

IN THE MATTER OF	* BEFORE THE
THE APPLICATION OF	
<u>NADINE LEE MILLER</u> –LEGAL OWNER	* COUNTY BOARD OF APPEALS
FOR A VARIANCE ON PROPERTY	
LOCATED ON THE S/S PINEY GROVE	* OF
ROAD, 3700' W OF C/L BUTLER ROAD	
(4089 PINEY GROVE ROAD)	* BALTIMORE COUNTY
4 TH ELECTION DISTRICT	* CASE NO. 00-332-A
3 RD COUNCILMANIC DISTRICT	
* * * * *	

OPINION

This case comes to the Baltimore County Board of Appeals based on a decision under the date of March 21, 2000 by the Deputy Zoning Commissioner for Baltimore County in which a Petition for Variance was granted. People’s Counsel filed a timely appeal to the County Board of Appeals on April 10, 2000. A public hearing was conducted on December 13, 2000, July 24, 2001 and July 25, 2001. Lawrence M. Stahl, C. Lynn Barranger, and Donna M. Felling comprised the panel December 13, 2000. By agreement of counsel, this matter was continued for a second day of hearing to a date beyond Ms. Felling’s term of office. Lawrence S. Wescott, Chairman of the Board of Appeals, stepped in for Ms. Felling beginning with hearing day #2 (7/24/2001), having reviewed the transcript from hearing day #1 as agreed by all parties. The matter was concluded on July 25, 2001, with public deliberation occurring on October 31, 2001.

Background

J. Neil Lanzi, Esquire, represented the Petitioner, Nadine Lee Miller. Carole S. Demilio, Deputy People’s Counsel for Baltimore County, appeared on behalf of that Office. Appearing on behalf of Nadine Miller at the hearing were both Mark Cunningham and William Hughey of the Baltimore County Office of Planning. Bruce Seeley of the Department of Environmental Protection and Resource Management appeared and was admitted as an expert in environmental management, as well as septic issues. Also appearing for Ms. Miller were Albert Leroy Snyder, a licensed surveyor, who was admitted as an expert in surveying, and Richard O. King, a licensed

real estate appraiser who was admitted as an expert in the area of real estate appraisals and property valuations. In addition to Nadine Miller's testimony, Richard L. Beall testified as an expert in architecture and land planning. Appearing for Appellant, People's Counsel for Baltimore County, were Charles H. Gibson, Nancy Cohen, Lisa Kier and Jack Dillon. Mr. Dillon was admitted as an expert in planning, zoning and the *Baltimore County Zoning Regulations* (BCZR).

The Petitioner requested a variance from §§ 1A01.3B.2, 1A91.3B.3 and 304 of the BCZR to permit an undersized lot of .44 acre in lieu of the required 1 acre, to permit setbacks of 15 feet on the side and rear of the property in lieu of the required 35 feet, and to permit a setback from the centerline of the road of 69 feet in lieu of the required 75 feet.

Facts

Testimony and evidence indicated that the property located at 4089 Piney Grove Road, which is the subject of this variance request, consists of .44 acre, more or less, zoned R.C. 2. The subject property is located on the south side of Piney Grove Road, north of its intersection with Butler Road. The property is unimproved at this time.

Mark Cunningham from Baltimore County Office of Planning testified with regard to the comments of the Office of Planning (Petitioner's Exhibits 1A and 1B) where that office gave its support for the project. The office reviewed the proposed project using four criteria: visibility, land use, compatibility, and impact of the proposal on the area. The office determined that this proposal met the criteria. He also clarified that the office looks at development regulations, not zoning regulations.

William P. Hughey has been employed as a Planner with the Baltimore County Office of Planning for 15 years and testified as the Community Planner for the Third Councilmanic District,

which includes the area of the subject property. Mr. Hughey testified that he had been out to the subject property on two occasions and observed a relatively small property surrounded by woods. Mr. Hughey testified that, when he reviews an undersized lot in the rural parts of the County, he takes into consideration whether the lot can provide private septic and a well on the site and whether the proposed structure can sit compatibly on the property without negatively affecting adjoining property owners. He opined, based on the proposed structure, that it could be built without detriment to the adjoining property owners.

Bruce Seeley has been employed with the Baltimore County Department of Environmental Protection and Resource Management (DEPRM) for 18 years and was admitted as an expert in environmental management, with particular expertise as to well and septic issues. Mr. Seeley testified that he was familiar with the subject property and conveyed the position of his department approving the installation of a private sewage disposal system allowing Ms. Miller to apply for a building permit. He opined that this construction of one single-family dwelling would not have an adverse impact on the adjacent properties. When questioned on cross-examination with regard to the recommendation that the well be moved farther away from the property line, Mr. Seeley stated that the recommendation could not be followed because the well had to be 100 feet from the septic reserve area. Mr. Seeley stated that the regulations requiring septic reserve area distances from wells were put in place to look toward the future and the protection of the water supply and the septic system for this lot as well as adjacent properties.

Albert Leroy Snyder, a registered surveyor, was admitted as an expert in surveying. Mr. Snyder testified that he prepared the site plan filed with the Petition for Variance (Petitioner's Exhibits 5 and 6). Also entered as exhibits were two photographic series (Petitioner's Exhibit 7A

through 7K and Petitioner's Exhibit 8A through 8Q) depicting the property and the surrounding area. Mr. Snyder testified that he was intimately familiar not only with Ms. Miller's property but also the property of Mr. and Mrs. Charles H. Gibson, as Mr. Snyder had provided surveying services for the Gibsons years ago. Mr. Snyder stated that the Miller property was hilly and wooded, and, in his opinion, the property would be compatible with the surrounding area. It was noted that the Gibson property was the closest dwelling to the subject property, and that the distance between the southwest corner of Ms. Miller's property and the Gibson house was approximately 260 feet.

As part of his responsibilities for this project, Mr. Snyder stated that he assisted Ms. Miller with the preparation of plans for a private well and private septic system. Mr. Snyder testified that, in preparing the well and septic plans, a determination as to the location of the well and septic was made by the contours of the property (Petitioner's Exhibit 9 and Petitioner's Exhibit 10). This required the well to go in the far western corner to allow for the septic reserve area. Mr. Snyder confirmed the property passed the required perc test allowing for the well and septic, and Baltimore County approved the proposed gravity feed system.

Next, Mr. Snyder testified as to the title work his office completed for this project. Introduced into evidence were the specific deeds and deed summaries (Petitioner's Exhibits 11 to 15). Mr. Snyder testified that Piney grove was a 14 to 16-foot paved road north of the property with no deeded right-of-way in front of the Miller property. He stated that the County normally maintains 35 feet. Mr. Snyder detailed the title histories for the Schafer property and the Miller property, confirming that Ms. Miller's family owned the Schafer property in 1908, and the subject property was purchased in 1913. In 1936 Ms. Miller's family sold the larger parcel to the Schafers

and maintained ownership of the smaller deeded parcel, which is the subject property. Mr. Snyder also testified that the deeds for the Miller property confirmed that the size and description have remained the same since 1859. He testified that it was his position that Ms. Miller was in compliance with the requirements of § 304.1 of the BCZR.

Richard O. King, a certified appraiser in the states of Virginia, Delaware, and Maryland, was admitted as an expert in the area of real estate appraisal and property valuations. He submitted his appraisal of Ms. Miller's property (Petitioner's Exhibit 17) with a total land and property value of approximately \$170,000.00. In his opinion, he felt that the construction of this home with the approved variances and then approved undersized lot would have no negative or adverse impact on the neighboring properties. He felt that developing the property would have a positive impact on the neighboring property owners.

Richard L. Beall, a licensed architect with 14 years experience as an architect and planner, was admitted as an expert in architecture and land planning. Mr. Beall prepared Petitioner's Exhibit 19 utilizing Baltimore County's 200-scale topography map of the subject property and surrounding area, which reflects its relationship to the Gibson property, the position of the proposed home, driveway and septic system as approved by Baltimore County. Mr. Beall stressed that the layout was prepared so that the house would conform to the natural topography without the need of a retaining wall and minimal area of disturbance (Petitioner's Exhibit 20). He also testified that the Baltimore County Health Department had no objection to the proposed layout, including the driveway partially traversing the septic field area.

Based on his experience as an architect and land planner, Mr. Beall discussed his familiarity with the BCZR and how the regulations applied to Ms. Miller project. Mr. Beall testified that the

BCZR, under § 304.1, recognizes that there are lots that have been created prior to 1955 and that a detached or semi-detached dwelling can be constructed on a lot having an area and width that is less than required. In his opinion, Ms. Miller's lot was created by deed from before the 1900s, and the Miller family has not owned adjoining land since 1936. Therefore, this lot meets the requirements of § 304.1 and is subject to any additional relief it requires because of its size through the variance process.

Mr. Beall next described the uniqueness of Ms. Miller's property. Mr. Beall stated that the subject property consisted of a small wooded lot of .44 acre surrounded by larger wooded properties. Mr. Gibson's property of approximately 7 acres was the smallest of the immediately surrounding properties. Ms. Miller's lot had steep topography, was irregular in shape, and the County required septic system utilized almost half of the lot area. The septic area takes up the majority of the lot and drives the placement of the house location. To illustrate his point, on Petitioner's Exhibit 20 he red-lined the envelope that remains with the required setbacks to show that the area falls in the approved septic area and the remaining area is 18 feet by 20 feet. In his opinion, the lot, with its steep topography, is not suitable for agriculture and its best and only use would be for a residential home. Mr. Beall opined that without any relief Ms. Miller would not be allowed to use the property. Mr. Beall furthered his opinion that the granting of the variances would not alter the character of the neighborhood nor impair the appropriate use and development of adjacent properties.

In response to the concerns of Mr. Gibson regarding the effect, if any, the proposal would have on Mr. Gibson's existing Forest Conservation Agreement, Mr. Beall testified that, as a land planner with expertise in forest conservation agreements, it was his opinion that Ms. Miller's

proposal, including the variances and use of the undersized lot, would have no negative impact on Mr. Gibson's existing Forest Conservation Agreement with the State of Maryland.

Nadine Miller, the owner of the subject property, testified that she inherited the property from her mother when she passed away two years ago. Ms. Miller discussed the history of the property as summarized by Albert Leroy Snyder in Petitioner's Exhibit 12. Ms. Miller testified that her family bought the property from Baltimore County after the school burned down. The larger parcel that the family owned surrounding the site had to be sold during the depression. The subject property was passed on to her father and subsequently placed in both her parents' names, Ernest W. Frantz, Sr., and Myrtle N. Frantz. After the death of her mother in 1997, the property was transferred to Nadine Miller pursuant to her mother's will. Ms. Miller testified that she had no intention to subdivide her property and fully intended to reside in her proposed single-family detached dwelling. She also stated that she made attempts to purchase land from Ms. Schafer to make a full acre but has had no response.

Charles H. Gibson of 4101 Piney Grove Road, whose property is adjacent to Ms. Miller's property, addressed his concerns on the development of the subject property. He raised concerns over his trees, which are in the Forest Conservation program, and the potential damage they would incur with the excavation that was needed. He also stated that he was not aware of any other lots in the area of less than one acre. Mr. Gibson did acknowledge that his house was over 200 feet from Ms. Miller's property, but that he was concerned about any liability he may incur with his tree branches falling on her house.

Nancy R. Cohen owns the 140 acres adjacent to Ms. Miller's property. She does not reside there, but the property is used agriculturally for horses and crops. Presently, someone is renting the

house on her property, and she has intentions to build a house there to live in herself or for her children in the future. Concerns were raised as to the character of the rural area changing. If this undersized lot is allowed, it is her belief that others will follow. She was also concerned as to the proximity of Ms. Miller's septic are to her property and whether or not any problems could affect her land. During cross-examination, she stated that she was not aware of any other undersized lots in the area.

Lisa Kier of 13907 Longnecker Road, which is adjacent to the west of Mr. Gibson's property, raised concerns that, with the size of the lot, the house would have to be placed on the road base of the slope of the property since, in her opinion, there would be no other place to put it. The character of the neighborhood is for the houses to be placed off the road so that you could not see the house. This potential road frontage placement, she opined, would be extremely out of character. She also raised concerns that, based on her personal experience with the soils in the area, there would be difficulty in finding a place for a perc test, and, with the lot being so small, there would be no room for error. Ms. Kier was also concerned about the potential traffic that would be generated and the potential complaints that would arise due to the unfamiliarity to farming practices.

Jack Dillon was admitted as an expert in the areas of planning, zoning, and the BCZR. Mr. Dillon testified that he is currently Executive Director of the Valley's Planning Council. As one of the draftsmen of the R.C. regulations, Mr. Dillon gave an overview of the history of the *Baltimore County Zoning Regulations* that emerged out of the growth of the 1950s and 1960s. According to Mr. Dillon, if someone had an undersized lot undeveloped prior to the R.C. 2 enactment which had been approved by the Planning Commission, it could be built on. However, in his opinion, since

Ms. Miller's property was originally created for a schoolhouse, it was created for a single purpose and therefore had no density. Mr. Dillon noted five other undersized lots in the R.C. 2 zone (People's Counsel Exhibit 8A) in a small town of Woodensburg near the Hanover Pike and Old Hanover Pike, and several others near the area of Butler Road and Sullivan Road. He opined that Ms. Miller's property was no different from other undersized lots in the R.C. 2 zone, and that, if the proposed building were allowed, it would be a multiplier to more development in the area.

Mr. Dillon also opined that the proposal being sought is out of character with the community, would change the environmental condition of the area, and has the potential for future septic problems. The subject property was identified by Mr. Dillon as being in the Worthington Historic District. One of the goals of the National Historic District, under the guidelines of the Department of the Interior for preserving agricultural landscapes, is to try to minimize the visual impact of development in the Historic District. The development of the subject site would be incompatible with those goals.

Under cross-examination, Mr. Dillon acknowledged that Ms. Miller has a lot of record and does not have sufficient land to conform to the current regulations as stated under § 304.1. However, he opined that § 304.1 is a use regulation, which does not allow one to apply for a variance. When questioned further, he stated that he believes that it is implied that relief is not available under 304.1 by using § 307. Mr. Dillon closed his testimony by stating that, depending on how the zoning regulations were written, a density unit could be based on area.

At the conclusion of the hearing, the Board requested that Counsel prepare briefs in lieu of oral argument to be filed simultaneously. This was done on August 31, 2001 with public deliberation taking place on October 31, 2001.

Issues Before the Board

1. Can § 304 apply in R.C. zones? If yes, does it then qualify for relief under § 307? If no, does it then constitute an unconstitutional taking of Ms. Miller's property?
2. If § 307 applies to § 304, then can the approval be granted for the variances requested from § 1A01.3B.2, 1A01.3B.3 and 304 of the *Baltimore County Zoning Regulations* (BCZR) to permit an undersized lot of .44 acre in lieu of the required 1 acre, to permit setbacks of 15 feet on the side and rear of the property in lieu of the required 35 feet and to permit a setback from the centerline of the road of 69 feet in lieu of the required 75 feet?

Opinion

Section 304.1 of the *Baltimore County Zoning Regulations* states that:

A one-family detached or semi-detached dwelling may be erected on a lot having an area or width at the building line less than that required by the are regulations contained in these regulations if:

- A. Such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to March 30, 1955;
- B. All other requirements of the height and area regulations are complied with; and
- C. The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements contained in these regulations.

People's Counsel maintains the position that § 304.1 applies to undersized Density Residential (D.R.) zones, since it was enacted at the time the D.R. zones were established, and that BCZR § 103.3 applies to the R.C. zones since it was enacted at the same time the R.C. Zones were established. People's Counsel further states that this limitation of § 304 to the D.R. Zones is reinforced by a 1992 Planning Board Report (People's Counsel Exhibit 11) amending BCZR 304 to

include the section on compatibility of the dwelling.

The Board takes note that, under BCZR § 304.1, which the County Council did amend, based on the Planning Board Report of Proposed Amendment, no language is contained which either excludes R.C. zones or specifically includes the D.R. zones. Bill No. 47 was adopted in 1992 when R.C. and D.R. zones were in existence. Therefore, this Board takes the position that BCZR § 304.1 applies to the subject property.

Upon review of BCZR § 103.3 to determine if this Section supersedes § 304.1, it was noted that BCZR § 103.3 states:

In an R.C. 2, R.C. 3, R.C. 4 or R. C. 5 Zone, contrary provisions of Subsection 103.1 and any other contrary provisions of or pursuant to these regulations notwithstanding, in the case of property covered by a recorded subdivision plat which was approved by Baltimore County Planning Commission or Board before the effective date of this subsection, and which remains in effect, buildings may be constructed, residential densities and lot lines may be established, and yards and other open areas may be laid out in accordance with the plan, subject to any conditions of the approval.

Leroy Snyder's testimony revealed that Ms. Miller's property was a transfer of deed of a lot of record; not property covered by a recorded subdivision plat. The Board has determined that § 103.3 is not applicable to Ms. Miller's property and addresses it to see if it meets all the requirements of BCZR 304.1.

The subject proposal before the Board is for a single-family home that is a use permitted by right in the R.C. zone. Testimony and evidence was presented that on June 18, 1936, Florence Frantz assigned by deed the 160 acres to Clarence Wheeler; the .44 acre is not assigned. On December 28, 1948, Florence Frantz died, leaving .44 acre to her son, Ernest, the grandfather of Ms. Miller. The property continued through Ms. Miller's father to her. The assignment of the .44 acre parcel occurred when the R.C. regulations did not exist, and it is a duly recorded lot of deed

prior to 1955, which satisfies Item "A" of § 304.1.

Item "B" of § 304.1 states, "...all other requirements of the height and area requirements are complied with..." While People's Counsel alleges that this is a condition precedent that must be met to qualify for relief under § 304.1, the Board has held the opinion that relief can be sought under § 307. People's Counsel referred to *In the Matter of the Application of Michael Schultz*, Case No. 99-210-A and utilizes a portion of the Board's Opinion to support this position. Upon review, it was found that the Board wrote, "...the Board takes a different view that has long been held by this body, mainly that where multiple variances are required, relief cannot be granted under Section 304.1, and the correct posture is to make application under Section 307 of the Baltimore County Zoning Regulations." Section 304 does not contain any language prohibiting a Petitioner from requesting a variance to area regulations or prohibiting the Board of Appeals from considering such a request. Notably, § 307 is silent on provisions prohibiting a variance request or variance consideration from undersized lots pursuant to § 304.1. People's Counsel's witness, Jack Dillon, testified that he felt it was implied that § 304 did not allow a Petitioner to apply for relief under § 307. This Board maintains, as in the spirit of *Schultz*, that this is the proper procedure when one needs to apply for relief for height and area requirements. The multiple variances will be addressed forthcoming.

The third condition found in § 304.1C states that the owner of the lot does not own sufficient land adjoining to conform to the width and area requirements contained in the regulations. Albert Leroy Snyder testified that Ms. Miller's family owned the Schafer property in 1908 and the subject property that was purchased in 1913. In 1936, Ms. Miller's family sold the larger parcel to the Schafers and maintained ownership of the smaller deeded parcel, which is the

subject property. Mr. Snyder also testified that the deeds for the Miller property confirmed that the size and description have remained the same since 1859. Richard Beall testified that the Miller lot was created by deed from before the 1900s, and the Miller family has not owned adjoining land since 1936. Nadine Miller testified that she made attempts to purchase land from Ms. Schafer to make a full acre but has had no response. The Board concludes that there is sufficient compelling evidence presented that Ms. Miller's lot was duly created by deed prior to March 30, 1955 and meets all the requirements of § 304.1. Therefore, it is subject to any additional relief it requires because of its size through the variance process.

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

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

Upon consideration of the testimony and evidence offered during this hearing, the Board finds that the subject property is unique because of its small size relative to the surrounding areas, its steep slopes, and the environmental constraints which make locating the house on the site very difficult. Mr. Beall, accepted as an expert in architecture and land planning, testified fully as to

these factors, and his testimony was uncontradicted by the Protestants.

Having established that the property is unique, the Board finds that the application of the zoning ordinances imposes a practical difficulty and undue hardship on the Petitioner. As a matter of fact, the steep topography, irregular shape and the County required septic system, which utilizes almost half of the lot area, renders the proposed location of the house the appropriate one. None of these factors was self-imposed by the Petitioner.

The third and final prong of the standard as found in *Cromwell* speaks to the spirit and intent of the zoning regulations. It is clear to this Board that the proposed construction by the Petitioner meets this standard. There is uncontradicted evidence that the plats show that the structure is at least 360 feet from the nearest neighbor's dwelling and screened by the limited excavation of trees on the property. Therefore, there will be no injury to public safety and welfare by granting the variance request.

People's Counsel addressed in their Brief that the Petitioner does not met § 102.4 of the BCZR, which states:

No dwelling, other than a multifamily building, shall be built on a lot containing less than 20,000 square feet which does not abut on a right-of-way at least 30 feet wide over which the public has an easement of travel, except as provided for panhandle lots in § 26-266 of the Baltimore County Code, 1988 Edition as revised [Bill Nos. 172-1989; 2-1992].

This raises the question of burden. This Board does not believe that it is the burden of a Petitioner to search and positively present all possible laws and regulations that could conceivably bear on any way on a request, especially when no issue is raised at the hearing nor any testimony raising an issue has been presented by an objecting party. Furthermore, there was testimony by Mr. Snyder that there is additional right-of-way in addition to "paved" road.

In conclusion, the Board is unanimous in granting the Petition for Variance relief from §§ 1jA1.3B.2, 1A01.3B.3, and 304 of the *Baltimore County Zoning Regulations* (BCZR) to permit an undersized lot of .44 acre in lieu of the required 1 acre, to permit setbacks of 15 feet on the side and rear of the property in lieu of the required 35 feet and to permit a setback from the centerline of the road of 69 feet in lieu of the required 75 feet as shown on Petitioner's 5 and Petitioner's 6.

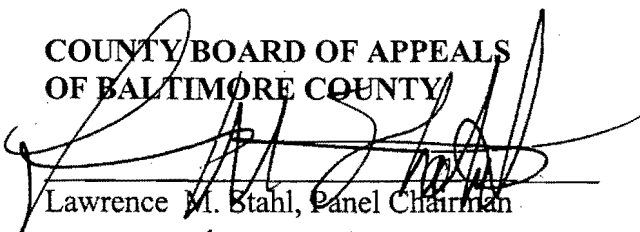
ORDER

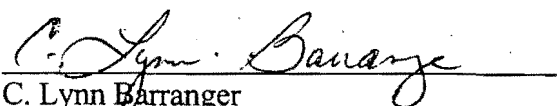
THEREFORE, IT IS THIS 19th day of December, 2000 by the County Board of Appeals of Baltimore County

ORDERED that Petitioner's request for variance relief from §§ 1A01.3B.2, 1A01.3B.3 and 304 of the *Baltimore County Zoning Regulations* (BCZR) to permit an undersized lot of .44 acre in lieu of the required on acre, to permit setbacks of 15 feet on the side and rear of the property in lieu of the required 35 feet, and to permit a setback from the centerline of the road of 69 feet in lieu of the required 75 feet as shown on Petitioner's Exhibit 5 and Petitioner's Exhibit 6 be and the same is hereby **GRANTED**.

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*.

**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**


Lawrence M. Stahl, Panel Chairman


C. Lynn Barranger

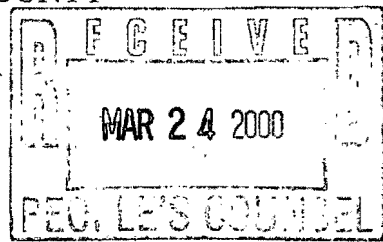

Lawrence S. Wescott

3/21/00

IN RE: PETITION FOR VARIANCE
S/S Piney Grove Road, 3700' W
Centerline Butler Road
4th Election District
3rd Councilmanic District
(4089 Piney Grove Road)

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* CASE NO. 00-332-A

Nadine Lee Miller
Petitioner



* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Variance filed by the legal owner of the subject property, Nadine Miller. The Petitioner is requesting a variance for property she owns located at 4089 Piney Grove Road, which property is zoned R.C.2. The variance request is from Section 1A01.3.B.3 of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow setbacks of 15 ft. on the side and rear of the property in lieu of the required 35 ft., to allow a setback from the centerline of the road of 69 ft. in lieu of the required 75 ft., and also to approve an undersized lot.

Appearing at the hearing on behalf of the variance request were Nadine Miller, owner of the property and Roy Snyder, property line surveyor. There were no protestants in attendance.

Testimony and evidence indicated that the property, which is the subject of this variance request consists of 0.44 acres, more or less, zoned R.C.2. The subject property is located on the south side of Piney Grove Road, north of its intersection with Butler Road. The property is unimproved at this time. Ms. Miller wishes to construct a single family residential dwelling on the subject property. This particular parcel of property has been in her family since 1913. She inherited the property from her mother. There have been no changes to the configuration of the property since the time her family owned the site in 1913 and they have not owned any

ORDER RECEIVED FOR FILING
Date 3/21/2000
By K. J. [Signature]

surrounding property around the subject parcel. Therefore, it is appropriate to approve the subject property as an undersized lot and to approve the variance request to allow Ms. Miller to construct a home on the site.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and her property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

- 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
- 2) whether a grant of the variance would do a substantial justice to the applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give sufficient relief; and,
- 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. Of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

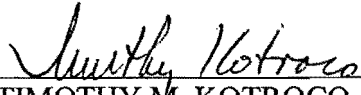
After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship will result if the variance is not granted. It has been established that special circumstances or conditions exist that are peculiar to the property which is the subject of this request and that the requirements from which the Petitioner seeks relief will unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the relief requested will not cause any injury to the public health, safety or general welfare, and meets the spirit and intent of the B.C.Z.R.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and after considering the testimony and evidence offered by the Petitioner, I find that the Petitioner's variance request should be granted.

ORDER RECEIVED FOR FILING
Date 3/21/2000
By J.R. Jameson

THEREFORE, IT IS ORDERED this 21st day of March, 2000, by this Deputy Zoning Commissioner, that the Petitioner's request for variance from Section 1A01.3.B.3 of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow setbacks of 15 ft. on the side and rear of the property in lieu of the required 35 ft., to allow a setback from the centerline of the road of 69 ft. in lieu of the required 75 ft., and also to approve an undersized lot, be and is hereby GRANTED, subject, however, to the following restriction which is a condition precedent to the relief granted herein:

- 1) The Petitioner may apply for her building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at her own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.


TIMOTHY M. KOTROCO
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

TMK:raj

ORDER RECEIVED FOR FILING

Date 3/21/2000

By R. J. [Signature]



Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 4089 Piney Grove Road

which is presently zoned RC 2

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 Variance from Section(s)

1A01.3 B. 2. and 1A01.3.B. 3. To permit a lot size of 0.44 acres in lieu of the required 1.0 acre and to permit setbacks of 15.0 feet at the right side and rear in lieu of the required 35 feet, and to permit a setback from the centerline of the road, of 69 feet in lieu of the required 75 feet.

ALSO TO VARIANCE ANY OTHER ISSUES DEEMED NECESSARY BY THE ZONING COMMISSIONER

of the Zoning Regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: (Indicate hardship or practical difficulty)

AND TO APPROVE ~~THE~~ AN UNDERSIZE LOT PER SECT. 304, BCZR.

The lot is undersized (0.44 ac.±) and because of the position of the proposed well and septic disposal areas the house cannot be kept within the proper setbacks.

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

I, or we, agree to pay expenses of above Variance, 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:

Name - Type or Print

Signature

Company

Address Telephone No.

City State Zip Code

Case No. 00-332-A

REV 9/15/98

Legal Owner(s):

Nadine Lee Miller

Name - Type or Print

Signature

Name - Type or Print

Signature

79 Arverne Court 410-252-7325
Address Telephone No.

Lutherville MD 21093
City State Zip Code

Representative to be Contacted:

A. L. Snyder

Name

1911 Hanover Pike 410-239-7744
Address Telephone No.

Hampstead MD 21074
City State Zip Code

OFFICE USE ONLY

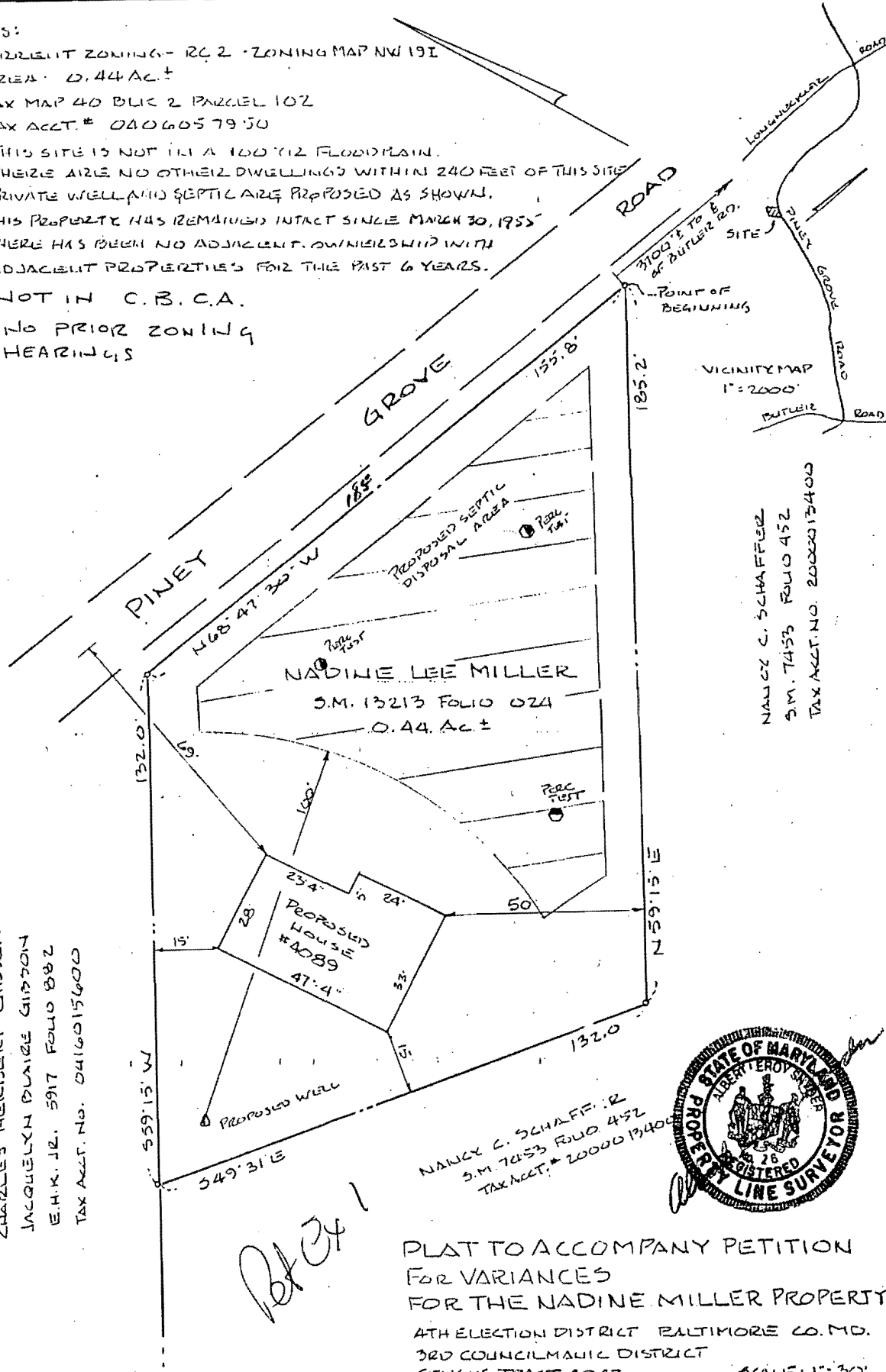
ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING
Reviewed By ctm Date 2/11/00

NOTES:

- 1.) CURRENT ZONING - RC 2 - ZONING MAP NW 191
- 2.) AREA - 0.44 AC. ±
- 3.) TAX MAP 40 BLC 2 PARCEL 102
TAX ACCT. # 0406057950
- 4.) THIS SITE IS NOT IN A 100 YR FLOODPLAIN.
- 5.) THERE ARE NO OTHER DWELLINGS WITHIN 240 FEET OF THIS SITE.
- 6.) PRIVATE WELL AND SEPTIC ARE PROPOSED AS SHOWN.
- 7.) THIS PROPERTY HAS REMAINED INTACT SINCE MARCH 30, 1955
- 8.) THERE HAS BEEN NO ADJACENT OWNERSHIP WITH ADJACENT PROPERTIES FOR THE PAST 6 YEARS.
- 9.) NOT IN C.B.C.A.
- 10.) NO PRIOR ZONING HEARINGS

CHARLES HERBERT GIBSON
JACQUELYN BLAISE GIBSON
E.H.K. JR. 5917 FOLIO 882
TAX ACCT. NO. 0416015600



VICINITY MAP
1" = 2000'

NANCY C. SCHAFFER
S.M. 7453 FOLIO 452
TAX ACCT. NO. 2000013400



PLAT TO ACCOMPANY PETITION
FOR VARIANCES
FOR THE NADINE MILLER PROPERTY
4TH ELECTION DISTRICT BALTIMORE CO. MD.
3RD COUNCILMANIC DISTRICT
CENSUS TRACT 4047
SCALE: 1" = 30'

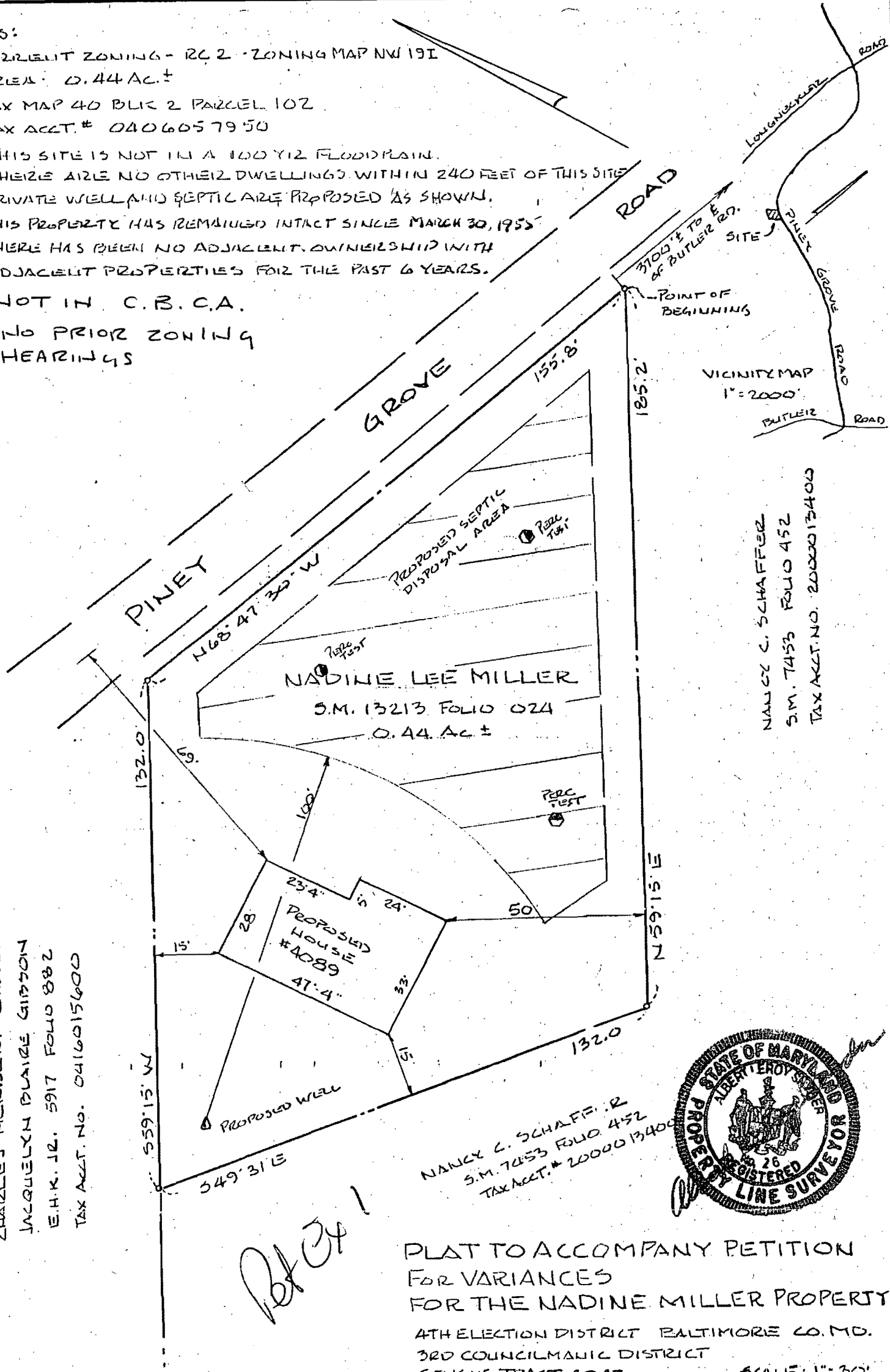
Plat 341

OWNER:
NADINE LEE MILLER
79 AVERNIE COURT
LUTHERVILLE MD 21093
PHONE: 410 252-7325

PREPARED BY:
A.L. SNYDER
SURVEYOR, INC.
1911 HANOVER PIKE
HAMPSTEAD, MD. 21074
410-239-7744

NOTES:

- 1.) ZONING - RC 2 - ZONING MAP NW 191
- 2.) AREA - 0.44 AC. ±
- 3.) TAX MAP 40 BLK 2 PARCEL 102
TAX ACCT. # 0406057950
- 4.) THIS SITE IS NOT IN A 100 Y12 FLOODPLAIN.
- 5.) THERE ARE NO OTHER DWELLINGS WITHIN 240 FEET OF THIS SITE.
- 6.) PRIVATE WELL AND SEPTIC ARE PROPOSED AS SHOWN.
- 7.) THIS PROPERTY HAS REMAINED INTACT SINCE MARCH 30, 1955.
- 8.) THERE HAS BEEN NO ADJACENT OWNERSHIP WITH ADJACENT PROPERTIES FOR THE PAST 6 YEARS.
- 9.) NOT IN C.B.C.A.
- 10.) NO PRIOR ZONING HEARINGS



VICINITY MAP
1" = 2000'

NANCY C. SCHAEFFER
S.M. 7453 FOLIO 452
TAX ACCT. NO. 2000013400

CHARLES HERBERT GIBSON
JACQUELYN PLAIRE GIBSON
E.H.K. 12. 5917 FOLIO 882
TAX ACCT. NO. 0416015600

NANCY C. SCHAEFFER
S.M. 7453 FOLIO 452
TAX ACCT. # 2000013400



PLAT TO ACCOMPANY PETITION
FOR VARIANCES
FOR THE NADINE MILLER PROPERTY

4TH ELECTION DISTRICT BALTIMORE CO. MD.
3RD COUNCILMANIC DISTRICT
CENSUS TRACT 4047

SCALE: 1" = 30'
FEBRUARY 3, 2000

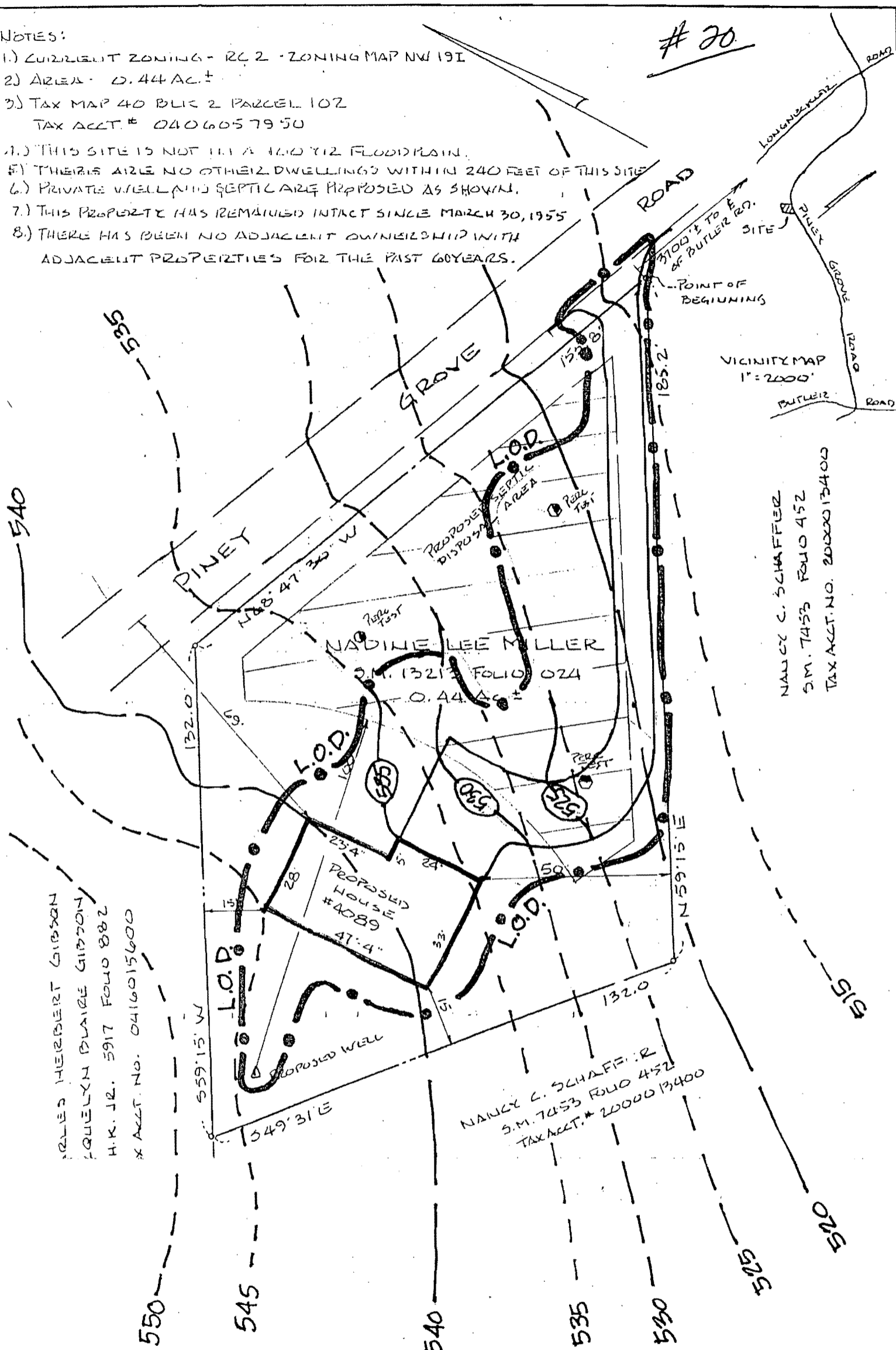
OWNER:
NADINE LEE MILLER
79 ARVERNE COURT
LUTHERVILLE MD 21093
PHONE: 410 252-7325

PREPARED BY:
A. L. SNYDER
SURVEYOR, INC.
1911 HANOVER PIKE
HAMPSTEAD, MD. 21074
410-239-7744

20

NOTES:

- 1.) CURRENT ZONING - RC 2 - ZONING MAP NW 191
- 2.) AREA - 0.44 AC. ±
- 3.) TAX MAP 40 BLC 2 PARCEL 102
TAX ACCT. # 0406057950
- 4.) THIS SITE IS NOT IN A 100 YR FLOODPLAIN.
- 5.) THERE ARE NO OTHER DWELLINGS WITHIN 240 FEET OF THIS SITE
- 6.) PRIVATE WELL AND SEPTIC ARE PROPOSED AS SHOWN.
- 7.) THIS PROPERTY HAS REMAINED INTACT SINCE MARCH 30, 1955
- 8.) THERE HAS BEEN NO ADJACENT OWNERSHIP WITH ADJACENT PROPERTIES FOR THE PAST 60 YEARS.



NEED HERBERT GIBSON
 QUEENY BLAIRE GIBSON
 H.K. JR. 5917 FOLIO 882
 * ACCT. NO. 0416015600

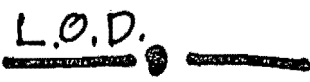
NADINE LEE MILLER
 211.13213 FOLIO 024
 0.44 AC. ±

PROPOSED HOUSE
 #4089
 47'-4"

NANCY C. SCHAFFLER
 S.M. 7453 FOLIO 452
 TAX ACCT. # 2000013400

NANCY C. SCHAFFLER
 S.M. 7453 FOLIO 452
 TAX ACCT. NO. 2000013400

NADINE MILLER PROPERTY
 PRELIMINARY GRADING PLAN
 LIMIT OF DISTURBANCE = L.O.D.



1 IN THE MATTER OF: * BEFORE THE
 2 NADINE LEE MILLER * BOARD OF APPEALS
 3 4089 Piney Grove Road * OF BALTIMORE COUNTY
 4 4th Election District * Case No. 00-332-A
 5 3rd Councilmanic District * December 13, 2000

* * * * *

9 The above-entitled matter came on for
 10 hearing before the Board of Appeals of Baltimore
 11 County at 400 Washington Avenue, Old Courthouse,
 12 Hearing Room 48, Towson, Maryland 21204 at 11:16 a.m.,
 13 December 13, 2000.

* * * * *

21 Reported by: Shannon M. Wright

*Survival -
 Copy for Day # 1
 12/13/00; Day # 2
 will be 7/24/01.
 Koshi
 7-13-01*