

IN RE: PETITIONS FOR SPECIAL EXCEPTION * BEFORE THE
AND VARIANCE - N/S Silver Spring
Road, 105' W of c/l Ratna Court * ZONING COMMISSIONER
(4608 Silver Spring Road)
11th Election District * OF BALTIMORE COUNTY
5th Councilmanic District * Case No. 98-255-XA

Scott J. Sykes, et ux, Owners;
Deborah L. Gill-Boyd, Contract Purchaser

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Exception and Variance filed by the owners of the subject property, Scott J. and Tamazon T. Sykes, and the Contract Purchaser, Deborah L. Gill-Boyd, through their attorney, Newton A. Williams, Esquire. The Petitioners request a special exception to permit a private kennel for pet dogs only on the subject property, and a variance from Section 421.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a private, small kennel use within 0 feet of the property line in lieu of the required distance of 200 feet. The subject property and relief sought are more particularly described on the site plan submitted which was accepted and marked into evidence as Petitioner's Exhibit 1.

Appearing at the hearing on behalf of the Petition were Scott J. Sykes, co-owner of the property, Deborah L. Gill-Boyd, Contract Purchaser, her mother, Eleanor Gill, Judy Corbett and Michele Reid, Real Estate agents with Long and Foster, and Newton A. Williams, Esquire, attorney for the Petitioners. Appearing as Protestants in the matter were several residents from the surrounding community, all of whom signed the Protestants' Sign In Sheet, and most of whom reside adjacent to the subject site. The spokespersons for this group of Protestants were William W. Rogers and Anna Marie Ryan.

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Date

By

Testimony and evidence offered revealed that the subject property consists of a gross area of 0.845 acres, more or less, zoned D.R. 5.5 and is improved with a one and one-half story dwelling, and an in-ground swimming pool. The owners of the property have entered into a contract to sell the property to Ms. Deborah Gill-Boyd, who currently has eight (8) pet German Shepherd dogs residing with her which she would like to move with her to the subject site. Mr. Sykes testified that he and his wife purchased the subject property in 1989; however, he presently resides on the property alone, having recently separated from his wife. He testified that over the years, he has made several improvements to the site, including an attached deck on the rear of the dwelling and additions to create more interior space. Mr. Sykes submitted numerous photographs of the property which demonstrate an attractive home and well-maintained yard.

Testimony was also received from Ms. Deborah Gill-Boyd who is under contract to purchase the subject property, contingent upon obtaining the zoning relief requested herein. Presently, she resides with her dogs in an end-of-group townhouse at 15 Romanoff Court in Perry Hall. Her animals are kept as pets as opposed to a commercial breeding or kennel operation.

Section 101 of the B.C.Z.R. defines the words and phrases used throughout the zoning regulations. A "kennel" is defined as, "Any building, other structure or land, or any portion thereof, which is used, intended to be used, or arranged for the housing of more than three (3) dogs, not counting puppies less than four (4) months old, for purposes of show, hunting, breeding, or sale, or as pets, excluding a farm or pet shop." Thus, notwithstanding the fact that Ms. Gill-Boyd does not operate a commercial kennel on her property, her keeping of the eight (8) dogs

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DATE 2/24/98
BY [signature]

constitutes a kennel operation under the B.C.Z.R.

Kennels are permitted in residential zones only by special exception. That is, they are not a use permitted by right, but a property owner who wishes to operate a kennel must obtain relief, pursuant to Section 502.1 of the B.C.Z.R. Ms. Gill-Boyd sought special exception approval from this Office in prior Case No. 97-586-XA to maintain all eight (8) dogs at her current address. That matter was considered by Deputy Zoning Commissioner Timothy M. Kotroco, and in accordance with his Order dated September 2, 1997, relief was denied. Nonetheless, certain of the facts and findings made by Deputy Commissioner Kotroco are relevant to the instant case.

Ms. Gill-Boyd testified at the hearing before me that she adopted a male and female German Shepherd from an animal shelter in 1995. Before the animals could be spayed and neutered, the female gave birth to a litter of six (6) puppies around Christmas, 1995. At first, Ms. Gill-Boyd attempted to find good homes for the litter; however, she was unsuccessful. She thereafter determined that it would not be appropriate to break up this family of animals, and thus, now resides with eight (8) full grown German Shepherd dogs.

To say that Ms. Gill-Boyd is attached to these animals and treats them as her family is a vast understatement. Ms. Gill-Boyd testified as to her care and attachment to her "babies" at great length during the hearing. She indicated, for example, that although she works full-time, her mother, Eleanor Gill, visits the dogs each day to let them outside and provide company. Ms. Gill-Boyd also indicated that the animals sleep with her and described in great detail her care of the animals.

Having been unsuccessful in obtaining relief to permit the dogs

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Date

By

to continue to reside with her at 15 Romanoff Court, Ms. Gill-Boyd has entered into a contingent contract to purchase the subject property. She proposes to move herself and her family of dogs to the subject property, zoned D.R. 5.5, for which a special exception is necessary. Additionally, a variance is needed from Section 421.1 of the B.C.Z.R., which requires a minimum setback of 200 feet from a kennel operation to the nearest property line.

As might be expected, the neighbors who appeared are opposed to the relief requested. They fear the anticipated impacts associated with maintaining a family of eight (8) adult German Shepherd dogs on the subject property. Concerns were expressed by the neighbors over the noise that might be generated by these dogs, as well as the smells caused by these animals. Obviously, the dogs would be expected to generate biological waste. Thus, these neighbors are concerned about the smell of this waste, and its impact on neighboring properties caused by storm water runoff.

Testimony was also offered regarding the existence of several public schools nearby and the possibility of the dogs disrupting and/or harming the children. Relevant concerns were also expressed regarding the potential impact of the animals on property values, and whether potential buyers in the neighborhood would be inclined not to buy as a result of the proposed kennel, although non-commercial, operation.

In considering this matter, it is to be emphasized that this case is not about the propriety of Ms. Gill-Boyd's devotion to her animals or whether it will cause an upset to the animals if they are separated. Rather, this is a zoning case in which the B.C.Z.R. need be applied, as well as the case law which has interpreted those zoning regulations. The

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Date 2/26/98
By [Signature]

law of special exceptions is set out in the B.C.Z.R. and the standards thereof set forth in Section 502.1. Essentially, the Petitioner must demonstrate that the proposed use at the subject location will not be detrimental to the health, safety or general welfare of the locale.

In the seminal case of Schultz v. Pritts, 291 Md. 1 (1981), the Court of Appeals observed that special exceptions are an appropriate part of the zoning scheme which carry with them a presumptive inference of permissibility. That is, in order for a special exception to be denied, it must be shown that the proposed use at the particular location proposed would have an adverse effect above and beyond that ordinarily associated with such use. Later, in another case, the Court of Special Appeals observed that it is not whether the use permitted by special exception will have adverse effects (such effects are implied in the first instance by making such uses special exceptions rather than permitted uses), it is whether the adverse effects at the particular location proposed would be greater than those impacts ordinarily associated with the particular use. See Mossburg v. Montgomery County, 107 Md. App. 1 (1995).

In applying the standards set forth in Section 502.1 and the case law, I am not persuaded that the Petitioner has met her burden. Thus, the Petition for Special Exception must fail. In my judgment, the persuasive factors are the size of the subject property, the actual area of the back yard, the close proximity of the neighbors, and the character of the community. I explain. Although the subject property is larger than the townhouse in which Ms. Gill-Boyd presently resides, it is still insufficient, in my judgment, to support the proposed kennel operation. This is particularly so in view of the location of the house. As shown on the site plan, the house is situated in essentially the middle of the lot.

Ms. Gill-Boyd proposes to fence the rear yard allowing the animals to exercise freely in that portion. In that the front yard cannot be so used, the affected area of the lot which can be used for the kennel operation is less than one-half of the total acreage. That is, although the total lot size is approximately 0.845 acres in area, the kennel itself will occupy less than one-half that sum, only the rear yard. Additionally, the rear yard contains two large improvements, namely, the attached deck and swimming pool, which further restrict the actual useable area of the back yard. Thus, although larger than the minimal townhouse backyard in which Ms. Gill-Boyd presently resides, the useable property at the subject location is still not large enough to support the proposed kennel operation.

Moreover, the proposed use is simply incompatible with the existing neighborhood. This is not a rural locale, but a suburban area which is intensely developed. It is inappropriate for the neighbors who live within such close proximity of the subject property to suffer the impacts on a daily basis of eight (8) adult German Shepherd dogs. Ms. Gill-Boyd testified that she closely monitors the animals in an attempt to minimize their impacts. Although this may be so, dogs are animals and not people. They bark at strangers, relieve themselves outdoors, etc. Despite Ms. Gill-Boyd's best efforts, these impacts will have serious repercussions upon the neighborhood. For these reasons, I feel compelled to deny the Petition for Special Exception.

Additionally, the Petition for Variance should and must be denied. Variance relief must be considered in accordance with Section 307 of the B.C.Z.R. In this case, I find no factor which supports a conclusion that this property is unique, thereby justifying variance relief. Clearly, the Petitioner cannot meet the 200-foot setback due to the dimensions of the

property. A granting of the variance would cause detrimental impact upon the surrounding neighborhood in that it would locate the kennel and dogs on property lines of adjacent lots. Moreover, the Petitioner's offer to erect an internal fence and provide limited buffer would be of little practical benefit and would inappropriately reduce the area in which the animals could exercise.

In conclusion, I feel compelled to deny the Petitions for Special Exception and Variance. I am sympathetic to the Petitioner's plight and her devotion to her animals. However, the maintenance of same in an intense residential development is inappropriate. The Petitioner would be well-advised to seek a larger, more rural location to maintain her animals.

Pursuant to the advertisement, posting of the property, and public hearing held thereon, and for the reasons set forth above, the Petitions for Special Exception and Variance shall be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 26th day of February, 1998 that the Petition for Special Exception to permit a private kennel for pet dogs only on the subject property, in accordance with Petitioner's Exhibit 1, be and is hereby DENIED; and,

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Section 421.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a private, small kennel use within 0 feet of the property line in lieu of the required distance of 200 feet, in accordance with Petitioner's Exhibit 1, be and is hereby DENIED.

The Petitioners shall have thirty (30) days from the date of this Order to file an appeal of this decision.

LES:bjs


LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County



Baltimore County
Zoning Commissioner
Office of Planning

Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
410-887-4386

February 26, 1998

Newton A. Williams, Esquire
Nolan, Plumbhoff & Williams
502 Washington Avenue, Suite 700
Towson, Maryland 21204

RE: PETITIONS FOR SPECIAL EXCEPTION AND VARIANCE
N/S Silver Spring Rd., 105' W of Ratna Ct. (4608 Silver Spring Road)
11th Election District - 5th Councilmanic District
Scott J. Sykes, et ux, Owners; Deborah L. Gill-Boyd, Contr. Purchaser
Case No. 98-255-XA

Dear Mr. Williams:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petitions for Special Exception and Variance have been denied, in accordance with the attached Order.

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

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. & Mrs. Scott Sykes, 4608 Silver Spring Rd., Perry Hall, Md. 21128
Ms. Deborah L. Gill-Boyd, 15 Romanoff Court, Baltimore, Md. 21234

Mr. William W. Rogers, 8 Ratna Court, Baltimore, Md. 21236
Ms. Anna M. Ryan, 2 Ratna Court, Baltimore, Md. 21236
Ms. June B. Mohr, 4 Ratna Court, Baltimore, Md. 21236
Ms. Jay Smith, 6 Ratna Court, Baltimore, Md. 21236
Ms. Patty Warren, 21 Ratna Court, Baltimore, Md. 21236
Ms. Virginia Corona, 7 Ratna Court, Baltimore, Md. 21236
Ms. Doris S. Small, 3 Ratna Court, Baltimore, Md. 21236
Mr. & Mrs. Thomas L. Getz, 12 Ratna Court, Baltimore, Md. 21236
Mr. & Mrs. Daniel Currey, 4604 Silver Spring Road, Balto., Md. 21236
Mr. Eugene T. Urbaniak, 10 Ratna Court, Baltimore, Md. 21236
Mr. Paul R. Goodsell, 4606 Silver Spring Road, Perry Hall, Md. 21128

People's Counsel; Case Files





Petition for Special Exception

to the Zoning Commissioner of Baltimore County

for the property located at 4608 Silver Spring Road
which is presently zoned D.R.5.5.

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

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, petition for a Special Exception under the Zoning Regulations of Baltimore County, to use the herein described property for a private kennel for pet dogs only

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

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

PLEASE BILL ADVERTISING TO OWNER.

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

Contract Purchaser/Lessee:

Legal Owner(s):

Deborah L. Gill-Boyd
(Type or Print Name)

Scott J. Sykes
(Type or Print Name)

Deborah L. Gill-Boyd
Signature

Scott J. Sykes
Signature

15 Romanoff Court
Address

Tamazon T. Sykes
(Type or Print Name)

Baltimore MD 21234
City State Zip Code

Tamazon T. Sykes
Signature

Attorney for Petitioner:

4608 Silver Spring Road 410-962-4822 ext. 316
Address Phone No.

Newton A. Williams
Nolan, Plumhoff & Williams, Chtd
(Type or Print Name)

Perry Hall MD 21128
City State Zip Code

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

Newton A. Williams
Nolan, Plumhoff & Williams, Chtd.

Newton A. Williams
Signature

Name

700 Nottingham Centre
502 Washington Avenue 410-823-7800
Address Phone No.
Towson MD 21204
City State Zip Code

700 Nottingham Centre
502 Washington Avenue
Towson, MD 21204 410-823-7800
Address Phone No.

Office Use Only
ESTIMATED LENGTH OF HEARING

unavailable for Hearing
the following dates Next Two Months
ALL Feb, 2006 and Nov 12
REVIEWED BY: STW DATE 1-7-98

ORDER RECEIVED FOR FILING
Date 1/7/98
By [Signature]

Zoning Administration and
Development Management

98-255-XA

255

PROPOSED PRIVATE KENNEL SPECIAL EXCEPTION
AND ZERO SETBACK REAR AND SIDEYARD

4608 SILVER SPRING ROAD [21128]

1. APPLICANT Debbie Gill-Boyd is a dog fancier, with 8 German shepherds.
2. Debbie is a hobbyist, not a breeder or a commercial operator.
3. No outdoor runs are proposed, and rear yard is proposed for a 6 foot privacy fence.
4. The dogs only are out briefly a. m. and p. m.
5. Debbie is partly disabled, and the dogs are her life.
6. No odor and very little noise.
7. Dogs will not be replaced , nor more dogs brought to the property.
8. Kennel law aimed at 100 to 200 dog boarding and breeding operations.
9. Few can afford over 5 acres to provide a 100 by 100 foot kennel area.
10. The dogs will be safely fenced to protect all concerned.
11. The kennel would be personal to Debbie and cease upon sale.
12. Debbie just needs a home for herself and her pets.
13. There is no restriction on cats or other pets as to numbers.
14. Debbie is willing to accept suggestions as to how she can be a good neighbor.



Petition for Variance

to the Zoning Commissioner of Baltimore County
for the property located at 4608 Silver Spring Road
which is presently zoned D.R.5.5.

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

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, petition for a Variance from Section(s) **421.1** to permit a private, small kennel use within zero feet of property lines in lieu of the required 200 feet.

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

(See Attached Reasons)

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

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

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

Contract Purchaser/Lessee:

Deborah L. Gill-Boyd

(Type or Print Name)

Deborah L. Gill-Boyd
Signature

15 Romanoff Court

Address

Baltimore 21234
Perry Hall MD 21236
City State Zip Code

Attorney for Petitioner:

Newton A. Williams

Nolan, Plumhoff & Williams, Chtd.

(Type or Print Name)

Newton A. Williams
Signature

700 Nottingham Centre
502 Washington Avenue 410-823-7800

Towson MD 21204
City State Zip Code

Legal Owner(s):

Scott J. Sykes

(Type or Print Name)

Scott J. Sykes
Signature

Tamazon T. Sykes

(Type or Print Name)

Tamazon T. Sykes
Signature

4608 Silver Spring Road

Address

410-962-4822 ext. 316

Phone No.

Perry Hall

City

MD

State

21128

Zip Code

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

Newton A. Williams

Nolan, Plumhoff & Williams, Chtd.

Name

700 Nottingham Centre
502 Washington Avenue
Towson, MD 21204

410-823-7800

Address

Phone No.

Office Use Only

ESTIMATED LENGTH OF HEARING

unavailable for Hearing

the following dates

ALL

OTHER

Next Two Months

REVIEWED BY: 300A

DATE

1-7-98

ORDER RECEIVED FOR FILING

Date

By



Zoning Administration and Development Management

98-255-XA

255

REASONS FOR REQUESTED VARIANCE
DEBORAH L. GILL-BOYD
4608 Silver Spring Road

Ms. Gill-Boyd seeks the set back variance for the following reasons:

1. She is a pet owner and her dogs are all from one litter, i.e. mother, father and siblings. She helped deliver the litter and has raised the entire family.
2. The dogs are kept indoors at all times, and are only let outdoors under her direct supervision, for exercise morning and evening;
3. Her yard is fenced, and it is kept clean, orderly and odor free at all times
4. The subject property, 4608 Silver Spring Road, is a single family house on a 0.845 acre lot. To provide a 70 foot by 70 foot core with 200 feet setbacks to all property lines would require a square lot of 470 feet by 470 feet in area, namely about 5.07 acres, almost a virtual impossibility. A private owner with eight closely supervised dogs should not be held to the same standard as a commercial kennel with 50 to 100 dogs in outdoor runs.
5. That her request for the private kennel is to retain only this canine family, and not to enlarge or add to this family group; and
6. Ms. Gill-Boyd is physically handicapped and resides alone. This family of dogs are her family;
7. According to Ms. Gill-Boyd's veterinarian, it would be detrimental to the health and well being of the family of dogs to be separated in any way.
8. Ms. Gill-Boyd is current on all required vaccinations and medications for the family of dogs;
9. The female siblings have been spayed to prevent any further additions to the family;
10. This family of dogs is closely supervised by Ms. Gill-Boyd, and would be kept indoors the great majority of the time.
11. Ms. Gill-Boyd intends to surround the rear yard with a six foot wooden, visual/privacy fence.
12. For such other and further reasons to be brought out at the time of the hearing hereon.

ORDER RECEIVED FOR FILING

Date

By

Zoning Description
For
4608 Silver Spring Road

Beginning at a point on the north side of Silver Spring Road which is 60 feet wide at the distance of 105 feet west of the centerline of Ratna Court which is 50 feet wide, as recorded in Deed Liber 7873, Folio 613.

- 1. North 03 degrees 22 minutes 54 seconds West, 248.33 feet*
- 2. North 68 degrees West, 163.95 feet*
- 3. South 04 degrees 30 minutes West, 250 feet*
- 4. South 68 degrees East, 171.37 feet to the place of beginning.*

Saving and Excepting a strip of land approximately 16 feet wide and extending the full width of the property that was conveyed to Baltimore County for the widening of Silver Spring Road.

Containing 0.845 Acres of Land more or less and being located in the 11th Election District, 5th Councilmanic District.



William T. Matthews

98-255-255-XA

CERTIFICATE OF PUBLICATION

TOWSON, MD., January 29, 19 98

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on Jan. 29, 19 98.

THE JEFFERSONIAN,

A. Henriksen
LEGAL AD. - TOWSON

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing in Towson, Maryland on the property identified herein as follows:

Case: #98-255-XA
4608 Silver Spring Road
(21128)
N/S Silver Spring Road, 105'
to centerline Patna Court
11th Election District
5th Councilmanic District
Legal Owner(s): Scott J.
Sykes & Tamazon T. Sykes
Contract Purchaser: Deborah
L. Gilt-Boyd

Special Exception: for a private kennel for pet dogs only.
Variance to permit a private, small kennel use within zero feet of the property lines in lieu of the required 200 feet.

Hearing: Wednesday, February 18, 1998 at 9:00 a.m., Room 407 County Courts Bldg., 401 Bosley Avenue.

LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Call (410) 887-3353.

(2) For information concerning the File and/or Hearing, Please Call (410) 887-3391.

1/434 Jan.29 C203242

BALTIMORE COUNTY, MAF AND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 044572

DATE 1-7-98 ACCOUNT R.001-6150.

AMOUNT \$ 550⁰⁰

RECEIVED FROM: DEBBIE GILL-BOYD

020 VAN. FOKKENEL. 250⁰⁰
050 SPEC. EXCEPTION 300⁰⁰

FOR: TOTAL \$ 550⁰⁰

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

98-255-KA
JTLA.

PAID RECEIPT

PROCESS ACTUAL TIME
1/08/1998 1/07/1998 15:58:37

REG 4804 CASHIER LGMT LYS DRAWER 4

5 MISCELLANEOUS CASH RECEIPT

Receipt # 034388 OFLN

CR NO. 044572

550.00 CHECK

Baltimore County, Maryland

CASHIER'S VALIDATION

Request for Zoning: Variance, Special Exception, or Special Hearing

Date to be Posted: Anytime before but no later than _____.

Format for Sign Printing, Black Letters on White Background:

ZONING NOTICE

Case No.: 98-255-XA

A PUBLIC HEARING WILL BE HELD BY
THE ZONING COMMISSIONER
IN TOWSON, MD.

PLACE: _____

DATE AND TIME: _____

REQUEST: A SPECIAL EXCEPTION TO ALLOW A
DOG KENNEL IN A DR ZONE AND

A VARIANCE TO ALLOW A KENNEL USE WITHIN 0 FT.
OF SIDE/REAR PROPERTY LINES IN LIEU OF REQUIRED 200 FT.

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY.
TO CONFIRM HEARING CALL 887-3391.

DO NOT REMOVE THIS SIGN AND POST UNTIL DAY OF HEARING UNDER PENALTY OF LAW

HANDICAPPED ACCESSIBLE

TO: PATUXENT PUBLISHING COMPANY
January 29, 1998 Issue - Jeffersonian

Please forward billing to:

Newton A. Williams, Esquire
700 Nottingham Centre
502 Washington Avenue
Towson, MD 21204

410-823-7800

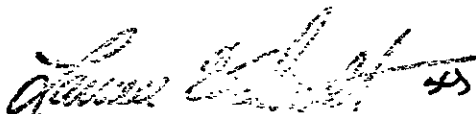
NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 98-255-XA
4608 Silver Spring Road (21128)
N/S Silver Spring Road, 105' to centerline Ratna Court
11th Election District - 5th Councilmanic District
Legal Owner: Scott J. Sykes & Tamazon T. Sykes
Contract Purchaser: Deborah L. Gill-Boyd

Special Exception for a private kennel for pet dogs only. Variance to permit a private, small kennel use within zero feet of the property lines in lieu of the required 200 feet.

HEARING: Wednesday, February 18, 1998 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue



Lawrence E. Schmidt

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 410-887-3353.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, PLEASE CALL 410-887-3391.



Baltimore County
Department of Permits and
Development Management

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

January 15, 1998

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 in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 98-255-XA
4608 Silver Spring Road (21128)
N/S Silver Spring Road, 105' to centerline Ratna Court
11th Election District - 5th Councilmanic District
Legal Owner: Scott J. Sykes & Tamazon T. Sykes
Contract Purchaser: Deborah L. Gill-Boyd

Special Exception for a private kennel for pet dogs only. Variance to permit a private, small kennel use within zero feet of the property lines in lieu of the required 200 feet.

HEARING: Wednesday, February 18, 1998 at 9:00 a.m. in Room 407, County Courts
Building, 401 Bosley Avenue

A handwritten signature in cursive script, appearing to read "Arnold Jablon", with the initials "SJ" written below it.

Arnold Jablon
Director

c: Newton A. Williams, Esquire
Scott & Tamazon Sykes
Deborah Gill-Boyd

- NOTES: (1) **YOU MUST HAVE THE ZONING NOTICE SIGN POSTED ON THE PROPERTY BY FEBRUARY 3, 1998.**
- (2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 410-887-3353.
- (3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 410-887-3391.





Baltimore County
Department of Permits and
Development Management

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

February 12, 1998

Newton A. Williams, Esquire
Nolan, Plunhoff & Williams, Chtd.
700 Nottingham Centre
502 Washington Avenue
Towson, MD 21204

RE: Item No.: 255
Case No.: 98-255-XA
Petitioner: Scott Sykes, et ux

Dear Mr. Williams:

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 January 7, 1998.

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 Roslyn Eubanks in the zoning office (410-887-3391).

Sincerely,

A handwritten signature in black ink, appearing to read "W. Carl Richards, Jr.", with a stylized flourish at the end.

W. Carl Richards, Jr.
Zoning Supervisor

WCR/re
Attachment(s)



BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Dept. of Permits & Development Management

Date: January 27, 1998

FROM: Arnold F. 'Pat' Keller, III, Director
Office of Planning

SUBJECT: 4608 Silver Spring Road

INFORMATION

Item Number: 255

Petitioner: Sykes Property

Zoning: DR 5.5

Requested Action: Special Exception

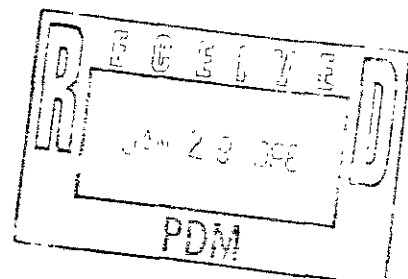
Summary of Recommendation:

Maintaining eight dogs in a residential setting appears to be excessive; however, the fact that the dogs are mostly kept inside and the applicant's unique circumstance seem to indicate that the instant request may deserve special consideration. In fact, the Office of Planning supports the request provided that written statements are provided from adjacent property owners stating that the dogs have not been a nuisance in the past. Additionally, restrictions should be imposed to protect the neighbors in the event that the subject request is granted.

Prepared by: *[Signature]*

Division Chief: *[Signature]*

AFK/JL





Maryland Department of Transportation
State Highway Administration

David L. Winstead
Secretary

Parker F. Williams
Administrator

Ms. Roslyn Eubanks
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County 1/16/98
Item No. 255 JRA

Dear Ms. Eubanks:

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 affected by any State Highway Administration projects.

Please contact Larry Gredlein at 410-545-5606 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,

for Ronald Burns, Chief
Engineering Access Permits
Division

LG

My telephone number is _____

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

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

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

TO: PDM

DATE: Jan 16, 98

FROM: R. Bruce Seeley *RBS/98*
Permits and Development Review
DEPRM

SUBJECT: Zoning Advisory Committee
Meeting Date: Jan 20, 98

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

Item #'s:

249

253

(255)

257

RBS:sp

BRUCE2/DEPRM/TXTSBP

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits & Development
Management

Date: January 26, 1998

FROM: Robert W. Bowling, Chief
Bureau of Developer's Plans Review

SUBJECT: Zoning Advisory Committee Meeting
for January 26, 1998
Item Nos. 250, 252, 253, 255,
and 258

The Bureau of Developer's Plans Review has reviewed the subject zoning items, and we have no comments.

RWB:HJO:jrb

cc: File

ZONE0126.NOC



Baltimore County
Fire Department

Office of the Fire Marshal
700 East Joppa Road
Towson, Maryland 21286-5500
410-887-4880

January 28, 1998

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

RE: Property Owner: SEE BELOW

Location: DISTRIBUTION MEETING OF January 20, 1998

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.

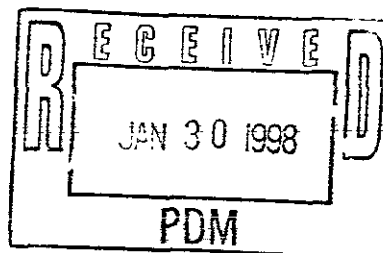
8. The Fire Marshal's Office has no comments at this time,
IN REFERENCE TO THE FOLLOWING ITEM NUMBERS:

249, 250, 251, 252, 254, 255, 256, and 258

REVIEWER: LT. ROBERT P. SAUERWALD

Fire Marshal Office, PHONE 987-4881, MS-1102F

cc: File



ho
2/18

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Dept. of Permits & Development Management

Date: January 27, 1998

FROM: Arnold F. 'Pat' Keller, III, Director
Office of Planning

SUBJECT: 4608 Silver Spring Road

INFORMATION

Item Number: 255

Petitioner: Sykes Property

Zoning: DR 5.5

Requested Action: Special Exception

Summary of Recommendation:

Maintaining eight dogs in a residential setting appears to be excessive; however, the fact that the dogs are mostly kept inside and the applicant's unique circumstance seem to indicate that the instant request may deserve special consideration. In fact, the Office of Planning supports the request provided that written statements are provided from adjacent property owners stating that the dogs have not been a nuisance in the past. Additionally, restrictions should be imposed to protect the neighbors in the event that the subject request is granted. -

Prepared by: *Jeffrey W. Z...*

Division Chief: *Carol L. Kerns*

AFK/JL

2/18

RE: PETITION FOR SPECIAL EXCEPTION * BEFORE THE
PETITION FOR VARIANCE *
4608 Silver Spring Road, N/S Silver * ZONING COMMISSIONER
Spring Rd, 105' to c/l Ratna Ct *
11th Election District, 5th Councilmanic * OF BALTIMORE COUNTY
Legal Owners: Scott & Tamazon Sykes * CASE NO. 98-255-XA
Contract Purchaser: Deborah L. Gill-Boyd *
Petitioner *

* * * * *

ENTRY OF APPEARANCE

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

Peter Max Zimmerman
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio
CAROLE S. DEMILIO
Deputy People's Counsel
Room 47, Courthouse
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of February, 1998, a copy of the foregoing Entry of Appearance was mailed to Newton A. Williams, Esq., Nolan, Plumhoff & Williams, 502 Washington Avenue, Suite 700, Towson, MD 21204, attorney for Petitioner.

Peter Max Zimmerman
PETER MAX ZIMMERMAN

2-10-98

Mr. Lawrence Schmitt
Zoning Commissioner
401 Gasley Ave
Lanham, Md. 21204

2/10/98
9:00

Re: Case No 98-255-XA

Dear Sir:

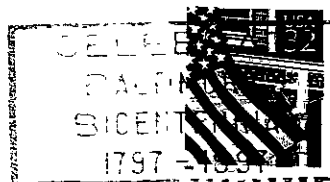
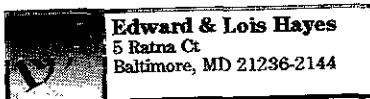
We are writing to protest re-zoning of property on Shiloh Spring Rd, behind property facing Ratna Ct, for the purpose of building a kennel for 8 German Shepherd dogs.

We do not feel this situation is appropriate for our area which is a quiet residential community of 21 families who are proud of their homes all of which are well kept. This would not only lower the value of our property but the smell and noise could be a health threat. My husband has had 2 open heart surgeries - 17 by-passes - which leaves him with a bad heart condition. Dogs barking all day, which would certainly happen with 8 dogs, could prove harmful to his health.

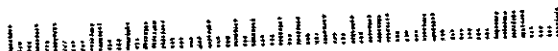
There is a danger to pedestrians, especially children from Perry Hall H.S. who walk by.

We hope you will not allow this.

5 Ratna Ct
Baltimore, Md. 21236 - Ken & Edward Hayes



Mr. Lawrence Schmitt
Zoning Commissioner
401 Bosley Ave
Towson, Md. 21204



February 11, 1998

Mr. Lawrence E. Schmidt,
Zoning Commissioner
401 Bosley Avenue
Towson, MD 21204

RE: Case No. 98-255-XA
4608 Silver Spring Road
Baltimore, MD 21236

*Rec'd
2/17/98
KJH*

Dear Mr. Lawrence:

I am writing this letter in reference to the abovementioned case number and property address in Baltimore County. My family resides on Ratna Court and we believe that if this variance is granted to permit a private, small kennel to be maintained on the property that it would be detrimental for a number of reasons. It surely would affect the value of my property and those of my neighbors, not to mention the noise we would be subjected to from time to time. The odor would also sometimes pervade the neighborhood. A main concern of mine is that a Baltimore County school bus stop is less than 100 feet from the property, used by both elementary and middle school students. I personally have children that wait at this stop every morning and get off of the bus there every afternoon, and will for at least the next 12 years. I feel that the safety of these children is an issue here.

I feel that whether or not the eight dogs are personal pets or if they were boarders has no bearing on this matter. This would be an infringement on the rights of property owners in this community if the variance were to be granted.

Yours truly,

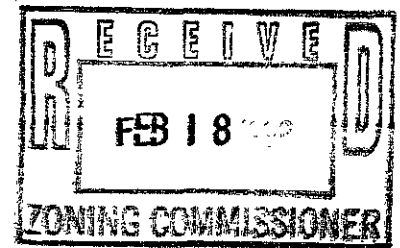
Patty Warren

Patty Warren
21 Ratna Court
Baltimore, MD 21236

2/5
2 Ratna Court
Baltimore, MD 21236
February 14, 1998

Mr. Lawrence E. Schmidt
Zoning Commissioner
401 Bosley Avenue
Towson, Maryland 21204

RE: 4608 Silver Spring Road
Case No.: 98-255-XA



Dear Mr. Schmidt:

We are writing to state our opposition to the Petition for Variance for the property located at 4608 Silver Spring Road to permit a private, small kennel use within zero feet of property lines in lieu of the required 200 feet for the following reasons:

1. The individual Deborah L. Gill-Boyd requesting the Variance has already been denied by the Commission on her present residence, 15 Romanoff Court (Case No.: 97-586-XA). Ms. Boyd has appealed this decision and had been granted a new hearing scheduled for February 17, 1998. The February 17th hearing has been rescheduled for March.
2. We reside in a very small residential area. The named property is surrounded by an individual residence on the west side; an individual residence on the north side; and a block of individual residences on the east side (four of which back up to the property -- #2, #4, #6, and #8 Ratna Court).
3. Approval of this request would significantly affect both the marketability and market values of our homes.
4. The property in question has an inground swimming pool which potentially can become contaminated from dog urine.
5. The ground will become void of grass and the dirt will become urine contaminated. In the summer during dry spells the odor of dog urine will circulate throughout the neighborhood via dust.
6. These eight (8) full grown German Shepherds pose safety and health hazards to the children in the bordering homes. While we do not have children at home, we do have three (3) grandchildren whom we take care of from time to time.

7. Mrs. Gill-Boyd in her original testimony stated she could not afford to purchase a new residence. Now all of a sudden she wishes to relocate her problems to our neighborhood. I believe to have a private kennel, one must have approximately 4.75 acres of land. The property in question is less than one (1) acre. Most of the land being in front of the house with the small parcel in the back. The backyard is where the kennel is proposed. This small parcel in the back also contains an inground swimming pool – a potential for contamination and mosquitoes from dog urine.

We thank you for your consideration in this matter.

Very truly yours,



Leo J. Ryan



Anna Marie Ryan

February 16, 1998

11 Ratna Court
Baltimore, MD 21236

Mr. Lawrence E. Schmidt
Zoning Commissioner
401 Bosley Avenue
Towson, Md 21204

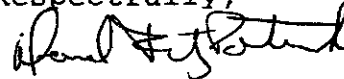
RE: Case No. 98-255-XA

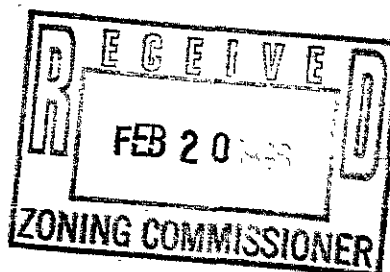
Mr. Schmidt:

I am writing in opposition to the rezoning request of Deborah L. Gill-Boyd. I am a homeowner on Ratna Court which is adjacent to the property that is requesting the rezoning. I believe that the reasons given by Ms Gill-Boyd have no validity. The 8 German shepherd dogs which she owns requires a large area for the roaming and relieving themselves each day. The area in question is not large enough to allow the dogs to do the above. The odor of the urine and feces residue is a potential health and environment problem. As a science teacher with a biology background, the reference to the veterinarian idea or "Family" and the separation of the animals would be detrimental is inconsistent with the natural laws of animal behavior. As a real estate agent with Coldwell Banker Gremler Realty, Inc., I have reviewed zoning laws and covenants for my clients. I believe that the county officials have set guidelines for the population in Baltimore County and to adjust them for 1 homeowner would do a great dis-service to the other 20 homeowners that reside in the area around 4608 Silver Spring Road.

I request that the petition for rezoning be denied.

Respectfully,


David FitzPatrick



Doris S. Small

3 Ratna Court
Baltimore, MD 21236

February 18, 1998

Mr. Lawrence E. Schmidt
Zoning Commissioner
401 Bosley Avenue
Towson, MD 21204

Re: Case No. 98-225XA
4608 Silver Spring Road

Dear Mr. Schmidt:

I strongly protest the approval of a zoning variance to allow a kennel permit within zero feet of property lines at 4608 Silver Spring Road.

I am most concerned that the potential escape of any or all of these dogs could cause bodily harm to the young children in our neighborhood and those who walk through to school. The corner of Ratna Court and Silver Spring Road is a school bus stop for elementary and middle school young people.

We are a densely built and inhabited neighborhood, living together in peace and harmony with each other. The noise, stench of dog urine and fetus would permeate our neighborhood, forcing upon us an unwelcome atmosphere which would jeopardize the quiet, cleanliness of our properties and deny us the use of our yards, as well as seep into our living areas.

As a senior citizen, these dogs in our neighborhood would threaten my well-being and safety. Further, a "kennel" permit such as described in the petition for variance would drastically impair the value of my home, a place that I have put a lifetime of effort and savings.

My living area is very close to 4608 Silver Spring Road property. The yard at 4608 is clearly visible from my house. This short distance would cause me to see the dirty, torn-up yard caused by the dogs as well as submit me to their filthiness.

I have listened to the testimony of the neighbors from the August hearing regarding M's Gill-Boyd's similar petition. Her move to Silver Spring Road will not change the fact that eight (8) large German Shepard dogs cannot co-exist in such a densely inhabited neighborhood. The past experience among the neighbors in Seven Courts will dictate the future because the same situation will exist at Silver Spring Road.

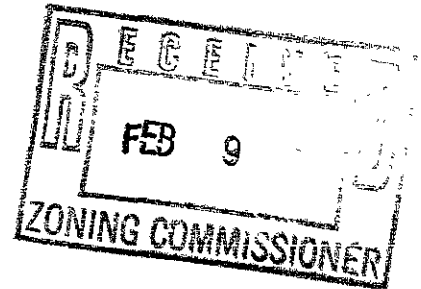
Thank you for your consideration in denying this petition.

Very truly yours,

Doris S. Small

2/18/98
4 Ratna Court
Baltimore, MD 21236-2145
February 10, 1998

Mr. Lawrence E. Schmidt
Zoning Commissioner
401 Bosley Avenue
Towson, MD 212204



Re: Case No. 98-255-XA
4608 Silver Spring Road

Dear Mr. Schmidt:

I am writing to state my opposition to the Petition for Variance for the property located at 4608 Silver spring Road to **permit a private, small kennel use within zero feet of property lines in lieu of the required 200 feet** for the following reasons:

1. This is a residential area. The named property is surrounded by an individual residence on the west side, an individual residence on the north side and a block of individual residences on the east side (four of which abut the property - numbers #2, #4, #6, #8 Ratna Court).
2. Because of the close proximity to adjoining properties, I do not feel any special exception should be given for small kennel use with zero setback to property lines in lieu of the required 200 feet.
3. The potential for noise and odor problems resulting from **eight** dogs is significant.
4. These problems would be considered a nuisance and would adversely affect the values of the adjoining properties.

In addition, several questions come to mind which I would like addressed:

1. What is the difference between this request (i.e. private kennel) and a commercial kennel?
2. How many dogs is the maximum for a private kennel?
3. In the event this variance would be granted:
 - a. What agency inspects and resolves any problems which may arise?
 - b. Does the *Special Exception* run with the property (i.e. is it transferable to future owners?

Very truly yours,

June B. Mohr

June B. Mohr

24 Names

February 9, 1998

To: The Zoning Commissioner of Baltimore County

Re: Petition for Variance
Property located at 4608 Silver Spring Road
Case No. 98-255XA

Not
Not

We, the undersigned oppose approval of a variance to permit a kennel within zero feet of property lines in lieu of the required 200 feet at 4608 Silver Spring Road.

As homeowners, we present the following reasons for our opposition. Other opposing factors may be presented at the hearing.

1. The very close proximity of our homes to 4608 Silver Spring Road, would cause us to be subject to gross dog urine odor and barking disturbance.

2. The view of an unkempt, dug-up yard by dogs is obtrusive. It would threaten our property values and peaceful existence in our homes and neighborhood.

3. The dog urine smell, barking and dirt would deny us the use of our back yards and decks for eating and recreation.

4. A fence would not keep these type of dogs from escaping into the neighborhood and causing bodily harm to adults and children who walk through the neighborhood, and reside in our midst.

① Mrs. Small
3 Ratna Ct
Baltimore MD 21236

⑤ MR & MRS. NICHOLAS
17 RATNA CT.
BALTO MD 21236

② Mr. & Mrs Choksey
1 Ratna Ct.
Balto, MD 21236

⑥ Mr & Mrs. Eugene URBANIAK
10 RATNA CT
BALTO, MD 21236

③ MR & Mrs G. Humann
13 Ratna Ct
Balto, MD 21236

⑦ MR & MRS. Thomas Getz
12 Ratna Ct.
Balto Md, 21236

④ Mr & Mrs John Shiner
15 Ratna Ct
Baltimore, MD 21236

⑧ Mr. & Mrs Edward Hayes
5 Ratna Ct
Baltimore, Md. 21236

(9) Mr & Mrs. Kevin Warner
21 Ratna Ct.
Baltimore, Md 21236

(23) Mary E. Knauer.
4620 Silver Spring Rd.
Perry Hall, Md.
21128

(10) Mr & Mrs Bevard
9 RATNA COURT
Baltimore Md 21236

(22) Mrs. Anna M. Ryan
2 Ratna Ct.
Balt. Md. 21236

(11) Mrs. Thelma Westland
4600 Silver Spring Rd
Perry Hall Md. 21128

(21) Mrs. Leo J. Ryan
2 RATNA CT Balt. MD 21236
(20) ~~Mr & Mrs W. Dean W. Ryan~~
8 RATNA CT BALTIMORE MD 21236

(12) ~~Thelma Westland & D~~
4600 S. Silver Spring Rd
Perry Hall Md. 21128

19 Jay Smoot
6 Ratna Ct
Baltimore Md 21236

(13) Lisa Goetz
16 Ratna Court
Baltimore, MD 21236

18 Mr. & Mrs. Angelo Corona
7 Ratna Court
Baltimore, Md. 21236

(14) Dale Gatz
16 Ratna Court
Baltimore, MD 21236

(17) James & Anita Pike
14 RATNA CT
BALT. MD 21236
James Pike

(15) Frank J. Gubli
14 Ratna Ct
Baltimore, MD 21236

(16) JOSE MARIA Zuñiga
19 RATNA CT
June Brown Mohr
4 Ratna Court, 21236-2145
Pg 242

NORTHWIND ANIMAL HOSPITAL, INC.

10016 HARFORD ROAD
BALTIMORE, MARYLAND 21234
Telephone (410) 668-4806

August 10, 1997

DR. SCOTT N. GOUNARIS

Pet. #4

To Whom It May Concern, Zoning Commission,

I have been Ms. Debra Gill-Boyd's veterinarian since I became one in 1982, and have been the veterinarian for her present group of dogs since "General Maximilian" and "Alfalfa Fields" were puppies in the summer of 1995. These two dogs have been cared for in the best possible manner since then as far as proper medical care and also as pet care is concerned.

General Max and Alfalfa had puppies in early January 1996, and six of them were presented to me in February to start puppy vaccination programs and for examination. Ms. Gill-Boyd has been more than an exemplary owner. Her puppies received the full recommended set of vaccinations, dewormings, heartworm prevention; the three female puppies were spayed on July 9, 1996. They have always, along with the mother and father, been presented in a clean, healthy, and "happy" manner. All her dogs are fed properly, have no diseases, are groomed and properly cared for. The health and preventive health care programs have been followed to the letter. All dogs are currently up-to-date on all vaccinations appropriate, and are currently on heartworm prevention. Whenever one gets ill, such as a small bout of diarrhea, etcetera, Ms. Gill-Boyd calls me to see what to do.

In summation, Ms. Gill-Boyd has been as fine an animal and pet owner as one could desire, and better than the vast majority of people I have met over the years. Since these eight dogs have been together since birth, I feel that separation of them would have a negative effect on all the dogs. It is common knowledge that animals growing up together will mourn the loss of their companion pets, whether it is due to death or separation by force. These effects can last for months or longer. This appears to be a case where the sire, dam, and all offspring have been together, and separation would be especially traumatic.

Sincerely,

Dr. Scott N. Gounaris

98-255-XA.

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME

ADDRESS

Newton A. Williams

502 Wash. Ave.

Debbie Gill - Boyd

15 Romanoff Court 21030

Patrick H. O'Keefe

523 Penny Lane Hunt Valley

Cleaver Gill

2612 Breighton Ave. * 21234

~~Anna H. Hays~~



98-255-XA

PLEASE PRINT CLEARLY

CITIZEN SIGN-IN SHEET

NAME

ADDRESS

Judy Corbett

Scott J Sykes

MICHELE REID

Long & Foster

1615 York Rd

Lutherville, MD 21093

4608 Silver Spring Rd

Perry Hall MD 21128

LONG & FOSTER

8712 BELAIR RD., BALD. 21236

PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

NAME

ADDRESS

William W. Rogers
Anna Marie Ryan
June B. Mohr
Jay Smith
Patty Warren
Virginia Corona
Doris S. Small
Linda Getz
Thomas L. Getz
Elizabeth A. Currey
Daniel G. Currey
Eugene T. Urbanik
Paul R. Goodsell

8 Ratna Ct 21236
2 Ratna Ct. 21236
4 Ratna Ct. 21236
6 Ratna Ct 21236
21 Ratna Ct. 21236
7 Ratna Ct 21236
3 Ratna Ct 21236
12 Ratna Ct 21236
12 Ratna Ct. 21236
4604 Silver Spring Rd 21128
4604 Silver Spring Rd.
10 Ratna Ct. 21236
4606 Silver Spring Rd 21128

~~Good~~
Good
copy

contact Sampson during that hiatus. Whack's request for the court to "initiate judicial compulsory process," while relevant, falls under the circumstances of this case to demonstrate or establish the requisite diligence necessary to reverse the trial court.

Appellant, despite being afforded an opportunity to do so, failed to even proffer the first and third prong of the requirements we iterated in *Whack*, i.e., (1) that he had a reasonable expectation of securing the witness within a reasonable time; and (2) that he had been diligent in his efforts to obtain the presence of Ms. Ferguson.

Neither Judge Howe nor Judge Cahill erred.

JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANT.

653 A.2d 532

CHESTER HAVEN BEACH PARTNERSHIP

BOARD OF APPEALS FOR QUEEN ANNE'S COUNTY.

No. 794, Sept. Term, 1994.

Court of Special Appeals of Maryland.

Feb. 9, 1995.

Property owner sought review of decision of County Board of Appeals denying requests for conditional use and for several variances in order to construct clustered units in residential area. The Circuit Court, Queen Anne's County, J. Owen Wise, J., affirmed, and property owner appealed. The Court of Special Appeals, Cathell, J., held that: (1) offer to build below density, if conditional use acceptable to environmental regulators is granted, does not satisfy requirement of

variance law that land itself be inherently unique; (2) property owner's failure to produce evidence meeting essential elements required for obtaining variances in first instance supported denial of variances; and (3) absence of existing houses on property to which proposed cluster units could be compared did not create "unique" circumstance which would justify granting variance.

Affirmed.

1. Zoning and Planning §503

Offer to build below density, if conditional use acceptable to environmental regulators changing character of use of property is granted, does not satisfy requirement of variance law that land itself be inherently unique and different from remainder of land in area.

2. Zoning and Planning §503

County board of appeals acted appropriately in denying property owner's requests for variances to allow "clustering" in planned residential development absent any evidence, other than nonexpert opinion, that property was "unique" as essential to granting requested variances; fact that property owner could not do what he wished to do with property did not make it "unique."

3. Zoning and Planning §503

Fact that property on which clustering of housing units was proposed had no existing houses to which to compare proposed cluster units did not make property "unique" as necessary to grant variance.

4. Zoning and Planning §503

In determining appropriateness of area variance, court considers whether subject property is so inherently unique that impact of ordinance on property would be disproportionate when compared to other lands in district.

tional use and for several variances. Appellant presents three issues:

I. Whether the Board of Appeals may deny a request for (i) a variance and (ii) a conditional use approval, both under the Queen Anne's County Zoning Ordinance, without delineating or applying any decisional standard, and even though Appellant presented uncontroverted testimony and evidence to support all statutory prerequisites with no countervailing evidence presented.

II. Whether the Board of Appeals may interpret § 5000 of the Queen Anne's County Critical Area Ordinance in a manner at odds with the intent of the provision as manifested by the plain meaning of the ordinance, the testimony of a drafter of part of the provision from the Office of Planning and Zoning and the testimony of Appellant's expert.

III. Whether the Board's finding, that the Appellant had not satisfied its burden of proving that it was the owner of land subdivided and recorded as of 1959 was arbitrary, capricious and illegal in light of the evidence presented.

The Facts

As this case was presented to the Board, much of the information submitted on behalf of appellant was by way of an opening statement by appellant's counsel. In his opening statement, counsel gave a history of his knowledge of certain land planning legislative processes in Queen Anne's County and then informed the Board, while still in opening statement, of some of the history of the property, including a statement that the property at issue was subject to a prior recorded plat. Counsel then introduced (apparently in evidence) certain deeds in the chain of title to the property. He then asked to introduce a memorandum of arguments applicant desired to present in respect to the application, stating: "[T]his will be my memorandum as far as the legal authority ... this has nothing to do with testimony."

The Board then introduced, as applicant's exhibits, a copy of the sectional zoning map and a letter from a Mr. Nickerson,

5. Zoning and Planning. Where property owner had not formally requested variance, zoning authority could not comply with specific conditions with which ordinance required compliance before grant of conditional use could be made, even if those conditions could legally be avoided by variance.

6. Zoning and Planning. It was not legislative intention in passing state or local critical area legislation that zoning variance procedures be proscribed in order to alleviate harshness of environmental regulation, and, thus, staff of area commission considering conditional use request should not recommend allowing construction despite apparent conflict between environmental regulations and zoning regulations.

7. Zoning and Planning. Until appropriate legislative bodies make consideration of appropriate reasons for granting of variance, zoning entities lack administrative authority to broaden, by ad hoc administrative acts, power they possess to grant variances.

8. Zoning and Planning. In area of variance issues, stringent unnecessary hardship standard applies, while, for use variances, seemingly even more stringent extraordinary hardship standard applies.

Howard L. Alderman, Jr. (Julius W. Lichter and Levin & Gann, P.A., on the brief), Towson, for appellant.

Argued before CATHELL, HARRELL and MURPHY, JJ.

CATHELL, Judge.

Appellant, Chester Haven Beach Partnership, appeals a judgment of the Circuit Court for Queen Anne's County (Wise, J.), affirming the denial by appellee, the Queen Anne's County Board of Appeals (Board), of appellant's requests for a condi-

Director of Environment Health Services. The letter, on Health Department stationery contained the following language: "There are no objections to this proposal by the 'Approving Authority' if the project is served by public water and public sewer." The Board, with the concurrence of appellant's counsel, then introduced a letter from the State Highway Administration, Engineering Access Permits Division, stating that it similarly had no objection, "as there are no State highways involved." Also introduced was the note of the staff of the Chesapeake Bay Critical Area Commission, stating that "[t]here are no comments at this time."

Counsel, resuming his opening statement, then informed the Board that the developing coordinator for the partnership might be called upon to testify. Counsel then described the partnership to the Board and counsel's past and present relationship to that partnership and its various partners. He then told the Board how the partnership operated.

Until this point, other than the exhibits offered, nothing was in evidence. Counsel's opening comments, for the most part, lacked relevance in respect to the issues now asserted on appeal. Thereafter, counsel called as a witness Mr. Michael Whitehill, the branch manager of McCrone, Inc., engineers, planners, and surveyors for the project. Mr. Whitehill described, *inter alia*, the type of subdivision sought to be established and the history of percolation tests. A letter dated June 7, 1976, was introduced through him, informing the owners of the property of serious percolation problems and noting therein that "even though this is a subdivision of record in Queen Anne's County, each application for a septic tank permit must be evaluated on its own merit." Mr. Whitehill then discussed the new developmental planning process, i.e., from an older subdivision plan to the one then being submitted.

Appellant attempted to assert at oral argument that the previous recordation of a subdivision on the subject site prior to the enactment of zoning is what made this property unique

for variance purposes. This argument, as we shall explain, is proffered for the first time on appeal.

Initially, we note that appellant's application stated:

Conditional use approval is sought to permit planned residential development in the existing NC-15 zone for Section 7203E of Q.A. Co. zoning ordinance and a variance from Section 7203E condition 1 is sought to permit more than six (6) units per "cluster" and delete conversion density percentages as being uniquely inapplicable.

No assertion was made as to any denial by zoning authorities of the claimed grandfathered density. Rather, appellant merely submitted a request to vary the percentage conversion in the code relating to planned and/or clustered development. This does not translate into any uniqueness caused by the inherent character of the property or the overall density requirement relevant thereto. In fact, as far as we can discern from the record in this case, for zoning purposes, the property, though perhaps non-conforming, has, through grandfathering, retained its density and single family lot status, i.e., an 186 lot subdivision for detached single family units.

Mr. Whitehill testified before the agency that:

These were single family lots that are below the 15,000 square feet that is now called for in the current zoning.... At that time, an attempt was made in 1976 to have some percolation tests run on these lots.... [T]here were some problems with some of the areas.... At that time... it was recommended... that they wait for public sewer....

.... This project at one time was intended to be an adjunct type community [adjunct to White's Heritage Continuing Care Community] which would be [a] retirement type of a project without the continuing care. They [the developers] have since changed that.... In the beginning of 1985 McCrone, Inc. did a survey.... with the intent to come up with a new development plan that would offer an alternative to this subdivision.... in hopes of taking the

existing subdivision and replacing it with a planned type of housing style as the 'new zoning' was brought into place. The idea . . . was to . . . hopefully get a limited development area criteria for the overall property and . . . undoing the undo-able, which is a 1959 plat . . . and replace[] it with a new zoning such as suburban estate zoning which would have allowed the planned housing styles we seek today by virtue of conditional use. . . . [S]uburban estate was inapplicable to a recorded subdivision. They couldn't un-record the subdivision . . . because they would not have only lost the grandfathering . . . they would have . . . to start over. . . . Professor Lichter here has wrote many letters . . . trying to get that LDA designation on the property, and [it] represents one of his few failures. . . . [I]t was suggested . . . that . . . we could combine lots . . . and go back and repack the lots. So we made an application. . . . That was an 88 lot combination plan dated 5/16/89 which was withdrawn. I hate to lose and so I withdraw these when things are going south on me in the middle of the operation, . . .

. . . Since that time [1976] we have been making continuous applications to the County . . . to amend this property into the master water and sewer plan so we could apply for sewer for the original lots. Then the nasty, the critical areas designation of RCA. . . . [it] did grandfather single family lots which brings us up to our third application . . . for . . . retirement community rental apartments. . . . We submitted a concept plan . . . that would take this grandfathered density of 186 single family units and convert it to a planned housing style. . . . We applied to the Planning Commission for approval . . . and . . . there was a glitch in the new critical area ordinance. . . . So this plan . . . was withdrawn. . . .

[T]he County proceeded with the rewording of that so that Section 5000 Critical Area Ordinance would be amended to include the other housing styles besides the single

family. The subject of tonight's hearing, now we have moved through nearly a decade of shenanigans.

. . . . Applicant's Exhibit No. 11 is the biggy. Our application . . . that we were forced to withdraw was basically subject to the conditional use. . . . Section 7203E. refers to . . . the . . . cluster. . . .¹¹ The first condition . . . asks that the cluster and planned development shall be scattered within surrounding single family homes. These . . . shall not consist of more than 6 units per cluster, nor more than 30% of the dwelling units in any block. This is the section from which we are seeking a variance. . . . [F]rom the Critical Areas perspective, . . . we are only disturbing 7 acres of land. . . . In order to do this . . . we . . . requested a shore buffer reduction that was granted in a unique fashion. . . . So that anything we granted here would permit the development to be out where the ground is more suitable, which is higher land toward the water, but we would expand the shore buffer for the entire balance of the property. . . .

. . . . The requirement of the RCA . . . ties us down to 15% impervious areas in the RCA. . . . [T]he impervious area that we are creating is half of that which is allowed by the Critical Areas RCA designation. [Emphasis added.]

[1] At that point, Mr. Whitehill testified as to various technical aspects of the project and then presented testimony that we shall discuss elsewhere in our opinion. His testimony as to the recorded subdivision plat was merely by way of giving a historical perspective of the land and the various projects proposed therefor. No claim was made below that these previous lots were in any way unique. Moreover, there is no indication that the density he claims was grandfathered has been denied him and, even if the authorities have chal-

1. A fair reading of the ordinance indicates that cluster units were originally perceived as low income housing. The conditions as to number and percentages appear to have been intended to limit the amount of such housing in any given neighborhood.

lenged his claim as to grandfathered density—and we find no indication that they have—appellant never requested a variance from any overall density requirement. All of its variance requests concern what it perceives to be necessary to meet the requirements of a change in its development plan from single family to group or cluster living necessitated by the current demand, not of zoning codes, but of environmental regulations (and economic conditions), especially the requirements of complying with the Chesapeake Bay Critical Area regulations. We are not unsympathetic to the plight of a property owner caught between local zoning codes and environmental regulations. We later herein suggest the correct method of addressing this issue. But, an offer to build below density, if a conditional use acceptable to environmental regulators changing the character of the use of the property is granted, does not satisfy the requirement of variance law that the land itself be inherently unique and different from the remainder of the land in the area.

We now continue our discussion of what did occur below. Applicant's Exhibit No. 11 was then introduced with, as we have said, the comment that "No. 11 is the biggy." It is a surveyor's or planner's (unrecorded) plan of the proposed project. Thereafter, Mr. Whitehill testified, initially and apparently referring to the requirements for the granting of conditional uses under the ordinance:

The first condition of that section asks that the cluster and planned development shall be scattered within surrounding single family homes. These planned developments shall not consist of more than 6 units per cluster, nor more than 30% of the dwelling units in any block.

Mr. Whitehill then noted:

This is the section from which we are seeking a variance. He later continued, in relevant part:

So these units as you are seeing them here are essentially clustered together. These are a planned housing style, apartments are a planned housing style, according to the zoning ordinance in Section 5105.J., that we would have to

provide in order to meet the general zoning criteria for apartments, we would have to provide a lot, if we were to put all these on one lot, that lot would only have to be 6.88 acres. But we actually have a much larger lot than that so we are actually conforming in excess of the minimum lot size that would be required under the zoning ordinance. This plan complies as a condominium project, this plan would comply with the requirements of virtually every planned housing style [and] ... as a rental project, it ... will all be privately owned and privately maintained.... Mr. Whitehill then introduced certain exhibits, not relevant to the issues on this appeal, stating that he did so "so we can go into juicier topics which are the variance and conditional use."

Then, continuing his comments, Whitehill noted:

Relative to the conditional use ... this is where we run into the request for the variance [but then, addressing the conditional use requirements]. If we were doing this in Cloverfields or Harbor View [other neighborhoods] ... where there are surrounding houses that have already been built and there is an established architectural texture ... then this special condition of the conditional use would certainly be applicable. At that point you are starting to say that if you take 30% of the dwelling units ... or 20% ... unfortunately, within this development itself, ... there is no architectural, there is nothing there ... so we find it difficult to apply that particular standard. In Condition 2 ... we certainly do comply with. Number 3, ... [slame sort of problem, there is nothing ... that we can compare this to.... [S]o we are actually less dense than this would permit. And that the cluster lots shall follow the same standards as village houses, we are not proposing cluster lots.... So what we have is kind of an interesting situation.... What we find is, by not developing 102 acres, by developing only ... 7 acres ... this is certainly more environmentally sound.... The single family issue has been resolved so that the grandfathering would be allowed to take those single family lots and convert them to the multifamily and planned housing styles.... [D]epending

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on the outcome of the conditional use, [we] would like to go in and apply for our sewer....

The following exchange then occurred between Mr. Whitehill and applicant's counsel:

[APPLICANT'S COUNSEL]: ... With regard to the requirements for variances ..., can you advise the Board, in your opinion professionally, whether a literal enforcement of the ordinance would result in unnecessary hardship as a result of the specified conditions[?]².

WHITEHILL: Yes, it would, because we have nothing to compare, we have nothing to derive both the housing style from, and we have nothing on the basis of the existing architecture ... in this particular instance.

[APPLICANT'S COUNSEL]: Are the conditions that are present on the property peculiar to this property[?]

WHITEHILL: They are very unique to this particular piece of property.

[APPLICANT'S COUNSEL]: Can you tell what they are[?]

WHITEHILL: The uniqueness is ... that this recorded subdivision since 1955 has no houses built in it to establish community character.³

[APPLICANT'S COUNSEL]: Can you tell us whether any of the conditions that are present are the result of any action taken by the petitioner....

WHITEHILL: No....

Thereafter, there was some testimony as to the engineering aspects of the project not relevant to the appellate issues at

2. Mr. Whitehill was not explicitly offered or accepted as an expert on any subject matter, though he purported to have testified before the Board "on a number of occasions over the last 20 years" and did respond to a number of opinion solicitation questions.

3. Here, particularly, Mr. Whitehill confuses the standard for conditional uses and variances. The existence *vel non* of houses, while perhaps relevant to conditional uses, is not normally relevant to variances; uniqueness of a particular property is relevant to variances.

bar. The applicant then rested. There were no protestants. Planning and zoning staff then testified in support of the project, stating: "Staff would support the conditional use approval, and we don't have any objection at all to the variance request."

The Board, in its Finding and Decision, noted, first of all, that the County had adopted a new comprehensive plan (zoning map) and zoning ordinance in 1987, which zoned the subject property NC-15, radically departing from the County's previous ordinance; that the County adopted its Chesapeake Bay Critical Area Program in 1988 and its Critical Area Ordinance in 1989; and that the Critical Area maps delineated the subject property as a Resource Conservation Area. Thereafter, an amendment was adopted to the Critical Area Ordinance that provided for a new Section 5000 c modifying density requirements and, in effect, grandfathering in the previous density provisions and resulting in a density of 186 units for the subject property. The Board noted, however, that, in order to avail itself of the 186-unit density, applicant, in addition to satisfying critical area concerns and other environmental matters, or because of those requirements, had to obtain a conditional use to permit clustering.

The conditional use provisions limited the clustering of units to *six units per cluster*, subjected the perimeter of the clustered units to the setbacks of the underlying zoning district, required the dwelling units to be in keeping with the architectural character of the area, and *required the density to be determined in relation to the minimum lot size for the cluster*. All of these conditions had to be met in order for the conditional use to be permitted.

The Board noted that, in addition to the conditional use—or really, in order to qualify to apply for the conditional use—the applicants had to get a variance from the six unit per cluster condition and from the provisions of the density percentages, and additional variances from the conditions for which the ordinance required satisfaction in order to be entitled to a conditional use. In other words, the Board perceived, correct-

ly, that the subject project could not meet the requirements of the ordinance established for the granting of the conditional use. Therefore, the applicants were attempting to eliminate the conditions by obtaining variances therefrom.

The attempt to follow this procedure creates fundamental and conceptual problems with the generally accepted proposition that, if the express conditions necessary to obtain a conditional use are met, it is a permitted use because the legislative body has made that policy decision. Does the legislative intent that the use be permitted remain if the conditions are not met but are eliminated by an administrative body granting a variance? Upon such an occurrence, the application for a conditional use becomes dependent upon the granting of the variances. Under those circumstances, the presumption that a conditional use is permitted may well fall by the wayside. The policy that establishes certain uses as permitted is predicated upon the satisfaction, not avoidance, of conditions. Conditions the legislative body attaches to the granting of a conditional use normally must be met in accordance with the statute—not avoided. In any event, even if such a procedure would pass muster, if the variance process fails, the entire application fails.

The Board initially addressed (apparently, presuming for the purposes of its discussion a project in which the variances had been approved) whether the proposed development could meet, even then, the more general requirements of a conditional use. It answered this in the negative, citing the following findings that we perceive to be supported by the evidence:

These districts [Neighborhood Conservation Districts] are intended to preserve the character of the existing neighborhoods.... [T]his area is dominated by single family residential structures and farmland. [T]he ... Ordinance clearly intend[ed] that the character of the existing neighborhood was to be preserved.... Clearly, the Applicant envisions an apartment complex in an area where apartments do not exist.

The Board then noted that which we have indicated above, "[a]pplicant not only wants the Board to grant a conditional use, but also to totally ignore the express conditions attached to that conditional use [i.e., combining the application with a request for a variance in order to remove the express conditions]." It then found that such a conditional use would permit the area to be dominated by the proposed apartment complex, despite the fact that apartments do not now exist in the neighborhood. Thereafter, the Board addressed other general conditions, the consideration of which is required in cases of requests for conditional uses, and extensively discussed the testimony and evidence in regards to, *inter alia*, traffic, harmony, purpose and goals of the ordinance.

[2] We do not choose to review each challenged evidential inference made by the Board. The Board properly denied the variances, penultimately, because of the abject failure of appellant to produce evidence (as opposed to non-expert opinion) meeting the essential elements required for obtaining variances in the first instance. We hold that the Board's findings and decisions arising out of its consideration of the general and special conditions, and Judge Wise's well-considered opinion affirming the Board's decision, were correct.

[3] The only evidence proffered in support of showing the property's "uniqueness," a showing essential to the grant of the requested variances, was Mr. Whitehill's testimony that it was unique. His testimony in this regard can be paraphrased as "it is unique because the property owner can't do what he wants to do," i.e., that the proposed property was unique because it had no existing houses thereon to which the proposed cluster units could be compared. That position has been consistently rejected as a reason to grant variances by the appellate courts of this and most foreign jurisdictions.⁴

4. The fact that nothing existed on nearby properties to which a comparison of the proposed cluster units can be made is proof that the instant property in its unimproved state is, for variance purposes, similar, not dissimilar or unique in respect to the neighboring properties. In any

[4] We recently discussed the issue of the grants and denials of variances in our case of *Cromwell v. Ward*, 102 Md.App. 691, 651 A.2d 424 (1995). We there described the initial and essential first step in the determination of the appropriateness of an area variance: "the subject property must be so inherently unique that the ordinance's impact thereon would be disproportionate when compared to other lands in the district." See, generally, our decision in *Cromwell* for a full and complete discourse on the subject of variance law.

In the case *sub judice*, not one minute speck of evidence was produced indicating that this property is inherently unique as compared to other properties in the area or that the zoning ordinance's impact on other properties in the neighborhood, area, or district was in any way different than its impact on the subject property. The evidence was to the contrary. It may be that other similar properties in the vicinity are not affected by the stringent requirements of critical area legislation, and it may be, though we do not now so hold, that, if only one property in a neighborhood is subject to stringent environmental restrictions, that property may be unique for variance purposes. That, however, is an issue for another case, or for the legislature, or regulators. In the case *sub judice*, there is no factual predicate, therefore.

We said in *Cromwell*:
[T]he variance process . . . is at least a two-step process. The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is—in and of itself—unique and unusual in a manner different from the

event, that was only one of the mandatory conditions that had to be met in order for a conditional use to be granted.

5. The variances requested were specific area variances needed in order to remove conditions statutorily attached to the conditional use sought. Had appellant attempted to get a variance (as opposed to a conditional use) in order to develop the whole project as proposed, the change from single-family to retirement apartments, would have also involved a "use" variance.

nature of surrounding properties. . . . Unless there is a finding that the property is unique, unusual, or different, the process stops here and the variance is denied. . . .

Opinion, at 694, 651 A.2d at 426. We concluded in *Cromwell*: There was no evidence submitted to the Board that the subject site was in any way peculiar, unusual, or unique when compared to other properties in the neighborhood such that the ordinance's . . . restriction's impact upon the subject property would be different than the restriction's impact upon other neighboring properties. In essence, the impact would be the same. The first step of the variance process was thus not met.

Opinion, at 726, 651 A.2d at 441.

There was little, if any, evidence presented below as to differences, if any, between other properties in the neighborhood (or area or district) and the subject property. Presumably, the provisions of the zoning ordinance would similarly impact on such nearby properties. We note, as we did in *Cromwell*, that

the variance that is desired (and the difficulties that would exist if it is not granted) cannot be the source of the first prong of the variance process—an inherent uniqueness of the subject property not shared by surrounding properties. Opinion, at 695, 651 A.2d at 426.

[5] In the case *sub judice*, unlike the zoning authorities in the *Cromwell* case, the zoning entity—the Board of Appeals—displayed an understanding of the variance process, and applied that understanding as they were required to do, denying the variance. That denial was legally correct. Given the failure of the request for a variance, it was impossible for appellants to comply with the specific conditions with which the ordinance required compliance before a grant of a conditional use could be made, even if such conditions could legally be avoided by variance. Thus, in addition to failing to meet the general conditions necessary for the approval of a conditional use, appellants also failed to meet the specific conditions. The Board did not err; its actions were not arbitrary

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and capricious. It correctly rejected the applications for the conditional use and the variances.

[6, 7]. Before concluding, we have two observations. First, the professional staff abdicated its responsibility in its role in respect to conditional uses and variances. It recommended favorably that, which, if granted, would have been clearly illegal and arbitrary. We can understand, however, that, in areas where severe environmental regulation, i.e., critical area regulations, overlay zoning regulations, the two statutory schemes can be in irreconcilable conflict. What is permitted by one scheme may be prohibited by the other. When that occurs—and it may well have occurred here—we perceive that there can exist extreme pressure within the staff to attempt to reconcile the irreconcilable. While the desire to rectify the problem is understandable, planning staff should not put itself in a position, or allow itself to become so positioned, of recommending that which the zoning code prohibits. The problems that may exist in the interplay between environmental and zoning regulations may well call for legislative attention. It is not, however, the function of staff to make such policy decisions in the absence of legislative action. We do not perceive that it was the legislative intention in passing the State or local critical area legislation that zoning variance procedures would be proscribed in order to alleviate the harshness of environmental regulation. If that is the intention of the legislative entities, they have the power to express clearly that intention. It may well be that the legislature should direct its attention to amending the variance provisions of Art. 86B to include the effect of subsection to environmental regulations as a unique quality of property so as to enable local jurisdictions to provide by ordinance for such consideration. It may be that charter counties need to consider amending their ordinances to allow environmental regulatory impact to be considered as an appropriate reason for the granting of a variance. Until the appropriate legislative bodies make that consideration, zoning entities lack the administrative authority to broaden, by *ad hoc* administrative acts, the power they possess to grant variances.

Second, we wish to note that Judge Wise, in his opinion and affirmance of the Board's decision, displayed a complete understanding of the nature of the zoning variance and conditional use law and procedure. His decision was correct.

[8] We conclude by noting that appellant further asserts that, because the Queen Anne's County's ordinance contains both the unnecessary hardship standard and an extraordinary hardship standard, the County must have intended to equate unnecessary hardship to practical difficulty. We do not agree. The only standards in Queen Anne's County are those that have been stated. They do not include practical difficulty. Thus, even in area variance issues, the stringent unnecessary hardship standard applies. In use variances (if same are even permitted under the Queen Anne's County ordinance), the seemingly even more stringent extraordinary hardship would apply. See *Cromwell, supra*. In that respect, the Queen Anne's County ordinance is a tough ordinance.

JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANT.

653 A.2d 641

Kenneth GOODWICH

v.

The SINAI HOSPITAL OF BALTIMORE, INC.

No. 797, Sept. Term, 1994.

Court of Special Appeals of Maryland.

Feb. 9, 1995.

Reconsideration Denied March 6, 1995.

Licensed physician sued hospital for breach of contract, intentional interference with contractual relations, and tortious

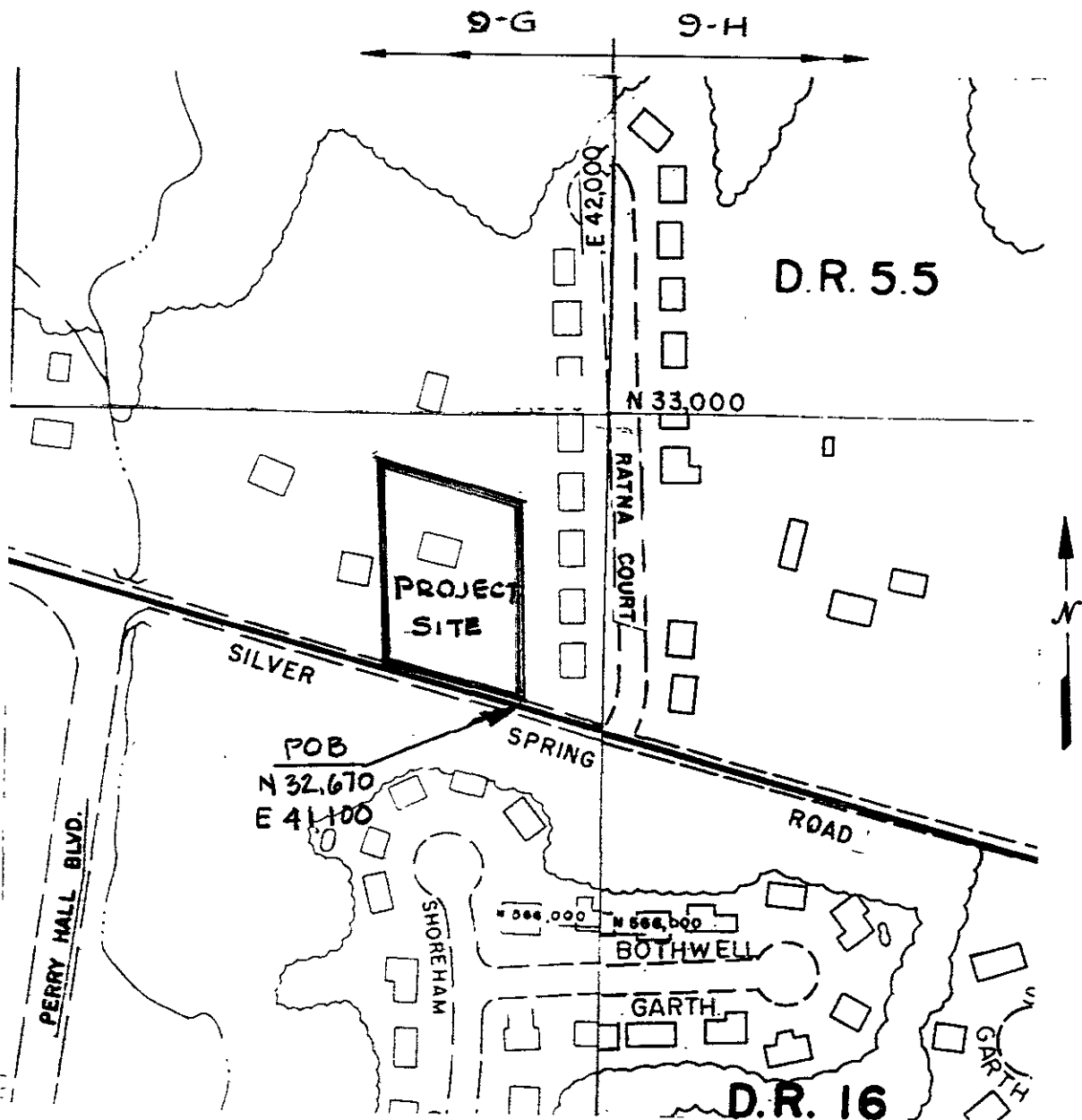
1986 COMPREHENSIVE ZONING MAP

Perry Hall

Sheets N.E., 9-G and 9-H

1" = 200'

(Subject Property at 4608 Silver Spring Road shown outlined in Red)



Plat to Accompany Petition
for
Zoning Variance and Special Exception
for
Animal (Dog) Kennel

Purpose : To allow the Applicant to maintain a private
kennel within the subject property for more
than three dogs. (Special Exception).

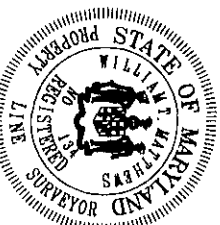
Variance : Section 421.1
To permit an Animal (Dog) Kennel within 200'
of nearest property line, zero (0)'.

Property Address : 4608 Silver Spring Road
Baltimore County, Md. 21128
Tax Account Number : 11-1119074492 R
Deed Reference : Liber: 7873, Folio: 613
Property Owner : Scott J. and Tamazon T. Sykes
Mailing Address : Same as above

Contract Purchaser
Deborah Lynn Gill-Boyd
15 Romanoff Court
Baltimore County, Md. 21236
Phone: 410-256-7737

LEGEND

- Property Corner
- UP Utility Poles
- WM Water Meter
- CO Clean-Out
- Trees (Approx. location)
- Paving
- Wood
- Fence Line
- Overhead Lines
- Shrubbery



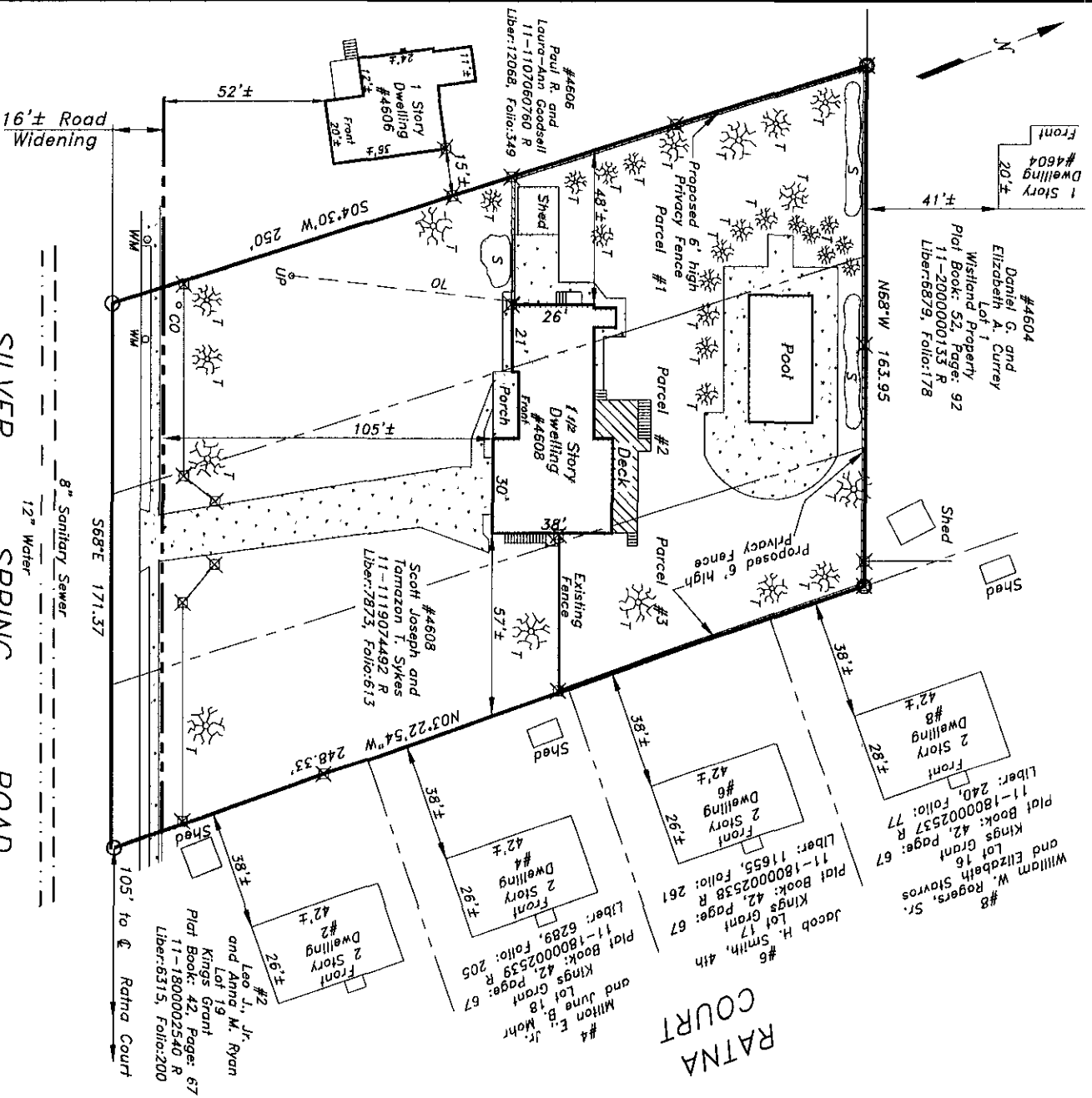
Deborah L. Gill-Boyd

11/20/97

Ruxton Design Corporation
8422 Bellona Lane
Towson, Maryland 21204
(410) 823-5000

Fax (410) 823-0115

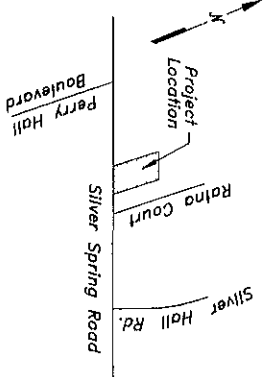
Scale 1" = 50'



SILVER SPRING ROAD
60' R/W
(46' Paved)

8" Sanitary Sewer
12" Water

Dwelling lies in Flood Zone C



Vicinity Map
1" = 1000'

LOCATION INFORMATION

Election District 11
Councilmanic District 5

1" = 200' Scale Map # 9-G & 9-H

Zoning : D.R. 5.5

Lot Size : 0.845 Acres
36,808 Sq. Ft.

Public Private

Sewer : ☒ Public ☐ Private

Water : ☒ Yes ☐ No

Chesapeake Bay Critical Area ☐ Yes ☒ No

Prior Zoning Hearings None

ZONING OFFICE USE ONLY

Reviewed By Item Number Case Number

204 255 98 XSS KA

(Plat. No 1)

Rev. 12/19/97



2/18/98

These pictures are of
Ratna Court.

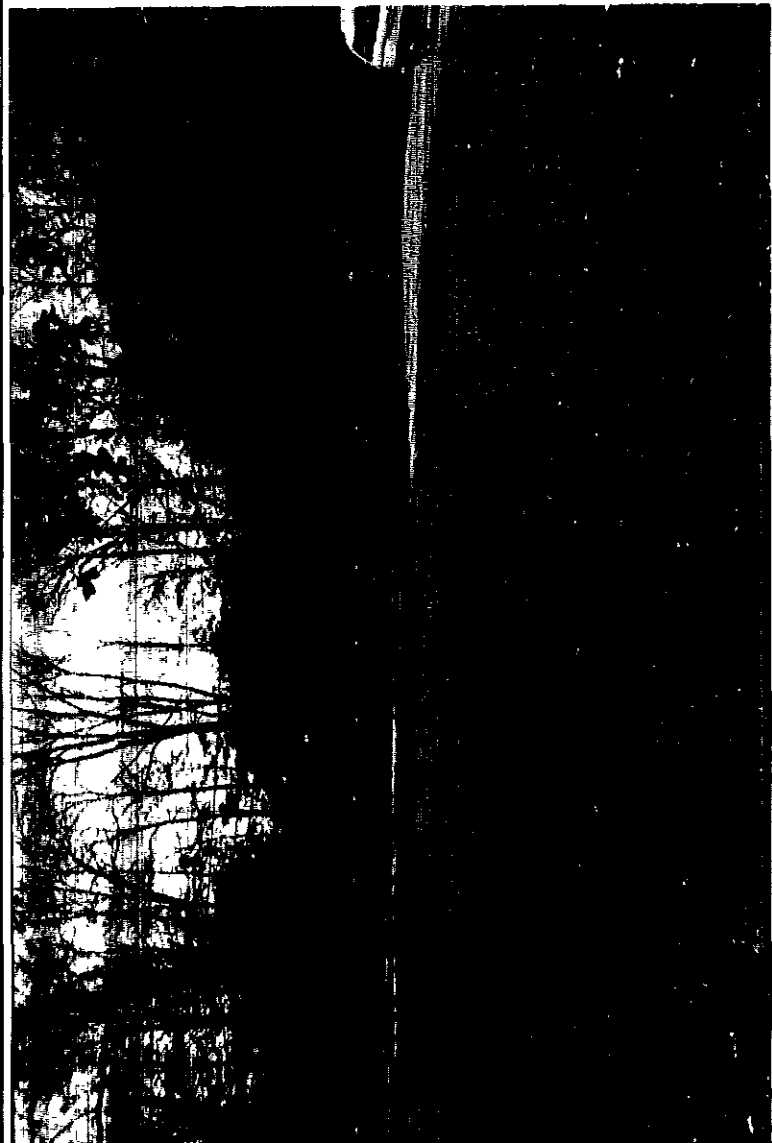
They show the close
proximity to 4608 Silver
Spring Road to our back
yards, the closely built
homes and the cleanliness
of our properties and
street

re: Case # 98-2557A

#3



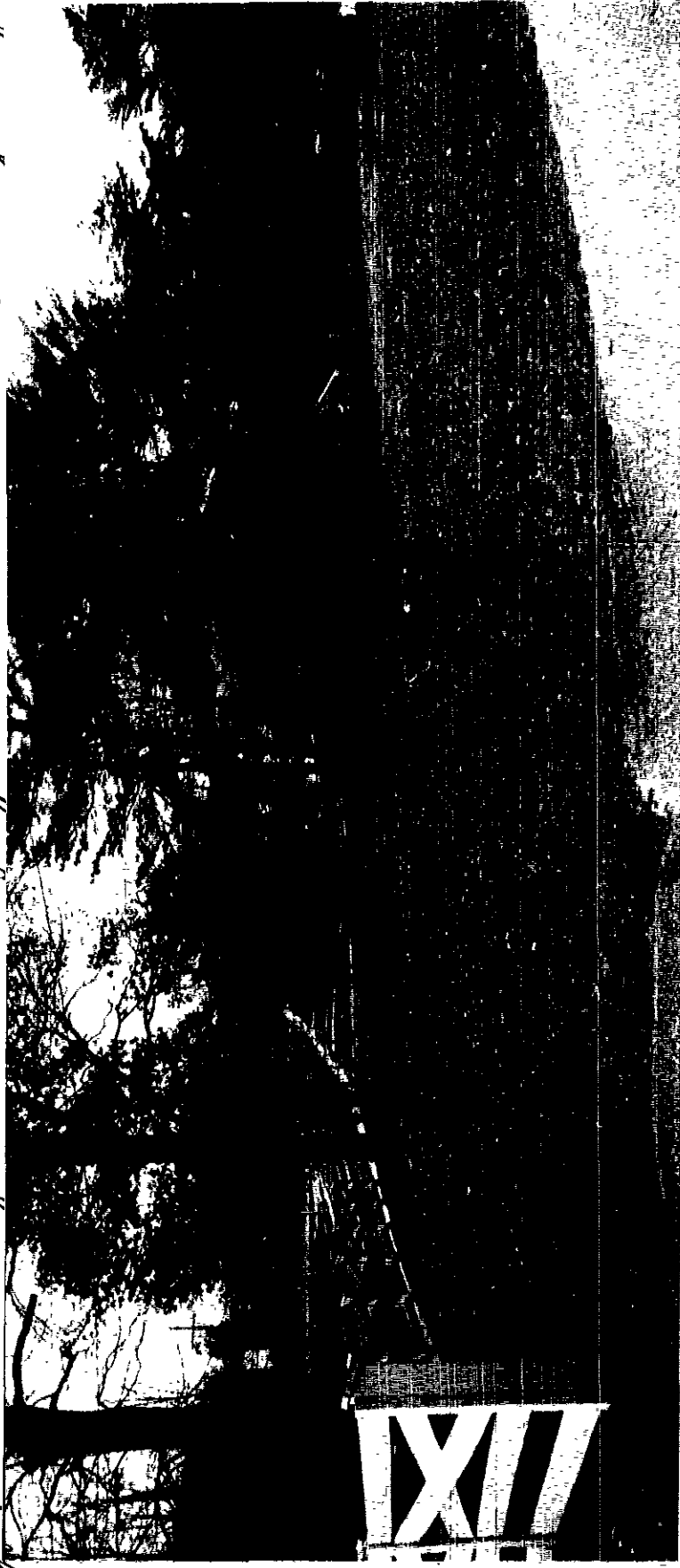
A. Request Kennel Special Exception for the Super Property - 4608 Silver Spring Road.
Deborah Gill-Boyd - Contract Purchaser - 98-255-XA
N/5 of Silver Spring Road, W of Rutna Court.



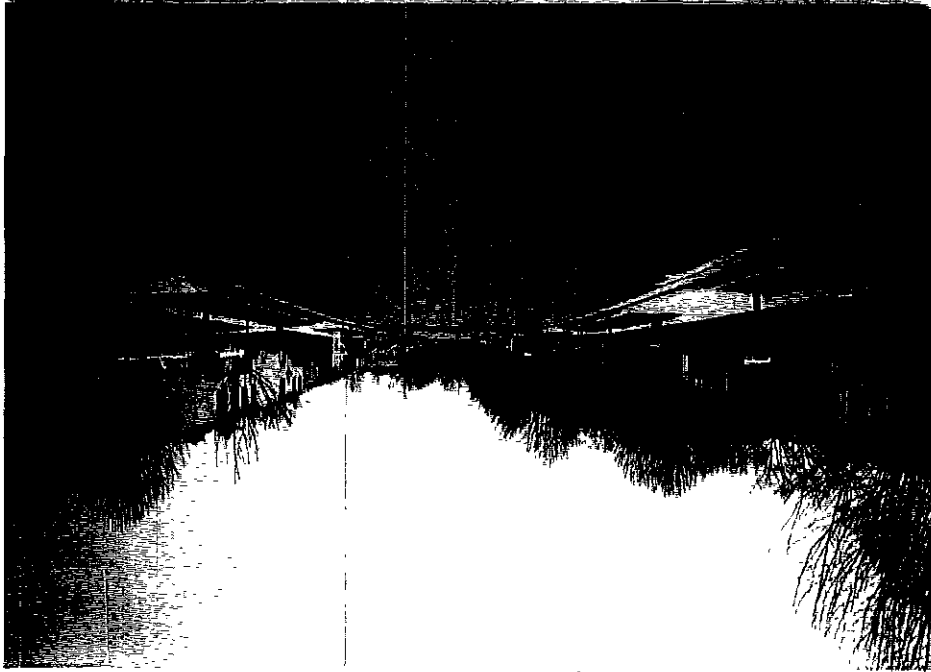
B. Looking from SE side yard at Silver Spring Rd

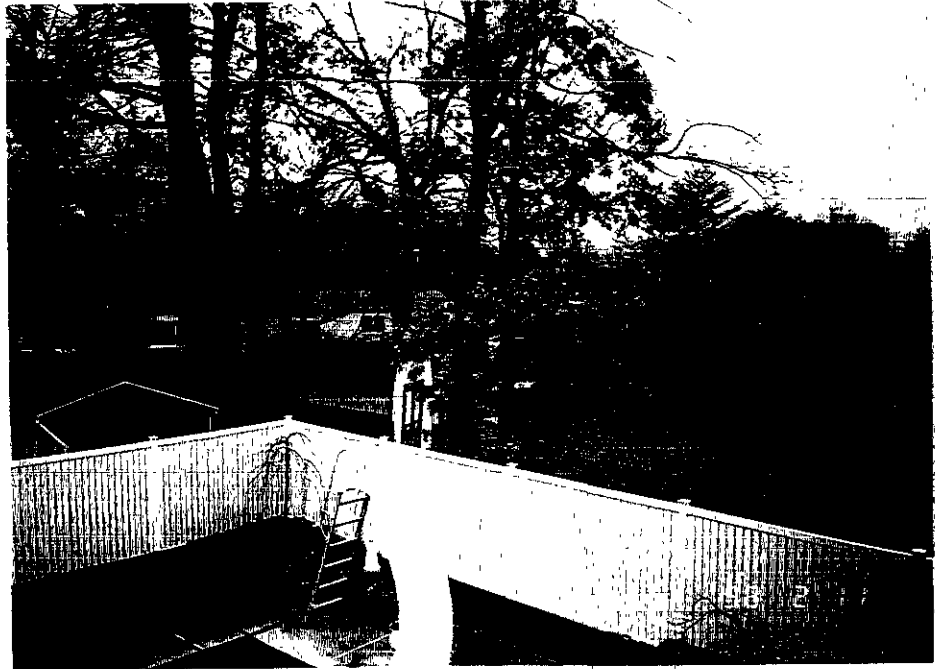


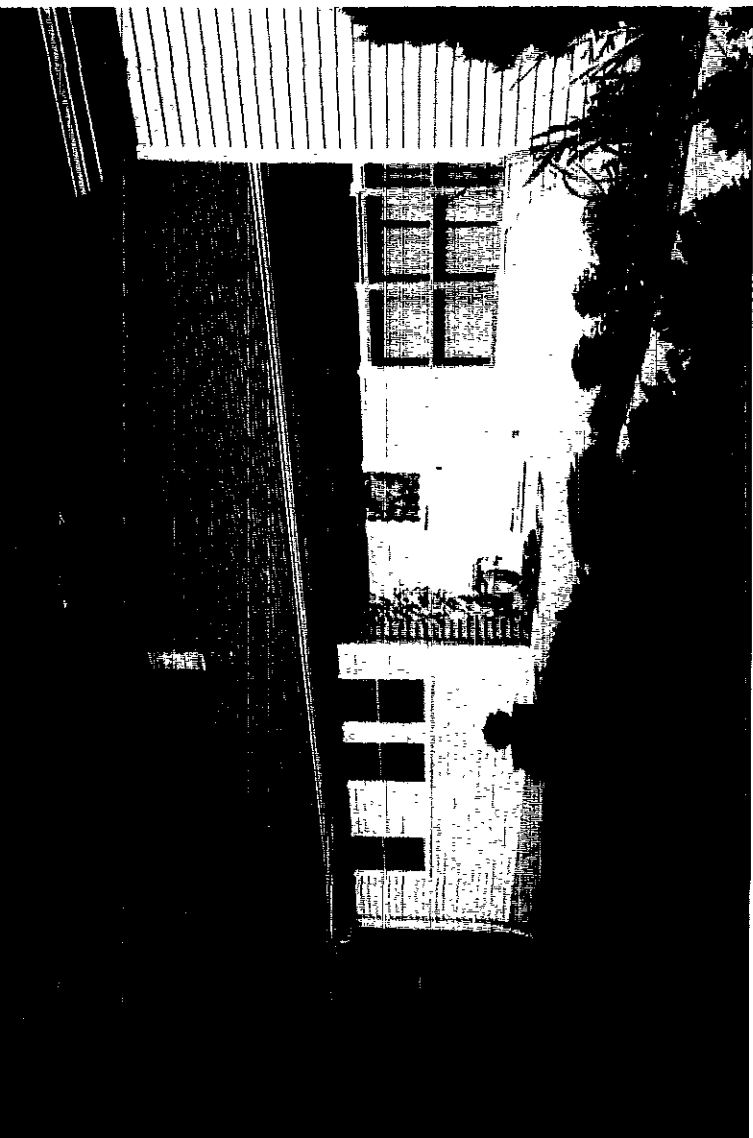
C. Looking E. from driveway - toward Patna Ct.



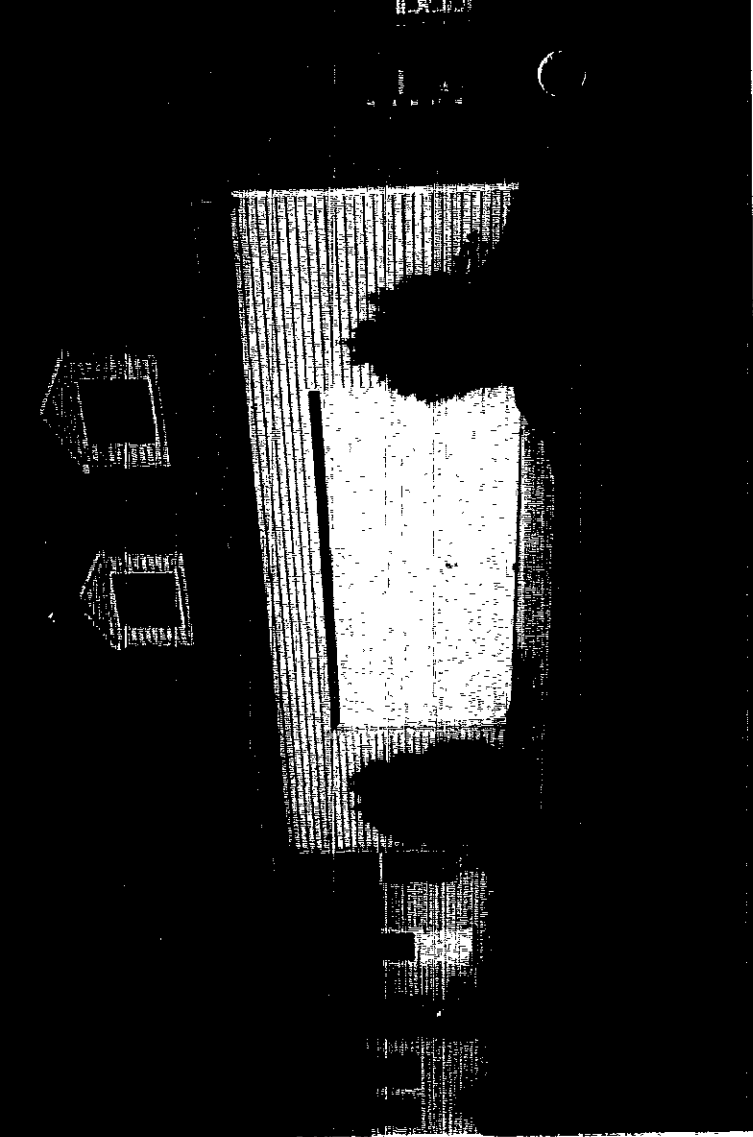
D. Looking W on Silver Spring Rd. from driveway



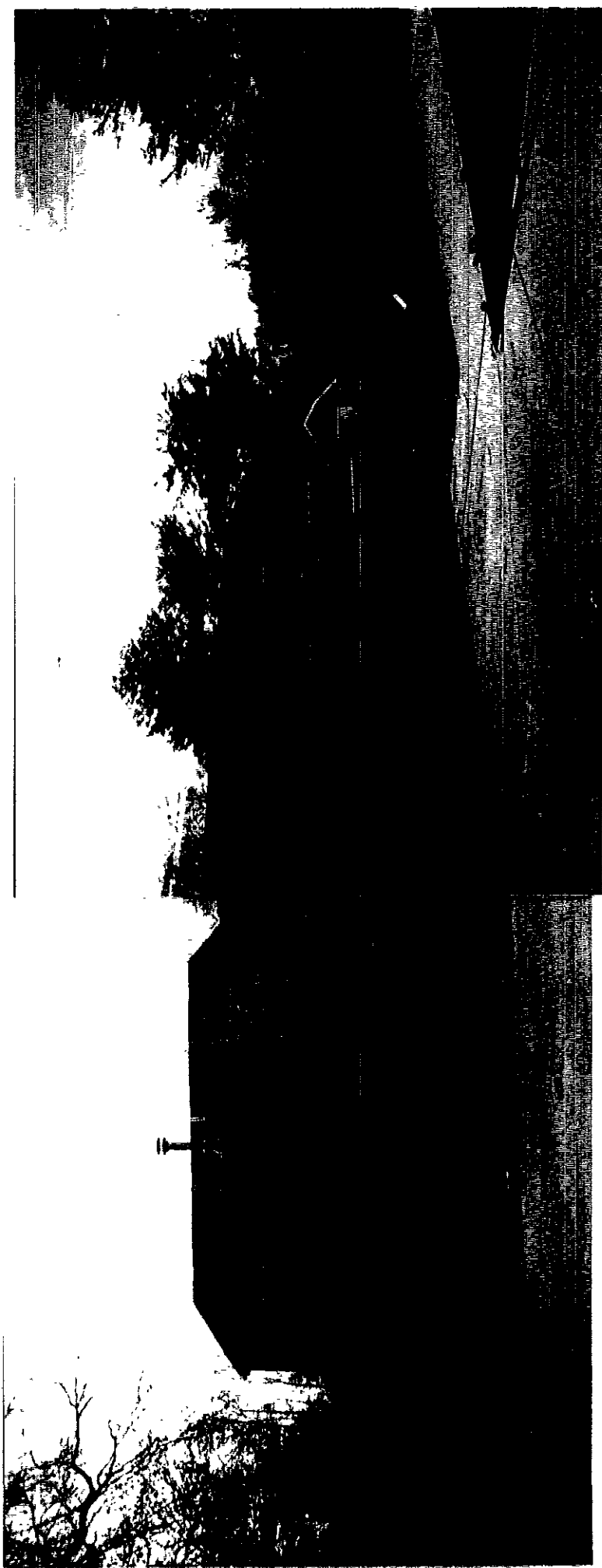




E. Middle wing of house and shed.



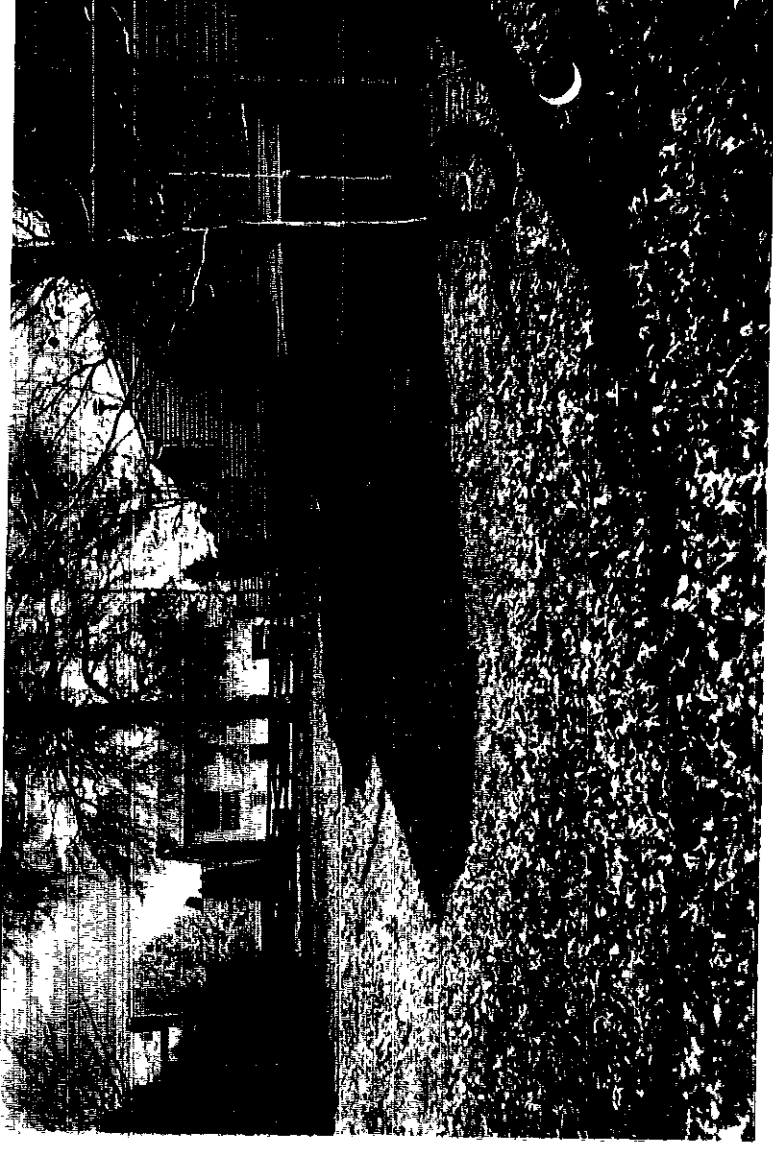
F. Garage end of house.



5. Rear of house and pool apron.



H. From rear of house looking across pond
to Carey property.



I. Looking E. across rear of house
toward Patna Court.



J. Looking W across pool.



K. Looking NE across screened pool.



L, Pool apron and E end of house



M, West end of house, looking SW
across pool.



W, Looking E. from pool upon



O, Looking NE from side of garage.



P. Looking NW across pool toward
Curvey Property



Q. Looking NE toward Ratna Court
from pool area.