

5/3/01

IN THE MATTER OF
THE APPLICATION OF
TIMOTHY R. QUIGG -LEGAL OWNER
/PETITIONER FOR VARIANCE ON PROPERTY
LOCATED ON THE SW/S YORK ROAD, 370' SE
OF THE CENTER LINE WEST ROAD
(1026-1028 YORK ROAD)

9TH ELECTION DISTRICT
4TH COUNCILMANIC DISTRICT

* BEFORE THE
* OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 00-532-A

* * * * *

MAJORITY OPINION

This matter comes before the Board of Appeals arising from an Order dated August 9, 2000 by the Zoning Commissioner of Baltimore County granting a Petition for Variance from § 421.2 of the *Baltimore County Zoning Regulations* (BCZR) to permit a pet shop located 35 feet from a residential zone in lieu of the required 200 feet.

The case was heard by the Board on November 2, 2000. The Petitioner was represented by Howard Alderman, Jr., Esquire. People's Counsel for Baltimore County appeared in opposition along with other Protestants.

After opening statements, Petitioner presented James Patton, President and Principal of Patton Consulting, Ltd., who, after appropriate *voir dire*, was accepted as an expert Professional Engineer, with concentration in planning and zoning matters. He testified that he had prepared the Petition and Plat for the subject variance request. He described the site as being in a very commercial area on the west side of and fronting on York Road just south of Interstate 695 (I-695). He noted that the site was surrounded on three sides by commercial uses (including an animal hospital) and was, itself, zoned business roadside (B.R.). The witness noted that the east side of York Road opposite the subject site is zoned residential (D.R.), and that the zone boundary was in the center of York Road, extending east to and including the I-695 cloverleafs at York Road. He stated that the Federal Bureau of Highways forbids any residential use within cloverleafs of interstate highways. He further testified that the zone was however, the site of the Maryland National Guard Armory, which was the only use in the residential zone within 200 feet

of the subject site. He explained that, since the cloverleaf of I-695 was owned by the State of Maryland and under the jurisdiction of the Federal Interstate Highway Program, the National Guard Armory was permitted to be located there only because a specific waiver had been requested of and granted by the Federal Government for that limited use. He stated that no residential use normally permitted in a D.R. zone by the BCZR could be placed in the D.R. zone containing the cloverleaf area.

Mr. Patton's opinion was that the D.R. zone located across from the subject site is "miszoned." He pointed out that the subject site was permitted to be used for Petitioner's intended purpose by "right"; and that § 421.2 of the BCZR was intended to protect residential areas from proximity to and the deleterious effects of commercial uses. Here, the "residential use" was illusory only and, in fact, prohibited by Federal Rule. Observing that he could not recall any other site in Baltimore County in a like configuration and circumstance, he testified that to limit the subject site's use because of its mere proximity to a "residential zone" which, by law, could not be used for residential purposes was not only a unique circumstance, but one which, given the underlying zoning of the site, would be unnecessarily burdensome on and would result in a very real practical difficulty and unreasonable hardship for the Petitioner.

The Board heard briefly from Mitchell Thompson, the Petitioner. He testified as to his previous experience in the pet shop business which he described as a family enterprise of many years. He presented information relating to the proposed operation of the business at the proposed site, and stated that it would be in accordance with all applicable laws and regulations. He related that he believed, based upon the site's zoning, that his proposed pet shop was allowed

“of right,” and that it was only when attempting to obtain a use and occupancy certificate for the location that he became aware of the need for a variance.

The Protestants presented Donald Armstrong, the operator of a video production business above and subgrade to the property adjacent to the subject site. He testified as to the various difficulties encountered by him and others over the years on the property, some of which he associated with a delicatessen previously located there. He informed the Board that he held a B.S. in Animal Science and a Master’s Degree in Dairy Science obtained at the University of Maryland. He then related a number of personal concerns relating to the proposed use of the site as a pet shop. They included disease transmission, possible exposure to odors and waste, noise, and a basic opposition to the project as an injustice visited unnecessarily on the adjoining property users.

Mrs. Phyllis Karp, a resident of Greenspring Valley, requested permission to testify. Although she had no specific personal knowledge of the instant matter, the Board accepted a proffer as to her concerns regarding the proposed use of the subject site.

The final witness for the Protestants was Frank Branchini, Executive Director of the Humane Society of Baltimore County. His testimony related to the proposed use of the site and his many concerns as to its effect on the animals, the community, and society in general. The Board also noted the presence of various members of the public who, although not presenting any individual testimony, signed an Attendance Sheet which was entered into the record.

The Board has addressed in its deliberation whether or not the requested relief is an “area variance” and not an impermissible “use variance.” The Maryland Court of Special Appeals has

determined that an "area variance" relates to a variance of area, height, density, setback or sideline restrictions; while a "use variance" seeks to allow a use other than those permitted in a particular district by law. *Anderson v. Town of Chesapeake Beach*, 22 Md.App. 28 (1974). The Court pointed out that a use variance changes the character of the zoned district, while an area variance does not. *Anderson, Id.*

In the instant case, the proposed use as a pet shop is permitted as a matter of right on the subject site. The variance requested asks to alter a setback distance from the location of the proposed use to a residential zone boundary. It does not seek a change that would alter the character of those uses permitted "of right" in the B.R. zone. People's Counsel submits for the Board's review a 1979 Baltimore County Circuit Court decision regarding § 421.1 of the BCZR. However, that decision relates to an animal facility in a residential zone and not (as in the instant case) to § 421.2 of the BCZR, relating to those like facilities in business and/or industrial zones. The Board unanimously believes and finds that the requested variance is clearly an issue of an "area variance" and not a "use variance."

Turning, therefore, to the question of the requested area variance, the Majority takes note of § 307.1 of the *Baltimore County Zoning Regulations*, which states, in pertinent part, as follows:

"...(T)he County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations...only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship.... Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area...regulations, and only in such manner as to grant relief without injury to

public health, safety, and general welfare...."

Further, this Board enjoys the guidance provided by the Court of Special Appeals in *Cromwell v. Ward*, 102 Md.App. 691 (1995), wherein the Court writes:

...The Baltimore County ordinance requires "conditions ...peculiar to the land...and...practical difficulty...." Both must exist. ...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 the uniqueness is first established that we then concern ourselves with the practical difficulties...." *Id.* at 698.

In requiring a pre-requisite finding of "uniqueness," the Court defined the term and states:

In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes requires that the subject property has an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions.... *Id.* at 710.

Likewise, the Court in *McLean v. Soley*, 270 Md. 216, 1973, established the following criteria for determining practical difficulty or unreasonable hardship:

- 1) Whether compliance with the strict letter of the restrictions governing various variances would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
- 2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
- 3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured. *McLean v. Soley, Id.*

The Majority of the Board believes that the uncontradicted testimony of Mr. Patton is dispositive of the threshold test of "uniqueness." The "restrictions imposed" on a use permitted as of right on the subject site, by its mere location abutting what can only be termed an "absolutely residentially prohibited but nevertheless technically residential zone," can only be described as, and clearly is, the type of "unique" situation imposed by an "abutting property" or "similar restriction" referred to in the Code as explained in *Cromwell*. The additional uncontradicted testimony of Mr. Patton that this is the only such configuration and like circumstance in the County only enhances that conclusion.

Having determined the uniqueness of the subject site, the existence of practical difficulty or unreasonable hardship must be determined. Addressing each of the criteria set forth in *McLean*, the Majority of this Board finds that compliance with the strict letter of § 421.2 in this situation would unreasonably prevent the Petitioner from using the property for its permitted "of right" use. Further, the Majority finds that it would do substantial justice to the Petitioner to grant the variance under the circumstances presented here. The Majority is convinced by the testimony of Mr. Patton and the Petitioner that the granting of the request would, likewise, do substantial justice to other property owners in the District and have no harmful effect whatsoever upon them.

Finally, the Majority looks with favor upon Mr. Patton's credible and largely uncontradicted testimony that the area in question is presently a multi-use commercial and well-trafficked one. His expert testimony as to the spirit and purpose of § 421.2 of the BCZR in protecting residential areas (and their residents) from proximity closer than 200 feet from the use

proposed, and his conclusion that no such planning benefit exists here because of the unique non-residential nature of the abutting residential zone, supports the conclusion of the Majority that the relief requested can be granted in accordance with the spirit of § 421.2 without harm to public safety and welfare.

Having so determined, as set forth above, the Majority of this Board grants the variance to § 421.2 of the *Baltimore County Zoning Regulations* as requested.

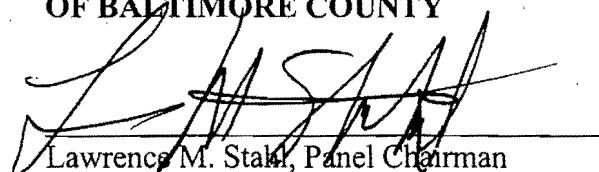
ORDER

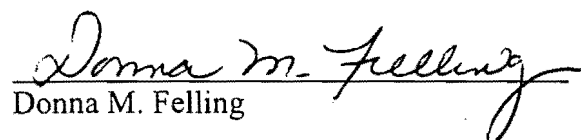
THEREFORE, IT IS THIS 3rd day of May, 2001 by the
County Board of Appeals of Baltimore County

ORDERED that Petitioners' request for variance relief seeking to permit a pet shop to be located 35 feet from a residential zone in lieu of the required 200 feet 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


Donna M. Felling

5/3/01

IN THE MATTER OF
THE APPLICATION OF
TIMOTHY R. QUIGG -LEGAL OWNER
/PETITIONER FOR VARIANCE ON PROPERTY
LOCATED ON THE SW/S YORK ROAD, 370' SE
OF THE CENTER LINE WEST ROAD
(1026-1028 YORK ROAD)

* BEFORE THE
* OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 00-532-A

9TH ELECTION DISTRICT
4TH COUNCILMANIC DISTRICT

* * * * *

DISSENTING OPINION

The writer of this minority opinion agrees with the majority in that this case involves an appeal of a final decision of the Zoning Commissioner in which approval was granted to permit a "pet shop" to be located within 38 feet of a residential zone boundary (in lieu of the required 200 feet). There is no question but that the property is governed by § 236 of the *Baltimore County Zoning Regulations* (BCZR). That section of the regulations incorporates uses permitted in the Business Major (B.M.) zone [BCZR 233]; and uses permitted in the Business Local (B.L.) zone [BCZR 230]. The regulations adopted governing the Business Local zone in BCZR 230.9 permit a "pet shop" as a use permitted as of right; and therefore by incorporation is permitted as of right in all of the above-referenced zones. People's Counsel has made a strong case that what is present here is, in reality, a "use variance" and not an "area variance" as approved by the Zoning Commissioner. Based on the testimony and evidence as submitted at the hearing, the Board members unanimously agreed that the issue at hand was one based on a request for an "area variance" – and not one based on a "use variance." The Board concurs that the case of *Loyola Loan Assn. v Buschman*, 227 Md. 243 (1961) was a controlling factor in which the Court outlined the distinction between a "use" variance and "area" variance:

Between a use variance, which changes the character of the zoned district, and an area variance, which does not. Use variances are customarily concerned with "hardship" cases, where the land cannot yield a reasonable return if used only in accordance with the use restrictions of the ordinance and a variance must be permitted to avoid confiscatory operation of the ordinance, while area variances are

customarily concerned with “practical difficulty.”

In the instant case, there was no doubt, based on the testimony and evidence, that the granting of the variance would not “change the residential character of the zoned district” which is the essential element in granting a “use” variance. The substantive fact is that, other than for the Maryland National Guard Armory, there is no “residential” character within the zone. This writer dissents solely on the basis of consideration of the “area” variance, and whether or not the Petitioners met the required standards for establishing the variance requirements. BCZR 307.1 requires, in part, that “a variance can 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 with the zoning regulations of Baltimore County would result in practical difficulty or unreasonable hardship....” The general rule is that a variance (an exception) is to be granted sparingly and only in rare instances and under peculiar and exceptional circumstances. A variance should be strictly construed. (See A. Rathkopf, *The Law of Zoning and Planning*, Section 38 (1979)). In the famous *Cromwell v. Ward* case, the Court of Special Appeals of Maryland quoted *North v. St. Mary’s County*, 99 Md.App. 512. In that case, the Court of Special Appeals held that there must be “a finding that special conditions or circumstances exist that are peculiar to the land....” In the zoning context, the term “unique” has a customized meaning.

These essentially fall into three categories:

1. Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome;

2. Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners; 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. [*McLean v. Solely*, 270 Md. 208 (1973)]

People's Counsel had referenced in his brief the *Cromwell* decision whereby the Court reversed the Baltimore County Board of Appeals in what has to be considered the granting of a very modest height variance for a garage and wine cellar. As one reads the opinion of the Court, it is quite evident that the application of the variance law must be followed strictly by an administrative body. There was absolutely no evidence submitted by any party that the subject property was unusual or unique. It is regular in shape, reasonably topographic, accessing a viable roadway system. It has been used quite successfully in the past for a variety of commercial /business purposes. The Majority believes that the proximity to the residentially zoned Maryland National Guard is significant enough to qualify the property as "unique." Admittedly, the location of the armory within the confines of the cloverleaf is unusual and may be the only land area where such a situation is present. However, the County Council has determined that certain institutional facilities are to be classified as "residential" in the zoning classification. The unusual nature of the armory and its setting does not, in and of itself, transform the property in the unique context as outlined by the Court of Special Appeals. In *Umerley v. People's Counsel*, 108 Md.App. 497, 508 (1996), the Petitioners argued

unsuccessfully that their property was unique because without setbacks and other variances, the long-existing trucking facility, in proximity to existing residential areas, "cannot comply with [the zoning] regulations." While the County Board of Appeals of Baltimore County accepted this rationale, Judge Bishop wrote:

Because the uniqueness requirement mandates that the subject property "have an inherent characteristic not shared by other properties in the area," such evidence cannot support a finding that the Umerley property is unique within the meaning of Maryland law. A review of the record fails to reveal any other evidence that would support such a finding.

It is the unique characteristics of the subject property itself that determines the uniqueness. The writer does not agree with the rationale that it is the "other similar restrictions," i.e., the armory, that warrants consideration of the variance in a positive vein. Again, there are a variety of community and institutional uses that are permitted by right or special exception. The writer agrees with the opinion expressed by People's Counsel that "a characteristic of neighboring properties does not translate to unique characteristic of the subject property itself." By granting the variance, the majority has administratively changed the zoning of the armory facility, and in so doing, opens the door wide for other variance requests in the immediate area, based not on the uniqueness of the property on which the variance is sought, but the uniqueness of the armory. And that is, in the opinion of this writer, a dangerous precedent, and treads on the exclusive zoning authority of the elected County Council.

Having determined that the property is not unique, it is not necessary to proceed to the second prong test of *Cromwell*; however, even in second instance, the Petitioner has not established "the burden in showing the facts to justify an exception or variance which rests upon

the applicant and it must be shown that the hardship affects the particular premises and is not common to other property in the neighborhood." *Easter v. Mayor & City Council*, 195 Md. 395 (1950). There is no unreasonable denial of Petitioner's use of the property. Over 100 uses exist by right and 80 by special exception. The Petitioner has not demonstrated any particular problem in leasing the property, and the writer rejects the premise that the Petitioner is being unreasonably denied a permitted use; and therefore is firmly entitled to a variance. The clear intent and import of *Cromwell* and other cases decided by the Maryland Courts is that a variance should be granted only where there are unusual conditions which unreasonably deprive the owner of the essential use of the property. That is simply not the case here. Denial of the variance requirement does not amount to property confiscation. There are a number of other substantial uses that can be employed by the Petitioner without the variance request. For the reasons so stated, this member of the Board respectfully dissents.



Charles L. Marks

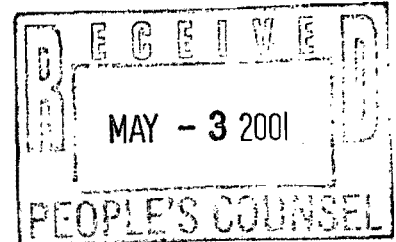
DATE: May 3, 2001



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
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410-887-3180
FAX: 410-887-3182

May 3, 2001



Peter Max Zimmerman
People's Counsel for
Baltimore County
Room 48, Old Courthouse
400 Washington Avenue
Towson, MD 21204

RE: *In the Matter of: Timothy R. Quigg* - Legal Owner
Case No. 00-532-A

Dear Mr. Zimmerman:

Enclosed please find a copy of the Majority Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter. Also enclosed is a copy of Mr. Marks' Concurring/Dissenting Opinion.

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

Enclosure

c: Howard L. Alderman, Jr., Esquire
Timothy R. Quigg
Mitchell J. Thomson
Jim Patton
Robert E. Latshaw, Jr.
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director/PDM
Virginia W. Barnhart, County Attorney



11/27/00

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BEFORE THE
COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY

Case No. 00-532-A

Timothy R. Quigg and Mitchell J. Thomson

Petitioners

1026-1028 York Road
9th Election District
4th Councilmanic District
Towson, Maryland

PETITIONERS' POST-HEARING MEMORANDUM

Howard L. Alderman, Jr.
Levin & Gann, P.A.
8th Floor, Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204

BEFORE THE
COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY

Case No. 00-532-A

Timothy R. Quigg and Mitchell J. Thomson

Petitioners

1026-1028 York Road
9th Election District
4th Councilmanic District
Towson, Maryland

PETITIONERS' POST-HEARING MEMORANDUM

Timothy R. Quigg ("Owner") and Mitchell J. Thomson (referred to sometimes in this case as "Lessee" or "Contract Purchaser") (Owner and Lessee are referred to hereafter, collectively as the "Petitioners" or "Appellees"), by and through their undersigned legal counsel, hereby submit this Post-Hearing Memorandum in accordance with the direction of the County Board of Appeals for Baltimore County ("Board") at the hearing held on the above-referenced appeal, in lieu of closing and legal argument.

STATEMENT OF THE CASE

This case is not about puppies. This case involves the proposed location of a pet shop only. This case comes to the Board on an appeal of a final decision of the Zoning

Commissioner for Baltimore County, dated August 9, 2000 (the "Commissioner's Decision"), wherein the Appellees' Petition for Variance was granted to permit a "pet shop" to be located thirty-eight (38) feet from a residential zone boundary in lieu of the required two hundred (200) feet. Appellees' property, located at 1026-1028 York Road (the "Subject Property"), consists of a gross area of 0.485 acres, more or less, currently zoned Business Roadside ("BR"), and is located on the southwest side of York Road, south of West Road. The Subject Property is also west of the Maryland National Guard Facility, currently located within the existing cloverleaf created by the on and off ramps for the York Road exit from Interstate 695. The Subject Property is governed by Section 236 of the Baltimore County Zoning Regulations ("BCZR") which incorporates uses permitted in the Business Major ("BM") Zone (BCZR §233) and uses permitted in the Business Local ("BL") Zone (BCZR §230). The adopted regulations governing the Business Local Zone in BCZR §230.9, permit a "Pet Shop" as a use permitted as of right; thus, such use, by incorporation, is permitted as of right in all three of the referenced business zones. In addition to the specified use regulations, any use permitted as of right or by special exception, is also subject to the area regulations set out in the BCZR. All BR zoned uses are, at a minimum, subject to the area regulations contained in BCZR §238. Additionally, the BCZR also contain, in Article 4, a series of Special Regulations which pertain to a variety of uses, including without limitation, §421.2 which provides that a pet shop located in any business zone (as of right or by special

exception), must be located more than two hundred (200) feet from the nearest residential zone. The Petitioners sought relief from this additional area setback by way of a properly filed Petition for Zoning Variance. Although at the time of filing that Petition other legal counsel was representing the Petitioners, the undersigned filed a properly prepared Entry of Appearance on behalf of the Petitioners in advance of the hearing before the Zoning Commissioner.

At the hearing before the Zoning Commissioner, there was no opposition to the request, as the Zoning Commissioner properly noted there were "no protestants or other interested persons present." (Commissioner's Decision at 1.) After considering the testimony and evidence presented, and for the reasons stated in his decision, the Zoning Commissioner granted the variance relief requested to permit the Petitioners' proposed pet shop to be located thirty-eight (38) feet from a residential zone boundary.

The Office of People's Counsel entered their appearance in this case, however, did not attend the hearing held before the Zoning Commissioner nor did any representative of that Office submit any evidence or testimony to be considered by the Commissioner. Notwithstanding the lack of participation in the proceedings before the Zoning Commissioner, the Office of People's Counsel noted an appeal of the Commissioner's Decision to this Board.

THE RELEVANT FACTS

There is no dispute that the Subject Property is zoned BR and that it is located on

the west side of York Road, across from the Maryland National Guard facility. Likewise, there is no dispute that the Subject Property was occupied previously by Raver's Meats and Delicatessen or that the Owner was not present at the proceedings held before the Board. In addition to the proposed pet shop, there is also an automotive service garage use on the Subject Property, in the rear of the same building for which the pet shop is proposed. The parties to this case can agree that there are a variety of uses specified as permitted as of right and by special exception in the BR zone (and thus on the Subject Property), either specifically or by incorporation of such uses permitted in the BL and BM zoning use regulations.

At the nearly day long hearing held by this Board on the variance relief requested, the Petitioners presented expert testimony from a registered professional engineer with an expertise in land planning and zoning matters and the testimony of one of the Petitioners, Mr. Mitchell Thomson. The case put on by the Office of People's Counsel in opposition to the relief requested consisted solely of purported fears and dislikes by an alleged occupant of an adjoining structure of a pet shop that will sell puppies and testimony from a representative of the Humane Society of Baltimore County alleging vagaries associated with the sale of puppies to Baltimore County residents. The case presented in opposition to the requested relief provided absolutely no evidence relative to the variance relief being sought with respect to the impact, if any there may be, by the proposed pet shop on the use(s) permitted within the adjoining residential zone by the

reduction of the 200 foot setback.

Jim Patton's Testimony

Appearing at the request of the Petitioners, in support of the variance relief requested, was James S. Patton, a professional engineer. Mr. Patton, whose Resume is in the record in this case as Petitioners' Exhibit No. 1, was accepted as an expert engineering witness, with an emphasis/expertise in planning and zoning matters. During a portion of his professional career, Mr. Patton authored zoning ordinances which were ultimately adopted by the legislative bodies of the jurisdictions which employed him. Mr. Patton described the Subject Property and the existing and proposed use thereof, with all of those uses being permitted as of right in the BR zone. Additionally, Mr. Patton noted that all of the properties fronting on the west side of York Road, both north (toward West Road) and south (toward Fairmount Avenue) of the Subject Property were zoned and used for commercial purposes. The right-of-way of York Road, in front of the Subject Property was described by Mr. Patton as being 100 feet in width, with 96 feet of existing paving located therein. The aerial photograph (complete with the taped red arrow pointing to the Subject Property) in evidence shows clearly the relationship of the Subject Property and the residential zone on the east side of York Road, as well as other commercial uses in the area.

Mr. Patton acknowledged that the residential zone boundary which necessitates the variance relief requested is located approximately in the center line of York Road and

that it extends from that centerline position in an easterly direction across the cloverleaf of the Baltimore Beltway within which is located the Maryland National Guard facility. Mr. Patton described his understanding of the general policy behind BCZR § 421.2 as providing a 200 foot buffer between residential living uses and pet shops/kennels/animal boarding places. Mr. Patton opined that the noise associated with York Road and Beltway traffic far exceeds any noise that might emanate from a pet shop at the proposed location. Thus, in Mr. Patton's opinion, given that the National Guard facility, being located on the only residentially zoned property within 200 feet of the Subject Property, is not the type of residential use sought to be protected by the County Council in enacting BCZR § 421.2 and the unique character of the Subject Property, the variance should be granted. It should not go unnoticed that BCZR § 421.2 applies a setback for pet shops/kennels/animal boarding places located in business and/or industrial zones only.

On both *voir dire* and on cross-examination, Mr. Patton was examined extensively regarding his knowledge and qualifications pertaining to the BCZR, the Subject Property and pet shop uses generally in Baltimore County. Mr. Patton acknowledged that there were other pet shops in Baltimore County, none of which were located within 200 feet of a use located within a residentially zoned cloverleaf of the Baltimore Beltway. When questioned about the applicability of BCZR § 236, Mr. Patton opined that the referenced section contained the **use regulations** applicable to BR zoned properties. Mr. Patton described that, in his opinion, the fact that other uses allowed in the BR zone may be

capable of being established on the Subject Property, such was irrelevant and had no bearing on the unique position of the Subject Property and the proposed pet shop relative to the residential zone to the east or the practical difficulty to be suffered by the Petitioners absent the requested relief.

Perhaps most importantly, Mr. Patton described how the Subject Property is uniquely situated and impacted by BCZR § 421.2. Mr. Patton described that since the cloverleaf of I-695 was owned by the State of Maryland, under the jurisdiction of the federal Interstate/Federal Highway Program, the National Guard facility was permitted to be constructed only because of a waiver having been granted by the federal agencies having control of uses along the interstate highway. Mr. Patton's uncontradicted testimony was that if the National Guard facility was abandoned, no residential uses as permitted by the BCZR in the DR zones could be established within this cloverleaf area. It is, according to Mr. Patton's testimony, the mere existence of the DR zone, a zone within which residential uses permitted by the BCZR are prohibited by the federal interstate programs, within 200 feet of the Subject Property that makes it unique from other business zoned properties in Baltimore County on which pet shops can also be located as of right. In Mr. Patton's opinion, the fact that the adjoining "residential zone" can not be used for residential purposes renders the 200 foot setback otherwise required by BCZR §421.2 meaningless. Mr. Patton opined that the imposition of the 200 foot setback requirement on the Subject Property, without variance, would be unnecessarily

burdensome on and would work real practical difficulty on the Petitioners.

Mitchell Thomson's Testimony

The Thomson family has been in the pet shop business all of Mr. Mitchell Thomson's life. Mr. Thomson owns and operates a pet shop, similar to the one proposed, in Laurel, Maryland. The main difference between the Laurel location and that proposed on the Subject Property is that the proposed pet shop will have less administrative office space associated with it, although Mr. Thomson will not be on-site more than four (4) days per week on the average. On direct and cross-examination, Mr. Thomson described how his pet shop operation is conducted in accordance with all applicable law and regulation and the relationship that is developed via contract with veterinarians in the immediate area to address weekly visits and the care for pets which may become ill. Mr. Thomson described his search for other, suitable pet shop locations in Baltimore County and his investment in the Subject Property.

The uncontradicted testimony of Mr. Thomson was that before signing any contract/lease with the owner, he (and his knowledgeable commercial real estate broker) visited the Baltimore County Department of Permits and Development Management - Zoning Office and were advised that a pet shop at the Subject Property was permitted as of right. It was only after moving forward with the pet shop plans, when Mr. Thomson was attempting to obtain a use and occupancy certificate for the Subject Property, was

he informed that prior County advice had been in error and that he would need to obtain a variance because there was a residential zone within 200 feet of the boundary of the Subject Property.

Protestant No. 1 - Phyllis Karp

Ms. Karp identified her 16 year residence at 7900 Greenspring Avenue in the Greenspring Valley area of Baltimore County. Upon disclosing that her interest in the instant case was an unrelated case in her neighborhood where a dog kennel was proposed, the Board ruled that Ms. Karp could offer personal knowledge about facts relevant to the instant case only. At that point, Ms. Karp, like many other Greenspring Valley residents who had been in attendance left the hearing room.

Protestant No. 2 - Donald Armstrong

Mr. Armstrong took the stand and testified that he was one of the owners of the property at 1030 York Road (the "Adjoining Property"), which adjoins the Subject Property and that he purportedly conducted his commercial film business in the basement of the improvements located on that property. On cross-examination, Mr. Armstrong was compelled to recant his testimony on direct examination and acknowledge that he had no "ownership interest" in the Adjoining Property and that he merely believed that his father (apparently one of the current owners) intended, at his death to leave his ownership interest to his son.

Mr. Armstrong testified that the front, exterior portion of the building on the

Subject Property was in shambles and that the parking lot was "broken up". As to the condition of the building on the Subject Property and the purported rodents running around (Mr. Armstrong later admitted that the rodents had originally been associated with the former delicatessen operation on the Subject Property), Mr. Armstrong admitted that he had not had "any interaction" with the Owner. Mr. Armstrong's comments on purported noise emanating from a proposed pet shop are disingenuous at best, given the adjoining service garage use, animal hospital use and extensive traffic on York Road.

The educational background of Mr. Armstrong includes his having earned a Bachelor of Science degree in "Dairy Science" from the University of Maryland. Although Mr. Armstrong has some experience in working with animals, he has selected video production as a vocation. Mr. Armstrong acknowledged that the Animal Hospital, located on the Adjoining Property treats sick and diseased animals. He also indicated that no portion of the property owned by his father (the Adjoining Property) was zoned residentially, it was all zoned exactly as the Subject Property — Business Roadside. Finally, on cross-examination, Mr. Armstrong acknowledged that he understood that any and all uses on the Subject Property had to be conducted in accordance with all applicable law and regulation.

What Mr. Armstrong did not testify about was the impact on the residential zone east of York Road, if any there may be, that would result from the requested variance. Nor did Mr. Armstrong testify that he selected the Adjoining Property for his commercial

film production use because of its proximity to the residential zone on the east side of York Road. Mr. Armstrong did acknowledge that but for the County Council's intent to, absent justification for variance, require that pet shops/kennels/animal boarding places be set back 200 feet from a residential zone, he would have no opportunity before this Board or any other forum to express his views on the operation of what he termed a "puppy store".

Protestant No. 3 - Mr. Frank Branchini

Mr. Branchini is an official with the Humane Society of Baltimore County and the director of various animal rights groups. His testimony in this case pertained exclusively to his perceived vagaries of the sale of puppies, the number of animals taken in by shelters in the County and the cost to the taxpayers for the operation of animal shelters. When questioned, on cross-examination, as to whether his views would be changed if the residential zone did not exist on the east side of York Road, Mr. Branchini candidly admitted that his testimony was unrelated to the zoning aspects of the case pending before this Board.

The Motion of People's Counsel

At the conclusion of the Petitioners' *prima facie* case, the People's Counsel for Baltimore County ("Opposing Counsel") made a Motion to Dismiss, suggesting that the Petitioners had failed to provide the substantial evidence necessary to prove the standards necessary to prevail in the pending zoning action. The initial fallacy in this argument is

that the Petitioners presented the only testimony relevant to the zoning relief requested. The evidence presented by Opposing Counsel in no way addressed the variance issue under consideration by this Board. Rather, Opposing Counsel's witnesses addressed their comments to the purported vagaries associated with the sale of puppies to the public.

The second and fatal fallacy to Opposing Counsel's motion is that in order to grant the motion, this Board must review the facts and evidence and all inferences therefrom in a light most favorable to the non-moving party (the Petitioners) and only then determine that the Petitioners' failed to present a *prima facie* case. *Sinder v. Heft* 271 Md. 409, 413-414 (1974) The direct testimony of James Patton and of Mitchell Thomson, provided uncontradicted evidence proving the standards of BCZR § 307.1 and *Anderson v. Town of Chesapeake Beach*, 22 Md. App. 28 (1974). Moreover, the cross-examination of Mr. Patton by Opposing Counsel further bolstered the Petitioners' case. In response to questions posed by Opposing Counsel, Mr. Patton enhanced his testimony regarding the uniqueness of the Subject Property in relation to the adjoining residential zone, located within the cloverleaf of an interstate highway, that is unusable for residential purposes. Additionally, Mr. Patton's testimony on cross-examination revealed that, to the best of his knowledge, there was no land similarly situated elsewhere in Baltimore County, adjacent to a residential zone within the right-of-way of Interstate 695.

The Petitioners met their burden via substantial (and the only) testimony relative to the standards that had to be met for approval of the requested variance. While Opposing Counsel attempted to make an issue of the fact that Timothy Quigg, one of the Petitioners was not in the hearing room, there is no requirement for either of any of the Petitioners to be present at the hearing on the zoning request.

For all of the foregoing reasons, the Motion to Dismiss must be denied.

LEGAL ARGUMENT

The Variance Relief Sought from BCZR § 421.2 is an "Area" Variance and Not a "Use" Variance

The alleged reason that the Office of People's Counsel noted an appeal of the Commissioner's Decision to this Board is that any variance from BCZR § 421.2 is not an area variance allowed by Section 307.1, but rather an impermissible use variance. In a letter, dated October 13, 2000, to this Board, the Office of People's Counsel ("Opposing Letter") suggests that a 1979 decision of the Circuit Court for Baltimore County is in agreement that such a variance amounts to a "use" variance.

The Opposing Counsel's characterization of the Circuit Court Judge's order in Case No. 10/433/6363 is misleading on its face. Opposing Counsel frames the issue as a "deviation from BCZR **Section 421** standards for kennels, pet shops and other uses" (Emphasis added.) In fact, Judge Haile's 1979 decision pertained solely to BCZR Section 421.1 rather than the more sweeping application to "BCZR Section 421" as

suggested by Opposing Counsel. Section 421.1 of the BCZR provides that:

Where an animal boarding place or kennel is allowed in a residential zone, either by special exception or as a permitted use, no part of any such use shall be located within 200 feet of the nearest property line. (Emphasis added.)

Presumably, on the facts and evidence in that 1979 Circuit Court case, Judge Haile found that the specifically proposed animal boarding place or kennel in a residential zone within 200 feet of a property line would **change the character of the residential district** and therefore was a “use” variance not permitted by the BCZR. However, in no event did Judge Haile’s ruling apply to any provision of the BCZR, other than Section 421.1 – a section inapplicable to the relief requested by the Petitioners.

The appellate courts of this state have long recognized the difference between a use variance and an area variance. The *Anderson* Court articulated the difference as follows:

. . . the variances requested in this case involve an ‘area variance’ (a variance from area, height, density, **setback**, or sideline restrictions, such as a variance from the distance required between buildings) and not a ‘use variance’ (a variance which permits a use other than that permitted in the particular district by the ordinance, such as a variance for an office or commercial use in a zone restricted to residential uses).

Anderson at 37-38. (Emphasis added.)

In support of its reasoning, the *Anderson* Court relied on a prior holding of the Court of Appeals of Maryland, in the case of *Loyola Loan Ass’n v. Buschman*, 227 Md.

243 (1961), where that Court described the distinctions:

“between a **use variance**, which **changes the character of the zoned district**, and an area variance, which does not. Use variances are customarily concerned with 'hardship' cases, where the land cannot yield a reasonable return if used only in accordance with the use restrictions of the ordinance and a variance must be permitted to avoid confiscatory operation of the ordinance, while area variances are customarily concerned with 'practical difficulty.'

Anderson at 38. (Emphases added.)

Most often, the appellate courts in this and other states have focused on the different standards of proof required to justify an “area” versus a “use” variance. In the case of a variance from a distance or setback requirement or a height requirement, the lesser “practical difficulty” standard applies. To prove practical difficulty, an applicant or petitioner:

need show only that:

'1) Whether compliance with the strict letter of the restrictions governing area, **setbacks**, frontage, height, bulk or density would unreasonably **prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.**'2) Whether a grant of the variance applied for would do **substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.**'3) Whether relief can be granted in such fashion that the **spirit of the ordinance will be observed and public safety and welfare secured.**' McLean v. Soley, 270 Md. 208, 214-215, 310 A.2d 783, 787 (1973), quoting 2 Rathkopf, The Law of Zoning and Planning, 45-28-29 (3d ed. 1972). The lesser burden is permitted because the impact of an area variance is viewed as being much less drastic than that of a use variance.

Anderson at 39. (Emphasis added.)

Contrast this to the more stringent **undue hardship** standard applied in obtaining a "use" variance to prohibit a taking of property rights in the constitutional sense.

Where the standard of undue hardship applies, the applicant, in order to justify the grant of the variance, must meet three criteria: 1) If he complied with the ordinance he would be unable to secure a reasonable return from or to make any reasonable use of his property. *Pem Co. v. Baltimore City*, 233 Md. 372, 378, 196 A.2d 879, 882 (1964); *Marino v. City of Baltimore*, 215 Md. 206, 218, 137 A.2d 198, 202 (1957); see *Salisbury Bd. v. Bounds*, 240 Md. 547, 555, 214 A.2d 810, 815 (1965). Mere financial hardship or an opportunity to get an increased return from the property is not a sufficient reason for granting a variance. *Daihl v. County Board of Appeals*, 258 Md. 157, 167, 265 A.2d 227, 232 (1970); *Salisbury Bd. v. Bounds*, supra, 240 Md. at 555, 214 A.2d at 814; *Marino v. City of Baltimore*, supra; *Easter v. City of Baltimore*, 195 Md. 395, 400, 73 A.2d 491, 492 (1950). 2) The difficulties or hardships were peculiar to the property in question and contrast with those of other property owners in the same district. *Burns v. Baltimore City*, 251 Md. 554, 559, 248 A.2d 103, 106 (1968); *Marino v. City of Baltimore*, supra; *Easter v. City of Baltimore*, supra. 3) The hardship was not the result of the applicant's own actions. *Salisbury Bd. v. Bounds*, supra; *Marino v. City of Baltimore*, supra; *Gleason v. Keswick Impvt. Ass'n*, 197 Md. 46, 50-51, 78 A.2d 164, 165-166 (1951).

Anderson at 38-39.

The Opposing Counsel questioned Mr. Patton extensively regarding the myriad of uses that may be established on the Subject Property, i.e. those uses permitted by right and by Special Exception in the BL, the BM and the BR zone. Clearly, this was Opposing Counsel's attempt to show that the Owner could secure a reasonable return on the use of the Subject Property or could establish one of the other permitted uses on the Subject Property. However, as described above, those factors are only relevant when a use variance is being sought. If an owner could not institute a reasonable use or realize

a reasonable return from his or her property because of the strict application of a regulation, absent a use variance, a taking of that property would result — such is not the case here.

As described by Mr. Patton, in the adjoining business districts are located a service garage (on part of the Subject Property), an animal hospital (on the Adjoining Property), a funeral home (on the north side of West Road), a major computer retail operation (CompUSA), a retail linen store, a car wash, etc. There is absolutely no showing whatsoever that a pet shop in this Business Roadside district will “change the character of the zoned district.” A different result may occur if an animal kennel or an animal boarding place (or a pet shop) was being proposed **in a residential zone**; depending on the intensity of the use, one may argue successfully that such use would change the **residential character of the residential zone**. No one can contend (at least not with a straight face) that a pet shop in a Business Roadside zone will change the character of that zone. Likewise, it can not be argued seriously that a pet shop, located in a BR zone situated 38 feet from a **residential zone**, within which zone no residential uses may be created, will change the character of the residential zone.

Uses permitted as of right or by special exception are subject to the bulk/area requirements of BCZR § 238. Some uses, whether they be located in a BR zone or another zone are also subject to the **Special Regulations** set forth in Article 4 of the BCZR. Section 421.2 of the BCZR applies additional setback requirements for pet shops

and related uses from residential zones. The Office of People's Counsel suggests that because this additional setback requirement is set forth as a special regulation applicable to animal boarding places, kennels and pet shops, any variation or deviation from the 200 foot requirement is a "use variance". Assuming *arguendo* that there may be a scintilla of merit in Opposing Counsel's argument, where is the line then drawn in Baltimore County regarding what is an area variance and what is a use variance? Since accessory uses are identified as uses permitted as of right, subject to the special regulation of Article 4 (BCZR § 400), have the countless variances granted for accessory structures in side or front yards, greater than 15 feet in height or closer than 2 ½ feet from a property line been granted contrary to the law because they are actually use variances?

Within the Special Regulation section of the BCZR, where the legislature has intended that its provisions not be subject to variance pursuant to BCZR §307, it has said so. For example, BCZR §406A sets forth those special regulations applicable to tennis facilities. Pursuant to BCZR §406A.3, tennis facilities shall not be located closer than 100 feet to a site boundary line in any Resource Conservation or Density Residential zone. However, the legislature went one step further when it provided that "no variance in the requirements may be granted under the provisions of Section 307 of these regulations." BCZR §406A.3 No similar prohibition from variance from BCZR §421.2 (or most of the other Special Regulations of Article 4 of the BCZR) has been adopted or even implied by the Baltimore County Council. If a variance from any of the Special

Regulations of the BCZR was an impermissible "use" variance as suggested by Opposing Counsel, the limiting requirements of BCZR §406A.3 would be meaningless. The Maryland Court of Appeals has long held that "no word in the statute and no portion of the statutory scheme should be read so as to render the other or any portion of it meaningless, surplusage, superfluous or nugatory." *Prince George's County v. Wilfred*, 340 Md. 651, 658 (1995); (quoting *GEICO v. Insurance Comm'r of Maryland*, 332 Md. 124, 132 (1993))

The requested variance from BCZR § 421.2 is an area variance. It is a variance from the otherwise required 200 foot **setback** from a residential zone. The requested variance is for a use permitted as of right in the business zone in which it is located. The Opposing Counsel's suggestion and possible argument that the requested relief is in the form of a "use variance" should be rejected on its face as contrary to the longstanding law of this State.

***The Petitioners Have Met Their Legal Burden In Justification of the
Variance Relief Requested***

The only relevant evidence in this case regarding the variance relief requested is that presented by the Petitioners. Other than unsupported and otherwise bald generalizations that the establishment of a "puppy store" would not do substantial justice to owners in the zoning district [which? BR or DR?] and that there would purportedly be insufficient protection of the health, safety and welfare of the community, neither Mr. Armstrong nor Mr. Branchini offered any evidence regarding the variance issue pending

before this Board. As noted above, the requested relief is for a **pet store**; a pet store that, at least initially, will sell puppies. However, the variance relief runs with the Subject Property and will permit a pet store at this location whether operated by Mr. Thomson or not and **regardless if puppies, fish or parakeets are sold.**

The burden was on the Petitioners to present evidence in support of the area variance requested. Notwithstanding the Opposing Counsel's continuous questioning of witnesses regarding factors related to the legal standard of "undue hardship", the Petitioners were required to prove, via substantial evidence, that **"practical difficulty"** would result if the requested relief was not granted.

BCZR § 307.1:

The County Council has authorized the Zoning Commissioner and this Board, pursuant to BCZR § 307.1 to grant area variances where strict application of the regulations would result in practical difficulty or unreasonable hardship. The standards are stated in the disjunctive; the case law as noted above is clear that practical difficulty is the standard to be applied to area variances and unreasonable hardship is that standard applicable to use variances. The authority to grant such variances applies in cases where there are special circumstances or conditions that exist relative to the subject property. Before an area variance can be approved, the Petitioner(s) must also show that there will be no increase in residential density and that the relief requested is in accord with the spirit and intent of the BCZR and that the public health, safety and welfare will be

secured.

The Case Law

The initial standards to be met by a petitioner in a zoning variance case were articulated clearly by the Maryland Court of Appeals in the case of *McLean v. Soley*, 270 Md. 208 (1973). Quoting Professor Rathkopf's treatise *The Law of Planning and Zoning*, the Court reiterated the three (3) standards to be met when seeking an area variance:

1. Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome;
2. Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners; 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.

McLean v. Soley at 214-215.

These standards are the same held by the Maryland Court of Special Appeals in the *Anderson* case and recognized in subsequent opinions of both Maryland appellate courts. The fact that Mr. Thomson selected this property only after being informed by Baltimore County zoning officials that a pet store was permitted as of right does not charge him with knowledge of a need for zoning variance. Even if Mr. Thomson entered his

contractual relationship with the Owner knowing that a variance would be needed for a pet shop, that fact is not relevant to the area variance relief being requested. As noted by the Maryland Court of Special Appeals in *Cromwell v. Ward*, 102 Md. App. 691 (1995), where a landowner has actual or constructive knowledge of the zoning regulations, such knowledge is a bar to the grant of a variance on the basis of "undue hardship". *Cromwell* at 717; (quoting *Sibley v. Inhabitants of the Town of Wells*, 462 A.2d 27 (1983)). As noted, repeatedly, above the applicable standard to the request pending in this case is "practical difficulty" and not "undue hardship".

As to the relevant [practical difficulty] standards, the Petitioners have shown that: Strict compliance with BCZR §421.2 will prevent, unreasonably, the Petitioners from using the Subject Property for a permitted purpose

- all parties agree that the use of the Subject Property for a **pet shop is a use permitted as of right** pursuant to BCZR §230.9
- as testified to by Mr. Patton, applying the **200 foot setback requirement from a residential zone to the Subject Property is unreasonable** in that the purpose of that setback is to provide a buffer from residential uses and that, as a matter of federal regulation, there can be no residential uses conducted within the DR zoned cloverleaf, east of York Road
- Mr. Patton opined that conformity with the 200 foot setback requirement, as to the Subject Property only, would place a **burden on the Petitioners that is not necessary**

The grant of the variance requested is the minimum necessary and can be granted so as to do substantial justice to the Petitioners and others in the BR zone

- The uncontradicted, expert testimony from James Patton was that the

requested 38 foot setback from a residential zone was the **minimum relief necessary** for the permitted use

- Contradicting the self-serving testimony of Mr. Donald Armstrong regarding his views relative to a “puppy store”, Mr. Patton opined that the front setback variance relief, for an existing building, a portion of which will house a pet shop, could be granted and that such grant **would do substantial justice to the Petitioners and would have no effect on others in the BR zone** and “certainly” would have no effect on the federally permitted, State National Guard facility located in the adjacent residential zone

The requested relief can be granted within the spirit and intent of the BCZR and without effect on the public health, safety and welfare

- Mr. Patton, an expert who has authored zoning ordinances that were subsequently adopted by the governing legislative body, opined that the 38 foot variance from what is effectively an artificial residential zone boundary, will **have no effect on the health, safety and/or general welfare of the public**. The limited hours of operation of the proposed pet shop as testified to by Mr. Thomson exclude, unlike other uses permissible as of right in the BR zone, the heavy morning rush hour on York Road
- Being familiar with the spirit and intent of the BCZR and, by his own understanding of the purpose and intent behind the 200 foot setback from a residential zone imposed by BCZR §421.2, Mr. Patton opined that **the requested relief can be granted such that the spirit and intent of the zoning ordinance will be observed**

The Subject Property is in a unique location compared to other properties in the BR zoned district

- On both direct and cross-examination, Mr. Patton described the absolute uniqueness of the Subject Property. When questioned by Opposing Counsel about other BR zoned properties adjacent to residentially zoned cloverleafs of the Baltimore Beltway, Mr. Patton opined that the Subject Property was the **only such situated property of which he was aware**; no contrary evidence was introduced. In Mr. Patton’s opinion, but for the

proximity to the residentially zoned cloverleaf on the east side of York Road (that is unusable for residential purposes) the Subject Property met all other requirements of the BCZR including, without limitation, all regulations pertaining to parking, use, area and bulk.

No resulting increase in residential density

- Mr. Patton testified unequivocally that if the requested zoning relief is granted, the grant will **not result in any increase in residential density** beyond that which may already be permissible in the BR zoning classification

The Petitioners have met their burden necessary to prevail on the variance relief requested. The Opposing Counsel and the protesting witnesses appearing on behalf thereof, have focused their testimony on their perceived views of the sale of puppies at the Subject Property. Absolutely no testimony was offered by those in opposition as to why a variance to a standard, designed generally as a buffer to uses that could be located adjacent to a residential zone, should not be granted. If the opposition dislikes the retail sale of puppies, their relief is with the County Council; a variance hearing to permit a pet shop within 38 feet of a residential zone is the improper forum.

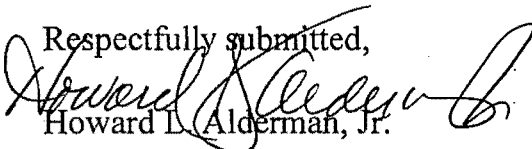
SUMMARY and CONCLUSION

This case is not about puppies; it is about the location of a pet shop in relation to a residential zone, the land within which can not be used for permitted residential purposes. This Board — like it has always done in the past — should not be influenced by or otherwise consider testimony, opinion, press or public outcry over unsubstantiated, perceived vagaries attributed to the retail sale of puppies. This is a zoning case.

The pet shop proposed at the Subject Property will not change the character of the zone in which is located and in which it is a use permitted as of right. The variance sought is from a 200 foot setback requirement from a residential zone, which setback was drafted to provide a buffer between a use permitted as of right in the BR zone and residential uses created in the adjoining residential zone. As such, the setback is meaningless in the instant case. The residential zone can not be used for permitted residential purposes and the noise associated with the traffic on York Road (and most certainly on the Baltimore Beltway) far exceeds any noise that would be emanate from the proposed pet shop.

The Petitioners have met their burden through substantial and uncontroverted evidence. The testimony offered in opposition to the variance relief requested is inapposite to the legal standards which apply in a zoning case. The uniqueness of the Subject Property and the practical difficulty that will be suffered by the Petitioners if the requested relief is not granted remains unchallenged.

For all of the foregoing reasons, this Board should grant, without condition or restriction, the variance relief requested.

Respectfully submitted,

Howard L. Alderman, Jr.
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Attorneys for Petitioners/Appellees

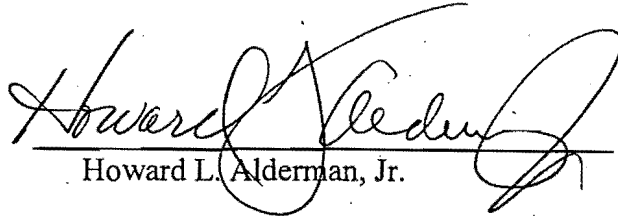
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of November, 2000, a copy of the foregoing Petitioners' Post-Hearing Memorandum, was mailed, postage prepaid, First Class United States Mail to the following:

Peter M. Zimmerman, Esquire
People's Counsel for Baltimore County
400 Washington Avenue, Room 47
Towson, Maryland 21204

Mr. Mitchell Thomson
13929 Baltimore Boulevard
Suite # 1
Laurel, MD 20707

Mr. Timothy R. Quigg
15836 East Redfield Avenue
Gilbert, AZ 85234



Howard L. Alderman, Jr.

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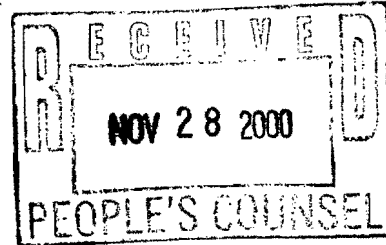
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ELLIS LEVIN (1893-1960)

November 27, 2000

Ms. Kathleen Bianco, Administrator
County Board of Appeals for Baltimore County
400 Washington Avenue, Suite 49
Towson, Maryland 21204



RE: *In Re: Timothy R. Quigg & Mitchell J. Thomson*
1026-1028 York Road
Case No.: 00-532-A
Petitioners' Post-Hearing Memorandum

Dear Ms. Bianco:

In accordance with the direction received from the Board at the conclusion of the hearing on the above-referenced matter, I am pleased to provide to the Board an original and three (3) copies of the *Petitioners' Post-Hearing Memorandum*. Should you or any member of the Board desire additional information or additional copies, please do not hesitate to contact me.

Very truly yours,

Howard L. Alderman, Jr.

HLA/gk
Enclosures (4)
c (w/one encl.):

Peter Max Zimmerman, Esquire
Mr. Timothy R. Quigg
Mr. Mitchell J. Thomson

11/27/00
RE: PETITION FOR VARIANCE
1026-1028 York Road ("Just Puppies"),
SW/S York Rd, 370' NE of c/l West Rd
9th Election District, 4th Councilmanic

Legal Owner: TIMOTHY R. QUIGG
Contract Purchaser: MITCHELL J. THOMSON
Petitioner(s)

* BEFORE THE
* COUNTY BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
* Case No. 00-532-A

* * * * *

PEOPLE'S COUNSEL'S MEMORANDUM

Statement of the Case, Description of Parties, and Outline of Facts

This variance petition requests the use of a pet shop in a business zone (B.R. – Business Roadside) 38 feet from an adjoining residential zone, instead of the minimum required 200 feet. BCZR 421.2. It raises a number of issues of public importance. For this reason, People's Counsel for Baltimore County appealed the Deputy Zoning Commissioner's approval dated August 9, 2000. The County Board of Appeals heard the case *de novo* in its entirety on November 2, 2000, and has set the case in for public deliberation on December 14, 2000. We hope that this memorandum is helpful to the CBA in its decisional process.

The Petitioners

Howard Alderman, Esq. appeared as attorney for the petitioners. The petition identifies Timothy R. Quigg as the property owner and Mitchell J. Thomsen as contract purchaser/lessee.

Mr. Quigg did not appear in person or testify at the CBA hearing. There was no evidence that he, as property owner, had any concerns or problems which warrant a variance. The only information provided about Quigg was that he lives in Arizona and that Thomsen had a lease, the specifics of which Thomsen refused to disclose. Mr. Quigg's interest in the case seemed tenuous, if not threadbare. There was no evidence, for example, that he acknowledged the lease, that it was currently in operation or in force, or that any rent had been paid.

Mr. Thomsen testified briefly, but was willing voluntarily to disclose only that he had a lease, and nothing more. On cross-examination mostly over objection, he provided skeletal information about his proposed pet shop for the sale of puppies. He revealed his intent to house sixty puppies at a time, in small cages holding one to four in each. He would import the puppies from the midwest. He anticipated seven employees, four full-time. None would have any particular health care qualifications. There was no evidence of any measures to reduce noise, dispose of waste, or otherwise provide onsite protection and care.

He acknowledged the problem of "kennel cough" but said he would have a veterinarian visit periodically. He said he would take back any sick dogs brought back within fourteen days, but did not elaborate on what would be done with these dogs. He admitted a compliance problem at his Laurel store with respect to puppies placed in pools, but said it was corrected.

The History of the Property

Mr. Quigg has owned the property 1026-28 York Road for many years. People's Counsel noted that county tax records showed he purchased it in 1978.

The front was occupied by Raver's market and the rear by Lowell's garage. Raver's departed several years ago. There was no evidence as to why Raver's moved. The garage is still there.

There was no evidence that Quigg attempted to lease the property anew for a use permitted without the specific problem of BCZR 421.2 compliance. The B.R. zone clearly allows over 100 business uses by right and over 80 by special exception. See BCZR 236, incorporating the B.L. and B.M. uses listed in BCZR 230 and 233. In sum, the evidence shows that the property has been used, and continues to be available for permitted uses, without the need for this variance.

Correspondingly, there was no evidence that Thomsen attempted to locate a site in one of the many business zone properties more than 200 feet from a residential zone. Rather, he just wanted this site.

The Shape and Topography of the Property

There is no evidence that the property itself is unusual or unique. It has a rectangular shape, like adjacent business property. Its topography is gently sloping, which is also typical along York Road. It is as suitable for normal business uses as any other properties in the area.

Petitioners' engineer, James Patton, emphasized that the nearby residential zone is in an interstate highway cloverleaf on state-owned property used by the Maryland National Guard. But the characteristics of the neighboring property do not make the subject property unique for variance purposes.

Petitioners also claimed that the MNG property should not be zoned residential. But that is the prerogative of the County Council, and not to be second-guessed in a variance case. There are many institutional uses allowed in residential zones. The Council is entitled, moreover, to consider future use of the property should it eventually be sold to the private sector.

The "Hardship" or "Sympathy" Claim

Thomsen testified that when he initially approached an unidentified county employee, he was told that a pet shop is a permitted use. Thomsen said that later, when he went for a use and occupancy permit, he was told he needed a variance and that the employee said it was an oversight.

Thomsen's testimony is vague at best. It also shows a casual approach to the opening of a new business and interaction with the government. Remarkably, it does not appear whether Thomsen initially showed the employee that his proposed location was within 200 feet of a residential zone. Therefore, to the extent the employee said a pet shop is permitted by right in a business zone, he was correct as a general matter. Moreover, since the employee remains unidentified, he is not available to tell his side of the story.

The true oversight was that of Mr. Thomsen, a businessman who came into Baltimore County and did not consult a zoning lawyer or other professional person familiar with the process. His self-serving attempt to shift the blame is unacceptable from any point of view.

In any event, even if a county official purported to authorize an illegal use, whether intentionally or mistakenly, that is not a justification or supporting factor. The law is clear, for reasons given below, that so-called "equitable estoppel" arguments are unacceptable for a variety of policy reasons.

The Neighboring Property Owner

Richard Armstrong, whose family owns 1030 York Road, appeared. The property houses an animal hospital. In addition, Mr. Armstrong operates a movie production business there.

He testified that he was opposed to the proposed use because of noise, contagious disease, and waste disposal problems which reasonably could be expected to affect adversely his use as well as that of the animal hospital. Mr. Armstrong had significant experience with animal handling and exhibited familiarity with different types of animal uses and health and safety issues.

Petitioner's attorney attacked Mr. Armstrong and claimed that he had an illegal use. That should not distract the CBA. This is not an enforcement proceeding. Clearly, the problems Armstrong identified with respect to the puppy operation would affect any legitimate commercial use. Eventually, Petitioner's attorney withdrew his attack.

Other Interested Persons

Frank Branchini, executive director of the Humane Society, described the impact of this use on animal population and efforts at animal control. He was concerned about the addition of more animals into the county at a time when thousands of animals already were being put to death each year, and substantial resources were being expended to address this problem. Grace Froelich and Donna Nearhoof of Animal Rescue also attended the hearing, but did not testify.

Many citizens interested in the Gretel White case, No. 00-438-A, also appeared. They were concerned because of a comparable legal issue there: Whether, as a matter of law, a kennel use in a residential zone on Greenspring Avenue may be allowed within 200 feet from the property line. Amy Kahn, Ira Wagonheim, Barbara Hettleman, Norman Shillman, and Sandy Karpe were among the interested citizens who signed the attendance sheet. Ms. Karpe attempted to testify, and the CBA took a proffer after declining to hear her evidence.

Questions Presented

1. Whether the petition fails to qualify, as a matter of law, because it is for a use variance?
2. Whether the petition also fails because the alleged "practical difficulty" does not actually pertain to the owner, but rather to a single commercial tenant's chosen use, out of over one hundred uses otherwise allowed?
3. Whether, in any event, the property fails the "uniqueness" test, which cannot be met by proof regarding the status of a neighboring property?
4. Whether there is also lacking any proof of true "practical difficulty" from any point of view?

5. Whether the alleged difficulty is “self-created?”
6. Whether the petitioner is entitled to any claim of advantage or “estoppel” based on interaction with county staff?
7. Whether there are additional factors which warrant consideration of the impact to the adjoining Armstrong property?

**Relevant Sections of the Zoning Ordinance
BCZR 307.1 (Pertinent Part) -- Variances**

“The zoning commissioner of Baltimore County and County Board of Appeals, on appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations and from sign regulations, only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the zoning regulations of Baltimore County would result in practical difficulty or unreasonable hardship... Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking, or sign regulations, and only in such manner as to grant relief without injury to the public health, safety, and general welfare. They shall have no power to grant any other variances.”

BCZR A400 (Bill Nos. 40-1967; 18-76) – Purpose

“Certain uses, whether permitted as of right or by special exception, have singular, individual characteristics which make it necessary, in the public interest, to specify regulations in greater detail than would be feasible in the individual use regulations for each or any of the zones or districts. This article, therefore, provides such regulations.”

**BCZR 421 -- Animal Boarding Place, Kennel, Pet Shop,
Veterinarian's Office, Veterinarian's Office (Bill No. 85-1967)**

421.1 “Where an animal boarding place or kennel is allowed in a residential zone, either as a special exception or as a permitted use, no part of any such use shall be located within 200 feet of the nearest property line.”

421.2 "Where an animal boarding place, kennel, or pet shop is allowed in a business or industrial zone, either as a special exception or as a permitted use, no part of such use shall be located within 200 feet of the nearest residential zone."

421.3 "Where a veterinarian's office or a veterinarian is allowed in a residential zone as a special exception, it shall be located only on a lot having an area of two acres or more, and no part of any such use shall be located within 100 feet of the nearest property line."

Section 238 -- B.R. Zone Area Regulations

"Minimum requirements, except as provided in Article 3, shall be as follows:

... 238.2 Side and rear yards for residences, as in Section 302; for other buildings, 30 feet."

Argument

Introduction

Anderson's American Law of Zoning Sec. 20.02, at 410-11 (1996) begins its section on the definition of "variance" with this discussion:

"A variance is an authorization for the construction or maintenance of a building or structure, or for the establishment or maintenance of a use of land, which is prohibited by a zoning ordinance..."

* * *

"The underlying purposes of administrative relief have been discussed in an earlier chapter, but specifically, with respect to variances, it is said that a variance is 'designed as an escape hatch from the literal terms of the ordinance which, if strictly applied, would deny a property owner all beneficial use of his land and thus amount to confiscation.'"

There is similar language in Maryland cases discussing “practical difficulties or unnecessary hardship. See Marino v. City of Baltimore, 215 Md. 206, 216 (1957); Park Shopping Center v. Lexington Park Theatre Co., 216 Md. 271 (1958).

There is a distinction between use variances and area variances. McLean v. Soley, 270 Md. 208 (1973). Use variances are customarily concerned with “hardship” cases, while area variances tend to require proof of “practical difficulty.” BCZR 307.1 allows area variances and other specified variances, but does not allow use variances.

It is often important to decide, therefore, whether a situation involves a use or an area variance. This may arise where legislation arguably contains a mix of use and area characteristics. In such situations, it is necessary to determine the predominant intent. BCZR 421 is an example of such an ordinance.

Here, we focused initially on this question. The Circuit Court in 1979 adjudged BCZR 421.1 to involve a use restriction not subject to variance. For reasons given below in Argument I, this decision continues to be correct and applies, as well, to the companion subsection 421.2 at issue here. It is also noteworthy that the pet shop use, which occupies the entire York Road frontage, is actually zero feet from the residential zone.

After Petitioners’ presentation, we observed yet another threshold issue. This involves the unusual absence of the property owner, or of proof regarding his situation or any problems due to the zoning law. Rather, the case amounts to a variance to suit one pet shop business with an undefined commercial lease of uncertain duration or operation for a portion of the owner’s property. The fundamental purpose of variance law is to

afford an “escape hatch” to the property owner from potential confiscation, and not as a convenience or luxury item to fit a singular commercial tenant. This is the subject of Argument II.

Then, even if the petition otherwise were eligible for review as an area variance, the evidence is still unsatisfactory. The property is not “unique,” as that term is understood in variance law. Moreover, there is no evidence of true “practical difficulty.” Indeed, any difficulty is “self-created.” These are the subjects of Arguments III-V. There, we will discuss Cromwell v. Ward, 102 Md. App. 691 (1995), Umerley v. People’s Counsel, 108 Md. App. 497 (1996), and McLean, *supra*. While McLean describes “practical difficulty” as a lesser standard than “unnecessary hardship”, the Cromwell and Umerley cases clarify that it is still intended to a very tough standard.

After that, we address Mr. Thomsen’s suggestion that he relied on advice of county officials before going forward. This play for sympathy may be clothed in the language of an “equitable estoppel” claim. It has no merit. In Argument VI, we discuss the venerable rule which rejects such equitable claims.

Finally, because Petitioner’s counsel tried to downplay the concerns of Mr. Armstrong, we shall discuss the relevance of the impact on the adjoining property. It is relevant to the BCZR 307.1 public safety, health, and welfare standard which becomes operative in every variance case. Moreover, although the variance requested here involves the residential zone across York Road, there is a further minimum side yard

setback requirement with which the request conflicts. This is the subject of Argument VII and also bears on the issue of practical difficulty.

The Petition Amounts to an Impermissible Use Variance

In 1967, the County Council enacted Bill 85-67. It included BCZR 421, concerning animal-related uses, as part of the BCZR 400 series of regulations. BCZR A400, enacted the same year in Bill 40-67, introduces this series with the statement of intent, that:

“Certain uses, whether permitted as of right or by special exception, have singular, individual characteristics, which make it necessary, in the public interest, to specify regulations in greater detail than would be feasible in the individual use regulations....” (Emphasis supplied).

In turn, BCZR 421.2, along with each subsection of BCZR 421, contains the key language:

“... no part of any such use shall be located within...”

Because of the express legislative intent of BCZR 421 to so limit certain uses, our office argued early on that it amount to a use limitation which may not be varied. In Walter Ross Ramage, No. 76-138-A, the CBA nevertheless granted variances for kennels less than 200 feet from the property line in a residential (R.C.) zone.

Upon review in the Circuit Court, however, Judge Walter Haile reversed in Case 10/433/6363. Judge Haile wrote in his final August 3, 1978 Order:

“The Court, in its Opinion dictated at the conclusion of the hearing on this matter, having found that the 200-foot requirement found in Section 421.1 of the Baltimore County Zoning Regulations is a use restriction which cannot be changed by variance under the provisions of Section 307 of said Regulations, it is, this 3rd day of August, 1979, Ordered, by the

Circuit Court for Baltimore County, that the Order of the County Board of Appeals for Baltimore County dated September 8, 1977, granting a variance herein be, and hereby is, REVERSED.”

The CBA and Circuit Court opinions are attached as Exhibits 1 and 2.

Since the Rumage case, the County Council has left BCZR 421 intact. Clearly, the language of BCZR 421.2 parallels BCZR 421.1. In this context, the legislature is presumed to be aware of judicial interpretation of its enactments and, if such interpretation is not overturned, to have acquiesced. Williams v. State, 292 Md. 201 (1981); Harden v. Mass Transit Admin., 277 Md. 399, 406 (1976). Moreover, in the later CBA case of Dr. Stanley A. Cohn, 86-257-XA, (Exhibit 3, attached) Chairman Hackett wrote with reference to the requested variance for an animal boarding place, at pages 2-3 of the opinion:

“After consideration of all the testimony and evidence received this day and consideration of Section 421.2 of the Baltimore County Zoning Regulations (BCZR), the Board is of the opinion that the request for a Class A Animal Boarding Place must be denied. There already exists upon the site a veterinarian, where animals may be boarded if the Veterinarian in charge deems their boarding on this site necessary for health reasons. The restrictions imposed on both animal boarding places and kennels enacted under Bill 85, 1967 are for the protection of neighboring properties, thus the 200 ft. setback required in Section 421.2. Section 421.2 is very clear in its wording herein quoted:

‘Sec. 421.2 – Where an animal boarding place, kennel, or pet shop is allowed in a business or industrial zone, either as a Special Exception or as a permitted use, **no part of such use shall be located within 200 feet of the nearest residential zone.**’ (Emphasis in original).

Clearly, this site cannot meet this requirement.”

Here, Petitioners argue, in effect, that the adjacent residential zone should not count because it is occupied merely by the Maryland National Guard rather than by dwellings. But the Council has chosen “residential zone” rather than “dwellings” as the applicable boundary, with the awareness that this broader category includes many community and institutional uses. See BCZR 1B01.1.

As a corollary, Petitioners argue that the proposed use is not so offensive to a National Guard facility, in comparison to a dwelling. But, even assuming that were the case (and there is no evidence), the Council chose to employ the broader “residential zone” for its boundary restriction, regardless of current use.

If Petitioners believe that this restriction is too broad, then their remedy lies with the County Council, which may amend the law. The present law is perfectly valid and enforceable. The Supreme Court long ago addressed a similar argument in Village of Euclid v. Ambler Realty Co., 272 U.S.365, 388-89 (1926):

“Here, however, the exclusion is in general terms of all industrial establishments, and it may thereby happen that not only offensive or dangerous industries will be excluded, but those which are neither offensive nor dangerous will share the same fate. But this is no more than happens with many practice-forbidding laws which this court has upheld, although drawn in general terms so as to include individual cases that may turn out to be innocuous in themselves.... The inclusion of a reasonable margin, to insure effective enforcement, will not put upon a law, otherwise valid, the stamp of invalidity. Such laws may also find their justification in the fact that, in some fields, the bad fades into the good by such insensible degrees that the two are not capable of being readily distinguished and separated in terms of legislation.”

In sum, while we do not concede “Just Puppies” is inoffensive, enforcement of the use restriction does not depend on case-by-case qualitative evaluation.

Petitioners' last argument rests on contrast with BCZR 406.A3. On July 12, 1978, the Council enacted Bill 62-78 (Exhibit 4, attached), which addresses tennis facilities. This stated in new BCZR 406A.3 that the "site area distance" limits to "residential site boundaries could not be varied under BCZR 307." Petitioners argue, therefore, that any such boundary limit enacted without this explicit statement is subject to variance.

There are several answers to this argument. The first is that this was a separate legislative enactment. There is no evidence of any intent to affect or weaken existing use restrictions in BCZR 421 or any other provision in place.

Secondly, BCZR 406A.3 described the new boundary restriction in terms of "area" rather than "use." It is plausible, therefore, that the Council thought additional explicit language necessary to clarify that this particular clause was not an area restriction, but rather a use restriction outside the scope of BCZR 307.

It is interesting, moreover, that Judge Haile's August 3, 1978 decision in the Rumage case came just after the Council passed the law on tennis facilities. There was apparently no evidence at the time, and there is no evidence now, that Bill 62-78 was intended to open up BCZR 421 and other singular use restrictions to variability as area restrictions under BCZR 307.

There is a maxim that all parts and sections of a statute should be considered, so that no part is considered superfluous. But this maxim is subordinate to the overriding principle of the proper determination of legislative intent based on all relevant information. There is also a maxim that the express mention of one item implies the omission of

others. In Latin, this is known as “*Expressio unius est exclusio alterius*.” But, the Court of Appeals has emphasized that this is “not a rule of law but merely an auxiliary rule of statutory construction.” This “maxim should not be applied to override the manifest intention of the Legislature...” Beshore v. Town of Bel Air, 237 Md. 398 (1965).

In Neil Kravitz, No. 96-89-SPH, CBA panel member Charles Marks rejected an argument similar to Thomsen’s here. Exhibit 5 (excerpt). In a case to decide the legality of home sales of firearms or ammunition, Kravitz argued that specific exclusion of “fortune-telling” at the end of the BCZR 101 “home occupation” definition implied that his home-based activity was by implication a permitted home occupation. The CBA saw that the fortune-telling legislation had a separate origin and history from that of the basic home occupation definition and was not determinative.

Here, Thomsen attempts to place the tennis facilities law center stage and preempt the specific intent to preclude pet shops within 200 feet of a residential zone. It is similar to Kravitz’s effort to have the fortune-telling exclusion dominate the law of home occupations. The CBA should likewise reject it.

II. A Variance May Not Be Granted to Suit a Commercial Tenant

At the *de novo* hearing, the property owner Quigg was a no-show and there was no information about whether he had any problems with the use of the property. Rather, the prospective commercial tenant Thomsen presented the case in skeletal fashion, asserting merely that he had a lease and wanted a pet shop. His message was that the zoning

restriction was irrelevant because the MNG occupied the residential zone inside the I-695 cloverleaf.

But this presentation misses a key point. The “practical difficulty” prong of a variance request pertains to the property owner. The variance concept exists to provide relief to a property owner in unique cases where legal restrictions are oppressive. Zoning law is necessarily restrictive. If every restriction of a permitted use were grounds for variance, then the law would collapse like a house of cards.

It is no accident that when the Court of Appeals articulated the criteria for proof of “practical difficulty” in the McLean case, *supra*, 270 Md. at 214-15, two of the three criteria referred to the property owner explicitly:

“1) Whether compliance with the strict letter of the restrictions... would unreasonably prevent the **owner** from using the property....”

“2) Whether a grant of the variance applied for would do substantial justice **to the applicant as well as to other property owners in the district**, or whether a lesser relaxation than that applied for would give substantial **relief to the owner of the property involved** and be more consistent with **justice to other property owners.**” (Emphasis supplied).

There does not appear to be any reported Maryland decision which approves a lease to suit a tenant, commercial or otherwise.

Moreover, if a lease were executed to place a pet shop on the subject property, it would be invalid unless conditioned on zoning approval. The background and status of the lease remain a mystery. But even if we assume the parties consider it valid and operative, it is subject to the rule:

“Numerous court decisions have held that where the use specified or allowed under a lease is absolutely prohibited by zoning restrictions applicable to the land in question, the lease is thereby rendered either void, unenforceable, or terminable.” 5 Rathkopf, Law of Zoning and Planning Sec. 56.02 (2000).

In this context, Quigg purchased the property in 1978. For many years, the front was occupied by Raver’s market. So far as the evidence shows, Quigg chose not to renew his lease with Raver’s. The rear was, and still is, occupied by a garage. There is absolutely no evidence that Quigg is having, or would have, any difficulty in selling or leasing the property for another business use. A decision to lease a property for an illegal use is not a basis for a variance.

In sum, even if a variance were available under BCZR 421, it was never meant to assure a property owner an entitlement to every permitted use regardless of noncompliance with stated restrictions. It was, moreover, surely never intended to be subordinate the law to the chance preference for a tenant the owner finds most desirable or profitable. Otherwise, the property owner would be in charge of zoning, and not the public. The bottom line is that Quigg never proved that he, as property owner, is entitled to a variance.

III. The Property Does Not Meet the “Uniqueness Test”.

a. Uniqueness of the Property Itself

BCZR 307.1 requires a showing of “special conditions or circumstances that are peculiar to the land or structure...” This involves the concept of “uniqueness.” The word “unique” has different meanings in different contexts. It is sometimes used merely to

denote a difference, or a lack of identity. For example, in law school, it is taught in basic property law that every property is “unique,” meaning that no two are precisely alike.

But in zoning, and under BCZR 307, the word is defined more strictly. Otherwise, every property would be in a position to qualify. In Cromwell v. Ward, 102 Md.App. 691, 710 (1995), the Court stated:

“In the zoning context the ‘unique’ aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. ‘Uniqueness’ of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls.” (Emphasis supplied).

The Cromwell decision reversed this CBA’s grant of a modest height variance for a garage and wine cellar. It shows that variance law must be followed strictly.

Here, there is nothing unique about Quigg’s property. It is regular in shape, with moderate topography, and good road access. It can be used for many business uses, and has been used for years. It is adjacent to a residential zone, as are many other properties in business and industrial zones, and so is limited with respect to animal boarding places, kennels, and pet shops. But proximity to a residential zone, or any other zone, is not a quality of uniqueness pertinent to the property.

Petitioners, in Patton’s testimony, placed emphasis on the occupancy of the neighboring residential zone property by the Maryland National Guard. There is nothing

unusual, however, about institutional use in a residential zone. As noted, many community and institutional uses are permitted by right or special exception.

Even if it were assumed to be unusual, however, a characteristic of the neighboring property does not translate to a unique characteristic of the subject property itself. In this context, the current situation of the cloverleaf is irrelevant. Even if it were there forever, it does not provide legal support for a variance.

The point made in Cromwell that “uniqueness” does not pertain to neighboring properties is not new. In Easter v. Mayor & City Council, 195 Md. 395 (1950); Cleland v. Mayor & City Council, 198 Md. (1951), and Park Shopping Center, supra, the Court rejected claims of unusual conditions on neighboring properties, including existence of nonconforming uses or even violations.

In Umerley v. People’s Counsel, 108 Md. App. 497, 508 (1996), the Petitioners claimed that their property was unique because, without setback and other variances, the longstanding trucking facility operation, which contributed to the county and state economy, “cannot comply with [the zoning] regulations.” The CBA accepted this argument, but the courts reversed. Judge Bishop wrote:

“Because the uniqueness requirement mandates that the subject property ‘have an inherent characteristic not shared by other properties in the ‘area’, such evidence cannot support a finding that the Umerleys’ property is unique within the meaning of Maryland law. A review of the record fails to reveal any other evidence that would support such a finding.”

There is not even a shadow of an argument in the present case that the Quigg property possesses some unique inherent characteristic. So, for yet another reason, the petition fails, as a matter of law.

b. The Connection Between Alleged Uniqueness and Practical Difficulty

BCZR 307 also requires “special circumstances or conditions” such that “strict compliance with the zoning regulations would result in practical difficulty or unreasonable hardship.” As it was put in Cromwell, an additional point is that “... variances should only be granted... where the uniqueness of that property results in an extraordinary impact upon it by operation of the statute...”

This is not a new concept. In Easter v. Mayor & City Council, 195 Md. 395 (1950), the Court said:

“The burden of showing facts to justify an exception or variance rests upon the applicant, and it must be shown that the hardship affects the particular premises and is not common to other property in the neighborhood.”

In Marino v. City of Baltimore, 215 Md. 206 (1957), the Court elaborated:

“The expression ‘practical difficulties or unnecessary hardships’ means difficulties which are peculiar to the situation of the applicant for the permit and are not necessary to carry out the spirit of the ordinance and which are of such a degree of severity that their existence amounts to a substantial and unnecessary injustice to the applicant.”

Thus, there must be a causal connection between the alleged “uniqueness” and “practical difficulty.” The alleged “uniqueness” must be viewed in context.

Here, as shown, there is nothing unique about the property itself. Moreover, there is nothing about the property that causes any extraordinary impact. Rather, it is the

legislation which has an impact on this property, as it does on every property in a business or industrial zone. This legislation does not excuse or exempt properties adjacent to residential zones occupied by the Maryland National Guard, by any other use permitted in a residential zone, or even by a nonconforming use. To grant a variance here would eviscerate and rewrite the law.

IV. There Is No Practical Difficulty

The Court of Appeals stated the criteria for "practical difficulty" in McLean v. Soley, 270 Md. 208, 214-15 (1973). The criteria, in their entirety, are:

"1) Whether compliance with the strict letter of the restrictions governing area, set backs, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

"2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

"3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured."

Here, the petition fails to satisfy any, much less all, of the criteria:

1) There is no unreasonable denial of the use of Quigg property, and no unnecessary burden. He has available over 100 uses by right and 80 by special exception, has never had any problem leasing the property before, and has part of it leased for a garage now. It may be assumed that the lease of the front section to Thomsen is for financial reasons, although there is no evidence one way or the

other. Even if this is the motive, it does not justify a variance. As the Court said in Burns v. Mayor & City Council, 251 Md. 554 (1968) quoting from Easter,

supra:

“... The mere fact that the variance would make the property more profitable is not a sufficient ground to justify a relaxation of setback requirements. ...”

The record here is even thinner than the record in Burns, where the Court rejected arguments based on economics:

“The testimony on occupancy was vague to the point that it did not close the door on the possibility of obtaining better income from the existing facilities.”

Ultimately, Petitioners’ argument seems to be that an applicant can choose any permitted use by right, and that wherever it deviates from applicable legal restrictions, he is being unreasonably denied a permitted use and, therefore, is entitled to a variance.

But this would turn variance law on its head. The philosophy of Cromwell and the legion of cases there reviewed is that variances should rarely be granted, and only when there are unusual situations which unreasonably deprive the owner of the essential use of the property.

2) There was no evidence that Quigg deserves the variance to achieve justice for him. It is a matter, at most, of choice, convenience, and desire. As to the Maryland National Guard property across York Road, there was no actual proof as to whether or not there would be an impact there.

At the same time, there was direct and undisputed evidence of adverse impact to the Armstrong property which houses a veterinarian and a film production business. The noise, health, and waste disposal issues were serious. Moreover, as Richard Armstrong said, it is one thing to have a veterinarian operated by professionals with animals monitored under controlled conditions. It is another to have sixty imported puppies, on a revolving door basis, managed by nonprofessionals in close quarters.

Petitioners seemed to suggest that the impact to the Armstrong property is irrelevant because the variance has to do with the residential zone and not the adjoining commercial building. There are two answers to this point. The first is that the McLean justice criterion refers to all property owners in the district, and is not so limited. The second is that Petitioner disregards the B.R. zone minimum side yard setback of thirty feet in BCZR 238.2. Even if it is assumed that the building is old and nonconforming, the proposal is for a new use which should comply with the letter and spirit of this requirement. Indeed, as argued in Section VII below, it appears to involve a second variance.

3) The variance is inconsistent with the explicit legislative intent of BCZR 421.2 to deal with pet shops, along with animal boarding places and kennels, as singular uses. Moreover, it cannot be granted consistent with the public safety and welfare. It is to be remembered that BCZR 307.1 includes this language:

“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 the public health, safety, and general welfare.”

In the present case, there was nothing in Petitioners' presentation to reflect any consideration given to the impact on the Armstrong property. Moreover, there were legitimate concerns expressed by Mr. Branchini of the Humane Society. While Petitioners suggest that this would be true of any puppy emporium, variance or no variance, the fact is that a variance is requested here and, so, broad public welfare considerations do come into play.

Further Evaluation of Petitioners' Presentation and the Patton Testimony

Quigg was a no-show and Thomsen answered very little beyond name, rank, and serial number. Petitioners relied mainly on engineer James Patton. He stated, in bullet fashion, brief opinions, that the variance accords with justice and is consistent with the spirit and intent of the law and the public welfare.. But his testimony lacks foundation.

Patton admitted, in *voir dire*, that he could not identify the criteria articulated in Maryland court decisions on practical difficulty. He could not identify any reported Maryland decision, despite the prominence of Cromwell and McLean. He then admitted he knew little of the history of the property and nothing about Quigg's situation or his efforts to lease the property. He had nothing to say about the Armstrong property. He also knew nothing about the specifics of the proposed puppy operation.

In this context, his sequential statements of "opinion" were conclusory or "quasi-conclusory". They are of the type of planning opinion rejected in People's Counsel v. Beachwood I L.P., 107 Md.App. 627, 650 (1995).

“A self-evident reason for rejecting as an effective catalyst an expert opinion... is the fact that the opinion is merely conclusory or is, at best, quasi-conclusory.”

Engineers, surveyors, landscape architects, and planners frequently appear in zoning to make declarations as to the ultimate legal conclusion. Such bare statements cannot be accepted in the absence of supporting facts and sound reasons. They cannot and do not furnish a legal basis to approve this variance.

V. The Alleged Practical Difficulty Is Self-Created

The Court of Appeals has also called it “incumbent [on the applicant] to [show]... that the hardship was not the result of the applicants’ own actions.” Marino, supra, 215 Md., at 218. This Court has underlined the point in Cromwell, supra, in its section on self-inflicted hardship, saying “it is never proper grounds for a variance.” Judge Cathell quoted Steele v. Flavanna Co. Bd. Of Zoning Appeals, 436 S.E.2d 453, 456 (1993):

“[T]he hardship, if any, was self-inflicted. The placement of the improvements... was within the control of the [applicants] and their contractor.”

He concluded:

“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.”

Here, Quigg has owned the property for many years. He chose not to renew his lease with Raver’s market. He then chose, apparently, some sort of lease with Thomsen. But a lease does not override zoning law. He placed himself in a situation in conflict

with the law. There is no evidence that he would have any difficulty leasing the property for a use which does not involve such a conflict. It is the classic example of a self-created difficulty.

Even if the case is considered from the tenant's point of view, there is no evidence that Thomsen looked for any property in compliance with BCZR 421.2. There was no evidence that other properties were or are unavailable.

VI. The "Equitable Estoppel" Doctrine Does Not Justify this Variance

There is, moreover, no excuse based on Thomsen's statement that somebody in the government told him a pet shop is a permitted use. His testimony was vague. It is not clear whether Thomsen identified the location. He did not then have a site plan. It does not appear that he told the staff member that there was residential zoning on the neighboring property. It does not appear that he consulted a lawyer, an engineer or planner familiar with the process. For all the testimony shows, he may initially have asked whether a pet shop is a permitted use in a business zone, to which the answer is yes.

But even if he had shown a site plan, and a mistake were initially made by county staff, that does not justify zoning approval. Indeed, in Cromwell, and in many other cases, permits and other approvals have been held not to authorize uses and activities which conflict with zoning law.

Judge Cathell wrote, concerning the variance in Cromwell v. Ward at 724:

"In the case of *Lipsitz v. Parr*, 164 Md. 222 ... (1933), a case seeking injunctive relief by way of restraining order, a city officer mistakenly issued a building permit for an ice factory when the statute prohibited ice factories. The Court there held:

‘A municipality may be estopped by the act of its officers if done within the scope and in the course of their authority or employment, but estoppel does not arise should the act be in violation of law... [T]he ordinance forbade the officials... to grant the permit which the plaintiff asked and obtained...

‘... [I]t was therefore unlawful for the officers... to grant the permit, and it would be unlawful for the licensee to do what the purporting permit apparently sanctioned. A permit thus issued... does not... prevent the permit from being denounced by the municipality because of its illegality... *Every one dealing with the officers and agents of a municipality is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled by their acts when done without legal authority.*’ [Emphasis added in Cromwell.]

‘So, even where a municipality has the power, but has done nothing, to ratify or sanction the unauthorized act... it is not estopped by the unauthorized or wrongful act of its officer... in issuing a permit that is forbidden by the explicit terms of an ordinance.... (Citations omitted.) 164 Md. at 227-228.’

“The Court cited *Lipsitz in Inlet Associates v. Assateague House Condominium Assoc.*, 313 Md. 413 ... (1988), a case seeking specific performance and injunctive relief, and also cited *City of Hagerstown v. Long Meadow Shopping Center*, 284 Md. 481 ... (1972), a case of timely appeal of the denial of the building permit. In *Inlet Associates*, the Court opined that ‘[c]onsequently, “[e]veryone dealing with the officers and agents of a municipality is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled by their acts when done without legal authority.”’ The Court added: ‘[T]he doctrine of equitable estoppel “cannot be... invoked to defeat the... enforcement of... ordinances, because of an error or mistake committed by one of its officers... which has been relied on by the third party to his detriment.”’

“Accordingly, it appears clear that the mistake of a county official cannot be the ‘practical difficulty’ unique to the subject property required in order to authorize the grant of the variance sought and obtained by Ward.

“The authorities elsewhere are in accord.

‘The master also erred in finding that the unnecessary hardship resulted from the plaintiffs’ reliance upon representations by the selectmen. This finding disregards the principle that hardship related to the special character of the *land*, not to the circumstances of the *owner*.’ (Citation omitted.) [Emphasis added in Cromwell.]

‘[R]elator argues that the Board should be estopped from denying the height variance because a building inspector visited the premises several times and observed the construction taking place but made no complaint... In any case there is no authority on the part of a building inspector to grant a variance....’” (Citations omitted).

From Lipsitz forward, the cases on equitable estoppel typically involve clear mistakes by county staff, the issuance of permits or some other formal approval, and substantial construction or other activity in reliance on advice or inaction by county officials. For policy reasons articulated in Lipsitz and reaffirmed in Cromwell, these do not justify actions done without legal authority.

The evidence here is far weaker than the evidence presented to support the equitable position of property owners in the cited cases. The alleged approval is vague. There was no permit issued. It is said there is a lease, but no details or specifics, and no evidence about construction or specific expenditures. It is all too easy for parties to make claims about what they have been told by unidentified county staff.

Under all these circumstances, Petitioners' equitable claim is insubstantial and without any legal basis. It is a gratuitous play for sympathy.

VII. The Proposed Use Also Conflicts with Sideyard Setback Requirements

Ordinarily, a building in the B.R. zone must satisfy the minimum side yard area setback of 30 feet set by BCZR 238.2. Here, the Quigg building is joined to the Armstrong building by a common party wall. If the building predates zoning and is non-conforming, there is still the question whether a change of use terminates the building's nonconforming status. BCZR 104.1. Prince George's County v. E. L. Gardner, 293 Md. 259 (1982). Here, moreover, the new use can reasonably be expected to have a significant adverse effect on the adjoining Armstrong property immediately to the north side. See McKenny v. Baltimore County, 39 Md.App. 257 (1978). Even if this change of use is allowed without a side yard setback variance, it imposes an additional burden on the Armstrong property which would not occur if the usual setback were operative.

At the very least, it would be inequitable to allow Petitioners to sidestep the impact on the Armstrong property merely by saying that their variance has to do only with the MNG property. It is in the interest of justice, and consistent with the spirit and intent of BCZR 238.2, that attention be paid to the Armstrong property under the McLean practical difficulty standard.

Indeed, it appears that a side yard setback variance is required for this pet shop and that it clearly does not qualify. In this connections, the Zoning Commissioner's Policy Manual Section 102.1B clarifies that upon conversion to a new use for which setback

requirements exceed the existing building setback, the existing setbacks "shall not be considered as non-conforming and zoning compliance will be required." Section 102.1B states, in its entirety:

"B. CONVERSIONS WITH DEFICIENT SETBACKS - When the use of an existing building changes and the setback requirements for the new use are greater than the existing building setback, existing setbacks shall not be considered as nonconforming and zoning compliance will be required. This may be accomplished by removing a portion of the building, purchasing additional property, or successfully petitioning for a variance based upon hardship or practical difficulty."

This is yet another reasons that the petition should be DENIED.

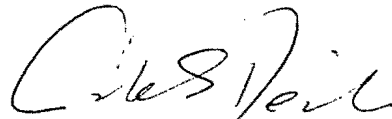
Conclusion

For each of the above reasons, and for all of them combined, the petition for variance does not qualify and is legally insufficient.



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 27th day of November, 2000, a copy of the foregoing People's Counsel's Memorandum was mailed to Howard L. Alderman, Jr., Esq.
502 Washington Avenue, 8th Floor, Towson, MD 21204, attorney for Petitioners.

Peter Max Zimmerman
PETER MAX ZIMMERMAN

Court File

RE: PETITION FOR VARIANCE
from Section 421.1 of the
Baltimore County
Zoning Regulations
NE corner Harford and
Glen Arm Roads
11th District

Walter Ross Ramage, et ux
Petitioners

Case No. 76-138-A

William C. Klapaska, et ux
and John W. Hessian, III,
People's Counsel for
Baltimore County
Protestants-Appellants

IN THE
CIRCUIT COURT
BALTIMORE COUNTY
AT LAW

Misc. Docket No. 10

Folio No. 433

File No. 6363

ORDER

The Court, in its Opinion dictated at the conclusion of the hearing on this matter, having found that the 200-foot requirement found in Section 421.1 of the Baltimore County Zoning Regulations is a use restriction which cannot be changed by variance under the provisions of Section 307 of said Regulations, it is, this *3rd* day of August, 1979,

ORDERED, by the Circuit Court for Baltimore County, that the Order of the County Board of Appeals for Baltimore County dated September 8, 1977, granting a variance herein be and it is hereby REVERSED.

Walter R. Hyde

JUDGE

True Copy Test

ELMER H. KAHLIN, JR., Clerk

J. T. [Signature]
Deputy Clerk

RECEIVED
BALTIMORE COUNTY
AUG 8 10 55 AM '79
COUNTY BOARD
OF APPEALS
BY: *[Signature]*

IN THE MATTER OF
DR. STANLEY A. COHN, ET UX
FOR SPECIAL EXCEPTION AND
VARIANCES ON PROPERTY LOCATED
ON THE WEST SIDE OF YORK RD.,
65' NORTH OF MT. CARMEL RD.
(17004-17006 YORK ROAD)
7th DISTRICT

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 86-257-XA

: : : : : : : : : : : : : : :

O P I N I O N

This case comes before this Board on appeal from a decision of the Deputy Zoning Commissioner granting the requested Special Exception and Variances. Case was heard this day in its entirety.

At the outset of this hearing, testimony produced the following facts:

1. The two parcels under petition known as 17004 and 17006 York Rd. are both zoned B.L.
2. The abutting parcel to the south is zoned BM-CR as evidenced on Petitioner's Exhibit No. 1.
3. All other abutting or adjacent properties are zoned residential - R.C. 5.
4. The Petition for the Special Exception and Variances on the property known as 17006 is withdrawn and no action on this petition is to be taken.
5. That the present use of the property known as 17004 is that of a veterinarian, permitted under Section 230.9.

Petitioner's first witness was James W. McKee, Civil Engineer and Land Surveyor, who prepared the site plan entered as Petitioner's Exhibit No. 1. He testified as to the pertinent points portrayed on this site plan. Dr. Stanley Cohn, Veterinarian and property owner, testified in his own behalf. He described his use of the property and the facility itself. This testimony was lengthy and is part of the record and will not be detailed here. He especially noted that he plans no physical changes to the property or his operation but wanted to legitimize the boarding of pets on the site. He also agreed to no expansion of the existing boarding facilities, no added cages nor

County Council of Baltimore County Maryland

Legislative Session 1978, Legislative Day No. 16

BILL NO. 62-78

Mr. John V. Murphy, Councilman

By the County Council, June 5, 1978

A BILL ENTITLED

AN ORDINANCE to specially provide for tennis and similar facilities in residential zones, by repealing and re-enacting with amendments, the definition of "open space, common" of Section 101 and subsections 1A01.2.C.7, 1A02.2.B.7, 1A03.3.B.3, 1A04.2.B.5, 1B01.1.C.6, of the Baltimore County Zoning Regulations and by adding the definition of country club and tennis facilities to Section 101, Section 406A and subsections 406A.1, 406A.2, 406A.3, 406A.4, 406A.5, and 406A.6 thereto.

WHEREAS, the County Council has received a final report from the Baltimore County Planning Board and has held a public hearing thereon recommending the adoption of legislation regarding tennis and similar facilities in residential zones; and

WHEREAS, the County Council has determined that the adoption of the legislation referred to herein is in the best interests of the citizens of Baltimore County and that it affects the health, safety, morals and general welfare of its citizens; now therefore

SECTION 1. *Be it ordained by the County Council of Baltimore County, Maryland*, that the definition of "open space, common" of Section 101 and subsections 1A01.2.C.7, 1A02.2.B.7, 1A03.3.B.3, 1A04.2.B.5 and 1B01.1.C.6 of the

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: Neil S. Kravitz -Petitioner
Case No. 96-89-SPH

DATE : June 19, 1996 @ 10:05 a.m.

BOARD /PANEL : Kristine K. Howanski (KKH)
Charles L. Marks (CLM)
S. Diane Levero (SDL)

SECRETARY : Kathleen C. Bianco
Administrative Assistant

Among those present at the deliberation were Peter Max Zimmerman, People's Counsel for Baltimore County, and Carole S. Demilio, Deputy People's Counsel.

PURPOSE --to deliberate issues and matter presented to the Board; testimony and evidence received June 19, 1996. Written Opinion and Order to be issued by the Board.

KKH: We are here this morning to deliberate Case No. 96-89-SPH, Neil S. Kravitz, Petitioner, and even though it's not a typical zoning matter, I guess I still have my continuing objections to the public deliberation process and note that. And typically, I think I will stay with that today as a prefer to hear from my colleagues before I speak.

SDL: The Petitioner is appealing the Zoning Commissioner's denial for special hearing to approve firearms license in residential zone as a home occupation. I would deny the Petitioner's appeal. I would do this on the basis of one factor only -- conducts gun-related activities in an auxiliary building, not the main dwelling or attached to the main dwelling. All other aspects comply with the requirements: no signs; no commodity on premises; no employees; and, finally, in my opinion, using no mechanical equipment.

People's Counsel argues that reloading machine serves no domestic purpose and, therefore, the use of this equipment renders him noncompliant. I strongly disagree. Mr. Kravitz is an active member of four or five gun groups; all of 250 members of one reload their own ammunition; and 99 percent of Baltimore County gun club load their own ammunition. Theirs is not a commercial use. I would point out that a homeowner has the right, under the Second Amendment of the Constitution, to keep arms in their home, and many homeowners exercise this right. The loading of cartridges for firearms would be

RE: PETITION FOR VARIANCE
1026-1028 York Road ("Just Puppies"),
SW/S York Rd, 370' NE of c/I West Rd
9th Election District, 4th Councilmanic

Legal Owner: **TIMOTHY R. QUIGG**
Contract Purchaser: **MITCHELL J. THOMSON**
Petitioner(s)

* BEFORE THE
* COUNTY BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
* Case No. 00-532-A

RECEIVED
COUNTY BOARD OF APPEALS
00 NOV 27 AM 9:07

* * * * *

PEOPLE'S COUNSEL'S MEMORANDUM

Statement of the Case, Description of Parties, and Outline of Facts

This variance petition requests the use of a pet shop in a business zone (B.R. – Business Roadside) 38 feet from an adjoining residential zone, instead of the minimum required 200 feet. BCZR 421.2. It raises a number of issues of public importance. For this reason, People's Counsel for Baltimore County appealed the Deputy Zoning Commissioner's approval dated August 9, 2000. The County Board of Appeals heard the case *de novo* in its entirety on November 2, 2000, and has set the case in for public deliberation on December 14, 2000. We hope that this memorandum is helpful to the CBA in its decisional process.

The Petitioners

Howard Alderman, Esq. appeared as attorney for the petitioners. The petition identifies Timothy R. Quigg as the property owner and Mitchell J. Thomsen as contract purchaser/lessee.

8/9/00
IN RE: PETITION FOR VARIANCE
SW/S York Road, 370' SE of the c/l
West Road
(1026-1028 York Road)
9th Election District
4th Council District

Timothy R. Quigg, Legal Owner;
Mitchell J. Thomson, Contract Purchaser

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 00-532-A
*

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the owner of the subject property, Timothy R. Quigg, and the Contract Purchaser, Mitchell J. Thomson. The Petitioners seek relief from Section 421.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a pet shop to be located 38 feet from a residential zone in lieu of the required 200 feet. The subject property and relief sought are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the request were Mitchell Thomson, Contract Purchaser, James Patton, Professional Engineer who prepared the site plan for this property, Robert E. Latshaw, Jr., Real Estate Broker, and Howard L. Alderman, Jr., Esquire. There were no Protestants or other interested persons present.

Testimony and evidence offered revealed that the subject property consists of a gross area of 0.485 acres, more or less, zoned B.R. and is located on the southwest side of York Road, just south of West Road in Towson. The property is improved with a one-story building, the front portion of which was formerly used by Raver's Food Market. The rear portion of the building contains an automotive service garage, and an animal hospital is located immediately adjacent to the north side of the building. The Petitioners are desirous of utilizing the vacant portion of the subject building for a pet shop, which is permitted by right in the B.M. zone. However, as shown on the site plan, the property is located immediately across from the Maryland National Guard Armory, which is on land zoned D.R.10.5. The D.R.10.5 zoning line is located 38 feet from the subject property. Thus, the requested variance is necessary in order to proceed as proposed.

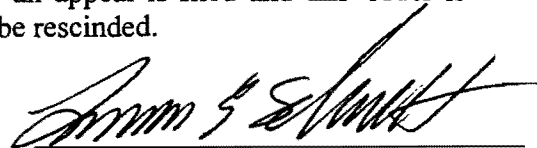
It should be noted that there were no adverse Zoning Advisory Committee comments submitted by any Baltimore County reviewing agency. However, the Office of Planning has recommended that certain improvements be made along the front portion of the site in order to comply with the "York Road North" guidelines of the Towson Community Plan and a proposed streetscape project that is being planned for this section of York Road. Thus, the Petitioners should cooperate with the Office of Planning to coordinate their efforts in terms of revitalizing this area of Towson.

Based upon the testimony and evidence presented, I am persuaded to grant the requested variance. As noted above, the proposed pet shop is a permitted use in the B.M. zone. Moreover, strict compliance with the zoning regulations would result in a practical difficulty and unreasonable hardship for the Petitioners, given the location of the existing building and its close proximity to D.R.10.5 zoned land. In my view, the relief requested will not cause any injury to the public health, safety or general welfare, and satisfies the spirit and intent of the B.C.Z.R. in that the property is far more than 200 feet from the nearest residence.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 9th day of August, 2000 that the Petition for Variance seeking relief from Section 421.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a pet shop to be located 38 feet from a residential zone in lieu of the required 200 feet, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restriction:

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



LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

LES:bjs

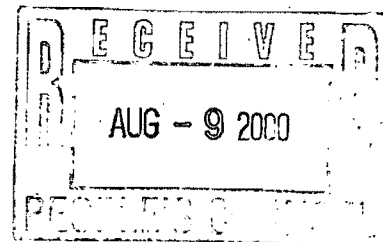


Baltimore County
Zoning Commissioner

August 8⁹, 2000

Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
410-887-4386
Fax: 410-887-3468

J. Carroll Holzer, Esquire
Holzer & Lee
508 Fairmount Avenue
Towson, Maryland 21204



RE: PETITION FOR VARIANCE
SW/S York Road, 370' NE of the c/l West Road
(1026-1028 York Road)
9th Election District - 4th Council District
Timothy R. Quigg, Legal Owner; Mitchell J. Thomson, Contract Purchaser - Petitioners
Case No. 00-532-A

Dear Mr. Holzer:

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

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

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. Timothy R. Quigg, 15836 E. Redfield Avenue, Gilbert, AZ 85234
Mr. Mitchell J. Thomson, 13929 Baltimore Boulevard, #1, Laurel, MD 20707
Mr. James S. Patton, 305 W. Chesapeake Avenue, #206, Towson, Md. 21204
Howard L. Alderman, Jr., Esquire, 305 W. Chesapeake Ave., #113, Towson, Md. 21204
File

SHOULD P.C. APPEAL?

GRANTED

Protestants involved?
Yes ☒ No

PMZ: _____

CSD: Appeal cal

For You, For Baltimore County ★ Census 2000 ★

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



Petition for Variance

to the Zoning Commissioner of Baltimore County
for the property located at 1026 - 1028 York Road
which is presently zoned BR

ad follow DMZ

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)

421.2 to permit a pet shop to be located next to a D.R. 10.5 Zone.

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

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:

Mitchell J. Thomson

Name - Type or Print

Signature

13929 Baltimore Blvd. #1

(301) 776-9929

Address

Telephone No.

Laurel,
City

Maryland
State

20707
Zip Code

Attorney For Petitioner:

J. Carroll Holzer

Name - Type or Print

Signature

Holzer & Lee
Company

508 Fairmount Ave.

(410) 825-6961

Address

Telephone No.

Towson,
City

Maryland
State

21204
Zip Code

Legal Owner(s):

Timothy R. Quigg

Name - Type or Print

Signature

Name - Type or Print

Signature

15836 E. Redfield Ave.

(480) 655-1953

Address

Telephone No.

Gilbert,

AZ

85234

City

State

Zip Code

Representative to be Contacted:

James S. Patton, P.E.

Name

305 W. Chesapeake Ave., Suite 206

(410) 296-2140

Address

Telephone No.

Towson,
City

Maryland
State

21204
Zip Code

OFFICE USE ONLY
ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

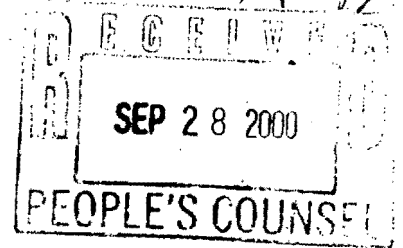
Reviewed By BK Date 6/12/00

CASE NO. 00-532-A



County Board of Appeals of Baltimore County

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



Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

September 28, 2000

NOTICE OF ASSIGNMENT

"JUST TUPPIES"

CASE #: 00-532-A

IN THE MATTER OF: TIMOTHY R. QUIGG –Legal Owner;
Mitchell Thomson –C.P. 1026-28 York Road
9th Election District; 4th Councilmanic District

8/08/00 – Petition for Variance GRANTED by Zoning Commissioner.

ASSIGNED FOR:

THURSDAY, NOVEMBER 2, 2000 at 10:00 a.m.

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).

If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Kathleen C. Bianco
Administrator

c: Appellant	: Peter Max Zimmerman /People's Counsel for Baltimore County
Counsel for Petitioners Petitioners	: Howard L. Alderman, Jr., Esquire : Timothy R. Quigg, Legal Owner Mitchell J. Thomson, C.P
Jim Patton Robert E. Latshaw, Jr.	
Pat Keller, Planning Director Lawrence E. Schmidt, Zoning Commissioner Arnold Jablon, Director /PDM Virginia W. Barnhart, County Attorney	

Case No. 00-532-A

SPH – To permit a pet shop to be located 38 feet from a residential zone ilo required 200 feet

8/08/00 –Z.C.'s Order in which Petition was GRANTED..

9/28/00 -Notice of Assignment sent to following; assigned for hearing on Thursday, November 2, 2000 at 10 a.m.:

Peter Max Zimmerman /People's Counsel for
Baltimore County
Howard L. Alderman, Jr., Esquire
Timothy R. Quigg, Legal Owner
Mitchell J. Thomson, C.P
Jim Patton
Robert E. Latshaw, Jr.
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

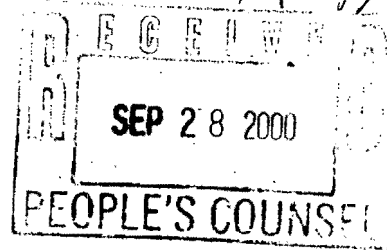


County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

September 28, 2000



NOTICE OF ASSIGNMENT

"JUST TUPPIES"

CASE #: 00-532-A

IN THE MATTER OF: TIMOTHY R. QUIGG –Legal Owner;
Mitchell Thomson –C.P. 1026-28 York Road
9th Election District; 4th Councilmanic District

8/08/00 – Petition for Variance GRANTED by Zoning Commissioner.

ASSIGNED FOR:

THURSDAY, NOVEMBER 2, 2000 at 10:00 a.m.

✓ on calendar of

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.

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If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Kathleen C. Bianco
Administrator

c: Appellant

: Peter Max Zimmerman /People's Counsel for
Baltimore County

Counsel for Petitioners
Petitioners

: Howard L. Alderman, Jr., Esquire
: Timothy R. Quigg, Legal Owner
Mitchell J. Thomson, C.P

Jim Patton
Robert E. Latshaw, Jr.

Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: June 26 2000

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

SUBJECT: 1026-1028 York Road

INFORMATION:

Item Number: 532

Petitioner: Timothy R. Quigg

Zoning: DR 10.5

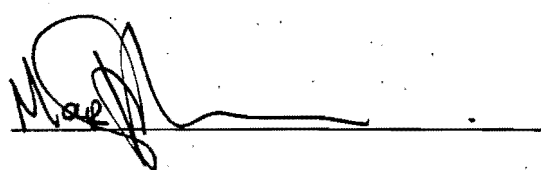
Requested Action: Variance

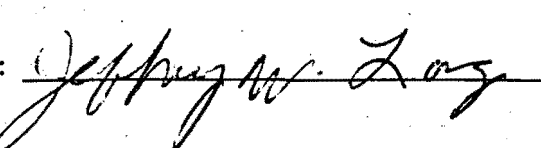
SUMMARY OF RECOMMENDATIONS:

This property is located within the Towson Master Plan Design Study Area and is subject to review by the Design Review Panel (Section 26-219 BCC). Should the use be granted, the applicant should contact the Office of Planning (Lynn Lanham) to schedule this review.

The project is also subject to the "York Road North" guidelines and general guidelines of the Towson Community Plan. A proposed streetscape project is being planned for this section of York Road.

The Office of Planning has determined that curb cuts should be consolidated into one entranceway, and sidewalks and landscaping should be provided along York Road. Sidewalks should also be provided along the building frontage and side. Handicap parking should be provided on site.

Prepared by: 

Section Chief: 

AFK:MAC:

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits & Development Mgmt.

DATE: July 17, 2000

FROM:  Robert W. Bowling, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For July 3, 2000
Item Nos. 516, 517, 518, 519, 520, 521, 522,
523, 524, 526, 527, 528, 529, 530, 531, 532,
534, 535, 536, 537, 538, 540, 541, and 543

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

RWB:HJO:jrb

cc: File



Baltimore County
Fire Department

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

June 29, 2000

Department of Permits and
Development Management (PDM)
County Office Building, Room 111
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204
ATTENTION: Gwen Stephens

RE: Property Owner: HAMPTON-REISTERSTOWN, LLC - 520
HELEN G. WARENER - 521
RAYMOND G. BURTON, DONALD L. CHATMAN, BARBARA A. CHATMAN,
LLOYD G. EYLER AND NELLIE L. EYLER, - 523
TIMOTHY R. QUIGG - 532
GOODWILL INDUSTRIES OF THE CHESAPEAKE, INC. - 534*
ROBERT J. HOLDEN AND JEANNE M. HOLDEN - 542

Location: DISTRIBUTION MEETING OF June 26, 2000

Item No.: 520, 521, 523, 532, 534*, 542

Dear Ms. Stephens:

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

4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.
5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1994 edition prior to occupancy.

*** ADDITIONAL COMMENT FOR ITEM 534 ONLY ***

9. ACCESS FOR FIRE DEPARTMENT EMERGENCY APPARATUS IS NEEDED AT THE FOLLOWING PORTION(S) OF THE BUILDING AT BOTH ENTRANCE GATES . THE ACCESS ROAD SHALL BE A MINIMUM OF 18 FEET IN WIDTH.

REVIEWER: LIEUTENANT HERB TAYLOR, Fire Marshal's Office
PHONE 887-4881, MS-1102F





**Maryland Department of Transportation
State Highway Administration**

Parris N. Glendening
Governor

John D. Porcari
Secretary

Parker F. Williams
Administrator

Date: 6.26.00

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

RE: Baltimore County
Item No. 532 BR

Dear Ms. Jackson:

We have reviewed the referenced item and have no objection to approval, as a field inspection reveals that the existing entrance(s) on to MD/US 45 are acceptable to the State Highway Administration (SHA) and this development is not affected by any SHA 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 Kenneth A. McDonald Jr., 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

BALTIMORE COUNTY, MARYLAND

INTEROFFICE MEMORANDUM

TO: THE HONORABLE WAYNE M. SKINNER,
COUNCILMAN, FOURTH DISTRICT

FROM: PETER MAX ZIMMERMAN, PEOPLE'S COUNSEL *PMZ*

SUBJECT: PETITION FOR ZONING VARIANCE - 1026-28 YORK ROAD,
SW/S YORK RD, 370' SE OF C/L WEST RD, 9TH ELECTION DIST,
4TH COUNCILMANIC DISTRICT
LEGAL OWNER: TIMOTHY R. QUIGG
CONTRACT PURCHASER: MITCHELL J. THOMPSON
CASE NO.: 00-532-A

DATE: AUGUST 23, 2000

This is in reply to your office's request for background information on this case. Our office has appealed a variance for a pet shop use less than 200 feet from a residential zone boundary. The reasons for the appeal, however, go beyond the specific situation here. The background involves the broader issue of whether BCZR Section 421's specific use provisions for animal boarding places, kennels, pet shops and veterinarians' offices are subject to variances under BCZR Section 307. The relevant provisions are attached.

It is fundamental that BCZR 307 allows "area variances" but not "use variances." See McLean v. Soley, 270 Md. 208 (1973). In this context, given specific "use language" both in Section 421 and the preamble in Section A400 concerning "special use regulations," our office has, for over twenty years, taken the position that to vary BCZR 421's minimum distance requirements would be an impermissible use variance.

In 1979, the Circuit Court agreed with us in the Rumage case, Number 10/433/6363, attached. There are several examples of County Board of Appeals decisions since then which uphold the BCZR 421 distance requirements.

**INTEROFFICE MEMORANDUM - AUGUST 23, 2000
TO COUNCILMAN WAYNE M. SKINNER
FROM PETER MAX ZIMMERMAN, PEOPLE'S COUNSEL**

It has been our experience that in the great majority of cases involving animal boarding places, kennels, pet shops, and veterinarians' offices, area citizens have opposed relaxation of the restrictions. In the last year, there have been kennel cases on Yeoho Road and Greenspring Avenue which became controversial.

Under these circumstances, our office recently revisited the issue. We determined that our involvement is necessary to defend Section 421 and to maintain a position consistent with past practice.

Therefore, although the above location on York Road has not yet encountered the type of opposition found in other cases, we found it necessary to appeal the variance approval to defend the law. To do otherwise would weaken the protection of the law generally.

BCZR 421 has been in effect since 1967. Any amendment would have countywide effects. Therefore, it may be prudent to have the input of citizens and communities from around the county if consideration is given to new legislation.

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

PMZ/caf
Attachments

RE: PETITION FOR VARIANCE
1026-28 York Road, SW/S York Rd,
370' SE of c/l West Rd
9th Election District, 4th Councilmanic

Legal Owner: Timothy R. Quigg
Contract Purchaser: Mitchell J. Thompson
Petitioner(s)

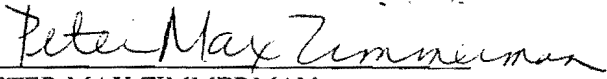
* BEFORE THE
* ZONING COMMISSIONER
* FOR
* BALTIMORE COUNTY
* Case No. 00-532-A

* * * * *

ENTRY OF APPEARANCE

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

All parties should copy People's Counsel on all correspondence sent/ documentation filed in the case.


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 13th day of July, 2000 a copy of the foregoing Entry of Appearance was mailed to J. Carroll Holzer, Esq., Holzer and Lee, 508 Fairmount Avenue, Towson, MD 21286, attorney for Petitioner(s).


PETER MAX ZIMMERMAN



Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

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

(410) 887-2188

PETER MAX ZIMMERMAN
People's Counsel

August 11, 2000

CAROLE S. DEMILIO
Deputy People's Counsel

Arnold Jablon, Director
Department of Permits and
Development Management
111 W. Chesapeake Avenue
Towson, MD 21204

Hand-delivered

Re: PETITION FOR VARIANCE
1026-28 York Road, SW/S York Rd,
370' NE of c/I West Rd,
9th Election Dist., 4th Councilmanic
Legal Owner: Timothy R. Quigg
Contract Purchaser: Mitchell J. Thomson
Case No.: 00-532-A

Dear Mr. Jablon:

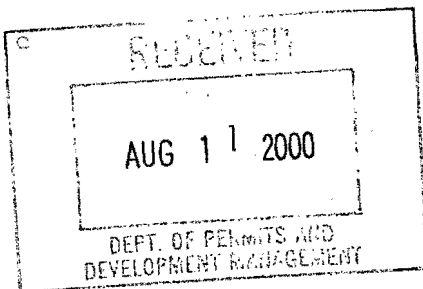
Please enter an appeal of the People's Counsel for Baltimore County to the County Board of Appeals from the Findings of Fact and Conclusions of Law dated August 9, 2000 of the Baltimore County Zoning Commissioner in the above-entitled case.

Please forward copies of any papers pertinent to the appeal as necessary and appropriate.

Very truly yours,

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio
Deputy People's Counsel



PMZ/CSD/csf

cc: Howard L. Alderman, Jr., Esq., Levin and Gann, 305 W. Chesapeake Avenue, Towson, MD 21204,
Attorney for Petitioners

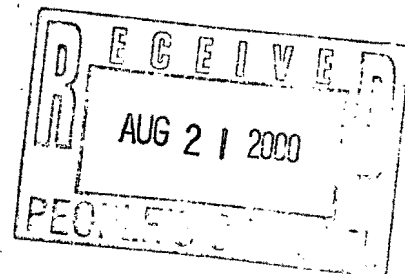
J. Carroll Holzer, Esq., Holzer and Lee, 508 Fairmount Avenue, Towson, MD 21286



Baltimore County
Department of Permits and
Development Management

Director's Office
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
410-887-3353
Fax: 410-887-5708

August 21, 2000



Ms. J. Carroll Holzer, Esq.
508 Fairmount Avenue
Towson, MD 21204

Dear Ms. Holzer:

RE: Petition for Variance, Case No.00-532-A, 1026-28 York Road, 9th Election District

Please be advised that an appeal of the above-referenced case was filed in this office on August 11, 2000, by Peter Max Zimmerman on behalf of People's Council. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

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

Sincerely,

A handwritten signature in black ink, appearing to read "Arnold Jablon / rsj".

Arnold Jablon
Director

AJ:rsj

c: Mitchell J. Thompson, 13929 Baltimore Blvd., Ste 1, Laurel, MD 20707
James S. Patton, P.E., 305 West Chesapeake Avenue, Ste 206, Towson, MD 21204
People's Counsel, M.S. 2010
Arnold Jablon, PDM Director
Zoning Commissioner





Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

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

(410) 887-2188

PETER MAX ZIMMERMAN
People's Counsel

October 13, 2000

CAROLE S. DEMILIO
Deputy People's Counsel

Lawrence M. Stahl, Chairman
County Board of Appeals
of Baltimore County
401 Washington Avenue, Room 49
Towson, MD 21204

Hand-delivered

RECEIVED
COUNTY BOARD OF APPEALS
00 OCT 13 PM 2:03

Re: PETITIONS FOR VARIANCES

(1) 7800 Greenspring Avenue,
3rd Election District, 2nd Councilmanic

Legal Owner: Gretel K. White, Petitioner

Case No.: 00-438-A

(2) 1026-1028 York Road ("Just Puppies"),
9th Election District, 4th Councilmanic

Legal Owner: Timothy R. Quigg

**Contract Purchaser: Mitchell J. Thomson,
Petitioners**

Case No.: 00-532-A

Dear Chairman Stahl:

The above cases have in common an important legal issue. They both present the question of whether deviation from BCZR Section 421 standards for kennels, pet shops, and other uses enumerated in that Section are subject to variance. It has been the position of this office that such deviations amount to "use variances," which are impermissible under BCZR Section 307.

As long ago as 1979, Circuit Court Judge Walter Haile agreed with our position in the case of Walter Ross Rumage, et ux., No. 10/433/6363, August 3, 1979, enclosed.

While the facts in the two above cases are different, we think that the common legal issue should be decided by the same CBA panel. We think it also would be advisable to schedule these cases together or back to back, if feasible.

Lawrence M. Stahl, Chairman
County Board of Appeals
of Baltimore County
October 13, 2000
Page Two

In any event, by this letter we are making sure that all of the parties in both cases are aware of their interrelationship.

At this writing the Quigg case is scheduled for November 2, 2000 at 10 a.m. The White case was recently appealed and is yet to be scheduled.

Very truly yours,



Peter Max Zimmerman
People's Counsel for Baltimore County



Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/caf
Enclosure

cc: Howard L. Alderman, Jr., Esq.,
Keith Franz, Esq. and Matthew H. Azrael, Esq.,
J. Carroll Holzer, Esq.
Jack Dillon, Valleys Planning Council

RE: PETITION FOR VARIANCE
from Section 421.1 of the
Baltimore County
Zoning Regulations
NE corner Harford and
Glen Arm Roads
11th District

Walter Ross Ramage, et ux
Petitioners

Case No. 76-138-A

William C. Klapaska, et ux
and John W. Hessian, III,
People's Counsel for
Baltimore County
Protestants-Appellants

IN THE
CIRCUIT COURT
BALTIMORE COUNTY
AT LAW

Misc. Docket No. 10

Folio No. 433

File No. 6363

ORDER

The Court, in its Opinion dictated at the conclusion of the hearing on this matter, having found that the 200-foot requirement found in Section 421.1 of the Baltimore County Zoning Regulations is a use restriction which cannot be changed by variance under the provisions of Section 307 of said Regulations, it is, this 3rd day of August, 1979,

ORDERED, by the Circuit Court for Baltimore County, that the Order of the County Board of Appeals for Baltimore County dated September 8, 1977, granting a variance herein be and it is hereby REVERSED.

Walter R. Hill
JUDGE

True Copy Test

ELMER H. KAHLIN, JR., Clerk

J. T. [Signature]
Deputy Clerk

RECEIVED
BALTIMORE COUNTY
AUG 8 10 55 AM '79
COUNTY BOARD
OF APPEALS
BY: _____

HOWARD L. ALDERMAN, JR.
halderman@LevinGann.com

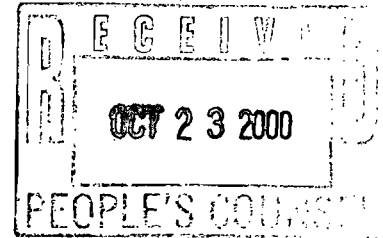
DIRECT DIAL
410-321-4640

LAW OFFICES
LEVIN & GANN
A PROFESSIONAL ASSOCIATION
NOTTINGHAM CENTRE, 8TH FLOOR
502 WASHINGTON AVENUE
TOWSON, MARYLAND 21204-4525
410-321-0600
TELECOPIER 410-296-2801

ELLIS LEVIN (1893-1960)

Cal
Per

October 20, 2000



Lawrence M. Stahl, Chairman
County Board of Appeals for
Baltimore County
400 Washington Avenue, Room 49
Towson, Maryland 21204

Re: Petition for Variance - 1026-1028 York Road
Timothy R. Quigg, Owner
Mitchell J. Thomson, Lessee
Case No. 00-532-A

Dear Mr. Stahl:

I am in receipt of a letter from the Baltimore County Office of People's Counsel dated October 13, 2000 which was postmarked October 17, 2000 and received by me on October 19, 2000. I am the attorney of record for the Petitioners in their efforts to obtain the technical variance necessary for Mr. Thomson to open his pet store which is named Just Puppies.

I have reviewed with interest the correspondence from People's Counsel and the Order of Judge Haile, in a 1979 decision, attached thereto. Without getting into argument on the issues, I suggest that the Office of People's Counsel reads the Order much more broadly than as clearly written by the Judge.

It is imperative that the hearing on the Just Puppies case proceed as scheduled on November 2, 2000. Therefore, to the extent that the Office of People's Counsel is requesting any type of postponement or re-assignment, on behalf of my client we hereby object. Should the Board decide to schedule the second case referenced by People's Counsel on the same day, provided that it does not impair my ability to present the case for my client, we would have no objection. Likewise, if you, as chairman, desire to schedule the second case before the same Board as may be scheduled to hear the Just Puppies, that is of no concern to my client.

Very truly yours,

October 20, 2000

Page2

Thank you for your consideration and I look forward to seeing the Board on November 2, 2000.

Very truly yours,

A handwritten signature in black ink, appearing to read "Howard L. Alderman, Jr.", with a stylized, cursive script.

Howard L. Alderman, Jr.

HLA/pal

cc: Mr. Mitchell J. Thomson (w/enclosure)

Mr. Timothy R. Quigg (w/enclosure)

James Patton, P.E. (w/enclosure)

Baltimore County Office of People's Counsel

U:\hla\stahl-l.ltr-9993.wpd

LATSHAW ASSOCIATES

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Tuesday, September 12, 2000

Telefaxed to: 410-887-3182

Peter Max Zimmerman, Esquire
Baltimore County Peoples Counsel
400 Washington Avenue, Room 47 Old Court House
Baltimore, Maryland 21204

Re: Just Puppies

1028 York Road, Towson, Maryland 21204

TIMOTHY QUIGG - 00 - 532 - A

Dear Peter:

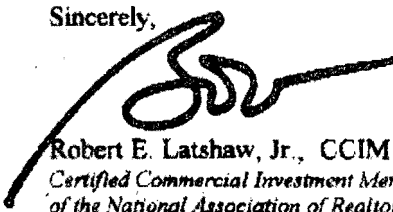
The owner, Mitchell J. Thomson, of the aforementioned business will be in town tomorrow, Wednesday, September 13th and would appreciate about fifteen (15) minutes of your time to discuss the problem that your appeal of this matter has caused and what remedies might be taken to reduce the already expensive roadblocks with which he has been confronted.

While I know you are not interested in aggravating the already difficult time citizens have in doing business in Baltimore County, this situation appears to be a bit unreasonable in light of the fact that a veterinarian and animal boarding facility already operates next door to this site.

Is there not some way your appeal could be dropped because of the uniqueness of this situation? Could not the County Council rectify whatever legal wording difficulties you may be having with "use" versus "area" variances at a later date?

Please give me a call at your earliest convenience to let me know if we may meet with you.

Sincerely,


Robert E. Latshaw, Jr., CCIM
*Certified Commercial Investment Member
of the National Association of Realtors*

Direct Dial 410-296-3400

cc: The Honorable Wayne M. Skinner	Fax 410-887-5791
Mr. Mitchell J. Thomson, <i>Just Puppies, Inc.</i>	Fax 301-776-9951
Mr. Timothy R. Quigg, <i>Property Owner</i>	Fax 480-655-1953
Andrew Janquitto, Esquire, Mudd, Harrison & Burch <i>Attorney for Landlord</i>	Fax 410-828-1042
Howard L. Alderman, Esquire, Levin & Gann <i>Attorney for Just Puppies</i>	Fax 410-296-2801
James S. Patton, P.E., Patton Consultants <i>Engineers for Just Puppies</i>	Fax 410-296-0419

PATTON

*Patton
Consultants
Ltd.
Engineering
& Site
Planning*

August 10, 2000

Permits and Development Management
Office of Planning
401 Bosley Avenue, 4th. floor
Towson, Maryland 21204

Attention: Jeffery W. Long

Subject: 1026-1028 York Road (Timothy Quigg)
"Just Puppies:
ZAC Item #532 - Variance Request

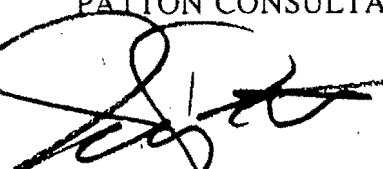
Dear Jeff:

To confirm our recent telephone conversation regarding Office of Planning recommendations to the Zoning Advisory Committee (ZAC), I clarified the fact that the proposed "Just Puppies", as tenant, applied for an "interior alterations" permit and a "use and occupancy" permit. The variance was required because of the proximity of a "pet shop" to a DR Zone. As tenant, exterior changes will solely be painting and installation of signage. Based on this information, you agreed that no review is required by the Design Review Panel in this matter.

Thank you for your cooperation.

Sincerely yours,

PATTON CONSULTANTS, LTD.



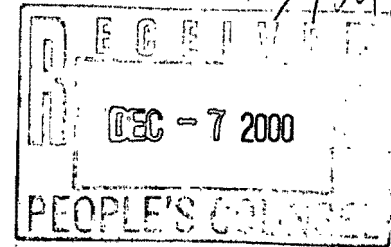
James S. Patton, P.E.,
President

JSP/met

cc: Mr. Mitchell Thomson
Howard Alderman, Esq.
Lawrence E. Schmidt, Esq.

November 30, 2000

Howard L. Alderman, Esquire
305 West Chesapeake Avenue
Towson, Maryland



Dear Mr. Alderman:

I read with horror the article that appeared in The Baltimore Sun today regarding the possible opening of a proposed pet shop called Just Puppies to be located on York Road in Towson. What was equally appalling was to have read your statement "This is just a zoning variance case. What these people think about this particular case is based on emotion, not on zoning law." In those few words, you made it quite clear just how insensitive and unconscionable a person you are and so apparently is the owner of this proposed shop. Money is apparently the thing of main importance. The article stated that the 60 puppies would not be from puppy mills. And, just where would you get 60 puppies to keep in such a facility. And, who is going to take care of them? What if no homes are found for them? Have you ever seen a puppy mill? I have. Have you seen what happens to dogs when they are kept in cages for extended periods of time, particularly as they are growing? Many of these dogs are sick when they arrive at the pet shops and/or have problems. Most cities and states are doing away with pet shops of this nature. There are hundreds of dogs in animal shelters already who need homes and who can't find homes. And, look in the newspapers. I am a private citizen, who is 57 years old, who works very hard to earn a living. But, I, by myself, am involved in feeding and rescuing cats and dogs and finding good homes for them. I spend about \$60.00 a month of my hard-earned income feeding unwanted animals. And, I am always giving money to some animal shelter – even if it is only pocket money. And, I know quite a number of groups of individuals and just individuals, like me, in and around Baltimore County and Baltimore City who are also involved in feeding unwanted cats and dogs and in rescuing them. This is an ongoing situation – 365 days a year – day and night. So, how can anyone be so unthinking as to even propose such a facility?

No, Mr. Alderman, you are wrong. This is not a case of a zoning variance law. This is a case of common sense and doing what is right, and not adding insult to injury, when there are already so many homeless dogs and cats who need good homes. And, yes, emotions do come in to play when you have a heart and are concerned about the well being of others and you see the terrible plight of unwanted animals. And, like I said above, how can anyone be so unthinking as to even propose such a facility?

Sincerely,

Deidra E. Hellwig

8 Witherwood Court, 3B
Towson, Maryland 21204

cc: Frank C. Branchini

Executive Director

Baltimore County Humane Society

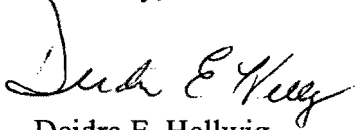
People's Counsel for Baltimore County, Board of Appeals, Zoning Board
The Honorable C.A. "Dutch" Ruppensberger

P.S. To the People's Counsel for Baltimore County
Board of Appeals
Zoning Board
The Honorable C.A. "Dutch" Ruppertsberger

This again reminds me of the situation with the Baltimore County "Detention" Center. I read the article in the newspaper that said the citizens approved this project. Most of the citizens probably didn't have a clue that it was part of Question C because unless you read the bill before hand, you didn't even realize it was part of the proposal. I had to read it three times before I saw it and the lady with whom I work told me that she almost didn't see it either because it was so slyly hidden in the text of that bill/proposal.

The Towson, Lutherville-Timonium and Hunt Valley areas cannot stand any additional traffic on York Road nor do we need any more shops or commercial facilities along the York Road Corridor. Let's start being sensible and preserve some of our land and try to reduce the traffic, noise, fumes, etc. that now effect what used to be one of the nicest "rural" areas with some commercial/retail buildings. Things seem to have gotten out of hand in Baltimore County.

Sincerely,

A handwritten signature in cursive script, appearing to read "Deidra E. Hellwig".

Deidra E. Hellwig
8 Witherwood Court, 3B
Towson, Maryland 21204



Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

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

(410) 887-2188

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

FAX COVER LETTER

TO: KEITH FRANZ, ESQ., 410 821-1265
CARROL HORTER, ESQ., 410 825-4923

FROM: PETER ZIMMERMAN

DATE: 8/21/00

PAGES (INCLUDING THIS COVER PAGE): 4

If all pages are not received, please call CAROL FISHER
at (410) 887-2188.

COMMENTS: RE: TIMOTHY QUIGG, Case No. 00-532-A

ENCLOSED ARE COPIES OF OBA and
CIRCUIT COURT OPINIONS IN WALTER RUMAGE
CASE NO. 76-138-A / 10/433/6363.



OFFICE OF PEOPLE'S COUNSEL
BALTIMORE COUNTY, MARYLAND
(410) 887-2188

Date: 10/17/2000

TO: GRACE, ANIMAL RESCUE
FROM: PETER ZIMMERMAN

Re: ZONING CASE
00-532-A
1028 YORK ROAD

FOR YOUR INFORMATION,
ENCLOSED ARE ZONING
CASE and MATERIALS
PMZ



OFFICE OF PEOPLE'S COUNSEL
BALTIMORE COUNTY, MARYLAND
(410) 887-2188

Date: 10/5/2000

TO: MARY JOKOVIC, DEFENDERS OF ANIMAL
FROM: PETER MAX ZIMMERMAN RIGHTS

FOR YOUR INFORMATION, ENCLOSED
IS OPINION IN PET SHOP CASE INVOLVING
"JUST PUPPIES, INC." TOGETHER
WITH PETITION AND NOTICE,

PM2

PLEASE CALL IF YOU HAVE ANY
QUESTIONS.

9-13-00

Met w/ Bob Latschow & contract purchaser at their request & OK'd by Howard Alderman ^{via (voice mail)} who was not present.

I explained the statute for 200' set back for pet shops applied county-wide & to let it go here would be a disadvantage to enforcement in another area where actual residences were w/ 200'. Acknowledged the MD Wat. Guard was not a residential use but it was up to CC to rezone it. Also statute, pays zone, not used residentially.

Agreed to hearing at CBA as soon as Kathy had about 1/2 day available. Advised when asked that we only appeal a fraction of the decisions from the CBA upon discussion w/ our office.

Latschman asked about use vs area variance & I briefly explained. I did tell him this did not seem like a case we would appeal just to test that issue. ~~and~~

Told them they may win at CBA & we (PM2 and) would discuss an appeal & let them know asap.

Agreed that this was not one of the most "egregious" cases involving the statute but we had to apply law consistently throughout the county, particularly a separate setback requirement for a specific use which differs from a general bulk setback for all uses in the zone.

CD

OX PM2

SYNVIS[®]

HYLAN G-F 20

Nov. 2, 2000

Mr. Zimmerman:

Mr. Mitchell Thomson has a "Test Puppie" stone in Laurel, Maryland at 13929 Baltimore Ave. (301- 776- 9929). This stone is the one described in the investigative report of May 20, 2000.

The investigation was conducted by Mr. Bill Dollinger, the executive director of "Friends of Animals", 2000 P. Street N.W. Suite 415, Washington, D.C., 20036 (202-296-2972).

Mrs. Henrietta S. Neill
410. 823. 4827

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Just Puppies experience

Wednesday, 01-Nov-00 16:47:09

206.205.152.22 writes:

I purchased a beautiful "toy/miniature" dachshund from the "Just Puppies" store in Laurel, Maryland, in December of 1999. He has been the a pure joy to me since I got him. But... I would never recommend anyone purchase an animal from this establishment. When I walked in the place there were over 90 dogs/puppies on hand to choose from. Some were sneezing, some were coughing, many were fighting. I picked up my little bundle of joy and immediately fell in love. What's not to love about a 2.5 pound puppy, right? In the first week that I had him I spent more than \$600 in vet bills. Oh, I went to the vet that Just Puppies recommended. What a joke!!! The little guy was sneezing, coughing, couldn't get a breath, not to mention the huge knot he had on his hind leg. The vet representing Just Puppies told me that he was fine, just give him the antibiotics (massive amounts) and bring him back in a week or so. The next day, I took him to my own vet, one that I know and trust with my other animals, only to find out that the dog was dehydrated, had kennel cough, had an allergic reaction to some shot or another that the Just Puppies people gave him, and he had some sort of foreign object up his little nose. I could go on and on but I'm sure the stories are all the same. I never received the registration papers on the puppy until August of this year (2000) and was lied to every time I called and asked where the papers were. So, if you want to save a cute puppy from the perils of puppy mills, go visit the Just Puppies in Laurel. They will tell you anything you want to hear as you are writing out your check!

(By the way, when I finally did receive my paperwork on my dog I found out that he came from the very puppy mill that was the subject of a major investigation by the television program "Dateline" back in January. Also, the dog that wasn't going to weigh more than 7 lbs., he now weighs 14 pounds and is not the least bit overweight!)

Donna

Donna - email: ddowning@ccex.com

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Re: Any Info on Just Puppies????

Saturday, 20-May-00 18:26:21

205.188.198.56 writes:

an article off this site

Our investigation began at "JUST PUPPIES", located in a strip mall on a well-traveled highway in suburban Maryland. Approximately sixty puppies of 30 different breeds can be found there on any given day. They are housed in children's plastic wading pools with chicken wire attached as makeshift fences. Buyers and browsers reach in and pull out pup after pup at will - an exhausting experience for the puppies. Newly arrived puppies are placed in the pools together, making disease control impossible.

Although the store has been open only since April 1999, FoA located several people who were dismayed to have spent hundreds of dollars on a puppy who fell ill immediately upon arrival home. Several puppies had hacking coughs, viral infections, lungs filled with fluid and other mysterious maladies that required weeks of medication to clear up. One 10-week-old cocker spaniel had to undergo a complete hip replacement operation, paid for at the buyer's expense.

A local veterinarian treated numerous puppies with kennel cough, a contagious disease that wouldn't be expected from puppies who are sold with a "health guarantee". The guarantee offered by JUST PUPPIES and similar stores turned out to be unrealistic and worthless to the upset new puppy buyers. It stipulates that the buyer must bring the sick puppy to the veterinarian representing the pet store. The store veterinarian then decides whether the puppy should receive treatment or be replaced with a puppy "of equal value".

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Any Info on Just Puppies????

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209.150.99.161 writes:

Does anyone know of an outfit known as Just Puppies? They have a locations in MARYland and Florida. They claim that they have visited all of the breeders that provide them puppies, but I am wary of this claim, since their breeders are all out of the Midwest. ANY information would be greatly appreciated.

Tony

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Message thread:

Any Info on Just Puppies???? (20-May-00 14:18:42)

Re: Any Info on Just Puppies???? (20-May-00 18:26:21)

(No subject) (n/t) (13-Nov-00 12:26:20)

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Now viewing page 1 of 3 (10-Nov-99 18:09:24 to 01-Nov-00 16:47:09)



In December 1999, we reported that the Hunte Corporation was shipping 230 puppies weekly from their commercial breeding/brokerage facility in Missouri. It would seem that since this story was made available through Truckers News, more information has come to light. In 1997 alone, the Hunte Corporation sold nearly 35,000 puppies to their pet store customers.

Please help us to educate the public that a Pet Store is NOT where you want to buy your companions. With the current euthanasia rate so high and all the wonderful animals in the shelters and pounds, there is no reason to have to buy from a pet store. Save a life - Adopt your next friend. :-) If you must have a new puppy then go to a reputable breeder. There is information throughout this site that will guide you in doing that.

1. Where puppies in the window come from!
Hunte Corp.
2. Partners in Crime! Pet stores/Suppliers

Where the puppies in the window come from!

Reprinted from the Truckers News Dec. 1999 by Brendan Cooney
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Hauling puppies is a big transition for some truck drivers. Going from carrying loads of objects that you never touch to carrying a trailer full of puppies that you have to pet, feed and coddle — and not get attached to — is a challenge.

Another perk is that they get to drive new equipment. Hunte has five 1999 Volvo 610s and two 2000 660s. "They're new trucks," Thorson says. "You don't have to worry about the truck breaking down. If it does, you just make a call, and they'll be out there to fix it. You don't have to worry about anything."

Lawson says the job is never dull. "Every week you learn something else. It's just like trucking. Just when you think you know dogs, you learn something new: a new breed or new ways to keep them healthy. We get to see dogs most people don't ever get to see, like the Tosa-Ken, a breed of mastiff." His favorite breed is the English bulldog, which grows to 70 pounds and sells for up to \$3,500 in New York pet stores. The drivers agree that hauling puppies is a mixed blessing. They get to spend time with adorable dogs, and they even get to hold them and play with them. But then they have to leave them. As Jones says, "The only bad part of the job is you get attached to the dogs."

Partners in Crime

Reprinted from ActionLine, the Friends of Animals' magazine, 777 Post Road, Darien, CT 06820

Twenty years ago, pet store chains with puppies in the window were as common a sight in suburban shopping malls as cellular phone stores are today. All the mall stores sold American Kennel Club (AKC) registered puppies from "puppy mills" - farms located primarily in midwestern states from which hundreds of thousands of puppies flooded the wholesale market each year.

Breeding for dollars, not health or sound temperament, puppy mills cut costs by keeping dogs in crowded dirty conditions, in chicken coops, ramshackle outbuildings, or dark cellars. With minimal human contact and poor genetic foundations, puppy mill purebreds turned out to be the worst sort of "impulse" purchase - with serious diseases and behavior problems included in the purchase price.

With present-day "superstore" pet supply chains such as PetsMart and Petco refusing to sell puppies or kittens, choosing instead to give space for animal shelters and rescue groups to showcase adoptable pets, one might be tempted to think that puppy mills are becoming a thing of the past. FoA's investigation into the sale of puppies in the state of Maryland proved otherwise.

Our investigation began at "JUST PUPPIES", located in a strip mall on a well-traveled highway in suburban Maryland. Approximately sixty puppies of 30 different breeds can be found there on any given day. They are housed in children's plastic wading pools with chicken wire attached as makeshift fences. Buyers and browsers reach in and pull out pup after pup at will - an exhausting experience for the puppies. Newly arrived puppies are placed in the pools together, making disease control impossible.

Although the store has been open only since April 1999, FoA located several people who were dismayed to have spent hundreds of dollars on a puppy who fell ill immediately upon arrival home. Several puppies had hacking coughs, viral infections, lungs filled with fluid and other mysterious maladies that required weeks of medication to clear up. One 10-week-old cocker spaniel had to undergo a complete hip replacement operation, paid for at the buyer's expense.

A local veterinarian treated numerous puppies with kennel cough, a contagious disease that wouldn't be expected from puppies who are sold with a "health guarantee". The guarantee offered by JUST PUPPIES and similar stores turned out to be unrealistic and worthless to the upset new puppy buyers. It stipulates that the buyer must bring the sick puppy to the veterinarian representing the pet store. The store veterinarian then decides whether the puppy should receive treatment or be replaced with a puppy "of equal value".

Diane Shawver bought a \$900 poodle from TODAY'S PET, another Maryland shopping mall pet store, last August. When the puppy began vomiting the day after coming home, she rushed him to her veterinarian, who diagnosed an intestinal blockage with severe dehydration. She was told by the store that the warranty was voided because she went to an outside vet. She was told that she could return her puppy, the store would euthanize him, and she could choose a new one.

The buyers interviewed by FoA investigators were told their puppies had not come from puppy mills but rather from "private breeders". In fact, all the pet stores investigated purchased their puppies from mills. One of the larger suppliers, **Hunte Corporation**, sold nearly 35,000 puppies in 1997 alone, according to U.S. Department of Agriculture reports.

The situation in Maryland may serve as a microcosm for the rest of the country. According to a 1999 issue of the Pet Products News Buying Guide, a pet store trade publication, "Livestock sales of dogs rose a healthy 35.6 percent in 1998". Sales generated from these puppies shot to \$33.6 million in 1998, compared to \$15.2 million in 1996.

Meanwhile, animal shelters across the country continue to kill millions of "unwanted" dogs every year for lack of good homes. It is estimated that between 25 and 45 percent of dogs arriving in shelters are purebreds, and breed-specific rescue organizations carry the burden of uncouned additional discarded dogs.

Many of the dissatisfied customers we interviewed are moving forward to take legal action against these stores. Washington DC's local Fox television affiliate worked with our investigators and aired a powerful expose'. Since the news story aired, a number of new complainants have surfaced. FoA has also coordinated a network of volunteers who will distribute leaflets outside of JUST PUPPIES, warning potential customers to the hidden costs in supporting the puppy mill trade.

Authors - Bill Dollinger and Donna Marsden

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Message thread:

Any Info on Just Puppies???? (20-May-00 14:18:42)

Re: Any Info on Just Puppies???? (20-May-00 18:26:21)

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Friends of Animals, Inc. is an international, non-profit, membership organization, incorporated in the state of New York in 1957. FoA works to protect animals from cruelty, abuse and institutionalized exploitation. FoA's efforts protect and preserve animals and their habitats around the world. Our goal is to achieve a compassionate ethic in people's relationship with animals, wild and domestic, at home and abroad.

Founded in 1957, Friends of Animals is a U.S. headquartered, international, non-profit 501 (c)(3) membership organization working to protect animals from cruelty and abuse. Today, we are one of the most respected activist groups in the nation and around the world. FoA has active members in all 50 states of the United States and in many foreign countries.

FoA's President is Priscilla Feral, who works out of the National Office in Darien, Connecticut. Our work is dependent upon the support of caring people who have become members to help protect animals and their habitats around the world.



FRIENDS OF ANIMALS

Founded in 1957, Friends of Animals is an international non-profit organization working to protect animals from cruelty and abuse. Today, they are one of the most respected activist groups in the nation and around the world. FoA has 150,000 members worldwide, with offices in Connecticut, New York, Washington, DC, Los Angeles and Jerusalem, Israel.

Their experienced staff, which includes environmental biologists, wildlife and marine mammal experts, legislative specialists, and animal protection activists, translate the needs of animals into fully developed and executed action programs for change. A brief synopsis of their major animal protection programs follows:

Breeding control for Cats and Dogs -FoA has assumed a leadership role in advocating low-cost spaying and altering as the most effective means of preventing the births of unwanted dogs and cats, and their subsequent abandonment, suffering and mass killing. FOA has responded to the need for affordable spaying and neutering by establishing the only nationwide low cost spay/neuter program (information on this program available by calling 1-800-321-PETS).

Endangered Species -FoA works diligently to afford and continue protection for endangered species by lobbying at the Convention on International Trade in Endangered Species on behalf of threatened and endangered species. FoA was instrumental in the passage of a worldwide ban on the ivory trade, and works to provide vital equipment to anti-poaching squads in 11 African countries.

Marine Mammals -Throughout the years, FoA's marine mammal programs have included investigative reports, public information and education, direct action, legislative action, and legal challenges on behalf of Marine Mammals. FoA was actively involved in the successful tuna boycott which led to the protection of dolphins from being killed by the tuna industry. FOA also campaigns to save Pacific walruses, sea lions, as well as lobbying to continue the worldwide moratorium on commercial whaling

Wildlife Programs - FoA has initiated a great many programs to help protect our wildlife and public lands. The FoA campaign which ended a "wolf-control" program by the state of Alaska brought great pressure on the state officials through a worldwide tourism boycott and dramatic footage of the snared wolves. FoA also works to educate the public and bring about reform in federal Animal Damage Control program, and the National Wildlife Refuge System.

Fighting the Fur Industry - FoA has waged an aggressive campaign to educate the public about the grim realities involved in the production of fur garments. Through fur-farm investigations and report, media outreach and large demonstrations such as the annual Fur-Free-Friday march in New York City, FoA has gotten the message out that it is no longer acceptable to wear fur.

To learn more about Friends of Animals, contact them at:

Friends of Animals
777 Post Road, Suite 205
Darien CT 06820
203-656-1522

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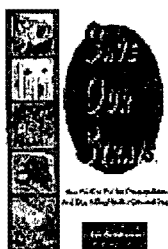
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Baltimore	<u>Heaven's Gate Animal Rescue</u>
Baltimore	<u>Maryland SPCA</u>
Berlin	<u>Worcester County Humane Society</u>
Cambridge	<u>Humane Society Of Dorchester County</u>
Cambridge	<u>Last Chance Animal Rescue</u>
Charlotte Hall	<u>St Mary's Animal Welfare League</u>
Chesapeake City	<u>Cecil County SPCA</u>
Chestertown	<u>Humane Society Of Kent County</u>

Kansas

The Cat Association of Topeka

Kentucky

Animal Refuge Center, Vine Grove
Ark Project, The
Home At Last Animal Sanctuary, Salvisa
Pet Lovers United, Madisonville
The Shamrock Foundation, Louisville
Trixie Foundation, The , Grayson

Louisiana

Arklatex Dog/Cat Adopt and Friends, Haughton
Bell Animal Shelter, Lake Charles
Lafayette Animal Aid
Southern Animal Foundation, New Orleans

Maine

Ark Animal Shelter
Boothbay Region Humane Society, Lincoln CO Shelter
Camden-Rockport Animal Rescue League, Rockport
Hemlock Hill Farm Sanctuary
Humane Society of Knox County, Thomason
Marlee Animan Rescue Shelter

Peaceable Kingdom, Brooks



Protectors of Animal Life Society, East Winthrop



Maryland

Action Pet Rescue Service, Baltimore

Alley Cat Allies, Mount Rainier



Animal Rescue, Baltimore

Cat & Kitten Rescue Of Baltimore

Catwoman Rescue and Adoption, Hampsted



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SELLING OF ANIMALS

Maryland law requires any puppy or kitten sold or given away be at least eight (8) weeks of age. Baltimore County law requires anyone selling or giving away a puppy, kitten, dog or cat to provide a health certificate, signed by a licensed veterinarian. A statement indicating date of sale or transfer of animal, description of animal, immunizations given and name, address and phone number of buyer and seller must be provided also.

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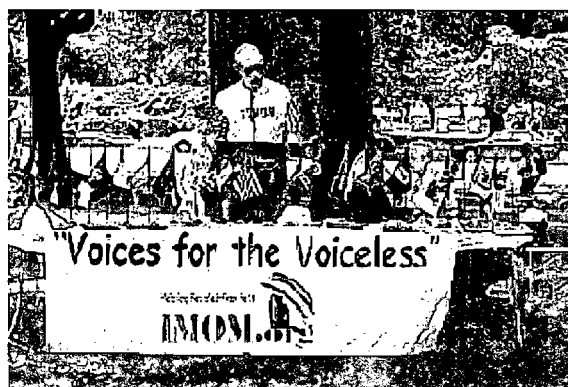
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VOICES FOR THE VOICELESS

Sacred Ground

The following is the complete text of the speech, "Sacred Ground," which was delivered by IMOM Review Board Member Jim Burris at the Voices For The Voiceless Rally in Washington, DC on July 2, 2000. Kyle Kimberlin, also an IMOM Board Member, wrote this highly inspirational speech with input from Jim, and together they were able to create a piece not soon forgotten. You may not have been able to attend the Rally...but you'll surely be moved by what Jim had to say.



Hi, Fighters!

For those of you who don't know me, I'm Jim Burris and I am sure I have traded e-mails with everyone here and many, many more who couldn't make the trip. When I retired from the FBI I assumed my fighting days were over... Boy, was I fooled!

I'm so glad that all of you could be here today. My message is going to be somewhat short, but it's powerful and something you need to hear. I hope when it's over you will feel differently about why you came.

As I look at all these beautiful state flags, I know some of you have come a long way. I came from Texas; anybody else here from Texas? Holler if you hear me! Maryland? Ohio? Florida? Tennessee? (Is Al Gore out there? I doubt it!!!) New Jersey? Michigan? Pennsylvania? Louisiana? Virginia? Colorado? Georgia? Connecticut? New York? California? North Carolina? Delaware? Iowa? DC?

I would like to recognize some of my "Inner Circle" of fighters-- the IMOM Gladiators. Some are here "in person" and all are here "in spirit." Please give these hard-hitting, dedicated, animal welfare "frontline warriors" a big round of applause. And, please, another round for the IMOM Review Board members.

got her head pinned under the door that did not have a safety feature to open if anything was stuck in the door. She was screaming and was unable to move while the door continued to try to shut, I ran to my truck to get the door opener, I did get the door to go up. The whole thing lasted about 30 seconds but I feel very fortunate that my puppy was not seriously injured. She checked out ok at the vet, fortunately. I put my foot in the door to measure the force and it left a bruise. We had just bought the house four months before and had never crossed my mind to check the door openers for safety beams. We thought we were ready for a pup and then this happened. It could have very easily ended in a tragedy and I feel our experience may help alert people to a potentially lethal experience.

Regards,

Jeff

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QUESTION

Dear Mr. Ed Frawley:

I found your website on the internet, and I was hoping you would be willing to help with some advice or maybe a referral to someone who would be able to help us.

I am sorry to say that we are having a problem with our Jack Russell Terriers. We have a 5 month old male Jack Russell Terrier who we bought from a friend who bought him from a pet store called "Just Puppies".

We have had our male dog for about 1.5 months. My husband bought me a 12 week old female JRT for mother's day. He bought the female from a JRTCA breeder who was home raised - she is the best, we have had for a little over a week.

Our male "Rusty" is not a very happy dog, he hardly ever wags his tail (he was 5 months old on May 14th - he is 13.5 inches at the withers and approximately 13 to maybe 14 lbs.). Our female "Molly" is very happy -she wags her tail everywhere she goes, great with our child, we already love her very much (Molly is now about 13 weeks and only 5lbs).

We have tried letting them duke it out and we have tried keeping them apart for a few days, because Rusty bites her and pulls on her ears. Rusty is always growling, baring his teeth, and biting (Molly at first was taking the abuse, but now her fur stands up and she is growling also). The first night they were home together he pinned her down by the neck and she was gasping for air (she couldn't even yipe in pain). Molly can be walking across the yard and Rusty will go over to her and bite her legs, neck, or back - sometimes he will start dragging her. He is not playing with her - she could be sleeping or using the bathroom and he will do those things to her. She is not allowed to play with toys or anything else without him lifting his lips and baring his teeth and starting a fight over it. He doesn't allow her to eat or drink without pushing her out of the way. She will wait for him to stop eating or drinking and will take her turn, but Rusty just comes back over and pushes her out and tries to eat all the food he can Molly's ribs are starting to show). Molly on the other hand is playful - she has the best temperament, but she is getting sick of Rusty - it is very apparent that she dislikes him and does not want to play with him - and she is starting to act aggressive like him.

Fortunately, the trailers are short — 34 feet — but winding one's way through the tight turns of a mall lot can be frustrating, he says.

Adding to the local flavor of the job is the truckers' familiarity with customers. Truckers know all the pet store owners on a first-name basis, which helps when they have to scratch the customers' backs to get them to accept a dog. The store owners can be more finicky than the pets. "If the dog's too ugly, I won't take it," says a pet store owner who prefers to remain anonymous. Another pet store owner says, "If it's a golden retriever with white legs, forget about it."

"We generally have a couple of rejects," says Vern Martin, Hunte's transportation manager. "It's the wrong sex, too ugly — if you can believe it — [has] a heart murmur, bad knee, hair loss, whatever." A runny nose is another basis for rejection. When unloading the puppies, drivers carry one puppy in each hand, so that they won't spread colds. Between handling dogs, the driver has to wash his hands with Septi-Clean hand sanitizer, a soap that dries in about 15 seconds. "You've got to have 20 heads on your shoulders," Elkins says. "Keep the customers happy. You're a driver, a salesman, a puppy-care technician, a politician; when you leave here you're in charge."

One initial drawback to the job is the pungent odor that fills the trailer. "The smell takes a little getting used to," Lawson admits. The trailers are custom-designed, with ramps that collect all the puppy waste and channel it into two 200-gallon tanks, which the drivers empty at a truckstop.

The trailers also have two tanks that each carry 100 gallons of drinking water for the puppies. A Thermo-King unit keeps the air fresh and the temperature between 72 and 74 degrees. The fresh air cuts down on upper-respiratory problems, Hunte says.

One perk for drivers is that they make a base salary, because each team drives different distances. They also get a bonus for returning to Hunte with an empty trailer.

Another perk is that they get to drive new equipment. Hunte has five 1999 Volvo 610s and two 2000 660s. "They're new trucks," Thorson says. "You don't have to worry about the truck breaking down. If it does, you just make a call, and they'll be out there to fix it. You don't have to worry about anything."

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Owner Name: QUIGG TIMOTHY R
Mailing Address: 15836 E REDFIELD RD
GILBERT AZ 85234

Use: COMMERCIAL
Principal Residence: NO

Transferred
From: HECKER AILEEN

Date: 06/30/1978 **Price:** \$0

Deed Reference: 1) / 5905/ 367
2)

Special Tax Recapture:

* NONE *

Tax Exempt: NO

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Premises Address:
1026 YORK RD

Zoning:
BR

Legal Description:
LT WS YORK RD & IMP
3960 S OF SEMINARY AV

Map **Grid** **Parcel**
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Subdiv

Sect

Block

Lot

Group

Plat No:

81

Plat Ref:

Special Tax Areas

Town:

Ad Valorem:

Tax Class:

Primary Structure Data

Year Built:
0000

Enclosed Area:
1,500 SF

Property Land Area:
7,276.00 SF

County Use:
06

Value Information

	Base Value	Current Value	Phase-In Value	Phase-in Assessments	
		As Of	As Of	As Of	As Of
		01/01/1999	07/01/2001	07/01/2000	07/01/2001
Land:	104,550	104,500			
Impts:	54,900	59,200			
Total:	159,450	163,700	163,700	64,910	163,700
Pref Land:	0	0	0	0	0



**Real Property
Information**

**Maryland Department of Assessments and Taxation
Real Property System**

[\[Go Back\]](#)

BALTIMORE COUNTY

[\[Start Over\]](#)

DISTRICT: 09 ACCT NO: 0908300662

Owner Information

Owner Name: QUIGG TIMOTHY R
Mailing Address: 15836 E REDFIELD RD
GILBERT AZ 85234-1309

Use: COMMERCIAL
Principal Residence: NO

Transferred

From: HECKER AILEEN

Date: 06/30/1978 **Price:** \$0

Deed Reference: 1) / 5905/ 367
2)

Special Tax Recapture:

* NONE *

Tax Exempt: NO

Location Information [View Map]

Premises Address:
1028 YORK RD

Zoning:
BR

Legal Description:
LT SWS YORK RD
319 S OF WEST RD

Map	Grid	Parcel	Subdiv	Sect	Block	Lot	Group	Plat No:
70	1	467					81	Plat Ref:

Special Tax Areas

Town:

Ad Valorem:

Tax Class:

Primary Structure Data

Year Built:	Enclosed Area:	Property Land Area:	County Use:
0000	2,400 SF	11,274.00 SF	06

Value Information

	Base Value	Current Value	Phase-In Value	Phase-in Assessments	
		As Of	As Of	As Of	As Of
		01/01/1999	07/01/2001	07/01/2000	07/01/2001
Land:	206,370	206,300			
Impts:	63,060	67,800			
Total:	269,430	274,100	274,100	109,010	274,100
Pref Land:	0	0	0	0	0

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: Neil S. Kravitz -Petitioner
Case No. 96-89-SPH

DATE : June 19, 1996 @ 10:05 a.m.

BOARD /PANEL : Kristine K. Howanski (KKH)
Charles L. Marks (CLM)
S. Diane Levero (SDL)

SECRETARY : Kathleen C. Bianco
Administrative Assistant

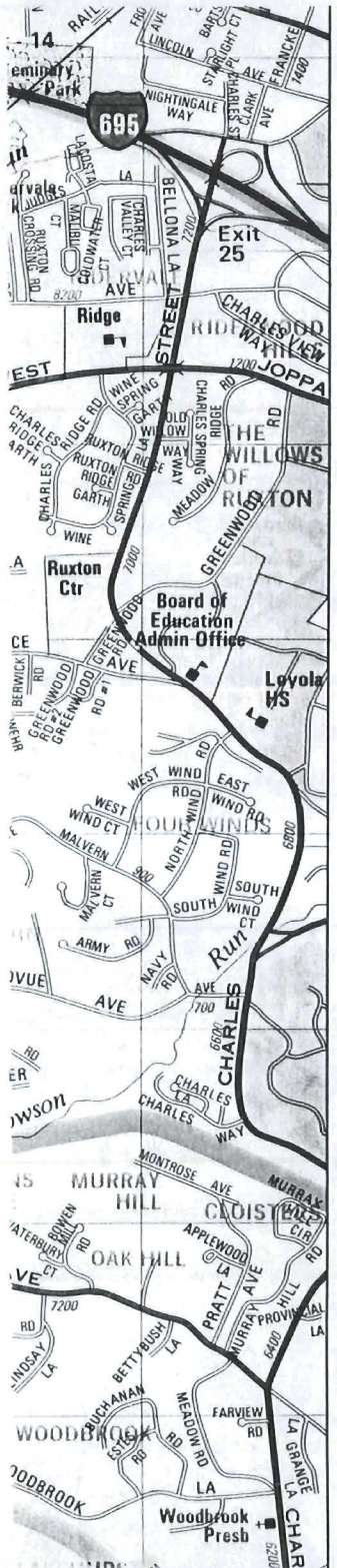
Among those present at the deliberation were Peter Max Zimmerman, People's Counsel for Baltimore County, and Carole S. Demilio, Deputy People's Counsel.

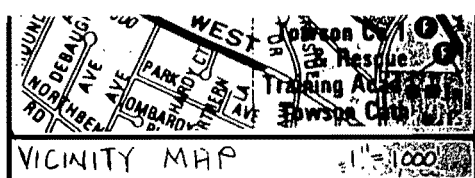
PURPOSE --to deliberate issues and matter presented to the Board; testimony and evidence received June 19, 1996. Written Opinion and Order to be issued by the Board.

KKH: We are here this morning to deliberate Case No. 96-89-SPH, Neil S. Kravitz, Petitioner, and even though it's not a typical zoning matter, I guess I still have my continuing objections to the public deliberation process and note that. And typically, I think I will stay with that today as a prefer to hear from my colleagues before I speak.

SDL: The Petitioner is appealing the Zoning Commissioner's denial for special hearing to approve firearms license in residential zone as a home occupation. I would deny the Petitioner's appeal. I would do this on the basis of one factor only -- conducts gun-related activities in an auxiliary building, not the main dwelling or attached to the main dwelling. All other aspects comply with the requirements: no signs; no commodity on premises; no employees; and, finally, in my opinion, using no mechanical equipment.

People's Counsel argues that reloading machine serves no domestic purpose and, therefore, the use of this equipment renders him noncompliant. I strongly disagree. Mr. Kravitz is an active member of four or five gun groups; all of 250 members of one reload their own ammunition; and 99 percent of Baltimore County gun club load their own ammunition. Theirs is not a commercial use. I would point out that a homeowner has the right, under the Second Amendment of the Constitution, to keep arms in their home, and many homeowners exercise this right. The loading of cartridges for firearms would be





MARYLAND NATIONAL GUARD ARMORY

GENERAL NOTES:

- OWNERSHIP:** TIMOTHY R. QUIGG
15836 E. REDFIELD AVE.
GILBERT, AZ. 85234
PHONE No.: (480) 655-1953
- PROPERTY ADDRESS:** 1026-1028 YORK ROAD
TOWSON, MD. 21204-2515
- LESSEE:** JUST PUPPIES (Mr. Mitchell Thomson)
13929 BALTIMORE BLVD.
LAUREL, MD. 20707
PHONE No.: (301) 776-9929
- CENSUS TRACT:** 4903.01
- COUNCIL DISTRICT:** 4 **ELECTION DISTRICT:** 9
- WATER SHED:** 10 **SUBSEWERSHED:** 29
- DEED & TAX #:** 5905/367 090300661
- EXISTING ZONING:** IIR (MAP No. NE 11A)
- EXISTING USE:** COMMERCIAL
- PROPOSED USE:** COMMERCIAL: PET SHOP
IN ACCORDANCE WITH DCZR
SECTION 421.2
- SITE ANALYSIS:** GROSS AREA: 21,115 SQ. FT. ± 0.485 AC ±
NET AREA: 18,345 SQ. FT. ± 0.426 AC ±
FRONT SETBACK: 25'
SIDE YARD: 30' *VARIANCE CASE #79-188-XA
REAR YARD: 30'
- COMMERCIAL PERMIT:** NONE OF RECORD
- ZONING HISTORY:** PETITION FOR SPECIAL EXCEPTION AND
VARIANCES CASE No. 79-188-XA GRANTED. A
USED CAR SALES & SERVICE FACILITY. A SIDE
SETBACK OF 0' IN LIEU OF THE REQUIRED 30'
AND DISPLAY OF USED CARS WITHIN 10' OF THE
RIGHT-OF-WAY OF YORK ROAD IN LIEU OF THE
REQUIRED SETBACK OF 35'. GRANTED MARCH 8,
1979.
- 14. SITE IS SERVICED BY PUBLIC WATER AND PUBLIC SANITARY SEWER.**
- 15. NO STREAMS, STORMWATER MANAGEMENT SYSTEMS, DRAINAGE SYSTEM EXIST ON OR WITHIN 50 FEET OF THE PROPERTY.**
- 16. FLOODING PERMITTED: 1.0'**
- 17. ACCESS NOT REQUIRED**
- 18. PARKING REQUIRED:**
PET SHOP:
5 PKG SPACES/1,000 SQ. FT. OF GROSS FLOOR
AREA X 2,240 SQ. FT. = 12 PKG SPACES
AUTO SERVICE:
3.3 PKG SPACES/1,000 SQ. FT. GROSS FLOOR AREA
X 1,344 = 5 PKG SPACES
TOTAL = 17 PARKING SPACES REQUIRED
PARKING PROPOSED: 17 PARKING SPACES PROPOSED
- 19. BASED ON PREVIOUS VARIANCE (CASE 79-188-XA) THE EXISTING BUILDING MEETS CODE REQUIREMENTS**
- 20. WALL MOUNTED SIGN:** MAXIMUM AREA/FACE = 2' X 21' = 56 SQ. FT.
NOT LARGER THAN 150 SQ. FT.
WALL MOUNTED SIGN OF 54 SQ. FT.
- 21. PROPOSED:**
- 22. FREE STANDING SIGN:** MAX AREA/FACE = 75 SQ. FT.
MAX HEIGHT = 25 FT
FREE STANDING SIGN OF 54 SQ. FT.

PRINTED

OR 81 633

PATTON CONSULTANTS, LTD.

PETITION REQUEST:

A VARIANCE FROM SECTION 421.2 TO PERMIT A PET SHOP TO BE LOCATED NEXT TO A DR 10.5 ZONE (RESIDENTIAL ZONE) IN LIEU OF THE REQUIRED 200 FEET FOR THE REASON THAT THE GOVERNMENTAL USE LOCATED IN THE NEAREST RESIDENTIAL (DR 10.5) ZONE IS THE MARYLAND NATIONAL GUARD ARMORY LOCATED INSIDE THE "CLOVER LEAF" ACCESS RAMPS OF THE I-695 (BALTIMORE BELTWAY). SUCH THAT THE SPIRIT AND INTENT OF THE REQUIREMENT OF BALTIMORE COUNTY ZONING REGULATIONS SECTION 421.2 WILL BE ACHIEVED. FURTHER, THE LOCATION OF THE PROPOSED LOT IS UNIQUE AND THE HARDSHIP WAS NOT CREATED BY THE APPLICANT NOR THE PROPERTY OWNERS.

OTHER APPLICABLE FACTORS WILL BE PRESENTED AT THE TIME OF HEARING OF THIS PETITION.

PATTON EXHIBIT

WOODS

BR

VACANT

JOHN S. ARMSTRONG ET AL
10057 / A 51
ACT # 0902850160

NOTE: VARIANCED TO 0' (CASE 78-188-740)
1 STORY GARAGE
AUTO SERVICE
12' HEIGHT

ANIMAL HOSPITAL

1 STORY BLDG
ROOF JUST PUPPIES
16' HEIGHT

#1030

310'

BR

#1028
#1026
FRONT
20'
31-30'

EX 8" W
EX 6" SAN

28'

28'

28'

28'

28'

28'

GENERAL NOTES:

1. OWNERSHIP
2. PROPERTY
3. LESSEE:
4. CENSUS TRACED
5. COUNCIL DISTRICT
6. WATER SHEET
7. DEED & TAX MAP
8. EXISTING ZONING
9. EXISTING USE
10. PROPOSED USE
11. SITE ANALYSIS
12. COMMERCIAL
13. ZONING HISTORY

10. SITE IS SERVING
11. NO STREAKS
OR WITHIN
12. PARKING
13. BASED ON

742 May

Ref M02



The Elements of Variance Law

A petitioner must pass each of a number of tests to obtain a variance. BCZR 307.1

states, in pertinent part, that the CBA may grant variances:

“... only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the zoning regulations of Baltimore County would result in practical difficulty or unreasonable hardship.”

This standard requires proof of the following:

1. That the land or structure is “unique,” a zoning term of art;
2. That the uniqueness “results” in “practical difficulty” pertinent to zoning compliance;
3. That there is true “practical difficulty,” another zoning term of art; and
4. That any such “practical difficulty” is not self-created.

In addition, the recently enacted sign ordinance, Bill 89-97, places an additional burden on petitioners for sign variances. BCZR 450.8A.1 states:

“In considering requests for special exceptions and variances, the provisions of this section shall be strictly construed, unless the demonstrable effect of a liberal construction will prevent or reduce the confusion and visual clutter caused by excessive signage.”

The Council also supported its new standards with a Statement of General Findings and Policies. Norman Gerber identified several as especially relevant. We note these:

450.1D: “Baltimore County's appearance is marred, property values and public investments are jeopardized, scenic routes are diminished and revitalization and conservation efforts are impeded by excessive signage and incompatible signage.”

RESUME

JAMES S. PATTON, P.E., **PRESIDENT, PATTON CONSULTANTS LTD.**

Mr. Patton has over thirty five (35) years experience in site engineering, site development services, and land planning for a wide variety of public and private clients. His experience in the private sector has been in residential, commercial, and industrial site development. His public works experience is very broad, as he served as an officer in the U. S. Navy Civil Engineering Corps and as City Engineer for Washington, PA. In addition, he has provided site engineering and planning services to many local school boards, hospitals, colleges, and institutions in their development and construction programs.

He has been responsible for projects ranging in size and scope from a few thousand square feet to areas of more than a thousand acres. These projects have included storm water management, water distribution, sanitary sewer, streets, roads, parking areas, grading, wetlands and critical areas, and erosion control. His background includes new development, expansion, restoration, renewal and revitalization.

Site Plan approvals and obtaining permits for site development is a major focus. The ability to overview the various elements of site development such as zoning, environmental concerns, and utilities has been and is an important function performed by Mr. Patton in obtaining approvals and expediting the development of a site or project.

EDUCATION:

SWARTHMORE COLLEGE
UNIVERSITY OF PENNSYLVANIA

Bachelor of Science, Civil Engineering
Master of City Planning

LICENSES/CERTIFICATIONS:

PROFESSIONAL ENGINEER

Pennsylvania, West Virginia (inactive)
and Maryland

EXPERT WITNESS

Baltimore County Circuit Court;
Baltimore County District Court;
Board of Appeals and Zoning
Commissioner; Anne Arundel County
Zoning Commission; City of Baltimore
Zoning Commissioner. Circuit Court
Washington County, PA.

COMPREHENSIVE PLANNER

New York, Pennsylvania, West Virginia,
and Delaware.

McLEAN v. SOLEY

[No. 23, September Term, 1973.]

Decided November 7, 1973.

ZONING — Variances — Need Sufficient To Justify An Exception Must Be Substantial And Urgent, And Not Merely For The Convenience Of The Applicant. pp. 212-213

ZONING — Variances — Requirements Of "Practical Difficulty Or Unreasonable Hardship" Are In The Disjunctive — No Reason To Construe "Practical Difficulty" As The Equivalent Of A Taking In The Constitutional Sense. pp. 213-214

ZONING — Variances — Criteria For Determining Whether Practical Difficulty Has Been Established. pp. 214-215

ZONING — Variances — Facts Which Meet Criteria For Granting Exception To Sideyard Requirements Where Strict Compliance Would Result In Destruction Of Trees. p. 215

ZONING — Estoppel — Variances — Rule That One Is Charged With Knowledge Of Zoning Regulations When Property Is Purchased And Therefore Precluded From Asserting Hardship Is Significant For Use Variances But Not Area Variances. p. 215

ZONING — APPEAL — Fairly Debatable — A Zoning Body's Decision Will Be Sustained Where Reasonable Persons Could Have Reached Differing Conclusions On The Evidence So That The Issues Were Fairly Debatable Even If A Court Might Have Reached A Contrary Result On The Evidence. pp. 215-216

R. L. H.

Appeal from the Circuit Court for Baltimore County (MACDANIEL, J.).

Appeal by William H. McLean, Jr., from granting of a sideyard variance to Joseph L. Soley by the Board of Appeals of Baltimore County. From a judgment affirming the action of the Board, the protestant appeals.

Judgment affirmed; appellant to pay costs.

The cause was argued before MURPHY, C. J., and BARNES, McWILLIAMS, SINGLEY, SMITH, DIGGES and LEVINE, JJ.

Richard F. Cadigan for appellant.

W. Lee Harrison, with whom was Cooper C. Graham on the brief, for appellee.

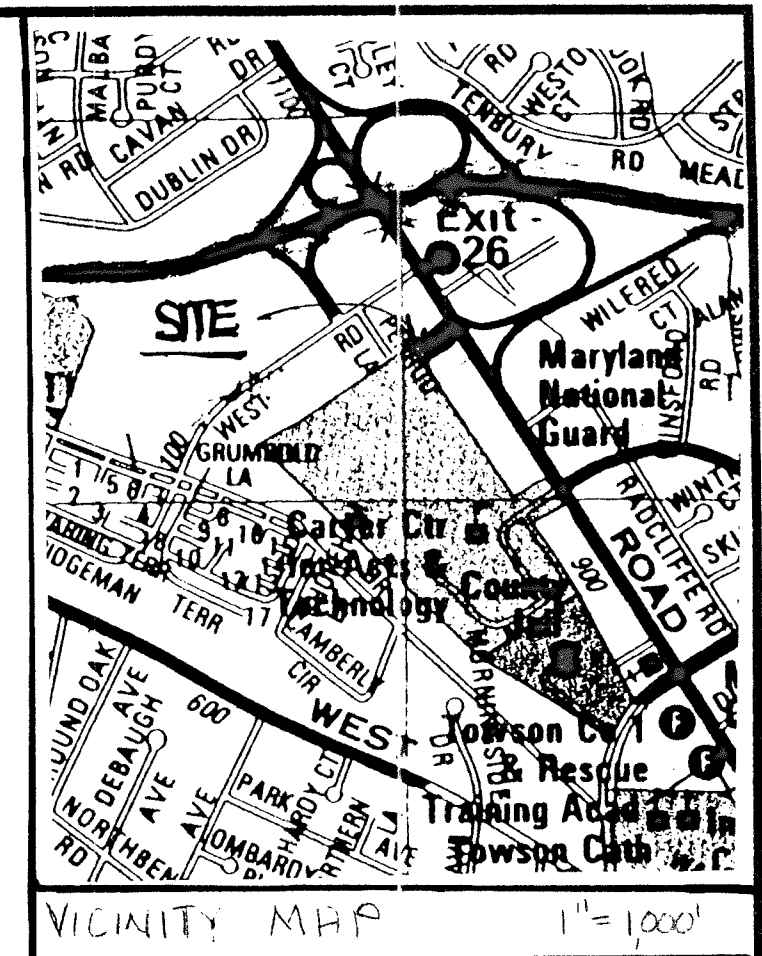
LEVINE, J., delivered the opinion of the Court.

This appeal is from an order of the Circuit Court for Baltimore County which affirmed a decision of the County Board of Appeals of Baltimore County (the Board) granting a variance from the side yard window setback requirement contained in the county zoning regulations. Appellee, Joseph L. Soley (Soley), had applied for the variance in connection with his proposed apartment house-office building project, and appellant, William H. McLean, Jr. (McLean), who lives in a house adjacent to the Soley property, was the only protestant.

The property in question is located on the north side of Aigburth Road approximately 324 feet east of York Road. Immediately to its west is a development previously built by Soley known as Cardiff Hall East Apartments, which also combines apartment units and office space. The McLean property, including his residence, is situated immediately to the east and fronts on Aigburth Road. The subject property, consisting of 2.43 acres, is rectangularly-shaped with the south end also fronting on Aigburth Road. The rear end of the parcel backs up on an alley which separates it from a development of detached homes called "Burkleigh Square."

Soley proposes to erect two rectangularly-shaped buildings, each to contain 20 dwelling units, positioned upon the parcel in a north-south direction. In other words, the south end of one building would front on Aigburth Road and the north end of the second would back up on the alley.

The adjacent parcel to the west, previously developed by Soley, consists of 4.44 acres and is improved by 60 units. Since the property is in the D.R. 16 classification, as is the



GENERAL NOTES:

1. **OWNERSHIP:** TIMOTHY R. QUIGG
1536 E. REDFIELD AVE.
GILBERT, AZ. 85211
PHONE No. (480) 615-1953
2. **PROPERTY ADDRESS:** 1026-1028 YORK ROAD
TOWSON, MD. 21204-2515
3. **LESSEE:** JUST PUPPIES (Mc. Mitchell Thomson)
13929 BALTIMORE LVD
LAUREL, MD. 20707
PHONE No. (301) 76-9929
4. **CENSUS TRACT:** 4903.01
5. **COUNCIL DISTRICT:** 4 ELECTION DISTRICT: 9
6. **WATER SHED:** 10 SUBDIVISION SHED: 29
7. **DEED & TAX #:** 5905/367 090300661
8. **EXISTING ZONING:** BR (MAP No. NE 11A)
9. **EXISTING USE:** COMMERCIAL
10. **PROPOSED USE:** COMMERCIAL PET SHOP
IN ACCORDANCE WITH BCZR
SECTION 421.2
11. **SITE ANALYSIS:** GROSS AREA: 21,115 SQ. FT. ± = 0.485 AC. ±
NET AREA: 15,595 SQ. FT. ± = 0.426 AC. ±
FRONT SETBACK: 25'
SIDE YARD: 33' *VARIANCE CASE #79-188-XA
REAR YARD: 33'
12. **COMMERCIAL PERMIT:** NONE OF RECORD
13. **ZONING HISTORY:** PETITION FOR SPECIAL EXCEPTION AND
VARIANCES CASE No. 79-188-XA GRANTED. A
USED CAR SALES & SERVICE FACILITY. A SIDE
SETBACK OF 0' IN LIEU OF THE REQUIRED 30'
AND DISPLAY OF USED CARS WITHIN 10' OF THE
RIGHT OF WAY OF YORK ROAD IN LIEU OF THE
REQUIRED SETBACK OF 35'. GRANTED MARCH 8,
1979.
14. **SITE IS SERVICED BY PUBLIC WATER AND PUBLIC SANITARY SEWER.**
15. **NO STREAMS, STORM WATER MANAGEMENT SYSTEMS, DRAINAGE SYSTEM EXIST OR WITHIN 50 FEET OF THE PROPERTY.**
16. **PERMITTED: 200'**
17. **A.O.S. NOT REQUIRED.**
18. **PARKING REQUIRED:** PET SHOP:
5 PKG SPACES/1,000 SQ. FT. OF GROSS FLOOR
AREA X 2,240 SQ. FT. = 12 PKG SPACES
AUTO SERVICE:
11 PKG SPACES/1,000 SQ. FT. GROSS FLOOR AREA
X 1,344 = 5 PKG SPACES
TOTAL = 17 PARKING SPACES REQUIRED
PARKING PROPOSED: 25 PARKING SPACES PROPOSED
19. **BASED ON PREVIOUS VARIANCE (CASE 79-188-XA) THE EXISTING BUILDING MEETS CODE REQUIREMENTS.**
- 20(a). **WALL MOUNTED SIGN:** MAXIMUM AREA/FACE: 2 X 28' = 56 SQ. FT.
* NOT LARGER THAN 150 SQ. FT.
PROPOSED: 1 WALL MOUNTED SIGN OF 54 SQ. FT.
- (b). **FREE STANDING SIGN:** MAX AREA/FACE: 75 SQ. FT.
MAX HEIGHT: 25 FT.
PROPOSED: 1 FREE STANDING SIGN OF 54 SQ. FT.

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VAL 81

PATTON CONSULTANTS, LTD.

PETITION REQUEST:

A VARIANCE FROM SECTION 421.2 TO PERMIT A PET SHOP TO BE LOCATED NEXT TO A DR 10.5 ZONE (RESIDENTIAL ZONE) IN LIEU OF THE REQUIRED 200 FEET FOR THE REASON THAT THE GOVERNMENTAL USE LOCATED IN THE NEAREST RESIDENTIAL (DR 10.5) ZONE IS THE MARYLAND NATIONAL GUARD ARMORY LOCATED INSIDE THE "CLOVER LEAF" ACCESS RAMPS OF THE I-695 (BALTIMORE BELTWAY). SUCH THAT THE SPIRIT AND INTENT OF THE REQUIREMENT OF BALTIMORE COUNTY ZONING REGULATIONS SECTION 421.2 WILL BE ACHIEVED. FURTHER, THE LOCATION OF THE PROPOSED LOT IS UNIQUE AND THE HARDSHIP WAS NOT CREATED BY THE APPLICANT NOR THE PROPERTY OWNERS.

OTHER APPLICABLE FACTORS WILL BE PRESENTED AT THE TIME OF HEARING OF THIS PETITION.

PATTON EXHIBIT #1

PROJECT/DEVELOPMENT		DATE	
"JUST PUPPIES"		04/00	
DRAWING TITLE		SHEET	
PLAT TO ACCOMPANY PETITION FOR VARIANCE		1 OF 1	
COUNTY: BALTIMORE	ELECTION DIST: 9/4	PROJECT #: 20013	SCALE: 1"=20'

DRAWN BY	DATE	REVISIONS	BY
DESIGN BY			
CHECKED BY			

