

IN RE: PETITION FOR VARIANCE
SW/Corner Pikesville Road and
Mt. Wilson Road
(8832 Pikesville Road)
3rd Election District
3rd Councilmanic District

Robert H. Brooks, et ux
Petitioners

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 95-251-A
*

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner as a Petition for Variance for that property known as 8832 Pikesville Road, located off of Reisterstown Road in Pikesville. The Petition was filed by the owners of the property, Robert H. and Susan L. Brooks. The Petitioners seek relief from Sections 101, 102.1, 1B01.1A and 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an existing accessory structure (dog house) to be located 9 inches from the rear property line in lieu of the minimum required 2.5 feet, and to amend the previously approved site plan in Case No. 91-148-A accordingly. The subject property and relief sought are more particularly described on the site plan submitted and marked into evidence as Petitioner's Exhibit 1.

Appearing at the hearing on behalf of the Petition were Robert Brooks, property owner, Jerome H. Kadden, nearby property owner, and John C. Broderick, Esquire, attorney for the Petitioners. Appearing as a Pro-estant in the matter was Milo Hekler, adjoining property owner.

Testimony and evidence offered demonstrated that the subject property consists of .26 acres, zoned D.R. 3.5 and is improved with a two-story dwelling, an attached two-car garage, an in-ground swimming pool, and a dog house/kennel area. This property was the subject of prior Case No. 91-148-A in which a variance for the existing swimming pool was

ORDER RECEIVED FOR FILING

Date

By

3/2/95
[Signature]

granted on December 12, 1990. In the instant case, the Petitioners seek relief to legitimize the location of the dog house/kennel area, which is located 9 inches from the rear property line adjoining the Hekler property. Testimony revealed that the Petitioners and the Protestant have had litigation in the Circuit Court for Baltimore County over the construction of the Petitioners' home by Mr. Hekler.

As to the instant case, testimony indicated that Mr. Brooks relocated the dog house/kennel to its present location in 1992 and that it has existed in that location since that time. The Petitioners presently own a Golden Retriever and a Sheltie. The Petition filed indicates the dog house/kennel was relocated to create a play area for the Petitioners' children. The site plan indicates the kennel was previously located in the southwest corner of the rear yard. Mr. Heckler objects to the location of the dog house/kennel in that the smell and noise from the dogs barking have become detrimental to his quiet enjoyment of his property. Mr. Heckler testified that when he pulls into his driveway and enters his home, which is located approximately 10 feet from his side property line and adjoins the rear property line of the Petitioners' property, the dogs often bark and he is offended by the smell emanating from this dog kennel area. Mr. Heckler would like to see the dog house relocated elsewhere on the Petitioners' property, or at least be moved 2.5 feet from the common property line.

After considering very carefully the testimony and evidence presented I find that the Petitioner has failed to prove the burden imposed upon him to allow the granting of a variance. It is clear the Petitioner can relocate the dog house an additional 21 inches from the rear property line in order to comply with setback requirements imposed by the B.C.Z.R.; however, I fully understand that moving this dog house as required will

3/2/95

[Signature]

not reduce the noise or smell experienced by Mr. Hekler in the least. As stated by the parties at the outset of the hearing, this matter is before me for reasons other than the relocation of this dog house. In any event I must rule upon the variance request before me. Mr. Brooks testified that it would cost him additional money to relocate this dog house to comply with the setback requirements. However, financial hardship is insufficient grounds to justify relief from the requirements imposed upon the Petitioner when seeking a variance.

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 conformance 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. 28 (1974).

After due consideration of the testimony and evidence presented, it appears the relief requested should be denied. There was insufficient evidence to allow a finding that the Petitioners would experience practical difficulty or unreasonable hardship if the requested variance were denied. The testimony presented by Petitioners was in support of a matter of preference rather than of the necessity for the variance. The Petitioners

ORDER RECEIVED FOR FILING

Date

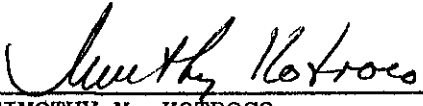
By

have failed to show that compliance would unreasonably prevent the use of the property or be unnecessarily burdensome. Therefore, the variance requested must be denied and the Petitioners shall be required to relocate the dog kennel in compliance with the zoning regulations.

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 denied.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 7th day of March, 1995 that the Petition for Variance seeking relief from Sections 101, 102.1, 1B01.1A and 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an existing accessory structure (dog house) to be located 9 inches from the rear property line in lieu of the minimum required 2.5 feet, and to amend the previously approved site plan in Case No. 91-148-A, in accordance with Petitioner's Exhibit 1, be and is hereby DENIED, subject to the following restrictions:

- 1) The Petitioners are hereby made aware that they have 30 days from the date of this Order in which to file an appeal of this decision.
- 2) The Petitioners shall have sixty (60) days from the date of this Order in which to relocate the dog kennel in compliance with the zoning regulations.


TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

ORDER RECEIVED FOR FILING

Date 3/2/95

By [Signature]

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning



Suite 112 Courthouse
400 Washington Avenue
Towson, MD 21204

(410) 887-4386

March 7, 1995

John C. Broderick, Esquire
216 Schilling Circle
Hunt Valley, Maryland 21030

RE: PETITION FOR VARIANCE
SW/Corner Pikesville Road and Mt. Wilson Road
(8832 Pikesville Road)
3rd Election District - 3rd Councilmanic District
Robert H. Brooks, et ux - Petitioners
Case No. 95-251-A

Dear Mr. & Mrs. Brooks:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Variance has been denied in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Zoning Administration and Development Management office at 887-3391.

Very truly yours,

A handwritten signature in cursive script, reading "Timothy Kotroco".

TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

cc: Mr. & Mrs. Robert H. Brooks
8832 Pikesville Road, Pikesville, Md. 21208

Mr. Milo Hekler
25 Mt. Wilson Lane, Pikesville, Md. 21208

People's Counsel

File





249

Petition for Variance

95-251-A

to the Zoning Commissioner of Baltimore County

for the property located at 8832 Pikesville Road
which is presently zoned DR 3.5

This Petition shall be filed with the Office of Zoning Administration & Development Management.

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s)

Section 101 "Accessory use or structure," 102.1

1B01.1A; 400.1 of Baltimore County Zoning. *TO PERMIT AN ACCESSORY STRUCTURE (AN EXISTING DOG HOUSE) TO BE LOCATED 9 INCHES FROM A PROPERTY LINE IN LIEU OF THE REQUIRED 25 FT. AND TO AMEND THE PREVIOUS APPROVED PLAN IN CASE # 91-148-A*
of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (indicate hardship or practical difficulty)

The dog house was relocated so that we could install trees to create an area where our child could play.

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.

(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/Lessee:

N/A
(Type or Print Name)

Signature

Address

City State Zipcode

Attorney for Petitioner:

(Type or Print Name)

Signature

Address Phone No.

City State Zipcode

Legal Owner(s):

Robert H. Brooks
(Type or Print Name)

Signature

Susan L. Brooks
(Type or Print Name)

Signature

8832 Pikesville Road wk. (410)486-3549
Address Phone No. (410)484-0527

Pikesville Md. 21208
City State Zipcode

Name, Address and phone number of representative to be contacted.

Robert Brooks
Name
8832 Pikesville Road (410)484-0527
Address Phone No.

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING
unavailable for Hearing

the following dates _____ Next Two Months

ALL _____ OTHER _____

REVIEWED BY: _____ DATE _____

Printed with Soybean Ink
on Recycled Paper

ORDER RECEIVED FOR FILING

Date

By

249

95-251-A

ZONING DESCRIPTION FOR

8832 PIKESVILLE ROAD BALT CO MD

LOT # 1 OF PIKESVILLE FARM, CONTAINING 11,459 SQ. FEET

FOLIO #515

PLAT BOOK # 7

BEGINNING ON THE WESTERLY SIDE OF PIKESVILLE
ROAD, 25' WIDE, AT A DISTANCE OF 35' ^{± SOUTH} FROM THE
CENTER LINE OF MIT WILSON LANE

- 1 SOUTH $39^{\circ} 53' 33''$ EAST 54.76 FEET
- 2 SOUTH $52^{\circ} 26' 06''$ WEST 142.16 FEET
- 3 NORTH $37^{\circ} 33' 54''$ WEST 39.46 FEET
- 4 NORTH $19^{\circ} 57' 33''$ WEST 66.24 FEET
- 5 NORTH $20^{\circ} 02' 27''$ EAST 115.36 FEET
- 6 SOUTH $74^{\circ} 55' 42''$ EAST 16.38 FEET TO THE
PLACE OF BEGINNING.

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

93-251-17

District: 3rd

Date of Posting: 2/3/95

Posted for:

Variance

Petitioner:

Robert & Susan Brooks

Location of property:

8832 Pittsville Rd., SW/cor. Mt. Wilson Lane

Location of Signs:

Facing road w/4 on property being zoned dr

Remarks:

Posted by

M. Stealy

Signature

Date of return:

2/10/95

Number of Signs:

1



CERTIFICATE OF PUBLICATION

TOWSON, MD.,

Feb. 3, 1995

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on Feb 2, 1995.

THE JEFFERSONIAN,

A. Henrichson

LEGAL AD. - TOWSON

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, 111 W. Chesapeake Avenue in Towson, Maryland 21204 or Room 118, Old Courthouse, 800 Washington Avenue in Towson, Maryland 21204 at the following:

Case #88-241-A
(Item 248)

8892 Pikeville Road
SWC Pikeville Road and
Mt. Wilson Lane
3rd Election District
3rd Councilmanic
Legal Owner(s):

Robert H. Brooks and
Susan L. Brooks
Hearing: Wednesday,
February 22, 1995 at
9:00 a.m. in Rm. 118, Old
Courthouse.

Variance to permit an accessory structure (an existing dog house) to be located 9-inches from a property line in lieu of the required 2 1/2 feet; and to amend the previous approved plan in case #81-148-A.

LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

NOTES: (1) Hearings are Handicapped Accessible for special accommodations. Please Call 887-3353.

(2) For information concerning the file and/or hearing, please call 887-3391.
2/041 February 2,

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

93-751-A

District 3rd

Date of Posting 5/26/95

Posted for: Appeal

Petitioner: Robert Brooks, et al

Location of property: Sulcon Pikesville Rd + Mt. Wilson Rd

Location of Signs: Facing road way on property being zoned

Remarks: _____

Posted by

M. H. [Signature]
Signature

Date of return:

6/2/95

Number of Signs: 1





Baltimore County
Zoning Administration &
Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204

receipt

95-251-A

Account: R-001-6150

Number 249

BY JLL

Date

1/19/95

1 RV FILING CODE 010 \$50.00
1 SIGN POSTING CODE 080 \$35.00
TOTAL \$85.00

BROOKS

8832 PIKESVILLE RD.

02A0280049MTC HRC
BA 0010523AMM 1-19-95

\$85.00

Please Make Checks Payable To: Baltimore County

Cashier Validation

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

No. 158666

DATE May 19, 1995 ACCOUNT R-001-615C

AMOUNT \$ 210.00

RECEIVED Polovoy & McCoy, LLC
FROM: _____

Appeal 95-251-A

FOR: _____
Robert H. Brooks, et ux
8832 Pikesville Road

03A0340112MICMRC

\$210.00

SA 001124405-10-95

DISTRIBUTION
WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

VALIDATION OR SIGNATURE OF CASHIER

NORMAN POLOVOY
ROBERT C. TURNER

JOHN CARROLL BRODERICK*

OF COUNSEL

DENNIS C. McCOY

ALBERT B. POLOVOY

* also admitted in D C, and Maine

LAW OFFICES
POLOVOY & McCOY, LLC
216 SCHILLING CIRCLE
HUNT VALLEY, MARYLAND 21031
(410) 527-1700
FAX (410) 527-1777

ANNAPOLIS OFFICE:
220 PRINCE GEORGE STREET
ANNAPOLIS, MARYLAND 21401
(410) 269-5980
FAX (410) 269-5991

May 11, 1995

Ms. Julie Winiarski
Zoning Administration
and Development Management
Baltimore County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

RE: Petition for Variance
SW Corner Pikesville
Road and Mt. Wilson Road
(8832 Pikesville Road)
3rd Election District-3rd
Councilmanic District
Robert H. Brooks, et ux - Petitioners
Case No.: 95-251-A

Dear Ms. Winiarski:

I enclose a check in the amount of \$210.00 payable to
Baltimore County for the fees for the appeal and sign.

Thank you for your assistance.

Sincerely,


John Carroll Broderick

JCB:mnb
enclosure

049jb\winiarski.101

RECEIVED
MAY 12 1995
ZADM

249

Baltimore County Government
Office of Zoning Administration
and Development Management



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

Baltimore County Zoning Regulations require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property and placement of a notice in at least one newspaper of general circulation in the County.

This office will ensure that the legal requirements for posting and advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements.

PAYMENT WILL BE MADE AS FOLLOWS:

- 1) Posting fees will be assessed and paid to this office at the time of filing.
 - 2) Billing for legal advertising, due upon receipt, will come from and should be remitted directly to the newspaper.
- NON-PAYMENT OF ADVERTISING FEES WILL STAY ISSUANCE OF ZONING ORDER.

ARNOLD JABLON, DIRECTOR

For newspaper advertising:

Item No.: 249

Petitioner: ROBERT H. AND SUSAN L. BROOKS

Location: 8832 PIKESVILLE ROAD PIKESVILLE MD 21208

PLEASE FORWARD ADVERTISING BILL TO:

NAME: ROBERT BROOKS

ADDRESS: 8832 PIKESVILLE ROAD

PIKESVILLE MD 21208

PHONE NUMBER: 484-0527 W-486-3549

Baltimore County Government
Office of Zoning Administration
and Development Management



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

JANUARY 26, 1995

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, 111 W. Chesapeake Avenue in Towson, Maryland 21204
or
Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 95-251-A (Item 249)

8832 Pikesville Road

SWC Pikesville Road and Mt. Wilson Lane

3rd Election District - 3rd Councilmanic

Legal Owner(s): Robert H. Brooks and Susan L. Brooks

HEARING: WEDNESDAY, FEBRUARY 22, 1995 at 9:00 a.m. in Room 118, Old Courthouse

Variance to permit an accessory structure (an existing dog house) to be located 9-inches from a property line in lieu of the required 2-1/2 feet; and to amend the previous approved plan in case #91-148-A.

A handwritten signature in cursive script, reading "Arnold Jablon".

Arnold Jablon
Director

cc: Robert and Susan Brooks, 8832 Pikesville Road, Pikesville MD 21208

bcc Milo Heckler

- NOTES: (1) ZONING SIGN & POST MUST BE RETURNED TO RM. 104, 111 W. CHESAPEAKE AVENUE ON THE HEARING DATE.
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.



TO: PUTUXENT PUBLISHING COMPANY
February 1, 1995 Issue - Jeffersonian

Please forward billing to:

Robert Brooks
8832 Pikesville Road
Pikesville, MD 21208
410-484-0527

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, 111 W. Chesapeake Avenue in Towson, Maryland 21204
or
Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 95-251-A (Item 249)
8832 Pikesville Road
SWC Pikesville Road and Mt. Wilson Lane
3rd Election District - 3rd Councilmanic
Legal Owner(s): Robert H. Brooks and Susan L. Brooks
HEARING: WEDNESDAY, FEBRUARY 22, 1995 at 9:00 a.m. in Room 118, Old Courthouse

Variance to permit an accessory structure (an existing dog house) to be located 9-inches from a property line in lieu of the required 2-1/2 feet; and to amend the previous approved plan in case #91-148-A.

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, PLEASE CALL 887-3391.



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

July 19, 1995

NOTICE OF ASSIGNMENT

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

CASE NO. 95-251-A

ROBERT H. BROOKS, ET UX -Petitioners
SW/cor Pikesville Road & Mt. Wilson Road
(8832 Pikesville Road)
3rd Election District
3rd Councilmanic District

VAR -To permit existing accessory structure
(dog kennel) 9" from line in lieu of minimum
required 2.5'; amend previous 91-148-A.

3/07/95 -D.Z.C.'s Order in which Petition for
Variance is DENIED; 60 days to relocate
kennel.

ASSIGNED FOR: **WEDNESDAY, NOVEMBER 8, 1995, at 10:00 a.m.**

cc: John C. Broderick, Esquire **Counsel for Appellants /Petitioners**
Mr. & Mrs. Robert H. Brooks **Appellants /Petitioners**

Mr. Milo Hekler **Protestant**

People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr. /PDM
Docket Clerk /PDM
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

Kathleen C. Weidenhammer
Administrative Assistant



Case No. 95-251-A

Robert H. Brooks, et ux - Petitioners

SW/C Pikesville Road and Mt. Wilson Road
(8832 Pikesville Road)

3rd Election District

Appealed: 5/10/95

IN THE MATTER OF
THE APPLICATION OF
ROBERT H. BROOKS, ET UX
FOR VARIANCE ON PROPERTY
LOCATED ON THE SOUTHWEST
CORNER PIKESVILLE ROAD AND
MT. WILSON ROAD
(8832 PIKESVILLE ROAD)
3RD ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 95-251-A
*

* * * * *

OPINION

The Petitioners, Robert H. and Susan L. Brooks, appealed from the Deputy Zoning Commissioner's decision denying a variance to permit an existing accessory structure, a dog kennel, to be located 9 inches from the rear property line in lieu of the minimum required 2.5 feet, and to amend the previously approved site plan accordingly. The Petitioners were represented by John C. Broderick, Esquire. Milo Hekler, an adjoining property owner, appeared as a Protestant.

According to the testimony and exhibits, the subject property consists of .26 acres zoned DR 3.5 and is improved with a two-story dwelling, an attached two-car garage, a swimming pool and a dog kennel. This property was the subject of a previous case, Case No. 91-148-A, in which a variance for the existing swimming pool was granted and a variance for the garage was denied. The Board of Appeals subsequently approved the variance for the garage.

Mr. Brooks testified that he originally erected the dog house in the left rear corner of his property in about 1989, and when he filed for the variance for the garage and pool in 1990, he moved the kennel to the right approximately 40 feet so he could plant three trees and install a swingset for his youngest child.

He testified that without a variance, he would have to move the kennel 21 inches, bringing it so close to the garage that he would lose a 36-inch concrete walkway to the pool that is presently between the kennel and the garage. He further testified that the walkway is the only practicable entrance to the pool for his mother-in-law, who is confined to a wheelchair and lives across the street; she cannot use the only other entrance to the pool, through the garage, because there are two steps leading from the garage to the pool area.

The Petitioner stated that it would cost \$2,500 in concrete work and to rework the fencing to move the dog kennel 21 inches, or \$3,500 to move it to its original location on the left

side of his back yard, which would also require the removal of a tree.

Mr. Hekler testified that he opposed the variance chiefly because in its present location the dog kennel is close to the front of his house, and the barking and odor from the Petitioner's dogs is very annoying.

To be granted a variance, the Petitioner must comply with Section 307.1 of the Baltimore County Zoning Regulations, which states that a variance may be granted "only in cases where *special circumstances exist that are peculiar to the land or structure which is the subject of the variance request* and where strict compliance with the zoning regulations for Baltimore County would result in practical difficulty or unreasonable hardship . . ." (Emphasis added.)

In Cromwell v. Ward, 102 Md. App. 691 (1995) the Court of Special Appeals has construed this regulation as follows:

[T]he variance process . . . is at least a two-step process. The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is -- in and of itself -- unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property. *Unless there is a finding that the property is unique, unusual, or different, the process stops here and the variance is denied without any consideration of practical difficulty or unreasonable hardship.* (Emphasis added.)

Cromwell cited North v. St. Mary's County, 99 Md. App. at 512 to show that the term "unique" in the zoning context requires that the subject property have an inherent characteristic not shared by other properties in the area, in regard to such factors as shape, topography, subsurface condition, environmental factors, and so forth.

The Appellant failed to present any testimony or evidence to this Board showing that the subject site possessed any such peculiar, unusual or unique factors when compared to other properties in the neighborhood such that the rear yard setback requirement's impact upon the subject property would be different than the restriction's impact upon neighboring properties. Thus, the first step of the variance process was not met, and the practical difficulty or unreasonable hardship requirements cannot be properly considered.

However, even assuming, for the sake of argument, that the property meets the requirement of uniqueness, the Appellant failed to produce convincing evidence of practical difficulty or unreasonable hardship. He testified that complying with the setback requirement

would result in the loss of use of a walkway which is the only useable entrance to his swimming pool for his handicapped mother-in-law. But the dog kennel was previously located in the left rear corner of his property, away from the walkway, and he moved it to the present location next to the walkway; the hardship was thus self-created. A self-created hardship is not proper grounds for a variance.

For these reasons the Board will deny this Petition for Variance.

ORDER

IT IS THEREFORE, this 29th day of November, 1995, by the County Board of Appeals of Baltimore County,

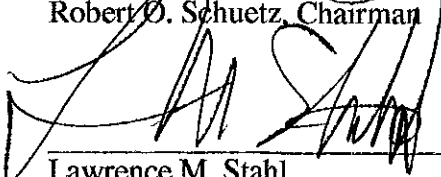
ORDERED that the Petition for Variance to permit an existing accessory structure (dog kennel) to be located 9 inches from the rear property line in lieu of the minimum required 2.5 feet, and to amend the previously approved site plan in Case No. 91-148-A, in accordance with Petitioner's Exhibit 1, be and is hereby **DENIED**, subject to the following restrictions:

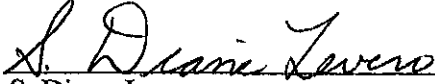
- 1) The Petitioners are hereby made aware that they have 30 days from the date of this Order in which to file an appeal of this decision.
- 2) The Petitioners shall have sixty (60) days from the date of this Order in which to relocate the dog kennel in compliance with the zoning regulations.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY


Robert O. Schuetz, Chairman


Lawrence M. Stahl


S. Diane Levero



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

November 29, 1995

John C. Broderick, Esquire
POLOVOY AND MCCOY, LLC
216 SCHILLING CIRCLE
HUNT VALLEY, MD 21031

RE: Case No. 95-251-A
Robert H. Brooks, et ux

Dear Mr. Broderick:

Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules and Procedure. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Charlotte E. Radcliffe for
Kathleen C. Bianco
Administrative Assistant

Enclosure

cc: Mr. and Mrs. Robert H. Brooks
Mr. Milo Hekler
People's Counsel for Baltimore County
Pat Keller
Timothy M. Kotroco
W. Carl Richards, Jr. /PDM
Docket Clerk /PDM
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney



Baltimore County Government
Office of Zoning Administration
and Development Management



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

February 15, 1995

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

RE: Item No.: 249
Case No.: 95-251-A
Petitioner: Mr. R. Brooks, et ux

Dear Mr. and Mrs. Brooks:

The Zoning Advisory Committee (ZAC), which consists of representatives from Baltimore County approving agencies, has reviewed the plans submitted with the above referenced petition. Said petition was accepted for processing by, the Office of Zoning Administration and Development Management (ZADM), Development Control Section on January 19, 1995.

Any comments submitted thus far from the members of ZAC that offer or request information on your petition are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties; i.e., zoning commissioner, attorney, petitioner, etc. are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. Only those comments that are informative will be forwarded to you; those that are not informative will be placed in the permanent case file.

If you need further information or have any questions regarding these comments, please do not hesitate to contact the commenting agency or Joyce Watson in the zoning office (887-3391).

Sincerely,

A handwritten signature in dark ink, appearing to read "W. Carl Richards, Jr.", is written over the typed name.

W. Carl Richards, Jr.
Zoning Supervisor

WCR/jw
Attachment(s)





**Maryland Department of Transportation
State Highway Administration**

O. James Lighthizer
Secretary
Hal Kassoff
Administrator

2-1-95

Ms. Joyce Watson
Zoning Administration and
Development Management
County Office Building
Room 109
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Baltimore County
Item No.: \$ 249 (JLL)

Dear Ms. Watson:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not effected by any State Highway Administration project.

Please contact Bob Small at 410-333-1350 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,

Bob Small

for

Ronald Burns, Chief
Engineering Access Permits
Division

BS/

My telephone number is _____

Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Zoning Administration and
Development Management

DATE: January 27, 1995

FROM: Pat Keller, Director
Office of Planning and Zoning

SUBJECT: Petitions from Zoning Advisory Committee

The Office of Planning and Zoning has no comments on the following petition(s):

Item Nos. 240, 241, 244, 248, (249) and 251

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 887-3480.

Prepared by:

Jeffrey W. Long

Division Chief:

Dary Keen

PK/JL

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT
INTER-OFFICE CORRESPONDENCE

TO: ZADM

DATE: 2/8/95

FROM: DEPRM
Development Coordination

SUBJECT: Zoning Advisory Committee
Agenda: Jan. 30, 1995

The Department of Environmental Protection & Resource Management has no comments for the following Zoning Advisory Committee Items:

Item #'s: *Rev. #215.*

244 withdrawn

245

247

249✓

251

LS:sp

LETTY2/DEPRM/TXTSBP

Baltimore County Government
Fire Department



700 East Joppa Road Suite 901
Towson, MD 21286-5500

(410) 887-4500

DATE: 02/07/95

Arnold Jablon
Director
Zoning Administration and
Development Management
Baltimore County Office Building
Towson, MD 21204
MAIL STOP-1105

RE: Property Owner: SEE BELOW

LOCATION: DISTRIBUTION MEETING OF JAN. 30, 1995.

Item No.: SEE BELOW

Zoning Agenda:

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.

8. The Fire Marshal's Office has no comments at this time,
IN REFERENCE TO THE FOLLOWING ITEM NUMBERS: 237, 244, 247, 248, 249,
250 AND 251. ✓

RECEIVED

FEB 8 1995

ZADM

REVIEWER: LT. ROBERT P. SAUERWALD
Fire Marshal Office, PHONE 887-4881, MS-1102F

cc: File



BALTIMORE COUNTY, MARYLAND
I N T E R O F F I C E C O R R E S P O N D E N C E

TO: Arnold Jablon, Director DATE: February 6, 1995
Zoning Administration and Development Management

FROM: Robert W. Bowling, P.E., Chief
Developers Engineering Section

RE: Zoning Advisory Committee Meeting
for February 6, 1995
Items 237, 244, 247, 248, 249 and 251

The Developers Engineering Section has reviewed
the subject zoning item and we have no comments.

RWB:sw



Zoning

Enforcement

Baltimore County
Zoning Administration & Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204
(410) 887-3351

B A L T I M O R E C O U N T Y , M A R Y L A N D

INTER-OFFICE CORRESPONDENCE

95-251

TO: Larry E. Schmidt
Zoning Commissioner

DATE: January 27, 1995

FROM: James H. Thompson - TLF
Zoning Enforcement Supervisor

SUBJECT: ITEM NO.: 249
PETITIONER: Robert H. Brooks and Susan L. Brooks

VIOLATION CASE NO.: C-95-618

LOCATION OF VIOLATION: 8832 Pikesville Road
Baltimore, Maryland 21208-1115
3rd Election District

DEFENDANTS: Robert H. Brooks and Susan L. Brooks
8832 Pikesville Road
Baltimore, Maryland 21208-1115

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 person(s):

NAME

ADDRESS

Mr. Milo Heckler

25 Mt. Wilson Lane
Baltimore, Maryland 21298

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

JHT/TLF/hek



BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF PERMITS AND LICENSES

TOWSON, MARYLAND 21204

John R. Ring
BUILDINGS ENGINEER

BUILDING PERMIT

PERMIT #: B130963 CONTROL #: RS DIST: 03 PREC: 03
DATE ISSUED: 05/21/92 TAX ACCOUNT #: 2100014912 CLASS: 04

PLANS: CONST 0 PLOT 1 R-PLAT 0 DATA 0 ELEC YES PLUM NO
LOCATION: 8832 PIKESVILLE RD
SUBDIVISION: PIKESVILLE FARMS

OWNERS INFORMATION

NAME: BROOKS, ROBERT & SUSAN
ADDR: 8825 PIKESVILLE RD 21208

TENANT:

CONTR: OWNER

ENGR:

SELLR:

WORK:

CONSTRUCT INGROUND POOL IN SIDE YARD. DE FILTER
POOL LETTER ATTACHED. TO BE FILLED BY TRUCK.
14'X28'X6'=392SF REPLACE PART OF FENCE W/6'
HIGH FENCE PER CODE. CANNOT FENCE IN WALKWAY
EASEMENTS. ANY FENCE ERECTED WITHIN AN EASEMENT
MUST BE REMOVED AT OWNERS EXPENSE. 125LF 91-148A

BLDG. CODE: BOCA CODE

RESIDENTIAL CATEGORY: DETACHED

OWNERSHIP: PRIVATELY OWNED

ESTIMATED \$ PROPOSED USE: SFD & POOL & FENCE
4,300.00 EXISTING USE: SFD

TYPE OF IMPRV: NEW BUILDING CONSTRUCTION

USE: SWIMMING POOL

FOUNDATION:

SEWAGE: PUBLIC EXIST

BASEMENT:

WATER: PUBLIC EXIST

LOT SIZE AND SETBACKS

SIZE: .2630AC

FRONT STREET:

SIDE STREET:

FRONT SETB: NC

SIDE SETB: NC/20

SIDE STR SETB:

REAR SETB: 14

THIS PERMIT
EXPIRES ONE
YEAR FROM DATE
OF ISSUE

DPL 114-11-74

B130963
BALTIMORE COUNTY, MARYLAND

Department of Permits and Licenses

Office of Buildings Engineer

County Office Building

Towson, Maryland 21204

Telephone: 887-3957

Part Of Building Inspected:

FOOTING

Approved ☒

Disapproved ()

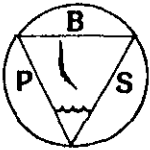
Remarks:

7-7-92
Date

al Hill
Building Inspector

PLEASE REFER TO PERMIT NUMBER WHEN

PAGE OF



7915-B PHILADELPHIA ROAD • BALTIMORE, MARYLAND 21237
PHONE: 410/866-6500 FAX: 410/866-6288

SOLD
TO:

SHIP
TO:

SAME

11701 HAMILTON PLACE
WHITE MARSH. MD.

21152

21234

43-16842

CUSTOMER NUMBER	CUSTOMER ORDER NO.	SHIP VIA CODE - DESCRIPTION	ORDER	
			DATE	NUMBER
2565		CUSTOMER PICKUP	6/23/92	8587
MESSAGE			TYPE OF TRANSACTION	

DEF REDD PT#0530

... 3

BIN NO.	LINE NO.	PRODUCT NO.	DESCRIPTION	AMT/CS	U/M	QUAN. ORDERED		✓	QUAN. SHIPPED	
						WHOLE	PART		WHOLE	PART
	1	99	CARDINAL 14X28 RECT. W/6" F/B CENTER STEP KIT	1	EA	1			1	
Bob Brink										

PACKAGE WEIGHTS											ZONE:	DATE	RECEIVED IN GOOD CONDITION
HAZARDOUS ZONE # (✓)											SHORTAGES MUST BE REPORTED WITHIN 5 DAYS FROM RECEIPT OF SHIPMENT. NO RETURNS ALLOWED WITHOUT PERMISSION OF BILLING OFFICE. RETURNS SUBJECT TO 16% RE-STOCKING CHARGE.		
OVERSIZE (✓)											PICKER I.D.	BAY LOCATION	CONTAINERS:

STIEFEL'S POOL SERVICE, INC.
11701 Hamilton Place
White Marsh, Maryland 21162
Phone: 256-0853

AGREEMENT

Dated 7/3/92 this Contract between Stiefel's Pool Service, Inc. and Contractor,
STEPHEN STIEFEL and Owners, BB & SUSAN
BROOKS HEREINAFTER CALLED THE OWNER, Address 8832 Pikesville
Rd. Zip 21208 Phone 484 0527.

Stiefel's Pool Service, Inc. agrees to furnish the following materials and accessories:

POOL CONSISTS OF THE FOLLOWING: 14' X 28' RECT. 3 1/2' TO 6'

IN DEPTH

☒ 20 gauge heavy vinyl pool liner	☒ Hayward DE filter with 3/4 Super Pump
☒ in-the-wall automatic skimmer	☒ Flexible PVC Pipe
☒ set of coping	☒ ladder
☐ diving board	☐ heater
☒ pool cover	☐ chemical kit
☒ underwater light	☐ automatic chlorinator
☒ complete pumping kit	☒ rope floats and hooks
☒ vacuum set (Hand)	☐ sliding board
☒ 0' or 6 walk-in steps	

ACCESSORIES

EXTRA CONCRETE PAD AT 3505^{PER} FT. POOL COST \$10,900.00
WALL FOAM AROUND ENTIRE POOL INSTALLATION COST
ON INSIDE ADDITIONAL COST \$200.00
TOTAL PRICE \$11,100.00

Installation: Made by said Contractor

Excavate pool, and supply hard bottom; level and erect panels, install liner, inlet fittings and wall-skimmer. Erect filter fill with media and connect to pool. Install coping and rough grade within four foot area all around pool. Test pool for proper filter and skimmer operation. (Electrical work included, unless otherwise specified.)

The Owners shall pay to Stiefel's Pool Service, Inc. the amount of \$ 3500.00 on signing of this contract. On delivery \$ 3500.00.

ARTICLE I Delivery of pool and acceptance of the same shall be on or before the NA day of NA, 1992. In the event Contractor is unable to perform by this time, Owners do hereby agree to extend the time of delivery for a period of ninety (90) days upon being orally informed of the delay on or before the aforementioned date.

ARTICLE II The owners shall pay to the contractor for the performance of the contract the sum of \$11,100.00 Dollars to be paid as follows:

1. 30% on Digging NA
2. 30% on Dropping Liner \$3500.00
3. Balance on Completion \$4100.00

ARTICLE III Use of the completed pool by the Owners and their family or their invitees shall constitute absolute acceptance of the Contractor's performance under this agreement, and shall be construed as such acceptance of the completed contract, notwithstanding any oral arrangements or agreements to the contrary, and such use shall be binding as an acceptance.

ARTICLE IV In the event Owners should fail to perform under this agreement, the Contractor shall receive as liquidated damages and not as a penalty a sum of twenty (20%) per cent of the agreed total purchase price.

ARTICLE V Contractor guarantees the pool against defects in workmanship and construction materials for one (1) year from date of completion provided Contractor receives written notice of such defects within said days. On finished products furnished by Contractor but purchased from others, whether included in the pool or otherwise, Contractor extends only the guarantee it receives from the manufacturer. Any liability of Contractor arising from defect(s) referred to herein shall not in any case exceed the cost of correcting such defect(s). Contractor will make no adjustments under this guarantee until Owners have paid Contractor in full.

ARTICLE VI The Owners warrant: that the pool site is within property and applicable set-back lines and will mark pool site or property lines and agree to provide adequate roadway ingress and working area; to pay for the entire cost of corrective measures necessitated by unknown underground conditions, including but not limited to removal or rerouting of underground springs, pipe lines and conduits, and removal of rock or any other material requiring the use of a compressor or blasting. Regarding such underground conditions, it is stipulated that the Contractor has no superior knowledge. Such corrective measures to be billed and paid for upon completion of corrective measures and before Contractor proceeds with further work. Said payment to be an addition to contract price.

ARTICLE VII Contractor shall not be held liable for any damages to installation or delays resulting from storms, fire, floods, earthquakes, expansion of earth, war, strikes, acts of God, or other accidental or natural causes beyond its control.

ARTICLE VIII If Owner(s) shall with respect to this agreement default of any payment or part thereof, under this agreement, then at the option of the Contractor, its successor or assigns, the said Contractor may enforce payment by confession of judgment as hereafter provided or at its option may enforce by Mechanic's Lien. In the event Owner(s) shall default with respect to any payment or other obligation as set forth herein, said Owner(s) hereby authorize and empower any attorney of any court of record to appear and confess judgment against said Owner(s) for any sums then due and unpaid, together with an amount equal to twenty-five (25%) percent thereof, for fees and costs of collection, expressly waiving and releasing all errors, stays of execution, and levy, exemption, inquisition, or appraisal.

ARTICLE IX Buyer has been informed of his responsibility for Electric Code requirements concerning pool filter and the safety device called G.F.I. (Ground Fault Circuit Interrupters).

ARTICLE X Buyer covenants and agrees that no diving equipment will be used on or about his pool other than specified by seller and assumes the risk for any injuries or damages incurred as a result of violation of this covenant and agreement; and buyer further acknowledges that 12x24 and 12x28 foot pools are unsafe for any diving equipment.

We the undersigned, jointly and severally promise to pay to the order of Stiefel's Pool Service, Inc., and said Contractor, the sum of 11,100.00 Dollars on demand, payable at White Marsh, Maryland 21162.

WITNESS our hands and seals this 3rd day of JULY, 1998.

Stiefel's Pool Service, Inc. and said Contractor

By: _____ (SEAL)
Owner

Owner (SEAL)



Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

January 25, 1996

John Carroll Broderick, Esquire
Polovoy & McCoy, LLC
216 Shilling Circle
Hunt Valley, Maryland 21031

RE: Zoning Variance Case 95-251-A
Zoning Violation C-95-618
8832 Pikesville Road
Robert H. Brooks, et ux, Petitioner
3rd Election District

Dear Mr. Broderick:

Correspondence dated January 11, 1996 has been received by this office from the County Board of Appeals regarding the above referenced case.

An extension of time has been requested by the petitioners to relocate the kennel on the property. Considering the weather conditions at hand, we certainly have no problem granting Mr. and Mrs. Brooks until May 1, 1996 to complete the work. Another inspection will be done after that date and hopefully, through their cooperation, this case (C-95-618) can be closed.

If you or your clients has any questions, please do not hesitate contacting this office at 887-3351.

Sincerely,

A handwritten signature in black ink, appearing to read "J. H. Thompson", is written over a large, stylized circular flourish.

James H. Thompson
Code Enforcement Supervisor

JHT:bb

cc: Mr. and Mrs. Robert H. Brooks
Mr. Milo Hekler
Mr. Robert O. Schuetz



Baltimore County Government
Office of Zoning Administration
and Development Management



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

May 19, 1995

Mr. Milo Hekler
25 Mt. Wilson Lane
Pikesville, MD 21208

RE: Petition for Variance
SW/Corner Pikesville Road
and Mt. Wilson Road
8832 Pikesville Road
3rd Election District
3rd Councilmanic District
Robert H. Brooks, et ux-Petitioners
Case No. 95-251-A

Dear Mr. Hekler:

Please be advised that an appeal of the above-referenced case was filed in this office on May 10, 1995 by John Carroll Broderick, Esquire on behalf of Mr. and Mrs. Robert H. Brooks. All materials relative to the case have been forwarded to the Board of Appeals.

If you have any questions concerning this matter, please do not hesitate to contact Julie A. Winiarski at 887-3353.

Sincerely,

A handwritten signature in black ink, appearing to read "Arnold Jablon".

Arnold Jablon
Director

AJ:jaw

cc: People's Counsel

95 MAY 19 AM 11:37



APPEAL

Petition for Variance
SW Corner Pikesville Road
and Mt. Wilson Road
8832 Pikesville Road
3rd Election District and 3rd Councilmanic District
Robert H. Brooks, et ux-Petitioners
Case No. 95-251-A

Petition(s) for Variance

Description of Property

Certificate of Posting

Certificate of Publication

Zoning Plan Advisory Committee Comments

Petitioner(s) and Protestant(s) Sign-In Sheets

Petitioner's Exhibits: 1 - Plat to Accompany Petition for Zoning Variance
2 - One photograph
3 - One large photograph

Protestant's Exhibits: 1 - One photograph
2 - Four photographs
3 - Pikesville Farms Plat

Copy of Permit No. B130963

Copy of Stiefel's Pool Service, Inc. Agreement

Copy of Baltimore Supplies

Copy of Zoning Violation

Deputy Zoning Commissioner's dated March 7, 1995

Notice of Appeal received on May 10, 1995 from John Carroll Broderick on behalf of Mr. and Mrs. Robert Brooks

cc: John C. Broderick, Polovoy and McCoy, LLC, 216 Schilling Circle, Hunt Valley, MD 21031

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

Mr. Milo Hekler, 25 Mt. Wilson Lane, Pikesville, MD 21208

People's Counsel, M.S. 2010

Request Notification: Patrick Keller, Director, Planning and Zoning
Timothy M. Kotroco, Deputy Zoning Commissioner
Arnold Jablon, Director of ZADM

7/19/95 -Notice of Assignment for hearing scheduled for Wednesday,
November 8, 1995 at 10:00 a.m. sent to following:

John C. Broderick, Esquire
Mr. & Mrs. Robert H. Brooks
Mr. Milo Hekler
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr. /PMD
Docket Clerk /PDM
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

Case No. 95-251-A
Robert H. Brooks, et ux

12/22/95 -Request for Extension to Comply with the Decision of the Board filed by John Carroll Broderick, Esquire - Counsel for Mr. and Mrs. Brooks. (Copies certified to Brooks /Hekler)

12/28/95 -Response letter to above Request filed by Milo Hekler, adjoining property owner, objecting to extension as requested. (No cc notations; copies sent this date by CBA to Messrs. Broderick and Hekler.)

1/03/96 -Letter from J. C. Broderick, Esq. - Acknowledging receipt of above response.

- Letter from Mrs. Brooks - regarding death of dog and reiterating request for extension.

1/11/96 -Memo from CBA /ROS to A. Jablon - matter no longer within Board's jurisdiction; outside of 30 days in which Board can amend; however, request does not seem unreasonable under circumstances. Copy to parties and Code Enforcement.

1/25/96 -Letter from James Thompson, Code Enforcement Supervisor -PDM, granting request for extension until May 1, 1996 to complete the work.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: Robert H. Brooks, et ux-Petitioner
Case No. 95-251-A

DATE : November 8, 1995 /at conclusion of hearing

BOARD /PANEL : Robert O. Schuetz (ROS)
Lawrence M. Stahl (LMS)
S. Diane Levero (SDL)

SECRETARY : Charlotte E. Radcliffe
Legal Secretary

Those present at this deliberation included John Broderick, Esquire, on behalf of Petitioner; and Mr. Milo Heckler, Appellant /Protestant.

ROS: As I indicated earlier, this is the deliberation portion of the proceeding and as is required by Article 10 government volume. The Board is required to deliberate zoning matters openly. This is never a comfortable situation, placing us in the position of the juror having to look at the evidence and testimony and to consider the credibility of the witnesses. The Board does this not willingly but as a matter of course.

We have a variance before use and as I said during course of proceedings current case of Cromwell v. Ward was to be addressed. Cromwell v. Ward was a case recorded in January of this year and has given the Board a great deal of guidance. "Variances" found in Section 307.1 of the Baltimore County Zoning Regulations and the tests for variances are uniqueness to the structure or land and then practical difficulty and unreasonable hardship. Cromwell v. Ward tells us that we have to consider uniqueness of land or structure first and if uniqueness is proven, you don't have to go to practical difficulty or unreasonable hardship. Looking at the photograph and the plan prepared, I find as a fact that there is absolutely nothing unique about this property. However, obtaining variance in 1991 is absolutely immaterial; variance is variance and Board is to follow the law and with guidance of Cromwell v. Ward refers to practical difficulty and unreasonable hardship are not an issue before the Board. However, because practical difficulty and unreasonable hardship were addressed, I will consider it and at least comment al beit rhetorically only. Whether or not you move the kennel 21 inches or reportedly 40 feet to the other corner of the property is not practical difficulty or unreasonable hardship. Gentlemen, you still enjoy use of this property whether the kennel is located in one corner or the other. Looking at the site plan, I don't see any practical difficulty or unreasonable hardship in forcing to comply with the law. I disagree with counsel that earlier argument would be frustrating to petitioner by denying this variance petition. I don't see where open space is utilized. It appears that he

has essentially blacktopped the entire back yard, save some 100 square feet where he planted trees. Not exactly open space. Whatever use of the garage is immaterial at this point. Bottom line is should kennel be allowed or moved -- going ahead and moving the kennel is no hardship. Therefore for all the above reasons I would deny the Petition for Variance strongly.

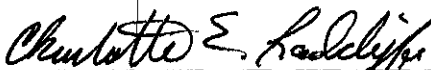
SDL: I think we have to go by Cromwell v. Ward; is there unique quality to land or structure? No evidence here that Petitioner's property was unique or different. The burden of proof is on the Petitioner and should meet burden of proof. I would deny Petition for Variance.

LMS: For all reasons stated, I was just looking at Cromwell v. Ward; there is no doctrine of stare decisis. In CBA cases, the argument is not variance and is not like equity arguments in zoning courts; faced with specific criteria for what we do. Do not think that variance becomes rare exception in uniqueness of land. Cromwell v. Ward made comments: in 12 years only 5 cases where reversal of denial of variance; believe treated as a rare instance and so that set of criteria; by their nature, need an avenue to prove uniqueness and then court will look further into arguments. For all those reasons, I concur which gives us a unanimous decision.

ROS: The Board will issue a written opinion. Any Petition for Judicial Review can be made from date of that order and not today's date.

* * * * *

Respectfully submitted,


Charlotte E. Radcliffe
Legal Secretary

96-148 JT

B A L T I M O R E C O U N T Y , M A R Y L A N D

Inter-Office Correspondence

TO: Arnold Jablon, Director
Permits and Development Management

DATE: January 11, 1996

FROM: Robert O. Schuetz, Chairman
County Board of Appeals

ROS

SUBJECT: Case No. 95-251-A /Robert H. Brooks, et ux

The Board has been contacted by Petitioners in the subject matter by way of a request for an extension of time in which to comply with this Board's Order issued November 29, 1995. In that Order, Petitioners were ordered to relocate the kennel on the subject property within 60 days of our Order. Primarily due to weather conditions, Petitioners' counsel has now requested an extension of time, until May 1, 1996, in which to have the necessary work performed.

Since more than 30 days have passed since the Board's Order was issued, this matter is no longer within our jurisdiction. Therefore, we cannot officially amend our previous Order. However, since the dog who resided in the subject kennel is no longer living, the request for additional time in which to have the work properly done does not seem to be an unreasonable one.

I am providing this information for your consideration in whatever action your department may or may not take regarding this matter.

cc: John Carroll Broderick, Esquire
Mr. & Mrs. Robert H. Brooks
Mr. Milo Heckler
James H. Thompson /Code Enforcement

RE: PETITION FOR VARIANCE

8832 Pikesville Road, SWC Pikesville Road
and Mt. Wilson Lane, 3rd Election Dist.,
3rd Councilmanic

Robert H. and Susan L. Brooks
Petitioners

BEFORE THE

ZONING COMMISSIONER

OF BALTIMORE COUNTY

CASE NO. 95-251-A

* * * * *

ENTRY OF APPEARANCE

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

Peter Max Zimmerman

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO

Deputy People's Counsel

Room 47, Courthouse

400 Washington Avenue

Towson, MD 21204

(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of February, 1995, a copy of the foregoing Entry of Appearance was mailed to Robert H. and Susan L. Brooks, 8832 Pikesville Road, Baltimore, MD 21208, Petitioners.

Peter Max Zimmerman

PETER MAX ZIMMERMAN



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

December 28, 1995

John Carroll Broderick, Esquire
POLOVOY & McCOY, LLC
216 Schilling Circle
Hunt Valley, MD 21031

Re: Case No. 95-251-A
Robert H. Brooks, et ux

Dear Mr. Broderick:

Enclosed for your information is a copy of the response to your Request for Extension to Comply with the Decision of the County Board of Appeals which was filed with the Board this date by Mr. Hekler.

Very truly yours,

A handwritten signature in cursive script, reading "Kathleen C. Bianco".

Kathleen C. Bianco
Administrative Assistant

Enclosure

cc: Mr. Robert H. Brooks
Mr. Milo Hekler



Milo Heckler
25 Mt. Wilson Lane
Pikesville, Maryland 21208

Ms. Kathleen C. Bianco
Administrative Assistant
County Board of Appeals of Baltimore County
Old Court House, Room 49
400 Washington Avenue
Towson, Maryland 21204

REF: Robert H. Brooks
Case No. 95-251-A

Dear Ms. Bianco:

Regarding Mr. and Mrs. Brooks' Request for Extension to Comply with the Decision of the County Board of Appeals, we are requesting not to grant the extension for the following reasons:

1. We have been waiting for 18 months, putting up with the inconvenience of the dog barking and odors every time we come in and out of the house.
2. We do not see any difficulty to relocate the dog kennel since the kennel is sitting on the concrete, and it is a 2 hour job to relocate it.

We would appreciate that you please take in consideration our request since it is very disturbing to us, to put up with this situation any longer.

Thank you for your understanding.

Sincerely,

Milo Heckler

A handwritten signature in dark ink, appearing to read 'Milo Heckler', with a long horizontal flourish extending to the right.

Copies 12/28/95 to: John Carroll Broderick, Esquire
Robert Brooks

LAW OFFICES
POLOVOY & McCOY, LLC
216 SCHILLING CIRCLE
HUNT VALLEY, MARYLAND 21031
(410) 527-1700
FAX (410) 527-1777

NORMAN POLOVOY
ROBERT C. TURNER

JOHN CARROLL BRODERICK*

OF COUNSEL

DENNIS C. McCOY

ALBERT B. POLOVOY

* also admitted in D.C. and Maine

ANNAPOLIS OFFICE:
220 PRINCE GEORGE STREET
ANNAPOLIS, MARYLAND 21401
(410) 269-5980
FAX (410) 269-5991

May 9, 1995

Mr. William Hackett
Baltimore County Board
of Appeals
Old Court House
400 Washington Avenue
Towson, Maryland 21204

RE: Petition for Variance
SW Corner Pikesville
Road and Mt. Wilson Road
(8832 Pikesville Road)
3rd Election District-3rd
Councilmanic District
Robert H. Brooks, et ux - Petitioners
Case No.: 95-251-A

55 MAY 10 2:11:25

Dear Mr. Hackett:

I represent Mr. and Mrs. Robert H. Brooks in their Petition for Variance. On or about March 7, 1995, Timothy M. Kotroco Deputy Zoning Commissioner, issued a Findings of Fact and Conclusions of Law denying the Brooks' Petition.

Shortly after the issuance of the opinion, Mr. Brooks was hospitalized at Union Memorial for back surgery and was incapacitated and on home rest for well over 30 days. He only recently returned to work. During that time, he did not have an opportunity to review Mr. Kotroco's decision or instruct me to file an appeal.

I, also, never received a copy of Mr. Kotroco's decision and learned only today that a copy of the decision was sent to my previous address and returned to the office of Planning and Zoning. At the time of the hearing, I entered my appearance and informed Mr. Kotroco of my new address.

On Mr. and Mrs. Brook's behalf, I respectfully request that an appeal be entered of Mr. Kotroco's decision. Mr. Brooks was

Mr. William Hackett
Page Two
May 9, 1995

unable to comply with the 30 day appeal requirement because of the surgery and recuperation time he was ordered to take by his doctor.

Sincerely,



John Carroll Broderick

JCB:mnb
cc: Arnold Jablon, Esquire
Mr. Milo Hekler
Mr. Robert Brooks

049jb\hackett.101

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IN THE MATTER OF
THE APPLICATION OF
ROBERT H. BROOKS, ET UX
FOR VARIANCE ON PROPERTY
LOCATED ON THE SOUTHWEST
CORNER PIKESVILLE ROAD AND
MT. WILSON ROAD
(8832 PIKESVILLE ROAD)
3RD. ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

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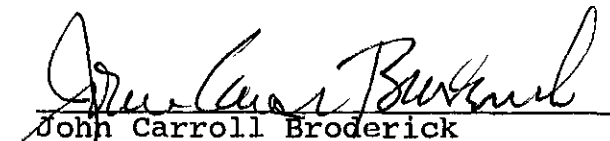
BEFORE THE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
CASE NO.: 95-251-A

* * * * *

REQUEST FOR EXTENSION TO COMPLY WITH THE OPINION
THE COUNTY BOARD OF APPEALS

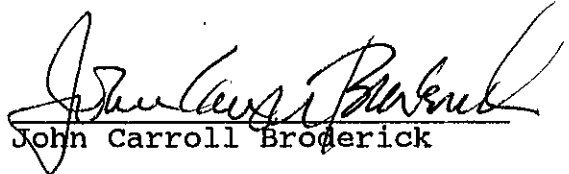
The Petitioners, Robert H. and Susan L. Brooks, request the County Board of Appeals for an extension of time to comply with its Opinion ordering that the dog kennel be relocated within sixty (60) days of November 29, 1995.

The Petitioners intend to abide by the Opinion of the Board of Appeals and request an extension of time until May 1, 1996 to perform the necessary work to relocate the dog kennel. Presently and over the next several months, the weather will be inclement and prevent them from properly doing the work. Concrete must be broken up and the ground must be moved and landscaped. The winter weather conditions will prevent them from being able to comply with the Opinion of the Board of Appeals without incurring considerable expense.


John Carroll Broderick
Polovoy & McCoy, LLC
216 Schilling Circle
Hunt Valley, Maryland 21031
(410) 527-1700

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of December, 1995
a copy of this Request for Extension to Comply with Opinion of
Board of Appeals was mailed first class, postage prepaid to Milo
Hekler, 25 Mt. Wilson Lane, Pikesville, Maryland 21208.


John Carroll Broderick

NORMAN POLOVOY
ROBERT C. TURNER

January 2, 1996

Ms. Kathleen C. Bianco
Administrative Assistant
County Board of Appeals of Baltimore County
Old Court House, Room 49
400 Washington Avenue
Towson, Maryland 21204

Dear Ms. Bianco:

Thank you for a copy of Mr. Heckler's letter to you concerning the Brooks' Request for an Extension to Comply with the Decision of the County Board of Appeals.

The case file is well documented that relocating the dog kennel an additional 21 inches will not eliminate barking and odors.

On behalf of the Brooks', I respectfully request that the County Board of Appeals favorably rule on their pending request.

Sincerely,

John Carroll Broderick
John Carroll Broderick

JCB/eljs

CC: Mr. Milo Heckler

56\jb\bianco.j2

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96 JAN -1 PM 2:02

Jan 1, 1996

Mrs Kathleen C. Bianco
Administrative Assistant
Old Court House Rm 49
Jannson Md 21204
case # 95-251-A

ref. Mr. Heckler's letter dated 12.28.95-

Dear Mrs Bianco

Mr. Heckler's states smells and
marking on my property for the
last eighteen months. That's
impossible. my golden retriever
was put to sleep on March 18, 1995
at Main Street Vet's (phone 526-7500)

The kennel can't be moved in
2 hours, we have a 6ft fence on our
entire back property line, the
kennel uses this as a fence, when
we move it we must drill
into the concrete to install
chain link as a back way
fence. I do have 2 10 year old
cats that live in the kennel
so we do need to install new
chain link fence.

Mr. Heckler has not called Animal Control because there never was any marking or foul odors. I clean up immediately after the dog and dispose of it properly.

My dog was, at that time, 9 1/2 years old and obedience trained. She marked at no one at any time.

This is a long list of complaints against us because we won a law suit against Mr. Heckler for improperly building our house. Our neighbors also won a law suit ^{against} him for the same thing.

I've lost a wonderful pet, we don't know why she became ill and eventually had to be put to sleep.

Please stop and think about his letter. It doesn't make sense there is no dog. The weather is against us doing digging and concrete work at night.

I thank you for your
time.

Thank You

Susan Brooks
8832 Lakeshille Rd
Balt Md 21208

I can present a copy
of the Euthanasia Slip from
the Vet.

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME

ADDRESS

JOHN CARROLL BRODERICK

ROBERT BROOKS

Jerome H Kadden

216 SCHILLING CIRCLE Hunt Valley

8832 Pikeville Road Pikeville

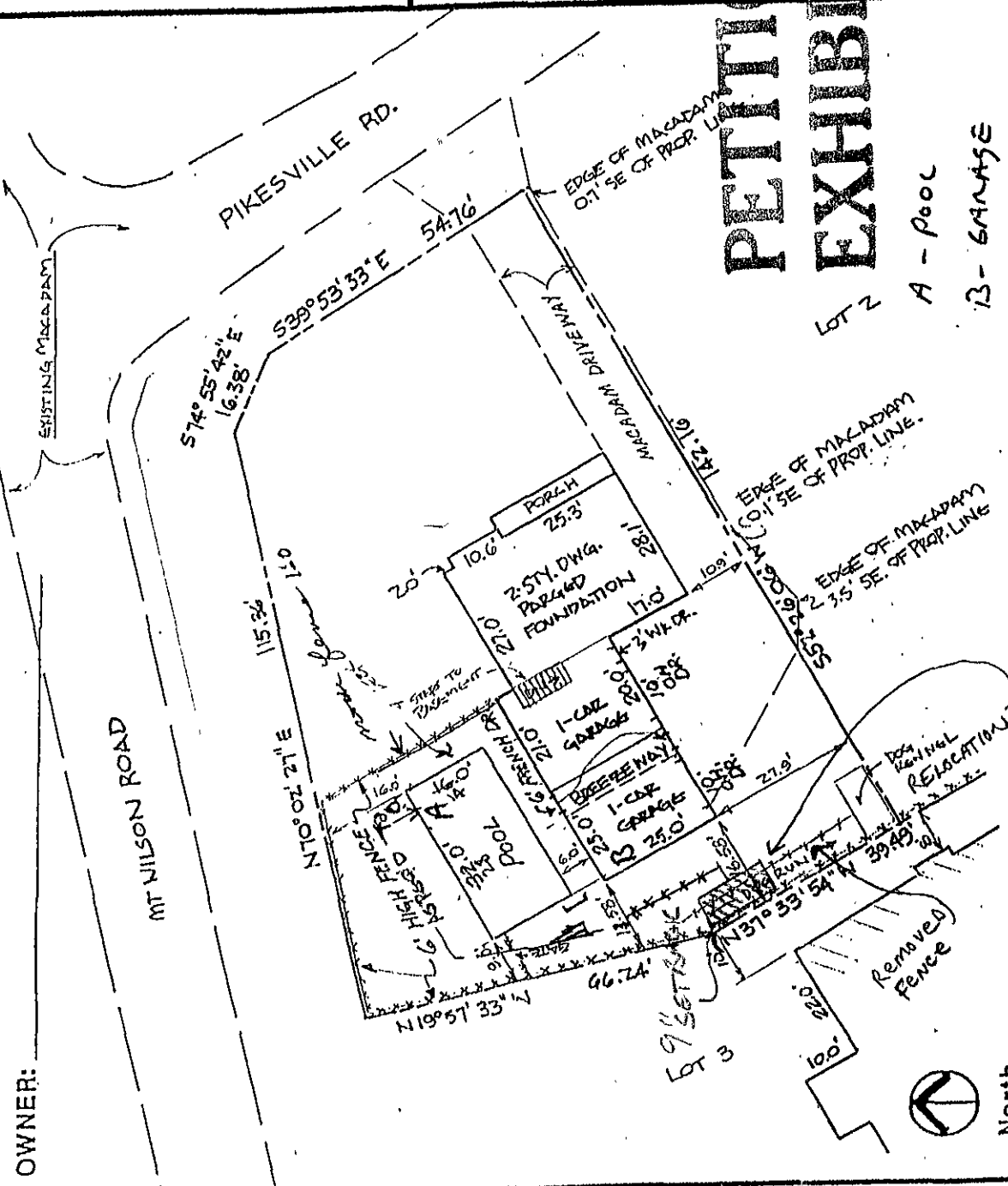
400 Mt Wilson Lane Bolt Md

Plat to accompany Petition for Zoning

PROPERTY ADDRESS: 8832 PLEESVILLE ROAD

Subdivision name: PIKEVILLE FALLS

OWNER: _____



Prepared by: DGE

Scale of Drawing: 1" = 30.0'

EXHIBIT I

4-0000

13-GRASSE

Lot size: 926 11,459

CCCL

☒ **Public**
☐ **Private**

MEMBER

* SUMMARY *

El Arca:

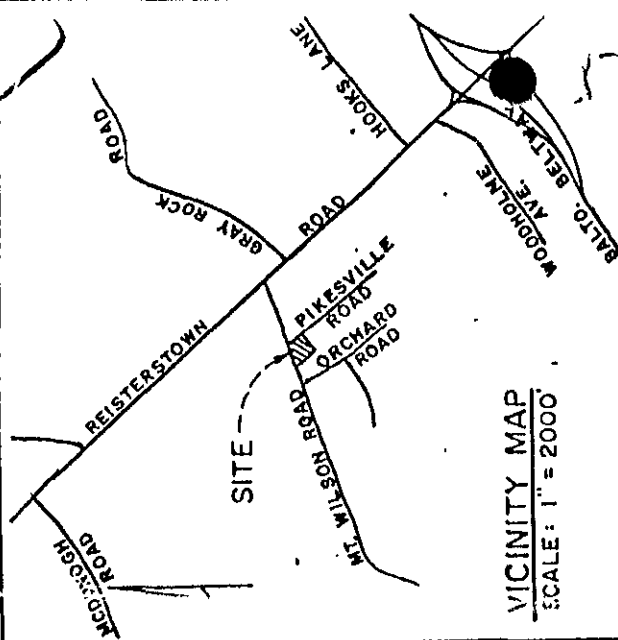
Q-10-A

reviewed by: ITEM #: CASE#:

Page

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FUTURE R/W AS
PROPOSED BY BALTO. CO.



VICINITY MAP
SCALE: 1" = 2000'

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 - 1.609 AC. ±
NO. OF LOTS - 3
GROSS RES. DENSITY - 1.86 LOTS/AC.

SUBDIVISION OF
PROTESTANTS "PIKESVILLE FARMS"
EXHIBIT NO. 3
WPC 7-7

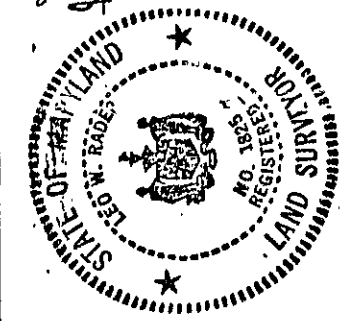
BALTO. CO. MD
3RD ELECT. DIST.
AUGUST 3, 1988
SCALE: 1" = 50'

DEED REF.: EHK JR. 7306-631.
TAX ACCT. NO.: 03-05-061252.

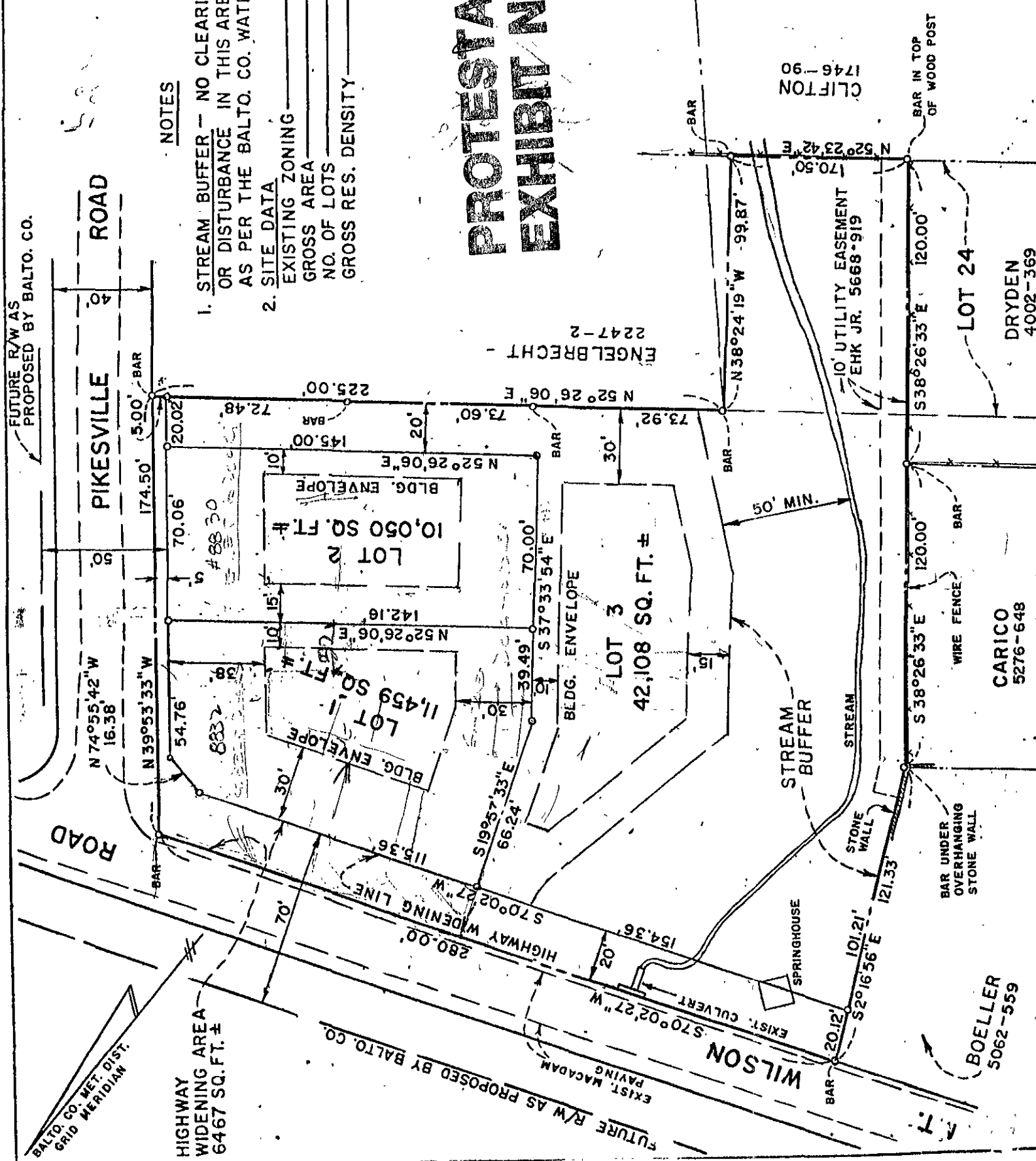
3 blocks - W

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

Robert W. Shundy 8/17/88
DIRECTOR DATE 10/3/85



LEO W. RADER
REG. LAND SURVEYOR
38 BELFAST ROAD
TIMONHUM, MARYLAND 21093
(301) 252-2920



PLOT PLAN

OWNER

Robert Brooks

0032666
Application No.

ADDRESS

8832 Pikeville Rd.

PLEASE SHOW BELOW:

- property line dimensions and easements.
- existing buildings.
- existing well/septic. (show distance to nearest structure)
- road names and location of alleys.
- 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.

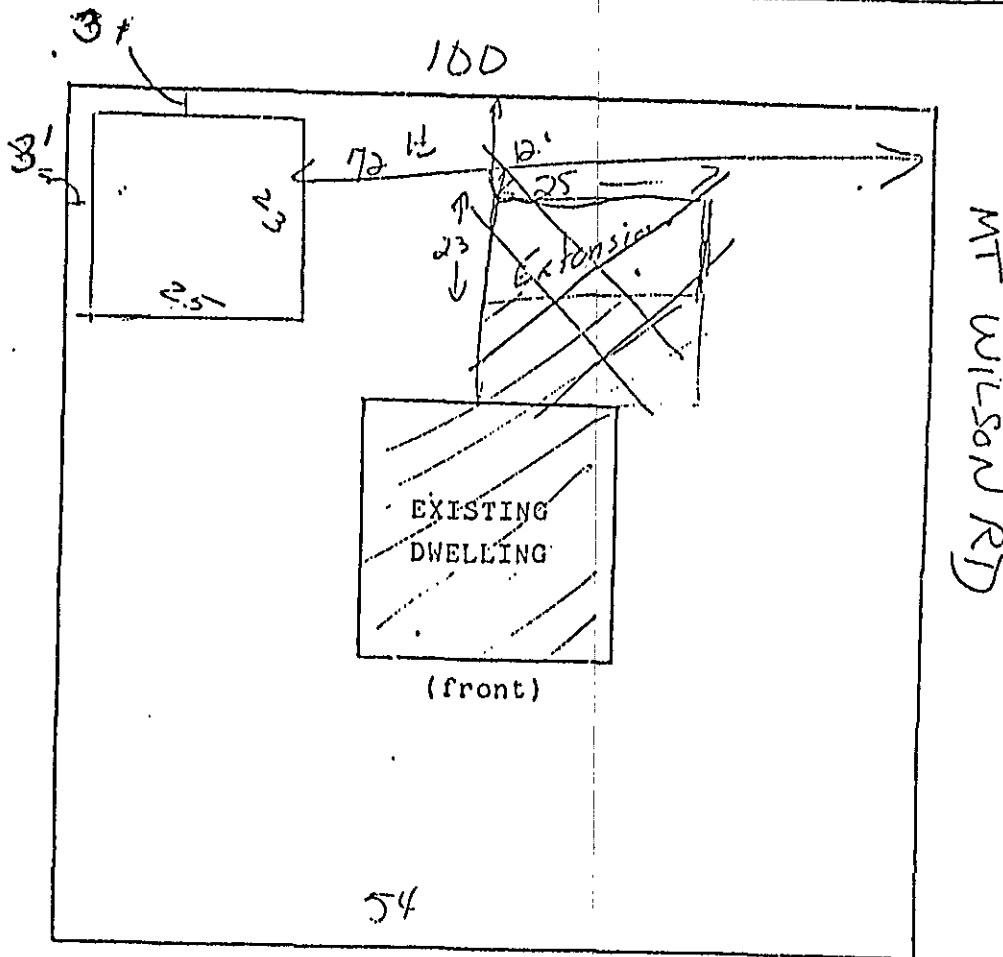
Front yard setback 0' 10"

Left side setback 2' 0" 3'

Rear yard setback 3' 10"

Right side setback 4' 10" 72'

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.



ROAD NAME

Pikeville Rd.

ZONING ENFORCEMENT

Baltimore County
Zoning Office
Towson, Maryland 212

* * * * * CORRECTION NOTICE * * * * *

CASE NUMBER C-91-93

ELECTION DISTRICT: 3rd

LOCATION: 8832 PIKESVILLE ROAD

DEAR ROBERT H. BROOKS AND SUSAN L. BROOKS:

PLEASE BE ADVISED THAT AN INSPECTION OF THE ABOVE REFERENCED
LOCATION REVEALED THAT THERE IS AN APPARENT VIOLATION AND THE FOLLOWING
CORRECTION IS REQUIRED:

REMOVE ATTACHMENT (GARAGE) TO PRIMARY STRUCTURE OR APPLY FOR A
VARIANCE THROUGH THE BALTIMORE COUNTY ZONING OFFICE, 111 W. CHESAPEAKE
AVENUE, TOWSON, MARYLAND, ROOM 113. (887-3391)

IF YOU HAVE ANY FURTHER QUESTIONS, PLEASE CONTACT THIS OFFICE AT
887-8094. FAILURE TO COMPLY BY AUGUST 18, 1990, WILL RESULT IN THE
ISSUANCE OF A CITATION WHEREIN YOU ARE SUBJECT TO A CIVIL PENALTY OF
\$200.00 FOR EACH VIOLATION, AND EACH DAY SHALL BE CONSIDERED A SEPARATE
VIOLATION (CIVIL PENALTY BILL #132-85).

INSPECTOR: TIMOTHY FITTS

DATE: 7/19/90

NW 9-6

● 249

● D.R. 3.5

D.R. 3.5

PRIVATE

95-251-A

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N 34,000

BL

BR

400

SITE

LANE

PIKEVILLE RD.

DIVISION

PIKEVILLE
FARMS

D.R. 3.5

N 33,000

N 566,000

(SHEET N.W.-9-F)



PETITIONER'S
EXHIBIT 3/2

65773 #131

