

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL CATEGORY

IN THE MATTER OF THE APPLICATION OF ROBERT H. BROOKS, et ux, for a ZONING VARIANCE OF A PROPERTY LOCATED AT THE WEST SIDE Pikesville Road, 35' SOUTH OF THE LINE OF MT. WILSON LANE (8832 PICESVILLE ROAD) 3RD ELECTION DISTRICT MD. COUNCILMANIC DISTRICT (91-148-A)	ATTORNEYS Robert A. McFarland David L. Nicks Polinsky & McCoy 34 Market Place, suite 801 (410) 485-2100 Curtis C. Coon 400 W Penna Ave (4-4264) 337-4491 Protestants
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- (1) Oct 10, 1991 - Protestants Order for Appeal from the Order of the Board of Appeals of Baltimore Co, Petition and Exhibit fd.
- (2) Oct 23, 1991 - Certificate of Notice fd.
- (3) Nov. 4, 1991 - App. of ROBERT A. MCFARLAND for the Appellants & Same Day Answer, fd.
- (4) Nov. 15, 1991 Transcript of Record, fd. (filed in 1)
- (5) Nov. 15, 1991 Notice of Transcript, fd. copy sent.
- (6) Nov. 21, 1991 - Order to strike the App. of ROBERT A. MCFARLAND and enter the App. of DAVID L. NICKS as Counsel for the relief. fd.
- (7) Feb. 12, 1992 - Appellants Motion to Dismiss, Memorandum, affidavit & Exhibits, fd.
- (8) Feb. 12, 1992 - Appellants Memorandum, fd.
- (9) Feb. 18, 1992 Appellants Response to Appellants Motion to Dismiss, fd.
- (10) Mar 5, 1992 Rec'd 2/25/92 Appellants memorandum, fd.
- (11) Mar 5, 1992 Motions Ruling from Judge J.F. Fader, II Denying the Motion of Brooks to dismiss, fd.

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CASE NO. 91 CV 5495 March 9, 1992 Hon. John F. Fader, II. Hearing had. Order to

(12) March 10, 1992 - Appellants Response Memorandum, fd. (4-4264 Mar 2)

(13) May 19, 1992 Memorandum and Opinion affirming the Baltimore County Board of Appeals fd. (JFF, II)

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ROBERT AND SUSAN L. BROOKS 691-148-A

W/s Pikesville Rd., 35' S of c/l 3rd Election District
of Mt. Wilson La. (8832 Pikesville 3rd Councilmanic District
Road)

VAR to permit a proposed addition to a dwelling to have a 12.5' rear setback in lieu of the required 30' and to permit a detached accessory structure (proposed pool) to be located in the side yard in lieu of the rear yard outside of the 1/3 of the lot farthest removed from the side street.

September 26, 1990 Petition for Variances filed by Mr. and Mrs. Brooks.

December 12 Order of the Zoning Commissioner DENYING Petition in part and GRANTING in part.

January 10, 1991 Notice of Appeal received from Robert A. McFarland, Esquire on behalf of Mr. and Mrs. Brooks, Petitioners/Appellants.

September 4, 1991 Hearing before the Board of Appeals.

September 20 Opinion and Order of the Board GRANTING Petition for Variance.

October 18 Order for Appeal filed in the Circuit Court for Baltimore County by Curtis C. Coon, Esquire on behalf of Mr. Milo Heckler and Vermont Building and Development Corporation, Protestants.

October 21 Petition to accompany appeal filed in the Circuit Court for Baltimore County by Mr. Coon.

October 23 Certificate of Notice sent to interested parties.

November 15 Transcript of testimony filed; Record of Proceedings filed.

May 19, 1992 Order of the CCLMCO AFFIRMING C. B. of A. (Hon. John F. Fader, II).

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91-148-A Robert H. Brooks, et ux 5/19/92 - CCL AFFIRMING C.B. of A. (Hon. John F. Fader, II)

IN THE MATTER OF THE APPLICATION OF ROBERT H. AND SUSAN L. BROOKS FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE WEST SIDE PICESVILLE ROAD, 35' SOUTH OF CENTERLINE OF MT. WILSON LANE (8832 PICESVILLE ROAD) 3RD ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT

IN THE
• FOR
• BALTIMORE COUNTY
• Case no: 91-CV--5495

MEMORANDUM AND OPINION AFFIRMING THE BALTIMORE COUNTY BOARD OF APPEALS

At issue here is the legal and factual propriety of the Order of the Board of Appeals of Baltimore County (Board of Appeals) granting Robert and Susan Brooks (Brooks) a 12.5 foot rear yard setback for a garage in lieu of the required 30 feet. In granting the variance, the Board of Appeals overruled a decision by the zoning commissioner of Baltimore County denying the variance and it let Robert Brooks get away with a flagrant and possible intentional violation of the zoning laws. Still, the Board of Appeals is to be affirmed.

A.

Baltimore County Zoning Regulation 1802.3.C.1 specifically sets a rear setback line of 30 feet for the 0.26 acre residential property at 8832 Pikesville Road in Baltimore County on which Brooks constructed a garage. No one disputes this fact. Brooks built in violation of that set back line. After the fact of building, Brooks applied for and was granted a variance with the Board of Appeals stating:

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The Board in its deliberations does concur that the plans, of the total property and its relationship to neighboring properties shows merit with the garage attachment, rather than in the rear yard. The 21 by 25 foot garage and breezeway attached to the house proper allows for more open space in the rear yard and a greater distance between buildings.

The Board acknowledges that the Petitioner made a horrendous error in the process of his building procedure, but from the evidence evaluated, the variance requested should be granted as there is no adverse effect on the health, safety and/or general welfare of the public. To remove the attached garage to the rear of the property would be a practical difficulty and unreasonable hardship for the Petitioner, even though it was self-created. The Board also makes note that the attached garage, while under construction, met with the approval of County Inspectors on several visits to the site.

The Protestants/Neighbor of Brooks appealed the Board of Appeals decision to this court.

B.

Baltimore County Zoning Regulation, Section 307 (B.C.Z.R.) sets forth the applicable provisions of the law relating to the obtaining of variances from set back line provisions of the zoning regulations:

Section 307---VARIANCE

307.1--The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from offstreet parking regulations and from sign regulations, only in cases where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship.

Furthermore, any such variance shall be granted only if it is 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.

(Emphasis added).

Both the parties to this case cite and argue the decision of the Court of Appeals of McLean v. Soley, 270 Md. 208, 310 A.2d 783 (1973) as dispositive of the issue. The Protestants argue that the Board of Appeals has exceeded its legal authority in granting the variance to Brooks. All of this depends on whether what the Board of Appeals did was fairly within the legal definition of "practical difficulty or unreasonable hardship." First, it is noted that the Board of Appeals used the applicable phrase from the zoning ordinance in the conjunctive, but the law provides a disjunctive test of "practical difficulty or unreasonable hardship. McLean gives some direction quoting a prior decision by that Court in Lorola Loan Ass'n v. Buschman, 227 Md. 243, 176 A.2d 355 (1961):

There we noted that the requirements "practical difficulty or unreasonable hardship" are in the disjunctive. Thus we said:

"The terms of §307 are applicable only to variances as to height and area. We see no occasion to construe that section otherwise than as it reads--in the disjunctive--"practical difficulty or unreasonable hardship," here as we see no reason to construe "practical difficulty" as the equivalent of a taking in the constitutional sense. . . . This, we think, presents at least a case of "practical difficulty" within the meaning of § 307 of the Regulations. To ignore it and to restrict Lorola to a building of uneconomic size where, as here, the Board's findings of general welfare and that the proposed variance is in strict harmony with the spirit and intent of the Regulations should be upheld, would, we think, place too narrow a construction upon §307, and would itself import an unreasonable hardship on the applicant. . . . 227 Md. at 250-51.

In 2 Rathkopf, The Law of Zoning and Planning, (3d ed. 1972) 28, 29, the following criteria for determining whether "practical difficulty" has been established are set forth:

"1) Whether compliance with the strict letter of the restrictions governing area, set back, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render

conformity with such restrictions unnecessarily burdensome.

"2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners."

"3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured."

Id., at 214-15.

"Troublesome awareness of animosity" between Brooks and the Protestants in this case was specifically noted by the Board of Appeals in its Opinion. Observation by the Board as to the conduct of the Protestants was as follows:

"[T]he Protestants . . . commenced construction of a house on his neighboring property after the Petitioner's garage addition was in place. His objection to the closeness of what would become his residence to that of Mr. Holmes appears to be self-imposed and, seemingly could have been avoided.

The test in this court to determine whether the decision by the Board of Appeals is to be affirmed, is whether the issue before the Board was "fairly debatable." Courts are not to substitute their opinion and/or view of the facts for that of the expertise of the administrative agency charged, by law, with decision making on the issue. McLean, 270 Md. at 215. As to deference to administrative decisions on zoning variance issues, see also: Holt v. Dist. of Columbia Bd. of Zoning, etc., 397 2d. 936, 942-43 (D.C. App. 1979).

The latest edition of Rathkopf is the Fourth Edition (1975). The same text is found in similar language there in Volume 3, §38.04, p. 38-57, 38-58 (Release §27, 2/88).

C.

There is one other aspect of this case that calls for judicial comment. In the opinion of the Board, the Brooks action in going against the letter of the zoning regulations constituted an intentional act on his part:

"In disregard of the limits of his permit, Petitioner personally commenced to build the garage as an attachment to his dwelling. Petitioner's Exhibit No. 2 shows the structure as a detached garage, aesthetically better than in the rear of his property as approved on the building permit."

In his testimony, the Petitioner admitted that he erred in positioning his garage contrary to the authorized location of his permit, but determined that the total aesthetics of his property would be better. After acquiring the building permit, he decided that the rear yard location placed the garage only three feet from his neighbor's property, and left only a four foot space between the corner of his house and the proposed rear yard structure. For these reasons, Petitioner took it upon himself to change his plan of construction, a condition he stated as not questioned by subsequent visits by County Inspectors.

"[W]e view with some concern the situation where an approved building permit was knowingly ignored by the Petitioner to satisfy his personal desires without forethought of the consequences of his action in building an unauthorized structure the size of the subject garage. To compound our bewilderment, the Petitioner is a professional in the construction industry, thoroughly acquainted with building permits and licenses. He undoubtedly understood the rules and regulations to be followed, but obviously disregarded their application to the projects he plans for his home and family."

To further complicate this decision, the Petitioner sought a variance setback after the fact, making it obvious that any hardship or difficulty he incurs has been self-imposed.

Is this so described purposeful conduct by Brooks enough to block his right to obtain the variance? McLean gives some direction on this point:

It is also contended by McLean that Soley is precluded from asserting "practical difficulty" because he was charged with knowledge of the backyard requirements when he purchased this property. We see no merit in this argument. We noted in

Kennedy v. Bd. of Co. Comm'rs, 262 Md. 1, 21, 276 A.2d 646 (1971), citing Lorola. Brooks that this "rule" is more strictly applied in "use variance" cases than in cases of "area variance" such as the one at bar. In other words, it has less significance where we are concerned with "practical difficulty" than it does in the event of "hardship" which usually characterized the "use variance" cases.

Id. at 215.

This court finds the strength of the Board of Appeals condemnation of the Brooks action somewhat attenuated by the testimony on which the conclusion was based. Brooks is an electrical contractor with 17-18 years of experience:

- Q: If you would tell the Board, what experience do you have in surveying and survey work for the sake of laying out your position of where the garage would be? Would you call that what experience you have in surveying?
- A: I have some experience as far as doing layout work for footings and final work related to our business, grading and so on.
- Q: And you are a contractor, subcontractor?
- A: We are an electrical contractor and we are also a subcontractor helping other people.
- (T.31-32)
- Q: So it struck you one day to put the plans together, to go down to the county and apply for a permit for a previously unplanned garage?
- A: Yes sir.
- Q: Did you go down yourself?
- A: No, sir.
- Q: But you got the report of what happened from one of your employees?
- A: Yes, sir.
- Q: But you are familiar, very familiar with the [permit] process, aren't you?
- A: Of some permits, yes.
- Q: You know the zoning office, the people that monitor zoning are different than the inspectors that coming out and look at your construction?
- A: Yes, sir.

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Q: You knew when you put this garage on an attached structure, you were deviating from the approved building permit plan, didn't you?

A: Yes.

(T.44-46).

Both the Kennedy and Lorola cases show fact situations that fall short of the purposeful, or at least reckless and non-attentive conduct of Brooks in this case as found by the Board of Appeals.

Certainly, it is not realistic to think we can encourage compliance with the law if we allow one to get away with a purposeful violation of the law. Human nature, with attendant expectant resentment, dictates the conclusion that a purposeful intentional flout of the zoning regulations should not ordinarily be allowed to stand. But the law puts substance over emotion and asks whether the variance would have been granted in any event. According to the Board of Appeals decision here, the variance would have been granted. That fact is the most important fact.

In the case at bar, there are factors mitigating against telling Brooks to tear down his garage for purposeful conduct: (1) There is a finding of practical difficulty borne out by the evidence, (2) At least a minimal attenuation of the Board of Appeals opinion on intentional conduct is seen by the evidence, (3) The Protestant built his structure after the Brooks construction was complete (although there would be no problem where he built had Brooks followed his original plan), and (4) The building inspectors did approve the building on several visits to the site. While this court views the situation at bar as stronger toward the issuance of

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a tear down order than the situation that was before the court in McLean v. Solay, the court cannot say that its opinion on this point should be legally substituted for that of the Board of Appeals.

D.

For the reasons stated above, this court concludes that the Order of the Board of Appeals is affirmed. It is so ORDERED by the Circuit Court for Baltimore County this 14th day of May, 1992.

John F. Fader II, Judge

CC: David L. Fortz, Esq.
Curtis C. Coon, Esq.

opa.492

IN THE MATTER OF THE APPLICATION OF ROBERT H. AND SUSAN L. BROOKS FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE WEST SIDE OF PIRKESVILLE ROAD, 35' SOUTH OF CENTERLINE OF MR. WILSON LANE (8833 PIRKESVILLE ROAD) 3RD ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY CASE NO. 91-CV-5495

APPELLEES' RESPONSE MEMORANDUM

In accordance with Maryland Rule 812, Appellees submit the following Memorandum:

STATEMENT OF ISSUE

Whether the County Board of Appeals of Baltimore County committed error in granting a variance to Robert H. and Susan L. Brooks from § 1802.3.C.1 to permit an addition to a dwelling to have a 12.5 ft. rear setback in lieu of the required 30 ft.?

Appellees do not recognize the Appellant's first issue as it does not correctly state an issue and the test to be applied by this Court in deciding such an issue. The correct test for judicial review of an act of an administrative agency such as the County Board of Appeals of Baltimore County has been defined as "whether a reasoning mind reasonably could have reached the factual conclusion the Agency reached and this need not and must not be either judicial fact finding or a substitution of judicial judgment for agency judgment." As is clear by Appellant's Memorandum, Appellant would have this Court substitute its

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judgment for that of the County Board of Appeals of Baltimore County.

Appellant's second issue is likewise incorrect as it presumes that the County Board of Appeals engaged in any speculation as to a collateral matter and it further presumes that such speculation entered into its ultimate finding. There is nothing in the September 20, 1991 Order of the County Board of Appeals of Baltimore County that supports, confirms, or infers that any speculation took place regarding the litigation mentioned involving the Appellant and the Appellees.

Appellant's Memorandum is further defective in that virtually all of the descriptions of testimony cited by Appellant mischaracterize and falsely state the substance of the cited testimony. In paragraph No. 3 of Appellant's Memorandum it states:

"Robert Brooks is a licensed electrician and has experience in surveying and knows the building permit process (T.45, T.47)."

A careful review of the transcript cited reveals that Mr. Brooks testified that he is familiar with the process of some permits.

Appellant's Memorandum also cites transcript pages 46 and 25 for the proposition that "Though he was aware of the prescribed location for the garage, Brooks, who admits that he fully understood what he was undertaking was wrong, nonetheless built the garage attached to his existing home and two car garage." Again, Appellants have mischaracterized the testimony

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as the transcript references reflect only that Mr. Brooks admitted that his construction of the garage was a deviation from that described in the permit.

Appellant's Memorandum goes on to state "The result is that Brooks now has a four car garage attached to his corner lot home (T.25)." Strangely, a careful review of page 25 of the transcript discloses that there is no testimony on that page that even refers to the so-called attached "four car garage".

On page 4 of Appellant's Memorandum, Appellants contend that page 46 of the transcript establishes that "Mr. Brooks actually had a voice in how his entire lot was developed from an unimproved state to finish (T.48)." A review of that page of the transcript reflects that Mr. Brooks' testimony was that he had "a choice to make" with regard to the location of a stairway to the basement of the home. Nothing in the testimony contained on page 48 even remotely establishes that Mr. Brooks had a voice in how his "entire lot" was developed (apart from the location of this stairway).

Appellant's Memoranda also states "Mr. Brooks openly admits that he intentionally disregarded all representations he made to the zoning authorities regarding the location of the garage (T.46) and, to put it bluntly, tried to 'pull one over' on the zoning authorities."

Here again a review of page 46 of the transcript reflects only that Mr. Brooks testified that he was aware that construction of an attached structure was a deviation from the

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approved building permit (T. page 46, lines 8 through 11). There is no testimony in the transcript to the effect that Mr. Brooks tried to "pull one over" on the zoning authorities, despite Appellant's assertion to the contrary.

Appellant's Memorandum (page 4) also includes the following:

"In addition to unilaterally changing the location of the garage, it also appears that Mr. Brooks built the garage, in part to house his commercial truck instead of parking it two blocks away at the business lot (T.41)."

Contrary to Appellant's assertion, page 41 of the transcript (and page 40 as well) contain no testimony supporting Appellant's proposition that Mr. Brooks built a garage "in part to house his commercial truck."

On page 5 of Appellant's Memorandum it states:

"Last, the Board excluded an [sic] evidence regarding a collateral suit between the parties, (T.64, 65) but made reference to the suit in its findings of fact and opinion. This is a clear error."

Appellants argue that the mere inclusion of a reference to the collateral lawsuit reflects that the County Board of Appeals of Baltimore County speculated on the collateral suit and such speculation was, in part, the basis for its order granting Appellee a variance of the thirty foot rear yard setback requirement. The County Board of Appeals of Baltimore County stated in its September 20, 1991 Order that "Counsel for the Petitioner entered into the hearing the fact that Petitioner has filed suit in the Courts against the protestant. The Board refused to hear the particulars of this lawsuit." Indeed, there

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is no indication in the body of the Order that the County Board of Appeals of Baltimore County speculated, or based any of its conclusions upon the existence of this lawsuit. It would seem from a review of the Order that mention of the collateral suit was made as it related to the Board of Appeals' observation that there was "animosity between the principals involved". Certainly, Appellant's bald allegation that speculation took place does nothing in terms of proving or disproving the proper legal basis for the County Board of Appeals of Baltimore County's Order granting the variance.

Despite Appellant's Petition alleging that the County Board of Appeals for Baltimore County speculated as to the content of a suit (page 2 paragraph (b)), Appellant's Memorandum contains absolutely no evidence citations to establish that any such speculation took place and/or that it had anything whatsoever to do with the Order granting the variance. This deficiency, along with many of the defects in Appellant's Memorandum cited herein, clearly reflect Appellant's hope and wish that this Court simply substitute its judgment for that of the administrative agency. This is contrary to the current State of Maryland Law with regard to appeals from decisions of administrative agencies. Montgomery County v. National Capital Realty, 267 Md. 376 (1977).

Finally, Appellees suggest that Appellant has failed to meet their burden of establishing that the County Board of Appeals of Baltimore County's Order granting the variance was issued based upon "legally sufficient evidence to support its decision",

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Montgomery County v. National Capital Realty Corporation, 267 Md. 364, 367 (1977). As the Appellant, it is his duty to bear the burden of proving that there was a legally insufficient evidentiary basis for the decision made to grant Appellees a variance. Appellee would submit that Appellant has failed to meet its burden and, therefore, the instant Appeal should be denied.

David H. North
David H. North
Polovoy & McCoy
34 Market Place, Suite 801
Baltimore, MD 21202
(410) 685-2100
Attorney for Appellees

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of February, 1992, a copy of the foregoing Appellees' Response Memorandum was mailed, first class, postage prepaid to Curtis C. Coon, Esq., 400 West Pennsylvania Avenue, Towson, Maryland 21204-4264.

David H. North
David H. North

brooks.app
dibi

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1802.3-Special Regulations for Certain Existing Developments or Subdivisions and for Small Lots or Tracts in D.R. Zones. [Bill No. 100, 1970.]

A. In D.R. zones, contrary provisions of this article notwithstanding, the provisions of or pursuant to this subsection shall apply to the use, occupancy, and development of, the alteration or expansion of structures upon, and administrative procedures with respect to: [Bill No. 100, 1970.]

1. Any lot which is in a recorded residential subdivision approved by the Baltimore County Planning Board or Baltimore County Planning Commission and which has been used, occupied, or improved in accordance with the approved subdivision plan: [Bill No. 100, 1970.]

2. Any land in a subdivision tract which was laid out in accordance with the regulations of residence zoning classifications now rescinded, for which a subdivision plan tentatively approved by the Planning Board remains in effect, and which has not been used, occupied, or improved in accordance with such plan: [Bill No. 100, 1970.]

3. Any lot, or tract of lots in single ownership, which is not in an existing development or subdivision as described in Subparagraph 1 or 2 and which is too small in gross area to accommodate six dwelling or density units in accordance with the maximum permitted density in the D.R. zone in which such tract is located: [Bill No. 100, 1970.]

4. Any lot, or tract of lots in single ownership, which is not in an existing development or subdivision as described in Subparagraph 1 or 2 and which is less than one-half acre in area, regardless of the number of dwelling or density units that would be permitted at the maximum permitted density in the zone in which it is located. [Bill No. 100, 1970.]

5. Any lot, or tract of lots in single ownership which is in a duly recorded subdivision plat not approved by the Baltimore County Planning Board or Planning Commission. [Bill No. 100, 1970.]

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B. Standards Applicable to Existing Developments Etc. The minimum standards for lot area, lot width, front-yard depth, single-side-yard width, sum of widths of both side yards, rear-yard depth, and height with respect to each use in a development described in Subparagraph A.1. above, shall be as prescribed by the zoning regulations applicable to such use at the time the plan was approved by the Planning Board or Commission; however, the same or similar standards may be codified and comparable bulk (height or area) standards for different permitted uses may be established and codified under Section 504, and these standards shall thereupon control in such existing developments. Development of any subdivision described in Subparagraph A.1. shall be in accordance with the tentatively approved subdivision plan therefor. Standards for development of lots or tracts described in Subparagraphs A.3, A.4 or A.5 shall be as set forth in Paragraph C, below. [Bill No. 100, 1970.]

C. Development Standards for Small Lots or Tracts. [Bill No. 100, 1970.]

1. Any dwelling hereafter constructed on a lot or tract described in Subparagraph A.3 or A.4 shall comply with the requirements of the following table:

Existing Zoning Classification	Minimum Lot Area, in Acres	Minimum Front-Yard Width, in Feet	Minimum Side-Yard Width, in Feet	Minimum Rear-Yard Width, in Feet	Minimum Lot Depth, in Feet	Minimum Front-Yard Setback, in Feet	Minimum Side-Yard Setback, in Feet	Minimum Rear-Yard Setback, in Feet
D.R. 1	1.00	100	40	15	60	25	5	5
D.R. 2	1.00	75	30	10	30	20	5	5
D.R. 3	1.00	50	20	10	15	15	5	5
D.R. 4	1.00	25	10	10	10	10	5	5
D.R. 5	1.00	25	10	10	10	10	5	5

[Bill No. 100, 1970.]

2. Other standards for development of small lots on tracts as so described shall be as set forth in provisions adopted pursuant to the authority of Section 504. [Bill No. 100, 1970.]

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IN THE MATTER OF THE APPLICATION OF ROBERT H. AND SUSAN L. BROOKS FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE WEST SIDE OF PIKEVILLE ROAD, 35' SOUTH OF CENTERLINE OF MT. WILSON LANE (8832 PIKEVILLE ROAD) 3RD ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

CG Doc. No. 5

Folio No. 127

File No. 91-CV-5495

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 Judson H. Lipowitz, 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 Commissioner and the Board of Appeals of Baltimore County:

No. 91-148-A
September 26, 1990 Petition for Variances filed by Mr. and Mrs. Brooks.
Publication in newspapers (no copy in file).
November 5 Certificate of Posting of property.
November 20 Comments of Baltimore County Zoning Plans Advisory Committee.
November 29 Hearing held on Petition by the Zoning Commissioner.
December 12 Order of the Zoning Commissioner DENYING Petition in part and GRANTING in part.

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Robert H. and Susan L. Brooks, File No. 91-CV-5495
Case No. 91-148-A

January 10, 1991 Notice of Appeal received from Robert A. McFarland, Esquire on behalf of Mr. and Mrs. Brooks, Petitioners/Appellants.
September 4, 1991 Hearing before the Board of Appeals.
September 20 Opinion and Order of the Board GRANTING Petition for Variance.
October 18 On or for Appeal filed in the Circuit Court for Baltimore County by Curtis C. Coon, Esquire on behalf of Mr. Milo Heckler and Vermont Building and Development Corporation, Protestants.
October 21 Petition to accompany appeal filed in the Circuit Court for Baltimore County by Mr. Coon.
October 23 Certificate of Notice sent to interested parties.
November 15 Transcript of testimony filed.

Petitioner's Exhibit No. 1 - Schematic of property - detached garage
2 - Schematic of property - attached garage
3 - Photocopies of permits & inspection
4 - A-Photo of property west on Wilson Rd., B-Photo-view of garage, C-Photo-view of house
5 - Photo of house & macadam driveway

Protestant's Exhibit No. 1 - Plot Plan with correction
2 - Plot of 3 lots
3 - Deed between Vermont Co. & R. Brooks (Liber 8368, Page 524)

November 15, 1991 Record of Proceedings filed in the Circuit Court 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.

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Robert H. and Susan L. Brooks, File No. 91-CV-5495
Case No. 91-148-A

Respectfully submitted,

Linda Lee M. Kusmaul
Linda Lee M. Kusmaul, Legal Secretary,
County Board of Appeals, Room 315, County
Office Building, 111 W. Chesapeake Ave.,
Towson, Maryland 21204 (301) 887-3180

cc: Curtis C. Coon, Esquire
Mr. Milo Heckler
Vermont Building and Development Corp.
Robert A. McFarland, Esquire
Mr. and Mrs. Robert H. Brooks

IN THE MATTER OF THE APPLICATION OF ROBERT H. AND SUSAN L. BROOKS FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE WEST SIDE OF PIKEVILLE ROAD, 35' SOUTH OF CENTERLINE OF MT. WILSON LANE (8832 PIKEVILLE ROAD) 3RD ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

CG Doc. No. 5

Folio No. 127

File No. 91-CV-5495

CERTIFICATE OF NOTICE

Madam Clerk:
Pursuant to the provisions of Rule 8-2(d) of the Maryland Rules of Procedure, William T. Hackett, Harry E. Buchheister, Jr. and Judson H. Lipowitz, 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, Curtis C. Coon, Esquire, 400 W. Pennsylvania Avenue, Towson, Maryland 21204-4264, Counsel for Plaintiffs; Mr. Milo Heckler, 3805 Cherrybrook Road, Randallstown, Maryland 21133 and Vermont Building and Development Corporation, c/o Curtis C. Coon, Esquire, 400 W. Pennsylvania Avenue, Towson, Maryland 21204-4264, Plaintiffs; Robert A. McFarland, Esquire, Polovoy & McCoy, 34 Market Place, Suite 801, Baltimore, Maryland 21202, Counsel for Mr. and Mrs. Brooks; Mr. Robert H. and Ms. Susan L. Brooks, 8832 Pikeville Road, Pikeville, Maryland 21208; and Michael B. Sauer, Esquire, c/o County Board of Appeals, Room 315, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204 on this 23rd day of October, 1991.

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Curtis C. Coon, Esquire, 400 W. Pennsylvania Avenue, Towson, Maryland 21204-4264, Counsel for Plaintiffs; Mr. Milo Heckler, 3805 Cherrybrook Road, Randallstown, Maryland 21133 and Vermont Building and Development Corporation, c/o Curtis C. Coon, Esquire, 400 W. Pennsylvania Avenue, Towson, Maryland 21204-4264, Plaintiffs; Robert A. McFarland, Esquire, Polovoy & McCoy, 34 Market Place, Suite 801, Baltimore, Maryland 21202, Counsel for Mr. and Mrs. Brooks; Mr. Robert H. and Ms. Susan L. Brooks, 8832 Pikeville Road, Pikeville, Maryland 21208; and Michael B. Sauer, Esquire, c/o County Board of Appeals, Room 315, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204, a copy of which Notice is attached hereto and prayed that it may be made a part hereof.

MICROFILMED

Robert H. and Susan L. Brooks, File No. 91-CV-5495
Case No. 91-148-A

Linda Lee M. Kusmaul
Linda Lee M. Kusmaul, Legal Secretary,
County Board of Appeals, Room 315, County
Office Building, 111 W. Chesapeake Ave.,
Towson, Maryland 21204 (301) 887-3180

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Curtis C. Coon, Esquire, 400 W. Pennsylvania Avenue, Towson, Maryland 21204-4264, Counsel for Plaintiffs; Mr. Milo Heckler, 3805 Cherrybrook Road, Randallstown, Maryland 21133 and Vermont Building and Development Corporation, c/o Curtis C. Coon, Esquire, 400 W. Pennsylvania Avenue, Towson, Maryland 21204-4264, Plaintiffs; Robert A. McFarland, Esquire, Polovoy & McCoy, 34 Market Place, Suite 801, Baltimore, Maryland 21202, Counsel for Mr. and Mrs. Brooks; Mr. Robert H. and Ms. Susan L. Brooks, 8832 Pikeville Road, Pikeville, Maryland 21208; and Michael B. Sauer, Esquire, c/o County Board of Appeals, Room 315, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204 on this 23rd day of October, 1991.

Linda Lee M. Kusmaul
Linda Lee M. Kusmaul, Legal Secretary,
County Board of Appeals, Room 315, County
Office Building, 111 W. Chesapeake Ave.,
Towson, Maryland 21204 (301) 887-3180

MICROFILMED



County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
1111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 867-3180

October 23, 1991

Curtis C. Coon, Esquire
400 W. Pennsylvania Avenue
Towson, Maryland 21204-4264

Re: Case No. 91-148-A (Robert H. and Susan L. Brooks)

Dear Mr. Coon:

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. In addition, all costs incurred for 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,

Linda Lee M. Kusmaul
Linda Lee M. Kusmaul
Legal Secretary

Enclosure

cc: Mr. Milo Heckler
Vermont Building and Development Corp.

MICROFILMED



County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
1111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 867-3180

October 23, 1991

Robert A. McFarland, Esquire
Polovoy & McCoy
34 Market Place
Suite 801
Baltimore, Maryland 21202

Re: Case No. 91-148-A (Robert H. and Susan L. Brooks)

Dear Mr. McFarland:

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,

Linda Lee M. Kusmaul
Linda Lee M. Kusmaul
Legal Secretary

Enclosure

cc: Mr. and Mrs. Robert H. Brooks
P. David Fields
Pat Keller
Lawrence E. Schmidt
Timothy N. Kotroco
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, Director
Zoning Administration

MICROFILMED

IN THE MATTER OF THE
APPLICATION OF ROBERT H.
AND SUSAN L. BROOKS
FOR A ZONING VARIANCE ON
PROPERTY LOCATED ON THE
WEST SIDE PIKEVILLE ROAD,
35' SOUTH OF CENTERLINE OF
MT. WILSON LANE (8832
PIKEVILLE ROAD)
3RD ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
Case No.

PETITION

Appellants, Milo Heckler and Vermont Building and Development Corporation, by their undersigned counsel hereby file their Petition setting forth the action appealed from, the error committed by the agency in taking such action, and the relief sought, and all is required under Rule B2 of the Maryland Rules of Civil Procedure, and say:

1. The action appealed from is the Order of the County Board of Appeals of Baltimore County passed in case no. 91-148-A on September 20, 1991. A copy of the Order is attached hereto.

2. The error committed by the agency is that:

(a) It improperly applied the law regarding variance from section 1802.3.c.1, permitting a proposed addition to a dwelling to have a 12.5' rear setback rather than a 30' setback as required. The

1

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commission concluded that the hardship was brought upon the Petitioner by himself and none other. The Petitioner misrepresented his intentions to Baltimore County in applying for the building permit; the Petitioner, after obtaining the building permit, built his garage on a site contrary to that for which he had permission; Petitioner is in the building trade as a profession and is aware of the significance of zoning setback requirements and of building permit requirements; Petitioner further sought the variance only after the garage was completed and after complaint was made by the Appellant.

(b) The Board speculated as to the content of a suit between Brooks and Vermont Building and Development Corporation and in fact, speculated to conclusions which are opposite to the only facts on the record regarding the location of the residence Vermont Building and Development Corporation built on the adjoining lot.

3. The relief sought by the Petitioner is that the Order of the Board of Appeals of Baltimore County be reversed and of the Order of Zoning Commissioner, requiring the removal of the garage, be affirmed.

WHEREFORE, the appellant moves that this Honorable Court grant it the relief requested herein, and such other and further relief as its cause may require.

Curtis C. Coon
Curtis C. Coon
400 West Pennsylvania Avenue
Towson, Maryland 21204-4264
(301) 337-4991

MICROFILMED

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of October, 1991 a copy of the foregoing Petition was mailed first-class, postage pre-paid to William T. Hackett, Chairman, County Board of Appeals of Baltimore County, County Office Building, Room 315, 111 West Chesapeake Avenue, Towson, Maryland 21204.

Curtis C. Coon
Curtis C. Coon

A signed/Noticed Per

CERTIFICATE OF SERVICE
91 OCT 17 AM 11:36

Mr. Clerk:

Please enter an Appeal on behalf of Milo Heckler, and Vermont Building and Development Corporation, protestants, from the Order of the Board of Appeals of Baltimore County, Maryland, passed in the above case on September 20, 1991.

Curtis C. Coon
Curtis C. Coon
400 West Pennsylvania Avenue
Towson, Maryland 21204-4264
(301) 337-4991

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of October, 1991 a copy of the foregoing Order of Appeal was mailed first-class, postage pre-paid to William T. Hackett, Chairman, County Board of Appeals of Baltimore County, County Office Building, Room 315, 111 West Chesapeake Avenue, Towson, Maryland 21204.

Curtis C. Coon
Curtis C. Coon

MICROFILMED

MICROFILMED

IN THE MATTER OF THE
APPLICATION OF ROBERT H.
AND SUSAN L. BROOKS
FOR A ZONING VARIANCE ON
PROPERTY LOCATED ON THE
WEST SIDE PIKEVILLE ROAD,
35' SOUTH OF CENTERLINE OF
MT. WILSON LANE (8832
PIKEVILLE ROAD)
3RD ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
CA E NO. 91-148-A

ORDER

This case is an appeal from the decision of the Zoning Commissioner, dated December 12, 1990, wherein the Petitioner, Robert Brooks, was denied a 12.5 foot rear yard setback for a garage in lieu of the required 30 feet. The Zoning Commissioner did grant a variance from Section 400.1 to permit a proposed swimming pool to be located in the side yard in lieu of the rear yard.

This matter of the setback variance for a garage on the .26 acre parcel at 8832 Pikeville Road in the Third Councilmanic District is puzzling to the Board by the fact that Petitioner constructed the subject garage at a location contrary to the location approved in his permit.

Mr. Milo Heckler, President of the Vermont Building Company, and the Protestant in this case, constructed the two-story colonial residence for the Petitioner and testified to the design of the house and the attached one-car garage therein. Upon the date of settlement and transfer of the deed from Heckler to Holmes, the Petitioner applied for a permit to build a detached garage in the rear yard. In disregard of the limits of his permit, Petitioner

Robert H. and Susan L. Brooks
Case No. 91-148-A

personally commenced to build the garage as an attachment to his dwelling. Petitioner's Exhibit No. 2 shows the structure adjacent to his existing garage, rather than in the rear of his property as approved on the building permit.

In his testimony, the Petitioner admitted that he erred in positioning his garage contrary to the authorized location of his permit, but determined that the total aesthetics of his property would be better. After acquiring the building permit, he decided that the rear yard location placed the garage only three feet from his neighbor's property, and left only a four foot space between the corner of his house and the proposed rear yard structure. For these reasons, Petitioner took it upon himself to change his plan of construction, a condition he stated was not questioned by subsequent visits by County Inspectors.

Mr. Milo Heckler, as the original contractor and property owner, voiced his opposition to the addition to the house. He objected because it would be too close to his property line and his proposed residence on the adjacent vacant lot, a setback requiring a variance of 12.5 feet in lieu of 30 feet.

In arriving at a fair and reasonable judgment in this case, there has been a troubling awareness of animosity between the principals involved. Counsel for the Petitioner entered into the hearing the fact that Petitioner has filed suit in the Courts against the Protestant. The Board refused to hear the particulars of this lawsuit. However, we do note from testimony heard that the Protestant, Mr. Heckler, commenced construction of a house on his

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Robert H. and Susan L. Brooks
Case No. 91-148-A

neighboring property after the Petitioner's garage addition was in place. His objection to the closeness of what would become his residence to that of Mr. Holmes appears to be self-imposed and, seemingly could have been avoided.

Regardless, we view with some concern the situation where an approved building permit was knowingly ignored by the Petitioner to satisfy his personal desires without forethought of the consequences of his action in building an unauthorized structure the size of the subject garage. To compound our bewilderment, the Petitioner is a professional in the construction industry, thoroughly acquainted with building permits and licenses. He undoubtedly understood the rules and regulations to be followed, but obviously disregarded their application to the projects he plans for his home and family.

To further complicate this decision, the Petitioner sought a variance setback after the fact, making it obvious that any hardship or difficulty he incurs has been self-imposed.

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

The Board in its deliberations does concur that the plans, of the total property and its relationship to neighboring properties shows merit with the garage attachment, rather than in the rear yard. The 23 by 25 foot garage and breezeway attached to the house-proper allows for more open space in the rear yard and a

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Robert H. and Susan L. Brooks
Case No. 91-148-A

greater distance between buildings.

The Board acknowledges that the Petitioner made a horrendous error in the process of his building procedure, but from the evidence evaluated the variance requested should be granted as there is no adverse effect on the health, safety and/or general welfare of the public. To remove the attached garage to the rear of the property would be a practical difficulty and unreasonable hardship for the Petitioner, even though it was self-created. The Board also makes note that the attached garage, while under construction, met with the approval of County Inspectors on several visits to the site.

ORDER

IT IS THEREFORE this 20th day of September, 1991 by the County Board of Appeals of Baltimore County ORDERED that the Petition for a Zoning Variance from Section 1802.3.C.1 to permit a proposed addition to a dwelling to have a 12.5 foot rear setback in lieu of the required 30 feet is hereby GRANTED.

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. Buchhalter, Jr.
Harry E. Buchhalter, Jr., Clerk

Jason H. Lipovits
Jason H. Lipovits

MICROFILMED

IN RE: PETITION FOR ZONING VARIANCE
W/S Pikeville Road, 35 ft. S
C/O of Mt. Wilson Lane
8832 Pikeville Road
3rd Election District
3rd Councilmanic District

BEFORE THE
ZONING COMMISSIONER
BALTIMORE COUNTY
Case No. 91-148-A

ROBERT H. BROOKS
and
SUSAN L. BROOKS
Petitioners

APPEAL

DEAR ZONING COMMISSIONER:

Please enter an appeal to the Board of Appeals for Baltimore County in the above referenced case on behalf of the Petitioner.

ROBERT J. MCFARLAND
POLINSKY & MCCOY
34 Market Place, Suite 801
Baltimore, Maryland 21202
(301) 685-2100
Attorney for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16 day of January, 1991, a copy of the foregoing Appeal was mailed, postage prepaid, to People's Counsel, Court House, Towson, Maryland 21204.

ROBERT A. MCFARLAND

MICROFILMED

IN RE: PETITION FOR ZONING VARIANCE
W/S Pikeville Road, 35 ft. S
C/O of Mt. Wilson Lane
8832 Pikeville Road
3rd Election District
3rd Councilmanic District

BEFORE THE
ZONING COMMISSIONER
BALTIMORE COUNTY
Case No. 91-148-A

Robert H. Brooks, et ux
Petitioners

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a zoning variance from Sections 1802.3.C.1 to permit a proposed addition to a dwelling to have a 12.5 ft. rear setback in lieu of the required 30 ft. and from Section 400.1 to permit a detached accessory structure (proposed pool) to be located in the side yard in lieu of the rear yard outside of the 1/3 of the lot farthest removed from the side street, as more particularly described on Petitioners' Exhibit No. 1.

The Petitioner, Robert H. Brooks, appeared and testified. Mr. Milo Heckler, President, Vermont Building Development Company appeared as a Protestant and was represented by Curtis C. Coon, Esquire.

Testimony indicated that the subject property, known as 8832 Pikeville Road consists of .26 acres +/-, zoned D.R.3.5 and is currently improved with a single family dwelling and two one-car garage, as indicated on Petitioners' Exhibit No. 1.

The Petitioner testified that he received a permit for the subject garage but candidly admitted that he did not construct the garage in the location indicated on the plat plan marked Protestant's Exhibit No. 1.

ORDER RECEIVED FOR FILING
Date 12/13/90
By [Signature]

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The application for permit and the building permit, itself, clearly indicated that the subject structure was to be a detached garage in the rear yard. The Petitioner clearly misrepresented his intent on the application and disregarded the limits of the building permit issued to him on September 29, 1989.

The Petitioner has also requested permission to place a 32 x 16 ft. swimming pool in his side yard in lieu of the rear yard, as indicated on Petitioners' Exhibit No. 1. The Petitioner testified that in view of his work schedule, he is unable to take vacations and that the pool serves as summer recreational activity for both he and his family. He indicated that, if the requested variance regarding the pool is denied, he would suffer an undue hardship in that there is insufficient room in his rear yard to locate the 32 x 16 rectangular pool.

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 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 compliance unnecessarily 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.

38 (1974).

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It is clear from the testimony that if the variance is granted in part, 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 variance relative to the subject pool was not granted. However, the Petitioner has created his own hardship and practical difficulty regarding the subject garage. The Petitioner clearly understood the scope of the permit issued to him on September 29, 1989 but, as noted above, he disregarded both the letter and spirit of same. Therefore, it has not 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. Therefore, the variance relief requested relative to the subject garage shall be denied.

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 in part and denied in part.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 16 day of December, 1990 that the Petition for a Zoning Variance from Section 1802.3.C.1 to permit a proposed addition to a dwelling to have a 12.5 ft. rear setback in lieu of the required 30 ft. is hereby DENIED; and,

IT IS FURTHER ORDERED that all improvements on the subject site not in compliance with this Order shall be removed on or before January 1, 1992; and,

IT IS FURTHER ORDERED that a zoning variance from Section 400.1 to permit a detached accessory structure (proposed pool) to be located in the

side yard in lieu of the rear yard outside of the 1/3 of the lot farthest removed from the side street, is accordance with Petitioners' Exhibit No. 1, is hereby GRANTED, subject, however, to the following restrictions which are conditions precedent the relief granted herein:

1. The 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. Upon request and reasonable notice, the Petitioners shall permit a representative of the Zoning Enforcement Division to make an inspection of the subject property to insure compliance with this Order.

JRH/mm
cc: Peoples Counsel

Robert Haines
ROBERT HAINES
Zoning Commissioner
for Baltimore County

111 West Chesapeake Avenue
Towson, MD 21204

887-3555

December 12, 1990

Mr. and Mrs. Robert H. Brooks
8832 Pikeville Road
Pikeville, Maryland 21208

RE: Petition for Zoning Variance
Case No. 91-148-A

Dear Mr. and Mrs. Brooks:

Enclosed please find the Decision rendered in the above captioned case. The Petition for Zoning Variance has been granted in part and denied in part, 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 887-3591.

Very truly yours,
Robert Haines
Robert Haines
Zoning Commissioner

JRH:mm
att:
cc: Peoples Counsel
cc: Curtis C. Coon, Esquire
cc: Mr. Milo Heckler

MICROFILMED

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91-148-A

MAP WV 9-G
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of this G
DATE 12-2-71
BF
Love
Party
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91-148-A

12-5, 1990

Publish

91-148-A

MICROFILMED

91-148-A

Date of return: February 15, 1991.

TOWSON, MD., 12-5 199

OWINGS MILLS TIMES,

\$68.40

Account: R-001-6150
Number

Date _____

04404#0012NICHRC \$35.00

04A04#0012MICHRC
BA C002:33PM09-05-90
Please make checks payable to Baltimore County NEXT BUSINESS D

Cashier Validation



Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Account: R-001-6150
Number: 91-148-4

receipt

Date:

1/20/90

APPEALS

APPEAL FEES	QTY	PRICE
150 - OF ALL OTHER ORDERS	1 X	\$125.00
150 - POSTING SIGNS / ADVERTISING	1 X	\$625.00
TOTAL:		\$150.00

LAST NAME OF OWNER: BROOKS

MICROFILMED

0440400130R1CWC \$150.00

Please Make Checks Payable To: Baltimore County 00140PM1-29-90
NEXT BUSINESS DAY

Cashier Validation:



Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

receipt

Account: R-001-6150
Number: 3989

Date:

11/26/90

M910047D

PUBLIC HEARING FEES	QTY	PRICE
080 - POSTING SIGNS / ADVERTISING	1 X	\$93.40
TOTAL:		\$93.40

LAST NAME OF OWNER: BROOKS

MICROFILMED

0440400130R1CWC \$93.40
BA 00140PM1-29-90

Please make checks payable to: Baltimore County

Cashier Validation:

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

DATE: 11-20-90



Denise F. Rasmussen
County Executive

Mr. & Mrs. Robert H. Brooks
8832 Pikeville Road
Pikesville, Maryland 21208

Re: Petition for Zoning Variance
CASE NUMBER: 91-148-4
W/S Pikeville Road, 35' S of Mt. Wilson Lane
8832 Pikeville Road
3rd Election District - 3rd Councilmanic
Petitioner(s): Robert H. Brooks, et al
HEARING: THURSDAY, NOVEMBER 29, 1990 at 2:00 p.m.

Dear Petitioners:

Please be advised that \$ 93.40 is due for advertising and posting of the above captioned property.

THIS FEE MUST BE PAID AND THE ZONING SIGN & POST SET(S) RETURNED ON THE DAY OF THE HEARING ON THE ABOVE SHOWN-SET ISSUE. DO NOT REMOVE THE SIGN & POST SET(S) FROM THE PROPERTY UNTIL THE DAY OF THE HEARING.

Please make your check payable to Baltimore County, Maryland. Bring the check and the sign & post set(s) to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Room 113, Towson, Maryland 21204 (113) minutes before your hearing is scheduled to begin.

Be advised that should you fail to return the sign & post set(s), there will be an additional \$25.00 added to the above amount for each such set not returned.

Very truly yours,

J. Robert Haines
J. ROBERT HAINES
ZONING COMMISSIONER

JRH:gs

MICROFILMED

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

October 18, 1990

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 on the following:

Petition for Zoning Variance
CASE NUMBER: 91-148-4
W/S Pikeville Road, 35' S of Mt. Wilson Lane
8832 Pikeville Road
3rd Election District - 3rd Councilmanic
Petitioner(s): Robert H. Brooks, et al
HEARING: THURSDAY, NOVEMBER 29, 1990 at 2:00 p.m.

Variance: To permit a proposed addition to a dwelling to have 12.5 ft. rear setback in lieu of the required 30 ft. and to permit a detached accessory structure (proposed pool) to be located in the side yard in lieu of the rear yard outside the 1/3 of the lot farthest removed from the street.

J. Robert Haines
J. ROBERT HAINES
ZONING COMMISSIONER OF
BALTIMORE COUNTY

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

November 20, 1990

Mr. & Mrs. Robert H. Brooks
8832 Pikeville Road
Pikesville, MD 21208

RE: Item No. 89, Case No. 91-148-A
Petitioner: Robert H. Brooks, et al
Petition for Zoning Variance

Dear Mr. & Mrs. Brooks:

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 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 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 JILLIE WIMIASKI, IF YOU HAVE ANY QUESTIONS REGARDING THIS, PLEASE CONTACT HER AT 887-3391.

Very truly yours,

JAMES E. DYER
Chairman
Zoning Plans Advisory Committee

JED:jw

Enclosures



Denise F. Rasmussen
County Executive



Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Account: R-001-6150
Number: 91-148-4

receipt

Date:

1/20/90

APPEALS

APPEAL FEES	QTY	PRICE
150 - OF ALL OTHER ORDERS	1 X	\$125.00
150 - POSTING SIGNS / ADVERTISING	1 X	\$625.00
TOTAL:		\$150.00

LAST NAME OF OWNER: BROOKS

MICROFILMED

0440400130R1CWC \$150.00

Please Make Checks Payable To: Baltimore County 00140PM1-29-90
NEXT BUSINESS DAY

Cashier Validation:



Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

receipt

Account: R-001-6150
Number: 3989

Date:

11/26/90

M910047D

PUBLIC HEARING FEES	QTY	PRICE
080 - POSTING SIGNS / ADVERTISING	1 X	\$93.40
TOTAL:		\$93.40

LAST NAME OF OWNER: BROOKS

MICROFILMED

0440400130R1CWC \$93.40
BA 00140PM1-29-90

Please make checks payable to: Baltimore County

Cashier Validation:

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

October 18, 1990

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 on the following:

Petition for Zoning Variance
CASE NUMBER: 91-148-4
W/S Pikeville Road, 35' S of Mt. Wilson Lane
8832 Pikeville Road
3rd Election District - 3rd Councilmanic
Petitioner(s): Robert H. Brooks, et al
HEARING: THURSDAY, NOVEMBER 29, 1990 at 2:00 p.m.

Variance: To permit a proposed addition to a dwelling to have 12.5 ft. rear setback in lieu of the required 30 ft. and to permit a detached accessory structure (proposed pool) to be located in the side yard in lieu of the rear yard outside the 1/3 of the lot farthest removed from the street.

J. Robert Haines
J. ROBERT HAINES
ZONING COMMISSIONER OF
BALTIMORE COUNTY

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

November 20, 1990

Mr. & Mrs. Robert H. Brooks
8832 Pikeville Road
Pikesville, MD 21208

RE: Item No. 89, Case No. 91-148-A
Petitioner: Robert H. Brooks, et al
Petition for Zoning Variance

Dear Mr. & Mrs. Brooks:

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 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 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 JILLIE WIMIASKI, IF YOU HAVE ANY QUESTIONS REGARDING THIS, PLEASE CONTACT HER AT 887-3391.

Very truly yours,

JAMES E. DYER
Chairman
Zoning Plans Advisory Committee

JED:jw

Enclosures



Denise F. Rasmussen
County Executive



Dennis F. Rasmussen
County Executive

Your petition has been received and accepted for filing this
26th day of September, 1990.

J. Robert Haines
J. ROBERT HAINES
ZONING COMMISSIONER

Received By:

Charles E. Burnham
Charles E. Burnham
Zoning Plans Advisory Committee

Petitioner: Robert H. Brooks, et ux
Petitioner's Attorney:

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: J. Robert Haines
Zoning Commissioner

DATE: October 16, 1990

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

SUBJECT: Robert H. Brooks, Item No. 89

The Petitioner requests a Variance to permit an addition with a
12.5 ft. setback in lieu of 30 ft., and to permit a pool to be
located in the side yard in lieu of the rear yard outside of the 1/3
of the lot farthest removed from the side street.

Staff recommends that the request be granted subject to the
following:

- The Petitioner should meet with staff to develop a landscape
concept to mitigate the impact of the requested variances.

Since the property is residential, this office does not feel
that a landscape plan is necessary.

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
ITEM89/ZAC1

Re 10/17/90

MICROFILMED



Dennis F. Rasmussen
County Executive

October 1, 1990

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

Dear Mr. Haines:

The Bureau of Traffic Engineering has no comments for
items number 89, 90, 91, 92, 93, 95, and 96.

Very truly yours,

Michael S. Flanagan
Michael S. Flanagan
Traffic Engineer Associate II

MSF/jw

RECEIVED
OCT 9 1990
ZONING OFFICE



Dennis F. Rasmussen
County Executive

OCTOBER 3, 1990

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

RE: Property Owner: ROBERT H. BROOKS

Location: 8832 PIKEVILLE ROAD

Item No.: 89 Zoning Agenda: SEPTEMBER 25, 1990

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: *Charles E. Burnham* 10-3-90 Noted and Approved
Special Inspection Division Fire Prevention Bureau *J. Robert Haines*

-R/REK

10/19/90

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE
SEPTEMBER 27, 1990

TO: J. ROBERT HAINES, ZONING COMMISSIONER, DEPARTMENT ZONING

FROM: CHARLES E. BURNHAM, PLANS REVIEW CHIEF, DEPARTMENT OF
PERMITS & LICENSES

SUBJECT: ZONING ITEM #: 89
PROPERTY OWNER: Robert H. Brooks, et ux
LOCATION: 8832 Pikeville Road, 35' S C/I of Mt. Wilson Lane (8832 Pikeville Road)
ELECTION DISTRICT: 3rd
COUNCILMANIC DISTRICT: 3d

A REVIT' OF THE SITE PLAN FOR THE ABOVE ZONING ITEM INDICATES THE
FOLLOWING:

- () PROPOSED SITE PLAN DOES, DOES NOT, COMPLY TO STATE CODE OF
MARYLAND REGULATION 05.01.07, MARYLAND BUILDING CODE FOR THE
HANDICAPPED.
- () PARKING LOCATION () RAMPS (degree slope)
- () TURNER PARKING SPACES () CURB CUTS
- () BUILDING ACCESS () SIGNAGE

() PLAN DOES, DOES NOT COMPLY TO SET BACKS FOR EXTERIOR FIRE
SEPARATION DISTANCE OF ARTICLE 5 AND ARTICLE 9 OF THE CURRENT
BALTIMORE COUNTY BUILDING CODE.

() A BUILDING PERMIT IS REQUIRED BEFORE ANY CONSTRUCTION CAN BEGIN.
SECTION 111.1 OF ARTICLE 1. CONSTRUCTION DRAWINGS MAY BE
REQUIRED.

() A CHANGE OF OCCUPANCY PERMIT IS REQUIRED TO CHANGE THE EXISTING
USE OF THE STRUCTURE TO THE PROPOSED USE. SEE ARTICLE THREE AND
ARTICLE ONE, SECTION 103.2 ALTERATIONS MAY BE NECESSARY BY CODE
TO COMPLY TO NEW USE REQUIREMENTS.

() STRUCTURE IS SUBJECT TO FLOOD PLAIN LIMITATIONS, SECTION 516.0
COUNCIL BILL #158-88 (BALTIMORE COUNTY BUILDING CODE).

(X) OTHER - Separate permits for pool and additions may be required

PERMITS MAY BE APPLIED FOR @ ROOM 100, 111 WEST CHESAPEAKE AVENUE,
TOWSON, MARYLAND 21204 - PHONE - 887-3900.

THIS REVIEW COVERS ONLY MAJOR ITEMS ASSOCIATED WITH THE SITE PLAN. A
FULL REVIEW MAY BE CONDUCTED WHEN THE PERMIT APPLICATION AND PLANS ARE
SUBMITTED.

APPLICABLE CODE: 1987 NATIONAL BUILDING CODES AS ADOPTED BY COUNCIL BILL #158-88.

9/28/90 RECEIVED

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Zoning Advisory Committee DATE: October 3, 1990

FROM: Robert M. Bowling, P.E.

RE: Zoning Advisory Committee Meeting
for September 25, 1990

The Developers Engineering Division has reviewed
the subject zoning items and we have no comments for
Items 89, 90, 91, 92 and 95.

Items 84 and 88 are subject to the previous County
Review Group comments.

For Item 83, a County Review Group Meeting may be
required for these improvements.

For Item 96, the right-of-way for Eugene Avenue is
incorrectly shown on the plan. The paving is 24 feet
and the right-of-way width is 44 feet, with a fillet and
drainage and utility easement across the southernmost corner
of the lot at the intersection.

Robert M. Bowling
ROBERT M. BOWLING, P.E. Chief
Developers Engineering Division

RWB:s

RECEIVED

MICROFILMED

10/4

ZONING ENFORCEMENT

RECEIVED SEP 13 1990

INTER-OFFICE CORRESPONDENCE

TO: James E. Dyer
Zoning Supervisor

DATE: September 11, 1990

FROM: James H. Thompson
Zoning Enforcement Coordinator

RE: Item No. 89 (if known)
Petitioner: Robert H. and Susan L. Brooks (if known)

VIOLATION CASE # C-91-93

LOCATION OF VIOLATION 8832 Pikeville Road

DEFENDANT Robert H. and Susan L. Brooks

ADDRESS 8832 Pikeville Road Baltimore, MD 21208

Please be advised that the aforementioned petition is the subject
of an active violation case. When the petition is scheduled for a
public hearing, please notify the following persons:

NAME

ADDRESS

Milo Heckler, President
Vermont Bldg. & Development Co.
3805 Cherrybrook Road
Randallstown, MD 21133

After the public hearing is held, please send a copy of the Zoning
Commissioner's Order to the Zoning Enforcement Coordinator, so that the
appropriate action may be taken relative to the violation case.

ewh/

MICROFILMED

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning



111 West Chesapeake Avenue
Townson, MD 21204

887-3355

January 30, 1991

Baltimore County Board of Appeals
County Office Building, Room 315
Townson, Maryland 21204

RE: Petition for Zoning Variance
W/S Pikeville Road, 35 ft. S C/I of Mt. Wilson Lane
(8832 Pikeville Road)
3rd Election District, 3rd Councilmanic District
ROBERT H. BROOKS & SUSAN L. BROOKS - Petitioner
Case No. 91-148-A

Dear Board:

Please be advised that an appeal of the above-referenced case was
filed in this office on January 10, 1991 by Robert A. McFarland,
Attorney on behalf of the Petitioner. All materials relative to the
case are being forwarded herewith.

Please notify all parties to the case of the date and time of the
appeal hearing when it 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

Enclosures

cc: Mr. & Mrs. Robert H. Brooks
8832 Pikeville Road, Pikeville, MD 21208

Robert A. McFarland - Polovoy & McCoy
34 Market Place, Suite 801, Baltimore, MD 21202

Mr. Milo Heckler, 3805 Cherrybrook Road, Randallstown, MD 21133

Curtis C. Coon, 20 South Charley Street, Baltimore, MD 21201

People's Counsel, Rm. 304, County Office Bldg., Townson, MD. 21204

MICROFILMED

Petition for Zoning Variance
W/S Pikesville Road, 35 ft. S c/l of Mt. Wilson Lane
(8832 Pikesville Road),
3rd Election District - 3rd Councilmanic District
ROBERT H. BROOKS AND SUSAN L. BROOKS - Petitioner
Case No. 91-148-A

People's Counsel of Baltimore County
Rm. 304, County Office Bldg., Towson, Md. 21204

Request Notification: P. David Fields, Director of Planning & Zoning
Patrick Keller, Office of Planning & Zoning
J. Robert Haines, Zoning Commissioner
Ann M. Nastarowicz, Deputy Zoning Commissioner
James E. Dyer, Zoning Supervisor
W. Carl Richards, Jr., Zoning Coordinator
Docket Clerk
Arnold Jablon, County Attorney
Public Services

<u>NAME</u>	<u>ADDRESS</u>
Charles C. Coon, Attorney for Vermont Bldg. & Dr. Co. Inc.	20 South Chapel ST. Bangor, Maine 04401
Milo Heckler, President Vermont Bldg. & Dr. Co. Inc.	3605 Chesapeake Dr. Pawcatuck, Conn 06259

20 South Charles ST
Baltimore, MD 212

HERRY BROOK RD.
FRENCH WID 21133

[016] B. K. N. S. 1987

A detailed map of the Pikeville Farms area, showing the proposed 400-foot wide 'SITE' for a new development. The map includes labels for 'PRIVATE' roads, 'BL' (Block), 'BR' (Block), 'PIKEVILLE FARMS', 'D.R. 3.5', and '400' feet wide. It also shows 'N 34,000' and 'N 33,000' grid lines, and a 'SITE' label with an arrow pointing to the proposed development area.

DR. 3.5

1^{re} 200

91-148-A

[illegible]

EXHIBIT 1

ORGEN MED

MICROPHIL MED

OWNER Robert Banks
ADDRESS 5522 Pharesville Rd.

PLAT PLAN
P032666
Application No.

PLEASE SHOW BELOW:

- property line dimensions and easements.
- existing buildings.
- existing well/septic. (show distance to nearest structure)
- road names and location of alley.
- if your property is in a tidal or riverine flood area,
- indicate elevation of lowest floor of proposed work.
- the proposed work and the setback distances to the proposed work.

Front yard setback 0 ft Left side setback 20 ft 3'
Rear yard setback 3 ft Right side setback 4 ft 20'

NOTE: 1. If a fence is to be closer than 2 feet to any existing fence or wall, adequate access must be provided for maintenance

2. Cannot fence access easements.

PROTESTANT'S
EXHIBIT 1

5

1059 1105

MICHIGAN STATE UNIVERSITY

91-1484

1. STREAM BUFFER - NO CLEARING, GRADING OR DISTURBANCE IN THIS AREA EXCEPT AS PER THE BALTO. CO. WATER POLICY.

2. SITE DATA
 EXISTING ZONING _____ DR. 3.5
 GROSS AREA _____ 1.60 AC. ±
 NO. OF LOTS _____ 3
 GROSS RES. DENSITY _____ 186 LOTS/AC.

NOTES

1. STREAM BUFFER - NO CLEARING, GRADING OR DISTURBANCE IN THIS AREA EXCEPT AS PER THE BALTO. CO. WATER POLICY.

2. SITE DATA
 EXISTING ZONING _____ DR. 3.5
 GROSS AREA _____ 1.60 AC. ±
 NO. OF LOTS _____ 3
 GROSS RES. DENSITY _____ 186 LOTS/AC.

PROTESTANT'S
 EXHIBIT 2

91-148A

VICINITY MAP
 SCALE 1" = 2,000'

SUBDIVISION OF
 PART OF LOTS 23 AND 24
 "PIKEVILLE FARMS"

3RD ELEC. DIST. BALTO. CO. MD
 SCALE 1" = 50' AUGUST 3, 1988

DEED REF. 1, ENH J.R. 7308-631.
 TAX ACCT. NO. 03-07-00452.

3/16/88 - W

APPROVED FOR BALTO. CO. DEPT. OF ENVIRONMENTAL
 PROTECTION AND RESOURCE MANAGEMENT

Lois W. Packer 1/17/88
 DIRECTOR

STATE OF MARYLAND
 DEPT. OF ENVIRONMENTAL
 PROTECTION
 LAND SURVEYOR

120 W. RACER
 REG. LAND SURVEYOR
 3 BELFRAST ROAD
 TIMMONS, MARYLAND 21067
 (301) 252-2920