

(99-/83-A)
/Dietrich & Heerd
CT AFFIRMS CBA
2/22/01 - John G. Turnbull II, J

## The Circuit Court for Paltimore County

THIRD JUDICIAL CIRCUIT OF MARYLAND

CHAMBERS OF JOHN GRASON TURNBULL, II

COUNTY COURTS BUILDING TOWSON, MARYLAND 21204 410-887-2647

	PETITION OF SUMMERFIELD FARMS ASSOC., INC., et al.	*	IN THE	
	PETITIONERS  PETITION FOR JUDICIAL REVIEW OF THE DECISION OF:	*	CIRCUIT COURT	710 11003
		*	FOR	
		*	BALTIMORE COUNTY	
	THE COUNTY BOARD OF BALTIMORE COUNTY	*	CASE NO.: 03-C-00-7365	1
	ROOM 49, OLD COURTHOUSE 400 WASHINGTON AVENUE	*		,
	TOWSON, MARYLAND 21204	*		•
	IN THE CASE OF: IN THE MATTER OF DANIEL DIETRICH and	*		
	VIENNA HEERD	*		
	* * * * *	*	* * *	

## OPINION AND ORDER

This case comes before this Court upon a Petition for Judicial Review of the decision by the County Board of Appeals (the "Board") filed by Summerfield Farms Association, Inc., Mr. & Mrs. Dudley C. Brownell, Virginia Sarant, and Marvin Johnson ("Petitioners"). The Board affirmed a decision made by the Zoning Commissioner of Baltimore County ("Commissioner") to grant a petition for a Variance made by Daniel Dietrich and Vienna Heerd ("Homeowners") pursuant to Section 307 of the Baltimore County Zoning Regulations ("BCZR"). The petition

for a Variance requested a modification of the setback requirements from 50 feet to 20 and 24 feet. This court heard argument on January 22, 2001 and held the matter sub curia pending a review of the record.

The issue presented before this Court is whether the County Board of Appeals of Baltimore County correctly recognized and applied the correct principles of law governing the case and whether its decision was based on substantial evidence and was fairly debatable.

This case involves the reconstruction of a dwelling on 11444 Glen Arm Road. The Homeowners contracted to purchase the property in 1998, subject to well and septic tests. After the septic system failed, the contract was amended to require the seller to repair the septic system prior to settlement. The Baltimore County Department of Environmental Protection approved the reconstruction of the septic system. The Homeowners then took possession of the property and began renovations. After renovations were begun, the Homeowners discovered that the house was so damaged by water and infested with termites that it was structurally unsound. They then decided to raze the dwelling and applied for a permit to allow them to reconstruct the dwelling on the existing foundation. When reconstructing the dwelling, the Homeowners replaced what was a carport with an attached garage. The setback was actually increased by approxiamately 17 feet when the garage was added and the carport was eliminated.

BCZR § 307 provides for the power of the Zoning Commissioner and County Board of Appeals of Baltimore County to grant variances from height and area regulations "only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship....Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said

height, area, off-street parking or sign regulations, and only in such manner as to grant relief without injury to public health, safety and general welfare." B.C.Z.R. §307

Petitioners argue that the Board erred in concluding that the property was unique. They assert that the property was not unique in any way when compared to properties on the same side of Glen Arm Road. Appellants also argue that the environmental constraints relied on by the Board to support its conclusion that the property was unique were manmade constraints, attributable to the Homeowners. Appellants' arguments rely on the language in the cases Cromwell v. Ward, 102 Md. App. 691, 651 A.2d 424 (1995) and Ad+Soil, Inc. v. County Commissioners, 307 Md. 317, 513 A.2d 893 (1986). This Court disagrees and is of the opinion that the decision of the Board is supported by both applicable law and facts. As such, the decision must be affirmed.

Cromwell v. Ward upholds prior case law and reasserts two requirements for the granting of variances. The petitioners must show (ii) that the difficulties or hardships were peculiar to the property in question in contrast with those of other property owners in the same district and, (ii) that the hardship was not the result of the applicants' own actions." Marino v. Mayor and City Council of Baltimore, 215 Md. 206, 137 A.2d 198 (1957).

At the hearing before the Board, Richard Matz, a professional engineer, was qualified as an expert in civil engineering and site development. He testified that because of the steep slopes on the property, the irregular triangular shape of this particular lot, the limited level area, the location of the septic system and the proximity of wells on adjoining properties, it was impossible to locate the dwelling anywhere else on the property without violating either the zoning regulations or a county environmental regulation or policy.

Bruce Seely, a representative from the Department of Environmental Protection and

Resource Management testified about the policy prohibiting up-hill septic pumping. He also testified about the recent change to allow it, but only in cases of new construction. The property involved here doesn't apply as it is not new construction, rather it is reconstruction on an original foundation.

Based upon this expert testimony, the Board found that the property was particularly unique to the surrounding properties based on its irregular triangular shape, steep slopes and environmental constraints. The Board also found that due to the topography of the land, the relocation of the dwelling would require the removal of the septic system, well, and driveway, which would result in a practical difficulty. Because of these factors, the Board decided that application of the zoning ordinances imposes a practical difficulty and undue hardship on the Homeowners.

These factors led to to the location of the original house which also violated the setback requirements. The Board also found that none of these factors were self-imposed by the Homeowners. It reasoned, "The new structure was constructed on the original foundation, and to allow a moderate enlargement is reasonable." Bd. of Appeals Opinion, p. 10. Finally, the Board decided that the variance is consistent with the spirit and intent of the zoning regulations.

The order of a county zoning authority must be upheld on review if it is not premised upon an error of law and if its conclusions reasonably may be based upon the facts proven.

Umerley v. People's Counsel, 108 Md. App. 497, 672 A.2d 1049 (1996). The fairly debatable test is "whether a reasoning mind reasonably could have reached the actual conclusion the agency reached; this need not and must not be either judicial fact-finding or a substitution of judicial judgment for agency judgment." Board of County Comm'rs v. Holbrook, 314 Md. 210, 550 A.2d 664 (1988).

Based upon the review of the record, it is the opinion of this court that the conclusions reached by the Board were reasonably based upon the facts proven and are supported by substantial evidence. This court will not substitute its judgment when a reasoning mind reasonably could have reached the same conclusion made by the Board. The testimony of the experts who testified at the hearings was uncontradicted. These experts testified that the characteristics of the property in question made the grant of a variance appropriate. The Board based its conclusions upon this uncontradicted testimony. Therefore, the decision of the Board of Appeals for Baltimore County is AFFIRMED, with costs of this appeal to be paid by the Petitioners.

JOHN GRASON TURNBULL, II

JUDGE

 $\frac{1}{\text{DATE}} \frac{20}{0}$ 

Copies:

Deborah Dopkin, Esq.

Michael Tanczyn, Esq.

True Copy Test
SUZANNE MENSH, Clerk

Assistant Clerk

a/22/00

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

PETITION OF:

SUMMERFIELD FARMS ASSOC., INC.

11202 Glen Arm Road Glen Arm, MD 21057 and, individuals:

MR & MRS DUDLEY C. BROWNELL

11520 Glen Arm Road Glen Arm, MD 21057

VIRGINIA SARANT

11440 Glen Arm Road Glen Arm, MD 21057

MARVIN JOHNSON

11510 Glen Arm Road Glen Arm, MD 21057

FOR JUDICIAL REVIEW OF THE OPINION OF \*

THE COUNTY BOARD OF APPEALS

OF BALTIMORE COUNTY

OLD COURTHOUSE, ROOM 49

400 WASHINGTON AVENUE

TOWSON, MARYLAND 21204

IN THE MATTER OF

THE APPLICATION OF

DANIEL DIETRICH AND VIENNA HEERD

FOR A VARIANCE ON PROPERTY LOCATED ON THE NE/S GLEN ARM ROAD, 2250' N OF

MANOR ROAD (11444 GLEN ARM ROAD)

11TH ELECTION DISTRICT 6TH COUNCILMANIC DISTRICT

CASE NO. 99-183-A

CIVIL ACTION No. <u>3-C-00-007365</u>

# PROCEEDINGS BEFORE THE ZONING COMMISSIONER AND THE BOARD OF APPEALS OF BALTIMORE COUNTY

### TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Lawrence M. Stahl, Lawrence S. Wescott, and Margaret Worrall, constituting the County Board of Appeals of Baltimore County, and in answer to the Petition for RECEIVED AMD FILED AMD FILED the record of proceedings had in the above-entitled matter, consisting of the following certified copies or original papers on file

CLERK OF THE SHOOT COURT BALIFBOAR GUIDHY in the Department of Permits and Development Management and the Board of Appeals of Baltimore County:

# ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT OF BALTIMORE COUNTY

No. 99-183-A

October 27, 1998 Petition for Variance filed by Daniel Dietrich and Vienna Heerd; to permit

lot line setbacks of 20' and 24' in lieu of the required 50 feet each, and to allow an existing shed to remain in the front yard in lieu of the required

rear yard location.

November 25 Entry of Appearance filed by People's Counsel for Baltimore County.

November 26 Publication in newspaper.

November 30 Certificate of Posting.

December 11 ZAC Comments.

January 12, 1999 Hearing held on Petitions by the Zoning Commissioner. (Deborah

Dopkins, Esquire, appeared as counsel for Property Owner and Contract

Purchaser; Michael; numerous residents appeared and signed the

Protestant's sign-in sheet - serving as spokespersons for the group were

Dudley Brownell and Stanley M. Pollack).

January 21 Order issued by the Zoning Commissioner in which the Petition for

Variance was GRANTED with restrictions.

February 18 Notice of Appeal filed by J. Carroll Holzer, Esquire, on behalf of Dudley

and Betty Brownell and Ginny Sarant, individually, and Summerfield

Farms Assn., Inc., Appellants.

June 16 Appearance of J. Carroll Holzer, Esquire is struck as of this date.

June 25 Entry of Appearance filed by Michael P. Tanczyn, Esquire, as counsel for

Summerfield Farms Assn., Inc., et al.

August 2 Motion to Quash and For Protective Order filed by Deborah C. Dopkin,

Esquire, on behalf of Daniel Dietrich & Vienna Heerd.

August 4 The Board convened for hearing; on the record received argument as to

Motion filed by Ms. Dopkin. Prior to opening statements as to the merits of the case, the Board postponed this matter, having ruled the Motion to Quash (on the record), ruling, among other things, that Petitioner Heerd be present, in addition to Petitioner Dietrich; and further directing both counsel to produce specific documents as indicated on the record this date

and prior to the next scheduled hearing date.

November 3, 1999 Hearing Day #1 as to merits held by the Board of Appeals.

February 29, 2000 Hearing Day #2 concluded.

April 3, 2000 Appellee's Memorandum filed by Deborah C. Dopkin, Esquire on behalf

of Daniel Dietrich and Vienna Heerd.

April 4 Protestant's Memorandum filed by Michael P. Tanczyn, Esquire, on

behalf of Summerfield Farms Association, Inc.

April 13 Public Deliberation conducted by the Board of Appeals.

June 23 Opinion and Order issued by the Board of Appeals; Petition for Variance

is GRANTED.

July 21 Petition for Judicial Review filed in the Circuit Court by Michael P.

Tanczyn, Esquire, on behalf of Summerfield Farms Assoc., Inc., Mr. &

Mrs. Dudley C. Brownell, Virginia Sarant, and Marvin Johnson.

July 27 Copy of Petition for Judicial Review received by the Board of Appeals

from the Circuit Court for Baltimore County.

July 28 Certificate of Notice sent to interested parties.

Petitioner's Exhibit No. 1- Plan to accompany variance request

2-CZMP 200-scale

3-Aerial photo – 1986 – 200 scale

4-Slope Analysis

5-Drawing showing 4 parcels of subject property

6-Drawing showing original residence on site

7-Constraints plan

...8-Photos – (3) from Glen Arm looking south

Protestant's Exhibit No 1-July 2, 1998 - Deed - Evans to Dietrich / Heerd

2-Sheet of 2 photos

3-Sheet of 4 photos

4-Sheet of 5 photos – house & access road

5-Sheet of 3 photos – area to east

6-Sheet of 4 photos –Sarant's property

7-Sheet of 3 photos

8-Sheet of 2 photos – Pet. Property

9-Sealed plat dated 10/7/98

10-(2) photos A-Original residence & shed

B-Foundation after razing

11A-Picture Tile 062B1

11B-Plannemetrics Topo

12-photo from ZC file

13-A&B (2 photos) house under construction

14-Protestants sign-in sheet

(continued list of Protestants Exhibits)

15-photo-taken by Heiderman - old house

16-Contract of purchase for subject property 4-18-98

plus addenda

17-Ms. Dopkin's cover letter, termite inspection & location

survey 4 pgs.

18A-photo –structure which was razed 18B-photo-site & time of Z.C.'s hearing

19A-photo-back of subject property w/ foundation

19B-same area as 19A from different angle 20A-Existing house during razing process

20B-Side of house being Brownells showing roofline of garage

20C-New house w/ garage in foreground Spring '99 20D-July/Aug. '99 Improvement as existing then

21-Back of house

22-Rule 8 papers -Summerfield Farms, Inc.

23A-photo-curve of 15' right of way

23B-photo -same corner

24-photo -view from stream looking up at Dietrich house 25-photo -Brownell's driveway near Dietrich property

26-DEPRM file excerpt

September 22, 2000

Transcript of testimony filed.

September 22, 2000

Record of Proceedings filed in the Circuit Court for Baltimore

County.

Record of Proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court, together with exhibits entered into evidence before the Board.

Charlotte E. Radcliffe, Legal Secretary

County Board of Appeals, Room 49 Basement Old Courthouse, 400 Washington Avenue

Towson, Maryland 21204 (410-887-3180)

c: Michael P. Tanczyn, Esquire Deborah C. Dopkin, Esquire People's Counsel for Baltimore County Virginia W. Barnhart, Esquire 1/28/00

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:

SUMMERFIELD FARMS ASSOC., INC.

11202 Glen Arm Road Glen Arm, MD 21057

and

MR & MRS DUDLEY C. BROWNELL

11520 Glen Arm Road Glen Arm, MD 21057

VIRGINIA SARANT

11440 Glen Arm Road Glen Arm, MD 21057

**MARVIN JOHNSON** 

11510 Glen Arm Road Glen Arm, MD 21057

FOR JUDICIAL REVIEW OF THE OPINION OF \*

THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

OLD COURTHOUSE, ROOM 49

400 WASHINGTON AVENUE

TOWSON, MARYLAND 21204

IN THE MATTER OF THE APPLICATION OF

DANIEL DIETRICH AND VIENNA HEERD

FOR A VARIANCE ON PROPERTY LOCATED

ON THE NE/S GLEN ARM ROAD, 2250' N OF MANOR ROAD (11444 GLEN ARM ROAD)

11TH ELECTION DISTRICT

6TH COUNCILMANIC DISTRICT

CASE NO. 99-183-A

CIVIL ACTION No. <u>3-C-00-007365</u>

#### **CERTIFICATE OF NOTICE**

#### Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure,
Lawrence M. Stahl, Lawrence S. Wescott, and Margaret Worrall, constituting the County Board
of Appeals of Baltimore County, has given notice by mail of the filing of the Petition for Judicial
Review to the representative of every party to the proceeding before it; namely, Michael P.
Tanczyn, Esquire, Suite 106, 606 Baltimore Avenue, Towson, MD 21204; Counsel for
Petitioners; Summerfield Farms Assoc., Inc., 11202 Glen Arm Road, Glen Arm, MD 21057,

Mr. & Mrs. Dudley C. Brownell, 11520 Glen Arm Road, Glen Arm, MD 21057, Virginia Sarant, 11440 Glen Arm Road, Glen Arm, MD 21057, and Marvin Johnson, 11510 Glen Arm Road, Glen Arm, MD 21057, Petitioners; Daniel Dietrich and Vienna Heerd, 4333 Chapel Road, Perry Hall, MD 21128; Deborah C. Dopkin, Esquire, Suite 920, 409 Washington Avenue, Towson, MD 21204; Counsel for Daniel Dietrich and Vienna Heerd; Richard C. Burch, Esquire, MUDD, HARRISON & BURCH, Suite 300, 105 W. Chesapeake Avenue, Towson, MD 21204-4712, Co-Counsel with Ms. Dopkin; and, Peter Max Zimmerman, People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, MD 21204; a copy of which Notice is attached hereto and prayed that it may be made a part hereof.

Charlotte E. Radcliffe, Legal Secretary
County Board of Appeals, Rm. 49-Basement
Old Courthouse, 400 Washington Avenue
Towson, Maryland 21204 (410-887-3180)

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Michael P. Tanczyn, Esquire, Suite 106, 606 Baltimore Avenue, Towson, MD 21204; Counsel for Petitioners; Summerfield Farms Assoc., Inc., 11202 Glen Arm Road, Glen Arm, MD 21057, Mr. & Mrs. Dudley C. Brownell, 11520 Glen Arm Road, Glen Arm, MD 21057, Virginia Sarant, 11440 Glen Arm Road, Glen Arm, MD 21057, and Marvin Johnson, 11510 Glen Arm Road, Glen Arm, MD 21057, Petitioners; Daniel Dietrich and Vienna Heerd, 4333 Chapel Road, Perry Hall, MD 21128; Deborah C. Dopkin, Esquire, Suite 920, 409 Washington Avenue, Towson, MD 21204; Counsel for Daniel Dietrich and Vienna Heerd; Richard C. Burch, Esquire, MUDD, HARRISON & BURCH, Suite 300, 105 W. Chesapeake Avenue, Towson, MD 21204-4712, Co-Counsel with Ms. Dopkin; and, Peter Max Zimmerman, People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, MD 21204; this 28th day of July, 2000.

Charlotte E. Radcliffe, Legal Secretary
County Board of Appeals, Room 49 Basement
Old Courthouse, 400 Washington Avenue
Towson, Maryland 21204 (410-887-3180)

(e/23/00

IN THE MATTER OF
THE APPLICATION OF
DANIEL DIETRICH AND VIENNA HEERD
- PETITIONERS FOR VARIANCE ON
PROPERTY LOCATED ON THE NE/S
GLEN ARM ROAD, 2250' N OF MANOR RD
(11444 GLEN ARM ROAD)
11<sup>TH</sup> ELECTION DISTRICT
6<sup>TH</sup> COUNCILMANIC DISTRICT

BEFORE THE

\* COUNTY BOARD OF APPEALS

\* OF

\* BALTIMORE COUNTY

\* Case No. 99-183-A

#### **OPINION**

This case comes before the Board of Appeals of Baltimore County based on a timely appeal resulting from the granting of a variance (Case No. 99-183-A) by the Zoning Commissioner. Three days of public hearing before this Board were held on August 4, 1999; November 3, 1999; and February 29, 2000. A public deliberation was held on April 13, 2000.

The Petitioners, Daniel Dietrich and Vienna Heerd, were represented by Deborah Dopkin, Esquire. The Appellants, Summerfield Farms Association, Dudley and Betty Brownell, and Virginia Sarant, were represented by Michael Tanczyn, Esquire.

On a preliminary matter, counsel for the Petitioners, Deborah Dopkin, submitted a Motion to Quash and a Motion for Protective Order in response to subpoenas filed by the Appellants' counsel, Michael Tanczyn. Ms. Dopkin argued that the information requested added nothing relevant to the variance request before the Board and that some of the items requested were inflammatory as well as inappropriate. Ms. Dopkin also noted that one of her Petitioners, Ms. Heerd, was not able to be at the hearing of August 4, 1999.

Mr. Tanczyn countered that each request was related to one of the items in the Zoning Commissioner's findings and that all items had bearing on the question of uniqueness and

practical difficulty. He stated that the items described by Ms. Dopkin as "inflammatory" were, in fact, necessary to determine the credibility of the witnesses.

The Board then denied the Motion to Quash and ordered that Ms. Heerd must appear and that all but item #3 (which was denied) would be held *sub curia* until the evidence could be obtained.

Counsel for both sides made a joint motion that the hearing be continued in order to collect the required information and to allow Ms. Heerd to be present. The Board granted the joint motion and the hearing was scheduled to be continued on November 3, 1999.

On that date the hearing began with a statement by the counsel for the Petitioners, Ms. Dopkin, that a variance of the setback requirements to allow 20 feet and 24 feet in lieu of the required 50 feet had been granted by the Zoning Commissioner, that the subject site is indeed unique, and that the variance request should be granted by the Board.

For the Protestants, Mr. Tanczyn stated that a variance was not needed by the Petitioners because the subject property is 2.11 acres, more than double the minimum lot size, and that the Petitioners are able to meet the setback requirements without a variance. He noted that the variance standards do not allow for a "preference variance" or self-created hardship.

The first witness for the Petitioners was Richard Matz of Colbert, Matz, Rosenfield, Inc.

Licensed and registered in Maryland since 1973, Mr. Matz was accepted by the Board as an expert in civil engineering. Mr. Matz testified that he had prepared the plan for the variance request (Petitioners' Exhibit #1). He indicated that the area surrounding the subject site is zoned R.C. 5 with lots of one acre or more, many improved with two-story single-family dwellings with attached garages. He said that the area is rural-residential with no farms or commercial uses.

Mr. Matz then described the subject site as 2.11 acres with a steep topography of more than 15 percent grade on average. He stated that the only flat portion was where the existing house was built. The well is about 10 years old, and the original septic system was put in when the house was built in the 1950s.

Mr. Matz offered as evidence a 200-scale aerial photo, dated 1986 (Petitioners' Exhibit #3), which showed the old house and also the neighbors' houses nearest the site. Mr. Matz opined that the closest house is that of the Heidermans, directly below the subject property and about 270 feet away.

He also introduced a topographical map (Petitioners' Exhibit #4), not field run but taken from a Baltimore County map, which depicts the steepness of various portions of the subject site. He reiterated that the house was built on the flattest portion of the site, as was the original dwelling.

Mr. Matz stated that the lot purchased by the Petitioners contained four separate parcels which they were consolidating into one. A plat had been prepared, the consolidation had been approved, and the document awaited signature at this time. Once consolidated, the subject site would permit only one house, in Mr. Matz' opinion, because of environmental and topographical constraints.

In Petitioners' Exhibit #6, Mr. Matz prepared a drawing showing the original house location, the 50-foot required setback lines, and the new house with the attached garage encroaching into the required setback area. The original house also encroached into the setback area.

Petitioners' Exhibit #7, prepared and presented by Mr. Matz, was a drawing showing the site constraints: the location of the existing well, the new septic system, the septic reserve area,

the slopes greater than 20 percent, the driveway, the foundation of the original house and the new house. Mr. Matz stated that the attached garage could not be built on any other part of the site because of the steepness of the slopes and the area constrained as the septic reserve.

Mr. Matz also testified that the new house is consistent with others in the neighborhood in size and style. He noted that this property is peculiar because of its irregular triangular shape, the steepness of the slopes and the existing environmental factors such as the location of the well and septic systems as well as the location of neighboring wells. He noted that these qualities were not created by the owners but were existing factors when they made their purchase. To build anywhere else would, in his opinion, require pumping septic uphill into a grinder pump in the basement. He also noted that building at the requested location fulfilled the spirit and intent of the *Baltimore County Zoning Regulations* (BCZR) and did not infringe on the neighboring houses which were at least 270 feet away.

In his opinion the Petitioners' request was precisely why the variance law was enacted. The prior structure intruded into the current setbacks as it was originally constructed; the new structure will not increase density and in fact density may be reduced by consolidating the parcels; and the house could not be placed in any other location without violating other regulations.

On cross-examination, Mr. Tanczyn asked Mr. Matz about the location of the house, well and septic system for the subject property. Mr. Matz indicated that the original house had been razed, leaving only the foundation, when he first viewed the property. The well had long been located as indicated on the plat, and the current septic system, which replaced the original septic system prior to settlement with the Petitioners, was in place and approved by Baltimore County as a repair to an existing system.

On viewing the sealed plat, dated October 7, 1998 (Protestants' Exhibit #9), Mr. Matz agreed that the plat showed only the original foundation and not the proposed garage and porch.

Mr. Tanczyn also asked Mr. Matz about the accuracy of Petitioners' Exhibit #4 relative to slope analysis. Mr. Matz admitted that his analysis is not 100 percent accurate when taken from an existing map rather than an actual field analysis. Mr. Matz also testified that there is ample land to build the Petitioners' house in the center of the property, except for the constraints he had outlined. Further, in comparing Petitioners' Exhibit #4 (the parcels of the subject site) and Petitioners' Exhibit #7 (the constraints map), Mr. Matz agreed that the proposed house could be built on the largest parcel, but in his opinion that would require a review by Baltimore County's Department of Environmental Protection and Resource Management (DEPRM) and probably a waiver to allow pumping septic uphill. In Mr. Matz' opinion, there was nowhere on the subject site where the Petitioners could totally comply with all environmental requirements as well as setback regulations.

Next to testify was one of the Petitioners, Daniel Dietrich. Mr. Dietrich stated that he owned the subject property along with his fiance', Ms. Heerd. At the time of purchase it had been their intention to renovate the existing house. He indicated that he did not have any involvement in the location of the existing septic system, and the area above the garage is designed for storage, not living area.

On cross-examination by Mr. Tanczyn, Mr. Dietrich testified that he and his fiance' decided to raze the original house after the settlement when they discovered extensive termite and water damage to the kitchen, bedrooms and living room. He explained that, when he removed the old wall-to-wall carpet, he found that the floors were rotted out. The structure was razed at the end of July 1998.

The next witness was Sally Heiderman of 11442 Glen Arm Road who testified that her property is directly in front of the subject property. Ms. Heiderman said that she supports the Petitioners' variance request. She had lived at her current residence as a child and then purchased the property from her parents in 1985. She believes that the Dietrich/Heerd house is compatible with the neighborhood and that the new house has the same amount of living space as the old house which was razed.

On cross-examination by Mr. Tanczyn, Ms. Heiderman explained that the garage and the front porch are larger than the original house, which had a carport and a small porch. Upon examining Protestants' Exhibit #12, she agreed that the new garage is two stories rather than one, but it could accommodate the same number of cars, two. She also admitted that she had never specifically measured either the new or the old structures.

On the third day of hearing, February 29, 2000, Daniel Dietrich was recalled to examine the Contract to Purchase and Addenda which were admitted as Protestants' Exhibit #16. Mr. Dietrich testified that the contract was contingent on having a working well and septic system. He indicated that an addendum dated May 22, 1998, requested that the sellers replace the septic tank, drain field and line to the house. The addendum was signed by both the sellers and the purchasers. Mr. Dietrich testified that he was not present for any of the work done on the septic system. The replacement request came as a result of an inspection by Baltimore County which indicated that the old system was failing.

Protestants' Exhibit #17 was a location survey and a certificate of termite inspection. Mr. Dietrich noted that the termite inspection indicated there were no problems in that regard. He then reiterated that he found the damage in July when he started working on the house. He indicated that he performed the razing himself for the most part, although he had some help with

the demolition. Mr. Dietrich admitted that he did not obtain a razing permit because he did not know that he needed one. Further, he did not investigate other locations for the new house because he was building on the old foundation in the same location. He did obtain a permit to reconstruct a dwelling on the same foundation as the prior residence.

The next witness, Dorothy Streb, testified as the representative of Summerfield Farms, Inc. Rule 8 papers were submitted and accepted as Protestants' Exhibit #22. Ms. Streb testified that the subject property is within the boundaries of her association. As the spokesman for the organization and its Zoning Chairman, Ms. Streb voiced opposition to the variance because of 1) non-compliance with the BCZR; 2) a pattern of behavior on the part of the Petitioners shown by their neglect to get a razing permit; 3) environmental concerns related to the removal of asbestos roof shingles without oversight of DEPRM; and 4) the fact that the granting of such a variance will set a bad precedent and encourage others to ignore the BCZR.

Ms. Streb opined that the subject site is not unique in any way, that all of the area in Summerfield is hilly, and many of the lots are irregularly shaped. On cross-examination by Ms. Dopkin, Ms. Streb testified that she had not investigated whether all houses in the area met setbacks as required nor did she know if any had been permitted to pump septic uphill. She also said that she did not know the exact requirements about asbestos shingle removal but that it was her "understanding" that a permit is required.

Protestant Virginia Sarant was the next witness. She testified that her property is opposite and downhill from the subject site. She expressed concerns about water running down the right-of-way road and creating erosion. She also expressed concern about the variance request because she felt that the Petitioners did not really need one and the property is not unique.

The next Protestant to speak was Betty Brownell whose property is immediately to the north of the subject property with the primary residence about 600 feet from the new construction. Protestants' Exhibit #18A-B, 19A-B, 20A-D, 21, and 23A-B were photos taken by Mrs. Brownell. Both Petitioners and Protestants agree that the photos are an accurate representation of the subject property as it currently exists. Mrs. Brownell stated that she is opposed to the request for variance and that all properties in the area are similarly hilly in contour.

Bruce Seeley, project manager for DEPRM, was called to testify. Mr. Seeley indicated that he had reviewed the file on the subject property and that he is familiar with the setback requirements relative to placement of well and septic systems. These requirements are regularly reviewed by his department as well as the Maryland Department of the Environment.

He stated that a permit to reconstruct plumbing was issued on June 18, 1998, to replace the existing septic tank and install a 175-foot absorption trench. He said the undated inspection report indicated that the new sewage disposal system had been installed per permit; that it should be sufficient for a two-bedroom house; and that approval was recommended.

Mr. Seeley further testified that the house might be placed to the northeast of the existing well head, but he emphasized that he was only speaking in regard to the regulations concerning well and septic. He indicated that this location would require pumping septic uphill which was permitted for new construction only. In this case the permit was for a repair to an existing system. In addition he stated that he was unfamiliar with the area on the whole and that he did not know if neighboring wells would be affected by that location.

Dudley Brownell, neighbor, also testified as to his objection to the Petitioners' request for variance. He said that the west side of Glen Arm Road is hilly, but that the east side is flatter land and gentle hills.

Gary Heiderman, Mrs. Heiderman, and Mrs. Sarant also spoke on the issue of water runoff from the subject site.

Section 307 of the BCZR permits granting of a variance upon certain terms and conditions, which in pertinent part allows a variance where special circumstances or conditions exist that are peculiar to the land that is the subject of the variance requested, and where strict compliance with the zoning regulations would result in practical difficulty or unreasonable hardship.

Under the Court of Special Appeals decision in *Cromwell v. Ward*, 102 Md.App. 691 (1995), which sets forth the legal standards under which a variance may be granted, the Board of Appeals, hearing the case *de novo*, is given the task of interpreting regulations and statutes where issues are debatable in the light of the law. The first burden on the Petitioner for variance is to prove that the property is unique. This standard must be met before other parts of the variance requirements can be properly considered.

Upon consideration of the testimony and evidence offered during this hearing, the Board finds that the subject property is unique because of its irregular shape, its steep slopes, and the environmental constraints which make locating the house elsewhere on the site impractical if not impossible. Mr. Matz, accepted as an expert in civil engineering, testified fully as to these factors and his testimony was uncontradicted by the Protestants.

Having established that the subject property is unique, the Board finds that the application of the zoning ordinance imposes a practical difficulty and undue hardship on the

Petitioners. As a matter of fact the location of the existing well and adjacent wells, in addition to the location of the septic system and septic reserve area plus the steepness of the topography, render the current location of the house the appropriate one. Indeed, these factors led to the location of the original house which also violated the modern day setback requirements of 50 feet. None of these factors was self-imposed by the Petitioners. The new structure was constructed on the original foundation, and to allow a moderate enlargement is reasonable.

The third and final prong of the standards as found in *Cromwell* speaks to the spirit and intent of the zoning regulations. It is clear to this Board that the construction by the Petitioners meets this standard. The new house, built on the old foundation, is compatible in size and style with others in the neighborhood, and is actually an improvement on the dilapidated building that it replaced. Uncontradicted evidence and photographs show that the structure is at least 270 feet from the nearest neighbor's dwelling and screened from all neighbors by woods. There is no increase in density brought about by this construction. Therefore there will be no injury to public safety and welfare by granting the variance request.

While the appeal was taken by the Protestants as to "all aspects of the Zoning Commissioner's decision," there was no evidence or discussion presented relative to the shed in the front yard. All evidence and testimony presented related strictly to the variance request.

Therefore the aspect of the shed in the front yard was not an issue before the Board and remains as granted by the Zoning Commissioner.

In conclusion, the Board is unanimous in granting the Petition for Variance seeking relief from Sections 104.3.B.2 and 400.J of the BCZR to permit lot line setbacks of 20 feet and 24 feet in lieu of the required 50 feet each, and to allow an existing shed to remain in the front yard in lieu of the required rear yard location as shown in Petitioners' Exhibit #1.

#### ORDER

THEREFORE, IT IS THIS \_\_23rd day of \_\_\_\_\_\_, 2000 by the County Board of Appeals of Baltimore County

ORDERED that Petitioners' request for variance relief seeking to permit lot line setbacks of 20 feet and 24 feet in lieu of the required 50 feet each be and the same is hereby GRANTED. It is also noted that Petitioners' request for variance relief to allow an existing shed to remain in the front yard in lieu of the required rear yard location was not an issue before the Board and therefore remains as granted by the Zoning Commissioner.

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

COUNTY BOARD OF APPEALS

Lawrence M. Stahl, Chairman

Lawrence S. Wescott

Margaret Worrall

JUN 26 2000

Deborah C. Dopkin Attorney At Law 409 Washington Avenue Suite 920 Towson, MD 21204 (410) 494-8080

Re: IN THE MATTER OF: \* DANIEL DIETRICH AND VIENNA HEERD - OWNERS 11444 Glen Arm Road 11th Election District 6<sup>th</sup> Councilmanic District

Petitioner/Appellee

- BEFORE THE
- COUNTY BOARD OF APPEALS
- OF
- BALTIMORE COUNTY
- Case No. 99-183-A

#### APPELLEE'S MEMORANDUM

Daniel Dietrich and Vienna Heerd, Appellee, by their attorney, Deborah C. Dopkin, and Deborah C. Dopkin, P.A., respectfully submits this Memorandum in support of their Petition for Variance.

#### STATEMENT OF THE CASE

Appellee, Daniel Dietrich and Vienna Heerd, the Petitioners below, filed a Petition for Variance from Sections 1A04.3.B.2 and 400.1 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit setbacks of 20 feet and 24 feet in lieu of the required 50 feet each, and to permit an existing shed to remain in the front yard in lieu of the required rear yard. (Attachment A)

A public hearing was held on January 12, 1999, before the Zoning Commissioner for Baltimore County at which testimony and evidence were presented.

By Findings of Fact and Conclusions of Law dated January 21, 1999, the Zoning Commissioner for Baltimore County granted the relief as requested. (Attachment B)

Appellant, who attended the hearing below, noted an appeal of the Zoning Commissioner's Order to the County Board of Appeals of Baltimore County. The appeal was made in a timely fashion.

#### STATEMENT OF THE FACTS

The subject of this Appeal is the reconstruction of a home on a 2.11± acre site located at the at 11444 Glen Arm Road in the 6<sup>th</sup> Councilmanic District of Baltimore County. The site is zoned R.C.5. The property has no road frontage and sits substantially back from Glen Arm Road. Access is by way of a driveway from Glen Arm Road that snakes up a rather steep hill to the property, a distance of some 500+'. The lot is of an irregular shape and has steep grades on most of the site except the location of the improvements, as shown on the site plan and slope analysis. (Petitioners' Exhibits 1 and 4.) The house itself is located on a flat area on the site, more than 270' (a city block) from the nearest adjacent residence, and 380' from the home of the nearest Appellant. T., Day 1, p. 20, 1. 14. Petitioner's home is surrounded by woods, and not visible from any of Protestants' homes. T., Day 1, p. 18, 1.4.

In April, 1998, after a cursory inspection, the Petitioners entered into a contract to purchase the property (Protestants' Exhibit 16), which was then improved with a single family dwelling originally constructed in 1950 or 1951. T., Day 1, p. 28, l. 17 The old dwelling had a small attached front porch and was served by a covered carport and concrete driveway on the southernmost side of the house, which were a mere 9' from the property line. The area adjoining the north side of the house was also used for parking.

The previous owner allowed the property to deteriorate, and upon his death, his estate put the property on the market.

Petitioners, who are first-time home owners, bought the house to be their primary residence, with the intention of performing much needed rehabilitation.

The contract, a standard form used by local Realtors, provided for well and septic tests. The well passed county standards, but the septic system serving the house, failed. Therefore, the contract was amended to require the Seller to repair the failing septic system to working order, which the Seller did prior to settlement. Baltimore County Department of Environmental Protection inspected and approved the reconstruction of the septic system. The Buyers had no involvement whatsoever in that reconstruction. T. Day 1, p. 169, 1.19.

Following settlement, Petitioners took possession of the property and began rehabilitation. Upon making inquiry of Baltimore County, Petitioner Dietrich was advised that he needed no permits or approvals to remove the siding and interior drywall. T. Day 2, pp. 44-45. After removing the shingles, carpeting and dry-wall, Petitioners discovered that the house was so infested with termites and so water damaged that it was structurally unsound. T., Day 2, pp 41-42. Petitioner then razed the dwelling, apparently without having first applied for a County razing permit. Subsequently, Petitioner applied for and obtained a permit to reconstruct a dwelling on the same foundation as the prior residence. (Attachment C) No separate razing permit was required.

Petitioners then proceeded to reconstruct the dwelling on the foundation, adding an attached garage on the north side of the

house rather than in the location of the prior carport and somewhat enlarging the front porch. The new dwelling utilizes the existing foundation, but unlike the old shingle house, it is a two story brick dwelling, similar to many of the other homes along Glen Arm Road. The building envelope for the new home is slightly larger than that for the prior dwelling.

Appearing at the hearing before the Zoning Commissioner on behalf of Appellee/Petitioners were Dan Dietrich, one of the Petitioners, and Richard E. Matz, a professional engineer, qualified as an expert in civil engineering and site development, who prepared the plan which accompanied the petition.

Mr. Matz offered testimony and evidence that the prior owner had recorded a Deed attempting to consolidate the four separate parcels that comprised the 2.11 acres (but had done so without Baltimore County approval). (Attachment D) Mr. Matz further testified that the deed conveying the property to Petitioner had purported to convey one lot, when in fact, the property still existed as four separate lots of record. (Protestants' Exhibit 1) At the time Petitioner applied for his permit, the Zoning Office discovered the irregularity. As a consequence, Mr. Matz on behalf of Petitioner, filed a plan to consolidate the four parcels into one. Mr. Matz testified that because the four parcels were created prior to the enactment of the R.C. regulations, the property could have supported more than one building lot. T., Day 1. pp. 24-28. In fact, by consolidating the lots into one, Petitioner is reducing allowable density from as many as four units, to only one.

Mr. Matz also testified that because of the proximity of wells on adjoining properties, the existence of steep slopes on the property itself, and the irregular shape of the only flat area of the lot, it was impossible to locate the dwelling anywhere on the site without violating some county regulations or policies. T. Day 1, p. 157, l. 7. Mr. Matz's testimony was uncontradicted.

Appellant testified on their own behalf and also called Bruce Seely of the Department of Environmental Protection and Resource Management ("DEPRM").

Bruce Seely testified that DEPRM has in recent years reversed its long-standing policy prohibiting pumping septic up-hill and now routinely grants relief for **new** construction to pump uphill (against steep slopes). However, the subject septic system was a reconstruct of a failing system. (see Attachment E) Mr. Seely testified that where there is a failing system, the Department does facilitates repairs to cure the immediate health hazard. T. Day 2, pp. 26-27.

The Zoning Commissioner found that the setbacks for the previous dwelling were also deficient, but because of the age of the house (built prior to the effective date of the R.C. regulations), those setbacks were grand-fathered. That finding was not raised as an issue by Appellant.

The policy permitting pumping for new construction arose because a property owner challenged the prohibition on pumping uphill presumably as a denial of his ability to use his property.

Since Appellants did not challenge the fact that the prior house was nonconforming and that it had inadequate setbacks, these issues must be considered to have been accepted by Appellants and waived on appeal.

Appellants also did not challenge before the Board of Appeals the variance for the shed.

Appellants allege that Petitioner is not entitled to variance relief, at different times alleging either that the hardship was self-created by virtue of reconstructing the septic system where it existed previously or that the property and structures are not unique or unusual such that they satisfy legal requirements for variance relief.

Appellee submits that under applicable law and practice, and based on the evidence presented, Appellee has met its burden and satisfied the legal standards to merit approval of the requested variances.

#### THE LAW AS TO THE VARIANCES

The Baltimore County Zoning Regulations ("B.C.Z.R.") provide:

"The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations, and from sign regulations only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. No increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height or area regulations." B.C.Z.R. §307.1 (emphasis added)

The Zoning Commissioner found that the property is indeed unique based on its topography, irregular shape and circumstances peculiar to the existing structures, i.e. the improvements, foundation, septic reserve and well areas. Further, he found that owing to the site constraints the area for building where all setbacks could be observed is "extremely small" and that to locate a new structure elsewhere on the property would threaten the viability of existing wells and septic fields, both on and offsite, creating a practical difficulty for Petitioners and a risk to other adjoining properties. Lastly, the Zoning Commissioner found there is no detrimental impact on surrounding locale such that the grant of the relief is consistent with the spirit and intent of the zoning regulations.

#### ISSUES PRESENTED

1. Do special circumstances or conditions that are peculiar to the land or structures which are the subject of the variance request exist, such that strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty?

Yes.

2. Does the grant of the variances increase residential density beyond that otherwise allowable by the Zoning Regulations?

No.

3. Will the requested relief be in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and without injury to public health, safety and general welfare?

Yes.

#### DISCUSSION

The Maryland courts have recently and exhaustively addressed the law of Maryland, and of Baltimore County in particular, as it relates to variances. The Court of Special Appeals in Cromwell v. Ward, 102 Md. App. 691, 651 A.2d 424 (1995), articulated a two part test, requiring first a finding that the property is unique, and only then, a determination of practical difficulty; that is, that the ordinance has an abnormal impact on that specific piece of property because of the property's unique characteristics.

The subject property satisfies both prongs of the legal test for a variance.

The property is unique: there are special circumstances or conditions exist that are peculiar to the land or structures. In particular, the site is of an irregular shape; there are steep slopes affecting almost all of the site; the location of wells on adjoining properties creates non-useable areas on the site that limit where a house can be built. To locate a house elsewhere on the site would have an adverse effect environmentally. T. Day 1, pp 41-43.

The combination of circumstances are peculiar to this property, subjecting it to conditions that do not apply generally to other properties in the area, a distinction advanced in a number of Maryland cases. AD + Soil, Inc. v. County Comm'rs, 307 Md. 307 (1986), cited in Cromwell.

These characteristics are found only at this particular location. Though, as Appellants allege, there may be other properties in the area that are hilly, this property not only suffers severe topography (over 25% slopes on most of the site), but is also irregularly shaped and constrained by adjacent wells, resulting in conditions unlike any other property in the area.

Having established the unique circumstances affecting this property, the courts then require an examination of whether the application of the zoning ordinance imposes a practical difficulty or undue hardship which is unique to the property.

Expert testimony was presented demonstrating that the conditions existing on the site limit the location where a house can be located. In fact, the only alternate location that might comply with zoning setbacks, would violate environmental regulations and policies for well and septic systems.<sup>2</sup> T., Day 1, p. 162, 1. 7.

Thus, the application satisfies the requirements for a variance based solely on the physical features unique to the location and the disproportionate impact that would result from strict compliance with the B.C.Z.R.

One can conclude that the variance should be affirmed based on the legal analysis, without looking further to the unique history of the deeds and prior use of the property. An examination of those circumstances compels the conclusion that the proposal is

The County's testimony was that waivers of environmental regulations are only granted routinely in the case of new construction; this site was a reconstruct and did not warrant pumping uphill, a practice historically contrary to County policy.

not only consistent with the spirit and intent of the regulations and the general area, but that it provides benefits to the locale not required of the Petitioner.

First, and not least, is that a dilapidated, uncared for property is being improved with a brick home far more in keeping with the style and nature of surrounding homes, as was evidenced by a myriad of photographs of the old house, the new house, and nearby and surrounding homes. T. Day 1, p. 40. l. 7-11. This, too, was undisputed.

What is more significant is that Petitioner, who arguably could have had two or more legal lots at the location, has consolidated the four pre-existing parcels of record into one parcel, thus reducing permissible density. So, instead of merely satisfying the standard of B.C.Z.R. that "[n]o increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance", Petitioner has in fact reduced that density.

Further support for the variance, if any is needed, can be found in the history of use of the site, and the unchallenged nonconforming residential use established by the long-existing prior residence. That house, built in the early 1950's, occupied the only level area of the site, and that use was continued by the Petitioner, not abandoned. Testimony was presented that Petitioner took possession of that house and commenced rehabilitation; what was salvageable from that house -- the utility systems and the entire foundation -- were used for the current reconstruction. The

County's building permit similarly acknowledges that the current improvements are a rebuild of the prior structure. The well and septic system served that use. All of these structures pre-dated the current zoning ordinance, and as such were valid, non-conforming uses, grand-fathered, to use the words of the Zoning Commissioner. There was also expert testimony that the extent of the nonconformity was not being increased — i.e., that the amount of the intrusion into setbacks is equivalent for the old and reconstructed houses.<sup>3</sup>

The undisputed history of use removes any suggestion that the location of the improvements is a hardship created by either this Petitioner or the prior owner in contravention of the B.C.Z.R. Further, the very existence of those improvements is a peculiarity unique to this particular property and none other.

Lastly, Appellants' position simply defies logic and makes no sense. To require a different location for the house would at the least create potential health hazards, disturb existing vegetated areas and grading, and require a new road and paving; a smaller or different style of house would be inconsistent with the area, and as such, could conceivably negatively impact property values. To do as Appellants urge, could create injury to the public health, safety and general welfare where none now exists!

Mr. Matz testified that the house was being centered rather than being located so close to the adjoining property line. T. Day 1, p. 43, l. 15-21.

#### CONCLUSION

Appellee has presented substantial evidence before this Board that the requested Petition for Variances meet the standards of the Baltimore County Zoning Regulations and Maryland case law. There are unique circumstances peculiar to this property. The variance does not increase density beyond that permitted. The hardship was not the result of Petitioners' action. The relief can be granted in such a fashion that the spirit and intent of the Zoning Regulations will be maintained. There will be no injury to the public safety and welfare if the relief is granted, but such injury is possible if the relief is denied.

Appellants have utterly failed to produce evidence sufficient to prove their case. Residents of the area did not produce any facts to show that the circumstances and conditions that exist on this property are common to any other properties in the area. Though early in the hearing Appellants alleged that Petitioners may have created the hardship, after the production and introduction of the contract and other documents relating to the house and systems serving it, Appellants retreated from their allegations. In fact, it became evident that the conditions occurred without or prior to Petitioners involvement in the property. Protestants were unable to demonstrate that if the variance were denied that the community might be better off in terms of health, safety and general welfare than if the variances are affirmed.

There was no expert testimony presented in support of Appellants' allegations. Nothing presented by Appellants disproves

the facts advanced by Petitioners, their witnesses, or the contracts, permits, inspection reports and other documents produced in support of the variances. There is nothing presented by Appellants sufficient to warrant a reversal of the decision of the Zoning Commissioner.

WHEREFORE, Appellee prays that this County Board of Appeals affirm the decision of the Zoning Commissioner for Baltimore County and grant the Petition for Variance and such other and further relief as the nature of its cause may require.

Respectfully submitted,

Deborah C. Dopkin 409 Washington Avenue, Suite 920 Towson, Maryland 21204 (410) 494-8080 Attorney for Appellee/Petitioner

#### POINTS AND AUTHORITY

- 1. Baltimore County Zoning Regulations
- 2. Cromwell v. Ward, 102 Md. App. 691, 651 A.2d 424 (1995)
- 3. AD + Soil, Inc. v. County Comm'rs, 307 Md. 307 (1986)

### CERTIFICATION OF MAILING

I HEREBY CERTIFY, that on this 3rd day of April, 2000, a copy of the foregoing Memorandum in Support was hand delivered or mailed, postage prepaid to Michael P. Tancqyn, Esquire, 606 Baltimore Avenue, Suite 106, Baltimore, Maryland 21204-4098.

Deborah C. Dopkin

C:\docs\DCD\ZONING\Dietrich\memorandum support

## Colbert Matz Cosenfelt, Inc.

Civil Engineers • Surveyors • Planners



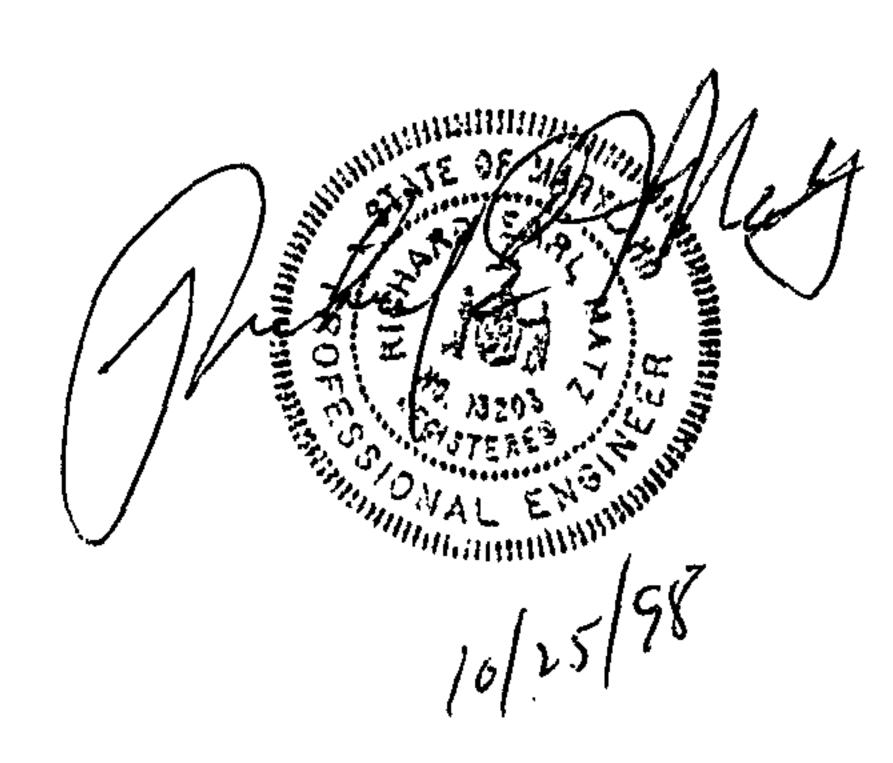
Attach ment A

ZONING DESCRIPTION 11444 Glen Arm Road at a point 2250 NORTH OF MANOR ROAD (REM)

Beginning at a point on the east side of a right-of-way to Glen Arm Road, 15 feet wide, 650 feet north of the centerline of Glen Arm Road which is 24 feet wide. Thence the following courses and distances:

N44°30'00"W 352.50 ft., \$83°54'00"E 244.37 ft., N47°00'00"E 325.00 ft., \$44°30'00"E 155.15 ft., and \$45°30'00"W 480.01 ft. to the place of beginning.

As recorded in Deed Liber 13037, Folio 131, and containing 2.11 acres. Also known as 11444 Glen Arm Road and located in the 11<sup>th</sup> Election District.



IN RE: PETITION FOR VARIANCE

BEFORE THE

NE/S Glen Arm Road, 2250' N of Manor Road, ZONING COMMISSIONER

(11444 Glen Arm Road)

11th Election District

6<sup>th</sup> Councilmanic District

OF BALTIMORE COUNTY

Daniel Dietrich and Vienna Heerd

Petitioners

Case No. 99-183-A

Attach ment B

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the owners of the subject property, Daniel Dietrich and Vienna Heerd. The Petitioners seek relief from Sections 1A04.3.B.2 and 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit lot line setbacks of 20 feet and 24 feet in lieu of the required 50 feet each, and to allow an existing shed to remain in the front yard in lieu of the required rear yard location. The subject property and relief sought are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the hearing on behalf of the Petition were Daniel Dietrich and Vienna Heerd, property owners, Frank L. Dietrich, Richard E. Matz, Professional Engineer who prepared the site plan for this property, and Deborah Dopkin, Esquire, attorney for the Petitioners. Also appearing in support of the request were Gary Heiderman, adjoining property owner, William Bissell, and Teresa Louro. Appearing as Protestants in the matter were numerous residents of the surrounding community, all of whom signed the Protestants' Sign In Sheet. Serving as spokespersons for the group were Dudley Brownell, adjoining property owner, and Stanley M. Pollack.

Testimony and evidence offered revealed that the subject property consists of a gross area of 2.11 acres, more or less, zoned R.C.5. The property is located not far from Gunpowder Falls State Park, and vehicular access thereto is by way of a driveway that leads to Glen Arm Road. Testimony indicated that the subject property is actually a compilation of what were originally four separate lots of record. However, the Petitioners purchased the property as a single parcel and will formally combine the four lots into one single lot, pending the outcome of the request for variance.

The property was previously improved with a single family dwelling which was shown in several photographs submitted at the hearing. That dwelling was constructed in the 1950s and had apparently become termite infested and was in a dilapidated condition when the Petitioners purchased the property. In order to improve the property, the Petitioners razed the dwelling, apparently without the benefit of a County razing permit.

The Petitioners propose to construct a new single family dwelling on essentially the same building footprint as the old dwelling. In fact, it was indicated that the existing foundation has been preserved and will be utilized. The building envelope will be slightly larger, however, primarily due to the proposed construction of an attached two-car garage and porch on the front of the house. As a result of these improvements, lot line setbacks of 20 feet and 24 feet will be maintained, in lieu of the required 50 feet. It was indicated at the hearing that the previous dwelling had also been deficient, insofar as setbacks were concerned; however, was grandfathered under the regulations in view of its age. Variance relief is also required to allow a shed to remain in the front yard. The site plan and photographs submitted show that there are two sheds presently on the property.

The granting of variance relief is provided in Section 307 of the B.C.Z.R. That Section allows the Zoning Commissioner to grant relief upon making certain findings of fact; to wit, that the property at issue is unique, that the Petitioner/Property Owner would suffer a practical difficulty or unreasonable hardship if relief were denied, and that relief can be granted within the spirit and intent of the zoning regulations and without adverse impact to the surrounding locale. (See also, Cromwell v. Ward, 102 Md. App. 691 (1995).

Turning first to the uniqueness of the property, I am persuaded that this property is indeed unique. The uniqueness arises from several factors. First, the property is of an irregular

shape. Also, the grade of the property is somewhat irregular. That is, the site of the previous house and existing foundation is one of the few flat portions of the property. Although structures can be built into a grade, it is clear that a flat grade is more desirable. Finally, uniqueness is also determined by the location of existing improvements on the site, not only including the foundation, but the existing septic reserve area and well. For all of these reasons I find that the property is unique.

Second, I also find that the Petitioners would suffer a practical difficulty if relief were denied. Owing to the site constraints set forth above, the area for building where all setbacks would be observed is extremely limited. Due to the irregular shape of the property, there is an extremely small area where a building footprint could be located and 50-foot setbacks maintained. As importantly, the location of the new structure elsewhere on the property would threaten the viability of the existing well and septic field, as well as well and septic systems offsite. County environmental regulations require appropriate setback distances between septic systems and wells, even those on adjacent properties. These regulations significantly limit the Petitioners' options.

Third, I find that there will be no detrimental impact on the surrounding locale occasioned by the granting of the variance. Moreover, the granting of the relief will be consistent with the spirit and intent of the zoning regulations.

In this regard, the opposition of the Protestants is quite difficult to fathom. The Petitioners are utilizing an existing parcel and propose to improve same with one single family dwelling, irrespective of the fact that they might arguably develop the property with four individual units. That is, rather than developing the parcel based upon its potential maximum development rights as four separate lots of records, these Petitioners are willingly limiting development to a single structure. Moreover, the Petitioners have razed a structure which was admittedly in a state of disrepair and intend to replace same with a new building, thereby enhancing this property and the surrounding neighborhood. Furthermore, the Petitioners are essentially developing the property with nothing more than what has previously existed for

nearly half a century. The property is located in a rural area that features large, single family dwellings on equally large lots. The Petitioners' proposal is not out of character or context with the area and I find no merit with the objections of the Protestants. The Petition shall therefore be granted.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons set forth above, the requested variance shall be granted.

this 2/2 day of January, 1999 that the Petition for Variance seeking relief from Sections 1A04.3.B.2 and 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit lot line setbacks of 20 feet and 24 feet in lieu of the required 50 feet each, and to allow an existing shed to remain in the front yard in lieu of the required rear yard location, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restriction:

The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

LAWRENCE E. SCHMIDT

Zoning Commissioner for Baltimore County

LES:bjs



## BALTINORE COUNTY, MARYLAND

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT TÓWSON, MARYLAND 21204

BUILDING FERMIT

PERMIT #: B351321

CONTROL #: NR

DIST: 11

DATE ISSUED: 02/22/99

TAX ACCOUNT #:

2200023516

PREC:

PLANS: CONST 0 PLOT 7 R PLAT 0

CLASS: 04

DATA O ELEC YES PLUM YES

SUBDIVISION: 2230 FT NW OF MANOR RD

LOCATION: 11444 GLEN ARM RD

OWNERS INFORMATION

NAME: DIETRICH. DANIEL

ADDR: 11444 GLEN ARM RD

GLEN ARM MD 21057

Attachment C

TENANT:

CONTR:

OWNER

ENGNR:

SELLR: WORK:

RECONSTRUCT SFD ON EX. FOUNDATION AND ADDITION

ON FRONT FORCH & GARAGE, HOUSE DECLARED UNSAFE DUE TO TERMITE INFESTATION AND WATER DAMAGE. PLANS DETERMINED BY INSPECTOR. WAIVE PLANS

PER RSW. 61'10"X34'10"X25'=3,804SF. 2 BDRMS.

BLDG. CODE: 1 AND 2 FAM. CODE

RESIDENTIAL CATEGORY: DETACHED

OWNERSHIF: FRIVATELY OWNED

PROPOSED USE: SFD RECONSTRUCTED PER TERMITE DAMAGE

30,000,00 EXISTING USE: SFD

TYPE OF IMPRY: NEW BULDING CONTRUCTION

USE: ONE FAMILY

FOUNDATION: BLOCK

BASEMENT: FULL

SEWAGE: PRIV. EXISTS WATER: PRIV. EXISTS

LOT SIZE AND SETBACKS

SIZE: 2.11AC

FRONT STREET:

SIDE STREET:

FRONT SETB: 170' SIDE SETB: 34'/48'

SIDE STR SETB:

· SETB: REAR

THIS PERMIT
EXPIRES ONE
VEAR FROM DATE OF ISSUE

DEPARTMENT OF PERMITS AND DEPARTMENT MANAGMENT
DEVELOPMENT OF THIS PERMIT
IS PART OF THIS PERMIT

# DEPT. OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT Ground Water Management - 401 Bosiey Ave., Towson 21204

February 17, 1999

Mr. Daniel Dietrich
11444 Glen Arm Road
Glen Arm, MD 21057

Dear Mr. Dietrich:

The following information pertains to Building Permit application number B351321, for a 2 bedroom dwelling located at 11444 Glen Arm Road, 21057, Election District 11:

### SEPTIC SYSTEM DESIGN

Permission to use the existing reconstructed sewage disposal system.

The septic system is to be installed as shown on the final approved site plan. The top of the septic tank shall not be deeper than 18 inches below grade. MANHOLE risers are to be installed to the surface over the septic tank and/or grease interceptor. The septic tank cover shall remain in place.

"A plumbing permit is required for installation of an on site sewage disposal system. Installation detail shall conform with the Baltimore County Plumbing and Gasfitting Code. This office must be contacted if any deviation to specification or location of the sewage disposal system is desired. Deviation requests must be accompanied by revised site plans showing all structures, water well, sewage disposal system and reserve area, for review and approval prior to system construction.

An inspection must be made by the Plumbing Inspection Division 410-887-3620 at the time the absorption trench is completely excavated to verify the final depth and grade of the trench. A transit or similar device must be provided.

### WATER SUPPLY SYSTEM

The water well yield test for well #BA EXISTING, performed by Watson's Plumbing & Heating on 5/13/98 indicates a yield of 6.33 gallons per minute after 3 hours of continuous pumping. In accordance with Section 35-41 of the Baltimore County Code, this test shall be valid until, for the purpose of conveyance of the property. This does not constitute, in any form or manner, a guarantee by this office, of continuous water well yield.

Prior to occupancy of any new building served by a water well, bacteriological and chemical samples must be collected for analysis. In order to avoid unnecessary delays, it is suggested that the water supply system be connected to the building and disinfected as soon as possible so that the necessary sampling can be accomplished. If assistance is required for water sample collection and analysis, please call 410-887-2762.

If there are any questions regarding the above, please contact this office at 410-887-2762.

Sincerely,

Thomás I. Bodrogi, R.S.

Di

Rec5.97#292

	DEPARTMENT OF DEDICTOR OF DETAILS MAKYLAND	DATE: 8/25/38
	DEPARTMENT OF PERMITS & DEVELOPMENT MANAGEMENT TOWSON, MARYLAND 21204	
PERMIT #: 135/32/		OEA: COP IISTORIC DISTRICT/E
RECEIPT #: A3(751)	PROPERTY ADDRESS 1144 Glen Arm Rol SUITE/SPACE/FLOOR	***************************************
CONTROL #: NR	SUBDIV:	YES NO
XREF #:	TAX ACCOUNT #: 22-00-02351	DO NOT KNOW
FEE: /48+5	CHIER S INFORMATION (LASA ELEGA)	TRICT/PRECINCT
PAID:	MAME: DANIEL / TIMETO	
PAID BY: PP	ADDR: 11444 GLEN ben Ro	
INSPECTOR:	APPLICANT INFORMATION	DOES THIS BIL
I HAVE CAREFULLY READ THIS APPLICATION AND KNOW THE SAME IS CORRECT AND TRUE,	NAME: Design Dietrical	HAVE SPRINKLE YES NO _
AND THAT IN DOING THIS WORK ALL PROVI-	COMPANY:	YES NO .
STONS OF THE BALTIMORE COUNTY CODE AND	STREET HUMY GLEN DEM RO CITY, ST, ZIP GLEN DEM NO ZUE	
APPROPRIATE STATE REGULATIONS WILL BE COMPLIED WITH WHETHER HEREIN SPECIFIED	DHOME 4.	•
OR NOT AND WILL REQUEST ALL REQUIRED	APPLICANT MHIC LICENSE #:	
INSPECTIONS.	SIGNATURE: DRC#	
BUILDING 1 or 2 FAM  CODE CODE	PLANS: CONST PLOT PLAT DATE	EL / PL /
BOCA CODE	TENANT	ELPL
TYPE OF IMPROVEMENT	CONTR: ENGNR:	
1. NEW BLDG CONST	CITET T 13 - Ann AA	
2ADDITION	SELLR: EVANS ESTATE CHARLES CALVIN F	ELIZABETH
ALTERATION  A DEDATE		} *
4REPAIR 5WRECKING	DESCRIBE PROPOSED WORK: Case # 99-183-	A granted 1-21-94
6. MOVING	Reconstanct SFD on Existing	• · · •
7. OTHER	a distribution of the	
•	could addition of front porch a	
TYPE OF USE	House declared unsatte due do	lerinite infertation
RESIDENTIAL	NON-RESTDENTIATE PLANS PETERM	INCO A THE PROPERTY
	NON-RESIDENTIAL WAVE CONST DIANS R	Sud
01. ONE FAMILY 02. TWO FAMILY	THE PROPERTY RECERDATION DESCRIPTION OF SO	SEMBLAT SEMBLAT
03. THREE AND FOUR FAMILY	09. CHURCH, OTHER RELIGIOUS BUILDING 10. FENCE (LENGTH HEIGHT	DEMBER
04. FIVE OR MORE FAMILY (ENTER NO UNITS)		1'80"x34'10"x25'=
55. PATMWING BOOT	PARKING GARAGE  13. SERVICE STATION, REPAIR GARAGE DI	2 BEDROUMAS
06. GARAGE 07. OTHER	THOUTSTAND, THOUTSTUDING IN	C # 101981 - (B(1
	15. OFFICE, BANK, PROFESSIONAL 16. PUBLIC UTILITY	-5 M/2 / Cin
TYPE FOUNDATION BASEMENT	17. SCHOOL, COLLEGE, OTHER EDUCATIONAL	1995
1. SLAB 1. FULL	19. STORE MEDICANDER TO	- 1
2. PARTE 3. NONE	IAL SPECIFY TYPE RESTAURA 20SWIMMING POOL	INT SICIL
<del></del>	SPECIFY TYPE	
•	22. TRINK, TOWER	
	23. OTHER HOTEL, MOTEL (NO. UNITS_	)
TYPE OF CONSTRUCTION TYPE	PE OF HEATING FUEL TYPE OF SEWAGE DISPOSAL	<del></del>
MASONRY 1.	CNG 2 DIRECTOR TO THE STATE OF	
• STRUCTURE STERT. **	OIL 4.—COAL 2.—PUBLIC SEWER -	EXISTSPROPOSI
DESTRICE AATEMALE	E OF WATER SUPPLY SEPTIC	EXISTS PROPOSI
ENTRAL AIR: 1. 2. 1.	DUBLTC GAGOSM AND EVTAT	EXISTS PROPOSI
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PROPOSED USE:		•
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1. PRIVATELY OWNED 2.	PUBLICLY OWNED 3. SALE 4. RENTAT	·
ESIDENTIAL CATEGORY: 1.	ENDCHED 3 CENT DAY	,
FAMILY BEDROOMS 2 #2BED:	#3BED. TOWNHS	
ARBAGE DISPOSAL T. V. 2 N.	BATHROOMS / CINCO 4	HIRISE
OWDER ROOMS 6	KITCHENS LIBER FOLIO	
	· · · · · · · · · · · · · · · · · · ·	
BUILDING SIZE LOT SIZE A	ID SETBACKS  BLD INSP: APPROVAL SIGNATURES	DATE
LOOR 1867 SIZE 2,	BLD PLAN : TO COM	1AA 8/25%
PIDTH 6/10% FRONT STREET	FIRE	MA-1 8/25/9
FRONT SETBE	DEDI CILITAS FIRME IN MONACIA	11 Dombo
TORIES ZYBAFF SIDE SETBK	ZU / 100 ZU/20PUB SERV // OF THE FIRM	CAM PRINTER
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ORNER LOT REAR SETBK	75	1-1/C :8/257
Y 2 2. N ZONING	RCS PERMITS:	*
MAKE CHECKS PAYABLE TO	BALTIMORE COUNTY MARYLAND NO PERMIT FEES REI	
123 - HINOR S		
	No ROCURD Ut MINOR SUB- D	op :
	1974	•

### NO CONSIDERATION NO TITLE EXAMINATION MADE OR REQUESTED

THE DEED, Made this 18 day of JULY 1995 by and between CHARLES CALVIN EVANS AND ELIZABETH A. EVANS, his wife, of the County of Baltimore, State of Maryland, of the first part, and CHARLES CALVIN EVANS AND ELIZABETH A. EVANS, his wife, of the County of Baltimore, State of Maryland, of the second part.

WHEREAS, by meens conveyances the said Charles Calvin Evans and Elizabeth A. Evens, his wife, soquired this to several perceis of land; and

WHEREAS, it is the intention of the perties hereto to consolidate said perceis under one description; and

WHEREAS, that is the purpose of this Deed.

NOW, THEREFORE, WITNESSETH, That in consideration of the sum of Five Dollars (SS.CO) and other good and valuable considerations this day paid, the receipt of which is hereby acknowledged, the said CHAPILES CALVIN EVANS AND ELIZABETH A. EVANS, his wife, do hereby grant and convey unto the said CHARLES CALVIN EVANS AND ELIZABETH A. EVANS, his wife, as tenants by the entiration, their assigns, the aurylvor of them and to the survivor's personal representatives and assigns, in fee simple, all that land, situate, lying and being in the Eleventh Election District of Baltimore County, State of Maryland, and described as follows, that is to say:

FOR DESCRIPTION SEE "EXHIBIT A" attached hereto and made a part hereof.

TOGETHER with the buildings and improvements thereupon erected, made or being and all and every the rights, alleys, ways, waters, privileges, appurtenances and advantages, to the same belonging, or in anywise appent lining.

TO HAVE AND TO HOLD the said lot of ground and premises unto the said CHARLES CALVIN EVANS AND ELIZABETH A. EVANS, his wife, as tenants by the antireties, their assigns, the survivor of them and to the survivor's personal representatives and assigns, in fee simple.

AND the said parties of the first part hereby covenant that they have not done or authored to be done any act, matter or thing whatsoover to encumber the property hereby conveyed; that they will warrant specially the property granted and that they will execute such further assurances of the same as may be requisite.

WITNESS the hands and seals of said grantors.

WITNESS:

RECEIVED FOR TRANSPER State Department of

Ameraments & Taxation

for Baltimore County

Autorized State 30-138

TRANSFER TAX NOT REQUIRED

Director of Filmings BALTIMORE COUNTY WARYLAND Aktachment to

SAMPLE OF STATES

GERHOLD, CROSS & ETESL, LAD.

Registered Professional Land Surveyors

OP! STILL UNAVEJUOR NWOTNURWOT TRAN OLE ELEBIFRIS DNAJYNAM, NURWOT

> 410-828-4470 PAX 410-828-4478

MACTIVILE PARTIENT SO GOALIGET SAUCTA & ESCO. STAICH & ESCO. SAUCT & BANNIE & SAUCT & BOTTEMPTOR SEMEMANA

July 12, 1995

### Description 2.11 Acre Parcel of Land

All that piece or parcel of land, situate, lying and being in the Eleventh Biection District of Baltimore County, State of Maryland and described as follows to wit:

Beginning for the same on the northeast side of a 15 foot right-of-way heretofore laid out at the beginning of the fourth or North 44 degrees 30 minutes West 239.66 foot line of a parcel of land which by a Dood dated April 23, 1949 and recorded among the Land Records of Baltimore County in Liber T.D.S. No. 1732 folio 360 was convoyed by Thomas O. Pearce and wife to Charles Calvin Evans and wife and running thence with and binding on said fourth line and on the northeast side of said 15 foot right-of-way, with the right and use thereof in common with others estitled thereto, North 44 degrees 30 minutes West 239.66 feet to the beginning of the percei of lend firstly described in a Deed dated July 28, 1951 and recorded among the Land Records of Baltimore County in Liber C.L.B. No. 2029 folio 367 which was conveyed by Thomas G. Pearce and wife to Charles Calvin Evans and wife and thence tunning with and binding on the first line of said limitly described percei of land and binding on the northeast side of the said 15 foot right-of-way, heretofore laid out, with the right and use in consmon with others entitled thereto, North 44 degrees 30 minutes west 112.84 feet o the beginning of the accord line of said last mentioned firstly described percel of land, theace running with and binding on the said second line, South \$3 degrees 54 minutes East 146.02 feet to the beginning of the last or South #3 degrees 54 minutes East 98.35 frot fine of the firstly bernin mentions a percei of land dated April 23,1949 which was conveyed by Pester to Brans and running thence with and binding on the said last line, South 83 degrees 54 minutes East 98.35 feet to the beginning of said last mentioned percei of land, thence running with and binding on the first line of the said percei of land, North 47 degrees East 53.90 feet to the beginning of the secondly described percei of land mentioned in a Deed dated July 22, 1951 and recorded among the Land Records of Baltimore County in Liber G.L.B. No. 2029 follo 367 which was conveyed by Thomas G. Pearce and wife to Charles Calvin Evans and wife, thence running with and binding on the first, second, and third lines of said parcel of land the three following courses and distances, viz: North 47 degrees East 271,10 feet, South 44 degrees 30 minutes East 155.15 feet to the northwest side of a right-of-way 25 feet wide, heretofore laid out, and South 45 degrees 30 minutes West binding on the northwest aide of said right-of-way with the right and use in common with others entitled thereto, 271.01 feet to the beginning of the third or South 45 degrees 30 minutes West 209 foot line of the first herein montlemed percel of land which by a deed dated April 23, 1949 was conveyed by Pearce

2 11 Ac.dee

1

011133.629

GERHOLD, Control & ETZEL, LID.
Registered Professional Land Reservers

July 12, 1995

## Description 2.11 Ages Parcel of Land

to Evens and thence running thence with and binding on said third line and binding on the northwest of said 25 foot right-of-way heretofore laid out, South 45 degrees 30 minutes west 209 feet to the piece of beginning.

Containing 2.11 Acres of land, more or less, as now compiled from current deeds of record.

Being all of the perceis of lead described in the two following deeds recorded among the Land Records of Daltimore County:

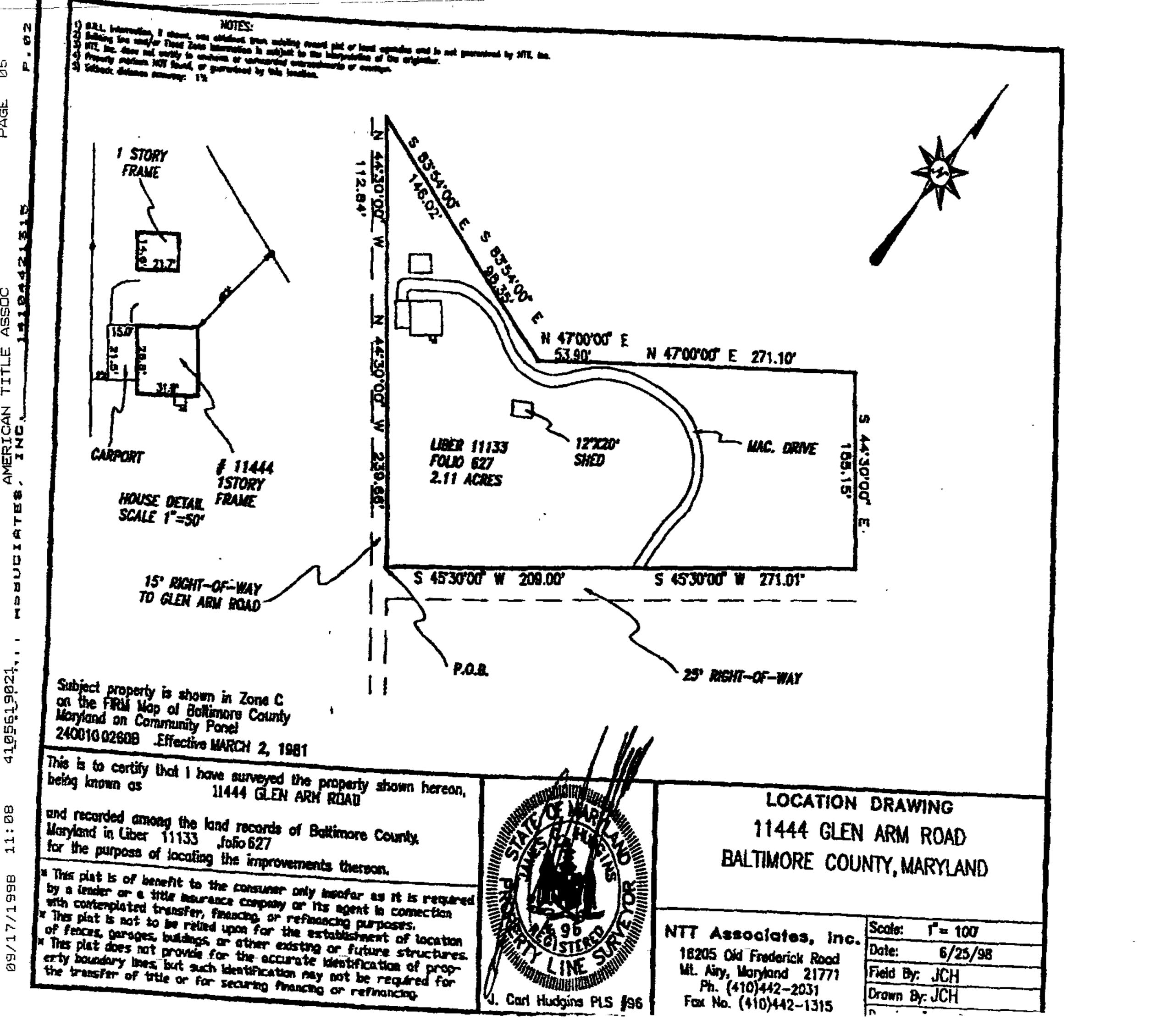
Deed dated June 17, 1949 and recorded in Liber T.B.S. 1757 follo 32 which was conveyed by Lillian A. Keily, unmarried to Lala M. Beatty, unmarried, during the term of her natural life and Charles Calvin Evans and Elizabeth A. Evans, his wife.

- 2. Doed dated July 28, 1951 and recorded in Liber G.L.L. No. 2029 folio 367 which was conveyed by Thomas G. Pearce and Lottle W. Pearce, his wife, to Charles Calvin Evans and Elizabeth A. Evans, his wife.
- Being a part of the pascel of land described in a Doed a sted April 23, 1949 and recorded in Liber T.B.S. No. 1738 folio 360 which was conveyed by Thomas G. Pearce and Lottle W. Pearce, his wife, to Charles Calvin Evans and Blizabeth A. Evans, his wife.

Together with the right and use thereof in common with others entitled thereto of the above mentioned 25 foot right-of-way and the 15 foot right-of-way, heretofore laid out, and described in the fight-of-way deeds.

2

2.11 Ac.



BALTIMORE COUNTY
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

GROUND WATER MANAGEMENT (410-887-2762)

# RECOMMENDATION PERMIT

- 11-6 Attachment E

	Thomas G HARRIS OWNER: IV: MAN PAUL CALA
ADDRESS:	11444 GIPN ARM RA E.D. 11
TYPE OF BU	ILDING: Residential
( )	Inspect septic tank baffles, repair as needed.
(×)	Replace septic tank 1500 GAL - CONCRETE
( <b>x</b> )	Install manhole riser and lid, bring riser and lid to grade.  Cover on septic tank to remain in place.
-( × )	Install distribution box as shown.
( )	Install seepage pit(s)as shown on plot plan. (size)
(*)	Install 1 75 absorption trenches, 2 wide, 6 deep,  42stone, as per plot plan.
( )	Install field laterals, wide, deep, minimum sq. ft. trench bottom, as per plot plan.
( )	Other comments:
	• • • • • • • • • • • • • • • • • • •
FEE:	\$ 29.00/Partial \$ 43.00/Complete
•	Sanitarian $\frac{6/8/73}{Date}$
White - P' PLBG.FRM/	lumbing Inspection Yellow - Applicant Pink - DEPRM DEPRM/TXTSDS-9/95

IN RE: PETITION FOR VARIANCE NE/S Glen Arm Road 2250 N of Manor Road (11444 Glen Arm Road) 11th Election District 6<sup>th</sup> Councilmanic District

DANIEL DIETRICH AND VIENNA HEERD

Petitioners/Appellees

COUNTY BOARD OF APPEALS BEFORE THE

99 AUG -2 AMII: 00

FOR

BALTIMORE COUNTY

Case No. 98-183-A

MOTION TO OUASH AND FOR PROTECTIVE ORDER

\*

Daniel Dietrich and Vienna Heerd, Appellees, by their attorney, Deborah C. Dopkin, and Deborah C. Dopkin, P.A., to the Subpoenas filed by Appellant's counsel, respectfully submits this Motion to Quash, and states as reasons therefore:

- 1. That the records requested do not relate to the Variance Petition that is the subject of this appeal should be quashed. Specifically, these are the Settlement Sheet (HUD-1), location survey, documents relating to permits, title documents other than the Deed, documents of any sort relating to the septic system, contracts relating to the purchase of the subject property, and documents between Mr. Dietrich or Ms. Heerd involving the United States Postal Service. To the extent such records are not public, a Protective Order should issue barring their production.
- That all such documents are unrelated and immaterial to the matters before this Board have no probative value, would not be otherwise admissible and relate to matters over which the Board has no jurisdiction.

Deborah C. Dopkin Attorney At Law 409 Washington Avenue | | Suite 920 Towson, MD 21204 (410) 494-8080

- 3. That Mr. Dietrich is the custodian of the records relating to the property, and his appearance alone is sufficient to respond to matters raised in Appellants' Subpoena. Therefore, Ms. Heerd's appearance should be not required before this Board.
- 4. That in general, the Subpoena fails to comply with Rules of Practice and procedure of the Baltimore County Board of Appeals.

WHEREFORE, Appellee prays:

- A. That this Motion to Quash be granted;
- B. That this Motion for Protective Order be granted;
- C. That the Subpoena, as to Ms. Heerd, be quashed in its entirety;
- D. That the Subpoena, as to Mr. Dietrich, be quashed in whole or in part; and
- E. Such other and further relief as the nature of this cause may require.

Deborah C. Dopkin

Deborah C. Dopkin, P.A.

409 Washington Avenue

Suite 920

Towson, Maryland 21204

(410) 494-8080

Attorney for Appellees

### CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this \_\_\_\_ day of August, 1999, a copy of the aforegoing Motion To Quash was mailed, postage prepaid

to Michael P. Tanczyn, Esquire, Suite 106, 606 Baltimore Avenue, Towson, Maryland 21204, attorney for Appellants.

Deborah C. Dopkin

C:\docs\KMC\DCD\Dietrich Motion Quash

(/20/94

IN RE:

PETITION FOR VARIANCE

BEFORE THE

NE/S Glen Arm Road, 2250'N of Manor Road,

(11444 Glen Arm Road)

11th Election District

**ZONING** 

6th Councilmanic District

**COMMISSIONER OF** 

BALTIMORE COUNTY

Daniel Dietrich and Vienna Heerd

**Petitioners** 

Case No. 99-183-A

### **NOTICE OF APPEAL**

Dudley and Betty Brownell and Ginny Sarant, individually, and Summerfield Farms Assn., Inc., Appellants in the above captioned case, by and through their attorney, J. Carroll Holzer and Holzer and Lee, hereby note an appeal to the County Board of Appeals from all aspects of the decision of the Zoning Commissioner of Baltimore County rendered on January 21, 1999, a copy of which is attached hereto, including the approval of all variances.

Filed concurrently with this Notice of Appeal is a check made payable to Baltimore County to cover the costs of the appeal and the posting of the property.

181999

Respectfully submitted,

J. Carroll Holzeř
Holzer & Lee

508 Fairmount Avenue

Towson, Maryland 21286

410-825-6961

Attorney for Appellants

LAW OFFICE

HOLZER AND LEE

THE 508 BUILDING

508 FAIRMOUNT AVENUE

TOWSON, MARYLAND

21286

(410) 825-6961 FAX: (410) 825-4923

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the th day of January, 1999, a copy of the foregoing Notice of Appeal was mailed first class, postage pre-paid to the County Board of Appeals, Basement Old Court House, 400 Washington Ave., Towson, MD 21204.

A. Carroll Holzer

NOTICES\A:\summerfield.NOA

IN RE: PETITION FOR VARIANCE

**BEFORE THE** 

NE/S Glen Arm Road, 2250' N of Manor Road,

(11444 Glen Arm Road)

ZONING COMMISSIONER

11<sup>th</sup> Election District 6<sup>th</sup> Councilmanic District

OF BALTIMORE COUNTY

Daniel Dietrich and Vienna Heerd

Case No. 99-183-A

**Petitioners** 

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the owners of the subject property, Daniel Dietrich and Vienna Heerd. The Petitioners seek relief from Sections 1A04.3.B.2 and 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit lot line setbacks of 20 feet and 24 feet in lieu of the required 50 feet each, and to allow an existing shed to remain in the front yard in lieu of the required rear yard location. The subject property and relief sought are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the hearing on behalf of the Petition were Daniel Dietrich and Vienna Heerd, property owners, Frank L. Dietrich, Richard E. Matz, Professional Engineer who prepared the site plan for this property, and Deborah Dopkin, Esquire, attorney for the Petitioners. Also appearing in support of the request were Gary Heiderman, adjoining property owner, William Bissell, and Teresa Louro. Appearing as Protestants in the matter were numerous residents of the surrounding community, all of whom signed the Protestants' Sign In Sheet. Serving as spokespersons for the group were Dudley Brownell, adjoining property owner, and Stanley M. Pollack.

Testimony and evidence offered revealed that the subject property consists of a gross area of 2.11 acres, more or less, zoned R.C.5. The property is located not far from Gunpowder Falls State Park, and vehicular access thereto is by way of a driveway that leads to Glen Arm

ON FILING 

MAN HERENATURES FILING

Road. Testimony indicated that the subject property is actually a compilation of what were originally four separate lots of record. However, the Petitioners purchased the property as a single parcel and will formally combine the four lots into one single lot, pending the outcome of the request for variance.

The property was previously improved with a single family dwelling which was shown in several photographs submitted at the hearing. That dwelling was constructed in the 1950s and had apparently become termite infested and was in a dilapidated condition when the Petitioners purchased the property. In order to improve the property, the Petitioners razed the dwelling, apparently without the benefit of a County razing permit.

The Petitioners propose to construct a new single family dwelling on essentially the same building footprint as the old dwelling. In fact, it was indicated that the existing foundation has been preserved and will be utilized. The building envelope will be slightly larger, however, primarily due to the proposed construction of an attached two-car garage and porch on the front of the house. As a result of these improvements, lot line setbacks of 20 feet and 24 feet will be maintained, in lieu of the required 50 feet. It was indicated at the hearing that the previous dwelling had also been deficient, insofar as setbacks were concerned; however, was grandfathered under the regulations in view of its age. Variance relief is also required to allow a shed to remain in the front yard. The site plan and photographs submitted show that there are two sheds presently on the property.

The granting of variance relief is provided in Section 307 of the B.C.Z.R. That Section allows the Zoning Commissioner to grant relief upon making certain findings of fact; to wit, that the property at issue is unique, that the Petitioner/Property Owner would suffer a practical difficulty or unreasonable hardship if relief were denied, and that relief can be granted within the spirit and intent of the zoning regulations and without adverse impact to the surrounding locale. (See also, Cromwell v. Ward, 102 Md. App. 691 (1995).

Turning first to the uniqueness of the property, I am persuaded that this property is indeed unique. The uniqueness arises from several factors. First, the property is of an irregular

Date RECEIVED FOR FILING
By

shape. Also, the grade of the property is somewhat irregular. That is, the site of the previous house and existing foundation is one of the few flat portions of the property. Although structures can be built into a grade, it is clear that a flat grade is more desirable. Finally, uniqueness is also determined by the location of existing improvements on the site, not only including the foundation, but the existing septic reserve area and well. For all of these reasons I find that the property is unique.

Second, I also find that the Petitioners would suffer a practical difficulty if relief were denied. Owing to the site constraints set forth above, the area for building where all setbacks would be observed is extremely limited. Due to the irregular shape of the property, there is an extremely small area where a building footprint could be located and 50-foot setbacks maintained. As importantly, the location of the new structure elsewhere on the property would threaten the viability of the existing well and septic field, as well as well and septic systems offsite. County environmental regulations require appropriate setback distances between septic systems and wells, even those on adjacent properties. These regulations significantly limit the Petitioners' options.

Third, I find that there will be no detrimental impact on the surrounding locale occasioned by the granting of the variance. Moreover, the granting of the relief will be consistent with the spirit and intent of the zoning regulations.

In this regard, the opposition of the Protestants is quite difficult to fathom. The Petitioners are utilizing an existing parcel and propose to improve same with one single family dwelling, irrespective of the fact that they might arguably develop the property with four individual units. That is, rather than developing the parcel based upon its potential maximum development rights as four separate lots of records, these Petitioners are willingly limiting development to a single structure. Moreover, the Petitioners have razed a structure which was admittedly in a state of disrepair and intend to replace same with a new building, thereby enhancing this property and the surrounding neighborhood. Furthermore, the Petitioners are essentially developing the property with nothing more than what has previously existed for

nearly half a century. The property is located in a rural area that features large, single family dwellings on equally large lots. The Petitioners' proposal is not out of character or context with the area and I find no merit with the objections of the Protestants. The Petition shall therefore be granted.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons set forth above, the requested variance shall be granted.

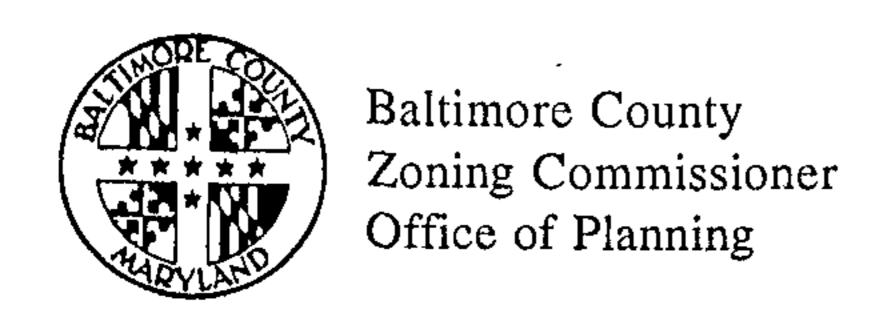
THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this Aday of January, 1999 that the Petition for Variance seeking relief from Sections 1A04.3.B.2 and 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit lot line setbacks of 20 feet and 24 feet in lieu of the required 50 feet each, and to allow an existing shed to remain in the front yard in lieu of the required rear yard location, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restriction:

1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

LAWRENCE E. SCHMIDT

Zoning Commissioner for Baltimore County

LES:bjs



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

January 21, 1999

Deborah Dopkin, Esquire Mercantile-Towson 409 Washington Avenue, Suite 920 Towson, Maryland 21204-4903

RE: PETITION FOR VARIANCE
NE/S Glen Arm Road, 2250' N of Manor Road
(11444 Glen Arm Road)
11th Election District – 6th Councilmanic District
Daniel Dietrich and Vienna Heerd - Petitioners
Case No. 99-183-A

Dear Ms. Dopkin:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Variance has been granted, 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

Mr. Daniel Dietrich and Ms. Vienna Heerd
 4333 Chapel road, Perry Hall, Md. 21128
 Mr. Richard E. Matz, Colbert Matz Rosenfelt, Inc.
 2835 Smith Avenue, Suite G, Baltimore, Md. 21209
 Mr. Dudley Brownell, 11520 Glen Arm Road, Glen Arm, Md. 21057
 Mr. Stanley Pollack, 4604 Copperwood Lane, Glen Arm, Md. 21057
 People's Counsel; Case/File



# Petition for Variance

# to the Zoning Commissioner of Baltimore County

for the property located at

99-183-1

11444 Glen Arm Road

which is presently zoned

R6-5

This Petition shall be filed with the Department of Permits & Development Management
The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) 400, 1,

1A04.3B.2 of the B.C.Z.R. for lot line setbacks of 20ft. and 24 ft., in lieu of 50ft. required for each and to allow an existing shall in the front yard in lieu of the required rear yard

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (Indicate hardship or practical difficulty) The uniqueness and peculiarity of the property causes the zoning provisions to impact disproportionately upon the property.

Practical difficulty and unreasonable hardship result from the disproportionate impact of the provisions of the zoning regulations caused by the property's uniqueness. 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.

	•
Contract Purchaser/Lassae:	We do solemnly declare and affirm, under the penalties of penjury, that (we are the legal owner(s) of the property which is the subject of this Petition.
	Legal Owner(s);
(Type or Print Name)	Daniel Dietrich
Signature	
Address	_ VIENNA HEERD
	(Type of Print Name)
City State Zipco Attorney for Petitioner:	Signature Signature
(Type of Print Name)	11444 Glen Arm Rd. 410-529-9677
Signature	Glen Arm, MD 21057 City State Sprode Name, Address and phone number of representative to be contacted.
Address Phone No.	Richard E. Matz, P.E.
City State Zipcode	Name Colbert Matz Rosenfelt, Inc. 2835esmith Ave. Steelt, Inc. Address Baltimore, MD 21209 Phone No. 653-383
	OFFICE USE ONLY
	ESTIMATED LENGTH OF HEARING  Unavailable for Hearing
Printed with Soybean Ink on Recycled Paper	the following dates Next Two Months  ALLOTHER
Revised 9/5/95	REVIEWED BY:DATE

# Colbert Matz Rosenfelt, Inc.

Civil Engineers • Surveyors • Planners

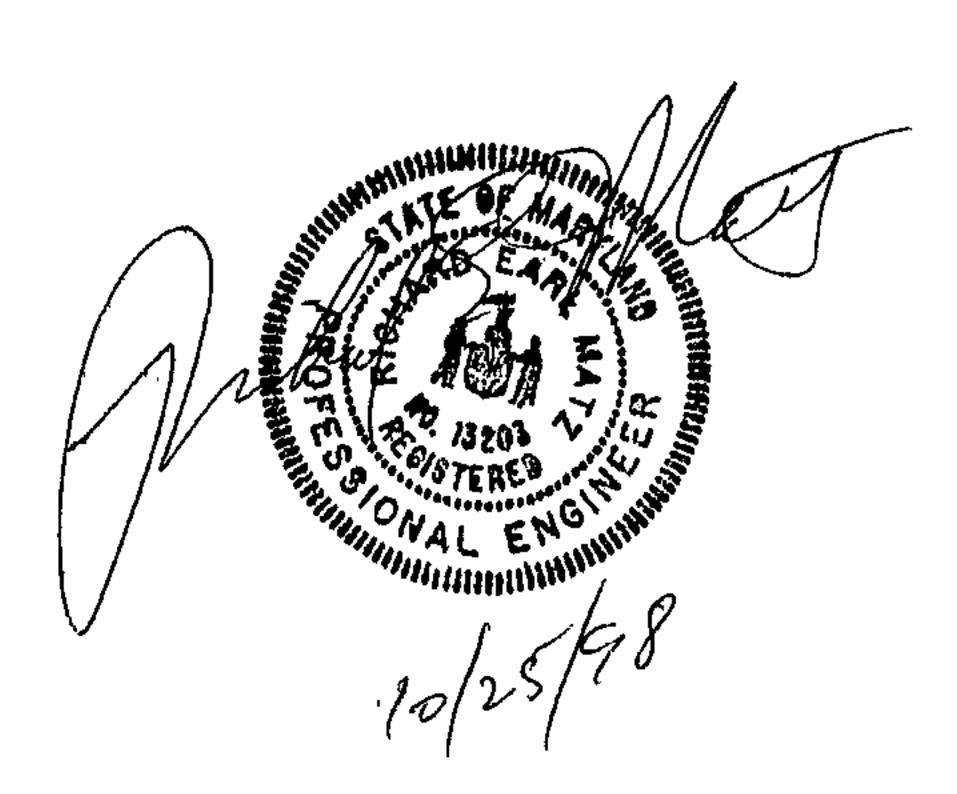


ZONING DESCRIPTION 11444 Glen Arm Road at a point 2250 North of Ex. MAROR

Beginning at a point on the east side of a right-of-way to Glen Arm Road, 15 feet wide, 650 feet north of the centerline of Glen Arm Road which is 24 feet wide. Thence the following courses and distances:

N44°30'00"W 352.50 ft., S83°54'00"E 244.37 ft., N47°00'00"E 325.00 ft., S44°30'00"E 155.15 ft., and S45°30'00"W 480.01 ft. to the place of beginning.

As recorded in Deed Liber 13037, Folio 131, and containing 2.11 acres. Also known as 11444 Glen Arm Road and located in the 11<sup>th</sup> Election District.



# DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT ZONING REVIEW

### ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The <u>Baltimore County Zoning Regulations</u> (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least fifteen (15) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements. The newspaper will bill the person listed below for the advertising. This advertising is due upon receipt and should be remitted directly to the newspaper.

OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

For Newspaper Advertising:	
Item Number or Case Number: 183 Petitioner: DANIEL DIETRICH AND VIENNA HEERD	<u></u>
Address or Location: 11444 GUEN ARM ROAP	
GLEN ARM, MD 21057.	
PLEASE FORWARD ADVERTISING BILL TO:  Name: DANIEL DIETRICH	
Address: 11444 GUEN ARM ROAD.	<u> </u>
GLEN ARM, MD 21057.  Telephone Number: 410-529-9677	<del></del>
	·

Revised 2/20/98 - SCJ

BALTIMORE COUNTY, MARYLATID  OFFICE OF BUDGET & FINANCE  MISCELLANEOUS RECEIPT  DATE  A 1/8/99  ACCOUNT  DO 1-6/50	PROCESS ACTUAL TUNE 2/19/1999 (19:12:31	PREFERENCE.
RECEIVED J. CARROLL HOLZEN	- KEI UROZ CARMIER JRIC JAK DWAKER 5 WISCELLANDUS CASH RECEIPT Receipt N (18100) CR WO. 063776 210.00 CHEK Taltimore County, Haryland	
POR: PPPEAL  99-183. A  DISTRIBUTION  MAINTE CACHEE		
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER	CASHIER'S VALIDATION	
BALTIMORE COUNTY, MAF AND OFFICE OF BUDGET & FINANCE MISCELLANEOUS RECEIPT	1800759 ACTUAL TIME 10/27/1998 (9:47:25)	
DATE 10-27-78 ACCOUNT 2-00/- 6/50  AMOUNT \$ 50,	THE WOOD CHERK PARTS PARTY DRAWS TO SHEEK TO SHE	
	The Strike and Comment to the	:
FOR: Residential Variance filing fee  11444 6164 Arm Rd.	Easting County, Haryland  1-183-A	

#### NOTICE OF ZONING HEARING

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

Case: #99-183-A
11444 Glen Arm Road
NW/S Glen Arm Road (600'
rear), approximately 2150' NE
of Manor Road
11th Election District
6th Councilmanic District
Legal Owner(s): Daniel Dietrich & Vienna Heerd

Variance: to permit lot line setbacks of 20 feet and 24 feet in lieu of the 50 feet required and to allow an existing shed in the front yard in lieu of the required rear yard.

Hearing: Tuesday, December 15, 1998 at 11:00 a.m. in 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.

11/384 Nov. 26 C275847 ,

### CERTIFICATE OF PUBLICATION

TOWSON, MD.,

THE JEFFERSONIAN,

LEGAL AD. - TOWSON

RE: Case No.: 9-183-A

HEERD, ETAL

Petitioner/Developer: C, U, R, ETAL

C/o R. MATZ

Date of Hearing/Closing:

Baltimore County Department of Permits and Development Management County Office Building, Room 111 111 West Chesapeake Avenue Towson, MD 21204

Attention: Ms. Gwendolyn Stephens

Ladies and Gentlemen:

Sincerely, Sincerely, (2/2/98)
(Signature of Sign Poster and Date)

Patrick M. O'Keefe
(Printed Name)

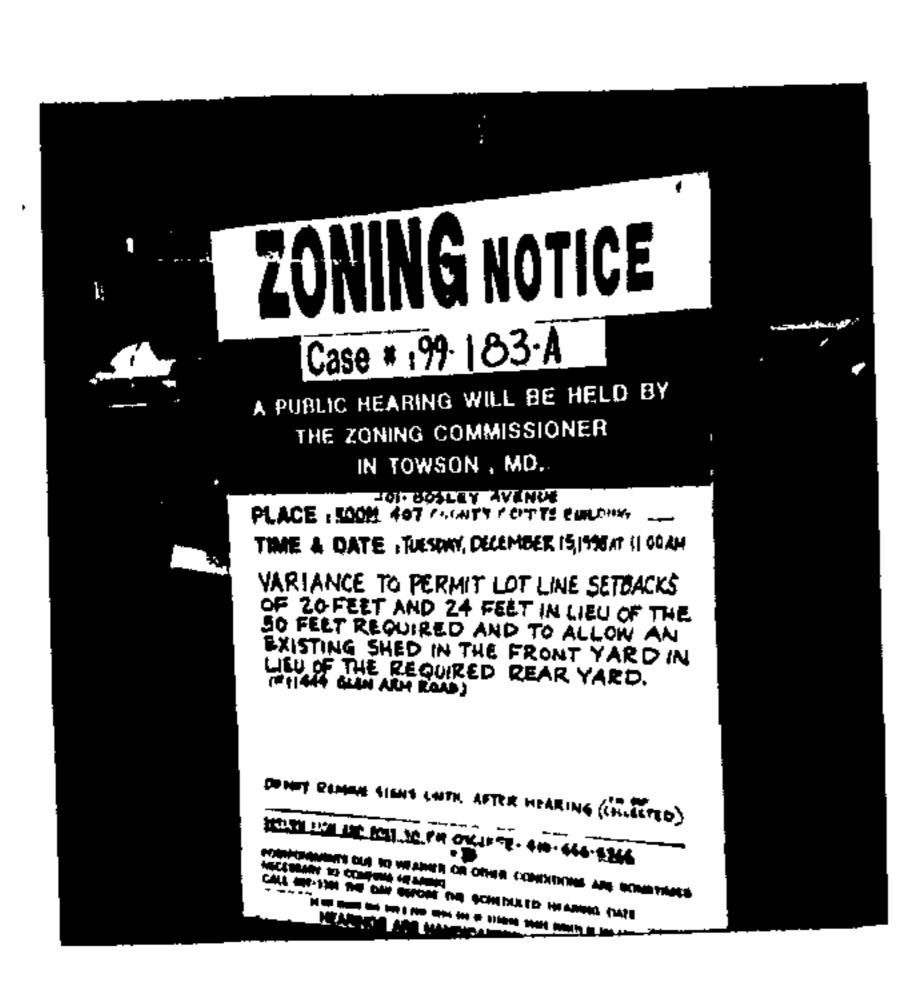
523 Penny Lane
(Address)
Hunt Valley, MD 21030

(City, State, Zip Code)

(City, State, Zip Code)

(Pager (410) 905-857/

(Telephone Number)



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.: 99-183-A

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

PLACE:
DATE AND TIME:
REQUEST: VARIANCE - TO PERMIT SIDE YARD
SETBACKS OF 20 FT, AND 24 FT.
IN LIEU OF THE PÉQUIRED 50 FT,
RESPECTIVELY and to allow an existing shed
in the front yard in lieu of the required rear yard
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

November 25, 1998 Issue – Jeffersonian

Please forward billing to:

Daniel Dietrich

410-529-9677

11444 Glen Arm Road Glen Arm, MD 21057

### **NOTICE OF ZONING 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: 99-183-A

11444 Glen Arm Road

NW/S Glen Arm Road (600' rear), approximately 2150' NE of Manor Road

11<sup>th</sup> Election District – 6<sup>th</sup> Councilmanic District Legal Owner: Daniel Dietrich & Vienna Heerd

Variance to permit lot line setbacks of 20 feet and 24 feet in lieu of the 50 feet required and to allow an existing shed in the front yard in lieu of the required rear yard.

HEARING: Tuesday, December 15, 1998 at 11:00 a.m. in Room 407, County Courts

Building, 401 Bosley Avenue

505

The state of the s

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 pdmlandacq@co.ba.md.us

November 10, 1998

### **NOTICE OF ZONING 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: 99-183-A 11444 Glen Arm Road

NW/S Glen Arm Road (600' rear), approximately 2150' NE of Manor Road

11<sup>th</sup> Election District – 6<sup>th</sup> Councilmanic District

Legal Owner: Daniel Dietrich & Vienna Heerd

Variance to permit lot line setbacks of 20 feet and 24 feet in lieu of the 50 feet required and to allow an existing shed in the front yard in lieu of the required rear yard.

HEARING: Tuesday, December 15, 1998 at 11:00 a.m. in Room 407, County Courts

Building, 401 Bosley Avenue

Arnold Jablon

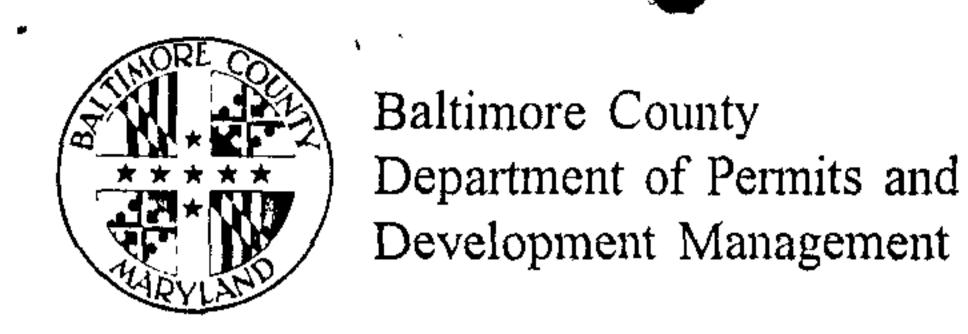
Director

c:. Vienna Heerd & Daniel Dietrich Colbert Matz Rosenfelt, Inc.

NOTES: (1) YOU MUST HAVE THE ZONING NOTICE SIGN POSTED ON THE PROPERTY BY NOVEMBER 30, 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.



Development Processing

County Office Building

111 West Chesapeake Avenue

Towson, Maryland 21204

pdmlandacq@co.ba.md.us

December 11, 1998

Richard Matz, P.E. Colbert, Matz, Rosenfelt, Inc. 2835 Smith Avenue, Suite G Baltimore, MD 21209

RE: Item No.: 183

Case No.: 99-183-A

Location: 11444 Glen Arm Road

Dear Mr. Matz:

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM), on October 27, 1998.

The Zoning Advisory Committee (ZAC), which consists of representatives from several Baltimore County approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure 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. All comments 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.

Very truly yours,

W. Carl Richards, Jr.

Zoning Supervisor

Zoning Review

WCR:ggs

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on Recycled Paper

Enclosures

Come visit the County's Website at www.co.ba.md.us



### BALTIMORE COUNTY, MARYLAND

### INTEROFFICE CORRESPONDENCE

TO:

Arnold Jablon, Director

Date: November 17, 1998

Department of Permits & Development

Management

Robert W. Bowling, Supervisor
Bureau of Developer's Plans Review

SUBJECT:

Zoning Advisory Committee Meeting

for November 16, 1998

Item Nos. 181, 182, (183) 186 and Item No. 158 - Revised Plans

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

RWB:HJO:jrb

File cc:

## BALTIMORE COUNTY, MARYLAND DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

Date: November 19, 1998

Arnold Jablon TO: R. Bruce Seeley PM/9/ FROM: SUBJECT: Zoning Item #183 Dietrich Property - 11444 Glen Arm Road Zoning Advisory Committee Meeting of November 9, 1998 The Department of Environmental Protection and Resource Management has no comments on the above-referenced zoning item. The Department of Environmental Protection and Resource Management requests an extension for the review of the above-referenced zoning item to determine the extent to which environmental regulations apply to the site. X The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item: Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 14-331 through 14-350 of the Baltimore County Code). X Development of this property must comply with the Forest Conservation Regulations (Section 14-401 through 14-422 of the Baltimore County Code). Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 26-436 through 26-461, and other Sections, of the Baltimore County Code). All future plans must show the streams and/or wetlands within 200 ft. of the property lines. X All existing structures must be shown accurately on all plans. X Prior to building permit approval, evaluation of the well and septic system will be required.



Parris N. Glendening
Governor

David L. Winstead
Secretary

Parker F. Williams

Date: 11.10.31

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

RE: Baltimore County

Item No. 183

115

Administrator

Dear. Ms Stephens:

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.

Should you have any questions regarding this matter, please contact Larry Gredlein at 410-545-5606 or by E-mail at (lgredlein@sha.state.md.us).

Very truly yours,

Michael M. Lenhart, Acting Chief Engineering Access Permits Division

My telephone number is \_\_\_\_\_\_

Jun 5

# BALTIMORE COUNTY, MARYLAND

#### INTER-OFFICE CORRESPONDENCE

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

Date: November 9, 1998

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

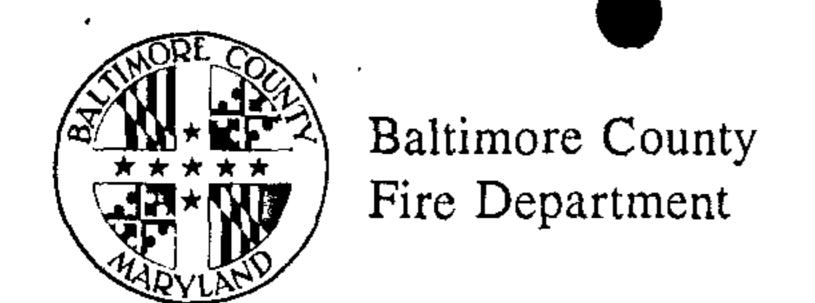
**SUBJECT:** Zoning Advisory Petitions

The Office of Planning has no comment on the following petition (s): Item No (s): 183 & 186

If there should be any questions or this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 410-887-3480.

Section Chief:

AFK/JL



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

NOVEMBER 23, 1998

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

RE: Property Owner: 183 - DANIEL DIETRICH AND VIENNA HEERD

186 - WILLIAM E. REDMAN AND MARY E. REDMAN

187 - FRANK GIBSON

Location: DISTRIBUTION MEETING OF NOVEMBER 9, 1998

ILem No.: 133, 186, 137

Zoning Agenda:

Gentlemen:

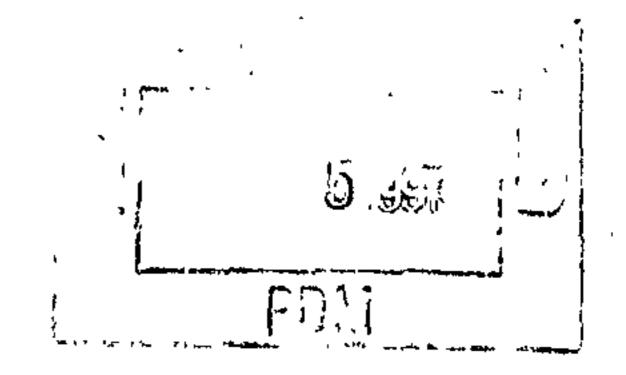
Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

7. The Fire Marshal's Office has no comments at this time.

REVIEWER: LT. ROBERT P. SAUERWALD

Fire Marsnai Office, PHONE 887-4381, MS-1102F

cc: File





RE: PETITION FOR VARIANCE 11444 Glen Arm Road, E/S right-of-way, 650' N of c/l Glen Arm Rd at point 2250' N of Manor Rd, 11th Election District, 6th Councilmanic				N ld,	*		BEFOR		MISSION	ER		
Legal Owners: Daniel Dietrich and Vienna Heerd			<b>!</b>	*		FOR						
20841	Petition		1 171CH1	ch and v	icima M	eera	*		BALTIN	MORE C	OUNTY	
		• • •					*		Case Nu	ımber: 9	9-183-A	
*	*	*	*	*	*	*	*	<b>*</b> k	-de	ىد	.1.	

# **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 of other proceedings in this matter and of the passage of any preliminary or final Order.

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

CAROLE S. DEMILIO

Deputy People's Counsel

Old Courthouse, Room 47

400 Washington Avenue

Towson, MD 21204

(410) 887-2188

# CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this \_\_\_\_\_\_\_ day of November, 1998, a copy of the foregoing Entry of Appearance was mailed to Richard E. Matz, P.E., Colbert, Matz Rosenfelt, Inc., 2835 G Smith Avenue, Baltimore, MD 21209, representative for Petitioner(s).

PETER MAX ZIMMERMAN



# County Bo of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49 400 WASHINGTON AVENUE TOWSON, MARYLAND 21204 410-887-3180 FAX: 410-887-3182

June 23, 2000

Michael P. Tanczyn, Esquire 606 Baltimore Avenue Suite 106 Towson, MD 21204

RE: In the Matter of Daniel Dietrich and Vienna Heerd/Case No. 99-183-A

Dear Mr. Tanczyn:

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

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules of Procedure, with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all Petitions for Judicial Review filed form this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Charlotte E. Rockliffe for Kathleen C. Bianco

Administrator

## Enclosure

c: Summerfield Farms Association
Dudley and Betty Brownell
Ginny Sarant
Deborah C. Dopkin, Esquire
Daniel Dietrich and Vienna Heerd
Stanley Pollack
People's Counsel for Baltimore County
Pat Keller /Planning Director
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

#### LAW OFFICES

# MICHAEL P. TANCZYN, P.A.

Suite 106 • 606 Baltimore Avenue Towson, Maryland 21204

Phone: (410) 296-8823 • (410) 296-8824

Fax: (410) 296-8827 • Computer Fax: (410) 296-2848

June 24, 1999

COUNTY BOARD OF APPEALS
99 JUH 25 PH 2: 17

Baltimore County Board of Appeals Attn: Mrs. Kathy Bianco Old Court House Room 49 400 Washington Avenue Towson, MD 21204

> Re: Petition for Variance of Daniel Dietrich and Vienna Heerd, Case No. 98-183-A Hearing Date: August 4, 1999 – 10:00 a.m.

Dear Mrs. Bianco:

Enclosed herewith please find Entry of Appearance form which I have sent as well to Counsel for the Petitioners. Would you kindly file this in the above case?

Thank you very much for your assistance in that regard.

Very truly yours,

Michael P. Tanczyn, Esquire

MPT/gr Enclosure

cc: Summerfield Field Farms Association, Inc. Deborah C. Dopkin, Esquire



# County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49 400 WASHINGTON AVENUE TOWSON, MARYLAND 21204 410-887-3180 FAX: 410-887-3182

July 28, 2000

Michael P. Tanczyn, Esquire Suite 106, 606 Baltimore Avenue Towson, MD 21204

RE: Civil Action #3-C-00-007365

DANIEL DIETRICH AND VIENNA HEERD

Dear Mr. Tanczyn:

In accordance with Rule 7-206 (c) of the Maryland Rules of Procedure, the County Board of Appeals is required to submit the record of proceedings of the petition for judicial review which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty days.

The cost of the transcript of the record must be paid by you. In addition, all costs incurred for certified copies of other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court within sixty days, in accordance with Rule 7-206(c).

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

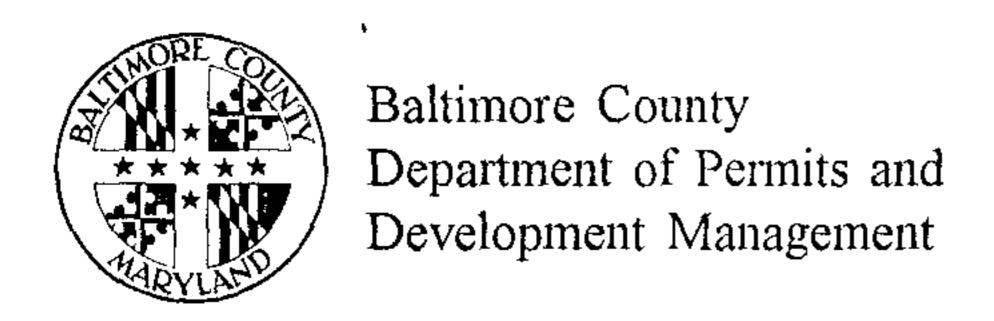
Charlotte E. Radcliffe

Charlotte ? Rodelyfo por

Legal Secretary

Enclosure

c: Summerfield Farms Assoc., Inc. Mr. & Mrs. Dudley C. Brownell Virginia Sarant Marvin Johnson



Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us
410-887-3391

February 24, 1999

Mr. Daniel Dietrich Ms. Vienna Heerd 4333 Chapel Road Perry Hall, Maryland 21128

Dear Mr. Dietrich and Ms. Heerd:

RE: Petition for Variance, Case No. 99-183-A, 11444 Glen Arm Road, 11th Election District:

Please be advised that an appeal of the above referenced case was filed in this office on February 18, 1999 by J. Caroll Holzer, Esquire on behalf of Dudley and Betty Brownell and Ginny Sarant. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

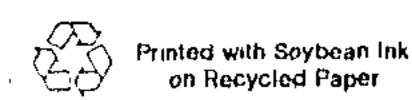
If you have any questions concerning this matter, please do not hesitate to call the Board of Appeals at 410-887-3180.

Sincerely,

Arnold Jablon
Director

AJ:cjs

c: People's Counsel Mr. Richard E. Matz, Colbert Matz Rosenfelt, Inc. 2835 Smith Avenue, Suite G, Baltimore, MD. 21209 Mr. Stanley Pollack, 4604 Copperwood Lane, Glen Arm, MD 21057 Deborah Dopkin, Esquire 409 Washington Avenue, Suite 920, Towson, Maryland 21204-4903



### APPEAL

Petition for Variance
NE/S Glen Arm Road, 2250' N of Manor Road
(11444 Glen Arm Road)
11th Election District - 6th Councilmanic District
Daniel Dietrich and Vienna Heerd - Owners

Case Number: 99-183-A

Petition for Variance

Description of Property

Certificate of Posting -

Certification of Publication

Entry of Appearance of People's Counsel

**Zoning Advisory Committee Comments** 

Petitioner(s) Sign-In Sheet

Protestant(s) Sign-In Sheet

Petitioners' Exhibits: 1.

1. Plan to accompany variance hearing

Nine photographs not marked as exhibits

Letter from Elizabeth K. Brownell and Dudley Brownell to Arnold Jablon, Director of PDM, dated December 9, 1998, requesting postponement of hearing

Letter from Arnold Jablon, Director of PDM, to Mr. & Mrs. Dudley Brownell, dated December 14, 1999, advising postponement of hearing

Letter from Arnold Jablon, Director of PDM, to Mr. & Mrs. Dudley Brownell, dated December 15, 1998, advising new hearing date

Letter in opposition from Marvin L. Johnson, Jr.

Letter in favor from Mr. & Mrs. Gary Heiderman

Zoning Commissioner's Order dated January 21, 1999 (Granted)

Notice of Appeal received on February 18, 1999 from J. Caroll Holzer, Esquire on behalf of Dudley and Betty Brownell and Ginny Sarant,

C: Mr. Daniel Dietrich & Ms. Vienna Heerd, 4333 Chapel Road, Perry Hall, MD. 21128
Mr. Richard E. Matz, Colbert Matz Rosenfelt, Inc. 2835 Smith Avenue, Suite G, Baltimore, MD. 21209
Deborah Dopkin, Esquire Towson, 409 Washington Avenue, Suite 920, Towson, MD 21204-4903
Mr. Stanley Pollack 4604 Copperwood Lane, Glen Arm, MD. 21057
People's Counsel of Baltimore County, MS #2010
Lawrence Schmidt, Zoning Commissioner
Arnold Jablon, Director of PDM Case No. 99-183-A

VAR -To permit lot line setbacks of 20' and 24' ilo required 50' each; to allow existing shed to remain in front yard ilo required rear yard location. 1/21/99 -Z.C.'s Order in which Petition for Variance was GRANTED.

6/09/99 -Notice of Assignment for hearing scheduled for Wednesday, August 4, 1999 at 10:00 a.m. sent to following: J. Carroll Holzer, Esquire Summerfield Farms Assn. c/o J. Carroll Holzer, Esq. Dudley and Betty Brownell Ginny Sarant Stanley Pollack /Protestant Deborah Dopkin, Esquire Daniel Dietrich and Vienna Heerd People's Counsel for Baltimore County Pat Keller, Director /Planning Lawrence E. Schmidt /Z.C. Arnold Jablon, Director /PDM Virginia W. Barnhart, County Attorney

- 6/16/99 -Letter from J. Carroll Holzer striking his appearance; will not be representing the Protestants in this matter.
- 6/25/99 -Entry of Appearance filed by M Tanczyn- Counsel for Petitioners.
- 8/02/99 -Motion to Quash and for Protective Order filed by Deborah Dopkin, counsel for Petitioners (in response to Subpoena filed for V. Heerd and Subpoena filed for D. Dietrich by M. Tanczyn on 7/30/99). Hearing scheduled for 8/04/99.
- 8/04/99 -Board and parties convened for hearing. On the record, received argument as to Motion filed by Ms. Dopkin. Prior to opening statements as to the merits of the case, the Board postponed this matter, having ruled the Motion to Quash (on the record), ruling, among other things, that Petitioner Heerd be present, in addition to Petitioner Dietrich; and further directing both counsel to produce specific documents as indicated on the record this date and prior to the next scheduled hearing date.

-Upon confirmation of Counsel availability for the reassigned hearing date, a notice of assignment will be sent to parties, with this matter reassigned for hearing on 11/03/99.

- 8/05/99 -Notice of Assignment sent to parties; reassigned to Wednesday, November 3, 1999 at 10:00 a.m.
- 11/03/99 -Hearing day #1 as to merits of case concluded; continued to day #2 scheduled for 2/29/2000. Notice to be sent. (Stahl, Wescott, Worrall)
- 11/12/99 -Notice of Assignment /Day #2 sent to parties; assigned for Tuesday, February 29, 2000 at 10:00 a.m. (copy to L.S.W.)
- 2/29/00 -Case concluded; memos due from counsel (D. Dopkin and M. Tanczyn) on Monday, 4/03/00; deliberation scheduled for 4/13/00; notice to be sent.

Case No. 99-183-A

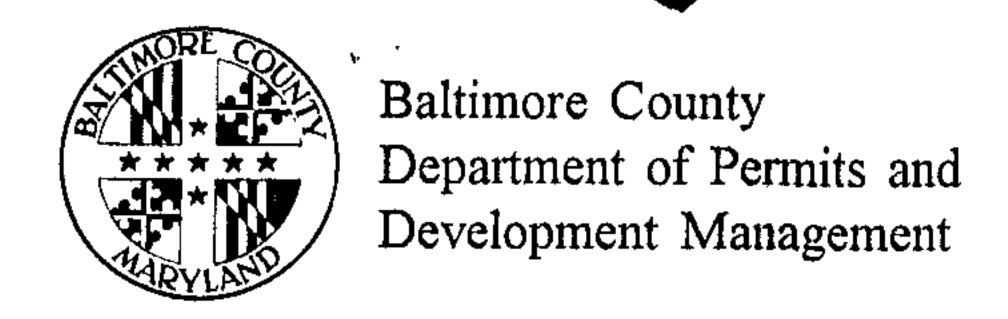
VAR -To permit lot line setbacks of 20' and 24' ilo required 50' each; to allow existing shed to remain in front yard ilo required rear yard location.

Page 2

- 3/02/00 -Notice of Deliberation sent to parties; scheduled for Thursday, April 13, 2000 at 9:15 a.m. Copy to L.S.W.
- 4/04/00 -Memos filed 4/03/00 by Counsel as requested. Copy to L. Wescott on 4/05/00; to M. Worall on 4/06/00; and to L Stahl 4/04/00.
- 4/13/00 -Deliberation concluded; Unanimous decision that variance is GRANTED; meets all three prongs of regulations as delineated in Cromwell v. Ward and 307.1 of the BCZR. Written Opinion and Order to be issued; appellate period to run from date of written Order and not today's date. (Stahl, Wescott, Worrall).

October 27, 1998 Petition for Variance filed by Daniel Dietrich and Vienna Heerd; to permit lot line setbacks of 20' and 24' ilo required 50 feet each, and to allow an existing shed to remain in the front yard ilo required rear yard location. November 25 Entry of Appearance filed by People's Counsel for Baltimore County. January 12, 1999 Hearing held on Petitions by the Zoning Commissioner. (Deborah Dopkin, Esquire, appeared as counsel for Dietrich & Heerd) Order issued by the ZC;; Petition for Variance was GRANTED w/Rs. January 21 February 18 Notice of Appeal filed by J. Carroll Holzer, Esquire, on behalf of Dudley and Betty Brownell and Ginny Sarant, individually, and Summerfield Farms Assn., Inc., Appellants. June 16 Appearance of J. Carroll Holzer, Esquire is struck as of this date. Entry of Appearance filed by Michael P. Tanczyn, Esquire, as counsel for Summerfield Farms June 25 Assn., Inc., et al. August 2 Motion to Quash and For Protective Order filed by Deborah C. Dopkin, Esquire, on behalf of Daniel Dietrich & Vienna Heerd. August 4 The Board convened for hearing; on the record received argument as to Motion filed by Ms. Dopkin. Prior to opening statements as to the merits of the case, the Board postponed this matter, having ruled the Motion to Quash (on the record), ruling, among other things, that Petitioner Heerd be present, in addition to Petitioner Dietrich; and further directing both counsel to produce specific documents as indicated on the record this date and prior to the next scheduled hearing date. November 3, 1999 Hearing Day #1 as to merits held by the Board of Appeals. Hearing Day #2 concluded. February 29, 2000 April 3, 2000 Appellee's Memorandum filed by Deborah C. Dopkin, Esquire on behalf of Daniel Dietrich and Vienna Heerd. April 4 Protestant's Memorandum filed by Michael P. Tanczyn, Esquire, on behalf of Summerfield Farms Association, Inc. April 13 Public Deliberation conducted by the Board of Appeals. June 23 Opinion and Order issued by the Board of Appeals; Petition for Variance is GRANTED. Petition for Judicial Review filed in the Circuit Court by Michael P. Tanczyn, Esquire, on behalf of Summerfield Farms Assoc., Inc., Mr. & Mrs. Dudley C. Brownell, Virginia Sarant, July 21 and Marvin Johnson, (copy rec'd by CBA 7/27/00). July 28 Certificate of Notice sent to interested parties. September 22, 2000 / Transcript and Record of Proceedings filed in the CCt.

March 22, 2001 (F) Opinion and Order issued by the CCt (Judge Turnbull); decision of the CBA is AFFIRMED.



Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us

December 14, 1998

Mr. & Mrs. Dudley Brownell 11520 Glen Arm Road Glen Arm, MD 21057

Dear Mr. & Mrs. Brownell:

RE: Case Number 99-183-A, 1444 Glen Arm Road

The above matter, previously assigned to be heard on Tuesday, December 15, 1998 has been postponed at your request.

Please be advised that, as the individual requesting and receiving the postponement, the responsibility and costs associated with the appropriate posting of the property now lies with you. The petitioner or his/her agent may not personally post or change a zoning sign. One of the currently approved vendors/posters must be contacted to do so.

If the property has been posted with notice of the hearing date, as quickly as possible a notice of postponement should be affixed to the sign(s). Then, upon notification of the new hearing date, such sign(s) must be changed to give notice of the new hearing date.

Very truly yours,

Arnold Jablon

**Director** 

AJ:scj

c: Daniel Dietrich & Vienna Heerd Colbert, Matz, Rosenfelt, Inc. Marvin Johnson, Jr.



# Baltimore County Department of Permits and Development Management

Development Processing County Office Building 111 West Chesapeake Avenue Towson, Maryland 21204 pdmlandacq@co.ba.md.us

December 15, 1998

Mr. & Mrs. Dudley Brownell 11520 Glen Arm Road Glen Arm, MD 21057

Dear Mr. & Mrs. Brownell:

RE: Case Number 99-183-A, 11444 Glen Arm Road

The above matter, previously assigned to be heard on December 15, 1998 has been rescheduled for Tuesday, January 12, 1999 at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue.

As the person requesting the postponement, you are now responsible for affixing the new hearing date and time to the hearing notice sign posted on the property as soon as possible.

If you need further information or have any questions, please do not hesitate to contact Sophia Jennings at 410-887-3391.

Very truly yours,

Arnold Jablon

Director

AJ:scj

c: Daniel Dietrich & Vienna Heerd Colbert Matz Rosenfelt, Inc. Marvin Johnson, Jr.

# BOARD OF APPEALS OF BALTIMORE COUNTY MINUTES OF DELIBERATION

IN THE MATTER OF:

Daniel Dietrich and Vienna Heerd -Owners

Case No. 99-183-A

DATE

Thursday, April 13, 2000

**BOARD /PANEL** 

Lawrence M. Stahl

(LMS)

Lawrence S. Wescott

(LSW)

Margaret Worrall

(MW)

SECRETARY

Kathleen C Bianco / Administrator

PURPOSE: To deliberate Case No. 99-183-A /Petition for Variance to permit lot line setbacks of 20 feet and 24 feet in lieu of required 50 feet each. Appeal of Zoning Commissioner's Order in which requested relief was granted (request to allow existing shed to remain in front yard in lieu of required rear yard was granted by the Zoning Commissioner; was not brought to the hearing before the Board by Appellant as an issue).

#### Panel members discussed:

Preliminary discussion delineating issue(s) before the Board; that shed need not be addressed as there was no testimony presented regarding this aspect of Zoning Commissioner's Order. Only issue brought to the Board on appeal appears to be requested variance for setbacks for the single-family dwelling.

Stated issue of variance; Cromwell v. Ward; 307.1 of the BCZR.

Additional issue – is it new construction or reconstruction of prior structure? Primary concern – it is larger than original building envelope; is this because of the garage; does the garage make it bigger?

Discussed location of septic system and wells; DEPRM position as to location of same and therefore limitations on where house can be located on the property; DEPRM did not consider this to be new construction.

Original structure did not meet setback requirements; discussed issue of expansion; briefs filed by counsel as to size of new dwelling; use of existing foundation with enlargement and addition of garage.

# Discussed 307.1 and Cromwell v. Ward as to unique:

- Shape, particularly so by existing wells and septic; slopes; location of original structure with foundation. (Board reviewed regulations for distance from well head to septic system; well to house; septic to house.)
- DEPRM's position that it is reconstruction; cannot pump up; put house on the same spot.
- Environmental safeguards due to well /septic location

• Limits on building locations due to above; while slopes exist on other properties, existing wells and septic have impact.

Agreed that it qualifies as to uniqueness.

Discussed 307.1 and Cromwell as to practical difficulty /unreasonable hardship:

- Same footprint; no increase. Petitioner limited as to building location; discussed condition of original house; need to replace it; limits on where it can be placed.
- Environmental issues safeguard of environment is important factor
- Would be unreasonable for Petitioner to be denied right to rebuild house; circumstances of original
  dwelling necessitated new building (reconstruction). House has always been there; denial of variance
  request would not result in compliance with regulations; original house did not meet current setback
  requirements.

Agreed that unreasonable hardship prong was met.

Discussed 307.1 and Cromwell as to spirit and intent:

- No harm to anyone with either size; new dwelling in same location as original structure; no negative impact on anyone if variance is granted
- 270 feet from nearest residence; 380 feet from home of nearest Appellant
- Replacing deteriorating and infested original structure with attractive new dwelling in the same location, although somewhat larger with garage added; utilizing original foundation. Meets the spirit and intent of the regulations; no detriment to adjacent properties nor surrounding community if variance relief as requested is granted.

Agreed that spirit and intent is met.

Upon determination that all three prongs of variance relief have been met (uniqueness; unreasonable hardship; and spirit and intent of regulations), Board reached unanimous decision to grant requested variance from 50-foot setback requirement as requested by Petitioners. Written Opinion and Order to be issued by the Board; appellate period to run from date of written Order and not today's date,

NOTE: These minutes, which will become part of the case file, are intended only to indicate for the record that a public deliberation took place this date regarding this zoning case. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order to be issued by this Board.

Respectfully submitted

Kathleen C. Bianco, Administrator

County Board of Appeals

#### CIRCUIT COURT FOR BALTIMORE COUNTY Suzanne Mensh

Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue

P.O. Box 6754

Towson, MD 21285-6754

(410)-887-2601, TTY for Deaf: (800)-735-2258 Maryland Toll Free Number (800) 938-5802

02/28/01

Case Number: 03-C-00-007365 AE

Date Filed: 07/25/2000 Status: Closed/Inactive

Judge Assigned: To Be Assigned,

In The Matter Of: Daniel Dietrich And Vienna Heerd

#### CASE HISTORY

#### OTHER REFERENCE NUMBERS

Description Number

Administrative Agency 99-183-A
Case Folder ID C00007365V01

## INVOLVED PARTIES

Type Num Name(Last, First, Mid, Title)	Addr Str/End	Disposition Addr Update	Entered
RES 001 Dietrich, Daniel Mail: 114444 Glen Arm Road Glen Arm, MD 21057	07/25/00	BT DO 02/22/01	07/25/00
Attorney: 0012358 Dopkin, Deborah C Deborah C Dopkin P A 409 Washington Avenue Suite 920 Towson, MD 21204 (410)494-8080		08/10/00	
RES 002 Heerd, Vienna		BT DO 02/22/01	07/25/00

07/25/00

Attorney: 0012358 Dopkin, Deborah C

Glen Arm, MD 21057

Mail: 114444 Glen Arm Road

08/10/00

03-C-00-007365 Date: 02/28/01 Time: 09:20 Page: 2

Deborah C Dopkin P A 409 Washington Avenue

Suite 920

Towson, MD 21204

(410)494-8080

Disposition All Conference of the Conference of

Type Num Name(Last,First,Mid,Title) Addr Str/End Addr Update Entered

PET 001 Summerfield Farms Assoc Inc BT D0 02/22/01 07/25/00

Mail: 11202 Glen Arm Road 07/25/00

Glen Arm, MD 21057

Attorney: 0012544 Tanczyn, Michael P 07/25/00

Michael P. Tanczyn, P.A. 606 Baltimore Avenue

Suite 106

Baltimore, MD 21204

(410)296-8823

PET 002 Brownell, Dudley C BT D0 02/22/01 07/25/00

Capacity : Mr

Mail: 11520 Glen Arm Road 07/25/00

Glen Arm, MD 21057

Attorney: 0012544 Tanczyn, Michael P 07/25/00

Michael P. Tanczyn, P.A. 606 Baltimore Avenue

Suite 106

Baltimore, MD 21204

(410)296-8823

PET 003 Brownell, Dudley C BT D0 02/22/01 07/25/00

Capacity : Mrs

Mail: 11520 Glen Arm Road 07/25/00

Glen Arm, MD 21057

Attorney: 0012544 Tanczyn, Michael P 07/25/00

Michael P. Tanczyn, P.A. 606 Baltimore Avenue

Suite 106

Baltimore, MD 21204

(410)296-8823

PET 004 Sarant, Virginia BT D0 02/22/01 07/25/00

Mail: 11440 Glen Arm Road 07/25/00

Glen Arm, MD 21057

Attorney: 0012544 Tanczyn, Michael P 07/25/00

Michael P. Tanczyn, P.A.

606 Baltimore Avenue

Suite 106

Baltimore, MD 21204

03-C-00-007365 Date: 02/28/01 Time: 09:20 Page:

(410)296-8823

Disposition

Type Num Name(Last, First, Mid, Title) Addr Str/End Addr Update Entered

PET 005 Johnson, Marvin BT DO 02/22/01 07/25/00

Mail: 11510 Glen Arm 07/25/00

Glen Arm, MD 21057

Attorney: 0012544 Tanczyn, Michael P 07/25/00

Michael P. Tanczyn, P.A. 606 Baltimore Avenue

Suite 106

Baltimore, MD 21204

(410)296-8823

TP 001 Board Of Appeals For Baltimore County The BT 00 02/22/01 07/25/00

Mail: Old Courthouse Room 49 07/25/00

400 Washington Avenue Towson, MD 21204

#### CALENDAR EVENTS

Date Time Dur Cer Evnt Lvl Atty Jdg Day Of Rslt By ResultDt Jdg T Notice Rec User ID

01/22/01 09:30A yes CIVI S JGT 01 /01 CON C 01/22/01 JGT P Y KLS Stenographer(s): Barbara Ely

#### JUDGE HISTORY

JUDGE ASSIGNED Type Assign Date Removal RSN

TBA To Be Assigned, J 07/25/00

#### DOCUMENT TRACKING

Num/Seq Description Filed Entered Party Jdg Ruling Closed User ID

02/22/01 TT JH

0001000 Petition for Judicial Review 07/21/00 07/25/00 PET001 TBA

Filed by PET001-Summerfield Farms Assoc Inc., PET002-Brownell, Dudley C. PET003-Brownell, Dudley C. PET004-Sarant, Virginia,

DETAGE Johnson Manuin

PET005-Johnson, Marvin

0001001 Response to Petition for Judicial Review 08/09/00 08/10/00 RES001 TBA 02/22/01 AR JH

Filed by RES001-Dietrich, Daniel, RES002-Heerd, Vienna

0002000 Motion to Dismiss the Petition for 08/09/00 08/10/00 RES001 JFF Subcuria/Reserved 09/06/00 AR LG

Page:

03-C-00-007365 Date:

02/28/01 Time: 09:20

Judicial Review Filed by RES001-Dietrich, Daniel, RES002-Heerd, Vienna

Num/Seq	Description	Filed	Entered	Party	Jdg Ruling	Closed	Use	r ID
0002001	Answer to Motion to dismiss Filed by PET005-Johnson, Marvin, PET004- PET003-Brownell, Dudley C, PET002-Browne PET001-Summerfield Farms Assoc Inc.		irginia,	PET005	TBA	02/22/01	AR	JH
0003000	Transcript of Record from Adm Agency *	09/22/00	09/26/00	ITP001	TBA	02/22/01	DFF	JН
0004000	Notice of Transcript of Record Sent	09/26/00	09/26/00	ITP001	TBA	09/26/00	DFF	DFF
0005000	Notice of Transcript of Record Sent	09/26/00	09/26/00	PET001	TBA	09/26/00	DFF	DFF
0006000	Notice of Transcript of Record Sent	09/26/00	09/26/00	RESO01	TBA	09/26/00	DFF	DFF
0007000	Scheduling Order	10/23/00	10/23/00	000	TBA	10/23/00	KLS	KLS
0008000	Memorandum Filed by PET001-Summerfield Farms Assoc Dudley C. PET003-Brownell, Dudley C. PET PET005-Johnson, Marvin	Inc, , PE		nell,	TBA	11/02/00	DFF	DFF
0008001	Answering memorandum Filed by RES001-Dietrich, Daniel, RES002		<b>1</b> 2/01/00 i enna	RES001	TBA	02/22/01	РΗ	JH
0009000	Open Court Proceeding January 22, 2001. Hon. John G. Turnbull Opinion and order to be filed.		01/22/01 ring had.	000	JGT	02/22/01	KP	JH
0010000	Order affirming decision	02/22/01	02/22/01	000	JGT	02/22/01	JН	JH
0011000	Invoice 10492 sent to Michael Tanczyn	02/27/01	02/27/01	000	TBA		CKC	CKC
0012000	Docket entries sent to Baltimore County Board of Appeals	02/28/01	02/28/01	000	TBA		CAM	CAM

#### TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num S	Seq
1YRT	One Year Tickle (Jud	CLOSED	07/21/01	365	no	no	DAAA	D	000 (	000
SLMR	Set List For Motions	CANCEL	08/31/00	22	no	no	DANS	D	000 (	000
1ANS	1st Answer Tickle	CLOSED	08/09/00	0	no	no	DANS	D	001 (	001

03-C-00-007365 Date: 02/28/01 Time: 09:20 Page: 5

Code Tickle Name Status Expires #Days AutoExpire GoAhead From Type Num Seq
SLTR Set List For Trial DONE 08/09/00 0 yes yes 1ANS T 001 001

#### DIFFERENTIATED CASE MANAGEMENT

#### TRACKS AND MILESTONES

Track: R1 Description: EXPEDITED APPEAL TRACK Custom: Yes

Assign Date: 10/23/00 Order Date: 10/23/00

Start Date: 10/23/00 Remove Date:

Motions to Dismiss under MD. Rule 2-322( 11/07/00 02/22/01 CLOSED All Motions (excluding Motions in Limine 12/13/00 02/22/01 CLOSED TRIAL DATE is 01/22/01 01/21/01 01/22/01 REACHED

# CIRCUIT COURT FOR BALTIMORE COUNTY

Suzanne Mensh

Clerk of the Circuit Court County Courts Building

401 Bosley Avenue

P.O. Box 6754

Towson, MD 21285-6754

(410)-887-2601, TTY for Deaf: (800)-735-2258 Maryland Toll Free Number (800) 938-5802

NOTICE OF RECORD

Case Number: 03-C-00-007365

Administrative Agency: 99-183-A

CIVIL

In The Matter Of: Daniel Dietrich And Vienna Heerd

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 22nd day of September, 2000.

Suzanne Mensh

Clerk of the Circuit Court, per

Date issued: 09/26/00

TO: BOARD OF APPEALS FOR BALTIMORE COUNTY THE

Old Courthouse Room 49 400 Washington Avenue

Towson, MD 21204

CIRCUIT COURT FOR BALTIMORE COUNTY

Suzanne Mensh

Clerk of the Circuit Court

County Courts Building

401 Bosley Avenue

P.O. Box 6754

Towson, MD 21285-6754

(410)-887-2601, TTY for Deaf: (800)-735-2258

Maryland Toll Free Number (800) 938-5802

Case Number: 03-C-00-007365

TO: BOARD OF APPEALS FOR BALTIMORE COUNTY THE Old Courthouse Room 49 400 Washington Avenue Towson, MD 21204

# THE CIRCUIT COURT FOR BALTIMORE COUNTY

#### THIRD JUDICIAL CIRCUIT OF MARYLAND

JOHN F. FADER II JUDGE

COUNTY COURTS BUILDING TOWSON, MARYLAND 21204 410-887-2916

September 1, 2000

# MEMORANDUM TO THE FILE:

#### RULING

Re: Summerfield Farms Assoc, Inc.

Judicial Review Dietrich and Heerd

Case No: 00-7365

The Motion to Dismiss filed by Dietrich and Heerd is held until the time of the hearing in this case. This court is not able to make a determination on the issue of standing based on the paper recitations in the motion and answer.

John F. Fader II, Judge

THE CLERK SHALL SEND COPIES OF THIS RULING TO ALL PARTIES IN THIS CASE

True Copy Test
SUZANNE MENSH, Clerk
Per Julia M. Galantere.
Assistant Clerk

# NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULING ORDER

#### CIRCUIT COURT FOR BALTIMORE COUNTY CIVIL ASSIGNMENT OFFICE COUNTY COURTS BUILDING 401 BOSLEY AVENUE P.O. BOX 6754 TOWSON, MARYLAND 21285-6754

Board Of Appeals For Baltimore County The Assignment Date: 10/23/00 Old Courthouse Room 49 400 Washington Avenue Towson MD 21204

Case Title: In The Matter Of: Daniel Dietrich And Vienna Heerd

Case No: 03-C-00-007365 AE

The above case has been assigned to the EXPEDITED APPEAL TRACK. Should you have any questions concerning your track assignment, please contact: Richard P. Abbott at (410) 887-3233.

You must notify this Coordinator within 15 days of the receipt of this Order as to any conflicts with the following dates:

#### SCHEDULING ORDER

1.	Motions to Dismiss under MD. Rule 2-322(b) are due by	11/07/00
2.	All Motions (excluding Motions in Limine) are due by	12/13/00
3.	TRIAL DATE is	01/22/01
	Civil Non-Jury Trial: Start Time: 09:30AM: To Be Assigned: 1 HOUR ADMINISTRATIVE APPEAL	

#### Honorable John Grason Turnbull II Judge

Postponement Policy: No postponements of dates under this order will be approved except for undue hardship or emergency situations. All requests for postponement must be submitted in writing with a copy to all counsel/parties involved. All requests for postponement must be approved by the Judge.

<u>Settlement Conference (Room 507):</u> All counsel and their clients <u>MUST</u> attend the settlement conference <u>in person</u>. All insurance representatives <u>MUST</u> attend this conference <u>in person</u> as well. Failure to attend may result in sanctions by the Court. Settlement hearing dates may be continued by Settlement Judges as long as trial dates are not affected. (Call [410] 887-2920 for more information.)

Special Assistance Needs: If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Court Administrator's Office at (410) 887-2687 or use the Court's TDD line, (410) 887-3018, or the Voice/TDD M.D. Relay Service, (800) 735-2258.

<u>Court Costs</u>: All court costs <u>MUST</u> be paid on the date of the settlement conference or trial.

cc: Deborah C Dopkin Esq cc: Michael P Tanczyn Esq

Issue Date 10/23/00

00 OCL S2 bil S: 38

COURTY BOARD OF AFPLACE. RECEIVED



LAW OFFICES

J. CARROLL HOLZER, PA

J. Howard Holzer 1907-1989

THOMAS J. LEE OF COUNSEL THE 508 BUILDING

508 FAIRMOUNT AVE. TOWSON, MD 21286 (410) 825-6961 FAX: (410) 825-4923

E-MAIL: JCHOLZER@ BCPL.NLT

June 15, 1999 #7131

Kathy Bianco
Baltimore County Board of Appeals
Old Courthouse, Room 49
400 Washington Avenue
Towson, MD 21204

Re: Daniel Dietrich and Vienna Heerd Owners - 11444 Glen Arm Road

Dear Ms. Bianco:

Please strike my appearance in the above captioned matter currently scheduled for August 4, 1999. I will not be representing the Protestants in this matter. Thank you very much for your kind attention.

J. Carroll Holzer

Very/truly yours,

JCH: rls
cc: Debra Dopkin

Elizabeth Brownell

a:/letters2/bianco1.ltr

Elizabeth K. Brownell 11520 Glen Arm Road Glen Arm, Maryland 21057

December

Mr. Arnold Jablon Director of PDM 111 W Chesapeake Avenue Towson, MD 21204

Dear Mr. Jablon,

As an adjoining property owner we are requesting a postponement of the hearing of case 99-183-A Petition for Variance for the property located at 11444 Glen Arm Rd. scheduled for December 15th at 11 AM.

Mrs. Brownell has been very ill for ten days and lost her voice. She has not been able to work with the community President, Mr. Pollack, and with other residents who have expressed interest in the variance.

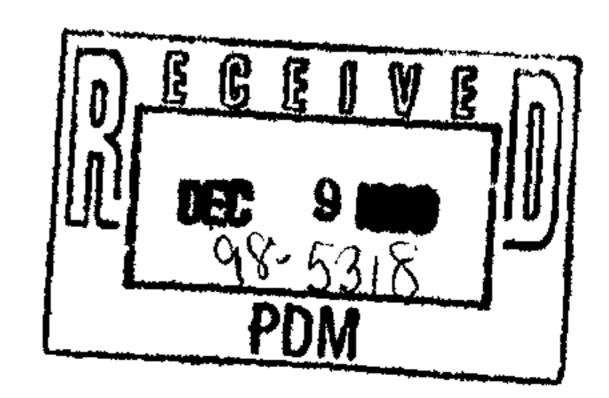
Please inform us at your earliest convenience as to your decision. We can be reached at 410-661-0785. Thank you for your consideration.

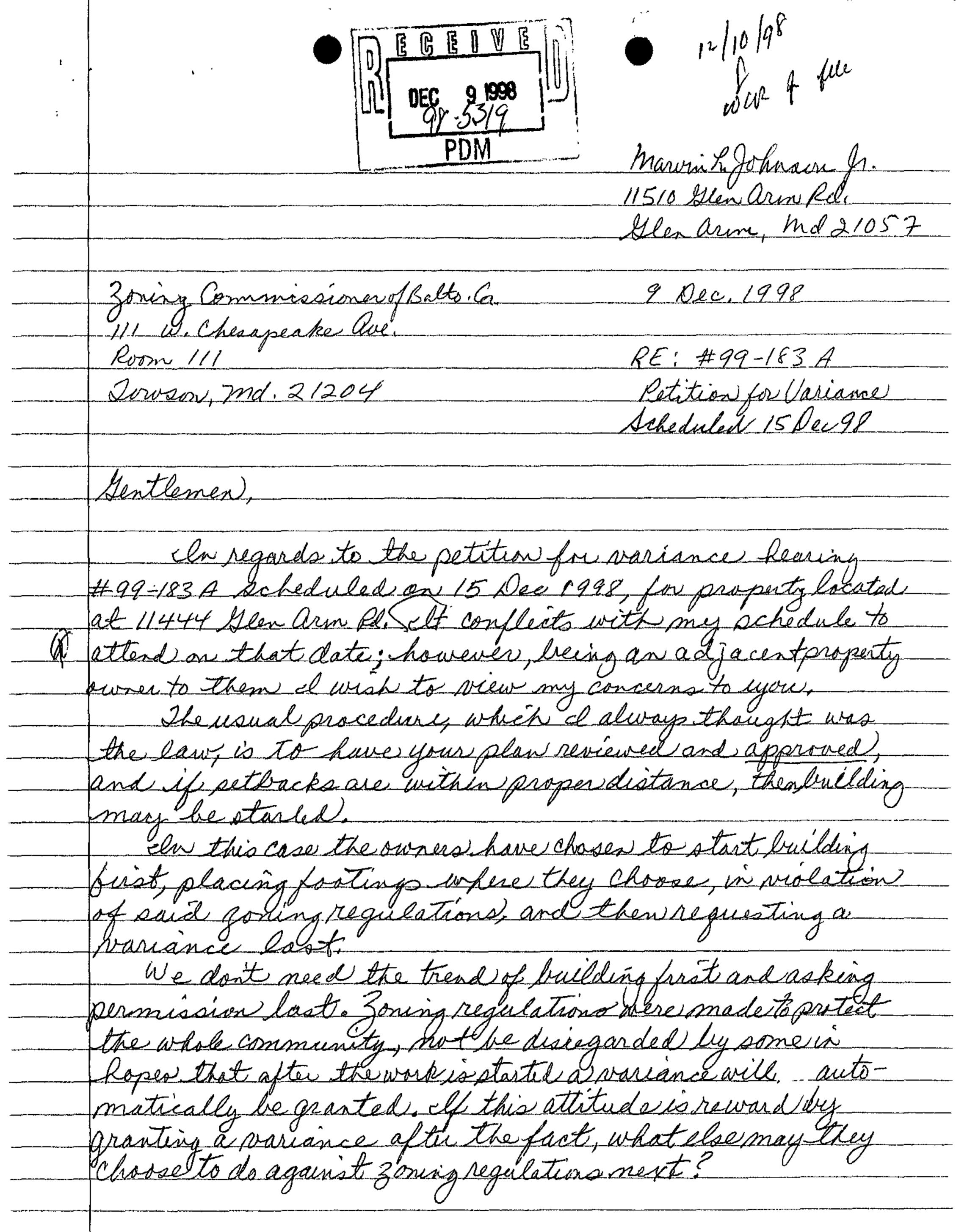
Sincerely, Bound Brownell

Elizabeth Brownell

Dudley Brownell

Dudley Brownell





Rease consider my concerns in this matter so that we may keep an community a beautiful place to live. Sincerely. Marvinh. Johnson fr.

How 5'120 1/7/09 um ullantul aran IIM le. How. life. MANE Xamilaro Engle the movement withers Denotion KO UND, wed there. for the proporty was Jamanas murity. 11444 Lamatama Insurvenin Lanmond 2 Mohay MOS. 45 Weaks wisting foundation Russ n tan nouteous Moone tous sindenesta cost

CHEL WOOW ummor toeld to Allanación de mista rocche And mour our out for as we're concorned, we have lived fore Dean approached as others wellcomed to the community. That fine because we have mp use for their sortions or for what they think they stand for The people in the association have too much time on their home and some individuals, no doubt, probably conditioned wisher wisher and supply the ambienting promoted a bond letiveer and for the meighbors in a positive way that would be wonderful But when they interfere has a menatione reason or to went a personal assessed that whom on about the batternen

D	EPARTMENT OF PERMITS & DEVELOPMENT MANAGEMENT
	TOWSON, MARYLAND 2120 MANAGEMENT OEA; COP
PERMIT #: 135/32/	Carry COY
RECEIPT #: A377967	PROPERTY ADDRESS 11444 GEN ARM ROL HISTORIC DISTRICT/E SUITE/SPACE/FLOOR 1444 GEN ARM ROL YES NO
CONTROL #: NR XREF #:	SUBDIV:
FEE: / //)' 75	OWNER'S INFORMATION (LAST, FIRST)  NAME: DALLIEL DISTRICT/PRECINCT
PAID: PAID BY: PN	ADDR: 11444 GLEN ben Ro
INSPECTOR:	DOES THIS RIT
I HAVE CAREFULLY READ THIS APPLICATION	NAME: "Description" HAVE SPRINKLE
AND KNOW THE SAME IS CORRECT AND TRUE, AND THAT IN DOING THIS WORK ALL PROVI-	COMPANY:
SIONS OF THE BALTIMORE COUNTY CYCLE AND	STREET 11444 GLEN Dem Ro
APPROPRIATE STATE REGULATIONS WILL BE COMPLIED WITH WHETHER HEREIN SPECIFIED	PHONE #: 410-529-9677 MHIC LICENSE #:
OR NOT AND WILL REQUEST ALL REQUIRED	APPLICANT
INSPECTIONS. BUILDING 1 or 2 FAM.	SIGNATURE: DRC#
CODE CODE	PLANS: CONSTPLOTPLATDATAELPL
BOCA CODE	CONTR:
TYPE OF IMPROVEMENT	ENGNR:
NEW BLDG CONST  ADDITION	SELLR: EVANS ESTATE CHARLES CALVIN + ELIZABETH
3. ALTERATION	
4. REPAIR	DESCRIBE PROPOSED WORK: Case # 99-183-A, granted 1-21-44
6. MOVING	Dail Loren City
7. OTHER	Reconstanct SFD on Existing Soundation
	and addition of front porch and GARAGE.
TYPE OF USE	House declared un satte due do lerrié enfertables
RESIDENTIAL	non-residential Waise Com Derenminen & Inspect
01. ONE FAMILY	TIVE COUST PIANS KAU
O2. TWO FAMILY	ANUGEMENT. RECREDITION OF ACT ACCOMMENT.
O3. THREE AND FOUR FAMILY O4. FIVE OR MORE FAMILY	10. FENCE (LENGTH HETCHE BUILDING
(ENTER NO UNITS) SWIMMING POOL	12. PARKING GARAGE BUILDING 2 BED ROUMAS
06. GARAGE	13. SERVICE STATION, PROMID CARROW TODE & LOCAL COLL
O7. OTHER	15. OFFICE, BANK, PROFESSIONAL HORSING HOME -C XXX 12
TYPE FOUNDATION BASEMENT-	17. SCHOOL, COLLEGE, OTHER EDUCATIONAL (CO)
SLAB 1. FULL	19. STORE MEDCANDATE
2. PARTI 3. CONCRETE 3. NONE	AL SPECIFY TYPE RESTAURANT SYLVEN SPECIFY TYPE 20. SWIMMING POOL
	SPECTED TOOK
•	TRANSIENT HOTEL, MOTEL, AND UNITED
YPE OF CONSTRUCTION TODAY	Z3. OTHER
111	E OF HEATING FUEL TYPE OF SEWAGE DISPOSAL
MASONRY 1 2 -	GAS 3. ELECTRICITY 1. PUBLIC SEWER EXISTS PROPOSI
STRUCTURE STEEL	PRIVATE SYSTEM
PAMBAT ATO. 4	PRIVY EXISTS PROPOSI
STIMATED COST: X / A.	PUBLIC SYSTEM EXISTS PROPOSED
E MATERIALS AND LABOR -	T. MOLORED
WNERSHIP EXISTING USE:	SED RECONSTRUCTED PER TERMITE DAMAGES
1. PRIVATELY OWNED 2.	PUBLICLY OWNED 3. SALE 4. RENTAL
ESIDENTIAL CATEGORY: 1. DE	TACHED 2. SEMI-DEM 2. COLOUR ALL
FAMILY BEDROOMS 2 #2BED?	#3BED: SEMI-DET. 3. GROUP 4. TOWNHSE 5. MIDRISE 6. HIRISE
ARBAGE DISPOSAL T. Y 2. N. OWDER ROOMS 6	BATHROOMS / CTAGG 4/
	KITCHENS LIBER FOLIO
BUILDING SIZE LOT SIZE AND	ARPROVAL SIGNATURES DATER
FLOOR 7804 SIZE AND SIZE AND SIZE 2./	BLD INSP://C
IDTH 6/10" FRONT STREET	DLU FIMIL ILLEVANO TO A AND A TOP TO THE PROPERTY OF THE PROPE
EPTH 39 10 SIDE STREET	SEDI CTT. 4/22 F-10/01
FRONT SETBK	170 ZONING///: (V/2/10/15/06 18/04 /7/10/15/94)
OT #'S SIDE STR SE	PBK ENVRMNT4/G AAAA
ORNER LOT REAR SETBK	73 = 18/25/10/11 0 / Ja F1/C :8/25/
Y ZONING	RCS PERMITS:
MAKE CHECKS PAYABLE TO	BALTIMORE COUNTY MARYLAND NO PERMIT FEES REFUNDED
123 - Minor S.	NO ROCUED Ut have so
	Merss Minde Sub- DDD

