

IN RE: PETITION FOR ZONING VARIANCE
NS of Lucerne Road, 152' E
of c/l of Tevis Circle
8412 Lucerne Road
2nd Election District
2nd Councilmanic District
Howard P. Newton, et ux
Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 90-260-A

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a variance from Section 1802.3.B. (1801.2.C.4., 1970) to permit a 10 ft. rear yard setback and an accessory structure (pool) in the side yard in lieu of the 22-1/2 ft. and rear yard, respectively, in accordance with the Petitioners' Exhibit 1.

The Petitioner, Howard P. Newton, appeared, testified and was represented by Harvey S. Levin, Esquire. There were no Protestants.

Testimony and evidence indicated that the subject property, known as 8412 Lucerne Road, consists of .2276 acres +/-, zoned D.R. 5.5, and is improved with a single family dwelling, detached garage, pool and attached deck.

The Petitioner testified that when he constructed the subject pool and deck, he thought it was being constructed in compliance with the Baltimore County Zoning Regulations (B.C.Z.R.). He was subsequently advised by a Building Inspector that there was a problem with the setback requirements and the placement of the subject pool in his side yard. The Petitioner also testified that he discussed this matter with his neighbors and they have no objection with the size or location of the subject pool and deck. Further, pursuant to the Zoning Commissioner's inquiry, the Petitioner agreed to plant a vegetative buffer along the rear of his property which adjoins lot No. 13A with a screening type evergreen.

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. Soiey, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

- 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unreasonably burdensome;
- 2) whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
- 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

It is clear from the testimony that if the variance is granted, such use as proposed would not be contrary to the spirit of the B.C.Z.R. 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 variances were not granted. It has been established that the requirements 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 variances requested will not be detrimental to the public health, safety and general welfare.

-2-

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 21st day of February, 1990 that the Petition to permit a 10 ft. rear yard setback and an accessory structure in the side yard in lieu of the 22-1/2 ft. and rear yard, respectively, in accordance with Petitioners' Exhibit 1, be and is hereby GRANTED, subject, however, to the following restrictions which are conditions precedent to the relief granted herein:

- 1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day 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 Petitioners shall plant a sufficient number of American Arborvitae along the rear of his property line adjoining lot No. 13A, so as to provide a screen/buffer between the subject pool, deck and existing dwelling number No. 3930, as indicated on Petitioners' Exhibit No. 1. The evergreens shall be planted equal distance apart and in accordance with the Baltimore County Landscape Manual.

JRH/mm
cc: Peoples Counsel

-3-

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3333
J. Robert Haines
Zoning Commissioner

February 20, 1990

Dennis F. Rasmussen
County Executive

Mr. and Mrs. Howard P. Newton III
8412 Lucerne Road
Randallstown, Maryland 21117

RE: Petition for Zoning Variance
Case No. 90-260-A

Dear Mr. and Mrs. Newton:

Enclosed please find the decision rendered in the above captioned case. The Petition for Zoning Variance has been granted in accordance with the attached Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days of the date of the Order to the County Board of Appeals. If you require additional information concerning filing an appeal, please feel free to contact our Appeals Clerk at 887-3391.

Very truly yours,
J. Robert Haines
Zoning Commissioner

JRH:mm
cc: Peoples Counsel

PETITION FOR ZONING VARIANCE 90-260-A

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:
The undersigned, legal owner(s) of the property at issue in Baltimore County and which is described in the description and plat attached hereto, hereby petition for a Variance from Section 1802.3.B. (1801.2.C.4., 1970) to permit a 10 ft. rear yard setback and an accessory structure (pool) in the side yard in lieu of the 22 1/2 ft. and rear yard, respectively, in accordance with the Petitioners' Exhibit 1.

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

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):
HOWARD P. NEWTON III
(Type or Print Name)
Signature
Address
City and State

Attorney for Petitioner:
Harvey S. Levin
(Type or Print Name)
Signature
Address
City and State

BEVERLY NEWTON
(Type or Print Name)
Signature
Address
City and State

6008 Harford Road
Baltimore, Maryland 21214
City and State

8412 LUCERNE RD. 6553358
Phone No.
RANDALLSTOWN, MD. 21133
City and State

Attorney's Telephone No. (301) 426-3100

Name
Address
Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 18 day of Oct 1989, 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 2 day of JAN 1990 at 9:30 o'clock A.M.

J. Robert Haines
Zoning Commissioner of Baltimore County

Hardships

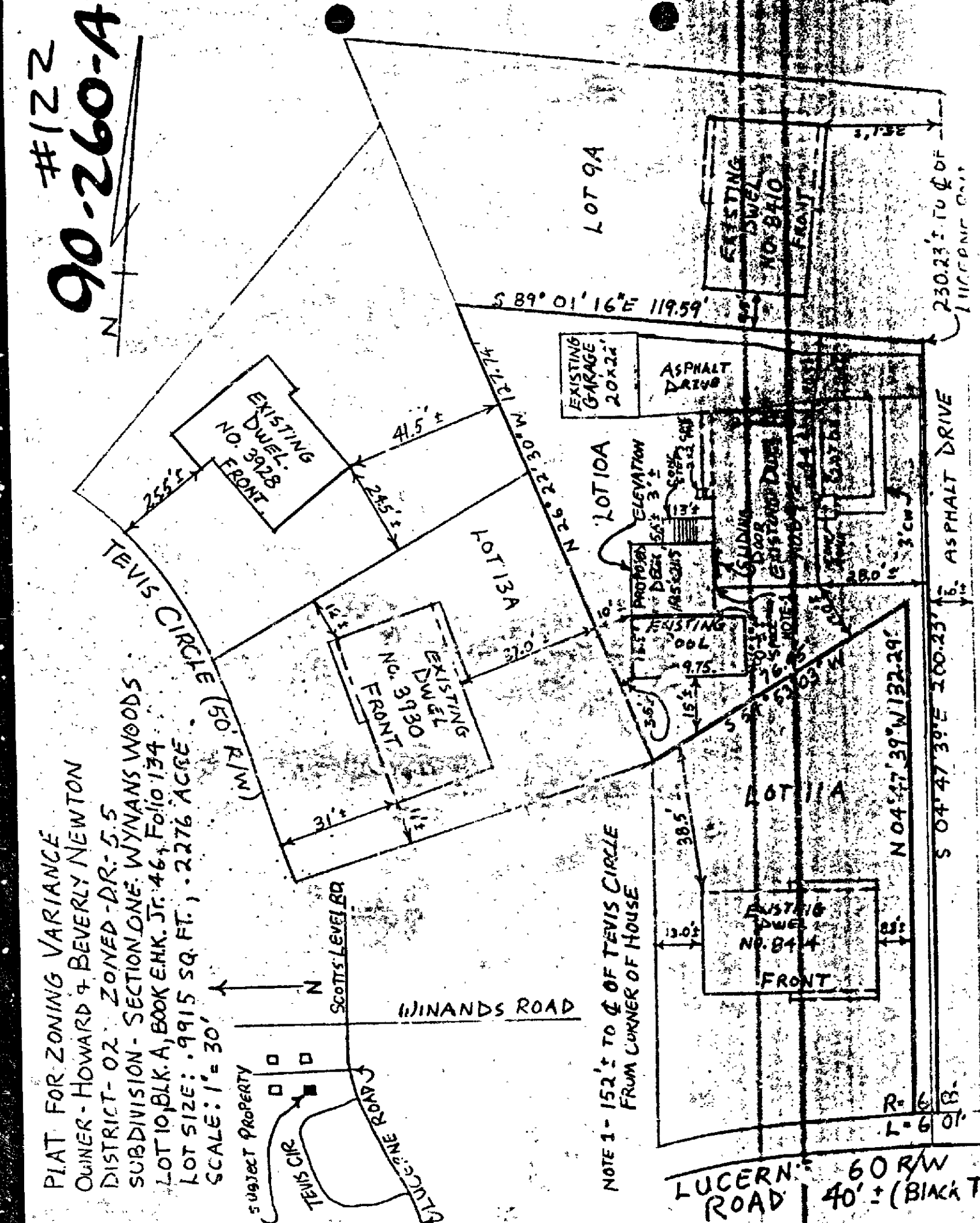
- 1 Our home is arranged in a way that the sliding glass door faces the shallow part of the lot and there is no other elevated access on the rear of the house. The rear steps lead to the 4th level. (Basement)
- 2 The deck creates no health or safety violations that we can see.
- 3 Material unusable for any other purpose.
- 4 A investment of \$2000.00 has been made, and the deck isn't unsightly.
- 5 Not having a full sized deck may diminish the value of our property.
- 6 We wouldn't be able to have full enjoyment of our pool and property.
- 7 Deck is built.

Howard + Beverly Newton
8412 Lucerne Rd
Randallstown, Md 21133
LOT 10 A Wynans Woods
DISTRICT 02

#122
90-260-A

ZONING DESCRIPTION

Beginning at a point on the North side of LUCERNE Rd. 152' from the c/l of TEVIS CIRCLE being known and DESIGNATED AS LOT 10 in Block A AS SHOWN ON THE PLAT ENTITLED "REVISED PLAT, SECTION ONE WYNANS WOODS," WHICH PLAT IS RECORDED AMONG THE LAND RECORDS OF BALTIMORE COUNTY IN PLAT BOOK E.H.K. JR. NO. 46, Folio 134. THE IMPROVEMENTS THEREON KNOWN AS 8412 LUCERNE ROAD. CONTAINING 9915 SQ. FT., .2276 ACRES



CERTIFICATE OF POSTING 90-260-A
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 2nd Date of Posting: December 11, 1989

Posted for: Variance

Petitioner: Howard P. Newton, III, et al.

Location of property: 1/2 of Luccombe Road, 152' E of c/l of Tavis Circle

Location of Sign: In front of 8412 Luccombe Road

Remarks:

Posted by: S. J. Arata Date of return: December 15, 1989

Number of Signs: 1

The Legal Clinic of
Harvey S. Levin, P.A.
ATTORNEY AT LAW
6008 HARFORD ROAD, BALTIMORE, MARYLAND 21214
TELEPHONE (301) 428-5100

January 18, 1990

Mr. G. G. Stephens
Baltimore County Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204

RE: Case Number: 90-260-A
Petitioner(s): Howard P. Newton, III, et al.

Dear Mr. Stephens:

Please be advised that my client agrees to either plant vegetated screening or to install an opaque fence as requested by the Office of Planning and Zoning. Please note same in the case file.

Very truly yours,
Harvey S. Levin
HSL:emp

cc: Mr. Howard P. Newton, III

RECEIVED
JAN 19 1990
ZONING OFFICE

CERTIFICATE OF POSTING 90-260-A
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 2nd Date of Posting: January 24, 1990

Posted for: Variance

Petitioner: Howard P. Newton, III, et al.

Location of property: 1/2 of Luccombe Road, 152' E of c/l of Tavis Circle

Location of Sign: In front of 8412 Luccombe Road

Remarks:

Posted by: S. J. Arata Date of return: February 2, 1990

Number of Signs: 1

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353

CONFIRMING

January 17, 1990

NOTICE OF REASSIGNMENT

Case # (s): 90-260-A

Petitioner(s): Howard P. Newton, III, et al.

THE ABOVE MATTER HAS BEEN REASSIGNED.

THE HEARINGS WILL NOW TAKE PLACE AS FOLLOWS:

WEDNESDAY, FEBRUARY 14, 1990 at 9:30 a.m.

BALTIMORE COUNTY OFFICE BUILDING, 111 W. CHESAPEAKE AVENUE, ROOM 106, TOWSON, MARYLAND 21204

J. Robert Haines
ZONING COMMISSIONER
BALTIMORE COUNTY

JR:gs
Copies:
Mr. & Mrs. Newton
Harvey S. Levin, Esq.
File

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353

December 18, 1989

Harvey S. Levin, Esq.
6008 Harford Road
Baltimore, Maryland 21214

RE: Case Number: 90-260-A
Petitioner(s): Howard P. Newton, III, et al.

Dear Mr. Levin:

Pursuant to your request, the above case scheduled to be heard on January 2, 1990, has been postponed.

You will be notified of the new hearing date in due course.

However, please be advised that the advertising fee for the January 2nd date, in the amount of \$99.86, must be paid. Further, your clients will incur additional costs, as it will be necessary to repost the property as to the new date.

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

Very truly yours,
G. G. Stephens
(301) 887-3391

cc: Mr. & Mrs. Newton

The Legal Clinic of
Harvey S. Levin, P.A.
ATTORNEY AT LAW
6008 HARFORD ROAD, BALTIMORE, MARYLAND 21214
TELEPHONE (301) 428-5100

December 6, 1989

RECEIVED
DEC 8 1989
ZONING OFFICE

Mr. J. Robert Haines
Zoning Commissioner of Baltimore County
Office of Planning & Zoning
Towson, Maryland 21204

RE: Case Number 90-260-A
Howard P. Newton, III
Hearing - Tuesday, January 2, 1990 - 9:30 a.m.

Dear Mr. Haines:

Please be advised this office represents Howard P. Newton, III. I would appreciate you postponing the hearing as I am appearing in the District Court of Baltimore City on that same day at 9:45 a.m. See enclosed notice. Kindly inform me of the new date and time. Thanking you for your anticipated cooperation, I am

Very truly yours,
Harvey S. Levin
HSL:emp
Enc.

cc: Mr. Howard P. Newton, III

CERTIFICATE OF PUBLICATION

TOWSON, MD. December 7, 1989

THIS IS TO CERTIFY, that the annexed advertisement was published in the OWINGS MILLS TIMES, a weekly newspaper printed and published in Towson, Baltimore County, Md., appearing on December 7, 1989.

OWINGS MILLS TIMES.
Publisher

\$74.86

NOTICE OF HEARING

The Zoning Commission of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland 21204 as follows:

Case Number: 90-260-A
Petitioner(s): Howard P. Newton, III, et al.
2nd Election District - 2nd Councilmanic
Hearing Date: Tuesday, Jan. 2, 1990 at 9:30 a.m.

Variance to permit a 10 foot rear yard setback and an accessory structure (pool) in the side yard is line of the 22-1/2 feet and rear yard, respectively.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commission 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 in writing and received in this office by the date of the hearing set above or prior to the hearing.

J. ROBERT HAINES
Zoning Commissioner of Baltimore County

JR:gs
cc: Mr. & Mrs. Newton, III
Harvey S. Levin, Esq.

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353

J. Robert Haines
Zoning Commissioner

Mr. & Mrs. Howard P. Newton, III
8412 Luccombe Road
Baltimore, Maryland 21133

DATE: DEC 12 1989
DEC 14 1989

Be: Petition for Zoning Variance
CASE NUMBER: 90-260-A
1/2 of Luccombe Road, 152' E of c/l of Tavis Circle
8412 Luccombe Road
2nd Election District - 2nd Councilmanic
Petitioner(s): Howard P. Newton, III, et al.
HEARING SCHEDULED: TUESDAY, JANUARY 2, 1990 at 9:30 a.m.

receipt
Account R-001-6150
Number No 755
90-260-A

Date: 1-2-90

PUBLIC HEARING FEES QTY PRICE
080 - POSTING SIGNS / ADVERTISING 1 X \$99.86
LAST NAME OF OWNER: NEWTON, III TOTAL: \$99.86

Cashier Validation: 8 115*****998612 5028F
Please make checks payable to: Baltimore County

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353

J. Robert Haines
Zoning Commissioner

November 30, 1989

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland 21204 as follows:

Petition for Zoning Variance
CASE NUMBER: 90-260-A
1/2 of Luccombe Road, 152' E of c/l of Tavis Circle
8412 Luccombe Road
2nd Election District - 2nd Councilmanic
Petitioner(s): Howard P. Newton, III, et al.
HEARING SCHEDULED: TUESDAY, JANUARY 2, 1990 at 9:30 a.m.

Variance to permit a 10 foot rear yard setback and an accessory structure (pool) in the side yard is line of the 22-1/2 feet and rear yard, respectively.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commission 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 in writing and received in this office by the date of the hearing set above or prior to the hearing.

J. ROBERT HAINES
Zoning Commissioner of Baltimore County

JR:gs
cc: Mr. & Mrs. Newton, III
Harvey S. Levin, Esq.

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

December 20, 1989

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

000

Harvey S. Levin, Esquire
6008 Harford Road
Baltimore, MD 21214

RE: Item No. 122, Case No. 90-260-A
Petitioner: Howard P. Newton, et ux
Petition for Zoning Variance

Dear Mr. Levin:

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 & problems with regard to the development of plans that may have a bearing on this case. 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.

IT WOULD BE APPRECIATED IF YOU WOULD RETURN YOUR WRITTEN COMMENTS TO MY OFFICE, ATTENTION JULIE WINIARSKI. IF YOU HAVE ANY QUESTIONS REGARDING THIS, PLEASE CONTACT HER AT 887-3391.

Very truly yours,
James E. Dyer
JAMES E. DYER
Chairman
Zoning Plans Advisory Committee

JED:jw

Enclosures

cc: Mr. & Mrs. Howard P. Newton
8412 Lucerne Road
Randallstown, MD 21133

Baltimore County
Zoning Commission
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3683

J. Robert Haines
Zoning Commissioner

RECEIVED
NOV 16 1989

Dear Mr. Haines:

Your petition has been received and accepted for filing this 18th day of October, 1989.

J. Robert Haines
ZONING COMMISSIONER

Received By:
James E. Dyer
Chairman
Zoning Plans Advisory Committee

Petitioner: Howard P. Newton, et ux
Petitioner's Attorney: Harvey S. Levin

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: J. Robert Haines
Zoning Commissioner

DATE: December 18, 1989

FROM: Pat Keller, Deputy Director
Office of Planning and Zoning

SUBJECT: Howard P. Newton, III, et ux, Item 122
Zoning Petition No. 90-260A

The Petitioners request a variance to rear yard setback requirements and accessory structure placement requirements.

In reference to this request, staff offers the following comment:

Vegetative screening or an opaque fence should be provided to screen the pool from adjoining residences.

If there should be any further questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3211.

PK/JL/cmm

DEC 18 1989

Baltimore County
Department of Public Works
Bureau of Traffic Engineering
Courts Building, Suite 405
Towson, Maryland 21204
(301) 887-3554

November 9, 1989

Mr. J. Robert Haines
Zoning Commissioner
County Office Building
Towson, Maryland 21204

RECEIVED
NOV 16 1989

ZONING OFFICE

Dear Mr. Haines:

The Bureau of Traffic Engineering has no comments for items number 119, 120, 121, 122, 123, 124, 125, 126, and 127.

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

MSF/lab

Baltimore County
Fire Department
800 York Road
Towson, Maryland 21204-2586
(301) 887-4500

W. H. Reincke
Chief

OCTOBER 20, 1989

J. Robert Haines
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, MD 21204

RE: Property Owner: HOWARD P. NEWTON, III
Location: N/S OF LUCERNE ROAD
Item No.: 122 Zoning Agenda: OCTOBER 17, 1989

Gentlemen:

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

7. The Fire Prevention Bureau has no comments at this time.

REVIEWER: *Pat Keller* Noted and
Planning Group Approved
Special Inspection Division *Fire Prevention Bureau*

JK/KEK

OCT 24 1989

