

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residential zone nor to increase density as that concept is understood from that allowed by the zoning classification. We have enough square footage in each lot to meet the minimum requirements of the existing zoning.

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We would urge this Court to adopt the reasoning of the Deputy Zoning Commissioner and her application of the three (3) part test of Anderson to this case, and reverse the Order of the Board of Appeals.

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809 Eastern Boulevard
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John B. Gontrum

THEODORE E. McCADDEN, SR. and MICHAEL BLACK	*	IN THE
vs.	*	CIRCUIT COURT
	*	FOR
SANDRA POOL and MARY PHIPPS	*	BALTIMORE COUNTY
IN THE MATTER OF THE APPLICATION OF THEODORE E. McCADDEN, SR., ET AL. FOR A ZONING VARIANCE, ETC.	*	Case No. 88OG2545

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

BRIEF OF APPELLEES
SANDRA POOL AND MARY PHIPPS

OCT 14 1988

A court should not substitute its judgment for the Board of Appeals.

The appellants contend that the DR5.5 zoning and its 55' frontage requirement should not apply to their lots (or to the neighborhood in general), as all of the previous subdivision frontages in that neighborhood are 50'. This court should not substitute its judgment for that of the various zoning departments, Board of Appeals and County Council determinations which instituted the comprehensive zoning map and (in this particular neighborhood) which halts increased congestion.

"Since R-A and R-G are different classifications, an alleged error not classifying property as one would seem very weak evidence, if any evidence at all, of error in not classifying it as the other. The requested classification here is, we repeat, from R-6 to R-G. The evidence impresses us as weak to establish any error at all in the comprehensive zoning, which is what we think the adoption of the 1955 map actually was; but even if there were some substantial evidence of error to support the requested reclassification, we think the matter was at least debatable. Under such circumstances, the courts are not authorized to overturn the action of the Board and to substitute their judgment for that of the Board." Rengo vs. Penfield Holding Co., 223 Md. 34, 43 (1959).

"But if the questions involved are fairly debatable and the facts presented are sufficient to support the board's decision, it must be upheld. (Cite cm.) Moreover, conditions upon which a special exception may be granted are set out in the ordinance, and the board has given a wide latitude of discretion in passing upon special exceptions so long as the resulting use is in harmony with the general purpose and intent of the zoning plan and will not adversely effect the use of neighboring properties and the general plan of the neighborhood as provided by the zoning ordinance. (Cite cm.)" Growther, Inc. vs. Johnson 225 Md. 379, 383 (1960).

The determination made by Baltimore County to require a 55' frontage on a new residence in the Oakleigh Beach area (where there are numerous available multiple lots allowing a 55' frontage) is sensible, practicable, and (at least) debatable. The zoning law enacted in Baltimore County should be enforced.

The appellants do not qualify for a non-conforming use.

The appellants main contention is that they now own two (2) 50' wide lots in an area where the zoning regulations have subsequently required 55' wide lots and the appellants' logic is that they should be entitled to a variance from the 55' requirement as the original subdividing of the appellants separate lots occurred prior to the zoning regulation.

"...to qualify as a non-conforming use, a use must be in existence at the time of the enactment of the zoning ordinance or at the date that the ordinance became effective. A mere intention to use land in a manner other than is permitted under the zoning ordinance, or the obtaining of a permit to erect a building for such use, is not enough to establish a non-conforming use...." 23 MLE, Zoning and Planning section 17.

The existence of all other houses in this neighborhood on single 50' lots in fact would be "grandfathered" as a non-conforming use and the county's zoning regulation designed to increase the size of house lots (decrease the density of housing in the area) is not effective to require those owners of existing houses to tear those houses down. However, the zoning is effective in the instant case, (where no house has been built), to prevent the owners of a 150' by 150' area from utilizing old (pre-zoning regulation) subdivision lines to build an under-sized house on a new undersized lot.

The Board of Appeals properly refused to grant a variance under the law of section 304, B.C.Z.R. and the Board of Appeals properly applied the law of section 307 B.C.Z.R.

The appellants contend that the Board of Appeals should have applied and granted them a variance under section 304 of the Baltimore County Zoning Regulations, which provides, "a one-family dwelling may be erected on a lot having an area or width at the building line less than that required by the height and area regulations." Although the appellants lots would have short width lines (side set backs) at the building line, they also have a narrow frontage and would not qualify for a variance under section 304, as that section requires at least that "...all other requirements of the height and area regulations are complied with...." In addition, the appellants would not qualify for a variance under section 304 as it also requires, "c. That the owner of the lot does not own sufficient adjoining land to conform substantially to the width and area requirements." In the instant case, the appellants owned the adjoining lot No. 113 which dominated and utilized lots 112 and 114 during its previous ownership and during the appellants' ownership until such time as the appellants made lots 112 and 114 the leftovers of the previous single use lot 112-113-114. The appellants cannot contend they do not own sufficient adjoining land when they themselves created the shortage. See Gleason vs. Kozwich, supra. (In addition, please see appellees' conclusion hereinafter showing an additional demonstration of the existence of

"sufficient adjoining land."

Section 307 BCZR (the correct section to invoke) was properly applied by the Board of Appeals. The Board of Appeals has the authority to grant a variance from an area regulation "only in cases where strict compliance with the zoning regulations... would result in practical difficulty...." Such a variance may not be granted if (a) there would result an increase in residential density beyond that otherwise allowable, (b) the variance fails to maintain strict harmony with the spirit and intent of the regulations, and (c) the variance causes substantial injury to the public health, safety, or general welfare. There was no practical difficulty to the appellants, as the compliance with the frontage requirement was of the appellants' own making (there was no violation while they owned the originally used three (3) parcel but only a violation after they sold the middle of that originally used parcel). A variance would violation the spirit and intent of the area regulations, as the density requirements of DR5.5 are intended to maintain larger open spaces and retain nature features. See also 1800.2 (B), BCZR. In addition, a variance would have been substantially injurious to the public health, safety, and general welfare (there was ample testimony and exhibits of excessive traffic and parking, TR 22; lack of suitable drainage, TR 23, 29; already disrepaired roads, Pro. Ex. 10 A, B, C; danger of loss of will life, TR 26; random dangers, TR 21; and damage to the Dry Critical area, TR 26; all of which will be exacerbated by the placing of one or two additional houses on the one or two

substandard remaining lot parts. There further was testimony of insufficient interhouse distances (side set backs) as the owner of the middle lot 113 - recently sold to that owner by the appellants - complained that his side window and door were only 5' from the new property line and that the erection of a house on lot 112 would be drastically close to his window and door. TR 44.

The law was properly applied by the board and the findings made by the board were amply supported by the evidence.

"...under similar circumstances, we said ... (Citations before)

"this rule (if the issue is 'fairly debatable,' we will not substitute our judgment for that of the administrative body) will be adhered to even if we are of the opinion that the administrative body came to a conclusion we properly would not have reached on the evidence. In the instant case, but for the rule, we might well have reached the conclusion (that the board of appeals erred), but in enforcing the rule we are obliged to say that reasonable persons could have reached a different conclusion on the evidence so that the issues were fairly debatable, and hence, the decision of the Board must be substanted"....McLean, vs.

Boley, 270 Md. 208, 215 (1973)

CONCLUSION

The appellants come with an untenable position. They purchased a large lot (three (3) previous sub lots) in a subdivision which has 065.5 ft' frontage requirements, that has many houses built prior to zoning on 50' sub lots, many houses built on double sub lots of 100' frontage, and houses built on triple sub lots built of 150' frontage (see colored sub lot map in appellee/protestant exhibits.) The appellants rehabilitated and then sold the previously existing house on their large parcel, and retained for themselves the two (2) outside sub lots. Not being satisfied with having bought one (1) large parcel and selling it, not being satisfied having bought one large parcel and dividing it into two (2) sections so that the existing house and sub lot 112 could be sold as a single unit and then sub lot 114 plus a 5' strip portion of the former sub lot 113 could be combined into one (1) qualifying 55' sub lot suitable for development, the appellents sold the wheat (the middle with the house) keep the chaff (the two (2) outside sub lots lacking sufficient frontage alone), they then asked for permission to make two more loaves of bread from the chaff (even if it meant placing one loaf of bread/house/backwards on one of the sub lots).

"The fact that rezoning would make property more valuable is not a sufficient reason for rezoning." 23 MLE, zoning, section 15.

Respectfully submitted,

Michael I. Gilbert
1121 Merritt Blvd.
Baltimore, MD 21222
(301) 282-0600
Attorney for the Appellees

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of _____, 1988 a copy of the foregoing was mailed to Jean K. Tullius, 809 Eastern Blvd., Baltimore, Maryland 21221 and People's Counsel, Phyllis Freidman, County Office Building, 111 West Chesapeake Ave., Towson, Maryland 21204.

Michael I. Gilbert

P.C. not included

and MICHAEL BLACK	*	IN THE
vs.	*	CIRCUIT COURT
SANDRA POOL and MARY PHIPPS	*	FOR
	*	BALTIMORE COUNTY
IN THE MATTER OF THE APPLICATION OF THEODORE E. McCADDEN, SR., ET AL. FOR A ZONING VARIANCE, ETC.	*	Case No. 88CG2545

MOTION FOR EXTENSION OF TIME TO FILE MEMORANDUM

The respondents SANDRA POOL and MARY PHIPPS respectfully move this Honorable Court for an extension of time of two days, until October 7, 1988, within which they may file their memorandum pursuant to Maryland Rule B12, on the grounds that:

1. The respondents' brief is due today.

2. Counsel for the respondents cannot complete the brief by today, owing to a large amount of administrative work in counsel's office during the last two weeks.

3. Counsel for the appellants has graciously consented to the granting of this motion.

WHEREFORE, the respondents respectfully pray that the above relief be granted.

Respectfully submitted,

Michael I. Gilbert
1121 Merritt Blvd.
Baltimore, MD 21222
(301) 282-0600
Attorney for the Respondents

OCT 10 1988

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of October, 1988, a copy of the foregoing was mailed to Jean K. Tullius 809 Eastern Boulevard, Baltimore, MD 21221 and to People's Counsel, Phyllis Freidman, County Office Building, 111 West Chesapeake Ave., Towson, MD 21204.

Michael I. Gilbert

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"The fact that rezoning would make property more valuable is not a sufficient reason for rezoning." 23 MLE, zoning, section 15.

Respectfully submitted,

Michael I. Gilbert
1121 Merritt Blvd.
Baltimore, MD 21222
(301) 282-0600
Attorney for the Appellees

CERTIFICATE OF SERVICE

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Michael I. Gilbert

P.C. not involved

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OCT 7 1988
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THEODORE E. McCADDEN, SR. and MICHAEL BLACK	*	IN THE
vs.	*	CIRCUIT COURT
SANDRA POOL and MARY PHIPPS	*	FOR
	*	BALTIMORE COUNTY
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	*	
	*	

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

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Baltimore, MD 21222
(301) 282-0600
Attorney for the Respondents

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Michael I. Gilbert

THEODORE E. McCADDEN, SR. and MICHAEL BLACK	*	IN THE
vs.	*	CIRCUIT COURT
	*	FOR
SANDRA POOL and MARY PHIPPS	*	BALTIMORE COUNTY
IN THE MATTER OF THE APPLICATION OF THEODORE E. McCADDEN, SR., ET AL. FOR A ZONING VARIANCE, ETC.	*	Case No. 88CG2545

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

ORDER

Upon motion of the respondents SANDRA POOL and MARY PHIPPS, and for good cause shown, it is this 21st day of September, 1988

ORDERED that the respondents SANDRA POOL and MARY PHIPPS be and hereby are granted an extension of time of two weeks, until October 5, 1988 within which time they may file their memorandum.

IT IS SO ORDERED.

William M. Nickerson
JUDGE

True Copy Test
SUZANNE MENEH, Clerk
Per. S. Sandra

PC not violated

PCF 1
PAZ 2

THEODORE E. McCADDEN, SR. 8144 Dundalk Avenue Baltimore, Maryland 21222	*	BEFORE THE
	*	CIRCUIT COURT
and	*	FOR
MICHAEL BLACK 2212 Park Drive Baltimore, Maryland 21221	*	BALTIMORE COUNTY
vs.	*	Appeal from an Order before the County Board of Appeals for Baltimore County
SANDRA POOL 931 Oakleigh Beach Road Baltimore, Maryland 21222	*	Case No. 88CG2545
and	*	
MARY PHIPPS 931 Oakleigh Beach Road Baltimore, Maryland 21222	*	
IN THE MATTER OF THE APPLICATION OF THEODORE E. McCADDEN, SR., ET AL FOR A ZONING VARIANCE ON SOUTH SIDE OF OAKLEIGH BEACH ROAD, 615' EAST OF THE CENTERLINE OF PIN OAK AVENUE (933 OAKLEIGH BEACH ROAD) 15th ELECTION DISTRICT 7th COUNCILMANIC DISTRICT	*	

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APPELLANT'S MEMORANDUM

This Memorandum is submitted on behalf of Theodore E. McCadden, Sr. and Michael Black, Appellants, in the above captioned case pursuant to Maryland Rule B12.

STATEMENT OF CASE

The Appellants, Theodore McCadden, Sr. and Michael Black brought a Petition for a Variance for lot widths of 50 feet in lieu of the required 55 feet for Lots 112, 113 and 114 on the southside of Oakleigh Beach Road in the 15th Election District. After a hearing, the Deputy Zoning Commissioner ordered that the Petition be granted for each lot subject to restrictions. A timely appeal was taken to the Board of Appeals for Baltimore County by the Appellee. The case came before the Board of Appeals on May 12, 1988. The Appellants and the Appellee were not represented by Counsel at this hearing. No experts were present. The Board of Appeals rendered an opinion on May 19th and denied the Appellants' request for a variance. The Appellants filed an Appeal from that decision with this Court. (Case No. 88CG2545)

STATEMENT OF FACTS

The Appellants were the purchasers of Lot 112, 113 and 114 at Oakleigh Beach Road. Each lot of the subject property is zoned D.R. 5.5 and is part of the Oakleigh Beach subdivision located on Oakleigh Beach Road near Wise Avenue. This subdivision was recorded in the Land Records of Baltimore County on August 24, 1939. (Appellee Exhibits 6A,B,C and 7A,B) When the subdivision was recorded, the lot major ity of the lots contained in it were 50' wide. The neighborhood is an older residential one, where the majority of dwellings are single-family residences on single lots. (T9 at 16) Most of

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the lots in the neighborhood comprise approximately the same area and dimensions as those of the Appellants' lots. (T4 at 1) Several lots in the neighborhood are non-conforming. (T 37, and T38 at 4, 5, 6)

Lots 112, 113 and 114 were previously subdivided and separately transferred by separate deeds to the Appellants upon purchase. (T9 at 18,20) Lots 112 and 114 are vacant and unimproved and have been so for approximately forty-nine (49) years. (T7 at 2, 20) In the immediate vicinity of Oakleigh Beach Road, Lots 112 and 114 are the only ones which are vacant and unimproved. (T40 at 15, 16) A dwelling house which the Appellants have renovated and sold is located on Lot 113 which is also 50' wide. (T.5 at 12) This house existed at least since 1952. (T.6 at 18)

The Appellants are requesting the variance to permit the development of the two (2) lots for residential purposes, to wit: Mr. McCadden testified that he is in the Home Improvement Business and intends to build a small house-a Cape Cod-on Lot 114, that would be approximately 28 feet by 28 feet. (T.6 at 5) Mr. McCadden also testified that the house he intends to build will conform with the neighborhood (T.6 at 3,4,6) and with all other Baltimore County Zoning Regulations. (T.6 at 20,21)

In order to improve Lots 112 and 114 because of their exceptionally narrow widths, Appellant applied for a five foot lot width variance. (T5 at 13,14,15) Without the variance for

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lot width size, he would not be able to develop the Lots (T.8 at 17) His testimony indicated that without the variance, he could only "go over and cut the grass once a week and be out Seven Thousand Dollars ($7,000.00) because there is nothing else that can be done with that lot unless the neighborhood wants to buy it." (T.8 at 16,17,18,19) Finally, testimony was elicited by both parties to this action that the majority of homes in the Oakleigh Beach subdivision are built on single 50 foot wide lots although a few residents own more than one (1) lot. (T42 at 10,11,12) (Protestant's Exhibit 11 B)

Appellee testified that if the variance was granted by the Board, problems generally with safety, (T22 at 11); traffic, (T23,24); drainage (T28 at 11-20); and, overcrowding (T.24 at 13-21) may occur in the future. Appellee produced photographs and exhibits to support their position that the grant of the variance would infringe the intent and spirit of the Baltimore County Zoning Regulations and be substantially detrimental to the public health, safety and general welfare. No specific information was conveyed to the Board on the input of two (2) more dwellings on these issues.

ARGUMENT

The Appellants submit that there are two (2) separate bases for overturning the decision of the Board of Appeals. The first is that the Board erroneously applied an incorrect interpretation of the law to the facts before it. By doing so, the Board acted arbitrarily and capriciously in imposing

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the order of May 19, 1988. The second issue is that the Board's decision that the variance be denied is not supported by competent, material and substantial evidence.

I. DID THE COUNTY BOARD OF APPEALS ERR IN REVERSING THE ZONING COMMISSIONER'S GRANT OF VARIANCES AS TO LOTS 112, 113 AND 114 BY APPLYING THE INCORRECT INTERPRETATION OF THE LAW TO THE FACTS BEFORE IT.

It is the Appellants' contention that the Board incorrectly applied the law to the evidence before it. The Appellants have requested a variance from Section 1B02.3c.1 pursuant to Section 307 of the Baltimore County Zoning Regulations. (BCZR) It is well settled that an area variance may be granted where strict application of the zoning regulations would result in practical difficulty or unreasonable hardship to the Appellant and his property. McClean v. Soley, 270 Md 208, 310 A2d 783 (1973)

Since the Appellants had requested a variance of 50 feet in lieu of the required lot width of 55 feet for Lots 112, 113 and 114, the Appellants have requested an area variance. An area variance is one for frontage, area, height and setback requirements. Anderson vs. Board of Appeals, of Chesapeake Beach, 22 Md. App 28, 322 A2d 220, (1973), Dahl v. County Board of Baltimore 258 MD 157 265 A2d 222 (1970) In Maryland, the test to be applied is that of practical difficulty where the ordinance is in the disjunctive rather than unnecessary hardship which is generally adopted for "use variances". Anderson, supra.

The following criteria are cited in Anderson, supra for an applicant for an area variance.

> An applicant for an area variance does not have to show a taking in a constitutional sense but must show that compliance with strict letter of restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent him from using property for permitted purpose or render conformity with restrictions unnecessarily burdensome, that grant of variance would do substantial justice to applicant as well as to other property owners in district, that relief can be granted in such fashion that spirit of ordinance will be observed and public safety and welfare secured.

It is the contention of the Appellants' that the exceptional lot width of Lots 112, 113 and 114 in a DR zone requires the Board to apply the correct legal principle to the subject property to conclude that practical difficulty or unnecessary hardship exists in this case. Testimony and evidence were propounded by the Appellants which showed that the dimensions of Lots 112, 113 and 114 were approximately 50 feet by 150 feet. A plat of a subdivision plan was offered to the Board which was recorded in 1939 and showed that the Oakleigh Beach Subdivision contains almost exclusively lots of this size. (T9 at 16) Even where certain owners had purchased more than one lot, and a minority had, it appeared that many homes were situated on one lot of the same approximate size as the Appellants. (T9 at 16)

The Appellants circumstances are unique because the lots can be said to be "substandard" or "undersized". In order to improve them as permitted by the zoning regulations, a variance must be granted. The lots are necessarily

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substandard or undersized because the lots are too narrow to comply with the standards of the BCZR. This in itself creates a practical difficulty or unreasonable hardship in that the lot width restriction makes it impossible for the Appellants to make normal improvements in the character of the use of the property which is permitted under DR5.5.

It is stated in the American Law of Zoning, 3rd ed. Section 20.56 at page 553 that: "The clearest case of hardship due to the literal application of zoning regulations is that the substandard lot which cannot be used for any purpose without relief from the restriction." By example, a definition of a substandard lot in the Ordinances of the District of Columbia, refers to a lot which is exceptionally narrow, shallow or has an exceptional topography, configuration or history. D.C. CODE 1973 Section 5-420(3) Zoning Regulations, Art. 82 Section 8206.11 Each lot, the subject of this Petition, can said to be substandard.

In Russell v. District of Columbia Board of Zoning Adjustment 402 Atlantic 2nd 1231 (1979) a District of Columbia Court of Appeals discussed the application for an area variance. Upon a showing that the lot was exceptionally small, it was held pursuant to ordinance that practical difficulties existed which entitled a property owner to a variance when he was deprived of all beneficial use of his property. Here, as in the instant case, the minimum lot restrictions are more than unnecessarily burdensome and the

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William M. Nilsson
JUDGE

True Copy Test
SUZANNE MENSH, Clerk
Per S. Sandis
Deputy Clerk

B.C. not involved

PCFS ✓
PMZ ✓

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AUG 24 1989

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the lots in the neighborhood comprise approximately the same area and dimensions as those of the Appellants' lots. (T4 at 1) Several lots in the neighborhood are non-conforming. (T 37, and T38 at 4, 5, 6)

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The Appellants submit that there are two (2) separate bases for overturning the decision of the Board of Appeals. The first is that the Board erroneously applied an incorrect interpretation of the law to the facts before it. By doing so, the Board acted arbitrarily and capriciously in imposing

the order of May 19, 1988. The second issue is that the Board's decision that the variance be denied is not supported by competent, material and substantial evidence.

I. DID THE COUNTY BOARD OF APPEALS ERR IN REVERSING THE ZONING COMMISSIONER'S GRANT OF VARIANCES AS TO LOTS 112, 113 AND 114 BY APPLYING THE INCORRECT INTERPRETATION OF THE LAW TO THE FACTS BEFORE IT.

It is the Appellants' contention that the Board incorrectly applied the law to the evidence before it. The Appellants have requested a variance from Section 1B02.3C.1 pursuant to Section 307 of the Baltimore County Zoning Regulations. (BCZR) It is well settled that an area variance may be granted where strict application of the zoning regulations would result in practical difficulty or unreasonable hardship to the Appellant and his property. McClean v. Soley, 270 Md 208, 310 A2d 783 (1973)

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It is the contention of the Appellants' that the exceptional lot width of Lots 112, 113 and 114 in a DR zone requires the Board to apply the correct legal principle to the subject property to conclude that practical difficulty or unnecessary hardship exists in this case. Testimony and evidence were propounded by the Appellants which showed that the dimensions of Lots 112, 113 and 114 were approximately 50 feet by 150 feet. A plat of a subdivision plan was offered to the Board which was recorded in 1939 and showed that the Oakleigh Beach Subdivision contains almost exclusively lots of this size. (T9 at 16) Even where certain owners had purchased more than one lot, and a minority had, it appeared that many homes were situated on one lot of the same approximate size as the Appellants. (T9 at 16)

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substandard or undersized because the lots are too narrow to comply with the standards of the BCZR. This in itself creates a practical difficulty or unreasonable hardship in that the lot width restriction makes it impossible for the Appellants to make normal improvements in the character of the use of the property which is permitted under DR5.5.

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Board was obliged to authorize a variance under these circumstances. The Appellant testified that if the variance is not granted, the property will for all practical purposes be useless. (T9 at 16) A landowner has the right to reasonable use of his property. Mr. McCadden stated that if the variance was not granted, he could not improve it and might as well let it lie idle or sell it to the neighborhood. (T9 at 16) A landowner certainly is not required to sell his property and has a right to develop it.

It is also argued that a pertinent Section of the BCZR was overlooked by the Board. In Baltimore County, the BCZR provides a window for those owners of a lot where the area or width of the building line is less than that required by the height and area regulations under certain circumstances. This section much like those jurisdictions who have legislated for "substandard lots" permits the erection of a one-family dwelling on a lot "having an area or width at the building line less than that required by the height and area regulations, provided: a. that such lot shall have been recorded or in a validly approved subdivision prior to adoption of these regulations; and b. that all other height and area regulations are complied with; and c. that the owner of the lot does not own sufficient adjoining land to conform substantially to the width an area requirements." It was error for the Board to not consider and apply this Section to the facts presented at the proceeding.

More importantly, the subject property lies within a DR 5.5 zone. This zone is designated for residential uses, more specifically single-family homes are permitted as a matter of right. Because of this, the spirit and intent of this zoning designation permits single-family dwelling as the permitted use. The combination of the substandard or undersized lot size, pre-recordation of the Oakleigh Beach subdivision plan before the invocation of the current zoning regulations and its location in a district zoned solely for residential purposes, without the grant of a variance deprives the Appellants of all beneficial use of the subject property.

Although a finding of practical difficulty or unreasonable hardship cannot be supported solely by evidence of financial and economic considerations, it is incumbent upon the Board to consider the facts before it and apply the correct legal principal. At the hearing before the Board, the Appellant testified to the dimensions of the subject lots. (T9 at 16) The Appellant also submitted into evidence the plan for Oakleigh Beach Road recorded in 1939 and the Board acknowledged that each of the lots were all approximately the same size of the Appellants (T9 at 16) The Appellant testified that the subject property was zoned residential and was to improve the lots with small single-family dwellings. (T9 at 16) Yet the Board ignored these dramatic facts and ignored Section 304 and misapplied the test for area variance.

The Appellants are requesting a de minimis variance of five (5) feet from that required by Section 1B02.3c1 of the BCZR. Appellant testified that he will not need any variances from front, side and rear yard setback requirements. Nowhere in the record is there evidence that the Appellants are attempting to merely avoid inconvenience or added expense.

In the instant case, there is no question that the Appellants are in a unique and peculiar situation or that without the variance, the lot width regulation of 55' amounts to a substantial and unnecessary injustice to the Appellants. The denial of the variance unduly restricts the use of the land due to its unique history and size so that in contravention of existing law, their property cannot be reasonably adapted to use in conformity with zoning regulations. Carney, supra. And these circumstances were not self-created. Lot 113 or the middle lot was improved since before 1952 by a single-family dwelling. (T6 at 18) Lots 112 and 114 are separate lots which abut Lot 113 on each side. (T7 at 2,20) Practically speaking and based on the lots' configuration and placement, the lots could not have been improved without a variance grant even if lot 113 was not sold. There was never the possibility that adjacent property could be used to extend the lot width of 55 feet of Lots 112 and 114.

The Board in its order incorrectly applied the law, and therefore acted arbitrarily and capriciously. In addition,

the Board failed to consider the applicability of Section 304 of the BCZR.

II. IN REVERSING THE ZONING COMMISSIONER'S GRANT OF A VARIANCE FOR LOTS 112, 113 AND 114 WERE THE FINDINGS OF THE BOARD SUPPORTED BY COMPETENT, MATERIAL AND SUBSTANTIAL EVIDENCE.

The findings of the Board were not supported by competent material and substantial evidence. In addition to the "practical difficulty or unreasonable hardship" standard, a granting of a variance is dependent upon the criteria of Section 307 of the BCZR. This section provides in pertinent part, that an area variance shall be granted "only if in strict harmony with the spirit and intent of said height, area, offstreet parking, or sign regulations, and only in such manner as to grant relief without substantial injury to public health, safety, and general welfare."

Since the proposed lot width modification is de minimis, and the Appellants intend only to build two (2) single family homes, one on lot 112 and one on lot 114 (both of which would conform to the neighborhood and to the zoning designation (T6 at 5), the evidence and testimony adduced could not be found to violate the spirit and intent of the BCZR. (See BCZR,DR, 1 B00.2 Purposes) Nonetheless, the Board ignored these facts in its decision.

Evidence was propounded by protestants regarding the granting of the variance and its future, albeit hypothetical, impact on the public health, safety, and general welfare. The

Board concluded that the impact was detrimental. (R.Opinion of the Board of Appeals)

The law requires that the facts presented support the Boards' finding that the harm to the public health, safety and general welfare be substantial. The term "substantial" ordinarily means "actual, not imaginary, having substance, considerable." Webster's New World Dictionary at page 746. Here, for several reasons, testimony presented by the Appellee could not be said to show a "substantial" injury.

The Board mistakenly reached the conclusion that the Appellee' testimony showed substantial detriment when the Board in it Opinion (R.Opinion of the Board of Appeals) found that "further development in this already crowded community is "undesirable". This is a decision, however, for the County Council in its review of zoning density and for the master plan. Furthermore the conclusion was based only on the most generalized of statements.

When applying the standards of Section 307 to these two lots it is important to view only the two lots and their impact on Sections 307 requirements as opposed to generalized community concerns. When one considers the increase in population of two families one can hardly conclude that the zoning density would be increased measurably, but instead would fall within permitted parameters of existing zoning regulations. Appellants would respectfully submit that any issues of potential radon problems or road disrepair are

issues of development not ones for the Board of Appeals on review of a Petition for Variance. The effect on wildlife preservation can hardly be said to be substantial when only two lots measuring 150 feet by 50 feet are intended to be developed. If anything these general concerns could be better addressed by a developer who intends to improve the subject properties.

Finally, the Zoning Advisory Committee (ZAC) has the duty to review each and every Petition for a Variance. The ZAC consists of Baltimore County Departments of Traffic Engineering, Health, Environmental Protection and Planning among others. Each department has the opportunity to comment on how a variance for a particular piece of property would affect the Community pursuant to Section 307. Where there are no negative comments submitted by the ZAC, it can be concluded that those departments and agencies composed of experts for Baltimore County find no substantial injury to the public health, safety or general welfare as applied to these lots. Yet this evidence was ignored by the Board.

Appellants are not questioning the standing of the Appellee to testify. We are questioning their competence to testify about those areas normally within the province of experts. Traffic, safety, drainage, congestion, road disrepair, radon, and wildlife preservation are areas ordinarily preserved for expert testimony and not lay witnesses. A reviewing Court has the authority to apply the

weight of the evidence test and determine whether a "reasoning mind could have reached the factual conclusion reached by the agency." Stewart Inc., v. Board of Commissioners, St. Mary's County, 381 A2d 1174, 38 Md. App 381 (1978) The facts presented on which the Board based its opinion have little weight for the simple reason that a layperson's testimony as to the foregoing subjects is strictly limited.

Evidence of substantial detriment must be substantial or real, not imaginary or hypothetical. Much of the exhibits and testimony presented projected hypothetical or imaginary problems: See radon (T21 at 12-21); wildlife (T21 at 10-14); (T27 at 10-21); police protection (T23 at 1-6); parking (T22 at11-21); future requests for variance (T33 at 1-14); congestion (T22 at 11-21) or future, unforeseeable and general concerns: (See radon T21 at 17-21); road Disrepair (T24 at 5,6,7,8); overcrowding (T24 at 12,13-17), or was of de minimis and/or controverted concern. (See drainage (T28 t 11-22) (T29 at 1-17); congestion on the weekend (T22 at 11-21) but cf. parking (T40 at 19-21 and T41 at 1-14).

It is questioned whether the Board considered the fact that the Appellants intend to build a total of two (2) small houses if the variance were to be granted. At the most, this would add two (2) families to the neighborhood. (T6 at 5) Realistically, it can only be concluded that this could not possibly contribute to a substantial injury to the public

health, safety and general welfare of this community which contains mostly single-family residents.

The evidence presented by the Appellees was not sufficient to render "fairly debatable", the question of overcrowding in the neighborhood. It is of utmost importance to acknowledge that none of the parties to this proceeding were represented by Counsel. (R. Opinion of Board of Appeals). No experts were present at this proceeding. The Appellant and three (3) residents testified. Important property rights are at stake. Testimony indicated that the Appellants may have no beneficial use of their property. (T8 at 16,17,18,19) Legal principles support the propositions that where a Appellant loses all beneficial use of the land, the zoning regulation is confiscatory, Loyola Loan Association v. Buschman, 227 Md 243, 176 A2d 355 (1961) and where unique circumstances exist, any hardship may be relieved through the variance procedure. Wilson v. Mayor & Commissioners of Town of Elkton, 35 Md App 417, 371 A2d 443, (1977) The Appellants urge this Court to consider the totality of factual circumstances, the urgency of property right at stake and applicable legal principle in its consideration of this case.

In summary, the Board did not consider and apply principles correctly presented. It is also Appellants' contention the Board could not have reasonably reached the opinion it did because it was not supported by competent, material and substantial evidence.

Board was obliged to authorize a variance under these circumstances. The Appellant testified that if the variance is not granted, the property will for all practical purposes be useless. (T9 at 16) A landowner has the right to reasonable use of his property. Mr. McCadden stated that if the variance was not granted, he could not improve it and might as well let it lie idle or sell it to the neighborhood. (T9 at 16) A landowner certainly is not required to sell his property and has a right to develop it.

It is also argued that a pertinent Section of the BCZR was overlooked by the Board. In Baltimore County, the BCZR provides a window for those owners of a lot where the area or width of the building line is less than that required by the height and area regulations under certain circumstances. This section much like those jurisdictions who have legislated for "substandard lots" permits the erection of a one-family dwelling on a lot "having an area or width at the building line less than that required by the height and area regulations, provided: a. that such lot shall have been recorded or in a validly approved subdivision prior to adoption of these regulations; and b. that all other height and area regulations are complied with; and c. that the owner of the lot does not own sufficient adjoining land to conform substantially to the width an area requirements." It was error for the Board to not consider and apply this Section to the facts presented at the proceeding.

More importantly, the subject property lies within a DR 5.5 zone. This zone is designated for residential uses, more specifically single-family homes are permitted as a matter of right. Because of this, the spirit and intent of this zoning designation permits single-family dwelling as the permitted use. The combination of the substandard or undersized lot size, pre-recordation of the Oakleigh Beach subdivision plan before the invocation of the current zoning regulations and its location in a district zoned solely for residential purposes, without the grant of a variance deprives the Appellants of all beneficial use of the subject property.

Although a finding of practical difficulty or unreasonable hardship cannot be supported solely by evidence of financial and economic considerations, it is incumbent upon the Board to consider the facts before it and apply the correct legal principal. At the hearing before the Board, the Appellant testified to the dimensions of the subject lots. (T9 at 16) The Appellant also submitted into evidence the plan for Oakleigh Beach Road recorded in 1939 and the Board acknowledged that each of the lots were all approximately the same size of the Appellants (T9 at 16) The Appellant testified that the subject property was zoned residential and was to improve the lots with small single-family dwellings. (T9 at 16) Yet the Board ignored these dramatic facts and ignored Section 304 and misapplied the test for area variance.

The Appellants are requesting a de minimis variance of five (5) feet from that required by Section 1B02.3c1 of the BCZR. Appellant testified that he will not need any variances from front, side and rear yard setback requirements. Nowhere in the record is there evidence that the Appellants are attempting to merely avoid inconvenience or added expense.

In the instant case, there is no question that the Appellants are in a unique and peculiar situation or that without the variance, the lot width regulation of 55' amounts to a substantial and unnecessary injustice to the Appellants. The denial of the variance unduly restricts the use of the land due to its unique history and size so that in contravention of existing law, their property cannot be reasonably adapted to use in conformity with zoning regulations. Carney, supra. And these circumstances were not self-created. Lot 113 or the middle lot was improved since before 1952 by a single-family dwelling. (T6 at 18) Lots 112 and 114 are separate lots which abut Lot 113 on each side. (T7 at 2,20) Practically speaking and based on the lots' configuration and placement, the lots could not have been improved without a variance grant even if lot 113 was not sold. There was never the possibility that adjacent property could be used to extend the lot width of 55 feet of Lots 112 and 114.

The Board in its order incorrectly applied the law, and therefore acted arbitrarily and capriciously. In addition,

the Board failed to consider the applicability of Section 304 of the BCZR.

II. IN REVERSING THE ZONING COMMISSIONER'S GRANT OF A VARIANCE FOR LOTS 112, 113 AND 114 WERE THE FINDINGS OF THE BOARD SUPPORTED BY COMPETENT, MATERIAL AND SUBSTANTIAL EVIDENCE.

The findings of the Board were not supported by competent material and substantial evidence. In addition to the "practical difficulty or unreasonable hardship" standard, a granting of a variance is dependent upon the criteria of Section 307 of the BCZR. This Section provides in pertinent part, that an area variance shall be granted "only if in strict harmony with the spirit and intent of said height, area, offstreet parking, or sign regulations, and only in such manner as to grant relief without substantial injury to public health, safety, and general welfare."

Since the proposed lot width modification is de minimis, and the Appellants intend only to build two (2) single family homes, one on lot 112 and one on lot 114 (both of which would conform to the neighborhood and to the zoning designation (T6 at 5), the evidence and testimony adduced could not be found to violate the spirit and intent of the BCZR. (See BCZR,DR, 1 B00.2 Purposes) Nonetheless, the Board ignored these facts in its decision.

Evidence was propounded by protestants regarding the granting of the variance and its future, albeit hypothetical, impact on the public health, safety, and general welfare. The

Board concluded that the impact was detrimental. (R.Opinion of the Board of Appeals)

The law requires that the facts presented support the Boards' finding that the harm to the public health, safety and general welfare be substantial. The term "substantial" ordinarily means "actual, not imaginary, having substance, considerable." Webster's New World Dictionary at page 746. Here, for several reasons, testimony presented by the Appellee could not be said to show a "substantial" injury.

The Board mistakenly reached the conclusion that the Appellee' testimony showed substantial detriment when the Board in it Opinion (R.Opinion of the Board of Appeals) found that "further development in this already crowded community is undesirable". This is a decision, however, for the County Council in its review of zoning density and for the master plan. Furthermore the conclusion was based only on the most generalized of statements.

When applying the standards of Section 307 to these two lots it is important to view only the two lots and their impact on Sections 307 requirements as opposed to generalized community concerns. When one considers the increase in population of two families one can hardly conclude that the zoning density would be increased measurably, but instead would fall within permitted parameters of existing zoning regulations. Appellants would respectfully submit that any issues of potential radon problems or road disrepair are

issues of development not ones for the Board of Appeals on review of a Petition for Variance. The effect on wildlife preservation can hardly be said to be substantial when only two lots measuring 150 feet by 50 feet are intended to be developed. If anything these general concerns could be better addressed by a developer who intends to improve the subject properties.

Finally, the Zoning Advisory Committee (ZAC) has the duty to review each and every Petition for a Variance. The ZAC consists of Baltimore County Departments of Traffic Engineering, Health, Environmental Protection and Planning among others. Each department has the opportunity to comment on how a variance for a particular piece of property would affect the Community pursuant to Section 307. Where there are no negative comments submitted by the ZAC, it can be concluded that those departments and agencies composed of experts for Baltimore County find no substantial injury to the public health, safety or general welfare as applied to these lots. Yet this evidence was ignored by the Board.

Appellants are not questioning the standing of the Appellee to testify. We are questioning their competence to testify about those areas normally within the province of experts. Traffic, safety, drainage, congestion, road disrepair, radon, and wildlife preservation are areas ordinarily preserved for expert testimony and not lay witnesses. A reviewing Court has the authority to apply the

weight of the evidence test and determine whether a "reasoning mind could have reached the factual conclusion reached by the agency." Steuart Inc., v. Board of Commissioners, St. Mary's County, 381 A2d 1174, 38 Md. App 381 (1978) The facts presented on which the Board based its opinion have little weight for the simple reason that a layperson's testimony as to the foregoing subjects is strictly limited.

Evidence of substantial detriment must be substantial or real, not imaginary or hypothetical. Much of the exhibits and testimony presented projected hypothetical or imaginary problems: See radon (T21 at 12-21); wildlife (T21 at 10-14); (T27 at 10-21); police protection (T23 at 1-6); parking (T22 at11-21); future requests for variance (T33 at 1-14): congestion (T22 at 11-21) or future, unforeseeable and general concerns: (See radon T21 at 17-21); road Disrepair (T24 at 5,6,7,8); overcrowding (T24 at 12,13-17), or was of de minimis and/or controverted concern. (See drainage (T28 t 11-22) (T29 at 1-17); congestion on the weekend (T22 at 11-21) but cf. parking (T40 at 19-21 and T41 at 1-14).

It is questioned whether the Board considered the fact that the Appellants intend to build a total of two (2) small houses if the variance were to be granted. At the most, this would add two (2) families to the neighborhood. (T6 at 5) Realistically, it can only be concluded that this could not possibly contribute to a substantial injury to the public

health, safety and general welfare of this community which contains mostly single-family residents.

The evidence presented by the Appellees was not sufficient to render "fairly debatable", the question of overcrowding in the neighborhood. It is of utmost importance to acknowledge that none of the parties to this proceeding were represented by Counsel. (R. Opinion of Board of Appeals). No experts were present at this proceeding. The Appellant and three (3) residents testified. Important property rights are at stake. Testimony indicated that the Appellants may have no beneficial use of their property. (T8 at 16,17,18,19) Legal principles support the propositions that where a Appellant loses all beneficial use of the land, the zoning regulation is confiscatory, Lovola Loan Association v. Buschman, 227 Md 243, 176 A2d 355 (1961) and where unique circumstances exist, any hardship may be relieved through the variance procedure. Wilson v. Mayor & Commissioners of Town of Elkton, 35 Md App 417, 371 A2d 443, (1977) The Appellants urge this Court to consider the totality of factual circumstances, the urgency of property right at stake and applicable legal principle in its consideration of this case.

In summary, the Board did not consider and apply principles correctly presented. It is also Appellants' contention the Board could not have reasonably reached the opinion it did because it was not supported by competent, material and substantial evidence.

FOR THE FOREGOING REASONS, the Appellants respectfully request that this Honorable Court:

1. Vacate the prior Order of the Board of Appeals and remand this case to the Board of Appeals for further or corrected findings;

2. In the alternative, reverse the Board of Appeals decision and grant the Petition for Variance for Lots 112,113 and 114.

3. For such other and further relief that the nature of this cause of action may require.

/S/
Jean K. Tullius

/S/
John B. Gontrum
ROMADKA, GONTRUM & HENNEGAN
809 Eastern Boulevard
Baltimore, Maryland 21221

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 22 day of August, 1988, a copy of the foregoing was mailed, postage prepaid to Michael Gilbert, 1121 Merritt Boulevard, Baltimore, Maryland 21221 and People's Counsel, Phyllis Freidman, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland 21204.

SKT /S/
Jean K. Tullius

LAW FIRM
ROMADKA
GONTRUM
& HENNEGAN
ESSEX MARYLAND

16

IN THE MATTER OF THE APPLICATION OF THEODORE F. McCADDEN, SR., ET AL FOR ZONING VARIANCE ON PROPERTY LOCATED ON THE SOUTH SIDE OF OAKLEIGH BEACH RD., 615' EAST OF THE CENTER LINE OF PIN OAK AVE. (933 OAKLEIGH BEACH RD.) 15th ELECTION DISTRICT 7th COUNCILMANIC DISTRICT	:	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW
THEODORE E. McCADDEN, SR., ET AL, PETITIONERS-PLAINTIFFS VS. SANDRA POOL, ET AL	:	CG Doc. No. 57 Folio No. 145 File No. 88-CG-2545
ZONING FILE NO. 88-142-A	:	

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come William T. Hackett, Harry E. Buchheister, Jr. and Lawrence E. Schmidt, 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:

No. 88-142-A

September 21, 1987	Petition of Theodore E. McCadden, Sr., et al, for zoning variance from Sec. 1B02.3.C.1 to permit lot widths of 50 ft. in lieu of the required 55 ft. for lots 112-114, on property located on the south side of Oakleigh Beach Rd., 615' East of the center line of Pin Oak Ave. (933 Oakleigh Beach Rd.) in the 15th Election District.
September 21	Order of Zoning Commissioner directing advertisement and posting of property - date of hearing set for Oct. 27, 1987, at 9 a.m.
October 8	Certificate of Posting of property - filed
October 8	Certificate of Publication in newspaper - filed
October 6	Comments of Baltimore County Zoning Plans Advisory Committee and Director of Planning - filed

---

October 27, 1987	At 9 a.m. hearing held on petition by Deputy Zoning Commissioner
December 15	Order of the Deputy Zoning Commissioner ordering that lot widths of 50 ft. in lieu of the required 55 ft. for Lots 112 thru 114, be approved, and as such, the Petition for Zoning Variance is GRANTED subj. to restrictions.
December 29	Order for Appeal to C.B. of A. from Sandra Pool and Mary Phipps.
May 12, 1988	Hearing on appeal before County Board of Appeals
May 19	Order of the Board ordering that the variance be DENIED.
June 7	Order for Appeal filed in the Circuit Ct. for Baltimore County by John B. Gontrum, Esq. and Jean K. Tullius, Esq. on behalf of Petitioners.
June 7	Petition to accompany Order for Appeal filed in the Circuit Ct. for Baltimore County.
June 9	Certificate of Notice sent to interested parties
July 5	Transcript of testimony filed
	Protestants' Exhibit No. 1 - Annotated Code pages
	" " " 2 - B. C. Code 1978 pages
	" " " 3 - B. C. Code 85 Supp. pages
	" " " 4 - Md. Law Encyclopedia pages
	" " " 5 - D.Z.C.'s Opinion, 12/15/87
	" " " 6 A,B,C - Plats
	" " " 7 A,B - Plats
	" " " 8 - Petition of neighbors in opposition
	" " " 9 A-E - Photos of traffic congestion
	" " " 10 A,B,C - Street deterioration on Oakley Beach Rd.
	" " " 11 B - Double & Triple lots listing
	" " " 12 - Photos of double & triple lots corresponds with Protestants' 11.

	Protestants' Exhibit No. 13 - Photos in wild life area
	" " " 14 - 4 photos of area
	" " " 15 - Photos of drainage problems
July 5, 1988	Record of proceedings filed in the Circuit Ct. for Baltimore County.

Record of proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court, together with exhibits entered into evidence before the Board. However, all tangible material or evidence of an unwieldy or bulky nature will be retained in the Board of Appeals' office, and upon request of the parties or the Court will be transmitted to the Court by whomever institutes the request.

Respectfully submitted,

June Holmen
County Board of Appeals of Baltimore County

cc: Theodore McCadden, Sr., et al
Sandra Pool, et al
Arnold Jablon, Esq.

IN THE MATTER OF THE APPLICATION OF THEODORE E. McCADDEN, SR., ET AL FOR ZONING VARIANCE ON PROPERTY LOCATED ON THE SOUTH SIDE OF OAKLEIGH BEACH RD., 615' EAST OF THE CENTER LINE OF PIN OAK AVE. (933 OAKLEIGH BEACH RD.) 15th ELECTION DISTRICT 7th COUNCILMANIC DISTRICT	:	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW
THEODORE E. McCADDEN, SR., ET AL, PETITIONERS-PLAINTIFFS VS. SANDRA POOL, ET AL	:	CG Doc. No. 57 Folio No. 145 File No. 88-CG-2545

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, William T. Hackett, Harry E. Buchheister, Jr. and Lawrence E. Schmidt, 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, Theodore E. McCadden, Sr., et al, 8144 Dundalk Avenue, Baltimore, Md. 21222, Petitioners; John B. Gontrum, Esq., and Jean K. Tullius, Esq., Romadka, Gontrum & Hennegan, 809 Eastern Blvd., Baltimore, Md. 21221, Counsel for Petitioners; Sandra Pool and Mary Phipps, 931 Oakleigh Beach Rd., Baltimore, Md. 21222, Protestants; and Phyllis C. Friedman, Esq., Rm. 223, 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 21204
494-3180

I HEREBY CERTIFY that a copy of the aforegoing Certificate of Notice has been mailed to Theodore E. McCadden, Sr., et al, 8144 Dundalk Ave., Baltimore, Md. 21222, Petitioners-Plaintiffs; John B. Gontrum, Esq., and Jean K. Tullius, Esq., Romadka, Gontrum & Hennegan, 809 Eastern Blvd., Baltimore, Md. 21221, Counsel for Petitioners-Plaintiffs; Sandra Pool and Mary Phipps, 931 Oakleigh Beach Rd., Baltimore, Md. 21222, Protestants; and Phyllis C. Friedman, Esq., Rm. 223, Court House, Towson, Md. 21204, People's Counsel for Baltimore County, on this 9th day of June, 1988.

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) 494-3180

June 9, 1988

John B. Gontrum, Esq.
Jean K. Tullius, Esq.
Romadka, Gontrum & Hennegan
809 Eastern Blvd.
Baltimore, Md. 21221

Dear Mr. Gontrum & Ms. Tullius:

RE: Case No. 88-142-A
Theodore McCadden, Sr., et al

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

The cost of the transcript of the record must be paid by you. Certified copies of 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 file in court, in accordance with Rule B-7(a).

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

June Holmen
June Holmen, Secretary

Enclosure
cc: Theodore E. McCadden, Sr., et al
file

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

RECEIVED
MAY 20 1988
ZONING OFFICE

May 19, 1988

Ms. Sandra Pool
931 Oakleigh Beach Road
Baltimore, MD 21222

RE: Case No. 88-142-A
Theodore E. McCadden, Sr., et al

Dear Ms. Pool:

Enclosed is a copy of the final Opinion and Order issued this date by the County Board of Appeals regarding the subject case.

Very truly yours,

Kathleen C. Weidenhammer
Kathleen C. Weidenhammer
Administrative Secretary

Encl.

cc: Ms. Mary Phipps
Mr. Theodore E. McCadden Jr.
Mr. Michael Black
Phyllis Cole Friedman, Esquire
P. David Fields
James G. Hoswell
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
Docket Clerk
Arnold Jablon, County Attorney

FOR THE FOREGOING REASONS, the Appellants respectfully request that this Honorable Court:

1. Vacate the prior Order of the Board of Appeals and remand this case to the Board of Appeals for further or corrected findings;

2. In the alternative, reverse the Board of Appeals decision and grant the Petition for Variance for Lots 112,113 and 114.

3. For such other and further relief that the nature of this cause of action may require.

/S/
Jean K. Tullius

/S/
John B. Gontrum
ROMADKA, GONTRUM & HENNEGAN
809 Eastern Boulevard
Baltimore, Maryland 21221

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JKT/S/
Jean K. Tullius

LAW FIRM
ROMADKA, GONTRUM, & HENNEGAN
ESSEX, MARYLAND

IN THE MATTER OF THE APPLICATION OF THEODORE E. McCADDEN, SR., ET AL FOR ZONING VARIANCE ON PROPERTY LOCATED ON THE SOUTH SIDE OF OAKLEIGH BEACH RD., 615' EAST OF THE CENTER LINE OF PIN OAK AVE. (933 OAKLEIGH BEACH RD.) 15th ELECTION DISTRICT 7th COUNCILMANIC DISTRICT

THEODORE E. McCADDEN, SR., ET AL, PETITIONERS-PLAINTIFFS

VS.

SANDRA POOL, ET AL

ZONING FILE NO. 88-142-A

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW

CG Doc. No. 57
Folio No. 145
File No. 88-CG-2545

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TO THE HONORABLE, THE JUDGE OF SAID COURT:

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Respectfully submitted,

June Holmen
County Board of Appeals of Baltimore County

cc: Theodore McCadden, Sr., et al
Sandra Pool, et al
Arnold Jablon, Esq.

IN THE MATTER OF THE APPLICATION OF THEODORE E. McCADDEN, SR., ET AL FOR ZONING VARIANCE ON PROPERTY LOCATED ON THE SOUTH SIDE OF OAKLEIGH BEACH RD., 615' EAST OF THE CENTER LINE OF PIN OAK AVE. (933 OAKLEIGH BEACH RD.) 15th ELECTION DISTRICT 7th COUNCILMANIC DISTRICT

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IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW

CG Doc. No. 57
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June Holmen
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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) 494-3180

June 9, 1988

John B. Gontrum, Esq.
Jean K. Tullius, Esq.
Romadka, Gontrum & Hennegan
809 Eastern Blvd.
Baltimore, Md. 21221

Dear Mr. Gontrum & Ms. Tullius:

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Theodore McCadden, Sr., et al

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June Holmen, Secretary

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RECEIVED
MAY 20 1988
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May 19, 1988

Ms. Sandra Pool
931 Oakleigh Beach Road
Baltimore, MD 21222

RE: Case No. 88-142-A
Theodore E. McCadden, Sr., et al

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Kathleen C. Weidenhammer
Kathleen C. Weidenhammer
Administrative Secretary

Encl.

cc: Ms. Mary Phipps
Mr. Theodore E. McCadden Sr.
Mr. Michael Black
Phyllis Cole Friedman, Esquire
P. David Fields
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Ann M. Nastarowicz
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Docket Clerk
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IN THE MATTER OF THE APPLICATION OF THEODORE E. McCADDEN, SR., ET AL FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE SOUTH SIDE OF OAKLEIGH BEACH ROAD, 615' EAST OF THE CENTERLINE OF PIN OAK AVENUE (933 OAKLEIGH BEACH ROAD) 15th ELECTION DISTRICT 7th COUNCILMANIC DISTRICT	:	BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 88-142-A

O P I N I O N

This matter comes before the Board as an appeal from the decision of the Deputy Zoning Commissioner dated December 15, 1987 which granted the Petitioner's variance allowing building on lot widths of 50 feet in lieu of the required 55 feet. The Petitioner, Theodore E. McCadden, Sr., appeared and was not represented by counsel. He testified that he had originally purchased lots identified on the plat as #112, #113 and #114. An existing dwelling house occupies lot #113, which the Petitioner has rehabilitated and resold. He seeks a variance in order to build on lots #112 and #114. In support of his petition, Mr. McCadden testified as to the existing layout of the neighborhood which was developed in the late 1940's. As the plat of the community indicates, all of the lots were originally sold as 50-foot wide parcels, as is the case in numerous areas of the County. Many of the single lots were developed with residences; however, sprinkled throughout the community are double- and triple-lot homes. Mr. McCadden testified that he would endure practics' difficulty or undue hardship if unable to build on these single lots, as they would then be unusable.

In opposition to the petition, the Board received testimony from Sandra Pool, a spokesperson on behalf of other community residents. Ms. Pool set forth numerous concerns in opposition to the petition. Foremost among these were safety, traffic, drainage, and overcrowding considerations. Ms. Pool produced numerous photographs and exhibits in support of her position.

She believes that additional development within this already cramped area would cause an exacerbation of the aforementioned problems.

Also testifying was Steven Chapman, the present owner of the rehabilitated house on lot #113. Mr. Chapman was particularly concerned about development on lot #112. His concerns as to development on that lot were related to the peculiar position of his house on lot #113. Specifically, his house sits within 5 feet of the property line between lots #112 and #113, and development of that adjoining lot would result in a near rowhouse configuration.

After considering all of the evidence and testimony presented, we are persuaded that the variance should not be granted. In our view, the Petitioner has not met his burden of practical difficulty or unreasonable hardship as set forth in McLean v. Soley, 270 Md 208, 310 A2d 783 (1973). Financial and economic considerations are insufficient to support such a finding and cannot be considered by this Board. Other than that economic issue, the Petitioner did not present any evidence which justified the granting of the variance. Additionally, as was clear from the testimony of the Protestants, further development in this already crowded community is undesirable. We therefore find no compelling reason to grant the variance from the required 55-foot mandate and will so order.

O R D E R

It is therefore this 19th day of May, 1988 by the County

Board of Appeals of Baltimore County ORDERED that the variance be and is hereby DENIED.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett, Chairman

Harry E. Buchheister, Jr.

Lawrence E. Schmidt

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

June 9, 1988

Phyllis C. Friedman
People's Counsel for Baltimore County
Court House
Towson, Md. 21204

Re: Case No. 88-142-A
Theodore E. McCadden, Sr., et al

Dear Mrs. Friedman:

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

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

June Holmen, Secretary

Encl.
cc: David Fields
James Hoswell
J. Robert Haines
Ann Nastarowicz
James E. Dyer
Docket Clerk
Sandra Pool, et al

IN THE MATTER OF THE APPLICATION OF THEODORE E. McCADDEN, SR., ET AL FOR ZONING VARIANCE ON PROPERTY LOCATED ON THE SOUTH SIDE OF OAKLEIGH BEACH RD., 615' EAST OF THE CENTER LINE OF PIN OAK AVE. (933 OAKLEIGH BEACH RD.) 15th ELECTION DISTRICT 7th COUNCILMANIC DISTRICT	:	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW
THEODORE E. McCADDEN, SR., ET AL, PETITIONERS-PLAINTIFFS VS. SANDRA POOL, ET AL	:	CG Doc. No. 57 Folio No. 145 File No. 88-CG-2545

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, William T. Hackett, Harry E. Buchheister, Jr. and Lawrence E. Schmidt, 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, Theodore E. McCadden, Sr., et al, 8144 Dundalk Avenue, Baltimore, Md. 21222, Petitioners; John B. Gontrum, Esq., and Jean K. Tulliüs, Esq., Romadka, Gontrum & Hennegan, 809 Eastern Blvd., Baltimore, Md. 21221, Counsel for Petitioners; Sandra Pool and Mary Phipps, 931 Oakleigh Beach Rd., Baltimore, Md. 21222, Protestants; and Phyllis C. Friedman, Esq., Rm. 223, 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
County Board of Appeals of Baltimore County, Rm. 200, Court House, Towson 21204
494-3180

I HEREBY CERTIFY that a copy of the aforegoing Certificate of Notice has been mailed to Theodore E. McCadden, Sr., et al, 8144 Dundalk Ave., Baltimore, Md. 21222, Petitioners-Plaintiffs; John B. Gontrum, Esq., and Jean K. Tulliüs, Esq., Romadka, Gontrum & Hennegan, 809 Eastern Blvd., Baltimore, Md. 21221, Counsel for Petitioners-Plaintiffs; Sandra Pool and Mary Phipps, 931 Oakleigh Beach Rd., Baltimore, Md. 21222, Protestants; and Phyllis C. Friedman, Esq., Rm. 223, Court House, Towson, Md. 21204, People's Counsel for Baltimore County, on this 9th day of June, 1988.

June Holmen
County Board of Appeals of Baltimore County

Request Notification: Norman E. Gerber, Director of Planning
James Hoswell, Office of Planning & Zoning
J. Robert Haines, Zoning Commissioner
Ann M. Nastarowicz, Deputy Zoning Commissioner
James E. Dyer, Zoning Supervisor
Docket Clerk

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

HEARING ROOM #218

January 25, 1988

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). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 88-142-A	THEODORE E. McCADDEN, SR., ET AL
	S/s Oakleigh Beach Rd., 615' E of c/l of Pine Oak Ave. (933 Oakleigh Beach Rd.)
	15th E. Dist.; 7th C. Dist.
	Variance-Lot Widths
ASSIGNED FOR:	THURSDAY, MAY 12, 1988, at 10 a.m.

cc: Theodore E. McCadden, Sr. & Michael Black	Petitioners
Sandra Pool and Mary Phipps	Protestants
Phyllis C. Friedman	People's Counsel
David Fields	Planning
James Hoswell	"
J. Robt. Haines	Zoning
Ann Nastarowicz	"
James Dyer	"
Docket Clerk	"

June Holmen, Secy.

APPEAL

Petition for Zoning Variance
S/S Oakleigh Beach Road, 615' E of c/l of Pin Oak Avenue
933 Oakleigh Beach Road)
15th Election District - 7th Councilmanic District
Theodore E. McCadden, Sr., et al - Petitioners
Case No. 88-142-A

Petition for Zoning Variance

Description of Property

Certificate of Posting

Certificates of Publication

Entry of Appearance of People's Counsel

Zoning Plans Advisory Committee Comments

Director of Planning & Zoning Comments

Petitioner's Exhibits: 1 - Plat of Property

2 - Development Plan of Oakleigh Beach dated [illegible]

Zoning Commissioner's Order dated December 15, 1987

Letter of Appeal received December 29, 1987 from Ms. Sandra Pool and Ms. Mary Phipps, Protestants.

Mr. Theodore E. McCadden, Sr. and
Mr. Michael Black, Petitioners
8144 Dundalk Avenue, Baltimore, Maryland 21222

Ms. Sandra Pool and
Ms. Mary Phipps, Protestants
931 Oakleigh Beach Road, Baltimore, Maryland 21222

Phyllis Cole Friedman, Esquire,
People's Counsel of Baltimore County
Rm. 223, Old Courthouse, Towson, Maryland 21204

IN THE MATTER OF THE APPLICATION OF THEODORE E. McCADDEN, SR., ET AL FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE SOUTH SIDE OF OAKLEIGH BEACH ROAD, 615' EAST OF THE CENTERLINE OF PIN OAK AVENUE (933 OAKLEIGH BEACH ROAD) 15th ELECTION DISTRICT 7th COUNCILMANIC DISTRICT	:	BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 88-142-A

: :

OPINION

This matter comes before the Board as an appeal from the decision of the Deputy Zoning Commissioner dated December 15, 1987 which granted the Petitioner's variance allowing building on lot widths of 50 feet in lieu of the required 55 feet. The Petitioner, Theodore E. McCadden, Sr., appeared and was not represented by counsel. He testified that he had originally purchased lots identified on the plat as #112, #113 and #114. An existing dwelling house occupies lot #113, which the Petitioner has rehabilitated and resold. He seeks a variance in order to build on lots #112 and #114. In support of his petition, Mr. McCadden testified as to the existing layout of the neighborhood which was developed in the late 1940's. As the plat of the community indicates, all of the lots were originally sold as 50-foot wide parcels, as is the case in numerous areas of the County. Many of the single lots were developed with residences; however, sprinkled throughout the community are double- and triple-lot homes. Mr. McCadden testified that he would endure practical difficulty or undue hardship if unable to build on these single lots, as they would then be unusable.

In opposition to the petition, the Board received testimony from Sandra Pool, a spokesperson on behalf of other community residents. Ms. Pool set forth numerous concerns in opposition to the petition. Foremost among these were safety, traffic, drainage, and overcrowding considerations. Ms. Pool produced numerous photographs and exhibits in support of her position.

She believes that additional development within this already cramped area would cause an exacerbation of the aforementioned problems.

Also testifying was Steven Chapman, the present owner of the rehabilitated house on lot #113. Mr. Chapman was particularly concerned about development on lot #112. His concerns as to development on that lot were related to the peculiar position of his house on lot #113. Specifically, his house sits within 5 feet of the property line between lots #112 and #113, and development of that adjoining lot would result in a near rowhouse configuration.

After considering all of the evidence and testimony presented, we are persuaded that the variance should not be granted. In our view, the Petitioner has not met his burden of practical difficulty or unreasonable hardship as set forth in McLean v. Soley, 270 Md 208, 310 A2d 783 (1973). Financial and economic considerations are insufficient to support such a finding and cannot be considered by this Board. Other than that economic issue, the Petitioner did not present any evidence which justified the granting of the variance. Additionally, as was clear from the testimony of the Protestants, further development in this already crowded community is undesirable. We therefore find no compelling reason to grant the variance from the required 55-foot mandate and will so order.

ORDER

It is therefore this 19th day of May, 1988 by the County

Board of Appeals of Baltimore County ORDERED that the variance be and is hereby DENIED.

Any appeal from this decision must be made 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

Harry E. Buchheister, Jr.
Harry E. Buchheister, Jr.

Lawrence E. Schmidt
Lawrence E. Schmidt

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

June 9, 1988

Phyllis C. Friedman
People's Counsel for Baltimore County
Court House
Towson, Md. 21204

Re: Case No. 88-142-A
Theodore E. McCadden, Sr., etal

Dear Mrs. Friedman:

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: David Fields
James Hoswell
J. Robert Haines
Ann Nastarowicz
James E. Dyer
Docket Clerk
Sandra Pool, et al

RECEIVED
JUN 10 1988
ZONING OFFICE

IN THE MATTER OF THE APPLICATION OF THEODORE E. McCADDEN, SR., ET AL FOR ZONING VARIANCE ON PROPERTY LOCATED ON THE SOUTH SIDE OF OAKLEIGH BEACH RD., 615' EAST OF THE CENTER LINE OF PIN OAK AVE. (933 OAKLEIGH BEACH RD.) 15th ELECTION DISTRICT 7th COUNCILMANIC DISTRICT	:	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW
THEODORE E. McCADDEN, SR., ET AL, PETITIONERS-PLAINTIFFS VS. SANDRA POOL, ET AL	:	CG Doc. No. 57 Folio No. 145 File No. 88-CG-2545

: :

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, William T. Hackett, Harry E. Buchheister, Jr. and Lawrence E. Schmidt, 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, Theodore E. McCadden, Sr., et al, 8144 Dundalk Avenue, Baltimore, Md. 21222, Petitioners; John B. Gontrum, Esq., and Jean K. Tullius, Esq., Romadka, Gontrum & Hennegan, 809 Eastern Blvd., Baltimore, Md. 21221, Counsel for Petitioners; Sandra Pool and Mary Phipps, 931 Oakleigh Beach Rd., Baltimore, Md. 21222, Protestants; and Phyllis C. Friedman, Esq., Rm. 223, 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 21204
494-3180

I HEREBY CERTIFY that a copy of the aforegoing Certificate of Notice has been mailed to Theodore E. McCadden, Sr., et al, 8144 Dundalk Ave., Baltimore, Md. 21222, Petitioners-Plaintiffs; John B. Gontrum, Esq., and Jean K. Tullius, Esq., Romadka, Gontrum & Hennegan, 809 Eastern Blvd., Baltimore, Md. 21221, Counsel for Petitioners-Plaintiffs; Sandra Pool and Mary Phipps, 931 Oakleigh Beach Rd., Baltimore, Md. 21222, Protestants; and Phyllis C. Friedman, Esq., Rm. 223, Court House, Towson, Md. 21204, People's Counsel for Baltimore County, on this 9th day of June, 1988.

June Holmen
June Holmen
County Board of Appeals of Baltimore County

Request Notification: Norman E. Gerber, Director of Planning
James Hoswell, Office of Planning & Zoning
J. Robert Haines, Zoning Commissioner
Ann M. Nastarowicz, Deputy Zoning Commissioner
James E. Dyer, Zoning Supervisor
Docket Clerk

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

RECEIVED
JAN 26 1988
ZONING OFFICE

HEARING ROOM #218

January 25, 1988

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). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 88-142-A	THEODORE E. McCADDEN, SR., ET AL S/s Oakleigh Beach Rd., 615' E of c/l of Pine Oak Ave. (933 Oakleigh Beach Rd.) 15th E. Dist.; 7th C. Dist. Variance-Lot Widths
ASSIGNED FOR:	THURSDAY, MAY 12, 1988, at 10 a.m.

cc: Theodore E. McCadden, Sr. & Michael Black	Petitioners
Sandra Pool and Mary Phipps	Protestants
Phyllis C. Friedman	People's Counsel
David Fields	Planning
James Hoswell	"
J. Robt. Haines	Zoning
Ann Nastarowicz	"
James Dyer	"
Docket Clerk	"

June Holmen, Secy.

APPEAL

Petition for Zoning Variance
S/S Oakleigh Beach Road, 615' E of c/l of Pin Oak Avenue
(933 Oakleigh Beach Road)
15th Election District - 7th Councilmanic District
Theodore E. McCadden, Sr., et al - Petitioners
Case No. 88-142-A

Petition for Zoning Variance
Description of Property
Certificate of Posting
Certificates of Publication
Entry of Appearance of People's Counsel
Zoning Plans Advisory Committee Comments
Director of Planning & Zoning Comments
Petitioner's Exhibits: 1 - Plat of Property
2 - Development Plan of Oakleigh Beach dated 10/26/87
Zoning Commissioner's Order dated December 15, 1987
Letter of Appeal received December 29, 1987 from Ms. Sandra Pool and Ms. Mary Phipps, Protestants.

Mr. Theodore E. McCadden, Sr. and
Mr. Michael Black, Petitioners
8144 Dundalk Avenue, Baltimore, Maryland 21222

Ms. Sandra Pool and
Ms. Mary Phipps, Protestants
931 Oakleigh Beach Road, Baltimore, Maryland 21222

Phyllis Cole Friedman, Esquire,
People's Counsel of Baltimore County
Rm. 223, Old Courthouse, Towson, Maryland 21204

January 4, 1988

Baltimore County Board of Appeals
Old Courthouse, Room #205
Towson, Maryland 21204

RE: Petition for Zoning Variance
S/S Oakleigh Beach Road, 615' E of c/l of Pin Oak Avenue
(933 Oakleigh Beach Road)
15th Election District - 7th Councilmanic District
Theodore E. McCadden, Sr., et al - Petitioners
Case No. 88-142-A

Dear Board:

Please be advised that on December 29, 1987, an appeal of the decision rendered in the above-referenced case was filed by Mr. Sandra Pool and Ms. Mary Phipps, Protestants. All materials relative to the case are being forwarded to your office herewith. Please notify all parties to the case when a date and time for the appeal hearing has been scheduled.

If you have any questions concerning this matter, please do not hesitate to contact this office.

Very truly yours,

J. ROBERT HAINES
Zoning Commissioner

JRHhjs

cc: Mr. Theodore E. McCadden, Sr. and
Mr. Michael Black
8144 Dundalk Avenue, Baltimore, Md. 21222

Ms. Sandra Pool and
Ms. Mary Phipps
931 Oakleigh Beach Road, Baltimore, Md. 21222

Phyllis Cole Friedman, Esquire,
People's Counsel of Baltimore County
Rm. 223, Old Courthouse, Towson, Maryland 21204

File

Page 1 of 2 12-28-87

RECEIVED
DEC 28 1987
ZONING OFFICE

Dear Ann Nastarowicz

We would like to appeal for the zoning variance that was granted in case No. 88-142-A.
Petitioners - Theodore McCadden/Michael Black
Election District - 15th
Councilmanic District - 7th

This variance was granted because we didn't should 'practical difficulties' or 'unreasonable hardship'.

The petitioners bought a large parcel of land which they want to sub divide into 3 lots. An existing house is now located off-center on the center lot. The petitioner is a business man wanting to make some money. I am a home owner who is now & wants to continue living in my neighbor. We bought our home because of the surrounding homes & land. Our area is already over populated. I feel there are many other places he could build-being he is a business-man. There also must be reasons that the board decided to change the frontage from 50 to 55. Could you please

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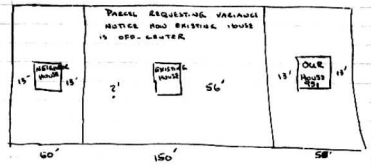
Page 2 of 2

advise us as what we can further do to help preserve our existing neighborhood. Below is a drawing of the property & surrounding houses involved in the variance.

BACK



FRONTAGE

Enclose are 2 checks for $75 - & $15 -
Please contact us as to our next step.

Sandra Pool / Mary Phipps
931 Oakleigh Beach Rd.
Balto, MD 21222
Phone - 388-0798 - Home
341-0179 - Work (Pool)

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

J. ROBERT HAINES
ZONING COMMISSIONER

October 21, 1987

Mr. Theodore E. McCadden, Sr.
Mr. Michael Black
8144 Dundalk Avenue
Baltimore, Maryland 21222

Re: PETITION FOR ZONING VARIANCE
S/S Oakleigh Beach Rd., 615' E of c/l of
Pin Oak Ave. (933 Oakleigh Beach Rd.)
15th Election District - 7th Councilmanic District
Theodore E. McCadden, Sr., et al - Petitioners
Case No. 88-142-A

Dear Messrs. McCadden and Black:

This is to advise you that $75.55 is due for advertising and posting of the above property. This fee must be paid before an Order is issued.

THIS FEE MUST BE PAID AND THE ZONING SIGN AND POST RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT BE ISSUED.

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 37962

DATE 10/27/87 ACCOUNT R-01-615-000
SIGN & POST RETURNED
AMOUNT $ 75.55
RECEIVED Home Improvement by Ted, 8144 Dundalk Ave., Balto., Md. 21222
FROM
ADVERTISING & POSTING COSTS RE CASE #88-142-A
FOR
B015******7555:: 37962
VALIDATION OR SIGNATURE OF CASHIER

he time it is placed by
elf.

ore County, Maryland, and remit
ilding, Towson, Maryland

RE: PETITION FOR VARIANCES
S/S Oakleigh Beach Rd., 615' E
of C/L of Pin Oak Ave.,
15th Election District

THEODORE E. McCADDEN, SR.,
et al., Petitioners

: BEFORE THE ZONING COMMISSIONER
: OF BALTIMORE COUNTY
: Case No. 88-142-A

ENTRY OF APPEARANCE

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

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

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

I HEREBY CERTIFY that on this 2nd day of October, 1987, a copy of the foregoing Entry of Appearance was mailed to Mr. Theodore E. McCadden, Sr., and Mr. Michael Black, 8144 Dundalk Ave., Baltimore, MD 21222, Petitioners.

RECEIVED
OCT 2 1987
ZONING OFFICE

Peter Max Zimmerman
Peter Max Zimmerman

PETITION FOR ZONING VARIANCE

15th Election District - 7th Councilmanic District

Case No. 88-142-A

LOCATION: South Side of Oakleigh Beach Road, 615 feet East of Centerline of Pin Oak Avenue (933 Oakleigh Beach Road)

DATE AND TIME: Tuesday, October 27, 1987, at 9:00 a.m.

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

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

Petition for Zoning Variance to permit lot widths of 50 feet in lieu of the required 55 feet for Lots 112 to 114

et al
Being the property of Theodore E. McCadden, Sr.,/ , as shown on plat plan filed with the Zoning Office.

In the event that this Petition(s) 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.

J. ROBERT HAINES
ZONING COMMISSIONER
OF BALTIMORE COUNTY

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

88-142-A

District 15th Date of Posting 10/8/87
Posted for: Variance
Petitioner: Theodore E. McCadden Sr., et al
Location of property: S/S Oakleigh Beach Rd., 615' E/Pin Oak Ave.
933 Oakleigh Beach Rd.
Location of Signs: Facing Oakleigh Beach Rd., approx 15' from roadway, o.k. - property of Petitioner
Remarks:
Posted by Signature Date of return: 10/8/87
Number of Signs: 1

CERTIFICATE OF PUBLICATION

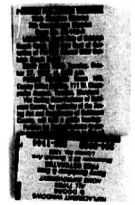
TOWSON, MD., Oct. 8, 1987

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 Oct. 8, 1987

THE JEFFERSONIAN,

Susan Sudler Obrecht
Publisher

CERTIFICATE OF PUBLICATION



OFFICE OF
Dundalk Eagle

4 N. Center Place
P.O. Box 8936
Dundalk, Md. 21222

October 8, 19 87

THIS IS TO CERTIFY, that the annexed advertisement of J. Robert Haines in the matter of Zoning Hrgs. Case #88-142-A - P.O. #91475 Req. #M05250 - 62 lines @ $24.80.
was inserted in *The Dundalk Eagle* a weekly newspaper published in Baltimore County, Maryland, once a week for one ~~successive~~ weeks before the 9th day of October 19 87 ; that is to say, the same was inserted in the issues of Oct. 8, 1987

Kimbel Publication, Inc.
per Publisher.

By

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 33113

DATE 11/4/88 ACCOUNT R-01-615-000
AMOUNT $50.00
RECEIVED Mr. Sandra Pool/Mr. Mary Phipps, 931 Oakleigh Beach Road, Baltimore, Md. 21222
FROM
FOR Appeal Filing and Posting Fee in Case No. 88-142-A
B 033**********5000:a 6058F
VALIDATION OR SIGNATURE OF CASHIER

January 4, 1988

Baltimore County Board of Appeals
Old Courthouse, Room #205
Towson, Maryland 21204

RE: Petition for Zoning Variance
S/S Oakleigh Beach Road, 615' E of c/l of Pin Oak Avenue
(933 Oakleigh Beach Road)
15th Election District - 7th Councilmanic District
Theodore E. McCadden, Sr., et al - Petitioners
Case No. 88-142-A

Dear Board:

Please be advised that on December 29, 1987, an appeal of the decision rendered in the above-referenced case was filed by Ms. Sandra Pool and Ms. Mary Phipps, Protestants. All materials relative to the case are being forwarded to your office herewith. Please notify all parties to the case when a date and time for the appeal hearing has been scheduled.

If you have any questions concerning this matter, please do not hesitate to contact this office.

Very truly yours,

J. Robert Haines
J. ROBERT HAINES
Zoning Commissioner

JRH:bjs

cc: Mr. Theodore E. McCadden, Sr. and
Mr. Michael Black
8144 Dundalk Avenue, Baltimore, Md. 21222

Ms. Sandra Pool and
Ms. Mary Phipps
931 Oakleigh Beach Road, Baltimore, Md. 21222

Phyllis Cole Friedman, Esquire,
People's Counsel of Baltimore County
Rm. 223, Old Courthouse, Towson, Maryland 21204

File

---

page 1 of 2

12-28-87

RECEIVED
DEC 29 1987
ZONING OFFICE

Dear Ann Nastarowicz

We would like to file an appeal for the zoning variance that was granted in case No. 88-142-A.
Petitioners - Theodore McCadden/Michael Black
Election District - 15th
Councilmanic District - 7th

These variance was granted because we didn't should 'practical difficulties' or 'unreasonable hardship'.

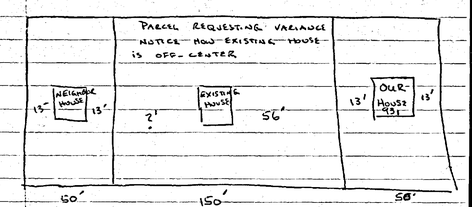
The petitioners bought a large parcel of land which they want to sub divide into 3 lots. An existing house is now located off-center on the center lot. The petitioner is a business man wanting to make some money. I am a home owner who is now & wants to continue living in my neighbor. We bought our home because of the surrounding homes & land. Our area is already over populated. I feel there are many other places he could build - being he is a business-man. There also must be reasons that the board decided to change the frontage from 50 to 55. Could you please

---

page 2 of 2

advise us as what we can further do to help preserve our existing neighborhood. Below is a drawing of the property & surrounding houses involved in the variance.

BACK



FRONTAGE

Enclose are 2 checks for $75 - & $15 -
Please contact us as to our next step.
Sandra Pool / Mary Phipps
931 Oakleigh Beach Rd.
Balto, Md 21222
Phone - 388-0798 - Home
347-0179 - Work (Pool)

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

J. ROBERT HAINES
ZONING COMMISSIONER

October 21, 1987

Mr. Theodore E. McCadden, Sr.
Mr. Michael Black
8144 Dundalk Avenue
Baltimore, Maryland 21222

Re: PETITION FOR ZONING VARIANCE
S/S Oakleigh Beach Rd., 615' E of c/l of
Pin Oak Ave. (933 Oakleigh Beach Rd.)
15th Election District - 7th Councilmanic District
Theodore E. McCadden, Sr., et al - Petitioners
Case No. 88-142-A

Dear Messrs. McCadden and Black:

This is to advise you that $75.55 is due for advertising and posting of the above property. This fee must be paid before an Order is issued.

THIS FEE MUST BE PAID AND THE ZONING SIGN AND POST RETURNED ON THE DAY THE ORDER IS TO BE ISSUED.

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 37962

DATE 10/27/87 ACCOUNT R-01-615-000
SIGN & POST RETURNED
AMOUNT $ 75.55
RECEIVED Home Improvement by Ted, 8144 Dundalk Ave., Balto., Md. 21222
FROM:
ADVERTISING & POSTING COSTS RE CASE #88-142-A
FOR:
B B015*****7555:a 227*F
VALIDATION OR SIGNATURE OF CASHIER

RE: PETITION FOR VARIANCES
S/S Oakleigh Beach Rd., 615' E of C/L of Pin Oak Ave., 15th Election District
THEODORE E. McCADDEN, SR., et al., Petitioners

: BEFORE THE ZONING COMMISSIONER
: OF BALTIMORE COUNTY
: Case No. 88-142-A

: : : : : : :

ENTRY OF APPEARANCE

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

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

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

I HEREBY CERTIFY that on this 2nd day of October, 1987, a copy of the foregoing Entry of Appearance was mailed to Mr. Theodore E. McCadden, Sr., and Mr. Michael Black, 8144 Dundalk Ave., Baltimore, MD 21222, Petitioners.

RECEIVED
OCT 2 1987
ZONING OFFICE

Peter Max Zimmerman
Peter Max Zimmerman

PETITION FOR ZONING VARIANCE

15th Election District - 7th Councilmanic District

Case No. 88-142-A

LOCATION: South Side of Oakleigh Beach Road, 615 feet East of Centerline of Pin Oak Avenue (933 Oakleigh Beach Road)

DATE AND TIME: Tuesday, October 27, 1987, at 9:00 a.m.

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

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

Petition for Zoning Variance to permit lot widths of 50 feet in lieu of the required 55 feet for Lots 112 to 114

et al

Being the property of Theodore E. McCadden, Sr., /, as shown on plat plan filed with the Zoning Office.

In the event that this Petition(s) 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.

J. ROBERT HAINES
ZONING COMMISSIONER
OF BALTIMORE COUNTY

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

88-142-A

District 15th Date of Posting 10/5/87
Posted for: Variance
Petitioner: Theodore E. McCadden Sr., et al
Location of property: S/S Oakleigh Beach Rd., 615' E/Pin Oak Ave. 933 Oakleigh Beach Rd
Location of Signs: Facing Oakleigh Beach Rd approx 15' from walk, on property of Petitioner
Remarks:
Posted by Signature Date of return: 10/8/87
Number of Signs: 1

PETITION FOR ZONING VARIANCE
15th Election District
7th Councilmanic District
Case No. 88-142-A
LOCATION: South Side of Oakleigh Beach Road, 615 feet East of Centerline of Pin Oak Avenue (933 Oakleigh Beach Road)
DATE AND TIME: Tuesday, October 27, 1987 at 9:00 a.m.
PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

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

Petition for Zoning Variance to permit lot widths of 50 feet in lieu of the required 55 feet for Lots 112 to 114.

Being the property of Theodore E. McCadden, Sr., et al, as shown on plat plan filed with the Zoning Office.

In the event that this Petition(s) 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
J. ROBERT HAINES
Zoning Commissioner
of Baltimore County

10/16 Oct. 8.

CERTIFICATE OF PUBLICATION

TOWSON, MD., Oct 8, 1987

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 Oct 8, 1987

THE JEFFERSONIAN,

Susan Sudler Obrecht
Publisher

PETITION FOR ZONING VARIANCE
15th Election District
7th Councilmanic District
Case No. 88-142-A
LOCATION: South Side of Oakleigh Beach Road, 615 feet East of Centerline of Pin Oak Avenue (933 Oakleigh Beach Road)
DATE AND TIME: Tuesday, October 27, 1987, at 9:00 a.m.
PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland
The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:
Petition for Zoning Variance to permit lot widths of 50 feet in lieu of the required 55 feet for Lots 112 to 114
9911-582 8/28/87
CHECK TO ACCOMPANY SIGN
SIGN & POST REMOVED AFTER HEARING
MISCELLANEOUS
SIGN & TY
SWOOD 4
REMOVED WRONGLY

CERTIFICATE OF PUBLICATION

OFFICE OF
Dundalk Eagle

4 N. Center Place
P.O. Box 8936
Dundalk, Md. 21222

October 8, 1987

THIS IS TO CERTIFY, that the annexed advertisement of J. Robert Haines in the matter of Zoning Hrgs. Case #88-142-A - P.O. #91475 Req. #M05250 - 62 lines @ $24.80,
was inserted in *The Dundalk Eagle* a weekly newspaper published in Baltimore County, Maryland, once a week for one ~~successive~~ weeks before the 9th day of October 1987; that is to say, the same was inserted in the issues of Oct. 8, 1987

Kimbel Publication, Inc.
per Publisher.

By K. C. Dolke

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 33113

DATE 1/4/88 ACCOUNT R-01-615-000
AMOUNT $60.00
RECEIVED Ms. Sandra Pool/Ms. Mary Phipps, 931 Oakleigh
FROM: Beach Road, Baltimore, Md. 21222
FOR: Refund filing and Posting fee in Case No. 88-142-A
B 9770*****2000:a 005*F
VALIDATION OR SIGNATURE OF CASHIER

88-142-A

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 21st day of September, 1987.

J. ROBERT HAINES
ZONING COMMISSIONER

Petitioner Theodore E. McCadden, Sr. Received by: James E. Dyer
Petitioner's Attorney et al

Chairman, Zoning Plans Advisory Committee

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. J. Robert Haines, Zoning Commissioner

Date: September 29, 1987

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

SUBJECT: Zoning Petitions No. 88-140-A, 88-141-A, 88-142-A, 88-143-A, 88-147-A, 88-148-A, 88-150-A, 88-158-A, 88-159-A, 88-160-A, 88-161-A

There are no comprehensive planning factors requiring comment on the above numbered petitions.

Norman E. Gerber, AICP
Director

NEG:KAK:dme

cc: Ms. Shirley M. Hess, Legal Assistant, People's Counsel
File

RECEIVED
OCT 13 1987
ZONING OFF

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

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

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

October 6, 1987

Mr. Theodore E. McCadden, Sr.
8144 Dundalk Avenue
Baltimore, Maryland 21222

RE: Item No. 525 - Case No. 88-142-A
Petitioner: Theodore E. McCadden, Sr., et al
Petition for Zoning Variance

Dear Mr. McCadden:

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.

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,

James E. Dyer /KKB

JAMES E. DYER
Chairman
Zoning Plans Advisory Committee

JED:kkb

Enclosures

Baltimore County
Department of Public Works
Bureau of Traffic Engineering
Courts Building, Suite 405
Towson, Maryland 21204
494-3554

Dennis F. Rasmussen
County Executive

July 9, 1987

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

Dear Mr. Jablon:

The Bureau of Traffic Engineering has no comments for items number 516, 517, 519, 520, 521, 522, 523, 524, 525, and 526.

Very truly yours,

Michael S. Flanigan
Traffic Engineer Associate II

MSF:lt

Baltimore County
Fire Department
Towson, Maryland 21204-2586
494-4500

Paul H. Reincke
Chief

June 19, 1987

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

Dennis F. Rasmussen
County Executive

Re: Property Owner: Theodore E. McCadden, Sr., et al (Critical Area)

Location: S/S Oakleigh Beach Road, 615' E. of c/l of Pin Oak Avenue

Item No.: 525 Zoning Agenda: Meeting of 6/23/87

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 or ____ 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: Capt. Dave Kelly 6-19-87 Noted and Approved: John E. O'Neill
Planning Group
Special Inspection Division
Fire Prevention Bureau

JJ1

PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
★ Sandy Pool	931 Oakleigh Bch Rd 21222
Harriet Phillips	914 Oakleigh Beach Rd
Joann Chudon	912 Oakleigh Beach Rd
Steven Patterson	200 Wise Avenue 21222
Mary Phipps	931 Oakleigh Beach Rd 21222

Mr. Theodore E. McCadden, Sr.
Mr. Michael Black
8144 Dundalk Avenue
Baltimore, Maryland 21222

September 22, 1987

NOTICE OF HEARING

RE: PETITION FOR ZONING VARIANCE
S/S Oakleigh Beach Rd., 615' E of c/l of Pin Oak Ave. (933 Oakleigh Beach Rd.)
15th Election District - 7th Councilmanic District
Theodore E. McCadden, Sr., et al - Petitioners
Case No. 88-142-A

TIME: 9:00 a.m.

DATE: Tuesday, October 27, 1987

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

J. ROBERT HAINES
Zoning Commissioner
Baltimore County

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

No. 37620

DATE 6/12/87 ACCOUNT R-01-615-000

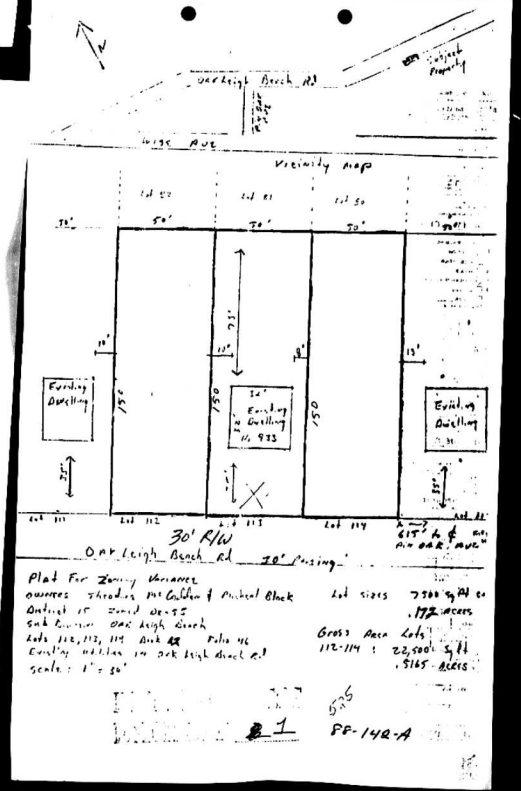
AMOUNT $ 35.00

RECEIVED FROM: Theodore E. McCadden

FOR: Zoning Variance Item # 525

B 085****3500:a 5:12PM

VALIDATION OR SIGNATURE OF CASHIER



88-142-A

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 21st day of September, 1987.

J. Robert Haines
ROBERT HAINES
ZONING COMMISSIONER

Petitioner Theodore E. McCadden, Sr.
Petitioner's Attorney et al

Received by: James E. Dyer
Chairman, Zoning Plans Advisory Committee

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO Mr. J. Robert Haines
Zoning Commissioner

Date September 29, 1987

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

SUBJECT Zoning Petitions No. 88-140-A, 88-141-A
88-142-A, 88-143-A, 88-147-A, 88-148-A, 88-150-A,
88-158-A, 88-159-A, 88-160-A, 88-161-A

There are no comprehensive planning factors requiring comment on the above numbered petitions.

Norman E. Gerber
Norman E. Gerber, AICP
Director

NEG:KAK:dme

cc: Ms. Shirley M. Hess, Legal Assistant, People's Counsel
File

RECEIVED
OCT 13 1987
ZONING OFFICE

CPS-one

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

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

000

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

October 6, 1987

Mr. Theodore E. McCadden, Sr.
8144 Dundalk Avenue
Baltimore, Maryland 21222

RE: Item No. 525 - Case No. 88-142-A
Petitioner: Theodore E. McCadden, Sr., et al
Petition for Zoning Variance

Dear Mr. McCadden:

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.

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,
James E. Dyer /KKB
JAMES E. DYER
Chairman
Zoning Plans Advisory Committee

JED:kkb

Enclosures

Baltimore County
Department of Public Works
Bureau of Traffic Engineering
Courts Building, Suite 405
Towson, Maryland 21204
494-3554

Dennis F. Rasmussen
County Executive

July 9, 1987

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

Dear Mr. Jablon:

The Bureau of Traffic Engineering has no comments for items number 516, 517, 519, 520, 521, 522, 523, 524, 525 and 526.

Very truly yours,
Michael S. Flanigan
Michael S. Flanigan
Traffic Engineer Associate II

MSF:lt

Baltimore County
Fire Department
Towson, Maryland 21204-2586
494-4500

Paul H. Reincke
Chief

June 19, 1987

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

Dennis F. Rasmussen
County Executive

Re: Property Owner: Theodore E. McCadden, Sr., et al (Critical Area

Location: S/S Oakleigh Beach Road, 615' E. of c/l of Pin Oak Avenue

Item No.: 525 Zoning Agenda: Meeting of 6/23/87

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 or ____ 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: Catt Owen Kelly 6-19-87 Noted and Approved: John J. O'Neill
Planning Group — Fire Prevention Bureau
Special Inspection Division

/31

PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
★ Sandy Pool	931 Oakleigh Bch Rd # 21222
Harriet Phillips	914 Oakleigh Beach RD.
James Elmden	917 Oakleigh Beach Rd
Denise Fortenson	900 West Avenue 21222
Mary Phipps	931 Oakleigh Beach Rd 21222

Mr. Theodore E. McCadden, Sr.
Mr. Michael Black
8144 Dundalk Avenue
Baltimore, Maryland 21222

September 22, 1987

NOTICE OF HEARING

RE: PETITION FOR ZONING VARIANCE
S/S Oakleigh Beach Rd., 615' E of c/l of Pin Oak Ave. (933 Oakleigh Beach Rd.)
15th Election District - 7th Councilmanic District
Theodore E. McCadden, Sr., et al - Petitioners
Case No. 88-142-A

TIME: 9:00 a.m.

DATE: Tuesday, October 27, 1987

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

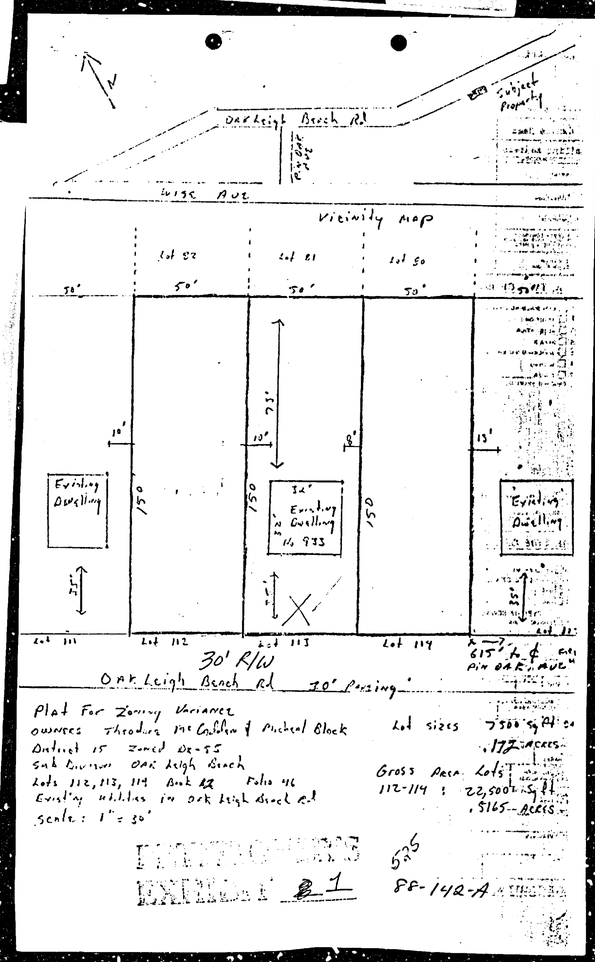
J. Robert Haines
J. ROBERT HAINES
Zoning Commissioner
Baltimore County

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

No. 37620

DATE 10/12/87 ACCOUNT R-01-615-000
AMOUNT $ 35.00
RECEIVED FROM: T. McCadden
FOR: ITEM #525 ZONING VARIANCE
B 057 ****3500:a 5126F

VALIDATION OR SIGNATURE OF CASHIER



PROTESTANTS EXHIBIT #1

I am not in Favor of the Zoning of Oakleigh Beach Road:

Mrs. Alex Albert T. Pantzer 938 Oakleigh Beach Rd
DANIEL E. PRICE 924 Oakleigh Beach Rd.
Ellen Tarawo 926 Oakleigh Beach Rd
Helen J. Fried Schoob 929 Oakleigh Beach Rd
Mary Phipps 931 Oakleigh Beach Rd.
Sandy Pool - 931 Oakleigh Bch Rd.
Myrtle Lawson 930 Oakleigh Beach Rd Balt 21222
Florence J. Joseph Holden 932 Oakleigh Beach Rd Balto
Henry J. Bruce 934 Oakleigh Beach Balto MD
Molly Cook 937 OAKLEIGH BEACH 21222
Charles H. Osborne
Hazel M. Kaiser
Madella Short 938 Grove Ave Balto. MD. 21222
Dorena A. Phipps
S. Bruce 926 Grove Ave
Mr. Mrs Donald A. Mahoney
602 N. Grove Ave
James F. Queen
902 Oakleigh Beach Rd 21222
Mr. & Mrs. Richard Massa
904 Oakleigh Beach, Md 21222
Mary Stout
Carlin Boyd
927 Oakleigh Beach Rd. Balt Md 21222
Ann C. Hall
906 OAKLEIGH BCH RD BALTO MD.
James H. Long 924 GROVE

Subscribed and sworn to me, in my presence, this 2nd day of Oct 19 88 a Notary Public in and for Baltimore County, Maryland

(Signature) Notary Public

My commission expires 7/1/89

H. Sullivan Notary Public

APPEAL

Petition for Zoning Variance
S/S Oakleigh Beach Road, 515' E of c/l of Pin Oak Avenue
(933 Oakleigh Beach Road)
15th Election District - 7th Councilmanic District
Theodore E. McCadden, Sr., et al - Petitioners
Case No. 88-142-A

Variance-to permit lot widths of 50 ft. in lieu of required 55 ft. for lots 112-114.

Petition for Zoning Variance

Description of Property

Certificate of Posting

Certificates of Publication

Entry of Appearance of People's Counsel

Zoning Plans Advisory Committee Comments

Director of Planning & Zoning Comments

Petitioner's Exhibits: 1 - Plat of Property

2 - Development Plan of Oakleigh Beach dated 10/26/87

Zoning Commissioner's Order dated December 15, 1987

Letter of Appeal received December 29, 1987 from Ms. Sandra Pool and Ms. Mary Phipps, Protestants.

David Fields, Dir., Planning
James Hoswell, Planning
J. Robt. Haines, Z.C.
Ann Nastarowicz, D.E.C.
James E. Dyer, Zoning
Docket Clerk

Mr. Theodore E. McCadden, Sr. and
Mr. Michael Black, Petitioners
8144 Dundalk Avenue, Baltimore, Maryland 21222

Ms. Sandra Pool and
Ms. Mary Phipps, Protestants
931 Oakleigh Beach Road, Baltimore, Maryland 21222

~~Phyllis Cole Friedman, Esquire~~
~~People's Counsel of Baltimore County~~
~~Rm. 223, 401 Court House, Towson, Maryland 21204~~

A. Jablon
N. West

Form 04A

Jack Advocate — 494-3188
Deputy Clerk
Sidney Court Commissioner
Tim Campbell — 494-3982
Hearing Assignment Clerk
Docket Records

CIRCUIT COURT FOR BALTIMORE COUNTY
ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Bosley Avenue
P.O. Box 6754
Towson, Maryland 21285-6754

Kathy Bushkin — 494-3180
Jury Assignments—Motions

Irene Summers - 494-3961
Jury Coordinator
Assignment—Non-Jury—Motions

TO: John B. Gontrum, Esq.
Jean E. Tullius, Esq.
Michael I. Gilbert, Esq.
Counsel for Petitioners
Sandra Pool, P.P.
Mary Phipps, P.P.
Protestants
County Board of Appeals
Leonard S. Jacobson, Esq.

RE: NON-JURY - 88CG-2545 - IN THE MATTER OF THE APPLICATION OF THEODORE E. MCCADDEN, SR., ET AL

HEARING DATE: WEDNESDAY, SEPTEMBER 16, 1988 @ 9:30 A.M.

ON THE FOLLOWING: APPEALS: 1 HR.

Please see the below motions.

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

SETTLEMENTS: If settlement is reached prior to this hearing date, the Assignment Office must be notified immediately. All settlements must be put on the record or an order of satisfaction is filed prior to trial.

THEODORE E. McCADDEN, Sr., et al — #88-142-A

S/s Oakleigh Beach Road, 515' E of c/l of Pin Oak Avenue (933 Oakleigh Beach Rd) — 15th E; 7th C

VAR -to permit lot widths of 50' in lieu of required 55'

Sept 21, 1987	Petition for Variance to permit lot widths of 50 feet in lieu of required 55 feet.
December 15	Order of D.E.C. that Petition for Zoning Variance is GRANTED.
Dec 29	Order for Appeal filed by Sandra Pool and Mary Phipps to C.B.A.
May 12, 1988	Hearing held before the C.B. of A.
May 19	Order of the Board that the variance is DENIED.
June 7	Order for Appeal filed in CCt, BCo by John B. Gontrum, Esq and Jean E. Tullius, Esq on behalf of Petitioners; Petition to Accompany Appeal filed.
June 9	Certificate of Notice sent.
July 5	Transcript of testimony filed; record of proceedings filed in CCt, BCo
October 24, 1989	Opinion and Order of the CCt, BCo AFFIRMING C. B. of A. (Jacobson)

Form 04A

Jack Advocate — 494-3188
Deputy Clerk
Sidney Court Commissioner
Tim Campbell — 494-3982
Hearing Assignment Clerk
Docket Records

CIRCUIT COURT FOR BALTIMORE COUNTY
ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Bosley Avenue
P.O. Box 6754
Towson, Maryland 21285-6754

Kathy Bushkin — 494-3180
Jury Assignments—Motions

Irene Summers - 494-3961
Jury Coordinator
Assignment—Non-Jury—Motions

TO: John B. Gontrum, Esq.
Jean E. Tullius, Esq.
Counsel for Petitioners
Sandra Pool, P.P.
Mary Phipps, P.P.
Protestants
County Board of Appeals
Theodore J. Bollinger, Esq.

RE: NON-JURY - 88CG-2545 - IN THE MATTER OF THE APPLICATION OF THEODORE E. MCCADDEN, SR., ET AL

HEARING DATE: THURSDAY, OCTOBER 13, 1988 @ 9:30 A.M.

OF THE FOLLOWING: APPEALS: 1 1/2 HOURS

Please see the below motions.

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

If a Status Hearing Date is not appended to any counsel, a request for a postponement MUST BE MADE IN WRITING to the Assignment Office AS SOON AS POSSIBLE, with a copy to all counsel involved. POSTPONEMENTS PRIOR TO 15 DAYS OF TRIAL should be directed to the attention of John Adams. POSTPONEMENTS WITHIN 15 DAYS OF TRIAL must be made to the attention of the Director of Central Assignments - Joyce Clemons - 494-3497.

SETTLEMENTS: If settlement is reached prior to this hearing date, the Assignment Office must be notified immediately. All settlements must be put on the record or an order of satisfaction is filed prior to trial.

Form 04A

Jack Advocate — 494-3188
Deputy Clerk
Sidney Court Commissioner
Tim Campbell — 494-3982
Hearing Assignment Clerk
Docket Records

CIRCUIT COURT FOR BALTIMORE COUNTY
ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Bosley Avenue
P.O. Box 6754
Towson, Maryland 21285-6754

Kathy Bushkin — 494-3180
Jury Assignments—Motions

Irene Summers - 494-3961
Jury Coordinator
Assignment—Non-Jury—Motions

TO: JOHN B. GONTRUM, ESQ.
JEAN E. TULLIUS, ESQ.
Counsel for Petitioners
MICHAEL I. GILBERT, ESQ.
COUNTY BOARD OF APPEALS
LEONARD S. JACOBSON

RE: NON JURY - 88-CG-2545 - THEODORE E. MCCADDEN, SR. ET AL VS. SANDRA POOL ET AL

HEARING DATE: MONDAY, JUNE 19, 1989 @ 9:30 a.m.

ON THE FOLLOWING: APPEAL: 1 1/2 hours

Please see the below motions.

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

If a Status Hearing Date is not appended to any counsel, a request for a postponement MUST BE MADE IN WRITING to the Assignment Office AS SOON AS POSSIBLE, with a copy to all counsel involved. POSTPONEMENTS PRIOR TO 15 DAYS OF TRIAL should be directed to the attention of John Adams. POSTPONEMENTS WITHIN 15 DAYS OF TRIAL must be made to the attention of the Director of Central Assignments - Joyce Clemons - 494-3497.

SETTLEMENTS: If settlement is reached prior to this hearing date, the Assignment Office must be notified immediately. All settlements must be put on the record or an order of satisfaction is filed prior to trial.

RECEIVED
COUNTY BOARD OF APPEALS
89 APR 28 AM 10:38

LAW FIRM
Romadka, Gontrum & Hennegan
IRVINGTON FEDERAL BUILDING
808 EASTERN BOULEVARD
ESSEX, MARYLAND 21221
TELEPHONE (301) 686-8274
FAX # 686-0138

ROBERT J. ROMADKA
JOHN B. GONTRUM
JOHN G. HENNEGAN

DONALD H. SHEFFY
NANCY E. DWYER

May 1, 1989

Ms. Irene Summers
Circuit Court for Baltimore County
Assignment Office
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, Maryland 21285-6754

Re: McCadden vs. Pool
Case No. 88-CG-2545

Dear Ms. Summers:

As you are aware, a hearing has been set for June 19, 1989 at 9:30 a.m. in reference to an appeal filed in the above referenced matter. Unfortunately, I will be out of the state on an extended vacation from June 15th through July 5th and will be unable to attend the hearing. I would, therefore, respectfully request that you reschedule the above and advise me of a new date.

Thank you for your anticipated cooperation in this matter.

Very truly yours,

John B. Gontrum

JBG:kb
cc: Michael I. Gilbert, Esquire
County Board of Appeals
The Honorable Leonard S. Jacobson
Theodore McCadden

RECEIVED
89 MAY -4 AM 11:14

Form 04A

Jack Advocate — 494-3188
Deputy Clerk
Sidney Court Commissioner
Tim Campbell — 494-3982
Hearing Assignment Clerk
Docket Records

CIRCUIT COURT FOR BALTIMORE COUNTY
ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Bosley Avenue
P.O. Box 6754
Towson, Maryland 21285-6754

Kathy Bushkin — 494-3180
Jury Assignments—Motions

Irene Summers - 494-3961
Jury Coordinator
Assignment—Non-Jury—Motions

TO: JOHN B. GONTRUM, ESQ.
JEAN E. TULLIUS, ESQ.
Counsel for Petitioners
MICHAEL I. GILBERT, ESQ.
COUNTY BOARD OF APPEALS
THE HONORABLE LEONARD S. JACOBSON

RE: NON JURY - 88-CG-2545 - THEODORE E. MCCADDEN, SR. ET AL VS. SANDRA POOL ET AL

HEARING DATE: TUESDAY, JANUARY 15, 1991 @ 9:30 a.m.

ON THE FOLLOWING: APPEAL: 1 1/2 hours

Please see the below motions.

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

If a Status Hearing Date is not appended to any counsel, a request for a postponement MUST BE MADE IN WRITING to the Assignment Office AS SOON AS POSSIBLE, with a copy to all counsel involved. POSTPONEMENTS PRIOR TO 15 DAYS OF TRIAL should be directed to the attention of John Adams. POSTPONEMENTS WITHIN 15 DAYS OF TRIAL must be made to the attention of the Director of Central Assignments - Joyce Clemons - 494-3497.

SETTLEMENTS: If settlement is reached prior to this hearing date, the Assignment Office must be notified immediately. All settlements must be put on the record or an order of satisfaction is filed prior to trial.

RECEIVED
COUNTY BOARD OF APPEALS
91 JAN -5 PM 2:28

PLOTTER PLANTS!

I AM NOT IN FAVOR of the ZONING of Oakleigh Beach Road.

Mrs. Ella Albert 7 Bunny Run 838 Oakleigh Beach Rd
Daniel E. Albert 7 Bunny Run 838 Oakleigh Beach Rd
Carl Jones 926 Oakleigh Beach Rd
Mary Ann Jones 931 Oakleigh Beach Rd
Gary Ann Pool 931 Oakleigh Beach Rd
Mr. & Mrs. Donald L. Phipps 933

Form 1-A

Bill Adams — 494-3180
Acting County Executive

Robert Gardt
Director of Planning

Tom Carrozzi — 494-3180
Director of Permits & Licenses

CIRCUIT COURT FOR BALTIMORE COUNTY
ASSIGNMENT OFFICE
COUNTY COURT BUILDING
401 Bosley Avenue
P.O. Box 6754
Towson, Maryland 21285-6754

Kathy Paulson — 494-3486
Jury Assignments—Admin

Dave Rosenberg — 494-3561
Assignments—Non-Jury—Admin

Ann Nastarowicz — 494-3180
Assignments—Non-Jury—Admin

TO:

JOHN B. GROTON, ESQ.
JOHN E. TRELLIS, ESQ.
SANDRA POOL (PP)
MARY PHIPPS, (PP)

COUNTY BOARD OF APPEALS

HONORABLE LORRAINE G. JACKSON

CONTINUED NOTICE

JANUARY 18, 1989

RE: NOW JANE: 88-CG-2543 - THEODORE E. MCCADDEN, SR. ET AL VS. SA 'M POOL ET AL

HEARING DATE: WEDNESDAY, APRIL 26, 1989 @ 9:30 a.m.

ON THE FOLLOWING: APPEAL: 1 1/2hours

Please see the below memo.

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

If the above hearing date is not acceptable to the counsel involved, a request for a postponement MUST BE MADE IN WRITING to the Assignment Office AS SOON AS POSSIBLE. POSTPONEMENTS WITHIN 15 DAYS OF TRIAL POSTPONEMENTS PRIOR TO 15 DAYS OF TRIAL Postponements of Circuit Court cases may be made only by Judge Court — 494-3497 Non-Jury — POSTPONEMENTS WITHIN 15 DAYS OF TRIAL must be made to the Assignment Office Jury — 494-3486

SETTLEMENTS: If a settlement of a case prior to this hearing date, the Assignment Office must be notified immediately. All settlements must be put on the record if an order of satisfaction is filed prior to trial.

11/87

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

HEARING ROOM #218

January 25, 1988
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). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 88-142-A — THEODORE E. McCADDEN, SR., ET AL

S/s Oakleigh Beach Rd., 615' E of c/l of Pine Oak Ave. (933 Oakleigh Beach Rd.)

15th E. Dist.; 7th C. Dist.

Variance-Lot Widths

ASSIGNED FOR: THURSDAY, MAY 12, 1988, at 10 a.m.

cc: Theodore E. McCadden, Sr. & Michael Black	Petitioners
Sandra Pool and Mary Phipps	Protestants
Phyllis C. Friedman	People's Counsel
David Fields	Planning
James Hoswell	"
J. Robt. Haines	Zoning
Ann Nastarowicz	"
James Dyer	"
Docket Clerk	"

June Holmen, Secy.

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

June 9, 1988

Phyllis C. Friedman
People's Counsel for Baltimore County
Court House
Towson, Md. 21204

Dear Mrs. Friedman:

Re: Case No. 88-142-A
Theodore E. McCadden, Sr., etal

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: David Fields
James Hoswell
J. Robert Haines
Ann Nastarowicz
James E. Dyer
Docket Clerk
Sandra Pool, et al

File

1/25/88 - Notified following of hear. set for Thursday, May 12, 1988, at 10 a.m.:

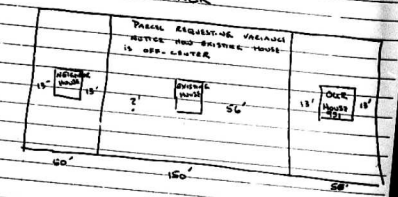
Theo. McCadden, Sr. and Michael Black
Sandra Pool and Mary Phipps
P. Friedman
D. Fields, J. Hoswell
J. R. Haines, Ann Nastarowicz
J. Dyer, Doc. Clerk

page 2 of 2

advise us as what we can further do to help preserve our existing neighborhood & surrounding houses involved in the variance.

Below is a drawing of the property

BACK



FRONTAGE

Enclose are 2 checks for $75 - & $15 -
Please contact us as to our next step.
Sandra Pool / Mary Phipps
931 Oakleigh Beach Rd.
Balto, Md 21222
Phone - 388-0798 - Home

Form C-4
Joni Adams — 494-2660
Civil Assignment Commissioner
Sebastian Cole — 494-3582
This Campbell — 494-3982
Master Assignment Clerk
Assignment Clerk

Kathy Buehlen — 494-2660
Jury Assignments—Motions

Inga Summers - 494-2661
Assistant Civil Assignment Commissioner
Assignment—Non-Jury—Motions

CIRCUIT COURT FOR BALTIMORE COUNTY
ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Bosley Avenue
P.O. Box 6754
Towson, Maryland 21285-6754

JANUARY 18, 1989

CORRECTED NOTICE

TO: JOHN B. GONTRUM, ESQ.
JEFF C. GORLIN, ESQ.
SANDRA POOL, (PP)
MAT PHIPPS, (PP)

COUNTY BOARD OF APPEALS

HONORABLE LEONARD S. JACOBSON

RE: CA 21-89-53
NOW JUST - 88-CZ-2345 - THEODORE E. MCCADDEN, SR. ET AL VS. SANDRA POOL ET AL

HEARING DATE: WEDNESDAY, APRIL 26, 1989 @ 9:30 a.m.
APPEAL: 1 1/2hours

ON THE FOLLOWING:

Please see the below notation:

UPON RECEIPT OF THIS NOTICE: Counsel shall contact each other immediately to conform calendars. Civil is not receiving notice will not constitute cause for postponement.

---

11 the above Hearing Date is not agreeable to any counsel, counsel for a postponement MUST BE MADE IN WRITING to the Assignment Office AS SOON AS POSSIBLE, with a copy to all counsel. ALL SETTLEMENTS PRIOR TO 11 DAYS OF TRIAL must be reported immediately to the attention of Central Assignments—Joyce Grimm—494-3497, SOON AS POSSIBLE, with a copy to all counsel. ALL SETTLEMENTS WITHIN 11 DAYS OF TRIAL must be made to the attention of the Director of Central Assignments—Joyce Grimm—494-3497, Joni Adams. POSTPONEMENTS WITHIN 11 DAYS OF TRIAL must be put on the record.

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.

11/87

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

HEARING ROOM #218

January 25, 1988

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CASE NO. 88-142-A	THEODORE E. McCADDEN, SR., ET AL
	S/s Oakleigh Beach Rd., 615' E of c/l of Pine Oak Ave. (933 Oakleigh Beach Rd.)
	15th E. Dist.; 7th C. Dist.
	Variance-Lot Widths
ASSIGNED FOR:	THURSDAY, MAY 12, 1988, at 10 a.m.

cc: Theodore E. McCadden, Sr. & Michael Black	Petitioners
Sandra Pool and Mary Phipps	Protestants
Phyllis C. Friedman	People's Counsel
David Fields	Planning
James Hoswell	"
J. Robt. Haines	Zoning
Ann Nastarowicz	"
James Dyer	"
Docket Clerk	"

June Holmen, Secy.

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

June 9, 1988

Phyllis C. Friedman
People's Counsel for Baltimore County
Court House
Towson, Md. 21204

Dear Mrs. Friedman:

Re: Case No. 88-142-A
Theodore E. McCadden, Sr., etal

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Enclosed is a copy of the Certificate of Notice.

Very truly yours,

June Holmen, Secretary

Encl.
cc: David Fields
James Hoswell
J. Robert Haines
Ann Nastarowicz
James E. Dyer
Docket Clerk
Sandra Pool, et al

1/25/88 - Notified following of hear. set for Thursday, May 12, 1988, at 10 a.m.:

Theo. McCadden, Sr. and Michael Black
Sandra Pool and Mary Phipps
P. Friedman
D. Fields, J. Hoswell
J. R. Haines, Ann Nastarowicz
J. Dyer, Doc. Clerk

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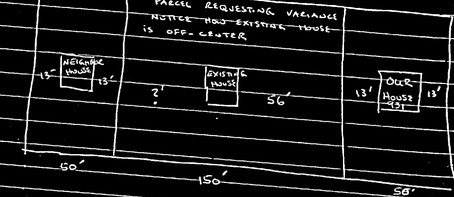
page 2 of 2

advise us as what we can further do to help preserve our existing neighborhood. Below is a drawing of the property & surrounding houses involved in the variance.

BACK



FRONTAGE

Enclose are 2 checks for $75 - & $15 -
Please contact us as to our next step.
Sandra Pool / Mary Phipps
931 Oakleigh Beach Rd.
Balto, Md 21222
Phone - 388-0798 - Home