

8/8/01

BALTIMORE COUNTY, MARYLAND

Petitioners

GEORGE HAYNES and CHRISTINE
HAYNES

1029 Cold Spring Road
Bowleys Quarters, MD 21220

Petitioners

FOR JUDICIAL REVIEW OF THE DECISION
OF THE COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY

IN THE CASE OF:

GEORGE P. HAYNES, ET UX
PETITIONERS (99-106-SPH) AND W.
HOWARD AYRES, ET UX PETITIONERS
(99-235-SPH)

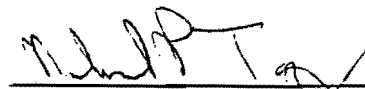
FOR SPECIAL HEARING ON PROPERTY
LOCATED ON THE S/S COLD SPRING
ROAD, 40' W OF C/L CHESTNUT ROAD
(1027 COLD SPRING ROAD) 15TH
ELECTION DISTRICT 5TH
COUNCILMANIC DISTRICT

* IN THE
*
* CIRCUIT COURT
*
* FOR
*
* BALTIMORE COUNTY
*
* Appeal from the
* County Board of Appeals of
* Baltimore County
*
* Case No. 03-C-00-001561

* * * * *

APPEAL

PLEASE NOTE an Appeal from the decision of the Circuit Court for Baltimore County
dated July 10, 2001 in this case to the Court of Special Appeals of Maryland.



MICHAEL P. TANCZYN, Esquire
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204 - (410) 296-8823
Attorney for the Petitioners/Appellants
George & Christine Haynes

RECEIVED AND FILED

01 AUG -8 AM 10:40

CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY this 8th day of August, 2001 a copy of the foregoing Appeal was mailed by first class mail, postage prepaid to C. William Clark, Esquire, Nolan, Plunhoff & Williams, 502 Washington Avenue, Suite 700, Towson, Maryland 21204, Attorney for Howard and Marsha Ayres.



MICHAEL P. TANCZYN Esquire
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204 - (410) 296-8823
Attorney for the Petitioners/Appellants
George & Christine Haynes

BALTIMORE COUNTY, MARYLAND

Petitioners

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HAYNES

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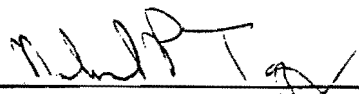
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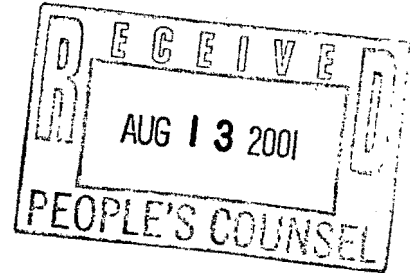
LAW OFFICES
MICHAEL P. TANCZYN, P.A.

Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204

(410) 296-8823 • (410) 296-8824 • Fax: (410) 296-8827

CPD
/pmr

August 8, 2000



Clerk
Circuit Court for Baltimore County
401 Bosley Avenue
P. O. Box 6754
Towson, MD 21285-6754

GEORGE + CHRISTINE HAYNES

Re: Petition for Judicial Review of Case No. 99-106-SPH and Case No. 99-235-SPH

Dear Madam Clerk:

Enclosed herewith please find our Appeal in the above case which we ask you to docket, as well as the information report required by Rule and our check for filing costs.

Thank you for your assistance in this regard.

Very truly yours,

Michael P. Tanczyn
Michael P. Tanczyn, Esquire

MPT/gr
Enclosure

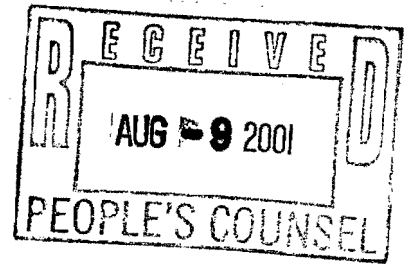
cc: George & Christine Haynes
C. William Clark, Esquire
Peter Max Zimmerman, Esquire

cd

LAW OFFICES
MICHAEL P. TANCZYN, P.A.

Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
(410) 296-8823 • (410) 296-8824 • Fax: (410) 296-8827

August 9, 2001



Clerk
Court of Special Appeals of Maryland
Courts of Appeal Building
361 Rowe Boulevard and Taylor Avenue
Annapolis, MD 21401-1699

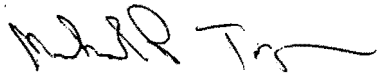
Re: Petition for Judicial Review of Case No. 99-106-SPH and Case No. 99-235-SPH
Circuit Court Case No. 03-C-00-001561 – Appeal

Dear Madam Clerk:

Enclosed herewith for filing please find the Prehearing Information Report along with a copy of the Appeal in this matter.

Thank you for your assistance in this regard.

Very truly yours,


Michael P. Tanczyn, Esquire

MPT/gr
Enclosures

cc: George & Christine Haynes
C. William Clark, Esquire
Peter Max Zimmerman, Esquire

BALTIMORE COUNTY, MARYLAND * IN THE
Petitioners * CIRCUIT COURT
* FOR
FOR JUDICIAL REVIEW OF THE * BALTIMORE COUNTY
DECISION OF THE COUNTY BOARD
OF APPEALS OF BALTIMORE COUNTY *
IN THE CASE OF: * Appeal from the
GEORGE P. HAYNES, ET UX * County Board of Appeals of
PETITIONERS (99-106-SPH) AND * Baltimore County
W. HOWARD AYRES, ET UX *
PETITIONERS (99-235-SPH) * Case No. 03-C-00-001561
FOR SPECIAL HEARING ON PROPERTY
LOCATED ON S/S COLD SPRING ROAD,*
40' W OF C/L CHESTNUT ROAD (1027
COLD SPRING ROAD) 15TH ELECTION *
DISTRICT 5TH COUNCILMANIC DISTRICT

* * * * *

MEMORANDUM OPINION AND ORDER OF THE COURT

This is an appeal brought by the Petitioners, Mr. and Mrs. George P. Haynes, from a decision of the County Board of Appeals of Baltimore County (the "Board"). This case arises from the granting by the Zoning Commissioner (the "Commissioner") of a variance for side yard setbacks for 1027 Cold Spring Road to the Petitioners' neighbors, Marsha and W. Howard Ayres, the Respondents.

In October 1998, the Ayreses filed Case No. 99-235-SPH, seeking approval of amendments to the site plan for the side yard setback variance granted in Case No. 97-377-SPHA. Both cases were heard and the Commissioner denied relief in Case No. 99-106-SPH to

MC
CC: Clark & Tanczyn

the Hayneses, and granted relief to the Ayreses in Case No. 99-235-SPH with conditions. On timely appeal to the Board, the Board conducted hearings on September 22 and September 28, 1999. By its Opinion and Order issued January 21, 2000, the Board denied the Petitioners' enforcement of the site plan of the original variance granted in Case No. 99-106 SPH, and made no decision with regard to the Respondents' Petition No. 99-235-SPH on appeal, other than a clarification of three conditions in the Board's Opinion. A timely Petition for Judicial Review of the Board's decision was filed by the Petitioners to the Circuit Court for Baltimore County on February 17, 2000.

STATEMENT OF FACTS

The Respondents, Mr. and Mrs. Ayres, have owned their home at 1027 Cold Spring Road for more than fourteen years. When the Respondents retired, they decided to build a new home on the same waterfront property. The zoning of the subject property requires a side yard setback of 55 feet. The Respondents could not comply with the side yard setback requirement due to the size of the lot, so they filed a Petition for Variance Relief, docketed as Case No. 97-377-SPHA. The Respondents requested a side yard setback of 8 feet from the Petitioners' property line and a side yard setback of 4.5 feet from the property line located on the opposite side of the proposed dwelling.

Before beginning work on the house, the Respondents sought approval for the variance from their neighbors, the Petitioners, who resided at 1029 Cold Spring Road. Mr. Haynes signed a written statement attesting to his knowledge and lack of opposition to the variance request. The Petitioners expressed no objection to the proposed structure during the petitioning process; they voiced their disapproval only after the Commissioner issued the final Order granting the

variance.

On April 17, 1997, a public hearing was held before the Commissioner to discuss the variance requested for 1027 Cold Spring Road. The Respondents attended the hearing and submitted a site plan for the proposed dwelling with a copy of the letter signed by Mr. Haynes, indicating his lack of opposition. The Petitioners did not attend the public hearing. Based on the evidence presented, the relief requested was granted pursuant to an Opinion and Order issued by the Commissioner on April 29, 1997.

The Order granting the variance is a final order, and no appeal was requested. Therefore, the Commissioner's decision is final. The Order enabled the Respondents to build within 8 feet of the Petitioners' property line, and the Respondents constructed their home based on the building permits issued in accordance with the Order.

After determining that the building plans should be altered, Mark Elliot, the builder of the Respondents' home, visited the Commissioner and requested approval for the modifications. Finding that the modifications were appropriate and consistent with the Order granting the variance in Case No. 97-377-SPHA, the Commissioner signed a handwritten note on the modified site plan, giving his approval for the changes to the house. The building permit was reissued and a use and occupancy permit was granted with all necessary inspections completed.

On September 14, 1998, Errol Ecker, a Code Enforcement Specialist for Baltimore County, visited the property at 1027 Cold Spring Road to investigate an alleged violation. He measured the building and compared his measurements with the permit application. Mr. Eckert found that the setbacks and height matched the dimensions on the application, and dismissed the violation, concluding that the structure was in compliance. Joseph W. McGraw, Jr., an expert in

land surveyance, performed the original stakeout for the new house. Mr. McGraw found that the dwelling did not violate the setback requirements and that the setback is not length specific.

In September 1998, after the builders had completed substantial construction on the home, the Petitioners filed a Petition for Special Hearing, docketed as Case No. 99-106-SPH. Subsequently, in October 1998, the Respondents filed a petition for Special Hearing, Case No. 99-235-SPH.

The Commissioner denied the Hayneses' Petition for Special Hearing in Case No. 99-106-SPH, thereby denying their request for enforcement of the original site plan. The Commissioner granted the Ayreses' Petition for Special Hearing in Case No. 99-235-SPH, and in doing so, he permitted the amendment to the site plan, and confirmed the existence and location of the dwelling, which had been constructed. The Commissioner did, however, impose the following certain conditions:

1. Mr. and Mrs. Ayres shall not be permitted to make any exterior changes, alterations or additions to the subject dwelling without filing a Petition for Special Hearing seeking approval of said changes. That is, there can be no construction of decks, additions or other exterior improvements to the dwelling without a public hearing. Even if these improvements would be permitted by right under the building code, the Petitioners must file a petition for Special Hearing to approve same in order to ensure compliance with the spirit and intent of this Order.
2. The Petitioners shall comply with all prior conditions and restrictions as set out in the Order issued in Case No. 97-377-SPHA. These conditions include restrictions adopted based upon the ZAC comments from the Department of Environmental Protection and Resource Management (DEPRM).
3. Finally I am not persuaded that Mr. and Mrs. Ayres should be permitted to install a roof over the porch located on the southeast corner of the building. Mr. and Mrs. Ayres have not persuaded me that the porch on this side of the dwelling need be covered. The construction of a roof would impact the Haynes' view. My site inspection indicated that this porch area is narrow and has limited utility. Moreover, there are no steps proposed or other access shown from the area. For all of these

reasons, although allowing Mr. and Mrs. Ayres the flexibility to install the necessary down spouts and gutters to direct rain off of the existing roof/porch and away from the dwelling, I will not allow the proposed porch roof to be constructed.

The Order states as follows:

THEREFORE, IT IS ORDERED by the Commissioner for Baltimore County, this 23rd day of April 1999, that the petition for Special Hearing filed by W. Howard Ayres and Marsha Ayres to approve amendments to the site plan for the variances granted in Case No. 97-377-SPHA, which permitted side yard building setbacks of 8 ft. and 4.5 ft. respectively, in lieu of the required 55 ft., and from Section 304 of BCZR to permit a dwelling on an undersized lot, be and is hereby GRANTED, subject, however, to the below listed restrictions; and

IT IS FURTHER ORDERED that a Petition for Special Hearing, filed in Case No. 99-106-SPH by George P. Haynes and Christine M. Haynes, to enforce the variance granted in Case No. 97-277-SPHA of the variance to the original footprint shown in the site plan submitted in that case be and is hereby DENIED.

The Petitioners brought Case No. 99-106-SPH before the County Board of Appeals of Baltimore County, seeking enforcement of the variance to the original footprint in Case No. 97-377-SPHA. The Respondents brought Case No. 99-235-SPH seeking approval of amendments to the site plan for the variance granted in Case No. 97-377-SPHA, and clarification of the restrictions imposed by the Commissioner. The two appeals were consolidated and presented in a public hearing.

The Board issued a written opinion, dated January 21, 2000, finding as a matter of fact that the Commissioner granted a variance to the setback requirements in an Opinion and Order dated April 27, 1997, and that this Order was not appealed, therefore constituting a final Order. The Board also concluded that as a matter of fact, "this variance allowing a side yard setback of 8 feet on the Haynes' boundary did not limit the setback in any way, and that no part of the Structure on the Ayreses' property has been built within the 8-foot setback." The Board also held

that

...the Zoning Commissioner is empowered and has the discretion to determine whether a change to the site plan is material which requires a public hearing or diminimus which requires no hearing. We find that the Zoning Commissioner's approval of revisions to the site plan is consistent with the 'spirit and intent' of the regulations of the original variance order, and therefore we deny the Protestants' request that the site plan of the original granting of the variance be enforced.

The Board addressed the Ayreses' request for clarification by providing the following instructions:

1. There shall be no exterior structural changes in size or dimension to the subject dwelling without filing a Petition of Special Hearing seeking approval of said changes. General maintenance, such as painting or repair (such as roof replacement, etc.) to the existing structure of changes of an ornamental nature (such as changes in lighting or siding/brick, etc.) will be permitted. All other conditions imposed by the Zoning Commissioner and cited herein shall stand as ordered.
2. The Petitioners shall comply with all prior conditions and restrictions set out in the Order issued in Case No. 97-377-SPHA.
3. Mr. and Mrs. Ayres shall not be permitted to construct a roof over the porch on the southeast corner of the dwelling, as described hereinabove.

STANDARD OF REVIEW

The Court of Special Appeals has held that the order of a county zoning authority must be upheld on review if it is not based upon an error of law and if its conclusions reasonably may be based upon the facts proven. Evans v. Shore Comm'ns, 112 Md. App. 284, 298, 685 A.2d 454, 461 (1996). The Court of Special Appeals further held that

...the action of the zoning authority is fairly debatable if based on substantial evidence; and that the fairly debatable test accords with the general standard for judicial review of the ruling of an administrative agency, which [is] defined as whether a reasoning mind reasonably could have reached the

factual conclusion the agency reached; this need not and must not be either judicial fact-finding or a substitution of judicial judgment for agency judgment.

Id. (citations and quotations omitted).

Further, the standard of review requires the following 3-step analysis:

1. First, the reviewing court must determine whether the agency recognized and *applied the correct principles of law governing the case*. The reviewing court is not constrained to affirm the agency where its order is premised solely upon an erroneous conclusion of law.
2. Once it is determined that the agency did not err in its determination or interpretation of the applicable law, the reviewing court next examines the agency's factual findings to determine if they are *supported by substantial evidence, i.e., by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion*.
3. Finally, the reviewing court must examine how the agency applied the law to the facts. This, of course, is a judgmental process involving a mixed question of law and fact, and *great deference must be accorded to the agency*. The test of appellate review of this function is *whether a reasoning mind could reasonably have reached the conclusion reached by the agency*, consistent with a proper application of the controlling legal principles.

Id. at 299, 685 A.2d at 461 (citations, quotations and brackets omitted) (emphasis in the original).

ANALYSIS

Step One: Applying the Correct Principles of Law

In analyzing the agency action, this Court must determine whether the agency recognized and applied the correct principles of law governing the case--the first prong of the three-step analysis.

A. Special Hearing

Regarding Petitions for Special Hearings, the BCZR provides:

The said Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of

appeal to the County Board of Appeals as hereinafter provided. The power given hereunder shall include the right of any interested person to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations.

BCZR § 500.7.

The Director of Zoning Administration and Development Management has the power and authority to make, adopt, promulgate and amend such policies, rules or regulations in connection with the BCZR as may be deemed necessary to carry out or enforce the provisions of the Code. Baltimore County Code § 26-135. The Director shall make the policies available to the public within the Commissioner's Policy Manual (the "Manual").

The Manual contains rules for Public Hearings on Motions to Amend a previously approved variance. Rule 500.8. The Commissioner determines whether he believes the amendment is consistent with the spirit and intent of the granting of the variance. BCZR § 307.1.

B. Application of the Law

The Board found as a matter of fact that the decision in Case No. 97-377-SPHA, which approved the variance to the side yard setbacks, was final and not appealed. Therefore, the Board did not need to examine the law of variances which the Petitioners ask this Court to review and apply.

While the legal argument made by the Petitioners to this Court may have been appropriate in an appeal of Case No. 97-377-SPHA, it has no application to the present case because of the finality of the prior case which granted the variances. The Board found that the Commissioner is empowered and has the discretion to determine whether a site plan change is material and

requires a public hearing. The Board correctly found on that point as well.

Step Two: Substantial Evidence

This Court finds that there was substantial evidence presented to the Board to support the Board's decision that the construction of the Ayreses' dwelling meets and honors the 8-foot side yard setback approved in Case No. 97-377-SPHA. That approval constitutes a final order of the Commissioner, as noted by him in a letter dated September 9, 1998. The County Board of Appeals expressly found as a fact that the decision in Case No. 97-377-SPHA was final and not appealed. The testimony of Mark Elliott, the Builder, and Joe McGraw, a licensed civil engineer with JST Engineering, who staked out the house, the photographic evidence admitted, as well as the cross-examination of Mr. Haynes, demonstrate that no portion of the foundation or of the house lies within the 8-foot setback. Errol Ecker, a Code Enforcement Inspector for Baltimore County, testified that, upon his examination following complaints by the Hayneses, he determined that no portion of the house was within the 8-foot setback, and following the issuance of the revised permit, the building complied with the permit.

Amendment of the Site Plan

The Finding of Facts and Conclusions of Law issued by the Commissioner in Case No. 97-377-SPHA, states in pertinent part as follows:

It is further ORDERED that a variance from Section 1A 04.3.B.3 of the Baltimore County Zoning Regulations (BCZR) to permit side yard setbacks of 4.5 ft. and 8 ft., in lieu of the required 50 ft., be and is hereby GRANTED; and It is further ORDERED that a variance from Section 304 of the BCZR also seeks other relief as may be necessary, be and is hereby GRANTED; subject, however, to...restrictions.

By its express terms, the variance grants a side yard setback of 4.5 feet and 8 feet in width. It

does not contain any dimension as to the length of the setback. In the testimony of Joe McGraw, the setback was not "length specific."

Both Mark Elliott and Joe McGraw testified that in their experience in the home building industry in Baltimore County, and, in this particular case, the homebuilder is permitted to construct the residential dwelling along, but no closer to boundary than the approved 8-foot side yard setback; since there are no dimensions on the length of the 8-foot side yard setback, so long as the building plans permit, one is allowed by the Commissioner's order to construct the dwelling up to the 8-foot setback in whatever length the building plans require, pursuant to the issued building permit. In addition, during his direct testimony, Mr. Haynes testified that when he and his wife inquired at the Zoning Office, both Jun Fernando and John Alexander, employees of the Baltimore County Zoning Review Office, told them that variations in the field can be substantial, but so long as the 8-foot setback is honored, the house being built by the Ayreses was permitted. Furthermore, the site plan originally submitted with the Application for Variance in Case No. 97-377-SPHA, while containing a scale, does not contain any dimensions for the length of the wall of the proposed house closest to the Haynes/Ayres boundary line.

Because of the citation issued by Errol Becker, Mark Elliott returned to the Commissioner in August of 1998 with an application for a permit based upon the revised footprint for the building, which did contain dimensions for the wall on the side nearest the Hayneses' house, as well as the roadside porch. On August 17, 1998, the Commissioner approved the plan as being consistent with the order in Case No. 97-377-SPHA. That document was then attached to the building permit issued under No. B3507290 on August 21, 1998. Following the filing by the Hayneses for a Petition for Special Hearing under Case No. 99-106-

SPH, the Ayreses filed a Petition for Special Hearing under Case No. 99-235-SPH to further amend the site plan to include the area for the water-side porch.

Because the Board of Appeals found the decision in Case No. 97-377-SPHA to be final and not appealed, the issue presented to this Court is whether or not the record contains substantial evidence to support the Board's decision that the amendment presented by Mark Elliott on August 17, 1998, and the amendment presented by the Ayreses' Petition under Case No. 99-235-SPH met the spirit and intent of the variances granted in Case No. 97-377-SPHA. Neither amendment seeks nor requires a further lessening of the side yard setback. Both amendments honor the 8-foot side yard setback previously granted. Neither amendment lengthens the depth of the house of 60 feet, which is the same depth shown on the original building permit under No. B320760, issued January 8, 1998. The water-side porch, as now constructed, with the minor addition of having the roof over the kitchen window finished off, demonstrates that it is an open-sided porch, which does not exceed 3 feet in height from the ground. The same is true with respect to the road-side porch.

Although Maryland law does not recognize a right to a scenic vista in this type of case, the additional construction of the waterside porch does not block the Petitioners' view of the water nor cause any other adverse impact to their property. Likewise, the road-side porch and the new wall enclosing additional interior space of the kitchen of the Respondents' home, do not affect the Petitioners' view. Furthermore, the Office of Planning supported the request to amend the variances previously granted upon its review of the Petition filed by the Ayreses in Case No. 99-235-SPH.

The revisions to the site plan and the accompanying revisions to the building plans, added

approximately 100 square feet to the interior of the proposed 3,600 square feet, according to the testimony of Mark Elliott. The house is a two-story dwelling, as originally proposed by the Respondents, and contains approximately the same number of square feet as originally requested in Building Permit No. B320760. The consent to the original variance, signed by the Petitioners, does not expressly confine their approval to a house of a particular size, style, or dimension. Substantial evidence in the record demonstrates that the revisions comply with the spirit and intent of the variances granted for the side yard setback and to permit construction of a one-family, detached dwelling on an undersized single-family lot, pursuant to Section 304 of the BCZR.

Furthermore, additional evidence in the record supports the decision of the Board. As built, the Respondents' home complies with the permits issued for it, and all County requirements. Inspector Ecker testified that upon his final review, the house, as contracted, matched the footprint and the dimensions of the permit as to width, depth and height. Furthermore, Baltimore County issued a Use and Occupancy Permit, which Mr. Ecker acknowledged that his Department was required to make final inspections to ensure compliance with County Requirements prior to that Use and Occupancy Permit being issued.

The testimony of Marsha Ayres, Mark Elliott and Joe McGraw, together with the photographic evidence, demonstrate that the house was constructed at the same location as the prior dwelling. Clearly, the Respondents' former dwelling jutted out further than the Petitioners' home to the same degree and proportion as does the new home. The testimony of Mrs. Ayres, Mr. Elliott and Mr. McGraw is that Mr. Ayres drove a stake at the corner of the house, and it was from that point that the house was laid out and built. The aerial photograph submitted by the

Petitioners supports the same finding.

Step Three: Reasonable Conclusion

The third prong of the test asks the reviewing Court to examine how the Agency applied the law to the facts. Great deference must be accorded to the Agency. The test for Appellate Review is whether a reasoning mind could reasonably reach the conclusion reached by the Board consistent with the proper application of the controlling legal principles. Given the opportunity to review the evidence and to observe the testimony of the witnesses, a reasoning mind could reasonably have reached the conclusion that the Board did, that the Commissioner's decision, and their *de novo* determination, that the revisions to the site plan did not amend the variances themselves, were consistent with the spirit and intent of the original variance, and were not material changes. Clearly, the Board's factual findings were supported by substantial evidence and a reasoning mind could reasonably reach the Board's conclusion, considering that evidence, as well as its application of the controlling legal principles.

This Court finds that the Board correctly decided below in denying the Petitioners' request for strict enforcement of the original variance. Therefore, this Court affirms the Board's decision. Accordingly, the decision of the County Board of Appeals of Baltimore County is hereby AFFIRMED.

7/10/01
Date

Alexander Wright, Jr.
Alexander Wright, Jr.
Judge

True Copy Test

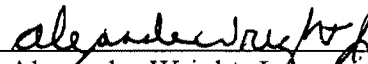
SUZANNE MENSCH, Clerk

Per

Mary B. Ross
Assistant Clerk

ORDER

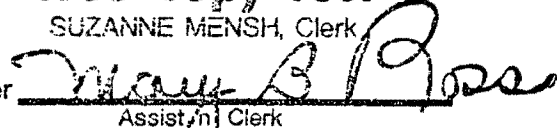
Upon consideration of the Petitioners' Memorandum in Support of Its Petition for Judicial Review of the decision of the County Board of Appeals of Baltimore County, the Respondents' Memorandum thereto, and having heard arguments in open court, it is this 10 day of July, 2001, **ORDERED** that the decision of the County Board of Appeals of Baltimore County is hereby **AFFIRMED**.


Alexander Wright, Jr.
Judge

Clerk to Notify:

C. William Clark, Esq.

Michael P. Tanczyn, Esq.

True Copy Test
SUZANNE MENSCH, Clerk
Per 
Assistant Clerk

7/17/00

PETITION OF:

GEORGE HAYNES and CHRISTINE HAYNES

1029 Cold Spring Road
Bowleys Quarters, MD 21220

Petitioners

FOR JUDICIAL REVIEW OF THE
DECISION OF THE BOARD OF
APPEALS OF BALTIMORE
COUNTY - Old Courthouse, Room
49

400 Washington Avenue
Towson, Maryland 21204

IN THE CASE OF:

GEORGE P. HAYNES, ET UX
PROTESTANTS/PETITIONERS;
(99-106-SPH) AND W. HOWARD
AYRES, ET UX PETITIONERS (99-
235-SPH) FOR SPECIAL HEARING
ON PROPERTY LOCATED ON THE
S/S COLD SPRING ROAD, 40' W OF
C/L CHESTNUT ROAD (1027 COLD
SPRING ROAD) 15TH ELECTION
DISTRICT 5TH COUNCILMANIC
DISTRICT

cap/pmz

IN THE CIRCUIT COURT

FOR

BALTIMORE COUNTY

CIVIL ACTION

No. 3-C-00-001561

* * * * *

MEMORANDUM OF PETITIONERS MR. & MRS. GEORGE P. HAYNES

NOW COMES Mr. & Mrs. George P. Haynes, Petitioners in Case 99-106-SPH and Protestants in Case 99-235-SPH, by their Attorney Michael P. Tanczyn, and respectfully submit this Memorandum of Law pursuant to Maryland Rule 7-207.

STATEMENT OF THE CASE

Mr. and Mrs. George P. Haynes filed Case 99-106-SPH seeking enforcement of the variance granted in accordance with its terms by the Zoning Commissioner to their neighbors in Case 97-377-SPHA, by which the Zoning Commissioner had approved a variance from side yard setbacks in accordance with the relief requested on the Petition and site plan filed by the Petitioners Marsha and W. Howard Ayres for 1027 Cold Spring Road. In October 1998, Mr. and Mrs. Ayres filed Case 99-

235-SPH seeking approval of amendment to the site plan for the variances granted in Case 97-377-SPHA. Both cases were heard and the Zoning Commissioner denied relief in 99-106-SPH to Mr. and Mrs. Haynes, and granted relief to the Ayres in 99-235-SPH with conditions. On timely appeal to the Board of Appeals, the Board of Appeals conducted hearings on September 22nd and September 28th, 1999 by its Opinion and Order issued January 21, 2000 denied the Haynes enforcement of the site plan of the original variance granted in Case 99-106, made no decision with regard to the Ayres' Petition 99-235-SPH on appeal other than a clarification of three conditions in page nine of the Board's Opinion. A timely Petition for Judicial Review was filed from the decision of the Board of Appeals by Mr. & Mrs. Haynes to the Circuit Court for Baltimore County on February 17, 2000.

QUESTION PRESENTED AND ARGUMENT

1. WHETHER THE DECISIONS OF THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY IS BASED ON SUBSTANTIAL EVIDENCE AND FAIRLY DEBATABLE, OR ARBITRARY CAPRICIOUS OR ILLEGAL, PATENTLY IGNORING THE CASE LAW INTERPRETING VARIANCE?

THE DECISION OF THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY IGNORED THE CONTROLLING LAW; WAS NOT BASED ON SUBSTANTIAL EVIDENCE TO SUPPORT ITS DECISION; WAS NOT FAIRLY DEBATABLE AND SHOULD NOT BE UPHOLD.

STATEMENT OF FACTS

Mr. and Mrs. Howard Ayres, who resided at 1023 Cold Spring Road (T-47) as well as 1027 Cold Spring Road and an interest in Mr. Ayres' father's house on Cold Spring Road (T-40, 42) had purchased in October of 1998 additionally, 1101 Cold Spring Road (T-43). The Haynes have resided at 1029 Cold Spring Road since the early eighties. Their house lies between 1027 and 1101 Cold Spring Road. When the Ayres desired to raze and replace a twenty-five (25) by forty-eight (48) bungalow at 1027 Cold Spring Road, Mr. Howard Ayres visited the Haynes in early February 1997 (Day 2 -T-97-98). He showed them a floor plan prepared by Sterling Design Group (Day 2, T-102), *Protestants CBA Exhibit 1*, and a site plan, (Day 2, T-99) which showed the placement of the new home vis a vis the Haynes house shown on the site plan, which was the same site (Day 2, T-107-108) plan attached to CBA Exhibit 3, Baltimore County Petition for Variance, later filed by Mr. Ayres. The Haynes viewed both the floor plan and the site plan and noted that, according to the site plan, the new house proposed by Howard Ayres would be further back from the water than the previous house and that according to the floor plan, the proposed openings or windows and doors on the Haynes' side of the property as well as the second floor deck in front of the proposed house were considered welcome trade offs to the Haynes' in return for the longer house proposed (Day 2, T-107-108). Mr. Ayres told them that he required a variance for one room, shown on the site plan and on the floor plan as the dining room, to accommodate an over sized dining room table (Day 2, T-100-101) which the Ayres had in their Glen Arm home and which they desired to move to this property when the new house was built. After reviewing those plans, Mr. Haynes signed a letter tendered to him (Day 2, T-111) by Mr. Ayres by which he approved the variance as explained to him by Mr. Ayres, relying on Mr. Ayres, with whom he had been friends for many years, to submit

the site plan shown to them to the Zoning Commissioner and, more importantly, to build the floor plan that he had shown to them. The Haynes consequently did not attend the hearing held by the Zoning Commissioner in Case 97-377-SPHA (Day 2, T-112) for a variance petition for 1027 Cold Spring. Mr. and Mrs. Ayres were the only persons who showed up before the Zoning Commissioner and the Zoning Commissioner granted the variance (Day 1, T-38) by his decision in April of 1997, property owners *Exhibit 2*. Thereafter, in February of 1998, the Ayres had the house at 1027 Cold Spring Road razed by contractors (Day 2, T-117). Mr. Haynes questioned, at the time of the stake out for the new building, the fact that the surveyors were locating (Day 2, T-113 - 114) it four and a half (4-1/2) feet off of his property line. He asked Mr. Ayres for a copy of what he had signed and a site plan, which Mr. Ayres did not produce, nor did the survey firm, JST Engineering (Day 2, T-114-116), nor the builder, Mark Elliott, all of whom were present. After some discussion, Mr. Ayres told the surveyors to stake out the structure no closer than eight (8) feet from the Haynes' side yard property line (Day 2, T-116).

When Mr. Haynes later became concerned about the location of the footings and foundation (Day 2, T-118), he made numerous inquiries to Baltimore County and was told that minor variations were permitted to the variance requested. He continued to complain throughout the spring and summer of 1998 (T-119), along with his wife Christine, to Baltimore County, and finally in August 1998, a Stop Work Order (Day 2, T-138, 140) was issued because the footprint of the building did not match what had been approved by the Zoning Commissioner in the site plan of Case 97-377-SPHA. The builder, Mark Elliott, had told Mr. Haynes in the springtime of 1998, that he could build beyond the area approved in the variance (Day 2, T-49-50) as long as he stayed eight (8) feet off the Haynes' side yard property line. Mr. Elliott then, (T-118) in response to the issuance of the Stop Work Order, took a location survey prepared by JST Engineering, dated August 11, 1998, to Towson and met with the Zoning Commissioner, the Honorable Lawrence Schmidt, on short notice, on August 17, 1998. He told Mr. Schmidt that the bump out area had been lengthened to thirty-two (32) feet and was on the rear portion of the improvements away from the water, and that no part of the improvements were closer to the water than had been approved by the Zoning Commissioner. He neglected to tell the Zoning Commissioner of the water side porch for which the footer had already been poured and block was (Day 2, T-31) on site which he described for the Board in property owner's *Exhibit 18*, for which he filled in the porch area in blue ink at the hearing on September 28, 1999. Based on what Mr. Elliott told him, (T-32) the Zoning Commissioner hand wrote an approval on the location survey on the spot and Mr. Elliott, within four (4) days, was issued a new permit B350729, based on the footprint shown the Zoning Commissioner four (4) days earlier.

The Haynes, upon learning of this by the Zoning Commissioner's letter attaching the drawing (Day 2, T-141-142) on which he had written his approval which was the property owner's *Exhibit 3*, noted that the Zoning Commissioner had not been shown the area called the water side porch, which they knew from living next door was under construction. The Haynes then filed case 99-106-SPH asking that the variance approved in 97-377-SPHA be enforced and maintained, and they also retained Counsel to file an Injunction Petition against the Ayres in the Circuit Court for Baltimore County. As a result of agreement reached between the parties, no further construction was to occur per the Court Order until these matters were heard by the Zoning Authorities. The Zoning Commissioner, the Honorable Lawrence Schmidt, heard these two Petitions below on March 25, 1999, and issued his Order denying the Haynes' request in Case 99-106-SPH and approving the

Ayres' request in Case 99-235-SPH for the water side porch, but prohibiting further construction and imposing certain conditions. Both parties appealed and this matter was heard by the Baltimore County Board of Appeals on September 22nd and September 28th, 1999.

At that hearing, Marsha Ayres, in the course of her testimony speaking for herself as well as her husband, Howard Ayres who was present, said that they would accept (T-66) what the Zoning Commissioner had approved for them in Zoning Case 99-235-SPH and that they were abandoning any request for a roof over the water side porch. She also testified as to numerous changes made from the floor plan shown to the Haynes to what had been built at 1027 Cold Spring Road. She stated that the water side porch was added on because her engineer, Mr. Fedas of the Sterling Group (T-64-65), felt that it balanced the porch on the other side of the property towards 1023 Cold Spring Road, and for personal reasons so that she could have flowers on the side porch and sit there (T-60) because she thought it was aesthetically pleasing (T-149). She identified the Sterling plans dated October 25, 1996 (T-95-96), and acknowledged that the second floor originally had a water side open walk out porch from her master bedroom (T-99-100), which she never really intended. Immediately next, she further acknowledge that the original variance site plan presented to the Zoning Commissioner showed only a fourteen foot long bump out on the Haynes' side of the property requiring a variance (T-100-101), and that the original plans showed no openings on the wall on the Haynes side until the bump out (T-103-104), and that the original plans showed no windows on the second floor bump out portion (T-105). She then testified that the later plans made after the Zoning Commissioner's variance approval had become final in June of 1997, reflected that she and her husband had made a decision of having a house built in the new design (T-107). Marsha Ayres further testified regarding additional changes made after the Zoning Commissioner's April '97 decision (T-108), not to put a porch where the patio was previously because they had torn that patio up and that there was a stairway flip flop moving the dining room bump out to the other side of the house on the 1023 Cold Spring Road side (T-109). Upstairs a change was made to eliminate the walk out porch from the master bedroom (T-109), and to put additional windows on the Haynes' side of their house (T-110), and she noted that the downstairs water side porch was not on the original plans (T-110), blithely testifying "when you build a house, it changes as you go" (T-110) "...there are things you do, you change the windows, you change the placement" (T-110-111). She acknowledged the additional water side porch was added, but she did not consider that a change to the house (T-112). She attributed the window doors placed on either side of the chimney on the first floor to the builder in an attempt to center the fireplace (T-115). Her testimony as to why that door was added in the living room was "if I have a fire in the kitchen, I can throw something out the door (T-116)." Insofar as the changes adding second floor windows, she explained that as simply what she chose to do (T-117), and she asserted that all changes were made to improve the whole house (T-120), and that she did not feel it necessary to ask the Haynes (T-120). She testified as to the reversal of the floor plan that the stairway originally proposed leading to the second floor would have blocked their view of the water from the rear of the house (T-78-80), so that was moved to the Haynes' side of the property. When that occurred, that made the bedroom and bath change to the Haynes' side of the property. She testified the master bedroom is where it was always supposed to be. Her reasons stated for the changes in the floor plan and the additional windows and doors on the Haynes side were that they were done to improve the Ayres views of the water.

Joseph W. McGraw, Jr., testified that (T-189) he had staked out the property for the new house in February or March of 1998. He had not reviewed the variance or site plan filed with the

variance request but rather, had worked off the plans given him for the stake out by Mark Elliott (T-209). Although when asked, he could state no authority for his position, it was his opinion that the variance approved by the Zoning Commissioner in Case 97-377-SPHA allowed the building of the Ayres' structure on the side closest to the Haynes anywhere along its length as long as it stayed eight (8) feet away from the common side yard property line. He had also prepared the plans locating (188 see 199 new side part on plans) improvements dated August 11, 1998 which had been submitted to the Zoning Commissioner by Mr. Elliott, which was property owner's *Exhibit No. 10*. He could not recall why the water side porch footers for the porch itself, which had been under construction since July of 1998, were not shown on that plan. Mr. McGraw testified that his impervious surface calculations did not include the side porch (Day 2, T-199-200), the bulkhead (T-206), or the garage (T-208), and that at the time of stakeout, he did not stakeout the water side porch (T-211). He further testified that the length of the bump out on the Zoning Commissioner's approved site plan as presented by the Petitioners was not important to him (T-222), and that he assumed emphasis added, it was an eight foot setback on the whole side because of the Zoning Commissioner's original written Opinion (T-228-230).

Errol Ecker testified as a Code Enforcement Specialist for Baltimore County that a Stop Work Order was issued because the footprint of the building did not match the site plans submitted by the Petitioners and approved at the Zoning Commissioner's hearing (T-160). He marked his file as reinspected and closed because of the obtention by the Petitioners of a new permit issued August 21, 1998 (T-160-161). In considering the prior complaint filed against this property, he did not have at the time the building plans or the Zoning Commissioner's site plan (T-173-174) to assist him. Insofar as the complaint concerning height of the structure, he stated that he had guesstimated the height (T-176).

Mark Elliott also testified for Petitioners as the builder and owner of (T-152) ME Builders, Inc. He had applied for the permits (T-155-156) to construct the house and he had been present for the stakeout, although he acknowledged he had not read the Zoning Commissioner's opinion or looked at the variance site (Day 2, T-57 - 58) plan before telling Mr. Haynes that he could build up to eight (8) feet from the Haynes' line for the length of the Ayres' residence on that side. He testified that after the Stop Work Order was issued (Day 2, T-13) in August of 1998, he had taken the Petitioner's *Exhibit 10*, plat prepared by JST Engineers dated (Day 2, T-15-16) August 11, 1998, to Baltimore County and had met with the Zoning Commissioner and had told him (T-153) that his construction was being held up due to an additional bump out length (Day 2, T-14) which he told the Commissioner was on the rear portion of the property. He identified in the hearing before the Board the porch area which was under construction, but had not been shown to the Zoning Commissioner in August of 1998, property owner's *Exhibit 18* (Day 2, T-31). He testified that he had told the Zoning Commissioner that the changes were to the rear of the structure and not towards the water and that no part of the structure was closer to the water than had been originally proposed in the Variance Hearing. He then got a new permit issued, namely permit 350729 issued August 21, 1998 (Day 2, T-27), and work continued until something else was brought to his attention; namely, notice of intent to seek an injunction by the Haynes (Day 2, T-32). On cross examination, he recalled after re-reading his deposition testimony, that he had not read the variance opinion or looked at the site plan prior to obtaining a permit to begin construction of the new Ayres' house and upon reading the Zoning Commissioner's decision, acknowledged that it said that the relief requested was as shown on the original site plan which only showed a fourteen (14) foot long

bump out area located to the rear of the structure on (Day 2, T-43) the Haynes' side and which was the only portion of the requested structure to be shown eight (8) feet from the Haynes' side yard lot line.

(Day 2, T-150-155) George Haynes, in support of his objection to the structure as built for the Ayres, testified it was not set back as far from the water as on the site plan shown to him by Howard Ayres; that the openings representing windows and doors on the Haynes' side in the existing structure were far more numerous and located in a way to impact the privacy of the Haynes; and finally were located much closer to his house for the entire length of the Ayres' structure closest to Haynes than had been originally proposed. He illustrated that by his layouts, prepared via a CAD system drawing, (Day 2, T-121) accepted as Protestants' *Exhibit 12 A, B, and C*, which showed the relative positions of the Haynes' side to the Ayres' closest side under the original footprint approved in 97-377-SPHA, and by contrast, under the existing footprint as built. These negative effects were also chronicled in the (Day 2, T-132) Haynes' pictures. Protestants' *Exhibit 15* showed how far forward the Ayres house was located than as shown on the site plan submitted by Mr. Ayres to the Zoning Commissioner in Case 97-377-SPHA. The scope and scale of the Ayres' structure as shown from the waterside in *Exhibit 18* and (Day 2, T-139) from the water yard area of the Haynes' property in Protestants' *Exhibit 19*, contrasts between the prior use enjoyed by the Haynes, which they expected would continue given Mr. Ayres' representations that the new house would be set back further from the water and would have on the representations that the new house would be set back further from the water and would have on the second floor water side an open porch with an eight and one -half (8-1/2) foot offset to the second floor super structure and the master bedroom was planned to open out on to that wrap around porch. The wrap around porch ran from the water side to the far side of the Ayres' structure on the 1023 Cold Spring Road side. The prior views before this construction were shown in Protestants' (Day 2, T-133-134) *Exhibit 16 and 17* in the sleeves and the pictures illustrating the effect on those views by the Ayres' (Day 2, T-143) house as constructed were shown in pictures 20 A, B and C. The series of pictures introduced as (Day 2, T-149) Protestants' 23 A, B, and C, illustrated the scale of the impact on Haynes from the additional windows at night. Additional witness, Tammy Imberowicz, of DEPRM, brought the DEPRM file (Day 2, T-69-70) illustrating that Mr. Fedas, of Sterling Design, Limited, presented a site plan for DEPRM review dated September 14, 1997 with revisions November 10, 1997 which included a proposal by the Ayres that they intended to take up much of the concrete in the patio in order to reduce the amount of impervious surface on site. Based on that proposal, that site plan was produced as Protestants' (Day 2, T-85) *Exhibit 8*.

ARGUMENT ONE

The decision of the County Board of Appeals for Baltimore County ignored the controlling law; was not based on substantial evidence to support its decision; and was not fairly debatable and should not be upheld. The Court of Special Appeals held in the case of *Evans v. Shore Communications*, 112 Md. App. 284, 298 (1996) quoting *Umerley v. People's Counsel*, 108 Md. App. 497, 672 A.2d 173, cert. denied, 342 Md. 584, 678 A.2d 1049 (1996) held:

"...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."

Additionally, it held:

"...the action of the zoning authority is "fairly debatable" if based on substantial evidence. (citation omitted); and that the fairly debatable test accords with the general standard for judicial review of the ruling of an administrative agency, which (is) defined as 'whether a reasoning mind reasonably could have reached the factual conclusion the agency reached; this need not and must not be either judicial fact-finding or a substitution of judicial judgment for agency judgment.'" (citations omitted). Id.

Further, the standard of review requires the following three step analysis:

1. First, the reviewing court must determine whether the agency recognized and applied the correct principles of law governing the case. The reviewing court is not constrained to affirm the agency where its order is premised solely upon an erroneous conclusion of law.
2. Once it is determined that the agency did not err in its determination or interpretation of the applicable law, the reviewing court next examines the agency's factual findings to determine if they are supported by substantial evidence i.e., by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion...
3. Finally, the reviewing court must examine how the agency applied the law to the facts. This, of course, is a judgmental process involving a mixed question of law and fact, and great deference must be accorded to the agency. The test of appellate review of this function is whether a reasoning mind could reasonably have reached the conclusion reached by the (agency), consistent with a proper application of the (controlling legal principles). Id."

The law was set forth in the case previously emanating from Baltimore County set forth by the Court of Special Appeals in Cromwell v. Ward, 102 Md. App. 691 at 697.

"The State Zoning Enabling Act was first passed in 1927 b Chapter 705 of the Acts of 1927. It has since been codified as Article 66B of the Annotated Code of Maryland (1957, 1988 Repl. Vol., 1994 Cum. Supp.). While it was generally believed that local subdivisions did not have to enact zoning regulations (and some did not), if enacted, they normally had to conform to the provisions of Article 66B."

"Baltimore County, however, is a charter county and is exempt from many of the provisions in Md. Code Art. 66B. See Md. Code Art. 66B § 7.03 which provides "Except as provided in [sections not pertinent here]...this article does not apply to the chartered counties of Maryland." Nevertheless, the language of Art. 66B relating to variances is virtually identical to the provisions of the Baltimore County ordinance."

"The Article 66B provision that provides for variance authority in local zoning ordinances is section 1.00(j). As relevant to an area variance, this section defines a variance under Art. 66B as follows:

Modification only of density, bulk, or area requirements in the zoning ordinance...where owing to conditions peculiar to the property, and not the result of any action taken by the applicant, a literal enforcement...would result in either, as specified by the local governing body in a zoning ordinance, unnecessary hardship or practical difficulty.

The Baltimore County Zoning Ordinance in section 307, "Variances," provides, in relevant part, that variances from the ordinances provision, i.e., height, may be granted 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...would result in practical difficulty or unreasonable hardship.

Accordingly, we shall, in our discussion of cases, refer extensively to cases under the provisions relating to Art. 66B as well as cases under the Baltimore County provisions.

The Baltimore County ordinance requires "conditions...peculiar to the land...and...practical difficulty..." Both must exist. But the terms "practical difficulty" and "unreasonable hardship" are stated in the ordinance disjunctively. Thus, at least as to variances other than use variances, (FN4) if the property is found to be unique, the practical difficulty standard would then apply. We address practical difficulty at some length hereafter. However, as is clear from the language of the Baltimore County ordinance, the initial factor that must be established before the practical difficulties, if any, are addressed, is the abnormal impact the ordinance has on a specific piece of property because of the peculiarity and uniqueness of that piece of property, not the uniqueness or peculiarity of the practical difficulties alleged to exist. It is only when that uniqueness is first established that we then concern ourselves with the practical difficulties (or unnecessary hardships in use variance cases)."

The Cromwell Court further distinguished between variances and special exceptions as follows:

"A variance is "authority...to use his property in a manner forbidden...", while an exception "allows him to put his property to a use which the enactment expressly permits."

"...The standards for...exceptions are usually less stringent than in the case of variances. A Maryland Court summarized this difference and the reason for it."

"A special exception...is one which is controlled and...permissible in a given zone. It is granted...upon a finding conditions of the zoning ordinance are satisfied. A variance is authorized...where the literal enforcement of its terms would result in unnecessary hardships."

"Robert M. Anderson, American Law of Zoning § 18.02-03 (2d ed. 1977) (footnotes omitted) (quoting in part *Stacy v. Montgomery County*, 239 Md. 189, 193, 210 A.2d 540 (1965)). See also *Schultz v. Pritts*, 291 Md. [651 A.2d 429] 1, 11, 432 A.2d 1319 (1980; *People's Counsel v. Mangione*, 85 Md. App. 738, 748, 584 A.2d 1318 (1991))."

"The general rule is that variances and exceptions are to be granted sparingly, only in rare instances and under peculiar and exceptional circumstances...A variance should be strictly construed.... *Cromwell v. Ward* 10 Id. at 700.

Insofar as meeting the initial proof of uniqueness, there was no attempt made by the Ayres in the initial variance proceeding to show uniqueness nor could they show uniqueness in any of the instant cases because the statute in question is not peculiar nor is their property peculiar in contrast with those of other property owners in the same district and here the hardship was the result of the applicant's own action as was found to be a fatal flaw in prior cases. *Cromwell Id.*, 102 Md. App. 691 at 706 quoting *Marino v. Mayor and City Council of Baltimore*, 215 Md. 206 at 218. *Salisbury Board of Zoning Appeals v. Bounds*, 240 Md. 547.

In the *Salisbury Board* case the Court first quoted from 2 Rathkopf *The Law of Zoning and Planning* § 48-1 and then noted:

"Where property, due to unique circumstances applicable to it, cannot reasonably be adopted to use in conformity with the restrictions...hardship [651 A.2d 423] arises...The restrictions of the ordinance, taken in conjunction with the unique circumstances affecting the property must be the proximate cause of the hardship...The hardship, arising as a result of the act of the owner...will be regarded as having been self-created, barring relief..."

The instant case fits squarely within the above general rule...If the Appellees had used proper diligence...and then made accurate measurements...[the resultant hardship could have been avoided]. The hardship...was entirely self-created...

Id. at 554-55, 214 A.2d 810 (emphasis added). Had Ward's contractor, Huber, in the case at bar, checked the ordinance's height limitation, the situation that now exists could easily have been avoided. See also *Burns v. Mayor and City Council of Baltimore*, 251 Md. 554, 559, 248 A.2d 103 (1968); *Pem Construction Co. v. Mayor and City Council of Baltimore*, 233 Md. 372, 378, 196 A.2d 879 (1964) ("There was no evidence of any limitation...by...size of yards, irregularity of shape of land or buildings, topography, grade or accessibility".... *Cromwell Id. at 706 - 707*

The blithe testimony of the property owner, Mrs. Ayres, as her justification for the changes made to the structure by them after obtaining Zoning Commissioner approval for the variance as chronicled in the Statement of Facts included that it was aesthetically pleasing to her that the interior changes were made to afford a water view from the depths of the house. The Cromwell Court in dealing with variance requests in that case stated that:

“reasons for a variance must be reasons pertaining to the property...Evidence of hardship or difficulty that will support a variance must relate to the land itself and not to the owner-applicant.” Id. (citation omitted). The Court added that “the 75-foot width and aggregation requirements do not put a burden on [appellant’s] property which does not apply to other properties in the vicinity...” Id. at 169. In the case *sub judice*, the Baltimore County fifteen foot height limitation for accessory buildings does not affect Ward’s property alone; it applies to all of the properties in the neighborhood. Cromwell supra at 713-714.

The Cromwell Court discussed the further legal standard in a variance case of unnecessary hardship as follows:

“A hardship exists only if due to special conditions unique to a particular parcel of land, the ordinance unduly restricts the use...The hardship must relate to the special character of the land rather than to the personal circumstances of the landowner.” Cromwell supra Id. at 717.

In quoting Sibley v. Inhabitants of the Town of Wells, 462 A.2d 27, 30-31 (1983), with approval, the Supreme Judicial Court of Maine had upheld the denial of a variance, holding:

“The need for a variance must be due to the unique circumstances of the property and not to the general conditions in the neighborhood;...

...The hardship must not be the result of actions taken by the Appellant or a prior owner...

...However, the mere fact that the lot is substandard is not a unique circumstance; all the undeveloped lots in that neighborhood are of substandard size... Cromwell supra at 717.”

Basically, had the Ayres built in accordance with the site plan submitted by them to the Zoning Commissioner for approval, there would have been no need either for them to file a Petition to Amend their original approval or to cause the Haynes to file a petition to enforce the original approval. In the Zoning Commissioner’s Opinion and Order in Case 97-377-SPHA, he explicitly states that all of the relief requested is shown on the attached site plan which showed on the Haynes’ side of the property only a fourteen foot section for which the variance from the standards was requested by the Petitioners. The Petitioners thereafter bootstrapped that into a sixty (60) foot long area of construction all along that side of their newly proposed home, which was to be inhabited by Mr. & Mrs. Ayres and which possessed four bedrooms. At the time of making this request, the

Ayres also owned 1023 Cold Spring Road, which they resided in while 1027 was being constructed, and during the pendency of this case, have purchased the home at 1101 Cold Spring Road immediately adjacent to the Haynes. The actions of the Ayres are then clearly seen as a self-inflicted hardship. In choosing to make changes to their plans without seeking further approval from the County and in constructing all of those changes under the claim that they were covered under the original zoning approval, is an absurd position for the Ayres to take unsupported by any case law in Maryland concerning variances. Their building permit for the structure they ultimately built calls for a structure thirty-six (36) feet high in violation of the height limit requirements for RC5 zones and they never bothered to request a variance for that to this time.

The Cromwell Court cites a long line of cases holding that it is incumbent upon the applicants to show that any hardship was not the result of their own actions. Cromwell supra at 721, Marino v. Mayor and City Council of Baltimore, 215 Md. 206, Ad Plus Soil, Inc. v. County Commissioners, 307 Md. At 340. The Cromwell Court aptly noted:

“Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively, not only generate a plethora of such hardships, but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted. Cromwell supra at 722.”

The Cromwell Court after considering the facts of that case, concluded that there was no evidence that the subject site was in any way peculiar, unusual or unique when compared to other properties in the neighborhood such that the ordinance's height restrictions impact on the subject property would be different than the restriction's impact upon neighboring properties. In essence, the impact would be the same. The first step of the variance process was thus not met. Had there been evidence before the Board indicating that the subject property was peculiar or unusual and thus, disproportionately affected by the height restriction, then we might have been able to conclude that the Board was correct. There was, however, no such evidence presented. Therefore, the Board's granting of the variance was arbitrary and illegal.

“It is not the purpose of variance procedures to effect a legalization of a property owner's intentional or unintentional violations of zoning requirements. When administrative entities such as the zoning authorities take it upon themselves to ignore the provisions of the statutes enacted by the legislative branch of government, they substitute their policies for those of the policymakers. That is improper. We shall reverse.” Cromwell supra at 726.

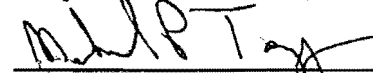
Any arguments made by the Ayres claiming that their subsequent petitions were merely amendments to the original variance must be seen for what they are. The Ayres, once caught building outside the approved site plan approved by the Zoning Commissioner, attempted to get after the fact approval for their oversized mansion built on a fifty (50) foot wide lot where they owned an adjacent fifty (50) foot lot at 1023 Cold Spring Road. There was manifestly no need on the part of the Ayres for a variance. In fact, had they built in accordance with the site plan they

presented to the Zoning Commissioner in Case 97-377-SPHA, the Haynes, who had approved prior to the hearing that plan in accordance with the architect's layout drawings shown them by Mr. Ayres, would have no complaint whatsoever if they did not like how it looked once the Ayres were completed. Whereas here, the Ayres have whipsawed the Zoning Commissioner's approval to ostensibly cover a sixty (60) foot long variance line where a fourteen (14) foot bump out was the only relief initially requested, and given that this was new construction by the Ayres, the Court cannot otherwise conclude that it is anything but self created hardship by the Ayres in building the monstrous structure substituted by them after the Zoning Commissioner's Order became final. What the Ayres and the zoning authorities which have heard this case including the Board of Appeals to this time have missed, is that the Ayres did not build that which they originally requested for approval. They would have had an extremely large house for the two of them to rattle around in in their retirement, which was their stated purpose for this large house, and would not have been deprived of any reasonable use of the property, by their adherence to their original variance approval as shown on the site plan.

CONCLUSION

For the authority stated, the Haynes respectfully request this Court to reverse the Board of Appeals decision in 99-106-SPH and remand it to the Board, and to reverse the Board's apparent decision and/or remand it to the Board of Appeals in Case 99-235-SPH.

Respectfully submitted,



MICHAEL P. TANCZYN, Esquire
606 Baltimore Avenue, Suite 106
Towson, Maryland 21204
Attorney for Mr. and Mrs. George Haynes
Petitioners in 99-106-SPH as Amended and
Protestants in 99-235-SPH

CERTIFICATE OF SERVICE

I HEREBY CERTIFY this 17th day of July, 2000 a copy of the foregoing Memorandum of Petitioners Mr. and Mrs. George P. Haynes was mailed to C. William Clark, Esquire, Nolan, Plunhoffs & Williams, 502 Washington Avenue, Suite 700, Towson, Maryland 21204, Attorney for Howard and Marsha Ayres and to Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, 400 Washington Avenue, Room 47, Towson, MD 21204



MICHAEL P. TANCZYN, Esquire
606 Baltimore Avenue, Suite 106
Towson, Maryland 21204
Attorney for Mr. and Mrs. George Haynes
Petitioners in 99-106-SPH as Amended and
Protestants in 99-235-SPH

C10/162

LAW OFFICES
MICHAEL P. TANCZYN, P.A.

Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204

(410) 296-8823 • (410) 296-8824 • Fax: (410) 296-8827

July 17, 2000

Clerk
Circuit Court for Baltimore County
401 Bosley Avenue
P. O. Box 6754
Towson, MD 21285-6754

Re: Petition for Judicial Review of Case No. 99-106-SPH and Case No. 99-235-SPH

Dear Madam Clerk:

Enclosed herewith please find Memorandum of Petitioners Mr. & Mrs. George P. Haynes for filing in this matter.

Thank you for your assistance in this regard.

Very truly yours,


Michael P. Tanczyn, Esquire

MPT/gr
Enclosure

cc: George & Christine Haynes
C. William Clark, Esquire
Peter Max Zimmerman, Esquire

PETITION OF:

* IN THE CIRCUIT COURT

GEORGE HAYNES and CHRISTINE
HAYNES

* FOR

1029 Cold Spring Road
Bowleys Quarters, MD 21220

* BALTIMORE COUNTY

Petitioners

* CIVIL ACTION

* No. 3-C-00-001561

FOR JUDICIAL REVIEW OF THE DECISION
OF THE BOARD OF APPEALS OF
BALTIMORE COUNTY – Old Courthouse,
Room 49
400 Washington Avenue
Towson, Maryland 21204

IN THE CASE OF:

GEORGE P. HAYNES, ET UX
PROTESTANTS/PETITIONERS; (99-106-
SPH) AND W. HOWARD AYRES, ET UX
PETITIONERS (99-235-SPH) FOR SPECIAL
HEARING ON PROPERTY LOCATED ON
THE S/S COLD SPRING ROAD, 40' W OF
C/L CHESTNUT ROAD (1027 COLD SPRING
ROAD) 15TH ELECTION DISTRICT 5TH
COUNCILMANIC DISTRICT

* * * * *

**AFFIDAVIT TO ACCOMPANY MOTION
TO EXTEND TIME FOR TRANSMISSION OF THE RECORD**

STATE OF MARYLAND, County of Baltimore to Wit:

I CERTIFY that I, Carolyn Peatt, do swear and affirm:

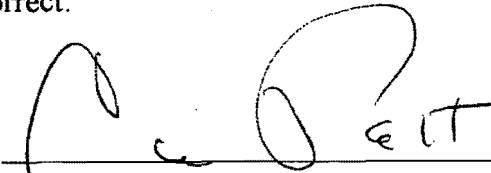
1. I am over the age of eighteen (18) and on personal knowledge, am competent to state
the following:

2. That I was responsible for preparing the transcript of the hearing in the Instant Cases for submission with the Record to the Circuit Court for Baltimore County in furtherance of the Petition for Judicial Review.

3. That due to the volume of work presently assigned to me, I will not be able to complete transcribing the two days of testimony by April 17, 2000.

4. That if an extension of time to transmit the record of sixty (60) days is granted, that will provide sufficient time to complete transcription of the testimony for submission with the record to the Circuit Court within that time frame.

5. That all of the above facts are true and correct.



CAROLYN PEATT

PETITION OF:

* IN THE CIRCUIT COURT

GEORGE HAYNES and CHRISTINE
HAYNES

* FOR

1029 Cold Spring Road
Bowleys Quarters, MD 21220

* BALTIMORE COUNTY

Petitioners

* CIVIL ACTION

No. 3-C-00-001561

FOR JUDICIAL REVIEW OF THE DECISION
OF THE BOARD OF APPEALS OF
BALTIMORE COUNTY – Old Courthouse,
Room 49
400 Washington Avenue
Towson, Maryland 21204

IN THE CASE OF:

GEORGE P. HAYNES, ET UX
PROTESTANTS/PETITIONERS; (99-106-
SPH) AND W. HOWARD AYRES, ET UX
PETITIONERS (99-235-SPH) FOR SPECIAL
HEARING ON PROPERTY LOCATED ON
THE S/S COLD SPRING ROAD, 40' W OF
C/L CHESTNUT ROAD (1027 COLD SPRING
ROAD) 15TH ELECTION DISTRICT 5TH
COUNCILMANIC DISTRICT

* * * * *

ORDER

UPON consideration of the Motion for Extension of Time to Transmit the Record and any response thereto, it is by the Circuit Court for Baltimore County this _____ day of April, 2000,

ORDERED, that the Motion for Extension of Time to Transmit the Record is granted and that the Record shall be transmitted to the Circuit Court by June 16, 2000 as prayed.

JUDGE

cc: Counsel

Michael P. Tanczyn, Esq.
606 Baltimore Avenue
Suite 106
Towson, Maryland 21204

C. William Clark, Esq.
502 Washington Ave.
Suite 700
Towson, Maryland 21204

Peter Max Zimmerman, Esquire
People's Counsel for Balto. Co.
400 Washington Ave., Room 47
Towson, Maryland 21204

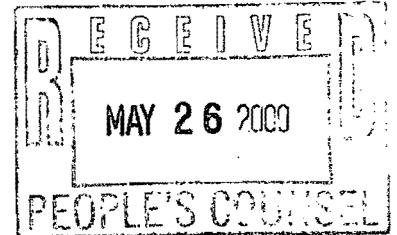
LAW OFFICES
MICHAEL P. TANCZYN, P.A.

Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204

(410) 296-8823 • (410) 296-8824 • Fax: (410) 296-8827

cd
pmt

May 25, 2000



Clerk
Circuit Court for Baltimore County
401 Bosley Avenue
P. O. Box 6754
Towson, MD 21285-6754

99-106-SPH / 99-235-SPH

Re: In the Matter of George Haynes - 03C00-001561AE

Dear Madam Clerk:

I just received the Scheduling Order noting that the hearing date has been vacated due to no transcript being filed. If you will check the Court file, you will see that a prior Court Order was entered extending the time for filing the transcript to the middle of June 2000. Therefore, we would ask that you resend the Scheduling Order since the time for submitting the transcripts has been previously extended by Court Order.

Thank you very much for your anticipated cooperation with this request.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Michael P. Tanczyn".

Michael P. Tanczyn, Esquire

MPT/gr

cc: George & Christine Haynes
C. William Clark, Esquire
Peter Max Zimmerman, Esquire ✓
Baltimore County Board of Appeals

3/23/00
PETITION OF:

GEORGE HAYNES and CHRISTINE
HAYNES

1029 Cold Spring Road
Bowleys Quarters, MD 21220

Petitioners

FOR JUDICIAL REVIEW OF THE DECISION
OF THE BOARD OF APPEALS OF
BALTIMORE COUNTY - Old Courthouse,
Room 49
400 Washington Avenue
Towson, Maryland 21204

IN THE CASE OF:

GEORGE P. HAYNES, ET UX
PROTESTANTS/PETITIONERS; (99-106-
SPH) AND W. HOWARD AYRES, ET UX
PETITIONERS (99-235-SPH) FOR SPECIAL
HEARING ON PROPERTY LOCATED ON
THE S/S COLD SPRING ROAD, 40' W OF
C/L CHESTNUT ROAD (1027 COLD SPRING
ROAD) 15TH ELECTION DISTRICT 5TH
COUNCILMANIC DISTRICT

IN THE CIRCUIT COURT

FOR

BALTIMORE COUNTY

CIVIL ACTION

No. 3-C-00-001561

* * * * *

MOTION TO EXTEND TIME FOR TRANSMISSION OF THE RECORD

NOW COMES George Haynes and Christine Haynes, Petitioners, by their undersigned
Counsel, and respectfully represents unto this Court:

1. That a Petition for Judicial Review was filed by them regarding the Instant Cases on
February 17, 2000. That the record in accordance with Maryland Rule 7-206 needs to be
transmitted to the Court within sixty (60) days after the agency receives the first Petition for Judicial
Review.

3. That pursuant to the Affidavit of Carol Peatt, Reporter for the Board of Appeals of Baltimore County, due to her volume of work, she does not believe that the transcript, which includes two full days of testimony, can be prepared within the time period required by Rule.

4. Per her Affidavit, she believes that if the time to extend the record is extended for no more than an additional sixty (60) days as provided by Maryland Rule 7-206(d), that will provide the necessary additional time within which to prepare and forward the record to the Circuit Court for Baltimore County in this case.

WHEREFORE, the Petitioners request this Honorable Court:

A. Extend the time for transmittal of the record to June 16, 2000.

13
MICHAEL P. TANCZYN, Esquire
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
Attorney for the Haynes

CERTIFICATE OF SERVICE

I HEREBY CERTIFY this 23rd day of March, 2000 a copy of the foregoing Motion to Extend Time for Transmission of the Record was mailed by first class mail, postage prepaid, to C. William Clark, Esquire, Suite 700, 502 Washington Avenue, Towson, Maryland 21204, Counsel for the Property Owners, and to Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, 400 Washington Avenue, Room 47, Towson, Maryland 21204, and to Charlotte E. Radcliffe, Legal Secretary, County Board of Appeals, Room 49, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204.

13
MICHAEL P. TANCZYN, Esquire
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
Attorney for Mr. & Mrs. George Haynes, Petitioners

LAW OFFICES

MICHAEL P. TANCZYN, P.A.

Suite 106, 606 Baltimore Avenue

Towson, Maryland 21204

(410) 296-8823 • (410) 296-8824

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

March 23, 2000

Clerk
Circuit Court for Baltimore County
401 Bosley Avenue
P. O. Box 6754
Towson, MD 21285-6754

Re: Petition for Judicial Review of Case No. 99-106-SPH and Case No. 99-235-SPH

Dear Madam Clerk:

Enclosed herewith please find Motion to Extend Time for Transmission of the Record pursuant to Maryland Rule 7-206 with Affidavit. Please forward this to the Court for its consideration.

Thank you for your assistance in this regard.

Very truly yours,


Michael P. Tanczyn, Esquire

MPT/gr
Enclosures

cc: George & Christine Haynes
C. William Clark, Esquire
Peter Max Zimmerman, Esquire ✓
Baltimore County Board of Appeals

1/2/00

IN THE MATTER OF THE	*	BEFORE THE
THE APPLICATION OF	*	COUNTY BOARD OF APPEALS
GEORGE P. HAYNES, ET UX -	*	OF
PROTESTANTS /PETITIONERS;	*	BALTIMORE COUNTY
(99-106-SPH) AND W. HOWARD	*	CASE NO. 99-106-SPH
AYRES, ET UX -PETITIONERS	*	AND
(99-235-SPH) FOR SPECIAL	*	CASE NO. 99-235-SPH
HEARING ON PROPERTY LOCATED ON	*	
THE S/S COLD SPRING ROAD, 40'	*	
W OF C/L CHESTNUT ROAD	*	
(1027 COLD SPRING ROAD)	*	
15TH ELECTION DISTRICT	*	
5TH COUNCILMANIC DISTRICT	*	

* * * * *

O P I N I O N

This case comes before the Board of Appeals of Baltimore County based on an appeal (Case No. 99-106-SPH) by the Protestants, Mr. and Mr. George P. Haynes, in which the Petition seeking enforcement of a variance granted in Case No. 97-377-SPHA was denied by the Zoning Commissioner, as well as an appeal (99-235-SPH) by the Petitioners, Marsha L. and W. Howard Ayres, seeking approval of amendments to the site plan for the variance granted in Case No. 97-377-SPHA by the Zoning Commissioner. For the purpose of this hearing, all parties agreed that the two appeals would be consolidated. Two days of public hearing before this Board were held on September 22, 1999 and on September 28, 1999. A public deliberation was held on November 16, 1999.

C. William Clark, Esquire, represented Mr. and Mrs. Ayres, the owners of the subject property, a waterfront lot at 1027 Cold Spring Road, 15th Election District, 5th Councilmanic District, in the Bowleys Quarters area of Baltimore County. Mr. and Mrs. Haynes were represented by Michael P. Tanczyn, Esquire.

In his opening statement, Mr. Clark explained that the

Petitioners applied for variance relief in Case No. 97-377-SPHA to allow them side yard setbacks of 8 feet on the Haynes boundary and 4-1/2 feet on the opposite side yard. Following a public hearing, the Zoning Commissioner granted this relief in an Opinion and Order dated April 29, 1997. No appeal was taken from this decision and building permits were issued. During the course of construction, changes were made which were not a part of the original site plan. Said changes were approved by the Zoning Commissioner without a public hearing as being within the spirit and intent of his original approval.

Representing the Protestants, Mr. Tanczyn relayed that his clients, Mr. and Mrs. Haynes, had not opposed the original plans as proposed by Mr. and Mrs. Ayres and therefore had not appeared at the variance hearing before the Zoning Commissioner. When, however, they as next door neighbors watched the changes being made during construction, they became concerned.

In September 1998 the Haynes filed Case No. 99-106-SPH; in October 1998 the Ayres filed Case No. 99-235-SPH. The Zoning Commissioner denied the Haynes' request for enforcement of the original site plan, and granted the Ayres' Petition which permitted the amendments to the site plan and confirmed the existence and location of the dwelling which had been constructed at 1027 Cold Spring Road. The Zoning Commissioner did, however, impose certain conditions of his approval as follows:

1. Mr. and Mrs. Ayres shall not be permitted to make any exterior changes, alterations or additions to the subject dwelling without filing a Petition for Special Hearing

seeking approval of said changes. That is, there can be no construction of decks, additions or other exterior improvements to the dwelling without a public hearing. Even if these improvements would be permitted by right under the building code, the Petitioners must file a Petition for Special Hearing to approve same in order to ensure compliance with the spirit and intent of this Order.

2. The Petitioners shall comply with all prior conditions and restrictions as set out in the Order issued in Case No. 97-377-SPHA. These conditions include restrictions adopted based upon the ZAC comment from the Department of Environmental Protection and Resource Management (DEPRM).

3. Finally, I am not persuaded that Mr. and Mrs. Ayres should be permitted to install a roof over the porch located on the southeast corner of the building. Mr. and Mrs. Ayres have not persuaded me that the porch on this side of the dwelling need be covered. The construction of a roof would impact the Haynes' view. My site inspection indicated that this porch area is narrow and has limited utility. Moreover, there are no steps proposed or other access shown from the area. For all of these reasons, although allowing Mr. and Mrs. Ayres the flexibility to install the necessary down spouts and gutters to direct rain off of the existing roof/porch and away from the dwelling, I will not allow the proposed porch roof to be constructed.

Appeals by both parties were taken. The Petitioners seek clarification of the conditions imposed upon them above; the Protestants seek enforcement of the site plan as originally approved.

The first witness was Marsha Ayres. Mrs. Ayres testified that she and her husband had owned the subject property on Galloway Creek for 14-1/2 years. They also own 1023 Cold Spring Road and 1101 Cold Spring Road with the purpose of providing a house for each of their two daughters. An extensive group of photographs of the subject property and the area surrounding it was accepted as

Petitioners' Exhibits No. 6A-6H; No. 7A & 7B; No. 8A, B, and C; and No. 9A-9D.

Mrs. Ayres further explained that the original 1-1/2 story bungalow on the site had been razed to be replaced by the building now constructed. She testified that changes had been necessary during construction including moving the stairway to the second floor from one side of the house to the other, and changing the location of some of the windows. She said that there had always been a porch planned for the roadside exterior as well as a waterside porch. According to her testimony the building remained within the footprint of the razed house and within the impervious restrictions necessary in the Critical Area regulations for a waterfront lot. She confirmed that in spite of changes in the building itself the side yard setbacks remained as they had been approved in the variance relief granted by the Zoning Commissioner.

Mark Elliott, the builder of 1027 Cold Spring Road, also testified. He indicated that he obtained a building permit (Petitioners' Exhibit No. 13) for a two-story single family dwelling with a width of 37.2 feet and 60 feet in depth, encompassing 2232 square feet in total. In August 1998 the County placed a stop work order on the property based on a complaint relative to the size of the foundation. On the referral of the Zoning Enforcement department, Mr. Elliott explained that he took the field modifications of the approved plan to the Zoning Commissioner (Petitioners' Exhibit No. 10) and, in Elliott's presence, the Zoning Commissioner wrote on the plan his approval of

the changes. The complaint, Elliott opined, had been with regard to whether the new construction was in violation of the 8-foot setback permitted on the Haynes boundary. With this approval, the zoning complaint was released and the building permit was reissued (Petitioners' Exhibit No. 12) to permit the builder to finish the job. Ultimately a use and occupancy permit was granted (Petitioners' Exhibit No. 14) with all Baltimore County inspections completed.

Errol Ecker, a code enforcement officer with Baltimore County for 23 years, was next to testify. Mr. Ecker indicated that he visited the subject property on September 14, 1998, measured the structure, compared his measurements with the permit application, and concluded that the setbacks and the height matched. He then closed the violation file because all was in compliance.

Joseph W. McGraw, Jr., owner and president of JST Engineering Co., Inc., was accepted as an expert in land surveying and testified on behalf of the Petitioners. He explained that he had calculated the amount of impervious coverage on the subject property as 3478 square feet or 29.1% of the area. As a surveyor with experience in the Critical Areas, Mr. McGraw concluded that the subject property impervious coverage complies with the regulations and therefore no waiver is required.

Mr. McGraw also testified that he had done the original stakeout for the new building to be constructed on the footprint of the old bungalow. He said that he was well aware of the setback requirements and, in his opinion, the setback is not "length

specific," but means that "you can put a building 8 feet off the property line."

The Protestant and next door neighbor, George W. Haynes, was next to testify. Mr. Haynes said that he had lived at 1029 Cold Spring Road since 1981. He is the Chief Mechanical Engineer at Kadon Ring and Seal Company.

He said that he, his wife and two young sons were visited by the Petitioner in February 1997 when Mr. Ayres showed him the plans for the proposed house. The plans indicated a 14-foot bumpout for a large dining room table which necessitated the new house being only 8 feet from the Haynes boundary. The Haynes were also shown an interior floor plan at this time with no window openings on their side. The waterside porch as shown on these plans did not block the Haynes view of Log Point from their master bedroom. The Haynes agreed not to oppose the variance request and did not attend the hearing before the Zoning Commissioner.

As an engineer, Haynes was able to scale the construction as the site was laid out and noted in February 1998 that the bumpout on their side had grown from 14 feet to 32 feet. He expressed his concerns to the Petitioners who indicated that they felt they were permitted to build whatever they wished, provided it was within the 8 feet setback adjacent to the Haynes boundary. Haynes testified that he complained to the zoning office and was told that the Petitioner was correct.

Later he complained about the placement of the side porch which led to the County issuing a stop work order while the

complaint was investigated. The violation was rescinded, Haynes testified, when the zoning enforcement office ascertained that the Zoning Commissioner had approved changes in the original site plan.

Evidence before the Board shows that the subject property is zoned R.C. 5 and is 50 feet in width and approximately 200 feet in depth. Inasmuch as this lot was an approved lot under a pre-existing subdivision plan and cannot comply with the current side yard setback requirement of 55 feet in the R.C. 5 zone, a variance was necessary. Section 307 of the Baltimore County Zoning Regulations (BCZR) permits the granting of variances:

...from height and area regulations, from off street parking regulations, and from sign regulations 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. 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....

The Board finds as a matter of fact that the Zoning Commissioner granted a variance to the setback requirements in his Opinion and Order dated April 27, 1997. This decision was not appealed and therefore it constitutes a final order.

Evidence and testimony indicate as a matter of fact that this variance allowing a side yard setback of 8 feet on the Haynes boundary did not limit the setback in any way, and that no part of

the structure on the Ayres property has been built within the 8-foot setback. All inspections and other regulations of Baltimore County have been met and a use and occupancy permit has been issued.

Furthermore, the Zoning Commissioner is empowered and has the discretion to determine whether a change to the site plan is material which requires a public hearing or diminimus which requires no hearing. We find that the Zoning Commissioner's approval of revisions to the site plan is consistent with the "spirit and intent" of the regulations of the original variance order, and therefore we deny the Protestants' request that the site plan of the original granting of the variance be enforced.

With regard to the clarification of the restrictions placed on the Petitioners by the Zoning Commissioner's Order, this Board finds that there shall be no exterior structural changes in size or dimension to the subject dwelling without filing a Petition for Special Hearing seeking approval of said changes. General maintenance, such as painting or repair (such as roof replacement, etc.) to the existing structure, or changes of an ornamental nature (such as changes in lighting or siding/brick, etc.) will be permitted. All other conditions imposed by the Zoning Commissioner and cited herein shall stand as ordered.

O R D E R

IT IS THEREFORE this 21st day of January, 2000 by the
County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Hearing filed in Case

No. 99-106-SPH in which Mr. and Mrs. Haynes seek enforcement of the site plan of the original granting of the variance in Case No. 97-377-SPHA be and the same is DENIED; and it is further

ORDERED that the restrictions imposed by the Zoning Commissioner shall be clarified as follows, in response to Petitioners' request for clarification filed in Case No. 99-235-SPH:

1. There shall be no exterior structural changes in size or dimension to the subject dwelling without filing a Petition for Special Hearing seeking approval of said changes. General maintenance, such as painting or repair (such as roof replacement, etc.) to the existing structure, or changes of an ornamental nature (such as changes in lighting or siding/brick, etc.) will be permitted. All other conditions imposed by the Zoning Commissioner and cited herein shall stand as ordered.

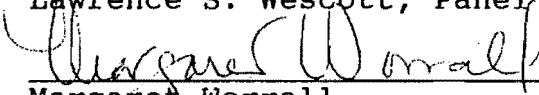
2. The Petitioners shall comply with all prior conditions and restrictions set out in the Order issued in Case No. 97-377-SPHA.

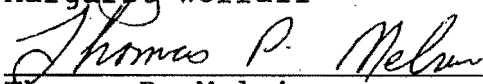
3. Mr. and Mrs. Ayres shall not be permitted to construct a roof over the porch on the southeast corner of the dwelling, as described hereinabove.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY


Lawrence S. Wescott, Panel Chairman


Margaret Worrall


Thomas P. Melvin



County Board of Appeals of Baltimore County

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

January 21, 2000

C. William Clark, Esquire
NOLAN, PLUMHOFF & WILLIAMS CHTD
Suite 700, Nottingham Centre
502 Washington Avenue
Towson, MD 21204

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

RE: In the Matter of W. Howard Ayres, et ux /Case
No. 99-235-SPH and In the Matter of George P.
Haynes, et ux /Case No. 99-106-SPH

Dear Counsel:

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 /cases.

Any petition for judicial review from this decision must be
made in accordance with Rule 7-201 through Rule 7-210 of the
Maryland Rules and Procedure, with a photocopy provided to this
office concurrent with filing in Circuit Court. Please note that
all Petitions for Judicial Review filed from 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,

Kathleen C. Bianco
Kathleen C. Bianco
Administrator

encl.

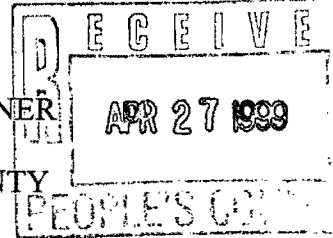
cc: Mr. & Mrs. George Haynes
W. Howard and Marsha Ayres
People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney



P.C. 4/23/99

IN RE: PETITION FOR SPECIAL HEARING
S/S Cold Spring Road, 40 ft. W of the
C/I of Chestnut Road
1027 Cold Spring Road
15th Election District
5th Councilmanic District
Legal Owners: W. Howard Ayres, et ux
Legal Owners: George P. Haynes, et ux

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* CaseNo 99-106-SPH & 99-235-SPH



* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for a single public hearing on consolidated cases; to wit: Case Nos. 99-106-SPH and 99-235-SPH. Both cases relate to Petitions for Special Hearing, filed for the property located at 1027 Cold Spring Road, in the Bowleys Quarters section of eastern Baltimore County. The property is owned by W. Howard Ayres and Marshall L. Ayres, his wife. Within the Petition filed by Mr. and Mrs. Ayres in case No. 99-235-SPH, special hearing relief is requested to approve amendments to the site plan for the variances granted in case No. 97-377-SPHA, which permitted side yard buildings setbacks of 8 ft. and 4.5 ft. respectively, in lieu of the required 55 ft., and from Section 304 of the BCZR to permit a dwelling on an undersized lot. The Petition for Special Hearing in case No. 99-106-SPH was filed by George P. Hayes and Christine M. Haynes, his wife, the owners of an adjacent property at 1029 Cold Spring Road. The Petition filed by Mr. and Mrs. Haynes seeks the strict enforcement of the variance granted in case No. 97-97-277-SPHA and compliance with the original foot print shown on the site plan submitted in that case. The Petition also requests another hearing so that Mr. and Mrs. Haynes can oppose the structure in its current configuration.

Appearing at the requisite public hearing held for those cases were Mr. and Mrs. Ayres, who were represented by C. William Clark, Esquire, and Mrs. And Mrs. Haynes, who were represented by Michael Tanczyn, Esquire. Also testifying was Errol A. Ecker, an inspector in Baltimore County's Division of Code Enforcement, and Mark Elliott, Mr. and Mrs. Ayres' builder.

A comment about the history of the recent use of the subject property as well as the

ongoing dispute between these parties is in order. The case brings to mind the legendary feud between the Hatfields and the McCoys in the back hills of Appalachia. Rarely, has this Zoning Commissioner seen a case where the parties have expended so much energy, anger and expense over such trivial issues. For example, the parties bicker and argue over distances measured in inches. It is, indeed, unfortunate that both sides have chosen this course, nonetheless, I consider the cases as they come before me on their merits, irrespective of the motives and behavior of the litigants.

The subject property is a waterfront lot located adjacent to Cold Spring Road in the Middle River/Galloway Creek Bowleys Quarters section of Baltimore County. Mr. and Mrs. Ayres have owned the property, as well as other nearby lots, for many years. Apparently, members of the Ayres family live in the vicinity, including immediately next door to the subject property at 1023 Cold Spring Road. The subject lot is 50 ft. in width and approximately 200 ft. in depth, zoned R.C.5. Until recently, it was improved by 1-1/2 story framed dwelling which was built in the 1930s. The property also features an attached garage which is immediately adjacent to Cold Spring Road.

Photographs of the original house submitted at the hearing showed that same was old and in need of certain repair and rehabilitation. Rather than undertake these costly repairs, Mr. and Mrs. Ayres decided to raze the dwelling and construct a new single family dwelling in its place. The proposed new dwelling was to be located essentially in the same building footprint as the old dwelling.

In that new construction was proposed, Mr. and Mrs. Ayres needed zoning variance relief for the side yard setback requirements. As noted above, the property is zoned R.C.5, a classification which requires 50 ft. side yard setbacks. In that the lot is only 50 ft. in width, it is unbuildable without variance relief. This is a classic case where variance relief is warranted. As noted in my prior Order, the lots within this community were laid out many years ago, prior to the adoption of the BCZR. Those lots are 50 ft. wide, well below the minimum required by the BCZR.

In any event, Mr. and Mrs. Ayres' Petition for Variance relief was filed and docketed

as case No. 97-377-SPHA. A public hearing was held for that case on Monday, April 7, 1997 before this Zoning Commissioner. Mr. and Mrs. Ayres appeared at that time and submitted a site plan for the property and proposed dwelling. They also produced a copy of a letter from their neighbors, Mr. and Mrs. Haynes, indicating no opposition to the request. Favorable Zoning Plans Advisory Committee (ZAC) comments were also received. Based upon the cumulative testimony and evidence presented at that time, the relief was granted, pursuant to an opinion and Order issued by me on April 29, 1997. Apparently, the Petitioners razed the existing dwelling and commenced construction soon thereafter. Although the new dwelling is indeed different from the razed structure, it is located on the same footprint. Testimony and evidence offered at the most recent hearing was that the southeast corner of the new house (i.e., the corner nearest the water and the Haynes lot) was located by a stake out of the old house, prior to its demolition. The corner of the new house was then placed at that stake. Even Mr. Haynes, who now bitterly opposes the Ayres construction, admitted that the corner of the new dwelling is located within 18 inches of the corner of the old house. In my judgment, even if an 18 inch difference exists, it is, meaningless in the scheme of things. I find that the new house is located at the same spot for all practical purposes.

Returning to the history of this case, the site plan originally approved by me and depicted a proposed 8 ft. side yard setback, from the side of the Ayres new house to the Ayres/Haynes property line. Moreover, the configuration shown in that plan indicated that the side wall of the Ayres new dwelling was not a continuous plane. That is, the design of the new dwelling shown on the original plan indicated a "bump out", which was 14 ft. in length. This bump out was that portion of the side wall of the dwelling which is within 8 ft. of the Haynes property line. The remainder of the house (the building is 60 ft. deep) would be, in effect, recessed from the plane created by the bump out and would, therefore, be set back farther from the property line.

Following the issuance of my Order, this Zoning Commissioner was unexpectedly visited by Mark Elliott, the builder of the Ayres dwelling, who requested a modification of

the original plan. The modification essentially enlarged the "bump out" from 14 ft. to 32 ft long. He indicated that more interior room in the dwelling was needed. At that meeting, I reviewed Mr. Elliott's amended plan which he had prepared in order to obtain the necessary building permits. In a handwritten note inserted on that plan, I stated that the modification was appropriate and consistent with the Order in case No. 97-377-SPHA. Specifically, I observed the 8 ft. side yard variance was still maintained in that the distance between the dwelling and the property line was not reduced. Moreover, the area of the enlarged bump out was in the rear of the dwelling, away from the water. Thus, there was no environmental complications caused by this modification. For those reasons, I approved the modification of the site plan. The building permit was, thereafter, issued and construction commenced in accordance with the modified plan.

It was then that Mr. and Mrs. Haynes noted a change to the dwelling which they had expected to see rise on their neighbor's property. Testimony and evidence offered at the hearing before me was that the parties had enjoyed an amicable relationship when the old dwelling existed. Apparently, Mr. and Mrs. Ayres shared their original plans with Mr. and Mrs. Haynes and the neighbors supported the original proposal. However, enlargement of the bump out was without the neighbors knowledge and consent. The parties relationship deteriorated when the Ayres built the house which the Haynes believe was not what was represented to them. The Ayres believe that those changes are minor.

The hearing before me consumed more than a full day and a significant number of documents were submitted. I reviewed all of the various photographs, plans and documents presented. Additionally, as I promised to the parties, I inspected the property. I viewed the property from the pier leading into Galloway Creek, from both lots and the street.

Based upon the record of this case and my field examination, I make the following findings:

First, it is clear that the Order granted in case No. 97-377-SPHA is a final Order. That Order granted variance relief to enable Mr. and Mrs. Ayres to build to within 8 ft. of the property line. This Order was not appealed and is final. Mr. and Mrs. Ayres constructed

their dwelling based upon building permits issued in accordance with that Order. I will not revisit that issue.

Second, the present structure, in its present configuration and location meets the spirit and intent of the variance relief previously granted. Enlargement of the bump out is consistent with the prior zoning Order issued. The building is entirely appropriate for the community. It is a magnificent building and an asset to the neighborhood. In this regard, I cannot fathom the reasons behind the bitter opposition expressed by Mr. and Mrs. Haynes to this structure. From the photographs submitted and my site visit, it appears to be located in a nearly identical place as the original structure. It is an improvement to that building. Although taller and comprising more interior square foot, the structure does not, in my judgment adversely impact the Haynes property. The 8 ft. variance has not been compromised. The house does not block the Haynes' view of the water, nor cause any other adverse impact to them. Moreover, the character of the existing neighborhood is of note. From my inspection, it appears that all of the lots are undersized, in relation to the R.C.5 requirements. This neighborhood is typical of many waterfront communities in Baltimore County. They were developed many years ago, prior to the adoption of any zoning code in Baltimore County. This factor must be taken into account considering the variance relief that was granted under special hearing at issue in this case.

Third, although not an issue before me, the Ayres erred in not sharing their changes with Mr. and Mrs. Haynes. The Haynes then lost perspective of those changes, which are essentially benign.

Based upon these conclusions, I shall, therefore, grant the Petition for Special Hearing in case No. 99-235-SPH permitting the amendments to the site plan, and confirming the existence and location of the dwelling which has been constructed. In accordance therewith, I will deny the Petition for Special Hearing filed by Mr. and Mrs. Haynes in case No. 99-106-SPH.

However, I shall impose certain conditions.

1. Mr. and Mrs. Ayres shall not be permitted to make any exterior changes, alterations

or additions to the subject dwelling without filing a Petition for Special Hearing seeking approval of said changes. That is, there can be no construction of decks, additions or other exterior improvements to the dwelling without a public hearing. Even if these improvements would be permitted by right under the building code, the Petitioners must file a Petition for Special Hearing to approve same in order to ensure compliance with the spirit and intent of this Order.

2. The Petitioners shall comply with all prior conditions and restrictions as set out in the Order issued in case 97-377-SPHA. These conditions include restrictions adopted based upon the ZAC comment from the Dept. of Environmental Protection and Resource Management (DEPRM).

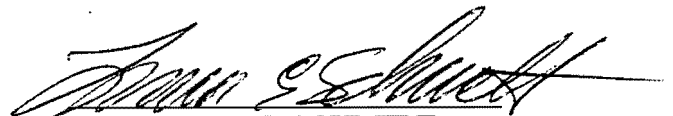
3. Finally, I am not persuaded that Mr. and Mrs. Ayres should be permitted to install a roof over the porch located on the southeast corner of the building. Mr. and Mrs. Ayres have not persuaded me that the porch on this side of the dwelling need be covered. The construction of a roof would impact the Haynes' view. My site inspection indicated that this porch area is narrow and has limited utility. Moreover, there are no steps proposed or other access shown from the area. For all of these reasons, although allowing Mr. and Mrs. Ayres the flexibility to install the necessary downspouts and gutters to direct rain off of the existing roof/porch and away from the dwelling, I will not allow the proposed porch roof to be constructed.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County, this 23rd day of April 1999, that the Petition for Special Hearing filed by W. Howard Ayres and Marsha Ayres to approve amendments to the site plan for the variances granted in case No. 97-377-SPHA, which permitted side yard building setbacks of 8 ft. and 4.5 ft. respectively, in lieu of the required 55 ft., and from Section 304 of the BCZR to permit a dwelling on an undersized lot, be and is hereby GRANTED, subject, however, to the below listed restrictions; and,

IT IS FURTHER ORDERED that a Petition for Special Hearing, filed in case No. 99-106-SPH by George P. Hayes and Christine M. Haynes, to enforce the variance granted in case No. 97-277-SPHA of the variance to the original foot print shown in the site plan submitted in that case be and is hereby DENIED.

1. Any appeal from this decision must be taken in accordance with the applicable provisions set forth in Section 26-132 of the Baltimore County Code.
2. Any additional exterior construction to the dwelling including, but not limited to, the construction of porches, decks, and additions shall not be permitted without a public hearing, following the filing of a Petition for Special Hearing. This restriction shall not apply to the installation of rain gutters, downspouts or other "punch list" type items necessary to complete construction.
3. The Petitioners shall comply with all prior conditions and restrictions set out in the Order issued in case No. 97-377-SPHA.
4. Mr. and Mrs. Ayres shall not be permitted to construct a roof over the porch on the southeast corner of the dwelling, as described hereinabove.



LAWRENCE E. SCHMIDT
ZONING COMMISSIONER
FOR BALTIMORE COUNTY



AMENDED

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 1027 Cold Spring Roadwhich is presently zoned RC-5

Case No. 99-106 SPH Amended Petition

This Petition shall be filed with the Department of Permits and 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 Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

To determine if the construction at the above address, after the approval obtained in Case No. 97-377 SPHA as originally approved is in accordance with the variance as approved; is in keeping with the spirit and intent of the Critical Areas Legislation; if it is in keeping with the requirements of Baltimore County Zoning Regulation Section 307; and to determine if it is supported by and in compliance with the requirements of the Critical Areas Legislation applied to this property as required under the original and all subsequent orders of the Zoning Commissioner; and to determine if neighboring property owners were afforded due process as to any notice and of any proposed change or amendment to the original variances approved prior to construction of the improvements or repeated substitution of building plans at the aforesaid address by Howard and Marsha Ayres.

Property is to be posted and advertised as prescribed by the zoning regulations.

I, or we, agree to pay expenses of above Special Hearing, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

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

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address

Telephone No.

City

State

Zip Code

Attorney For Petitioner:

Michael P. Tanczyn, Esq.

Name - Type or Print

Signature

Law Offices of Michael P. Tanczyn

Company

410-296-8823

Suite 106, 606 Baltimore Ave.

Address

Telephone No.

Towson, Maryland

21204

City

State

Zip Code

Legal Owner(s):

George Haynes

Name - Type or Print

Signature

Christine Haynes

Name - Type or Print

Signature

1029 Cold Spring Road

Address

Telephone No.

Bowleys Quarters, MD

21220

City

State

Zip Code

Representative to be Contacted:

Michael P. Tanczyn, Esq.

Name

410-296-8823

Suite 106, 606 Baltimore Ave.

Address

Telephone No.

Towson, Maryland

21204

City

State

Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Case No. _____

Reviewed By _____ Date _____

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

CD/PT

July 29, 1999

RECEIVED
COUNTY BOARD OF APPEALS
99 JUL 30 PM 2:46

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

Re: Petition for Special Hearing
Case No. 99-106 SPH

Dear Kathy:

Enclosed herewith please for filing in this matter is the Amended Petition for Special Hearing which has been signed by myself and my clients. I have sent a copy of this to Bud Clark, who is representing the Ayres, by copy of this letter.

Thank you for your assistance in this regard.

Very truly yours,

Michael P. Tanczyn

Michael P. Tanczyn, Esquire

MPT/gr
Enclosure

cc: George & Christine Haynes
C. William Clark, Esquire



Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 1027 Cold Spring Road

which is presently zoned R. C. 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 Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve Amendments to the site plan for the variances granted in Case # 97-377-SPHA permitting side yard building setbacks of 8.0 feet and 4.5 feet respectively, in lieu of the required 50 feet, and from Section 304 to permit a dwelling on an undersized lot.

ad

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

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

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

Contract Purchaser/Lessee:

(Type or Print Name)

Signature

Address

City State Zipcode

Attorney for Petitioner:

C. William Clark
(Type or Print Name)

Signature

502 Washington Avenue, Suite 700
Address Phone No.

TOWNSHIP MD 21204
City State Zipcode

Legal Owner(s):

W. Howard and Marsha L. Ayres
(Type or Print Name)

Signature

(Type or Print Name)

Signature

4211 Manor Wood Drive (410) 335-7973
Address Phone No.

Glen Arm MD 21057
City State Zipcode
Name, Address and phone number of representative to be contacted.

C. William Clark (410)
Name
502 Washington Avenue, Suite 700 823-7800
Address Phone No.

OFFICE USE ONLY
ESTIMATED LENGTH OF HEARING 1/2 DAY
unavailable for Hearing

the following dates Next Two Months
ALL OTHER
REVIEWED BY: CAM DATE 4 Dec 98





Petition for Special Hearing

CLC 46
PMV

to the Zoning Commissioner of Baltimore County

for the property located at 1027 COLD SPRING RD.
which is presently zoned RC.5

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

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve **THE ENFORCEMENT OF**

VARIANCE #97-377-SPHA AS GRANTED TO THE ORIGINAL FOOTPRINT OR CONVEY ANOTHER ZONING HEARING SO MR. + MRS. HAYNES MAY OPPOSE THE STRUCTURE IN ITS CURRENT CONFIGURATION.

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

I, or we, agree to pay expenses of above Special Hearing 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/Lessee:

(Type or Print Name)

Signature

Address

City State Zipcode

Attorney for Petitioner:

(Type or Print Name)

Signature

Address Phone No.

City State Zipcode

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

PETITIONER/ADVERSE
Legal Owner(s): 1029 Cold Spring Rd.

GEORGE P. HAYNES

(Type or Print Name)

Signature

Christine M. Haynes

(Type or Print Name)

Christine M. Haynes

Signature

1029 COLD SPRING RD. 410/335-7709
Address Phone No.

BALTO. MD 21220
City State Zipcode

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

SAME AS ABOVE

Name

Address Phone No.

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing

2 1/2 hrs

the following date

Next Two Months

ALL ☒ OTHER

REVIEWED BY:

CAH

DATE

9 SEP 98

106



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

September 25, 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: 99-106-SPH
1027 Cold Spring Road
S/S Cold Spring Road, 40' W of centerline Chestnut Road
15th Election District - 5th Councilmanic District
Legal Owner: Howard & Marsha Ayres
Petitioner: George P. & Christine M. Haynes

Special Hearing to approve the enforcement of variance #97-377-SPHA as granted to the original footprint or convene another zoning hearing.

HEARING: Thursday, October 29, 1998 at 9:00 a.m. in Room 407, County Courts Building,
401 Bosley Avenue

Arnold Jablon
Director

c: George & Christine Haynes
Howard & Marsha Ayres

- NOTES: (1) **YOU MUST HAVE THE ZONING NOTICE SIGN POSTED ON THE PROPERTY BY OCTOBER 14, 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.

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



Printed with Soybean Ink
on Recycled Paper



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

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: 99-235-SPH
1027 Cold Spring Road
S/S Cold Spring Road, approximately 100' W of centerline Chestnut Road
15th Election District – 5th Councilmanic District
Legal Owner: W. Howard and Marsha L. Ayres

Special Hearing to approve amendments to the site plan for variances granted in case number 97-377-SPHA and Section 304 to permit a dwelling on an undersized lot.

HEARING: Wednesday, January 13, 1999 at 2:00 p.m. in Room 407, County Courts Building, 401 Bosley Avenue

A handwritten signature in cursive script, appearing to read "Arnold Jablon".

Arnold Jablon
Director

c: W. Howard & Marsha L. Ayres
C. William Clark, Esquire
Michael P. Tanczyn, Esquire
Christine & George Haynes

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY DECEMBER 29, 1998.**
- (2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
- (3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

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



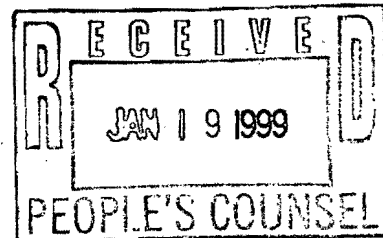


Baltimore County
Zoning Commissioner
Office of Planning

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

January 11, 1999

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



RE: PETITIONS FOR SPECIAL HEARING
S/S Cold Spring Road, 40' W of the c/l Chestnut Road
(1027 Cold Spring Road)
15th Election District – 5th Councilmanic District
W. Howard Ayres, et ux - Petitioners
Cases Nos. 99-235-SPH and 99-106-SPH (Haynes)

Dear Mr. Tanczyn:

This office is in receipt of your letter dated January 11, 1999 requesting a postponement of the above-captioned matter, which is scheduled to be heard on Wednesday, January 13, 1999. Please be advised that I have discussed your request with Mr. Clarke, who represents the other parties to this case, and it was tentatively agreed to reschedule this matter to Thursday, January 21, 1999 at 10:00 AM in Room 407 of the County Courts Building. By copy of this letter to Mr. Clarke, I am confirming that your request for postponement has been granted and the hearing rescheduled as noted above. In the event you find that this hearing date is not convenient, please notify me as soon as possible so that another date can be selected.

Should you have any questions concerning this matter, please do not hesitate to contact me.

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: C. William Clark, Esquire
502 Washington Avenue, Suite 700, Towson, Md. 21204

✓ People's Counsel; Case File



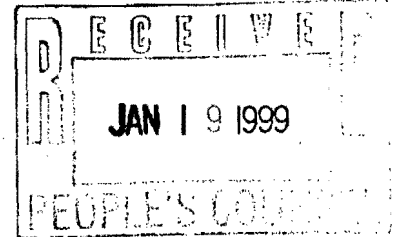


Baltimore County
Zoning Commissioner
Office of Planning

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

January 11, 1999

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



RE: PETITIONS FOR SPECIAL HEARING
S/S Cold Spring Road, 40' W of the c/l Chestnut Road
(1027 Cold Spring Road)
15th Election District - 5th Councilmanic District
W. Howard Ayres, et ux - Petitioners
Cases Nos. 99-235-SPH and 99-106-SPH (Haynes)

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This office is in receipt of your letter dated January 11, 1999 requesting a postponement of the above-captioned matter, which is scheduled to be heard on Wednesday, January 13, 1999. Please be advised that I have discussed your request with Mr. Clarke, who represents the other parties to this case, and it was tentatively agreed to reschedule this matter to Thursday, January 21, 1999 at 10:00 AM in Room 407 of the County Courts Building. By copy of this letter to Mr. Clarke, I am confirming that your request for postponement has been granted and the hearing rescheduled as noted above. In the event you find that this hearing date is not convenient, please notify me as soon as possible so that another date can be selected.

Should you have any questions concerning this matter, please do not hesitate to contact me.

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: C. William Clark, Esquire
502 Washington Avenue, Suite 700, Towson, Md. 21204

People's Counsel; Case File





Baltimore County
Zoning Commissioner
Office of Planning

CD
P42
Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
410-887-4386

February 10, 1999

William C. Clarke, Esquire
Nolan, Plumhoff & Williams
502 Washington Avenue, Suite 700
Towson, Maryland 21204

RE: PETITIONS FOR SPECIAL HEARING
S/S Cold Spring Road, 40' W of the c/l Chestnut Road
(1027 Cold Spring Road)
15th Election District - 5th Councilmanic District
W. Howard Ayres, et ux - Petitioners
Cases Nos. 99-235-SPH and 99-106-SPH (Haynes)

M/M George
Petitioners
Prot.

Dear Mr. Clarke:

This letter is to confirm that the above-captioned matters have been rescheduled for a continued hearing on Thursday, March 25, 1999 at 9:00 AM in Room 407 of the County Courts Building. I understand that you have contacted Michael P. Tanczyn, Esquire, attorney for Mr. & Mrs. Haynes, and that this date is agreeable to him and his clients as well.

Thank you for your assistance in this matter and should you have any questions concerning the rescheduled hearing date, please do not hesitate to call me.

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Michael P. Tanczyn, Esquire
606 Baltimore Avenue, Suite 106, Towson, Md. 21204

✓ People's Counsel; Case Files





Baltimore County
Zoning Commissioner
Office of Planning

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

February 10, 1999

William C. Clarke, Esquire
Nolan, Plumhoff & Williams
502 Washington Avenue, Suite 700
Towson, Maryland 21204

RE: PETITIONS FOR SPECIAL HEARING
S/S Cold Spring Road, 40' W of the c/l Chestnut Road
(1027 Cold Spring Road)
15th Election District – 5th Councilmanic District
W. Howard Ayres, et ux - Petitioners
Cases Nos. 99-235-SPH and 99-106-SPH (Haynes)

Dear Mr. Clarke:

This letter is to confirm that the above-captioned matters have been rescheduled for a continued hearing on Thursday, March 25, 1999 at 9:00 AM in Room 407 of the County Courts Building. I understand that you have contacted Michael P. Tanczyn, Esquire, attorney for Mr. & Mrs. Haynes, and that this date is agreeable to him and his clients as well.

Thank you for your assistance in this matter and should you have any questions concerning the rescheduled hearing date, please do not hesitate to call me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lawrence E. Schmidt".

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Michael P. Tanczyn, Esquire
606 Baltimore Avenue, Suite 106, Towson, Md. 21204

People's Counsel; Case Files



Printed with Soybean Ink
on Recycled Paper



County Board of Appeals of Baltimore County

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

Hearing Room - Room 48

FAX: 410-887-3182

Old Courthouse, 400 Washington Avenue

June 17, 1999

NOTICE OF ASSIGNMENT

CASE #: 99-106-SPH

IN THE MATTER OF: GEORGE P. HAYNES, ET UX -
Protestants /Petitioners (Marsha L. & W. Howard
Ayres -Legal Owners) 1027 Cold Spring Lane

(Petition seeking enforcement of variance granted
in 97-377-SPH was DENIED by ZC.)

and

CASE #: 99-235-SPH

IN THE MATTER OF: W. HOWARD AYRES, ET UX -
Petitioners 1027 Cold Spring Road
15th Election District; 5th Councilmanic

(Petition seeking approval of amendments to site
plan for variance granted in 97-377-SPH by ZC.)

ASSIGNED FOR:

WEDNESDAY, SEPTEMBER 22, 1999 at 10:00 a.m. /Day #1
and TUESDAY, SEPTEMBER 28, 1999 at 10:00 a.m. /Day #2

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the
advisability of retaining an attorney.

Please refer to the Board's Rules of Practice & Procedure, Appendix C,
Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient
reasons; said requests must be in writing and in compliance with Rule
2(b) of the Board's Rules. No postponements will be granted within 15
days of scheduled hearing date unless in full compliance with Rule
2(c).

Kathleen C. Bianco
Administrator

cc: Counsel for Appellants /Protestants: Michael P. Tanczyn, Esquire
Appellants /Protestants: Mr. & Mrs. George Haynes
(Appealed as to Order /99-235-SPH and 99-106-SPH)

Counsel for Appellants /Property Owners: C. William Clark, Esquire
Appellants /Property Owners: W. Howard and Marsha Ayres
(Appealed as to Order /99-235-SPH)

People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney





County Board of Appeals of Baltimore County

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

PC NO 7
INVOLVED

October 1, 1999

NOTICE OF DELIBERATION

IN THE MATTER OF:

GEORGE P. HAYNES, ET UX -Petitioners /Protestants
Case No. 99-106-SPH and W. HOWARD AYRES, ET UX -Petitioners /
Legal Owners Case No. 99-235-SPH

The above matter having been heard in two days of public hearing (9/22/99 and 9/28/99), deliberation has been scheduled as follows:

DATE AND TIME : TUESDAY, NOVEMBER 16, 1999 at 9:30 a.m.

LOCATION : Room 48, Basement, Old Courthouse

NOTE: Closing Memorandums due from Counsel on Friday, October 22, 1999
(ORIGINAL AND THREE [3] COPIES)

Kathleen C. Bianco
Administrator

c: Counsel for Appellants /Protestants: Michael P. Tanczyn, Esquire
Appellants /Protestants: Mr. & Mrs. George Haynes
(Appealed as to Order /99-235-SPH and 99-106-SPH)

Counsel for Appellants /Property Owners: C. William Clark, Esquire
Appellants /Property Owners: W. Howard and Marsha Ayres
(Appealed as to Order /99-235-SPH)

People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

copies: S.W.M.

To be filed in by
Clerk, Court of
Special Appeals

PHC No. _____

NOTICE
Pursuant to Md. Rule 8-205 this
form must be completed and sent
to Clerk, Court of Special Appeals,
Courts of Appeal Bldg., Annapolis,
MD 21401

COURT OF SPECIAL APPEALS

CIVIL APPEAL PREHEARING INFORMATION REPORT

1. Title of Case: Baltimore Co., MD & George Haynes & Christine Haynes,
Which party is Appellant in Court of Special Appeals: Petitioners
Name George Haynes & Christine Haynes
2. Names, addresses, and telephone numbers of counsel:
For Appellant: Michael P. Tanczyn, Esq.
606 Baltimore Ave., Ste. 106
Towson, MD 21204 410-296-8823
For Appellee: C. William Clark, Esq.
Nolan, Plumbhoff & Williams 410-823-7800
Ste. 700, 502 Washington Ave., Towson, MD 21204
3. Trial Court: (Circuit) (Orphan's) Court for _____
Circuit Court For Baltimore County
a. Docket No: 03-C-00-001561 c. Trial Judge
The Honorable Alexander Wright, Jr.
b. Jury/ Non-Jury/ Motion Hearing
Non-Jury
4. Type of Case (e.g., automobile negligence, worker's compensation,
breach of contract, domestic, employment dispute, product liability,
property dispute, tax, UCC, zoning, etc):
Zoning
5. Trial
a. Duration of trial or hearings (days/hours): One Hour
b. Number of exhibits in evidence:
6. Judgment
a. Date of Judgment being appealed (if date is other than that shown
on docket, please explain): July 10, 2001
b. Describe judgment or order being appealed. (Attach a copy of
any written opinion of the trial court.) Copy attached.
c. Did judgment finally dispose of all claims by and against all
parties? Yes If not, please explain why judgment is appealable.
(See Md. Rule 2-602; Courts Art., Sections 12-301, 12-303.)

- Page 3 of 4

13. Motions cases

If this appeal is from the granting of a motion to dismiss or for summary judgment

Not applicable.

a. Was the proceeding recorded? (See Md. Rule 16-404-D) _____

b. If the proceeding was recorded:

(1) How long did the hearing on the motion last? _____

(2) If a transcript of the proceeding is not necessary to the appeal, state why.

14. Settlement or Scheduling Conference

a. Would a prehearing conference be helpful in settling or limiting issues? Yes

b. Do you see a need for an administrative conference to resolve any special issues regarding the record, briefing, or scheduling? Yes If so, state (1) the issues and (2) whether you have discussed them with opposing counsel. Was mailed to C. William Clark, Esquire, Attorney for Appellees and to Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County.

NOTICE

A prehearing conference is designed to encourage the parties to reach a voluntary settlement before incurring the expenses of securing a transcript and preparing and printing briefs, or, if that is not possible, to consider limiting the issues, the option of an expedited appeal pursuant to Md. Rule 8-207, and any special scheduling or briefing problems. Please set forth succinctly any additional information and attach any documents that will assist the Court and the parties in these regards. Information concerning settlement negotiations will be kept confidential.

CERTIFICATE OF SERVICE

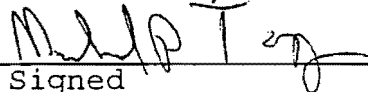
I hereby certify that a copy of the foregoing report was mailed to:

C. William Clark, Esq., Nolan, Plumhoff & Williams, Ste. 700, 502 Washington Ave., Towson, MD 21204, Attorney for Appellees & Peter Max Zimmerman, Esq., People's Counsel for Balto. Co., 400 Washington Ave., Rm. 47 Towson, MD 21204.

Date

August 8, 2001

Signed



**ATTACHMENT TO
COURT OF SPECIAL APPEALS
CIVIL APPEAL PREHEARING INFORMATION REPORT**

Appeal Of: George Haynes & Christine Haynes

9. Issues:

- a. Whether the affirmation by the Circuit Court of the Board of Appeals decision was based on substantial evidence where the Variance Petitioners, the Ayres, after obtaining all the relief they originally requested, consisting of a fourteen foot (14') long area of variance on the side of their proposed new home adjacent to the Protestant Appellants; subsequently totally drastically revised their building plans and constructed a home, without zoning approval, with a sixty foot (60') length along the variance line with numerous additional large windows, doors, and porches, violates the established standard to afford the minimum relief necessary for a variance request in the interpretation of Section 307 of the Baltimore County Zoning Ordinance?
- b. Whether the Court's affirmation violates the spirit and intent of the BCZR of Variance that the minimum relief necessary to afford relief is to be provided to a Variance Petitioner who are not to be rewarded for self created hardships where, as here, the Ayres literally revised and changed their building plans without seeking zoning approval and only sought zoning approval after the Haynes sought and obtained a Stop Work Order from Baltimore County Building Inspectors because the Ayres' construction did not follow the footprint of the site plan in the variance approval in Case 97-377-SPHA, as well as the house front of the Ayres' house being closer to the water than that shown under the site plan submitted in Case 97-377-SPHA?
- c. Whether the Court's decision overrules the standard enunciated in Cromwell v. Ward requiring the showing of uniqueness of the Ayres' property, either in the original Petition for Variance or in any subsequent amendments where the Ayres already owned an adjacent improved parcel negating the need for a variance under the Friends of the Ridge v. BG&E case?

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

Date: December 28, 1998

TO: Arnold Jablon
FROM: R. Bruce Seeley *ROS/RS*
SUBJECT: Zoning Item #235

Ayres Property - 1027 Cold Spring Road

Zoning Advisory Committee Meeting of December 14, 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).
 - Development of this property must comply with the Forest Conservation Regulations (Section 14-401 through 14-422 of the Baltimore County Code).
 - X 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).

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: December 17, 1998

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

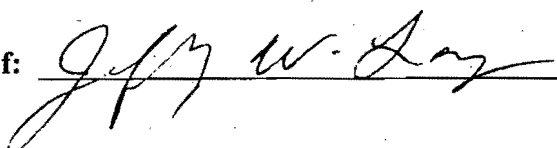
SUBJECT: 1027 Cold Spring Road

INFORMATION:

Item Number: 235
Petitioner: W. Howard and Marsha L. Ayres
Property Size: 10,175± square feet
Zoning: RC 5
Requested Action: Variance
Hearing Date:

SUMMARY OF RECOMMENDATIONS:

The Office of Planning supports the request to amend the variances granted in Case No.97-377-SPHA permitting side yard building setbacks of 8.0 feet and 4.5 feet respectively, in lieu of the required 50 feet, and to permit a dwelling on an undersized lot.

Section Chief: 

AFK:KB:lsn



**Maryland Department of Transportation
State Highway Administration**

CB
PM

Parris N. Glendening
Governor

David L. Winstead
Secretary

Parker F. Williams
Administrator

Date: 12.11.91

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

RE: Baltimore County
Item No. 235 COM

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,

M. M. Lenhart

for Michael M. Lenhart, Acting Chief
Engineering Access Permits Division

My telephone number is _____

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

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



Maryland Department of Transportation
State Highway Administration

Parris N. Glendening
Governor

David L. Winstead
Secretary

Parker F. Williams
Administrator

Date: 12.11.94

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

RE: Baltimore County
Item No. 235 COM

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,

for Michael M. Lenhart, Acting Chief
Engineering Access Permits Division

My telephone number is _____

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

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

Date: October 7, 1998

TO: Arnold Jablon
FROM: R. Bruce Seeley *RB/4p*
SUBJECT: Zoning Item #106

1027 Cold Springs Road

Zoning Advisory Committee Meeting of September 21, 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).
 - Development of this property must comply with the Forest Conservation Regulations (Section 14-401 through 14-422 of the Baltimore County Code).
 - X 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).



**Maryland Department of Transportation
State Highway Administration**

C. P. M.

Parris N. Glendening
Governor

David L. Winstead
Secretary

Parker F. Williams
Administrator

Date: 9.22.94

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

RE: Baltimore County
Item No. 106 CAM

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.

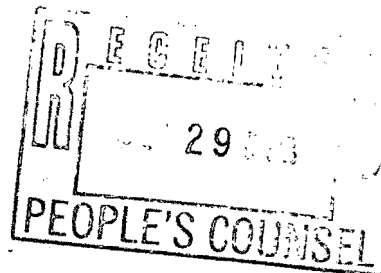
Should you have any questions regarding this matter, please contact Larry Gredlein at 410-545-5606 or by E-mail at (lgredlein@sha.state.md.us).

Very truly yours,

L. J. Gredlein

L. J. Ronald Burns, Chief
Engineering Access Permits
Division

LG



My telephone number is _____

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

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717

RE: PETITION FOR SPECIAL HEARING
1027 Cold Spring Road, S/S Cold Spring Rd, 40' W
of c/I Chestnut Rd, 15th Election District,
5th Councilmanic

Legal Owners:
Petitioners: George and Christine Haynes

Petitioner(s)

* BEFORE THE
* ZONING COMMISSIONER
* FOR
* BALTIMORE COUNTY
* Case Number: 99-106-SPH

* * * * *

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.



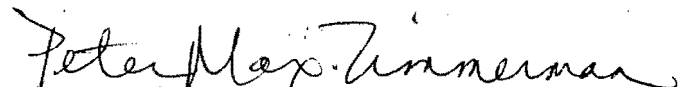
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



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 8th day of October, 1998, a copy of the foregoing Entry of Appearance was mailed to Petitioners George P. and Christine M. Haynes, 1029 Cold Spring Road, Baltimore, MD 21220.



PETER MAX ZIMMERMAN

RE: PETITION FOR SPECIAL HEARING
1027 Cold Spring Road, S/S Cold Spring Rd,
appx. 100' W of c/l Chestnut Rd, 15th Election
District, 5th Councilmanic

Legal Owners: W. Howard Ayres & Marsha L. Ayres

Petitioner(s)

* BEFORE THE
* ZONING COMMISSIONER
* FOR
* BALTIMORE COUNTY
* Case Number: 99-235-SPH

* * * * *

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
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio
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 31st day of December, 1998, a copy of the foregoing Entry of Appearance was mailed to C. William Clark, Esq., Nolan, Plumbhoff & Williams, 502 Washington Avenue, Suite 700, Towson, MD 21204, attorney for Petitioner(s).

Peter Max Zimmerman
PETER MAX ZIMMERMAN



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

May 24, 1999

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

99-106-SPH

Dear Mr. Tanczyn:

W. HOWARD AYRES

RE: Petition for Special Hearing, Case No. 99-235-SPH, 1027 Cold Spring Road, 15th
Election District

Please be advised that an appeal of the above referenced case was filed in this office on May 24, 1999 by C. William Clark, Esquire on behalf of W. Howard and Marsha Ayres. All materials relative to the cases 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,

A handwritten signature in cursive script, appearing to read "Arnold Jablon".

Arnold Jablon
Director

AJ:scj

c: C. William Clark, Esquire
People's Counsel

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



Printed with Soybean Ink
on Recycled Paper



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

May 24, 1999

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

Dear Mr. Tanczyn:

RE: Petition for Special Hearing, Case No. 99-235-SPH, 1027 Cold Spring Road, 15th Election District
99-106-SPH - M/M George (Haynes), Petitioners / W. HOWARD AYRES Prof.

Please be advised that an appeal of the above referenced case was filed in this office on May 24, 1999 by C. William Clark, Esquire on behalf of W. Howard and Marsha Ayres. All materials relative to the cases 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:scj

c: C. William Clark, Esquire
People's Counsel

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



IN RE: PETITION FOR SPECIAL
HEARING

S/S Cold Spring Road, 40 ft. W of the
C/1 of Chestnut Road
1027 Cold Spring Road
15th Election District
5th Councilmanic District
Legal Owners: W. Howard Ayres et ux
Legal Owners: George P. Haynes et ux

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* CASE NO. 99-106-SPH &
* 99-235-SPH
*
*

* * * * *

APPEAL

NOW COMES Michael P. Tanczyn, attorney for George P. Haynes, to appeal to the Board of Appeals from the decision of the Zoning Commissioner of April 23, 1999 and specifically:

A. The grant of the Petition of W. Howard Ayres and Marsha Ayres in Case No. 99-235-SPH but not the denial of the roof over the porch on the southeast corner of the building nor the conditions 2, 3 and 4 imposed by the Zoning Commissioner.

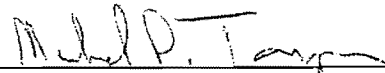
B. From the denial of the Petition of Mr. and Mrs. George P. Haynes in Case No. 99-106-SPH.



Michael P. Tanczyn, Esquire
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
Attorney for the Haynes

CERTIFICATE OF SERVICE

I HEREBY CERTIFY this 21st day of May, 1999, a copy of the foregoing was mailed by first class mail, postage prepaid, to C. William Clark, Esquire, Suite 700, 502 Washington Avenue, Towson, Maryland 21204, Attorney for the Ayres.



Michael P. Tanczyn, Esquire
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
Attorney for the Haynes

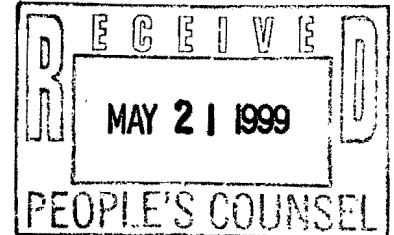
For Peoples Counsel

cd

LAW OFFICES
MICHAEL P. TANCZYN, P.A.

Suite 106 • 606 Baltimore Avenue
Towson, Maryland 21204
(410) 296-8823 • (410) 296-8824
Fax: (410) 296-8827 • Computer Fax: (410) 296-2848

May 21, 1999



Office of Zoning
Attn: Ms. Sophie Jennings
Room 109, County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

AURES/HAYNES

Re: Petitions for Special Hearing Cases 99-235 SPH and 99-106 SPH

Dear Sophie:

Enclosed herewith please find our Appeal Notice for the above special hearings which were consolidated for hearing before the Zoning Commissioner. My clients note an appeal to the Board of Appeals in both cases per the attached Appeal Notice. I also enclose my check for costs.

If you have any questions, please do not hesitate to call me.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Michael P. Tanczyn".

Michael P. Tanczyn, Esquire

MPT/gr

cc: Mr. & Mrs. George Haynes
C. William Clark, Esquire
The Honorable Lawrence E. Schmidt

LAW OFFICES
MICHAEL P. TANCZYN, P.A.

Suite 106 • 606 Baltimore Avenue
Towson, Maryland 21204
(410) 296-8823 • (410) 296-8824

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

April 22, 1999

Baltimore County Board of Appeals
Attn: Kathy Bianco
Room 48, Old Court House
400 Washington Avenue
Towson, MD 21204

RECEIVED
COUNTY BOARD OF APPEALS
99 APR 28 PM 2:37

Re: Appeal Case No. C-99-377-SPH, Hearing Date May 11, 1999

Dear Kathy:

The purpose of this letter is to request that the above case be dismissed on behalf of the Haynes pursuant to an understanding reached before the Zoning Commissioner, the matters contained in this appeal were considered by the Zoning Commissioner as part of a hearing held last month before the Zoning Commissioner of Baltimore County. As part of our understanding in that case, we agreed that we would dismiss this appeal.

Thank you very much for your cooperation in handling the dismissal.

Very truly yours,



Michael P. Tanczyn, Esquire

MPT/gr

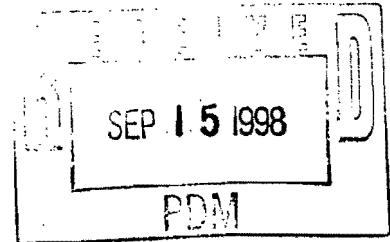
cc: Mr. & Mrs. George Haynes
C. William Clark, Esquire

LAW OFFICES
MICHAEL P. TANCZYN, P.A.

Suite 106 • 606 Baltimore Avenue
Towson, Maryland 21204
(410) 296-8823 • (410) 296-8824
Fax: (410) 296-8827 • Computer Fax: (410) 296-2848

September 15, 1998

Zoning Commissioner
Suite 405
County Courts Building
401 Bosley Avenue
Towson, MD 21204



Re: *Petition for Special Hearing and Variance - 1027 Cold Spring Road*
Case No.: 97-377-SPHA
Petitioners: *W. Howard Ayres and Marsha L. Ayres*
My Clients: *Mr. and Mrs. George Haynes*

Dear Mr. Commissioner:

Please enter an appeal from your granting of an amendment to the site plan approved in Case 97-377-SPHA which you granted by handwritten note without notice or public hearing on or about August 17, 1998. I have enclosed my check in the amount of \$250.00 for the filing costs in this matter. Please notify the Appellants of the time and date of the hearing once it is forwarded to the Board of Appeals of Baltimore County.

Please note that this is an appeal not only from the Amendment as to the variance area requested, but also as to the specific finding in the original Order that the density for an area would not be affected by the replacement building for an existing dwelling, as well as by the failure of the Petitioners to comply with the requirements of the Chesapeake Bay critical area regulations and failure to incorporate the DEPRM comments and Development Plans review Division comments.

Thank you very much for your cooperation in this regard. If you have any questions, please do not hesitate to contact me.

Very truly yours,


Michael P. Tanczyn, Esquire

MPT/gr
Enclosure

cc: Mr. and Mrs. George P. Haynes
Mr. and Mrs. Howard Ayres
Mr. Arnold Jablon, Director Dept. of Permits & Development Mgmt.

COPY

MICHAEL P. TANCZYN, P.A.

ESCROW ACCOUNT
606 BALTIMORE AVENUE
SUITE 106
TOWSON, MD 21204

4800

Sept 16, 1998

7-1/520
2518

PAY
TO THE
ORDER OF

Baltimore County

\$ 250.00

Two Hundred Fifty and 00/100

DOLLARS

Security features
are included
inside of bag.

SIGNET BANK

ACH R&T 052000018
Baltimore, MD 21202

FOR

97-3775PHA

Michael Tanczyn

MP

⑈00004800⑈ ⑆052000018⑆ ⑈002⑈6403535⑈

LAW OFFICES
MICHAEL P. TANCZYN, P.A.

Suite 106 • 606 Baltimore Avenue

Towson, Maryland 21204

(410) 296-8823 • (410) 296-8824

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

September 15, 1998

Zoning Commissioner
Suite 405
County Courts Building
401 Bosley Avenue
Towson, MD 21204

Re: Petition for Special Hearing and Variance - 1027 Cold Spring Road
Case No.: 97-377-SPHA
Petitioners: W. Howard Ayres and Marsha L. Ayres
My Clients: Mr. and Mrs. George Haynes

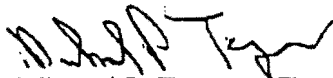
Dear Mr. Commissioner:

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Thank you very much for your cooperation in this regard. If you have any questions, please do not hesitate to contact me.

Very truly yours,



Michael P. Tanczyn, Esquire

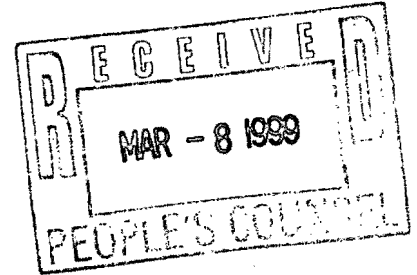
MPT/gr
Enclosure

cc: Mr. and Mrs. George P. Haynes
Mr. and Mrs. Howard Ayres
Mr. Arnold Jablon, Director Dept. of Permits & Development Mgmt.

Mr. & Mrs. George P. Haynes
1029 Cold Spring Rd.
Bowley's Quarters, MD 21220
March 2, 1999

CR
PM2
Note: 97-377
99-235

Mr. C.A. Dutch Ruppertsberger
County Executive
400 Washington Ave.
Old Courthouse Mezzanine
Towson, MD 21204



Subject: Bowley's Quarters building permit moratorium

Dear Mr. Ruppertsberger:

We support the proposed four month moratorium on building permits on the Back River and Bowley's Quarters peninsulas. We believe that Baltimore County should use this time to review existing zoning regulations and the Chesapeake Bay Critical Areas Legislation to insure these regulations are being fairly and equitably enforced.

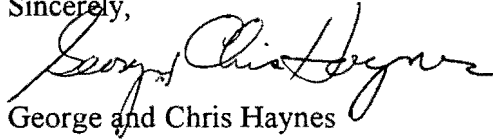
Our waterfront property at 1029 Cold Spring Road, Balto. Co., abuts a single family dwelling construction project at 1027 Cold Spring Road. Since the inception of this project, the property owners have consistently deceived us and the County relative to the size and configuration of their new home. We have retained an attorney to defend our rights as Baltimore County property owners and taxpayers. It is unfortunate that the lack of code enforcement and Zoning's willingness to grant revisions and override violations without due process has lead us to pursue this costly legal process.

We are not opposed to waterfront development but the close proximity of waterfront properties makes the enforcement of Zoning and DEPRM regulations of paramount concern. If these regulations are not enforced, not only is the health of the Bay jeopardized, but so are the privacy and quality-of-life of waterfront residents. We are concerned that the doctrine of "Gentrification" is being used by some County departments to rationalize rampant development in waterfront areas of Essex. It is no surprise that the Baltimore County waterfront is a magnet for well-to-do citizens and that this influx of money will continue as sewage makes more waterfront property suitable for building. We believe it is the County's responsibility to assure that the laws are equitably applied regardless of project value or homeowners' net worth.

Our current situation is an excellent example of how "Gentrification" can degrade property values for established waterfront homes. As more permits are issued, lack of enforcement will result in an untenable situation for all residents. We request your office take prompt action to review current Zoning and DERPM enforcement in the Bowley's Quarters community. We believe our current dispute with Baltimore County Zoning and our neighbors should be viewed as a test case on uncontrolled development on the

Bowley's Quarters peninsula. As a starting point your office may review the inconsistency between the original variance as granted by Zoning and the actual structure as it stands today. Attached are a number of hearing notices, petitions and circuit court documents relating to our case for your information. Our next hearing is scheduled for March 25, 1999, hope to see you there.

Sincerely,

A handwritten signature in cursive script, appearing to read "George and Chris Haynes".

George and Chris Haynes

cc: Mike Tanczyn, P.A

Vince Gardina (D-5th)

Tom Lehner - Pres., BQIA

Peter Max Zimmerman - People's Counsel, Balto. Co. ✓

Jean A. Flanagan - The Avenue

CHESTNUT
ROAD

N 89° 37' W 50'

30' e/w

83.4%

54

27.17' 2' 10.0'
18.0' 1027 10.0'
6.17' 2 32.0'
1. ST. 32.0'
2. BRICK
↑
FRAME
UNDER
COAST 32.0'
25.0'

4. Lot 2.

200,000

7.27

LOT 76

Lot 77

50.72

BULKHEAD

GALLOWAY CREEK

Scale: 1" = 40' Date: 8-11-98

GEORGE HAYNES and
CHRISTINE HAYNES
Plaintiffs

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

v.

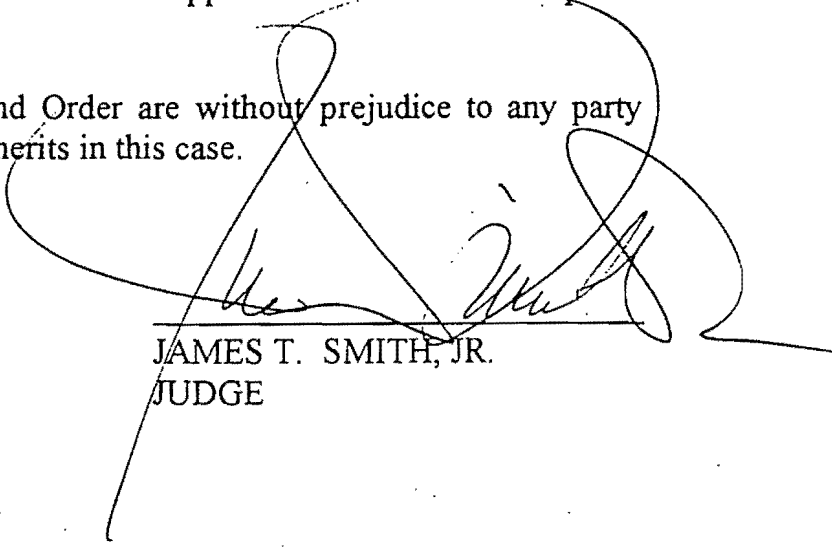
HOWARD AYRES and
MARSHA AYRES
Defendants

CASE NO. C-98-9491

ORDER

The above entitled matter having come on for hearing on the Request for Preliminary Injunction filed by George Haynes and Christine Haynes, Plaintiffs; and the Plaintiffs and the Defendants, Howard Ayres and Marsha Ayres, having appeared and all parties being represented by counsel, and an agreement having been made in open court on September 24, 1998, which agreement all parties requested be incorporated in an order to be passed, now, therefore, it is this 24th day of September, 1998, by the Circuit Court for Baltimore County, ORDERED:

- 1) That the Plaintiffs' Request for Preliminary Injunction is withdrawn pursuant to the agreement reached in open court on September 24, 1998; and
- 2) That the Defendants shall cease further construction in the approximate 23-28 ft. area from the bump-out to the water end of the Defendants' home as shown on the photograph attached hereto and made a part hereof, excepting installation of windows and the brick around the windows in the area depicted beneath the scaffolding on the aforesaid photograph, and construction of an approximate 4ft. x 4 ft. over-hang roofing over the aforesaid window area and, at Defendant's sole risk, construction of a concrete deck on the porch from the house wall to the existing brick wall, pending a final zoning decision on the issue of further construction in the approximate 23-28 ft. side porch area; and
- 3) That this Agreement and Order are without prejudice to any party regarding any hearing on the merits in this case.


JAMES T. SMITH, JR.
JUDGE

JTS/ss

Copy: Michael Tanczyn, Esq.
Robert E. Cahill, Jr., Esq.
Court file

IN THE MATTER OF
THE APPLICATION OF
W. HOWARD AYRES, ET UX
FOR SPECIAL HEARING AND
VARIANCE ON PROPERTY LOCATED
ON THE SOUTH SIDE COLD SPRING
ROAD, 100' +/- WEST OF
CHESAPEAKE AVENUE
(1027 COLD SPRING ROAD)
15TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 97-377-SPHA
*

* * * * *

ORDER OF DISMISSAL

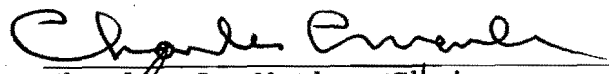
This matter comes to this Board on appeal from a decision of the Zoning Commissioner in Case No. 97-377-SPHA in which the requested special hearing and variance relief relative to the subject property, was granted subject to restrictions.

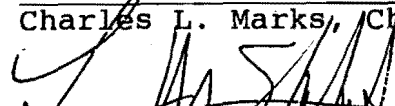
WHEREAS, the Board is in receipt of a letter of dismissal of appeal filed by Michael P. Tanczyn, Esquire, Counsel for Mr. and Mrs. George Haynes, Appellants /Protestants, dated April 22, 1999 (a copy of which is attached hereto and made a part hereof); and

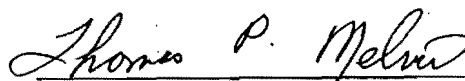
WHEREAS, said Counsel for Appellants /Protestants requests that the appeal filed in this matter be dismissed as of April 22, 1999, as stated in the attached letter;

IT IS HEREBY ORDERED this 10th day of May, 1999 by the County Board of Appeals of Baltimore County that said appeal be and the same is hereby DISMISSED.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY


Charles L. Marks, Chairman


Lawrence M. Stahl


Thomas P. Melvin



Baltimore County
Zoning Commissioner
Office of Planning

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

September 9, 1998

Mr. & Mrs. George P. Haynes
1029 Cold Spring Road
Bowleys Quarters, Maryland 21220

RE: PETITIONS FOR SPECIAL HEARING & VARIANCE
1027 Cold Spring Road
W. Howard Ayres and Marsha L. Ayres, Owners
Case No. 97-377-SPHA

Dear Mr. & Mrs. Haynes:

In response to your letter dated August 12, 1998, and to follow-up on our several telephone conversations concerning the above-captioned matter, the following comments are offered.

I first apologize for the delay in responding in writing to your inquiry. It took me some time to locate the case file and research the issues raised. In any event, a review of the case file indicates that Petitions for Special Hearing and Variance were filed by the owners of the subject property, W. Howard and Marsha L. Ayres, seeking relief from Section 1A04.3.B.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit side yard building setbacks of 4.5 feet and 8.0 feet in lieu of the required 50 feet each, and from Section 304 to permit a dwelling on an undersized lot with any other variance deemed necessary by the Zoning Commissioner.

As required by County law, notice of the relief requested and public hearing to be held thereon was provided via an advertisement in the Jeffersonian Newspaper on March 20, 1997 and a posted sign on the property on or about March 21, 1997. Following that notice, a public hearing was convened on April 7, 1997 at which I presided. According to the record maintained in the case file, no one appeared at the hearing in opposition to the request. The only attendees were Mr. & Mrs. Ayres. At the hearing, a copy of the site plan was submitted which showed the Petitioners' plans. Specifically, it was represented that the property is improved with a 1.5 story single family dwelling which was approximately 60 years old and that the Petitioners proposed to raze that dwelling to construct a new single family dwelling in its place. It was indicated that the proposed new dwelling would be essentially in the same building footprint as the old dwelling, and that variance relief as indicated was necessary.

Also at the hearing, a letter was submitted which had been signed by three neighbors, including George Haynes, indicating that there was no



Mr. & Mrs. George P. Haynes
September 9, 1998
Page 2

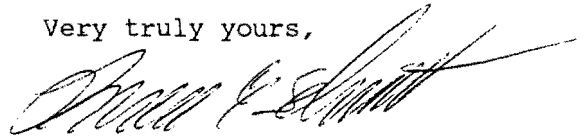
opposition to Mr. & Mrs. Ayres' request. Based upon the testimony and evidence presented at the hearing, the relief requested was granted on April 29, 1997. A copy of the Order setting out my complete Findings of Fact and Conclusions of Law is attached hereto.

Under the Baltimore County Code, any appeal of my decision must be filed within thirty (30) days of the date of the written Order. According to the file, no such appeal was taken. On August 17, 1998, an individual appeared at my office representing himself to be the builder of the new house on the Ayres' lot. He indicated that an amended site plan was being submitted for consideration. A copy of that site plan is attached hereto, with my handwritten note hereon. Essentially, I determined that the amended site plan fell within the spirit and intent of the originally approved request. I particularly observed that the 8-foot side yard setback continued to be maintained. Moreover, the depth of the building was no greater, thus the mass and scale of the proposed structure had not changed.

I understand the concerns which you have raised in your letter and your objection. However, with all due respect, I do not believe the objections are meritorious, particularly in view of the fact that variance relief was granted with your support, and that no appeal of the original Order was filed. In my judgment, the changes to the proposed house are relatively minor in scope and nature. The building is no deeper and comes no closer to your property line than that originally planned. For all of these reasons, I decline to reverse my prior Order.

Please do not hesitate to contact me should you have any further questions.

Very truly yours,



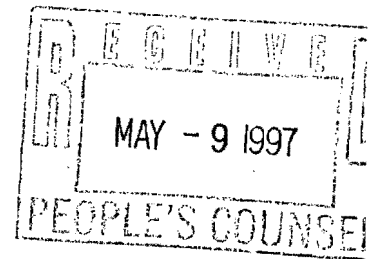
LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Case File

FC 4/29/97

IN RE: PETITIONS FOR SPECIAL HEARING * BEFORE THE
AND ZONING VARIANCE *
S/S Cold Spring Road, 100 ft. * ZONING COMMISSIONER
+/- W of Chesapeake Avenue *
1027 Cold Spring Road * OF BALTIMORE COUNTY
15th Election District *
5th Councilmanic District * Case No. 97-377-SPHA
W. Howard Ayres, et ux, Petitioners



* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Special Hearing and Petition for Variance for the property located at 1027 Cold Spring Road, in the Middle River community of Baltimore County. The Petition was filed by W. Howard Ayres and Marsha L. Ayres, his wife, property owners. Special hearing relief is requested to approve and confirm the density for an area not being affected by the replacement of an existing dwelling. Variance relief is requested from Section 1A04.3.B.3 of the Baltimore County Zoning Regulations (BCZR) to permit side yard setbacks of 4.5 ft. and 8 ft., in lieu of the required 50 ft. The Petition for Variance also seeks other relief as may be necessary, pursuant to Section 304 of the BCZR. All of the requested relief and subject property are more particularly shown on the site plan, received into evidence as Petitioners' Exhibit No. 1.

Appearing and testifying at the requisite public hearing held for this case were W. Howard Ayres and Marsha L. Ayres, property owners/-Petitioners. There were no Protestants or other interested persons present.

The subject property is a water front lot located adjacent to Cold Spring Road and Middle River/Galloway Creek in the Bowleys Quarters section of Baltimore County. Apparently, the Ayres family has owned the subject property, as well as other nearby lots for many years. In fact, Mr. Ayres indicated that members of his family live in the vicinity,