ORDER RECEIVED FOR FILING
Date (1/5/9)
By

IN RE: PETITION FOR VARIANCE

S/S Moorefield Road, 90' E of

Glenwilde Road

(1317 Glenwilde Road) 1st Election District 1st Councilmanic District

Robert L. Kennedy, et ux

Petitioners

BEFORE THE

\* DEPUTY ZONING COMMISSIONER

\* OF BALTIMORE COUNTY

Case No. 96-4-A

\*

\* \* \* \* \* \* \* \* \* \*

### AMENDED ORDER

This matter came before the Deputy Zoning Commissioner as a Petition for Variance filed by the owners of the subject property, Robert and Susan Kennedy, seeking relief from Section 427 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an existing fence, located 3-inches from the rear property line and adjoining a front yard, to be 48 inches in height in lieu of the maximum permitted 42 inches, in accordance with the site plan marked into evidence as Petitioner's Exhibit 1.

By Order issued August 22, 1995, the relief requested was denied and the Petitioners were required to lower the height of the fence to 42 inches in all those areas where the fence abuts a neighbor's front yard. In an effort to assist the Petitioners in this endeavor, those sections of fence required to be lowered were highlighted in yellow on a copy of the Petitioners' site plan, marked Exhibit A, which was attached to the Order.

Subsequent to the issuance of said Order, this office received a letter from the Petitioners requesting a modification of my decision to permit a portion of their fence to remain at its present height. Specifically, the Petitioners advised this office that the highlighted areas on the site plan included a section of fence which was not in the front yard of their neighbor's house on adjoining Lot 6. The Petitioners pointed out that the house on Lot 6 faces in a southeasterly direction and thus, that

ORDER RECEIVED FOR FILING

section of fence located on the northwest corner of the subject property is actually located in the rear yard of that property. Therefore, that section of fence does not need to be lowered to the 42-inch height required by my Order dated August 22, 1995.

After further review of the site plan for this property and documentation contained within the case file, it appears that an amendment to correct this error is warranted and I shall so Order.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for day of October, 1995 that the Order issued Baltimore County this August 22, 1995 be and the same is hereby AMENDED to permit that section of fence located on the northwest corner of the subject property adjacent to Lot 6 and highlighted in yellow on Exhibit A to remain at its present height. inasmuch as that section of fence is located in the rear yard of the dwelling on Lot 6; and,

IT IS FURTHER ORDERED that an Appeal of this decision may be taken within thirty (30) days of the date of this Order but only for that portion of the Order dealing with the fence height adjacent to Lot 6.

IT IS FURTHER ORDERED that all other terms and conditions of the Order issued August 22, 1995 shall remain in full force and effect.

TIMOTHY M. KOTROCO

Deputy Zoning Commissioner

for Baltimore County

TMK:bis

Mr. & Mrs. Robert L. Kennedy cc: 1317 Glenwilde Road, Catonsville, Md.

21228

Mr. & Mrs. Ronald Rodriquez

1319 Glenwilde Road, Catonsville, Md. 21228

Mr. Donald Yakel

1314 Glenwilde Road, Catonsville, Md. 21228

People's Counsel; Case File

IN RE:

PETITION FOR VARIANCE

S/S Moorefield Road, 90' E of

Glenwilde Road

(1317 Glenwilde Road)
1st Election District
1st Councilmanic District

Robert L. Kennedy, et ux

Petitioners

\* BEFORE THE

\* DEPUTY ZONING COMMISSIONER

OF BALTIMORE COUNTY

\* Case No. 96-4-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 1317 Glenwilde Road, located in the vicinity of Rolling Road and Route 40 West in Catonsville. The Petitioners seek relief from Section 427 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a fence, 3-inches from the rear property line and adjoining a front yard, with a height of 48 inches, more or less, in lieu of the maximum permitted 42 inches. The subject property and relief sought are more particularly described on the site plan submitted which was accepted into evidence as Petitioner's Exhibit 1.

Appearing at the hearing on behalf of the Petition were Robert and Susan Kennedy, property owners. Appearing in opposition to the relief requested were Ronald Rodriquez, adjoining property owner, and Donald Yakel a nearby resident of the community.

Testimony and evidence offered revealed that the subject property consists of .489 acres, more or less, zoned D.R. 5.5 and is improved with a 2.5 story dwelling. Also on the property, down both sides and across the rear property line is a split-rail fence, approximately 48 inches in height, which is the subject of this Petition. The Petitioners filed the instant Petition to legitimize the subject fence which exceeds the 42-inch height limitation imposed by the zoning regulations. The exact location

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Date
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of this fence has been marked on the site plan with "x" marks. Testimony revealed that the subject fence was built without benefit of a building permit several years ago. Further testimony indicated that this fence was erected prior to development of the adjoining property to the rear of this site. Mr. Kennedy testified that he neglected to obtain a valid building permit for the fence prior to erecting same on his property. He testified that now that this matter has been brought to the attention of Baltimore County, he is attempting to obtain a valid building permit for this fence; however, the requested variance must be decided prior to doing so.

The facts of this case clearly demonstrate that a large portion of the Kennedy fence is actually located in the front yards of other lots. Specifically, when looking at the site plan and extending a line along the front foundation wall of the adjacent dwelling on Lot 4 facing Moorefield Road, a large portion of the Kennedy fence is located in that neighbor's front yard. Furthermore, much of the Petitioners' fence adjacent to Lot 6 is located in that neighbor's front yard as well. Again, extending a line of division along the front foundation wall of the dwelling on Lot 6, the subject fence is situated in that neighbor's front yard. The regulations limit the height of that portion of the Petitioners' fence which abuts a neighbors' front yard to 42 inches. Accordingly, the relief requested is necessary in order for the fence to remain in its present condition.

Appearing in opposition to the Petitioners' request was Ronald Rodriquez, adjoining property owner at 1319 Glenwilde Road, and Donald Yakel, a representative of the surrounding community association. Both gentlemen voiced opposition to the height of the fence and argued that the requirements of the B.C.Z.R. should be applied evenly to all residents of this community. They requested that any portion of the Kennedy fence which

ORDER RECEIVED FOR FILING
Date

\$ 22.95

By

abutted a neighbor's front yard be limited to a height of 42 inches and that no variance should be granted for any higher height.

It should be noted that this is the third time that these neighbors have been before this Deputy Zoning Commissioner over the issue of fences. In fact, this particular case is directly related to prior Case No. 95-495-A in which Ronald Rodriquez filed a similar Petition. In that case, the Rodriquez' fence across the rear of their property abutted the front yard of the Kennedy property. The Kennedys appeared as Protestants in that case.

After considering all of the testimony and evidence offered concerning a variance for the fence on the Kennedy property, I find that the Petitioner has not met his burden in order for a variance to be granted. Therefore, the Petitioners must lower their fence to a height of 42 inches in all those areas where their fence abuts a neighbor's front yard. I have attached to this Order a site plan of the Petitioners' property on which I have highlighted in yellow those sections of fence which are located in the front yards of their neighbors' property and which must be lowered to a height of 42 inches to be in compliance with the B.C.Z.R.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 22 day of August, 1995 that the Petition for Variance seeking relief from Section 427 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a fence, 3-inches from the rear property line and adjoining a front yard, with a height of 48 inches, more or less, in lieu of the maximum permitted 42 inches, in accordance with Petitioner's Exhibit 1, be and is hereby DENIED; and,

IT IS FURTHER ORDERED that within forty-five (45) days of the date of this Order, the Petitioners shall reduce the height of their fence

to 42 inches in all of those areas highlighted in yellow on the attached site plan marked as Exhibit A; and,

IT IS FURTHER ORDERED that the Petitioners shall have thirty (30) days from the date of this Order in which to file an appeal of this decision.

TIMOTHY M. KOTROCO

Deputy Zoning Commissioner

for Baltimore County

TMK:bjs

DER RECEIV**ED FOR FILING**800/95

### Baltimore County Government Zoning Commissioner Office of Planning and Zoning



Suite 112 Courthouse 400 Washington Avenue Towson, MD 21204

(410) 887-4386

August 22, 1995

Mr. & Mrs. Robert L. Kennedy 1317 Glenwilde Road Catonsville, Maryland 21228

RE: PETITION FOR VARIANCE

S/S Moorefield Road, 90' E of Glenwilde Road

(1317 Glenwilde Road)

1st Election District - 1st Councilmanic District

Robert L. Kennedy, et ux - Petitioners

Case No. 96-4-A

Dear Mr. & Mrs. Kennedy:

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 Permits and Development Management office at 887-3391.

Very truly yours,

TIMOTHY M. KOTROCO

Deputy Zoning Commissioner

for Baltimore County

TMK:bjs

cc: Mr. & Mrs. Ronald Rodriquez

1319 Glenwilde Road, Catonsville, Md. 21228

Mr. Donald Yakel

1314 Glenwilde Road, Catonsville, Md. 21228

People's Counsel

File



# Petition for Variance

### to the Zoning Commissioner of Baltimore County

for the property located at 1317 GLENWILDE ROAD CATONSVINE MD. 2/228
which is presently zoned

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)

To allow a rear yard fence (adjoining a front yard) with a 3 inch setback with a height of 34 inches +/- in lieu of the maximum permitted height of 42 inches.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (indicate hardship or practical difficulty). Due to practical difficulty. Strict compliance would lessen Ability to restrict A child is a bog from entering Address property of increase anyer of possibility lib Tury to child entering reasons from property. The spirit of the ordinance will be because of the fact that the violation alleged is merely a small part of the 520 wall fact of fence to the property. Furthermore, said property is a flagship lot.

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 Baltin are County.

Contract Purchaser/Lessee			Rus er M. 1 Kensher u
(Type or Print Name)			(Type or Print Name)
Signature	·		Signature Signature
Address			(Type or Print Name)
Či y	State	Zipcode	Signature June 19
Attorney for Petitioner	•		1317 Glenwilse Ros 455-
(Type or Print Name)			1317 Glennilse Rolls 455-6 Address Phone No 554 CATONSVILLE MS. 21228
Signature			City State Zipcode Name, Address and phone number of representative to be contacted.
Address	Phone t	No.	Name
	State	Zipcode	Address Phone No OFFICE USE ONLY
		Agricus Administra	
1		Ψ.	the following dates Next Two Months

# Zoning Description for 1317 Glenwilde Rd. 1st Election Dista 1st councilmatic Dista

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.....

Beginning at a point on the south side of Moorefield Rd. at the distance 90 ft teast of Glenwide Rd. Being Lot NO. 3, Sect of in the subdivision of Westview Parki, Containing 21,300 se. Ft. t RALTIMORE COUNTY, MARYLAND

FICE OF FINANCE - REVENUE DIVISION

MISCELLANEOUS CASH RECEIPT

DATE 7-5-95

ACCOUNT ROOF-6/50

AMOUNT \$ 5.145.

RECEIVED Robt Rennedy 1317 Blenwide Tilly for 150.

H 0/0 - Administrative Variance Physics 150.

H 0/0 - Syll + 10057/14y

FOR:

VALIDATION OR SIGNATURE OF CASHIER

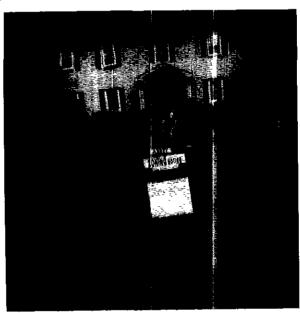
WHITE-CASHIER PINK-AGENCY YELLOW-CUSTOMER

BALTIMORE COLUTY, MARYLI DEFICE OF FINANCE - REVENUE DI MISCELLANEOUS CASH RECEI	VISION	No.	075036	-
10/26/95		ROO1-7	120	
		\$ 210.0		
RECEIVED AWATTONY				
FOR: MYNAL DOM	TY	ZONING CA	THE STORY	US
KUEN IN ZONG	A91.8025	PENTEHRE	\$22k0.J0	

# ZONING DEPARTMENT OF BALTIMORE COUNTY

Towner	, Maryland

District	Date of Posting 7/22/95
Posted for: Sudves	
Petitioner: Robort & Suson Konnody  Location of property: 1317 Glon Wilds Rd, St	<u> </u>
Location of property: 2222	· · · · · · · · · · · · · · · · · · ·
Location of Signs: Tocing Youd Way on from	ly boing 20-red
Remarks: Mont. I Jocolion - sign hodborn o	hongst
Posted by	v. 7/28
Number of Signe:	



964

BUARN TO A

95 NOV -9 MIR: 09

ZONING DEPARTMENT OF BALTIMORE COUNTY 96-4-

Posted for: Abbust Likewoody	Date of Posting 11/2/95	. <b>-</b>
Posted for:		
Petitioner: Bolest Likewing	·	•
Location of property: \$15 Mans Fald If	U	_
		-
Location of Signs: Facing road why on pro	perty being appealed	•
		_
Remarks: 11/6/15 - Reposted.	~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~	_
Posted by Market Signature	Date of return: 1'/19/85	<u>_</u>
Number of Signs:	,	



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 accessed 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 a	dvertisi	ng:		1			
Item No.: 00	3	$\mathcal{L}$	,	. )			
Petitioner:	,	KOBER		KENNI	edy	DAA /	1
Location:	1317	GLENWIL	LDE "	ROAD			<i>!</i>
PLEASE FORWARD	ADVERTIS	ING BILL TO:	,		•	J. WAY	
NAME:	RoB	ier L.	KENN	EAY	<del>J</del>	70-	,
ADDRESS:	131	GLE	النالم	DE ROA	4		
		CATONS		_	215	<u>8</u>	
* PHONE NUMBER:_	4	55 048	36	•			,

### HOTTOE OF HEARING

The soning commissioner of Balling's CSUMD By authority of the Zoning Ast and Regulations of Balling's Ast and Regulations of Balling's County will hold a public hearing on the organy identified Herein in Roam 108 of the County Efficient County Co

21204 as follows: \_-

Case: #96-4-A
((tein 3)
1317. Glanwilde Road
SSE Moorefield, Road, 90'
+/I E of Glenwilde Road
1st Election District
1st Councilmanic
Legal Owner(s):
Robert L, Kennedy and
Susan H, Kennedy
Hearing, Wednesday,
August 9, 1995 at 10:00
a.m. in Rm. 106, County Office Building.

Variance to allow a rear yard tence (adjoining a front yard) with a 3-inch setback with a height of 54 inches 1- in lieu height of 42 inches 1- in lieu height of 42 inches

ZAMRENCE E. SCHMIDT Zoning Commissioner for Ballimore County

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

(2)For information concernsing the File and/or Hearing, Please Call 887-3391.
7/195 July 20.

### CERTIFICATE OF PUBLICATION

TOWSON, MD.,

THE JEFFERSONIAN,

J. Henricon

LEGAL AD. - TOWSON

Probability in the same of the

Baltimore County Government Office of Zoning Administration and Development Management



111 West Chesapeake Avenue Towson, MD 21204

July 17, 1995

(410) 887-3353

#### 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

Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 96-4-A (Item 3)

1317 Glenwilde Road

S/S Moorefield Road, 90'+/- E of Glenwilde Road

1st Election District - 1st Councilmanic

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

HEARING: WEDNESDAY, AUGUST 9, 1995 at 10:00 a.m. in Room 106, County Office Building.

Variance to allow a rear yard fence (adjoining a front yard) with a 3-inch setback with a height of 54 inches +/- in lieu of the maximum permitted height of 42 inches.

Arnold Jablon

Director

Department of Permits and Development Management

Robert and Susan Kennedy

- 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 CONCERING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.

TO: PUTUXENT PUBLISHING COMPANY

July 20, 1995 Issue - Jeffersonian

Please foward billing to:

Robert L. Kennedy 1317 Glenwilde Road Catonsville, MD 21228 455-0486

#### 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

Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 96-4-A (Item 3)
1317 Glenwilde Road
S/S Moorefield Road, 90!+/- E of Glenwilde Road
1st Election District - 1st Councilmanic
Legal Owner(s): Robert L. Kennedy and Susan H. Kennedy
HEARING: WEDNESDAY, AUGUST 9, 1995 at 10:00 a.m. in Room 106, County Office Building.

Variance to allow a rear yard fence (adjoining a front yard) with a 3-inch setback with a height of 54 inches +/- in lieu of the maximum permitted height of 42 inches.

LAWRENCE E. SCHMIDT ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.

(2) FOR INFORMATION CONCERING 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

April 29, 1996

### NOTICE OF POSTPONEMENT & REASSIGNMENT

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. 96-4-A

ROBERT L. KENNEDY, ET UX -Petitioners S/s Moorefield Road, 90' E of Glenwilde Road 1st Election District 1st Councilmanic District

VAR -Fence Height.

10/05/95 -D.Z.C.'s Amended Order -to permit section of fence adjacent to Lot 6 to remain at present height inasmuch as located in rear yard; 8/22/95 -Order of the D.Z.C. -Petition for Variance /fence height of 48" in lieu of permitted 42" DENIED.

which was scheduled for hearing on April 24, 1996 was POSTPONED on the record that date pursuant to issue raised at hearing as to which Order of the DZC is actually the appealable event (Mr. Kotroco's 8/22/95 Order in full or his limited 10/05/95 Amended Order); and has been

#### WEDNESDAY, JULY 3, 1996 at 10:00 a.m. REASSIGNED FOR:

Mr. and Mrs. Robert L. Kennedy

Anthony J. DiPaula, Esquire Counsel for Petitioners / Appellants Petitioners /Appellants

Mr. & Mrs. Ronald Rodriquez

Protestants

Mr. Donald Yakel

Protestant

People's Counsel for Baltimore County Pat Keller /Planning Director Timothy M. Kotroco Docket Clerk /PDM Arnold Jablon, Director /PDM Virginia W. Barnhart, County Attorney

> Kathleen C. Bianco Administrative Assistant



Printed with Soybean Ink on Recycled Paper

Baltimore County Government Office of Zoning Administration and Development Management



111 West Chesapeake Avenue Towson, MD 21204

(410) 887-3353

August 3, 1995

Mr. and Mrs. Robert L. Kennedy 1317 Glenwilde Road Catonsville, Maryland 21228

RE: Item No.: 03

Case No.: 96-4-A

Petitioner: R. L. Kennedy, et ux

Dear Mr. and Mrs. Kennedy:

The Zoning Advisory Committee (ZAC), which consists of representatives from Baltimore County approval agencies, has reviewed the plans submitted with the above referenced petition, which was accepted for processing by Permits and Development Management (PDM), Zoning Review, on July 5, 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 (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

W. Carl Richards, Jr. Zoning Supervisor

WCR/jw
Attachment(s)

Printed with Soybean Ink on Recycled Paper

wcp/i

### BALTIMORE COUNTY, MARYLAND

### INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon,	Director, ZADM	DATE:	July 2	26, 1995
FROM: Pat Keller, I	Director, OPZ			
SUBJECT: 1317 Glenv	wilde Road			
INFORMATION:				
Item Number:	3			
Petitioner:	Kennedy Property			
Property Size:				
Zoning:	DR-5.5	· · · · · · · · · · · · · · · · · · ·		
Requested Action:	Variance			· · · ·
Hearing Date:				·
SUMMARY OF RECOMMENI	DATIONS:			
The applicant reques	sts a variance to permit a fence he	ight of	54 inc	hes in lieu
tioner will need to	t oppose the applicant's request, is satisfy the burden imposed upon the onable hardship to justify the gran	em to p	rove pr	actical diffi-
Prepared by: Division Chief: PK/JL	Hry W. Ly Say L. Kerno	-		

### BALTIMORE COUNTY, MARYLAND INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director DATE: July 24, 1995 Zoning Administration and Development Management

FROM Robert W. Bowling, P.E., Chief
Development Plans Review Division

RE: V Zoning Advisory Committee Meeting for July 24, 1995
Item No. 003

The Development Plans Review Division has reviewed the subject zoning item. If this variance is granted, we recommend that the fence be set back at least 3 feet off the Moorefield Road right-of-way. Shrubs should be planted in this 3-foot wide strip.

RWB:sw

### Baltimore County Government Fire Department



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

(410) 887-4500

DATE: 07/17/95

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 OF JULY 17, 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:01,03,04,05,06 & 08.5

REVIEWER: LT. ROBERT P. SAUERWALD

Fire Marshal Office, PHONE 887-4881, MS-1102F

File
Printed on Recycled Paper

BALTIMORE COUNTY, MARYLAND

### DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

### INTER-OFFICE CORRESPONDENCE

TO:

ZADM

DATE:

July 18

FROM:

DEPRM

Development Coordination

SUBJECT:

Zoning Advisory Committee

Agenda:

July 17, 1995

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

Item #'s:

48

LS:sp

LETTY2/DEPRM/TXTSBP

7-12-95

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

Re: Baltimore County (535)

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.

Bob Small

Ronald Burns, Chief
 Engineering Access Permits
 Division

BS/

### BALTIMORE COUNTY, MARYLAND

96-4-A

### INTER-OFFICE CORRESPONDENCE

DATE: July 26, 1995 TO: Arnold Jablon, Director, ZADM FROM: Pat Keller, Director, OPZ SUBJECT: 1317 Glenwilde Road INFORMATION: 3 Item Number: Kennedy Property Petitioner: Property Size: DR-5.5 Zoning: Requested Action: Variance Hearing Date: SUMMARY OF RECOMMENDATIONS: The applicant requests a variance to permit a fence height of 54 inches in lieu of the required 42 inches. While staff does not oppose the applicant's request, it is clear that the petitioner will need to satisfy the burden imposed upon them to prove practical difficulty and/or unreasonable hardship to justify the granting of the subject variance.

Drengrad hus

Division Chief:

PK/JL

RE: PETITION FOR VARIANCE
1317 Glenwilde Road, S/S Moorefield Rd,
90'+/- E of Glenwilde Road, 1st
Election District, 1st Councilmanic

Robert L. and Susan H. Kennedy Petitioners BEFORE THE

ZONING COMMISSIONER

OF BALTIMORE COUNTY

CASE NO. 96-4-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

People's Counsel for Baltimore County

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 Appearance was mailed to Robert L. and Susan H. Kennedy, 1317 Glenwilde Road, Baltimore, MD 21228, Petitioners.

PETER MAX ZIMMERMAN

## PETITION PROBLEMS AGENDA OF

### #1 --- JLL

1. No sign fee paid (see receipt).

### #2 --- RT

- 1. Receipt is for special exception (\$300); petition is for special hearing (\$250) -- Which one is correct?
- 2. Special hearing petition says to amend special exception case. Case number given (82-52-SPHA) is for special hearing and variance. What are they amending -- special hearing or a special exception?
- 3. Need authorization for person signing for legal owner.
- 4. Zoning on petition says B.R.-A.S.; folder says B.R.-C.N.S. Which one is correct?
- 5. Who signed for attorney? Do they have authorization?

### #3 --- JJS

1. No zoning on petition form.

### #5 --- JLL

- 1. Need authorization for person signing for lessee.
- 2. Who signed for attorney? Do they have authorization?

#### APPEAL

Petition for Variance S/S Moorefield Road 90' E of Glenwilde Road 1st Election District - 1st Councilmanic District Robert L. Kennedy, et ux - Petitioners Case No. 96-4-A

Petition for Variance

Description of Property

Certificate of Posting

Certificate of Publication

Entry of Appearance of People's Counsel

Zoning Plans Advisory Committee Comments

Petitioner's Exhibits: 1 - Location Survey to Accompany a Petition for Variance

2 - One Photograph of Fence

3A - 3B - Letters of Support

4 - Letter of Opposition

Letter to the Deputy Zoning Commissioner from Robert L. Kennedy dated September 22, 1995

Letter and Location Survey to the Deputy Zoning Commissioner from Susan H. Kennedy dated October 4, 1995

Deputy Zoning Commissioner's Order dated August 22, 1995 (Denied)

Deputy Zoning Commissioner's Order dated October 5, 1995 (Amending the August 22, 1995 Order)

Notice of Appeal received on October 25, 1995 from Anthony J. DiPaula, Esquire, Attorney for the Petitioners

Anthony J. DiPaula, Esquite, Covahey and Boozer, P.A., 614 cc: Bosley Avenue, Towson, MD 21204

Mr. and Mrs. Robert L. Kennedy, 1317 Glenwilde Road,

Catonsville, MD 21228

Mr. and Mrs. Ronald Rodriquez, 1319 Glenwilde Road,

Catonsville, MD 21228

Mr. Donald Yakel, 1314 Glenwilde Road, Catonsville, MD 21228 People's Counsel of Baltimore County, M.S. 2010

Request Notification: Timothy M. Kotroco, Deputy Zoning

Commissioner

Arnold Jablon, Director of PDM

/nmn

1/02/96 -Notice of Assignment for hearing scheduled for Wednesday, April 24, 1996 at 10:00 a.m. sent to following:

Anthony J. DiPaula, Esquire
Mr. and Mrs. Robert L. Kennedy
Mr. & Mrs. Ronald Rodriquez
Mr. Donald Yakel
People's Counsel for Baltimore County
Pat Keller /Planning Director
Timothy M. Kotroco
Docket Clerk /PDM
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

MS. Rodriquez
TO SEND LIETTER
WY CONCERNS OF
APPEND OF BOTH
AMENDED & 25T
VECTSION.

4/24/96 -Board convened; questions raised as to action from which this appeal was taken (8/22/96 DZC Order or only the amended order of 10/05/95). People's Counsel had indicated that office would not be participating in these proceedings since, by the Notice of Assignment which cites the language in the DZC's Amended Order, the appeal could be taken only from the Amended Order dealing with fence height adjacent to lot 6. This was questioned by Counsel for Appellant /Petitioner.

Matter was then continued; People's Counsel advised as to questions being raised relative to appealable event; Notice of Assignment to be sent to parties for rescheduled hearing date.

- 4/29/96 -Notice of Assignment sent to parties; matter rescheduled to Wednesday, July 3, 1996 at 10:00 a.m.
- 6/28/96 -Letter from P. Zimmerman regarding legal issues relative to this matter. PMZ provided copies for each Board member, and also copied Mr. DiPaula on his letter.

#### COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

### MINUTES OF DELIBERATION

IN THE MATTER OF: Robert L. Kennedy, et ux -Petitioner

Case No. 96-4-A

DATE: July 3, 1996 /at conclusion of hearing

BOARD / PANEL : Lawrence M. Stahl (LMS)

S. Diane Levero (SDL)
Margaret Worrall (MW)

SECRETARY : Charlotte E. Radcliffe, Legal Secretary

Among those present at the deliberation were the Petitioners.

LMS: This is the discussion/deliberation portion of our proceedings in this matter. I will first take a moment or two if you will indulge me, as is my habit. In these cases, I feel open deliberation is an improper procedure to use; a statute law to control judicial and quasi-judicial hearings. As Court of Special Appeals has just ruled it "has a chilling effect" on the judges of the Board of Appeals; to come up with our decision in open deliberation has a chilling effect. I am gratified the Court of Special Appeals says very clearly that it does have a chilling effect. Open deliberation does not have to take place in a development plan hearing. I am still unhappy, but hopeful. Having said that, lets move on.

I believe this matter to be relative, straight forward, and simple. There is no conflict as to facts, no conflict of dates, and no conflict of testimony. We are faced with a very practical situation upon which we must superimpose Cromwell v. Ward. It is a two-prong test. The first prong of the two-prong test requires that you show that there are specific conditions existing that are peculiar to that land or structure which is unique in the sense that it would be different from other situations. Generally this Board has heard cases where "uniqueness" is that last little odd-shaped property put into a plan, or property that physically can not be used and therefore it is unique, and that a variance must be granted.

The larger section of the fence is not unique; nothing unique about it. If that were the only case it would fail the test; we would go no further. However, I believe all cases that come before any Court still exist under basic constitutional principles of ex post facto; constitutional premise - to do something legal today cannot be punished later; in good faith when you did it; it was not illegal and had good reasons for I believe that this is a case in which had that doing that. part of fence needed to match up to the requirements of Cromwell v. Ward, it would not have survived. However, the board heard uncontradicted testimony that house of Petitioner's and fence existed legally even before the home next door, the Hartka property, was actually built; only imposition of that lot next door that rendered the Kennedy fence not in compliance with the supplied scale of fence heights in the BCZR. I believe had the

### Deliberation /Robert L. Kennedy, et ux /96-4-A

house not existed before, Cromwell v. Ward would apply and the Petitioner would fail because Cromwell v. Ward would be an applicable law in existence and not a situation that faced the Kennedy's. But that is not the case. At the time, Kennedy's were in full compliance and not in part, therefore, I believe that to say that a later building of something cannot make illegal something that was legal before. Therefore, as to that portion of the fence, Cromwell v. Ward does not apply. I would rule that that section of the fence need not be in compliance, that no variance is required. Now let me say this to the Kennedy's, if that fence comes down and a new fence is built, Cromwell v. Ward would most certainly apply and the zoning laws in effect then would have to be complied with, but you have done nothing additional; it exists as it was when it was legally built.

That raises up a more difficult question. The small section of fence on the side. That house was in existence and Cromwell v. Ward does apply. In light of the testimony of the circumstances which is a nice lawyer's way of saying we are looking at the whole picture. I take note and believe that as it relates to that small portion of fence, that the nature of development in which it happened haphazardly (and again the fence was there) that developing in a haphazard way; the location of the house rendered that small portion where the angle of that neighbor next to the Kennedy property was in fact a unique circumstance, and having been so, we would then begin the second prong.

There are questions: if there was a detrimental effect on property owner and neighborhood? cost and burdens on Kennedy's and neighborhood? Circumstances to require lowering of that piece of fence would make no sense. Therefore, I would rule that variance, for those two total reasons, should be granted and 48" height that existed for the fence that is there now be allowed. Margaret...

MW: I really don't see anything I need to add. I would agree.

SDL: I would agree also. I would like to add, 6" is not a whole lot when you have a dog and children; a dog that can jump. That is a hardship.

LMS: In the matter of the fence, that is our decision and there will be a written decision emanating from this deliberation. Appeal to the Circuit Court for Baltimore County from County Board of Appeals decision should be filed with 30 days of the date of the opinion.

Respectfully submitted,

Charlotte E. Radcliffe

Legal Secretary

### BALTIMORE COUNTY, MARYLAND

### Inter-Office Correspondence

TO: L. Stahl DATE: June 28, 1996

D. Levero M. Worrall

FROM: Kathi

SUBJECT: Robert L. Kennedy, et ux /Case No. 96-4-A

Hearing date: Wednesday, July 3, 1996

Attached for your review is a copy of a letter submitted this date by Peter Zimmerman regarding the subject matter, which is scheduled for hearing on Wednesday, July 3rd. He is raising several legal issues unrelated to the merits of the case.

As this correspondence was just hand-delivered to our office today, there has not been time for any response from Mr. DiPaula, who represents the Petitioners in this case. However, I thought you might want the opportunity to review what we have received prior to Wednesday.

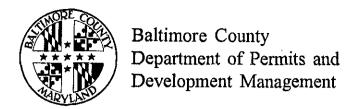
Should you have any questions regarding this case, or any attachment, etc., please let me know.

kathi

### Attachment

P.S. I will be on vacation next week. However, I will be talking with Charlotte some time during each day. Also, should you want to leave a message for me at home, my number is 893-7747. Our plans are to actually leave town on Tuesday.

Kathi



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

December 27, 1995

Mr. & Mrs. Ronald Rodriguez 1319 Glenwilde Road Catonsville, MD 21228

RE: Zoning Appeal Case #96-4-A

14317 Glenwilde Road
1st Election District

Dear Mr. & Mrs. Rodriguez:

Reference is made to your fax of December 21, 1995 to Ms. Julie Winiarski in which you questioned an appeal filed for the referenced zoning case. You indicated that, per the amended hearing order, only a portion of that order may be appealed and not the entire case.

In discussing this matter with Mr. James Thompson, Code Enforcement Supervisor, the enforcement division will not pursue any action until the appeal hearing is resolved.

Also, the issues on which matter may be appealed will be decided by the Board of Appeals at the hearing. The Department of Permits and Development Management has accepted this appeal request. Should you disagree with the validity of the appeal, it is suggested that you state your case at that hearing.

I trust that the information set forth in this letter is sufficiently detailed and responsive to the request. If you need further information or have any questions, please do not hesitate to contact me at (410) 887-3391.

Very truly yours,

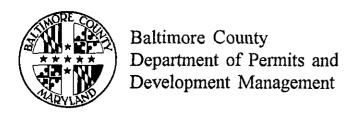
Mitchell J. Kellman Planner II

Zoning Review

MJK:scj

Enclosure

c: zoning case #96-4-A Board of Appeals



Permits and Licenses County Office Building 111 West Chesapeake Avenue Towson, Maryland 21204 (410) 887-3900 Fax: (410) 887-2824

October 26, 1995

Mr. and Mrs. Ronald Rodriquez 1319 Glenwilde Road Catonsville, MD 21228

Mr. Donald Yakel 1314 Glenwilde Road Catonsville, MD 21228

Re: Petition for Variance of S/S Moorefield Road 90' E of Glenwilde Road 1st Election District 1st Councilmanic District Robert L. Kennedy, et ux - Petitioners Case No. 96-4-A

Dear Mr. and Mrs. Rodriquez and Mr. Yakel:

Please be advised that an appeal of the above-referenced case was filed in this office on October 25, 1995 by Anthony J. DiPaula, Esquire, on behalf of Robert L. Kennedy. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals, "Board".

If you have any questions concerning this matter, please do not hesitate to contact the Board at 887-3180.

Sincerely,

Directo

Department of Permits and Development Management

AJ:nmn

cc: People's Counsel



### Batimore County, Maryland



OFFICE OF PEOPLE'S COUNSEL

Room 47, Old CourtHouse 400 Washington Ave. Towson, MD 21204

(410) 887-2188

PETER MAX ZIMMERMAN People's Counsel CAROLE S. DEMILIO
Deputy People's Counsel

June 27, 1996

Lawrence Stahl, Esq., Panel Chairman Board of Appeals of Baltimore County Room 49 Courthouse 400 Washington Avenue Towson. MD 21204

Hand-delivered

Re: PETITION FOR VARIANCE

1317 Glenwilde Road, S/S Moorefield Road, 90'+/- E of Glenwilde Road 1st Election Dist., 1st Councilmanic PETITIONERS: ROBERT L. KENNEDY, ET UX.

Case No. 96-4-A

Dear Mr. Stahl:

This variance appeal presents important related issues concerning (1) the finality of a zoning commissioner decision, and (2) the authority of the Zoning Commissioner to reconsider and amend an Order after the expiration of the 30-day statutory appeal period of Code Sec. 26-132, attached.

The basic facts follow this simple documentary chronology:

- 1. July 5, 1995: Petition for Variance to legalize fence reviewed and accepted for filing.
- 2. August 9, 1995: Public hearing held. Property owners and neighboring citizens appear.
- 3. August 22, 1995: Deputy Zoning Commissioner issues Order denying variance.
- 4. September 25, 1995: Petitioner writes letter asking for extension of time to file appeal.
- 5. October 2, 1995: Director of Permits and Development Management Arnold Jablon replies that he has no authority to extend deadline, but that Deputy Zoning Commissioner arguably may issue Amended Order.

Lawrence Stahl, Esq., Panel Chairman Board of Appeals of Baltimore County June 27, 1996 Page Two

- 6. October 4, 1995: Petitioner telephones Deputy Zoning Commissioner and speaks with him about case (as reported in letter of same day).
- 7. October 4, 1995: Petitioner writes to Deputy Zoning Commissioner to ask for modification of decision.
- 8. October 5, 1995: Deputy Zoning Commissioner amends Order, allowing part of the fence to stand.

The main questions presented are:

- I. Does the Zoning Commissioner (or Deputy) have the authority to amend an Order after the expiration of the 30-day appeal period?
- II. What authority is there for reconsideration of a Zoning Commissioner decision?

There are also other questions of interest relating to the procedure leading to the Amended Order. These pertain to utilization of conversations and correspondence as a basis of the amendment, without apparent notice and opportunity to be heard for other parties. There are, in addition, questions relating to the substantive basis upon which a commissioner may reconsider a decision. But, in view of the other problems, it may not be necessary to reach these issues.

### I. The August 22, 1995 Denial is Final.

Code Sec. 26-127 (also attached) establishes a mandatory 30-day time limit. Once this period ends, the decision is final.

The Maryland cases on this point include <u>Nutter v. Baltimore</u>, 230 Md. 6 (1962); and <u>Skipjack Cove Marina v. County Comm'rs for Cecil Co.</u>, 252 Md. 440 (1969). In <u>Skipjack</u>, speaking of the failure to appeal a CBA zoning decision within 30 days, Judge Barnes wrote, at 250 A.2d 265:

"No appeal was taken from that decision of the Board so that it became final after the 30 day period provided by Maryland Rule B4 had expired, and is subject to challenge only for fraud, surprise or some other factor directly affecting the validity, vel non, of the decision. There were no allegations that such conditions existed."

Lawrence Stahl, Esq., Panel Chairman Board of Appeals of Baltimore County June 27, 1996 Page Three

Similarly, the documents here do not reveal any factor directly affecting the validity of the decision. At most, the petitioners simply contended that the original decision was based on partially incorrect findings of fact.

In <u>Nutter</u>, the Court underlined the finality of any issue resolved by an administrative zoning decision in the absence of a timely appeal. There, the Court rejected a collateral attack on the Board's original decision.

The bottom line is that on September 22, 1995, the Deputy Zoning Commissioner's decision became final, and the Amended Order of October 5, 1995 is invalid.

### II. There Is No Authority For Reconsideration After 30 Days.

In this connection, we have also reviewed the Rules of the Zoning Commissioner to discover whether any rules exist which provide for reconsideration and an extension of time for appeal. There is no such rule.

This contrasts, for example, with Maryland Rule 2-534, which allows a motion to alter or amend a Circuit Court judgment, and thereby extend the appeal deadline. It must be filed within ten (10) days of the judgment. A motion for reconsideration may be filed within 30 days of the court judgment under Rule 2-535, but it does not extend the appeal deadline.

To gain additional perspective, please note that the County Board of Appeals' own Rule 10 authorizes revisory power exercised within 30 days on the basis of fraud, mistake, or irregularity, but does not provide that a request for reconsideration extends the appeal deadline.

In any event, an administrative agency may not amend its decision based on a "change of mind". See Redding v. Board of County Comm'rs, 263 Md. 94 (1971). Whether the Deputy Zoning Commissioner's Amended Order here involves such a "change" and is thus legally insufficient is a serious question. But it is academic because of the finality of the original order.

For the same reason, the notice and hearing questions pertinent to reconsideration need not be decided. It would appear, however, that these elements of procedural due process, also delineated in Code Sec. 26-127, were not observed.

Lawrence Stahl, Esq., Panel Chairman Board of Appeals of Baltimore County June 27, 1996 Page Four

#### III. The Amended Order Is Appealable.

Article VI of the County Charter and Sec. 26-132 of the County Code authorize an appeal of any Order of the Zoning Commissioner. Therefore, any person feeling aggrieved may take an appeal within 30 days.

Indeed, to obtain relief from an Amended Order issued after an original Order is final, the appeal process provides a particularly important remedy. In the present case, there is an unexpected twist.

The protestants clearly could have filed an appeal, but did not. Rather, the appeal is filed by the petitioners, even though the Amended Order benefited them in comparison with the original Order, which entirely denied their fence variance. The petitioners' actual complaint is now directed against what they perceive is left standing from the original denial.

#### Conclusion

But, as already shown, the original denial is final, and the Amended Order was issued without authority. Therefore, to resolve this appeal, the Board should find the August 22, 1995 Order intact, and reverse the Amended Order because it is untimely or legally insufficient.

Very truly yours,

Peter Max Zimmerman

Pete Max Cumani

People's Counsel for Baltimore County

Carole S. Demilio

Deputy People's Counsel

PMZ/caf Enclosures

cc: Anthony J. DiPaula, Esq. Attorney for Petitioners

Mr. and Mrs. Ronald Rodriguez, Protestants

Mr. Donald Yakel, Protestant

#### PLANNING, ZONING AND SUBDIVISION CONTROL

- (b) The zoning commissioner shall furnish with reasonable promptness a copy of any paper or record in his office to any person applying for same upon payment in advance of the sum of fifty cents (\$0.50) per page or as otherwise established by the administrative officer for transcribing, photographing, or otherwise reproducing such paper. Such reproduction when so made and certified under the seal of the zoning commissioner shall be evidence in any court or before any county board, commission, or official.
- (c) The zoning commissioner shall permit any resident of the county or representative of the press to inspect and examine, as soon as received for filing or at any time thereafter, all papers filed in the zoning commissioner's office and to make memoranda or notes therefrom for any lawful purpose whatsoever, without payment of fees therefor, and also to examine the records and indexes in his office, free of charge. It shall be the duty of the zoning commissioner to afford such person immediate access to such papers or records and a full opportunity to examine the same and make memoranda therefrom.
- (d) All records kept by the zoning commissioner shall be open to inspection by the county executive or any member of the county council at all reasonable times, whether or not such records are required to be kept by statute or ordinance. The zoning commissioner is authorized, in his discretion, to permit other county officials to remove a zoning file from his office; provided such official signs a regular receipt book to be kept by the zoning commissioner as a permanent record which shall show the date and time that such file is taken and returned. When the file is returned, the receipt book must be signed by the person who had withdrawn the file and countersigned by the zoning commissioner or his deputy.
- (e) Nothing contained in this title or elsewhere shall prevent the zoning commissioner from transferring any file in his official custody to the board of appeals or to any circuit court or to the state court of appeals while review of proceedings is pending, and upon making such transfer the zoning commissioner is hereby relieved from any duties or responsibilities in connection therewith until such file is returned to him.

(f) The provisions of this section shall be executed by the deputy zoning commissioner as well as the zoning commissioner, and they may delegate to their chief clerk the performance of the daily duties and responsibilities in connection therewith.

(Code 1978, § 22-30; Bill No. 18, 1990, § 2; Bill No. 4, 1992, § 1)

### Sec. 26-132. Appeals to county board of appeals.

- (a) Any person or persons, jointly or severally, or any taxpayer aggrieved or feeling aggrieved by any decision or order of the zoning commissioner or the director of zoning administration and development management shall have the right to appeal therefrom to the county board of appeals. No official, office, department, or board of the county aggrieved or feeling aggrieved by any decision of the zoning commissioner shall have the right to appeal therefrom to the county board of appeals without the prior approval of the administrative officer and the county attorney. People's counsel is not subject to such prior approval. Notice of such appeals shall be filed, in writing, with the director within thirty (30) days from the date of any final order appealed, together with the required fee as provided in the zoning regulations. Such appeals shall be heard and disposed of by the county board of appeals as may be provided in the Charter and the board's own rules of procedure. Any reclassification when granted by the county board of appeals shall, in the absence of an appeal therefrom, have the force and effect of law.
- (b) For purposes of this section, the term "person aggrieved or feeling aggrieved" includes a duly constituted civic, improvement, or community association if:
  - (1) The property or issue which is the subject of the final order being appealed is:
    - a. Located within the geographic limits of the association, said limits to be defined and determined by the first of the following criteria found applicable:
      - 1. If incorporated, any geographic description contained in the associa-

- tion's corporate articles, bylaws, charter, or similar document;
- 2. If not so incorporated, by any metes and boundaries description for the association contained in any zoning map, plat, or similar document on file at the county department of public works, the land records office of the county, or at some other county governmental agency or department;
- 3. If no such description exists, by any street, road, or thoroughfare description for the association contained in any zoning map, plat, or similar document on file in the county department of public works, the land records office of the county, or at some other county governmental agency or department; or
- b. The property or issue is of such a nature and kind as to be within the association's discernable and assessable tax base if such exists; or of such a nature as to personally and specifically affect, damage, or impact the members of the association in a way different from that suffered by the members of any other associations or in a way different from a general interest such as is the concern shared by the public in general; or of such a nature or type as to give the members of the association a valid and discernible property interest therein or right thereto.
- (2) The association complies with the rules of procedure of the board.

(Code 1978, § 22-32; Bill No. 18, 1990, § 2; Bill No. 116, 1990, § 2; Bill No. 4, 1992, § 1)

Annotations—Remedy provided under title 34 of 1958 Code held to be an alternative to that afforded by this section, at least where it is affirmatively alleged that the planning board has violated zoning regulations and that a violation of either the zoning or the subdivision regulations was subject to an injunction under title 34. Lynn v. Goldman, 216 Md. 562, 141 A.2d 172 (1958).

County council need not follow the recommendations of the planning board, and need not have any further or additional hearing in regard to any changes or amendments the county council may see fit to make. Swathmore Company v. Kaestner, 258 Md. 517, 266 A.2d 341 (1970).

The people's counsel has the right to appeal zoning decisions. People's Counsel for Baltimore County v. Williams, 45 Md. App. 617, 415 A.2d 585 (1974).

### Sec. 26-133. Appeals from the county board of appeals.

Appeals from the county board of appeals to the courts may be taken in the manner provided in article VI of the Charter.

(Code 1978, § 22-33)

Annotations—This section (34-7, 1958 Code) directs that the court of appeals shall not award cost of the appeal against any party to the appeal except the appellant. Kroen v. Board of Zoning Appeals of Baltimore County 209 Md. 420, 121 A.2d 181 (1956).

The adoption of a new land use may have caused issuance of the appeal to become moot. This section directs that the court of appeals should not award cost of the appeal against any party to the appeal except the appellant. Lake Falls Assn. v. Board of Zoning Appeals of Baltimore County, 209 Md. 561, 121 A.2d 809 (1956); Grau v. Board of Zoning Appeals of Baltimore County, 210 Md. 21, 122 A.2d 825 (1956); Hardesty v. Board of Zoning Appeals of Baltimore County, 211 Md. 174, 126 A.2d 621 (1956).

Cited in Prince George's County v. Donohue, 220 Md. 372, 152 A.2d 560 (1959).

Construed in Renz v. Bonfield Holding Co., 223 Md. 34, 158 A.2d 615 (1960).

This section before amendment provided that in the appeal of zoning cases "the court of appeals shall not award cost of the appeal against any party to the appeal except the appellant." Maryland Rule 882a provides that in all cases in the court of appeals "the awarding of costs shall be in the discretion of this court, but unless it is otherwise ordered by this court, costs shall be awarded against the losing party." Held, that Maryland Rule 882 applies. Reese et al. v. Mandel et ux., 224 Md. 121, 167 A.2d 111 (1961).

Referred to in Renz v. Bonfield Holding Co., 223 Md. 34, 158 A.2d 615 (1960).

A person who was not a party to a proceeding before the board of appeals has no standing to appeal from an order entered by the board of appeals, Hitzrot v. County Board of Appeals, 262 Md. 297, 278 A.2d 11 (1971).

#### Sec. 26-134. Correction of zoning map.

(a) The owner of any property may give written notice to the director of planning and zoning that the zoning map last enacted by the county council does not accurately reflect the final zoning classification imposed by the council on the owner's property during the last or prior comprehensive ings, the county council may by ordinance adopt such regulations or maps, subject, however, to such changes or amendments therein as the county council may deem appropriate, but subject to the provisions of section 26-128(e).

- (b) No change or amendment may be made in a zoning map to an area or parcel of land which was not considered by the planning board for a change in zoning prior to its submission of the map to the county council.
  - (c) (1) Each change or amendment to be made in a zoning map as proposed by the planning board shall be voted upon individually by the county council, and each vote thereon shall be recorded in the council minutes.
  - (2) The officially adopted zoning map shall be the one (1) inch to two hundred (200) feet scale maps.
- (d) Notwithstanding any other provision of this Code relating to reclassifications or rezoning of land, the county council may amend at any time the official zoning map in conjunction with the approval of growth allocation applications and the related amendment of the official critical area map enacted pursuant to section 26-123(g) of this Code, but only after receipt of recommendations from the planning board pursuant to section 26-123(g) and (h) and subject to the procedures established in this subsection below:
  - (1) That all requests for growth allocation that involve changes to the underlying zone or zones not subject to section 2-356(j)(3) of this Code shall be submitted to the director of the department of environmental protection and resource management, who shall process such requests pursuant to section 26-123(g) and (h);
  - (2) Within a reasonable period from receipt of the recommendations from the planning board, pursuant to section 26-123(h), and subject to the giving of at least twenty (20) days' public notice in two (2) newspapers of general circulation, the county council shall hold a public hearing on the proposed zoning changes;

(3) Within sixty (60) days of the county council's public hearing, the county council shall take action on the planning board's recommendations.

(Code 1978, § 22-22; Bill No. 14, 1992, § 1)

### Sec. 26-125. County council action on regularly revised zoning map.

Each time the county council receives a recommended zoning map from the director of planning under the procedure set forth in section 26-123(d), the county council shall forthwith schedule a hearing or hearings thereon, in accordance with the procedures set forth in section 26-124. Before October 16 of each year in which it is required in this title that the proposed version of said map be recommended by the planning board, the council shall adopt the complete county-wide zoning map last so recommended with such revisions as may be made in accordance with section 26-124. (Code 1978, § 22-23)

#### Sec. 26-126. Planning board reports.

- (a) Within two (2) years after the county council has received a final report of the planning board concerning amendments to the zoning regulations, the county council by ordinance may act upon the report. If the county council fails to so act within the two-year period, the final report of the planning board is null and void, and any action upon the subject matter of the final report requires compliance with the provisions of sections 26-123 and 26-124 regarding amendments to the zoning regulations.
- (b) Within two (2) years after the county council has acted pursuant to subsection (a) of this section, the council by ordinance may take further action upon any issue related to the subject matter of the final report without the necessity of compliance with the provisions of section 26-123 regarding a prior recommendation of the planning board. However, prior to taking such action, the council shall prepare a specific proposal and hold a hearing on the proposal. (Code 1978, § 22-24)

# Sec. 26-127. Authority of zoning commissioner to provide for special exceptions and variances.

(a) Except as provided in section 2-356(p) of this Code and subject to the appropriate principles,

standards, rules, conditions, and safeguards set forth in the zoning regulations, and that all decisions of the zoning commissioner with respect to such matters shall be subject to appeal to the board of appeals as provided in this article. The zoning commissioner shall schedule a public hearing on any petition for such a variance or special exception for a date not less than twenty-one (21) nor more than ninety (90) days after the petition is accepted for filing. For a period of at least fifteen (15) days prior to the time of such hearing, notice of the time and place of the hearing relating to the property under petition shall be conspicuously posted thereon and shall be given in at least one (1) newspaper of general circulation in the county. Such notice shall provide the address of the property under petition, but if not available, a description and the action requested thereon. Upon establishing a hearing date for such a petition. the zoning commissioner shall promptly forward a copy of the petition to the director of planning and zoning (or deputy) for consideration and written report thereon containing findings thereon with regard to planning factors.

(b) (1) Notwithstanding the above provisions, the zoning commissioner is hereby empowered to grant variances from area and height regulations, subject to the appropriate principles, standards, rules, conditions, and safeguards set forth in the zoning regulations, without a public hearing if the subject of the variance petition involves an owner-occupied lot zoned residential, as defined by the zoning regulations, and subject to the following conditions: (i) a supporting affidavit under oath made on the personal knowledge of the petitioner setting forth facts as to which would otherwise satisfy the petitioner's burden of proof as required by the zoning regulations if a hearing were to be required; (ii) the filing of such affidavit with the petition, to be in addition to the information required by the zoning commissioner on such petition; and (iii) on the lot in question, notice of the petition shall be conspicuously posted for a period of at least fifteen (15) days following the filing of the application. Within the fifteen-day posting period, any occupant or owner within one thousand (1,000) feet of

the lot in question may file a formal request for a public hearing with the zoning commissioner, and such hearing shall be scheduled within seventy-five (75) days from receipt of the request for public hearing. If a formal request for a public hearing is not filed, the zoning commissioner, without a public hearing, may grant such a variance as described above if the proposed requested variance is in strict harmony with the spirit and intent of the height and area requirements of the zoning regulations, and any other applicable requirements.

- (2) If a formal request for a public hearing is not filed and notwithstanding any provision herein to the contrary, the zoning commissioner may, at his or her discretion, require a public hearing whereat the petitioner shall be required to satisfy the burden of proof required by the zoning regulations for such variance to be granted.
- (c) Variances may be issued with such conditions or restrictions as determined appropriate by the zoning commissioner for the purpose of protecting the health, safety, or general welfare of the surrounding community.
- (d) Notwithstanding any provision of this Code or the county zoning regulations to the contrary:
  - (1) The zoning commissioner shall schedule a public hearing on any petition for a special exception for a rail passenger station, as that term is defined in the county zoning regulations, or for a variance or special hearing on any issue involving transit facilities, for a date not more than sixty (60) days after the petition is filed. Posting and advertising for such hearing shall be as required by subsection (a) of this section.
  - (2) The zoning commissioner shall issue a decision within fifteen (15) days after the conclusion of the public hearing required in subsection (d)(1) above.
  - (3) Any person or persons, jointly or severally, or any taxpayer, aggrieved or feeling aggrieved by the decision of the zoning commissioner issued pursuant to this subsection, shall have the right to appeal

therefrom to the county board of appeals, with notice of such appeal in writing to be filed with the zoning commissioner within fifteen (15) days from the date of any final order appealed from, together with any required fee. Such appeal shall be heard and disposed of by the county board of appeals as is provided for below.

(4) The board of appeals shall schedule a public hearing for a date not more than forty-five (45) days after such notice of appeal is received by the zoning commissioner. The board shall issue its decision within fifteen (15) days after the conclusion of its public hearing. There shall be appropriate notice of the date, time, and location of the public hearing and posting of the property at issue as otherwise provided in the Charter, law and the board's own rules of procedure. (Code 1978, § 22-26; Bill No. 18, 1990, § 2; Bill No.

## Sec. 26-128. Files on zoning commissioner's hearing proceedings; basis of zoning commissioner's decision.

91, 1990, § 2; Bill No. 1, 1992, § 2)

- (a) The zoning commissioner shall cause to be maintained complete files with respect to all hearing proceedings over which he presides. The director of zoning administration and development management is the official custodian of all such files. The file with respect to the zoning commissioner's hearing proceeding upon a petition shall include at least the following documents:
  - (1) The petition itself;
  - (2) Any report of the planning board or comments from the director of planning and zoning or other officer of the office of planning and zoning relating to the petition, or any duly submitted pertinent report or comments from any other county agency;
  - (3) Any exhibits introduced in evidence at the hearing; and
  - (4) The opinion rendered by the zoning commissioner.
- (b) In the rendering of each decision, the basis of the decision shall be fully explained. (Code 1978, § 22-27; Bill No. 4, 1992, § 1)

### Sec. 26-129. Review of zoning commissioner's decisions by board of appeals.

Whenever the zoning commissioner renders a decision pursuant to a hearing proceeding and an appeal from such decision is taken before the board of appeals, the file with respect to the zoning commissioner's hearing proceeding shall remain part of the case file, and the zoning commissioner's file and all of the documents contained therein as required by section 26-128 shall be considered in evidence by the board without testimony thereto, absent objection by any party to the case. If such objection is made, the item shall be entered by testimony of a proper witness, who shall be notified by the board.

(Code 1978, § 22-28; Bill No. 18, 1990, § 2)

#### Sec. 26-130. Zoning commissioner's docket.

A public docket shall be maintained in the office of the zoning commissioner in which he shall promptly cause to be noted a record of all proceedings before the zoning commissioner and all subsequent proceedings and appeals with reference thereto. The director of zoning administration and development management is the official custodian of all such records and dockets. (Code 1978, § 22-29; Bill No. 4, 1992, § 1)

#### Sec. 26-131. Books and papers.

(a) The zoning commissioner shall also file all papers delivered to him to be filed. The director of zoning administration and development management shall have the official custody of all books and papers pertaining to the office of zoning commissioner.

#### BALTIMORE COUNTY, MARYLAND

#### INTER-OFFICE CORRESPONDENCE

TO:

Arnold Jablon, Director

**DATE:** June 11, 1997

Permits & Development Management

FROM:

Charlotte E. Radcliffe

County Board of Appeals

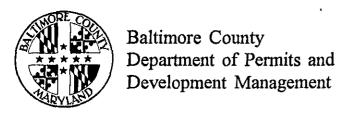
SUBJECT: Closed File: Case No. 96-4-A

ROBERT L. KENNEDY, ET UX

1st E; 1st C

As no further appeals have been taken regarding the subject case, we are hereby closing the file and returning same to you herewith.

Attachment (Case File No. 96-4-A)



Director's Office County Office Building 111 West Chesapeake Avenue Towson, Maryland 21204 (410) 887-3353

Fax: (410) 887-5708

9L-4-A.

October 2, 1995

Mr. Robert L. Kennedy 1317 Glenwilde Road Baltimore, Maryland 21228

RE: Filing Deadline for Appeals

Dear Mr. Kennedy:

I am in receipt of your letter dated September 25, 1995. Please be advised that the law does not permit me to extend the filing deadline for appeals. The Baltimore County Code sets out a thirty day time period which cannot be extended; however, if Deputy Zoning Commissioner Timothy Kotroco issues an amended order to his original decision, it is arguable that a new thirty day time period would begin to run. I would suggest that you then file your appeal within the thirty day period from the date of the amended order.

Sincerely,

ARNOLD JABLO

Director

AJ:ljb

Betty place in Place in Blanch, Blanch Jawan Sili. Manda,

#### COVAHEY & BOOZER, P. A.

ATTORNEYS AT LAW
614 BOSLEY AVENUE
TOWSON, MARYLAND 21204
AREA CODE 410
828-9441

EDWARD C. COVAHEY, JR.

F VERNON BOOZER \*

MARK S. DEVAN

ANTHONY J. DIPAULA \*

THOMAS P. DORE

ROGER J. SULLIVAN

FAX 410-823-7530

ANNEX OFFICE SUITE 302 606 BALTIMORE AVE. TOWSON, MD. 21204

\* ALSO ADMITTED TO D. C. BAR

October 24, 1995

#### HAND DELIVERY

Arnold Jablon, Director
Baltimore County Department of
Permits and Development Management
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

RE: ZONING CASE NO.: 96-4-A ROBERT L. KENNEDY, ET UX. 1317 GLENWILDE ROAD

Dear Mr. Jablon:

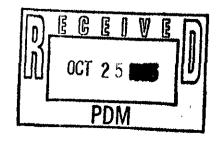
Please treat this as notice of an appeal to the Board of Appeals, being filed in the above referenced case. Enclosed is a check in the amount of \$210.00 to cover the cost of same. Please see that all future notices and other communications regarding the above case be sent to the undersigned as well as the parties in interest. Thank you.

Very truly yours,

Anthony J. DiPaula

AJD/ds 10±ds.105 enclosure

cc: Robert and Susan Kennedy



#### COVAHEY & BOOZER, P. A.

ATTORNEYS AT LAW
614 BOSLEY AVENUE
TOWSON, MARYLAND 21204
AREA CODE 410
828-9441

EDWARD C. COVAHEY, JR.
F. VERNON BOOZER \*
MARK S. DEVAN
ANTHONY J. DIPAULA \*
THOMAS P. DORE
ROGER J. SULLIVAN

FAX 410-823-7530

ANNEX OFFICE SUITE 302 606 BALTIMORE AVE. TOWSON, MD. 21204

Julie

\* ALSO ADMITTED TO D C. BAR

October 27, 1995

Ms. Julie Winiarski
Baltimore County Department of
Permits and Development Management
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

RE: ZONING CASE NO.: 96-4-A ROBERT L. KENNEDY, ET UX. 1317 GLENWILDE ROAD

Dear Ms. Winiarski:

This is to confirm that the appeal letter dated October 24, 1995 filed in the above referenced case was filed on behalf of Robert L. Kennedy and Susan H. Kennedy, his wife, although not clearly stated in the initial letter. Please process same accordingly.

Very truly yours,

Anthony J. DiPaula

AJD/ds 10±ds.123



- 4698-95-0Y

September 25, 1995

Mr Arnold Jablon
Director
Zoning Administration and
Development Management

Dear Mr. Jablon:

Enclosed please find a copy of a letter that I hand delivered to Timothy Kotroko. Said letter was misplaced in our household, and as a result I brought it to Mr. Kotroko in person, with the request that he extend the appeal date, due to the errors he made in his ruling regarding our case no. 96-4-A. (The appeal date was to be 30 days after the 22nd of August.) I was subsequently advised that I had to make written request to you for the extension to file an appeal.

Mr. Kotroko told me that he would review the notes in regard to this case and send a letter by the end of the week. Please therefore extend your permission for the filing of an appeal to be made 10 days after the upcoming correction of Mr. Kotroko's decision. Thank you for your cooperation.

Sinceraly

Robert L. Kennedy

1317 Glenwilde Road

Catonsville, Md. 21228

ZADM

Dear Mr. Kotroco:

I hope you will recall your telephone conversation as initiated by my wife, Susan Kennedy, during which she protested your ruling of August 22, 1995, referring to case No. 96-4-A, such conversation taking place on August 25, 1995.

Your paragraph number four quotes that "The facts of this case clearly demonstrate that a large portion of the Kennedy fence is actually located in the front yards of other lots." This is simply NOT TRUE. You chose to ignore the verbal testimony during the hearing given by myself that revealed that the areas defined as "front yards" only measured approximately 40 feet. You have further misinterpreted the site plan as furnished, which clearly indicates a front facing of lot #6 directly opposite to that which you have based your ruling on.

Furthermore, the extent of the ruling exceeds even that of the area considered applicable by the zoning inspector Donna Thompson and that of John as elicited during the variance application process.

We were also disappointed that you were apparently predisposed to rule against our variance petition, as you announced during the Rodriguez hearing that you would rule the same on both cases. It seems predjucial for you to announce this before even hearing testimony regarding our request for variance. If variances are not considered on a case to case basis, and fairly decided upon, there would be no need for variances, and laws would be inflexably applied.

We therefore request you to reconsider and rewrite your decision, with the added advisory that the Rodriguezes advised the community on August 28, 1995 that they were lowering their fence and also

installing an electronic barrier for the control of their dogs.

Robert L. Kennedy

1317 Glenwilde Road

Catonsville, Md. 21228

October 4, 1995

Mr. Timothy M. Kotroco Suite 112 Courthouse 400 Washington Avenue Towson, MD 21204

Dear Mr. Kotroco,

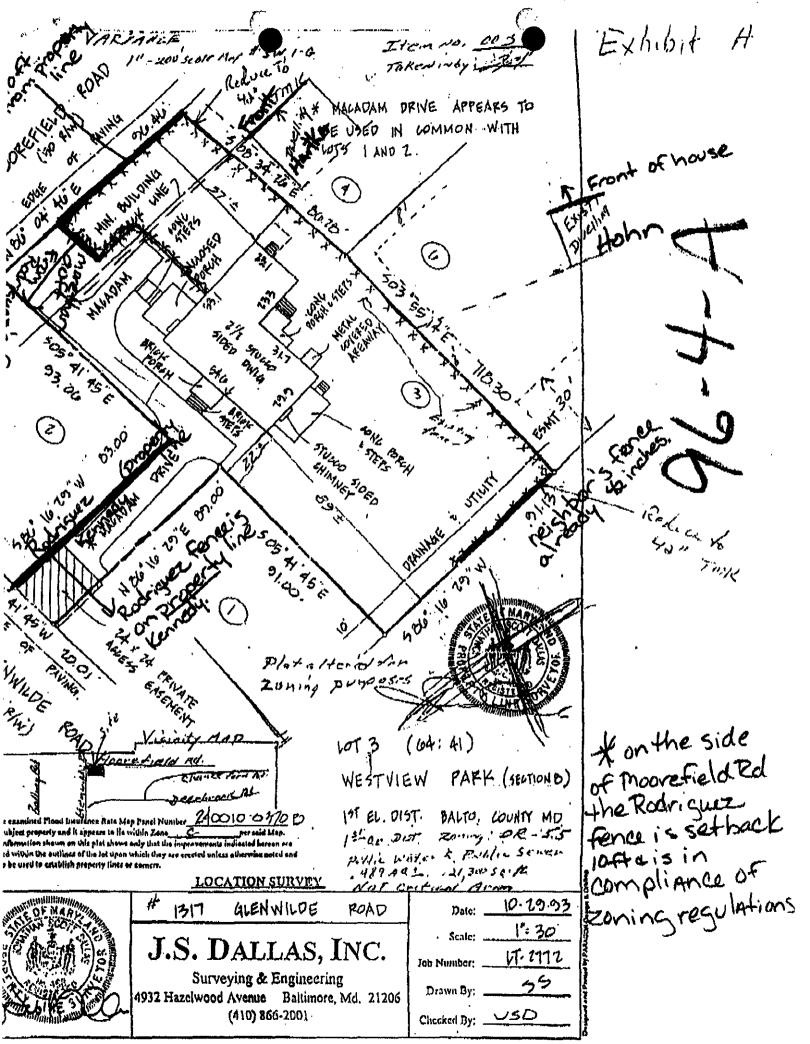
As you know we spoke today in reference to our Variance Appeal. I brought to your attention the fact that our fence is set back ten feet from Moorefield Road which is actually in compliance with the Zoning Laws. I also discussed that the front of our fence is more than twenty feet from the Rodriguez's property and this is also in compliance with Zoning Regulations. The house behind our property is actually facing away from our house in the direction of the arrow on the plat drawing. Therefore the fence adjoining this property is in compliance as well as the fence adjoining the back of this property. This specific fence is not ours however it is only 42 inches high and therefore is in compliance with regulations. I believe the area that is out of compliance on our fence is that which is on the side of Hartka's house, 6127 Moorefield Road, from the front of their house to Moorefield Road. You have in your possession letters from the Hartka family and Mr. William Hohn, 6123 Moorefield Road, stating that they have no objection to the height of our fence.

I have also enclosed a copy of the location survey which you sent to us with your decision. I have outlined the actual information concerning the setback ofour fence and the location of the front yard of the Hohn residence. I understand that the reason the tone of your decision was somewhat chastising since you thought our backyard was the Hohn frontyard. I trust that the corrections made above resolve any misconceptions.

I also spoke with Ms. Lavette Danneman from Mr. Jablon's office. She informed me that once we receive your amended decision we have thirty days to appeal that decision. If we decide to we will do so promptly.

I want to thank you for taking the time to speak with me today. I do appreciate your attention to this case and hope that we will reach a solution satisfactory to all parties soon.

Sincerelyn Kunnedy Susan H. Kennedy





# Maryland State Department of EDUCATION

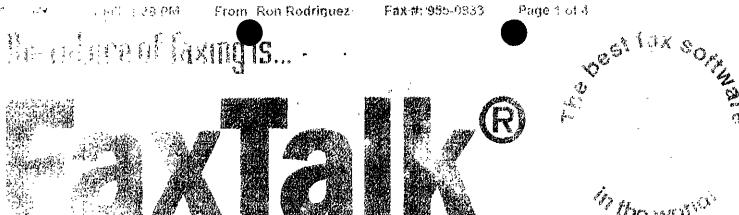
#### **DIVISION OF REHABILITATION SERVICES**

Nancy S. Grasmick State Superintendent of Schools

Robert A. Burns Assistant State Superintendent in Rehabilitation Services MD Rehabilitation Center 2301 Argonne Drive Baltimore, MD 21218 Phone (410) 554-9100 TDD (410) 554-9155 FAX (410) 554-9112

MRC FAX (410) 554-9131

	wholes
DATE:	
TO:	TimoThy Kotisco
FROM:	Susan H. Bennedy
THERE ARE	PAGES INCLUDING THIS COVER LETTER.
IF YOU H PLEASE DO	AVE ANY QUESTIONS OR DO NOT RECEIVE ALL OF THE PAGES, NOT HESITATE TO CALL OUR OFFICE AT (410) 554-9141.
THANK YOU	7.1
NOTES:	I was unable to wach you. Please call
	I was unable to wach you. Please call
	if you have any questions
	Thanks.
	Susan N. Bennedy



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Thursday, December 21, 1995

Time:

4:38 PM

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Ms. Julio Winter ki

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on December 2, inclusional and I submitted this letter to I for Arroad Jablon. In this letter we requested continuous of the appeal for Case No. 96-44. We have the effective a resolute

I unletter quotes those portions of Mr. Limothy introductive older that specifies the terms of any appeals of is our interest in fitty and the Perinogens — It into Mrs. doi: 100 united sections submitted the inclinated deadance for the indication of the indication. However, that appeal was culmitted within the deadance for the indication of Mr. Reaction submitted. Thus, they may appear the decision for the operation of the reactions of their operation of the section of the section of the section of the first object of the operation of the first object of the operation of the first of their abids of their objects.

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To Whom It May Concern,

With regard to the fence between

my property at 6123 Moorefield Road

and that of the Kennedy's at 1317

Glenwilde Road, this note is written

to have it known that I, William H.

Hohn, am not offensed in any way

to the present condition of said fence.

Hillian Hoho K. 5-22-25

Pet. Ex. 6

April 20, 1996

County Board of Appeals of Baltimore County

I am a resident of Baltimore County, living at 1314 Glenwilde Road across Th. road from Mr. and Mrs. Robert Kennedy (1317 Glenwilde Road).

I do not protest to the height of the fence surrounding their home. I believe if the fence was lowered it would be unattractive and unuseful considering the style of the fence.

Thank you

Anna Lou Yakel

Thank you

Anna Lou Yakel

5724-95

December 2, 1995

Mr. and Mrs. Ronald Rodriguez 1319 Glenwilde Road Catonsville, MD 21228 Call ASD + ched

Enternant12/7/95 use

Mr. Arnold Jablon, Director
Department of Permits and Development Management
Permits and Licenses
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

#### Dear Sir(s):

I am writing to request a written clarification of the limitations regarding case number 96-4-A. This case regards a fence that is violation of Section 427 of the Baltimore County Zoning Regulation (BCZR). On August 22, Mr. Timothy Kotroco, Deputy Zoning Commissioner for Baltimore County, denied Mr. and Mrs. Robert L. Kennedy relief from Section 427 of the BCZR. Specifically, Mr. Kotroco stated on pages 3 and 4 of his Order:

"It is ... ordered that within forty-five (45) days of the date of this Order [August 22], the Petitioners [Mr. and Mrs. R. L. Kennedy] shall reduce the height of their fence to 42 inches in all of those areas highlighted in yellow on the attached site plan marked as Exhibit A; and

It is further ordered that the Petitioners shall have thirty (30) days from the date of this Order in which to file an appeal of this decision."

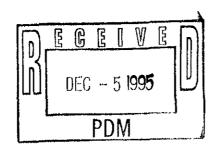
Based on this ruling, Mr. and Mrs. Kennedy were required to submit their request for an appeal by September 21. According to the County Zoning Office, the Kennedys did not submit any such request by this deadline. After issuing his Order, Mr. Kotroco became aware of an error he made in specifying the portions of Mr. and Mrs. Kennedy's fence that were in violation of his Order. A portion of the fence he had sited as being in violation was in fact not. On October 5, Mr. Kotroco amended this Order as follows:

"... It is ordered by the Deputy Zoning Commissioner for Baltimore County this 5th day of October, 1995 that the Order issued August 22, 1995 be and the same is hereby amended to permit that section of fence located on the northwest corner of the subject property adjacent to Lot 6 and highlighted in yellow on Exhibit A to remain at its present height, inasmuch as that section of fence is located in the rear yard of the dwelling on Lot 6; and,

It is further ordered that an Appeal of this decision may be taken within thirty (30) days of the date of this Order but only for that portion of the Order dealing with the fence height adjacent to Lot 6.

It is further ordered that all other terms and conditions of the Order issued August 22, 1995 shall remain in full force and effect."

According to his amended ruling, the original deadline for an appeal still remains at September 22. Only the decision for the portion of the fence specified in his amended Order may be appealed by November 4.



On October 25, your department received a request for an appeal to this case from Mr. Anthony J. DiPaula, Esquire, on behalf of Mr. Kennedy. Upon inquiring to your office, we were informed that the letter submitted for the Kennedys only states a request for an appeal to the decision for Case No. 96-4-A. It does not specifically state whether this is an appeal of the original or amended decision. Based on the rulings by Mr. Kotroco, we believe that Mr. and Mrs. Kennedy are only allowed to appeal the amended decision. His original Order for the remainder of their fence still stands, and it can no longer be appealed.

In order to avoid confusion, we request clarification of the motion for an appeal submitted by Mr. Anthony J. DiPaula, Esquire, on behalf of Mr. and Mrs. Robert L. Kennedy. Specifically, we request that if the appeal only applies to the amended decision, then these limitations should be explicitly stated by written correspondence to all the involved parties, including the Office of Baltimore County Zoning Enforcement. Furthermore, the remainder of the Kennedy's fence (those sections not adjacent to lot#6) has not been cut, and thus is in violation of the original Order. If the Kennedys are exempt from these prior rulings, then the reasons for this exemption should also be explicitly stated. Thank you for you cooperation.

Sincerely,

Mr. and Mrs. Ronald Rodriguez

Pet, Ex. 1

October 4, 1995

Mr. Timothy M. Kotroco Suite 112 Courthouse 400 Washington Avenue Towson, MD 21204

Dear Mr. Kotroco,

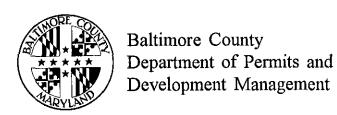
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I have also enclosed a copy of the location survey which you sent to us with your decision. I have outlined the actual information concerning the setback ofour fence and the location of the front yard of the Hohn residence. I understand that the reason the tone of your decision was somewhat chastising since you thought our backyard was the Hohn frontyard. I trust that the corrections made above resolve any misconceptions.

I also spoke with Ms. Lavette Danneman from Mr. Jablon's office. She informed me that once we receive your amended decision we have thirty days to appeal that decision. If we decide to we will do so promptly.

I want to thank you for taking the time to speak with me today. I do appreciate your attention to this case and hope that we will reach a solution satisfactory to all parties soon.

Sincerelyn Kunedy Susan H. Kennedy



Director's Office County Office Building 111 West Chesapeake Avenue Towson, Maryland 21204 (410) 887-3353

Fax: (410) 887-5708

October 2, 1995

Mr. Robert L. Kennedy 1317 Glenwilde Road Baltimore, Maryland 21228

RE: Filing Deadline for Appeals

Jablangs

Dear Mr. Kennedy:

I am in receipt of your letter dated September 25, 1995. Please be advised that the law does not permit me to extend the filing deadline for appeals. The Baltimore County Code sets out a thirty day time period which cannot be extended; however, if Deputy Zoning Commissioner Timothy Kotroco issues an amended order to his original decision, it is arguable that a new thirty day time period would begin to run. I would suggest that you then file your appeal within the thirty day period from the date of the amended order.

Sincerely,

ARNOLD JABLO

Director

AJ:ljb

To Whom It May Concern,

With regard to the fence between

my property at 6123 Moorefield Road

and that of the Kennedy's at 1317

Glenwilde Road, this note is written

to have it known that I, William H.

Hohn, am not offensed in any way

to the present condition of said fence.

Hillian Hoho K. 5-22-95



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10	whomit	may	CONCELU)

As owners of 4127 Moorefield Rd, our property abuts the Kennedy's house on Glenwilde. We have no problem or complaint concerning the height of their fence and wish to state this for the record, we can be reached at home at 744-2496 it you need verification.

Sincorely Surpan T. Hora Thomas J. Hartka Susan T. Hartka

August 8, 1995

We, the undersigned, wish to express our strong opposition to any zoning variances for the properties at 1317 and 1319 Glenwilde Road. We previously stated our objections at two seperate hearings held by your office. The Baltimore County Zoning laws are specific in their designation as to the regulations concerning fence heights in the front of properties.

The continued practice to allow a variance everytime someone desires to erect a structure that does not meet code will cause a drop in property values.

We therefore request that the requested variances be denied.

Sincerely,

Patricia Ketes K. Kuhleman Mrt Mrs. Carl Lewis

Donald Jakel Donald Jakel Fam Denmill

Address

1316 Glenwilde Al - 21228 1410 Alenwildo Rd 21228 1406 Blinwilde Rd 21228 1312 Glauntée Rd 21238

1314 Glenweder Rd 2/228 1314 Glenwilde Al 21228 6118 Deerbrook Rd, 21228

PETITIONER'S EXHIBIT NO.4

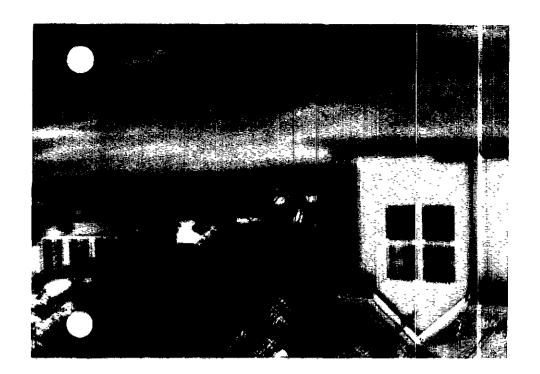
County Buard of Apprels
200 - Room 219, Court House
24 Towson, Maryland 21204

CASE # 96-4-A

PETITIONCR'S EXHIBITE

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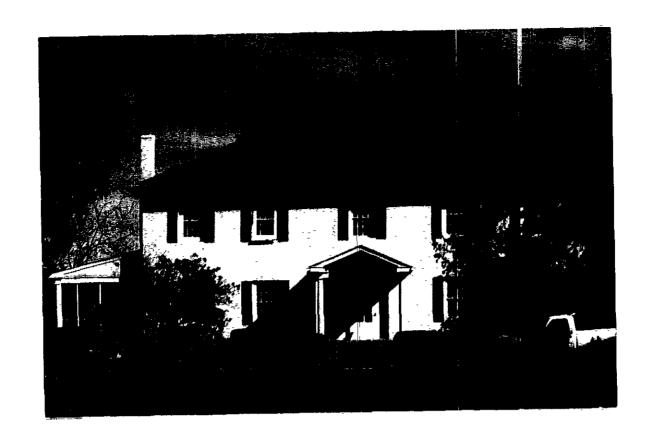
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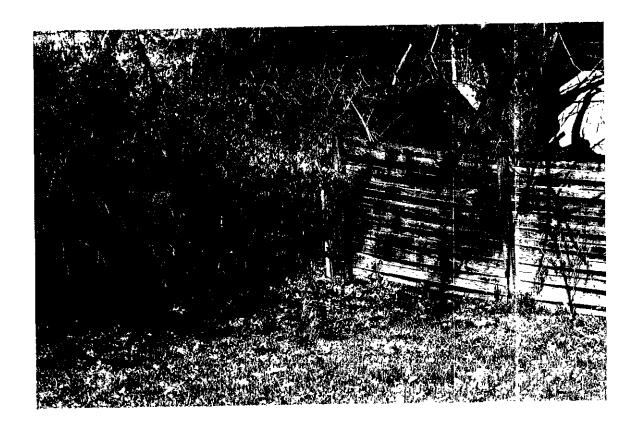


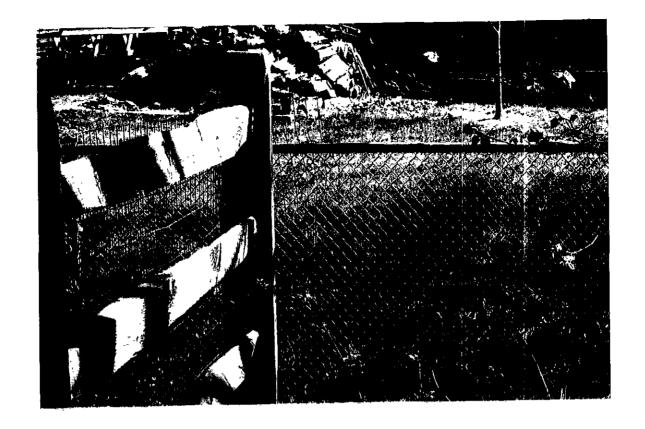
















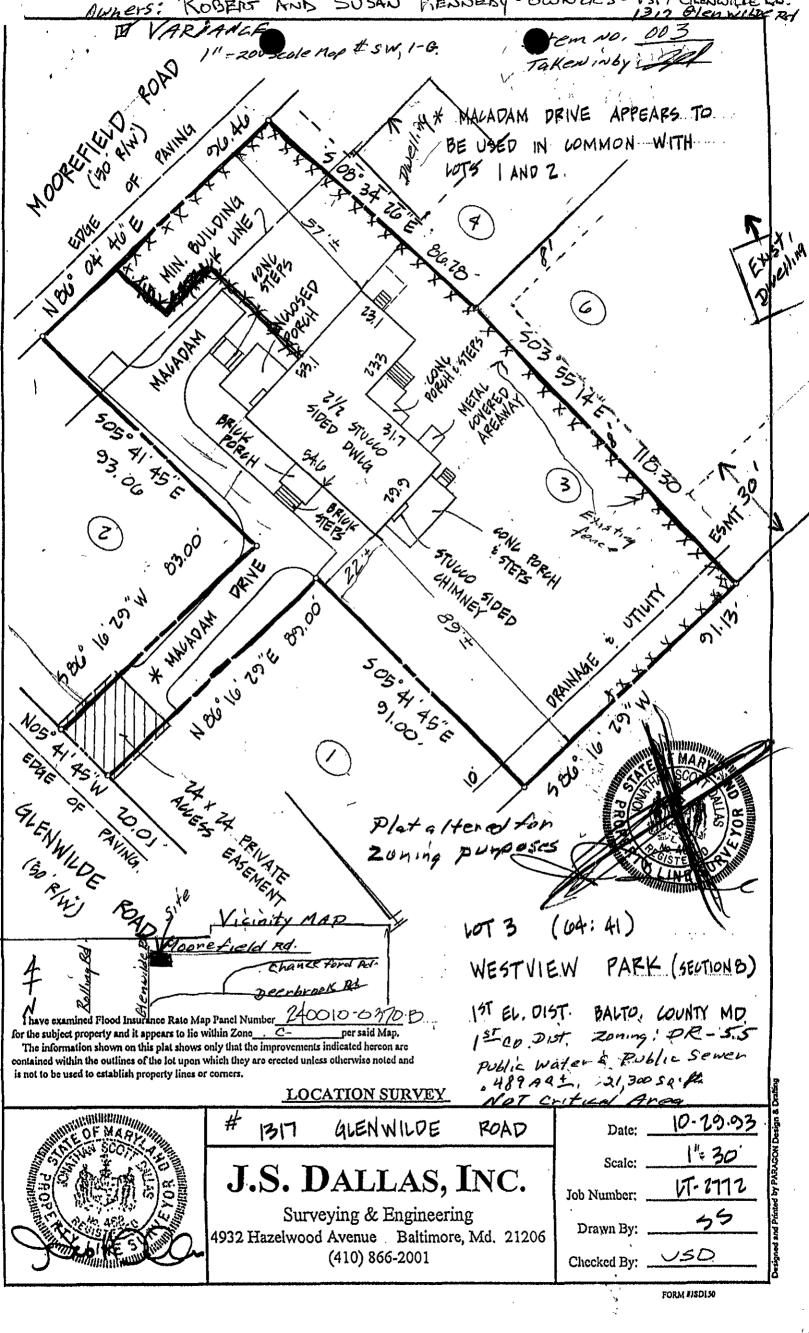


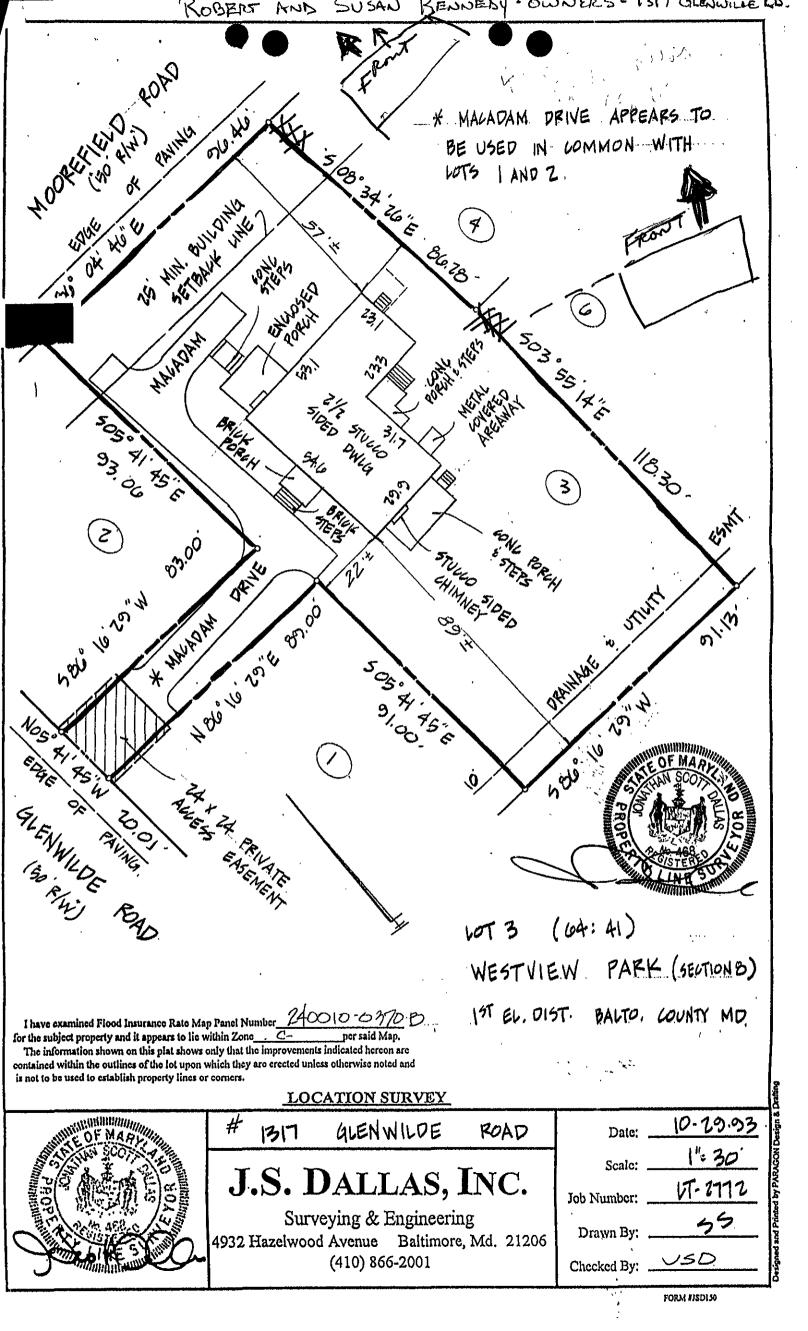


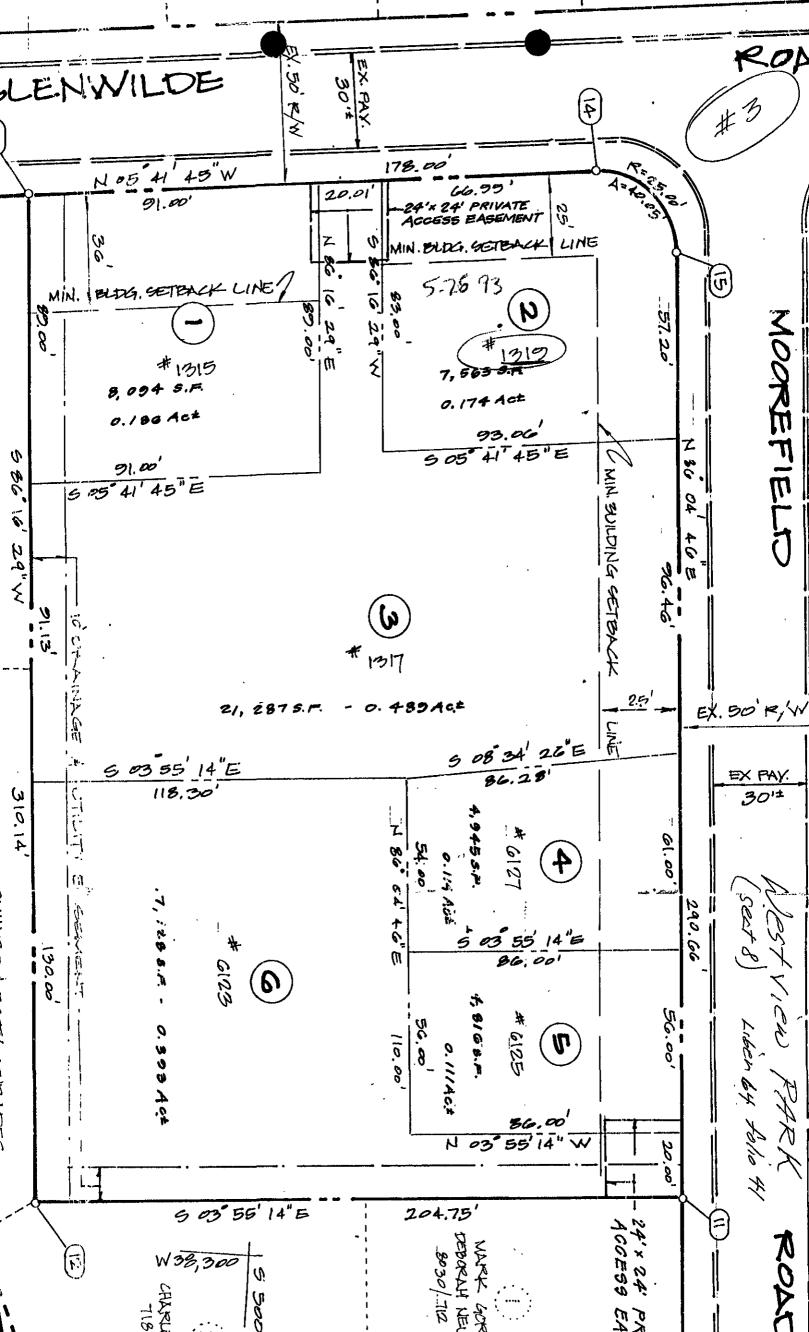


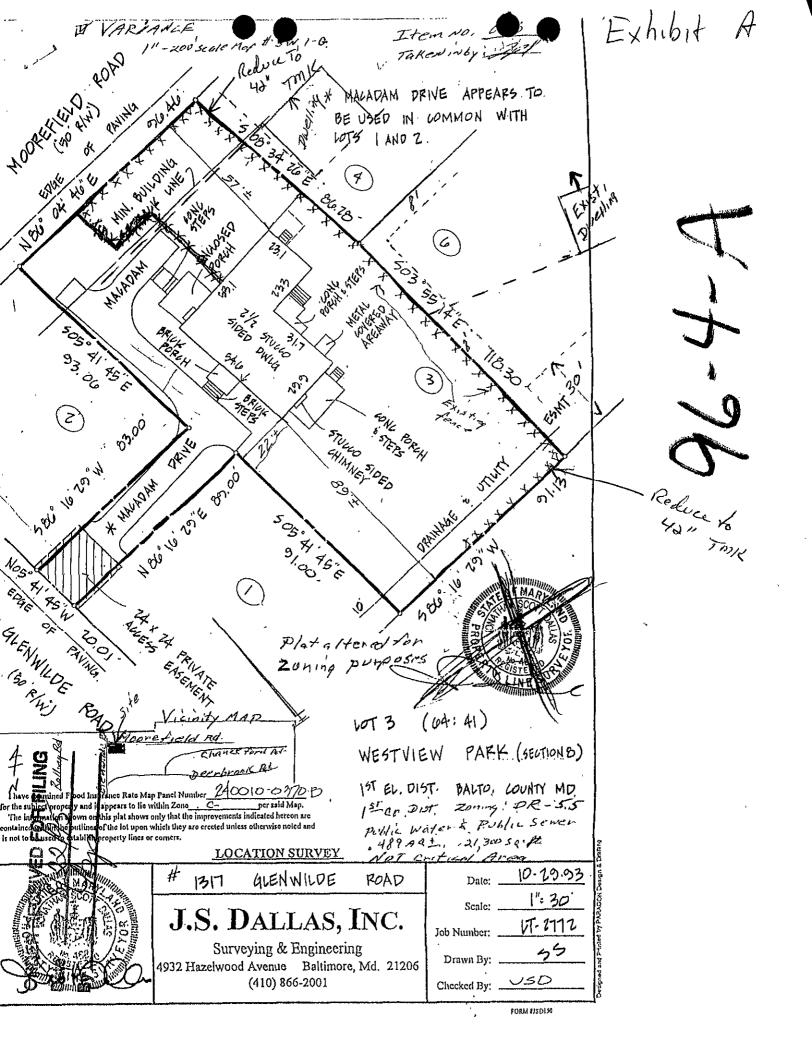


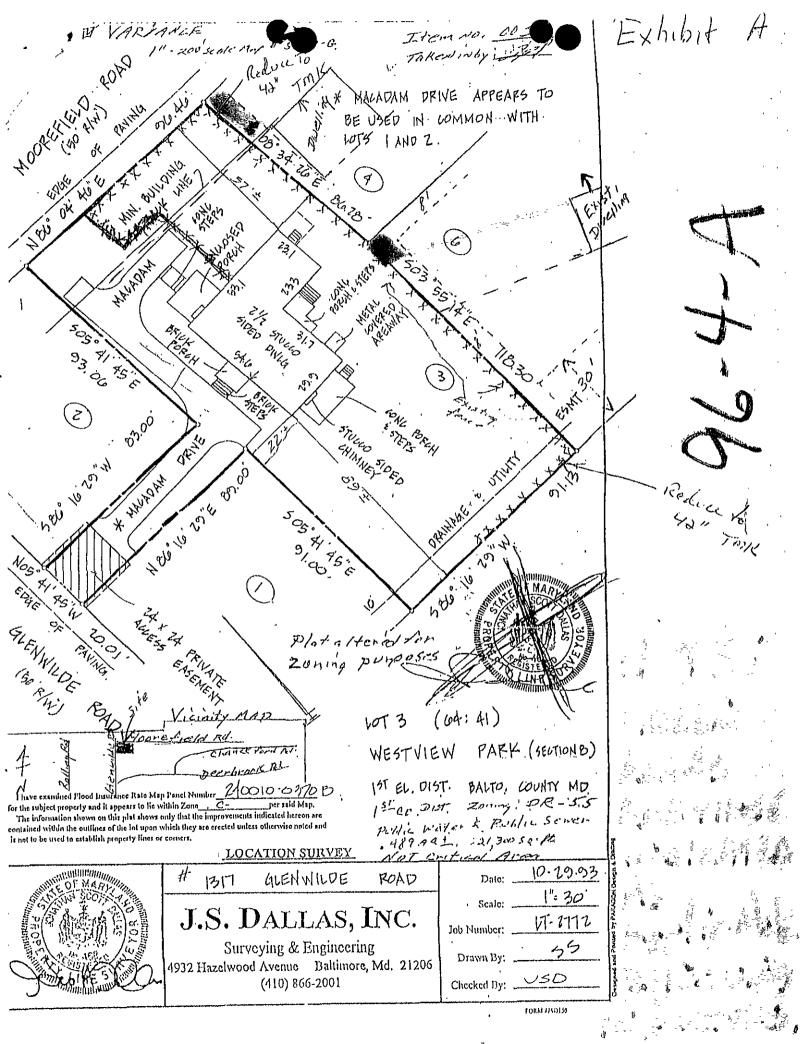




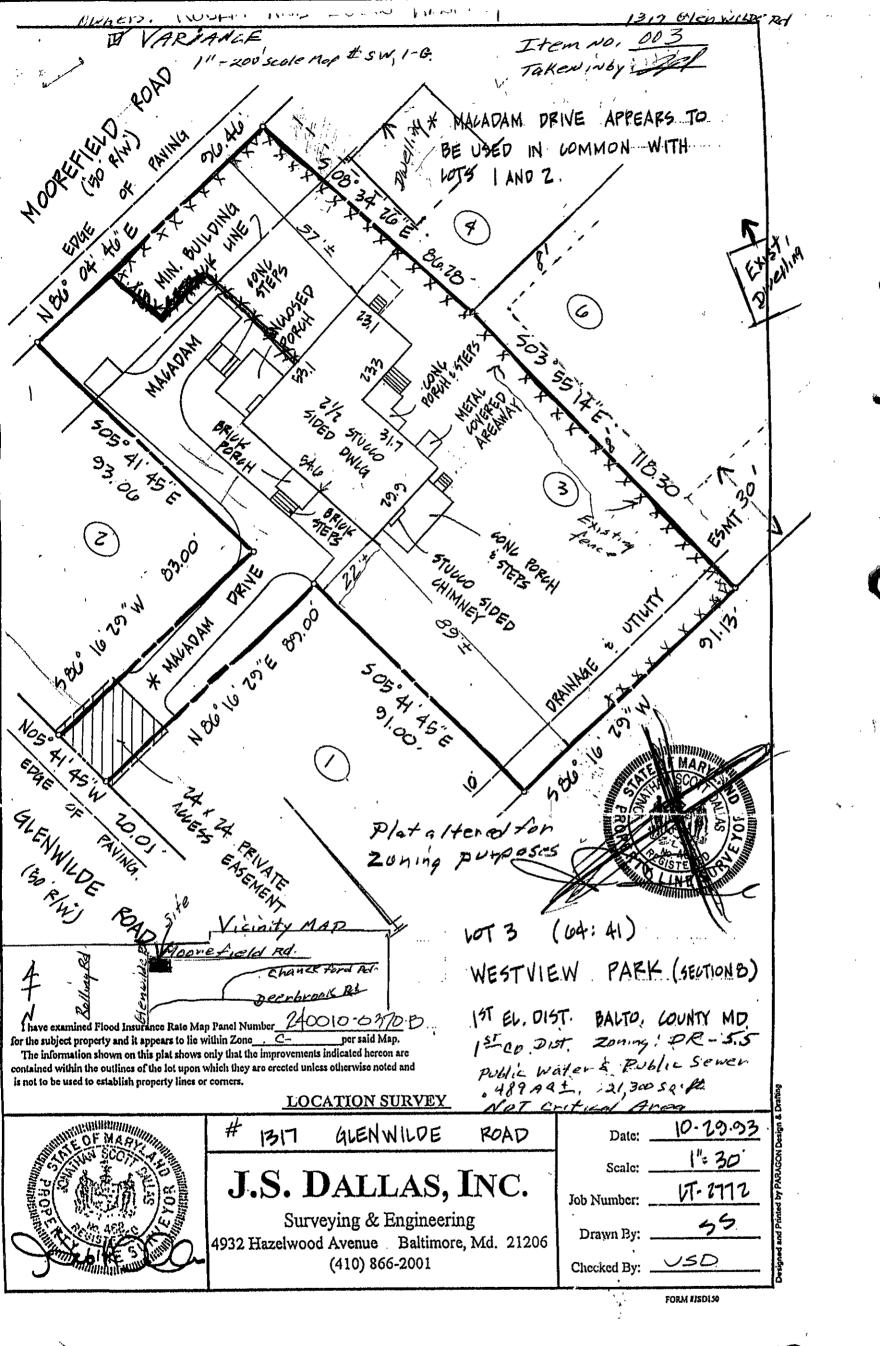








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PETITIONER'S
EXHIBIT NO. \_\_\_

IN THE MATTER OF
THE APPLICATION OF
ROBERT L. KENNEDY, ET UX
FOR A VARIANCE ON PROPERTY
LOCATED ON THE SOUTH SIDE
MOOREFIELD ROAD, 90' E OF
GLENWILDE ROAD
1ST ELECTION DISTRICT
1ST COUNCILMANIC DISTRICT

- \* BEFORE THE
- \* COUNTY BOARD OF APPEALS
- \* OF
- \* BALTIMORE COUNTY
- \* CASE NO. 96-4-A

### OPINION

Mr. and Mrs. Robert L. Kennedy filed a Petition for Variance to permit a fence height of 48" in lieu of the permitted 42" on certain portions of the fence at their residence on the south side Moorefield Road, 90' East of Glenwilde Road in the 1st Election District, 1st Councilmanic District.

A hearing was held before the Deputy Zoning Commissioner, who denied the Petitioners permission for the Variance in an order dated August 22, 1995. In an amended order dated October 5, 1995, the Deputy Zoning Commissioner granted permission for the section of the fence adjacent to Lot 6 to remain at the present height of 48" inasmuch as it is located in the rear yard. Mr. and Mrs. Kennedy then filed an appeal.

At a <u>de novo</u> hearing on the appeal, July 3, 1996, this Board received testimony from the property owners, Mr. and Mrs. Kennedy and their neighbor, Susan Hartka, as witnesses for the Petitioners. Anthony J. DiPaula, Esquire, represented the Petitioners as legal counsel. There were no Protestants present. Peter Max Zimmerman entered his appearance as People's Counsel.

Mr. Zimmerman raised the issue of whether or not the appeal by the Kennedys was timely in that it was filed within 30 days of the

date of the amended order, not the date of the original order. Counsel for the Petitioners, Mr. DiPaula, argued that when the original order is amended, the door is reopened, and the appeal period begins again for a 30-day period.

Acting Board Chairman, Lawrence Stahl, ruled that the appeal was made within the required time frame, and the Board would hear the case de novo. Mr. Stahl explained that what occurred in this instance points out a gap in the rules for Zoning Commissioner action, and that he would hope that the County Council would take measures to close this gap. Presently, there is no rule for when an amended order must be issued. The County Board of Appeals cannot superimpose the rules of the courts and the County Board of Appeals on the Zoning Commissioner. The Board hears appeals from a final decision, and in this case, the final decision was the amended order from which the Kennedys made a timely appeal.

Mr. Zimmerman responded that he would not litigate the case on the merits and asked to be excused. Mr. Stahl granted the request.

Section 307.1 of the <u>Baltimore County Zoning Regulations</u> (BCZR) permits the Board of Appeals to grant a variance upon certain terms and conditions, which in pertinent part in this case, allow a variance where special circumstances or conditions exist that are unique to the land or structure which is the subject of the variance requested, and where strict compliance with the zoning regulations for Baltimore County would result in practical difficulty or unreasonable hardship.

On behalf of the Petitioners, Susan Hartka testified that, in

large part, it is her side yard which adjoins the Kennedys' backyard, and that the fence between the two properties was existing prior to purchase of the lot adjoining by the Hartkas and prior to the construction of their house. Mrs. Hartka testified that only a small portion of the fence adjoins the Hartkas' front yard, and that she had no problem with the Kennedys' fence which is constructed of post-and-rail.

Mrs. Susan Kennedy, property owner and Petitioner, testified that she and her husband live in the original house on the property from which the subdivision was created. Their property is served by a panhandle driveway off Glenwilde Avenue. They acquired the property in November 1993 and put up the fence 10 days later. Part of the fence, which is 48" in height, faces the Hartka property and part faces the lot owned by William H. Hohn.

Mrs. Kennedy explained that in an order from the Deputy Zoning Commissioner, dated August 22, 1995, Mr. Kotroco misunderstood the location of the fence relative to the neighboring yards, and therefore denied the variance request. Upon Mrs. Kennedy explaining the error to the Deputy Zoning Commissioner, Mr. Kotroco issued an amended order, dated October 5, 1995, stating as follows:

Specifically, the Petitioners advised this office that the highlighted areas on the site plan included a section of fence which was not in the front yard of their neighbor's house on adjoining Lot 6. The Petitioners pointed out that the house on Lot 6 faces in a southeasterly direction and thus, that section of fence located on the northwest corner of the subject property is actually located in the rear yard of that property. Therefore, that section of fence does not need to be lowered to the 42" height required by my Order dated August 22, 1995.

Mr. Kennedy followed with further testimony that the fence was built to contain their dog and their child, and that the building material was chosen to have minimal impact to the neighbors. Mr. Kennedy also made reference to the letters in the file from neighbors Yakel, Hohn, and Hartka indicating that they have no objection to the fence as presently constructed.

In closing, Mr. DiPaula, attorney for the Petitioners, pointed out that the fence is now in compliance except for the small portion which adjoins the Hartka and the Hohn properties. It is this portion for which the Petitioners request a variance. The fence adjoining the Hartka front yard pre-existed the construction of the Hartka house, and it was in compliance at the time of construction.

Mr. DiPaula argued further that the fence next to the Hohn property meets the requirements under <u>Cromwell v. Ward</u> 102 Md App. 691 (1995), because the lots in this particular subdivision were laid out randomly in a "bizarre" manner whereby the houses are each oriented in a different direction. This unusual situation with the land, therefore, said Mr. DiPaula, meets the criteria of uniqueness as set forth in <u>Ward</u>. Finally, the expense, aesthetic interference, and labor of lowering the height of this small portion of fence by 6" meets the second prong of undue hardship and physical difficulty.

The Board determined that there is no conflict as to facts, dates, or testimony in the case before us. The case then rests on whether or not the Petitioners can meet the strict criteria on

variances as set forth under <u>Cromwell v. Ward</u>. We find that the nature of development in which it happened haphazardly and the location of the Hohn house next to the Kennedy property in fact rendered that small portion where the angle of that neighbor's yard met the Kennedys' a unique circumstance. Therefore, the first prong of the test is satisfied.

On the second prong of whether the denial of the variance would result in practical difficulty or unreasonable hardship, we find that lowering this small part of the fence would be expensive and burdensome to the Petitioners, and aesthetically displeasing to the community.

This Board finds that the Petitioners have met the requirements of Section 307.1 and will grant the Petition for Variance as requested.

With regard to the portion adjoining the Hartka property, this Board finds that this case exists under the basic constitutional principle of ex post facto: if something is legal when it is done, then the doer cannot be punished later. The Board heard uncontradicted evidence that the Petitioners' house and fence were constructed before the Hartka house was built. Only the imposition of the Hartka house rendered the Kennedy fence not in compliance with the supplied scale of fence heights in the BCZR. Therefore, no variance is required for this section of fence.

#### ORDER

IT IS THEREFORE this 26th day of September , 1996 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Variance of the fence between the Hohn property and the Kennedy property is hereby GRANTED, and the Variance for the fence height between the Hartka property and the Kennedy property is found to be unnecessary as cited above.

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 \

Lawrence M. Stahl

S. Diane Levero

Margaret Worrall



# County Board of Appeals of Baltimore County

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

September 26, 1996

Anthony J. DiPaula, Esquire COVAHEY & BOOZER, P.A. 614 Bosley Avenue Towson, MD 21204

RE: Case No. 96-4-A

Robert L. Kennedy, et ux

Dear Mr. DiPaula:

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

Legal Secretary

#### Enclosure

cc: Mr. and Mrs. Robert L. Kennedy

Mr. and Mrs. Ronald Rodriquez

Mr. Donald Yakel

People's Counsel for Baltimore County

Pat Keller /Planning Director

Timothy M. Kotroco

Arnold Jablon, Director /PDM

Virginia W. Barnhart, County Attorney

